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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 97–101–3]

Imported Fire Ant Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, two interim rules that amended the imported fire ant regulations by designating as quarantined areas all or portions of 9 counties in Arkansas, 10 counties in North Carolina, 3 counties in Oklahoma, 5 counties in South Carolina, 15 counties in Tennessee, and 13 counties in Texas. The interim rules were necessary in order to impose certain restrictions on the interstate movement of regulated articles from these areas to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

EFFECTIVE DATE: Affirmation effective November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Milberg, Operations Officer, Operational Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–5255; or e-mail: ron.p.milberg@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on January 28, 1998 (63 FR 4151–4154, Docket No. 97–101–1), we amended § 301.81–3(e) of the imported fire ant regulations by designating as quarantined areas all or portions of 10 counties in North Carolina, 3 counties in Oklahoma, 5 counties in South Carolina, 15 counties in Tennessee, and 13 counties in Texas. In another interim rule, effective and published in the **Federal Register** on July 2, 1998 (63 FR 36155–36156, Docket No. 97–101–2), we amended § 301.81–3(e) of the imported fire ant regulations by designating as quarantined areas 9 counties in Arkansas. The interim rules were necessary in order to impose certain restrictions on the interstate movement of regulated articles from these areas to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

Comments on the first interim rule (Docket No. 97–101–1) were required to be received on or before March 30, 1998. Comments on the second interim rule (Docket No. 97–101–2) were required to be received on or before August 31, 1998. We did not receive any comments on either interim rule. Therefore, for the reasons given in the interim rules, we are adopting the interim rules as a final rule.

This action also affirms the information contained in the interim rules concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, two interim rules that amended 7 CFR 301 and that were published at 63 FR 4151–4154 on January 28, 1998, and 63 FR 36155–36156 on July 2, 1998.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 30th day of October, 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30135 Filed 11–9–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV99–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule makes changes in the regulations under the Florida citrus marketing order and the grapefruit import regulations. This rule relaxes the minimum size requirement for red seedless grapefruit and for red seedless grapefruit imported into the United States from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter). The Citrus Administrative Committee (Committee), the agency that locally administers the marketing order for oranges, grapefruit, tangerines, and tangelos grown in Florida, unanimously recommended this change. This change allows handlers and importers to ship size 56 red seedless grapefruit through November 7, 1999, and is expected to maximize grapefruit shipments to fresh market channels.

DATES: Effective November 9, 1998. Comments received by January 11, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; Fax: (202) 205–6632; or E-mail: moabdocket_clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (941) 299–

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4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders, by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

The order for Florida citrus provides for the establishment of minimum grade and size requirements with the concurrence of the Secretary. The minimum grade and size requirements are designed to provide fresh markets with fruit of acceptable quality and size, thereby maintaining consumer confidence for fresh Florida citrus. This contributes to stable marketing conditions in the interest of growers, handlers, and consumers, and helps increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1. The current minimum size requirement for domestic shipments is size 56 (at least 3 5/16 inches in diameter) through November 8, 1998, and size 48 (3 9/16 inches in diameter) thereafter. The current minimum size for export shipments is size 56 throughout the year.

This interim final rule invites comments on a change to the order's rules and regulations relaxing the minimum size requirement for domestic shipments of red seedless grapefruit. This action allows for the continued shipment of size 56 red seedless grapefruit. This rule relaxes the minimum size from size 48 (3 9/16 inches diameter) to size 56 (3 5/16 inches diameter) through November 7, 1999. Absent this change, the minimum size will revert to size 48 (3 9/16 inches diameter) November 9, 1998. The Committee met on September 3, 1998, and unanimously recommended this action.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (7 CFR part 905.306; 63 FR 19379, April 20, 1998) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). This rule adjusts Table I to establish a minimum size of 56 through November 7, 1999. Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR part 944.106; 63 FR 19379, April 20, 1998). This rule also adjusts § 944.106 to establish a minimum size of 56 through November 7, 1999. Export requirements for Florida red seedless grapefruit are not changed by this rule.

In making its recommendation, the Committee considered estimated supply and demand. The supply of red seedless grapefruit is expected to be slightly higher than last season based on the Department's official crop estimate of 31,500,000 1 3/5 bushel boxes as compared to last season's utilized supply of 30,600,000 boxes. The fruit is expected to be high quality with a good appearance. The Committee reports that it expects fresh market demand to be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1998–99 season.

This size relaxation will enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1998–99 season, and will provide for the maximization of shipments to fresh market channels.

The Committee believes that domestic markets have been developed for size 56 fruit and that the industry should continue to supply those markets. This minimum size change pertains to the domestic market, and does not change the minimum size for export shipments which will continue at size 56 throughout the season. The largest market for size 56 small red grapefruit is for export.

Committee members stated that during the first 11 weeks of the season (September 21 through December 6) there is a volume regulation in effect limiting the volume of small red seedless grapefruit entering the fresh market that has been successful in moving smaller-sized fruit to those markets demanding such sizes (63 FR 51511, September 28, 1998). The Committee agreed that this regulation has been helpful in reducing the negative effects of size 56 on the domestic market.

In addition, the currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

Based on available information, the Committee unanimously recommended that the minimum size for shipping red seedless grapefruit to the domestic market should be size 56 through November 7, 1999. This rule will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet anticipated market demand for the 1998–99 season. Additionally, importers will be favorably affected by this change since the relaxation of the minimum size regulation will also apply to imported grapefruit.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule relaxes the minimum size requirement under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106. This rule relaxes the minimum size requirement for imported red seedless grapefruit to 3$^{5}/_{16}$ inches in diameter (size 56) until November 7, 1999, to reflect the relaxation being made under the order for red seedless grapefruit grown in Florida.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 80 grapefruit handlers subject to regulation under the order, approximately 11,000 growers of citrus in the regulated area, and about 25 grapefruit importers. Small agricultural service firms, which includes handlers and importers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on the industry and Committee data for the 1997–98 season, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 1997–98 season was around $6.30 per $^{4}/_{5}$ bushel cartons, and total fresh shipments for the 1997–98 season are estimated at 15.5 million cartons of red seedless grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in Committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of the Florida grapefruit handlers could be considered small businesses under the SBA definition and about 20 percent of the handlers could be considered large businesses. The majority of grapefruit handlers, growers, and importers may be classified as small entities.

Florida shipped approximately 42,410,000 $^{4}/_{5}$ bushel cartons of grapefruit to the fresh market during the 1997–98 season. Of these cartons, about 21,860,000 were exported. In the past three seasons, domestic shipments of Florida grapefruit averaged about 21,148,000 cartons. During the period 1991 through 1996, imports have averaged 734,800 cartons a season. Imports account for less than five percent of domestic shipments.

Section 905.52 of the order, in part, authorizes the Committee to recommend minimum grade and size regulations to the Secretary. Section 905.306 (63 FR 19379, April 20, 1998) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. This rule relaxes the minimum size requirement for domestic shipments of red seedless grapefruit from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 7, 1999. No change is being made in the minimum size 56 requirement for export shipments. Absent this rule, the minimum size requirement for domestic shipments will revert to size 48 on November 9, 1998. The motion to allow shipments of size 56 red seedless grapefruit through November 7, 1999, was passed by the Committee unanimously. In addition, there is a volume regulation in effect for the first 11 weeks of this season (September 21 through December 6) that limits the volume of small red seedless grapefruit entering the fresh market (63 FR 51511; September 28, 1998).

This rule will have a positive impact on affected entities. This action allows for the continued shipment of size 56 red seedless grapefruit. This change is not expected to increase costs associated with the order requirements.

This rule relaxes the minimum size from size 48 (3$^{9}/_{16}$ inches diameter) to size 56 (3$^{5}/_{16}$ inches diameter) through November 7, 1999. This change will allow handlers to continue to ship size 56 red seedless grapefruit to the domestic market. This rule will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs. This is consistent with current and anticipated demand in those markets for the 1998–99 season, and will provide for the maximization of shipments to fresh market channels.

The currency and economic problems currently facing the Pacific Rim countries remain a concern. These countries traditionally have been good markets for size 56 grapefruit. Current conditions there could reduce demand for grapefruit, and alternative outlets need to be available. It will be advantageous to have the ability to ship size 56 red seedless grapefruit to the domestic market should problems materialize in the export market.

This change will allow for the continued shipment of size 56 red seedless grapefruit. The opportunities and benefits of this rule are expected to be equally available to all grapefruit handlers, growers, and importers regardless of their size of operation.

In 1996, imports of grapefruit totaled 15,000 tons (approximately 705,880 cartons). The Bahamas were the principal source, accounting for 95 percent of the total. Remaining imports were supplied by the Dominican Republic and Israel. Imported grapefruit enters the United States from October through May. Imports account for less than five percent of domestic shipments.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must

meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the minimum size for domestic red seedless grapefruit shipments, this change will also be applicable to imported grapefruit. This rule relaxes the minimum size to size 56. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers because it allows shipments of size 56 red seedless grapefruit into U.S. markets through November 7, 1999.

The Committee considered one alternative to this action. The Committee discussed relaxing the minimum size to size 56 on a permanent basis rather than just for a year. Members said that each season is different, and they prefer to consider this issue on a yearly basis. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large red seedless grapefruit handlers or importers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information collection requirements and duplication by industry and public sectors.

In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 3, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the size requirements currently prescribed under the marketing order for Florida citrus. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This rule relaxes the minimum size requirement for red seedless grapefruit grown in Florida and red seedless grapefruit imported into the United States; (2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the Committee, and they will need no additional time to comply with the relaxed size requirement; (3) shipments of the 1998–99 season Florida red seedless grapefruit crop are underway; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR Parts 905 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. In § 905.306, Table I in paragraph (a) is amended by revising the entry under "Grapefruit" for "Seedless, red" to read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
GRAPEFRUIT			
. . . . .			
Seedless, red	11/9/98–11/7/99	U.S. No. 1	3 5/16
	On and after 11/8/99	U.S. No. 1	3 9/16
. . . . .			

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

4. In § 944.106, the table in paragraph (a) is amended by revising the entry for "Seedless, red" to read as follows:

§ 944.106 Grapefruit import regulation.

(a) * * *

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
• • • • • • •			
Seedless, red	11/9/98–11/7/99	U.S. No. 1	3 5/16
	On and after 11/8/99	U.S. No. 1	3 9/16
• • • • • • •			

* * * * *

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30115 Filed 11–6–98; 9:44 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV98–920–3 FIR]

Kiwifruit Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent of kiwifruit established for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1998–99 and subsequent fiscal periods. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Thus, the assessment rate of $0.05 per 22-pound volume fill container is less than the 1997–98 assessment rate. The Committee is responsible for local administration of the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant or Rose M. Aguayo, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 1998, and continuing until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues a decrease in the assessment rate and continues a change in the assessable unit established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Thus, the assessment rate of $0.05 per 22-pound volume fill container for the 1998–99 and subsequent fiscal periods is less than the 1997–98 assessment rate.

The California kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have

an opportunity to participate and provide input.

For the 1997–98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on July 8, 1998, and unanimously recommended 1998–99 expenditures of $135,250 and an assessment rate of $0.05 per 22-pound volume fill container or equivalent of kiwifruit. In comparison, last year's budgeted expenditures were $161,286, and the assessment rate was $0.0225 per tray equivalent, which approximates $0.0675 per 22-pound volume fill container. The assessment rate of $0.05 per 22-pound volume fill container is $0.0175 or 26 percent lower than the 1997–98 equivalent rate. The Committee voted to reduce 1998–99 budgeted expenditures and the assessment rate to lessen the financial burden on California kiwifruit handlers.

The Committee recommended changing the assessable unit to a 22-pound volume fill container or equivalent basis because this container is now the predominant container being used by handlers within the industry. Tray packs had been the container of choice in previous seasons, but handlers have been switching gradually to volume fill containers.

The Committee owes $32,577 to the California Kiwifruit Commission (Commission) and plans to pay off the loan during the 1998–99 fiscal period. The Commission administers a State program utilized to promote kiwifruit grown in California. The Committee and Commission share staff and expenses pursuant to an agreement.

During the 1997–98 fiscal period, the Committee borrowed $32,577 from the Commission pursuant to § 920.41 of the order to cover a funding deficit. Handler assessments received were lower than expected because the 1997–98 crop of 9 million trays or tray equivalents and shipments of 8.5 million trays or tray equivalents were smaller than the Committee anticipated. The Committee had estimated that assessments would total $225,000 for the 1997–98 fiscal period, and that shipments for the period would total 10 million trays or tray equivalents.

The following table compares major budget expenditures (in thousands of dollars) recommended by the Committee for the 1998–99 and 1997–98 fiscal periods:

Budget expense categories	1998–99	1997–98
Administrative Staff and Field Salaries	44.2	102.2
Contingency Fund/ Operating Reserve	29.2	0
Travel, Food and Lodging	5.0	13.8
Accident and Health Insurance	3.8	12.2

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of California kiwifruit, and additional pertinent factors. Kiwifruit shipments for the year are estimated at 2,705,000 22-pound volume fill containers or equivalents of kiwifruit, which should provide $135,250 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses, to reimburse the borrowed funds, and to fund an adequate reserve. It is anticipated that the assessment rate of $0.05 per 22-pound volume fill container or equivalent of kiwifruit handled will provide a reserve of $29,200 at the end of the fiscal year. Currently, there are no funds in the reserve. Reserve funds will be kept within 1 fiscal period's expenses, the maximum permitted under § 920.42 of the order.

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 450 producers of kiwifruit in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. One of the 60 handlers subject to regulation has annual kiwifruit sales of at least $5,000,000, and the remaining 59 handlers have sales less than $5,000,000, excluding receipts from any other sources. Ten of the 450 producers subject to regulation have annual sales of at least $500,000, and the remaining 440 producers have sales less than $500,000, excluding receipts from any other sources. The majority of California kiwifruit producers and handlers may be classified as small entities.

This rule continues a decrease in the assessment rate and continues a change in the assessable unit established for the Committee for the 1998–99 and subsequent fiscal periods from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Thus, the assessment rate of $0.05 per 22-pound volume fill container for the 1998–99 and subsequent fiscal periods is $0.0175 less than the 1997–98 assessment rate. The Committee unanimously recommended 1998–99 expenditures of $135,250. The quantity of assessable kiwifruit for the 1998–99 fiscal period is estimated at 2,705,000, 22-pound volume fill containers. Thus, the $0.05 rate should provide $135,250 in assessment income and be adequate to meet this year's expenses.

The Committee recommended changing the assessable unit to a 22-pound volume fill container or equivalent basis because this container is now the predominant container being used by handlers within the industry.

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Tray packs had been the container of choice in previous seasons, but handlers have been switching gradually to volume fill containers.

The following table compares major budget expenditures (in thousands of dollars) recommended by the Committee for the 1998–99 and 1997–98 fiscal years:

Budget expense categories	1998–99	1997–98
Administrative Staff and Field Salaries	44.2	102.2
Contingency Fund/ Operating Reserve	29.2	0
Travel, Food and Lodging	5.0	13.8
Accident and Health Insurance	3.8	12.2

The Committee owes $32,577 to the California Kiwifruit Commission (Commission) and plans to pay off the loan during the 1998–99 fiscal period. The Commission administers a State program utilized to promote California kiwifruit. The Committee and Commission share staff and expenses through an agency agreement.

The Committee borrowed the money from the Commission pursuant to § 920.41 of the order to cover a fund shortage during the 1997–98 fiscal period. Handler assessments received were lower than expected because the 1997–98 crop of 9 million trays or tray equivalents and shipments of 8.5 million trays or equivalents were smaller than the Committee anticipated. The Committee had estimated that assessments would be $225,000 for the 1997–98 fiscal period and that kiwifruit shipments would be 10 million trays or equivalents.

To lessen the financial burden on handlers, the Committee voted to reduce 1998–99 expenditures and the assessment rate. The reduced rate allows the Committee to meet its expenses, to reimburse the borrowed funds, and to establish an adequate reserve (estimated to be $29,200 at the end of the 1998–99 fiscal period). Currently, there are no funds in the reserve. Section 920.42 of the order provides for a maximum reserve equal to approximately 1 fiscal period's expenses.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Finance and Assessment Subcommittee. Alternative expense levels and assessment rates were considered at several industry strategic planning meetings. The assessment rate of $0.05 per 22-pound volume fill container or equivalent of assessable kiwifruit was determined by dividing the total recommended budget for 1998–99 by the quantity of assessable kiwifruit, estimated at 2,705,000 22-pound volume fill containers or equivalents.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicated that the grower price for the 1998–99 season would be approximately $7.59 per 22-pound volume fill container or equivalent of kiwifruit. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total grower revenue is estimated at 0.7 percent.

This action continues a decrease in the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 8, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large California kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on August 20, 1998 (63 FR 44541). Copies of that rule were also mailed or sent via facsimile to all kiwifruit handlers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 19, 1998, and no comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 920 which was published at 63 FR 44541 on August 20, 1998, is adopted as a final rule without change.

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30121 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 1, 2, and 11

[Docket No. 98–024–1]

Reorganization; Animal Care

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Animal Welfare and horse protection regulations by removing all references to "Regulatory Enforcement and Animal Care" and "APHIS, REAC Sector Supervisor" and replacing them with "Animal Care" and "AC Regional Director," respectively. This final rule is necessary for the regulations to accurately reflect the current organizational structure of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20788–1231, (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

In 1996, the Regulatory Enforcement and Animal Care (REAC) program area of the Animal and Plant Health Inspection Service (APHIS) was reorganized and divided into the Investigative and Enforcement Services

(IES) and Animal Care (AC) programs. IES is responsible for investigating instances of noncompliance with APHIS regulations, and AC conducts inspections and other activities to enforce the provisions of the Animal Welfare Act, the Horse Protection Act, and the regulations promulgated under those acts. To reflect this change in APHIS' organization, we are amending the Animal Welfare regulations in 9 CFR parts 1 and 2 and the horse protection regulations in 9 CFR part 11. Specifically, we are removing all references to "Regulatory Enforcement and Animal Care" and "APHIS, REAC Sector Supervisor" and are replacing them with references to "Animal Care" and "AC Regional Director," respectively.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12866 and 12988. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 1

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

9 CFR Part 11

Animal welfare, Horses, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR parts 1, 2, and 11 as follows:

PART 1—DEFINITION OF TERMS

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

2. Section 1.1 is amended as follows:

a. By removing the definition of *APHIS, REAC Sector Supervisor* and by adding, in alphabetical order, a definition of *AC Regional Director* to read as set forth below.

b. In the definition of *Deputy Administrator*, by removing the words "Regulatory Enforcement and Animal Care (REAC)" and adding in their place the words "Animal Care (AC)" and by removing the word "REAC" and adding in its place the word "AC".

§ 1.1 Definitions.

* * * * *

AC Regional Director means a veterinarian or his designee, employed by APHIS, who is assigned by the Administrator to supervise and perform the official work of APHIS in a given State or States. As used in part 2 of this subchapter, the AC Regional Director shall be deemed to be the person in charge of the official work of APHIS in the State in which the dealer, exhibitor, research facility, intermediate handler, carrier, or operator of an auction sale has his principal place of business.

* * * * *

PART 2—REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(g).

§ 2.1 [Amended]

4. Section 2.1 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director" in the following places:

a. Paragraph (a)(1) each time they appear.
b. Paragraph (a)(2).
c. Paragraph (b).
d. Paragraph (d)(2).
e. Paragraph (e)(1).

§ 2.5 [Amended]

5. Section 2.5 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director" in the following places:

a. Paragraph (a)(2).
b. Paragraph (c).
c. Paragraph (f) each time they appear.

§ 2.6 [Amended]

6. In § 2.6, paragraph (a) is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

§ 2.7 [Amended]

7. In § 2.7, paragraph (a) is amended by removing the words "APHIS, REAC Sector Supervisor" each time they appear and adding in their place the words "AC Regional Director".

§ 2.8 [Amended]

8. Section 2.8 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

§ 2.10 [Amended]

9. In § 2.10, paragraph (a) is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

§ 2.25 [Amended]

10. In § 2.25, paragraph (a) is amended by removing the words "APHIS, REAC Sector Supervisor" each time they appear and adding in their place the words "AC Regional Director".

§ 2.26 [Amended]

11. Section 2.26 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

§ 2.27 [Amended]

12. Section 2.27 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director" in the following places:

a. Paragraph (a).
b. Paragraph (b)(1) each time they appear.
c. Paragraph (b)(2).

§ 2.30 [Amended]

13. Section 2.30 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director" in the following places:

a. Paragraph (a)(1) each time they appear.
b. Paragraph (b).
c. Paragraph (c)(1).
d. Paragraph (c)(2) each time they appear.
e. Paragraph (c)(3).

§ 2.31 [Amended]

14. In § 2.31, paragraph (d)(1)(x)(C) is amended by removing the words "Regulatory Enforcement and Animal Care,".

§ 2.36 [Amended]

15. In § 2.36, paragraph (a) is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

§ 2.38 [Amended]

16. Section 2.38 is amended as follows:

a. By removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director" in the following places:

i. Paragraph (c).
ii. Paragraph (g)(7), footnote 1.
iii. Paragraph (i).

b. In paragraph (h)(2), by removing the words "Regulatory Enforcement and Animal Care,".

§ 2.52 [Amended]

17. In § 2.52, footnote 4 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

§ 2.78 [Amended]

18. In § 2.78, paragraph (b) is amended by removing the words "Regulatory Enforcement and Animal Care,".

§ 2.102 [Amended]

19. In § 2.102, paragraphs (a) and (b) are amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

§ 2.127 [Amended]

20. Section 2.127 is amended by removing the words "APHIS, REAC Sector Supervisor" and adding in their place the words "AC Regional Director".

PART 11—HORSE PROTECTION REGULATIONS

21. The authority citation for part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

22. In § 11.1, the definition of *Sector Supervisor* is removed and a definition of *Regional Director* is added, in alphabetical order, to read as follows:

§ 11.1 Definitions.

* * * * *

Regional Director means the APHIS veterinarian who is assigned by the Administrator to supervise and perform official duties of APHIS under the Act in a specified State or States.[1]

* * * * *

§ 11.7 [Amended]

23. In § 11.7, footnote 6 is amended by removing the words "Regulatory Enforcement and Animal Care,".

§ 11.24 [Amended]

24. In § 11.24, paragraphs (a) and (b) are amended by removing the words "Sector Supervisor" and adding in their place the words "Regional Director".

[1] Information as to the name and address of the Regional Director for the State or States concerned can be obtained by writing to the Animal and Plant Health Inspection Service, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234.

Done in Washington, DC, this 30th day of October, 1998 .

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30137 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 92, 93, 94, 95, 96, and 98

[Docket No. 94–106–14]

RIN 0579–AA11

Importation of Animals and Animal Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: We are announcing the availability through the World Wide Web of requests received by the Animal and Plant Health Inspection Service (APHIS) to recognize regions for the purpose of exporting animals or animal products to the United States and to assess the disease risk presented by specific commodities exported from those regions.

ADDRESSES: To review requests received by APHIS, along with information submitted to support those requests, go to the APHIS Regionalization Request page on the World Wide Web. The Web page URL is http://www.aphis.usda.gov/vs/reg-request.html. Once you have reached the Web page, click on the box labeled "Click Here."

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231. (301) 734–8590; or e-mail: gary.s.colgrove@usda.gov.

SUPPLEMENTARY INFORMATION: On October 28, 1997, we published in the **Federal Register** (62 FR 56000–56026, Docket No. 94–106–9) a final rule establishing procedures for recognizing regions, rather than only countries, for the purpose of exporting animals and animal products to the United States. The final rule also established procedures by which regions may request permission to export animals and animal products to the United States under specified conditions, based on the regions disease status.

In the final rule, we stated that we will, in general, process applications and risk assessments according to the following procedures:

1. The official of the national government of any country who has the authority in that country to request such a change may submit a request to the Administrator of the Animal and Plant Health Inspection Service (APHIS) that all or part of the country be recognized as a region, be included within an adjacent previously recognized region, or be made part of a region larger than the country.

2. Each request for approval to export a particular type of animal or animal product to the United States from a foreign region must be made to the Administrator, and must include information regarding the following: The veterinary services organization in the region; the disease and vaccination status of the region; the disease status of adjacent regions and the degree of separation from those regions; the control of the movement of animals and products from regions of higher risk; policies and infrastructure for disease control in the region; surveillance practices and diagnostic laboratory capabilities in the region; and livestock demographics and marketing practices in the region.

In the final rule, we also stated that the above information would be made available to the public prior to our initiating any rulemaking action on the request. We are giving notice that this information may be viewed at the Web page described under the heading **ADDRESSES.**

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450, and 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 3rd day of November, 1998.

John R. Clifford,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30136 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 98–18]

RIN 1557–AB65

Organization and Functions, Availability and Release of Information, Contracting Outreach Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its disclosure regulation. Among other things, the amendment clarifies that Suspicious Activity Reports are non-public documents and that the OCC may make non-public OCC information available to a supervised entity and to other persons, as in the sole discretion of the Comptroller may be necessary or appropriate, without a request for records or testimony.

DATES: This interim rule is effective on November 10, 1998. Comments must be received by January 11, 1999.

ADDRESSES: Comments should be directed to: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW, Washington, DC 20219, Attention: Docket No. 98–18. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Ursula Pfeil, Attorney, Legislative and Regulatory Activities (202) 874–5090; or Stuart Feldstein, Assistant Director, Legislative and Regulatory Activities (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background and Discussion of Interim Rule

The OCC is amending subpart C of 12 CFR Part 4 which governs the release of non-public OCC information. Part 4 currently requires a person seeking non-public OCC information to submit a request in writing to the OCC. The current rule does not include a procedure for the release of non-public OCC information to supervised entities and other persons without a specific request for the information.

The OCC has authority to prescribe rules governing the release of agency records and information under its grant of statutory authority to promulgate substantive regulations to carry out the responsibilities of the office, 12 U.S.C. 93a, as well as under statutes that contemplate the sharing of information with other agencies and persons. *See, e.g.*, 12 U.S.C. 481; 12 U.S.C. 1867; 12 U.S.C. 1820(d)(6).

In some circumstances, the safety and soundness or financial stability of national banks may be affected unless the OCC discloses non-public information to supervised entities or certain other persons without a request. For example, if the OCC obtains information that a check fraud ring has targeted multiple banks in a particular area, it may be necessary for the OCC to disclose confidential supervisory information obtained from one of the targeted banks to other banks that may also be targets of the same scheme. Similarly, the OCC's ability to help national banks attain Year 2000 readiness depends, in part, on the OCC's ability to share information concerning third parties with supervised entities and other persons.[1]

This interim rule amends part 4 to include a new section on the dissemination of non-public OCC information without a request. This new section authorizes the OCC to make non-public OCC information available to a supervised entity and to other persons, as in the sole discretion of the Comptroller may be necessary or appropriate, without a request for records or testimony.[2] This interim rule defines the term "supervised entity" to include a national bank, a subsidiary of a national bank, or a federal branch or agency of a foreign bank licensed by the OCC. The OCC may continue to impose conditions and limitations on the disclosure of information through the entry of a protective order or a written agreement of confidentiality, as provided for under the current rule.

Current § 4.32 defines non-public OCC information as information, confidential or otherwise, that the OCC is not required to release under the Freedom of Information Act (FOIA) (5 U.S.C. 552) or that the OCC has not yet published or made available under 12 U.S.C. 1818(u), the statute requiring publication of certain enforcement orders. FOIA specifically exempts from disclosure several categories of information including records contained in, or related to, examination and operating or condition reports concerning financial institutions. This interim rule adds a new provision to the part 4 definition of non-public OCC information to include a Suspicious Activity Report (SAR) filed by the OCC or a supervised entity under 12 CFR 21.11. This new provision clarifies that SARs, which are sensitive and confidential documents, are subject to the procedures for the release of non-public OCC information under part 4.

This interim rule also clarifies that non-public OCC information remains the property of the OCC even after it is disclosed, and that it may not be disclosed to others except as authorized by the OCC. In addition, no current or former OCC employee or agent may disclose or permit the disclosure of any non-public OCC information to anyone other than an employee or agent of the OCC who is entitled to the information for the performance of OCC duties. Current or former OCC employees or agents subpoenaed or otherwise requested to provide OCC information must notify the OCC immediately under procedures set forth in § 4.37(a)(2).

Effective Date

Section 553 of the Administrative Procedure Act permits an agency to issue a rule without prior notice and comment when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B); 5 U.S.C. 553(d). Likewise, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI), Pub. L. 103–325, authorizes a banking agency to issue a rule without notice and comment to be effective before the first day of the calender quarter that begins on or after the date on which the regulations are published in final form if the agency finds good cause for an earlier effective date. 12 U.S.C. 4802(b)(1).

The OCC finds good cause for issuing this interim rule without prior notice and comment and for the rule to take effect upon publication in the **Federal Register**. Among other things, making this interim rule effective immediately will allow the OCC to disclose non-public OCC information to supervised entities and other persons in certain enforcement contexts requiring immediate action where a request for the information may not be forthcoming or may be delayed. The OCC's ability to help national banks attain Year 2000 readiness in the short time remaining also depends, in part, on the OCC's ability to provide information rapidly concerning third parties to supervised entities and other persons without a request. The OCC's ability to carry out its mission to ensure national banks' safety and soundness, in certain circumstances, may be impaired unless it can make disclosures, as authorized by this interim rule, promptly after acquiring the information in question. For these reasons, the OCC concludes that prior notice and comment

[1] For example, "other persons" may include self-regulatory organizations or state banks with whom the OCC seeks to share information.

[2] This approach is consistent with the long-standing disclosure regulation of the Federal Reserve Board (FRB). See 12 CFR 261.20. The FRB disclosure regulation similarly authorizes the FRB to share confidential supervisory information with supervised financial institutions and, from time to time, to make other discretionary disclosures that the FRB determines necessary.

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procedures and a delayed effective date are impracticable and would be contrary to the public interest. 5 U.S.C. 553(b)(B).

Request for Comment

The OCC is interested in the views of the public regarding this interim rule and therefore welcomes comments on any and all aspects of this interim rule.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act is only required whenever an agency is required to publish a general notice of proposed rulemaking. 5 U.S.C. 603. As noted previously, the OCC has determined that it is not necessary to publish a notice of proposed rulemaking for this rule. Accordingly, an initial regulatory flexibility analysis is not required. Nonetheless, since this interim rule imposes no new requirements on any national bank, the OCC finds that this interim rule does not have a secondary or incidental effect on a substantial number of small entities or create any additional burden on small entities.

OCC Executive Order 12866 Statement

The OCC has determined that the interim rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act), applies only when an agency is required to promulgate a general notice of proposed rulemaking or a final rule for which a general notice of proposed rulemaking was published. 2 U.S.C. 1532. As noted previously, the Agencies have determined that it is not necessary to publish a notice of proposed rulemaking for these Guidelines. Accordingly, an unfunded mandates act analysis is not required. Nonetheless, since this interim rule prescribed no mandate of any kind, the OCC finds that this interim rule will not result in expenditure by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects in 12 CFR Part 4

Freedom of information, National banks, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is amended as set forth below:

PART 4—ORGANIZATIONS AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM

1. The authority citation for part 4 is revised to read as follows:

Authority: 12 U.S.C. 93a. Subpart A also issued under 5 U.S.C. 552; Subpart B also issued under 5 U.S.C. 552; E.O. 12600 (3 CFR 1987 Comp., p. 235). Subpart C also issued under 5 U.S.C. 301, 552; 12 U.S.C. 161, 481, 482, 484(a), 1442, 1817(a)(3), 1818(u) and (v), 1820(d)(6), 1821(c), 1821(o), 1821(t), 1831m, 1831p-1, 1831o, 1867, 1951 *et seq.*, 2601 *et seq.*, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510. Subpart D also issued under 12 U.S.C. 1833e.

Subpart C—Release of Non-Public OCC Information

2. Section 4.31 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 4.31 Purpose and scope.

(a) *Purpose.* * * *

(1) Afford an orderly mechanism for the OCC to process expeditiously requests for non-public OCC information; to address the release of non-public OCC information without a request; and, when appropriate, for the OCC to assert evidentiary privileges in litigation;

* * * * *

(b) *Scope.* (1) This subpart applies to requests for, and dissemination of, non-public OCC information, including requests for records or testimony arising out of civil lawsuits and administrative proceedings to which the OCC is not a party and the release of non-public OCC information without a specific request. Lawsuits and administrative proceedings to which the OCC is not a party include proceedings in which a Federal agency is a party in opposition to the private requester.

* * * * *

3. Section 4.32 is amended by redesignating paragraph (e) as paragraph (f); by removing the word "and" from paragraph (b)(1)(v); and by adding new paragraphs (b)(1)(vii) and (e) to read as follows:

§ 4.32 Definitions.

* * * * *

(b) * * *

(1) * * *

(vii) A Suspicious Activity Report filed by the OCC or a supervised entity under 12 CFR 21.11; and

* * * * *

(e) *Supervised entity* includes a national bank, a subsidiary of a national bank, a Federal branch or agency of a foreign bank licensed by the OCC as defined under 12 CFR 28.11(h) and (i), or any other entity supervised by the OCC.

* * * * *

4. Sections 4.36 through 4.39 are redesignated as §§ 4.37 through 4.40, respectively.

5. A new § 4.36 is added to read as follows:

§ 4.36 Disclosure of non-public OCC information.

(a) *Discretionary disclosure of non-public OCC information.* The OCC may make non-public OCC information available to a supervised entity and to other persons, as in the sole discretion of the Comptroller may be necessary or appropriate, without a request for records or testimony.

(b) *Conditions and limitations.* The OCC may impose any conditions or limitations on disclosures under this section, including the restrictions on dissemination contained in § 4.38, that it determines are necessary to effect the purposes of this section.

(c) *Unauthorized disclosures prohibited.* All non-public OCC information remains the property of the OCC. No supervised entity, government agency, person, or other party to whom the information is made available, or any officer, director, employee, or agent thereof, may disclose non-public OCC information without the prior written permission of the OCC, except in published statistical material that does not disclose, either directly or when used in conjunction with other publicly available information, the affairs of any individual, corporation, or other entity. Except as authorized by the OCC, no person obtaining access to non-public OCC information under this section may make a copy of the information and no person may remove non-public OCC information from the premises of the institution, agency, or other party in authorized possession of the information.

6. Paragraph (a) of newly designated § 4.37 is revised to read as follows:

§ 4.37 Persons and entities with access to OCC information; prohibition on dissemination.

(a) *Current and former OCC employees or agents—(1) Generally.*

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Except as authorized by this subpart or otherwise by the OCC, no current or former OCC employee or agent in any manner, may disclose or permit the disclosure of any non-public OCC information to anyone other than an employee or agent of the Comptroller for use in the performance of OCC duties.

(2) *Duty of person served.* Any current or former OCC employee or agent subpoenaed or otherwise requested to provide information covered by this subpart must immediately notify the OCC as provided in this paragraph. The OCC may intervene, attempt to have the compulsory process withdrawn, and register appropriate objections when a current or former OCC employee or agent receives a subpoena and the subpoena requires the current or former employee or agent to appear or produce OCC information. If necessary, the current or former employee or agent must appear as required and respectfully decline to produce the information sought, citing this subpart as authority and United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951). The current or former OCC employee or agent must immediately notify the OCC if subpoenaed or otherwise asked for non-public OCC information:

(i) In a civil action, by notifying the Director of the OCC's Litigation Division at the Washington, DC office; or

(ii) In a criminal action, by notifying the appropriate district counsel for current and former district employees or agents; or the Director of the OCC's Enforcement and Compliance Division at the Washington, DC office, for current and former Washington employees or agents.

* * * * *

Dated: October 28, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 98–30044 Filed 11–9–98; 8:45 am]

BILLING CODE 4870–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE147, Special Conditions No. 23–094–SC]

Special Conditions: Raytheon Aircraft Company, Model 3000, Airplane Design

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Raytheon Model 3000 airplane. This airplane will have novel or unusual design features associated with the digital electronic engine/propeller controls and the suction defueling system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 601 East 12th Street, Kansas City, Missouri, 816–426–6934, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Background

On January 15, 1996, Raytheon Aircraft Company (formerly Beech Aircraft Corporation) applied for a Type Certificate (TC) for their new Model 3000. The Model 3000 is an all-metal, low-wing monoplane of conventional construction, powered by a single Pratt & Whitney (P&W) PT6A–68 engine flat rated at 1100 SHP. The airframe will be stressed for 7g positive and 3.5g negative loading. Maximum takeoff weight will be 6,300 pounds. The crew compartment will be pressurized to a maximum differential of 3.6 psig and accommodate two pilots equipped with zero-zero ejection seats in a stepped tandem seating arrangement. The airplane will feature a 3,000 psi hydraulic system, powered by a single engine driven pump, to operate the landing gear, flaps, and speed brakes. The V_{MO} for the Model 3000 will be 320 KCAS, and the maximum altitude will be 31,000 feet MSL. Each cockpit will be equipped with electronic flight instruments for primary attitude, heading, and navigation information display.

Type Certification Basis

Under the provisions of 14 CFR part 21 21.17, Raytheon Aircraft Company must show that the Model 3000 meets the applicable provisions of part 23, effective February 1, 1965, as amended by Amendments 23–1 through 23–47; 14 CFR part 23, 23.201, 23.203, and 23.207, as amended by Amendment 23–50; 14 CFR part 34, effective September 10, 1990, as amended by the amendment in effect on the date of certification; 14 CFR part 36, effective December 1, 1969, as amended by Amendment 36–1 through the amendment in effect on the day of certification; The Noise Control Act of 1972; and special conditions for Protection from High Intensity Radiated Fields (HIRF); exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (part 23) do not contain adequate or appropriate safety standards for the Model 3000 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 3000 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 3000 will incorporate the following novel or unusual design features:

Digital Electronic Engine Controls

The Model 3000 design includes a digital electronic engine/propeller control, known as a Power Management Unit (PMU). Although the precedent for electronic engine controls has been previously established, the PMU utilized on the Model 3000 performs functions not envisaged when part 23 was developed. With the Model 3000, the (Power Control Lever) PCL is a single lever, which has a mechanical and electrical interface to the PMU in order to produce "jet-like" thrust characteristics during rapid power changes and at low power conditions. PCL movement is transmitted to the PMU, which, in turn, controls fuel flow, gas generator speed, and propeller speed. Propeller pitch is not pilot controllable; therefore, a separate propeller control lever is not supplied.

During normal operation, propeller pitch is governed at 100 percent Np. Low airspeed and power combinations result in propeller pitch going to the mechanical low pitch stop (similar to a fixed-pitch propeller). During large power transitions below 100 percent Np (idle to takeoff power), the PMU will control propeller pitch. The PMU is utilized to control the thrust response of the engine-propeller combination and it prohibits operation of the engine-propeller combination in propeller RPM ranges with adverse vibration characteristics. There is no guidance in part 23 concerning the protection of the PMU from the indirect effects of lightning.

Suction Defuel Capability

The Model 3000 design includes a suction defuel capability not envisaged when part 23 was developed. It is understood that suction defuel is a common feature in part 25 airplanes. The Model 3000 airplane will have pressure fuel and defuel as well as gravity fuel and defuel capability. Pressure defueling essentially entails reversing the pumps on the fueling vehicle and "sucking" fuel from the airplane through the servicing port. Section 23.979 addresses pressure fueling but not suction defueling. Any suction defuel system components, in addition to meeting the general requirements for part 23 fuel systems, must also function as intended.

Discussion of Comments

Notice of proposed special conditions No. 23–98–03–SC for the Raytheon Aircraft Company Model 3000 was published in the **Federal Register** on August 27, 1998 (63 FR 45772). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model 3000. Should Raytheon Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, 21.16 and 21.17; and 14 CFR part 11, 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Raytheon Aircraft Company Model 3000 airplanes.

1. Digital Electronic Engine/Propeller Control (PMU)

(a) Any failure of the Power Management Unit must be annunciated to the crew.

(b) Failures of the Power Management Unit that affect flight characteristics must be identified and evaluated, and appropriate flight manual procedures developed, including possible prohibitions on continued flight or dispatch.

(c) The functioning of the Power Management Unit must be protected to ensure that the control will continue to perform critical functions (functions whose failure condition would prevent continued safe flight and landing) after the aircraft is exposed to lightning.

2. Suction Defuel

(a) The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.

Issued in Kansas City, Missouri on October 26, 1998.

Marvin Nuss,

Assistant Manager, Small Airplane Directorate.

[FR Doc. 98–30091 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–56–AD; Amendment 39–10874; AD 98–22–16]

Airworthiness Directives; Robinson Helicopter Company (RHC) Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–22–16 which was sent previously to all known U.S. owners and operators of RHC Model R44 helicopters by individual letters. This amendment supersedes AD 98–12–19, issued August 5, 1998, applicable to RHC Model R44 helicopters, that currently requires main rotor blade inspections and replacement if a crack is found. This amendment requires the same inspections as AD 98–12–19, but mandates replacement of all the affected main rotor blades prior to further flight after November 15, 1998. This amendment is prompted by an incident in which a crack was discovered in a main rotor blade. The actions specified by this AD are intended to prevent failure of a main rotor blade and subsequent loss of control of the helicopter.

DATES: Effective November 10, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–22–16, issued on October 22, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–56–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Frederick Guerin, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On October 22, 1998, the FAA issued priority letter AD 98–22–16, applicable to RHC Model R44 helicopters, which

requires inspecting each main rotor blade for cracks every 5 hours time-in-service (TIS) until each main rotor blade is replaced with a redesigned main rotor blade. The main rotor blade must be replaced prior to further flight after November 15, 1998. The AD was prompted by an incident in which a pilot heard a loud noise and felt severe vibrations while hovering, resulting in a forced landing. Upon inspection, a crack was found in a main rotor blade. The crack started at the mid-span inboard trim tab, ran chordwise to the spar, and turned along the spar for about an inch. The crack originated from a hole in the main rotor blade skin. Subsequent investigations revealed that the manufacturing process utilized to drill the holes in the main rotor blade skin can allow a fatigue crack to originate at these holes and propagate in the skin. That condition, if not corrected, could result in failure of a main rotor blade and subsequent loss of control of the helicopter.

This AD supersedes AD 98–12–19, Amendment 39–10712 (63 FR 43299, August 13, 1998), that required the same inspections as this AD. However, since the issuance of that AD, it has been determined that continued inspections are inadequate to ensure continued operational safety and that mandatory terminating action is required to permanently resolve this unsafe condition. Therefore, this AD mandates replacement of all the affected main rotor blades prior to further flight after November 15, 1998.

The FAA has reviewed RHC R44 Service Bulletin SB–27B, Revision B, which recommends replacing daily preflight inspections with repetitive inspections at intervals not to exceed 5 hours TIS and clarifies the inspection procedure. The FAA has also reviewed RHC R44 Service Bulletin SB–28, which describes procedures for main rotor blade replacement and recommends replacement by December 31, 1998. Both service bulletins are dated June 18, 1998.

RHC has also issued a Safety Alert to all Model R44 helicopter owners, operators, and service centers which states that long term usage of main rotor blades, part number (P/N) C016–1, is not recommended. RHC recently commented to Rules Docket No. 98–SW–25–AD (AD 98–12–19). RHC states that AD 98–12–19 should not permit visual inspections of main rotor blade, P/N C016–1, to continue indefinitely, and requests that the compliance procedures be modified to require the installation of redesigned main rotor blades, P/N C016–2, to "avoid possible catastrophic failure." The commenter also requests that NOTE 5 reference "Revision B of R44 Service Bulletin 27" for blade inspection and "R44 Service Bulletin 28" for blade replacement. The FAA concurs that as the TIS and total number of repetitive inspections on these main rotor blades increase, so does the possibility for a crack to develop and remain undetected. Based on that re-evaluation, the FAA has determined that the required compliance time for main rotor blade replacement should be earlier than the date stated in RHC R44 Service Bulletin SB–28 in order to ensure public safety.

Since an unsafe condition has been identified that is likely to exist or develop on other RHC Model R44 helicopters of the same type design, the FAA issued priority letter AD 98–22–16 to require repetitively inspecting both holes on both the upper and lower surfaces of each main rotor blade for cracks until the main rotor blades are replaced with redesigned main rotor blades. The main rotor blades must be replaced prior to further flight after November 15, 1998.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 22, 1998 to all known U.S. owners and operators of RHC Model R44 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The FAA estimates that 96 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to perform the inspections and 10 work hours to replace both main rotor blades on each helicopter, and the average labor rate is $60 per work hour. Required parts will cost approximately $3,900 per main rotor blade. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $817,920, assuming one inspection and replacement of both main rotor blades on all helicopters.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–56–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g) 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10712 (63 FR 43299, August 13, 1998), and by adding a new airworthiness directive (AD), Amendment 39–10874, to read as follows:

AD 98–22–16 **Robinson Helicopter Company:** Amendment 39–10874. Docket No. 98–SW–56–AD. Supersedes AD 98–12–19, Amendment 39–10712, Docket No. 98–SW–25–AD.

Applicability: Model R44 helicopters, serial numbers (S/N) 0002 through 0486, with main rotor blades, part number (P/N) C016–1, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a main rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 5 hours time-in-service (TIS), perform a dye-penetrant inspection of the main rotor blade skin around both inboard trim tab alignment rivets as follows, referring to Figure 1.

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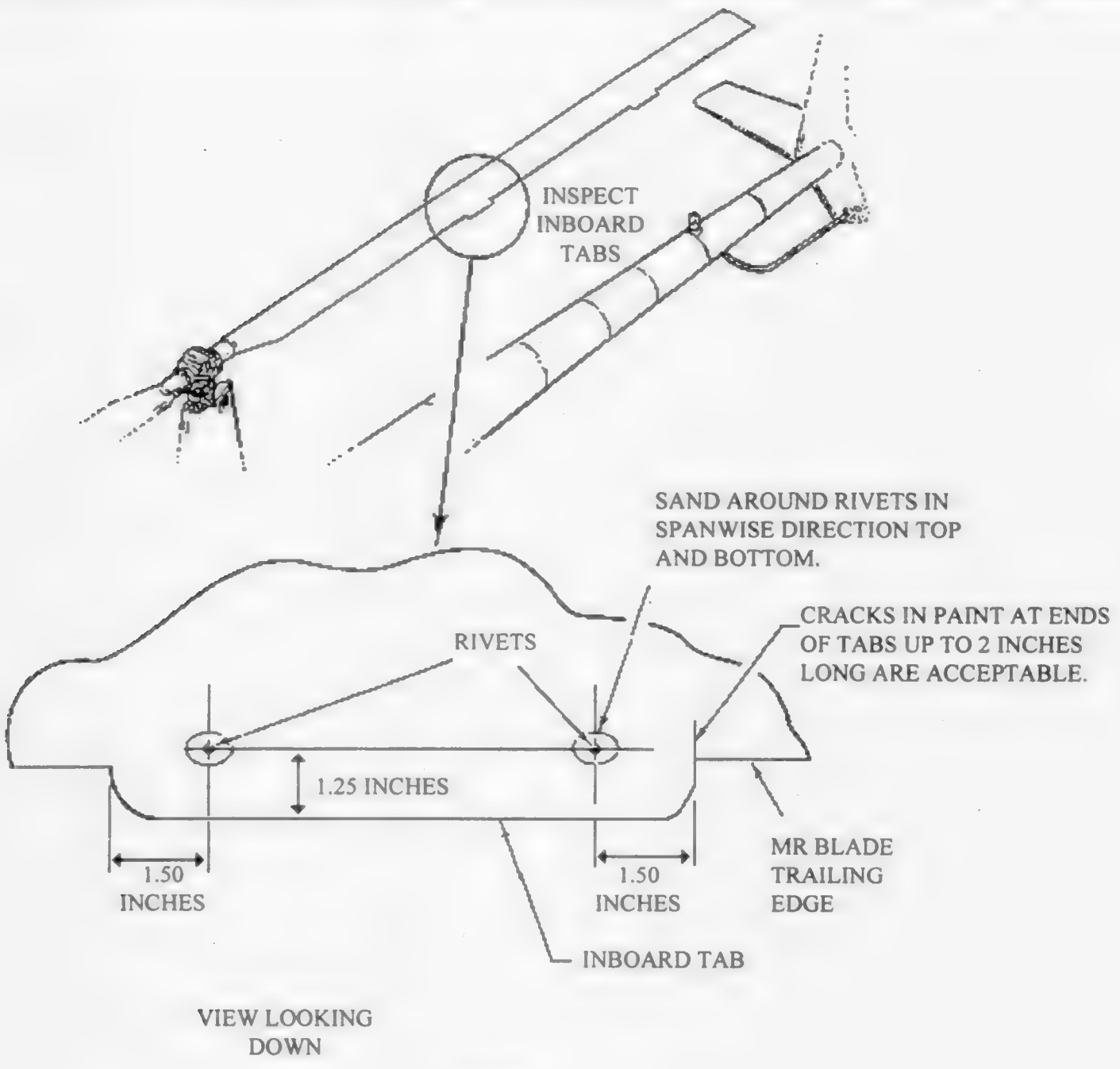

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(1) Remove all paint around both rivets, exposing an area of approximately 3/4" in diameter, at the inboard trim tab on the top and bottom of each main rotor blade (4 places per main rotor blade). Use 180 grit or finer abrasive paper, followed by 600 grit or finer paper to eliminate course sanding marks. Sand only in a spanwise direction. Do not use chemical paint strippers.

(2) Inspect the main rotor blade skin around the rivets on the upper and lower surfaces (4 locations) using a dye-penetrant inspection method.

Note 2: Chordwise cracks in the paint up to 2 inches long which are located along either inboard or outboard edge of the trim tab are acceptable.

(b) Clean the sanded areas prepared in accordance with paragraph (a) of this AD with 111-Trichloroethane or methyl ethyl ketone (MEK) and then apply clear lacquer to seal the unpainted areas.

Note 3: Do not bend the inboard main rotor blade tabs from their present position or utilize them for any subsequent main rotor blade tracking adjustment.

(c) Thereafter, prior to the first flight of each day, or at intervals not to exceed 5 hours TIS, whichever occurs first, using a 5-power or higher magnifying glass, visually inspect both upper and lower main rotor blade skin surfaces around the inboard trim tab rivets (4 locations) for cracks.

(d) If a crack is found, replace the main rotor blade with an airworthy main rotor blade before further flight.

(e) Prior to further flight after November 15, 1998, install a set of main rotor blades, main rotor blade P/N C016–2. This constitutes terminating action for the inspections required by this AD.

Note 4: Robinson Helicopter Company R44 Service Bulletin SB–27B, Revision B, and Robinson Helicopter Company Service Bulletin SB–28, both dated June 18, 1998, pertain to the subject of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) Special flight permits will not be issued.

(h) This amendment becomes effective on November 10, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–22–16, issued October 22, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 1, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–30046 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–38–AD; Amendment 39–10875; AD 98–23–09]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA 330F, G, and J Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter France Model SA 330F, G, and J helicopters, that requires an initial and repetitive inspections of each tail rotor shaft flapping hinge retainer (retainer) for cracks and replacement of a retainer if a crack is discovered. This amendment is prompted by a report of high vibrations due to a cracked retainer occurring on a helicopter while it was in service. The actions specified by this AD are intended to detect cracks in the retainers that, if left undetected, could lead to high tail rotor vibrations, loss of tail rotor control, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Eurocopter France Model SA 330F, G, and J helicopters was published in the **Federal Register** on April 21, 1998 (63 FR 19672). That action proposed to require an initial and repetitive inspections of each retainer for cracks and replacement of a retainer if a crack is discovered.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 4 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to accomplish each dye-penetrant inspection, 2.0 work hours to replace the retainers on each helicopter, if necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $56,900. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $252,080, assuming that the retainers on the tail rotor blades are replaced on all 4 helicopters and each helicopter is dye-penetrant inspected 200 times per year.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–38–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

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Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–23–09 Eurocopter France: Amendment 39–10875. Docket No. 97–SW–38–AD.

Applicability: Model SA 330F, G, and J helicopters with tail rotor head assembly, part number 330 A 33 0000 all dash numbers, or 330 A 33 0001 all dash numbers, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks on a tail rotor shaft flapping hinge retainer (retainer) that could lead to high tail rotor vibrations, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, and thereafter before the first flight of each day, perform a dye-penetrant inspection of each retainer for cracks.

(b) If a crack is found on any retainer, replace it with an airworthy retainer before further flight.

Note 2: Eurocopter Service Bulletin No. 05.84, Revision No. 1, dated January 29, 1996, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–076–075(AB)R1, dated November 5, 1997.

(e) This amendment becomes effective on December 15, 1998.

Issued in Fort Worth, Texas, on November 2, 1998.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–30045 Filed 11–9–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASW–32]

Revision of Class D Airspace; McKinney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D airspace at McKinney, TX.

EFFECTIVE DATE: The direct final rule published at 63 FR 40169 is effective 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 28, 1998 (63 FR 40169). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on October 5, 1998.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 98–30089 Filed 11–9–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 274

[Release Nos. 33–7608; IC–23522; File No. S7–19–97]

RIN 3235–AG73

Update of Registration Form To Reflect Fee Rate Change for Registration of Certain Investment Company Securities

AGENCY: Securities and Exchange Commission.

ACTION: Amendments to form.

SUMMARY: The Securities and Exchange Commission ("Commission") is updating the fee rate information in the instructions to the form under the Investment Company Act of 1940 that prescribes the method by which certain investment companies calculate and pay registration fees on securities they issue (the form was last published in its entirety at 62 FR 47941 (Sept. 12, 1997), and was last amended at 62 FR 64687 (Dec. 9, 1997)). On October 21,1998, legislation was enacted that sets a new fee rate of $278 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). Registration fees under this new rate are calculated by multiplying the aggregate offering or sales amount by .000278. This amendment updates the reference to the current fee rate in the instructions to the form.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Robin Gross Lehv, Staff Attorney, Office of Regulatory Policy at (202) 942–0690, or Carolyn A. Miller, Senior Financial Analyst, Office of Financial Analysis at (202) 942–0513, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 5–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is amending Instruction C.9 to Form 24F–2 [17 CFR 274.24] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").

Form 24F–2 is the Form on which certain investment companies file an annual notice of securities sold pursuant to rule 24f-2 under the Investment Company Act [17 CFR 270.24f-2]. The Instruction to Item 5(vii) explains that the multiplier for calculation of the registration fee is determined by the Commission in accordance with section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)]. The Instruction informs filers of the multiplier that was in effect as of the date of the most recent printing of the

Form, but indicates that this rate is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws.

On October 21, 1998, legislation was enacted that sets the fee rate at $278 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). Fees will be calculated by multiplying the aggregate offering or sales amount by .000278.

The Commission is amending the Instruction to Item 5(vii) of Form 24F–2 to reflect the change in the fee rate.

Statutory Authority

The Commission is amending Form 24F–2 pursuant to the authority set forth in sections 24 and 38(a) of the Investment Company Act [15 U.S.C. 80a-24, -37(a)].

Text of Form Amendments

For the reasons set out in the preamble, Form 24F–2, referenced in § 274.24, Title 17, Chapter II of the Code of Federal Regulations, is amended as follows:

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, and 80a-29, unless otherwise noted.

2. Form 24F–2 (referenced in § 274.24) is amended by revising the second and third sentences of Instruction C.9 to Item 5(vii) to read as follows:

Note: Form 24F–2 does not, and the amendments will not, appear in the *Code of Federal Regulations*.

Form 24F–2

Annual Notice of Securities Sold Pursuant to Rule 24f–2

* * * * *

Instructions

* * * * *

C. Computation of Registration Fee

* * * * * *

9. Item 5(vii)–* * * As of October 22, 1998, the fee rate was $278 per $1,000,000 offered or sold (prorated for amounts less than $1,000,000). The registration fee is calculated by multiplying the aggregate offering or sales amount by .000278. * * *

* * * * *

For the Commission, by the Office of the Secretary, pursuant to delegated authority.

Dated: November 4, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30011 Filed 11–9–98; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF JUSTICE

28 CFR Parts 0 and 27

[A.G. Order No. 2190–98]

RIN 1105–AA60

Whistleblower Protection For Federal Bureau of Investigation Employees

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes procedures under which employees of the Federal Bureau of Investigation may make disclosures of information protected by the Civil Services Reform Act of 1978 (Pub. L. No. 95–454) and the Whistleblower Protection Act of 1989 (Pub. L. No. 101–12), codified at 5 U.S.C. 2303. It also establishes procedures under which the Department of Justice (the Department) will investigate allegations by Federal Bureau of Investigation (FBI) employees of retaliation for making such disclosures and provide appropriate corrective action.

DATES: *Effective date:* November 10, 1998.

Comment Date: Comments are due on or before January 11, 1999.

ADDRESSES: Interested parties should submit written comments to: Stuart Frisch, General Counsel, Office of the General Counsel, Justice Management Division, United States Department of Justice, 10th and Pennsylvania Ave., N.W., Washington, D.C., 20530.

E-mail comments submitted over the Internet should be addressed to caterini@justice.usdoj.gov.

FOR FURTHER INFORMATION CONTACT: Stuart Frisch, General Counsel, or John Caterini, Attorney-Advisor, Office of the General Counsel, Justice Management Division, U.S. Department of Justice, (202) 514–3452.

SUPPLEMENTARY INFORMATION:

A. Background

Under sections 1214 and 1221 of title 5 of the United States Code, most Federal employees who believe they have been the victim of a prohibited personnel practice, including retaliation for whistleblowing, have the right to request an investigation by the Office of Special Counsel (OSC) (section 1214) or, in appropriate circumstances, to pursue an individual right of action before the Merit Systems Protection Board (MSPB) (sections 1214(a)(3) & 1221). Under 5 U.S.C. 2302(a)(2)(C)(ii), the FBI is expressly excluded from the scheme established by sections 1214 and 1221. Section 2303(a) of title 5, however, separately prohibits employees of the FBI from retaliating against whistleblowers. Section 2303(b) charges the Attorney General with prescribing regulations to ensure that such retaliation not be taken, and section 2303(c) charges the President with providing for the enforcement of section 2303 "in a manner consistent with applicable provisions of section 1214 and 1221."

On April 14, 1997, the President delegated to the Attorney General his "functions concerning employees of the Federal Bureau of Investigation vested in [him] by . . . section 2303(c) of title 5, United States Code," and directed the Attorney General to establish "appropriate processes within the Department of Justice to carry out these functions." *See* 62 FR 23123 (1997).

Accordingly, this interim rule implements 5 U.S.C. 2303 (b) & (c). It supersedes and replaces 28 CFR 0.39c, which gave the Counsel for the Department's Office of Professional Responsibility authority to request a stay of a personnel action when he determined that there were reasonable grounds to believe that the action was taken as a reprisal for whistleblowing.

The rule designates the Department's Office of Professional Responsibility (OPR), the Department's Office of Inspector General (OIG), and the FBI's Office of Professional Responsibility as offices to which an FBI employee (or applicant for employment with the FBI) may disclose information that the employee or applicant reasonably believes evidences: violation of any law, rule or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety. Any such disclosure to one of these offices is protected, and the rule prohibits retaliation for making it. The rule further provides that OPR and OIG will investigate whistleblower retaliation claims, recommend stays of personnel actions, and recommended corrective action where appropriate. The Director, Office of Attorney Personnel Management (the Director), or his designee, will decide whistleblower retaliation claims presented to him by OPR or OIG, as well as those claims brought to him directly by an employee or applicant in appropriate circumstances. He will also grant stays

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of personnel actions and order corrective action when appropriate. The rule grants powers and functions to the investigating offices (*i.e.*, OPR or OIG) and to the Director that are consistent with those granted to the OSC and MSPB in sections 1214 and 1221. Time frames specified in the statute generally were imported from those provided for in the OSC/MSPB system. The regulations allow for an extension of any time limit in extenuating circumstances.

Sections 1214(c) and 1221(h) of title 5 provide for judicial review by the Court of Appeals for the Federal Circuit. Section 2303(c), however, authorizes the Executive Branch to resolve allegations of whistleblower reprisal involving the FBI without reference to judicial review. Because only Congress is empowered to waive sovereign immunity, and section 2303 does not include such a waiver, this rule does not provide for judicial review. The rule provides for review of the Director's decision by the Deputy Attorney General or his designee, who will review the decision under the standard set forth in 5 U.S.C. 7703(c). That is, the Deputy Attorney General shall review the record and modify or set aside the Director's actions, findings, or conclusions found to be: (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) obtained without procedures required by law, rule, or regulation having been followed; or (3) unsupported by substantial evidence. The Deputy Attorney General has full discretion to review and modify corrective action ordered by the Director, provided, however, that if the Deputy Attorney General upholds a finding that there has been a reprisal, then the Deputy Attorney General shall order appropriate corrective action. The regulation provides this discretionary review because the Attorney General, as head of the Department, must retain ultimate authority over any decision that might relate to or affect the management of the FBI; under 28 CFR 0.15, the Deputy Attorney General is generally authorized to exercise all the power and authority of the Attorney General.

This interim rule is effective upon publication in the **Federal Register**, although the Department invites post-promulgation comments and will address any such comments in a final rule. The Department finds that good cause exists under 5 U.S.C. 553(b) and (d)(3) for adopting this as an interim rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. This rule provides formal procedures under which employees of, or applicants for employment with, the FBI may make certain protected disclosures of information and establishes procedures under which the Department will investigate allegations of reprisal for making any such disclosure. It provides a benefit to FBI employees or applicants for employment with the FBI. These procedures provide additional protection to such employees and applicants, and it is in the public interest to provide such protection without delay.

B. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this regulation and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. This rule merely establishes procedures under which employees or applicants for employment with the FBI, may make certain protected disclosures of information and establishes procedures under which the Department will investigate allegations of retaliation against such individuals.

C. Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

D. Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

E. Unfunded Mandates Reform Act of 1995

This rule will not, in the aggregate, result in the expenditure by State, local and tribal governments, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

F. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 27

Government Employees; Justice Department; Organization and functions (Government agencies); Whistleblowing.

For the reasons stated in the preamble, title 28 of the Code of Federal Regulations is amended as follows:

§ 0.39c [Removed]

1. In Subpart G–2 of Part 0, remove section 0.39c.

2. Add Part 27 to read as follows:

PART 27—WHISTLEBLOWER PROTECTION FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES

Subpart A—Protected Disclosures of Information

§ 27.1 Making a protected disclosure.
§ 27.2 Prohibition against reprisal for making a protected disclosure.

Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action

§ 27.3 Investigations: Office of Professional Responsibility and Office of the Inspector General.
§ 27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.
§ 27.5 Review.
§ 27.6 Extensions of time.

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519; 5 U.S.C. 2303; President's Memorandum to the Attorney General, Delegation of Responsibilities Concerning FBI Employees Under the Civil Service Reform Act of 1978, 3 CFR p. 284 (1997).

Subpart A—Protected Disclosures of Information

§ 27.1 Making a protected disclosure.

(a) When an employee of, or applicant for employment with, the Federal Bureau of Investigation (FBI) (FBI employee) makes a disclosure of information to either the Department of Justice's (Department's) Office of Professional Responsibility (OPR), the Department's Office of Inspector

General (OIG), or the FBI Office of Professional Responsibility (collectively, Receiving Offices), the disclosure will be a "protected disclosure" if the person making it reasonably believes that it evidences:

(1) A violation of any law, rule or regulation; or

(2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(b) When a Receiving Office receives a protected disclosure, it shall proceed in accordance with existing procedures establishing jurisdiction among the respective Receiving Offices.

§ 27.2 Prohibition against reprisal for making a protected disclosure.

(a) Any employee of the FBI, or of any other component of the Department, who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take a personnel action, as defined below, with respect to any FBI employee as a reprisal for a protected disclosure.

(b) Personnel action means any action described in clauses (i) through (x) of 5 U.S.C. 2302(a)(2)(A) taken with respect to an FBI employee other than one in a position which the Attorney General has designated in advance of encumbrance as being a position of a confidential, policy-determining, policy-making, or policy-advocating character.

Subpart B—Investigating Reprisal Allegations and Ordering Corrective Action

§ 27.3 Investigations: Office of Professional Responsibility and Office of the Inspector General.

(a)(1) An FBI employee who believes that another employee of the FBI, or of any other Departmental component, has taken or has failed to take a personnel action as a reprisal for a protected disclosure (reprisal), may report the alleged reprisal to either the Department's OPR or the Department's OIG (collectively, Investigative Offices). The report of an alleged reprisal must be made in writing.

(2) For purposes of this Subpart, references to the FBI include any other Departmental component in which the person or persons accused of the reprisal were employed at the time of the alleged reprisal.

(b) The Investigative Office that receives the report of an alleged reprisal shall consult with the other Investigative Office to determine which office is more suited, under the circumstances, to conduct an investigation into the allegation. The Attorney General retains final authority to designate or redesignate the Investigative Office that will conduct an investigation.

(c) Within 15 calendar days of the date the allegation of reprisal is first received by an Investigative Office, the office that will conduct the investigation (Conducting Office) shall provide written notice to the person who made the allegation (Complainant) indicating—

(1) That the allegation has been received; and

(2) The name of a person within the Conducting Office who will serve as a contact with the Complainant.

(d) The Conducting Office shall investigate any allegation of reprisal to the extent necessary to determine whether there are reasonable grounds to believe that a reprisal has been or will be taken.

(e) Within 90 calendar days of providing the notice required in paragraph (c) of this section, and at least every 60 calendar days thereafter (or at any other time if the Conducting Office deems appropriate), the Conducting Office shall notify the Complainant of the status of the investigation.

(f) The Conducting Office shall determine whether there are reasonable grounds to believe that there has been or will be a reprisal for a protected disclosure. The Conducting Office shall make this determination within 240 calendar days of receiving the allegation of reprisal.

(g) If the Conducting Office decides to terminate an investigation, it shall provide, no later than 10 business days before providing the written statement required by paragraph (h) of this section, a written status report to the Complainant containing the factual findings and conclusions justifying the termination of the investigation. The Complainant may submit written comments on such report to the Conducting Office. The Conducting Office shall not be required to provide a subsequent written status report after submission of such comments.

(h) If the Conducting Office terminates an investigation, it shall prepare and transmit to the Complainant a written statement notifying him/her of—

(1) The termination of the investigation;

(2) A summary of relevant facts ascertained by the Conducting Office;

(3) The reasons for termination of the investigation; and

(4) A response to any comments submitted under paragraph (g) of this section.

(i) Such written statement prepared pursuant to paragraph (h) of this section may not be admissible as evidence in any subsequent proceeding without the consent of the Complainant.

(j) Nothing in this part shall prohibit the Receiving Offices, in the absence of a reprisal allegation by an FBI employee under this part, from conducting an investigation, under their pre-existing jurisdiction, to determine whether a reprisal has been or will be taken.

§ 27.4 Corrective action and other relief: Director, Office of Attorney Personnel Management.

(a) If, in connection with any investigation, the Conducting Office determines that there are reasonable grounds to believe that a reprisal has been or will be taken, the Conducting Office shall report this conclusion, together with any findings and recommendations for corrective action, to the Director, Office of Attorney Personnel Management (the Director). If the Conducting Office's report to the Director includes a recommendation for corrective action, the Director shall provide an opportunity for comments on the report by the FBI and the Complainant. The Director, upon receipt of the Conducting Office's report, shall proceed in accordance with paragraph (f) of this section.

(b) At any time, the Conducting Office may request the Director to order a stay of any personnel action for 45 calendar days if it determines that there are reasonable grounds to believe that a reprisal has been or is to be taken. The Director shall order such stay within three business days of receiving the request for stay, unless the Director determines that, under the facts and circumstances involved, such a stay would not be appropriate. The Director may extend the period of any stay granted under this paragraph for any period that the Director considers appropriate. The Director shall allow the FBI an opportunity to comment to the Director on any proposed extension of a stay. The Director may terminate a stay at any time, except that no such termination shall occur until the Complainant and the Conducting Office shall first have had notice and an opportunity to comment.

(c)(1) The Complainant may present a request for corrective action directly to the Director within 60 calendar days of receipt of notification of termination of an investigation by the Conducting Office or at any time after 120 calendar days from the date the Complainant first notified an Investigative Office of an alleged reprisal if the Complainant has not been notified by the Conducting

Office that it will seek corrective action. The Director shall notify the FBI of the receipt of the request and allow the FBI 25 calendar days to respond in writing. If the Complainant presents a request for corrective action to the Director under this paragraph, the Conducting Office may continue to investigate the reprisal allegation only with the consent of the Complainant. If the Complainant refuses such consent, the Conducting Office will discontinue investigation of the reprisal allegation and will not prepare a report for the Director. In such event, however, the Conducting Office may continue to investigate any separate violation of law, rule, or regulation discovered during the investigation of reprisal that is otherwise within the Conducting Office's pre-existing jurisdiction. When the Complainant presents a request for corrective action directly to the Director and does not consent to the Conducting Office continuing an independent investigation of the reprisal allegation, the Conducting Office shall submit to the Complainant and to the FBI its Memoranda of Interviews (or portions thereof) that relate to the reprisal investigation, consistent with the Conducting Office's obligations regarding confidentiality and privacy.

(2) The Director may not direct the Conducting Office to reinstate an investigation that the Conducting Office has terminated in accordance with section 27.3(h).

(d) Where a Complainant has presented a request for corrective action directly to the Director under paragraph (c)(1) of this section, the Director may hold a hearing at which the Complainant may present evidence in support of his or her claim, in accordance with such procedures as the Director may adopt. The Director is hereby authorized to compel the attendance and testimony of, or the production of documentary or other evidence from, any person employed by the Department if doing so appears reasonably calculated to lead to the discovery of admissible evidence, is not otherwise prohibited by law or regulation, and is not unduly burdensome. Any privilege available in judicial and administrative proceedings relating to the release of documents or the giving of testimony shall be available to the parties in the hearing before the Director. All assertions of such privileges shall be decided by the Director. Upon the request of either the Complainant, the Conducting Office, or the FBI, the Director may certify a ruling on an assertion of privilege for review by the Deputy Attorney General.

(e) Where a Complainant has presented a request for corrective action to the Director under paragraph (c) of this section, the Complainant may at any time request the Director to order a stay of any personnel action allegedly taken or to be taken in reprisal for a protected disclosure. The request for a stay must be in writing, and the FBI shall have an opportunity to respond. The request shall be granted within 10 business days of the receipt of any response by the FBI if the Director determines that such a stay would be appropriate. A stay granted under this paragraph shall remain in effect for such period as the Director deems appropriate. The Director may modify or dissolve a stay under this paragraph at any time if the Director determines that such a modification or dissolution is appropriate.

(f) The Director shall determine, based upon all the evidence, whether a protected disclosure was a contributing factor in a personnel action taken or to be taken. If the Director determines that a protected disclosure was a contributing factor in a personnel action taken or to be taken, he shall order corrective action as he deems appropriate. The Director may conclude that the disclosure was a contributing factor in the personnel action based upon circumstantial evidence, such as evidence that the employee taking the personnel action knew of the disclosure or that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action. Corrective action may not be ordered, however, if the FBI demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

(g) If the Director orders corrective action, such corrective action may include: placing the Complainant, as nearly as possible, in the position he would have been in had the reprisal not taken place; reimbursement for attorneys fees, reasonable costs, medical costs incurred, and travel expenses; back pay and related benefits; and any other reasonable and foreseeable consequential damages.

(h) If the Director determines that there has not been a reprisal, the Director shall report this finding in writing to the Complainant, the FBI, and the Conducting Office.

§ 27.5 Review.

The Complainant or the FBI may request from the Deputy Attorney General a review of the Director's decision within 30 calendar days. The Deputy Attorney General (or a designee) shall set aside or modify the Director's actions, findings, or conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; obtained without procedures required by law, rule, or regulation having been followed; or unsupported by substantial evidence. The Deputy Attorney General has full discretion to review and modify corrective action ordered by the Director, provided, however, that if the Deputy Attorney General upholds a finding that there has been a reprisal, then the Deputy Attorney General shall order appropriate corrective action.

§ 27.6 Extensions of time.

The Director may extend, for extenuating circumstances, any of the time limits provided in these regulations relating to proceedings before him and to requests for review by the Deputy Attorney General.

Dated: October 29, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–29700 Filed 11–9–98; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 560

Iranian Transactions Regulations: Reporting on Foreign Affiliates' Oil-Related Transactions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: The Treasury Department is amending the Iranian Transactions Regulations to terminate the reporting requirement for subsidiaries' Iranian petrochemical transactions and Iran-related sales of services (including insurance and financing) and goods (including oilfield supplies and equipment).

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Layne, Blocked Assets Division (tel: 202/622–2440), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the

Federal Register. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat[R] readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library ("TEL") in the "Research Mall" of the FedWorld bulletin board. By modem, dial 703/321–3339, and select self–expanding file "T11FR00.EXE" in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

The Office of Foreign Assets Control ("OFAC") introduced reporting requirements on certain oil–related transactions by foreign affiliates of U.S. persons as an amendment to the Iranian Transactions Regulations in September 1995 (60 FR 47061, Sept. 11, 1995 — the "Regulations"). This amendment implemented the President's declaration of national emergency and imposition of sanctions against Iran, contained in Executive Order 12957 of March 15, 1995, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; and Executive Order 12959 of May 6, 1995, 60 FR 24757, 3 CFR, 1995 Comp., p. 356. On November 15, 1996, OFAC clarified that the scope of the reporting requirements in § 560.603 extends beyond transactions directly involving crude oil or natural gas to include transactions involving petrochemicals and the provision of certain goods (including oilfield supplies and equipment) and services (including financing and insurance) (61 FR 58480, Nov. 15, 1996). On April 23, 1997, OFAC further amended the § 560.603 reporting requirements to require U.S. persons to file reports only with respect to foreign affiliates engaging in a reportable transaction or transactions totaling $1,000,000 or more during the calendar quarter. The foreign affiliate's relationship to the U.S. person, including percentage of direct and indirect ownership, no longer had to be reported. Reports were to be filed within 60 days, rather than 15 days, of the end of each calendar quarter. The present amendment eliminates Iranian–origin petrochemicals from the definition of "reportable transactions" and terminates the reporting requirements for subsidiaries' sales of the services and goods noted above. The revised § 560.603 retains the reporting requirements covering crude oil and natural gas.

Since the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the collections of information related to the Regulations have been approved by the Office of Management and Budget ("OMB") under control number 1505–0106. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 560

Administrative practice and procedure, Agricultural commodities, Banks, banking, Exports, Foreign trade, Imports, Information, Investments, Iran, Penalties, Reporting and recordkeeping requirements, Services, Specially designated nationals, Terrorism, Transportation.

For the reasons set forth in the preamble, 31 CFR part 560 is amended as follows:

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 is revised to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 2349aa–9; 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 12613, 52 FR 41940, 3 CFR, 1987 Comp., p. 256; E.O. 12957, 60 FR 14615, 3 CFR, 1995 Comp., p. 332; E.O. 12959, 60 FR 24757, 3 CFR, 1995 Comp., p. 356; E.O. 13059, 62 FR 44531, 3 CFR, 1997 Comp., p. 217.

Subpart F—Reports

2. Section 560.603 is revised to read as follows:

§ 560.603 Reports on oil transactions engaged in by foreign affiliates.

(a) *Requirement for reports.* A report must be filed with the Office of Foreign Assets Control with respect to each foreign affiliate of a United States person that engaged in a reportable transaction, as defined in paragraph (b) of this section, during the calendar quarter. Reports are due within 60 days after the end of each calendar quarter.

(b) *Definitions.* For purposes of this section:

(1) The term *reportable transaction* means any purchase, sale, or swap of Iranian–origin crude oil or natural gas. For purposes of this paragraph (b), a purchase, sale, or swap is deemed to have occurred as of the date of the bill of lading used in connection with such transaction.

(2) The term *foreign affiliate* means a person or entity other than a United States person (see § 560.314) which is organized or located outside the United States and which is owned or controlled by a United States person or persons.

(c) *Who must report.* A United States person must file a report with respect to each foreign affiliate owned or controlled by it which engaged in a reportable transaction or transactions during the calendar quarter. For the calendar quarter beginning October 1, 1996, and all subsequent quarters, a United States person must file a report only as to each foreign affiliate owned or controlled by it which engaged in a reportable transaction or transactions totaling $1,000,000 or more during the calendar quarter. A single United States entity within a consolidated or affiliated group may be designated to report on each foreign affiliate of the United States members of the group. Such centralized reporting may be done by the United States person who owns or controls, or has been delegated authority to file on behalf of, the remaining United States persons in the group.

(d) *What must be reported.* (1) Part I of the report must provide the name, address, and principal place of business of the United States person; its place of incorporation or organization if an entity; and the name, title, and telephone number of the individual to contact concerning the report.

(2) Part II of the report must provide, with respect to the foreign affiliate, its name and address; the type of entity, *e.g.*, corporation, partnership, limited liability company; the country of its incorporation or organization; and its principal place of business.

(3) Part III of the report must include the following information with respect to each reportable transaction (a separate Part III must be submitted for each reportable transaction):

(i) The nature of the transaction, *e.g.*, purchase, sale, swap;

(ii) A description of the product involved;

(iii) The name of the Iranian or third country party or parties involved in the transaction;

(iv) The currency and amount of the transaction, and corresponding United States dollar value of the transaction if not denominated in United States dollars.

(e) *Where to report.* Reports must be filed with the Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220. Reports may be submitted by facsimile transmission at 202/622–1657. A copy must be retained for the reporter's records.

(f) *Whom to contact.* Blocked Assets Division, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220; telephone: 202/622–2440.

Dated: October 9, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 22, 1998.

Elisabeth A. Bresee

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–30126 Filed 11–5–98; 3:17 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: The Office of Foreign Assets Control is amending the Iraqi Sanctions Regulations to permit U.S. persons to enter into executory contracts for the sale of oilfield parts and equipment to the Government of Iraq in conformity with United Nations Security Council Resolutions No. 1153 and 1175.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief, Licensing (tel.: 202/622–2480) or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

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Background

United Nations Security Council Resolution ("UNSCR") No. 1153 of February 20, 1998, authorizes the exportation from Iraq of $5.256 billion in petroleum and petroleum products within a 180–day period. UNSCR No. 1175 of June 19, 1998, authorizes the exportation to Iraq of the necessary parts and equipment to enable Iraq to achieve the level of exports authorized in Resolution No. 1153. Pursuant to Executive Orders 12722 of August 2, 1990 (55 FR 31803, 3 CFR, 1990 Comp., p. 294), and 12724 of August 9, 1990 (55 FR 33089, 3 CFR, 1990 Comp., p. 297), and in accordance with UNSCRs No. 1153 and 1175, the Office of Foreign Assets Control is amending § 575.522 of the Iraqi Sanctions Regulations, 31 CFR Part 575 (the "Regulations"), to authorize United States persons to enter into executory contracts with the Government of Iraq for the sale and exportation to Iraq of parts and equipment necessary to enable Iraq to export petroleum and petroleum products in accordance with UNSCRs No. 1153 and 1175.

Since the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553)(the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply. This final rule imposes no paperwork burden.

List of Subjects in 31 CFR Part 575

Administrative practice and procedure, Banks, banking, Blocking of assets, Exports, Foreign trade, Humanitarian aid, Imports, Iraq, Oil imports, Penalties, Petroleum, Petroleum products, Reporting and recordkeeping requirements, Specially designated nationals, Terrorism, Travel restrictions.

For the reasons set forth in the preamble, 31 CFR part 575 is amended as follows:

PART 575—IRAQI SANCTIONS REGULATIONS

1. The authority citation for part 575 is revised to read as follows:

Authority: 3 U.S.C. 301; 18 U.S.C. 2332d; 22 U.S.C. 287c; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); 31 U.S.C. 321(b); 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–513, 104 Stat. 2047–2055 (50 U.S.C. 1701 note); E.O. 12722, 55 FR 31803, 3 CFR, 1990 Comp., p. 294; E.O. 12724, 55 FR 33089, 3 CFR, 1990 Comp., p. 297; E.O. 12817, 57 FR 48433, 3 CFR, 1992 Comp., p. 317.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

2. Section 575.522 is amended by revising the section heading, removing the word "and" from the end of paragraph (a)(2), removing the period at the end of paragraph (a)(3) and adding "; and", and adding a new paragraph (a)(4) to read as follows:

§ 575.522 Executory contracts with the Government of Iraq for trade in petroleum, pipeline parts and equipment, humanitarian goods, and oil field equipment authorized.

(a) * * *

(4) The sale and exportation to Iraq of oilfield parts and equipment to the extent necessary to enable Iraq to export petroleum and petroleum products in accordance with United Nations Security Council Resolutions No. 1153

and 1175 and other relevant UNSC Resolutions.

* * * * *

Dated: October 20, 1998.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 27, 1998.

Elisabeth A. Bresee

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 98–30125 Filed 11–5–98; 3:43 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ17

Minimum Income Annuity and Gratuitous Annuity

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to provide that if the Department of Defense (DOD) or the Department of Transportation determines that an individual who is entitled to a minimum income annuity for certain surviving spouses also is entitled to a certain gratuitous annuity, VA will combine the payment of the gratuitous annuity with the minimum income annuity payment. This amendment reflects statutory provisions contained in the National Defense Authorization Act for Fiscal Year 1998. The responsibility for paying the gratuitous annuity was transferred from DOD to VA.

DATES: *Effective Date:* November 10, 1998.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 645 of the National Defense Authorization Act for Fiscal Year 1998, Pub. L. 105–85, § 645, 111 Stat. 1629, 1801–1802 (1997) (10 U.S.C. 1448 note), transferred responsibility for paying the gratuitous annuity authorized by section 653 of the National Defense Authorization Act, Fiscal Year 1989, Pub. L. 100–456, § 653, 102 Stat. 1918, 1991–1992 (1988), from DOD to the Secretary of Veterans Affairs. However, DOD or the Department of Transportation remains responsible for funding this annuity and determining basic eligibility. This gratuitous annuity, initially in the amount of $165 a month, but since adjusted for changes in the Consumer Price Index, is paid to certain surviving spouses of persons who died before November 1, 1953, and were entitled to retired or retainer pay on the date of death. The statute provides that VA will combine the payment of this gratuitous annuity with the payment of the minimum income annuity authorized by Pub. L. 92–425, § 4, 86 Stat. 706, 712 (1972) (10 U.S.C. 1448 note). Section 638 of the National Defense Authorization Act for Fiscal Year 1997, Pub. L. 104–201, § 638, 110 Stat. 2422, 2581 (1996), transferred responsibility for paying a guaranteed minimum annual income (the so-called minimum-income-widow annuity, or minimum income annuity) to the Secretary of Veterans Affairs from DOD. We have amended 38 CFR 3.811 accordingly.

This document merely restates statutory provisions. Accordingly, the provisions of 5 U.S.C. 553 regarding prior notice and public comment and delayed effective date are not applicable.

The Secretary hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule restates statutory provisions which only affect individuals. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance program number is 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: October 29, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.811, paragraph (d) is redesignated as paragraph (e); and the section heading and the heading for paragraph (a) are revised, a new paragraph (d) is added, and the authority citation at the end of the section is revised, to read as follows:

§ 3.811 Minimum income annuity and gratuitous annuity.

(a) *Eligibility for minimum income annuity.* * * *

* * * * *

(d) If the Department of Defense or the Department of Transportation determines that a minimum income annuitant also is entitled to the gratuitous annuity authorized by Pub. L. 100–456 as amended, which is payable to certain surviving spouses of servicemembers who died before November 1, 1953, and were entitled to retired or retainer pay on the date of death, VA will combine the payment of the gratuitous annuity with the minimum income annuity payment.

* * * * *

(Authority: Sec. 4, Pub. L. 92–425, 86 Stat. 706, 712, as amended (10 U.S.C. 1448 note))

[FR Doc. 98–30055 Filed 11–9–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–80–1–7353; FRL–6173–8]

Approval and Promulgation of Implementation Plans(SIP); Texas: 1990 Base Year Emissions Inventories, 15% Rate of Progress Plans, Contingency Plans, and Motor Vehicle Emission Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Conditional interim final rule.

SUMMARY: In this action, the EPA is granting conditional interim approval of the 15% Rate-of-Progress (ROP) Plans and associated Motor Vehicle Emissions Budgets (MVEB) for the Dallas/Fort Worth, El Paso and Houston/Galveston ozone nonattainment areas. In addition, EPA is fully approving revisions to the 1990 base year emissions inventories and the contingency plans for the three areas. The 15% ROP Plans and MVEB's are receiving conditional interim approval, instead of full approval, because they rely on emission reductions from the Texas Inspection and Maintenance (I/M) Program which received final conditional interim approval on July 11, 1997 (62 FR

37138). This action will aid in ensuring the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone as required by the Clean Air Act (Act), as amended in 1990.

DATES: This conditional interim final rule is effective on December 10, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Guy R. Donaldson, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7242.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(b)(1) of the Act requires ozone nonattainment areas with classifications of moderate and above to develop plans to reduce area-wide Volatile Organic Compound (VOC) emissions by 15% from a 1990 baseline during the first six years after enactment (November 15, 1996). In addition, section 172(c)(9) of the Act requires that contingency measures be included in the plan revision to be implemented if reasonable further progress is not achieved or if the standard is not attained.

In Texas, four moderate and above ozone nonattainment areas are subject to the 15% Rate of Progress (ROP) requirements. These are the Beaumont/Port Arthur (moderate [1]), Dallas/Fort Worth (serious [2]), El Paso (serious), and Houston/Galveston (severe) areas.

The Governor of Texas submitted revisions to the State Implementation Plan(SIP) in a letter dated August 9, 1996, including revisions to the 15% ROP Plans for the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso and Houston/Galveston areas. The revisions also included changes to the 1990 Base Year Inventory, the El Paso Section 179B International Border analysis, the Post-96 ROP Plan for Houston and the Houston/Galveston Employee Commute Options SIP.

The EPA proposed conditional interim approval of the 15% ROP plans for the Dallas/Fort Worth, El Paso and Houston areas on July 11, 1997 (62 FR 37175). For further information, including specification of the measures included in the 15% ROP Plans, please see that **Federal Register** notice.

In this **Federal Register** action, EPA is approving only the Emissions Inventories, 15% ROP Plans, MVEB and Contingency measures for the Dallas/Fort Worth, El Paso and Houston/Galveston areas. The EPA is taking no action on the other portions of the August 9, 1996, submittal, including the Beaumont/Port Arthur 15% ROP Plan. Final action approving the Beaumont/Port Arthur 15% ROP Plan and associated Contingency Plan, revisions to the 1990 Emissions Inventory for Beaumont/Port Arthur, and MVEB for Beaumont/Port Arthur was published in the **Federal Register** on February 10, 1998 (63 FR 6659). The other portions of the submittal will be processed in separate **Federal Register** actions.

II. Public Comments and EPA Responses

The EPA received comment letters from the Houston Airport System, the Air Transport Association, American Airlines, and the Dallas/Fort Worth International Airport Board. All of the comments address related issues. The commentors' concerns are summarized below.

1. The City of Houston, Department of Aviation requested a 180-day extension to the comment period so a revised emissions inventory for the Houston/Galveston area could be prepared to reflect the area's actual and projected aircraft emissions. The City of Houston's comment is based on the belief that the SIP inventory of 1.82 tons/day understates the actual emissions attributable to commercial aviation in the City of Houston.

2. The Air Transport Association of America (ATA) requested a 90-day extension to the comment period. The ATA believes that current emissions and emission calculations associated with growth of the DFW International Airport have not been properly taken into account. The ATA also refers to a document entitled "DOT/FAA Final Environmental Impact Statement: Dallas/Fort Worth International Airport Runway 16/34 East—Runway 16/34 West" (1991). The ATA believes that information from this document was not incorporated in the Dallas/Fort Worth 15% ROP plan.

3. American Airlines also asked for a 90-day extension to the comment period to allow for revision of the 1990 emissions inventory and the 15% ROP Plan. American Airlines refers to the 1991 Environmental Impact Statement as providing documentation that the 1990 base year inventory for Dallas/Fort Worth area is incorrect and the projected emissions do not accurately project anticipated emissions growth at DFW Airport. Their analysis indicated that: turboprop aircraft were not included in the emission estimate for the DFW Airport; the inventory is based on default times for the various stages of aircraft operations (i.e. take-off, climb-out, approach and idle/taxi) in the landing/take-off (LTO) cycle, which are not specific to the DFW airport; and the EIS was based on LTO cycle times appropriate to the DFW airport and included turboprop aircraft.

4. The DFW International Airport Board requested a 180-day extension to the comment period. They also commented that the estimate of emissions from commercial aircraft is significantly understated and conflicts with the 1991 Environmental Impact Statement. In addition, the ROP Plan does not consider projections for anticipated growth in aircraft activity in the Dallas/Fort Worth Area. The DFW Airport Board expressed the same concerns that were identified by American Airlines regarding the emission calculations.

All of the commentors expressed concern that if emissions growth is underestimated, future planned expansions at the airports in the nonattainment areas will not be able to conform to the applicable SIP.

Response to Comments

Comment: All of the commentors asked for an extension of the comment period. During that time they would develop documentation for a revised emission inventory and projected emissions.

Response: The EPA does not believe that additional time for comment is appropriate. The EPA approved the State's estimate of 1990 commercial aircraft emissions in the **Federal Register** action on the 1990 emissions inventories for the Houston/Galveston and Dallas/Fort Worth areas on November 8, 1994 (59 FR 55586). No comments were received on the 1994 action that referred to the commercial aircraft inventory. In the July 11, 1997, **Federal Register**, EPA did not propose to revise the approved estimates of the 1990 commercial aircraft emissions, nor did Texas submit a revision to this portion of the inventories. Thus, the

[1] Previously classified serious. On April 2, 1996, EPA corrected the classification of Beaumont/Port Arthur to moderate (61 FR 14496).

[2] Reclassified to serious (63 FR 8128, February 18, 1998).

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July 11, 1997, **Federal Register** proposal did not reopen the 1990 base year emissions inventory for commercial aircraft. In addition, the amount of emissions growth allocated for commercial aviation is at the discretion of the State. Therefore, the commentors' appropriate course of action for revising the base year inventories and projected future emissions estimates for commercial aircraft, is to work with Texas with the goal of the State submitting to EPA revisions to the inventories and the SIP. If revisions are submitted to EPA, they would be acted upon in a separate action published in the **Federal Register**.

Comment: The Emissions Inventories should be disapproved because the level of commercial aircraft emissions are understated.

Response: The EPA approved the 1990 emission inventory for commercial aircraft in a previous **Federal Register** action and did not propose to revise it in the July 11, 1997 **Federal Register** proposal. Since EPA did not propose to revise the commercial aircraft emissions in the approved inventory, we cannot address this comment in this rulemaking.

However, EPA believes that the major potential source of discrepancy is that the approved 1990 emission inventory is calculated using default values for the idle/taxi times at the airports. The approach of using default times for estimating airport emissions is reasonable and follows EPA guidance and, therefore, can be approved. The EPA encourages States to use site specific measured values in place of default values whenever possible. However, since Texas did not do so in this case, the appropriate course of action is for the commenters to work with the State on this issue.

Comment: The 15% ROP SIPs should be disapproved because they do not accurately project the growth in commercial aircraft emissions.

Response: The issue of whether the State has projected adequate growth in emissions for commercial aircraft emissions is of particular concern because the section 176 General Conformity requirements of the Act could impede future planned expansions if the SIP does not allow for sufficient projected emissions. The EPA believes that States must account for growth in emissions so that the air quality planning efforts have a reasonable chance of success. In the case of commercial aircraft emissions, the State followed EPA guidance and projected that aircraft emissions would grow based on the Economic Growth Analysis System (EGAS). The EGAS projects growth in emissions based on economic projections for particular industries. The State followed EPA's guidance in projecting growth. The EPA believes the State's estimate is reasonable and can be accepted. If growth in emissions in excess of the State's estimate is desired by the airports, they should work with the State to ensure that the desired growth is accounted for in the SIP. The State has the discretion to provide for future emissions growth in the SIP and EPA can accept projections that are reasonable and based on EPA guidance.

III. Rulemaking Action

Pursuant to sections 110 and Part D of the Act, EPA is approving the revised emissions inventories for the Dallas/Fort Worth, El Paso and Houston/Galveston areas and Contingency Plans. The EPA is giving conditional interim approval to the 15% ROP Plans and associated MVEB for the Dallas/Fort Worth, El Paso and Houston/Galveston areas.

The 15% ROP Plans for the three areas can only receive a conditional interim approval because the plans all rely, in part, on emission reductions from the revised I/M program. The EPA published conditional interim approval of the I/M program for the three areas on July 11, 1997 (62 FR 37138). Therefore, the 15% ROP Plans can only receive conditional interim approval.

Interim Approval

Section 348 of the National Highway Systems Designation Act (NHSDA) allows States to make a "good faith" estimate of the reductions that will be achieved by the I/M program. The I/M program can be given interim approval during a 18-month period during which the program is evaluated to validate the "good faith" estimate. At the end of the 18-month interim period (February 11, 1999), the interim approval for the I/M program will automatically lapse pursuant to the NHSDA. It is expected that, by that time, the State will be able to make a demonstration of the program's effectiveness using appropriate evaluation criteria. If the State fails to provide such a demonstration of the program's effectiveness to EPA by February 11, 1999, the interim approval will lapse. A lapse of the I/M approval resulting from the State failing to provide a program demonstration could result in EPA disapproval of the I/M SIP. Lapse of the I/M interim approval will result in a 15% ROP Plan approval lapse unless emission reductions are submitted and approved which can replace the projected emission reductions from I/M. Information from the I/M program evaluation showing the program achieves a lesser amount of emissions reductions than originally projected will be considered in any future actions on the 15% ROP Plans. Further discussion of the requirements for final approval of the I/M program is contained in the October 3, 1996, **Federal Register** (61 FR 51651).

Conditional Approval

The EPA is granting conditional approval of the 15% Plans contingent upon the State meeting the conditions outlined in the I/M conditional approval. These include the State obtaining the appropriate legislative authority as needed to implement the program outlined in the Governor's Executive Order. If the State fails to meet the conditions within 12 months of the effective date of the conditional interim final approval, this action on the 15% Plans will convert to a disapproval. However, the State submitted in a letter, dated May 29, 1997, a revision to the SIP including the items identified in the conditions. A completeness letter was sent on August 18, 1997. Therefore, there will be no automatic conversion of the I/M or 15% Rate of Progress plans to disapproval. The EPA is evaluating whether the SIP revision meets the requirements of the conditional approval and will take action in a separate **Federal Register** document.

Motor Vehicle Emissions Budgets

The Clean Air Act, section 176(c), and the transportation conformity rule require States to establish MVEB in any control strategy SIP that is submitted for attainment and maintenance of the National Ambient Air Quality Standards. The EPA is granting conditional interim approval to the MVEB listed below, for the Dallas/Fort Worth, El Paso, and Houston/Galveston areas.

1996 VOC Motor Vehicle Emission Budget

Area	VOC (tons/day)
Dallas/Fort Worth	165.49
El Paso	21.63
Houston/Galveston	152.12

IV. Administrative Requirements

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental

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factors and in relation to relevant statutory and regulatory requirements.

A. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that this action will not have a significant economic impact on ■ substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to a disapproval under section 110(k), based on the state's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, I certify that this disapproval action will not have a significant economic impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new federal requirement.

B. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Since this action does not impose any mandate, it is also not subject to Executive Order 12875 concerning Federal mandates.

C. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

D. Executive Orders 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866 entitled, "Regulatory Planning and Review."

E. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget ■ description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

F. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, representatives of Indian tribal governments are "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

G. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentialiy effective

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 1999. Filing a petition for reconsideration by the Administrator of this conditional interim final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: September 23, 1998.

Gregg A. Cooke,

Regional Administrator, Region 6.

Part 52, *Chapter I, Title 40 of the Code of Federal Regulations* is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. Section 52.2270 is amended by adding paragraph (c)(113) to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(113) The Texas Natural Resource Conservation Commission submitted a revision to the State Implementation Plan (SIP) on August 9, 1996. This revision contained, among other things, 15% Rate-of-Progress plans for the Dallas/Fort Worth, El Paso and Houston/Galveston ozone nonattainment areas which will aid in ensuring the attainment of the National Ambient Air Quality Standards for ozone. This submittal also contained revisions to the 1990 base year emissions inventories, the associated Motor Vehicle Emission Budgets and contingency plans.

(i) Incorporation by reference. Texas Natural Resource Conservation Commission (TNRCC) order adopting amendments to the SIP; Docket Number 96–0465–SIP, issued July 31, 1996.

(ii) Additional material.

(A) TNRCC certification letter dated July 24, 1996, and signed by Gloria Vasquez, Chief Clerk, TNRCC.

(B) The SIP narrative plan and tables dated July 24, 1996 entitled, "Revisions to the State Implementation Plan (SIP) for the Control of Ozone Air Pollution," as it applies to the Dallas/Fort Worth, El Paso and Houston areas' 15% Rate-of-Progress plans, emissions inventories, motor vehicle emissions budgets and contingency plans.

* * * * *

3. Section 52.2309 is amended by adding paragraph (e) to read as follows:

§ 52.2309 Emissions inventories.

* * * * *

(e) The Texas Natural Resource Conservation Commission submitted a revision to the State Implementation Plan (SIP) on August 9, 1996. This revision was submitted for the purpose of satisfying the 15% Rate-of-Progress requirements of the Clean Air Act, which will aid in ensuring the attainment of the National Ambient Air Quality Standards for ozone. This submittal also contained revisions to the 1990 base year emissions inventories for the Dallas/Fort Worth, El Paso and Houston/Galveston areas.

[FR Doc. 98–29812 Filed 11–9–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ29–2–185 FRL–6174–4]

Approval and Promulgation of Implementation Plans; State of New Jersey; Clean Fuel Fleet Opt Out

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan revision submitted by the State of New Jersey for the purpose of meeting the requirement to submit the federal Clean Fuel Fleet program (CFFP) or a substitute program that meets the requirements of the Clean Air Act (Act or CAA). EPA is approving the State's plan for implementing a substitute program to opt out of the federal CFFP.

EFFECTIVE DATE: This rule will be effective December 10, 1998.

ADDRESSES: Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(c)(4)(A) of the Clean Air Act requires states containing areas designated as severe ozone nonattainment areas, including New Jersey, to submit for EPA approval a state implementation plan (SIP) revision that includes measures to implement the federal Clean Fuel Fleet program (CFFP). Under this program, a specified percentage of vehicles purchased by covered fleet operators must meet emission standards that are more stringent than those that apply to conventional vehicles. Covered fleets are defined as having 10 or more vehicles that are centrally fueled or capable of being centrally fueled. A CFFP meeting federal requirements would be a state-enforced program which requires covered fleets to assure that an annually increasing percentage of new vehicle purchases are certified clean vehicles. In New Jersey, the program would apply in the State's portion of the New York-Northern New Jersey-Long Island ozone nonattainment area and in New Jersey's portion of the Philadelphia-Wilmington-Trenton ozone nonattainment area; thus all counties in New Jersey except for Warren, Atlantic and Cape May Counties would be covered under the federal CFFP.

The federal CFFP is divided into two components. The first component is a light duty federal CFFP which applies to covered fleets of passenger cars and trucks of gross vehicle weight rating (GVWR) of 6,000 pounds and less, and trucks between 6,000 and 8,500 pounds GVWR. Covered fleets which fall under the light duty federal CFFP are required

to assure that 30 percent of new purchases are clean vehicles in the first year of the program, 50 percent in the second year and 70 percent in the third and subsequent years.

The second component is a heavy duty (HD) federal CFFP which applies to covered fleets of trucks over 8,500 pounds GVWR and below 26,000 pounds GVWR. The HD federal CFFP requires that 50 percent of covered fleets' new purchases be clean fueled vehicles in the first and subsequent years.

Under the federal CFFP, the vehicle exhaust emission standards for light duty vehicles are equivalent to those established by the California Air Resources Board (CARB) as light duty low emission vehicles (LEVs), for use in the California LEV program. In addition to LEVs, this certification exists for vehicles meeting four additional levels of emissions stringency, including zero emission vehicles (ZEVs). For further information regarding emission standards associated with all of the clean fuel vehicles which are applicable under the LEV program and the federal CFFP, the reader is referred to the federal CFFP final rule, published on March 1, 1993 at 58 FR 11888.

Section 182(c)(4)(B) of the Act allows states to "opt out" of the federal CFFP by submitting for EPA approval a SIP revision consisting of a program or programs that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions as achieved by the federal CFFP. The Clean Air Act directs EPA to approve a substitute program if it achieves long term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the federal CFFP or the portion of the federal CFFP for which the measure is to be substituted.

On February 15, 1996 New Jersey submitted its New Jersey Clean Fleets (NJCF) program as a substitute for the federal CFFP. This submittal, comprising the State's federal CFFP substitute which EPA is now taking action to approve, was in addition to prior federal CFFP-related submittals of November 1992 and May 1994. The reader is referred to EPA's proposed approval of the NJCF program, published at 62 FR 61948 on November 20, 1997 for further detail on those previous submittals. The NJCF program is an essentially voluntary mix of incentive-based programs which are intended to spur public and private fleets within New Jersey to purchase clean, alternatively fueled vehicles (AFVs).

On March 29, 1996, and on March 6, 1997, New Jersey supplemented the federal CFFP SIP revision with (1) a clarifying letter from New Jersey Department of Environmental Protection (NJDEP) Commissioner Shinn, and (2) with material from its October 21, 1996 public hearing, respectively. The 1996 letter from Commissioner Shinn clarified that the NJCF program substitution includes, to the extent necessary to meet SIP obligations, New Jersey's LEV program (NJ LEV) which had been adopted by that time. Because the emissions reductions relied upon in the NJCF program will largely result from voluntary measures, the NJ LEV program essentially serves the role of a "backstop" to the NJCF program. This means that in the event the NJCF program fails to achieve the emissions reductions claimed by the State, emission reductions achieved with the separate LEV program will be used by the State to account for those reductions that would have originally been realized through the federal CFFP. In that event EPA would then recognize NJ LEV as the effective opt out measure.

Unlike the federal CFFP, NJ LEV will impose requirements on auto manufacturers and their yearly vehicle sales. The adopted NJ LEV regulation states that New Jersey's primary intention is to participate in the National LEV (NLEV) program (discussed in more detail in section III. C. of this notice) as the preferred means of achieving cleaner vehicle sales throughout the State. The NJ LEV regulation also states that New Jersey would operate its own California LEV program if the NLEV program ultimately was not implemented (the reader is referred to the NJCF proposal at 62 FR 61948 for details regarding California LEV as it relates to the NJ LEV regulation). The NLEV regulation was designed with the understanding that EPA cannot require NLEV. NLEV must be mutually agreed upon by the participating states and the auto manufacturers because in the Clean Air Act, Congress disallows EPA from changing vehicle emission standards until at least model year 2004 (see CAA § 202). However, during the time following EPA's proposed approval of the NJCF program as an opt-out substitute for the federal CFFP, EPA promulgated a supplemental final rule for NLEV (see 62 FR 925, January 7, 1998). As per provisions of that final rule, with NLEV opt-in commitments from 9 of the 13 Ozone Transport Commission (OTC) States (including New Jersey) and the 23 major domestic and foreign auto manufacturers, on March 2, 1998, EPA officially found NLEV to be in effect.

Therefore, as per its State-specific LEV regulation, and as indicated in a January 28, 1998 letter from New Jersey Governor Christine Todd Whitman to the EPA Administrator, the State will participate in NLEV and receive creditable emission reductions through the proscribed federal enforcement of NLEV. As stated in its regulation, with its decision to participate in NLEV, the State will not operate California LEV in New Jersey, at least until such time that EPA implements more stringent Tier 2 vehicle emission standards, which will not be sooner than model year 2004 (see CAA § 202 and 63 FR 925–987). Therefore NLEV is now the applicable enforceable backstop to the NJCF program.

The NLEV program requires that auto manufacturers must meet an average vehicle emission standard, based on the certified emission standards of all annual vehicle sales. The annual average vehicle emission standard (referred to as the non-methane organic gas (NMOG) average) increases in stringency on an annual basis. Quantitatively, NLEV will achieve long term vehicle emission reductions which are far greater than what the federal CFFP could have achieved.

The Clean Air Act requires states to observe certain procedural requirements in developing implementation plan revisions for submission to EPA. Sections 110(a)(2) and 172(c)(7) of the Act require states to provide reasonable notice and public hearing before adoption by the state and submission to EPA for approval. Section 110(1) of the Act also requires states to provide reasonable notice and hold a public hearing before adopting SIP revisions. EPA must also determine whether a state's submittal is complete before taking further action on the submittal. See section 110(k)(1). EPA's completeness criteria for SIP submittals are set out in 40 CFR Part 51, Appendix V (1993). New Jersey's SIP revision which EPA is approving in this notice has met all of the procedural requirements and completeness criteria.

II. State Submittal

New Jersey submitted SIP revisions on February 15, 1996, March 29, 1996 and March 6, 1997 which substitutes the State's NJCF program, backstopped by the enforceable NJ LEV program, for the federal CFFP.

The NJCF program consists of the following four components: (1) Incentive Development program, (2) the Department of Energy's (DOE's) EPAct fleet requirements, (3) DOE's Clean

Cities program, and (4) the Advanced Technology Vehicle (ATV) agreement associated with the NLEV program. Components (1), (3) and (4) are voluntary in nature, while the second component, the EPAct fleet requirements, is a mandatory DOE program. However although the EPAct mandate requires purchases of alternative fuel vehicles (see Section C. 2. for additional details), it does not require vehicle emissions standards to be met, as the federal CFFP does. New Jersey will track clean alternative fueled EPAct vehicle purchases as well as those from the other NJCF components in determining the degree to which its federal CFFP substitute is achieving equivalent reductions, and subsequently the amount of credit which will be needed from its backstop, the NLEV program.

Because NLEV has been found to be in-effect by EPA, the State's regulation states that New Jersey will participate in the NLEV program (discussed in more detail in section III. C. of this notice). The NLEV program will begin with model year 1999 vehicle sales in the Northeast Trading Region (NTR), which is comprised of NLEV opt-in states Connecticut, Delaware, Maryland, New Jersey, New Hampshire, Pennsylvania, Rhode Island, Virginia and Washington, D.C. The NLEV program requires that those vehicles be certified to meet a specific NMOG standard when their total emissions are averaged as a fleet. Manufacturers must ensure that each model year of vehicles produced for sale meet a yearly NMOG fleet average over the entire NTR. The NLEV fleet-average NMOG standard will be 0.148 grams per mile for model year 1999. The NMOG average becomes increasingly stringent annually, and for model year (MY) 2001 and later the standard is 0.075 grams per mile.

III. Analysis of State Submission

A. Opt Out Criteria and Requirements

Section 182(c)(4) of the Clean Air Act, which allows states required to implement a federal CFFP to opt out of the program by submitting a SIP revision consisting of a substitute program, requires that the substitute program result in long term emission reductions equal to or greater than the federal CFFP. Also, EPA can only approve such substitute programs that consist exclusively of provisions other than those required under the Clean Air Act for the area. New Jersey's NLEV-backstopped NJCF program satisfies both of these requirements.

B. Equivalency of Substitute

The Clean Air Act requires that any substitute for the federal CFFP must provide equivalent long term emission reductions. In its SIP revision, the State estimated the emission reductions which would be attributable to operation of the federal CFFP in New Jersey. It is this amount of long term reduction, discussed below, which the State's substitute must achieve.

Light Duty Vehicle Analysis

New Jersey first analyzed the potential for emissions reductions to result from long term compliance with the light duty vehicle portion of the federal CFFP in New Jersey. The light duty vehicle purchase requirements of the federal CFFP are intended to ensure a gradual turnover of conventional light duty fleet vehicles to clean light duty vehicles in covered fleets. Under the federal CFFP, in the long term a substantial portion of light duty vehicles in covered fleets would meet at least the LEV standard, where otherwise they would not have met those more stringent standards (i.e., if the State was not also operating a LEV program as described above). In its SIP revision however, New Jersey pointed out that the light duty vehicle portion of the federal CFFP, in the long term, would essentially duplicate the regional and Statewide, more comprehensive NLEV program which has already been adopted as part of the NJ LEV regulation [Adopted on November 22, 1995 at 27 N.J.R. 5016(a)(December 18, 1995), codified at N.J.A.C. 7:27–26]. EPA has determined that, in light of the NLEV program, operation of the light duty federal CFFP in New Jersey would yield essentially no benefit above that from the NLEV. For additional details regarding the light duty vehicle analysis, the reader is referred to EPA's November 20, 1997 proposed approval of NJCF as an opt-out substitute for the federal CFFP at 62 FR 61948 and to the Response to Comments section of this action.

Heavy Duty Vehicle Analysis

The heavy duty vehicle portion of the federal CFFP requires that on an annual basis, 50 percent of heavy duty fleet vehicles purchased each year must meet clean fuel vehicle emission standards. Through appropriate modeling, New Jersey has determined that the estimated emission reduction benefit that would result from applying the federal CFFP's heavy duty vehicle requirements in New Jersey would be approximately 4.5 tons per day (tpd) of volatile organic compounds (VOC) and oxides of nitrogen (NOx) combined in 2010 (for additional details regarding modeling techniques and assumptions used to arrive at this figure, the reader is referred to EPA's November 20, 1997 NJCF proposal at 62 FR 61948). New Jersey's SIP submittal states that modeling emission reductions out to the year 2010 is adequate for the purpose of determining the long term reductions which could be expected of the heavy duty federal CFFP in New Jersey. EPA agrees with this reasoning. The NJCF program must achieve that amount of emission reductions within the same time frame in order to be an acceptable substitute for the federal CFFP. If it does not, as will be verified through the program emission reduction tracking system that the State committed to implement (described below), the State has also committed to use enforceable emission reduction credit generated from the NLEV program to make up any emission reduction shortfall which may result.

C. NJCF Program Details and Goals

NJDEP has estimated that, in order to meet the Clean Air Act requirement of an approvable federal CFFP substitute, the NJCF program must provide emission reductions equivalent to those from approximately 50,750 medium heavy duty certified clean fueled vehicles by 2010. NJDEP has determined that in order to contribute towards the emission reductions needed for a substitute program, a medium or heavy duty vehicle must be certified by CARB to meet LEV (or cleaner) standards.

1. Incentive Development Program

The incentive development program was developed by a public/private workgroup which includes representatives of local and national fleet operators, municipalities, alternative and clean fuel providers, and government officials. The Workgroup's efforts are intended to spur use of clean alternative fuel vehicles. Major areas of focus for the Workgroup, as it implements its Action Plan, include development of a New Jersey alternative fuel mechanic training program and promotion of a State policy with legislative and regulatory support of the use of alternative fuels and AFVs. Examples of such legislation include a bill which would provide sales and use tax exemption for clean alternative fuel vehicle purchases in New Jersey.

2. EPAct Purchase Mandates

The second component of the NJCF program is the alternative fuel vehicle purchase requirements under the federal EPAct, 42 U.S.C. 13201 *et seq*. Under

EPAct, all state, federal, and fuel-provider fleets must ensure that a percentage of their new light duty vehicle purchases operate on alternative fuels. In the long term, 75% of new state and federal purchases and 90% of fuel-provider purchases must be AFVs. In its SIP submittal, New Jersey reported that at least 61 State vehicles run on clean alternative fuels as a result of EPAct compliance, and alternative fuel vehicles are available for purchase by public agencies through the State purchase contract.

3. New Jersey Clean Cities Program

Clean Cities is a voluntary federal program designed to accelerate and expand the use of clean AFVs and related refueling infrastructure in communities throughout the country. In 1995 the State's Division of Energy initiated its North Jersey Clean Cities programs in the metropolitan areas of Elizabeth, Jersey City, Newark and Trenton; in 1997 this program received official Clean Cities designation status from the U.S. Department of Energy (USDOE). New Jersey plans to expand this program in other areas of the State as well, and expects the program to have a significant long term emission reduction benefit.

4. Advanced Technology Vehicle Program

The fourth component of the NJCF program is an Advanced Technology Vehicle (ATV) cooperative agreement between states and auto manufacturers which emerged during their negotiations on the NLEV program. The regulatory portion of the NLEV program does not address an agreement regarding advanced technology vehicles (ATV), and advancing technology is not a legally-required criterion of the NLEV program, however EPA recognizes that a separate agreement between states and auto manufacturers regarding an ATV component could be a useful means of achieving additional environmental benefits beyond the emissions reductions which will be achieved through NLEV. In EPA's June 6, 1997 NLEV rulemaking, an ATV was defined as any vehicle certified by CARB or EPA that is either: (1) A dual-fuel, flexible-fuel, or dedicated alternatively fueled vehicle certified as a transitional low emission vehicle (TLEV), LEV, or ultra low emission vehicle (ULEV) when operated on the alternative fuel; (2) certified as a ULEV or ILEV; or (3) a dedicated or hybrid electric vehicle. As discussed in that rulemaking, EPA acknowledges the suggestion that advancing motor vehicle pollution control technology through a states-manufacturers partnership can be an important result of the basic NLEV agreement. Furthermore, EPA agrees with New Jersey's intention to use an ATV agreement with the auto manufacturers as part of its substitute (backstopped by the enforceable NLEV program) for the federal CFFP. The ATV program, as New Jersey and other states intend, would involve a cooperative effort among the NLEV opt-in states, EPA, DOE, fuel providers, aftermarket converters, fleet operators, and the full range of motor vehicle manufacturers to develop ways to increase use of ATVs. In its SIP submittal, the NJDEP stated it expects to begin implementing this ATV program, in cooperation with other states, the auto manufacturers, and fuel providers, soon after the NLEV program's implementation and agreement on an ATV component is reached.

In order to facilitate implementation of the NJCF program, New Jersey has stated in its latest SIP submittal that it is relying on EPA to support the ATV initiative by approving emission reduction SIP credits, where appropriate, upon the introduction of ATVs into the fleet. EPA is prepared to assist the State in this manner (i.e. by allowing long term emission reductions generated by a cooperative ATV program to be used in part as a substitute SIP measure for the federal CFFP), provided emissions reductions from the ATV provision, along with those generated from the other NJCF program components, can be documented by the State. It is for this purpose that New Jersey has incorporated a planned system to track NJCF program emissions reductions.

This system, described below, will serve to identify the need, if any should exist in the future, to utilize the credit from the backstop should the planned reductions not occur as intended with the voluntary NJCF program.

NJCF Program Backstop

New Jersey, along with the states of Connecticut, Delaware, Rhode Island, Maryland, New Hampshire, Pennsylvania, Virginia, and Washington, D.C. have opted into the NLEV program. Upon its NLEV opt-in, NLEV became the effective backstop to the NJCF, as discussed in section I. of this action.

NLEV is a voluntary nationwide program to make new cars significantly cleaner emitting than today's current cars. NLEV, which began as the "OTC-LEV" program before it included provisions for cleaner vehicle sales for the entire nation, has also been referred to in the past as "49-State LEV" and "the 49-State Car program." The NLEV program represents an alternative, more effective method of regulatory development through extensive interaction between EPA and stakeholders. NLEV will achieve substantial air pollution reductions nationwide while providing the automotive industry flexibility to meet the new requirements in the most efficient manner. The NLEV program requires that each model year of vehicles produced for sale in the Northeast opt-in states, beginning with model year 1999, be certified to meet a specific NMOG standard when their total emissions are averaged as a fleet. Manufacturers must ensure that each model year of vehicles produced for sale, meet a yearly NMOG fleet average which becomes increasingly more stringent annually, and for model year 2001 and later the standard is 0.075 grams per mile. Manufacturers will meet the annual NMOG averages through a sales mix of vehicles certified to meet emission standards of varying stringency. Like CARB certified vehicles and as discussed earlier in section I. of this action, such standards exist for TLEVs, LEVs, ULEVs, ZEVs and the existing Tier I federal standards.

On December 16, 1997 the EPA Administrator signed the final rule for NLEV and began the opt in clocks for the states of the Northeast, the auto manufacturers and EPA. According to the rule, those states had forty-five days to opt in, and the manufacturers had sixty days from the rule signature to make that decision. Nine northeastern states and 23 major auto manufacturers took the opportunity to opt into the National LEV program within the specified time frames. New Jersey did so with a January 28, 1998 letter to the Administrator from Governor Whitman committing to the State to participation in the NLEV. EPA determined that the opt-ins from both sets of parties met the criteria necessary for the NLEV program to be in effect and enforceable, and on March 2, 1998, the EPA Administrator made the official finding that the NLEV program is in effect.

NLEV will result in substantial reductions in NMOG and NO_X, which contribute to ozone nonattainment in many states including New Jersey. Emission reduction estimates are based on a start date of MY 1999 in Northeast and MY 2001 nationwide. EPA estimates that nationally, by 2007, NO_X will be reduced by 496 tons per day and NMOG will be reduced by 311 tons per day as a result of NLEV implementation. NLEV will also result in reductions in toxic air pollutants such as benzene, formaldehyde, acetaldehyde, and 1,3

butadiene. Benzene is classified as a human carcinogen, while the others are considered probable carcinogens.

NLEV in New Jersey will assure reductions of ozone-forming and air toxics emissions that are at least equivalent to those that would be realized through the light duty portion of a federal CFFP; in the event that the NJCF program fails to reduce long term emissions to the level which would have been achieved by the federal CFFP, NLEV will make up the resultant shortfall.

Vehicle Tracking System

In its most recent NJCF SIP revision submittals, New Jersey has committed to implement an automated tracking system to track clean fueled vehicle purchases and conversions associated with the NJCF program (detailed above) throughout the State beginning in 1998. The State will periodically track the variety of clean NJCF vehicles purchased in New Jersey, but most notably CARB and EPA certified LEVs (and vehicles certified to more stringent standards, such as ULEVs). The information gathered from the automated tracking system will provide an accurate indication of the number of vehicles purchased in New Jersey that are certified to meet the applicable LEV, etc. standards. In this manner the State will accumulate a database with which it can calculate emission reduction benefits associated with certified clean vehicle purchases resulting from the NJCF program, and determine if necessary the need to employ the LEV backstop discussed above. New Jersey further clarified the method it will employ to track these vehicle purchases as a means of assessing the NJCF program's long term effectiveness. Specifically, NJDEP will receive reports on at least an annual basis from the New Jersey Division of Motor Vehicles, the New Jersey Department of Treasury and the USDOE which will contain updates of the numbers of certified clean vehicles and AFVs purchased statewide in New Jersey.

IV. Public Comment

EPA proposed to approve the New Jersey federal CFFP opt-out SIP revision on November 20, 1997, 62 FR 61948. Comments were received from one interested party. EPA evaluated the comments, which have been incorporated into the docket for the rulemaking. The comments were evaluated with respect to the proposed approval, and the summary of the comments and EPA's responses follow.

Comment: New Jersey should move to supplement its mobile source reduction strategies as opposed to using reductions in place of the federal CFFP. The federal government conditionally leaves the option available to the State of New Jersey to find a substitute for the Clean Fuel Fleet Programs. New Jersey should use all available mobile source reduction strategies, including a LEV program combined with the NJCF program, in its effort to achieve attainment of the ozone standards.

The commentor also asserts that New Jersey has completely abandoned any clean fuel requirements for heavy duty fleet vehicles. The commentor questions why emission reduction credits generated from the NJCF program or the NLEV program should be used for mobile sources, when New Jersey fails to control emissions from heavy duty trucks, which would be included in the Clean Fuel Fleet Program. If all vehicles and stationary sources are subject to emissions reductions, the commentor states that there seems to be a significant omission of the exercise of regulatory authority in disregarding heavy duty truck emissions.

Response: The Clean Air Act allows states to opt out of the federal CFFP with an equivalent substitute, as the commentor points out. EPA is directed to approve the State's opt out SIP revision provided it meets the statutory requirements of equivalent long term reductions through a provision or provisions not otherwise required by Act, which New Jersey has done. In enforcing the requirements of the Clean Air Act, EPA consistently works to afford as much flexibility to states in meeting those requirements, and does not second-guess state policy choices regarding how to achieve attainment.

Regarding the comment that New Jersey has abandoned clean fuel requirements for heavy duty fleet vehicles, again, EPA abstains as much as possible from dictating states' policy choices regarding which sources to regulate, as long as they meet requirements of Clean Air Act. This applies to the degree to which the substitute NJCF program does or does not target heavy duty fleet vehicles, as long as the program will achieve equivalent reductions, which EPA has determined that it will.

Comment: NJDEP has not satisfied the federal criteria in Section 182(C)(4)(B) of the Clean Air Act, which requires that "the Administrator may approve of such revisions only if it consists exclusively of provisions other than those required under this Act for the area." The commentor asserts that the reason OTC-LEV fails as an adequate substitute is that the adoption of the OTC-LEV program was required throughout the Ozone Transport Region (OTR) in order to bring certain areas of the OTR into ozone attainment pursuant to Section 184(c)(1) of the Clean Air Act. Therefore, the commentor wrote, New Jersey was compelled to adopt this LEV requirement, making such a LEV program a Clean Air Act requirement and unavailable for use as a substitute federal CFFP measure. The commentor further believes that comparison to OTC-LEV in an equivalency demonstration is misplaced because New Jersey anticipated participation in NLEV, employing OTC-LEV only as a fall-back measure if NLEV did not become effective. Lastly the commentor states that New Jersey cannot use OTC-LEV as a backstop because as adopted by the State, OTC-LEV can only become effective in New Jersey if a threshold of other state LEV programs is reached.

Response: The Clean Air Act directs EPA to approve a substitute program if it achieves long-term reductions in emissions of ozone-producing and toxic air pollutants equivalent to those that would have been achieved by the federal CFFP or the portion of the federal CFFP for which the measure is to be substituted, and is not otherwise required by the Clean Air Act. EPA maintains that both the NJCF program, and its backstop, the NLEV program will assure emissions reductions at least equivalent to the federal CFFP and neither program is otherwise required by the Clean Air Act.

New Jersey originally intended to opt out of the federal CFFP with the LEV program in a submittal dated May 15, 1994. Although EPA could not take action to approve that submittal because the LEV regulation was only in the proposal stage at that time, New Jersey intended to adopt a LEV program and to use it as a federal CFFP opt out measure before it was compelled to adopt such a program for any other reason (see 62 FR 61948 under Section I. Background for further detail on the State's earlier submissions).

Subsequent to New Jersey's original intended opt out with LEV, on December 19, 1994 EPA approved a petition by the OTC to require OTC-LEV, or an equivalent substitute, e.g. NLEV, throughout the OTR. However, as stated in the November 20, 1997 **Federal Register** notice, a Federal Circuit Court has since remanded that requirement. [*Virginia* v. *EPA*, No. 95–1163 (D.C. Cir. March 11, 1997)]. The Court's vacatur of OTC-LEV, and the equivalent NLEV, as a SIP requirement of the OTR States effectively made these programs "not otherwise required by the Act" and thus eligible for use by the States as a

substitute measure, as permitted under Section 182(c)(4) of the Clean Air Act.

EPA rejects the assertion that the proposed approval's comparison to OTC-LEV in an equivalency demonstration is misplaced. Rather, EPA believes that the equivalency demonstration, and the analysis of the demonstration, was appropriate. The analysis examined the effect of federal CFFP operation concurrent to operation of either OTC-LEV (also referred to as the State LEV and "California" LEV program) or NLEV, in recognition that one or the other would be in effect through the long term. Results of the examination yielded the quantity of emissions reductions necessary to be achieved by the substitute (or its backstop) for it to be equivalent to the federal CFFP. The substitute meets the equivalency requirement because New Jersey has committed to bring about the sale of additional clean vehicles which will reduce as much emissions as the federal CFFP would have, to track those reductions on a regular basis and to substitute emission reductions from the backstop NLEV program if necessary.

The commentor's assertion that New Jersey cannot use OTC-LEV as a backstop because its effectiveness is dependant on a certain threshold of other state LEV programs is invalidated because NLEV is the effective backstop (see section I. of this action), and does not rely on such a threshold.

Comment: The commentor asserts that NJDEP's LEV program lacks State enforceability because the NJLEV rule excludes from enforcement action any failure to comply with the fleet average requirement.

Response: New Jersey had indicated that if it had eventually operated the OTC-LEV program, active program enforcement would have been provided if it was determined necessary for compliance subsequent to implementation. However, this issue is now moot since New Jersey has opted into NLEV (see the above response to comment and also section I. of this approval).

Comment: NJDEP has not adequately documented an equivalency demonstration for the long-term emission reductions which would have been associated with a light duty federal CFFP. Although NJDEP stated, and EPA agreed in its proposed approval, that an explicit demonstration was unnecessary because of the duplicative nature LEV program operation, the commentor states that the Clean Air Act does not make this exception to the State's duty to establish the equivalency of any substitute program. New Jersey is "guesstimating" that it will achieve the equivalent reductions. There are no quantifiable methods established to demonstrate that there will be "equivalent" reductions.

Response: Clean Air Act section 182(c)(4)(B) states that the EPA Administrator shall approve a federal CFFP substitute measure "that in the Administrator's judgement will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of title II, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute." Thus the Clean Air Act does not explicitly require the State to document an equivalency demonstration, as the commentor asserts, but rather defers to EPA's judgement of the long-term equivalency of the substitute measure. In judging the equivalency of the NJCF, for the purpose of comparison, EPA (and the State) set out to determine the long-term emissions reductions which would have been achieved by operation of the light duty federal CFFP in New Jersey. EPA concluded that those reductions would be negligible to zero because light duty federal CFFP purchase requirements would duplicate existing, further reaching NLEV sales requirements in New Jersey (vehicle emission standard requirements of both programs are essentially identical). Therefore, since in EPA's judgement the amount of long-term reductions attributable to the light duty federal CFFP would be zero, a demonstration that the light duty federal CFFP portion of the substitute program will achieve at least zero reductions would be superfluous and is unnecessary.

The commentor asserts that there are no quantifiable methods established to demonstrate that there will be equivalent reductions. However, as detailed in EPA's proposed NJCF Program approval at 62 FR 61961, New Jersey performed a modeling analysis which determined that the federal CFFP substitute must achieve approximately 4.5 tons per day of NOx and VOC combined by 2010 in order to achieve equivalent reductions. The State further determined that the requisite reductions can be achieved through acquisition of 50,750 medium heavy duty clean vehicles by 2010. As detailed above, New Jersey has initiated an automated tracking system to track clean fueled vehicle purchases and conversions associated with the NJCF program throughout the State beginning in 1998. The reader is referred to the subsection titled "Vehicle Tracking System" under section III. C. of this notice, and to the proposal at 62 FR 61952 for further information on the tracking system. The State has committed in its SIP submittal that it will monitor its progress toward procurement of that number and type of vehicles on a regular basis, and will backstop any shortfall with NLEV emission reductions if that goal is not reached by 2010.

Comment: Regarding claims that the NJCF Program will still create a shortfall as compared to the light duty federal CFFP, New Jersey believes that any loss of emission reduction benefits that would occur from gasoline powered LEVs operated on Federal RFG rather than the fuel that they were certified to operated on (e.g., California RFG) would be relatively small in the long-term. There is no basis other than the anticipation by NJDEP that in the long-term, more vehicles will be operating on alternative fuels and to support that assertion. The commentor requests that this basis for satisfying this shortfall in needed emissions reduction, be further explained.

Response: The commentor is referring to New Jersey's further examination of the relative effects of programs associated with the Light Duty Vehicle Analysis, discussion of which can be found under section III. B. of EPA's February 20, 1997 proposed approval (see 62 FR 61948). As explained above, EPA has judged that light duty federal CFFP emissions reductions would be at most negligible due to concurrent operation of NLEV in New Jersey. However, in its SIP submittal, New Jersey went further to discuss qualitatively the potential effects of operation of LEVs on Federal RFG vs. California RFG. California RFG is the fuel for which gasoline-powered CARB LEVs are certified to operate on. New Jersey stated, and EPA agreed, that in the aggregate, long-term loss of emissions benefit from operating CARB certified LEVs on Federal RFG would likely be small, if any. EPA believes this is especially true when considering that in the long term, Federal RFG phase 2 (effective throughout New Jersey on January 1, 2000) will be in place. Federal RFG phase 2 will be substantially cleaner than both conventional gasoline and Federal RFG phase 1, and closer in composition to California RFG, specifically with respect to sulfur levels. Sulfur in gasoline inhibits the performance of catalytic converters, which are used on all current gasoline-fueled vehicles to reduce VOCs, carbon monoxide and NOx. EPA may soon propose gasoline sulfur standards which would result in sulfur levels lower than Federal RFG phase 2 levels, to be implemented in the long term.

The commentor asserts that the only basis for the assumption that in the long term more vehicles will be operating on alternative fuels (and thus reduce the number of cleaner gasoline-powered vehicles) is New Jersey's anticipation of such. EPA disagrees with this assertion, and further believes that the State has thoroughly established that basis through the provision of the NJCF Program elements. The NJCF Program will both assure and encourage alternative fuel and AFV development and use through elements such as EPAct purchase mandates and the Incentive Development Program. The reader is referred to section III. C. of this notice and the proposed approval at 62 FR 61951 for further detail regarding the NJCF Program elements. Additionally since the publication of the NJCF Program proposed approval, New Jersey supplemented its SIP revision with a March 30, 1998 letter from NJDEP which details further enhancements to the NJCF program. These include: an ATV Incentive Plan which will encourage the purchase of ULEV and cleaner technology vehicles; plans for a Mobile Source Outreach Strategy for the Northeast, which includes a LEV component; and a broadening of State alternative fueling station use to include access by local governments, contingent on NJCF Program approval in the SIP.

Comment: The State did not properly preserve its right to Opt Out of the federal CFFP as it did not indicate any specific substitute measures that would be used to achieve the required reductions. The NRDC Appellate Court Decision does not allow any preservation of this option.

Response: The commentor is asserting that failure to specify an opt out program prior to May 1992 means that the State can no longer opt out of the federal CFFP. EPA has interpreted that states' continued ability to opt out now does not depend on them having submitted such a specification prior to May of 1992. As stated in EPA's proposed approval of the NJCF program published on November 20, 1997 at 62 FR 61948, in its decision that EPA's conditional approval policy was contrary to law [*NRDC* v. *EPA*, 22 F.3d. 1125 (D.C. Cir. 1994)], the court did not want to penalize states for their reliance on EPA's actions. Therefore, EPA is considering all relevant submissions made thus far by the State that are intended to substitute for the federal CFFP. Moreover, EPA has interpreted that the May 1992 deadline is a deadline without a consequence, and therefore there is no time constraint regarding EPA's approval of such an opt out program.

V. Summary of Action

In this final rule, EPA is approving New Jersey's SIP revision submitted to fulfill the federal Clean Fuel Fleet requirements of the Clean Air Act. EPA believes New Jersey's Clean Fleet program, backstopped by the adopted New Jersey LEV program implementing NLEV is an adequate substitute for the federal Clean Fuel Fleet program under section 182(c)(4).

VI. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already

imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: September 30, 1998.

William J. Muszynski,

Acting Regional Administrator, Region III.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Section 52.1570 is amended by adding new paragraph (c)(65) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(65) Revision to the New Jersey State Implementation Plan (SIP) for ozone, submitting a New Jersey Clean Fleets program with Ozone Transport Commission Low Emission Vehicle (OTC–LEV) program as an effective backstop, substituted for the Clean Fuel Fleet program, dated February 15, 1996, March 29, 1996, and March 6, 1997, submitted by the New Jersey Department of Environmental Protection (NJDEP).

(i) Incorporation by reference. Title 7, Chapter 27, Subchapter 26, "Ozone Transport Commission Low Emission Vehicles Program," effective December 18, 1995.

(ii) Additional material.

(A) Letter dated February 15, 1996 from NJDEP Commissioner Shinn to Region 2 Administrator Jeanne M. Fox transmitting first version of NJCF program.

(B) Letter dated March 29, 1996 from NJDEP Commissioner Shinn to Region 2 Administrator Jeanne M. Fox supplementing February 15, 1996 submittal.

(C) "SIP Revision for the Attainment and Maintenance of the Ozone National Ambient Air Quality Standards, New Jersey Clean Fleets (NJCF) SIP," March 6, 1997.

(*1*) NJCF Appendix D: "New Jersey Clean Fleets (NJCF) Program (1996 Action Plan Recommendations)."

(*2*) NJCF Appendix H: Response to Public Comments, NJCF Program, dated February 14, 1997.

(*3*) February 20, 1998 letter from Sharon Haas, Principal Environmental Specialist, NJDEP, to George Krumenacker, Transportation Services Specialist I, Bureau of Transportation Services, New Jersey Department of Treasury.

(*4*) March 25, 1998 Memo from Colleen Woods, Acting Director, Motor Vehicle Services, to Sharon Haas, Principal Environmental Specialist, NJDEP.

3. In § 52.1605 the table is amended by adding a new entry for Subchapter 26 under the heading "Title 7, Chapter 27" to the table in numerical order to read as follows:

§ 52.1605 EPA-approved New Jersey regulations.

State regulation	State effective date	EPA approved date	Comments
.	.	.	.
Title 7, Chapter 27			

State regulation	State effective date	EPA approved date	Comments
Subchapter 26, "Ozone Transport Commission Low Emission Vehicles Program".	12/18/95	Nov. 10, 1998, 63 FR 62955.	Approves Subchapter 26 "OTC–LEV program" which as adopted states that New Jersey will not implement its California LEV program in the event that EPA finds National LEV to be "in-effect." EPA's March 2, 1998 National LEV in-effect finding thus makes National LEV the effective program contained in Subchapter 26. Subchapter 26 is approved here as an effective enforceable backstop to voluntary New Jersey Clean Fleets program.

* * * * *

[FR Doc. 98–29968 Filed 11–9–98; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50632A; FRL–6042–2]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA issued a document (FR Doc. 98–22441) in the **Federal Register** of August 20, 1998 issuing significant new use rules (SNURs) for 73 substances. This document inadvertently did not assign an exemption to notification requirements for a substance subject to one of these SNURs. EPA did not intend to omit this exemption to notification requirements. This action is necessary in order to issue the correct notification requirements.

DATES: This document is effective on November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a document (FR Doc. 98–22441) in the **Federal Register** of August 20, 1998 (63 FR 44562) (FRL–5788–7) which inadvertently did not assign an exemption to notification requirements for a substance for which a SNUR was issued. This correction adds the exemption to notification requirements for § 721.9719.

I. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule does not impose any requirements. It only implements a correction to the Code of Federal Regulations. As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). For the same reason, it does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) or Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). In addition, since this type of action does not require any proposal, no action is needed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

b. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

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II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: October 28, 1998.

Ward Penberthy,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

In FR Doc. 98–22441 published on August 20, 1998 (63 FR 44562) make the following correction:

§ 721.9719 [Corrected]

On page 44583, in the first column, in § 721.9719(a)(2)(i), beginning in the third line, "(a), (b), (c), (d), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5)." is corrected to read "(a), (b), (c), (d), (e) (concentration set at 1.0 percent), (f), (g)(3)(i), (g)(3)(ii), (g)(4)(i), and (g)(5).".

[FR Doc. 98–29813 Filed 11–9–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–57; RM–9251]

Radio Broadcasting Services; Center & Jacksonville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 272C2 for Channel 272A at Jacksonville, Texas, and modifies the license for Station KLJT at Jacksonville, to specify operation on Channel 272C2, in response to a petition filed by Robert W. Shivey. *See* 63 FR 24158, May 4, 1998. The coordinates for Channel 272C2 at Jacksonville are 31–52–52 and 95–09–30. To accommodate the substitution at Jacksonville, we shall also substitute Channel 263A for Channel 272A at Center, Texas, and modify the license for Station KDET accordingly. The coordinates for Channel 263A are 31–42–13 and 94–06–05. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–57, adopted October 21, 1998, and released October 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 272A and adding Channel 272C2 at Jacksonville and by removing Channel 272A and adding Channel 263A at Center.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30074 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–7; RM–9211 & RM–9261]

Radio Broadcasting Services; Roxton, TX and Soper, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 243A to Soper, Oklahoma, in response to a counterproposal filed by Soper Broadcasting Company. Lake Broadcasting, Inc. originally proposed the allotment of Channel 274A at Roxton, Texas, but withdrew its interest in response to the *Notice*. *See* 63 FR 6144, February 6, 1998. The coordinates for Channel 243A at Soper are 34–01–56 and 94–45–55. There is a site restriction 6.5 kilometers (4.0 miles) west of the community. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–7, adopted October 21, 1998, and released October 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Soper, Channel 243A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30073 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–52; RM–9239]

Radio Broadcasting Services; Hague, NY, Addison, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of John Anthony Bulmer, substitutes Channel 229C3 for Channel 229A, reallots Channel 229C3 from Hague, NY, to Addison, VT, as the community's first local aural service, and modifies Station WWFY's construction permit accordingly. *See* 63 FR 20562, April 27, 1998. Channel 229C3 can be allotted to Addison, Vermont, in compliance with the Commission's minimum distance separation requirements, with respect to all domestic allotments, with a site restriction of 14.2 kilometers (8.8 miles) west, at coordinates 44–02–30 North Latitude; 73–28–00 West Longitude, to accommodate petitioner's desired transmitter site. Addison is located within 320 kilometers of the U.S.-Canadian border and the allotment will result in a short-spacing to Station CBM–FM, Channel 228C1, Montreal, Quebec, Canada. Therefore, the allotment has been concurred in by the Canadian Government as a specially-negotiated short-spaced allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–52, adopted October 21, 1998, and released October 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Hague, Channel 229A.

3. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by adding Addison, Channel 229C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30072 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–127; RM–9303]

Radio Broadcasting Services; Boulder, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299A to Boulder, Montana, in response to a petition filed by Boulder Broadcasting Company. *See* 63 FR 39805, July 24, 1998. The coordinates for Channel 299A at Boulder are 46–14–18 and 112–07–06. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–127, adopted October 21, 1998, and released October 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Boulder, Channel 299A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30071 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 385

[FHWA Docket Nos. MC–94–22 and MC–96–18; FHWA–97–2252]

RIN 2125–AC71

Safety Fitness Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; corrections.

SUMMARY: The FHWA is making corrections to the November 6, 1997, final rule on Safety Fitness Procedures. The final rule established a means of determining whether a motor carrier has complied with the fitness requirements of the Motor Carrier Safety Act of 1984. The final rule included several minor errors which this document corrects.

DATES: Effective November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. William C. Hill, Vehicle and Operations Division, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

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SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours a day, 365 days each year. Please follow the instructions online for more information and help.

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Background

On November 6, 1997, the FHWA published a final rule incorporating the agency's safety fitness rating methodology (SFRM) as an appendix to 49 CFR part 385, Safety Fitness Procedures (62 FR 60035). The SFRM is used to measure the safety fitness of motor carriers against the standard contained in 49 CFR Part 385. The final rule also included a procedure which provides motor carriers with a 45-day period during which a proposed rating can be challenged before it becomes effective. The final rule included several minor errors.

Errors in Final Rule

There are references to commercial motor vehicles used to transport "15 or more passengers, including the driver," in the Summary, Discussion of Comments, Rulemaking Analysis, and Appendix B to Part 385. The definition of a "commercial motor vehicle" in § 390.5 includes a passenger-carrying threshold which reads as follows: "The vehicle is designed to transport more than 15 passengers, including the driver." Therefore, the wording used in the rule includes vehicles that are not subject to the FMCSRs. To correct this problem, the agency is replacing "15 or more passengers, including the driver" with "more than 15 passengers, including the driver."

In addition, the vehicle out-of-service (OOS) rate was omitted from section II.A.2 of Appendix B. The first sentence in this section currently reads "If a carrier's vehicle OOS rate is less than percent, the initial factor rating will be *satisfactory*." The sentence is being revised to read "If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*."

The motor carrier Rating Table in section III.A. of the Appendix is being revised to replace "0" with "1" on the third line of the first column. As revised, the table indicates that 1 unsatisfactory factor rating and 2 or fewer conditional factor ratings, will result in an overall safety rating of conditional.

Under section III.B. of the Appendix, Proposed Safety Rating, the word "OR" was omitted between "Your proposed safety rating is SATISFACTORY" and "Your proposed safety rating is CONDITIONAL." The words "safety" and "days" were omitted from the sentence following "Your proposed safety rating is CONDITIONAL." The sentence is being revised to read as follows: "The proposed safety rating will become the final safety rating 45 days after you receive this notice."

Under section VII of the Appendix, List of Acute and Critical Regulations, §§ 391.87(f)(5) through 391.115(c) are being deleted to conform to a final rulemaking for technical amendments which was published on July 11, 1997 (62 FR 37150). That rule removed Subpart H (Controlled Substances Testing) of 49 CFR Part 391 because the FHWA's alcohol and controlled substances regulations are now codified at 49 CFR Part 382. Subpart H included §§ 391.81–391.125, and the list of acute and critical regulations is therefore being amended to remove the references to these sections.

It has been brought to our attention that the discussion of preventable accidents in section II.B.(e) of Appendix B may be subject to misinterpretation. If a carrier has a proposed or current unsatisfactory accident factor rating, and the carrier believes the accident factor would not be unsatisfactory if evaluated on the basis of a preventable accident rate, it should seek an administrative review under § 385.15. Some readers apparently believe that motor carriers who contend that an accident was not preventable are required to present the FHWA with a very detailed analysis or investigation of the incident, perhaps based on the work of accident reconstructionists and attorneys. That was not the agency's intention. Although there is nothing to prevent a carrier from submitting extensive evidence of non-preventability, the FHWA believes that a copy of an accident report prepared by a government agency would generally be sufficient, providing the report did not identify any actions the driver could have taken to prevent the accident. The carrier could offer any additional information or explanation it considered appropriate. For example, the driver of a commercial motor vehicle (CMV) that is struck from behind when it stops at a toll booth, or from the side when crossing an intersection on a green light, has no realistic opportunity to avoid the accident.

Rulemaking Analyses and Notices

This final rule makes minor corrections to the November 6, 1997, final rule concerning safety fitness procedures. Since the amendments to the final rule are simply corrections, the FHWA finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to promulgate this final rule without notice and comment rulemaking and to make it effective on the date of publication in the **Federal Register** pursuant to 5 U.S.C. 553(d)(3).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866. The agency has also determined that this action is not a significant regulatory action under the Department of Transportation's regulatory policies and procedures. This final rule is clerical in nature and does not include substantive changes to the November 6, 1997, final rule concerning safety fitness procedures.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities and has determined that it will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (the Act) (Pub. L. 104–4) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FHWA has determined that the changes in this rule will not have an impact of $100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that

this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 385

Highway safety, Motor carriers, and Safety fitness procedures.

Issued on: October 29, 1998.

Gloria J. Jeff,

Deputy Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, Chapter III, Appendix B to Part 385 as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 104, 504, 521(b)(5)(A), 5113, 31136, 31144, and 31502; 49 CFR 1.48.

2. Appendix B to Part 385 is amended by revising section II.A.(a)2., the motor carrier safety table in section III.A., and sections III.B.(a) and III.B.(c); and in section VII by removing the citations and text for §§ 391.87(f)(5) through 391.115(c), to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

II. Converting CR Information Into A Safety Rating

* * * * *

A. Vehicle Factor

(a) * * *

2. If a carrier's vehicle OOS rate is less than 34 percent, the initial factor rating will be *satisfactory*. If noncompliance with an acute regulation or a pattern of noncompliance with a critical regulation is discovered during the examination of Part 396 requirements, the factor rating will be lowered to *conditional*. If the examination of Part 396 requirements discovers no such problems with the systems the motor carrier is required to maintain for compliance, the Vehicle Factor remains *satisfactory*.

* * * * *

III. Safety Rating

A. Rating Table

* * * * *

MOTOR CARRIER SAFETY RATING TABLE

Factor ratings		Overall Safety rating
Unsatisfactory	Conditional	
0	2 or fewer	Satisfactory
0	more than 2	Conditional
1	2 or fewer	Conditional
1	more than 2	Unsatisfactory
2 or more	0 or more	Unsatisfactory

B. Proposed Safety Rating

(a) The proposed safety rating will appear on the CR. The following appropriate information will appear after the last entry on the CR, MCS–151, part B.

"Your proposed safety rating is SATISFACTORY."

OR

"Your proposed safety rating is CONDITIONAL." The proposed safety rating will become the final safety rating 45 days after you receive this notice.

OR

"Your proposed safety rating is UNSATISFACTORY." The proposed safety rating will become the final safety rating 45 days after you receive this notice

* * * * *

(c) Proposed *unsatisfactory* safety ratings will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provision of § 385.13, which prohibits motor carriers rated *unsatisfactory* from transporting hazardous materials requiring placarding or more than 15 passengers, including the driver.

* * * * *

[FR Doc. 98–30105 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 217 and 227

[Docket No. 950427117–8275–04; I.D. No. 100598B]

RIN 0648–AH97

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS notifies fishermen that it has extended the authorization for shrimp trawlers to use limited tow times in the inshore waters of Alabama as an alternative to the otherwise required use of Turtle Excluder Devices (TEDs) through November 30, 1998. Without this extension, the authorization would have expired November 6, 1998. NMFS has been notified by the Director of the Marine Resources Division of the Alabama Department of Conservation and Natural Resources (Alabama Director) that debris conditions in Alabama's inshore waters resulting from the passage of Hurricane Georges have persisted or even worsened. Because the use of TEDs may continue to be impracticable, NMFS has extended the authorization to use limited tow times. The intent of this extension is to provide adequate protection for threatened and endangered sea turtles when debris conditions may make TED-use impracticable.

DATES: This extension is effective from November 5, 1998 through November 30, 1998. Comments on this notification are requested, and must be received by December 7, 1998.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, 813–570–5312, or Barbara A. Schroeder, 301–713–1401.

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SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 227.72 (e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize "compliance with tow time restrictions as an alternative to the TED requirement, if [he] determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable." The provisions of 50 CFR 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets that are not equipped with TEDs.

Recent Events

On September 27, Hurricane Georges hit the Mississippi and Alabama coasts. The hurricane remained nearly stationary over the coastal area and South Alabama for about two days and deposited as much as 36 inches of rain on some areas. The combination of heavy rains and hurricane storm surge produced severe flooding in south Mississippi and South Alabama rivers.

The Alabama Director stated in a September 30, 1998, letter to the NMFS Southeast Regional Administrator that the flooding "has deposited a tremendous amount of debris in Alabama's bays." He further stated that the "inordinate amount of debris is causing extraordinary difficulty with the performance of TEDs in these areas" and that "the debris clogs the TEDs making them inoperable for the exclusion of turtles and reduces the catch of shrimp." His letter requested that NMFS use its authority to allow the use of 55–minute tow times as an alternative to TEDs for a 30-day period in Alabama's inshore waters that are open to shrimping.

As a result of the special environmental conditions that may have made trawling with TED-equipped nets impracticable, the Assistant Administrator issued an emergency notification to authorize the use of restricted tow times as an alternative to the use of TEDs in the inshore waters of Alabama (63 FR 55053, October 14, 1998). That notification was effective from October 7, 1998 through November 5, 1998.

The Alabama Director recently informed the NMFS Southeast Regional Administrator in a November 3, 1998 letter that debris conditions in Mississippi Sound have been worsening as debris has been flushed out of Mobile Bay and into Mississippi Sound. Shrimpers continue to collect large amounts of debris, but many areas remain untrawlable. The Alabama Director reports that shrimp trawlers are generally not able to work closer than one-half mile from shore due to the large amounts of nearshore debris. He requested that the authorization to use limited tow times be extended to November 30, 1998, to allow additional time to remove the debris.

Special Environmental Conditions

The Assistant Administrator finds that special environmental conditions following Hurricane Georges have persisted in Alabama inshore waters and may make trawling with TED-equipped nets impracticable. Therefore, the Assistant Administrator, by this notice, extends the authorization to use restricted tow times as an alternative to the use of TEDs in the inshore waters of Alabama. The State of Alabama is continuing to monitor the situation and is cooperating with NMFS in determining the ongoing extent of the debris problem in Alabama inshore waters. Moreover, Alabama's enforcement officers have assisted with the enforcement of the restricted tow times. In his November 3, 1998, letter, the Alabama Director reported that shrimpers have given the Alabama enforcement officers excellent cooperation in following the tow time limits. He stated that Alabama enforcement officers will continue to monitor the area for the duration of this exemption extension. Ensuring compliance with tow time restrictions is critical to effective sea turtle protection, and the Alabama Director's commitment to provide additional enforcement of the tow time restrictions is an important factor enabling NMFS to issue this authorization.

Continued Use of TEDs

NMFS encourages shrimp trawlers in Alabama inshore waters who are authorized under this notification to use restricted tow times to continue to use TEDs if possible. NMFS studies have shown that the problem of clogging by seagrass, algae or by other debris is not unique to TED-equipped nets. When fishermen trawl in problem areas, they may experience clogging with or without TEDs. A particular concern of fishermen, however, is that clogging in a TED-equipped net may hold open the turtle escape opening and increase the risk of shrimp loss. On the other hand, TEDs also help exclude certain types of debris and allow shrimpers to conduct longer tows.

NMFS' gear experts provide several operational recommendations to fishermen to maximize the debris exclusion ability of TEDs that may allow some fishermen to continue using TEDs without resorting to restricted tow times. NMFS has had good experience with hard TEDs made of either solid rod or hollow pipe that incorporate a bent angle at the escape opening and recommends use of this type of TED, in a bottom-opening configuration, to help exclude debris. In addition, the installation angle of a hard TED in the trawl extension is an important performance element in excluding debris from the trawl. High installation angles can result in debris clogging the bars of the TED; NMFS recommends an installation angle of 45°, relative to the normal horizontal flow of water through the trawl, to optimize the TED's ability to exclude turtles and debris. Furthermore, the use of accelerator funnels, which are allowable modifications to hard TEDs, is not recommended in areas with heavy amounts of debris or vegetation. Lastly, the webbing flap that is usually installed to cover the turtle escape opening may be modified to help exclude debris quickly: the webbing flap can either be cut horizontally to shorten it so that it does not overlap the frame

of the TED or be slit in a fore-and-aft direction to facilitate the exclusion of debris.

All of the preceding recommendations represent legal configurations of TEDs for shrimpers in the inshore areas of Alabama (not subject to special requirements effective in the Gulf Shrimp Fishery-Sea Turtle Conservation area). This notice extends, through November 30, 1998, the authorization to use restricted tow times in the inshore waters of Alabama as an alternative to the otherwise required use of TEDs. This notice does not authorize any other departure from the TED requirements, including any illegal modifications to TEDs. In particular, if TEDs are installed in trawl nets, they may not be sewn shut.

Alternative to Required Use of TEDs

The authorization provided by this notification applies to all shrimp trawlers that would otherwise be required to use TEDs in accordance with the requirements of 50 CFR 227.72(e)(2) who are operating in inshore waters of the State of Alabama, in areas which the State has opened to shrimping. "Inshore waters", as defined at 50 CFR 217.12, means the marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by NOAA (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80. Instead of the required use of TEDs, shrimp trawlers, through November 30, 1998, may opt to comply with the sea turtle conservation regulations by using restricted tow times. If they do so, their tow times must not exceed 75 minutes measured from the time trawl doors enter the water until they are retrieved from the water.

Additional Conditions

NMFS expects that shrimp trawlers operating in Alabama inshore waters without TEDs in accordance with this authorization will retrieve debris that is caught in their nets and return it to shore for disposal or to other locations defined by the Alabama Director, rather than simply disposing the debris at sea. Proper disposal of debris should help the restoration of the shrimping grounds in the wake of the hurricane. Shrimp trawlers are reminded that regulations under 33 U.S.C. 1901 *et seq.* (Act to Prevent Pollution From Ships) may apply to disposal at sea.

Alternative to Required Use of TEDs; Termination

The Assistant Administrator, at any time, may modify this authorization through publication of a notice in the **Federal Register**, if the Assistant Administrator determines that the alternative authorized is not sufficiently protecting turtles, as evidenced by observed lethal takes of turtles aboard shrimp trawlers, elevated sea turtle strandings, or insufficient compliance with the authorized alternative. If necessary, the Assistant Administrator could modify the affected area or impose any necessary additional or more stringent measures, including more restrictive tow times or synchronized tow times. The Assistant Administrator may also terminate this authorization at any time for these same reasons, or if compliance cannot be monitored effectively, or if conditions do not make trawling with TEDs impracticable. This authorization will expire automatically at midnight on December 1, 1998, unless it is extended through another notice published in the **Federal Register**.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator has determined that this action is necessary to respond to an emergency situation to allow more efficient fishing for shrimp, while providing adequate protection for endangered and threatened sea turtles pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator finds that there is good cause to waive prior notice and opportunity to comment on this extension. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from providing relief within the necessary timeframe. The Assistant Administrator finds that an unusually large amount of debris exists in the aftermath of Hurricane Georges, has created a special environmental conditions that may make trawling with TED-equipped nets impracticable and that the use of limited tow times for the described area and time instead of TEDs would adequately protect threatened and endangered sea turtles. Notice and comment are contrary to the public interest in this instance

Because this action relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a delay in effective date.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et. seq.*, are inapplicable.

The Assistant Administrator prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this (57 FR 57348, December 4, 1992). Copies of the EA are available (see **ADDRESSES**).

Dated: November 5, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30127 Filed 11–5–98; 2:36 pm]

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Proposed Rules

Federal Register
Vol. 63, No. 217
Tuesday, November 10, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 15 and 15d

RIN 0503–AA15

Nondiscrimination in USDA Conducted Programs and Activities

AGENCY: Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The United States Department of Agriculture (USDA or the Department) is proposing to revise its regulations governing nondiscrimination in programs and activities conducted by the Department. On April 23 1996, the Department published an earlier proposal to do so in the **Federal Register** (61 FR 17851). Specifically, the Department proposed to remove the current regulation on this subject found at 7 CFR part 15, subpart B, and place it in a new part 15d; clarify that the regulation applies to all Department-conducted programs and activities, not just to direct assistance programs; add familial status and marital status to the protected classes contained in the regulation; add a provision on Department agencies' compliance efforts; reflect that the Assistant Secretary for Administration has been delegated the authority to make final determinations as to whether prohibited discrimination occurred and the corrective action required to resolve complaints; remove the Appendix to the regulation that lists the Department programs subject to these provisions; and make other clarifications to the regulation.

A final rule never was issued because USDA was in the midst of a comprehensive evaluation of its civil rights program. Now that that review is complete, it is appropriate to continue with promulgation of the rule. However, because USDA is proposing several significant changes since the proposed rule, the Department has determined that it would be appropriate to again publish a proposed rule so that the public will have an opportunity to comment on these changes. These changes include the addition of sexual orientation and public assistance status as protected classes and a prohibition against reprisal for exercising rights under the rule.

DATES: Comments must be received by December 10, 1998.

FOR FURTHER INFORMATION CONTACT: Alyce Boyd-Stewart, Chief, Policy and Planning Division, Office of Civil Rights, (202) 720–5212; or Ron Walkow, Attorney-Advisor, Office of the General Counsel, (202) 720–6056. If a copy of this final rule in an alternate format, e.g., braille, is necessary, contact 202–720–0353 (voice or TDD).

SUPPLEMENTARY INFORMATION: Subpart B currently contains the Department's civil rights regulations for programs and activities conducted by the Department. As noted in the Department's earlier proposed rule, the rule is in need of revision. The Department's earlier proposal to revise the rule was published April 23, 1996, and a 30-day comment period followed. The Department now is proposing additional changes, as well as modifications to the previous proposal. The instant proposal should be read alongside the earlier proposal for a complete explanation of what USDA is proposing.

The only comment the Department received on the earlier proposal was from a non-profit law center that represents farmers and rural communities. The commenter supports the addition of compliance reviews to the regulation and states that having the Department supplement an agency investigation of a complaint is a positive step that will ensure that complaints are fully investigated

However, the commenter urged the Department to abandon the 180-day period for filing complaints or, in the alternative, to adopt a longer limitations period. The commenter argued that victims of discrimination often do not recognize the full effect of discrimination for several months and that many such victims will appropriately deal with their difficulties through other means before filing a complaint. The commenter further argued that there is no legal basis for the 180-day limit while under the Equal Credit Opportunity Act (ECOA), for example, an individual has two years to file a lawsuit. Thus, the commenter argued, the limitations period may have the effect of encouraging litigation against the Department even when an individual would prefer to go through the administrative complaint process.

The Department has determined that it will retain the 180-day filing period for complaints in this proposed rule. The reasons for this retention are set out below. Nothing in those reasons is intended to indicate that full and fair consideration will not be given to comments on this matter received in response to this proposed rule. The 180-day period is intended to have individuals bring allegations of discrimination to the attention of the Department in a timely manner so that the Department can adequately address such allegations. A 180-day period also is used in the Department's Title VI regulations, which deal with allegations of discrimination against recipients of assistance through the Department. See 7 CFR 15.6. Indeed, this period is common to every Department and Federal agency that has a Title VI regulation. We believe the same period should apply to the Department conducted activities as that which applies to its Title VI activities.

In addition, the proposed regulation addresses the commenter's concern that some individuals may not recognize the full effects of discrimination within 180 days. Specifically, the regulation states that the 180-day period begins to run "from the date the person knew or should have known of the alleged discrimination * * *." Thus, the 180-day period will not begin to run until that individual knows, or at least should have known, that he or she was discriminated against. To emphasize, the filing period does not necessarily begin to run from the date of a particular action that may be discriminatory, for example the denial of a loan, but rather "from the date the person knew or should have known of the alleged discrimination * * *."

In addition, the proposed regulation states that the 180-day limit can be extended "for good cause." Thus, a complainant who files a complaint past the 180-day period will be given an opportunity to explain the delay and, in appropriate circumstances, retain the opportunity to present his or her complaint.

The commenter argued that the 180-day period may be shorter than the

period some complainants have to file a lawsuit. However, the Department does not believe that this alone is sufficient cause for lengthening the filing period. In regard to the commenter's point about ECOA, it should be noted that Part 15d is not an ECOA administrative procedure, nor an administrative procedure pursuant to any other Federal statute. The proposed regulation merely informs the public of the Department's nondiscrimination policy and of an individual's right to file a complaint if he or she believes that he or she has been discriminated against by the Department so that the Department can take appropriate action. Of course, the availability of 15d and ECOA often will be co-extensive, and it often will be the case that a 15d complaint will afford the Department an opportunity to provide relief to a complainant that may avoid an ECOA lawsuit. The fact that the 180-day period has run does not prohibit an individual from filing an ECOA lawsuit, nor does it prohibit the Department from settling a potential ECOA lawsuit before such a suit is initiated. There is no exhaustion of administrative requirement to filing an ECOA lawsuit. In addition, the fact that a complainant may have a legitimate ECOA claim might be the basis for applying the "good cause" exception to the filing period.

The commenter next contended that the "good cause" exception to the 180-day filing period should be explained in 15d rather than in internal guidance. After reviewing the commenter's arguments, the Department does not agree with this contention. The "good cause" exception is intended to give discretion to the Director of the Office of Civil Rights (CR) or his or her designee to extend the filing period when appropriate. The exception is not intended to create a rigid rule as to when "good cause" has been met. Thus, it would not be appropriate to address the specifics of good cause in the published regulation. Any complainant who files after the 180-day period may explain the reason for the delay and in appropriate circumstances an extension will be granted. The fact that a claim may be time barred does not prohibit the Department from looking into the allegations and taking appropriate action as to internal matters. The Department believes that an enumeration of the elements of the good cause exception may deter some individuals from filing complaints because they mistakenly believe that their situation is not covered by the listed elements. A simple good cause exception will allow for individuals to file complaints who believe that they have a good reason for filing after the 180-day period.

Finally, the commenter objected to proposed section 15d.5. After further review, the Department has determined that this provision should not be included in the rule. As is explained in more detail in the preamble to the original proposed rule, the purpose of this section was to make clear the intent and legal effect of the regulation. However, the Department believes that the statement of intent contained in the preamble to the earlier proposed rule is sufficient notice as to the intent of the prohibition of discrimination contained in the rule. In short, proposed section 15d.5 is more confusing than illuminating.

The Department also is proposing two additional protected classes in addition to those discussed in the earlier proposal. As stated in that proposal, the Department's policy has been that the protected classes contained in the rule should, at a minimum, reflect those classes protected by the various civil rights laws. Thus, the earlier proposal stated that the rule should include marital status and familial status since these classes are included in the Fair Housing Act (marital status) and ECOA (marital and familial status). However, the Department neglected the fact that ECOA also prohibits discrimination against individuals because all or part of their income is derived from any public assistance program. 15 U.S.C. 1691(a)(3). Accordingly, the Department is proposing to add "public assistance status" to the list of protected classes contained in the regulation.

The Department also is proposing to add sexual orientation as a protected class in the rule. Beginning with the Secretary's Civil Rights Policy Statement issued in February 1997, the Secretary of Agriculture has included sexual orientation as a prohibited basis for discrimination against both USDA employees and customers in his civil rights policy statements. In doing so, the Secretary has determined that treatment of USDA employees and customers based on sexual orientation is treatment that is unfair and inequitable. Based on this policy and Executive Order 13087 in which the President directed a uniform policy prohibiting discrimination on this basis in Federal employment, USDA is about to add sexual orientation as a protected class to its complaint process for USDA employees. In order to be consistent, the Department is now proposing to add sexual orientation to the instant rule so that USDA customers who believe that they have been discriminated against by USDA employees will be able to file a complaint with USDA, have this complaint investigated and resolved and, if appropriate, have corrective action provided.

The Department also is proposing that a provision on reprisal be added to the rule. It is USDA's policy that no individual who files a complaint or otherwise participates in the complaint process under the proposed rule be subject to reprisal or retaliation. In addition, no person who opposes any practice prohibited by the rule in any manner should be subjected to such reprisal. By including a prohibition against reprisal in the rule, individuals who believe that they have been subject to reprisal will be able to file a complaint with CR, have this complaint investigated and resolved and, if appropriate, have corrective action provided. Finally, this is consistent with all Federal civil rights complaint processes, which uniformly contain a prohibition against reprisal.

The earlier proposed rule stated that the authority to make final determinations, including corrective action, would be delegated to the Assistant Secretary for Administration. However, after a reevaluation of this proposal, the Department is proposing that this authority should be delegated to the Director, CR. Thus, the proposed rule reflects this change. In addition, the proposed provision on compliance similarly reflects that the Director has been delegated the authority for enforcement of this rule.

Finally, the Department is proposing to modify section 15d.4(c) from the form it originally was proposed so that it is less confusing. The purpose of this provision is to make clear that complaints submitted under this part alleging discrimination based on disability will be processed pursuant to 7 CFR Part 15e, which contains the Department's regulations implementing the Rehabilitation Act as it applies to federally conducted programs.

This proposed rule has been determined to be "not-significant" for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget. USDA certifies that this final rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.). USDA also certifies that this final rule would not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. 44 U.S.C. Chapter 35.

USDA is providing a 30-day comment period for this rule. Comment is invited

on all aspects of the proposal, including the appropriateness and effect of the proposed changes, and any additional or alternative measures that would serve the goals of USDA as outlined in the proposal.

List of Subjects in 7 CFR Parts 15 and 15d

Nondiscrimination.

Accordingly, The Department of Agriculture proposes to amend Title 7 of the Code of Federal Regulations. Subtitle A, as follows:

PART 15—[AMENDED]

1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

2. Part 15, subpart B (§§ 15.50–15.52) and the appendix thereto is proposed to be removed.

3. Part 15, subpart C (§§ 15.60–15.143) is proposed to be redesignated as part 15, subpart B.

4. A new part 15d is proposed to be added to read as follows:

PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.

15d.1 Purpose.
15d.2 Discrimination prohibited.
15d.3 Compliance.
15d.4 Complaints.

Authority: 5 U.S.C. 301.

§ 15d.1 Purpose.

The purpose of this part is to set forth the nondiscrimination policy of the United States Department of Agriculture in programs or activities conducted by the Department, including such programs and activities in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

§ 15d.2 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture shall exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, religion, sex, age, national origin, marital status, familial status, public assistance status, sexual orientation, or disability under any program or activity conducted by such agency, officer or employee.

(b) No person shall be subjected to reprisal for opposing any practice prohibited by this part or for filing a complaint or participating in any other manner in a proceeding under this part.

§ 15d.3 Compliance.

The Director of the Office of Civil Rights shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

§ 15d.4 Complaints.

(a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file on his or her own, or through an authorized representative, a written complaint alleging such discrimination. No particular form of complaint is required. The complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the Director of the Office of Civil Rights or his designee. Any person who complains of discrimination under this part in any fashion shall be advised of his or her right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Director of the Office of Civil Rights, United States Department of Agriculture, Washington, DC 20250, who will investigate the complaints. The Director of the Office of Civil Rights will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve the complaints. The complainant will be notified of the final determination on his or her complaint.

(c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under Part 15e of this chapter.

Dated: October 20, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 98–28699 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1214

[FV–96–705–APR]

Proposed Kiwifruit Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Supplementary Notice of Proposed Rulemaking.

SUMMARY: This proposed rule would amend an October 17, 1997, proposed rule which described the proposed Kiwifruit Research, Promotion, and Consumer Information Order (Order). Under the proposed Order, producers and importers would pay an assessment not to exceed 10 cents per 7-pound tray of kiwifruit to the proposed National Kiwifruit Board (Board). The Board would conduct a generic program of research, promotion, and consumer information to maintain, expand, and develop markets for kiwifruit under the supervision of the Department of Agriculture (USDA). The amended proposed rule would revise the Order by eliminating the requirement that 51 percent of the members of the Board be domestic kiwifruit producers to reflect the June 23, 1998, amendments to the National Kiwifruit Research, Promotion, and Consumer Information Act.

DATES: Comments must be received by January 11, 1999. A referendum order establishing the voting period for the referendum and the representative period for voter eligibility will be published at a later date in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda__■__farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), send comments regarding the merits of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above. Comments concerning the information collection associated with this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Stacey L. Bryson, Research and

Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244, fax (202) 205–2800, telephone (888) 720–9917, or e-mail at stacey__l__bryson@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, Subtitle V of the Federal Agricultural Improvement and Reform Act of 1996 [Pub. L. 104–127], enacted April 4, 1996, hereinafter referred to as the Act. The Act was amended on June 23, 1998 [Pub. L. 105–185]. Previous documents in connection with this proceeding: a proposed rule with a request for comments dated September 23, 1996 [61 FR 51378, October 2, 1996] (first proposed rule) and a proposed rule dated October 8, 1997 [62 FR 54314, October 17, 1997] (second proposed rule). In addition, a proposed rule was issued on September 23, 1996 [61 FR 51391, October 2, 1996], to establish procedures for conducting referenda on the proposed Order. The referendum procedures were made final on November 17, 1997 [61 FR 54310, October 17, 1997].

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 558 of the Act as amended [7 U.S.C. 7467], after an Order is implemented, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order or any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After such hearing, the Secretary will make a ruling on the petition. The Act as amended provides that the district courts of the United States in any district in which a person who is a petitioner resides or carries on business are vested with jurisdiction to review the Secretary's ruling on the petition, if a complaint for that purpose is filed within 20 days after the date of the entry of the ruling.

Executive Order 12866

This rule has been determined to be "not significant" for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of the previously published proposed rules on small entities.

The kiwifruit industry initiated this program by asking the U.S. Congress (Congress) to pass legislation to provide authority for a generic program of promotion and research for kiwifruit. Congress found that this program is vital to the welfare of kiwifruit producers and other persons concerned with producing, marketing, and processing kiwifruit.

This program is intended to: develop and finance an effective and coordinated program of research, promotion, and consumer information regarding kiwifruit; strengthen the position of the kiwifruit industry in domestic and foreign markets and maintain, develop, and expand markets for kiwifruit; and to treat domestically produced kiwifruit and imported kiwifruit equitably.

Industry support for the program will be determined during the referendum to be conducted by USDA. Dates for the referendum will be announced by the Secretary no later than 60 days before the referendum.

This program was initiated by industry, industry must approve the program in a referendum in advance of its implementation, and industry members would serve on the Board that would administer the program under USDA's supervision. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Administrative proceedings were discussed earlier in this proposed rule.

In this program, handlers would be required to collect assessments from producers, file reports, and submit assessments to the Board. Importers would be required to remit to the Board assessments not collected by the U.S. Customs Service (Customs) and to file reports with the Board. Exempt producers and importers would be required to file an exemption application. Producers, importers, and exporters (persons outside of the United Sates who export kiwifruit into the United States) would participate in the nomination process and be eligible to serve as members on the Board. While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act as amended. The estimated cost in providing information to the Board by the 760 respondents would be $7,842.50 or $10.32 per respondent per year.

USDA would oversee program operations and, if the program is implemented, every 6 years would conduct a referendum to determine whether the kiwifruit industry supports continuation of the program.

There are approximately 600 producers, 45 importers, and 65 handlers of kiwifruit that would be covered by the program. In addition, exporters would be eligible to serve on the Board.

Small agricultural service firms, which would include the handlers and importers who would be covered under the Order, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $5 million and small agricultural producers, those who would be required to pay assessments, as those having annual receipts of $500,000. Only one handler has been identified to have $5 million or more in annual sales. In addition, there are 10 producers at or over the $500,000 annual sales receipts threshold. Accordingly, the majority of handlers and producers may be classified as small entities. While USDA does not have specific information regarding the size of importers, it may be concluded that the majority of importers may be classified as small entities.

Exporters were not included in the initial Regulatory Flexibility Analysis regarding the impact of previously published proposed rule. In order to have all the data necessary for a more comprehensive analysis of the effects of the proposed Order, we are inviting comments concerning the potential effects on exporters. In particular, we are interested in determining the number and size of exporters that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits or costs.

USDA is aware of producers in California, Oregon, Pennsylvania, and South Carolina, and importers that

import kiwifruit from Chile, New Zealand, and Italy. USDA believes that these individuals would include a majority of the producers and importers that would be covered under the program. USDA is also aware that some individuals may be producers of "hardy kiwifruit," a different species of kiwifruit, known as *Actinidia arguta*, which would not be covered under the proposed program. However, USDA does not have specific information regarding how many individuals produce only the "hardy kiwi" versus the "fuzzy" most common kiwifruit species, known as *Actinidia deliciosa*.

Other names for the species *Actinidia arguta* (hardy kiwifruit) are baby kiwifruit, kiwifruit grape, and kiwiberry. There are no official statistics on this commodity because it is such a small and new crop. According to comments received on the first proposed rule, this species is grown in California, Oregon, Pennsylvania, Washington, and Virginia. The production in Virginia and Pennsylvania is not commercially marketed. Oregon production on 5 acres was a total of 216,000 pounds over the last 3 years. It takes 3 to 5 years to harvest the first crop. The hardy kiwifruit is hand-harvested and packed in 6-ounce berry baskets like raspberries. The harvesting, storage, handling, consumer recognition, and marketing of this species are completely different from the most common fuzzy kiwifruit or *Actinidia deliciosa*. All references to "kiwifruit" in this document, therefore, mean the *Actinidia deliciosa* species.

California is the source of practically all of the kiwifruit produced in the United States. The California kiwifruit industry consists of approximately 600 producers and 65 handlers. Production rose by 94 percent between 1984 and 1997, increasing from 36 million pounds to 70 million pounds annually. In contrast, from 1984 through 1997, the value of production fell 7 percent.

Most U.S. kiwifruit is utilized fresh. Fresh utilization almost tripled between 1984 and 1997, growing from 24 million pounds to 62.6 million pounds. The season average price from 1984 through 1997 fell 52 percent, declining from $0.54 per pound to $0.26 per pound. Exports accounted for about 19 percent of U.S. fresh utilization during that period.

In 1997, California production was 70.0 million pounds. The value of the 1997 crop was $16.5 million of which $16.2 million represented fresh utilization. In 1996, production was 63.0 million pounds with a crop value of $13.2 million. In 1997, 98 percent of production was utilized in fresh outlets.

U.S. exports of fresh kiwifruit totaled 13.1 million pounds in 1997. The value was $7.1 million. The major destinations included Canada (66 percent of the U.S. poundage exported), Republic of Korea (18 percent), and Mexico (7 percent).

In 1997, kiwifruit imports totaled 75.9 million pounds, with a value of $20.7 million. About 80 percent of imports came from Chile, 14 percent from Italy, and 4 percent from New Zealand. Fresh kiwifruit per capita consumption in 1996 was 0.55 pounds, down slightly from 0.56 pounds per capita during the 1995 season.

The proposed kiwifruit Order would authorize assessments on producers (to be collected by first handlers) and on importers (collected by Customs) of up to 10 cents per 7-pound tray. The Board, which would be composed of kiwifruit producers, importers, and exporters, must recommend the assessment rate, which is subject to oversight by the Secretary, as are the other rules and regulations. At the maximum rate of assessment, the Board would collect $1.97 million to administer the program. Assessments on domestic fresh-market production (62.6 million pounds) are expected to represent 45 percent of the income under the program.

The effect of the assessments will depend on the actual rate recommended by the Board. At the maximum rate, it is expected that the effect on producers would be approximately 5 percent of their average return. However, the Order would exempt producers of less than 500 pounds of kiwifruit a year, importers of less than 10,000 pounds a year, and kiwifruit sold for processing and sold directly to consumers. Furthermore, under the proposed program, the Board could authorize different reporting schedules based on different marketing practices. This could be of benefit specially to small businesses for whom a less frequent reporting period would diminish the reporting burden.

USDA will keep all of these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the implementation process. In addition, trade associations and related industry media will receive news releases and other information regarding the implementation and referendum process. Furthermore, all the information will be available electronically.

If the program is implemented, the Board would develop guidelines for compliance with the program.

In addition, the kiwifruit industry would nominate individuals to serve as members of the Board. These individuals would recommend the assessment rate, programs and projects, a budget, and any other rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the kiwifruit industry as specified in the Act as amended.

There is a federal marketing order program for kiwifruit in California which is administered by the Kiwifruit Administrative Committee (KAC), also under USDA supervision. KAC is composed of California producers. The marketing order regulations for grade, size, maturity, and containers are designed to assure consumers of consistently good quality California kiwifruit. The marketing order and its regulations allow small farmers to compete effectively in an increasingly competitive marketplace. Under the marketing order, handlers are required to submit information pertaining to and pay assessments on kiwifruit shipments. The assessment rate recommended by the KAC is derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the KAC's expected expenses. On August 21, 1998, the assessment rate and assessable unit were decreased from $0.0225 per tray or tray equivalent to $0.05 per 22-pound volume fill container or equivalent. The assessment rate of $0.0225 per tray or tray equivalent approximates $0.0675 per 22-pound volume fill container. Each handler pays an average of $2,000 per year in assessments. Under the marketing order, the estimated reporting burden per year for individual handlers is estimated at 4.2 hours or $42.00 per handler.

The California Kiwifruit Commission (CKC) administers a California state program for kiwifruit. The CKC is composed of kiwifruit producers, packers, and handlers. In 1996–97 producers paid $1.4 million in assessments at a rate of $0.17 per tray or tray equivalent. The CKC has set an assessment rate of $0.17 per 22-pound volume fill container for the 1998–99 season.

The collection of information required under the proposed order for the research and promotion program would be similar to the marketing order program. However, the KAC and the

Board would keep their information separate to comply with confidentiality requirements under the programs. Furthermore, using the same source of information would reduce the burden on producers and handlers of all sizes.

In the past, the CKC participated in a voluntary promotional program with Chilean kiwifruit growers to jointly advertise kiwifruit in the United States. This program, however, does not provide enough resources to be as effective as a national generic program could be. In addition, other importing countries and private companies spend considerable amounts of resources in kiwifruit advertising. The purpose of the program is not to restrict individual promotions but to add a generic promotion program for kiwifruit where industry segments pull together resources for the benefit of the whole industry.

The absence of a generic program for kiwifruit may have a negative impact on the industry because other commodity groups, specifically for competing fruits, conduct promotion activities to maintain and expand their markets. The kiwifruit industry would be at a disadvantage because individual producers, handlers, and importers would not be able to implement and finance such a program without cooperative action. In addition, Agricultural Issues Forum, a group of 15 California commodity organizations, conducted a study in mid-1995 and reported in early 1996 that consumers strongly support the concept of farmers working together to promote their products, conduct product research, engage in consumer education programs, and set quality standards and inspect products. Consumers said that they benefitted from these activities and were more inclined to buy those products. Eighty-one percent of the farmers surveyed said that mandated programs were either very important or important in promoting products. The survey was conducted among farmers, public policy leaders, consumers, retailers, and allied industries.

In order to conduct the Regulatory Flexibility Analysis regarding the impact of the proposed Order on small entities, the first proposed rule invited comments concerning the potential effects of the proposed Order. No comments were received concerning the impact of the proposed Order on small entities. However, as explained earlier in this rule and in the second proposed rule, "hardy kiwifruit" producers would not be covered under the program because the species *Actinidia arguta* is considerably different from the most common "fuzzy kiwifruit" species *Actinidia deliciosa*. This would have a positive impact on small businesses since most of the producers of "hardy kiwifruit" are considered small businesses.

In addition, it is expected that the previously published proposed Order would be very beneficial to the kiwifruit industry, especially small businesses who would not be able to afford a nationwide comprehensive program individually.

It is estimated that there are approximately 645 kiwifruit producers and importers who would be eligible to vote in the referendum. It would take an average 15 minutes for each voter to read the voting instructions and complete the referendum ballot. The total burden on the total number of voters will be 29 hours.

Paperwork Reduction Act

In accordance with OMB regulations [5 CFR Part 1320] which implement the PRA [44 U.S.C. Chapter 35], and as stated in the previous proposed rules, the information collection and recordkeeping requirements that would be imposed by the proposed Order were approved by OMB on December 16, 1996.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: 0581–0093, except for the background questionnaire (no. 2 below) which is assigned OMB number 0505–0001.

Expiration Date of Approval: November 30, 2000, for 0581–0093 and November 30, 1998, for 0505–0001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act as amended.

While the proposed Order would impose certain recordkeeping requirements on handlers and importers, information required under the proposed Order could be compiled from records currently maintained. The provisions of the proposed Order have been carefully reviewed and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already maintained by handlers under the federal marketing order program in California and the CKC. The information needed would be taken from financial reports or sales receipts already maintained.

The forms require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act as amended. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The most recent information indicates that there would be 647 respondents affected by the nomination of Board members provisions of the proposed Order, which is related to this amended proposed rule: 600 producers, 45 importers or exporters, and 2 public member nominees. The estimated cost in providing information related to the nomination of Board members by the 647 respondents would be $1,200 or $1.86 per respondent. This total has been estimated by multiplying 120 (total burden hours requested) by $10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

The information collection requirements that are related to the nomination sections of the proposed Order which are affected by this amended proposed rule are:

(1) *Nominations.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hour per response.

Respondents: Producers, importers, and exporters.

Estimated Number of Respondents: 647.

Estimated Number of Responses per Respondent: 1 every 3 years (0.33).

Estimated Total Annual Burden on Respondents: 108 hours.

(2) *A background questionnaire for nominees.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response for each producer, importer, exporter, and public member nominated to the Board.

Respondents: Producers, importers or exporters, and public member

Estimated Number of Respondents: 22 for the initial nominations to the Board and approximately 12 respondents annually thereafter.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 22 hours for the initial nominations to the Board and 12 hours annually thereafter.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, ■ comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Comments concerning the burden for the nomination process should reference OMB No. 0581–0093. Comments addressing the nomination background information form should reference OMB No. 0505–0001. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and by the deadline listed above.

Background

The Act became effective on April 4, 1996. It authorizes the Secretary to implement a promotion program for kiwifruit, which would be administered by an 11-member industry board appointed by the Secretary.

Under the program, producers of 500 or more pounds of kiwifruit per year and importers of 10,000 pounds or more of kiwifruit per year would be assessed at a rate not to exceed 10 cents per 7-pound tray of kiwifruit. There are approximately 600 producers, 45 importers, and 65 handlers of kiwifruit that would be covered by the program. In addition to the *de minimis* exemptions for producers and importers, U.S. kiwifruit for processing would be exempt from assessment. The maximum assessment rate would generate about $2 million annually. Assessments would be used to pay for: research, promotion, and consumer information; administration, maintenance, and functioning of the Board; and expenses incurred by the Secretary in implementing and administering the Order, including referendum costs.

The first handler would be responsible for the collection of assessments from the producer and payment to the Board. Handlers would be required to maintain records for each producer for whom kiwifruit is handled, including kiwifruit produced by the handler. In addition, handlers would be required to file reports regarding the collection, payment, or remittance of the assessments. All information obtained through handler reports would be kept confidential.

Customs would collect assessments on imported kiwifruit and would remit those assessments to the Board for a fee.

The Act requires the Secretary to conduct a referendum during the 60-day period preceding the proposed Order's effective date. Kiwifruit producers of 500 pounds or more and importers of 10,000 pounds or more annually would vote in the referendum to determine whether they favor the Order's implementation. The proposed Order must be approved by a majority of eligible producers and importers voting in the referendum, and producers and importers favoring approval must produce and import more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum. Subsequent referenda would be conducted every 6 years after the program is in effect or when requested by 30 percent of kiwifruit producers and importers covered by the Order. The Secretary would give serious consideration to requests for referendum when requested by a group representing a considerable amount of the volume covered by the program.

The Act provides for the submission of proposals for a kiwifruit research, promotion, and consumer information Order by industry organizations or any other interested person affected by the Act. The Act requires that such a proposed Order provide for the establishment of a promotion Board. The promotion Board would be composed of 11 voting members, who would be producers, importers or exporters, and a public member. Each member would have an alternate. Members would serve a three-year term of office. No member may serve more than two consecutive three-year terms.

The Act provides that any person subject to the Order may file with the Secretary a petition stating that the Order or any of its provisions is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The individual would be given the opportunity to a hearing on the petition.

The Secretary issued a news release on May 6, 1996, requesting proposals for an initial Order or portions of an initial Order by May 17, 1996. A second news release, extending the deadline for submission of proposals to June 3, 1996, was issued on May 24, 1996.

An entire proposed Order was submitted by the CKC. In addition, ■ partial proposal was submitted by the New Zealand Kiwifruit Marketing Board (NZKMB). The NZKMB represents all New Zealand exporters of kiwifruit into the United States.

In addition to minor editorial changes, USDA modified the CKC's proposed text to conform with provisions of the Act and to clarify certain other provisions of the proposed order. USDA published the CKC's and the NSKMB's proposals for public comment in the **Federal Register** on October 2, 1996 [61 FR 51378]. The deadline for comments was December 2, 1996. Seventy-five comments were received. Comments were received from eight Chilean kiwifruit growers or grower associations, 31 Chilean kiwifruit exporters or exporter associations, one international exporter association, 26 importers of Chilean kiwifruit, two U.S. growers, the CKC, four universities, and the embassies of Australia and New Zealand. Seventy-three of the comments opposed implementation of the Order as proposed on October 2, 1996.

USDA analyzed the comments and made several changes to the proposed Order to address commenters' concerns. One of the commenters' issues, however, was not addressed because the provisions at issue were consistent with the then relevant provisions of the Act. This issue related to the composition of the initial Board and the requirement that 51 percent of the members of the Board be domestic producers, regardless of the percentage of assessments paid by importers. These provisions are contained in § 1214.30 of the proposed Order.

A revised proposed Order was published in the **Federal Register** on October 17, 1997 [62 FR 54314]. At the same time, USDA announced that a referendum on the proposed Order, as revised by that proposed rule, would be conducted.

After the publication of that proposed rule, the CKC requested the Secretary to delay the referendum until the Act could be amended to remove the requirement that 51 percent of the Board members be domestic producers. Subsequently, on June 23, 1998, the Act was amended [Pub. L. 105–185] to remove the 51 percent requirement as well as to provide that future

amendments of the Order could become effective without an industry referendum. The first amendment requires changes in § 1214.30 of the proposed Order. In addition, a conforming change is needed in § 1214.76 to indicate that the Act has been amended.

Therefore, this action would revise §§ 1214.30 and 1214.76 to reflect the amendments to the Act.

In the earlier proposed rules, § 1214.30(a) provided that the initial Board would be composed of six producers, four importers and/or exporters, and one public member. This section would be revised by this proposed rule to state that, for the initial Board, the number of producer and importers or exporters on the Board would be apportioned, by the Secretary, on the basis of the average annual kiwifruit production and imports over the preceding four years.

To determine the four-year average, we have calculated domestic production and imports for the last four seasons (1994–95 through 1997–98) as shown in the accompanying chart.

U.S. PRODUCTION AND IMPORTS OF KIWIFRUIT

Year [1]	Domestic production [2] (million pounds)	Imports (million pounds)	Total (million pounds)	Percent domestic	Percent imports
1997–98	62.6	[3] 79.3	[3] 141.9	[3] 44.1	[3] 55.9
1996–97	52.2	83.2	135.4	38.6	61.4
1995–96	65.0	81.1	146.1	44.5	55.5
1994–95	75.0	79.4	154.4	48.6	51.4
4-year average	.....	.....	.....	43.9	56.1

[1] September 1 through August 31.
[2] Fresh utilization because the proposed program would not cover kiwifruit for processing.
[3] Projected; includes imports through July 1998.

Based on this analysis, the four-year average for domestic production in the U.S. fresh market is 43.9 percent, and the four-year average of imports in the U.S. fresh market is 56.1. Therefore, if the initial Board seats were allocated as of the date of this rule, the Secretary would appoint four producers, six importers or exporters, and one public member to the Board. However, if the proposed promotion program is implemented, the Secretary will use the most current information available at the time of implementation in determining the allocation of seats on the initial Board.

Section 1214.30(a) (1) and (2) stated that the Kiwifruit Board would be composed of six producers and four importers. This section has been revised to state that the Kiwifruit Board would be composed of ten producers and importers or exporters (or their representatives) based on the proportional representation of the level of domestic production and imports of kiwifruit, as determined by the Secretary.

Sections 1214.30(b) (1) and (2) stated that membership of the Board could be adjusted to accommodate changes in production and import levels of kiwifruit as long as producers comprise not less than 51 percent of the membership of the Board. These sections are revised to remove the 51 percent requirement.

In addition, this rule would revise § 1214.76 to add "as amended," after the word "Act".

This action makes no other changes to the text of the Order provisions as they appeared in the October 1997 proposed rule.

For the Order to become effective, the Order must be approved by a majority of kiwifruit producers and importers voting in a referendum, with such majority producing or importing more than 50 percent of the total volume of kiwifruit produced and imported by persons voting in the referendum.

The previously published proposed Order is summarized as follows:

Sections 1214.1 through 1214.19 of the proposed Order define certain terms, such as kiwifruit, handler, producer, and importer, which are used in the proposed Order.

Sections 1214.30 through 1214.39 include provisions relating to the establishment, adjustment, and membership; nominations; appointment; terms of office; vacancies; reimbursement; powers; and duties of the Board.

The Board would be the body organized to administer the Order through the implementation of programs, plans, projects, budgets, and contracts to promote and disseminate information about kiwifruit, under the supervision of the Secretary. Further, the Board would be authorized to incur expenses necessary for the performance of its duties and to set a reserve fund. Sections 1214.40 and 1214.50 provide information on these activities.

Sections 1214.51 through 1214.53 would authorize the collection of assessments, specify who pays them and how, and specifies persons who would be exempt from paying the assessment. In addition, it would prohibit use of funds to influence government policy or action.

The assessment rate may not exceed 10 cents per 7-pound tray of kiwifruit. The actual rate would be recommended by the Board and approved by the Secretary through regulation. Direct sales to consumers by a producer and kiwifruit for processing are exempt from assessments.

The assessment sections also outline the procedures to be followed by handlers and importers for remitting assessments; establish a 1.5 percent per month interest charge for unpaid or late assessments; and provide for refunds of assessments paid by importers who import less than 10,000 pounds of kiwifruit a year.

Sections 1214.60 through 1214.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information obtained from such books, records, or reports.

Sections 1214.70 through 1214.73 describe the rights of the Secretary, authorize the Secretary to suspend or terminate the Order when deemed appropriate, and prescribe proceedings after suspension or termination.

Sections 1214.74 through 1214.77 are miscellaneous provisions including the provisions involving personal liability of Board members and employees; handling of patents, copyrights, inventions, and others; amendments to

the Order; and separability of Order provisions.

USDA will analyze all comments received in response to this proposed rule and make any necessary changes to the proposed Order. Then, as appropriate, the Secretary will issue a referendum order, which will establish the voting period, representative period, and method of voting and designate the referendum agents.

List of Subjects in 7 CFR Part 1214

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Kiwifruit, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that the proposed rule establishing Title 7 of Chapter XI of the Code of Federal Regulations and published at 62 FR 54314 on October 17, 1997, be further amended as follows:

1. In § 1214.30, paragraphs (a), (b) (1) and (2) are revised to read as follows:

PART 1214—KIWIFRUIT RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

Subpart A—Kiwifruit Research, Promotion, and Consumer Information Order

* * * * *

National Kiwifruit Board

§ 1214.30 Establishment, adjustment, and membership.

(a) Establishment of National Kiwifruit Board. There is hereby established a National Kiwifruit Board of 11 members. Ten members shall be producers (or their representatives) who are not exempt from assessment, exporters (or their representatives), or importers (or their representatives) who are not exempt from assessment. One member shall be appointed from the general public. The number of members allocated to domestic producers, exporters, and importers shall be based on a proportional representation of the level of domestic production and imports of kiwifruit, as determined by the Secretary. The Secretary shall consider average annual domestic production and imports during the four years which immediately precede the effective date of the Order.

(b) Adjustment of Membership. (1) Subject to the 11-member limit, the Secretary may adjust membership on the Promotion Board to accommodate changes in domestic production and import levels of kiwifruit.

(2) At least every five years, and not more than every three years, the Promotion Board shall review changes in the volume of domestic and imported kiwifruit covered by this part. If annual kiwifruit production and imports over the preceding four years indicate that such changes in production and import levels have occurred warranting reapportionment, the Promotion Board shall recommend reapportionment of Board membership, for approval of the Secretary.

* * * * *

§ 1214.76 [Amended]

2. Section 1214.76 is amended by adding the phrase "as amended," after the word "Act".

Dated: November 4, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–30119 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, that currently requires a one-time inspection for heat damage of the fuselage skin and stubwing structure; either repetitive tests of certain seals or repair of heat damage, as necessary; and eventual replacement of corrujoint seals with new, improved seals. This action would add a requirement for repetitive inspections for heat damage of the subject area, and would provide for a new optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent leakage of hot air from the corrujoint seals of certain valves in the stubwings, and subsequent heat damage of the fuselage skin and stubwing structure, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by December 10, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 98–NM–202–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–202–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 31, 1998, the FAA issued AD 98–08–01, amendment 39–10450 (63 FR 17318, April 9, 1998), applicable to certain Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes. That AD requires a one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure; either repetitive leak tests of the seals of the bleed air system or repair of any heat-damaged structure, as necessary; and eventual replacement of corrujoint seals with new, improved seals. That action was prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent the leakage of hot air from the corrujoint seals of the low- and high-pressure check valves located in the stubwings, which could result in heat damage to the fuselage skin and stubwing structure, and consequent reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has advised the FAA that the unsafe condition addressed in AD 98–08–01 may exist or develop on certain Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes despite compliance with the requirements of that AD. Based on the results of the one-time visual inspection (required by AD 98–08–01), the manufacturer has recommended, and the RLD has mandated, that a visual inspection be repeated at specified intervals to detect heat damage of the fuselage skin and stubwing connection angles in the stubwing area.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–53–087, dated November 17, 1997, which describes procedures for repetitive visual inspections to detect heat damage of the fuselage skin and stubwing connection angles in the stubwing area. This service bulletin also describes procedures for an additional detailed inspection of the fuselage skin and stubwing structure, and repair when overheat damage is detected. Accomplishment of the actions specified in Fokker Service Bulletin SBF100–53–087 is intended to adequately address the identified unsafe condition. The RLD classified Fokker Service Bulletin SBF100–53–087 as mandatory and issued Dutch airworthiness directive 1995–076/3 (A), dated November 28, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Fokker also has issued Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, which describes procedures for modification of the fuselage skin and stubwing structure to improve heat protection. The modification involves installing new heat shields on the fuselage skin, relocating the aft bay overheat switch, and replacing insulation blankets of the bleed air ducts with new, improved insulation blankets. This service bulletin specifies that accomplishment of the modification would eliminate the need for the repetitive inspections described in Fokker Service Bulletin SBF100–53–087. The RLD has approved Fokker Service Bulletin SBF100–36–027 and classified it as optional.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–08–01, amendment 39–10450 (63 FR 17318, April 9, 1998), to continue to require a one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure; either repetitive leak tests of the seals of the bleed air system or repair of any heat-damaged structure, as necessary; and replacement of corrujoint seals with new, improved seals. Additionally, this proposal would require repetitive inspections of the fuselage skin and stubwing connection angles to detect heat damage, and an additional detailed inspection of the fuselage and stubwing structure and repair when heat damage is detected. This proposal also would provide for a new optional terminating action for the repetitive inspections.

FAA's Determination

Operators should note that, in consonance with the findings of the RLD, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect heat damage to the fuselage skin and stubwing structure before the damage represents a hazard to the airplane.

Difference Between Proposed Rule and Relevant Service Information

Operators should note that Fokker Service Bulletin SBF100–53–087 specifies that heat damage of the fuselage skin should be repaired in accordance with Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, which describes procedures for certain repairs of heat damage, and recommends that the manufacturer may be contacted for disposition of other repairs. This proposal would require such other repairs to be accomplished in accordance with a method approved by either the FAA or the RLD (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the RLD would be acceptable for compliance with this proposed AD.

Explanation of Changes Made to Applicability

Operators should note that the applicability of the proposed AD differs from the applicability of AD 98–08–01 in that it excludes those airplanes on which Fokker Proforma Service Bulletin SBF100–36–027 has been accomplished. The FAA has determined that accomplishment of the actions described in that service bulletin would terminate the requirements of the new repetitive visual inspections of the

fuselage skin in the left- and right-hand stubwings.

Cost Impact

The FAA estimates that 141 airplanes of U.S. registry would be affected by this proposed AD.

The one-time visual inspection that was previously required by AD 98–08–01, and retained in this AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the one-time inspection requirement of this AD on U.S. operators is estimated to be $180 per airplane.

The seal replacement that was previously required by AD 98–08–01, and retained in this AD, takes approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $80 per airplane. Based on these figures, the cost impact of the seal replacement requirement of this AD on U.S. operators is estimated to be $500 per airplane.

The repetitive inspections proposed by this AD would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive inspections proposed by this AD on U.S. operators is estimated to be $25,380, or $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10450 (63 FR 17318, April 9, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Fokker Services B.V.: Docket 98–NM–202–AD. Supersedes AD 98–08–01, Amendment 39–10450.

Applicability: Model F.28 Mark 0070 and Mark 0100 series airplanes equipped with any corrujoint seal having part number (P/N) BE20061 (Rolls-Royce P/N 3405891) or on which Fokker Proforma Service Bulletin SBF100–36–027, including Appendix 1, both dated March 21, 1997, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hot air from the corrujoint seals of the low- and high-pressure check valves located in the stubwings, and subsequent heat damage of fuselage skin and stubwing structure adjacent to bleed air system components in the stubwings, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98–08–01, Amendment 39–10450

(a) For Model F28 Mark 0070 and Mark 0100 series airplanes as listed in Fokker Service Bulletin SFB100–53–084, dated July 6, 1996; if equipped with any corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891): Within 3,000 flight hours or 12 months after May 14, 1998 (the effective date of AD 98–08–01, amendment 39–10450), whichever occurs first, perform a one-time visual inspection of the fuselage skin in the left- and right-hand stubwings to detect heat damage; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SFB100–53–084, dated July 6, 1996.

(b) If no heat damage is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new, improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(2) Perform a leak test of each corrujoint seal at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(i) If any leakage is found at a seal, prior to further flight, replace that seal with a new, improved seal having part number EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(ii) If no leakage is found at a seal, perform an additional leak test of that seal within 250 flight hours after the initial test.

(A) If no leakage is found during the additional test of the seal, within 3,000 flight hours after the additional test, replace the seal with an improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(B) If any leakage is found during the additional test of the seal, prior to further flight, replace the seal with a new, improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; and inspect the fuselage skin in the applicable left- or right-hand stubwing to detect heat damage, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(c) If any heat damage is found during the inspection required by paragraph (a) or paragraph (b)(2)(ii)(B) of this AD, prior to further flight, perform a detailed inspection of the fuselage skin and stubwing structure to detect the extent of heat damage, in

accordance with Parts 4 and 5 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; and accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Except as provided by paragraph (g) of this AD: Repair the affected structure in accordance with Part 6 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996. And

(2) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new, improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(d) As of May 14, 1998, no person shall install a corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891) on any airplane.

New Requirements for This AD

(e) For Model F.28 Mark 0070 and Mark 0100 series airplanes on which Fokker Proforma Service Bulletin SBF100–36–027, including Appendix 1, both dated March 21, 1997, has not been accomplished: Perform a visual inspection of the fuselage skin in the left- and right-hand stubwings to detect heat damage, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, at the latest of the times specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD, as applicable. Repeat the inspection required by paragraph (e) of this AD thereafter at intervals not to exceed 6,000 landings.

(1) Within 6,000 landings after the effective date of this AD.

(2) Within 6 months after the effective date of this AD.

(3) Within 6,000 landings after accomplishment of the inspection required by paragraph (a) of this AD.

(f) If any heat damage is detected during any inspection required by paragraph (e) of this AD, prior to further flight, perform a detailed visual inspection to determine the extent of heat damage, in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997. Except as provided by paragraph (g) of this AD, prior to further flight, repair in accordance with the service bulletin.

Note 2: Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, refers to Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, as an additional source of service information for the detailed inspection procedures, repair limits, and repair procedures.

(g) If any damage is found during accomplishment of any action specified by paragraph (c)(1) or (f) of this AD, and Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, or Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, specifies to contact the manufacturer for an appropriate action. Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the RLD (or its delegated agent).

(h) Installation of new heat shields, relocation of the aft bay overheat switch, and replacement of the insulation blankets of the bleed air ducts with new, improved insulation blankets, in accordance with Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, constitutes terminating action for the repetitive inspection requirements of paragraph (e) of this AD.

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(i)(2) Alternative methods of compliance, approved previously in accordance with AD 98–08–01, amendment 39–10450, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

(i)(3) Airplanes repaired in accordance with alternative methods of compliance, approved previously in accordance with AD 98–08–01, are not considered exempt from the repetitive inspection requirements of paragraph (e) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1995–076/3 (A), dated November 28, 1997.

Issued in Renton, Washington, on November 3, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30052 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–39–AD]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. (Schweizer) Model 269C–1 helicopters. This proposal would require a visual inspection of the bond line between the main rotor blade (blade) abrasion strip (abrasion strip) and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the abrasion strip for debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade. This proposal is prompted by four reports that indicate that debonding and corrosion have occurred on certain blades where the abrasion strip attaches to the blade skin. The actions specified by the proposed AD are intended to prevent loss of the abrasion strip from the blade and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe and Propulsion Branch, Engine and Propeller Directorate, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581–1200, telephone (516) 256–7532, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The

proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–39–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–39–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Schweizer Model 269C–1 helicopters. This proposal would require a visual inspection of the bond line between the blade abrasion strip and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the abrasion strip for debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade. This proposal is prompted by four reports that indicate that debonding and corrosion have occurred on certain blades where the abrasion strip attaches to the blade skin. This condition, if not corrected, could result in loss of the abrasion strip from the blade and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other Schweizer Model 269C–1 helicopters of the same type design, the proposed AD would require a visual inspection of the bond line between the main rotor blade abrasion strip and the blade for voids, separation, or lifting of the abrasion strip; a visual inspection of the adhesive bead around the perimeter of the abrasion strip for erosion, cracks, or blisters; a tap (ring) test of the abrasion strip for debonding or hidden corrosion voids; and removal of any blade with an unairworthy abrasion strip and replacement with an airworthy blade. Repair of an affected blade's abrasion strip is considered a terminating action for the requirements of this AD.

The FAA estimates that 47 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately one-third of a work hour per helicopter to conduct the initial inspections; approximately one-third of a work hour to conduct the repetitive inspections; approximately 11 work hours to remove and reinstall a blade; and approximately 32 work hours to repair the blade; and that the average labor rate is $60 per work hour. Required parts (replacement abrasion strips) would cost approximately $57 per main rotor abrasion strip (each helicopter has three main rotor blades). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65,168 per year for the first year and approximately $64,228 for each of the next 5 years thereafter, assuming 24 of the affected blades (approximately 1/6 of the fleet or the blades on 8 helicopters) in the fleet are removed, repaired, and reinstalled with replacement abrasion strips each year, and that all affected helicopters are subjected to one repetitive inspection each year, including the first year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Schweizer Aircraft Corporation and Hughes Helicopters, Inc.: Docket No. 98–SW–39–AD.

Applicability: Model 269C–1 helicopters with main rotor blades, P/N 269A1185–1, S/N S222, S312, S313, S325, S326, S327, S339, S341, S343, S346, S347, S349 through S367, S369 through S377, S379 through S391, S393, S394, S395, S397, S399, S401 through S417, S419 through S424, S426 through S449, S451 through S507, S509 through S513, S516 through S527, S529 through S540, S542, S544 through S560, S562 through S584, S586 through S595, S597 through S611, S620 through S623, S625, S628, S633, S641 through S644, S646, S653, S658, S664, S665, and S667, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the abrasion strip from a main rotor blade (blade) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS), or within 90 calendar days after the effective date of this AD, whichever is earlier, or prior to installing an affected replacement blade, and thereafter at intervals

not to exceed 50 hours TIS from the date of the last inspection or replacement installation:

(1) Visually inspect the adhesive bead around the perimeter of each abrasion strip for erosion, cracks, or blisters.

(2) Visually inspect the bond line between each abrasion strip and each blade skin for voids, separation, or lifting of the abrasion strip.

(3) Inspect each abrasion strip for debonding or hidden corrosion voids using a tap (ring) test as described in the applicable maintenance manual.

(b) If any deterioration of an abrasion strip adhesive bead is discovered, prior to further flight, restore the bead in accordance with the applicable maintenance manual.

(c) If abrasion strip debonding, separation, or a hidden corrosion void is found or suspected, prior to further flight, remove the blade with the defective abrasion strip and replace it with an airworthy blade.

(d) Repair of an affected blade's abrasion strip is considered a terminating action for the requirements of this AD. Identify the repaired blade with a white dot added adjacent to the blade S/N.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished, provided the abrasion strip has not started to separate or debond from the main rotor blade.

Issued in Fort Worth, Texas, on November 3, 1998.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–30047 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration (FAA), DOT

14 CFR Part 71

[Airspace Docket No. 97–ASW–24]

Proposed Modification to the Gulf of Mexico High Offshore Airspace Area

AGENCY: Federal Aviation Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend the Gulf of Mexico High Offshore Airspace Area. The proposed action would extend the present airspace area east and south to the boundary of the Houston Air Route Traffic Control Center (ARTCC) Flight Information Region/Control Area (FIR/CTA). Additionally, this action proposes to increase the vertical limits of the proposed airspace area from Flight Level (FL) 280 up to and including FL 600. This proposed action would provide additional airspace in which domestic air traffic procedures may be used to separate and manage aircraft operations. This proposed change would enhance the efficient utilization of that airspace.

DATES: Comments must be received on or before December 29, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 97–ASW–24, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193–0001.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–ASW–24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On March 2, 1993, the FAA published a final rule (58 FR 12128) which, in part, redesignated certain control areas over international waters as offshore airspace areas. The redesignations were necessary to comply with the Airspace Reclassification final rule issued on December 17, 1991 (56 FR 65638).

One of the areas affected by the March 2, 1993, final rule was the Gulf of Mexico Control Area. This area was divided vertically into two areas, one of which was redesignated as the Gulf of Mexico High Offshore Airspace Area.

In June of 1996 the FAA completed an evaluation of the airspace over the Gulf of Mexico. The evaluation was a combined effort with representatives from the FAA, Servicios a la Navegacion en El Espacio Aereo Mexicano, and other airspace users. The objective of the evaluation was, in part, to identify areas where air traffic services, air traffic operations, and utilization of airspace could be improved. One conclusion of this evaluation was the determination that system capacity would be enhanced by modifying air traffic control (ATC) procedures used to control aircraft

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operations in the airspace over the Gulf of Mexico.

Currently, International Civil Aviation Organization (ICAO) oceanic ATC procedures are used to separate and manage aircraft operations that extend beyond the lateral boundary of the existing Gulf of Mexico High Offshore Airspace Area. Modifying the Gulf of Mexico High Offshore Airspace Area by extending the boundaries further east and south of the current location to the Houston ARTCC FIR/CTA, will allow the application of domestic ATC separation procedures over a larger area. This proposal to modify the offshore airspace area would enhance system capacity and allow for more efficient utilization of that airspace.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Gulf of Mexico High Offshore Airspace Area, by extending the present airspace area east and south to the Houston ARTCC FIR/CTA. The proposed modification would allow the application of domestic ATC separation procedures, in lieu of ICAO separation procedures, enhancing system capacity, and allowing for more efficient use of the airspace.

Offshore airspace area designations are published in paragraph 2003 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The offshore airspace area designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the ICAO International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Air Traffic Airspace Management, in areas outside U.S. domestic airspace is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of the document is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the FAA proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 2003 Offshore Airspace Areas

* * * * *

Gulf of Mexico High [Revised]

That airspace extending upward from FL 280 to and including FL 600 bounded on the west, north, and east by a line 12 miles offshore and parallel to the Texas, Louisiana, Mississippi, Alabama, and Florida shorelines; bounded on the south from east to west by the southern boundary of the Jacksonville ARTCC, Miami Oceanic CTA/FIR; Merida UTA/FIR; Monterey UTA/UIR, Houston CTA/FIR; to the point of beginning, and that airspace extending upward from 18,000 feet MSL to and including FL 280 bounded on the west, north, and east by a line 12 miles offshore and parallel to the Texas, Louisiana, Mississippi, Alabama, and Florida shorelines bounded on the south from east to west by the southern boundary of the Jacksonville ARTCC, Miami Oceanic CTA/FIR, Houston CTA/FIR and lat. 26°00'00"N.

* * * * *

Issued in Washington, DC, on November 2, 1998.

John S. Walker,

Program Director for Air Traffic Airspace Management.

[FR Doc. 98–29951 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 119, 121, 125, and 135

[Docket No. FAA–1998–4458; Notice No. 98–13]

RIN 2120–AG35

Prohibition on the Transportation of Devices Designed as Chemical Oxygen Generators as Cargo in Aircraft; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This document contains a correction to the NPRM published in the **Federal Register** (63 FR 45912) on August 27, 1998. The NPRM proposes to ban, in certain domestic operations, the transportation of devices designed to chemically generate oxygen, including devices that have been discharged and newly manufactured devices that have not yet been charged for the generation of oxygen, with limited exceptions.

FOR FURTHER INFORMATION CONTACT: David L. Catey, (202) 267–8166.

Correction of Publication

In proposed rule FR Doc. 98–23010, beginning on page 45912 in the **Federal Register** issue of August 27, 1998, make the following corrections:

On page 45912, in the first column, in the heading, "[Docket No. 29318; Notice No. 98–12]", should read "[Docket No. FAA–1998–4458; Notice No. 98–13]".

In the **ADDRESSES** section on page 45912, in the first column, in the fifth line, the docket number "FAA–98–29318", should read "FAA–1998–4458".

In the Comments Invited section on page 45912, in the second column, last paragraph, first line, "Docket No. 29318", should read "Docket No. FAA–1998–4458".

Issued in Washington, DC on November 4, 1998.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 98–30088 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 98P–0683]

Food Labeling: Health Claims; Soy Protein and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to authorize the use, on food labels and in food labeling, of health claims on the association between soy protein and reduced risk of coronary heart disease (CHD). FDA is proposing this action in response to a petition filed by Protein Technologies International, Inc. (the petitioner). The agency has tentatively concluded that, based on the totality of publicly available scientific evidence, soy protein included in a diet low in saturated fat and cholesterol may reduce the risk of CHD.

DATES: Written comments by January 25, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Susan M. Pilch, Center for Food Safety and Applied Nutrition (HFS–465), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4500.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, the President signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments was that they provided procedures whereby FDA is to regulate health claims on food labels and in food labeling.

In the **Federal Register** of January 6, 1993 (58 FR 2478), FDA issued a final rule that implemented the health claim provisions of the act (hereinafter referred to as the 1993 health claims final rule). In that final rule, FDA adopted § 101.14 (21 CFR 101.14), which sets out the rules for the authorization and use of health claims. Additionally, § 101.70 (21 CFR 101.70) establishes a process for petitioning the agency to authorize health claims about a substance-disease relationship (§ 101.70(a)) and sets out the types of information that any such petition must include (§ 101.70(d)). These regulations became effective on May 8, 1993.

In response to the 1990 amendments, FDA also conducted an extensive review of the evidence on the 10 substance-disease relationships listed in the 1990 amendments. As a result of its review, FDA has authorized claims for 8 of these 10 relationships, one of which focused on the relationship between dietary saturated fat and cholesterol and reduced risk of CHD. CHD is the most common, most frequently reported, and most serious form of cardiovascular disease (CVD) (58 FR 2739, January 6, 1993). Further, while the agency denied the use on food labeling of health claims relating dietary fiber to reduced risk of CVD (58 FR 2552), it authorized a health claim relating diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain dietary fiber (particularly soluble fiber) to a reduced risk of CHD.

In the proposed rule entitled "Health Claims and Label Statements; Lipids and Cardiovascular Disease" (56 FR 60727, November 27, 1991), FDA set out the criteria for evaluating evidence on diet and CVD relationships. The agency focused on those aspects of the dietary lipid and CVD relationship for which the strongest scientific evidence and agreement existed. FDA noted that, because of the public health importance of CHD, identification of "modifiable" risk factors for CHD had been the subject of considerable research and public policy attention. The agency also noted that there is general agreement that elevated blood cholesterol levels are one of the major "modifiable" risk factors in the development of CHD. FDA cited Federal Government and other reviews that concluded that there is substantial epidemiologic and clinical evidence that high blood levels of total and low density lipoprotein (LDL) cholesterol are a cause of atherosclerosis and represent major contributors to CHD. Further, factors that decrease total blood cholesterol and LDL-cholesterol will also decrease the risk of CHD. FDA concluded that it is generally accepted that blood total and LDL-cholesterol levels are major risk factors for CHD, and that dietary factors affecting blood cholesterol levels affect the risk of CHD. High intakes of dietary saturated fat and, to a lesser degree, of dietary cholesterol are consistently associated with elevated blood cholesterol levels. FDA concluded that the publicly available data supported an association between diets low in saturated fat and cholesterol and reduced risk of CHD (58 FR 2739 at 2751).

Based on its review using the stated criteria, and on its consideration of comments received in response to the proposed rule entitled "Health Claims; Dietary Fiber and Cardiovascular Disease" (56 FR 60582), FDA concluded that the publicly available scientific information supported an association between diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products (i.e., foods that are low in saturated fat and cholesterol and that are good sources of dietary fiber) and reduced risk of heart disease (58 FR 2552 at 2572). In the 1993 dietary fiber and CVD final rule, in response to a comment regarding the apparent hypocholesterolemic properties of specific food fibers, FDA again articulated its criteria for evaluating diet and CHD relationships (58 FR 2552 at 2567). FDA agreed that

the effectiveness of naturally occurring fibers in foods in reducing the risk of CHD may be documented for specific food products. Further, the agency indicated that if manufacturers could document, through appropriate studies, that dietary consumption of the soluble fiber in a particular food has a beneficial effect on blood lipids predictive of CHD risk, they should petition for a health claim for that particular product. In response to two petitions that documented such evidence, FDA has authorized health claims for soluble fiber from certain foods and reduced risk of CHD in § 101.81 (21 CFR 101.81) (62 FR 3584 at 3600, January 23, 1997, and amended at 62 FR 15343 at 15344, March 31, 1997, and 62 FR 8119, February 18, 1998).

The present rulemaking is in response to a manufacturer's health claim petition on the relationship between soy protein and the risk of CHD.

II. Petition for Soy Protein and Reduced Risk of CHD

A. Background

On May 4, 1998, Protein Technologies International, Inc., submitted a health claim petition to FDA requesting that the agency authorize a health claim on the relationship between consumption of soy protein and the risk of CHD (Refs. 1 and 2). On August 12, 1998, the agency sent the petitioner a letter stating that it had completed its initial review of the petition, and that the petition would be filed in accordance with section 403(r)(4) of the act (21 U.S.C. 343(r)(4)) (Ref. 3). In this proposed rule, the agency presents the rationale for a health claim on this food-disease relationship as provided for under the standard in section 403(r)(3)(B)(i) of the act and § 101.14(c) of FDA's regulations.

B. Review of Preliminary Requirements for a Health Claim

1. The Substance Is Associated With a Disease for Which the U.S. Population Is at Risk

Several previous rules establish that CHD is a disease for which the U.S. population is at risk, specifically claims for dietary saturated fat and cholesterol and risk of CHD (§ 101.75 (21 CFR 101.75)); fruits, vegetables, and grain products and risk of CHD (§ 101.77 (21 CFR 101.77)); and soluble fiber from certain foods and risk of CHD (§ 101.81). FDA stated in these rules that CHD remains a major public health problem and the number one cause of death in the United States. Despite the decline in deaths from CHD over the past 30 years, this disease is still exacting a tremendous toll in morbidity and mortality (Refs. 4 through 6). There are more than 500,000 deaths each year for which CHD is an underlying cause, and another 250,000 deaths for which CHD is a contributing cause. About 20 percent of adults (male and female; black and white) ages 20 to 74 years have blood total cholesterol (or serum cholesterol) levels in the "high risk" category (total cholesterol greater than (>) 240 milligrams (mg) per (/) deciliter (dL) and LDL-cholesterol greater than 160 mg/dL) (Ref. 7). Another 31 percent have "borderline high" cholesterol levels (total cholesterol between 200 and 239 mg/dL and LDL-cholesterol between 130 and 159 mg/dL) in combination with two or more risk factors.

CHD has a significant effect on health-care costs. In 1985, total direct costs related to CHD were estimated at $13 billion, and indirect costs from loss of productivity due to illness, disability, and premature deaths from this disease were an estimated $36 billion (Ref. 4). Based on these facts, FDA tentatively concludes that, as required in § 101.14(b)(1), CHD is a disease for which the U.S. population is at risk.

2. The Substance Is a Food

The substance that is the subject of this rulemaking is soy protein (Ref. 1). Soy protein is an edible component of the soybean, *Glycine max*. Soybeans are a significant source of low-cost, high-quality protein in the human diet.

Soy protein is used as an ingredient in other foods. It is produced from raw whole soybeans by a multistep process that removes the lipid and indigestible components to concentrate the protein and increase its availability. Depending upon the particular steps used during processing, soy protein ingredients may take the form of isolated soy protein (ISP), soy protein concentrate (SPC), or soy flour (SF). Each of these ingredients may be further processed into texturized soy protein or texturized vegetable protein (TVP), used in the manufacture of meat and poultry analogs, by thermoplastic extrusion or steam texturization to impart structure and shape. In addition to protein, these soy protein ingredients contain other naturally occurring soy constituents, such as isoflavones, fiber, and saponins. The specific processing steps employed determine the extent of retention of such naturally occurring constituents in the final product.

Soy protein is also consumed in the diet as a component of traditional fermented and nonfermented soy foods such as tofu, tempeh, and miso, in addition to whole soybeans, soynuts, soy milk, soy yogurt, and soy cheese. These products contain variable amounts of soy protein and other naturally occurring soy constituents depending on the specific technologies used in their production.

Soy protein ingredients (ISP, SPC, and SF) and soy protein-containing foods may partially replace or be used in addition to animal or other vegetable protein sources in the human diet. Therefore, FDA has tentatively concluded that the substance satisfies the preliminary requirement of § 101.14(b)(3)(i).

3. The Substance Is Safe and Lawful

The petitioner stated that soy protein ingredients were in common use in food before January 1, 1958, and that they are generally recognized as safe (GRAS) by self-determination (Ref. 1). Because the fractionation procedures used to convert vegetable flours to vegetable protein isolates and concentrates were commonplace prior to 1958, the petitioner asserted that ISP and SPC can be defined as soy flour "subject only to conventional processing as practiced prior to January 1, 1958." The petitioner alluded to statements that it attributed to FDA about the GRAS status of soy protein products. (In point of fact, however, in one document (35 FR 18530, December 5, 1970), FDA was restating a petitioner's grounds for its petition, and in the other document (43 FR 30472, July 14, 1978), FDA was stating a condition on the vegetable protein products to which the proposed regulation applied, and was not itself determining the safety or suitability of any product (43 FR 30472 at 30474 to 30475 (comment 10).) The petitioner also referred to unidentified statements by the U.S. Department of Agriculture, the Association of American Feed Control Officials, and the Codex Alimentarius that it asserted support for the GRAS status of soy protein products (Ref. 1).

The petition also addressed some concerns that have been raised about the potential risk of consuming soy products: Allergenicity, exposure to trypsin inhibitors, reduced bioavailability of minerals, and hormonal disturbances.

As is true for any protein entering the gastrointestinal tract, soy protein has the potential to elicit an allergic reaction. Food allergies most commonly develop in infants and young children. Although the use of heat or hot aqueous ethanol in the processing of soybeans destroys the immunochemical reactivity of most of the protein, a small number of infants fed soy formula experience allergic reactions to soy (Ref. 9). Such sensitization appears to be a manifestation of an immature digestive tract and is rarely seen in children more

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than 4 years old or adults. Many children outgrow food allergies (Ref. 10) and soy and seafood allergies are among those likely to be outgrown, in contrast to allergies to milk, egg white, or peanuts.

Concerns have been raised in the past about exposure to trypsin inhibitors contained in soybeans because these compounds had been found to stimulate pancreatic hyperplasia and hypertrophy in animals (Ref. 11). These concerns have been allayed because heat treatment removes most of the activity of these proteases (Ref. 12). In addition, recent studies have questioned the applicability of the animal models, which differ from humans in the type of diet, sensitivity of the pancreas to trypsin inhibitors, and the anatomic sites of pancreatic cell proliferation (Refs. 12 through 15) and have found low rates of cancer in populations with dietary patterns that include soy foods (Ref. 16).

Soybeans contain phytic acid and dietary fiber, which have well documented effects on reducing the bioavailability of divalent minerals, and these components are retained in the protein fraction in variable amounts depending upon processing. In general, the bioavailability of minerals is lower from plant sources than animal sources, but soy has not been found to reduce the availability of minerals from other dietary sources consumed concurrently (Ref. 17). Data on the possible deleterious effects of soy, and particularly its phytate content, on mineral balance have been obtained mainly from studies of animal models; findings in humans are less consistent and suggest that although absorption may be impaired, overall mineral balance is not adversely affected (Refs. 13, 18, 19, 20).

Finally, the possibility of hormonal disturbances from the weakly estrogenic-antiestrogenic effects of soy isoflavones has been raised. For example, infertility was found in sheep that had consumed clover containing isoflavones (Ref. 21); however, studies of soy isoflavones in primates showed no effects on male or female reproductive tissue or ability (Refs. 22 through 24). Soy isoflavones have been hypothesized as a protective factor against breast cancer in populations that consume large amounts of soy protein (Ref. 25), and in one controlled human trial, a 45-mg/day dose of isoflavones lead to favorable changes in menstrual cycle length and hormone levels similar to those seen in women treated with tamoxifen (Ref. 26).

Based on the totality of the evidence and, in particular, its common use in food, the agency is not prepared, at this time, to take issue with the petitioner's view that the use of soy protein is safe and lawful as required in § 101.14(b)(3)(ii). Thus, FDA tentatively concludes that the petitioner has provided evidence that satisfies the requirement in § 101.14(b)(3)(ii) that use of soy protein at the levels necessary to justify a claim is safe and lawful.

III. Review of Scientific Evidence

A. Basis for Evaluating the Relationship Between Soy Protein and CHD

The review examined the relationship between soy protein and CHD by focusing on the effects of dietary intake of this substance on blood lipid levels and on the risk of developing CHD. In the 1991 lipids-CVD and dietary fiber-CVD health claim proposals, the agency set forth the basis for the relationship between dietary substances and CVD (56 FR 60727 at 60728 and 56 FR 60582 at 60583). In those documents, the agency stated that there are many risk factors that contribute to the development of CVD, and specifically CHD, one of the most serious forms of CVD and among the leading causes of death and disability. The agency also stated that there is general agreement that elevated blood cholesterol levels are one of the major "modifiable" risk factors in the development of CVD and, more specifically, CHD.

The Federal Government and others who have reviewed the matter have concluded that there is substantial epidemiologic evidence that high blood levels of total cholesterol and LDL-cholesterol are a cause of atherosclerosis (inadequate circulation of blood to the heart due to narrowing of the arteries) and represent major contributors to CHD (56 FR 60727 at 60728, 56 FR 60582 at 60583, Refs. 4 through 6). Factors that decrease total cholesterol and LDL-cholesterol will also tend to decrease the risk of CHD. High intakes of saturated fat and, to a lesser degree, of dietary cholesterol are associated with elevated blood total and LDL-cholesterol levels (56 FR 60727 at 60728). Thus, it is generally accepted that blood total cholesterol and LDL-cholesterol levels can influence the risk of developing CHD, and, therefore, that dietary factors affecting these blood cholesterol levels affect the risk of CHD (Refs. 4 through 6).

When considering the effect that the diet or components of the diet have on blood (or serum) lipids, it is also useful to consider the effect that these factors may have on blood levels of high density lipoprotein (HDL)-cholesterol. HDL-cholesterol appears to have a protective effect because it is involved in the regulation of cholesterol transport out of cells and to the liver, from which it is ultimately excreted (Refs. 4 and 8).

For these reasons, the agency based its evaluation of the relationship between consumption of soy protein and CHD primarily on changes in blood total and LDL-cholesterol resulting from dietary intervention with soy protein-containing products. A secondary consideration was that beneficial changes in total and LDL-cholesterol should not be accompanied by potentially adverse changes in HDL-cholesterol. This focus is consistent with that used by the agency in response to the 1990 amendments in deciding on the dietary saturated fat and cholesterol and CHD health claim, § 101.75 (56 FR 60727 and 58 FR 2739); the fruits, vegetables, and grain products and CHD claim, § 101.77 (56 FR 60582 and 58 FR 2552); and the soluble fiber from certain foods and CHD claim, § 101.81 (61 FR 296, 62 FR 3584, 62 FR 28234, and 63 FR 8119).

B. Review of Scientific Evidence

1. Evidence Considered in Reaching the Decision

The petitioner submitted scientific studies (Refs. 27 through 66) evaluating the relationship between soy protein in the diet and serum lipid levels in humans (Refs. 1 and 2). The studies submitted were conducted between 1976 and 1998. The petition included tables that summarized the outcome of the studies and a summary of the evidence. In the approach taken previously in the diet and CVD proposed rules, the agency began its review of scientific evidence in support of a health claim by considering those studies that were published since 1988, the date of publication of the "Surgeon General's Report on Nutrition and Health," which is the most recent and comprehensive Federal review of the scientific evidence on dietary factors and CVD. In a brief discussion of the role of protein in coronary heart disease, the Surgeon General's report noted that studies of the substitution of soy protein and other vegetable proteins for animal protein in the diets of hyperlipidemic patients have shown a marked reduction in serum cholesterol levels but only a small change in persons with normal cholesterol levels (Ref. 4). Because of the brevity of this consideration of soy protein, the agency reviewed all of the studies on soy protein submitted by the petitioner, including those published prior to 1988.

The petition also presented some findings from studies that employed animal models and from in vitro

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experiments. Human studies are weighted most heavily in the evaluation of evidence on a diet and disease relationship; animal model and in vitro studies can be considered as supporting evidence but cannot, in the absence of human studies, serve as the basis for establishing that a diet and disease relationship exists. Such studies may be useful in providing information on the mechanism of action of soy protein's effects on blood cholesterol levels.

2. Criteria for Selection of Human Studies

The criteria that the agency used to select the most pertinent studies were consistent with those that the agency used to evaluate the relationship between other substances and CHD. These criteria were that the studies: (1) Present data and adequate descriptions of the study design and methods; (2) be available in English; (3) include estimates of, or enough information to estimate, soy protein intakes; (4) include direct measurement of blood total cholesterol and other blood lipids related to CHD; and (5) be conducted in persons who represent the general U.S. population. In the case of (5), these persons can be considered to be adults with blood total cholesterol levels less than 300 mg/dL. Studies of special population groups, such as adults with very high serum cholesterol (mean greater than 300 mg/dL) and children with hypercholesterolemia, were considered relative to the nature of the support they provided for evidence of effect seen in studies of subjects more representative of the general U.S. population.

In a previous rulemaking (62 FR 28234 at 28238 and 63 FR 8103 at 8107), the agency concluded that hypercholesterolemic study populations are relevant to the general population because, based on data from the National Health and Nutrition Examination Surveys (NHANES) III, the prevalence of individuals with elevated blood cholesterol (i.e., 200 mg/dL or greater) is high, i.e., approximately 51 percent of adults (Ref. 7). The proportion of adults having moderately elevated blood cholesterol levels (i.e., between 200 and 239 mg/dL) was estimated to be approximately 31 percent, and the proportion of adults with high blood cholesterol levels (240 mg/dL or greater) was estimated to be approximately 20 percent (Ref. 7). It is also estimated that 52 million Americans 20 years of age and older would be candidates for dietary intervention to lower blood cholesterol (Ref. 7). As the leading cause of death in this country, CHD is a disease for which the general U.S. population is at risk. The risk of dying from CHD is related to serum cholesterol levels in a continuous and positive manner, increasing slowly for levels between 150 mg/dL and 200 mg/dL and more rapidly when the cholesterol level exceeds 200 mg/dL (Ref. 67). The public health policy elucidated by the National Cholesterol Education Program (NCEP), National Heart, Lung, and Blood Institute, is to extend the benefits of cholesterol lowering to the population as a whole by promoting adoption of eating patterns that can help lower the blood cholesterol levels of most Americans (Ref. 67). A dietary intervention that lowers blood cholesterol levels mainly or only in persons with high levels would, like an intervention that lowers cholesterol levels across the entire population range, cause a shift in the population distribution of blood cholesterol levels resulting in a decrease in the mean value for the blood cholesterol level in the general population (Ref. 67). The anticipated effect of such a shift would be to reduce the morbidity from CHD and to produce a continued or accelerated decline in the CHD mortality rate in the United States. Accordingly, in this proposal, the agency has reviewed and considered the evidence of effects of soy protein on serum lipids in hypercholesterolemic subjects.

In selecting human studies for review, the agency excluded studies that were published in abstract form because they lacked sufficient detail on study design and methodologies, and because they could not provide the primary data.

3. Criteria for Evaluating the Relationship Between Soy Protein and CHD

Well reasoned approaches for evaluating studies supporting diet/disease relationships are summarized in the comprehensive report "Diet and Health" issued by the National Academy of Sciences (Ref. 68) and "The Guide to Clinical Preventive Services" issued by the U.S. Preventive Services Task Force (Ref. 69). The criteria articulated in these documents provided a starting point for FDA's review of individual studies on the relationship between dietary factors and CHD in previous rulemakings: In the 1991 proposed rule on lipids and CVD (56 FR 60727), in the 1991 proposed rule on dietary fiber and CVD (56 FR 60582), in the January 1996 proposed rule on whole oats and CHD (61 FR 296), and in the May 22, 1997, proposed rule on soluble fiber from psyllium and CHD (62 FR 28234).

The criteria that the agency used in evaluating the studies for this rulemaking include: (1) Reliability and accuracy of the methods used in nutrient intake analysis, including measurements of soy protein intake; (2) estimates of intake of saturated fat and cholesterol; (3) available information on the soy protein test products and control foods; (4) measurement of study endpoints (i.e., measurement of blood lipid levels); and (5) general study design characteristics.

The general study design characteristics for which the agency looked included randomization of subjects, appropriateness of controls, selection criteria for subjects, attrition rates (including reasons for attrition), potential for misclassification of individuals with regard to dietary intakes, presence of recall bias and interviewer bias, recognition and control of confounding factors (for example, monitoring body weight and control of weight loss), appropriateness of statistical tests and comparisons, and statistical power of the studies. The agency considered whether the intervention studies that it evaluated had been of long enough duration, greater than or equal to 3 weeks duration, to ensure reasonable stabilization of blood lipids.

C. Review of Human Studies

FDA conducted a comprehensive review of 41 of 43 human intervention studies submitted in the petition and reported in 38 references by the petitioner (Refs. 27 through 64). The two studies FDA excluded from consideration at the outset (Refs. 32 and 52) were of infants. Of the studies reviewed, 27 met the aforementioned criteria for selection (Refs. 27, 28, 29, 30 (1 trial), 31, 33, 34, 35, 36, 37, 40 (2 trials), 42 and 45 (1 trial), 43, 44, 46, 49, 51, 53, 54, 55, 56, 58, 59, 60, 63, and 64). Of these, the agency gave particular weight to 14 trials (Refs. 27, 28, 30 (1 trial), 31, 36, 37 (1 trial), 40 (2 trials), 44, 49, 51, 54, 58, and 59) that included subjects representative of the general U.S. population and that were well controlled, reported intakes of saturated fat and cholesterol, and avoided problems associated with small sample size, lack of a placebo, and other design problems. These studies are summarized in Table 1 at the end of this document and discussed in section III.C.1 of this document. Three additional similar trials that were included in the review but accorded less weight because of issues concerning the populations studied and diets fed (Refs. 29, 43, and 53) are also summarized in Table 1 of this document and discussed in section III.C.1 of this document. Seven trials in adults (Refs. 33, 35, 46,

55, 56, 60, and 64) and three trials in children (Refs. 34, 42 and 45 (1 trial), and 63) with type II or familial hypercholesterolemia are summarized in Table 2 at the end of this document and discussed in section III.C.2 of this document. The fourteen remaining intervention trials (Refs. 30 (1 trial), 37 (1 trail), 38, 39 (2 trials), 41, 47, 48, 50 (2 trials), 57, 61, and 62 (2 trials)) failed to meet the inclusion criteria because of small sample size, inadequate period of intervention, inadequate characterization of the soy protein tested, inadequate information on dietary intake, or lack of data on outcome variables. The results of one epidemiological study (Ref. 65) and a meta-analysis (Ref. 66) that included a number of the soy protein studies submitted in the petition are discussed in sections III.C.3 and III.C.4, respectively, of this document.

1. Studies of Adult Subjects Representative of the General U.S. Population (Serum Cholesterol <300 mg/dL)

The agency began its consideration of the data with the 14 well controlled and representative studies identified previously (Refs. 27, 28, 30 (1 trial), 31, 36, 37 (1 trial), 40 (2 trials), 44, 49, 51, 54, 58, and 59). Several of these studies examined the interaction of protein and other components of soy protein sources hypothesized to have an impact on lipid-lowering effects (i.e., isoflavones, dietary fiber, and soy lipids) (Refs. 31, 28, 27, 51, and 44). Findings with respect to soy protein are described in this section, while findings regarding the specific influence of soy isoflavones (Refs. 31 and 28) are discussed in more detail in section III.C.5 of this document.

In hypercholesterolemic subjects, Crouse et al. (Ref. 31, documented in Ref. 1 with corrections noted in Ref. 2) found that 25 grams (g) of soy protein from ISP containing 2.5 mg total aglycone isoflavones/g protein lowered total ($p<0.05$) and LDL-cholesterol levels ($p<0.05$) by 4 and 6 percent, respectively, while HDL-cholesterol was not altered. Furthermore, in subjects with LDL-cholesterol levels in the top half of the study population, serum total and LDL-cholesterol were reduced by 9 percent ($p<0.03$) and 12 percent ($p<0.03$), respectively, by the ISP with 2.5 mg total aglycone isoflavones/g protein, and by 8 percent ($p<0.03$) and 9 percent ($p<0.03$), respectively, by the ISP with 1.6 mg total aglycone isoflavones/g protein. HDL-cholesterol concentrations were unchanged. These results indicate that soy protein, in a diet low in saturated fat and cholesterol, can exert hypocholesterolemic effects but suggest these effects may be modulated by the presence of isoflavones.

In hypercholesterolemic, postmenopausal women, Baum et al. (Ref. 28) also investigated the impact of soy protein as ISP containing different levels of isoflavones. Adjusted mean differences in the change from baseline for total serum cholesterol level did not differ in the two soy groups and the control group. However, there was a statistically significant reduction of 8 to 9 percent in non-HDL (LDL plus very low density lipoprotein (VLDL)) cholesterol in both of the ISP treatment groups ($p<0.05$) compared to the control group. HDL-cholesterol was also significantly increased ($p<0.05$) in both soy groups compared to the control. The level of isoflavones did not affect any of the blood lipid levels measured. This study also indicates the ability of soy protein provided in a diet low in saturated fat and cholesterol to reduce LDL-cholesterol.

Two studies that examined the effect of soy protein in hypercholesterolemic adults consuming low fat diets also evaluated whether soy cotyledon fiber had additional lipid-lowering effects. Bakhit et al. (Ref. 27) used 25 g protein and 20 g dietary fiber as treatment levels while Potter et al. (Ref. 51) used 50 g protein and 20 g dietary fiber. Soy protein was provided as ISP (Refs. 27 and 51) and SF (Ref. 51) incorporated into baked products.

Bakhit et al. (Ref. 27) studied subjects who had initially been screened for eligibility based on plasma total cholesterol concentrations greater than 220 mg/dL before starting the study. During the baseline dietary period, plasma total cholesterol decreased to levels below 220 mg/dL in 10 of the subjects; these subjects did not have any further decrease in total or LDL-cholesterol with any of the experimental diets. The subjects whose cholesterol remained greater than the 220 mg/dL intent-to-treat level did show a statistically significant decrease from post-baseline dietary levels for total cholesterol, but not for LDL-cholesterol, after consuming ISP. In the subset analysis, Bakhit et al. (Ref. 27) found a statistically significant decrease in total cholesterol of 7 percent ($p<0.05$) from post-stabilization levels with ingestion of ISP. Addition of soy cotyledon fiber to the ISP diet resulted in a statistically significant decrease ($p<0.05$) of 8 percent in total cholesterol. Ingestion of the casein plus cellulose control diet produced a nonsignificant decrease ($p>0.05$) in total cholesterol of 3 percent. Differences in LDL- and HDL-cholesterol from baseline or control after the two soy diets were not statistically significant. In the subset analysis, the additional effect of soy fiber on blood cholesterol levels was not significant when evaluated by analysis of covariance ($p=0.04$ for protein effects; $p=0.07$ for fiber effects). This study supports a conclusion that the protein and not the fiber component of the soybean is largely responsible for effects on blood lipids.

Potter et al. (Ref. 51) reported a statistically significant ($p<0.05$) decrease in plasma total cholesterol from baseline of 8 percent with ingestion of diets containing ISP whether soy cotyledon fiber or cellulose was also consumed. The 8-percent decrease observed in LDL-cholesterol from baseline was statistically significant only when the ISP diet also contained soy cotyledon fiber ($p<0.05$). Total and LDL-cholesterol were also significantly ($p<0.01$) lower with the ISP diets compared to the nonfat dry milk-cellulose control diet. No statistically significant changes in HDL-cholesterol were observed with any of the soy protein diets. Changes from baseline were not statistically significant for any of the blood lipids when the diet providing soy protein as SF was consumed. However, the difference in total cholesterol observed after ingestion of SF was 19 mg/dL lower than that on the control diet of nonfat dry milk and cellulose ($p<0.01$). These findings suggest that the principal dietary component responsible for the lipid-lowering observed in this study is the soy protein fraction, and that soy fiber may have an incremental effect.

Kurowska et al. (Ref. 44) tested the effects of soy protein and soy oil in hypercholesterolemic subjects by adding combinations of "milk" and desserts to provide a total of 31 g protein from either cow's milk or soy milk and 16 g fat from either cow's milk, soybean oil, or whole soybean soy milk. The three dietary treatments were cow's milk (2-percent fat), skim cow's milk (0-percent fat) plus soy oil (16 g), or soybean milk. No statistically significant changes from baseline in total cholesterol were observed in response to any of the dietary treatments. The 4-percent decline in LDL-cholesterol observed with the soybean milk diet was not statistically significant. HDL-cholesterol was increased 7 percent from baseline ($p=0.04$) with the whole soybean milk treatment. In the subjects with the highest initial LDL-cholesterol level and LDL/HDL-cholesterol ratio, LDL-cholesterol was reduced by 11 percent by the soybean milk diet.

Five earlier studies included in Table 1 reported on effects of soy protein in hypercholesterolemic subjects.

In hypercholesterolemic subjects, Goldberg et al. (Ref. 37) examined the effects of ISP (99 g of soy protein) incorporated as a meat analog or formulated in beverage compared to a control animal protein diet consisting of analogous meat products and nonfat dry milk. Both diets resulted in statistically significant reductions in serum total and LDL-cholesterol levels. With the soy protein diet, total cholesterol was decreased by 15 percent ($p<0.001$) and LDL-cholesterol was decreased by 17 percent ($p<0.001$) from baseline values. Total cholesterol was 8 mg/dL lower ($p<0.005$), and LDL-cholesterol was 10 mg/dL lower ($p<0.05$), at the end of the dietary period when soy protein was ingested as compared to the animal protein diet. Both the change in HDL-cholesterol from the baseline and the difference in HDL-cholesterol between the soy and control diets were small and not statistically significant.

Mercer et al. (Ref. 49) tested the effects of approximately 17 g of soy protein from ISP as a replacement for 2-percent fat cow's milk in subjects with mild to moderate hypercholesterolemia. Total cholesterol levels were not significantly different ($p>0.05$) on the two diets. However, among the subjects whose baseline total cholesterol was above the 90th percentile, the soy protein diet resulted in a decrease from baseline in mean total cholesterol of 4 percent and a level 9 percent lower (16 mg/dL; $p<0.05$) than the level at the end of the cow's milk period. There were no statistically significant differences in LDL-cholesterol and HDL-cholesterol between ISP and cow's milk diets either for all subjects or for the subset of subjects with the highest initial total cholesterol levels.

Holmes et al. (Ref. 40) conducted two trials with hypercholesterolemic subjects testing SF as a texturized vegetable protein product formulated with egg yolk, beef tallow, and cottonseed oil to create an analog for lean ground beef. An average of 27 g of soy protein was consumed in the partially substituted diet in the first trial and 62 g was consumed in the completely substituted diet in the second trial. In trial 1, statistically significant changes in total cholesterol ($p<0.02$) and LDL-cholesterol ($p<0.05$) occurred during the initial stabilization period when the control diet was consumed; no further changes occurred after the second period during which the partially substituted soy diet was consumed. In trial 2, both diets significantly lowered mean total cholesterol during the first dietary sequence ($p<0.05$), the animal protein diet by 18 percent and the soy diet by 19 percent. Crossing over the diets had no further effect. LDL-cholesterol levels were not reduced by either diet. HDL-cholesterol levels were not significantly affected by diet in either trial. The two trials were unique in the source of soy protein and in including subjects with type IV hyperlipidemia.

Shorey et al. (Ref. 54) examined the effects of 57 g of soy protein (mean intake) consumed as ISP incorporated both into meat analogs and a soy-based beverage in hypercholesterolemic young men. A statistically significant ($p=0.027$) decrease from baseline total cholesterol of 7 percent was noted in the group consuming the soy protein diet; however, these values were 6 mg/dL higher than change from baseline values obtained from the control group. HDL-cholesterol also significantly ($p=0.001$) decreased from baseline values by 15 percent. LDL-cholesterol was not measured in this study. Although the two diets were well matched for saturated fat and cholesterol, interpretation of these findings is complicated by the fact that body weight was significantly ($p<0.004$) decreased in both groups of subjects. Subjects who showed a significant hypocholesterolemic response on either diet were those who substantially reduced their customary protein and fat intakes on the experimental diets. In contrast to other studies, subjects in this study with lower baseline values experienced more pronounced reductions in total cholesterol level.

Four additional well-controlled studies included in Table 1 of this document examined the effects of soy protein in normocholesterolemic subjects.

The study of Carroll et al. (Ref. 30) compared ISP (44 g soy protein estimated) incorporated into foods and a soy-based beverage to a mixed protein/animal-based diet in healthy young women. Plasma total cholesterol was significantly ($p<0.05$) lower, by 10 mg/dL, when the soy protein diet was consumed as compared with the mixed protein diet. Neither LDL-cholesterol nor HDL-cholesterol was measured.

Giovannetti et al. (Ref. 36) examined the effects of ISP (66 to 80 g of soy protein depending on energy intake) incorporated as meat and dairy analogs in healthy young adult women in both high- and low-fat diets. On the high-fat diet, serum total cholesterol was 4 mg/dL lower, LDL-cholesterol was 6 mg/dL lower, and HDL-cholesterol was 3 mg/dL lower after ingestion of the soy protein than after ingestion of the mixed protein control. None of the changes in blood lipids reached statistical significance. On the low-fat diet, serum total cholesterol was 1 mg/dL higher, LDL-cholesterol was 5 mg/dL lower, and HDL-cholesterol was 2 mg/dL higher after soy protein than after the mixed protein control; these differences were not statistically significant. The magnitude of reduction in serum total cholesterol with soy protein was similar on the high-fat and low-fat diets, 10 percent and 9 percent, respectively. Substitution of soy protein caused reductions in LDL-cholesterol levels during the high-fat diet in 11 of 12 subjects and during the low-fat diet in 9 of 12 subjects.

Van Raaij et al. (Ref. 58) tested the effects of ISP in young normocholesterolemic men and women consuming three diets that differed in protein composition with 65 percent of the total protein replaced by either soy protein (54 g), or casein, or an approximately 2:1 mixture of casein (36 g):soy (17 g). In the group consuming the soy protein diet, total serum cholesterol and LDL-cholesterol were decreased (-2 percent and -8 percent, respectively) and HDL-cholesterol increased (+10 percent) compared to values at the end of the lead-in period. The changes in both LDL-cholesterol and HDL-cholesterol were statistically significant ($p<0.05$). In addition, decreases in LDL-cholesterol were significantly ($p<0.05$) greater with the soy protein diet compared to changes with the casein diet. Although weight loss did occur among subjects consuming both the soy protein diet ($n=9$) and the casein diet ($n=6$), when data from the subset without a weight loss of more than 2 kilograms (kg) were analyzed separately, the same effects of soy protein ingestion on blood lipid-lowering were observed. The lipid changes in the group that remained on the 2:1 casein:soy diet were not statistically significantly different from the casein group, nor were changes from the end of the stabilization period significant in this group.

In a trial with both normocholesterolemic and hypercholesterolemic subjects, Van Raaij et al. (Ref. 59) tested both ISP and SPC (each providing an average of 55 g of soy protein) compared to a casein control. Serum total cholesterol was decreased from baseline by 4 percent and LDL-cholesterol was decreased by 3 percent on the ISP diet. These changes were significantly different from those on the SPC diet ($p<0.05$) but not significantly different from those on the casein diet. HDL-cholesterol showed a slight but statistically significant

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increase of 2 percent from baseline on the ISP diet, a change that was also significantly different from that on the casein diet. When SPC was used as the protein source, total cholesterol was not altered, LDL-cholesterol was increased by 6 percent, and HDL-cholesterol decreased by 3 percent compared to baseline. None of these changes in blood lipids from baseline or differences between the casein and SPC diets was statistically significant. Interpretation of this study is complicated by differential weight loss on the experimental diets (weight loss was greatest in the casein group) and differential fiber intake.

Three additional studies (Refs. 29, 43, and 53), in which interpretation is complicated by design issues such as choice of subjects, concerns about weight loss, or uncertainties about other components in diets, are also summarized in Table 1 of this document and discussed as follows.

Bosello et al. (Ref. 29) and Jenkins et al. (Ref. 43) both studied the hypocholesterolemic effects of soy protein versus casein in the context of hypocaloric diets fed to obese persons to achieve significant weight reduction. In Bosello et al. (Ref. 29), obese subjects (>150 percent of ideal body weight) received 375 kilocalorie (kcal)/day initially, followed by an 800 kcal/day diet. During both phases, the 375 kcal portion was provided by commercial textured protein products that delivered either 27 g protein from casein or 27 g protein from soy protein (type of soy protein not given). During the second phase, the 375 kcal/day was "integrated" with an extra 425 kcal/day from conventional foods. Mean weight losses for the soy and casein groups were 17 and 16 kg, respectively. Total cholesterol and LDL-cholesterol in the soy group were both 16 percent lower compared to baseline ($p<0.01$). Compared to the casein group, total cholesterol was 20 mg/dL lower ($p<0.01$) and LDL-cholesterol was 16 mg/dL lower ($p<0.01$). HDL-cholesterol was decreased in both groups at the end of the study; however, only in the casein group was the difference statistically significant ($p<0.01$). Additionally, the decrease in HDL-cholesterol in the casein group was significantly ($p<0.01$) greater than that observed in the soy protein group.

Jenkins et al. (Ref. 43) examined the effects of soy protein ingestion on serum cholesterol in obese women who were also consuming a hypocaloric diet for weight reduction. The three treatments were: A control, hypocaloric diet of 1,000 total kcal consumed as conventional foods; the same diet with two meals per day replaced by a soy protein (18.4 g provided as ISP) liquid formula preparation; or the same diet with two meals per day replaced by a milk protein (17.6 g as milk protein isolate and nonfat dry milk) liquid formula. An average 2.5 kg weight loss per month occurred during the study ($p<0.05$) across diet treatments. Statistically significant decreases from baseline in total cholesterol of 10 percent ($p<0.05$) and in LDL-cholesterol of 17 percent ($p<0.05$) occurred only during the period when the soy protein formula was ingested. Changes in HDL-cholesterol were not statistically significant. These effects of soy protein were independent of the order the soy diet was consumed relative to the conventional hypocaloric diet. The levels of total and LDL-cholesterol achieved with ingestion of soy protein were, respectively, 10 mg/dL and 8 mg/dL lower with the soy protein diet as compared with the casein diet. Neither the conventional hypocaloric diet nor the casein formula hypocaloric diet resulted in statistically significant decreases in total or LDL-cholesterol despite weight loss. Calculations of the expected decline in serum total cholesterol based on changes in weight, dietary cholesterol, and saturated and polyunsaturated fat accurately predicted the observed changes in both the hypocaloric diet and milk formula groups, but significantly underestimated the decrease observed in the soy formula group.

Sacks et al. (Ref. 53) studied the effects of 27 g of protein consumed daily as ISP or casein incorporated into muffins and oatmeal in adults who were strict vegetarians. Not unexpectedly, given the very low baseline lipid concentrations and very low dietary fat and cholesterol intake, no statistically significant changes or differences in total cholesterol, LDL-cholesterol or HDL-cholesterol were observed from consumption of either soy protein or casein.

a. *Summary—Hypercholesterolemic subjects consuming diets low in saturated fat and cholesterol.* In five (Refs. 31, 28, 27, 51, and 44) of seven (Refs. 31, 28, 27, 51, 44, and 40 (2 trials)) well-controlled studies of hypercholesterolemic subjects consuming low saturated fat and low cholesterol diets, soy protein intake was associated with significant decreases in total and/or LDL-cholesterol levels. Crouse et al. (Ref. 31, documented in Ref. 1 with corrections noted in Ref. 2) found that soy protein from ISP containing 2.5 mg total aglycone isoflavones/g protein statistically significantly lowered total ($p<0.05$) and LDL-cholesterol levels ($p<0.05$), by 4 and 6 percent, respectively, while HDL-cholesterol was not altered. In a subset of subjects with LDL-cholesterol levels in the top half of the study population, serum total and LDL-cholesterol were reduced by 9 percent ($p<0.03$) and 12 percent ($p<0.03$), respectively, by the ISP with 2.5 mg total aglycone isoflavones/g protein, and by 8 percent ($p<0.03$) and 9 percent ($p<0.03$), respectively, by the ISP with 1.6 mg total aglycone isoflavones/g protein. Baum et al. (Ref. 28) found that the adjusted mean difference in total serum cholesterol level was not significantly ($p>0.05$) different in the two groups consuming soy as ISP and the control group. However, there was a statistically significant reduction of 8 to 9 percent in non-HDL (LDL plus VLDL) cholesterol in both of the ISP treatment groups ($p=0.04$) compared to the control group.

Bakhit et al. (Ref. 27) found, in a subset of subjects whose cholesterol remained greater than the 220 mg/dL intent-to-treat level after run-in with the baseline diet, a statistically significant decrease in total cholesterol of 7 percent ($p<0.05$) from post-stabilization levels with ingestion of ISP; addition of soy cotyledon fiber to the ISP diet resulted in a significant decrease ($p<0.05$) of 8 percent in total cholesterol. Levels of LDL-cholesterol were not statistically significantly affected by either soy diet. Potter et al. (Ref. 51) reported a statistically significant decrease ($p<0.05$) from baseline in total plasma cholesterol of 8 percent with ingestion of diets containing ISP whether soy cotyledon fiber or cellulose was also consumed. The 8-percent decrease in LDL-cholesterol from baseline was statistically significant only when the ISP diet also contained soy cotyledon fiber ($p<0.05$). Total and LDL-cholesterol were also significantly lower ($p<0.01$) with the ISP diets compared to the nonfat dry milk-cellulose diet. Changes from baseline were not statistically significant for any of the blood lipids when the diet providing soy protein as SF was consumed. However, the difference in total cholesterol observed after ingestion of SF was 19 mg/dL lower than that on the control diet of nonfat dry milk and cellulose ($p<0.01$).

With diets providing either cow's milk (2-percent fat), or skim cow's milk (0-percent fat) plus soy oil (16 g), or soybean milk, Kurowska et al. (Ref. 44) found no statistically significant changes from baseline in total cholesterol and LDL-cholesterol in response to any of the dietary treatments. In the subjects with the highest initial LDL-cholesterol levels and LDL/HDL-cholesterol ratios, LDL-

cholesterol was reduced by 11 percent by the soybean milk diet. Holmes et al. (Ref. 40) conducted two trials testing SF as a texturized vegetable protein product, with averages of 27 and 62 g of soy protein consumed, respectively, in the first and the second trial. In trial 1, statistically significant changes in total and LDL-cholesterol occurred during the stabilization period when the control diet was consumed; no further changes occurred after the second dietary period during which the partially substituted soy diet was consumed. In trial 2, both diets resulted in a statistically significant lowering of total cholesterol during the first dietary sequence, the animal protein diet by 18 percent and the soy diet by 19 percent. Crossing over the diets had no further effect. LDL-cholesterol levels were not reduced by either diet. These studies were unique in the source of soy protein used and in including subjects with type IV hyperlipidemia.

Levels of HDL-cholesterol were also measured in each of these seven studies and were found either to be unchanged (Refs. 31, 27, 51, and 40 (2 trials)) or to show a slight but statistically significant increase (Refs. 28 and 44) in response to consumption of diets containing soy protein.

Levels of soy protein as ISP found to be effective in lowering total and LDL-cholesterol levels ranged in these studies from 25 to 50 g (Refs. 31, 28, 27, and 51). As whole soybean milk, 31 g of soy protein lowered LDL-cholesterol only in the subset of subjects with the highest initial LDL-cholesterol levels and LDL/HDL-cholesterol levels (Ref. 44). Diets providing 50 g of soy protein as SF did not cause significant changes from baseline for any of the blood lipids, but the decrease in total cholesterol observed after ingestion of SF was significantly greater than that on the control diet of nonfat dry milk and cellulose (Ref. 51). Diets providing 27 g of soy protein as SF in a textured product had no significant effects on blood lipid levels compared to a control diet, and a higher level (62 g) significantly lowered total cholesterol only in the experimental group fed the soy protein diet first (Ref. 40).

b. *Summary—Hypercholesterolemic subjects consuming "usual" diets.* Three studies reported on effects of soy protein in hypercholesterolemic subjects consuming "usual" diets that were generally high in total fat, saturated fat, and cholesterol (Refs. 37, 49, and 54). Goldberg et al. (Ref. 37) found, on the soy protein diet (with 99 g of soy protein as ISP), statistically significant decreases from baseline of 15 percent in total cholesterol and 17 percent in LDL-cholesterol. Total cholesterol was 8 mg/dL lower ($p<0.005$), and LDL-cholesterol was 10 mg/dL lower ($p<0.05$), at the end of the dietary period when soy protein was ingested as compared to the animal protein diet. Mercer et al. (Ref. 49) found that a diet with approximately 17 g of soy protein from ISP did not produce changes in serum cholesterol that were significantly different from those of a cow's milk control diet. Among subjects whose baseline total cholesterol was above the 90th percentile, Mercer et al. (Ref. 49) found that the soy protein diet resulted in a decrease from baseline in mean total cholesterol of 4 percent and a level 9 percent lower (16 mg/dL; $p<0.05$) than the level at the end of the cow's milk control period. LDL-cholesterol did not differ significantly between ISP and cow's milk diets for all subjects or for the subset of subjects with the highest initial total cholesterol levels.

Shorey et al. (Ref. 54) found diets with 57 g of soy protein as ISP was associated with a statistically significant decrease from baseline in total cholesterol of 7 percent ($p=0.027$); however, these values were 6 mg/dL higher than change from baseline values obtained from the control group. LDL-cholesterol was not measured in this study. Although the two diets were well matched for saturated fat and cholesterol, interpretation of these findings is complicated by the fact that body weight was significantly decreased in both groups of subjects ($p<0.004$). Subjects who showed a significant hypocholesterolemic response on either diet were those who substantially reduced their customary protein and fat intakes on the experimental diets. In contrast to other studies, subjects in this study with lower baseline values experienced more pronounced reductions in total cholesterol level.

HDL-cholesterol was also measured in these three studies. Changes were small and not statistically significant in two studies (Refs. 37 and 49), but HDL-cholesterol was significantly decreased from baseline values by 15 percent in one study (Ref. 54). (This latter study had a number of anomalous results.)

Each of these three studies fed soy protein in experimental diets as ISP (Refs. 37, 49, and 54). With a diet containing a very high level (99 g) of soy protein from this source (Ref. 37), statistically significant differences in both total and LDL-cholesterol were reported. Results were less consistent with a relatively low level of soy protein (17 g) (Ref. 49). An intermediate level of soy protein (57 g) was found to be ineffective in lowering total cholesterol in the study of Shorey et al. (Ref. 54).

c. *Summary—Normocholesterolemic subjects.* Five studies examined the effects of soy protein in normocholesterolemic subjects (Refs. 30, 36, 58, 59, and 53). The study of Carroll et al. (Ref. 30) found plasma total cholesterol was significantly lower (-10 mg/dL) when a soy protein diet (low in saturated fat and cholesterol and providing an estimated 44 g soy protein as ISP) was consumed as compared with a mixed protein control diet ($p<0.05$). LDL-cholesterol was not measured. Giovannetti et al. (Ref. 36) examined the effects of soy protein as ISP (66 to 80 g of soy protein depending on energy intake) in both high- and low-fat diets. Changes in total and LDL-cholesterol with the soy protein diets were not statistically significantly different from changes with the corresponding control diets, regardless of fat content. The magnitude of reduction in serum total cholesterol with soy protein was similar on the high-fat and low-fat diets, 10 percent and 9 percent, respectively. Substitution of soy protein caused reductions in LDL-cholesterol levels during the high-fat diet in 11 of 12 subjects and during the low-fat diet in 9 of 12 subjects.

Van Raaij et al. (Ref. 58) tested the effects of ISP using three diets high in total fat, saturated fat, and cholesterol that differed in protein composition with 65 percent of the total protein comprising either soy protein (54 g), or casein, or an approximately 2:1 mixture of casein (36 g):soy (17 g). In the group consuming the soy protein diet, the decrease in total serum cholesterol (-2 percent) was not statistically significant, but the decrease in LDL-cholesterol (-8 percent) was statistically significant ($p<0.05$). In addition, decreases in LDL-cholesterol were significantly greater with the soy protein diet compared to changes with the casein diet ($p<0.05$).

In a trial with both normocholesterolemic and moderately hypercholesterolemic subjects, Van Raaij et al. (Ref. 59) tested both ISP and SPC (each providing an average of 55 g of soy protein) compared to a casein control in diets high in total fat, saturated fat, and cholesterol. Serum total cholesterol was decreased from baseline by 4 percent and LDL-cholesterol was decreased by 3 percent on the ISP diet. These changes were statistically significantly different from those on the SPC diet ($p<0.05$) but not significantly different from those on the casein diet. When SPC was used as the protein source, total cholesterol was not altered and LDL-cholesterol was increased by 6 percent compared to

baseline. None of these changes in blood lipids from baseline or differences between the casein and SPC diets was statistically significant. Interpretation of this study is complicated by differential weight loss on the experimental diets (weight loss was greatest in the casein group) and differential fiber intake.

Sacks et al. (Ref. 53) studied the effects of 27 g of protein consumed daily as ISP or casein incorporated into muffins and oatmeal, in diets very low in saturated fat and cholesterol in adults who were strict vegetarians. Not unexpectedly, given the very low baseline lipid concentrations and very low dietary fat and cholesterol intake, no statistically significant changes or differences in total cholesterol or LDL-cholesterol or HDL-cholesterol were observed from consumption of either soy protein or casein.

HDL-cholesterol was measured in four of these studies, with statistically significant increases associated with soy protein intake found in two (Refs. 58 and 59) and no statistically significant changes in two (Refs. 36 and 53).

Effects of soy protein on total and LDL-cholesterol were less consistent in normocholesterolemic subjects than in moderately hypercholesterolemic subjects. As ISP, 44 g of soy protein was effective in statistically significantly lowering total cholesterol in one study (Ref. 30), and 54 g statistically significantly lowered LDL-cholesterol in one study (Ref. 58). With very low initial blood lipid levels, the impact of dietary changes appears to be lessened.

d. *Summary—Subjects consuming hypocaloric diets.* Bosello et al. (Ref. 29) and Jenkins et al. (Ref. 43) both studied the hypocholesterolemic effects of soy protein versus casein in the context of hypocaloric diets fed to obese persons to achieve significant weight reduction. In Bosello et al. (Ref. 29), total cholesterol and LDL-cholesterol in the soy group (which consumed 27 g of soy protein) were both 16 percent lower compared to baseline ($p<0.01$). Compared to the casein control group, total cholesterol was 20 mg/dL lower ($p<0.01$) and LDL-cholesterol was 16 mg/dL lower ($p<0.01$) in the soy protein group. Jenkins et al. (Ref. 43) found that statistically significant decreases from baseline in total cholesterol of 10 percent ($p<0.05$) and in LDL-cholesterol of 17 percent ($p<0.05$) occurred only during the period when the soy protein formula (which provided 17 g of soy protein) was ingested. The levels of total and LDL-cholesterol achieved with ingestion of soy protein were, respectively, 10 mg/dL and 8 mg/dL lower with the soy protein diet compared with casein diet. Neither the conventional hypocaloric diet nor the casein formula hypocaloric diet resulted in statistically significant decreases in total or LDL-cholesterol despite weight loss.

HDL-cholesterol was decreased in both groups at the end of the first study (Ref. 29); however, only the casein group's values were significantly ($p<0.01$) different from baseline. Additionally, the decrease in HDL-cholesterol in the casein group was significantly($p<0.01$) greater than that observed in the soy protein group. In the second study (Ref. 43), HDL-cholesterol levels were not significantly affected by dietary treatment.

These two studies (Refs. 29 and 43) demonstrated decreases in both total and LDL-cholesterol levels during hypocaloric diets that provided relatively low amounts (27 and 17 g, respectively) of soy protein.

2. Studies of Subjects with Type II and Familial Hypercholesterolemia (Mean Total Cholesterol Level>300 mg/dL)

Ten studies (Refs. 33, 35, 46, 55, 56, 60, 64, 34, 42 and 45 (1 trial), and 63) of subjects with severe (type II or familial) hypercholesterolemia (mean total cholesterol level>300 mg/dL) are summarized in Table 2 of this document and discussed in section III. C.2 of this document. Seven report results in adults (Refs. 33, 35, 46, 55, 56, 60, and 64) and three in children (Refs. 34, 42 and 45 (1 trial), and 63).

a. *Studies in adults.* Sirtori et al. (Ref. 55) reported a decrease of 21 percent in both total ($p<0.001$) and LDL-cholesterol ($p<0.01$) with soy protein consumption in adults with type II hyperlipoproteinemia. Total intake of soy protein, as a textured protein isolate, was not given but was approximately 13 percent of kcal or 60 g. The order in which the soy protein diet was consumed did not affect the results and the changes in total plasma cholesterol level far exceeded those expected based on the small differences in ratio of polyunsaturated to saturated fat and cholesterol content of the diets. When the control diet was fed first, statistically significant changes in total and LDL-cholesterol were not observed; when it was fed second, total cholesterol increased statistically significantly. These investigators also reported that addition of 500 mg cholesterol in a small, similar study showed that level of dietary cholesterol did not modify the cholesterol-lowering effect of soy protein observed.

Descovich et al. (Ref. 33) examined the effects of soy protein replacing animal protein in adults with stable type IIa and IIb hypercholesterolemia. Subjects consumed an average of 47 g of soy protein in the form of texturized soy protein (from SF) mixed into main dishes. During the baseline control period with a lipid-lowering diet, plasma total cholesterol decreased 3 percent from baseline levels. When soy protein was substituted for animal protein in the second dietary period, total cholesterol decreased by 24 percent ($p<0.001$) at the end of the experimental period. All of the subjects demonstrated decreases in total cholesterol of at least 10 percent. Upon returning to the control diet, plasma total cholesterol increased 7 percent in men and 9 percent in women. LDL-cholesterol also showed a statistically significant decrease, by 31 percent from baseline levels ($p<0.001$), while HDL-cholesterol remained stable over the course of the soy protein diet (+0.4 mg/dL for men and +1.0 mg/dL for women).

Wolfe et al. (Ref. 64) tested the effects of ingesting 47 g of soy protein in the form of ISP incorporated into main dishes and a beverage, while animal proteins were incorporated into similar main dishes and cow's milk was consumed during the mixed protein control period. Baseline lipid concentrations were not given; however, mean total cholesterol concentrations were 280 mg/dL after the soy protein treatment and 321 mg/dL after the control treatment. Thus, compared with the control period, serum total cholesterol was 41 mg/dL lower with ingestion of soy protein ($p<0.05$) and LDL-cholesterol was 43 mg/dL lower ($p<0.05$). HDL-cholesterol was similar at the end of the soy protein and control dietary periods.

Sirtori et al. (Ref. 56) conducted a trial that examined the effects of complete and partial substitution of soy protein as SF (60 g or 30 g of soy protein), in a lecithinated textured vegetable protein, for animal protein in adults with type IIa hyperlipoproteinemia. Plasma cholesterol levels were not altered during the first control diet period. Total plasma cholesterol levels were significantly ($p<0.01$) reduced in both periods of soy protein administration, by 18.6 percent when 60 g were consumed and by 13.2 percent when 30 g were consumed. Serum cholesterol values returned almost completely to baseline during the second control period. Changes in LDL-cholesterol levels were superimposable to those of total cholesterol. HDL-cholesterol levels tended to increase during the two soy periods and decline to baseline levels during the second control period, but these differences were not statistically significant.

Verillo et al. (Ref. 60) compared the effects of substituting 31 g of soy protein

as SF for animal protein versus the addition of 31 g of soy protein as SF to animal protein in adults with stable type II hypercholesterolemia. Slight, nonsignificant decreases in total and LDL-cholesterol levels were reported during the initial control period. Among subjects who consumed the soy-substituted diet, serum total cholesterol declined significantly ($p<0.01$) from the end of the baseline diet by 35 percent and 23 percent in type IIa and type IIb patients, respectively. LDL-cholesterol declined significantly ($p<0.01$) from the end of the baseline diet by 44 percent and 23 percent in type IIa and type IIb patients, respectively. HDL-cholesterol increased 8 percent, but this change did not reach statistical significance. The same hypocholesterolemic effects were also seen among subjects who consumed the soy-added diet. A comparison of results at the ends of the soy periods versus the means of final values of both control periods showed differences in serum lipids that were of similar magnitudes, but not statistically significantly different. The hypocholesterolemic response to soy was significantly related to cholesterol level at entry to the study.

The study of Lovati et al. (Ref. 46) in adults with type II hypercholesterolemia provided soy protein as SF, from textured vegetable protein, in amounts varying between 70 and 105 g depending upon total energy consumed. Plasma total and LDL-cholesterol levels both decreased by 16 percent ($p<0.01$) during the period when soy protein diet was ingested compared with levels at the start of the experimental period. Changes in these parameters on the control diet were negligible. HDL-cholesterol concentrations were not documented but were reported to be unchanged on the two diet regimens.

Gaddi et al. (Ref. 35) examined the effects of replacing animal protein and non-soy plant protein with approximately 75 g soy protein from SF in a lecithinated textured soy protein, in adults with familial hypercholesterolemia. The control diet did not affect plasma lipid values during the initial experimental period. After ingestion of the soy protein diet, plasma total cholesterol decreased by 21 percent ($p<0.0l$) and LDL-cholesterol decreased by 25 percent ($p<0.01$) from levels measured after the first control diet period. HDL-cholesterol levels were unchanged. Plasma total and LDL-cholesterol returned to concentrations close to those at baseline following resumption of the control diet during the third experimental period.

b. *Studies in children.* Gaddi et al. (Ref. 34) studied children from 3 to 12 years of age with familial hypercholesterolemia. After a baseline dietary period during which subjects consumed a low lipid diet, soy protein in the form of SF replaced a portion of the animal protein intake. No significant changes in plasma lipids occurred over the duration of the baseline dietary period. Plasma total cholesterol at the end of the soy protein dietary period was 20 percent lower than at the end of the baseline dietary period ($p<0.001$). LDL-cholesterol was 24 percent lower ($p<0.01$) and HDL-cholesterol level was not affected.

Widhalm et al. (Ref. 63) examined the lipid-lowering effects of incorporating ISP (13.5–18 g protein) into food and beverage recipes in children with familial hypercholesterolemia. After the soy protein dietary periods, plasma total cholesterol was 16 percent lower ($p<0.005$) than baseline levels in the group that consumed the soy protein diet before the control diet and 18 percent lower ($p<0.001$) in the group that consumed soy last. LDL-cholesterol was also statistically significantly decreased ($p<0.001$) by 22 percent in the first group and 25 percent in the second group. During the control diet periods, total and LDL-cholesterol levels were reduced by 8 percent and 7 percent in the first group and by 12 percent and 13 percent in the second group, respectively. HDL-cholesterol was not statistically significantly affected by dietary treatment.

Laurin et al. (Ref. 45) and Jacques et al. (Ref. 42) both reported on a test of the lipid-lowering effects of ISP (28 g of soy protein) in children, 6 to 12 years of age, with familial hypercholesterolemia. Children consumed either a conventional low fat diet with 2-percent cow's milk or the same low fat diet with a soy-based beverage made with 2-percent butterfat substituted for the 2-percent cow's milk. Comparisons between the two treatment groups indicated that total and LDL-cholesterol levels were not altered. HDL-cholesterol level was increased 4 percent ($p<0.04$) with soy protein compared to cow's milk.

c. *Summary—Subjects with Type II or familial hypercholesterolemia.* Each of the ten studies of the effects of soy protein in subjects with severe (type II or familial) hypercholesterolemia employed diets low in saturated fat and cholesterol (Refs. 33, 35, 46, 55, 56, 60, 64, 34, 42 and 45 (1 trial), and 63), and most subjects had been consuming such a therapeutic diet prior to the study. Six of the ten trials were conducted by workers from the same group (Refs. 55, 33, 56, 46, 35, and 34). Most used SF in TVP as the source of soy protein, in amounts ranging from 14 to 105 g (Refs. 33, 56, 60, 46, 35, 34, and 63); the remainder used ISP as the source of soy protein, in amounts ranging from 28 to 60 g (Refs. 55, 64, and 42 and 45 (1 trial)). In all the studies conducted in adults (Refs. 33, 35, 46, 55, 56, 60, and 64), using both fixed sequence and crossover study designs, large and statistically significant decreases in both total and LDL-cholesterol levels were observed in response to consumption of diets containing soy protein. In the six trials in which they were measured, HDL-cholesterol levels were either not statistically significantly affected (Refs. 33, 64, 60, 46, and 35) or were statistically significantly increased (Ref. 56).

In the studies conducted in children with familial hypercholesterolemia, two of the three trials demonstrated statistically significant decreases from baseline levels in total and LDL-cholesterol during the periods when soy protein diets were consumed (Refs. 34 and 63). However, interpretation of these findings is complicated by uncertainty about the control of intake of other dietary constituents, especially saturated fat and cholesterol. In the study reported by Laurin et al. and Jacques et al. (Refs. 45 and 42), differences in these dietary components were controlled. With diets providing 12 percent of kcal from saturated fat and 163 to 180 mg of cholesterol, plasma total and LDL-cholesterol levels were not statistically significantly different, but the HDL-cholesterol level was statistically significantly higher, on the soy diet than on the cow's milk diet.

3. Epidemiologic Evidence on Soy Protein and Blood Lipids

The petitioner also submitted one epidemiologic study by Nagata et al. (Ref. 65) that described the relationship between soy product and soy protein intake and serum total cholesterol concentrations in Japanese men and women. Participants in this study were 1,242 men and 3,596 women from the Takayama Study, a prospective cohort study on the impact of diet and lifestyle on cancer, who attended the annual health checkup program between April and October 1992. Data regarding food intake were collected by a validated, semiquantitative food frequency questionnaire (FFQ). Blood samples were also taken for each subject and analyzed for total cholesterol concentrations. Soy products identified in the FFQ included tofu (plain, fried, deep-fried, or dried), miso, fermented soybeans, soy milk, and boiled soybeans. The estimated amount of soy protein consumed from these sources was 8.00 ± 4.95 g/day for men and 6.88

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± 4.06 g/day for women. The authors noted that their FFQ may underestimate soy product intake; they also estimated that 4 to 9 g additional soy protein may be consumed daily from soy protein added to meats and fish pastes that was not accounted for in the FFQ. Thus, analyses were presented in terms of relative soy protein intake. Using energy-adjusted means for quartiles of soy protein intake, a statistically significant negative trend was observed for lower serum total cholesterol concentrations with higher levels of soy protein intake ($p<0.0001$ for both men and women). The analysis for men was controlled for age, smoking status, and total energy, protein, and fat intake. The analysis for women was controlled for age, menopausal status, body mass index, and intake of energy and vitamin C. Further adjustments for physical activity, coffee and tea consumption, and intakes of cholesterol, carbohydrates, fiber, and vitamin E were performed and results were not affected. Between the 1st and 4th quartiles in men, total cholesterol was lower by 12 mg/dL with a 9.6-g increase in soy protein intake. For women, total cholesterol was lower by 9 mg/dL with a 7.9-g increase in soy protein intake.

4. Meta-analysis of Studies of Soy Protein and Blood Lipids

The petitioner presented the results of a 1995 meta-analysis (Ref. 66) of the effect of soy protein on blood lipids. While the role of "research synthesis" studies, including meta-analyses, is of interest, it is as yet unresolved. The appropriateness of such analytical techniques to establish diet/health relationships in particular is not known. There are on-going efforts to identify criteria and critical factors to consider in both conducting and using such analyses, but this science is still emerging. Therefore, the meta-analysis did not weigh heavily within the body of evidence for this relationship.

In summary, Anderson et al. (Ref. 66) pooled data from studies that were deemed comparable in methodology in order to perform a meta-analysis of the effect of soy protein on blood lipids. Of the 37 publications identified by these investigators that presented data on soy protein and lipid changes, 29 met the criteria of using either ISP or texturized soy protein as the soy protein source, employing either a parallel or crossover design, and providing initial or baseline cholesterol values to allow calculation of decreases. These 29 publications reported the findings from 38 separate trials. Each of these publications was included in the petition and was considered for review individually by FDA as described previously. Thirty-four of the trials were conducted among adults and four among children. Study samples included individuals with normal blood cholesterol levels as well as those with mildly to severely elevated levels. Twelve of the trials were conducted in subjects with familial hypercholesterolemia.

The specific analytical approach is described in Anderson et al. (66). Based on examining the difference from baseline between the soy protein and control protein groups, the analysis indicated that soy protein consumption statistically significantly decreased total cholesterol for the pooled data by 9.3 percent and LDL-cholesterol by 12.9 percent. HDL-cholesterol was increased by a net of 2.4 percent with soy protein ingestion, but this change was not statistically significant. This analysis also suggested that the initial level of serum total cholesterol was the most important determinant of serum lipid response to soy protein. When changes in total and LDL-cholesterol were examined by quartile of baseline cholesterol concentration, a progressively greater magnitude of change was observed from the lowest to the highest quartiles. Additional analyses indicated that the type and amount of soy protein consumed and type of background diet did not substantially influence the results.

To examine further the effects of the type and amount of soy protein, an analysis was performed using changes observed with the soy diet alone instead of net changes as the outcome variable. Initial serum cholesterol concentration was also the major determinant of effects in this model, but statistically significant effects ($p=0.02$) were also obtained for amount of soy protein. This model predicted, after adjustment for initial values and other variables, serum total cholesterol decreases of 8.9 mg/dL with 25 g/day soy protein, 17.4 mg/dL with 50 g/day of soy protein, and 26.3 mg/dL with 75 g/day of soy protein.

5. Studies of the Role Soy Isoflavones

Isoflavones are a class of naturally-occurring compounds with weak estrogenic/antiestrogenic activities that are present in a wide variety of plants. The 12 major isomers of naturally-occurring isoflavones in soybeans are genistein, genestin, 6"-*O*-acetylgenistin, 6"-*O*-malonylgenestin, diadzein, diadzin, 6"-*O*-acetyldiadzin, 6"-*O*-malonyldiadzin, glycitein, glycitin, 6"-*O*-acetylglycitin, and 6"-*O*-malonyglycitin. The levels of isoflavones in soybeans are known to vary with cultivar and growing conditions. Soy isoflavones are retained to variable degrees in soy protein products and soy foods, depending on the particular processing techniques used. For example, essentially all of the isoflavones in soy protein products can be extracted by alcohol washing, and their levels can also be reduced by repeated aqueous washings and some texturization techniques. Because of the estrogenic activities of the soy isoflavones, they have been hypothesized to contribute to the hypocholesterolemic effect of soy protein.

The petitioner submitted an unpublished study by Crouse et al. (Ref. 31, documented in Ref. 1 with corrections noted in Ref. 2) that examined the effect of soy protein containing different levels of isoflavones in hypercholesterolemic men and women (summarized in Table 1 of this document). Potential subjects were provided instruction in an NCEP Step 1 diet and followed this diet for 1 month. Subjects with qualifying serum lipid levels (LDL-cholesterol >140 mg/dL) were given a casein drink containing 25 g protein to consume in place of other protein in the NCEP Step 1 diet. Subjects compliant with this regimen were then randomized into one of five treatment groups and baseline blood lipid values were obtained. The treatment groups received 25 g protein from ISP prepared from soy with different levels of isoflavones (either 1.0, 1.6, or 2.5 mg total aglycone isoflavones/g protein), or 25 g protein from alcohol-washed ISP that contained essentially no isoflavones (0.2 mg total aglycone isoflavones/g protein) or 25 g protein from casein (no isoflavones) in beverages for 9 weeks. Dietary intake was assessed at baseline and at the end of the study. Diet was reported to be stable and comparable between groups throughout the study, with 9 percent of energy derived from saturated fat. Body weight was also stable, with no differences between groups at baseline or at the end of the trial. Results indicated the ISP containing the highest level of isoflavones significantly lowered total ($p<0.05$) and LDL-cholesterol ($p<0.05$), by 4 percent and 6 percent, respectively, while HDL-cholesterol was not altered (Table 1). Furthermore, in subjects with LDL-cholesterol in the top half of the study population, serum total and LDL-cholesterol were reduced by 9 percent ($p<0.03$) and 12 percent ($p<0.03$), respectively, by the ISP with the highest isoflavone content, and by 8 percent ($p<0.03$) and 9 percent ($p<0.03$), respectively by the ISP with the second highest isoflavone content, while HDL-cholesterol concentrations were maintained.

Baum et al. (Ref. 28) also investigated the impact in soy protein containing different levels of isoflavones on cholesterol lowering and examined whether changes in blood lipids were lasting or transient. Subjects were moderately hypercholesterolemic women, who were at least 1 year since last menstrual period, and were not taking medications known to alter lipid or bone metabolism. Following a 2-week run-in period during which subjects consumed an NCEP Step I diet, subjects were randomly assigned to one of three treatment groups consisting of 40 g protein from either ISP with 1.4 mg total aglycone isoflavones/g protein, ISP with 2.3 mg total aglycone isoflavones/g protein, or casein/nonfat dry milk for the 24-week treatment period. Although the adjusted mean difference in total serum cholesterol level was not statistically significantly different in the soy groups and the control group, there was a significant reduction of 8 to 9 percent in non-HDL (LDL plus VLDL) cholesterol in both of the ISP treatment groups (p=0.04) compared to the control group. HDL-cholesterol was also significantly increased in both soy groups compared to the control. Body weight remained stable, and dietary intake was assessed and was reported to be similar among treatment groups although details were not reported.

The petitioner concluded that these two studies (Refs. 31 and 28) provided evidence that the hypocholesterolemic effect of soy protein is dependent on processing techniques that enable retention of the naturally occurring isoflavones in conjunction with the soy protein. As additional supportive evidence for this conclusion, the petitioner cited studies of the lipid-lowering effects of soy protein with naturally occurring isoflavones in nonhuman primates (Refs. 22 and 70). In these experiments, the effects of diets including ISP with naturally occurring isoflavones compared with those of diets containing either casein or alcohol-washed ISP stripped of essentially all naturally occurring isoflavones were examined in two species of monkeys. The studies demonstrate significant depressions in total and non-HDL (LDL plus VLDL) cholesterol levels in response to diets containing unextracted ISP as compared with the diets containing casein or alcohol-washed ISP. As evidence that soy isoflavones alone, in the absence of soy protein, are ineffective in lowering blood lipids, the petitioner cited the study of Nestel et al. (Ref. 71). In that study, consumption of a tablet containing 80 mg of total aglycone isoflavones (mainly genistein and diadzein) had no impact on blood lipid profiles in postmenopausal women.

Although the petitioner suggested, based on the studies of Crouse et al. (Ref. 31) and Baum et al. (Ref. 28), that isoflavone content exceeding a certain threshold was a useful marker for soy protein that would be effective in lowering blood lipid levels, FDA has tentatively concluded that the evidence is not sufficient to establish that the presence of isoflavones accounts for or is related to the effect on blood lipids. The agency notes that there are a variety of methods for processing soy that could give rise to variable amounts of naturally-occurring isoflavones in soy protein products, and this is a possible hypothesis for explaining some of the variability in the results of human intervention studies. However, with two exceptions (Refs. 31 and 28), the studies reviewed and described in this document did not include concurrent measures of the isoflavone content of the soy protein products studied. More importantly, a recent letter to the editor from Sirtori et al. (Ref. 72), which was not included in the petition, contradicts the conclusions of Crouse et al. (Ref. 31) and Baum et al. (Ref. 28). These researchers (Ref. 72) reported that the TVP fed in their studies contained essentially no isoflavones and still considerable impact on LDL-cholesterol was observed. These studies (Refs. 33, 56, 46, 35, and 34) were conducted in subjects with type II hypercholesterolemia and all showed large and significant decreases in blood total and LDL-cholesterol levels.

Given the limited number of studies and the contradictory outcomes, FDA is not persuaded that the isoflavone component of soy protein is a relevant factor to the diet-disease relationship. Rather, FDA tentatively concludes that the evidence from a wide range of studies using differently processed soy protein is supportive of a relationship between soy protein per se and reduced risk of CHD.

6. Summary

In five (Refs. 31, 28, 27, 51, and 44) of seven (Refs. 31, 28, 27, 51, 44, and 40 (2 trials)) well-controlled studies of hypercholesterolemic subjects consuming low saturated fat and low cholesterol diets, soy protein intake was associated with statistically significant decreases in total and/or LDL-cholesterol levels, either in the entire study populations or subsets of subjects with higher initial blood lipid levels. Levels of HDL-cholesterol were found either to be unchanged (Refs. 31, 27, 51, and 40 (2 trials)) or slightly but statistically significantly increased (Refs. 28 and 44) by consumption of diets containing soy protein.

Levels of soy protein as ISP found to be effective in lowering total and LDL-cholesterol levels, in the context of a diet low in saturated fat and cholesterol, ranged in these studies from 25 to 50 g (Refs. 31, 28, 27, and 51). As whole soybean milk, 31 g of soy protein lowered LDL-cholesterol only in the subset of subjects with the highest initial LDL-cholesterol levels and LDL/HDL-cholesterol levels (Ref. 44). Diets providing 50 g of soy protein as SF did not cause significant changes from baseline for any of the blood lipids, but the decrease in total cholesterol observed after ingestion of SF was significantly greater than that on the control diet of nonfat dry milk and cellulose (Ref. 51). Diets providing 27 g of soy protein as SF in a textured product had no significant effects on blood lipid levels compared to a control diet, and a higher level (62 g) significantly lowered total cholesterol only in the experimental group fed the soy protein diet first (Ref. 40).

Three intervention studies reported on effects of soy protein in hypercholesterolemic subjects consuming "usual" diets that were generally high in total fat, saturated fat, and cholesterol (Refs. 37, 49, and 54). In each of these three studies, soy protein was fed in experimental diets as ISP (Refs. 37, 49, and 54). With a diet containing a very high level (99 g) of soy protein from this source (Ref. 37), statistically significant differences in both total and LDL-cholesterol were reported. Results were less consistent, showing a significant decrease in total cholesterol only in subjects with the highest baseline levels, with a relatively low level of soy protein (17 g) (Ref. 49). An intermediate level of soy protein (57 g) was found to be ineffective in lowering total cholesterol in the study of Shorey et al. (Ref. 54). (This latter study had a number of anomalous results.) HDL-cholesterol was also measured in these three studies. Changes were small and not statistically significant in two studies (Refs. 37 and 49), but HDL-cholesterol was statistically significantly decreased from baseline values by 15 percent in one study (Ref. 54).

Five intervention studies examined the effects of soy protein in normocholesterolemic subjects (Refs. 30, 36, 58, 59, and 53). Effects of soy protein on total and LDL-cholesterol were less consistent in normocholesterolemic subjects than in hypercholesterolemic subjects. As ISP, 44 g of soy protein was effective in significantly lowering total cholesterol in one study (Ref. 30) and 54 g

significantly lowered LDL-cholesterol in one study (Ref. 58). With very low initial blood lipid levels seen in some of these studies, the impact of dietary changes is considerably lessened. HDL-cholesterol was measured in four of these studies, with statistically significant increases associated with soy protein intake found in two (Refs. 58 and 59) and no statistically significant changes in two (Refs. 36 and 53).

Two intervention studies (Refs. 29 and 43) examined the hypocholesterolemic effects of soy protein versus casein in the context of hypocaloric diets fed to obese persons to achieve significant weight reduction. These two studies (Refs. 29 and 43) demonstrated large decreases in both total and LDL-cholesterol levels during hypocaloric diets that provided relatively low amounts (27 and 17 g, respectively) of soy protein. HDL-cholesterol was decreased in both soy and casein groups at the end of the first study (Ref. 29); however, only the casein group's values were significantly different ($p<0.01$) from baseline. Additionally, the decrease in HDL-cholesterol in the casein group was significantly greater ($p<0.01$) than that observed in the soy protein group. In the second study (Ref. 43), HDL-cholesterol levels were not significantly affected by dietary treatment.

In all seven intervention studies conducted in adults with type II or familial hypercholesterolemia (Refs. 33, 35, 46, 55, 56, 60, and 64), large and statistically significant decreases in both total and LDL-cholesterol levels were observed in response to consumption of diets containing soy protein. In the six trials in which they were measured, HDL-cholesterol levels were either not statistically significantly affected (Refs. 33, 64, 60, 46, and 35) or statistically significantly increased (Ref. 56). Each of these studies in adults with severe (type II or familial) hypercholesterolemia employed diets low in saturated fat and cholesterol (Refs. 33, 35, 46, 55, 56, 60, and 64) and most subjects had been consuming such a therapeutic diet prior to the study. Most trials used SF in TVP as the source of soy protein, in amounts ranging from 31 to 105 g (Refs. 33, 56, 60, 46, and 35); the remainder used ISP as the source of soy protein, in amounts ranging from 28 to 60 g (Refs. 55 and 64). Two of the three trials conducted in children with familial hypercholesterolemia demonstrated significant decreases from baseline levels in total and LDL-cholesterol during the periods when soy protein diets were consumed (Refs. 34 and 63).

Evidence from one epidemiologic study (Ref. 65) supported a significant negative trend for lower serum total cholesterol concentrations with higher levels of soy protein intake ($p<0.0001$ for both men and women). Between the first and fourth quartiles in men total cholesterol was lower by12 mg/dL with a 9.6-g increase in soy protein intake. For women, total cholesterol was lower by 9 mg/dL with a 7.9-g increase in soy protein intake.

Based on these studies, FDA tentatively finds there is scientific evidence for a consistent, clinically significant effect of soy protein on blood total and LDL-cholesterol. The hypocholesterolemic effect of soy protein is seen in addition to the effects of a low saturated fat and low cholesterol diet. The degree of lowering of blood total and LDL-cholesterol is consistently and highly dependent on initial levels, within and across studies of subjects with normal, moderately elevated, and severely elevated blood lipid levels, with persons having higher blood lipid levels showing greater effects. Soy protein consistently causes only statistically nonsignificant effects or slight elevations in HDL-cholesterol levels. The intervention studies suggest that a minimum level of approximately 25 g of soy protein is needed to have a clinically significant effect on total and LDL-cholesterol levels. These conclusions, drawn from the review of the individual, well controlled studies, are also supported by the meta-analysis of Anderson et al. (66).

IV. Decision To Propose a Health Claim Relating Soy Protein to Reduction in Risk of CHD

The petition provided and FDA reviewed information on pertinent human studies that evaluated the effects on serum cholesterol and LDL-cholesterol levels from dietary intervention with soy protein in subjects with normal to elevated serum cholesterol levels.

FDA tentatively concludes that, based on the totality of publicly available scientific evidence, there is significant scientific agreement to support the relationship between consumption of soy protein included in a diet low in saturated fat and cholesterol and the risk of CHD. The strongest evidence for the effect of soy protein on the risk of CHD is provided by studies that measured the effect of dietary soy protein consumption on the two major risk factors for CHD, total and LDL-cholesterol.

In most intervention trials in subjects with total cholesterol<300 mg/dL, soy protein was found to reduce total and/or LDL-cholesterol levels to a clinically significant degree (Refs. 31, 28, 27, 51, 44, 37, 49, 30, 58, 29, and 43). Moreover, HDL-cholesterol levels were unchanged (Refs. 31, 27, 51, 40, 37, 49, 36, and 53) or slightly increased (Refs. 28, 44, 58, and 59). In some cases (Refs. 27, 44, and 49), decreases in total and LDL-cholesterol were statistically significant only in subsets of subjects with the higher initial blood lipid levels. Results in normocholesterolemic subjects (Refs. 30, 36, 58, 59, and 53) were more variable than in hypercholesterolemic subjects (31, 28, 27, 51, 44, 40, 37, 49, 54, 29, and 43). The outcome of an epidemiologic study (Ref. 65) also supported a relationship between higher levels of soy protein intake and lower blood lipid levels.

Most of the studies in subjects with total cholesterol<300 mg/dL used low saturated fat and low cholesterol diets (Refs. 31, 28, 27, 51, 44, 30, 36, 53, 29, and 43), but some used "usual" diets (Refs. 37, 49, 54, 36, 58, and 59). Although soy protein was found to lower blood lipid levels in some of the studies using "usual" diets, hypocholesterolemic effects of soy protein were more consistently observed with diets low in saturated fat and cholesterol. In some studies (especially those without run-in periods) (Refs. 40 and 54), the control low saturated fat and low cholesterol diets induced significant decreases in blood lipid levels making it difficult to detect any additional effect of soy protein. At the same time, in two studies in which soy protein containing hypocaloric diets were compared to similar diets without soy (Refs. 29 and 43), only the soy protein containing diets induced significant changes in blood lipid levels. Given the variability of amounts and forms in which soy protein was provided in the diets, the response of blood lipid levels appears robust.

Data from studies of adults with type II and familial forms of hypercholesterolemia (and total cholesterol levels in excess of 300 mg/dL) (Refs. 55, 33, 64, 56, 64, 46, and 35) were more consistent than studies in persons with lower blood lipid levels in showing large and statistically significant decreases in total and LDL-cholesterol, accompanied by no changes or slight increases in HDL-cholesterol levels. Nearly all of the subjects in these trials consumed low saturated fat and low cholesterol diets during the studies and had consumed such diets prior to studies with soy protein.

Soy protein was tested in a variety of food forms (as soy beverages, formulated into meat and dairy product analogs, added to soups, or baked into foods, such as muffins and breads) but produced fairly consistent results

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regardless of the food form fed and apparent differences in processing techniques.

FDA tentatively concludes, based on the evidence submitted and reviewed, that soy protein, included in a diet low in saturated fat and cholesterol, can lower blood total and LDL-cholesterol levels, without adversely affecting HDL-cholesterol levels. The agency also tentatively concludes that the effect is due to soy protein per se and is not consistently related to the presence or absence of isoflavones. The intervention studies suggest that a minimum level of approximately 25 g of soy protein is needed to have a clinically significant effect on total and LDL-cholesterol levels.

Based on the totality of the scientific evidence presented in the petition, the agency tentatively concludes that there is significant scientific evidence to show that soy protein, included in a diet low in saturated fat and cholesterol, will help reduce serum lipids, and that such reductions may reduce the risk of CHD. In the majority of clinical studies evaluating soy products, total and LDL-cholesterol were the lipid fractions shown to be the most affected by soy protein intervention. As part of a diet low in saturated fat and cholesterol, regular consumption of soy protein, in an amount to provide 25 g/day, resulted in reduced total and LDL-cholesterol levels in subjects with normal and elevated serum cholesterol levels. As stated in section III.A of this document, Federal Government and other reviews have concluded that there is substantial epidemiologic and clinical evidence that high blood levels of total cholesterol and LDL-cholesterol represent major contributors to CHD (56 FR 60727 at 60728, and Refs. 4 through 7). Dietary factors that decrease total cholesterol and LDL-cholesterol will affect the risk of CHD (Refs. 4 through 7).

Given all of this evidence, the agency is proposing a health claim on the relationship between soy protein and reduced risk of CHD.

V. Description and Rationale for Components of Health Claim

A. Relationship Between Soy Protein and CHD and the Significance of the Relationship

Proposed § 101.82(a) describes the relationship between diets low in saturated fat and cholesterol containing soy protein and the risk of CHD. In proposed § 101.82(a)(1), the agency recounts that CHD is the most common and serious form of CVD, and that CHD refers to diseases of the heart muscle and supporting blood vessels. The proposed section also notes that high blood total and LDL-cholesterol levels are associated with increased risk of developing CHD and identifies the levels of total cholesterol and LDL-cholesterol that would put an individual at high risk of developing CHD, as well as those serum lipid levels that are associated with borderline high risk. This information will assist consumers in understanding the seriousness of CHD.

In proposed § 101.82(a)(2), the agency recounts that populations with a low incidence of CHD tend to have low blood total and LDL-cholesterol levels. It states that these populations also tend to have dietary patterns that are low in total fat, saturated fat, and cholesterol and high in plant foods that contain fiber and other components. This information is consistent with that provided in the authorized health claim for fruits, vegetables, and grain products and CHD (§ 101.77) and so the agency believes that this information provides a basis for a better understanding of the numerous factors that contribute to the risk of CHD and the relationship with soy protein and diets low in saturated fat and cholesterol.

Proposed § 101.82(a)(3) states that diets low in saturated fat and cholesteral may reduce the risk of CHD. The paragraph further states that soy protein, when added to such a diet, may also help reduce the risk of CHD.

Proposed § 101.82(b) describes the significance of the diet-disease relationship. In proposed § 101.82(b)(1), the agency recounts that CHD remains a major public health concern in the United States because the disease accounts for more deaths than any other disease or group of diseases. The claim states that early management of modifiable risk factors for CHD is a major public health goal that can assist in reducing the risk of CHD. This information is consistent with the evidence that lowering blood total and LDL-cholesterol levels reduces the risk of CHD (56 FR 60727, 58 FR 2739, and Refs. 4 through 8).

In proposed § 101.82(b)(2), the significance of the relationship between soy protein and CHD risk factors in context of the total diet is discussed. The agency recounts that many Americans' intakes of saturated fat and cholesterol exceed recommended levels, and it summarizes public health recommendations for the diet (56 FR 60727 at 60738 and § 101.75(b)(3)). This paragraph also states that scientific evidence demonstrates that diets low in saturated fat and cholesterol and that contain soy protein are associated with reduced blood lipids. FDA tentatively concludes that the latter statement is scientifically valid based on the evidence that it has reviewed on this nutrient-disease relationship.

B. Nature of the Claim

In proposed § 101.82(c)(1), FDA is proposing to require that all of the general requirements for health claims set out in § 101.14 be met. This provision is consistent with the provisions of the other specific health claim regulations in 21 CFR part 101, subpart E.

In proposed § 101.82(c)(2)(i), FDA is proposing to authorize a health claim on the relationship between diets that contain soy protein and are low in saturated fat and cholesterol and the risk of CHD. The agency is proposing to do so based on its review of the scientific evidence on this nutrient-disease relationship, which shows that diets that contain soy protein and are low in saturated fat and cholesterol help to reduce total and LDL-cholesterol levels, especially in individuals with elevated blood total cholesterol (Refs. 31, 28, 27, 51, 44, 37, 49, 30, 58, 29, 43, 55, 33, 64, 56, 64, 46, and 35). This result is significant for the risk of heart disease because elevated levels of total and LDL-cholesterol are associated with increased risk of CHD (Refs. 4 through 7).

Most of the scientific evidence for an effect of soy protein on blood lipid levels was provided by studies that used diets low in saturated fat and cholesterol. Although soy protein was found to lower blood lipid levels in some of the studies using "usual" diets (Refs. 37, 49, and 58), hypocholesterolemic effects of soy protein were more consistently observed with diets low in saturated fat and cholesterol.

Moreover, as stated in section V.A of this document, CHD is a major public health concern in the United States, and the totality of the scientific evidence provides strong and consistent support that diets high in saturated fat and cholesterol are associated with elevated levels of blood total and LDL-cholesterol and, thus, CHD (56 FR 60727 at 60737). Dietary estimates for American adults show that the average saturated fat intakes of American adults are about 13 percent of calories, total fat intakes are about 37 percent of calories, and average cholesterol intakes range from 300 to over 400 mg daily for adult men and women (56 FR 60727 at 60738). The current intakes of saturated fat and total fat are thus well in excess of recommended goals of less than 10 percent and 30 percent of calories.

Dietary guidelines from both Government and private scientific bodies conclude that the majority of the American population would benefit from decreased consumption of dietary saturated fat and cholesterol (Refs. 4 through 7). The results of several studies showed that daily consumption of soy protein lowered total cholesterol and LDL-cholesterol, and the effects of dietary intake of soy protein were evident when the diets were low in saturated fat and cholesterol (Refs. 31, 28, 27, 51, 44, 30, 29, and 43). Thus, the agency tentatively finds that it will be more helpful to Americans' efforts to maintain healthy dietary practices if the effect of soy protein on serum lipids is characterized in the context of a diet low in saturated fat and cholesterol.

In § 101.82(c)(2)(i)(A), the agency is proposing to require, consistent with other health claims, that the relationship be qualified with the terms "may" or "might." These terms are used to make clear that not all persons can necessarily expect to benefit from these dietary changes (56 FR 60727 at 60740 and 58 FR 2552 at 2573). The requirement that the claim use the term "may" or "might" to relate the ability of soy protein to reduce the risk of heart disease is also intended to reflect the multifactorial nature of the disease.

In § 101.82(c)(2)(i)(B), the agency is proposing to require, consistent with other authorized health claims, that the terms "coronary heart disease" or "heart disease" be used in specifying the disease. These terms are commonly used in dietary guidance materials, and therefore they should be readily understandable to the consumer (56 FR 60727 at 60740 and 58 FR 2552 at 2573).

In § 101.82(c)(2)(i)(C), the agency is proposing that the claim specify the substance as "soy protein." Based on its review of the scientific evidence submitted with the petition, the agency tentatively concludes that there is significant scientific agreement that diets low in saturated fat and cholesterol that contain soy protein may help to reduce blood total and LDL-cholesterol levels, the major modifiable risk factors for CHD (Refs. 31, 28, 27, 51, 44, 37, 49, 30, 58, 29, 43, 55, 33, 64, 56, 64, 46, and 35). As discussed in section III.C.5 of this document, FDA did not find persuasive the limited and contradictory evidence that soy isoflavones are a relevant factor in the diet-disease relationship persuasive. Therefore, FDA has tentatively concluded that evidence from a wide range of studies supports a relationship between soy protein per se and reduced risk of CHD.

As discussed previously, the agency tentatively finds that for the public to understand fully, in the context of the total daily diet, the significance of consumption of soy protein on the risk of CHD (see section 403(r)(3)(B)(iii) of the act), information about the total diet must be included as part of the claim. Therefore, in § 101.82(c)(2)(i)(D), the agency is proposing to require that the claim include the fact that the effect of dietary consumption of soy protein on the risk of CHD is evident when it is consumed as part of a healthy diet and that, consistent with other authorized health claims, the fat component of the diet be specified as "saturated fat" and "cholesterol." Based on its review of the scientific evidence submitted with the petition, the agency tentatively concludes that there is significant scientific agreement that diets containing soy protein and low in saturated fat and cholesterol are associated with reduced blood total and LDL-cholesterol levels.

Proposed § 101.82(c)(2)(i)(E), consistent with other authorized health claims, requires that the claim not attribute any degree of risk reduction of CHD to consumption of diets low in saturated fat and cholesterol that contain soy protein. None of the studies that the agency reviewed provide a basis for determining the percent reduction in risk of CHD likely from consuming diets that contain soy protein and are low in saturated fat and cholesterol. Also consistent with other authorized claims, proposed § 101.82(c)(2)(i)(F) requires that the claim not imply that consumption of diets low in saturated fat and cholesterol and that contain soy protein is the only recognized means of reducing CHD risk.

Proposed § 101.82(c)(2)(i)(G) requires that the claim specify the daily dietary intake of soy protein needed to reduce the risk of CHD and the contribution one serving of the product makes to achieving the specified daily dietary intake. This requirement is consistent with requirements set forth in § 101.81.

In the studies showing a statistically significant effect of soy protein on total or LDL-cholesterol, the amounts fed ranged from 17 to 105 g/day (Refs. 31, 28, 27, 51, 44, 37, 49, 30, 58, 29, 43, 55, 33, 64, 56, 64, 46, and 35). In proposing 25 g/day as an effective daily intake of soy protein, the petitioner relied on the meta-analysis by Anderson et al. (Ref. 65) and noted that the estimate suggested by the meta-analysis was confirmed by the recent study of Crouse et al. (Ref. 31) that found reductions in total and LDL-cholesterol of 4 and 6 percent, respectively, with ingestion of 25 g/day of soy protein containing high levels of isoflavones.

FDA notes that, although none of the studies reviewed attempted to determine an effective or optimal amount of soy protein, the study by Sirtori et al. (Ref. 56) suggests the existence of a dose-response. In that study of subjects with type II hypercholesterolemia, total cholesterol levels were reduced by 13 and 19 percent, and LDL-cholesterol levels were reduced by 18 and 23 percent, compared to control by ingestion of 30 and 60 g/day of soy protein, respectively. With levels of soy protein intake lower than the proposed effective amount, findings have been variable. Mercer et al. (Ref. 49) found a statistically significant reduction in total cholesterol in response to 17 g/day of soy protein only in those subjects with high initial values. Feeding the same amount (17 g/day) of soy protein in a hypocaloric diet, however, Jenkins et al. (Ref. 43) found statistically significant reductions of 10 and 17 percent in total and LDL-cholesterol, respectively. With 25 g/day of soy protein, Bakhit et al. (Ref. 27) found a statistically significant reduction in total cholesterol (about 8 percent) in subjects with blood cholesterol levels greater than 220 mg/dL. Crouse et al. (Ref. 31) found that 25 g of soy protein that contained a high level of isoflavones significantly lowered total ($p<0.05$) and LDL-cholesterol ($p<0.05$), by 4 percent and [illegible] percent, respectively. Furthermore, in subjects with LDL-cholesterol in the top half of the study population, serum total and LDL-cholesterol were reduced by 9 percent ($p<0.03$) and 12 percent ($p<0.03$), respectively, by soy protein with the highest isoflavone content, and by 8 percent ($p<0.03$) and 9 percent ($p<0.03$), respectively, by soy protein with the second highest isoflavone content. Although Holmes et al. (Ref. 40) did not find statistically significant changes in blood lipids with 27 g of soy protein, using 28 g of soy protein in a hypocaloric diet, Bosello et al. (Ref. 29) observed decreases of 16 percent from baseline in both total and LDL-cholesterol ($p<0.01$). With 31 g of soy protein, Kurowska et al. (Ref. 44) found an 11-percent reduction in LDL-cholesterol in subjects with the highest initial LDL-cholesterol levels and LDL/HDL-cholesterol ratios. As a substitution or as an addition, Verillo et al. (Ref. 60) found 31 g of soy protein produced large (>20 percent) reductions in both total and LDL-cholesterol in subjects with type II hypercholesterolemia.

Based on these data that support a dose-response and that show clinically significant reductions in total and LDL-

cholesterol with soy protein ingestion in the range of 17 to 31 g/day, and recognizing that the hypocholesterolemic effects of soy protein are highly dependent on initial blood lipid levels, the agency has tentatively accepted that 25 g/day represents a reasonable effective amount of soy protein. In addition, an amount of 25 g/day of soy protein represents half of the Reference Daily Intake (RDI) of 50 g for protein and is a reasonable level of consumption in the context of the total daily diet. Thus, FDA tentatively concludes that the amount of soy protein associated with reduction in total and LDL-cholesterol levels and, thus, with reduced risk of CHD is 25 g or more of soy protein per day. The agency is asking for comments on this tentative determination.

C. Nature of the Substance

Proposed § 101.82(c)(2)(ii)(A) indicates that soy protein from the legume seed *Glycine max* is the substance that is the subject of this claim.

Proposed § 101.82(c)(2)(ii) (B) sets out FDA's tentative decision that soy protein when evaluated for compliance purposes by the agency will be measured using the Association of Official Analytical Chemists International (AOAC) official method of analysis No. 988.10.

The petitioner proposed that measurement of total soy isoflavones be used as a marker for the content of soy protein in foods and as an indicator of the effectiveness of soy protein products in reducing blood cholesterol. As discussed in section C.III.5 of this document, FDA disagrees with the petitioner's conclusions regarding the significance of soy isoflavones with respect to the observed hypocholesterolemic effects of soy protein. Accordingly, FDA finds the proposed methodology to assess isoflavones irrelevant. The AOAC method that FDA is proposing instead is an enzyme-linked immunosorbant assay that detects soy protein in raw and heat-processed meat products. With this assay, samples are compared to standard commercial soy protein and appropriate blanks. The method is described as semi-quantitative, but it can be quantitative when the nature of the soy protein in the samples is known and the assay is calibrated accordingly. The sample extraction procedure, which involves preparation of an acetone powder, has been shown to be appropriate for a complex food matrix (meat). FDA believes, therefore, that this assay should also be suitable for other food matrices. FDA is requesting comments on the suitability of this method for assuring that foods bearing the health claim contain qualifying levels of soy protein.

D. Nature of the Food

Proposed § 101.82(c)(2)(iii)(A) requires that the food bearing the health claim contain at least 6.25 g of soy protein per reference amount customarily consumed (RACC) of the food product.

Using 25 g of soy protein as the qualifying amount for a CHD claim, the petitioner suggested that a single serving of a soy protein-containing product (i.e., 1 RACC) should provide 1/4 of this amount (based on 4 servings a day). Thus, a soy protein-containing product would have to contain at least 6.25 g soy protein (1/4 x 25 g) per RACC. The petitioner stated that this approach is reasonable because it would permit a wide variety of low fat, soy protein containing products to bear the health claim. The petitioner provided a list of products on the market that currently meet the proposed requirements and a list of products that could be modified to meet them (Ref. 1, Appendix V).

The agency has generally made the assumption that a daily food consumption pattern includes three meals and a snack (see 58 FR 2302 at 2379, January 6, 1993). Because of the wide variety of types of foods that could contain qualifying levels of soy protein (baked goods, tofu, soy beverages and shakes, meat analogs), the agency has tentatively concluded that the assumption of 4 servings/d of soy protein containing foods is reasonable. Therefore, the agency tentatively finds that use of the qualifying criterion set forth in the petition for this proposed rule is appropriate and is proposing this level in this document. The qualifying level of protein, 6.25 g/RACC, exceeds the amount required for a food to qualify as a "good source" of protein, i.e., 10 percent of the RDI of 50 g or 5 g/RACC).

In § 101.82(c)(2)(iii)(B), the agency is proposing, consistent with other authorized heart disease health claims, that foods bearing the health claim meet requirements for "low saturated fat," "low cholesterol," and "low fat." In the preamble to the final rule on fruits, vegetables, and grain products and heart disease (§ 101.77, 58 FR 2552 at 2572), the agency stated that populations with diets rich in these low saturated fat and low cholesterol foods experience many health advantages, including lower rates of heart disease. In the preamble to the proposed rule on dietary lipids and heart disease (56 FR 60727 at 60739), the agency stated that while total fat is not directly linked to increased risk of CHD, it may have significant indirect effects. Foods that are low in total fat facilitate reductions in intakes of saturated fat and cholesterol to recommended levels. Therefore, the agency tentatively concludes that proposed § 101.82(c)(2)(iii)(B) sets forth an appropriate requirement for food to be eligible to bear the soy protein and CHD claim.

E. Optional Information

FDA is proposing in § 101.82(d)(1) that the claim may state that the development of heart disease depends on many factors and, consistent with authorized CHD health claims, may list the risk factors for heart disease that are listed in §§ 101.75(d)(1), 101.77(d)(1), and 101.81(d)(1). The agency is also proposing, in response to the petition, that the claim may provide additional information about the benefits of exercise and body weight management. This additional information can provide a context that is useful for an understanding of the relationship between soy protein and heart disease, but manufacturers should be cautioned that it should not be presented in a way that is misleading to the consumer.

In proposed § 101.82(d)(2), consistent with §§ 101.75(d)(2), 101.77(d)(2), and 101.81(d)(2), FDA is providing that the claim may state that the relationship between a diet high in soy protein and reduced risk of heart disease is through the intermediate link of "blood cholesterol" or "blood total cholesterol" and "LDL- cholesterol." The relationship between soy protein and reduced blood total cholesterol and LDL-cholesterol is supported by the scientific evidence presented in this proposal.

In § 101.82(d)(3), the agency is proposing that, consistent with §§ 101.75(d)(3), 101.77(d)(3), and 101.81(d)(3), the claim may include information from § 101.82(a) and (b). These paragraphs summarize information regarding the relationship between diets high in soy protein and the risk of CHD and about the significance of that relationship. This information helps to convey the seriousness of CHD and the role that a diet high in soy protein can play to help reduce the risk of CHD.

The agency is proposing that the claim may include any of the optional information authorized to be included in §§ 101.75(d)(5), (d)(6), and (d)(7), 101.77(d)(5), (d)(6), and (d)(7), and 101.81(d)(5), (d)(6), and (d)(7). The health claim may state that diets high in soy protein and low in saturated fat and cholesterol are part of a dietary pattern

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that is consistent with dietary guidelines for Americans. The claim may state that individuals with elevated serum lipids should consult their physicians for medical advice and treatment and may include information on the prevalence of CHD in the United States. The intent of this information is to provide consumers with information that will help them understand the seriousness of CHD in the United States and to help them understand that diets high in soy protein are consistent with dietary guidelines.

F. Model Health Claims

In proposed § 101.82(e), FDA is providing model health claims to illustrate the requirements of new § 101.82. FDA emphasizes that these model health claims are illustrative only. These model claims illustrate the required, and some of the optional, elements of the proposed rule. If the agency authorizes a claim about the relationship between soy protein and CHD, manufacturers will be free to design their own claim so long as it is consistent with § 101.82(c).

In §§ 101.82(e)(1) and (e)(2), the model claim illustrates all of the required elements of the proposed health claim. The claim states "25 grams of soy protein a day, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of food] supplies _____ grams of soy protein." or "Diets low in saturated fat and cholesterol that include 25 grams of soy protein may reduce the risk of heart disease. One serving of [name of food] provides _____ grams of soy protein."

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

A. Cost–Benefit Analysis

FDA has examined the impacts of the proposed rule under Executive Order 12866. Executive Order 12866 directs Federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). According to Executive Order 12866, a regulatory action is "economically significant" if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered "significant" under Executive Order 12866 if it raises novel legal or policy issues. FDA finds that this proposed rule is neither an economically significant nor a significant regulatory action as defined by Executive Order 12866.

In addition, in accordance with the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801(a)(1)(A)(ii)), the Administrator of the Office of Information and Regulatory Affairs of the Office and Management and Budget (the Administrator) has determined that this proposed rule is not a major rule for the purpose of congressional review. A major rule for this purpose is defined in 5 U.S.C. 804(2) as one that the Administrator has determined has resulted or is likely to result in: (1) An annual effect on the economy of $100,000,000 or more; or (2) a major increase in costs for prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule will give firms the option of making certain label claims involving soy protein. No costs will be generated by this proposed rule because it will not require any labels to be changed or any product to be reformulated. Firms will only relabel or reformulate products if the benefits to those firms outweigh the costs. Social benefits may be generated by this proposed rule because the value some consumers place on the information provided in these claims may be greater than the cost to industry of making these claims. In general, consumers may value this type of information because it will enable them to eat a healthier diet. Consumers may value this type of information presented on product labels, in particular, because it would obviate the need to consult other sources of information and because it may reassure consumers who are aware of the role of FDA in regulating health claims on product labels that the information is truthful, not misleading, and scientifically valid.

Consumer valuation of this information will reflect the value that consumers place on reducing the likelihood of CHD and the perceived usefulness of this information for reducing the likelihood of CHD. However, consumers may either underestimate or overestimate the usefulness of this information in reducing the likelihood of CHD. Therefore, another metric for valuing the social benefits of this proposed rule is the health care costs avoided by the reduction in CHD-related disease and disability made possible by this proposed rule. If consumers were aware of these health care costs and had an accurate notion of the likelihood that such costs could be avoided by using the information provided in the claims allowed by this proposed rule, then consumer valuation of this information would be at least as great as the value of any health care costs avoided. The value of the information might be greater because some consumers might value the information but might not choose to modify their behavior so as to reduce the likelihood of CHD.

In general terms, the relevant regulatory options available to FDA are as follows: (1) Allow this claim to be made under a broader set of conditions than those specified in this proposed rule (e.g., with fewer required elements in the claim, or with a lower level of soy protein in a serving of food), and (2) allow this claim to be made under a more restricted set of conditions than those specified in this rule (e.g., more required elements or higher levels of soy protein). Neither of these alternatives would generate net costs because, like the proposed action, firms would only relabel or reformulate products if the benefits to those firms outweigh the costs. These options would generate higher benefits than the proposed action if allowing this claim to be made under either a broader set of conditions or more restricted set of conditions than the proposed conditions would provide consumers with more valuable information (that would nonetheless be truthful, not misleading, and scientifically valid) or would make possible a greater reduction in health care costs than would the proposed action. FDA tentatively believes that no alternative conditions exist that would render the net benefits of this proposed rule greater than the proposed conditions. In particular, FDA believes that the information proposed to be required in a health claim about the relationship between soy protein and CHD is the minimum necessary for the claim to be truthful, not misleading, and

scientifically valid, thereby maximizing the likelihood that qualifying foods will be labeled with the claim and that consumers will be able to use the information. Similarly, FDA believes that the amount of soy protein proposed to be required for a food bearing this claim will allow both the claim to appear on a significant number of foods and consumers who use the claim, in the aggregate, to benefit from the use of soy protein in their diet. However, FDA requests comments and supporting information on any modifications of the conditions under which this claim is allowed that would increase the net benefits of this proposed rule.

B. Small Entity Analysis

FDA has examined the impacts of this proposed rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). The Regulatory Flexibility Act requires Federal agencies to consider alternatives that would minimize the economic impact of their regulations on small businesses and other small entities. No costs will be generated by this proposed rule because it will not require any labels to be changed, or any product to be reformulated. Therefore, small businesses will only relabel or reformulate products if the benefits (e.g., increased sales of their products) to those small businesses outweigh the costs. Accordingly, under the Regulatory Flexibility Act) (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that this proposed rule, if issued, will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed food labeling health claim on the association between soy protein and coronary heart disease would be a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

IX. Effective Date

FDA is proposing to make these regulations effective upon publication in the **Federal Register** of a final rule based upon this proposal.

X. Comments

Interested persons may, on or before January 25, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. New § 101.82 is added to subpart E to read as follows:

§ 101.82 Health claims: Soy protein and risk of coronary heart disease (CHD).

(a) Relationship between diets that are low in saturated fat and cholesterol and that include soy protein and the risk of CHD. (1) Cardiovascular disease means diseases of the heart and circulatory system. CHD is one of the most common and serious forms of cardiovascular disease and refers to diseases of the heart muscle and supporting blood vessels. High blood total cholesterol and low density lipoprotein (LDL)-cholesterol levels are associated with increased risk of developing CHD. High CHD rates occur among people with high total cholesterol levels of 240 milligrams per deciliter (mg/dL) (6.21 (millimole per liter (mmol/L))) or above and LDL-cholesterol levels of 160 mg/dL (4.13 mmol/L) or above. Borderline high risk total cholesterol levels range from 200 to 239 mg/dL (5.17 to 6.18 mmol/L) and 130 to 159 mg/dL (3.36 to 4.11 mmol/L) of LDL-cholesterol. The scientific evidence establishes that diets high in saturated fat and cholesterol are associated with increased levels of blood total and LDL-cholesterol and, thus, with increased risk of CHD.

(2) Populations with a low incidence of CHD tend to have relatively low blood total cholesterol and LDL-cholesterol levels. These populations also tend to have dietary patterns that are not only low in total fat, especially saturated fat and cholesterol, but are also relatively high in plant foods that contain dietary fiber and other components.

(3) Scientific evidence demonstrates that diets low in saturated fat and cholesterol may reduce the risk of CHD. Other evidence demonstrates that the addition of soy protein to a diet that is low in saturated fat and cholesterol may also help to reduce the risk of CHD.

(b) *Significance of the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and the risk of CHD.* (1) CHD is a major public health concern in the United States. It accounts for more deaths than any other disease or group of diseases. Early management of risk factors for CHD is a major public health goal that can assist in reducing risk of CHD. High blood total and LDL-cholesterol are major modifiable risk factors in the development of CHD.

(2) Intakes of saturated fat exceed recommended levels in the diets of many people in the United States. One of the major public health recommendations relative to CHD risk is to consume less than 10 percent of calories from saturated fat and an average of 30 percent or less of total calories from all fat. Recommended daily cholesterol intakes are 300 mg or less per day. Scientific evidence demonstrates that diets low in saturated fat and cholesterol are associated with lower blood total and LDL-cholesterol levels. Soy protein, when included in a low saturated fat and cholesterol diet, also helps to lower blood total and LDL-cholesterol levels.

(c) *Requirements.* (1) All requirements set forth in § 101.14 shall be met.

(2) Specific requirements—(i) Nature of the claim. A health claim associating diets that are low in saturated fat and cholesterol and that include soy protein with reduced risk of heart disease may be made on the label or labeling of a food described in paragraph (c)(2)(iii) of this section, provided that:

(A) The claim states that diets that are low in saturated fat and cholesterol and that include soy protein "may" or "might" reduce the risk of heart disease;

(B) In specifying the disease, the claim uses the following terms: "heart disease" or "coronary heart disease";

(C) In specifying the substance, the claim uses the term "soy protein";

(D) In specifying the fat component, the claim uses the terms "saturated fat" and "cholesterol";

(E) The claim does not attribute any degree of risk reduction for CHD to diets that are low in saturated fat and cholesterol and that include soy protein;

(F) The claim does not imply that consumption of diets that are low in saturated fat and cholesterol and that include soy protein is the only recognized means of achieving a reduced risk of CHD; and

(G) The claim specifies the daily dietary intake of soy protein that is necessary to reduce the risk of coronary heart disease and the contribution one serving of the product makes to the specified daily dietary intake level. The daily dietary intake level of soy protein that has been associated with reduced risk of coronary heart disease is 25 grams (g) or more per day of soy protein.

(ii) *Nature of the substance.* (A) Soy protein from the legume seed *Glycine max.*

(B) FDA will measure soy protein by method No. 988.10 from the "Official Methods of Analysis of the Association of Official Analytical Chemists International," 16th Ed. (1995), which is incorporated by reference in accordance with 5 U.S.C. 522(a) and 1 CFR part 51. Copies may be obtained from the Association of Official Analytical Chemists International, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877–2504, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC;

(iii) *Nature of the Food Eligible to Bear the Claim.* (A) The food product shall contain at least 6.25 g of soy protein reference amount customarily consumed of the food product;

(B) The food shall meet the nutrient content requirements in § 101.62 for a "low saturated fat," "low cholesterol," and "low fat" food.

(d) *Optional information.* (1) The claim may state that the development of heart disease depends on many factors and may identify one or more of the following risk factors for heart disease about which there is general scientific agreement: A family history of CHD; elevated blood total and LDL-cholesterol; excess body weight; high blood pressure; cigarette smoking; diabetes; and physical inactivity. The claim may also provide additional information about the benefits of exercise and management of body weight to help lower the risk of heart disease;

(2) The claim may state that the relationship between intake of diets that are low in saturated fat and cholesterol and that include soy protein and reduced risk of heart disease is through the intermediate link of "blood cholesterol" or "blood total and LDL-cholesterol;"

(3) The claim may include information from paragraphs (a) and (b) of this section. which summarize the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and CHD and the significance of the relationship;

(4) The claim may state that a diet low in saturated fat and cholesterol that includes soy protein is consistent with "Nutrition and Your Health: Dietary Guidelines for Americans," U.S. Department of Agriculture (USDA) and Department of Health and Human Services (DHHS), Government Printing Office (GPO);

(5) The claim may state that individuals with elevated blood total and LDL-cholesterol should consult their physicians for medical advice and treatment. If the claim defines high or normal blood total and LDL-cholesterol levels, then the claim shall state that individuals with high blood cholesterol should consult their physicians for medical advice and treatment;

(6) The claim may include information on the number of people in the United States who have heart disease. The sources of this information shall be identified, and it shall be current information from the National Center for Health Statistics, the National Institutes of Health, or "Nutrition and Your Health: Dietary Guidelines for Americans," USDA and DHHS, GPO;

(e) *Model health claim.* The following model health claims may be used in food labeling to describe the relationship between diets that are low in saturated fat and cholesterol and that include soy protein and reduced risk of heart disease:

(1) 25 grams of soy protein a day, as part of a diet low in saturated fat and cholesterol, may reduce the risk of heart disease. A serving of [name of food] supplies ———— grams of soy protein.

(2) Diets low in saturated fat and cholesterol that include 25 grams of soy protein may reduce the risk of heart disease. One serving of [name of food] provides ———— grams of soy protein.

Dated: November 2, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30008 Filed 11–9–98; 8:45 am]

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Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Crouse et al. (1998, submitted for pub) (Ref. 31)	CON: 9 wk NCEP Step I, low-fat (32% of E) diet with casein beverage	CON: 33 adults, 20-70 yr, with LDL-C >140 and <200 mg/dL after BASE	CON: 25 g casein	CON Prot: 15% of E Sat fat: 9% of E Chol: NR	CON v. BASE Tot-C: 0% (NS) LDL-C: 0% (NS) HDL-C: -2%(NS)
	SOY-1: 9 wk NCEP Step I, low-fat (32% of E) diet with soy beverage containing variable amounts of naturally occurring isoflavones	SOY-1: 31 as above	SOY-1: 25 g as ISP with 4.9 mg isoflavones (0.2 mg/g protein) (alcohol washed)	SOY-1 Prot: 15% of E Sat fat: 9% of E Chol: NR	SOY-1 v. BASE Tot-C: -1% (NS) LDL-C: -2% (NS) HDL-C: -2% (NS)
	SOY-2: 9 wk NCEP Step I, low-fat (32% of E) diet with soy beverage containing variable amounts of naturally occurring isoflavones	SOY-2: 31 as above	SOY-2: 25 g as ISP with 23.6 mg isoflavones (1.0 mg/d protein)	SOY-2 Prot: 15% of E Sat fat: 9% of E Chol: NR	SOY-2 v. BASE Tot-C: -3% (NS) LDL-C: -3% (NS) HDL-C: 0% (NS)
	SOY-3: 9 wk NCEP Step I, low-fat (32% of E) diet with soy beverage containing variable amounts of naturally occurring isoflavones	SOY-3: 31 as above	SOY-3: 25 g as ISP with 38.9 mg isoflavones (1.6 mg/g protein)	SOY-3 Prot: 15% of E Sat fat: 9% of E Chol: NR	SOY-3 v. BASE Tot-C: -2% (NS) LDL-C: -3% (NS) HDL-C: +2% (NS)
	SOY-4: 9 wk NCEP Step I, low-fat (32% of E) diet with soy beverage containing variable amounts of naturally occurring isoflavones --- Parallel design, double-blinded; stratified randomization by gender and age; all subjects received 1 mon of instruction in NCEP Step 1 diet, then 1 mon run-in with casein beverage and NCEP Step 1 diet (BASE) prior to randomization to treatment groups	SOY-4: 30 as above --- BASE Tot-C = 241 mg/dL	SOY-4: 25 g as ISP with 61.8 mg isoflavones (2.5 mg/g protein) ---	SOY-4 Prot: 15% of E Sat fat: 9% of E Chol: NR --- Dietary intake reported to be stable and comparable among groups throughout study	SOY-4 v. BASE Tot-C: -4% LDL-C: -6% HDL-C: 0% (NS) For subjects with LDL-C > median: SOY-3 v. BASE Tot-C: -8% LDL-C: -9% HDL-C: -4% (NS) SOY-4 v. BASE Tot-C: -9% LDL-C: -12% HDL-C: -2% (NS) --- Analyses based on final values adjusted for differing baseline values in each dietary group; significance given v. CON

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Baum et al. (1998) (Ref. 28)	CON: 24 wk NCEP Step I, low-fat (<30% of E) with casein/nonfat dry milk incorporated into baked products, soup, and beverages	CON: 22 postmenopausal women, 49-83 yr, with Tot-C 240-300 mg/dL	CON: 40 g casein	CON Prot: NR* Sat fat: NR* Chol: <300 mg*	SOY-1 v. CON* Tot-C: NS LDL-C**: -11 mg/dL HDL-C: +5 mg/dL
	SOY-1: 24 wk NCEP Step I, low-fat (<30% of E) with soy protein (moderate isoflavone level) incorporated into baked products, soup, and beverages	SOY-1: 23 as above	SOY-1: 40 g as ISP with 56 mg isoflavones (1.4 mg/g protein)	SOY-1 Prot: NR* Sat fat: NR* Chol: <300 mg*	SOY-2 v. CON* Tot-C: NS LDL-C**: -10 mg/dL HDL-C: +4 mg/dL
	SOY-2 : 24 wk NCEP Step I, low-fat (<30% of E) with soy protein (high isoflavone level) incorporated into baked products, soup, and beverages	SOY-2: 21 as above	SOY-2: 40 g as ISP with 90 mg isoflavones (2.3 mg/g protein)	SOY-2 Prot: NR* Sat fat: NR* Chol: <300 mg*	-----
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	Parallel design; randomized, double-blinded; 14 d run-in on BASE diet	BASE Tot-C = ~250 mg/dL No medications known to affect lipid or bone metabolism		* Dietary intake was assessed; reported not to differ among treatment groups	* For adjusted mean difference ** Reported as non-HDL-C Body weight remained stable

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Bakhit et al. (1994) (Ref. 27)	CON-1: 4 wk self-selected, low-fat (26.6% of E); 4 added muffins to provide test protein and fiber	CON-1: 21 men, 23-70 yr, with Tot-C >220 mg/dL	CON-1: 25 g casein + 20 g cellulose	CON-1 Prot: 19.0% of E Sat fat: 22.0 g Chol: 314 mg	CON's or SOY's v. BASE Tot-C: NS LDL-C: NS HDL-C: NS
	SOY-1: 4 wk self-selected, low-fat (26.7% of E); 4 added muffins to provide test protein and fiber	SOY-1: same as above	SOY-1: 25 g as ISP + 20 g cellulose	SOY-1 Prot: 19.8% of E Sat fat: 21.5 g Chol: 286 mg	SOY's v. CON's Tot-C: NS LDL-C: NS HDL-C: NS
	CON-2: 4 wk self-selected, low-fat (24.6% of E); 4 added muffins to provide test protein and fiber	CON-2: same as above	CON-2: 25 g casein + 20 g soy cotyledon fiber	CON-2 Prot: 19.2% of E Sat fat: 17.4 g Chol: 260 mg	*For 11 subjects w/ Tot-C>220 mg/dL after BASE diet:* SOY-1 and SOY-2 v. BASE Tot-C: -16 and -19 mg/dL LDL-C: NS HDL-C: NS
	SOY-2: 4 wk self-selected, low-fat (26.7% of E); 4 added muffins to provide test protein and fiber	SOY-2: same as above	SOY-2: 25 g as ISP + 20 g soy cotyledon fiber	SOY-2 Prot: 19.7% of E Sat fat: 19.7 g Chol: 264 mg	SOY's v. CON's Tot-C: NS LDL-C: NS HDL-C: NS
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	Crossover; Latin square design; 2 wk run-in with BASE low-fat diet; free-living	BASE Tot-C = 222 mg/dL Note: 32% attrition			No changes in body weight or activity levels

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dl - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Potter et al. 1993 (Ref. 51)	CON: 4 wk low-fat (22.3% of E) diet; mixed protein sources with 50% from nonfat dry milk in baked products; ~20 g cellulose added	CON: 25 men, 48-78 yr, with Tot-C >200 mg/dL	CON: nonfat dry milk + cellulose	CON Prot: 18.6% of E Sat fat: NR* Chol: 220 mg	SOY-1 vs. CON Tot-C: -19 mg/dL LDL-C: -13 mg/dL (NS) HDL-C: +2 mg/dL (NS)
	SOY-1: 4 wk low-fat (24.4% of E) diet; mixed protein sources with 50% from soy protein (as SF) in baked products; ~20 g soy cotyledon fiber from SF	SOY-1: same as above	SOY-1: 50 g as SF	SOY-1 Prot: 19.3% of E Sat fat: NR* Chol: 203 mg	SOY-2 vs. CON Tot-C: -26 mg/dL LDL-C: -18 mg/dL HDL-C: 0 mg/dL (NS)
	SOY-2: 4 wk low-fat (20.8% of E) diet; mixed protein sources with 50% from soy protein (as ISP) in baked products; ~ 20 g cellulose added	SOY-2: same as above	SOY-2: 50 g as ISP + cellulose	SOY-2 Prot: 21.3% of E Sat fat: NR* Chol: 171 mg	SOY-3 vs. CON Tot-C: -25 mg/dL LDL-C: -19 mg/dL HDL-C: 0 mg/dL (NS)
	SOY-3: 4 wk low-fat (22.5% of E) diet; mixed protein sources with 50% from soy protein (as ISP) in baked products; ~20 g soy cotyledon fiber added	SOY-3: same as above	SOY-3: 50 g as ISP + soy cotyledon fiber	SOY-3 Prot: 21.4% of E Sat fat: NR* Chol: 195 mg	SOY-1 vs. BASE Tot-C: -5% (NS) LDL-C: -5% (NS) HDL-C: -1% (NS) SOY-2 vs. BASE Tot-C: -8% LDL-C: -8% (NS) HDL-C: -5% (NS) SOY-3 vs. BASE Tot-C: -8% LDL-C: -8% HDL-C: -5% (NS)
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	Crossover; Latin square design; 2 wk run-in with BASE low-fat diet; metabolic ward	BASE Tot-C = 224 mg/dL		* <10% of E Dietary fiber: CON=SOY-2> SOY-1>SOY-3	No changes in body weight or activity levels

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Kurowska et al. (1997) (Ref. 44)	CON-1: 4 wk usual, moderate-fat (29% of E) diet plus cow milk and low-fat milk dessert	CON-1: 34 adults, mean age 55 yr, with moderately elevated Tot-C (17 male)	CON-1: mixed sources + milk	CON-1 Prot: 19% of E Sat fat: 24.7 g Chol: 259 mg	CON-1, CON-2, SOY v. BASE Tot-C: NS LDL-C: NS HDL-C: +7% (for SOY)
	CON-2: 4 wk usual, moderate-fat (28% of E) diet plus skim milk, skim milk dessert, and soy oil	CON-2: same as above	CON-2: mixed sources + milk	CON-2 Prot: 19% of E Sat fat: 18.9 g Chol: 185 mg	*For 24 subjects with highest LDL-C:* SOY v. BASE Tot-C: NS LDL-C: -11% HDL-C: +9%
	SOY: 4 wk usual, moderate-fat (29% of E) diet plus soybean milk and soybean dessert	SOY: same as above	SOY: mixed sources + 31 g as whole soybean milk	SOY Prot: 19% of E Sat fat: 17.8 g Chol: 196 mg	-----
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	Crossover; random assignment; 4 wk run-in and 2 wk washouts with usual diet	BASE Tot-C = 265 mg/dL			

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Goldberg et al. (1982) (Ref. 37)	CON: 6 wk conventional food, high-fat (44% of E) diet; 75% of total protein from animal sources and 25% from vegetable sources other than soy SOY: 6 wk conventional food, high-fat (44% of E) diet; 75% of total protein from soy (isocaloric substitution) in meat analogs and soy milk ----- Crossover; random assignment to CON or SOY initially; 6 wk run-in with moderate-fat (37.5% of E) BASE diet; no washout	CON: 12 adults, 23-64 yr, with primary hypercholesterolemia (7 male); SOY: same as above ----- Initial Tot-C range: 227-299 mg/dL BASE Tot-C=260 mg/dL	CON: mixed sources SOY: 99 g (est) as ISP and other sources -----	CON Prot: 20.4% of E Sat fat: 29.3 g Chol: 215 mg SOY Prot: 19.8% of E Sat fat: 27.3 g Chol: 219 mg -----	CON v. BASE Tot-C: -32 mg/dL LDL-C: -23 mg/dL HDL-C: 0 mg/dL (NS) SOY v. BASE Tot-C: -40 mg/dL LDL-C: -33 mg/dL HDL-C: -1 mg/dL (NS) SOY v. CON Tot-C: -8 mg/dL LDL-C: -10 mg/dL HDL-C: -1 mg/dL (NS) -----
Mercer et al. (1987) (Ref. 49)	CON: 6 wk "usual" moderate-fat (34% of E) diet; mixed protein sources including milk SOY: 6 wk "usual" moderate-fat (35% of E) diet; mixed protein sources with soy beverage substituted for milk ----- Crossover; random assignment to SOY or CON initially; no run-in or washout	CON: 33 adults, 25-69 yr, with normal to moderately elevated cholesterol SOY: same as above ----- BASE Tot-C = 221 mg/dL range 173-325 mg/dL	CON: milk and other protein sources SOY: 17 g (est) as ISP and other protein sources -----	CON Prot: 17.6% of E P/S: 0.22 Chol: 276 mg SOY Prot: 16.9% of E P/S: 0.29 Chol: 290 mg -----	SOY v. CON Tot-C: -2 mg/dL (NS) LDL-C: -2 mg/dL (NS) HDL-C: +1 mg/dL (NS) For 5 subjects w/ high Tot-C: SOY v. CON Tot-C: -16 mg/dL LDL-C: -3 mg/dL (NS) ----- No significant weight changes

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Holmes et al. (1980) (Ref. 40)	CON: 3 wk moderate fat (34% of E) conventional diet; total protein comprising 40% beef, 27% other animal, and 33% vegetable sources SOY: 4 wk moderate fat (34% of E) with soy substituted for beef; total protein comprising 38% soy, 31% other animal, and 31% other vegetable sources ----- Fixed sequence: CON—SOY	CON: 12 adults, 27-60 yr, with type II or type IV hypercholesterolemia (9 male) SOY: same as above ----- BASE Tot-C = 277 mg/dL	CON: beef and other sources SOY: 27 g (est) as SF from TVP and other sources -----	CON Prot: 15% of E Sat fat: 8% of E Chol: 254 mg SOY Prot: 15% of E Sat fat: 9% of E Chol: 254 mg -----	CON v. BASE Tot-C: -36 mg/dL or -13% LDL-C: -25 mg/dL or -13% HDL-C: (NS) SOY v. CON Tot-C: -6 mg/dL (NS) LDL-C: -1 mg/dL (NS) HDL-C: -6 mg/dL (NS) -----
	CON: 3 wk moderate fat (34% of E) conventional diet; total protein comprising 71% beef and 29% vegetable sources SOY: 3 wk moderate fat (35% of E) with soy substituted for beef; total protein 71% soy and 29% other vegetable sources ----- Crossover; random assignment to (I) CON—SOY or (II) SOY—CON; no run-in or washout periods	CON: 10 adults, 28-60 yr, with type II or type IV hypercholesterolemia (6 male) SOY: same as above ----- BASE(I)Tot-C=275 mg/dL BASE(II) Tot-C=290 mg/dL	CON: beef and other sources SOY: 62 g (est) as SF from TVP and other sources -----	CON Prot: 14% of E Sat fat: 9% of E Chol: 144 mg SOY Prot: 14% of E Sat fat: 9% of E Chol: 144 mg -----	CON (I & II) v. BASE Tot-C: - 18% (I) & NS (II) LDL-C: NS (I) & NS (II) HDL-C: NS (I) & NS (II) SOY (I & II) v. BASE Tot-C: NS (I) & -19% (II) LDL-C: NS (I) & NS (II) HDL-C: NS (I) & NS (II) -----

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Shorey et al. (1981) (Ref. 54)	CON: 6 wk usual diet; prepared meals with mixed protein sources; 30-35% of E from fat	CON: 11 men, mean age 26 yr, with Tot-C >218 mg/dL	CON: mixed sources	CON Prot: 90 g Sat fat: 30 g Chol: 181 mg	CON v. BASE Tot-C: -22 mg/dL LDL-C: NR HDL-C: -4 mg/dL (NS)
	SOY: 6 wk usual diet; prepared meals with all animal protein sources replaced by soy protein; 30-35% of E from fat	SOY: 13 as above	SOY: 57 g as ISP	SOY Prot: 87 mg Sat fat: 33 g Chol: 183 mg	SOY v. BASE Tot-C: -16 mg/dL LDL-C: NR HDL-C: -8 mg/dl SOY v. CON Tot-C: +6 mg/dL LDL-C: NR HDL-C: -4 mg/dL
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	Parallel design; no run-in period	BASE Tot-C = 243 mg/dL			Note: subjects in both groups had significant weight loss; responders in both had higher protein, fat, saturated fat, and cholesterol in previous diets than in experimental diets

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Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Carroll et al. (1978) (Ref. 30)	CON: ~5 wk ordinary food, moderate-fat (34% of E) diet; mixed protein sources (40% animal)	CON: 10 young women, 19-25 yr, with normal Tot-C	CON: mixed sources	CON Prot: 15% of E P/S: 0.43 Chol: 168 mg	SOY v. CON Tot-C: -10 mg/dL LDL-C: NR HDL-C: NR
	SOY: ~5 wk ordinary food, moderate-fat (34% of E) diet; mixed protein sources with meats replaced by soy analogs and cow milk replaced by soy milk	SOY: same as above	SOY: 44 g (est) as ISP	SOY Prot: 16% of E P/S: 0.44 Chol: 161 mg	
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	Crossover; random assignment; no run-in or washout periods	BASE Tot-C ND			
Giovannetti et al. (1986) (Ref. 36)	CON-1: 4 wk conventional food, moderate fat (38% of E); mixed protein sources	CON-1: 12 young adults, 20-28 yr, normal cholesterol levels	CON-1: mixed sources	CON-1 Prot: 18% of E Sat fat: NR Chol: NR	SOY-1 v. CON-1 Tot-C: -4 mg/dL (NS) LDL-C: -6 mg/dL (NS) HDL-C: -3 mg/dL (NS)
	SOY-1: 4 wk conventional food; moderate fat (38% of E); meat replaced by soy analogs and milk replaced by soy beverage (88% of total protein)	SOY-1: same as above	SOY-1: 66-80 g (est) as ISP and other vegetable sources	SOY-1 Prot: 18% of E Sat fat: NR* Chol: NR**	
	CON-2: 4 wk conventional food, low fat (23% of E); mixed protein sources	CON-2: same as above	CON-2: mixed sources	CON-2 Prot: 18% of E Sat fat: NR* Chol: NR**	SOY-2 v. CON-2 Tot-C: +1 mg/dL (NS) LDL-C: -5 mg/dL (NS) HDL-C: +2 mg/dL (NS)
	SOY-2: 4 wk conventional food; low fat (23% of E); meat replaced by soy analogs and milk replaced by soy beverage (88% of total protein)	SOY-2: same as above	SOY-2: 66-80 g (est) as ISP and other vegetable sources	SOY-2 Prot: 18% of E Sat fat: NR* Chol: NR**	
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	Crossover; Latin square design	BASE Tot-C = 145 mg/dL		* P/S=1.24 ** 103-138 mg	No weight loss; LDL-C lower on soy diets for almost all subjects

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dL - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Van Raaij et al. (1981) (Ref. 58)	CON: 4 wk "typical Western" moderate fat (~38% of E) diet; 65% of total protein from casein in various foods and beverages	CON: 25 young adults, 18-28 yr	CON: casein and other sources	CON Prot: 24% of E Sat fat: 13.2% of E Chol: 387 mg	CON v. SOY-1 (BASE) Tot-C: -3 mg/dL (NS) LDL-C: -0.4 mg/dL (NS) HDL-C: +2.3 mg/dL (NS)
	SOY-1: 4 wk "typical Western" moderate fat (~38% of E) diet; 65% of total protein from a 2:1 mixture of casein and soy protein in various foods and beverages	SOY-1: 20 as above	SOY-1: 17 g (est) as ISP, casein and other sources	SOY-1 Prot: 24% of E Sat fat: 13.8% of E Chol: 398 mg	SOY-2 v. SOY-1 (BASE) Tot-C: -3 mg/dL (NS) LDL-C: -6.6 mg/dL (and sig diff from change for CON) HDL-C: +5.8 mg/dL
	SOY-2: 4 wk "typical Western" moderate fat (~38% of E) diet; 65% of total protein from soy protein in various foods and beverages	SOY-2: 24 as above	SOY-2: 54 g (est) as ISP and other sources	SOY-2 Prot: 24% of E Sat fat: 12.9% of E Chol: 365 mg	
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	Parallel design; 3 groups; 1.5 wk run-in on SOY-1(BASE) then CON, SOY-1, or SOY-2	BASE Tot-C = ~150 mg/dL			
Van Raaij et al. (1982) (Ref. 59)	CON: 4 wk "typical Western" moderate fat (34.5% of E) diet; 60% of total protein from casein	CON: 17 adults, 29-60 yr	CON: casein and other sources	CON Prot: 15.9% of E Sat fat: 15.3% of E Chol: 374 mg	SOY-1 v. CON-1 (BASE) Tot-C: -7.7 mg/dL (NS, but sig diff from SOY-2) LDL-C: -3.7 mg/dL (NS, but sig diff from SOY-2) HDL-C: +1.3 mg/dL (NS, but sig diff from CON-2)
	SOY-1: 4 wk "typical Western" moderate fat (34.5% of E) diet; 60% of total protein from soy protein isolate	SOY-1: 20 as above	SOY-1: 55 g as ISP and other sources	SOY-1 Prot: 16.2% of E Sat fat: 15.0% of E Chol: 381 mg	SOY-2 v. CON-1 (BASE) Tot-C: +1.2 mg/dL (NS) LDL-C: +7.6 mg/dL (NS) HDL-C: -1.7 mg/dl (NS)
	SOY-2: 4 wk "typical Western" moderate fat (34.5% of E) diet; 60% of total protein from soy protein concentrate	SOY-2: 20 as above	SOY-2: 55 g as SPC and other sources	SOY-2 Prot: 16.1% of E Sat fat: 14.9% of E Chol: 382 mg	
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	Parallel design; 3 groups; 2.5 wk run-in on CON –1 (BASE), then CON-2, SOY-1, or SOY-2	BASE Tot-C = 215 mg/dL; range 135-305 mg/dL		Dietary fiber CON< SOY-1<SOY-2	Greater decrease in serum lipids in subjects with weight loss >3 kg

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Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dl - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Jenkins et al., 1989 (Ref. 43)	CON-1: 4 wk conventional food reducing diet (1000 kcal); ~30% of E from fat	CON-1: 11 obese women, aged 23-56 yr	CON-1: mixed sources	CON-1 Prot: 55g Sat fat: NR Chol: 408 mg P/S: 0.25	CON-1 vs. BASE Tot-C: -12 mg/dL (NS) LDL-C: -13 mg/dL (NS) HDL-C: NS
	SOY: 4 wk conventional food reducing diet (1000 kcal as above) with 2 meals/d replaced by soy supplement drink; ~30% of E from fat	SOY: same as above	SOY: 17 g as ISP and SF plus other mixed sources	SOY Prot: 72 g Sat fat: NR Chol: 214 mg P/S: 0.32	SOY vs. BASE Tot-C: -22 mg/dL or –10% LDL-C: -20 mg/dL or –17% HDL-C: NS
	CON-2: 4 wk conventional food reducing diet (1000 kcal as above) with 2 meals/d replaced by milk supplement drink; ~30% of E from fat	CON-2: same as above	CON-2: 18 g as milk protein isolate and non-fat dried milk, plus other mixed sources	CON-2 Prot: 71 g Sat fat: NR Chol: 195 mg P/S: 0.30	CON-2 vs. BASE Tot-C: -14 mg/dL (NS) LDL-C: -12 mg/dL (NS) HDL-C: -3 mg/dL (NS)
	---- Randomized, crossover for two periods (CON-1 and SOY), then all CON-2	----- Base Tot-C = 197 mg/dL	-----	-----	----- Weight loss not significantly different on different diets
Bosello et al., 1988 (Ref. 29)	CON: 15 days very low calorie (375 kcal) commercial preparation with casein; then 60 days adding integrating diet of conventional foods for hypocaloric regimen (800 kcal total)	CON: 12 obese adults, 25-42 yr (6 male)	CON: 27 g as casein, plus other mixed sources	CON Prot: 47 g Sat fat: ~2 g Chol: NR P/S: 0.44	CON vs. BASE Tot-C: -15 mg/dL or -7% (NS) LDL-C: -8 mg/dL or -5% HDL-C: -9 mg/dL or -16%
	SOY: 15 days very low calorie (375 kcal) commercial preparation with soy protein; then 60 days adding integrating diet of conventional foods for hypocaloric regimen (800 kcal total)	SOY: 12 as above	SOY: 28 g as SF(?)	SOY Prot: 47 g Sat fat: ~2 g Chol: NR P/S: 0.44	SOY vs. BASE Tot-C: -35 mg/dL or -16% LDL-C: -24 mg/dL or -15% HDL-C: -4 mg/dl or -7% (NS)
	----- Parallel design; 7 day run-in with isocaloric standard diet	----- Base Tot-C: 215 mg/dL for CON; 219 mg/dL for SOY	-----	-----	----- Body weight loss was the same on the two diet

Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dl - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Sacks et al. 1983 (Ref. 53)	CON: 3 wk usual macrobiotic vegetarian diet with casein supplement	CON: 13 strict vegetarians, 21-40 yr (9 male)	CON: 27 g casein	BASE Prot: 59 g Sat fat: 5 g Chol: 12 mg	CON vs. BASE Tot-C: -4 mg/dL (NS) LDL-C: -1 mg/dL (NS) HDL-C: +1 mg/dL (NS)
	SOY: 3 wk usual macrobiotic vegetarian diet with soy protein supplement	SOY: same as above	SOY: 27 g as ISP	CON and SOY Prot: 82 g Sat fat: 5 g Chol: 30 mg	SOY vs. BASE Tot-C: -3 mg/dL (NS) LDL-C: -1 mg/dL (NS) HDL-C: + 2mg/dL (NS) SOY vs. CON Tot-C: NS LDL-C: NS HDL-C: NS
	----- Crossover design	---- BASE Tot-C = 129 mg/dL	-----	----	-----

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Table 1. Summary of Clinical Trials: Subjects with Total Cholesterol Levels <300 mg/dl - continued

Acronyms and Abbreviations Used in Table

BASE	baseline
Chol	dietary cholesterol
CON	control diet
d	day
dL	deciliter
E	energy
est	estimated
g	gram
HDL-C	serum high density lipoprotein cholesterol level
ISP	isolated soy protein
Kcal	kilocalorie
LDL-C	serum low density lipoprotein cholesterol level
mg	milligram
mon	month
NCEP	National Cholesterol Education Program
NR	not recorded
NS	not statistically significant*
Prot	dietary protein
P/S	polyunsaturated to saturated fat ratio
Sat fat	saturated far
SF	soy flour
sig diff	statistically significant difference
SPC	soy protein concentrate
SOY	soy-containing diet
Tot-C	serum total cholesterol level
TVP	textured vegetable protein
wk	week
yr	year

* Results are statistically significantly different unless noted otherwise

Table 2. Studies of Subjects with Type II or Familial Hypercholesterolemia

Table 2. Studies of Subjects with Type II or Familial Hypercholesterolemia

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Sirtori et al. (1977) (Ref. 55)	CON: 3 wk low-lipid (21% of E) with total protein comprising 62% animal and 38% vegetable sources	CON: 20 adults with type-II hypercholesterolemia (? male); age NR	CON: mixed protein sources	CON Prot: 21% Sat fat: 4.3% of E Chol: *	CON v. BASE (2 periods) Tot-C: -18 (NS) & +23 mg/dL LDL-C: -19(NS) & +12 mg/dL (NS) HDL-C: NR
	SOY: 3 wk low-lipid (26% of E) with total protein comprising 63% soy, 30% other vegetable, and 7% animal sources	SOY: same as above	SOY: 60 g (est) as ISP (in TVP)	SOY Prot: 21% of E Sat fat: 4.3% of E Chol: 0-6 mg	SOY v. BASE (2 periods) Tot-C: -60 & -77 mg/dL LDL-C: -36 & -56 mg/dL HDL-C: NR
	-----	-----	-----	-----	-----
	Crossover; metabolic ward; random assignment to SOY or CON initially; 1-wk run-in on usual diet in hospital; no washout between test diets	BASE Tot-C = ~333 mg/dL	Details about diets NR	Note: Chol intake * 100 mg/1,000 kcal	Comparison of SOY v. CON NR
Descovich et al. (1980) (Ref. 33)	CON: 8 wk standardized usual therapeutic diet; 20% of total protein from vegetable sources; moderately hypocaloric	CON: 127 adults, mean age 50 yr (67 male)	CON: mixed protein sources	CON Prot: 20% of E Sat fat: NR P/S: 1.8-2.0	CON v. BASE Tot-C: -2.8% (NS) LDL-C: NR (NS) HDL-C: NS
	SOY: 8 wk usual diet with soy analogs substituted for most animal proteins; 90% of total protein from vegetable sources	SOY: same as above	SOY: 31-62 g as SF (in TVP)	SOY Prot: 19% of E Sat fat: NR P/S: 18-2.3	SOY v. first CON Tot-C: -24% LDL-C: -31% HDL-C: NS
	-----	-----	-----	-----	-----
	Fixed sequence: CON—SOY—CON	BASE Tot-C = 351 mg/dL	-----	Chol: NR	NS weight loss
Wolfe et al. (1981) (Ref. 64)	CON: 6-8 wk low-cholesterol diet of conventional foods	CON: 7 adults with hyper-cholesterolemia, 29-60 yr, (? male)	CON: mixed protein sources (77 g)	CON Prot: 15% of E Sat fat: ~10% of E Chol: 88 mg	
	SOY: 6-8 wk low-cholesterol diet with soy analogs substituted for meats and cow milk	SOY: same as above	SOY: 47 g as ISP, with other vegetable protein	SOY Prot: 15% of E Sat fat: ~10% of E Chol: 88 mg	SOY v. CON Tot-C: -41 mg/dL LDL-C: -43 mg/dL HDL-C: +1 mg/dL (NS)
	-----	-----	-----	-----	-----
	Crossover; random assignment to CON or SOY initially; no run-in or washout	BASE Tot-C NR	-----		No weight change on diets

Table 2. Studies of Subjects with Type II or Familial Hypercholesterolemia - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Sirtori et al. (1985) (Ref. 56)	CON: 4 wk low-lipid (25% of E) with total protein comprising 60% animal and 40% vegetable sources	CON: 65 adults with type IIa hypercholesterolemia, 20-69 yr, (29 male)	CON: mixed protein sources	CON Prot: 20% of E Sat fat: NR Chol: 140-180 mg	CON v. BASE Tot-C: -4.7% (NS) LDL-C: NS HDL-C: NS
	SOY-1: 4 wk low-lipid (25% of E) with soy replacing most of animal protein for total protein comprising 10% animal and 90% vegetable sources	SOY-1: same as above	SOY-1: 60 g (est) as SF (in TVP)	SOY-1 Prot: 20 % of E Sat fat: NR Chol: 20-60 mg	SOY-1 v. first CON Tot-C: -19% LDL-C: -23% HDL-C: +8%
	SOY-2: 4 wk low-lipid (25% of E) with soy replacing much of animal protein for total protein comprising 30% animal and 70% vegetable sources	SOY-2: same as above	SOY-2: 30 g (est) as SF (in TVP)	SOY-2 Prot: 20 % of E Sat fat: NR Chol: 80-120 mg	SOY-2 v. first CON Tot-C: -13% LDL-C: -18% HDL-C: +8%
	---- Fixed sequence: CON—SOY-1—CON—SOY-2; 45-d run-in on low-lipid diet	---- BASE Tot-C = 364 mg/dL	----	---- P:S ratio balanced across diets	----
Verrillo et al. (1985) (Ref. 60)	CON: 8 wk low-fat (~33% of E) mixed-protein diet; 60% of total protein from animal sources	CON: 66 adults with familial or type II hypercholesterolemia, mean age 50 yrs (29 male)	CON: mixed protein sources	CON Prot: 17% of E Sat fat: 7 % of E Chol: ~200 mg	
	SOY-1: 16 wk low-fat (34% of E) with soy substituted for most of animal protein sources	SOY-1: 20 of above	SOY-1: 31 g as SF (in TVP)	SOY-1 Prot: 15% of E Sat fat: 7% of E Chol: 188 mg	SOY-1 v. mean of CON diets Tot-C: -29.5% LDL-C: -38.0% HDL-C: +7.7% (NS)
	SOY-2: 16 wk low fat (31% of E) with a supplement of soy protein added	SOY-2: 41 of above	SOY-2: 31 g as SF (in TVP)	SOY-2 Prot: 20% of E Sat fat: 7 % of E Chol: 205 mg	SOY-2 v. mean of CON diets Tot-C: -29.9% LDL-C: -36.5% HDL-C: -7.1% (NS)
	---- Fixed-sequence: CON—(Soy-1 or Soy-2)—CON	---- BASE Tot-C = ~309 mg/dL	----	----	---- Difference between SOY-1 and Soy-2 NS

Table 2. Studies of Subjects with Type II or Familial Hypercholesterolemia - continued

Table 2. Studies of Subjects with Type II or Familial Hypercholesterolemia - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Lovati et al. (1987) (Ref. 46)	CON: 4 wk low-lipid (26% of E from fat) with animal protein SOY: 4 wk same diet as CON with soy products substituted for all animal protein ---- Crossover; random assignment to CON or SOY initially; 1-month run-in on diet with animal protein and P/S ~2.0; 3-4 wk washout between test diets	CON: 12 adults with hypercholesterolemia, 26-64 yr (5 male) SOY: same as above ---- BASE Tot-C = 410 mg/dL (range 305-600 mg/dL)	CON: mainly animal protein; details NR SOY: ~70-105 g as SF (in TVP); details NR ----	CON Prot: 20% of E P/S: ~2.0 Chol: 150 mg SOY Prot: 20% of E P/S: ~2.0 Chol: 150 mg ----	CON v. BASE Tot-C: NR (NS) LDL-C: NR (NS) HDL-C: NR (NS) SOY v. BASE Tot-C: -18% & –14% (for each of two sequences) LDL-C: -16% (average of both sequences) HDL-C: NR (NS) ---- Note: SOY v. CON NR
Gaddi et al. (1991) (Ref. 35)	CON: 4 wk controlled low-lipid diet; 40% of total protein from vegetable sources SOY: 4 wk low-lipid diet with soy analogs substituted for all animal proteins; 100% of protein from vegetable sources (75% of that from soy) ---- Fixed sequence: CON—SOY—CON	CON: 21 adults with familial hypercholesterolemia, 20-60 yr (8 male) SOY: Same as above ---- BASE Tot-C = 402 mg/dL	CON: mixed protein sources SOY: 75 g as SF (in TVP) ----	CON Prot: 20% of E Sat fat: 6.5% of E Chol: 120-250 mg SOY Prot: 20% of E Sat fat: 6.5% of E Chol: <10 mg ---- Note: Chol intake	CON v. BASE Tot-C: -11 mg/dL (NS) LDL-C: -16 mg/dL (NS) HDL-C: NS SOY v. first CON Tot-C: -82 mg/dL LDL-C: -79 mg/dL HDL-C: NS ----
Gaddi et al. (1987) (Ref. 34)	CON: 4 wk low-lipid (25% of E) therapeutic diet; total protein comprising 70% animal and 30% vegetable sources SOY: 18 wk low lipid (25% of E) diet like CON with soy substituted for most of the animal products; total protein 10% animal and 90% vegetable sources ---- Fixed Sequence: CON—SOY	CON: 16 children with familial hypercholesterolemia, 3-12 yr SOY: 12 of above ---- BASE Tot-C = 376 mg/dL	CON: mixed protein sources SOY: ? g as SF (in TVP) actual amount NR ----	CON Prot: 20% of E Sat fat: NR Chol: NR SOY Prot: 20% of E Sat fat: NR Chol: NR ----	CON v. BASE Tot-C: -14 mg/dL (NS) LDL-C: -10 mg/dL (NS) HDL-C: NS SOY v. CON Tot-C: -73 mg/dL LDL-C: -73 mg/dL HDL-C: NS ----

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Table 2. Studies of Subjects with Type II or Familial Hypercholesterolemia - continued

Study	Duration and Type of Control (CON) and Soy Protein (SOY) Dietary Treatments	Subject Numbers and Characteristics	Protein Sources and Amounts of Soy Protein	Dietary Intakes	Results
Widhalm et al. (1993) (Ref. 63)	CON: 8 wk low-fat (35% of E) diet; mixed protein sources	CON: 23 children with familial or polygenic hypercholesterolemia, mean age = 9.3 yr	CON: mixed sources	CON Prot: 15% of E P/S: 0.65 Chol: 190mg	CON (I & II) v. BASE Tot-C: -18% (NS) & -12% LDL-C: -7% (NS) &-13% HDL-C: -5% (NS) & +1% (NS)
	SOY: 8 wk low-fat (32% of E) diet enriched with a soy supplement	SOY: same as above	SOY: 14-18 g as SF	SOY Prot: 18% P/S: 0.73 Chol: 140 mg	SOY (I & II) v. BASE Tot-C: -16% & -18% LDL-C: -22% & -25% HDL-C: -1% (NS) & -13% (NS)
	----	----	----	----	----
	Crossover; Group I fed SOY initially and Group II fed CON initially; 8 wk washout with usual diet between test diets	BASE Tot-C > 90th percentile			Comparison of SOY v. CON NR
Laurin et al. (1991) (Ref. 45) and Jacques et al. (1992) (Ref. 42)	CON: 4 wk low-lipid (28% of E) diet; mixed protein sources including cow milk	CON: 10 children with familial hypercholesterolemia, 6-12 yr	CON: milk and other protein sources	CON Prot: 19% of E Sat fat: NR Chol: 181 mg	CON v. BASE* Tot-C: +10 mg/dL (NS) LDL-C: -8 mg/dL (NS) HDL-C: +1 mg/DL (NS)
	SOY: 4 wk low-lipid (28% of E) diet; soy beverage substituted for cow milk, with other components held constant	SOY: same a above	SOY: 28 g as ISP; other protein sources	SOY Prot: 20% of E Sat fat: NR Chol: 163	SOY v. BASE* Tot-C: -2 mg/dL (NS) LDL-C: -0.4 mg/dL (NS) HDL-C: +4 mg/dL (NS) SOY v. CON** Tot-C: 0 (NS) LDL-C: +2 mg/dL (NS) HDL-C: +2 mg/dL
	----	----	----	----	----
	Crossover; random assignment to SOY or CON initially; run-in with usual diet regimen (BASE); 4-wk washout with usual diet between test diets	BASE Tot-C range: 233-378 mg/dL		P:M:S = 1:3:3 in both test diets	* From Ref. 45 for n=9 ** From Ref. 42 for n=10

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Table 2. Studies of Subjects with Type II or Familial Hypercholesterolemia - continued

Acronyms and Abbreviations Used in Table

BASE	baseline
Chol	dietary cholesterol
CON	control diet
d	day
dL	deciliter
E	energy
est	estimated
g	gram
HDL-C	serum high density lipoprotein cholesterol level
ISP	isolated soy protein
kcal	kilocalorie
LDL-C	serum low density lipoprotein cholesterol level
mg	milligram
mon	month
NR	not recorded
NS	not statistically significant*
Prot	dietary protein
P/S	polyunsaturated to saturated fat ratio
P:M:S	polyunsaturated to monounsaturated to saturated fat ratio
Sat fat	saturated far
SF	soy flour
sig diff	statistically significant difference
SPC	soy protein concentrate
SOY	soy-containing diet
Tot-C	serum total cholesterol level
TVP	textured vegetable protein
wk	week
yr	year

* Results are statistically significantly different unless noted otherwise

[FR Doc. 98–30008 Filed 11–9–98; 8:45 am]
BILLING CODE 4160–01–C

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–121268–97]

RIN 1545–AW10

Travel and Tour Activities of Exempt Organizations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations that clarify when the travel and tour activities of tax exempt organizations are substantially related to the purposes for which exemption was granted.

DATES: The public hearing is being held on Wednesday, February 10, 1999, at 10 a.m. The IRS must receive outlines of topics to be discussed at the hearing by January 20, 1999.

ADDRESSES: The public hearing is being held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building.

Mail outlines to: CC:DOM:CORP:R (REG–121268–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Hand deliver outlines Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–121268–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Submit outlines electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting them directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing LaNita VanDyke, (202) 622–7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations (REG–121268–97) that were published in the **Federal Register** on April 23, 1998 (63 FR 20156).

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who have submitted written comments and wish to present oral comments at the hearing, must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by January 20, 1999.

A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–30014 Filed 11–9–98; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–198, RM–9304]

Radio Broadcasting Services; Cross Plains, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Alalatex Broadcasters, proposing the allotment of Channel 245C3 to Cross Plains, Texas. The channel can be allotted to Cross Plains without a site restriction at coordinates 32–07–42 and 99–11–18.

DATES: Comments must be filed on or before December 21, 1998, and reply comments on or before January 5, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jean Hill, Partner, Alalatex Broadcasters, 6101 Bayou Road, Mobile, AL 36605.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–198, adopted October 21, 1998, and released October 30, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30070 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 63, No. 217
Tuesday, November 10, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 5, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: Survey for Local Cooperatives' Role in the Emerging Grain and Feed Industries.

OMB Control Number: 0570–NEW.

Summary of Collection: The mission of the Cooperative Services Program (CS) of the Rural Business-Cooperative Service (RBS) is to assist farmer-owned cooperatives in improving the economic well-being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The interplay between market and agricultural policy has shaped, and continues to shape the potential activities of grain marketing cooperatives. The passage of the Capper-Volstead Act in 1922, the Cooperative Marketing Act of 1926, and the Agricultural Marketing Act of 1929 were responses to the drastic declines in the prices for most agricultural commodities after World War I. The alternative was direct intervention by the federal government to limit supplies on the domestic market in order to raise prices. Cooperatives are found at all levels of the grain marketing industry, but their presence is strongest at the origination stage (procuring grain from farmers), and weakest in grain exporting. RBS will collect information about cooperatives through telephone and personal interviews surveys.

Need and Use of the Information: RBS will collect information through a survey to establish a baseline of cooperative resources and preferences. This information may ultimately provide a basis for structuring the standardized production and marketing grain sector desired by end-users. The information will be used by regional cooperatives to facilitate strategic planning with member local cooperatives.

Description of Respondents: Business or other for-profit.

Number of Respondents: 800.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 800.

Emergency approval has been requested by October 30, 1998.

Agricultural Research Service/National Agricultural Library

Title: Food and Nutrition Information Center Customer Satisfaction Survey for Food and Nutrition Service Audiences.

OMB Control Number: 0518–NEW.

Summary of Collection: The Food and Nutrition Information Center, National Agricultural Library (NAL), Agricultural Research Service (ARS), USDA receives special funding to serve Food and Nutrition Service (FNS), USDA funded programs. This is documented through two Memoranda of Understanding (MOU) agreements between the Food and Nutrition Information Center, National Agricultural Library and Food and Nutrition Service and Economic Research, USDA. Because the Center and the NAL are emphasizing electronic access, availability of publications and other resources using only this method of communication may be feasible for some audiences served as many do not have access to the World Wide Web or even e-mail through the Internet. Nutrition staff in various FNS-funded programs that the Food and Nutrition Information Center is funded to serve do not have access to World Wide Web and, in some cases, e-mail. ARS will collect information using a survey.

Need and Use of the Information: ARS will collect information to plan and manage services directed to the audiences that they provide service to in order to establish how best to provide reference materials and other resources and tools.

Description of Respondents: State, Local, or Tribal Government; Federal Government.

Number of Respondents: 900.

Frequency of Responses: Reporting: Other (every 3 years).

Total Burden Hours: 450.

Rural Utilities Service

Title: Lien Accommodations and Subordinations, 7 CFR Part 1717, Subparts R&S.

OMB Control Number: 0572–0100.

Summary of Collection: The Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, authorizes and empowers the Administrator of the Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification

and the furnishing of electric energy to persons in rural areas who are not receiving central station service. The RE Act also authorizes and empowers the Administrator of RUS to provide financial assistance to borrowers for purposes provided in the RE Act by accommodating or subordinating loans made by the National Rural Utilities Cooperative Finance Corporation, the Federal Financing Bank, and other lending agencies. RUS will collect information using forms RUS 178, Report of Progress of Construction and Engineering Services, and RUS 457, Engineer's Monthly Report of Substation Progress.

Need and Use of the Information: RUS will collect information to determine an applicant's eligibility for a lien accommodation or lien subordination under the RE Act; facilitate an applicant's solicitation and acquisition of non-RUS loans as to conserve available Government funds; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; subsequent to granting the lien accommodation or lien subordination, administer each so as to minimize its cost to the Government.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 93.

Forest Service

Title: Forest Products Free Use Permit, Forest Products Removal Permit and Cash Receipt, and Forest Products Sale Permit and Cash Receipt.

OMB Control Number: 0596–0085.

Summary of Collection: 16 U.S.C. 551 requires the promulgation of regulations to regulate forest use and prevent destruction of the forests. Regulations at 36 CFR 223.1 and 223.2 govern the sale of forest products such as Christmas trees, pine cones, moss, and mushrooms. Regulations at 36 CFR 223.5–223.13 set forth conditions under which free use of forest product may be obtained by individuals or organizations. 15 U.S.C. 607 provides that a defense against trespass is that the forest product be removed under the regulations. These statutes and the regulations apply to 16 U.S.C. 477, 492, and 607a. Regulations at 36 CFR 261.6 require persons to obtain permits to remove special forest products from National Forest Land. Forest Service Regional Offices have been issuing Forest Product Removal Permits for over 20 years. Each Region has developed its own Forest Product Removal Permit and policies for implementation, but have not obtained OMB authorization for the information collection. National Headquarters is preparing a Forest Product Removal Permit to be implemented in all Regions to ensure consistent implementation of National policies for free use and special forest product programs. Information is required to determine if the applicant meets the criteria under which free use or sale of forest products is authorized by the regulations and to ensure that the permittee complies with the regulations and terms of the permit. This information is also needed to allow Forest Service (FS) compliance personnel to identify permittees in the field.

Need and Use of the Information: The FS will collect information from the public in order to issue a permit, the information that is needed is the name, address, tax identification number or other identification number, this information is used by the FS to keep a record of person buying forest products. The person requesting the permit will provide the information orally and the Forest Officer will enter the information into the permit computerized program or enter onto a hard copy of a permit.

Description of Respondents: Individuals or households; Business or other for-profit.

Number of Respondents: 618,750.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 41,366.

Farm Service Agency

Title: CCC Conservation Contract.

OMB Control Number: 0560–0174.

Summary of Collection: The Farm Service Agency (FSA), in conjunction with the Natural Resources Conservation Service (NRCS), is charged with administering the Environmental Quality Incentives Program (EQIP), the Farmland Protection Program (FPP), and the Conservation Farm Option (CFO) Program. These programs provide farmers and ranchers with flexible opportunities to work with the federal government to address natural resource concerns by implementing innovative and environmentally-sound solutions. Information must be collected from potential participants who wish to apply for these programs. Additional information is required from individuals once they have been accepted into the program to ensure compliance and to issue, as appropriate, cost share and land retirement payments.

Need and Use of the Information: Information will be collected from producers and ranchers who wish to voluntarily participate in either the EQIP, FPP or CFO programs. The application information will allow agency management to select program participants which will help best achieve program objectives related to maximizing environmental benefits, minimizing land retirement, and continuing agricultural production levels. Ongoing recordkeeping and reporting requirements will be necessary to ensure compliance with program provisions.

Description of Respondents: Farms; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 91,000.

Frequency of Responses: Recordkeeping; Reporting: Other (when applying).

Total Burden Hours: 383,830.

Rural Housing Service

Title: 7 CFR 1951–R, Rural Development Loan Servicing.

OMB Control Number: 0575–0015.

Summary of Collection: The Rural Development (RD) Loan Servicing was legislated in 1985 under Section 1323 of the Food and Security Act of 1985. This action is needed to inplement the provision of Section 407 of the Health and Human Services Act of 1986, which amended Section 1323 of the Food Security Act of 1985. Subpart R of part 1951 contains regulations for servicing and liquidating existing loans previously approved and administered by the U.S. Department of Health and Human Services (HHS) under 45 CFR Part 1076 and transferred from HHS to the U.S. Department of Agriculture. This subpart contains regulations for servicing and liquidating loans made by Rural Development, successor to the Farmers Home Administration, under the Intermediary Relending Program (IRP) to eligible intermediaries and applies to ultimate recipients and other involved parties.

Need and Use of the Information: RD will collect information from the intermediary, i.e. assets and liabilities, income statement and a summary of the intermediary's lending and guarantee program. The information is vital to RD for the Agency to make credit and financial analysis decisions based on financial information provided by the Intermediary.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 420.

Frequency of Responses: Reporting: On occasion; Quarterly; Semi-annually; Annually.

Total Burden Hours: 12,675.

Animal and Plant Health Inspection Service

Title: Domestic Quarantines.

OMB Control Number: 0579–0088.

Summary of Collection: Chapter 8 of the Plant Quarantine Act (U.S.C. 161) provides authority for the Secretary of Agriculture to quarantine any State, Territory, or District of the United States to prevent the spread of insect infestation and diseases new to or not widely distributed throughout the United States. The Domestic Quarantines regulations (7 CFR Part 301) are issued under this authority. Implementing these quarantines often requires the Animal and Plant Health Inspection Service (APHIS) to collect information from a variety of individuals who are involved in growing, packing, handling, transporting, and exporting plants and plant products. The information collected from these individuals is vital to helping ensure that injurious plant diseases and insect pests do not spread within the United States. Information to be collected is necessary to determine compliance with domestic quarantine laws. Federal/State domestic quarantines are necessary to regulate the movement of articles from infested areas to noninfested areas. Collecting information requires the use of a number of forms and documents.

Need and Use of the Information: APHIS will collect information by interviewing growers and shippers at the time the inspections are being conducted and by having growers and shippers of exported plants and plant products complete an application for a transit permit. Information is collected from the growers, packers, shippers, and exporters of regulated articles to ensure that the articles, when moved from a quarantined area, do not harbor injurious plant diseases and insect pests. The information obtained will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

Description of Respondents: Business or other for-profit; Farms; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 174,072.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 60,126.

Rural Housing Service

Title: 7 CFR 1980–D, Rural Housing Loans.

OMB Control Number: 0575–0078.

Summary of Collection: The Rural Housing Service (RHS) offers supervised credit programs to build modest housing and essential community facilities in rural areas. RHS regulations prescribe the policy necessary to process Rural Housing loan guarantees to low- and moderate-income applicants. RHS, formerly known as the Rural Housing and Community Development Service (RHCDS), is a successor agency to the Farmers Home Administration under the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law 103–354. Section 517(d) of Title V of the Housing Act of 1949 provides the authority for the Secretary of Agriculture to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas. The purpose of the Guaranteed Rural Housing (GRH) program is to assist low- and moderate-income individuals and families in acquiring or constructing a single family residence in a rural area with loans made by private lenders. RHS will collect information using an application form from the customers for a mortgage loan.

Need and Use of the Information: RHS will collect information from potential borrowers such as household income, assets and liabilities, and monthly expenses to determine if borrowers qualify for and assure they receive all assistance for which they are eligible. All information collected is used to determine eligibility for program participation and to monitor the program efficiency and effectiveness.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 48,060.

Frequency of Responses: Reporting: On occasion: Monthly.

Total Burden Hours: 153,931.

Forest Service

Title: 36 CFR Part 228, Subpart A—Locatable Minerals.

OMB Control Number: 0596–0022.

Summary of Collection: The United States Mining Law of 1872, as amended, governs the prospecting for and appropriation of metallic and most nonmetallic minerals on 192 million acres of National Forest set up by proclamation from the public domain. It gives individuals the right to search for and extract valuable mineral deposits of locatable minerals. Recording that claim in the local courthouse and with the appropriate Bureau of Land Management (BLM) State Office affords protection from subsequent locators. A mining claimant is entitled to reasonable access to claim for further prospecting, mining or necessary related activities, subject to the other laws and applicable regulations. The purpose of the regulations at 36 CFR part 228, subpart A, is to set some specific rules and procedures through which use of the surface of National Forest System lands in connection with mineral operations authorized by the United States mining laws shall be conducted so as to minimize adverse environmental impacts on surface resources. The Forest Service (FS) will collect information using form FS2800–5, Plan of Operations for Mining Activities on National Forest System Lands.

Need and Use of the Information: FS will collect information requirements for a Notice of Intent to identify the area involved; the nature of the proposed operations; the route to the area of operations; the method of transport. The information requirements for a Plan of Operations includes: the name and legal mailing address of the operators; a description of the type of operations proposed; a description of how it would be conducted; a description of the type and standard of existing/proposed roads/access routes; a description of the means of transportation to be used; a description of the period during which the proposed activity will take place; and measures to meet the environmental protection requirements. The information requirements for a cessation of operations include: verification to maintain the structures, equipment and other facilities; expected reopening date; estimate of extended duration of operations; maintenance of the site, structures, equipment and other facilities during nonoperating periods.

Description of Respondents: Business or other for-profit.

Number of Respondents: 5,924.

Frequency of Responses: Reporting: Other (approved till operations change).

Total Burden Hours: 4,462.

Rural Housing Service

Rural Business-Cooperative Service

Farm Service Agency

Title: 7 CFR 1955–B, Management of Property.

OMB Control Number: 0575–0110.

Summary of Collection: The Farm Service Agency (FSA) and the Rural Business-Cooperative Service (RBS) programs are administered under the provisions of the Consolidated and Rural Development Act (CONACT), as amended. FSA Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance

agricultural production. The Rural Housing Service (RHS) provides credit in the form of Multi-Family Housing loan and Community Facility loans. The RBS program is designed to improve, develop or finance business industry and employment and improve the economic and environmental climate in rural communities. These agencies must collect information on real property taken into custody and chattel property in the agency's inventory.

Need and Use of the Information: FSA, RHS, and RBS collect information to properly track and monitor real property and chattel property used to secure loans.

Description of Respondents: Individuals or households; Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,637.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 1,245.

Farm Service Agency

Title: American Indian Livestock Feed Program.

OMB Control Number: 0560–0187.

Summary of Collection: The Agricultural Act of 1970 (7 U.S.C. 1427 (a)), section 813, gives the Secretary of Agriculture the authority to relieve distress caused by a natural disaster by using funds from the sale of commodities held in the disaster reserve. On December 17, 1997, the Secretary announced there would be an American Indian Livestock Feed Program (AILFP) and allocated $8 million from the sale of disaster reserve stocks to fund the program. An additional $4.5 million was subsequently added to the funds for a total of $12.5 million. The AILFP will provide cash reimbursement to livestock owners who must purchase feed to sustain their livestock as a result of a natural disaster. Reimbursement will amount to either 30 percent of the Animal Unit Days (AUD) times the AUD value for the crop year in which the disaster took place, or the amount the owner spent to purchase the feed, whichever amount is smaller. Livestock owners are required to provide receipts substantiating their purchases. When the loss of livestock feed first becomes noticeable in a region a tribal government representative will contact the Bureau of Indian Affairs (BIA) Area Office and the Farm Service Agency (FSA) State Office to get the names of representatives from those agencies who will serve as members of a Survey Team. The Survey Team will consist of a BIA representative, an FSA representative, and at least one tribal representative. The Survey Team will examine the conditions in the region and determine if a natural disaster has had a detrimental effect on the availability of livestock feed in the region, and if so, the team will estimate the loss. FSA will collect information using several forms.

Need and Use of the Information: FSA will collect information to determine if the disaster region commended by the tribal government meets the requirements of the regulations.

Description of Respondents: Individuals or households; State, Local or Tribal Government.

Number of Respondents: 45,000.

Frequency of Responses: Reporting: On occasion; Other (when losses occur).

Total Burden Hours: 22,563.

Farm Service Agency

Title: Livestock Indemnity Program (7 CFR 1439).

OMB Control Number: 0560–0179.

Summary of Collection: Under Pub. L. 105–18, the Secretary of Agriculture is authorized to use up to $50 million from proceeds earned from the sale of grain in the disaster reserve established in the Agricultural Act of 1970 to implement a Livestock Indemnity Program. The program will provide payments to producers with livestock and poultry losses between October 1, 1996 and June 12, 1997, from natural disasters which occurred between October 1, 1996 and June 12, 1997, for which a Presidential or Secretarial Declaration was requested by June 12, 1997, and subsequently approved. Pub. L. 105–119 authorized an additional $6 million to implement a Livestock Indemnity Program for livestock and poultry losses beginning March 1, 1997, through November 26, 1997, from natural disasters which occurred beginning March 1, through November 26, 1997, for which a Presidential or Secretarial Declaration was requested between June 12, 1997, and December 1, 1997, and subsequently approved. The Farm Service Agency (FSA) will collect information using form CCC–661 to establish eligibility for the program.

Need and Use of the Information: FSA will collect information from persons who suffered livestock or poultry losses to support their reported pre-disaster inventory such as receipts for purchase of livestock, poultry, or feed and loan documents, or any information that may be available to verify their livestock or poultry possessions prior to the reported loss. Evidence to support the number of losses such as rendering receipts and a certification by the producer on CCC–661 regarding the accuracy of the information submitted. The information collected will be used by the Commodity Credit Corporation (CCC) to determine the eligibility and amount of assistance in accordance with published regulations. Failure to make sound decisions in providing livestock indemnity program payments, would result in inequitable treatment of the livestock and poultry owners.

Description of Respondents: Farms.

Number of Respondents: 60,000.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 120,000.

Farm Service Agency

Title: Upland Cotton Domestic User/ Exporter Agreement and Payment Program.

OMB Control Number: 0560–0136.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996 (the FAIR Act) provided that, during the period beginning August 1, 1991, and ending July 31, 2003, if for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest price U.S. growth, as quoted for Middling (M) one and three-thirty seconds inch cotton, delivered C.I.F. northern Europe exceeds the Northern Europe price by more than 1.25 cents per pound, the Secretary of Agriculture issue cash or commodity certificates to domestic users for cotton consumed or for exporters for exports made in the week following such consecutive 4-week period. Participating exporters must submit form CCC–1045–1, Exporter Application for Payment, or provide the same information in their own format whenever they export cotton during a week in which a payment rate is in effect. The Farm Service Agency (FSA) will collect information using form CCC–1045–1.

Need and Use of the Information: FSA will collect information from form CCC–1045, Upland Cotton Domestic User/ Exporter Agreement. The agreement contains the terms and conditions for receiving payments and outlines the responsibilities of the participants. Data collected on the agreement documents are limited to the name of exporter, address of recordkeeping office, and taxpayer ID. The agreement establishes basic eligibility to participate in the program.

Description of Respondents: Business or other for-profit.

Number of Respondents: 230.

Frequency of Responses: Reporting: Weekly.

Total Burden Hours: 3,145.

Farm Service Agency

Title: Request for Aerial Photography.

OMB Control Number: 0560–0176.

Summary of Collection: The USDA Farm Service Agency (FSA) Aerial Photography Field Office (AFPO) has the authority to coordinate aerial photography work in USDA, develop and carry out aerial photography and remote sensing programs and the Agency's aerial photography flying contract programs. Section 387 of the Agriculture Adjustment Act of February 16, 1938, states "The Secretary may furnish reproductions of such aerial or other photographs, mosaics, and maps as have been obtained in connection with the authorized work of the Department to farmers and governmental agencies at the estimated cost of furnishing such reproductions, and to persons other than farmers at such prices (not less than estimated cost of furnishing such reproductions) and the Secretary may determine, the money received from such sales to be deposited in the Treasury to the credit of the appropriation charged with the cost of making such reproductions." FSA will collect information using FSA–441 form to determine the necessary customer and photography information needed for the USDA FSA Aerial Photography Field Office to produce and ship the various products ordered from our office.

Need and Use of the Information: FSA will collect information on the name, address, contact name, telephone, fax, e-mail, customer code, agency code, purchase order number, credit card number/exp. date and amount remitted/po amount. Customers have the option of placing orders by mail, fax, telephone, walk-in or floppy disk. Furnishing this information requires the customer to research and prepare their request before submitting it to APFO.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 12,000.

Frequency of Responses: Reporting: Other (when ordering).

Total Burden Hours: 8,000.

Rural Housing Service

Title: Form RD 1910–11, Application Certification, Federal Collection Policies for Consumer or Commercial Debts.

OMB Control Number: 0575–0127.

Summary of Collection: The Rural Development (RD) implements the requirements of the Office of Management and Budget (OMB) Circular A–129. OMB Circular A–129, "Policies for Federal Credit programs and Non-Tax Receivables provides direction as to how agencies should inform its loan applicants of the Federal Government's debt collection policies and procedures prior to extending credit. At the time an application for a loan program is completed, the agency will ask the applicant to sign a debt collection certification statement to certify knowledge of the Government's policies. This statement details the consequences of delinquency. Form RD 1910–11 uniformly advises applicants of the debt collection methods that will and can be used in recovering on delinquent or defaulted loans. RD will collect information using Form RD 1910–11.

Need and Use of the Information: RD will collect information using Form RD 1910–11 to advise applicants of the debt collection methods that will and can be used in recovering on delinquent or defaulted loans. The information will be obtained from loan applicants for consumer and commercial debt at the time of loan application. If the application results in a loan, the information will be maintained in the borrower's case file or loan docket and used as documentation should the borrower become delinquent or default.

Description of Respondents: State, Local or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government.

Number of Respondents: 1,565.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 392.

Farm Service Agency

Title: Power of Attorney.

OMB Control Number: 0560–NEW.

Summary of Collection: The FSA–211, Power of Attorney and FSA–211–1, Power of Attorney for Husband and Wife have been revised to provide for authority for programs provided by the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act). The power of attorney grants said attorney authority to act with respect to actions involving Farm Service Agency (FSA), Commodity Credit Corporation (CCC) and Federal Crop Insurance (FCIC) insured crops. These forms provide a service to producers who are not always able to be present to sign documents. They save the producers the legal fees associated with obtaining a power of attorney. FSA will collect information using form FSA–211 and FSA–211–1.

Need and Use of the Information: FSA will collect information using FSA–211, Power of Attorney to delegate authority to another person to act for the producer with respect to actions under a variety of programs administered by FSA and FSA–211–1, Power of Attorney for Husband and Wife used by one spouse to grant signing authority for another. Without a power of attorney a husband or wife may not be able to sign documents on behalf of a spouse. These forms provide a service to producers who are not always able to be present to sign documents.

Description of Respondents: Farms.

Number of Respondents: 500,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150,000.

Rural Business-Cooperative Service

Title: Revolving Loan Funds Capitalized by USDA Rural Development.

OMB Control Number: 0570–0030.

Summary of Collection: The information to be collected under this action involves three programs. The Intermediary Relending Program (IRP) was authorized by Section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note). The Rural Business Enterprise Grant Program is authorized by section 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932). The Rural Economic Development Grant Program is authorized by Section 313 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c). The Rural Business-Cooperative Service (RBS), an agency within the Rural Development mission area of the U.S. Department of Agriculture, operates several programs that provide funds to organizations to be used for loans to third-party recipients. The Intermediary Relending Program (IRP) provides long term, low interest loans to nonprofit corporations, public agencies, Indian tribes, and cooperatives to establish revolving loan funds to finance businesses and community development projects in rural areas. The Rural Business Enterprise Grant Program provides grant funds to nonprofit and emerging private business enterprises in rural areas. The Rural Economic Development Grant Program provides grants to electric and telephone program borrowers of the Rural Utilities Service, for the purpose of promoting rural economic development and job creation projects. In each of these programs there is an organization, referred to herein as an intermediary, that receives the Federal loan or grant assistance, and uses that assistance to establish revolving funds to make loan and grant assistance, to third parties, referred to herein as ultimate recipients. RBS will collect information using an automated data base of information created by Virginia Polytechnical University on ultimate recipient loans.

Need and Use of the Information: RBS will collect information to analyze the feasibility of secondary market sales of the promissory notes held by the intermediaries and to provide better measures and more accurate and complete information for measuring program impact, in accordance with the National Performance and Results Act.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 550.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,750.

Rural Housing Service

Title: 7 CFR 1901–E, Civil Rights Compliance Requirements.

OMB Control Number: 0575–0018.

Summary of Collection: Rural Development (RD) is required to provide Federal financial assistance through its farmer, housing, and community and business programs on an equal opportunity basis. The laws implemented in 7 CFR 1901–E, require the recipients of Rural Development's Federal financial assistance to collect various types of information by race, color, and national origin. RD will collect information using various RD forms.

Need and Use of the Information: RD will collect information on race, color and national origin. RD will use this information to monitor a recipient's compliance with the civil rights laws, and to determine whether or not service and benefits are being provided to beneficiaries on an equal opportunity basis. Without the required information, RD and its recipient will lack the necessary documentation to demonstrate that their programs are being administered in a nondiscriminatory manner and in full compliance with the civil rights laws.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 19,565.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 533,017.

Farm Service Agency

Title: Debt Settlement Policies and Procedures, 7 CFR 792 and 1403.

OMB Control Number: 0560–0146.

Summary of Collection: The Federal Claims Collection Act of 1966, as revised by the Debt Collection Act of 1982 (DCIA) (31 U.S.C., 3711, et seq.) requires each Federal agency to make aggressive action to collect debts owed it, and to cooperate with other Federal agencies in their debt collection activities. The DCIA of 1996 has increased the aggressiveness required through the addition of mandated provisions to ensure that all agencies are employing the most efficient and cost effective procedures and methods to identify, report and collect outstanding debts. In order for Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) to carryout their responsibilities under this statute, information must be obtained to ensure that the Government will be able to collect, or otherwise settle, debts owed it by any person, organization, corporation, or other legal entity. The Federal Claims Collection Standards and the DCIA provided that if the debtor is financially unable to pay the debt in one lump sum, payment may be accepted in regular installments, that agencies should obtain financial statements from debtors who represent that they are unable to pay the debt in one lump sum, and that agencies which agree to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement. FSA and CCC will collect financial information and the completion of a settlement agreement or promissory note from debtors who are unable to pay their debts in one lump sum.

Need and Use of the Information: FSA will collect information on the debtors assets, liabilities, income and expenses when a debtor requests to enter into an installment agreement to settle their debt. Based on that information a determination can be made on whether the debtor can pay the debt in one lump sum or an installment is necessary. Without this financial information FSA/CCC would have no method of allowing debtor's to pay their debts in installments while still ensuring that the government's financial interests are protected. Once an installment request has been approved, a legally enforceable written agreement incorporating the terms of payment is necessary to evidence the agreement and allow for judicial enforcement if the debtor defaults on the agreement. Form CCC–279 is executed as a promissory note in these situations.

Description of Respondents: Individuals or households; Farm; Federal Government.

Number of Respondents: 250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 125.

Farm Service Agency

Title: Conservation and Environmental Programs—7 CFR 701.

OMB Control Number: 0560–0082.

Summary of Collection: The Conservation and Environmental Programs Regulations at 7 CFR Part 701 set forth the basic policies, program provisions, and eligibility requirements, as determined by the Secretary, under which cost-sharing assistance will be made available to eligible agricultural producers/landowners for carrying out approved long-term conservation, forestry and emergency conservation measures. The regulations include: (1) individual program goals and objectives; (2) applicable program definitions; (3) procedures for program development and implementation; (4) conditions for approvals, payments, and completion of practices; and (5) general provisions to each program. The Farm Service Agency (FSA), in cooperation with the Natural Resources Conservation Service (NRCS), the Forest (FS) and other agencies and organizations, provides eligible producers and landowners, cost-share incentives and technical assistance through several interrelated conservation and environmental programs to help farmers, ranchers and other eligible landowners and operators conserve soil, improve water quality, maintain the fertility of the land, develop the forests, and rehabilitate land damaged by natural disasters. The programs included are Emergency Conservation Program (ECP), Conservation Reserve Program (CFP), Forestry Incentives Program, and Rural Clean Water Program (RCWP). Various forms are used to collect information on the type of assistance required and to certify completions so that cost-share payments can be received.

Need and Use of the Information: Information collected is used by FSA offices to determine eligibility, calculate cost-share payments earned by participants based on the information reported by the applicant that is substantiated by the receipts or sales documents to monitor compliance.

Description of Respondents: Farm.

Number of Respondents: 450,000.

Frequency of Responses: Reporting.

Total Burden Hours: 205,000.

Farm Service Agency

Title: General Regulations Governing Sugar Loans for 1996 and Subsequent Crops—7 CFR part 1435.

OMB Control Number: 0560–0093.

Summary of Collection: Sugar loans are authorized by the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 FAIR Act),

Section 156 and the Commodity Credit Corporation (CCC) Charter Act (Pub. L. 80–806). The loans to processors are made available through CCC and implemented by regulations at 7 CFR 1435. The 1996 Act provides the Secretary shall make available recourse or nonrecourse marketing assistance loans on 1996 through 2002 crops of sugar beets and sugarcane. The Farm Service Agency (FSA), on behalf of CCC, administers recourse and nonrecourse loans for sugar. The type of loan, recourse or nonrecourse, is determined by the level of tariff rate quotas for sugar imports. CCC makes loans available to processors on eligible sugar pledged as loan collateral. The sugar may be stored in approved farm storage. Processors obtain loans on sugar processed from sugar beets and sugar cane grown by eligible producers in the United States and Puerto Rico. An eligible producer on a farm must have: (1) complied with the highly erodible land requirements; (2) reported planted acres for commodities applicable to loan requests; (3) met the applicable crop insurance requirements; and (4) share in the risk of producing the commodity. Eligible sugar must be processed and owned by the eligible processor and stored in suitable storage. May not have been processed from imported sugarcane, sugar beets, or molasses, and must have been processed in the United States or Puerto Rico and must have processor certification in the loan application that the sugar is eligible and available to be pledged as collateral. FSA will collect information using form SU–2, Application for Sugar Loan.

Need and Use of the Information: FSA will collect information on the total capacity, storage location, crop years, commodity lienholders, quantity, lot number and where the sugar was produced. The information is used to determine the eligibility of the sugar and is used to establish the quantity to be pledged as collateral for the certified loan. Furnishing the data is voluntary, however, without it, assistance under the CCC loan program cannot be provided.

Description of Respondents: Business or other for-profit.

Number of Respondents: 43.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 15.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–30122 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northern Sierra Forest Plan Amendment EIS; Humboldt-Toiyabe National Forest; Carson City, Douglas, and Washoe Counties, Nevada; Alpine, Eldorado, Nevada, Sierra, Lassen, and Toulumne Counties, California

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Humboldt-Toiyabe National Forest will prepare an environmental impact statement (EIS) to consider amending the Toiyabe National Forest Land and Resource Management Plan (Forest Plan). The amendment will be comprehensive, covering a wide variety of issues needed to update the Forest Plan for the Northern Sierra area.

DECISION TO BE MADE: The Forest Service will decide whether or not to amend the Forest Plan for the Northern Sierra area, which coincides with the Carson Ranger District. The amendment will consider improving the management direction of portions of the Forest Plan and affirm continuation of other aspects of the Forest Plan's management direction for the next 10–15 years. No irreversible or irretrievable commitment of resources (site specific actions) will be taken as a result of this decision.

DATES: The public is asked to provide any information they believe the Forest Service should consider and to submit any issues regarding alternatives or potential impacts by January 23, 1999. The agency expects to file the draft EIS with the Environmental Protection Agency and make it available for public comment in November, 1999. The agency expects to file the final EIS in June, 2000.

MEETINGS: The Humboldt-Toiyabe National Forest will hold four public meetings to present information gained from the implementation of the current Forest Plan and discuss the proposed Forest Plan amendment. Comments from the public, other agencies and tribal councils are welcomed. Tentative dates and locations for these meetings are: December 11, 1998, 7:00 pm–9:00 pm at the Sierra Room, Carson City Community Center, Carson City, NV; December 15, 1998, 4:00 pm–7:00 pm at the Old Schoolhouse, Bartley Regional Park, 6000 Bartley Ranch Drive, Reno, NV; Dec. 17, 1998, 4:00 pm-7:00 pm at Turtle Rock Park, Markleeville, CA; and January 12, 1999 from 1:00 pm to 2:00 pm at the Douglas County Administration Building Courtroom, 1616 8th St., Minden, NV.

COMMENTS: Written comments on the information presented here should be submitted to the Northern Sierra Planning Team, Attn. Dave Loomis, USDA Forest Service, Humboldt-Toiyabe National Forest, 1536 South Carson St., Carson City, NV 89701. Comments should be received by January 23, 1999.

ADDITIONAL INFORMATION: For additional information contact Dave Loomis, Forest Planner, Humboldt-Toiyabe National Forest, 1536 South Carson St., Carson City, NV 89701, (702) 884–8132.

RESPONSIBLE OFFICIAL: The Regional Forester for the Intermountain Region located at 324 25th Street, Odgen Utah 84401 is the responsible official for this action.

SUPPLEMENTARY INFORMATION: The proposed amendment will address management of National Forest System lands in the Northern Sierra area, which includes portions of Lassen, Sierra, Nevada, Eldorado, and Alpine Counties in California and portions of Washoe, Carson City, and Douglas Counties in Nevada. This area is part of the Sierra Nevada mountain range. A framework for conservation and collaboration for National Forest System lands in the Sierra Nevada is currently under development. The EIS for the Northern Sierra Plan Amendment will be developed in coordination with the EIS for the Sierra Framework.

The substantive changes that will be addressed in the amendment of the Forest Plan are described in the regulations implementing the National Forest Management Act (NFMA). The amendment process begins with monitoring and evaluation of Forest Plan implementation (36 CFR 219.12(k)). It includes public involvement in monitoring and identification of opportunities for improvements to improve management.

This NOI signals the development of an EIS for the amendment of the Forest Plan. Based upon monitoring and evaluation results and the information obtained in the Analysis of the Management Situation (AMS), the Humboldt-Toiyabe National Forest is proposing to make several improvements to the long-term management direction for the Northern Sierra area. The public is invited to comment on the preliminary alternatives which have been identified.

Proposed Action

The proposed action is to amend the Toiyabe Land and Resource Management Plan to improve management direction. The purpose of the proposed action is to provide long

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term management direction for the Northern Sierra area. The proposed action is needed because existing guidance is more than a decade old. That guidance does not reflect the substantial additions to the National Forest System in the area, the rapidly growing and diversifying population, or the advances in science that have occurred over the last decade. Four alternatives have been prepared to address the topics outlined below. A preferred alternative will be selected during the preparation of the drafts EIS based on public comments from this scoping process and the analysis of environmental impacts of the alternatives.

Amendment Topics

Based on the analysis of the existing direction, monitoring and evaluation of resource conditions, and public comments, the following topics have been identified as having a need for change in management direction. Heritage Resources, American Indian Religious and Cultural Use, Watershed Protection, Species and Ecosystem Viability, Roadless/Wilderness Area Management, Wild and Scenic River Suitability, Access, Transportation, Recreation, Visual Resources, Fire and Smoke Management, Forest Products Management, Livestock Grazing Management, Mining, and Land Adjustment.

Potential Alternatives

These alternatives are preliminary only and will be refined through the public scoping process. While alternatives may vary in emphases, management activities would occur within the framework of the Forest Service Natural Resources Agenda. The agenda emphasizes watershed protection, ecosystem management, recreation and road management.

Alternative A emphasizes public recreational access to Forest System lands. It protects scenic quality as a backdrop that enhances the quality of life for residents and visitors. Alternative B emphasizes public access, commercial services, and high diversity of multiple uses. It provides for local economic diversity through forest product development, forage utilization, outfitter guides, recreational facilities, and motorized recreational opportunities. Alternative C emphasizes ecological restoration including the protection, maintenance, and restoration of watershed, riparian areas, and ecosystem viability. Alternative D emphasizes sustainable multiple use to meet current and future needs and expectations of local communities and the American public. It encourages cooperative partnerships and collaborative stewardship of the National Forest.

Public Comments on the Draft EIS

The Draft Environmental Impact Statement is expected to be available for public review and comment in November, 1999. The comment period on the draft environmental impact statement will be at least 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submiss[illegible]nd notify the requester that the c[illegible]nts may be resubmitted with or w[illegible] name and address.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the comment period so that substantive comments are made available to the Forest Service when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be specific and refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft statement or the merits of the alternatives discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 4, 1998.

Gloria E. Flora,

Forest Supervisor, Humboldt-Toiyabe National Forest.

[FR Doc. 98–30062 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Keystone Resort, Jones Gulch Development; White River National Forest, Summit County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects from the development of the Jones Gulch ski pod at Keystone Resort. Development will be confined to Keystone Resort's existing Special Use Permit boundary. The proposed actions to construct lifts, trails, snowmaking, and associated service roads are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The Forest Service is evaluating a proposal, submitted by Keystone Resort, which is consistent with forest management direction for ski areas. The purposes of the project are to address the following needs: (1) To improve skier/snowboarder distribution and reduce trail densities on the front side of Keystone Mountain by providing additional intermediate and advanced terrain on the front side of Keystone Mountain; (2) to improve ingress and egress and reduce out-of-base congestion by adding another portal at

Jones Gulch; (3) to meet existing and anticipated skier demand through development of infrastructure consistent with advances in equipment, lift technology, and consumer preference; (4) to address some existing environmental concerns associated with historic activities and existing development. The EIS will tier to the White River National Forest Land and Resource Management Plan (Forest Plan) and Final EIS of September 20, 1984, which provides overall guidance for ski area management of the area. All activities associated with the proposal will be designed to maintain high quality resource objectives.

DATES: Written comments and suggestions should be postmarked or received by the Dillon Ranger District no later than 30 days after the publication of this notice. Send comments to Michael Liu, Attn: Keystone, Dillon Ranger District, P.O. Box 620, Silverthorne, Colorado, 80498, fax (970) 468–7735.

FOR FURTHER INFORMATION: Contact Michael Liu, Special Projects Coordinator, Dillon Ranger District, phone (970) 262–3440.

SUPPLEMENTARY INFORMATION: The proposed action includes construction of facilities entirely within Keystone Resort's Special Use Permit area. These facilities have been conceptually approved through previous National Environmental Policy Act analysis of the Resort's Master Development Plan (MDP). Specific elements of the proposed action include: Approximately 125 acres of trail construction, approximately 95 acres of additional snowmaking coverage, construction of three chair-lifts and one surface-lift, and construction of required service roads.

The project area is located on National Forest System lands within sections 19, 20, 29, 30, 31 and 32, Township 5 South, Range 76 West of the 6th P.M., all within Summit County, Colorado. Keystone Resort is located approximately 70 miles west of Denver, Colorado.

These improvements are consistent with Forest Plan and Regional Guide direction, and are considered necessary in light of current resort deficiencies, increased visitation experienced over the past decade, and projected future visitation increases. The proposed analysis will provide additional site-specific detail for portions of the existing MDP to accommodate changing socio-economic and environmental considerations, and may modify previous approvals shown in the MDP to avoid wetlands and other environmentally sensitive areas.

Preliminary Issues

Preliminary issues identified forest fragmentation and effects to: Wildlife, wetlands, water quality, mountain hydrology, geological stability, and the relationship of the project to future development of adjacent real estate. Additional issues will be identified during the scoping process.

Public Involvement and Scoping

Analysis of this proposal was originally planned under an Environmental Assessment (EA). After further study and additional information from resource specialists, the Forest Service has decided to prepare an EIS. Public scoping was conducted for the EA during October and November of 1997 through newspaper articles, letters to interested parties and two open houses. Comments previously submitted as part of the EA scoping process will be included in the documentation for the EIS and will be used to focus analysis and develop alternatives. Interested groups and individuals that have previously commented as part of the EA scoping process will be retained on the project mailing list.

The project proposal has been modified since originally submitted by Keystone Resort. The proposed Ski Tip Return Trail has been removed and one chairlift has been added to the proposal.

This environmental analysis and decision making process will enable additional interested and affected people to participate and contribute to the final decision. The Forest Service will seek information, comments, and assistance identifying issues from Federal, State, local agencies, federally recognized Native American tribes, and other individuals or organizations who may be interested in or affected by the proposal.

Completion of the draft EIS is anticipated during the late winter or spring of 1999. The final EIS should be completed some time during the late summer or fall of 1999. The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the "Notice of Availability" in the **Federal Register**.

Responsible Official

The Responsible Official for this project is Martha Ketelle, Forest Supervisor for the White River National Forest. The Responsible Official will document the decision and reasons for the decision in the Record of Decision issued concurrently with the release of the final EIS. That decision will be subject to appeal under 36 CFR 215.

Dated: November 3, 1998.

Martha Ketelle,

Forest Supervisor, White River National Forest.

[FR Doc. 98–30066 Filed 11–9–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Amendment to Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 5:30 p.m. on Tuesday, November 17, 1998, has a location change. The new location is the Logan Area Public Library, 1 Wildcat Way, Logan, West Virginia 25601. The notice originally published in the **Federal Register** on Thursday, October 29, 1998, Vol. 63, No. 209, p. 58008. This notice is change of location only.

Persons desiring additional information, should contact Chairperson Gregory T. Hinton, 304–367–4244 or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 5, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–30199 Filed 11–9–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Postponement of Final Results of Antidumping Duty New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for the final results of the new shipper administrative review of the

antidumping duty order on brake rotors from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the new shipper administrative review of the antidumping duty order on brake rotors from the People's Republic of China (PRC). This review covers the period April 1, 1997, through September 30, 1997.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–4194, respectively.

Postponement of Preliminary Results of Review

On November 28, 1997, the Department initiated a new shipper review of the antidumping duty order on brake rotors from the PRC for China National Industrial Machinery Import & Export Co., Lai Zhou Auto Brake Equipments Factory, Longkou Haimeng Machinery Co., Ltd., Qingdao Gren (Group) Co., and Yantai Winhere Auto Part Manufacturing Co., Ltd. (62 FR 64206, December 4, 1997). On September 29, 1998, the Department made its preliminary determination in the above-referenced review (63 FR 51895, September 29, 1998). The current deadline for the final results in this new shipper review is December 23, 1998. In accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended, the Department finds this new shipper review extraordinarily complicated because the large number of respondents and is extending the time limit for completion of the final results until February 23, 1999, which is 150 days after the date on which the preliminary results were issued.

Dated: November 4, 1998.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30143 Filed 11–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Postponement of Preliminary Results of Antidumping Duty New Shipper Administrative Review and First Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of the time limit for the preliminary results in the antidumping duty new shipper administrative review and first administrative review of the antidumping duty order on brake rotors from the People's Republic of China.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty new shipper administrative review and first administrative review of the antidumping duty order on brake rotors from the People's Republic of China (PRC). This review covers the period October 1, 1996, through March 31, 1998.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Everett Kelly, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–4194, respectively.

Postponement of Preliminary Results of Review

The Department initiated a new shipper review of the antidumping duty order on brake rotors from the PRC (63 FR 28355) on May 22, 1998 and, on May 29, 1998, initiated the first administrative review of the antidumping duty order on brake rotors from the PRC (63 FR 29370). Pursuant to section 351.214(j)(3) of its regulations, and with the agreement of Yantai Chen Fu Machinery Co. Ltd., (Yantai Chen Fu) the Department is conducting the 1996–1998 administrative review and the new shipper review of Yantai Chen Fu concurrently. The current deadline for the preliminary results in these reviews is January 4, 1999. In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 ("the Act"), as amended, we determine that it is not practicable to complete these reviews within the original time frame because of the large number of respondents.[1] Further, in accordance with section 751(a)(2)(B)(iv) of the Act, the Department finds the concurrent new shipper review extraordinarily complicated because it is being conducted with the administrative review of a large number of respondents. Thus the Department is extending the time limit for completion of the preliminary results until April 30, 1999, which is 365 days after the last day of the anniversary month of the order.

The final determination will occur within 120 days of the publication of the preliminary results.

Dated: November 4, 1998.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30144 Filed 11–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Final Results of Expedited Sunset Review: Roller Chain, Other Than Bicycle, From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Roller Chain, Other Than Bicycle, From Japan.

SUMMARY: On July 6, 1998, the Department of Commerce ("the Department") initiated a sunset review of the antidumping finding on roller chain, other than bicycle, from Japan (63 FR 26389) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of the domestic industry and substantive comments filed on behalf of the domestic industry and respondent

[1] The administrative review respondents are Yantai Import and Export Co., Southwest Technical Import & Export Co.,Yangtze Machinery Co., MMB International Inc., Hebei Metals and Minerals Import and Export Co., Jilin Provincial Machinery & Equipment Import and Export Co., Shangdong Jiyuang Enterprise Co., Longjing Walking Tractor Works Foreign Trade Import and Export Co., Qindao Metals, Minerals & Machinery Import and Exports Co., Shanxi Macjinery and Equipment Import and Export Co., Xianghe Zichen Casting Co., Yenhere Co., China Non-Market Economy Entity, China National Automotive Industry Import and Export Co., Shandong Laizhou CAPCO Industry, Shenyang Honbase Machinery Co. Ltd., Lai Zhou Luyuan Automobile Fitting Co., Ltd., China National Machinery and Equipment Import and Export (Xinjiang) Corporation, Ltd. The new shipper is Yantai Chen Fu Machinery Co., Ltd.

interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping finding would be likely to lead to a continuation or recurrence of dumping at the levels indicated in the Appendix to this notice.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping finding is roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle" includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This finding also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

This review covers all manufacturers and exporters of roller chain from Japan, other than Honda Motor Company and Tsubakimoto Chain, for which the finding has been revoked.

Background

On July 6, 1998, the Department initiated a sunset review of the antidumping finding on roller chain, other than bicycle, from Japan (63 FR 26389), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate from the American Chain Association ("ACA") on July 20, 1998, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. ACA claimed interested party status under section 771(9)(E) of the Act, as a trade association, a majority of whose members manufacture roller chain in the United States. We received complete substantive responses from ACA and from Daido Tsusho Co., Ltd. ("Daido Tsusho") and Daido Corporation (collectively "Daido") on August 5, 1998, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In its substantive response, Daido stated that Daido Tsusho is an exporter of the subject merchandise manufactured by Daido Kogyo Co., Ltd. ("Daido Kogyo") and Enuma Chain Manufacturing Co., Ltd. ("Enuma"), and that Daido Corporation is a U.S. importer of the subject merchandise manufactured by Daido Kogyo and Enuma. Additionally, Daido Tsusho stated that it had participated in administrative reviews under its former name, Meisei Trading Co., Ltd. Daido claimed interested party status as a foreign exporter and United States importer of subject merchandise under section 771(9)(A) of the Act.

Using the information on value of exports submitted by Daido and the value of imports as reported by the United States Customs Service ("Customs") in its annual reports to Congress on administration of the antidumping and countervailing duty laws,[1] the Department determined that exports by Daido Tsusho Co., Ltd. accounted for significantly less than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review. Therefore, the Department determined that respondent interested parties provided an inadequate response to the notice of initiation, and, in accordance with section 351.218(e)(1)(ii)(C)(2) of the *Sunset Regulations*, the Department determined to conduct an expedited review.

On September 14, 1998, Daido submitted comments arguing that ACA's response to the notice of initiation was inadequate and, thus, the Department should conduct a 90-day sunset review and revoke the antidumping finding. Daido argued that ACA does not qualify as an interested party because four members of ACA that are U.S. manufacturers of roller chain are also importers of roller chain from Japan. On September 17 1998, we received unsolicited rebuttal comments on behalf of ACA. On October 5, 1998, Daido argued that ACA's September 17 letter should be disregarded and removed from the record because it constituted an unauthorized and unsolicited written argument.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping finding would be likely to lead to a continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping finding, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the finding is revoked.

As discussed more fully in the "Department's Position" contained in the "Continuation or Recurrence of Dumping" section of this notice, given that dumping has continued over the life of the finding, consistent with Section II.A.3. of the *Sunset Policy Bulletin*, the Department determines that dumping is likely to continue if the finding were revoked. Further, on the bases discussed more fully in the "Department's Position" contained in the "Magnitude of the Margin" section of this notice, we determine that the original margins calculated by the

[1] This information is available to the public on the Internet at "http://www.ita.doc.gov/import_admin/ records/sunset".

Department are probative of the behavior of the Japanese manufacturers and exporters of roller chain and we will report to the Commission the company-specific and "all others" margins contained in the Appendix to this notice.

Below, we address the issues raised in this sunset review.

Continuation or Recurrence of Dumping

Interested Party Comments

In its substantive response, ACA argues that the actions taken by producers and exporters of Japanese roller chain during the life of the finding indicate that "dumping would persist, and indeed grow worse, were the finding revoked." (*See* August 5, 1998, Substantive Response of ACA.) With respect to whether dumping continued at any level above de minimis after the issuance of the finding, ACA asserts that, as documented in the final results of reviews reached by the Department, dumping levels have increased during the life of the finding, with company-specific margins ranging up to 43.29 percent.

With respect to whether imports of the subject merchandise ceased after the issuance of the finding, ACA observes that the number of firms exporting roller chain to the United States has declined dramatically in recent years, noting that the first administrative review conducted by the Department covered 110 entities, while the more recent reviews cover only a handful of firms. While recognizing that the Department's figures appear to understate the true volume of the imported subject merchandise, ACA notes that information available on the Department's web site demonstrates that imports of covered chain in 1997 surged to the highest level in at least five years.

In conclusion, ACA argues that the Department should determine that there is a likelihood that dumping would continue were the finding revoked because (1) dumping margins have been significant and have increased over the life of the finding, and (2) certain companies have ceased exporting altogether.

In its substantive response, Daido states that the revocation of the dumping finding would likely result in (1) no significant change in Japanese roller chain import volumes, (2) no significant change in Japanese roller chain prices, and (3) no adverse impact on U.S. roller chain manufacturers. (*See* August 5, 1998, Substantive Response of Daido.) In its submission, Daido does not address the fact that dumping margins above de minimis continue to exist. Commenting on the question of import volumes, Daido states that Japanese chain (including both subject and non-subject merchandise) import volumes increased from 20,215,319 pounds in 1973 to a high point of 38,317,728 pounds in 1985 and have since moved erratically to 24,459,000 pounds in 1997. Additionally, in its August 5, 1998, rebuttal comments, Daido states that import values are significantly affected by exchange rate fluctuations and the use of value figures is likely to produce mistaken conclusions. In its substantive response, Daido did not address the issue of whether dumping is likely to continue.

Department's Position

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc., No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3. of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

The antidumping finding on roller chain, other than bicycle, from Japan was published in the **Federal Register** as Treasury Decision 73–100 (38 FR 9226, April 12, 1973). Since that time, the Department has conducted numerous administrative reviews. On August 14, 1989, and April 23, 1991, the Department revoked the finding with respect to imports from Tsubakimoto Chain Company and Honda Motor Company effective October 1982 and September 1983, respectively (54 FR 33259 and 56 FR 18564). The finding remains in effect for all other imports of roller chain from Japan.

We find that the existence of dumping margins after the issuance of the finding is highly probative of the likelihood of continuation or dumping. Deposit rates above de minimis levels continue in effect for exports by several Japanese manufacturers and exporters of roller chain (for example, Daido Kogyo; Enuma; Hitachi; Izumi Chain Manufacturing Co; Pulton Chain Company, Inc.; Sugiyama Chain Company, Ltd; and Toyota Motor Company). As discussed in Section II.A.3. of the Sunset Policy Bulletin and the SAA at 890, and the House Report at 63–64, "[i]f companies continue dumping with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed." Therefore, absent argument and evidence to the contrary and, given that dumping has continued over the life of the finding, the Department determines that dumping is likely to continue if the finding were revoked.

Magnitude of the Margin

Interested Party Comments:

In its substantive response, Daido recommends that the Department select the dumping margins reported by Customs in the administrative reviews conducted immediately after the publication of the dumping finding. Specifically, Daido suggests that the Department adopt the Customs determinations that sales by Enuma and Daido Kogyo had not been made at less than fair value for a period of two years since the dumping finding. Indeed, noting that "it appears" that certain companies "are not selling roller chain, other than bicycle, from Japan at less than fair value," in 1977 and 1978, Treasury published three **Federal Register** notices of *tentative* determinations to modify or revoke the finding of dumping on roller chain from Japan with respect to merchandise sold by Honda Motor Company, Ltd. and Toyota Motor Sales Co., Ltd. and merchandise produced and sold by Enuma and Daido Kogyo (*see* 42 FR 41517 (August 17, 1977), 42 FR 54043 (October 4, 1977), and 43 FR 30635 (July 17, 1978)). ACA objected to the use of those margins, stating that so much time has elapsed that those margins are no longer probative and that use of such margins ignores the fact that dumping margins have increased over the life of the finding (*see* August 10, 1998, Rebuttal Comments of ACA).

Daido suggests that, alternatively, consistent with the *Sunset Policy Bulletin*, the Department should select the margins from the first administrative review conducted by the Department, which generally covers the period April

1, 1979 through March 31, 1980. Daido states that the dumping margin for Daido Kogyo and Enuma for that period is 1.18 percent (*see* 46 FR 44488 (September 4, 1981)).

ACA argues in both its substantive response and rebuttal comments that margins from 1981 are no longer probative as to the level of dumping that would likely occur should the finding be revoked. ACA proposes that, for each company which is currently being reviewed or which has been reviewed within the past five years, the Department should report to the Commission the highest margin determined or applied as the margin likely to prevail in the event of revocation. Additionally, for companies not currently being reviewed, or not reviewed within the past five years, ACA suggests that the Department select the highest "all others" rate from the past five years. To support its position, ACA contends that it is reasonable to expect that a company that is dumping with the restraining influence of an antidumping finding in place would continue to dump if the finding were revoked at a level at least as high as the highest recent level. Further, ACA argues that the use of a more recently calculated margin provides a better indication of the likely conduct of producers and/or exporters than 25-year, or even 18-year old conduct. Finally, ACA suggests that employing margins calculated in the most recent five years would be consistent with standard five-year reviews to be conducted by the Department.

Daido objects to the use of the highest dumping margins from the past 25 years, arguing that, in a case with such a long history as this, the best basis for predicting future conduct is past conduct—excluding aberrational margins found to exist over the many years. Daido argues that aberrational margins result from a number of factors besides a willful intent to dump, *e.g.*, exchange rate fluctuations and clerical errors in reporting data. Daido urges the Department to select, as the magnitude of the margin likely to prevail, a zero or de minimis margin for Daido Kogyo and Enuma because these companies demonstrated a consistent pattern of zero or de minimis margins.

Department's Position

In the *Sunset Policy Bulletin*, the Department stated that, in a sunset review of an antidumping finding for which no company-specific margin or all others rate is included in the Treasury finding published in the **Federal Register**, the Department normally will provide to the Commission the company-specific margin from the first final results of administrative review published in the **Federal Register** by the Department. Additionally, if the first final results do not contain a margin for a particular company, the Department normally will provide the Commission, as the margin for that company, the first "new shipper" rate established by the Department for that finding. (*See* section II.B.1. of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3. of the *Sunset Policy Bulletin*).

Because Treasury did not publish weighted-average dumping margins in its finding, and such margins are not otherwise publicly available, the margins determined in the original investigation are not available to the Department for use in this sunset review. Under these circumstances, the Department normally will select the margin from the first administrative review conducted by the Department as the magnitude of the margin of dumping likely to prevail if the finding is revoked. We note that, to date, the Department has not issued any duty absorption findings in this case.

ACA argues that the Department should abandon its policy of selecting the margins from the first administrative review conducted by Commerce and, instead, should select the highest margins from the recent administrative reviews. In the *Sunset Policy Bulletin* the Department stated that "a company may choose to increase dumping in order to maintain or increase market share" and that "the Department may, in response to argument from an interested party, provide to the Commission a more recently calculated margin for a particular company, where, for that particular company, dumping margins increased after the issuance of the order." (*See* section II.B.2. of the *Sunset Policy Bulletin*.) The Department's intent was to establish a policy of using the original investigation margin as a starting point, thus providing interested parties the opportunity and incentive to come forward with data which would support a different estimate. ACA, however, merely asserts that it is reasonable to expect that a company dumping with the restraining influence of an antidumping finding in place would continue dumping if the finding were revoked at a level at least as high as the highest recent level. Additionally, ACA suggests that the current economic crisis in Asia generally, and in Japan in particular, as well as the resulting increase in Japanese exports and the attendant surge in Japanese imports (including the 1997 surge in covered roller chain imports reflected on the Department's web site), provide further support for concluding that dumping is likely to continue if the finding were revoked. ACA did not, however, present arguments with respect to changes in margin levels as related to market share. In fact, using the volume and value of Daido Tsusho's exports of subject merchandise for five calendar years beginning with 1993, provided in Daido's substantive response, we find that, although increasing on a value basis over the five years, Daido's exports, on a volume basis, actually decreased. This information does not present the Department with a picture of the relative market share held by Daido over this period. Given the information available to the Department, it is not possible to discern whether Daido's recent margins reflect an effort to obtain or increase market share.

With respect to Daido's suggestion that the Department select rates established in administrative reviews conducted by Customs, we do not agree with ACA that margins dating back to 1977 and 1978 are no longer probative because so much time has elapsed. We do agree, however, that tentative determinations by Treasury are not an appropriate source of margins for the purpose of sunset reviews, because they were never finalized and, in fact, when considered by the Department, were determined no longer applicable.

Our review of the margin history over the life of this finding demonstrates that, for the most part, margins remained relatively constant. Although we recognize that there have been fluctuations, we do not view them as demonstrating a consistent pattern of behavior. Therefore, we determine that the original margins calculated by the Department are probative of the behavior of the Japanese manufacturers and exporters of roller chain.

Adequacy

Interested Party Comments

On September 14, 1998, Daido submitted comments arguing that ACA's response to the notice of initiation was inadequate and, thus, the Department should conduct a 90-day sunset review and revoke the antidumping finding. Daido argued that ACA does not qualify as an interested party because four members of ACA that are U.S. manufacturers of roller chain are also importers of roller chain from Japan. On September 17, 1998, we received

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unsolicited rebuttal comments on behalf of ACA. On October 5, 1998, Daido argued that ACA's September 17 letter should be disregarded and removed from the record because it constituted an unauthorized and unsolicited written argument.

Department's Position

In an expedited review, the *Sunset Regulations* provide only for comments on the appropriateness of the Department's determination to conduct an expedited review based on inadequate response from respondent interested parties. *See* section 351.309(e)(i) of the *Sunset Regulations*, referencing sections 351.218(e)(1)(ii) (B) and (C) (inadequate response from a foreign government or respondent interested parties, respectively). Daido's and ACA's comments do not address this issue. Section 351.218(d)(4) of the *Sunset Regulations* explicitly provides that, in an expedited review, the Department normally will not consider any additional information from a party after the time for filing rebuttals to substantive responses has expired. Since both parties submitted these comments after the deadline had expired, and did not request any extension of submission deadlines, we find these comments to be untimely and have not considered Daido's September 14, 1998, and October 5, 1998 submissions, or ACA's September 17, 1998, in making our final determination. We note that the parties could have submitted comments addressing the adequacy of response by domestic interested parties in either the substantive responses that were due on August 5, 1998, or August 10, 1998.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 3, 1998.

Holly Kuga,

Acting Assistant Secretary for Import Administration.

Appendix

Manufacturer/Exporter	Margin (percent)
A & K Co.	1.84
Ajia Kikei Boeki	1.84
APC Corp.	0
Asia Machinery	2.00
Auto Dynamics	5.36
C. Itoh	0
Central Automotive	2.00
Cherry Industrial	20.00
Daido Enterprising	2.00
Daido Kogyo Co., Ltd	1.18
Daido Sangyo	5.36
Deer Island	43.29
Detroit Industries	5.36
Empire Motor	5.36
Enuma Chain Manufacturing Co.	1.18
Enuma Chain/Daido	15.92
Enuma Chain/Meisi	15.92
Fee International	1.84
Fuji Lumber	0
Fuji Motors (Zenoah)	5.36
Fuji Seiko	43.29
Fukoku	5.36
Hajime	5.36
Harima Enterprise	0
Henry Abe	5.36
HIC Trading Co., Ltd.	0
Hiro Enterprises	0
Hitachi Metals/Hitachi Intl.	2.76
Hitachi Metals/All Other Importers.	1.84
HKS Japan	20.00
Hodaka Kogyosho	5.36
Honda Motor	Revoked
I & OC	5.36
Iketoku	5.36
Izumi Chain Mfg. Co., Ltd.	6.93
Jeico	0
Kaga Kogyo (Kaga Industries Co., Ltd.).	0
Kaga/APC	0
Kaga Koken/TK Products	1.00
Karl Mayer Textile	0
Kashima Trading	43.29
Katayama Chain Co., Ltd	43.29
Kawasaki	1.00
Kokusai	5.36
Marubeni	0
Maruka Machinery	5.36
MC Intl.	5.36
Meiho Yoko	43.29
Meisei Trading	1.18
Miewa Trading	3.00
Mitsui	13.40
Mitsubishi	5.36
Mitsubishi Boeki	34.80
Mitsubishi Motors	5.36
Myasaki Shokai	5.36
Naniwa Kogyo	43.29
Nankai Buhin	5.36
Nickel & Lyons	5.36
Nippo Buhin	5.36
Nissan Motor	0
Nissei Company	12.80
Nissho Iwai	0
Nomura Shoji	5.36
Oriental Chain	0
Osaka Buhin	5.36
Pulton Chain	0
Pulton/HIC Trading	0
Pulton/I&OC	0
Refac Intl.	5.36
Rocky Asia	6.93
Royal Industires	2.00
Ryobi Ltd.	2.00
Sanko Co.	9.37
Schneider Engineering	2.00
Shima Trading	6.99
Shinyei Kaisha	5.36
Shinyo Ind.	43.29
Sugiyama/Fuji Lumber	0
Sugiyama/Harima Enterprise	0
Sugiyama/HKK	15
Sugiyama/I & OC	0
Sugiyama/All Others	0
Sumitomo Shoji Kaisha	5.36
Suzuki Motor	0
Tabard	43.29
Taikyo Sangyo	0
Taiyo Shokai	43.29
Takara Auto Parts	29.52
Takasago (currently RK Excel)	5.36
Tanaka Kogyo	5.36
Tashiro	5.36
Tatsumiya Kogyo	2.00
TEC Engineering	5.36
Teijin Shojhi Kaisha Ltd.	5.36
TK Products	1.00
Tokyo Enterprise	5.36
Tokyo Incentive	5.36
Tokyo Ryuki Seizo	0
Tosho	5.36
Toyo Kogyo Mazda	0
Toyo Menka Kaisha	5.36
Toyota Motor Sales	43.29
Tsubakimoto Chain	Revoked
Tsujimoto Shokai	5.36
United Trading Co.	5.36
Universal Trading	5.36
Y–K Brothers Shokai	5.36
Yamaha Motor	2.00
Yamakyu Chain	9.37
Yoshida Auto	43.29
Yoshimura	5.36
Zushi Industrias	5.36
All Other Firms	15.92

[FR Doc. 98–30142 Filed 11–9–98; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Bahrain

November 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Bahrain and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1999 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bahrain and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Group I 237, 239pt.[1], 331–336, 338, 339, 340–342, 345, 347, 348, 350–352, 359pt.[2], 431, 433–436, 438, 440, 442–448, 459pt.[3], 631, 633–636, 638, 639, 640–647, 648, 649, 650–652, 659pt.[4], 831, 833–836, 838, 840, 842–847, 850–852, 858 and 859pt.[5], as a group.	47,389,134 square meters equivalent.
Sublevels in Group I	
338/339	658,482 dozen.
340/640	315,928 dozen of which not more than 236,945 dozen shall be in Categories 340–Y/640–Y[6].

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[4] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[5] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[6] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30133 Filed 11–9–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

November 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Colombia and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body

pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following restraint limits:

Category	Twelve-month limit
315	25,953,465 square meters.
443	129,828 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 6, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30132 Filed 11–9–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and guaranteed access levels for textile products, produced or manufactured in Guatemala and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels for 1999.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	1,497,682 dozen.
347/348	1,793,301 dozen.
351/651	315,928 dozen.
443	72,305 numbers.
448	45,303 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 1999, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in Guatemala from fabric formed and cut in the United States and re-exported to the United States from Guatemala during the period January 1, 1999 through December 31, 1999:

Category	Guaranteed Access Level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.

Category	Guaranteed Access Level
443	25,000 numbers.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of January 24, 1990, as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30134 Filed 11–9–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC is chartered to develop new and innovative methods to maintain the government-owned, contractor-operated ammunition industrial base and retain critical skills for a national emergency. This meeting will update attendees on the status of ongoing actions with decisions being made to close out or continue these actions. Topics for this meeting include Funding Status, 10 U.S.C. 2692 Delegation of Authority, and Commercial Sector Privatization. This meeting is open to the public.

Dates of Meeting: December 9–10, 1998.

Place of Meeting: Holiday Inn Select, 130 Clairemont Avenue, Decatur, Georgia 30030.

Time of Meeting: 8:00 AM–5:00 PM on December 9 and 10.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria, Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: Participants are encouraged to make reservations immediately by calling (800) 225–6079. Be sure to mention that you will be attending the ARMS PPTF meeting to obtain the negotiated group rate of $86.50 per night (plus 12% room tax). Request you contact Mike Perez on the ARMS Team, telephone (309) 782–3360 or Mike Lopez at (309) 782–4090, if you will be attending the meeting, so that our roster of attendees is accurate. This number may also be used if other assistance regarding the ARMS meeting is required.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–30083 Filed 11–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Forces Epidemiological Board (AFEB)

AGENCY: Office of The Surgeon General, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, this announces the forthcoming AFEB Infectious Disease Subcommittee meeting. This subcommittee will meet from 0700–1600 on Thursday, 10 December and 0800–1400 on Friday, 11 December. The purpose of the meeting is to address pending Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and to conduct an executive working session.

The meeting location will be at the Walter Reed Army Institute of Research, Washington, DC.

The meeting will be open to the public, but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: COL Benedict Diniega, AFEB Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, Virginia 22041–3258, (703) 681–8012/4.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–30082 Filed 11–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 16 November 1998.

Time of Meeting: 0900–1600.

Place: 490 L'Enfant Plaza, SW, Suite 7170, Washington, DC 20024.

Agenda: The Army Science Board's (ASB) Summer Study Panel on "Improving Mobility for Army XXI and Beyond" will meet for discussions. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please call our office at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–30013 Filed 11–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intend To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Improvements to the Cheasapeake & Delaware Canal and Connecting Channels, Delaware and Maryland

AGENCY: U.S. Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The action being taken is an evaluation of the outstanding issues of concern raised by State and Federal agencies and local interest groups during the Feasibility Study for the Cheaspeake and Delaware Canal-Baltimore Harbor Connecting Channels (Deepening), Delaware and Maryland.

FOR FURTHER INFORMATION CONTACT: Questions regarding the DSEIS should be addressed to Ms. Barbara Conlin, (215) 656–6557, U.S. Army Corps of Engineers, CENAP–PL–E, Wanamaker

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Building, 100 Penn Square East, Philadelphia, PA 19107–3390.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

a. The proposed document will address outstanding economic issues including the appropriate channel depth. Potential environmental impacts will be further evaluated, including possible impacts to groundwater quality from the disposal of dredged material, loss of groundwater into the canal/river, bank erosion, impacts to aquatic resources and water quality impacts in the Chesapeake Bay.

b. The authority for the proposed project is the resolution adopted by the House of Representatives Committee on Public Works and Transportation September 8, 1988.

c. The resolution authorized the review of existing reports of the Chief of Engineers for the Inland Waterway-Delaware River to Chesapeake Bay, Delaware and Maryland, and the report on the Baltimore Harbor and Channels, Maryland, with a view to determine the feasibility of measures to promote and encourage the efficient, economic, and logical development of the channel system serving the Port of Baltimore.

2. Alternatives

In response to the study resolution a reconnaissance report was completed in February 1990 at 100% Federal expense. The results indicated there was Federal interest in further feasibility phase studies of improvements to the canal and the connecting channels. The feasibility phase of study was cost-shared 50%–50% between the Maryland Port Administration (MPA) and the Federal government and was completed in December 1996 with the issuance of the Chief of Engineers' report. The Chief of Engineers' report concluded that the plan developed by the reporting officers was engineeringly sound. The review also found that the Reedy Point entrance flare, bend widening at Sandy Point, and the establishment of an emergency anchorage at Howell Point were economically justified. However, questions remain regarding the appropriate channel depth which are to be addressed during this phase of study (Planning, Engineering and Design).

3. Scoping

a. The Planning, Engineering and Design (PED) phase was initiated 8 April 1997 with the execution of a cost sharing agreement between the Federal government and the MPA. As part of the PED phase a working group has been established to help disseminate information to the interested public, review the information, make suggestions on the study process, and assure that all the issues are addressed. Also, as part of the PED phase, several repositories have been established at local libraries, Corps offices, and the MPA offices. The repositories contain pertinent reports from the feasibility study as well as information developed during the on-going PED phase.

b. The scoping process is on-going and has involved coordination with Federal, State, and local agencies and interest groups. The public and all agencies are invited to comment on this proposal. Any pertinent information that Federal, State or local agencies or the private sector can provide will be used to the greatest extent possible. We welcome any assistance and suggestions pertaining to the conduct of this study. All comments should be directed to the above address, Attn: CENAP–PL–E.

4. Availability

It is estimated that the DSEIS will be made available to the public in Spring 2000.

Leonard J. Lipski,

Assistant Chief of Planning Division.

[FR Doc. 98–30084 Filed 11–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Lee County Beach Erosion Control Project, Gasparilla and Estero Islands, Lee County, Florida

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for the Lee County Beach Erosion Control Project, Gasparilla and Estero Islands, Lee County, Florida.

FOR FURTHER INFORMATION CONTACT: Kenneth Dugger, 904–232–1686, Environmental Branch, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: The Beach Erosion Control Project for Lee County, Florida, was authorized in accordance with recommendations of the Chief of Engineers in House Document number 91–393, under the provisions of Section 201 of the Flood Control Act of 1965 enacted by House Resolution dated December 15, 1970, and Senate Resolution dated December 17, 1970. The authorization provides for Federal participation in beach restoration and periodic nourishment along portions of the Gulf shore of Lee County. Captiva Island was included in this authorization and has been constructed. The proposed action consists of a protective beach, estimated berm width of up to 120 feet, along 2.7 miles of shore on Gasparilla Island, and 4.6 miles on Estero Island. The borrow site for Estero Island has an area of 1.59 square miles, and is located in the Gulf approximately 1.5 miles southwest of Sanibel Island. The borrow site for Gasparilla Island has an area of 2.8 square miles, and is located in the Gulf just north of Boca Grande Pass.

Alternatives: Alternatives considered include no action, non-structural measures, the construction of revetments, perched beaches, breakwaters, beach fills of varying widths, construction of submerged near-shore berms, beach fill transitions, and a beach fill/groin combination. Alternative sand sources in addition to the use of the proposed borrow area for nourishment, include the use of other local offshore sand sources, the use of other sand sources such as upland sources, Bahamian sand, other foreign sands, or other distant sources.

Issues: The EIS will consider impacts on hardbottom communities, protected species, shore protection, health and safety, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

Scoping: A scoping letter was sent to interested parties on August 12, 1996. In addition, all parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time, there are no plans for a public scoping meeting.

Public Involvement: We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the State Historic Preservation Officer, and with the FWS under the Fish and Wildlife Coordination Act. A request and scope of work for a Fish and

Wildlife Coordination Act Report was forwarded to FWS on October 20, 1998.

Other Environmental Review And Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to Section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

DEIS Preparation: It is estimated that the DEIS will be available to the public on or about January 13, 1999.

Dated: October 28, 1998.

Michael A. Moore,

Lieutenant Colonel, U.S. Army Acting Chief, Planning Division.

[FR Doc. 98–30085 Filed 11–9–98; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Re-Open Scoping Process for the Draft Environmental Impact Statement for the Proposed Disposal and Reuse of Naval Air Station South Weymouth, Massachusetts

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy announces the intent to re-open the Scoping process for the preparation of a Draft Environmental Impact Statement (DEIS) for the proposed disposal and reuse of Naval Air Station (NAS) South Weymouth, Massachusetts. A second scoping workshop will be held to receive oral and written comments to identify potentially significant issues for study in the DEIS and to notify parties interested in and affected by the property transfer and reuse. Federal, state, and local agencies, and interested individuals are invited to be present or represented at the workshop.

DATES: The Navy will hold a second public meeting to further identify the scope of issues to be addressed in the DEIS in light of the revised Reuse Plan. The meeting will be held on Wednesday, December 9, 1998, beginning at 7:00 p.m., at the Abigail Adams Intermediate School, Middle Street, Weymouth, Massachusetts.

ADDRESSES: Navy representatives will make a brief presentation, then members of the public will be asked to provide their comments. Agencies and the public are encouraged to provide written comments in addition to, or, in lieu of, oral comments at the scoping meeting. To be most helpful, comments should clearly describe specific issues or topics, which the EIS should address. Written comments must be postmarked by Jan 15, 1999, and should be mailed to Commanding Officer, Northern Division, Naval Facilities Engineering Command, Attn: Mr. Robert Ostermueller (Code 202), 10 Industrial Highway, MS 82, Lester, Pennsylvania 19113. All statements, both oral and written, will become part of the public record on this action and will be given equal consideration.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this notice may be obtained by contacting Mr. Robert Ostermueller (Code 202), Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, MSC 82, Lester, Pennsylvania 19113, telephone (610) 595–0759, facsimile (610) 595–0778.

SUPPLEMENTARY INFORMATION: Pursuant to Council on Environmental Quality regulations (40 CFR Parts 1500–1508) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of the Navy announces its intention to prepare a DEIS for the proposed disposal and reuse of NAS South Weymouth, Massachusetts.

In December 1995, the Congressional Committee on Base Realignment and Closure (BRAC) recommended the closure of NAS South Weymouth and its subsequent relocation to NAS Brunswick, Maine. This recommendation was approved by President Clinton and accepted by the One Hundred Fifth Congress in 1995. The BRAC legislation also identified the requirements for compliance with NEPA, stating that the provisions of NEPA shall apply during the process of property disposal. Accordingly, the Navy initiated the process to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and likely reuse of this property with the publication of a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** on April 14, 1997. A public scoping workshop was held at the NAS South Weymouth Officers Club on April 29, 1997.

The proposed action that was to be considered and evaluated in the DEIS was the Reuse Plan prepared by the NAS South Weymouth Reuse Committee acting as the Local Reuse Authority (LRA). Subsequent to this scoping process, the LRA informed the Navy that it was revising the Reuse Plan and requested that the EIS process be deferred until the revised Reuse Plan was submitted. The recently submitted revised Reuse Plan represents a reasonable and likely redevelopment scenario based on the proposed zoning of the site including the development of a mall and other facilities providing approximately 2.1 million square feet of retail space. The Draft EIS will evaluate environmental impacts of the revised Reuse Plan as well as of reasonable possible redevelopment scenarios. Navy will also evaluate the no action alternative, defined as the retention of NAS South Weymouth by the federal government.

Based on an evaluation conducted and accepted by the State Historic Preservation officer in 1990, none of the NAS buildings or structures are eligible for listing on the National Register of Historic Places. A re-evaluation of these buildings and structures, particularly with regard to Cold War significance, will be conducted as part of the EIS process.

Dated: November 5, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–30118 Filed 11–9–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on December 10, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: October 30, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01500-2

SYSTEM NAME:

Student Records *(January 19, 1994, 59 FR 2834).*

Changes:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 12, after the words 'test scores,' add 'psychological profile'.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual; schools and educational institutions; Commander, Navy Personnel Command; Chief of Naval Education and Training; Commandant of the Marine Corps; Commanding Officer, Naval Special Warfare Center; Commander, Navy Recruiting Command; and instructor personnel.'

* * * * *

N01500-2

SYSTEM NAME:

Student Records.

SYSTEM LOCATION:

Schools and other training activities or similar organizational elements of the Department of the Navy and Marine Corps. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records of present, former, and prospective students at Navy and Marine Corps schools and other training activities or associated educational institution of Navy sponsored programs; instructors, staff and support personnel; participants associated with activities of the Naval Education and Training Command, including the Navy Campus for Achievement and other training programs; tutorial and tutorial volunteer programs; dependents' schooling.

CATEGORIES OF RECORDS IN THE SYSTEM:

Schools and personnel training programs administration and evaluation records. Such records as basic identification records i.e., Social Security Number, name, sex, date of birth, personnel records i.e., rank/rate/grade, branch of service, billet, expiration of active obligated service, professional records i.e., Navy enlisted classification, military occupational specialty for Marines, sub-specialty codes, test scores, psychological profile, basic test battery scores, and Navy advancement test scores. Educational records i.e., education levels, service and civilian schools attended, degrees, majors, personnel assignment data, course achievement data, class grades, class standing, and attrition categories. Academic/training records, manual and mechanized, and other records of educational and professional accomplishment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To record course and training demands, requirements, and achievements; analyze student groups or courses; provide academic and performance evaluation in response to official inquiries; provide guidance and counseling to students; prepare required reports; and for other training administration and planning purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records may be stored in file folders, card files, file drawers, cabinets, or other filing equipment. Automated records may be stored on magnetic tape, discs, or in personal computers.

RETRIEVABILITY:

Social Security Number and name.

SAFEGUARDS:

Access is provided on a 'need-to-know' basis and to authorized personnel only. Records are maintained in controlled access rooms or areas. Data is limited to personnel training associated information. Computer terminal access is controlled by terminal identification and the password or similar system. Terminal identification is positive and maintained by control points. Physical access to terminals is restricted to specifically authorized individuals. Password authorization, assignment and monitoring are the responsibility of the functional managers. Information provided via batch processing is of a predetermined and rigidly formatted nature. Output is controlled by the functional managers who also control the distribution of output.

RETENTION AND DISPOSAL:

Destroy after completion of training, transfer, or discharge, provided the data has been recorded in the individual's service record or on the student's record card.

SYSTEM MANAGER(S) AND ADDRESS:

The commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requester should provide his full name, Social Security Number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present drivers license, military or Navy civilian employment identification card, or other similar identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commanding officer of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

Requester should provide his full name, Social Security Number, military or civilian duty status, if applicable, and other data when appropriate, such as graduation date. Visitors should present

drivers license, military or Navy civilian employment identification card, or other similar identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; schools and educational institutions; Commander, Navy Personnel Command; Chief of Naval Education and Training; Commandant of the Marine Corps; Commanding Officer, Naval Special Warfare Center; Commander, Navy Recruiting Command; and instructor personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–29576 Filed 11–9–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board (IAB) to the International Energy Agency (IEA) will meet November 18–19, 1998 at the headquarters of the International Energy Agency in Paris, France.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on November 18 and November 19, 1998, at the headquarters of the IEA, 9 rue de la Federation, Paris, France, beginning at approximately 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the IEA's offices on November 18–19, 1998, including a preparatory encounter among company representatives on November 18 from approximately 8:30 a.m. to 9:30 a.m. The Agenda for the preparatory encounter among company representatives is to elicit views regarding items on the SEQ's Agenda. The Agenda for the SEQ meeting is under the control of the SEQ. It is expected that the SEQ will adopt the following Agenda:

Agenda—Emergency Response Exercise 1998

November 18, 1998

1. Welcome to the IEA
2. Objectives of the Session
3. General Introduction and Description of IEA Emergency Management Organization
   - The Agreement on an International Energy Program (IEP) and basic objectives of the IEA
   - Emergency Management Organization—the IEP, IAB, SEQ, Industry Supply Advisory Group, and Emergency Operations Team
4. Introduction to the Emergency Management Manual (EMM) and Reference Guide and to Coordinated Emergency Response Measures (CERM)
5. An Introduction to IEA Communications and Information
   - Communication services at the IEA and data security
   - Data available at the IEA to ISAG
   - Structure and contents of Questionnaires A and B, and reporting relationships
6. Activation Procedures and Responsibilities
   - Calculations (Base Period Final Consumption, Available Supplies, Emergency Response Drawdown Obligation, Allocation Rights/Allocation Obligations)
7. The Balancing Process and Voluntary Offers
   - Definitions of Voluntary Offers (VOs) and their role in the EMM balancing process
   - The functions of the Emergency Operations Team, National Emergency Sharing Organizations, and Reporting Companies in generating and processing VOs
   - Creation of a Voluntary Offer
8. IEA Actions and Response and Country Contributions to Joint Response (Scenario Stages 1 and 2 and Initial Response to Stage 3)
9. Round Table of Country Responses to the Scenario Stages 1 and 2

November 19, 1998

1. Round Table of Country Responses to the Scenario Stage 3
2. ISAG Report on Results of ISAG Session of November 16–17, 1998
3. Assessment of the Situation from the IAB Perspective; Company Insights from NESO Consultations on Scenarios
4. General Discussion of Situation following Stage 3 Country Responses; Assessment of Further Action Needed
5. Surprise Scenario Exercise and Reaction of Participants to Additional Disruption and/or New Scenario
6. Overall Assessment of Exercise and Suggestions on Further Work

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, D.C., November 5, 1998.

Mary Anne Sullivan,

General Counsel.

[FR Doc. 98–30145 Filed 11–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation and National Security

Information Briefing Regarding the Nuclear Cities Initiative

AGENCY: Office of Nonproliferation and National Security, DOE.

ACTION: Notice of public information presentation.

SUMMARY: The Department of Energy (DOE) will hold an informal public information workshop to introduce the Nuclear Cities Initiative, a new joint US-Russia project in nonproliferation commercialization focusing on the ten closed nuclear cities of the Russian Federation. The initiative was officially launched with the signing of the government-to-government agreement on September 22, 1998 in Vienna, Austria by Energy Secretary Bill Richardson and Russian Minister of Atomic Energy Evgeny Adamov. DOE staff will explain the goals and objectives of the Nuclear Cities Initiative, introduce the Nuclear Cities Initiative staff, and solicit suggestions for parameters of public participation in this project from those attending.

DATES: The information presentation will be held on Wednesday, December 2, 1998, with the briefing portion held from 10:00 a.m. until 11:30 a.m. A Questions and Answer session will follow from 11:30–1 p.m. with members of the Nuclear Cities Initiative staff responsible for specific aspects of the program. Representatives from the Office of General Counsel and the Office of Procurement Operations will also be present to provide program support.

ADDRESSES: The information presentation will be held at the U.S. Department of Energy, Forrestal building, Main Auditorium, 1000 Independence Avenue, SW, Washington, DC 20585. It is advisable to register for attendance in advance by contacting either individual named above and to provide the program office with the name of the company or firm that you represent and a list of any other attendees from your company/firm in advance. All those inquiring will be added to an Nuclear Cities Initiative database and will receive any additional information and updates.

FOR FURTHER INFORMATION CONTACT: Reeshemah Speaks NN–40, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6568, email:reeshemah.speaks@hq.doe.gov; or Denise Tramble, NN40, U.S. Department of Energy, Office of Initiatives of Proliferation Prevention, 1000 Independence Avenue, SW, Washington, DC 20585, 202–586–1007, e-mail:denise.tramble@hq.doe.gov. FAXES ARE WELCOME. Fax number is 202–586–2164.

SUPPLEMENTARY INFORMATION: The Department of Energy, together with the Russian Ministry of Atomic Energy, is the Executive Agent charged with carrying out the Nuclear Cities Initiative.

The Nuclear Cities Initiative is an agreement between the US and Russian Federation for mutual cooperation to address the problems faced by the ten closed cities which house the Russian nuclear weapons uranium enrichment, plutonium production, weapons design, and weapons assembly facilities.

The Nuclear Cities Initiative has near term goals to provide civilian employment for displaced weapons workers in the ten closed nuclear cities and long term goals to assist the Russian Federation in reducing the size of its nuclear weapons complex. In its first year the project will focus on three of the ten nuclear cities designated by Minatom for assistance. Those cities are Sarov (Arzamas-16), Snezhinsk (Chelyabinsk-70), and Zheleznogorsk (Krasnoyarsk-26).

The Department of Energy has thus far allocated $15,000,000 for the Nuclear Cities Initiative in Fiscal Year 1999. Early activities will feature assessment trips to the first three nuclear cities to yield an analysis of the strengths, weaknesses opportunities and potential problems specific to each of the three cities.

Once that is accomplished DOE will be looking to the private sector to participate in assessing business opportunities and job creation in these cities.

This information briefing will provide opportunities for interested parties to find out more about the nuclear cities, the mandate of the project, and how the public and private sector can participate. Nongovernmental Organizations within the nonproliferation and social support communities will also have a role under Nuclear Cities Initiative and are also welcome.

Information about the Nuclear Cities Initiative including project description, chronology, mission statement, lists and maps of the nuclear cities, copies of the Government-to-Government Agreement and descriptions of the business, commercial development, training and social support components of the project will be available.

This program is intended to provide general information and will not necessarily result in any future request for proposals, invitation for bids, or preapplications or applications for a financial assistance agreement such as a Grant or Cooperative Agreement. Unsolicited proposals and/or any offer to enter into a contract with the Department of Energy will not be invited and shall not be accepted. Matters that will be considered are described below.

Matters to be Considered: DOE is interested in receiving comments and views of interested parties, such as statements of capability, informational brochures and other written materials prepared by attendees providing relevant information and activities that would facilitate creation of conditions necessary for business training, job creation, and the attracting of investment opportunities in the designated nuclear cities for the purposes prescribed in the "Agreement Between the Government of the United States of America and the Government of the Russian Federation on the Nuclear Cities Initiative" signed on September 22, 1998, in Vienna, Austria.

After reviewing comments from those attending the information briefing and the assessment reports of the working groups, the Department will issue a report on the results, with outlines of how interested parties can continue to actively participate in the initiative.

Those unable to attend can receive an information packet about the Nuclear Cities Initiative by contacting the Nuclear Cities Initiative program office at the address given above.

Tentative Agenda: Wednesday, December 2, 1998

- Welcoming Remarks and Opening of Meeting.
- Overview of NCI by Director of Office of Initiative for Proliferation Prevention and Nuclear Cities Initiative.
- Introduction to staff of Nuclear Cities Initiative.
- Outline of program activities envisioned under NCI.
- Question and Answer period/Public Discussion.

Issued in Washington DC on November 4, 1998.

Louis Licht,

Interagency Coordinator and Federal Liaison, Nuclear Cities Initiative.

[FR Doc. 98–30139 Filed 11–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–127–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Tariff

November 4, 1998.

Take notice on October 30, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 336, Sixth Revised Sheet No. 337, Fourth Revised Sheet No. 337A, Third Revised Sheet No. 337B, and Second Revised Sheet No. 337C, with an effective date of January 1, 1999.

CIG states the purpose of this filing is to comply with Section 1.7 of the Gas Research Institute (GRI) Settlement dated January 21, 1998 in Docket No. RP97–149–003, *et al.*, to provide for a voluntary GRI contribution mechanism in CIG's General Terms and Conditions.

CIG states that copies of the filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30036 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–027]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets to become effective November 1, 1998:

Twentieth Revised Sheet No. 30
Twelfth Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement ten negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services on Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30020 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–40–000]

Granite State Gas Transmission, Inc.; Notice of Request Under Blanket Authorization

November 4, 1998.

Take notice that on October 28, 1998, Granite State Gas Transmission, Inc. (Granite State), 300 Friberg Parkway, Westborough, Massachusetts 01581, filed in Docket No. CP99–40–000, a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point located in the Town of South Berwick, York County, Maine, for service to Northern Utilities, Inc. (Northern Utilities) under Granite State's blanket certificate issued in Docket No. CP82–515–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Granite State proposes to construct and operate an additional delivery point for Northern Utilities on its pipeline system to enable Northern Utilities to provide firm gas service to the new Marshwood High School under construction in South Berwick, Maine. Granite State further states that the estimated proposed volumes delivered through the new delivery point would be approximately 9,811 Mcf. Granite State further states that the estimated cost of the facility is $68,000 for which Northern Utilities would reimburse to Granite State. It is further stated that the operation of the new delivery point would not adversely affect Granite State's ability to provide its maximum daily delivery and annual obligations to other transportation shippers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30017 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–124–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective January 1, 1999.

Thirteenth Revised Sheet No. 5
Eleventh Revised Sheet No. 6
Second Revised Sheet No. 124
Fourth Revised Sheet No. 891

Kern River states that the purpose of this filing is (1) to include a "check the box" mechanism in the General Terms and Conditions of the tariff that allows Kern River's customers to voluntarily contribute funds to the Gas Research Institute (GRI) in addition to the amounts collected by Kern River through GRI surcharges, and (2) to update Kern River's tariff to reflect the 1999 GRI surcharges.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30033 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–226–002 and RP98–61–005]

Koch Gateway Pipeline Company; Notice of Compliance Filing

November 4, 1998.

Take notice that on October 30, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1998:

Eighth Revised Sheet No. 2700
Sixth Revised Sheet No. 2701
Sixth Revised Sheet No. 2702
Fifth Revised Sheet No. 2704
Tenth Revised Sheet No. 2705
Ninth Revised Sheet No. 2706
Ninth Revised Sheet No. 5200

Koch has submitted the above referenced tariff sheets in compliance with the Commission's Letter Order issued October 16, 1998, accepting Koch's Offer of Settlement and Stipulation and Agreement (Settlement) filed on August 28, 1998, in Docket Nos. RP98–61 and RP98–226. The Settlement resolved all outstanding issues regarding the resolution of imbalances resulting from Prior Period Adjustments (PPA's).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30023 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–410–002]

Koch Gateway Pipeline Company; Notice of Compliance Filing

November 4, 1998.

Take notice that on October 29, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective October 19, 1998:

Substitute Second Revised Sheet No. 201
Substitute Fourth Revised Sheet No. 800
Substitute Sixth Revised Sheet No. 801
Substitute Sixth Revised Sheet No. 802
Substitute Second Revised Sheet No. 1701
Substitute Sixth Revised Sheet No. 1804
Substitute Fourth Revised Sheet No. 1805
Substitute Fourth Revised Sheet No. 1806
Substitute First Revised Sheet No. 2000

Koch states that it is submitting the above listed tariff sheets to respond to the Commission's Order issued on October 14, 1998, in Docket No. RP98–410, which accepted, subject to review and conditions, Koch's proposed tariff changes to comply with the intra-day nomination standards adopted by Order 587–H.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30027 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–000]

Mississippi River Transmission Corporation; Notice Rescheduling Technical Conference

November 4, 1998.

Take notice that the Commission staff will convene a technical conference as provided by the Commission order in this proceeding issued October 14, 1998.[1] The technical conference, previously scheduled for Wednesday, November 4, 1998, at 10:00 a.m., has been rescheduled. The technical conference will be held on Thursday, November 12, 1998, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Attendance will be limited to parties and staff. For additional information, please contact Jerie O'Connor at (202) 208–0459, or Harris Wood at (202) 208–0224.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 98–30026 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–42–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 4, 1998.

Take notice that on October 29, 1998, NorAm Gas Transmission Company (Applicant), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana, 71151, filed in Docket No. CP99–42–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to construct and operate a new delivery tap for service to ARKLA, a division of NorAm Energy Corporation and an affiliate of Applicant, under Applicant's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file

[1] Mississippi River Transmission Corporation, 85 FERC ¶61,049 (1998).

with the Commission and open to public inspection.

Applicant proposes to construct and operate an additional two-inch delivery tap and first-cut regulator to render service for ARKLA located on Applicant's Line No. BT–14 in Faulkner County, Arkansas. Applicant asserts that the volumes of natural gas to be delivered at the proposed tap, up to 9,000 Dth per year and 30 Dth on a peak day, are within the certificated entitlement of ARKLA. Applicant states that ARKLA will construct, at its cost, a two-inch meter station and convey ownership to Applicant. Applicant further asserts that it has sufficient capacity to accomplish the deliveries without detriment to Applicant's other customers. Applicant indicates that the total cost of construction of the proposed facility is estimated to be $2,250, which sum ARKLA will reimburse Applicant.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30018 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–034]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective November 1, 1998.

Seventeenth Revised Sheet No. 7
Sixth Revised Sheet No. 7D
Seventh Revised Sheet No. 7E

NGT states that the purpose of this filing is to reflect the implementation of two new negotiated rate transactions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 98–30019 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–004]

Northern Natural Gas Company; Notice of Compliance Filing

November 4, 1998.

Take notice that on October 30, 1998, Northern Natural Gas Company tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective on November 1, 1998:

Northern states that this filing is made in compliance with the Commission's order issued October 29, 1998 in Docket Nos. RP98–203–000, et al., to effectuate changes in the terms and conditions applicable to Northern's services under Rate Schedules TF, TFX, TI, GS–T, FDD, IDD, MPS and SMS, the Forms of Service Agreements thereunder, and the General Terms and Conditions of Northern's Tariff.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30022 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–125–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, following tariff sheets, to become effective January 1, 1999:

Third Revised Volume No. 1

Fourteenth Revised Sheet No. 5
Seventh Revised Sheet No. 225

Original Volume No. 2

Twenty-Fourth Revised Sheet No. 2.2

Northwest states that the purpose of this filing is (1) to include a "check the box" mechanism in the General Terms and Conditions of the tariff that allows Northwest's customers to voluntarily contribute funds to the Gas Research Institute (GRI) in addition to the amounts collected by Northwest through GRI surcharges, and (2) to update Northwest's tariff to reflect the 1999 GRI surcharges.

Northwest states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

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Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30034 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–266–004]

Ozark Gas Transmission, L.L.C.; Notice of Compliance Filing

November 4, 1998.

Take notice that on October 22, 1998, Ozark Gas Transmission, L.L.C. (Ozark) filed copies of "errata" sheets to its October 1, 1998, "Compliance Filing of Complete Tariff and Initial Rates", all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 10, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party to a proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30077 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–365–002]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the First Substitute, Fourth Revised Tariff Sheet No. 95 to become effective on December 1, 1998. In addition, Sea Robin has notified the Commission that it proposes to implement SoNet Premier for Sea Robin shippers on December 1, 1998.

On July 31, 1998, Sea Robin made a tariff filing in which it proposed to streamline certain contract, billing, and information processing requirements to better serve its customers' needs. At that time Sea Robin believed that SoNet Premier would be operational to transact business for the gas day of September 1, 1998. By filing dated August 27, 1998, Sea Robin notified the Commission that the September 1, 1998 implementation date would not be met. On August 28, 1998, the Commission issued a "Notice of Extension of Time" extending the effective date of the tariff sheets until the date SoNet Premier is placed in service. Since that time, Sea Robin found that Sheet No. 95 did not incorporate in the tariff or by reference all of the GISB standards that it was proposing to implement on SoNet Premier.

Accordingly, Sea Robin hereby files Sheet No. 95 to incorporate by reference all of the GISB standards for which Sea Robin had previously obtained a waiver and to add those standards that it had inadvertently omitted.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30024 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–126–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective December 1, 1998:

Second Revised Sheet No. 196

Southern states that its filing is in compliance with the Commission's April 29, 1998 order approving the January 21, 1998 Stipulation and Agreement related to continued funding of Gas Research Institute programs. Specifically, the tariff filing provides for implementation of a voluntary contribution procedure through a "check the box" mechanism.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 98–30035 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–105–000]

TCP Gathering Company; Notice of Tariff Filing

November 4, 1998.

Take notice that on October 30, 1998, TCP Gathering Co. (TCP) tendered for filing to become a part of TCP's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective January 1, 1999:

First Revised Sheet No. 2
First Revised Sheet No. 83
Second Revised Sheet No. 84
Original Sheet No. 84A

TCP is making this filing pursuant to the January 21, 1998 Stipulation and Agreement (Settlement) approved by the FERC's order issued April 29, 1998 in Docket Nos. RP97–149–003, *et al.* In the Settlement, TCP and other pipelines have agreed to be voluntary collection agents for shippers who voluntarily choose to contribute to GRI programs through "check-the-box" approach on pipelines' invoices. Therefore, TCP proposed revised tariff language in Section 21.1 of the General Terms and Conditions of its Tariff to implement the "check-the-box" mechanism.

TCP states that copies of the filing were served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 98–30029 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–188–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

Take notice that on October 29, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sub Third Revised Sheet No. 339A, to become effective November 1, 1998.

Tennessee states that the revised tariff sheet is being filed in compliance with the "Order Following Technical Conference" of the Federal Energy Regulatory Commission (the "Commission") issued in the captioned proceeding on October 14, 1998. Tennessee Gas Pipeline Company, 85 FERC ¶ 61,052 (1998). In compliance with the Commission's order, the revised tariff sheet provides, in new Article III, Section 11(n), that where nominations from a releasing shipper and a replacement shipper overlap in a particular portion of Tennessee's system at the same time, such overlapping nomination will be allowed provided that the combined total of the volumes nominated do not exceed the original entitlement level of the underlying firm contract. Tennessee further states that volumes in excess of the contractual entitlement will only be allowed if such volumes were separately nominated under authorized overrun or Rate Schedule IT.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30021 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

November 4, 1998.

Take notice that on October 30, 1998, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective January 1, 1999:

Third Revised Sheet No. 20
Second Revised Sheet No. 102
First Revised Sheet No. 112

TransColorado states that this filing is a general rate case under Section 4(e) of the Natural Gas Act and is filed in compliance with ordering paragraph (c) of the September 30, 1996, order in Docket No. CP90–1777–008. The September 30, 1996, order required TransColorado within 3 years of the date of the Phase I facilities are placed in service or at least 60 days prior to placing Phase II facilities in service, whichever comes first, to make a Natural Gas Act Section 4(e) general rate case filing to reflect current costs and volumes. TransColorado expects that the Phase II facilities will be ready for service on January 1, 1999. Therefore, this rate case filing was filed 60 days prior to the effective date of the Phase II facilities being placed in service. Further, TransColorado has requested authority to withdraw the rate case filing in the event the Phase II facilities are not placed in service prior to February 1, 1999.

TransColorado states that the rates it has proposed are based on the overall cost of service for the base period consisting of the twelve months ended June 30, 1998, adjusted for known and measurable changes through December 31, 1999. The proposed jurisdictional transportation rates are based on a 25 year levelized rate design. TransColorado has sought waiver of 18 CFR § 154.303 to allow rates to go into effect on January 1, 1999.

TransColorado further states that a copy of this filing has been served upon TransColorado's jurisdictional customers, the Colorado Public Utilities Commission, and the New Mexico Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30030 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–381–000]

Transcontinental Gas Pipe Line Corporation; Notice Granting Late Intervention

November 4, 1998.

Motions to intervene in the above-captioned proceeding were due on September 14, 1998. Williams Energy Services Company filed a motion to intervene out of time on October 9, 1998. No party filed an answer in opposition to the motion.

The petitioner appears to have a legitimate interest under the law that is not adequately represented by other parties. Granting the intervention will not cause a delay or prejudice any other party. It is in the public interest to allow the petitioner to appear in this proceeding. Accordingly, good cause exists for granting the late intervention.

Pursuant to Section 375.302 of the Commission's Regulations (18 CFR 375.202), the petitioner is permitted to intervene in this proceeding subject to the Commission's rules and regulations under the Natural Gas Act, 15 U.S.C. §§ 717–717(W). Participation of the late intervenor shall be limited to matters set out in its motion to intervene. The admission of the late intervenor shall not be construed as recognition by the Commission that the intervenor might be aggrieved by any order entered in this proceeding.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30025 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–121–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective January 1, 1999:

First Revised Sheet No. 79A
Fourteenth Revised Sheet No. 80

Transwestern states that the above-referenced tariff sheets are being filed to revise Transwestern's Gas Research Institute (GRI) tariff provisions to comply with the Stipulation and Agreement Concerning GRI Funding, dated January 21, 1998, in Docket Nos. RP97–391–000, *et al.* (GRI Settlement).

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30031 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–2–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of December 1, 1998:

First Revised Sheet No. 222

Williams states that the instant filing is being made pursuant to 18 CFR 161.3(1) and 250.16(b)(1). 18 CFR 161.3(1) requires interstate pipelines to post the names and addresses of its marketing affiliates on its web site on the public Internet, and 18 CFR 250.16(b)(1) requires interstate pipelines to maintain tariff provisions containing a complete list of operating personnel and facilities shared by the interstate pipeline and its marketing or brokering affiliates. Williams is updating the list of shared operating personnel in Section 8.9 of its tariff, and making reference to the list of marketing affiliates on its web site on the Internet.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc 98–30016 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–16–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of November 1, 1998:

Substitute Third Revised Sheet No. 6

Williams states that on October 1, 1998, it made a filing pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1, to submit its fourth quarter 1998 report of GSR costs. Williams has discovered that the Base Maximum FTS–M Reservation Balancing Fee was misstated in the "Base Maximum Rate" column on Sheet No. 6 in that filing. The Rate was correct in the "Total Maximum Rate" column. The instant filing is being made to correct this error.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30028 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–123–000]

Williams Gas Pipeline Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of January 1, 1999:

First Revised Sheet Nos. 285–287

Williams states that the instant filing is being made pursuant to Order Approving Settlement, issued April 29, 1998, in Docket No. RP97–391–002, *et al.* and the Stipulation and Agreement filed January 21, 1998, in Docket No. RP97–391–002. Williams is making a tariff filing to add a section to Article 25, Gas Research Institute RD&D Funding Unit, to provide for a voluntary contribution mechanism for collecting contributions for GRI funding from Shippers. Williams will add a "check the box" option on its transportation invoices for Shippers to specify the level of contribution and the projects or project areas to be funded.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30032 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–76–000]

Wyoming Interstate Company, Ltd., Notice of Proposed Change in FERC Gas Tariff

November 4, 1998.

Take notice that on October 30, 1998, Wyoming Interstate Company (WIC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 5.2 and Second Revised Volume No. 2, Eighth Revised Sheet No. 4A, with an effective date of December 1, 1998.

WIC states that the tariff sheets are reflecting an increase in the percentage for Fuel, Lost and Unaccounted-for Gas ("FL&U Percentage") from .49% to .80% effective December 1, 1998.

WIC states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30037 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–76–000 and RP99–129–000]

Wyoming Interstate Company, Ltd.; Notice of GRI Filing

November 4, 1998.

Take notice on October 30, 1998, Wyoming Interstate Company, Ltd. (WIC), tendered for filing to become part

of its FERC Gas Tariff, First Revised Volume No. 1 and Second Revised Volume No. 2, the tariff sheets listed on Appendix A to the filing, with an effective date of November 1, 1998.

WIC states the purpose of this filing is to permit WIC to collect Gas Research Institute (GRI) charges associated with WIC transportation pursuant to the Commission's Opinion No. 418 issued November 12, 1997 in Docket No. RP97–391–000. WIC will begin transporting quantities of gas subject to GRI charges in November 1998. The attached Appendix A tariff sheets implement the GRI rates requested and change WIC's General Terms and Conditions to allow for GRI collection.

WIC states that copies of the filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30038 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4335–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

November 2, 1998.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER98–4335–000]

Take notice that on October 28, 1998, Commonwealth Edison Company (ComEd), filed a revised Dynamic Scheduling Agreement (WMD Agreement), dated March 1, 1998, between ComEd and Wholesale Marketing Department of Commonwealth Edison Company (WMD) in response to inquiries from the Commission Staff concerning the WMD Agreement.

ComEd continues to seek an effective date of March 1, 1998, ComEd served copies of the amended filing on the Illinois Commerce Commission, WMD and all parties to the proceeding.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER99–191–000]

Take notice that on October 28, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies) tendered for filing an amendment to the service agreement filed on October 14, 1998 in Docket No. ER99–191–000 establishing Western Farmers Electric Cooperative (Western), as a customer under the CSW Operating Companies' market-based rate power sales tariff. The amendment consists of a page of the agreement that was inadvertently omitted from the original filing.

The CSW Operating Companies state that a copy of this filing was served on Western.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Energy, Inc.

[Docket No. ER99–339–000]

Take notice that on October 28, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Constellation Power Source, Inc. (Constellation), as Transmission Customer.

A copy of the filing was served upon Constellation.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER99–340–000]

Take notice that on October 28, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Statoil Energy Trading, Inc. (Statoil), as Transmission Customer.

A copy of the filing was served upon Statoil.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Energy, Inc.

[Docket No. ER99–341–000]

Take notice that on October 28, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Engage Energy US, L.P. (Engage), as Transmission Customer.

A copy of the filing was served upon Engage.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Puget Sound Energy, Inc.

[Docket No. ER99–342–000]

Take notice that on October 28, 1998, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with PacificCorp Power Marketing, Inc. (PPM), as Transmission Customer.

A copy of the filing was served upon PPM.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Washington Water Power Company

[Docket No. ER99–343–000]

Take notice that on October 28, 1998, Washington Water Power Company (WWP), tendered for filing, with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Mutual Netting Agreement and

Certificate of Concurrence allowing arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with PG&E Energy Trading—Power, L.P.

WWP requests waiver of the prior notice requirement and requests an effective date of October 1, 1998.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER99–344–000]

Take notice that on October 28, 1998, Southern Company Services, Inc. (SCSI), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (collectively referred to as Southern Companies), tendered for filing amendments to service agreements under Southern Companies' Market-Based Rate Power Sales Tariff (FERC Electric Tariff, Original Volume No. 4) entered into previously with Associated Electric Cooperative, and Calpine Power Services Company. SCSI states that the amendments are prospective only and will enable Southern Companies to engage in further short-term market-based rate sales with these entities.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power & Light Company

[Docket No. ER99–345–000]

Take notice that on October 27, 1998, Florida Power & Light Company (FPL), tendered for filing notice of cancellations for FPL Rate Schedule FERC No. 77 and Service Agreements with the cities of Jacksonville Beach, Green Cove Springs and Clewiston, Florida, under FPL's FERC Electric Tariff, Third Revised Volume No. 1.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER99–346–000]

Take notice that on October 28, 1998, PP&L, Inc. (PP&L), tendered for filing a Power Supply Agreement dated September 2, 1998, with Citizens' Electric Company of Lewisburg, Pennsylvania (Citizens' Electric) an amendment and addendum to a Power Supply Agreement dated January 25, 1994 with Citizens' Electric and a Service Agreement dated October 22, 1998 with Citizens' Electric under PP&L's FERC Electric Tariff Revised Volume No. 5. The Service Agreement adds Citizens' Electric as an eligible customer under the Tariff.

PP&L requests an effective date of February 1, 1999, for the Power Supply Agreement dated September 2, 1998. PP&L requests an effective date of February 1, 1998, for the amendment and addendum to the Power Supply Agreement dated January 25, 1994. PP&L requests that the Service Agreement become effective sixty days from the date of filing.

PP&L states that copies of this filing have been supplied to Citizens' Electric and to the Pennsylvania Public Utility Commission.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER99–347–000]

Take notice that on October 28, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Enserch Energy Services, Inc.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–348–000]

Take notice that on October 28, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and the Board of Municipal Utilities of Sikeston, Missouri.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Entergy Services, Inc.

[Docket No. ER99–349–000]

Take notice that on October 28, 1998 Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Western Farmers Electric Cooperative for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. FirstEnergy Corp.

[Docket No. ER99–353–000]

Take notice that on October 28, 1998, FirstEnergy Corp. (FirstEnergy), tendered for filing a form of Service Agreement for Network Integration Transmission Service Under the Pennsylvania Electric Choice Program (Service Agreement) as Attachment J to the FirstEnergy Open Access Transmission Tariff (Tariff). Also filed as Attachment K to the Tariff is a form of Operating Agreement for Network Integration Transmission Service of FirstEnergy Under the Pennsylvania Electric Choice Program (Operating Agreement). Filed as Attachment L to the Tariff is the Index of Network Integration Transmission Service Customers Under the Pennsylvania Electric Choice Program (Index). The agreements and Index are consistent with the Tariff which became effective November 8, 1997 subject to refund by Federal Energy Regulatory Commission order in Docket No. ER97–4142.

FirstEnergy also tendered for filing a Notice of Cancellation of the Service Agreement for Network Integration Transmission Service Under the Pennsylvania Retail Access Pilot, Attachment J to the Tariff, and the Index of Network Integration Transmission Service Customers Under the Pennsylvania Retail Access Pilot, Attachment K to the Tariff. These Attachments are superseded by the agreements and Index filed above relating to the Pennsylvania Electric Choice Program.

The proposed effective date for the Service Agreement, Operating Agreement, and Index and for the Cancellation is January 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission and the designated agents for Pennsylvania Retail Access Pilot Program, customers currently being served under the Tariff.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

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15. FirstEnergy System

[Docket No. ER99–354–000]

Take notice that on October 28, 1998, FirstEnergy System filed Service Agreements to provide Non-Firm Point-to-Point Transmission Service for West Penn Power and Columbia Power Marketing, the Transmission Customers. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under these Service Agreements is October 15, 1998.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Nevada Power Company

[Docket No. ER99–356–000]

Take notice that on October 28, 1998, Nevada Power Company (Nevada Power), tendered for filing a 230 kV Facilities Interconnection Agreement between Nevada Power Company and El Dorado Energy, L.L.C., (EDE). The Agreement facilitates the construction, operation and maintenance of certain interconnection facilities required to interconnect EDE's proposed power generation project to Nevada Power's 230 kV transmission system.

Nevada Power requests an effective date no later than sixty (60) days after the filing date of the Agreement.

In addition to the Parties to this Agreement, copies of this filing have also been served on the Public Utilities Commission of Nevada and the Utility Consumer's Advocate.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Illinois Power Company

[Docket No. ER99–357–000]

Take notice that on October 28, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Merchant Energy Group of the Americas, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 1, 1998.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Consumers Energy Company

[Docket No. ER99–361–000]

Take notice that on October 28, 1998, Consumers Energy Company (CECo), tendered for filing proposed amended tariff sheets to its Open Access Electric Transmission Tariff implementing new rates, terms and conditions of service which result from the split of its transmission and local distribution facilities approved in the Federal Energy Regulatory Commission's declaratory order issued on July 29, 1998 in Docket No. EL98–21–000.

CECo requests that these amended tariff sheets be accepted for filing and made effective on January 1, 1999.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Atlanta Gas Light Services, Inc.

[Docket No. ER97–542–000]

Take notice that on October 28, 1998, Atlanta Gas Light Services, Inc. (AGLS), tendered for filing Notification of Change in Status. Atlanta Gas Light Services, Inc., seeks to notify the Commission that it has become affiliated with SouthStar Energy Services, LLC. a non-regulated vendor of natural gas, propane, fuel oil, electricity, and other energy commodities.

Comment date: November 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Arizona Public Service Company

[Docket No. OA97–466–002]

Take notice that on October 27, 1998, Arizona Public Service Company (PS) tendered for filing a Motion For An Extension Of Time To Submit Its Compliance Filing And Request For Expedited Consideration Of This Motion. APS requests an additional 60 days to submit the required information. The additional time is requested because APS is in the midst of a major reorganization and the changes will directly impact the information APS is required to file in compliance with the Commission's Order on Standards of Conduct issued September 29, 1998, in Docket No. OA97–466–001.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. LUZ Solar Partners Ltd., III

[Docket No. QF86–734–005]

On October 28, 1998, LUZ Solar Partners Ltd., III, filed with the Federal Energy Regulatory Commission (Commission) a supplement to its Application for Recertification of a Qualifying Small Power Production Facility which was filed with the Commission on August 4, 1998.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. LUZ Solar Partners Ltd., IV

[Docket No. QF86–736–005]

On October 28, 1998, LUZ Solar Partners Ltd., IV, filed with the Federal Energy Regulatory Commission (Commission) a supplement to its Application for Recertification of a Qualifying Small Power Production Facility which was filed with the Commission on August 4, 1998.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. LUZ Solar Partners Ltd., V

[Docket No. QF87–402–005]

On October 28, 1998, LUZ Solar Partners Ltd., V, filed with the Federal Energy Regulatory Commission (Commission) a supplement to its Application for Recertification of a Qualifying Small Power Production Facility which was filed with the Commission on August 4, 1998.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. LUZ Solar Partners Ltd., VI

[Docket No. QF88–33–006]

On October 28, 1998, LUZ Solar Partners Ltd., VI, filed with the Federal Energy Regulatory Commission (Commission) a supplement to its Application for Recertification of a Qualifying Small Power Production Facility which was filed with the Commission on August 4, 1998.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. LUZ Solar Partners Ltd., VII

[Docket No. QF88–34–006]

On October 28, 1998, LUZ Solar Partners Ltd., VII, filed with the Federal Energy Regulatory Commission (Commission) a supplement to its Application for Recertification of a Qualifying Small Power Production Facility which was filed with the Commission on August 4, 1998.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Salton Sea Power Generation L.P. (Salton Sea II Facility)

[Docket No. QF89–297–004]

On October 26, 1998, Salton Sea Power Generation L.P., 302 South 36th Street, Omaha, Nebraska 68131, filed

with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 (b) and (d)(2) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility was previously self-certified as a qualifying small power production facility in 1989 in Docket No. QF89–297–000 and again self-certified in Docket Nos. QF89–297–002 and 003. Recertification is being sought to reflect a change in status of the owner of the facility.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30015 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2073]

Wisconsin Electric Power Company; Notice of Availability of Draft Application and Preliminary Draft Environmental Assessment (DEA)

November 4, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.* 2073.

c. *Applicant:* Wisconsin Electric Power Company.

d. *Name of Project:* Michigamme Falls Hydroelectric Project.

e. *Location:* Michigamme River near Crystal Falls, Iron Mountain, and Kingsford, in Iron County, Michigan.

f. *Applicant Contact:* Ms. Rita L. Hayen, P.E., Wisconsin Electric Power Company, 333 W. Everett Street, P.O. Box 2046, Milwaukee, WI 53201–2046.

g. *FERC Contract:* Patti Leppert-Slack, (202) 219–2767.

h. Wisconsin Electric Power Company (Wisconsin Electric) mailed a copy of the Draft License Application and Preliminary DEA to all entities on October 20, 1998. The Commission received a copy of the Draft License Application and Preliminary DEA on October 22, 1998. Copies of these documents, as well as the resource study reports previously distributed for review and comment, are available for review at Wisconsin Electric's Office, 800 Industrial Park Drive, Iron Mountain, Michigan.

Copies are also available at the following libraries: Crystal Falls District Community Library, 401 Superior Ave., Crystal Falls, Michigan; Dickinson County Library, 401 Iron Mountain St., Iron Mountain, Michigan; and Dickinson County Library-Norway Branch, 620 Section St., Norway, Michigan.

i. As discussed in the Commission's June 14, 1996, letter to all parties, with this notice we are soliciting preliminary terms, conditions, and recommendations on the Draft License Application and Preliminary DEA.

j. All comments on the Draft License Application and Preliminary DEA should be sent to the address noted above in Item (f), with one copy filed with the Commission at the following address: Patti Leppert-Slack, Federal Energy Regulatory Commission, 888 First Street, NE, Room 72–33, Washington, DC 20426.

All comments must include the project name and number, and bear the heading "Preliminary Comments," "Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Any party interested in commenting must do so on or before January 22, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30043 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File An Application for a New License

November 4, 1998.

a. *Type of filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 469.

c. *Date filed:* October 23, 1998.

d. *Submitted By:* Minnesota Power, Inc., current licensee.

e. *Name of Project:* Winton Project.

f. *Location:* On the Kawishiwi River, in St. Louis and Lake Counties, Minnesota.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of current license:* March 1, 1981.

i. *Expiration date of current license:* October 31, 2003.

j. *The project consists of two developments:* The Winton Development consists of: (1) a concrete dam comprising: (a) a 176-foot-long spillway section; (b) a 84-foot-long taintor gate section; (c) a 80-foot-long stop-log gate section; (d) a 111-foot-long and 120-foot-long non-over-flow section; and (e) a 161-foot-long intake section; (2) approximately 1,500-foot-long earth dikes; (3) a 2,982-acre reservoir comprising of the Garden, Farm, and Friday Lakes at normal water surface of the Garden, Farm, and Friday Lakes at normal water surface elevation of 1,388.0 feet msl; (4) two 250-foot-long, 9-foot-diameter penstocks extending to; (5) a powerhouse containing two generating units with a total installed capacity of 4,000 kW; and (6) appurtenant facilities.

The Birch Lake Reservoir Development consists of: (1) 227-foot-long rock-filled timber crib dam comprising; (a) a 72-foot-long taintor gate section; and (b) a 85-foot-long sluice gate section; (2) the 7,724-acre Birch Lake reservoir at normal water surface elevation of 1,418.0 feet msl. This development provides water storage for the Winton Development.

k. Pursuant to 18 CFR 16.7, information on the project is available at: Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, Ms. Ingrid Kane, (218) 720–2534.

l. *FERC contact:* Tom Dean (202) 219–2778.

m. Pursuant to 18 CFR 16.9 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the

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existing license. All applications for license for this project must be filed by October 31, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30039 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment to Project Design

November 4, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to Project Design.

b. *Project No:* 7115-028.

c. *Date Filed:* 06/03/1998.

d. *Applicant:* Southeastern Hydro-Power, Inc.

e. *Name of Project:* George W. Andrews.

f. *Location:* At the existing United States Army Corps of Engineers' George W. Andrews Lock and Dam, on the Chattahoochee River in Houston County, Alabama, and Early County, Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. *Applicant Contact:* Charles B. Mierek, President, Southeastern Hydro-Power, Inc.; 5250 Clifton-Glendale Road; Spartanburg, SC 29307-4618; (864) 579-4405.

i. *FERC Contact:* Mohamad Fayyad, (202) 219-2665.

j. *Comment Date:* December 12, 1998.

k. *Description of Amendment:* Licensee proposes the following design changes: (1) installing 6 generating units rated at 4,000 kW each, with a hydraulic capacity of 3,500 cfs each, instead of the licensed 4 units rated at 8,850 kW each, with a hydraulic capacity of 5,250 cfs each; and (2) a 140-foot-long by 300-foot-wide integral headworks-powerhouse structure, instead of the 116-foot-long by 182-foot-wide structure. The change in project design would allow operation at a minimum turbine flow of 1,000 cfs instead of the current design that requires 2,000 cfs.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's respresentatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30040 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA)

November 4, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New Licenses.

b. *Project Nos.:* P–2058 and P–2075.

c. *Applicant:* Washington Water Power Company, Spokane, WA.

d. *Name of Projects:* Cabinet Gorge Project and Noxon Rapids Project.

e. *Location:* The Cabinet Gorge and Noxon Rapids projects are located on the Clark Fork River, in Bonner County, Idaho and Sanders County, Montana. Both projects are partially within the Idaho Panhandle National Forest and the Kanisku National Forest.

f. *Applicant Contact:* Mr. Robert Anderson, Washington Water Power Company, E. 1411 Mission Avenue, Spokane, WA 99202, (509) 489–0500.

g. *FERC Contact:* Bob Easton (202) 219–2782.

h. Washington Water Power Company mailed a copy of the PDEA and Draft License Application to interested parties on October 15. The Commission received a copy of the PDEA and Draft License Application on October 15.

i. With this notice we are soliciting preliminary terms, conditions, and recommendations for the PDEA and comments on the draft license application.

j. All comments on the PDEA and draft license application for the Cabinet Gorge Project and the Noxon Rapids Project should be sent to the address noted above in item (f) with one copy filed with the Commission at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Dockets—Room 1A, 888 First Street, Washington, DC 20426.

All comments must (1) bear the heading "Preliminary Comments", "Preliminary Recommendations", "Preliminary Terms and Conditions", or "Preliminary Prescriptions"; and (2) set forth in the heading the name of the applicant and the project number of the application. Any party interested in commenting must do so before January 15, 1999.

k. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30041 Filed 11–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

November 4, 1998.

a. *Type of filing:* Notice of Intent to File Application for New License.

b. *Project No.:* 233.
c. *Date filed:* October, 13, 1998.
d. *Submitted By:* Pacific Gas and Electric Company, current licensee.
e. *Name of Project:* Pit No. 3, 4, and 5.
f. *Location:* On the Pit River, in Shasta County, California. Several project facilities are within the Shasta-Trinity and Lassen National Forests.
g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
h. *Effective date of original license:* February 1, 1981.
i. *Expiration date of original license:* October 31, 2003.
j. The project consists of the Pit No. 3, Pit No. 4, and Pit No. 5 developments, each consisting of a dam and reservoir, a tunnel and penstock, a powerhouse, and a transmission line. The project has a total installed capacity of 317,000 kilowatts.
k. Pursuant to 18 CFR 16.7, information on the project is available at: Pacific Gas and Electric Company, 245 Market Street, Room 1103, San Francisco, CA 94105, ATTN: John Gourley, (415) 972–5772.
l. *FERC contact:* Héctor M. Pérez (202) 219–2843.
m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by October 31, 2001.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98–30042 Filed 11–9–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing With the Commission

November 4, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major Relicense.
b. *Project No.:* P–2634–007.
c. *Date Filed:* April 28, 1998.
d. *Applicant:* Great Northern Paper, Inc.
e. *Name of Project:* Storage Project.
f. *Location:* On Ragged Stream, Caucomgomoc Stream, and West Branch and South Branch of the Penobscot River in the Counties of Somerset and Piscataquis, Maine.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Brian Stetson, Manager of Environmental Affairs, Great Northern Paper, Inc., One Katahdin Avenue, Millinocket, ME 04462–1398, (207) 723–2664.
i. *FERC Contact:* William Diehl, P.E. (202) 219–2813.
j. *Comment Date:* December 10, 1998.
k. *Status of Environmental Analysis:* This application has been accepted, but is not ready for environmental analysis at this time—see attached paragraph E1.
l. *Description of Project:* The constructed project consists of four dams and reservoirs on headwaters tributaries of the Penobscot River. The four developments are named Canada Falls Lake, Seboomook Lake, Caucomgomoc Lake, and Ragged Lake. There are no power generating facilities included in the project. The total storage capacity of the four reservoirs is about 9,224 billion cubic feet or about 212,000 acre-feet.
m. *Purpose of Project:* The project reservoirs are used to store water during periods of high stream runoff, and release that water during low-runoff periods. This controlled release program benefits downstream river users and adjacent land interests.
n. This notice also consists of the following standard paragraphs: B1 and E1.
o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, N.E., Room 2A–1, Washington, D.C. 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at Great Northern Paper, Inc., One Katahdin Avenue, Millinocket, Maine 04462–1398, (207) 723–2664.
B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.
E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98–30078 Filed 11–9–98; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6187–1]

Reopening of Comment Period for Florida Department of Environmental Protection; Underground Injection Control (UIC); Application for Revision of State Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of comment period on application for revision of Florida UIC program.

SUMMARY: The Environmental Protection Agency (EPA) is reopening the comment period for the application for revision of the Florida UIC program which was published in the **Federal Register** on October 2, 1998 at 63 FR 53047. The reopening of the comment period will allow all interested parties to submit written comments on the proposal.

VOL 63 ISS 217 NO 10 1998 UMI

DATES: The comment period for this proposal will be reopened on November 11, 1998 and will close on November 25, 1998.

ADDRESSES: Copies of the application and pertinent materials are available between 8:30 a.m. and 3:30 p.m. Monday through Friday at the following locations for inspection and copying: Environmental Protection Agency, Region 4, Ground Water & UIC Section, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, PH: (404) 562–9450; and Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400, PH: (850) 487–0505. Comments should be mailed to Nancy H. Marsh, Ground Water & UIC Section, Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta. Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Nancy H. Marsh, Ground Water & UIC Section, Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303, (404) 562–9450.

SUPPLEMENTARY INFORMATION: The reopened comment period for the proposed revision of Florida UIC program now ends November 25, 1998. All comments submitted in accordance with the instructions in the notice of public comment period will be incorporated into the Record and considered before promulgation of the final rule.

Dated: October 28, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30150 Filed 11–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6186–9]

National Drinking Water Advisory Council, Health Care Provider Outreach and Education Working Group; Notice of Open Meeting

Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the "Health Care Provider Outreach and Education Working Group" of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on December 2, 1998 from 9 am to approximately 5 pm, and on December 3, 1998 from 9 am to approximately 12:30 pm. The meeting will be held at the Holiday Inn-Georgetown, located at 2101 Wisconsin Avenue, N.W., Washington DC, 20007, telephone (202) 338–4600. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is to clarify the needs of the health care provider community for information on drinking water, and begin to consider a strategy for meeting these needs. The meeting is open to the public to observe. The working group members are meeting to gather information on this topic and recommend steps towards a draft position paper for deliberation by the Advisory Council within the next year. Given the scope of this effort, therefore, there will be only limited time at the meeting available for statements from the public.

For more information, please contact, Ron Hoffer, Designated Federal Officer, of the Health Care Provider Outreach and Education Working Group, U.S. EPA, Office of Ground Water and Drinking Water (Mail Code 4607), 401 M Street SW, Washington, D.C. 20460. Mr. Hoffer's telephone number is (202) 260–7096 and E-mail address is hoffer.ron@epa.gov. In Mr. Hoffer's absence you may contact Ms. Sherri Umansky, U.S. EPA, Office of Ground Water and Drinking Water (Mail Code 4607) at (202) 260–0432, and by E-mail at umansky.sherri@epa.gov.

Dated: October 29, 1998.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 98–30148 Filed 11–9–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6187–2]

Old ATC Refinery Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Old ATC Refinery site in Wilmington, New Hanover County, North Carolina with the following settling parties: Linda Carroll and Carroll Carolina Corporation. The settlement requires the settling parties to pay $170,000.00 to the Hazardous Substance Superfund should the site property sell before April 1, 1999. If the property fails to sell before April 1, 1999, the settlement requires the settling parties to pay $85,000.00 to the Hazardous Substance Superfund in annual installments over the subsequent three years. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the address below.

DATES: Comments must be received by December 10, 1998.

ADDRESSES: Copies of the proposed settlement may be obtained from: Attn: Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303, (404) 562–8887.

Comments should reference the Old ATC Refinery Site in Wilmington, New Hanover County, North Carolina, and should be addressed to Paula Batchelor at the above address.

Dated: October 23, 1998.

Anita Davis,

Acting Chief, Program Services Branch, Waste Management Division.

[FR Doc. 98–30149 Filed 11–9–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 90–53; DA–2208]

Private Land Mobile Radio Service Rules, New England Area Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice inviting comments on the New England Area Public Safety Regional Plan (Region 19 Plan) that proposes to revise the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the New England area. In accordance with the National Public Safety Plan,

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each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[1]

DATES: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, DC, (202) 418–0680.

SUPPLEMENTARY INFORMATION: On September 14, 1998, Region 19 submitted a proposed amendment to its Public Safety Plan that would revise the current channel allotments to reflect changes made as a result of its fourth window application process. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[2] The Public Safety Plan for Region 19, which was adopted by the Commission on April 26, 1990, governs the use of frequency assignments in the 821–824/866–869 MHz within the New England area.[3] The Commission is soliciting comments from the public before taking action on this proposed plan amendment. Interested parties may file comments to the proposed amendment on or before November 29, 1998, and reply comments on or before December 14, 1998. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), [*See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998)], or by filing paper copies. Commenters who submit by paper should send original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554. Commenter should clearly identify all comments and reply comments, whether submitted electronically or as paper copies, as submissions to General Docket 90–53 New England Public Safety Region 19. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number.

Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694.

The original Region 19 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, NW, Washington, DC. The original Region 19 Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30069 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[3] Order, General Docket 90–53, 5 FCC Rcd 2844 (1990).

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 93–150; DA 98–2207]

Private Land Mobile Radio Service Rules, North Carolina Public Safety Regional Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice amending the North Carolina Public Safety Regional Plan (Region 31 Plan) that revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the state of North Carolina. As a result of approving the amendment for the Plan for Region 31, the interests of the eligible entities within the region will be furthered.

DATES: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, DC, (202) 418–0680.

SUPPLEMENTARY INFORMATION: By this Public Notice, the Commission announces that the North Carolina Regional Planning Committee proposal to amend the North Carolina Public Safety Regional Plan (Region 31 Plan) revising the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within North Carolina is approved. In accordance with the Public Safety National Plan, Region 31 is responsible for planning public safety radio frequency spectrum use in the 821–824/866–869 MHz bands within North Carolina.[1]

On February 5, 1998, we received a request from the North Carolina Regional Planning Committee proposing to amend the Region 31 Plan, which was adopted by the Commission on August 3, 1993.[2] We have reviewed the Region 31 request. The amendment is considered a minor amendment and includes concurrences from each of the adjacent Regions 10, 37, 39, and 42. The amendment is, therefore, approved as submitted. The Secretary's Office will place the amended Region 31 Plan in the official docket file where it will be available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694.

The original Region 31 Public Safety Plan is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, NW, Washington, DC. The original Region 31 Public Safety Plan may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30068 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Order, PR Docket 93–150, 8 FCC Rcd 5447 (1993).

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 89–573; DA 98–1778]

Private Land Mobile Radio Service Rules, Philadelphia Region Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice amending the Philadelphia Public Safety Regional Plan (Region 28 Plan) that revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the Philadelphia area. As a result of approving the amendment for the Plan for Region 28,

the interests of the eligible entities within the region will be furthered.

DATES: September 11, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, D.C., (202) 418–0680.

SUPPLEMENTARY INFORMATION: By this Public Notice, the Commission announces that the Philadelphia Region 28 Planning Update Committee proposal to amend the Philadelphia Public Safety Regional Plan (Region 28 Plan) revising the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the Philadelphia area is approved. On March 17, 1998, we received a request from the Philadelphia Region 28 Planning Update Committee proposing to amend the Region 28 Plan, which was adopted by the Commission on February 2, 1990,[1] and subsequently revised on December 16, 1993.[2] In accordance with the Public Safety National Plan, Region 28 is responsible for planning public safety radio frequency spectrum use in the 821–824/866–869 MHz bands within eastern Pennsylvania, southern New Jersey, and Delaware.[3] We have reviewed the Region 28 request and find that the amendment furthers this goal. The amendment is considered a minor amendment and includes concurrences from each of the adjacent Regions 8, 20, 30, 36, and 55. The amendment is, therefore, approved as submitted.

The Secretary's Office will place the amended Region 28 Plan in the official docket file where it will be available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0680. The original Region 28 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, NW, Washington, DC. The original Region 28 Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, Telephone (202) 857–3800.

List of Subjects

Public Safety Radio Services, Special Emergency Radio Services.

[1] Order, General Docket 89–573, 5 FCC Rcd 764 (1990).

[2] Order, DA 93–1530, 9 FCC Rcd 82 (1994).

[3] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30067 Filed 11–9–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:49 a.m. on Thursday, November 5, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the Corporation's corporate activities, and (2) an administrative enforcement proceeding.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Julie L. Williams (Acting Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: November 5, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–30231 Filed 11–6–98; 1:05 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" NUMBER: 98–30004.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 12, 1998, 10:00 a.m. Meeting Open to the Public.

The Following Item Has Been Added to the Agenda:

Proposed Directive to the Audit Division.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–30267 Filed 11–6–98; 3:13 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Oceanair Freight Int'l, Inc., 509–513 S. Caroline Street, Baltimore, MD 21231, Officer: Fola S. Jinaou, President.

Allied Maritime Services Inc., 360 Rue Saint Jacques, Montreal, Quebec H2y 1R2, Officers: Michael H. Belmer, President, James G. Allan, Vice President.

Dated: November 4, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–30086 Filed 11–9–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 24, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert Valdez, La Junta, Colorado; as Trustee of ESOP; and Dale L. Leighty, Las Animas, Colorado; to acquire voting shares of First National Bank of Las Animas, Las Animas, Colorado.

Board of Governors of the Federal Reserve System, November 4, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30095 Filed 11–9–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Aberdeen Financial Corporation, Sierra Blanca, Texas; to become a bank holding company by acquiring 90 percent of the voting shares of Aberdeen Financial Intermediate Holding Company, Inc., Wilmington, Delaware, and thereby indirectly acquire Bank of Sierra Blanca, Sierra Blanca, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; to merge with Riverton State Bank Holding Company, Riverton State Bank, both of Riverton, Wyoming, and Dubois National Bank, Dubois, Wyoming.

Board of Governors of the Federal Reserve System, November 4, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30097 Filed 11–9–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 24, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. U.S. Bancorp, Minneapolis, Minnesota; to acquire Libra Investments, Inc., Irvine, California, through this acquisition, U.S. Bancorp will acquire an equity interest in Libra Investors, LLC, LFM, LLC, Libra Investors II, LLC, and LFC, LLC, all of Los Angeles, California, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than open-end investment companies. *J.P. Morgan & Co., Incorporated*, 75 Fed. Res. Bull. 192 (1989). Engaging in financial advisory activities pursuant to § 225.28(b)(6) of the Board's Regulation Y. Providing agency transactional services for customer investments pursuant to § 225.28(b)(7) of Regulation Y. Acting directly or indirectly through subsidiaries or affiliates, as general partner for a series of limited partnerships and limited liability companies now existing or to be established in the future, that are excluded from the definition of "investment company" under the Investment Company Act of 1940 and are exempt from registration and the prospectus requirements of the Securities Act of 1933, which may invest in securities or other assets eligible for investment by U.S. Bancorp and may make, service and invest in discounted bank loans and other debt securities (other than discounted debt securities collateralized by shares of banks and bank holding companies), including secured and unsecured debt in the form of bank loans, privately placed and publicly-traded debt instruments, bonds, notes, debentures and discounted receivables. *Dresdner Bank AG*, 84 Fed. Res. Bull. 361 (1998); Letter to Swiss Bank Corporation from the Federal Reserve Bank of New York (March 28, 1995); *Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1991).

Board of Governors of the Federal Reserve System, November 4, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30096 Filed 11–9–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 12:00 noon, Monday, November 16, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions)

involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30238 Filed 11–6–98; 3:13 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 9723189]

The May Department Stores Company, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John T. Dugan or Paul G. Block, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, MA 02114–4719, (617) 424–5960 or 424–5971.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 2, 1998), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can by obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from The May Department Stores Company. The proposed respondent is a large retailer that operates over 350 department stores nationwide through eight regional divisions and ten trade names, including Lord & Taylor, Hecht's, Strawbridge's, Foley's, Robinsons-May, Kaufmann's, Filene's, Famous Barr, L.S. Ayres, and Meier & Frank.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleges several unfair or deceptive acts or practices related to the proposed respondent's policy of inducing consumers who have filed for bankruptcy protection to sign agreements reaffirming debts owed to proposed respondent prior to the filing of the bankruptcy petition. The complaint charges that the proposed respondent: falsely represented to consumers that signed reaffirmation agreements would be filed with the bankruptcy courts, as required by the United States Bankruptcy Code; falsely represented to consumers that debts associated with unfiled reaffirmation agreements, or agreements that were filed but not approved by the bankruptcy courts, were legally binding on the consumers; and unfairly collected debts that it was not permitted by law to collect. The proposed consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondent from engaging in similar acts in the future.

The proposed consent order preserves the Commission's right to seek consumer redress if the Commission determines that redress to consumers provided through related named and unnamed legal actions is not adequate.

Part I of the proposed order prohibits the proposed respondent from misrepresenting to consumers who have filed petitions for bankruptcy protection under the United States Bankruptcy Code that (A) reaffirmation agreements will be filed in bankruptcy court; or (B) any reaffirmation agreement is legally binding on the consumer. Part I.C of the proposed order prohibits the proposed respondent from taking any action to collect any debt (including any interest, fee, charge, or expense incidental to the principal obligation) that has been legally discharged in bankruptcy proceedings and that the proposed respondent is not permitted by law to collect. Part II of the proposed order prohibits the proposed respondent from making any material misrepresentation in the collection of any debt subject to a pending bankruptcy proceeding.

Part III of the proposed order contains record keeping requirements for materials that demonstrate the compliance of the proposed respondent with the proposed order. Part IV requires distribution of a copy of the consent decree to certain current and future personnel who have responsibilities related to collecting debts subject to bankruptcy proceedings.

Part V provides for Commission notification upon any change in the corporate respondent affecting compliance obligations arising under the order. Part VI requires the proposed respondent to notify the Commission of proposed settlement terms in related actions filed by various named and unnamed parties. Part VII requires the filing of compliance report(s). Finally, Part VIII provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.
Donald S. Clark,
Secretary.
[FR Doc. 98–30087 Filed 11–9–98; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99009]

Notice of Availability of Funds; Cooperative Agreement for Limb Loss Research and the Prevention of Secondary Conditions

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for limb loss research and the prevention of secondary conditions. The purpose of the program is to advance the field of limb loss epidemiology, surveillance, data analysis, and intervention design including health promotion programs for persons with limb loss and the prevention of secondary conditions. This program addresses the "Healthy People 2000" priority area of Preventive Services.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations, and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

It is anticipated that a maximum of $500,000 will be available in FY 1999 to fund one award, including direct and indirect costs. It is expected that the project period will begin on April 1, 1999 and the award will be made for a 12-month budget period within a project period of up to four years. This funding estimate may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, CDC site visits, and the availability of funds.

Use of Funds

Project funds may be used to support personnel services, supplies, equipment, travel, subcontracts, and other services consistent with the approved scope of work.

Project funds may not be used to supplant other available applicant or collaborating agency funds, for construction, or purchase of facilities or space, or for patient care. Project funds may not be used for individualized preventive measures (direct patient support) such as wheelchairs, assistive technology, and medical appliances including prosthetic devices unless specifically approved by the funding agency. Travel funds should be requested for at least three project staff to participate in a CDC Office on Disability and Health workshop in Atlanta, GA during the first budget year.

D. Program Requirements

The applicant should: (1) propose and utilize a six month planning period at the beginning of the project in order to structure key staffing and organizational activities; (2) establish formal collaborations with identified outside entities, and solicit diverse input for use in project design, objective setting, and operations; and (3) appoint a full-time manager/coordinator with the authority and responsibility to conduct and manage all components of the project.

Cooperative Activities

In conducting activities to achieve the purposes of this program, the Recipient shall be responsible for activities listed under Recipient Activities, item A; and CDC shall be responsible for activities listed under CDC Activities, item B.

A. Recipient Activities

1. Develop an epidemiologic capacity to understand and characterize secondary conditions in persons with limb loss including analyses of differential secondary conditions and their associations with co-morbidities.
2. Collect, compile, and analyze information relevant to the incidence and prevalence of limb loss and amputations on a national, regional, and state/local basis.
3. Develop cost-effectiveness measures and models as optimal approaches for intervention design and efficacy, and provide guidance for their implementation.
4. Characterize the population of persons with limb loss by determined incidence, etiology/causality, functional effects, co-morbidities, and affected limb site variables.
5. Develop and maintain research literature and resources on the prevention of secondary conditions and health promotion strategies regarding limb loss, and establish a communication process to disseminate prevention information to research entities including collaboration with the National Limb Loss Information Center.
6. Provide technical assistance on health promotion and community-directed interventions that has as its purpose the prevention of secondary conditions in targeted populations.
7. Develop a model limb loss and amputation reporting system that could be piloted in a geographic or health jurisdiction.
8. Collaborate with other organizations for the design and/or implementation of programs meriting replication in other settings, recognizing appropriate cultural sensitivity and controlled by a formal program evaluation protocol.
9. Establish relationships and client access linkage with public/community/advocacy/voluntary agencies and provider organizations that serve persons with limb loss for the purpose of addressing and understanding secondary conditions and promoting best practices from the health promotion and personal perspective of persons who have experienced limb loss.
10. Collect and report information on community programs related to limb loss including complications from surgery, comparisons of clinical and community programs geared toward preventing secondary conditions, vocational and educational outcomes in persons with limb loss, gaps in services and data, and provider training needs.

B. CDC Activities

1. Provide consultation in the development of data collection instruments, methods, procedures, and outcome determinations.
2. Provide technical consultation, assistance, and referrals on existing epidemiological information regarding limb loss and amputations in the United States.
3. Serve as a reference for accessing other data sets that will be of value to the surveillance and epidemiologic activities of the recipient.
4. Provide consultation on the development of cost-effectiveness and cost-utility models, and in designing minimal data sets for developing pilot reporting systems for limb loss and amputations.
5. Assist the project in the planning and organizing of conferences and

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workshops regarding surveillance activities, developing partnerships, and in the characterization of limb loss nationally and in population subgroups.

6. Assist in the transfer of information and methods developed in the project to other disability-related entities and programs.

E. Application Content

Use the information in the Program Requirements, Cooperative Activities, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative addressing the scored criteria should be no more than 40 single-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Letter of Intent (LOI)

A non-binding letter of intent to apply is requested from potential applicants. The LOI should identify the Announcement number, name the proposed project director, and describe the scope of the proposed project in not more than three pages. The letter will not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and ensure that each applicant receives timely and relevant information prior to the application review.

The LOI should be submitted on or before *December 22, 1998* to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, Georgia 30305-2209.

Application

Applicants must submit a separate typed abstract/summary of their proposal as a cover to their applications, consisting of no more than two single-spaced pages. Applicants should also include a table of contents for the project narrative and related attachments. It is strongly suggested that applications be organized to be compatible with the evaluation scoring criteria, as that is the process by which the review committee will assess the quality of the proposals.

Submit the original and five copies of PHS–398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet for PHS 398. Budget and other required forms are in the application kit. Applications are due on or before *Wednesday, January 20, 1999.*

Submit the application to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, Georgia 30305–2209. Please list the Announcement Number 99009 on the covering address label. If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

A. Problem Statement and Evidence of Need—15 Points

This includes: 1. the extent to which the applicant understands the purpose and requirements of the program.

2. The presentation of the magnitude and impact of limb loss as a public health issue with cited references.

3. The understanding of unmet needs as they affect the occurrence and documentation of secondary conditions, and the information gaps associated with the epidemiology of secondary conditions related to limb loss.

4. The presentation of the full range of surveillance activities required and inventory of data sets to be developed and accessed.

5. The description of research needs in the development of models for intervention design, and the problems (and opportunities) inherent in developing uniform reporting systems for limb loss and amputations.

B. Research Resources and Organizational Capacity—20 Points

This includes: 1. the capability of the applicant to conduct the project, taking into account its institutional experience and its current activities in the field for all required activities.

2. The ability of the applicant to ensure timely access to necessary population-based data related to the surveillance and epidemiology of secondary conditions associated with limb loss.

3. The understanding demonstrated and the resources available to address the development of cost-effectiveness models for the design and conduct of health promotion interventions.

4. The capacity of the applicant to provide evidence of effective collaborations and linkages to meet the research requirements of the project including documented letters of support and commitments from collaborating entities.

5. The capacity of the applicant to include and effectively work with community organizations and service providers in order to develop and sustain an outreach capacity to assess the needs of persons with limb loss, and to provide guidance and consultation regarding health promotion interventions to prevent secondary conditions.

6. The capacity of the applicant to collect and secure confidential information, and to protect study participants through rigorous human subjects clearance procedures.

C. Research Approach—35 Points

This includes: 1. the methods to be employed to gather necessary etiological/causality, demographic, and functional data, including the kinds and resources of data to be accessed, collected, analyzed, and used.

2. The quality and scope of the data collection and data analysis plan, and the description of the staff and organizations charged with its control.

3. The approach proposed to use extant or emerging epidemiologic data to assess the frequency and significance of secondary conditions, including risk and protective factors.

4. The approach to translate epidemiological/ surveillance data into outreach intervention protocols designed to prevent secondary conditions in persons with limb loss through the provision of guidance and technical assistance to community groups and service providers.

5. The approach to gather information on the experiences, perceptions, and concerns/needs of persons with limb loss (and their families), and translate that information into intervention protocols designed to provide knowledge to prevent secondary conditions. This approach should consider both healthy living practices (e.g., tobacco use cessation, nutrition, weight management, physical activity and exercise), as well as secondary medical/clinical conditions directly related to an amputation/limb loss (e.g., infections, fall-related injury, pain, depression, prosthetic adaptability, etc).

6. The capacity of the applicant to describe their approach and later develop a prototype uniform reporting system for limb loss and amputations

that could be piloted in a selected jurisdiction to demonstrate feasibility and reasonableness.

7. The quality and comprehensiveness of the overall research plan that includes innovative approaches to best address the epidemiologic/surveillance, demographic characterization, health promotion interventions, and collaborative opportunities.

8. The degree to which the applicant has met CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

D. Management Plan and Project Goals and Objectives—30 Points

This includes: 1. how the applicant will use the six month planning period to gather diverse input and engage all collaborating partners and constituencies in meeting the full range of activities required under this announcement.

2. The management work plan for conducting the project including the advantage defined by its placement within the applicant organization (include an organization chart and denote the relationship of this project within the applicant organization).

3. The presentation of the approach, methods, and goals, objectives and timelines for the first year by calendar month or quarter; and a work plan outline for the second, third, and fourth years of the project.

4. The description of the specified tasks and responsibilities for all positions proposed for financial assistance, including both applicant organization staff and contractual/consultant personnel.

5. The manner in which the project will seek out, utilize, and benefit from other research and provider organizations in developing limb loss project priorities and objectives.

6. The proposed plan to maintain and disseminate appropriate limb loss information through defined communications technology processes and systems.

7. The process for how the applicant will evaluate the management work plan and all research and outreach activities of the project.

E. Budget Justification—Not Scored

This criteria includes the adequacy of the budget justification and its relationship to program operations, collaborations, and services. Each line item of the budget must be well justified in a brief narrative with special attention given to contractual requests including the responsibilities of consultants, percentage time equivalents, hourly or daily rates, etc. This section will also be evaluated on the adequacy of facilities to conduct the project. The relevance of this section to the other evaluation criteria will be measured on the extent to which the budget narrative is reasonable, clearly documented, accurate, and consistent with the purpose of this announcement.

F. Human Subjects—Not Scored

This includes the extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. If the project involves research on human participants, assurance and evidence must be provided to demonstrate that the project will be subject to initial and continuing reviews by an appropriate institutional review board. Does the project adequately address the requirements of 45 CFR 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. semi-annual progress reports; due dates to be denoted in the notice of grant award;

2. financial status report, due no more than 90 days after the end of each budget period; and

3. final financial and performance reports, due no more than 90 days after the end of the project period.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act [42 U.S.C. section 241 (a)], as amended. The Catalog of Federal Domestic Assistance number is 93.184.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. Also, the CDC Home Page on the Internet: http://www.cdc.gov is available for copies of this Announcement, application forms, and funding information.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99009, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, GA, 30305–2209, telephone (404) 842–6804. E-mail address: vxw1@cdc.gov

For program technical assistance, contact Jack Stubbs, Office on Disability and Health, Centers for Disease Control and Prevention, National Center for Environmental Health (NCEH) 4770 Buford Highway, Mailstop F–29, Atlanta, GA, telephone (770) 488–7096. E-mail address: jbs2@cdc.gov

Dated: November 4, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30058 Filed 11–9–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99010]

Notice of Availability of Funds; Cooperative Agreement for a National Information Center on Physical Activity for Persons With Disabilities

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999

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funds to establish a National Information Center on Physical Activity for Persons with Disabilities. The purpose of this Center is to provide information, technical assistance, and consultation on physical activity, exercise, and health promotion practices targeting persons with disabilities across all segments of the population. It includes addressing the prevention of secondary conditions in persons who have a disability by promoting and assessing the benefits of physical activity and exercise toward reducing the risk for associated adverse health and participation outcomes among persons who have a disabling condition. This program addresses the "Healthy People 2000" priority areas of Preventive Services and Physical Activity and Fitness.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

It is anticipated that a maximum of $750,000 will be available in FY 1999 to fund one award, including direct and indirect costs. It is expected that the project will begin on April 1, 1999, and the award will be made for a 12 month budget period within a project period of up to four years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, CDC site visits, and the availability of funds.

Use of Funds

Project funds may be used to support personnel services, supplies, equipment, travel, subcontracts, and other services consistent with the approved scope of work. Project funds may not be used to supplant other available applicant or collaborating agency funds, for construction, for purchase of facilities or space, or for patient care. Project funds may not be used for individualized or group program support such as wheelchairs, sport/recreational and fitness equipment, assistive technology, and medical appliances unless specifically approved by the funding agency. Travel funds should be requested for three project staff to participate in a CDC Office on Disability and Health workshop in Atlanta, GA during the first budget year, and two project staff members to attend the American College of Sports Medicine Annual Meeting in Seattle, WA in June 1999.

D. Program Requirements

Applicants should: (1) propose a full-time manager/coordinator with the authority and responsibility to conduct and manage all components of the project; (2) demonstrate the capacity to motivate persons with disabilities to engage in physical activity and exercise; (3) demonstrate the capacity to provide consultation to organizations that provide direct services, guidance, and instruction to persons with disabilities toward increasing participation and beneficial outcomes in physical activity and exercise programs; (4) demonstrate the capacity to serve in a national leadership role to establish and operate the National Information Center, given the applicant's reputation, experience, and expertise in the field; and (5) provide direction and leadership in developing recommendations and programs promoting fully accessible physical facilities and equipment designed to increase opportunities for physical activities and exercise for persons with disabilities.

Cooperative Activities

In conducting activities to achieve the purposes of this program, the recipient shall be responsible for activities listed under Recipient Activities, item A; and CDC shall be responsible for activities listed under CDC activities, item B.

A. Recipient Activities

1. Collect, compile, and provide information regarding physical activity and exercise for persons with disabilities on a national, regional, and state/local basis to a broad range of requestors including individuals, researchers, disability service organizations, community groups, service providers, legislative and governing bodies, and the public.

2. Identify, enumerate, and characterize the nature of such requests, inquiries and needs from persons with disabilities, providers, and organizations seeking information on physical activity and exercise.

3. Provide guidance for initiating and maintaining physical activity among persons with disabilities, including imparting information regarding the benefits of physical activity to individuals and to those populations served by requesting organizations.

4. Provide technical assistance and consultation in the design, conduct, and evaluation of health promotion and community-directed physical activity and exercise programs in targeted populations of persons with disabilities.

5. Develop and provide information regarding innovative and acceptable physical activity facilities (e.g. buildings, parks, trails, equipment, new technology) that are fully accessible and available to persons with disabilities with attention to geographical proximity and cost issues.

B. CDC Activities

1. Provide technical consultation on current available and emerging research, literature, epidemiological, and physical activity information in the United States.

2. Serve as a conduit for accessing other data sets and for referrals to information resources that would be of value to the information gathering/dissemination and technical assistance activities of the recipient.

3. Assist the project in the planning and organizing of conferences and workshops related to project activities regarding physical activity and exercise for persons with disabilities.

4. Assist the project in the transfer of information and methods developed in the project to other disability-related entities and programs.

E. Application Content

Use the information in the Program Requirements, Cooperative Activities, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative addressing the scored criteria should be no more than 40 single-spaced pages, printed on one side, with one inch margins, and unreduced font.

F. Submission and Deadline

Letter of Intent (LOI)

A non-binding letter of intent to apply is requested from potential applicants. The LOI should identify the announcement number, name the proposed project director, and describe the scope of the proposed project in not more than three pages. This letter will not influence review or funding

decisions, but it will enable CDC to plan the review more efficiently, and ensure that each applicant receives timely and relevant information prior to the application review.

The LOI should be submitted on or before December 22, 1998 to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, Georgia 30305–2209.

Application

Applicants must submit a separate typed abstract/summary of their proposal as a cover to their applications, consisting of no more than two single-spaced pages. Applicants should also include a table of contents for the project narrative and related attachments. It is suggested that applications be organized to be compatible with the evaluation scoring criteria, as that is the process by which the review committee will assess the quality of the applications.

Submit the original and five copies of PHS–398 (OMB Number 0925–0001). Adhere to instructions on the Errata Instruction Sheet for PHS 398. Budget and other required forms are in the application kit. Applications are due on or before Wednesday January 20, 1999.

Submit the application to Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, Georgia 30305–2209. Please list Announcement Number 99010 on the covering address label. If your application does not arrive in time for submission to the review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

A. Problem Statement and Evidence of Need—15 Points. This includes: 1. The extent to which the applicant understands the purpose and requirements of the program.

2. The accounts of the value of promoting physical activity among persons with disabilities as an important public health issue with cited references in the literature.

3. The presentation of the full range of information and communications activities that will be required with an inventory of resources and databases to be accessed as referral sources.

4. The description of unmet needs and gaps (barriers and constraints) as they relate to advancing a coordinated and comprehensive information system on physical activity and exercise among persons with disabilities; and how this project would move toward elimination of those barriers.

B. Research Resources and Organizational Capacity—20 Points. This includes: 1. The capability of the applicant to conduct the project, taking into account its institutional experience, evidence of leadership, and current activities in the field for those activities required.

2. The ability of the applicant to ensure timely access to necessary data and educational materials related to physical activity, denoting the sources for such data and materials.

3. The capacity of the applicant to provide evidence of effective collaborations and linkages with both the disability and physical activity fields, professional groups, service providers, fitness facilities, governmental agencies, and community organizations to meet the requirements of the project; including documented letters of support and commitments from those collaborating entities.

4. The capacity of the applicant to gather necessary demographic and functional outcome information regarding sub-group patterns for engaging in physical activity and the benefits to be derived; including the kinds and sources of information to be accessed, analyzed, and publicized, the staff/organizations charged with its control, and how that data would be used.

C. Operational Approach—40 Points. This includes: 1. The methods to be employed to establish an effective information resources system and communications network.

2. The approach to: (a) Gather information on the determinants (facilitators and barriers) to physical activity and exercise; (b) assess the perceptions and experiences of persons with disabilities and their families regarding physical activity; (c) formulate a strategy to enable and motivate persons with disabilities to engage in physical activity, exercise, and recreational programs; and (d) promote guidelines and recommendations for sustaining such activities over the long-term.

3. The methods by which the applicant will develop and disseminate educational materials on facts, benefits, programs, and motivational tools based on their value for promoting physical activity in persons with disabilities across all age ranges and literacy levels during medical treatment, rehabilitation, and in the home and community settings.

4. The approach proposed to construct a centralized listing of programs, events, and service providers to be disseminated to requestors for personal, organizational, and constituency use.

5. The accounts of the proposed resource development and communications capacity for employing information technology to reach key targeted groups including impairment-specific populations; children; older citizens; women; minorities; lower socio-economic strata; professionals/clinicians/fitness/allied health providers and educators/trainers; persons with varying fitness levels; and changing (persons with improving/regressing physical conditioning) in order to best translate information into physical activity and exercise programs and protocols for persons with disabilities.

6. The description of how the applicant will develop and implement appropriate readability levels, cultural sensitivity, and fully accessible formats in all communication and program activities.

7. The methods by which the applicant will provide technical assistance, information, and consultation to participants and supporting organizations regarding the design, conduct, and evaluation of programs to introduce and sustain physical activity and exercise in persons with disabilities.

8. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in proposed research (as appropriate). This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

D. Management Plan and Project Goals and Objectives—25 Points. This includes: 1. The management work plan for conducting the project including the process (approach and methods) by which the applicant will meet established goals and objectives.

2. The presentation of those specific goals, objectives and timelines (with performance expectations for the first year by calendar month or quarter, and a work plan outline for the second, third, and fourth years of the project).

3. The description of the major tasks and responsibilities for key positions including the applicant organization and identified contractual/consultant personnel (include an organization chart and denote the relationship of this project within the applicant organization).

4. The methods by which the applicant will seek out, utilize, and benefit from input by persons with disabilities and their families, and from organizations representing the disability and physical activity communities in planning for project priorities and activities.

5. The description of how the applicant will evaluate its work plan and all informational, referral, communications, and technical assistance activities.

E. Budget Justification—Not Scored. This criteria includes the adequacy of the budget justification and its relationship to program operations, collaborations, and services. Each line item of the budget must be well justified in a brief narrative with special attention given to contractual requests including the responsibilities of consultants, percentage time equivalents, hourly or daily rates, etc. This section will also be evaluated on the adequacy of facilities to conduct the project. The relevance of this section to the other evaluation criteria will be measured on the extent to which the budget narrative is reasonable, clearly documented, accurate, and consistent with the purpose of this announcement.

F. Human Subjects—Not Scored. This includes the extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. If the proposed project involves research on human participants, assurance and evidence must be provided that the project will be subject to initial and continuous reviews by an appropriate institutional review board. Does the applicant adequately address the requirements of 45 CFR 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of: 1. Semi-annual progress reports; due dates to be denoted in the notice of grant award;

2. Financial status report, due no more than 90 days after the end of each budget period; and

3. Final financial status and performance reports, due no more than 90 days after the end of the project period.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, Section 301(a) [42 U.S.C. section 241(a), as amended. The Catalog of Federal Domestic Assistance number is 93.184.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6674). You will be asked to leave your name and address and will be instructed to identify the Announcement Number of interest. Also, the CDC Home Page on the Internet: http://www.cdc.gov is available for copies of this Announcement, application forms and funding information.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99010, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, GA 30305–2209, telephone (404) 842–6804. E-mail address: vxw1@cdc.gov.

For program technical assistance, contact Joseph B. Smith, Office on Disability and Health, National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop F–29, Atlanta, GA, telephone (770) 488–7082. E-mail address: jos4@cdc.gov

Dated: November 4, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30060 Filed 11–9–98; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 2000

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 2000.

SUMMARY: This issuance sets forth the individual allotments to States for Fiscal Year 2000, pursuant to title XX of the Social Security Act, as amended (Act). The allotments to the States published herein are based upon the authorization set forth in section 2003(c) of the Social Security Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: John K. Jolley, (202) 401–5284.

SUPPLEMENTARY INFORMATION: Section 2003(c) of the Act authorizes $2.380 billion for Fiscal Year 2000 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Island, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.380 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.380 billion is allotted to each State in the same proportion as that State's population is to the population of all

States, based upon the most recent data available from the Department of Commerce. For Fiscal Year 2000, the allotments are based upon the Bureau of Census population statistics contained in its reports "Population of States by Broad Age Groups and Sex: 1990 and 1995 (CB96–88, Table 4) released May 31, 1996, and "1990 Census of Population and Housing" (CPH–6–AS and CPH–6–CNMI) published April 1992, which was the most recent data available from the Department of Commerce at the time of the Department's initial promulgation.

EFFECTIVE DATE: The allotments are effective October 1, 1999.

FISCAL YEAR 2000 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Alabama	$38,307,808	$37,004,055
Alaska	5,440,375	5,255,219
American Samoa	88,560	85,546
Arizona	37,992,554	36,699,530
Arkansas	22,373,994	21,612,526
California	284,529,822	274,846,246
Colorado	33,750,142	32,601,503
Connecticut	29,498,723	28,494,775
Delaware	6,458,194	6,238,398
Dist. of Col	4,990,013	4,820,185
Florida	127,596,615	123,254,041
Georgia	64,861,162	62,653,702
Guam	410,345	396,379
Hawaii	10,691,598	10,327,724
Idaho	10,475,425	10,118,909
Illinois	106,555,694	102,929,219
Indiana	52,269,036	50,490,132
Iowa	25,598,587	24,727,374
Kansas	23,103,580	22,317,282
Kentucky	34,767,961	33,584,682
Louisiana	39,109,452	37,778,416
Maine	11,177,990	10,797,562
Maryland	45,423,530	43,877,603
Massachusetts	54,709,999	52,848,020
Michigan	86,010,171	83,082,934
Minnesota	41,523,394	40,110,202
Mississippi	24,292,536	23,465,773
Missouri	47,954,566	46,322,499
Montana	7,836,302	7,569,604
Nebraska	14,744,858	14,243,037
Nevada	13,781,083	13,312,063
New Hampshire	10,340,316	9,988,397
New Jersey	71,562,552	69,127,020
New Mexico	15,177,206	14,660,671
New York	163,355,373	157,795,800
North Carolina	64,807,119	62,601,499
North Dakota	5,773,643	5,577,145
No. Mariana Islands	82,069	79,276
Ohio	100,439,775	97,021,447
Oklahoma	29,525,745	28,520,877
Oregon	28,291,753	27,328,883
Pennsylvania	108,735,447	105,034,787
Puerto Rico	12,310,345	11,891,379
Rhode Island	8,917,171	8,613,687
South Carolina	33,083,606	31,957,651
South Dakota	6,566,281	6,342,807
Tennessee	47,342,073	45,730,851
Texas	168,651,632	162,911,808
Utah	17,573,133	16,975,056
Vermont	5,269,238	5,089,907
Virgin Islands	410,345	396,379
Virginia	59,609,939	57,581,197
Washington	48,918,341	47,253,473
West Virginia	16,465,242	15,904,870
Wisconsin	46,144,110	44,573,659
Wyoming	4,323,477	4,176,334
Total	2,380,000,000	2,299,000,000

Dated: November 3, 1998.
Donald Sykes,
Director, Office of Community Services.
[FR Doc. 98–30075 Filed 11–9–98; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96N–0393]

Agency Information Collection Activities; Proposed Collection; MedWatch: The FDA Medical Products Reporting Program; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed revision of two forms for collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed revision of two forms from "MedWatch: The FDA Medical Products Reporting Program" (MedWatch). These forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory), will be used to report to the agency on adverse events and product problems that occur with all medical products regulated by FDA.

DATES: Submit written comments on the collection of information by January 11, 1999.

ADDRESSES: Submit written requests for single copies of the revised MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory), and a summary of the proposed revisions to the forms, by e-mail to "medwatch@oc.fda.gov", by fax to 301–827–7241, or by mail to "MedWatch: The FDA Medical Product Reporting Program," Food and Drug Administration (HF–2), 5600 Fishers Lane, rm. 17–65, Rockville, MD 20857 (301–827–7240). Requests by mail should include one self-addressed adhesive label to assist that office in processing your request. Copies of the forms and the summary of the changes may also be obtained via Internet at "http://www.fda.gov/medwatch" under "How to Report".

Submit written comments on the revised MedWatch reporting forms to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MedWatch—The FDA Medical Products Reporting Program (Forms FDA 3500 and FDA 3500A) (OMB Control Number 0910–0291—Revision)

Under sections 505, 507, 512, 513, 515, and 903 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355, 357, 360b, 360c, 360e, and 393); and section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to ensure the safety and effectiveness of drugs, biologics, and devices. Under section 502(a) of the act (21 U.S.C. 352(a)), a drug or device is misbranded if its labeling is false or misleading. Under section 502(f)(1) of the act it is misbranded if it fails to bear adequate warnings, and under section 502(j), it is misbranded if it is dangerous to health when used as directed in its labeling.

Under section 4 of the Dietary Supplement Health and Education Act of 1994 (the DSHEA) (21 U.S.C. 301), section 402 of the act (21 U.S.C. 342) is amended so that FDA must bear the burden of proof to show a dietary supplement is unsafe.

To carry out its responsibilities, the agency needs to be informed whenever an adverse event or product problem occurs. Only if FDA is provided with such information, will the agency be able to evaluate the risk, if any, associated with the product, and take whatever action is necessary to reduce or eliminate the public's exposure to the risk through regulatory action ranging from labeling changes to the rare product withdrawal. To ensure the marketing of safe and effective products, certain adverse events must be reported. Requirements regarding mandatory reporting of adverse events or product problems have been codified in parts 310, 314, 600, and 803 (21 CFR 310, 314, 600, and 803), specifically §§ 310.305, 314.80, 314.98, 600.80, 803.30, 803.50, 803.53, and 803.56.

To implement these provisions for reporting of adverse events and product problems with all medications, devices, and biologics, as well as any other products that are regulated by FDA, two very similar forms are used. Form FDA 3500 is used for voluntary (i.e., not mandated by law or regulation) reporting of adverse events and product problems by health professionals and the public. Form FDA 3500A is used for mandatory reporting (i.e., required by law or regulation). Respondents to this collection of information are health professionals, hospitals and other user-facilities (e.g., nursing homes, etc.), consumers, manufacturers of biologics, drugs and medical devices, distributors, and importers.

II. Use of the Voluntary Version (FDA Form 3500):

Individual health professionals are not required by law or regulation to submit adverse event or product problem reports to the agency or the manufacturer. There is one exception. The National Childhood Injury Act of 1986 mandates that certain adverse reactions following immunization be reported by physicians to the joint FDA/Centers for Disease Control and Prevention (CDC) Vaccine Adverse Event Reporting System (VAERS).

Hospitals are not required by Federal law or regulation to submit adverse event reports on medications. However, hospitals and other medical facilities are required by Federal law to report medical device related deaths and serious injuries.

Manufacturers of dietary supplements do not have to prove safety or efficacy of their products prior to marketing, nor do they have mandatory requirements for reporting adverse reactions to FDA. However, the DSHEA of 1994 puts the onus on FDA to prove that a particular product is unsafe. Consequently, the agency is totally dependent on voluntary reporting by health professionals and consumers about problems with the use of dietary supplements.

The voluntary version of the form is used to submit all adverse event and product problem reports not mandated by Federal law or regulation.

Experience over the past 5 years has revealed the need to modify the voluntary form to better utilize the available space and to better query reporters for information specific to dietary supplements and medication quality problems.

III. Use of the Mandatory Version (FDA Form 3500A):

A. Drug and Biologic Products

In section 505(j) and 704 (21 U.S.C. 374) of the act, Congress has required that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act. These statutory requirements regarding mandatory reporting have been codified by FDA under parts 310 and 314 (drugs) and part 600 (biologics) of the Code of Federal Regulations. Parts 310, 314, and 600 mandate the use of the FDA Form 3500A for reporting to FDA on adverse events that occur with drugs and biologics.

B. Medical Device Products

Section 519 of the act (21 U.S.C. 360i) requires manufacturers, importers, or distributors of devices intended for human use to establish and maintain records, make reports, and provide information as the Secretary of Health and Human Services may by regulation reasonably require to ensure that such devices are not adulterated or misbranded and to otherwise ensure its safety and effectiveness. Furthermore, the Safe Medical Device Act of 1990, signed into law on November 28, 1990, amends section 519 of the act. The amendment requires that user facilities such as hospitals, nursing homes, ambulatory surgical facilities and outpatient treatment facilities report deaths related to medical devices to FDA and to the manufacturer, if known. Serious illnesses and injuries are to be reported to the manufacturer or to FDA if the manufacturer is not known. These statutory requirements regarding mandatory reporting have been codified by FDA under 21 CFR part 803 (part 803). Part 803 mandates the use of FDA Form 3500A for reporting to FDA on medical devices.

C. Other Products Used in Medical Therapy

There are no mandatory requirements for the reporting of adverse events or product problems with products such as dietary supplements. However, the DSHEA puts the onus on FDA to prove that a particular product is unsafe. Consequently, the agency is totally dependent on voluntary reporting by health professionals and consumers about problems with the use of dietary supplements.

The mandatory form has been modified to incorporate some new data elements and to allow drug and biologic manufacturers to use only the front page rather than the full two-page form. (Note: Most pharmaceutical manufacturers already use a one-page modified version of the 3500A form where Section G from the back of the form is substituted for Section D on the front of the form.)

IV. Estimated Reporting Burden

FDA estimates the burden for completing the forms for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

FDA Center(s)[1] and Forms (with applicable 21 CFR Section)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
CBER/CDER					
Form 3500[2]	16,008	1	16,008	0.5	8,004
Form 3500A[3] (§§ 310.305, 314.80, 314.98, and 600.80)	410	573.9	235,304	1.0	235,304
CDRH					
Form 3500[2]	2,353	1	2,353	0.5	1,176.5
Form 3500A[3] (§ 803)	3,116	24.8	77,337	1.0	77,337
CFSAN					
Form 3500[2]	237	1	237	0.5	118.5
Form 3500A[3] (no mandatory requirements)	0	0	0	1.0	0
Total Hours					321,940
Form 3500[2]					9,299
Form 3500A[3]					312,641

[1] CBER (Center for Biologics Evaluation and Research), CDER (Center for Drug Evaluation and Research), CDRH (Center for Devices and Radiological Health), and CFSAN (Center for Food Safety and Applied Nutrition).
[2] FDA Form 3500 is for voluntary reporting.
[3] FDA Form 3500A is for mandatory reporting.

The figures shown in Table 1 of this document are based on actual number of calendar year 1997 reports and respondents for each center and type of report.

As more medical products are approved by FDA and marketed, and as knowledge increases regarding the importance of notifying FDA when adverse events and product problems are observed, it is expected that more reports will be submitted.

V. Request for Comments

Interested persons may, on or before January 11, 1999, submit written

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comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments and copies of the revised MedWatch reporting forms, Form FDA 3500 (voluntary) and Form FDA 3500A (mandatory), may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30007 Filed 11–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0228]

Determination of Regulatory Review Period for Purposes of Patent Extension; Neuro Cybernetic Prosthesis (NCP®) System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Neuro Cybernetic Prosthesis (NCP®) System and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device Neuro Cybernetic Prosthesis (NCP®) System. Neuro Cybernetic Prosthesis (NCP®) System is indicated for use as an adjunctive therapy in reducing the frequency of seizures in adults and adolescents over 12 years of age with partial onset seizures, which are refractory to antiepileptic medications. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Neuro Cybernetic Prosthesis (NCP®) System (U.S. Patent No. 4,867,164) from Cyberonics, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 22, 1998, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Neuro Cybernetic Prosthesis (NCP®) System represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Neuro Cybernetic Prosthesis (NCP®) System is 3,237 days. Of this time, 3,066 days occurred during the testing phase of the regulatory review period, while 171 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: September 6, 1988. The applicant claims that the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective on November 15, 1988. However, FDA records indicate that the IDE was determined substantially complete for clinical studies to have begun on September 6, 1988, which represents the IDE effective date.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: January 27, 1997. The applicant claims December 16, 1991, as the date the premarket approval application (PMA) for Neuro Cybernetic Prosthesis (NCP®) System (PMA 910070) was initially submitted. However, FDA records indicate that PMA 910070 submitted on December 6, 1991, was incomplete. FDA refused this application and notified the applicant of this fact by letter dated February 11, 1992. The completed PMA was then submitted and renumbered PMA 970003 on January 27, 1997, which is considered to be the PMA initially submitted date.

3. *The date the application was approved*: July 16, 1997. FDA has verified the applicant's claim that PMA 970003 was approved on July 16, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,761 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 11, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 10, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies

(except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 2, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–30005 Filed 11–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Donor Suitability; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop: Blood Donor Suitability. The workshop is intended to gather current scientific data on certain high risk criteria used in donor deferral.

Date and Time: The workshop will be held on Monday, November 23, 1998, 8:30 a.m. to 5 p.m.

Location: The workshop will be held at the Parklawn Bldg., conference rooms D and E, 5600 Fishers Lane, Rockville, MD 20857.

Contact: Robbin Gordon, Project Manager, Conference Management Associates, Inc., Three Corporate Sq., suite 180, Atlanta, GA 30329–2013, 404–633–9117, FAX 404–636–6311.

Registration: Send or fax registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by Friday, November 13, 1998.

Registration at the site will be done on a space available basis on the day of the workshop beginning at 7:30 a.m. There is no registration fee for the workshop.

If you need special accommodations due to disability, please contact Carol White Hales at least 7 days in advance.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to gather current scientific data on certain blood donor suitability issues. At the workshop, FDA will review the use of certain donor deferral criteria based on high risk behavior (i.e., intravenous drug abuse, male to male sex, and sex for drugs or money).

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the workshop at a cost of 10 cents per page. The workshop transcript will also be available on the Center for Biologics Evaluation and Research website at "http://www.fda.gov/cber/minutes/workshop-min.htm".

Dated: November 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30006 Filed 11–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0964]

Draft "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological *In Vitro* Diagnostic Product." The draft guidance document, when finalized, is intended to assist applicants in the preparation of the chemistry, manufacturing, and controls (CMC) section and the establishment description section of a biologics license application (BLA), revised Form FDA 356h, for biological in vitro diagnostic products. This action is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiatives and FDA Modernization Act of 1997, and it is intended to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time, however, comments should be submitted by January 11, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological *In Vitro* Diagnostic Product" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–10), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological *In Vitro* Diagnostic Product." This draft document, when finalized, is intended to provide general information for the content and format of the CMC section and establishment description section of the BLA for biological in vitro diagnostic products. This draft document is intended for use by those firms which manufacture any licensed in vitro diagnostic product used to screen donor blood, determine donor suitability, test for retroviral infection, or determine transfusion compatibility (e.g., blood grouping and typing reagents). This draft document is not intended to cover those in vitro diagnostic products used to test for endotoxins, such as limulus amebocyte lysate (LAL), or those products for which a premarket application (PMA) or a 510(k) must be submitted.

In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of a new harmonized Form FDA 356h entitled "Application to

Market a New Drug, Biologic, or an Antibiotic for Human Use." The new harmonized form is intended to be used by applicants for all drug and biological products. The new harmonized form, when fully implemented, will allow biological product manufacturers to submit a single application, the BLA, instead of two separate license application submissions, a product license application (PLA), and an establishment license application (ELA).

This draft guidance document represents the agency's current thinking on content and format of the CMC information and establishment description information for biological in vitro diagnostic products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit written comments to the Dockets Management Branch (address above) regarding the draft guidance document. Written comments may be submitted at any time, however, comments should be submitted January 11, 1998, to ensure their adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments and requests for copies should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: November 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30094 Filed 11–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1048–N]

RIN 0938–AJ27

Medicare Program; Request for Nominations for the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice requests nominations from medical organizations representing physicians for individuals to serve on the Practicing Physicians Advisory Council (the Council).

Section 4112 of the Omnibus Budget Reconciliation Act of 1990 established the Council to advise the Secretary of the Department of Health and Human Services on proposed regulations and manual issuances related to physicians' services. Four council members' terms of service are scheduled to expire on February 28, 1999.

EFFECTIVE DATE: Nominations will be considered if we receive them at the appropriate address, provided below, no later than 5 p.m. on November 30, 1998.

ADDRESSES: Mail or deliver nominations to the following address: Health Care Financing Administration, Center for Health Plans and Providers, Office of Professional Relations, Attention: Aron Primack, M.D., Executive Director, Practicing Physicians Advisory Council, Room 435H, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Aron Primack, M.D., Executive Director, Practicing Physicians Advisory Council, (202) 690–7418.

SUPPLEMENTARY INFORMATION: Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary of the Department of Health and Human Services (the Secretary) on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Section 1868(a) of the Act requires that the Council consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act; that is, State-licensed physicians of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors.

The Council must include both participating and nonparticipating physicians, as well as physicians practicing in rural and underserved urban areas. In addition, section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

This notice is an invitation to all organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire in 1999 will be considered for reappointment, if renominated, subject to the Federal Advisory Committee Management Handbook. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter, as requested by the Secretary, to discuss proposed changes in regulations and manual issuances that relate to physicians' services. Council members are expected to participate in all meetings.

Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services provides management and support services to the Council.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee); 5 U.S.C. App. 2; and 45 CFR part 11.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: October 30, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–30103 Filed 11–9–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Evaluation of High-Risk Youth Substance Abuse Prevention Initiatives— 0930–0178 (Extension, no change)—The Center for Substance Abuse Prevention (CSAP) is conducting a cross-site evaluation of 47 demonstration projects targeting high-risk youth to assess the effectiveness of the demonstration program in: (1) preventing and/or reducing substance abuse among at-risk youth; and (2) intervention strategies for reducing selected risk factors and enhancing protective factors. Youth participating in the programs and comparison group youth complete self-administered questionnaires at four points in time: baseline; at program exit; 6 months after program exit; and 18 months after program exit. The project annual burden estimate, annualized over the 5-year project period, is shown below:

	Number of respondents	Number of responses/respondent	Average burden/response (hours)	Annualized burden hours
Youth Questionnaires*	11,100	4	.64	4,522
Tracking Form	11,100	1	.05	111
Total				4,633

*Burden estimate based on an average of 45 minutes for baseline and exit questionnaires and 30 minutes for each follow-up questionnaire. Annualized estimates reflect actual attrition rates.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 3, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–30057 Filed 11–9–98; 8:45 am]

BILLING CODE 4162–20 P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for the Management of Florida Panther National Wildlife Refuge in Collier County, Florida, and Notice of Meeting To Seek Public Comments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and meeting.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, has made available for public review a draft comprehensive conservation plan for the management of a national wildlife refuge in Collier County, Florida, and plans to hold a public meeting in the vicinity of the refuge to solicit public comments on the draft plan. A copy of the plan is available at local libraries in Collier and Lee counties, Florida. A copy may also be obtained by contacting the Fish and Wildlife Service's Regional Office in Atlanta, Georgia, at the address given below.

DATES: The Service will hold a public meeting on December 5, 1998, 10 a.m. to 6 p.m., at the Fish and Wildlife Service office located in the Comfort Inn, 3860 Tollgate Boulevard, Naples, Florida 34114. In addition, written comments on the draft plan should be sent no later than December 21, 1998, to the address given below.

FOR FURTHER INFORMATION CONTACT: Mr. Charles R. Danner, U.S. Fish and Wildlife Service, Southeast Regional Office, 1875 Century Boulevard, Atlanta, GA 30345 (Telephone 1–800–419–9582).

SUPPLEMENTARY INFORMATION: The refuge covers approximately 26,400 acres and lies within the Big Cypress Swamp physiographic region of Florida. The plan presents three alternatives for the protection and management of the refuge including a "no action" alternative. The refuge's mission is to conserve and manage lands and waters in concert with other agency land efforts within the Big Cypress Watershed, primarily for the Florida panther, other endangered and threatened species, natural diversity, and cultural resources for the benefit of the American people.

Dated: November 4, 1998.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–30059 Filed 11–9–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE 003208–0

Applicant: Frances Prevost, Ponchatoula, Lousiana

Applicant requests authorization to purchase in interstate commerce masked bobwhites (*Colinus virginianus*

ridgwayi) to conduct captive propagation activities.

Permit No. PRT–830213

Applicant: EcoPlan Associates, Inc., Mesa, Arizona

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatchers (*Empidonax traillii extimus*) and cactus ferruginous pygmy-owls (*Glaucidium brasilianum cactorum*) in Arizona.

Permit No. PRT–813088

Applicant: Bureau of Land Management, Albuquerque, New Mexico

Applicant requests authorization for scientific research and recovery purposes to sample, identify, measure, and immediately release unharmed Comanche Springs pupfish (*Cyprinodon elegans*), and Pecos gambusia (*Gambusia nobilis*) in various sites on the Rio Grande River, and on the Rio Grande River Drainage, Phantom Lake Spring Refugium near Balmorhea, Texas.

Permit No. TE004131–0

Applicant: Steiner C. Kierce, Castroville, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for the following endangered and threatened species in south Texas from I–10 to San Antonio, Texas, to Ozona, Texas, south on the Rio Grande River to the Gulf of Mexico:

Mammals—
- jaguarundi (*Felis yagouaroundi*)
- ocelot (*Felis pardalis*)

Birds—
- interior least term (*Sterna antillarum*)
- black-capped vireo (*Vireo atricapillus*)
- golden-cheeked warbler (*Dendroica chrysoparia*)

Amphibian—
- Houston toad (*Bufo houstonensis*)

Plants—
- South Texas ambrosia (*Ambrosia cheiranthifolia*)
- Tobusch fishhook cactus (*Ancistrocactus (=Echinocactus mammillaria) tobuschii*
- Texas ayenia (*Ayenia limitaris*)
- black lace cactus (*Echinocereus reichenbachii var. albertii (=E. melanocentrus*)
- Johnston's frankenia (*Frankenia johnstonii*)
- slender rush-pea (*Hoffmannseggia tenella*)
- Walker's manioc (*Manihot walkerae*)
- Navasota ladies'-tresses (*Spiranthes parksii*)
- Texas snowbells (*Styrax texanus*)
- ashy dogweed (*Thymophylla (=Dyssodia) tephroleuca*)
- star cactus (*Astrophytum (=Echinocactus) asterias*)

Permit No. TE–004401–0

Applicant: Robert J. Schmalzel, Oracle, Arizona

Applicant request authorization for scientific research and recovery purposes to collect 5 plants of the Nichol's Turk's Head cactus (*Echinocactus horizonthalonius var. nicholii L. Benson*) from the Tohono O'Odham Nation with written permission.

Permit No. TE–004439–0

Applicant: Albuquerque Biological Park, Albuquerque, New Mexico

Applicant request authorization to obtain and hold Loggerhead sea turtles (*Caretta caretta*), green sea turtle (*Chelonia mydas*), Kemp's ridley sea turtles (*Lepidochelys kempii*), and Hawksbill sea turtle (*Eretmochelys imbricata*), for public display and educational purposes.

Permit No. TE–004472–0

Applicant: James R. Dixon, Bryan, Texas

Applicant requests authorization for scientific research and recovery purposes to collect a blood sample, mark (by pit tag, toe clip, or cold brand), weigh, measure and release unharmed back into the wild the following endangered and threatened amphibians and reptiles: Barton Springs salamander (*Eurycea sosorum*), San Marcos salamander (*Eurycea nana*), Texas blind salamander (*Typhlomolge rathbuni*), Houston toad (*Bufo houstonensis*), American alligator (*Alligator mississippiensis*), American crocodile (*Crocodylus acutus*), and the Concho water snake (*Nerodia harteri paucimaculata*).

Permit No. TE–004510–0

Applicant: William D. Boyett, Greenville, Wisconsin

Applicant request authorization for research and recovery purposes to live-trap, mark, and immediately release unharmed unlimited numbers of Hualapai Mexican vole (*Microtus mexicanus hualapaiensis*) in the Hualapai Mountains in northwest Arizona.

Permit No. TE–TE004573–0

Applicant: Raven Ecological Services, Huntsville, Texas

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for aplomado falcon (*Falco femoralis*), black-capped vireo (*Vireo atricapillus*), and golden-cheeked warbler (*Dendroica chrysoparia*), bald eagle (*Haliaeetus leucocephalus*), and Houston toad (*Bufo houstonensis*).

Permit No. TE–004654–0

Applicant: Dennis J. Abbate, Tucson, Arizona

Applicant requests authorization for scientific research and recovery purposes to conduct presence/absence surveys for cactus ferruginous pygmy-owls (*Glaucidium brasilianum cactorum*) in Pima, Pinal, and Maricopa Counties, Arizona.

DATES: Written comments on these permit applicants must be received on or before December 10, 1998.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

Steven M. Chambers,

ARD-Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–30061 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces the Fall 1999 field trip and meeting of the Aquatic Nuisance Species Task Force. The focus of the field trip and meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The field trip will take place from 8:30 a.m. to 12:15 p.m., Tuesday, November 17, 1998. The Aquatic Nuisance Species Task Force will meet from 1:30 p.m. to 5:00 p.m., Tuesday, November 17, 1998, and 8:30 a.m. to 4:00 p.m., Wednesday, November 18, 1998.

ADDRESSES: The field trip will begin and the meeting will be held in the Auditorium, Building 1006, U.S. Army Engineers Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi.

FOR FURTHER INFORMATION CONTACT: Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2025 or by e-mail at: robert__people@fws.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a field trip and meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The field trip will consist of a briefing about and a tour of the U.S. Army Engineers Waterways Experiment Station. Topics to be covered during the meeting Tuesday afternoon include briefings about regional nonindigenous species problems and initiatives, ballast water issues and activities, CAL–FED nonindigenous species initiatives, and the mitten crab infestation in California and actions to address that problem, and updates about the proposed Invasive Species Executive Order and the Task Force's regional panels. Topics to be covered during the meeting on Wednesday include the Executive Secretary's report, types of control to be included in Task Force-approved control programs, the green crab control program proposal, preliminary recommendations of the National Nonindigenous Aquatic Species Survey Program Work Group, a New Zealand Mud Snail Control Proposal, voluntary national recreational activity guidelines, the 100th Meridian Initiative to Prevent Westward Spread of Zebra Mussels, Asian swamp eel problems and initiatives, Caulerpa taxifolia concerns and possible actions, and an ANS Task Force awards program.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: November 4, 1998.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 98–30076 Filed 11–9–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]

Notice for Publication AA–8447–A, AA–8447–B, AA–8447–D, AA–8447–A2, AA–8447–B2; Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that the decisions to issue conveyance (DIC) to The Eyak Corporation, notice of which was published in the **Federal Register**, 63 FR 55402, on October 15, 1998, is modified by adding, modifying, or removing certain public easements; modifying a portion of the land description for rescission of prior tentative approval to the State of Alaska; and modifying the description of a certain third party interest to which a portion of the conveyance is subject.

Notice of the modified DICs will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the modified DICs may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, an agency of the Federal government, or regional corporation, shall have until December 10, 1998 to file an appeal on the issues in the modified DICs. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed with the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Except as modified, the decision, notice of which was given October 15, 1998, is final.

Heather A. Coats,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 98–30063 Filed 11–9–98; 8:45 am]

BILLING CODE 4310–[illegible]–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf: Operations, Current List of Notices to Lessees and Operators (NTLs) Issued by the National Office and OCS Regions

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS periodically issues NTLs to lessees and operators of oil and gas or sulphur leases in the Outer Continental Shelf (OCS). This **Federal Register** notice: (1) informs the public, industry, and other Government agencies of NTLs that are in effect as of November 1, 1998; (2) officially rescinds several NTLs and Letters to Lessees and Operators (LTLs); and (3) announces a new method of numbering regional NTLs.

ADDRESSES: You may obtain copies of NTLs through our website at WWW.MMS.GOV or by contacting the National office or the OCS Region that issued the NTL at the following addresses:

National Office

Minerals Management Service, Engineering and Operations Division, 381 Elden Street, Herndon, VA 20170–4817, Attention: Ms. Alexis London; Telephone (703) 787–1600.

Alaska OCS Region

Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, AK 99508–4363, Attention: Ms. Christine Huffaker; Telephone (907) 271–6621.

Gulf of Mexico (GOM) OCS Region

Minerals Management Service, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2394, Attention: Mr. Michael Dorner; Telephone (504) 736–2599.

Pacific OCS Region

Minerals Management Service, 770 Paseo Camarillo, Camarillo, CA 93010–6064, Attention: Ms. Freddie Mason; Telephone (805) 389–7566.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division; Telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS is responsible for oil and gas or sulphur operations in the OCS to ensure operational safety and protection of the environment. In addition to our regulations, we issue NTLs to provide guidance and to further clarify,

interpret, or describe regulatory requirements on a national or regional basis. In the past we have also issued LTLs for this purpose or to communicate information to OCS lessees and operators.

Recently issued final regulations have eliminated the need for certain NTLs and LTLs or have required changes in others. This year we have also updated and reissued many of our NTLs to reflect current technologies, correct regulatory citations, and include a statement on the Paperwork Reduction Act of 1995 as it pertains to the NTL.

For your convenience, the following table lists the current active NTLs issued by the National office and the OCS Regions. Therefore, if an NTL issued before November 1, 1998, is not listed, it is canceled and no longer in effect. However, although not listed here, those LTLs currently in effect will remain in effect until they are superseded by NTLs or rescinded.

NTL No.	Effective date	Title/subject
Current Notices to Lessees and Operators Issued by the National Office		
93–1N	04/16/93	Guidelines for an Application for Certificate of Oil Spill Financial Responsibility for Offshore Facilities.
96–7N*	12/10/96	Civil Penalties Program (*Modified by 97–5N).
97–2N	08/01/97	Well Naming and Numbering Standards.
97–3N	08/01/97	Annual Performance Review.
97–4N	09/01/97	Civil Penalties Program Annual Summary to be Published.
97–5N*	10/07/97	Civil Penalties Program Revised Assessment Matrix (*Modifies 96–7N).
98–1N	01/02/98	Interim Guidance for Applying Platform Design Criteria from American Petroleum Institute (API) Recommended Practice (RP) 2A, "Planning, Designing, and Constructing Fixed Offshore Platforms," 19th Edition (8/1/91) and 20th Edition (7/1/93) and its Supplement 1 (2/1/97).
98–2N	01/23/98	Guidance Regarding API Specification 14A, "Specification for Subsurface Safety Valve Equipment," Ninth Edition (7/1/94) and Supplement 1.
98–4N	03/04/98	Interim Guidance for Applying "Simplified Fatigue Analysis" Procedure from API RP 2A.
98–5N	04/01/98	Application and Audit Fees for Requests for Royalty Relief or Adjustment Under 30 CFR Part 203.
98–6N	04/01/98	Performance Measures for OCS Operators and Form MMS–131.
98–7N	04/15/98*	Reminder Concerning Periodic Inspection of Platforms. . . . (*Rescind on 11/2/98).
98–8N	06/01/98	Deepwater Operations Plans.
98–9N and Addendum.	06/01/98* 07/17/98	Redesignation of 30 CFR Part 250—Oil and Gas and Sulphur Operations in the OCS (*Rescind on 12/31/98).
98–10N	07/01/98	Decentralization of the Lessee Training Program.
98–11N	07/01/98*	Guidelines for an Application for Suspension of Production Due to Uneconomic Market Conditions (*10/15/98 FEDERAL REGISTER notice, 63 FR 55405, as corrected, announced this NTL will be rescinded effective 1/13/99).
98–12N	07/01/98	Determination of Pollution Inspection Frequencies for Unmanned Facilities.
98–13N	07/01/98	Use of New or Alternative Technology and Procedures.
98–14N	07/01/98	Conservation Information.
98–15N	08/24/98*	Invitation to Minerals Management Service (MMS)/Industry Performance Measures/Best Practices Workshops (*Rescind on 11/13/98).
98–16N	10/28/98	API Specification 6D (SPEC 6D), Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves), 21sf Edition (3/31/94), and Supplements 1 and 2.
98–17N	11/01/98	Revised Guidelines for Royalty Relief Under 30 CFR Part 203.
No Current Notices to Lessees and Operators Issued by the Alaska OCS Region		
Current Notices to Lessees and Operators Issued by the Gulf of Mexico OCS Region		
85–02	02/04/85	Effect of Drilling "Window" Approvals.
86–05	06/18/86	New Form for Designation of Operator.
92–02	05/28/92	Minimum Interim Requirements for Site Clearance (and Verification) of Abandoned Oil and Gas Structures in the GOM.
92–04	07/01/92	Interim Requirements for Oil Spill Contingency Plans and Oil Spill Response Training and Drills.
93–04	09/30/93	OCS Functional Responsibility of New Regulations.
94–02	02/24/94	Air Emissions Reporting Requirements.
96–03	05/08/96	Guidelines for the Offshore Storage and Sub-Seabed Disposal of Wastes Resulting from the Development and Production of Oil and Gas on the OCS.
96–08	11/25/96	Time Allowed for the Correction of Incidents of Noncompliance (INC's) and for the Return of Notification of INC Forms.
96–10	12/05/96	Air Emissions Information for Application for Accessory Platforms to Pipeline Rights-of-Way.
97–04	01/31/97	Addition of Blocks to the Thirty-fifth Drilling Window.
97–06	03/01/97	Timely Submittal of Drilling Well Records in Accordance with 30 CFR 250.66 [Redesignated 30 CFR 250.416].
97–07	03/01/97	Revised Conditions of Approval to Drill, Sidetrack and/or Complete for Oil and Gas Production.
97–15	06/27/98	Interim Guidance for Regional Oil Spill Response Plans.
97–16	08/01/97	Production Within 500 Feet of a Unit or Lease Line.
97–17	08/01/97	Containment Requirements for Bolted or Welded Stock Tanks.
97–18	08/18/97	Timely Submittal of Deepwater Royalty Relief Applications.
98–04	06/08/98	Hurricane and Tropical Storm Evacuation and Production Curtailment Procedures.
98–05	07/01/98	Confirmation of Deepwater Royalty Relief for Leases Issued After November 28, 1995.
98–96	08/10/98	Archaeological Requirements.
98–07	08/10/98	Procedures Regarding Activities Conducted Under Approved Plan.
98–08	08/10/98	Meteorological Data Collection Requirements.
98–09	08/10/98	Proposed and As-Built Pipeline Location Data.

NTL No.	Effective date	Title/subject
98–10	08/10/98	Best Available Control Technology (Sulphur Dioxide).
98–11	08/10/98	Implementation of Measures to Detect and Protect Deep Water Chemosynthetic Communities.
98–12	08/10/98	Implementation of Consistent Biological Stipulation Measures in the Central and Western Gulf of Mexico.
98–13	08/10/98	Minimizing Oil and Gas Structures in the Gulf of Mexico.
98–14	08/10/98	Guidelines for Reducing or Eliminating Trash and Debris in the Gulf of Mexico.
98–15	08/10/98	Time Allowed Between Lease Holding Operations (30 CFR 250.13 [Redesignated 30 CFR 250.113]).
98–16	08/10/98	Hydrogen Sulfide (H_2S) Requirements.
98–17	06/30/98*	Gas Volume Statement Requirements (*Rescind on 12/31/98).
98–18	09/01/98	Change of Address for the Submittal of Certain Drilling Records in Accordance with 30 CFR 250.416.
98–19	09/15/98	Temporary Abandonment of Wells and Maintenance, Protection and Removal of Underwater Casing Stubs.
98–20	09/15/98	Shallow Hazards Requirements.
98–21	09/15/98	Environmental Information Guidelines for OCS Plans.
98–22	10/05/98	Reorganization of the Office of Field Operations to Activate the Lake Charles District, Realign the District Boundaries, and Establish District and Pipe Section Procedures for After-Hours, Weekend and Holiday Calls, and Related Submittals.
98–23	10/15/98	Interim Reporting Requirements for 30 CFR 250, Subpart K, Oil and Gas Production Rates.
98–24	10/15/98	Rate Control Section Address, Office Hours, and Telephone Procedures.
98–25	11/01/98	Economic Assumptions for RSVP Deepwater Royalty Relief Model.
Current Notices to Lessees and Operators Issued by the Pacific OCS Region		
92–01	03/24/92	Warning Signs: Pipelines and Power Cables.
97–02	09/22/97	Pipeline Right-of-Way Applications and Assignment Fees: Requirements for Filing of Lease Transfers.
98–01	03/05/98	Santa Maria District Office Phone Call Procedures and Hours.
98–02	03/05/98	Camarillo District Office Phone Call Procedures and Hours.
98–04	07/01/98	Gas Volume Statement Requirements.
98–05	08/04/98	Archaeological Survey and Report Requirements.
98–06	08/04/98	Change of Ownership/Operatorship of Leases and Pipeline.
98–07	08/04/98	Helideck Closures.
98–08	08/04/98	Biological Survey Criteria.
98–09	08/11/98	Hydrogen Sulfide (H_2S) Requirements.
98–10	08/21/98	Liquid Royalty Measurement Facilities.
98–11	08/31/98	Submission of Digitized Well Log Data on Magnetic Tape.
98–12	08/11/98	Guidelines for Shallow Hazards and Report Requirements for Exploration Drilling.
98–13	08/11/98	Guidelines for Shallow Hazards and Report Requirements for OCS Development Operations.

You are advised that effective with the publication of this notice, we are officially rescinding the following previously issued NTLs and LTLs that are no longer current, have served their purpose, or because recently revised regulations and policies have eliminated the need for them.

National Office

93–02N—Liability of Assignors, Assignees, and Colessees for Plugging and Removal Property on Termination of An Outer Continental Shelf Oil and Gas Lease.

95–01N—Suspension of Requirements for Updating Safety and Pollution Prevention Equipment Inventory Lists.

96–02N—Reporting Oil Spills.

97–01N—Blowout Preventer (BOP) Requirements.

Alaska OCS Region

82–01—Interim Minimum Requirements for Marking of Equipment.

86–02—Preliminary and Other Activities Conducted on Leased Lands—Beaufort Sea.

89–01—Minimizing Potential for Incidental Taking of Polar Bear and Walrus During Preliminary and Other Activities Conducted on Leased Areas in the Beaufort and Chukchi Seas.

89–02—Preliminary Activities, Shallow Hazards Geophysical Surveys and Geotechnical Evaluations.

Gulf of Mexico OCS Region

73–03—The Use of Polychlorinated Biphenols (PCB's).

88–02—Submission of List of Safety and Pollution-Prevention Equipment.

88–03—Information to Be Made Available to the Public on the Reports Required in Subpart K of 30 CFR Part 250.

89–05—Timelapse in Exploratory Drilling Operations Not to Exceed 180 Days for Deepwater (400 Meters or Deeper) Leases.

89–07—Supplemental Bonds.

91–01—Submittal of Electric, Radioactive, and Other Well Bore Surveys.

91–06—Notice to the Designated Operators of Liquid Royalty Measurement Facilities.

93–05—Procedures and Policies Concerning Transition Period for Use of the New Semiannual Well Test Report Form.

96–04—Air Pollutant Emissions Reporting Requirements.

96–05—Departures for Testing Blowout Preventers (BOP).

97–01—Air Pollution Emissions Reporting Requirement.

97–05—Incorporation by Reference into the MMS Regulations of API RP 2A Nineteenth Edition, August 1, 1991, for Planning, Designing, and Constructing Fixed Offshore Platforms.

97–11—Special Security Handling of Well Logs and Data Generated from Oil and Gas Leases.

LTL dated 07/20/95—Requests for Suspensions of Operations Based on Rig Delays.

LTL dated 07/25/96—Suspensions of Productions/Operations Program Overview.

Pacific OCS Region

80–02—Minimum Requirements for Environmental Reports.

88–05—Requirements for Exploratory Operations OCS California.

97–03—Invitation to Workshop.

98–03—Invitation to Royalty Relief Workshop.

LTL dated 06/26/95—Contacts and Functional Directory.

LTL dated 02/15/96—Guidelines for the Application, Review, Approval and Administration of the Royalty Relief Program.

This notice also advises you that beginning in January 1999, we will include a letter designation in regional as well as National NTL numbers to avoid possible confusion with duplicate numbers. The letter designation before the NTL number will indicate whether it applies on a National basis or to which specific Region it pertains. For example:

- NTL 99–N01 will apply on a National basis.
- NTL 99–A01 will pertain only to the Alaska OCS Region.
- NTL 99–G01 will pertain only to the Gulf of Mexico OCS Region.
- NTL 99–P01 will pertain only to the Pacific OCS Region.

Dated: October 30, 1998.

Michael C. Hunt,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 98–30131 Filed 11–9–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan and Draft Environmental Impact Statement, Lyndon B. Johnson National Historical Park, Texas; Notice of Availability

AGENCY: National Park Service, US Department of the Interior.

ACTION: Availability of draft general management plan and environmental impact statement for Lyndon B. Johnson National Historical Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft general management plan and environmental impact statement (GMP/DEIS) for Lyndon B. Johnson National Historical Park, Texas.

DATES: The GMP/DEIS is available for public review through January 22, 1999. If any public meetings are held concerning the GMP/DEIS, they will be announced at a later date.

ADDRESSES: Comments on the GMP/DEIS should be sent to the Superintendent, Lyndon B. Johnson National Historical Park, PO Box 329, Johnson City, TX 78636. Public reading copies of the GMP/DEIS will be available for review at the following location: Office of the Superintendent, Lyndon B. Johnson National Historical Park, PO Box 329, Johnson City, Texas 78636, Telephone: (830) 868–7128.

SUPPLEMENTARY INFORMATION: The GMP/DEIS analyzes three alternatives for management and development of the national historical park. Alternative 1, the no-action alternative, describes a continuation of the present management course. Alternative 2 reflects a modest increase in the level of staffing and in park maintenance, interpretation, and administration. It allows a limited schedule of visitation at the Texas White House and changes the bus tour to a shuttle system. It provides a higher level of protection for park historic resources and expands educational outreach into the local community. Minimal additional staff would be added. Alternative 3, the National Park Service's proposed action, describes a comprehensive change in the overall visitor experience of the ranch with the Texas White House open on a regularly scheduled basis, the bus tour becoming a shuttle system, and new facilities for visitor contact, maintenance, ranching, and park interpretive staff. In Johnson City, the visitor experience of the settlement would become much more unique and educational. Staffing would be significantly upgraded. All alternatives would preserve and maintain exteriors of all historic buildings, would improve interpretive programs and educational outreach, and enhance partnerships. The GMP/DEIS in particular evaluates the environmental consequences of the proposed action and the other alternatives on archeological and historic resources, soils, water resources and water quality, floodplains, economy and social environment, and visitor use/experience and interpretation.

FOR FURTHER INFORMATION CONTACT: Superintendent, Lyndon B. Johnson National Historical Park, at the above address and telephone number.

Peggy A. Halderman,

Assistant Regional Director, Intermountain Region, National Park Service.

[FR Doc. 98–30128 Filed 11–9–98; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–398]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On October 30, 1998, the Commission received a request from the United States Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 for the purpose of providing advice concerning possible modifications to the Generalized System of Preferences (GSP). Following receipt of the request and in accordance therewith, the Commission instituted investigation No. 332–398 in order to provide as follows—

(1) With respect to the article listed in Part A of the attached Annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of such article from eligibility for duty-free treatment under the GSP for imports from beneficiary developing countries other than those countries designated as least-developed beneficiary countries; and

(2) In accordance with section 503(d)(1)(A) of the 1974 Act, advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for the country specified with respect to the articles in Part B of the attached Annex.

With respect to the competitive need limit in section 503(c)(2)(A)(i)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $85,000,000.

As requested by USTR, the Commission will seek to provide its advice not later than February 1, 1999.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT:

(1) Project Manager, Cynthia B. Foreso (202–205–3348)
(2) Agricultural and forest products, William Hoffmeier (202–205–3321)
(3) Energy, chemicals, and textiles, Christopher Robinson (202–205–2334)
(4) Minerals, metals, machinery, and miscellaneous manufactures, David Lundy (202–205–3439)
(5) Electronics and transportation, James M. Brandon (202–205–3433)

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

Background

The USTR letter noted that the Trade Policy Staff Committee (TPSC)

announced in the October 26, 1998 **Federal Register** the acceptance of product petitions for modification of the GSP received as part of the 1998 annual review. The letter stated that modifications to the GSP which may result from this review will be announced in May 1999 and become effective on or about July 1, 1999.

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on December 1, 1998, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, D.C. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on November 18, 1998. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on November 20, 1998. Posthearing briefs should be filed with the Secretary by close of business on December 15, 1998. In the event that no requests to appear at the hearing are received by the close of business on November 18, 1998, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after November 18, 1998 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on December 15, 1998. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: November 4, 1998.

Donna R. Koehnke,

Secretary.

Annex I (HTS Subheadings)[1]

A. Petition to remove duty-free status from beneficiary developing countries, other than those designated as least-developed beneficiary developing countries, for a product on the list of eligible articles for the GSP.

2934.20.05

B. Petitions for waiver of competitive need limit for a product on the list of eligible products for the specified country.

2841.70.10 (Chile)
2916.31.15 (Estonia)
4412.13.50 (Indonesia)
4412.22.30 (Indonesia)
7113.11.50 (Thailand)
7113.19.29 (India)
7403.13.00 (Chile)
7403.19.00 (Chile)
7418.19.20 (India)
8483.10.30 (Brazil)
8527.39.00 (Indonesia)
8528.12.16 (Thailand)
8531.20.00 (Philippines)
8708.39.50 (Brazil)
9001.30.00 (Indonesia)

[FR Doc. 98–30079 Filed 11–9–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 17, 1998 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–776 (Final) (Certain Preserved Mushrooms from Chile)—briefing and vote.
5. Outstanding action jackets:
   1. Document No. ID–98–022: Approval of final report in Inv. No. 332–384 (The Changing Structure of the Global Large Civil Aircraft Industry and Market: Implications for the Competitiveness of the U.S. Industry).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 6, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30224 Filed 11–6–98; 11:53 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 153–98]

Privacy Act of 1974; Notice of Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Justice Management Division, Department of Justice, proposes to modify a system of records entitled, "Department of Justice (DOJ) Controlled Parking Records, Justice/JMD–017." Notice of the system was last published in the **Federal Register** on October 2, 1990 (55 FR 40244). Modifications to the system include:

"System Name" has been changed to "Department of Justice (DOJ) Employee Transportation Facilitation System, Justice/JMD–017."[1]

The purpose of this system of records has been expanded. Information in the system was used to assign, manage, and control the use of vehicle parking spaces. Information will be added to assist in managing the issuance of transit subsidies.

Existing routine use (5) has been modified. First, disclosure may be made to ensure that Federal employees do not simultaneously receive both a parking benefit and transit subsidy—either from their respective agencies or in conjunction with another Federal agency. Second, disclosure of non-Federal ridesharing applicant information may be made to enable DOJ and other Federal agencies to validate parking permit eligibility for their employees.

Two new routine uses identified as routine uses (3) and (4) have been added.

The "Categories of Individuals Covered by the System" has been

[1] See USTR **Federal Register** notice of October 26, 1998 (63 F.R. 57150) for article description.

[1] The Office of the Federal Register shall remove from DOJ's compilation of Privacy Act issuances the system of records entitled "Department of Justice (DOJ) Controlled Parking Records, Justice/JMD–017," and add to DOJ's compilation the modified system of records entitled, "Department of Justice (DOJ) Employee Transportation Facilitation System, Justice/JMD–017."

expanded to include all applicants for any benefit provided under the expanded program, e.g., ridesharing and transit subsidy applicants.

Appropriate changes related to the addition of this information have been made throughout the system description. In addition, other appropriate revisions, e.g., additional authority citations have been added. Finally, the necessary edits have been made to report this system of records as a Department-wide system, i.e., these records may be maintained by all Department components.

This 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on new routine uses; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the system modifications. Therefore, please submit comments by December 10, 1998. The public, OMB, and the Congress are invited to comment on the modification to this system. Comment may be submitted to Patricia E. Neely, Program Analyst, Information Management and Security Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530 (Room 850 WCTR Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on the system modification to OMB and the Congress. The system description is reprinted below.

Dated: October 30, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/JMD–017

SYSTEM NAME:

Department of Justice (DOJ) Employee Transportation Facilitation System, Justice/JMD–017.

SYSTEM LOCATION(S):

Records are located in the offices of the Employee Transportation Coordinator of the respective DOJ components as listed in Appendix I of part 16, 28 CFR.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Covered are any individuals who may apply for or participate in the ridesharing, parking, or transit subsidy programs of the DOJ. Individuals include: (1) DOJ employees and other Federal and non-Federal agency employee applicants for, and/or recipients of ridesharing information; (2) DOJ applicants for and/or recipients of parking privileges; (3) DOJ and other Federal and non-Federal agency employees, who may participate as riders in the parking program with DOJ employees who have applied for or who have been granted parking privileges; (4) DOJ applicants for, and/or recipients of, transit subsidies and authorized use of home-to-work transportation.

DOJ employee applicants and recipients may include former DOJ employees; non-Federal employees may include private sector and other State and local government employees.

CATEGORIES OF RECORDS IN THE SYSTEMS:

Records in the system include any records necessary to carry out the responsibilities authorized by law related to parking, ridesharing, and transit subsidy programs.

Paper records may include DOJ car/vanpool parking space applications and written requests for executive, unusual and handicapped parking assignments; ridesharing applications which provide or request applicant information related to availability for car/vanpools, and/or which provide or request similar information related to potential car/vanpool members; transit subsidy applications and certifications; correspondence to applicants; and administrative reports—including status reports and reports of disbursements to transit subsidy recipients.

Paper records may also include the notifications described under "Routine Uses of Records Maintained in the System, * * *."

Computer records may include data from the employee applications and/or from personnel records. Data from personnel records may include any data needed to process an application—such as that needed to verify employment, e.g., Federal service computation data, organization code, or that needed to identify parking assignments or fare subsidies that are no longer valid, e.g., separation date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 40 U.S.C. 471 *et seq.;* Executive Order 12191 of February 1, 1980, on the Federal Facility Ridesharing Program; the Federal Employees Clean Air Incentives Act (Pub. L. 103–172), effective January 1, 1994; and Treatment of Employer-Provided Transportation Benefits (Pub. L. 102–486, section 1911), effective December 31, 1992.

PURPOSE(S):

Information in the system will be used to assign, manage, and control the use of vehicle parking spaces and the issuance of transit subsidy benefits; to assist employees and the public in forming car/vanpools; and to ensure the integrity of the parking and transit subsidy programs of the Department of Justice and other Federal agencies by validating parking assignments and transit subsidy requests. Federal employees will not be able to participate in their transit subsidy program if they are provided parking/rider benefits by any Federal agency. Similarly, Federal employees will not be able to participate in their agency parking program if they receive either parking/rider benefits from another Federal agency, or transit subsidy benefits from their own agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant records may be disclosed:

(1) As is necessary to respond to congressional inquiries on behalf of constituents;

(2) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of Title 44 U.S.C. 2904 and 2906; and

(3) To DOJ employees to enable them to contact other individuals covered by this system of records for the purpose of forming or participating in a car/vanpool.

(4) To Federal agencies and/or to the Metropolitan Council of Governments, and similar organizations, to enable such organizations—through coordinating efforts with other Federal agencies—to provide information to any person for the purpose of contacting any individuals covered by this system of records in order to form or participate in a car/vanpool. Disclosure may include a list of program participants or, where appropriate, it may relate to only one or multiple individuals.

(5) To Federal agencies, DOJ may also provide information as follows:

DOJ employee information:

(a) Upon request, either a list of DOJ employees, or an affirmative, negative or "non-DOJ employee" response as to whether or not a DOJ employee(s) (or name represented to be a DOJ employee)—is listed as a participant (or as an applicant in DOJ's parking or transit subsidy programs; or is authorized to use a DOJ vehicle for home-to-work transportation (or has requested such authorization). Disclosure is made to enable that Federal agency to determine or validate a DOJ employee's eligibility to participate in its parking program.

(b) Upon DOJ initiative, either a DOJ employee name(s) or a list on which DOJ employees are named as participants (or as applicants) in DOJ's parking or transit subsidy programs, or as employees authorized to use a DOJ vehicle for home-to-work transportation (or as employees who have requested such authorization). Disclosure is made

to elicit an affirmative or negative response as to whether such DOJ employee(s) participate with another Federal agency employee in that agency's parking program (or have requested such participation), and thus enable DOJ to determine or validate DOJ employee eligibility for any form of DOJ parking privileges, or for DOJ transit subsidies.

Other Federal Agency Employee Information:

(c) Upon request, either a list of another Federal agency's employees or an affirmative or negative response as to whether or not such agency employee(s) participate (or have requested participation) in DOJ's parking program. Disclosure is made to enable that agency to determine or validate eligibility for any form of parking privileges, or transit subsidy benefits, for its employees.

(d) Upon DOJ initiative, either a Federal agency employee name(s) or a list on which such agency's employee(s) are named as participating in DOJ's parking program (or has requested such participation). Disclosure is made to elicit from that agency an affirmative, negative, or "non-employee" response as to whether such employee(s) participate (or have requested participation) in that agency's parking or transit subsidy programs, or are authorized to use a vehicle for home-to-work transportation (or have requested such authorization), and thus enable DOJ to determine or validate other Federal agency employee eligibility to participate in DOJ's parking program.

Non-Federal Employee Information:

(e) Upon request, either the name(s) of non-Federal employees, a list of names, or a list which includes their name(s). Disclosure is made to enable the agency to determine whether a non-Federal employee may also be listed as a rider in DOJ's parking program and, as a result, enable the agency to determine or validate parking permit eligibility for its employees.

(f) Upon DOJ initiative, either the name(s) of non-Federal employees, a list of names, or a list which include their name(s). Disclosure is made to enable the DOJ to determine whether a non-Federal employee may also be listed as a rider in that agency's parking program and, as a result, enable the DOJ to determine or validate parking permit eligibility for DOJ employees.

Parking spaces may be assigned according to a variety of established priorities among Federal agencies and, in some instances, according to specific criteria, e.g., carpools with the greatest number of participants (except in a tie). Therefore, these disclosures would enable other Federal agencies and DOJ to review the validity of parking space assignments, identify and take appropriate action with respect to those who violate parking assignment policies (as set forth in published agency operating procedures and policies), and thus allocate spaces fairly. In addition, because transit subsidies are offered to encourage the use of public transportation for those not allocated parking privileges, such disclosures would also enable other Federal agencies and DOJ to ensure that both parking privileges and transit subsidies are not provided to the same employee(s).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in hard copy form and/or electronically.

RETRIEVABILITY:

Records may be retrieved by individual name, social security number, residential zip code, vehicle tag number, vehicle type, or other information from the application or personnel records. Records may be retrieved by name or other identifier directly and/or by asking the system to segregate a list, by name, of those who work for a particular DOJ component. Former DOJ employee names are retrieved by asking the system to segregate a list, by name, of those parking participants who have separated from employment with DOJ. Other Federal agency employee names are retrieved by asking the system to segregate a list, by name, of those parking participants who are identified as employees of a particular Federal agency. Non-Federal agency employee names may be similarly segregated.

SAFEGUARDS:

These files are stored in locked file cabinets in secured facilities, and access is restricted to personnel having an official need. Automated records are protected through computer password security.

RETENTION AND DISPOSAL:

Data is deleted from the data base when the individual covered by the system no longer participates in the Employee Transportation Facilitation program, e.g., is no longer on the ridesharing listing; is no longer a member of a car/vanpool; or, no longer receives a transit subsidy. Paper copies of reports and listings are retained (under General Records Schedule 6) for six years starting with October 1 of the next fiscal year after the date that the individual no longer participates in the program.

SYSTEMS MANAGER(S) AND ADDRESS:

Director, Facilities and Administrative Services Staff, Justice Management Division, NPB Suite 1070, Department of Justice, Washington, DC 10530.

NOTIFICATION PROCEDURES:

Individuals wanting to know whether information about them is maintained in this system of records may review their own ridesharing, parking, transit subsidy, or other personal data upon presentation of a picture identification card at the appropriate address indicated under "Records Access Procedures."

RECORDS ACCESS PROCEDURES:

Except as otherwise noted, employees of the Offices, Boards, and Divisions (listed in Appendix I of part 16, 28 CFR) may appear in person or address their requests for access to: Employee Transportation Coordinator, Facilities and Administrative Services Staff, Justice Management Division, NPB Suite 1070, Department of Justice, Washington, DC 10530.

Except as otherwise noted, employees of the bureaus (listed in Appendix I of part 16, 28 CFR) may appear in person or address their requests for access to the following bureau officials, attention Employee Transportation Coordinator:

Director, Bureau of Prisons, HOLC Building, 320 First Street, NW., Washington, DC 20534

Administrator, Drug Enforcement Administration, 700 Army Navy Drive, Arlington, VA 22202

Director, Federal Bureau of Investigation, J. Edgar Hoover Building, 935 Pennsylvania Avenue, NW., Washington, DC 20535–0001

Commissioner, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, DC 20536

Director, U.S. Marshals Service, 600 Army Navy Drive, Arlington, VA 22202

Individuals who park in a DOJ building (or DOJ-leased space) other than the one in which they work, may review their parking record by presenting the required identification to the Employee Transportation Coordinator at the appropriate building address.

CONTESTING RECORD PROCEDURES

Individuals may request changes to their own record by submitting the proposed changes in writing at the appropriate address indicated under "Records Access Procedures."

Individuals who submit proposed changes to information provided by third parties should be prepared to provide information supporting their contention that such third-party information is erroneous.

RECORD SOURCE CATEGORIES:

DOJ and other Federal Agency applicants; DOJ personnel records; participating Department components and other Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 98–30156 Filed 11–9–98; 8:45 am]
BILLING CODE 4410–CH–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: November 30, 1998, 2:00 pm, U.S. Department of Labor, N–3437 A/B, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, DC this 2nd day of November 1998.

Andrew James Samet,

Deputy Under Secretary, International Affairs.

[FR Doc. 98–30117 Filed 11–9–98; 8:45 am]
BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–34,837; Sonoco Products Co., Paper Div., Speciality Products, Holyoke, MA.
TA–W–34,976; Cordis Corporation, Warren, NJ.
TA–W–34,864; AMP, Inc., Selingsgrove, PA.
TA–W–34,822; The Arnold Palmer Golf Co. (Formerly Progroup), Ooltewah, TN.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,035; Smith Corona Corp., Cortland, NY.
TA–W–34,966; Central Resources, Inc., Midland, TX.
TA–W–34,994; Naxos of America, Inc., Pennsauken, NJ.
TA–W–34,816; Cone International, L.L.C., Portland, OR.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,936; Polaroid Corp., Norwood MA.
TA–W–34,984; Firstenergy Corp., Akron, OH and Various Locations in the State of Ohio.
TA–W–34,851; Weyerhaeuser Co., Containerboard Div—Linerboard Mill, Springfield, OR.
TA–W–34,802; Fina Pipe Line Co., Big Spring, TX.
TA–W–34,910; American Bank Note Co., Philadelphia, PA.
TA–W–34,993; Alcoa Fujikura Ltd, Electro-Mechanical Products, Owosso, MI.
TA–W–34,670; Rexworks, Inc., Milwaukee, WI.
TA–W–34,947, Texas Instruments, Midland, TX.

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–35,036; Woodhall Weaving Mills, Inc., Pawtucket, RI: September 17, 1997.
TA–W–35,010; The Outdoor Recreation Group, Los Angeles, CA; September 11, 1997.
TA–W–34,999; Siebe Automotive—Algood, Siebe Automotive North America, Algood, TN: September 15, 1997.
TA–W–35,030; Wolverine Drilling, Inc., Kenmare, MD: September 14, 1997.
TA–W–34,945; St. Paul Apparel, St. Paul, VA: August 25, 1997.
TA–W–34,806 & A; Donnkenny Apparel, Inc., Rural Retreat, VA and Christiansburg, VA: July 21, 1997.
TA–W–34,783 & A; Huber Lace and Embroidery, Inc., West New York, NJ and Clover Trimmings, Inc., New York, NY: July 6, 1997.
TA–W–35,011; Richard's Sportswear, Inc., San Fernando, CA: September 9, 1997.
TA–W–34,034; Geneva Steel, Provo, UT: September 18, 1997.
TA–W–35,044; Givens Industries, Inc., Moulton, AL: September 21, 1997.
TA–W–34,967; Wundies, Inc., Wellsboro, PA: July 4, 1998.
TA–W–35,063; Apehead Mfg, Inc., Cookeville, TN: October 5, 1997.
TA–W–35,781; Armco, Inc., Mansfield Operations, Mansfield, OH: July 18, 1997.

TA–W–34,758; Nordictrack, Glencoe, MN: July 7, 1997.
TA–W–35,000; Santa's Best, Millville, NJ: September 8, 1997.
TA–W–34,855; Ricon Resins, Inc., Grand Junction, CO: August 4, 1997.
TA–W–34,832; Inter Lake Papers, Inc., Kimberly, WI: July 29, 1997.
TA–W–34,929; Allegheny Ludlum Corp., Leechburg, PA: August 5, 1997.
TA–W–35,007; ICI Explosives USA, Inc., Explosivs Div., Tamaqua, PA: September 16, 1997.
TA–W–35,020; Lane Punch Corp., New Berlin, WI: September 10, 1997.
TA–W–34,778; Syroco, Inc., Siloam Springs, AR: July 7, 1997.
TA–W–34,860; Sandvik Rock Tools, Inc., Houston, TX: August 3, 1997
TA–W–35,049; Borden Foods Corp., Tolleson, AZ: September 23, 1997.
TA–W–34,766; B & H, Inc., Leighton, AL: July 6, 1997.
TA–W–34,830; M. Fine & Sons Manufacturing Co., Inc., Lawrenceburg, TN: July 22, 1997.
TA–W–34,768; The Faulhaber Co., Monroeville, OH: July 6, 1997.
TA–W–34,983; M. Wile and Co., d/b/a Intercontinental Branded Apparel (Elmwood Ave & Goodell Street Plants), Buffalo, NY: April 16, 1998.
TA–W–34,852; Thomas & Betts Corp., Montgomeryville, PA: May 17, 1998.
TA–W–34,946; GCO Apparel, Inc., Bowdon, GA: August 26, 1997.
TA–W–34,969; Teledyne Electronics Technologies, Analytical Instruments, City of Industry, CA: September 4, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implemnetation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 1998.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally of partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increased imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02657; Miller Sports (dba) Miller Golf Bags, Walnut Ridge, AR
NAFTA–TAA–02607; Sensus Technologies, Inc., Uniontown, PA
NAFTA–TAA–02520; XEL Communications, Aurora, CO
NAFTA–TAA–02567; Globe Business Furniture, Inc., Hendersonville, TN
NAFTA–TAA–02578; Fujitsu Computer Products of America, Inc., Hillsboro, OR
NAFTA–TAA–02579; BWD Automotive Corp., Ottawa, IL
NAFTA–TAA–02559; Ricon Resins, Inc., Grand Junction, CO
NAFTA–TAA–02515; Syroco, Inc., Siloam Springs, AR
NAFTA–TAA–02569; Cordis Corp., Warren, NJ
NAFTA–TAA–02540; Sonoco Products Co., Paper Div-Specialty Products, Holyoke, MA
NAFTA–TAA–02540; Rexworks, Inc., Milwaukee, WI
NAFTA–TAA–02583; GCO Apparel Co, Bowdon, GA

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02655; Hvide Maine, Inc., Offshore Towing Div., Fort Lauderdale, FL
NAFTA–TAA–02604; Naxos of America, Inc., Pennsauken, NJ
NAFTA–TAA–02597; Central Resources, Inc., Midland, TX
NAFTA–TAA–02532; GE Power Systems, Parts and Services Operations, Schenectady, NY

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02633; Jasper Textile Corp., Jasper, FL: September 11, 1997.
NAFTA–TAA–02592; Stone Apparel, North, SC: August 24, 1997.
NAFTA–TAA–02556; Cross Creek Apparel, Carthage, NC: October 5, 1997.
NAFTA–TAA–02610; Teledyne Electronic Technologies, Analytical Instruments, City of Industry, CA: September 4, 1997.
NAFTA–TAA–02648; McCulloch Corp., Lake Havasu City Warehouse, Lake Havasu City, AZ: February 10, 1998.
NAFTA–TAA–02640; The Russell Group Limited, Rockingham, NC: September 17, 1997.
NAFTA–TAA–02539; Inter Lake Papers, Inc., Kimberly, WI: July 29, 1997.
NAFTA–TAA–02628; ICI Explosives USA, Inc., Explosives Div., Tamaqua, PA: September 16, 1997.
NAFTA–TAA–02641; Owens-BriGam Medical Co., Newland, NC: September 28, 1997.
NAFTA–TAA–02623; The Outdoor Recreation Group, Los Angeles, CA: September 11, 1997.
NAFTA–TAA–02595; Richard's Sportswear, Inc., San Fernando, CA: September 2, 1997.
NAFTA–TAA–02646; Borden Foods Corp., Tolleson, AZ: September 23, 1997.
NAFTA–TAA–02600; Lear Corp., Midland, TX: September 8, 1997.
NAFTA–TAA–02608; Alcoa Fujikura Ltd. Electro Mechanical Products, Owosso, MI: August 31, 1997.
NAFTA–TAA–02613; M. Wile and Co d.b.a. Intercontinental Branded Apparel (Elmwood Ave and Goodell Street Plants), Buffalo, NY: January 19, 1998.
NAFTA–TAA–02662; Sonoco Products Co., Amsterdam, NY: October 6, 1997.

I hereby certify that the aforementioned determinations were issued during the month of October, 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 28, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30106 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,216, TA–W–34,216A]

JoLene Company, Inc., Provo, Utah and Salt Lake City, Utah; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Trade Adjustment Assistance on March 25, 1998, applicable to all workers of JoLene Company, Incorporated, located in Provo, Utah. The notice was published in the **Federal Register** on April 21, 1998 (63 FR 19752).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received from the company shows that worker separations will occur at the Salt Lake City, Utah facility of JoLene Company, Incorporated when it closes at the end of November, 1998. The workers are engaged in the production of infants' and children's dresses.

The intent of the Department's certification is to include all workers of JoLene Company, Incorporated who were adversely affected by increased imports of infants' and children's dresses.

Accordingly, the Department is amending the certification to cover the workers of JoLene Company, Incorporated, Salt Lake City, Utah.

The amended notice applicable to TA–W–34,216 is hereby issued as follows:

"All workers of JoLene Company, Incorporated, Provo, Utah (TA–W–34,216), and Salt Lake City, Utah (TA–W–34,216 A) who became totally or partially separated from employment on or after January 19, 1997 through March 25, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 20th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment.

[FR Doc. 98–30108 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 20, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 20, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 19th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 10/19/1998]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,093	Okie Apparel Factory (Wrks)	Hugo, OK	10/13/1998	Sports Clothing.
35,094	Pearl Izumi (Comp)	Broomfield, CO	09/30/1998	Sports Clothing.
35,095	McCulloch Corp (Wrks)	Lake Havasu Cty, AZ	09/29/1998	Machined Parts for Yardware.
35,096	U.S. Technologies (Comp)	Sewell, NJ	09/19/1998	Distribution Center for Lamps.
35,097	Wallet Works, Inc (Wrks)	Boise Cave, KY	09/28/1998	Retail Sales of Wallets.
35,098	Hardin Knitwear, Inc (Comp)	Bronx, NY	09/29/1998	Knitwear.
35,099	Creative Expressions (Wrks)	Indianapolis, IN	10/01/1998	Paper Party Goods.
35,100	AET (Comp)	Covington, VA	10/05/1998	Packaging Films.
35,101	General Electric (Wrks)	Somersworth, NH	09/19/1998	Residential Meter Subassembly.
35,102	Mitchell Manufacturing (Wrks)	Clare, MI	10/02/1998	Door Panels, Seat Frames & Covers.
35,103	Harman Consumer Mfg (Wrks)	El Paso, TX	09/25/1998	CD Player.
35,104	W. Seitchik and Sons (Comp)	Philadelphia, PA	09/19/1998	Men's Tailored Clothing.
35,105	Thurmond Apparel, Inc (Comp)	State Road, NC	09/29/1998	Ladies' Sportswear.
35,106	OPT Industries (USWA)	Phillipsburg, NJ	09/28/1998	Electronic Components.
35,107	Int'l Product Options (Wrks)	New York, NY	09/30/1998	Ladies' Dresses, Pants, Skirts.
35,108	Gulf States Steel, Inc (USWA)	Gadsden, AL	09/19/1998	Hot & Cold Rolls, Galvanized Plates, Coils.
35,109	MKE-Quantum Components (Wrks)	Shrewsbury, MA	09/21/1998	Wafers.
35,110	M.I. Phoenix, Inc (Wrks)	New Medford, MA	10/06/1998	Ladies' Jackets.
35,111	Associated Plastics (Wrks)	Jonesboro, AR	09/28/1998	Telephone Boxes, Pads.
35,112	Reliability, Inc (Wrks)	Durham, NC	10/07/1998	Burned-In & Test Memory Chips.

[FR Doc. 98–30107 Filed 11–9–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 326]

Rubbermaid-Cortland, Inc., Cortland, New York; Notice of Negative Determination on Reconsideration

On August 25, 1998, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 4, 1998 (63 FR 47327).

The Department initially denied TAA to workers of Rubbermaid-Cortland because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. Production and sales at the Cortland, New York plant increased during the relevant time period. Furthermore, in early 1998, the production of molded plastic household products was shifted from Cortland to other domestic Rubbermaid production facilities. The workers at the subject firm were engaged in employment related to the production of molded plastic household products.

The petitioners asserted that the subject firm shifted production of toolboxes to Canada and Europe and imported into the U.S. and further, that imports of toolboxes and other household products from other countries impacted on the subject firm's market share.

On reconsideration, the Department requested that the Rubbermaid, Incorporated provide additional information about foreign toolbox production, other foreign production of household products, and information concerning overall sales and production for the Household Products Division.

Additional information provided by the company indicates that production equaling less than 10 percent of the former production of toolboxes at Cortland was transferred to another country for three months then transferred back to another domestic facility of the company. The investigation also revealed that the subject firm is not importing like or directly competitive articles into the U.S. from recently acquired facilities in Europe. Further, the investigation revealed that the sales by Rubbermaid's Household Products Division is relatively unchanged.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Rubbermaid-Cortland, Incorporated, Cortland, New York.

Signed at Washington, DC, this 21st day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30109 Filed 11–9–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,398, TA–W–34,398A]

Semitool, Inc.; Kalispell, Montana and Maine Service Center, South Portland, Maine; Amended Certification Regarding Eligibility To Apply for Working Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Working Adjustment Assistance on May 28, 1998, applicable to all workers of Semitool, Incorporated located in Kalispell, Montana. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33958).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at the Maine Service Center of Semitool, Incorporated located in South Portland Maine. Workers at the South Portland, Maine location provide administrative and customer support services for Semitool's wafer processing equipment production facilities including Kalispell, Montana.

The intent of the Department's certification is to include all workers of Semitool, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending certification to cover the workers of Semitool, Incorporated, Maine Service Center, South Portland, Maine.

The amended notice applicable to TA–W–34,398 is hereby issued as follows:

All workers of Semitool, Incorporated, Kalispell, Montana (TA–W–34,398), and the Maine Service Center, South Portland, Maine (TA–W–34,398A) who became totally or partially separated from employment on or after March 14, 1997 through May 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 20th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30111 Filed 11–9–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,116, TA–W–34,116A]

Tonkawa Gas Processing Woodward, Oklahoma and Delhi Gas Pipeline Corp., Dallas, Texas; Notice of Negative Determination on Reconsideration on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Former Employees of Tonkawa Gas Processing and Delhi Pipeline Corp.* v. *Secretary of Labor,* No. 98–04–00889.

The Department's initial denial for the workers of Tonkawa Gas Processing, Woodward, Oklahoma and Delhi Gas Pipeline Corporation, Dallas, Texas issued on March 16, 1998 and published in the **Federal Register** on April 3, 1998 (63 F.R. 16,574), was based on the fact that criterion (3) of the group eligibility requirements of section 222 of the Trade Act of 1974, as amended, was not met.

The petitioners request for reconsideration resulted in a Dismissal of Application for Reconsideration which was issued on April 7, 1998 and published in the **Federal Register** on April 22, 1996 (63 FR 19,756). The Department's review of the application for reconsideration found no new substantial information which would bear importantly on the Department's determination.

On remand, the Department contacted company officials, both from the parent company and the subject facility, to obtain (1) information on the business of Delhi Gas Pipeline and it's relationship with Tonkawa Gas processing; (2) information on the business of Tonkawa Gas Processing and the Woodward, Oklahoma facility; and (3) additional information on production and employment at the subject facility.

Tonkawa Gas Processing is a wholly-owned subsidiary of the Delhi Group

which was sold to Koch Industries, Inc. in November, 1997. The Tonkawa Gas Processing facility in Woodward, Oklahoma processes liquefied natural gases, e.g. Ethane, Propane, Normal Butane, and Isobutane. The gas processed by the Woodward facility is only gas from Delhi pipelines. Production at the Woodward facility remained relatively constant during both 1996 and 1997. In December, 1997, with the acquisition of the Delhi Group by Koch Industries, an employment streamlining was implemented at the Woodward facility which resulted in a net employment loss of one position, a plant operator.

It is determined, therefore, upon further investigation, that employment declines at the Woodward facility were not as a result of a decline in production at the facility but rather, were the result of attempts by the firm acquiring the subject facility to increase operating efficiencies. Further, declines in production at the facility subsequent to the acquisition and the net employment reduction were attributable to a decline in the supply of raw materials (natural gas) which were used in the production of liquefied gas products at that facility and could not, therefore, have been attributable to increased imports of like or directly competitive products. Further, a review of imports of liquefied natural gases indicates that imports declined during 1997 compared to the previous year and are less than 10% relative to domestic production.

Conclusion

After consideration on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Tonkawa Gas Processing, Woodward, Oklahoma and Delhi Gas Pipeline Corporation, Dallas, Texas.

Signed at Washington, DC, this 23rd day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30110 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration (ETA)

Unemployment Compensation for Ex-servicemembers (UCX) Program: Unemployment Insurance Program Letter Amending the Consolidated List of "Acceptable" Narrative Reasons for Separation Transmitted in UIPL No. 3–95, Change 1 to Include Those Dealing With "Inaptitude."

ETA has responsibility for administration of the UCX program, providing unemployment compensation benefits for ex-servicemembers. ETA issues interpretations affecting the UCX program in Unemployment Insurance Program Letters (UIPLs) to the State Employment Security Agencies (SESAs). The UIPL described below is published in the **Federal Register** in order to inform the public.

UIPL 3–95, Change 2

To be eligible for UCX, an ex-servicemember must, among other requirements, meet the definition of "Federal service." This requires that the servicemember be separated under honorable conditions and have completed a first full term of service. If separated before completing the first full term, the separation must be for, among other reasons, "inaptitude," but only if the service was continuous for at least 365 days. On December 6, 1994, UIPL No. 3–95 was issued to all SESAs formally transmitting a new consolidated list of acceptable narrative reasons for separation, except those for "inaptitude," and instructions for their use in determining individual eligibility for UCX benefits.

UIPL No. 3–95 informed the SESAs that ETA would amend the list of "acceptable" narrative reasons for separation when it was determined which narrative reasons for separation were for "inaptitude." DOL has now finalized the list of "acceptable" narrative reasons for separation dealing with "inaptitude" in UIPL No. 3–95, Change 2.

Dated: November 5, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor.

DIRECTIVE: Unemployment Insurance Program Letter No. 3–95, Change 2

TO: All State Employment Security Agencies

FROM: Grace A. Kilbane, Director, Unemployment Insurance Service

SUBJECT: UCX Narrative Reasons for Separation from Military Service

1. *Purpose.* To amend the consolidated list of "acceptable" narrative reasons for separation transmitted in Unemployment Insurance Program Letter (UIPL) No. 3–95 and UIPL No. 3–95, Change 1 to include those dealing with "inaptitude."

2. *References.* UIPL No. 3–95; UIPL No. 3–95, Change 1; 5 U.S.C. 8521(a)(1); and 20 CFR Part 614.

3. *Background.* On December 6, 1994, UIPL No. 3–95 was issued to all State Employment Security Agencies (SESAs) formally transmitting a new consolidated list of acceptable narrative reasons for separation, except those for "inaptitude," and instructions for their use in determining individual eligibility for UCX benefits. The military services began to use exclusively the consolidated list of "acceptable" narrative reasons for separation after October 1, 1993.

After the issuance of UIPL No. 3–95, the Department of Labor (DOL) received several inquiries from SESAs regarding the effective date of the new instructions for using the consolidated list of acceptable narrative reasons for separation that was contained in UIPL No. 3–95. UIPL No. 3–95 stated that the new consolidated list of acceptable narrative reasons for separation was effective for all separations from military service on or after December 6, 1994, the date of the directive. Since the DOL did not provide for a retroactive application of the consolidated list in UIPL No. 3–95, some SESAs assumed that UIPL No. 25–83 and Changes 1-12 were controlling for the period October 1, 1993, to December 5, 1994.

Consequently, UIPL No. 3–95, Change 1 was issued revising the effective date of UIPL No. 3–95 and provided clarifying instructions concerning the effective dates of lists of "acceptable" narrative reasons for separation.

Further, UIPL No. 3–95 informed the SESAs that the DOL would amend the list of "acceptable" narrative reasons for separation when it was determined which narrative reasons for separation were for "inaptitude." DOL has now finalized the list of "acceptable" narrative reasons for separation dealing with "inaptitude."

The contents of this directive will also be issued as a Change 14 to *ET Handbook No. 384, Second Edition.*

4. *DOL Definition of "Inaptitude."* DOL defines "inaptitude" as being "unsuitable for military service for reasons largely related to personal characteristics not reflected by acts of serious misbehavior."

5. *Narrative Reasons for Separation Meeting DOL's Definition of Inaptitude.* DOL determined that 20 narrative reasons, listed in the attachment to this directive, constitute "inaptitude" under the above definition for UCX qualifying purposes. DOL estimates that this broader definition will allow approximately 2,500 to 3,000 additional claimants per year to qualify for UCX.

6. *Effective Date.* The narrative reasons for separation that DOL has determined constitute "inaptitude" within the meaning of 5 U.S.C. 8521(a)(1)(B)(ii)(IV) shall be effective for all initial claims filed on and after the date of this directive. However, where State law permits, a monetary redetermination must be issued when: (1) a claimant requests a redetermination on a new or previously denied claim or files an additional or renewed claim for benefits, and (2) the claimant's military service is within

the State's base period at the time of the request or effective date of claim.

Any redetermination of monetary eligibility must be based upon the "new list" of acceptable narrative reasons for discharge. This applies to any claimant who has or who would have had a benefit year in effect which would have included UCX wage credits, if not for the denial based on the prior list of acceptable narrative reasons for discharge. However, this new interpretation only impacts weeks of unemployment after the date of this directive, i.e., although a redetermination may result in future eligibility or a higher weekly benefit amount, no back payments will be made as a result of wage credits that were unavailable to the claimant prior to the date of this directive.

The new list of "acceptable" narrative reasons for separation constituting "inaptitude" represents a substantial expansion from October 1, 1993, of both the types and the numbers, of separations designated as "inaptitude." Prior to October 1, 1993, there was only one DOD narrative reason used to denote discharges for "inaptitude." This reason was designated as "Unsuitability—Inaptitude." However, since October 1, 1993, the DOD had ceased using this narrative reason.

Although it is a sound rule of administrative law to apply new statutory interpretations prospectively, UIPL No. 3–95 announced an intent to make retroactive the amended list of "acceptable" narrative reasons for separation constituting "inaptitude." DOL initially believed that a substantial number of ex-servicemembers might have been prejudiced by having no discharges designated as "inaptitude" from late 1993 until the new "inaptitude" list was released and thus examined whether to apply this expanded list retroactively to October 1, 1993. However, as explained below, DOL, in consultation with DOD, has since determined that very few servicemembers would be prejudiced by an application that was only prospective and, therefore, the public interest would not be served by a retroactive application.

DOD has informed DOL that there were only seven discharges with a narrative reason related to "inaptitude" (designated as "Unsuitability—Inaptitude") during the three fiscal years immediately prior to October 1, 1993. This information suggests that very few servicemembers likely would have been discharged after 1993 for the "inaptitude" narrative reason for separation had the pre-October 1, 1993 narrative reason continued in use. Thus, very few individuals discharged after October 1, 1993, but prior to the date of this issuance, would have had any expectation of qualifying for benefits under the prior inaptitude list.

7. *Action Required.* SESAs are required to:

a. Distribute the contents of this directive and the attachment to all appropriate staff members.

b. Destroy the Attachment to UIPL 3–95 Change 1 and utilize the Attachment to this Change 2 to UIPL 3–95.

c. Announce in a newspaper of general circulation, and in other appropriate media such as veterans publications, the application of the operating instructions contained in this directive and their effect on UCX eligibility. The announcements shall include mention of the authority under 20 CFR 614.9(a) to issue redeterminations of previously denied UCX claims.

8. *Inquiries.* Direct inquiries to the appropriate Regional Office.

9. *Attachment.* Revised List of "Acceptable" Narrative Reasons for Separation Meeting the Requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I)–(IV).

"ACCEPTABLE" Narrative Reasons for Separation Meeting the Requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I)–(IV)

For the convenience of the government under an early release program (5 U.S.C. 8521(a)(1)(B)(ii)(I))
Medal of Honor Recipient
Completion of Required Active Service
Insufficient Retainability (Economic Reasons)
Reduction in Force
To Attend School
Holiday Early Release Program
Defective Enlistment Agreement
Erroneous Entry (Other)
Intradepartmental Transfer*
Miscellaneous/General Reasons**

Because of medical disqualification, pregnancy, parenthood, or Service-incurred injury or disability (5 U.S.C. 8521(a)(1)(B)(ii)(II))
Pregnancy or Childbirth
Parenthood or Custody of Minor Children
Conditions, not Disability
Disability, Severance Pay
Disability, Permanent
Disability, Temporary
Disability, Existed Prior to Service, PEB
Disability, Existed Prior to Service, Med BD
Disability, Aggravated
Disability, Other

Because of hardship (5 U.S.C. 8521(a)(1)(B)(ii)(III))
Surviving Member
Hardship

*Effective for separations on or after September 1, 1994.

**Pertaining only to Army Officers' separations occurring from October 1, 1994 through August 31, 1995 and November 14, 1995 through July 1, 1996.

Because of personality disorders or inaptitude, but only if the service was continuous for 365 days or more (5 U.S.C. 8521(a)(1)(B)(ii)(IV))
Personality Disorder

The following are narrative reasons for separation that DOL has determined constitute "inaptitude" within the meaning of 5 U.S.C. 8521(a)(1)(B)(ii)(IV) and which are effective for all separations from military services on and after the date of this directive:

Conscientious Objector
Weight Control Failure
Ecclesiastical Endorsement
Secretarial Authority
Physical Standards
Erroneous Entry, Alcohol Abuse
Erroneous Entry, Drug Abuse
Non-selection, Permanent Promotion
Non-selection, Temporary Promotion
Failure to Complete a Commission or Warrant Program
Failure to Complete a Course of Instruction
Unsatisfactory Performance
Substandard Performance
Personal Alcohol Abuse
Alcohol Rehabilitation Failure
Drug Rehabilitation Failure
Military Personnel Security Program
Homosexual Admission
Homosexual Act
Non-retention on Active Duty

[FR Doc. 98–30138 Filed 11–9–98; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–94]

Electro-Test, Inc., Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Electro-Test, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than January 11, 1999.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Electro-Test, Inc. (ETI) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). ETI's expansion request covers the use of an additional test standard. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR

1910.7). Appendix A to this section requires that OSHA publish this public notice of the preliminary finding on an application.

ETI's previous application as an NRTL covered its initial recognition (60 FR 30495, June 9, 1995, which OSHA granted on October 6, 1995 (60 FR 52417).

The current addresses of the ETI testing facilities already recognized by OSHA are:

* Electro-Test, Inc., 1320 El Capitan Drive, 4th Floor, Danville, California 94526
Electro-Test, Inc., 3150–B E. Birch Street, Brea, California 92821
* Due to city boundary lines, this site is partially located in San Ramon, California.

General Background on the Application

ETI has submitted a request, dated September 2, 1998 (see Exhibit 11), to expand its recognition as an NRTL for one additional test standard. ETI seeks recognition for testing and certification of products to demonstrate compliance to the following test standard, and OSHA has determined it is appropriate, as prescribed by 29 CFR 1910.7(c): ANSI/UL 508C Power Conversion Equipment. The designation and title of this test standard were current at the time of the preparation of this notice. OSHA recognition of any NRTL for a particular test standard is limited to products for which OSHA standards require third party testing and certification before use in the workplace.

Preliminary Finding on the Application

ETI has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of ETI's NRTL testing facilities. However, NRTL Program audit staff reviewed information pertinent to the request, and in a memo dated September 9, 1998 (see Exhibit 12), recommended that ETI's recognition be expanded to include the additional test standard listed above.

Following a review of the application file, the auditor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the Electro-Test, Inc. facilities listed above, the expansion of recognition to use the additional test standard. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Electro-Test Inc. facilities listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether ETI has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment must consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of ETI's request, the recommendation on the expansion, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–2–94, the permanent record of public information on ETI's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant ETI's expansion request. The Assistant Secretary will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 28th day of October, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–30116 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–93]

Entela, Inc.; Application for Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of Entela, Inc., for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of this application.

DATES: Comments submitted by interested parties must be received no later than January 11, 1999.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Entela, Inc. (ENT) has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). ENT's expansion request covers the use of additional test standards. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of the preliminary finding on an application.

ENT's previous application as an NRTL also covered an expansion for use of additional test standards (63 FR 19275, April 17, 1998), which OSHA granted on July 10, 1998 (63 FR 37416).

The current addresses of the ENT testing facilities already recognized by OSHA are:

Entela, Inc., 3033 Madison, S.E., Grand Rapids, Michigan 49548
Entela Taiwan Laboratories, 3F No. 260 262 Wen, Lin North Road, Pei Tou, Taipei, Taiwan.

General Background on the Application

ENT has submitted a request, dated August 10, 1998 (see Exhibit 15), to expand its recognition as an NRTL for additional test standards. OSHA's recognition of ENT's site in Taipei, Taiwan, currently includes certain limitations that are applicable to the testing and evaluation of products under the test standards listed below. These limitations are repeated in this notice.

ENT's request for expansion also includes its timely request for renewal of its recognition. However, ENT's recognition as an NRTL does not expire until July 26, 1999. Prior to this date, staff for the NRTL Program plans to perform an on-site review of one or both of the ENT testing sites. These reviews

are part of the normal process for granting an NRTL a renewal of its recognition, and in this case, ENT's recognition.

ENT seeks recognition for testing and certification of products to demonstrate compliance to the following 18 test standards, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA recognition of any NRTL for a particular test standard is limited to products for which OSHA standards require third party testing and certification before use in the workplace.

ANSI/UL 187 X-Ray Equipment
ANSI/UL 563 Ice Makers
ANSI/UL 867 Electrostatic Air Cleaners
ANSI/UL 916 Energy Management Equipment
ANSI/UL 924 Emergency Lighting and Power Equipment
UL 962 Household and Commercial Furnishings
ANSI/UL 1069 Hospital Signaling and Nurse-Call System
ANSI/UL 1088 Temporary Lighting Strings
ANSI/UL 1236 Battery Chargers
ANSI/UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
ANSI/UL 1472 Solid-State Dimming Controls
ANSI/UL 1492 Audio and Video Equipment
ANSI/UL 1564 Industrial Battery Chargers
ANSI/UL 1573 Stage and Studio Lighting Units
ANSI/UL 1638 Visual Signaling Appliances
UL 1993 Self-Ballasted Lamps and Lamp Adapters
ANSI/UL 2044 Commercial Closed Circuit Television Equipment
UL 3044 Surveillance Closed Circuit Television Equipment

The designations and titles of the above test standards were current at the time of the preparation of this notice.

Limitations on the Recognition

The following limitations apply to the recognition of the Taiwan facility:

a. The Taiwan facility shall be limited to carrying out minor mechanical and electrical testing of instruments and small appliances.

b. Performance of inspections shall be limited to Entela personnel.

Preliminary Finding on the Application

ENT has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of ENT's NRTL testing facilities. However, NRTL Program audit staff reviewed information pertinent to the request, and in a memo dated September 9, 1998 (see Exhibit 16), recommended that ENT's recognition be expanded to include the additional 18 standards listed above.

Following a review of the application file, the auditor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the Entela, Inc. facilities listed above, the expansion of recognition to use the additional 18 test standards, with the limitations to be applied as noted. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Entela, Inc. facilities listed above can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition, subject to the above limitations. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether ENT has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment must consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of ENT's request, the recommendation on the expansion, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–2–93, the permanent record of public information on ENT's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant ENT's expansion request. The Assistant Secretary will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC this day of 28th day of October, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–30112 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–26–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–1–88]

MET Laboratories, Inc., Application Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the application of MET Laboratories, Inc. for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of the application.

DATES: Comments submitted by interested parties must be received no later than January 11, 1999.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that MET Laboratories, Inc. (MET), has applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion request covers the use of additional test standards. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of the preliminary finding on an application.

MET's previous application as an NRTL covered the renewal and an expansion of its recognition (61 FR 41661, August 6, 1996), which OSHA granted on November 20, 1996 (61 FR 59114).

The current address of the MET testing facility already recognized by OSHA is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

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General Background on the Application

MET has submitted a request, dated June 3, 1998 (see Exhibit 20A), to expand its recognition as an NRTL for additional test standards. MET provided some additional information related to its request on August 21, 1998 (see Exhibit 20B). MET will notify OSHA, as stated in this letter, regarding a change in its existing capability to perform explosion tests. Relatedly, OSHA intends to impose limitations on the testing permitted under certain test standards.

MET seeks recognition for testing and certification of products to demonstrate compliance with the following 17 standards, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA recognition of any NRTL for a particular test standard is limited to products for which OSHA standards require third party testing and certification before use in the workplace.

ANSI/UL 5 Surface Metal Raceways and Fittings
ANSI/UL 50 Enclosures for Electrical Equipment
ANSI/UL 65 Electric Wired Cabinets
ANSI/UL 201 Garage Equipment
ANSI/UL 482 Portable Sun/Heat Lamps
ANSI/UL 514A Metallic Outlet Boxes, Electrical
UL 664 Commercial Dry-Cleaning Machines (Type IV)
ANSI/UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations[1]
UL 775 Graphic Arts Equipment
ANSI/UL 886 Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations[1]
ANSI/UL 1017 Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018 Electric Aquarium Equipment
ANSI/UL 1054 Special-Use Switches
ANSI/UL 1203 Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations[1]
ANSI/UL 1310 Direct Plug-In Transformer Units
ANSI/UL 1573 Stage and Studio Lighting Units
ANSI/UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

Preliminary Finding on the Application

MET has submitted an acceptable request for expansion of its recognition as an NRTL. In connection with this request, OSHA did not perform an on-site review of MET's NRTL testing facilities. However, NRTL Program audit staff reviewed information pertinent to the request, and in a memo dated September 9, 1998 (see Exhibit 21), recommended that MET's recognition be expanded to include the 17 additional test standards listed above.

Following a review of the application file, the auditor's recommendation, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant, to the MET Laboratories, Inc. facility listed above, the expansion of recognition to use the additional 17 test standards. The staff therefore recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon the recommendations of the staff, the Assistant Secretary has made a preliminary finding that the MET Laboratories, Inc. facility listed above can meet the requirements, as prescribed by 29 CFR 1910.7, for the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the application.

OSHA welcomes public comments, in sufficient detail, as to whether MET has met the requirements of 29 CFR 1910.7 for expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment must consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESSES**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of MET's request, the recommendation on the expansion, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–1–88, the permanent record of public information on MET's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant MET's expansion request. The Assistant Secretary will make the final decision on granting the expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 28th day of October, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–30113 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–26–U

[1] Testing and certification of products under this test standard is limited to Class I locations. Explosion testing is also limited to current test chamber capabilities.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–3–90]

Southwest Research Institute, Applications for Renewal and Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the applications of Southwest Research Institute for renewal and for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, and presents the Agency's preliminary finding. This preliminary finding does not constitute an interim or temporary approval of these applications.

DATES: Comments submitted by interested parties must be received no later than January 11, 1999.

ADDRESSES: Send comments concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, at the above address, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Southwest Research Institute (SwRI) has applied for renewal and for expansion of its current recognition as a Nationally Recognized Testing Laboratory (NRTL). SwRI's expansion request covers the use of additional test standards. OSHA recognizes an organization as an NRTL, and processes applications related to such recognitions, following requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Appendix A to this section requires that OSHA publish this public notice of the preliminary finding on an application.

When first recognized, OSHA identified the Department of Fire Technology as the SwRI unit to which the recognition would, and still does, apply. The renewal and expansion will continue to apply primarily to this part of SwRI, although part of the recognition, such as the requirement for independence, applies to SwRI as a whole.

SwRI's previous application as an NRTL covered its recognition as an NRTL (57 FR 30237, July 8, 1992), which OSHA granted on the date noted below.

The current address of the SwRI testing facility already recognized by OSHA is: Southwest Research Institute, Department of Fire Technology, 6620 Culebra Road, Post Office Drawer 28510, San Antonio, Texas 78228.

General Background on the Applicant and Applications

According to publicly available information, SwRI is an "independent, nonprofit, applied engineering and physical sciences research and development organization * * *" In addition, SwRI has "12 technical divisions," one of which is the Chemistry and Chemical Engineering Division. This division includes the Department of Fire Technology.

SwRI has submitted a request for renewal of its recognition, dated October 1, 1997 (see Exhibit 6A). SWRI received its recognition as an NRTL on July 13, 1993 (58 FR 37752), for a period of five years ending July 13, 1998. Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. SwRI has submitted its request within the time allotted, and retains its recognition pending OSHA's final decision in this renewal process.

SwRI has also submitted a request, dated October 1, 1997 (see Exhibit 6B) to expand its recognition for additional test standards. However, OSHA has determined that some of the standards that were requested are not appropriate, as prescribed by 29 CFR 1910.7(c). Therefore, OSHA does not intend to include these standards for recognition.

Renewal of Recognition

SwRI seeks renewal of its recognition for testing and certification of products to demonstrate compliance to the following 7 test standards, which OSHA has previously recognized for SwRI:

UL 10A Tin-Clad Fire Doors
ANSI/UL 10B Fire Tests of Door Assemblies
ANSI/UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 155 Tests of Fire Resistance of Vault and File Room Doors
ANSI/UL 555 Fire Dampers
ANSI/UL 910 Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables Used in Air Handling Spaces
ANSI/UL 1887 Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics

The designations and titles of the above test standards were current at the time of the preparation of this notice. They may differ from those that OSHA used in the original recognition of the test standards published in the **Federal Register**. In addition, OSHA had recognized SwRI for ASTM E152 but the standards organization has since withdrawn this standard. As a result, this standard is not included in SwRI's renewal. The standards organization has indicated that it is working on a replacement standard.

Expansion of Recognition—Additional Test Standards

SwRI seeks recognition for testing and certification of products to demonstrate compliance to the following 3 test standards, and OSHA has determined the standards are appropriate, as prescribed by 29 CFR 1910.7(c). OSHA recognition of any NRTL for a particular test standard is limited to products for which OSHA standards require third party testing and certification before use in the workplace.

UL 162 Foam Equipment and Liquid Concentrates
ANSI/UL 711 Rating and Fire Testing of Fire Extinguishers
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids

Preliminary Finding on the Applications

SwRI has submitted acceptable requests for renewal and expansion of its recognition as an NRTL. In connection with the requests, OSHA has performed an on-site review of the SwRI facility in San Antonio, Texas, on March 30–April 2, 1998. The review focused on the testing and certification activities performed by the Department of Fire Technology in its capacity as an NRTL. Discrepancies noted by the auditor during the on-site review were addressed by SwRI following the on-site evaluation and are included in the on-site review report (see Exhibit 7).

Following a review of the application file, the on-site review report, and other pertinent documents, the NRTL Program staff has concluded that OSHA can grant to the SwRI Department of Fire Technology facility in San Antonio, Texas: (1) The renewal of recognition for the test standards noted above, and (2) the expansion to use the additional 3 test standards. The staff therefore recommended to the Assistant Secretary that the applications be preliminarily approved.

Based upon the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the SwRI Department of Fire Technology San Antonio, Texas can meet the recognition requirements, as prescribed by 29 CFR 1910.7, for the renewal and the expansion of recognition. This preliminary finding does not constitute an interim or temporary approval of the applications.

OSHA welcomes public comments, in sufficient detail, as to whether SwRI has met the requirements of 29 CFR 1910.7 for the renewal and expansion of its recognition as a Nationally Recognized Testing Laboratory. Your comment must consist of pertinent written documents and exhibits. To consider it, OSHA must receive the comment at the address provided above (see **ADDRESS**), no later than the last date for comments (see **DATES** above). You may obtain or review copies of SwRI's requests, the on-site review report, and all submitted comments, as received, by contacting the Docket Office, Room N2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. You should refer to Docket No. NRTL–3–90, the permanent record of public information on SwRI's recognition.

The NRTL Program staff will review all timely comments, and after resolution of issues raised by these comments, will recommend whether to grant SwRI's renewal and expansion requests. The Assistant Secretary will make the final decision on granting the renewal and expansion, and in making this decision, may undertake other proceedings that are prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

Signed at Washington, DC, this 28th day of October, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–30114 Filed 11–9–98; 8:45 am]

BILLING CODE 4510–26–U

LEGAL SERVICES CORPORATION

Intent to Award—Grant Awards to Applicants for Funds to Provide Civil Legal Services to Eligible Low-Income Clients Beginning January 1, 1999

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make 1999 competitive grant awards.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award grants and contracts to provide

economical and effective delivery of high quality civil legal services to eligible low-income clients, beginning January 1, 1999.

DATES: All comments and recommendations must be received on or before the close of business on December 10, 1998.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street, N.E., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Operations, (202) 336–8827.

SUPPLEMENTARY INFORMATION: Pursuant to the Corporation's announcement of funding availability on April 22, 1998 (63 FR 19960) and Grant Renewal applications due on September 1, 1998, the LSC will award funds to one or more of the following organizations to provide civil legal services in the indicated service areas.

Service area	Applicant name	Anticipated 1999 award amounts
AL–1	Legal Services Corporation of Alabama Inc	$4,527,314
AL–2	Legal Services of North-Central Alabama Inc	515,039
AL–3	Legal Services of Metro Birmingham Inc	915,553
MAL	Legal Services Corporation of Alabama Inc	27,827
AK–1	Alaska Legal Services Corporation	550,568
NAK–1	Alaska Legal Services Corporation	456,588
AZ–1	Pinal & Gila Counties Legal Aid Society	268,741
AZ–2	DNA—People's Legal Services Inc	515,205
AZ–3	Community Legal Services, Inc	2,488,448
AZ–4	Southern Arizona Legal Aid Inc	1,270,438
MAZ	Community Legal Services, Inc	125,569
NAZ–1	Pinal & Gila Counties Legal Aid Society	28,441
NAZ–2	Community Legal Services, Inc	26,144
NAZ–3	Papago Legal Services Inc	186,680
NAZ–4	Southern Arizona Legal Aid Inc	259,268
NAZ–5	DNA—People's Legal Services Inc	2,203,060
AR–1	Ozark Legal Services	485,922
AR–2	Legal Services of Northeast Arkansas Inc	414,253
AR–3	Western Arkansas Legal Services	341,104
AR–4	East Arkansas Legal Services	532,791
AR–5	Center for Arkansas Legal Services	1,623,115
MAR	Center for Arkansas Legal Services	59,319
CA–1	California Indian Legal Services Inc	25,230
CA–2	Greater Bakersfield Legal Assistance Inc	558,335
CA–4	Legal Aid Foundation of Long Beach	860,528
CA–5	Legal Aid Foundation of Los Angeles	5,057,019
CA–6	Legal Aid Society of Alameda County	1,010,747
CA–6	Volunteer Legal Services Corporation	1,010,747
CA–7	Channel Counties Legal Services Association	552,586
CA–8	San Fernando Valley Neighborhood Legal Services Inc	1,528,045
CA–9	Legal Services Program for Pasadena and San Gabriel-Pomona Valley	1,467,552
CA–10	Legal Aid Society of San Mateo County	309,364
CA–11	Contra Costa Legal Services Foundation	443,065
CA–12	Inland Counties Legal Services Inc	2,346,096
CA–13	Legal Services of Northern California Inc	2,204,363
CA–14	Legal Aid Society of San Diego Inc	2,077,909
CA–15	California Rural Legal Assistance Inc	2,375,420
CA–15	San Francisco Neighborhood Legal Assistance Foundation	689,231
CA–17	Legal Aid of the North Bay	143,718
CA–18	Community Legal Services Inc	789,248
CA–19	Legal Aid Society of Orange County Inc	2,641,447
CA–23	Redwood Legal Assistance	324,734
CA–25	Legal Aid of the Central Coast	330,599
CA–26	Central California Legal Services	2,039,494
MCA	California Rural Legal Assistance Inc	2,232,645
NCA–1	California Indian Legal Services Inc	745,893
CO–2	Colorado Rural Legal Services Inc	893,500
CO–3	Legal Aid Society of Metropclitan Denver Inc	1,510,516
CO–5	Pikes Peak/Arkansas River Legal Aid	574,143
MCO	Colorado Rural Legal Services Inc	125,610
NCO–1	Colorado Rural Legal Services Inc	24,095
CT–1	Statewide Legal Services of Connecticut Inc	1,783,807
MCT	Statewide Legal Services of Connecticut Inc	14,087
NCT–1	Pine Tree Legal Assistance Inc	13,218
DE–1	Legal Services Corporation of Delaware Inc	444,082
MDE	Legal Aid Bureau Inc	20,994
DC–1	Neighborhood Legal Services Program of the District of Columbia	796,411
FL–1	Central Florida Legal Services Inc	965,185
FL–2	Legal Aid Service of Broward County, Inc	985,038
FL–3	Florida Rural Legal Services Inc	1,950,702
FL–4	Jacksonville Area Legal Aid Inc	771,438

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Service area	Applicant name	Anticipated 1999 award amounts
FL–5	Legal Services of Greater Miami Inc	2,725,284
FL–6	Legal Services of North Florida Inc	827,340
FL–7	Greater Orlando Area Legal Services Inc	780,322
FL–8	Bay Area Legal Services, Inc	1,097,702
FL–9	Withlacoochee Area Legal Services Inc	438,532
FL–10	Three Rivers Legal Services Inc	615,230
FL–11	Northwest Florida Legal Services Inc	424,122
FL–12	Gulfcoast Legal Services Inc	929,351
MFL	Florida Rural Legal Services Inc	759,576
GA–1	Atlanta Legal Aid Society Inc	1,762,150
GA–2	Georgia Legal Services Program	5,542,015
MGA	Georgia Legal Services Program	331,591
GU–1	Guam Legal Services Corporation	156,812
HI–1	Legal Aid Society of Hawaii	839,525
MHI	Legal Aid Society of Hawaii	58,285
NHI–1	Native Hawaiian Legal Corporation	107,869
ID–1	Idaho Legal Aid Services Inc	922,137
MID	Idaho Legal Aid Services Inc	158,086
NID–1	Idaho Legal Aid Services Inc	54,850
IL–1	Cook County Legal Assistance Foundation Inc	981,307
IL–2	Legal Assistance Foundation of Chicago	4,805,228
IL–3	Land of Lincoln Legal Assistance Foundation Inc	2,595,248
IL–4	Prairie State Legal Services Inc	2,195,694
IL–5	West Central Illinois Legal Assistance	186,112
MIL	Legal Assistance Foundation of Chicago	211,126
IN–1	Legal Services of Maumee Valley Inc	290,149
IN–2	Legal Services of Northwest Indiana Inc	587,618
IN–3	Legal Services Organization of Indiana Inc	2,836,451
IN–4	Legal Services Program of Northern Indiana Inc	934,703
MIN	Legal Services Organization of Indiana Inc	96,162
IA–1	Legal Services Corporation of Iowa	2,271,217
IA–2	Legal Aid Society of Polk County	239,847
MIA	Legal Services Corporation of Iowa	31,913
KS–1	Kansas Legal Services Inc	2,261,630
MKS	Kansas Legal Services Inc	10,051
KY–2	Legal Aid Society	1,153,695
KY–3	Central Kentucky Legal Services Inc	476,765
KY–5	Appalachian Research and Defense Fund of Kentucky	2,023,479
KY–6	Cumberland Trace Legal Services Inc	391,960
KY–7	Western Kentucky Legal Services Inc	808,149
KY–8	Northern Kentucky Legal Aid Society Inc	750,030
MKY	Appalachian Research and Defense Fund of Kentucky	35,991
LA–1	Capital Area Legal Services Corporation	1,398,480
LA–2	Southwest Louisiana Legal Services Society Inc	424,072
LA–3	North Louisiana Legal Assistance Corporation	786,410
LA–4	New Orleans Legal Assistance Corporation	1,952,464
LA–5	Northwest Louisiana Legal Services Inc	762,000
LA–6	Acadiana Legal Service Corporation	1,644,059
LA–7	Kisatchie Legal Services Corporation	412,847
LA–8	Southeast Louisiana Legal Services Corporation	595,418
MLA	Acadiana Legal Service Corporation	23,286
ME–1	Pine Tree Legal Assistance Inc	1,001,962
MME	Pine Tree Legal Assistance Inc	60,708
NME–1	Pine Tree Legal Assistance Inc	54,416
MD–1	Legal Aid Bureau Inc	3,110,271
MMD	Legal Aid Bureau Inc	76,897
MA–1	Volunteer Lawyers Project of the Boston Bar Association Inc	1,482,482
MA–2	South Middlesex Legal Services Inc	160,336
MA–3	Legal Services for Cape Cod and Islands Inc	195,790
MA–4	Merrimack Valley Legal Services Inc	717,687
MA–5	New Center for Legal Advocacy, Inc	523,320
MA–10	Massachusetts Justice Project	1,202,285
MMA	Massachusetts Justice Project	14,071
MI–1	Legal Services of Southeastern Michigan Inc	542,767
MI–2	Legal Services Organization of Southcentral Michigan Inc	233,973
MI–3	Wayne County Neighborhood Legal Services Inc	3,281,071
MI–3	Legal Aid and Defender Association of Detroit	3,281,071
MI–4	Legal Services of Eastern Michigan	1,294,278
MI–5	Legal Aid of Central Michigan	509,232
MI–6	Lakeshore Legal Aid	552,429

Service area	Applicant name	Anticipated 1999 award amounts
MI–7	Oakland Livingston Legal Aid	544,670
MI–8	Berrien County Legal Services Bureau Inc	182,629
MI–9	Legal Services of Northern Michigan Inc	783,780
MI–10	Legal Aid of Western Michigan	1,010,772
MI–11	Legal Aid Bureau of Southwestern Michigan Inc	404,757
MMI	Legal Services of Southeastern Michigan Inc	509,092
NMI–1	Michigan Indian Legal Services Inc	121,203
MP–1	Micronesia Legal Services, Inc	1,388,231
MN–1	Legal Aid Service of Northeastern Minnesota	464,076
MN–2	Judicare of Anoka County Inc	101,026
MN–3	Central Minnesota Legal Services Inc	1,217,481
MN–4	Legal Services of Northwest Minnesota Corporation	454,894
MN–5	Southern Minnesota Regional Legal Services Inc	1,194,369
MMN	Southern Minnesota Regional Legal Services Inc	169,212
NMN–1	Anishinabe Legal Services Inc	201,762
MS–1	Central Mississippi Legal Services	922,270
MS–2	North Mississippi Rural Legal Services Inc	2,210,915
MS–3	South Mississippi Legal Services Corporation	576,608
MS–4	East Mississippi Legal Services Corporation	454,505
MS–5	Southeast Mississippi Legal Services Corporation	538,474
MS–6	Southwest Mississippi Legal Services Corporation	468,832
MMS	Central Mississippi Legal Services	48,267
NMS–1	East Mississippi Legal Services Corporation	70,179
MO–1	Southeast Missouri Legal Services Inc	548,789
MO–2	Meramec Area Legal Aid Corporation	325,511
MO–3	Legal Aid of Western Missouri	1,679,679
MO–4	Legal Services of Eastern Missouri Inc	1,765,203
MO–5	Mid-Missouri Legal Services Corporation	344,487
MO–6	Legal Aid of Southwest Missouri	752,388
MMO	Legal Aid of Western Missouri	68,897
MT–1	Montana Legal Services Association	986,618
MMT	Montana Legal Services Association	46,166
NMT–1	Montana Legal Services Association	112,606
NE–1	Legal Services of Southeast Nebraska	323,733
NE–2	Legal Aid Society Inc	605,717
NE–3	Western Nebraska Legal Services Inc	446,125
MNE	Western Nebraska Legal Services Inc	35,760
NNE–1	Legal Aid Society Inc	27,907
NV–1	Nevada Legal Services Inc	987,701
MNV	Nevada Legal Services Inc	2,126
NNV–1	Nevada Legal Services Inc	112,265
NH–1	Legal Advice & Referral Center, Inc	563,215
MNH	Pine Tree Legal Assistance Inc	8,413
NJ–1	Cape-Atlantic Legal Services Inc	227,712
NJ–2	Warren County Legal Services Inc	39,763
NJ–3	Camden Regional Legal Services Inc	845,605
NJ–4	Union County Legal Services Corporation	285,070
NJ–5	Hunterdon County Legal Service Corporation	22,392
NJ–6	Bergen County Legal Services	258,450
NJ–7	Hudson County Legal Services Corporation	656,995
NJ–8	Essex-Newark Legal Services Project Inc	881,754
NJ–9	Middlesex County Legal Services Corporation	268,468
NJ–10	Passaic County Legal Aid Society	360,634
NJ–11	Somerset-Sussex Legal Services Corporation	85,028
NJ–12	Ocean-Monmouth Legal Services Inc	427,604
NJ–13	Legal Aid Society of Mercer County	186,840
NJ–14	Legal Aid Society of Morris County	92,746
MNJ	Camden Regional Legal Services Inc	102,052
NM–1	DNA—People's Legal Services Inc	206,486
NM–2	Legal Aid Society of Albuquerque Inc	552,743
NM–3	Southern New Mexico Legal Services Inc	921,376
NM–4	Northern New Mexico Legal Services, Inc	776,211
NM–4	Justice Inc	776,211
MNM	Southern New Mexico Legal Services Inc	73,869
NNM–1	Southern New Mexico Legal Services Inc	12,839
NNM–2	DNA—People's Legal Services Inc	11,237
NNM–3	Indian Pueblo Legal Services Inc	367,339
NY–1	Legal Aid Society of Northeastern New York Inc	686,278
NY–3	Legal Aid for Broome and Chenango	224,428
NY–4	Neighborhood Legal Services Inc	944,464
NY–5	Chautauqua County Legal Services Inc	153,727
NY–6	Chemung County Neighborhood Legal Services Inc	267,822

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Service area	Applicant name	Anticipated 1999 award amounts
NY–7	Nassau/Suffolk Law Services Committee Inc	887,023
NY–8	Legal Aid Society of Rockland County Inc	541,286
NY–9	Legal Services for New York City	11,314,289
NY–10	Niagara County Legal Aid Society Inc	190,148
NY–13	Legal Services of Central New York Inc	703,120
NY–14	Legal Aid Society of Mid-New York Inc	619,573
NY–15	Westchester/Putnam Legal Services Inc	606,197
NY–16	North Country Legal Services Inc	324,932
NY–17	Southern Tier Legal Services	254,935
NY–18	Monroe County Legal Assistance Corporation	885,459
MNY	Legal Aid Society of Mid-New York Inc	234,106
NC–1	Legal Services of North Carolina Inc	4,978,592
NC–2	Legal Services of Southern Piedmont, Inc	669,130
NC–3	North Central Legal Assistance Program, Inc	360,204
NC–4	Legal Aid Society of Northwest North Carolina Inc	403,367
MNC	Legal Services of North Carolina Inc	453,289
NNC–1	Legal Services of North Carolina Inc	117,559
ND–1	Legal Assistance of North Dakota Inc	623,899
ND–2	North Dakota Legal Services Inc	8,289
MND	Southern Minnesota Regional Legal Services Inc	98,031
NND–1	Legal Assistance of North Dakota Inc	44,488
NND–2	North Dakota Legal Services Inc	120,012
OH–1	Western Reserve Legal Services	688,635
OH–2	Stark County Legal Aid Society	325,478
OH–3	Legal Aid Society of Cincinnati	1,067,807
OH–4	The Legal Aid Society of Cleveland	1,887,686
OH–5	The Legal Aid Society of Columbus	1,154,829
OH–7	Legal Aid Society of Dayton Inc	581,339
OH–8	Legal Aid Society of Lorain County Inc	249,508
OH–9	Legal Aid Society of Cincinnati	300,927
OH–9	Butler-Warren Legal Assistance Association	300,927
OH–10	Allen County Blackhoof Area Legal Services Association	288,304
OH–12	Legal Services of Northwest Ohio, Inc	722,683
OH–13	The Toledo Legal Aid Society	307,280
OH–14	Wooster-Wayne Legal Aid Society Inc	93,846
OH–15	Northeast Ohio Legal Services	817,819
OH–16	Rural Legal Aid Society of West Central Ohio	536,811
OH–17	Ohio State Legal Services	1,837,260
MOH	Legal Services of Northwest Ohio, Inc	106,535
OK–1	Legal Aid of Western Oklahoma Inc	2,315,357
OK–2	Legal Services of Eastern Oklahoma Inc	1,849,230
MOK	Legal Aid of Western Oklahoma Inc	52,924
NOK–1	Oklahoma Indian Legal Services Inc	306,336
OR–1	Legal Aid Services of Oregon	1,346,871
OR–2	Lane County Legal Aid Service Inc	275,118
OR–3	Legal Aid Services of Oregon	517,149
OR–4	Marion-Polk Legal Aid Service Inc	242,494
MOR	Legal Aid Services of Oregon	471,107
NOR–1	Legal Aid Services of Oregon	155,851
PA–1	Philadelphia Legal Assistance Center	2,558,008
PA–2	Legal Services Inc	215,039
PA–3	Delaware County Legal Assistance Association Inc	303,417
PA–4	Bucks County Legal Aid Society	172,041
PA–5	Laurel Legal Services Inc	629,515
PA–8	Neighborhood Legal Services Association	1,648,733
PA–9	Northern Pennsylvania Legal Services, Inc	358,996
PA–10	Keystone Legal Services Inc	357,971
PA–11	Southwestern Pennsylvania Legal Aid Society Inc	519,366
PA–12	Legal Aid of Chester County Inc	140,078
PA–13	Legal Services of Northeastern Pennsylvania Inc	405,419
PA–14	Susquehanna Legal Services	408,124
PA–15	Northwestern Legal Services	721,434
PA–17	Lehigh Valley Legal Services Inc	309,861
PA–18	Montgomery County Legal Aid Service	194,102
PA–20	Southern Alleghenys Legal Aid Inc	468,766
PA–21	Central Pennsylvania Legal Services	1,067,129
MPA	Philadelphia Legal Assistance Center	140,177
PR–1	Puerto Rico Legal Services Inc	16,460,943
PR–2	Community Law Office Inc	311,780
MPR	Puerto Rico Legal Services Inc	245,893
RI–1	Rhode Island Legal Services Inc	765,069
MRI	Rhode Island Legal Services Inc	1,497

Service area	Applicant name	Anticipated 1999 award amounts
SC–1	Neighborhood Legal Assistance Program Inc	1,207,530
SC–2	Palmetto Legal Services	1,063,779
SC–3	Carolina Regional Legal Services Corporation	243,710
SC–4	Legal Services Agency of Western Carolina Inc	665,896
SC–7	Piedmont Legal Services Inc	934,976
MSC	Neighborhood Legal Assistance Program Inc	167,293
SD–1	Black Hills Legal Services Inc	159,277
SD–2	East River Legal Services	428,663
SD–3	Dakota Plains Legal Services Inc	288,056
MSD	Black Hills Legal Services Inc	3,358
NSD–1	Dakota Plains Legal Services Inc	788,287
TN–1	Southeast Tennessee Legal Services, Inc	623,891
TN–2	Legal Services of Upper East Tennessee Inc	744,670
TN–3	Knoxville Legal Aid Society Inc	548,144
TN–4	Memphis Area Legal Services Inc	1,356,078
TN–5	Legal Aid Society of Middle Tennessee	1,047,301
TN–6	Rural Legal Services of Tennessee Inc	680,570
TN–7	West Tennessee Legal Services Inc	644,943
TN–8	Legal Services of South Central Tennessee Inc	462,909
MTN	Legal Services of Upper East Tennessee Inc	53,644
TX–1	Legal Aid of Central Texas	1,498,373
TX–3	Legal Services of North Texas	2,313,148
TX–4	El Paso Legal Assistance Society	1,223,817
TX–5	West Texas Legal Services, Inc	3,949,399
TX–6	Gulf Coast Legal Foundation	4,788,692
TX–8	Bexar County Legal Aid Association Inc	1,810,682
TX–9	Heart of Texas Legal Services Corporation	490,612
TX–10	Texas Rural Legal Aid Inc	3,647,305
TX–11	East Texas Legal Services Inc	2,731,331
TX–12	Coastal Bend Legal Service	1,343,670
MTX	Texas Rural Legal Aid Inc	1,182,317
NTX–1	Texas Rural Legal Aid Inc	26,423
UT–1	Utah Legal Services Inc	1,534,290
MUT	Utah Legal Services Inc	57,366
NUT–1	Utah Legal Services Inc	37,705
VT–1	Legal Services Law Line of Vermont Inc	434,619
MVT	Legal Services Law Line of Vermont Inc	6,849
VI–1	Legal Services of the Virgin Islands Inc	278,700
VA–1	Legal Services of Northern Virginia Inc	485,302
VA–2	Piedmont Legal Services, Inc	166,160
VA–3	Rappahannock Legal Services Inc	221,135
VA–4	Southwest Virginia Legal Aid Society Inc	224,940
VA–5	Peninsula Legal Aid Center Inc	457,499
VA–6	Central Virginia Legal Aid Society Inc	529,019
VA–7	Legal Aid Society of New River Valley Inc	214,716
VA–8	Legal Aid Society of Roanoke Valley	302,201
VA–9	Tidewater Legal Aid Society	785,252
VA–10	Virginia Legal Aid Society Inc	759,642
VA–11	Southside Virginia Legal Services Inc	135,818
VA–12	Blue Ridge Legal Services Inc	260,709
VA–13	Client Centered Legal Services of Southwest Virginia Inc	383,457
MVA	Peninsula Legal Aid Center Inc	133,394
WA–1	Northwest Justice Project	3,667,009
MWA	Northwest Justice Project	617,331
NWA–1	Northwest Justice Project	203,903
WV–1	Appalachian Research and Defense Fund Inc	736,108
WV–2	Legal Aid Society of Charleston	387,808
WV–3	West Virginia Legal Services Plan Inc	1,699,771
MWV	West Virginia Legal Services Plan Inc	30,921
WI–1	Legal Action of Wisconsin Inc	2,112,825
WI–2	Wisconsin Judicare Inc	999,034
WI–3	Legal Services of Northeastern Wisconsin Inc	615,263
WI–4	Western Wisconsin Legal Services Inc	402,557
MWI	Legal Action of Wisconsin Inc	77,004
NWI–1	Wisconsin Judicare Inc	115,659
WY–4	Wind River Legal Services Inc	423,369
MWY	Wind River Legal Services Inc	10,522
NWY–1	Wind River Legal Services Inc	145,891

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These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area indicated is served by one of the organizations listed above, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about January 1, 1999.

Date Issued: November 5, 1998.

Karen J. Sarjeant,

Acting Vice President for Programs.

[FR Doc. 98–30146 Filed 11–9–98; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[98–162]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before December 10, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Cost Reduction Proposals Under the NASA FAR Supplement.

OMB Number: 2700–0094.

Type of review: Extension.

Need and Uses: This program provides an incentive for contractors to propose and implement, with NASA approval, significant cost reduction initiatives on current and follow-on contracts.

Affected Public: Business or other for-profit, Not-for-profit institutions

Number of Respondents: 9.

Responses Per Respondent: 1.25.

Annual Responses: 11.25.

Hours Per Request: 45.

Annual Burden Hours: 506.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–30155 Filed 11–9–98; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–160]

NASA Advisory Council (NAC), Aeronautics and Space Transportation Technology Advisory Committee (ASTTAC); Flight Research Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics and Space Transportation Technology Advisory Committee, Flight Research Subcommittee meeting.

DATES: Wednesday, December 2, 1998, 8:00 a.m. to 5:00 p.m. and Thursday, December 3, 1998, 8:00 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Dryden Flight Research Center, Building 4800, Executive Council Room 2020, Edwards, CA 93535.

FOR FURTHER INFORMATION CONTACT: Ms. Victoria A. Regenie, National Aeronautics and Space Administration, Dryden Flight Research Center, Edwards, CA, 93523, 805/258–3136.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda topics for the meeting are as follows:

—Review of Flight Research Base R&T Program

—Review of the Costs Associated with Varying Types of Flight Research

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–30153 Filed 11–9–98; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–161]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Tuesday, November 17, 1998, 9:00 a.m. to 5:00 p.m.; and Wednesday, November 18, 1998, 9:00 a.m. to 12:00 noon.

ADDRESSES: NASA/Goddard Space Flight Center, Code 200 Directorate Conference Room, Building 8, 1st floor, Room 121, Greenbelt, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—MBRAC Subpanel Reports

—Status of MBRAC Recommendations

—Report on CSOC and ODIN

—Action Items

—Call to Order

—Reading of Minutes

—Agency Small Disadvantaged Business (SDB) Program

—Report of Chair

—Public Comment

—Center Directorate Reports

—Reports on NASA FY 98 SDB Accomplishments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 2, 1998.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 98–30154 Filed 11–9–98; 8:45 am]

BILLING CODE 7510–01–M

NORTHEAST DAIRY COMPACT COMMISSION

Notice of Meeting

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of meeting.

SUMMARY: The Compact Commission will hold its monthly meeting to consider matters relating to administration and the price regulation to include the reports and recommendations of the Commission's standing Committees.

DATES: The meeting is scheduled for Wednesday, November 18, 1998 to commence at 10:00 a.m.

ADDRESSES: The meeting will be held at the New Hampshire State Legislative Office Building, Room 306–308, 33 North Main Street, Concord, New Hampshire (exit 14 off I–93).

FOR FURTHER INFORMATION CONTACT: Kenneth Becker, Executive Director, Northeast Dairy Compact Commission, 43 State Street, PO Box 1058, Montpelier, VT 05601. Telephone (802) 229–1941.

(Authority: (a) Article V, Section 11 of the Northeast Interstate Dairy Compact, and 7 U.S.C. 7256)

Dixie L. Henry,

General Counsel.

[FR Doc. 98–30056 Filed 11–9–98; 8:45 am]

BILLING CODE 1650–01–P

PEACE CORPS

Information Collection Requests Under OMB Review

AGENCY: The Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget. (0420–0007).

SUMMARY: Pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35) this notice announces that the Peace Corps has submitted to the Office of Management and Budget a request to approve the new Return Peace Corps Volunteer Speakers enrollment form. A copy of the information collection may be obtained from Betsi Shays, Director of World Wise Schools, Peace Corps, 1111 20th Street, NW, Washington, DC 20526. Ms. Betsi Shays may be contacted by telephone at 202–692–1455. The Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and, ways to minimize the burden the collection of information those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Comments on these forms should be addressed to Victoria Becker Wassmer, Desk Officer, Office of Management and Budget, NEOB, Washington, DC 20503.

Information Collection Abstract

Title: Return Peace Corps Volunteer Enrollment Speakers Form.

Need for and use of this information: The Peace Corps needs this information in order to identify prospective applicants for a returned Volunteer speakers bureau. The information is used to determine what program specific information to send to interested individuals.

Respondents: Return Peace Corps Volunteers who are volunteering to become speakers.

Respondents obligation to reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 750 hours
b. Annual record keeping burden: 0 hours
c. Estimated average burden per response: 3 min
d. Frequency of response: one time
e. Estimated number of likely respondents: 15,000
f. Estimated cost to respondents: $16,800.00

William C. Piatt,

Associate Director for Management.

[FR Doc. 98–30130 Filed 11–9–98; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23521; 812–10872]

KBK Financial, Inc., et al.; Notice of Application

November 4, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) from sections 2(a)(48) and 55(a) of the Investment Company Act of 1940 (the "Act").

Summary of Application: The order would permit KBK Financial, Inc. ("Financial"), which will elect to be regulated as a business development company ("BDC") under the Act, to look to the assets of its wholly-owned subsidiary, rather than Financial's interest in the subsidiary itself, in determining whether Financial meets certain requirements for BDCs under the Act.

Applicants: Financial and KBK Receivables Corporation (the "Subsidiary").

Filing Date: The application was filed on November 21, 1997. Applicants have agreed to file an amendment, the substance of which is incorporated in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 30, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, 2200 City Center II, 301 Commerce Street, Fort Worth, Texas 76102.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street NW., Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. Applicants are Delaware corporations. All of the issued and outstanding shares of Financial

currently are owned by KBK Capital Corporation and all of the issued and outstanding shares of the Subsidiary are held by Financial. Financial provides working capital financing and asset-based loans to small to medium size companies through term loans, lines of credit, and the discounted purchase of accounts receivable. Financial also securitizes a portion of the accounts receivable through the Subsidiary, which is a bankruptcy remote subsidiary of Financial. Applicants state that, other than with respect to bankruptcy protection, Financial and the Subsidiary effectively operate as one company.

2. Pursuant to a plan of reorganization, all of the issued and outstanding shares of Financial will become publicly owned. Financial will continue to own all of the issued and outstanding shares of common stock of the Subsidiary. Following the reorganization, Financial will elect to be regulated as a BDC under the Act and the Subsidiary will continue to rely on section 3(c)(5) of the Act.

3. Applicants request relief to permit the assets held by the Subsidiary, rather than the common stock of the Subsidiary itself, to be treated as assets held by Financial for the purpose of determining whether Financial meets certain requirements for BDCs under the Act. Applicants request that the relief extend to any future bankruptcy-remote subsidiaries that are wholly-owned by Financial and comply with the terms and conditions of the order ("Future Subsidiaries").

Applicants' Legal Analysis

1. Section 2(a)(48) of the Act generally defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through (3) of the Act and makes available significant managerial assistance with respect to the issuers of these securities. Section 55(a) of the Act requires a BDC to have at least 70% of its assets invested in assets described in sections 55(a)(1) through (6) ("Qualifying Assets"). Qualifying Assets generally include securities issued by eligible portfolio companies as defined in section 2(a)(46) of the Act. Section 2(a)(46)(B) generally excludes from the definition of an eligible portfolio company an investment company, as defined under section 3 of the Act, and a company that would be an investment company but for the exclusion from the definition of investment company in section 3(c) of the Act.

2. Applicants state that the Subsidiary may not be deemed an eligible portfolio company because it is relying on section 3(c)(5) of the Act. Applicants request relief under section 6(c) from section 55(a) to permit the assets held by the Subsidiary, rather than the Subsidiary itself, to be treated as assets held by Financial for the purposes of: (a) Determining whether Financial is operated for the purpose of making investments in securities described in paragraphs (1) through (3) of section 55(a); (b) determining whether Financial makes available managerial assistance to companies as described in section 2(a)(48); and (c) applying the 70% test in section 55(a).

3. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act, if the exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets the section 6(c) standards for the reasons discussed below.

4. Applicants state that all of the voting securities of the Subsidiary will be held by Financial and Financial will control the operations of the Subsidiary, including the acquisition and disposition of its assets. Applicants also state that the assets of the Subsidiary will be held by the Subsidiary and not directly by Financial only for bona fide business reasons that are unrelated to the policies underlying the Act. In addition, applicants state that any activity carried on by the Subsidiary will in all material respects have the same economic effect on Financial's shareholders as if done by Financial directly. Applicants also acknowledge that any assets or debts of the Subsidiary will be treated as assets or debts of Financial for purposes of the asset coverage requirements under the Act. Therefore, applicants state that it is appropriate to look to the assets held by the Subsidiary, rather than to the common stock of the Subsidiary held by Financial, in determining whether Financial meets the requirements for BDCs under the Act discussed above.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Subsidiary, and any Future Subsidiary, may not acquire any asset if the acquisition would cause Financial to violate section 55(a) of the Act.

2. Financial will at all times own and hold, beneficially and of record, all of the outstanding voting capital stock of the Subsidiary and any Future Subsidiary.

3. No person will serve or act as investment adviser to the Subsidiary or any Future Subsidiary unless the directors and shareholders of Financial will have taken the action with respect thereto also required to be taken by the directors and shareholder of the Subsidiary or Future Subsidiary.

4. No person will serve as a director of the Subsidiary or any Future Subsidiary who will not have been elected as a director of Financial at its most recent annual meeting, as contemplated by section 16(a) of the Act and subject to the provisions thereof relating to the filling of vacancies, other than one additional director of the Subsidiary or a Future Subsidiary who is not a director or affiliated person of Financial. Notwithstanding the foregoing, the board of directors of the Subsidiary or a Future Subsidiary will be elected by Financial as the sole shareholder of the Subsidiary or the Future Subsidiary, and the boards will be composed of the same persons, other than as described above, that serve as directors of Financial.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30012 Filed 11–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40635; File No. SR–GSCC–98–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Regarding Amendments to GSCC's By-Laws

November 4, 1998.

On August 31, 1998, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–98–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 30, 1998.[2] No comment

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40463 (September 23, 1998), 63 FR 52313.

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letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

GSCC was formed by the National Securities Clearing Corporation ("NSCC") in 1986. Initially, GSCC was a wholly-owned subsidiary of NSCC. However, in December 1987 GSCC shares were issued in a private placement, and now approximately seventy-five percent of GSCC's shares are owned by its member firms.

GSCC's shareholders agreement provides that NSCC has the right to nominate two individuals for election to the GSCC Board and that GSCC is to designate one of those individuals to the position of Vice-Chairman. Since GSCC was incorporated in 1986, GSCC's by-laws have provided that the Vice-Chairman of GSCC's Board shall automatically be its CEO and that GSCC's President shall automatically be the COO.

GSCC believes that in order to ensure its independence, GSCC's Board of Directors should determine itself which individuals should serve as the CEO and COO. Therefore, the rule change amends GSCC's by-laws to:

(1) Delete the provision that states that the Vice Chairman of the Board shall be CEO of GSCC,

(2) Delete the provision that states that the President shall be the COO of GSCC, and

(3) Make other conforming changes to appropriately reflect the responsibilities of the CEO and COO.

II. Discussion

Section 17A(b)(3)(C) of the Act [3] requires that the rules of a clearing agency be designed to assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the rule change is consistent with GSCC's obligations under Section 17A(b)(3)(C) because the amendments to GSCC's by-laws should increase the flexibility of GSCC's Board of Directors to determine which individuals should serve as GSCC's CEO and COO. As a result, the rule should give GSCC's member firms better representation and control the administration of GSCC's affairs.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act [4] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–98–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30100 Filed 11–9–98; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78q–(b)(3)(C).

[4] 15 U.S.C. 78q–1.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40634; File No. SR–NSCC–98–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying NSCC's Annuities Processing Service

November 4, 1998.

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 8, 1998, as amended by facsimile on October 8, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–NSCC–98–13) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit members to use the Annuities Processing Service ("APS") to submit data and to settle payments with respect to life insurance products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC currently transmits data and information and settles payments with respect to annuities through APS.[3] Under the proposed rule change, NSCC will transmit data and information and settle payments relating to life insurance products as well as annuity products through APS. According to NSCC, the processing of data and information and the settlement of payments with respect to life insurance products would be identical to the processing of annuity products. Since the name "Annuities Processing Service" or APS is commonly known and recognized, NSCC has no current plans to change the name of the service.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [4] and the rules and regulations thereunder since it will facilitate the prompt and accurate processing of transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [5] and Rule 19b–4(e)(4) thereunder [6] because the

[1] 15 U.S.C. 78s(b) (1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] APS is a centralized communication link connecting participating insurance carriers with broker-dealers, banks, and the broker-dealers' or banks' affiliated life insurance agencies where appropriate. For a more detailed description of APS, refer to Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 [File No. SR–NSCC–96–21] (order approving proposed rule change).

[4] 15 U.S.C. 78q–1.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).

proposal effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submission should refer to File No. SR–NSCC–98–13 and should be submitted by December 1, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Johathan G. Katz,

Secretary.

[FR Doc. 98–30098 Filed 11–9–98; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40638; File No. SR–OCC–98–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of a Proposed Rule Change Relating to Differential Index Options

November 4, 1998.

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 7, 1998, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, OCC will amend its By-Laws and Rules to provide for the clearance and settlement of differential index options.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Description of Differential Index Options

The American Stock Exchange, Inc. ("AMEX") has submitted a proposed rule change to the Commission to trade differential index options.[4] The purpose of OCC's proposal is to provide for the issuance, clearance, and settlement of differential index options.

A differential index is a measure, expressed in percentage terms, of the difference between the performance of one security or index (called the "designated interest") and the performance of another security or index (called the "benchmark") over the life of an option. The determination of the value of a differential index differs from the determination of the value of a standard index although both types of indices have a specific value at any given time.[5]

A differential index option, like other index options, is a cash settled option that entitles an exercising holder to receive and requires an assigned writer to pay an "exercise settlement amount."[6] In the case of a call, the exercise settlement amount is based on the extent to which the aggregate current index value exceeds the aggregate exercise price. In the case of a put, the exercise settlement amount is determined by the extent to which the aggregate exercise price exceeds the aggregate current index value. A differential index option differs from a standard index option in that its exercise settlement amount is based upon the difference between the relative performance of two securities or indices rather than the absolute performance of a single index. The differential index options that AMEX has proposed to trade are European style, meaning that they can be exercised only upon expiration.

The clearance and settlement of differential index options is similar to that of other index options. The reporting authority for the underlying differential index will be required to provide the value of the index to OCC as of a specified date and time.[7] OCC will then use the value of the differential index to determine the exercise settlement amount. OCC believes that differential index options can readily be processed, margined, and settled pursuant to the same rules and

[1] 15 U.S.C. 78s(b) (1).

[2] The complete text of the proposed amendments to OCC's By-Laws and Rules is included in OCC's filing, which is available for inspection and copying at the Commission's public reference room and through OCC.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] Securities Exchange Act Release No. 40537 (October 8, 1998), 63 FR 56052 [File No. SR–AMEX–98–12].

[5] According to OCC, AMEX has proposed to trade Index Differential Options (a designated index versus a benchmark index), Equity Differential Options (a designed stock versus a benchmark index), and Paired Stock Differential Options (a designated stock versus a benchmark stock).

[6] Differential index options are index options even if the designated security or the benchmark security is an equity security.

[7] Computation of differential index values will be the exclusive function of the reporting authority.

procedures that apply to standard index options with certain modifications.

2. Proposed Amendments to Articles I and VI of the By-Laws

Under the proposed rule change, OCC will add a definition of "underlying interest" to Article I of the By-Laws to provide a generic term for underlying securities, indices, currencies, and other underlying interests. In addition, OCC will amend Article IV, Section 11 of the By-Laws to reflect that the term "index group" is no longer defined in relation to index options although it is still defined for IPs.

3. Proposed Amendments to Article XVII of the By-Laws

OCC will amend Article XVII of the By-Laws, which applies to index options generally, to add specific provisions applicable to differential index options and to revise certain terms to be sufficiently generic to apply to differential index options as well as other index options. The term "index group" will be eliminated altogether. The term "index security" will be added to refer to an individual security included in an index of securities.[8] The term "index security" will apply to differential index options only when either the designated interest or the benchmark is itself an index. Thus, for example, an individual security that is the designated interest with respect to a differential index is not included in the definition of an "index security." OCC will add other terms referring expressly to differential index options which OCC believes are self-explanatory.

OCC will amend Article XVII, Section 2 of the By-Laws for purposes of clarity. OCC does not intend for this amendment to create a substantive change.

OCC will modify Article XVII, Section 3 of the By-Laws to make it clear that as is the case with any other index option OCC will ordinarily make no adjustments to the terms of a differential index option if index securities are added to or deleted from or if their relative weight is changed in an underlying index that is either the designated interest or the benchmark for the differential index. In addition, OCC will make clear that it will ordinarily make no adjustments to the terms of a differential index option having a security as differential index or benchmark if certain dilutive or concentrative events occur, such as a stock split, or if certain extraordinary events occur, such as a merger of the issuer. OCC will reserve the right to make an adjustment to the terms of a differential index option only if one of the enumerated events causes significant discontinuity in the level of the differential index and OCC determines that the discontinuity has not been adequately remedied.

In addition, OCC will make slight modifications to Article XVII, Section 4, relating to the unavailability or inaccuracy of index values, in order to incorporate provisions for differential index options. In addition, OCC will amend Article XVII, Section 5, relating to the time for determination of current index value, in order to eliminate the reference to index groups.

4. Proposed Amendments to Existing Rules

OCC will modify provisions in Rule 207 to accommodate differential index options. In addition, OCC will modify Interpretation and Policy .03 under Rule 602, Rule 1801(c), and Rule 1801(e) to remove references to index groups with respect to index options.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act[9] and the rules and regulations thereunder because it applies the same procedures and safeguards to differential index options that OCC has employed with respect to other index options. OCC believes that these procedures have proven effective in promoting the prompt and accurate clearance and settlement of securities transactions and in safeguarding securities and funds.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would have any material adverse impact on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–98–09 and should be submitted by December 1, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30099 Filed 11–9–98; 8:45 am]

BILLING CODE 8010–01–M

[8] In addition, OCC will make technical amendments to the By-Laws and Rules to conform to these definitional changes.

[9] 15 U.S.C. 78q–1.

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3145]

State of Texas (Amendment #1)

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to establish the incident period as beginning on October 17, 1998 and continuing through October 31, 1998.

All other information remains the same, i.e., the deadline for filing

applications for physical damage is December 19, 1998 and for economic injury the termination date is July 19, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 4, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–30147 Filed 11–9–98; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice No. 2927]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Thursday, December 3, 1998, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC. The purpose of this meeting is to report on the 78th session of the IMO Legal Committee, which was held October 19–23, 1998, in London. The meeting will address: provision of financial security for passenger claims, provision of financial security for other maritime claims, compensation for pollution from ships' bunkers, and a draft convention on wreck removal, as well as other matters.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, contact either Captain Malcolm J. Williams, Jr., or Lieutenant William G. Rospars, U.S. Coast Guard (G–LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267–1527, fax (202) 267–4496.

Dated: November 4, 1998.

Stephen M. Miller,

Chairman, Shipping Coordinating Committee.

[FR Doc. 98–30104 Filed 11–9–98; 8:45 am]

BILLING CODE 4710–70–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–100a]

Implementation of WTO Recommendations Concerning the European Communities' Regime for the Importation, Sale and Distribution of Bananas

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determination of action to be taken; request for public comment; notice of public hearing.

SUMMARY: The United States Trade Representative requests written comments and invites testimony in the context of a public hearing on its proposed determination that the imposition of prohibitive (100 percent *ad valorem*) duties on selected products from the European Communities (EC) is an appropriate action under section 306(b) and 301(a) of the Trade Act of 1974, as amended, should the EC fail to implement the recommendations of the World Trade Organization Dispute Settlement Body concerning the EC's regime for the importation, sale, and distribution of bananas within the prescribed reasonable period of time, which expires on January 1, 1999. The products to be affected by the proposed duty increase will be drawn from the list of products set forth in the Annex to this notice. The USTR intends to publish a notice on December 15, 1998 describing the actions that it would take, beginning as early as February 1, 1999.

DATES: Requests to testify at the public hearing and written testimony for the public hearing are due by noon on Monday, November 30, 1998; the public hearing will be held on Wednesday, December 9, 1998; written comments, in lieu of written and oral testimony, are due by noon on Thursday, December 10, 1998; and rebuttal briefs, if needed, are due by noon on Friday, December 11, 1998.

ADDRESSES: 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel, (202) 395–7305; or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395–3320.

SUPPLEMENTARY INFORMATION: January 1, 1999 is the deadline for the European Communities' (EC) implementation of the recommendations of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's regime for the importation, sale, and distribution of bananas (banana regime). On October 22, 1998, the United States Trade Representative (USTR) published a notice [63 FR 56687] of a proposed affirmative determination under section 306(b) of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2416), that the measures the EC has undertaken to apply as of January 1, 1999 fail to implement the WTO recommendations concerning the EC banana regime. Such a determination will require the USTR also to determine what further action to take under section 301(a) in the event the EC has failed to implement the WTO recommendations by January 1, 1999.

Permissible actions under section 301(a) of the Trade Act include: action to suspend, withdraw or prevent the application of benefits of trade agreement concessions to the EC; imposition of duties or other import restrictions on goods of the EC or fees or restrictions on services of the EC; and restriction or denial of service sector access authorizations with respect to services of the EC. The USTR proposes that the imposition of prohibitive (100 percent *ad valorem*) duties on selected products from the EC is an appropriate action should the EC fail to implement the WTO recommendations within the prescribed reasonable period of time. The products to be affected by the duty increase will be drawn from the list of products set forth in the Annex to this notice.

The USTR intends to publish a notice on December 15, 1998 describing the actions that it would take beginning February 1, 1999. If the EC requests arbitration under Article 22.6 of the WTO Dispute Settlement Understanding (DSU), the USTR would delay implementation of action until the completion of the arbitration proceedings or until March 3, 1999, whichever is earlier.

The announcement of the USTR's determination on December 15 and the subsequent implementation of action are contingent upon the EC's failure to suspend the implementation of its new banana regime and to implement a regime consistent with the WTO's recommendations. The dates on which the USTR intends to implement action—February 1 or no later than March 3, 1999—correspond to the dates contemplated by sections 306(b) and 305(a) of the Trade Act as well as Article 22 of the DSU.

Section 306(b) of the Trade Act requires the USTR to determine what further action it shall take under section 301(a) if the USTR considers that a foreign country has failed to implement a recommendation made pursuant to dispute settlement proceedings under the WTO. The USTR shall make this determination no later than thirty days after the expiration of the reasonable period of time provided for such implementation under Article 21.3 of the DSU, which is January 31, 1999 in this case. Section 305(a)(1) requires the USTR to implement such action by no later than thirty days after the date on which that determination is made, or March 2 in this case.

According to Article 22 of the DSU, the United States can request DSB authorization to suspend the application of concessions or other obligations to the EC for its failure to bring a measure into compliance with a covered agreement or the WTO's recommendations within the reasonable period of time. The United States may make its request twenty days after the expiration of the reasonable period of time, or January 21 in this case. Article 22.6 of the DSU provides that the DSB shall grant the requested authorization not later than thirty days after the expiration of the reasonable period, or January 31 in this case. The DSB must decide by consensus to reject the request for authorization. The EC may object to the level of suspension proposed or the application of the principles and procedures specified in Article 22.3 of the DSU in considering the types of concessions or obligations to suspend, in which case the matter shall be referred to arbitration. The DSU requires that arbitration proceedings be completed within sixty days after the expiration of the reasonable period of time, or March 2 in this case. The United States may not suspend concessions or other obligations during the course of the arbitration proceedings.

Proposed Determination on Appropriate Action

The USTR proposes that the imposition of prohibitive (100 percent ad valorem) duties on selected products from the EC is an appropriate action should the EC fail to implement the WTO recommendations within the prescribed reasonable period of time, which expires on January 1, 1999. The products to be affected by the duty increase will be drawn from the list of products set forth in the Annex to this notice. The USTR also has been considering whether appropriate action may include the imposition of fees or restrictions on, or the restriction or denial of authorizations for, EC services and service suppliers. If the USTR intends to determine that any action with respect to services or service suppliers would be practicable and effective, the USTR will publish a further notice seeking comments on such proposed action.

In determining what action to take, the USTR will consider all written comments, testimony, and rebuttal briefs submitted by interested persons to the Section 301 Committee in accordance with the procedures described below.

Public Comment on Proposed Action; Hearing Participation

In accordance with section 304(b) of the Trade Act, the USTR requests all interested persons to provide written comments on the proposed action. Written comments are due by noon on Thursday, December 10, 1998.

The USTR also invites interested persons to present written and oral testimony and rebuttal briefs in the context of a public hearing to be held pursuant to section 304(b) of the Trade Act. The hearing will be held at 8:00 a.m. on Wednesday, December 9, 1998 in the Main Hearing Room at the U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Testimony at the public hearing should be limited to no more than five minutes.

Written comments and written and oral testimony may address: the appropriateness of imposing increased duties upon the products listed in the Annex to this notice; the levels at which U.S. customs duties should be set for particular items; the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex; and any other matter relating to the appropriate action to be taken under section 306(b) and 301(a). Interested persons submitting written comments do not need to present written and oral testimony as well.

Requests To Testify and Written Testimony: Interested persons wishing to present testimony at the hearing must submit a written request to do so by noon on Monday, November 30, 1998, together with twenty copies of their complete written testimony. Requests to testify must conform to the requirements of 15 CFR 2006.9 and include the following information: (1) Name, address, telephone number, fax number, firm or affiliation of the applicant, and interest of the applicant; and (2) a brief summary of the comments to be presented. After considering the request to present oral testimony, the Chairman of the Section 301 Committee will notify the applicant of the time of his or her testimony.

Rebuttal Briefs: To assure each party an opportunity to contest the information provided by other parties, the USTR will entertain rebuttal briefs filed by any party by noon on Friday, December 11, 1998. In accordance with 15 CFR 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in written or oral testimony and should be as concise as possible.

Requirements for Submissions: Written comments on the proposed determination, written testimony, and rebuttal briefs must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b). Comments must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn: EU—Bananas Implementation of WTO Recommendations, Room 100.

Written comments, written testimony, and rebuttal briefs will be placed in a file (Docket 301–100a) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the docket that is open to public inspection.

An appointment to review Docket No. 301–100a may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101 of the Office of the United States Trade Representative.

Joanna K. McIntosh,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–P

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Annex

[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings of the Harmonized Tariff Schedule of the United States (HTS) which are being considered, and such language is not itself intended to describe articles which are under consideration.]

HTS Subheading	Article Description
	Cheese and curd:
	[Fresh (unripened or uncured) cheese, including whey cheese, and curd; grated or powdered cheese, of all kinds; processed (process) cheese, not grated or powdered; blue-veined cheese]
	Other cheese:
	Other cheeses, and substitutes for cheese, including mixtures of the above:
	Cheeses made from sheep's milk:
0406.90.57	Pecorino, in original loaves, not suitable for grating
	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:
1905.30.00	Sweet biscuits; waffles and wafers
	Fruit juices (including grape must) and vegetable juices, not fortified with vitamins or minerals, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:
2009.70.00	Apple juice
	Wine of fresh grapes, including fortified wines; grape must other than that of heading 2009:
	[Sparkling wine]
	Other wine; grape must with fermentation prevented or arrested by the addition of alcohol:
	In containers holding 2 liters or less:
	[Effervescent wine]
	Other:
	Of an alcoholic strength by volume not over 14 percent vol.:
	[If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Tokay" and if so designated on the approved label]
	Other:
	Valued not over $1.05/liter:
2204.21.5005	Red
	Of an alcoholic strength by volume over 14 percent vol.:
	[If entitled under regulations of the United States Internal Revenue Service to a type designation which includes the name "Marsala" and if so designated on the approved label]
2204.21.80	Other
	Other:
	In containers holding over 2 liters but not over 4 liters:
2204.29.40	Of an alcoholic strength by volume over 14 percent vol.
	In containers holding over 4 liters:
2204.29.60	Of an alcoholic strength by volume not over 14 percent vol.
2204.29.80	Of an alcoholic strength by volume over 14 percent vol.
	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, cosmetic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
	Perfumed bath salts and other bath preparations:
	[Bath salts, whether or not perfumed]
3307.30.50	Other
3406.00.00	Candles, tapers and the like

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HTS Subheading	Article Description
	Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials:
3920.10.00	Of polymers of ethylene
3920.20.00	Of polymers of propylene
	Of polycarbonates, alkyd resins, polyallyl esters or other polyesters:
3920.62.00	Of polyethylene terephthalate
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper:
	Handbags, whether or not with shoulder strap, including those without handle:
	With outer surface of sheeting of plastic or of textile materials:
4202.22.15	With outer surface of sheeting of plastic
	Articles of a kind normally carried in the pocket or in the handbag:
	With outer surface of sheeting of plastic or of textile materials:
	With outer surface of sheeting of plastic:
4202.32.10	Of reinforced or laminated plastics
	Articles of apparel, clothing accessories and other articles of furskin:
4303.10.00	Articles of apparel and clothing accessories
	Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm:
4407.10.00	Coniferous
	Other uncoated paper and paperboard, in rolls or sheets, not further worked or processed than as specified in note 2 to chapter 48 of the HTS:
4805.50.00	Felt paper and paperboard
	Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or sheets:
	Paper and paperboard of a kind used for writing, printing or other graphic purposes, of which more than 10 percent by weight of the total fiber content consists of fibers obtained by a mechanical process:
	[Light-weight coated paper]
4810.29.00	Other
	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like:
4819.20.00	Folding cartons, boxes and cases, of noncorrugated paper or paperboard
	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings:
	[Postcards]
4909.00.40	Other
	Other printed matter, including printed pictures and photographs:
	[Trade advertising material, commercial catalogs and the like]
	Other:
	Pictures, designs and photographs:
	Printed not over 20 years at time of importation:
	[Suitable for use in the production of articles of heading 4901]
	Other:
	Lithographs on paper or paperboard:
4911.91.20	Not over 0.51 mm in thickness

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HTS Subheading	Article Description
	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
	Of wool or fine animal hair:
6110.10.10	Wholly of cashmere
	Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):
	Suit-type jackets and blazers:
	Of wool or fine animal hair:
	[Containing 30 percent or more by weight of silk or silk waste]
6204.31.20	Other
	Bed linen, table linen, toilet linen and kitchen linen:
	[Bed linen, knitted or crocheted]
	Other bed linen, printed:
	Of cotton:
	[Containing any embroidery, lace, braid, edging, trimming, piping or applique work]
	Other:
6302.21.90	Not napped
	Scissors, tailors' shears and similar shears, and blades and other base metal parts thereof:
	Valued over $1.75/dozen:
	[Pinking shears, valued over $30/dozen]
8213.00.90	Other (including parts)
	Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases; parts thereof:
	Filtering or purifying machinery and apparatus for liquids:
8421.21.00	For filtering or purifying water
	Filtering or purifying machinery and apparatus for gases:
	[Intake air filters for internal combustion engines]
	Other:
	[Catalytic converters]
8421.39.80	Other
	Sewing machines, other than book-sewing machines of heading 8440; furniture, bases and covers specially designed for sewing machines; sewing machine needles; parts thereof:
8452.10.00	Sewing machines of the household type
	Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:
	[Lead-acid storage batteries, of a kind used for starting piston engines]
	Other lead-acid storage batteries:
	[Of a kind used as the primary source of electrical power for electrically powered vehicles of subheading 8703.90]
8507.20.80	Other
	Electromechanical domestic appliances, with self-contained electric motor; parts thereof:
8509.10.00	Vacuum cleaners
8509.40.00	Food grinders, processors and mixers; fruit or vegetable juice extractors
	Electrical lighting or signaling equipment (excluding articles of heading 8539), windshield wipers, defrosters and demisters, of a kind used for cycles or motor vehicles; parts thereof:
	Windshield wipers, defrosters and demisters:
8512.40.40	Windshield wipers

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HTS Subheading	Article Description
	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:
	[Microwave ovens]
	Other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters:
8516.60.40	Cooking stoves, ranges and ovens
	Other electrothermic appliances:
8516.71.00	Coffee or tea makers
	Apparatus and equipment for photographic (including cinematographic) laboratories (including apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials), not specified or included elsewhere in chapter 90 of the HTS; negatoscopes; projection screens; parts and accessories thereof:
9010.10.00	Apparatus and equipment for automatically developing photographic (including cinematographic) film or paper in rolls or for automatically exposing developed film to rolls of photographic paper
	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:
	[Of base metal]
9405.10.80	Other
	Dolls representing only human beings and parts and accessories thereof:
9502.10.00	Dolls, whether or not dressed
	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.10.00	Electric trains, including tracks, signals and other accessories thereof; parts thereof
	[Reduced-size ("scale") model assembly kits, whether or not working models, excluding those of subheading 9503.10; parts and accessories thereof; other construction sets and constructional toys, and parts and accessories thereof; toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof; toy musical instruments and apparatus and parts and accessories thereof; puzzles and parts and accessories thereof; other toys, put up in sets or outfits, and parts and accessories thereof; other toys and models, incorporating a motor, and parts and accessories thereof]
9503.90.00	Other
	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
	Articles for Christmas festivities and parts and accessories thereof:
	Christmas ornaments:
9505.10.10	Of glass
	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating styli; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609:
9608.10.00	Ball point pens

[FR Doc. 98–30225 Filed 11–9–98; 8:45 am]
BILLING CODE 3190–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Draft Advisory Circular (AC) No. 120–29A, Criteria for Approval of Category I and Category II Weather Minima for Approach

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a draft advisory circular.

SUMMARY: This notice announces the availability of a draft AC, recommended by the Aviation Rulemaking Advisory Committee (ARAC), which provides information and guidance on obtaining and maintaining approval of Category I and II Weather Minima, including installation and approval of associated aircraft systems. This draft AC would replace AC 120–29 and represents the first steps of harmonization efforts of the Federal Aviation Administration, the European Joint Aviation Authority, and other regulatory authorities. This notice solicits public comment on the draft AC.

DATES: Comments on the draft AC must be received on or before January 11, 1999.

ADDRESSES: To obtain a copy of the draft AC or to send comments on the draft AC, please contact Yolanda Hill, Flight Technologies and Procedures Division (AFS–410), Room 835, Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC 20591; telephone: (202) 267–3728. The draft AC may also be accessed on the Internet at www.faa.gov/AVR/afs/afs410/afs410.htm.

FOR FURTHER INFORMATION CONTACT: Technical questions should be addressed to Jim Enias, Technical Programs Division (AFS–400), Federal Aviation Administration, Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7211.

Comments Invited

The FAA invites interested parties to submit comments on this draft AC, as recommended by the ARAC. Commenters should identify AC 120–29A and submit comments to the person and address listed above. The FAA will consider all communications received on or before the closing date for comments before completing its review of this ARAC recommended AC. The recommended draft AC and comments received may be inspected at the Office of Flight Standards Service, Technical Programs Division, Room 835, Federal Aviation Administration (Federal Office Building 10A), between the hours of 9:00 a.m. and 5:00 p.m. weekdays, except Federal holidays.

Background

This draft AC was received from the ARAC in August 1998. The AC recommended by the ARAC would set forth an acceptable means, but not the only means, of obtaining and maintaining approval of operations in Category I and II landing weather minima and low visibility approach criteria including the installation and approval of associated aircraft systems. It includes additional or revised Category I and II criteria for use in conjunction with heads-up displays, use of required navigation performance, satellite navigation sensors, and "engine inoperative" Category II criteria.

This draft AC should be reviewed in conjunction with the regulatory requirements of 14 CFR parts 121, 125, and 135, as applicable. This draft AC would not change, add, or delete any regulatory requirement or authorize any deviation from parts 121, 125, or 135.

The FAA is currently reviewing this ARAC recommendation and may make revisions to this document before it is issued. These revisions may include editorial changes to ensure that this AC does not impose requirements on operators independent of the current regulations. The regulations themselves, referenced in the draft AC, may be reviewed for revisions, as appropriate. It should be noted that the draft AC explicitly states that nothing in it is intended to preclude an operator from proposing and demonstrating to the FAA its ability to operate to Category I and II minima with a different equipment configuration, or alternatively to a runway visual range minima lower than presently described in this document.

If, after review of this recommendation, the FAA decides to make any substantive changes in the draft AC, the revised document will be made available again for comment before final issuance.

This draft revision incorporates changes resulting from the first steps toward international all weather operations criteria harmonization taken by the FAA, JAA, and several other regulatory authorities. Subsequent revisions of this AC are planned as additional all weather operations harmonization items are agreed and completed by FAA and JAA, or internationally.

Issued in Washington, DC on November 4, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

[FR Doc. 98–30093 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Dockert No. MARAD–98–4661]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Chief, Division of Marine Insurance, Office of Subsidy and Insurance, Maritime Administration, MAR–575, Room 8117, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–4161 or FAX 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: War Risk Insurance.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0011.

Form Numbers: MA–355; MA–528; MA–742; MA–828; and, MA–942.

Expiration Date of Approval: August 31, 1999.

Summary of Collection of Information: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, (46 App. U.S.C. 1282), the Secretary of the U.S. Department of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. This collection is required for the program. It consists of forms MA–355; MA–528; MA–742; MA–828; and MA–942.

Need and Use of the Information: The collected information is necessary to determine the eligibility of the applicant and the vessel(s) for participation in the war risk insurance program.

Description of Respondents: Vessel(s) owner or charterer interested in participation in MARAD's war risk insurance program.

Annual Responses: 1730.

Annual Burden: 930 hours.

Comments: Signed written comments should refer to the docket number that appear at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By Order of the Maritime Administrator.

Dated: November 4, 1998.

Joel C. Richard,

Secretary.

[FR Doc. 98–30080 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Information Collection Available for Public Comments and Recommendations; Correction

Notice Document 98–29414 appearing on page 59359, in the issue of Tuesday, November 3, 1998 cites an incorrect Docket Number for this proceeding. The correct Docket Number is "Docket No. MARAD–98–4661".

Dated: November 3, 1998.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 98–30081 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33657 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33657 [1] to permit the trackage rights to expire on December 31, 1998, in accordance with the agreement of the parties. [2]

DATES: This exemption will be effective on December 10, 1998. Petitions to reopen must be filed by November 30, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33657 (Sub-No. 1) must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on petitioner's representative Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 2, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30141 Filed 11–9–98; 8:45 am]

BILLING CODE 4915–00–P

[1] On September 3, 1998, UP filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway Company (BNSF) to grant temporary overhead trackage rights to UP over approximately 448 miles of BNSF's rail line between milepost 618.0 at Pueblo, CO, and milepost 170 at Peabody, KS. *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33657 (STB served Sept. 30, 1998). The exemption became effective on September 10, 1998, 7 days after the verified notice was filed.

[2] In the absence of an exemption as being granted here, trackage rights normally remain in effect unless discontinuance authority or approval of a new agreement is obtained. *See Milford—Bennington Railroad Company, Inc.—Boston and Maine Corporation and Springfield Terminal Railway Company,* Finance Docket No. 32103 (ICC served Sept. 3, 1993).

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–29: OTS No. 15554]

Citizens Bank, FSB, Salisbury, NC; Approval of Conversion Application

Notice is hereby given that on October 29, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Citizens Bank, FSB, Salisbury, North Carolina, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309.

Dated: November 4, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–30009 Filed 11–9–98; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–30: OTS No. 5766]

Ogdensburg Federal Savings and Loan Association, Ogdensburg, New York; Approval of Conversion Application

Notice is hereby given that on October 30, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Ogdensburg Federal Savings and Loan Association, Ogdensburg, New York, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of

Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 4, 1998.

By the Office of Thrift Supervision,

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–30010 Filed 11–9–98; 8:45 am]

BILLING CODE 6720–01–P

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November 10, 1998

Part II

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4378–N–01]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from January 1, 1998 through March 31, 1998.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), HUD is required to make public all approval actions taken on waivers of regulations. This notice is the twenty-ninth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the Reform Act), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This is the twenty-ninth notice of its kind to be published under section 106 of the Reform Act. This notice updates HUD's waiver-grant activity from January 1, 1998 through March 31, 1998.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 58.73 (involving the waiver of a provision in 24 CFR part 58) would come early in the sequence, while waivers of 24 CFR part 990 would be among the last matters listed.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.)

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between April 1, 1998 through June 30, 1998.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: November 4, 1998.

Andrew Cuomo,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development January 1, 1998 through March 31, 1998

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

For items 1 and 2, waivers granted for 24 CFR part 5, contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

1. Regulation: 24 CFR 5.613.

Project/activity: A request was made by the Chicago Housing Authority (CHA), of Chicago, IL, to permit the establishment of ceiling rents for its entire low-rent inventory.

Nature of requirement: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30 percent of Monthly Adjusted Income; (2) 10 percent of monthly income; (3) if the family receives Welfare assistance from a public agency and a part of such payments is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated; or (4) the minimum rent set by the PHA.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date granted: February 25, 1997.

Reason waived: The establishment of ceiling rents will permit the CHA to attract wage-earning, low-income applicants, and will help improve the CHA's current vacancy ratio.

2. Regulation: 24 CFR 5.613.

Project/activity: A request was made by the Stevens Point Housing Authority (SPHA), of Stevens Point, WI, to permit the establishment of ceiling rents for certain of its hard-to-rent units.

Nature of requirement: The total tenant payment a public housing agency (PHA) must charge shall be the highest of the following, rounded to the nearest dollar: (1) 30 percent of Monthly Adjusted Income; (2) 10 percent of

Monthly Income; (3) if the family receives Welfare assistance from a public agency and a part of such payments is specifically designated by such agency to meet the family's housing costs, the monthly portion of such payments which is so designated; or (4) the minimum rent set by the PHA.

Granted by: Kevin Emanuel Marchman, Acting Assistant Secretary for Public and Indian Housing.

Date granted: March 14, 1997.

Reason waived: The establishment of ceiling rents will permit the SPHA to reduce their vacancy rate and attract a wider range of low-income families.

For items 3 through 24, waivers granted for 24 CFR parts 42, 91, and 92, contact: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

3. Regulation: 24 CFR 42.375.

Project/activity: The State of Ohio requested a waiver of the one-for-one replacement requirements for the use of Community Development Block Grant (CDBG) supplemental disaster appropriations.

Nature of requirement: Section 101(c) of the Housing and Community Development Act of 1974, and the implementing regulations at 24 CFR 42.375 require that lower-income dwelling units that are demolished in connection with a CDBG-assisted activity be replaced with comparable lower-income dwelling units.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date granted: January 8, 1998.

Reasons waived: HUD waived the regulations to allow the State to implement a voluntary program to acquire properties in a flood plain and maintain the properties for open space or recreational purposes. Such property use is required by the Hazard Mitigation Grant Program administered by the Federal Emergency Management Agency (FEMA).

4. Regulation: 24 CFR 42.375.

Project/activity: The State of Indiana requested a waiver of the one-for-one replacement requirements for the use of Community Development Block Grant (CDBG) supplemental disaster appropriations.

Nature of requirement: Section 101(c) of the Housing and Community Development Act of 1974, as amended and implementing regulations at 24 CFR 42.375 require that lower-income dwelling units that are demolished in connection with a CDBG-assisted activity be replaced with comparable lower-income dwelling units.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date granted: March 18, 1998.

Reasons waived: HUD waived the regulation to permit the State to acquire and demolish 79 properties in the flood plain, as part of the State's Hazard Mitigation Grant Program.

5. Regulation: 24 CFR 91.10(b).

Project/activity: The State of Maine requested a waiver of the requirement that a jurisdiction notify HUD in writing regarding changes in its program year.

Nature of requirement: HUD's Consolidated Plan regulations at 24 CFR 91.10(b) require that once a jurisdiction's program year is established, the jurisdiction may either shorten or lengthen its program year provided that it notifies HUD in writing at least two months before the change in the program year.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date granted: March 26, 1998.

Reasons waived: The waiver permitted the State to: (1) Expedite the distribution of funds to homeowners who may have not been eligible for disaster funds; (2) Respond to public forum requests for changes; and (3) Make the change prior to the beginning of citizen participation cycle for the five year consolidated plan.

6. Regulation: 24 CFR 91.225(b)(4).

Project/activity: Lakewood, Ohio requested that it be permitted to modify its selected time period for complying with the requirement that it expend at least 70 percent of its Community Development Block Grant (CDBG) funds for activities that benefit low and moderate income persons.

Nature of requirement: HUD's Consolidated Plan regulations at 24 CFR 91.225(b)(4) provide that each CDBG grantee must certify that it will achieve the primary objective of the CDBG program (using program money for activities that benefit low and moderate income persons).

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: January 9, 1998.

Reasons Waived: The City of Lakewood planned to address a critical infrastructure need of the City by undertaking a large slums and blight project. The City would have been unable to meet the financial needs of this project if the waiver had been denied.

7. Regulation: 24 CFR 92.252(b).

Project/Activity: The City of New York requested a waiver of the HOME program regulation relating to the calculation of rents charged for units occupied by very low income households. The City requested that it be permitted to adjust the rents for 103 of these units by using the Section 8 program rents instead.

Nature of Requirement: HUD's HOME program regulations at 24 CFR 92.252(b) require that rental projects with five or more HOME-assisted rental units, 20 percent of the HOME-assisted units must be occupied by very low income families. Further, § 90.252(b) a cap on the maximum rent that can be charged to these families (30 percent of the family's annual or adjusted income, depending on the median income of the area).

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: February 18, 1998.

Reasons Waived: HUD granted the waiver because the restructuring of rents for 103 units would have imposed an administrative burden on the City.

8. Regulation: 24 CFR 92.254.

Project/Activity: Washington County, Oregon requested a waiver of the requirement that property be transferred to a homebuyer within 42 months after project completion. This waiver would extend the maximum lease period to 60 months for low income first time homebuyers.

Nature of Requirement: HUD's HOME program regulations at 24 CFR 92.254(a) require that property be transferred to a homebuyer within forty-two (42) months after project completion.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 16, 1998.

Reasons Waived: The waiver was granted because it would allow potential lease purchasers of 14 new construction townhouses sufficient time to accumulate funds for downpayments and closing costs.

For Item 9, Waiver Granted for 24 CFR Part 203, Contact: Mark Holman, Chief, Mortgage Underwriting and Insurance Branch, Home Mortgage Insurance Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 9270, Washington, D.C. 20410–7000; telephone: (202) 708–1220 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

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9. Regulation: 24 CFR 203.49(c).

Project/Activity: Waiver of the requirements of 24 CFR 203.49(c) to extend the initial adjustment dates for adjustable rate mortgage (ARM) loans beyond the 12 to 18 month window currently provided for in the regulation.

Nature of Requirement: The regulation provides that lenders may extend the initial interest rate adjustment dates on ARM loans thus rendering the loans eligible for placement in Ginnie Mae pools. Ineligibility of the loans for delivery to Ginnie Mae would result in financial hardship to the mortgagee and will not have an adverse impact on any mortgagors.

Granted by: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner and Art Agnos, Acting General Assistant Secretary for Housing-Federal Housing Commissioner.

Dates Granted: Four waivers: two on March 23, 1998 and two on January 8, 1998.

Reasons Waived: Mortgagees (Banc One, Homeside Lending and HomeTrust) requested to extend the initial change date for ARM loans beyond the 12–18 month window period as required by 24 CFR 203.49(c). Approving the waiver enabled the lender to securitize the loans and rendered no harm to the borrowers or the Department.

For Items 10 Through 25, Waivers Granted for 24 CFR Parts 570 and 576, Contact: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

10. Regulation: 24 CFR 570.1(c) (which codifies section 101(c) of the Housing and Community Development Act of 1974, as amended).

Project/Activity: Rapid City, South Dakota requested a waiver of the requirement that at least 50 of its HUD disaster recovery funds be used for activities which benefit low- and moderate-income persons.

Nature of Requirement: Section 101(c) of the Housing and Community Development Act of 1974, as amended (which HUD has codified in its CDBG regulations at 24 CFR 570.1(c)) requires that CDBG funds principally benefit low and moderate income persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: February 27, 1998.

Reasons Waived: Chapter 10 of Title II of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters authorizes HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of disaster recovery funds in a federal disaster area. The Assistant Secretary granted the waiver because the City indicated little disaster effect on low and moderate income residents.

11. Regulation: 24 CFR 570.1(c) (which codifies section 101(c) of the Housing and Community Development Act of 1974, as amended).

Project/Activity: Grand Forks County, North Dakota requested a waiver of the requirement that at least 50 of its HUD disaster recovery funds be used for activities which benefit low- and moderate-income persons.

Nature of Requirement: Section 101(c) of the Housing and Community Development Act of 1974, as amended (which HUD has codified in its CDBG regulations at 570.1(c)) requires that CDBG funds principally benefit low- and moderate-income persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 12, 1998.

Reasons Waived: Chapter 10 of Title II of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters authorizes HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of disaster recovery funds in a federal disaster area. The Assistant Secretary determined that the County's proposal to use its allocation to rebuild county offices that would house social service offices, sheriff/correctional offices, and emergency offices, served a public purpose.

12. Regulation: 24 CFR 570.1(c) (which codifies section 101(c) of the Housing and Community Development Act of 1974, as amended).

Project/Activity: Traill County, North Dakota requested a waiver of the requirement that at least 50 of its HUD disaster recovery funds be used for activities which benefit low and moderate income persons.

Nature of Requirement: Section 101(c) of the Housing and Community Development Act of 1974, as amended (which HUD has codified in its CDBG regulations at 570.1(c)) requires that program funds principally benefit low and moderate income persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 12, 1998.

Reasons Waived: Chapter 10 of Title II of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters authorizes HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of disaster recovery funds in a federal disaster area. The requirement was waived because all unmet needs of low and moderate income disaster victims were addressed.

13. Regulation: 24 CFR 570.1(c) (which codifies section 101(c) of the Housing and Community Development Act of 1974, as amended).

Project/Activity: Pembina County, North Dakota requested a waiver of the requirement that at least 50 percent of its HUD disaster recovery funds be used for activities which benefit low- and moderate-income persons.

Nature of Requirement: Section 101(c) of the Housing and Community Development Act of 1974, as amended (which HUD has codified in its CDBG regulations at 24 CFR 570.1(c)) requires that CDBG funds principally benefit low and moderate income persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 24, 1998.

Reasons Waived: Chapter 10 of Title II of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters authorizes HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of disaster recovery funds in a federal disaster area. The Assistant Secretary granted the waiver to allow HUD Disaster Recovery Initiative funds to assist disaster victims at all income levels, since other resources were being used to address the needs of low- and moderate-income people.

14. Regulation: 24 CFR 570.1(c) (which codifies section 101(c) of the Housing and Community Development Act of 1974, as amended).

Project/Activity: Mercer County, North Dakota requested a waiver of the requirement that at least 50 of its HUD disaster recovery funds be used for activities which benefit low- and moderate-income persons.

Nature of Requirement: Section 101(c) of the Housing and Community Development Act of 1974, as amended (which HUD has codified in its CDBG regulations at 24 CFR 570.1(c)) requires that CDBG program funds principally benefit low- and moderate-income persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 25, 1998.

Reasons Waived: Chapter 10 of Title II of the 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters authorizes HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of disaster recovery funds in a federal disaster area. The Assistant Secretary granted the waiver because the community lacked sufficient concentrations of lower income populations. Also, without the waiver the County would not be able to implement critically needed mitigation and repair projects, and other safety measures.

15. Regulation: 24 CFR 570.208(a)(3).

Project/Activity: The City of Oakland, California requested a waiver of the Community Development Block Grant (CDBG) regulations at 24 CFR 570.208(a)(3) to permit the use of CDBG funds to assist in the development of a mixed income single family housing project.

Nature of Requirement: The CDBG regulations at 24 CFR 570.208(a)(3) require, as a general rule, that CDBG-assisted housing structures principally benefit low- and moderate-income households.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: January 9, 1998.

Reasons Waived: The application of the regulations would have created undue hardship and adversely affected the purposes of the CDBG program because the City would have been unable to sell 49 percent of the homes to families at 120 percent of the area median income. If the City had been prohibited from doing so, a high level of additional resources would have been needed to make the project financially feasible. HUD determined that making this project financially possible met the purposes of the CDBG program.

16. Regulation: 24 CFR 570.208(a)(3).

Project/Activity: The City of St. Louis, Missouri requested a waiver of the Community Development Block Grant (CDBG) regulations at 24 CFR 570.208(a)(3) to permit the use of CDBG funds to assist in converting two non-residential structures into mixed income residential structures where less than 51 percent of the units in each structure will be occupied by low and moderate income households.

Nature of Requirement: The CDBG regulations at 24 CFR 570.208(a)(3) require, as a general rule, that CDBG-assisted housing structures principally benefit low- and moderate-income households.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: January 9, 1998.

Reasons Waived: The application of the regulation would have adversely affected the purposes of the CDBG program by impeding the provision of affordable housing in the central business district. Denial of the waiver request would have adversely impacted affect the City's ability to create mixed income housing development in the central city.

17. Regulation: 24 CFR 570.309.

Project/Activity: Milwaukee and Waukesha Counties, Wisconsin requested a waiver of the regulation that restricts assistance of activities outside the jurisdiction of the Community Development Block Grant (CDBG) recipient to those that benefit residents within the grantee's jurisdiction.

Nature of Requirement: HUD's CDBG regulations at 24 CFR 570.309 provides that a grantee can only provide CDBG funds for an activity outside of the grantee's jurisdiction if certain conditions are met. First, the grantee must determine that the activity is needed to further the purposes of the CDBG program and the grantee's community's development objectives. Secondly, the grantee must determine that reasonable benefits from the activity will accrue to residents within the jurisdiction of the grantee.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 13, 1998.

Reasons Waived: The 1997 Emergency Supplemental Appropriations Act for Recovery from Natural Disasters authorizes HUD to suspend certain statutory and regulatory provisions that would otherwise apply to the use of disaster recovery funds in a federal disaster area. The regulatory requirement was waived because the needs of low- and moderate-income disaster victims were being addressed by the Counties.

18. Regulation: 24 CFR 576.21.

Project/Activity: The Government of Puerto Rico, requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: January 30, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The Commonwealth provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources, therefore, it was determined that the waiver was appropriate.

19. Regulation: 24 CFR 576.21.

Project/Activity: The State of New York, requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: January 30, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources. Accordingly, HUD determined that the waiver was appropriate.

20. Regulation: 24 CFR 576.21.

Project/Activity: New York City, New York requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C.

11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: February 10, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources. Accordingly, HUD determined that the waiver was appropriate.

21. Regulation: 24 CFR 576.21.

Project/Activity: The State of Wisconsin requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: February 17, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources. Accordingly, HUD determined that the waiver was appropriate.

22. Regulation: 24 CFR 576.21.

Project/Activity: The City of Binghamton, New York requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: February 26, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources. Accordingly, HUD determined that the waiver was appropriate.

23. Regulation: 24 CFR 576.21.

Project/Activity: The City of Colorado Springs, Colorado requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 10, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The City provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources. Accordingly, HUD determined that the waiver was appropriate.

24. Regulation: 24 CFR 576.21.

Project/Activity: The State of California requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 26, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The State provided a letter that demonstrated that other categories of ESG activities will be carried out locally with other resources. Accordingly, HUD determined that the waiver was appropriate.

25. Regulation: 24 CFR 576.35.

Project/Activity: The State of California requested a waiver of the Emergency Shelter Grants (ESG) Program regulations at 24 CFR 576.35(a)(2)(ii).

Nature of Requirement: HUD's regulations at 24 CFR 576.35(a)(2)(ii) requires that State recipients receiving grants for homeless prevention activities must spend the funds within 180 days from the date on which the State made the grant funds available to its recipient.

Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.

Date Granted: March 26, 1998.

Reasons Waived: The State requested the waiver in order to enable recipients to have funds available for prevention activities during the winter months.

For Item 26, Waiver Granted for 24 CFR Part 761, Contact: Bruce Knott, Director of Housing and Community Development, U.S. Department of Housing and Urban Development, National Office of Native American Programs, 1999 Broadway, Box 90, Denver, CO 80202; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

26. Regulation: 24 CFR 761.30(b).

Project/Activity: A request was made by the Pueblo of Acoma Housing Authority (PAHA) for an 18-month extension of their fiscal year 1995 Public and Indian Housing Drug Elimination Grant Program (PIHDEP) grant.

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Nature of Requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the PIHDEP program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Deborah Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 18, 1998.

Reason Waived: The original grant was awarded to the All Indian Pueblo Housing Authority (AIPHA), an umbrella housing authority that served 11 tribes in New Mexico, including the PAHA. When AIPHA was terminated, the grant was transferred to the newly-created PAHA, which wanted to implement the drug prevention/intervention and youth activities that were specified in the approved drug elimination comprehensive plan. A waiver of the regulations was granted to PAHA so that they would be able to successfully implement all drug elimination activities in their community by the end of the extended time frame.

For Items 27 Through 30, Waivers Granted for 24 CFR Part 761, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

27. Regulation: 24 CFR 761.30(b).

Project/Activity: Redevelopment and Housing Authority of the City of Portsmouth, Virginia; Public and Indian Housing Drug Elimination Program (Grant #VA36DEP0010195).

Nature of Requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Kevin E. Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: February 25, 1998.

Reason Waived: The waiver was granted in order to permit the Portsmouth Redevelopment and Housing Authority to complete its adult basic education and job training programs. These programs were not part of the Authority's original grant. Accordingly, the Authority needed the additional time to establish evaluation criteria and negotiate contracts for these programs.

28. Regulation: 24 CFR 761.30(b).

Project/Activity: Housing Authority of the City of York, Pennsylvania; Public and Indian Housing Drug Elimination Grant Program (Grant #PA26DEP0220195).

Nature of Requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Deborah Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 27, 1998.

Reason Waived: The waiver was granted in order to permit the York, Pennsylvania Housing Authority three additional months to complete its grant activities (such as foot patrols and other community police services). The extension will also allow the Housing Authority to purchase a van for drug-prevention activities.

29. Regulation: 24 CFR 761.30(b).

Project/Activity: Housing Authority of the City of Waycross, Georgia; Public and Indian Housing Drug Elimination Grant Program (Grant #GA06DEP0280195).

Nature of Requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Deborah Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 27, 1998.

Reason Waived: The waiver was granted to provide the Waycross Housing Authority with six additional months for completing its grant activities. The extension was necessary to permit the Housing Authority to use grant funds originally budgeted for policing activities to be used for other drug-prevention activities.

30. Regulation: 24 CFR 761.30(b).

Project/Activity: Housing Authority of the City of Concord, New Hampshire; Public and Indian Housing Drug Elimination Program (Grant #NH36DEP005–0195).

Nature of Requirement: The regulations state that the terms of the grant agreement may not exceed 24 months for the Public and Indian Housing Drug Elimination Grant Program and that only one 6-month extension is allowed. If the grant funds are not expended at the end of the grant term, funds must be remitted to HUD.

Granted by: Deborah Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: March 27, 1998.

Reason Waived: The departure of the Concord Housing Authority's Executive Director and Drug Prevention Coordinator delayed the implementation of its Public and Indian Housing Drug Elimination Program grant. The extension of the grant term will permit the Housing Authority to use the remaining grant funds to install lighting in and around some of the Housing Authority buildings and on the street.

For Item 31, Waiver Granted for 24 CFR Part 811, Contact: James B. Mitchell, Acting Director, Special Projects Division, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Room 6164, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

31. Regulation: 24 CFR 811.104(b).

Project/Activity: Refunding of bonds which financed a HODAG assisted project in Palm Beach County, Florida (Spinnaker Landing Apartments, Project No. FL002–HG402).

Nature of Requirement: The regulation prohibits payment of a fee to a Housing Authority other than for actual expenses of a bond refunding transaction.

Granted by: Art Agnos, Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 15, 1998.

Reasons Waived: The refunding bonds were issued on terms which reduced debt service to strengthen the financial condition of the project, transferred ownership to a new entity, and redeemed 1988 bonds which were in default. The Palm Beach County Housing Authority received a fee of $32,500 for its participation in this transaction. Because this fee was paid by the project owner and not from refunding bond proceeds or from debt service reserve residual balances, good cause existed to waive § 811.104(b).

For Items 32 and 33, Waivers Granted for 24 CFR Part 882, Contact: Debbie Ann Wills, Field Management Officer, U.S. Department of Housing and Urban

Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

32. Regulation: 24 CFR 882.803(a)(3).
Project/Activity: The New England Shelter near Boston, Massachusetts proposed using Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) program funds to renovate a building located on the grounds of ■ Veterans Administration Memorial Hospital.
Nature of Requirement: HUD's regulation at 24 CFR 882.803(a)(3) provides that units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions are not eligible for Section 8 Moderate Rehabilitation SRO program funds.
Granted by: Saul Ramirez, Assistant Secretary for Community Planning & Development.
Date Granted: February 18, 1998.
Reasons Waived: The waiver was granted because of the organization's difficulty in finding an appropriate site. Failure to approve the waiver would have resulted in further delays for this project, which will provide much needed housing for the locality's homeless population.

33. Regulation: 24 CFR 882.408(a).
Project/Activity: The Metro Dade Housing Authority requested a waiver, to increase the Fair Market Rent (FMR) in its Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) program for a single project.
Nature of Requirement: HUD's regulation at 24 CFR 882.408(a) provides that rental housing assisted with SRO funds cannot charge rents that exceed the current Section 8 FMR.
Granted by: Saul Ramirez, Assistant Secretary for Community Planning and Development.
Date Granted: March 10, 1998.
Reasons Waived: The waiver was granted because the Housing Authority documented that the SRO rents in its locality were higher than the published FMR.

For Items 34 Through 38, Waivers Granted for 24 CFR Part 891, Contact: Willie Spearmon, Director, Office of Business Products, Office of Housing, U.S. Department of Housing and Urban Development. 451 Seventh Street, SW, Room 6134, Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

34. Regulation: 24 CFR 891.100(d).
Project/Activity: Dorothea Dix House.
Nature of Requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.
Granted by: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: January 15, 1998.
Reasons Waived: HUD approved the waiver request in order to assure the feasibility of the Dorothea Dix House.

35. Regulation: 24 CFR 891.100(d).
Project/Activity: Valentine Good Samaritan Housing Project.
Nature of Requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.
Granted by: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 3, 1998.
Reasons Waived: HUD approved the waiver request in order to assure the feasibility of the Valentine Good Samaritan Housing Project. The Sponsor had explored all avenues to save money in the design, labor and materials for the project before the approval of the waiver.

36. Regulation: 24 CFR 891.100(d).
Project/Activity: Jeffersontown Good Samaritan Housing Project.
Nature of Requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.100(d) provides that HUD may amend the amount of an approved capital advance only after initial closing has occurred.
Granted by: Art Agnos, Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: March 11, 1998.
Reasons Waived: HUD approved the waiver request in order to assure the feasibility of the Jeffersontown Good Samaritan Housing Project.

37. Regulation: 24 CFR 891.310(b).
Project/Activity: ARC HUD III, Inc.
Nature of Requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.310(b) establishes several accessibility requirements for the Section 811 Program of Supportive Housing for Persons with Disabilities and to Section 202 projects for non-elderly disabled families and individuals. Specifically, the regulation requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities. In projects for developmentally disabled or physically disabled persons, all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities.
Granted by: Nicolas P. Retsinas, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: February 23, 1998.
Reasons Waived: HUD approved the waiver to maintain project feasibility and facilitate project development. Requiring all four of the group homes involved in the project to be accessible would have made the project financially infeasible. The sponsor will make one of the homes fully accessible in accordance with the requirements § 891.310(b). Further, the project, as a whole, will comply with the requirements of Section 504 of the Rehabilitation Act of 1973.

38. Regulation: 24 CFR 891.310(b).
Project/Activity: Project Share V.
Nature of Requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.310(b) establishes several accessibility requirements for the Section 811 Program of Supportive Housing for Persons with Disabilities and to Section 202 projects for non-elderly disabled families and individuals. Specifically, the regulation requires that all entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities. In projects for chronically mentally ill individuals, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home, but at least one for each such space) must be designed to be accessible or adaptable for persons with disabilities.
Granted by: Art Agnos, Acting General Deputy Assistant Secretary for

Housing-Federal Housing Commissioner.

Date Granted: March 18, 1998.

Reasons Waived: HUD approved the waiver to maintain project feasibility and facilitate project development. Requiring all four of the group homes involved in the project to be accessible would have imperiled project feasibility. The sponsor will make one of the homes fully accessible in accordance with the requirements § 891.310(b). Further, the project, as a whole, will comply with the requirements of Section 504 of the Rehabilitation Act of 1973.

For Items 39 Through 64, Waivers Granted for 24 CFR Part 982, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

39. Regulation: 24 CFR 982.201(b).

Project/Activity: Southwestern Idaho Cooperative Housing Authority; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation limits eligibility for both the Section 8 rental certificate and rental voucher programs to specified categories of families.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: February 11, 1998.

Reason Waived: The waiver permitted two single parent families, that would have been eligible if they had applied separately, to continue living as a household sharing both expenses and the care of three disabled children in the household.

40. Regulation: 24 CFR 982.303(b).

Project/Activity: Cuyahoga Metropolitan Housing Authority, Ohio; Section 8 Rental Certificate and Rental Voucher Programs.

Nature of Requirement: The regulation provides for a maximum rental certificate/rental voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 6, 1998.

Reason Waived: The waiver covered 24 families who were issued rental certificates/vouchers for relocation as a result of termination of project-based Section 8 contracts due to HUD contract enforcement activities. The waivers were granted to prevent further hardship to the families who did not appear to have received adequate relocation assistance.

41. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the City of Alameda, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 6, 1998.

Reason Waived: Approval of the waiver prevented further hardship to a certificate holder whose illness prevented him from seeking housing during the time his certificate was in effect.

42. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of Snohomish County, Washington; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin E. Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 6, 1998.

Reason Waived: Approval of the waiver prevented further hardship to a certificate holder whose medical condition severely limited her ability to seek housing.

43. Regulation: 24 CFR 982.303(b).

Project/Activity: Portage Metropolitan Housing Authority, Ohio; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 22, 1998.

Reason Waived: The program participant was forced to move from her assisted housing due to the sale of the property. Approval of the waiver minimized disruption to the family. The waiver permitted the three children in the family to remain in the same school district, and the head of the household to continue her participation in HUD's Family Self-Sufficiency Program.

44. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the City of Los Angeles, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 28, 1998.

Reason Waived: Approval of the waiver prevented hardship for an elderly certificate holder who was confined to bed and unable to look for housing during much of the time his certificate was in effect.

45. Regulation: 24 CFR 982.303(b).

Project/Activity: Idaho Housing and Finance Association; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 28, 1998.

Reason Waived: Approval of the waiver provided extra search time for a certificate holder whose degenerative disorder made it difficult for him to seek housing.

46. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the County of Alameda, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 28, 1998.

Reason Granted: The waiver provided extra search time to a certificate holder who, as a result of her mobility impairment, faced special difficulties in locating a suitable unit.

47. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of Santa Clara County, California; Section 8 Rental Voucher Program.

Nature of Requirement: The regulation provides for a maximum rental voucher term of 120 days during which a rental voucher holder may seek housing to be leased under the program.

Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

Date Granted: January 28, 1998.
Reason Granted: Approval of the waiver prevented hardship to the voucher holder who, as a result of serious illness, was unable to seek housing during much of the time her voucher was in effect.

48. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of Alameda County, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: January 28, 1998.
Reason Waived: Approval of the waiver, which provided extra search time, helped prevent further hardship to this single parent family. The head of household could not seek housing during much of the time her rental certificate was in effect due to a variety of medical problems, including the serious injuries she suffered when struck by a car.

49. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of the City of Alameda, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: January 28, 1998.
Reason Waived: Approval of the waiver prevented hardship to an elderly certificate holder, who was unable to complete her planned move due to a heart attack.

50. Regulation: 24 CFR 982.303(b).
Project/Activity: Montgomery County Housing Authority, Pennsylvania; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: January 30, 1998.
Reason Waived: Approval of the waiver allowed the program participant to move to another State where she could receive specialized medical treatment. She was unable to complete the move at the time planned because of complications resulting from her illness.

51. Regulation: 24 CFR 982.303(b).
Project/Activity: Holbrook Housing Authority, Massachusetts; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 11, 1998.
Reason Waived: Approval of the waiver prevented hardship to a homeless certificate holder who suffers from Multiple Sclerosis. Her search for suitable housing was made extremely difficult by her illness and by the lack of adequate support in her housing search.

52. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of the County of Santa Clara, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 13, 1998.
Reason Waived: The waiver prevented hardship to an elderly certificate holder who, due to illness, was unable to seek housing during much of the time his certificate was in effect.

53. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of the County of Santa Clara, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 13, 1998.
Reason Waived: The waiver permitted the disabled certificate holder to find permanent housing located near her doctors. She was unable to seek housing during the required time period due to her hospitalization after suffering a series of strokes.

54. Regulation: 24 CFR 982.303(b).
Project/Activity: Linn-Benton Housing Authority, Oregon; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 13, 1998.
Reason Waived: The waiver permitted a disabled certificate holder to complete the necessary paperwork for moving into a suitable unit.

55. Regulation: 24 CFR 982.303(b).
Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 17, 1998.
Reason Waived: Approval of the waiver provided the certificate holder with additional time to seek housing. Coronary artery disease and other medical conditions severely limited the certificate holder's ability to seek housing during the time her rental certificate was in effect.

56. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of the County of Santa Clara, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 17, 1998.
Reason Waived: Approval of the waiver provided the elderly, mobility impaired certificate holder with additional time to find suitable housing. The certificate holder was unable to seek housing during the time her rental certificate was in effect due to poor health and lack of assistance in her housing search.

57. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of St. Louis County, Missouri; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.

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Date Granted: February 17, 1998.
Reason Waived: The waiver granted the certificate holder additional time to find suitable housing. The certificate holder was unable to seek housing during the required time period due to surgery and rehabilitation treatments.

58. Regulation: 24 CFR 982.303(b).
Project/Activity: Commonwealth of Massachusetts, Department of Housing and Community Development; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 17, 1998.
Reason Waived: The waiver was granted to protect the program participant from further hardship. The program participant was forced to move from her assisted unit because of domestic abuse. Her ability to find another suitable unit was severely limited by her serious health problems.

59. Regulation: 24 CFR 982.303(b).
Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: February 17, 1998.
Reason Waived: The waiver was granted to protect the family from further hardship. The family has special housing needs due to the medical condition of a child in the family and the illness of other family members. The medical condition of these family members made it difficult for the family to locate suitable housing during the term of the rental certificate.

60. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of Alameda County, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: March 6, 1998.
Reason Waived: The waiver was granted to prevent further hardship to a homeless family. The waiver provided additional time for the family to locate housing near the school and medical facilities used by the disabled son.

61. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of the County of Santa Clara, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: March 23, 1998.
Reason Waived: The waiver was granted to prevent hardship to a seriously ill certificate holder. The certificate holder was hospitalized during much of the time his certificate was in effect and was, therefore, unable to search for housing during that time.

62. Regulation: 24 CFR 982.303(b).
Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: March 23, 1998.
Reason Waived: The waiver granted the certificate holder, who was seriously ill during much of the time her certificate was in effect, additional time to find suitable housing.

63. Regulation: 24 CFR 982.303(b).
Project/Activity: Metro Housing and Redevelopment Authority; St. Paul, Minnesota; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: March 26, 1998.
Reason Waived: Approval of the waiver prevented further hardship to a disabled certificate holder. The certificate holder's ability to seek housing during the required time period was severely limited by a mobility impairment.

64. Regulation: 24 CFR 982.303(b).
Project/Activity: Housing Authority of the City of Los Angeles, California; Section 8 Rental Certificate Program.
Nature of Requirement: The regulation provides for a maximum rental certificate term of 120 days during which a certificate holder may seek housing to be leased under the program.
Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.
Date Granted: March 27, 1998.
Reason Waived: The waiver was granted to prevent hardship to a disabled certificate holder. The certificate holder suffers from multiple health problems that limited her ability to obtain suitable housing.

For Item 65, Waiver Granted for 24 CFR Part 990, Contact: Joan DeWitt, Director, Office of Funding and Financial Management Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–1872 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

65. Regulation: 24 CFR 990.109.
Project/Activity: Pennington County, South Dakota Housing and Redevelopment Commission (PCHRC).
Nature of Requirement: Under HUD's Performance Funding System (PFS) regulations at 24 CFR part 990, the energy conservation incentive that relates to energy performance contracting currently applies to only PHA-paid utilities.
Granted by: Kevin Emanuel Marchman, Assistant Secretary for Public and Indian Housing.
Date Granted: March 2, 1998.
Reason Waived: The PCHRC has *both* PHA-paid and tenant-paid utilities. A request was made to permit the PCHRC to benefit from energy performance contracting for developments which have tenant-paid utilities. The PCHRC estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities. The waiver permits the PCHRC to exclude from its PFS calculation of rental income increased rental income due to the difference between updated baseline utility allowances (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

[FR Doc. 98–30124 Filed 11–9–98; 8:45 am]
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Thomas Alva Edison Commemorative Coin Act (Oct. 31, 1998; 112 Stat. 3073)

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S. 2427/P.L. 105–345
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S. 2505/P.L. 105–346
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H.J. Res. 138/P.L. 105–350

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S. 538/P.L. 105–351

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S. 744/P.L. 105–352

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S. 1260/P.L. 105–353

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S. 2524/P.L. 105–354

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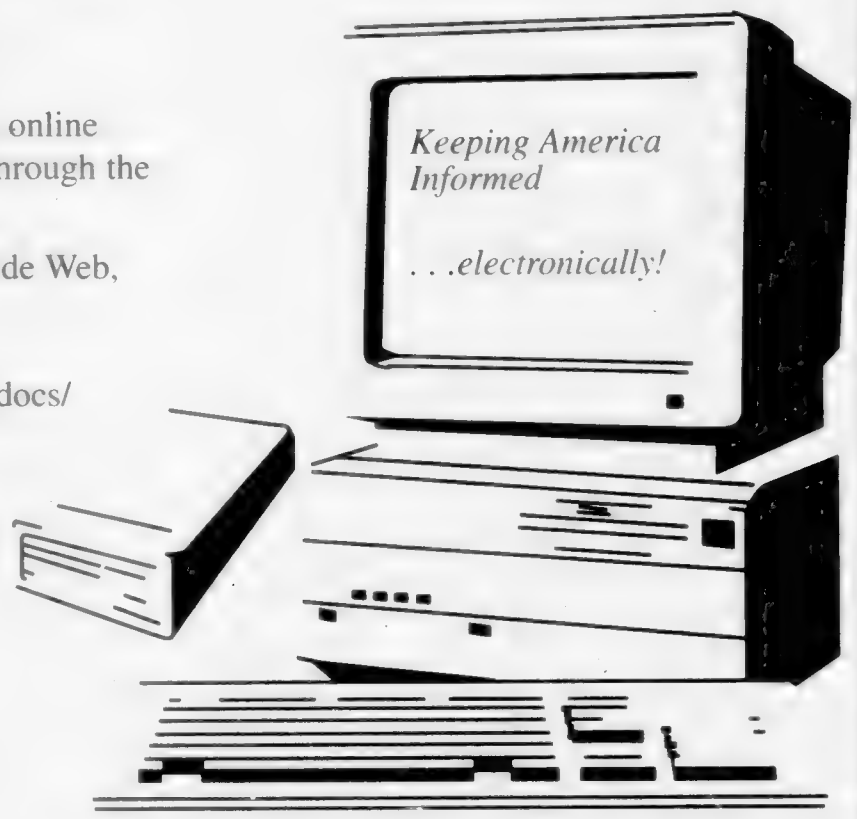

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Federal Register

Thursday
November 12, 1998

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VOL 63 ISS 218 NO 12 1998 UMI

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponosred by the Office of the Federal Register.

WHAT: Free public breifings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: Tuesday, Nov. 24, 1998 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 7146 of November 9, 1998

Veterans Day, 1998

By the President of the United States of America

A Proclamation

This year on Veterans Day, we celebrate the 80th anniversary of the armistice that finally silenced the guns of World War I. Millions of brave Americans marched into Europe and into the brutality of trench warfare to fight that war. Although President Woodrow Wilson recognized that "it is a fearful thing to lead this great peaceful people into war," he also realized that it was important to do so "for the things which we have always carried nearest our hearts—for democracy, for the right of those who submit to authority to have a voice in their own Governments . . . ." The veterans of the First World War accepted this burden and privilege, which American men and women in uniform have borne throughout the decades and still bear today.

At Cantigny, St. Mihiel, Chateau-Thierry, Belleau Wood, and the Meuse-Argonne, American soldiers withstood the onslaughts of the enemy and, with extraordinary valor and unbending determination, turned the tide of battle and won a signal victory for democracy. Our Nation has been truly blessed by the service of these veterans who set an extraordinary example of courage and devotion to country that inspired the generations of Americans who followed them into the Armed Forces.

Through two world wars, through long and costly struggles against aggression in Korea and Vietnam, through conflict in the Persian Gulf, and in numerous peacekeeping and humanitarian missions, America's veterans have risked their lives and spilled their blood to keep faith with our Nation's fundamental values of freedom, democracy, and human dignity. We owe an enormous debt of gratitude to these patriots, whose service and sacrifice have allowed us to raise our children in a country blessed with peace and prosperity and to shape a brighter future for nations around the world.

In grateful recognition of the contributions of those who have served in our Armed Forces, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor America's veterans. On Veterans Day, we honor all those who have served in our Armed Forces, and we remember with deep respect those who paid the ultimate price for our freedom. America's veterans have answered the highest calling of citizenship, and they continue to inspire us with the depth of their patriotism and the generosity of their service.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Wednesday, November 11, 1998, as Veterans Day. I urge all Americans to acknowledge the courage and sacrifice of our veterans through appropriate public ceremonies and private prayers. I call upon Federal, State, and local officials to display the flag of the United States and to encourage and participate in patriotic activities in their communities. I invite civic and fraternal organizations, places of worship, schools, businesses, unions, and the media to support this national observance with suitable commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

[FR Doc. 98–30451
Filed 11–10–98; 8:45 am]
Billing code 3195–01–P

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Presidential Documents

Memorandum of October 27, 1998

Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the FY 97 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

(1) progress toward democratization in Burma;

(2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and

(3) progress made in developing a comprehensive, multilateral strategy to bring democracy to, and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council (SPDC) and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling these requirements to the appropriate committees of the Congress and to arrange for publication of this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, October 27, 1998.

[FR Doc. 98–30450
Filed 11–10–98; 8:45 am]
Billing code 4710–10–M

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Presidential Documents

Notice of November 9, 1998

Continuation of Iran Emergency

On November 14, 1979, by Executive Order 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency have been transmitted annually by the President to the Congress and the **Federal Register**. The most recent notice appeared in the **Federal Register** on October 1, 1997. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1998. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 9, 1998.

[FR Doc. 98–30452
Filed 11–10–98; 8:45 am]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
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Thursday, November 12, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 70

RIN 3150–AF87

Criticality Accident Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to give licensees of light-water nuclear power reactors greater flexibility in meeting the requirement that licensees authorized to possess more than a small amount of special nuclear material (SNM) maintain a criticality monitoring system in each area in which the material is handled, used, or stored. This action is taken as a result of the experience gained in processing and evaluating a number of exemption requests from such licensees and NRC's safety assessments in response to these requests that concluded that the likelihood of criticality was negligible.

EFFECTIVE DATE: The final rule is effective on December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–3224; e-mail: mtj1@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations to give persons licensed to construct or operate light-water nuclear power reactors the option of either meeting the criticality accident requirements of paragraph (a) through (c) of 10 CFR 70.24 in handling and storage areas for SNM, or electing to comply with certain requirements that are set forth in a new Section 50.68 in 10 CFR Part 50. The requirements in Section 50.68 are generally the requirements that the NRC has used to grant specific exemptions from the requirements of 10 CFR 70.24. In addition, the NRC is deleting the current text of Section 70.24(d) concerning the granting of specific exemptions from Section 70.24 because it is redundant to 10 CFR 70.14(a). Section 70.24(d) is rewritten to provide that the requirements in paragraphs (a) through (c) of 10 CFR 70.24 do not apply to holders of a construction permit or operating license for a nuclear power reactor issued under 10 CFR Part 50, or combined licenses issued under 10 CFR Part 52, if the holders comply with the requirements of 10 CFR 50.68(b).

II. Discussion

On December 3, 1997 (62 FR 63825), the NRC published a direct final rule in the **Federal Register** that would have provided persons licensed to construct or operate light-water nuclear power reactors with the option of either meeting the criticality accident requirements of paragraph (a) of 10 CFR 70.24 in handling and storage areas for SNM, or electing to comply with requirements that would be incorporated into 10 CFR Part 50 at 10 CFR 50.68. A direct final rule (62 FR 63825) and a parallel proposed rule (62 FR 63911) amending Parts 70 and 50 were published in the **Federal Register** on December 3, 1997. The statement of considerations for the direct final rule and the proposed rule stated that if significant adverse comments were received on the direct final rule, the NRC would withdraw the direct final rule and would address the comments in a subsequent final rule. Significant adverse comments were received from the public, and on February 25, 1998, the NRC published a notice withdrawing the direct final rule and revoking the regulatory text. Since the direct final rule had an effective date of February 17, 1998, it was necessary for the February 25, 1998 notice to revoke the regulatory text which became effective on February 17, 1998, as well as to withdraw the direct final rule. With the withdrawal and revocation, the proposed rule is the only regulatory proposal remaining. The NRC has determined to modify the proposed rule to address public comments and to make several editorial clarifications. The analysis of and response to the public comments to the proposed rule are set forth below.

III. Comments on the Proposed Rule

The NRC received comments on the December 3, 1997, proposed rule (62 FR 63911) from Commonwealth Edison, Carolina Power & Light Company, Southern Nuclear Operating Company, Nuclear Energy Institute, Northern States Power Company, Trojan Nuclear Plant, and Detroit Edison. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW. (Lower Level), Washington, DC. Many of the comment letters suggested editorial type changes, some of which have been incorporated into this final rule. The comments are classified into nine general comments and are addressed as follows:

Comment 1: The proposed rule should not prohibit licensees from applying for exemptions under the guidelines of 10 CFR 70.14 and should contain provisions to note that any existing approved exemptions remain valid.

Response: Even though the wording of paragraph (d) in the current version of 10 CFR 70.24, which provides for applying for exemptions should "good cause" exist, is being deleted, licensees are not prohibited from applying for such exemptions under the guidelines of paragraph (a) of 10 CFR 70.14, "Specific Exemptions."

The standard for issuance of exemptions under Section 70.14 is essentially the same as the "good cause" criterion in paragraph (d) of Section 70.24. Therefore, its removal from Section 70.24(d) will not change the standard for, or otherwise serve to limit the granting of, exemptions to Section 70.24.

This rulemaking does not affect the status of exemptions to the requirements of Section 70.24 that were previously granted by the NRC. A licensee currently holding an exemption to Section 70.24 may continue operation under its existing exemption (including any applicable conditions imposed as part of the granting of the exemption) and its current programs and commitments without any further action. Alternatively, a licensee

currently holding exemptions to Section 70.24 may elect to comply with the new alternative provided under Section 50.68(b), but if it does so, its exemption would be inapplicable and would not serve as a basis for avoiding compliance with the criteria listed in Section 50.68(b). A licensee whose exemption was issued as part of its operating license and whose exemption contained conditions imposed as part of the granting of the exemption, need not apply for a license amendment to delete the exemption conditions as a prerequisite for complying with Section 50.68(b).

Comment 2: For many BWRs, optimum moderation calculations are not performed for the fresh fuel storage racks because administrative controls are in place to preclude these conditions. In accordance with vendor recommendations, compensatory measures have been established to preclude an optimum moderation condition in the fresh fuel storage racks. The rule should contain a provision that exempts this requirement if adequate controls have been established to preclude an optimum moderation condition.

Response: The NRC agrees and has added the following provision to 10 CFR 50.68(b)(3): "This evaluation need not be performed if administrative control and/or design features prevent such moderation, or if fresh fuel storage racks are not used."

Comment 3. The rule should eliminate the reference to General Design Criterion 63 (GDC 63) and should describe the underlying monitoring requirements.

Response: The reference to GDC 63 was initially incorporated to ensure that licensees receiving an exemption to 10 CFR 70.24 would not erroneously view the exemption as the basis for removing from the spent fuel pool area radiation monitors that were installed to meet other monitoring requirements, such as those contained in 10 CFR 20.1501 and GDC 63. This rule change does not affect these other monitoring requirements; therefore, referencing GDC 63 has been deleted.

Comment 4. Placing a limit on enrichment offers no direct safety benefit and should not be included.

Response: The NRC disagrees with the comment. The maximum allowable nominal enrichment of reactor fuel is currently limited to 5-weight percent on the basis of possible criticality concerns even in a dry environment, as well as currently approved extensions to 10 CFR 51.52 based on an environmental impact study for enrichments higher than 5-weight percent. Any future approved enrichment extension can be readily handled by modifying this criterion.

Comment 5. Replace "may not permit" with "shall prohibit the" in Criterion (1).

Response: The NRC agrees and has used the phrase suggested by the commenters.

Comment 6. Use of "pure water" and "unborated water" should be consistent.

Response: The NRC agrees. The final rule uses the term "unborated water."

Comment 7. Criteria (2) and (3) should not be applicable if the licensee does not use the fresh fuel storage racks.

Response: The NRC agrees and has added the following provision to 10 CFR 50.68 (b)(2) and (b)(3): "This evaluation need not be performed if administrative controls and/or design features prevent such moderation or if fresh fuel storage racks are not used."

Comment 8. The meaning of "transportation" in criterion (1) is unclear.

Response: The NRC agrees and has deleted the term.

Comment 9. The phrase "maximum permissible U–235 enrichment" in Criteria (2), (3), and (4) should be replaced by the phrase "maximum fuel assembly reactivity."

Response: The NRC agrees and has used the phrase suggested by the commenter.

IV. Section-by-Section Analysis

10 CFR 50.68

Paragraph (a) of Section 50.68 allows a nuclear power plant licensee (including a holder of either a construction permit or a combined operating license) the option of complying with Section 70.24 (a) through (c), or complying with the requirements in paragraph (b) of Section 50.68. The corresponding provision in Section 70.24 is paragraph (d).

Paragraph (b) sets forth eight specific requirements which a licensee must comply with so long as it chooses under the provisions of Section 50.68 to avoid compliance with the requirements of Section 70.24 (a) through (c).

A licensee currently holding an exemption to Section 70.24 may elect to comply with the new alternative provided under Section 50.68, but if it does so, its exemption to Section 70.24 is inapplicable to, and would not serve as a basis for avoiding compliance with the eight criteria in Section 50.68(b).

10 CFR 70.24

Paragraph (d)(1) of Section 70.24 allows a nuclear power plant licensee (including a holder of either a construction permit or a combined operating license) the option of complying with Section 70.24 (a) through (c), or complying with the requirements in 10 CFR Section 50.68. This paragraph is the corresponding provision to Section 50.68(a).

Paragraph (d)(2) clarifies that the status of exemptions to the requirements of Section 70.24 that were previously granted by the NRC continue unaffected by this rulemaking. A licensee currently holding an exemption to Section 70.24 may continue operation under its existing exemption (including any applicable conditions imposed as part of the grant of the exemption) and its current programs and commitments without any further action.

A license that seeks an exemption from the requirements of Section 70.24 must meet the criteria for an exemption under Section 70.14. The standard for issuance of exemptions remains unchanged from the old rule, since the Commission regards the former "good cause" criterion under the previous version of Section 70.24(d) as being essentially the same as the standard for issuance of exemptions under Paragraph 70.14.

V. Metric Policy

On October 7, 1992, the Commission published its final Policy Statement on Metrication. According to that policy, after January 7, 1993, all new regulations and major amendments to existing regulations were to be presented in dual units. The new addition and amendment to the regulations contain no units.

VI. Finding of No Significant Environmental Impact

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule, would not be a major Federal action significantly affecting the quality of the human environment; and therefore, an environmental impact statement is not required. The final rule provides an alternative to existing requirements on criticality monitoring. The alternative method contained in the final rule in the new Section 50.68 represents a codification of the criteria currently used by the NRC for granting exemptions from the criticality monitoring requirements in 10 CFR 70.24(a). These criteria provide an acceptable alternative for assuring that there are no inadvertent criticality events of special nuclear material at nuclear power reactors, which is the purpose of the criticality monitoring

requirements in Section 70.24(a). Experience over 15 years has demonstrated that the alternative criteria have been effective in preventing inadvertent criticality events, and the NRC concludes that as a matter of regulatory efficiency, there is no purpose to requiring licensees to apply for and obtain exemptions from requirements of Section 70.24(a) if they adhere to the alternative criteria in the new Section 50.68. Since the alternative contained in Section 50.68 provides an equally effective method for preventing inadvertent criticality events in nuclear power plants, the NRC concludes that the final rule will not have any significant impact on the quality of the human environment. Therefore, an environmental impact statement has not been prepared for this regulation. This discussion constitutes the environmental assessment for this rulemaking.

VII. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0009 and 3150–0011.

VIII. Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

IX. Regulatory Analysis

The current structure of the current 10 CFR 70.24 is overly broad and places a burden on a licensee to identify those areas or operations at its facility where the requirements are unnecessary, and to request an exemption if the licensee has sufficient reason to be relieved from the requirements. This existing structure has resulted in a large number of exemption requests.

To relieve the burden on power reactor licensees of applying for, and the burden on the NRC of granting exemptions, this amendment permits power reactor facilities with nominal fuel enrichments no greater than 5-weight percent of U–235 to be excluded from the scope of 10 CFR 70.24, provided they meet specific requirements being added to 10 CFR Part 50. This amendment is a result of the experience gained in processing and evaluating a number of exemption requests from power reactor licensees and NRC's safety assessments in response to these requests which concluded that the likelihood of criticality was negligible.

The only other viable option to this amendment is for the NRC to make no changes and allow the licensees to continue requesting exemptions. If no changes are made, the licensees will continue to incur the costs of submitting exemptions and NRC will incur the costs of reviewing them. Under this rule, an easing of the burden on licensees results from not having to request exemptions. Similarly, the NRC's burden will be reduced by avoiding the need to review and evaluate these exemption requests.

This rule is not a mandatory requirement, but an easing of burden action which results in regulatory efficiency. Also, the rule does not impose any additional costs on existing licensees and has no negative impact on public health and safety, but will provide savings to future licensees, and may provide some reduction in burden to current licensees whose current exemption includes conditions which are more restrictive than the requirements in Section 50.68. There will also be savings in resources to the NRC as well. Hence, the rule is shown to be cost beneficial.

The foregoing constitutes the regulatory analysis for this final rule.

X. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the NRC hereby certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensees of nuclear power plants. These licensee companies that are dominant in their service areas, do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, 5 U.S.C. 601, or the size standards adopted by the NRC (10 CFR 2.810).

XI. Backfit Analysis

The NRC has determined that this rule does not impose a backfit as defined in 10 CFR 50.109(a)(1), since it provides an alternative to existing requirements on criticality monitoring. Accordingly, the NRC has not prepared a backfit analysis for this rule.

XII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a "major rule" and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 70

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Parts 50 and 70:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

The authority citation for 10 CFR part 50 continues to read as follows:

1. **Authority:** Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80 and 50.81

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also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. Section 50.68 is added under the center heading "Issuance, Limitations, and Conditions of Licenses and Construction Permits" to read as follows:

§ 50.68 Criticality accident requirements.

(a) Each holder of a construction permit or operating license for a nuclear power reactor issued under this part or a combined license for a nuclear power reactor issued under Part 52 of this chapter, shall comply with either 10 CFR 70.24 of this chapter or the requirements in paragraph (b) of this section.

(b) Each licensee shall comply with the following requirements in lieu of maintaining a monitoring system capable of detecting a criticality as described in 10 CFR 70.24:

(1) Plant procedures shall prohibit the handling and storage at any one time of more fuel assemblies than have been determined to be safely subcritical under the most adverse moderation conditions feasible by unborated water.

(2) The estimated ratio of neutron production to neutron absorption and leakage (k-effective) of the fresh fuel in the fresh fuel storage racks shall be calculated assuming the racks are loaded with fuel of the maximum fuel assembly reactivity and flooded with unborated water and must not exceed 0.95, at a 95 percent probability, 95 percent confidence level. This evaluation need not be performed if administrative controls and/or design features prevent such flooding or if fresh fuel storage racks are not used.

(3) If optimum moderation of fresh fuel in the fresh fuel storage racks occurs when the racks are assumed to be loaded with fuel of the maximum fuel assembly reactivity and filled with low-density hydrogenous fluid, the k-effective corresponding to this optimum moderation must not exceed 0.98, at a 95 percent probability, 95 percent confidence level. This evaluation need not be performed if administrative controls and/or design features prevent such moderation or if fresh fuel storage racks are not used.

(4) If no credit for soluble boron is taken, the k-effective of the spent fuel storage racks loaded with fuel of the maximum fuel assembly reactivity must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with unborated water. If credit is taken for soluble boron, the k-effective of the spent fuel storage racks loaded with fuel of the maximum fuel assembly reactivity must not exceed 0.95, at a 95 percent probability, 95 percent confidence level, if flooded with borated water, and the k-effective must remain below 1.0 (subcritical), at a 95 percent probability, 95 percent confidence level, if flooded with unborated water.

(5) The quantity of SNM, other than nuclear fuel stored onsite, is less than the quantity necessary for a critical mass.

(6) Radiation monitors are provided in storage and associated handling areas when fuel is present to detect excessive radiation levels and to initiate appropriate safety actions.

(7) The maximum nominal U–235 enrichment of the fresh fuel assemblies is limited to five (5.0) percent by weight.

(8) The FSAR is amended no later than the next update which § 50.71(e) of this part requires, indicating that the licensee has chosen to comply with § 50.68(b).

PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

The authority citation for 10 CFR part 70 continues to read as follows:

1. Authority: Secs. 51, 53, 161, 182, 183, 68 Stat. 929, 930, 948, 953, 954, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2282, 2297f); secs. 201, as amended, 202, 204, 206, 88 Stat. 1242, as amended, 1244, 1245, 1246, (42 U.S.C. 5841, 5842, 5845, 5846).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 70.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 70.21(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 70.31 also issued under sec. 57d, Pub. L. 93–377, 88 Stat. 475 (42 U.S.C. 2077). Sections 70.36 and 70.44 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234).

Section 70.61 also issued under secs. 186, 187, 68 Stat. 955 (42 U.S.C. 2236, 2237). Section 70.62 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

2. In § 70.24, paragraph (d) is revised to read as follows:

§ 70.24 Criticality accident requirements.

* * * * *

(d)(1) The requirements in paragraphs (a) through (c) of this section do not apply to a holder of a construction permit or operating license for a nuclear power reactor issued under part 50 of this chapter or a combined license issued under part 52 of this chapter, if the holder complies with the requirements of paragraph (b) of 10 CFR 50.68.

(2) An exemption from § 70.24 held by a licensee who thereafter elects to comply with requirements of paragraph (b) of 10 CFR 50.68 does not exempt that licensee from complying with any of the requirements in § 50.68, but shall be ineffective so long as the licensee elects to comply with § 50.68.

Dated at Rockville, Maryland this 28th day of October, 1998.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 98–30253 Filed 11–10–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–217–AD; Amendment 39–10880; AD 98–23–13]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model Viscount 744, 745, 745D, and 810 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace Model Viscount 700, 800, and 810 series airplanes, that currently requires repetitive inspections to detect cracks and corrosion in the inboard and outboard engine nacelle structures on the wings; replacement of any cracked fittings and mating struts; and treatment or replacement of any corroded fittings or struts. This amendment requires repetitive inspections to detect cracking or corrosion of the eye end fittings of the outboard engine lower support or of the bore of the taper pin holes, and repair, if necessary. This amendment also limits the applicability of the existing AD. This amendment is prompted by reports of cracked and separated lower eye end fittings. The actions specified by this AD are intended to detect and correct cracking of the eye end fittings of the outboard engine lower support, which could result in reduced structural integrity of the engine nacelle support structures.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of December 17, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft Limited, Chadderton Division, Engineering Support, Greengate, Middleton, Manchester M24 1SA, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–20–17, amendment 39–6744 (55 FR 38539, September 19, 1990), which is applicable to all British Aerospace Model Viscount 700, 800, and 810 series airplanes, was published in the Federal Register on September 8, 1998 (63 FR 47440). The action proposed to require new repetitive inspections to detect cracking or corrosion of the eye end fittings of the outboard engine lower support or of the bore of the taper pin holes, and repair, if necessary. The action also proposed to limit the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 29 airplanes of U.S. registry that will be affected by this AD.

The new eddy current inspections that are required in this AD take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $3,480, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6744 (55 FR 38539, September 19, 1990), and by adding a new airworthiness directive (AD), amendment 39–10880, to read as follows:

98–23–13 British Aerospace Regional Aircraft Limited (Formerly British Aerospace Commercial Aircraft Limited, Vickers-Armstrongs Aircraft Limited): Amendment 39–10880. Docket 98–NM–217–AD. Supersedes AD 90–20–17, amendment 39–6744.

Applicability: Model Viscount 744, 745, and 745D series airplanes, on which British Aerospace Modification D3227 has not been accomplished; and Model Viscount 810 series airplanes, on which British Aerospace Modification FG 2103 has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the eye end fittings of the outboard engine lower support, which could result in reduced structural integrity of the engine nacelle support structures, accomplish the following:

(a) Perform an eddy current inspection to detect cracking or corrosion of the eye end fittings of the outboard engine lower support, or of the bore of the taper pin holes, in accordance with the Accomplishment Instructions of British Aerospace Preliminary Technical Leaflet (PTL) No. 326, Issue 2, including Appendices 1 and 2, all dated December 1, 1994 (for Model Viscount 744, 745, and 745D series airplanes); or PTL 197, Issue 3, including Appendices 1 and 2, all dated November 20, 1993 (for Model Viscount 810 series airplanes); at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD. Thereafter, repeat the inspection at intervals not to exceed 900 landings.

(1) For Model Viscount 744, 745, and 745D series airplanes: Inspect within 3 months after the effective date of this AD.

(2) For Model Viscount 810 series airplanes: Inspect within 900 landings after the last inspection performed in accordance with PTL 197, Issue 2, dated July 10, 1992; or within 3 months after the effective date of this AD; whichever occurs later.

(b) If any cracking is found during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with the following British Aerospace Regional Aircraft Preliminary Technical Leaflets, which contain the specified effective pages:

Preliminary technical leaflet referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
PTL 326, Issue 2, December 1, 1994	1–6	2	December 1, 1994.
	APPENDIX 1		
	1–6	2	December 1, 1994.
	APPENDIX 2		
	1–6	2	December 1, 1994.
PTL 197, Issue 3, November 20, 1993	1–8	3	November 20, 1993.
	APPENDIX 1		
	1–6	3	November 20, 1993.
	APPENDIX 2		
	1–7	Original	November 20, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft Limited, Chadderton Division, Engineering Support, Greengate, Middleton, Manchester M24 1SA, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 17, 1998.

Issued in Renton, Washington, on November 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30053 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–143–AD; Amendment 39–10879; AD 98–23–12]

RIN 2120–AA64

Airworthiness Directives; de Havilland Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all de Havilland Model DHC–7 series airplanes, that currently requires certain structural inspections, and repair, if necessary. This amendment requires an additional structural inspection. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking in certain significant structural areas, which could reduce the structural integrity of these airplanes.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of December 17, 1998.

The incorporation by reference of a certain other publication, as listed in the regulations, was approved previously by the Director of the Federal Register as of April 21, 1997 (62 FR 12531, March 17, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–06–08, amendment 39–9965 (62 FR 12531, March 17, 1997), which is applicable to all de Havilland Model DHC–7 series airplanes, was published in the **Federal Register** on September 3, 1998 (63 FR 46925). The action proposed to continue to require certain structural inspections, and repair, if necessary. The action also proposed to require an additional structural inspection.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 50 airplanes of U.S. registry that will be affected by this AD.

The inspections that are currently required by AD 97–06–08, and retained in this AD, take approximately 15 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on

U.S. operators is estimated to be $45,000, or $900 per airplane, per inspection cycle.

The new inspection that is required by this AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspection required by this AD on U.S. operators is estimated to be $9,000, or $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9965 (62 FR 12531, March 17, 1997), and by adding a new airworthiness directive (AD), amendment 39–10879, to read as follows:

98–23–12 De Havilland Inc.: Amendment 39–10879. 98–NM–143–AD. Supersedes AD 97–06–08, Amendment 39–9965.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure the continued structural integrity of these airplanes, accomplish the following:

Restatement of Requirements of AD 97–06–08, Amendment 39–9965:

(a) Within 6 months after April 21, 1997 (the effective date of AD 97–06–08, amendment 39–9965), incorporate into the FAA-approved maintenance inspection program the inspections and inspection intervals defined in DHC–7 Maintenance Manual, Product Support Manual (PSM) 1–7–2, Chapter 5–60–00, Temporary Revision TR 5–84, dated June 15, 1994; and inspect the significant structural items prior to the thresholds specified in TR 5–84 of PSM 1–7–2. Repeat the inspections thereafter at the intervals specified in TR 5–84 of PSM 1–7–2.

(b) Prior to further flight, repair any discrepancies detected during any inspection required by paragraph (a) of this AD in accordance with one of the following:

(1) The DHC–7 Maintenance Manual; or

(2) The DHC–7 Structural Repair Manual; or

(3) Other data meeting the certification basis of the airplane approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate; or

(4) Data meeting the certification basis of the airplane approved by Transport Canada Aviation.

New Requirements of this AD

(c) Incorporate into the FAA-approved maintenance inspection program the inspections and inspection intervals defined in the de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–99, dated December 22, 1997, at the applicable time specified in paragraph (c)(1) or (c)(2) of this AD; and inspect the significant structural items prior to the thresholds specified in TR 5–99 of PSM 1–7–2. Thereafter, repeat the inspection at the intervals specified in TR 5–99 of PSM 1–7–2.

(1) For airplanes that have accumulated 38,000 or more total flight cycles as of the effective date of this AD: Incorporate within 2,000 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 38,000 total flight cycles as of the effective date of this AD: Incorporate prior to the accumulation of 40,000 total flight cycles.

(d) Incorporate into the FAA-approved maintenance inspection program the inspections and inspection intervals as defined in the de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, PSM 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–97, dated December 22, 1997, at the applicable time specified in paragraph (d)(1) or (d)(2) of this AD; and inspect the significant structural items prior to the thresholds specified in TR 5–97 of PSM 1–7–2. Thereafter, repeat the inspection at the intervals specified in TR 5–99 of PSM 1–7–2.

(1) For airplanes that have accumulated 19,000 or more total flight cycles as of the effective date of this AD: Incorporate within 1,000 flight cycles after the effective date of this AD.

(2) For airplanes that have accumulated fewer than 19,000 total flight cycles as of the effective date of this AD: Incorporate prior to the accumulation of 20,000 total flight cycles.

(e) All inspection results, positive or negative, must be reported to de Havilland in accordance with "Introduction," paragraph 5, of de Havilland Inc. DASH 7 Maintenance Manual Chapter 5, Section 5–60–00, PSM 1–7–2, Temporary Revision TR 5–84, dated June 15, 1994. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections shall be done in accordance with DHC–7 Maintenance Manual, Product Support Manual (PSM) 1–7–2, Chapter 5–60–00, Temporary Revision TR 5–84, dated June 15, 1994; de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–99, dated December 22, 1997; and de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, PSM 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–97, dated December 22, 1997.

(1) The incorporation by reference of de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–99, dated December 22, 1997; and de Havilland Inc. DASH 7 Maintenance Manual, Chapter 5, Section 5–60–00, Product Support Manual (PSM) 1–7–2, Supplementary Inspection Program (SIP), Temporary Revision TR 5–97, dated December 22, 1997; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of DHC–7 Maintenance Manual, Product Support Manual (PSM) 1–7–2, Chapter 5–60–00, Temporary Revision TR 5–84, dated June 15, 1994, was approved previously by the Director of the Federal Register as of April 21, 1997 (62 FR 12531, March 17, 1997).

(3) Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–94–19R1, dated January 26, 1998.

(i) This amendment becomes effective on December 17, 1998.

Issued in Renton, Washington, on November 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30051 Filed 11–10–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–99–AD; Amendment 39–10877; AD 98–23–11]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–31 series airplanes, that requires a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary. This amendment is prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners of the forward service door doorjamb. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–31 series airplanes was published in the **Federal Register** on January 27, 1998 (63 FR 3852). That action proposed to require a one-time visual inspection to determine if all corners of the forward service door doorjamb have been modified previously, various follow-on repetitive inspections, and modification, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Allow Designated Engineering Representative (DER) Approval of Certain Repairs

One commenter requests that the FAA revise the proposed AD to permit repairs of cracked structure to be accomplished in accordance with the DER of The Boeing Company, Douglas Products Division, on a temporary basis, rather than in accordance with the Manager of the Los Angeles Aircraft Certification Office (ACO). The commenter states that such an approval would expedite the process for repair approval for a crack condition beyond the allowable repair limits (i.e., greater than 2 inches in length) and for existing repairs that are not accomplished in accordance with the DC–9 Structural Repair Manual (SRM) or Service Rework Drawing.

The FAA does not concur. While DER's are authorized to determine whether a design or repair method complies with a specific requirement, they are not currently authorized to make the discretionary determination as to what the applicable requirement is. However, the FAA has issued a notice (N 8110.72, dated March 30, 1998), which provides guidance for delegating authority to certain type certificate holder structural DER's to approve alternative methods of compliance for AD-required repairs and modifications of individual airplanes. The FAA is currently working with The Boeing Company, Douglas Products Division, to develop the implementation process for delegation of approval of alternative methods of compliance in accordance with that notice. Once this process is implemented, approval authority for alternative methods of compliance can be delegated without revising the AD.

Request To Revise Paragraph (e) of the Proposed AD

One commenter requests that paragraph (e) of the proposed AD be revised to read as follows:

"(e) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward doorjamb of the service door have been modified by FAA approved repairs other than the DC–9 SRM or Service Rework Drawing, prior to further flight, accomplish an initial Low Frequency Eddy Current inspection of the fuselage skin adjacent to the repair.

(e)(i) If no cracks are detected, within (6) months after the initial LFEC inspection, accomplish a repair approved by the Manager, Los Angeles ACO.

(e)(ii) If cracks are detected, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO."

This commenter states that, as paragraph (e) of the proposed AD is currently worded, it will cause an unnecessary operational impact since FAA-approved non-standard SRM or Service Rework Drawing repairs are known to exist for this area of the doorjamb. The commenter contends that obtaining approval for such repairs from the Los Angeles ACO, prior to further flight, will be time consuming and will result in an unwarranted extended ground time for the airplane.

The FAA does not concur with the commenter's request to revise paragraph (e) of the AD. The FAA, in conjunction with McDonnell Douglas, has conducted further analysis of this issue. The FAA has determined that, for doorjambs of the forward service door that are found to be modified previously, but not in accordance with the DC–9 SRM, an initial low frequency eddy current inspection of the fuselage skin adjacent to those existing repairs will not detect any cracking under the repairs. In light of this determination, no change to this final rule is necessary.

Request To Revise DC–9 Supplemental Inspection Document (SID)

One commenter requests that, prior to issuance of the final rule, the DC–9 SID be revised to incorporate the actions required by this proposed AD. The commenter states that such a revision will eliminate confusion between the DC–9 SID and the proposed AD. The FAA does not concur. The actions required by this AD are necessary to ensure inspection continuity for the affected Principal Structural Element (PSE). After issuance of the final rule, the manufacturer may revise the DC–9 SID.

Request To Revise Compliance Time for Low Frequency Eddy Current (LFEC) or X-ray Inspection

One commenter requests that the compliance time for the initial inspection (LFEC or x-ray) in paragraph (b) of the proposal be revised to correspond with those presently in the SID program—within three years after the effective date of the AD, or prior to 53,140 landings, whichever occurs later. The commenter points out that such a revision would permit its fleet to be inspected during major scheduled maintenance checks, which would reduce the burden of line maintenance and the number of line airplanes out of service as a result of any findings. The commenter agrees that the repetitive inspection interval should remain at 3,225 landings, as specified in the proposed rule.

The FAA does not concur with the commenter's request to revise the compliance time for the initial inspection specified in paragraph (b) of the AD. The commenter provided no technical justification for revising this interval. Fatigue cracking of the fuselage skin and doubler at the corners of the forward service door doorjamb is a significant safety issue, and the FAA has determined that the inspection threshold, as proposed, is warranted, based on the effectiveness of the inspection procedure to detect fatigue cracking. The FAA considered not only those safety issues in developing an appropriate compliance time for this action, but the recommendations of the manufacturer, and the practical aspect of accomplishing the required inspection within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. In light of these factors, the FAA has determined that the initial compliance time, as proposed, is appropriate.

Other Relevant Rulemaking

The FAA has revised the final rule to include a new paragraph (f). This new paragraph states that accomplishment of the inspection requirements of this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.033 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document) required by AD 96–13–03, amendment 39–9671 (61 FR 31009, June 19, 1996). Since this new paragraph is being added, the FAA has removed "NOTE 4," which is no longer necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 64 McDonnell Douglas Model DC–9–31 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 51 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required one-time visual inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the one-time visual inspection required by this AD on U.S. operators is estimated to be $3,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the LFEC or x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary LFEC or x-ray inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the HFEC inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary HFEC inspection is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification, it would take approximately 30 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,800 per airplane. Based on these figures, the cost impact of any necessary modification is estimated to be $6,600 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–23–11 McDonnell Douglas: Amendment 39–10877. Docket 97–NM–99–AD.

Applicability: Model DC–9–31 series airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the forward service door doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words "repair" and "modify/modification" in this AD and the referenced service bulletin are used interchangeably.

(a) Prior to the accumulation of 50,000 total landings, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the forward service door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have not been modified,* prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the forward service door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) Group 1, Condition 1. If no crack is detected during any LFEC or x-ray inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with the service bulletin.

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,225 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

(ii) *Option 2.* Prior to further flight, modify the corner skin of the forward service door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 2 inches or less in length: Prior to further flight, modify/repair the corners of the doorjamb of the forward service door in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 2 inches in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual, using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) *Option 1.* Prior to the accumulation of 6,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by paragraph (c)(1) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 3,000 landings.

(ii) If any crack is detected during any HFEC inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(2) *Option 2.* Prior to further flight, modify the corner skin of the forward service door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously in accordance with McDonnell Douglas DC–9 Structural Repair Manual, using an aluminum doubler, prior to the accumulation of 28,000 landings after accomplishment of that modification, or within 3,225 landings after the effective date of this AD, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997.

(1) If no crack is detected on the skin adjacent to the modification during the HFEC required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997: If the visual inspection required by paragraph (a) of this AD reveals that the corners of the forward service door doorjamb *have been modified* previously, but not in accordance with McDonnell Douglas Structural Repair Manual, prior to further flight, repair the corners in accordance with a method approved by the Manager, Los Angeles ACO.

(f) Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.033 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document) required by AD 96–13–03, amendment 39–9671.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) Except as provided by paragraphs (b)(1)(ii)(B), (b)(2)(ii), (b)(3), (c)(1)(ii), (c)(2)(ii), (d)(2), and (e) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin DC9–53–288, dated February 10, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 17, 1998.

Issued in Renton, Washington, on November 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30049 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–72–AD; Amendment 39–10876; AD 98–23–10]

RIN 2120–AA64

Airworthiness Directives; Burkhart GROB Luft-und Raumfahrt GmbH Model G 109B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Burkhart GROB Luft-und Raumfahrt GmbH (Grob) Model G 109B gliders. This AD requires inspecting the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing); and repairing any paint scratches, and repairing or replacing any engine mounting frame that is found damaged. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct damage to the engine mounting frame, which could result in failure of the engine mount structure with consequent loss of the engine.

DATES: Effective December 17, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–72–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Grob Model G 109B gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 2, 1998 (63 FR 46714). The NPRM proposed to require inspecting the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing); and repairing any paint scratches, and repairing or replacing any engine mounting frame that is found damaged. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Grob Service Bulletin TM 817–45, dated July 27, 1995.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 29 gliders in the U.S. registry will be affected by the

inspection, that it will take approximately 2 workhours per glider to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $3,480, or $120 per glider.

If damage is found on the engine mounting frame that is beyond certain limits specified in the service information, the FAA estimates that it will take approximately 13 workhours per glider to accomplish the repair or replacement, at an average labor rate of approximately $60 an hour. Parts cost $200 for repair and $750 for replacement. Based on these figures, the total cost impact of the repair, if necessary, is estimated to be $980 per glider. The total cost impact of the replacement, if necessary, is estimated to be $1,530 per glider.

Compliance Time of This AD

Although damage to the engine mounting frame occurs during flight, this unsafe condition is not a result of the number of times the glider is operated. The chance of this situation occurring is the same for a glider with 10 hours time-in-service (TIS) as it will be for a glider with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–23–10 Burkhart Grob Luft-und Raumfahrt GmbH: Amendment 39–10876; Docket No. 98–CE–72–AD.

Applicability: Model G 109B gliders, all serial numbers, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct damage to the engine mounting frame, which could result in failure of the engine mount structure with consequent loss of the engine, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, inspect the engine mounting frame for paint scratches and damage (abrasions, notches, or chafing) in accordance with the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995.

(b) If a paint scratch(es), but no damage, is found during the inspection required by paragraph (a) of this AD, prior to further flight, remove all flakes and dust from the area, degrease the tube and apply a protective anti-corrosion coat, and shorten the warm air duct or replace it if damaged. Accomplish the warm air duct modification or replacement in accordance with the maintenance manual.

(c) If a paint scratch(es) and damage are both found during the inspection required by paragraph (a) of this AD, accomplish the following:

(1) Prior to further flight, remove all flakes and dust from the area; and

(2) Perform the actions specified in paragraph (d) or (e) of this AD, as applicable. Accomplish these actions at the compliance times specified in the applicable paragraphs.

(d) If damage (abrasions, notches, or chafing) is found during the inspection required by paragraph (a) of this AD, and the damage is 0.7 millimeters (mm) or less in depth as specified in paragraph 3(b) of the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995, prior to further flight, degrease the tube and apply a protective anti-corrosion coat, and shorten the warm air duct or replace it if damaged. Accomplish the warm air duct modification or replacement in accordance with the maintenance manual. Within 6 calendar months after the inspection required by paragraph (a) of this AD, accomplish one of the following:

(1) Send the engine mounting frame to the manufacturer for repair at the address specified in paragraph (h) of this AD and accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD. Do not operate the glider until the part is repaired, sent back, and re-installed on the glider; or

(2) Replace the engine mounting frame with a new part of the same design, or an FAA-approved part that has been inspected in accordance with the requirements of paragraph (a) of this AD and is found free of damage.

(e) If damage (abrasions, notches, or chafing) is found during the inspection required by paragraph (a) of this AD, and the damage is more than 0.7 mm in depth as specified in paragraph 3(c) of the Action section of Grob Service Bulletin TM 817–45, dated July 27, 1995, prior to further flight, accomplish one of the following:

(1) Send the engine mounting frame to the manufacturer for repair at the address specified in paragraph (h) of this AD and accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD. Do not operate the glider until the part is repaired, sent back, and re-installed on the glider; or

(2) Replace the engine mounting frame with a new part of the same design, or an FAA-approved part that has been inspected in accordance with the requirements of paragraph (a) of this AD and is found free of damage. Accomplish the warm air duct modification or replacement specified in paragraph (b) of this AD.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be

forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(h) Questions or technical information related to Grob Service Bulletin TM 817–45, dated July 27, 1995, should be directed to Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(i) The inspection required by this AD shall be done in accordance with Grob Service Bulletin TM 817–45, dated July 27, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 95–362 Grob, dated September 27, 1995.

(j) This amendment becomes effective on December 17, 1998.

Issued in Kansas City, Missouri, on November 2, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30048 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–28]

Amendment to Class E Airspace; Fairbury, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Fairbury, NE.

DATES: The direct final rule published at 63 FR 49282 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 15, 1998 (63 FR 49282). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on the date.

Issued in Kansas City, MO on October 26, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30244 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–25]

Amendment to Class E Airspace; Muscatine, IA

AGENCY: Federal Aviation Administration [FAA], DOT

ACTION: Final rule.

SUMMARY: This amendment revises the Class E airspace area at Muscatine, IA, to accommodate the Global Positioning System (GPS) Runway (RWY) 6 and VHF Omnidirectional Range (VOR) RWY 24 Standard Instrument Approach Procedures (SIAPs) at Muscatine Municipal Airport. This action will provide for additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) for Instrument Flight Rules (IFR) operations at Muscatine Municipal Airport, Muscatine, IA. A minor correction is also being made in the geographic position coordinates of Port City VOR/DME.

EFFECTIVE DATE: 0901 UTC January 28. 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On September 3, 1998, the FAA proposed to amend part 71 of the Federal Regulations (14 CFR part 71) by revising the Class E airspace area at Muscatine, IA (63 FR 46936). The proposed action would provide additional controlled airspace to accommodate the GPS RWY 6 and VOR RWY 24 SIAPs at the Muscatine Municipal Airport. A minor correction is also being made in the geographic position coordinates of the Port City VOR/DME.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending from 700 feet or more above the surface of the earth are published in paragraphs 6005 of FAA Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) amends the Class E airspace area at Muscatine, IA, by providing additional controlled airspace for aircraft executing the GPS RWY 6 and VOR RWY 24 SIAPs to the Muscatine Municipal Airport. This action also corrects the geographic position coordinates of the Port City VOR/DME.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATIONS OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Muscatine, IA [Revised]

Muscatine Municipal Airport, IA
(Lat. 41°21′59″ N., long. 91°08′47″ W.)
Port City VOR/DME
(Lat. 41°22′10″ N., long. 91°08′36″ W.)
Muscatine NDB
(Lat. 41°21′44″ N., long. 91°08′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Muscatine Municipal Airport and within 2.6 miles each side of the 061° radial of the Port City VOR/DME extending from the 6.5-mile radius to 7 miles east of the airport and within 2.6 miles each side of the 248° bearing from the Muscatine NDB extending from the 6.5-mile radius to 7 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on October 7, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30243 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–35]

Amendment to Class E Airspace; Goodland, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Goodland, KS.

DATES: The direct final rule published at 63 FR 47153 is effective on 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 4, 1998 (63 FR 47153). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 7, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division Central Region.

[FR Doc. 98–30242 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–46]

Amendment to Class E Airspace; Concordia, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Blosser Municipal Airport, Concordia, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 17, GPS RWY 35, and Nondirectional Radio Beacon (NDB) NDB–A Standard Instrument Approach Procedures (SIAPs) to serve Blosser Municipal Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 17, GPS RWY 35, and NDB–A SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 17, GPS RWY 35, NDB–A SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 23, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–46, 601 East 12th Street, Kansas city, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 17, GPS RWY 35, and NDB–A SIAPs to serve the Blosser Municipal Airport, Concordia, KS. The amendment to Class E airspace at Concordia, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will

be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–46." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

According, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Concordia, KS [Revised]

Concordia, Blosser Municipal Airport, KS
(Lat. 39°32'57" N., long. 97°39'08" W.)
Concordia NDB
(Lat. 39°33'12" N., long. 97°39'04" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Blosser Municipal Airport and within 2.5 miles each side of the 016° bearing from the Concordia NDB extending from the 6.4-mile radius to 7 miles northeast of the airport.

* * * * *

Issued in Kansas City, MO, on October 21, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30241 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 740 and 742

[Docket No. 980918239–8239–01]

RIN 0694–AB78

Exports of High Performance Computers; Post-shipment Verification Reporting Procedures

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) (15 CFR parts 730–799) by revising the requirements for exports of high performance computers. This rule

revises post-shipment verification (PSV) reporting procedures originally implemented as a result of the National Defense Authorization Act (NDAA) for fiscal year 1998 (Pub L. 105–85, 111 Stat. 1629).

DATES: This rule is effective November 12, 1998.

FOR FURTHER INFORMATION CONTACT: William Arvin, Bureau of Export Administration, Telephone: (202) 482–5775.

SUPPLEMENTARY INFORMATION:

Background

The National Defense Authorization Act (NDAA) for Fiscal Year 1998 contained provisions regarding exports and reexports of high performance computers. The NDAA established requirements for advance notification of exports and reexports of high performance computers and post-shipment verifications of such exports. On February 3, 1998, BXA published in the **Federal Register** a rule amending the EAR to implement these provisions (63 FR 5448). This rule revises the post-shipment verification reporting procedures.

To address the volume of post-shipment verifications (PSVs) generated by the NDAA on high performance computer exports, BXA's Export Enforcement has created the High Performance Computer (HPC) Team. This rule directs PSV report submission to the HPC team. Rather than submit PSV reports within 30 days of export, as was previously required, exporters may now submit the reports no later than the last day of the month following the month in which the export took place. As part of the commodity description, reports must specify model number, serial number, and composite theoretical performance (CTP) in millions of theoretical operations per second (MTOPS) for each item. Exporters may no longer submit reports by facsimile.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 15, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, Multi-Purpose Application," which carries a burden hour estimate of 52.5 minutes per submission and control number 0694–0107, "National Defense Authorization Act," Advance Notifications and Post-Shipment Verification reports. Reports in support of Post-Shipment Verifications require 15 minutes per submission, whether the Post-Shipment Verification is conducted on an export authorized under a license or License Exception CTP.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this rule is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be sent to Hillary Hess, Director, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 742

Exports, Foreign trade.

Accordingly, parts 740 and 742 of the Export Administration Regulations (15 CFR parts 730–799) are amended to read as follows:

PART 740—[AMENDED]

1. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917 (1995); E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298 (1997); Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp., p.306 (1998); Notice of August 13, 1998 (63 FR 44121, August 17, 1998); and P.L. 105–85, 111 Stat. 1629.

2. Section 740.7 is amended by revising paragraph (d)(4)(v) to read as follows:

§ 740.7 Computers (CTP).

* * * * *

(d) * * *

(4) *NDAA notification.* * * *

(v) *Post-shipment verification.* * * *

(A) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BXA at the address listed in paragraph (d)(4)(v)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) NDAA notification number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers, serial numbers, and CTP level in MTOPS; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (d)(4)(v)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service:

Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044, Attn: HPC Team.

(2) For courier deliveries:

U.S. Department of Commerce, Office of the Assistant Secretary, For Export Enforcement, Room H3721, 14th Street and Constitution Ave. NW, Washington, DC 20230, Attn: HPC Team

* * * * *

PART 742—[AMENDED]

3. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179 (1979); E.O. 12851, 58 FR 33181, 3 CFR 1993 Comp., p. 608 (1994); E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917 (1995); E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950 (1995); E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228 (1997); Notice of August 15, 1995, 3 CFR, 1995 Comp. 501 (1996); Notice of August 14, 1996, 61 FR 42527, 3 CFR 1996 Comp., p. 298 (1997); Notice of August 13, 1997 62 FR 43629, 3 CFR, 1997 Comp., p. 306 (1998); Notice of August 13, 1998 (63 FR 44121, August 17, 1998); and P.L. 105–85, 111 Stat. 1629.

4. Section 742.12 is amended by revising paragraph (b)(3)(iv) to read as follows:

§ 742.12 High performance computers.

* * * * *

(b) * * *

(3) * * *

(iv) *Post-shipment verification.* * * *

(A) *Information that must be included in each post-shipment report.* No later than the last day of the month following the month in which the export takes place, the exporter must submit the following information to BXA at the address listed in paragraph (b)(3)(iv)(B) of this section:

(*1*) Exporter name, address, and telephone number;

(*2*) License number;

(*3*) Date of export;

(*4*) End-user name, point of contact, address, telephone number;

(*5*) Carrier;

(*6*) Air waybill or bill of lading number;

(*7*) Commodity description, quantities—listed by model numbers, serial numbers, and CTP level in MTOPS; and

(*8*) Certification line for exporters to sign and date. The exporter must certify that the information contained in the report is accurate to the best of his or her knowledge.

(B) *Mailing address.* A copy of the post-shipment report[s] required under paragraph (b)(3)(vi)(A) of this section shall be delivered to one of the following addresses. Note that BXA will not accept reports sent C.O.D.

(1) For deliveries by U.S. postal service:

Bureau of Export Administration, U.S. Department of Commerce, P.O. Box 273, Washington, D.C. 20044, Attn: HPC Team.

(2) For courier deliveries:

U.S. Department of Commerce, Office of the Assistant Secretary For Export Enforcement, Room H3721, 14th Street and Constitution Ave. NW, Washington, DC 20230, Attn: HPC Team.

* * * * *

Dated: November 4, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–30250 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 240, 249

[Release No. 34–40594A; File No. S7–30–97]

RIN 3235–AH16

OTC Derivatives Dealers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correction to final regulation.

SUMMARY: This document contains a correction to final regulations (34–40594), which were published Tuesday, November 3, 1998, (63 FR 59362). The regulations establish a new regulatory framework under the Securities Exchange Act of 1934 that tailor capital, margin, and other broker-dealer regulatory requirements to a class of registered dealers, called OTC derivatives dealers, that are active in over-the-counter derivatives markets.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Macchiaroli, Associate Director, at (202) 942–0132, Thomas K. McGowan, Assistant Director, at (202) 942–0177, or Christopher M. Salter, Attorney, at (202) 942–0148, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

The final regulations that are the subject of these corrections supersede Part IIB of Form X–17A–5 on the effective date and effect OTC derivatives dealers required to file Part IIB of Form X–17A–5 pursuant to Securities Exchange Act Rule 17a–12 (17 CFR 240.17a–12).

II. Need for Correction

As published the final regulations contain errors which may prove to be misleading and are in need of clarification.

III. Correction of Publication

Accordingly, the publication on November 3, 1998 of final regulations (34–40594), which were the subject of FR Doc. 98–29007, is corrected as follows:

Part IIB of Form X–17A–5 (referenced in § 249.617) which was published beginning on page 59407 and ending on page 59434 is corrected to read as follows:

* * * * *

Dated: November 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL
OMB Number: 3235-0498
Expires: March 31, 2001
Estimated average burden hours per response: 20

FORM X-17A-5

FOCUS REPORT

(Financial and Operational Combined Uniform Single Report)

PART IIB [11]

OTC DERIVATIVES DEALER

(PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM.)

THIS REPORT IS BEING FILED PURSUANT TO (Check Applicable Block(s)):

1) Rule 17a-12 [16] 2) Rule 17a-11 [18] 3) Other [26]

[13] (Name of Dealer)

[14] (SEC File No.)

[20] (Address of Principal Place of Business (DO NOT USE P. O. Box No.))

[15] (Firm I.D. No.)

[21] (City) [22] (State) [23] (Zip Code)

[24] (For Period Beginning (MM/DD/YYYY))

[25] (For Period Ending (MM/DD/YYYY))

NAME AND TELEPHONE NO. OF PERSON TO CONTACT IN REGARD TO THIS REPORT:

[30] (Name)

[31] ((Area Code) - Telephone No.)

NAME(s) OF SUBSIDIARIES OR AFFILIATES CONSOLIDATED IN THIS REPORT:

OFFICIAL USE

[32] [33]

[34] [35]

[36] [37]

[38] [39]

[Does respondent carry its own customer accounts?] Yes [40] No [41]

Check here if respondent is filing an audited report: [42]

EXECUTION:

The registrant/dealer submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements and schedules remain true, correct and complete as previously submitted.

Dated the _____ day of _____ 19 ____

MANUAL SIGNATURES OF:

1) _____
(Principal Executive Officer or Managing Partner)

2) _____
(Principal Financial Officer or Partner)

3) _____
(Principal Operations Officer or Partner)

ATTENTION -- Intentional misstatements or omissions of facts constitute Federal Criminal Violations. (See 18 U.S.C. 1001 and 15 U.S.C. 78:f(a))

FOR SEC USE ONLY

TO BE COMPLETED WITH THE ANNUAL AUDIT REPORT ONLY:

CERTIFIED PUBLIC ACCOUNTANT whose opinion is contained in this report:

70
((Name) If individual, give last, first, middle name)

71
((Address) DO NOT USE P. O. Box No.)

72 (City) 73 (State) 74 (Zip Code)

DO NOT WRITE UNDER THIS LINE

FOR SEC USE ONLY

WORK LOCATION 50	REPORT DATE (MM/DD/YYYY) 51	DOC. SEQ. NO. 52	CARD 53

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) N 2 100

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

Consolidated 198

Unconsolidated 199

As of (MM/DD/YYYY) 99

(SEC File No.) 98

ASSETS

Assets	Allowable	Non - Allowable	Total
1. Cash	$ 200		$ 750
2. Cash segregated in compliance with federal and other regulations	210		760
3. Receivable from brokers/dealers and clearing organizations:			
A. Failed to deliver	230		770
B. Securities borrowed	250		780
C. Omnibus accounts	270		790
D. Clearing organization	290		800
E. Contracts:			
1. Interest Rate	291		801
2. Currency & Foreign Exchange	292		802
3. Equity	293		803
4. Commodity	294		804
5. Other	295		805
F. Other	300	$ 550	810
4. Receivable from customers:			
A. Securities accounts:			
1. Cash and fully secured accounts	310		
2. Partly secured accounts	320	560	
3. Unsecured accounts		570	
B. Commodity accounts	330	580	
C. Allowance for doubtful accounts	( ) 335	( ) 590	820

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets	Allowable	Non - Allowable	Total
5. Receivables from non-customers:			
A. Cash and fully secured accounts	$ 340		
B. Partly secured and unsecured accounts	350	$ 600	$ 830
6. Securities purchased under agreements to resale	360	605	840
7. Securities and spot commodities owned at market value:			
A. Bankers acceptances, certificates of deposit and commercial paper	370		
B. U.S. and Canadian government obligations	380		
C. State and municipal government obligations	390		
D. Corporate obligations	400		
E. Stocks and warrants	410		
F. Options	420		
G. Arbitrage	422		
H. Other securities	424		
I. Spot commodities	430		850
8. Securities owned not readily marketable:			
A. At cost $	130 440	610	860
9. Other investments not readily marketable:			
A. At cost $	140		
B. At estimated fair value	450	620	870
10. Securities borrowed under subordination agreements and partners' individual and capital securities accounts at market value:			
A. Exempted securities $	150		
B. Other $	160 460	630	880

OMIT PENNIES

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

ASSETS (continued)

Assets	Allowable	Non - Allowable	Total
11. Secured demand notes - market value of collateral:			
A. Exempted securities $ [170]			
B. Other $ [180]	[470]	[640]	[890]
12. Investment in and receivables from affiliates, subsidiaries and associated partnerships [480]	[480]	[670]	[910]
13. Property, furniture, equipment, leasehold improvements and rights under lease agreements:			
At cost (net of accumulated depreciation and amortization)	$ [490]	$ [680]	$ [920]
14. Other Assets:			
A. Dividends and interest receivable [500]	[500]	[690]	
B. Free shipments [510]	[510]	[700]	
C. Loans and advances [520]	[520]	[710]	
D. Miscellaneous [530]	[530]	[720]	[930]
15. TOTAL ASSETS	$ [540]	$ [740]	$ [940]

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY

Liabilities		Total
16. Bank loans payable		$ 1470
17. Securities sold under repurchase agreement		1480
18. Payable to brokers/dealers and clearing organizations:		
A. Failed to receive:		1500
B. Securities loaned:		1520
C. Omnibus accounts:		1540
D. Clearing organization:		1560
E. Other		1570
19. Payable to customers:		
A. Securities accounts-including excess collateral of $ 950		1580
B. Commodities accounts		1590
20. Payable to non - customers:		
A. Securities accounts		1600
B. Commodities accounts		1610
21. Securities sold not yet purchased at market value-		
including arbitrage of $ 960		$ 1620
22. Accounts payable and accured liabilities and expenses:		
A. Drafts payable		1630
B. Accounts payable		1640
C. Income taxes payable		1650
D. Deferred income taxes		1660
E. Accured expenses and other liabilities		1670
F. Other		1680

OMIT PENNIES

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YYYY) _____

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

	Liabilities	Total
23. Notes and mortgages payable:		
A. Unsecured		1690
B. Secured		1700
24. Liabilities subordinated to claims of general creditors:		
A. Cash borrowings:		1710
1. from outsiders	$ 970	
2. Includes equity subordination (15c3-1d) of	$ 980	
B. Securities borrowings, at market value		1720
1. from outsiders	$ 990	
C. Pursuant to secured demand note collateral agreements:		1730
1. from outsiders	$ 1000	
2. Includes equity subordination (15c3-1d) of	$ 1010	
D. Accounts and other borrowings not qualified for net capital purposes		1750
25. TOTAL LIABILITIES		$ 1760

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

STATEMENT OF FINANCIAL CONDITION FOR OTC DERIVATIVES DEALERS

LIABILITIES AND OWNERSHIP EQUITY (continued)

Ownership Equity		Total
26. Sole proprietorship	$	1770
27. Partnership-limited partners		1780
28. Corporation:		
A. Preferred stock		1791
B. Common Stock		1792
C. Additional paid-in capital		1793
D. Retained earnings		1794
E. Total		1795
F. Less capital stock in treasury	( )	1796
29. TOTAL OWNERSHIP EQUITY	$	1800
30. TOTAL LIABILITIES AND OWNERSHIP EQUITY	$	1810

OMIT PENNIES

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Electing 15c3-1 Appendix F)

CAPITAL

Capital

1. Total Ownership Equity		$	3480
2. Deduct: Ownership Equity not Allowable for Net Capital		( )	3490
3. Total Ownership Equity Qualified for Net Capital			3500
4. Add: Subordinated Liabilities Approved for Net Capital			3520
5. Other Allowable Credits or Deductions			3525
6. Total Capital and Approved Subordinations			3530
7. Non-Allowable Assets	$ 3540		
8. Secured demand note deficiency	3590		
9. Other Deductions and Charges	3610		
10. Total Non-Allowable Assets, Other Deductions, and Charges (add lines 7 - 9)		( )	3620
11. Tentative Net Capital (Must equal or exceed $100,000,000)		$	3640

Computation of Net Capital Requirements and Excess Net Capital

12. Market Risk Exposure:			
A. Total Value At Risk		$	3635
Value At Risk Components:			
1. Fixed Income (VaR)	$ 3636		
2. Currency (VaR)	3637		
3. Commodities (VaR)	3638		
4. Equities (VaR)	3639		
NOTE: The sum of the value at risk components may not equal total value at risk.			
B. Multiplication Factor	X $		3645
C. Subtotal (If Line 12A is positive, multiply Line 12A by 12B)			3655
D. Alternative Method for Equities under Appendix A of Rule 15c3-1 (if applicable)			3665
E. Non - Marketable Securities			3675
F. Residual Positions			3676
13. Subtotal Market Risk Exposure (add Lines 12C and 12D)		$	3677

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Becting 15c3-1 Appendix F)

CAPITAL (continued)

Capital

14. Credit Risk Exposure:			
A. Credit Risk Charge (Counterparty)	3678		
B. Concentration Charge	3650		
15. Subtotal Credit Risk Exposure (add Lines 14A and 14B)		$	3679
16. Net Capital (Line 11 less Lines 13 and 15)			3750
17. Minimum Capital Requirement		20,000,000	3758
18. Excess Net Capital (Line 16 less Line 17)		$	3770

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

COMPUTATION OF NET CAPITAL AND NET CAPITAL REQUIRED
(Under (c)(3)(vi) of Rule 15c3-1)

Capital

1. Total Ownership Equity (from Statement of Financial Condition - Item 1800)	$	3480
2. Deduct: Ownership Equity not allowable for Net Capital	( )	3490
3. Total Ownership Equity Qualified for Net Capital		3500
4. Add: Subordinated Liabilities Approved for Net Capital		3520
5. Other Allowable Credits or Deductions		3525
6. Total Capital and Approved Subordinations	$	3530
7. Non-Allowable Assets	( )	3540
8. Other Deductions and/or Charges:	( )	4000
9. Secured demand note deficiency	( )	3590
10. Commodity futures contracts and spot commodities proprietrary capital charges	( )	3600
11. Other additions and/or allowable credits		
A. Credit add backs under 15c3-1(c)(15)		3631
B. Other		3632
12. Tentative Net Capital (must equal or exceed $100,000,000)	$	3640
13. Haircuts On Securities (computed pursuant to 15c3-1(c)(2)(vi)):		
A. Fixed Income	$ 3636	
B. Currency	3637	
C. Commodities	3638	
D. Equities	3639	
14. Total deductions and/or charges	( )	4040
15. Undue Concentration	( )	3650
16. Other (List)	( )	3736
17. Credit Risk	( )	4051
18. Net Capital	$	4750
19. Minimum Net Capital	$ 20,000,000	3758
20. Excess Net Capital	$	3770

OMIT PENNIES

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YYYY) from 3932 to 3933

(Name of Dealer)

Number of months included in this statement 3931

STATEMENT OF INCOME (LOSS)

REVENUE

1. Contracts:		
A. Interest Rate/Fixed Income Products	$	3921
B. Over-the-counter currency and foreign exchange products for Net Capital		3922
C. Equity products		3923
D. Commodity Products		3924
E. All other securities commissions		3925
F. Total securities commissions	$	3940
2. Gains or Losses on Firm Securities Trading Accounts:		
A. From market making in over-the-counter equity securities	$	3941
1. Includes gains or (losses) OTC market making in exchange listed equity securities	$ 3943	
B. From trading in debt securities		3944
C. From market making in options on a national securities exchange		3945
D. From all other trading		3949
E. Total gains or (losses)	$	3950
3. Gains or Losses on Firm Securities Investment Accounts:		
A. Includes realized gains (losses)	$ 4235	
B. Includes unrealized gains (losses)	4236	
C. Total realized and unrealised gains (losses)	$	3952
4. Other Interest		3953
5. Fees for account supervision, investment advisory and administrative services		3975
6. Revenue from research services		3980
7. Commodities revenue		3990
8. Other revenue		3995
9. Total Revenue	$	4030

EXPENSES

10. Compensation	$	4110
11. Clerical and administrative employees' expenses		4040

OMIT PENNIES

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

For the Period (MM/DD/YYYY) from 3932 to 3933

(Name of Dealer) Number of months included in this statement 3931

STATEMENT OF INCOME (LOSS)

EXPENSES (continued)

12. Salaries and other employment costs for general partners, and voting stockholder officers		$ 4120
A. Includes interest credited to General and Limited Partners capital accounts	$ 4130	
13. Floor brokerage paid to certain brokers (see definition)		4050
14. Commissions and clearance paid to all other brokers (see definition)		4145
15. Clearance paid to non-brokers (see definition)		4135
16. Communications		4060
17. Occupancy and equipment costs		4080
18. Promotional costs		4150
19. Interest expense		4075
A. Includes interest on accounts subject to subordination agreements	4070	
20. Losses in error account and bad debts		4170
21. Data processing costs (including service bureau service charges)		4186
22. Non-recurring charges		4190
23. Regulatory fees and expenses		4195
24. Other expenses		4100
25. Total expenses		$ 4200

NET INCOME

26. Income (loss) before Federal income taxes and items below (Item 10 less Item 25)		$ 4210
27. Provision for Federal income taxes (for parent only)		4220
28. Equity in earnings (losses) of unconsolidated subsidiaries not included above		4222
A. After Federal income taxes of	4338	
29. Extraordinary gains (losses)		4224
A. After Federal income taxes of	4239	
30. Cumulative effect of changes in accounting principles		4225
31. Net income (loss) after Federal income taxes and extraordinary items		4230

MONTHLY INCOME

32. Income (current month only) before provision for Federal income taxes and extraordinary items		$ 4211

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

Ownership Equity and Subordinated Liabilitites maturing or proposed to be withdrawn within the next six months and accruals, (as defined below), which have not been deducted in the computation of Net Capital.

Type of Proposed Withdrawal or Accrual (see below for code to enter)	Name of Lender or Contributor	Insider or Outsider? (In or Out)	Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)	Withdrawal or Maturity Date (MM/DD/YYYY)	Expect to Renew (Yes or No)
4600	4601	4602	$ 4603	4604	4605
4610	4611	4612	4613	4614	4615
4620	4621	4622	4623	4624	4625
4630	4631	4632	4633	4634	4635
4640	4641	4642	4643	4644	4645
4650	4651	4652	4653	4654	4655
4660	4661	4662	4663	4664	4665
4670	4671	4672	4673	4674	4675
4680	4681	4682	4683	4684	4685
4690	4691	4692	4693	4694	4695

Total $ _____ 4699*

* To agree with the total on Recap (Item No. 4880)

OMIT PENNIES

WITHDRAWAL CODE:	DESCRIPTIONS
1	Equity Capital
2	Subordinated Liabilities
3	Accruals
4	15c3-1(c)(2)(iv) Liabilities

INSTRUCTIONS: Detail Listing must include the total of items maturing during the six month period following the report date, regardless of whether or not the capital contribution is expected to be renewed. The schedule must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation pursuant to Rule 15c-3-1(c)(2)(iv)), which could be required by the lender on demand or in less than six months.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer) _____ As of (MM/DD/YYYY) _____

Ownership Equity and Subordinated Liabilities maturing or proposed to be withdrawn within the next six months and accruals, which have not been deducted in the computation of net capital.

RECAP

1. Equity Capital		
A. Partnership Capital:		
1. General Partners	$	4700
2. Limited		4710
3. Undistributed Profits		4720
4. Other (describe below)		4730
5. Sole Proprietorship		4735
B. Corporation Capital:		
1. Common Stock	$	4740
2. Preferred Stock		4750
3. Retained Earings (Dividends and Other)		4760
4. Other (describe below)		4770
2. Subordinated Liabilities		
A. Secured Demand Notes	$	4780
B. Cash Subordinates		4790
C. Debentures		4800
D. Other (describe below)		4810
3. Other Anticipated Withdrawals		
A. Bonuses	$	4820
B. Voluntary Contributions to Pension or Profit Sharing Plans		4860
D. Other (describe below)		4870

4. Description of Other

_____

_____

_____

_____

5. TOTAL		4880

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

CAPITAL WITHDRAWALS

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

STATEMENT OF CHANGES IN OWNERSHIP EQUITY
(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

1. Balance, beginning of period		$	4240
A. Net income (loss)			4250
B. Additions (includes non-conforming capital of	$ 4262		4260
C. Deductions	4272		4270
2. Balance, end of period (From item 1800)		$	4290

STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED TO CLAIMS OF GENERAL CREDITORS

3. Balance, beginning of period	$	4300
A. Increases		4310
B. Decreases	( )	4320
4. Balance, end of period (From item 3520)	$	4330

OMIT PENNIES

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YYYY) _____

FINANCIAL AND OPERATIONAL DATA

		VALUATION	NUMBER
1. Month end total number of stock record breaks unresolved over three business days			
A. Breaks long	4890	$	4900
B. Breaks short	4910	$	4920

2. Is the firm in compliance with Rule 17a-13 regarding periodic count and verification of securities positions and locations at least once in each calendar quarter? (Check one) Yes [4930] No [4940]

3. Personnel employed at end of reporting period:		
A. Income producing personnel		4950
B. Non-income producing personnel (all other)		4960
C. Total		4970
4. Actual number of tickets executed during current month of reporting period		4980
5. Number of corrected customer confirmations mailed after settlement date		4990

	NO. OF ITEMS	DEBIT (Short Value)	NO. OF ITEMS	Credit (Long Value)
6. Money differences	5000	$ 5010	5020	$ 5030
7. Security suspense accounts	5040	$ 5050	5060	$ 5070
8. Security difference accounts	5080	$ 5090	5100	$ 5110
9. Commodity suspense accounts	5120	$ 5130	5140	$ 5150
10. Open transactions with correspondents, other brokers, clearing organizations, depositories and interoffice and inter-company accounts which could result in a charge – unresolved amounts over 30 calendar days	5160	$ 5170	5180	$ 5190
11. Bank account reconciliations – un-resolved amounts over 30 calendar days	5200	$ 5210	5220	$ 5230
12. Open transfers over 40 calendar days, not confirmed	5240	$ 5250	5260	$ 5270
13. Transactions in reorganization accounts – over 60 calendar days	5280	$ 5290	5300	$ 5310
14. Total	5320	$ 5330	5340	$ 5350

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) | As of (MM/DD/YYYY)

FINANCIAL AND OPERATIONAL DATA (continued)

	NO. OF ITEMS	Ledger Amount	Market Value
15. Failed to deliver 11 business days or longer (21 business days or longer in the case of Municipal Securities)	5360	$ 5361	$ 5362
16. Failed to receive 11 business days or longer (21 business days or longer in the case of Municipal Securities)	5363	$ 5364	$ 5365
17. Security concentrations (See instructions in Part I):			
A. Proprietary positions			$ 5370
18. Total of personal capital borrowings due within six months			$ 5378
19. Maximum haircuts on underwriting commitments during the period			$ 5380
20. Planned capital expenditures for business expansion during next six months			$ 5382
21. Liabilities of other individuals or organizations guaranteed by respondent			$ 5384
22. Lease and rentals payable within one year			$ 5386
23. Aggregated lease and rental commitments payable for entire term of the lease			
A. Gross			$ 5388
B. Net			$ 5390

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OTC Derivatives Dealer:

as of _____

SCHEDULE I
CREDIT-CONCENTRATION REPORT FOR TWENTY LARGEST CURRENT NET EXPOSURES

Counterparty Identifier (1)	Country (2)	Industry Segment (3)	Rating (4)	Gross Replacement Value (5) Receivable (Gross Gain)	Gross Replacement Value (5) Payable (Gross Loss)	Net Replacement Value (6)	Current Net Exposure (7)	Total Credit Exposure (8)	Comments (9)
Totals									

(1) Identify counterparty by counterparty's corporate name.

(2) Identify country exposures by residence of main operating company.

(3) Report on a counterparty-by-counterparty basis by type of entity in accordance with ISDA guidelines (i.e., Primary ISDA Members, Non-Primary ISDA Members: Corporates, Financial Institutions, Government/Supranationals, or Other).

(4) Ratings are Nationally Recognized Statistical Rating Organization ("NRSRO") ratings or internal credit ratings as assigned by the firm. See Schedule IV for conversion of firm ratings into NRSRO equivalent ratings.

(5) Report gross replacement value (receivable and payable), excluding the effect of legally enforceable netting agreements and excluding the application of collateral.

(6) Report net replacement value, including the effect of legally enforceable netting agreements but excluding the application of collateral.

(7) Report current net exposure, including the effect of legally enforceable netting agreements and the application of collateral.

(8) Report the sum of the current net exposure and the potential additional credit exposure (calculated as the maximum credit exposure expected to be exceeded with a probability of one percent over a two-week period, less current net exposure).

(9) Provide additional relevant information (e.g., details on credit enhancements, type of contract, maturity, offsetting, significant additional exposures in affiliated entities, etc.).

SEC Form 2430 (12/1997)

OTC Derivatives Dealer:

as of _____

SCHEDULE II
PORTFOLIO SUMMARY OF OTC DERIVATIVES EXPOSURES

Credit Rating Category (1)	Industry Segment (2)	Current Net Exposure (3)	Net Replacement Value (4)	Gross Replacement Value (5) Receivable	Gross Replacement Value (5) Payable
XXX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
XX	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
X	Primary ISDA Member				
	Corporate				
	Financial Institutions				
	Government				
	Other				
	TOTAL				
	GRAND TOTAL				

(1) See Note (4) on Schedule I.

(2) See Note (3) on Schedule I.

(3) See Note (7) on Schedule I.

(4) See Note (6) on Schedule I.

(5) See Note (5) on Schedule I.

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SCHEDULE III
GEOGRAPHIC DISTRIBUTION (1) OF OTC DERIVATIVES EXPOSURES

Country	Credit Rating Category (2)	Current Net Exposure (3)	Net Replacement Value (4)	Gross Replacement Value (5) Receivable	Gross Replacement Value (5) Payable
A	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country A TOTAL				
B	XXX				
	XX				
	X				
	YYY				
	YY				
	Y				
	Country B TOTAL				
	GRAND TOTAL				

(1) Top 10 country exposures (by residence of main operating company).

(2) See Note (4) on Schedule I.

(3) See Note (7) on Schedule I.

(4) See Note (6) on Schedule I.

(5) See Note (5) on Schedule I.

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
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OTC Derivatives Dealer: as of _____

SCHEDULE IV
INTERNAL CREDIT RATING CONVERSION

Internal Credit Rating	Equivalent Ratings NRSRO 1	NRSRO 2
	Aaa	AAA
	Aa1	AA+
	Aa2	AA
	Aa3	AA-
	A1	A+
	A2	A
	A3	A-
	Baa1	BBB+
	Baa2	BBB
	Baa3	BBB-
	Ba1	BB+
	Ba2	BB
	Ba3	BB-
	B3	B+
	B2	B
	B1	B-
	CCC	CCC

SEC Form 2430 (12/1997)

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT
PART IIB

OTC Derivatives Dealer:

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SCHEDULE V
NET REVENUES (1) FROM OTC DERIVATIVES AND RELATED ACTIVITIES

Product Category (2)	Quarter Ended [DATE]	Month Ended [MONTH 3]	[MONTH 2]	[MONTH 1]
Fixed Income Products				
OTC Options				
Swaps				
Dollar				
Non-Dollar				
Currency & Foreign Exchange Products				
Equity Products				
Commodity Products				
Other Products (specify)				
Total All Products				

(1) Report net revenues from OTC derivatives activities in the specified product category after taking into account related positions (including those that are not OTC derivatives), with net revenues defined as trading gains/losses plus interest and dividend income less dividend and interest expense (excluding all other expenses and allocable overhead).

(2) Product types should be organized by one or more principle market categories.

SEC Form 2430 (12/1997)

SEC Form 2430 (12/1997)

FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YYYY) _____

SCHEDULE VI
AGGREGATE SECURITIES AND OTC DERIVATIVE POSITIONS

I. AGGREGATE SECURITIES AND COMMODITIES POSITIONS

Aggregate Securities and Commodities Positions	LONG	SHORT
1. U.S. Treasury securities	$ 6200	$ 6201
2. U.S. Government agency	$ 6210	$ 6211
3. Securities issued by states and political subdivisions in the U.S.	$ 6220	$ 6021
4. Foreign securities:		
A. Debt securities	$ 6230	$ 6231
B. Equity securities	$ 6235	$ 6236
5. Banker's acceptances	$ 6240	$ 6241
6. Certificates of deposit	$ 6250	$ 6251
7. Commercial paper	$ 6260	$ 6261
8. Corporate obligations	$ 6270	$ 6271
9. Stocks and warrants (other than arbitrage positions)	$ 6280	$ 6281
10. Arbitrage:		
A. Index arbitrage and program trading	$ 6290	$ 6291
B. Risk arbitrage	$ 6295	$ 6296
C. Other arbitrage	$ 6300	$ 6301
11. Options:		
A. Market value of put options:		
1. Listed	$ 6310	$ 6311
2. Unlisted	$ 6315	$ 6316
B. Market value of call options:		
1. Listed	$ 6320	$ 6321
2. Unlisted	$ 6325	$ 6326
12. Spot commodities	$ 6330	$ 6331
13. Investments with no ready market:		
A. Equity	$ 6340	$ 6341
B. Debt	$ 6345	$ 6346
C. Other (include limited partnership interests)	$ 6350	$ 6351
14. Other securites or commodities	$ 6360	$ 6361
15. Summary of delta or similar analysis (if available) (attach analysis)		

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer)	As of (MM/DD/YYYY)

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

A. Securities	LONG	SHORT
1. When-issued securities:		
A. Gross commitments to purchase	$ 6400	$ 6401
B. Gross commitments to sell	$ 6405	$ 6402
2. Written stock option contracts:		
A. Market value, and the value of the underlying securities, of call contracts:		
1. Listed		
a. Market value	$ 6410	$ 6411
b. Value of underlying securities	$ 6415	$ 6416
2. Unlisted		
a. Market value	$ 6420	$ 6421
b. Value of underlying securities	$ 6425	$ 6426
B. Market value, and the value of the underlying securities, of put contracts:		
1. Listed		
a. Market value	$ 6430	$ 6431
b. Value of underlying securities	$ 6435	$ 6436
2. Unlisted		
a. Market value	$ 6440	$ 6441
b. Value of underlying securities	$ 6445	$ 6446
C. Market value, and the value of the underlying securities, of naked call contracts:		
1. Listed		
a. Market value	$ 6450	$ 6451
b. Value of underlying securities	$ 6455	$ 6456
2. Unlisted		
a. Market value	$ 6460	$ 6461
b. Value of underlying securities	$ 6465	$ 6466
D. Market value, and the value of the underlying securities, of naked put contracts:		
1. Listed		
a. Market value	$ 6470	$ 6471
b. Value of underlying securities	$ 6475	$ 6476
2. Unlisted		
a. Market value	$ 6480	$ 6481
b. Value of underlying securities	$ 6485	$ 6486

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(Name of Dealer) _____ As of (MM/DD/YYYY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG	SHORT
3. Futures:		
A. U.S. Treasury and mortgage-backed securities futures	$ 6500	$ 6501
B. Other futures (specify)	$ 6505	$ 6506
4. Forwards:		
A. U.S. Treasury and mortgage-backed securities	$ 6510	$ 6511
1. Aggregate current cost of replacing contracts by counter-party.	$ 6512	$ 6513
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Other forwards (specify)	$ 6515	$ 6516
1. Aggregate current cost of replacing contracts by counter-party.	$ 6517	$ 6518
2. Per counterparty breakdown where credit risk exceeds the (attach schedule)		
B. Interest Rate Swaps		
1. U.S. dollar denominated swaps:		
A. Total notional or contractual amount	$ 6520	$ 6521
B. Aggregate current cost of replacing contracts by counter-party.	$ 6525	$ 6525
C. Per counterparty breakdown. (attach schedule)		
2. Cross currency swaps:		
A. Total notional or contractual amount	$ 6530	$ 6531
B. Aggregate current cost of replacing contracts.	$ 6535	$ 6536
C. Per counterparty breakdown. (attach schedule)		
C. Foreign exchange		
1. Swaps:		
A. Total notional or contractual amount	$ 6540	$ 6541
B. Aggregate cost of replacing contracts by counterparty.	$ 6545	$ 6546
C. Per counterparty breakdown. (attach schedule)		
2. Notional or contractual amounts of commitments to purchase foreign currencies and U.S. dollar exchange:		
A. Futures	$ 6550	$ 6551

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II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG	SHORT
B. Forwards	$ 6560	$ 6561
1. Aggregate current cost of replacing contracts by counter-party.	$ 6562	$ 6563
2. Per counterparty breakdown. (attach schedule).		
3. Naked written option contracts:		
A. Contractual value	$ 6570	$ 6571
B. Value of the underlying instruments	$ 6575	$ 6576
D. All other swap agreements (specify type) (attach schedule if necessary)		
1. Total notional or contractual amount	$ 6580	$ 6581
2. Aggregate current cost of replacing contracts by counterparty.	$ 6585	$ 6586
3. Per counterparty breakdown. (attach schedule)		
E. Commodities		
1. Futures	$ 6590	$ 6591
2. Forwards	$ 6595	$ 6596
1. Aggregate current cost of replacing contracts by counter-party.	$ 6600	$ 6601
2. Per counterparty breakdown. (attach schedule).		
3. Sold option contracts (e.g., options on individual commodities and commodities indexes)		
A. Market value, and the value of the underlying instruments, of call contracts:		
1. Listed		
a. Market value	$ 6610	$ 6611
b. Value of underlying instruments	$ 6612	$ 6613
2. Unlisted		
a. Market value	$ 6615	$ 6616
b. Value of underlying instruments	$ 6617	$ 6618
B. Market value, and the value of the underlying instruments, of put contracts:		
1. Listed		
a. Market value	$ 6620	$ 6621
b. Value of underlying instruments	$ 6622	$ 6623

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FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT

PART IIB

(Name of Dealer) _____ As of (MM/DD/YYYY) _____

II. FINANCIAL INSTRUMENTS WITH OFF-BALANCE SHEET RISK AND WITH CONCENTRATION OF CREDIT RISK

(Provide notional or contractual amounts where appropriate, or in the case of options, the values of the underlying instrument.)

	LONG		SHORT	
2. Unlisted				
a. Market value	$	6625	$	6626
b. Value of underlying instruments	$	6627	$	6628
C. Market value, and the value of the underlying instruments, of naked call contracts:				
1. Listed				
a. Market value	$	6630	$	6631
b. Value of underlying instruments	$	6632	$	6633
2. Unlisted				
a. Market value	$	6635	$	6636
b. Value of underlying instruments	$	6637	$	6638
D. Market value, and the value of the underlying instruments, of naked put contracts:				
1. Listed				
a. Market value	$	6640	$	6641
b. Value of underlying instruments	$	6642	$	6643
2. Unlisted				
a. Market value	$	6645	$	6646
b. Value of underlying instruments	$	6647	$	6648

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[FR Doc. 98–30248 Filed 11–10–98; 8:45 am]
BILLING CODE 8010–01–C

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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2704

Implementation of Amendments to the Equal Access to Justice Act in Commission Proceedings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission is publishing final revisions to its rules providing for the award of attorney's fees and other expenses under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504, applicable to eligible individuals and entities who are parties to administrative proceedings before the Commission. The revisions to the rules are in response to amendments to the EAJA, enacted pursuant to Pub. L. 104–121, 110 Stat. 862 (1996), and effective on March 29, 1996. The rules authorize fee awards under a newly-defined standard—when the Secretary of Labor's demand is substantially in excess of the decision of the Commission and is unreasonable when compared to that decision. The rules also expand the definition of a "party" eligible for an award under this new standard to include "a small entity" as defined by 5 U.S.C. 601. The maximum hourly rate for attorney's fees in all EAJA cases before the Commission is increased to $125.

In addition to the changes in the rules mandated by the EAJA amendments, the Commission is revising other EAJA rules in light of its experience under the present rules and in light of comments submitted during the comment period for the proposed rules. The procedure under the rules for increasing the maximum hourly rate for fees is modified to allow an applicant to request such an increase from an administrative law judge, subject to Commission review. The Commission is revising its rules to provide that parties submit EAJA applications directly to the Chief Administrative Law Judge instead of to the Chairman. Finally, the requirement in the present rules requiring Commission approval of the settlement of an EAJA claim that is resolved prior to the filing of an application is deleted, and the rule is modified to provide for notification of the Commission in the event that an EAJA claim is settled after an application is filed with the Commission.

DATES: Effective December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone: 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Commission's present rules, the EAJA applies to administrative adjudications, brought pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., in which an eligible party prevails over the Department of Labor's Mine Safety and Health Administration. 29 CFR 2704.100 and 2704.103. Prior to the enactment of Pub. L. 104–121, prevailing parties could receive awards if they met the EAJA's eligibility standards (which set ceilings on the net worth and number of employees) and if the government's position was not "substantially justified."

Pub. L. 104–121 creates an additional standard under which eligible parties can obtain fees in administrative adjudications. The EAJA amendments authorize an award when a government "demand" is both "substantially in excess of the decision of the adjudicative officer" and "unreasonable." *Id.* at 231(a). Under this standard, if the demand by the Secretary of Labor is substantially in excess of the amount finally obtained by the Secretary and is unreasonable when compared with that amount under the facts and circumstances of the case, the Commission shall award to the opposing party the fees and other expenses related to defending against the demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. *Id.*

Pub. L. 104–121 also establishes a separate definition of a "party" for fee awards under the new standard. Parties that are eligible to apply for awards include "small entit[ies] as defined in section 601 [of title 5]." *Id.* at 231(b)(2). Title 5 U.S.C. 601(6) provides that "small entity" has "the same meaning as the term[] 'small business'. . . ." In turn, a "small business" is defined at 5 U.S.C. 601(3) as a "small business concern" under section 3 of the Small Business Act (15 U.S.C. 632). Section 632(a) authorizes the Small Business Administration (SBA) to establish standards to specify when a business concern is "small." The SBA has recently issued updated size standards for various types of economic activity, categorized by the Standard Industrial Classification System. 13 CFR 121.105. In defining the standards for small businesses engaged in mining, the SBA regulations count either annual receipts or numbers of employees. The number of employees or annual receipts specified is the maximum allowed for a concern and its affiliates to be considered small. 13 CFR 121.201. The standards for the mining industry are as follows:

Division B-Mining:	
Major Group 10-Metal Mining	500 employees.
Major Group 12-Coal Mining	500 employees.
Major Group 14-Mining and Quarrying of Non-Metallic Minerals, Except Fuels	500 employees.
Except:	
1081 Metal Mining Services	$5 million.
1241 Coal Mining Services	$5 million.
1481 Nonmetallic Minerals Services, Except Fuels	$5 million.

13 CFR 121.201.

Pub. L. 104–121 also increases the maximum fee award of an attorney or agent from $75 to $125 per hour. *Id.* at 231(b)(1).

In addition to the changes mandated by the EAJA amendments, the Commission has the benefit of experience under its current rules and the comments of the Secretary and other parties who have practiced before it and has determined to revise its rules to handle EAJA applications in a more efficient manner. Accordingly, the Commission is modifying its rules to provide that applicants can file EAJA applications directly with the Chief Administrative Law Judge, that parties are not required to seek Commission approval for settlement of EAJA claims, and that applicants may seek an increase in the maximum rate for attorney's fees by filing a petition with the administrative law judge who is assigned to the EAJA application.

II. Analysis of the Regulations

The Commission published a proposed rule on December 19, 1996 (61 FR 66961). The Commission proposed to add language to the present language of § 2704.100 to provide that an eligible party may receive an award if a demand is made by the Secretary that is substantially in excess of the decision of the Commission and is unreasonable when compared with that decision, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust, as required by the EAJA amendments. For purposes of this part, a decision of the Commission includes not only a decision by the Commission but also a decision by an administrative law judge that becomes final by operation of law. The Commission did not receive any comments to its proposed rule. Accordingly, the Commission is publishing the rule, as proposed, with the exception of an editorial change in the language specifying the new grounds for recovery of fees and expenses in order to fully conform to the language of the statute.

The Commission proposed to change the present language of § 2704.102 to provide for a new subpart to specify that, where an applicant seeks an award based on the new standard for recovery in the EAJA amendments—substantially excessive and unreasonable demand of the Secretary—the adversary adjudication before the Commission must have commenced on or after March 29, 1996, the effective date of the amendments. There were no comments to the proposed rule, and the final rule is published as proposed.

In § 2704.104, as proposed, the Commission has added language to its present rule at paragraph (c) to refer to the new eligibility requirements in the EAJA amendments for the new standard of recovery. Paragraphs (c) through (g) in the present rule are redesignated in light of additions to the section.

The bulk of the comments submitted in reference to proposed § 2704.104 concerned the aggregation of net worth and number of employees of affiliated organizations, subjects currently addressed in the present paragraph (f),which will be redesignated as § 2704.104(b)(2). Several of the comments suggested that the Commission modify its present rule regarding the aggregation of affiliated companies. Another commenter asserts that majority ownership is not always the correct standard for determining control. However, the Commission's present approach to affiliated companies in its rules was based on the Model Rules, promulgated by the Administrative Conference of the United States ("ACUS"). Under the 1996 EAJA amendments, Congress adopted the definition of a "small business concern" of the SBA in the new class of claims eligible for relief, which is similar to the present approach in the Commission's rules in addressing affiliated companies. Accordingly, the Commission is not persuaded that its approach to aggregated companies that are prevailing parties should be changed. Further, the Commission believes that it has the flexibility to look at considerations other than majority ownership under its present rules.

The Commission proposed to delete any reference to a "unit of local government" in § 2704.104, which specifies those prevailing parties that are eligible for EAJA awards, because of the unlikelihood that they would be involved in Commission proceedings. However, one commenter pointed out a prior Commission proceeding involving such an entity. Accordingly, the reference to units of local government has been retained in § 2704.104(b)(4)(iii). Under the new EAJA grounds for recovery—an excessive and unreasonable demand by the Secretary—an applicant must be a small entity as defined in 5 U.S.C. 601. To qualify as a small business under 5 U.S.C. 601(3), the applicant must meet the requirements for a small mining business concern as set forth by the SBA at 13 CFR 121.104, 121.106 and 121.201. No commenter objected to the Commission's incorporation by reference, at § 2704.104(c), of the SBA's specification of annual receipts or number of employees that are specified at 13 CFR part 121.

As set forth in the proposed rules, § 2704.105(a) specifies the standard for an award based on prevailing party status and is unchanged except that it is revised to include the sentence regarding denial or reduction of an award because of unreasonable protraction in the proceedings or special circumstances that is presently in paragraph (b).

Section 2704.105(b) tracks the language of Pub. L. 104–121 at section 231(a) and provides that, if the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case, the Commission shall award to an eligible applicant fees and expenses related to defending against the excessive demand. Nevertheless, an award may not be made if the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. Whether the applicant has unduly or unreasonably protracted the underlying proceeding may also be considered.

In the proposed § 2704.105(b), it was specified that the burden of proof is on the applicant to show that the demand of the Secretary is substantially excessive and unreasonable. In response to the proposed rule, two commenters argued that it was at odds with EAJA to place on the applicant the burden of showing that a demand of the Secretary was excessive and unreasonable. Upon further consideration, the Commission has concluded that the burden of proof of showing the reasonableness of Secretary's demand is best borne by the Secretary, because she is in the best position to plead and prove the facts and circumstances leading to the formulation of her demand. As one of the commenters suggested, the showing of reasonableness of the Secretary's demand is analogous to the Secretary's burden of proving substantial justification. However, as stated in the proposed rules, the burden is on the applicant to establish that the Secretary's demand was excessive. Unlike reasonableness of the Secretary's demand, this threshold determination is based on objective facts ascertainable to the applicant.

Section 2704.105(b) defines "demand" by tracking language in the EAJA amendments, Pub. L. 104–121 at § 231(b)(5)(F).

In conformity with the EAJA amendments, the Commission proposed to amend § 2704.106(b) to provide that the maximum award for fees of an attorney or agent is $125 per hour. No comments were received in response to the proposed rule. An additional reference has been included in the final § 2704.106(b) to the revised procedure in § 2704.107(a), governing increases to the maximum rate.

As proposed, § 2704.107(a) is amended to reflect that the highest award for attorney's fees is $125 per hour. A number of commenters suggested that the Commission further amend its present procedure to authorize the administrative law judge assigned to an EAJA application to grant increases in the $125 per hour rate for fees in light of increases in the cost of living or other "special factors." The Commission has concluded that delegating to its judges the authority to authorize increases in the level of fees is a more efficient and expeditious way of implementing such increases. Further, authorization of higher fees because of "special circumstances" is,

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by necessity, a matter determined by the unique facts and circumstances in an individual case. Therefore, the Commission has revised § 2704.107(a) to provide that requests for increases in fees are submitted to the administrative law judge assigned to the matter, subject to Commission review as specified in § 2704.308.

Section 2704.108 presently provides for awards to prevailing parties in cases where the Secretary's position is not substantially justified, the basis for recovery specified in § 2705.105(a). As proposed, the rule is amended to refer to the new basis for recovery in § 2704.105(b), which specifies that recovery under EAJA also includes an excessive and unreasonable demand by the Secretary. The rule provides that, if an applicant is entitled to an award under either standard in § 2704.105, the award shall be made by the Commission against the Department of Labor. At the suggestion of one commenter, a reference in the rule that the applicant must meet its burden of proof under § 2704.105 was deleted as unnecessary.

As proposed, § 2704.201 designates the Chief Administrative Law Judge as the Commission official to whom EAJA applications are submitted, revising the present procedure that requires submission of applications to the Chairman. The rule has been revised substantially to limit specification of the contents of an EAJA application to those matters common to all applications, whether based on prevailing party status or a substantially excessive and unreasonable demand by the Secretary. In addition to the revisions in the proposed rule, the final rule contains a new reference to the filing of a request for an increase in fees with the application, as provided for in § 2704.107.

Section 2704.202 specifies the contents of an EAJA application by a prevailing party, formerly covered in § 2704.201(a) and (b). Language from present § 2704.201(b) permitting a tax-exempt organization to omit a net-worth statement has not been retained because of the low likelihood that such an organization would ever be a party to a Commission EAJA proceeding.

Present § 2704.203 is redesignated as § 2704.205. Revised § 2704.203(a) specifies the new standard for recovery—whether the Secretary's demand was substantially in excess of the decision of the Commission and unreasonable. The subsection has also been revised, consistent with the changes to § 2704.105(b), to specify that application shall show that the Secretary's demand is excessive; further, the application shall allege the Secretary's demand that is deemed to be unreasonable. Revised § 2704.203(b) provides that the application must show that the applicant is a small entity as defined in 5 U.S.C. 601(6) and provides that the application shall include a statement of the applicant's annual receipts or number of employees, as appropriate, where the applicant seeks eligibility based on being a small business. Section 2704.203(b) also requires a brief description of the type and purpose of the applicant's organization or business. Because the EAJA amendments rely on the SBA's definition of "small business concern," and because the SBA has defined small business concerns engaged in mining in terms of annual receipts or number of employees and has set forth its methodology for calculating the annual receipts or number of employees (13 CFR 121.104 and 121.106), the Commission intends that parties be guided by those regulations in meeting the SBA's standards of annual receipts or number of employees to qualify as a "small business."

Present § 2704.204 is redesignated as § 2704.206. The new § 2704.204 is a redesignation of § 2704.202(b). The Commission has revised the language of the rule to regulate the public disclosure of financial information in the annual receipts exhibits under the new EAJA standard for recovery, in addition to the present coverage of net worth exhibits.

Section 2704.205 is a redesignation of present § 2704.203. The Commission did not propose to revise the content of the rule. However, one commenter suggested several modifications to the rule. It was recommended that the rule specify that the applicant file with its application a statement that it actually paid the fees to preclude an application when a mine operator or other ineligible party has paid the fees. The commenter further requested that an applicant be required to segregate out fees and expenses related to that application when there are multiple positions and parties. We agree with the commenter's concern that there must be an adequate segregation of claims and fees when there are multiple claims and issues present. However, we believe that the rules adequately address the problem. See §§ 2704.105(a), (b), 2704.202(a), and 2704.203(a). We also conclude that § 2704.205, as presently drafted, is adequate to ensure that the applicant has actually paid the expenses and fees claimed. ("The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed."). See also § 2704.104(e) (barring recovery of fees and expenses by an applicant who appears in a Commission EAJA proceeding on behalf of an entity that is ineligible). Accordingly, we have not adopted the suggested revisions.

Section 2704.206 is a redesignation of present § 2704.204. As proposed, paragraph (a) adds new language to provide for an application, as required by the EAJA amendments, when a demand by the Secretary is substantially in excess of the decision in the case and unreasonable. In addition, language has been added to provide for the filing of EAJA applications with the Commission 30 days after final disposition by a court in the event that an applicant wishes to file in light of the court's disposition. See *Dole* v. *Phoenix Roofing, Inc.*, 922 F.2d 1202,1206–07 (5th Cir. 1991). Cases that are remanded back to the Commission by the court of appeals, in which an applicant then becomes a prevailing party, are governed by the rule that an application must be filed no later than 30 days after the Commission's final disposition of the underlying proceeding.

Section 2704.206(b), which specifies that an application for fees is stayed in the event that review or reconsideration of the merits decision is sought, adds language to include the new standard for recovery. Section 2704.206(c) is revised to delete an inadvertent reference to section 105(a) of the Mine Act, 30 U.S.C. 815(a), in the definition of final Commission dispositions in the present rule; in addition, references to Commission decisions in §§ 2704.307 and 2704.308 are deleted because those provisions pertain to decisions on EAJA applications, rather than decisions on the merits.

The Commission is revising § 2704.305 to eliminate the reference to "prevailing" party status because an EAJA award is no longer limited to proceedings involving a prevailing party but includes those proceedings in which the Secretary has made a substantially excessive and unreasonable demand. In addition, the Commission proposed to eliminate a portion of the present rule requiring Commission approval of some, but not all, settlement agreements that resolve EAJA claims. In response to the proposed rule, one commenter noted that no provision in the Mine Act or EAJA requires Commission approval of such settlements. We agree. Accordingly, the Commission is revising the present rule to require only that parties notify the Commission if a case settles, after an EAJA application is filed, in order that the Commission can properly maintain its docket.

Because under the EAJA amendments, an EAJA award is no longer limited to

a prevailing party, the Commission proposed adding language to § 2704.307 to provide for the issuance of written findings and conclusions addressing whether the applicant has been subjected to a substantially excessive and unreasonable demand. The proposed rule further delineated between the specific findings depending on whether the application was filed pursuant to § 2704.105(a) (prevailing party) or (b) (excessive and unreasonable demand). The Commission received numerous comments to this rule and § 2704.308, which governs Commission review of EAJA decisions issued by its judges. The comments addressed none of the proposed changes but rather addressed the provisions in §§ 2704.307 and 2704.308, which reference Commission review of administrative law judge EAJA decisions. The commenters asserted that there is no provision for administrative review of decisions adverse to the government in EAJA or its amendments, nor was there mention of such review in its legislative history. Further, in the view of one commenter, such administrative review would have a "chilling effect" on the willingness of small businesses to challenge unreasonable actions of MSHA.

The Commission has fully addressed this issue in *Contractors Sand and Gravel, Inc.*, 20 FMSHRC 960, (Sept. 1998). As noted in that decision, provisions in EAJA and its legislative history support such administrative appellate review. Further, as we noted, such administrative review ensures a uniform body of caselaw in this area. None of the comments persuade us to change our view that the Commission should have the same ability to review judges' decisions on EAJA applications that it has with regard to judges' decisions under the Mine Act.

Finally, the Commission is revising § 2704.308(c) by eliminating the last two sentences of the present rule. The matter of when a Commission order can be appealed is beyond the scope of the Commission's rules and addressed by EAJA, 5 U.S.C. 504(c)(2), and federal rules of procedure. The finality of an unreviewed decision of an administrative law judge is addressed in § 2704.307.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2704

Administrative practice and procedure, Equal access to justice.

For the reasons set out in the preamble, 29 CFR part 2704 is amended as follows:

PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS

1. The authority citation for part 2704 is revised to read as follows:

Authority: (5 U.S.C. 504(c)(1); Pub. L. 99–80, 99 Stat. 183; Pub. L. 104–121, 110 Stat. 862.

Subpart A—General Provisions

2. Section 2704.100 is revised to read as follows:

§ 2704.100 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504, provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before this Commission. An eligible party may receive an award when it prevails over the Department of Labor, Mine Safety and Health Administration (MSHA), unless the Secretary of Labor's position in the proceeding was substantially justified or special circumstances make an award unjust. In addition to the foregoing ground of recovery, an eligible party may receive an award if the demand of the Secretary is substantially in excess of the decision of the Commission and unreasonable, unless the applicant party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. The rules in this part describe the parties eligible for each type of award. They also explain how to apply for awards, and the procedures and standards that this Commission will use to make the awards.

3. Section 2704.102 is revised to read as follows:

§ 2704.102 Applicability.

Section 2704.105(a) applies to adversary adjudications before the Commission pending or commenced on or after August 5, 1984. Section 2704.105(b) applies to adversary adjudications commenced on or after March 29, 1996.

4. Section 2704.104 is amended by revising paragraphs (b) through (e) and removing paragraphs (f) and (g) to read as follows:

§ 2704.104 Eligibility of applicants.

* * * * *

(b) For purposes of awards under § 2704.105(a) for prevailing parties:

(1) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis;

(2) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part unless the administrative law judge determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the administrative law judge may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(3) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(4) The types of eligible applicants are as follows:

(i) An individual with a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and employs not more than 500 employees;

(iii) Any other partnership, corporation, association, unit of local government, or public or private organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purposes of awards under § 2704.105(b), eligible applicants are small entities as defined in 5 U.S.C. 601, subject to the annual-receipts and number-of-employees standards as set forth by the Small Business Administration at 13 CFR Part 121.

(d) For the purpose of eligibility, the net worth, number of employees, or annual receipts of an applicant, as applicable, shall be determined as of the date the underlying proceeding was initiated under the Mine Act.

(e) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

5. Section 2704.105 is revised as follows:

§ 2704.105 Standards for awards.

(a) A prevailing applicant may receive an award of fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Secretary was substantially justified. The position of the Secretary includes, in addition to the position taken by the Secretary in the adversary adjudication, the action or failure to act by the Secretary upon which the adversary adjudication is based. The burden of proof that an award should not be made to a prevailing applicant because the Secretary's position was substantially justified is on the Secretary, who may avoid an award by showing that his position was reasonable in law and fact. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the underlying proceeding or if special circumstances make the award unjust.

(b) If the demand of the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision, under the facts and circumstances of the case, the Commission shall award to an eligible applicant the fees and expenses related to defending against the excessive demand, unless the applicant has committed a willful violation of law or otherwise acted in bad faith or special circumstances make an award unjust. The burden of proof is on the applicant to establish that the Secretary's demand was substantially in excess of the Commission's decision; the Secretary may avoid an award by establishing that the demand was not unreasonable when compared to that decision. As used in this section, "demand" means the express demand of the Secretary which led to the adversary adjudication, but does not include a recitation by the Secretary of the maximum statutory penalty—

(1) In the administrative complaint, or

(2) Elsewhere when accompanied by an express demand for a lesser amount.

6. Section 2704.106 is revised to read as follows:

§ 2704.106 Allowable fees and expenses.

* * * * *

(b) No award for the fee of an attorney or agent under this part may exceed $125 per hour, except as provided in § 2704.107. No award to compensate an expert witness may exceed the highest rate at which the Secretary of Labor pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item if the attorney, agent or witness ordinarily charges clients separately for such expenses.

* * * * *

7. Section 2704.107(a) is revised to read as follows:

§ 2704.107 Rulemaking on maximum rates for attorney's fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), attorney's fees may be awarded at a rate higher than $125 per hour. Any such increase in the rate for attorney's fees will be made only upon a petition submitted by the applicant, pursuant to § 2704.201, and only if the administrative law judge determines, in his or her discretion, that it is justified. Any such adjustment in fees is subject to Commission review as specified in § 2704.308.

* * * * *

8. Section 2704.108 is revised to read as follows:

§ 2704.108 Awards.

If an applicant is entitled to an award under § 2704.105(a) or (b), the award shall be made by the Commission against the Department of Labor.

9. Subpart B is revised to read as follows:

Subpart B—Information Required From Applicants

Sec.

2704.201 Contents of application—in general.
2704.202 Contents of application—where the applicant has prevailed.
2704.203 Contents of application—where the Secretary's demand is substantially in excess of the judgment finally obtained and unreasonable.
2704.204 Confidential financial information.
2704.205 Documentation of fees and expenses.
2704.206 When an application may be filed.

Subpart B—Information Required From Applicants

§ 2704.201 Contents of application—in general.

(a) An application for an award of fees and expenses under the Act shall be made to the Chief Administrative Law Judge of the Commission at 1730 K Street NW, 6th Floor, Washington, DC 20006. The application shall identify the applicant and the underlying proceeding for which an award is sought.

(b) The application shall state the amount of fees and expenses for which an award is sought. The application may also include a request that attorney's fees be awarded at a rate higher than $125 per hour because of an increase in the cost of living or other special factors.

(c) The application may also include any other matters that the applicant wishes the Commission to consider in determining whether and in what amount an award should be made.

(d) The application should be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(e) Upon receipt of an application, the Chief Administrative Law Judge shall immediately assign it for disposition to the administrative law judge who presided over the underlying Mine Act proceeding.

§ 2704.202 Contents of application—where the applicant has prevailed.

(a) An application for an award under § 2704.105(a) shall show that the applicant has prevailed in a significant and discrete substantive portion of the underlying proceeding and identify the position of the Department of Labor in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants including their affiliates, as described in § 2704.104(b)(2) of this part).

(c) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as described in

§ 2704.104(b)(2) of this part) when the underlying proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file additional information to determine its eligibility for an award.

§ 2704.203 Contents of application—where the Secretary's demand is substantially in excess of the judgment finally obtained and unreasonable.

(a) An application for an award under § 2704.105(b) shall show that the Secretary's demand is substantially in excess of the decision of the Commission; the application shall further allege that the Secretary's demand is unreasonable when compared with the Commission's decision.

(b) The application shall show that the applicant is a small entity as defined in 5 U.S.C. 601(6), and the application must conform to the standards of the Small Business Administration at 13 CFR 121.201 for mining entities. The application shall include a statement of the applicant's annual receipts or number of employees, as applicable, in conformance with the requirements of 13 CFR 121.104 and 121.106. The application shall describe briefly the type and purpose of its organization or business.

§ 2704.204 Confidential financial information.

Ordinarily, the net-worth and annual-receipts exhibits will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of such exhibits and believes there are legal grounds for withholding the information from disclosure may submit that portion of the exhibit directly to the administrative law judge in a sealed envelope labeled "Confidential Financial Information," accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b)(1)–(9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the Secretary of Labor against whom the applicant seeks an award, but need not be served on any other party to the proceeding. If the administrative law judge finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures under the Freedom of Information Act (29 CFR part 2702).

§ 2704.205 Documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the underlying proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The administrative law judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 2704.206 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the underlying proceeding or in a significant and discrete substantive portion of that proceeding. An application may also be filed when a demand by the Secretary is substantially in excess of the decision of the Commission and is unreasonable when compared with such decision. In no case may an application be filed later than 30 days after the Commission's final disposition of the underlying proceeding, or 30 days after issuance of a court judgment that is final and nonappealable in any Commission adjudication that has been appealed pursuant to section 106 of the Mine Act, 30 U.S.C. 816.

(b) If review or reconsideration is sought or taken of a decision on the merits as to which an applicant has prevailed or has been subjected to a demand from the Secretary substantially in excess of the decision of the Commission and unreasonable when compared to that decision, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this part, final disposition before the Commission means the date on which a decision in the underlying proceeding on the merits becomes final under sections 105(d) and 113(d) of the Mine Act (30 U.S.C. 815(d), 823(d)).

Subpart C—Procedures for Considering Applications

10. Section 2704.305 is revised to read as follows:

§ 2704.305 Settlement.

In the event that counsel for the Secretary and an applicant agree to settle an EAJA claim after an application has been filed with the Commission, the applicant shall timely notify the Commission of the settlement and request dismissal of the application.

11. Section 2704.307 is revised to read as follows:

§ 2704.307 Decision of administrative law judge.

The administrative law judge shall issue an initial decision on the application within 75 days after completion of proceedings on the application. In all decisions on applications, the administrative law judge shall include written findings and conclusions on the applicant's eligibility, and an explanation of the reasons for any difference between the amount requested and the amount awarded. As to applications filed pursuant to § 2704.105(a), the administrative law judge shall also include findings on the applicant's status as a prevailing party and whether the position of the Secretary was substantially justified; if at issue, the judge shall also make findings on whether the applicant unduly protracted or delayed the underlying proceeding or whether special circumstances make the award unjust. As to applications filed pursuant to § 2704.105(b), the administrative law judge shall include findings on whether the Secretary made a demand that is substantially in excess of the decision of the Commission and unreasonable when compared with that decision; if at issue, the judge shall also make findings on whether the applicant has committed a willful violation of the law or otherwise acted in bad faith or whether special circumstances make the award unjust. Under either paragraph, the decision shall include, if at issue, detailed findings and conclusions on whether an increase in the cost of living or any other special factor justifies a higher fee than the $125 per hour fee set forth in

the statute. The initial decision by the administrative law judge shall become final 40 days after its issuance unless review by the Commission is ordered under § 2704.308 of this part.

12. Section 2704.308(c) is revised to read as follows:

§ 2704.308 Commission review.

* * * * *

(c) If review of the initial decision of the administrative law judge is granted by the Commission, the Commission shall, after allowing opportunity for presentation of views by opposing parties, review the case and issue its own order affirming, modifying or vacating in whole or in part the initial decision or directing other appropriate relief.

Issued this 30th day of October, 1998 at Washington, D.C.

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 98–29680 Filed 11–10–98; 8:45 am]

BILLING CODE 6735–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4011 and 4022

Disclosure to Participants; Benefits Payable in Terminated Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the appendix to the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans by adding the maximum guaranteeable pension benefit that may be paid by the PBGC with respect to a plan participant in a single-employer pension plan that terminates in 1999. This rule also amends Appendix B to the PBGC's regulation on Disclosure to Participants by adding information on 1999 maximum guaranteed benefit amounts. The amendment is necessary because the maximum guarantee amount changes each year, based on changes in the contribution and benefit base under section 230 of the Social Security Act. The effect of the amendment is to advise plan participants and beneficiaries of the increased maximum guarantee amount for 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4022(b) of the Employee Retirement Income Security Act of 1974 provides for certain limitations on benefits guaranteed by the PBGC in terminating single-employer pension plans covered under Title IV of ERISA. One of the limitations, set forth in section 4022(b)(3)(B), is a dollar ceiling on the amount of the monthly benefit that may be paid to a plan participant (in the form of a life annuity beginning at age 65) by the PBGC. The ceiling is equal to "$750 multiplied by a fraction, the numerator of which is the contribution and benefit base (determined under section 230 of the Social Security Act) in effect at the time the plan terminates and the denominator of which is such contribution and benefit base in effect in calendar year 1974 [$13,200]." This formula is also set forth in § 4022.22(b) of the PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022). The appendix to Part 4022 lists, for each year beginning with 1974, the maximum guaranteeable benefit payable by the PBGC to participants in single-employer plans that have terminated in that year.

Section 230(d) of the Social Security Act (42 U.S.C. 430(d)) provides special rules for determining the contribution and benefit base for purposes of ERISA section 4022(b)(3)(B). Each year the Social Security Administration determines, and notifies the PBGC of, the contribution and benefit base to be used by the PBGC under these provisions, and the PBGC publishes an amendment to the appendix to Part 4022 to add the guarantee limit for the coming year.

The PBGC has been notified by the Social Security Administration that, under section 230 of the Social Security Act, $53,700 is the contribution and benefit base that is to be used to calculate the PBGC maximum guaranteeable benefit for 1999. Accordingly, the formula under section 4022(b)(3)(B) of ERISA and 29 CFR § 4022.22(b) is: $750 multiplied by $53,700/$13,200. Thus, the maximum monthly benefit guaranteeable by the PBGC in 1999 is $3,051.14 per month in the form of a life annuity beginning at age 65. This amendment updates the appendix to Part 4022 to add this maximum guaranteeable amount for plans that terminate in 1999. (If a benefit is payable in a different form or begins at a different age, the maximum guaranteeable amount is the actuarial equivalent of $3,051.14 per month.)

Section 4011 of ERISA requires plan administrators of certain underfunded plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits of the PBGC's guarantee. The PBGC's regulation on Disclosure to Participants (29 CFR Part 4011) implements the statutory notice requirement. This rule amends Appendix B to the regulation on Disclosure to Participants by adding information on 1999 maximum guaranteed benefit amounts. Plan administrators may, subject to the requirements of that regulation, include this information in participant notices.

Because the maximum guaranteeable benefit is determined according to the formula in section 4022(b)(3)(B) of ERISA, and these amendments make no change in its method of calculation but simply list 1999 maximum guaranteeable benefit amounts for the information of the public, general notice of proposed rulemaking is not required.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects

29 CFR Part 4011

Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR parts 4011 and 4022 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

. The authority citation for Part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. The appendix to part 4022 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

Appendix to Part 4022—Maximum Guaranteeable Monthly Benefit

The following table lists by year the maximum guaranteeable monthly benefit payable in the form of a life annuity commencing at age 65 as described by § 4022.22(b) to a participant in a plan that terminated in that year:

Year	Maximum guaranteeable monthly benefit
. . . . .	
1999	3,051.14

PART 4011—DISCLOSURE TO PARTICIPANTS

3. The authority citation for Part 4011 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1311.

4. Appendix B to part 4011 is amended by adding a new entry to the table to read as follows. The introductory text is reproduced for the convenience of the reader and remains unchanged.

APPENDIX B TO PART 4011.—TABLE OF MAXIMUM GUARANTEED BENEFITS

If a plan terminates in—	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
.	.	.	.	.	.	.	.	.
1999	$3,051.14	$36,613.68	$2,410.40	$28,924.80	$1,983.24	$23,798.88	$1,373.01	$16,476.12

Issued in Washington, D.C., this 5th day of November, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–30188 Filed 11–10–98; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets; Expected Retirement Age

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule amends the Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans by substituting new Table I–99 in place of existing Table I–98 in appendix D. Table I–99 applies to any plan being terminated either in a distress termination or involuntarily by the PBGC with a valuation date falling in 1999, and is used to determine expected retirement ages for plan participants. This table is needed in order to compute the value of early retirement benefits and, thus, the total value of benefits under the plan.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) sets forth (in subpart B) the methods for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974. Under ERISA section 4041(c), guaranteed benefits and benefit liabilities under a plan that is undergoing a distress termination must be valued in accordance with part 4044, subpart B. In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA Section 4042(a), it uses the subpart B valuation rules to determine the amount of the plan's underfunding.

Under § 4044.51(b), early retirement benefits are valued based on the annuity starting date, if a retirement date has been selected, or the expected retirement age, if the annuity starting date is not known on the valuation date. Sections 4044.55 through 4044.57 set forth rules for determining the expected retirement ages for plan participants entitled to early retirement benefits. Appendix D of part 4044 contains tables to be used in determining the expected early retirement ages.

Table I in appendix D (Selection of Retirement Rate Category) is used to determine whether a participant has a low, medium, or high probability of retiring early. The determination is based on the year a participant would reach "unreduced retirement age" (*i.e.*, the earlier of the normal retirement age or the age at which an unreduced benefit is first payable) and the participant's monthly benefit at unreduced retirement age. The table applies only to plans with valuation dates in the current year and is updated annually by the PBGC to reflect changes in the cost of living, etc.

Tables II–A, II–B, and II–C (Expected Retirement Ages for Individuals in the Low, Medium, and High Categories respectively) are used to determine the expected retirement age after the probability of early retirement has been determined using Table I. These tables establish, by probability category, the expected retirement age based on both the earliest age a participant could retire under the plan and the unreduced retirement age. This expected retirement age is used to compute the value of the early retirement benefit and, thus, the total value of benefits under the plan.

This document amends appendix D to replace Table I–98 with Table I–99 in order to provide an updated correlation, appropriate for calendar year 1999, between the amount of a participant's benefit and the probability that the participant will elect early retirement. Table I–99 will be used to value benefits in plans with valuation dates during calendar year 1999.

The PBGC has determined that notice of and public comment on this rule are impracticable and contrary to the public interest. Plan administrators need to be able to estimate accurately the value of plan benefits as early as possible before initiating the termination process. For

that purpose, if a plan has a valuation date in 1999, the plan administrator needs the updated table being promulgated in this rule. Accordingly, the public interest is best served by issuing this table expeditiously, without an opportunity for notice and comment, to allow as much time as possible to estimate the value of plan benefits with the proper table for plans with valuation dates in early 1999.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—[AMENDED]

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. Appendix D to part 4044 is amended by removing Table I–98 and adding in its place Table I–99 to read as follows:

Appendix D to Part 4044—Tables Used To Determine Expected Retirement Age

TABLE I–99—SELECTION OF RETIREMENT RATE CATEGORY

[For Plans with valuation dates after December 31, 1998, and before January 1, 2000]

Participant reaches URA in year—	Participant's retirement rate category is—			
	Low[1] if monthly benefit at URA is less than—	Medium[2] if monthly benefit at URA is		High[3] if monthly benefit at URA is greater than—
		From	To	
2000	423	423	1,784	1,784
2001	433	433	1,825	1,825
2002	443	443	1,867	1,867
2003	453	453	1,910	1,910
2004	464	464	1,954	1,954
2005	474	474	1,999	1,999
2006	485	485	2,045	2,045
2007	496	496	2,092	2,092
2008	508	508	2,140	2,140
2009 or later	519	519	2,189	2,189

[1] Table II–A.
[2] Table II–B.
[3] Table II–C.

* * * * *

Issued in Washington, D.C., this 5th day of November, 1998.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–30189 Filed 11–10–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–156]

Drawbridge Operation Regulations: Harlem River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the regulations listed under 33 CFR 117.789, governing the operation of the Broadway Bridge, mile 6.8, across the Harlem River in New York City. This deviation allows the bridge owner, the New York City Department of Transportation (NYCDOT), to keep the bridge in the closed position from October 21, 1998 to November 30, 1998, to facilitate repairs. Vessels which can pass under the bridge without a bridge opening may do so at any time.

DATES: This deviation is effective from October 21, 1998 through November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Yee, Project Manager, Bridge Branch at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Broadway Bridge, mile 6.8, over the Harlem River has a vertical clearance of 24 feet at mean high water (MHW) and 29 feet at mean low water (MLW) in the closed position.

The City of New York requested a temporary deviation from the operating regulations for the Broadway Bridge because the bridge is presently unable to open as a result of a start up transformer and contacts failure. The parts necessary to perform the repairs are no longer stock items and must be custom manufactured from specifications. Vessels that can pass under the bridge without an opening may do so at all times during this closed period.

This deviation to the operating regulations will allow the bridge to remain in the closed position from October 21, 1998 to November 30, 1998. This deviation from the normal operating regulations is authorized under 33 CFR 117.35.

Dated: October 27, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–30209 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08–98–070]

Drawbridge Operating Regulation; Gulf Intracoastal Waterway, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR 117.5 governing the operation of the FM 457 pontoon drawbridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent, Matagorda County, Texas. This deviation allows the Texas Department of Transportation to close the bridge from 6 a.m. until 10 p.m. on Tuesday, December 1, 1998. This temporary deviation is issued to allow for scheduled maintenance to the swing span and its mechanical components.

DATES: This deviation is effective from 6 a.m. until 10 p.m. on December 1, 1998.

FOR FURTHER INFORMATION CONTACT:

Mr. David Frank, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130–3396, telephone number 504–589–2965.

SUPPLEMENTARY INFORMATION: The FM 457 pontoon bridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent, Matagorda County, Texas, has no vertical clearance in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Texas Department of Transportation sent a letter to the Coast Guard requesting a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work. This work is essential for the continued operation of the draw span.

This deviation allows the draw of the FM 457 pontoon bridge across the Gulf Intracoastal Waterway, mile 418.0, west of Harvey Locks, near Sargent to remain in the closed-to-navigation position between 6 a.m. and 10 p.m., on Tuesday, December 1, 1998.

This deviation will be effective from 6 a.m. until 10 p.m. on December 1, 1998. Presently, the draw opens on signal at any time.

Dated: November 2, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 98–30208 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA44–1–7365; FRL–6168–5]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Revised Format for Materials Being Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change.

SUMMARY: The EPA is revising the format of 40 Code of Federal Regulations (CFR) part 52, subpart T for materials submitted by Louisiana that are incorporated by reference (IBR) into the State Implementation Plans (SIPs). The regulations affected by this format change have all been previously submitted by the respective State agency and approved by EPA. This format revision will primarily affect the "Identification of plan" sections of CFR 52.970, as well as the format of the SIP materials that will be available for public inspection at the EPA Region 6 office, the Air and Radiation Docket and Information Center located in Waterside Mall, Washington, DC., and the Office of the Federal Register. The sections of 40 CFR 52.970 pertaining to provisions promulgated by EPA or State-submitted materials not subject to IBR review and 40 CFR 52.971 through 52.995 remain unchanged.

EFFECTIVE DATE: This action is effective November 12, 1998.

ADDRESSES: The SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733;

Office of Air and Radiation, Docket and Information Center (Air Docket), EPA, 401 M Street, SW, Room M1500, Washington, DC 20460; and

Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L) at the above Region 6 address or at (214) 665–7354.

SUPPLEMENTARY INFORMATION:

Background

Each State is required by section 110(a)(1) of the Clean Air Act (ACT), to have a SIP that contains the control measures and strategies which will be used to attain and maintain the national ambient air quality standards. The SIP is extensive, containing such elements as emission inventories, monitoring network, attainment demonstrations, and enforcement mechanisms. The control measures and strategies must be formally adopted by each State after the public has had an opportunity to comment on them. They are then submitted to EPA as SIP revisions on which EPA must formally act.

Once these control measures are approved by EPA pursuant to 110(k) of the Act, after notice and comment, they are incorporated into the SIP and are identified in part 52 (Approval and Promulgation of Implementation Plans), 40 CFR. The actual State regulations which are approved by EPA are not reproduced in their entirety in 40 CFR part 52, but are "incorporated by reference," which means that the citation of a given State regulation with a specific effective date has been approved by EPA. This format allows both EPA and the public to know which measures are contained in a given SIP and ensures that the State is enforcing the regulations. It also allows EPA to take enforcement action or the public to bring citizen suits, should a State not enforce its SIP-approved regulations.

The SIP is an active or changing document which can be revised by the State as necessary to address the unique air pollution problems in the State as long as changes are not contrary to Federal law. Therefore, EPA, from time to time, must take action to incorporate into the SIP, revisions of the state program which may contain new and/or revised regulations. Regulations approved into the SIP are then incorporated by reference into part 52. As a result of consultations between EPA and the Office of Federal Register, EPA revised the procedures on May 22, 1997 (62 FR 27968), for incorporating by reference federally-approved SIPs and began the process of developing pursuant to 110(h)(1) of the Act: 1) a revised SIP document for each State that would be incorporated by reference under the provisions of 1 CFR part 51; 2) a revised mechanism for announcing EPA approval of revisions to an applicable SIP and updating both the IBR document and the CFR; and 3) a revised format of the "Identification of plan" sections for each applicable subpart to reflect these revised IBR procedures. The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997, **Federal Register** document.

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Content of Revised IBR Document

The new SIP compilations contain the federally-approved portion of state regulations and source specific permits submitted by each State agency. These regulations and source-specific permits have all been approved by EPA through previous rulemaking actions in the **Federal Register**. The SIP compilations are stored in 3-ring binders and will be updated primarily on an annual basis.

If no significant changes are made for any state to the SIP during the year, an update will not be made during that year. If significant changes occur during the year, an update could be done on a more frequent basis, as applicable. Typically, only the revised sections of the compilation will be updated. Complete resubmittals of a state SIP compilation will be done on as needed basis.

Each compilation contains two parts. Part 1 contains the regulations and Part 2 contains the source-specific permits that have been approved as part of the SIP. Each part has a table of contents identifying each regulation or each source specific permit. The table of contents in the compilation corresponds to the table of contents published in 40 CFR part 52 for these states. The regional EPA offices have the primary responsibility for ensuring accuracy and updating the compilations. The Region 6 EPA Office developed and will maintain the compilations for Louisiana. A copy of the full text of the State's current compilation will also be maintained at the Office of Federal Register and EPA's Air Docket and Information Center.

The EPA is beginning the phasing in of SIP compilations for individual states, and expects to complete the conversion of the revised "Identification of plan" format and IBR documentation for all states by May 1999. This revised format is consistent with the SIP compilation requirements of section 110(h)(1) of the Act.

Revised Format of the "Identification of Plan" Sections in Each Subpart

In order to better serve the public, EPA is revising the organization of the "Identification of plan" section of 40 CFR 52.970. The EPA is including additional information which will more clearly identify what provisions constitute the enforceable elements of the SIP.

The revised "Identification of plan" section will contain five subsections: (a) Purpose and scope, (b) Incorporation by reference, (c) EPA approved regulations, (d) EPA approved source-specific permits, and (e) EPA approved nonregulatory provisions, such as transportation control measures, statutory provisions, control strategies, monitoring networks, etc.

Enforceability and Legal Effect

This change to the procedures for incorporation by reference announced today will not alter in any way the enforceability or legal effect of approved SIP materials, including both those approved in the past or to be approved in the future. As of the effective date of the final rule approving a SIP revision, all provisions identified in the **Federal Register** document announcing the SIP approval will be federally enforceable, both by EPA under section 113 of the Act and by citizens under section 304 of the Act, where applicable. All revisions to the applicable SIP are federally enforceable as of the effective date of EPA approval even if they have not yet been incorporated by reference. To facilitate enforcement of previously approved SIP provisions and provide a smooth transition to the new SIP processing system, EPA is retaining the original "Identification of Plan" section, previously appearing in the CFR as the first or second section of part 52 for each State subpart.

Notice of Administrative Change

Today's action constitutes a "housekeeping" exercise to ensure that federally approved state plans are accurately reflected in 40 CFR part 52. State SIP revisions are controlled by EPA Regulations at 40 CFR part 51. When EPA receives a formal SIP revision request, the Agency must publish the proposed revision in the **Federal Register** and provide for public comment before approval.

The EPA has determined that today's rule falls under the "Good Cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today's rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs.

Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" since the codification only reflects existing law. Immediate revision to the CFR benefits the public by removing outdated citations.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by

statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities, 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

The regulations affected by this format change to 40 CFR part 52 have all been previously submitted by the respective State agency and approved by EPA. Therefore, the Regional Administrator certifies that there is no significant impact on any small entities affected.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. § 804(2).

H. Judicial Review

The EPA has determined that the provisions of section 307(b)(1) of the Clean Air Act pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions approving each individual component of Louisiana SIP compilations had previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to provide an additional opportunity for judicial review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides.

Dated: September 8, 1998.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

2. Section 52.970 is redesignated as § 52.999 and the heading and paragraph (a) are revised to read as follows:

§ 52.999 Original identification of plan section.

(a) This section identifies the original "The Louisiana Air Control Commission Implementation Plan" and all revisions submitted by Louisiana that were federally approved prior to July 1, 1998.

* * * * *

3. A new § 52.970 is added to read as follows:

§ 52.970 Identification of plan.

(a) *Purpose and scope.* This section sets forth the applicable State Implementation Plan (SIP) for Louisiana under section 110 of the Clean Air Act, 42 U.S.C. 7410, and 40 CFR part 51 to meet national ambient air quality standards.

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c),(d) and (e) of this section with an EPA approval date prior to July 1, 1998, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notice of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c), (d) and (e) of this section with EPA approval dates after July 1, 1998, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 6 certifies that the rules/regulations provided by EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations which have been approved as part of the State Implementation Plan as of July 1, 1998.

(3) Copies of the materials incorporated by reference may be inspected at the Region 6 EPA Office at 1445 Ross Avenue, Suite 700, Dallas, Texas, 75202–2733; the EPA, Air and Radiation Docket and Information

Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460; or at the Office of Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) EPA approved regulations.

EPA APPROVED LOUISIANA REGULATIONS IN THE LOUISIANA SIP

State citation	Title/subject	State approval date	EPA approval date	Comments
LAC Title 33. Environmental Quality Part III. Air				
Chapter 1—General Provisions				
Section 101	Authority, Matter Incorporated by Reference, and Permit Fee System.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 103	Scope and Severability of Air Regulations.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 107	Procedure for Handling Investigations, Complaints and Confidentiality.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 109	Necessary Changes for Approval of Compliance Schedules and Annual Report Requirements.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 111	Definitions under the Louisiana Air Regulations.	Aug. 1991, LR17:777	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Chapter 2—Rules and Regulations for the Fee System of the Air Quality Control Programs				
Section 223	Fee Schedule Listing	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Chapter 5—Permit Procedures				
Section 501	Authority	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 503	Procedures for Notification for Interstate Pollution.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 504	Nonattainment New Source Review Procedures.		10/10/97, 62 FR 52951	Ref 52.999(c)(68).
Section 505	For Emissions Below PSD de minimis Levels.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
			Correction 03/06/92, 57 FR 08076.	Ref 52.999(c)(58).
Section 507	Notification Requirement (for Emission Reduction).	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 509	Prevention of Significant Deterioration	Feb. 1995, LR21:170	10/15/96, 61 FR 53639	Ref 52.999(c)(69).
Chapter 7—Ambient Air Quality				
Section 701	Purpose and Information Regarding Standards for PM10, SO2, CO, Atmospheric Oxidants, NO_X and Pb.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 703	Scope of Ambient Air Quality Standards for PM10, SO2, CO, Ozone, NO_X, and Pb.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 705	Standards: Description of Ambient Air Quality Standards.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 707	Degradation of Ambient Air Having Higher Quality than Set Forth in these Sections Restricted.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 709	Measurement of Concentrations PM10, SO2, CO, Atmospheric Oxidants, NO_X, and Pb.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Table 1	Primary Ambient Air Quality Standards.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Table 1a	Secondary Ambient Air Quality Standards.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Table 2	Ambient Air—Methods of Contaminant Measurements.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Chapter 9—General Regulations on Control of Emissions and Emission Standards				
Section 901	Purpose	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 903	Scope	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 905	Control Facilities to be Installed When Feasible.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 907	Emission Resulting in Undesirable Levels Not Allowed (From Refuse Disposal).	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 909	Responsible Person to have Test Made.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).

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Section 911	Department May Make Tests	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 913	New Sources to Provide Sampling Ports.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 915	Emission Monitoring Requirements: Applicability, Special Considerations, Exemptions, and Circumvention.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 917	Variances	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 918	Recordkeeping and Annual Reporting	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 919	Emission Inventory	Oct. 1994, LR20:1102	01/06/95, 60 FR 02016	Ref 52.999(c)(65).
Section 921	Stack Heights	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 923	Maintenance of Pay	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 925	Mass Emission Rate Control Plan	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 927	Notification Required (Emergency Occurrences).	Dec. 1987, LR13:741	03/08/89, 54 FR 09795,	Ref 52.999(c)(49).
Section 929	Violation of Emission Regulation Cannot be Authorized.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 11—Control of Emissions From Smoke				
Section 1101	Control of Air Pollution from Smoke: Purpose and Control of Smoke.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1103	Impairment of Visibility on Public Roads Prohibited.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1105	Smoke from Flaring Shall be no Darker than No. 1 Ringelmann.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49)
Section 1107	Exemptions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1109	Control of Air Pollution from Outdoor Burning.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1111	Exclusion: Variance, Unpopulated Areas and Water Vapor.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 13—Emission Standards for Particulate Matter				
Subchapter A	General			
Section 1301	Emission Standards for Particulate Matter.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1303	Provision Governing Specific Activities	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1305	Control of Fugitive Emissions	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1307	Degradation	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 1309	Measurements of Concentrations	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter B	Fluid Catalytic Cracking Units			
Section 1311	Emission Limits—Including Fluid Catalytic Cracking Units.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Subchapter C	Fuel Burning Equipment			
Section 1313	Emissions from Fuel Burning Equipment.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1315	More Stringent Regulations may be Prescribed if Particulates are Toxic.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 1317	Exclusions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter D	Refuse Incinerators			
Section 1319	Refuse Incinerators: Purpose, Scope, Capacity, Approval of, Allowable Emissions, Disposal, and Restrictions.	Jun 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Subchapter E	Leadened Particulate Matter			
Section 1321	Emission Standards for Leaded Particulate Matter.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 3	Allowable Rate of Emissions Based on Process Weight Rate.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 14—Conformity				
Subchapter A	Determining Conformity of General Federal Actions to State or Federal Implementations Plans			
Section 1401	Purpose	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).

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Section 1402	Scope	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1403	Prohibition	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1404	Definitions	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section:				
1405	Applicability	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
1405.B		06/20/97, LR23:720	03/09/98, 63 FR 11372	Ref 52.999(c)(75)
Section 1406	Conformity Analysis	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1407	Reporting Requirements	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1408	Public Participation	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1409	Frequency of Conformity Determinations.	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1410	Criteria for Determining Conformity of General Federal Actions.	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1411	Procedures for Conformity Determinations of General Federal Actions.	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1412	Mitigation of Air Quality Impacts	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1413	Department Review	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1414	Enforcement Provisions	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Section 1415	Savings Provision	Nov. 1994, LR20:1268	09/13/96, 61 FR 48409	Ref 52.999(c)(67).
Chapter 15—Emission Standards for Sulfur Dioxide				
Section 1501	Degradation of Existing Emission Quality Restricted.	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1503	Emission Limitations	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1505	Variance	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1507	Exceptions, Startup provisions, Online Operating Adjustments, and Bubble Concept.	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1509	Reduced Sulfur Compounds (New and Existing Sources).	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1511	Continuous Emissions Monitoring	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Section 1513	Recordkeeping and Reporting	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Table 4	Emissions—Methods of Contaminant Measurement.	Apr. 1992, LR18:374	07/15/93, 58 FR 38060	Ref 52.999(c)(59).
Chapter 17—Control of Emissions of Carbon Monoxide (New Sources)				
Subchapter A	General			
Section 1701	Degradation of Existing Emission Quality Restricted.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter B	Ferrous Metal Emissions			
Section 1703	Ferrous Metal Emissions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter C	Petroleum Refinery Emissions			
Section 1705	Petroleum Refinery Emissions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 19—Mobile Sources				
Subchapter B	Clean Fuel Fleet			
Section 1951	Purposes	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1953	General Provisions	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1955	Definitions	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1957	Exemptions	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1959	Emissions Standards	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1961	Credits Program	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1963	Emissions Reduction Credits Program—Reserved.	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1965	Recordkeeping	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1967	Conversion to Clean Fuel Vehicles—Reserved.	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1969	Fuel Provider Requirements	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1971	Enforcement	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Section 1973	Fees	Nov. 1994, LR20:1263	10/23/95, 60 FR 54308	Ref 52.999(c)(66).
Chapter 21—Control of Emissions of Organic Compounds				
Subchapter A	General			
Section 2101	Compliance Schedules	Nov. 1990, LR16:959	05/05/94, 59 FR 23166	Ref 52.999(c)(60).

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State citation	Title/subject	State approval date	EPA approval date	Comments
Section 2103	Storage of Volatile Organic Compounds (Large Tanks).	Dec. 1995, LR21:1333	10/22/96, 61 FR 54737	Ref 52.999(c)(71)(E)(F)(G).
Section 2105	Storage of Volatile Organic Components (Small Tanks).			NOT IN SIP.
Section 2107	Volatile Organic Compounds—Loading.	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2108	Marine Vapor Recovery	Nov. 1990, LR16:959	10/22/96, 61 FR 54737	Ref 52.999(c)(71)(A)(B).
Section 2109	Oil/Water—Separation	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2111	Pumps and Compressors	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2113	Housekeeping	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2115	Waste Gas Disposal and Exemptions	Mar. 1993, LR19:317	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2117	Exemptions	Feb. 1990, LR16:116	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2119	Variances	Feb. 1990, LR16:116	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2121	Fugitive Emission Control	Jul. 1991, LR17:654	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2122	Fugitive Emission Control for Ozone Nonattainment Areas.	Nov. 1994, LR20:1269	10/22/96, 61 FR 54737	Ref 52.999(c)(71)(C)(D).
Subchapter B	Organic Solvents			
Section 2123	Organic Solvents	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Subchapter C	Vapor Degreasers			
Section 2125	Vapor Degreasers	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Subchapter D	Cutback Paving Asphalt			
Section 2127	Cutback Paving Asphalt	Apr. 1991, LR17:360	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter E	Perchloroethylene Dry Cleaning Systems			
Section 2129	Perchloroethylene Dry Cleaning Systems.	Nov. 1990, LR16:959	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter F	Gasoline Handling			
Section 2131	Filling of Gasoline Storage Vessels	Oct. 1992, LR18:1122	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2132	Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities.	Jan. 1993, LR19:46	03/25/94, 59 FR 14114	Ref 52.999(c)(61).
Section 2133	Gasoline Bulk Plants	Jul. 1990, LR16:609	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2135	Bulk Gasoline Terminals	Oct.1992, LR18:1123	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Section 2137	Gasoline Terminal Vapor-Tight Control Procedure.	Jul. 1990, LR16:609	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter G	Petroleum Refinery Operations			
Section 2139	Refinery Vacuum Producing Systems	Jul. 1991, LR17:654	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 2141	Refinery Process Unit Turnarounds.	Jul. 1991, LR17:654	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter H	Graphic Arts			
Section 2143	Graphic Arts (Printing) by Rotogravure and Flexographic Processes.	Oct. 1992, LR18:1123	07/25/96, 61 FR 38590	Ref 52.999(c)(64).
Subchapter I	Pharmaceutical Manufacturing Facilities			
Section 2145	Pharmaceutical Manufacturing Facilities.	Nov. 1990, LR16:959	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Subchapter J	Limiting Volatile Organic Compound (VOC) Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (SOCMI)			
Section 2147	Limiting VOC Emissions from SOCMI Reactor Process and Distillation Operations.	Apr. 1995, LR21:380	12/02/97, 62 FR 63658	Ref 52.999(c)(74).
Subchapter K	Limiting Volatile Organic Compound Emissions from Batch Processing			

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Section 2149	Limiting Volatile Organic Compound Emissions from Batch Processing.	Apr. 1995, LR21:387	12/02/97, 62 FR 63658	Ref 52.999(c)(74).
Subchapter L	Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing			
Section 2151	Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing.	Apr. 1995, LR21:391	12/02/97, 62 FR 63658	Ref 52.999(c)(74).
Table 8	Untitled [List of Synthetic Organic Chemicals].	Dec. 1987, LR13:741	05/05/94, 59 FR 23166	Ref 52.999(c) (49) and (60). Table approved at (c)(49) included CAS numbers. Table approved at (c)(60) did not include CAS numbers.
Chapter 23—Control of Emissions from Specific Industries				
Subchapter A	Chemical Woodpulping Industry			
Section 2301	Control of Emissions from the Chemical Woodpulping Industry.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter B	Aluminum Plants			
Section 2303	Standards for Horizontal Stud Soderberg Primary Aluminum Plants and Prebake Primary Aluminum Plants.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter C	Phosphate Fertilizer Plants			
Section 2305	Fluoride Emissions Standards for Phosphate Fertilizer Plants.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Subchapter D	Emission Standards for the Nitric Acid Industry			
Section 2307	Emission Standards for the Nitric Acid Industry.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 56—Prevention of Air Pollution Emergency Episodes				
Section 5601	Purpose	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 5603	Scope	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 5605	Episode Criteria and Air Pollution Forecast.	Dec. 1987, LR13:741	03/08/89 54 FR 09795	Ref 52.999(c)(49).
Section 5607	Administrative Authority Will Determine When Criteria Level Has Been Reached.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 5609	Preplanning Strategies Required: Alert Level, Warning Level, and Emergency Level.	Jun. 1988, LR14:348	06/15/89, 54 FR 25451	Ref 52.999(c)(50).
Section 5611	Standby Plans to be Submitted When Requested by Administrative Authority.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 5	Emission Reduction Plans—Alert Level.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 6	Emission Reduction Plans—Warning Level.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Table 7	Emission Reduction Plans—Emergency Level.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 60—Test Methods—NSPS Division's Source Test Manual				
6001 to 6089	40 CFR 60, Appendix A NSPS Methods 1 to 41.	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 61—Divisions Source Test Method				
Subchapter A	Method 43—Capture Efficiency Test Procedures			
Section 6121	Principle	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6123	Definitions	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6125	Applicability	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6127	Specific Requirements	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).

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Section 6129	Recording and Reporting	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Section 6131	Procedures for Method 43	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.A	Procedure F.1—Fugitive VOC Emissions from Temporary Enclosures.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.B	Procedure F.2—Fugitive VOC Emissions from Building Enclosures.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.C	Procedure G.1—Captured VOC Emissions.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.D	Procedure G.2—Captured VOC Emissions (Dilution Technique).	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.E	Procedure L—VOC Input	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
6131.F	Procedure T—Criteria for Verification of a Permanent or Temporary Total Enclosure.	Jul. 1991, LR17:653	05/05/94, 59 FR 23166	Ref 52.999(c)(60).
Chapter 63—Test Methods—LESHAP Division's Source Test Manual				
6301 to 6401	40 CFR 61, Appendix B Test Methods	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Chapter 65—Rules and Regulations for the Fee System of the Air Quality Control Programs				
Section 6501	Scope and Purpose	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6503	Authority	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6505	Definitions	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6507	Application Fees	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6509	Annual Fees	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6511	Methodology	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6513	Determination of Fee	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6515	Method of Payment	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6517	Late Payment	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6519	Failure to Pay	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6521	Effective Date	Dec. 1987, LR13:741	03/08/89, 54 FR 09795	Ref 52.999(c)(49).
Section 6523	Fee Schedule Listing	Nov. 1992, LR18:1256	03/25/94, 59 FR 14114	Ref 52.999(c)(61).

(d) EPA-approved State Source-specific requirements.

EPA-APPROVED LOUISIANA SOURCE-SPECIFIC REQUIREMENTS

Name of source	Permit number	State approval/effective date	EPA approval date	Comments
Lead SIP for Ethyl Corp. in Baton Rouge.	Compliance order	01/27/89	06/27/89, 54 FR 27002	Amended Compliance order dated 01/31/86. Modeling 05/27/88. State letter 01/27/89. Ref 52.999(c)(51).
Vulcan Materials Company Facility in Geiser, Ascension Parish.	1829T(M–2)	07/28/89	10/10/89, 54 FR 41444	Revision of Bubble Permit. Issued 03/24/83, amended 07/28/89. Ref 52.999(c)(52).
American Cyanamid Company Fortier Plant in Westwego, Jefferson Parish.	1896(M–2)	07/20/89	11/27/89, 54 FR 48743	Revision of Bubble Permit. Issued 10/17/84, amended 07/20/89. Ref 52.999(c)(53).
Vista Chemical Company Facility in Westlake, Louisiana.	1828(M–2)	09/25/86	02/02/90, 55 FR 03598	Bubble Permit. Submitted by Governor on 11/22/83, amended 09/25/86. Ref 52.999(c)(54).
Union Carbide Facility in Hahnville, Louisiana.	1836T(M–1)	05/05/90	07/18/90, 55 FR 29205	Revision of Bubble Permit. Submitted by Governor on 10/19/83, amended 04/23/87, revised 05/05/90. Ref 52.999(c)(55).
Dow Chemical Facility in Plaquemine, Iberville Parish.	1838T(M–2)	10/16/91	10/04/94, 59 FR 50500	Revision of Bubble Permit. Issued 7/28/83, amended 10/16/91. Ref 52.999(c)(62).
Exxon Compliance Date Extension, Baton Rouge Refinery.	N/A	09/12/97	05/11/98, 63 FR 25773	Extension of compliance date to LAC 33:III, 2103.D.4 Ref 52.999(c)(79).

(e) EPA approved nonregulatory provisions and quasi-regulatory measures.

EPA APPROVED LOUISIANA STATUTES IN THE LOUISIANA SIP

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
LA. R.S. of 1950. Title 40, Chapter 12. The Louisiana Air Control Law, Part 1, Louisiana Air Control Commission				
40:2201	Citation	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2202	Definition	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2203	Commission created; domicile; membership; tenure; meetings.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2204	Powers and Duties of Commission	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2205	Powers and Duties of Technical Secretary	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2206	Approval of rules and regulations; public hearings; difference.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2207	Validity of rules or regulations; declaratory judgement.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2208	Investigations; complaints; hearings; recommendations.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2209	Procedure at hearings	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:1077	Secret processes or methods as confidential	01/01/80	06/09/82, 47 FR 25013	Ref 52.999(c)(39) Old section name 2210.
40:2211	Variances	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2212	Failure to act on petition for variance	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2213	Judicial review	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2214	Injunction; penalties for violations of orders of the commission.	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
40:2215	Actions inuring to benefit the state	Apr. 1979	02/14/80 45 FR 09909	Ref 52.999(c)(15).
40:2216	Act as exclusive means of control; nuisances	Apr. 1979	02/14/80, 45 FR 09909	Ref 52.999(c)(15).
LA. R.S. of 1992. Title 30 and 36, Subtitle II. Environmental Quality, Chapter 3. Louisiana Air Control Law				
30:2060 N.6	Toxic air pollution emission control program	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
30:2061	Small Business Stationary Source Technical and Environmental Compliance Assistance Program.	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
30:2062	Louisiana Small Business Compliance Advisory panel.	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
36:239(H)	Transfer of agencies and functions to the Department of Environmental Quality.	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).

EPA APPROVED CONTROL MEASURES IN THE LOUISIANA SIP

Control measures	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approval date	Comments
Federal Hydrocarbon Standards	Region 106, SE LA–SE TX AQCR	03/30/73	06/22/73 38 FR 16565	Ref 52.999(c)(04).
PM Strategy	Region 106, SE LA–SE TX AQCR	01/02/73	07/19/77, 42 FR 37000	Ref 52.999(c)(06).
Air Quality Maintenance Area for PM	Shreveport, LA	12/09/77	08/18/78, 43 FR 36628	Ref 52.999(c)(09).
Air Quality Surveillance Network	New Orleans, LA	04/03/78	01/29/79, 44 FR 05601	Ref 52.999(c)(10). Change of sampling site location.
Louisiana Ozone SIP	Nonattainment areas, AQCR 022 and 106.	04/30/79	02/14/80, 45 FR 09909	Ref 52.999(c)(15). Part D requirement.
Evidence of Notice and Public Hearing.	Statewide	06/20/79	02/10/82, 47 FR 06017	Ref 52.999(c)(16).
Emission Inventory	Nonattainment areas	08/28/78	02/14/80, 45 FR 09909	Ref 52.999(c)(17).
Air Quality Surveillance Network	Statewide	01/10/80	08/06/81, 46 FR 40006	Ref 52.999(c)(20). Final Revisions to ambient monitoring.
Lead SIP	Baton Rouge, LA	10/31/83	05/01/84, 49 FR 18485	Ref 52.999(c)(40).
NSR and Visibility Monitoring	Class I Federal Areas in LA	10/14/85	06/10/86, 51 FR 20969	Ref 52.999(c)(44).
Small Business Program	Statewide	10/22/92	06/23/94, 59 FR 32359	Ref 52.999(c)(63).
Redesignation Request and Maintenance Plan.	Pointe Coupe Parish	12/20/95	01/06/97, 61 FR 00648	Ref 52.999(c)(70).
Revision to SIP, 15% ROP Plan	Nonattainment areas	12/15/95	10/22/96, 61 FR 54737	Ref 52.999(c)(71).
VOC RACT Negative Declarations	Baton Rouge nonattainment area	12/15/95	10/30/96, 61 FR 55894	Ref 52.999(c)(72).
Redesignation Request and Maintenance Plan.	Calcasieu Parish	12/20/95	05/02/97, 62 FR 24036	Ref 52.999(c)(73).

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6185–4]

RIN 2060–ZA03

Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates (adopts) a Federal plan to implement emission guidelines for MWC units located in areas not covered by an approved and currently effective State plan. The Federal plan is an interim action because on the effective date of an approved State plan, the Federal plan will no longer apply to MWC units covered by the State plan. This MWC Federal plan includes the same required elements as a State plan as specified in 40 CFR part 60, subpart B. These elements are: identification of legal authority; identification of mechanisms for implementation; inventory of affected facilities; emission inventory; emission limits; compliance schedules; public hearing requirements; reporting and recordkeeping requirements; and public progress reports.

On December 19, 1995, EPA adopted emission guidelines for existing municipal waste combustor (MWC) units. Section 129 of the Clean Air Act (Act) requires States with existing MWC units subject to the guidelines to submit plans to EPA that implement and enforce the emission guidelines. The State plans were due on December 19, 1996. States without MWC units subject to the emission guidelines must submit a negative declaration letter. Following receipt of a State plan, EPA has up to 6 months to approve or disapprove the plan. If a State with existing MWC units does not submit an approvable plan within 2 years after promulgation of the guidelines (i.e., December 19, 1997), the Act requires EPA to develop, implement, and enforce a Federal Plan for MWC units in that State. This MWC Federal plan was proposed on January 23, 1998 (63 FR 3509).

EFFECTIVE DATE: The effective date of this MWC Federal plan is December 14, 1998. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of December 14, 1998.

Judicial Review. This section 111(d)/129 rule for municipal waste combustors was proposed on January 23, 1998 (63 FR 3509). This notice promulgating a rule for municipal waste combustors constitutes final administrative action concerning that proposal. Under section 307(b)(1) of the Act, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by January 11, 1999. Under section 307(d)(7)(B) of the Act, only an objection to this rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the Act, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding brought by the EPA to enforce these requirements.

ADDRESSES: *Docket.* Docket numbers A–89–08, A–90–45, and A–97–45 contain the supporting information for this promulgated rule and the supporting information for EPA's promulgation of emission guidelines for existing MWC units. Public comments on the proposed rule for this action were received in docket number A–97–45. The dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For procedural and implementation information regarding this Federal Plan, contact Ms. Julie Andresen McClintock at (919) 541–5339, Program Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information regarding State plans, contact Mr. Walt Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For State-specific information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 2) as shown in section I of **SUPPLEMENTARY INFORMATION**.

The following outline shows the organization of the **SUPPLEMENTARY INFORMATION** section of this preamble.

I. Background of MWC Regulations and Affected Facilities
  A. Background of MWC Regulations
  B. MWC Federal Plan and Affected Facilities
  C. Status of State Plans
II. Required Elements of the MWC Federal Plan
III. Changes Since Proposal
  A. Final Control Plan Requirements
  B. Dates for Increments of Progress
  C. Options 1, 2, and 3 and Site-specific Compliance Schedules
  D. Compliance Dates Already Achieved
  E. Subpart Cb Amended Emission Limits
IV. Summary of Federal Plan Emission Limits and Requirements
V. Implementation of Federal Plan and Delegation
  A. Background of Authority
  B. Delegation of the Federal Plan
  C. Mechanisms for Transferring Authority
VI. Title V
VII. Administrative Requirements
  A. Docket
  B. Paperwork Reduction Act
  C. Executive Order 12866
  D. Unfunded Mandates Reform Act of 1995
  E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996
  F. Submission to Congress and the General Accounting Office
  G. National Technology Transfer and Advancement Act
  H. Executive Order 12875
  I. Executive Order 13084
  J. Executive Order 13045

SUPPLEMENTARY INFORMATION:

I. Background of MWC Regulations and Affected Facilities

A. Background of MWC Regulations

On February 11, 1991 (56 FR 5488), EPA promulgated in the **Federal Register** emission guidelines for existing MWC units (40 CFR part 60, subpart Ca) under authority of section 111 of the Act as amended in 1977. On September 20, 1994, EPA proposed revised emission guidelines for MWC units (40 CFR part 60, subpart Cb) under sections 111 and 129 of the Act as amended in 1990. On December 19, 1995, EPA issued final emission guidelines applicable to small and large categories of MWC units.[1] *See* 60 FR 65387. On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subpart Cb as it applies to MWC units with an individual capacity to combust less than or equal to 250 tons per day

[1] The small category comprised all MWC units located at facilities with total capacity to combust between 35 mg/day (40 tons per day), and 225 mg/day (250 tons per day) of MSW. The large category comprised all MWC units located at facilities with total capacity to combust greater than 250 tons per day of MSW.

of municipal solid waste (MSW) (small MWC units), and all cement kilns combusting MSW, consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), amended, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subpart Cb applies to MWC units with an individual capacity to combust more than 250 tons per day of MSW per unit (large MWC units). On August 25, 1997 (62 FR 45116), EPA published changes to the emission guidelines to address the court decision. Those changes went into effect on October 24, 1997 and State plans incorporating those changes were due on August 25, 1998.

States with existing large MWC units subject to the emission guidelines were required to submit to EPA a plan that implements and enforces the guidelines within 1 year after promulgation of the guidelines, or by December 19, 1996. As stated in the proposal preamble, the court's order that vacated the applicability of the guidelines to small MWC units and cement kilns did not affect the due date or the required content of State plans for Large MWC units. The due date for State plans remained December 19, 1996. Section 129(b)(3) of the Act requires EPA to develop, implement, and enforce a Federal plan for large units located in States that have not submitted an approvable plan within 2 years after promulgation of the guidelines, or by December 19, 1997.

Today's action adopts a Federal plan for MWC units that are not yet covered by an approved State plan. The elements of the Federal plan are summarized in section II of this preamble. This MWC Federal plan was proposed in the **Federal Register** on January 23, 1998 (63 FR 3509). Comment letters were received through March 24, 1998. An opportunity for public hearing was offered, but no requests were received and a public hearing was not held. The public comments and EPA's responses are also documented in "Municipal Waste Combustion: Background Information Document for Federal Plan—Public Comments and Responses" (EPA–456/R–98–005), docket A–97–45, item III–B–1. The EPA's responses to the public comments and changes to the regulation are also summarized in section III of this preamble.

B. MWC Federal Plan and Affected Facilities

This MWC Federal plan affects all MWC units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units) that commenced construction on or before September 20, 1994 that are not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility in any State whose approved State plane is subsequently vacated in whole or in part.

Section 129 of the Act specifies that the Federal plan applies to MWC units located in any State that has not submitted an "approvable" State plan by December 19, 1997. The EPA received several State plans before December 19, 1997 and those plans were approved; five more plans were approved by August 15, 1998. Any MWC units covered by plans submitted after December 19, 1997 are covered by the Federal plan until the State plan is approved and becomes effective. An approved State plan is a State plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cb. The State plan is effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Today's adoption of this MWC Federal plan does not preclude a State from submitting a State plan later. If a State submits a State plan after today's publication of the MWC Federal plan, EPA will review and approve or disapprove the State plan. If EPA approves the State plan, then the Federal plan no longer applies as of the effective date of the State plan. (See the discussion in *State Submits A State Plan After Large MWC Units in the State Are Subject to the Federal Plan* in section V of this preamble.)

Sections 62.14100 and 62.14102 of subpart FFF describe the MWC units included and excluded from the Federal plan. The exclusion table in § 62.14102 of subpart FFF lists those units, by State, to which the MWC Federal plan currently does not apply. The exclusion table is provided as a matter of convenience and is not controlling in determining whether a large MWC unit is subject to the Federal plan. Any large MWC unit not covered by an approved and currently effective State plan is subject to the Federal plan. As State plans are approved, EPA will periodically amend the exclusion table in § 62.14102 of subpart FFF to identify MWC units covered in EPA-approved and currently effective State plans.

If a large MWC unit was overlooked by a State and the State submitted a negative declaration letter, the large unit would be subject to this Federal plan. Also, the EPA believes that no large MWC units are located in Indian country. In the unlikely event that a large MWC unit is located in Indian country, then the unit would be covered by the Federal plan, unless it is covered by an approved and currently effective Tribal plan. The tribal Authority Rule authorizes eligible Tribal governments to submit to EPA a section 129/111(d) State plan for MWCs (63 FR 7254, February 12, 1998). The Tribal Authority Rule also contains a discussion on the EPA's authority to implement Clean Air Act programs in Indian country. See also the preamble discussion in the Federal Operating Permits Program proposed rule published on March 21, 1997, 62 FR 13747.

C. Status of State Plans

Many States are making significant progress on their State plans. Twenty-four States have large MWC units and require State plans. The EPA has approved the State plans for Florida (62 FR 36995), Georgia (63 FR 27494), Illinois (62 FR 67570), Minnestoa (63 FR 43080), New York (63 FR 41427), Oregon (62 FR 36995), South Carolina (63 FR 40046), and Tennessee [2] and the MWC units covered in those State plans are not covered by the MWC Federal plan, as of the effective date specified in the **Federal Register** notice announcing EPA's approval of the State plan. The EPA expects more State plans to be approved in the next few months. Table 1 summarizes the status of States without State plans. The table is based on information received from EPA Regional Offices (A–97–45, IV–J–2). The status of States without State plans as of July 27, 1998 is as follows:

- The EPA has received a negative declaration letter from States listed in section I of table 1 stating that there are no large MWC units in these States; thus EPA is not expecting a State plan to be submitted from these States. However, in the unlikely event that there are large MWC units located in any of these States, this Federal plan would automatically apply to them;
- The EPA has received a State plan from States listed in section II of table 1 and the State plans currently are being reviewed by EPA. The Federal plan covers large MWC units in these States until these State plans are approved by EPA and become effective;
- The EPA has received a State plan or a negative declaration letter from the States listed in section III of table 1. The large MWC

[2] Program approval of the State plan has been signed by the Regional Administrator, but not yet published in the **Federal Register**. If the approval of the State plan occurs in a timely fashion, the State plan and not the Federal plan will apply. However, if approval is delayed for reasons such as receipt of adverse comments, the Federal plan will apply for the short period until the State plan is approved. Any delay in the approval of a State plan will be announced in the **Federal Register**.

units in these States are subject to the MWC Federal plan until a State plan applicable to large MWC units is approved by EPA and become effective.

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN[a]

State	Status[c]
I. Negative Declaration Submitted to EPA	
Region I:	
Rhode Island	A
Vermont	A
Region II:	
Puerto Rico	A
Virgin Islands	A
Region III[b]:	
Delaware	A
District of Columbia	A
West Virginia	A
Region IV:	
Kentucky	A
Mississippi	A
North Carolina	A
Region V:	
Wisconsin	A
Region VI:	
Arkansas	A
Louisiana	A
New Mexico	A
Texas	A
Region VII:	
Iowa	A
Kansas	A
Missouri	A
Nebraska	A
Region VIII:	
Colorado	A
Montana	A
North Dakota	A
South Dakota	A
Utah	A
Wyoming	A
Region IX:	
American Samoa	A
Arizona	A
Nevada	A
Northern Mariana Islands	A
Region X:	
Alaska	A
Idaho	A
II. State plan submitted to EPA	
Region I:	
Maine	B
Region III:	
Maryland	C
Pennsylvania	C
Region VI:	
Oklahoma	B
III. Neither a State plan nor a negative declaration letter submitted to EPA	
Region I:	
Connecticut	D
New Hampshire	D
Massachusetts	D
Region II:	
New Jersey	D
Region III:	
Virginia	D
Region IV:	
Alabama	D
Region V:	
Indiana	D
Michigan	D
Ohio	D
Region IX:	
California	D
Guam	D
Hawaii	D
Region X:	
Washington	D

[a] Any large MWC units in these States are covered by the Federal plan.

[b] The City of Philadelphia and Allegheny County, Pennsylvania submitted documentation stating that they have no municipal waste combustors that would be subject to the emission guidelines; however, the Pennsylvania Department of Environmental Protection submitted a State plan.

[c] Status codes.

A=Negative declaration submitted. No State plan is expected. However, in the unlikely event that large MWC units are located in any of these States, this Federal plan would automatically apply to them.

B=State plan has been submitted and is being received by EPA. If the plan is approved and becomes effective, MWC units covered by the State plan would not be subject to the promulgated Federal plan.

C=State plan has been submitted, but is incomplete.

D=State plan or negative declaration submittal has not been received.

Regulated Entities

Entities regulated by this action are existing MWC units with the capacity to combust greater than 250 tons per day of MSW unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is in effect. Today's MWC Federal plan will affect MWC units in 15 States. However, many State plans are expected to be approved in the next few months. Based on a 1997 MWC inventory and recent information from EPA Regional Offices (A–97–45, IV–J–2), this Federal plan is expected to affect MWC units in 16 States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry and Local Government Agencies	Waste-to-energy plants that generate electricity or steam from the combustion of garbage by feeding municipal waste into large furnaces. Incinerators that combust trash but do not recover energy from the waste.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this MWC Federal plan. For specific applicability criteria, see §§ 62.14100 and 62.14102 of subpart FFF.

Regional Office Contracts

For information regarding the implementation of the MWC Federal Plan, contact the appropriate EPA Regional Office as shown in table 2.

TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS

Regional contact	Phone No.	Fax No.
John Courcier, U.S. EPA, Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), John F. Kennedy Federal Bldg., Boston, MA 02203–0001	(617) 565–9462	(617) 565–4940
Christine DeRosa, U.S. EPA, Region II (New Jersey, New York, Puerto Rico, Virgin Islands), 290 Broadway, New York, NY 10007–1866	(212) 637–4022	(212) 637–3901
James B. Topsale, U.S. EPA/3AP22, Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia), 1650 Arch Street, Philadelphia, PA 19103–2029	(215) 814–2190	(215) 814–2134
Scott Davis, U.S. EPA/APTMD, Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), 345 Courtland St., N.E., Atlanta, GA 30365	(404) 562–9127	(404) 562–9095

TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL WASTE COMBUSTORS—Continued

Regional contact	Phone No.	Fax No.
Douglas Aburano (MN)	(312) 353–6960	(312) 886–5824
Mark Palermo (IL, IN, OH)	(312) 886–6082	
Victoria Hayden (MI)	(312) 886–4023	
Charles Hatten (WI)	(312) 886–6031	
U.S. EPA/AT18J, Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), 77 W. Jackson Blvd., Chicago, IL 60604		
Mick Cote, U.S. EPA, Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7219	(214) 665–7263
Wayne Kaiser, U.S. EPA, Region VII (Iowa, Kansas, Missouri, Nebraska), 726 Minnesota Ave., Kansas City, KS 66101	(913) 551–7603	(913) 551–7065
Mike Owens, U.S. EPA, Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 999 18th Street, Suite 500, Denver, CO 80202–2466	(303) 312–6440	(303) 312–6064
Patricia Bowlin, U.S. EPA/Air 4, Region IX (American Samoa, Arizona, California, Guam, Hawaii, Northern Mariana Islands, Nevada), 75 Hawthorne Street, San Francisco, CA 94105	(415) 744–1188	(415) 744–1076
Catherine Woo, U.S. EPA, Region X (Alaska, Idaho, Oregon, Washington), 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0404

II. Required Elements of the MWC Federal Plan

Sections 111(d) and 129 of the Act, as amended, 42 U.S.C. 7411(d) and 7429(b)(2), require States to develop and implement State plans for MWC units to implement and enforce the promulgated emission guidelines. Subparts B and Cb of 40 CFR part 60 require States to submit State plans that include specified elements. Because this Federal plan is being adopted in lieu of State plans, it includes the same essential elements: (1) Identification of legal authority, (2) identification of mechanisms for implementation, (3) inventory of affected facilities, (4) emissions inventory, (5) emission limits, (6) compliance schedules, (7) public hearing requirements, (8) reporting and recordkeeping requirements, and (9) public progress reports. Each State plan element was discussed in detail as it relates to the Federal plan in the preamble to the proposed rule (63 FR 3509). The following table (Table 3) identifies each element and identifies where it is located or codified. The EPA received public comments on the emission limits, compliance schedules, and reporting presented in section III of this preamble.

TABLE 3.—REQUIRED ELEMENTS AND LOCATION

Require element of the MWC Federal plan	Where located
1. Identification of legal authority	Section 129(b)(3) of the Act.
2. Identification of mechanisms for implementation	Section V of this preamble.
3. Inventory of affected facilities	Docket A–97–45, item II–B–1.
4. Emissions inventory	Docket A–97–45, item II–B–1.
5. Emission limits	40 CFR 62.14103, 62.14106, and 62.14107 of subpart FFF.
6. Compliance schedules	40 CFR 62.14108 of subpart FFF.
7. Public hearing requirements	63 FR 3517, January 23, 1998.
8. Reporting and recordkeeping requirements	40 CFR 62.14109 of subpart FFF.
9. Public progress reports	63 FR 3517, January 23, 1998.

III. Changes Since Proposal

This section of the preamble discusses the changes to the MWC Federal plan resulting from public comments. The public comments received on the proposed Federal plan are summarized and addressed in the promulgation background information document (EPA–456/R–98–005, docket A–97–45, III–B–1).

A. Final Control Plan Requirements

The proposed MWC Federal plan included specific requirements for the final control plan, which must be submitted to meet the first of five increments of progress toward retrofitting air pollution control equipment. Commenters indicated that the detailed requirements, including a requirement to prepare engineering drawings and specifications, go beyond the requirements in 40 CFR part 60, subparts B and Cb and EPA's State plan guidance document (EPA–456/R–96–003, docket A–97–45, II–A–7). Commenters requested that EPA revise the definition of final control plan to maintain consistency with subparts B and Cb and the State plan guidance document. This would allow owners and operators to better meet the increment 1 date and would be consistent with their efforts to prepare the same material for the State plan. In response to these comments, EPA revised the definition of final control plan to be consistent with 40 CFR part 60, subparts B and Cb and the State plan guidance document. The final rule requires a control plan, which can be a letter or brief document, that describes the controls or process changes that the source will use to comply with the emission limits and other requirements. The EPA recognizes the importance of maintaining consistency between the Federal plan and previous rules and guidance. By maintaining this consistency, MWC owners and operators will be preparing the same final control plan whether they are subject to the Federal plan or a subsequently approved State plan, unless the approved State plan contains requirements that are more stringent than those in the Federal plan. The EPA's goal is to allow owners and operators sufficient time to select a control technology, award contracts, and begin construction to achieve compliance by December 19, 2000.

B. Dates for Increments of Progress

The proposed MWC Federal plan included a generic compliance schedule with five increments of progress toward retrofitting air pollution control equipment. The proposed Federal plan would have required an owner or operator to submit the final control plan (increment 1) by September 21, 1998, award contracts (increment 2) by May 18, 1999, begin construction (increment 3) by November 14, 1999, finish construction (increment 4) by November 19, 2000, and achieve final compliance (increment 5) by December 19, 2000. The EPA received requests either to delay the increment 1 compliance date or "float" the increment dates relative to publication of the final rule in the **Federal Register** (i.e., each date would fall a certain number of months after publication). Commenters suggested that floating the dates would provide flexibility that would assist in achieving final compliance.

To respond to these comments, EPA delayed the increment 1 compliance date to allow sufficient notice and a reasonable amount of time for owners and operators to submit their control plans after the Federal plan rule is adopted. The revised increment 1 date is 60 days after today's publication of the Federal plan, which is about 2 months later than the proposed date of September 21, 1998. This will allow an owner or operator adequate time to prepare the final control plan, which is less detailed than would have been required in the proposal.

The remaining dates (increments 2 through 5) in the generic compliance schedule remain the same as in the proposal. These dates were retained for two reasons. First, these dates are achievable and they are necessary for MWC owners and operators to stay on track to complete retrofits by December 19, 2000. Second, if alternative dates are needed, an owner or operator may request alternative dates for increments 2, 3, and 4 as discussed in the next section of this preamble.

The EPA maintains that each date in the generic compliance schedule is achievable for MWC units. The generic schedule is based on four retrofit studies, which give a realistic estimate of the time required for an owner or operator to retrofit control equipment and reach final compliance. To provide maximum flexibility, the first three Federal plan increments are based on the maximum time required by any of the cases studied. The fourth increment was established to provide the maximum time to retrofit and still meet the final compliance date. The fifth and final increment is dictated by the Act. If the State or owners or operators wish to differ from the generic compliance schedule, they have the option of submitting alternative dates for increments 2 through 4, as described below. Because EPA is allowing this flexibility, EPA is not floating the generic compliance dates in the final Federal plan and is maintaining the proposed compliance dates for increments 2 through 5.

The EPA also maintains that MWC owners and operators have had adequate notice to begin retrofits. MWC owners and operators have known that they would need to install controls by December 19, 2000 since the promulgation of the emission guidelines on December 19, 1995. In July of 1996, EPA published the EPA State plan guidance document (EPA–456/R–96–003) that clearly describes the increments of progress and the final compliance date. Thus, MWC owners and operators had adequate time to develop their final control plans, plan their increments, and begin retrofits.

C. Options 1, 2, and 3 and Site-specific Compliance Schedules

Commenters supported EPA's approach in providing options for establishing the dates for the five increments of progress and EPA is retaining the proposed approach in the final Federal plan. The proposed Federal plan included three options for establishing the increment dates. Under option 1, a facility subject to the Federal plan would follow the generic compliance schedule developed by EPA. Under option 2, a State could submit alternative increment dates during the comment period that are consistent with the State plan. Under option 3, a State or the owner or operator could submit alternative dates for increments 2 through 4 on or before the date the final control plan is due under the generic compliance schedule. In all options, increment 1 and 5 dates must match increment 1 and 5 dates in the generic compliance schedule. In option 2, EPA reviewed the schedules submitted during the comment period and incorporated the approved schedules into the final Federal plan. In option 3, EPA would review the schedules before approving them and will periodically amend the site-specific table (table 6 of subpart FFF) to identify the MWC units with an EPA approved site-specific schedule.

The EPA is keeping these options to maintain consistency with State plans and offer flexibility on intermediate increments so long as the increment 1 and 5 dates are met. Many States exercised option 2 and submitted site-specific compliance schedules during the comment period. The EPA reviewed all schedules submitted by States to determine if the schedules met the increment 1 and 5 compliance dates. The EPA reviewed justification letters for increments 2, 3, and 4, if the dates were later than the generic schedule. Based on this review, EPA approved the site-specific schedules for various MWC facilities in the following States: California, Maine, Maryland, New Jersey, Pennsylvania, and Virginia. These approved site-specific schedules appear in table 6 of subpart FFF. The background information document (EPA–456/R–98–005, A–97–45, III–B–1) and a memorandum (A–97–45, IV–A–1) available in the docket provide details on the schedules submitted by the commenters and EPA's review process.

Note that under option 3, MWC owners or operators and States still have the opportunity to submit site-specific alternative dates for increments 2, 3, and 4 for approval at the time the final control plan is due. MWC owners or operators must submit the dates and a justification to EPA and must provide the State a copy. The EPA will review and approve or disapprove the alternative compliance dates in a timely manner. In order to facilitate EPA review, the site-specific schedule requests should include a justification for the site-specific schedule. The date for achieving final compliance for all schedules cannot be later than December 19, 2000.

D. Compliance Dates Already Achieved

At proposal, several States without approved State plans had submitted site-specific compliance schedules that included compliance dates that had already been achieved. To make it clear that these facilities must notify EPA when they meet an increment, EPA revised the format of the site-specific compliance schedule in the final rule. Rather than inserting "NA" (not applicable) for increment dates that have been achieved, EPA is inserting an increment compliance date that falls 60 days after publication of the final Federal plan. The owner or operator of an MWC unit that is not covered by an EPA approved and currently effective State plan must submit a notification to EPA stating that the increment was met. This is the same notification as required for all facilities subject to the Federal plan. The owner or operator must mail the (post-marked) notification to the applicable EPA Regional Office within 10 business days of the increment date defined in the Federal plan. For increments that have been achieved, the

due date for this notification is 70 days (60 days plus 10 days) after publication of this final rule. The EPA is requiring notification to ensure completion of increments so the facility will meet the final compliance deadline.

E. Subpart Cb Amended Emission Limits

This MWC Federal plan implements the emission guidelines (40 CFR part 60, subpart Cb) for MWC units not covered by an EPA approved and currently effective State plan. Because this Federal plan is being adopted in lieu of State plans, it contains the same elements required by 40 CFR part 60, subparts B and Cb. Each element is described in the Federal plan proposal (62 FR 3509, January 23, 1998), including the subpart Cb emission limits. Subpart Cb was amended on August 25, 1997 (62 FR 45116) to include revised emission limits for sulfur dioxide, hydrogen chloride, lead, and nitrogen oxides. States were required to incorporate the new limits in their State plans by August 25, 1998. The amended emission guidelines required final compliance with the amended emission limits no later than 5 years after promulgation (August 25, 2002), consistent with section 129 of the Act. The EPA incorporated these revised emission limits in the proposed MWC Federal plan but proposed final compliance by December 19, 2000.

One commenter requested that EPA stagger the compliance dates for the amended emission limits to August 25, 2002 to be consistent with the maximum time allowed by subpart Cb, as amended. The commenter was concerned that there may be a significant cost associated with requiring earlier compliance with the more strict standards. However, the commenter was not able to provide any specific cost information. The EPA maintains that requiring compliance with the revised limits by December 19, 2000 does not cause significant additional burden or costs to facilities. The same types of air pollution control technology served as the basis for both the 1995 limits and the 1997 amended limits: spray dryer/fabric filter or electrostatic precipitator (ESP), carbon injection, and selective non-catalytic reduction (SNCR) for non-refractory combustor types. Large municipal waste combustor units need to install controls by December 19, 2000 to meet the original limits. As soon as these controls are installed, the units will also meet the final, amended limits. The EPA's test data used to develop the emission guidelines show that these controls actually achieve emission levels well below the 1995 and 1997 emission limits (docket A–89–08 and A–90–45). The 1997 limits are only slightly different than the 1995 limits and will not require major operational changes or significantly increase costs. Section 129 of the Act and 40 CFR part 60, subpart B, require compliance "as expeditiously as practicable" and compliance with all limits by December 19, 2000 is practicable. Thus, EPA is not changing the proposed final compliance date for the amended 1997 limits from December 19, 2000.

IV. Summary of Federal Plan Emission Limits and Requirements

The MWC Federal plan (40 CFR part 62, subpart FFF), which implements the emission guidelines, includes emission limits, operating practice requirements, operator training and certification requirements, and compliance and performance testing requirements. These emission limits and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cb), as amended. Table 4 summarizes the requirements of the Federal plan rule (40 CFR part 62, subpart FFF).

TABLE 4.—SUMMARY OF FEDERAL PLAN REQUIREMENTS FOR EXISTING MWCs[a b]

Applicability:

The Federal plan applies to existing MWC units with capacities to combust greater than 250 tons per day of municipal solid waste unless the unit is subject to a section 111(d)/129 State plan that has been approved by EPA and is currently effective.

Unit size (MSW combustion capacity)	Requirement
>250 tons per day (referred to as a large MWC unit)	Subject to provisions listed below.

Good Combustion Practices:

- A site-specific operator training manual is required to be developed and made available for MWC personnel.
- The EPA or a State MWC operator training course is required to be completed by the MWC chief facility operator, shift supervisors, and control room operators.
- The ASME (or State-equivalent) provisional and full operator certification is required to be obtained by the MWC chief facility operator (mandatory), shift supervisors (mandatory), and control room operators (optional).
- The MWC load level is required to be measured and not to exceed 100 percent of the maximum load level measured during the most recent dioxin/furan performance test.
- The maximum PM control device inlet flue gas temperature is required to be measured and not to exceed the temperature 17°C above the maximum temperature measured during the most recent dioxin/furan performance test.
- The CO level is required to be measured using a CEMS, and the concentration in the flue gas is required not to exceed the following:

MWC type	CO level	Averaging time
Modular starved-air and excess-air	50 ppmv	4-hour.
Mass burn waterwall and refractory	100 ppmv	4-hour.
Mass burn rotary refractory	100 ppmv	24-hour.
Fluidized-bed combustion	100 ppmv	4-hour.
Pulverized coal/RDF mixed fuel-fired	150 ppmv	4-hour.
Spreader stoker coal/RDF mixed fuel-fired	200 ppmv	24-hour.
RDF stoker	200 ppmv	24-hour.
Mass burn rotary waterwall	250 ppmv	24-hour.

MWC Organic Emissions (measured as total mass dioxins/furans):

- Dioxins/furans (performance test by EPA Reference Method 23).

MWC units utilizing an ESP-based air pollution control system	60 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing),[c].
MWC units utilizing a nonESP-based air pollution control system	30 ng/dscm total mass (mandatory) or 15 ng/dscm total mass (optional to qualify for less frequent testing),[c].

- Basis for dioxin/furan limits GCP and SD/ESP or GCP and SD/FF, as specified above.

MWC Metal Emissions:

- PM (performance test by EPA Reference Method 5).

27 mg/dscm (0.012 gr/dscf).
- Opacity (performance test by EPA Reference Method 9).
  10 percent (6-minute average).
- Cd (performance test by EPA Reference Method 29). 0.040 mg/dscm (18 gr/million dscf).
- Pb (performance test by EPA Reference Method 29).
  0.44 mg/dscm (200 gr/million dscf).
- Hg (performance test by EPA Reference Method 29).
  0.080 mg/dscm (35 gr/million dscf) or 85-percent reduction in Hg emissions.
- Basis for PM, opacity, Cd, Pb, and Hg limits GCP and SD/ESP/CI or GCP and SD/FF/CI.

MWC Acid Gas Emissions:
- SO_2 (performance test by CEMS).
  29 ppmv or 75-percent reduction in SO_2 emissions.
- HCl (performance test by EPA Reference Method 26).
  29 ppmv or 95-percent reduction in HCl emissions.
- Basis for SO_2 and HCl limits.
  See basis for MWC metals.

Nitrogen Oxides Emissions:
- NO_X (performance test by CEMS):

Mass burn waterwall	205 ppmv.
Mass burn rotary waterwall	250 ppmv.
Refuse-derived fuel combustor	250 ppmv.
Fluidized bed combustor	180 ppmv.
Mass burn refractory	No NO_X control requirement.

- Basis for NO_X limits:

MWC units except refractory	SNCR.
Refractory MWC units	No NO_X control requirement.

Fugitive Ash Emissions:
- Fugitive emissions (performance test by EPA Reference Method 22).
  Visible emissions 5 percent of the time from ash transfer systems except for maintenance and repair activities.
- Basis for fugitive emission limit ..... Wet ash handling or enclosed ash handling.

Performance Testing and Monitoring Requirements:
- Reporting frequency ..... Annual (semiannual if violation).
- Load, flue gas temperature ..... Continuous monitoring, 4-hour block arithmetic average.
- CO ..... CEMS, 4-hour block or 24-hour daily arithmetic average, as applicable.
- Dioxins/furans, PM, Cd, Pb, HCl, and Hg ..... Annual stack test.
- Opacity ..... COMS (6-minute average) and annual stack test.
- SO_2 ..... CEMS 24-hour daily geometric mean.

Fugitive ash emissions — Annual test
- NO_X ..... CEMS, 24-hour daily arithmetic average.

Compliance Schedule:
See Section III of this preamble and 40 CFR part 62, subpart FFF.

[a] All concentration levels in the table are converted to 7 percent O_2, dry basis.

[b] List of acronyms and abbreviations.
ASME—American Society of Mechanical Engineers.
C—Celsius.
Cd—cadmium.
CEMS—continuous emissions monitoring system.
CI—carbon injection.
CO—carbon monoxide.
COMS—continuous opacity monitoring system.
ESP—electrostatic precipitator.
FF—fabric filter.
gr/dscm—grains per dry standard cubic meter.
Hg—mercury.
MSW—municipal solid waste.
MWC—municipal waste combustor.
ng/dscm—nanograms per dry standard cubic meter.
NO_X—nitrogen oxides.
O_2—oxygen.
Pb—lead.
PM—particulate matter.
RDF—refuse-derived fuel.
SD—spray dryer.
SNCR—selective noncatalytic reduction.
TEQ—toxic equivalency.

[c] Although not part of the dioxin/furan limit, the dioxin/furan total mass limits of 30 ng/dscm and 60 ng/dscm are equal to about 0.3 to 0.8 ng/dscm TEQ and 0.7 to 1.4 ng/dscm TEQ, respectively. The optional reduced testing limit of 15 ng/dscm total mass is equal to about 0.1 to 0.3 ng/dscm TEQ.

V. Implementation of Federal Plan and Delegation

A. Background of Authority

Under sections 111(d) and 129 of the Act, the EPA is required to adopt emission guidelines that are applicable to existing solid waste incineration sources. The emission guidelines are not enforceable, however, until the EPA approves a State plan or adopts a Federal plan for implementing and enforcing them, and the State or Federal plan has become effective. In cases where a State has not submitted an approvable plan, the EPA must adopt a MWC Federal plan for sources in the State as an interim measure to

implement the emission guidelines until a State plan is approved and becomes effective. A few States may not submit a State plan at all.

Congress has determined that the primary responsibility for air pollution prevention and control rests with State and local agencies. (See section 101(a)(3) of the Act.) Consistent with that overall determination, Congress established sections 111 and 129 of the Act with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Congress explicitly required that EPA establish procedures under section 111(d) that are similar to those under section 110(c) for State Implementation Plans. Congress has shown a consistent intent for the States and local agencies to hold the primary responsibility to implement and enforce the requirements of the emission guidelines. Congress has also required EPA to promulgate a Federal plan for States that fail to submit approvable State plans in time. Accordingly, EPA has strongly encouraged the States to submit approvable State plans on time, and for those States that are unable to submit approvable State plans on time, EPA strongly encourages them to request delegation of the Federal plan so that they can have the primary responsibility in their State, consistent with Congress' overarching intent.

The EPA believes, more specifically, that the State and local agencies have the responsibility to design, adopt, and implement the control programs needed to meet the requirements of the MWC rules and the MWC Federal plan. The EPA also believes that these agencies possess appropriate enforcement resources and other practical advantages to ensure the highest rates of actual compliance in the field. For these reasons, EPA seeks to employ all available mechanisms to expedite program transfer to State and local agencies, where requests for delegations can be granted. For example, the EPA has encouraged States to help determine compliance schedules and to provide operator training and certification requirements for this MWC Federal plan.

B. Delegation of the Federal Plan

For a State to request delegation of the Federal plan, the State must submit to the appropriate EPA Regional Administrator a written request for delegation of authority. The State must explain how the State meets the criteria for delegation. The minimum criteria include a demonstration that adequate resources and legal and enforcement authority to administer and enforce the program exist in the State requesting the delegation. If the State meets these criteria, EPA will approve the delegation of the Federal plan and will announce the approval of the delegation in a **Federal Register** notice. A Memorandum of Agreement between the appropriate EPA Regional Office and the State would set forth the terms and conditions of the delegation and would be used to transfer authority.

An MWC owner or operator not covered by a State plan can submit requests for approvals to EPA directly and should copy the State on the request until the Federal Plan is delegated to the State. Actions that cannot be delegated, such as the approval of requests for waivers of operator training, should be sent to EPA and copied to the State. The EPA would, in conjunction with the State, make efforts to ensure that affected units are aware that the State has been delegated responsibility for implementation of the Federal Plan. The status of Federal plan delegations to the States will be posted on the EPA TTN Web Website: http://www.epa.gov/ttn/oarpg, along with an up-to-date list of State plan submittals.

The EPA will continue to implement the Federal plan if a State does not qualify to take delegation. If a State fails to implement the delegated portion of the Federal plan, EPA will take responsibility for direct implementation and enforcement of the Federal rule. For all delegations, the EPA would still retain the authority to approve an alternative "as protective as" emission standard, major alternatives to test methods, major alternatives to monitoring or waiver of recordkeeping, or waiver of operator training and certification. Major alternatives include entirely new methods or alternative test methods or monitoring methods that use unproven technology or procedures. The EPA does not relinquish enforcement authority even when a State has received delegation.

C. Mechanisms for Transferring Authority

There are three mechanisms for transferring implementation responsibility to State and local agencies: (1) If EPA approves a State plan submitted to EPA after the Federal plan is adopted, the State would by definition have authority to enforce and implement its State plan in lieu of the Federal plan upon the effective date of EPA's approval; (2) if a State does not submit and/or obtain approval of a State plan, EPA can delegate the authority to the State to perform certain implementation responsibilities for the Federal plan to the extent requested by the State and allowed by State law; and (3) if a State plan is modified such that it is no longer as protective as the emission guidelines, and thus EPA does not approve these less protective provisions of the State plan, then EPA could encourage the State to request delegation of the MWC Federal plan. Each of these different options is described in more detail below.

1. State Submits a State Plan After Large MWC Units Located in the State Are Subject to the Federal Plan

After an MWC unit in a particular State becomes subject to this Federal plan, the State may still adopt and submit to EPA for approval a State plan which contains all the required elements of a State plan. The EPA will determine if the State plan is as protective as the emission guidelines. If EPA determines that the State plan is not as protective as the guidelines, EPA will disapprove the plan. Large MWC units covered in the State plan remain subject to the Federal plan. If EPA determines that the State plan is as protective as the emission guidelines, EPA will approve the State plan. The State will implement and enforce the State plan in lieu of the Federal plan. The approval of the State plan automatically conveys to a State the responsibility for the 1995 emission guidelines, as amended, through the State plan mechanism as intended by Congress.

The EPA will periodically amend the Federal plan exclusion table to identify State that have approved State plans. MWC units covered in those approved and effective State plans are not subject to the Federal plan. The State plan is effective on the date specified in the notice publsihed in the **Federal Register** announcing EPA's approval, whether or not the exclusion table has been revised.

2. State Takes Delegation of the Federal Plan

As a matter of convenience, States that do not have an approved State plan in effect can request responsibilities for implementing the Federal plan. The EPA believes that it is advantageous and the best use of resources for the State to agree to undertake administrative and substantive roles in implementing the Federal plan to the maximum extent allowed by law. These roles could include as a minimum: administration and oversight of compliance reporting and recordkeeping requirements, conduct of source inspections, and preparation of draft notices of violation. For some situations, the EPA could

retain primary responsibility for bringing enforcement actions against sources violating Federal plan provisions. These roles could include delegation of all substantive actions, including primary responsibility for enforcement of the requirements, as allowed by State law and approved by EPA.

3. An approved State Plan is No Longer as Protective as the Emission Guidelines

The EPA could also delegate portions of the Federal plan to a State for special circumstances. An example would be a State with an approved State plan that only contains the 1995 emission limits. This State plan must incorporate the revised emission limits by August 25, 1998. If a State plan does not incorporate the amended emission limits by that date, the State plan would no longer be as protective as the emission guidelines. Rather than withdrawing its approval of the entire State plan, the EPA could, to the extent authorized by State law, delegate that portion of the Federal plan containing the revised emission limits (from the August 25, 1997 amendments) to the State. The State would have responsibility for implementation and enforcement of all MWC requirements, including those in the partially delegated Federal Plan.

In the proposed Federal plan preamble EPA proposed another option for the delegation of the Federal plan in which a State adopts a State rule but does not submit a State plan. After considering all other proposed options, (e.g. the subsequent approval of a State plan, and the straight delegation of the Federal plan), EPA determined that this option was unnecessary, and could potentially result in the need to make equivalency determinations that would be resource intensive and complex to administer. The EPA believes that the preferred way to implement and enforce the emission guidelines after the State has adopted a State rule is for the State to submit a State plan that includes the State rule or other enforceable mechanism, as well as the other required elements of an approvable State plan. Upon EPA approval of the State plan that includes the enforceable mechanism, both the State and ETA are vested with full authority. Upon the effective date of EPA's approval of the State plan, the Federal plan will no longer apply to MWC units covered by the State plan.

VI. Title V

All MWC sources subject to this MWC Federal plan must obtain a title V permit. Title V permits issued to these sources must include all applicable requirements of this Federal plan. (See 40 CFR 70.2 and 71.2.) The permit must also contain all necessary terms and conditions to assure compliance with the applicable requirements.

If a source is subject to both State and Federal plan requirements due to, for example, the delegation options outlined above, then the source's permit must contain the applicable provisions from each plan. Given that a title V permit for a MWC source may contain both State and Federal provisions, it is especially important that each title V permit issued to a MWC source clearly state the basis for each requirement consistent with 40 CFR 70.6(a)(1)(i) and 71.6(a)(1)(i).

VII. Administrative Requirements

Since today's promulgated rule simply implements the MWC emission guidelines (40 CFR part 60, subpart Cb) promulgated on December 19, 1995 (60 FR 65387) and amended on August 25, 1997 (62 FR 45116) as they apply to large MWC units and does not impose any new requirements, much of the following discussion of administrative requirements refers to the documentation of applicable administrative requirements as discussed in the preamble to the 1995 rule.

A. Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [see 42 U.S.C. 7607(d)(7)(A)]. Docket numbers A–89–08 and A–90–45 contain the supporting information for the December 19, 1995 and August 25, 1997 emission guidelines. Because this promulgated rule implements the emission guidelines, these same dockets also contain the supporting information for this rulemaking. Public comments received on the proposed rule for this rulemaking and additional supporting information are included in docket number A–97–45.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1847.01) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460, by e-mail at farmer.sand@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The information required under this rule is needed by the Agency to ensure that the MWC Federal plan requirements are implemented and are complied with on a continuous basis. Required records and reports are necessary to identify MWC units that may not be in compliance with the MWC Federal plan requirements. Based on reported information, EPA will decide which units should be inspected and what records or processes should be inspected. The records that owners and operators of units maintain will indicate whether MWC personnel are operating and maintaining control equipment properly.

The EPA based its ICR calculations on a 1997 MWC inventory (A–97–45, II–B–1) and information from EPA Regional Offices (A–97–45, IV–J–1). As of June 1998 when the ICR was submitted, the Federal plan was projected to affect 135 MWC units at 56 plants located in 19 States. The EPA expected that 12 additional State plans would be approved within the year following promulgation and four additional State plans will be approved within 2 years following promulgation. (Since June 1998, the EPA has approved 4 additional State plans.) When a State plan is approved and becomes effective, the Federal plan no longer applies to MWC units covered in that State plan; therefore, the estimated burden will continue to decrease. The estimated annual burden for industry averaged over the first 3 years after the implementation of the Federal plan is 16,907 hours annually at a cost of $6,285,923 (including $657,885 in labor costs) per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated annual burden for the Agency averaged over the first 3 years would be 2,850 hours at a cost of $115,003 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons

to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and ■ person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR part 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by December 14, 1998. Include the ICR number in any correspondence.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA and OMB determine that this regulatory action is "not significant" under Executive Order 12866. This promulgated Federal plan simply implements the 1995 MWC emission guidelines (as amended in 1997) and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1995 MWC emission guidelines. The EPA considered the 1995 emission guidelines and standards to be significant and the rules were reviewed by OMB in 1995 (*see* 60 FR 65405).

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any rule where the estimated costs to State, local or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. An unfunded mandates statement was prepared and published in the 1995 promulgation notice for the emission guidelines and standards (*see* 60 FR 65405 to 65412).

The EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. Therefore, the requirements of the Unfunded Mandates Act do not apply to this promulgated rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1995 MWC emission guidelines rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (*see* 60 FR 65413). This final Federal plan does not establish any new requirements. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), EPA certifies that this Federal plan will not have a significant impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

F. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the SBREFA of 1996, generally provides that before a rule may take effect, the Agency adopting the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. No. 104–113, § 12(d) (15 U.S.C. 272 note), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This promulgated MWC Federal plan does not establish any new requirements for MWC units. Therefore, the requirements of the NTTAA are not applicable to this final rule.

H. Executive Order 12875

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, on October 26, 1993. Executive Order 12875 prohibits the EPA, to the extent feasible and permitted by the law, from promulgating any regulation that is not required by statute and creates a mandate upon a State, local, or Tribal government unless the Federal government provides the funds necessary to pay the direct costs incurred by the State, local, or Tribal government in complying with the mandate. If the mandate is unfunded, the EPA must provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, or Tribal governments, the nature of those entities' concerns, any written communications submitted to EPA by

such units of government and the EPA's position supporting the need to issue the regulation. Executive Order 12875 further requires EPA to develop an effective process to permit elected officials and other representatives of State, local, and Tribal governments, "to provide meaningful and timely input in the development of regulatory proposals containing the significant unfunded mandates."

The EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emissions guidelines. Accordingly, the requirements of Executive Order 12875 do not apply. However, to ensure a smoother transition for facilities that are initially covered by the Federal plan but are later covered by a State plan, EPA has involved State and local governments in the development of this rule. During development of the Federal plan, EPA worked with the Regional Offices to identify and address State issues. The EPA invited States to identify State operator training and certification to be incorporated in the Federal plan and is, as a result, incorporating the Connecticut and Maryland State certifications for MWC operators and the Connecticut State operator training course. In addition, EPA requested compliance schedules from States that want a schedule in the Federal plan consistent with the State plan until the State plan becomes effective. Nine States submitted compliance schedules. Also, the EPA received comments from ten States and local agencies and considered them in developing the final rule.

I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities".

The Federal plan adopted today does not significantly or uniquely affect communities of Indian tribal governments. As noted previously in this preamble, EPA believes that no large MWC units are located in Indian country. In addition, the EPA has determined that this promulgated Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1995 MWC emission guidelines. (See the discussion in Executive Order 12875 in this section.) Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, then EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Report and recordkeeping requirements, Incorporation by reference.

Dated: October 30, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Amend § 62.02 by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 62.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans for the control of pollutants and facilities under section 111(d), and section 129 as applicable, of the Act, and the Administrator's promulgation of such plans or portions of plans thereof. Approval of a plan or any portion of a plan is based on a determination by the Administrator that it meets the requirements of section 111(d), and section 129 as applicable, of the Act and provisions of part 60 of this chapter.

* * * * *

(g) Substitute plans promulgated by the Administrator for States that do not have approved plans are contained in separate subparts that appear after the subparts for States. These Federal plans include sections identifying the applicability of the plan, emission limits, compliance schedules, recordkeeping and reporting, performance testing, and monitoring requirements.

3. Amend subpart A by adding § 62.13 to read as follows:

§ 62.13 Federal plans.

The Federal plans apply to owners and operators of affected facilities that are not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility located in any State or portion of Indian country whose approved State or Tribal plan for that area is subsequently vacated in whole or in part. Affected facilities are defined in each Federal plan.

(a) The substantive requirements of the municipal waste combustor Federal plan are contained in subpart FFF of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

(b) The substantive requirements of the municipal solid waste landfills Federal plan are contained in subpart GGG of this part. These requirements include emission limits, compliance schedules, testing, monitoring, and reporting and recordkeeping requirements.

(c) Medical waste incinerator Federal plan. [Reserved]

4. Amend part 62 by adding and by reserving subparts DDD and EEE as follows:

Subpart DDD—[Reserved]

Subpart EEE—[Reserved]

5. Amend part 62 by adding subpart FFF consisting of §§ 62.14100 through 62.14109 to read as follows:

Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

Sec.

62.14100 Scope and delegation of authority.
62.14101 Definitions.
62.14102 Affected facilities.
62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.
62.14104 Requirements for municipal waste combustor operating practices.
62.14105 Requirements for municipal waste combustor operating training and certification.
62.14106 Emission limits for municipal waste combustor fugitive ash emissions.
62.14107 Emission limits for air curtain incinerators.
62.14108 Compliance schedules.
62.14109 Reporting and recordkeeping, and compliance and performance testing.
Table 1 of Subpart FFF—Units Excluded From Subpart FFF
Table 2 of Subpart FFF—Nitrogen Oxides Requirements for Affected Facilities
Table 3 of Subpart FFF—Municipal Waste Combustor Operating Requirements
Table 4 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Pre-1987 MWCs)
Table 5 of Subpart FFF—Generic Compliance Schedules and Increments of Progress (Post-1987 MWCs)
Table 6 of Subpart FFF—Site-specific Compliance Schedules and Increments of Progress

Subpart FFF—Federal Plan Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994

§ 62.14100 Scope and delegation of authority.

(a) This subpart contains emission requirements and compliance schedules for the control of pollutants from certain municipal waste combustors in accordance with section 111(d) and section 129 of the Clean Air Act and 40 CFR part 60, subparts B and Cb. This municipal waste combustor Federal plan applies to each affected facility as defined in § 62.14102 that is not covered by an EPA approved and currently effective State or Tribal plan. This Federal plan, or portions thereof, also applies to each affected facility in any State whose approved State plan is subsequently vacated in whole or in part. This Federal plan, or portions thereof, also applies to each affected facility located in Indian country if the approved Tribal plan for that area is subsequently vacated in whole or in part.

(b) The following authorities shall be retained by the EPA Administrator and not transferred to the State upon delegation of authority to the State to implement and enforce the Federal plan:

(1) An alternative emission standard;

(2) Major alternatives to test methods;

(3) Major alternatives to monitoring;

(4) Waiver of recordkeeping; and

(5) Waiver of training requirement for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification on or before the effective date of this subpart, as provided in § 62.14105(d)(2) of this subpart.

§ 62.14101 Definitions.

Terms used but not defined in this subpart have the meaning given to them in the Clean Air Act and 40 CFR part 60, subparts A, B, and Eb.

Contract means a legally binding agreement or obligation that cannot be canceled or modified without substantial financial loss.

De-rate means to make a permanent physical change to the municipal waste combustor unit that reduces the maximum combustion capacity of the unit to less than or equal to 250 tons per day of municipal solid waste. A permit restriction or a change in the method of operation does not qualify as de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

EPA approved State plan means a State plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cb. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Municipal waste combustor plant means one or more affected facilities (as defined in § 62.14102) at the same location.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cb.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart Cb.

§ 62.14102 Affected facilities.

(a) The affected facility to which this subpart applies is each municipal waste combustor unit with a capacity to combust greater than 250 tons per day of municipal solid waste for which construction was commenced on or before September 20, 1994, that is not regulated by an EPA approved and currently effective State or Tribal plan. Table 1 of this subpart lists those units regulated by an EPA approved State plan. Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA approved and currently effective State or Tribal plan.

(b) A municipal waste combustor unit regulated by an EPA approved and currently effective State or Tribal plan is not regulated by this subpart.

(c) Any municipal waste combustor unit that has the capacity to combust more than 250 tons per day of municipal solid waste and is subject to a Federally enforceable permit limiting the maximum amount of municipal solid waste that may be combusted in the unit to less than 11 tons per day is not subject to this subpart if the owner or operator:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit that limits the firing of municipal solid waste to less than 11 tons per day; and

(3) Keeps records of the amount of municipal solid waste fired on a daily basis.

(d) Physical or operational changes made to an existing municipal waste combustor unit primarily for the purpose of complying with the emission requirements of this subpart are not considered in determining whether the unit is a modified or reconstructed facility under 40 CFR part 60, subpart Ea or subpart Eb.

(e) A qualifying small power production facility, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data

documenting that the facility qualifies for this exemption.

(f) A qualifying cogeneration facility, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), that burns homogeneous waste (such as automotive tires or used oil, but not including refuse-derived fuel) for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating, or cooling purposes, is not subject to this subpart if the owner or operator of the facility notifies the EPA Administrator of this exemption and provides data documenting that the facility qualifies for this exemption.

(g) Any unit combusting a single-item waste stream of tires is not subject to this subpart if the owner or operator of the unit:

(1) Notifies the EPA Administrator of an exemption claim; and

(2) Provides data documenting that the unit qualifies for this exemption.

(h) Any unit required to have a permit under section 3005 of the Solid Waste Disposal Act is not subject to this subpart.

(i) Any materials recovery facility (including primary or secondary smelters) that combusts waste for the primary purpose of recovering metals is not subject to this subpart.

(j) Any cofired combustor, as defined under 40 CFR 60.51b of subpart Eb that meets the capacity specifications in paragraph (a) of this section is not subject to this subpart if the owner or operator of the cofired combustor:

(1) Notifies the EPA Administrator of an exemption claim;

(2) Provides a copy of the Federally enforceable permit (specified in the definition of cofired combustor in this section); and

(3) Keeps a record on a calendar quarter basis of the weight of municipal solid waste combusted at the cofired combustor and the weight of all other fuels combusted at the cofired combustor.

(k) Air curtain incinerators, as defined under 40 CFR 60.51b, that meet the capacity specifications in paragraph (a) of this section, and that combust a fuel stream composed of 100 percent yard waste are exempt from all provisions of this subpart except the opacity standard under § 62.14107, and the testing procedures and the reporting and recordkeeping provisions under § 62.14109.

(l) Air curtain incinerators that meet the capacity specifications in paragraph (a) of this section and that combust municipal solid waste other than yard waste are subject to all provisions of this subpart.

(m) Pyrolysis/combustion units that are an integrated part of a plastics/rubber recycling unit (as defined in 40 CFR 60.51b) are not subject to this subpart if the owner or operator of the plastics/rubber recycling unit keeps records of the weight of plastics, rubber, and/or rubber tires processed on a calendar quarter basis; the weight of chemical plant feedstocks and petroleum refinery feedstocks produced and marketed on a calendar quarter basis; and the name and address of the purchaser of the feedstocks. The combustion of gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquefied petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feestocks produced by plastics/rubber recycling units are not subject to this subpart.

(n) Cement kilns firing municipal solid waste are not subject to this subpart.

§ 62.14103 Emission limits for municipal waste combustor metals, acid gases, organics, and nitrogen oxides.

(a) The emission limits for municipal waste combustor metals are specified in paragraphs (a)(1) through (a)(3) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: particulate matter in excess of 27 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and opacity in excess of 10 percent (6-minute average).

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain: cadmium in excess of 0.040 milligrams per dry standard cubic meter, corrected to 7 percent oxygen; and lead in excess of 0.44 milligrams per dry standard cubic meter, corrected to 7 percent oxygen.

(3) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain mercury in excess of 0.080 milligrams per dry standard cubic meter or 15 percent of the potential mercury emission concentration (85-percent reduction by weight), corrected to 7 percent oxygen, whichever is less stringent.

(b) The emission limits for municipal waste combustor acid gases, expressed as sulfur dioxide and hydrogen chloride, are specified in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain sulfur dioxide in excess of 29 parts per million by volume or 25 percent of the potential sulfur dioxide emission concentration (75-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent. Compliance with this emission limit is based on a 24-hour daily geometric mean.

(2) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain hydrogen chloride in excess of 29 parts per million by volume or 5 percent of the potential hydrogen chloride emission concentration (95-percent reduction by weight or volume), corrected to 7 percent oxygen (dry basis), whichever is less stringent.

(c) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain municipal waste combustor organics, expressed as total mass dioxins/furans, in excess of the emission limits specified in either paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) The emission limit for affected facilities that employ an electrostatic precipitator-based emission control system is 60 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(2) The emission limit for affected facilities that do not employ an electrostatic precipitator-based emission control system is 30 nanograms per dry standard cubic meter (total mass), corrected to 7 percent oxygen.

(d) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain nitrogen oxides in excess of the emission limits listed in table 2 of this subpart for affected facilities. Table 2 of this subpart provides emission limits for the nitrogen oxides concentration level for each type of affected facility.

§ 62.14104 Requirements for municipal waste combustor operating practices.

(a) The owner or operator of an affected facility must not cause to be discharged into the atmosphere from that affected facility any gases that contain carbon monoxide in excess of the emission limits listed in table 3 of this subpart. Table 3 provides emission

limits for the carbon monoxide concentration level for each type of affected facility.

(b) The owner or operator of an affected facility must comply with the municipal waste combustor operating practice requirements listed in 40 CFR 60.53b(b) and (c) of subpart Eb. For calculating the steam (or feedwater) flow required under 40 CFR 60.58(i)(6)(i), proceed in accordance with ASME PTC 4.1–1964 (Reaffirmed 1991), Power Test Codes: Test Code for Steam Generating Units (with 1968 and 1969 Addenda). For design, construction, installation, calibration, and use of nozzles and orifices required in 40 CFR 60.58(i)(6)(ii), proceed in accordance with the recommendations in ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th Edition (1971). The Director of the Federal Register approves these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, D.C.

§ 62.14105 Requirements for municipal waste combustor operator training and certification.

The owner or operator of an affected facility must comply with the municipal waste combustor operator training and certification requirements listed in paragraphs (a) through (g) of this section. For affected facilities, compliance with the municipal waste combustor operator training and certification requirements specified under paragraphs (a), (b), (d), and (g) of this section must be no later than 12 months after the effective date of this subpart.

(a) Each chief facility operator and shift supervisor must obtain and maintain a current provisional operator certification from either the American Society of Mechanical Engineers QRO–1–1994 or a State certification program in Connecticut and Maryland (if the affected facility is located in either of the respective States). If ASME certification is chosen, proceed in accordance with ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(b) Each chief facility operator and shift supervisor must have completed full certification or must have scheduled a full certification exam with either the American Society of Mechanical Engineers QRO–1–1994 or a State certification program in Connecticut and Maryland (if the affected facility is located in either of the respective States). If ASME certification is chosen, proceed in accordance with ASME QRO–1–1994, Standard for the Qualification and Certification of Resource Recovery Facility Operators. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American Society of Mechanical Engineers, Service Center, 22 Law Drive, Post Office Box 2900, Fairfield, NJ 07007. You may inspect a copy at the Office of Air Quality Planning and Standards Air Docket, EPA, Mutual Building, Room 540, 411 West Chapel Hill Street, Durham, NC 27701 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(c) The owner or operator of an affected facility must not allow the facility to be operated at any time unless one of the following persons is on duty at the affected facility: a fully certified chief facility operator; a provisionally certified chief facility operator who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart; a fully certified shift supervisor; or a provisionally certified shift supervisor who is scheduled to take the full certification exam no later than 12 months after the effective date of this subpart. If one of the persons listed in this paragraph must leave the affected facility during their operating shift, a provisionally certified control room operator who is onsite at the affected facility may fulfill the requirement in this paragraph.

(d)(1) Each chief facility operator, shift supervisor, and control room operator at an affected facility must complete the EPA municipal waste combustor operator training course or the State municipal waste combustor operator training course in Connecticut (if the affected facility is located in Connecticut).

(2) The requirement specified in this paragraph does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of this subpart. The owner or operator of an affected facility may request that the EPA Administrator waive the requirement specified in this paragraph for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of this subpart.

(e) The owner or operator of an affected facility must develop and update on a yearly basis a site-specific operating manual that must, at a minimum, address the elements of municipal waste combustor unit operation specified in paragraphs (e)(1) through (e)(11) of this section.

(1) A summary of the applicable standards under this subpart;

(2) A description of basic combustion theory applicable to a municipal waste combustor unit;

(3) Procedures for receiving, handling, and feeding municipal solid waste;

(4) Procedures for municipal waste combustor unit startup, shutdown, and malfunction;

(5) Procedures for maintaining proper combustion air supply levels;

(6) Procedures for operating the municipal waste combustor unit within the standards established under this subpart;

(7) Procedures for responding to periodic upset or off-specification conditions;

(8) Procedures for minimizing particulate matter carryover;

(9) Procedures for handling ash;

(10) Procedures for monitoring municipal waste combustor unit emissions; and

(11) Reporting and recordkeeping procedures.

(f) The owner or operator of an affected facility must establish a training program to review the operating manual according to the schedule specified in paragraphs (f)(1) and (f)(2) of this section with each person who has responsibilities affecting the operation of an affected facility including, but not limited to, chief facility operators, shift supervisors, control room operators, ash

handlers, maintenance personnel, and crane/load handlers.

(1) Each person specified in paragraph (f) of this section must undergo initial training no later than the date specified in paragraph (f)(1)(i) or (f)(1)(ii) of this section, whichever is later.

(i) The date prior to the day the person assumes responsibilities affecting municipal waste combustor unit operation; or

(ii) The date 12 months after the effective date of this subpart.

(2) Annually, following the initial review required by paragraph (f)(1) of this section.

(g) The operating manual required by paragraph (e) of this section must be kept in a location readily accessible to each person required to undergo training under paragraph (f) of this section. The operating manual and records of training must be available for inspection by the EPA or its delegated enforcement agency upon request.

§ 62.14106 Emission limits for municipal waste combustor fugitive ash emissions.

(a) The owner or operator of an affected facility must not cause to be discharged to the atmosphere from that affected facility visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) in excess of 5 percent of the observation period (i.e., 9 minutes per 3-hour period), as determined by EPA Reference Method 22 observations as specified in 40 CFR 60.58b(k) of subpart Eb, except as provided in paragraphs (b) and (c) of this section.

(b) The emission limit specified in paragraph (a) of this section does not cover visible emissions discharged inside buildings or enclosures of ash conveying systems; however, the emission limit specified in paragraph (a) of this section does cover visible emissions discharged to the atmosphere from buildings or enclosures of ash conveying systems.

(c) The provisions specified in paragraph (a) of this section do not apply during maintenance and repair of ash conveying systems.

§ 62.14107 Emission limits for air curtain incinerators.

The owner or operator of an air curtain incinerator with the capacity to combust greater than 250 tons per day of municipal solid waste and that combusts a fuel feed stream composed of 100 percent yard waste and no other municipal solid waste materials must not (at any time) cause to be discharged into the atmosphere from that incinerator any gases that exhibit greater than 10-percent opacity (6-minute average), except that an opacity level of up to 35 percent (6-minute average) is permitted during startup periods during the first 30 minutes of operation of the unit.

§ 62.14108 Compliance schedules.

(a) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) to retrofit air pollution control devices to meet the emission limits of this subpart. As specified in 40 CFR part 60, subpart B, the compliance schedules and increments of progress apply to each owner or operator of an affected facility who is taking longer than 1 year after the date of publication of this subpart FFF final rule to comply with the emission limits specified in this subpart.

(1) Submit a final control plan according to the requirements of § 62.14109(g).

(2) Award contract(s): Award contract(s) to initiate on-site construction, initiate on-site installation of emission control equipment, or incorporate process changes. The owner or operator must submit a signed copy of the contract(s) awarded according to the requirements of § 62.14109(h).

(3) Initiate on-site construction: Initiate on-site construction, initiate on-site installation of emission control equipment, or initiate process changes needed to meet the emission limits as outlined in the final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission control equipment or complete process changes.

(5) Achieve final compliance: Incorporate all process changes or complete retrofit construction as designed in the final control plan and connect the air pollution control equipment or process changes with the affected facility identified in the final control plan such that if the affected facility is brought on line, all necessary process changes or air pollution control equipment are operating fully. Within 180 days after the date the affected facility is required to achieve final compliance, the initial performance test must be conducted.

(b) The owner or operator of an affected facility must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraphs (b)(1) through (b)(4) of this section, except as provided in paragraphs (c), (d), and (e) of this section.

(1) The owner or operator of an affected facility that commenced construction, modification, or reconstruction on or before June 26, 1987 and will take longer than 1 year after the date of publication of this subpart FFF (or 1 year after a revised construction permit or a revised operating permit is issued, if a permit modification is required) to comply with the emission limits of this subpart must achieve the increments of progress according to the schedule in table 4 of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(2) The owner or operator of an affected facility that began construction, modification, or reconstruction after June 26, 1987 must achieve the increments of progress according to the schedule in table 5 of this subpart to comply with the emission limits of this subpart, except for those affected facilities specified in paragraphs (b)(3) and (b)(4) of this section.

(3) The owner or operator of each specified affected facility in table 6 of this subpart must achieve the increments of progress according to the schedule in table 6 of this subpart.

(4) For affected facilities that are subject to the schedule requirements of paragraph (b)(1) or (b)(2) of this section, the owner or operator (or the State air pollution control authority) may submit for approval alternative dates for achieving increments 2, 3, and 4. The owner or operator (or the State air pollution control authority) that is submitting these alternative dates must meet the reporting requirements of § 62.14109(m).

(c) The owner or operator of an affected facility that has ceased operation but will reopen prior to the applicable final compliance date specified in paragraphs (b)(1) through (b)(4) of this section must meet the same compliance dates and increments of progress specified in paragraphs (b)(1) through (b)(4) of this section.

(d) The owner or operator of an affected facility that has ceased or ceases operation of an affected facility and restarts the affected facility after the compliance dates specified in paragraphs (b)(1) through (b)(4) of this section must comply with the emission limits, requirements for combustor operating practices, and operator training and certification requirements of this subpart upon the date the affected facility restarts. The initial performance tests required by § 62.14109(c) must be conducted within 180 days after the date the unit restarts.

(e) The owner or operator of an affected facility that will be de-rated prior to the applicable final compliance date instead of complying with the

emission limits of this subpart must meet the same increments of progress and achieve the de-rating by the final compliance date (specified in paragraphs (b)(1) through (b)(4) of this section) that would be applicable to the affected facility if it did not de-rate. The owner or operator of an affected facility that will be de-rated must meet the reporting requirements of § 62.14109k. After de-rating is accomplished, the municipal waste combustor affected facility is no longer subject to this subpart.

§ 62.14109 Reporting and recordkeeping and compliance and performance testing.

(a) The owner or operator of an affected facility must comply with the reporting and recordkeeping provisions listed in 40 CFR 60.59b of subpart Eb, except as provided in paragraphs (a)(1) through (a)(3) of this section.

(1) The siting requirements under 40 CFR 60.59b(a), (b)(5), and (d)(11) of subpart Eb and the notification of construction requirements under 40 CFR 60.59b(b) and (c) of subpart Eb do not apply.

(2) 40 CFR 60.54b, 60.56b, and 60.58b(g)(5)(iii) of subpart Eb do not apply to this subpart (see §§ 62.14105 and 62.14107 of this subpart).

(b) The owner or operator of an affected facility must comply with the compliance and performance testing methods and procedures listed in 40 CFR 60.58b of subpart Eb, except as provided in paragraphs (c) and (d) of this section.

(c) The initial performance test must be completed within 180 days after the date of final compliance specified in § 62.14108, rather than the date for the initial performance test specified in 40 CFR 60.58b of subpart Eb.

(d) The owner or operator of an affected facility may follow the alternative performance testing schedule for dioxin/furan emissions specified in paragraph (d)(1) of this section.

(1) If all performance tests for all affected facilities at the MWC plant over a 2-year period indicate that dioxin/furan emissions are less than or equal to 15 nanograms per dry standard cubic meter total mass, corrected to 7 percent oxygen for all affected facilities located within a municipal waste combustor plant, the owner or operator of the municipal waste combustor plant may elect to conduct annual performance tests for one affected facility (i.e., unit) per year at the municipal waste combustor plant. At a minimum, a performance test for dioxin/furan emissions shall be conducted annually (no more than 12 months following the previous performance test) for one affected facility at the municipal waste combustor plant. Each year a different affected facility at the municipal waste combustor plant shall be tested, and the affected facilities at the plant shall be tested in sequence (e.g., unit 1, unit 2, unit 3, as applicable). If each annual performance test continues to indicate a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter (total mass), the owner or operator may continue conducting a performance test on only one affected facility per year. If any annual performance test indicates a dioxin/furan emission level greater than 15 nanograms per dry standrd cubic meter (total mass), performance tests thereafter shall be conducted annually on all affected facilities at the plant until and unless all annual performance tests for all affected facilities at the plant over a 2-year period indicate a dioxin/furan emission level less than or equal to 15 nanograms per dry standard cubic meter (total mass).

(2) The owner or operator who is following the alternative performance testing schedule for dioxin/furan emissions specified in paragraph (d)(1) of this section may choose an alternative testing sequence (e.g., unit 1, 3, 2, 4) for affected facilities at the municipal waste combustor plant. The owner or operator must submit a request to EPA for approval of the alternative testing sequence. After approval, the alternative testing sequence is effective until a different testing sequence is received and approved by EPA.

(e) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF final rule to comply with the emission limits of this subpart must submit notification to the EPA Regional Office within 10 business days of completing each increment. Each notification must indicate which increment of progress specified in § 62.14108(a)(1) through (a)(5) has been achieved. The notification must be signed by the owner or operator of the affected facility.

(f) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart who fails to meet any increment of progress specified in § 62.14108(a)(1) through (a)(5) according to the applicable schedule in § 62.14108 must submit notification to the EPA Regional Office within 10 business days of the applicable date in § 62.14108 that the owner or operator failed to meet the increment.

(g) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must submit a final control plan by the date specified in § 62.14108(b) with the notification required by § 62.14109(e). The final control plan must, at a minimum, include a description of the air pollution control devices or process changes that will be employed for each unit to comply with the emission limits and other requirements of this subpart.

(h) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must submit a signed copy of the contract or contracts awarded according to the requirements of § 62.14108(a)(2) with the notification required by § 62.14109(e).

(i) The owner or operator of an affected facility that is taking longer than 1 year after the date of publication of this subpart FFF to comply with the emission limits of this subpart must keep on site a copy of the final control plan required by § 62.14109(g).

(j) The owner or operator of an affected facility that plans to cease operation of the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the applicable compliance date specified in § 62.14208 must submit a notification by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108(b)(1) through (b)(4), as applicable. (Affected facilities that cease operation on or before December 19, 2000, rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 are not required to submit a final control plan.) The notification must state the date by which the affected facility will cease operation. If the cease operation date is later than 1 year after the date of publication of this subpart FFF, the owner or operator must enter into a legally binding closure agreement with EPA by the date the final control plan is due. The agreement must specify the date by which operation will cease.

(k) The owner or operator of an affected facility that plans to de-rate the affected facility on or before December 19, 2000 rather than comply with the emission limits of this subpart by the compliance date specified in § 62.14108 must submit a final control plan as required by paragraph (g) of this section and submit notification of increments of progress as required by paragraphs (e)

and (f) of this section and § 62.14108(e) of this subpart.

(1) The final control plan must, at a minimum, include the information in paragraphs (k)(1)(i) and (k)(1)(ii) of this section rather than the information in paragraph (g) of this section.

(i) A description of the physical changes that will be made to accomplish the de-rating.

(ii) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the de-rating. (See the procedures specified in 40 CFR 60.58b(j) of subpart Eb for calculating municipal waste combustor unit capacity.)

(2) The owner or operator must submit a signed copy of the contract or contracts awarded to initiate the de-rating with the notification required by paragraph (e) of this section.

(l) The owner or operator of an affected facility that is ceasing operation more than 1 year following the date of publication of this subpart FFF must submit performance test results for dioxin/furan emissions conducted during or after 1990 for each affected facility by the date 1 year after the date of publication of this subpart FFF. The performance test shall be conducted according to the procedure in paragraph (b) of this section.

(m) The owner or operator (or the State air pollution control authority) that is submitting alternative dates for increments 2, 3, and 4 according to § 62.14108(b)(4) must submit the alternative dates by the date specified for the final control plan according to the schedule specified in paragraphs § 62.14108 (b)(1) and (b)(2), as applicable. The owner or operator (or the State air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in tables 4 or 5 of this subpart. The owner or operator must also submit the alternative dates and justification to the State.

Tables to Subpart FFF

TABLE 1 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR UNITS (MWC UNITS) EXCLUDED FROM SUBPART FFF [1]

State	MWC units
Florida	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.
Georgia	Existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Savannah Energy Systems Company, Savannah, Georgia.
Illinois	Existing MWC units located at Robbins Resource Recovery Center, Robbins, Illinois.
Minnesota	All MWC units with unit capacities greater than 93.75 million British thermal units per hour on a heat input basis (250 tons per day) located in Minnesota.
New York	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.
Oregon	Existing facilities at the following MWC sites: (a) Ogden Martin Systems, Marion County, Oregon. (b) Coos County, Coos Bay, Oregon.
South Carolina	Existing facilities with a MWC unit capacity greater than 250 tons per day of municipal solid waste at the following MWC sites: (a) Foster Wheeler Charleston Resource Recovery Facility, Charleston, South Carolina.
Tennessee	Existing MWC units with capacity to combust more than 250 tons per day of municipal solid waste.

[1] Notwithstanding the exclusions in table 1 of this subpart, this subpart applies to affected facilities not regulated by an EPA approved and currently effective State or Tribal plan.

TABLE 2 OF SUBPART FFF—NITROGEN OXIDES REQUIREMENTS FOR AFFECTED FACILITIES

Municipal waste combustor technology	Nitrogen oxides emission limit (parts per million by volume) [a]
Mass burn waterwall	205.
Mass burn rotary waterwall	250.
Refuse-derived fuel combustor	250.
Fluidized bed combustor	180.
Mass burn refractory combustors	No limit.

[a] Corrected to 7 percent oxygen, dry basis.

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) [a]	Averaging time (hrs) [b]
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4

TABLE 3 OF SUBPART FFF—MUNICIPAL WASTE COMBUSTOR OPERATING REQUIREMENTS—Continued

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) [a]	Averaging time (hrs) [b]
Refuse-derived fuel stoker	200	24
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	200	24

[a] Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.
[b] Averaging times are 4-hour or 24-hour block averages.

TABLE 4 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS (PRE-1987 MWCs) [a] [b]

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction, modification, or reconstruction on or before June 26, 1987 (All pollutants).	January 11, 1999	05/18/99	11/16/99	11/19/00	12/19/00

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.
[b] As an alternative to this schedule, the owner or operator may close the affected facility by December 19, 2000, complete the retrofit while the affected facility is closed, and achieve final compliance upon restarting. See §§ 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.

TABLE 5 OF SUBPART FFF—GENERIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS

[Post-1987 MWCs] [a, b]

Affected facilities	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Affected facilities that commenced construction modification, or reconstruction after June 26, 1987:					
1. Emission limits for Hg, dioxin/furan.	[c] NA	[c] NA	[c] NA	[c] NA	1 year after promulgation of this subpart or 1 year after permit issuance. [d]
2. Emission limits for SO_2, HCl, PM, Pb, Cd, opacity CO, NO_X.	January 11, 1999	05/18/99	11/16/99	11/19/00	12/19/00.

[a] Table 4 or 5 of this subpart applies to MWC units subject to the Federal plan except those with site-specific compliance schedules shown in Table 6 of this subpart.
[b] As an alternative to this schedule, the unit may close by December 19, 2000, complete retrofit while closed, and achieve final compliance upon restarting. See § § 62.14108(c), 62.14108(d), and 62.14109(i) of this subpart.
[c] Because final compliance is achieved in 1 year, no increments of progress are required.
[d] Permit issuance is issuance of a revised construction permit or revised operating permit, if a permit modification is required to retrofit controls.

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS [a]

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
Stanislaus Resource Recovery Facility.	Crows Landing, California.	January 11, 1999	01/19/02	05/19/00	11/19/00	12/19/00
Southeast Resource Recovery Facility.	Long Beach, California.	January 11, 1999	04/30/99	10/31/99	04/30/00	12/19/00
All large MWC units	Maine	January 11, 1999	01/01/99	07/01/99	09/01/00	12/19/00
Baltimore Resco	Baltimore, Maryland	January 11, 1999	January 11, 1999	January 11, 1999	09/01/00	12/19/00
All large MWC units	New Jersey [b]	January 11, 1999	05/18/99	11/14/99	11/19/00	12/19/00
American Ref-Fuel	Delaware County, Pennsylvania.	11/01/98	05/18/99	11/14/99	11/19/00	12/19/00
Montenay Energy Resource.	Montgomery County, Pennsylvania.	11/01/98	05/18/99	11/14/99	11/19/00	12/19/00

TABLE 6 OF SUBPART FFF—SITE-SPECIFIC COMPLIANCE SCHEDULES AND INCREMENTS OF PROGRESS [a]—Continued

Affected facilities at the following MWC sites	City, State	Increment 1 Submit final control plan	Increment 2 Award contracts	Increment 3 Begin on-site construction	Increment 4 Complete on-site construction	Increment 5 Final compliance
I–95 Energy/Resource Recovery Facility.	Lorton, Virginia	January 11, 1999	10/15/99	03/01/00	11/19/00	12/19/00

[a] These schedules have been reviewed and determined to be acceptable by EPA.
[b] This schedule applies to HC1 SO_2, PM, Pb, Cd, CO, and NO_X. However, owners and operators of large MWC units in New Jersey have the option of reserving the portion of their control plan that addresses NO_X. Owners and operators must submit the reserved portion to EPA by December 15, 1999.

[FR Doc. 98–29967 Filed 11–10–98; 8:45 am]
BILLING CODE 6560–50–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1827 and 1852

Reportable Item Definition

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the two NASA FAR Supplement (NFS) definitions of "reportable item".

DATES: This rule is effective November 12, 1998.

ADDRESSES: Tom O'Toole, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

The NFS has two definitions of "reportable item"—in section 1827.301, Definitions, and the clause at 1852.227–70, New Technology. These definitions vary slightly, and this rule will conform these definitions by using the version at 1827.301 as a baseline. Other minor adjustments are made to cite appropriate USC titles and add examples of reportable items. A proposed rule was published in the August 13, 1998 **Federal Register** (63 FR 43362). NASA received one public comment that suggested the scope of the revised definition was unnecessarily broad in that it would now apply to all copyrightable data. NASA disagrees. The revised definition only intended to clarify that all inventions and innovations, including computer programs, should be reported without regard to potential patentability under Title 35 and/or copyrightability under Title 17 of the U.S. Code. However, to optimize clarity and preclude the potential misconception that reporting is required for all data produced under the contract, NASA has restructured the definition to focus more explicitly the U.S.C. references.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes are editorial clarifications and do not impose any new requirements on offerors or contractors. The rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1827 and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1827 and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1827 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1827—PATENTS, DATA, AND COPYRIGHTS

2. Section 1827.301 is amended by revising the definition of "reportable item" to read as follows:

1827.301 Definitions.

* * * * *

Reportable item, as used in this subpart, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable or otherwise protectible under Title 17 of the United States Code.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 1852.227–70 is amended by revising the clause date and the definition of "reportable item" in paragraph (a) of the clause to read as follows:

1852.227–70 New technology.

* * * * *

New Technology November 1998

(a) * * *

Reportable item, as used in this clause, means any invention, discovery, improvement, or innovation of the contractor, whether or not patentable or otherwise protectible under Title 35 of the United States Code, made in the performance of any work under any NASA contract or in the performance of any work that is reimbursable under any clause in any NASA contract providing for reimbursement of costs incurred before the effective date of the contract. Reportable items include, but are not limited to, new processes, machines, manufactures, and compositions of matter, and improvements to, or new applications of, existing processes, machines, manufactures, and compositions of matter. Reportable items also include new computer programs, and improvements to, or new applications of, existing computer programs, whether or not copyrightable

or otherwise protectible under Title 17 of the United States Code.

* * * * *

[FR Doc. 98–30265 Filed 11–10–98; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket No. PS–121; Notice–5]

RIN 2137–AD05

Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Further response to petitions for reconsideration on pressure testing within terminals and tank farms.

SUMMARY: This document announces that, while RSPA continues to review requirements for pressure testing older piping within terminals and tank farms, it will not enforce those requirements provided the terminals and tank farms are designed and operated at lower stress levels than the main line. RSPA is evaluating comments received on pressure testing within these areas and is considering modifying the current requirements. The enforcement policy maintains the status quo (that is, no testing required) until a decision is made.

FOR FURTHER INFORMATION CONTACT: Mike Israni, (202) 366–4571, or e-mail: mike.israni@rspa.dot.gov, regarding the subject matter of this document, or Jenny Donohue, (202) 366–4046, for copies of this document or other information in the docket.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1994, RSPA issued a final rule requiring certain older hazardous liquid and carbon dioxide pipelines to be pressure tested. The American Petroleum Institute (API) and Williams Pipe Line Company (Williams) filed petitions for reconsideration of pressure testing requirements for older terminal and tank farm piping on the grounds that pressure testing would be costly and disruptive in the terminals and that such piping is of lower risk since terminals and tank farms are generally operated at reduced pressures. To explore this issue further, RSPA invited comments in a **Federal Register** notice published February 10, 1998 [63 FR 6677].

RSPA received five comments, including one from API. Four of five commenters expressed that terminal/tank farm piping should be exempt from testing requirements because they are designed and operated so that stress level can never exceed 20% SMYS, therefore, there is low possibility of failure. Commenters also argued that compliance would be a difficult task because of many fittings, valves, tanks, and instrumentation. Commenters also suggested that the benefit would be questionable, but the costs would be substantially higher. API suggested that RSPA consider separate rulemaking on testing of terminal/tank piping, excluding them from the current rule. One commenter suggested that leak detection and a volumetric system should be used as a direct substitute for a pressure test.

API also suggested developing a testing/monitoring protocol for evaluating piping within terminals and tank farms that would provide equivalent levels of safety for those facilities. Given the great variety of conditions that exist in terminals and tank farms and the benefits of identifying alternative ways of addressing pipeline risks, development of such a protocol has merit. RSPA will work cooperatively with API on its protocol. RSPA anticipates using the protocol in our evaluation of the pressure testing requirement for terminals and tank farm piping.

Compliance dates for the 1994 rule requiring pressure testing had been extended to allow completion of rulemaking to allow a risk-based alternative to pressure testing. [62 FR 54591]. That rulemaking, which did not address alternatives for terminal and tank farm piping, has just been published. [63 FR 59475; November 4, 1998]. Absent some agency action, operators of older terminals and tank farms would have to complete the pressure testing requirements for piping in their terminals prior to RSPA's reconsideration of these requirements. In order to preserve the status quo, RSPA will not enforce the pressure testing requirements with respect to older piping located in terminals or tank farms that are designed and operated so that they do not experience stress levels of 20 percent or greater.

Issued in Washington, DC on November 5, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–30210 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN1018–AE16

Changes in the List of Species in Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) regulates international trade in certain animals and plants. Species or other taxa for which such trade is controlled are listed in Appendices I, II, and III to CITES. The countries participating in this treaty, including the United States, adopted amendments to Appendices I and II at the tenth meeting of the Conference of the Parties (COP10) in June, 1997. The United States did not enter a reservation against any of the adopted amendments. This document incorporates all these amendments into the U.S. Fish and Wildlife Service's (Service) informational list of CITES species. It also incorporates a small number of additional changes to the list of CITES-protected animal and plant taxa (50 CFR 23.23) unrelated to decisions of the Parties at COP10 and serving only to clarify taxonomy, common names, or geographic ranges of animal and plant taxa and populations already listed. None of these additional changes affects the biological entity listed by the CITES parties.

DATES: This rule is effective November 12, 1998. With the exception of the new listings of sturgeon species at COP10 (which had the effective date of April 1, 1998), the amendments set forth in this rule entered into effect on September 18, 1997, under the terms of CITES.

ADDRESSES: Please send correspondence concerning this document to Chief, Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, room 750; Arlington, Virginia, 22203; fax 703–358–2276. Materials received will be available for public inspection by appointment, from 8:00 a.m. to 4:00 p.m. Monday through Friday at the above address in Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Susan Lieberman, Chief, Office of Scientific Authority, U.S. Fish and Wildlife Service, telephone 703–358–1708.

SUPPLEMENTARY INFORMATION:

Background

CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species. Species for which the trade is controlled are included in three Appendices. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those of other species). Appendix III includes species that any Party identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties to control trade.

Any CITES Party may propose amendments to Appendices I and II for consideration either at meetings of the Conference of the Parties held about every 2½ years or, occasionally, by a postal vote process. The text of proposals must be communicated to the CITES Secretariat at least 150 days before such a meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate responses to all Parties no later than 30 days before the meeting. Amendments are adopted by consensus or a two-thirds majority of the Parties present and voting.

Actions of the Parties

The tenth meeting of the Conference of the Parties to CITES was held June 9–20, 1997, in Harare, Zimbabwe. Decisions of the Parties on 62 different animal proposals and 13 different plant proposals to amend the Appendices I and II were reported in the proposed rule published in the **Federal Register** on August 22, 1997 (62 FR 44627).

The August 22, 1997, proposed rule (62 FR 44627) requested comments from the public on whether the United States should enter reservations against any of the listing amendments. If the United States were to enter a reservation, it would be treated as a country not party to CITES with respect to trade in that particular species. However, because of the requirements of other Parties, the U.S. Lacey Act Amendments of 1981, and relevant CITES resolutions, the effect of a reservation would be limited. More comprehensive discussions of any practical effects of entering a reservation and reasons for or against entering reservations can be found in the November 8, 1994 and January 3, 1995 **Federal Register** notices (59 FR 55617 and 60 FR 73, respectively).

Related Considerations

During the public comment period pursuant to the proposed rule of August 22, 1997, only one organization submitted comments. The Humane Society of the United States (HSUS) submitted comments on a number of issues. The HSUS opposed the taking of reservations by the United States; the Service concurs, and has recommended no reservations. Regarding the alligator snapping turtle, the HSUS noted that endemism is not a reason to not list a species in the CITES Appendices. The Service agrees, and notes that whether or not a species qualifies for inclusion in Appendix II under the CITES listing criteria (Resolution Conf. 9.24) is independent of its degree of endemism. The Service will continue to monitor the status of and trade in this species, and work with the states where the species is native in order to reach the best possible conservation solution for the species. The HSUS requested that the United States include the species in Appendix III; that option is currently being explored. If the Service decides to recommend such a listing in Appendix III, a notice will be published in the **Federal Register** inviting public comments. The HSUS also discussed the annotated transfer of certain African elephant populations to Appendix II, noting that live elephants may not be imported for commercial purposes. The HSUS is incorrect, in that live elephants from Namibia only are restricted to non-commercial purposes; those from Zimbabwe and Botswana can be imported for any purpose. Since these populations are in Appendix II, no U.S. import permit is required under CITES, and the decision on commerciality and suitability of destinations will be made by the exporting country. However, if any of the three countries affected consult the United States prior to issuance of an export permit, the Service will respond to any inquiry about any proposed facility. The HSUS recommended that the Service discuss other aspects of the annotated downlisting of the African elephant populations with members of the Standing Committee. The Service continues to discuss aspects of the downlisting, and practical implementation concerns, with many different governments, including those on the Standing Committee. The HSUS also requested that the United States include map turtles and bigleaf mahogany in CITES Appendix II. The Service is currently reviewing which proposals it may submit for consideration at CITES COP11, and published a notice of information requesting public comments in the **Federal Register** on January 30, 1998 (63 FR 4613).

Procedural Requirements

This **Federal Register** notice amends the informational list of CITES species in 50 CFR 23.23 to accurately reflect the changes in the list of species in the CITES appendices that have already been made by the Conference of the Parties at their tenth meeting, and that the United States is bound to accept unless it entered reservations. The Service does not believe that implementation of any of these adopted amendments would be contrary to the interests or laws of the United States. The period of time during which the United States could have entered a reservation against any of the amendments ended on September 18, 1997. The Service did not recommend the entry of any reservations, and none were taken by the United States. Therefore, except for the newly adopted sturgeon listings having an effective date of April 1, 1998, these amendments to the CITES Appendices have been in effect for the United States since September 18, 1997.

This notice brings the information in 50 CFR 23.23 into agreement with the current species listings in the CITES appendices. Earlier **Federal Register** notices informed the public about these amendments and provided opportunity for comment on them, including announced public meetings. Since these CITES amendments became effective on September 18, 1997, and April 1, 1998, this amendment to 50 CFR Part 23 is effective upon its date of publication.

In addition to reflecting the amendments to the Appendices adopted at COP10, this notice also incorporates certain other minor changes into the list of CITES-protected animal and plant taxa (50 CFR 23.23) unrelated to decisions of the Parties at COP10 and serves only to clarify taxonomy, common names, or geographic ranges of animal and plant taxa and populations already listed. None of these additional changes affects the biological entity listed by the CITES parties. In the amendatory section below, all entries in the current CFR list that will be either modified or deleted by this rule are treated as deletions and presented in a list of deletions. This is followed by a list of additions, which includes not

only new taxa or populations resulting from amendments adopted at COP10, but also all modifications of current CFR listings.

Note: The Department has determined that amendments to CITES Appendices, which result from actions of the CITES Parties, do not require the preparation of Environmental Assessments as defined under the authority of the National Environmental Policy Act (42 U.S.C. 4321–4347). These amendments are simply notifications of actions taken by the CITES Parties and therefore, this notice does not constitute a "rule" for purposes of the Administrative Procedures Act (5 U.S.C. 551(4)). Accordingly, the provisions of Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601) and the Small Business Regulatory Enforcement Fairness Act of 1996 do not apply. The adjustments to the list in 50 CFR 23.23 presented below are solely informational to provide the public with accurate data on the species covered by CITES. All non-sturgeon listings adopted by the Parties took effect on September 18, 1997, under the terms of CITES. The sturgeon listings took effect April 1, 1998. This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

This document was prepared by Marshall Howe and Timothy Van Norman, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.* and 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Imports, Treaties.

Regulation Promulgation

Accordingly, for the reasons set out in the preamble of this document, Part 23 of Title 50, Code of Federal Regulations, is amended as follows:

PART 23—ENDANGERED SPECIES CONVENTION

1. The authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

2. § 23.23(d) is revised to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(d) Subject to the regulations of this part are all living or dead animals or plants in Appendix I, II or III, and all their readily recognizable parts and derivatives except for specified parts or derivatives of particular Appendix III animal species as excluded in the particular listing and the following categorically excluded or exempted parts or derivatives of certain plants:

(1) For Appendix II and Appendix III plants and artificially propagated hybrids of Appendix I plants: Seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers; and

(2) For Appendix II and Appendix III plants: Seeds (other than the seeds of Mexican Cactaceae originating from Mexico, which are included in the Appendices), spores, pollen (including pollinia), and artificially propagated cut flowers; and

(3) For artificially propagated hybrids of Appendix I plants: seeds and pollen (including pollinia) and cut flowers; and

(4) For artificially propagated or naturalized Appendix II Cactaceae species: fruits and their parts and derivatives; for Opuntia subgenus Opuntia species, separate stem joints (pads) and their parts and derivatives.

(5) For Orchidaceae species: in Appendix I, seedling or tissue cultures obtained in vitro, in solid or liquid media, transported in sterile containers; in Appendix II, for artificially propagated Vanilla species, the fruits and their parts and derivatives.

* * * * *

2. § 23.23(f) is amended by removing the following taxa or populations as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
CLASS MAMMALIA:	MAMMALS: Kangaroos, Wombats, Wallabies, Cuscuses, Rat-kangaroos, etc.:		
Burramys parvus	Mountain pygmy possum	II	7/1/75
Dendrolagus bennettianus	Bennett's tree kangaroo, Dusky tree kangaroo.	II	6/28/79
D. lumholtzi	Lumholtz's tree kangaroo	II	6/28/79
Order Primates:	Primates: Monkeys, Apes, etc.:		
All species except those in App. I or with earlier date in App. II.		II	2/4/77
Phaner sp.	Fork mouse lemur, Fork-marked mouse lemur.	I	7/1/75
Order Cetacea:	Whales, Porpoises, Dolphins:		
All species except those in App. I or with earlier date in App. II.		II	6/28/79
Order Carnivora:	Carnivores: Cats, Bears, etc.:		
Nasua narica (=*nasua*)	Common coati, Coatimundi	III (Honduras)	4/13/87
Ursus arctos (all European populations except Italian population and former USSR populations).	European Brown Bear	II	7/29/83
U. arctos (Italian population)	European Brown bear	II	7/1/75
U. arctos (all Asian populations, including populations of Iran, Iraq, Syria, and Turkey, except former USSR populations and populations and subspecies listed in App. I).	Brown bear	II	1/18/90
U. arctos (=*U. arctos pruinosus*) (populations of Bhutan, China, and Mongolia).	Tibetan blue bear	I	7/1/75
U. arctos (all North American populations except Mexican population).	Brown bear, Grizzly	II	7/1/75
U. arctos (=*U. a. nelsoni*) (Mexican population)	Mexican grizzly bear	I	7/1/75
U. arctos isabellinus	Red bear	I	6/28/79

Species	Common name	Appendix	First listing date (month/day/year)
Order Proboscidea:	Elephants:		
Loxodonta africana	African elephant	I	2/4/77
Order Artiodactyla:	Even-toed ungulates:		
Bison bison athabascae	Woods bison	I	7/1/75
Bos mutus	Wild yak	I	7/1/75
Ovis vignei	Shapo	I	7/1/75
Pecari tajacu (except populations of the United States)	Collared peccary	II	10/22/87
Vicugna vicugna (except populations listed below)	Vicuna	I	7/1/75
V. vicugna (populations of Paranicota Province, Ia. Region of Tarapaca in Chile and all populations of Peru) (export limited to cloth products, wool sheared from live animals, and the Peruvian stock of 3249 kg. extant in November, 1994).	Vicuna	II	7/1/75
CLASS AVES:	BIRDS:		
Order Falconiformes:	Hawks, Falcons, Vultures, Eagles:		
All species except Cathartidae and those species in App. I or with earlier date in App. II.	All species except New World vultures	II	6/28/79
Order Gruiformes:	Cranes, Rails, Bustards:		
Gallirallus australis hectori	Eastern weka rail	II	7/1/75
Pedionomus torquatus	Collared hemipode, Plains wanderer	II	6/28/79
Turnix melanogaster	Black-breasted button-quail	II	6/28/79
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories:		
All species in order except those in App. I or with earlier date in App. II, and except *Melopsittacus undulatus*, *Nymphicus hollandicus*, and *Psittacula krameri*. However, the latter is listed separately in App. III.	All Parrots, Parakeets, Macaws and Lories (not including the Budgerigar, Cockatiel, and Rose-ringed parakeet).	II	6/6/81
Order Strigiformes:	Owls:		
All species except those in App. I or with earlier date in App. II.		II	6/28/79
Order Passeriformes:	Perching birds, Songbirds:		
Gracula religiosa	Hill myna	III (Thailand)	6/11/92
CLASS REPTILIA:	REPTILES:		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
Alligatoridae spp. (all species in family except those in App. I or with earlier date in App. II).	Alligators, Caimans	II	2/4/77
Caiman latirostris	Broad-snouted caiman	I	7/1/75
Crocodylidae spp. (all species in family except those in App. I or with earlier date in App. II).	Crocodiles	II	2/4/77
Crocodylus niloticus (populations of Madagascar and Uganda subject to export quotas described by the Secretariat).	Nile crocodile	II	7/1/75
C. niloticus (populations of Botswana, Ethiopia, Kenya, Malawi, Mozambique, South Africa, Zambia, and Zimbabwe subject to ranching provisions).	Nile crocodile	II	7/1/75
C. niloticus (population of Tanzania subject to ranching provisions and annual quotas described by the Secretariat).	Nile crocodile	II	7/1/75
Melanosuchus niger (population of Ecuador, subject to zero export quotas in 1995 and 1996, followed by annual quotas described by the Secretariat).	Black caiman	II	7/1/75
Order Serpentes:	Snakes:		
Boidae spp. (all species except those in App. I or with earlier date in App. II).	Boa constrictors, Pythons	II	2/4/77
CLASS OSTEICHTHYES:	BONY FISHES:		
Order Acipenseriformes:	Sturgeons:		
PHYLUM ARTHROPODA:	ARTHROPODS:		
CLASS Insecta:	Insects:		
Ornithoptera spp. (all species except those in App. I or with earlier date in App. II).	Birdwing butterflies	II	2/16/79
PHYLUM MOLLUSCA:	MOLLUSCS:		
CLASS Pelecypoda (=*Bivalvia*):	Clams, Mussels:		
Fusconaia subrotunda	Long solid mussel	II	7/1/75
Lampsilis brevicula	Ozark lamp pearly mussel	II	7/1/75
Lexingtonia dolabelloides	Slab-side pearly mussel	II	7/1/75
CLASS Gastropoda:	Snails:		
Paryphanta spp. (New Zealand species only)	New Zealand amber snails	II	7/1/75
PLANT KINGDOM:	PLANTS:		
Family Agavaceae:	Agave family:		
Agave victoriae-reginae	Queen Victoria agave	II	7/29/83
Family Apocyanaceae:	Dogbane family:		
Pachypodium brevicaule (and its natural hybrids; no export of adult plants before tenth Conference of the Parties, ca. March, 1997).		II	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
Family Araliaceae:	Ginseng family:		
Panax quinquefolius	American ginseng	II	7/1/75
Family Cactaceae:	Cactus family:		
All species except those in App. I	Cacti	II	7/1/75
Coryphantha werdermannii	Jabali pincushion cactus	I	7/1/75
Echinocereus (=*Wilcoxia*) *schmollii*	Lamb's-tail cactus	I	7/1/75
Escobaria minima	Nellie's corycactus	I	7/1/75
E. sneedii	Sneed pincushion cactus	I	7/1/75
Pachycereus (=*Backebergia*) *militaris*	Teddy-bear cactus, Military cap	I	7/1/75
Pediocactus (=*Toumeya*) *knowltonii*	Knowlton's cactus	I	7/1/75
P. (=*Toumeya*) *papyracanthus* (see *Sclerocactus papyracanthus*).			
P. paradinei	Houserock Valley cactus	I	7/1/75
P. peeblesianus (=*Toumeya fickeisenii*, =*T. peeblesiana*)	Peebles' Navajo cactus	I	7/1/75
P. sileri	Siler's pincushion cactus	I	7/1/75
Pelecyphora spp. (includes *Encephalocarpus* sp.)	Hatchet cactus, Pinecone cactus, Peyotillo.	I	7/1/75
Sclerocactus brevihamatus subsp. *tobuschii* (=*Ancistrocactus tobuschii*, =*Echinocactus tobuschii*).	Tobusch fishhook cactus	I	7/1/75
S. (=*Echinomastus*, =*Neolloydia*) *erectocentrus*		I	7/1/75
S. glaucus	Uinta Basin hookless cactus	I	7/1/75
S. papyracanthus	Grama-grass cactus	I	7/1/75
Strombocactus disciformis	Disc cactus, Top cactus	I	7/1/75
Family Cycadaceae:	Cycas family:		
Family Euphorbiaceae:	Spurge family:		
Euphorbia spp. (excluding non-succulent species) (all species except those in App. I).	Euphorbias	II	7/1/75
E. decaryi (including var. *capsaintemariensis*, *E. capsaintemariensis*) (and its natural hybrids).		I	7/1/75
Family Leguminosae (=Fabaceae):	Pea family:		
Pericopsis elata (including saw-logs, sawn wood, and veneers, but no other parts or derivatives, i.e., products).	Afrormosia	II	6/11/92
Family Magnoliaceae:	Magnolia family:		
Talauma hodgsonii		III (Nepal)	11/16/75
Family Meliaceae:	Mahogany family:		
Swietenia macrophylla (populations in the Americas, including saw-logs, sawn wood, and veneers, but no other parts or derivatives, e.g., products).	Bigleaf mahogany	III (Costa Rica)	11/16/95
S. mahagoni (including saw-logs, sawn wood, and veneers, but no other parts or derivatives, i.e., products).	Caribbean mahogany	II	6/11/92
Family Orchidaceae (= Apostasiaceae, Cypripediaceae):	Orchid family:		
Family Portulacaceae:	Portulaca family:		
Anacampseros spp.		II	7/1/75
Lewisia tweedyi	Tweedy's lewisia	II	7/29/83
Family Primulaceae:	Primrose family:		
Cyclamen spp.	Cyclamens	II	7/1/75
Family Proteaceae:	Protea family:		
Orothamnus zeyheri	Marsh-rose	I	7/1/75
Protea odorata	Ground-rose	I	7/1/75
Family Theaceae:	Tea family:		
Camellia chrysantha	Yellow-flowered camellia, Jinhuacha	II	8/1/85

3. § 23.23(f) is amended by adding the following taxa or populations to read as follows:

§ 23.23 Species listed in Appendices I, II, and III.

* * * * *

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
CLASS MAMMALIA:	MAMMALS:		
* * *	* * * *		
Order Primates (formerly including order Scandentia, above): All species of primates except those in App. I or with earlier date in App. II.	Primates: Monkeys, Apes, etc.: A4/77..		

Species	Common name	Appendix	First listing date (month/day/year)
• • •	• • • •		
Phaner sp.	Fork-marked mouse lemurs	I	7/1/75
• • •	• • • •		
Order Xenarthra:	Anteaters, Sloths, Armadillos:		
• • •	• • • •		
Chaetophractus nationi (subject to a zero export quota)	Hairy armadillo	II	9/18/97
• • •	• • • •		
Order Cetacea:	Whales, Porpoises, Dolphins:		
All species except those in App. I or with earlier date in App. II.	All whales, porpoises, and dolphins not listed below.	II	6/28/79
• • •	• • • •		
Order Carnivora:	Carnivores: Cats, Bears, etc.:		
• • •	• • • •		
Nasua narica	Common coati, Coatimundi	III (Honduras)	4/13/87
• • •	• • • •		
U. arctos (all Asian populations, including populations of Iran, Iraq, Syria, Turkey, and the former USSR, except populations and subspecies listed in App. I).	Brown bear	II	1/18/90
U. arctos (all European populations except Italian population and former USSR populations).	European brown Bear	II	7/29/83
Ursus arctos (all North American populations except *U. a. nelsoni*).	Brown bear, Grizzly bear	II	7/1/75
U. arctos (all populations of Bhutan, Mongolia, and China except subspecies with earlier date).	Brown bear	I	1/18/90
U. arctos (Italian population)	European brown bear	I	7/1/75
U. arctos isabellinus	Red bear	I	6/28/79
U. arctos nelsoni	Mexican grizzly bear	I	7/1/75
U. arctos pruinosus	Tibetan blue bear	I	7/1/75
• • •	• • • •		
Order Proboscidea:	Elephants:		
• • •	• • • •		
Loxodonta africana (except the populations of Botswana, Namibia, and Zimbabwe).	African elephant	I	2/4/77
L. africana [only the populations of Botswana, Namibia, and Zimbabwe, to allow: (1) export of hunting trophies for non-commercial purposes; (2) export of live animals to appropriate and acceptable destinations (Namibia: for non-commercial purposes only); (3) export of hides (Zimbabwe only); (4) export of leather goods and ivory carvings for non-commercial purposes (Zimbabwe only). No international trade in ivory is permitted before 18 months after the transfer to Appendix II comes into effect (i.e., March 18, 1999). Thereafter, under experimental quotas for raw ivory not exceeding 25.3 tons (Botswana), 13.8 tons (Namibia) and 20 tons (Zimbabwe), raw ivory may be exported only to Japan, subject to the conditions established in Decision of the Conference of the Parties regarding ivory No. 10.1. Specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly].	African elephant	II	2/4/77
• • •	• • • •		
Order Artiodactyla:	Even-toed ungulates:		
• • •	• • • •		
Bison bison athabascae	Wood bison	II	7/1/75
• • •	• • • •		
Bos mutus (excluding domestic forms)	Wild yak	I	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
. . .	. . . .		
Ovis ammon nigrimontana	Kara Tau argali	I	7/1/75
. . .	. . . .		
O. vignei vignei	Shapo	I	7/1/75
. . .	. . . .		
Pecari tajacu (except populations of the United States and Mexico).	Collared peccary	II	10/22/87
. . .	. . . .		
Vicugna vicugna (except populations listed below, under the conditions specified).	Vicuña	I	7/1/75
V. vicugna [Argentina: wild populations of the Province of Jujuy and the semi-captive populations of the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan (export limited to wool sheared from live animals and to cloth and items made thereof, including luxury handicrafts and knitted articles; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-ARGENTINA"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75
V. vicugna [Bolivia: populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and Lipez-Chichas (export limited to wool sheared from live animals and to cloth and items made thereof, including luxury handicrafts and knitted articles, but with a zero annual export quota; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-BOLIVIA"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75
V. vicugna [Chile: populations of Paranicota Province, 1a. Region of Tarapaca (export limited to wool sheared from live animals and to cloth and items made thereof, including luxury handicrafts and knitted articles; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-CHILE"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75
V. vicugna [Peru: all populations (export limited to the stock of 3249 kg. extant in November, 1994, to wool sheared from live animals, and to cloth and items made thereof, including luxury handicrafts and knitted articles; the reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Convenio para la Conservación y Manejo de la Vicuña and the words, "VICUÑA-PERU"; all specimens not meeting any of the above conditions shall be deemed to be specimens of species included in Appendix I and the trade in them shall be regulated accordingly)].	Vicuña	II	7/1/75*
. . .	. . . .		
CLASS AVES	BIRDS		
. . .	. . . .		
Order Falconiformes:	Hawks, Falcons, Vultures, Eagles:		
All species except those in App. I, or with earlier date in App. II, and except Cathartidae species not specifically listed below.	All species except New World vultures not specifically listed below.	II	6/28/79

Species	Common name	Appendix	First listing date (month/day/year)
• • •	• • • •		
Order Psittaciformes:	Parrots, Parakeets, Macaws, Lories, Cockatoos, etc.:		
All species in order except those in App. I or with earlier date in App. II, and except *Melopsittacus undulatus*, *Nymphicus hollandicus*, and *Psittacula krameri*. However, the latter is listed separately in App. III.	All Parrots, Parakeets, Macaws, Lories, Cockatoos, etc. not listed below (not including the Budgerigar, Cockatiel, and Rose-ringed parakeet).	II	6/6/81
• • •	• • • •		
Amazona viridigenalis	Red-crowned (= Green-cheeked) parrot	I	6/6/81
• • •	• • • •		
Vini ultramarina	Ultramarine lorikeet	I	6/6/81
• • •	• • • •		
Order Strigiformes:	Owls:		
All species except those in App. I or with earlier date in App. II.	All Owls not listed below	II	6/28/79
• • •	• • • •		
Order Passeriformes:	Perching birds, Songbirds:		
• • •	• • • •		
Amandava formosa	Green avadavat	II	9/18/97
• • •	• • • •		
Gracula religiosa	Hill myna	II	6/11/92
• • •	• • • •		
Leiothrix argentaurius	Silver-eared mesia	II	9/18/97
L. lutea	Pekin robin	II	9/18/97
• • •	• • • •		
Liocichla omeiensis	Omei Shan liocichla	II	9/18/97
• • •	• • • •		
Padda oryzivora	Java sparrow	II	9/18/97
• • •	• • • •		
Pycnonotus zeylanicus	Straw-headed bulbul	II	9/18/97
• • •	• • • •		
Tangara fastuosa	Seven-colored tanager	II	9/18/97
• • •	• • • •		
CLASS REPTILIA Order Testudinata:	REPTILES Turtles, Tortoises:		
• • •	• • • •		
Callagur borneoensis	Painted terrapin	II	9/18/97
• • •	• • • •		
Order Crocodylia:	Crocodiles, Alligators, Caimans, Gavials:		
Alligatoridae spp. (all species in family except those in App. I or with earlier date in App. II).	All Alligators and Caimans not listed below.	II	2/4/77
• • •	• • • •		
Caiman latirostris (except population of Argentina)	Broad-snouted caiman	I	7/1/75
• • •	• • • •		
Crocodylidae spp. (all species in family except those in App. I or with earlier date in App. II).	All Crocodiles not listed below	II	2/4/77
• • •	• • • •		
Crocodylus niloticus (populations of Botswana, Kenya, Malawi, South Africa, Zambia, and Zimbabwe, subject to ranching provisions).	Nile crocodile	II	7/1/75
C. niloticus (population of Ethiopia, Madagascar, Mozambique, Tanzania, and Uganda, subject to an annual export quota).	Nile crocodile	II	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
. . .	. . . .		
Melanosuchus niger (population of Ecuador, subject to a zero annual export quota until a different quota has been approved by the Secretariat).	Black caiman	II	7/1/75
. . .	. . . .		
Order Serpentes:	Snakes:		
. . .	. . . .		
Boidae spp. (all species except those in App. I or with earlier date in App. II).	All Boa constrictors, Pythons not listed below.	II	2/4/77
. . .	. . . .		
Naja kaouthia (see *Naja naja*)			
. . .	. . . .		
Naja oxiana (see *Naja naja*)			
. . .	. . . .		
CLASS OSTEICHTHYES	BONY FISHES		
. . .	. . . .		
Order Acipenseriformes (all species except those in App. I or with earlier date in App. II)	All Sturgeons and Paddlefish not listed below.	II	4/1/98
. . .	. . . .		
PHYLUM ARTHROPODA CLASS Insecta:	ARTHROPODS Insects:		
. . .	. . . .		
Ornithoptera spp. (all species except those in App. I or with earlier date in App. II).	All Birdwing butterflies not listed below	II	2/16/79
. . .	. . . .		
PLANT KINGDOM (NOTE GENERAL EXCLUSIONS AND EXCEPTIONS IN INTRODUCTORY TEXT): Family Agavaceae:	PLANTS Agave family:		
. . .	. . . .		
Agave victoriae-reginae (=*A. ferninandi-regis*)	Queen Victoria agave	II	7/29/83
. . .	. . . .		
Family Apocynaceae:	Dogbane family:		
. . .	. . . .		
Pachypodium brevicaule (and its natural hybrids)		II	7/1/75
. . .	. . . .		
Family Araliaceae: *Panax quinquefolius* (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Ginseng family: American ginseng	II	7/1/75
. . .	. . . .		
Family Cactaceae (note general exclusions and exceptions in introductory text): All species except those in App. I, and except artificially propagated specimens of the following hybrids and/or cultivars: (1) *Hatiora* × *graeseri* (=*H. gaertneri* × *H. rosea*); (2) *Schlumbergera* (=*Zygocactus*) *truncata* cultivars and its hybrids with *S. opuntoides* (=*S.*× *exotica*), *S. orssichiana*, and *S. russelliana* (=*S.*× *buckleyi*); (3) *Gymnocalycium mihanovichii* cultivars lacking chlorophyll, grafted on *Hatiora* "Jusbertii", *Hylocereus trigonus* or *H. undatus*; and (4)*Opuntia microdasys*.	Cactus family: Cacti	II	7/1/75
. . .	. . . .		
Coryphantha werdermannii (=*C. densispina; Mammillaria w.*)	Jabali pincushion cactus	I	7/1/75
. . .	. . . .		
Echinocereus (=*Cereus, =Wilcoxia*) *schmollii*	Lamb's-tail cactus	I	7/1/75

Species	Common name	Appendix	First listing date (month/day/year)
• • •	• • • •		
Escobaria minima (=*Coryphantha m.*, not *Mammillaria m.*; =*C. nelliae, E. n.*, =*Mammillaria n.*).	Nellie's corycactus	I	7/1/75
E. sneedii, including *E. s.* var. *leei* (=*Coryphantha s.* var. *l.*, =*E. leei*, =*Mammillaria l.*) and *E. s.* var. *sneedii* (=*Coryphantha s.*, =*Mammillaria s.*).	Sneed pincushion cactus	I	7/1/75
• • •	• • • •		
Pachycereus militaris (=*Backebergia m.*, =*Cephalocereus m.*, =*Mitrocereus m.*, =*Pachycereus chrysomallus*).	Teddy-bear cactus, Military cap	I	7/1/75
• • •	• • • •		
Pediocactus knowltonii (=*P. bradyi* var. *k.*, =*Toumeya k.*)	Knowlton cactus	I	7/1/75
• • •	• • • •		
P. paradinei (=*Pilocanthus p.*)	Houserock Valley cactus	I	7/1/75
P. peeblesianus, including *P. p.* var. *fickeiseniae* (=*Navajoa f.*, =*Toumeya f.*) and *P. p.* var. *peeblesianus* (=*Echinocactus p.*, =*Navajoa p.*, =*Toumeya p.*, =*Utahia p.*).	Fickeisen Navajo cactus, Peeble's Navajo cactus.	I	7/1/75
P. sileri (=*Echinocactus s.*, =*Utahia s.*)	Siler's pincushion cactus	I	7/1/75
• • •	• • • •		
Pelecyphora (=*Encephalocarpus*) spp.	Hatchet cactus, Pinecone cactus, Peyotillo.	I	7/1/75
Sclerocactus brevihamatus subsp. *tobuschii* (=*Ancistrocactus t.*, =*Echinocactus t.*, =*Ferocactus t.*, =*Mammillaria t.*).	Tobusch fishhook cactus	I	7/1/75
S. erectocentrus (=*Echinocactus e.*, =*Echinomastus e.*, =*Neolloydia e.*, =*Thelocactus e.*; =*Echinomastus acunensis*, =*Echinomastus e.* var *a.*, =*Neolloydia e.* var *a.*; =*Echinocactus krausei*, =*Echinomastus k.*).	Redspine fishhook cactus	I	7/1/75
S. glaucus (=*S. franklinii*; =*Echinocactus g.*, =*Ferocactus g.*, =*Pediocactus g.*, =*S. whipplei* var. *g.*; =*E. subglaucus*; =*S. wetlandicus*; =*S. w.* var. *ilseae*).	Uinta Basin hookless cactus	I	7/1/75
• • •	• • • •		
S. papyracanthus (=*Echinocactus p.*, =*Mammillaria p.*, =*Pediocactus p.*, =*Toumeya p.*).	Grama-grass cactus	I	7/1/75
• • •	• • • •		
Strombocactus spp. (=*S. disciformis* in broad sense)	Disc cactus, Top cactus	I	7/1/75
• • •	• • • •		
Family Cycadaceae:	Old World cycad family (see families Stangeriaceae and Zamiaceae for other cycads):		
• • •	• • • •		
Family Euphorbiaceae:	Spurge family:		
Euphorbia spp., except those species in App. I, and excluding non-succulent species and artificially propagated specimens of *Euphorbia trigona* cultivars.	Euphorbias	II	7/1/75
• • •	• • • •		
E. capsaintemariensis (= *E. decaryi* var. *c.*) (and its natural hybrids).		I	7/1/75
• • •	• • • •		
E. decaryi (and its natural hybrids) (see also *E. capsaintemariensis*, formerly included in *E. decaryi*).		I	7/1/75
• • •	• • • •		
Family Leguminosae (=Fabaceae):	Pea family:		
• • •	• • • •		
Pericopsis elata (including logs, sawn wood, and veneer sheets, but not other parts or derivatives).	Afrormosia	II	6/11/92

Species	Common name	Appendix	First listing date (month/day/year)
. . .	. . . .		
Family Magnoliaceae:	Magnolia family:		
Magnolia (=*Talauma*) *hodgsonii*		III (Nepal)	11/16/75
Family Meliaceae:	Mahogany family:		
. . .	. . . .		
Swietenia macrophylla (populations in the Americas, including logs, sawn wood, and veneer sheets, but not other parts or derivatives).	Bigleaf mahogany	III (Costa Rica)	11/16/95
S. mahagoni (including logs, sawn wood, and veneer sheets, but not other parts or derivatives).	Caribbean mahogany	II	6/11/92
. . .	. . . .		
Family Orchidaceae (= Apostasiaceae, Cypripediaceae) (note general exclusions and exceptions in introductory text):	Orchid family:		
. . .	. . . .		
Family Portulacaceae:	Portulaca family:		
Anacampseros spp. (including *A.* [= *Grahamia*] *australiana*, *A.* [=*G.*] *kurtzii*).		II	7/1/75
Avonia spp. (formerly a part of *Anacampseros* spp.)		II	7/1/75
. . .	. . . .		
Family Primulaceae:	Primrose family:		
Cyclamen spp., excluding artificially propagated specimens of the cultivars of *Cyclamen persicum* (except when traded as dormant tubers).	Cyclamens	II	7/1/75
Family Proteaceae:	Protea family:		
Orothamnus zeyheri	Marsh-rose	II	7/1/75
Protea odorata	Ground-rose	II	7/1/75
Family Ranunculaceae:	Buttercup family:		
Hydrastis canadensis (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Goldenseal	II	9/18/97
. . .	. . . .		
Family Scrophulariaceae:	Figwort family:		
Picrorhiza kurrooa (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Kutki	II	9/18/97
Family Stangeriaceae:	Stangeria family:		
Bowenia spp. (formerly in Zamiaceae)	Bipinnate cycads	II	2/4/77
. . .	. . . .		
Family Valerianaceae:	Valerian family:		
Nardostachys grandiflora (=*Nardostachys jatamansi* misapplied) (whole and sliced roots and parts of roots, excluding manufactured parts or derivatives such as powders, pills, extracts, tonics, teas, and confectionery).	Himalayan nard or spikenard	II	9/18/97
. . .	. . . .		

Dated: September 8, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–29849 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 110598A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the amount of the 1998 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 7, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and CFR part 679.

The Final 1998 Harvest Specifications of Groundfish for the BSAI established the initial TAC of Atka mackerel in the Western Aleutian District as 22,950 mt, and, through the apportionment of reserve allocated an additional 2,025 mt for a total of 24,975 mt (63 FR 12689, March 16, 1998). See § 679.20(c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC for Atka mackerel in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 23,975 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1998 TAC of Atka mackerel for the Western Aleutian District of the BSAI. A delay in the effective date is impracticable and contrary to public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 5, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30229 Filed 11–6–98; 3:46 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 218
Thursday, November 12, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–40643; File No. S7–26–98]

RIN 3235–AH04

Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934

AGENCY: Securities and Exchange Commission.

ACTION: Reproposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for a release reproposing books and records requirements for broker-dealers under the Securities Exchange Act of 1934 (Release No. 34–40518) which was published in the **Federal Register** on October 9, 1998 (63 FR 54404). The comment period for Release No. 34–40518, is being extended to December 9, 1998.

DATES: Comments must be received on or before December 9, 1998.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission ("Commission"), 450 Fifth Street, N.W., Mail Stop 6–9, Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7–26–98; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, (202) 942–0131; Thomas K. McGowan, Assistant Director, (202) 942–4886; or Deana A. La Barbera, Attorney, (202) 942–0734, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On October 2, 1998, the Commission issued for comment Release No. 34–40518 soliciting comment on reproposed amendments to the Commission's books and records rules, Rules 17a–3 and 17a–4 under the Securities Exchange Act of 1934. Specifically, the reproposed amendments are designed to clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The reproposed amendments also specify the books and records that broker-dealers would have to make available at their local offices. The reproposed books and records rules are specifically designed to assist securities regulators when conducting sales practice examinations.

The Commission originally requested that comments on this reproposal be received by November 9, 1998. The Commission has recently received requests to extend the comment period and believes that extending the comment period is appropriate in order to give the public additional time to comment on the matters 1 addressed by the release. Therefore, the Commission is extending to December 9, 1998 the comment period for Release No. 34–40518 (Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934).

Dated: November 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30249 Filed 11–10–98; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892

[Docket No. 98N–0009]

Medical Devices; Exemption From Premarket Notification and Reserved Devices; Class I

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its classification regulations to designate class I devices that are exempt from the premarket notification requirements, subject to certain limitations, and to designate those class I devices that remain subject to premarket notification requirements under the new statutory criteria for premarket notification requirements. The devices FDA is proposing to designate as exempt do not include class I devices that have been previously exempted by regulation from the premarket notification requirements. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). FDA is taking this action in order to implement a requirement of FDAMA.

DATES: Written comments by January 26, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Device and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the act (21 U.S.C. 360c), FDA must classify devices

into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the 1976 amendments (Pub. L. 94–295), as amended by the SMDA (Pub. L. 101–629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to ensure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device, or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, part 807 (21 CFR part 807), require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is substantially equivalent within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval. Unless exempted from premarket notification requirements, persons may not market a new device under section 510(k) of the act, unless they receive a substantial equivalence order from FDA or an order reclassifying the device into class I or class II, under section 513(f) of the act.

On November 21, 1997, the President signed FDAMA into law (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section 510(l) to the act. Under section 206 of the FDAMA, new section 510(l) of the act became effective on February 19, 1998. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury. This document refers to these devices that FDA believes meet these criteria as "reserved." FDA has evaluated all class I devices to determine which device types should be subject to premarket notification requirements.

In developing the list of reserved devices, the agency considered its experience in reviewing premarket notifications for these device types, focusing on the risk inherent with the device and/or the disease being treated or diagnosed. FDA believes that the devices listed as reserved are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA published a list of devices it considered reserved and that require premarket notification and a list of devices it believed met the exemption criteria in FDAMA. FDA invited comments on the February 2, 1998, notice. Responses to these comments are addressed in this document.

FDA is now proceeding to designate which devices require premarket notification, and which are exempt, subject to limitations, under notice and comment rulemaking proceedings under new section 510(l). The devices FDA is proposing to designate as requiring premarket notification include five devices that are currently exempt from premarket notification because FDA believes they meet the reserved criteria: *Quinine test system* § 862.3750 (21 CFR 862.3750), *Sulfonamide test system* § 862.3850 (21 CFR 862.3850), *Cardiopulmonary bypass accessory equipment* § 870.4200 (21 CFR 870.4200), *Ophthalmic eye shield* § 886.4750 (21 CFR 886.4750) (when made of other than plastic or aluminum), and *Electrode cable* § 890.1175 (21 CFR 890.1175). FDA also is proposing to modify the limitations language for all class I devices that are currently exempt.

II. Limitations on Exemptions

FDA believes that the generic types of class I devices listed herein, in addition to a vast majority of class I devices previously exempted, should be exempt from the premarket notification requirements under section 510(l) of the act. FDA further believes, however, that these generic device categories should be exempt only to the extent that they have existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices (IVD's), for which a misdiagnosis as a result of using the device, would not be associated with high morbidity or mortality. FDA believes that certain changes to devices within a generic device type that is generally exempt may make the device intended for a use that is of substantial importance in preventing impairment of human health or may make the device present a potential unreasonable risk of illness or injury. Accordingly, devices changed in this manner would fall within the reserved criteria under section 510(l) of the act and would require premarket notification.

FDA believes that devices that have different intended uses than legally marketed devices in that generic device type present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics are unknown. Moreover, FDA believes that IVD's that are intended for a use for which a misdiagnosis, as a result of using the device, could result in high morbidity or mortality, either are intended for a use that is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury.

Accordingly, because FDA believes that devices incorporating the characteristics described previously fit within the reserved criteria under section 510(l) of the act, FDA considers any class I device to be subject to premarket notification requirements if the device: (a) Has an intended use that is different from the intended use of a legally marketed device in that generic type of device (e.g., the device is intended for a different medical purpose, or the device is intended for lay use instead of use by health care professionals); or (b) operates using a different fundamental scientific technology than that used by a legally marketed device in that generic type of device (e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an IVD detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization or amplification technology rather than culture or immunoassay technology); or (c) is an in vitro device that is intended: (1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical

devices; (2) for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism; (3) for measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy; (4) to assess the risk of cardiovascular diseases; (5) for use in diabetes management; (6) to identify or infer the identity of a microorganism directly from clinical material; (7) for detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma; (8) for noninvasive testing as defined in § 812.3(k) (21 CFR 812.3(k); and (9) for near patient testing (point of care).

FDA is proposing to revise §§ 862.9, 864.9, and 866.9 (21 CFR 862.9, 864.9, and 866.9) to incorporate the revised limitations on exemptions for IVD's as set forth previously. FDA believes that these limitations, for the reasons described previously, are appropriate for IVD's.

FDA is also proposing to amend all current limitations on exemptions sections (21 CFR 862.9, 864.9, 866.9, 868.9, 870.9, 872.9, 874.9, 876.9, 878.9, 880.9, 882.9, 884.9, 886.9, 888.9, 890.9, and 892.9) in two ways. First the proposed limitations language clarifies that these limitations apply to class II, as well as class I devices. On January 21, 1998 (63 FR 3142), FDA published a list of exempted class II devices, subject to certain limitations. Under section 510(m)(1), as added by FDAMA, FDA was provided the authority to exempt these class II devices upon issuance of a notice. FDA intends to codify these exemptions, including the limitations described in the January 21, 1998, **Federal Register** notice, by issuance of a final rule in the near future.

The limitations language that is proposed in this document for class I devices is identical to those limitations for class II devices that became effective on January 21, 1998. Accordingly, the proposed limitations sections state that the scope of these limitations apply to class II, as well as class I devices.

Second, FDA is proposing to amend the limitations language to state that premarket notifications must be submitted for class I exempt devices if the intended use is different than the "legally marketed devices in that generic type." Currently, the limitations in § _____.9 of each classification regulation part (e.g., §§ 862.9, 864.9, etc.) states that manufacturers must submit premarket notifications for class I exempt devices when "[t]he device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent;".

FDA believes that devices that have an intended use that differs from any legally marketed device should not be exempt because those devices present a potential unreasonable risk of illness or injury because their safety and effectiveness characteristics are unknown. Manufacturers of such devices should submit a premarket notification and the agency will determine if they are substantially equivalent to other legally marketed devices in that generic device type.

In addition to the general limitations on exemptions that FDA considers applicable to all class I devices that are described previously, FDA also considers certain devices within a generic class to remain subject to the premarket notification requirements because they either are intended for a use that is of substantial importance in preventing impairment of human health or they present a potential unreasonable risk of illness or injury. For example, elsewhere in this document, FDA states that it considers liquid bandages generally to be exempt from the premarket notification requirements, but considers a subcategory of those devices, those intended for treatment of burns and other open wounds, to remain subject to the premarket notification requirements. FDA believes that liquid bandages intended for burns and other open wounds should remain subject to this requirement because they are of substantial importance in preventing impairment of human health by helping to prevent infections.

FDA also advises that an exemption from the requirement of premarket notification does not mean that the device is exempt from any other statutory or regulatory requirements, unless such exemption is explicitly provided by order or regulation.

III. Analysis of Comments to the February 2, 1998, Notice

1. One comment proposed that general purpose instruments (21 CFR 862.2140, 862.2150, 862.2160, 862.2170, 862.2250, 862.2260, 862.2300, 862.2400, 862.2500, 862.2540, 862.2560, 862.2680, 862.2700, 862.2730, and 862.2750) designed to perform clinical testing that provide results that are intended to be of "substantial importance in preventing impairment of human health, or presents a potential risk of illness or injury" should not be exempt.

If these devices are not subject to the proposed limitations in § 862.9, FDA does not believe that premarket notification is necessary because these devices do not meet the reserved criteria. Laboratory instruments, like other devices, should be regulated according to risk and the risk associated with any device is related to intended use and indications for use. As general purpose instruments, these devices make no specific claims and their safety and effectiveness can be reasonably assured by using other general controls, including design controls (if the instrument includes computer automation). If the labeling includes indications for specific analytes on the general purpose instrument, the devices would not meet the reserved criteria. Under proposed § 862.9, these devices would be subject to the limitations on exemptions and, therefore, would be not be exempt from premarket notification. Review of the system and its indications by FDA would be required through a new premarket notification.

2. One comment stated that general purpose instruments should not be exempt from premarket notification because they could be used in a physician's office or near patient testing (point of care) by nonlaboratory trained individuals resulting in major threats to patient health.

FDA believes that these concerns are addressed by the limitations on exemptions. Under § 862.9(c), devices that are "for near patient testing (point of care)" would be excluded from exemption from premarket notification.

3. One comment stated that in vitro devices "intended for use in screening or diagnosis of familial and acquired genetic disorders including inborn errors of metabolism" (21 CFR 862.1330, 862.1335, 862.1560, 862.1595, and 862.1650) and test markers for endocrine disorders (21 CFR 862.1075, 862.1080, 862.1200, 862.1245, 862.1250, 862.1260, 862.1265, 862.1270, 862.1275, 862.1280, 862.1285, 862.1300, 862.1370, 862.1385, 862.1390, 862.1395, and 862.1620) should be subject to premarket notification.

FDA agrees that the manufacturer of the IVD's described by the comment may continue to be required to submit 510(k)'s under the proposed limitations on exemptions. Proposed limitations in § 862.9 would assure that these products will be subject to premarket notification requirements if intended for use in screening or diagnosis of familial or

acquired genetic disorders or endocrine disorders and will not be subject to these requirements where the same device is not intended for these specific high risk indications. FDA, therefore, believes that these devices should be exempt from premarket notification, subject to the limitation.

4. One comment suggested that premarket notifications and review should be required for devices and tests designed to "identify or infer the identity of a microorganism directly from clinical materials," including devices classified under §§ 866.3145, 866.3375, 866.3405, 866.3480, 866.3500 and 866.3740.

FDA agrees. The comment has described one of the limitations on exemptions in the proposed rule. That limitation would apply to a number of classifications, including those cited by this comment.

5. One comment suggested that:

> Quality control material—(assayed and unassayed) ([21 CFR] 862.1660), must continue to be reviewed so that the FDA oversight function may continue to identify those manufacturers of quality control reagents whose manufacturing or testing practices could fail to ensure a product of appropriate accuracy, stability, and reliability.

FDA agrees that quality control materials are of critical importance in laboratory operations. The agency intends to continue to review assayed quality control materials because it believes they meet the reserved criteria. FDA believes unassayed quality control materials, other than those used for donor screening, are appropriate for exemption from premarket review. Unlike unassayed quality control materials, assayed quality control materials have specifically labeled performance levels that are reviewed. The performance of unassayed quality control materials that are not labeled is not assessed in the 510(k) process and is assessed by the laboratory rather than the manufacturer. Issues such as stability and reliability for unassayed quality control materials are adequately addressed by the new quality systems requirements of current good manufacturing practices. Unassayed quality control materials for donor screening, however, should not be exempt because FDA should review the labeling to ensure no specific performance claims are made.

6. One comment indicated that there is an inconsistency between the exemptions of the free tyrosine test system (21 CFR 862.1730) and the galactose test system (21 CFR 862.1310), and the limitations on exemptions that apply to a device that "(c) is a in-vitro device that is intended: * * * (2) for use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism," because all free tyrosine test systems and galactose test systems are for those uses. Another comment stated that they were confused about the exemption from premarket notification of free tyrosine test systems and the limitations on exemptions, as noted previously.

FDA agrees there was an inconsistency. Because the devices are used for screening and diagnosis of genetic disorders and are related to significant morbidity and mortality associated with the disease entities identified by abnormalities in tyrosine and galactose metabolism, FDA believes these devices fit within the reserved criteria and should be added to the list of reserved class I devices that will continue to require premarket notification submissions.

7. The Health Care Financing Administration (HCFA) raised concerns about the effect that exemptions may have on HCFA's implementation of the Clinical Laboratory Improvements Amendments (CLIA). HCFA subsequently commented that they believed that their concerns could be addressed without affecting the exemption process.

FDA intends to continue to meet with the HCFA staff to address these concerns, which relate to inspection procedures in laboratories.

8. One comment stated that FDA had previously exempted the unscented menstrual pad § 884.5435 (21 CFR 884.5435), from premarket notification, except for intralabial pads and reusable menstrual pads. The comment pointed out that the February 2, 1998, notice did not state whether these devices were reserved or exempted. The comment believes that FDA meant to exempt them and asked for clarification.

FDA has evaluated the use of intralabial pads and reusable menstrual pads and believes that they do meet the reserved criteria of FDAMA. These devices may present a potential unreasonable risk of illness or injury due to the risk of vaginal laceration, ulceration, vaginal microflora changes, and other possible adverse effects. FDA is, therefore, proposing to continue to designate the intralabial pads and reusable menstrual pads (§ 884.5435) as devices that require premarket notification.

9. One comment stated that FDA should exempt calipers because they do not meet the class I reserved criteria of FDAMA.

FDA concurs and notes that calipers were exempted on April 5, 1989 (54 FR 13826), under 21 CFR 878.4800 (manual surgical instrument for general use), subject to 21 CFR 878.9 limitations of exemptions from section 510(k) of the act.

10. Two comments expressed support for FDA's interpretation of section 510(l) of FDAMA and the agency's conclusion that devices identified in 21 CFR 874.3300(b)(1), air conduction hearing aids, meet the exemption criteria. One comment stated that "a device will lose its exemption if its intended use differs, or if it operates with a different fundamental scientific technology." The other comment added that the society he represented had concerns regarding FDA's "vigilance in insisting on adherence to FDA regulation governing the labeling and conditions for sale of hearing aids."

FDA agrees with the one comment on the scope of the limitations on exemptions. As far as FDA regulations governing the labeling, the agency believes that general controls are sufficient to regulate air-conduction hearing aids and that trade complaints will keep the agency well informed. The proposed regulation on conditions of sale of hearing aids is moving toward publication.

11. One comment responded to the February 2, 1998, notice by submitting a request for classification under section 513(g) of the act, requesting information regarding the requirements applicable to a dental water filter system with a treated filter/waterline under 21 CFR 872.6640.

FDA considers this comment a section 513(g) of the act request and will respond to the submitter in an individual response.

12. One comment requested that the 510(k) the comment submitted for a class I device classified under § 884.1040 (21 CFR 884.1040) *Viscometer for cervical mucus*, be found to be exempt from the section 510(k) requirements of the act. The comment stated that "the device is not intended for a use which is of substantial importance in preventing impairment of human health and does not present a potential unreasonable risk of illness or injury ("reserved criteria")" and should not be placed under the reserved criteria found in section 206 of FDAMA.

FDA agrees that, generally, viscometers for cervical mucus (§ 884.1040) do not meet the "reserved" criteria under FDAMA and did place this classification regulation on the list of exempted devices in the February 2, 1998, notice. Consistent with the February 2, 1998, notice, FDA is proposing to designate viscometers for cervical use exempt from 510(k) requirements. The comment's device,

however, would use a new matrix for this device. FDA believes that this represents a different intended use that would make this device subject to the limitations on exemptions and, therefore, ineligible for exemption.

13. One comment questioned the limitations on exemptions stated in the February 2, 1998, notice, particularly the limitations applicable to IVD's that are noninvasive tests. The comment criticized the use of the words "noninvasive testing" as being overly broad.

FDA disagrees with this comment. FDA believes that the limitations are necessary to assure that devices are not marketed that are significantly different from the devices exempted from premarket notification, particularly in the area of IVD's where devices are often subject to changes in intended use and conditions of use. Noninvasive testing devices should not be exempt because they almost always involve novel matrices and novel technologies. However, FDA is clarifying the phrase, "noninvasive testing," by citing the definition of "noninvasive" found in § 812.3(k) in the proposed limitations on exemptions.

14. One comment suggested that FDA should review the exemptions and reservations in existing classifications to assure that the present lists are consistent with those listed in the February 2, 1998, notice.

FDA has reviewed the existing regulations again and is proposing to reserve five currently exempted device classifications (§§ 862.3750, 862.3850, 870.4200, 886.4750, and 890.1175).

15. One comment suggested that FDA reserve 11 class I devices that FDA stated it considered exempt class I devices in the February 2, 1998, **Federal Register** notice and subject them to section 510(k) of the act requirements, including: *Cultured animal and human cells* (21 CFR 864.2280); *Microorganism differentiation and identification device* (21 CFR 866.2660); *Coxsackievirus serological reagents* (21 CFR 866.3145); *Echinococcus spp. serological reagents* (21 CFR 866.3200); *Equine encephalomyelitis virus serological reagents* (21 CFR 866.3240); *Lymphocytic choriomeningitis virus serological reagents* (21 CFR 866.3360); *Mumps virus serological reagents* (21 CFR 866.3380); *Poliovirus serological reagents* (21 CFR 866.3405); *Trichinella spiralis serological reagents* (21 CFR 866.3850); *Rickettsia serological reagents* (21 CFR 866.3500); and *Streptococcus spp. serological reagents* (21 CFR 866.3740).

FDA does not agree with the comment that these devices meet the reserved criteria. FDA notes the limitations on exemptions are specifically designed to maintain premarket review for devices used in "screening, diagnosis, or monitoring life threatening diseases" or "to infer the identity of a microorganism directly from clinical material." While section 510(k) of the act exemptions would apply to devices marketed for uses the agency would consider lower risk, such as determination of immune status or for epidemiological uses of these devices, they would not apply to devices with diagnostic claims for use in life-threatening disease states or for direct detection of a microorganism using clinical material. Therefore, FDA is proposing to designate these 11 devices as exempt from section 510(k) of the act requirements subject to the limitations on exemptions.

16. One comment suggested that the limitations on exemptions are unnecessary, confusing, and difficult to apply, especially to IVD's. This comment additionally notes "we question the basis for FDA's broad restrictions in such a specific category of devices."

FDA does not agree that the language is unnecessary, confusing, or difficult to apply. The limitations language that was in the February 2, 1998, **Federal Register** notice, and that is proposed for all class I devices modifies the limitations on exemptions currently found in § _____.9 of each device classification regulation part (e.g., §§ 862.9, 864.9, etc.) only in three ways. First, FDA has referenced class II devices to reflect that both class I and class II devices may be exempted in accordance with new section 510(l) and (m). Second, the limitations language modifies current limitations language by stating that devices are to be compared to "any legally marketed device in that generic type of device" rather than a device on the market "before May 28, 1976" or a "preamendments device to which it has been determined substantially equivalent." Third, the limitations language adds specific language relating to IVD's. The agency cannot predict all possible different intended uses or changes in fundamental scientific technologies that may significantly affect safety and effectiveness; limitations on exemptions are, therefore, in the best interest of the public health because they ensure that devices incorporating such changes will be reviewed for safety and effectiveness by the agency before they go to market.

In order to efficiently allocate review resources, the agency has developed a risk-based approach toward use of the limitations on exemptions to ensure that high-risk devices remain subject to premarket review. The limitations on exemptions continue to take into account two critical risk elements—intended use and novelty of technology.

Furthermore, FDA believes that in vitro diagnostic devices are unique because their safety and effectiveness relates primarily to the information generated by these devices rather than the direct interaction between device and patient. FDA has more fully discussed the need for these limitations earlier in this document.

17. One comment believed the limitations on exemptions required clarification as follows:

With regard to the first limitation ("has an intended use that is different from the intended use of a legally marketed device in that generic type"), we believe that current law is clear that if a device has an intended use different than that expressed in the definition contained in the Code of Federal Regulations (CFR), such device would not be the same as the exempted device. The exemption would simply not apply to that device. However, "intended use" can encompass many different concepts that go beyond the general intended use statements that comprised the CFR definitions. There has been some controversy, for instance, over the extent to which indications for use can change intended use. Our position is that any indication for use that has been included in a previous 510(k) order of classification identifies the scope of the intended use for each exempt type of device. Minor variances of indications for use within the intended use of an exempt type of device should have no effect on the status of a 510(k) exemption.

FDA has interpreted § _____.9(a) in the limitations on exemptions under the current regulations to mean that any legally marketed device (as defined in 21 CFR 807.92(a)(3)) within a device classification regulation may serve as a predicate for another manufacturer's device and the other manufacturer's device may be exempt. FDA believes that any additional indication for use for an exempt classification device type (i.e., an indication not previously cleared) is considered a different intended use and does not meet the limitations on exemptions, and therefore, requires a new premarket notification. FDA agrees that minor variances in indications would not affect the exemption status of the classification. FDA notes that in its guidance entitled "Deciding When to Submit a 510(k) for a Change to an Existing Device," FDA states, in regard to minor variances in indications of closely related populations, "If the expansion is to a population with similar demographics, diagnosis, prognosis, comorbidity and potential for complications as the original, then a new 510(k) is not ordinarily expected."

18. On its own initiative, FDA is proposing to require premarket notification for five devices that are currently exempt from premarket notification: Quinine test system (§ 862.3750), sulfonamide test system (§ 862.3850), cardiopulmonary bypass accessory equipment (§ 870.4200), electrode cable (§ 890.1175), and ophthalmic eye shield (when made of other than plastic or aluminum) (§ 886.4750).

IV. FDA Proposal to Revoke Exemptions

A. Quinine Test System (§ 862.3750) and Sulfonamide Test System (§ 862.3850)

On June 8, 1988 (53 FR 21447), FDA published a final rule exempting the quinine test system and the sulfonamide test system from premarket notification requirements. FDA stated that it was exempting these products because it believed that premarket notification was not necessary to protect the public health.

The quinine test system is used to measure quinine, a fever-reducing and pain-relieving drug used to treat malaria, in the serum or urine. Measurements obtained by this device are used in the diagnosis and treatment of quinine overdose and malaria. If this device fails, persons who have malaria may suffer serious life-threatening consequences by not receiving the appropriate amount of quinine. Similarly, the sulfonamide test system is intended to measure sulfonamide levels which are used to treat life-threatening bacterial infections. The failure of this device may also result in the improper treatment of a life-threatening disease.

Given that these devices are used in determining the treatments for life-threatening diseases, and an inaccurate measurement of the treatment drug could result in life-threatening consequences, FDA does not believe that its previous determinations to exempt these devices from premarket notification were correct. Accordingly, FDA believes that premarket review is necessary to assure the safety and effectiveness of these devices. Moreover, FDA believes that these products meet the reserved criteria for premarket review under section 510(l), in that they are intended for a use which is of substantial importance in preventing impairment of human health, and present a potential unreasonable risk of illness or injury. Therefore, FDA is proposing to require manufacturers of these products to submit premarket notifications.

B. Ophthalmic Eye Shields (§ 886.4750)

On September 2, 1987 (52 FR 33366), FDA published a final rule classifying ophthalmic eye shields as class I devices. This generic type of device is described in § 886.4750 as "a device that consists of a plastic or aluminum eye covering intended to protect the eye or retain dressing materials in place." Plastic or aluminum eye shields rest over the forehead and cheek and do not contact the eye.

Since that classification, FDA has found eye shields that are made of collagen substantially equivalent to eye shields made out of plastic or aluminum in § 886.4750. Collagen eye shields, unlike aluminum and plastic eye shields, come in direct contact with the cornea and are indicated for relief of discomfort from post-surgical, traumatic and nontraumatic corneal conditions. Unlike aluminum and plastic eye shields, there are toxicological concerns relating to biocompatibility and dissolving time for collagen materials. In premarket reviews, FDA has examined biocompatibility and dissolving issues in determining the substantial equivalence of collagen eye shields to plastic and aluminum eye shields.

On December 7, 1994 (59 FR 63005), FDA published a final rule exempting this classification from premarket notification requirements, and quality systems requirements, except 21 CFR 820.198, with respect to complaint files. FDA erred in not amending the codified language at that time to retain premarket review and quality system requirements for collagen eye shields that had been placed in that classification. Despite the exemption language, FDA has continued to receive and review premarket notifications for eye shields made out of collagen.

Because the toxicological issues cause the product to meet the reserved criteria in that the devices are intended for a use which is of substantial importance in preventing impairment of human health or present a potential unreasonable risk of illness or injury, FDA is proposing to amend the codified text to state that collagen eye shields are not exempt from premarket notification requirements.

C. Cardiopulmonary Bypass Accessory Equipment (§ 870.4200) and Electrode Cable (§ 890.1175)

On June 12, 1989 (54 FR 25042), FDA published a final rule exempting electrode cables (§ 890.1175) and cardiopulmonary bypass accessory equipment (§ 870.4200) from premarket notification requirements. FDA received numerous reports of deaths and injuries associated with unprotected patient cables and lead wires. To address the risk of patient exposure to macro shock or electrocution due to the inappropriate connection of a patient connected cable or electrode lead wire to an alternating current power source, in the **Federal Register** of May 9, 1997 (62 FR 25477), FDA published a final rule establishing a performance standard for cables and leads. In the preamble of that final rule, FDA announced that it intended to reclassify electrode cables (§ 890.1175) and cardiopulmonary bypass accessory equipment (§ 870.4200) to class II to subject them to this performance standard. In the meantime, FDA is proposing to subject these devices to premarket review to assure that they are safe and effective, pending the rulemaking to reclassify them into class II.

V. Proposed Designation of Devices

In the **Federal Register** of February 2, 1998 (63 FR 5387), FDA issued a notice of its intent to propose to exempt a list of class I (general controls) devices from the requirement of premarket notification, subject to the limitations of exemptions. FDA has reviewed that list and other devices in light of the comments received in response to the February 2, 1998, notice and other information that has come to FDA's attention. As a result, FDA is proposing to designate as exempt certain devices that were not listed as exempt in the February 2, 1998, notice and to designate as reserved devices certain devices that were not designated as reserved in the February 2, 1998, notice or that were previously exempted by regulation.

The following devices are devices that FDA believes meet the reserved criteria in section 206 of FDAMA and, therefore, FDA is proposing to designate that they remain subject to premarket notification under new section 510(l) added to the act:

TABLE 1.—PROPOSED DESIGNATIONS OF RESERVED CLASS I DEVICES

21 CFR Section	Name of Device
862.1065	Ammonia test system
862.1113	Bilirubin (total and unbound) in the neonate test system
862.1310	Galactose test system
862.1410	Iron (non-heme) test system
862.1415	Iron-binding capacity test system
862.1495	Magnesium test system
862.1580	Phosphorous (inorganic) test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1680	Testosterone test system
862.1730	Free tyrosine test system
862.1775	Uric acid test system
862.3050	Breath-alcohol test system
862.3110	Antimony test system
862.3120	Arsenic test system
862.3220	Carbon monoxide test system
862.3240	Cholinesterase test system
862.3280	Clinical toxicology control material (assayed and unassayed)[1]
862.3600	Mercury test system
862.3750	Quinine test system
862.3850	Sulfonamide test system
864.7040	Adenosine triphosphate release assay
864.8950	Russell viper venom reagent
864.9050	Blood bank supplies
864.9125	Vacuum-assisted blood collection system[2]
864.9195	Blood mixing devices and blood weighing devices[2]
866.2390	Transport culture medium
866.2560	Microbial growth monitor[3]
866.2850	Automated zone reader
866.2900	Microbiological specimen collection and transport device
866.3110	Campylobacter fetus serological reagents
866.3120	Chlamydia serological reagents
866.3235	Epstein-Barr virus serological reagents
866.3370	Mycobacterium tuberculosis immunofluorescent reagents
866.3870	Trypanosoma spp. serological reagents
870.4200	Cardiopulmonary bypass accessory equipment
872.3700	Dental mercury
872.4200	Dental handpiece and accessories
872.6250	Dental chair and accessories[4]
872.6640	Dental operative unit and accessories[5]
872.6710	Boiling water sterilizer
876.5160	Urological clamps for males[6]
878.4460	Surgeon's glove
880.5090	Liquid bandage[7]
880.5680	Pediatric position holder
880.6250	Patient examination glove
880.6375	Patient lubricant
880.6760	Protective restraint
882.1030	Ataxiagraph
882.1420	Electroencephalogram (EEG) signal spectrum analyzer
882.4060	Ventricular cannula[8]
882.4545	Shunt system implantation instrument[9]
884.2980(a)	Telethermographic system[10]
884.2982(a)	Liquid crystal thermographic system[11]
884.5435	Unscented menstrual pads (intralabial pads and reusable menstrual pads)
886.4070	Powered corneal burr[12]
886.4300	Intraocular lens guide[13]
886.4370	Keratome
886.4750	Ophthalmic eye shield (when made of other than plastic or aluminum)
888.1500	Goniometer
890.1175	Electrode cable
890.3850	Mechanical wheelchair
890.5710	Hot or cold disposable pack[14]
892.1100	Scintillation (gamma) camera
892.1110	Positron camera

[1] Meets reserved criteria for all assayed and only the unassayed when used for donor screening.
[2] Meets reserved criteria when automated.
[3] Meets reserved criteria when automated blood culturing systems.
[4] Meets reserved criteria when dental chair with the operative unit.
[5] Meets reserved criteria when it is not an accessory to the unit.
[6] Meets reserved criteria when devices are for internal use or are used for females.
[7] Meets reserved criteria for uses other than as a skin protectant.
[8] Meets reserved criteria if not made of surgical grade stainless steel.

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[9] Meets reserved criteria if not made of surgical stainless steel.
[10] Meets reserved criteria if an adjunct use system.
[11] Meets reserved criteria if nonelectrically powered and AC-powered adjunctive system.
[12] Meets reserved criteria if for use other than for removing rust rings.
[13] Meets reserved criteria if used as folders and injectors for soft or foldable intraocular lenses (IOL's).
[14] Meets reserved criteria if indicated for use on infants.

FDA is proposing to amend the regulations to designate the following devices as exempt from premarket notification because FDA believes that they do not meet the reserved criteria under section 206 of the FDAMA that adds new section 510(l) of the act:

TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES

21 CFR Section	Name of Device
862.1030	Alanine amino transferase (ALT/SGPT) test system
862.1040	Aldolase test system
862.1060	Delta-aminolevulinic acid test system
862.1075	Androstenedione test system
862.1080	Androsterone test system
862.1095	Ascorbic acid test system
862.1115	Urinary bilirubin and its conjugates (nonquantitative) test system
862.1130	Blood volume test system
862.1135	C-peptides of proinsulin test system
862.1165	Catecholamines (total) test system
862.1175	Cholesterol (total) test
862.1180	Chymotrypsin test system
862.1185	Compound S (11-deoxycortisol) test system
862.1195	Corticoids test system
862.1200	Corticosterone test system
862.1240	Cystine test system
862.1245	Dehydroepiandrosterone (free and sulfate) test system
862.1250	Desoxycorticosterone test system
862.1260	Estradiol test system
862.1265	Estriol test system
862.1270	Estrogens (total, in pregnancy) test system
862.1275	Estrogens (total, nonpregnancy) test system
862.1280	Estrone test system
862.1285	Etiocholanolone test system
862.1300	Follicle-stimulating hormone test system
862.1325	Gastrin test system
862.1330	Globulin test system
862.1335	Glucagon test system
862.1360	Gamma-glutamyl transpeptidase and isoenzymes test system
862.1370	Human growth hormone test system
862.1375	Histidine test system
862.1385	17-Hydroxycorticosteroids (17-ketogenic steroids) test system
862.1390	5-Hydroxyindole acetic acid/serotonin test system
862.1395	17-Hydroxyprogesterone test system
862.1400	Hydroxyproline test system
862.1405	Immunoreactive insulin test system
862.1430	17-Ketosteroids test system
862.1435	Ketones (nonquantitative) test system
862.1450	Lactic acid test system
862.1460	Leucine aminopeptidase test system
862.1465	Lipase test system
862.1475	Lipoprotein test system
862.1485	Luteinizing hormone test system
862.1500	Malic dehydrogenase test system
862.1505	Mucopolysaccharides (nonquantitative) test system
862.1510	Nitrite (nonquantitative) test system
862.1520	5'-Nucleotidase test system
862.1530	Plasma oncometry test system
862.1535	Ornithine carbamyl transferase test system
862.1540	Osmolality test system
862.1542	Oxalate test system
862.1550	Urinary pH (nonquantitative) test system
862.1560	Urinary phenylketones (nonquantitative) test system
862.1570	Phosphohexose isomerase test system
862.1590	Porphobilinogen test system
862.1595	Porphyrins test system
862.1605	Pregnanediol test system
862.1610	Pregnanetriol test system
862.1615	Pregnenolone test system
862.1620	Progesterone test system
862.1625	Prolactin (lactogen) test system

TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
862.1630	Protein (fractionation) test system
862.1645	Urinary protein or albumin (nonquantitative) test system
862.1650	Pyruvate kinase test system
862.1655	Pyruvic acid test system
862.1660	Quality control material (assayed and unassayed)[1]
862.1705	Triglyceride test system
862.1725	Trypsin test system
862.1780	Urinary calculi (stones) test system
862.1785	Urinary urobilinogen (nonquantitative) test system
862.1790	Uroporphyrin test system
862.1795	Vanilmandelic acid test system
862.1805	Vitamin A test system
862.1820	Xylose test system
862.2140	Centrifugal chemistry analyzer for clinical use
862.2150	Continuous flow sequential multiple chemistry analyzer for clinical use
862.2160	Discrete photometric chemistry analyzer for clinical use
862.2170	Micro chemistry analyzer for clinical use
862.2250	Gas liquid chromatography system for clinical use
862.2260	High pressure liquid chromatography system for clinical use
862.2270	Thin-layer chromatography system for clinical use
862.2300	Colorimeter, photometer, or spectrophotometer for clinical use
862.2400	Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use
862.2500	Enzyme analyzer for clinical use
862.2540	Flame emission photometer for clinical use
862.2560	Fluorometer for clinical use
862.2680	Microtitrator for clinical use
862.2700	Nephelometer for clinical use
862.2730	Osmometer for clinical use
862.2750	Pipetting and diluting system for clinical use
862.2850	Atomic absorption spectrophotometer for clinical use
862.2860	Mass spectrometer for clinical
862.2900	Automated urinalysis system
862.3280	Clinical toxicology control material (assayed and unassayed)[1]
864.2280	Cultured animal and human cells
864.3250	Specimen transport and storage container
864.5240	Automated blood cell diluting apparatus
864.6150	Capillary blood collection tube
864.9125	Vacuum-assisted blood collection system[2]
864.9185	Blood grouping view box
864.9195	Blood mixing devices and blood weighing devices[2]
864.9225	Cell-freezing apparatus and reagents for in vitro diagnostic use
864.9275	Blood bank centrifuge for in vitro diagnostic use
864.9320	Copper sulphate solution for specific gravity determinations
864.9750	Heat-sealing device
866.2660	Microorganism differentiation and identification device
866.3040	Aspergillus spp. serological reagents
866.3140	Corynebacterium spp. serological reagents
866.3145	Coxsackievirus serological reagents
866.3200	Echinococcus spp. serological reagents
866.3240	Equine encephalomyelitis virus serological reagents
866.3355	Listeria spp. serological reagents
866.3360	Lymphocytic choriomeningitis virus serological reagents
866.3375	Mycoplasma spp. serological reagents
866.3380	Mumps virus serological reagents
866.3405	Poliovirus serological reagents
866.3480	Respiratory syncytial virus serological reagents
866.3500	Rickettsia serological reagents
866.3600	Schistosoma spp. serological reagents
866.3680	Sporothrix schenckii serological reagents
866.3740	Streptococcus spp. serological reagents
866.3850	Trichinella spiralis serological reagents
866.5060	Prealbumin immunological test system
866.5065	Human allotypic marker immunological test system
866.5160	Beta-globulin immunological test system
866.5200	Carbonic anhydrase B and C immunological test
866.5330	Factor XIII, A, S, immunological test system[3]
866.5400	Alpha-globulin immunological test system
866.5420	Alpha-1-glycoproteins immunological test system
866.5425	Alpha-2-glycoproteins immunological test system
866.5430	Beta-2-glycoprotein I immunological test system
866.5440	Beta-2-glycoprotein III immunological test system
866.556	
866.557	
866.559	
866.571	
866.573	
866.576	
866.589	
868.191	
868.562	
868.564	
868.567	
868.570	
868.681	
872.327	
872.340	
872.354	
872.630	
872.639	
874.107	
874.110	
874.150	
874.180	
874.192	
874.330	
874.354	
874.410	
874.442	
874.530	
874.555	
874.584	
876.516	
876.521	
876.525	
876.598	
878.325	
878.391	
878.392	
878.404	
878.410	
878.420	
878.432	
878.468	
878.476	
878.482	
878.496	
880.509	
880.527	
880.542	
882.120	
882.150	
882.175	
882.406	
882.454	
882.465	
882.475	
884.104	
886.178	
886.194	
886.407	
886.430	
886.585	
890.518	
890.571	
892.130	
892.132	
892.133	
892.135	
892.141	
892.189	
892.191	
892.196	

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TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
866.5560	Lactic dehydrogenase immunological test system
866.5570	Lactoferrin immunological test system
866.5590	Lipoprotein X immunological test system
866.5715	Plasminogen immunological test system
866.5735	Prothrombin immunological test system[4]
866.5765	Retinol-binding protein immunological test system
866.5890	Inter-alpha trypsin inhibitor immunological test system
868.1910	Esophageal stethoscope
868.5620	Breathing mouthpiece
868.5640	Medicinal nonventilatory nebulizer (atomizer)
868.5675	Rebreathing device
868.5700	Nonpowered oxygen tent
868.6810	Tracheobronchial suction catheter
872.3275(a)(1)	Dental cement (zinc oxide-eugenol)
872.3400(b)(1)	Karaya and sodium borate with or without acacia denture adhesive (less than 12 percent sodium borate by weight)
872.3540(b)(1)	OTC denture cushion or pad[5]
872.6300	Rubber dam[6]
872.6390	Dental floss
874.1070	Short increment sensitivity index (SISI) adapter
874.1100	Earphone cushion for audiometric testing
874.1500	Gustometer
874.1800	Air or water caloric stimulator
874.1925	Toynbee diagnostic tube
874.3300(b)(1)	Hearing aid[6]
874.3540	Prosthesis modification instrument for ossicular replacement surgery
874.4100	Epistaxis balloon
874.4420	Ear, nose, and throat manual surgical instrument
874.5300	Ear, nose, and throat examination and treatment unit
874.5550	Powered nasal irrigator
874.5840	Antistammering device
876.5160	Urological clamp for males[7]
876.5210	Enema kit
876.5250(b)(2)	Urine collector and accessories[8]
876.5980(b)(2)	Gastrointestinal tube and accessories[9]
878.3250	External facial fracture fixation appliance
878.3910	Noninflatable extremity splint
878.3925	Plastic surgery kit and accessories
878.4040	Surgical apparel[10]
878.4100	Organ bag
878.4200	Introduction/drainage catheter and accessories
878.4320	Removable skin clip
878.4680	Nonpowered, single patient, portable suction apparatus
878.4760	Removable skin staple
878.4820	Surgical instrument motors and accessories/attachments
878.4960	Operating tables and accessories and operating chairs and accessories
880.5090	Liquid bandage[11]
880.5270	Neonatal eye pad
880.5420	Pressure infusor for an I.V. bag
882.1200	Two-point discriminator
882.1500	Esthesiometer
882.1750	Pinwheel
882.4060	Ventricular cannula[12]
882.4545	Shunt system implantation instrument[13]
882.4650	Neurosurgical suture needle
882.4750	Skull punch[14]
884.1040	Viscometer for cervical mucus
886.1780	Retinoscope[15]
886.1940	Tonometer sterilizer
886.4070	Powered corneal burr[16]
886.4300	Intraocular lens guide[17]
886.5850	Sunglasses (nonprescription
890.5180	Manual patient rotation bed
890.5710	Hot or cold disposable pack[18]
892.1300	Nuclear rectilinear scanner
892.1320	Nuclear uptake probe
892.1330	Nuclear whole body scanner
892.1350	Nuclear scanning bed
892.1410	Nuclear electrocardiograph synchronizer
892.1890	Radiographic film illuminator
892.1910	Radiographic grid
892.1960	Radiographic intensifying screen

TABLE 2.—PROPOSED DESIGNATIONS OF EXEMPTED CLASS I DEVICES—Continued

21 CFR Section	Name of Device
892.1970	Radiographic ECG/respirator, synchronizer
892.2010	Medical image storage device
892.2020	Medical image communication device
892.5650	Manual radionuclide applicator system
892.6500	Personnel protective shield

[1] Exemption is limited to unassayed material, except when used in conjunction with donor screening tests.
[2] Exemption is limited to manual devices.
[3] This exemption should not be confused with 21 CFR 864.7290.
[4] This exemption should not be confused with 21 CFR 864.5425 or 864.7750.
[5] This exemption does not apply to class III OTC denture cushion as described in 21 CFR 872.3540(b)(2).
[6] Exemption does not include rubber dam intended for use in preventing transmission of sexually transmitted diseases through oral sex. Those devices are classified as condoms in § 884.5300.
[7] Exemption is limited to air-conduction hearing aids.
[8] Exemption does not include devices for internal use or devices used for females.
[9] Exemption does not include class II devices for a urine collector and accessories intended to be connected to an indwelling catheter as described in 21 CFR 876.5250(b)(1).
[10] Exemption is limited to dissolvable nasogastric feed tube guide for the nasogastric tube in § 876.5980(b)(2) (21 CFR 876.5980(b)(2)). Exemption does not include class II devices as described in § 876.5980(b)(1).
[11] Exemption is limited to class I category other than surgical gowns and surgical masks.
[12] Exemption is limited to uses as a skin protectant.
[13] Exemption is limited to devices made of surgical grade stainless steel.
[14] Exemption is limited to devices made of surgical grade stainless steel.
[15] Exemption should not be confused with 21 CFR 882.4305.
[16] Exemption is limited to class I battery-powered devices.
[17] Exemption is limited to rust ring removal.
[18] Exemption does not apply if used as folders and injectors for soft or foldable IOL's.

VI. Differences Between the February 2, 1998, List of Exempt and Reserved Devices, and List of Exempt and Reserved Devices Proposed Herein

As stated previously, FDA issued a notice on February 2, 1998, in the **Federal Register** that listed the devices that it considered exempt from 510(k) requirements (exempt), and those it considered subject to 510(k) requirements (reserved) under new section 510(l). This document proposes to designate the reserved and exempt lists by notice and comment rulemaking. Although most of the device categories listed in the February 2, 1998, notice, and the device categories listed in this proposal are identical, there are a few differences. These differences are described in the following lists:

TABLE 3.—PROPOSED RESERVED DEVICES THAT ARE CURRENTLY EXEMPTED BY REGULATION

21 CFR Section	Name of Device
862.3750	Quinine test system
862.3850	Sulfonamide test system
870.4200	Cardiopulmonary bypass accessory equipment
886.4750	Ophthalmic eye shield (when made of other than plastic or aluminum)
890.1175	Electrode cable

TABLE 4.—ADDITIONAL PROPOSED RESERVED DEVICES NOT CONSIDERED RESERVED UNDER THE FEBRUARY 2, 1998, FEDERAL REGISTER NOTICE

21 CFR Section	Name of Device
862.3050	Breath alcohol test system
872.3700	Dental Mercury
884.5435	Unscented menstrual pads (intralabial pads and reusable menstrual pads)

TABLE 5.—ADDITIONAL PROPOSED EXEMPTED DEVICES NOT CONSIDERED EXEMPTED IN THE FEBRUARY 2, 1998, FEDERAL REGISTER NOTICE

21 CFR Section	Name of Device
864.3250	Specimen transport and storage container (OTC)
864.6150	Capillary blood collection tube
872.3275(a)(1)	Dental cement (zinc oxide-eugenol)
872.3540(b)(1)	OTC dental cushion or pad (wax impregnated cotton cloth)
872.6300	Rubber dam
874.1100	Earphone cushion for audiometric testing
874.3540	Prosthesis modification instrument for ossicular replacement surgery
874.4420	Ear, nose, and throat manual surgical instrument
876.5980(b)(2)	Gastrointestinal tube and accessories (dissolvable nasogastric feed tube guide for the nasogastric tube)

TABLE 5.—ADDITIONAL PROPOSED EXEMPTED DEVICES NOT CONSIDERED EXEMPTED IN THE FEBRUARY 2, 1998, FEDERAL REGISTER NOTICE—Continued

21 CFR Section	Name of Device
878.3250	External facial fracture appliance
878.3910	Noninflatable extremity splint
878.3925	Plastic surgery kit and accessories
878.4100	Organ bag
882.1200	Two point discriminator
882.1500	Esthesiometer
882.1750	Pinwheel
892.1350	Nuclear scanning bed
892.2010	Medical image storage device
892.2020	Medical image communication device
892.6500	Personnel protective shield

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that these proposed actions are of a type that do not individually or cumudatave a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages distributive impacts and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires, if a rule has a significant impact on a substantial number of small entities, agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. In most cases, the proposed rule would reduce a regulatory burden by exempting manufacturers of devices subject to the rule from the requirements of premarket notification.

FDA is proposing to require premarket notification for 5 devices that were previously exempt from premarket notification. These devices are as follows:

A. Cardiopulmonary Bypass Accessory Equipment (§ 870.4200) and Electrode Cable (§ 890.1175).

In the **Federal Register** of May 9, 1997 (62 FR 25477), FDA published a final rule to establish a performance standard for electrode lead wires and patient cables. In the preamble to that rule (62 FR 25485), FDA noted that three unprotected cable and electrode lead wire systems are included in class I devices, and, as such, are not subject to a mandatory performance standard. These include the two devices listed previously and the AC-powered goniometer (21 CFR 888.1500). FDA further stated that, because of the degree of health risk, the agency intended to reclassify the devices into class II so that they would be subject to the mandatory performance standard. The cardiopulmonary bypass accessory equipment and the electrode cable were already exempt from premarket notification; the AC-powered goniometer was not. Because of the degree of health risk, FDA believes that these devices should be designated as reserved devices.

FDA also included in the preamble of the May 9, 1997, rule an assessment of the economic impact of imposition of the standard including an assessment of its effect on small businesses. In this assessment, FDA included the three class I devices to which the rule would later apply. FDA concluded that the rule would not have a significant economic impact on a substantial number of small entities. This rule would only impose the additional requirement of submitting a premarket notification for these devices. Because the premarket notification would consist primarily of a certification of compliance with the cables and leads standard, FDA believes that this requirement will not be a significant burden.

B. Ophthalmic Eye Shield (When Made of Other than Plastic or Aluminum) (§ 886.4750).

There are six manufacturers of ophthalmic eye shields other than those made of plastic or aluminum registered with FDA. FDA anticipates that any premarket notifications that are necessary for these devices would be simple. FDA would be primarily interested in the biocompatibility of the devices. FDA estimates that preparation of such a premarket notification would cost no more than $5,000.

C. Quinine Test System (§ 862.3750) and Sulfonamide test system (§ 862.3850).

At this time, there are no firms registered for manufacture of these devices.

In light of the previous discussion under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

IX. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Comments

Interested persons may, on or before January 26, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy.

Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Parts 862, 868, 870, 872, 874, 876, 878, 880, 882, 884, 888, and 890

Medical devices.

21 CFR Part 864

Blood, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

21 CFR Part 892

Medical devices, Radiation protection, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA is proposing to amend 21 CFR parts 862, 864, 866, 868, 870, 872, 874, 876, 878, 880, 882, 884, 886, 888, 890, and 892 as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.9 is revised to read as follows:

§ 862.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

3. Section 862.1030 is amended by revising paragraph (b) to read as follows:

§ 862.1030 Alanine amino transferase (ALT/SGPT) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

4. Section 862.1040 is amended by revising paragraph (b) to read as follows:

§ 862.1040 Aldolase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

5. Section 862.1060 is amended by revising paragraph (b) to read as follows:

§ 862.1060 Delta-aminolevulinic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

6. Section 862.1075 is amended by revising paragraph (b) to read as follows:

§ 862.1075 Androstenedione test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

7. Section 862.1080 is amended by revising paragraph (b) to read as follows:

§ 862.1080 Androsterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

8. Section 862 1095 is amended by revising paragraph (b) to read as follows:

§ 862.1095 Ascorbic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

9. Section 862.1115 is amended by revising paragraph (b) to read as follows:

§ 862.1115 Urinary bilirubin and its conjugates (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

10. Section 862.1130 is amended by revising paragraph (b) to read as follows:

§ 862.1130 Blood volume test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

11. Section 862.1135 is amended by revising paragraph (b) to read as follows:

§ 862.1135 C-peptides of proinsulin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

12. Section 862.1165 is amended by revising paragraph (b) to read follows:

§ 862.1165 Catecholamines (total) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

13. Section 862.1175 is amended by revising paragraph (b) to read as follows:

§ 862.1175 Cholesterol (total) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

14. Section 862.1180 is amended by revising paragraph (b) to read as follows:

§ 862.1180 Chymotrypsin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

15. Section 862.1185 is amended by revising paragraph (b) to read as follows:

§ 862.1185 Compound S (11-deoxycortisol) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

16. Section 862.1195 is amended by revising paragraph (b) to read as follows:

§ 862.1195 Corticoids test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

17. Section 862.1200 is amended by revising paragraph (b) to read as follows:

§ 862.1200 Corticosterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

18. Section 862.1240 is amended by revising paragraph (b) to read as follows:

§ 862.1240 Cystine test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

19. Section 862.1245 is amended by revising paragraph (b) to read as follows:

§ 862.1245 Dehydroepiandrosterone (free and sulfate) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

20. Section 862.1250 is amended by revising paragraph (b) to read as follows:

§ 862.1250 Desoxycorticosterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

21. Section 862.1260 is amended by revising paragraph (b) to read as follows:

§ 862.1260 Estradiol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

22. Section 862.1265 is amended by revising paragraph (b) to read as follows:

§ 862.1265 Estriol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

23. Section 862.1270 is amended by revising paragraph (b) to read as follows:

§ 862.1270 Estrogens (total, in pregnancy) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

24. Section 862.1275 is amended by revising paragraph (b) to read as follows:

§ 862.1275 Estrogens (total, nonpregnancy) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

25. Section 862.1280 is amended by revising paragraph (b) to read as follows:

§ 862.1280 Estrone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

26. Section 862.1285 is amended by revising paragraph (b) to read as follows:

§ 862.1285 Etiocholanolone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

27. Section 862.1300 is amended by revising paragraph (b) to read as follows:

§ 862.1300 Follicle-stimulating hormone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

28. Section 862.1325 is amended by revising paragraph (b) to read as follows:

§ 862.1325 Gastrin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

29. Section 862.1330 is amended by revising paragraph (b) to read as follows:

§ 862.1330 Globulin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

30. Section 862.1335 is amended by revising paragraph (b) to read as follows:

§ 862.1335 Glucagon test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in

subpart E of part 807 of this chapter subject to § 862.9.

31. Section 862.1360 is amended by revising paragraph (b) to read as follows:

§ 862.1360 Gamma-glutamyl transpeptidase and isoenzymes test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

32. Section 862.1370 is amended by revising paragraph (b) to read as follows:

§ 862.1370 Human growth hormone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

33. Section 862.1375 is amended by revising paragraph (b) to read as follows:

§ 862.1375 Histidine test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

34. Section 862.1385 is amended by revising paragraph (b) to read as follows:

§ 862.1385 17-Hydroxycorticosteroids (17-ketogenic steroids) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

35. Section 862.1390 is amended by revising paragraph (b) to read as follows:

§ 862.1390 5-Hydroxyindole acetic acid/serotonin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

36. Section 862.1395 is amended by revising paragraph (b) to read as follows:

§ 862.1395 17-Hydroxyprogesterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

37. Section 862.1400 is amended by revising paragraph (b) to read as follows:

§ 862.1400 Hydroxyproline test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

38. Section 862.1405 is amended by revising paragraph (b) to read as follows:

§ 862.1405 Immunoreactive insulin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

39. Section 862.1430 is amended by revising paragraph (b) to read as follows:

§ 862.1430 17-Ketosteroids test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

40. Section 862.1435 is amended by revising paragraph (b) to read as follows:

§ 862.1435 Ketones (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

41. Section 862.1450 is amended by revising paragraph (b) to read as follows:

§ 862.1450 Lactic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

42. Section 862.1460 is amended by revising paragraph (b) to read as follows:

§ 862.1460 Leucine aminopeptidase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

43. Section 862.1465 is amended by revising paragraph (b) to read as follows:

§ 862.1465 Lipase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

44. Section 862.1475 is amended by revising paragraph (b) to read as follows:

§ 862.1475 Lipoprotein test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

45. Section 862.1485 is amended by revising paragraph (b) to read as follows:

§ 862.1485 Luteinizing hormone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

46. Section 862.1500 is amended by revising paragraph (b) to read as follows:

§ 862.1500 Malic dehydrogenase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

47. Section 862.1505 is amended by revising paragraph (b) to read as follows:

§ 862.1505 Mucopolysaccharides (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

48. Section 862.1510 is amended by revising paragraph (b) to read as follows:

§ 862.1510 Nitrite (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

49. Section 862.1520 is amended by revising paragraph (b) to read as follows:

§ 862.1520 5'-Nucleotidase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

50. Section 862.1530 is amended by revising paragraph (b) to read as follows:

§ 862.1530 Plasma oncometry test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

51. Section 862.1535 is amended by revising paragraph (b) to read as follows:

§ 862.1535 Ornithine carbamyl transferase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

52. Section 862.1540 is amended by revising paragraph (b) to read as follows:

§ 862.1540 Osmolality test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

53. Section 862.1542 is amended by revising paragraph (b) to read as follows:

§ 862.1542 Oxalate test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

54. Section 862.1550 is amended by revising paragraph (b) to read as follows:

§ 862.1550 Urinary pH (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

55. Section 862.1560 is amended by revising paragraph (b) to read as follows:

§ 862.1560 Urinary phenylketones (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

56. Section 862.1570 is amended by revising paragraph (b) to read as follows:

§ 862.1570 Phosphohexose isomerase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

57. Section 862.1590 is amended by revising paragraph (b) to read as follows:

§ 862.1590 Porphobilinogen test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

58. Section 862.1595 is amended by revising paragraph (b) to read as follows:

§ 862.1595 Porphyrins test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

59. Section 862.1605 is amended by revising paragraph (b) to read as follows:

§ 862.1605 Pregnanediol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

60. Section 862.1610 is amended by revising paragraph (b) to read as follows:

§ 862.1610 Pregnanetriol test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

61. Section 862.1615 is amended by revising paragraph (b) to read as follows:

§ 862.1615 Pregnenolone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

62. Section 862.1620 is amended by revising paragraph (b) to read as follows:

§ 862.1620 Progesterone test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

63. Section 862.1625 is amended by revising paragraph (b) to read as follows:

§ 862.1625 Prolactin (lactogen) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

64. Section 862.1630 is amended by revising paragraph (b) to read as follows:

§ 862.1630 Protein (fractionation) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

65. Section 862.1645 is amended by revising paragraph (b) to read as follows:

§ 862.1645 Urinary protein or albumin (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

66. Section 862.1650 is amended by revising paragraph (b) to read as follows:

§ 862.1650 Pyruvate kinase test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

67. Section 862.1655 is amended by revising paragraph (b) to read as follows:

§ 862.1655 Pyruvic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

68. Section 862.1660 is amended by revising paragraph (b) to read as follows:

§ 862.1660 Quality control material (assayed and unassayed).

* * * * *

(b) *Classification.* Class I (general controls). Except when used in donor screening tests, unassayed material is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

69. Section 862.1705 is amended by revising paragraph (b) to read as follows:

§ 862.1705 Triglyceride test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

70. Section 862.1725 is amended by revising paragraph (b) to read as follows:

§ 862.1725 Trypsin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

71. Section 862.1780 is amended by revising paragraph (b) to read as follows:

§ 862.1780 Urinary calculi (stones) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

72. Section 862.1785 is amended by revising paragraph (b) to read as follows:

§ 862.1785 Urinary urobilinogen (nonquantitative) test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

73. Section 862.1790 is amended by revising paragraph (b) to read as follows:

§ 862.1790 Uroporphyrin test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

74. Section 862.1795 is amended by revising paragraph (b) to read as follows:

§ 862.1795 Vanillmandelic acid test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

75. Section 862.1805 is amended by revising paragraph (b) to read as follows:

§ 862.1805 Vitamin A test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

76. Section 862.1820 is amended by revising paragraph (b) to read as follows:

§ 862.1820 Xylose test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

77. Section 862.2140 is amended by revising paragraph (b) to read as follows:

§ 862.2140 Centrifugal chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

78. Section 862.2150 is amended by revising paragraph (b) to read as follows:

§ 862.2150 Continuous flow sequential multiple chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

79. Section 862.2160 is amended by revising paragraph (b) to read as follows:

§ 862.2160 Discrete photometric chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

80. Section 862.2170 is amended by revising paragraph (b) to read as follows:

§ 862.2170 Micro chemistry analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

81. Section 862.2250 is amended by revising paragraph (b) to read as follows:

§ 862.2250 Gas liquid chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

82. Section 862.2260 is amended by revising paragraph (b) to read as follows:

§ 862.2260 High pressure liquid chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

83. Section 862.2270 is amended by revising paragraph (b) to read as follows:

§ 862.2270 Thin-layer chromatography system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9. Particular components of TLC systems, i.e., the thin-layer chromatography apparatus, TLC atomizer, TLC developing tanks, and TLC ultraviolet light, are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

84. Section 862.2300 is amended by revising paragraph (b) to read as follows:

§ 862.2300 Colorimeter, photometer, or spectrophotometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

85. Section 862.2400 is amended by revising paragraph (b) to read as follows:

§ 862.2400 Densitometer/scanner (integrating, reflectance, TLC, or radiochromatogram) for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

86. Section 862.2500 is amended by revising paragraph (b) to read as follows:

§ 862.2500 Enzyme analyzer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

87. Section 862.2540 is amended by revising paragraph (b) to read as follows:

§ 862.2540 Flame emission photometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

88. Section 862.2560 is amended by revising paragraph (b) to read as follows:

§ 862.2560 Fluorometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

89. Section 862.2680 is amended by revising paragraph (b) to read as follows:

§ 862.2680 Microtitrator for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

90. Section 862.2700 is amended by revising paragraph (b) to read as follows:

§ 862.2700 Nephelometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

91. Section 862.2730 is amended by revising paragraph (b) to read as follows:

§ 862.2730 Osmometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

92. Section 862.2750 is amended by revising paragraph (b) to read as follows:

§ 862.2750 Pipetting and diluting system for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

93. Section 862.2850 is amended by revising paragraph (b) to read as follows:

§ 862.2850 Atomic absorption spectrophotometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

94. Section 862.2860 is amended by revising paragraph (b) to read as follows:

§ 862.2860 Mass spectrometer for clinical use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

95. Section 862.2900 is amended by revising paragraph (b) to read as follows:

§ 862.2900 Automated urinalysis system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

96. Section 862.3280 is amended by revising paragraph (b) to read as follows:

§ 862.3280 Clinical toxicology control material.

* * * * *

(b) *Classification.* Class I (general controls). Except when used in donor screening, unassayed material is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

97. Section 862.3750 is amended by revising paragraph (b) to read as follows:

§ 862.3750 Quinine test system.

* * * * *

(b) *Classification.* Class I.

98. Section 862.3850 is amended by revising paragraph (b) to read as follows:

§ 862.3850 Sulfonamide test system.

* * * * *

(b) *Classification.* Class I.

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

99. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

100. Section 864.9 is revised to read as follows:

§ 864.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

101. Section 864.2280 is amended by revising paragraph (b) to read as follows:

§ 864.2280 Cultured animal and human cells.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

102. Section 864.3250 is amended by revising paragraph (b) to read as follows:

§ 864.3250 Specimen transport and storage container.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter

subject to § 864.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

103. Section 864.5240 is amended by revising paragraph (b) to read as follows:

§ 864.5240 Automated blood cell diluting apparatus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

104. Section 864.6150 is amended by revising paragraph (b) to read as follows:

§ 864.6150 Capillary blood collection tube.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

105. Section 864.9125 is amended by revising paragraph (b) to read as follows:

§ 864.9125 Vacuum-assisted blood collection system.

* * * * *

(b) *Classification.* Class I (general controls). The manual device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

106. Section 864.9185 is amended by revising paragraph (b) to read as follows:

§ 864.9185 Blood grouping view box.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

107. Section 864.9195 is amended by revising paragraph (b) to read as follows:

§ 864.9195 Blood mixing devices and blood weighing devices.

* * * * *

(b) *Classification.* Class I (general controls). The manual device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

108. Section 864.9225 is amended by revising paragraph (b) to read as follows:

§ 864.9225 Cell-freezing apparatus and reagents for in vitro diagnostic use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

109. Section 864.9275 is amended by revising paragraph (b) to read as follows:

§ 864.9275 Blood bank centrifuge for in vitro diagnostic use.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

110. Section 864.9320 is amended by revising paragraph (b) to read as follows:

§ 864.9320 Copper sulfate solution for specific gravity determinations.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

111. Section 864.9750 is amended by revising paragraph (b) to read as follows:

§ 864.9750 Heat-sealing device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 864.9.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

112. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

113. Section 866.9 is revised to read as follows:

§ 866.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

114. Section 866.2660 is amended by revising paragraph (b) to read as follows:

§ 866.2660 Microorganism differentiation and identification device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

115. Section 866.3040 is amended by revising paragraph (b) to read as follows:

§ 866.3040 Aspergillus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

116. Section 866.3140 is amended by revising paragraph (b) to read as follows:

§ 866.3140 Corynebacterium spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

117. Section 866.3145 is amended by revising paragraph (b) to read as follows:

§ 866.3145 Coxsackievirus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

118. Section 866.3200 is amended by revising paragraph (b) to read as follows:

§ 866.3200 Echinococcus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

119. Section 866.3240 is amended by revising paragraph (b) to read as follows:

§ 866.3240 Equine encephalomyelitis virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

120. Section 866.3355 is amended by revising paragraph (b) to read as follows:

§ 866.3355 Listeria spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

121. Section 866.3360 is amended by revising paragraph (b) to read as follows:

§ 866.3360 Lymphocytic choriomeningitis virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

122. Section 866.3375 is amended by revising paragraph (b) to read as follows:

§ 866.3375 Mycoplasma spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

123. Section 866.3380 is amended by revising paragraph (b) to read as follows:

§ 866.3380 Mumps virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

124. Section 866.3405 is amended by revising paragraph (b) to read as follows:

§ 866.3405 Poliovirus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

125. Section 866.3480 is amended by revising paragraph (b) to read as follows:

§ 866.3480 Respiratory syncytial virus serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

126. Section 866.3500 is amended by revising paragraph (b) to read as follows:

§ 866.3500 Rickettsia serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

127. Section 866.3600 is amended by revising paragraph (b) to read as follows:

§ 866.3600 Schistosoma spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

128. Section 866.3680 is amended by revising paragraph (b) to read as follows:

§ 866.3680 Sporothrix schenckii serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

129. Section 866.3740 is amended by revising paragraph (b) to read as follows:

§ 866.3740 Streptococcus spp. serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

130. Section 866.3850 is amended by revising paragraph (b) to read as follows:

§ 866.3850 Trichinella spiralis serological reagents.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

131. Section 866.5060 is amended by revising paragraph (b) to read as follows:

§ 866.5060 Prealbumin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

132. Section 866.5065 is amended by revising paragraph (b) to read as follows:

§ 866.5065 Human allotypic marker immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

133. Section 866.5160 is amended by revising paragraph (b) to read as follows:

§ 866.5160 Beta-globulin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

134. Section 866.5200 is amended by revising paragraph (b) to read as follows:

§ 866.5200 Carbonic anhydrase B and C immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

135. Section 866.5330 is amended by revising paragraph (b) to read as follows:

§ 866.5330 Factor XIII, A, S, immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9. This exemption does not apply to factor deficiency tests classified under § 864.7290 of this chapter.

136. Section 866.5400 is amended by revising paragraph (b) to read as follows:

§ 866.5400 Alpha-globulin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

137. Section 866.5420 is amended by revising paragraph (b) to read as follows:

§ 866.5420 Alpha-1-glycoproteins immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

138. Section 866.5425 is amended by revising paragraph (b) to read as follows:

§ 866.5425 Alpha-2-glycoproteins immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

139. Section 866.5430 is amended by revising paragraph (b) to read as follows:

§ 866.5430 Beta-2-glycoprotein I immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

140. Section 866.5440 is amended by revising paragraph (b) to read as follows:

§ 866.5440 Beta-2-glycoprotein III immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

141. Section 866.5560 is amended by revising paragraph (b) to read as follows:

§ 866.5560 Lactic dehydrogenase immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

142. Section 866.5570 is amended by revising paragraph (b) to read as follows:

§ 866.5570 Lactoferrin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

143. Section 866.5590 is amended by revising paragraph (b) to read as follows:

§ 866.5590 Lipoprotein X immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

144. Section 866.5715 is amended by revising paragraph (b) to read as follows:

§ 866.5715 Plasminogen immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

145. Section 866.5735 is amended by revising paragraph (b) to read as follows:

§ 866.5735 Prothrombin immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9. This exemption does not apply to multipurpose systems for in vitro coagulation studies classified under § 864.5425 of this chapter or prothrombin time tests classified under § 864.7750 of this chapter.

146. Section 866.5765 is amended by revising paragraph (b) to read as follows:

§ 866.5765 Retinol-binding protein immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

147. Section 866.5890 is amended by revising paragraph (b) to read as follows:

§ 866.5890 Inter-alpha trypsin inhibitor immunological test system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 866.9.

PART 868—ANESTHESIOLOGY DEVICES

148. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

149. Section 868.9 is revised to read as follows:

§ 868.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific

technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

150. Section 868.1910 is amended by revising paragraph (b) to read as follows:

§ 868.1910 Esophageal stethoscope.

* * * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

151. Section 868.5620 is amended by revising paragraph (b) to read as follows:

§ 868.5620 Breathing mouthpiece.

* * * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

152. Section 868.5640 is amended by revising paragraph (b) to read as follows:

§ 868.5640 Medicinal nonventilatory nebulizer (atomizer).

* * * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

153. Section 868.5675 is amended by revising paragraph (b) to read as follows:

§ 868.5675 Rebreathing device.

* * * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

154. Section 868.5700 is amended by revising paragraph (b) to read as follows:

§ 868.5700 Nonpowered oxygen tent.

* * * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

155. Section 868.6810 is amended by revising paragraph (b) to read as follows:

§ 868.6810 Tracheobronchial suction catheter.

* * * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 868.9.

PART 870—CARDIOVASCULAR DEVICES

156. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

157. Section 870.9 is revised to read as follows:

§ 870.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

158. Section 870.4200 is amended by revising paragraph (b) to read as follows:

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§ 870.4200 Cardiopulmonary bypass accessory equipment.

* * * * *

(b) *Classification.* Class I.

PART 872—DENTAL DEVICES

159. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

160. Section 872.9 is revised to read as follows:

§ 872.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

161. Section 872.3275 is amended by revising paragraph (a)(2) to read as follows:

§ 872.3275 Dental cement.

(a) * * *

(2) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

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162. Section 872.3400 is amended by revising paragraph (b)(1) to read as follows:

§ 872.3400 Karaya and sodium borate with or without acacia denture adhesive.

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(b) *Classification.* (1) Class I (general controls) if the device contains less than 12 percent by weight of sodium borate. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

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163. Section 872.3540 is amended by revising paragraph (b)(1) to read as follows:

§ 872.3540 OTC denture cushion or pad.

* * * * *

(b) *Classification.* (1) Class I if the device is made of wax-impregnated cotton cloth that the patient applies to the base or inner surface of a denture before inserting the denture into the mouth. The device is intended to be discarded following 1 day's use. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

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164. Section 872.6300 is amended by revising paragraph (b) to read as follows:

§ 872.6300 Rubber dam and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

165. Section 872.6390 is amended by revising paragraph (b) to read as follows:

§ 872.6390 Dental floss.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

166. Section 872.6640 is amended by revising paragraph (b) to read as follows:

§ 872.6640 Dental operative unit and accessories.

* * * * *

(b) *Classification.* Class I (general controls). Except for dental operative unit, accessories are exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 872.9.

PART 874—EAR, NOSE, AND THROAT DEVICES

167. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

168. Section 874.9 is revised to read as follows:

§ 874.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within

that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

169. Section 874.1070 is amended by revising paragraph (b) to read as follows:

§ 874.1070 Short increment sensitivity index (SISI) adapter.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

170. Section 874.1100 is amended by revising paragraph (b) to read as follows:

§ 874.1100 Earphone cushion for audiometric testing.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

171. Section 874.1500 is amended by revising paragraph (b) to read as follows:

§ 874.1500 Gustometer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

172. Section 874.1800 is amended by revising paragraph (b) to read as follows:

§ 874.1800 Air or water caloric stimulator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

173. Section 874.1925 is amended by revising paragraph (b) to read as follows:

§ 874.1925 Toynbee diagnostic tube.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

174. Section 874.3300 is amended by revising paragraph (b) to read as follows:

§ 874.3300 Hearing Aid.

* * * * *

(b) *Classification.* (1) Class I (general controls) for the air-conduction hearing aid. The air-conduction hearing aid is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

(2) Class II for the bone-conduction hearing aid.

175. Section 874.3540 is amended by revising paragraph (b) to read as follows:

§ 874.3540 Prosthesis modification instrument for ossicular replacement surgery.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

176. Section 874.4100 is amended by revising paragraph (b) to read as follows:

§ 874.4100 Epistaxis balloon.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

177. Section 874.4420 is amended by revising paragraph (b) to read as follows:

§ 874.4420 Ear, nose, and throat manual surgical instrument.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

178. Section 874.5300 is amended by revising paragraph (b) to read as follows:

§ 874.5300 Ear, nose, and throat examination and treatment unit.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

179. Section 874.5550 is amended by revising paragraph (b) to read as follows:

§ 874.5550 Powered nasal irrigator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the

premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

180. Section 874.5840 is amended by revising paragraph (b) to read as follows:

§ 874.5840 Antistammering device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 874.9.

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

181. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

182. Section 876.9 is revised to read as follows:

§ 876.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

183. Section 876.5160 is amended by revising paragraph (b) to read as follows:

§ 876.5160 Urological clamp for males.

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for internal use or use on females, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

184. Section 876.5210 is amended by revising paragraph (b) to read as follows:

§ 876.5210 Enema kit.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9. The device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

185. Section 876.5250 is amended by revising paragraph (b)(2) to read as follows:

§ 876.5250 Urine collector and accessories.

* * * * *

(b) * * *

(2) Class I (general controls) for a urine collector and accessories not intended to be connected to an indwelling catheter. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to the general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

186. Section 876.5980 is amended by revising paragraph (b)(2) to read as follows:

§ 876.5980 Gastrointestinal tube and accessories.

* * * * *

(b) * * *

(2) Class I (general controls) for the dissolvable nasogastric feed tube guide for the nasogastric tube. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 876.9.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

187. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

188. Section 878.9 is revised to read as follows:

§ 878.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or

effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

189. Section 878.3250 is amended by revising paragraph (b) to read as follows:

§ 878.3250 External facial fracture fixation appliance.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

190. Section 878.3910 is amended by revising paragraph (b) to read as follows:

§ 878.3910 Noninflatable extremity splint.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

191. Section 878.3925 is amended by revising paragraph (b) to read as follows:

§ 878.3925 Plastic surgery kit and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

192. Section 878.4040 is amended by revising paragraph (b) to read as follows:

§ 878.4040 Surgical apparel.

* * * * *

(b) *Classification.* (1) Class II (special controls) for surgical gowns and surgical masks.

(2) Class I (general controls) for surgical apparel other than surgical gowns and surgical masks. The class I device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

193. Section 878.4100 is amended by revising paragraph (b) to read as follows:

§ 878.4100 Organ bag.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

194. Section 878.4200 is amended by revising paragraph (b) to read as follows:

§ 878.4200 Introduction/drainage catheter and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

195. Section 878.4320 is amended by revising paragraph (b) to read as follows:

§ 878.4320 Removable skin clip.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

196. Section 878.4680 is amended by revising paragraph (b) to read as follows:

§ 878.4680 Nonpowered, single patient, portable suction apparatus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

197. Section 878.4760 is amended by revising paragraph (b) to read as follows:

§ 878.4760 Removable skin staple.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

198. Section 878.4820 is amended by revising paragraph (b) to read as follows:

§ 878.4820 Surgical instrument motors and accessories/attachments.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

199. Section 878.4960 is amended by revising paragraph (b) to read as follows:

§ 878.4960 Operating tables and accessories and operating chairs and accessories.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 878.9.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

200. The authority citation for 21 CFR part 880 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

201. Section 880.9 is revised to read as follows:

§ 880.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which ■ misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of ■ legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

202. Section 880.5090 is amended by revising paragraph (b) to read as follows:

§ 880.5090 Liquid bandage.

* * * * *

(b) Classification. Class I (general controls). When used only as a skin protectant, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

203. Section 880.5270 is amended by revising paragraph (b) to read as follows:

§ 880.5270 Neonatal eye pad.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

204. Section 880.5420 is amended by revising paragraph (b) to read as follows:

§ 880.5420 Pressure infusor for an I.V. bag.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 880.9.

PART 882—NEUROLOGICAL DEVICES

205. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

206. Section 882.9 is revised to read as follows:

§ 882.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

207. Section 882.1200 is amended by revising paragraph (b) to read as follows:

§ 882.1200 Two-point discriminator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

208. Section 882.1500 is amended by revising paragraph (b) to read as follows:

§ 882.1500 Esthesiometer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. The device is also exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

209. Section 882.1750 is amended by revising paragraph (b) to read as follows:

§ 882.1750 Pinwheel.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

210. Section 882.4060 is amended by revising paragraph (b) to read as follows:

§ 882.4060 Ventricular cannula.

* * * * *

(b) *Classification.* Class I (general controls). When made only of surgical grade stainless steel, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

211. Section 882.4545 is amended by revising paragraph (b) to read as follows:

§ 882.4545 Shunt system implantation instrument.

* * * * *

(b) *Classification.* Class I (general controls). When made only of surgical grade stainless steel, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

212. Section 882.4650 is amended by revising paragraph (b) to read as follows:

§ 882.4650 Neurosurgical suture needle.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9.

213. Section 882.4750 is amended by revising paragraph (b) to read as follows:

§ 882.4750 Skull punch.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 882.9. This exemption does not apply to powered compound cranial drills, burrs, trephines, and their accessories classified under § 882.4305.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

214. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

215. Section 884.9 is revised to read as follows:

§ 884.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

216. Section 884.1040 is amended by revising paragraph (b) to read as follows:

§ 884.1040 Viscometer for cervical mucus.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 884.9.

PART 886—OPHTHALMIC DEVICES

217. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

218. Section 886.9 is revised to read as follows:

§ 886.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

219. Section 886.1780 is amended by revising paragraph (b) to read as follows:

§ 886.1780 Retinoscope.

* * * * *

(b) *Classification.* (1) Class II (special controls) for the AC-powered device.

(2) Class I (general controls) for the battery-powered device. The class I battery-powered device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9. The battery-powered device is exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

220. Section 886.1940 is amended by revising paragraph (b) to read as follows:

§ 886.1940 Tonometer sterilizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

221. Section 886.4070 is amended by revising paragraph (b) to read as follows:

§ 886.4070 Powered corneal burr.

* * * * *

(b) *Classification.* Class I (general controls). When intended only for rust ring removal, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

222. Section 886.4300 is amended by revising paragraph (b) to read as follows:

§ 886.4300 Intraocular lens guide.

* * * * *

(b) *Classification.* Class I (general controls). Except when used as folders or injectors for soft or foldable intraocular lenses, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

223. Section 886.4750 is amended by revising paragraph (b) to read as follows:

§ 886.4750 Ophthalmic eye shield.

* * * * *

(b) *Classification.* Class I (general controls). When made only of plastic or aluminum, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9. When made only of plastic or aluminum, the devices are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

224. Section 886.5850 is amended by revising paragraph (b) to read as follows:

§ 886.5850 Sunglasses (nonprescription).

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 886.9.

PART 888—ORTHOPEDIC DEVICES

225. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

226. Section 888.9 is revised to read as follows:

§ 888.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the

device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

PART 890—PHYSICAL MEDICINE DEVICES

227. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

228. Section 890.9 is revised to read as follows:

§ 890.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

229. Section 890.1175 is amended by revising paragraph (b) to read as follows:

§ 890.1175 Electrode cable.

* * * * *

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9. The devices are exempt from the current good manufacturing practice regulations in part 820 of this chapter, with the exception of § 820.180 of this chapter, with respect to general requirements concerning records, and § 820.198 of this chapter, with respect to complaint files.

230. Section 890.5180 is amended by revising paragraph (b) to read as follows:

§ 890.5180 Manual patient rotation bed.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

231. Section 890.5710 is amended by revising paragraph (b) to read as follows:

§ 890.5710 Hot or cold disposable pack.

* * * * *

(b) *Classification.* Class I (general controls). Except when intended for use on infants, the device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 890.9.

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PART 892—RADIOLOGY DEVICES

232. The authority citation for 21 CFR part 892 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

233. Section 892.9 is revised to read as follows:

§ 892.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, for which a misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial and acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) and IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

234. Section 892.1300 is amended by revising paragraph (b) to read as follows:

§ 892.1300 Nuclear rectilinear scanner.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

235. Section 892.1320 is amended by revising paragraph (b) to read as follows:

§ 892.1320 Nuclear uptake probe.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

236. Section 892.1330 is amended by revising paragraph (b) to read as follows:

§ 892.1330 Nuclear whole body scanner.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

237. Section 892.1350 is amended by revising paragraph (b) to read as follows:

§ 892.1350 Nuclear scanning bed.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

238. Section 892.1410 is amended by revising paragraph (b) to read as follows:

§ 892.1410 Nuclear electrocardiograph synchronizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

239. Section 892.1890 is amended by revising paragraph (b) to read as follows:

§ 892.1890 Radiographic film illuminator.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

240. Section 892.1910 is amended by revising paragraph (b) to read as follows:

§ 892.1910 Radiographic grid.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

241. Section 892.1960 is amended by revising paragraph (b) to read as follows:

§ 892.1960 Radiographic intensifying screen.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

242. Section 892.1970 is amended by revising paragraph (b) to read as follows:

§ 892.1970 Radiographic ECG/respirator synchronizer.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

243. Section 892.2010 is amended by revising paragraph (b) to read as follows:

§ 892.2010 Medical image storage device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

244. Section 892.2020 is amended by revising paragraph (b) to read as follows:

§ 892.2020 Medical image communications device.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

245. Section 892.5650 is amended by revising paragraph (b) to read as follows:

§ 892.5650 Manual radionuclide applicator system.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

246. Section 892.6500 is amended by revising paragraph (b) to read as follows:

§ 892.6500 Personnel protective shield.

* * * * *

(b) *Classification.* Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 892.9.

Dated: October 14, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–29855 Filed 11–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[DEA NUMBER 137E]

RIN 1117–AA31

Exemption of Chemical Mixtures

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: The DEA is extending the comment period on the **Federal Register** notice of proposed rulemaking entitled "Exemption of Chemical Mixtures" published on September 16, 1998 (63 FR 49506).

DATES: The period for public comment that was to close on November 16, 1998 will be extended to February 15, 1999.

SUPPLEMENTARY INFORMATION: The DEA published a notice of proposed rulemaking (63 FR 49506) to implement those portions of the Domestic Chemical Diversion Control Act of 1993 (Pub. L. 103–200) that exempt from regulation under the Controlled Substances Act certain chemical mixtures that contain regulated chemicals. The proposed regulations identified those mixtures, or categories of mixtures, that will be automatically exempt from regulation and defined an application process that can be used to exempt chemical mixtures that do not meet the criteria for automatic exemption. On October 15, 1998, Hyman, Phelps & McNamara, P.C. submitted a formal request that the comment period be extended. Upon consideration of this request, an extension is provided that allows ample time for interested persons to evaluate and consider all aspects of this proposal and respond accordingly. Therefore, the comment period for the proposed rule is extended to February 15, 1999. Comments must be received by the DEA on or before this date.

ADDRESSES: Comments and objections should be submitted in quintuplicate to the Acting Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

Dated: November 5, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–30283 Filed 11–10–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AI63

Eligibility Criteria for the Montgomery GI Bill—Active Duty and Other Miscellaneous Issues

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). The proposed amendments reflect statutory changes which set forth new eligibility criteria that will allow additional individuals to establish eligibility for educational assistance under the Montgomery GI Bill—Active Duty (MGIB); and also reflect statutory provisions concerning the approval of courses leading to alternative teacher certification. This document also would make changes for the purpose of clarification.

DATES: Comments must be received on or before January 11, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI63." All written comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Advisor, Education Service, Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: This document proposes to amend subparts D, G, K, and L of 38 CFR part 21, which concern educational assistance under various educational programs administered by VA. The proposed amendments would implement provisions of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201) and various provisions of the Veterans' Benefits Improvements Act of 1996 (Pub. L. 104–275).

Formerly, officers could not participate in the Montgomery GI Bill—Active Duty (MGIB) if they were commissioned after December 31, 1976, under a program of educational assistance under 10 U.S.C. 2107 (Senior Reserve Officer Training Corps (SROTC) Scholarship Program). A provision of Pub. L. 104–201 states that this restriction no longer applies to an individual who enters active duty after September 30, 1996, and received no more than $2,000 for each year of participation in the SROTC program of educational assistance. The regulations governing eligibility for the MGIB would be revised to reflect the new statutory provision.

Individuals who entered active duty during the period from January 1, 1977, through June 30, 1985, were given the opportunity to participate in the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). Provisions of Pub. L. 104–275 permitted certain VEAP participants on active duty to elect to participate in the MGIB instead. The military pay of an individual who made the election will be reduced by $1,200, or, if not so reduced, VA will collect the amount from the individual. The regulations governing eligibility for the MGIB would be revised to reflect the new statutory provisions, including our view that the applicable statutory provisions require that an individual who made an election to participate in

the MGIB would not become entitled until he or she has provided the Government the $1,200.

Certain full-time, Active Guard Reserve (AGR) service and full-time National Guard service by a member of the Army National Guard or the Air National Guard in the member's status as a member of the National Guard of a State for the purpose of organizing, administering, recruiting, instructing, or training the National Guard qualifies as active duty for purposes of establishing eligibility to participate in the MGIB. Before the enactment of Pub. L. 104–275, the MGIB statute required that, in order to participate, the individual must have first performed qualifying active duty after November 29, 1989. A provision of Pub. L. 104–275 permitted certain members of the Army National Guard and the Air National Guard to elect to become entitled to the MGIB based on AGR or ADS service first performed after June 30, 1985. The regulations governing eligibility for the MGIB would be revised to reflect the new statutory provision.

Since neither of the groups of individuals may receive benefits until the required $1,200 is collected, the regulations governing the effective dates of awards of educational assistance would be amended to establish effective dates for benefits based on elections to receive benefits and receipt of the $1,200 and of any other evidence necessary to establish a valid election.

An individual is prohibited by statute (38 U.S.C. 3033(c)) from using the same period of service to establish eligibility for both the MGIB and the Montgomery GI Bill—Selected Reserve (MGIB–SR). Some of those individuals now eligible to elect to become entitled to the MGIB by having certain AGR and ADS service qualify as active duty, may have previously used that service to establish eligibility for the MGIB–SR. If such an individual received educational assistance under the MGIB–SR and now makes such an election, he or she would have no service to support the educational assistance previously received under the MGIB–SR. Consequently, it is necessary for VA to terminate that assistance retroactively to the first date of training for which the individual received educational assistance. VA is proposing to revise 38 CFR 21.7635 accordingly. The procedures for repayment of amounts paid under the MGIB–SR are set forth at 38 CFR 1.900 through 1.994.

Beginning in November 1994, a pilot program was authorized by statute that required certain entities offering alternative teacher certification courses to be considered to be educational institutions. Since courses must be offered by educational institutions in order to be approved by State approving agencies for VA training, this provision allowed State approving agencies to approve these courses. This program was scheduled to expire on September 30, 1996. Pub. L. 104–275 made the pilot program permanent. Various regulations that indicated that the pilot program was scheduled to end on September 30, 1996, would be revised accordingly.

This document would make other changes for the purpose of clarity.

The restatements of statute and statutory interpretations contained in this proposed rule would be applied from the effective dates of the statutory provisions. The dates of application for the provisions covered by this document would be as follows:

October 1, 1996: 38 CFR 21.7020(b)(1), new § 21.7042(f)(3) and newly redesignated § 21.7042(f)(4)

October 9, 1996: §§ 21.4135(b); 21.5021(d)(3); 21.5058(b); 21.5130(d); 21.7020(b)(29); all changes to § 21.7042 except new § 21.7042(f)(3) and newly redesignated § 21.7042(f)(4); §§ 21.7045; 21.7050; 21.7131; 21.7520(b); and 21.7635

The Department of Defense (DOD) is issuing this proposed rule jointly with VA insofar as it relates to VEAP. This program is funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this proposed rule insofar as it relates to the Montgomery GI Bill—Selected Reserve. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this proposed rule is issued solely by VA.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a collection of information is set forth in the proposed 38 CFR 21.7131(l) and (m). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the Office of Management and Budget (OMB) for its review of the proposed collection of information.

OMB assigns a control number to each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AI63."

Title: Evidence Submitted to Validate an Election to Receive Educational Assistance under the Montgomery GI Bill—Active Duty.

Summary of collection of information: The proposed § 21.7131(l) and (m) would provide that a veteran may be required to submit evidence to validate an election to receive educational assistance under the MGIB and that the date of VA's receipt of the evidence may have an effect on the effective date of an award of educational assistance. The type of evidence submitted would be copies of records that most individuals would keep, such as a discharge certificate or a document that shows that $1,200 was withheld from military pay. There would be no recordkeeping requirement.

Description of need for information and proposed use of information: VA and DOD conduct a computer match that allows VA access to data contained in the Defense Manpower Data Center (DMDC) about applicants for the MGIB. Those data are necessary to establish their eligibility for educational assistance. Normally, the information contained in DMDC records would be sufficient for VA to decide if an individual who claims to have become eligible for educational assistance under the proposed § 21.7042(a)(7), 21.7042(b)(10), or 21.7045(d) is, in fact, eligible. However, VA realizes that there may be an occasional error in entering the pertinent data into the computer records, so that it may appear that an individual is ineligible when he or she is actually eligible. The proposed § 21.7131(l) and (m) recognize this by allowing for the possibility that an individual may have to submit additional evidence to show that he or she is eligible for educational assistance. VA will use the evidence submitted to validate an individual's eligibility for educational assistance under the MGIB.

Description of likely respondents: Individuals seeking to establish eligibility for educational assistance under the MGIB.

Estimated number of respondents: 56 per year.

Estimated frequency of responses: Once per respondent.

Estimated average burden per collection: 20 minutes. This is VA's estimate of the average time it would take for respondents to find or obtain, if necessary, this additional evidence, and to copy and mail this evidence to VA.

Estimated total annual reporting and recordkeeping burden: 19 hours.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to submit comments to VA on the proposed rule.

Regulatory Flexibility Act

The Secretary of Defense, Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Adoption of this proposed rule would not cause educational institutions to make changes in their activities and would have minuscule monetary effects, if any. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule would also affect the Montgomery GI Bill—Selected Reserve program, which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 12, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Normand G. Lezy,

Lieutenant General, USAF

Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: July 28, 1998.

T. J. Barrett, RADM, USCG,

Assistant Commandant for Human Resources, Acting.

For the reasons set forth above, 38 CFR part 21 (subparts D, G, K, and L) is proposed to be amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

2. In § 21.4135, paragraph (b) is added to read as follows:

§ 21.4135 Discontinuance dates.

* * * * *

(b) *Election to receive educational assistance under the Montgomery GI Bill—Active Duty.* If a veteran makes a valid election, as provided in § 21.7045(d), to receive educational assistance under the Montgomery GI Bill—Active Duty in lieu of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program, the discontinuance date of educational assistance under the Post-Vietnam Era Veterans' Educational Assistance Program shall be the date on which the election was made pursuant to procedures described in § 21.7045(d)(2).

(Authority: 38 U.S.C. 3018C(c)(1))

* * * * *

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

3. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

§ 21.5021 [Amended]

4. In § 21.5021, paragraph (d)(3) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,".

5. In § 21.5058, the authority citation for paragraph (b) is revised to read as follows:

§ 21.5058 Resumption of participation.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3018A, 3018B, 3018C, 3202(l), 3222)

§ 21.5130 [Amended]

6. In § 21.5130, paragraph (b) is amended by removing "(except paragraph (b))".

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

7. The authority citation for part 21, subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30, 36, unless otherwise noted.

8. In § 21.7020, paragraph (b)(29)(iii) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; the authority citation for paragraph (b)(29) is revised; paragraph (b)(1)(iv) is added immediately after the authority citation for paragraph (b)(1)(iii); and paragraph (b)(44) is added immediately after the authority citation for paragraph (b)(43), to read as follows:

§ 21.7020 Definitions.

* * * * *

(b) * * *

(1) * * *

(iv) When referring to individuals who, before June 30, 1985, had never served on active duty (as that term is defined by § 3.6(b) of this chapter) and who made the election described in § 21.7042(a)(7) or (b)(10), the term *active duty* when used in this subpart includes full-time National Guard duty under title 32, U.S. Code first performed after June 30, 1985, by a member of the Army National Guard of the United States or the Air National Guard of the United States for the purpose of organizing, administering, recruiting, instructing, or training the National Guard.

(Authority: 38 U.S.C. 3002(7); sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(29) * * *

(Authority: 38 U.S.C. 3002(8), 3452(c))

* * * * *

(44) *Date of election.* The term *date of election* means:

(i) For an election that must be made in the form and manner determined by the Secretary of Defense, the date determined by the Secretary of Defense; and

(ii) For an election that must be submitted to VA, the date VA receives the written election.

(Authority: 38 U.S.C. 3018C(a)(5); sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

9. In § 21.7042, paragraph (f)(3) is redesignated as paragraph (f)(4); newly redesignated paragraph (f)(4) is amended by removing "Paragraph (f)(2) of this section does" and adding, in its place, "Paragraphs (f)(2) and (f)(3) of this section do", by removing "Coast" and adding, in its place, "United States Coast", and by removing "Reserve" and adding, in its place, "Senior Reserve"; paragraph (a)(7) is added immediately after the authority citation for paragraph (a)(6); paragraph (b)(10) is added immediately after the authority citation for paragraph (b)(9); new paragraph (f)(3) and paragraph (g)(5) are added; and paragraphs (f)(2), (g)(1), and (g)(4) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

* * * * *

(a) * * *

(7) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(b) * * *

(10) An individual whose active duty meets the definition of that term found in § 21.7020(b)(1)(iv), and who wishes to become entitled to basic educational assistance, must have elected to do so before July 9, 1997. For an individual electing while on active duty, this election must have been made in the manner prescribed by the Secretary of Defense. For individuals not on active duty, this election must have been submitted in writing to VA.

(Authority: Sec. 107(b), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

(f) * * *

(2) Except as provided in paragraph (f)(4) of this section, an individual is not eligible for educational assistance under 38 U.S.C. chapter 30 if after December 31, 1976, he or she receives a commission as an officer in the Armed Forces upon graduation from:

(i) The United States Military Academy;

(ii) The United States Naval Academy;

(iii) The United States Air Force Academy; or (iv) The United States Coast Guard Academy.

(3) Except as provided in paragraph (f)(4) of this section, an individual who after December 31, 1976, receives a commission as an officer in the Armed Forces upon completion of a program of educational assistance under 10 U.S.C. 2107 is not eligible for educational assistance under 38 U.S.C. chapter 30, if the individual enters on active duty—

(i) Before October 1, 1996; or

(ii) After September 30, 1996, and while participating in that program received more than $2,000 for each year of participation.

(Authority: 38 U.S.C. 3011(c), 3012(d))

* * * * *

(g) *Reduction in basic pay.* (1) Except as elsewhere provided in this paragraph, the basic pay of any individual described in paragraph (a), (b), or (c) of this section shall be reduced by $100 for each of the first 12 months that the individual is entitled to basic pay. If the individual does not serve 12 months, it shall be reduced by $100 for each month that the individual is entitled to basic pay.

* * * * *

(4) The individual who makes the election described in either paragraph (a)(7) or (b)(10) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions described in this paragraph. If the basic pay of an individual is not reduced and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions, that individual is ineligible for educational assistance.

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

(5) If through administrative error, or other reason—

(i) The basic pay of an individual described in paragraph (a)(1) through (a)(6), (b)(1) through (b)(9), (c), or (d) of this section is not reduced as provided in paragraph (g)(1) or (g)(2) of this section, the failure to make the reduction will have no effect on his or her eligibility, but will negate or reduce the individual's entitlement to educational assistance under 38 U.S.C. chapter 30 determined as provided in § 21.7073 for an individual described in paragraph (c) of this section;

(ii) The basic pay of an individual, described in paragraph (a)(7) or (b)(10) of this section, is not reduced as described in paragraph (g)(4) of this section and/or VA does not collect from the individual an amount equal to the difference between $1,200 and the total amount of the pay reductions described in paragraph (g)(4) of this section, that individual is ineligible for educational assistance. If the failure to reduce the individual's basic pay and/or the failure to collect from the individual was due to administrative error on the part of the Federal government or any of its employees, the individual may be considered for equitable relief depending on the facts and circumstances of the case. See § 2.7 of this chapter.

(Authority: 38 U.S.C. 3002, 3011, 3012, 3018)

10. In § 21.7045, the heading and introductory text are revised; and paragraph (d) is added, to read as follows:

§ 21.7045 Eligibility based on involuntary separation, voluntary separation, or participation in the Post-Vietnam Era Veterans' Educational Assistance Program.

An individual who fails to meet the eligibility requirements found in § 21.7042 or § 21.7044 nevertheless will be eligible for educational assistance as provided in this subpart if he or she meets the requirements of paragraphs (a) and (b) of this section; paragraphs (a) and (c) of this section; or paragraph (d) of this section.

* * * * *

(d) *Alternate eligibility requirements for participants in the Post-Vietnam Era Veterans' Educational Assistance Program.*—(1) *Making an election.* To receive educational assistance under the authority of paragraph (d) of this section, a veteran or servicemember must—

(i) Have elected to do so before October 9, 1997;

(ii) Have been a participant (as that term is defined in § 21.5021(e)) in the Post-Vietnam Era Veterans' Educational Assistance Program on October 9, 1996;

(iii) Have been on active duty on October 9, 1996; and

(iv) Receive an honorable discharge.

(2) *Election.* The election to receive educational assistance payable under this subpart in lieu of educational assistance payable under the Post-Vietnam Era Veterans' Educational Assistance Program is irrevocable. The election must have been made before October 9, 1997, pursuant to procedures provided by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or provided by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(3) *$1,200 collection.* An individual who has made the election described in paragraph (d)(2) of this section shall have his or her basic pay reduced by $1,200 in a manner prescribed by the Secretary of Defense. To the extent that basic pay is not so reduced before the individual's discharge or release from active duty, VA will collect from the individual an amount equal to the difference between $1,200 and the total amount of the reductions. Reduction in basic pay by $1,200 or collection of $1,200 is a precondition to establishing eligibility.

(4) *Educational requirement.* Before applying for benefits that may be payable as the result of making a valid election, an individual must have—

(i) Completed the requirements of a secondary school diploma (or equivalency certificate); or

(ii) Successfully completed the equivalent of 12 semester hours in a program of education leading to a standard college degree.

(Authority: 38 U.S.C. 3018C)

11. In § 21.7050, paragraph (a)(1) is amended by removing "paragraph (b)" and adding, in its place, "paragraphs (b) and (c)", and by removing "of this part"; paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively; the authority citation for paragraph (b) is revised; and a new paragraph (c) is added to read as follows:

§ 21.7050 Ending dates of eligibility.

* * * * *

(b) * * *

(Authority: 38 U.S.C. 3031(e))

(c) *Time limit for some members of the Army and Air National Guard.* (1) If a veteran or servicemember establishes eligibility for the educational assistance payable under this subpart by making the election described in § 21.7042(a)(7) or (b)(10), VA will not provide basic educational assistance or supplemental educational assistance to that veteran or servicemember beyond 10 years from the later of:

(i) The date determined by paragraph (a) or (b) of this section, as appropriate; or

(ii) The effective date of the election described in § 21.7042(a)(7) or (b)(10), as appropriate.

(2) The effective date of election is the date on which the election is made pursuant to the procedures described in § 21.7045(d)(2).

(Authority: Sec. 107(b)(3), Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

12. In § 21.7131, paragraphs (l) and (m) are added to read as follows:

§ 21.7131 Commencing dates.

* * * * *

(l) *Eligibility established under § 21.7042(a)(7) or (b)(10).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under either § 21.7042(a)(7) or (b)(10). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7042(g)(4) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7042(g)(4), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (l)(2)(ii) or (l)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 5113; sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

(m) *Eligibility established under § 21.7045(d).* This paragraph must be used to establish the effective date of an award of educational assistance when the veteran or servicemember has established eligibility under § 21.7045(d). The commencing date of an award of educational assistance for such a veteran or servicemember is the latest of the following:

(1) The commencing date as determined by paragraphs (a) through (c) and (f) through (j) of this section;

(2) The date of election provided that—

(i) The servicemember initiated the $1,200 reduction in basic pay required by § 21.7045(d)(3) and the full $1,200 was collected through that pay reduction;

(ii) Within one year of the date of election VA both collected from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay, as provided in § 21.7045(d)(3), and received from the veteran any other evidence necessary to establish a valid election; or

(iii) VA received from the veteran $1,200 or the difference between $1,200 and the amount collected through a reduction in the veteran's military pay and any other evidence necessary to establish a valid election within one year of the date VA requested the money and/or the evidence.

(3) If applicable, the date VA collected the difference between $1,200 and the amount by which the servicemember's military pay was reduced, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met; or

(4) If applicable, the date VA collected $1,200, if the provisions of paragraph (m)(2)(ii) or (m)(2)(iii) of this section are not met.

(Authority: 38 U.S.C. 3018C(a), (b), 5113)

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

13. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35 36, unless otherwise noted.

14. In § 21.7520, paragraph (b)(23)(iv) is amended by removing "during the period beginning on November 2, 1994, and ending on September 30, 1996,"; and the authority citation for paragraph (b)(23) is revised to read as follows:

§ 21.7520 Definitions.

* * * * *

(b) * * *
(23) * * *

(Authority: 10 U.S.C. 16131(a), (c); 38 U.S.C. 3002, 3452)

* * * * *

15. In § 21.7635, paragraph (y) is redesignated as paragraph (z); and a new paragraph (y) is added, to read as follows:

§ 21.7635 Discontinuance dates.

* * * * *

(y) *Election to receive educational assistance under 38 U.S.C. chapter 30.* VA shall terminate educational assistance effective the first date for which the reservist received educational assistance when—

(1) The service that formed a basis for establishing eligibility for educational assistance under 10 U.S.C. chapter 1606 included a period of active duty as described in § 21.7020(b)(1)(iv); and

(2) The reservist subsequently made an election, as described in § 21.7042(a)(7) or (b)(10), to become entitled to basic educational assistance under 38 U.S.C. chapter 30.

(Authority: Sec. 107, Pub. L. 104–275, 110 Stat. 3329–3330)

* * * * *

[FR Doc. 98–30287 Filed 11–10–98; 8:45 am]
BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[DA 98–2231; IB Docket No. 98–172; RM–9005, RM–9118]

Redesignation of the 18 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the Ka-band, and the Allocation of Additional Spectrum for Broadcast Satellite Service Use

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Notice of Proposed Rulemaking in this proceeding set due dates for filing comments and reply comments. At the request of several parties to this proceeding, those due dates are hereby extended.

DATES: Comments due November 19, 1998; reply comments due December 21, 1998.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Chuck Magnuson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–2159.

SUPPLEMENTARY INFORMATION: This proposed rulemaking, 63 FR 54100, October 8, 1998, concerns redesignation of the 17.7–19.7 GHz frequency band, blanket licensing of satellite earth stations in the 17.7–20.2GHz and 27.5–30.0 GHz frequency bands, and the allocation of additional spectrum in the 17.3–17.8 and 24.75–25.25 GHz frequency bands for broadcast satellite service use.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30219 Filed 11–10–98; 8:45 am]
BILLING CODE 8712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4873; Notice 1]

RIN 2127–AG87

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Federal motor vehicle safety standard on lighting to reorganize the sections relating to headlighting. A notice proposing reorganization of the sections relating to other lamps is planned for later in 1998. This action is taken to remove inconsistencies and to facilitate reference to the standard in an effort to improve its comprehensibility.

DATES: Comments are due on the proposal February 10, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590 (Docket hours are from 10:00 a.m. to 5:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards (202–366–6346).

SUPPLEMENTARY INFORMATION:

I. The Reason for This Rulemaking

Federal Motor Vehicle Safety Standard No. 108 specifies performance requirements for lamps, reflective devices and associated equipment on new motor vehicles, as well as their location. The standard also covers replacement lighting equipment. Its present version represents 31 years of accumulated amendments and the incorporation of numerous industry consensus standards. In many cases, the incorporated versions are no longer in print. Requirements concerning a particular lighting device are sometimes found at different places within the standard or are partially contained in SAE standards which are themselves incorporated by reference. As printed at 49 CFR 571.108, revised as of October 1, 1997, Standard No. 108 occupies 73 pages, by far the longest of the Federal motor vehicle safety standards. The agency responds to approximately 150 letters annually from domestic and foreign manufacturers of vehicles and equipment, state agencies, vehicle owners, and inventors of lighting devices asking for interpretations of Standard No. 108, and even more inquiries by telephone. The agency believes that this heavy demand may be due in part to difficulties that interested parties may have in finding the applicable provisions in the standard and in gaining confidence that they are aware of all requirements.

Therefore, NHTSA has decided to issue two notices proposing amendments intended to make the standard easier to understand. The amendments are not intended to change the requirements of the standard, except in a few minor instances which will be clearly identified in this preamble and the preamble of the second proposal. This NPRM proposes amendments to only those sections of Standard No. 108 applying to headlamp systems. Revised regulatory language for other lamps will be proposed for amendment in a future notice. The principal change in the organization of headlamp requirements is the elimination of the separate section devoted to sealed beam headlamps. They are treated in this proposal as a type of integral beam headlamp which have additional requirements to assure interchangeability.

II Drafting Guidelines

The following drafting guidelines have been followed in this proposal and will be followed in the subsequent proposal to the extent possible where the agency believes that adherence to them improves the clarity of the standard:

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(a) All requirements directly affecting a specific type of lamp or reflector will be consolidated in the same section to avoid scattered requirements. Requirements common to more than one lamp or reflector will be repeated in each lamp or reflector section if they are brief, or they will be referenced in subsequent sections if they are too lengthy.

(b) Lighting requirements should be contained within the text of Standard No. 108 rather than incorporated by reference. Users should be relieved of the burden of searching incorporated SAE standards for the possibility of additional requirements. Ideally, the required performance of a lamp or reflector would be described fully within the text of Standard No. 108, but the details of the test method would be specified by incorporation of industry standard test methods developed by SAE and other consensus bodies. In other instances where lighting requirements are unavoidably established by incorporation of an industry standard, the citation should include mention of the types of requirements found in the standard. A reader of Standard No. 108 should be able to determine at least the existence of all lighting requirements without prior knowledge of the content of industry standards incorporated by reference.

(c) Titles will be used for subparagraphs and higher level paragraphs. Subparagraph titles will form an index to this lengthy standard in the manner of the proposed interim index of headlamp requirements attached to S7. Paragraph names will impose a logical order on the requirements that will assist writers of future amendments in preserving the value of the index and assist readers in locating provisions of interest.

(d) In general, the existing wording of requirements will be preserved to avoid unintended effects on regulatory burdens, but the desire for clarity will call for occasional edits. A review of past interpretation letters will be used to identify particular instances where editing may be beneficial.

(e) References to SAE standards will be updated to current versions unless a revision would result in significant burden without compensatory safety benefits or unless NHTSA believes that the older version is better for motor vehicle safety.

(f) Two different numbering systems are used within the existing paragraphs of the standard. In the most frequently used system, letters and numbers follow a prescribed hierarchy. This has led to some unwieldy constructions where it is difficult to identify and cite a specific requirement. For example, in the requirements for replaceable bulb headlamp systems, Standard No. 108 presently contains a paragraph S7.5(d)(2)(i)(A)(1). The second system is similar to SAE practice in which subparagraphs are given numbers. For example, the subparagraphs of S7.8.5 are S7.8.5.1, S7.8.5.2, and S7.8.5.3 rather than S7.8.5(a), (b), and (c). Even in this instance, the first system is followed thereafter in these subparagraphs, such as S7.8.5.2(a)(1)(i). One way to address the problem is to rewrite and simplify the text to minimize the number of subparagraphs, which NHTSA has done. After this point, the clearest system appears to be one that uses a numerical hierarchy for all paragraphs above the lowest level and reserves the lowest level for letters (e.g., S7.4.1.1(a)). The NPRM contains no subparagraphs beyond this initial alphabetical level.

(g) References to past effective dates of provisions will be eliminated. They have been kept until now as a guide to compliance with replacement equipment specifications.

III. Amendments Proposed for Specific Parts of Standard No. 108

S4 Definitions. The definition of "integral beam headlamp" would be expanded to include sealed beam headlamps. The definitions of both integral and "replaceable bulb headlamps" would be edited to state expressly that headlamps that are visually/optically aimable or that incorporate a vehicle headlamp aiming device may be designed for removable lenses. The definition of "replaceable light source headlamps" would be amended to delete an unnecessary restriction on the number of light sources in a headlamp of that type.

Definitions of "two-headlamp systems" and "four-headlamp systems would be added.

S7 Headlighting requirements. All subparagraphs and most of the lower level paragraphs in S7 would be given titles, and the provisions of the proposed regulatory language would be rearranged as required to conform to the structure imposed by the paragraph titles. An index of all headlamp provisions now contained in Paragraphs 7, 8, 9 and 10 of the present standard has been added. When the rest of Standard No. 108 is reorganized, this partial index would become part of an index of the whole standard to be located at the beginning.

S7.1. The mounting location requirements of Tables II and IV would be added to the text of the standard. The language prohibiting grills, covers and other headlamp obscurations would be moved from S7.8.5 to this paragraph. References to past effective dates would be eliminated.

S7.2. This paragraph would be devoted to general requirements involving headlamp lens marking and replaceable lenses. Present S7.2.1(d), dealing with photometric test procedure, would be moved to S7.4.2 and S7.5.2 where other photometric test requirements are contained. The text of S5.8.2 and S5.8.11, dealing with replacement lenses and lens marking of certain replacement headlamps, would be moved to S7.2.

S7.3. The present S7.3 specifying sealed beam headlamp performance would be eliminated. Sealed beam headlamps would be regulated as a type of integral beam headlamp with photometric limitations in some instances to preserve their interchangeability. In many four headlamp systems, the upper beam is produced by the combined operation of the upper beam lamp and one or more filaments in the lower beam lamp. The standard recognizes several photometry options developed for sealed beam headlamps in which the dual headlamps of each side of a vehicle combine their light output in different ways to achieve an upper beam. Manufacturers would be required to continue the use of the present beam patterns for the various types of interchangeable sealed beam headlamps so that the intended upper beam pattern is maintained when the consumer replaces a single lamp. Systems using only two headlamps do not pose a similar concern. Accordingly, no extra limitations would be placed on sealed beam headlamps in two headlamp systems.

Present S7.9 containing motorcycle headlamp requirements would be moved to S7.3 with several amendments. The incorporation by reference of SAE J584 would continue to be the source of several requirements for motorcycle headlamps, but a parenthetical note would be added telling the reader what types of requirements are to be found in SAE J584. The incorporated version of SAE J584 would remain that of 1964 because the agency concluded in a recent rulemaking (61 FR 6616) that it would be inappropriate to use the 1993 version of the standard in its entirety. Instead, only the photometric performance and the aiming method of the newer version of J584 were included. The reference in the present text to SAE J566 1960 would be eliminated by including its brief provisions directly in S7.3.

S7.4. The present requirements for integral beam lamps would be used also to regulate sealed beam headlamps with a few special provisions. Since integral beam headlamps are those without replaceable light sources, sealed beam headlamps are simply a category of integral beam headlamps designed to interchangeability standards rather than particular to a given vehicle model. Paragraph S7.4 would restrict standard sealed beam headlamps, designated by SAE types, to the beam patterns presently specified for those types and to the visually/optically aimable version of those beam patterns. However, the visually/optically aimable versions would be required to retain the aiming pads specified by the SAE standards for the attachment of external aimers. This would be required because it is necessary to mount external aimers on both sides of a vehicle even if only one headlamp requires external aiming.

References to SAE J1383, regarding specifications of sealed beam headlamp types and photometric test procedure, have been updated to the DEC96 version. The incorporated provisions of the updated SAE J1383 appear to be substantially identical to those of the presently cited APR85 version, except with respect to photometric performance in the region of the beam pattern above 10 degrees up. The latest SAE revision measures only the area 45 degrees to the right and left of the driver (rather than +/−90 degrees), and small regions of brightness exceeding the regional maximum of 175 cd. would be permitted if confined to a 2- degree conical angle. This requirement protects drivers from annoying reflections of headlamp light in rain and snow, while recognizing that stray light beams of insignificant breadth do not pose a problem. Paragraph S7.4.2 of the proposed revision would adopt the approach taken by SAE J1383 DEC96 to the beam pattern above 10 degrees.

The photometric requirements for lamps comprised of multiple beam contributors, presently in S7.4(a)(3), would be restated in terms of beam contributors per beam rather than beam contributors per vehicle to improve clarity. Present S7.4(b) and (c) would be combined in S7.4.5 and simplified in expression. The provision that visually/optically aimable headlamps and headlamps with VHADs may be designed with replaceable lenses has been moved into S7.4 and S7.5 rather than being conveyed only by the definitions of integral beam and replaceable bulb headlamps. In this way, the definitions are provided only to clarify the terms used in the requirements, not to become additional sources of regulatory provisions where they may escape the user's notice.

Currently Standard No. 108 requires the lower beam in a four-lamp headlighting system to be provided by the uppermost lamp (if the lamps are arranged vertically), or outermost (if they are arranged horizontally). This presupposes that the two headlamps on a side share a common vertical or horizontal axis. With the advent of projector beam headlamps, there may be no common axis of light sources within a headlamp.

The proposed language of S7.4.5 and S7.5.3 establishes that the most important safety aspect of headlamp arrangement is the marking of the full width of the vehicle by the operation of the lower beam. It would set a priority of outermost over uppermost for lower beam headlamps, reflectors or light sources, and it would permit arrangements in which the uppermost headlamps are upper beams as long as the outermost headlamps are lower beams. It would permit the arrangement of upper and lower beams in a two headlamp system to be based on either the locations of the outer lighted edges of separate upper and lower beam reflectors or the position of the light sources. Only where the outer edges of headlamps or headlamp reflectors or light sources in a two headlamp system are arranged exactly vertically (i.e., in the same vertical longitudinal plane) would the lower beam be required to be the uppermost lamp.

The proposed language of S7.4.5 and S7.5.3 also anticipates future headlamp designs with an array of light sources or remote light sources with multiple light paths to the headlamp reflector. It would require only that the outermost light source be activated on the lower beam to mark the full width of the vehicle, rather than to "provide" the lower beam, and it would view the outermost light path of a remote light source as equivalent to the outermost light source of a conventional design in regard to marking vehicle width.

Proposed S7.4.8.8 *Exposure resistance* would apply to plastic material for headlamp lenses the requirements of SAE J576 JUL91 Plastic materials for use in optical parts such as lenses and reflectors of motor vehicle lighting devices, which would be incorporated by reference. This amendment would clarify the agency's intent that Standard No. 108 and SAE J576 JUL91 require the same level of haze resistance for materials for headlamp lenses, namely that they show no deterioration in a visual inspection after a three-year outdoor exposure test. The amendment would supersede a statement in a previous interpretation (sent on December 7, 1994, to Brian J. Williams) applying a 30 percent haze limit after the outdoor exposure test to plastic materials for headlamp lenses. The statement was a literal interpretation of the word "lamp" in S5.1.2. However, the reasons for the agency's establishment in 1975 of the 30 percent haze limit for material for "lamp" lenses were applicable only for signal and license plate lamps. In 1975, the only lamps known to use plastic materials were signal lamps and license plate lamps. Headlamps at that time were required to be sealed beams with glass lenses.

By way of explanation, originally, Standard No. 108 cited SAE J576b (1966) which required that "exposed samples, when compared with the unexposed control samples, shall not show . . . haze." The requirement referred to an inspection with the naked eye of plastic samples after outdoor exposure tests in Florida and Arizona. In 1974, General Electric (GE) petitioned the agency to relax the haze requirement for signal lamp lenses, but not for reflex reflectors. GE provided a large body of data on various signal lamps with a degree of surface haze representative of highly weathered polycarbonate plastic lenses without protective coatings. It concluded that haze did not make signal lamps less visible, although it altered the distribution of light output among the photometric test points for the various lamps and could actually have the effect of causing the lamp to appear larger. The agency agreed with GE and amended the standard to include as an exception to J576 (which was updated to J576c May 1970 at that time) the following:

> After the outdoor exposure test, the haze and loss of surface luster of plastic materials used for lamp lenses shall not be greater than 30 percent as measured by ASTM 1003–61 * * *.

The reason given by the agency for proposing the amendment (39 FR 35179) was:

> In GE's view, deglossing to haze levels of 50 percent does not appear to significantly affect the overall photometric performance and *signaling* effectiveness of the lamp. The effect of haze is to scatter light from the point of maximum intensity to the wider angle test points, resulting in a diminution of light output at the former, and an increase at the latter. In accordance with GE's test data and suggestion, the NHTSA is proposing that haze levels should not exceed 30 percent. [italic added]

NHTSA believes that it is clear from the original petition that the only lenses to which a haze limit as high as 30 percent should apply were those on

signal and license plate lamps. To repeat, at the time of that rulemaking, all headlamps manufactured for sale in the United States were sealed beams with glass lenses. None of the information and assertions in GE's petition pertained to lenses for headlamps, and the agency's stated conclusion in that rulemaking about the effect of haze on lamp lenses shows that haze is antithetical to the objectives of headlamp design. Headlamps are designed to maintain a difficult balance between providing enough light to guide the driver and limiting light that causes glare for other drivers. A hazed headlamp lens both diminishes the light needed by the driver and simultaneously increases the glare to other drivers. While the effect of haze is insignificant for signal lamps, the same is not true for headlamps.

When Standard No. 108 was amended to allow plastic headlamp lenses, the lenses were required to demonstrate resistance to abrasion. Compliance was achieved through coatings. In a 1993 NPRM (58 FR 13042) proposing a haze limit of 7 percent for reflex reflector material, NHTSA asked for comments on whether all abrasion-resistant coatings also prevented haze on headlamp lenses exceeding 7 percent (the approximate equivalent of haze just discernable to the naked eye). Ford Motor Company commented that, in its experience with plastic headlamp lenses, all such coatings would prevent haze exceeding 7 percent. NHTSA is concerned that some contemporary hard coatings may no longer provide this level of haze protection though capable of providing sufficient abrasion resistance. A final rule based on this proposal would successfully address this possibility.

The provision of J576 allowing a 25-percent reduction in luminous transmittance of plastic material as a result of outdoor exposure is specifically excluded from application to headlamp lenses in SAE J1383 Performance Requirements for Motor Vehicle Headlamps, but that part of SAE J1383 has not been incorporated in Standard No. 108. The agency agrees with SAE that the 25-percent loss in transmittance permitted by SAE J576 is another provision suitable for signal lamp lenses rather than headlamp lenses, but it would prefer to adopt a more appropriate transmittance-loss limit for headlamp lens material rather than simply to eliminate the reference. The agency believes that suitable hard coatings which protect against abrasion and haze currently limit transmittance loss to much less than 25 percent.

Accordingly, NHTSA asks readers to comment on the actual performance of coated plastic samples of current headlamp lens materials in the J576 outdoor exposure tests.

Paragraph S5.1.2 contains other potential ambiguities that will be addressed when the requirements for signal lamps and reflex reflectors are reorganized in a future notice. For example, the measured haze limits for reflex reflectors and signal lamps are listed in paragraphs introduced as exceptions to J576 JUL91. However, the haze limits are the same as those in J576 JUL91; the exception is that Standard No. 108 cites a more recent update of the ASTM haze measurement method than does J576 JUL91.

The reference to SAE J580 Sealed Beam Headlamp Assembly would be eliminated from the present S7.4(g) and the remaining text designated S7.4.9. The SAE canceled SAE J580 in 1992 and its pertinent provisions were moved to SAE J1383. However, the connector resistance test of SAE J580, which was referenced in S7.4(g), was rejected by SAE for inclusion in J1383. The rationale given by SAE was that the connector resistance is not important because the photometric performance requirement assures correct current flow at the headlamp terminal and connector, and the resistance requirement would not permit the use of stainless steel and other higher resistance material for terminals. The agency agrees that the design resistance of a new headlamp terminal and connector is not important if it provides complying photometric performance, but it believes that Standard No. 108 should continue to require that the resistance of terminals not be subject to significant degradation as a consequence of corrosion. Therefore, the corrosion resistance requirement for terminals of S7.4(h)(3) would be retained in S7.4.8.3. A new Figure 11, illustrating the measurement of current flow at headlamp terminals, would be added to Standard No. 108 and referenced in S9.4 of the new text to eliminate a reference to a figure in SAE J580.

S7.5. The present text concerning replaceable bulb headlamps is very difficult to follow, due in part to the need for many paragraphs and the lack of paragraph titles. The proposed text is extensively rewritten to parallel the simpler organization of S7.4. Paragraph S7.5 would be renamed "Replaceable light source headlamps" because replaceable light sources other than incandescent bulbs have been permitted. The adoption of the proposed text would have no effect on the requirements for replaceable light source headlamps with one exception.

The present text requires a lens marking for replaceable bulb headlamps identifying the type of replaceable light source, unless it uses a type HB1 bulb. The exception for type HB1 bulbs has been removed from the proposed text. At an earlier time when only one or two types of bulbs were in use, it may have been acceptable to designate one type with the absence of a mark. But it no longer appears to be a reasonable practice, now that a large number of types of replaceable light sources are in use. The agency believes that type HB1 bulbs are not used on vehicles in current production, and therefore no burdens would be imposed by the change. However, if future vehicles were to be produced using type HB1 bulbs, their headlamps would require the same kind of marking as required for all other types of replaceable light sources. The purpose of the mark is to assist the vehicle owner in choosing the correct light source with which to repair a burned out headlamp.

Finally, a headlamp system using replaceable light sources would be allowed to combine them with fixed light sources (such as high intensity discharge sources (HIDs)), while adhering to the same beam patterns and requirements of replaceable light source headlamps.

S7.6. The present S7.6 on combination headlighting systems would be eliminated. Its purpose was to address headlamps combining HID light sources and replaceable bulbs. Formerly, HID light sources were permitted only in the form of integral beam headlamps (which are integrated from the 12.8 volt receptical inward), so that their use in combination with a replaceable bulb created a distinct class of headlamp. Now, HID light sources may be used in a replaceable form, and the resulting headlamps are simply the replaceable light source headlamps covered in S7.5. Paragraph S7.5 would also be amended to recognize a headlamp system using standardized replaceable light sources (e.g., HB3, HB4) combined with fixed light sources which need not be standardized, including high voltage HID light sources.

The text presently contained in S7.7 Replaceable light sources would be moved to S7.6. The text would be given paragraph titles and arranged in a different order but otherwise remain unchanged. The present S9 Deflection test for replaceable light sources would be moved to S7.6.3 to make the light source section self-contained.

S7.7. The special wiring requirement paragraphs pertaining to headlamp systems would be moved from S5.5 to S7.7 in the interest of consolidating the headlamp requirements. The brief manual headlamp beam switching requirements of J564a would be written directly in the text rather than continuing to be incorporated by reference to a 1964 document. A switch without "dead spots" as expressed in the 1964 standard is clarified as a switch of the make-before-break type.

The agency proposes to update SAE J565 Semi-automatic headlamp beam switching from the 1969 version to the most recent revision of 1989. It is unknown if the update would impose new burdens, but it seems unlikely that a 1969 standard continues to have relevance in the area of automatic controls which has since been revolutionized by electronic technology. In the case of SAE J565 JUN89, it would not be necessary to place its requirements directly in Standard No. 108 because it represents a self-contained treatment of a distinct wiring option which is sufficiently identified by its title.

The language of S7.7.4 would be amended to add an exception to the prohibition in S7.7.3 against simultaneous activation of upper and lower headlamp beams. The purpose of this requirement is to prevent glare. Ford Motor Company wrote NHTSA asking for an interpretation that this provision would not apply to its Auto Low Beam backup system, intended for a two-headlamp system. Under Ford's system, if an upper beam fails, the lamp automatically switches to the lower beam for use as a reserve upper beam headlamp. The agency has informed Ford that the extinction of an upper beam results in a noncomplying headlamp system, and that there is no prohibition against use of the remaining beam in the headlamp to supplement the other headlamp. Because of the potential for glare, however, the agency has not extended this interpretation to the converse, that is, allowing an upper beam to substitute for a lower beam when the lower beam has become inoperative. In NHTSA's view, this would be an instance in which a manufacturer "made inoperative" the glare protection provisions of Standard No. 108, within the meaning of 49 U.S.C. 30122. A reduced intensity upper beam is a possible solution as a backup for an extinguished lower beam but NHTSA would not propose to permit it until researching the glare issue.

The rest of the provisions are unchanged, except for paragraph titles and some rearrangement of sentence order. S5.5.10 (b) and (c) were repeated in S7.7.5 and S7.7.6, rather than moved, because S5.5.10 seen in its entirety is an important example of agency policy on flashing lamps—namely, that no required or auxiliary lamps other than those listed in S5.5.10 are permitted to flash.

S8. The text of the present S8 would be moved to S9 (vacated by the move of the light source deflection test to S7.6), and the new S8 would be dedicated to the present text of S7.8 Aimability performance requirements. With the recent addition of a visual/optical aim option, the aimability material has become much lengthier than other areas of the standard. Further, the subject is sufficiently self-contained to form a complete entity. The reduction of paragraph levels accomplished by the move and the increased use of paragraph titles in the proposed text would improve clarity.

S8.2. This paragraph would be the same as the present S7.8.1 with the addition of a title and an updated reference to SAE J1383, consistent with references in the proposed S7 text.

S8.3. This paragraph would contain the present text of S7.8.2 through S7.8.4, with paragraph titles and some reordering of paragraph levels. Part of the present S7.8.5 would be included as an introductory sentence in S8, and the part dealing with headlamp covers and obstructions would be moved to general installation requirements that would be contained in S7.1.

S8.4. Paragraph S8.3 would contain the present text of S7.8.5.1 on external aim, reducing by two the levels of paragraph numbering. The reference to SAE J602 would be updated to the DEC89 version which includes specifications for an additional 92 x 150 mm locating plate for the external headlamp aiming device, permitting deletion of Figure 16. A sentence informing the reader of the purpose of the torque deflection and inward force tests would be added. The text of S8.3.1 would be amended to define that the torque value specified in the test is that measured with respect to a horizontal axis in the aiming reference plane. The present omission of a torque reference axis was the subject of an interpretation (letter to Tolley, June 8, 1995). A sentence would also be added stating that sealed beam headlamp mounts would be tested with the standard deflectometers and adaptors specified in SAE J1383 DEC96. In addition, paragraph titles would be added.

S8.5. The text of S7.8.5.2 on vehicle headlamp aiming devices (VHADs) would be moved to S8.4 unchanged except for the order of a few phrases and shorter paragraph numbers.

S8.6. The text of S7.8.5.3 on visual/optical aim, added in 1997, would be moved to S8.5 with references to SAE J1383 and J575 updated.

S8.7. This would be a new paragraph setting aiming system requirements for replacement headlamps. It assures that all combinations of original and replacement headlamps are aimable.

S9. The agency considered the alternative of citing various SAE headlamp test procedures rather than maintaining detailed test procedures in Standard No. 108. However, the alternative was not consistent with the goal of making the present requirements of the standard more accessible to the reader. Some of the SAE test procedures require reference to multiple SAE standards which does not favor accessability. Also, the applicable SAE test procedures are not identical to the procedures of the standard.

Some of the differences in test procedures are clearly significant. For example, the SAE abrasion test is a test of materials, while the abrasion test of Standard No. 108 is a test of headlamps. Also, the SAE corrosion test does not include tests of the reflector and electrical connector as does Standard No. 108. Other SAE test procedures contain differences whose effects are uncertain, such as differences in the amount of light blockage during the internal heat test and differences in the humidity cycle and soak time in the humidity test. While there may be merit in adopting some test procedures in the most current SAE form, the changes would be considered for technical reasons, rather than to reduce the size of paragraphs in the standard. Since the clarity of Standard No. 108 would suffer from references to the SAE test procedures accompanied by exceptions, the present brief test procedures are retained in the text of paragraph S9.

A new Figure 11, illustrating the measurement of current flow at headlamp terminals, would be included in Standard No. 108 and referenced in S9.4 of the new text to eliminate a reference to a figure in obsolete SAE J580.

Standard No. 108 has maintained a reference to the 1970 version of SAE J575 for the vibration test because the agency believed the vibration test of later versions of SAE J575 was insufficient. However, it is undesirable to cite two versions of an SAE standard, especially when one is so old that it may be hard to locate. The current SAE standard for tests of heavy truck lamps, SAE J2139 JAN94, uses the same vibration test as the 1970 SAE J575.

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Therefore, SAE J2139 JAN94 would be substituted for SAE 575e to describe the vibration test of S9.8.

S10. The general requirements in the present text of S10 concerning simultaneous aim photometry tests of integral beam headlamps would be moved to S7.4.4, and the material particular to type F sealed beams would be eliminated. The present text of S12 on headlamp concealment devices would be redesignated as S10 so that all headlamp material would appear in contiguous sections.

S11. The title of S11 would be changed to clarify that it pertains to daytime running lights (DRLs) rather than to headlamps. It should be moved into a section devoted to DRLs when the requirements for other lamps are reorganized.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available to inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Effective Date: Since the purpose of the amendments is to clarify existing requirements, the agency believes that a final rule would not impose any additional burden with one exception. The amended language regarding haze resistance of plastic headlamp lens material would supersede a December 1994 interpretation and may cause some headlamp manufacturers to reinstate the coating materials and products generally in use before that time. Therefore, the proposed amendment would become effective 180 days after publication, to allow time for potential production changes for plastic headlamp lenses.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking actions was not reviewed under Executive Order 12866. It has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action would be to clarify existing requirements. It would not impose any additional burden upon any person, except that a truck or multipurpose passenger vehicle equipped with a four-lamp headlamp system in which the lamps are arranged vertically would have to switch the relative positions of the lamps on vehicles manufactured on and after September 1, 2000. Impacts of the proposed rule are, therefore, so minimal as not to warrant preparation of a full regulatory evaluation.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.* I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle headlamps. According to the size standards of the Small Business Association (at 13 CFR Part 121.601), manufacturers of lamps and reflective devices would be considered manufacturers of "Motor Vehicle Parts and Accessories" (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of "Motor Vehicles and Passenger Car Bodies" (SIC Code 3711) is 1,000 employees or fewer. This NPRM would have no significant economic impact of a small business in these industries because, if made final, the rule would make no substantive change to requirements currently specified in Standard No. 108.

Further, small organizations and governmental jurisdictions will not be significantly affected as no price increases are expected as a result of this rulemaking. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 on "Federalism." It has been determined that the rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The rulemaking action would not have a significant effect upon the environment as it does not affect the present method of manufacturing motor vehicle lighting equipment.

Civil Justice Reform

This rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

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PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR Part 571 be amended as follows:

1. The authority citation would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 would be amended by:

(a) adding two new definitions, "Four-headlamp system" and "Two-headlamp system," in alphabetical order to S4,

(b) revising the definitions of "Integral beam headlamp" and "Replaceable bulb headlamp," in S4,

(c) revising S5.5.10(c) and S5.510(d),

(d) removing S7 through S12.5,

(e) adding new S7 through S11,

(f) removing Figures 11 through 14, 16, 18, 21 and 22; and

(g) adding new Figure 11, to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4. *Definitions.*

* * * * *

Four-headlamp system means a headlamp system with two independent headlamps on each side of a vehicle which may be used singly or in combination to provide lower and upper beams.

* * * * *

Integral Beam Headlamp means a headlamp (including a sealed beam headlamp listed in SAE J1383 DEC96 but not a replaceable bulb headlamp) comprising an integral and indivisible optical assembly including lens, reflector, and light source, except that a visually/optically aimable headlamp or one incorporating a vehicle headlamp aiming device may have a lens designed to be replaceable.

* * * * *

Replaceable bulb headlamp means a headlamp comprising a bonded lens reflector assembly and one or two replaceable headlamp light sources, except that a visually/optically aimable headlamp or one incorporating a vehicle headlamp aiming device may have a lens designed to be replaceable.

* * * * *

Two-headlamp system means a headlamp system with one headlamp on each side of a vehicle, each of which provides a lower and upper beam.

* * * * *

S5.5.10 * * *

(c) A motorcycle headlamp may be wired to allow either its upper beam or its lower beam, but not both, to modulate from a higher intensity to a lower intensity in accordance with S7.3;

(d) All other lamps, including all lamps not required by this standard, shall be wired to be steady burning.

* * * * *

S7. *Headlamp and replaceable light source requirements.*

S7.0 *Table of Contents.* The following is a table of contents of the requirements for headlamps and replaceable light sources.

S7.1 General Installation Requirements
S7.2 Lens Marking and Replacement Lens Requirements
S7.3 Motorcycle Headlamps
S7.4 Integral Beam Headlamp Systems
S7.5 Replaceable Light Source Headlamp Systems
S7.6 Replaceable Light Sources
S7.7 Special Wiring Requirements

S7.1 *General installation requirements.*

(a) Each passenger car, multipurpose passenger vehicle, truck, and bus shall be equipped with a headlighting system designed to conform to the requirements of S7.4 or S7.5. The headlamps shall be mounted on the front of the vehicle symmetrically disposed about its vertical centerline, with each lower beam headlamp at the same height and as far apart as practicable, and with each upper beam headlamp at the same height. With the vehicle at curb weight, the center of each headlamp shall be not less than 560 mm (22 in) and not more than 1370 mm (54 in) above the road surface.

(b) Each motorcycle shall be equipped with a headlighting system designed to conform with the requirements of S7.3. A single headlamp shall be mounted on the front vertical centerline of the motorcycle, or if two headlamps are used, they shall be symmetrically disposed about its vertical centerline. With the vehicle at curb weight, the center of each headlamp shall be not less than 560 mm (22 in) and not more than 1370 mm (54 in) above the road surface.

(c) When activated in a steady-burning state, headlamps shall not have any styling ornament or other feature, such as a translucent cover or grill, in front of the lens. Headlamp wipers may be used in front of the lens, provided that the headlamp system is designed to conform with all applicable photometric requirements with the wiper stopped in any position in front of the lens.

S7.2 *Lens marking and replacement lens requirements.*

S7.2.1 *Lens marking requirements.*

(a) The lens of each original and replacement equipment headlamp and of each original equipment and replacement equipment beam contributor, and each replacement headlamp lens, shall be marked with the symbol "DOT," either horizontally or vertically, which shall constitute the certification required by 49 U.S.C. 30115.

(b) Each headlamp lens and each beam contributor to which S7.2.1(a) applies shall be marked with the name and/or trademark registered with the U.S. Patent and Trademark Office of the manufacturer of such headlamp, replacement lens or beam contributor, or of its importer, or of any manufacturer of a vehicle equipped with such headlamp or beam contributor. Each replacement headlamp lens shall also be marked with the manufacturer and the part or trade number of the headlamp for which it is intended. Nothing in this paragraph shall be construed to authorize the marking of any such name and/or trademark by one who is not the owner, unless the owner has consented to it.

(c) Each headlamp and beam contributor to which S7.2.1(a) applies shall be marked with its voltage and with its part or trade number.

(d) Headlamps designed to interchange with types C and D sealed beam headlamps, specified by SAE Standard J1383 DEC96, may be marked "1" and "2" rather than "1C1" and "2C1", respectively and "TOP" or "2" rather than "2D1".

S7.2.2 *Replacement lens requirements.*

(a) A replacement lens for a headlamp that is not required to have a bonded lens shall be provided with a replacement seal in a package that includes instructions for the removal and replacement of the lens, the cleaning of the reflector, and the sealing of the replacement lens to the reflector assembly.

(b) Each replacement headlamp lens when installed on a headlamp with a replacement seal, according to the lens manufacturer's instructions, shall not cause the headlamp to fail to comply with any of the requirements of this standard.

S7.3 *Motorcycle headlamps.* Each motorcycle shall be equipped with a headlighting system designed to conform to the following requirements.

S7.3.1 *Photometric requirements and applicable SAE standard.* Each motorcycle may be equipped with—

(a) A headlighting system designed to conform to SAE Standard J584 *Motorcycle Headlamps* April 1964 (which includes requirements for

photometry, focus, color and resistance to vibration, moisture, dust and corrosion) using the photometric specifications of Figure 32 and the upper beam aimability specifications of S7.3.2 rather than the SAE J584 photometry requirements, or

(b) If manufactured on or before September 1, 2000, a headlighting system designed to conform to SAE Standard J584 April 1964; or

(c) One half of any headlighting system specified in S7.4 or S7.5 which provides both a full upper beam and full lower beam. Where more than one lamp must be used, the lamps shall be mounted vertically, with the lower beam as high as practicable. When installed on a motorcycle, such half systems need not meet the aiming requirements of S8.

S7.3.2 *Aimability.*

S7.3.2.1 *Photoelectric aim using upper beam.* The upper beam of a multiple beam headlamp designed to conform to the photometric requirements of Figure 32 shall be aimed photoelectrically during the photometric test in the manner prescribed in SAE Standard J584 OCT93, *Motorcycle Headlamps.*

S7.3.2.2 *Headlamp mounting.* Headlamps and headlamp mountings shall be so designed and constructed that:

(a) The axis of the light beams may be adjusted to the left, right, up or down from the designed setting, the amount of adjustability to be determined by practical operating conditions and the type of equipment.

(b) The adjustments may be conveniently made by one person with tools ordinarily available.

(c) When the headlamps are secured, the aim will not be disturbed under ordinary conditions of service.

S7.3.3 *Motorcycle headlamp modulation system.*

S7.3.3.1 A headlamp on a motorcycle may be wired to modulate either the upper beam or the lower beam from its maximum intensity to a lesser intensity, provided that:

(a) The rate of modulation shall be 240±40 cycles per minute.

(b) The headlamp shall be operated at maximum power for 50 to 70 percent of each cycle.

(c) The lowest intensity at any test point shall be not less than 17 percent of the maximum intensity measured at the same point.

(d) The modulator switch shall be wired in the power lead of the beam filament being modulated and not in the ground side of the circuit.

(e) Means shall be provided so that both the lower beam and upper beam remain operable in the event of a modulator failure.

(f) The system shall include a sensor mounted with the axis of its sensing element perpendicular to a horizontal plane. Headlamp modulation shall cease whenever the level of light emitted by a tungsten filament light operating at 3000 degrees Kelvin is either less than 270 lux (25 foot-candles) of direct light for upward pointing sensors or less than 60 lux (5.6 foot-candles) of reflected light for downward-pointing sensors. The light is measured by a silicon cell type light meter that is located at the sensor and pointing in the same direction as the sensor. A Kodak Gray Card (Kodak R–27) is placed at ground level to simulate the road surface in testing downward pointing sensors.

(g) When tested in accordance with the test profile shown in Figure 9, the voltage drop across the modulator when the lamp is on at all test conditions for 12-volt systems and 6-volt systems shall not be greater than 0.45 volt. The modulator shall meet all the provisions of the standard after completion of the test profile shown in Figure 9.

(h) Means shall be provided so that both the lower and upper beam function at design voltage when the headlamp control switch is in either the lower or upper beam position when the modulator is off.

S7.3.3.2(a) Each motorcycle headlamp modulator not intended as original equipment shall comply with S7.3.3.1(a) through (g) when connected to a headlamp of the maximum rated power and a headlamp of the minimum rated power, and shall provide means so that the modulated beam functions at design voltage when the modulator is off.

(b) Instructions, with a diagram, shall be provided for mounting the light sensor including location on the motorcycle, distance above the road surface, and orientation with respect to the light.

S7.3.4 *Marking.* (a) Each replaceable bulb headlamp that is designed to meet the photometric requirements of S7.3.1(a) or S7.3.2(a) and that is equipped with a light source other than a replaceable light source meeting the requirements of S7.7, shall have the word "motorcycle" permanently marked on the lens in characters not less than 3 mm (o.114 in) in height.

(b) Each motorcycle headlamp modulator not intended as original equipment, or its container, shall be labeled with the maximum wattage, and the minimum wattage appropriate for its use.

S7.4 *Integral beam headlamp systems.* An integral beam headlamp system shall be designed to conform to the following requirements:

S7.4.1 *Photometric requirements.* The system shall provide in total not more than two upper beams and two lower beams. The color of any headlamp beam shall be white as specified in SAE J578 JUN95.

S7.4.1.1 *Four-headlamp systems.* Except as provided in S7.4.1.1(d), each upper beam headlamp and each lower beam headlamp in a four-headlamp system shall be designed to conform to the photometrics specified in its respective column of one of the following:

(a) Figure 15, or

(b) Figure 15 except that the upper beam test value at 2.5 D–V and 2.5 D–12R and 12L, shall apply to the lower beam headlamp and not to the upper beam headlamp, and the upper beam test point value at 1.5D–9R and 9L shall be 1000, or

(c) Figure 28;

(d) Headlamps designed to interchange with types A, C and G sealed beam headlamps shall conform to the photometrics of Figure 28 only; headlamps designed to interchange with type F sealed beam headlamps shall conform to the photometrics of Figure 15 only; headlamps designed to interchange with type J sealed beam headlamps shall conform to the photometric specification of S7.4.1.3, and type 55x135 sealed beam headlamps shall conform to the photometric specification of S7.4.1.1(b). The cited types of sealed beam headlamps are those specified by SAE Standard J1383 DEC96 *Performance Requirements for Motor Vehicle Headlamps.*

(e) Headlamp systems using the photometry of Figures 15–1 or 28–1 shall comply with the mechanical aim requirements of S8.3 or S8.4.

S7.4.1.2 *Two-headlamp systems.* (a) Each headlamp shall be designed to conform to the photometrics of either Figure 17 or Figure 27.

(b) Headlamp systems using the photometry of Figures 17–1 or 27–1 shall comply with the mechanical aim requirements of S8.3 or S8.4.

S7.4.1.3 *Headlamp systems using lamps comprised of multiple beam contributors.* In a headlamp system in which there is more than one beam contributor providing each lower beam, and/or more than one beam contributor providing each upper beam, each beam contributor in the system shall be designed to meet only the photometric performance requirements of Figure 15 based upon the following mathematical expression: conforming test point value = (Figure 15 test point value)/total

number of beam contributors for each lower or upper beam, as appropriate). The system shall be designed to use the Vehicle Headlamp Aiming Device (VHAD) as specified in S8.4.

S7.4.2 *Photometric test procedure.* Each integral beam headlamp system shall be designed to conform to the applicable photometric performance requirements of S7.4.1 (rather than Table 3 of SAE J1383 DEC96) when tested in accordance with the test procedures of Paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96. Unless stated otherwise, a tolerance of +/− ¼ degree is permitted during photometric performance tests for any headlamp or beam contributor. The test points 10U–90U shall be measured in a horizontal range 45R to 45L from the normally exposed surface of the lens face. Luminous intensities in this upper region may exceed the limits contained in S7.4.1 if they are confined within a 2-degree conical angle and do not exceed 438 cd. The term "aiming plane" means "aiming reference plane," or an appropriate vertical plane defined by the manufacturer as required in S8.1.

S7.4.3 *Assemblies allowing simultaneous aim of multiple lamps.* A headlamp or beam contributor designed to meet S7.4.1.1 or 7.4.1.3, and S8.3, except a type A, C or G sealed beam headlamp, may be mounted in an assembly to permit simultaneous aiming of the beam(s) contributors, provided that with any complying contributor the assembly complete with all lamps meets the appropriate photometric requirements when tested in accordance with S7.4.4.

S7.4.4 *Photometric test procedure for simultaneous aim assemblies.* The assembly used for simultaneously aiming more than one integral beam headlamp, at each side of a vehicle, shall be placed on a test fixture on a goniometer located not less than 18.3 m (60 ft) from the photometer. The assembly shall be aimed by centering the geometric center of the lower beam lens(es) on the photometer axis and by aligning the photometer axis to be perpendicular to the aiming reference plane or appropriate vertical plane defined by the manufacturer of any lower beam contributor. Photometric compliance of a lower beam shall be determined with all lower beam contributors illuminated and in accordance with the test procedures of paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96 using the test points and photometric requirements of Figure 15. The assembly shall then be moved in a plane parallel to the established aiming plane of the lower beam until the assembly is located with the geometric center of the upper lens(es) on the photometer axis. Photometric compliance for an upper beam shall now be determined using the figure and procedure specified for the lower beam. During photometric testing, a ¼ degree reaim is permitted in any direction at any test point.

S7.4.5 *Arrangement and marking of upper and lower beams.*

(a) The reflector with the most outboard lighted edge or the most outboard light source within a headlamp in a two-headlamp system, or the most outboard headlamp in a four-headlamp system shall provide all or part of the lower beam. If the light sources or the outboard lighted edges of reflectors or headlamps are arranged along the same vertical longitudinal plane, the upper light source, reflector or headlamp shall provide all or part of the lower beam. For purposes of this paragraph, the location within the headlamp reflector of the light path from a remote light source shall be considered the location of the light source.

(b) In a four-headlamp system, the lower beam headlamp lens shall be permanently marked with the letter "L" or the number "2" before the type designation letter of types A, C and G sealed beam headlamps, and the upper beam headlamp lens shall be permanently marked with the letter "U" or the number "1" before the type designation letter of types A, C and G sealed beam headlamps.

S7.4.6 *Aimability.* The system shall be aimable in accordance with the requirements of S8. A system that incorporates any headlamp or beam contributor that does not have a VHAD as an integral and indivisible part of the headlamp or beam contributor shall be designed so that the appropriate photometrics are met when any correctly aimed and photometrically conforming headlamp or beam contributor is removed from its mounting and aiming mechanism, and is replaced without reaim by any conforming headlamp or beam contributor of the same type. A visually/optically aimable sealed beam headlamp interchangeable with a mechanically aimable sealed beam headlamp shall be manufactured with the aiming pads specified for it in SAE J1383 DEC96.

S7.4.7 *Replaceable lenses.* Headlamps that are visually/optically aimable in accordance with S8.5 or that incorporate a vehicle headlamp aiming device conforming to S8.4 may be designed to have a replaceable lens.

S7.4.8 *Other performance requirements.* When tested according to any of the procedures indicated in S9, each headlamp or beam contributor shall meet the appropriate requirement:

S7.4.8.1 *Abrasion.* After an abrasion test conducted in accordance with S9.2, the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.2 *Chemical resistance.* After the chemical resistance tests of S9.3 and S9.10.1, the headlamp shall have no surface deterioration, coating delamination, fractures, deterioration of bonding or sealing materials, color bleeding or color pickup visible without magnification, and the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.3 *Corrosion resistance.* After a corrosion test conducted in accordance with S9.4, there shall be no evidence of external or internal corrosion or rust visible without magnification. After a corrosion test conducted in accordance with S9.10.2, there shall be no evidence of corrosion or rust visible without magnification on any part of the headlamp reflector that receives light from a headlamp light source, on any metal light or heat shield assembly, or on a metal reflector of any other lamp not sealed from the headlamp reflector. Loss of adhesion of any applied coating shall not occur more than 3.2 mm (0.125 in.) from any sharp edge on the inside or outside. Corrosion may occur on terminals only if the current produced during the test of S9.4(c) is not less than 9.7 amperes.

S7.4.8.4 *Dust resistance.* After a dust test conducted in accordance with S9.5, the headlamp shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.5 *Heat resistance.* The headlamp shall first meet the requirements of S7.4.8.5(a) and then those of S7.4.8.5(b).

(a) After a temperature cycle test conducted in accordance with S9.6.1, the headlamp shall show no evidence of delamination, fractures, entry of moisture or deterioration of bonding material, color bleeding, warpage or deformation visible without magnification or lens warpage greater than 3 mm (0.118 in) measured parallel to the optical axis at the point of intersection of the axis of each light source with the exterior surface of the lens, and it shall meet the photometric requirements applicable to the headlamp system under test.

(b) After an internal heat test conducted in accordance with S9.6.2, there shall be no lens warpage greater than 3 mm (0.118 in) when measured parallel to the optical axis at the point of intersection of the axis of each light

source with the exterior surface of the lens, and it shall meet the photometric requirements applicable to the headlamp system under test.

S7.4.8.6 *Humidity resistance.* After a humidity test conducted in accordance with S9.7, the inside of the headlamp shall show no evidence of delamination or moisture, fogging or condensation visible without magnification.

S7.4.8.7 *Vibration resistance.* After a vibration test conducted in accordance with S9.8, there shall be no evidence of loose or broken parts, other than filaments, visible without magnification.

S7.4.8.8 *Exposure resistance.* After a three-year outdoor exposure test conducted in accordance with SAE J576 JUL91, plastic materials used for headlamp lenses shall:

(a) Have no loss of luminous transmittance of more than 25 percent of the luminous transmittance of the unexposed control sample when tested according to ASTM E 308–66 using CIE Illuminant A (2856K);

(b) Continue to conform to the color specification of achromatic lens material contained in SAE J578 JUN95 for samples having the thickness of the headlamp lens or greater;

(c) Show no deterioration regarding haze when evaluated visually, and

(d) Show no physical changes affecting performance such as color bleeding, delamination, crazing or cracking when compared visually to unexposed samples.

S7.4.9 *Exceptions to other performance requirements.* A headlamp with a glass lens need not meet the abrasion resistance test (S9.2). A headlamp with a nonreplaceable lens need not meet the chemical and corrosion resistance test of reflectors (S9.10). A headlamp with a nonreplaceable glass lens need not meet the chemical resistance test (S9.3). A headlamp with a glass lens and a non-plastic reflector need not meet the internal heat test of S9.6.2. A headlamp of sealed design as verified in S9.9 (sealing) need not meet the dust, humidity or corrosion resistance requirements of S7.4.8, except that it must meet the corrosion resistance requirement for terminals in S7.4.8.3.

S7.4.10 *Incorporation of non-headlamp light sources.* An integral beam headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S7.5 *Replaceable light source headlamp systems.* Each replaceable light source headlamp system shall use replaceable light sources complying with S7.6, or a combination at each side of fixed light sources and complying replaceable light sources, and it shall be designed to conform to the following requirements:

S7.5.1 *Photometric requirements.* The system shall provide in total not more than two upper beams and two lower beams and shall incorporate not more than two replaceable light sources in each headlamp of a two-headlamp system nor more than one replaceable light source in each headlamp of a four-headlamp system. The color of the emanating light produced by a headlamp shall be white as specified in SAE J578 JUN95. The photometric performance specified in S7.5.1.1 and S7.5.1.2 (depicted in Figure 26) shall be obtained using any complying replaceable light source of the type intended for use in such system.

S7.5.1.1 *Four-headlamp systems.* Each upper beam headlamp and each lower beam headlamp of a four-headlamp system shall be designed to conform to the photometrics of one of the following:

(a) Figure 15, or

(b) Figures 15 or 27 if the system uses only light sources of types HB1 or HB5.

S7.5.1.2 *Two-headlamp systems.* Each headlamp in a two-headlamp system shall be designed to conform to the photometrics of one of the following:

(a) Figure 17, or

(b) Figures 17 or 27 if the system uses only light sources of types HB1 or HB5.

S7.5.2 *Photometric test procedure.* Each replaceable light source headlamp system shall be designed to conform to the applicable photometric performance requirements of S7.5.1 (rather than Table 3 of SAE J1383 DEC96) when tested in accordance with the test procedures of Paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96. Unless stated otherwise, a tolerance of ±¼ degree is permitted during photometric performance tests for any headlamp. The test points 10U–90U shall be measured in a horizontal range 45R to 45L from the normally exposed surface of the lens face. Luminous intensities in this upper region may exceed the limits contained in S7.5.1 if they are confined within a 2-degree conical angle and do not exceed 438 cd. The term "aiming plane" means "aiming reference plane," or an appropriate vertical plane defined by the manufacturer as required in S8.1.

S7.5.3 *Arrangement and marking of upper and lower beams.*

(a) The reflector with the most outboard lighted edge or the most outboard light source within a headlamp in a two-headlamp system, or the most outboard headlamp in a four-headlamp system shall provide all or part of the lower beam. If the light sources or the outboard lighted edges of reflectors or headlamps are arranged along the same vertical longitudinal plane, the upper light source, reflector or headlamp shall provide all or part of the lower beam. For purposes of this paragraph, the location within the headlamp reflector of the light path from a remote light source shall be considered the location of the light source.

(b) In a four-headlamp system the lower beam headlamp lens shall be permanently marked with the letter "L" and the upper beam headlamp lens shall be permanently marked with the letter "U".

(c) The lens of each replaceable light source headlamp shall bear permanent marking in front of each replaceable light source with which it is equipped that states the HB Type or the bulb marking/designation provided in compliance with Section VIII of Appendix A or Section VI of Appendix B of part 564 of this chapter.

S7.5.4 *Aimability.* The system shall be aimable in accordance with the requirements of S8. Headlamps designed to conform to the external mechanical aiming requirements of S8.3 shall have no mechanism that allows adjustment of an individual light source, or, if there are two light sources, independent adjustment of each reflector.

S7.5.5 *Replaceable lenses.* Headlamps that are visually/optically aimable in accordance with S8.5 or that incorporate a vehicle headlamp aiming device conforming to S8.4 may be designed to have a replaceable lens.

S7.5.6 *Replacement lens-reflector units.* Each lens reflector unit manufactured as replacement equipment shall be designed to conform to the requirements of S7.5.1 when any replaceable light source appropriate for such unit is inserted in it.

S7.5.7 *Other performance requirements.* Each headlamp shall meet the requirements of S7.4.8 and S7.4.9, except that the sentence in S7.4.9 granting exceptions to the corrosion, dust and humidity test requirements for sealed headlamps does not apply.

S7.5.8 *Incorporation of non-headlamp light sources.* A replaceable bulb headlamp may incorporate replaceable light sources that are used for purposes other than headlighting.

S7.6 *Replaceable light sources.* Each replaceable light source shall be designed to conform to the dimensions and electrical specifications furnished with respect to it pursuant to part 564 of this chapter, and shall conform to the following requirements:

S7.6.1 *Color.* When the replaceable light source of any complying headlamp

is replaced with a complying light source having a compatible base, the color of the light produced by the headlamp shall remain white as specified in SAE J578 JUN95.

S7.6.2 *Test of luminous flux and power.* The measurements of maximum power and luminous flux that are submitted in compliance with Appendix A or Appendix B of part 564 of this chapter, shall be made with the direct current test voltage regulated within one quarter of one percent. The test voltage shall be 12.8v. The measurement of luminous flux shall be in accordance with the Illuminating Engineering Society of North America, LM 45; *IES Approved Method for Electrical and Photometric Measurements of General Service Incandescent Filament Lamps* (April 1980). The replaceable light source shall be seasoned before such measurement.

(a) For a light source with a resistive element type filament, seasoning of the light source shall be made in accordance with paragraph 3.8 of SAE Standard J1383 DEC96 *Performance Requirements for Motor Vehicle Headlamps.* The measurement of luminous flux shall be made with the black cap installed on Type HB1, Type HB2, Type HB4, and Type HB5 light sources, and on any other replaceable light source so designed, and shall be made with the electrical conductor and light source base shrouded with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing. The measurement of luminous flux for Type HB3 and Type HB4 shall be made with the base covered with the white cover shown in the drawings for Types HB3 and HB4 filed in Docket No. NHTSA 98–3397. The white covers are used to eliminate the likelihood of incorrect lumens measurement that will occur should the reflectance of the light source base and electrical connector be low.

(b) For a light source using excited gas mixtures as a filament or discharge arc, seasoning of the light source system, including any ballast required for its operation, shall be made in accordance with paragraph 4.0 of SAE Recommended Practice J2009 FEB93 *Discharge Forward Lighting Systems.* With the test voltage applied to the ballast input terminals, the measurement of luminous flux shall be made with the black cap installed, if so designed, and shall be made with the base covered with an opaque white colored cover, except for the portion normally located within the interior of the lamp housing.

S7.6.3 *Test of seal airtightness.* The capsule, lead wires and/or terminals, and seal on each Type HB1, Type HB3, Type HB4, and Type HB5 light source, and on any other replaceable light source which uses a seal, shall be installed in a pressure chamber as shown in Figure 25 so as to provide an airtight seal. The diameter of the aperture in Figure 25 on a replaceable light source (other than an HB Type) shall be that dimension furnished for such light source in compliance with Section IV.B of Appendix A or Section III.B of Appendix B of part 564 of this chapter. An airtight seal exists when no air bubbles appear on the low pressure (connector) side after the light source has been immersed in water for one minute while inserted in a cylindrical aperture specified for the light source, and subjected to an air pressure of 70kPa (10 P.S.I.G.) on the glass capsule side.

7.6.4 *Deflection resistance requirement.* After the force deflection test conducted in accordance with S7.6.5, the permanent deflection of the glass envelope shall not exceed 0.13 mm (0.005 in) in the direction of the applied force.

S7.6.5 *Deflection test.* With the light source rigidly mounted in a fixture in a manner indicated in Figure 8, a force of 17.8 ± 0.4N (4.0 ± 0.1 lb) is applied at a distance "A" from the reference plane perpendicular to the longitudinal axis of the glass capsule and parallel to the smallest dimension of the pressed glass capsule seal. The force shall be applied (using a rod with a hard rubber tip with a minimum spherical radius of 1 mm (0.039 in) radially to the surface of the glass capsule in four locations in a plane parallel to the reference plane and spaced at a distance "A" from that plane. These force applications shall be spaced 90 degrees apart starting at the point perpendicular to the smallest dimension of the pressed seal of the glass capsule. The bulb deflection shall be measured at the glass capsule surface at 180 degrees opposite to the force application. Distance 'A' for a replaceable light source other than an HB Type shall be the dimension provided in accordance with Appendix A of part 564 of this chapter.

7.6.6 *Rated laboratory life of discharge type light sources.* The "rated laboratory life" that is submitted in compliance with Appendix B of Part 564 of this chapter shall be determined in accordance with paragraphs 4.3 and 4.9 of SAE Recommended Practice J2009 FEB93 *Forward Discharge Lighting Systems* for light sources that use excited gas mixtures as a filament or discharge arc.

7.6.7 *Marking requirements for light sources.* The base of each HB Type shall be marked with its HB Type designation. If other than an HB Type, the light source shall be marked with the bulb marking designation specified for it in compliance with Appendix A or Appendix B of part 564 of this chapter. Each replaceable light source shall also be marked with the symbol DOT and with a name or trademark in accordance with S7.2.

7.6.8 *Marking requirements for ballast devices.* If a ballast is required for light source operation, each ballast shall bear the following permanent markings:

(a) Name or logo of ballast manufacturer;

(b) Ballast part number or unique identification;

(c) Part number or other unique identification of the light source for which the ballast is designed;

(d) Rated laboratory life of the light source/ballast combination, if the information for the light source has been filed in Appendix B of part 564 of this chapter;

(e) A warning that ballast output voltage presents the potential for severe electrical shock that could lead to permanent injury or death;

(f) Ballast output power in watts and output voltage in volts DC or root mean squared volts AC; and

(g) The symbol 'DOT'.

S7.7 *Special wiring requirements.*

S7.7.1 *Headlamp beam switching.* Each vehicle shall have a means of switching between lower and upper beams designed and located so that it may be operated conveniently by a simple movement of the driver's hand or foot. The switch shall complete the circuit for one beam before opening the circuit for the other beam to avoid transient points in which neither beam is powered. A blue or green upper beam indicator light shall be provided, with a minimum area equivalent to that of a 4.75 mm (3/16 in) diameter circle, plainly visible to drivers of all heights under normal driving conditions when headlamps are required.

S7.7.2 *Semi-automatic headlamp beam switching.* As an alternative to S7.7.1, a vehicle may be equipped with semi-automatic means of switching between lower and upper beams that conforms to SAE Recommended Practice J565 JUN89, *Semi-Automatic Headlamp Beam Switching Devices.*

S7.7.3 *Prohibition against simultaneous upper and lower beam use.* Except as provided in S7.7.4, the wiring harness or connector assembly of each headlamp system shall be designed so that only those light sources intended for meeting lower beam photometrics are energized when the beam selector

switch is in the lower beam position, and that only those light sources intended for meeting upper beam photometrics are energized when the beam selector switch is in the upper beam position. Except as provided in S7.7.4, the lower and upper beams shall not be energized simultaneously except momentarily for temporary signaling purposes or during switching between beams.

S7.7.4 *Exceptions to simultaneous beam prohibition.*

S7.7.4(a) On a motor vehicle equipped with a headlighting system designed to conform to the photometric requirements of Figure 15–1 or 15–2, the lower beam lamps may be wired to remain activated when the upper beam lamps are activated.

(b) On a motor vehicle equipped with an Integral Beam headlighting system meeting the photometric requirements of S7.4.1.1(b), the lower beam headlamps shall be wired to remain permanently activated when the upper beam headlamps are activated.

(c) On a motor vehicle equipped with a headlighting system designed to conform to the requirements of Figure 17–1 or 17–2, a lower beam light source may be wired to remain activated when an upper beam light source is activated if the lower beam light source contributes to compliance of the headlighting system with the upper beam requirements of Figure 17–1 or 17–2.

(d) Lower beam headlamps may be wired to activate upon failure of an upper beam headlamp, regardless of the position of the beam selector switch.

S7.7.5 *Flashing.* Headlamps and side marker lamps may be wired to flash for signaling purposes;

S7.7.6 *Motorcycle headlamp beam modulation.* A motorcycle headlamp may be wired to allow either its upper beam or its lower beam, but not both, to modulate between a higher intensity and a lower intensity in accordance with S7.3.4.

S8. *Headlamp aimability performance requirements.*

S8.0 The following is a table of contents for headlamp aimability performance requirements:

S8.1 General requirements
S8.2 Aiming reference features
S8.3 Headlamp mounting and aiming mechanism
S8.4 External mechanical aiming
S8.5 On-vehicle mechanical aiming (VHAD)
S8.6 Visual/optical aiming
S8.7 Replacement headlamps

S8.1 *General requirements.* When a headlamp system is installed on a motor vehicle, it shall be aimable with at least one of the following: an externally applied mechanical aiming device, as specified in S8.4; an on-vehicle mechanical headlamp aiming device installed by the vehicle or lamp manufacturer, as specified in S8.5; or by visual/optical means, as specified in S8.6. All of the headlamps within the system shall be aimable by the same means. An auxiliary vertical VHAD complying with S8.5 may be used on a headlamp complying with S8.6.

S8.2 *Aiming reference features*

(a) Each headlamp or beam contributor that is not visually/optically aimable in accordance with S8.6 of this standard shall be equipped with fiducial marks, aiming pads, or similar references of sufficient detail and accuracy, for determination of an appropriate vehicle plane to be used with the photometric procedures of SAE J1383 DEC96 for correct alignment with the photometer axis when being tested for photometric compliance, and to serve for the aiming reference when the headlamp or beam contributor is installed on a motor vehicle. The fiducial marks, aiming pads, or similar references are protrusions, bubble vials, holes, indentations, ridges, scribed lines, or other readily identifiable marks established and described by the vehicle or headlamp manufacturer.

(b) Each motor vehicle manufactured on and after September 1, 1998, shall be equipped with headlamps or beam contributors which have a mark or markings that are visible from the front of the headlamp when installed on the vehicle to identify the optical axis of the headlamp to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp. Examples of such marks include, but are not limited to: dots, circles or trademarks with an obvious center; marks on the periphery of the lens which can be converged accurately to the optical center; pointed bulb tips or circular light shields clearly visible through unfluted lenses if they coincide with the optical center. The shape of a round or rectangular headlamp intrinsically marks the center if its lens surface is symmetric about its beam axis.

(c) Each headlamp that is visually/optically aimable in accordance with S8.6 of this standard shall be marked in accordance with S8.6.6.

S8.3 *Headlamp mounting and aiming mechanism.* Except as provided in this paragraph, each headlamp shall be installed on a motor vehicle with a mounting and aiming mechanism that allows aim inspection and adjustment of both vertical and horizontal aim, and is accessible for those purposes without removal of any vehicle parts, except for protective covers removable without the use of tools.

S8.3.1 *Cross-axis sensitivity.*

(a) When installed on the vehicle, adjustment of one aim axis through its full on-vehicle range shall not cause the aim of the other axis to deviate more than ±0.76 degree.

(b) If the performance specified in S8.3.1(a) is not achievable, the labeling requirements of S8.5.3(c) apply, except that if the aiming mechanism is not a VHAD, the requirements specific to VHADs are not applicable, and the instructions shall be specific to the aiming mechanism installed.

(c) A visually/optically aimable headlamp that has a lower beam shall not have a horizontal adjustment mechanism unless such mechanism meets the on-vehicle aiming requirements of S8.4 of this standard.

S8.3.2 *Aim adjustment range.*

(a) When a headlamp system is tested in a laboratory, the range of its vertical aim shall not be less than ±4 degrees from the nominal correct aim position for the intended vehicle application. When installed on a motor vehicle, the range of vertical aim shall be not less than the full range of pitch of the vehicle on which the headlamp system is installed. The installed range of static pitch angle shall as a minimum be determined from unloaded vehicle weight to gross vehicle weight rating, and incorporate pitch angle effects from maximum trailer or trunk loadings, the full range of tire intermix sizes and suspensions recommended and/or installed by the vehicle manufacturer, and the anticipated effects of variable passenger loading. The vertical aim adjustment mechanism shall be continuously adjustable over the full range.

(b) When a headlamp system is tested in a laboratory, the range of its horizontal aim shall be not less than ±2.5 degrees from the nominal correct aim position for the intended vehicle application.

S8.3.3 *Mechanisms with independent reflector movement.* If the headlamp is aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, it shall:

(a) allow movement of the headlamp system, when tested in the laboratory, to be not less than the full range of pitch on the vehicle on which the headlamp system is installed and for the horizontal aim range limits of S8.3.2(b),

(b) conform with the photometrics applicable to it with the lens at any position relative to the reflector within the range limits as specified in S8.3.3(a)

(c) be exempted from the ±4 degree vertical aim range for laboratory testing of S8.3.2(a), and

(d) be exempted from the ±2.5 degree horizontal aim range of S8.3.2(b) if it is visually/optically aimable and has fixed horizontal aim.

S8.4 *External Mechanical aiming.* Each headlamp system that is capable of being mechanically aimed by externally applied headlamp aiming devices shall be mechanically aimable using the equipment specified in SAE Standard J602 DEC89 *Headlamp Aiming Device for Mechanically Aimable Headlamp Units* without the removal of any ornamental trim rings, covers, wipers or other vehicle parts. The torque deflection test of S8.4.1 assures that headlamps designed for external aiming are mounted to the vehicle in a manner sufficiently rigid to prevent aiming errors as a consequence of the weight of the headlamp aiming device. The inward force test limits the influence of aerodynamic forces on headlamp aim.

S8.4.1 *Torque deflection test.* The aim of the headlamps in each headlamp system that is designed to use such external aiming devices, shall not deviate more than 0.30 degree when a torque of 2.25 N-m (20 in-lb), applied about a horizontal axis in the aiming reference plane, is removed from the headlamp in its design operating position. The downward force used to create the torque shall be applied parallel to the aiming reference plane, through the aiming pads, and displaced forward using a lever arm that is perpendicular to the aiming reference plane and originates at the center of the aiming pad pattern (see Figures 4–1 and 4–3). For headlamps using the aiming pad locations of Group I, the distance between the point of application of force and the aiming reference plane shall be not less than 168.3 mm (6.625 in.) plus the distance from the aiming reference plane to the secondary plane, if used (see S8.3.4(a)). For headlamps using the aiming pad locations of Group II, the distance between the point of application of force and the aiming reference plane shall be not less than 167.9 mm (6.609 in) plus the distance from the aiming reference plane to the secondary plane, if used. For headlamps using the nonadjustable Headlamp Aiming Device Locating Plates for the 146 mm diameter, the 176 mm diameter, and the 92x150 mm sealed beam units, the distance between the point of application of force and the aiming plane shall, respectively, be not less than 177.4 mm (6.984 in), 176.2 mm (6.937 in), and 193.7 mm (7.625 in). For types A, B, C, D, E, F, G and H sealed beam headlamps the force shall be applied using the appropriate deflectometer described in SAE J1383 DEC96.

S8.4.2 *Inward force test.* When a headlamp is installed on a motor vehicle, its aim in any direction shall not change by more than 0.30 degree nor shall the lamp recede more than 2.5 mm (0.1 in) after being subjected to an inward force of 222N (50 lb) applied evenly to the lens parallel to the optical axis.

S8.4.3 *Corrosion test.* The mounting and aiming mechanism of each headlamp system shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73 *Method of Salt Spray (Fog) Testing* for a period of 50 hours, consisting of two successive 25-hour periods of 24 hours exposure followed by 1 hour of drying. At the end of 50 hours, the headlamp system shall be capable of meeting any of the applicable requirements of S8.

S8.4.4 *Lens marking for use of adjustable aimer locating plate.* Each headlamp system which is designed to use the type of Headlamp Aiming Device Locating Plates which uses adjustable length legs for the 100 x 165 mm unit and the 142 x 200 mm unit shall meet the requirements of S8.4.4 (a) and (b).

(a) The lens shall have three aiming pads which meet the requirements of Figure 4, *Dimensional Specifications for Location of Aiming Pads on Replaceable Bulb Headlamp Units.* The aiming pads need not be centered at the geometric center of the lens, or on the optical axis. Except as provided in subparagraph S8.4.4(b), a whole number, which represents the distance in tenths of an inch (i.e., 0.3 inch = 3) from the aiming reference plane to the respective aiming pads which are not in contact with that plane, shall be inscribed adjacent to each respective aiming pad on the lens. The height of these numbers shall be not less than 4 mm (0.157 in). If there is interference between the plane and the area of the lens between the aiming pads, the whole number represents the distance to a secondary plane. The secondary plane shall be located parallel to the aiming reference plane and as close to the lens as possible without causing interference.

(b) If the most forward aiming pad is the lower inboard aiming pad, then the dimensions may be placed anywhere on the lens. The dimension for the outboard aiming pad (Dimension F in Figure 4) shall be followed by the letter "H" and the dimension for the center aiming pad shall be followed by the letter "V." The dimensions shall be expressed in tenths of an inch.

S8.4.5 *Nonadjustable aimer locating plate.* Each headlamp may be designed to use the nonadjustable Headlamp Aiming Device Locating Plate for the 100 x 165 mm unit, the 142 x 200 mm unit, the 146 mm diameter unit, the 178 mm diameter unit, or the 92 x 150 mm unit of SAE J602 DEC89 and incorporate lens mounted aiming pads or other aimimg plane locators as specified for those units in Figures 27, 21, 22, 25 or 23 respectively in SAE J1383 DEC96. If so designed, no additional lens marking is necessary to designate the type of plate or dimensions.

S8.5 *On-vehicle mechanical aiming (VHAD).* Each headlamp system that is capable of being aimed by mechanical equipment installed on the vehicle shall include a Vehicle Headlamp Aiming Device (VHAD), providing for headlamp aim inspection and adjustment in both the vertical and horizontal axes, that conforms to the following requirements:

S8.5.1 *Vertical aim.* The VHAD shall include the necessary references and scales relative to the horizontal plane to assure correct vertical aim for photometry and aiming purposes. An off-vehicle measurement of the angle of the plane of the ground is permitted. In addition, an equal number of graduations from the "0" position representing angular changes in the axis in the upward and downward directions shall be provided.

(a) Each graduation shall represent a change in the vertical position of the mechanical axis not larger than 0.19 degree (2.54 mm at 7.61 m (1 in. at 25 ft)) to provide for variations in aim at least 1.2 degrees above and below the horizontal, and have an accuracy relative to the zero mark of less than 0.1 degree.

(b) The VHAD shall be marked to indicate headlamp aim movement in the upward and downward directions.

(c) Each graduation shall indicate a linear movement of the scale indicator of not less than 1.27 mm (0.05 in) if a direct reading analog indicator is used. If a remote reading indicator is provided, it shall represent the actual aim movement in a clear, understandable format.

(d) The vertical indicator shall perform through a minimum range of ±1.2 degrees.

(e) Means shall be provided in the VHAD for compensating for deviations in floor slope less than 1.2 degrees from the horizontal that would affect the correct positioning of the headlamp for vertical aim.

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(f) The graduations shall be legible under an illumination level not greater than 30 foot-candles, measured at the top of the graduation, by an observer having 20/20 vision (Snellen), and shall permit aim adjustment to within 0.19 degree (25.4 mm at 7.61 m (1 in. at 25 ft)).

S8.5.2 *Horizontal aim.* The VHAD shall include references and scales relative to the longitudinal axis of the vehicle necessary to assure correct horizontal aim for photometry and aiming purposes. An "0" mark shall be used to indicate alignment of the headlamps relative to the longitudinal axis of the vehicle. In addition, an equal number of graduations from the "0" position representing equal angular changes in the axis relative to the vehicle axis shall be provided.

(a) Each graduation shall represent a change in the horizontal position of the mechanical axis not greater than 0.38 degree (51 mm at 7.61 m (2 in. at 25 ft)) to provide for variations in aim at least 0.76 degree (102 mm at 7.61 m (4 in. at 25 ft.)) to the left and right of the longitudinal axis of the vehicle, and shall have an accuracy relative to the zero mark of less than 0.1 degree.

(b) The VHAD shall be marked to indicate headlamp aim movement in the left and right directions.

(c) The graduations shall be legible under an illumination level not greater than 30 foot-candles, measured at the top of the graduation, by an observer having 20/20 vision (Snellen), and shall permit aim adjustment to within 0.38 degree (51 mm at 7.61 m (2 in. at 25 ft.)).

(d) The horizontal indicator shall perform through a minimum range of ±0.76 degree (102 mm at 7.61 m (4 in. at 25 ft.)); however, the indicator itself shall be capable of recalibration over a movement of ±2.5 degrees relative to the longitudinal axis of the vehicle to accommodate any adjustment necessary for recalibrating the indicator after vehicle repair from accident damage.

S8.5.3 *Aiming labels and instructions.*

(a) The instructions for properly aiming the headlighting system using the VHAD shall be provided on a label permanently affixed to the vehicle adjacent to the VHAD, or in the vehicle operator's manual. The instructions shall advise that the headlighting system is properly aimed if the appropriate vertical plane (as defined by the vehicle manufacturer) is perpendicular to both the longitudinal axis of the vehicle, and a horizontal plane when the vehicle is on a horizontal surface, and the VHAD is set at "O" vertical and "O" horizontal.

(b) Should a remote indicator or a remote indicator and adjuster be provided, the instructions shall be placed in the operator's manual, and may also be placed on a label adjacent to the VHAD.

(c) Should the mechanism not meet the requirements of S8.3.1, a cautionary label shall be placed adjacent to the mechanism stating the caution and including either the reason for the caution or the corrective action necessary. Each such label shall also refer the reader to the vehicle operator's manual for complete instructions. Each such vehicle shall be equipped with an operator's manual containing the complete instructions appropriate for the mechanism installed.

S8.5.4 *Fixed VHAD calibration.* Each headlamp equipped with a VHAD that is manufactured for use on motor vehicles manufactured on or after September 1, 1998, shall be manufactured with the geometry of the VHAD devices permanently aligned with the beam pattern.

S8.5.5 *Testing the VHAD.*

S8.5.5.1 The headlamp assembly (the headlamp(s) and the VHAD(s)) shall be mounted on a level goniometer, aligned to a photometer located not less than 18.3 m (60 ft) from the VHAD assembly. The assembly shall be mechanically aimed using the VHAD in accordance with the manufacturer's instructions as provided with the vehicle on which the VHAD is intended to be used. A ¼ degree re-aim is permitted in any direction at any test point to allow for variations in readings between laboratories. The test shall be conducted in accordance with the photometry test procedures of paragraphs 5.1 and 5.1.4 of SAE J1383 DEC96. Under these conditions the mounted headlamp assembly shall be designed to conform to the photometric requirements appropriate for the headlamp system under test.

S8.5.5.2 When tested in accordance with S8.5.5.1, with any complying replacement headlamp unit(s) or complying light sources intended for use in the system under test, the VHAD and headlamp system shall be designed to conform to the photometric performance requirements appropriate for the system under test.

S8.5.5.3 With the same VHAD and associated headlamp(s) (or headlamp assembly) rigidly mounted in a headlamp test fixture, each graduation on the horizontal and vertical aim scales shall be checked and any variation from the correct aim shall not exceed ±0.2 degree, and ±0.1 degree respectively.

S8.5.5.4 The calibration of the VHAD shall be maintained under the following test conditions. The aimer shall be adjusted before each of the following tests to assure that the indicators are centered at 0 with the aiming plane horizontal and vertical and with the scale on the device set at 0.

(a) The VHAD and an unlighted headlamp assembly shall be stabilized at −7 ±3 degrees C (20 ±5 degrees F) in a circulating air environmental test chamber. After a period of 30 minutes, when measured at that soak temperature, the variation from correct horizontal or vertical aim shall not exceed ±0.2 degree, and ±0.1 degree, respectively.

(b) The VHAD, and the headlamp assembly with it highest wattage filament (or combination of filaments intended to be used simultaneously) energized at its design voltage, shall then be stabilized at 38 ±3 degrees C (100 ±5 degrees F) in a circulating air environmental test chamber. After a period of 30 minutes, when measured at that soak temperature, the variation from correct horizontal and vertical aim shall not exceed ±0.2 degree, and ±0.1 degree, respectively.

(c) The VHAD and an unlighted headlamp assembly shall then be placed in a circulating air environmental test chamber and exposed to a temperature of 60 ±3 degrees C (140 ±5 degrees F) for 24 hours, followed by a temperature of −40 ±5 degrees C (−40 ±3 degrees F) for 24 hours and then permitted to return to room temperature, after which the VHAD and headlamp assembly shall show no damage which would impair its ability to perform as specified herein. The variation from correct horizontal or vertical aim shall not exceed ±0.2 degree, and ±0.1 degree, respectively.

S8.5.5.5 The same VHAD and headlamp assembly shall then be tested according to the corrosion test procedure of S8.5.3.

S8.5.5.6 The same VHAD and headlamp assembly shall then be tested for photometric compliance as specified in S8.5.5.1 and S8.5.5.2.

S8.6 *Visual/optical aiming.* Each visually/optically aimable headlamp shall be designed to conform to the following requirements:

S8.6.1 *Vertical aim, lower beam.* Each lower beam headlamp shall have a cutoff in the beam pattern. It may be either on the left side or the right side of the optical axis, but once chosen for a particular headlamp system's design, the side chosen for the cutoff shall not be changed for any headlamps intended to be used as replacements for those system's headlamps.

S8.6.1.1 *Vertical position of cutoff:* The headlamp shall be aimed vertically

so that the cutoff is on the left side, at 0.4 degree down from the H–H line, or on the right side, at the H–H line.

S8.6.1.2 *Vertical gradient:* The gradient of the cutoff measured at either 2.5 degrees L or 2.0 degrees R shall be not less than 0.13 based on the procedure of S8.5.1.5.

S8.6.1.3 *Horizontal position of the cutoff:* The width shall be not less than two degrees, with not less than two degrees of its actual width centered at either 2.5 degrees L, or 2.0 degrees R.

S8.6.1.4 *Maximum inclination of cutoff:* The vertical location of the highest gradient at the ends of the minimum width shall be within ±0.2 degree of the vertical location of the maximum gradient measured at the appropriate vertical line (at either 2.5 degrees L for a left-side cutoff, or 2.0 degrees R for a right-side cutoff.)

S8.6.1.5 *Measuring the cutoff parameter:*

(a) The headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at the specified test voltage.

(b) The headlamp beam pattern shall be aimed with the cutoff at the H-H axis. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(c) A vertical scan of the beam pattern shall be conducted for a headlamp with a left-side gradient by aligning the goniometer on a vertical line at 2.5 degrees L and scanning from 1.5 degrees U to 1.5 degrees D. For a headlamp with a right-side gradient, a vertical scan of the beam pattern shall be conducted by aligning the goniometer on a vertical line at 2.0 degrees R and scanning from 1.5 degrees U to 1.5 degrees D.

(d) Determine the maximum gradient within the range of the scan by using the formula: $G = \log E(\alpha) - \log E(\alpha+0.1)$, where "G" is the gradient, "E" is illumination and "α" is vertical angular position. The maximum value of the gradient "G" determines the vertical angular location of the cutoff. Perform vertical scans at 1.0 degree L and R of the measurement point of the maximum gradient to determine the inclination.

S8.6.2 *Horizontal aim, lower beam.* There shall be no adjustment of horizontal aim unless the headlamp is equipped with a horizontal VHAD. If the headlamp has a VHAD, it shall be set to zero.

S8.6.3 *Vertical aim, upper beam.*

(a) If the upper beam is combined in a headlamp with a lower beam, the vertical aim of the upper beam shall not be changed from the aim set using the procedures of S8.6.1 and S8.6.2 used for the lower beam.

(b) If the upper beam is not combined in a headlamp with a lower beam, the vertical aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the H-H axis.

S8.6.4 *Horizontal aim, upper beam.*

(a) If the upper beam is combined in a headlamp with a lower beam, the horizontal aim of the upper beam shall not be changed from the aim set using the procedures of S8.6.1 and S8.6.2 used for the lower beam.

(b) If the upper beam is not combined in a headlamp with the lower beam and has fixed horizontal aim or has a horizontal VHAD, then the headlamp shall be mounted on a fixture which simulates its actual design location on any vehicle for which the headlamp is intended. The fixture, with the headlamp installed shall be attached to the goniometer table in such a way that the fixture alignment axes are coincident with the goniometer axes. The headlamp shall be energized at 12.8 V ±20 mV. There shall be no adjustment, shimming, or modification of the horizontal axis of the headlamp or test fixture, unless the headlamp is equipped with a VHAD. In this case the VHAD shall be adjusted to zero.

(c) If the upper beam is not combined in a headlamp with a lower beam, and it does not have a VHAD, the horizontal aim of the upper beam shall be adjusted so that the maximum beam intensity is located on the V-V axis.

S8.6.5 *Photometric Requirements and Measurement:*

(a) Instead of being designed to conform to the photometric requirements of Figures 15–1, 17–1, 27–1 or 28–1, a visually/optically aimable headlamp shall be designed to conform to the requirements of Figures 15–2, 17–2, 27–2 or 28–2 when tested in accordance with S8.6.5 (b) and SAE J575 JUN92, with the distance from the photometer to the headlamp no less than 18.3 m (60 ft).

(b) If the lower beam has a left side cutoff, reaim the headlamp vertically to place the maximum gradient found in S8.5 at 0.4 degree below the H-H line. For a headlamp with a lower beam right side cutoff, place the maximum gradient found in S8.5 at the H-H line. For an upper beam, the headlamp would already be aimed at the end of the procedure found in S8.5. A 0.25 degree reaim is permitted in any direction at any test point.

S8.6.6 *Marking.*

S8.6.6.1 Headlamp optical axis mark. There shall be a mark or markings identifying the optical axis of the headlamp visible from the front of the headlamp when installed on the vehicle, to assure proper horizontal and vertical alignment of the aiming screen or optical aiming equipment with the headlamp being aimed. The manufacturer is free to choose the design of the mark or markings. The mark or markings may be on the interior or exterior of the lens or indicated by a mark or central structure on the interior or exterior of the headlamp.

S8.6.6.2 *Visual/optical aimability identification marks.*

(a) The lens of a lower beam headlamp shall be marked "VOL" if the headlamp is intended to be visually/optically aimed using the left side of the lower beam pattern.

(b) The lens of a lower beam headlamp shall be marked "VOR" if the headlamp is intended to be visually/optically aimed using the right side of the lower beam pattern.

(c) The lens of each sealed beam or integral beam headlamp shall be marked "VOR" if the headlamp is of a type that was manufactured before March 1, 1997, and if such headlamp type has been redesigned since then to be visually/optically aimable.

(d) The lens of a headlamp that is solely an upper beam headlamp and intended to be visually/optically aimed using the upper beam shall be marked "VO".

(e) Each letter used in marking according to this paragraph shall be not less than 3 mm. (0.118 in) high.

S8.7 *Replacement headlamps.*

S8.7.1 If a headlamp using visual/optical aim or a VHAD is offered as a replacement for a headlamp using external mechanical aim, it shall have the same pattern of aiming pads as the original headlamp.

S8.7.2 A headlamp using visual/optical aim may be offered as a replacement for a headlamp using a VHAD only if the replacement headlamp has a horizontal VHAD complying with S8.5.

S8.7.3 A headlamp using a VHAD may be offered as a replacement for a headlamp using visual/optical aim.

S9. *Headlamp performance test procedures.*

S9.0 The following is a table of contents of the test procedures for headlamp performance.

S9.1 Photometry.
S9.2 Abrasion.

S9.3 Chemical resistance.
S9.4 Corrosion.
S9.5 Dust.
S9.6 Temperature and internal heat tests.
S9.7 Humidity.
S9.8 Vibration.
S9.9 Sealing.
S9.10 Chemical and corrosion resistance of reflectors of replaceable lens headlamps

S9.1 *Photometry.* Each headlamp to which S9 applies shall be tested according to the test procedures of Paragraphs 5.1 and 5.1.4 of SAE Standard J1383 DEC96 and the applicable photometric requirements specified in S7.4 or S7.5, after each test specified in S9.2, S9.3, S9.5, S9.6.1, S9.6.2, S9.7, and S9.10.1 and S9.10.2, if applicable. A 1/4 degree reaim is permitted in any direction at any test point.

S9.2 *Abrasion.*

S9.2.1 A headlamp shall be mounted in the abrasion test fixture in the manner indicated in Figure 5 with the lens facing upward.

S9.2.2 An abrading pad meeting the requirements in S9.2.2 (c)(1) through (c)(4) shall be cycled back and forth (1 cycle) for 11 cycles at 100 mm ± 20 mm (4 ± 0.8 in) per second over at least 80 percent of the lens surface, including all the area between the upper and lower aiming pads, but not including lens trim rings and edges.

S9.2.3(a) The abrading pad shall be not less than 25 mm ± 1 mm (1.0 ± .04 in) wide, constructed of 0000 steel wool, and rubber cemented to a rigid base shaped to the same vertical contour of the lens. The "grain" of the pad shall be perpendicular to the direction of motion.

(b) The abrading pad support shall be equal in size to the pad and the center of the support surface shall be within ± 2 mm (±.08 in) of parallel to the lens surface.

(c) The density of the abrading pad shall be such that when the pad is mounted to its support and is resting unweighted on the lens, the base of the pad shall be no closer than 3.2 mm (.125 in) to the lens at its closest point.

(d) When mounted on its support and resting on the lens of the test headlamp, the abrading pad shall then be weighted such that a pad pressure of 14 ± 1 kPpa (2.0 ± .15 psi) exists at the center and perpendicular to the face of the lens.

S9.2.4 A pivot shall be used if it is required to follow the contour of the lens.

S9.2.5 Unused steel wool shall be used for each test.

S9.3 *Chemical resistance.*

S9.3.1 The entire exterior lens surface of the headlamp in the headlamp test fixture and top surface of the lens-reflector joint shall be wiped once to the left and once to the right with a 150 mm (6 in) square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 60 ml (2 oz) of a test fluid as listed in S9.3.2. The lamp shall be wiped within 5 seconds after removal of the cloth from the test fluid.

S9.3.2 The test fluids are:

(a) ASTM Reference Fuel C, which is composed of Isooctane 50 percent volume and Toluene 50 percent volume. ASTM Reference Fuel C must be used as specified in OSHA Standard 29 CFR 1910.106—*Handling storage and use of flammable combustible liquids.*

(b) Tar remover (consisting by volume of 45 percent xylene and 55 percent petroleum base mineral spirits).

(c) Power steering fluid (as specified by the vehicle manufacturer for use in the motor vehicle on which the headlamp is intended to be installed).

(d) Windshield washer fluid consisting of 0.5 percent monoethanolamine with the remainder 50 percent concentration of methanol/distilled water by volume.

(e) Antifreeze (50 percent concentration of ethylene glycol/distilled water by volume).

S9.3.3 After the headlamp has been wiped with the test fluid, it shall be stored in its designed operating attitude for 48 hours at a temperature of 73 degrees F ± 7 degrees (23 degrees C ± 4 degrees) and a relative humidity of 30 ±10 percent. At the end of the 48-hour period, the headlamp shall be wiped clean with a soft dry cotton cloth and visually inspected.

S9.4 *Corrosion.*

(a) Prior to exposure, each terminal between the headlamp and its connector shall be tested with apparatus shown in Figure 11. The power source shall be set to provide 12.8 volts and the resistance shall be set to produce 10 amperes at each terminal and recorded. In the case of replaceable light source headlamps, the procedure may be performed with the light source removed from the headlamp. If necessary, holes may be made in the connector body or bulb base for access to the terminal. Such holes shall be plugged during the test procedure of paragraph (b) below, and reopened for the procedure of paragraph (c), below.

(b) The headlamp with connector attached to the terminals (but the rest of the apparatus of Figure 11 removed), unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing,* for 240 hours, consisting of ten successive 24-hour periods. During each period, the headlamp shall be mounted in the middle of the chamber and exposed for 23 hours to the salt spray. The spray shall not be activated during the 24th hour. The replaceable light source shall be removed from the headlamp and from the test chamber during the one hour of salt spray deactivation and reinserted for the start of the next test period, at the end of the first and last three 23-hour periods of salt spray exposure, and at the end of any two of the fourth through seventh 23-hour periods of salt-spray exposure. The test chamber shall be closed at all times except for a maximum of 2 minutes which is allowed for removal or replacement of the replaceable light source during each period. After the ten periods, the lens reflector unit without the bulb shall be immersed in deionized water for 5 minutes, then secured and allowed to dry by natural convection only.

(c) Using the voltage, resistance and pretest set up of subparagraph (a) the current in each terminal test circuit shall be measured after the salt spray exposure test conducted in subparagraph (b).

S9.5 *Dust.* The headlamp, mounted on a headlamp test fixture, with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be positioned within a cubical box, with inside measurements of 900 mm (35.4 in) on each side or larger if required for adequate wall clearance, i.e., a distance of at least 150 mm (5.9 in) between the headlamp and any wall of the box. The box shall contain 4.5 kg (9.9 lb) of fine powdered cement which conforms to the ASTM C150–77 specification for Portland Cement. Every 15 minutes, the cement shall be agitated by compressed air or fan blower(s) by projecting blasts of air for a two-second period in a downward direction so that the cement is diffused as uniformly as possible throughout the entire box. This test shall be continued for five hours after which the exterior surfaces of the headlamp shall be wiped clean.

S9.6 *Temperature and internal heat tests.* A headlamp with one or more replaceable light sources shall be tested according to S9.6.1 and S9.6.2. Tests shall be made with all filaments lighted at design voltage that are intended to be used simultaneously in the headlamp and which in combination draw the highest total wattage. These include but are not limited to filaments used for turn signal lamps, fog lamps, parking lamps, and headlamp lower beams

lighted with upper beams when the wiring harness is so connected on the vehicle. If a turn signal is included in the headlamp assembly, it shall be operated at 90 flashes a minute with a 75±2 percent current "on time." If the lamp produces both the upper and lower beam, it shall be tested in both the upper beam mode and the lower beam mode under the conditions above described, except for a headlamp with a single Type HB1 or HB2 light source.

S9.6.1 *Temperature cycle.* A headlamp, mounted on a headlamp test fixture, shall be subjected to 10 complete consecutive cycles having the thermal cycle profile shown in Figure 6. During the hot cycle, the lamp, shall be energized commencing at point "A" of Figure 6 and de-energized at point "B." Separate or single test chambers may be used to generate the environment of Figure 6. All drain holes, breathing devices or other openings or vents of the headlamps shall be in their normal operating positions.

S9.6.2 *Internal Heat Test.*

(a) The headlamp lens surface that would normally be exposed to road dirt shall be uniformly sprayed with any appropriate mixture of dust and water or other materials to reduce the photometric output at the H–V test point of the upper beam (or the 1/2D–1 1/2R test point of the lower beam as appropriate) to 25±2 percent of the output originally measured in the photometric test conducted pursuant to S7.4.2 or S7.5.2, as applicable. A headlamp with a single light source having two filaments shall be tested on the upper beam only. Such reduction shall be determined under the same conditions as that of the original photometric measurement.

(b) After the photometric output of the lamp has been reduced as specified in 9.6.(a), the lamp and its mounting hardware shall be mounted in an environmental chamber in a manner similar to that indicated in Figure 7 "Dirt/Ambient Test Setup." The headlamp shall be soaked for one hour at a temperature of 35 + 4 − 0 degrees C (95 + 7 − 0 degrees F) and then the lamp shall be energized according to S8.6 for one hour in a still air condition, allowing the temperature to rise from the soak temperature.

(c) The lamp shall be returned to a room ambient temperature of 23 + 4 − 0 degrees C (73 + 7 − 0 degrees F) and a relative humidity of 30 ± 10 percent and allowed to stabilize to the room ambient temperature. The lens shall then be cleaned.

S9.7 *Humidity.*

(a) The test fixture consists of a horizontal steel plate to which three threaded steel or aluminum rods of nominal 13 mm (0.5 in) diameter are screwed vertically behind the headlamp. The headlamp assembly is clamped to the vertical rods, which are behind the headlamp. All attachments to the headlamp assembly are made behind the lens and vents or openings, and are not within 51 mm (2 in) laterally of a vent inlet or outlet.

(b) The mounted headlamp assembly is oriented in its design operating position, and is placed in a controlled environment at a temperature of 38+4 − 0 degrees C (100+7 − 0 degrees F) with a relative humidity of not less than 90 percent. All drain holes, breathing devices, and other openings are in their normal operation positions for all phases of the humidity test. The headlamp shall be subjected to 24 consecutive 3-hour test cycles. In each cycle, it shall be energized for 1 hour at design voltage with the highest combination of filament wattages that are intended to be used, and then de-energized for 2 hours. If the headlamp incorporates a turn signal, it shall flash at 90 flashes per minute with a 75±2 percent current "on-time."

(c) Within 3 minutes after the completion of the 24th cycle, the air flow test will begin. The following shall occur: the mounted assembly shall be removed, placed in an insulating box and covered with foam material so that there is no visible air space around the assembly; the box shall be closed, taken to the air flow test chamber, and placed within it. Inside the chamber, the assembly with respect to the air flow, shall be oriented in its design operating position. The assembly is positioned in the chamber so that the center of the lens is in the center of the opening of the air flow entry duct during the test. The headlamp has at least 75 mm (3 in) clearance on all sides, and at least 100 mm (4 in) to the entry and exit ducts at the closest points. If vent tubes are used which extend below the lamp body, the 75 mm (3 in) are measured from the bottom of the vent tube or its protection. The temperature of the chamber is 23+4–0 degrees C (73+7–0 degrees F) with a relative humidity of 30+10–0 percent. The headlamp is not energized.

(d) Before the test specified in S9.7(e) the uniformity of the air flow in the empty test chamber at a plane 100 mm (4 in) downstream of the air entry duct shall have been measured over a 100 mm (4 in) square grid. The uniformity of air flow at each grid point is ±10 percent of the average air flow specified in S9.7(e) of this paragraph.

(e) The mounted assembly in the chamber shall be exposed, for 1 hour to an average air flow of 100+0–10 m/min (330+0–30 ft/min) as measured with an air velocity measuring probe having an accuracy of ±3 percent in the 100 m/min (330 ft/min) range. The average air flow is the average of the velocity recorded at six points around the perimeter of the lens. The six points are determined as follows: at the center of the lens, construct a horizontal plane. The first two points are located in the plane, 25 mm (1 in) outward from the intersection of the plane and each edge of the lens. Then, trisect the distance between these two points and construct longitudinal vertical planes at the two intermediate locations formed by the trisection. The four remaining points are located in the vertical planes, 25 mm (1 in) above the top edge of the lens, and 25 mm (1 in) below the bottom edge of the lens.

(f) After one hour, the headlamp is removed and inspected for moisture.

S9.8 *Vibration.* A vibration test shall be conducted in accordance with the procedures of SAE J2139 JAN94 *Tests for Lighting Devices and Components Used on Vehicles 2032 mm or More in Overall Width,* and the following: the table on the adapter plate shall be of sufficient size to completely contain the test fixture base with no overhang. The vibration shall be applied in the vertical axis of the headlamp system as mounted on the vehicle. The filament shall not be energized.

S9.9 *Sealing.* An unfixtured headlamp in its design mounting position shall be placed in water at a temperature of 60 ±3 degrees C (176 ±5 degrees F) for 1 hour. The headlamp shall be energized in its highest wattage mode, with the test voltage at 12.8 ±0.1 V. during immersion. The lamp shall then be de-energized and immediately submerged in its design mounting position into water at 0 +3–0 degrees C (32 +5–0 degrees F). The water shall be in a pressurized vessel, and the pressure shall be increased to 70 kPa (10 psi), upon placing the lamp in the water. The lamp shall remain in the pressurized vessel for a period of 30 minutes. This entire procedure shall be repeated for four cycles. Then the lamp shall be inspected for any signs of water on its interior. During the high temperature portion of the cycles, the lamp shall be observed for signs of air escaping from its interior. If any water occurs on the interior or air escapes, the lamp is not a sealed lamp.

S9.10 *Chemical and corrosion resistance of reflectors of replaceable lens headlamps.*

S9.10.1 *Chemical resistance.*

(a) With the headlamp in the headlamp test fixture and the lens removed, the entire surface of the reflector that receives light from a

headlamp light source shall be wiped once to the left and once to the right with a 150 mm (6 in) square soft cotton cloth (with pressure equally applied) which has been saturated once in a container with 60 ml (2 oz) of one of the test fluids listed in S9.10.1(b). The lamp shall be wiped within 5 seconds after removal of the cloth from the test fluid.

(b) The test fluids are tar remover (consisting by volume of 45 percent xylene and 55 percent petroleum base mineral spirits); mineral spirits; and fluids other than water contained in the manufacturer's instructions for cleaning the reflector.

(c) After the headlamp has been wiped with the test fluid, it shall be stored in its designed operating attitude for 48 hours at a temperature of 23 degrees C ± 4 degrees (73 degrees F ± 7 degrees) and a relative humidity of 30 ± 10 percent. At the end of the 48-hour period, the headlamp shall be wiped clean with a soft dry cotton cloth and visually inspected.

S9.10.2 *Corrosion.*

(a) The headlamp with the lens removed, unfixtured and in its designed operating attitude with all drain holes, breathing devices or other designed openings in their normal operating positions, shall be subjected to a salt spray (fog) test in accordance with ASTM B117–73, *Method of Salt Spray (Fog) Testing,* for 24 hours, while mounted in the middle of the chamber.

(b) Afterwards, the headlamp shall be stored in its designed operating attitude for 48 hours at a temperature of 23 degrees C ± 4 degrees (73 degrees F ± 7 degrees) and a relative humidity of 30 ± 10 percent and allowed to dry by natural convection only. At the end of the 48-hour period, the reflector shall be cleaned according to the instructions supplied with the headlamp manufacturer's replacement lens, and inspected. The lens and seal shall then be attached according to these instructions and the headlamp tested for photometric performance.

S10. *Headlamp concealment devices.*

S10.1 While the headlamp is illuminated, its fully-opened headlamp concealment device shall remain fully opened should any loss of power to or within the headlamp concealment device occur.

S10.2 Whenever any malfunction occurs in a component that controls or conducts power for the actuation of the headlamp concealment device shall be capable of being fully opened by a means not requiring the use of any tools. Thereafter, the headlamp concealment device must remain fully opened until intentionally closed.

S10.3 Except for malfunctions covered by S10.2, each headlamp concealment device shall be capable of being fully opened and the headlamps illuminated by actuation of a single switch, lever, or similar mechanism, including a mechanism that is automatically actuated by a change in ambient light conditions.

S10.4 Each headlamp concealment device shall be installed so that the headlamp may be mounted, aimed, and adjusted without removing any component of the device, other than components of the headlamp assembly.

S10.5 Except for cases of malfunction covered by S10.2, each headlamp concealment device shall, within an ambient temperature range of −29 degrees C to +49 degrees C (−20 degrees F to +120 degrees F), be capable of being fully opened in not more than 3 seconds after the actuation of the headlighting control.

S11. *Photometric test of DRL.* A lamp that is wired in accordance with S5.5.11, shall be tested for compliance with S5.5.11(a)(1) in accordance with the test method specified for photometric testing in SAE Standard J575 JUN92 when a test voltage of 12.8V ±20 mV is applied to the input terminals of the lamp switch module or voltage-reducing equipment, whichever is closer to the electrical source on the vehicle. The test distance from the lamp to the photometer shall be not less than 18.3 m (60 ft), if the lamp is optically combined with a headlamp, or is a separate lamp, and not less than 3 m (9.75 ft), if the lamp is optically combined with a lamp, other than a headlamp, that is required by this standard.

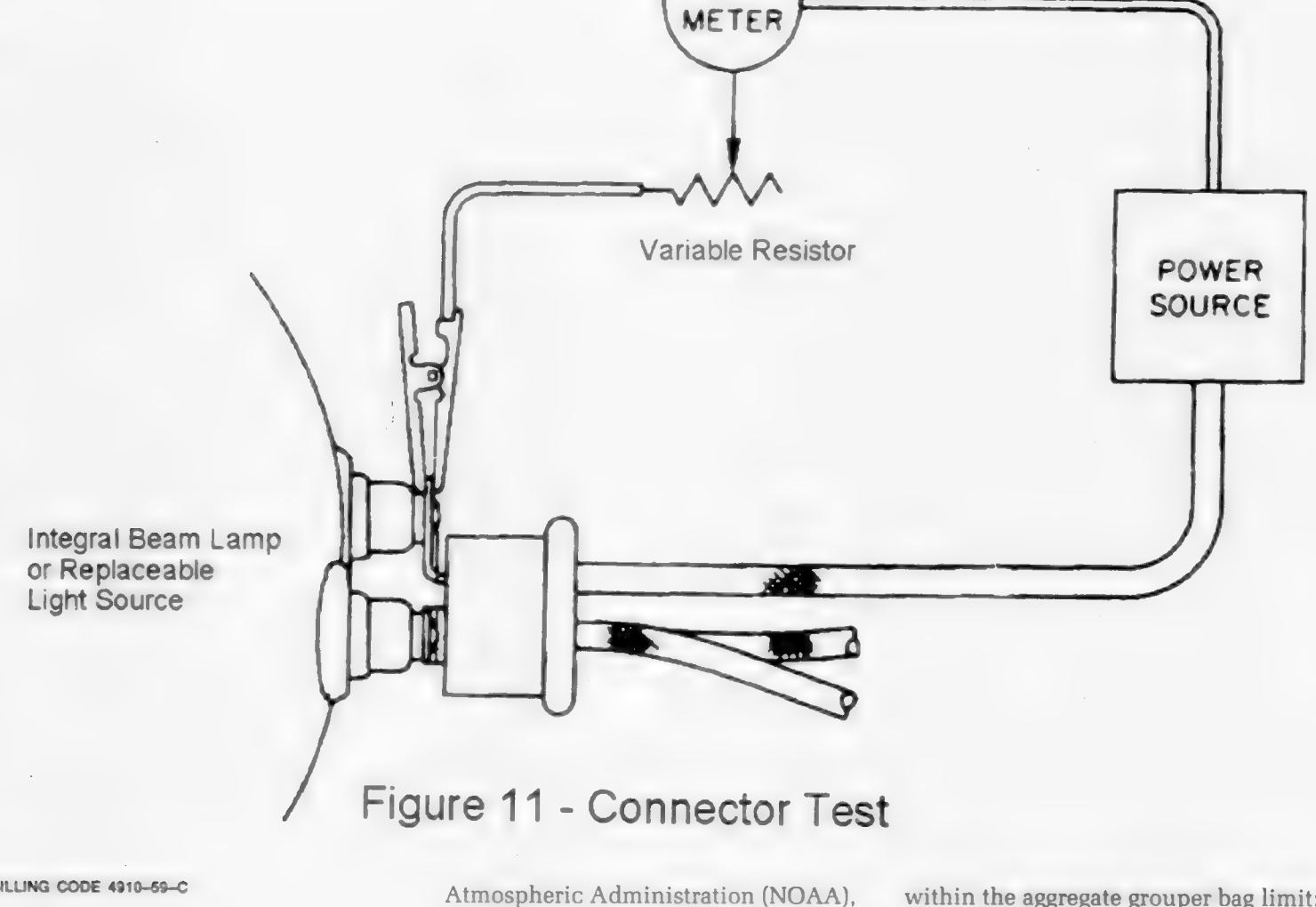

Figure 11 - Connector Test

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[Insert Figure 11]

* * * * *

BILLING CODE 4910–59–P

Issued on: November 4, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–29921 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 981006253–8253–01; I.D. 082698D]

RIN 0648–AK05

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 9 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). This proposed rule would increase the minimum size for red porgy, black sea bass, gag, and black grouper for all participants in the fishery; increase the minimum size for vermilion snapper for a person subject to the bag limit; establish bag limits for red porgy and black sea bass; during March and April, prohibit harvest and possession in excess of the bag limit and prohibit purchase and sale of red porgy, gag grouper, and black grouper; for greater amberjack, reduce the bag limit, establish a commercial quota and trip limit, prohibit sale of greater amberjack caught under the bag limit when the commercial fishery is closed, prohibit harvest and possession in excess of the bag limit during April, change the beginning of the fishing year to May 1, and prohibit coring (i.e., removing the head from the carcass); restrict possession of gag and black grouper within the aggregate grouper bag limit; establish an aggregate bag limit for all snapper-grouper species currently not under a bag limit (excluding tomtate and blue runner); require escape vents and escape panels with degradable hinges and fasteners in black sea bass pots; and specify that a vessel with longline gear on board may only possess certain deep-water species of snapper-grouper (i.e., snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish.) The intended effect of this rule is to reduce overfishing and to conserve and manage these snapper-grouper species.

DATES: Written comments must be received on or before December 28, 1998.

ADDRESSES: Comments on this proposed rule or on the initial regulatory flexibility analysis (IRFA) should be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N.,

St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Requests for copies of Amendment 9, which includes a final supplemental environmental impact statement, a regulatory impact review (RIR), an IRFA, and a social impact assessment/fishery impact statement should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Recent scientific stock assessments and public testimony have identified a number of snapper-grouper species as being overfished. The management measures in Amendment 9 are designed to prevent this overfishing, rebuild some of the overfished species, and manage the fishery in a more orderly manner. The Council has chosen management alternatives in Amendment 9 that would make substantial progress toward rebuilding stocks, where needed, by increasing the spawning potential ratio (SPR), which is used as a measure of stock status. For some species, up-to-date assessments were not available or data used for assessments were limited. For other species, recent landings trends and other information contradicted assessment information. The Council based decisions on the most recent and best scientific information available to ensure overfished stocks would be well on their way to recovery from the overfished status of below 30–percent SPR. For certain species, the Council chose alternatives that would further rebuild the species toward the optimum yield (OY) level, which is also expressed in terms of SPR.

Overfishing

The OY for species in the snapper-grouper management unit is 40–percent (static) SPR. Species that are below 30–percent (transitional) SPR are considered overfished and must be rebuilt as soon as possible.

Red porgy, black sea bass, vermilion snapper, and gag are overfished and in need of rebuilding. The status of black grouper is uncertain. Declining commercial landings and the average size of fish landed indicate that greater amberjack may be approaching a condition of being overfished. Thus, the Council has recommended precautionary management measures for black grouper and greater amberjack to ensure that overfishing does not occur. A general description of the biological status and proposed management measures for each species is given below.

Red Porgy

A 1994 stock assessment, based on data through 1992, indicated that red porgy is overfished, with an SPR of 13 percent. Fishing mortality needs to be reduced by 75 percent to achieve the OY of 40–percent SPR and must be reduced by 65 percent to eliminate overfishing.

This proposed rule would impose a 14–inch (35.6–cm) total length (TL) recreational and commercial minimum size limit, a 5–fish bag limit, and March-April seasonal harvest limitations. In combination, these measures should reduce total catch by 59 percent. This rule also proposes prohibiting all permitted dealers from purchasing red porgy during March and April regardless of where the red porgy is harvested or possessed (i.e., state or Federal waters). However, red porgy harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained. The Council believes that conservation measures enacted in 1992 have resulted in some stock rebuilding and that these proposed management measures should result in rebuilding the stock within 10 years in accordance with the FMP's current stock rebuilding schedule.

Decreased landings resulting from the March-April seasonal harvest limitations and the increase in minimum size should result in a loss in gross revenues from red porgy sales of about $268,500 in the first year. However, the increase in minimum size would result in an increase in yield-per-recruit, which should lead to increased commercial landings in future years. In addition, fishermen likely would increase effort for red porgy during the open season, which would reduce the estimated loss in revenues. There would be unquantified losses for the for-hire industry and a reduction in consumer surplus related to canceled private recreational trips. The reduction in landings in the short term would result in progress toward rebuilding the red porgy stocks; however, the offsetting benefits cannot be calculated precisely because there is insufficient information available to predict future yields that may be possible from a rebuilt stock.

Black Sea Bass

A 1996 stock assessment, based on data through 1995, indicates that black sea bass are overfished, with an SPR of 26 percent. In addition, the catch-per-unit-effort of headboats off South Carolina has declined from just over 11 fish per angler day in 1980 to just over 1 fish per angler day in 1995. In 1995, the commercial sector harvested about 49 percent of the total catch.

Fishing mortality needs to be reduced by 56 percent to achieve OY and by 22 percent to eliminate overfishing. This proposed rule would increase the minimum size limit to 10 inches (25.4 cm) and impose a 20–fish bag limit. In combination, these measures should reduce total catch by 34 percent. This proposed rule also would require escape vents and escape panels with degradable fasteners in black sea bass pots. This would minimize bycatch of juvenile fish and reduce release mortality from this component of the fishery. Also, handling of undersized fish would be reduced, which should result in a more efficient fishing operation. In the first year these measures would reduce commercial revenues by about $242,300 and reduce recreational landings by about 40 percent. However, revenues and landings are expected to increase as the resource rebuilds toward OY. The proposed management measures are expected to rebuild the black sea bass stock within 10 years in accordance with the FMP's current stock rebuilding schedule.

Greater Amberjack

A 1996 stock assessment, based on data through 1995, indicates an SPR of 84 percent. However, in a recent review of the status of fisheries required by the Magnuson-Stevens Act, NMFS' Southeast Fisheries Science Center (SEFSC) determined that the status of the stock relative to the FMP's current overfishing definition is unknown. The SEFSC found that the scant data and analyses used in the assessment yielded results inconsistent with subsequent data showing declines in average size and landings of greater amberjack. Accordingly, the Council is recommending precautionary measures to ensure that this species does not approach an overfished condition.

This rule proposes to: (1) Reduce the recreational bag limit from 3 to 1 greater

amberjack per person per day; (2) prohibit throughout the EEZ harvest and possession in excess of the bag limit during April ; (3) establish a 1,000–lb (454–kg) daily commercial trip limit; (4) establish a commercial quota of 1,169,931 lb (530,672 kg) (63 percent of the 1995 landings); (5) begin the fishing year May 1; (6) prohibit sale of fish harvested under the bag limit when the season is closed; and (7) prohibit coring (i.e., removing the head from the carcass). In 1995, the commercial sector harvested 66 percent of the total catch, although formerly most greater amberjack were taken by the recreational sector.

NMFS believes that the Council intended immediate implementation of the measures for greater amberjack that establish a quota and begin the fishing year on May 1. Therefore, NMFS will apply this quota to greater amberjack that have been landed since May 1, 1998.

In addition, this proposed rule would prohibit all permitted dealers from purchasing greater amberjack in April regardless of where the greater amberjack is harvested or possessed (i.e., state or Federal waters), with the exception that greater amberjack harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained, as specified in this proposed rule.

In combination, these measures should reduce total recreational and commercial landings of greater amberjack by 11 percent and 41 percent, respectively. This would result in a loss of commercial revenues of about $352,000–$397,000 in the first year. The reduction in landings in the short term would result in a more stable greater amberjack stock. The potential benefits of the proposed measures cannot be calculated precisely because there is insufficient information available to predict future yields that may result from the proposed measures.

Vermilion Snapper

A 1997 assessment, based on data through 1996, indicated that vermilion snapper were overfished, with an SPR of 27 percent. Fishing mortality must be reduced by between 39 and 51 percent to achieve OY and by between 11 and 31 percent to eliminate overfishing. In 1995, the commercial sector harvested about 75 percent of the catch.

This proposed rule would increase the recreational minimum size limit for vermillion snapper from 10 inches (25.4 cm) to 11 inches (27.9 cm) TL. This should reduce the recreational catch by about 9 percent in the short term. The associated reduction in fishing mortality and the increase in yield-per-recruit should result in sustainable increases in catch levels as the resource rebuilds. The Council believes that the proposed increase in minimum size limit would be sufficient to rebuild the stock within 10 years in accordance with the FMP's current stock rebuilding schedule. The Council will continue to monitor this species and, if necessary, implement additional measures to rebuild this resource.

Gag

The SPR for gag in a 1996 stock assessment, based on data through 1993, was 13 percent. This proposed rule would increase the minimum size limit for gag from 20 inches (50.8 cm) to 24 inches (61.0 cm) TL. This proposed rule also would prohibit the harvest and possession of gag in excess of the bag limit during March and April. This would protect the spawning stock, particularly males, which are more aggressive during this period and more susceptible to being caught. In 1995, about 71 percent of all gag were landed by commercial fishermen.

Further, this proposed rule would prohibit all permitted dealers from purchasing gag during March and April regardless of where the gag is harvested or possessed (i.e., state or Federal waters), with the exception that gag harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained, as specified in this proposed rule.

The proposed March-April seasonal harvest restrictions and the proposed increase in minimum size, in combination, should reduce commercial landings by about 37 percent in the first year. This represents a potential loss of up to $1,186,000 in annual gross revenues. The proposed increase in minimum size would substantially increase yield-per-recruit, which should lead to increased commercial landings in future years. The initial reduction in landings would result in progress toward rebuilding the gag resource, but the offsetting benefits cannot be calculated precisely because there is insufficient information available to predict future yields that may be possible from a rebuilt stock. The Council believes that the proposed measures would rebuild the gag stock above the 30–percent SPR level, if the natural mortality rate is 0.15 or higher, within 15 years in accordance with the FMP's current stock rebuilding schedule.

Black Grouper

The 1997 stock assessment, based on data through 1995, indicated that the SPR was about 5 percent. Because of the uncertainty of this estimate, the status of the stock is listed as unknown in NMFS' Report to Congress on Status of Fisheries of the United States, September 1997. In 1994, about 80 percent of the catch of black grouper was harvested by commercial fishermen.

This proposed rule would prohibit all permitted dealers from purchasing black grouper in March and April regardless of where the black grouper is harvested or possessed (i.e., state or Federal waters), with the exception that black grouper harvested from areas outside the South Atlantic could be purchased and possessed, provided appropriate documentation of the area of origin is maintained, as specified in this proposed rule.

This proposed rule would prohibit the harvest of black grouper in March and April (the spawning season) and would increase the minimum size limit (from 20 to 24 inches (50.8 to 61 cm)) TL . In combination, these measures should reduce commercial landings by 35 percent, which represents a potential $90,000 loss in gross revenues in the first year. The increase in the minimum size limit would reduce headboat landings by 71 percent (based on number of fish) or by 44 percent (based on weight). The reduction in landings in the short term would result in progress toward rebuilding the black grouper stocks, but the offsetting benefits cannot be calculated precisely because there is insufficient information available to predict future yields that may be possible from a rebuilt stock. However, the increase in minimum size limit would increase yield-per-recruit, and future recruitment should be enhanced by these measures, which should result in increased landings. The Council will continue to monitor the status of the stock and propose new measures, should they be required to rebuild the stock further.

Gag and Black Grouper Bag Limit Restriction

This proposed rule would impose a recreational bag limit of no more than two gag or black grouper, individually or in combination. This would help to minimize compliance problems associated with anglers' general inability to distinguish between these species, and would enhance enforcement efforts. The Council concluded that the bag limit would have little effect on the headboat sector and

an unknown economic effect on the charterboat or private/rental boat sectors. Although the impact of this measure can not be quantified, it should result in some conservation benefit. Also, it may help to direct fishing effort to species that are not overfished and not subject to such restrictive limits.

South Atlantic Snapper-Grouper 20–Fish Aggregate Bag Limit

This proposed rule would establish an aggregate bag limit of 20 South Atlantic Snapper-Grouper. No bag limit currently exists for these species. The proposed bag limit would provide some biological protection for these species and discourage commercial fishing by recreational fishermen. The 20–fish bag limit should reduce headboat catches by 1 percent and private/rental catches by about 7 percent. There would be no catch reduction for charter vessels. Total reduction in recreational catch should be less than 1 percent. This measure should help encourage anglers to conserve marine fishery resources and would enhance enforcement efforts.

Longline Restriction

Currently, bottom longline gear is allowed only in waters deeper than 50 fm and only north of St. Lucie Inlet, Florida. This restriction is designed to conserve mid-shelf species (i.e., those typically found in depths less than 50 fm) and to protect critical coral and live-bottom habitat. This proposed rule would further restrict vessels with longline gear on board to possession of only the following deep-water South Atlantic snapper-grouper species: Snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish.

Landings data indicate that longline vessels are catching species that are commonly found in depths of 50 fm or less, i.e., mid-shelf species. The proposed restriction would limit vessels with longline gear on board to possession of South Atlantic snapper-grouper that are typically found only in depths greater than 50 fm. This measure is designed to complement the existing prohibition on use of longline gear in depths shoreward of 50 fm.

Based on landings from 1994 to 1996, an average of 104,397 lb (47,354 kg) of mid-shelf species were landed annually by vessels with longline gear on board. Assuming an exvessel price of $1.50 per pound, annual gross revenue of up to $157,000 could be lost by longline vessels as a result of this proposed measure. This assumes that the number of fishing trips would remain the same as during the 1994–1996 period.

The Council is also concerned that bottom longlines are being used in areas that could suffer damage to bottom habitat. This proposed measure would further support keeping bottom longlines out of sensitive habitat areas, thereby meeting the Magnuson-Stevens Act mandate to protect essential fish habitat.

Availability of Amendment 9

Additional background and rationale for the measures discussed above are contained in Amendment 9, the availability of which was announced in the **Federal Register** (63 FR 47461; September 8, 1998). Written comments on Amendment 9 must be received on or before November 9, 1998. Comments that are received by November 9, 1998, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision. All comments received on Amendment 9 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Changes Proposed by NMFS

In § 622.36(b)(2), NMFS proposes to revise the wording of the seasonal harvest limitation for mutton snapper to improve clarity and provide consistency with other similar provisions in the regulations.

For the convenience of the reader, NMFS proposes to reorder the minimum sizes in § 622.37 based on species rather than on minimum size.

NMFS proposes to add language to § 622.39(a)(1) to advise vessel operators of their responsibility for ensuring compliance with bag and possession limits.

Classification

At this time, NMFS has not determined that Amendment 9 is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 9.

The Council prepared a final supplemental environmental impact statement for this FMP; a notice of availability was published on October 9, 1998 (63 FR 54476).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Council prepared an IRFA, based on the RIR, that describes the impact this proposed rule, if adopted, would have on small entities. Based on the IRFA, NMFS agrees with the Council's conclusion that Amendment 9, if approved and implemented through final regulations, would have a significant economic impact on a substantial number of small entities. A summary of the IRFA's assessment of the significant impacts on small entities follows.

The rule is designed to meet five specific objectives, the most important being the prevention of overfishing for a number of the snapper-grouper species. The Magnuson-Stevens Act provides the legal basis for the rule and no duplicative, overlapping or conflicting Federal rules were identified.

Under Amendment 8 to the FMP, about 2,000 commercial fishing businesses are expected to qualify for limited access permits when § 622.44(c) becomes effective on December 14, 1998. Most or all of these would be affected by Amendment 9 and are considered small entities for the purposes of the Regulatory Flexibility Act because their annual gross revenues are less than $3 million. Accordingly, it was determined that a substantial number of small entities would be expected to be affected for purposes of the Regulatory Flexibility Act. The Council concluded that the red porgy, black sea bass, amberjack, gag, black grouper actions, and the gear regulation addressing the possession of longline gear and certain snapper-grouper species could reduce revenues by as much as $2.3 million, or approximately 15 percent of the 1995 estimated ex-vessel value of the snapper grouper fishery. Although some actions would decrease recreational satisfaction due to restrictions of size or bag limits, there would be no decline in charterboat or headboat trips. The proposed rule would create a new recordkeeping requirement for permitted dealers in certain situations. The rule generally prohibits possession of red porgy, greater amberjack, gag, and black grouper during the closed seasons for these species. However, permitted dealers that have a documented paper trail showing that the fish were harvested in areas not under the jurisdiction of the Council would be allowed to possess these species during the closed seasons. The total cost of the public burden in terms of the value of the time spent by permitted dealers to create and/or maintain the paper trail record is estimated at $1,000. There would also be a compliance cost associated with a new requirement for escape panels and escape vents with biodegradable fasteners for black sea bass pots. The aggregate estimated cost

to make the necessary alterations to all existing black sea bass pots is $25,000.

Significant alternatives were identified for most of the actions proposed in Amendment 9. The status quo was identified as an alternative for all the actions under consideration but was rejected in all cases because continuing the status quo is not a feasible alternative under the Magnuson-Stevens Act. A number of other alternatives were identified for all the actions being considered and although some of these would minimize the adverse economic effects relative to the preferred alternatives, they did not meet the objectives, especially the biological objectives, specified as the basis for the amendment.

A copy of the IRFA is available for comment (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB Control Number.

This rule contains a new collection-of-information requirement subject to the PRA—namely, the requirement that dealers possessing red porgy, gag, black grouper, or greater amberjack during seasonal closures must maintain documentation that such fish were harvested from areas other than the South Atlantic. This requirement has been submitted to OMB for approval. The public reporting burden for this collection of information is estimated at 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collections of information, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 5, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.30, paragraph (d) is added to read as follows:

§ 622.30 Fishing years.

* * * * *

(d) *South Atlantic greater amberjack*—May 1 through April 30.

3. In § 622.36, headings for paragraphs (a) and (b) and new paragraphs (b)(4) and (b)(5) are added; paragraph (b) introductory text is removed; and paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 622.36 Seasonal harvest limitations.

(a) *Gulf EEZ.* * * *

(b) *South Atlantic EEZ*—(1) *Greater amberjack spawning season.* During April, each year, the possession of greater amberjack in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested, is limited to one per person per day or one per person per trip, whichever is more restrictive. Such greater amberjack are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(6).

(2) *Mutton snapper spawning season.* During May and June, each year, the possession of mutton snapper in or from the EEZ on board a vessel that has a commercial permit for South Atlantic snapper-grouper is limited to 10 per person per day or 10 per person per trip, whichever is more restrictive.

* * * * *

(4) *Black grouper and gag.* During March and April, each year, the possession of black grouper and gag in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such black grouper or gag were harvested, is limited to two black grouper or gag, combined, per person per day or two black grouper or gag, combined, per person per trip, whichever is more restrictive. Such black grouper or gag are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

(5) *Red porgy.* During March and April, each year, the possession of red porgy in or from the South Atlantic EEZ and in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such red porgy were harvested, is limited to five per person per day or five per person per trip, whichever is more restrictive. Such red porgy are subject to the prohibition on sale or purchase, as specified in § 622.45(d)(5).

4. In § 622.37, paragraph (e) is revised to read as follows:

§ 622.37 Minimum sizes.

* * * * *

(e) *South Atlantic snapper-grouper*—(1) *Snapper.* (i) Lane snapper—8 inches (20.3 cm), TL.

(ii) Vermilion snapper—11 inches (27.9 cm), TL, for a fish taken by a person subject to the bag limit specified in § 622.39 (d)(1)(v) and 12 inches (30.5 cm), TL, for a fish taken by a person not subject to the bag limit.

(iii) Blackfin, cubera, dog, gray, mahogany, queen, silk, and yellowtail snappers; and schoolmaster—12 inches (30.5 cm), TL.

(iv) Mutton snapper—16 inches (40.6 cm), TL.

(v) Red snapper—20 inches (50.8 cm), TL.

(2) *Grouper.* (i) Red, yellowfin, and yellowmouth grouper; and scamp—20 inches (50.8 cm), TL.

(ii) Black grouper and gag—24 inches (61.0 cm), TL.

(3) *Other snapper-grouper species.* (i) Black sea bass—10 inches (25.4 cm), TL.

(ii) Gray triggerfish in the South Atlantic EEZ off Florida—12 inches (30.5 cm), TL.

(iii) Hogfish—12 inches (30.5 cm), fork length.

(iv) Red porgy—14 inches (35.6 cm), TL.

(v) Greater amberjack—28 inches (71.1 cm), fork length, for a fish taken by a person subject to the bag limit specified in § 622.39(d)(1)(i) and 36 inches (91.4 cm), fork length, for a fish taken by a person not subject to the bag limit.

* * * * *

5. In § 622.38, paragraph (e) is removed; paragraphs (f) through (i) are redesignated as paragraphs (e) through (h), respectively; and paragraph (a) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(a) The following must be maintained with head and fins intact: Cobia, king mackerel, and Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, except as specified for king mackerel in paragraph (g) of this section; South Atlantic snapper-grouper in or from the South Atlantic EEZ, except as specified in paragraph (h) of this section; yellowtail snapper in or from the Caribbean EEZ; and finfish in or from the Gulf EEZ, except as specified in paragraphs (c), and (d) of this section. Such fish may be eviscerated, gilled, and scaled, but must otherwise be maintained in a whole condition.

* * * * *

6. In § 622.39, a concluding sentence is added to paragraph (a)(1); paragraphs (d)(1)(i), and (d)(1)(ii) are revised; and paragraphs (d)(1)(vi) through (viii) are added to read as follows:

§ 622.39 Bag and possession limits.

(a) * * * (1) * * * The operator of a vessel that fishes in the EEZ is responsible for ensuring that the bag and possession limits specified in this section are not exceeded.

* * * * *

(d) * * *

(1) * * *

(i) Greater amberjack—1.

(ii) Groupers, combined, excluding jewfish and Nassau grouper, and tilefishes—5. However, within the 5–fish aggregate bag limit, no more than two fish may be gag or black grouper, combined.

* * * * *

(vi) Red porgy—5.

(vii) Black sea bass—20.

(viii) South Atlantic snapper-grouper, combined, excluding tomtate and blue runner and those specified in paragraphs (d)(1)(i) through (vii) of this section—20.

* * * * *

7. In § 622.40, paragraph (b)(3)(i) is revised to read as follows:

§ 622.40 Limitations on traps and pots.

* * * * *

(b) * * *

(3) * * * (i) A sea bass pot that is used or possessed in the South Atlantic EEZ between 35°15.3' N. lat. (due east of Cape Hatteras Light, NC) and 28°35.1' N. lat. (due east of the NASA Vehicle Assembly Building, Cape Canaveral, FL) is required to have—

(A) On at least one side, excluding top and bottom, a panel or door with an opening equal to or larger than the interior end of the trap's throat (funnel). The hinges and fasteners of each panel or door must be made of one of the following degradable materials:

(*1*) Ungalvanized or uncoated iron wire with a diameter not exceeding 0.041 inches (1.0 mm), that is, 19 gauge wire.

(*2*) Galvanic timed-release mechanisms with a letter grade designation (degradability index) no higher than J.

(B) An unobstructed escape vent opening on at least two opposite vertical sides, excluding top and bottom. The minimum dimensions of an escape vent opening (based on inside measurement) are:

(*1*) 1 1/8 by 5 3/4 inches (2.9 by 14.6 cm) for a rectangular vent.

(*2*) 1.75 by 1.75 inches (4.5 by 4.5 cm) for a square vent.

(*3*) 2.0–inch (5.1–cm) diameter for a round vent.

* * * * *

8. In § 622.41, paragraph (d)(6) is added to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(d) * * *

(6) *Longline species limitation.* A vessel that has on board a valid Federal commercial permit for South Atlantic snapper-grouper, excluding wreckfish, that fishes in the EEZ on a trip with a longline on board, may possess only the following South Atlantic snapper-grouper: snowy grouper, warsaw grouper, yellowedge grouper, misty grouper, golden tilefish, blueline tilefish, and sand tilefish. For the purpose of this paragraph, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter suitable for use in the longline fishery on any reel, and gangions are on board. Removal of any one of these three elements constitutes removal of a longline.

* * * * *

9. In § 622.42, paragraph (e)(3) is added to read as follows:

§ 622.42 Quotas.

* * * * *

(e) * * *

(3) *Greater amberjack*—1,169,931 lb (530,672 kg), gutted weight, that is, eviscerated but otherwise whole.

* * * * *

10. In § 622.43, paragraphs (a)(5) and (b)(1) are revised to read as follows:

§ 622.43 Closures.

(a) * * *

(5) *South Atlantic snapper-grouper, excluding wreckfish.* (i) *Greater amberjack.* The bag limit specified in § 622.39(d)(1)(i) and the possession limits specified in § 622.39(d)(2) apply to all harvest or possession of greater amberjack in or from the South Atlantic EEZ, and the sale or purchase of greater amberjack taken from the EEZ is prohibited. In addition, the bag and possession limits for greater amberjack and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such greater amberjack were harvested.

(ii) *Golden tilefish and snowy grouper.* Golden tilefish and snowy grouper, for which there are quotas, are managed under the commercial trip limits specified in § 622.44(c) in lieu of the closure provisions of this section.

* * * * *

(b) * * * (1) The prohibition on sale/purchase during a closure for Gulf reef fish, king and Spanish mackerel, royal red shrimp, greater amberjack, or wreckfish in paragraph (a)(1), (a)(3)(iii), (a)(4), (a)(5)(i), or (a)(6) of this section does not apply to the indicated species that were harvested, landed ashore, and sold prior to the effective date of the closure and were held in cold storage by a dealer or processor.

* * * * *

11. Section 622.44(c), which was published at 63 FR 38303, July 16, 1998, is proposed to be amended by adding paragraph (c)(4) to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(4) *Greater amberjack.* Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg).

* * * * *

12. In § 622.45, paragraphs (d)(5) and (d)(6) are added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(5) During March and April, no person may sell or purchase a red porgy, gag, or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on

sale/purchase during March and April does not apply to red porgy, gag, or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of red porgy, gag, or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the red porgy, gag, or black grouper;

(iii) The port and date of offloading from the vessel harvesting the red porgy, gag, or black grouper; and

(iv) A statement signed by the dealer attesting that the red porgy, gag, or black grouper was harvested from an area other than the South Atlantic.

(6) During April, no person may sell or purchase a greater amberjack harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during April does not apply to greater amberjack that were harvested, landed ashore, and sold prior to April 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of greater amberjack harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the greater amberjack;

(iii) The port and date of offloading from the vessel harvesting the greater amberjack; and

(iv) A statement signed by the dealer attesting that the greater amberjack was harvested from an area other than the South Atlantic.

* * * * *

13. Figure 2 of Appendix C to Part 622 is amended by removing the reference to "length for deheaded greater amberjack.

[FR Doc. 98–30230 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

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Notices

Federal Register
Vol. 63, No. 218
Thursday, November 12, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 97–057N]

Notice of Change of Inspection Procedures; Adoption of Selective Carcass Palpation Procedure for Lambs

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) of the Department of Agriculture (USDA) is clarifying the changes that it intends to make in its inspection procedures for lambs. Currently, inspectors extensively palpate the carcasses of lambs for the purpose of detecting and removing carcasses with caseous lymphadenitis. The Agency announced in a October 27, 1997, **Federal Register** notice that it would be changing its inspection procedure for lambs in response to a petition from the American Sheep Association. In this notice, the Agency is clarifying the changes that it intends to make and the basis for those changes.

FOR FURTHER INFORMATION CONTACT: Dr. Alice Thaler, Chief, Concepts and Design Branch, Inspection Systems Development Division, Office of Policy, Program Development, and Evaluation, FSIS; telephone (202) 205–0005 or FAX (202) 690–0824.

SUPPLEMENTARY INFORMATION: FSIS is issuing this notice to clarify, and to provide additional information about the basis for, certain planned changes in how it inspects lamb carcasses that it announced in the **Federal Register** of October 27, 1997 (62 FR 55569). The National Advisory Committee on Meat and Poultry Inspection recommended that FSIS clarify the terminology that it used in the October 27 notice, and that the Agency more fully explain the basis for its planned action. In the October 27 notice, FSIS used the term "hands-on" to describe its current inspection procedures and the term "hands-off" to describe the new inspection procedures that it planned to implement. FSIS believes that the terms "extensive carcass palpation" and "selective carcass palpation" more accurately describe its current and its planned new inspection procedures for lambs. Thus, it is replacing the terms used in the October 27 notice to describe its inspection procedures with these terms and will use these terms.

Traditionally, USDA meat inspectors have extensively palpated the carcasses of lambs as part of their post-mortem evaluation of these animals. The American Sheep Industry Association petitioned the Agency to end this practice for food safety reasons. The primary justification for this long-standing extensive carcass palpation practice was to detect carcasses with caseous lymphadenitis.

In determining the desirability of such a procedure for lambs, FSIS considered two questions: (1) Will diseased carcasses or parts be more likely to reach consumers using a selective carcass palpation inspection procedure, and (2) Are current inspection procedures which use extensive carcass palpation likely to be spreading or adding contamination to carcasses?

Description of Extensive and Selective Carcass Palpation

Extensive carcass palpation for lambs is described in the Meat and Poultry Inspection Manual's inspection procedures for sheep (which includes lambs) and goats (MPI Manual 11.1(j)(2)) as follows:

- Palpate prefemoral, superficial inguinal, or supramammary, and popliteal lymph nodes.
- Palpate back and sides of carcass.
- Palpate prescapular lymph nodes and shoulders, and lift forelegs.

These procedures are considered extensive carcass palpation because no other livestock species receives palpation of this magnitude.

In contrast, selective carcass palpation will mean that inspectors palpate lamb carcasses only when they have reason to believe that disease conditions or pathology may be present. Selective carcass palpation will apply only to carcasses and not to viscera. Selective carcass palpation will not change other inspection procedures for lambs such as turning the carcass, which is necessary to perform inspection procedures.

Comparing Extensive Carcass Palpation to Selective Carcass Palpation Procedures

In determining whether to change inspection procedures for lamb carcasses, FSIS first considered the benefits derived from extensive carcass palpation and determined what food safety or other consumer protection benefits, if any, are attributable to the current inspection procedure. Caseous lymphadenitis is the primary disease of lambs detected by extensive carcass palpation. In the United States, six federally inspected plants slaughter 80 percent of the lambs. From Fiscal Years 1987 to 1996, these six plants slaughtered 26,347,480 lambs and yearlings (present data do not distinguish between lambs and yearlings), and FSIS inspectors condemned only 1,203 animals for caseous lymphadenitis, a 0.0046 percent condemnation rate.

Caseous lymphadenitis is rare in lambs, and it does not cause foodborne illness in people who eat lamb, regardless of how thoroughly or not it is cooked, or in people who handle lamb. Of the diseases routinely present in lambs, seven are of public health concern: actinobacillosis, campylobacteriosis, contagious ecthyma, echinococcosis, leptospirosis, Salmonella dysentery, and toxoplasmosis. None of these seven, however, requires carcass palpation for diagnosis.

FSIS then considered whether the current inspection techniques used on lambs that employ extensive carcass palpation cause inspectors to spread or add contamination to lamb carcasses. Although there is no published data on this question, the unpublished data provided to FSIS by the American Sheep Industry Association (LeValley 1997) [1] and data from other food handling and health care industries (Gould and Ream 1996; Wenzel and Pulverer 1995), support the concern that extensive carcass palpation can contaminate lamb carcasses or spread contamination.

[1] This information is on display in the FSIS Docket Room, 300 12th St., SW., Washington, DC.

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Conclusion

The primary reason for extensive carcass palpation in lambs is to detect lesions of caseous lymphadenitis. This disease does not cause foodborne illness and has an extremely low prevalence in lambs. Other diseases routinely present in lamb carcasses that are of public health concern are not detected by carcass palpation. Therefore, there is little basis to find that selective carcass palpation will cause foodborne illness or cause diseased carcasses or parts to reach consumers.

On the other hand, the cited literature attests to the fact that hands are capable of spreading or adding microorganisms. Although it has not been proven directly that extensive carcass palpation by lamb inspectors causes microbial contamination or actually spreads such contamination, the evidence from the sheep industry and allied industries strongly suggests that this can occur. Thus, current inspection procedures using extensive carcass palpation can spread or add contamination to carcasses.

FSIS, therefore, announced in the October 27, 1997, **Federal Register** notice that it was taking a hands-off inspection approach to lambs. As stated previously, this approach is more accurately described as selective carcass palpation. Adopting this approach entails a number of steps, including consultation with employee organizations. Additional information may be found in a new FSIS directive on the Agency's planned inspection procedures for lambs, which will be effective upon publication and after consultations have been completed.

FSIS will continue to monitor condemnation rates in plants that slaughter lambs to identify the impact, if any, of the change. Further, the Agency intends to look at the implications of handling product during inspection procedures with regard to the production of all meat and poultry products.

Done at Washington, DC, on: November 4, 1998.

Thomas J. Billy,

Administrator.

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[FR Doc. 98–30182 Filed 11–10–98; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Sunshine Act Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2:00 p.m., Wednesday, November 18, 1998.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: Introduction of board directors and staff and general discussion involving:

1. 1999 agency budget.
2. Current telecommunications industry issues.
3. Liquidating account and Federal Credit Reform.
4. Status of PBO planning.
5. Legal advisor to privatization committee.
6. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9:00 a.m., Thursday, November 19, 1998.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Report on board election results.
3. Oath of office.
4. Election of board officers; Chairperson, Vice Chair, Secretary, and Treasurer.
5. Action on the August 21, 1998, Minutes.
6. Report on loans approved in FY 1998.
7. Summary of financial activity for FY 1998.
8. Report on interest earned on amounts in the liquidating account.
9. Governor's report on PBO planning.
10. Consideration of resolution to re-establish the privatization committee.
11. Consideration of resolution to approve Roberta D. Purcell to serve as the Assistant Governor.
12. Establish date and location of next regular board meeting.
13. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: November 5, 1998.

Christopher A. McLean,

Deputy Governor, Rural Telephone Bank.

[FR Doc. 98–30390 Filed 11–9–98; 2:18 pm]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Iowa Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:30 p.m. on December 7, 1998, at the Marriott Hotel, 700 Grand Avenue, Des Moines, Iowa 50309. The purpose of the meeting is to hold orientation for new members and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, .

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 98–30202 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Maine Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 1:30 p.m. on December 4, 1998, at the Central Maine Power Offices, Conference Room, 83 Edison Drive, Augusta, Maine 04336. The Committee will be briefed by invited civil rights advocates on the status of civil rights issues in Maine. The Committee will also plan future events and review a draft of the Committee report, *Limited English Proficient Students in Maine: An Assessment of Equal Educational Opportunities.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gerald Talbot, 207–772–6098 or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, .

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 98–30200 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on December 9, 1998, at the Crowne Plaza Downtown Jackson, 200 East Amite, Jackson, Mississippi 39201. The purpose of the meeting is to hold orientation for new members and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 5, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–30203 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 7:30 p.m. on December 1, 1998, at the Office of the Rhode Island General Treasurer, Conference Room, State House, Providence, Rhode Island 02903. The Committee will be briefed by invited civil rights advocates on the status of civil rights issues in Rhode Island. The Committee will also plan future events and review a draft of the Committee's statement of concern, *The Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Olga Noguera, 401–464–1876 or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at

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least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, .

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 98–30201 Filed 11–10–98; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed disposals of excess commodities from the National Defense Stockpile. The Department of Defense plans to further revise certain material quantities included in the proposed Fiscal Year (FY) 1999 and the FY 2000 Annual Materials Plans (AMP). Defense has requested that the Committee consider the proposed revisions to the AMP disposal levels.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee seeks comments concerning the potential market impact of disposals of excess materials from the Stockpile. The Departments of Commerce and State co-chair the Committee. The FY 1999 and proposed FY 2000 AMP materials under review are Bauxite (refractory), Tungsten (Ferro), Columbium Metal Ingots, Platinum-Iridium, and Tantalum Metal Ingots.

DATE: The Commerce Department must receive comments by December 14, 1998.

ADDRESSES: Please send all written comments to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; FAX (202) 501–0657.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–2871; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: The Department of Defense, as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. The stockpile was established under the authority of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*). Defense is required by law to refrain from causing undue market disruption, while at the same time protecting the U.S. Government against avoidable loss, when disposing and acquiring materials.

The President appointed an Interagency Market Impact Committee (the Committee) under the FY 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h–1) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile. * * *" The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The Committee requests that interested parties provide comment on the potential market impact of the proposed revised disposals of these commodities. This information will enhance the quality of advice that the Committee offers to Defense.

The AMP listing below includes the proposed maximum disposal quantity for each material. These quantities are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time as well as on the quantity of material approved for disposal by Congress.

PROPOSED REVISION TO FY 1999 AMP AND TO PROPOSED FY 2000 AMP

Material	Units	Current FY 1999 quantity	Revised FY 1999 quantity	Revised FY 2000 quantity
Bauxite (Refractory)	LCT ..	0	29,000	29,000
Columbium Metal Ingots	Lb Cb	0	20,000	20,000
Tantalum Metal Ingots	Lb Ta	0	40,000	40,000
Tungsten (Ferro)	Lb W	100,000	400,000	400,000
Platinum-Iridium	Tr Oz	0	4,450	4,450

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Public comments in response to this Notice must be received by December 14, 1998 to ensure the Committee's full consideration. Interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed of any market impact resulting from the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the

public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Mr. Henry Gaston, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: November 4, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–30157 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of November 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in November for the following periods:

	Periods
Antidumping Duty Proceedings	
Argentina:	
Barbed Wire & Barbless Fencing Wire, A–357–405	11/1/97–10/31/98
Carbon Steel Wire Rods, A–357–007	11/1/97–10/31/98
Brazil: Circular Welded Non-Alloy Steel Pipe, A–351–809	11/1/97–10/31/98
Japan:	
Bicycle Speedometers, A–588–038	11/1/97–10/31/98
Light Scattering Instruments, A–588–813	11/1/97–10/31/98
Mexico: Circular Welded Non-Alloy Steel Pipe, A–201–805	11/1/97–10/31/98
Singapore: Light-Walled Rectangular Pipe & Tube, A–559–502	11/1/97–10/31/98
Republic of Korea: Circular Welded Non-Alloy Steel Pipe, A–580–809	11/1/97–10/31/98
Taiwan:	
Circular Welded Non-Alloy Steel Pipe, A–583–814	11/1/97–10/31/98
Collated Roofing Nails, A–583–826	11/20/97–10/31/98
The People's Republic of China:	
Collated Roofing Nails, A–570–850	11/20/97–10/31/98
Garlic, A–570–831	11/1/97–10/31/98
Paper Clips, A–570–826	11/1/97–10/31/98
Tungsten Ore Concentrates, A–570–811	11/1/97–10/31/98
Venezuela: Circular Welded Non-Alloy Steel Pipe, A–307–805	11/1/97–10/31/98
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
Japan: Certain Small Electric Motors of 5 to 150 Hoursepower, CA–588–090	11/1/97–10/31/98
Mexico: Fresh Tomatoes, CA–201–820	11/1/97–10/31/98
Russia: Cut-to-Length Carbon Steel Plate, A–821–808	11/1/97–10/31/98
South Africa: Cut-to-Length Carbon Steel Plate, A–791–804	11/1/97–10/31/98
The People's Republic of China: Cut-to-Length Carbon Steel Plate, A–570–849	11/1/97–10/31/98
The Ukraine:	
Cut-to-Length Carbon Steel Plate, A–823–808	11/1/97–10/31/98
Silicomanganese, A–823–805	11/1/97–10/31/98

In accordance with § 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27424 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or

a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of orgin and each country of orgin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party of the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of November 1998. If the Department does not receive, by the last day of November 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 5, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30281 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties

AGENCY: International Trade Administration/Import Administration, Department of Commerce

ACTION: Rebuttal period for comments on policy concerning assessment of antidumping duties.

SUMMARY: On October 15, 1998, the Department of Commerce published in the **Federal Register** (63 FR 55361) a request for parties to comment on the Department's regulation on automatic liquidation where a reseller has been involved in the chain of commerce for merchandise. This notice establishes a rebuttal period.

FOR FURTHER INFORMATION CONTACT: Joan L. MacKenzie, Senior Attorney, Office of the Chief Counsel for Import Administration, (202) 482–1310, or Laurie Parkhill, Director, Office 3, Import Administration, (202) 482–4733.

SUPPLEMENTARY INFORMATION: On October 15, 1998, the Department of Commerce published in the **Federal Register** (63 FR 55361) a request for parties to comment on the Department's regulation on automatic liquidation where a reseller has been involved in the chain of commerce for merchandise. This notice establishes a rebuttal period to any comments submitted in response to the October 15, 1998, notice.

Subsequent to the publication of the October 15, 1998 notice, we received a request to extend the due date for comments. This request was granted and comments are now due Friday, November 13, 1998. In addition, on October 23, 1998, we received a request that we establish a period for rebuttal to any comments submitted in response to the October 15, 1998, notice. The Department is granting the request for a rebuttal period. All rebuttal comments will be due Friday, December 4, 1998.

To help simplify the processing and distribution of comments and rebuttals, the Department requests that a submission in electronic form accompany the required paper copies. Comments filed in electronic form should be on a DOS formatted 3.5" diskette in either WordPerfect format or a format that the WordPerfect program can convert into WordPerfect. Please make each comment a separate file on the diskette and name each separate file using the name of the proposed document, *e.g.*, "Reseller Liquidation."

Comments received on diskette will be made available to the public on the Web at the following address: "http://www.ita.doc.gov/import admin/ i records/". In addition, upon request, the Department will make comments filed in electronic form available to the public on 3.5" diskettes (at cost) with specific instructions for accessing compressed data (if necessary). Any questions concerning file formatting, document conversion, access on the Web, or other electronic filing issues should be addressed to Andrew Lee Beller, IA Webmaster, at (202) 482-0866 or via e-mail at andrew lee beller@ita.doc.gov.

Address written comments to Robert S. LaRussa, Assistant Secretary for Import Administration, Dockets Center, Room 1870, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230. Attention: Laurie Parkhill, Comment on Automatic Liquidation.

Dated: November 3, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30237 Filed 11–6–98; 3:08 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1997–1998 antidumping duty administrative review and new shipper review of stainless steel bar from India.

SUMMARY: In response to requests from Bhansali Bright Bars Pvt. Ltd. and Venus Wire Industries Limited, the Department of Commerce is conducting an administrative review of the antidumping duty order on stainless steel bar from India. In response to requests from Sindia Steels Limited, Chandan Steel Limited, and Madhya Pradesh Iron & Steel Company, the Department of Commerce is conducting a new shipper review of the antidumping duty order on stainless steel bar from India. These reviews cover sales of stainless steel bar to the United States during the period February 1, 1997, through January 31, 1998.

We have preliminarily determined that, during the period of review, Venus Wire Industries Limited, Sindia Steels Limited, and Madhya Pradesh Iron & Steel Company made sales below normal value and that Bhansali Bright Bars Pvt. Ltd. and Chandan Steel Limited did not make sales below normal value. If these preliminary results are adopted in our final results of administrative review and new shipper review, we will instruct the Customs Service to assess antidumping duties equal to the difference between the export price and the normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: November 12, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith or James Breeden, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1998).

Background

On February 23 and February 25, 1998, the Department received requests from Bhansali Bright Bars Pvt. Ltd. ("Bhansali") and Venus Wire Industries Limited ("Venus") to conduct an administrative review of the antidumping duty order on stainless steel bar from India. The Department published in the **Federal Register**, on March 23, 1998, a notice of initiation of an administrative review of Bhansali and Venus covering the period February 1, 1997, through January 31, 1998 (63 FR 13837).

On February 19, 1998, Sindia Steels Limited ("Sindia") requested that we conduct a new shipper review. Sindia's request was followed by similar requests from Chandan Steel Limited ("Chandan") and Madhya Pradesh Iron and Steel Company ("Madhya") on February 27, 1998. We published the notice of initiation for this new shipper review on April 7, 1997 (63 FR 16972). This new shipper review covers the same period as the administrative review and, pursuant to section 751(a) of the Act and 19 CFR 351.214(j)(3), is being conducted concurrently with the administrative review.

On August 14 and October 30, 1998, the Department initiated sales below cost investigations of Madhya and Bhansali, respectively. A sales below cost analysis of Bhansali is not included in this notice because the sales below cost investigation was initiated shortly before issuance of these preliminary results. A sales below cost analysis of Madhya is not included in this notice because Madhya did not submit the requested cost information in a timely manner *(see, Facts Available,* below).

Scope of Reviews

Imports covered by these reviews are shipments of stainless steel bar ("SSB"). SSB means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. SSB includes cold-finished SSBs that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut length flat-rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in-thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes and sections.

The SSB subject to this order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Use of Facts Otherwise Available

Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and that is necessary to the determination but which does not meet all the applicable requirements established by the Department if—

(1) The information is submitted by the deadline established for its submission,

(2) The information can be verified,

(3) The information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) The interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the Department with respect to the information, and

(5) The information can be used without undue difficulties.

On September 3, 1998, Madhya requested a one week extension in which to submit its responses to Section D (Cost of Production and Constructed Value) of the original questionnaire and to the Department's supplemental questionnaire. In support of its request, Madhya stated that it needed additional time because it was having difficulty responding to both questionnaires at the same time. We granted its request. On the date the responses were due, we received an additional request for an extension from Madhya's counsel. Counsel explained that, as of this date, it had not received the questionnaire responses from Madhya; in fact, counsel had "not heard from them." We granted the request. Finally, on September 14, 1998, the date the questionnaire responses were due, we received a request for a third extension. The only reasoning supplied to the Department was that the responses from India had not yet been provided to counsel. Because we did not receive an adequate explanation or reasoning as to why the extension was needed, we did not grant the request. Nonetheless, Madhya submitted its responses on September 17, 1998. However, because Madhya failed to meet an already extended deadline and provided no explanation as to why it did not meet the extended deadline, we rejected its response as untimely.

We must therefore consider whether the submitted information already on the record is usable under section 782(e) of the Act. The information that Madhya failed to provide would have been the first comprehensive cost information to be used in the Department's cost

investigation. Thus, the information currently on the record is so incomplete that it cannot serve as a reliable basis for reaching preliminary results (*see, Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 969 (January 7, 1997)*. Therefore, in accordance with section 776(a) of the Act and 19 CFR 351.308(a), we must use facts otherwise available.

In determining the appropriate facts available to apply to Madhya's sales, we have preliminarily determined that Madhya failed to cooperate by not acting to the best of its ability to comply with a request for information under section 776(b) of the Act. Specifically, as described above, Madhya failed to submit its questionnaire responses on time and failed to provide adequate reasons for the delays, despite having been advised by its counsel of the importance of meeting the Department's deadlines. Therefore, we have applied adverse facts available to calculate Madhya's margin.

As adverse facts available, we have preliminarily assigned a margin of 12.45 percent to Madhya's sales of the subject merchandise. This margin is the "all others" rate established in the less-than-fair-value ("LTFV") investigation. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see*, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts available. Therefore, we preliminarily find that the 12.45 percent rate is corroborated.

United States Price

In calculating the price to the United States, we used export price ("EP"), in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation into the United States and use of constructed export price was not otherwise indicated.

We calculated EP based on either the CIF or C&F price to the United States. In accordance with section 772(c)(2) of the Act, we made deductions, as appropriate, for foreign inland freight, international freight, marine insurance, brokerage and handling, and clearing and forwarding.

All five respondents claimed an upward adjustment to EP for a "duty drawback" program. In the preliminary results of the first administrative review of this order, we analyzed the functioning of this duty drawback program and found that it did not meet the Department's criteria for an upward adjustment to EP (*see*, 62 FR 10540 at 10541, March 7, 1997). We maintained our position in the final results (*see*, 62 FR 37030, July 10, 1997). We have reexamined the program in regard to the five respondents, and have found no reason to deviate from our previous decision. As stated in *Certain Welded Carbon Standard Steel Pipes and Tubes from India* (62 FR 47632 at 47635, September 10, 1997), "we determine whether an adjustment to U.S. price for a respondent's claimed duty drawback is appropriate when the respondent can demonstrate that it meets both parts of our two-part test. There must be: (1) A sufficient link between the import duty and the rebate, and (2) a sufficient amount of raw materials imported and used in the production of the final exported product." Because the respondents did not demonstrate a sufficient link between the import duty and the rebate, we have not made an adjustment to EP.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a basis for calculating normal value ("NV"), we compared the respondents' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. When home market sales were determined to be insufficient in quantity to permit a proper comparison with sales to the United States, we compared the respondents' volume of third country sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

For Bhansali and Chandan, because the aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV for these companies on the prices at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

For Venus and Sindia, because the aggregate volume of home market sales of the foreign like product was not greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was not appropriate for calculating NV. Therefore, we examined these companies' sales to third country markets. Both Venus and Sindia had more than one third country market that satisfied the criteria of section 773(a)(1)(B)(ii) of the Act. To select among these markets, we considered the criteria outlined in 19 CFR 351.404(e): The similarity of the foreign like product exported to each third country versus subject merchandise exported to the United States; the volume of sales to the third countries; and other factors that we considered appropriate. For Venus, we chose Belgium as the third country market. Although it was not the largest third country market, the merchandise sold to Belgium was more similar to the merchandise sold by Venus to the United States. In the case

of Sindia, we selected Canada. Again, Canada was not the largest third country market, but the merchandise sold there was more similar to the merchandise sold to the United States and the Canadian sales were contemporaneous with U.S. sales, while sales to the largest third country were not. Both Venus' aggregate sales of the foreign like product to its second largest third country market and Sindia's aggregate sales of the foreign like product to Canada were greater than five percent of their sales, by volume, of the subject merchandise to the United States (see the Memoranda to Richard Moreland dated October 2, 1998, "*Selection of Third Country Comparison Market*," which are available in the public records of the Department's Central Records Unit, Room B–099.).

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in these reviews, we reviewed information from each respondent regarding the marketing stage involved in the reported home market or third country and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Pursuant to section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action at 827, in identifying levels of trade for EP and home market sales, we considered the selling functions reflected in the starting prices before any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

Based on an analysis of the selling functions, class of customers, and level of selling expenses, we found that the marketing processes in both the home market or third country and the United States were not substantially dissimilar for Bhansali, Chandan, Venus, or Sindia. Therefore, we have preliminarily found that sales in both markets for each respondent are at the same LOT and consequently, no LOT adjustment is warranted.

Preliminary Results of the Reviews

As a result of our comparison of EP and NV, we preliminarily determine the following weighted-average dumping margins:

Manufacturer/ Exporter	Period	Margin (percent)
Bhansali ..	2/1/96–1/31/97	0.00
Venus	2/1/96–1/31/97	0.23
Sindia	2/1/96–1/31/97	0.19
Chandan ..	2/1/96–1/31/97	0.00
Madhya ...	2/1/96–1/31/97	12.45

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of these administrative and new shipper reviews, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

Upon completion of these administrative and new shipper reviews, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between EP and NV may vary from the percentages stated above. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the period of review ("POR") to the total value of subject merchandise entered during the POR. In order to estimate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value. This rate will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirement will be effective upon publication of the final results of these administrative and new shipper reviews for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates established in the final results of these reviews; (2) if the exporter is not a firm covered in these reviews, but was covered in a previous review or the original LTFV investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers and/or exporters of this merchandise, shall be 12.45 percent, the "all others" rate established in the LTFV investigation (59 FR 66915, December 28, 1994).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review, new shipper review, and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 351.214.

Dated: November 2, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30280 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DS–P

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DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–052. *Applicant:* University of Maryland, Baltimore, Department of Anatomy and Neurobiology, 685 W. Baltimore Street, Room 222, Baltimore, MD 21201. *Instrument:* Patch Clamp System. Manufacturer: Luigs and Neumann, Germany. *Intended Use:* The instrument will be used to provide visual stimulation during experiments on the processing of visual information in ferrets. In addition, the instrument will be used in rotation courses for graduate students preparing for thesis work. *Application accepted by Commissioner of Customs:* October 20, 1998.

Docket Number: 98–053. *Applicant:* Rutgers, The State University of New Jersey, Department of Ceramics and Material Engineering, 56 Bevier Road, Piscataway, NJ 08855. *Instrument:* Superfine Mill and Crushing Ring, Model MIC–2. *Manufacturer:* NARA Machinery Co. Ltd., Japan. *Intended Use:* The instrument will be used to make hydroxyapatite biomaterials as well as lead magnesium niobate electronic materials using novel mechanochemical phenomena. The experiments will consist of blending different types of particulate raw materials that will be subjected to mechanochemical stresses under a variety of operating conditions of the instrument. In addition, the instrument will be used by graduate students in a graduate program of ceramic science and engineering. *Application accepted by Commissioner of Customs:* October 22, 1998.

Docket Number: 98–054. *Applicant:* University of Illinois at Chicago, Purchasing Division, 845 W. Taylor Street (M/C 273), Chicago, IL 60607–7059. *Instrument:* Two-Zone Mercury Overpressure Annealing System. *Manufacturer:* Cifer SRL, Italy. *Intended Use:* The instrument is intended to be used for studies of mercury cadmium telluride grown by molecular beam epitaxy with the objective of obtaining multi-layer mercury cadmium telluride structures with p on n junctions to fabricate infrared detector arrays. *Application accepted by Commissioner of Customs:* October 23, 1998.

Docket Number: 98–055. *Applicant:* Mount Sinai School of Medicine, One Gustave L. Levy Place, New York, NY 10029. *Instrument:* Electron Microscope and Accessories, Model H–7500. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument is intended to be used to examine nervous system tissue in order to achieve the aims of the following research projects: (1) Morphologic Basis for Central Vestibular Inhibition, (2) Morphologic Basis for Central Vestibular Adaptation, (3) Nitric Oxide Signaling in Hypergravity-Induced Neuronal Plasticity and (4) Ultrastructural Anatomy of the Toadfish Crista. *Application accepted by Commissioner of Customs:* October 23, 1998.

Docket Number: 98–056. *Applicant:* University of Wisconsin—Madison, Biotechnology Center, 750 University Avenue, Madison, WI 53706. *Instrument:* Piezo Manipulator, Model PPM–150FU. *Manufacturer:* Prime Tech Ltd., Japan. *Intended Use:* The instrument will be used to reduce the trauma to oocytes during experiments involving the cloning of rodents (mice and rats) from cultured cells. *Application accepted by Commissioner of Customs:* October 27, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–30282 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110598C]

International Whaling Commission; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice sets forth guidelines for participating on the Committee and a tentative schedule of meetings and other important dates.

DATES: December 4, 1998, 2:00 p.m. See **SUPPLEMENTARY INFORMATION** for additional information and tentative dates of additional interagency meetings in 1999.

ADDRESSES: The December 4, 1998, meeting will be held in Room 1863, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713–2322.

SUPPLEMENTARY INFORMATION: The December 4, 1998, Interagency Committee meeting will review recent events relating to the IWC and issues that will arise at the 1999 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere, who is also the U.S. Commissioner to the IWC. The U.S. Commissioner has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These

stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

Tentative Meeting Schedule

The schedule of additional meetings and deadlines, including those of the IWC, during 1999 follows. Specific locations and times will be published in the **Federal Register**.

February 19, 1999: Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 1998 IWC annual meeting.

April 9, 1999: Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 1998 IWC annual meeting.

April 30 to May 3, 1999 (Grenada): IWC Scientific Committee Working Groups.

May 3 to 15, 1999 (Grenada): IWC Scientific Committee.

May 17 to 19, 1999 (Grenada): IWC Whale Killing Methods Workshop.

May 19 to 21, 1999 (Grenada): IWC Commission Committee, Sub-committees and Working Groups.

May 24 to 28, 1999 (Grenada): IWC 51st Annual Meeting.

Special Accommodations

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Catherine Corson at least 5 days prior to the meeting date.

Dated: November 5, 1998.

Patricia Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30264 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110398A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Whiting Oversight Committee on Monday, November 30, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on November 30, 1998. See **SUPPLEMENTARY INFORMATION** for the specific time.

ADDRESSES: The meeting will be held in Portsmouth, NH. See **SUPPLEMENTARY INFORMATION** for the specific location.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, Massachusetts 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Date and Agenda

Monday, November 30, 1998, 10:00 a.m.—Whiting Oversight Committee Meeting.

Location: Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH 03801; telephone: (603) 431–6774; fax: (603) 431–5553.

Review rationale for final management measures for Amendment 12 to the Northeast Multispecies Fishery Management Plan (to manage silver hake, offshore hake, and red hake); review text of draft regulations for Amendment 12; discuss and resolve outstanding issues identified by NMFS relevant to achieving the objectives of the management plan and fulfilling the requirements of the Sustainable Fisheries Act.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Committee action during this meeting. Committee action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30263 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110498D]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a plan team meeting.

SUMMARY: The North Pacific Fishery Management Council's Plan Team for the Bering Sea/Aleutian Island King and Tanner Crab Fishery Management Plan will meet in Anchorage, AK.

DATES: The meeting will be held on November 30–December 1, 1998, beginning at 11:00 a.m. on Monday, November 30.

ADDRESSES: The meeting will be held in Room 229, Old Federal Building, 605 W. 4th Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The agenda for the meeting will include the following:

1. Review of comments received from the Scientific and Statistical Committee on the Crab Stock Assessment and Fishery Evaluation Report.

2. Review length-based analysis model for Bristol Bay red king crab.

3. Review progress on Bering Sea C. bairdi crab rebuilding plan.

4. Review opilio crab bycatch limits in the scallop fishery.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

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Dated: November 4, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30262 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 9805–29140–8140–01]

Cooperation Between the Technology Administration of the United States Department of Commerce and the Science and Technology Commission of The People's Republic of China; Civil Indistrial Technology Coordinating Committee

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for the coordinating committee.

SUMMARY: The Technology Administration invites nominations of individuals to appointment to the Civil Industrial Technology Coordinating Committee established under the Implementing Arrangement Concerning Cooperation in Civil Industrial Technology. The Technology Administration will consider all nominations received in response to this notice of appointment to the Coordinating Committee.

DATES: Please submit nominations on or before January 8, 1999.

ADDRESSES: Please submit nominations to Phyllis Yoshida, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4411, Washington, D.C. 20230. Nominations may also be submitted by fax to 202–219–3310.

FOR FURTHER INFORMATION CONTACT: Phyllis Yoshida, telephone 202–482–1287; fax 202–219–3310; e-mail *Phyllis_*Yoshida@ta.doc.gov.

SUPPLEMENTARY INFORMATION:

Goals of the Implementing Arrangement

On October 24, 1996, the United States Department of Commerce and the State Science and Technology Commission of the People's Republic of China (hereinafter referred to as the "Participants") signed the Implementing Arrangement Concerning Cooperation in Civil Industrial Technology. It establishes a framework and goals for cooperation in science and technology, and requires the creation of a joint Civil Industrial Technology Coordinating Committee ("CIT Coordinating Committee"). The Technology Administration is the executive secretariat for this initiative.

The goal of the Participants is to promote mutually beneficial cooperation among public and private entities in both nations, to strengthen technological capabilities of the Participants, and to broaden and intensify relations between their technological communities.

Cooperative Activities

Cooperative activities under this Implementing Arrangement may include, among others, joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences, and symposia; exchange of scientific and technical information in the context of cooperative activities; and other forms of scientific and technological cooperation as may be deemed appropriate. Cooperative activities should reflect technological strengths in China and the United States, and should be structured to provide an appropriate role for the private sector and academic organizations.

Information on the CIT Coordinating Committee

The Participants intend to jointly establish a CIT Coordinating Committee, consisting of 12 members, six to be designated by the Department of Commerce, and six to be designated by the State Science and Technology Commission. The Committee also includes the Executive Secretariat and Secretariat, two government officials designated by each of the Participants. The Coordinating Committee members will be drawn from the private sector, representing private industry, academia, or non-governmental organizations in the Participants'countries.

The members of the Coordinating Committee will be expected to carry out the following functions:

1. Identify fields and forms of cooperation in accordance with the goals and objectives of the Implementing Arrangement;
2. Review, assess, and make specific recommendations concerning cooperative activities; and
3. Undertake other appropriate functions as may be approved by the Participants.

Meetings of the Coordinating Committee

The CIT Coordinating Committee meets twice a year, alternating between China and the United States to meet the objectives of the Implementing Arrangement.

Length of Service

The Participants intend to maximize public participation through regular rotation of CIT Coordinating Committee members. Committee members will serve a three year term, with staggered term ends to ensure that at least one-third of the membership is replaced annually.

Membership Criteria and Requirements

The U.S. members of the CIT Coordinating Committee shall be eminent leaders from industry, academia, or government who have experience in technology development, technology diffusion, or international technology collaboration. The CIT Coordinating Committee members should be familiar with the business climate, status of technology, and economic development of China. They should be U.S. citizens. Members of the CIT Coordinating Committee shall serve without compensation.

The Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse CIT Coordinating Committee membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the Implementing Arrangement. Nominees will be vetted in accordance with processes established by the Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting has three components: (1) an internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: November 4, 1998.

Kelly H. Carnes,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 98–30187 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–18–U

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 9805–29138–8138–01]

The United States-Greek Initiative for Technology Cooperation With the Balkans; Joint Science and Technology Cooperation Council

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for joint council.

SUMMARY: The Technology Administration invites nominations of individuals to appointment to the Joint Council on Technology Cooperation established under a Memorandum on Understanding between the United States Department of Commerce and the Greek Ministry of National Economy concerning technology cooperation with the Balkans. The Technology Administration will consider all nominations received in response to this notice of appointment to the Joint Council.

DATES: Please submit nominations on or before January 8, 1999.

ADDRESSES: Please submit nominations to Lucy H. Richards, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4411, Washington, D.C. 20230. Nominations may also be submitted by fax to 202–482–4826.

FOR FURTHER INFORMATION CONTACT: Lucy H. Richards, telephone 202–482–6804; fax 202–482–4826, e-mail *Lucy_Richards@ta.doc.gov*.

SUPPLEMENTARY INFORMATION:

Goals of the Memorandum of Understanding

On January 17, 1998, the United States Department of Commerce and the Greek Ministry of National Economy (hereinafter known as the "Participants") entered into a Memorandum of Understanding (MOU) concerning technology cooperation with the Balkans, to be known as "The United States-Greek Initiative for Technology Cooperation with the Balkans" (ITCB). A Joint Science and Technology Cooperation Advisory Council (hereinafter "the Joint Council") is to be established under the MOU.

The Participants recognize that working together to foster collaborative and mutually beneficial technology cooperation with countries in the Balkan region will provide economic benefits to the Balkan region and to the United States and Greece. The goal of the Participants is to foster collaboration among public and private entities in the Participants' countries, and public and private entities in the Balkan region in order to enhance technological capabilities in the Balkan region, enhance the relationship between U.S. and Greek private sector firms and entities in the Balkan region, and promote the development of stable, free market economies in the Balkan region. For the purposes of the MOU, the Balkan region is to encompass Albania, Bulgaria, Romania, the Former Yugoslav Republic of Macedonia, and any other countries in the region that the Participants may later mutually agree to include.

Cooperative Activities

Cooperative activities under this MOU may include, among others, coordinated and joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences, and symposia; exchanges of science and technology information and documentation in the context of cooperative activities; exchanges of scientists, specialists, and researchers; exchanges or sharing of equipment or materials; and other forms of scientific and technological cooperation as may be deemed appropriate. Cooperative activities should reflect technological strengths in the United States and Greece, and should be structured to provide an appropriate role for U.S. and Greek private sector and academic organizations. Cooperative activities should also seek to include public and private science and technology establishments in the Balkan region and encourage the application and adoption of technology in their relevant entities.

Information on the Joint Council

For the purposes of implementing this MOU, the Participants intend to jointly establish a Joint Science and Technology Cooperation Advisory Council, to consist of six members, three to be designated by, and serve at the pleasure of the Greek Ministry of National Economy, and three to be designated by, and serve at the pleasure of, the U.S. Department of Commerce. Each participant may also designate alternate members.

The members of the Joint Council will be expected to carry out the following functions:

1. Recommend to the Participants overall policies under the MOU;
2. Identify fields and forms of cooperation in accordance with the goals and objectives of the MOU;
3. Review, assess, and make specific recommendations concerning cooperative activities;
4. Prepare periodic reports concerning the activities of the Joint Council and cooperative activities undertaken under the MOU for submission to the Participants; and
5. Undertake such further functions as may appropriately be approved by the Participants.

Meetings of the Joint Council

The Joint Council may meet annually, or at other regular intervals as deemed appropriate, alternately in Greece and the United States, and additionally as may be determined by the Participants.

Length of Service

A member's length of service on the Joint Council is not stipulated in the MOU and is discretionary with the Department of Commerce. Individuals chosen for membership will serve a term that best fits the needs and objectives of the Joint Council. Members will serve a two or three-year term with staggered term ends. Upon the completion of a member's term, the Department will either repeat this recruitment and selection process or extend the member's term as long as the member proves to work effectively on the Joint Council and his/her expertise is still needed.

Membership Criteria and Requirements

The U.S. members of the Joint Council shall be eminent leaders, broadly representative of industry, academia, or government, who have experience in technology development, technology diffusion, or international technology collaboration. They shall be U.S. citizens. They shall be familiar with the business climate and the status of technology and economic development in Greece and the Balkans, with Greek and Balkan industry, or with Greek and Balkan academic institutions. Members of the Joint Council shall serve without compensation.

The Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse Joint Council membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the MOU. Nominees will be vetted in accordance with processes established by the Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting system has three components: (1) an internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: November 4, 1998.

Kelly H. Carnes,

Deputy Assistant Secretary For Technology Policy.

[FR Doc. 98–30186 Filed 11–10–98; 8:45 am]

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DEPARTMENT OF COMMERCE

Technology Administration

[Docket No. 9805–29139–8139–01]

Cooperation Between the Technology Administration of the United States Department of Commerce and the Industrial Research and Technology Unit of the Northern Ireland Department of Economic Development; Joint Board on Scientific and Technological Cooperation

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice; request for nominations for joint board.

SUMMARY: The Technology Administration invites nominations of individuals to appointment to the Joint Board on scientific and technological cooperation established under a Memorandum of Understanding on technology cooperation between the Technology Administration and the Northern Ireland Industrial Research and Technology Unit. The Technology Administration will consider all nominations received in response to this notice of appointment to the Joint Board.

DATES: Please submit nominations on or before January 8, 1999.

ADDRESSES: Please submit nominations to Lucy H. Richards, Office of Technology Policy, Technology Administration, Department of Commerce, Room 4411, Washington, D.C. 20230. Nominations may also be submitted by fax to 202–482–4826.

FOR FURTHER INFORMATION CONTACT: Lucy H. Richards, telephone 202–482–6804; fax 202–482–4826; e-mail *Lucy_Richards@ta.doc.gov*.

SUPPLEMENTARY INFORMATION:

Goals of the Memorandum of Understanding

On December 1, 1995, the Technology Administration of the United States Department of Commerce and the Industrial Research and Technology Unit of the Northern Ireland Department of Economic Development (hereinafter known as the "Participants") entered into a Memorandum of Understanding (hereinafter referred to as the "MOU") concerning technology cooperation. A Joint Board on Scientific and Technological Cooperation (hereinafter referred to as "the Joint Board") was established under the MOU.

The Participants recognize that working together to foster enhanced cooperation in technology development, encouraging technology diffusion arrangements, and seeking opportunities for the collaborative and mutually beneficial use of technology for industrial wealth creation and increased economic competitiveness will provide substantial benefits to Northern Ireland and the United States. The goals of the Participants are to strengthen technological capabilities of the Participants, to broaden and expand relations between their technological communities and to promote technological cooperation in areas of mutual benefit for peaceful purposes.

Cooperative Activities

Cooperative activities under this MOU may include coordinated and joint research and technology projects, studies, and investigations; joint technological courses, workshops, conferences, and symposia; exchanges of science and technology information and documentation in the context of cooperative activities; exchanges of scientists, specialists, and researchers; exchanges or sharing of equipment or materials; and other forms of scientific and technological cooperation as may be approved by the Joint Board.

Information on the Joint Board

For the purposes of implementing this MOU, the Participants have established a Joint Board on Scientific and Technological Cooperation, to consist of six members, three to be designated by and serve at the pleasure of the Industrial Research and Technology Unit, and three to be designated by and serve at the pleasure of the Technology Administration of the U.S. Department of Commerce. Each Participant may also designate alternate members.

The members of the Joint Board will be expected to carry out the following functions:

1. Recommend to the Participants overall policies under the MOU;

2. Identify fields and forms of cooperation in accordance with the goals and objectives of the MOU;

3. Review, assess, and make specific recommendations concerning cooperative activities;

4. Prepare periodic reports concerning the activities of the Joint Board and cooperative activities undertaken under the MOU for submission to the Secretary of Commerce of the United States and the Minister of Economic Development of Northern Ireland; and

5. Undertake such further functions as may appropriately be approved by the Participants.

Meetings of the Joint Board

The Joint Board may meet annually, or at other regular intervals as deemed appropriate, alternately in the United States and Northern Ireland, and additionally as may be determined by the Participants.

Length of Service

The Charter of the Joint Board establishes that members of the Joint Board shall each serve for a three year term, unless removed by the Secretary of Commerce or his/her designee (for the United States members) or the Chief Executive of the Industrial Research and Technology Unit or his/her designee (for the Northern Ireland members). Upon the completion of a member's term, the Department will either announce a request for nominations or extend the member's term as long as the member proves to work effectively on the Joint Board and his/her expertise is still needed.

Membership Criteria and Requirements

The U.S. members of the Joint Board shall be eminent leaders from industry, academia, or government who have experience in technology development, technology diffusion, or international technology collaboration. They should be familiar with the business climate and the status of technology and economic development in Northern Ireland, and with Northern Ireland institutions. They should be U.S. citizens. Members of the Joint Board shall serve without compensation.

The Department of Commerce is committed to equal opportunity in the workplace, and seeks a broad-based and diverse Joint Board membership.

Conflict of Interest

Nominees will be evaluated for their ability to contribute to the goals and objectives of the MOU. Nominees will be vetted in accordance with processes established by the Department of Commerce in February 1997, as soon as possible following tentative selection. The vetting has three components: (1) an internal review for possible appearance of conflict problems; (2) an external review for possible appearance of problems; and (3) a recusal/ethics agreement review.

Dated: November 4, 1998.

Kelly H. Carnes,

Deputy Assistant Secretary for Technology Policy.

[FR Doc. 98–30185 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–18–U

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits and guaranteed access levels for textile products, produced or manufactured in the Dominican Republic and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits and guaranteed access levels. The limits for Categories 339/639 and 347/348/647/648 have been reduced for carryforward applied in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 63 FR 16474, published on April 3, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in the Dominican Republic and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Restraint limit
338/638	951,261 dozen.
339/639	1,080,321 dozen.
340/640	979,271 dozen.
342/642	689,136 dozen.
347/348/647/648.	2,194,361 dozen of which not more than 1,238,434 dozen shall be in Categories 647/648.
351/651	1,173,979 dozen.
433	22,085 dozen.
442	74,983 dozen.
443	137,182 numbers.
444	74,983 numbers.
448	38,628 dozen.
633	143,688 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Also pursuant to the ATC, and under the terms of the Special Access Program, as set forth in 63 FR 16474 (April 3, 1998), effective on January 1, 1999, you are directed to establish guaranteed access levels for properly certified textile products in the following categories which are assembled in the Dominican Republic from fabric formed and cut in the United States and re-exported to the United States from the Dominican Republic during the period January 1, 1999 through December 31, 1999:

Category	Guaranteed access level
338/638	1,150,000 dozen.
339/639	1,150,000 dozen.
340/640	1,000,000 dozen.
342/642	1,000,000 dozen.
347/348/647/648.	8,050,000 dozen.
351/651	1,000,000 dozen.
433	21,000 dozen.
442	65,000 dozen.
443	50,000 numbers.
444	30,000 numbers.
448	40,000 dozen.
633	60,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification in accordance with the provisions of the certification requirements established in the directive of February 25, 1987, as amended, shall be denied entry unless the Government of the Dominican Republic authorizes the entry and any charges to the appropriate specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30234 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on the Extension of Temporary Amendment to the Requirements for Participating in the Special Access Progam for Caribbean Basin Countries

November 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice and letter to the Commissioner of Customs published in the Federal Register on December 17, 1997 (62 FR 66057) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. This amendment extended the exemption period for one year, December 23, 1997 through December 22, 1998, for women's and girls' chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in Categories 433, 443, 633 and 643 which are entered under the Special Access Program (9802.00.8015) provided they are cut in the United States. In a subsequent notice and letter published on September 29, 1998 (63 FR 51903), the exemption was extended for the period September 23, 1998 through September 22, 1999 for men's and boys' chest type plate, "hymo" piece or "sleeve header" of woven or welf-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of tailored suit jackets and suit-type jackets in the same categories.

The purpose of this notice is to request public comments on CITA's intention to combine and extend through December 31, 2000, the exemption periods for women's and girls' and men's and boys' "hymo" type interlining. Thereafter, the exemption period for women's and girls' and men's and boys' "hymo" type interlining would extend through December 31, 2000.

There will be a 30-day comment period beginning November 12, 1998 and extending through December 14, 1998. Anyone wishing to comment or provide data or information regarding domestic production or availability of the products mentioned above is invited to submit 10 copies of such comments or information to Troy H. Cribb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30235 Filed 11–10–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 99–C0003]

Small World Toys, Inc., a Domestic Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substance Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with Small World Toys, Inc., a domestic corporation, containing a civil penalty of $225,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 27, 1998.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 99–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0626, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: November 4, 1998.

Sadye E. Dunn,

Secretary.

Settlement Agreement and Order

1. Small World Toys, Inc. (hereinafter, "Small World"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Small World violated the Consent Decree of Permanent Injunction and the Federal Hazardous Substances Act (FHSA).

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Small World is a corporation organized and existing under the laws of the State of California. Small World's address is 5711 Buckingham Parkway, Culver City, CA 90231. Small World is an importer and wholesaler of children's toys.

II. Allegations of the Staff

A. Violation of the Consent Decree

4. On July 31, 1986, the United States Department of Justice on behalf of the Commission and Small World entered into a Consent Decree of Permanent Injunction, hereinafter, "Consent Decree" (Consent Decree, Attachment A) to resolve allegations that Small World introduced or caused the introduction in interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, toys and other articles intended for use by children under three years of age that failed to comply with the Commission's Small Parts Regulation at 16 CFR Part 1501, in violation of sections 4 (a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c).

5. The Consent Decree requires Small World to test six (6) units of a toy or other article intended for children under three years old for small parts pursuant to the use and abuse procedures set forth in 16 CFR 1501.4 and 1500.51 and .52 twice per calendar year unless Small World receives only one shipment of the particular toy during the calendar year. If any unit of a toy fails use and abuse procedures, Small World is prohibited from distributing the toy in interstate commerce and must notify the Commission in writing within three (3) days of the failure.

6. Small World has not complied with the testing and reporting requirements of the Consent Decree.

7. Small World's failure to comply with the testing and reporting requirements of the Consent Decree constitutes a violation of the Consent Decree.

B. Toys With Small Parts

8. On four occasions between October 12, 1994, and December 1, 1995, Small World introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, eight kinds of toys (23,604 retail units) intended for use by children under three years old. These toys are identified and described as follows:

Sample No.	Product	Collect. date * entry date	Expt/Mfg.	Quantity
T–867–8045	Necklace	10/12/94	Fishel	3,456
T–867–8046	Necklace	10/12/94	Fishel	2,304
T–867–8178	Bracelet	*01/27/95	Fishel	4,320
T–867–8179	Bracelet	*01/27/95	Fishel	4,320
T–867–8180	Locomotive	*01/27/95	Supertoys	576
T–867–8181	Car	*01/27/95	Golden Bell	2,448
T–867–8338	Gazoobo	*09/12/95	Caben	6,168
96–860–5154	Simba Doll	*12/01/95	Unknown	12

9. The toys identified in paragraph 8 above are intended for children under three years old and are subject to the Commission's Small Parts Regulation, 16 CFR Part 1501.

10. The toys identified in paragraph 8 above failed to comply with the Commission's Small Parts Regulation, 16 CFR Part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and .52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the toys fit completely within the small parts test cylinder, as set forth in 16 CFR 1501.4.

11. Because the separated parts fit completely within the test cylinder as described in paragraph 10 above, each of the toys identified in paragraph 8 above presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration, and/or ingestion of small parts).

12. Each of the toys identified in paragraph 8 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

13. Each of the toys identified in paragraph 8 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance as described in paragraph 12 above; and because it presents a mechanical hazard as described in paragraph 11 above.

14. Small World knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid banned hazardous toys, identified in paragraph 8 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263 (a) and (c).

C. Rattles With Small Parts

15. On one occasion in 1994, Small World introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, one kind of rattle (3,456 units) intended for use by children. This rattle is identified and described as follows:

Sample No.	Product	Entry Date	Expt/Mfg.	Quantity
S–867–8429	Handy Dandy Rattle	10/12/94	Ambi	3,456

16. The rattle identified in paragraph 15 above is subject to, but failed to comply with the Commission's Rattle Regulations, 16 CFR Part 1510, in that when tested under the procedures set forth in 16 CFR 1510.4, the rattle penetrated the full depth of the test fixture.

17. Because the rattle identified in paragraph 15 above penetrated the full depth of the cavity of the test fixture as specified in 16 CFR 1510.4, it presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking) and is, therefore, a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

18. The rattle identified in paragraph 15 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(15) because it is intended for use by children and bears or contains a hazardous substance; and because it presents a mechanical hazard as defined in paragraph 17 above.

19. Small World knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid banned hazardous rattle identified in paragraph 15 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

D. Art Material

20. On three occasions between August 31, 1993, and September 13, 1993, Small World introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, eight (8) different types of art material products (8,592 units). These art material products are identified and described as follows:

Sample No.	Product	Entry Date	Expt/Mfg.	Quantity
R–867–8507	Dino Puzzle	08/31/93	Aims	1,152
R–867–8508	Water Color Paint Set	09/01/93	Weghorn	120
R–867–8509	Water Color Paint Set	09/01/93	Weghorn	576

Sample No.	Product	Entry Date	Expt/Mfg.	Quantity
R–867–8515	Water Color Paint Set	09/01/93	Weghorn	480
R–867–8516	Water Color Paint Set	09/01/93	Weghorn	2,592
R–867–8517	Color Paint Set	09/01/93	Weghorn	312
R–867–8518	Water Color Paint Set	09/01/93	Weghorn	480
R–867–8579	Mini Crayons	09/13/93	Aims	2,880

21. The art material products identified in paragraph 20 above are subject to, but failed to comply with the requirements for the Labeling of Art Materials Act in that (a) Small World did not submit these art material products for review by a toxicologist as required by section 23(a) of the FHSA, 15 U.S.C. 1277(a) and 16 CFR 1500.14(b)(8)C)(1); and (b) these art material products did not bear the statement of conformance with ASTM D–4236, as required by section 23(a) of the FHSA, 15 U.S.C. 1500.14(b)(8)(C)(7).

22. The art material products identified in paragraph 20 above are "misbranded hazardous substances" pursuant to section 3(b) of the FHSA, 15 U.S.C. 1262(b) and 16 CFR 1500.14(b)(8)(C)(1) and (7).

23. Small World knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the aforesaid misbranded hazardous art materials identified in paragraph 20 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c).

E. Failure to Follow Export Notification Requirements

24. On ten occasions between April 8, 1997, and November 24, 1997, Small World exported 10 different kinds of toys (9,291 units) intended for use by children under three years old that failed to comply with the Commission's Small Parts Regulations 16 CFR Part 1501 without submitting a "notification of intent to export" to the Commission pursuant to section 14(d) of the FHSA, 15 U.S.C. 1273(d) and the Commission's Procedures For Export of Noncomplying Products, 16 CFR Part 1019. These toys are described and identified as follows:

Product	Expt./Mfg.	Quantity
Pull-Along Dog.	Ambi	2,847
Sand Boat	Ambi	882
Animal Trains.	Caben	714
Ambu-lance.	Golden Bell	888
Bear Trumpet.	Hong Kong Toy Ctr.	624
Cement Mixer.	Kodomo	600
Water Wheel.	Kodomo	1,188
Shape Sorter.	Megcos	720
Crane Truck.	Golden Bell	600
Bank	Caben	228

25. Small World knowingly failed to file the required notification informing the Commission of its intent to export the toys identified in paragraph 24 above, in violation of section 4(i) of the FHSA, 15 U.S.C. 1263(j).

III. Response of Small World

26. Small World denies the allegations of the staff set forth in paragraphs 4 through 25 above. Small World denies the allegations that it violated the testing and reporting provisions of the Consent Decree and that it knowingly introduced or caused the introduction in interstate commerce and delivered or proffered delivery thereof for pay or otherwise any banned hazardous toys and rattles and any misbranded hazardous art material products.

27. Small World contends the necklaces, bracelets, locomotive and car listed in paragraph 8 are not intended or promoted for use by children under three years old and therefore are not subject to the CPSC Small Parts Regulation. The Gazoobo toy is intended and promoted for ages above 18 months through 5 years and it meets CPSC's Small Parts requirement for that age group. The Simba Doll sold by Small World met the CPSC Small Parts Regulation.

28. Small World did not knowingly introduce or cause the introduction into interstate commerce or receive or deliver or proffer delivery of any banned hazardous rattles as alleged in paragraph 15.

29. Small World never received in interstate commerce the art materials listed in paragraph 20 and never introduced them into interstate commerce. They were stopped before entry into the United States and before Small World had any opportunity to inspect them to determine if they were properly labeled under the Labeling of Art Materials Act. Two products, Dino Puzzle and Mini Crayons, were returned to the manufacturer before they entered the United States. The Color Paint Sets were properly labeled after SWT was informed that they had arrived at the port without labels.

IV. Agreement of the Parties

30. The Consumer Product Safety Commission has jurisdiction over Small World and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

31. Upon final acceptance by the Commission of this Settlement Agreement and Order, Small World knowingly, voluntarily, and completely waives any rights it may have in this matter (a) to an administrative or judicial hearing, (b) to judicial review or other challenge or contest of the validity of the Commission's actions, (c) to a determination by the Commission whether Small World failed to comply with the testing and reporting requirements of the Consent Decree and the FHSA, (d) to a statement of findings of facts and conclusions of law, and (e) to any claims under the Equal Access to Justice Act.

32. In settlement of the staff's allegations, Small World agrees to pay a civil penalty of $225,000.00 as set forth in the incorporated Order.

33. In settlement of the staff's allegations, Small World agrees to comply with the testing and reporting requirements of the Consent Decree.

34. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued, and the Commission may publicize the terms of the Settlement Agreement and Order.

35. Upon provisional acceptance of this Settlement Agreement by the Commission, the Commission will place the Settlement Agreement and the Provisional Order on the public record, and publish it in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written requests not to accept the Settlement Agreement within 15 days, the Settlement Agreement shall be deemed finally accepted and the Final Order issued on the 16th day.

36. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

37. The provisions of this Settlement Agreement and Order shall apply to Small World and each of its successors and assigns.

38. Small World shall notify the CPSC in writing at least thirty (30) calendar days prior to any reorganization, dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of any subsidiaries, or any other changes in the corporate structure of Small World that may affect compliance obligations arising out of this Settlement Agreement and Order. Such notice shall be sent by certified mail, return receipt requested to: Assistant Executive Director for Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

39. Upon final acceptance of this Agreement, the Commission shall issue the attached Final Order.

Respondent Small World Toys, Inc.

Dated: October 6, 1998.

Edward M. Goldwasser,

President, Small World Toys, Inc., 5711 Buckingham Parkway, Culver City, CA 90231.

Dated: October 7, 1998.

Michael A. Brown,

Esquire,

Margaret A. Freeston,

Esquire, Brown & Freeston, P.C., 3201 New Mexico Avenue, N.W., Suite 242, Washington, D.C. 20016–2756.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, D.C. 20207–0001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dated: October 8, 1998.

Dennis C. Kacoyanis,

Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Small World Toys, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Small World Toys, Inc.; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement and Order, Small World Toys, Inc. shall pay to the Commission a civil penalty in the amount of TWO HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($225,000.00) in three (3) payments. The first payment of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) shall be due within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the attached Settlement Agreement or December 20, 1998 whichever is later. The second payment of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) shall be due on December 20, 1999. The third payment of SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($75,000.00) shall be due on December 20, 2000. Upon the failure by Small World Toys, Inc. to make a payment or upon the making of a late payment by Small World Toys, Inc. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (c).

Provisionally accepted and Provisional Order issued on the 4th date of November, 1998.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Consent Decree of Permanent Injunction

The United States of America, on behalf of the Consumer Product Safety Commission, having filed on the 29th day of July, 1986, a complaint seeking to enjoin permanently the defendant from directly or indirectly doing or causing to be done any act in violation of sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA) 15 U.S.C. 1263(a) and (c) by introducing, delivering for introduction or receiving in interstate commerce any toy or other article intended for use by children under 3 years of age which is a banned hazardous substance pursuant to 15 U.S.C. 1261(q)(1)(A), and the regulations issued thereunder, 16 CFR 1500.18(a)(9) and 16 CFR Part 1501, 16 CFR Part 1510, 16 CFR 1500.48 and .49; and from directly or indirectly doing or causing to be done any act or violation of section 19(a)(2) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2068(a)(2), by manufacturing for sale, offering for sale; distributing in commerce or importing into the United States any toy or other article intended for use by children that are banned under 16 CFR Part 1303, regarding articles bearing lead containing paint. The defendant, Small World Toys, a corporation, having consented to the entry of this decree and to each and every provision hereof, without contest and before any testimony has been taken, and the United States having moved this Court for this permanent injunction:

Now, therefore, it is *ordered, adjudged and decreed* that:

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337 and 1345 and 15 U.S.C. 1267(a) and has personal jurisdiction over the defendant.

2. Small World Toys, ("Small World"), a corporation organized and existing under the laws of the State of California, with its principal place of business located at 5711 Buckingham Parkway, Culver City, California 90230, is in the business of importing and distributing toys that are subject to the requirements of the FHSA and the regulations issued thereunder.

3. Defendant has introduced, delivered for introduction or received in interstate commerce, children's toys called Ambi "Funhouse," Model No. E71; Ambi "Jack in the Ball," Model No. E153; Ambi "Mini-Racer," Model No. E666; Royal Company Ltd., "Water Wheel," Model No. 1928; Jimson, "Super Air Bus," Model No. 349; Jimson "Elephant Boat," Model No. 376; Jimson, "See Thru Locomotive," Model No. 270T; Discovery World/Small World Toys "Lift & Learn Puzzles," Model Nos. 2501, 2502, 2503, 2504, 2505 and 2506; Discovery World/Small World Toys "Scratch & Sniff Puzzles," Model Nos. 2507, 2508, 2509, 2510, and 2512; Hermann Eichhorn Gmb. Hu. Co., K6, "Wooden Train," Model No. 2037 and Hans Clemens Co., "Stuffed Bears," Model No. 51250.

4. The Commission believes the toys referred to in paragraph 3 are toys intended for use by children under three and are subject to the requirements of the FHSA and its regulations.

5. The Commission believes the children's toys referred to in paragraph 3 above are banned hazardous substances pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A), and the regulations issued thereunder, 16 CFR 1500.18(a)(9) and 1501 because they exhibit small parts which present choking, aspiration or ingestion hazards when subject to the

test requirements of 16 CFR 1500.51 and 1500.52 and 1501.4.

6. The defendant voluntarily agreed to the Commission's request to stop distributing the Ambi "Funhouse," Royal Company "Water Wheel," Jimson "Super Air Bus," Jimson "Elephant Boat," Herman Eichorn Gm. Hu. Co. "Wooden Train", Hans Clemens Co. "Stuffed Bear," and Jimson "See Thru Locomotive" until such time as they have been changed and complied with the requirements of the FHSA. The defendant also agreed to recall the Ambi "Jack in the Ball," and agreed to a limited recall from the retail level of the Discovery World/Small World Toys "Lift & Learn Puzzles" and "Scratch & Sniff Puzzles," and a limited recall of the hat of the Ambi "Mini-Racer," including an incentive program to encourage consumers to return the hat, and agreed not to sell such products until such time as the products were or have been appropriately modified.

7. The defendant, and each and all of its directors, officers, agents, servants, representatives, employees, successors or assigns, and any and all persons in active concert or participation with it, are hereby enjoined from directly or indirectly doing or causing the introduction, delivery for introduction or receipt in interstate commerce, of:

(a) Any toy or other article intended for use by children under three years of age that presents a choking, aspiration or ingestion hazard because of small parts as defined in 16 CFR Part 1501 or which when tested in accordance with 16 CFR 1501.4 and 1500.51 and .52, presents a choking, aspiration or ingestion hazard because of small parts as defined in 16 CFR Part 1501.

(b) Any toy or article intended for use by children that does not comply with the requirements of 16 CFR 1500.48 and .49, regarding sharp points and edges.

(c) Any rattle which does not comply with the requirements of 16 CFR Part 1510.

(d) Any toy or other article intended for use by children that does not comply with the requirements of 16 CFR Part 1303, regarding articles bearing lead containing paint.

8. Although the FHSA does not require manufacturers, distributors or importers to test any products, the defendant agrees to conduct, or have conducted on its behalf, the tests described in 16 CFR 1501.4 and 1500.51 and .52 to detect any banned hazardous toys or other articles intended for use by children under three years of age. The testing shall be as follows:

(a) Samples of each model of toy or other article intended for use by children shall be tested at least twice each calendar year. However, if only one shipment of a model is received during the calendar year, samples of the model shall be tested only one time during the calendar year. The samples shall be tested before items from the shipment(s) involved are introduced or delivered for introduction into interstate commerce by defendant or its agents.

(b) A sample shall consist of at least six items of a model, but the Commission encourages defendant to use 12 or more items. The number of items used shall be divided evenly between each of the tests required under this paragraph, except that the torque and tension tests, 16 CFR 1500.51 (e) and (f) and .52 (e) and (f), shall be conducted on the same items.

(c) The items in each sample shall be selected at random from as many cartons as possible and from more than one shipment if possible.

(d) Each item in the sample shall be tested in accordance with 16 CFR 1501.4, 1500.51 and .52. If any items from the sample fail the testing requirements, the shipment(s) from which these items were selected shall not be released into interstate commerce until such time as the products have been appropriately modified or a remedial plan under subsection (e) is implemented. The defendant shall notify the Commission within three (3) working days of defendant's actual or constructive receipt of such test results and shall provide CPSC with a copy of any written failing test reports. Such notification shall be sent by certified mail, return receipt requested, to the following address: Consumer Product Safety Commission, Western Regional Office, 555 Battery Street, Room 401, San Francisco, California 94111.

(a) Upon receipt of such notification, the Commission will then discuss with defendant what remedial action may be necessary.

9. The Commission agrees that defendant has 30 days from the effective date of this consent decree to complete the initial testing required by paragraph eight (8) of all toys intended for children under three subject to the decree which are in their possession or control on the effective date of the decree. For those toys or articles distributed by defendant which are age labeled for children over three years or which are not age labeled, but which defendant believes may be subject to this consent decree because they are toys or other articles intended for use by children under three years of age, defendant shall seek guidance from the Commission within 10 days of entry of this consent decree on whether the Commission believes these toys or other articles are subject to this consent decree. Defendant has 30 days from the receipt of such guidance in which to complete the initial testing required by paragraph eight (8) of this consent decree.

10. For the purpose of complying with the terms of this consent decree, the tests required by 16 CFR 1500.51(b)(2) and .52(b)(2) may be conducted using resilient non-textile floor Type IV tiles that conform to federal specification SS–T–312B.

11. Defendant agrees to maintain records of the tests conducted pursuant to paragraph eight (8) for a period of 3 years. Such records shall include, but not be limited to, the date of the test, the procedure used, the citation of the Code of Federal Regulations of each test used, the number of samples tested, and the results.

12. CPSC, its agents and duly authorized representatives shall be permitted to enter any of defendant's facilities at reasonable times to inspect defendant's business premises and defendant's business records relating to the matters that are the subject of this Consent Decree; to collect any samples; and to conduct any tests which the Consumer Product Safety Commission believes are necessary to ensure that the purposes of this decree are implemented.

13. Defendant shall notify the Consumer Product Safety Commission, in writing, at least 30 days before any changes such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporate structure of Small World Toys that may affect compliance obligations arising out of this Consent Decree. Such notice shall be sent, certified mail, return receipt requested, to the address in paragraph eight (8) above.

14. Defendant shall conduct an immediate limited recall of the hat of the Ambi "Mini-Racer," combined with an incentive program approved by the Consumer Product Safety Commission, to encourage consumers to return the hat. The defendant shall also conduct an immediate limited recall from the retail level of the Discovery World/Small World Toys "Lift & Learn Puzzles" and "Scratch & Sniff Puzzles." The recalls shall, at a minimum, consist of written notification approved by the Commission to each of defendant's customers, such as retailers and distributors, who obtained the toys from the defendant. All aspects of the recall shall be approved by the Commission. Defendant shall also stop distribution of the Ambi "Funhouse," Royal Company "Water Wheel," Jimson "Super Air

Bus," Jimson "Elephant Boat," Hermann Eichorn Gm. Hu. Co. "Wooden Train," Hans Clemens Co. "Stuffed Bear" and Jimson "See Thru Locomotive," until such time as they have been changed and comply with the requirements of the FHSA.

15. The parties to this consent decree agree that the Court retains jurisdiction of these matters for the purpose of enabling any party to the consent decree to apply for any further orders that may be needed to construe, carry out, modify, terminate or enforce compliance with the terms of this agreement.

16. By signing this consent decree, the defendant does not admit any violation of the FHSA and does not admit that any of its actions described in paragraphs six (6) and fourteen (14) above were taken to correct any violations of the FHSA.

Dated: Los Angeles, California, July 30, 1986.

Small World Toys

Edward M. Goldwasser,
President.
Michael A. Brown,
Counsel for Small World Toys.
Schmeltzer, Aptaker & Sheppard, P.C.,
1800 Massachusetts Avenue, NW., Suite 500, Washington, DC 20036, (202) 828–1000.

Approved and so ordered:

John G. Davies

Dated: July 31, 1986.

For the United States

Richard K. Willard,
Assistant Attorney General, Civil Division.
Robert C. Bonner,
United States Attorney for the Central District of California.

Assistant United States Attorney.

Attorney, Civil Division, Office of Consumer Litigation, Department of Justice.

[FR Doc. 98–30163 Filed 11–10–98; 8:45 am]
BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Navy Planning and Steering Advisory Committee

ACTION: Notice.

SUMMARY: The Navy Planning and Steering Advisory Committee (PSAC) has been renewed in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The PSAC provides objective advice and recommendations to the Secretary of Defense, the Secretary of the Navy and the Chief of Naval Operations on matters relating to ballistic missile security and anti-submarine warfare. The committee establishes a technical dialogue between experts from the public and private sectors on matters of national security involving the ballistic missile program.

The PSAC will be composed of approximately 25 members, from government and private academic, scientific, and intelligence communities who are experts in the disciplines of ballistic missile security and anti-submarine warfare, thus ensuring a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

For further information regarding the PSAC, contact: Laura Wurzer, Department of the Navy, telephone: 703–602–4039.

Dated: November 5, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30160 Filed 11–10–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on December 1, 1998; December 8, 1998; December 15, 1998; December 22, 1998 and December 29, 1998, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: 5 November 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30159 Filed 11–10–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Graviton, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Graviton, Inc., a revocable, nonassignable, exclusive license in the United States and certain foreign countries, to practice the Government-owned inventions described in U.S. Patent No. 5,372,930 entitled "Sensor for Ultra-Low Concentration Molecular Recognition" issued December 13, 1994; U.S. Patent No. 5,807,758 entitled "Chemical and Biological Sensor Using An Ultra-Sensitive Force Transducer" issued September 15, 1998; U.S. Patent Application Serial No. 08/794,979 (Navy Case No. 77,576) entitled "Biosensor Using Magnetically-Detected Label" filed February 5, 1997; U.S. Patent Application Serial No. 09/008,782 (Navy Case No. 78,183) entitled "Force Discrimination Assay" filed January 20, 1998; U.S. Patent Application Serial No. 09/074,541 (Navy Case No. 78,838) entitled "Apparatus and Method for Measuring Intermolecular Interactions by Atomic Force Microscopy" filed May 8, 1998; in the field of pharmaceutical biological assays, clinical diagnostics, and biochemical sensors.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than January 11, 1999.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR OOCC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Dr. Richard H. Rein, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: November 3, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–30266 Filed 11–10–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 11, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 5, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: Research on Charter School Finances.
Frequency: On occasion.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 693.
Burden Hours: 671.
Abstract: This two-year study explores how state and district policies, as well as charter school practices, affect charter schools' cost-effectiveness and quality. Funding equity and adequacy are assessed. This study proposes to inform policymakers at the federal, state, and local level of the precise effects of varied approaches to charter school finance.

[FR Doc. 98–30197 Filed 11–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 14, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Werfel—d@al.eop.gov. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of

the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 5, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.
Title: Annual Survey of Bilingual Education: State Grant Program.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't; SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 59.
Burden Hours: 1,180.
Abstract: This information will be used to make funding decisions, to inform the Congress on the status of Limited English Proficient (LEP) students nationwide, and to inform Congress and other entities of the progress of LEP students with each state. The respondents are SEAs charged with the authority to provide technical assistance to LEAs and to collect data on LEP population.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–30198 Filed 11–10–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Teleconference

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Executive Committee teleconference.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference of the Executive Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. The public is being given less than 15 days notice of this meeting because of the need to expedite a decision involving other agencies.

DATES: November 12, 1998.

TIME: 1–2 p.m., EST.

LOCATION: Room 100, 80 F St., NW, Washington, DC 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The teleconference is open to the public. The Executive Committee will consider issues related to participation in an international study on the impact of information and communication technology on learning and teaching. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: November 6, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98–30222 Filed 11–10–98; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Education Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Peer Review and Standards Committee of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

DATES: December 2, 1998.

TIME: 10–4 p.m., EST.

LOCATION: Room 100, 80 F St., NW, Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. The meeting is open to the public. The Peer Review and Standards Committee will consider recommendations for the improvement of standards for the evaluation and peer review of grant and cooperative agreement applications. Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: November 6, 1998.

Eve M. Bither,

Executive Director.

[FR Doc. 98–30223 Filed 11–10–98; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Science; Continuation of Solicitation for the Office of Science (Formerly the Office of Energy Research) Financial Assistance Program—Notice 99–01

AGENCY: U.S. Department of Energy.

ACTION: Annual Notice of Continuation of Availability of Grants and Cooperative Agreements.

SUMMARY: The Office of Science of the Department of Energy hereby announces its continuing interest in receiving grant applications for support of work in the following program areas: Basic Energy Sciences, High Energy Physics, Nuclear Physics, Computational and Technology Research, Fusion Energy Sciences, Biological and Environmental Research and Energy Research Analyses. On

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September 3, 1992, (57 FR 40582), DOE published in the **Federal Register** the Office of Energy Research Financial Assistance Program, 10 CFR Part 605, Final Rule, which contained a solicitation for this program. Information about submission of applications, eligibility, limitations, evaluation and selection processes and other policies and procedures are specified in 10 CFR Part 605.

DATES: Applications may be submitted at any time in response to this Notice of Availability.

ADDRESSES: Applications must be sent to: Director, Grants and Contracts Division, Office of Science, SC–64, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. When preparing applications, applicants should use the Office of Science Financial Assistance Program Application Guide and Forms located on the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. Applicants without Internet access may call 301–903–5212 for information.

SUPPLEMENTARY INFORMATION: This Notice is published annually and remains in effect until it is succeeded by another issuance by the Office of Science. This annual Notice 99–01 succeeds Notice 98–01 which was published October 31, 1997.

It is anticipated that approximately $400 million will be available for grant and cooperative agreement awards in FY 1999. The DOE is under no obligation to pay for any costs associated with the preparation or submission of an application. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this Notice.

In addition, the following program descriptions are offered to provide more in-depth information on scientific and technical areas of interest to the Office of Science:

1. Basic Energy Sciences

The Basic Energy Sciences (BES) program supports fundamental research in the natural sciences and engineering leading to new and improved energy technologies and to understanding and mitigating the environmental impacts of energy technologies. The science divisions and their objectives are as follows:

(a) Materials Sciences

The objective of this program is to increase the understanding of phenomena and properties important to materials behavior that will contribute to meeting the needs of present and future energy technologies. It is comprised of the subfields metallurgy, ceramics, solid state physics, materials chemistry, and related disciplines where the emphasis is on the science of materials. Program Contact: (301) 903–3427.

(b) Chemical Sciences

The objective of this program is to expand, through support of basic research, knowledge of various areas of chemistry, chemical engineering and atomic molecular and optical physics with a goal of contributing to new or improved processes for developing and using domestic energy resources in an efficient and environmentally sound manner. Disciplinary areas where research is supported include atomic molecular and optical physics; physical, inorganic and organic chemistry; chemical physics; photochemistry; radiation chemistry; analytical chemistry; separations science; actinide chemistry; and chemical engineering sciences. Program Contact: (301) 903–5804.

(c) Engineering Research

This program's objectives are: (1) to extend the body of knowledge underlying current engineering practice in order to open new ways for enhancing energy savings and production, prolonging useful equipment life, and reducing costs while maintaining output performance, and environmental quality; and (2) to broaden the technical and conceptual base for solving future engineering problems in the energy technologies. Long-term research topics of current interest include: foundations of bioprocessing of fuels and energy related wastes, fracture mechanics, experimental and theoretical studies of multi phase flows, intelligent machines, and diagnostics and control for plasma processing of materials. Program Contact: (301) 903–5822.

(d) Geosciences

The goal of this program is to develop a quantitative and predictive understanding of the energy-related aspects of processes in the earth. The emphasis is on the upper levels of the earth's crust and the focus is on geophysics, geomechanics and geochemistry of rock-fluid systems and interactions emphasizing processes taking place at the atomic and molecular scale. Specific topical areas receiving emphasis include: high resolution geophysical imaging; rock physics, fundamental properties and interactions of rocks, minerals, and fluids; and sedimentary basin systems. The resulting improved understanding and knowledge base are needed to assist efforts in the utilization of the Nation's energy resources in an environmentally acceptable fashion. Program Contact: (301) 903–5822.

(e) Energy Biosciences

The primary objective of this program is to generate the fundamental understanding of biological mechanisms in the areas of botanical and microbiological sciences that will support biotechnological developments related to DOE's mission. The research serves as the basic information foundation with respect to an environmentally responsible renewable resource production for fuels and chemicals, microbial conversions of renewable materials and biological systems for the conservation of energy. This office has special requirements for the submission of preapplications, when to submit, and the length of the applications. Applicants are encouraged to contact the office regarding these requirements. Program Contact: (301) 903–2873.

2. High Energy and Nuclear Physics

This program supports about 90% of the U.S. efforts in high energy and nuclear physics. The objectives of these programs are indicated below:

(a) High Energy Physics

The primary objectives of this program are to understand the ultimate structure of matter in terms of the properties and interrelations of its basic constituents, and to understand the nature and relationships among the fundamental forces of nature. The research falls into three broad categories: experimental research, theoretical research, and technology R&D in support of the high energy physics program. Program Contact: (301) 903–3624.

(b) Nuclear Physics (Including Nuclear Data Program)

The primary objectives of this program are an understanding of the interactions and structures of atomic nuclei and nuclear matter at the most elementary level possible, and an understanding of the fundamental forces of nature as manifested in nuclear matter. Program Contact: (301) 903–3613.

3. Computational and Technology Research

The goal of this program is to conduct an integrated program in applied mathematical sciences, high

performance computing and communications, information infrastructure, advanced energy projects research, and technology research, to address complex problems. Research in forefront and diverse programs is becoming more multi disciplinary and requires new approaches to the solution of these complex problems. The program exploits the capabilities and research skills at universities, national laboratories, and industrial research laboratories. The program provides technical, analytical, and management direction for development, implementation, and evaluation of research programs that include activities from fundamental research to technology development. The goal of the program is accomplished through the effort of the following two divisions:

(a) Mathematical, Information, and Computational Sciences

This subprogram supports a spectrum of fundamental research in applied mathematical sciences, computer science, and networking from basic through prototype development. Results of these efforts are used to form partnerships with users in scientific disciplines to validate the usefulness of the ideas and to develop them into tools. Testbeds on important applications for DOE are supported by this subprogram. Program Contact: (301)–903–5800.

(b) Advanced Energy Projects/ Laboratory Technology Research

Advanced Energy Projects—This activity funds research to establish the feasibility of novel, energy-related concepts. These concepts are usually derived from recent advances in basic research, but require additional research to establish their feasibility. A common theme for each concept is the initial linkage of new, or previously neglected, research results to a practical energy payoff for the Nation.

Laboratory Technology Research—This subprogram conducts high risk, energy-related research that advances fundamental science and technology toward innovative applications that could significantly impact the Nation's energy economy. Scientists at the Office of Science laboratories enter into cost-shared research partnerships with industry to explore energy applications of research advances in areas of mission relevance to both parties. The partners jointly bring technology research to a point where industry or the Department's technology development programs can pursue final development or commercialization. Current research projects emphasize advanced materials, intelligent processes and controls, and energy-related applications of biotechnology. Program Contact: (301)-903–5995.

4. Fusion Energy Sciences

The mission of the Fusion Energy Sciences program is to advance plasma science, fusion science, and fusion technology—the knowledge base needed for an economically and environmentally attractive fusion energy source. This program is supported by the Office of Fusion Energy Sciences (OFES), which fosters both applied and basic research and emphasizes international collaboration to accomplish this mission.

(a) Science Division

This Division seeks to develop the physics knowledge base needed to advance the Fusion Energy Sciences program toward its goals. Basic and applied research is carried out in the following areas: (1) basic plasma science research directed at furthering the understanding of fundamental processes in plasmas; (2) improving the theoretical understanding of fusion plasmas necessary for interpreting results from present experiments and the planning and design of future confinement devices, (3) obtaining the critical data on plasma properties, atomic physics and new diagnostic techniques for support of confinement experiments, (4) supporting exploratory research into concepts that are alternatives to the tokamak, and (5) carrying out research on issues that support the development of Inertial Fusion Energy, for which target development is carried out by the Department of Energy's Defense Programs. Research into basic physics issues associated with medium to large scale confinement devices is essential to studying conditions relevant to the production of fusion energy. Experiments on these scale of devices are used to explore the limits of specific confinement concepts, as well as study associated physical phenomena. Specific areas of interest include: (1) the production of increased plasma densities and temperatures, (2) the understanding of the physical laws governing plasma energy of high plasma pressure, (4) the investigation of plasma interaction with radio frequency waves, and (5) the study and control of particle transport and exhaust in plasmas. Program Contact: (301) 903–4095.

(b) Technology Division

This Division seeks to develop the technology knowledge base needed to advance the Fusion Energy Sciences program toward its goals. The Division's science-oriented goal is to provide the technologies that are required to successfully design, build, and operate near-term experiments aimed at producing, understanding, and optimizing the fusion energy process. The Division's energy-oriented goal is to develop the technologies that will be needed in the long-term for an economically and environmentally attractive fusion energy source. These goals are pursued through multi-institutional domestic programs and international collaboration partnerships. Program Contact: (301) 903–5378.

5. Biological and Environmental Research Program

The goals of the Biological and Environmental Research Program are as follows: (1) to provide, through basic and applied research, the scientific information required to identify, understand and anticipate the long-term health and environmental consequences of energy use and development; and (2) to utilize the Department's unique resources to solve major scientific problems in medicine, biology and the environment. Goals of the program are accomplished through the efforts of the following research program elements:

(a) Health Effects and Life Sciences Research

This is a broad program of basic and applied biological research. The objectives are: (1) to create and apply new technologies and resources in mapping, sequencing, and information management for characterizing the molecular nature of the human genome; (2) to develop and support DOE national user facilities for use in fundamental structural biology; (3) to use model organisms to understand human genome organization, human gene function and control, and the functional relationships between human genes and proteins; (4) to characterize and exploit the genomes and diversity of microbes with potential relevance for energy, bioremediation, or global climate; (5) to understand and characterize the risks to human health from exposures to low levels of radiation and chemicals; (6) to develop novel technologies for high throughput determination of protein structure; and (7) to anticipate and address ethical, legal, and social implications arising from genome research. Program Contact: (301) 903–5468.

(b) Medical Applications and Measurement Science

The objectives of this program comprise the following areas: (1) to develop technologies for the beneficial applications of radiation and in vivo

radiotracer detection in the study, diagnosis and treatment of human diseases and disorders; (2) to develop new instrumentation for biological and medical research; and (3) to develop new concepts and techniques for detecting and measuring the hazardous agents of biochemical, physical and environmental consequences related to energy production.

Program Contact: (301) 903–3213.

(c) Environmental Remediation

The objectives of the program relate to environmental processes affected by energy production and use. The program develops information on the physical, chemical and biological processes that cycle and transport energy-related material, particularly contaminates that arose during nuclear weapons production, through the Earth's surface and subsurface. Emphasis is put on the development of a strong basis for understanding and implementing the appropriate and efficient use of bioremediation, particularly at the Department's sites.

Program Contact: (301) 903–3281.

(d) Environmental Processes

This program addresses global environmental change from increases in atmospheric carbon dioxide and other greenhouse gases. The scope of the global change program encompasses the carbon cycle, climate modeling and diagnostics, atmospheric sciences and meteorology, ecosystem responses, and impacts on resources. The role of clouds and radiation in climate prediction is a particular emphasis.

Program Contact: (301) 903–3281.

6. Energy Research Analyses

This program supports energy research analyses of the Department's basic and applied research activities. Specific objectives include assessments to identify any duplication or gaps in scientific research activities, and impartial and independent evaluations of scientific and technical research efforts.

Program Contact: (202) 586–7021.

7. Experimental Program to Stimulate Competitive Research (EPSCoR)

The objective of the EPSCoR program is to enhance the capabilities of EPSCoR states to conduct nationally competitive energy-related research and to develop science and engineering manpower to meet current and future needs in energy-related fields. This program addressees research needs across all of the Department of Energy research interests. Research supported by the EPSCoR program is concerned with the same broad research areas addressed by the Office of Science programs that are described above. The EPSCoR program is restricted to applications which originate in eighteen states (Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming) and the commonwealth of Puerto Rico. It is anticipated that in Fiscal Year 1999, only a limited number of new competitive research grants will be awarded under this program due to prior commitments to ongoing EPSCoR grant projects.

Program Contact: (301) 903–3427.

Issued in Washington, DC, on November 5, 1998.

John Rodney Clark,

Associate Director for Resource Management, Office of Science.

[FR Doc. 98–30278 Filed 11–10–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–37–000]

Town of Colorado City, Arizona; Notice of Petition for Declaratory Order

November 5, 1998.

Take notice that on October 27, 1998, the Town of Colorado City, Arizona (Colorado City), P.O. Box 70, Colorado City, Arizona 86021 filed a petition for the declaratory order addressing the question of the Commission's jurisdiction over Questar Gas Company (Questar) as it relates to Questar providing a natural gas transportation service for Colorado City, all as more fully set forth in the application on file with the Commission an open to public inspection.

It is stated that Colorado City is in the process of establishing a municipal gas distribution system to serve residential, commercial and industrial customers. It is asserted that Colorado City has determined that it can obtain natural gas supply from sources outside of Arizona and have the gas transported by interstate pipelines. Colorado City states that it has requested Questar to transport gas from its system in Utah to an interconnection, located in Hurricane, Utah, with the facilities of the City of Hildale, Utah (Hildale). It is explained that Colorado City has an agreement with Hildale for transportation to Hildale, Utah, which is located on the Arizona border. Colorado City asserts that Questar presently transports gas from interstate sources to the Hildale Electric Power Plant, an end-user. It is explained that Colorado City sent a letter December 7, 1998, to Questar requesting transportation service to Hildale for use in Colorado City's distribution system in Arizona. It is further explained that Questar refused this request in a letter sent on January 5, 1998, stating that Questar is not in the business of transporting gas for resale.

In this petition, Colorado City requests that the Commission issue a declaratory order which addresses the question of whether the Commission has exclusive jurisdiction to order Questar to provide an interstate transportation service through its pipeline facilities in Utah to Colorado City's facilities in Arizona.

Colorado City requests a determination as to whether Questar's refusal to provide such a service is in violation of the Commission's Regulations in light of Colorado City's assertion that Questar is transporting similar gas for use in a municipal electric plant. Colorado City requests a determination as to whether it can file an application under Section 7(a) of the Natural Gas Act requesting the Commission to compel Questar to provide the requested service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the

certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided, for unless otherwise advised, it will be unnecessary for Colorado City to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–30171 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–44–000]

Colorado Interstate Gas Company; Notice of Request Under Blanket Authorization

November 5, 1998.

Take notice that on October 29, 1998, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP99–44–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct a new meter station, located in Huerfano County, Colorado, for delivery of gas to Petroglyph Energy, Inc. (Petroglyph), under CIG's blanket certificate issued in Docket No. CP83–21–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CIG proposes to construct a new delivery facility to be located in Section 9, Township 29 South, Range 67 West, Huerfano County, Colorado. CIG states that the new facility will consist of a two-inch meter run and appurtenant facilities for the delivery of gas to Petroglyph, a producer, for start up fuel gas for their compression facility.

CIG declares that the delivery facility will be capable of delivering up to 8,000 Mcf per day. CIG asserts that the proposed facility will not have an impact on CIG's peak day and annual deliveries as the service will be provided on an interruptible basis and only when start up fuel gas is required.

CIG states that the proposed delivery facility will cost an estimated $6,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–30174 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–41–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

November 5, 1998.

Take notice that on October 29, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP99–41–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct, own and operate a new delivery point on FGT's 36-inch mainline to accommodate natural gas deliveries to Clark-Mobile Counties Gas District (Clark-Mobile), in Mobile County, Alabama. FGT makes such request under its blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

FGT proposes to construct, own, and operate a new delivery point on FGT's 36-inch mainline on the discharge side of Compressor Station 11, to accommodate the transportation of natural gas to Clark-Mobile's Mount Vernon B Meter Station (Mt. Vernon B). FGT states that it will own an 8-inch hot tap on its 36-inch mainline, 250 feet of 6-inch connecting lateral and electronic flow measurement facilities, and that Clark-Mobile will construct and own the Mt. Vernon B meter station and regulator station. It is indicated that Clark-Mobile requested this additional tap on the discharge side of FGT's 36-inch mainline to allow delivery of gas to Clark-Mobile at a higher pressure to serve customers requiring higher pressures than FGT can deliver from the suction side of Compressor Station 11.

The maximum gas quantity that FGT will deliver into the existing meter station is 28,800 MMBtu per day or 10,512,000 MMBtu per year to serve an interruptible load to Clark-Mobile's customers. It is averred that the end use of the gas will primarily be for industrial, commercial, and residential uses.

The estimated total cost of the proposed construction is approximately $128,000, inclusive of tax gross up. It is stated that Clark-Mobile will reimburse FGT for all costs directly and indirectly incurred by FGT for the construction of the facilities proposed herein. It is indicated that to the extent such reimbursement qualifies as a contribution in aid of construction under the Tax Reform Act of 1986, Clark-Mobile agrees to reimburse FGT for income tax incurred by FGT.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–30172 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–404–000]

Mississippi River Transmission Corporation; Revised Notice Rescheduling Technical Conference

November 5, 1998.

Take notice that the Commission staff will convene a technical conference as provided by the Commission order in this proceeding issued October 14,

1998.[1] The technical conference, previously scheduled for Wednesday, November 4, 1998, at 10:00 a.m., has been rescheduled.

Take notice that the technical conference will be held on Thursday, November 12, 1998, at 2:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Attendance will be limited to parties and staff. For additional information, please contact Jerie O'Connor at (202) 208–0459, or Harris Wood at (202) 208–0224.

David P. Boergers,

Secretary.

[FR Doc. 98–30176 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–406–000]

Overthrust Pipeline Company; Notice of Technical Conference

November 5, 1998.

On October 16, 1998, the Commission issued an order in the captioned docket requiring, among other things, that a technical conference be convened to investigate the reasonableness of Overthrust's proposed tariff changes.

Take notice that the conference will begin at 9:00 a.m., on Thursday, November 19, 1998, at the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426 in a room to be designated at that time.

Any questions concerning the conference should be directed to Richard A. White, OGC, (202) 208–0491 or Yolanda C. Hart-Harris, OPR, (202) 208–0069.

David P. Boergers,

Secretary.

[FR Doc. 98–30177 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Mississippi River Transmission Corporation, 85 FERC ¶61,049 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–43–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 5, 1998.

Take notice that on October 29, 1998, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP99–43–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization construct and operate a delivery point to provide transportation service to Greater Dickson Gas Authority (Dickson) in Dickson County, Tennessee under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to construct a delivery point on its system at approximately M.P. 81–3, −4+7.2 on Tennessee's 30-inch lines 100–3 and 100–4. Tennessee states that the total quantities to be delivered to Dickson will not exceed the total quantities authorized prior to this request. Tennessee states that construction of the delivery point is not prohibited by Tennessee's existing tariff. Tennessee states that it has sufficient capacity to accomplish deliveries at the delivery point without detriment or disadvantage to Tennessee's other customers. Further, Tennessee states that the construction of the delivery point is not expected to have any significant impact upon Tennessee's peak day or annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–30173 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–000]

Viking Gas Transmission Company; Notice of Informal Settlement Conference

November 5, 1998.

Take notice that an informal settlement conference in this proceeding will be convened on Tuesday, November 17, 1998, at 10:00 a.m., continuing on Wednesday, November 18, 1998, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or John P. Roddy at (202) 208–0053.

David P. Boergers,

Secretary.

[FR Doc. 98–30175 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6641–027]

City of Marion and Smithland, Hydroelectric Partners; Notice of Availability of Final Environmental Assessment

November 5, 1998.

A final environmental assessment (FEA) is available for public review. The FEA is for an application to amend the Smithland Hydroelectric Project. The licensee proposes to replace the licensed three large turbine/generator units with 216 small turbines and 108 generator units. The FEA finds that

approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Smithland Hydroelectric Project is located on an existing U.S. Army Corps of Engineers Dam, on the Ohio River in Livingston County, Kentucky.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be viewed in the Public Reference Branch, Room 2A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426.

For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

David P. Boergers,

Secretary.

[FR Doc. 98–30180 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing; Notice That the Application is Not Ready for Environmental Analysis; Notice of Solicitation of Interventions and Protests

November 5, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major New License.

b. *Project No.:* 372–008.

c. *Date filed:* June 12, 1998.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lower Tule River Hydroelectric Project.

f. *Location:* On the North and South Forks of the Middle Fork Tule River in Tulare County, California, partially within the boundaries of the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Edward Miller, Manager, Hydro Generation, Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770, (626) 302–1564.

i. *FERC Contact:* Nan Allen at (202) 219–2938.

j. *Deadline Date:* 60 days from the issuance date of this notice.

k. *Description of the Project:* The existing project consists of: (1) A 15-foot-high, concrete dam; (2) a 5-foot-high, rubble masonry dam; (3) a 31,802-foot-long flow line; (4) a 2,815-foot-long steel penstock; (5) a 3.37 acre-foot forebay; (6) a powerhouse containing two turbine-generator units with a total installed capacity of 2,520 kilowatts (kW); and (7) a 2,352-foot-long tailrace.

l. *Locations of the Application:* A copy of the application is available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy of the application may also be viewed or printed by accessing the Commission's WebSite on the Internet at www.ferc.fed.us. For assistance users call (202) 208–2222. A copy is also available for inspection and reproduction at the Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770 (626) 302–1564.

m. *Status of Application and Environmental Analysis:* This application has been accepted for filing, but it is not ready for environmental analysis. See attached paragraph E1.

n. *Invitation to Intervene or Protest:* Intervenors are reminded of the Commission's Rules of Practice and Procedure requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list for the project. Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. See attached paragraph B1.

o. This notice contains the standard paragraphs B1 and E1.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–30178 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

November 5, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment to License.

b. *Project No:* 2100–095, & –096.

c. *Date Filed:* October 26, 1998.

d. *Applicant:* California Department of Water Resources.

e. *Name of Project:* Feather River Hydroelectric Project.

f. *Location:* On the Feather River in Butte County, California.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Mr. Roland Williams, California Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236–0001, (530) 534–2323.

i. *FERC Contact:* Timothy Welch (202) 219–2666.

j. *Comment Date:* December 15, 1998.

k. *Description of Amendment:* The California Department of Water Resources (licensee) filed an application to extend its Lake Oroville fish stocking study for one year. The one year extension is needed to allow an additional year to evaluate the 1997 stocked salmon. The licensee has been conducting the study since 1993 and will use the information from the study to recommend a final stocking rate for Lake Oroville in 1999. The licensee also requests a one year extension of its Lake Oroville fish habitat enhancement project.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protest or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–30179 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Surrender of License

November 5, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 6461–019.

c. *Date Filed:* October 8, 1998.

d. *Applicant:* City of Port Angeles.

e. *Name of Project:* Morse Creek.

f. *Location:* Morse Creek, Clallaham County, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Robert J. Titus, 321 East Fifth Street, P.O. Box 1150, Port Angeles, WA 98362, (360) 417–4701.

i. *FERC Contact:* David Snyder, (202) 219–2385.

j. *Comment Date:* December 15, 1998.

k. *Description of Application:* The City of Port Angeles (City) has applied to surrender its license because the project has proven to be uneconomical to operate. The City states that the project's annual operation and maintenance expenses have exceeded the annual value of the power generated by the project in recent years. The project consists of: (1) a 10-foot-high, 25-foot-long concrete diversion weir and intake structure; (2) a 750-foot-long, 30 by 36-inch-diameter concrete tunnel; (3) a 11,400-foot-long, 24-inch-diameter steel pipeline; (4) a tee connection in the pipeline; (5) a 1,300-foot-long, 24-inch-diameter penstock; (6) a powerhouse with a single generator having a nameplate rating of 560 kW; (7) a 2,400 underground transmission line; (8) 4,400 feet of access road; and appurtenance facilities. The City proposes to remove the existing generating equipment and continue to use the diversion structure and pipeline to provide an emergency water supply.

l. The notice also consists of the following standard paragraphs: B, C2, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Any motion to intervene must also be served upon each representative of the applicant specified in the particular notice.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–30181 Filed 11–10–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6188–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Final Authorization for Hazardous Waste Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Action (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget

(OMB): Final Authorization for Hazardous Waste Management, EPA ICR Number 0969.04, OMB Control Number 2050–0041 (expiration date March 31, 1999.) Before submitting the ICR to OMB for Review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Tony Terrell at EPA, (703) 308–6496, and refer to EPA ICR No. 969.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–98–SAIP–fffff to: RCRA docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA HQ), 401 M Street, SW, Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically through the Internet to: *rcradocket@epamail.epa.gov* Comments in electronic format should also be identified by docket number F–98–SAIP–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically.

The ICR is available on the Internet. Follow these instructions to access the information electronically:

WWW: *http://www.epa.gov.oswer/hazwaste/state/index.htm*
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in /pub/epaoswer

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Tony Terrell, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) *308–6496/8638,terrell.tony@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are authorized to manage the federal Hazardous waste program.

Title: Final Authorization for Hazardous Waste Management Programs, (OMB Control No. 2050–0041, ICR No. 969.) expiring March 31, 1999.

Abstract: In order for a State to obtain final authorization for a State hazardous waste program or to revise its previously authorized program, it must submit an official application to the EPA Regional office for approval. The purpose of the application is to enable EPA to properly determine whether the State's program meets the requirements of section 3006 of RCRA.

A State with an approved program may voluntarily transfer program responsibilities to EPA by notifying EPA of the proposed transfer, as required by section 271.23. Further, EPA may withdraw a State's authorized program under section 271.23.

State program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. In the event that the State is revising its program by adopting new Federal requirements, the State shall prepare and submit modified revisions of the program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary. The State shall inform EPA of any proposed modifications to its basic statutory or regulatory authority in accordance with section 271.21. If a State is proposing to transfer all or any part of any program from the approved State agency to any other agency, it must notify EPA in accordance with section 271.21 and submit revised organizational charts as required under section 271.6, in accordance with section 271.21. These paperwork requirements are mandatory under section 3006(a). EPA will use the information submitted by the State in order to determine whether the State's program meets the statutory and regulatory requirements for authorization. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automatic electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 275 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States with authorized State Programs.

Estimated Number of Respondents: 49.

Frequency of Response: 12.

Estimated Total Annual Hour Burden: 3037 hours.

Estimated Total Annualized Cost Burden: $63,863.

Dated: November 4, 1998.

Barnes Johnson,

Acting Director, Office of Solid Waste.

[FR Doc. 98–30275 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6185–5]

Protection of Stratospheric Ozone: Notice of Revocation of Technician Certification Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revocation.

SUMMARY: Through this action, EPA is announcing the revocation of Education Dynamics Institute (EDI) (located in Las Vegas, NV) to provide the technician certification exam in accordance with regulations promulgated at 40 CFR 82.161. EDI was issued a letter of revocation on August 19, 1998 that included an explanation of the basis for EPA's decision. This action also acknowledges the voluntary withdrawal of I.M./Thrifty Distribution, Inc. (located in Portland, OR); Advanced Technical Institute (located in Milpitas/Fremont, CA); and ADC, Limited (located in Albuquerque, NM) from the list of EPA-approved certification programs.

EDI has not complied with the recordkeeping and reporting requirements established for all technician certification programs pursuant to section 608 of the Clean Air Act Amendments. In accordance with those requirements, all approved technician certification programs must submit an activity report to EPA on a semi-annual basis. EPA sent EDI an information collection request issued pursuant to section 114(a) of the Clean Air Act, in which EPA requested that the program submit the required activity report. That information request letter indicated that failure to respond could result in revocation. Subsequent attempts by EPA to contact EDI were unsuccessful.

In accordance with 40 CFR 82.161(e), EPA revoked approval of EDI on August 19, 1998. All the above mentioned programs are no longer authorized to certify technicians or issue valid certification credentials. However, technicians certified by these programs during the period that the programs operated as EPA-approved programs, will remain certified in accordance with 40 CFR 82.161(a).

DATES: EDI had its approval as an EPA-approved technician certification program revoked, effective August 19, 1998.

FOR FURTHER INFORMATION CONTACT: Jake Johns, Program Implementation Branch, Stratospheric Protection Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J), 401 M Street, SW, Washington, DC 20460. The Stratospheric Ozone Hotline at 800–296–1996 can also be contacted for further information.

Dated: November 3, 1998.

Paul M. Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 98–30276 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6188–3]

Clean Air Act Advisory Committee—Notice of Charter Renewal

The Charter for the Environmental Protection Agency's (EPA) Clean Air Act Advisory Committee (CAAAC) will be renewed for an additional two-year period, beginning on November 16, 1998, as a necessary committee which is in the public interest, in accordance with provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. appl. 2 section 9(c). The purpose of the CAAAC is to provide independent advice and counsel to the EPA on policy and technical issue associated with implementation of the Clean Air Act of 1990. It is determined that CAAAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Paul Rasmussen, Designated Federal Official, CAAAC, U.S. EPA, Senior Advisor, Office of Air and Radiation (6102), 401 M Street SW., Washington, DC 20460.

Dated: November 3, 1998.

Paul Rasmussen,

Designated Federal Official.

[FR Doc. 98–30270 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6187–9]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Lake Salvage Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement with Litton Systems, Inc.; MagneTek Inc.; Philips Electronics North America Corporation; Alex Simkin; Edward Simkin and Irwin Simkin for the Lake Salvage Superfund Site.

SUMMARY: In accordance with section 122(I)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended (CERCLA), notification is hereby given of a proposed administrative agreement concerning the Lake Salvage Company hazardous waste site at 2527–29 West Lake Street in Chicago, Illinois (the "Site"). EPA proposes to enter into this agreement under the authority of section 122(h) and 107 of CERCLA. The proposed agreement has been executed by Litton Systems, Inc.; MagneTek Inc.; Philips Electronics North America Corporation; Alex Simkin; Edward Simkin and Irwin Simkin (the "Settling Parties").

Under the proposed agreement, the Settling Parties will pay $77,785.15 to the Hazardous Substances Superfund to resolve EPA's claims against them for response costs incurred by EPA at the Site. EPA incurred response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site. EPA also incurred response costs overseeing response activities conducted by Litton Systems, Inc. at the Site.

For thirty days following the date of publication of this document, the Environmental Protection Agency will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before December 14, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Lake Salvage Site, Chicago, Illinois, U.S. EPA Docket No. V–W–99C–_____.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. sections 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–30271 Filed 11–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission.

November 4, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 11, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Section 95.861, Interference.

Form Number: N/A.

Type of Review: Existing collection in use without OMB control number.

Respondents: Business or other for-profit entities.

Number of Respondents: 400.

Estimated Time per Response: 0.5 hours.

Frequency of Response: On occassion reporting requirements.

Total Annual Burden: 200 hours.

Total Annual Cost: None.

Needs and Uses: The notification requirement contained in Section 95.861 requires 218–219 MHz licensees to notify all households located both within a TV Channel 13 Grade B predicted contour and an 218–219 MHz system service area of the potential for interference to Channel 13 TV reception.

OMB Control Number: 3060–XXXX.

Title: Proposed Section 95.833, Construction requirements (WT Docket 98–169).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 900.

Estimated Time per Response: 1 hour.

Frequency of Response: Information is filed within five and ten years of license grant.

Total Annual Burden: 900 hours.

Total Annual Cost: None.

Needs and Uses: The requirement contained in Section 95.861 is necessary for 218–219 MHz Service system licensees to file a report within five and ten years of license grant to demonstrate that they provide substantial service to its service areas. This collection, which is currently in the rules, has been waived by an Order released on January 14, 1998, (DA 98–59), for all licensees pending resolution of the construction requirement by the current Notice of Proposed Rulemaking, WT Docket No. 98–169, FCC 98–228. No collection have been made. The NPRM proposes to reduce the regulatory burden on licensees by extending the filing of a report from three years to five years.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–30217 Filed 11–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 3, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 14, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 until December 4, 1998 or via internet to jboley@fcc.gov. After December 4th, direct all comments to Judy Boley, Federal Communications Commission, Room C1804, 445 12th Street, SW, Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0374.

Title: Section 73.1690, Modification of Transmission System.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 650 (300 AM station + 350 FM/TV station licensees.)

Estimated Time Per Response: 0.5 to 3.0 hours (3 hours/respondent for AM stations; 0.5 hours/respondent for FM/TV stations).

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Cost to Respondents: N/A.

Total Annual Burden: 1,075 hours.

Needs and Uses: Section 73.1690(d) requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modification to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram is to be retained at the transmitter site as long as the equipment is in use. The data is used by broadcast licensees to provide prospective users of the modified equipment with necessary information. If no such information exists, any future problems could prove difficult to solve and could result in electronic frequency interference for long periods of time.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–30218 Filed 11–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) submitted to OMB for Review and Approval.

November 4, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated information techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 14, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 234, 1919 M St., NW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0665.

Title: Section 64.707, Public Dissemination of Information by Providers of Operator Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 436.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,744 hours.

Cost to Respondents: None.

Needs and Uses: 47 CFR 64.707, requires that operator service providers (OSPs) regularly publish and make available at no cost upon request from consumers written materials that describe any changes in operator services and choices available to consumers. A statute, 47 U.S.C. 226 (d)(4)(B), required adoption of this rule. This requirement was a response to a widespread failure of operator service providers to provide information necessary for informed consumer choice in the marketplace. OSPs have provided this information primarily to consumers in the form of a written report that will be regularly updated at the OSP's discretion. Consumers will use this information to increase their knowledge of the choices available to them in the operator service marketplace.

OMB Control Number: 3060–0653.

Title: Section 64.703 (b), Consumer Information " Posting by Aggregators.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 56,200.

Estimated Time per Response: 3.67 hours (avg.).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 206,566 hours.

Cost to Respondents: None.

Needs and Uses: As required by 47 U.S.C. 226 (c)(1)(A), Section 64.703 (b) of the Commission's rules provides that aggregators (providers of telephones to the public or transient users) must post in writing, on or near such phones, information about presubscribed operator services, rates, carrier access, and the FCC address to which consumers may direct complaints. The Commission proposes to modify Section 64.703 to establish a 30-day time limit for updating consumer information posting on aggregator telephones.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30220 Filed 11–10–98; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. James R. Izant, and Elizabeth Ann Izant, both of Warren, Ohio; Phyllis J. Izant, Lafayette, Indiana; and Holly H. Izant-McSharry, Riverside, Connecticut; to acquire voting shares of Second Bancorp Incorporated, Warren Ohio, and thereby indirectly acquire voting shares of Second National Bank of Warren, Warren, Ohio.

Board of Governors of the Federal Reserve System, November 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30191 Filed 11–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. David A. Straz, Jr., Tampa, Florida; to acquire additional voting shares of City Financial Corporation of Tampa, Tampa, Florida, and thereby indirectly acquire additional voting shares of City First Bank, Tampa, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stephen J. Goodenow, Okoboji, Iowa; and Sara J. Blum, Storm Lake, Iowa; to acquire additional voting shares of Goodenow Bancorporation, Okoboji, Iowa, and thereby indirectly acquire additional voting shares of Bank Midwest, Fairmont, Minnesota.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Huston Family Voting Trust and Non Huston Family Members Voting Trust, both of Marshall, Missouri; to acquire voting shares of Wood & Huston Bancorporation, Inc., Marshall, Missouri, and thereby indirectly acquire voting shares of Missouri Southern Bank, West Plains, Missouri; and Wood & Huston Bank, Marshall, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Tieman H. & Katherine W. Dippel, Jr., Brenham, Texas; Tieman H. Dippel, III, Brenham, Texas; Margaret K. & Dathan C. Voelter, Waco, Texas; Arthur S. Knolle, Brenham, Texas; and Ronald D. & Deanna D. Alfred, Brenham, Texas; all to acquire additional voting shares of Brenham Bancshares, Inc., Brenham, Texas, and thereby indirectly acquire additional voting shares of Brenham National Bank, Brenham, Texas.

Board of Governors of the Federal Reserve System, November 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30286 Filed 11–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. CCBT Bancorp, Inc., Hyannis, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Cape Code Bank and Trust Company, Hyannis, Massachusetts.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. First Perry Bancorp, Inc., Marysville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Marysville, Marysville, Pennsylvania.

C. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Mountain Bancorp, Inc., West Liberty, Kentucky; to acquire 100 percent of the voting shares of Citizens Bank, Grayson, Kentucky.

D. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. The First Bancshares, Inc., Hattiesburg, Mississippi; to acquire 100

percent of the voting shares of The First National Bank of the Pine Belt, Laurel, Mississippi (in organization).

E. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. P&C Investments, Inc., Muscatine, Iowa; to become a bank holding company by acquiring 20.59 percent of the voting shares of Peoples National Corporation, Columbus Junction, Iowa, and thereby indirectly acquire Community Bank, Muscatine, Iowa.

Board of Governors of the Federal Reserve System, November 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30190 Filed 11–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1998.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. BB&T Corporation, Winston-Salem, North Carolina, and BB&T Financial Corporation of Virginia, Virginia Beach, Virginia; to merge with MainStreet Financial Corporation, Martinsville, Virginia, and thereby indirectly acquire Piedmont Trust Bank, Martinsville, Virginia; Bank of Carroll, Hillsville, Virginia; Bank of Ferrum, Ferrum, Virginia; First Community Bank of Saltville, Saltville, Virginia; The First Bank of Stuart, Stuart, Virginia; MainStreet Bank Central Virginia, Mechanicsville, Virginia; First National Bank of Clifton Forge, Clifton Forge, Virginia; Commerce Bank Corporation, College Park, Maryland; Tysons National Bank, McLean, Virginia; and The Bank of Northern Virginia, Arlington, Virginia.

In connection with this application, Applicants have also applied to acquire MainStreet Trust Company, N.A., Martinsville, Virginia, and thereby engage in trust activities, pursuant to § 225.28(b)(5) of Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. First Security Bancorp, Searcy, Arkansas; to acquire 100 percent of the voting shares of Baxter County Bancshares, Inc., Mountain Home, Arkansas, and thereby indirectly acquire Peoples Bank & Trust Company, Mountain Home, Arkansas.

Board of Governors of the Federal Reserve System, November 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30284 Filed 11–10–98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Westbank Corporation, West Springfield, Massachusetts; to acquire Cargill Bancorp, Putnam, Connecticut, and thereby acquire Cargill Bank, Putnam, Connecticut, and thereby engage in operating a savings and loan association, pursuant to § 225.28(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, November 5, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30192 Filed 11–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies

with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 27, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Enterbank Holdings, Inc., Clayton, Missouri; to engage *de novo* through its subsidiary, Argent Capital Management, LLC, Clayton, Missouri, in financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30285 Filed 11–10–98; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Advisory Committee for Injury Prevention and Control: Notice of Recharter

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Committee for Injury Prevention and Control, National Center for Injury Prevention and Control, of the Department of Health and Human Services, has been rechartered for a 2-year period, through October 28, 2000.

For further information, contact Thomas E. Blakeney, Executive Secretary, ACIPC, CDC, 1600 Clifton Road, NE, m/s K61, Atlanta, Georgia 30333. Telephone 770/488–1481, fax 770/488–4222, e-mail teb2@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 5, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30204 Filed 11–10–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99023]

Notice of Availability of Funds; Cooperative Agreement for National Programs To Prevent HIV Infection and Other Important Health Problems Among Youth Strengthen Coordinated School Health Programs

I. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for cooperative agreements that establish national programs to prevent behaviors that place elementary through college-aged young people at risk for human immunodeficiency virus (HIV) infection, other sexually transmitted diseases (STDs), unintended pregnancy, and other important health problems. CDC expects to award cooperative agreements to national organizations that can become an integral part of a broad national strategy to prevent and reduce (1) sexual behaviors that result in HIV infection, STDs, and unintended pregnancy; (2) alcohol and other drug use; (3) tobacco use; (4) dietary patterns that result in disease; (5) intentional and unintentional injury; and (6) sedentary lifestyles among young people. Applicants may apply for one of the three following priority areas:

Priority 1: Strengthen the capacity of national, state, and/or local agencies to help schools prevent behaviors that place all young people at risk and particularly those from communities of color for human immunodeficiency virus (HIV) infection, other sexually transmitted diseases (STDs), unintended pregnancy, and other important health problems.

Special Emphasis Area

Additional funding is available to expand activities to enable the nations' schools to develop programs to prevent teenage pregnancies. National organizations that receive funds to support activities in this special emphasis area must represent state and local education and health policymakers, administrators, or school personnel who develop teenage pregnancy prevention programs. Recipients of awards for teenage pregnancy prevention funds also must apply for and receive an award for Priority Area 1.

Priority 2: Strengthen the capacity of postsecondary institutions to work with national, state, and/or local agencies to prevent behaviors that place all young people at risk particularly those from communities of color for HIV infection, other STDs, unintended pregnancy, and other important health problems.

Priority 3: Strengthen the capacity of organizations that serve young people in high-risk situations and young people within communities of color, to work with national, state, and/or local agencies to prevent behaviors that place these young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems. A list of young people considered to be in high-risk situations is included as Attachment C in this program announcement.

This program addresses the Healthy People 2000 with a particular focus on the education and community-based programs priority area. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," an activity to reduce morbidity and mortality and improve the quality of life.

II. Eligible Applicants

Eligible applicants are national health, education, and social service organizations including national parent and minority organizations that are private, nonprofit, professional, or voluntary. A parent organization represents parents whose purpose is to promote the health and well-being of school-aged children.

Eligible organizations must have affiliate offices or local, state, or regional membership constituencies in a minimum of 10 states and territories. Affiliate offices and local, state, or regional membership constituencies may not apply in lieu of, or on behalf of, their national office. For profit agencies are not eligible to apply. Colleges and universities are not eligible to apply.

To be considered a national minority organization, eligible applicants must meet the following criteria:

1. At least 51 percent of persons on the governing board must be members of racial or ethnic minority populations.

2. The organization must possess a documented history of serving racial or ethnic minority populations through its offices, affiliates, or participating organizations at the national level for at least 12 months before the submission of the application.

The American Association of Colleges for Teacher Education, American Association of Community Colleges, American College Health Association, Association of American Colleges and

Universities, American Association of Colleges for Teacher Education, Boost Alcohol Consciousness Concerning the Health of University Students (BACCHUS), and Gamma Peer Education, National Association of Student Personnel Administrators, National Association of Equal Opportunity in Higher Education, and United Negro College Fund are not eligible for funding of Priority Area 2 under this program announcement. These organizations are currently funded for similar activities under Program Announcement 532, A National System of Integrated Activities to Prevent HIV Infection and Other Serious Health Problems Among Students, Especially Postsecondary Students. Organizations funded under Announcement 532 may apply for funding under Priority Areas 1 or 3 of this program announcement.

Limited competition is justified under this program announcement because of the need for directed and concentrated focus in the effective dissemination of programs and information. The coordination and implementation of a national health education program strategy requires organizations that have the capacity and experience to influence the professional actions of their constituencies; have the capacity to identify, assess, and advocate for implementing effective programs; and can build the capacity of health, education, and social service agencies.

Note: Public Law 104–65 states that an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

III. Availability of Funds

It is anticipated that $6 million will be available in FY 1999 to fund approximately 25 awards under the three priority areas, including at least one national organization that represents parents and one national minority organization. In addition, it is anticipated that $1 million will be available in FY 1999 to fund approximately 8 awards in a special emphasis area associated with priority #1.

A. Approximately $3.3 million will be available to fund approximately 15 awards under Priority 1. The average award will be approximately $220,000, ranging from $100,000 to $300,000.

Approximately $1 million will be available to fund approximately eight awards under the special emphasis area, teenage pregnancy prevention. The average award will be $125,000, ranging from $100,000 to $140,000. Only applicants receiving funding under Priority Area 1 are eligible for special emphasis area funding.

B. Approximately $460,000 will be available to fund approximately two awards under Priority 2. The average award will be approximately $230,000, ranging from $100,000 to $300,000.

C. Approximately $1.52 million will be available to fund approximately eight awards under Priority 3. The average award will be approximately $190,000, ranging from $100,000 to $300,000.

D. Approximately $480,000 will be available to fund at least one national minority organization in one or more of the three priority areas.

E. Approximately $240,000 will be available to fund an organization that represents parents and families in one of the three priority areas.

Awards are expected to begin on or about March 15, 1999, and will be for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory performance as evidenced by required reports and the availability of funds.

IV. Program Requirements

Funds must be used for categorical activities to prevent behaviors that place elementary through college-aged young people and specifically those in communities of color, at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems. Funds may be used to integrate such categorical activities into broader coordinated health programs to improve the health of young people (e.g., adolescent health programs, coordinated school health programs, college health programs).

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under Section A, and CDC will be responsible for conducting activities under Section B.

A. Recipient Activities

1. Collaborate with constituents; state and local education, health, and social service agencies; nongovernmental partners; and CDC to develop a national strategy to achieve the purposes of this program.

2. Implement specific, measurable, and feasible goals and objectives.

3. Evaluate the effectiveness of the program in achieving goals and objectives.

4. Participate in the Division of Adolescent and School Health (DASH) annual conference and at least one workshop during the budget period.

5. Disseminate programmatic information through appropriate methods, such as:

(a) Sharing materials through clearinghouses, at workshops and conferences, and as part of annual progress reports.

(b) Sharing project-related news and information with other CDC-funded State Education Agencies (SEAs), Local Education Agencies (LEAs), and national organizations through the Internet, other computer networks, the mail, and at workshops and conferences.

(c) Disseminate information and materials to decision makers, school personnel, public health officials, leaders of postsecondary institutions, leaders in State and local organizations that support health education, and others.

6. Implement an operational plan for the funded priority area that may include, but is not limited to, one or more of the following activities:

a. Possible overall activities:

(1) Help schools or other agencies that serve young people conduct coordinated programs that prevent behaviors that place elementary through college-aged young people in general, and in particular young people within communities of color at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

(2) Collaborate with other national organizations to establish and maintain initiatives to prevent behaviors that place elementary through college-aged young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

(3) Educate and enable managers, leaders, and decision makers who are members of the national organizations to act individually and collectively to support locally determined programs that are consistent with community values and appropriate to community needs and to place such programs high on their own agenda and on the public health agenda.

(4) Educate and enable families, minority organizations, the media, businesses, and others in the community to act individually and collectively to support (a) health programs for young people with content that is locally determined, (b) strategies that have credible evidence of effectiveness to reduce the priority health risk behaviors among young people, and (c) programs that are

consistent with community values and appropriate to community needs.

(5) Build the capacity of community agencies, parents, and professionals who work with minority populations to establish and/or maintain programs that focus on prevention education to reduce the risk for HIV infection, other STDs, unintended pregnancy, and other important health problems among elementary through college-aged young people.

(6) Provide technical assistance and training to parents, members of faith communities, and professionals who work with minority populations to use proven, effective strategies and programs to prevent behaviors that place elementary through college-aged young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

b. Possible Activities Related to Priority Area 1: For young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems.

(1) Support state and local education agencies to improve the health and academic status of elementary through high school-aged youth.

(2) Develop and strengthen an effective working relationship between state and local education, health, and social service agencies to prevent behaviors that place elementary through high school-aged youth at risk.

(3) Support the development of national, state, and local policies and programs that facilitate the coordination of government agencies and non-governmental organizations to support coordinated school health programs for students.

(4) Support efforts by education agencies, health departments, and social service agencies to develop school and community-based health programs that demonstrate credible evidence of reducing HIV infection, other STDs, unintended pregnancy, and other important health problems among young people.

c. Possible Activities Related to Priority Area 2:

(1) Develop and strengthen the capacity of postsecondary institutions to work with state and local schools to prevent behaviors that place elementary through college-aged young people at risk.

(2) Assist postsecondary institutions in encouraging college and university personnel to provide technical assistance to State and local education, health, and social service agencies so that structural and educational improvements are implemented to support coordinated school health programs.

d. Possible Activities Related to Priority Area 3:

(1) Establish or build the capacity of state and local schools or other agencies that serve young people to implement and maintain effective HIV prevention interventions that target young people in high-risk situations; and coordinate these efforts with other agencies and their constituents that serve young people.

(2) Support and strengthen HIV prevention interventions targeting specific populations of young people in high-risk situations, especially those within communities of color by: (a) providing technical assistance and training to meet the needs of constituent agencies at the local level, (b) establishing systematic policies and procedures that serve young people in high-risk situations, and (c) providing materials and resources to assist schools and community agencies in implementing effective programs.

(3) Strengthen collaboration at the national, state, and local levels to meet the needs of specific populations of young people in high-risk situations by: (a) Working closely with other nongovernmental organizations, especially those with access to or resources for the targeted population; (b) encouraging state and local constituent agencies and groups to be involved with the HIV prevention community planning group process in their area, as well as with their state or local health departments and other key organizations that serve young people of color; (c) identifying and communicating opportunities to share resources, models, ideas, and best practices among constituent agencies, as well as with other relevant Federal, national, state, and local agencies.

e. Possible Activities Related to the Special Emphasis Area of Teenage Pregnancy Prevention:

(1) Build the capacity of schools to develop and carry out pregnancy prevention policies and programs.

(2) Work with other funded national organizations in the Special Emphasis Area to coordinate and determine the informational and technical assistance needs of state and local school board members, health and education officials, legislators, administrators, and school personnel.

B. CDC Activities

1. Provide and periodically update information related to the purposes or activities of this program announcement.

2. Coordinate with national, state, and local education, health and social service agencies, as well as other relevant organizations, in planning and conducting national strategies designed to strengthen programs for preventing HIV infection, STDs, unintended pregnancy, and other important health risks and health problems among young people.

3. Provide programmatic consultation and guidance related to program planning, implementation, and evaluation; assessment of program objectives; and dissemination of successful strategies, experiences, and evaluation reports.

4. Plan and carry out meetings of national, state, and local education agencies and other appropriate organizations and individuals to address issues and program activities related to improving coordinated school health programs and strengthening the capacity of postsecondary institutions and agencies that serve young people to prevent HIV infection, STDs, and other important health problems among young people.

5. Assist in the evaluation of program activities.

V. Application Content

Applications must be developed in accordance with Public Health Service (PHS) form 5161–1, information contained in the program announcement, and the instructions outlined in the following section headings. Applicants must not identify any activities that would constitute research. Activities funded under this announcement are intended to build the capacity of national organizations to promote HIV, STD, and unintended pregnancy prevention among youth and should not include any formal or informal research. Applicants may apply for funding under only one of the priority areas and the application must clearly identify the specific priority area for which support is requested. Applicants who are funded under Priority Area 1 will be eligible to compete for, and receive, funding under the special emphasis area, school-based teenage pregnancy prevention. Applicants who elect to compete for the special emphasis area funding should address each of the following areas in a separate section of the application that is submitted in addition to their application for priority one funds.

A. Executive Summary

The applicant should provide a concise, two to three page, summary that clearly describes:

1. Eligibility, including: (a) Status as a national organization, (b) number and membership of affiliate offices, (c) status as a parent or minority organization, if applicable, and (d) experience and capacity as an organization to work with personnel from State and local education agencies, State or local health agencies, postsecondary institutions, or other relevant agencies in preventing behaviors that place elementary through college-aged young people at risk for HIV infection, other STDs, unintended pregnancy, and other important health problems. Documentation that supports eligibility should be submitted as an attachment to the Executive Summary.

2. The need for implementing a program to prevent HIV infection and other important health problems among young people in schools (Priority Area 1), young people in postsecondary institutions (Priority Area 2), or young people in high-risk situations (Priority Area 3).

3. The major proposed goals, objectives, and activities for implementation of the program, as well as the total requested amount of Federal funding.

4. Applicant's capability to implement the program.

5. If applying for funding for the special emphasis area to prevent teenage pregnancy, evidence of an established working relationship with State and local education and health policymakers, administrators, and/or school personnel.

B. Background and Need (not more than 4 pages)

Identify the priority area for which support is being requested and describe:

1. Experience in identifying needs associated with the priority area.

2. Organization's background and experience in addressing the needs related to the priority area.

3. The need for the proposed activities.

C. Capacity (not more than 8 pages)

1. Describe ability to address the identified needs.

2. Describe constituents and affiliates as follows:

(a) Type of constituency.

(b) Number of constituents and affiliates.

(c) Location of constituents and affiliates.

(d) How the constituency can work with or influence the population identified in the priority area.

(e) How the constituents and affiliates are working with state and local education and health policymakers.

3. Describe efforts and relevant experience at the national, state, and local levels that support the priority area(s) and expanded activities, if applicable, for which the applicant is applying, including such factors as:

(a) Current and previous experience related to the proposed program activities.

(b) Current and previous coordination with health, education, and social service agencies or other appropriate agencies.

(c) Activities related to building alliances, networks, or coalitions.

(d) Current and previous coordination with national non-governmental agencies that have an interest in health-related issues among young people.

4. Submit a copy of the organizational chart, describe the organizational structure, and describe how that structure supports health promotion and education activities.

D. Operational Plan (not more than 15 pages)

1. Goals. List goals that specifically relate to program requirements that indicate where the program will be at the end of the projected 5 year project period.

2. Objectives. List objectives that are specific, measurable, and feasible to be accomplished during the projected 12-month budget period. The objectives should relate directly to the project goals and recipient activities.

3. Describe in narrative form and display on a timetable, specific activities that are related to each objective. Indicate when each activity will occur as well as when preparations for activities will occur. Also, indicate who will be responsible for each activity and identify staff who will work on each activity.

E. Project Management and Staffing Plan (not more than 8 pages)

(a) Describe the proposed staffing for the project and provide job descriptions for existing and proposed positions.

(b) Submit curriculum vitae (limited to 2 pages per person) for each professional staff member named in the proposal.

(c) Submit job descriptions illustrating the level of organizational responsibility for professional staff who will be assigned to the project.

(d) If other organizations will participate in proposed activities, provide the name(s) of the organization(s), as well as the applicant's staff person who will coordinate the activity and/or supervise the other staff. For each organization listed, provide a letter identifying the specific activity and the capacity of the assisting organization or subcontractor, and their role in carrying out the proposed activities.

F. Sharing Experiences (not more than 1 page)

Describe how materials that are developed or activities that are successful will be shared with others. Examples of such activities include, but are not limited to:

1. Sharing materials through clearinghouses, at workshops and conferences, and as part of annual progress reports.

2. Sharing project-related news and information with other CDC-funded SEAs, LEAs, and national organizations through the Internet and other computer networks, the mail, and at workshops and conferences.

3. Disseminating materials to affiliates, constituents, other national organizations, or State and local education departments.

4. Disseminating information and materials within the State to decision makers, school personnel, public health officials, leaders of postsecondary institutions, leaders in State and local organizations that support health education, and others.

G. Collaborating (not more than 1 page)

Describe the types of proposed collaboration and the agencies and organizations with whom collaboration will be conducted. Examples of such activities include, but are not limited to:

1. Planning and implementing joint training programs or workshops.

2. Planning and convening joint conferences.

3. Participating in conferences or workshops with other recipients.

4. Participating in a national coordinating committee on school health that will be convened at least twice within each budget period.

5. Identifying measures of progress.

H. Evaluation (not more than 4 pages)

Describe a plan that evaluates the program's effectiveness in meeting its objectives. For each of the types of evaluation listed below, specify the evaluation question to be answered, data to be obtained, the type of analysis, to whom it will be reported, and how data will be used to improve the program. Indicate in the plan the projected staff and time lines to be used.

1. Process evaluation. Evaluate the program's progress in meeting objectives and conducting activities during the budget period.

2. Outcome evaluation. Assess the effectiveness of proposed activities, including training sessions and documents developed in attaining

goal(s) at the completion of the one year budget period and the 5 year project period.

I. Budget and Accompanying Justification

Provide a detailed budget and line-item justification of all operating expenses. The budget should be consistent with the stated objectives and planned activities of the project. Budget requests should include the cost of a 4 day trip to Atlanta for two individuals.

J. Typing and Mailing

Applicants are required to submit an original and two copies of the application, including an executive summary. Pages must be numbered clearly, and a complete table of contents of the application and its appendixes must be included. Begin each separate section on a new page. The original and each copy of the application set must be submitted unstapled and unbound. All materials must be typewritten, single-spaced, using an unreduced type not less than 12 point (10 characters per inch) on 8½″ x 11″ paper, with at least a 1″ margin, including headers and footers, and printed on one side only.

VI. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before December 21, 1998, submit the application to: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 99023, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209.

If the application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless the applicant can provide proof that the application was mailed on or before the deadline (i.e., Receipt from U.S. Postal Service postmark or a commercial carrier. Private metered postmarks are not acceptable).

VII. Special Guidelines for Technical Assistance Workshop

One-day technical assistance workshops will be available for potential applicants in each of the following locations: November 19, 1998 in Washington, D.C. and November 23, 1998 in Denver, Colorado. Each meeting will begin promptly at 10:00 a.m. and end by 4:00 p.m. in their respective time zones. Locations of the meeting are to be determined and information will be available by contacting the program representative identified below. The purpose of this meeting is to help potential applicants to:

1. Understand the scope and intent of the national programs to strengthen coordinated school health programs and prevent HIV infection and other important health problems among young people.

2. Understand the scope and intent of the State and local school health programs to prevent serious health problems and improve educational outcomes.

3. Become familiar with the Department of Health and Human Services grants policies, applications, and review procedures.

Attendance at this workshop is not mandatory. Applicants who are currently funded by CDC may not use project funds to attend this workshop. Workshops will be held only if 10 persons or more sign-up by the aforementioned deadline.

Each potential applicant may send not more than two representatives to this meeting. Please provide the names of the persons who are planning to attend this meeting to Mary Vernon, Acting Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–31, Atlanta, Georgia 30341–3717, E-mail address mev0@cdc.gov; telephone (770) 488–3253, within 1 week after the publication date of the program announcement in the **Federal Register**.

VIII. Evaluation Criteria (100 Points)

Each application will be evaluated individually according to the following criteria by an independent review group appointed by CDC.

A. Background and Need (10 points)

The extent to which the applicant justifies need for the program under the priority area, their organization's experience in addressing the priority area, and the need for proposed activities.

B. Capacity (30 points)

The extent to which the applicant demonstrates the capacity and ability of their organization and constituency to address the identified needs and develop and conduct program activities.

C. Operational Plan (25 points)

The extent to which the applicant:

1. Identifies Goals. The extent to which the applicant has submitted goals that are specific and feasible for the projected 5 year project period and are consistent with program requirements.

2. Identifies Objectives. The extent to which the applicant has submitted objectives for the 1 year budget period that are specific, measurable, and feasible and are related directly to the program's goals.

3. Proposes activities that are likely to achieve each objective for the budget period.

4. Addresses each recipient activity for the relevant priority area.

5. Provides a reasonable time line for conducting those activities.

D. Project Management and Staffing (15 points)

The extent to which the applicant identifies staff that have the responsibility, capability, and authority to carry out each activity, as evidenced by job descriptions, curriculum vitae, organizational charts, and letters of support from collaborating agencies.

E. Sharing Experiences and Resources (5 points)

The extent to which the applicant indicates how they will share effective materials and activities.

F. Collaborating (5 points)

The extent to which the applicant describes how they will collaborate with agencies such as State and local health and education departments, postsecondary institutions, and other national organizations.

G. Evaluation (10 points)

The extent and method to which the applicant proposes to measure progress in meeting objectives and program effectiveness, and presents a reasonable plan for obtaining data, reporting the results, and using the results for programmatic decisions.

H. Budget (Not Scored)

The extent to which the applicant provides a detailed and clear budget narrative consistent with the stated objectives, planned activities and goals of the project.

IX. Other Requirements

A. HIV/AIDS Requirements

Recipients must comply with the document entitled: "Interim Revision of Requirements of the Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs" (June

15, 1992), a copy of which is included in the application kit. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.1113, which is also included in the application kit. In progress reports, the recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

B. Lobbying Restrictions

Applicants should be aware of restriction on the use of DHHS funds for lobbying of Federal or State legislative bodies. See Attachment I for further details.

C. Research Activities Restricted

Applicants must not identify any activities that would constitute research. Activities funded under this announcement are intended to build the capacity of national organizations to promote HIV, STD, and unintended pregnancy prevention among youth and should not include any formal or informal research.

D. Technical Reporting Requirements

Provide CDC with an original and two copies of:

1. Annual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to: Mildred Garner, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–15 Proof of Non-profit Status

X. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a), 311(b) (c) and 317(R)(2) of the Public Health Service Act [42 U.S.C. section 241(a), 243(b) and (c), and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.938.

XI. Where To Obtain Additional Information

Please refer to Program Announcement 99023 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 99–023, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209, Telephone: (404) 842–6508, E-mail address: rnh2@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov. For program technical assistance, contact Mary Vernon, Acting Chief, Special Populations Section, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Mail Stop K–31, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Atlanta, Georgia 30341–3717, E-mail address mev0@cdc.gov; telephone (770) 488-3253.

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management and technical assistance may be obtained from: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 99023, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mail Stop E–18, Atlanta, Georgia 30305–2209, Telephone (404) 842–6508, E-mail address rnh2@cdc.gov.

John L. Williams,

Director, Procurement and Grants Office.

[FR Doc. 98–30206 Filed 11–10–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Health Research Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following committee meeting.

Name: Mine Health Research Advisory Committee (MHRAC).

Time and Date: 9 a.m.—4 p.m., December 4, 1998.

Place: Pittsburgh Research Laboratory, 626 Cochrans Mill Road, Pittsburgh, PA 15236.

Status: Open to the public, limited only by space available. The meeting room accommodates approximately 150 people.

Purpose: The Committee is charged with advising the Secretary; the Assistant Secretary for Health; the Director, Centers for Disease Control and Prevention; and the Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters to be Discussed: The agenda will include an Overview of NIOSH; NIOSH-wide Mining Research; Surveillance of Coal Workers Pneumoconiosis (SWP) and Silicosis; Status of Continuous Respirable Dust Monitors; Surveillance, Statistics and Research Support Activity at PRL; Overview of Extramural Grants Process and Future Activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Grayson, Ph.D., Executive Secretary, MHRAC, NIOSH, CDC, 200 Independence Avenue, S.W., Room 715-H, Humphrey Building, Washington, D.C. 20201, telephone 202/401–2192, fax 202/260–4464, e-mail lhg9@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 5, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30205 Filed 11–10–98; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Interim Tribal TANF Data Report.

OMB No.: 0970–0176.

Description: This information is being collected to meet the statutory requirements of section 411 of the Social Security Act and section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. It consists of disaggregated demographic and program information that will be used to determine participation rates and other statutorily required indicators for the Tribal Temporary Assistance for Needy Families (Tribal TANF) program.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Interim Tribal TANF Data Report	18	4	451	32,472

Estimated Total Annual Burden Hours: 32,472.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn; ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 6, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–30251 Filed 11–10–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Detailed Model Plan and the Abbreviated Model Plan.

OMB No.: 0970–0075.

Description: This information requirement is an annual activity which is required by law for the receipt of Federal block grant funds under the LIHEAP statute. By law, we must make this model plan available to grantees. It provides grantees an optional management tool that may alleviate the burden of preparing additional information to complete plans. The detailed model plan is to be filed only once every three years or sooner if major changes are made to a grantee's program. In the other two years, grantees would submit an abbreviated application which will still meet the statutory requirement for a complete application.

Respondents: State, Local or Tribal Govt.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	.33	38

Estimated Total Annual Burden Hours: 103.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: Ms. Wendy Taylor.

Dated: November 5, 1998.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 98–30164 Filed 11–10–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1039–CN]

RIN 0938–AI87

Medicare Program; Hospice Wage Index; Corrections

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice; correction notice.

SUMMARY: In the October 5, 1998 issue of the **Federal Register** (63 FR 53446), we published a notice announcing the annual update to the hospice wage index. The wage index is used to reflect local differences in wage levels. That update was effective October 1, 1998 and is the second year of a 3-year transition period. This notice corrects errors made in that document.

FOR FURTHER INFORMATION CONTACT: Carol Blackford, (410) 786–5909.

SUPPLEMENTARY INFORMATION: The October 5, 1998 notice contained technical and typographical errors. Therefore, we are making the following corrections:

1. On page 53447, in Table A., "Schoharie, NY" is removed from the list of counties with MSA code number 0160.

2. On page 53448, in Table A., "Stanly, NY" is removed from the list of counties with MSA code number 1520 and is added to a new MSA code number "15206," with area name "Charlotte-Gastonia-Rock Hill, NC-SC" and with wage index value "0.9741."

3. On page 53449, in Table A., the MSA code number "2580" for Washington, AR is corrected to read "25806."

4. On page 53449, in Table A., the MSA code number "2760" for Allen, IN, De Kalb, IN, and Whitley, IN is corrected to read "27606."

5. On page 53450, in Table A., "La Crosse, WI" is removed from the list of counties with MSA code number 3870.

6. On page 53451, in Table A., the MSA code number "5640" for Warren, NJ is corrected to read "56406."

7. On page 53452, "St. Louis, MO" is added to the list of counties with MSA code number 70408.

Authority: Section 1814(i) of the Social Security Act (42 U.S.C. 1395f (i)(1))

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 29, 1998.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 98–30193 Filed 11–10–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995.

Proposed Project: The National Health Service Corps (NHSC) Loan Repayment Program (OMB No. 0915–0127)—Extension and Revision. The NHSC Loan Repayment Program (LRP) was established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under this program, the Department of Health and Human Services agrees to repay the educational loans of the primary care health professionals. In return, the health professionals agree to serve for a specified period of time in a federally-designated HPSA approved by the Secretary for LRP participants.

This request for extension of OMB approval will include the NHSC LRP application and loan verification form, as well as two new forms: a Site Information Form and Request for Method of Advanced Loan Repayment Form. In an effort to improve the procedure for recruiting NHSC applicants and to alleviate some of the burden and delay in the application process, the following changes are proposed:

(1) The applicant will submit a "Site Information Form" rather than a copy of the signed employment contact. This form provides information about the proposed employment site, requiring only a signature and date from the Site Administrator/Executive Officer. This change will allow HRSA to begin consideration of the application at an earlier stage, since a signed employment contract generally takes more time to negotiate.

(2) A new one page form, "The Request for Method of Advanced Loan Repayment" form, will be included with the application. It provides a description of three methods of payment (quarterly, annually, and biennially), and asks applicants to select the method they prefer.

(3) Applicants now obtain a self-report from the National Practitioner Data Bank (NPDB), which must be submitted with the application form. To obtain that form, applicants must submit a written request to the NPDB. To expedite that process, HRSA proposes to send the NPDB request form with the LRP application.

The estimate of burden is as follows:

Respondent	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Applicants	800	1	1.5	1200
Lenders	45	1	15 minutes	11
Total	845			1211

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of

Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: November 4, 1998.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–30221 Filed 11–10–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030–99–1610–00]

Grand Staircase-Escalante National Monument Draft Management Plan and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

ADDRESSES: Copies of the Grand Staircase-Escalante National Monument Draft Management Plan and Draft Environmental Impact Statement (DMP/DEIS) may be obtained from the following Bureau of Land Management (BLM) locations: Grand Staircase-Escalante National Monument Planning Office, 337 South Main Street, Suite 010, Cedar City, Utah 84720, telephone (435) 865–5100; BLM, Utah State Office, 324 South State, Public Room (4th Floor), Salt Lake City, Utah, telephone (801) 539–4001; Kanab Resource Area Office, 318 North First East, Kanab, Utah 84741, telephone (435) 644–2672; Escalante Interagency Office, P.O. Box 225, Escalante, Utah 84726, telephone (435) 826–4291. Comments must be received by the Grand Staircase-Escalante National Monument Planning Office, 337 South Main Street, Suite 010, Cedar City, Utah 84720 by Friday, February 12, 1999.

SUMMARY: In accordance with section 102 of the National Environmental Policy Act of 1970, section 202 of the Federal Land Policy and Management Act of 1976 and 43 CFR part 1610, a draft management plan/draft environmental impact statement for Grand Staircase-Escalante National Monument, Utah, has been prepared and is available for review and comment. The DMP/DEIS describes and analyzes future options for managing 1,684,899 acres of public land in Garfield and Kane Counties, Utah. The DMP/DEIS also examines recommendations on suitability for additions to the Wild and Scenic Rivers System. Decisions generated during this planning process will supersede land use planning guidance presented in the Management Framework Plans and subsequent amendments.

FOR FURTHER INFORMATION CONTACT: Pete Wilkins, Planning Team Leader, or A. J. Meredith, Monument Manager, Bureau of Land Management, Grand Staircase-Escalante National Monument Planning Office, 337 South Main Street, Suite 010, Cedar City, Utah 84720, telephone (435) 865–5100.

SUPPLEMENTARY INFORMATION: The DMP/DEIS analyzes five alternatives to resolve the following seven major issues: (1) How will Monument resources be protected? (2) How will research associated with the Monument be managed? (3) How will Monument management be integrated with community plans? (4) How will people's activities and uses be managed? (5) What facilities are needed and where? (6) How will transportation and access be managed? (7) To what extent is water necessary for the proper care and management of the objects of the Monument, and what further action is necessary to assure the availability of water. Each alternative represents a complete management plan for the area. The alternatives can be summarized as (A) the no action or change from management as directed by the Proclamation and the Interim Management Guidance, (B) the preferred alternative which emphasizes the preservation of the monument, while recognizing its value as a scientific resource, (C) emphasizes the exemplary opportunities for scientific research, (D) emphasizes the preservation of the primitive, undeveloped nature of the Monument through the stewardship of intact natural systems, and (E) emphasizes and facilitates a full range of developed and undeveloped recreational opportunities, while relying upon public education and use management to protect Monument resources.

Wild and Scenic Rivers

In Alternative A (No Action Alternative), a suitability determination would not be made on the 25 eligible river segments (330 miles). In Alternative B (Preferred Alternative) and E, 17 eligible river segments, totaling 225 river miles would be recommended as suitable for Congressional designation into the National Wild and Scenic River System (NWSRS). In Alternative C, all 25 eligible river segments (330 miles) would be determined to be unsuitable. In Alternative D, all 25 eligible river segments, totaling 330 river miles, would be determined suitable and would be recommended for Congressional designation. The table outlines the river segments that were determined eligible for Congressional designation. The table also identifies, by alternative, which eligible river segments would be determined suitable and recommended to Congress for designation into the NWSRS.

River segment	Segment description	Miles	Tentative classification	Determined suitable by alternative				
				A	B	C	D	E
Escalante River Basin								
Harris Wash	Tenmile Crossing to confluence with Bighorn Wash.	2.9	Scenic	.....	.....	.....	X	.....
	Bighorn Wash to unnamed road.	8.7	Wild	.....	.....	.....	X	
	Road to west side of State section.	2.8	Recreational	.....	.....	.....	X	.....
	State section to Monument boundary.	1.2	Wild	.....	X	.....	X	X
Lower Boulder Creek	Downstream side of State section to Escalante River.	13.6	Wild	.....	X	.....	X	X
Dry Hollow Creek	Monument boundary to Lower Boulder Creek.	4.3	Wild	.....	.....	.....	X	.....

River segment	Segment description	Miles	Tentative classification	Determined suitable by alternative				
				A	B	C	D	E
Slickrock Canyon	Monument boundary to private land.	2.8	Wild	.....	X	.....	X	X
Cottonwood Canyon	Monument boundary to Lower Deer Creek.	4.4	Wild	.....	.....	.....	X	.....
Lower Deer Creek	Private land to Burr Trail Road	3.8	Recreational	.....	X	.....	X	X
	Burr Trail Road to Lower Boulder Creek.	7	Wild	.....	X	.....	X	X
The Gulch, Blackwater Canyon, Lamanite Arch Canyon, and Water Canyon.	Monument boundary to Burr Trail Road.	11	Wild	.....	X	.....	X	X
	Along Burr Trail Road	0.6	Recreational	.....	X	.....	X	X
	Below Burr Trail Road to Escalante River.	13	Wild	.....	X	.....	X	X
	Black Water, Lamanite and Water Canyons.	6.5	Wild	.....	.....	.....	X	.....
Steep Creek	Monument boundary to The Gulch.	8.9	Wild	.....	X	.....	X	X
Lower Horse Canyon	Outstanding Natural Area boundary to Escalante River.	3	Wild	.....	.....	.....	X	.....
Wolverine Creek	Entire	9.7	Wild	.....	.....	.....	X	.....
Little Death Hollow	Entire	14.8	Wild	.....	.....	.....	X	.....
Escalante River	Confluence with Pine Creek to Highway 12.	13.8	Wild	.....	X	.....	X	X
	Highway 12 to east side of private land.	1.1	Recreational	.....	X	.....	X	X
	Private land to Monument boundary.	19.2	Wild	.....	X	.....	X	X
Lower Sand Creek and Willow Patch Creek.	Sweetwater Creek to Escalante River.	13.2	Wild	.....	X	.....	X	X
Mamie Creek and west tributary.	Monument boundary to Escalante River.	9.2	Wild	.....	X	.....	X	X
Death Hollow Creek	Monument boundary to Mamie Creek.	9.9	Wild	.....	X	.....	X	X
Calf Creek	Headwaters to Lower falls	3.5	Wild	.....	X	.....	X	X
	Lower falls to recreation site	3	Scenic	.....	X	.....	X	X
	Recreation site to Escalante River.	1.5	Recreational	.....	X	.....	X	X
Phipps Wash and tributaries	Headwaters to Escalante River	6	Wild	.....	.....	.....	X	.....
Unnamed Tributary (West of Calf Creek).	Headwaters to Escalante River	2.6	Wild	.....	.....	.....	X	.....
Twentyfive Mile Wash	Rat Seep Hollow to Monument boundary—including unnamed wash on north side.	9.1	Wild	.....	.....	.....	X	.....
	T37S, R6E, S29 to Monument boundary—not including unnamed wash on north side.	6.8	Wild	.....	X	.....	.....	X
Paria River Basin								
Paria River including Deer Creek Canyon, Snake Creek, Hogeye Creek, part of Kitchen Canyon, Starlight Canyon, and part of Cottonwood Creek.	Paria River—T38S, R2W, S21 to T41S, R1W, S7.	22	Wild	.....	X	.....	X	X
	Paria River—T41S, R1W, S7 to downstream of private land south of Highway 89.	16.9	Recreational	.....	X	.....	X	X
	Deer Creek—Headwaters to Paria River.	5.1	Wild	.....	X	.....	X	X
	Snake Creek—entire	4.7	Wild	.....	X	.....	X	X
	Hogeye Creek—entire	6.3	Wild	.....	X	.....	X	X
	Kitchen Canyon—T40S, R2W, S28 to Starlight Canyon.	1.2	Wild	.....	X	.....	X	X
	Starlight Canyon—entire	4.9	Wild	.....	X	.....	X	X

River segment	Segment description	Miles	Tentative classification	Determined suitable by alternative				
				A	B	C	D	E
	Lower Cottonwood Creek—confluence with Hackberry Creek to Paria River.	2.9	Recreational	.....	X	.....	X	X
Bull Valley Gorge	Little Bull Valley to Sheep Creek.	5.9	Wild	.....	.....	.....	X	.....
Lower Sheep Creek	Bull Valley Gorge to Paria River.	1.5	Wild	.....	X	.....	X	X
Hackberry Creek	Headwaters to Cottonwood Creek.	20	Wild	.....	X	.....	X	X
Buckskin Gulch (outside Monument).	Wilderness boundary to Paria River.	18	Wild	.....	X	.....	X	X
Lower Paria River (outside Monument).	Downstream side of private land to wilderness boundary.	3.3	Recreational	.....	X	.....	X	X
	Segment in wilderness	4.8	Wild	.....	X	.....	X	X

Open houses will be held from 5:00 PM to 8:30 PM on the following dates at the following locations, except as noted:

Kanab, UT, Kanab Middle School, December 1, 1998 (6:30 PM to 9:00 PM)
Albuquerque, NM, Winrock Inn, 18 Winrock Center, N.E., December 1, 1998
Escalante, UT, Escalante High School, December 3, 1998
Denver, CO, Hyatt Regency Tech Ctr., 7800 Tufts Avenue, December 3, 1998
Salt Lake City, UT, Salt Lake Hilton, 150 W. 500 S., December 8, 1998
Tropic, UT, Bryce Valley High, December 8, 1998
San Francisco, CA, San Francisco Marriott, 55 Fourth Street, December 10, 1998
Big Water, UT, Big Water Town Hall, December 10, 1998
Orderville, UT, Valley High School, January 5, 1999
Panguitch, UT, Panguitch High School, January 5, 1999
Flagstaff, AZ, Flagstaff Radisson, Woodlands Plaza, 1175 West Route 66, January 7, 1999
Cedar City, UT, Southern Utah University—Charles Hunter, January 7, 1999
Washington, DC, The Capital Hilton, 16th and K Streets NW, January 12, 1999

Dated: November 5, 1998.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 98–30162 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Central Gulf of Mexico, Oil and Gas Lease Sale 172

AGENCY: Minerals Management Service, Interior.

ACTION: Availability of the proposed notice of sale.

Gulf of Mexico Outer Continental Shelf (OCS); Notice of Availability of the Proposed Notice of Sale for proposed Oil and Gas Lease Sale 172 in the Central Gulf of Mexico. This Notice of Availability is published pursuant to 30 CFR 256.29(c), as a matter of information to the public.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, provides the affected States the opportunity to review the proposed Notice of Sale. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

The proposed Notice for proposed Sale 172 and a "Proposed Sale Notice Package" containing information essential to potential bidders may be obtained from Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 17, 1999.

Dated: November 5, 1998.

Cynthia Quarterman,

Director, Minerals Management Service.

[FR Doc. 98–30261 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation.

ACTION: Notice of public meetings; correction.

SUMMARY: On September 1, 1998, the Bureau of Reclamation published a notification in the **Federal Register** on page 46468 concerning the announcement of three upcoming Glen Canyon Technical Work Group public meetings to be held in Phoenix, Arizona. The document contained incorrect dates for the second meeting.

The correct dates and locations for the second meeting are:

November 16–17, 1998—Phoenix, Arizona: The meeting will begin at 10:00 a.m. and end at 5:00 p.m. on the first day. The second day of the meeting will begin at 8:00 a.m. and end at 4:00p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel at 1515 North 44th Street in Phoenix, Arizona.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, Bureau of Reclamation, Salt Lake City, Utah at 801–524–3702.

Dated: November 5, 1998.

Kirk Rodgers,

Acting Commissioner, Bureau of Reclamation.

[FR Doc. 98–30184 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974

require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 1999 is 6.875 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1998, through and including September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Schluntz, Economist, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, Attention: D–5200, Building 67, Denver Federal Center, Denver, CO 80225–0007; telephone: (303) 445–2901.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 6.875 percent for fiscal year 1999.

This rate has been computed in accordance with Section 80(a), Pub. L. 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average to be 6.02 percent. Rounding this average yield to the nearest one-eighth percent is 6.000 percent, which exceeds the permissible one-quarter of 1 percent change from fiscal year 1998 to 1999. Therefore, the change is limited to one-quarter of 1 percent.

The rate of 6.875 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common time basis.

Dated: October 29, 1998.

Maryanne C. Bach,

Assistant Director, Program Analysis Office.

[FR Doc. 98–30161 Filed 11–10–98; 8:45 am]

BILLING CODE 4310–94–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is resubmitting the following information collections without change to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 11, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen, (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposals for the following collections of information:

OMB Number: 3133–0138.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Community Development Revolving Loan Program for Credit Unions, Application for Funds. NCUA requests this information from credit unions to assess financial ability to repay the loans and to ensure the funds are used to benefit the institution and community it serves.

Respondents: Community Credit Unions which request loans from the revolving loan program.

Estimated No. of Respondents/Recordkeepers: 25.

Estimated Burden Hours Per Response: 8 hours.

Frequency of Response: Other. As the need for borrowing arises.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost: $3,126.

By the National Credit Union Administration Board on November 1, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30195 Filed 11–10–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following new information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). These information collections are published to obtain comments from the public.

DATES: Comments will be accepted until January 11, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposals for the following collections of information:

OMB Number:

Form Number: N/A.

Type of Review: Existing collection in use without an Agency OMB control number.

Title: Home Mortgage Disclosure Act—Loan Application Register. The Federal Reserve Board, through Regulation C, requires depository institutions that meet its asset-size threshold to maintain data about home loan applications, to update the

information quarterly, and to report the information annually.

Respondents: Credit Unions which meet the Federal Reserve asset-size threshold for reporting.

Estimated No. of Respondents/ Recordkeepers: 1593.

Estimated Burden Hours Per Response: 8 hour.

Frequency of Response: 362,731 (estimated).

Estimated Total Annual Burden Hours: 30,227.

Estimated Total Annual Cost: $302,270.

By the National Credit Union Administration Board on November 1, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30196 Filed 11–10–98; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Literature Section (Heritage & Preservation, and Education & Access categories) to the National Council on the Arts will be held on December 1–2, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on December 1st and from 9:00 a.m. to 4:30 p.m. on December 2nd, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506. A portion of this meeting, from 11:00 a.m. to 1:00 p.m. on December 2nd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on December 1st and from 9:00 a.m. to 1:00 p.m. and 3:00 p.m. to 4:30 p.m. on December 2nd, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: October 28, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30212 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Multidisciplinary Section (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on December 1–3, 1998. The panel will meet from 9:00 a.m. to 7:00 p.m. on December 1st, from 9:00 a.m. to 6:45 p.m. on December 2nd, and from 9:00 a.m. to 3:45 p.m. on December 3rd, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506. A portion of this meeting, from 11:30 a.m. to 12:30 p.m. on December 3rd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines

The remaining portions of this meeting, from 9:00 a.m. to 7:00 p.m. on December 1st, from 9:00 a.m. to 6:45 p.m. on December 2nd, and from 9:00 a.m. to 11:30 a.m. and 12:30 p.m. to 3:45 p.m. on December 3rd, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: November 5, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30213 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Music Section (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on December 1–3, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on December 1st, from 8:45 a.m. to 6:30 on December 2nd, and from 8:30 a.m. to 5:00 p.m. on December 3rd, in Room M–07 and Room 219 (sub-panels A and B) at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 3:15 p.m. to 4:30 p.m. on December 3rd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines. The open session will be held in Room M–07.

The remaining portions of this meeting, from 9:00 a.m. to 6:00 p.m. on December 1st, from 8:30 a.m. to 6:45 p.m. on December 2nd, and from 9:00 a.m. to 3:15 p.m. on December 3rd, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 5, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30214 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Media Arts Section B (Heritage & Preservation and Education & Access categories) to the National Council on the Arts will be held on December 2–4, 1998. The panel will meet from 9:30 a.m. to 6:30 p.m. on December 2nd, from 9:30 a.m. to 5:30 p.m. on December 3rd, and from 9:30 a.m. to 3:00 p.m. on December 4th, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 4:00 p.m. to 5:30 p.m. on December 3rd, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects,and guidelines.

The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on December 2nd, from 9:30 a.m. to 4:00 p.m. on December 3rd, and from 9:30 a.m. to 3:00 p.m. on December 4th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated; November 5, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30215 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Arts Education Section (Education & Access and Planning & Stabilization categories) to the National Council on the Arts will be held on December 7–11, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on December 7th, from 8:30 a.m. to 6:00 p.m. on December 8th–10th, and from 9:00 a.m. to 3:00 p.m. on December 11th, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 10:30 a.m. to 12:00 p.m. on December 11th, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, meet from 9:00 a.m. to 6:00 p.m. on December 7th, from 8:30 a.m. to 6:00 p.m. on December 8th–10th, and from 9:00 a.m. to 10:30 a.m. and 12:00 p.m. to 3:00 p.m. on December 11th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the pubic, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Accessibility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 5, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations National Endowment for the Arts.

[FR Doc. 98–30216 Filed 11–10–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board

DATE AND TIME:

November 19, 1998, 12:30 p.m. Closed Session

November 19, 1998, 2:00 p.m. Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA 22230.

STATUS:

Part of this meeting will be open to the public.

Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, November 19, 1998

Closed Session (12:00–12:30 p.m. and 1:30—1:50 p.m.)

- Closed session Items for November 1998
- Minutes, August 1998
- Personnel
- Nominees
- Awards and Agreements
- Status—NSF FY2000 Budget

Thursday, November 19, 1998

Open Session (1:50 p.m.—6:00 p.m.)

- Swearing in of NSB nominees
- Minutes, August 1998
- Closed Session Items for March 1999
- Chairman's Report
- Director's Report
- Reports from Committees
- Science and Engineering Indicators—2000 Plan
- NSB Strategic Plan
- February Policy Meeting & NSB retreat
- Break
- Environment for NSF Planning and Budget Activity

Marta Cehelsky,

Executive Officer.

[FR Doc. 98–30373 Filed 11–9–98; 12:26 pm]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, November 17, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7086 Transit Bus Special Investigation Report.

7085 Brief of Accident—Failure of an Allied-Signal, Inc., Railroad Tank Car and Released of Anhydrous Hydrogen Fluoride in Memphis, Tennessee, April 2, 1997.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT. Rhonda Underwood, (202) 314–6065.

November 6, 1998

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–30289 Filed 11–6–98; 4:32 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–16055–ML, ASLBP No. 95–707–02–ML]

Atomic Safety and Licensing Board; Advanced Medical Systems, Inc.; Order Granting Hearing and Federal Register Notice of Opportunity to Intervene

Before Administrative Judges: B. Paul Cotter, Jr., Chairman, Thomas D. Murphy, Special Assistant

November 4, 1998.

On September 28, 1998, the Director of the Office of Nuclear Materials Safety and Safeguards of the Nuclear Regulatory Commission, notified Seymour Stein, President of Advanced Medical Systems, Inc. (AMS), that his firm's application to renew AMS's License No. 34–19089–01 to possess and use nuclear materials was denied. The stated basis for denial was that AMS lacked the requisite financial assurance necessary for decommissioning the facility. Pursuant to 10 CFR 2.103, the notice granted AMS 20 days to request a hearing to contest the denial and stated that if a hearing were to be held, the issue to be decided would be:

whether the renewal application complies with the requirements of 10 CFR 30.35 such that the Licensee's application for renewal of its license should be granted.

By timely motion of October 15, 1998, Mr. Stein, on behalf of AMS, requested a hearing to consider whether the AMS renewal application complies with the requirements of 10 CFR 30.35. Thereafter, on October 28, 1998, the undersigned Presiding Officer was appointed to rule upon requests for hearing and petitions to intervene in this matter, and, if necessary, to conduct an informal adjudicatory hearing.

Based on the information presented in Staff's September 28, 1998 letter and AMS's request for hearing, the hearing request is granted. AMS is entitled to a hearing under 10 CFR 2.103(b) which extends hearing rights to licensees whose license renewal applications have been rejected so long as their requests for hearings are timely. This hearing is to be conducted under the informal hearing procedures of 10 CFR Part 2, Subpart L.

In accordance with 10 CFR 2.1205 (j) and (k)[1] 1998, persons wanting to intervene in this proceeding, including a State, county, municipality, or an agency thereof wishing to participate as an interested governmental entity pursuant to 10 CFR 2.1211 (b), must file a petition within 30 days of the publication of this notice in the **Federal Register**. A petition to intervene under 10 CFR 2.1205(k) must provide the information required by 10 CFR 2.1205(e), including a detailed description of the petitioner's interests in the proceeding, how its interests may be affected by the proceeding, and its areas of concern about the licensing activities which are the subject matter of this proceeding. A governmental entity wishing to participate in accordance with 10 CFR 2.1211(b) must provide the information required by that provision, including a listing of its areas of concern about the subject matter of the proceeding.

It is so ordered.

Dated: November 4, 1998.

B. Paul Cotter, Jr.,

Administrative Judge.

[FR Doc. 98–30258 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

[1] This rule and all rules governing the proceeding may be found at 10 CFR, Part 2, Subpart L and on the Internet at <http://www.NRC.gov/NRC/ASLBP/part2cfr.txt.

The proposed amendments would add current Technical Specification (TS) 3.7.1, Condition B, which applies to inoperable startup transformers and would remove the allowance to shut down a unit under Action B when a Required Action and associated Completion Time of Condition A is not met. As adopted into the improved TS (ITS), the proposed change would require initiation of a shutdown in 1 hour and an intermediate step to Mode 4 in 18 hours. The second involves ITS Limiting Condition for Operation 3.8.1.b and would add a specification for minimum Keowee lake level.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for each of the above proposed changes. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below.

1. Would the changes involve a significant increase in the probability or consequences of an accident previously evaluated?

For all the changes the answer is "no." The proposed changes would not affect the safety function of the subject systems. There would be no direct effect on the design or operation of any plant structures, systems, or components. No previously analyzed accidents were initiated by the functions of these systems, and the systems were not factors in the consequences of previously analyzed accidents. Therefore, the proposed changes would have no impact on the consequences or probabilities of any previously evaluated accidents.

2. Would the changes create the possibility of a new or different kind of accident from any accident previously evaluated?

For all the changes the answer is "no." The proposed changes would not lead to any hardware or operating procedure change. Hence, no new equipment failure modes or accidents from those previously evaluated would be created.

3. Would the changes involve a significant reduction in a margin of safety? For all the changes the answer is "no." Margin of safety is associated with confidence in the design and operation of the plant. The proposed changes to the TS do not involve any change to plant design, operation, or analysis. Thus, the margin of safety previously analyzed and evaluated is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 14, 1998, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

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petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated October 28, 1997, as supplemented by letters dated March 26, April 8, May 20, May 25, and October 28, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 5th day of November 1998.

For the Nuclear Regulatory Commission.

David E. LaBarge,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30254 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission or NRC) has granted a request by the Tennessee Valley Authority (TVA) to withdraw its June 2, 1995, application for an amendment to Facility Operating License DPR–33 issued to TVA for the operation of the Browns Ferry Nuclear Plant, Unit 1, located in Limestone County, Alabama. The application was revised by letter dated March 6, 1997, and was supplemented by letters dated April 11, 1997, and March 13, 1998. Notice of consideration of issuance of this amendment was published in the **Federal Register** on August 16, 1995 (60 FR 42609). The application also requested similar amendments to Facility Operating Licenses DPR–52 and DPR–68 for Browns Ferry Nuclear Plant, Units 2 and 3 respectively. The requested actions for Units 2 and 3 have been approved.

The proposed amendment, submitted in custom Technical Specification (TS) format, would have revised the custom TSs for Unit 1 to include changes associated with the implementation of the Power Range Neutron Monitor (PRNM) upgrade, and to incorporate changes related to the implementation of Average Power Range Monitor (APRM) and Rod Block Monitor technical specification improvements and Maximum Extended Load Line Limit (MELLL) Analysis. A general revision to the application was submitted on March 6, 1997, and parallel changes in Improved TS (ITS) format were submitted on April 11, 1997, and revised by a submittal dated March 13, 1998.

On July 14, 1998, NRC approved the conversion from custom TSs to ITSs (Amendment No. 234) for Unit 1. On October 5, 1998, TVA informed the staff by letter that because the custom TSs are no longer in use, the Unit 1 TS changes previously proposed in custom format for PRNM/MELLL are no longer needed. Also, because TVA has no firm schedule for the restart of Unit 1, the PRNM/MELLL proposed changes in ITS format also are being withdrawn. Furthermore, since TVA does not now have a firm schedule for the restart of Unit 1, any changes associated with the PRNM/MELLL will be resubmitted prior to Unit 1 restart.

For further details with respect to this action, see the application for amendment dated June 2, 1995, and March 6, 1997, and TVA's letters dated April 11, 1997, and March 13, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 4th day of November 1998.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30256 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Tennessee Valley Authority (TVA) to withdraw its June 21, 1996, application for an amendment to Facility Operating License DPR–33 issued to TVA for the operation of the Browns Ferry Nuclear Plant, Unit 1, located in Limestone County, Alabama. The application was supplemented by letter dated February 7, 1997. Notice of consideration of issuance of this amendment was published in the **Federal Register** on August 14, 1996 (61 FR 42285).

The proposed amendment, submitted in custom technical specification format, would have provided a new safety limit minimum critical power ratio (SLMCPR) to replace the existing non-conservative value. The proposed amendment also would have updated a technical specification bases to clarify the usage of the residual heat removal supplemental spent fuel pool cooling mode.

On May 7, 1997, the Nuclear Regulatory Commission (NRC) issued the Bases change, however, no further action was taken on the remainder of the application pending TVA documentation of completion of analyses related to the SLMCPR for Unit 1. On July 14, 1998, the NRC issued Amendment No. 234 to Operating License DPR–33. Amendment No. 234 converted the Unit 1 custom technical specifications, which were in effect at the time the June 21, 1996, application was submitted, into the standard technical specification format. Thus, the NRC was unable to take any further action upon the June 21, 1996, application. TVA's letter of October 13, 1998, informed the staff that the requested changes are no longer needed. Furthermore, since TVA does not now have a firm schedule for the restart of Unit 1, any changes associated with the SLMCPR will be resubmitted prior to Unit 1 restart.

For further details with respect to this action, see the application for amendment dated June 21, 1996, TVA's letters dated February 7, 1997, and October 13, 1998, and the staff's letter dated September 22, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 4th day of November 1998.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Senior Project Manager, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30257 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–029–LA–R; ASLBP No. 99–754–01–LA–R]

Atomic Safety and Licensing Board; Yankee Atomic Electric Company (Yankee Nuclear Power Station), License Termination Plan; Notice of Prehearing Conference

Before Administrative Judges: Charles Bechhoefer, Chairman; Dr. Thomas S. Elleman; Thomas D. Murphy

November 5, 1998.

Notice is hereby given that, as provided in the Atomic Safety and Licensing Board's Memorandum and Order (Schedules for Remanded Proceeding; Prehearing Conference), dated October 27, 1998, a prehearing conference is hereby scheduled beginning at 9:30 a.m. on Wednesday, December 16, 1998, at the Grand Jury Room (top floor), Franklin County Courthouse, 425 Main Street, Greenfield, MA 01301. To the extent necessary, the conference will continue on Thursday and Friday, December 17 and 18, 1998, beginning at 9:00 a.m., at the same location.

The purpose of the conference will be to determine whether any of the petitioners found by the Commission in CLI–98–21 to have standing—i.e., the New England Coalition on Nuclear Pollution, Inc. (NECNP) and the Citizens Awareness Network (CAN)—have submitted admissible contentions conforming to the criteria set forth in 10 CFR 2.714 (b) and (d), to enable them to become parties to the proceeding. The conference will also consider petitions, if any, from interested States or governmental bodies, as discussed by the Commission in CLI–98–21. Finally, to the extent necessary, the conference will consider discovery and future schedules for various aspects of the proceeding.

In accordance with 10 CFR 2.715(a), the Board will hear oral limited appearance statements at this prehearing conference. Any person not a party to the proceeding or a petitioner for intervention will be permitted to make such a statement, either orally or in writing, setting forth his or her position on issues of concern. These statements do not constitute testimony or evidence but may help the Board and/or parties in their deliberations on the extent of the issues to be considered.

Oral limited appearance statements may be given from 7:00 p.m. to 9:30 p.m. on Wednesday, December 16, 1998 (or such lesser time as is necessary to accommodate speakers who are present), at the same location as the site of the prehearing conference. (To the extent that the Board is apprised of a need to accommodate further speakers, it will attempt to do so at the beginning of any later session of the conference that may be necessary.) The number of persons making oral statements and the time allotted for each statement may be limited depending on the number of persons present at the designated time. (Normally, each oral statement may extend for up to five (5) minutes.) Written statements may be submitted at any time. Written statements, and requests for oral statements, should be submitted to the Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington D.C. 20555. A copy of such statement or request should also be served on the Chairman of this Licensing Board. (Persons desiring to make oral statements who have filed a written request will be given priority over those who have not filed such a request.)

Documents relating to this application are on file at the Local Public Document Room, located at the Greenfield Community College, 1 College Drive, Greenfield, MA 01301, as well as at the Commission's Public Document Room, the Gelman Building, 2120 L St., N.W., Washington D.C. 20037.

It is so ordered.

Rockville, Maryland, November 5, 1998.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 98–30259 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. and MidAmerican Energy Co.; Quad Cities Nuclear Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order, approving under 10 CFR 50.80, the transfer of control of Facility Operating License Nos. DPR–29 and DPR–30, to the extent held by MidAmerican Energy Company (MidAmerican) for possession of the Quad Cities Nuclear Power Station, Units 1 and 2 (Quad Cities), located in Rock Island County, Illinois.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consent to the transfer of control of the licenses, with respect to MidAmerican's 25 percent ownership interest in Quad Cities, to the extent such transfer would be effected by a proposed corporate merger involving CalEnergy Company (CalEnergy) and MidAmerican Energy Holdings Company (MAHC), the parent of MidAmerican. Commonwealth Edison Company (ComEd) alone is licensed to operate, as well as possess Quad Cities and is not involved in the proposed merger. MidAmerican would continue to remain the minority owner and possession-only licensee of the facility.

The proposed action is in accordance with the application dated September 10, 1998, filed by CalEnergy and MidAmerican, accompanied by cover letters dated September 10, 1998, and supplemented by a letter dated September 16, 1998, and attachments thereto, from Roy P. Lessy, Jr., counsel for CalEnergy and MidAmerican.

The Need for the Proposed Action

The proposed action is needed to permit the consummation of the proposed corporate merger discussed above to the extent the merger will effect a transfer of control of the licenses.

Environmental Impacts of the Proposed Actions

The Commission has completed its evaluation of the proposed merger and concludes that there will be no changes to Quad Cities or the environment as a result of this action. The transfer of control of the licenses to the extent effected by the merger between MidAmerican and CalEnergy will not affect the numbers, qualifications, or organizational affiliation of the personnel who operate the facility, since ComEd is not involved in the proposed merger and will continue to be solely responsible for the operation of Quad Cities. No changes are being made with respect to any requirements governing plant operations or equipment.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the proposed action and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the proposed action would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action would not affect non-radiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects associated with the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are identical.

Alternative Use of Resources

The action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of Quad Cities Nuclear Power Station, Units 1 and 2, dated September 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on September 30, 1998, the staff consulted with the Illinois State official, Mr. Frank Niziolek, Head, Reactor Safety Section, Division of Engineering, Illinois Department of Nuclear Safety, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the request for approval dated September 10, 1998, accompanied by cover letters dated September 10, 1998, and supplemented by a letter dated September 16, 1998, and attachments thereto, from Roy P. Lessy, Jr., counsel for CalEnergy and MidAmerican, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the public document room located at the Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Dated at Rockville, MD, this 4th day of November 1998.

For the Nuclear Regulatory Commission.

Stuart A. Richards,

Director, Project Directorate III–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30255 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 105th meeting on December 15–17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, December 15, 1998—8:30 a.m. until 6:00 p.m.

Wednesday, December 16, 1998—8:30 a.m. until 6:00 p.m.

Thursday, December 17, 1998—8:30 a.m. until 4:00 p.m.

A. *Overviews of FY–99 NRC Staff Programs*—The Committee will hear a number of briefings from the NRC staff on FY–99 waste related programs. These overviews will include decommissioning activities, the High Level Waste repository program, and

programs planned or underway in the spent fuel projects office.

B. *Viability Assessment*—The Committee will review the Department of Energy's Yucca Mountain viability assessment. This will include an overview of the Total System Performance Assessment and factors used in abstracting TSPA models, the repository safety strategy, performance allocation, and an overview of the license application plan.

C. *Preparation of ACNW Reports*—The Committee will discuss planned reports on the following topics: an ACNW self assessment; a 1999 Action Plan for the Committee; proposed importance measures for evaluating nuclear waste repository performance; issues related to regulatory guidance and a standard review plan for decommissioning; observations from the recent European technical exchange; and other topics discussed during this and previous meetings as the need arises.

D. *Meeting with NRC's Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards*—The Committee will meet with the Director to discuss recent developments within the division such as developments at the Yucca Mountain project, rules and guidance under development, available resources, and other items of mutual interest.

E. *Prepare for the Next Meeting with the Commission*—The Committee will begin preparations for its next public meeting with the Commission. Topics to be discussed will be selected and Committee assignments made.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and Working Groups. The Committee will discuss ACNW-related activities of individual members.

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51367). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Chief, Nuclear Waste Branch, Mr. Richard K. Major, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the Chief, Nuclear Waste Branch, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Major as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Richard K. Major, Chief, Nuclear Waste Branch (telephone 301/415–7366), between 8:00 a.m. and 5:00 p.m. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or reviewing on the internet at *http://www.nrc.gov/ACRSACNW*.

The ACNW meeting dates for Calendar Year 1999 are provided below:

ACNW Meeting No.	1999 ACNW meeting date
	No Meeting in January.
106th	February 22–26, 1999 (San Antonio, Texas).
107th	March 23–25, 1999.
	No Meeting in April.
108th	May 11–13, 1999.
109th	June 15–17, 1999.
110th	July 19–21, 1999.
	No Meeting in August.
111th	September 14–17, 1999 (Amargosa Valley, Nevada).
112th	October 12–14, 1999.
	No Meeting in November.
113th	December 14–16, 1999.

Dated: November 5, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–30260 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 9, 16, 23, and 30, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 9

Thursday, November 12

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Friday, November 13

9:00 a.m.
*Meeting on NRC Response to Stakeholders' Concerns (Public Meeting) (Contact: Bill Hill, 301–415–1661/1969)

***Please Note:** The room location for the *Meeting on NRC Response to Stakeholders' Concerns*, scheduled for Friday, November 13, is in the NRC auditorium, Bldg 2, NRC Headquarters, Rockville, Md.

Week of November 16—Tentative

Tuesday, November 17

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 23—Tentative

Tuesday, November 24

9:00 a.m.
Briefing on fire Protection Issues (Public Meeting) (Contact: Steve West, 301–415–1220)

Wednesday, November 25

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 30—Tentative

Monday, November 30

2:00 p.m.
Meeting of DC Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on November 3, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "BRIEFING BY EXECUTIVE BRANCH" (Closed Ex.-1) be held on

November 3, 1998, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 6, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–30385 Filed 11–9–98; 1:04 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–16055]

Advanced Medical Systems, Inc.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), has acted on a Petition for action under 10 CFR 2.206, dated August 19, 1994, filed by William B. Schatz, Esq., on behalf of the Northeast Ohio Regional Sewer District (District), with respect to an NRC Licensee, Advanced Medical Systems, Inc. (AMS).

The District requested, pursuant to 10 CFR 2.206, that NRC amend AMS' License No. 34–19089–01 to require AMS to install, maintain, and operate a radiation alarm system on all drains at 1020 London Road, Cleveland, OH (AMS Facility) that lead to either sanitary or storm sewers.

The Petitioner's request to require a radiation alarm system on all drains at the AMS Facility was based on the risk posed by the contaminated AMS Facility, and on the basis that the original license for the site, issued to Picker X-Ray Corporation (Picker) in 1959, contained a requirement for an alarm system to detect unmonitored discharges.

For the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–98–11), the Director of the Office of Nuclear Material Safety and Safeguards has denied the request. The complete text of DD–98–11 follows this notice and is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, Perry Public Library, 3735 Main Street, Perry, OH 44081.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, this Decision will constitute the final action of the Commission 25 days after the date of issuance unless the Commission, on its own motion, institutes review of the decision within that time.

Dated at Rockville, Maryland, this 4th day of November, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

I. Introduction

By letter dated August 19, 1994, addressed to Mr. James M. Taylor, former Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC), William B. Schatz, Esq., on behalf of the Northeast Ohio Regional Sewer District (District), requested that the NRC take action with respect to Advanced Medical Systems, Inc. (AMS), of Cleveland, OH, an NRC licensee.[1] The District requested, pursuant to 10 CFR 2.206, that the NRC amend License No. 34–19089–01, to require AMS to install, maintain, and operate a radiation alarm system on all drains at 1020 London Road, Cleveland, OH (AMS Facility), that lead to either sanitary or storm sewers.

The District asserts two major reasons as the bases for the request. First, it views the quantity of cobalt-60 waste in the AMS Facility's basement as a major threat based on the following: (a) The NRC has admitted that the existing contamination at the AMS Facility continues to pose a risk; (b) the contamination that exists at the AMS Facility is estimated to include 393 curies, as of 1988, of loose, "talcum-like" cobalt-60 scattered on the floor of the basement waste hold-up room; (c) cobalt-60 contamination was found in the sewer line connecting the AMS Facility to the public sewer, and was found directly under the AMS discharge; (d) the District has already incurred costs of nearly $2 million to address loose cobalt-60 contamination at the Easterly and Southerly Wastewater Treatment Plants; (e) the NRC has been unable or unwilling to explain the source of the cobalt-60 on the District's property, and unable to identify any likely sources for the cobalt-60 other than the AMS Facility; and (f) the quantity of cobalt-60 at the Southerly Plant exceeds that which the AMS records show was released by AMS into the sewer system. Secondly, the original license for this site, issued to Picker in 1959, contained a requirement for an alarm system to detect unmonitored discharges. The District states that such an alarm system was not a condition of the subsequent AMS license, despite a recommendation from Oak Ridge Associated Universities that such an alarm system be installed, along with control valves, to shut off flow to the sewer if the alarm sounds.

By letter dated September 7, 1994, the NRC formally acknowledged receipt of the District's letter, and informed the District that its request was being treated pursuant to 10 CFR 2.206 of the Commission's regulations. A notice of the receipt of the Petition was published in the **Federal Register** on September 19, 1994 (59 FR 47959). The NRC Staff sent a copy of its acknowledgment letter, with a copy of the Petition, to AMS. By letter dated November 9, 1995, the NRC informed the District that further action on its request was being deferred until completion of an ongoing proceeding on AMS' November 29, 1994, application to renew its license. While that proceeding has not been terminated, the NRC staff has decided to deny the renewal application. See letter

[1] Northeast Ohio Regional Sewer District submitted two previous Petitions for action against AMS under 10 CFR 2.206. In a Petition dated March 3, 1993, and supplemented by letters dated September 13, 1994, October 13, 1994, and April 29, 1996, the Petitioner requested that NRC: (1) modify AMS' License No. 34–19089–01 to require that AMS assume all costs resulting from the off-site release of cobalt-60 that has been deposited at the Petitioner's Southerly Wastewater Treatment Center; (2) order AMS to decontaminate the sewer connecting its facility with the public sewer at London Road, and continue down stream with such decontamination to the extent that sampling indicates is necessary; (3) commence enforcement action against AMS for violation of 10 CFR 303(a), 401(c)(3) and 20.2003; and (4) take action on the AMS license to safely, immediately, and reasonably decontaminate the London Road interceptor (the sewer). The second request had been partially granted when the NRC amended the AMS license to require remediation of the sewer line connecting AMS Facility with the public sewer, and the Petition was denied in all other respects. Advanced Medical Systems, Inc. (DD–97–13), 45 NRC 460 (1997). In a second Petition dated August 3, 1993, the Petitioner requested that the NRC take action to require AMS to provide adequate financial assurance to cover public liability pursuant to section 170 of the Atomic Energy Act of 1954, as amended. The second petition was denied. Advanced Medical Systems, Inc. (DD–94–6), 39 NRC 373 (1994).

from C. Paperiello, NRC to S. Stein, AMS, dated September 28, 1998. Accordingly, it is now appropriate for the staff to consider the action requested by the District.

I have completed my evaluation of the matter raised by the District and have determined that, for the reasons stated below, the Petition should be denied.

II. Background

In 1959, the Atomic Energy Commission (AEC) (predecessor to the NRC) issued License No. 34–07225–09 to Picker X-Ray Corporation (Picker), for operation of a sealed-source manufacturing facility located at 1020 London Road. The license authorized Picker to receive, store, and encapsulate cobalt-60 for the purpose of installing these encapsulated sources in approved devices and distributing the sources to customers having valid licenses. The facility at 1020 London Road had been built specifically for the intended purpose of handling and encapsulating large quantities of cobalt-60 (in the kilocurie range); the building included a hot cell for encapsulating the cobalt-60, and various support areas, including a heavily shielded room that contained two stainless steel tanks to collect liquid radioactive waste [waste hold-up tanks (WHUT)]. During the manufacturing of encapsulated sources, it was not uncommon that the hot cell would become contaminated with oxidized cobalt-60. To maintain control of contamination and radiation levels, the cell would be cleaned periodically, with the liquid waste generated by the cleanup diverted to the WHUT room, which had a combined holding capacity of 600 gallons. The stored liquid radioactive waste was then discharged to the sanitary sewer at irregular intervals, depending on the volume of liquid waste generated during normal operations. In a manual entitled "Radiation Safety Procedures for the Picker X-Ray Corporation, Waite Manufacturing Division, Inc.," dated December 1959, a procedure outlined the equipment and steps followed to discharge the liquid waste to the sewer. The liquid radioactive waste was pumped directly from the WHUT into the sanitary sewer system through a drain in the basement floor. The hose from the WHUT to the sewer drain was continuously monitored during discharge, with the liquid passing through a solenoid valve, an in-line monitor consisting of a G-M tube with a rate meter and a strip chart recorder, and a water meter. The solenoid valve opened only during intentional discharge from the WHUT, and only when the monitoring system detected count rates below a preset level, ensuring that only authorized concentration levels were being discharged. A record of the total discharge would be indicated by the total volume of liquid discharged and the count rate information from the monitor, calculating the average concentration and the total activity. The description of the monitoring process did not have the detection system operating continuously, but only while discharging from the hold-up tanks to the sanitary sewer drain.

In a letter submitted to the AEC dated January 25, 1974, Picker submitted a manual entitled "Radiation Safety Procedures for the Picker Corporation, Isotope Operations," requesting it supersede the then effective manual, "Radiation Safety Procedures for the Picker X-Ray Corporation, Waite Manufacturing Division, Inc.," mentioned above. This new manual modified the facility's liquid waste disposal method and system, and was later revised in September 1976. See Inspection Report No. 030–16055/93003(DRSS) at 13. The AEC, and later the NRC, did not incorporate the January 1974 letter, the manual, and the subsequent September 1976 revision, into Picker's license. In February 1974 (OR Inspection Report No. 74–01 for License No. 34–07225–09 at 6), Picker modified its liquid radioactive waste discharge procedure from the in-line continuous monitor, to a batch disposal method. This batch disposal system consisted of a 55-gallon drum located outside the room housing the WHUT, atop a stand pipe connected to a floor drain leading to the sanitary sewer line. Waste water was pumped from the WHUT to the 55-gallon drum, the drum liquid was then agitated by an electrically driven trolling motor, and, after agitation, the liquid was sampled to determine its radioactive concentration. After determining radioactivity concentration and the volume in the 55-gallon drum, for recording concentration and total quantity of radioactive material, the plug at the bottom of the drum was removed to discharge the contents to the sanitary sewer. This batch method of disposal was continued until Picker terminated this license in November 1979.

In 1979, Picker sold the facility and operation at 1020 London Road to AMS. The provisions of the AMS license application were similar to the previous Picker license, with many of the procedures carried forward to the AMS license, including the batch method for liquid radioactive waste release described above. AMS used the same batch method for disposal of liquid radioactive waste as Picker, from the time that AMS' initial license (License No. 34–19089–01) was issued on November 2, 1979, until April 1986. In 1986, AMS installed a 200-gallon plastic tank to collect waste from the drain leading from decontamination showers, the laundry, and sinks, and discontinued use of the 55-gallon drum for discharge. One of the two tanks in the WHUT room, a 500-gallon tank, was no longer receiving liquid waste when the 200-gallon tank was installed in 1986, and the use of the other tank in the WHUT room (100-gallon capacity) was discontinued in 1988, when the WHUT room was isolated. The batch method of determining concentration and total volume of the liquid discharge from the 200-gallon tank, to show compliance, continued until May 1989, when discharge to the sanitary sewer (via floor drains) was discontinued completely.

III. Discussion

The District's petition requests the NRC to require AMS to install, maintain, and operate a radiation alarm system on all drains at the AMS Facility that lead to either sanitary or storm sewers. The request to modify the license by having alarms installed appears to be an effort to put in place a mechanism that would indicate when cobalt-60 is entering the District's sanitary sewer system, and, in turn, to stop the entry of the cobalt-60 into the sanitary sewer system on positive indication of material.

Most of the bases for the Petition are restatements of facts, or existing information in previously published documents, that are associated with the facility at 1020 London Road. Since 1989, when AMS changed its decontamination process to a dry method, AMS' records indicate that AMS has not disposed of any radioactive waste into the sanitary sewer drain.

The District has incurred costs of nearly $2 million addressing the cobalt-60 contamination at its Easterly and Southerly wastewater treatment plants. The District's apparent concern in this Petition is the threat that the London Road facility poses to the District's treatment facilities, primarily pertaining to the imposition of additional costs through release of cobalt-60 from the AMS facility into the District's system. As described below, however, neither the nature or activity of the contamination in the WHUT room, in light of the condition of the WHUT room, nor the requirements formally applicable to Picker, establish any basis

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to take the requested action. This cobalt-60 contamination is in a dry state, and the WHUT room is completely isolated from the sewer system and from accidental access. There are no floor drains in the WHUT room, and there is no water supply into or out of the room. Accordingly, the existence of contamination of 393 curies (14.5 terabecquerels) of loose, "talcum-like" cobalt-60 in the WHUT room in the basement does not warrant granting of the District's request.

The District indicated there had been an alarm and control system that had once been in place when Picker operated the facility, up to November of 1979. In connection with this type of system, the District states that the system had not been a required condition of the license after Picker terminated work at the facility, and operations continued under the AMS license. In its original license application to show compliance with the regulations at that time, Picker included conditions requiring a water-monitoring system that detected concentration levels in a drainpipe. The system that Picker described in the Informational Memorandum No. 6, "Calibration and Evaluation of Water Monitor System," submitted by Picker to the NRC on December 2, 1959, was used as both a control system, to prevent discharge above a preset limiting concentration, and as a method of showing compliance with then-applicable regulations. However, this documentation does not indicate that there had been any alarm as part of the system—nor is it documented, from that time, why the in-line system was discontinued, and a batch method used in its stead, in 1974. See OR Inspection Report 74–01, License No. 34–07225–09, transmittal dated May 3, 1974. Two interviewees questioned during a 1993 inspection indicated that the in-line system was discontinued because the in-line G–M detector needed to be replaced, but was no longer manufactured or available. See Report No. 030–16055/93003 (DRSS) at 11. Both procedures, the in-line monitoring method and the batch method, at the time they were being used, satisfied the requirement to show compliance independently, and, therefore, either procedure was considered acceptable at the time of the request.

The Oak Ridge Associated Universities report that recommended monitoring the discharge to the sanitary sewer and placing a servo-valve mechanism on the drains was part of a larger report. See "Evaluation of the Operational Radiation Safety and Fire Protection Programs of the Advanced Medical Systems, Inc., London Road Facility, Cleveland, Ohio," December 1985. This method was given as an alternative for developing a contingency plan for controlling release to the sanitary sewer system in case of a major spill into the basement. The other alternative offered in this report was to seal the drains in the basement floor, so that any release could be monitored before releasing to the sewer system. AMS chose this latter alternative as a means of preventing an unmonitored release. The method of sealing the drains was determined to be appropriate to ensure compliance with 10 CFR 20.303 (1985). A continuous monitor could be used for the purpose of detecting a major unintended release, but might be relatively insensitive for normal operations.

In October 1994, the District issued an Executive Director's Order to AMS terminating all sewer service effective October 24, 1994. In November 1994, the District placed a compression plug in the AMS lateral sewer line that connects the AMS Facility to the District's sewer system under London Road. Thus, in effect, the District isolated the AMS Facility's sanitary and storm drain lines from the sanitary sewerage treatment system. In mid-1995, AMS grouted shut the entire lateral line, to immobilize any residual cobalt-60 that remained in the lateral. AMS' grouting of the lateral line blocked release, through the lateral, from the AMS Facility to the District's sewer system. At some point following the grouting operation, the District removed the compression plug on AMS' lateral sewer line. Currently, there are drains at the AMS Facility that lead from the rooftop (for rainwater) to the main sewer system in London Road, but there are no other drains from the facility that are connected to the sewer system. The lateral connector, which connects all drains originating from within the AMS Facility to the District's sewer line, remains grouted. Also, in a settlement agreement between the District and AMS, executed on December 20, 1996, the District indicated that it would allow re-connection of the AMS Facility to its London Road Interceptor pursuant to procedures set forth in the agreement, provided that several conditions were first satisfied. As of the date of this Director's Decision, AMS has not executed all the conditions in the agreement. The December 1996 settlement agreement states that re-connection shall be in full accordance with several criteria and requirements, with one of the requirements being that AMS must agree not to discharge any cobalt-60 into the sanitary sewer system, directly or indirectly. See Settlement Agreement dated December 20, 1996, at 10, forwarded by a letter from Dwight Miller, Stavole & Miller, Attorneys and Counsellors at Law, to John Madera, Chief, Materials Inspection Branch 1, Region III, dated January 6, 1997. With this agreement for re-connection in place, and with the only connection between the interior of the AMS Facility and the District's sewer system grouted, until AMS satisfies the condition of the settlement agreement, the requested requirement for an alarm system is not necessary at this time.

The existence of unsealed cobalt-60 at the AMS Facility does represent a potential risk. As the NRC staff has previously stated, the possibility remains that the contamination existing on site might be spread to areas offsite or that future operations could result in offsite contamination. Such offsite contamination would not necessarily spread to the District's system, however. In addition, the likelihood of accidental release of cobalt-60 from the licensee's facility has diminished and continues to do so. Advanced Medical Systems (DD–94–6) 39 NRC 373, 379 (1994). Since 1994, the amount of cobalt-60 that could be released in an accident at the licensee's facility has been greatly diminished because of disposals to a licensed disposal site. See NRC Inspection Report No. 030–16055/97001(DNMS) (March 7, 1997). Moreover, NRC inspection and review of records have not revealed any documentation at AMS or other evidence that would indicate discharges into the sanitary sewer system have been in excess of authorized limits. Advanced Medical Systems, Inc. (DD–97–13) 45 NRC 460, 465 (1997). As the situation exists today, the NRC staff concludes that neither the contamination at the facility nor the licensee's drainage system present an immediate health and safety hazard to the public, and that the requested action is not warranted.

IV. Conclusion

The staff has carefully considered the request of the Petitioner. In addition, the staff has evaluated the bases for the Petitioner's request. For the reasons discussed above, the District's request for action pursuant to section 2.206 is denied, and no action pursuant to section 2.206 is being taken in this matter.

As provided by 10 CFR 2.206, a copy of this Decision will be filed with the Secretary of the Commission for the Commission's review. The Decision will

become the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time.

Dated at Rockville, Maryland, November 4, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–30252 Filed 11–10–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23524; File No. 812–11282]

Provident Mutual Life Insurance Co. et al.

November 4, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for order pursuant to Section 26(b) and Section 17(b) of the Investment Company Act of 1940 (the "Act" or the "1940 Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of securities issued by certain management investment companies (each a "Management Company") and held by either Provident Mutual Variable Managed Separate Account (the "Managed Account"), Provident Mutual Variable Separate Account (the "Separate Account"), Providentmutual Variable Annuity Separate Account (the "Variable Account"), or Providentmutual Variable Life Separate Account (the "Variable Life Account") (each, an "Account," together, "Accounts") to support variable life insurance contracts or variable annuity contracts (collectively, the "Contracts") issued by Provident Mutual Life Insurance Company ("PMLIC") or Providentmutual Life and Annuity Company of America ("PLACA"). Applicants also seek an order exempting them from Section 17(a) of the Act to the extent necessary to permit PMLIC to consolidate the Managed Account with the Separate Account to permit PLACA to consolidate two subaccounts to the Variable Account and to consolidate two subaccounts of the Variable Life Account.

APPLICANTS: PMLIC, PLACA, the Managed Account, the Separate Account, the Variable Account, and the Variable Life Account.

FILING DATE: August 27, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on November 30, 1998, and must be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Adams Scaramell, Esq., Provident Mutual Life Insurance Company, 1050 Westlakes Drive, Berwyn, Pennsylvania 19312. Copies to Stephen E. Roth, Esq. and David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, N.W., Washington, D.C. 20004–2415.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicants' Representations

1. PMLIC, a mutual life insurance company chartered by the Commonwealth of Pennsylvania, is authorized to transact life insurance and annuity business in Pennsylvania and in 50 other jurisdictions. PLMIC is the depositor and sponsor of the Separate Account and the Managed Account.

2. PLACA is a stock life insurance company originally incorporated under the laws of the Commonwealth of Pennsylvania in 1958, and redomiciled as a Delaware insurance company in 1992. It is a wholly owned subsidiary of PMLIC. PLACA is licensed to do business in 48 states and the District of Columbia. PLACA is a depositor and sponsor of the Variable Account and the Variable Life Account.

3. PMLIC established the Managed Account on October 21, 1985, and the Separate Account on June 3, 1993, as segregated investment accounts under Pennsylvania law. PLACA established the Variable Account on May 9, 1991, as a segregated investment account under Pennsylvania law, and established the Variable Life Account on June 30, 1994, as a segregated investment account under Delaware law. Each Account is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. The Separate Account is divided into sixteen subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponsing investment portfolio (each, a "Portfolio") of one of six series-type Management Companies. The Managed Account is not divided into subaccounts and invests in shares of the Market Street Fund, Inc. The assets of the Separate Account and the Managed Account support variable life insurance Contracts, and interests in these Accounts offered through such Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form S–6.

5. The Variable Account is divided into thirty-three subaccounts. Each subaccount invests exclusively in a Portfolio of one of ten series-type Management Companies. The assets of Variable Account support annuity Contracts, and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form N–4.

6. The Variable Life Account is divided into twenty-two subaccounts. Each subaccount invests in a Portfolio of one of seven series-type Management Companies. The assets of the Variable Life Account support variable life Contracts, and interests in the Account offered through such Contracts have been registered under the 1933 Act on Form S–6.

7. The Separate Account, the Variable Account, and the Variable Life Account each invest in two Management Companies that are involved in the substitutions discussed in the application: the Neuberger & Berman Advisers Management Trust and the American Century Portfolios, Inc.

8. American Century Variables Portfolios, Inc. ("ACVP") was organized as a Maryland corporation on June 4, 1987. It is registered under the Act as an open-end management investment company. ACVP is a series investment company as defined by Rule 18f–2 under the Act, and currently comprises six Portfolios, one of which, American Century V.P. Capital Appreciation Portfolio, is involved in the proposed substitutions. Investors Research Corporation serves as the investment adviser to ACVP.

9. AMT was organized as a Delaware business trust on May 23, 1994. AMT is registered under the Act as a diversified, open-end management investment company. AMT is a series investment company as defined by Rule 18f-2 under the Act, and is a "feeder" fund in a "master-feeder" structure. Each series of AMT currently invests all of its net investible assets in a corresponding series of Advisers Master Trust, the "master" fund. AMT currently comprises eight Portfolios. Neuberger & Berman Management Incorporated serves as investment adviser to AMT. The following AMT Portfolios are involved in the proposed substitutions discussed in the application: AMT's Balance Portfolio, AMT's Growth Portfolio and AMT's Partners Portfolio.

10. MSF was incorporated in Maryland on March 21, 1985. MSF is registered under the Act as an open-end diversified management investment company. MSF is a series investment company as defined by Rule 18f-2 under the Act and currently comprises eleven Portfolios. Providentmutual Investment Management Company serves as investment adviser to the MSF All Pro Large Cap Growth Portfolio. Sentinel Advisers Company serves as investment adviser to the Managed Portfolio.

11. The Contracts are flexible premium variable life insurance contracts and individual flexible premium deferred variable annuity contracts. PMLIC issues four of the variable life insurance Contracts that are participating in the proposed substitution. PLACA issues one of the variable life insurance Contracts and the only variable annuity Contract that are participating in the proposed substitution. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. PMLIC or PLACA, under each of the Contracts, reserves the right to substitute shares of one Portfolio for shares of another, including a Portfolio of a different Management Company.

12. Under all of the variable life insurance Contracts except the "Options Contract," a Contract owner may make unlimited transfers (in minimum amounts of at least $1000) of contract value in a Contract year between and among the subaccounts of the relevant Account, the other separate accounts available under the Contract, and either PMLIC's or PLACA's general account. However, after the fourth transfer in a Contract year, each insurer assesses ■ $25 charge for each transfer. Under the Options Contract, a Contract owner may make four transfers (of at least $100) of account value in a contract year between and among the subaccounts of the Separate Account and the other separate accounts available under this Contract. Under the PLACA variable annuity contract, a Contract owner may make unlimited transfers (of at least $500) of account value between and among the subaccounts of the Variable Annuity Account and PLACA's general account. There is no charge for transfers.

13. PMLIC, on its behalf and on behalf of the Separate Account; and PLACA, on its behalf and on behalf of the Variable Account and the Variable Life Separate Account; propose to make certain substitutions of shares held in those Accounts. PMLIC and PLACA propose to substitute shares of MSF Managed Portfolio for shares of AMT Balanced Portfolio, shares of MSF All-Pro Large Cap Growth Portfolio for shares of ACVP Capital Appreciation Portfolio, and shares of AMT Partners Portfolio for shares of AMT Growth Portfolio. PMLIC and PLACA believe that by making the proposed substitutions in each of their Accounts, they can better serve the interests of owners of their Contracts.

14. MSF Managed Portfolio and AMT Balanced Portfolio have substantially the same investment objectives and achieve these objectives by investing in equity and debt securities. Applicants, however, believe that the proposed substitutions will benefit Contract owners by offering MSF Managed Portfolio, which in recent years has had lower expenses and better performance than AMT Balanced Portfolio. MSF Manged Portfolio also is a more popular investment option than the AMT Balanced Portfolio. The expense ratios for MSF Manged Portfolio have been significantly lower over each of the past three years (by approximately 33% in 1995, by approximately 49% in 1996, and by approximately 46% in 1997) than the expense ratios for AMT Balanced Portfolio for the same periods. Applicants believe that MSF Managed Portfolio will continue to have low expense ratios, and have no reason to believe that AMT Balanced Portfolio will match the low expense ratios of the Balanced Portfolio in the near future. Likewise, for each of the past three years, MSF Managed Portfolio has had somewhat higher total returns than AMT Balanced Portfolio. Similarly, as shown below, the average annual total returns for the Portfolios for 1, 3, and 5 years show MSF Managed Portfolio with somewhat better performance results than AMT Balanced Portfolio.

AVERAGE ANNUAL TOTAL RETURNS
[As of 12/31/97]

	1 year	3 years	5 years
AMT Balanced	18.6%	15.6%	9.4%
MSF Managed	20.3%	18.2%	12.2%

Applicants have no reason to believe that, in the near term, the performance of AMT Balanced Portfolio will match or exceed that of MSF Managed Portfolio. Finally, Applicants assert that the AMT Balanced Portfolio has proved to be an unpopular investment choice with Contract owners and does not exhibit signs of becoming more popular in the future. During each of the past three fiscal years, far more Contract owners allocated Contract values to MFS Managed Portfolio than to AMT Balanced Portfolio.

NUMBER OF OWNERS OF ALL PMLIC/PLACA CONTRACTS WITH VALUE ALLOCATED TO EACH PORTFOLIO

	MSF managed portfolio	AMT balanced portfolio
12/31/97	13,062	3,320
12/30/96	12,767	2,802

NUMBER OF OWNERS OF ALL PMLIC/PLACA CONTRACTS WITH VALUE ALLOCATED TO EACH PORTFOLIO—Continued

	MSF managed portfolio	AMT balanced portfolio
12/31/95	12,495	2,058

For the foregoing reasons, Applicants submit that the proposed substitution of

the MSF Managed Portfolio for shares of the AMT Balanced Portfolio is in the best interests of Contract owners.

15. MSF All Pro Large Cap Growth Portfolio and ACVP Capital Appreciation Portfolio have substantially the same investment objective: to achieve capital appreciation or growth by investing in equity securities. In addition, ACVP Capital Appreciation Portfolio was managed with an essentially large capitalization growth stock investment style. Applicants' however, believe that Contract owners will be better served by replacing ACVP Capital Appreciation Portfolio with MSF All Pro Large Cap Growth Portfolio for three basic reasons: (a) ACVP Capital Appreciation's poor performance and shrinking asset base over each of the past three years, (b) the shift in investment strategy made by the adviser of ACVP Capital Appreciation Portfolio, and (c) the unpopularity of ACVP Capital Appreciation Portfolios as an investment option under the Contracts. For each of the past three fiscal years the total returns for ACVP capital Appreciation Portfolio have been poor. In 1996 and 1997 the Portfolio had negative total returns (−4.32% and −3.26%, respectively). The Portfolio had these poor returns despite the record highs achieved in the U.S. equity markets during 1996 and 1997. Further, ACVP Capital Appreciation Portfolio is the worst performing domestic equity Portfolio available under the Contracts for each of the past two fiscal years. In addition, the net assets of ACVP Capital Appreciation Portfolio have declined in each of the past three fiscal years. Significantly, the Portfolio's net assets declined by more than 50% during 1997. Should the decline in net assets of ACVP Capital Appreciation Portfolio continue, Applicants believe that the expenses of the Fund would eventually increase. Applicants have no reason to believe that the performance of the Portfolio or the rate of decline of its asset base will be reversed in the foreseeable future.

16. In addition to poor performance and a shrinking asset base, ACVP Capital appreciation Portfolio has recently changed its investment style. When PMLIC and PLACA selected the Portfolio as an investment option under the Contracts, it was managed primarily as a large capitalization growth stock portfolio. However, the investment adviser now emphasizes primarily smaller capital stocks. MSF All Pro Large Cap Growth Portfolio is a large capitalization growth stock portfolio that invests in the equity securities of the 750 largest companies by market capitalization. Substituting MSF All Pro Large Cap Growth Portfolio for ACVP Capital Appreciation Portfolio will ensure that the Contracts continue to offer a growth portfolio with a large capitalization stock orientation.

17. Finally, Applicants submit that ACVP Capital Appreciation Portfolio has been among the least (if not the least) popular investment option for Contract owners for each of the past three fiscal years, and does not exhibit signs of becoming more popular in the future. Applicants believe that MSF All Pro Large Cap Growth Portfolio would be a more popular investment option for Contract owners. For the foregoing reasons, Applicants submit that the substitution of MSF All Pro Large Cap Growth Portfolio shares for shares of ACVP Capital Appreciation Portfolio will better serve the interests of Contract owners.

18. AMT Partners Portfolio has substantially the same investment objective as the AMT Growth Portfolio. Applicants, however, believe that it is in the best interests of Contract owners to substitute shares of the AMT Partners Portfolio for shares of the AMT Growth Portfolio because of the change in investment strategy of the AMT Growth Portfolio, and the good performance, declining expenses, and growth potential of the AMT Partners Portfolio. Although AMT Growth Portfolio has not changed its investment objective recently, its style of investing has changed dramatically. In July 1997, the Fund's adviser appointed a new portfolio manager. As a result of this management change, AMT Growth Portfolio no longer follows a strategy which emphasizes the selection of large capitalization stocks with value characteristics and instead employs a strategy which emphasizes the selection of mid-capitalization stocks with strong earnings growth momentum. AMT Partners Portfolio is essentially the portfolio that the AMT Growth Portfolio once was. In addition, AMT Partners Portfolio follows what used to be AMT Growth Portfolio's investment strategy of investing significantly in large capitalization stocks with value characteristics such as low price/earnings ratios. As such, the AMT Partners Portfolio is a suitable replacement to fill the void left by the AMT Growth Portfolio in the large capitalization value category of investment options available under the Contracts.

19. Moreover, the AMT Partners Portfolio has exhibited stronger performance and greater growth over each of the past three fiscal years than has AMT Growth Portfolio. For example, during 1997, net assets increased by approximately 57%, the expense ratio declined .09% from 1996 to .86%, and total return increased from 29.57% in 1996 to 31.25% in 1997. In contrast, net assets of AMT Growth Portfolio increased approximately 3% over 1997, the expense ratio declined only .02% from 1996 to .90%, and total return increased from 9.14% in 1996 to 29.01%. In addition, for each of the past three years, the expense ratios for the AMT Partners Portfolio have declined, while the expense ratios for the AMT Growth Portfolio have stayed roughly the same. Applicants have no reason to believe that strong performance, declining expenses, and growth potential of the AMT Partners Portfolio will not continue. For the foregoing reasons, Applicants believe that Contract owners would be better served by substituting shares of the AMT Partners Portfolio for shares of the AMT Growth Portfolio.

20. The following charts show the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past three years for five of the six Portfolios involved in the proposed substitutions. (The MSF All Pro Large Cap Growth Portfolio is not included in the charts below because it is new.)

	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
AMT Balanced Portfolio:			
1995	$144.4	.99	23.76
1996	173.2	1.09	6.89
1997	161.9	1.04	19.45
MSF Managed Portfolio:			
1995	36.0	.66	24.43
1996	43.4	.60	11.88

	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
1997	56.1	.58	21.23
American Century V.P. Capital Appreciation Portfolio:			
1995	1,461.0	.99	31.10
1996	1,314.0	1.00	(4.32)
1997	594.0	1.00	(3.26)
AMT Growth Portfolio:			
1995	537.8	.90	31.73
1996	566.4	.92	9.14
1997	583.7	.90	29.01
AMT Partners Portfolio:			
1995	207.5	1.09	36.47
1996	705.4	.95	29.57
1997	1,632.8	.86	31.25

21. By supplements to the various prospectuses for the Contracts and the Accounts, all owners of the Contracts will be notified of PMLIC's and PLACA's intention to take the necessary actions to substitute shares of the Portfolios. The supplements for the Accounts advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in any one of the affected subaccounts or the Managed Account on the date of the supplement to another subaccount or separate account available under a Contract other than one of the other affected investment subaccounts or the Managed Account, without that transfer counting as a "free" transfer permitted under a Contract. The supplements also inform Contract owners that PMLIC and PLACA will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the Proposed substitution.

22. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights to PMLIC's nor PLACA's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by PMLIC or PLACA. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a Contract year. PMLIC and PLACA will not exercise any right either may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

23. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all account value under a Contract invested in any one of the affected subaccounts or the Managed Account on the date of the notice to another subaccount or separate account available under their Contract without that transfer counting as one of any limited number of transfers permitted in a Contract year or as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that PMLIC and PLACA will not exercise any rights reserved by either under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states. Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by PMLIC (or one of its affiliates) or PLACA (or one of its affiliates) during the 60 days following the proposed substitutions. The notices will be accompanied by current prospectuses for MSF Managed Portfolio, the MSF All Pro Large Cap Growth Portfolio, and the AMT Partners Portfolio.

24. PMLIC and PLACA also are seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

Section 26(b)

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to receive Commission approval before substituting the securities held by the trust. Section 26(b) was added to the Act by the Investment Company Amendments of 1970. Prior to the enactment of the 1970 amendments, a depositor of a unit investment trust could substitute new securities for those held by the trust by notifying the trust's security holders of the substitution within five days of the substitution. In 1966, the Commission, concerned with the high sales charges then common to most unit investment trusts and the disadvantageous position in which such charges placed investors who did not want to remain invested in the substituted fund, recommended that Section 26 be amended to require that a proposed substitution of the underlying investments of a trust receive prior Commission approval. Congress responded to the Commission's concerns by enacting Section 26(b) to require that the Commission approve all substitutions by the depositor of investments held by unit investment trusts.

2. The proposed substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act. Applicants therefore request an order from the Commission pursuant to Section 26(b) approving the proposed substitutions.

3. The Contracts expressly reserve for PMLIC or PLACA the right, subject to

compliance with applicable law, to substitute shares of another Management Company for shares of a Management Company held by an Account or a subaccount of an Account. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right. PMLIC and PLACA each reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners.

4. In the case of the proposed substitution of shares of MSF Managed Portfolio for shares of AMT Balanced Portfolio, AMT Balanced Portfolio would be replaced by a Portfolio with substantially the same investment objectives but which has lower expenses and better performance. Moreover, MSF Managed Portfolio is already available under the Contracts and is a more popular investment option than AMT Balanced Portfolio.

5. In the case of the proposed substitution of shares of MSF All Pro Large Cap Growth Portfolio for shares of ACVP Capital Appreciation Portfolio, the interests of Contract owners will be better served primarily because the worst performing domestic equity Portfolio and one of the least attractive investment options under the Contracts would be replaced by a Portfolio with substantially the same investment objective and hopefully better performance. In addition, ACVP Capital Appreciation Portfolio has shifted its investment strategy since it was first made available as an investment option to Contract owners. Its investment adviser no longer primarily invests in large capitalization stocks and instead primarily invests in smaller capitalization stocks. MSF All Pro Large Cap Growth Portfolio, in contrast, will invest primarily in large capitalization stocks.

6. Finally, in the case of the proposed substitution of shares of AMT Partners Portfolio for shares of AMT Growth Portfolio, Contract owners will be better served because AMT Partners Portfolio has an investment strategy comparable to that of AMT Growth Portfolio before it changes its strategy. However, AMT Partners Portfolio has lower fees, better performance, and better growth potential than AMT Growth Portfolio. AMT Partners Portfolio uses the value style of investing (as opposed to the growth style of investing currently used by AMT Growth Portfolio) and has substantially the same investment objective as AMT Growth Portfolio.

7. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

8. Applicants anticipate that Contract owners will be in at least as favorable a position with the proposed array of separate accounts and subaccounts offered after the proposed substitutions as they have been with the array of separate accounts and subaccounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer account values between and among the same number of separate accounts or subaccounts as they could before the proposed substitutions.

9. Applicants assert that each of the proposed substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer account values into other separate accounts or subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

10. The proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular investment company in which to invest their account values. They also select the specific type of insurance coverage offered by PMLIC or PLACA under their Contract as well as numerous other rights and privileges set forth in the Contract. Contract owners may also have considered PMLIC's or PLACA's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

11. Applicants submit that, for all the reasons summarized above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Section 17(b)

12. Applicants also request an order under Section 17(b) exempting them from the provisions of Section 17(a) to the extent necessary to consolidate: (a) the Managed Account with the subaccount of the Separate Account that will invest in MSF Managed Portfolio, (b) the subaccount of the Variable Account that currently invests in MSF Managed Portfolio with the subaccount that currently invests in AMT Balanced Portfolio, and (c) the subaccount of the Variable Life Account that currently invests in MSF Managed Portfolio with the subaccount that currently invests in AMT Balanced Portfolio.

13. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the Act generally prohibits the persons described above, acting as principals, from knowingly purchasing any security or other property from the registered investment company. Because the Managed Account and the Separate Account (as well as several other PMLIC separate accounts) are registered collectively with the Commission as a single unit investment trust of which PMLIC is the depositor, the Managed Account and the Separate Account are affiliated persons of each other. Because PLACA is the depositor of the Variable Account and the Variable Life Account, these Accounts are affiliated persons of each other. Further, because all of the Accounts are under the common control of PMLIC, they are all affiliated persons of each other.

14. The combining of the Managed Account with a subaccount of the Separate Account, and possibly the consolidation of subaccounts of the Variable Account and the Variable Life Account, because it could be deemed to involve the transfer of assets from one entity to another, may involve these entities, acting as principal, in buying and selling securities or other property from one to another in contravention of Section 17(a).

15. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any transaction from the prohibitions of Section 17(a) if the evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and

(c) The proposed transaction is consistent with the general purposes of the Act.

16. Applicants submit that the terms of the proposed substitutions, as described in this Application, including the consideration to be paid and received, are fair and reasonable and do not involve overreaching on the part of any person concerned. Applicants also submit that the proposed substitutions are consistent with the policies of each of the Accounts and with the general purposes of the Act. The Commission has previously granted exemptions from Section 17(a) to permit the combination or consolidation of separate accounts registered as unit investment trusts. The Commission also has granted numerous exemptions from Section 17(a) to permit the consolidation of subaccounts of a separate account registered as a unit investment trust in connection with a substitution.

17. Rule 17a–8 under the Act provides an exemption from Section 17(a) of the Act for mergers of affiliated mutual funds (or acquisitions of one fund by an affiliated fund) as long as the directors of the funds determine that the merger (or acquisition) is in the best interests of the fund and that the interests of each fund's shareholders will not be diluted. In proposing Rule 17a–8, the Commission offered several factors for directors to consider in reaching this determination. Although the Accounts (and relevant subaccounts) do not have directors and the proposed substitutions do not come within the parameters of Rule 17a–8, Applicants submit that the Commission may look to these factors as a standard for judging the reasonableness and fairness of the proposed substitutions and related consolidations.

(a) Immediately after the proposed substitutions, the Managed Account and each affected subaccount of the other Accounts would invest exclusively in shares of the same Portfolio as does the subaccount with which it would be consolidated. Therefore, to the extent that the investment objectives of these Portfolios can be attributed to the Managed Account or a subaccount, each surviving subaccount will, by definition, have the same "investment objectives, policies, restrictions and portfolios" after the proposed substitutions and related consolidations as it and its consolidation partner had before the transactions.

(b) The proposed substitutions and related consolidations will be effected by "combining" the Managed Account and certain subaccounts with other subaccounts and transferring shares of Portfolios held by the Managed Account or a subaccount to a surviving subaccount. The transfer will be carried out in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder in that the aggregate net asset value of the transferred shares will not change and each Contract owner holding units of interest in the Managed Account or a subaccount will have those units exchanged for units of equal value in the surviving subaccount. The "prices" or values of the exchanged interests under the Contracts will thus be equivalent. In addition, the proposed substitutions and related consolidations will impose no tax liability upon Contract owners or alter the tax status of the Contracts. The proposed substitutions and related consolidations will not in any way dilute the interests of Contract owners.

(c) PMLIC or PLACA will bear all of the costs and expenses of the proposed substitutions and related consolidations. None of the Accounts, affected subaccounts or Contract owners will incur any costs or expenses and will not pay any fees or charges as a result of the proposed substitutions and related consolidations. Therefore, no direct or indirect costs to Contract owners or dilution of Contract owner interests will occur.

18. The proposed substitutions and related consolidations will benefit Contract owners by consolidating an unneeded Account and several duplicative subaccounts of other Accounts. The consolidations are motivated by effiencies of administration that will result from the elimination of the Managed Account and two subaccounts of each of the other Accounts, the continued existence of which serves no useful purpose. PMLIC and PLACA expect and intend that Contract owners will benefit from the consolidation to the extent that it streamlines record keeping and other administrative operations.

19. As explained above, each surviving subaccount will have the same investment policy as its consolidation partner as recited in the registration statements and reports for both filed under the Act.

20. The proposed substitutions and related consolidations are consistent with the general purposes of the Act, as enunciated in the Findings and Declaration of Policy of the Act, particularly, Section 1(b)(2). The proposed substitutions and related consolidations do not present any of the abuses that the Act was designed to prevent or raise issues it was designed to address. Applicants will carry out the proposed substitutions and related consolidations in a manner appropriate in the public interest and consistent with the protection of investors.

21. Applicants submit that, for all of the reasons summarized above, the terms of the proposed substitutions and related consolidations, including the consideration to be paid or received, are reasonable and fair to each Account (and subaccounts) and to Contract owners invested in each and do not involve overreaching on the part of any person; furthermore, the proposed substitutions and related consolidations are consistent with the policy of each Account (and subaccount) and the general purposes of the Act.

Conclusion

For the reasons summarized above, Applicants assert that the requested order meets the standards set forth in 26(b) and 17(b), respectively, and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30246 Filed 11–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40631; File No. SR–NYSE–98–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to NYSE Rule 64

November 3, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 16, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 64. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, NYSE Rule 64 requires Floor Official approval for all "non-regular way" [3] trades during all but the final calendar week of the year. The Rule provides that during the last calendar week of the year such approval is required only for sales more than 4/16 point away from the regular way bid or offer. The Exchange is proposing that the rule be amended so that the current provision applicable for the last week of trading in the year applies at all times. Therefore, Floor Official approval would be required only for those "non-regular way" trades that are more than 4/16 point away from the regular way bid or offer.

Exchange staff has analyzed price changes from the current bid or offer for "non-regular way" trades during June 1998. Their analysis showed that 97% of such trades were 4/16 point or less away from the regular way bid or offer. This result indicates that a large proportion of "non-regular way" trades occur at a small variation from the current regular way market.

The Exchange believes that the proposed rule change would relieve members of the burden of obtaining Floor Official approval for routine "non-regular way" trades at small price variations, while preserving Floor Official supervision for those instances where it is most needed. The Rule would retain the requirement for Floor Officials to "take into consideration whether the price of the transaction is reasonable in relation to the 'regular way' market" when deciding whether to grant approval for a "non-regular way" trade.

The Exchange believes that this proposal would allow Floor Officials to focus their attention on supervising those situations where oversight is most important.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–33 and should be submitted by December 3, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30247 Filed 11–10–98; 8:45 am]

BILLING CODE 8010–01–M

[3] A "non-regular way" trade is a trade that is settled in a different time frame from "regular-way" trades, which settle on the third business day following the transaction. *See* NYSE Rule 64(a)(3).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

STATE JUSTICE INSTITUTE

Sunshine Act Meeting

DATE AND TIME:
Friday, November 20, 1998 9:00 a.m.–5:00 p.m.
Saturday, November 21, 1998 9:00 a.m.–12:00 p.m.

PLACE: Hilton, Palm Springs Resort, 400 E. Tahquitz Canyon Way, Palm Springs, CA 92262.

MATTERS TO BE CONSIDERED: FY 1999 grant requests, internal Institute business matters.

PORTIONS OPEN TO THE PUBLIC: All matters other than those noted as closed below.

PORTIONS CLOSED TO THE PUBLIC: Internal personnel matters and Board of Directors' committee meetings.

CONTACT PERSON FOR MORE INFORMATION: David I. Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100.

David I. Tevelin,

Executive Director.

[FR Doc. 98–30290 Filed 11–6–98; 4:47 pm]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Bureau of Transportation Statistics (BTS) invites the general public, industry and other Federal Agencies to comment on the continuing need for and usefulness of the BTS Form 41. Comments are requested concerning whether (a) the continuation of Form 41 is necessary for DOT to carry out its mission of promoting air transportation; (b) BTS accurately estimated the reporting burden; (c) there are other ways to enhance the quality, use and clarity of the data collected; and (d) there are ways to minimize reporting burden, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted by January 11, 1999.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, BTS, at (202) 366–4387.

SUPPLEMENTAL INFORMATION:

OMB Approval No. 2138–0013.

Title: Report of Financial and Operating Statistics for Large Certificated Air Carriers.

Form No.: BTS Form 41.

Type of Review: Extension of a currently approved collection.

Respondents: Large certificated air carriers.

Number of Respondents: 98.

Estimated Time Per Response: 4 hours.

Total Annual Burden: 35287 hours.

Needs and Uses: DOT uses Form 41 traffic data to help formulate the United States position in international negotiations, to select carriers for international routes and to conduct environmental impact analyses. DOT uses Form 41 cost data to calculate the Standard Fare Levels (Passenger and Cargo) and to set the Intra-Alaska and international mail rates. The Department of the Air Force, Military Airlift Command uses Form 41 data in ratemaking for the Civil Reserve Air Fleet Program, and for its Air Carrier Analysis Support System (ACAS). DOT uses aircraft inventory data in its administration of the War Air Service Program (Emergency Preparedness). DOT uses operational and financial data to review International Air Transport Association Agreements (IATA), to review initial air carrier fitness, to review air carrier continuing fitness, to review foreign air carrier applications and to monitor the status of the air transport industry. The Justice Department uses the data in its antitrust analyses. DOT meets its responsibility to the International Civil Aviation Organization, an arm of the United Nations, by the use of Form 41 data.

Traffic data, especially enplanement data, are used for the National Plan of Integrated Airport Systems, airport capacity analyses, the Airport Improvement Program, systems planning at airports, exemption requests to transport hazardous materials, and essential air service analyses. The Federal Aviation Administration and the National Transportation Safety Board use Form 41 data in safety analyses (operational), air carrier certification, safety forecasting/regulatory analysis and air carrier safety surveillance and inspection.

The Department of Energy uses Form 41 fuel data in monitoring industry fuel consumption for emergency preparedness planning.

The Department of Commerce, Bureau of Economic Analysis, uses Form 41 data in its estimation of the Gross National Product, analyses of international trade accounts and to compile the Input-Output Tables of the United States.

The Department of Labor uses employment statistics in its Productivity Studies and Indices.

Timothy E. Carmody,

Director, Office of Airline Statistics, Bureau of Transportation Statistics.

[FR Doc. 98–30245 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: George Bush Intercontinental Airport, Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered for construction of a proposed new Runway 8L–26R, extension and widening of Runway 14R–32L and associated near term master plan projects at George Bush International Airport, Houston, Texas.

The purpose of the proposed project is to reduce aircraft delay and maintain the Airport's ability to serve as a connecting hub.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Senior Program Manager, ASW–651, Texas Airports Development Office, 2601 Meacham Boulevard, Fort Worth, Texas 76137–4298. Telephone (817) 222–5655.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the city of Houston Department of Aviation, will prepare an EIS for the proposed project. The city of Houston proposes to construct a new air carrier runway to improve the efficiency of George Bush Intercontinental Airport. The preliminary proposed placement of the runway is parallel to and north of the existing Runway 8–26. The preliminary length is approximately 9,400 feet. While this is the preliminary layout proposed by the city of Houston, a number of alternative placements will be explored in the EIS. The city of Houston also proposes to extend and widen Runway 14R–32L to improve the efficiency of the Airport. Extensions to both runway ends, as well as a single runway end, will be considered in the EIS. The city of Houston also proposes to expand the International Arrival Building (IAB) to improve the terminal efficiency of George Bush Intercontinental Airport. International traffic has been increasing an average of 15 percent a year since 1995. Associated with these projects, the City proposes the following projects: improve Airport drainage, construct storm runoff treatment system, extend the Automated People Mover (APM), extend the Terminal C south ramp, extend the ramp north of Terminals B and C, expand aircraft rescue and fire fighting (ARFF) Station 54, construct a new cargo area, extend Taxiway SD across JFK Boulevard, and other near-term projects.

The FAA intends to conduct a scoping process to gather input from all interested parties to help identify any issues of concern associated with the proposed project. In addition to this notice, Federal, state, and local agencies which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed project will be notified through letter of a scoping meeting to be held at 1 p.m. on December 9, 1998, in the Terminal A conference room at George Bush Intercontinental Airport. In order to notify the general public of the scoping process, a notice will be placed in a newspaper having general circulation in the project area describing the proposed

project and its purpose. The newspaper notice will notify the public that a scoping meeting will be held on December 9, 1998, at the Nimitz High School, 2005 W.W. Thorne Rd., Houston, TX 77073 and on December 10, 1998, at the Deerbrook Mall Community Room, 20131 Highway 59, Humble, TX 77338 to gain the public's input concerning the proposed project.

Issued on: November 4, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–30240 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 14, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago, Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago, Department of Aviation under section 158.23 of Part 158

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 22, 1998 the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago, Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 29, 1999.

The following is a brief overview of the application.

PFC application number: 99–06–U–00–MDW.

Level of the proposed PFC: $3.00.

Actual charge effective date: August 1, 1998.

Estimated charge expiration date: August 1, 2020.

Total estimated PFC revenue: $187,179,775.

Brief description of proposed project(s): Midway Terminal Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago, Department of Aviation.

Issued in Des Plaines, Illinois on November 2, 1998.

Benito De Leon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30239 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Howell, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for proposed vehicular improvements for access to the Kent County International Airport and areas surrounding the airport in the southeast Grand Rapids and Kentwood area of, Kent County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. James Kirschensteiner, Environmental Programs and Field Operations Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (517) 377–1880 x 41, Mr. Ron Kinney, Manager, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone (517) 335–2621, or Mr. Steve Warren, Kent County Road Commission, 1500 Scribner Ave. NW, Grand Rapids, Michigan 49504, Telephone (616) 752–7111.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Michigan Department of Transportation (MDOT), Kent County Road Commission, Grand Valley Metropolitan Council, City of Kentwood, Cascade Charter Township, Kent County International Airport, and the Grand Rapids Area Transit Authority, is preparing an Environmental Impact Statement (EIS) for proposed access improvements to the Kent County International Airport and environs. The area is experiencing significant growth and development. Currently there is no direct airport access to and from the freeway system. Existing roadways accessing the airport and the surrounding environs are not able to accommodate current and future traffic volumes in an acceptable manner.

A Major Investment Study is underway to narrow the range of alternative investment strategies. The alternatives under consideration include (1) No Build, (2) the construction of a new I–96 Interchange at a new location, and (3) implementing traffic management programs which could include expansion of transit ridership, and/or travel demand management initiatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, with a Scoping Document. A substantial public involvement effort is currently underway to solicit public views and comments. Two public involvement efforts have been conducted to date under the Major Investment Study: the first in April 1998

and the second on October 21, 1998, to provide the public an opportunity to discuss the proposed action. A public hearing will also be held on the Draft Environmental Impact Statement. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. A Scoping Meeting is scheduled for November 23, 1998, at 9:00 a.m. at the Kent County Road Commission.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 3, 1998.

Norman R. Stoner,

Assistant Division Administrator, Lansing, Michigan.

[FR Doc. 98–30268 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4622]

National Corridor Planning and Development Program and Coordinated Border Infrastructure Program—Implementation of the Transportation Equity Act for the 21st Century

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments; solicitation of applications for FY 1999 grants.

SUMMARY: This document provides implementation guidance on sections 1118 and 1119 of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178. These sections established the National Corridor Planning and Development Program (NCPD program) and the Coordinated Border Infrastructure Program (CBI program). The NCPD program and the CBI program are funded by a single funding source. These programs provide funding for planning, project development, construction and operation of projects that serve border regions near Canada and Mexico and high priority corridors throughout the United States. States and metropolitan planning organizations (MPOs) are, under the NCPD program, eligible for discretionary grants for: corridor feasibility; corridor planning; multistate coordination; environmental review; and construction. Border States and metropolitan planning organizations (MPOs) are, under the CBI program, eligible for discretionary grants for: transportation and safety infrastructure improvements, operation and regulatory improvements and coordination and inspection improvements in a border region.

DATES: Grant applications should be received by FHWA Division Offices on January 11, 1999. Specific information required in grant applications is provided in Section III of this notice. Comments on program implementation should be received on or before April 12, 1999. The additional time is provided so that any applicants can use the first 60 days to fully concentrate on preparing grant applications and, subsequently, to use information developed during that time to formulate comments in the following 90 days. The FHWA will consider comments received in developing the FY 2000 solicitation of grant applications. More information on the type of comments sought by the FHWA is provided in Section II of this notice.

ADDRESSES: Your signed, written comments on program implementation for FY 2000 and beyond should refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Applications for FY 1999 grants under the NCPD and CBI programs should be submitted to the FHWA Division Office in the State of the applicant.

FOR FURTHER INFORMATION CONTACT: Martin Weiss, Intermodal and Statewide Programs Division, HEP–10, (202) 366–5010; or Diane Mobley (for the NCPD program), Office of the Chief Counsel, HCC–31, (202) 366–1366; or Grace Reidy (for the CBI program), Office of the Chief Counsel, HCC–31, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): "http://dms.dot.gov". It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: "http://www.nara.gov/fedreg" and the Government Printing Office's database at: "http://www.access.gpo.gov/nara".

In addition, a number of documents and links concerning the NCPD and CBI programs are available though the home page of the Corridor/Border Programs: "http://www.fhwa.dot.gov/hep10/corbor/corbor.html".

Background

Sections 1118 and 1119 of the TEA–21 establish the NCPD and CBI programs; respectively. These programs respond to substantial interest in both subjects dating from, at least as early as, 1991. In that year, the Intermodal Surface Transportation Efficiency Act (ISTEA) designated a number of high priority corridors. Subsequent legislation modified the corridor descriptions and designated additional corridors. Citizen and civic groups were formed to promote many of these corridors as, for example, a means to accommodate international trade. Similarly, since 1991, a number of studies have identified infrastructure and operation deficiencies near the U.S. borders with Canada and Mexico. Also various groups, some international and/or intergovernmental, were formed to study opportunities to improve infrastructure and operations.

The NCPD and CBI programs are funded by a single funding source. The combined authorized funding for these two programs is $140 million in each year from FY 1999 to FY 2003 (a total of $700 million). However, obligations will be limited each year by the requirements of Section 1102 (Obligation Ceiling) of the TEA–21.

Under the NCPD program, funds are available to States and metropolitan planning organizations (MPOs) for coordinated planning, design, and construction of corridors of national

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significance, economic growth, and international or interregional trade. Under the CBI program, funds are available to border States and MPOs for projects to improve the safe movement of people and goods at or across the border between the United States and Canada and the border between the United States and Mexico. In addition, the Secretary may transfer up to a total of $10 million of combined program funds, over the life of the TEA–21, to the Administrator of General Services for the construction of transportation infrastructure necessary for law enforcement in border States. Such transfers will be made outside the provisions of this notice, based on funding requested and supporting information furnished by the Administrator of General Services.

The Federal share for these funds is 80% plus the sliding scale adjustment in States with substantial public lands. The period of availability for obligation is the fiscal year for which the funds are authorized and the 3 years following. States which receive an allocation of funds under these programs will, at the same time, receive an increase in obligation authority equal to the allocation. For FY 1999, there will be no targets for each of the two programs (e.g., x% for the NCPD program and y% for the CBI program). However, based on the wide interest in all facets of both programs, the FHWA does expect to allocate substantial funding in FY 1999 for projects from both the NCPD and CBI programs.

This notice includes three sections and one attachment:

Section I—Notice of program implementation
Section II—Request for comments on program implementation in FY 2000 and beyond
Section III—Solicitation of applications for FY 1999 grants
Attachment 1—Summary sheet

Section I—Notice of Program Implementation

The FHWA is implementing both the NCPD and CBI programs with the same goals: These are:

1. Respect both the letter and the intent of existing statutes.
2. Minimize administrative additions to statutory requirements.
3. Minimize grant application paperwork.
4. Maximize administrative control of grants by FHWA field personnel rather than FHWA Headquarters personnel.
5. Encourage substantive coordination of grant applications and grant administration by State and local officials.
6. Encourage appropriate private/public, State/local, intermodal, interregional, multistate and multinational coordination.
7. Encourage grant applications that have realistic objectives and time horizons.

Outreach, Coordination and Cooperation

In addition to the goals noted above, the implementation of this program has been based on various other sources of information. The first source of input, both verbal and written, were the comments made by elected officials and the general public during the course of the DOT's outreach activities following the passage of TEA–21. Written comments were those received by the public docket associated with the overall TEA–21 outreach program. The U.S. Department of Transportation (DOT) established Docket No. OST–98–4146 for such comments. Verbal comments were those provided by people at three outreach sessions which focused specifically on the NCPD and CBI programs. These sessions were held: in San Diego, CA on August 25, 1998; in Detroit, MI on August 27, 1998; and, in Houston, TX on October 8, 1998. Internet users may access summaries of these sessions from the home page of the TEA–21 outreach session at: "http://www.fhwa.dot.gov/tea21/outreach.htm".

The second source of input were the comments made by a working group comprised of persons in various offices in the FHWA and other offices in the DOT.

The third source of input was information provided during other discussions between FHWA staff and a variety of public sector and private sector officials who have contributed program related information and/or voiced concerns since the passage of TEA–21.

Eligibility—NCPD Program

Projects eligible for funding include:
1. Feasibility studies.
2. Comprehensive corridor planning and design activities.
3. Location and routing studies.
4. Multistate and intrastate coordination for corridors.
5. Environmental review or construction after review by the Secretary of a development and management plan for the corridor or useable section of the corridor (hence called "corridor plan").

The FHWA considers work in the pre-feasibility stage of a project, e.g., development of metropolitan and State plans and programs, as not eligible for support with federal aid under Section 1118 funds (although funds authorized by other portions of the TEA–21 are eligible for such support), but project development planning is eligible for support.

The FHWA construes the phrase 'environmental review', as used above, as being the portion of the environmental documentation (e.g., EA/FONSI, EIS) process requiring formal interagency review and comment. Thus, even without review of the corridor plan, work needed to produce the pre-draft EIS and to revise the draft would be eligible for support with federal aid under Section 1118. However, work subsequent to FHWA signature of the draft EIS (or equivalent) would not be eligible for such support until review of the corridor plan. Subsequent to such a review, work on a final EIS and any other necessary environmental work would be eligible for funding under this section.

Eligibility for funds from the NCPD program is limited to high priority corridors identified in Section 1105(c) of the ISTEA, as amended, and any other significant regional or multistate highway corridors selected by the Secretary after consideration of the criteria listed for selecting projects for NCPD funding. Fund allocation to a corridor does not constitute designation of the corridor as a high priority corridor. The FHWA has no statutory authority to make such a designation.

Eligibility—CBI Program

Projects eligible for funding include:
1. Improvements to existing transportation and supporting infrastructure that facilitate cross border vehicle and cargo movements.
2. Construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements related to international trade.
3. Operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border vehicle and cargo movements.
4. Modifications to regulatory procedures to expedite cross border vehicle and cargo movements.
5. International coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross border vehicle and cargo movements.
6. Activities of Federal inspection agencies.

The statute requires projects to be in a border region. The FHWA considers projects within 100 km (62 miles) of the

U.S./Canada or U.S./Mexico border to be in a border region.

Selection Criteria for the NCPD Program Funding

The statute identifies the following criteria to be used in identifying corridors, in addition to those statutorily designated for eligibility. These criteria will be used for selecting projects for funding:

1. The extent to which the annual volume of commercial vehicle traffic at the border stations or ports of entry of each State: has increased since the date of enactment of the North American Free Trade Agreement (NAFTA); and is projected to increase in the future.

2. The extent to which commercial vehicle traffic in each State has increased since the date of enactment of the NAFTA; and is projected to increase in the future.

3. The extent to which international truck-borne commodities move through each State.

4. The reduction in commercial and other travel time through a major international gateway or affected port of entry expected as a result of the proposed project including the level of traffic delays at at-grade highway crossings of major rail lines in trade corridors.

5. The extent of leveraging of Federal funds provided under this subsection, including: use of innovative financing; combination with funding provided under other sections of the TEA–21 and Title 23 U.S.C.; and combination with other sources of Federal, State, local or private funding including State, local and private matching funds.

6. The value of the cargo carried by commercial vehicle traffic, to the extent that the value of the cargo and congestion impose economic costs on the Nation's economy.

7. Encourage or facilitate major multistate or regional mobility and economic growth and development in areas underserved by existing highway infrastructure.

Specific aspects of the NCPD program require the FHWA to interpret these criteria. Based on the goals noted above in Section I., the FHWA intends to use a flexible interpretation. For example, while the date of the enactment of NAFTA was December 8, 1993, traffic data which provides an average for the calendar year 1993 could be used for the pre-NAFTA information. For another example, since businesses use both imported and domestically produced materials in a constantly changing component mix to produce higher valued products, and because, interregional trade is noted as part of the purpose of the section, either interstate traffic or interregional traffic could be used as a surrogate for "international truck-borne commodities". Similarly, where determining the value of cargo carried by commercial vehicle traffic would be impossible without using proprietary information, a reasonable surrogate could be based on the vehicle traffic multiplied by an imputed value for various classes of cargo.

Selection Criteria for the CBI Program Funding

The selection criteria in the statute are:

1. Expected reduction in commercial and other motor vehicle travel time through an international border crossing as a result of the project.

2. Improvements in vehicle and highway safety and cargo security related to motor vehicles crossing a border with Canada or Mexico.

3. Strategies to increase the use of existing, underutilized border crossing facilities and approaches.

4. Leveraging of Federal funds including use of innovative financing, combination of such funds with funding provided under other sections of the TEA–21 and combination with other sources of Federal, State, local or private funding.

5. Degree of multinational involvement in the project and demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico.

6. Improvements in vehicle and highway safety and cargo security in and through the gateway or affected port of entry concerned.

7. The extent to which the innovative and problem solving techniques of the proposed project would be applicable to other border stations or ports of entry.

8. Demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvement programs.

As in the NCPD program criteria, the FHWA intends to use a flexible interpretation of the CBI program selection criteria. For example, because local (e.g., county, municipal) agencies sometimes have very small capital improvement budgets, that local commitment for continuing planning and improvement will be considered in the context of local program cooperation with State projects in the border regions as well as in the context of local financial support for such projects.

Selection Criteria Common to all Discretionary Programs

The concept of equity was very important in the development of TEA–21. Therefore, national geographic distribution among all discretionary programs and congressional direction or guidance will be considered by the Administrator in the selection of projects for discretionary funds.

Evaluation Considerations for both the NCPD and the CBI Program

To adequately evaluate the extent to which selection criteria noted above have been met by individual projects, the FHWA will consider the following in each grant application:

1. Likelihood of expeditious completion of a useable project or product.

2. Size, in dollars, of the program grant request in comparison to likely accomplishments (e.g., grant requests that exceed about 10% of the available NCPD and CBI program funding in a given year would be expected to be subject to extra scrutiny to determine whether the likely consequences would be commensurate with that level of funding).

3. Clarity and conciseness of the grant application in submission of the required information.

4. State priorities and endorsement of, or opposition to, projects by other States, MPOs and other public and private agencies or organizations, as well as the status of the project on the State transportation improvement program (STIP) and the metropolitan transportation improvement program (TIP).

5. The extent to which the project may be eligible under both the NCPD and the CBI program.

Section II—Request for Comments on Program Implementation in FY 2000 and Beyond

The NCPD and the CBI programs are new. Furthermore, they represent a substantial public investment. Consequently, in addition to evaluating the overall program based on information in the grant applications, the FHWA is also specifically requesting comments on how program implementation can be improved. The Docket number noted in the beginning of this notice should be referenced. Comments may be on any aspect of the program. The FHWA is particularly interested in comments on discretionary determinations of the agency and in suggestions, consistent with the statute, that will result in more complete realization of the goals noted in the

beginning of Section I of this notice. Lastly, the FHWA requests comments on how applicants can develop useful performance measures to evaluate project implementation.

Section III—Solicitation of Applications for FY 1999 Grants

As noted above, applications for FY 1999 grants are to be sent to the Division office in the State of the applicant or to the Division office in the lead State, where a project is in more than one State.

When sending in applications, the States and MPOs must understand that any qualified projects may or may not be selected; it may be necessary to supplement NCPD and CBI program funds with other Federal-aid and/or other funds to complete a useable project or product and allocations of FY 1999 funds will be made considering the degree to which proposed projects are viable and implementation schedules are realistic.

There is no prescribed format for project submission. However, the following information should be addressed in the application to properly evaluate the candidate projects. Applications that do not include the following information may be considered incomplete:

1. State (if a multi state or multi MPO project list the lead State/MPO and participating States/MPO) and, if applicable, congressional high priority corridor number(s);
2. County(ies) or Parish(es);
3. U.S. Congressional District(s) and name of U.S. Representative(s) in the District(s);
4. Project Location; including a map(s) with U.S., State and local numbered routes and other important facilities clearly identified;
5. Project Objectives;
6. Proposed Work; identifying which specific element(s) or work corresponds to each of the list of eligible items noted above is addressed and disaggregating the work into phases, if applicable;
7. Planning and Coordination Status; identifying whether the project is included, or expected to be included, in State and MPO plans and programs (e.g., STIPs and TIPs); discussing consistency with plans and programs developed by empowerment zone and enterprise community organizations; discussing consistency with plans developed for compliance with the Clean Air Act; and, discussing coordination with inspection agencies and with Canada and Mexico, as applicable;
8. Traffic/Safety Information and Projections; addressing the applicable statutory criteria;
9. Financial Information and Projections; (e.g., total estimated cost of improvements to corridor or border facility, previous funding, commitment of other funds) addressing the applicable statutory criteria;
10. Infrastructure Condition Information; addressing the applicable statutory criteria;
11. Information Regarding Ownership; including whether it is private or public, operating authority and maintenance responsibility for all facilities to be improved as part of the project;
12. Other Information; addressing the applicable statutory criteria (e.g., implementation schedule);
13. Amount of NCPD Program and/or CBI Program Funds; requested as well as written confirmation of the source and amount of non-Federal funds that make up the non-Federal share of the project. If the State is willing to accept partial funding, this also should be indicated;
14. Future Funding Requests; related to the project anticipated under these programs or other discretionary programs;
15. The Priority; the State (or lead State) assigns to this project (e.g., priority one, priority two, etc.) relative to other projects located in the State for which applications are being submitted based on this notice;
16. Public Endorsements/expectations of the project or opposition; to the project by public and private organizations who expect to use the work to be funded by the grant as well as those who expect to benefit or be adversely affected, directly or indirectly, from such work;
17. Corridor plan; for those grant applications for the NCPD program where the work to be funded includes environmental review or construction;
18. Performance measures; which the applicant intends to use to evaluate implementation process in the project; and,
19. Summary Sheet; covering basic project information (see Attachment 1).

Attachment 1—Format for Summary Sheet

Application for NCPD or CBI discretionary funds:

Grantee: List full name of agency.

U.S. Representative/Senator(s): List full names.

Governor/Mayor(s): List full names.

Project: Short name and brief description of project (e.g., This project provides for widening by one lane in each direction of * * * extending from * * * in the vicinity of * * * to * * * in the vicinity of * * * a distance of * * *. This improvement will serve * * * and * * * will result in major safety/time savings * * * to * * *).

FHWA funds requested: Exclude non federal share.

Other funds committed: Specify source and amounts.

Other support: List agencies providing substantive assistance.

Other important information: (e.g., improved access to Indian Reservation, expected improvement to local economy, specify phase of project or corridor development, specify ongoing projects that will be coordinated with this one, identify environmental features, construction scheduling—all if appropriate).

(Authority: 23 U.S.C. 315; 49 CFR 1.48, Sections 1118, 1119 of Pub. L. 105–178)

Issued on: November 4, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 98–30236 Filed 11–9–98; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Joint Partnership Program; Public Meeting

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting, open to all interested parties, to discuss and comment on the Federal Transit Administration's (FTA) new Joint Partnership Program (JPP). The purpose of the meeting is to outline the JPP, to receive comments and suggestions on the Program from meeting attendees, and to answer questions.

DATES: The meeting will take place on November 13, 1998, from 8 a.m. to 12:00 noon.

ADDRESSES: The meeting will be held in room 2201 at the Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Dr. A.M. (Tony) Yen, Office of Research, Demonstration and Innovation, Federal Transit Administration (TRI–2), at (202) 366–4047 or Donald R. Durkee, Office of Technology, Federal Transit Administration (TRI–20), at (202) 366–0942.

Issued on: November 5, 1998.

Gordon J. Linton,

Administrator.

[FR Doc. 98–30207 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Issuance of Advisory Bulletin

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: We are issuing this advisory bulletin to owners and operators of Hazardous Liquid and Natural Gas Pipelines. The bulletin advises the industry about the potential for damage to pipeline facilities caused by the passage of Hurricane Georges.

ADDRESSES: This document can be viewed on our home page at: http//ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty, (202) 366–4577.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this Notice is to advise all operators of natural gas and hazardous liquid pipelines located in offshore waters of the Gulf of Mexico of recurring safety problems that may be resulting from the passage of Hurricane Georges. Operators should be advised that we have received several reports of damage to pipeline facilities, particularly in the area bounded, East of the Mississippi River and West of Mobil Bay.

Several mudslides in this area may have exposed pipelines which could pose a safety threat to the crews of fishing vessels in shallow coastal waters and to other marine operations in shipping lanes and deeper offshore waters. Extensive onshore flooding may also have exposed or weakened facilities. We are working with the Minerals Management Service, the Coast Guard, and the Army Corps of Engineers to address the potential hazards of exposed or weakened pipeline facilities in areas affected by Hurricane Georges. This Notice reminds operators of offshore pipelines that may have been affected by flooding of Federal pipeline safety requirements. We are advising pipeline operators of similar problems that may occur in inland navigable waterways. Also, we are advising the commercial fishing industry of the potential of unburied offshore pipelines by sending this Notice to Louisiana Shrimp Association, Texas Shrimp Association, Southeastern Fisheries Association, National Fish Meal & Oil Association, and Concerned Shrimpers of America. Pipeline operators or mariners aware of any damage or exposure to a portion of a submerged pipeline should report that information to the appropriate US Coast Guard District. The Coast Guard has issued a radio advisory to vessel operators operating in or near the mouth of the Mississippi and an advisory in its Notice to Mariners.

II. Advisory Bulletin (ADB–98–3)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines.

Subject: Recurring safety problems which may be resulting from the passage of Hurricane Georges.

Purpose: We are advising all operators of natural gas and hazardous liquid pipelines located in offshore waters and other areas that may have been impacted by flooding due to the passage of Hurricane Georges. The recent passage of Hurricane Georges and major storms may have contributed to the exposure or instability of pipelines in the vicinity of the Gulf of Mexico.

Advisory: On October 1, 1998, a 10-inch pipeline located in the Gulf of Mexico south of the Mississippi River; in an unstable mudslide area with a water depth of 108 feet, ruptured and released an estimated 3,700 barrels of crude oil. Other reported incidents include pipeline exposures and natural gas and hazardous liquid releases.

Our pipeline regulations require operators to patrol their lines periodicaliy for the presence of unusual operating and maintenance conditions and to take corrective action if conditions are unsafe. Because this patrolling is generally done using aircraft, pipelines exposed or damaged on the seafloor can not be visually detected. It is likely that some pipelines located in the area of Hurricane Georges' impact are exposed or damaged. It is important to note that if a pipeline operator has knowledge that its pipeline is exposed or otherwise presenting a danger to the public or the environment, 49 CFR sections 192.613 and 192.703 applicable to gas pipeline operators, and 49 CFR section 195.401 applicable to hazardous liquid pipeline operators would require the operator to take steps to mitigate the hazard. Additionally, 49 CFR sections 192.612(b) and 195.413(b) require that, if upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, it shall promptly notify the National Response Center (1–800–424–8802) with the geographic coordinates of that pipeline, mark the location of the pipeline in accordance with 64 CFR, and within six months of discovery, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

In view of the above, pipeline operators should consider taking the following actions regarding the natural gas and hazardous liquid pipelines located in areas impacted by Hurricane Georges.

1. Identify and caution persons who normally engage in commercial fishing, shrimping, and other marine vessel operations in shallow coastal waters where Hurricane Georges may have affected a pipeline. Submerged offshore pipelines may have become unprotected on the ocean floor. Marine vessels operating in water depths comparable to a vessel's draft or when operating bottom dragging equipment can be damaged and their crews endangered by an encounter with a submerged pipeline. The pipeline company's public education and damage prevention programs may be used to facilitate this notification process. Pipeline operators may want to consider a joint public education effort in areas of common concern.

2. Identify and caution marine vessel operators in offshore shipping lanes and other offshore areas where Hurricane Georges may have affected a pipeline that deploying fishing nets or anchors, and dredging operations may damage the pipeline, their vessels, and endanger their crews. The pipeline company's public education and damage prevention programs may be used to facilitate this notification process. Pipeline operators may want to consider a joint public education effort in areas of common concern.

3. Identify and correct any conditions on the pipeline that could violate pipeline safety requirements, and the terms and conditions of the pipeline's Corps of Engineers permit.

Issued in Washington, D.C. on November 6, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–30279 Filed 11–10–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 4, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the

submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 14, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0074.

Form Number: IRS Form 1040 and Schedules A, B, C, C–EZ, D, D–1, E, EIC, F, H, J, R, and SE.

Type of Review: Revision.

Title: U.S. Individual Income Tax Return.

Description: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 71,877,464.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form/schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS	Totals
Form 1040	3 hr., 34 min	2 hr., 13 min	4 hr., 30 min	7 min	10 hr., 57 min.
Schedule A	2 hr., 32 min	26 min	1 hr., 10 min	27 min	4 hr., 35 min.
Schedule B	33 min	8 min	11 min	20 min	1 hr., 12 min.
Schedule C	6 hr., 26 min	1 hr., 11 min	2 hr., 6 min	35 min	10 hr., 18 min.
Schedule C–EZ	46 min	4 min	34 min	20 min	1 hr., 4 min.
Schedule D	1 hr., 11 min	2 hr., 7 min	2 hr., 39 min	1 hr., 3 min	4 hr., 10 min.
Schedule D–1	13 min	1 min	11 min	35 min	1 hr., 0 min.
Schedule E	2 hr., 52 min	1 hr., 7 min	1 hr., 16 min	35 min	5 hr., 10 min.
Schedule EIC		2 min	5 min	20 min	27 min.
Schedule F:					
Cash Method	4 hr., 2 min	36 min	1 hr., 14 min	20 min	6 hr., 12 min.
Accrual Method	4 hr., 22 min	25 min	1hr., 19 min	20 min	6 hr., 26 min.
Schedule H	46 min	30 min	48 min	35 min	1 hr., 35 min.
Schedule J	20 min	8 min	1 hr., 8 min	41 min	2 hr., 17 min.
Schedule R	20 min	15 min	22 min	35 min	1 hr., 32 min.
Schedule SE:					
Short	20 min	13 min	11 min	14 min	58 min.
Long	26 min	22 min	34 min	20 min	1 hr., 2 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,211,582,312 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–30183 Filed 11–10–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Discontinuance

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Discontinuance of information collection.

SUMMARY: Notice is hereby given of the discontinuance by the OCC, the Board, and the FDIC (the "agencies") of an information collection, the "Monthly Consolidated Foreign Currency Report of Banks in the United States" (FFIEC 035). Banks will no longer be required to complete this report after the December 31, 1998 report date.

DATES: The final date as of which the FFIEC 035 will be collected is December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Additional information may be requested from any of the agency clearance officers or the Office of Management and Budget (OMB) Desk Officer whose names appear below.

OCC: Jessie Gates, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Mary M. McLaughlin, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

OMB: Alexander T. Hunt, OMB Desk Officer, (202) 395–7860, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Discontinuance of the Following Report

Title: Monthly Consolidated Foreign Currency Report of Banks in the United States.

Form number: FFIEC 035.

Frequency of Response: Monthly.

Affected Public: Businesses or other for-profit.

For OCC:

OMB Number: 1557–0156.

Estimated Number of Respondents: 29.

Estimated Average Hours per Response: 12.68 burden hours.

Estimated Total Annual Burden: 4,413 burden hours.

For Board:

OMB Number: 7100–0178.

Estimated Number of Respondents: 116.

Estimated Average Hours per Response: 12.68 burden hours.

Estimated Total Annual Burden: 17,651 burden hours.

For FDIC:

OMB Number: 3064–0105.

Estimated Number of Respondents: 4

Estimated Average Hours per Response: 10 burden hours.

Estimated Total Annual Burden: 480 burden hours.

General description of report: This information collection is mandatory: 12 U.S.C. 248(a) and 1844(c) (Board), 12 U.S.C. 1817(a) (FDIC), and 31 U.S.C. 5315—5321, and 12 U.S.C. 161·(OCC).

Abstract: The agencies have used the FFIEC 035 data to monitor the foreign exchange activities of individual U.S. banks and banking institutions.

Current Actions: The agencies have determined that the foreign exchange activities reported in the FFIEC 035 can be monitored through other supervisory means. Therefore, the FFIEC 035 will no longer be collected after this year. The final date as of which banks must file this report is December 31, 1998.

In a **Federal Register** notice dated July 13, 1998 (63 FR 37622–37623), the Department of the Treasury proposed to collect some of the information currently reported on the FFIEC 035 on their Foreign Currency Forms FC–1 (Weekly Consolidated Foreign Currency Report of Major Market Participants), FC–2 (Monthly Consolidated Foreign Currency Report of Major Market Participants), and FC–3 (Quarterly Consolidated Foreign Currency Report). Banks should determine whether they must file one of these Foreign Currency Forms beginning in 1999. Requests for copies of the Foreign Currency Forms and instructions should be directed to T. Ashby McCown, Director, Office of International Financial Analysis, Department of the Treasury, Washington, DC 20220, telephone (202) 622–2250, FAX (202) 622–0607.

Dated: October 30, 1998.

Karen Solomon,

Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, November 5, 1998.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 28th day of October, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–30211 Filed 11–10–98; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–55

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–55, Extension of Relief for Late S Elections.

DATES: Written comments should be received on or before January 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Extension of Relief for Late S Elections.

OMB Number: 1545–1548.

Revenue Procedure Number: Revenue Procedure 98–55.

Abstract: Revenue Procedure 98–55 updates the Service's instructions for requesting relief for a late S corporation election and other late elections that must be filed by or for an S corporation. Revenue Procedure 98–55 provides that a corporation will have 12 months from the original due date for the S election (but not later than the due date for the tax return for the first year it intended to be an S corporation) to request relief for a late S election by filing Form 2553, Election by a Small Business Corporation, and attaching a statement explaining the reason for the failure to file a timely S corporation election.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–30158 Filed 11–10–98; 8:45 am]

BILLING CODE 4830–01–U

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Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 432

Energy Conservation Program: Test Procedures for Distribution Transformers; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 432

[Docket No. EE–TP–98–550]

RIN 1904–AA85

Energy Conservation Program: Test Procedures for Distribution Transformers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Proposed Rulemaking and public hearing.

SUMMARY: Pursuant to Section 346(a) of the Energy Policy and Conservation Act as amended (EPCA), 42 U.S.C. 6317(a), the Department of Energy (DOE or the Department) proposes to adopt test procedures for measuring the energy efficiency of distribution transformers. The Department proposes to use these test procedures in the process of evaluating whether and what efficiency standards are appropriate for distribution transformers. If standards are promulgated, then use of these test procedures would be required to determine compliance and as a basis for representations. The proposed rule would incorporate by reference clauses from test procedures contained in commercial standards. The Department is proposing to use one of two alternative sets of standards as the primary references: alternative (A) is primarily based on American National Standards Institute (ANSI)/Institute of Electrical and Electronics Engineers (IEEE) standards C57.12.90–1993 and C57.12.91–1995, and alternative (B) is based on National Electrical Manufacturers Association (NEMA) standard TP 2–1998, pending its approval by ANSI.

DATES: The Department will accept comments, data, and information regarding the proposed rule no later than February 5, 1999. Ten (10) copies must be submitted. In addition, the Department requests that an electronic copy (3½" diskette) of the comments on WordPerfect™ 6.1 be provided.

A public hearing will be held on January 6, 1999, in Washington, DC. Requests to speak at the hearing must be received by the Department no later than 4:00 p.m., December 23, 1998. Ten (10) copies of statements to be given at the public hearing must be received by the Department no later than 4:00 p.m., December 23, 1998, and the Department requests that a computer diskette (WordPerfect™ 6.1) of each statement also be provided at that time.

ADDRESSES: Requests to make statements at the public hearing and copies of such statements should be addressed to Ms. Brenda Edwards-Jones, and written comments should be addressed to Ms. Kathi Epping, each at the following address: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121. All such documents should be identified both on the envelope and on the documents as "Energy Conservation Program for Commercial Products: Test Procedures for Distribution Transformers, Docket No. EE–TP–98–550." The hearing will begin at 9:00 a.m., on January 6, 1999, and will be held in Room 1E–245 at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC. For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment," of this notice.

Copies of the transcript of the public workshop and public comments received may be read in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Copies of the standards to be incorporated by reference may be viewed at the Department of Energy's Freedom of Information Reading Room at the address stated above. Copies of the referenced standards may be obtained by request from Global Engineering Documents World Headquarters (for NEMA Standards TP 1–1996 and TP 2–1998), 15 Iverness Way East, Inglewood, CO 80112–5776 or the American National Standards Institute (for ISO Standard 9001–1993 and ANSI standards C57.12.90–1993, C57.12.91–1995, C57.12.00–1993, and C57.12.01–1989), 11 West 42nd Street, New York, N.Y. 10036.

FOR FURTHER INFORMATION CONTACT: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0121, (202) 586–7425, e-mail: Kathi.Epping@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

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  B. Distribution transformers not subject to the test procedures
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I. Introduction

A. Authority

The National Energy Conservation Policy Act of 1978, Pub. L. 95–619, amended the Energy Policy and Conservation Act (EPCA) to add a Part C of Title III, which established an energy conservation program for certain industrial equipment. The most recent amendments to EPCA, in the Energy Policy Act of 1992 (EPAct), Public Law 102–486, included amendments that expanded Title III of EPCA to include certain commercial water heaters and heating and air-conditioning equipment, incandescent and fluorescent lamps, electric motors, and electric distribution transformers.

Among these amendments is Section 124(a) of EPACT, which amended Section 346 of EPCA, 42 U.S.C. 6317, to provide that the Secretary of Energy must prescribe testing requirements and energy conservation standards for those distribution transformers for which the Secretary determines that standards "would be technologically feasible and

economically justified, and would result in significant energy savings." 42 U.S.C. 6317(a). On October 22, 1997, the Department issued a notice setting forth its determination ("Determination notice") that, based on the best information currently available, energy conservation standards for electric distribution transformers are technologically feasible and economically justified and would result in significant energy savings. 62 FR 54809. Consequently, the Department is now proceeding to establish, by notice and comment rulemaking, test procedures for distribution transformers.

In the Determination notice, the Department construed the term "distribution transformer" in section 346 of EPCA to mean "all transformers with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 480 V, and a capacity of either 10 to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers," except for transformers which are not continuously connected to a power distribution system as a distribution transformer. The Department believes this exception would include regulating transformers, machine tool transformers, welding transformers, grounding transformers, testing transformers, and other transformers which are not designed to transfer electrical energy from a primary distribution circuit to a secondary distribution circuit, or within a secondary distribution circuit, or to a consumer's service circuit. The Department indicated that all products included in this definition of "distribution transformer" would be addressed in its rulemakings on energy efficiency test procedures and standards for transformers.

Subsequently, the Department has learned that industry typically classifies transformers with a secondary voltage up to 600 V as distribution transformers. These transformers are included, for example, in the scope of NEMA standard TP 1. In light of industry usage and practice, the Department has decided that the term "distribution transformer", in the statute, includes transformers with a secondary voltage 480 V to 600 V, in addition to those transformers in the above-mentioned definition. These additional transformers are covered by today's proposed test procedures, and will be included in the Department's consideration of efficiency standards for transformers.

B. Background

The Secretary's Determination notice was based, in part, on analyses conducted by the Oak Ridge National Laboratory (ORNL). In July 1996, ORNL published a report, entitled "Determination Analysis of Energy Conservation Standards for Distribution Transformers, ORNL–6847" which assessed several options for setting efficiency standards. The report was based on information from annual sales data, average load data, and surveys of existing and potential transformer efficiencies that were obtained from several organizations. In September 1997, ORNL published a second report, entitled "Supplement to the "Determination Analysis" (ORNL–6847) and Analysis of the NEMA Efficiency Standard for Distribution Transformers, ORNL–6925". The purpose of this report was to assess NEMA TP 1 along with the options considered in the determination study, using the more accurate analysis model and transformer market and loading data developed subsequent to the publication of the original ORNL report.

On February 10, 1998, the Department held a public workshop with representatives from the National Electrical Manufacturers Association (NEMA), manufacturers, utilities, Federal and state agencies, foreign government, and other interested parties in Washington, DC. Draft Test Procedures were presented as a basis for discussion. In addition, the following issues were discussed: (a) adoption of national and international consensus standards in the test procedures for determining energy efficiency of distribution transformers, (b) burden imposed on industry, especially on manufacturers, by additional testing and data processing, (c) the definition of "basic model" for distribution transformers, (d) sampling plan for units to be tested, (e) selection of a measure of energy consumption for distribution transformers, (f) selection of reference temperatures, (g) requirement for applying corrections to measurement data of both liquid-immersed and dry-types of transformers, (h) requirements for quality assurance in testing, and (i) defining the transformers which are to be covered by the test procedures. A transcript of the public workshop is available at the Freedom of Information Reading Room.

NEMA submitted a written statement at the workshop, and 5 comments were received subsequent to the public workshop. A letter from Don Ballard (industry consultant) and a letter from the US Department of Agriculture concerning issues relating to today's notice were submitted to DOE prior to the public workshop. The Department will consider these two letters as part of the public comment received. The comments made at the workshop as well as the written comments were considered in preparing the test procedure presented in today's proposed rule, and recommendations were incorporated where appropriate. The reasons for not incorporating any significant recommendations are explained in section II of today's proposed rule.

C. Summary of the Proposed Test Procedures

The Department will use the test procedures in today's proposed rule in the process of evaluating whether and what efficiency standard levels are appropriate for distribution transformers. If efficiency standards are promulgated, then manufacturers would be required to use these test procedures to determine compliance with the standards and as a basis for representations they make as to the efficiency levels of the transformers they produce.

The Department is proposing that a uniform set of test procedures be applied to all distribution transformers for which standards will be considered, and to all for which standards are ultimately adopted. This does not necessarily mean, however, that a single standard or set of labeling requirements will be adopted for all transformers. In possible future rulemakings addressing standards and labeling, distribution transformers will be divided into classes, if appropriate. A separate class and an appropriate standard will be created for each group of products where the record indicates the product includes a utility or performance-related feature that affects energy efficiency. Moreover, in evaluating an efficiency standard in a future rulemaking, the Department will consider whether the standard would result in any lessening of the utility or performance of the transformer(s) that would be covered by the standard. Finally, even if standards are promulgated for distribution transformers, some classes of transformers may be excluded from standards.

The Department proposes today to incorporate by reference clauses from industry standards for measuring the energy efficiency of distribution transformers. The proposed rule contains two alternative sets of standards for testing transformers for energy consumption and efficiency, and the Department intends to select one of

these alternatives for inclusion in the final rule. Alternative (A) is primarily based on American National Standards Institute (ANSI)/Institute of Electrical and Electronics Engineers (IEEE) standards C57.12.90–1993 and C57.12.91–1995, and alternative (B) is based on National Electrical Manufacturers Association (NEMA) standard TP 2–1998. The two reference test standards under alternative (A) are well established within the industry and have been used for over two decades. Limited additional reference is made under alternative (A) to ANSI/IEEE C57.12.00–1993 regarding reference temperatures, loss tolerances, and measurement tolerances. With respect to actual tests and measurements for power losses leading to energy consumption and efficiency, the material in the C57 series standards and TP 2 is nearly identical. The NEMA standard TP 2–1998, referenced in alternative (B), combines all information applicable to tests, measurements for energy consumption, and calculation of efficiency in a single document applicable to both liquid-immersed and dry-type transformers.

The test procedure involves the measurement of electric power consumed by the transformer in the form of no-load and load losses, as well as the determination of certain other quantities needed to establish the test conditions: temperature of the windings and the core; current; voltage; frequency and waveform of voltage; and direct current resistance of the windings. Today's proposed rule also proposes a sampling plan for testing a basic model to establish its compliance with standards and to provide a basis for efficiency representations.

In addition to discussing the standards to be incorporated by reference, the following issues are discussed below: distribution transformers not subject to the test procedures; the reference conditions in the test procedure, measures of energy consumption, the definition of a "basic model" to permit grouping of models for testing purposes, and the sampling plan.

II. Discussion

A. Standards to be Incorporated by Reference

The Department is proposing to incorporate by reference specific portions of either three widely used commercial standards, or of a standard being developed by the National Electrical Manufacturers Association (NEMA), as a test procedure in Appendix A of 10 CFR part 432. The three national standards were prepared by the IEEE and approved by ANSI: (1) ANSI/IEEE C57.12.90–1993, "IEEE Standard Test Code for Liquid-Immersed Distribution, Power and Regulating Transformers and IEEE Guide for Short Circuit Testing of Distribution and Power Transformers," (2) ANSI/IEEE C57.12.91–1995, "IEEE Standard Test Code for Dry-Type Distribution and Power Transformers," and (3) ANSI/IEEE C57.12.00–1993, "IEEE Standard General requirements for Liquid-Immersed Distribution, Power and Regulating Transformers." ANSI/IEEE C57.12.90–1993 and ANSI/IEEE C57.12.91–1995 are considered primary references as they address tests and measurements leading to the energy consumption and efficiency values. ANSI/IEEE C57.12.00–1993 complements the previous two ANSI/IEEE standards by specifying the reference temperatures and measurement tolerances, which are essential in fully defining the measurement data. The three aforementioned standards contain more material than the information that is applicable to loss or efficiency testing. Hence, only the applicable sections and clauses are incorporated by reference in today's proposed rulemaking.

The Department is considering referencing a single clause, 4.11.1, of International Standards Organization (ISO) Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing," for guidance purposes only, concerning compliance with requirements for quality assurance of the test and measuring equipment.

The remaining reference standard being considered by the Department was prepared by NEMA: TP 2–1998, "Test Method for Measuring the Energy Consumption of Distribution Transformers." It is also considered a primary reference standard. This NEMA publication is planned for submission to the ANSI C57 committee for review and possible approval as a national standard, thus including in the approval process a broader constituency, such as the electric utility industry, which is the principal user group of distribution transformers.

In addition, IEEE PC57.123, "Draft Guide for Transformer Loss Measurement" is nearing completion and provides additional guidance on how to conduct transformer loss measurements. The Department is also aware that a revised version of ANSI/IEEE C57.12.01 is currently being balloted. If adopted, this revision would make C57.12.01 more consistent with C57.12.00 in specifying measurement tolerances. DOE will examine these documents for possible incorporation by reference in the final DOE test procedures, if they have been approved by IEEE, their sponsoring organization (and preferably by ANSI as well), prior to adoption of the final rule. After the final rule is published, however, any subsequent amendments to any of the referenced standards by the standard-setting organizations (ANSI, IEEE, NEMA, ISO) would become part of the DOE test procedure only if DOE amends the test procedure to incorporate them.

In comments on workshop issues, NEMA recommends TP 2–1998 as the sole primary reference to be incorporated in the DOE test procedure, because it combines in one document the subject matter that is now available in several documents. DOE recognizes the advantages of having all relevant testing requirements in a single primary reference because it enhances the convenience for users and will facilitate future harmonization. However, DOE also desires to incorporate consensus standards that have the broadest acceptance by the stakeholders, such as the cited ANSI standards.

The Department is concerned over whether TP 2 has undergone broad-based scrutiny. In order for DOE to accept TP 2, the Department would need to have sufficient evidence that all users and stakeholders have had an opportunity to review TP 2. The Department would like comments from stakeholders, such as utilities and contractors who specify transformers for commercial and industrial applications (e.g., retail, industrial, and office buildings), on the adequacy of TP 2 to measure transformer efficiency. The Department also is concerned that portions of the current version of TP 2 have been abbreviated from the ANSI/IEEE standards, and certain portions are ambiguous and should be made more explicit. There are also instances in which the terminology should be changed. In addition, certain portions do not read as if the current version of TP 2 is a final document. If these concerns with TP 2 are addressed during the ANSI approval process as the Department believes is likely, and if TP 2 receives approval from ANSI, the Department would be inclined to adopt alternative B.

B. Distribution Transformers Not Subject to the Test Procedures

The commercial standards on which today's proposed test procedures are based are intended to test 60 Hz transformers, although the standards allow for minor variations in frequency. Many manufacturers would need to

modify test equipment in order to accurately conduct tests for transformers that operate at frequencies that deviate substantially from 60 Hz. Because such distribution transformers comprise a small segment of the market, they have little potential for resulting in significant energy savings. In addition, transformers with frequencies other than 60 Hz were not included in the ORNL Determination analyses. Consequently, the Department is proposing that the test procedures in today's proposed rule cover only 55 to 65 Hz transformers, and the Department intends to evaluate only 60 Hz transformers in a possible future standards rulemaking. The Department does not believe this will cause "loopholes" because it would not be beneficial to the manufacturers to substitute transformers at substantially different frequencies for 60 Hz applications.

In addition, the Department recognizes that the efficiency of distribution transformers connected to rectifier and converter circuits cannot be readily tested or accurately measured by the conventional loss measurement test procedures outlined in today's proposed rule. The nameplates of these transformers contain a rating for the fundamental-frequency apparent output power and a rating for the apparent output power with non sinusoidal current produced by the converter. The latter is inherently smaller than the former, because harmonic currents produce losses in addition to those of the fundamental-frequency current. As a result of additional physical and electrical requirements in the design of converter and rectifier transformers, their performance is optimized for the output power rating with non sinusoidal current, yielding less than the optimal performance at fundamental frequencies, as would be required in a general purpose distribution transformer. Conversely, optimally designed distribution transformers of other types will not meet the optimal requirements of a converter and rectifier transformer. These transformers also were not included in the ORNL Determination analyses. In addition, rectifier and converter transformers generally have more than two windings per phase, requiring more magnetic material and resulting in higher no-load losses. For these reasons, the test procedures in today's proposed rule will not apply to converter and rectifier transformers with more than 2 windings per phase, and the Department is not inclined to evaluated these transformers in a possible future standards rulemaking.

For the purposes of these test procedures, the Department proposes to define the term "distribution transformer" to mean all transformers with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 600 V, a frequency of 55–65 Hz, and a capacity of either 10 kVA to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers, except for transformers which are not designed to be connected to a power distribution system as a distribution transformer. These exceptions would include regulating transformers, machine tool transformers, welding transformers, grounding transformers, testing transformers, and other transformers which are not designed to transfer electrical energy from a primary distribution circuit to a secondary distribution circuit, or within a secondary distribution circuit, or to a consumer's service circuit. Converter and rectifier transformers with more than two windings per phase also would not be included.

C. Reference Conditions

There is considerable diversity in the reference conditions specified in the existing commercial standards. Under the current industrial practice, the load losses of liquid-immersed transformers are reported at the rated load and the reference temperature of 85° C, as specified by ANSI/IEEE C57.12.00. This reference temperature is based on an ambient temperature of 20° C and the temperature rise of 65° C. The load losses of dry-type transformers are reported at the rated load and, depending on the insulation system used, at one of five specified temperature rises in addition to an ambient temperature of 20° C, as specified by ANSI C57.12.01. The resulting reference temperatures are: 80, 100, 135, 150, and 170° C. ANSI standards C57.12.90 and C57.12.91 provide an identical algorithm for converting the measured load loss values to specified reference temperatures.

For no-load losses of liquid-immersed transformers, ANSI C57.12.00 specifies the reference temperature of 20° C, thus approximating ambient conditions. Additionally, ANSI C57.12.90 provides an algorithm for converting a no-load loss value measured at another temperature to that at the reference temperature. No reference temperature is specified for the no-load losses of the dry-type transformers.

Finally, NEMA TP 1–1996 recommends minimum efficiencies and the following reference conditions for distribution transformers:

	No-load losses	Load losses
Liquid-immersed (50% of rated load)	20° C	85° C
Medium-voltage dry-type (50% of the rated load)	20° C	75° C
Low-voltage dry-type (35% of the rated load)	20° C	75° C

In order to address the inconsistencies in the reference conditions among the industry standards, the proposed rule specifies the following: (1) Use a consistent reference temperature of 20° C for reporting the no-load losses of both liquid-immersed and dry-type transformers, and correct the measured no-load loss data of dry-type transformers to 20° C as required in ANSI standards for liquid-immersed transformers, if such a correction is significant relative to required measurement accuracy; (2) correct the measured load loss data of dry-type transformers for phase angle errors in the measuring equipment as required in ANSI standards for liquid-immersed transformers, if such errors are significant relative to required measurement accuracy; (3) use an efficiency selected at lower than the rated loading and using a reference temperature for load losses that approximates the temperature rise at new loading conditions, as opposed to using temperature rises, as in ANSI/IEEE standards, for rated nameplate loading; and (4) measure losses of dry-type transformers to the same accuracy as specified for liquid-immersed transformers.

These reference conditions enhance uniformity in requirements and facilitate comparison of products using both liquid-immersed and dry-type insulations. Therefore the proposed rule requires that test results be reported at the following loads and reference temperatures: [1]

[1] Establishing specific loading levels is properly part of the energy conservation standard, but correction of measurement data to new reference conditions (including loading levels) must be included in the test procedure. Today's proposed test procedures use the loading levels in NEMA TP 1, because they appear to be widely used in the industry and are reasonable for testing that is conducted to consider and develop standards. Any standards that are prescribed for transformers will include specific loading levels, which the Department will incorporate into the applicable test procedures.

	No-load losses	Load losses
Liquid-immersed (50% of rated load)	20 °C	55 °C
Medium-voltage [2] dry-type (50% of the rated load)	20 °C	75 °C
Low-voltage [3] dry-type (35% of the rated load)	20 °C	75 °C

Under the proposed rule, the measured no-load and load losses used in the efficiency computation would be adjusted to the stated reference conditions, the total uncertainty (including measurement inaccuracy and uncertainty resulting from lack of reference condition adjustments) exceeds 3 percent.

These reference temperatures were selected with the objectives of obtaining uniformity in reference conditions, having reference conditions that best reflect the actual operating conditions, and maintaining consistency with the practices of the current commercial standards as much as possible. Fully satisfying all three criteria, however, was not practical or even possible, due to the previously mentioned diversity in the existing practice and the inherent differences between liquid-immersed and dry-type transformers. The proposed reference temperature to which no-load losses would be adjusted for both types of transformers is 20 °C, which is consistent with C57.12.00 and TP 1, but not with C57.12.01 which does not specify the reference temperature for no-load losses of dry-type transformers. The 20 °C reference temperature is close to the ambient temperature; therefore losses can be easily measured when the transformer is cold, but this reference temperature does not represent operating conditions. However, because the changes in the core losses due to temperature are small (quoted in C57.12.90 as 6.5×10^{-4} per unit per °C), these differences will have only a small effect on the resulting calculated efficiency.

If a transformer is being tested for efficiency at less than full-rated or nameplate loading (as may be the case for a possible future efficiency standard), it is proper to adjust the reference temperature for load losses. A well established algorithm published in ANSI C57.12.90 and ANSI C57.12.91 is used to perform the computational operation to convert load losses measured at a given temperature to equivalent load losses at a different reference temperature. For load losses of dry-type transformers, TP 1 recommends a single reference temperature of 75 °C, as a substitute for the five temperatures at the rated load corresponding to the five insulation classes. To assess the adequacy of this adjustment, reduced operating temperatures were calculated at 50% and 35% of rated load for all five temperature classes of dry-type insulation and for liquid-immersed insulation. The relationship whereby the temperature rise (ΔT) is proportional to the 0.8th power of the dissipated power (W) was used for this calculation. Thus, $\Delta T = kW^{0.8}$, where k is a constant. The assumption was made that, at the rated load, 75% of dissipated power is the load loss and the remainder is no-load (core) loss.

The results are summarized in Table 1 for both 50% and 35% of the rated loads. Note that for dry-type transformers, out of 10 estimated reference temperatures, five are below 75 °C, four are above, and one is exactly on. Thus, the selected value in TP 1 represents a reasonable compromise, especially if each of the 10 groups were to have similar installed kVA capacity.

TABLE 1.—CALCULATED TEMPERATURE RISES FOR TRANSFORMERS OPERATED AT LOWER THAN THE RATED (NAMEPLATE) LOAD

Insulation system temperature rating °C	Temperature rise at rated load °C	Reference temperature °C	Temperature rise at 50% of rated load °C	Estm. reference temperature at 50% of rated load °C	Temperature rise at 35% of rated load °C	Estm. reference temperature at 35% of rated Load °C
Liquid-Immersed						
85	65	85	35	55	.....	.....
DryType						
130	60	80	30	50	25	45
150	80	100	40	60	35	55
185	115	135	60	80	50	70
200	130	150	65	85	55	75
220	150	170	75	95	65	85

Assumptions:
No-load losses 25%; load losses 75%.
Algorithm: $\Delta T = kW^{0.8}$.
ΔT—temperature rise.
W—dissipated power.
k—constant.
ΔT rounded off to the nearest 5 °C.

For liquid immersed transformers, in the proposed test procedure the reference temperature for the load losses is lowered from 85°C (in C57.12.00 and C57.12.90) to 55°C. This adjustment better approximates the conditions of the actual use of these transformers, and was arrived at using the same type of approach that was used to calculate the adjustment of the load loss reference temperature for dry-type transformers.

The written comments received in conjunction with the workshop on February 10, 1998, support 20°C as the reference temperature for no-load losses of both types of transformers and 75°C as the reference temperature for load

[2] Medium voltages are considered to be greater than 1200 volts.

[3] Low voltages are considered to be no greater than 1200 volts.

losses of dry-type transformers. For load losses of liquid-immersed transformers, stakeholders agreed with using a reference temperature lower than 85°C but did not recommend a specific value.

D. Measures of Energy Consumption

The test procedure provides for three interrelated measures of energy consumption: (a) total transformer losses, (b) transformer efficiency, and (c) estimated annual energy consumption (EAEC). Under the test procedure, each measure is computed at the loading parameters used in NEMA TP 1–1996: 50% of the rated load for liquid-immersed and medium-voltage dry-type transformers, and at 35% of the rated load for low-voltage dry-type transformers.

Transformer losses consist of load losses and no load losses. Load losses vary quadratically with the output current and, hence, with output power. No load losses vary with excitation volatge. The efficiency of a transformer varies with the output power as a result of varying losses.

The industry practice, as required by the cited ANSI standards, has been to measure and report transformer losses rather than energy efficiency. DOE believes that efficiency is the preferable energy descriptor because it is a normalized measure and allows trade-offs between the two types of losses, load losses and no-load losses. Workshop participants supported efficiency as a measure for energy conservation in distribution transformers. Consequently the Department is inclined to use efficiency as the energy descriptor for any standards that may be promulgated.

Expressing energy consumption in terms of efficiency presents some difficulties in calculations and adjustment of test data (e.g. to reference conditions) because accuracy may be lost in the rounding-off process to the nearest tenth of one percent. To avoid this loss of computational accuracy, under the proposed rule, the intermediate calculations would use transformer losses (in watts) or would use percent efficiency with two digits after the decimal point. Only the final efficiency percentage would be rounded off to the nearest one tenth of one percent.

E. Basic Model

It is common for a manufacturer to make numerous models of a product covered by EPCA, and under the Act each model is potentially subject to testing for energy efficiency. Moreover, for appliances covered by the EPCA energy conservation program, although not for distribution transformers, several models often are essentially the same, with each model having some refinement that does not significantly affect the energy efficiency or performance. In order to lessen the burden of test procedures, generally appliance models having essentially identical electrical and mechanical characteristics are categorized into a family of models. The Department has used the term "basic model" to identify a family of such models, which consist of products or items of equipment whose performance, design, mechanical, and functional characteristics are essentially the same. Components of similar design may be substituted in a basic model without requiring additional testing if the represented measures of energy consumption continue to satisfy applicable provisions for sampling and testing. Only representative samples within each "basic model" are tested.

Thus, the term "basic model" has been defined as follows: "Basic model means all units of a given type of covered product (or class thereof) manufactured by one manufacturer and—* * *[as to dishwashers, for example] which have electrical characteristics that are essentially identical, and which do not have any differing physical or functional characteristics which affect energy consumption." 10 CFR 430.2.

At the February 1998 workshop, DOE presented a similar definition for transformers, but it was opposed by all groups and individuals because distribution transformers, unlike consumer appliances, are not produced in large numbers of virtually identical units. However, NEMA presented an approach in which a basic model could be defined to include all transformers having the same nominal power (kVA) rating, the same insulation type (liquid-immersed or dry-type), and the same number of phases (single or three), and operating within the same voltage range. Under NEMA's definition, "rating" means a standard output power rating, as tabulated in NEMA TP 1–1996, tables 4–1 and 4–2 (reproduced herein as tables 2 and 3), but will encompass some ratings that are close but not equal to the standard ratings. These power ratings are also the preferred ratings from ANSI/IEEE C57.12.00–1993 for liquid-immersed transformers and ANSI/IEEE C57.12.01–1989 for dry-type transformers.

The Department believes the foregoing approach to defining "basic model" is a sound means to reduce the burden of testing. It would apply an approach to distribution transformers that has proven effective in the residential appliance program, but with appropriate modifications given the nature of distribution transformers. The factors outlined in this approach are the design variables that affect a transformer's efficiency. Design considerations cause a transformer's efficiency to increase as its power rating increases. For dry type transformers, efficiency decreases as voltage increases, when all other factors are held constant. In addition, liquid-immersed insulation is inherently more efficient than dry-type insulation, and multiple phases slightly decrease efficiency. Consequently, the Department believes the assignment of minimum efficiencies will likely be made in accordance with such groupings. For example the Canadian energy conservation standard for distribution transformers implements this approach. Therefore, the Department is proposing the definition for "basic model" be based on NEMA's approach.

TABLE 2.—PREFERRED STANDARD KVA RATINGS LIQUID-IMMERSED DISTRIBUTION TRANSFORMERS

Single-Phase
Power Rating:
10
15
25
37.5
50
75
100
167
250
333
500
667
833
Three-phase
Power Rating:
15
30
45
75
112.5
150
225
300
500
750
1000
1500
2000
2500

TABLE 3.—PREFERRED STANDARD KVA RATINGS DRY-TYPE DISTRIBUTION TRANSFORMERS

Power rating, kVA	Low voltage, > 1.2 kV	Medium voltage, ≤ 1.2 kV
Single-Phase		
15		
25		
37.5		
50		
75		
100		
167		
250		
333		
500		
667		
833		
Three-Phase		
15		
30		
45		
75		
112.5		
150		
225		
300		
500		
750		
1000		
1500		
2000		
2500		

The Department has some concern, however, that this approach may allow manufacturers who sell some high efficiency models to deliberately under design other transformers within that basic model, while still meeting the standard for the average efficiency of the basic model. The Department is considering addressing this point by imposing a maximum efficiency variation within a basic model, similar to what is now done in ANSI/IEEE C57.12.00 and C57.12.01, as well as NEMA TP 2. The Department would like comments on this concern.

F. Number of Units to be Tested

As discussed above, the classification of transformers into "basic models" is one step to reduce the burden of testing. The Department also proposes to permit the use of a statistically meaningful sampling procedure for selecting test specimens, so as to further reduce the testing burden on manufacturers while giving sufficient assurance that the true mean energy efficiency of a basic model meets or exceeds the efficiency level claimed by the manufacturer.

Although the sampling plan presented in this test procedure rule might have some application during the evaluation of possible efficiency standards, it would become operative primarily if and when standards are promulgated. At that point, the efficiency of each basic model of distribution transformer would be established initially by "compliance testing" for the purposes of determining whether the transformer complies with the applicable efficiency standard and of labeling the transformer. A sampling plan for compliance is intended to provide a statistically meaningful sampling procedure for conducting tests, so as to reduce the testing burden while giving sufficient assurance that the true mean energy efficiency of a basic model (i.e., the average efficiency of all units manufactured) meets or exceeds a given performance level.

For this purpose, one product under 10 CFR Part 430, § 430.24, involves some similarities with distribution transformers. The required sampling plan for compliance testing of fluorescent lamp ballasts under § 430.24 (q)(1) states, "For each basic model of fluorescent lamp ballasts, as defined in paragraph (14) of § 430.2, a sample of sufficient size, no less than four, shall be tested to insure that (i) any represented value of estimated annual operating costs, energy consumption, or other measure of energy consumption of a basic model for which consumers would favor a lower value shall be no less than the higher of (A) the mean of the sample or (B) the upper 99 percent confidence limit divided by 1.01, and (ii) any represented value of the ballast efficiency factor or other measure of energy consumption of a basic model for which consumers would favor a higher value shall be no greater than the lower of (A) the mean of the sample or (B) the lower 99 percent confidence limit of the true mean divided by 0.99."

A sampling plan for enforcement, on the other hand, is intended to provide a statistically meaningful sampling procedure for conducting tests, so as to reduce the testing burden while giving sufficient assurance that a distribution transformer found to be in noncompliance will actually be in noncompliance. The sampling plan for enforcement testing under Part 430 is provided in 10 CFR 430.70, Appendix B. This sampling plan is based on the statistical t-test yielding 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard.

At the February 1998 workshop, DOE presented both sampling approaches for consideration for compliance testing for distribution transformers. In the comments on workshop issues, NEMA recommended the enforcement sampling test also be used for demonstration of compliance. However, after reviewing these approaches more closely, the Department believes the sampling plan for compliance in Part 430 favors consumers by providing high statistical probability that the mean performance of the basic model meets or exceeds the performance level claimed by the manufacturer based on testing a small number of models. Most of the error introduced by estimating the performance of the basic model from a sample (rather than from testing all units) is absorbed by the producer (manufacturer). The probability of false determination of compliance is low and is quantifiable from the confidence limit and the divisor. For example, for transformer losses, using a lower confidence limit of 95%, 0.97 as the divisor, and assuming a standard deviation of 3% for a basic model and a minimum sample size of five, possible errors and corresponding probabilities for false determinations of compliance are:

Error in percent	1.5	2.0	2.9
Probability in percent	10	5	1

Under these constraints there is a probability of less than 5% that the estimated average losses of the entire population exceed the true average by 2%.

Conversely, the enforcement sampling approach in Part 430 is based on a Student's t-test; it generally tests whether there is a sufficiently high probability to conclude that the average performance of all units of the basic model is below the standard to warrant enforcement action. By selecting an upper confidence limit and a minimum sample size, the probability of the populations not meeting the standard by a certain amount can be established. For example, for transformer losses, using the upper 95% confidence limit and a sample size of five, on a population with standard deviation of 3%, the possible errors and corresponding probabilities for significant false determinations of compliance are high as shown in the table below:

Error in percent	0.8	2.9	5.7
Probability in percent	90	50	5

Under these constraints there is a probability of almost 50% that the estimated average losses of the entire population exceed the true average by 3%.

Thus, after considerable review, the Department is proposing in today's proposed rule to use Part 430's sampling

approach for compliance testing. For transformer losses, the proposed lower confidence limit is 95%, and the divisor is 0.97, with a minimum sample size of five.

Some manufacturers, however, particularly small companies, have limited output of certain basic models; consequently, under today's proposed sampling plan, a manufacturer would need to test a relatively high proportion of the units it manufactures of such a basic model. Moreover, although the Department could provide in its sampling plan that the minimum number of units tested of a low production basic model be reduced from five to two or three, any such basic model would be subject to increased risk of being determined to be in non-compliance due to the statistical probabilities associated with testing a small number of units. To allay these concerns, the Department is considering three possible approaches for sampling limited production models:

(1) Combine two or more limited production basic models of distribution transformer into an aggregate "basic model";

(2) Allow testing of a sample fewer than five units, and also permit the use of a represented efficiency value that exceeds, by a specified increment, the average efficiency of the sample, so long as each tested unit exceeds ■ minimum level of efficiency [4];

(3) Allow compliance testing over a period of time.

The third alternative would be similar to the Department's approach for lamps, which permits lamp manufacturers to submit a certification report up to one year after the date the manufacture of a new model commences, provided that prior to distribution the manufacturer submits a statement describing how it determined the model meets the energy conservation standard. See section 430.62(c)(2) and 42 U.S.C. 6295(i)(7). The Department solicits comments on these possible approaches.

G. New Part 432

10 CFR part 430 covers consumer products as distinct from commercial and industrial equipment. The Department proposed to create a new part 431 in the Code of Federal Regulations (10 CFR part 431) to cover certain commercial and industrial equipment 61 FR 60439 (November 27, 1996). The Department is now contemplating adding a new Part 432 which would include products addressed under 346 of EPCA.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rulemaking, the Department proposes provisions to establish test procedures for electric distribution transformers. These test procedures would be used initially only for the purpose of considering the adoption of energy conservation standards. During a subsequent rulemaking concerning such standards, the Department will address the extent to which these test procedures would become generally applicable and binding for determining the energy efficiency of distribution transformers.

The Department has concluded that this rule would not have a significant effect on the human environment, and is covered under the categorical exclusion A.6 of appendix A to Subpart D, 10 CFR Part 1021, which applies to procedural rulemakings. (10 CFR Part 1021 is a DOE regulation implementing the National Environmental Policy Act of 1969 (NEPA), and Appendix A to Subpart D sets forth DOE actions excluded from NEPA review.) Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's proposed rule has been determined not to be a "significant regulatory action," as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts.

Today's proposed rule prescribes test procedures that will be used to determine what standards, if any, DOE would adopt, and that would likely become generally applicable only upon adoption of standards. Unless and until such standards are adopted, the Department anticipates that manufacturers will use the test procedures to voluntarily test their transformers and provide to DOE efficiency information about their products. No entities, small or large, would be required to comply with these test procedures. Therefore DOE believes today's proposed rule does not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted.

D. Review Under Executive Order 12612, "Federalism"

Executive Order 12612, "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the National Government and States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The proposed rule published today would not regulate the States. At this point, it primarily would affect the manner in which DOE determines whether standards should be adopted, as prescribed under the Energy Conservation and Policy Act. The proposed rule published today would not alter the distribution of authority and responsibility to regulate in this area. Accordingly, DOE has determined that preparation of a federalism assessment is unnecessary.

E. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

It has been determined pursuant to Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," 52 FR 8859 (March 18, 1988), that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

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[4] DOE is considering, as a method of implementing this approach, the following: If fewer than 5 units of a basic model are manufactured in a period of 180 days, all units manufactured within this period shall be tested, and the average efficiency of the sample $\bar{E}$ shall satisfy the condition

$$\bar{E} \geq E_S [1 - 0.04 \div \sqrt{n} (1 - E_S \div 100)]$$

where n is the number of units in the sample, and E_s is the represented value of efficiency.

For sample sizes of two, three, or four transformers, the lowest efficiency in the sample E_{min} shall satisfy the condition

$$E_{min} \geq E_S [1 - 0.08 (1 - E_S \div 100)]$$

F. Review Under the Paperwork Reduction Act

Today's notice of proposed rulemaking would not impose any compliance certification, labeling or other reporting requirements. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under Executive Order 12988, "Civil Justice Reform"

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by Section 3(a), Section 3(b) of the Executive Order specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provide a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires Executive agencies to review regulations in light of applicable standards Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE reviewed today's proposed regulation under the standards of Section 3 of the Executive Order and determined that, to the extent permitted by law, it meets the requirements of those standards.

H. Review Under Section 32 of the Federal Energy Administration Act of 1974

Pursuant to Section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy is required to comply with Section 32 of the Federal Energy Authorization Act (FEAA), as amended by Section 9 of the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). Section 32 provides in essence that, where a proposed rule contains or involves use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards.

The rule proposed in this notice incorporates by reference commercial standards NEMA TP 2. The Department has evaluated these standards and concludes they were not developed in a manner which fully provides for public participation, comment, and review. The rule proposed in this notice also incorporates by reference commercial standards IEEE/ANSI C57.12.90–1993, C57.12.91–1995, C57.12.00–1993, and C57.12.01–1989, as well as ISO Standard 9001–1993. The Department has evaluated these standards and is unable to conclude whether they were developed in a manner which fully provides for public participation, comment, and review. However, the Department believes the IEEE/ANSI and ISO review processes provide for participation from a larger group of entities than the NEMA standards review process.

As required by Section 32(c) of the Federal Energy Administration Act, the Department will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of these standards on competition, prior to prescribing a final rule.

I. Review Under Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The budgetary impact statement must include: (i) identification of the Federal law under which the rule is promulgated; (ii) a qualitative and quantitative assessment of anticipated costs and benefits of the Federal mandate and an analysis of the extent to which such costs to state, local, and tribal governments may be paid with Federal financial assistance; (iii) if feasible, estimates of the future compliance costs and of any disproportionate budgetary effects the mandate has on particular regions, communities, non-Federal units of government, or sectors of the economy; (iv) if feasible, estimates of the effect on the national economy; and (v) a description of the Department's prior consultation with elected representatives of state, local, and tribal governments and a summary and evaluation of the comments and concerns presented.

The Department has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

IV. Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in the proposed rulemaking by submitting data, comments, or information with respect to the proposed issues set forth in today's proposed rule to Ms. Kathi Epping, at the address indicated at the beginning of the notice. All submittals received by the date specified at the beginning of this notice will be considered by the Department in developing the final rule.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) a description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

B. Public Hearing

1. Procedures for Submitting Requests To Speak

The time and place of the public hearing are indicated at the beginning of this notice of proposed rulemaking. The Department invites any person who has an interest in today's notice of proposed rulemaking, or who is a representative of a group or class of persons that has an interest in these proposed issues, to make a request for an opportunity to make an oral presentation. If you would like to attend the public hearing, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. Requests to speak may be hand delivered to the address indicated at the beginning of the notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

The person making the request should briefly describe the interest concerned and state why he or she, either individually or as a representative of a group or class of persons that has such an interest, is an appropriate spokesperson, and give a telephone number where he or she may be contacted.

Each person selected to be heard is requested to submit an advance copy of his or her statement prior to the hearing as indicated at the beginning of this notice. Any person wishing to testify who cannot meet this requirement, may at the Department's discretion be permitted to testify if that person has made alternative arrangements with the Office of Codes and Standards in advance. The letter making a request to give an oral presentation shall ask that such alternative arrangements be made.

2. Conduct of Hearing

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 336 of the Act. The Department of Energy reserves the right to select the persons to be heard at the hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing.

Each participant will be permitted to make a prepared general statement, limited to five (5) minutes, prior to the discussion of specific topics. The general statement should not address these specific topics, but may cover any other issues pertinent to this rulemaking. Other participants will be permitted to briefly comment on any general statements. The hearing will then be divided into segments, with each segment consisting of one or more topics covered by this notice, as follows: (1) proposed test procedures; (2) adequacy of TP 2 to meet the requirements of users; (3) distribution transformers not subject to the test procedures; (4) grouping of transformers for testing purposes, as manifested by the definition of a basic model; (5) sampling plan for compliance; and (6) general statutory requirements. Any issue concerning a definition in the proposed rule should be addressed during the discussion of the topic(s) to which that issue pertains.

The Department will introduce each topic with a brief summary of the relevant provisions of the proposed rule, and the significant issues involved. Participants in the hearing will then be permitted to make a prepared statement limited to five (5) minutes on that topic. At the end of all prepared statements on a topic, each participant will be permitted to briefly clarify his or her statement and comment on statements made by others. The Department is particularly interested in having participants address in their statements the specific issues set forth below in Section IV–C, "Issues for Public Comment," and participants should be prepared to answer questions by the Department concerning these issues. Representatives of the Department may also ask questions of participants concerning other matters relevant to the hearing. The total cumulative amount of time allowed for each participant to make prepared statements shall be 20 minutes.

The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any further procedural rules, or modification of the above procedures, needed for the proper conduct of the hearing will be announced by the presiding official.

A transcript of the hearing will be made, and the entire record of this rulemaking, including the transcript, will be retained by the Department of Energy and made available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

C. Issues Requested for Comment

The Department of Energy is interested in receiving comments and/or data concerning the feasibility, workability and appropriateness of the test procedures proposed in today's proposed rulemaking. Also, DOE welcomes discussion on improvements or alternatives to these approaches. In particular, the Department is interested in gathering comments on the following:

- The adequacy of TP 2 to meet the requirements of non-NEMA manufacturers and users, such as utilities and contractors who specify transformers for commercial and industrial applications (e.g., retail, industrial, and office buildings);
- Distribution transformers not subject to the test procedures;
- Grouping of transformers for testing purposes, as manifested by the definition of a basic model; and
- The sampling plan for compliance (The Department is particularly interested in discussing how small populations should be handled.)

List of Subjects in 10 CFR Part 432

Administrative practice and procedure, Energy conservation, Household appliances. Incorporation by reference.

Issued in Washington, DC., on October 2, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Chapter II of Title 10, Code of Federal Regulations, is proposed to be amended by adding a new Part 432 to read as follows.

PART 432—ENERGY CONSERVATION PROGRAM FOR DISTRIBUTION TRANSFORMERS

Sec.

432.1 Purpose and scope [Reserved].
432.2 Definitions.
432.22 Reference Sources.
432.24 Units to be tested.
Appendix A to Part 432—Uniform Test Method for Measuring the Energy Consumption of Distribution Transformers.

Authority: 42 U.S.C. 6317.

§ 432.1 Purpose and scope [Reserved].

§ 432.2 Definitions.

Basic model means all units of a given type of distribution transformer manufactured by a single manufacturer and which have a comparable nominal output power (kVA) rating, operate within the same voltage range, have the same insulation type (liquid-immersed or dry type), and have the same number of phases (single or three).

Converter transformer means a transformer designed for the dedicated applications of converting direct current (dc) to alternating current (ac), or converting alternating current to direct current. Its nameplate contains a rating for the fundamental-frequency apparent output power and a rating for the apparent output power with non

sinusoidal current produced by the converter.

Distribution transformer means a transformer with a primary voltage of 480 V to 35 kV, a secondary voltage of 120 V to 600 V, a frequency of 55–65 Hz, and a capacity of either 10 to 2500 kVA for liquid-immersed transformers or 0.25 kVA to 2500 kVA for dry-type transformers, except for:

(1) Converter and rectifier transformers with more than two windings per phase, and

(2) Transformers which are not designed to be continuously connected to a power distribution system as a distribution transformer. This second exception includes regulating transformers, machine tool transformers, welding transformers, grounding transformers, testing transformers, and other transformers which are not designed to transfer electrical energy from a primary distribution circuit to a secondary distribution circuit, or within a secondary distribution circuit, or to a consumer's service circuit.

Dry-type distribution transformer means a distribution transformer in which the core and coils are immersed in a gaseous or dry-compound insulating medium.

Efficiency means, for a distribution transformer, the ratio of the useful output power to the total input power.

Liquid-immersed distribution transformer means a distribution transformer in which the core and coils are immersed in an insulating liquid.

Load losses mean, for a distribution transformer, those losses which are incident to the carrying of a specified load. Load losses consist of ohmic (I^2R) loss in the windings due to load and eddy currents; the loss due to circulating currents in parallel windings or in parallel winding strands; and stray losses due to leakage fluxes in the windings, core clamps, and other parts.

Low-voltage dry-type transformer means a distribution transformer with a primary voltage rated at 1.2 kV and below.

Medium-voltage dry-type transformer means a distribution transformer with a primary voltage rated above 1.2 kV.

No-load losses mean, for a distribution transformer, those losses which are incident to the excitation of the transformer. No-load losses consist of core loss, dielectric loss, conductor loss in the windings due to exciting current, and conductor loss due to the circulating currents in parallel windings.

Rectifier transformer means a transformer designed for the dedicated application of converting alternating current to direct current. Its nameplate contains a rating for the fundamental-frequency apparent output power and a rating for the apparent output power with non sinusoidal current produced by the converter.

Total losses mean, for a distribution transformer, the total of the no-load and load losses. It does not include losses due to accessories, such as cooling fans.

Transformer means a static electromagnetic device consisting of a winding, or two or more coupled windings, with a magnetic core for introducing inductive coupling between electric circuits, designed to transfer power by electromagnetic induction between circuits at the same frequency.

§ 432.22 Reference Sources.

(a) Materials Incorporated by Reference. (1) General. The following standards which are not otherwise set forth in this part 432 are incorporated by reference. The material listed in paragraph (a)(2) of this section has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE test procedures unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register.**

(2) Availability of Standards.

Option One for Paragraph (a)(2)(i) [5]

(i) Copies of ANSI standards C57.12.90–1993, C57.12.91–1995, and C57.12.00–1993 can be obtained from the American National Standards Institute, 11 West 42nd Street, New York, N.Y., 10036;

Option Two for Paragraph (a)(2)(i)

(i) Copies of NEMA Standards Publication TP 2–1998 can be obtained from Global Engineering Documents World Headquarters, 15 Iverness Way East, Inglewood, CO 80112–5776;

(ii) All standards incorporated by reference are available for inspection at the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Hearings and Dockets, Forrestal Building, 1000 Independence Ave, SW, Washington, DC 20585.

(iii) All standards incorporated by reference are available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, N.W., Washington, DC.

Option One for Paragraph (a)(3)

(3) List of standards incorporated by reference. (i) ANSI/IEEE Standard C57.12.90–1993, "IEEE Standard Test Code for Liquid-Immersed Distribution, Power, and Regulating Transformers and IEEE Guide for Short-Circuit Testing of Distribution and Power Transformers", sections 5 through 5.3.2, sections 8 through 8.4, and sections 9 through 9.4.1.

(ii) ANSI/IEEE Standard C57.12.00–1993, IEEE Standard General Requirements for Liquid-Immersed Distribution, Power, and Regulating Transformers" clause 9.4.

(iii) ANSI/IEEE Standard C57.12.91–1995, "IEEE Standard Test Code for Dry-Type Distribution and Power Transformers" clauses 5 through 5.4.2.3, clauses 8 through 8.3, and clauses 9 through 9.4.2.

Option Two for Paragraph (a)(3)

(3) Standard incorporated by reference. NEMA Standards Publication TP 2–1998, "Standard Test Method for Measuring the Energy Consumption of Distribution Transformers" sections 1, 2, 3, 4, 5, and 6. Deviations from these sections are set forth at Appendix A to Part 432 section 3.2(ii).

Option One for Paragraph (b)

(b) Reference Standard. The following standard is referred to in the DOE test procedure and elsewhere in 10 CFR part 432 but is not incorporated by reference and is provided here for guidance: ISO Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing" clause 4.11.1.

Option Two Omits Paragraph (b)

§ 432.23 Test procedures for measures of energy consumption.

Option One for Paragraph (a)

(a) Total losses, expressed in kilowatts, of a liquid-immersed distribution transformer operated at 50% of the rated load shall be determined in accordance with clause 3.1.2 of Appendix A to this part. Total losses of a dry-type distribution transformer operated at either 50% or 35% of the rated load, as appropriate, shall be determined in accordance with clause 3.2.3 of Appendix A to this part.

Option Two for Paragraph (a)

(a) Total losses, expressed in kilowatts, of a liquid-immersed distribution transformer operated at 50% of the rated load shall be determined in accordance with clause 3.3 of Appendix A to this part. Total losses of a dry-type distribution transformer operated at either 50% or 35% of the rated load, as appropriate, shall be determined in accordance with clause 3.4 of Appendix A to this part.

Option One for Paragraph (b)

(b) Efficiency, expressed in percent, of a liquid-immersed distribution transformer

[5] In the preamble to this proposed rule, the Department states its intention to adopt as the test procedure for distribution transformers either portions of standards prepared by IEEE and approved by ANSI, or portions of a standard being developed by NEMA. In the proposed rule language, passages introduced by the phrase "OPTION ONE FOR PARAGRAPH_____" constitute the language DOE proposes to use if it decides to adopt the ANSI/IEEE standards, and the phrase "OPTION TWO FOR PARAGRAPH_____" introduces the regulatory language proposes in the event the NEMA standard is adopted.

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operated at 50% of the rated load shall be determined in accordance with clause 3.1.2 of Appendix A to this part. Efficiency of a dry-type distribution transformer, expressed in percent, operated at either 50% or 35% of the rated load shall be determined in accordance with clause 3.2.3 of Appendix A to this part.

Option Two for Paragraph (b)

(b) Efficiency, expressed in percent, of a liquid-immersed distribution transformer operated at 50% of the rated load shall be determined in accordance with clause 3.5 of Appendix A to this part. Efficiency of a dry-type distribution transformer, expressed in percent, operated at either 50% or 35% of the rated load shall be determined in accordance with clause 3.5 of Appendix A to this part.

(c) The estimated annual energy consumption (EAEC), expressed in kilowatt-hours per year, for a distribution transformer operating continuously at 50% or 35% of the rated output power, as appropriate, shall be the product of:

(1) The total losses in kilowatts as determined in paragraph (a) of this section; and

(2) The representative use cycle of 8766 hours per year.

§ 432.24 Units to be tested.

For each basic model of distribution transformers, a random sample of sufficient size, but no fewer than five production units, shall be tested to insure that any represented value of efficiency shall be no greater than the lower of the:

(a) Mean of the sample; or

(b) The lower 95% confidence limit of the estimated true mean divided by a number equal to $[1-0.03(1-E_s/100)]$, where E_s is the represented value of efficiency claimed for that particular basic model.

Appendix A to Part 432—Uniform Test Method for Measuring the Energy Consumption of Distribution Transformers

1. Definitions. Use the definitions in 10 CFR 432.21 and the following:

1.1 ANSI Standard means a standard approved by a committee accredited by the American National Standards Institute.

1.2 IEEE Standard means a standard developed and approved by the Institute of Electrical and Electronics Engineers. All IEEE standards referenced in Appendix A have been approved or recognized by ANSI.

1.3 ISO Standard means a standard developed and approved by the International Standards Organization.

1.4 NEMA Standards Publication means a standard developed and approved by National Electrical Manufacturers Association.

1.5 Phase angle error means an error introduced in the phase angle displacement between voltage and current phasors by the test equipment. Phase angle error, if significant, can introduce errors in measured transformer losses.

1.6 Phase angle correction means the adjustment (correction) of measurement data to negate the effects of phase angle error.

1.7 Reference temperature means the temperature, specified in a standard, to which the transformer losses shall be corrected and reported.

1.8 Temperature correction means the adjustment (correction) of measurements of no load losses and load losses, obtained with the distribution transformer under test at a temperature that is different from the reference temperature, to values that would have been obtained with the distribution transformer at the reference temperature.

1.9 Test voltage means the voltage of the electric power supplied to the distribution transformer under test.

1.10 Waveform correction means the adjustment (correction) of measurement data obtained with a test voltage that is non-sinusoidal (distorted) to values that would have been obtained with sinusoidal voltage.

Option One for Paragraph 2

2. References.

2.1 ANSI/IEEE Standard C57.12.90–1993, "IEEE Standard Test Code for Liquid-Immersed Distribution, Power, and Regulating Transformers and IEEE Guide for Short-Circuit Testing of Distribution and Power Transformers" (ANSI/IEEE C57.12.90).

2.2 ANSI/IEEE Standard C57.12.00–1993, IEEE Standard General Requirements for Liquid-Immersed Distribution, Power, and Regulating Transformers" (ANSI/IEEE C57.12.00).

2.3 ANSI/IEEE Standard C57.12.91–1995, "IEEE Standard Test Code for Dry-Type Distribution and Power Transformers" (ANSI/IEEE C57.12.91).

2.4 ISO Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing."

Option Two for Paragraph 2

2. References.

NEMA Standards Publication TP 2–1998, "Standard Test Method for Measuring the Energy Consumption of Distribution Transformers" (NEMA TP 2).

Option One for Paragraph 3

3. Test Procedures' Measurements and Instrumentation, Reference Conditions, Calculations.

The resistance of transformer windings, the no-load losses, and the load losses of transformers shall be measured, and the total losses and efficiency shall be computed at the specified loading levels and reference temperatures, using the methods described in the following industry standards (with certain specified modifications and exceptions): ANSI/IEEE standards C57.12.90–1993 and C57.12.91–1995 (primary references); ANSI/IEEE standard C57.12.00–1993 (supplemental reference). The methods to be used, including applicable sections and clauses in the referenced standards, as well as exceptions and modifications to such sections and clauses, are listed in this appendix: §§ 3.1–3.3 and their subclauses.

3.1 Liquid-Immersed Distribution Transformers.

Using the methods specified in ANSI/IEEE standard C57.12.90–1993 sections 5, 8, and 9, measure the resistance of transformer windings, the no-load losses and load losses of liquid-immersed distribution transformers. Perform waveform correction on the measured no-load losses and perform phase angle correction for the load losses.

3.1.1 Perform temperature corrections for the loss data of § 3.1 by converting the no-load losses to 20°C and converting the load losses to 55°C with the loading at 50% of the rated load. To perform these temperature corrections, the provisions in sections 8.4 and 9.4.2 of ANSI/IEEE standard C57.12.90–1993 are applicable. For the conversion to the 50% loading the quadratic relationship $P_{(LSO)}=P_{(LM)}\ (50/M)^2$ applies, where $P_{(LSO)}$ is the load loss power at 50% loading, $P_{(LM)}$ is the load loss power at M% loading, and (50/M) is the ratio of the loading at the 50% reference condition to the loading during the measurement (near 100% loading).

3.1.2 Calculate the total losses (P_{50}) at 50 % loading by adding the no-load losses and the load losses as computed in § 3.1.1, and calculate the efficiency at 50 % loading according to the equation:

$E_{50}=100\ [P_{O(50)}/(P_{O(50)}+P_{L(20)})]$,

where E_{50} is the efficiency at 50% loading, and $P_{O(50)}$ and $P_{L(50)}$ are the output power and total loss power, respectively, at 50% loading.

3.2 Dry-Type Transformers.

Using the methods specified in ANSI/IEEE standard C57.12.91–1995, sections 5, 8, and 9, measure the resistance of transformer windings, the no-load losses and load losses of dry-type distribution transformers. Perform waveform correction on the measured no-load losses and perform phase angle correction for the load losses.

3.2.1 In addition to the requirements of ANSI/IEEE standard C57.12.91–1995, the following two additional requirements apply to the measurements in section 3.2 of this appendix:

(i) Perform phase angle correction for the measured load losses as specified in ANSI/IEEE standard C57.12.90–1993, clause 9.4.1 and Table 1;

(ii) Measure the no-load losses with the transformer at the reference temperature of 20°C; a temperature tolerance of ±10°C is permissible; if no-load loss measurements are conducted outside this temperature tolerance, perform the appropriate temperature correction such as that specified in ANSI/IEEE standard C57.12.90–1993, clause 8.4.

3.2.2 Perform temperature corrections for the loss data by converting the load losses of medium-voltage dry-type transformers to 75°C, at 50% of the rated load, and converting the load losses of low-voltage dry-type transformers to 75°C, at 35% of the rated load. To perform these temperature corrections, the provisions of ANSI/IEEE standard C57.12.91-1995, clause 9.4.1 shall apply. For the conversions to the 50% and 35% loading levels the algorithm of § 3.1.1 applies.

3.2.3 Calculate the total losses, $P_{L(50X35)}$, at either 50% or 35% loading, as appropriate, by adding the no-load losses and load losses as computed in § 3.2.2, and calculate the efficiency of the transformer at either 50% or 35% loadings according to the equation:

$E_{(50X30)}=100\ [P_{O(50X30)}/(P_{O(50X30)}+P_{L(50X30)})]$,

where $E_{(50X30)}$ is the efficiency in percent, $P_{O(50X30)}$ is the output power in kilowatts, and

$P_{L(50X30)}$ is the loss power in kilowatts. The subscripts, (50) or (35), denote the loading levels, either 50% or 35%.

3.3 Quality Assurance in Testing.

Accuracies required for measuring the winding resistances, the no-load and load losses, and the temperature of distribution transformers shall be those specified in ANSI Standard C57.12.00–1993, Section 9.4.

Test equipment and measuring instruments shall be calibrated and maintained in their normal operating condition. Calibration records shall be maintained to demonstrate compliance with the required measurement accuracies. General guidance as to procedures that will aid in meeting these objectives is provided by the following Clause 4.11.1 of ISO Standard 9001–1993, "Quality Systems—Model for quality assurance in design, development, production, installation, and servicing.":

"The supplier shall establish and maintain documented procedures to control, calibrate and maintain inspection, measuring and test equipment (including test software) used by the supplier to demonstrate the conformance of product to the specified requirements. Inspection, measuring and test equipment shall be used in a manner which ensures that measurement uncertainty is known and is consistent with the required measurement capability."

Option Two for Paragraph 3

3. Test Procedures—Measurements and Instrumentation, Reference Conditions, Calculations.

The resistance of transformer windings, the no-load losses, and the load losses of transformers shall be measured, and the total losses and efficiency shall be computed at the specified loading levels and reference temperatures, using the methods described in the following industry standards (with certain specified modifications and exceptions): NEMA standard TP 2. The methods to be used, including applicable sections and clauses in the referenced standards, as well as exceptions and modifications to such sections and clauses, are listed in this appendix: sections 3.1–3.5 and their subclauses.

3.1 Liquid-Immersed and Dry-Type Distribution Transformers.

In accordance with NEMA TP 2, sections 1, 2, 3, 4, 5, and 6, do the following: measure the resistance of transformer windings, the no-load losses, and the load losses of liquid-immersed and dry-type transformers; apply waveform corrections, phase angle corrections, and temperature corrections to the measured data for no-load losses and load losses; and ensure the quality assurance measures for testing operations.

3.2 Deviations from NEMA TP 2. For the purpose of this DOE test procedure the following deviations from TP 2 shall apply:

(i) Section 7 of TP 2, Demonstration of Compliance, shall not be a part of the DOE test procedure.

(ii) The reference conditions for reporting the data under the DOE test procedure shall be: 20 °C ± 10 °C for no-load losses of liquid-immersed distribution transformers and dry-type distribution transformers; 55 °C for load losses of liquid-immersed distribution transformers operated at 50% of the rated load; 75 °C for load losses of medium-voltage dry-type transformers operated at 50% of the rated load; and 75 °C for load losses of low-voltage dry-type transformers operated at 35% of the rated load.

(iii) The exceptions listed in item 4 of the Scope of TP 2 do not apply to the DOE test procedure.

3.3 The total losses of liquid-immersed distribution transformers, at the specified reference conditions, shall be computed according to clause 5.2.3 of TP 2.

3.4 The total losses of the dry-type distribution transformers, at the specified reference conditions, shall be computed data according to clause 5.3.3 of TP 2.

3.5 Compute the efficiency values of liquid-immersed distribution transformers and dry-type distribution transformers at the specified reference conditions using the algorithm provided in clause 5.4 of TP 2.

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Part III

Department of Labor

Employment and Training Administration

Draft White Paper: Workforce Investment Act of 1998 Implementation; Comment Request; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act of 1998

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice: request for comments.

SUMMARY: The purpose of this notice is to obtain comments on the Department of Labor's draft White Paper on the implementation of the Workforce Investment Act (WIA or Act), Public Law 105–220 (August 7, 1998). The paper sets forth in general terms the approach the Department is taking to implement title I, III and V of the Act. The implementation of title V will be conducted in conjunction with the Department of Education. This paper is only one of a series of documents and other materials that will guide the implementation of the Act. It is not intended to answer all questions relating to implementation, but rather to provide the general philosophy and approach to implementation. Other documents will address more specific issues. While the Department does not plan to revise this paper, all comments received by the closing date will be considered in future aspects of the implementation process. This notice is not a proposed rule. The Department will consider comments on regulations throughout the rulemaking process.

DATES: The Department invites written comments on this notice. Comments received on or before December 1, 1998 will be considered in the development of regulations and policy guidance as well as the overall implementation strategy. Statute requires regulations to be promulgated by February 1999.

ADDRESSES: Submit written comments to Mr. Eric Johnson, Workforce Investment Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S5513, Washington, DC 20210. All comments will be available for public inspection and copying during normal business hours at the address above. Copies of the draft White Paper are available at the address above, as well as on the WIA web site at http://usworkforce.org. Comments may be submitted electronically to that web address. Commenters wishing acknowledgment of receipt of their comments must submit them by certified mail, return receipt requested.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Johnson, Workforce Investment Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S5513, Washington, DC 20210, Telephone: (202) 219–0316 (voice) (This is not a toll-free number), or 1–800–326–2577 (TDD).

SUPPLEMENTARY INFORMATION: Signed into law on August 7, 1998, the Workforce Investment Act provides the framework for a unique national workforce preparation and employment system designed to meet the needs of job seekers, individuals who want to further their career, as well as the nation's businesses. The Act encourages States to reform existing employment and training programs and to think broadly about how Federal, State and local resources can be integrated into a comprehensive workforce investment system. The Act builds on the most successful elements of previous Federal legislation. Just as important, its key components are based on local and State input and extensive research and evaluation studies of successful training and employment innovations over the past decade. The Act makes changes to the current funding streams, target populations, delivery systems, accountability systems, labor market information systems, and governance structures. The White Paper is attached.

Signed at Washington, D.C., this 5th day of November, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor.

Message From the Secretary of Labor

With an economy more vibrant than any we've seen in 30 years, America is looking forward to a new century filled with endless possibilities for growth and opportunity. Just this year, millions of new jobs have been created. Unemployment is at an all-time low, and wages are on the rise.

But with new high-skill jobs growing at nearly three times the rate of other jobs, many employers are having a hard time attracting qualified workers. And millions of workers with few or no skills feel trapped in jobs leading nowhere.

As Secretary of Labor, one of my chief goals is bridging the gap between job opportunities and the pool of workers who are qualified to fill them. I want to equip every American worker with skills that will not only secure a good job, but guarantee every step up the workforce ladder leads to even greater opportunities.

That is why the Department of Labor worked with Congress to create the historic Workforce Investment Act, signed into law this year. Five years in the making, the Workforce Investment Act represents a total overhaul of our country's job-training system—a customer-driven overhaul that will help employers get the workers they need and empower job seekers to meet the challenges of the new century by getting the training they need for the jobs they want.

The Workforce Investment Act makes this possible through an innovative "One-Stop" system designed to provide a full menu of job training, education and employment services at a single neighborhood location where adults, veterans, dislocated workers and youth will receive skills assessment services, information on employment and training opportunities, unemployment, services, job search and placement assistance, and up-to-date information on job vacancies—all at one center specifically tailored to meet the needs of the community it serves.

Best of all, job seekers will control their own careers by choosing the training programs and services that fit their needs. And they'll keep that control for life. So when it's time to make another move up the career ladder, sharpen a skill, learn a new one, or just get information, workers will be able to continue to rely on their local One-Stop Center.

The Workforce Investment Act also provides for increased accountability. The performance of states, localities and training providers will be monitored against goals set by the Act —including job placement rates, earnings, retention in employment, and skill gains. Failure to meet the goals will lead to sanctions, while exceeding them will lead to incentive funds.

But the Workforce Investment Act is more than a new job training system. It's a strong network of interlinked programs designed to provide wide choices to Americans seeking new opportunities and valuable information. And, it's a chance for us to harness today's opportunities for success and invest them in the workforce of tomorrow.

I am immensely proud that 15 million young out of school Americans will not be left out of this system. The law focuses on the needs of kids in left-out communities to ensure they are pulled into the inner circle of opportunity offering all of us a pool of talent for the future. That is why I am inviting everyone—government, business, labor and communities to work together to prepare America's workforce for the challenges of the 21st Century.

Implementing the Workforce Investment Act of 1998

(10/8/98 DRAFT)

The Workforce Investment Act will empower all workers—young and old—

with the skills and knowledge to build better lives for themselves and their families as we enter the new century.

Secretary of Labor Alexis Herman

August 8, 1998.

Purpose

This paper sets forth in general terms the approach the Department of Labor is taking to implement titles I, III, and V of the Workforce Investment Act. The implementation of title V will be conducted in conjunction with the Department of Education. Implementation is guided by the goals and specific requirements of the new law, as well as by the Act's legislative history, the bipartisan "reform" principles that have been articulated by the President and Members of Congress, the views of workforce investment system stakeholders, and specific Departmental and Administration principles that affect implementation (such as regulatory reform).

This paper is only one of a series of documents and other materials—including regulations, questions and answers, technical assistance guides, etc.—that will guide implementation of the Act. It is not intended to answer all questions relating to implementation, but rather to provide the general philosophy and approach to implementation.

Other documents will address more specific issues. Comments on this paper and other implementation materials are welcome and should be sent to the address at the end of this paper.

Introduction

The Workforce Investment Act of 1998 represents the first major reform of the nation's job training system in over 15 years. The enactment of this legislation is the culmination of a four year bipartisan effort on the part of the Administration and Congress to design, with States and local communities, a revitalized system that provides workers with the information, advice, job search assistance, and training they need to get and keep good jobs—and provides employers with skilled workers.

This reform comes at an opportune time. The American economy is stronger than it has been in a generation, and it is increasingly driven by creativity, innovation and technology. New high-skill jobs are growing at nearly three times the rate of other jobs. Many employers are finding it increasingly difficult to locate and attract qualified workers for high-skilled, high-paying jobs—as well as qualified workers for entry-level jobs. At the same time, millions of workers with little or no skills feel trapped in low-wage, dead end jobs. Reforms under the Workforce Investment Act will permit us to build a delivery system in which any adult interested in advancing his or her career—regardless of income—can keep on learning, and where job seekers—such as low-income adults including welfare parents, disadvantaged youth, unemployed or displaced workers, and others willing to learn and work—can access high quality information and services. This delivery system should be designed with the participation of employers, labor, education and community groups which have a large stake in its success.

The enactment of the Workforce Investment Act provides unprecedented opportunity for major reforms that will result in a reinvigorated, integrated workforce investment system. States and local communities should seize this historic opportunity by thinking expansively and designing a customer-focused, comprehensive delivery system. New, strong, business-led local boards can contribute fresh thinking about the labor market and its needs—as well as about quality and continuous improvement—in a way that earns sustained support by local business leaders. We will know if we have successfully implemented this legislation if in less than five years, businesses actively use the workforce investment system to fill their labor force needs, "graduates" increase their skills and earnings, and more and more Americans seek access to the system's services.

States and communities will be able to strengthen ongoing reforms that have been supported by the Department of Labor through the One-Stop initiative, the School-to-Work Opportunities initiative which is administered jointly with the Department of Education, and through flexibility provided through waivers and Work-Flex. By eliminating many of the administrative and regulatory barriers that have previously existed, this Act provides States and local communities with the tools they need to finally build the comprehensive systems they have been striving towards.

Background

The current patchwork of Federal job training programs has taken shape over the last six decades, each element responding to a particular concern at a specific time, but never fully brought into alignment with the other components of the "system". The effects of this approach include:

- *Limited choice.* In most programs, choices about job training are made through bureaucratic processes. Men and women seeking new opportunities must settle for what the system has available rather than being permitted to search the market to select the job training that is right for them.
- *Lack of quality information.* Good choices call for reliable data about what jobs are available, what skills they require, and which training institutions offer the best value and performance. But, the current system too often does not provide this type of information to individual job seekers and employers.
- *Weak strategies.* Confronted with splintered and disorganized programs, States and local communities have found it challenging to devise effective strategies for deploying Federal resources, or for effectively integrating Federal efforts with one another and with their own resources. As a result, the private sector has questioned the value of the system.
- *Absence of strong accountability.* The quality of training and related services is highly uneven. Institutions can continue to get Federal funds regardless of performance. Too often, rewards are not targeted to the best programs.

By integrating numerous Federal education, training and employment programs into a comprehensive, streamlined system, the Workforce Investment Act strives to overcome these and other shortcomings of the nation's job training system.

Principles

The Workforce Investment Act gives American workers the chance to equip themselves with the skills and information needed to compete in the new economy, and helps workers take responsibility for building a better future for themselves and their families. To accomplish the goals of the new legislation, the new workforce investment system will be built around several key principles:

- *Streamlining services.* Multiple employment and training programs will be integrated at the "street level" through the One-Stop delivery system. By building on One-Stop implementation efforts already underway in the vast majority of States, this integrated system will simplify and expand access to services for job seekers and employers.
- *Empowering individuals.* Individuals will be empowered to obtain the services and skills they need to enhance their employment opportunities. This empowerment will be accomplished through Individual Training Accounts which will enable eligible participants to choose the

qualified training program that best meets their needs. The development of "consumer reports" containing information for each training provider will allow individuals to make informed training choices.

• *Universal access.* Through the One-Stop system, every individual will have access to core employment-related services. Customers can obtain job search assistance as well as labor market information about job vacancies, the skills needed for occupations in demand, wages paid, and other relevant employment trends in the local, regional and national economy.

• *Increased accountability.* States, localities and training providers will be held accountable for their performance. The Act identifies core indicators of performance—including job placement rates, earnings, retention in employment, skill gains, and credentials earned—that States and local areas would have to meet. Failure to meet the performance goals will lead to sanctions, while exceeding the levels could lead to the receipt of incentive funds. Training providers will have to meet performance goals to remain eligible to receive funds under the Act.

• *Strong role for local boards and the private sector.* Local boards will become business-led "Boards of Directors" for the local areas. By relieving them from "nitty-gritty" operational details, the Act ensures they will be able to focus on strategic planning, policy development and oversight of the local system.

• *State and local flexibility.* States and localities will have exceptional flexibility to build on existing reforms in order to implement innovative and comprehensive workforce investment systems. Through such mechanisms as unified planning, waivers, and Work-Flex—as well as through the Act's grandfathering provisions which allow States to continue innovative practices—States and their local partners have the flexibility to tailor delivery systems to meet the particular needs of individual communities.

• *Improved youth programs.* Youth programs will be linked more closely to local labor market needs and the community as a whole, and will provide a strong connection between academic and occupational learning. In addition, traditional employment and training services will be augmented by an array of youth development activities. The establishment of a youth council in every local area will raise the visibility of youth programs and facilitate coordination and strategic design. The Act also authorizes Youth Opportunity Grants that are designed to provide funding to increase job opportunities for youth in high poverty areas. In addition, the Act reforms the Job Corps program by strengthening linkages among Job Corps centers, the State workforce investment systems, the local communities in which they are located, and employers.

A fundamental reform of Federal programs and policies based on these principles will permit communities and States to craft a workforce investment system that respects individual choices, reflects local conditions, and delivers results.

Goals

Through the establishment of comprehensive State and local workforce investment systems that are constructed around the basic principles described above, the Act strives to increase the employment, retention, and earnings of participants, and increase occupational skills attainment by participants. In achieving these goals, the new system will also:

1. Improve the quality of the workforce. Finding workers to sustain America's economic growth is becoming one of the most crucial concerns of business owners and managers across the United States. Changing job requirements and the resulting demand for new skills, the desire for reliable worker credentials, and shifting company and industry structures mean continuing intense demand for high-quality services that enable workers to meet the needs of the labor market. The Act was developed with the recognition that, as the 21st century approaches, we have to develop training opportunities that respond to market needs and provide consumer choices.

2. Enhance the productivity and competitiveness of the Nation. The world of work is continuously changing. Economic progress greatly benefits many American workers and American businesses, but it poses important challenges as well. New technologies, changes in international trade, deregulation, and greater competition have led to structural changes in the U.S. labor markets. Research suggests that rapid technological progress, fierce competition, further integration of the U.S. economy with other economies, and significant demographic changes will continue. This Act will create a system that can quickly respond to such changes, and that is intended to efficiently prepare workers to meet the needs of the labor market, provide key labor market information, and help provide businesses with the resources to remain competitive. An integrated, highly accountable workforce investment system is critical if American workers and businesses are to keep pace in this rapidly changing economic environment.

3. Reduce welfare dependency. Working with the hardest to serve is a major challenge in welfare reform despite reduced caseloads. This Act aims to reduce welfare dependency and provide the tools to do so through the One-Stop system that includes the Welfare-to-Work program, and is able to integrate TANF and other programs that serve the welfare customer—in order to invest in the employment and job retention of the hardest to serve. In areas where adult funding is limited, welfare recipients and other low wage individuals will receive priority for intensive and training services. Collaboration between the workforce investment and welfare systems is important for several reasons. Both systems now focus on helping clients become employed. In addition, the two systems serve many of the same customers. Common customers also include employers who hire clients of the two systems. Finally, given scarce resources, strong collaboration will ensure that efforts are not duplicated.

Fundamental Change in Service Delivery

This bill is tailored to meet the local needs of both workers and business for years to come. It will help all Americans who want to take advantage of the new high paying jobs that our economy is creating. It will provide business with the skilled employees they need to compete in the global high-tech economy. Above all it will make sure that as our economy moves into the 21st century, our job training system does too.

Secretary of Labor Alexis Herman
July 31, 1998.

One-Stop Service Delivery

The cornerstone of the new workforce investment system is One-Stop service delivery which will unify numerous training, education and employment programs into a single, customer-friendly system. The underlying notion of "One-Stop" is the integration of programs, services and governance structures. The Employment Service plays a critical role in One-Stop service delivery as the primary job finding source, especially for unemployment insurance (UI) claimants. It provides quality information to the public about jobs, the dynamics of the labor market, available training and education opportunities, and the links to other public and private services.

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It is envisioned that each State could use common intake and case management systems in order to take full advantage of the One-Stops' potential for efficiency and effectiveness. A wide range of services from multiple training and employment programs will be available to meet the needs of a variety of customers—employers and job seekers. In addition, these local One-Stop centers will be places where all Americans can access high quality local information on available jobs, skill requirements, and training provider performance.

The Act requires the establishment of a One-Stop system in each local area. The local board, in collaboration with the local elected official, is responsible for overseeing the One-Stop system in their local area. While the Act establishes certain minimum requirements for the structure of the local system, it allows local communities significant flexibility in the design and implementation of their One-Stop systems.

Each local One-Stop system will be comprised of numerous partners that will provide core services through the One-Stop system. It is envisioned that every local system will represent true collaboration between all of the One-Stop partners. Partners will provide such services in a way that is consistent with their authorizing legislation.

Required Partners

- Adult, Dislocated Worker, and Youth Activities.
- Employment Service.
- Adult Education.
- Postsecondary Vocational Education.
- Vocational Rehabilitation.
- Welfare-to-Work.
- Title V of the Older Americans Act.
- Trade Adjustment Assistance.
- NAFTA Transitional Adjustment Assistance.
- Veterans Employment and Training Programs.
- Community Services Block Grant.
- Employment and training activities carried out by the U.S. Department of Housing and Urban Development.
- Unemployment Insurance.

The Act specifies several Federal programs and activities that are required to participate in each local One-Stop system. The local area may also include other appropriate Federal, State or local programs—as well as private sector initiatives—as partners in the One-Stop system. Ultimately, a local community could have dozens of designated partners in their system.

Each One-Stop partner is required to enter into a Memorandum of Understanding (MOU) with the local board. The MOU will describe: (1) the services to be provided through the One-Stop system; (2) how the costs of the services and the operating costs of the system will be funded; (3) methods of referral of individuals between the One-Stop Operator and the One-Stop partners; (4) the duration of the MOU; and (5) the procedures for amending the MOU. The MOU may also be used to address such other issues as the parties determine are appropriate. One-Stop partners also are required members of the local board —in order to provide them with an integral role in policy development and overall system evaluation

A One-Stop operator will be designated to manage the day-to-day functioning of the local One-Stop system. One-Stop operators may be designated or certified through a competitive process or in accordance with an agreement reached between the local board and a consortium of entities that, at a minimum, includes three or more of the mandatory One-Stop partners. A wide range of organizations and entities—such as postsecondary educational institutions, local Employment Service offices, community-based organizations, private for-profit entities, or government agencies—are eligible to be designated or certified as a One-Stop operators. However, a local board may only be designated or certified as a One-Stop operator with the agreement of the chief local elected official and the Governor.

Each local area is required to have at least one physical "full service" center at which customers can access services from each of the One-Stop partners. This comprehensive center can be augmented by additional "full service" centers and through a network of affiliated sites, or a network of One-Stop partners that can consist of physical sites or electronic access points.

Regardless of the design that a local area chooses, it must be based on a "no wrong door" approach which will assure customers that information all of the core services will be available regardless of where the individuals initially enter the system. This means it does not matter whether an individual enters the system as a UI claimant or as a job seeker seeking information through the Employment Service—in either case, he or she will have access to the full range of services available through the local system.

Adults and Dislocated Workers—A Continuum of Services. It is envisioned that One-Stop centers will offer a wide spectrum of services—ranging from self-service activities such as using a computer to get information from America's Job Bank, to intensive staff-assisted services such as group counseling, and include access to training and other services for which the individual may be eligible. While this range of services is to be made available, the levels to be offered are not prescribed in the Act. Individuals with special needs—for example, persons with disabilities, non-English speaking persons, or those who lack computer skills—will be accommodated so that they can access all services offered for which they are eligible.

There are separate funding streams for adults and dislocated workers. For both, the Act provides for three levels of services: core services; intensive services; and training. These levels of services are to be accessed sequentially—that is the more extensive levels of services are provided when the individual is unable to obtain employment with the more basic services.

In the new system, "placement" no longer needs to be immediately followed by "termination." This will result in a shift from short-term "episodic" fixes to a system where individuals can access information and services continuously throughout their lifetime. This focus will provide new opportunities for low-wage workers to benefit from the workforce investment system. For example, former welfare recipients who are placed in a job through the Welfare-to-Work initiative will be able to remain in the workforce investment system and continue to obtain the information and services they need in order to progress through the labor market.

Core Services. In the new workforce investment system, all Americans will see the One-Stop Centers as a community resource they can use throughout their lifetime to enhance their job skills as they move up the career ladder—rather than just a place to go in times of a crisis, such as when they lose their jobs. Previously, only Wagner-Peyser funds could be used to provide labor market information and labor exchange services for any employer or job seeker without regard to specific program eligibility. This Act expands the concept of universal access to all core services provided through the One-Stop Centers. By integrating the services offered through multiple programs and using available technology, the One-Stop system will be able to offer customers—job seekers and employers—a choice of any or all core services and information. The combination of Wagner-Peyser funds, funds from the Workforce Investment

Act, and funds from other One-Stop partners should result in a dramatic expansion of accessability to core services.

Core Services

- Determination of eligibility of services.
- Outreach, intake (which may include worker profiling), and orientation to the One-Stop system.
- Initial assessment.
- Job search and placement assistance, and career counseling.
- Provision of labor market information.
- Provision of information on:
- Eligible training providers;
- Local performance outcomes;
- One-stop activities;
- Filing claims for Unemployment Insurance;
- Supportive services.
- Assistance in establishing eligibility for Welfare-to-Work and financial aid assistance.
- Follow-up service.

Consistent with the MOU and the legal requirements applicable to each One-Stop partner, the core services in the centers and One-Stop system may be provided by the partners, the operator, or through other arrangements. Local boards cannot directly provide core services unless the chief local elected official and the Governor agree to allow the board to provide such services.

It is important to note that the Employment Service has been and will continue to be an essential component of any One-Stop system. The Act requires that all basic Wagner-Peyser-funded labor exchange services be provided as part of the One-Stop system. Similarly, the One-Stop system is intended to maintain close linkages to the unemployment insurance system. In addition to providing information on filing for UI as a core service, the system would also be the provider of reemployment services to UI claimants who are "profiled" as needing these services to become reemployed. The UI program may be co-located in the centers, the centers may be a source for filing telephone claims for UI assistance, or other arrangements may be made. Finally, through the Employment Service component of the One-Stop, the system will continue to assist the UI program in verifying that UI claimants are actively seeking employment.

Intensive Services. Intensive services may be provided to adults and dislocated workers who are unemployed and are unable to obtain employment through core services, if the One-Stop operator determines that the individual is in need of more intensive services in order to obtain employment. Adults and dislocated workers who are employed, but who are determined by the One-Stop operator to be in need of intensive services in order to obtain or retain employment that allows for self-sufficiency are also eligible to receive intensive services.

Intensive Services

- Comprehensive and specialized assessments of skill levels (i.e. diagnostic testing);
- Development of an individual employment plan;
- Group counseling;
- Individual counseling and career planning;
- Case management;
- Short-term prevocational services.

Intensive services may be provided by One-Stop operators or through contracts with service providers, including contracts with public, private for-profit and private nonprofit service providers, approved by the local board. Local boards cannot directly provide intensive services unless the chief local elected official and the Governor agree to allow the board to provide such services. If the local board and the Governor determine that there is a shortage of adult funds in the local area, they will direct the One-Stop operator to give priority in the use of these funds for intensive services to welfare recipients and other low-income individuals.

Training Services. Individuals who have met the eligibility requirements for intensive services, and are unable to obtain or retain employment through intensive services may receive training services. Through the One-Stop system, these individuals will be evaluated to determine whether or not they are in need of training and if they possess the skills and qualifications needed to participate successfully in the training program in which they express an interest. Training services must be directly linked to occupations that are in demand in the local area, or in another area to which the individual receiving services is willing to relocate. As with intensive services, in areas where the local board and the Governor determine that adult funds are limited, welfare recipients and other low-income individuals shall receive priority in the use of such funds for training services.

The underlying principle of the provision of training services under the Act is customer choice. One-Stop centers will provide access to consumer information relating to training providers that can assist individuals in gaining relevant skills—including information on the performance of such providers in placing graduates in employment. Through local boards, each State will compile a list of eligible training providers that meet performance levels as set by the Governor, and adjusted upward, as appropriate, by local boards. Individuals may choose any provider from the list of approved providers, whether or not the provider is located in the local area where the individual resides. In addition, States may enter into agreements on a reciprocal basis which allow individuals to access training in another State.

The Act creates a market-based system for training services, and will provide "a level-playing field" for a wide array of providers—large and small, public and private. Those who provide training services under the Act will have to meet the test private businesses face every day. They will have to deliver value to their customers, or risk losing them. With individuals making their choices based on past performance, ineffective training providers will not survive.

With limited exceptions, training services will be provided through the use of Individual Training Accounts (ITAs). States and local boards will determine how to structure the ITA system in their local areas. For example, an ITA could take a variety of forms such as a voucher, credit, debit card, or even a repository for training funds from other programs. In addition, the law does not prescribe a limit on the amount that may be provided to assist an individual in obtaining training, but does not preclude a State or locality from establishing such limits.

Training services may be provided through a contract for services instead of an ITA only if: (1) such services are on-the-job training provided by an employer or customized training; (2) the local board determines there are an insufficient number of eligible providers of training services in the local area (such as rural areas) to accomplish the purposes of the ITA system; or (3) the local board determines that there is a training program of demonstrated effectiveness offered in the local area by a community-based organization or another private organization to serve special participant populations that face multiple barriers to employment (e.g. individuals with substantial language or cultural barriers, offenders, homeless individuals, or other hard-to-serve populations as determined by the Governor). Local boards may not directly provide training services unless they receive a waiver from the Governor. Since the intent of the Act is to reform the local service delivery system, and to move away from the

current practice of contracting for blocks of services, and then finding participants to fill them—these exceptions are meant to be limited.

Youth Programs. Through the reform of the current youth training system and the Job Corps program, and the authorization of the Youth Opportunity Area initiative, the Act provides a variety of activities that will prepare youth for academic and employment success. The youth programs authorized under this Act are designed to create youth systems that are closely linked to the labor market and are designed to provide participants with a comprehensive set of service strategies.

Formula Youth Program. Through the combination of the Year-Round Youth Training funding stream and the Summer Youth Employment Program funding stream into a single youth funding stream, local areas will have greater discretion in determining how to allocate resources to serve youth. The new single youth program fuses youth development activities (i.e. leadership growth opportunities such as community service) with traditional employment and training activities. It is based upon several key elements: integrated academic and vocational education; integrated work-based and classroom-based instruction; effective connections to intermediaries with strong links to the job market and employers; and intensive private-sector involvement.

A Youth Council will be established as a subgroup of the local board in each local area and will include representatives of: youth service agencies; parents; public housing authorities; Job Corps; former youth program participants; and other appropriate individuals. The Youth Council will be responsible for developing portions of the local plan relating to youth, recommending the providers of youth activities to be awarded grants by the local board, conducting oversight of these providers, and coordinating youth activities in the local area. The creation of these councils will be an unprecedented opportunity for a broad range of entities to play an integral role in the development and oversight of the youth development and training system. and facilitate the enhanced coordination of youth services. Youth services are to be delivered by entities that are competitively awarded a grant or contract by the local board to provide such services. Such entities may or may not be the same as those providing services under the One-Stop system in the local area. Each local area can determine the extent to which they want to integrate youth services with the adult and dislocated worker delivery system based in the One-Stop. It is envisioned that States and localities would make connections to the adult system through relationships with the private sector and higher education institutions, and through their streamlined administrative structure.

In order to be eligible for services, a youth must be ages 14–21, low income, and meet at least one of the six specified barriers to employment. Five percent of the youth served in a local area may be non-low-income if they experience one or more specified barriers to school completion or employment. In addition, in an attempt to focus resources on those most in need, thirty percent of funds in each local area must be expended on out-of-school youth. Youth that do not meet the eligibility requirements must be referred to the One-Stop or another appropriate program for further assessment in order to meet the basic skills and training needs of the individual.

Eligible Youth—Barriers to Employment

- Basic skills deficient;
- A school dropout;
- Homeless, a runaway, or a foster child;
- Pregnant or a parent;
- An offender;
- An individual who requires additional assistance to complete an educational program, or to secure and hold employment.

The new law requires an individual assessment of skill levels and service needs and the development of a service strategy for each youth participant. The Act also outlines the required elements of the youth program. These elements are to include such activities as: tutoring, study skills training and instruction; alternative secondary school services; summer employment opportunities; paid and unpaid work experiences; occupational skill training; leadership development activities; supportive services; adult mentoring; and comprehensive guidance and counseling. An emphasis is placed on longer-term service through the provision of adult mentoring both during and after participation, for a total of not less than one year, and follow up services for not less than one year after the completion of participation. In addition, each participant must be provided information on the full array of appropriate services that are available through the local One-Stop system.

Youth Opportunity Grants The Act authorizes the Youth Opportunity Grants initiative to direct resources to Empowerment Zones, Enterprise Communities, and other high-poverty areas, to provide comprehensive services designed to increase employment and school completion rates of youth. Through a national competitive grant process, the initiative will provide employment and training services to all disadvantaged youth in high-poverty areas for an extended period to change the culture of joblessness and high unemployment. Local boards will be the recipients of these grants, thus ensuring a strong linkage between these targeted investments and the formula youth program. The funds provided are to be used for the youth activities required under the formula program, and youth development activities such as leadership development, community service, and recreation activities. In addition, the program must provide intensive placement services and follow-up services for not less than two years after a youth has completed participation in other activities.

Job Corps The Act contains several changes designed to strengthen the Job Corps program and to ensure that it functions as an integral part of the workforce investment system. The new provisions will ensure strong linkages among Job Corps centers, State workforce investment systems, employers, and local communities. It also assures that applicants are assigned to centers nearest to their homes.

Due to the size and scope of the Job Corps investment, the Act holds the program and individual Job Corps centers accountable to additional requirements. The Act identifies core indicators of performance including vocational completion and placement rates of students, earnings and retention in employment. It also requires the provision of continued services to graduates for one year after completion of the program.

The Act requires Job Corps centers to have a business and community liaison and an industry council to enhance cooperation with business. These requirements ensure connections between local labor markets and Job Corps centers, that the vocational training offered is relevant to labor market needs, and that participants learn occupational skills that are in demand in their home communities.

National Programs

Native Americans. Grants to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals are authorized in order: (1) to develop more fully the academic, occupational, and literacy

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skills of such individuals; (2) to make such individuals more competitive in the workforce; and (3) to promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of these communities. Provisions are similar to those contained in the Job Training Partnership Act. The Native American Employment and Training Council is retained to provide the Secretary of Labor with advice on program operations and administration. In addition, authority was added allowing the Secretary to waive statutory or regulatory requirements of this program (other than labor standards) pursuant to a request from a grantee.

Migrant and Seasonal Farmworkers. Similar to provisions in the Job Training Partnership Act, grants to support migrant and seasonal farmworkers and their dependents are authorized to: (1) strengthen the ability of the eligible individuals to obtain or retain unsubsidized employment or stabilize their unsubsidized employment; and (2) provide supportive services and related assistance. The Act adds specific eligibility criteria for migrant and seasonal farmworkers. In addition, funds are specifically earmarked for migrant youth activities.

Veterans. The Act retains the current law veterans' employment program (JTPA title IV-C) and expands the eligibility for the program to include, in addition to veterans with service-connected disabilities and recently separated veterans, veterans who have significant barriers to employment and veterans who served on active duty in the armed forces during a war or in which a campaign badge has been authorized (e.g. the Persian Gulf War).

National Activities

The Act requires the Secretary to conduct a wide variety of national activities. Every two years the Secretary must publish a plan that describes the national activity priorities for the next five-years. This plan, which will be published in the **Federal Register** and shared with Congress, will ensure that investments are planned in a strategic manner. The Act also requires the Secretary to conduct a study on improving the formulas for allocating funds contained in Act.

National Activities

- Technical Assistance.
- Dislocated Worker Technical Assistance.
- Pilot, Demonstration, Multiservice, Multistate and Research projects.
- Dislocated Worker Pilot, Demonstration, Multiservice, Multistate and Research projects.
- Evaluation.
- National Emergency Grants.

Through this broad range of authorized activities, the Department will develop and implement techniques and approaches, and demonstrate the effectiveness of specialized methods, of addressing employment and training needs of individuals. Funds will also be used to evaluate the impact of workforce investment activities. In a change from current law, most awards are subject to competitive requirements, matching requirements, peer review, and time limits. These provisions will ensure the continued integrity of these investments.

Holding States and Localities Responsible for Results

Consistent with the performance-based approach provided in the Government Performance and Results Act (GPRA), the Department is placing a special emphasis on the area of program performance. This includes a focus on: outcomes rather than inputs; results rather than process; and continuous improvement rather than management control. The performance provisions contained in the Act reflect this emphasis, and provide increased flexibility in service delivery in exchange for increased accountability for results. Through these provisions, the Act strives to establish a comprehensive performance accountability system in order to optimize the return on investment of Federal funds in State and local workforce investment activities. This accountability system will assess the effectiveness of States and local areas in achieving positive results as well as the continuous improvement of their workforce investment systems.

Core Indicators of Performance. The Act establishes core indicators of performance for all adult, dislocated worker, and youth programs to be applied to States as well as local areas. The core indicators of performance for adult and dislocated worker activities (except for self-service and informational activities) and for youth participants age 19–21 include:

1. Entry into unsubsidized employment;
2. Retention in unsubsidized employment 6 months after entry into employment;
3. Earnings received in unsubsidized employment 6 months after entry into the employment; and
4. Attainment of a recognized credential relating to achievement of educational or occupational skills for individuals who enter employment. (For youth age 19–21, educational and skill attainment is measured for all individuals who enter postsecondary education, advanced training, or employment.)

The core indicators of performance for youth age 14–18 include:

1. Attainment of basic skills and, as appropriate, work readiness or occupational skills;
2. Attainment of secondary school diplomas and their recognized equivalents; and
3. Placement and retention in postsecondary education or advanced training, or placement and retention in military service, or employment—including qualified apprenticeship.

In addition, a customer satisfaction indicator must be established that measures employers' and participants' satisfaction with the services received under this Act. The inclusion of a customer satisfaction indicator is important because securing employment is not the sole concern when job-seekers enter the workforce investment system. Customers are also concerned with their access to quality information, their treatment by program staff, and their access to services—in short, how well they feel that the system met their needs. Recent research suggests that satisfaction with these other aspects of a system are important to individuals whether or not they find a stable job as a result of a training program or other service.

States also have the ability to identify additional indicators of performance, and must report annually on a number of other indicators specified in the Act, including employment, retention and earnings (12 months after entry into employment) and performance information on specific population groups.

Negotiated Levels of Performance. For each core indicator, and the customer satisfaction indicator, the State will negotiate its expected levels of performance for the State as a whole with the Secretary. These levels must be included in the State Workforce Investment Plan and the negotiation must be completed before a State receives any funds under the Act. Several factors are to be taken into account in this negotiation process: (1) the extent to which the levels will assist the State in attaining a high level of customer satisfaction; (2) how the levels compare with the levels for other States—taking into account differences in economic conditions, characteristics of participants, and the services to be provided; and (3) the extent to which

the levels promote continuous improvement in performance and ensure optimal return on the investment of Federal funds.

The State will carry out a similar negotiation with the local areas within their State—taking into account specific economic, demographic and other characteristics of the areas—to establish their expected levels of performance for each core indicator.

Incentives, Sanctions and Technical Assistance: In an effort to drive positive results and continuous improvement, the Act contains strong ties between performance and funding. If a State fails to meet its expected levels of performance in any year, it can request technical assistance from the Department of Labor. If a State continues to fail to meet its agreed-upon performance levels for a second year—or if a State fails to report its performance information in any year—its funding can be reduced by up to five percent. If a State exceeds its expected levels of performance—as well as its levels of performance under Adult Education and Vocational Education—it will receive an incentive grant which must be used to finance innovative workforce investment projects within the State. The linking of performance for these three programs—workforce investment, adult education, and vocational education—illustrates the importance of collaboration of those systems.

New Roles and Flexibility

Partnerships at all levels—local, State and Federal—and across the system is the hallmark of the new workforce investment system. All levels will be required to coordinate and collaborate with agencies and entities that have not been a part of the "traditional" workforce development system. The incorporation of programs and activities administered by agencies other than the Department of Labor into the One-Stop system will require enhanced coordination between Labor, Education, Housing and Urban Development, Transportation, Health and Human Services, and Agriculture—and will require these entities to develop collaborative strategies for service delivery and work towards common goals. In addition, it is envisioned that business, labor organizations, community organizations, school, and other interested entities will be fully involved in the design and quality assurance of the new system. Dialogue with customers, partners, stakeholders, and Congress will be ongoing and consistent—at every level, and between levels.

Accountability and responsibility for outcomes at all levels of the system will exist, with each level having unique and integral roles and responsibilities. This will result in high quality, effective services for customers.

Local: In the new system, the local level remains key for policy and administrative decisions. It is where customers access services and where the design for the new One-Stop system and the consumer-driven training system will be implemented. Local Workforce Investment Boards will have important roles in the new system. Some of these roles include the development of a 5-year local plan, the identification of eligible providers of training services, and coordination of activities across programs. Through the local plan, the operation of the workforce investment system can be tailored to meet local needs.

The chief local elected officials continue to have a central role in the administration of workforce investment activities. Specifically, the chief local elected official:

- Appoints the members of the local board, which is responsible for establishing workforce investment policies in the local area;
- Develops, in collaboration with the local board, the local workforce investment plan, which specifies the types of services that will be provided, such as summer youth employment and training;
- Serves, or designates an entity to serve, as the grant recipient for job training funds provided under the Act, which includes the responsibility for receiving and disbursing formula grant funds;
- Works with the local board to conduct oversight of the One-Stop customer service system in the local area, designates and certifies One-Stop operators, appoints One-Stop partners (i.e., participating programs) and develops and approves the memoranda of understanding under which the One-Stop system will be administered; and
- Works with the local board to negotiate with the Governor the performance levels that will be applicable to local areas and that could result in incentive funds or sanctions.

Additionally, representatives of chief elected officials are members of the State board that develops the State plan and carries out other statewide activities.

State: The Act includes numerous features designed to provide States with increased flexibility in designing and implementing workforce investment systems. It also prescribes new roles for Governors. For example, the Workforce Investment Act:

- Eliminates mandatory set-asides for education coordination grants and older worker programs, and combines the year-round and summer youth programs into a single funding stream—resulting in far fewer funding constraints.
- Requires that each State establish a business-led State Workforce Investment Board, consisting of the Governor and appointees of the Governor representing business, education, labor, local elected officials and others, to develop a comprehensive 5-year strategic State plan for all workforce investment activities, and monitor the operation of the workforce investment system.
- Allows Governors to submit a single "unified" State plan covering numerous Federal education, training and employment programs. This provision also includes a requirement for joint planning and coordination through which the entities responsible for planning or administering such programs will review and comment on all components of the plan.
- Allows, through the inclusion of grandfathering provisions, features of State laws enacted prior to December 31, 1997 relating to designation of service areas and sanctioning of local areas for poor performance that are inconsistent with the Act. In addition, all States may retain their existing State councils and local boards created under JTPA if they substantially meet the requirements of the Act and were in existence on December 31, 1997.
- Assures that States retain any existing waivers that they have received from the Department of Labor and codifies the Secretary of Labor's waiver authority that previously only existed in annual Appropriations language. In addition, the Act expands eligibility for "Work-Flex" to all States—flexibility that is currently limited to a six State demonstration.
- Increases, significantly, the Governor's flexibility in using State reserve funds to finance activities that are State priorities. Under the Act, the State reserves fifteen percent from each of the three funding streams and may merge those funds and use them for an array of workforce investment activities—including incumbent worker projects.
- Provides the Governor with a significant new role in developing performance measures. They will have an important new opportunity to affect the measures that will be used to evaluate the effectiveness of the workforce investment system in their State.

State Workforce Investment Boards will also play an important role in the design and implementation of State systems. For example, the Board will assist the Governor to develop a 5-year strategic plan, continuously improve the system, designate local workforce investment areas, develop State performance measures, and develop allocation formulas.

Federal: The Federal role also is changing. The Federal role in the new workforce investment system will be one of a leader and an enabler—with a focus on ensuring overall accountability for results rather than adherence to administrative process. The Federal role can be separated into the following areas that range from the most "hands-on" activities, to facilitating progress, to the administrative and support functions needed in this new system:

- Strategic planning and policy formulation which defines and focuses the direction of the public system.
- Performance accountability to ensure that States and localities meet program performance requirements and provide the highest level of service to customers.
- Knowledge development which provides important research and evaluation findings to the workforce investment system to facilitate better ways of delivering workforce investment-related activities.
- Technical assistance which provides expert assistance to State and local partners and other stakeholders.
- Administration and oversight to ensure financial accountability of programs and compliance with legal requirements.
- Prototype information systems which design and support national information and communication needs.

Transition Efforts

The Department is in the process of organizing for the transition to the new workforce investment system. An implementation task force has been appointed, and a number of workgroups have been established to focus on a wide variety of transition issues. The following workgroups have been established: (1) Policy Development; (2) Performance Accountability; (3) Outreach and Communications; (4) Administration and Close-Out; (5) Program Services; and (6) Technical Assistance.

Although States are not required to fully implement all of the requirements of the Act until July 1, 2000—the Department encourages States that are ready to implement early, beginning July 1, 1999. In order to enable States to implement beginning in July of 1999—the Department intends to work quickly to develop planning guidance. The Department intends to publish interim final regulations in the **Federal Register** by early February 1999.

The Department recognizes that flexibility is key to implementing the legislation. The Act is not the status quo; and a "do it this way" approach dictated by the Federal government will not work. States and local areas must be able to work in partnership to address the needs of workers and employers by designing systems that make sense for local labor markets and produce results. We can help as a partner, but the most important linkages will be ones forged at State and local levels.

Consultation Process. The transition can only be enhanced by tapping into established networks to draw on the broadest possible participation and contribution to the planning, implementation and follow up of the Workforce Investment Act by the organizations and people who will be the ones to make it happen. The Department of Labor is taking an all inclusive approach to engaging the system in the implementation of the Act. A variety of strategies will be used to ensure continuous, two-way communication between the Federal, State, and local partners, stakeholders, and other interested organizations and individuals.

Information will be openly shared throughout the planning and implementation process. Input will be sought on a continuous basis to ensure that this process is truly a collaborative one. Various meetings of workforce investment partners, customers, and other stakeholders will be used as an arena to share current information on proposed implementation policies/strategies as well as seek input from the system. In addition, various roundtables and policy forums will be held in each of the Department's ten regions to facilitate and encourage a continuous face-to-face dialogue throughout the planning and implementation process.

A workforce investment website (http://usworkforce.org) has been established to provide a vehicle for continuous, ongoing communications. The website is intended to function as an open forum for dialogue between federal, state, local partners, stakeholders and other interested individuals and organizations. This website will enable implementation plans to be shared as they are developed, questions to be raised, issues to be surfaced, and solutions to be proposed. A question and answer system is being developed to provide a medium through which the Department can respond to questions raised by State and local partners and individual stakeholders. Once answers are developed, they will be posted promptly on the website. Hard copies of questions and answers will be prepared and distributed to the system on a periodic basis.

Regulations. The Department intends to publish interim final regulations by early February 1999, with final regulations scheduled to be issued by the end of 1999. The Department has developed a set of principles to guide the regulations writing process. These principles include:

- *Customer First.* The first consideration in writing regulations will be to consider how they may impact on service to the customers—participants and employers.
- *Consistency.* The regulations will be internally consistent, in terms of the message, tone, length and quality, and written in a style that conveys information in a manner that is easy to read and understand.
- *Input on Key Issues.* Input will be sought from the workforce investment community as a whole through various media and through individual workgroups, as appropriate, on issues which need to be addressed in regulations before and during regulation writing.
- *Minimal Regulations.* Regulations will be prepared only when:—clarifications are needed to implement legislative provisions;—explanations on how the agency intends to interpret the Act are necessary;—specific issues are not addressed in the legislation requiring a rule to fill gaps in the legislation; and—policy guidance would be insufficient to allow grantees to ensure that critical provisions are implemented.
- *Flexibility.* All regulations will permit the maximum flexibility to customers as well as State and local governments in terms of service and implementation of legislative provisions.
- *Administrative Feasibility.* Regulations will be written in a manner which permits persons at State and local levels to use them under a variety of circumstances.

Technical Assistance: By early 1999, a comprehensive technical assistance strategy will be in place. It is envisioned that the technical assistance effort will focus on three areas: (1) Assisting States and localities in closing-out the JTPA system; (2) assisting "early implementers"— States that will begin operating under the Act in 1999; and (3) assisting States that will not begin

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implementing the new requirements until the year 2000.

Initial Implementation Timeline

The Department intends to meet the following timeline for the implementation of the new system:

Begin Consultations on Planning/Program/Policy Guidance, *September 1998*

Regions and States Identify Closeout Issues, *October 1998*

Publish Planning Guidance, *November 1998*

Publish Interim Final Regulations, *February 1, 1999*

Early States Submit Plans, *April 1, 1999*

Early State Implementation and Operation, *July 1, 1999*

Publish Final Regulations, *December 31, 1999*

All States Implementing Workforce Investment Act, *July 1, 2000*

For Further Information Contact: Workforce Investment Act Implementation Taskforce Office, U.S. Department of Labor, 200 Constitution Ave. NW, Room S5513, Washington, D.C. 20210, Telephone: (202) 219–0316 (voice), 1–800–326–2577 (TDD), Fax: (202) 219–0323, E-mail: wia98tf@doleta.gov, Website: http://usworkforce.org.

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To authorize the Automobile National Heritage Area in the State of Michigan, and for other purposes. (Nov. 6, 1998; 112 Stat. 3247)

S. 2232/P.L. 105–356

To establish the Little Rock Central High School National Historic Site in the State of Arkansas, and for other purposes. (Nov. 6, 1998; 112 Stat. 3268)

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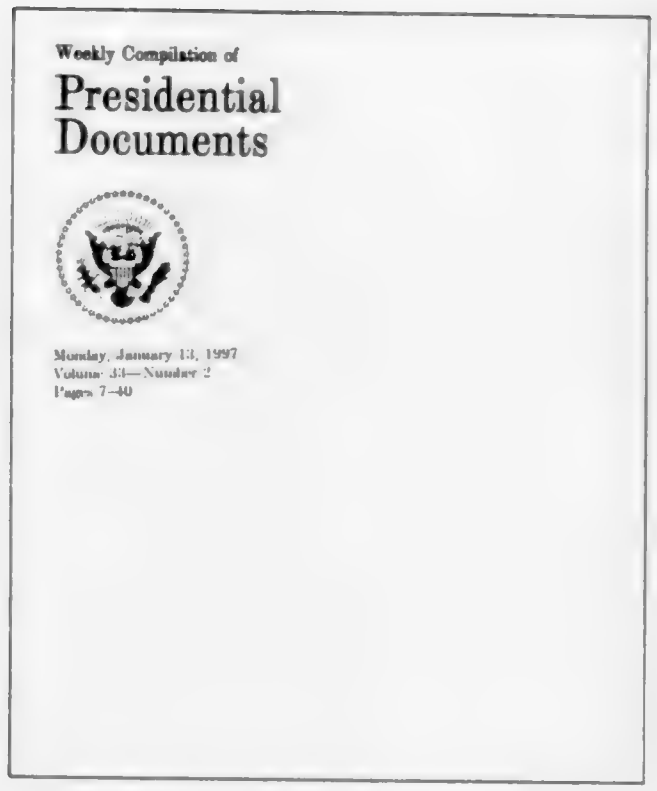

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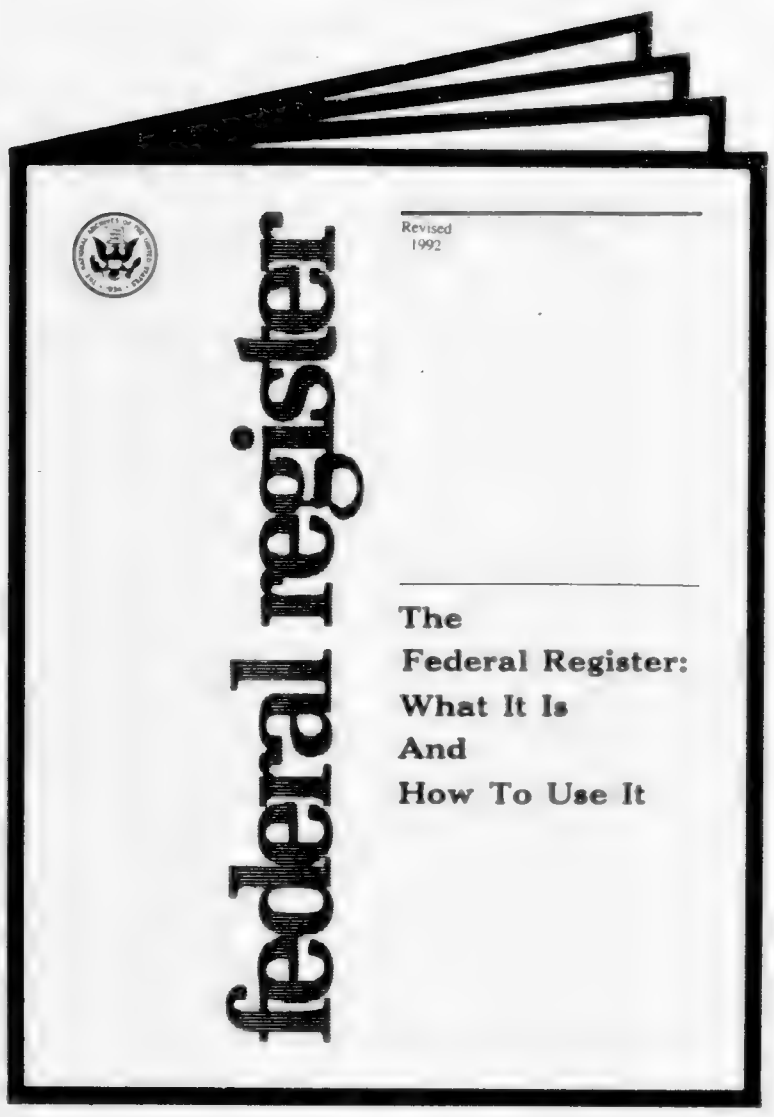

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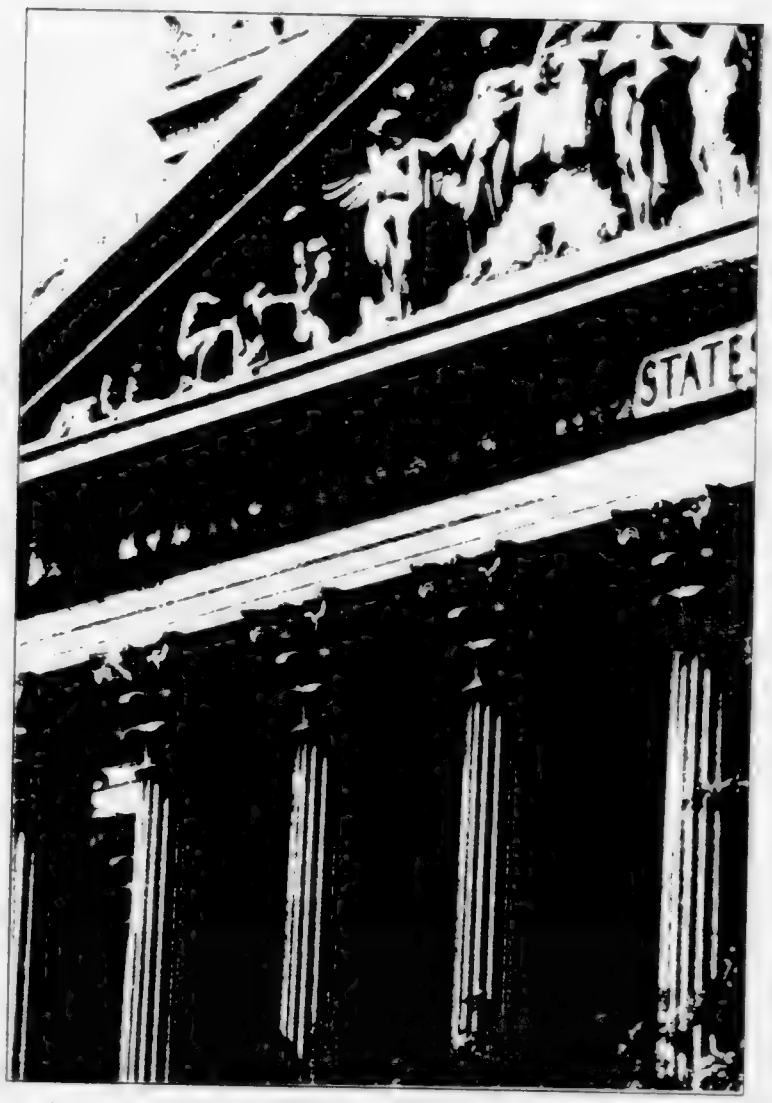

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VOL 63 ISS 219 NO 13 1998 UMI

Rules and Regulations

Federal Register
Vol. 63, No. 219
Friday, November 13, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AH07

Cost-of-Living Allowances (Nonforeign Areas); Kauai, HI; U.S. Virgin Islands

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: The Office of Personnel Management (OPM) published a final rule on October 21, 1998 (63 FR 56430), concerning cost-of-living allowance rates for certain Federal employees in Kauai, HI, and the U.S. Virgin Islands. This rule adopted as final a previous interim rule (62 FR 14188, March 25, 1997) that raised the COLA rates in these two areas. In transcribing the implementation date from the interim rule, we inadvertently used "1998" instead of "1997." The correct implementation date is shown in the **DATES** section that follows.

DATES: *Effective date:* November 20, 1998. *Implementation date:* The rate increases authorized by these regulations are applicable as of the first day of the first pay period beginning on or after March 25, 1997.

FOR FURTHER INFORMATION CONTACT: Kurt Springmann, (202) 606–2838, FAX: (202) 606–4264, or email at COLA@opm.gov.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 98–30510 Filed 11–12–98; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–088–1]

Asian Longhorned Beetle; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations by adding three areas in and around Chicago, IL, to the list of quarantined areas and restricting the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Asian longhorned beetle to noninfested areas of the United States.

DATES: Interim rule effective November 6, 1998. Consideration will be given only to comments received on or before January 12, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–088–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–088–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–5255; or e-mail: Ron.P.Milberg@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB) (Anoplophora glabripennis), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. It is known to attack healthy maple, horse chestnut, birch, Rose of Sharon, poplar, willow, elm, locust, mulberry, chinaberry, apple, cherry, pear, and citrus trees. It may also attack other species of hardwood trees. In addition, nursery stock, logs, green lumber, firewood, stumps, roots, branches, and debris of a half an inch or more in diameter are subject to infestation. ALB bores into the heartwood of host trees, eventually killing the host trees. Immature beetles bore into tree trunks and branches, causing heavy sap flow from wounds and sawdust accumulation at tree bases. They feed on, and over-winter in, the interior of the trees. Adult beetles emerge in the spring and summer months from round holes approximately 3/8-inch diameter (about the size of a dime) that they bore through the trunks of trees. After emerging, adult beetles feed for 2 to 3 days and then mate. Adult females then lay eggs in oviposition sites that they make on the branches of trees. A new generation of ALB is produced each year. If this pest moves into the hardwood forests of the United States, the nursery and forest products industries could experience severe economic losses.

The Asian longhorned beetle regulations (7 CFR 301.51–1 through 301.51–9, referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of ALB to noninfested areas of the United States. Portions of New York City and Nassau and Suffolk Counties in the State of New York are already designated as quarantined areas.

Recent surveys by inspectors of Illinois State, county, and city agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that infestations of ALB have occurred in and around the Chicago, IL, area. Specifically, infestations have been found in the Ravenswood area in the city of Chicago; in the village of Summit, IL; and in the unincorporated areas of Dupage County near Addison, IL. Officials of the U.S. Department of Agriculture and officials of State, county, and city agencies in Illinois have begun an intensive survey and eradication program in the infested areas. The State of Illinois has quarantined the infested areas and is restricting the intrastate movement of regulated articles from the quarantined areas to prevent the artificial spread of

ALB within the State. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined area to prevent the artificial spread of ALB to other States and Canada.

The regulations in § 301.51–3(a) provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which ALB has been found by an inspector, in which the Administrator has reason to believe that ALB is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where ALB has been found.

Less than an entire State will be designated as a quarantined area only if the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles, and the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are amending § 301.51–3(c) by adding three areas in and around Chicago, IL, to the list of quarantined areas. The new quarantined areas are described in the rule portion of this document.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the ALB from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Under the Plant Quarantine Act and the Federal Plant Pest Act (7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167), the Secretary of Agriculture is authorized to regulate the interstate movement of articles to prevent the spread of injurious plant pests in the United States.

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this interim rule on small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this interim rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this interim rule.

This interim rule amends the ALB regulations by quarantining three areas in and around Chicago, IL, and restricting the interstate movement of regulated articles from the quarantined areas. This action is necessary on an emergency basis to prevent the spread of ALB to noninfested areas of the United States.

Within the newly quarantined areas for ALB, nurseries, arborists, tree removal services, and firewood dealers could be affected by this interim rule. They could be affected in two ways. First, if a business wishes to move regulated articles interstate from a quarantined area, that business must either: (1) Enter into a compliance agreement with APHIS for the inspection and certification or limited permitting of regulated articles for interstate movement from the quarantined area; or (2) present its regulated articles to an APHIS inspector for inspection and obtain a certificate or a limited permit, issued by the APHIS inspector, for the interstate movement of the regulated articles. In either case, the inspections of regulated articles may be inconvenient, but these inspections do not result in any additional direct costs for businesses because APHIS provides the services of the inspector without cost, as long as those services are administered during normal working hours. There is also no cost for the compliance agreement, certificate, or limited permit for interstate movement of regulated articles.

However, some regulated articles, because of ALB infestation, may not qualify for interstate movement under a certificate or limited permit. In this case, a business wishing to move such regulated articles interstate from a quarantined area would be deprived of the opportunity to benefit from the sale of the affected regulated articles in another State. However, we do not have data to estimate either the potential loss of income or the economic impact of any potential loss of income on small businesses.

If this rule is not implemented, there is potential for serious economic losses to many businesses, both large and small, in the United States. ALB has the potential to cause extensive tree damage. In the eastern region of the United States alone, which includes the north-central States, there are 279 million acres of hardwood forests, representing about 75 percent of the land of all eastern forests. That forest acreage is in addition to land in urban and suburban areas, where hardwood trees are common in streets, backyards, and parks. It is estimated that maple trees account for at least 30 percent of the street and park plantings in urban areas. Nursery stock and certain fruit trees are also at risk.

Industries at risk to the spread of ALB are important economically. The forest products industry provided employment to 1.6 million U.S. workers in 1986, the last year for which complete data is available, 9 percent of the employment in all industries that year. For the United States as a whole, timber was the most important agricultural crop in 1986 in terms of the dollar value of production. In 1986, roundwood timber products, at local points of delivery, were valued at $12.6 billion, ahead of corn, which was valued at $12.4 billion. In the north-central United States, timber was the fourth most important agricultural crop in 1986, behind only corn, soybeans, and hay. The value of roundwood timber products harvested in the north-central United States accounted for 8 percent of the employment, 6 percent of the wages and salaries, and 7 percent of the value of shipments of all industries in that area in 1986. This translates to a workforce of 382,000 employees earning $8.6 billion. Industry shipments were valued at $44.8 billion in 1986. In all, forest industry manufacturing in the north-central United States contributed $53.4 billion to the gross national product in 1986. (These statistics on the forest products industry reflect products made from softwood timber as well as

hardwood timber. However, the impact of hardwood timber on the totals is significant. As an example, hardwood accounted for 80 percent of the net volume of growing stock on timberland in eight north-central States in 1992.)

Nonmanufacturing industries that rely on healthy hardwood trees are also important economically. In 1994, the annual average employment and wages at firms in the north-central States engaged primarily in the production of ornamental nursery products, including nursery stock, totaled 18,429 and $303 million, respectively. In 1993, sales of plants (trees and shrubs) by nurseries and greenhouses in the United States totaled an estimated $3.1 billion, of which $525 million was derived from sales in 8 north-central States. During the year ending September 30, 1993, 103.9 million landscape trees were sold in the United States, including 26 million in 8 north-central States. Approximately half of all landscape trees sold in the United States are hardwood trees.

The maple syrup industry relies on healthy maple trees, especially the sugar maple, for its production. In 1995, three north-central States (Michigan, Ohio, and Wisconsin) accounted for about 20 percent of the value of the U.S. maple syrup production ($25.5 million).

The tourism industry is tied heavily to leaf color changes in the fall, and the maple tree is noted for producing some of the most vivid colors. Between mid-September and late October, for example, the hardwood forests of New England draw 1 million tourists and generate $1 billion in revenue. It is estimated that up to one fourth of the tourism revenue generated annually in New England is due to the fall foliage displays. Although to a lesser extent than New England, the forests of the north-central States also generate tourism revenue as a result of leaf color changes in the fall.

The commercial fruit industry is also at risk of pest infestation, as pear, apple, plum, and citrus trees are susceptible to ALB infestation. It is estimated that, for the United States as a whole, the cost of replacing host fruit trees would amount to $5.2 billion alone for pear, apple, and plum orchards, and $10.4 billion for citrus. The fruits of host trees would also be affected by a widespread infestation. The average 1995–1997 value of utilized production in the United States of the four fruits noted above was estimated at $4.7 billion.

The alternative to this interim rule was to take no action. We rejected this alternative because the quarantine of the three areas in Illinois listed in this document is necessary to prevent the spread of the ALB.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that a Federal quarantine for ALB will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**, by calling the Plant Protection and Quarantine Fax Service at (301) 734–3560, or by visiting the following Internet site: http://www.aphis.usda.gov/ppd/ead/ppqdocs.html.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.51–3, paragraph (c) is amended by adding an entry for Illinois, in alphabetical order, to read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

Illinois

City of Chicago. That area in the Ravenswood community in the city of Chicago that is bounded as follows: Beginning at the intersection of Kedzie and Bryn Mawr; then east along Bryn Mawr to the end; then east along an imaginary line to the shoreline of Lake Michigan; then south from the intersection of Kedzie and Bryn Mawr, along Kedzie to Diversey Parkway; then east along Diversey Parkway to the end; then east along an imaginary line to the shoreline of Lake Michigan; then north along the shoreline of Lake Michigan to the point of beginning.

DuPage County. That area near Addison in DuPage County that is bounded as follows: Beginning at the intersection of Fullerton Avenue and Swift Road; then east along Fullerton Avenue to Lombard Road; then north along Lombard Road to Army Trail; then west along Army Trail to Swift Road; then south along Swift Road to the point of beginning.

Village of Summit. That area in the Village of Summit that is bounded as follows: Beginning at the intersection of Archer and 59th Street; then south along Archer to 67th Street; then east along 67th Street to the end; then east along the railroad tracks to Sayre; then north along Sayre to 59th Street; then west

along 59th Street to the point of beginning.

* * * * *

Done in Washington, DC, this 6th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30343 Filed 11–12–98; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 9003 and 9033

[Notice 1998–16]

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final Rule: Announcement of Effective Date.

SUMMARY: On Aug. 27, 1998, the Commission published the text of revised regulations concerning the electronic filing of reports by publicly financed Presidential primary and general election candidates. 63 FR 45679 (Aug. 27, 1998). These regulations implement portions of the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act, as well as Pub. L. 104–79. The Commission announces that these rules are effective as of November 13, 1998.

EFFECTIVE DATE: November 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant Genral Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Today, the Commission is announcing the effective date of new regulations at 11 CFR 9003.1(b)(11) and 9033.1(b)(13), which set forth conditions that Presidential candidates agree to abide by in exchange for receiving public financing for their campaigns. The amendments indicate that if Presidential candidates and their authorized committees computerize their campaign finance records, they must agree to participate in the Commission's recently established electronic filing program as a condition of voluntarily accepting federal funding.

Sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rule or regulation prescribed by the Commission to implement Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR 9003.1(b)(11) and 9033.1(b)(13) were transmitted to Congress on Aug. 21, 1998. Thirty legislative days expired in both the Senate and the House of Representatives on Oct. 21, 1998.

Announcement of Effective Date: 11 CFR 9003.1(b)(11) and 9033.1(b)(13), as published at 63 FR 45679 on Aug. 27, 1998, are effective as of November 13, 1998.

Dated: November 6, 1998.

Scott E. Thomas,

Acting Chairman, Federal Election Commission.

[FR Doc. 98–30297 Filed 11–12–98; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–305–AD; Amendment 39–10878; AD 89–18–07 R1]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125, DH.125, BH.125, and HS.125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Raytheon Model BAe.125, DH.125, BH.125, and HS.125 series airplanes, that currently requires inspection of the elevator mass balance side plate assembly and spigot for corrosion, and repair, if necessary; application of corrosion protection treatment; and installation of corrosion resistant Monel rivets in the elevator balance weight structure. That AD was prompted by reports of corrosion on the elevator mass balance side plate assembly and the balance weight spigot. The actions specified by that AD are intended to prevent such corrosion damage, which could lead to displacement of the side plate and consequent control surface interference and jamming of flight controls. This amendment limits the applicability of the existing AD.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2145; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 89–18–07, amendment 39–6297 (54 FR 33874, August 17, 1989), which is applicable to certain Raytheon Model BAe.125, DH.125, BH.125, and HS.125 series airplanes, was published in the **Federal Register** on August 13, 1998 (63 FR 43338). The action proposed to require inspection of the elevator mass balance side plate assembly and spigot for corrosion, and repair, if necessary; application of corrosion protection treatment; and installation of corrosion resistant Monel rivets in the elevator balance weight structure. The action also proposed to limit the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

Since the issuance of the existing AD, the FAA has reviewed the figures it has used in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations to $60 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Because this AD merely deletes airplanes from the applicability of the

rule, the AD otherwise adds no additional costs, and requires no additional work to be performed by affected operators.

The FAA estimates that 346 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $207,600, or $600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6297 (54 FR 33874, August 17, 1989), and by adding a new airworthiness directive (AD), amendment 39–10878, to read as follows:

89–18–07 R1 Raytheon Aircraft Company (Formerly Beech, Raytheon Corporate Jets, British Aerospace, Hawker Siddeley, et al.): Amendment 39–10878. Docket 97–NM–305–AD. Revises AD 89–18–07, Amendment 39–6297.

Applicability: Model BAe.125, DH.125, BH.125, and HS.125 series airplanes; up to and including series 700; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Note 2: Raytheon (Beech) Model DH.125–400B, BH.125–400B and –600B, HS.125–600B and –700B, and BAe 125–800B series airplanes are similar in design to the airplanes that are subject to the requirements of this AD, and, therefore, also may be subject to the unsafe condition addressed by this AD. However, as of the effective date of this AD, those models are not type certificated for operation in the United States. Airworthiness authorities of countries in which those models are approved for operation should consider adopting corrective action, applicable to these models, that is similar to the corrective action required by this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent control surface interference and jamming of flight controls, accomplish the following:

(a) Within 3 years since the date of airplane manufacture, or within 60 days after September 21, 1989 (the effective date of AD 89–18–07, amendment 39–6297), whichever occurs later, accomplish the following:

(1) Inspect the elevator mass balance weight side plate assembly and balance weight spigot for corrosion, in accordance with British Aerospace Service Bulletin 27–142, Revision 2, dated June 10, 1987, or Revision 3, dated November 13, 1989. Any corrosion detected during this inspection must be repaired prior to further flight, in accordance with the service bulletin.

(2) Apply corrosion protection treatment and install Monel rivets, part number MS9318–052, or British Standard Specification SP88–304 rivets, in the elevator balance weight structure, in accordance with British Aerospace Service Bulletin 27–142, Revision 2, dated June 10, 1987, or Revision 3, dated November 13, 1989.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with British Aerospace Service Bulletin 27–142, Revision 2, dated June 10, 1987, or British Aerospace Service Bulletin 27–142, Revision 3, dated November 13, 1989, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	3	November 13, 1989.
2	Original	May 15, 1987.
3	2	June 10, 1987.
4	1	May 21, 1987.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 18, 1998.

Issued in Renton, Washington, on November 3, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30050 Filed 11–12–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–294–AD; Amendment 39–10887; AD 96–04–11 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes Equipped With Rolls Royce Model RB211–535E4/E4B Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 757–200 series airplanes, that currently requires a revision to the Airplane Flight Manual to ensure that the flightcrew activates the engine cowl thermal anti-ice (CTAI) system for both engines at the top of descent to avoid engine rundown (loss of engine power). This amendment clarifies the relationship between two existing AD's. The actions specified in this AD are intended to ensure that the flightcrew activates the engine cowl thermal anti-ice system for both engines prior to descent; activation of the engine CTAI system in the middle of descent could result in a compressor stall and subsequent engine rundown of multiple engines.

DATES: Effective November 30, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–294–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Information pertaining to this amendment may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On February 15, 1996, the FAA issued AD 96–04–11, amendment 39–9523 (61 FR 6935, February 23, 1996), applicable to certain Boeing Model 757–200 series airplanes, to require a revision to the FAA-approved Airplane Flight Manual to ensure that the flightcrew activates the engine cowl thermal anti-ice (CTAI) system for both engines at the top of descent to avoid engine rundown (loss of engine power). That action was prompted by reports that, after the flightcrew activated the engine CTAI during descent, engine rundown occurred due to unknown reasons. The actions required by that AD are intended to ensure that the flightcrew activates the engine CTAI system for both engines prior to descent; activation of the engine CTAI system in the middle of descent could result in a compressor stall and subsequent engine rundown of multiple engines.

In the preamble to AD 96–04–11, the FAA indicated that the actions required by that AD were considered interim action. Rolls Royce had advised the FAA that it was developing a modification that will positively address the identified unsafe condition.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA issued AD 97–02–12, amendment 39–9897 (62 FR 4899, February 3, 1997). That AD applies to Rolls Royce Model RB211–535E4 and –535E4–B turbofan engines installed on Boeing Model 757–200 series airplanes. It requires installation of an improved fuel flow governor that incorporates revised minimum compressor discharge P4 stop settings. That AD indicates that installation of these improved fuel flow governors on both engines of Model 757 series airplanes constitutes terminating action for the requirements of AD 96–04–11.

Consequently, the FAA has determined that further rulemaking is necessary to revise AD 96–04–11 to clarify the relationship of that AD to AD 97–02–12 by indicating that installation of the improved fuel flow governors (as required by AD 97–02–12) terminates the requirements of AD 96–04–11.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD revises AD 96–04–11 to continue to require a revision to the Airplane Flight Manual to ensure that the flightcrew activates the engine cowl thermal anti-ice (CTAI) system for both engines at the top of descent to avoid engine rundown (loss of engine power). This AD merely clarifies the relationship between AD 96–04–11 and AD 97–02–12.

Determination of Rule's Effective Date

Since this AD merely provides information regarding the effect of another AD, and does not change the existing requirements, it is found that notice and opportunity for prior public comment hereon are unnecessary, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–294–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does

not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9523 (61 FR 6935, February 23, 1996), and by adding a new airworthiness directive (AD), amendment 39–10887, to read as follows:

96–04–11 R1 Boeing: Amendment 39–10887. Docket 98–NM–294–AD. Revises AD 96–04–11, amendment 39–9523.

Applicability: Model 757–200 series airplanes, equipped with Rolls Royce Model RB211–535E4/E4B engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To reduce the risk of engine rundown during idle descents, accomplish the following:

(a) Within 30 days after March 11, 1996 (the effective date of AD 96–04–11, amendment 39–9523), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

"Limitations Section 1

In order to reduce the risk of engine rundown during idle descents, activate the engine cowl thermal anti-ice system for both engines prior to idle descents above flight level (FL) 200. Below FL 200, use normal engine cowl thermal anti-ice system procedures (as defined in the AFM).

Note: The Master Minimum Equipment List (MMEL) for Model 757 series airplanes currently specifies that an airplane may be dispatched with an engine anti-ice valve locked in the closed position. The requirement of this section to activate the engine cowl thermal anti-ice system prior to descent will prevent the dispatch of airplanes with an engine anti-ice valve locked in the closed or open position. Where differences exist between the current specification of the MMEL and the requirements of this AFM limitation, the AFM limitation prevails."

Note 1: AD 97–02–12, amendment 39–9897, requires installation of improved fuel flow governors (FFG) on both engines of Boeing Model 757–200 series airplanes. Accomplishment of this installation constitutes terminating action for the requirements of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on November 30, 1998.

Issued in Renton, Washington, on November 4, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30335 Filed 11–12–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–53–AD; Amendment 39–10873; AD 98–23–08]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) PW4000 series turbofan engines not incorporating modifications described in certain PW service bulletins listed in the applicability section, that requires high pressure compressor (HPC) blade tip grinding of the rotor assembly, installation of aluminum oxide coated HPC blade tips in stages 9 through 12, modification of HPC 8th through 14th stage stators, incorporation of 1st stage high pressure turbine (HPT) vanes with increased airflow area which also requires additional HPT hardware modifications, and incorporation of HPC 13th–15th stage zirconium oxide blade tips. This amendment is prompted by reports of HPC surge caused by excessive HPC rear stage rotor-to-case clearance. The actions specified by this AD are intended to prevent HPC surge, which can result in engine power loss at a critical phase of flight such as takeoff or climb.

DATES: Effective January 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Chris Gavriel, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA

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01803–5299; telephone (781) 238–7147, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) PW4000 series turbofan engines not incorporating modifications described in certain PW service bulletins listed in the applicability section was published in the **Federal Register** on June 18, 1998 (63 FR 33295). That action proposed to require high pressure compressor (HPC) blade tip grinding of the rotor assembly, installation of aluminum oxide coated HPC blade tips in stages 9 through 12, modification of HPC 8th through 14th stage stators, incorporation of 1st stage high pressure turbine (HPT) vanes with increased airflow area which also requires additional HPT hardware modifications, and incorporation of HPC 13th–15th stage zirconium oxide blade tips.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests a change to the Compliance Section to allow the accomplishment of either PW Service Bulletins (SBs) No. PW4ENG–72–514, or the appropriate nozzle guide vane and TOBI duct section of SB PW4ENG–72–504. The commenter wants to have a choice to incorporate the pertinent sections of SB PW4ENG–72–504 after the effective date of this AD and still comply with the AD. The FAA concurs, provided that all of the requirements of that SB are incorporated, since incorporation of only the pertinent sections will not produce a certified engine configuration. Engines that have incorporated the modifications in SB PW4ENG–72–504 already are exempted from the AD based upon the applicability. If an operator wants to exercise this choice after the effective date of this AD, instead of incorporating the modifications in SB PW4ENG–72–514, that choice will produce an airworthy engine to an equivalent level of the modifications in SB PW4ENG–72–514. There are two other SBs listed in the applicability section: SB PW4ENG–72–490 and PW4ENG–72–572 that accomplish equivalent actions to SB PW4ENG–72–504. Therefore, a paragraph has been added to the compliance section clarifying that if the modifications contained in certain SBs listed in the applicability paragraph are incorporated after the effective date of this AD, no further action is required.

One commenter states that it has already complied with the requirements of this AD and that those requirements are effective in preventing surges from occurring in service.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 187 engines of the affected design in the worldwide fleet. The FAA estimates that there are currently 61 engines installed on aircraft of U.S. registry that would be affected by this AD. Required parts would cost approximately $20,000 per engine. Based on these figures, the total cost impact of the AD, including labor costs, is estimated to be $1,220,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–23–08 Pratt & Whitney: Amendment 39–10873. Docket 97–ANE–53–AD.

Applicability: Pratt & Whitney (PW) Model PW4152, PW4056, PW4156, PW4256, PW4052, PW4158, PW4060, PW4160, PW4460, PW4050, PW4060A, PW4156A, PW4062, PW4462, PW4060C, and PW4650 turbofan engines, not incorporating at least one of the modifications described in the PW service bulletins (SBs) and listed in items (1) through (6), excluding those engines having a (–3) identifier next to the engine model number on the engine data plate. These engines are installed on but not limited to Boeing 767 and 747 series aircraft, McDonnell Douglas MD–11 series aircraft, and Airbus A310 and A300–600 series aircraft.

(1) PW4ENG 72–484, Revision 3, dated July 1, 1997, or earlier revisions, PW4ENG 72–486, Revision 1, dated November 23, 1994, or original issue.

(2) PW4ENG 72–484, Revision 3, dated July 1, 1997, or earlier revisions, PW4ENG 72–575, Revision 1, dated June 30, 1997, or original issue, PW4ENG 72–486, Revision 1, dated November 23, 1994, or original issue.

(3) PW4ENG 72–514, Revision 1, dated August 2, 1996, or original issue.

(4) PW4ENG 72–490, Revision 1, dated August 2, 1994, or original issue.

(5) PW4ENG 72–504, Revision 1, dated May 9, 1995, or original issue.

(6) PW4ENG 72–572, dated June 16, 1995.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor (HPC) surge, which can result in engine power loss at a critical phase of flight such as takeoff, accomplish the following:

(a) Within 1,400 cycles in service (CIS) after the effective date of this AD, or prior to June 30, 1999, whichever occurs first, perform the following modifications:

(1) Incorporate stage 9 through 12 aluminum oxide blade tips and grind HPC

blade tips at the rotor assembly in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–484, Revision 3, dated July 1, 1997, concurrently with the requirements of paragraph (a)(4) of this AD.

(2) Modify HPC 8th–14th stage stators in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–486, Revision 1, dated November 23, 1994.

(3) Modify the 1st stage high pressure turbine (HPT) cooling duct (TOBI Duct), install a metering plug in the Number 2 bearing thrust balance vent tube, and incorporate 1st stage HPT vanes with increased airflow area in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–514, Revision 1, dated August 2, 1996.

(4) Incorporate HPC 13th–15th stage zirconium oxide blade tips in accordance with the Accomplishment Instructions of PW SB No. PW4ENG–72–575, Revision 1, dated June 30, 1997.

(5) If at any time prior to the compliance time of this AD incorporation of the requirements of any one of the SBs, identified in items (4), (5), and (6) in the applicability section of this AD is accomplished on any engine, then such an engine will not be subject to the requirements of this AD and no further action is required.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following PW SBs:

Document No.	Pages	Revision	Date
PW4ENG–72–484	1–16	3	July 1, 1997.
	17–78	1	November 8, 1994.
	79	2	March 10, 1995.
	80, 81	3	July 1, 1997.
Total Pages: 81.			
PW4ENG–72–486	1–31	1	November 23, 1994.
Total Pages: 31.			
PW4ENG–72–514	1–6	1	August 2, 1996.
	7	Original	June 23, 1994.
	8–35	1	August 2, 1996.
Total Pages: 35.			
PW4ENG–72–575	1–43	1	June 30, 1997.
Total Pages: 43.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 12, 1999.

Issued in Burlington, Massachusetts, on November 5, 1998.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–30320 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–21–AD; Amendment 39–10872; AD 98–23–07]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines, that requires a one-time acid etch inspection of the turbine exhaust case (TEC) wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if weld material is detected, removal from service and replacement with serviceable parts. This amendment is prompted by reports of weld rework performed in the outer case wall of the TEC, in the mount lug fillet area, during original production to address local under minimum wall thickness conditions which have left the TEC's structural capability compromised. The actions specified by this AD are intended to prevent TEC structural failure under abnormal operating conditions, which could result in reduced main mount load capability, engine separation from the wing and subsequent loss of control of the aircraft.

DATES: Effective January 12, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 12, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

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SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Pratt & Whitney (PW) Models JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –7Q, –7Q3, –59A, –70A, and –7R4D turbofan engines was published in the **Federal Register** on May 7, 1998 (63 FR 25179). That action proposed to require at the next removal of the TEC from the low pressure turbine case "P" flange for maintenance after the effective date of this AD, a one-time acid etch inspection of TEC wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if that material is detected, removal from service and replacement with serviceable parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Risk Assessment

Several commenters question the risk assessment used to generate the proposed rule. The FAA will address each comment individually and provide responses.

Two commenters state that a Continued Airworthiness Assessment Methodology (C.A.A.M.) analysis needs to be performed to validate the risk analysis submitted by the manufacturer for this rulemaking. The FAA does not concur. C.A.A.M. is a system of assessing and managing risk that includes the use of quantitative risk analysis models. The risk analysis submitted by the manufacturer to evaluate the subject unsafe condition followed the C.A.A.M. procedure.

Two commenters indicate that utilizing data from one operator is insufficient to establish an appropriate risk factor. The FAA does not concur. The database of the one operator in question is extensive, since it represents a substantial portion of the engine fleet and includes detailed records of all inspections, and has been validated repeatedly against full-fleet experience.

Two commenters object to the use of data from one operator based on that operator's hour-to-cycle mission profile. The FAA does not concur. Cracking in the mount lug area of the TEC is a function of high stress and temperature operation on a cyclic basis, and is independent of hours, time in service (TIS).

One commenter takes issue with the assumption of constant fleet size and utilization. The FAA does not concur. The future rate of utilization is subject to a variety of factors, including resale and continued use of engines. The assumption of constant fleet size and utilization has been consistently used in previous risk analyses, therefore, this assumption allows comparison of this risk with other unsafe conditions.

One commenter takes issue with the use of linear interpolation to predict failures instead of using Weibull analysis. The FAA does not concur. Weibull analysis was used to develop the failure distribution.

One commenter notes it is not apparent that an assessment for incorrectly reading the acid etch is accounted for in the risk analysis. The FAA does not concur. The probability of correctly interpreting the macroetch results for the weld condition is high. This factor does not significantly affect the results of the risk analysis.

One commenter postulates a lower risk of fan blade release coupled with a TEC with welds or cracks. The FAA does not concur. The FAA finds this calculation inaccurate because it: (1) includes only past occurrences for its estimate of the percent of the fleet with TEC cracks or welds and (2) it does not use the standard statistical practice for calculating mean time between failure.

One commenter states that since there has never been a failure of the TEC from a full blade out or rotor seizure, the risk analysis is in question. The FAA does not concur. Corrective action does not need to occur as a result of a serious event. The FAA has determined that an unsafe condition exists and therefore this rulemaking is necessary as a proactive approach to continued airworthiness.

Two commenters request the FAA direct PW to partner with the operators to develop a risk assessment, which takes into consideration specific data elements from the major affected operators to determine a logical and true safety risk and to postpone rulemaking until such time that this risk analysis can be reviewed. The FAA does not concur. The FAA has determined that the risk assessment evaluated for this rulemaking is appropriate. Since an unsafe condition has been determined to exist and is likely to develop on other products of the same type design, it is appropriate to issue this AD without further delay.

Other Comments

Two commenters cite concerns about consistency for inspecting the primary mount locations on the TEC for the JT9D–7A/7F/7J models and the JT9D–20/20J models. The FAA concurs. Revision 1 of the SBs, referenced in this final rule, have corrected the inconsistency among engine models for the primary mount locations.

Two commenters request that the economic impact of the proposal be revised to reflect case repairs and acquisition of new cases. The FAA concurs. There are 1,125 engines installed on aircraft of U.S. registry that would be affected by the inspection requirements of this AD. The average labor rate is $60 per work hour and it would take approximately 1.4 work hours per engine to accomplish the acid etch inspection. For the inspection, then, the estimated impact is $94,500. The cost of replacement of a TEC found with welding in the primary mount lug area is approximately $495,000 per TEC. Since this AD addresses 23 TECs that are unaccounted for in the field, the estimated impact is $11,385,000. Therefore the total estimated cost impact of this AD is $11,479,000.

One commenter notes that the proposed rule states the required actions must be taken at the next removal of the TEC from the low pressure turbine case "P" flange. If the phrase "when the engine is in the shop," were added it would provide for exchanging a TEC in the hangar during an aircraft service. Normally when a TEC is replaced in the hangar, an overhauled case is obtained from a vendor. However, on occasion, a TEC is obtained from another engine and a small airline needs this flexibility. The FAA concurs. The FAA has revised the shop visit definition in the compliance section of this final rule to induction of the engine into the shop for scheduled maintenance.

One commenter states that they are currently inspecting the TECs to the original SB and the Internal Engineering Notice (IEN) noted in PW All Operators Wire (AOW). The commenter requests the AD indicate the original of SB 6322, A72–546 and IEN 97ECO56C as compliance with the AD. The FAA concurs. In the interest of time to alert operators of the need to conduct the inspection, PW issued an AOW citing the IEN number 97ECO56C which is used within PW to issue the original SB. The IEN for Revision 1 to SB 6322 and A72–546 were issued before the NPRM was released and provided better etching agents the operator can use for the inspection and referenced acid etch inspection for only the primary mount lug locations. Since complying with the original SBs is more restrictive than Revision 1, this final rule has been revised to reference the original issue of the affected SBs.

One commenter concurs with the rule as proposed.

Additional Technical Concerns

The following technical concerns were raised in comments to the proposed rule, but do not request any specific changes to the rule as proposed, however the FAA will answer these technical concerns.

One commenter asks if the full fan blade out test data was not required for SB 4853 why is a full fan blade out test required to evaluate welds in mount areas? The commenter also asks why is the static deflection load test data presented to the FAA for welds in the mount areas not admissible as substantiation, when PW considered static load test data admissible for mount lug area modifications? The FAA does not concur. The objective of SB 4853 is to address cracking in the TEC struts and rails and does not address the case wall. Also, PW did not submit data to substantiate weld repairs in the primary mount lug areas, and no other design approvals allowing for weld repairs in the primary mount lug areas have been issued by the FAA.

One commenter refers to AD 96–25–10 (Docket 95–ANE–57) that requires JT9D TEC modification to increase the containment capability and includes the option of welding doublers on the inside surface of the TEC or welding a thicker replacement flange onto the case, and then asks why is the FAA unconcerned about the TEC's ability to withstand a full fan blade out or rotor seizure for a case that has a 360 degree weld approximately 1.2" away from the mount bosses? The FAA does not concur. Welds associated with the P flange replacement and containment shields are outside the high stress zone of the primary mount lug locations.

Two commenters request that the Chromalloy "strongback" repair be listed as a means for compliance with the AD. The FAA does not concur. The repair has not been approved by the FAA nor does it provide an alternate method of compliance to the AD as proposed. The AD method of compliance is to perform an acid etch and conduct an inspection, therefore the Chromalloy repair is considered outside the scope of this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–23–07 Pratt & Whitney: Amendment 39–10872. Docket 98–ANE–21–AD.

Applicability: Pratt & Whitney (PW) Models JT9D–7, –7A, –7H, –7AH, –7F, –7J, –20, –20J, –7Q, –7Q3, –59A, –70A, and –7R4D turbofan engines. These engines are installed on but not limited to Boeing 747 and 767 series, McDonnell Douglas DC–10 series, and Airbus A300 and A310 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent turbine exhaust case (TEC) structural failure under abnormal operating conditions, which could result in reduced main mount load capability, engine separation from the wing and subsequent loss of aircraft control, accomplish the following:

(a) At the next shop visit after the effective date of this AD, accomplish the following in accordance with PW Alert Service Bulletin (ASB) No. JT9D–A6322, Revision 1, dated August 13, 1998, or Original, dated March 19, 1998, or ASB No. JT9D–7R4–A72–546, Revision 1, dated August 13, 1998, or Original, dated March 19, 1998, as applicable:

(1) Perform a one-time acid etch inspection of TEC wall between and on either side of the "R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material.

(2) If weld material is found, remove from service the TEC and replace with a serviceable part.

(b) For the purpose of this AD, a shop visit is defined as the induction of an engine into a shop for the purpose of maintenance.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(e) The actions required by this AD shall be done in accordance with the following PW ASBs:

Document No.	Pages	Revision	Date
JT9D–7R4–A72–546	1–4	1	August 13, 1998.

Document No.	Pages	Revision	Date
	5	Original	March 19, 1998.
	6–9	1	August 13, 1998.
	10, 11	Original	March 19, 1998.
	12–19	1	August 13, 1998.
Total Pages: 19			
JT9D–7R4–A72–546	1–16	Original	March 19, 1998.
Total Pages: 16.			
A6322	1–4	1	August 13, 1998.
	5–22	Original	March 19, 1998.
	23–29	1	August 13, 1998.
	30, 31	Original	March 19, 1998.
	32–45	1	August 13, 1998.
Total Pages: 45.			
A6322	1–41	Original	March 19, 1998.
Total Pages: 41.			

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 12, 1999.

Issued in Burlington, Massachusetts, on November 5, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–30332 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–195–AD; Amendment 39–10683; AD 98–23–15]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model Hawker 800XP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800XP series airplanes, that requires replacement of the fuel feed hose assemblies of the auxiliary power unit (APU) with new hose assemblies. This amendment is prompted by a report of the collapse of the inner casing of the fuel feed hose that supplies fuel to the APU. The actions specified by this AD are intended to prevent failure of the fuel feed hose assemblies, which could result in fuel leakage and consequent risk of fire in the aft equipment bay.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Randy Griffith, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP series airplanes was published in the **Federal Register** on August 27, 1998 (63 FR 45773). That action proposed to require replacement of the fuel feed hose assemblies of the auxiliary power unit (APU) with new hose assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 11 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $3,300, or $300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–23–15 Raytheon Aircraft Company (Formerly Beech): Amendment 39–10883. Docket 98–NM–195–AD.

Applicability: Model Hawker 800XP series airplanes, serial numbers 258297 through 258304 inclusive, and 258307 through 258309 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the fuel feed hose assemblies, which could result in fuel leakage and consequent risk of fire in the aft equipment bay, accomplish the following:

(a) Within 300 flight hours or 3 months after the effective date of this AD, whichever occurs later, replace the fuel feed hose assemblies of the auxiliary power unit (APU) with new hose assemblies in accordance with Raytheon Aircraft Service Bulletin SB.49–3018, dated August 1997.

(b) If replacement fuel feed hose assemblies are not immediately available for installation, shut down the APU and display warning notices prohibiting use of the APU in accordance with Raytheon Aircraft Service Bulletin SB.49–3018, dated August 1997, until the replacement required by paragraph (a) of this AD is accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Raytheon Service Bulletin SB.49–3018, dated August 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 18, 1998.

Issued in Renton, Washington, on November 4, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30168 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–88–AD; Amendment 39–10884; AD 98–23–16]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires the installation of certain rivets on support arm 2 of the left and right flaps. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the support arms of the flaps, which could result in reduced structural integrity of the airplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published in the **Federal Register** on September 3, 1998 (63 FR 46924). That action proposed to require the installation of certain rivets on support arm 2 of the left and right flaps.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required installation, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $1,920, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–23–16 Dornier Luftfahrt GMBH: Amendment 39–10884. Docket 98–NM–88–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3064 through 3086 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the support arms of the flaps, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 10,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, install rivets on support arm 2 of the left and right flaps, in accordance with Dornier Service Bulletin SB–328–57–239, dated July 7, 1997

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with Dornier Service Bulletin SB–328–57–239, dated July 7, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from FAIRCHILD DORNIER, DORNIER Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 97–328, dated November 20, 1997.

(e) This amendment becomes effective on December 18, 1998.

Issued in Renton, Washington, on November 4, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30169 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–67–AD; Amendment 39–10871; AD 98–20–18]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines (IAE) V2500–A1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–20–18 that was sent previously to all known U.S. owners and operators of International Aero Engines (IAE) V2500–A1 series turbofan engines by individual letters. This AD requires, prior to further flight, removal from service of affected high pressure turbine (HPT) disks, identified by part number and serial number in the applicability paragraph of this AD, and replacement with a serviceable part. This amendment is prompted by a report of an uncontained HPT disk failure. The actions specified by this AD are intended to prevent an HPT disk fracture, an uncontained engine failure, and damage to the aircraft.

DATES: Effective November 30, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–20–18, issued on September 14, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 98–ANE–67–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On September 14, 1998, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 98–20–18, applicable to International Aero Engines (IAE) V2500–A1 series turbofan engines, which requires, prior to further flight, removal from service of affected high pressure turbine (HPT) disks, identified by part number and serial number in the applicability paragraph of this AD, and replacement with a serviceable part. That action was prompted by a report of an uncontained HPT disk failure on an IAE V2500–A1 series turbofan engine installed on an Airbus A320 series aircraft. Preliminary investigation of the recovered HPT stage 1 disk fracture surface indicates that the fracture initiated from a subsurface location in the disk bore area. The fractured part has been returned to IAE to continue the investigation. A review of manufacturing records has identified 6 additional HPT disks that were produced from the same or related material lot. There exists a possibility that these 6 disks produced from the same material lot could be similarly affected as the failed HPT disk. Therefore, the FAA has determined that these 6 disks must be immediately removed from service prior to further flight. This condition, if not corrected, could result in an HPT disk fracture, an uncontained engine failure, and damage to the aircraft.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 98–20–18 to prevent HPT disk fracture. The AD requires, prior to further flight, removal from service of affected HPT disks, identified by part number and serial number in the applicability paragraph of this AD, and replacement with a serviceable part.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 14, 1998, to all known U.S. owners and operators of IAE V2500–A1 series turbofan engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (14 CFR part 39) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–67–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–20–18 International Aero Engines: Amendment 39–10871. Docket 98–ANE–67–AD.

Applicability: International Aero Engines (IAE) V2500–A1 series turbofan engines, with high pressure turbine (HPT) stage 1 disks, part number (P/N) 2A1801, serial numbers (S/Ns) P100430, P100421, P100621, and P100618; HPT stage 1 disk, P/N 2A1101, S/

N P100346; and HPT stage 2 disk, P/N 2A0902, S/N P100381, installed. These engines are installed on Airbus A320 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an HPT disk fracture, an uncontained engine failure, and damage to the aircraft, accomplish the following:

(a) Prior to further flight, remove from service and replace with a serviceable part the following affected HPT disks:

HPT disk	P/N	S/N	Engine on which part may be installed
Stage 1 ...	2A1801	P100430	V0122
	2A1801	P100421	V0134
	2A1801	P100621	V0137
	2A1801	P100618	V0149
	2A1101	P100346	Removed
Stage 2 ...	2A0902	P100381	V0127

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) This amendment becomes effective November 30, 1998, to all persons except those persons to whom it was made immediately effective by priority letter AD 98–20–18, issued September 14, 1998, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 4, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–30331 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–12–AD; Amendment 39–10886; AD 98–23–18]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (Bell) Model 214B, 214B–1, and 214ST helicopters. This action requires a visual inspection of thin-flanged attachment barrel nuts (barrel nuts) manufactured by Kaynar Technologies, Inc. for cracks or lubrication residue, and replacement of the barrel nuts and corresponding attaching bolts, as necessary. These barrel nuts have been installed in main rotor grips, pitch horns, and tailboom assemblies. This amendment is prompted by a report of a cracked barrel nut, which was discovered on a helicopter being prepared for shipment. The actions specified in this AD are intended to detect cracks in a barrel nut, which could lead to failure of a main rotor grip, pitch horn, or tailboom, and subsequent loss of control of the helicopter.

DATES: Effective November 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 30, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Forest, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas, 76137, telephone (817) 222–5861, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (Bell) Model 214B, 214B–1, and 214ST helicopters. This action requires an inspection of barrel nuts manufactured by Kaynar Technologies, Inc. (Kaynar). This amendment is prompted by the discovery of a cracked barrel nut, part number NAS577B–10A, on a helicopter being disassembled for shipment. The crack was in the threaded portion of the barrel nut. A laboratory analysis indicated that the cracking is a result of hydrogen embrittlement introduced during manufacture. These nuts may have been installed in spare main rotor grips, pitch horns, or tailboom assemblies; and may also have been supplied as individual spare parts. The actions specified in this AD are intended to detect cracks in a barrel nut, which could lead to failure of a main rotor grip, pitch horn, or tailboom, and subsequent loss of control of the helicopter.

The FAA has reviewed Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214–97–59 and Bell Helicopter Textron, Inc. Alert Service Bulletin No. 214ST–97–78, both dated July 17, 1997, which describe procedures for determining if any barrel nuts used on the affected model helicopters were manufactured by Kaynar, and if so, visually inspecting those barrel nuts for cracks or lubrication residue using a 10-power or higher magnifying glass. If a crack or lubrication residue is discovered in the threads of either a barrel nut or its attaching bolt, both the barrel nut and the attaching bolt must be replaced with airworthy parts. Barrel nuts whose manufacturer cannot be positively identified must also be replaced.

Since an unsafe condition has been identified that is likely to exist or develop on other Bell Model 214B, 214B–1, and 214ST helicopters of the same type design, this AD is being issued to detect cracking in a barrel nut, which could lead to failure of a main rotor grip, pitch horn, or tailboom, and subsequent loss of control of the helicopter. The actions are required to be accomplished in accordance with the service bulletins described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, an inspection of the barrel nuts is required within 40 hours time-in-service, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 15 helicopters of U.S. registry will be affected by this proposed AD, that it will take approximately 3.0 work hours per helicopter to accomplish the inspection and replacement of parts, and that the average labor rate is $60 per work hour. Required parts will cost approximately $600 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $11,700.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–12–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–23–18 Bell Helicopter Textron, Inc.: Amendment 39–10886. Docket No. 98–SW–12–AD.

Applicability: Model 214B, 214B–1, and 214ST helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 40 hours time-in-service, unless accomplished previously.

To detect cracks in a barrel nut, which could lead to failure of a main rotor grip, pitch horn, or tailboom, and subsequent loss of control of the helicopter, accomplish the following:

(a) For each barrel nut, determine if the manufacturer was Kaynar Technologies Inc. (Kaynar) in accordance with paragraph 1.a. of the Accomplishment Instructions of Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) No. 214–97–59, applicable to Model 214B and B–1 helicopters, or Bell Helicopter Textron, Inc. ASB No. 214ST–97–78, applicable to Model 214ST helicopters, both dated July 17, 1997.

(b) For each Kaynar-manufactured barrel nut, part number (P/N) NAS577B–10A, determine if it is a "thick" flange barrel nut (installed edge distance of 0.115-inch) or a "thin flange barrel nut (installed edge distance of 0.155-inch) in accordance with paragraph 1.b of the Accomplishment Instructions of the applicable ASB, dated July 17, 1997.

(c) For each barrel nut identified as a Kaynar-manufactured "thin" flange barrel nut, using a 10-power or higher magnifying glass, perform a visual inspection for cracks in the threaded portion of each barrel nut or lubrication residue in the threaded portion of each barrel nut or its corresponding attaching bolt.

Note 2: If a "thick" flange Kaynar-manufactured barrel nut, P/N NAS577B–10A, is installed, compliance with paragraphs (d) and (e) of this AD is not required.

(d) For each barrel nut that cannot be positively identified, and for each Kaynar-manufactured "thin" flange barrel nut in which a crack or lubrication residue was discovered as a result of the inspection required by paragraph (c) of this AD, replace the barrel nut and the corresponding attaching bolt with an airworthy barrel nut and attaching bolt before further flight. If an unairworthy barrel nut is found at the right-hand upper tailboom attachment location, also replace the left-hand upper barrel nut and corresponding bolt, and inspect both upper tailboom and fuselage longeron fittings for damage or deformation.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

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used if approved by the Manager, FAA, Rotorcraft Directorate, Rotorcraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The identification and determination of the barrel dimensions shall be done in accordance with Bell Helicopter Textron, Inc. ASB No. 214–97–59 or Bell Helicopter Textron, Inc. ASB No. 214ST–97–78, both dated July 17, 1997. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on November 30, 1998.

Issued in Fort Worth, Texas on November 4, 1998.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–30165 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–304–AD; Amendment 39–10889; AD 98–24–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires a one-time inspection to identify the part numbers of two dimmer controls for the overhead instrument panel light and circuit breaker lightplate located in the flight compartment. For airplanes on which a dimmer control having an incorrect part number is installed, this action also requires replacing the dimmer control with a new part; modifying and reinstalling the existing dimmer control; or reinstalling a dimmer control following modification of the part by the part manufacturer. This amendment is prompted by reports of smoke emitting from the overhead panels in the cockpit area. The actions specified in this AD are intended to prevent an electrical failure in the overhead dimmer control due to overheating of a printed circuit board capacitor in the dimmer control, which could result in rupture of the capacitor and smoke in the flight compartment.

DATES: Effective November 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 30, 1998.

Comments for inclusion in the Rules Docket must be received on or before Janaury 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–304–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems Safety and Integration, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of several incidents of dimmer switches overheating and emitting smoke. These incidents occurred on McDonnell Douglas Model MD–11 series airplanes.

Investigation has revealed that, when a need for higher lighting in the cockpit occurs (such as during a thunderstorm) and increased voltage is required, a strong burning odor could occur due to overheating of a capacitor within the dimmer unit. The dimmer unit is located in the overhead switch panel to the rear of the firewall shut off handles. This component is well protected by a unit housing and additional cover that separates the unit from other components in the cockpit overhead compartment.

There is no evidence from any of the in-service events that any overheated capacitor has led to further aircraft damage beyond the capacitor. These incidents are not considered to be related to a recent accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Overheating of a capacitor inside the dimmer controls of the overhead instrument panel light and circuit breaker lightplate in the cockpit could cause an electrical failure in the overhead dimmer control, and consequent rupture of the PCB capacitor and smoke in the flight compartment.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–33–045, dated June 14, 1995, which describes the following procedures:

- Replacing any dimmer control, part number (P/N) 263–1, of the overhead instrument panel light and circuit breaker lightplate in the flight compartment with a new dimmer control, P/N 263–2.
- Modifying any dimmer control, P/N 263–1, of the overhead instrument panel light and circuit breaker lightplate to improve reliability and to extend the service life of dimmer controls by replacing one capacitor (C2) of the PCB assembly with a new, higher voltage capacitor that is more thermal resistant, reidentifying the existing dimmer control, and installing a new unit nameplate; and reinstalling the modified part.
- Returning the incorrect dimmer control, P/N 263–1, to the manufacturer of the part for modification and reidentification, and reinstalling the modified part.

Accomplishment of either the replacement or modification specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent an electrical failure in the overhead dimmer control due to overheating of a PCB capacitor in the dimmer control, which could result in rupture of the capacitor and smoke in the flight compartment. This AD requires a one-time visual inspection to identify the part numbers of two dimmer controls for the overhead instrument panel light and circuit breaker lightplate located in the flight compartment. For airplanes on which a dimmer control having a certain part number installed, this action also requires replacing the dimmer control with a new part; or replacing the existing dimmer control with a modified dimmer control.

The FAA has been notified by the manufacturer that a 30-day lead time for obtaining the required parts will be required, following the 30 days specified for inspection of the dimmer controls. The FAA considers that the 30-day lead time will accommodate the time necessary for affected operators to order and obtain the necessary parts required for the replacement of the dimmer controls, without adversely affecting safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–304–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–02 McDonnell Douglas: Amendment 39–10889. Docket 98–NM–304–AD.

Applicability: Model MD–11 series airplanes, serial numbers 447 through 597 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an electrical failure in the dimmer control for the overhead instrument panel light and circuit breaker lightplate due to overheating of a printed circuit board (PCB) capacitor in the dimmer control, which could result in rupture of the capacitor and smoke in the flight compartment, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection of the two dimmer controls for the overhead instrument panel light and circuit breaker lightplate located in the flight compartment to identify the part numbers of the dimmer controls.

(1) If all dimmer controls are identified as part number (P/N) 263–2, no further action is required by this AD.

(2) If any dimmer control is identified as P/N 263–1, within 30 days after accomplishing the inspection specified by paragraph (a) of this AD, accomplish the actions required by paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii) of this AD, in accordance with McDonnell Douglas Service Bulletin MD11–33–045, dated June 14, 1995.

(i) Replace any dimmer control, P/N 263–1, with a new dimmer control, P/N 263–2. Or

(ii) Modify any dimmer control, P/N 263–1, and reinstall the modified and reidentified dimmer control in the flight compartment. Or

(iii) Remove any dimmer control, P/N 263–1; return it for modification and reidentification to Olin Aerospace Company, 11441 Willows Road NE, Redmond, Washington, 98073–9745; and reinstall the modified and reidentified dimmer control in the flight compartment.

(b) As of the effective date of this AD, no person shall install on any McDonnell Douglas Model MD–11 series airplane, a dimmer control, P/N 263–1, unless that dimmer control has been modified and reidentified to P/N 263–2 in accordance with McDonnell Douglas Service Bulletin MD11–33–045, dated June 14, 1995.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with McDonnell Douglas Service Bulletin MD11–33–045, dated June 14, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on Novemebr 30, 1998.

Issued in Renton, Washington, on November 9, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30531 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–U

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 201

[Release No. 34–40636; File No. S7–23–98]

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission is adopting amendments to its Rules of Practice, Rules 210 and 221. The Commission is amending Rule 210 to permit, for representatives of any federal, state, or local criminal prosecutorial authority, limited participation for the purpose of requesting a stay in an enforcement or disciplinary proceeding, in order to support efforts to bring criminal prosecutions arising out of securities violations. The Commission is amending Rule 221 to require only one prehearing conference, instead of two, as previously required, in order to streamline the administrative process and conserve the parties' and the Commission's resources.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Joan L. Loizeaux, Principal Assistant General Counsel, or Kathleen O'Mara, Senior Counsel, Office of General Counsel, (202) 942–0950, Securities and Exchange Commission, 450 Fifth Street, N.W., Stop 6–6, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Discussion

The Commission adopted, after notice and comment, comprehensive revisions to its Rules of Practice that became effective on July 24, 1995.[1] These revisions were the result of an approximately two-and-a-half year study by the Commission's Task Force on Administrative Proceedings that culminated in a comprehensive report.[2] The Task Force found that the fundamental structure of the Commission's administrative process was sound and successfully protected the essential interests of respondents, investors, and the public, but that some changes were necessary. The Task Force recommended changes to the Rules of Practice in an effort to set forth applicable procedural requirements more completely, in a format easier to use, and to streamline procedures that had become burdensome.

In November 1997, the Commission's Inspector General issued a report evaluating the Commission's Administrative Proceedings Process in an attempt to assess the impact of the new Rules of Practice. The Inspector General recommended, among other things, that the Commission review Rules 210 and 221. The Commission reviewed these rules and proposed that the rules be changed as discussed below (and reflected in the text of the rules). The proposed rules were published for notice and comment on September 2, 1998 in the **Federal Register**.[3] No comments were received. The Commission is adopting these rules as proposed.

Rule 210 previously prohibited intervention or limited participation in Commission enforcement proceedings and in disciplinary proceedings to review self-regulatory organization determinations.[4] Prohibiting intervention or participation in these cases served the purpose of preventing extraneous issues from diverting administrative proceedings before the Commission and promoted timely and efficient resolution of all matters before the Commission.

In recent years, however, the Commission has received requests from representatives of various federal and local criminal prosecutors to participate in enforcement proceedings in order to request a stay of the Commission's proceedings during the pendency of a criminal investigation or prosecution based on the same or related underlying conduct. These authorities typically assert that substantial prejudice could result to a criminal prosecution if an administrative proceeding is not postponed.

The Commission supports efforts to bring criminal prosecutions arising out of securities violations. Accordingly, the Commission is adopting amendments to Rule 210 to allow authorized representatives of the United States Department of Justice, including any United States Attorney's Office, and of state and local prosecutors to seek leave to participate in a Commission enforcement or disciplinary proceeding for the limited purpose of requesting a

[1] Final Rules of Practice, Exchange Act Release No. 35833, 60 FR 32738 (June 23, 1995).

[2] Task Force on Administrative Proceedings, Securities and Exchange Commission, Fair and Efficient Administrative Proceedings: Report of the Task Force (February 1993).

[3] Rules of Practice—Rules 210 and 221, Exchange Act Release No. 40364 (August 26, 1998), 63 FR 46716.

[4] Rule 210(f), however, allowed the Commission or a hearing officer to modify the provisions of Rule 210 to impose such terms and conditions on participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

stay in that proceeding. We have determined that the process of considering such requests for postponements will be facilitated if those seeking them are permitted to present their views to the hearing officer. The hearing officer can then evaluate that request in light of the hearing's status. Any postponement of an enforcement or disciplinary proceeding, however, should be based on a showing of good cause and be limited to a reasonable period of time, balancing the need for delay against the need to bring the proceeding to a timely resolution, consistent with the public interest.

The Commission is also adopting amendments to Rule 221 to require a single prehearing conference, instead of the two prehearing conferences previously required. The Commission's experience with this Rule has indicated that, as a routine practice, two conferences are not always necessary. Therefore, in order to streamline the administrative process, conserving the parties', as well as the Commission's, resources, the Commission is amending the rule to require only one prehearing conference. Rule 221 would continue to permit the hearing officer in his or her discretion to order additional prehearing conferences on his or her own motion or at the request of a party.

II. Administrative Procedure Act and Regulatory Flexibility Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A), that this revision relates solely to agency organization, procedures, or practice. It is therefore not subject to the provisions of the Administrative Procedure Act requiring notice, opportunity for public comment, and publication. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, also does not apply. Nonetheless, the Commission previously published these rule changes for notice and comment.

III. Statutory Basis and Text of Proposed Amendment

The proposed Rule amendments would be promulgated pursuant to section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Exchange Act, 15 U.S.C. 78w; section 20 of the Public Utility Holding Company Act, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a-37 and 80a-39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11.

List of Subjects in 17 CFR Part 201

Administrative practice and procedure.

For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 201—SUBPART D—RULES OF PRACTICE

1. The authority citation for Part 201, Subpart D, continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–2, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12 unless otherwise noted.

2. Section 201.210 is amended by revising paragraph (a)(1) and the introductory text of paragraph (c) and adding paragraph (c)(3) to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding or a proceeding to review a self-regulatory organization determination*—(1) *Generally.* No person shall be granted leave to become a party or non-party participant on a limited basis in an enforcement or disciplinary proceeding or a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, except as authorized by paragraph (c) of this section.

* * * * *

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding or a proceeding to review a self-regulatory organization determination, any person may seek leave to participate on a limited basis as a non-party participant as to any matter affecting the person's interests. In any enforcement proceeding or disciplinary proceeding, an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State may seek leave to participate on a limited basis as a non-party participant as provided in paragraph (c)(3) of this section.

* * * * *

(3) *Leave to participate in certain Commission proceedings by a representative of the United States Department of Justice, a United States Attorney's Office, or a criminal prosecutorial authority of any State or any other political subdivision of a State.* The Commission or the hearing officer may grant leave to participate on a limited basis to an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State for the purpose of requesting a stay during the pendency of a criminal investigation or prosecution arising out of the same or similar facts that are at issue in the pending Commission enforcement or disciplinary proceeding. Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for stay shall be favored. A stay granted under this paragraph (c)(3) may be granted for such a period and upon such conditions as the Commission or the hearing officer deems appropriate.

* * * * *

3. Section 201.221 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 201.221 Prehearing conference.

(a) *Purposes of conference.* The purposes of a prehearing conference include, but are not limited to:

(1) Expediting the disposition of the proceeding;

(2) Establishing early and continuing control of the proceeding by the hearing officer; and

(3) Improving the quality of the hearing through more thorough preparation.

* * * * *

(d) *Required prehearing conference.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, at least one prehearing conference should be held.

* * * * *

Dated: November 4, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30407 Filed 11–12–98; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 96F–0401]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamide-ethyleneimine-epichlorohydrin resin for use as a retention aid in the manufacture of paper and paperboard intended for use in contact with dry food. This action is in response to a petition filed by BASF Corp.

DATES: The regulation is effective November 13, 1998; written objections and requests for a hearing by December 14, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 31, 1996 (61 FR 56242), FDA announced that a food additive petition (FAP 6B4501) had been filed by BASF Corp., 11501 Steele Creek Rd., Charlotte, NC 28273. The petition proposed to amend the food additive regulations in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to provide for the safe use of polyamide-ethyleneimine-epichlorohydrin resin for use as a retention aid in the manufacture of paper and paperboard intended for use in contact with dry food.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine, carcinogenic impurities resulting from the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under the general safety standard of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive, (*Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyamide-ethyleneimine-epichlorohydrin resin will result in exposure to no greater than 50 parts per billion (ppb) of the additive in the daily diet (3 kilogram (kg)) or an estimated daily intake (EDI) of 0.15 milligram per person per day (mg/p/d) (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated small dietary exposure resulting from the proposed use of the additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine, carcinogenic chemicals that may be present as impurities in the additive. This risk evaluation of ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine has two aspects: (1) Assessment of the exposure to the impurities from the proposed use of the additive; and (2) extrapolation of the risk observed in animal bioassays to the conditions of exposure to humans.

A. Ethylene Oxide

FDA has estimated the exposure to ethylene oxide from the petitioned use of the additive in the manufacture of paper and paperboard to be no greater than 50 parts per quadrillion (ppq) of the daily diet (3 kg) or no more than 150 picogram (pg)/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethylene oxide conducted by the Institute of Hygiene, University of Mainz, Germany (Ref. 3), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the petitioned use of the additive. The results of the bioassay on ethylene oxide demonstrated that ethylene oxide was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas of the forestomach and carcinomas in situ of the glandular stomach.

Based on the agency's estimate that the exposure to ethylene oxide will not exceed 150 pg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additives is 2.8×10^{-10} (or 2.8 in 10 billion)) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethylene oxide is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethylene oxide would result from the proposed use of the additive.

B. 1,4-Dioxane

FDA has estimated the exposure to 1,4-dioxane from the petitioned use of the additive in the manufacture of paper and paperboard to be no more than 55 parts per trillion (ppt) of the daily diet (3 kg) or 0.2 microgram (µg/p/d (Ref. 1)). The agency used data from a carcinogenesis bioassay on 1,4-dioxane, conducted by the National Cancer

Institute (Ref. 5), to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The results of the bioassay on 1,4-dioxane demonstrated that the material was carcinogenic for female rats under the conditions of the study. The test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

Based on the agency's estimate that exposure to 1,4-dioxane will not exceed 0.2 μg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additive is 6.9×10^{-9}, or 6.9 in 1 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to 1,4-dioxane is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to 1,4-dioxane would result from the proposed use of the additive.

C. Epichlorohydrin

FDA has estimated the exposure to epichlorohydrin from the petitioned use of the additive in the manufacture of paper and paperboard to be no more than 100 ppq of the daily diet (3 kg) or no more than 300 pg/p/d (Ref. 1). The agency used data from a Japanese carcinogenesis bioassay (Ref. 6), on epichlorohydrin fed to rats via their drinking water to estimate the upper-bound limit of lifetime human risk from exposure to this chemical resulting from the proposed use of the additive. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic under the conditions of the study. The test material caused significantly increased incidences of stomach papillomas and carcinomas in the rats.

Based on the agency's estimate that exposure to epichlorohydrin will not exceed 300 pg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additive is 1.4×10^{-11} (or 1.4 in 100 billion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to epichlorohydrin is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to epichlorohydrin would result from the proposed use of the additive.

D. Ethyleneimine

FDA has estimated the exposure to ethyleneimine from the petitioned use of the additive in the manufacture of paper and paperboard to be no greater than 2.5 ppq of the daily diet (3 kg) or no greater than 7.5 pg/p/d (Ref. 1). The agency used data from a carcinogenesis bioassay on ethyleneimine conducted by the National Cancer Institute (Ref. 7), to estimate the upper-bound limit of lifetime human risk from exposure to ethyleneimine resulting from the proposed use of the additive. The results of the bioassay on ethyleneimine demonstrated that the material was carcinogenic for male and female mice under the conditions of the study. The test material caused significantly increased incidence of lung and liver neoplasia in both male and female mice.

Based on the agency's estimate that exposure to ethyleneimine will not exceed 7.5 pg/p/d, FDA estimates that the upper-bound limit of lifetime human risk from the proposed use of the subject additive is 2.6×10^{-9} (or 2.6 in 1 billion) (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to ethyleneimine is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to ethyleneimine would result from the proposed use of the additive.

E. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine present as impurities in the additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low level at which ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine may be expected to remain as impurities following production of the additive, the agency would not expect the impurities to become components of food at other than extremely low levels; and (2) the upper-bound limits of lifetime risk from exposure to ethylene oxide, 1,4-dioxane, epichlorohydrin, and ethyleneimine are very low, 2.8 in 10 billion, 6.9 in 1 billion, 1.4 in 100 billion, and 2.6 in 1 billion, respectively.

III. Conclusion

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a retention aid in the production of paper and paperboard is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 176.180 should be amended as set forth as follows.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 14, 1998, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that

objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch, FDA, to the Indirect Additives Branch, FDA, concerning "FAP 6B4501 (MATS M2.0 & 2.1): BASF Corp., "Safe Use of Polymin SB as a Retention Agent in the Manufacture of Paper and Paperboard to be Made Into Dry Food Containers," dated September 18, 1996.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1,2-Propylene Oxide Upon Intragastric Administration to Rats," *British Journal of Cancer*, 46: pp. 924–933, 1982.

4. Memorandum from the Indirect Additives Branch, FDA, to the Executive Secretary, Quantitative Risk Assessment Committee, FDA, concerning "Estimation of Upper-bound Lifetime Risk From Ethyleneimine, Epichlorohydrin, Ethylene Oxide and 1,4-dioxane in an Aqueous Solution of Either One or a Mixture of the Following Two Polymers;

Formate salt form: Hexanedioic acid with N-(2-aminoethyl)-1,3-propanediamine, aziridine, (chloromethyl)oxirane, 1,2-ethanediamine, N,N″-1,2-ethanediylbis[1,3-propanediamine] formic acid and α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl) [CAS Reg. No. 114133–44–7].

Sulfate salt form: Hexanedioic acid with N-(2-aminoethyl)-1,3-propanediamine, aziridine, (chloromethyl)oxirane, 1,2-ethanediamine, N,N″-1,2-ethanediylbis[1,3-propanediamine] and α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl), sulfate salt [CAS Reg. No. 16768–43–5]."Subject of Food Additive Petition No. 6B4501 (BASF Corp.), dated October 17, 1996.

5. "Bioassay of 1,4–Dioxane for Possible Carcinogenicity," National Cancer Institute, NCI–CG–TR–80, 1978.

6. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," Gann 71:922–923, 1980.

7. Innes, J. R. M. et al., "Bioassay of Pesticide Chemicals for Tumorigenicity in Mice: A Preliminary Note," *Journal of National Cancer Institute*, 42:1101, 1969.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.180 is amended in the table in paragraph (b)(2) by alphabetically adding an entry under the heading "List of substances" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *

(2) * * *

List of substances	Limitations
* * *	* * * *
Polyamide-ethyleneimine-epichlorohydrin resin is prepared by reacting equimolar amounts of adipic acid and three amines (21 mole percent of 1,2-ethanediamine, 51 mole percent of N-(2-aminoethyl)-1,3-propanediamine, and 28 mole percent of N, N′-1,2-ethanediylbis(1,3-propanediamine)) to form a basic polyamidoamine which is modified by reaction with ethyleneimine (5.5:1.0 ethyleneimine:polyamidoamine). The modified polyamidoamine is reacted with a crosslinking agent made by condensing approximately 34 ethylene glycol units with (chloromethyl)oxirane, followed by pH adjustment with formic acid or sulfuric acid to provide a finished product as a formate (CAS Reg. No. 114133–44–7) or a sulfate (CAS Reg. No. 167678–43–5), having a weight-average molecular weight of 1,300,000 and a number-average molecular weight of 16,000.	
* * *	* * * *

Dated: November 2, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30296 Filed 11–12–98; 8:45 am]

BILLING CODE 4160–01–F

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in December 1998.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during December 1998.

For annuity benefits, the interest assumptions will be 5.40 percent for the first 25 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions represent an increase (from those in effect for November 1998) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.00 percent for the period during which a benefit is in pay status and during any years preceding the benefit's placement in pay status. The lump sum interest assumptions represent an increase (from those in effect for November 1998) of 0.25 percent for the period during which a benefit is in pay status; they are otherwise unchanged.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during December 1998, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 62 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . . , and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
•	•	•	•	•	•	•
December 1998	.0540	1–25	.0525	≤25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
62	12–1–98	01–1–99	4.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 6th day of November, 1998.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–30448 Filed 11–12–98; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 198–0099a; FRL–6184–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Kern County Air Pollution Control District, Placer County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following Districts: Kern County Air Pollution Control District (KNCAPCD), Placer County Air Pollution Control District (PLCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from motor vehicle and mobile equipment refinishing, graphic arts, paper or fabric coating, and screen printing. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on January 12, 1999, without further notice, unless EPA receives adverse by December 14, 1998. If EPA received such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301

Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: KNCAPCD Rule 410.4A—Motor Vehicle and Mobile Equipment Refinishing Operations and Rule 410.7—Graphic Arts, PLCAPCD Rule 239—Graphic Arts, SJVUAPCD Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations and Rule 4607—Graphic Arts, SMAQMD Rule 450—Graphic Arts and Rule 459—Automotive, Truck and Heavy Equipment Refinishing Operations, and SBCAQMD Rule 339—Motor Vehicle and Mobile Equipment Coating Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on May 10, 1996 (410.4A and 410.7), August 1, 1997 (239), March 10, 1998 (4602, 4607 and 339), and May 18, 1998 (450 and 459).

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Southeast Desert Modified Air Quality Management Area portion of Kern County, the Sacramento Metro Area, which includes portions of El Dorado and Placer Counties, the San Joaquin Valley Air Basin, and the Santa Barbara-Santa Maria-Lompoc Area (Santa Barbara County). 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Sacramento Metro Area is classified as severe, the San Joaquin Valley Air Basin and all of Kern County is classified as serious, and the Santa Barbara-Santa Maria-Lompoc Area is classified as moderate; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline. However, the Southeast Desert Air Basin portion of Kern County was not a pre-amendment nonattainment area and, therefore was not designated and classified upon enactment of the amended ACT. For this reason KNCAPCD is not subject to the section 182(a)(2)(A) RACT fix-up requirement. The KNCAPCD is, however, still subject

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs)

to the requirements of EPA's SIP-Call, because the SIP-Call included all of Kern County.[2]

The State of California submitted many revised RACT rules for incorporation into its SIP on May 10, 1996, August 1, 1997, March 10, 1998, and May 18, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for KNCAPCD Rule 410.4A—Motor Vehicle and Mobile Equipment Refinishing Operations and Rule 410.7—Graphic Arts, PLCAPCD Rule 239—Graphic Arts, SJVUAPCD Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations and Rule 4607—Graphic Arts, SMAQMD Rule 450—Graphic Arts and Rule 459—Automotive, Truck and Heavy Equipment Refinishing Operations, and SBCAQMD Rule 339—Motor Vehicle and Mobile Equipment Coating Operations. KNCAPCD adopted Rules 410.4A and 410.7 on March 7, 1996, PLCAPCD adopted Rule 239 on February 13, 1997, SJVUAPCD adopted Rules 4602 and 4607 on September 17, 1997, SMAQMD adopted Rule 450 on December 5, 1996 and Rule 459 on October 2, 1997, and SBCAPCD adopted Rule 339 on April 17, 1997. These submitted rules were found to be complete on July 19, 1996 (410.4A and 410.7), September 30, 1997 (239), May 21, 1998 (4602, 4607 and 339), and July 17, 1998 (450 and 459) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP.

KNCAPCD Rule 410.4A, SJVUAPCD Rule 4602, SMAQMD Rule 459, and SBCAPCD Rule 339 control emissions of volatile organic compounds (VOCs) from refinishing of automobiles and other mobile equipment. KNCAPCD Rule 410.7, PLCAPCD Rule 239, and SMAQMD Rule 450 limit emissions of VOCs from graphic arts operations. SJVUAPCD Rule 4607 limits emissions of VOCs from graphic arts, screen printing and paper or fabric coating operations. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the above Districts' efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

[2] The Sacramento Metro Area, the San Joaquin Valley Air Basin and the Santa Barbara-Santa Maria-Lompoc Area retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. The Southeast Desert Air Basin portion of Kern County was designated nonattainment on November 6, 1991 (56 FR 56649). On April 25, 1995, EPA published a final rule granting the State's request to reclassify the Sacramento Metro Area to severe from serious (60 FR 20237). This reclassification became effective on June 1, 1995.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to KNCAPCD Rule 410.7, PLCAPCD Rule 239, SMAQMD Rule 450, and the graphic arts sections of SJVUAPCD Rule 4607 is entitled, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography, EPA 450/2–78–033, December 1978. The CTG applicable to the paper or fabric coating section of SJVUAPCD Rule 4607 is entitled, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light-Duty Trucks, EPA–450/2–77–008, May 1977. The remaining part of SJVUAPCD Rule 4607 controls emissions from a source category for which EPA has not issued a CTG. Accordingly this section of the rule was evaluated against the general RACT requirements of the Clean Air Act (CAA section 110 and part D). KNCAPCD Rule 410.4A, SJVUAPCD Rule 4602, SMAPCD Rule 459, and SBCAPCD Rule 339 control emissions from a source category for which EPA has not issued a CTG. Accordingly these rules were evaluated against the general RACT requirements of the Clean Air Act (CAA section 110 and part D), and against the document entitled, National Volatile Organic Compound Emission Standard for Automobile Refinish Coatings (40 CFR part 59, subpart E). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is currently no version of KNCAPCD Rule 410.4A—Motor Vehicle and Mobile Equipment Refinishing Operations in the SIP. The submitted rule includes the following provisions:

- VOC content limits of coatings and dates by which facilities must meet the limits,
- Provisions for an optional emission control system in lieu of compliant coatings,
- The requirement to apply coatings only in permitted, properly maintained paint spray booth at locations with appropriate city or county zoning,
- Work practice standards and regulations concerning surface preparation and equipment clean-up,
- A prohibition to specify the application of, and to sell noncompliant automobile refinish coatings within the district,
- Exemption for touch-up operations not to exceed 9 sq. ft., coating of engine compartment, engine and suspension components, and aerosol containers not to exceed the capacity of 18 oz.,
- Requirements for recordkeeping, and
- Test methods to be used when determining compliance with this rule.

On July 11, 1997, EPA approved into the SIP a version of Rule 410.7—Graphic Arts that had been adopted by KNCAPCD on May 6, 1991. KNCAPCD submitted Rule 410.7—Graphic Arts includes the following significant changes from the current SIP:

- A reference to KNCAPCD Rule 102 was added in lieu of listing the VOC exempt compounds.

On July 11, 1997, EPA approved into the SIP a version of Rule 239—Graphic Arts that had been adopted by PLCAPCD on June 8, 1995. PLCAPCD submitted Rule 239—Graphic Arts includes the following significant changes from the current SIP:

- An exemption for screen printing operations,

• An exemption from the provisions of PLCAPCD Rule 219—Organic Solvents,

• A reference to the correct collection efficiency test method, and

• The rule was reformatted and contains a number of wording changes to enhance clarity and enforceability.

On May 6, 1996, EPA approved into the SIP a version of Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations that had been adopted by SJVUAPCD on June 15, 1995. SJVUAPCD submitted Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations includes the following significant changes from the current SIP:

• An amended multistage coating definition, and

• Wording changes to enhance clarity and enforceability of the rule.

On September 7, 1995, EPA approved into the SIP a version of Rule 4607—Graphic Arts that had been adopted by SJVUAPCD on May 19, 1994. SJVUAPCD submitted Rule 4607—Graphic Arts includes the following significant changes from the current SIP:

• An expanded definition section,

• A lower exemption threshold of 400 lbs. Of VOC per calender month (was 75 lbs. per day),

• An exemption for proof presses and blanket repair material used in containers of 4 fl. oz. or less,

• Revised and expanded the record keeping requirements, and

• Additional test methods to determine compliance with the rule.

On October 4, 1994, EPA approved into the SIP a version of Rule 450—Graphic Arts that had been adopted by SMAQMD on February 23, 1993. Revisions to this rule were subsequently adopted, and then were superceded by the submitted version. In evaluating the submitted version, EPA reviewed materials associated with the superceded revisions. SMAQMD submitted Rule 450—Graphic Arts includes the following significant changes from the current SIP:

• An exemption from the provisions of SMAQMD Rule 411—Organic Solvents,

• Added the definition of rotogravure printing,

• Changed the definition of exempt compound as having the same meaning as in SMAQMD Rule 101—General Provisions and Definitions, and

• Changed the definition of VOC as having the same meaning as in SMAQMD Rule 101.

There is currently no version of SMAQMD Rule 459—Automotive, Truck and Heavy Equipment Refinishing Operations in the SIP. Earlier revisions to this rule were adopted, and then subsequently revised by the submitted version. In evaluating this rule, EPA reviewed materials associated with the superceded versions. The submitted rule includes the following provisions:

• A purpose and applicability section,

• Exemptions for restoration of special interest and street rod vehicles, aerosol containers, radiator, drive train, and engine component coatings, stencil coatings, and touch-up coatings,

• A severability provision,

• A standards section containing the VOC limits for coatings and effective dates, requirements for optional emission control equipment, VOC limits and storage requirements for surface preparation and clean-up material,

• An administrative section containing the following: a requirement that any person using emission control equipment must submit an operation and maintenance plan, the calculations to determine VOC mass emission rate and percent control efficiency, the calculations to determine VOC content of coatings, less water and exempt compounds, and the calculations to determine the VOC content of coating removers, surface preparation and clean-up material,

• A monitoring and records section that defines the record keeping requirement and record retention time for end users, requires any person that sells coatings within the district to keep sales records, and contains the Test methods to be used in determining compliance.

On July 11, 1997, EPA approved into the SIP a version of Rule 239—Graphic Arts that had been adopted by SBCAPCD on June 8, 1995. SBCAPCD submitted Rule 239—Graphic Arts includes the following significant changes from the current SIP:

• The list of VOC exempt compounds was moved from this rule to SBCAPCD Rule 102—Definitions.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, KNCAPCD Rule 410.4A—Motor Vehicle and Mobile Equipment Refinishing Operations and Rule 410.7—Graphic Arts, PLCAPCD Rule 239—Graphic Arts, SJVUAPCD Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations and Rule 4607—Graphic Arts, SMAQMD Rule 450—Graphic Arts and Rule 459—Automotive, Truck and Heavy Equipment Refinishing Operations, and SBCAQMD Rule 339—Motor Vehicle and Mobile Equipment Coating Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 12, 1999 without further notice unless the Agency receives adverse comments by December 14, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 12, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written

communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: October 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(231)(i)(B)(*4*), (248)(i)(C), (254)(i)(A)(*3*), (254)(i)(C)(*2*), and (255) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(231) * * *

(i) * * *

(B) * * *

(*4*) Rule 410.4A, adopted on May 6, 1991 and amended on March 7, 1996 and Rule 410.7, adopted on June 29, 1981 and amended on March 7, 1996.

* * * * *

(248) * * *

(i) * * *

(C) Placer County Air Pollution Control District.

(*1*) Rule 239, adpoted on November 3, 1994 and amended on February 13, 1997.

* * * * *

(254) * * *

(i) * * *

(A) * * *

(*3*) Rules 4602 and 4607, adopted on April 11, 1991 and amended on September 17, 1997.

* * * * *

(C) * * *

(*2*) Rule 339, adopted on November 5, 1991 and revised on April 17, 1997.

* * * * *

(255) New and amended regulations for the following APCD's were submitted on May 18, 1998, by the Governor's designee.

(i) Incorporation by reference.

(A) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 450, adopted on July 23, 1981 and amended on December 5, 1996, and Rule 459, adopted on December 7, 1995 and amended on October 2, 1997.

* * * * *

[FR Doc. 98–30273 Filed 11–12–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[GA–41–9829a; FRL–6187–4]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Georgia

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the section 111(d) Plan submitted by the Georgia Department of Natural Resources (DNR) for the State of Georgia on January 20, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Solid Waste (MSW) Landfills.

DATES: This direct final rule is effective on January 12, 1999, without further notice, unless EPA receives adverse comment by December 14, 1998. If EPA receives adverse comment, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Scott Martin, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Georgia Department of Natural Resources, Air Protection Branch, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (Act), EPA has established procedures whereby States submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, EPA establishes EG in accordance with 40 CFR 60.22 which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State, local, or tribal agency's section 111(d) plan for a designated facility must comply with the EG for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759). (*See* 61 FR 9905–9944.) The pollutants regulated by the NSPS and EG are MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine whether control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.32c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to either: (1) submit a plan for the control of the designated pollutant to which the EG applies; or (2) submit a negative declaration if there were no designated facilities in the State within nine months after publication of the EG (by December 12, 1996).

EPA has been involved in litigation over the requirements of the MSW landfill EG and NSPS since the summer of 1996. On November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et.al*, No. 96–1152 (D.C. Cir), in accordance with section 113(g) of the Act. *See* 62 FR

60898. It is important to note that the proposed settlement does not vacate or void the existing MSW landfill EG or NSPS. Pursuant to the proposed settlement agreement, EPA published a direct final rulemaking on June 16, 1998, in which EPA is amending 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. *See* 63 FR 32743–32753, 32783–32784. EPA regulations at 40 CFR 60.23(a)(2) provide that a State has nine months to adopt and submit any necessary State Plan revisions after publication of a final revised emission guideline document. Thus, States are not yet required to submit State Plan revisions to address the June 16, 1998, direct final amendments to the EG. In addition, as stated in the June 16, 1998, preamble, the changes to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. *See* 63 FR 32744. Accordingly, the MSW landfill EG published on March 12, 1996, was used as a basis by EPA for review of section 111(d) Plan submittals.

This action approves the section 111(d) Plan submitted by the Georgia DNR for the State of Georgia to implement and enforce subpart Cc.

II. Discussion

The Georgia DNR submitted to EPA on January 20, 1998, the following in their section 111(d) Plan for implementing and enforcing the emission guidelines for existing MSW landfills in the State of Georgia: Legal Authority; Enforceable Mechanism; MSW Landfill Source and Emission Inventory; Emission Standards; Collection and Control System Design Plan Review Process; Compliance Schedule; Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments; Submittal of Progress Reports to EPA; Source Surveillance, Compliance Assurance and Enforcement; and applicable State of Georgia statutes and rules of the Georgia DNR.

The approval of the Georgia State Plan is based on finding that: (1) the Georgia DNR provided adequate public notice of public hearings for the proposed rulemaking and State Plan which allows the Georgia DNR to implement and enforce the EG for MSW landfills; and (2) the Georgia DNR also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facilities; enforce applicable laws, regulations, standards and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In section A of the Plan, the Georgia DNR cites the following references for the legal authority: State of Georgia Attorney General's Opinion Regarding State Authority to Operate the Title V Operating Permit Program; The Georgia Air Quality Act, sections 12–9–1 through 12–9–25; The Rules of the Georgia Department of Natural Resources for Air Quality Control, Chapter 391–3–1; the Georgia Natural Resources Act; the Georgia Administrative Procedures Act; and the Official Code of Georgia Annotated. On the basis of the Attorney General's Opinion, the statutes, and rules of the State of Georgia, the State Plan is approved as being at least as protective as the Federal requirements for existing MSW landfills.

In section C of the Plan, the Georgia DNR cites the enforceable mechanism for implementing the EG for existing MSW landfills. The enforceable mechanism is the state regulation adopted by the State of Georgia in Rule 391–3–1–.02(2)ggg, "Municipal Solid Waste Landfills." The State's regulation meets the Federal requirements for an enforceable mechanism and is approved as being at least as protective as the Federal requirements contained in subpart Cc for existing MSW landfills.

In section C of the Plan, the Georgia DNR cites all emission standards and limitations for the major pollutant categories related to the designated sites and facilities. These standards and limitations in the Georgia DNR's Rule 391–3–1–.02(2)ggg are approved as being at least as protective as the Federal requirements contained in Subpart Cc for existing MSW landfills.

Section D of the Plan describes the process the Georgia DNR will utilize for the review of site-specific design plans for gas collection and control systems. The process outlined in the Plan meets the Federal requirements contained in subpart Cc for existing MSW landfills.

In section E of the Plan, the Georgia DNR cites the compliance schedules adopted in Rule 391–3–1–.02(2)ggg for each existing MSW landfill to be in compliance within 30 months of the effective date of their implementing regulation (June 23, 1997). These compliance times for affected MSW landfills address the required compliance time lines of the EG. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

In section B of the Plan, the Georgia DNR submitted a source and emission inventory of all designated pollutants for each MSW landfill in the State of Georgia. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing MSW landfills.

Section G of the Plan includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities. The Georgia DNR also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MSW landfill emissions data, correlated with emission standards that apply, available to the general public. Georgia Rule 391–3–1–.02(2)ggg supports the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These Georgia rules have been reviewed and approved as being at least as protective as Federal requirements for existing MSW landfills.

Section G of the Plan, outlines how the Georgia DNR will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for Plan reporting.

Consequently, EPA finds that the Georgia State Plan meets all of the requirements applicable to such plans in 40 CFR part 60, subparts B and Cc. The Georgia DNR did not, however, submit evidence of authority to regulate existing MSW landfills in Indian Country. Therefore, EPA is not approving this Plan as it relates to those sources.

III. Final Action

Based on the rationale discussed above, EPA is approving the State of Georgia section 111(d) Plan, as submitted on January 20, 1998, for the control of landfill gas from existing MSW landfills, except for those existing MSW landfills located in Indian Country. As provided by 40 CFR 60.28(c), any revisions to the Georgia State Plan or associated regulations will not be considered part of the applicable plan until submitted by the Georgia DNR in accordance with 40 CFR 60.28(a) or (b), as applicable, and until

approved by EPA in accordance with 40 CFR part 60, subpart B.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the revision should significant, material, and adverse comments be filed. This action will be effective January 12, 1999, unless by December 14, 1998, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will be addressed in ■ subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective January 12, 1999.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an "economically significant" action under Executive Order 12866.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Pursuant to section 605(b) of the RFA I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under Federal, State, or Local law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: September 21, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642

Subpart L—Georgia

2. Section 62.2600 is amended by adding paragraphs (b)(5) and (c)(4) to read as follows:

§ 62.2600 Identification of plan.

* * * * *

(b) * * *

(5) State of Georgia Plan for Implementation of 40 CFR Part 60, Subpart Cc, For Existing Municipal Solid Waste Landfills, submitted on January 20, 1998, by the Georgia Department of Natural Resources.

(c) * * *

(4) Existing municipal solid waste landfills.

3. Subpart L is amended by adding a new § 62.2607 and a new undesignated center heading to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.2607 Identification of sources.

The plan applies to existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991, that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

[FR Doc. 98–30399 Filed 11–12–98; 8:45 am]
BILLING CODE 6560–60–U

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–3 and 301–10

[FTR Amendment 74—1998 Edition]

RIN 3090–AG73

Federal Travel Regulation; Use of Commercial Transportation, Fly America Act

AGENCY: Office of Governmentwide Policy (OGP), GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) provisions pertaining to use of U.S. flag air carriers under the provisions of 49 U.S.C. 40118, commonly referred to as the Fly America Act. This final rule reduces the connecting time for use of U.S. flag air carrier service at an overseas interchange point; requires that airline tickets issued under a code share agreement identify the U.S. flag air carrier's designator code and flight number; removes references to "gateway airports;" and implements a new method for calculation of the employee's liability for unauthorized transportation on a foreign air carrier.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Technical information: Umeki G. Thorne, telephone (202) 501–1538. FTR "plain language" format: Internet GSA, *ftrtravel.chat@gsa.gov*.

SUPPLEMENTARY INFORMATION:

Subsection 127 (d) of the General Accounting Office Act of 1996 (Pub. L. 104–316) amended 49 U.S.C. 40118 to require that the Administrator of General Services Administration (GSA) issue regulations under which agencies may permit payment for transportation on a foreign air carrier when such transportation is determined necessary. This final rule implements the Administrator's authority under the statute, identifying when U.S. flag air carrier service is deemed available (for transportation between a point in the United States and a point outside the United States) or reasonably available (for transportation between two points outside the United States). This final rule is written in the "plain language" style of regulation writing as a continuation of GSA's effort to make the FTR easier to understand and use. This final rule removes Part 301–3 of 41 CFR Chapter 301 and adds the provisions implementing the Fly America Act to Part 301–10. This final rule also modifies the proposed rule with request for comments published in the **Federal Register** on April 7, 1998 (63 FR 16936).

During the 30-day comment period provided by the proposed rule, GSA received comments from four Federal agencies, three U.S. flag air carriers, an air carrier association, and three non-Government entities. GSA carefully reviewed each comment. Changes based on comments received have been grouped by section of the proposed rule and subject area and are discussed in the following general analysis.

Section 301–10.134 What Is U.S. Flag Air Carrier Service?

U.S. Air Carrier Certificate

Section 301–10.134 of the proposed rule generally defines "U.S. flag air carrier service" as service on an air carrier holding a certificate under 49 U.S.C. 41102. One Federal agency requested that GSA clarify that although U.S. flag air carriers must hold a certificate, the transportation does not have to be authorized by such certificate, if it is authorized by rule or exemption. GSA has revised § 301–10.134 accordingly.

Code Share Agreements

Ticket Stock

A comment from a non-Government entity supported the language in § 301–10.134 of the proposed rule stating that service under a code share arrangement, when the entire ticket is issued by a U.S. flag air carrier, is deemed U.S. flag air carrier service. In contrast, three Federal agencies, two U.S. flag air carriers and the air carrier association objected to this requirement as too restrictive. Two of the Federal agencies and the air carrier association stated that many developing countries have neither U.S. flag air carrier facilities nor personnel. Accordingly, in such cases, obtaining a ticket on U.S. flag air carrier ticket stock is not practicable and could preclude travelers from benefiting from U.S. flag air carrier service through code share arrangements. The air carrier association also pointed out that the essential feature on an airline ticket is the air carrier designator code and flight number rather than the ticket stock. One U.S. flag air carrier stated that imposing a U.S. air carrier ticket stock requirement could, in some cases, divert traffic to foreign air carriers in those locations where no U.S. flag air carrier facilities or personnel are located. In addition, GSA notes that as airlines and travelers more frequently utilize electronic ticketing, a U.S. air carrier ticket stock requirement appears outdated. As a result of these comments, the language of the proposed rule has been revised. The final rule states that the ticket (or documentation for an electronic ticket) must identify the U.S. flag air carrier's designator code and flight number. The requirement that the ticket be issued on U.S. flag air carrier ticket stock has been removed.

Foreign Air Carrier Code Share Service as U.S. Flag Air Carrier Service

One U.S. flag air carrier objected, except under limited circumstances, to the determination that service by a foreign air carrier under a code share arrangement is service by a U.S. flag air carrier. Specifically, the U.S. flag air carrier stated that code share service by a foreign air carrier is merely a form of interline service and therefore should not be considered service by a U.S. flag air carrier unless the U.S. flag air carrier bears the financial risk of empty seats on the aircraft. In contrast, the air carrier association commented that code share arrangements between U.S. flag air carriers and foreign air carriers are consistent with the Fly America Act because they promote the intent of the Fly America Act by improving the economic and competitive position of U.S. flag air carriers.

The final rule provides that U.S. flag air carrier service includes service provided by a foreign air carrier under a code share agreement when the ticket, or documentation in the case of an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number. It is GSA's position that codesharing between U.S. flag air carriers and foreign air carriers increases opportunities for U.S. flag air carriers to expand into new international markets, which in turn promotes revenues to U.S. flag air carriers, thereby furthering the goals of the Fly America Act. Additionally, the U.S. flag air carrier whose designator code and flight number appears on the ticket, or documentation in the case of an electronic ticket, takes responsibility for the passenger(s) traveling under the U.S. flag air carrier's designator code and flight number, supporting the determination that the code share service is properly deemed service by the U.S. flag air carrier.

Section 301–10.135 When Must I Travel Using U.S. Flag Air Carrier Service?

Exception for Transportation Under Bilateral and Multilateral Agreements

Section 301–10.135 of the proposed rule states that U.S. flag air carrier service must be used for all travel funded by the U.S. Government, unless one of the various exceptions applies. One Federal agency commented that § 301–10.135(b), which addresses

bilateral or multilateral agreements, could be misleading because the criteria from the Fly America Act for exchanging fly-national privileges under such agreements are to be applied by the negotiators at the time the agreement is made, not by the traveler. That agency also stated that as of the date of the proposed rule there were no bilateral or multilateral agreements in effect that met the requirements of the Fly America Act. Based on this comment, GSA has clarified § 301–10.135(b). Under the final rule, a traveler is not required to use U.S. flag air carrier service if transportation by a foreign air carrier is provided under a bilateral or multilateral air transportation agreement which the Department of Transportation has determined meets the conditions specified in the Fly America Act. To verify existence of any qualifying bilateral or multilateral agreements, agencies should contact the U.S. Department of Transportation, Office of the Secretary, Office of International Aviation, Room X–40, Washington, DC 20590.

Direct Service by Foreign Air Carrier

A Federal agency commented on § 301–10.135(d) of the proposed rule, which states that when no U.S. flag air carrier provides service on a particular leg of the route, foreign air carrier service may be used, but only to or from the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service. The agency requested that GSA eliminate the words, "but only to or from the nearest interchange point on a usually traveled route" in order to save travel time by enabling travelers to use direct service on a foreign air carrier. GSA is not persuaded that this change is warranted. While the use of a foreign air carrier may be more convenient when the foreign air carrier has nonstop or direct service, GSA does not consider a shorter travel time in these circumstances to be sufficient to consider U.S. flag air carrier service unavailable or use of a foreign air carrier necessary. Therefore, GSA did not adopt the revision proposed in the comment. Of course, if the traveler meets an exception provided in the regulation, such as those provided in § 301–10.136, then the traveler may use a foreign air carrier.

Section 301–10.136 What Exceptions to the Fly America Act Requirements Apply When I Travel Between the United States and Another Country?

Removal of the terms "gateway airport in the United States" and "gateway airport abroad"

The air carrier association requested clarification for the removal of terms "gateway airport in the United States" and "gateway airport abroad." The association stated that it does not oppose the deletion of the terms but requested that GSA clarify any policy change intended by the elimination of these terms. GSA does not intend to make a significant substantive policy change through the removal of the terms "gateway airport abroad" and "gateway airport in the United States." However, as there are a myriad of potential travel situations, there may be instances where the removal of the terms result in a different outcome than that which would have resulted under the former rule.

Connecting Time

Section § 301–10.136 (b)(3) of the proposed rule reduced the connecting time from 6 hours or more to 4 hours or more at an overseas interchange point for purposes of determining whether U.S. flag air carrier service is unavailable. One Federal agency and one non-Government entity commented in support of this policy change. In contrast, two U.S. flag air carriers and the air carrier association opposed this policy change. The U.S. flag air carriers and the air carrier association stated that this change would unnecessarily risk the loss of business by U.S. airlines as it is likely to result in U.S. flag air carrier service being deemed unavailable in more instances, thereby diverting more travel to foreign air carriers.

GSA has considered these comments, but the change included in the proposed rule reducing the connecting time from 6 hours or more to 4 hours or more remains in this final rule. GSA included a number of considerations in its review of the issue. When the Fly America Act was first implemented in the 1970's, the 6 hour or more connecting time rule was established as a reasonable standard for connecting service through an overseas interchange point. Since that time, U.S. flag air carriers have significantly expanded their service in international markets and increased their service at international interchange points so that passengers can connect in a shorter time frame. Expanded use of code share arrangements has also helped reduce connecting times at overseas interchange points.

In reviewing this issue, GSA's analysis of airline schedule data showed that the airlines' average layover or connecting time is 2½ hours. GSA's analysis also showed that there would not be a large number of flights impacted by this change. Therefore, reducing the connecting time from 6 hours to 4 hours should not result in a significant loss of revenue to U.S. flag air carriers. Under the final rule, U.S. flag air carrier service is deemed unavailable when connecting service at an overseas interchange point would require a connecting time of 4 hours or more. This exception applies only when no U.S. flag air carrier service is available within the 4 hour time period, including U.S. flag air carrier service under a code share agreement.

Section 301–10.138 In What Circumstances Is Foreign Air Carrier Service Deemed a Matter of Necessity?

Excess Foreign Currency

Section (b)(3) of this section of the proposed rule stated that "(b) Necessity includes, but is not limited to, the following circumstances when: (3) Your program or activity may only be financed, under statute, using excess foreign currency and all U.S. flag air carriers refuse to accept foreign currencies." As no excess foreign currency situations exist at the present time (and have not existed since 1992), GSA has determined that the provision included at § 301–10.138(b)(3) of the proposed rule is unnecessary. Therefore § 301–10.138(b)(3) of the proposed rule is not included in this final rule. Should excess foreign currency issues arise in the future, GSA will determine at that time whether a provision on the subject should be included in the regulation.

Safety Exceptions

The air carrier association commented on § 301–10.138(b)(1)(2), stating that although the association did not object to the safety exceptions included in the proposed rule, GSA should inform travelers that security exceptions (due to a terrorist threat on a U.S. flag air carrier) should only be invoked after consultation with the Office of Civil Aviation Security of the Federal Aviation Administration (FAA). In the event of a threat to a U.S. flag air carrier, the FAA and the Department of State will issue a travel advisory notice to the general public. Agencies should take any such travel advisory notices into account when determining whether foreign air carrier service is deemed a necessity as provided in § 301–10.138. Written approval is required for a determination that foreign air carrier service is a necessity based on a security threat to a U.S. flag air carrier and must be supported by a travel advisory notice. The language of this final rule includes this requirement. With respect to threats against Government employees or other

travelers, which formulate the basis for a determination that foreign air carrier service is necessary (as contrasted with threats to a U.S. flag air carrier), evidence of such threats must accompany the agency's approval of the use of foreign air carrier service.

Section 301–10.144 What Is My Liability if I Improperly Use a Foreign Air Carrier?

Splitting the Cost of Air Travel Between Federal and Non-Federal Funds

One non-Government entity commented that the provision included in this section of the proposed rule for computing liability may encourage splitting the cost of a trip between non-Federal and Federal funds to permit the use of a foreign air carrier for convenience or lower rates. The comment stated that the entity's practice has been to deny payment of the total cost of the air travel (both foreign and U.S.) if a foreign air carrier was improperly used for any part of the trip.

Under § 301–3.6(c)(4) of the current FTR, employee liability is computed based on a formula used to determine the amount of lost revenue to the U.S. flag air carrier(s) rather than denial of the entire cost of air travel. The new policy for employee liability, which denies reimbursement for use of any foreign air carrier for any part of the trip for which it was not authorized, is intended to simplify the process for computing employee liability. 49 U.S.C. 40118 applies only to transportation that is financed with U.S. Government funds and will not result in improperly splitting the costs of a trip between Federal and non-Federal funds. GSA's intent is to ensure that agencies establish internal procedures for disallowance of reimbursement to travelers who use foreign air carrier service that was not authorized or otherwise permitted under this regulation. Therefore this section has been modified to include a provision requiring agencies to establish such internal procedures.

Ticket Purchases Made Through a Government Contractor Travel Agency

One Federal agency stated that agencies which are not using charge cards for purchase of airline tickets should be allowed to make payment directly to the Travel Management Center, and then seek reimbursement from the employee when an employee has improperly used a foreign air carrier. The issue of whether a Federal agency must pay a travel management center/travel agency contractor when there is improper use of a foreign air carrier is a matter of contract administration. GSA notes that many Government contracts for travel management center/travel agency services include a provision requiring that the contractor abide by the terms of the Fly America Act in issuing tickets for Federal travelers and bear the financial burden for failure to do so. Accordingly, GSA determined it unnecessary to revise § 301–10.144 on this issue.

GSA has determined that this final rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply. The Paperwork Reduction Act does not apply because the proposed revisions do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 et seq. This final rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–3 and 301–10

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR Chapter 301 is amended as follows.

PART 301–3—USE OF COMMERCIAL TRANSPORTATION

1. Under the authority of 5 U.S.C. 5707, part 301–3 is removed.

PART 301–10—TRANSPORTATION EXPENSES

2. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 486(c); 49 U.S.C. 40118.

3. An undesignated center heading and sections 301–10.131 through 301–10.144 are added to read as follows:

Use of United States Flag Air Carriers

Sec.

301–10.131 What does United States mean?
301–10.132 Who is required to use a U.S. flag air carrier?
301–10.133 What is a U.S. flag air carrier?
301–10.134 What is U.S. flag air carrier service?
301–10.135 When must I travel using U.S. flag air carrier service?
301–10.136 What exceptions to the Fly America Act requirements apply when I travel between the United States and another country?
301–10.137 What exceptions to the Fly America Act requirements apply when I travel solely outside the United States, and a U.S. flag air carrier provides service between my origin and destination?
301–10.138 In what circumstances is foreign air carrier service deemed a matter of necessity?
301–10.139 May I travel by a foreign air carrier if the cost of my ticket is less than traveling by a U.S. flag air carrier?
301–10.140 May I use a foreign air carrier if the service is preferred by or more convenient for my agency or me?
301–10.141 Must I provide any special certification or documents if I use a foreign air carrier?
301–10.142 What must the certification include?
301–10.143 What is my liability if I improperly use a foreign air carrier?

Use of United States Flag Air Carriers

§ 301–10.131 What does United States mean?

For purposes of the use of United States flag air carriers, *United States* means the 50 states, the District of Columbia, and the territories and possessions of the United States (49 U.S.C. 40102).

§ 301–10.132 Who is required to use a U.S. flag air carrier?

Anyone whose air travel is financed by U.S. Government funds, except as provided in § 301–10.135, § 301–10.136, and § 301–10.137.

§ 301–10.133 What is a U.S. flag air carrier?

An air carrier which holds a certificate under 49 U.S.C. 41102 but does not include a foreign air carrier operating under a permit.

§ 301–10.134 What is U.S. flag air carrier service?

U.S. flag air carrier service is service provided on an air carrier which holds a certificate under 49 U.S.C. 41102 and which service is authorized either by the carrier's certificate or by exemption or regulation. U.S. flag air carrier service also includes service provided under a code share agreement with a foreign air carrier in accordance with Title 14, Code of Federal Regulations when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number.

§ 301–10.135 When must I travel using U.S. flag air carrier service?

You are required by 49 U.S.C. 40118, commonly referred to as the "Fly

America Act," to use U.S. flag air carrier service for all air travel funded by the U.S. Government, except as provided in § 301–10.136 and § 301–10.137 or when one of the following exceptions applies:

(a) Use of a foreign air carrier is determined to be a matter of necessity in accordance with § 301–10.138; or

(b) The transportation is provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act; or

(c) You are an officer or employee of the Department of State, United States Information Agency, United States International Development Cooperation Agency, or the Arms Control Disarmament Agency, and your travel is paid with funds appropriated to one of these agencies, and your travel is between two places outside the United States; or

(d) No U.S. flag air carrier provides service on a particular leg of the route, in which case foreign air carrier service may be used, but only to or from the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service; or

(e) A U.S. flag air carrier involuntarily reroutes your travel on a foreign air carrier; or

(f) Service on a foreign air carrier would be three hours or less, and use of the U.S. flag air carrier would at least double your en route travel time; or

(g) When the costs of transportation are reimbursed in full by a third party, such as a foreign government, international agency, or other organization.

§ 301–10.136 What exceptions to the Fly America Act requirements apply when I travel between the United States and another country?

The exceptions are:

(a) If a U.S. flag air carrier offers nonstop or direct service (no aircraft change) from your origin to your destination, you must use the U.S. flag air carrier service unless such use would extend your travel time, including delay at origin, by 24 hours or more.

(b) If a U.S. flag air carrier does not offer nonstop or direct service (no aircraft change) between your origin and your destination, you must use a U.S. flag air carrier on every portion of the route where it provides service unless, when compared to using a foreign air carrier, such use would:

(1) Increase the number of aircraft changes you must make outside of the U.S. by 2 or more; or

(2) Extend your travel time by at least 6 hours or more; or

(3) Require a connecting time of 4 hours or more at an overseas interchange point.

§ 301–10.137 What exceptions to the Fly America Act requirements apply when I travel solely outside the United States, and a U.S. flag air carrier provides service between my origin and my destination?

You must always use a U.S. flag carrier for such travel, unless, when compared to using a foreign air carrier, such use would:

(a) Increase the number of aircraft changes you must make en route by 2 or more; or

(b) Extend your travel time by 6 hours or more; or

(c) Require a connecting time of 4 hours or more at an overseas interchange point.

§ 301–10.138 In what circumstances is foreign air carrier service deemed a matter of necessity?

(a) Foreign air carrier service is deemed a necessity when service by a U.S. flag air carrier is available, but

(1) Cannot provide the air transportation needed; or

(2) Will not accomplish the agency's mission.

(b) Necessity includes, but is not limited to, the following circumstances:

(1) When the agency determines that use of a foreign air carrier is necessary for medical reasons, including use of foreign air carrier service to reduce the number of connections and possible delays in the transportation of persons in need of medical treatment; or

(2) When use of a foreign air carrier is required to avoid an unreasonable risk to your safety and is approved by your agency (e.g., terrorist threats). Written approval of the use of foreign air carrier service based on an unreasonable risk to your safety must be approved by your agency on a case by case basis. An agency determination and approval of use of a foreign air carrier based on a threat against a U.S. flag air carrier must be supported by a travel advisory notice issued by the Federal Aviation Administration and the Department of State. An agency determination and approval of use of a foreign air carrier based on a threat against Government employees or other travelers must be supported by evidence of the threat(s) that form the basis of the determination and approval; or

(3) When you can not purchase a ticket in your authorized class of service on a U.S. flag air carrier, and a seat is available in your authorized class of service on a foreign air carrier.

§ 301–10.139 May I travel by a foreign air carrier if the cost of my ticket is less than traveling by a U.S. flag air carrier?

No. Foreign air carrier service may not be used solely based on the cost of your ticket.

§ 301–10.140 May I use a foreign air carrier if the service is preferred by or more convenient for my agency or me?

No. You must use U.S. flag air carrier service, unless you meet one of the exceptions in § 301–10.135, § 301–10.136, or § 301–10.137 or unless foreign air carrier service is deemed a matter of necessity under § 301–10.138.

§ 301–10.141 Must I provide any special certification or documents if I use a foreign air carrier?

Yes, you must provide a certification, as required in § 301–10.143 and any other documents required by your agency. Your agency cannot pay your foreign air carrier fare if you do not provide the required certification.

§ 301–10.142 What must the certification include?

The certification must include:

(a) Your name;

(b) The dates that you traveled;

(c) The origin and the destination of your travel;

(d) A detailed itinerary of your travel, name of the air carrier and flight number for each leg of the trip; and

(e) A statement explaining why you met one of the exceptions in § 301–10.135, § 301–10.136, or § 301–10.137 or a copy of your agency's written approval that foreign air carrier service was deemed a matter of necessity in accordance with § 301–10.138.

§ 301–10.143 What is my liability if I improperly use a foreign air carrier?

You will not be reimbursed for any transportation cost for which you improperly use foreign air carrier service. If you are authorized by your agency to use U.S. flag air carrier service for your entire trip, and you improperly use a foreign air carrier for any part of or the entire trip (i.e., when not permitted under this regulation), your transportation cost on the foreign air carrier will not be payable by your agency. If your agency authorizes you to use U.S. flag air carrier service for part of your trip and foreign air carrier service for another part of your trip, and you improperly use a foreign air carrier (i.e., when neither authorized to do so nor otherwise permitted under this regulation), your agency will pay the transportation cost on the foreign air

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carrier for only the portion(s) of the trip for which you were authorized to use foreign air carrier service. The agency must establish internal procedures for denying reimbursement to travelers when use of a foreign air carrier was neither authorized nor otherwise permitted under this regulation.

Dated: November 5, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–30344 Filed 11–12–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants

CFR Correction

In Title 50 of the Code of Federal Regulations, parts 1 to 199, revised as of Oct. 1, 1997, § 17.44 is corrected by adding paragraph (v) as follows:

§ 17.44 Special rules—fishes.

* * * * *

(v) Gulf sturgeon (*Acipenser oxyrhynchus desotoi*). (1) No person shall take this species, except in accordance with applicable State fish and wildlife conservation laws and regulations for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, or other conservation purposes consistent with the Act.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to taking of this species is also a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatever, any of this species taken in violation of applicable State fish and wildlife conservation laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (v)(1) through (3) of this section.

(5) Taking of this species for purposes other than those described in paragraph (v)(1) of this section, including taking incidental to otherwise lawful activities, is prohibited except when permitted under 50 CFR 17.32.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 981109279–8279–01; I.D. 020398B]

RIN 0648–AM02

Atlantic Marlin Adjustable Bag Limit Provision

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; technical amendment.

SUMMARY: By the interim rule, published in the **Federal Register** on March 24, 1998, NMFS increased the minimum size limits for Atlantic blue marlin (BUM) and Atlantic white marlin (WHM), respectively, and required operators of Atlantic billfish sport fishing tournaments to notify NMFS at least 4 weeks prior to tournament commencement. On September 29, 1998, NMFS extended the period of the interim rule for an additional 180 days and amended it to increase the minimum size limit for Atlantic BUM to 99 inches lower jaw-fork length (LJFL) (251 cm), to establish a recreational bag limit of one Atlantic BUM or WHM per vessel per trip and to grant the Assistant Administrator for Fisheries, NOAA (AA), authority to adjust the bag limit, including adjusting it to zero. The current action amends the interim rule to remove the provision allowing the AA to adjust the bag limit.

DATES: Effective November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Buck Sutter, 813–570–5447; fax: 813–570–5364.

SUPPLEMENTARY INFORMATION: The International Convention for the Conservation of Atlantic Tunas (ICCAT) adopted a recommendation in 1997 with several measures to address the condition of billfish resources throughout the Atlantic Ocean, including reducing Atlantic BUM and Atlantic WHM landings by at least 25 percent from 1996 limits, starting in 1998, to be accomplished by the end of 1999. In September 1997, NMFS designated BUM and WHM as being overfished. In response to the ICCAT recommendation, as required by Atlantic Tunas Convention Act (ATCA), and in an effort to reduce overfishing, NMFS promulgated a 180-day interim rule (63 FR 14030, March 24, 1998) under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson-Stevens Act). The interim rule increased the minimum size of Atlantic BUM and WHM that could be retained by U.S. recreational anglers and required operators of Atlantic billfish sport fishing tournaments to notify NMFS at least 4 weeks prior to tournament commencement. The interim rule was extended for an additional 180 days, beginning September 24, 1998, and amended to increase the minimum size limit for Atlantic BUM to 99 inches (251 cm), to establish a recreational bag limit of one Atlantic BUM or WHM per vessel per trip, and to grant the AA authority to adjust the bag limit up or down, including to zero if the landing limits for BUM and WHM are reached (26.2 mt and 2.48 mt, respectively), as determined by the most recent tournament and other landings data (63 FR 51859, September 29, 1998).

It is highly unlikely that the interim authority granted the AA to adjust the bag limit would have to be used by March 19, 1999, the date the interim rule expires. The BUM and WHM recreational angling seasons in the United States generally occur between May and September. The best currently available scientific information indicates that the ICCAT-recommended landing limits for BUM and WHM have not been exceeded thus far during 1998. In addition, the NMFS Recreational Billfish Survey indicates that no landings of BUM or WHM have been observed from October through February over the last 3 years of the survey (1995 to 1997). Under 50 CFR 644.20, the fishing year and associated landing limits run from January 1 to December 31. At the initiation of the new fishing year on January 1, 1999, the landing limits start again at 26.2 mt BUM and 2.48 mt WHM. Based on the landings data for 1995 through 1997, 0 percent of the landings for both BUM and WHM are taken during January and February, and only 3.6 percent of BUM and 1.6 percent of WHM are taken during March. It is, therefore, highly unlikely that there would be any need to adjust the bag limit of one fish per vessel per trip downward for the remainder of 1998, or from January 1, 1999, through March 19, 1999, in order to ensure compliance with ICCAT-recommended landing limits.

NMFS has received public comment on the interim rule, and on October 9, 1998 (63 FR 54433) NMFS published a notice of availability of draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish FMP), with a request for comments by January 7, 1999. Draft Amendment 1 to

the Billfish FMP contains an alternative management measure that would give the AA, the authority to adjust the bag limit up or down, including adjusting it to zero if the landing limits for BUM and WHM are reached. The public comments received to date indicate that the possibility of a zero bag limit could have a significant negative impact on the planning of, and participation in, billfish tournaments. Sport fishing organizations have stated their intent to address this issue in the context of commenting on draft Amendment 1 to the Billfish FMP and on the regulations to implement that amendment (proposed implementing regulations for the FMP amendment will be published shortly).

NMFS agrees that there is no need to maintain the provision to adjust the bag limit in the interim rule and, by this action, removes the AA's authority to adjust the bag limit. NMFS will evaluate written and verbal comments received during the 3-month comment period on the draft FMP amendment, and during the comment period on the implementing regulations to be proposed shortly, in determining the appropriateness of using adjustable bag limits to ensure compliance with ICCAT-recommended landing limits. In the highly unlikely event that a prohibition of Atlantic BUM and/or WHM landings is required because ICCAT-recommended limits have been exceeded before the end of the interim rule period, NMFS has the authority, under section 305(d) of the Magnuson-Stevens Act, to take appropriate action.

Classification

The AA has determined that this amendment of the interim rule is consistent with the Magnuson-Stevens Act and other applicable laws.

The AA has determined that, under 5 U.S.C. 553(b)(B), there is good cause to waive the requirement for prior notice and an opportunity for public comment as such procedures would be contrary to the public interest for the reasons stated above. Further, under 5 U.S.C. 553(d)(3), the AA has determined that there is good cause to waive the otherwise required 30-day delay in effective date. This rule affects only the authority of NMFS to adjust a bag limit. It does not impose any substantive requirement on any fisherman for which time would be required to come into compliance.

The amendment of this interim rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and an opportunity for public comment are not required to be provided for the amendment of this interim rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 6, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 644 is amended as follows:

PART 644—ATLANTIC BILLFISHES

1. The authority citation for part 644 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 644.26 [Amended]

2. Section 644.26 (b) is removed and reserved.

[FR Doc. 98–30391 Filed 11–9–98; 4:10 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 219
Friday, November 13, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. That action would have required repetitive inspections of the inboard and outboard flap actuators to measure the rotational freedom of the actuator ball screw adjacent to the actuator housing, and replacement of the flap actuators with new or serviceable actuators, if necessary. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data pertaining to this issue and is undertaking alternative rulemaking action. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Anthony E. Gallo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7510; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes, was published in the **Federal Register** on June 8, 1998 (63 FR 31140). The proposed rule would have required repetitive inspections of the inboard and outboard flap actuators to measure the rotational freedom of the actuator ball screw adjacent to the actuator housing, and replacement of the flap actuators with new or serviceable actuators, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The proposed actions were intended to prevent premature wear of the internal gears on the flap actuators, which could result in complete disconnection of the actuator gear set and a mechanical jam of the flap system. This condition could cause structural damage and/or significant twist of a flap panel, which could lead to reduced controllability of the airplane.

Actions Since Issuance of the Notice of Proposed Rulemaking (NPRM)

Since the issuance of the NPRM on June 2, 1998, the FAA has received reports of six instances of jammed flap actuators on airplanes that were in compliance with the requirements of that proposed AD. In one case, a twisted flap was not detected prior to takeoff; in another case, a twisted flap occurred upon deployment of flaps for landing. In both cases, the airplanes were controllable and landed successfully. These reports indicate that the replacement action specified by the proposed rule is inadequate to address the unsafe condition.

As a result, the FAA has reconsidered its previous position on this rulemaking action and issued AD 98–20–01, amendment 39–10767 (63 FR 49661, September 17, 1998), on September 11, 1998, to address the unsafe condition. The actions of that AD require revising the procedures in the FAA-approved Airplane Flight Manual for checking the flap system. The amendment also requires revising the procedures in the FAA-approved maintenance program, and performing follow-on actions, if necessary. The actions specified in that AD are considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking. The actions required by that AD are intended to prevent an unannunciated failure of the flap system due to a twisted outboard flap, which could result in a flap asymmetry, and consequent reduced controllability of the airplane.

FAA's Conclusions

The FAA has determined that other rulemaking was required to address the identified unsafe condition. In light of this other on-going rulemaking activity, the FAA hereby withdraws the proposed rule.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 98–NM–134–AD, published in the **Federal Register** on June 8, 1998 (63 FR 31140), is withdrawn.

Issued in Renton, Washington, on November 4, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30334 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–276–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. This proposal would require a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the main landing gear (MLG), and repair or replacement of any discrepant component with a new or serviceable component. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent heavy vibration and possible damage to the components of the MLG, and consequent reduced controllability of the airplane during takeoff and landing.

DATES: Comments must be received by December 14, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–276–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–276–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–276–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 and 0100 series airplanes. The RLD advises that it received a report of heavy vibration coming from the main landing gear (MLG) during landing. Investigation revealed that the cause of the heavy vibration was attributed to the nut of the apex bolt becoming detached from the apex pin, which resulted in disconnection of the upper and lower torque links of the right-hand MLG at the apex joint. Subsequent investigations of other Fokker Model F.28 series airplanes, equipped with Menasco MLG's, revealed loss of torque of the apex pin of the torque links and, in some cases, loss of torque of the shimmy damper attachment bolts. These conditions, if not corrected, could result in heavy vibration and possible damage to the components of the MLG, and consequent reduced controllability of the airplane during takeoff or landing.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–32–113, dated May 28, 1998, which describes procedures for a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the MLG, and repair or replacement of any discrepant component with a new or serviceable component. Discrepancies may include incorrect positioning of the apex pin, misalignment of the slotted locking nut, loss of torque of the bolts, or damage to the locking plate and apex bolt. The service bulletin also recommends informing Fokker Services of inspection results.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1998–058 (A), dated May 29, 1998, in order to assure the continued airworthiness of these airplanes in the Netherlands.

Other Relevant Rulemaking

On October 7, 1998, the FAA issued AD 98–21–33, amendment 39–10841 (63 FR 55527, October 16, 1998), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, to require a one-time inspection of the torque links of the MLG assemblies to determine if the lockwire is present on the apex bolt, and corrective action, if necessary. However, this proposed AD would not affect the current requirements of that previously issued AD.

FAA's Conclusions

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 131 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per

airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $15,720, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 98–NM–276–AD.

Applicability: Model F.28 Mark 0070 and 0100 series airplanes, as listed in Fokker Service Bulletin SBF100–32–113, dated May 28, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent heavy vibration and possible damage to the components of the main landing gear (MLG), and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a one-time visual inspection to detect discrepancies of the components of the torque link apex joint and shimmy damper attachments of the MLG, in accordance with Fokker Service Bulletin SBF100–32–113, dated May 28, 1998. If any discrepancy is detected, prior to further flight, repair or replace any discrepant component with a new or serviceable component, in accordance with the service bulletin.

Note 2: In paragraph 2.F.(10) of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–113, dated May 28, 1998, the parenthetical phrase that recommends the size of torque wrench to use, should read "* * * (0 to 75 lbf ft)," rather than "* * * (0 to 75 lbf in)".

(b) Submit a report of the inspection findings (positive or negative) to Fokker Services B.V., Technical Services, Attn.: Manager Airline Support, P.O. Box 75047, 1117 ZN Schiphol-Oost, the Netherlands; Fax No. 3120605200; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection required by paragraph (a) of this AD is accomplished after the effective date of this AD: Submit a report within 10 days after accomplishing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection required by paragraph (a) of this AD has been accomplished prior to the effective date of this AD: Submit a report within 30 days after the effective date of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a Menasco MLG having part number (P/N) 41050–5, –6, –7, or –8; or P/N 41060–1 or –2; unless it has been inspected in accordance with paragraph (a) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive BLA 1998–058(A), dated May 29, 1998.

Issued in Renton, Washington, on November 5, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30333 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket No. RM98–10–000]

Regulation of Short-term Natural Gas Transportation Services; Notice of Staff Conference on Pipeline Capacity Auctions

November 6, 1998.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking, notice of staff conference on pipeline capacity auctions.

SUMMARY: The staff of the Federal Energy Regulatory Commission is holding a conference to discuss pipeline capacity auctions as contemplated in the Notice of Proposed Rulemaking (NOPR), issued on July 29, 1998. 63 FR 42982 (Aug. 11, 1998). The scope of the conference includes all issues raised by

the auction proposed in the NOPR and will consist of panel discussions and presentations.

DATES: December 8, 1998, 9:30 a.m.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington DC 20426.

FOR FURTHER INFORMATION CONTACT: Elizabeth Zerby, Office of Pipeline Rates, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, 202–208–1181.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to rimsmaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, DC 20426.

Regulation of Short-Term Natural Gas Transportation Services

Take notice that on December 8, 1998, the staff of the Federal Energy Regulatory Commission will hold a conference to discuss pipeline capacity auctions as contemplated in the Notice of Proposed Rulemaking (NOPR), issued on July 29, 1998.[1] The conference will begin at 9:30 a.m. at the Commission's offices, 888 First Street, NE., Washington, DC, in the Commission Meeting Room. All interested persons are invited to attend and participate. The purpose of this conference is to enable the industry to discuss with staff, as well as with each other, issues relating to auctions as proposed in the NOPR.

The scope of the conference includes all issues raised by the auction proposed in the NOPR. These would include: how an auction might affect pipeline cost recovery, including issues of rate design, reserve prices, and access charges; how pre-arranged capacity release transactions could be accommodated within an auction; how a capacity auction could coordinate with gas purchasing and risk management practices as well as with the acquisition and scheduling of capacity on interconnecting pipelines and local distribution companies; how auctions affect transaction costs; and how to determine the extent of available capacity as well as the types of capacity that should be included in the auction. The conference is intended to stimulate comment and discussion between staff and the industry on all aspects of the auction proposal in the NOPR, but any staff comments will not necessarily reflect the views of the Federal Energy Regulatory Commission or any Commissioner.

The conference will consist of roundtable discussions and presentations. Parties interested in making presentations and/or participating in the discussions should indicate their interest by November 20, 1998, by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM98–10–000. Upon receipt of these requests, a later notice will be issued providing further details about how the conference is to be organized.

An overhead projector will be made available at the conference. If participants require additional audiovisual services, the need to provide notice of their request in their letter to the Secretary to ensure that it can be accommodated.

The Capitol Connection may broadcast this conference in the Washington, D.C. area if there is sufficient interest. For those outside the Washington, D.C. area, the Capitol Connection may broadcast the conference live via satellite for a fee if there is sufficient interest to justify the cost. To indicate interest in either the local or national braodcast, please call Shirley AlJarani or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible, or e-mail to capcon@gmu.edu.

In addition, National Narrowcast Network's Hearing-On-The-line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211 for further details.

Questions about the conference should be directed to: Elizabeth Zerby, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, 202–208–1181.

David P. Boergers,

Secretary.

[FR Doc. 98–30370 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Regulation of Short-Term Natural Gas Transportation Services, Notice of Proposed Rulemaking, 63 FR 42982 (Aug. 11, 1998), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,533 (July 29, 1998).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–98–125]

RIN 2115–AE46

Special Local Regulations: Greenwood Lake Powerboat Classic, Greenwood Lake, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the annual Greenwood Lake Powerboat Classic. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the southern end of Greenwood Lake, New Jersey.

DATES: Comments must be received on or before January 12, 1998.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch

(CGD01–98–125), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade A. Kenneally, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–98–125) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Greenwood Lake Powerboat Association and the West Milford, New Jersey Chamber of Commerce sponsor this annual high-speed powerboat race with approximately 60 race boats, up to 20 feet in length, participating in the event. An average of 125 spectator craft view this event each year. The race will take place on the southern end of Greenwood Lake, New Jersey. The regulated area encompasses all waters of Greenwood Lake north of 41°08′N, south of 41°09′N, with the shoreline comprising the eastern and western boundaries. The northern boundary will be marked by 6 temporary buoys. The more narrow southern boundary will be marked by 4 temporary buoys. The proposed regulation is effective annually from 10 a.m. until 7 p.m. on Saturday and Sunday, the first weekend before Memorial Day weekend. The race boats will be competing at high speeds with numerous spectator crafts in the area, creating an extra or unusual hazard in the navigable waterway. The proposed regulation prohibits all vessels not participating in the event, swimmers, and personal watercraft from transiting this portion of Greenwood Lake during the races. It is needed to protect the waterway users from the hazards associated with high-speed powerboats racing in confined waters. Marine traffic will be able to transit through the area at various times between races at the direction of the Coast Guard Patrol Commander.

Discussion of Proposed Rule

The proposed special local regulation is for the annual Greenwood Lake Powerboat Classic held on the southern end of Greenwood Lake, New Jersey. This event is held annually on the weekend before Memorial Day weekend. This rule is being proposed to provide for the safety of life on navigable waters during the event, to give the marine community the opportunity to comment on this event, and to decrease the amount of annual paperwork required for this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the southern end of Greenwood Lake during the races, the effect of this regulation will not be significant for several reasons: the limited duration that the regulated area will be in effect, marine traffic will be able to transit through the regulated area at various times between races at the direction of the Coast Guard Patrol Commander, the event is taking place on an inland lake that has no commercial traffic, it is an annual event with local support, and advance notifications will be made to the local maritime community via facsimile. Vessels, swimmers, and personal watercraft of any nature not participating in this event will be unable to transit through or around the regulated area during this event unless authorized by the Coast Guard Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the

Coast Guard must consider whether this rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add § 100.120 to read as follows:

§ 100.120 Special Local Regulations: Greenwood Lake Powerboat Classic, Greenwood Lake, New Jersey.

(a) *Regulated Area.* All waters of Greenwood Lake, New Jersey north of 41°08′N and south of 41°09′N (NAD 1983). The shoreline comprises the eastern and western boundaries.

(b) *Special local regulations.*

(1) Vessels not participating in this event, swimmers, and personal watercraft of any nature are prohibited from entering or moving with the regulated area unless authorized by the Patrol Commander.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(c) *Effective period.* This regulation is in effect annually on Saturday and Sunday from 10 a.m. until 7 p.m. on the first weekend before Memorial Day weekend.

Dated: October 19, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–30446 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 198–0099b; FRL–6184–5]

Approval and Promulgation of State Implementation Plans; California Implementation Plan Revision, Kern County Air Pollution Control District, Placer County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from motor vehicle and mobile equipment refinishing, graphic arts, paper or fabric coating, and screen printing.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by December 14, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
Kern County Air Pollution Control District, 2700 M Street, Suite 302, Bakersfield, CA 93301
Placer County Air Pollution Control District, 11464 B Avenue, Auburn, CA 95603
San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721
Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826
Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Section (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns Kern County Air Pollution Control District Rule 410.4A—Motor Vehicle and Mobile Equipment Refinishing Operations and Rule 410.7—Graphic Arts, San Joaquin Valley Unified Air Pollution Control District Rule 4602—Motor Vehicle and Mobile Equipment Coating Operations and Rule 4607—Graphic Arts, Sacramento Metropolitan Air Quality Management District Rule 450—Graphic Arts and Rule 459—Automotive and Trucks and Heavy Equipment Refinishing Operations, and Santa Barbara County Air Pollution Control District Rule 339—Motor Vehicle and Mobile Equipment Coating Operations, submitted to EPA on May 10, 1996 (410.4A, 410.7), August 1, 1997 (239), March 10, 1998 (4602, 4607, 339), and May 18, 1998 (450, 459) by the California Air Resources Board. For further information, please see the

information provided in the Direct Final action that is located in the Rules section of this **Federal Register**.

Dated: October 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–30274 Filed 11–12–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[GA–41–9829b; FRL–6187–3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d) Plan submitted by the Georgia Department of Natural Resources (DNR) for the State of Georgia on January 20, 1998, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Solid Waste Landfills. The Plan was submitted by the Georgia DNR to satisfy certain Federal Clean Air Act requirements. In the Rules section of this **Federal Register**, EPA is approving the Georgia State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates that it will not receive any significant, material, and adverse comments. A detailed rationale for the approval is set forth in the direct final rule and incorporated by reference herein. If no significant, material, and adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Comments must be received by December 14, 1998.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules section of this **Federal Register** and incorporated by reference herein.

Dated: September 21, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30400 Filed 11–12–98; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 412, 413, 419, 489, 498, and 1003

[HCFA–1005–N]

RIN 0938–AI56

Medicare Program; Prospective Payment System for Hospital Outpatient Services; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for a proposed rule published in the **Federal Register** on September 8, 1998, (63 FR 47552). In that rule, as required by sections 4521, 4522, and 4523 of the Balanced Budget Act of 1997, we proposed to eliminate the formula-driven overpayment for certain outpatient hospital services, extend reductions in payment for costs of hospital outpatient services, and establish in regulations a prospective payment system for hospital outpatient services (and for Medicare Part B services furnished to inpatients who have no Part A coverage.) The comment period is extended for 60 days.

DATES: The comment period is extended to 5 p.m. on January 8, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1005–N, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1005–N. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Janet Wellham, (410) 786–4510.

SUPPLEMENTARY INFORMATION: On September 8, 1998, we issued a proposed rule in the **Federal Register** (63 FR 47552) that would do the following:

- Eliminate the formula-driven overpayment for certain outpatient hospital services;
- Extend reductions in payment for costs of hospital outpatient services;
- Establish in regulations a prospective payment system for hospital outpatient services, for partial hospitalization services furnished by community mental health centers, and for certain Medicare Part B services furnished to inpatients who have no Part A coverage;
- Propose new requirements for provider departments and provider-based entities;
- Implement section 9343(c) of the Omnibus Budget Reconciliation Act of 1986, which prohibits Medicare payment for nonphysician services furnished to a hospital outpatient by a provider or supplier other than a

hospital unless the services are furnished under an arrangement with the hospital;

• Authorize the Department of Health and Human Services' Office of Inspector General to impose a civil money penalty against any individual or entity who knowingly presents a bill for non-physician or other bundled services not provided directly or under such an arrangement.

Because of the scope of the proposed rule, hospitals and numerous professional associations have requested more time to analyze the potential consequences of the rule. Therefore, we are extending the public comment period for an additional 60 days, until January 8, 1999.

Published elsewhere in this issue of the **Federal Register** is a notice extending for an additional 60 days, the comment period for the proposed rule published in the June 12, 1998, **Federal Register** in which we propose to rebase Medicare payment rates and update the list of approved procedures for ambulatory surgical centers (ASCs) (63 FR 32290). We are extending the comment period for the June 12, 1998, ASC proposed rule to be concurrent with the extended comment period for the September 8, 1998, hospital outpatient proposed rule because Medicare payments to ASCs are closely linked to the manner in which Medicare proposes to pay hospitals under a prospective payment system for surgical services furnished on an outpatient basis.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: November 9, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–30388 Filed 11–9–98; 3:10 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416 and 488

[HCFA–1885–3N]

RIN 0938–AH81

Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Procedures for Ambulatory Surgical Centers Effective October 1, 1998; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for the third time on a proposed rule published in the **Federal Register** on June 12, 1998, (63 FR 32290). In that rule we proposed to make various changes, including changes to the ambulatory surgical center (ASC) payment methodology and the list of Medicare covered procedures. The comment period is extended for 60 days.

DATES: The comment period is extended to 5 p.m. on January 8, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1885–P, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1885–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Joan H. Sanow, (410) 786–5723.

SUPPLEMENTARY INFORMATION: On June 12, 1998, we issued a proposed rule in the **Federal Register** (63 FR 32290) that would do the following:

• Update the criteria for determining which surgical procedures can be appropriately and safely performed in an ASC.

• Make additions to and deletions from the current list of Medicare covered ASC procedures based on the revised criteria.

• Rebase the ASC payment rates using cost, charge, and utilization data collected by a 1994 survey of ASCs.

• Refine the ratesetting methodology that was implemented by a final notice published on February 8, 1990, in the **Federal Register**.

• Require that ASC payment, coverage, and wage index updates be implemented annually on January 1 rather than having these updates occur randomly throughout the year.

• Reduce regulatory burden.

• Make several technical policy changes.

The proposed rule would also implement requirements of section 1833(i)(1) and (2) of the Social Security Act. We indicated that comments would be considered if we received them by August 11, 1998.

We received requests from numerous ASCs and professional associations for more time to analyze the potential consequences of the rule. We issued a notice in the **Federal Register** on August 14, 1998, (63 FR 43655) announcing extension of the public comment period to September 10, 1998.

On September 8, 1998, we published a proposed rule in the **Federal Register** entitled "Medicare Program; Prospective Payment System for Hospital Outpatient Services" (63 FR 47552). We received additional requests from ASCs and professional associations for more time to analyze the impact of the hospital outpatient proposed rule, and for a delay in the implementation of the ASC final rule to be concurrent with implementation of the hospital outpatient prospective payment system.

On October 1, 1998, we reopened the comment period for the June 12, 1998, ASC proposed rule until November 9, 1998, to coincide with the comment period for the September 8, 1998, hospital outpatient proposed rule. We also gave notice in the October 1, 1998, **Federal Register** (63 FR 52663) of a

delay in the adoption of the provisions of the June 12, 1998, ASC proposed rule as a final rule to be concurrent with the adoption as final of the hospital outpatient prospective payment system as soon as possible after January 1, 2000.

Published elsewhere in this issue of the **Federal Register** is a notice extending for 60 days the comment period for the September 8, 1998, hospital outpatient proposed rule (63 FR 47552). Because Medicare payments to ASCs are closely linked to the way Medicare proposes to pay hospitals under a prospective payment system for surgical services furnished on an outpatient basis, we are extending the comment period for the June 12, 1998, ASC proposed rule for 60 days to be concurrent with the extended comment period for the September 8, 1998, hospital outpatient proposed rule. The comment period will close at 5 p.m. on January 8, 1999.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 3, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: November 9, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–30389 Filed 11–9–98; 3:10 pm]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC86

National Flood Insurance Program; Advance Notice of Determining the Write-Your-Own Expense Allowance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We, FEMA, are considering changes under the flood insurance Write-Your-Own (WYO) program to our rules on marketing incentives, performance measures, compensation under the WYO expense allowance, agent compensation, and compensation for unallocated loss expenses. Before publishing any rule change in these areas, we want the advice and comments of WYO companies, agents, consumers, and any other interested parties.

DATES: We invite your advice and comments on the proposal. Please send your comments on or before January 12, 1999.

We intend to hold a public meeting for oral submissions in early 1999. We will publish notice in the **Federal Register** with the date and location of the public meeting after the comment period expires for this advance notice of proposed rulemaking.

ADDRESSES: Please send your written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (telefax) (202) 646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia I. Murphy, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., room 429, Washington, DC 20472, (202) 646–2775, (email) *claudia.murphy@fema.gov.*

SUPPLEMENTARY INFORMATION:

Background

The WYO program is a cooperative venture between the Federal Government and private insurance companies. Goals of the program include: increase the flood insurance policy base and the geographic distribution of policyholders; improve service to policyholders and agents; increase the National Flood Insurance Program's (NFIP) ability to settle claims promptly when catastrophes occur; and give private insurers experience operating the NFIP. The duties and responsibilities of the Federal Government and the private insurers participating in the WYO program and the terms for compensation are spelled out each year in the Financial Assistance/Subsidy Arrangement. (44 CFR Part 62, Appendix A.)

FEMA believes the WYO program is the most effective vehicle for delivering flood insurance to consumers and supporting the floodplain management goals of the NFIP. As pressure to raise flood insurance rates continues, particularly regarding reducing premium subsidies, FEMA must examine ways to contain operating costs and determine the most equitable and cost-effective ways to compensate companies that sell and service flood insurance policies.

Marketing and Promotional Expense

We invite your comments on the reasonableness of adjusting the expense allowance for WYO companies to reflect the expense incurred by the FIA in funding marketing efforts. In recent years, FIA marketing and promotional expenses have been about one percent of total flood insurance premiums written. We did not incur similar marketing expense when the WYO expense allowance formula was established. FIA effectively incurs the type of expense that would be considered "other acquisition expense" when incurred by a private insurer. Because "other acquisition expense" is one of the expense components reflected in the WYO expense allowance calculation, it may be reasonable to reflect some or all of the marketing expense incurred by FIA as an offset to the marketing expense we allow in determining the overall WYO expense allowance.

Marketing Incentives

We adjust a company's base expense allowance depending on how well the company met the marketing goals for the arrangement year contained in the marketing guidelines established pursuant to Article II.G. of the Arrangement. We seek your comments on whether a company's compensation should be contingent on meeting the marketing guidelines and if the marketing incentive is the most effective way to encourage the marketing of flood insurance.

As a separate consideration, we ask for your comments on options regarding the marketing incentive adjustment that has been a feature of the expense calculation since arrangement year 1994–95. We have identified possible approaches to the marketing incentive allowance:

(1) Change the current maximum addition to the basic WYO expense allowance from 1.3 percentage points to some other amount, such as 1.0 or 0.5 percentage points;

(2) Eliminate the marketing incentive program; or

(3) Continue the current marketing incentive program.

Performance Measures

We also invite your comments on how performance should be considered in determining the expense allowance of a particular WYO company. Incorporating performance measures into the determination of a company's expense allowance would create incentives to maximize efficiency in areas such as the settlement of NFIP claims, underwriting accuracy, customer services, financial and statistical reporting, and to maximize the cost effectiveness of the WYO program.

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Alternatives to the Current Compensation Scheme

We ask for your advice and comments on alternatives to the current compensation scheme. One future approach might be to determine the WYO expense allowance using actual average expense ratios of the WYO companies as opposed to the ratios of the entire property/casualty industry. We could use direct written premium and expense information allocated to Federal flood insurance from Part III—Allocation to Lines of Direct Business Written for the property/casualty industry as reported in A.M. Best Company's *Aggregates and Averages.*

(1) We could total the amounts incurred for "Commissions", "Taxes", "Other Acquisition", and "General Expense" and divide this sum by "Premiums Written" to derive a baseline expense ratio.

(2) Alternatively, we could compute an operating allowance percentage by totaling the amounts incurred for "Taxes", "Other Acquisition", and "General Expense" and dividing this sum by "Premiums Written" to derive a baseline expense ratio and add a fixed percentage commission allowance.

We could adjust the percentage amount of either of the computed ratios to compensate the companies for their participation in the WYO program. One approach could be to set the expense ratio at the mid-point, or some other point, between the expense ratio computed using the proposed expense allowance formula and the ratio derived from direct Federal flood program premium and expense data. We welcome your comments on how this adjustment could be determined.

Agent Compensation

FEMA does not determine commissions paid by WYO companies to their agents; however, we include a 15 percent agent commission expense in calculating the WYO expense allowance. Market evidence based on the prevalence of rebating suggests this commission level is high for Residential Condominium Building Association Policies. We invite comments on how to modify the expense structure in light of the practice of rebating.

We do not intend to change the portion of the WYO expense allowance for agents but would like to gather information on industry practices for compensating agents who sell insurance products. We encourage and invite you to provide a description of your commission structure and/or other methods for compensating your agents. We are interested in knowing about differences in compensation for flood insurance and other types of property and casualty insurance and any differences in commissions paid for large and small policies, new and renewal business, and commercial and residential business.

Compensation for Unallocated Loss Expenses

Finally, we would like to gather information on the costs companies incur handling NFIP claims, which are in addition to the Adjuster Fee Schedule but are not eligible for reimbursement as a special allocated loss adjustment expense. Currently, WYO companies are entitled to an expense payment of 3.3 percent of the incurred loss, exclusive of "incurred but not reported" losses, as compensation for settling losses. An expense payment based on the percent of the incurred loss may operate as an incentive to pay questionable or disputed claims. We encourage you to provide information on the costs incurred settling NFIP losses, how claims handling practices affect your company's costs, and how the frequency of disasters affect these costs.

Confidential Information

Business entities who choose to submit confidential information protected from disclosure under the Freedom of Information Act (5 USC 552(b)(4)) should identify that information clearly as such, segregate it from the body of the comment, and include a summary of or reference to it in the comment.

Public Meeting

We intend to hold a public meeting for oral submissions in early 1999. We will publish notice in the **Federal Register** with the date and location of the public meeting after the comment period expires for this advance notice of proposed rulemaking. Please indicate in your comments whether you wish to participate in this meeting, and if so, the name and title of the speaker. If several respondents have substantially similar comments, a preliminary hearing may be necessary to align interests.

Dated: November 4, 1998.

Jo Ann Howard,

Federal Insurance Administrator.

[FR Doc. 98–30409 Filed 11–12–98; 8:45 am]

BILLING CODE 6718–03–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067–AC92

National Flood Insurance Program; Determining the Write-Your-Own Expense Allowance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We, FEMA, propose to change our method for establishing the Write-Your-Own (WYO) expense allowance percentage for arrangement years beginning on or after October 1, 1999. We would use a new formula to derive the expense ratios used in determining the operating portion of the expense allowance. This formula would use direct, as opposed to net, premium and expense information for the property/casualty industry and would have the effect of lowering the expense allowance.

DATES: We invite your advice and comments on the proposal. Please send your comments on or before January 12, 1999.

We intend to hold a public meeting for oral submissions in early 1999. We will publish a notice in the **Federal Register** with the date and location of the meeting after the comment period expires for this proposed rule.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (telefax) (202) 646–4536, (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Claudia I. Murphy, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., room 429, Washington, DC 20472, (202) 646–2775, (email) *claudia.murphy@fema.gov.*

SUPPLEMENTARY INFORMATION:

Background

The WYO program is a cooperative venture between the Federal Government and private insurance companies. The goals of the program are: to increase the flood insurance policy base and the geographic distribution of policyholders; to improve service to policyholders and agents; to increase the NFIP's ability to settle claims promptly in catastrophe situations, and to give private insurers experience operating the NFIP. The duties and responsibilities of the Federal Government and the private

insurers participating in the WYO program and the compensation, or expense allowance, are spelled out each year in the Financial Assistance/ Subsidy Arrangement. (44 CFR Part 62, Appendix A.)

WYO Expense Allowance

The WYO expense allowance is composed of an operating allowance percentage and a fixed 15 percent commission allowance. Before the 1994–95 arrangement year, the operating allowance percentage of the expense allowance was based on the average expense ratios for "Other Acq.", "General Exp.", and "Taxes" as published, for the latest available year, in A.M. Best Company's *Aggregates and Averages*—Property Casualty Insurance Underwriting—by Lines for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined. Specifically, we combined the ratios of net expenses, by category, to net premiums written, for each of the aforementioned five property insurance coverages according to weighting based on net premiums earned for each coverage. To that percentage we then added a fixed 15 percent commission allowance to arrive at the annual WYO expense allowance percentage.

Since the 1994–95 arrangement year, we have included only the non-liability portion of Commercial Multiple Peril lines in the computations. We have also determined the final amount retained by the company by an adjustment to a base percentage depending on how well the company met the marketing goals for the arrangement year contained in the marketing guidelines established pursuant to Article II.G. of the Arrangement.

New Formula To Derive Expense Ratios

We want to continue the same basic approach we have used for more than 15 years and intend to use published property/casualty industry expense information to derive flood insurance expense allowances. We would update the specifics of the formula to take advantage of data elements not available in published form at the time we originally established the current formula. Fifteen years ago *Aggregates and Averages* did not contain an Insurance Expense Exhibit for the property/casualty industry and the Insurance Expense Exhibit completed by insurers did not provide direct premium and expense information comparable to what is provided today.

New Formula Under Consideration

We ask your advice and comments on a new formula we propose to use to derive the three expense ratios that determine the operating portion of the expense allowance. This formula would use the direct, as opposed to net, premium and expense information reflected in Part III of the Insurance Expense Exhibit for the property/ casualty industry as reported in A.M. Best Company's *Aggregates and Averages*. We would aggregate premiums and expense amounts for each of the same five property coverages, and we would derive the weighted-average expense ratios therefrom. We would eliminate the use of an earned premium weighting of by-line expense ratios because we would rely no longer on by-line ratios to derive the combined expense ratios for the five lines involved.

Information on direct premiums written provides a better indicator of the premiums written in a year to be used in computing the expense ratio. Direct premiums written represent the aggregate amount of recorded originated premiums, other than reinsurance, written during a year after deducting all return premiums. Net premiums written include direct premiums written and reinsurance assumed, less reinsurance ceded. Reinsurance is not a part of a WYO company's flood business because the Federal government assumes liability for all losses and hence, should not be included in the calculation of the expense ratio.

Confidential Information

Business entities who chose to submit confidential information protected from disclosure under the Freedom of Information Act (5 U.S.C. 552(b)(4)) should identify that information clearly as such, segregate it from the body of the comment, and include a summary of or reference to it in the comment.

Public Meeting

We intend to hold a public meeting for oral submissions in early 1999. We will publish a notice in the **Federal Register** with the date and location of the meeting after the comment period expires for this proposed rule. Please indicate in your comments whether you wish to participate in this meeting, and if so, the name and title of the speaker. If several respondents have substantially similar comments, a preliminary hearing may be necessary to align interests.

National Environmental Policy Act

This proposed rule would be categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This proposed rule would not be a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. To the extent possible, this proposed rule adheres to the regulatory principles set forth in E.O. 12866 and the Office of Management and Budget has not reviewed it under the provisions of E.O. 12866.

Paperwork Reduction Act

This proposed rule would not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This proposed rule would not involve any policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule would meet the applicable standards of § 2(b)(2) of E.O. 12778.

Regulatory Flexibility Act

I certify that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because it would make minor and technical amendments to the National Flood Insurance Program. This proposed rule would not contain any significant substantive changes from FEMA's present Write-Your-Own expense allowance regulations and would not substantially change how FEMA determines the Write-Your-Own expense allowance. The Regulatory Flexibility Act does not apply to this proposed rule and no regulatory analysis has been prepared.

List of Subjects in 44 CFR 62

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 44 CFR 62, Appendix A, as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

1. The authority citation to Part 62 continues to read:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. We revise Article III.B of Appendix A to Part 62, to read as follows:

Appendix A to Part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement

* * * * *

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

* * * * *

B. The Company will be entitled to withhold as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. of this article. This amount will equal the sum of the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" calculated by aggregating premiums and expense amounts for each of five property coverages using direct, as opposed to net, premium and expense information to derive weighted average expense ratios. The five property coverages we will include are Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion). We will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's *Aggregates and Averages*.

The Company will be entitled to 15 percent of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

The amount of expense allowance retained by the company may be increased a maximum of 1.3 percent, depending on the extent to which the company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G. The amount of any increase will be paid to the company after the end of the Arrangement year.

The Company, with the consent of the Administrator as to terms and costs, will be entitled to use the services of a national rating organization, licensed under state law, to help the FIA undertake and carry out such studies and investigations on a community or individual risk basis, and to determine equitable and accurate estimates of flood insurance risk premium rates as authorized under the National Flood Insurance Act of 1968, as amended. The Company will be reimbursed for the charges or fees for such services under the provisions of the WYO Accounting Procedures Manual.

* * * * *

Dated: November 4, 1998.

Jo Ann Howard,

Federal Insurance Administrator.

[FR Doc. 98–30410 Filed 11–12–98; 8:45 am]

BILLING CODE 6718–03–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981104276–8276–01; I.D. 100898A]

Fisheries of the Northeastern United States; Proposed 1999 Fishing Quotas for Atlantic Surf Clams and Ocean Quahogs

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1999 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs; request for comments.

SUMMARY: NMFS issues these proposed quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany quahog fisheries for 1999. These quotas were selected from a range defined as optimum yield (OY) for each fishery. The intent of this action is to propose allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and propose an allowable harvest level of Maine mahogany quahogs from the waters north of 43°50′N. lat. in 1999.

DATES: Public comments must be received on or before December 17, 1998.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's analysis and recommendations are available from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901–6790.

Send comments to: Jon Rittgers, Acting Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, "Comments—1999 Surf Clam and Quahog Quotas."

FOR FURTHER INFORMATION CONTACT: David Gouveia, Fishery Management Specialist, 978–281–9280.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Assistant Administrator for Fisheries, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the OY for each fishery. It is the policy of the Council that the levels selected allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the Council policy is to consider economic benefits of the quotas. Regulations implementing Amendment 10 to the FMP published on May 19, 1998 (63 FR 27481), established a small artisanal fishery in the waters north of 43°50′ N. lat. for Maine mahogany quahogs and an initial annual quota of 100,000 Maine bushels (35,150 hectoliters (hL)). As specified in Amendment 10, the Maine mahogany quahog quota is in addition to the quota specified for the ocean quahog fishery.

The fishing quotas must be in compliance with overfishing definitions for each species. The overfishing definitions are fishing mortality rates of $F_{20\%}$ (20 percent of maximum spawning potential (MSP)) for surf clams and $F_{25\%}$ (25 percent of MSP) for ocean quahogs and Maine mahogany quahogs combined.

In proposing these quotas, the Council considered the available stock assessments, data reported by harvesters and processors, and other relevant information concerning exploitable biomass and spawning biomass, fishing mortality rates, stock recruitment, projected effort and catches, and areas closed to fishing. This information was presented in a written report prepared by the Council staff. The proposed quotas for the 1999 Atlantic surf clam, ocean quahog, and Maine mahogany quahog fisheries are shown below. The surf clam and Maine mahogany quahog quotas would be unchanged from the 1998 level, and the ocean quahog quota would be increased from the 1998 level by 13 percent.

PROPOSED 1999 SURF CLAM/OCEAN QUAHOG QUOTAS

Fishery	1999 final quotas (bu)	1999 final quotas (hL)
Surf clam[1]	2,565,000	1,362,000
Ocean quahog[1]	4,500,000	2,387,000
Maine mahogany quahog[2]	100,000	35,150

[1] 1 bushel = 53.24 liters.
[2] 1 bushel = 35.4 liters.

Surf Clams

The Council recommends a 1999 quota of 2.565 million bushels (1.362

million hL) for surf clams, a level unchanged since 1995. This level of quota was estimated as corresponding to the fishing mortality rate that would be required to harvest the annual surplus production for Northern New Jersey. The vast majority of the catch (>80 percent) is currently derived from the Northern New Jersey area, which contains about 36 percent of the coast-wide resource. Since surf clams reach a harvestable size in 6 to 7 years and recruitment is evident, this level of quota will not harm the long-term sustainability of the resource.

As specified in the FMP, the quota level must comply with the surf clam overfishing definition. Based on the surf clam overfishing definition of $F_{20\%}$, this translates to F = 0.18 for surf clams. The F in 1997 associated with a quota of 2.565 million bushels (1.362 million hL) was approximately 0.04 for the Northern New Jersey area. The specific F associated with the 1999 quota will be calculated when the next assessment is complete, but should be approximately the estimated F in 1997 for Northern New Jersey. Therefore, the proposed quota is below the approved overfishing threshold definition for fishing mortality.

The proposed quota was the Council's preferred alternative quota for the 1999 surf clam fishery. This preferred alternative was based on the surf clam analysis found in the 26th Northeast Regional Stock Assessment Workshop (SAW 26). SAW 26 utilized recent data from the 1997 survey, which included work to estimate dredge efficiency. Although SAW 26 showed a significant increase in surf clam biomass, the Council chose not to consider a quota increase for 1999 because of three main factors: (1) The vast majority of the catch (>80 percent) is derived from the Northern New Jersey area, and the net productivity of that area appears to be at an equilibrium with the current catches; (2) the 1997 Federal surf clam landings were 6 percent less than the 1997 quota and preliminary data for 1998 also indicates that landings will also be below the 1998 quota level; and (3) although SAW 26 utilized a new dredge efficiency estimate to derive a sharp increase in surf clam biomass, this assessment is the first conducted using the new estimate.

The Council continues to assume that none of the Georges Bank resource (approximately one quarter of the resource) would be available during the next 10 years for harvesting because of paralytic shellfish poisoning. In the recent past, both the Council's Surf Clam and Ocean Quahog Committee and the Industry Advisory Group believed that the reopening of the Georges Bank area was uncertain and too speculative to base quota recommendations upon. There was no discussion about surf clam availability from Georges Bank relative to the 1999 quota recommendation.

Ocean Quahogs

The Council recommends a 1999 quota of 4.5 million bushels (2.387 million hL) for ocean quahogs, an increase of 13 percent from the 1998 quota level. The FMP specifies that the quota level must comply with the ocean quahog overfishing definition. Based on the ocean quahog overfishing definition of $F_{25\%}$, this yields F = 0.04. The 1997 quota yielded an F of approximately 0.021. The specific F associated with the 1999 quota will be calculated when the new assessment is complete but should be close to the F in 1997 since a significant proportion of the biomass remains unexploited. Therefore, the proposed quota is below the approved overfishing definition for fishing mortality. The Atlantic surf clam and ocean quahog quotas are specified in standard bushels of 53.24 liters per bushel while the Maine mahogany quahog quota is specified in "Maine" bushels of 35.4 liters per bushel. Since Maine mahogany quahogs are the same species as ocean quahogs, both species are combined and share the same ocean quahog overfishing definition. When the two quota amounts are added, the total allowable harvest is lower than the level that would result in overfishing for the entire stock, as previously defined in the ocean quahog overfishing definition.

The Council proposes a 1999 ocean quahog quota based on the analysis found in the 27th Northeast Regional Stock Assessment Workshop (SAW 27). As in SAW 26 with respect to surf clams, SAW 27 also utilized recent data from the 1997 survey, which included work to estimate dredge efficiency, and showed a significant increase in the ocean quahog biomass. Although 30 percent of the resource is located on Georges Bank, SAW 27 did not question whether Georges Bank would ever be reopened. However, SAW 27 showed that using the entire resource, with a harvest level of only 4 million bushels (2.122 million hL), would produce a supply year harvest equivalent to 76 years. That is significantly longer than the period specified in the Council's policy of at least 30 years. The resource is of sufficient size overall that the 30 percent that is on Georges Bank is not necessary to meet the Council's 30-year supply policy.

Although SAW 27 showed that the ocean quahog quota could have been increased by more than 13 percent from the 1998 quota level, the Council chose the half-million bushel increase for 1999 because of four main factors: (1) The resource is at medium-high level of biomass and is considered under-exploited at the scale of the management unit; (2) the 1997 landings were constraining to industry; (3) most industry members supported the 4.5 million figure; and (4) as with surf clams, although SAW 27 utilized a new dredge efficiency estimate to derive a sharp increase in ocean quahog biomass, this assessment represents only one point over time.

The Council also voted to recommend that the Maine mahogany quahog quota remain unchanged from the 1998 quota level at 100,000 Maine bushels (35,140 hL) for 1999. This quota pertains to the zone of both state and Federal waters off the eastern coast of Maine north of 43°50′ N. lat. Amendment 10, which established management measures for this small artisanal fishery for ocean quahogs was implemented in May of 1998. Data from the federally managed fishery is just beginning to be compiled, and there has been no attempt yet to develop and conduct a scientific survey of the extent of the resource. Apparently, maintaining the quota at its current level for another year will not constrain the fishery or endanger the resource.

Classification

This action is authorized by 50 CFR part 648, complies with the National Environmental Policy Act, and has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce, for the reasons set forth below, certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council prepared a Regulatory Impact Review (RIR), which describes the impact this proposed rule, if adopted, would have on small entities. The RIR notes that 50 vessels reported harvesting surf clams or ocean quahogs from Federal waters in 1997 under an individual transferable quota (ITQ) system. These vessels sold their catches to 11 companies. Under the ITQ system, the right to harvest is allocated to 125 owners, some of whom harvest either surf clam or ocean quahog and some of whom harvest both.

The Council proposes maintaining a surf clam quota of 2.565 million bushels, a level which has been

unchanged since 1995. The Council notes that 80 percent of the surf clam harvest is concentrated off the coast of Northern New Jersey. The most recent scientific advice indicates that, while overall that stock could sustain higher harvests, careful consideration must be given to such an increase since harvesting activity is likely to remain focused off Northern New Jersey, where current catches approximately equal stock production. In addition, the Council expressed concern that the 1997 quota was not attained. The proposal to maintain the surf clam quota at the current 1998 level was opposed by some industry representatives who argued that there was adequate biological information to justify an increase in surf clam quota. However, the Council's quota setting policy for surf clams requires consideration of the economic benefits. The Council, in recommending no change from the 1998 quota level for surf clams, relied upon industry comment with respect to those economic benefits. Some argued that a quota increase would encourage corporate consumers to develop new products to utilize surf clams and generate benefits. Others argued against an increase, noting the current quota is not being fully harvested and an additional quota would only create surplus supply.

The Council also recommends an ocean quahog quota of 4.500 million bushels (a 13 percent increase from the 1998 quota of 4.000 million bushels) and no change in the Maine mahogany quahog quota from the 1998 level of 100,000 Maine bushels. Similar to that of surf clams, the most recent scientific information reported higher biomass estimates for ocean quahogs. However, the advice noted that local declines in quahog abundance could occur if the fishery concentrated in areas of high biomass. The 1998 Maine mahogany quahog quota level was implemented in May of this year and is not projected to be harvested. Therefore, because the proposed quota levels do not restrict the harvest levels of these fisheries from their 1998 levels, it is anticipated that this action will not have a significant impact on a substantial number of these small entities engaged in these fisheries. A copy of the RIR is available from the Council (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30288 Filed 11–6–98; 4:46 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 648 and 649

[Docket No. 981026267–8267–01; I.D. 100798B]

RIN 0648–AL36

Fisheries of the Northeastern United States; American Lobster Fishery; Fishery Management Plan (FMP) Amendments to Achieve Regulatory Consistency on Permit Related Provisions for Vessels Issued Limited Access Federal Fishery Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule and request for comments to implement measures contained in Amendment 11 to the Summer Flounder, Scup, and Black Sea Bass FMP; Amendment 7 to the Atlantic Mackerel, Squid, and Butterfish FMP; Amendment 11 to the Atlantic Surf Clam and Ocean Quahog FMP; Amendment 8 to the Atlantic Sea Scallop FMP; Amendment 10 to the Northeast Multispecies FMP; and Amendment 7 to the American Lobster FMP. These amendments would implement regulations to achieve regulatory consistency on vessel permitting for FMPs which have limited access permits issued by the Northeast Region of the NMFS. The proposed regulations are intended to facilitate transactions such as buying, selling, or upgrading commercial fishing vessels issued limited access permits. Consistency on these regulations is especially important for vessels which have limited access permits in more than one fishery in the Northeast Region.

DATES: Public comments must be received on or before December 28, 1998.

ADDRESSES: Comments on this proposed rule should be sent to Jon C. Rittgers, Acting Regional Administrator, Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Proposed Rule for Permit Consistency."

Copies of these amendments, the regulatory impact review, and the environmental assessment are available from the Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904-6790, or the Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the Acting Regional Administrator, Northeast Regional Office, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION: This proposed rule would implement amendments to the Summer Flounder, Scup, and Black Sea Bass FMP; Atlantic Surf Clam and Ocean Quahog FMP; Atlantic Mackerel, Squid, and Butterfish FMP; Atlantic Sea Scallop FMP; Northeast Multispecies FMP; and to the American Lobster FMP.

Summary of Proposed Measures

These proposed amendments would consolidate measures governing permit-associated activities for all Northeast Region FMPs that have limited access permits. None of the proposed measures would apply retroactively. The measures would (1) allow a one-time vessel upgrade/replacement allowance of 10 percent in size (length overall (LOA), gross registered tons (GRT), and net tons (NT)), or 20 percent in horsepower (HP) for all limited access permits except American lobster (an engine HP increase may be performed separately from a vessel size increase); (2) require that the fishing and permit history of a vessel and the replacement vessel be owned by the same person when transferring limited access permits to replacement vessels; (3) allow voluntary replacement of vessels, regardless of vessel condition; (4) require that the fishing and permit history of a vessel transfer with the vessel whenever it is bought, sold or otherwise transferred, unless there is a written agreement between the buyer and seller, or other credible written evidence, verifying that the seller is retaining the vessel's fishing and permit history for purposes of replacing the vessel; (5) set the effective date of the final rule implementing the FMP amendments as the vessel baseline specification date for FMPs without baselines (scup, *Loligo*/butterfish, *Illex*, black sea bass, mahogany quahog); (6) set the effective date of the final rule implementing the FMP amendments as the revised replacement baseline date

and the newly established upgrade baseline date for the summer flounder FMP; (7) authorize the permanent voluntary relinquishment of permit eligibility; (8) implement a restriction on permit splitting; and (9) require a one-time Confirmation of Permit History (CPH) registration and an annual permit renewal. For the American Lobster FMP, the amendments would prohibit permit splitting and require a one-time CPH registration.

Background

Current limited access vessel permit regulations for FMPs in the Northeast Region were developed by the Mid-Atlantic Fishery Management Council (MAFMC) and New England Fishery Management Council (NEFMC) over a period of many years. As a result, the FMPs differ widely on important provisions regarding vessel replacement and upgrade, permit history transfer, permit splitting, and permit renewal. The current regulations are not only inconsistent among FMPs, they are also, in some instances, overly restrictive. This has proven to be confusing and inefficient, especially for the approximately 2,079 vessels which possess more than one limited access Federal fishery permit. Routine business transactions, such as the sale or purchase of a vessel, have become unnecessarily complicated because of these differences. In a worst case situation, four different sets of guidelines would need to be interpreted by both industry and NMFS if a vessel with multispecies, summer flounder, black sea bass, and scup limited access permits was bought, sold, or upgraded.

These proposed measures were developed at the MAFMC Comprehensive Management Committee meeting on February 27, 1998. In March 1998, the MAFMC voted to accept the measures for public hearings. Simultaneously, the Interspecies Committee of the NEFMC approved these measures for public hearing. Due to a lack of Council staff time, NMFS staff prepared a draft environmental assessment (EA) and regulatory impact review (RIR) during May 1998 to facilitate the public hearing process. The MAFMC approved the EA and Public Hearing Document on June 3, 1998. The NEFMC approved the EA and Public Hearing Document on June 24, 1998. Public comments on the draft EA/RIR were accepted from June 24, 1998, to August 5, 1998. Public hearings were conducted in Riverhead, NY (July 20, 1998), Toms River, NJ (July 21, 1998), Norfolk, VA (July 21, 1998), and Peabody, MA (July 30, 1998). The MAFMC reviewed the public hearing comments and voted to approve the amendments for the summer flounder, scup, and black sea bass; Atlantic mackerel, squid, and butterfish; and Atlantic surf clam and ocean quahog FMPs for submission to the Secretary of Commerce (Secretary) on August 20, 1998. The NEFMC voted to approve the amendments for the NE multispecies, Atlantic sea scallops, and American lobster FMPs for submission to the Secretary on September 24, 1998.

The following section describes problems with the existing regulations and explains how the proposed amendments would address these problems.

Vessel Ownership Restrictions

A regulation affecting scup, *Illex*, *Loligo*/butterfish, and mahogany quahog permits currently requires that, when replacing an existing vessel with another vessel and transferring permits, the existing vessel and the replacement vessel must be owned simultaneously by the same person. This has proven to be impractical because most vessel owners must sell their current vessel in order to purchase a replacement vessel. Without these changes vessel owners who must use the proceeds from the sale of one vessel to finance the purchase of another vessel may be unable to procure a replacement vessel.

The proposed amendments would eliminate the requirement that both vessels are owned simultaneously at the time of replacement in these FMPs. The owner of the replacement vessel would only need to possess the fishing and permit history of a limited access vessel to transfer the permit to an otherwise qualified replacement vessel. To facilitate this, the proposed regulations establish procedures to provide a CPH, which would retain a vessel's fishing and permit history. The CPH would remain valid until it is used to issue a permit to an otherwise qualified replacement vessel.

Vessel Replacement Restrictions Based on Vessel Condition

A current provision affecting some Mid-Atlantic permits (scup, *Illex*, *Loligo*/butterfish, and mahogany quahogs) requires that a vessel must sink or be declared unseaworthy by the U.S. Coast Guard before it can be replaced. Under these regulations, a vessel cannot be replaced voluntarily if it is simply old or in disrepair, so an owner may have to keep fishing with the vessel until it burns or sinks. This requirement compromises vessel safety, diminishes an owner's flexibility to replace a vessel at a time when the owner deems appropriate, and prevents owners from taking timely advantage of opportunities to purchase new vessels. Furthermore, this requirement serves no conservation purpose. The proposed amendments would allow for voluntary vessel replacement at a time when an owner chooses for all of the FMPs with limited access permits.

Differences in Permit History Transfer Regulations Among FMPs

The regulations governing permit history transfers would be amended to be consistent among FMPs. Under current black sea bass, multispecies, Atlantic sea scallop, and American lobster regulations, fishing and permit history may be separated from a hull when a vessel is sold, if there is a written agreement between the buyer and the seller. However, under the summer flounder, scup, *Illex*, *Loligo*/butterfish, and mahogany quahog requirements, permit eligibility always transfers with the vessel if it is sold. This inconsistency regarding how permit histories are transferred is important because it affects the manner in which people can enter or retain access to limited access fisheries. The proposed amendments would allow the fishing and permit history of a vessel to be retained by a seller (with written agreement from the buyer) for all limited access permits. As a result, the fishing industry will gain more flexibility when buying and selling vessels.

Differences Among FMPs in Vessel Replacement and Upgrading Existing Vessels

Current regulations prohibit increasing the size and HP of a replacement vessel at the time of replacement for vessels with black sea bass, scup, *Illex*, *Loligo*/butterfish, or mahogany quahog limited access permits. These regulations, however, do allow for an existing vessel to have length added and a larger, more powerful engine installed. This confounds measures to control effort and capitalization in these fisheries, over the long term.

The summer flounder, multispecies, and Atlantic sea scallop regulations allow, for vessel replacement purposes, a one-time HP increase that may not exceed 20 percent of the HP of the vessel replaced and a one-time increase of up to 10 percent in each of the specifications for vessel size (length, GRT, and NT), all of which must be performed at the same time. A vessel size upgrade may be performed separately from an engine HP upgrade.

The proposed amendments would allow a one-time upgrade or

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replacement allowance of 10 percent in each of the specifications for vessel size (GRT, NT, and length) and a 20 percent increase in HP for all FMPs with existing replacement or upgrade restrictions (excluding the American lobster FMP). The proposed amendments would (1) establish vessel baseline specification dates for FMPs without baselines (scup, *Loligo*/butterfish, *Illex*, black sea bass, mahogany quahog); (2) establish an upgrade baseline specification date for the summer flounder FMP; and (3) revise the summer flounder FMP replacement baseline specification date. These baseline specification dates will be the effective date of the final rule.

Differences on Permit Splitting and Permit History Transfer Among FMPs

The multispecies FMP does not allow a multispecies permit to be issued to a vessel if its fishing or permit history has been used to qualify the vessel for another limited access Federal fishery. This "permit-splitting" prohibition was intended to prevent an increase in fishing effort and capitalization. The problem is that only the multispecies FMP has the "no-splitting" provision. Because of this, a multispecies permit could be revoked for circumstances that are not in that permit holder's control. This could occur when a vessel with both multispecies and scup, or certain other permits, is sold. The seller could retain the multispecies permit and transfer it to another vessel. The buyer would still be eligible for the scup permit because it transfers with the vessel under current scup regulations and the regulations in other FMPs. However, due to the prohibition on permit-splitting in multispecies, if the scup permit is issued, the multispecies permit would have to be canceled.

The proposed regulations would prohibit permit splitting in all FMPs. This has the effect of keeping all "permit packages" intact. The adoption of this rule and all of its proposed measures allowing for voluntary vessel replacement and for the retention in writing of limited access permits, makes it necessary that NMFS adopt a prohibition against permit splitting in all FMPs with limited access permits. Otherwise, through the use of permit splitting, overall fleet capacity may increase, thereby negating the benefits gained from other management measures. The proposed amendments would also avoid the situation described above where a permit has to be canceled for reasons that are beyond a permit holder's control.

Voluntary Relinquishment of Permit Eligibility

There are situations where it is advantageous or desirable for a vessel owner to relinquish a permit voluntarily. For example, if frequent reporting is required; or if it is necessary to choose between different baselines; or if it is possible to take advantage of the unrestricted vessel upgrade allowance in the lobster fishery. The proposed amendments allow for the voluntary permanent relinquishment of permit eligibility allowing more flexibility to limited access permit holders.

Technical Changes

Amendment 2 to the summer flounder FMP established the vessel permit moratorium, which was initially to expire after 1997. Amendment 10 to the summer flounder FMP extended the moratorium indefinitely (62 FR 63872, December 3, 1997), but § 648.4(a)(3)(i) was not revised as necessary. This inadvertent omission is being corrected in this rulemaking.

Classification

At this time, NMFS has not determined that the amendments that this rule would implement are consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination will take into account the data, views, and comments received during the comment period for this proposed rule.

This proposed rule has been determined to be significant for the purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

NMFS' standards for criteria to determine if a regulatory action is significant include: (1) a decrease in annual gross revenues of more than 5 percent for 20 percent or more of the affected small entities; (2) an increase in total costs of production of more than 5 percent as a result of an increase in compliance costs for 20 percent or more of the affected small entities; (3) compliance costs as a percent of sales for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities for 20 percent or more of the affected small entities; (4) capital costs of compliance that represent a significant portion of capital available to small entities, considering internal cash flow and external financing capabilities; or (5) 2 percent of the small business entities affected being forced to cease business operations.

A substantial number of entities may be directly or indirectly impacted by this proposed action because all of the vessels (4,430) in these fisheries are small entities and hold at least one limited access moratorium permit in the Northeast Region. However, this proposed rule would not have a significant economic impact because, if adopted, it would not result in a decrease in gross revenues, result in significant compliance costs, or cause businesses to cease operations. Many of these small entities currently operate under existing restrictions affecting vessel replacement, vessel upgrade, permit transfers, and permit renewals that are more restrictive and more complicated than the measures contained in this proposed rule.

Current restrictions governing these activities differ for each vessel, depending upon the unique combination of permits which the vessel possesses. There are currently four different sets of regulations. This creates confusion and is inefficient when attempting to sell, modify, or replace a fishing vessel. This proposed amendment would reduce the number of sets of guidelines from four to one, and these proposed guidelines are already applicable in the multispecies and Atlantic sea scallop fisheries.

The proposed action would not result in a decrease in annual gross revenues of more than 5 percent for 20 percent or more of the affected small entities because the new requirements are generally more lenient and less complicated than the existing array of regulations governing permit-related activities. In addition, these requirements do not impose compliance costs, such as gear purchases or direct restrictions on fishing activities. If and when a vessel owner chooses to buy, sell, upgrade, or replace a vessel then the regulations would affect them. However, these actions would still be permissible and, with the exception of upgrades in some fisheries, the regulations would be more lenient. Because the proposed restriction on vessel upgrades is difficult to quantify, NMFS is seeking comments to establish any potential impacts that the restriction may create. Costs of production and capital costs of compliance will not increase because the regulations do not impose immediate compliance requirements.

Because this action, if adopted, would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been submitted to OMB for approval. Vessel owners intending to replace vessels, upgrade vessels, or obtain a CPH are required to complete an application form. The estimated average response time is 3 hours for applicants requesting replacements of vessels permitted for Mid-Atlantic fisheries. For applicants requesting a history retention, the estimated average response time is one- half hour per response. For applicants requesting vessel specification upgrades, the estimated average response time is 3 hours. For applicants requesting replacements of undocumented vessels, the estimated average response time is 3 hours.

This proposed rule also contains two collection-of-information requirements previously approved under OMB control number 0648–0202. The response time for a multispecies permit holder to request a change in permit category is 5 minutes. The response time for a multispecies permit holder to request a permit appeal in writing is 3 minutes. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility, the accuracy of the burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

List of Subjects

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 649

Fisheries.

Dated: November 6, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 648 and 649 are proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.4 is amended by removing paragraph (a)(5)(ii); redesignating existing paragraphs (a)(5)(iii), (a)(5)(iv), and (a)(5)(v) as paragraphs (a)(5)(ii), (a)(5)(iii), and (a)(5)(iv) respectively; revising paragraphs (a)(1)(i)(A) through (a)(1)(i)(C), (a)(1)(i)(E), (a)(1)(i)(F), (a)(1)(i)(H), (a)(1)(i)(I)(*2*), (a)(1)(i)(J) through (a)(1)(i)(L), (a)(2)(i)(B), (a)(2)(i)(H), (a)(3)(i) heading, (a)(3)(i)(B), (a)(3)(i)(C), (a)(4)(i), (a)(5)(i), (a)(6)(i), (a)(7)(i); and adding paragraphs (a)(1)(i)(M), (a)(2)(i)(L), (a)(2)(i)(M), (a)(3)(i)(D) through (a)(3)(i)(H), and (a)(3)(i)(J) through (a)(3)(i)(L) to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) * * *

(i) * * *

(A) *Eligibility.* To be eligible to apply for a limited access multispecies permit, as specified in § 648.82, a vessel must have been issued a limited access multispecies permit for the preceding year, or be replacing a vessel that was issued a limited access multispecies permit for the preceding year.

(B) *Application/renewal restrictions.* All limited access permits established under this section must be issued on an annual basis by the last day of the fishing year for which the permit is required, unless a Confirmation of Permit History (CPH) has been issued as specified in (a)(1)(i)(J) of this section. Application for such permits must be received no later than 30 days before the last day of the fishing year. Failure to renew a limited access permit in any fishing year bars the renewal of the permit in subsequent years.

(C) *Qualification restriction.* Unless the Regional Administrator determines otherwise, no more than one vessel may qualify, at any one time, for a limited access permit based on that or another vessel's fishing and permit history. If more than one vessel owner claims eligibility for a limited access permit, based on one vessel's fishing and permit history, the Regional Administrator will determine who is entitled to qualify for the permit and any DAS allocation according to paragraph (a)(1)(i)(D) of this section.

* * * * *

(E) *Replacement vessels.* To be eligible for a limited access permit under this section, the replacement vessel must meet the following criteria and any applicable criteria under paragraph (a)(1)(i)(F) of this section:

(*1*) The replacement vessel's horsepower may not exceed by more than 20 percent the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The replacement vessel's length, GRT, and NT may not exceed by more than 10 percent the length, GRT, and NT of the vessel's baseline specifications, as applicable.

(F) *Upgraded vessel.* A vessel may be upgraded, whether through refitting or replacement, and still be eligible for or be eligible to retain or renew a limited access permit, only if the upgrade complies with the following:

(*1*) The vessels's horsepower may be increased, whether through refitting or replacement, only once. Such an increase may not exceed 20 percent of the horsepower of the vessel's baseline specifications, as applicable.

(*2*) The vessel's length, GRT, and NT may be increased, whether through refitting or replacement, only once. Any increase in any of these three specifications of vessel size may not exceed 10 percent of the vessel's baseline specifications, as applicable. If any of these three specifications is increased, any increase in the other two must be performed at the same time. This type of upgrade may be done separately from an engine horsepower upgrade.

* * * * *

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel that was initially issued a limited access permit as of the date the initial vessel applied for such permit.

(I) * * *

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category unless they are otherwise restricted by paragraph (a)(1)(i)(I)(*1*) of this section.

For 1997 and beyond, the owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon his/her application for a permit no later than 30 days prior to the last day of the fishing year and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of issuance of the vessel's permit. After 45 days have expired, the vessel must remain in that permit category for the duration of the fishing year.

* * * * *

(J) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (a)(1)(i)(K) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. Information requirements for the CPH application are the same as those for a limited access permit. Any request for information about the vessel on the CPH application form refers to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (a)(1)(i)(E) of this section.

(K) *Abandonment or voluntary relinquishment of permit history.* If a vessel's limited access permit history for a particular fishery is voluntarily relinquished to the Regional Administrator, or abandoned through failure to renew or otherwise, no limited access permit for that fishery may be reissued or renewed based on that vessel's history or to any vessel relying on that vessel's history.

(L) *Restriction on permit splitting.* A limited access permit issued pursuant to this section may not be issued to a vessel or its replacement, or remain valid, if the vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(M) *Appeal of denial of permit—(1) Eligibility.* Any applicant eligible to apply for a limited access multispecies permit who is denied such permit may appeal the denial to the Regional Administrator within 30 days of the notice of denial. Any such appeal must be based on one or more of the following grounds, must be in writing, and must state the grounds for the appeal:

(*i*) The information used by the Regional Administrator was based on mistaken or incorrect data.

(*ii*) The applicant was prevented by circumstances beyond his/her control from meeting relevant criteria.

(*iii*) The applicant has new or additional information.

(*2*) *Appeal review.* The Regional Administrator will appoint a designee who will make the initial decision on the appeal. The appellant may request a review of the initial decision by the Regional Administrator by so requesting in writing within 30 days of the notice of the initial decision. If the appellant does not request a review of the initial decision within 30 days, the initial decision shall become the final administrative action of the Department of Commerce. Such review will be conducted by a hearing officer appointed by the Regional Administrator. The hearing officer shall make findings and a recommendation to the Regional Administrator which shall be advisory only. Upon receiving the findings and the recommendation, the Regional Administrator will issue a final decision on the appeal. The Regional Administrator's decision is the final administrative action of the Department of Commerce.

(*3*) *Status of vessels pending appeal.* A vessel denied a limited access multispecies permit may fish under the limited access multispecies category, provided that the denial has been appealed, the appeal is pending, and the vessel has on board a letter from the Regional Administrator authorizing the vessel to fish under the limited access category. The Regional Administrator will issue such a letter for the pendency of any appeal. Any such decision is the final administrative action of the Department of Commerce on allowable fishing activity, pending a final decision on the appeal. The letter of authorization must be carried on board the vessel. If the appeal is finally denied, the Regional Administrator shall send a notice of final denial to the vessel owner; the authorizing letter becomes invalid 5 days after receipt of the notice of denial.

* * * * *

(2) * * *

(i) * * *

(B) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

* * * * *

(H) *Vessel baseline specifications.* See paragraph (a)(1)(i)(H) of this section.

* * * * *

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Percentage ownership restrictions.* (*1*) For any vessel acquired after March 1, 1994, a vessel owner is not eligible to be issued a limited access scallop permit for the vessel if the issuance of the permit will result in the vessel owner, or any person who is a shareholder or partner of the vessel owner, having an ownership interest in limited access scallop vessels in excess of 5 percent of the number of all limited access scallop vessels at the time of permit application.

(*2*) Vessel owners who were initially issued a 1994 limited access scallop permit, or were issued or renewed a limited access scallop permit for a vessel in 1995 and thereafter in compliance with the ownership restrictions in paragraph (a)(2)(i)(M)(*1*) of this section, are eligible to renew such permits(s), regardless of whether the renewal of the permits will result in the 5– percent ownership restriction being exceeded.

(*3*) Having an ownership interest includes, but is not limited to, persons who are shareholders in a vessel owned by a corporation, who are partners (general or limited) to a vessel owner, or who, in any way, partly own a vessel.

* * * * *

(3) * * *

(i) *Moratorium permits.*

* * * * *

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* The vessel baseline specifications in this section are the respective specifications (length, GRT, NT, horsepower) of the vessel as of [*insert effective date of final rule in the FEDERAL REGISTER*].

(I) [Reserved]

(J) Confirmation of permit history. See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

* * * * *

(4) * * *

(i) *Maine mahogany quahog permit.* (A) A vessel is eligible for a Maine mahogany quahog permit to fish for ocean quahogs in the Maine mahogany quahog zone if it meets the following eligibility criteria, and an application for a Maine mahogany quahog permit is submitted by May 19, 1999:

(*1*) The vessel was issued a Federal Maine Mahogany Quahog Experimental Permit during one of the experimental fisheries authorized by the Regional Administrator between September 30, 1990, and September 30, 1997; and,

(*2*) The vessel landed at least one Maine bushel of ocean quahogs from the Maine mahogany quahog zone as documented by fishing or shellfish logs submitted to the Regional Administrator prior to January 1, 1998.

(B) Application/renewal restriction. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

(M) *Appeal of denial of a permit.* (*1*) Any applicant denied a Maine mahogany quahog permit may appeal to the Regional Administrator within 30 days of the notice of denial. Any such appeal shall be in writing. The only ground for appeal is that the Regional Administrator's designee erred in concluding that the vessel did not meet the criteria in paragraph (a)(4)(i)(A) of this section. The appeal must set forth the basis for the applicant's belief that the decision of the Regional Administrator's designee was made in error.

(*2*) The appeal may be presented, at the option of the applicant, at a hearing before an officer appointed by the Regional Administrator.

(*3*) The hearing officer shall make a recommendation to the Regional Administrator.

(*4*) The Regional Administrator will make a final decision based on the criteria in paragraph (a)(4)(i)(A) of this section and on the available record, including any relevant documentation submitted by the applicant and, if a hearing is held, the recommendation of the hearing officer. The decision on the appeal by the Regional Administrator is the final decision of the Department of Commerce.

(ii) [Reserved]

(5) * * *

(i) *Loligo squid/butterfish and Illex squid moratorium permits.* (*Illex* squid moratorium is applicable from July 1, 1997, until July 1, 2002). (A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain *Loligo* squid, butterfish, or *Illex* squid in excess of the incidental catch allowance in paragraph (a)(5)(ii) of this section in the EEZ, a vessel must have been issued a *Loligo* squid and butterfish moratorium permit or *Illex* squid moratorium permit, as applicable, in a previous year or be replacing a vessel that was issued a moratorium permit for a previous year.

(B) *Application/renewal restriction.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) *Restriction on permit splitting.* See paragraph (a)(1)(i)(L) of this section.

* * * * *

(6) * * *

(i) *Moratorium permit*—(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain scup, a vessel must have been issued a scup moratorium permit in a previous year or be replacing a vessel that was issued a scup moratorium permit for a previous year.

(B) Application/renewal restriction. See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) Restriction on permit splitting. See paragraph (a)(1)(i)(L) of this section.

* * * * *

(7) * * *

(i) *Moratorium permits*—(A) *Eligibility.* To be eligible to apply for a moratorium permit to fish for and retain black sea bass in excess of the possession limit established pursuant to § 648.145 in the EEZ north of 35°15.3' N. Lat., the latitude of Cape Hatteras Light, NC, a vessel must have been issued a black sea bass moratorium permit in a previous year or be replacing a vessel that was issued a black sea bass moratorium permit for a previous year.

(B) *Application/renewal restrictions.* See paragraph (a)(1)(i)(B) of this section.

(C) *Qualification restriction.* See paragraph (a)(1)(i)(C) of this section.

(D) *Change in ownership.* See paragraph (a)(1)(i)(D) of this section.

(E) *Replacement vessels.* See paragraph (a)(1)(i)(E) of this section.

(F) *Upgraded vessel.* See paragraph (a)(1)(i)(F) of this section.

(G) *Consolidation restriction.* See paragraph (a)(1)(i)(G) of this section.

(H) *Vessel baseline specifications.* See paragraph (a)(3)(i)(H) of this section.

(I) [Reserved]

(J) *Confirmation of permit history.* See paragraph (a)(1)(i)(J) of this section.

(K) *Abandonment or voluntary relinquishment of permits.* See paragraph (a)(1)(i)(K) of this section.

(L) Restriction on permit splitting. See paragraph (a)(1)(i)(L) of this section.

* * * * *

3. Section 648.14 is amended by adding paragraphs (a)(114) and (a)(115) to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(114) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the horsepower of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

(115) Fish for, possess, or land species regulated under this part with or from a vessel issued a limited access permit under §§ 648.4(a)(1)(i), 648.4(a)(2)(i), 648.4(a)(3)(i), 648.4(a)(4)(i), 648.4(a)(5)(i), 648.4(a)(6)(i), or § 648.4(a)(7)(i), that has had the length, GRT, or NT of such vessel or its replacement upgraded or increased in excess of the limitations specified in § 648.4(a)(1)(i)(E) and (F).

* * * * *

PART 649—AMERICAN LOBSTER FISHERY

1. The authority citation for part 649 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 649.4 is amended by revising paragraph (b)(2)(i) and adding paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(3)(v) to read as follows:

§ 649.4 Vessel permits.

* * * * *

(b) * * *

(2) * * *

(i) To be eligible to renew or apply for a limited access lobster permit, a vessel or permit applicant must have been issued either a limited access lobster permit for the preceding year or ■ confirmation of permit history (CPH), or a vessel must be replacing a valid limited access American lobster permit from the preceding year or permit history confirmation. If more than one applicant claims eligibility to apply for a limited access American lobster permit based on one fishing and permit history, the Regional Administrator shall determine who is entitled to qualify for the limited access permit or permit history confirmation.

* * * * *

(3) * * *

(iii) *Restriction on permit splitting.* A limited access American lobster permit may not be issued to a vessel or its replacement, or remain valid, if a vessel's permit or fishing history has been used to qualify another vessel for another Federal fishery.

(iv) *Consolidation restriction.* Limited access permits may not be combined or consolidated.

(v) *Confirmation of permit history.* Notwithstanding any other provisions of this part, a person who does not currently own a fishing vessel, but who has owned a qualifying vessel that has sunk, been destroyed, or transferred to another person, must apply for and receive a CPH if the fishing and permit history of such vessel has been retained lawfully by the applicant. To be eligible to obtain a CPH, the applicant must show that the qualifying vessel meets the eligibility requirements, as applicable, in this part. Issuance of a valid CPH preserves the eligibility of the applicant to apply for a limited access permit for a replacement vessel based on the qualifying vessel's fishing and permit history at a subsequent time, subject to the replacement provisions specified in this section. A CPH must be applied for in order for the applicant to preserve the fishing rights and limited access eligibility of the qualifying vessel. If fishing privileges have been assigned or allocated previously under this part, based on the qualifying vessel's fishing and permit history, the CPH also preserves such fishing privileges. Any decision regarding the issuance of a CPH for a qualifying vessel that has been applied for or been issued previously a limited access permit is a final agency action subject to judicial review under 5 U.S.C. 704. An application for a CPH must be received by the Regional Administrator no later than 30 days prior to the end of the first full fishing year in which a vessel permit cannot be issued. Failure to do so is considered abandonment of the permit as described in paragraph (q) of this section. A CPH issued under this part will remain valid until the fishing and permit history preserved by the CPH is used to qualify a replacement vessel for a limited access permit. Information requirements for the CPH application are the same as those for a limited access permit with any request for information about the vessel being applicable to the qualifying vessel that has been sunk, destroyed, or transferred. Vessel permit applicants who have been issued a CPH and who wish to obtain a vessel permit for a replacement vessel based upon the previous vessel history may do so pursuant to paragraph (b)(1)(i)(D) of this section.

* * * * *

[FR Doc. 98–30294 Filed 11–12–98; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981016290–8260–01; I.D. 090998B]

RIN 0648–AL20

Fisheries of the Exclusive Economic Zone Off Alaska; Vessel Moratorium Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 59 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 57 to the FMP for Groundfish of the Gulf of Alaska (GOA), and Amendment 9 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area submitted by the North Pacific Fishery Management Council (Council). These amendments would extend the Vessel Moratorium Program (VMP) authorized under the aforementioned FMPs from January 1, 1999, through December 31, 1999, with one change. The one change would be that after December 31, 1998, no person could apply for a new moratorium permit unless the application is based on a moratorium qualification that was used as the basis for issuing a moratorium permit on or before December 31, 1998. Extension of the VMP from January 1, 1999, through December 31, 1999, would prevent a one-year hiatus between the current expiration of the VMP on December 31, 1998, and the start of fishing under the License Limitation Program (LLP) on January 1, 2000.

DATES: Comments on this proposed rule must be received by *December 14, 1998. NMFS invited comments on the amendments themselves through November 17, 1998 (63 FR 49892).*

ADDRESSES: Comments should be addressed to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228

SUPPLEMENTARY INFORMATION:

The U.S. groundfish fisheries of the GOA and the BSAI in the exclusive economic zone (EEZ) are managed by NMFS pursuant to the FMPs for groundfish in the respective management areas. The commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The FMPs were prepared by the Council, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, and are implemented by regulations at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

NMFS implemented the VMP through regulations effective January 1, 1996, to impose a temporary moratorium on the entry of new vessels into the commercial groundfish fisheries in the EEZ of the GOA and the BSAI and the commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands (60 FR 40763, August 10, 1995). The Council intended to curtail increases in fishing capacity and provide industry stability while measures such as the LLP, recommended by the Council in June 1995, were developed by the Council, and if approved, implemented by NMFS.

NMFS approved the LLP on September 12, 1997. However, its implementation has required more time than originally anticipated. Fishing under the LLP is scheduled to begin on January 1, 2000; however, the VMP will expire on December 31, 1998. Unless the VMP is extended, a one-year hiatus will occur between the expiration of the VMP and the beginning of fishing under the LLP.

Extension of the VMP requires that the applicable FMPs be amended because the FMPs specify an expiration date of January 1, 1999 for the VMP. The Council submitted amendments to the applicable FMPs that, if approved and implemented by NMFS, would extend the VMP until December 31, 1999. During its consideration of extending the VMP to avoid a hiatus, the Council was concerned about the potential of latent capacity entering the affected fisheries if new applications could be submitted during the extension. Under the existing VMP, an applicant can apply for a new moratorium permit at any time during the VMP. So far, approximately 1,900 moratorium permits, out of a potential of approximately 3,350, have been issued. If the VMP were extended without a restriction on applications, up to 1,450 more moratorium permits could be applied for and issued. Therefore, the Council in its recommended FMP amendments extending the VMP through December 31, 1999, recommended that no person be allowed to apply for a new moratorium permit after the current VMP expiration date, December 31, 1998, unless the application is based on a moratorium qualification that was used as a basis for obtaining a moratorium permit issued on or before that date.

Accordingly, under the proposed rule, an application for a moratorium permit received after December 31, 1998, would be denied unless the moratorium qualification on which the application is based already has been used as a basis for the issuance of a moratorium permit.

To reduce the administrative costs of extending the VMP, the proposed rule would extend existing moratorium permits through December 31, 1999, rather than authorizing the reissuance of new permits with the new expiration date. The only new moratorium permits that would be issued would be those based on moratorium qualification transfers. These new permits would also expire on December 31, 1999.

Classification

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. OMB approved the collection of this information under OMB control number 0648–0213.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Approved under 0648–013—Alaska Region Logbook Family of Forms: The estimated time for a vessel owner to complete a moratorium qualification is 0.46 hour per response.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities for the following reason:

This action is expected to affect approximately 1,900 moratorium permit holders, 1,450 vessels that are moratorium qualified, but for which permits have not been issued, and an indeterminate number of persons who do not qualify for a license under the upcoming LLP. The approximately 1,900 permit holders will benefit from the proposed rule in that they will be authorized to continue fishing for one year. This positive impact does not trigger a finding of significant economic impact for purposes of the Regulatory Flexibility Act (RFA). The approximately 1,450 vessels that are moratorium qualified, but for which moratorium permits have not been issued, would be affected by this action because the opportunity for the vessel's owner to apply for a moratorium permit based on the moratorium qualification of that vessel will end on December 31, 1998. However, the agency has determined that the effect would be negligible because during the period of the current VMP (1996 - 1998), moratorium permits were not requested for these 1,450 vessels. In any event, these vessels have until the currently scheduled expiration of the VMP (i.e., December 31, 1998) to apply for a permit. Thus, this extension does not limit their ability to apply for a permit any more than it would have been limited under the *status quo*. Finally, the indeterminate number of persons who will qualify for a license under the LLP, but who do not qualify for a moratorium permit, will be precluded from fishing in 1999, unless they receive a moratorium qualification transfer from an existing holder. Although NMFS cannot determine exactly how many persons are in this third category, it believes them to constitute a small number because of the limited time in which this situation could have occurred. Most persons who may qualify for a license under the LLP also qualified for a moratorium permit because the qualifying period for the VMP is similar to the general qualification period for the LLP. However, from February 10, 1992, through June 27, 1992, or 4.5 months, a person could have qualified under the provisions of the LLP without qualifying for a moratorium permit. The limited

time period in which this situation could have occurred (4.5 months) indicated that the resulting number of persons affected would not be substantial when compared to the universe of affected small entities.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 9, 1998.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.4, (c) heading and paragraphs (c)(1)(ii), (c)(1)(iii)(E), (c)(6) and (c)(7) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(c) *Moratorium permits (applicable through December 31, 1999)*—(1) *General.*

* * * * *

(ii) *Duration.* Notwithstanding the expiration date printed on the permit, a moratorium permit is valid through December 31, 1999, unless otherwise specified.

(iii) * * *

(E) The permit's term indicates an expiration of December 31, 1998, or December 31, 1999.

* * * * *

(6) *Application for permit*—(i) *General.* A moratorium permit will be issued to the owner of a vessel of the United States if he/she submits to the Regional Administrator a complete application that is subsequently accepted and approved and if the vessel's LOA does not exceed the maximum LOA as specified in § 679.2.

(ii) *Contents of application.* A complete application for a moratorium permit must include the following information for each vessel:

(A) Name of the vessel, state registration number of the vessel, and the USCG documentation number of the vessel, if any;

(B) Name(s), business address(es), and telephone and fax numbers of the owner of the vessel;

(C) Name of the managing company;

(D) Valid documentation of the vessel's moratorium qualification, if requested by the Regional Administrator due to an absence of landings records for the vessel from January 1, 1988, through February 9, 1992;

(E) Reliable documentation of the vessel's original qualifying LOA, if requested by the Regional Administrator, such as a vessel survey, builder's plan, state or Federal registration certificate, fishing permit records, or other reliable and probative documents that clearly identify the vessel and its LOA, and that are dated before June 24, 1992;

(F) Specifications of the fishing gear(s) used from January 1, 1988, through February 9, 1992, and, if necessary, the fishing gear(s) used from February 10, 1992, through December 11, 1994;

(G) Specification of the vessel as either a catcher vessel or a catcher/processor vessel;

(H) If applicable, transfer authorization if a permit request is based on transfer of moratorium qualification pursuant to paragraph (c)(9) of this section; and

(I) Signature of the person who is the owner of the vessel or the person who is responsible for representing the vessel owner.

(iii) An application for a moratorium permit will be denied if it is received after December 31, 1998, unless it is based on a moratorium qualification for which a moratorium permit has been issued on or before December 31, 1998.

(7) *Moratorium qualification.*—(i) *Qualification by landings.* A vessel has moratorium qualification if:

(A) The vessel is an original qualifying vessel based on a legal landing of moratorium species between January 1, 1988, and February 9, 1992;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(C) The vessel's moratorium qualification has not been transferred; and

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(ii) *Qualification by transfer.* A vessel has moratorium qualification if:

(A) The vessel receives a valid moratorium qualification by a transfer approved by the Regional Administrator under paragraph (c)(9) of this section;

(B) The vessel is not a moratorium exempt vessel under paragraph (c)(2) of this section;

(C) The moratorium qualification received by transfer has not been subsequently transferred; and

(D) A moratorium permit for the vessel's moratorium qualification has been issued based on an application submitted on or before December 31, 1998.

(iii) *Expiration of moratorium qualification.* A vessel's moratorium qualification will expire on December 31, 1998, unless a moratorium permit has been applied for on or before December 31, 1998, and subsequently issued based on that moratorium qualification.

* * * * *

[FR Doc. 98–30435 Filed 11–12–98; 8:45 am]
BILLING CODE 3510–22–F

VOL 63 ISS 219 NO 13 1998 UMI

Notices

Federal Register
Vol. 63, No. 219
Friday, November 13, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–107–1]

Availability of Memorandum of Understanding With the Forest Service, USDA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that a Memorandum of Understanding (MOU) between the Animal and Plant Health Inspection Service (APHIS), Wildlife Services, and the Forest Service, United States Department of Agriculture, has been renewed until September 3, 2003, and is available for examination by the public. The MOU establishes guidelines and policy for managing animal damage on National Forest System lands by clarifying the roles and cooperative responsibilities of the Forest Service and APHIS's Wildlife Services in the management of programs under the Animal Damage Control Act of 1931, as amended.

ADDRESSES: Copies of the MOU are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the MOU are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. Copies of the MOU may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Martin Mendoza, Jr., Director, Operational Support, Wildlife Services, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234, (301) 734–7921.

SUPPLEMENTARY INFORMATION: Under the Animal Damage Control Act of March 2, 1931, as amended (7 U.S.C. 426–426c), the Secretary of Agriculture is authorized to manage wildlife on National Forest System lands to protect humans, and prevent damage to agriculture, forests, wild game animals, fur-bearing animals, and birds.

The Secretary has assigned responsibility for managing wildlife damage to the Animal and Plant Health Inspection Service (APHIS), Wildlife Services. The U.S. Forest Service is responsible for management of wildlife on National Forest System lands. In June of 1993, both agencies signed a Memorandum of Understanding (MOU) which served to: (1) Identify responsibilities of the respective agencies and foster a partnership in discharging the Federal obligation under the Animal Damage Control Act, as amended, for the management of wild vertebrates causing damage on National Forest System lands; (2) establish general guidelines to assist field personnel in carrying out their animal damage management responsibilities consistent with policies of the U.S. Forest Service and Wildlife Services; and (3) strengthen the cooperative approach to animal damage management on National Forest System lands through exchange of information and mutual program support.

The MOU was set to expire after 5 years, and was renewed on September 3, 1998. This notice informs the public that the MOU is available for public inspection.

Done in Washington, DC, this 6th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30392 Filed 11–12–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alaska Region; Legal Notices Required Under 36 CFR Part 215

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with 36 CFR Part 215, Deciding Officers in the Alaska Region will publish Notices of Proposed Actions and Notices of Decisions Subject to Administrative Appeal in the Legal Notice Section of the newspapers listed in the Supplementary Information Section of this Notice. As provided in 36 CFR 215.5, such notices shall constitute legal evidence that the agency has given timely and constructive Notice of Proposed Actions and Notice of Decisions Subject to Administrative Appeal. Newspaper publication of Notices of Proposed Actions and Notices of Decisions is in addition to direct notice to persons who have requested notice in writing and to persons known to be interested in or affected by a specific proposal or decision.

DATES: Use of these papers for purposes of publishing Legal Notices of Proposed Actions and Notices of Decisions Subject to Administrative Appeal shall being November 1, 1998.

FOR FURTHER INFORMATION CONTACT: Cherie Shelley, Regional Appeals Coordinator, Alaska Region, USDA Forest Service, EPB, P.O. Box 21628, Juneau, Alaska 99802–1628, Telephone (907) 586–8855.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Alaska Region will give Legal Notices of Proposed Actions and Notices of Decisions Subject to Administrative Appeal in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive Notice of Proposed Actions and Notice of Decisions Subject to Administrative Appeal. As provided at 36 CFR 215.6, the time frame for public comment on proposed actions shall be based on the date of publication of the Notice in the primary newspaper.

Decisions by the Regional Forester:

Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska, for decisions affecting National Forest System lands in the State of Alaska and for any decisions of Region-wide impact.

Anchorage Daily News, published daily in Anchorage, Alaska, for decisions affecting National Forest System lands in the State of Alaska and for any decisions of Region-wide impact. Decisions by Chugach Forest

Supervisor and the Glacier District Ranger, Chugach National Forest:

Anchorage Daily News, published daily in Anchorage, Alaska.

Decisions by the Cordova District Ranger, Chugach National Forest:

Anchorage Daily News, published daily in Anchorage, Alaska.

Cordova Times, published weekly in Cordova, Alaska.

Decisions by the Seward District Ranger, Chugach National Forest:

Anchorage Daily News, published daily in Anchorage, Alaska.

Seward Phoenix Log, published weekly in Seward, Alaska.

Peninsula Clarion, published daily except Saturday, Sunday, and official holidays in Kenai, Alaska.

Decisions by the Tongass Forest Supervisor:

Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska, for decisions affecting National Forest System lands on the Chatham Area of the Tongass National Forest.

Ketchikan Daily News, published daily except Saturday and official holidays in Ketchikan, Alaska, for decisions affecting National Forest System lands on the Ketchikan Area of the Tongass National Forest.

Petersburg Pilot, published weekly in Petersburg, Alaska, for decisions affecting National Forest System lands on the Stikine Area of the Tongass National Forest.

Decisions by the Assistant Forest Supervisor for the Chatham Area, the Yakutat District Ranger, the Hoonah District Ranger, the Juneau District Ranger, and the Admiralty National Monument Ranger, Chatham Area of the Tongass National Forest:

Juneau Empire, published daily except Saturday and official holidays in Juneau, Alaska.

Decisions by the Sitka District Ranger, Chatham Area of the Tongass National Forest:

Daily Sitka Sentinel, published daily except Saturday and official holidays in Sitka, Alaska.

Decisions by all Deciding Officers of the Ketchikan Area of the Tongass National Forest:

Ketchikan Daily News, published daily except Sunday and official holidays in Ketchikan, Alaska

Decisions by the Assistant Forest Supervisor for the Stikine Area and the Petersburg District Ranger, Stikine Area of the Tongass National Forest:

Petersburg Pilot, published weekly in Petersburg, Alaska.

Decisions by the Wrangell District Ranger, Stikine Area of the Tongass National Forest:

Wrangell Sentinel, published weekly in Wrangell, Alaska.

Dated: October 29, 1998.

James Gladen,

Acting Regional Forester.

[FR Doc. 98–30427 Filed 11–12–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oklahoma

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Oklahoma for review and comment.

SUMMARY: It is the intention of NRCS in Oklahoma to issue a new and revised conservation practice standards Section IV of the FOTG. The new standard is Contour Buffer Strips (Code 332). The revised standard is Riparian Forest Buffer (Code 391A). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Keith Vaughan, State Resource Conservationist, Natural Resources Conservation Service (NRCS), 100 USDA, Suite 203, Stillwater, OK 74074–2655. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to Keith.Vaughan@ok.usda.gov.

FOR FURTHER INFORMATION CONTACT: Keith Vaughan, 405–742–1240.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oklahoma will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oklahoma regarding disposition of those comments and a final determination of changes will be made.

Dated: October 21, 1998.

Ronnie L. Clark,

State Conservationist, Stillwater, Oklahoma.

[FR Doc. 98–30345 Filed 11–12–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 1988 Fiscal Year Interest Rates on Rural Telephone Bank Loans

AGENCY: Rural Telephone Bank, USDA.

ACTION: Notice of 1998 fiscal year interest rates determination.

SUMMARY: In accordance with 7 CFR 1610.10, The Rural Telephone Bank (Bank) fiscal year 1998 cost of money rates have been established as follows: 5.96% and 5.71% for advances from the liquidating account and financing account, respectively (fiscal year is the period beginning October 1 and ending September 30).

Except for loans approved from October 1, 1987, through December 21, 1987, where borrowers elected to remain at interest rates set at loan approval, all loan advances made during fiscal year 1998 under Bank loans approved in fiscal years 1998 through 1991 shall bear interest at the rate of 5.96% (the liquidating account rate). All loan advances made during fiscal year 1998 under Bank loans approved during or after fiscal year 1992 shall bear interest at the rate of 5.71% (the financing account rate).

The calculation of the Bank's cost of money rates for fiscal year 1998 for the liquidating account are provided in Tables 1 and 2. Since the calculated rates are greater than the minimum rate (5.00%) allowed under 7 U.S.C. 948(b)(3)(A), the cost of money rates for the liquidating account and financing account are set at 5.96% and 5.71%, respectively. The methodology required to calculate the cost of money rates is established in 7 CFR 1610.10(c).

FOR FURTHER INFORMATION CONTACT: Jonathan P. Claffey, Acting Director, Advanced Telecommunications Services Staff, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1701, Room 2919, South Building, Washington, DC 20250, telephone number (202) 720–0530.

SUPPLEMENTARY INFORMATION: The Federal Credit Reform Act of 1990 ("Credit Reform") (2 U.S.C. § 661a, et seq.) implemented a system to reform the budgetary accounting and

management of Federal credit programs. Bank loans approved on or after October 1, 1991, are accounted for in a different manner than Bank loans approved prior to fiscal year 1992. As a result, the Bank must calculate two cost of money rates: (1) The cost of money rate for advances made from the liquidating account (advances made during fiscal year 1998 on loans approved prior to fiscal year 1992) and (2) the cost of money rate for advances made during fiscal year 1998 on loans approved on or after October 1, 1991 (otherwise referred to as loans from the financing account).

The cost of money rate methodology is the same for both accounts. It develops a weighted average rate for the Bank's cost of money considering total fiscal year loan advances; the excess of fiscal year loan advances over amounts received in the fiscal year from the issuance of Class A, B, and C stocks, debentures and other obligations; and the costs to the Bank of obtaining funds from these sources.

During fiscal year 1998, the Bank was authorized to pay the following dividends: the dividend on Class A stock was 2.00% as established in amended section 406(c) of the Rural Electrification Act (RE Act); no dividends were payable on Class B stock as specified in 7 CFR 1610.10(c); and the dividend on Class C stock was established by the Bank at 7.25%.

Sources and Costs of Funds—Liquidating Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1998. Advances for the purchase of Class B stock and cash purchases for Class B stock were (909,626. Rescissions of loan funds advanced for Class B stock amounted to $140.174. Thus, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $769,452 ($909,626—$140,174). The amount received by the Bank in fiscal year 1998 from the issuance of Class C stock was $19,669.

The Bank did not issue debentures or any other obligations related to the liquidating account in fiscal year 1998. Consequently, no cost was incurred related to the issuance of debentures subject to 7 U.S.C. 948(b)(3)(D).

The excess of fiscal year 1998 loan advances from the liquidating account over amounts received from issuance of stocks, debentures, and other obligations amounted to $19,884,667. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the liquidating account is also provided in Table 1. The methodology required to perform this calculation is described in 7 CFR 1610.10(c). The cost for money rates for fiscal years 1974 through 1987 are defined in section 408(b) of the RE Act, as amended by Pub. L. 100–203, and are listed in 7 CFR 1610.10(c) and Table 1 herein.

Sources and Costs of Funds—Financing Account

In accordance with Section 406(a) of the RE Act, the Bank did not issue Class A stock in fiscal year 1998. Advances for the purchase of Class B stock and cash purchases for Class B stock were $1,624,559. Since there were no rescissions of loan funds advanced for Class B stock, the amount received by the Bank from the issuance of Class B stock, per 7 CFR 1610.10(c), was $1,624,559. The amount received by the Bank in fiscal year 1998 from the issuance of Class C stock was $589.

During fiscal year 1998, issuance of debentures or any other obligations related to the financing account were $32,360,482 at an interest rate of 5.98%.

The excess of fiscal year 1998 loan advances from the financing account over amounts received from issuance of stocks, debentures, and other obligations amounted to $460,828. The cost associated with this excess is the historical cost of money rate as defined in 7 U.S.C. 948(b)(3)(D)(v). The calculation of the Bank's historical cost of money rate for advances from the financing account is also provided in Table 2. The methodology required to perform this calculation is described in 7 CFR 1610.10(c).

Dated: November 4, 1998.

Christopher A. McLean,

Deputy Governor, Rural Telephone Bank.

BILLING CODE 3410–15–M

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TABLE 1

Rural Telephone Bank Cost of Money Rate - Liquidating Account:

FY 1998 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a) x (b)	(c) / Advances
Issuance of Class A Stock	$ -	2.00%	$ -	0.0000%
Issuance of Class B Stock	$ 769,452	0.00%	$ -	0.0000%
Issuance of Class C Stock	$ 19,669	7.25%	$ 1,426	0.0069%
Issuance of Debentures and Other Obligations	$ -		$ - -	0.0000%
Excess of Total Advances Over Issuances	$ 19,884,677	6.19%	$ 1,230,862	5.9537%
Total FY 1998 Advances	$ 20,673,798	CALCULATED COST OF MONEY RATE =		5.96%
		MINIMUM RATE ALLOWABLE =		5.00%

Rural Telephone Bank Historical Cost of Money Rate - Liquidating Account:

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a) X (b)	(c) / Total Advances
FY 1974	5.01%	$ 111,022,574	$ 5,562,231	0.237%
FY 1975	5.85%	$ 130,663,197	$ 7,643,797	0.326%
FY 1976	5.33%	$ 99,915,066	$ 5,325,473	0.227%
FY 1977	5.00%	$ 80,907,425	$ 4,045,371	0.172%
FY 1978	5.87%	$ 142,297,190	$ 8,352,845	0.356%
FY 1979	5.93%	$ 130,540,067	$ 7,741,026	0.330%
FY 1980	8.10%	$ 199,944,235	$ 16,195,483	0.690%
FY 1981	9.46%	$ 148,599,372	$ 14,057,501	0.599%
FY 1982	8.39%	$ 112,232,127	$ 9,416,275	0.401%
FY 1983	6.99%	$ 93,402,836	$ 6,528,858	0.278%
FY 1984	6.55%	$ 90,450,549	$ 5,924,511	0.252%
FY 1985	5.00%	$ 72,583,394	$ 3,629,170	0.155%
FY 1986	5.00%	$ 71,582,383	$ 3,579,119	0.152%
FY 1987	5.00%	$ 51,974,938	$ 2,598,747	0.111%
FY 1988	5.00%	$ 119,488,367	$ 5,974,418	0.255%
FY 1989	5.00%	$ 97,046,947	$ 4,852,347	0.207%
FY 1990	5.00%	$ 107,694,991	$ 5,384,750	0.229%
FY 1991	5.43%	$ 163,143,075	$ 8,858,669	0.377%
FY 1992	6.14%	$ 84,940,822	$ 5,215,366	0.222%
FY 1993	6.05%	$ 84,605,366	$ 5,118,625	0.218%
FY 1994	6.15%	$ 54,530,897	$ 3,353,650	0.143%
FY 1995	6.04%	$ 35,967,133	$ 2,172,415	0.093%
FY 1996	6.05%	$ 30,965,187	$ 1,873,394	0.080%
FY 1997	5.98%	$ 32,602,587	$ 1,949,635	0.083%
	TOTAL ADVANCES	$ 2,347,100,725	COST OF MONEY	6.19%

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TABLE 2

Rural Telephone Bank Cost of Money Rate - Financing Account:

FY 1998 Source of Bank Funds	(a) Amount	(b) Cost	(c) (a) x (b)	(c) / Advances
Issuance of Class A Stock	$ -	2.00%	$ -	0.0000%
Issuance of Class B Stock	$ 1,624,559	0.00%	$ -	0.0000%
Issuance of Class C Stock	$ 589	7.25%	$ 43	0.0001%
Issuance of Debentures and Other Obligations	$ 32,360,482	5.98%	$ 1,935,157	5.6179%
Excess of Total Advances Over Issuances	$ 460,828	6.53%	$ 30,092	0.0874%
Total FY 1998 Advances	$ 34,446,458	CALCULATED COST OF MONEY RATE =		5.71%
		MINIMUM RATE ALLOWABLE =		5.00%

Rural Telephone Bank Historical Cost of Money Rate - Financing Account:

Fiscal Year	(a) Cost of Money	(b) Advances	(c) (a) X (b)	(c) / Total Advances
FY 1992	7.38%	$ 4,056,250	$ 299,351	0.149%
FY 1993	6.35%	$ 23,839,200	$ 1,513,789	0.754%
FY 1994	6.40%	$ 56,838,902	$ 3,637,690	1.812%
FY 1995	6.88%	$ 37,161,517	$ 2,556,712	1.273%
FY 1996	6.42%	$ 44,536,621	$ 2,859,251	1.424%
FY 1997	6.54%	$ 34,368,726	$ 2,247,715	1.119%
	TOTAL ADVANCES	$ 200,801,216	COST OF MONEY	6.53%

[FR Doc 98–30396 Filed 11–12–98; 8:45 am]
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DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Fisheries Finance Program Requirements.

Agency Form Number(s): NOAA Forms 88–1.

OMB Approval Number: 0648–0012.

Type of Request: Revision of a currently approved collection.

Burden: 8,820 hours.

Number of Respondents: 1,080.

Avg. Hours Per Response: Ranges between approximately 8 and 12 hours depending on the requirement.

Needs and Uses: NOAA operates a direct loan program to assist in financing certain actions relating to commercial fishing vessels, shoreside fishery facilities, aquaculture operations, and individual fishing quotas. Applications are required to qualify for such a loan, and persons receiving a loan must file annual financial reports.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: November 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30382 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Seafood Inspection Services.

Agency Form Number(s): NOAA Forms 89–800, 89–814, 89–819.

OMB Approval Number: 0648–0266.

Type of Request: Revision of a currently approved collection.

Burden: 13,065 hours.

Number of Respondents: 7,082.

Avg. Hours Per Response: Ranges between 5 minutes and 105 hours depending on the requirement.

Needs and Uses: NOAA operates a voluntary fee-for-service seafood inspection program. Federally-inspected products may display official quality grade marks. Those wishing to participate in the program must request the services and submit specific compliance information.

Affected Public: Businesses or other for-profit organizations.

Frequently: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: November 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30383 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Gear-Marking Requirement for Atlantic Large Whale Take Reduction Plan.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: Existing collection in use without OMB approval number.

Burden: 4,206 hours.

Number of Respondents: 1,260.

Avg. Hours Per Response: 6 minutes (multiple responses).

Needs and Uses: Lobster and gillnet fishermen setting gear in right whale critical habitats and other areas where right whales are likely to occur will be required to mark their gear with specific color codes. The purpose of this requirement is to assist in determining where entanglements of endangered whales are occurring.

Affected Public: Businesses or other for-profit organizations, individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: November 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30384 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), we are giving notice of a meeting of the Commerce Secretary's 2000 Census Advisory Committee. The meeting will convene on December 3–4, 1998, at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC. The Committee will continue to review and discuss Census 2000 Dress Rehearsal operations and procedures, such as the preliminary results of the tabulation of race and Hispanic origin data. It will continue to review and discuss Census 2000, including plans for the language program. The Committee will continue working on a final dress rehearsal report for the Secretary of Commerce. Last minute changes to the schedule are possible, and they could prevent us from giving advance notice.

DATES: On Thursday, December 3, 1998, the meeting will begin around 8:45 a.m. and adjourn at approximately 4:30 p.m. On Friday, December 4, 1998, the meeting will begin around 8:45 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Anyone wishing additional information about this meeting, or who wishes to submit written statements, may contact Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington, DC 20233; telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Committee is composed of a Chair, Vice-Chair, and up to 35 member organizations, all appointed by the Secretary of Commerce. The Committee will consider the goals of Census 2000 and user needs for information provided by that census. The Committee will provide an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The Committee shall consider all aspects of the conduct of the 2000 Census of Population and Housing and shall make recommendations for improving that census.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelby Folger at 301–457–2308, TDD 301–457–2540.

Dated: November 9, 1998.

Robert J. Shapiro,

Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 98–30431 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 50–98]

Foreign-Trade Zone 72—Indianapolis, IN; Application for Subzone, Alfa Laval Distribution, Inc. (Parts for Industrial Separators and Decanter Centrifuges), Indianapolis, Indiana

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Indianapolis Airport Authority, grantee of FTZ 72, requesting special-purpose subzone status for the separator and decanter centrifuge parts distribution facility of Alfa Laval Distribution, Inc., located in Indianapolis, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 5, 1998.

The Alfa Laval facility (22,400 sq. ft. on 2.5 acres) is located at 7601 Winton Drive, Indianapolis, Indiana. The facility (20 employees) is used for storage, inspection, packaging and distribution of a wide variety of parts and components for separator and decanter centrifuge equipment. The products are distributed throughout North and South America, Europe and Asia. About 30 percent of the parts are sourced from abroad and over 30 percent are exported. No authority is being sought for activity conducted under FTZ procedures that would result in a change in tariff classification.

Zone procedures would exempt Alfa Laval from Customs duty payments on foreign parts that are reexported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the facility. The application indicates that the savings from zone procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period January 27, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 11405 N. Pennsylvania St., Ste 106, Carmel, Indiana 46032

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, N.W., Washington, DC 20230

Dated: November 5, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–30416 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 49–98]

Foreign-Trade Zone 1—New York, New York; Application for Subzone, Pfizer Inc. (Pharmaceutical Products), Brooklyn, New York

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of New York, New York, grantee of FTZ 1, requesting special-purpose subzone status for the pharmaceutical manufacturing plant of Pfizer Inc., (Pfizer), in Brooklyn, New York. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 3, 1998.

Pfizer Inc. (U.S.) is a research-based health care company which comprises three global businesses—Health Care, Consumer Health Care and Animal Health.

Pfizer's Brooklyn plant (574,055 sq. ft./1 bldg. on 7.8 acres + proposed 240,000 sq. ft. warehouse expansion) is located at 630 Flushing Avenue,

Brooklyn, New York. The facility (with some 1,200 employees) produces finished pharmaceutical products, primarily Atarax®, Cardura®, Diflucan®, Glucotrol XL®, Navane®, Norvasc®, Unisom®, Zithromax®, and Zoloft®. Pfizer is considering expanding production at the plant to include three new products, VIAGRA® treatment for erectile dysfuntion (HTSUS 3004.90.9040), TIKOSYN® anti-arrhythmia treatment (HTSUS 3004.90.9020) and eletriptan migraine treatment (HTSUS 3004.90.9040). Foreign-sourced materials will account for, on average, 70 percent of material value, and include items from the following categories:

Aromatic ethers and their derivatives
HTSUS 2909.30.4000 10.3%
Aromatic monoamines and their derivatives, salts
HTSUS 2921.49.4500 10.7%
Organo-sulfur compounds
HTSUS 2930.90.9050 3.7%
Heterocyclic compounds with nitrogen hetero-atoms(s):
HTSUS 2933.19.9000 6.8%
HTSUS 2933.59.5300 6.6%
HTSUS 2933.59.7000 10.7%
HTSUS 2933.90.7900 10.7%
HTSUS 2933.90.9000 3.7%
Chemically pure sugar ethers/salts, other than sucrose
HTSUS 2940.00.6000 5.8%

The company may also purchase from abroad other ingredients and materials in the following general categories: gums, starches, waxes, vegetable extracts, mineral oils, sugars, empty capsules, protein concentrates, prepared animal feed, mineral products, inorganic acids, chlorides, clorates, sulfites, sulfates, phosphates, cyanides, silicates, radioactive chemicals, rare-earth metal compounds, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, insecticides, rodenticides, fungicides and herbicides, fertilizers, vitamins, hormones, antibiotics, gelatins, enzymes, pharmaceutical glaze, essential oils, albumins, gelatins, activated carbon, residual lyes, acrylic polymers, color lakes, soaps and detergents, various packaging and printing materials, medicaments, pharmaceutical products, and instruments and appliances used in medical sciences.

Zone procedures would exempt Pfizer from Customs duty payments on foreign materials used in production for export (some 9 percent of production). On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free) rather than the duty rates that would otherwise apply to the foreign-sourced materials noted above (duty-free to 18.6 percent). At the outset, it is expected that zone savings would primarily involve choosing the finished product duty rate on Viagra®, Tikosyn®, Zeldox® and eletriptan (duty-free), rather than the rates for their foreign components listed above (duty rates ranging from 3.7% to 10.7%). The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 27, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 6 World Trade Center, Rm. 635, New York, New York 10048
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: November 4, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–30415 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 9801013257–8258–00]

Proposed Withdrawal of Thirty-One Federal Information Processing Standards (FIPS) Publications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The following Federal Information Processing Standards (FIPS) Publications are proposed for withdrawal from the FIPS series:

—FIPS 21–4, COBOL (ANSI X3.23–1985, X3.23a–1989&X3.23b–1993)
—FIPS 29–3, Interpretation Procedures for Federal Information Processing Standards for Software
—FIPS 101, Guideline for Lifecycle Validation, Verification, and Testing of Computer Software
—FIPS 106, Guideline on Software Maintenance
—FIPS 119–1, Ada (ANSI/ISO/IEC 8652:1995)
—FIPS 132, Guideline for Software Verification and Validation Plans (ANSI/IEEE 1012–1986)
—FIPS 137, Analog to Digital Conversion of Voice by 2,400 Bit/Second Linear Predictive Coding
—FIPS 139, Interoperability and Security Requirements for Use of the Data Encryption Standard in the Physical Layer of Data Communications
—FIPS 141, Interoperability and Security Requirements for Use of the Data Encryption Standard with CCITT Group 3 Facsimile Equipment
—FIPS 144, Data Communication Systems and Services User-Oriented Performance Parameters (ANSI X3.102–1983/R1990)
—FIPS 150, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus (EIA–538–1988)
—FIPS 151–2, Portable Operating System Interface (POSIX)—System Application Program Interface [C Language] (ISO/IEC 9945–1:1990)
—FIPS 155, Data Communication Systems and Services User-Oriented Performance Measurement Methods (ANSI X3.141–1987)
—FIPS 162, 1,200 Bits Per Second Two-Wire Duplex Modems for Data Communications Use on Telephone-Type Circuits
—FIPS 163, 2,400 Bits Per Second Two-Wire Duplex Modems for Data Communications Use on Telephone-Type Circuits
—FIPS 164, 2,400 Bits Per Second Four-Wire Duplex and Two-Wire Half-Duplex Modems for Data Communications Use on Telephone-Type Circuits
—FIPS 165, 4,800 Bits Per Second Four-Wire Duplex and Two-Wire Half-Duplex Modems for Data Communications Use on Telephone-Type Circuits
—FIPS 166, 4,800 and 9,600 Bits Per Second Two-Wire Duplex Modems for Data Communications Use on Telephone-Type Circuits

—FIPS 167, 9,600 Bits Per Second Four-Wire Duplex Modems for Data Communications Use on Telephone-Type Circuits
—FIPS 168, 12,000 and 14,400 Bits Per Second Four-Wire Duplex Modems for Data Communications Use on Telephone-Type Circuits
—FIPS 169, Error Correction in Modems Employing Asynchronous-To-Synchronous Conversion
—FIPS 170, Data Compression in Modems Employing CCITT Recommendation V.42 Error Correction
—FIPS 172–1, VHSIC Hardware Description Language (VHDL) (ANSI/IEEE 1076–1993)
—FIPS 175, Federal Building Standard for Telecommunications Pathways and Spaces (ANSI/EIA/TIA–569–1990)
—FIPS 176, Residential and Light Commercial Telecommunications Wiring Standard (ANSI/EIA/TIA–570–1991)
—FIPS 182, Integrated Services Digital Network (ISDN)
—FIPS 187, Administration Standard for the Telecommunications Infrastructure of Federal Buildings (ANSI/TIA/EIA–606–1993)
—FIPS 189, Portable Operating System Interface (POSIX)—Part 2: Shell and Utilities (ISO/IEC 9945–2:1993)
—FIPS 193, SQL Environments
—FIPS 194, Open Document Architecture (ODA) Raster Document Application Profile (DAP) (ISO/IEC 12064–1 ISP/FOD112)
—FIPS 195, Federal Building Grounding and Bonding Requirements for Telecommunications (ANSI/TIA/EIA–607–1994)

Many of these FIPS adopt voluntary industry standards for Federal government use, but the FIPS documents have not been updated to reference current or revised voluntary industry standards. Others of these FIPS provide advisory guidance to Federal agencies with no requirements for compulsory and binding use. Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, to use technical standards that are developed in voluntary consensus standards bodies. Consequently, there no longer is a need for FIPS that duplicate voluntary industry standards.

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain copies of these standards and guidelines from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone 1–800–553–NTIS (6847) or (703) 605–6000.

DATES: Comments on this proposed withdrawal of these FIPS must be received on or before February 11, 1999.

ADDRESSES: Written comments concerning the withdrawal should be sent to: Information Technology Laboratory, ATTN: Proposed Withdrawal of 31 FIPS, Building 820, Room 562, National Institute of Standards and Technology, Gaithersburg, MD 20899. Electronic comments should be sent to: fips.comments@nist.gov

Comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Pub. L. 104–106.

Dated: November 6, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30340 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice if hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Wednesday, December 2, 1998, and Thursday, December 3, 1998 from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public.

DATES: The meeting will be held on December 2–3, 1998, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology Gaithersburg, MD in the Administration Building, Lecture Room A.

AGENDA:

—Welcome and Overview
—Issues Update and Briefings
—Trust in Cyperspace Briefing
—GITS/CIO Security Committees Updates
—Privacy Issues Updates
—NIST Computer Security Updates
—Discusison
—Pending Business
—Public Participation
—Agenda Development for March 1999 Meeting
—Wrap-Up

PUBLIC PARTICIPATION: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the pubic who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, Building 820, Room 426, National Institute of Standards and Technology, Gaithersburg. MD 20899–0001. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than November 30, 1998. Approximately 20 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, Building 820, Room 426, Gaithersburg, MD 20899–0001, telephone: (301) 975–3696.

Dated: November 6, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30341 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–CN–M

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award's Board of Overseers

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, December 3, 1998, from 8:30 a.m. to 3:30 p.m. The Board of Overseers consists of twelve members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of the meeting on December 3, 1998, will be for the Board of Overseers to discuss and review information received from the National Institute of Standards and Technology (NIST) with the chairperson of the Judges Panel of the Malcolm Baldrige National Quality Award, a discussion of pilot on site with oral feedback, proposed to create previous winners categories, and to present recommendations to the NIST Director.

DATES: The meeting will convene December 3, 1998, at 8:30 a.m. and adjourn at 3:30 p.m. on December 3, 1998.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Conference Room (seating capacity 36, includes 24 participants), Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: November 6, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30371 Filed 11–12–98; 8:45 am]

BILLING CODE 3510–03–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, November 19, 1998 3:00 p.m.

LOCATION: Room 410 B/C, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: November 9, 1998.

Sadye E. Dunn,

Secretary.

[FR Doc. 98–30458 Filed 11–9–98; 4:04 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In accordance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed extension of collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received January 12, 1998.

ADDRESSES: Written comments and recommendations on the information collection should be sent to Tricare Management Activity, Office of General Counsel, 16401 E. Centretech Parkway, Attn: Robert Shepherd, Aurora, CO 80011.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection, please write to the above address or call Tricare Management Activity, Office of General Counsel at (303) 676–3703.

Title Associated With Form, and OMB Number: Statement of Personal Injury—Possible Third Party Liability Champus, DD Form 2527, OMB Number 0720–0003.

Needs and Uses: This information collection is completed by CHAMPUS beneficiaries suffering from personal injuries and receiving medical care at Government expense. The information is necessary in the assertion of the Government's right to recovery under the Federal Medical Care Recovery Act. The data is used in the evaluation and processing of these claims.

Affected Public: Individuals or household, Federal government.

Annual Burden Hours: 17,300.

Number of Respondents: 29,500.

Responses per Respondent: 1.

Average Burden per Response: 35 minutes.

Frequency: On occasion, only when a beneficiary is insured under circumstances creating possible liability in a third party.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Federal Medical Care Recovery Act, 42 U.S.C. 2651–2653 as implemented by Executive Order No. 11060 and 28 C.F.R. 43 provides for recovery of the reasonable value of medical care provided by the United States to a person who is injured or suffers a disease under circumstances creating tort liability in some third person. DD Form 2527 is required for investigating and asserting claims in favor of the United States arising out of such incidents.

When a claim for CHAMPUS benefits is identified as involving possible third party liability and the information is not submitted with the claim, TRICARE/CHAMPUS contractor requests that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the Government' claim. When appropriate, the information is

forwarded to the Department of Justice as the basis for litigation.

Section 1 of the Form is used to collect general information, such as name, address and telephone numbers about the military sponsor and the injured beneficiary.

Section 2 of the Form allows the injured beneficiary to explain in his or her own words how the injury occurred. This allows the beneficiary to explain that he or she was not injured in an accident or that no third party was responsible. If either of these conditions exist, the beneficiary does not have to complete the rest of the form.

Section 3 of the Form is used to collect information about accidents that do not involve motor vehicles. Information such as location, time, date, property owner's name and address and the names and addresses of persons involved or witnesses is collected in this section of the form. Other information relating to police investigations, other injured family members, whether the accident was work related and insurance coverage is also collected.

Section 4 of the Form is used to collect information about motor vehicle accidents. Most of the investigations for possible third party liability involve motor vehicle accidents. A beneficiary must attach a copy of the official police report to the form. Additional information not usually included in police reports is entered in Section 4, including information about insurance coverage of the parties, and whether the accident was work related is collected.

Section 5 of the Form is used for miscellaneous information such as possible medical treatment in a Government hospital, the name and address of the beneficiary's attorney, and information regarding any possible releases or settlements with another party to the accident.

Section 6 of the Form contains the certification, date and signature of the beneficiary (or a designee).

Dated: November 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30310 Filed 11–12–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Health Affairs/ TRI CARE Management Office), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Health Affairs) announces the following proposed new collection for the DD Forms, "Loan Verification Form," a public information collection and seeks public comment for the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions to the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 30, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Health Affairs), ATTN: Lieutenant Commander Steven Griffitts, Tri Care Management Activity, 555 Leesburg Pike, Falls Church, Virginia 220441.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 681–1740.

Title, Associated Form, and OMB Number: "Loan Information and Verification Form," DD Form, OMB Control Number:

Needs and Uses: Title 10, USC, requires applicants to submit this form, to their Service representative, prior to participation in the Health Loan Repayment Program (HPLR). Lenders will verify the data submitted and respond back to the Service Representative. All loans must met federal standards and be approve by the Department Finance and Accounting office prior to disbursement of funds.

Affected Public: City, County, State and Federal lending Agencies, Banks, and other financial lending agencies. Normally, this form would be completed by the applicant and submitted to the Service for financial disbursement of funds under the Health Loan Repayment Program.

Annual Burden Hours: 175.

Number of Respondents: 700.

Responses per Respondent: 1.

Average Burden per Response: 15 min.

Frequency: On application for the Health Professional Loan Repayment Program.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This information collected provides the Armed Services with the exact loan debits and the loan agency. The DD Form is the method of collecting and verifying outstanding loans for applicant's within the Health Loan Repayment Program. This DoD Form will considered the official request for obtaining loans data on HPLR applicants.

Dated: November 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30311 Filed 11–12–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of extension of cancer treatment clinical trials demonstration project.

SUMMARY: This notice is to advise interested parties of a one-year extension of a demonstration project in which the DoD provides CHUMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Institutes of Health, National Cancer Institute (NCI) clinical trials. Participation in these clinical trials will improve access to promising cancer therapies for CHAMPUS eligible beneficiaries when their conditions meet protocol eligibility criteria. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. At this time, there

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is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trials. Extending the demonstration for an additional year will allow sufficient time for patient accrual to clinical trials and collection of data which allows for comprehensive economic analysis. This demonstration also affects TRICARE, the managed health care program that includes CHAMPUS. This demonstration project, which is under the authority of 10 U.S.C., section 1092, will expire December 31, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Larkin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1745.

SUPPLEMENTARY INFORMATION:

A. Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an existing demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration purpose is to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The January 24, 1996, notice anticipated the possibility of extending the demonstration.

The NCI trails program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network which includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer treatment, the Department expanded its breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trails. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trails and stabilizing the referral base for these clinical activities. While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that this increased access to innovative cancer therapies will occur at a cost comparable to that which the Department has experienced in paying for conventional therapies under the standard CHAMPUS program. Results of this demonstration will provide a framework for determining the scope of DoD's continued participation in the NCI's research efforts.

Dated: November 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30308 Filed 11–12–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

MacDill 65 Demonstration of Military Managed Care

AGENCY: Department of Defense, Health Affairs.

ACTION: Notice of demonstration project.

SUMMARY: This notice is to advise interested parties of a demonstration project in which DoD will enroll up to 2,000 Medicare-eligible military retirees at MacDill Air Force Base to primary care managers. The MacDill 65 demonstration project seeks to show that a DoD-operated program can provide primary health care services to beneficiaries eligible for both military health care and Medicare more effectively and efficiently than under the current DoD-operated system. In this project, DoD will grant enrollees in the program priority access to primary health care at MacDill in exchange for their agreement to receive all of their primary health care from MacDill AFB. Additional services, available at the military treatment facility at MacDill AFB, will be granted to these enrollees at a higher priority than that granted to other retirees and their family members not enrolled in TRICARE Prime. Funding for the demonstration for care provided will come from an additional $2 million per year over the current level of DoD expenditures on care provided to the MacDill AFB Medicare-eligible population. Claims for care provided to enrollees outside the MTF will be submitted to Medicare on a fee-for-service basis by the civilian provider. At the end of the project, DoD will conduct an analysis of the benefits and costs of the program. DoD will conduct the demonstration over three years, from October 1, 1998, to September 30, 2001. This demonstration project is being conducted under the authority of 10 USC 1092.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Steve Lillie, TRICARE Management Activity (703) 681–1745.

SUPPLEMENTARY INFORMATION:

A. Background

DoD-provided health care for Medicare-eligible military retirees has always been available at MTFs on a space-available basis. Federal law (10 U.S.C. 1086(d)) excludes Medicare-eligible military retirees, survivors, and family members (with the exception of those eligible for Medicare because of a disability or end-stage renal disease) from participation in the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), the DoD-sponsored health care benefit for military dependents and retirees. When DoD began the transition to the TRICARE program in 1995, the Department again determined it was necessary to exclude Medicare beneficiaries from enrollment in TRICARE Prime, DoD's HMO-like program, based on their exclusion from CHAMPUS and the statutory requirement that TRICARE Prime not increase costs.

In the past, many Medicare beneficiaries have obtained substantial amounts of health care at MTFs. However, because of military budget cutbacks, a series of military base closures, and increased demand for MTF resources from a growing retiree population, Medicare-eligible beneficiaries are finding it increasingly difficult to obtain care at MTFs in many locations.

Also contributing to the reduction of space-available care for Medicare-eligible beneficiaries is the establishment of a priority system for access to MTF care. As mandated by 10 U.S.C. 1097(c), first priority is granted to active duty personnel. Active duty dependents enrolled in TRICARE Prime are assured of second priority over enrolled military retirees and their dependents, who enjoy third priority. Active duty dependents who are not enrolled in Prime are accorded fourth priority. Medicare-eligible beneficiaries are in the fifth and lowest priority group, along with other non-enrolled retirees.

B. Description of MacDill 65 Project

(1) Location of Project: MacDill 65 will be conducted in the catchment area of MacDill Air Force Base, Florida. The catchment area is a 40-mile radius around the base and is identified by zip codes.

(2) MacDill 65 Schedule: Prior to the beginning of health care delivery under this demonstration, 1998, MacDill AFB will issue public announcements providing information about the MacDill 65 program and the enrollment process. These announcements will include the posting of notices in the MTF and publication in local newspapers serving the MTF's catchment areas. The public announcements will indicate that a 30-day application acceptance period will begin, followed approximately 30 days later by the start date of health care delivery under MacDill 65. The project will continue for a maximum of three years to September 30, 2001.

(3) Eligible Population: To be eligible to be enrolled in MacDill 65, a military retiree must (1) be eligible for care from DoD and through Medicare's aged program, (2) be enrolled in Medicare Part B, (3) not be enrolled in a Medicare HMO, (4) reside within the catchment area of MacDill AFB, and (5) have received medical services at MacDill AFB as a dual-eligible beneficiary prior to August 1, 1998, or became eligible for Medicare on or after August 1, 1998.

(4) Enrollment Capacity: There will be 2,000 slots in MacDill 65 enrollment capacity. Additionally, MacDill will offer enrollment to all otherwise eligible applicants who become Medicare-eligible during the demonstration and who, immediately prior to reaching age 65, were enrolled in TRICARE Prime and assigned to a MacDill AFB primary care manager.

(5) Enrollment: Enrollment will be on a first-come/first-served basis. Enrollment applications will be accepted by mail at an address designated by MacDill AFB. If capacity is reached, applications received on the same day will be placed on a waiting list, up to a specified limit, again, in the order in which they are received, and applicants will be granted enrollment as existing enrollment slots are vacated. MacDill will limit its waiting list to a number equal to 10% of its maximum MacDill 65 enrollment capacity as described above.

Marketing and educational meetings began July 1998. Applications were accepted by mail through the month of August. In September, a lottery was used to select the 2,000 enrollees from the applications received. During that time, educational briefings were provided. Applications were available and were accepted by mail.

Enrollment in MacDill 65 is for three years. Beneficiaries may leave the program at any time by submitting a written request. There will be no enrollment fees for MacDill 65, although enrollees will be required to maintain their enrollment in Medicare Part B through the payment of monthly premiums.

As a condition of enrollment, each dual-eligible beneficiary will be asked to receive all of his or her primary health care, except emergency or urgent care, through the MacDill 65 program. If an enrollee requires medical care beyond the scope of primary care, a referral will be provided by the primary care manager. The referral providers may be MTF providers, providers in the TRICARE managed care support contractor's network or other civilian providers who agree to accept Medicare assignment. Enrollees may self-refer or accept the primary care manager's referral. Enrollees may not seek care at an MTF other than through their MTF primary care manager, to whom they have been guaranteed priority access as described below. Those Medicare-eligible beneficiaries who are not enrolled in MacDill 65 will remain eligible for space-available care at the MTF.

(6) Services Covered: The MacDill 65 benefit is a primary care benefit with additional services to the extent available at the MTF. Enrollees will be assigned a primary care manager at MacDill AFB and will be guaranteed access to primary care at the MTF in accordance with the TRICARE Prime access standards (32 CFR 199.17(p)(5)). With respect to non-primary care, additional services, available at the military treatment facility at MacDill AFB, will be granted to these enrollees at a higher priority than that granted to other retirees and their family members not enrolled in TRICARE Prime. Enrollees will not displace TRICARE Prime enrollees, however. There will be no enrollee cost shares associated with care provided at the MTF with the exception of the minimal per diem costs incurred by those receiving inpatient care.

For medical care not available at MacDill AFB, MacDill AFB will refer MacDill 65 enrollees to providers who accept Medicare assignment in the local area. For all medically necessary specialty care, an appropriate referral will be made. Alternatively, the enrollee may chose to obtain services from another Medicare-eligible provider. The cost of care provided outside the MTF is not the responsibility of MacDill AFB. Rather, claims for care provided by civilian providers for MacDill 65 enrollees will be submitted to Medicare on a fee-for-service basis. While an enrollee should receive a referral to the civilian provider from DoD, Medicare regulations will govern payment for such care. Accordingly, the Medicare fiscal intermediary or carrier will have the authority to determine whether a service is a Medicare-covered benefit and will determine the allowable rates and the applicable cost shares and deductibles. Depending upon Medicare payments rules, payment for care by a civilian provider ultimately will be the responsibility of the MacDill 65 enrollee.

MacDill 65 enrollees will have access to the complete drug formulary of the MTF, without regard to whether the prescription was written by an MTF or civilian provider. DoD will not guarantee that a drug prescribed by a provider, either at the MTF or in the civilian sector, will be available at the MTF pharmacy. Prescriptions which must be filled outside the MTF will be the financial responsibility of the enrollee.

Impact of Demonstration Project on Access to Care for Non-Enrolled Medicare-Eligible Beneficiaries

The goal of the MacDill 65 project is to develop a primary care benefit for Medicare-eligible beneficiaries, which will better ensure their access to military health care. This will enable DoD to offer more predictable access to military health care to a limited number of Medicare-eligible beneficiaries and will allow DoD to provide such care in a more cost-effective manner than the current space-available system.

Enrollees in MacDill 65 will benefit from improved access to a broader range of services at MTFs than they currently receive under the space-available system. The current system provides limited amounts of care to a large number of Medicare-eligibles. As a result of the implementation of MacDill 65, those who are not enrolled in the program, either by choice or lack of available enrollment slots will probably find their access to space-available MTF care more limited than it is currently. This is because resources currently devoted to space-available care are expected to be shifted to the care of MacDill 65 enrollees. It is important to note that the *eligibility* of non-enrolled beneficiaries to space-available care in MTFs is not affected by their enrollment status. However, the actual *availability* of space for this group is likely to decrease. While this may result in

higher out-of-pocket costs and reduced convenience for Medicare-eligible beneficiaries as they seek health care using their Medicare benefit, the Department believes that successful conduct of the MacDill 65 project will demonstrate the Department's ability to operate a cost-effective primary care program for Medicare-eligible beneficiaries.

The Department is also aware that the requirement for all MacDill 65 enrollees to have Medicare Part B represents an increased cost for those who rely solely on no-cost, space-available care at the MTF. However, Medicare regulations require Medicare-risk HMO members to also be enrolled in Part B. As the Department is strongly supportive of Medicare Subvention legislation, it is one of the reasons the Department has implemented a policy of encouraging military retirees to enroll in Part B upon reaching age 65. Also, enrollees in MacDill 65 will require Part B coverage to submit claims to Medicare for civilian provider services.

Dated: November 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30309 Filed 11–12–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

International Energy Agency Meeting

AGENCY: Department of Energy.

ACTION: Notice of meeting.

SUMMARY: The Industry Advisory Board to the International Energy Agency will meet November 20, 1998 at the headquarters of the International Energy Agency in Paris, France in connection with a joint meeting of the IEA's Standing Group on Emergency Questions and Standing Group on the Oil Market.

FOR FURTHER INFORMATION CONTACT: Samuel M. Bradley, Acting Assistant General Counsel for International and Legal Policy, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202–586–6738.

SUPPLEMENTARY INFORMATION: In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notice is provided:

A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on November 20, 1998, at the headquarters of the IEA, 9 rue de la Federation, Paris, France, beginning at approximately 9:30 a.m.

The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) (part of which will be held jointly with the Standing Group on the Oil Market (SOM)) that is scheduled to be held at the IEA's offices on November 20. The Agenda for the meeting is under the control of the SEQ and SOM. It is expected that the following Agenda will be adopted:

Meeting of the Standing Group on Emergency Questions

1. Adoption of the Agenda
2. Approval of the Summary Record of the 93rd Meeting
3. The 1998 SEQ Work Program
4. The 1999 SEQ Work Program
   - Survey of SEQ/SOM Member Budget and Work Program Priorities
5. Policy and Legislative Developments in Member Countries
   - U.S. Energy Policy and Conservation Act
   - Developments in other IEA countries
6. Current IAB Activities
7. Emergency Reserve Situation of IEA Countries
   - Emergency Reserve and Net Import Situation of IEA Countries on 1 July 1998
8. Emergency Reserve Measurement Issues
   - Treatment of Petroleum Coke for IEA Emergency Reserve Purposes—Proposal by the Spanish Administration
9. Emergency Response Issues of IEA Candidate Countries
   - Emergency Reserve Situation of IEA Candidate Countries
10. Emergency Data System and Related Questions
    - Base Period Final Consumption—Q397—Q298
    - Monthly Oil Statistics (MOS) June 1998
    - MOS July
    - MOS August
11. Emergency Response Reviews of IEA Countries
    - Emergency Response Review of Australia
    - Emergency Response Review of Canada
    - Emergency Response Review of New Zealand
    - Emergency Response Review of Finland
    - Progress Report on the Review Program
    - Updated Schedule of Emergency Response Reviews
12. Emergency Reference Guide
    - Update of Emergency Contact Points List
13. Other Business
    - Discussion of possible event to mark 25 years of SEQ work on energy security

Joint Meeting of the Standing Group on Emergency Questions and the Standing Group on the Oil Market

1. Current Oil Market Situation (Based on the monthly Oil Market Report dated 9 November 1998)
2. Oil Supply in the South Atlantic: A Strategic Outlook to 2005
3. External Economic Influences on the World Oil Market: The Implications of Expectations, Inventories and Prices
   - Dr. Philip K. Verleger, P.K. Verleger LLC
4. Report on the Emergency Response Exercise 98

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(ii)), this meeting is open only to representatives of members of the IAB and their counsel, representatives of members of the SEQ and SOM, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, and the European Commission, and invitees of the IAB, the SEQ, the SOM, or the IEA.

Issued in Washington, D.C., November 6, 1998.

Mary Anne Sullivan,

General Counsel.

[FR Doc. 98–30436 Filed 11–12–98; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–46–000]

Algonquin Gas Transmission Company; Notice of Application

November 6, 1998.

Take notice that on October 29, 1998, Algonquin Gas Transmission Company (Algonquin), 5400 Westheimer Court, Houston, Texas 77251–1642, filed an application pursuant to Section 7(b) and 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing Algonquin to construct, own, operate and maintain certain facilities and to abandon certain facilities necessary to render a firm transportation service for up to 46,000

dekatherms per day (Dth/d) of natural gas for Tiverton Power Associates Limited Partnership (Tiverton) to serve its gas-fired electric generation facility to be constructed in Tiverton, Rhode Island (Tiverton Plant). Algonquin also seeks authorization to charge the proposed initial incremental surcharge discussed below. The application is on file with the Commission and open to public inspection.

On September 3, 1998, Tiverton and Algonquin entered into a precedent agreement and a service agreement under Algonquin's Rate Schedule AFT–1 (September Agreements). Algonquin states that the term of the service agreement is seventeen years. To implement the firm service contemplated by the September 3rd Agreements, Algonquin proposes to utilize existing unsubscribed capacity; to construct delivery point facilities including a tap, meter and connecting pipeline; uprate two existing compressor units at the Chaplin Compressor Station by 900 Horsepower; replace approximately 0.42 miles of existing 10-inch pipe with 30-inch pipe; and, uprate 15.46 miles of 30-inch mainline downstream of Algonquin's existing Burrillville Compressor Station. The uprate of 30-inch mainline would involve replacing in nine segments a total of approximately 1.85 miles of 30-inch mainline pipe with newer higher strength 30-inch pipe. Algonquin states that the primary receipt point for service to Tiverton is to be located at Brookfield, Connecticut; and, the primary delivery point is to be located at the proposed meter station at Tiverton, Rhode Island. Algonquin proposes to commence construction of the facilities on May 16, 1999, to meet its April 1, 2000 in service date for firm deliveries to the Tiverton Plant.

Algonquin states the cost of the facilities is estimated to be approximately $13,949,960 in year of construction dollars. Algonquin proposes to charge its Rate Schedule AFT–1 system rate and an incremental surcharge. Also, Algonquin is requesting that the Commission approve the rates proposed herein as pro forma rates subject to the condition that Algonquin make a compliance filing 30 days prior to the in-service date to reflect any changes to the Rate Schedule AFT–1 system rates that may occur prior to the in-service date. Algonquin requests authorization to charge the proposed incremental surcharge and to adjust the surcharge prior to the commencement of service to Tiverton.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before November 27, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. *The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved.* Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–30312 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–136–000]

Algonquin Gas Transmission Company; Notice of Proposed Change in FERC Gas Tariff

November 6, 1998.

Take notice that on November 2, 1998, Algonquin Gas Transmission Company (Algonquin) submitted for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Second Revised Sheet No. 689A
Fourth Revised Sheet No. 690

Algonquin asserts that the above listed tariff sheets are being filed to comply with the January 21, 1998, Stipulation and Agreement Concerning Gas Research Institute (GRI) Funding which was certified to the Commission on March 10, 1998, 82 FERC ¶ 63,014 (1998), and approved by the Commission in its Order Approving Settlement issued April 29, 1998, 83 FERC ¶ 61,093 (1998), and the Order on Rehearing issued June 26, 1998, 83 FERC ¶ 61,331 (1998).

Algonquin states that a voluntary contribution mechanism provision has been added to the General Terms and Conditions to allow customers to make voluntary contributions to GRI in such amounts and for such GRI projects or project areas as customers shall specify. Algonquin also states that, consistent with the Stipulation and Agreement, this voluntary contribution mechanism is not a pipeline rate, rate provision, or term or condition of service.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30318 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–130–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1998.

Take notice that on November 2, 1998, El Paso Natural Gas Company tendered for filing as part of its FERC Gas Tariff, the following tariff sheets with an effective date of January 1, 1999:

Second Revised Volume No. 1–A

Fourteenth Revised Sheet No. 20
Eighth Revised Sheet No. 22
Fourteenth Revised Sheet No. 23
Eighteenth Revised Sheet No. 24
Fourteenth Revised Sheet No. 26
Fourteenth Revised Sheet No. 27
Twelfth Revised Sheet No. 28
Second Revised Sheet No. 37
Second Revised Sheet No. 38
Fifth Revised Sheet No. 256
Fifth Revised Sheet No. 257

Third Revised Volume No. 2

Forty-Third Revised Sheet No. 1–D.2
Thirty-Seventh Revised Sheet No. 1–D.3

El Paso states that the filing is being made pursuant to Subpart C of Part 154 of the Commission's Regulations and in compliance with the Commission's order issued September 29, 1998 at Docket No. RP98–235–000

El Paso states that the tariff sheets are being filed to revise the Gas Research Institute surcharges and add the voluntary "check the box" contribution mechanism.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30321 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–133–000]

Mississippi River Transmission Corporation; Notice of Filing

November 6, 1998.

Take notice that on November 2, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing a Reconciliation Report of MRT's recovery of Gas Supply Realignment Costs (GSRC).

MRT states that pursuant to Section 16.3 (g)(i) of the General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1, MRT is required to file a reconciliation report of the recovery of its GSRC within 60 months from November 1, 1993. MRT estimates a total over-recovery of approximately $763,000 from its FT and SCT customers. MRT further states that within 90 days of the reconciliation report, it will file a repayment plan to refund to its Firm customers any over-collection plus carrying charges.

MRT states that a copy of this filing is being mailed to each of MRT's customers and to the state commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30315 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–134–000]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1998.

Take notice that on November 2, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheet to be effective January 1, 1999:

Third Revised Sheet No. 228

MRT states that this filing is being submitted pursuant to the provisions of the settlement in Docket Nos. RP97–149–003, *et al*, whereby MRT and other participating pipelines agreed to act as collection agent for customers who wish to participate in voluntary funding for the GRI.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30316 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–132–000 and TM99–1–92–000]

Mojave Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 6, 1998.

Take notice that on November 2, 1998, Mojave Pipeline Company (Mojave) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1999:

Second Revised Sheet No. 11
First Revised Sheet No. 233

Mojave states that the filing is pursuant to Subpart C of Part 154 of the Commission's Regulations and in compliance with the Commission's order issued September 29, 1998 at Docket No. RP98–235–000.

Mojave states that the tariff sheets are being filed to revise the Gas Research Institute surcharges and add the voluntary "check the box" contribution mechanism.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30314 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR98–11–002]

PanEnergy Louisiana Intrastate Company; Notice of Compliance Filing

November 6, 1998.

Take notice that on September 24, 1998, PanEnergy Louisiana Intrastate Company (PELICO) in compliance with the September 21, 1998 Letter Order in PR98–11–000, filed an amended page 3 of the Statement of Operating Conditions (Statement), to be effective April 12, 1998.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions or protests must be filed on or before November 17, 1998. The petition for rate approval is on file with the Commission and is available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30313 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–138–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Change in FERC Gas Tariff

November 6, 1998.

Take notice that on November 2, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective January 1, 1999:

First Revised Sheet No. 290A

Panhandle states that the purpose of this filing is to comply with the January 21, 1998, Stipulation and Agreement Concerning Gas Research Institute (GRI) Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, a voluntary contribution mechanism provision has been added to the General Terms and Conditions to allow shippers to make voluntary contributions to GRI in such amounts and for such GRI research and development projects or project areas as customers shall specify. Consistent with the Stipulation and Agreement, this voluntary contribution mechanism is not a pipeline rate, rate provision nor term or condition of service.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30320 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–135–000]

Texas Eastern Transmission Corporation; Notice of Proposed Change in FERC Gas Tariff

November 6, 1998.

Take notice that on November 2, 1998, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Tenth Revised Sheet No. 631
First Revised Sheet No. 631A
Fifth Revised Sheet No. 632

Texas Eastern asserts that the above listed tariff sheets are being filed to comply with the January 21, 1998, Stipulation and Agreement Concerning Gas Research Institute (GRI) Funding which was certified to the Commission on March 10, 1998, 82 FERC ¶ 63,014 (1998), and approved by the

Commission in its Order Approving Settlement issued April 29, 1998, 83 FERC ¶ 61,093 (1998), and the Order on Rehearing issued June 26, 1998, 83 FERC ¶ 61,331 (1998).

Texas Eastern states that a voluntary contribution mechanism provision has been added to the General Terms and Conditions to allow customers to make voluntary contributions to GRI in such amounts and for such GRI projects or project areas as customers shall specify. Texas Eastern also states that, consistent with the Stipulation and Agreement, this voluntary contribution mechanism is not a pipeline rate, rate provision, or term or condition of service.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commisson's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30317 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–131–000]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

November 6, 1998.

Take notice that on November 2, 1998, Taxas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, with an effective date of January 1, 1999:

Second Revised Sheet No. 189

Texas Gas states that the tariff sheet being filed herein revises Section 22 of Texas Gas's General Terms and Conditions to include language providing invoices have a "check the box" option for shippers to voluntarily contribute funds to the Gas Research Institute (GRI). This provision was established as a part of the Stipulation and Agreement concerning GRI Funding in Docket Nos. RP97–391–000, RP97–149–002 and RP97–3–000 (not consolidated). The instant filing is made in compliance with Commission Order dated April 28, 1998 (83 FERC 61,093) which allows shippers to voluntarily contribute funds in addition to those collected through the GRI surcharge.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Referance Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30322 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–540–000]

Transcontinental Gas Pipe Line Corporation; Notice of Site Visit

November 6, 1998.

On November 16 through 19, 1998. The Office of Pipeline Regulation (OPR) staff will conduct an inspection of the route proposed by Transcontinental Gas Pipe Line Corporation (Transco) for its Market Link Expansion Project. The proposed route and route alternatives, crossing portions of Pennsylvania and New Jersey, will be inspected by helicopter and automobile.

The current itinerary is to conduct a ground inspection on November 16 and 19, and an aerial inspection on November 17 and 18, 1998. If weather conditions preclude an overflight, the inspection will be conducted by automobile only from a location to be determined. Representatives of Transco will accompany the OPR staff. All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 98–30369 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–137–000]

Trunkline Gas Company; Notice of Proposed Change in FERC Gas Tariff

November 6, 1998.

Take notice that on November 2, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999:

Second Revised Sheet No. 217
Original Sheet No. 217A

Trunkline states that the purpose of this filing is to comply with the January 21, 1998, Stipulation and Agreement Concerning Gas Research Institute (GRI) Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093 (1998), order on reh'g, 83 FERC ¶ 61,331 (1998). Specifically, a voluntary contribution mechanism provision has been added to the General Terms and Conditions to allow shippers to make voluntary contributions to GRI in such amounts and for such GRI research and development projects or project areas as customers shall specify. Consistent with the Stipulation and Agreement, this voluntary contribution mechanism is not a pipeline rate, rate provision nor term or condition of service.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30319 Filed 11–12–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–7–000, et al.]

Tri Energy Company Limited, et al.; Electric Rate and Corporate Regulation Filings

November 3, 1998.

Take notice that the following filings have been made with the Commission:

1. Tri Energy Company Limited

[Docket No. EG99–7–000]

Take notice that on October 1, 1998, Tri Energy Company Limited (the Applicant) whose address is Grand Amarin Tower, 16th Floor, 1550 New Petchburi Road, Ratchathewi, Bangkok 10320, Thailand, filed with the Federal Energy Regulatory Commission, an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning a nominal 700 MW combined cycle power plant located in Ratchaburi Province and selling electric energy at wholesale, as that term has been interpreted by the Commission. The Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Public Service Company of New Hampshire

[Docket No. EL95–71–002]

Take notice that on October 26, 1998, the Public Service Company of New Hampshire tendered for filing a compliance filing as required by the Commission's October 6, 1998 "Order Denying Rehearing, Denying Clarification and Ordering Compliance with May 29 Order and Ordering Refunds," in the above-captioned matter.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Northern Indiana Public Service Company

[Docket No. ER99–359–000]

Take notice that on October 29, 1998, Northern Indiana Public Service Company (Northern Indiana), filed a Service Agreement pursuant to its Power Sales Tariff with Strategic Energy Ltd., (SEL).

Northern Indiana has requested an effective date of October 30, 1998.

Copies of this filing have been sent to SEL, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Illinois Power Company

[Docket No. ER99–381–000]

Take notice that on October 29, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which PG&E Energy Trading-Power, L.P., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 1, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER99–382–000]

Take notice that on October 29, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Consumers Energy Company and The Detroit Edison Company referred to collectively as the Michigan Companies under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER99–384–000]

Take notice that on October 28, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and UGI Energy Services, Inc., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to UGI Energy Services, Inc., under the terms and conditions of the Tariff.

Virginia Power requests an effective date of October 29, 1998.

Copies of the filing were served upon UGI Energy Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER99–385–000]

Take notice that on October 29, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Virginia Electric and Power Company.

Wisconsin Electric respectfully requests an effective date of October 28, 1998, to allow for economic transactions.

Copies of the filing have been served on Virginia Electric and Power Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power

[Docket No. ER99–386–000]

Take notice that on October 29, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with FirstEnergy Corp.

Wisconsin Electric respectfully requests an effective date of October 28, 1998, to allow for economic transactions.

Copies of the filing have been served on FirstEnergy Corp., the Michigan

Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Arizona Independent Scheduling Administrator Association

[Docket No. ER99–388–000]

Take notice that on October 29, 1998, Arizona Independent Scheduling Administrator Association (AISA), tendered for filing a comprehensive document including: Articles of Incorporation, AISA By-laws, AISA Schedule Administration Agreement, AISA Tariff, list of AISA Board Members, Arizona Corporation Commission (ACC) letter support approval of the AISA, support information developing the AISA transmission surcharge, ACC Decision #61071 in support of its request seeking the Commission's approval for implementation of the AISA on January 1, 1999.

A copy of this filing has been served on the Arizona Corporation Commission and to other Parties contained in the Service List included in the filing.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Tampa Electric Company

[Docket No. ER99–389–000]

Take notice that on October 29, 1998, Tampa Electric Company (Tampa Electric), tendered for filing revisions to the addenda containing unbundled generation, transmission, and ancillary service rates for economy energy coordination transactions that it had filed previously in compliance with Order No. 888, and that were accepted for filing in Docket No. OA97–244–000. Tampa Electric states that the revisions are necessary to conform the unbundled rates to the settlement open access tariff rates approved by the Commission in Docket Nos. ER95–1775–000, OA96–116–000, and OA96–116–001.

Tampa Electric proposes that the revised addenda be made effective on January 1, 1997, in keeping with the Order No. 888 requirement for unbundling of such rates.

A copy of the filing has been served on each of the other utilities that is a party to a contract, service schedule, or letter of commitment affected by the filing, and the Florida Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Enron Power Marketing, Inc.

[Docket No. ER99–364–000]

Take notice that on October 29, 1998, Enron Power Marketing, Inc., filed a proposed amendment to its FERC Electric Rate Schedule No. 1, to allow it to sell electric energy and capacity at wholesale to its affiliate Portland General Electric Company under its market-based rate authority, to become effective December 28, 1998.

Copies of the filing were served upon the Oregon Public Utility Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Deseret Generation & Transmission Co-operative

[Docket No. ER99–365–000]

Take notice that on October 29, 1998, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella short-term firm point-to-point service agreement with TransAlta Energy Marketing (U.S.) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of October 29, 1998.

Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. TransAlta Energy Marketing (U.S.) has been provided a copy of this filing.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power & Light Company

[Docket No. ER99–367–000]

Take notice that on October 29, 1998, Delmarva Power & Light Company filed a notification of termination of its service agreement with Vastar Power Marketing, Inc., Service Agreement No. 45 of Delmarva's FERC Electric Tariff, Original Volume No. 14 (Market-Based Sales Tariff).

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–369–000]

Take notice that on October 29, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 7 to add three (3) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of October 28, 1998, to Atlantic City Electric Company, Delmarva Power & Light Company and Tenaska Power Services Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PP&L, Inc.

[Docket No. ER99–370–000]

Take Notice that on October 29, 1998, PP&L, Inc. (formerly known as Pennsylvania Power & Light Company) (PP&L), filed a Service Agreement dated October 7, 1998 with Strategic Energy Ltd. (Strategic), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds Strategic as an eligible customer under the Tariff.

PP&L requests an effective date of October 29, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Strategic and to the Pennsylvania Public Utility Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PJM Interconnection, L.L.C.

[Docket No. ER99–371–000]

Take notice that on October 29, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing a notice of termination of four service agreements for Network Integration Transmission Service under the PJM Open Access Transmission Tariff. These agreements were necessary to accommodate the Pennsylvania Retail Competition Pilot program which ends on December 31, 1998.

Copies of this filing were served upon the parties to the service agreements, and the Pennsylvania Public Utility Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER99–373–000]

Take notice that on October 29, 1998, Wolverine Power Supply Cooperative, Inc. (Wolverine), tendered for filing proposed changes in its Rate Schedule FERC No. 4. The proposed changes amend Rate Schedule FERC No. 4 by revising the Power Supply Cost Recovery Charge in compliance with the Commission's Order of December 23, 1998, in Docket No. ER98–413–000. The change does not propose an increase in rates.

Copies of the filing were served on the public utility's customers.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER99–375–000]

Take notice that on October 29, 1998, Ameren Services Company (ASC) as Agent for Union Electric Company (UE), tendered for filing a Service Agreement for Market Based Rate Power Sales between UE and the City of St. James (the City), Missouri. ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to the City pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–376–000]

Take notice that on October 29, 1998, Ameren Services Company (ASC), tendered for filing a Network Operating Agreement and a Service Agreement for Network Integration Transmission Service between Ameren Services and the City of St. James, Missouri (the City). Ameren Services asserts that the purpose of the Agreement is to permit Ameren Services to provide transmission service to the City pursuant to Ameren's Open Access Tariff.

ASC requests that as directed in the Commission's Order No. 888, the Service Agreement be allowed to become effective November 1, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–378–000]

Take notice that on October 29, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 38, to add FirstEnergy Trading and Power Marketing, Inc., to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreement is October 28, 1998.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. PECO Energy Company

[Docket No. ER99–379–000]

Take notice that on October 29, 1998, PECO Energy Company (PECO), tendered for filing a Notice of Termination for the Power purchase Agreement between PECO and Baltimore Gas and Electric Company (BG&E), for Long Term Sale of Firm Electric Capacity and Associated Energy, dated May 19, 1994, as subsequently amended.

PECO requests that the termination be made effective as of September 10, 1998.

PECO states that copies of its filing have been served on the Pennsylvania Public Utility Commission and on BG&E.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. New England Power Pool

[Docket No. ER99–387–000]

Take notice that on October 30, 1998, the New England Power Pool (NEPOOL), Executive Committee submitted the Thirty-Eighth Agreement Amending New England Power Pool Agreement, amending provisions relating to the pricing of 10-Minute Spinning Reserve service and making corrections to various provisions of the Restated NEPOOL Agreement and the Restated Open Access Transmission Tariff.

The NEPOOL Executive Committee states that copies of these materials were sent to the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Deseret Generation & Transmission Co-operative

[Docket No. ER99–366–000]

Take notice that on October 29, 1998, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella non-firm point-to-point service agreement with TransAlta Energy Marketing (U.S.) Inc., under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of October 29, 1998.

Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000. TransAlta Energy Marketing (U.S.) Inc., has been provided a copy of this filing.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30323 Filed 11–12–98; 8:45 am]

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DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of September 28 Through October 2, 1998

During the week of September 28 through October 2, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 3, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 105

Personnel Security

Personnel Security Hearing, 9/30/98, *VSO–0204*

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain an access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found that the respondent did not have a personality disorder as diagnosed by a psychiatrist because the psychiatrist stated that it was a close case and had based his diagnosis upon some incorrect information. The Hearing Officer also found, however, that the respondent had not provided convincing evidence to contradict the psychiatrist's diagnosis that he suffered from alcohol abuse. Under these circumstances, the Hearing Officer found that the respondent's access authorization should not be reinstated.

Personnel Security Hearing, 10/1/98, *VSO–0205*

After reviewing the record concerning the individual's rehabilitation from his bipolar-two mental condition, an OHA hearing officer issued an Opinion recommending that the individual's access authorization not be restored.

Refund Applicaitons

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supplemental Refunds	RB272–00144	9/29/98
Don Nicolaysen et al	RK272–04820	9/29/98
Nueces Electric Coop, Inc.	RF272–94582	9/29/98

Dismissals

The following submissions were dismissed.

Case No.	Name
Jerry T. Ensminger	RK272–04395
Personnel Security Hearing	VSO–0231

[FR Doc. 98–30387 Filed 11–12–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 17 Through August 21, 1998

During the week of August 17 through August 21, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 3, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 99

Appeals

Baker, Donelson, Bearman & Caldwell, 8/20/98, *VFA–0430*

Baker, Donelson, Bearman & Caldwell filed an Appeal from a determination issued to it by the Golden Field Office of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act. The law firm request sought records related to the DOE's "Building America" program and a particular Request for Proposal issued pursuant to that program. The Golden Field Office released all responsive records except for one document which it withheld in full pursuant to Exemption 4. In considering the Appeal, the DOE determined that the determination letter employed three, analytically distinct, Exemption 4 tests: for trade secrets, for commercial or financial information that is voluntarily submitted, and for commercial or financial information that is involuntarily submitted. Because the tests are analytically distinct, they are mutually exclusive, and cannot be melded together for the same information. In addition, the determination letter did not explain the application of any of these three standards. Accordingly, the DOE granted the appeal in part and remanded the matter to the Golden Field Office to issue a new determination.

Bernice McCulloch, 8/17/98, *VFA–0427*

The DOE issued a Decision and Order denying a Freedom of Information Act (FOIA) Appeal that was filed by Bernice McCulloch. In her Appeal, Ms. McCulloch challenged the adequacy of the search for responsive documents performed by the Oak Ridge Operations Office. In the Decision, the DOE found that the search was adequate.

HANFORD EDUCATION ACTION LEAGUE, 8/17/98 VFA–0431

The DOE's Office of Hearings and Appeals (OHA) granted an appeal of a determination in response to a request for documents from the DOE's Richland Operations Office (DOE/RL). While finding that DOE/RL conducted an adequate search for documents, the OHA remanded the matter to the DOE's FOI and Privacy Group for a search of offices at DOE Headquarters.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple Refund Dist	RB272–00142	8/19/98

[FR Doc. 98–30394 Filed 11–12–98; 8:45 am]
BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 24 through August 28, 1998

During the week of September 24 through August 28, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines,* a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 3, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 100

Appeal

Neutron Technology Corporation, 8/27/98, VFA–0432

The OHA denied an appeal of a determination in response to a request for documents from the DOE's Brookhaven National Laboratory (BNL). The OHA found that, pursuant to the contract under which the requested documents were created, the documents were the property of the contractor and thus not agency records subject to the FOIA.

Personnel Security

Personnel Security Hearing, 8/24/98, VSO–0207

An OHA Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain access authorization under the provisions of 10 C.F.R. Part 710. The Hearing Officer found the individual had not produced sufficient evidence to mitigate the security concern raised by a positive test result for marijuana. In particular, the Hearing Officer found that the individual's inconsistent statements regarding her knowledge and intention of marijuana use raised substantial doubt about whether she had falsified information that she provided in a Personnel Security Interview. On the basis of those unresolved security concerns, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Application

Varity Kelsey-Hayes Company F/K/A Fruehauf Corp., 8/26/98, *RC272–00391*

The DOE issued a Decision and Order rescinding half of a refund from one company and denying two Applications for Supplemental Refund and two Applications for Refund from two other companies in the crude oil refund proceeding. The two latter companies, Fruehauf Trailer Corp. (FTC) and Fruehauf Trailer Services, Inc. (FTS) applied for refunds based on the original refund that the first company, Fruehauf Corp. (Fruehauf) had received. The OHA first found that FTC and FTS were ineligible for either supplemental or original refunds because those applicants were simply challenging the propriety of the grant of the original refund to Fruehauf. The OHA deemed this challenge to be untimely because FTS and FTC had failed to meet the June 30, 1995 crude oil proceeding filing deadline. Moreover, the OHA examined the material FTS and FTC submitted and found that Fruehauf had been ineligible to receive half the refund it had been granted. The OHA therefore rescinded half of Fruehauf's original refund. However, because the OHA also granted a supplemental refund based on the remaining gallonage, the successor corporation to Fruehauf was not required to repay any funds to the Department of Energy.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Cherokee Brick Co. et al	RF272–98900	8/27/98
General Car & Truck Leasing	RF272–98964	8/28/98
Grumman Aerospace Corp.	RF272–52464	8/26/98
Grumman Aerospace Corp.	RD272–52464	
Ilene Deatherage et al	RK272–01586	8/28/98
Morton International et al	RK272–01965	8/28/98
Renaissance Westchester Hotel	RK272–04415	8/27/98
Twin County Service Co.	RG272–00151	8/27/98

Dismissals

The following submissions were dismissed.

Case No.	Name
Edna Schonthaler	RK272–01755
John Gilmore	VFA–0425
Jurischik Bros. Drywall, Inc.	RK272–04071
Montpelier Orchard Mgmt. Co.	RK272–04377
Star Foundation	VFA–0440
Watson & Watson	RK272–04572

[FR Doc. 98–30395 Filed 11–12–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of October 5 through October 9, 1998

During the week of October 5 through October 9, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 3, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 106

Appeals

Baker, Donelson, Bearman, & Caldwell, 10/9/98, *VFA–0443*

The Department of Energy's Office of Hearings and Appeals (OHA) issued a decision granting a Freedom of Information Act (FOIA) Appeal filed by the law firm of Baker, Donelson, Bearman, & Caldwell (Baker). Baker sought the release of information withheld under Exemption 4 of the FOIA by the Department's Golden Field Office (Golden). The OHA found that Golden had failed either to provide an adequate justification for withholding the requested document in its entirety, or to release segregable material. The matter was therefore remanded to Golden.

Missouri River Energy Services, 10/9/98, *VFA–0444*

Missouri River Energy Services (Missouri) filed an Appeal from a determination issued by the Department of Energy's Western Area Power Administration (WAPA). WAPA denied a request for information that Missouri filed under the Freedom of Information Act (FOIA). In its Appeal, Missouri asserted that WAPA failed to: (1) produce an index of the documents it provided and indicate whether it segregated non-exempt material from those documents; (2) specifically identify the exemption applicable to each withheld document; (3) provide an adequate justification for applying Exemptions 4 and 5 to each of the withheld documents; and (4) provide sufficient information in its determination to permit Missouri to make a meaningful appeal. The DOE found that WAPA failed to identify the exemption applicable to each withheld document and to provide an adequate justification for withholding documents under FOIA Exemptions 4 and 5. Consequently, the Appeal filed by Missouri was granted and remanded to WAPA to issue another, more detailed determination.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CJC Leasing, Inc., et al	RC272–00393	10/5/98
Curtis Hoskins, Jr., et al	RF272–96326	10/5/98
Davis Paint Co.	RF272–53572	10/5/98
Eunice & Ronald Meilstrup, et al	RF272–95300	10/5/98
Highland Superstores	RK272–04846	10/8/98

Dismissals

The following submissions were dismissed.

Case No.	Name
City of Willoughby Hills	RF272–83042
Dakota Barge Service	RK272–04535
Dexter Corp.	RK272–04823
Gallup McKinley Cnty. Schools	RF272–83056
Granite Island Group	VFA–0442
Personnel Security Hearing	VSO–0228
Personnel Security Hearing	VSO–0235
Putnam Asphalt Co.	RK272–04824

Case No.	Name
Raffie & Swanson, Inc.	RG272–00134

[FR Doc. 98–30411 Filed 11–12–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of July 13 Through July 17, 1998

During the week of July 13 through July 17, 1998, the decisions and orders listed below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 3, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Buckeye Countrymark, Inc.	RF272–94054	7/13/98
City of Woodruff	RF272–83069	7/14/98
City of Oneonta	RF272–83077	
Edwin L. Cording et al	RK272–02420	7/14/98
Indian River Transport, Inc.	RF272–80896	7/16/98
Aime Bellavance & Sons, Inc.	RF272–83150	
Luppes Transport Co., Inc.	RF272–80899	
National Transportation Service, Inc.	RF272–94513	7/15/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Colorado Springs School District 11	RF272–95313
Personnel Security Hearing	VSO–0215

[FR Doc. 98–30412 Filed 11–12–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Proposed Rate Schedule Changes

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Proposed Changes to Southwestern Power Administration Rate Schedules and Opportunity for Public Review and Comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has determined that minor revisions to the terms and conditions within existing rate schedules NFTS–98 and P–98A are required. Since the proposed changes to the rate schedules are associated with the terms and conditions of service, the net results of the 1997 Integrated System Power Repayment Studies, which was the basis for the existing rate schedules, will not be altered. Southwestern held informal meetings with customers to discuss proposed changes and to provide opportunity for input in the development of these changes.

DATES: Written comments on the proposed rate schedule changes are due on or before December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, Southwestern Power Administration, Department of Energy, One West Third Street, Tulsa, Oklahoma 74103, (918) 595–6696.

SUPPLEMENTARY INFORMATION:

Changes to Rate Schedule NFTS–98 (Wholesale Rates for Non-Federal Transmission Service)

The name of the rate schedule will be changed to NFTS–98B in order to reflect the fact that revisions have been made. Minor corrections and modifications were made throughout the rate schedule for the purpose of clarification; however two areas have been revised. The changes made to the terms and conditions of both Real Power Losses and the Capacity Overrun Penalty are addressed in detail below.

The existing rate schedule (NFTS–98) determined the rate for Real Power Losses based upon the cost of energy for Southwestern's marketing area during the previous Fiscal Year, as set forth in the most recently available Energy Information Administration (EIA) Publication. The EIA has recently ceased to compile this information, making it necessary for Southwestern to develop an alternative source upon which to base its rate for Real Power Losses. The basis for determining the rate to charge for Real Power Losses was therefore modified to reflect the average actual costs incurred by Southwestern for the purchase of energy to replace Real Power Losses during the most

recent twelve-month period. The rate for Real Power Losses will be posted on Southwestern's OASIS. Southwestern proposes to initially implement this rate effective January 1, 1999, and thereafter the rate will be reviewed and adjusted to become effective at the beginning of each Fiscal Year (October 1).

The Capacity Overrun Penalty provision in the existing rate schedule set forth a penalty of $0.05 per kilowatthour for any energy which flows outside the authorized bandwidth from a range of 1 to 2,000 kilowatts and a penalty of $0.10 per kilowatthour for any energy which flows outside the authorized bandwidth from 2,001 kilowatts or greater. As a result of this past summer's price escalation for power and the potential unauthorized use of Southwestern's system, Southwestern has revised its Capacity Overrun Penalty provision. It was determined that the penalty to be applied would need to be increased to provide a greater deterrent not to overrun Southwestern's system. The proposed Capacity Overrun Penalty provision has been revised to assess a $0.10 per kilowatthour penalty for *any* energy which flows outside of the authorized bandwidth during the months of March, April, May, October, November, and December. A penalty of $0.30 per kilowatthour will likewise be assessed during the months of January, February, June, July, August, and September.

Changes to Rate Schedule P–98A (Wholesale Rates for Hydro Peaking Power)

The name of the rate schedule will be changed to P–98B in order to reflect the fact that revisions have been made. Minor corrections and modifications were made throughout the rate schedule for the purpose of clarification; however four areas have been revised. The section discussing and listing the Power Customer-specific credit, which ended June 30, 1998, has been removed since it is no longer applicable. The changes made to the terms and conditions of Real Power Losses, Energy Imbalance Service, and the Capacity Overrun Penalty are addressed in detail below.

The existing rate schedule (P–98A) determined the rate for Real Power Losses based upon the cost of energy for Southwestern's marketing area during the previous Fiscal Year, as set forth in the most recently available Energy Information Administration (EIA) Publication. The EIA has recently ceased to compile this information, making it necessary for Southwestern to develop an alternative source upon which to base its rate for Real Power Losses. The basis for determining the rate to charge for Real Power Losses was therefore modified to reflect the average actual costs incurred by Southwestern for the purchase of energy to replace Real Power Losses during the most recent twelve-month period. The rate for Real Power Losses will be posted on Southwestern's OASIS. Southwestern proposes to initially implement this rate effective January 1, 1999, and thereafter the rate will be reviewed and adjusted to become effective at the beginning of each Fiscal Year (October 1).

The Energy Imbalance Service description has been modified to clarify that because the Energy Imbalance Service bandwidth specified in Southwestern's Open Access Transmission Tariff does not apply to the deliveries of Hydro Peaking Power and associated energy, Energy Imbalance Service is not charged on such deliveries. However, Power Customers who consume a capacity of Hydro Peaking Power greater than their Peak Contract Demand may be subject to a Capacity Overrun Penalty.

The Capacity Overrun provision set forth in the existing rate schedule assess a penalty of $0.05 per kilowatthour for any energy which flows outside the authorized bandwidth from a range of 1 to 2,000 kilowatts and a penalty of $0.10 per kilowatthour for any energy which flows outside the authorized bandwidth from a range of 2,001 kilowatts or greater. As a result of this past summer's recent price escalation for power and the potential unauthorized use of Southwestern's system, Southwestern has revised the Capacity Overrun Penalty provision. It was determined that this penalty would need to be increased to provide a greater deterrent not to overrun Southwestern's system. The Capacity Overrun Penalty provision has been revised to assess a $0.10 per kilowatt penalty during the months of March, April, May, October, November, and December for each hour during which Hydro Peaking Power was provided at a rate greater than that to which the Power Customer is entitled. A penalty of $0.30 per kilowatt will likewise be assessed during the months of January, February, June, July, August, and September.

Redlined versions of the revised rate schedules NFTS–98B and P–98B will be made available upon request. To request a copy, please contact Barbara Otte, 918–595–6674 or Tracey Hannon, 918–595–6677.

The Administrator has determined that written comments will provide adequate opportunity for public participation in the rate schedule revision process. Therefore an opportunity is presented for interested parties to submit written comments on the proposed rate schedule changes. Written comments are due on or before thirty (30) days following publication of the notice in the **Federal Register**. Five copies of written comments should be submitted to: Michael A. Deihl, Administrator, Southwestern Power Administration, One West Third Street, Tulsa, OK 74103.

Following review and consideration of written comments, the Administrator will finalize and submit the proposed rate schedules to the Deputy Secretary of Energy for approval on an interim basis. The Deputy Secretary will then submit the proposed rate schedules to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Dated: November 5, 1998.

Michael A. Deihl,

Administrator.

[FR Doc. 98–30413 Filed 11–12–98; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6188–6]

Agency Information Collection Activities Up for Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Water Quality Inventory Reports, ICR #1560.04, OMB #2040–0071, which expires on February 28, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 12, 1999.

ADDRESSES: Office of Wetlands, Oceans, and Watersheds (4503F), 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Sarah Lehmann, National 305(b) Coordinator, telephone: (202) 260–7021; facsimile: (202) 260–1977; e-mail: Lehmann.Sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are the 50 States, the District

of Columbia, five Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands). Two Interstate River Basin Commissions and one Indian Tribe or Tribal Group also sent data to EPA during the period covered by the current ICR. The SIC code for respondents is 9511 (Administration of Environmental Quality Programs: Air and Water Resources and Solid Waste Management).

Title: National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), and 314(a)). OMB Control Number 2040–0071. Expiration date: February 28, 1999.

Abstract: Section 305(b)(1) of the Clean Water Act (Public Law 92–500, 33 U.S.C 1251 *et seq.*; most recently amended in 1987 by Public Law 100–4) requires each State to prepare and submit a biennial water quality assessment report to the EPA Administrator. Regulations for water quality monitoring, planning, management and reporting are found in 40 CFR part 130. Each 305(b) report includes such information as a description of the quality of waters of the State; an analysis of the extent to which these waters provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water; recommendations for additional action necessary to achieve such uses; an estimate of the environmental impact and economic and social costs as well as the economic and social benefits of such achievement; and a description of the nature and extent of nonpoint sources of pollutants and recommendations as to programs needed to control each category of such sources.

Under CWA section 314(a)(2), States must incorporate their Clean Lakes Report into the 305(b) reports. Clean Lakes Reports include an identification and classification according to trophic condition of all publicly owned lakes; a description of the methods to control sources of pollution and restore these lakes; methods to mitigate the harmful effects of high acidity; a list and description of publicly owned lakes for which uses are known to be impaired; and an assessment of the status and trends of water quality in lakes.

Section 303(d)(1) of the CWA requires States to identify and rank water-quality limited waters which will not meet State water quality standards after implementation of technology-based point source controls.

Reporting under sections 305(b) and 314 is thus required of the 50 States. Reporting activities under section 303(d) may be submitted as part of the 305(b) report or may be submitted under separate cover. Other respondents (Territories, River Basin Commissions, certain Indian Tribes or Tribal Groups) also prepare 305(b) reports to document the quality of their waters to EPA, Congress, and the public and, in some cases, to meet grant conditions.

The 305(b) reporting process is an essential component of the EPA water pollution control program. EPA's Office of Water uses the 305(b) reports as the principal information source for assessing nationwide water quality, progress made in maintaining and restoring water quality, and the extent of remaining water pollution problems. EPA prepares the National Water Quality Inventory Report to Congress and evaluates impacts of EPA's water pollution control programs with the information and data supplied in the State and Tribal 305(b) reports and the corresponding national database, the EPA Waterbody System. The Office of Water uses the Report to Congress to target persistent and emerging water quality problems with new initiatives and to improve or eliminate ineffective programs.

EPA uses the information submitted under section 314 to evaluate the effectiveness of the Clean Lakes grant program. The Agency assembles national information on water quality trends in lakes eligible for section 314 grants, initiation and completion of Clean Lakes Projects funded with 314 grants, and tangible results of lake restoration projects.

Under section 303(d), EPA must review and approve or disapprove the State lists of water-quality limited waterbodies still requiring total maximum daily loads (TMDLs). Section 303(d) of the CWA establishes the TMDL process to provide for more stringent water-quality based controls when required Federal, State or local controls are inadequate to achieve State water quality standards. TMDLs encourage a holistic view of water quality problems considering all contributions and instream water quality and provide a method to allocate those contributions to meet water quality standards.

EPA is currently developing proposed revisions to the TMDL program regulations and, as part of that effort, will determine whether it needs to prepare a new ICR based on the proposed regulatory revisions. While at this time, EPA believes that it is likely that a new ICR will be needed, no final decision will be made and the Agency will continue to undertake the necessary analyses needed to make such a final decision.

EPA is also working with our partners on the development of 1998 Clean Water Action Plan Unified Watershed Assessments (UWA). EPA and its partners are looking into whether these assessments should be updated in the future. If the UWA are updated and are subject to ICR requirements, EPA will conduct a complete burden analysis.

The next 305(b) reports and 303(d) lists are due to EPA in April 2000. EPA has published guidelines on the types of information requested of respondents in their 305(b) reports. The current edition is Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Report Contents, EPA841–B–97–002A, and Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates: Supplement, EPA841–B–97–002B (see contact information above).

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9. This ICR renewal does not involve third-party and public disclosures not previously reviewed and approved by OMB.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The existing burden estimate for all reporting and recordkeeping is 229,805 burden hours per year. This estimate was based on 59 respondents and a biennial response frequency, and is equivalent to an average of 3,895 burden hours per year. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information. EPA intends to reduce the burden in the future by encouraging additional States to undertake abbreviated reporting and

annual electronic reporting on core elements for the geographic areas covered in that year.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: November 3, 1998.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans and Watersheds.

[FR Doc. 98–30398 Filed 11–12–98; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00562; FRL–6044–1]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with methodology for conducting comparative ecological risk assessments, developmental neurotoxicity study (a retrospective analysis), and a status report on use of the FQPA 10x safety factor.

The Agency will present methods for comparing the potential ecological risk of pesticides used on similar crop sites. Risk indices or quotients are calculated and the results are compared to established levels of concern (LOCs). The resultant exceedances are used to rank pesticides and use sites. In addition, since numerous calculations are made using a range of use rates and toxicity values, pesticides and their use sites are compared based on frequency distributions of LOC exceedances. The comparisons include acute and chronic endpoints for terrestrial and aquatic organisms, as well as incident reports and information on extent of use. Pesticide specific ecotoxicology data and environmental fate and transport data are used in the analysis. Models such as GENEEC and FATE are used to estimate pesticide exposure. The Agency will also present two sessions concerning human health risk assessment. The first session will concern a retrospective analysis of 12 developmental neurotoxicity studies. The Agency will also provide an update of activities concerning the FQPA 10x safety factor.

DATES: The meeting will be held on Tuesday and Wednesday, December 8 and 9, 1998, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at: The Sheraton Crystal Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia. The telephone number for the hotel is: (703) 486–1111.

By mail, submit written comments (one original and 20 copies) to: Paul I. Lewis, Designated Federal Official (DFO) for the FIFRA/Scientific Advisory Panel (7101C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Room 117S, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP–00562." No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: By mail: Paul I. Lewis, DFO, FIFRA Scientific Advisory Panel (7101C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460; Office location: Rm. 117S, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5369; e-mail: Lewis.Paul@epamail.epa.gov

A meeting agenda is currently available and copies of EPA primary background documents for the meeting will be available no later than November 13, 1998. The meeting agenda and EPA primary background documents are available on the EPA web site http://www.epa.gov/pesticides/SAP/ or may be obtained by contacting the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5805.

SUPPLEMENTARY INFORMATION: Any member of the public wishing to submit written comments should contact Paul I. Lewis at the address or the phone number given above to confirm that the meeting is still scheduled and that the agenda has not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to the DFO, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately five minutes. The Agency will allow additional time for presentation of oral comments at the FQPA 10x safety factor session to provide public commenters sufficient time to state their remarks at the meeting. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify the DFO and submit 20 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice under docket number "OPP–00562" (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental

Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch at the address or telephone number given above.

List of Subjects

Environmental protection.

Dated: November 3, 1998.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 98–30393 Filed 11–12–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00564; FRL–6045–1]

Pesticide Spray Drift Data Review Workshop; Notice of Public Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) will hold a public workshop to discuss scientific data submitted to the EPA by the pesticide industry's Spray Drift Task Force (SDTF). This workshop will focus on the data which was generated to characterize spray drift associated with orchard airblast, ground hydraulic, chemigation application methods.

DATES: The workshop will be held on Wednesday, December 2, 1998, from 1 p.m. to 5:30 p.m. and Thursday, December 3, 1998, from 8 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Ramada Plaza Hotel, Old Town, 901 N. Fairfax St., Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Arnet Jones, Norman Birchfield, or Gail Maske, Office of Pesticide Programs (7507C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone numbers and e-mail addresses: Arnet Jones (703) 305–7416, jones.arnet@epa.gov; Norman Birchfield (703) 605–0582, birchfield.norman@epa.gov; and Gail Maske (703) 305–5245, maske.gail@epa.gov.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is to discuss the scientific aspects of the orchard airblast, ground hydraulic, and chemigation field studies and supporting data (including integration studies) which the pesticide industry's SDTF submitted to EPA to fulfill registration requirements. The participants in the workshop will include OPP's Environmental Fate and Effects Division, EPA's Office of Research and Development, USDA's Agricultural Research Service, Environment Canada, and California EPA's Department of Pesticide Regulation, all of which have prepared reviews of these studies. In addition to these organizations, four independent scientists who have prepared reviews under contract to OPP will also make presentations. A list of studies submitted by the pesticide industry's SDTF is available from any of the individuals listed under "FOR FURTHER INFORMATION CONTACT."

The invited reviewers will present conclusions of their technical reviews of the studies discussed in this document. However, outside observers (interested parties who were not part of the technical review) will have an opportunity to comment on scientific and technical issues related to the studies after the initial presentations. Additional comments may also be made on the afternoon of December 3rd, after the reviewers have discussed the issues raised on the previous afternoon and have prepared a summary of responses. OPP plans to discuss the results of this peer review workshop and related issues with the Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Scientific Advisory Panel at the Panel's February 1999 meeting.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: November 6, 1998.

Joseph J. Merenda, Jr.,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 98–30449 Filed 11–12–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6188–5]

42 U.S.C. Section 122(i), Proposed Administrative Order on Consent with Compromise of CERCLA Response and Oversight Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed AOC.

SUMMARY: EPA is proposing to sign and issue an Administrative Order on Consent (AOC) under section 106 of CERCLA for a removal action at the Carbographics Industries Corporation Superfund Site. Respondents have agreed to perform a clean up, in return for EPA waiving response costs of approximately $5,000. EPA today is proposing to sign and issue this AOC because it expeditiously achieves a necessary removal action without resort to time-consuming and costly litigation.

DATES: Comments on this proposed settlement must be received by December 14, 1998.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Janet Pope at (312)353–0628 before visiting the Region V Office). Janet Pope, OPA (P19–J) U.S. Environmental Protection Agency, Region V, Office of Superfund, Removal and Enforcement Response Branch, 77 W. Jackson Blvd., Chicago, Illinois 60604.

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible) Janet Pope, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–0628.

FOR FURTHER INFORMATION CONTACT: Janet Pope, Office of Public Affairs, at (312) 353–0628.

SUPPLEMENTARY INFORMATION: The Carbographics Site is a one story, industrial, brick building (approximately 25,000 square feet) located at 4757 North Ronald Street,

Harwood Heights, Illinois, which is a suburban industrial area with surrounding residential and commercial areas. Single family homes adjacent to the east fence of the site are within approximately thirty feet of the property and multi-unit apartment buildings are adjacent to the north and east of the Site. The Harwood Heights United States Post Office is located to the east across Ronald Street. There is an elementary school located approximately 0.25 mile southeast of the Site and a high school located approximately 0.5 mile southwest of the Site. On March 13, 1998, U.S. EPA conducted a Removal Site Assessment and identified approximately 850 one gallon, 345 five gallon, 20 fifteen gallon, 3 thirty gallon, 144 fifty-five gallon containers and various gas cylinders throughout the building. Labels on many of the containers indicated the contents were flammable, organic peroxides, acids, and caustics. Analytical results from samples collected from four fifty-five gallon drums confirmed that the contents exhibit the RCRA characteristics for ignitability and corrosivity. In addition to the containers located within the building, two underground storage tanks which were used to store solvents are located under the south parking lot. Within the building is a small electro plating operation. Minor releases were observed inside the Carbographics building. The potential for fire and explosion appear to be the major threat of release due to the significant amount of flammable materials inside the building. Subsurface contamination has also been documented in the south parking lot area.

Though recently boarded up by the Village of Harwood Heights, the Site is accessible. Based on the presence of graffiti within the building, and notwithstanding past efforts to secure the building, it appears that the Site is routinely visited by gangs and children. Several windows are broken and the roof, which appears to have been damaged by fire, is unstable. After EPA had sampled and assessed the situation, EPA contacted the named Respondent parties (two officers and an employee of the now dissolved Carbographics Industries Incorporated)and negotiated an Administrative Order on Consent for the remainder of the removal action.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement.

Comments should be sent to Janet Pope of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

Brian A. Barwick,

Assistant Regional Counsel.

[FR Doc. 98–30397 Filed 11–12–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy Regarding the National Environmental Policy Act of 1969

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final Statement of Policy.

SUMMARY: As part of the FDIC's systematic review of its regulations and written policies under section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), the FDIC is revising its Statement of Policy on the National Environment Policy Act of 1969 (NEPA). The original Statement of Policy, issued on March 31, 1980, describes the FDIC's responsibility and procedures with respect to the NEPA.

The revised Statement of Policy reflects the FDIC's experience in applying the current NEPA Statement of Policy, and primarily affects applications for deposit insurance for de novo institutions, establishment of a domestic branch, and relocation of a domestic branch or main office. Categorical exclusions are established for all other filings submitted to the FDIC pursuant to 12 CFR part 303. In extraordinary circumstances, however, the NEPA procedures may also impact categorically excluded filings. The revision also makes the Statement of Policy more concise and understandable.

On July 15, 1998, the FDIC published for comment in the **Federal Register** its revised Statement of Policy (63 FR 38172–74). During the 45-day public comment period, no comments were received. Accordingly, the revised Statement of Policy has been adopted by the FDIC's Board of Directors.

DATES: The revised Statement of Policy will become effective December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Marilyn Reddy, Review Examiner, Division of Supervision (202) 898–6772; A. Ann Johnson, Counsel, Legal Division (202) 898–3573; David Fisher, Counsel, Legal Division (202)-736–3103, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC is conducting a systematic review of its regulations and written policies. Section 303(a) of the CDRI Act, 12 U.S.C. 4803(a), requires the FDIC to streamline and modify its regulations and written policies in order to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. Section 303(a) also requires the FDIC to remove inconsistencies and outmoded and duplicative requirements from its regulations and written policies.

As part of this review, the FDIC has determined that its Statement of Policy on the NEPA should be revised. The NEPA sets forth a national policy to promote preservation of the environment. It requires, in part, that all agencies of the Federal Government include in every recommendation or report on major Federal actions significantly affecting the quality of the human environment a detailed statement that addresses the environmental impact of the proposal. The Council on Environmental Quality (CEQ) has adopted regulations that implement this requirement. 40 CFR part 1500.

The FDIC issued its current Statement of Policy in 1980 to provide guidance on the NEPA and its implementing regulations. The Statement of Policy provides that the FDIC will consider relevant environmental factors and make a threshold determination that a proposed action does or does not significantly affect the environment. The determination is required for applications for deposit insurance, to establish a branch, to merge, or to move an office. The current Statement of Policy also provides detailed information on the preparation of an environmental impact statement.

Consistent with the goals of the CDRI Act review, the FDIC is modifying the Statement of Policy to enhance efficiency in implementing the NEPA requirements. Pursuant to the CEQ regulations (40 CFR 1507.3(b)), the revised Statement of Policy establishes categorical exclusions for all filings made by depository institutions pursuant to 12 CFR part 303 with the exception of applications for deposit insurance for de novo institutions, and applications for establishment of a domestic branch or relocation of a domestic branch or main office. Absent extraordinary circumstances, filings subject to a categorical exclusion require no further NEPA action.

For those applications that are categorically excluded, the revised Statement of Policy provides that the FDIC may request additional information from applicants if extraordinary circumstances indicate

that a normally excluded action may have a significant environmental effect. For example, additional information may be requested where filings involve real property with endangered or threatened species, wetlands or floodplains, cultural or historic sites, or where construction is proposed.

The revised Statement of Policy also describes the responsibilities of the applicant in submitting a part 303 filing and the FDIC in reviewing the filing. Before approving a filing that is not categorically excluded, the FDIC must prepare an environmental assessment (EA). The applicant is required to submit sufficient information for the FDIC to determine whether the application may affect the quality of the human environment.

If the EA prepared by the FDIC indicates that approval of the filing will not significantly affect the quality of the human environment, the NEPA process will conclude with a finding of no significant impact (FONSI) to document the FDIC's determination.

On the other hand, if the EA indicates that approval of the filing may significantly affect the quality of the human environment, the FDIC will prepare and circulate an environmental impact statement (EIS) in accordance with the CEQ regulations. Because cases that involve the preparation of an EIS are expected to be extremely rare, the revised Statement of Policy no longer includes detailed information on the preparation of an EIS. Instead, the revised Statement of Policy states that the FDIC will comply with the requirements of the CEQ regulations.

In addition, the revised Statement of Policy provides for public involvement in the FDIC's NEPA compliance activities.

According to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Although the revised Statement of Policy does not create or change any collection of information, OMB has approved the information collections referenced in the revised Statement of Policy as parts of a larger collection of information. OMB control numbers for the approved information collections specifically referenced in the revised Statement of Policy are OMB control number 3064–0001, expiring on July 31, 2000, for applications dealing with deposit insurance, and OMB control number 3064–0070, expiring on November 30, 2000, for applications dealing with establishment of a branch, relocation of a main office, and relocation of a branch. Application requirements and procedures are located at 12 CFR part 303 *et seq.*

On July 15, 1998, the FDIC published for comment in the **Federal Register** its revised Statement of Policy (63 FR 38172–74). During the 45-day public comment period, no comments were received. Accordingly, the Board of Directors of the FDIC has adopted the revised Statement of Policy on the National Environmental Policy Act, as proposed in the **Federal Register** on July 15, 1998 and set forth below.

Statement of Policy

National Environmental Policy Act Procedures Relating to Filings Made With the FDIC

This Statement of Policy addresses the FDIC's compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4331, *et seq.* (NEPA), with respect to applications, notices, and requests (filings) submitted to the FDIC in accordance with governing regulations at 12 CFR part 303. The procedures in this Statement of Policy primarily affect applications for deposit insurance for de novo institutions, establishment of a domestic branch, and relocation of a domestic branch or main office. There may be extraordinary circumstances where these NEPA procedures also impact other filings submitted pursuant to part 303.

A. Responsibility of the FDIC

The NEPA sets forth a national policy to promote preservation of the environment. Section 102(2)(C) of the NEPA requires, in part, that all agencies of the Federal Government include in every recommendation or report on major Federal actions significantly affecting the quality of the human environment a detailed statement that addresses the environmental impact of the proposal. The Council on Environmental Quality (CEQ) has adopted regulations that implement section 102(2)(C) of the NEPA. 40 CFR part 1500.

The FDIC believes that its decisions on part 303 filings will rarely have a significant effect on the human environment. Nevertheless, it is the policy of the FDIC to evaluate fully its regulatory actions, as necessary, in accordance with the requirements of the NEPA. This Statement of Policy supplements, and shall be used by the FDIC in conjunction with, the CEQ regulations.

B. Background

NEPA and the implementing CEQ regulations require a Federal agency to prepare an "environmental impact statement" (EIS) to analyze the effects of, and discuss alternatives for, any proposed major Federal action (including approval of a filing) significantly affecting the quality of the human environment. Often, to determine whether an EIS must be prepared, an agency will prepare an "environmental assessment" (EA). The EA will result in either a finding that an EIS must be prepared, or a finding of no significant impact (FONSI).

C. Definitions

As used in this statement of policy:

- *Major Federal action* includes actions with effects that may be major and which are potentially subject to Federal control and responsibility.
- *Environmental impact statement* (EIS) means a detailed written statement as required by section 102(2)(C) of the NEPA which analyzes the environmental impact of the FDIC's approval of a filing.
- *Environmental assessment* (EA) means a concise document that sets forth sufficient information for the FDIC to determine whether to prepare an EIS.
- *Finding of no significant impact* (FONSI) means a determination that approval of the filing will not have a significant effect on the quality of the human environment and therefore no further NEPA analysis is required.
- *Categorical exclusion* means a category of filings that do not individually or cumulatively have a significant effect on the human environment, and which require no NEPA analysis.

D. Categorical Exclusions

The CEQ regulations require Federal agencies to develop categorical exclusions as part of the agencies' NEPA procedures. 40 CFR 1507.3(b)(2)(ii). Accordingly, the FDIC is establishing categorical exclusions for all filings made by depository institutions pursuant to part 303 with the exception of applications for:

(1) Deposit insurance for de novo institutions.

(2) Establishment of a domestic branch, or relocation of a domestic branch or main office.

All other part 303 filings are subject to categorical exclusions and, therefore, require no further NEPA action. Consistent with the CEQ regulations, however, the FDIC may request additional information from applicants if extraordinary circumstances indicate that a normally categorically excluded action may have a significant environmental effect. Such extraordinary circumstances may exist,

for example, where filings involve real property where endangered or threatened species, wetlands or floodplains may be present, where the applicant's proposed activity impacts cultural or historic sites, or where construction is proposed.

E. FDIC Procedure

In reviewing a part 303 filing, the FDIC will determine whether the filing falls within the categorical exclusions established by this statement of policy. If the filing falls within the categorical exclusions, the FDIC will determine whether the proposal involves any extraordinary circumstances that require NEPA analysis. If necessary, the FDIC may request additional information from an applicant to aid in this determination.

1. Environmental Assessment

The FDIC must prepare an EA before approving a filing for (1) deposit insurance for a de novo institution, or (2) establishment of a domestic branch, or relocation of a domestic branch or main office. The applicant must provide sufficient information for the FDIC to determine whether the application may affect the quality of the human environment.

The applicant shall provide information on compliance with local zoning laws and regulations, and effects on traffic patterns (including, for example, adequacy of roads and parking places, increase or decrease of traffic hazards and congestion, and favorable impacts such as potential decrease in pollution or fuel consumption). The FDIC may request additional information, as warranted, on other matters. Based on its evaluation of this information, the FDIC will prepare the EA.

2. Finding of No Significant Impact

If the EA indicates that approval of the filing will not significantly affect the quality of the human environment, the NEPA process will conclude with a FONSI to document the FDIC's determination of no significant effect on the human environment.

3. Environmental Impact Statement

If the EA indicates that approval of the filing may significantly affect the quality of the human environment, the FDIC will prepare an EIS in accordance with the CEQ regulations.

F. Public Involvement

Pursuant to the CEQ regulations, the FDIC will make diligent efforts to involve the public in its NEPA compliance activities. In addition to the public notice requirements set forth in part 303, the FDIC will apprise the public of the availability of any environmental impact statements it prepares and will provide opportunity for public comment prior to the finalization of those documents.

G. Summary and Conclusion

Most of the filings made by depository institutions pursuant to part 303 will fall within the categorical exclusions established by this Statement of Policy. For those filings not falling within the categorical exclusions, or involving extraordinary circumstances, the FDIC will analyze relevant information with respect to environmental factors and incorporate it into the FDIC's environmental assessment. Filings that require the FDIC's preparation of an environmental impact statement are expected to be extremely rare. When those instances arise, the FDIC will comply with the requirements of the CEQ regulations regarding the preparation and processing of environmental impact statements.

H. Information Requests

Inquiries regarding specific filings and requests for documents and information should be directed to the appropriate regional director of the FDIC's Division of Supervision.

By order of the Board of Directors.

Dated at Washington, DC, this 27th day of October, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–30367 Filed 11–12–98; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Alabama National BanCorportion, Birmingham, Alabama; to acquire 100 percent of the voting shares of Community Bank of Naples, N.A., Naples, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Port William Bancshares, Inc., Carrollton, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Carrollton, Carrollton, Kentucky.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Bryan Family Management Trust, and Bryan Heritage Limited Partnership, both of Bryan, Texas, to acquire The First National Bank of Bryan, Bryan, Texas.

2. Diboll State Bancshares, Inc., Diboll, Texas; to merge with First Bancorporation of Cleveland, Inc., Cleveland, Texas, and thereby indirectly acquire First Cleveland Delaware Financial Corporation, Dover, Delaware, and First Bank & Trust, Cleveland, Texas.

3. Sulphur Springs Bancshares, Sulphur Springs, Texas; Sulphur Springs Delaware Financial Corporation, Dover, Delaware; and The City National Bank of Sulphur Springs, Sulphur Springs, Texas; to acquire 100 percent of the voting shares of First National Bank, Sulphur Springs, Texas.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Eggemeyer Advisory Corp., Castle Creek Capital, LLC, Castle Creek Capital Partners Fund-I, LP, all of Rancho Santa Fe, California; to acquire more than 5 percent of the voting shares of PNB Financial Group, Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

2. Western Bancorp, Newport Beach, California; to acquire 100 percent of the voting shares of PNB Financial Group, Newport Beach, California, and thereby indirectly acquire Pacific National Bank, Newport Beach, California.

Board of Governors of the Federal Reserve System, November 9, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30439 Filed 11–12–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Thursday, November 19, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30612 Filed 11–10–98; 3:53 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Policy Concerning Disclosures of Nonmerger Competition and Consumer Protection Investigations

AGENCY: Federal Trade Commission.

ACTION: Notice of revised policy.

SUMMARY: The Federal Trade Commission is revising its policy concerning disclosure of investigations. The Commission's policy, subject to specified exceptions, is to conduct its investigations on a nonpublic basis. The revised policy permits limited disclosures about nonmerger investigations where: A target has publicly disclosed the relevant information in either a press release or a filing with a government agency; or the investigation or the practice has received substantial publicity and the disclosure does not identify a target that has not already disclosed its own identity. Inquiries seeking disclosure under this authority should be addressed to the Commission's Office of Public Affairs.

EFFECTIVE DATE: The policy is effective on November 13, 1998. The Commission will, however, accept comments on the policy that are received on or before December 14, 1998 and may re-evaluate the policy in light of those comments.

FOR FURTHER INFORMATION CONTACT: Victoria A. Streitfeld, Office of Public Affairs, 202–326–2718, or Debra A. Valentine, General Counsel, 202–326–2481.

SUPPLEMENTARY INFORMATION: Commission policy is to hold confidential the existence and targets of law enforcement investigations until the Commission issues an administrative complaint, authorizes or files a judicial complaint, announces a proposed settlement, or closes a matter. *See* 42 FR 64135 (1977). The Commission believes generally that public disclosure of pending investigations and identification of targets before the Commission has had an opportunity to weigh the evidence may unjustifiably harm the companies investigated and interfere with the conduct and successful resolution of such matters. However, the Commission's policy has long included exceptions for disclosure of industrywide investigations and of investigations that involve significant risk of economic harm or risk to public health or safety. *Id.* More recently, the Commission announced a further exception that permits its Office of Public Affairs ("OPA") to disclose that the agency is investigating a merger or similar transaction where a party to the underlying transaction had announced it in a press release or a public filing with a governmental body. 62 FR 18630 (1977).[1]

The first aspect of the modified policy applies if a target has publicly disclosed, in either a press release or a filing with a government agency, that it is the subject of a nonmerger investigation. In such cases, OPA could: (1) Confirm information that the target has already disclosed, to the extent that such information bears on the investigation of *that* target, and (2) with the approval of a Director or Deputy Director of the Bureau of Competition or Consumer Protection, disclose limited additional information about the general nature and scope of the investigation. These limited additional disclosures, which might be needed to correct misimpressions, could not identify additional targets that have not already identified themselves. This aspect of the policy contemplates, for example, disclosures that the Commission is investigating competitive practices in a particular industrial sector or that it is investigating a type of claim for a particular category of product. It also permits disclosure, in appropriate cases, of whether an investigation is wide-ranging or narrow in scope.

The second aspect of the modified policy permits OPA to make limited disclosures about the general nature and scope of a nonmerger investigation in unusual cases where there has been substantial publicity about the investigation or the underlying practice. *See Also* United States Attorneys' Manual (1997) Ch. 1–7.530 (allowing comments about an investigation in "unusual circumstances" where a matter has received substantial publicity). These limited disclosures of the general nature and scope of an investigation, like the disclosures contemplated above, are permitted only if approved by the relevant Bureau Director or Deputy Director. As a general rule, "substantial publicity" consists of, among other things, significant factual material concerning the investigation or the underlying practice that has appeared in the print or electronic media. By contrast, "substantial publicity" does not include mere rumors or statements, for which journalists seek confirmation by the Commission, that have not already been independently corroborated by significant coverage in the print or electronic media.

In addition, where an investigation can be disclosed under the conditions

[1] An investigation may also be disclosed because of a petition to limit or quash compulsory process. *See* 16 CFR 4.9(b)(4).

set forth above and the recipient of compulsory process announces that the Commission has issued such process, the policy permits confirmation of such process.

Nothing in this notice shall be construed as modifying the authority of the Commission (as opposed to the Commission's staff) to make appropriate disclosures concerning nonpublic investigations whenever it determines that doing so would be in the public interest. The Commission will continue to keep confidential, as appropriate under its existing laws and policies, nonpublic information submitted to the agency.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–30372 Filed 11–12–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–257]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Medicare+Choice Disenrollment Form.

Form Nos.: HCFA–R–257 (OMB# 0938–0741).

Use: The primary purpose of the form is to receive and process the beneficiary's request for disenrollment from a Medicare+Choice plan and to return to original (fee-for-service) Medicare. The secondary purpose of the new form is to obtain the reason for the disenrollment, for analysis and reporting.

Frequency: As requested by beneficiary;

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, and Federal government;

Number of Respondents: 60,000 annually;

Total Annual Responses: 20,000 in first year, 60,000 thereafter;

Total Annual Hours: 3,960.

(2) *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: Information Collection Requirements in HSQ–108–F Assumption of Responsibilities and Supporting Regulations in 42 CFR 412.44, 412.46, 431.630, 456.654, 466.71, 466.73, 466.74, and 466.78;

Form No.: HCFA–R–0071 (OMB# 0938–0445);

Use: This purpose of this collection is to create the Utilization and Quality Control Peer Review Organization (PRO) program which replaces the Professional Standards Review Organization (PSRO) program and streamlines peer review activities. This rule outlines the review functions to be performed by the PRO and outlines the relationships among PROs, providers, practitioners, beneficiaries, fiscal intermediaries, and carriers.

Frequency: Other, as needed;

Affected Public: Business or other for-profit;

Number of Respondents: 53;

Total Annual Responses: 880;

Total Annual Hours: 46,653.

(3) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Sole Community Home Health Agencies (HHA) and Supporting Regulations in 42 CFR Section 424.22;

Form No.: HCFA–R–0085 (OMB# 0938–0489);

Use: These regulations implement the rules for participation of HHAs in Medicare and the establishment and review of plans of care for home health services. These regulations make it easier for certain HHAs to meet certification and plan of care requirements.

Frequency: Annually;

Affected Public: Business or other for-profit and not-for-profit institutions;

Number of Respondents: 20;

Total Annual Responses: 20;

Total Annual Hours: 40.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 15, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–30429 Filed 11–12–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

National Institutes of Health (NIH)

National Institutes of Health Clinical Center (NIHCC); Opportunity for Cooperative Research and Development Agreement (CRADA) in the Fields of Rehabilitation Medicine and Speech-Language Pathology Using Ultrasound Imaging or Similar Technology

AGENCY: Rehabilitation Medicine Department, NIHCC, NIH, DHHS.

ACTION: Notice of a Cooperative Research and Development Agreement (CRADA) opportunity.

SUMMARY: The Rehabilitation Medicine Department, Speech-Language Pathology Section, of the National Institutes of Health Clinical Center (NIHCC), seeks a Cooperative Research and Development Agreement (CRADA) with one or more collaborators in the ultrasound imaging or related technology fields. The purpose of the collaboration will be to develop a method to examine the movements of the oral pharynx including the tongue base, pharynx, and soft palate during

sleep using ultrasound imaging. The objectives of the research include the development of a noninvasive and reliable procedure to examine the components of sleep apnea and the development of an ultrasound transducer that can be used to assist the physician in determining which patients will benefit from tongue base or palatal reduction procedures.

Obstructive sleep apnea currently affects more than four (4) percent of the population, causing significant morbidity and mortality. Due to a current deficiency in methods of examination and diagnosis, the location of the obstruction(s) and the physiology of the response remain unknown. Because surgical procedures are considered as possible treatment for this disorder, it is necessary to know the anatomical and structural location of the obstruction. Currently, there is no inexpensive, noninvasive method for visualizing this entity. Therefore, a noninvasive ultrasonic device for the examination and diagnosis of sleep apnea is necessary to fill the current void.

The anticipated term of the CRADA is four (4) years.

Sponsors will be selected based upon their ability to collaborate with NIHCC for the development of the ultrasonic diagnostic device.

DATES: Interested parties should submit a one paragraph statement of interest addressing the collaborator's ability to perform the collaboration responsibilities. The statement of interest should be submitted to NIHCC in writing no later than December 14, 1998.

ADDRESSES: Inquiries and statements of interest regarding this opportunity should be addressed to Steven Galen, Technology Development Coordinator, National Institutes of Health, Warren Grant Magnuson Clinical Center. Phone: (301) 594–4509, FAX (301) 402–2143, 6011 Executive Boulevard, Suite 511, Rockville, MD 20852.

SUPPLEMENTARY INFORMATION: A CRADA is the anticipated joint agreement to be entered into the NIHCC pursuant to the Federal Technology Transfer Act of 1986 as amended by the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113 (Mar. 7, 1996)) and by Executive Order 12591 of April 10, 1987.

The CRADA objective is the rapid publication of research findings and the timely commercialization of improved diagnostic and treatment strategies in the field of ultrasound imaging or similar technology. Particular emphasis is placed on discoveries that enhance clinical research.

Under a CRADA, the NIHCC can offer selected collaborators access to facilities, staff, materials, and expertise. The collaborator may contribute facilities, staff, materials, expertise and funding to the collaboration. *The NIHCC cannot contribute funding.* The CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA and may qualify as co-inventor of new technology developed under the CRADA.

CRADA proposals will be evaluated under the following criteria:

- Corporate research and development competencies.
- Demonstrated abilities to productively collaborate in research programs.
- Expertise in performing clinical phase trials and regulatory affairs.
- The nature of resources to be contributed to the collaboration.
- Key staff expertise, qualifications and relevant experience.
- Willingness to assign technical staff to on-site collaborative efforts.
- Ability to effectively commercialize new discoveries.

The role of the National Institutes of Health Clinical Center includes the following:

(1) The NIHCC will provide:

(a) Expertise in oral pharyngeal ultrasound imaging, including anatomy and physiology of the intra-oral structure;

(b) Expertise in defining the abnormalities associated with obstructive sleep apnea;

(c) Input on the design of the transducer;

(d) Technological considerations for patient safety, position and comfort;

(e) Ongoing evaluation of the technologic advances and designs;

(f) Normal subjects and apnea patients for testing of equipment;

(g) Use of existing transducers for comparison of technologic advances; and

(h) Input from multidisciplinary researchers with expertise in apnea.

(2) The NIHCC will provide an existing protocol or create a new protocol for the phase I clinical study of the resulting diagnostic devise.

The role of the CRADA Collaborator includes the following:

(1) The development of an ultrasound device which can be used to aid physicians in the examination, diagnosis and treatment of sleep apnea.

(2) Conducting phase I clinical studies of the diagnostic device to be performed in compliance with the NIHCC protocol to be provided.

(3) Commercialization of the resulting device including providing the resources necessary.

Dated: November 5, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Institutes of Health.

[FR Doc. 98–30433 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–19, P60 review, area A.

Date: January 20–22, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Young A. Shin, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–18, P60 review, area B.

Date: January 21–23, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate applications.

Place: Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: H. George Hausch, PHD, Chief, Grants Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and

Disorders Research, National Institutes of Health, HHS)

Dated: November 6, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30298 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB 6 (J2).

Date: December 3, 1998.

Time: 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Date: November 6, 1998.

Anna Snouffer,

Committee Management Officer, NIH.

[FR Doc. 98–30299 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 24, 1998.

Time: 10:00 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Antonio Noronha, PHD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–7722, anoronha@willco.niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 24, 1998.

Time: 1:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Antonio Noronha, PHD, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–7722, anoronha@willco.niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians, National Institutes of Health, HHS)

Dated: November 6, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30300 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 (J3).

Date: December 7–9, 1998.

Time: December 7, 1998, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: New York's Hotel Pennsylvania, Seventh Avenue and 33rd Street, New York, NY 10001.

Contact Person: Lakshmanan Sankaran Ph.D Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 6, 1998.

Anna Snouffer,

Committee Management Officer, NIH.

[FR Doc. 98–30301 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Institutional National Research Service Award Applications.

Date: November 13, 1998.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Bldg, Bethesda, MD 20892–6400, (Telephone Conference Call).

Contact Person: Mary J. Stephens-Frazier, Ph.D, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health/PHS/DHHS, Natcher Building, Room 3AN32, Bethesda, MD 20892, (301) 594–5971.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: November 4, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30302 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel ZDK1 GRB–7 (J1).

Date: December 9–11, 1998.

Time: December 9, 1998, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Mayflower Hotel, 15 Central Park West, New York, NY 10023–7709.

Contact Person: Lakshmanan Sankaran, Ph.D Scientific Review Administrator Review Branch, DEA, NIDDK Natcher Building, Room 6AS–37 National Institutes of Health Bethesda, MD 20892–6600 (301) 594–7799.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–8 Special Emphasis Panel.

Date: December 14–16, 1998.

Time: 7:00 PM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: The Clarion Carriage House Inn, 738 Boston Post Road, Subdury, MA 01776.

Contact Person: Roberta J. Haber, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8898.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 5, 1998.

Anna Snouffer,

Committee Management Officer, NIH.

[FR Doc. 98–30303 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 1, 1998.

Time: 8:15 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lawrence E. Chaitkin, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 1, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 4, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30305 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

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the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Critical Research Communication.

Date: November 9, 1998.

Time: 10:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852.

Contact Person: Aida K. Vasquez, Grant Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9788, avasquez@willco.niaaa.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 12, 1998.

Time: 8:30 AM to 10:00 AM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aida K. Vasquez, Grant Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9788, avasquez@willco.niaaa.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 16, 1998.

Time: 1:00 PM to 2:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20853, (Telephone Conference Call).

Contact Person: Aida K. Vasquez, Grant Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9788, avasquez@willco.niaaa.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: November 23, 1998.

Time: 8:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Aida K. Vasquez, Grant Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892, 301–443–9788, avasquez@willco.niaaa.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 6, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30306 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 16, 1998.

Time: 3:PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John L. Bowers, Phd. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892–6600 (301) 594–7799.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 1998.

Time: 2:30 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, Phd, DDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 22–23, 1998.

Time: 1:00 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Syed M. Quadri, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 23, 1998.

Time: 8:00 AM to 5:PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Nancy Shinowara, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, Shinowan@drg.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 23, 1998.

Time: 2:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Garrett V. Keefer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7808, Bethesda, MD 20892, (301) 435–1152.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 24, 1998.

Time: 7:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gertrude K. McFarland, DNSC, FAAN, RN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 4, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30304 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Long-Acting Testosterone Androgenic Compounds and Pharmaceutical Compositions Thereof

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent 4,948,790, issued August 14, 1990 entitled, "Long-Acting Androgenic Compounds, and Pharmaceutical Compositions Thereof" to N.V. Organon, having a place of business in The Netherlands. The United States of America is an assignee of the patent rights in this invention.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before January 12, 1999, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Dennis H. Penn, Pharm.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 211; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: In an effort to develop an efficacious treatment for human reproductive disorders this invention describes testosterone bucyclate, which provides a means for prolonged androgenic activity when administered intramuscularly as an aqueous crystalline suspension. This compound may have utility as a therapeutic androgen for patients with androgen deficiency syndromes, male contraception, and as an androgen replacement in other methods of male contraception.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of the invention for the development of pharmaceutical compounds to treat human androgen deficiency syndromes and male contraception.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 5, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–30432 Filed 11–12–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Mandatory Guidelines for Federal Workplace Drug Testing Programs

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Revisions to the Mandatory Guidelines.

SUMMARY: On September 30, 1997, the Department of Health and Human Services (HHS) published a notice in the **Federal Register**, 62 FR 51118, revising the testing cutoff levels for opiates that were in Mandatory Guidelines for Federal Workplace Drug Testing Programs, 59 FR 29916 (June 9, 1994). The **Federal Register** notice indicated that May 1, 1998, was the effective date for implementing the new opiate testing cutoff levels. Subsequent to the publication of that notice, it became clear that not all manufacturers of immunoassay test kits would be able to provide a sufficient supply of the modified opiate reagents by that date, that it would take more time for the certified drug testing laboratories to validate the new immunoassay test kits and confirmatory test procedures for opiates, and that it would take more time to verify the performance of each laboratory using external performance testing samples. For these reasons, on February 4, 1998, the Division of Workplace Programs sent a letter to all Federal agencies, HHS certified and applicant drug testing laboratories, and immunoassay test kit manufacturers informing them that the effective date would be delayed 4 to 6 months beyond the May 1, 1998, effective date published in the September 30, 1997, **Federal Register** notice. This notice establishes a new effective date.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Donna M. Bush, Drug Testing Team Leader, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, Maryland 20857, tel. (301) 443–6014.

SUPPLEMENTARY INFORMATION: The Division of Workplace Programs is satisfied that the manufacturers of test kits can provide an adequate supply of the modified opiate test kits to the certified laboratories by the December 1, 1998, effective date. During June 1998, the certified laboratories received a special set of performance testing samples from the National Laboratory Certification Program (NLCP) contractor to evaluate each laboratory's ability to conduct the initial and confirmatory tests at the revised testing levels for opiates. The results for this set of samples indicate that all the laboratories were able to conduct the initial test using the modified opiate test kits provided by the immunoassay test kit manufacturers. Based on this information, all the manufacturers were contacted and informed that a December 1, 1998, effective date has been selected. There was unanimous agreement among the manufacturers that each would be able to provide a sufficient number of kits to the laboratories before that date. A second set of special performance testing samples will be sent to the laboratories in September 1998 to further ensure that all laboratories are prepared to test specimens for opiates using the revised testing levels.

The September 30, 1997, **Federal Register** notice discusses the background and summary of public comments regarding the changes to the testing cutoff levels of opiates. The Department's responses to those comments and the proposed policy have

not changed. However, to ensure that there is no misunderstanding, the changes to the Mandatory Guidelines for Federal Workplace Drug Testing Programs published on June 9, 1994 (59 FR 29916) are restated in this notice.

Information Collection Requirements: There are no new paperwork requirements subject to the Office of management and Budget approval under the Paperwork Reduction Act of 1980.

Dated: September 21, 1998.

Nelba Chavez,

Administrator, Substance Abuse and Mental Health Services Administration.

Dated: October 31, 1998.

Donna E. Shalala,

Secretary.

The following amendments are made to the Mandatory Guidelines for Federal Workplace Drug Testing Programs published on June 9, 1994 (59 FR 29916):

Subpart B

1. Section 2.4(e)(1), the initial test level for opiate metabolites appearing in the table, is amended by changing the value of "300" to "2,000" and deleting the footnote that had specified a 25 ng/mL testing level if the immunoassay test was specific for free morphine.

2. Section 2.4(f)(1), the confirmatory test level for morphine appearing in the table, is amended by changing the value of "300" to "2,000."

3. Section 2.4(f)(1), the confirmatory test level for codeine appearing in the table, is amended by changing the value of "300" to "2,000."

4. Section 2.4(f)(1), the table of confirmatory test levels, is amended by adding a new line under opiates to read as follows:

6-Acetylmorphine[4] 10 ng/mL

5. Section 2.4(f)(1), the table of confirmatory test levels, is amended by adding a new footnote under the table to read as follows:

[FR Doc. 98–30403 Filed 11–12–98; 8:45 am]

BILLING CODE 4160–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–40]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 14, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable, (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 4, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of Proposal: Loan Guarantee Program—Mortgage Credit Analysis and Transmittal for Payment of Loan Guarantee Fee.

Office: Public and Indian Housing.

OMB Approval Number: 2577–0200.

Description of the Need for the Information and its Proposed Use: The forms will be used by lenders to determine the borrowers' credit worthiness and to forward specific loan data to Treasury. The lender must analyze the borrower's ability to repay the mortgage debt. Once the borrower is approved, a fee of 1 percent is submitted to HUD. This is a one-time fee and can be included in the mortgage amount.

Form Number: HUD–53036 and HUD–53038.

Respondents: Business or Other-For-Profit.

Frequency of Submission: On Occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
53036	500		1		.10		50
53038	500		1		.083		42

[4] Test for 6–AM when the morphine concentration exceeds 2,000 ng/mL.

Total Estimated Burden Hours: 92.
Status: Reinstatement without changes.
Contact: Karen Garner-Wing, HUD, (202) 675–1600 x3317, Joseph F. Lackey, Jr., OMB, (202) 395–7316

Dated: November 4, 1998.

[FR Doc. 98–30292 Filed 11–12–98; 8:45 am]
BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; *COE:* Mr. Robert Swieconek, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749; *Energy:* Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: November 5, 1998.

Fred Karnas, Jr.,
Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/13/98

Suitable/Available Properties

Buildings (by State)

California

Natl Weather Svc. Station
Blue Canyon Airport
Emigrant Gap CA 95715–
Landholding Agency: GSA
Property Number: 549840007
Status: Surplus
Comment: 3140 sq. ft., presence of asbestos, most recent use—ofc/residential/storage, land agreements w/U.S. Forest Service exist, special use permit
GSA Number: 9–C–CA–1521

New York

Naval Reserve Center
201 Third Avenue
Frankfort NY 13340–1419
Landholding Agency: Navy
Property Number: 779840017
Status: Unutilized
Comment: 10,000 sq. ft., most recent use—training facility

Ohio

Lorain Housing
238–240 Augusta Ave.
Lorain OH 44051–
Landholding Agency: GSA
Property Number: 549840006
Status: Excess
Comment: 3000 sq. ft. duplex, 2-story, good condition, possible lead based paint, existing easements
GSA Number: 1–U–OH–814

Rhode Island

Bldg. 70
Naval Station, Newport
Middletown Co: Newport RI 20842–
Landholding Agency: Navy
Property Number: 779840018
Status: Unutilized
Comment: 1900 sq ft., most recent use—storage, off-site use only

Bldg. 111
Naval Station, Newport
Middletown Co: Newport RI 20842–
Landholding Agency: Navy
Property Number: 779840019
Status: Unutilized
Comment: 560 sq. ft., most recent use—storage, off-site use only

Texas

Soil Testing Lab
4815 Cass St.
Dallas TX 75235–
Landholding Agency: GSA
Property Number: 549840008
Status: Excess
Comment: 40,000 sq. ft., most recent use—laboratory
GSA Number: 7–D–TX–1059

Suitable/Unavailable Properties

Land (by State)

Kentucky

Portion of Tract 3300
Fishtrap Lake Co: Pike KY 41548–
Landholding Agency: COE
Property Number: 319830002
Status: Excess
Comment: 0.40 acre encroachment, steep hill

Unsuitable Properties

Buildings (by State)

Idaho

Bldg. 101
Mountain Home Air Force Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189840001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
Mountain Home Air Force Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189840002
Status: Unutilized
Reason: Extensive deterioration

Michigan

Tract 100–1
Calumet Air Force Station
Calmut Co: Keweenaw MI 49913–
Landholding Agency: GSA
Property Number: 549840003
Status: Excess
Reason: Other
Comment: no legal access
GSA Number: 1–D–MI–659A

Tracts 100–2, 100–3
Calumet Air Force Station
Calmut Co: Keweenaw MI 49913–
Landholding Agency: GSA
Property Number: 549840004
Status: Excess
Reason: Other
Comment: no legal access
GSA Number: 1–D–MI–659A

Montana

Bldg. 803
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189840003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1060
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189840004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1846
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189840005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 1847
Malmstrom AFB Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Number: 189840006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

New Mexico

Bldg. 18, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 419840001
Status: Unutilized
Reason: Secured Area Extensive deterioration

Oklahoma

Bldg. 502
Max Westheimer Field
Norman Co: Cleveland OK 73069–
Landholding Agency: GSA
Property Number: 549840005
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 7–D–OK–405–B

Washington

Bldg. 918
Puget Sound Naval Shipyard
Bremerton, WA 98314–5000
Landholding Agency: Navy
Property Number: 779840020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

[FR Doc. 98–30129 Filed 11–12–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Indian Gaming Commission

Notice of the Proposed Appointment of Elizabeth Lohah Homer to the National Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Regulatory Act, 25 U.S.C. 2701 et. seq. provides for a three person National Indian Gaming Commission. One member, the chairman, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Prior to appointing members, the Secretary is required to give public notice of a proposed appointment and allow for a comment period. Notice is hereby given of the proposed appointment of Elizabeth Lohah Homer as an associate member of the National Indian Gaming Commission.

DATES: Comments must be received before or on December 12, 1998.

ADDRESSES: Comments should be submitted to the Director, Office of Executive Secretariat, United States Department of the Interior, 1849 C Street, NW, Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robert Moll, Assistant Solicitor, Division of General Law, Branch of General Legal Services, United States Department of the Interior, 1849 C Street, NW, Mail Stop 6531, Washington, DC 20240; telephone 202–208–5216.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act establishes the National Indian Gaming Commission (Commission), composed of three full-time members; a chairman and two associate members. 25 U.S.C. 2704(b). Commission members serve for a term of three years. 25 U.S.C. 2704(b)(2)(4)(A). The chairman is appointed by the President with the advice and consent of the Senate. 25 U.S.C. 2704(b)(1)(A). The two associate members are appointed by the Secretary of the Interior. 25 U.S.C. 2704(b)(1)(B). Prior to appointing an associate member to the Commission, the Secretary is required to "publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the Commission and shall allow a period of not less than thirty days for receipt of public comment." 25 U.S.C. 2704(b)(2)(B). Notice is hereby given of

the proposed appointment of Elizabeth Lohah Homer as an associate member of the Commission for a term of three years.

Ms. Homer appears well-qualified to serve as an associate member of the Commission. She has served as the Director, Office of American Indian Trust, United States Department of the Interior, since December, 1994. In that capacity she has provided executive direction and management over the development, coordination, and implementation of Indian trust policies. Ms. Homer served as a Special Attorney in the Criminal Division, United States Department of Justice from August, 1992 to December, 1994. Between October, 1989 and August, 1992 Ms. Homer was an Assistant District Attorney, Violent Crimes Division, Office of the District Attorney for the Second Judicial District of New Mexico. Ms. Homer was the Deputy Director of Americans for Indian Opportunity from January, 1982 to April, 1986. From August, 1980 to December, 1981, Ms. Homer served as a Policy Analyst for the Council of Energy Resource Tribes. She was a Tribal Programs Analyst for the Osage Tribe of Oklahoma from July, 1979 to July, 1980.

Ms. Homer is a member of the Osage Tribe of Oklahoma. She received a Bachelor of Arts Degree in Political Science from the University of Colorado in 1979. Ms. Homer also holds a Juris Doctor from the University of New Mexico School of Law, awarded in 1989. Among Ms. Homer's professional associations are membership in the State Bar of New Mexico, the Federal Bar for the District of New Mexico and the American Indian Law Enforcement Association. Ms. Homer does not appear to have any financial interests that would make her ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B).

Any person wishing to submit comments on this proposed appointment may submit written comments to the address listed above. Comments must be received by the due date, which is 30 days from the date of the publication of this notice.

Dated: November 6, 1998.

Edward B. Cohen,

Deputy Solicitor.

[FR Doc. 98–30376 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Colorado's Ocean Journey, Denver, CO, PRT–004334

The applicant request a permit to import Asian bony tongue (*Scleropages formusus*) fish from Dragon Fish Industry, LCK Agrotechnology Park, Singapore and Totoaba (*Cynoscion macdonaldi*) fish from Facultad de Ciencias Marinas, Ensenada Baja California, Mexico for the purpose of enhancement of the survival of the species through conservation education.

Applicant: Kansas City Zoological Gardens, Kansas City, MO, PRT–004333

The applicant request permits to import two captive born Western Lowland Gorilla (*Gorilla gorilla gorilla*) from Calgary Zoo, Alberta, Canada, for the purpose of enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: November 6, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–30307 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Revised Recovery Plan for Todsen's Pennyroyal (Hedeoma todsenii) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of the draft revised recovery plan for Todsen's pennyroyal (*Hedeoma todsenii*), a plant from the San Andres and Sacramento mountains in south-central New Mexico. This species is know from 18 sites in pinyon-juniper woodland in Otero and Sierra counties, New Mexico. The Service solicits review and comment from the public on this draft revised recovery plan.

DATES: Comments on the draft revised recovery plan must be received on or before January 12, 1999 to ensure they receive consideration by the Service.

ADDRESSES: Persons wishing to receive the draft revised recovery plan may obtain a copy by contacting the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna, NE, Albuquerque, New Mexico 87113 (Telephone 505/346–2525). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles B. McDonald, Botanist, at the address and telephone number (Ext. 112) given above.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the needed recovery measures.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery

plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Todsen's pennyroyal was listed under the Act as an endangered species on January 18, 1981 (46 FR 5729). When listed, it was known from only two sites in the San Andres Mountains on the White Sands Missile Range in Sierra County, New Mexico. A recovery plan for Todsen's pennyroyal was approved in 1985. Subsequent to development of the original recovery plan, 15 new sites for the plant were found on the western slope of the Sacramento Mountains in Otero County, New Mexico. The new sites are on the Lincoln National Forest and on public lands administered by the Bureau of Land Management. The discovery of the new sites plus additional new information about the biology and ecology of the species have necessitated revision of the original recovery plan.

Recovery will focus on the continuing protection efforts of the three Federal agencies responsible for land management of existing sites. Additional recovery efforts will focus on research to determine the biological and ecological requirements of the species with the goal of developing management practices that will ensure the maintenance of self-sustaining populations in natural habitat.

The availability of a draft Todsen's Pennyroyal Revised Recovery Plan for review and comment was announced in the **Federal Register** on October 14, 1994 (59 FR 52189). The revised plan, however, was never completed and further changes to the plan have been made since then. This notice gives the public another opportunity for review and comment before the draft revised plan is approved.

Public Comments Solicited

The Service solicits written comments on the draft Todsen's Pennyroyal Revised Recovery Plan. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 2, 1998.

Renne Lohoefener,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. 98–30337 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability

AGENCY: Fish and Wildlife Service, Interior.

Receipt of an application for an incidental take permit and availability of the Misstex Habitat Conservation Plan for take of one red-cockaded woodpecker group on 80 acres of private land in Montgomery County, Texas.

SUMMARY: A private landowner, Mr. Charles H. Lewis III of Misstex Properties, L.C., has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The applicant has been assigned permit number TE–003596–0. The proposed permit would authorize the applicant to take one red-cockaded woodpecker (RCW) group incidental to timber harvest operations and proposed development of 80 acres of timberland on a 753-acre tract of land located in Montgomery County, Texas.

This notice advises the public that the Service has opened the comment period on the permit application. The permit application includes the Misstex RCW Habitat Conservation Plan (HCP).

Based upon guidance in the Service's November 1996, Habitat Conservation Planning Handbook, the Misstex RCW HCP qualifies as a "Low Effect" HCP. Therefore, this action is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further National Environmental Policy Act (NEPA) documentation will be made. This notice is provided pursuant to section 10c of the Act and NEPA regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act. If it is determined that the requirements are met, a permit will be issued for the incidental take of the RCW based upon the Misstex RCW HCP. The final determinations will not be completed until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

DATES: Comments on the Misstex RCW HCP, should be received in writing on or before December 14, 1998.

ADDRESSES: Persons wishing to review the application and HCP may obtain a copy by contacting Mr. Jeffrey A. Reid, Fish and Wildlife Biologist, U.S. Fish and Wildlife Service, 701 N. First Street, Lufkin, Texas 75901. Written comments should also be sent to Jeffrey A. Reid at the same address; please refer to permit No. TE–003596–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Reid (Fish and Wildlife Biologist) at the above address or telephone (409/639–8546). Documents will also be available for public inspection, by appointment, during normal business hours at the above address and at 711 Stadium Drive, Suite 252, Arlington, Texas 76011. An appointment may be scheduled at the Arlington Office by calling (817/277–1100).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the RCW. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidential to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22. The applicant owns approximately 2,000 contiguous acres in Montgomery County, Texas, that includes this 753-acre tract. The balance of the timber on the 2,000 acres was harvested except for an 80-acre RCW area that is part of the 753-acre tract. This 80 acres was retained for the RCWs to provide two clusters and associated foraging habitat. Approximately 5 to 6 seedtrees per acre were retained on the remaining 1,920 acres.

The applicant has determined that retaining the timber that supports the RCW group is not an acceptable alternative and that harvesting the entire tract, including the two RCW clusters, is the preferred alternative. Consequently, the incidental taking of the RCW group is unavoidable, and the adverse impacts of the proposed timber harvesting activities cannot be minimized.

Two RCW clusters comprised of three natural cavity trees are located on the 80 acres. Two of these cavity trees are considered to be unusable, because they contain enlarged cavities. A fall 1997, afternoon roost check revealed that two RCWs were utilizing the 80 acres. One RCW roosted in the only usable cavity tree, and the other roosted in the open. To provide additional roosting/nesting cavities, the landowner had four

artificial cavity inserts installed upon request of the Service. Two of the four inserts were active by March 1998, one of which was identified as the nest tree in May 1998. Harvesting the 80 acres will incidentally take at least two RCWs (and any offspring produced), three natural cavity trees, and four trees with artifical cavity inserts.

The applicant proposes to provide $50,000 to implement the Misstex RWC HCP. The mitigative aspects of this HCP involve translocating juvenile RCWs from the 80 acres in Montgomery County to Champion International's Brushy Creek RCW Management Area in Trinity County, Texas, in an attempt to establish an additional breeding pair on a permanently protected 210-acre site. If an additional RCW group has not been established on the Brushy Creek RCW Management Area after four breeding seasons, Champion International agrees to assume responsibility for the mitigation of the group located on the applicant's property.

The permanent protection and management of 210 acres on Brushy Creek RCW Management Area is intended to compensate for the loss of 80 acres of RCW habitat on the applicant's property. The agreement by Champion to ncrease its baseline number of RCW groups by one, essentially results in relocating one breeding group instead of the loss of one group. The balance of the funds that remain after the applicant's mitigation is considered complete will be place in an endowment fund to be managed by the National Fish and Wildlife Foundation for RCW recovery programs on state and private lands.

Dated: November 3, 1998.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–30428 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P, AA–9245, AA–9254, AA–9255, AA–9273, AA–9276, AA–9278, AA–9312, AA–9332, and AA–11440]

Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(h)(1), will be issued to Calista Corporation for 9 sites aggregating approximately 158.6 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian

T. 3 S., R. 96 W.,
T. 4 S., R. 96 W.,
T. 4 S., R. 99 W.,
T. 3 N., R. 100 W.,
T. 3 S., R. 100 W.,
T. 4 S., R. 100 W.,

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until December 14, 1998 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 98–30350 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–99–1320–01; COC 61357]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 61357; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Oxbow Mining, Inc., requesting the Bureau of Land Management offer for competitive lease 3,702.81 acres of federal coal in Delta and Gunnison Counties, Colorado. Tract delineation by the Uncompahgre Field Office resulted in the addition of 160 acres of federal coal in sec. 32, T. 12 S., R. 90 W., 6th P.M. for a grand total of 3,862.81 acres.

DATES: The public hearing will be held at 7 p.m., December 3, 1998. Written comments should be received no later than December 17, 1998.

ADDRESSES: The public hearing will be held in the Paonia Town Hall, 214 Grand Avenue, Paonia, Colorado. Written comments should be addressed to the Bureau of Land Management, Field Office Manager, Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Allan Belt, field Office Manager, Uncompahgre field Office at the address above, or by telephone at (970) 240–5315.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on December 3, 1998, at 7 p.m., in the Paonia Town Hall at the address given above.

An application for coal lease was filed by Oxbow Mining, Inc., requesting the Bureau of land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 12 S., R. 90 W., 6th P.M.
Sec. 31, lots 1 to 14, inclusive, and NE¼;
Sec. 32, lots 3 to 6, inclusive, lots 11 to 14, inclusive, and NW¼.
T. 12 S., R. 91 W., 6th P.M.
Sec. 35, lots 1, 2, and 4 to 8, inclusive, 13 to 16, inclusive, lots 21, 22, and that part of HES No. 134 lying in the NE¼;
Sec. 36, lots 1 to 17, inclusive, NE¼, E½NW¼, SW¼NW¼, and that part of HES No. 134 lying in lot 1.
T. 13 S., R. 90 W., 6th P.M.
Sec. 5, lots 7 to 10, inclusive;
Sec. 6, lots 8 to 17, inclusive.
T. 13 S., R. 91 W., 6th P.M.
Sec. 1, lots 1 and 4, inclusive, S½NW¼ and SW¼;
Sec. 2, lot 1, and S½NE¼;
Sec. 12, S½NE¼, and NW¼.
Containing 3,862.81 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area; and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the December 3, 1998, public hearing should be received at the Uncompahgre Field Office prior to the close of business December 3, 1998. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the uncompahgre Field Office at the above address prior to close of business on December 17, 1998.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Environmental Assessment and Maximum Economic Recovery Report are available from the Uncompahgre Field Office upon request.

A copy of the Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as priorietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be avaiable for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado, 80215.

Dated: November 05, 1998.

Karen A. Purvis,

Solid Minerals Team Resource Services.

[FR Doc. 98–30424 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

[MT–960–1150–00]

District Advisory Council Meeting

AGENCY: Bureau of Land Management, North Dakota Field Office, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Dakotas Resource Advisory Council will be held January 11 & 12, 1999, at the Expressway Suites, 180 E. Bismarck Expressway, Bismarck, North Dakota. The session will convene at 8:00 a.m. on January 11th and resume at 8:00 a.m. on the 12th. Agenda items include updates on the South Dakota Land Exchange, coordination with the U. S. Forest Service, and Off-Road Vehicle use on public lands. Election of a Chairperson for 2000 will also be on the agenda.

The meeting is open to the public and a public comment period is set for 8:00 a.m. on January 12th. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per-person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying.

The 12-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the Dakotas.

FOR FURTHER INFORMATION CONTACT: Douglas Burger, Field Office Manager, North Dakota Field Office, 2933 3rd Avenue West, Dickinson, ND 58601. Telephone (701) 225–9148.

Dated: November 4, 1998.

Douglas J. Burger,

Field Office Manager.

[FR Doc. 98–30325 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–0777–74]

Alaska Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Alaska Resource Advisory Council meeting.

SUMMARY: The Alaska Resource Advisory Council will conduct an open meeting Wednesday, December 2, 1998, from 9:30 a.m. until 4:30 p.m. and Thursday, December 3, 1998, from 9 a.m. until 3 p.m. The council will review BLM land management issues and take public comment on those issues. The meeting will be held at the BLM Alaska State Office, located on the 4th floor of the Anchorage Federal Office Building at 7th Avenue and C Street.

Public comment will be taken from 1–2 p.m. Wednesday, December 2. Written comments may be submitted at the meeting or mailed to the address below prior to the meeting.

ADDRESSES: Inquiries about the meeting should be sent to External Affairs, Bureau of Land Management, 222 W. 7th Avenue, #13, Anchorage, AK 99513–7599.

FOR FURTHER INFORMATION CONTACT: Teresa McPherson, (907) 271–5555.

Dated: November 6, 1998.

Brenda Zenan,

Acting Associate State Director.

[FR Doc. 98–30349 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–960–99–1990–00]

Resource Advisory Council Meeting, Missoula, Montana

AGENCY: Butte Field Office, Bureau of Land Management, DOI.

ACTION: Notice of Butte Resource Advisory Council meeting, Missoula, Montana.

SUMMARY: The Butte Resource Advisory Council will convene at 9 a.m., Thursday, December 10, 1998, at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana. The main issue will be to continue work on guidelines for BLM trails and roads.

The meeting is open to the public and written comments may be given to the

Council. Oral comments may be presented to the Council at 3 p.m. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact the Butte Field Office, 106 North Parkmont (P.O. Box 3388), Butte, Montana 50702–3388, telephone 406–494–5059.

FOR FURTHER INFORMATION CONTACT: BLM Butte Field Manager Merle Good at the above address or telephone number.

Dated: November 6, 1998.

Merle Good,

Butte Field Manager.

[FR Doc. 98–30532 Filed 1–12–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–00; WYW 82535]

Notice Providing for Opening of Public Land; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect as to 1,153.30 acres of public land which were originally included in application for exchange, Wyoming 82535.

EFFECTIVE DATE: November 13, 1998.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM Wyoming State Office, PO Box 1828, Cheyenne, Wyoming 82003–1828, 307–775–6115.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), at 9 a.m. on November 13, 1998, the following described lands will be relieved of the temporary segregative effect of exchange application WYW 82535.

Sixth Principal Meridian, Wyoming

T. 33 N., R. 108 W.,
Sec. 2, lots 1, 2, SNE, SNW, NESW, NWSE;
Sec. 3, SENE;
Sec. 4, SNE;
Sec. 9, NWNW;
Sec. 10, SWSW;
Sec. 15, WNW.
T. 36 N., R. 108 W.,
Sec. 26, SWSE;
Sec. 34, lots 3, 4, SNE, SENW, NESW, NSE;
Sec. 35, lots 3, 4, SNW, NWSW.

The area described contains 1,153.30 acres in Sublette County.

1. At 9 a.m. on November 13, 1998, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on November 13, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

2. At 9 a.m. on November 13, 1998, the lands will be opened to location and entry under the United States mining laws. Appropriations of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: October 23, 1998.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 98–30351 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–952–09–1420–00]

Arizona; Notice of Filing of Plats of Survey

November 3, 1998.

1. The plats of survey of the following described lands were officially filed in the Arizona State Office, Phoenix, Arizona, on the dates indicated:

A plat representing the dependent resurvey of a portion of H.E.S. No. 214 and a metes-and-bounds survey of tract 37 in unsurveyed Township 4½ North, Range 31 East, Gila and Salt River Meridian, Arizona, was accepted July 6, 1998 and was officially filed July 17, 1998.

This plat was prepared at the request of the United States Forest Service.

A plat representing the survey of the Ninth Standard Parallel North, (south boundary), the Fourth Guide Meridian East, (east boundary), the west and north boundaries and the subdivisional lines, Township 37 North, Range 16 East, of the Gila and Salt River Meridian, Arizona, was accepted August 31, 1998, and was officially filed September 10, 1998.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the Ninth Standard Parallel North, (south boundary), Township 37 North, Range 17 East, of the Gila and Salt River Meridian, Arizona, was accepted August 31, 1998, and was officially filed September 10, 1998.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat representing the survey of the Ninth Standard Parallel North, (south boundary), the east boundary, a portion of the west boundary, a portion of the subdivisional lines, and the subdivision of Sections 29 and 32, Township 37 North, Range 18 East, of the Gila and Salt River Meridian, Arizona, was accepted August 31, 1998, and was officially filed September 10, 1998.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Area Office.

A plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of Section 16, and a metes-and-bounds survey in Section 16, Township 5 South, Range 8 East, of the Gila and Salt River Meridian, Arizona, was accepted July 28, 1998, and was officially filed July 30, 1998.

This plat was prepared at the request of the National Park Service.

A plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of Sections 8 and 9, Township 19 South, Range 16 East, of the Gila and Salt River Meridian, Arizona, was accepted July 6, 1998, and was officially filed July 17, 1998.

This plat was prepared at the request of the United States Forest Service.

A plat, in eleven sheets, representing the survey of the legal descriptive boundary of the South Maricopa Mountains Wilderness Area in Townships 5 South, Ranges 1, 2 and 3 West, and 1 East. Townships 6 South, Ranges 1 and 2 West, and 1 East, of the Gila and Salt River Meridian, Arizona, was accepted August 10, 1998, and was officially filed August 21, 1998.

This plat was prepared at the request of the Bureau of Land Management, Phoenix Field Office.

A plat, in two sheets, representing the dependent resurvey of a portion of the subdivisional lines and a portion of the U.S. Customs and Immigration Reserve, the subdivision of the Southeast Quarter of Section 6, and a metes-and-bounds

survey, in Section 6, Fractional Township 18 South, Range 5 West, of the Gila and Salt River Meridian, Arizona, was accepted July 13, 1998, and was officially filed July 17, 1998.

This plat was prepared at the request of the National Park Service.

A plat, in five sheets, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of Section 8, and the metes-and-bounds survey of the Mount Tipton Wilderness Area Boundary, in Township 24 North, Range18 West, of Gila and Salt River Meridian, Arizona, was accepted July 23, 1998, and was officially filed July 30, 1998.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

A plat representing the dependent resurvey of a portion of the Sixth Standard Parallel North through Range 19 West, a portion of the Fifth Guide Meridian West through Township 24 North, and a portion of the subdivisional lines, and the metes-and-bounds survey of the Mount Tipton Wilderness Area Boundary, in Township 24 North, Range 19 West, of the Gila and Salt River Meridian, Arizona, was accepted July 28, 1998, and was officially filed July 30, 1998.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

A plat, in three sheets, representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines, the subdivision of Sections 18, 30 and 31, and the metes-and-bounds survey of the Mount Tipton Wilderness Area Boundary, in Township 25 North, Range 17 West of the Gila and Salt River Meridian, Arizona, was accepted July 21, 1998, and officially filed July 24, 1998.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

A plat, in four sheets, representing the dependent resurvey of portions of the Sixth Standard Parallel North, through Range 18 West, portions of the Fifth Guide Meridian West, through Township 25 North, and a portion of the subdivisional lines, the subdivision of Sections 17, 18 and 31, and the metes-and-bounds survey of the Mount Tipton Wilderness Area Boundary, in Township 25 North, Range 18 West, of the Gila and Salt River Meridian, Arizona, was accepted July 22, 1998, and was officially filed July 24, 1998.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

A plat, in ten sheets, representing the survey of the legal descriptive boundary of the Mount Tipton Wilderness Area in Townships 24 North, Ranges 17, 18 and 19 West, Townships 25 North, Ranges 17 and 18 West, and Township 26 North, Range 18 West, of the Gila and Salt River Meridian, Arizona, was accepted August 17, 1998, and was officially filed August 28, 1998.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

A plat, in four sheets, representing the dependent resurvey of a portion of the south and east boundaries and a portion of the subdivisional lines, the subdivision of Sections 28 and 34, and the metes-and-bounds survey of the Mount Tipton Wilderness Area Boundary in Township 26 North, Range 18 West, of Gila and Salt River Meridian, Arizona, was accepted July 8, 1998, and was officially filed July 17, 1998.

This plat was prepared at the request of the Bureau of Land Management, Kingman Field Office.

2. These plats will immediately become the basic records for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

3. All inquires relating to these land should be sent to the Arizona State Office, Bureau of Land Management, 222 N. Central Avenue, PO Box 1552, Phoenix, Arizona 85001–1552.

Kenny D. Ravnikar,

Chief Cadastral, Surveyor of Arizona.

[FR Doc. 98–30430 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection, Designation of Royalty Payment Responsibility (OMB Control Number 1010–0107, Form MMS–4425), which expires on December 31, 1998.

FORM: MMS–4425, Designation of Royalty Payment Responsibility.

DATES: Written comments should be received on or before January 12, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, Designation of Royalty Payment Responsibility, which expires December 31, 1998. We are requesting OMB approval for a three year extension of this existing collection authority. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Pub. L 104–185, as corrected by Pub. L. 104–200, establishes the owners of operating rights and/or lease record title (who are jointly defined as "lessees" under RSFA) as responsible for making royalty and related payments on a Federal lease. The Secretary of the Interior is responsible for the collection of royalties from lessees producing minerals from leased Federal lands. The Secretary is required by various laws to manage the production of mineral resources on Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws. MMS performs the royalty management functions for the Secretary. When a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands.

Currently, it is common for a payor rather than a lessee to make royalty and related payments on a Federal lease. When a payor pays royalties on a

Federal lease on behalf of a lessee, RSFA requires that the lessee certify to MMS, in writing, that a particular payor has been designated by the lessee to make such royalty and related payments to MMS on behalf of the lessee. RSFA made this payor designation requirement effective for lease production beginning September 1, 1996. We may require some payors to provide us information regarding the lessees on whose behalf they are paying if we need to inform those lessees that they must certify to MMS in writing their respective payors as their designees. We are asking lessees and payors (designees) to provide data required under RSFA so that we can fully implement the Act.

The Bureau of Land Management (BLM) maintains records of operating rights owners and lessees. To facilitate the collection of lessee and payor data described above, MMS is discussing with BLM their assistance in including language in the lease transfer instrument, when operating rights and/or lease record title transfers from one owner to another, notifying new operating rights and/or lease record title owners that they must file their written designation of payors with MMS. The form the lessee must file with MMS, the Designation of Royalty Payment Responsibility form, Form MMS–4425, will be available from the MMS Home Page on the Internet, from MMS offices directly, and perhaps from BLM offices also.

We estimate that 20,000 Designation of Royalty Payment Responsibility forms will be completed annually by 20,000 lessees and 2,500 payors (designees). We estimate that a lessee and a payor (designee) will take ¾ hour and ¼ hour, respectively, to complete this form. These estimates include time for learning requirements, research, lessee/payor contact and coordination, and preparation and transmission of the information to MMS. We estimate that the annual burden is 20,000 hours (20,000 forms × ¾ hour + 20,000 forms × ¼ hour), and that the annual cost is $1,000,000 (20,000 hours × $50).

Dated: November 6, 1998.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 98–30329 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Snake River Project, Arrowrock Dam Outlet Works Rehabilitation, Ada County, ID

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public scoping meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), has scheduled public meetings to collect scoping input for the proposed rehabilitation of outlet works at Arrowrock Reservoir. These meetings will assist in determining issues associated with the project that will be evaluated in the environmental impact statement. The primary purposes of the proposed action are to correct deficiencies in the values, reduce the difficulty and environmental impacts of future inspection and maintenance of Arrowrock Dam's outlet works, and to provide increased operational flexibility.

DATES: The scoping meetings will be held on December 14, 1998, from 1 to 3 p.m. and from 7 to 9 p.m.

Comments on the proposed project can be sent to the address below and will be accepted through December 28, 1998.

ADDRESSES: The scoping meetings will be held at The Natural Resources Center, 1387 South Vinnell Way, Boise, Idaho.

Comments may be addressed to the Bureau of Reclamation, Snake River Area Office, 214 Broadway Avenue, Boise, Idaho 83702–7298.

FOR FURTHER INFORMATION CONTACT: Steve Dunn, Natural Resource Specialist, at the above address or by telephone at (208) 334–9844.

SUPPLEMENTARY INFORMATION: A notice of intent to prepare an environmental impact statement was published in the **Federal Register** on October 20, 1998 (63 FR 56047, October 20, 1998).

Arrowrock Dam is located on the Boise River, about 13 miles east of Boise, Idaho. Reclamation completed construction of the dam in 1915, and at that time it was the highest dam in the world. Arrowrock is one of three storage dams on the Boise River. Anderson Ranch Dam is located upstream of Arrowrock on the South Fork Boise River, and Lucky Peak Dam, constructed by the U.S. Army Corps of Engineers, is located on the Boise River downstream of Arrowrock and impounds water up against Arrowrock Dam when full. Arrowrock Reservoir is operated for irrigation and flood control in combination with Anderson Ranch and Lucky Peak Reservoirs. In general, water is stored in Arrowrock Reservoir during the winter and spring, according to predicted runoff and flood control requirements, and released through the summer for irrigation.

The ensign valves controlling releases from Arrowrock Dam are the original valves installed in 1915. These valves have reached the end of their useful life, resulting in complex operational and maintenance concerns. Most of the valves have been damaged through prolonged use, and there is an increasing need for frequent inspection and repair. Three of the 10 ensign valves in the lower bank are no longer usable.

The existing ensign valves also limit Arrowrock Dam's operational flexibility. The lower bank of ensign valves cannot be used under high water pressure when the reservoir is full. This reduces the dam's capability to release water for flood control operations in years with high runoff.

Reclamation has developed a proposal to replace the 10 lower ensign valves with "clamshell gates." The clamshell gates would allow releases at any reservoir level, providing more operational flexibility. The remaining upper row of 10 ensign valves and the sluice gates at the base of the dam could be abandoned, which would significantly reduce maintenance. The clamshell gates would be designed to allow inspection and maintenance without the need for dewatering.

Dated: November 6, 1998.

Kenneth R. Pedde,

Acting Regional Director, Bureau of Reclamation.

[FR Doc. 98–30347 Filed 11–12–98; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Regional Community Policing Institute Surveys: Pre-test and Post-test.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until January 12, 1999. Written comments and suggestions from the

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public and affected agencies concerning the proposed collection of information are requested.

Comments should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Comments also may be submitted to the COPS Office via facsimile to 202–633–1386. In addition, comments may be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20503. Comments may be submitted to DOJ via facsimile to 202–514–1534.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Regional Community Policing Institute Surveys: Pre-Test and Post-test.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form: COPS 30/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: A sample of local law enforcement officers and community members receiving training on community policing from COPS funded RCPI will be surveyed regarding their attitudes toward the RCPI training experience and the impact of training on the delivery of police services and police-citizen relations. The surveys will also capture information on the respondents' training histories, including training taken prior to RCPI participation and a description of the RCPI training program in which they enrolled.

To uphold its mandate to enhance and advance community policing and to foster training and education on community policing, the COPS Office has provided continued funding to 30 Regional Community Policing Institutes (RCPI). The RCPIs are a mechanism to provide training and technical assistance on community policing to law enforcement agencies and the communities they serve. RCPIs are charged with providing comprehensive and innovative education, training, and technical assistance to COPS grantees and other departments throughout a designated region. The geographic distribution of RCPIs has resulted in the availability of training to law enforcement agencies and communities throughout the nation.

Innovations in traditional training methods are necessary to continue the advancement of community policing in law enforcement agencies throughout the United States. In turn, it is necessary to understand and document the impact of these innovative training programs. The evaluation of the RCPI program will provide vital information on the impact of these training endeavors by closely examining the outcomes of training programs and by assessing police officer and community members' attitudes and behaviors related to the training opportunities. The Regional Community Policing Institute Surveys: Pre-test and Post-test will provide essential information on the impact of training on the behavior and attitudes of police officers and sample of citizen trainees. The pre-test survey will be administered to officers and community members prior to receiving training from RCPI and the post-test will be administered to the same group of trainees three months after they receive training.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: This collection includes pre and post-test surveys. Approximately 3,000 respondents will be surveyed pre and post. Estimated time to complete each survey is 45 minutes with no preparation time.

(6) An estimate of the total public burden (in hours) associated with the collection: Approximately 4,500 hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G street, NW, Washington, DC 20530.

Dated: November 9, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–30408 Filed 11–12–98; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed Consent Decree ("Decree") in *United States* versus *ANRFS Holdings, Inc., et al,* Civil Action No. 98–0400–E–BLW, was lodged on October 9, 1998, with the United States District Court for the District of Idaho.

The complaint and amended complaints filed in the above-referenced matter allege that defendants ANRFS Holdings, Inc.; FMC Corporation; J.R. Simplot Company; Lucent Technologies, Inc.; Monsanto Company; and Terteling Company, Inc. (together "Settling Defendants") are jointly and severally liable for the United States' response costs at the McCarty's/Pacific Hide and Fur Superfund Site ("Site") in Pocatello, Idaho, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The Site is comprised of 17 acres located in northwest Pocatello, Idaho that as used as part of a gravel mining operation as early as 1949, and as a metal salvaging yard beginning in the late 1950s and continuing until approximately 1979. Metal was salvaged at the Site from many sources, including transformers, which were stored in and around a gravel pit ("Pit") in the southwest corner of the Site. Lead from lead-acid batteries was also salvaged at the Site. As a result of these activities, the Site was contaminated with lead and polychlorinated biphenyls ("PCBs"), which are hazardous substances within the meaning of CERCLA, and the United States incurred response costs responding to the release or threat of release of these hazardous substances at the Site.

Under the proposed Decree, Settling Defendants shall pay the United States approximately $1.25 million towards the United States' approximately $3.2 million in unreimbursed response costs at the Site. In exchange, the Decree provides Settling Defendants a covenant

not to sue under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606–9607.

Sampling shows that the entire Site is now cleaned to residential levels.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *ANRFS Holdings, Inc., et al*, DOJ Ref. #90–11–2–47B.

The proposed consent decree may be examined at the office of the United States Attorney, District of Idaho, P.O. Box 32, Boise, Idaho, 83707, (208) 334–1211; the Region X Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–1796; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy of the Decree, *with all attachments*, please refer to the referenced case and enclose a check in the amount of $41.25 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy of the Decree *without the attachments*, please enclose a check in the amount of $6.75.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30422 Filed 11–12–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On October 29, 1998, the United States lodged a proposed consent decree in the case of *United States* v. *Campbell Soup Co. and Silgan Can Co.*, Civil Action No. S–95–1854 (E.D. Cal.), with the United States District Court for the Eastern District of California.

The proposed consent decree resolves claims that the United States asserted against Campbell Soup Company and Silgan Can Company in a civil lawsuit first filed on October 6, 1995. The complaint in this case alleges that Campbell constructed or modified and then operated can manufacturing equipment at its facility located at 6200 Franklin Blvd. in Sacramento, California, without complying with the Clean Air Act, the state implementation plan, or with permits issued by the Sacramento Metropolitan Air Quality Management District. Coatings and other compounds used in the can manufacturing process emit Volatile Organic Compounds ("VOCs") into the atmosphere, which creates ground level ozone and smog. Among other things, the United States' lawsuit alleges that Campbell operated without permits, failed to limit VOC emissions with Best Available Control Technology ("BACT"), and failed to provide offsets for the VOC emissions from its modified machinery.

On June 2, 1998, Silgan took over operation of the can manufacturing facility from Campbell, and our complaint alleges that Silgan operated and is operating the facility with many of the same violations committed by Campbell. Campbell and Silgan have informed the United States that they intend to replace the equipment at issue in our complaint with a new can manufacturing line that incorporates BACT, resulting in the permanent shutdown of the machinery at issue in our lawsuit by August 1, 2000.

The proposed Consent Decree requires Campbell to pay a civil penalty of $1,215,000, requires Defendants to cease operating all sources of VOC emissions at the three-piece can facility by August 1, 2000, requires Defendants to limit VOC emissions from the facility prior to August 1, 2000, and requires Defendants to transfer Emission Reduction Credits to Environmental Resources Trust, a non-profit organization.

The Department of Justice will accept comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. *See* 28 CFR 50.7. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and send a copy to Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Your comments should refer to *U.S.* v. *Campbell Soup Co. and Silgan Can Co.*, Civil No. S–95–1854 (E.D. Cal.), and DOJ No. 90–5–2–1–1971.

You may examine the proposed consent decree at the office of the United States Attorney, Eastern District of California, 555 Capitol Mall, Suite 1550, Sacramento, California 95814; or at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. You may also obtain a copy of the consent decree in person or by mail from the Consent Decree Library. Your request for a copy of the consent decree in *U.S.* v. *Campbell Soup Co. and Silgan Can Co.* should refer to that case title, Civil No. S–95–1854 (E.D. Cal.), and DOJ No. 90–5–2–1–1971, and must include a check for $5.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30420 Filed 11–12–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

On October 23, 1998, the United States lodged a proposed consent decree in the case of *United States* v. *Guam Power Authority*, Civil Action No. 97–00030 (D. Guam), with the United States District Court for the Territory of Guam.

The proposed consent decree resolves claims that the United States asserted against Guam Power Authority ("GPA") in a civil complaint filed on April 29, 1997. The filed complaint alleges that GPA failed to burn low-sulfur fuel-oil at its Cabras-Piti area electricity generating plants when required, submitted late reports to EPA, and violated other monitoring and reporting requirements contained in a waiver that EPA issued to GPA under section 325 of the Clean Air Act, 42 U.S.C. 7425–1.

The proposed Consent Decree requires GPA to comply with the waiver requirements, to pay a civil penalty of $170,000, and to spend at least $800,000 on a Supplemental Environmental Project that will automate GPA's fuel-switching operations and reduce sulfur emissions from GPA's Cabrias-Piti plants.

The Department of Justice will accept comments relating to this Consent Decree for a period of thirty (30) days from the date of this publication. *See* 28 C.F.R. 50.7. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and send a copy to Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105. Your comments should refer to *U.S.* v. *Guam Power Authority*, Civil No. 97–00030 (D. Guam), and DOJ No. 90–5–2–1–2060.

You may examine the proposed consent decree at the office of the United States Attorney, Territory of Guam, Suite 502–A, Pacific News Bldg., 238 Archbishop Flores Street, Agana,

Guam 96910; or at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. You may also obtain a copy of the consent decree in person or by mail from the Consent Decree Library. Your request for a copy of the consent decree in *U.S.* v. *Guam Power Authority* should refer to that case title, Civil No. 97–00030 (D. Guam), and DOJ No. 90–5–2–1–2060, and must include a check for $5.75 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30419 Filed 11–12–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Axys Pharmaceuticals, Inc./Luminex Corporation

Notice is hereby given that, on September 15, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Axys Pharmaceuticals, Inc./Luminex Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Axys Pharmaceuticals, Inc., La Jolla, CA; and Luminex Corporation, Austin, TX. The nature and objectives of the venture are to develop and demonstrate technology that will be applied to the fields of gene discovery and DNA diagnostics. The technology is based on the manipulation of thousands of elements in arrays in miniature (microarray technology) and will utilize methods that are innovative and proprietary.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–30421 Filed 11–12–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on May 6, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Chrysalis Symbolic Design, Inc., North Billerica, MA; Gatefield Corp. (formerly Zycad), Fremont, CA; Global UniChip Corp., Hsinchu Science Park, TAIWAN; Henry Davis Consulting, Inc., Soquel, CA; Qualis Design Corp., Lake Oswego, OR; RocketChips, Inc., Ames, IA; Scottish Enterprise, Glasgow, SCOTLAND; Silicon Automation Systems, Bangalorc, Karnataka, INDIA; Simutech, Vancouver, WA; and Xentec, Inc., Oakville, Ontario, CANADA have been added as parties to this venture. Also, Caseium, Inc., Santa Clara, CA; Compass Design Automation, San Jose, CA; GEC Plessey Semiconductor, Plymouth, Devon, UNITED KINGDOM; Nippon Telegraph & Telephone, Kanagawa, JAPAN; Olympus Optical Co., Ltd., Tokyo, JAPAN; Precedence, Inc., Campbell, CA; Tower Semiconductor, San Jose, CA; ViewLogic, Rockville, MD; and Zycad, Fremont, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 27, 1996, VSI Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on February 27, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 30, 1998 (63 FR 40742).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 98–30423 Filed 11–12–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 9, 1998.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Women (NLS).

OMB Number: 1220–0110 (Revision).

Frequency: Biennially.

Affected Public: Individuals or households.

Number of Respondents: 7,221.

Estimated Time Per Response: 64.5 minutes.

Total Burden Hours: 7,762.

Total Annualized Capital/startup Costs: 0.

Total Annual (operating/maintaining): 0.

Description: The Department of Labor will use the information to help understand and explain the employment activities, unemployment activities, and retirement decisions of women. The mature women currently are ages 62–76 and the young women are ages 45–55. We first interviewed them for the NLS in 1967 and 1968 respectively.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–30437 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,834]

Blanchard Shirt Company, Mt. View, Arkansas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 10, 1998 in response to a worker petition which was filed on behalf of workers at the Capital Mercury Apparel, Ltd, d/b/a Blanchard Shirt Company, Mt. View, Arkansas.

An active certification covering the petitioning group of workers is already in effect (TA–W–34,833A). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 28th day of October 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30363 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,570]

Buena Vista Manufacturing Company, Buena Vista, Virginia; Notice of Revised Determination on Reconsideration

On August 18, 1998, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on September 4, 1998 (63 FR 47325).

The Department initially denied TAA to workers of Buena Vista Manufacturing Company, Buena Vista, Virginia producing knit children's apparel because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department conducted further survey analysis of the major customer of Buena Vista manufacturing Company and reviewed purchases of both licensed and non-licensed children's knit apparel. The survey revealed that the former customer imported substantial amounts of children's knit apparel. Further, the Department reviewed import data for children's knit apparel. The review indicated that imports of women's and girl's blouses during the 12 month period April, 1997—March, 1998 were over 215% of U.S. shipments. Further, while data on U.S. shipments of men's and boy's shirts is not yet available for the same time period, imports of men's and boy's shirts increased from 1.35 billion units in 1996 to 1.62 billion units in 1997. In addition, imports during the 12 month period April 1997 through march, 1998 were 1.7 billion units compared to 1.4 billion units during the previous 12 months.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with children's knit apparel, contributed importantly to the declines in sales or production and to the total or partial separation of workers of Buena Vista manufacturing Company, Buena Vista, Virginia. In accordance with the provisions of the Act, I make the following certification:

All workers of Buena Vista Manufacturing Company, Buena Vista, Virginia who became totally or partially separated from employment on or after May 11, 1997 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, D.C. this 3rd day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30359 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,762; TA–W–34,762D]

Dresser Oil Tools, Dresser Industries, Incorporated, Production and Sales Representatives, Dallas, Texas, and Operating at Various Locations in Louisiana; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 18, 1998 applicable to all workers of Dresser Oil Tools, Dallas, Texas [TA–W–34,762] and operating at various locations in Louisiana [TA–W–34,762D]. The notice was published in the **Federal Register** on October 9, 1998 (63 FR 54495).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of oilfield equipment and provide office, administration, management and sales services. Company information shows that Dresser Industries, Incorporated is the parent firm of Dresser Tools located in Dallas, Texas. New information provided by the State shows that some workers separated from employment at Dresser Tools had their wages reported under a separate unemployment insurance (UI) tax account for Dresser Industries, Incorporated, Dallas, Texas. Based on these findings, the Department is amending the certification to include workers of Dresser Industries, Incorporated.

The intent of the Department's certification is to include all workers of Dresser Tools who were adversely affected by increased imports of oilfield equipment.

The amended notice applicable to TA–W–34,762 is hereby issued as follows:

All workers of Dresser Oil Tools, Dresser Industries, Incorporated, Dallas Texas [TA–

W–34,762] and operating at various locations in Louisiana [TA–W–34,762D], who became totally or partially separated from employment on or after July 6, 1997 through September 18, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30356 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,031]

Halliburton Energy Services, Duncan, Oklahoma; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 28, 1998, in response to a petition filed on the same date on behalf of workers at Haliburton Energy Services, Duncan, Oklahoma.

A certification applicable to a larger group of Halliburton workers in various states covers the petitioning group. That certification was issued on October 28, 1998, and is currently in effect (TA–W–35,056). consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 28th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30364 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,992]

Halliburton Energy Services, Midland, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 21, 1998, in response to a petition filed on the same date on behalf of workers at Halliburton Energy Services, Midland, Texas.

A certification applicable to a larger group of Halliburton workers in various states covers the petitioning group. That certification was issued on October 28, 1998, and is currently in effect (TA–W–35,056). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 28th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30365 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,001]

NACCO Materials Handling Group, Incorporated Counterbalanced Development Center & Headquarters, Fairview, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 28, 1998 in response to a worker petition which was filed on behalf of workers at the NACCO Materials Handling Group, Incorporated, Counterbalanced Development Center & Headquarters, Fairview, Oregon.

An active certification covering the petitioning group of workers is already in effect (TA–W–34, 718B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 3 day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance, Office of Trade Adjustment Assistance.

[FR Doc. 98–30352 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,718; TA–W–34,718B]

NACCO Materials Handling Group, Incorporated, Yale Materials, Flemington, New Jersey; Counterbalanced Development Center & Headquarters, Fairview, Oregon; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 8, 1998, applicable to workers of NACCO Materials Handling Group, Incorporated, Yale Materials, located in Flemington, New Jersey. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Counterbalanced Development Center & Headquarters, Fairview, Oregon of NACCO Materials Handling Group, Incorporated. The Fairview, Oregon location provides support function services, administration, research and development for the subject firms' production facilities including Flemington, New Jersey. The workers produce forklift components.

The intent of the Department's certification is to include all workers of NACCO Materials Handling Group, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of NACCO Materials Handling Group, Incorporated, Counterbalanced Development Center & Headquarters, Fairview, Oregon.

The amended notice applicable to TA–W–34,718 is hereby issued as follows:

All workers of NACCO Materials Handling Group, Incorporated, Yale Materials, Flemington, New Jersey (TA–W–34,718), and the Counterbalanced Development Center & Headquarters, Fairview, Oregon (TA–W–34,718B) who became totally or partially separated from employment on or after June 18, 1997 through September 8, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30360 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34–758; TA–W–34, 758A]

Nordictrack, Glencoe, Minnesota, Chaska, Minnesota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 15, 1998, applicable for all workers of Nordictrack, Glencoe, Minnesota. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the State agency, the Department reviewed the certification for workers of the subject firm. New information submitted to the Department shall that worker separations have occurred at the subject firm's Chaska, Minnesota location. The NordicTrack workers in Chaska provide services and administrative support for the production of exercise equipment at the Glencoe plant.

The intent of the Department's certification is to include all workers of Nordictrack who were affected by increased imports. Accordingly, the Department is amending the worker certification to include the workers of the subject firm in Chaska, Minnesota, providing services and administrative support of the Glencoe plant.

Other findings on review show that the Department incorrectly set the impact date at July 7, 1997. The workers at the subject firm were covered under an earlier certification, TA–W–32, 707, which expired September 12, 1998. In order to avoid an overlap in coverage, the Department is also amending this certification to set the impact date at September 13, 1998.

The amended notice applicable to TA–W–34, 758 is hereby issued as follows:

All workers of NordicTrack, Glencoe, Minnesota (TA–W–34, 758) and Chaska, Minnesota (TA–W–34, 758A), who became totally or partially separated from employment on or after September 13, 1998 through October 15, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30357 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,398; TA–W–34,398B]

Semitool, Incorporated, Kalispell, Montana; Semitool—Austin Central Region, Austin, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 28, 1998, applicable to all workers of Semitool, Incorporated located in Kalispell, Montana. The notice was published in the **Federal Register** on June 22, 1998 (63 FR 33958).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations occurred at Semitool—Austin, Central Region of Semitool, Incorporated located in Austin, Texas. Workers at the Austin, Texas location provide administrative and customer support services for Semitool's wafer processing equipment production facilities including Kalispell, Montana.

The intent of the Department's certification is to include all workers of Semitool, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Semitool, Incorporated, Semitool—Austin, Central Region, Austin, Texas.

The amended notice applicable to TA–W–34,398 is hereby issued as follows:

All workers of Semitool, Incorporated, Kalispell, Montana (TA–W–34,398), and Semitool—Austin, Central Region, Austin, Texas (TA–W–34,398B) who became totally or partially separated from employment on or after March 14, 1997 through May 28, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of November, 1998.

Grant D. Deale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30358 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 23, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 23, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 26th day of October, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 10/26/1998]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,113	Thorn Apple Valley (Co.)	Forrest City, AR	10/15/1998	Weiners.
35,114	Dana Corporation (Wkrs)	Traverse City, MI	10/06/1998	Mirror Systems, Bracketry for Trucks.
35,115	Santoro Clothing (UNITE)	Fall River, MA	10/16/1998	Men's Suits.
35,116	David Clothing (UNITE)	Brockton, MA	10/16/1998	Men's Army and Navy Coats.
35,117	Justin Clothing (UNITE)	New Bedford, MA	10/16/1998	Men's Suites.
35,118	Institute For Scientific (Wkrs).	Cherry Hill, NJ	10/29/1998	Gather Scientific Information.
35,119	Tri State Associated (Wkrs).	EL Paso, TX	10/12/1998	Grocery Goods Wholesale.
35,120	Biltell (UNITE)	St. Louis, MO	10/14/1998	Dress Coats, Suites and Sportcoats.
35,121	Pent Products, Inc. (Wkrs)	Ardmore, AL	10/18/1998	Electrical Powerways/Harnesses.
35,122	Pafer Huichita (Co.)	El Paso, TX	10/02/1998	Ladies', Men's & Children's Pants & Shorts.
35,123	Hamilton Beach-Proctor (Co.).	Mount Airy, NC	10/13/1998	Toasters and Toaster Ovens.
35,124	Twinstar Semiconductor (Wkrs).	Richardson, TX	10/06/1998	Memory Chips for Computers.
35,125	Pool Company Southwestern (Wkrs).	San Angelo, TX	10/10/1998	Oil Well Services.
35,126	Parsons Industries, Inc. (Co.).	Ashland, OR	10/05/1998	Secondary Wood Products.
35,127	Coltec Industries (USWA)	Beloit, WI	09/22/1998	Diesel Engines.
35,128	Sonju Auto Body Coatings (Co.).	Kalispell, MT	10/12/1998	Coated Robotics.
35,129	Pioneer Oil Co. (Inc (Co.)	Lawrenceville, IL	09/08/1998	Crude Oil.
35,130	Beloit Pulping Systems (UE).	Dalton, MA	10/05/1998	Dilution Nozzles, High Sheer Mixers.
35,131	Matsushita Semiconductor (Wkrs).	Puyallup, WA	10/09/1998	Integrated Circuits.
35,132	Guilford Fibers (Wkrs)	Gainesville, GA	10/05/1998	Polyster and Nylon Fiber.
35,133	Johnson Matthey (Wkrs)	Cheney, WA	10/06/1998	Thermal Plate.
35,134	Henson Garment Co., Inc. (Co.).	Athens, GA	10/15/1998	Men's & Ladies' Pants & Shorts.
35,135	Computalog Wireline (Wkrs).	Hays, KS	10/09/1998	Oil Well Services.
35,136	B.W.D. (Wkrs)	Selma, AL	10/13/1998	Automotive Parts.
35,137	Adams USA, Inc. (Co.)	Monterey, TN	10/12/1998	Protective Football Equipment.
35,138	Curry Grain Co. (Wkrs)	Filer, ID	10/09/1998	Dry Beans.
35,139	Kellwood Company (Co.)	Morgantown, KY	10/14/1998	Fleece Jackets and Winter Coats.
35,140	Georgia Pacific Lebonite (WCIW).	Lebanon, OR	10/13/1998	High Density Hardboard.

[FR Doc. 98–30362 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02624]

Jonathan Manufacturing, Fullerton, California; Notice of Termination of Investigation

Pursuant to Section 250 of the Trade Act of 1974, an investigation was initiated on September 15, 1998, in response to a petition filed on the same date on behalf of workers at Jonathan Manufacturing, Fullerton, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 30th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30354 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02527–NAFTA–02527B]

NACCO Materials Handling Group, Incorporated Yale Materials and NAFTA–02527B Counterbalanced Development Center & Headquarters; Amended Certification Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D. Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on September 8, 1998, applicable to workers of NACCO Materials Handling Group, Incorporated, Yale Materials, located in Flemington, New Jersey. The notice was

published in the **Federal Register** on September 28, 1998 (63 FR 51606).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Counterbalanced Development Center & Headquarters, Fairview, Oregon of NACCO Materials Handling Group, Incorporated. The Fairview, Oregon location provides support function services, administration, research and development for the subject firms' production facilities including Flemington, New Jersey. The workers produce forklift components.

The intent of the Department's certification is to include all workers of NACCO Materials Handling Group, Incorporated who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to cover the workers of NACCO Materials Handling Group, Incorporated, Counterbalanced Development Center & Headquarters, Fairview, Oregon.

The amended notice applicable to NAFTA–02527 is hereby issued as follows:

"All workers of NACCO Materials Handling Group, Incorporated, Yale Materials, Flemington, New Jersey (NAFTA–2527), and the Counterbalanced Development Center & Headquarters, Fairview, Oregon, (NAFTA–2527B) who became totally or partially separated from employment on or after June 18, 1997 through September 8, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30353 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02616]

NACCO Materials Handling Group, Incorporated Counterbalanced Development Center and Headquarters, Fairview, Oregon; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), an investigation was initiated on September 17, 1998 in response to a petition filed on behalf of workers at NACCO Materials Handling Group, Incorporated, Counterbalanced Development Center & Headquarters, Fairview, Oregon.

The petitioning group of workers are covered under an existing NAFTA certification (NAFTA–02527B). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 30 day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–30355 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply For NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D. Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Acting Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Acting Director of OTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Acting Director of OTAA not later than November 23, 1998.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Acting Director of OTAA at the address shown below not later than November 23, 1998.

Petitions filed with the Governors are available for inspection at the Office of the Acting Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW Washington, DC 20210.

Signed at Washington, DC this 2nd day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date received at Governor's office	Petition No.	Articles produced
Union Apparel (UNITE)	Norvelt, PA	10/15/1998	NAFTA–2,685	Men's and ladies sportcoats.
Welco Lumber (Co.)	Marysville, WA	10/22/1998	NAFTA–2,686	Cedar lumber.
Babbie Casuals (Co.)	Pacoima, CA	10/22/1998	NAFTA–2,687	Jeans.
Oldenburg Lake Shore (Co.)	Ontonagon, MI	10/22/1998	NAFTA–2,688	Heavy metal fabrication.
Pafer Huichita El Paso (Co.)	El Paso, TX	10/23/1998	NAFTA–2,689	Cutting of garments.
Gilbert and Bennett (Co.)	Carney, MI	10/21/1998	NAFTA–2,690	Cedar border fencing.
Justin Clothing (Co.)	New Bedford, MA	10/19/1998	NAFTA–2,691	Men's suits.
Santoro (UNITE)	Fall River, MA	10/19/1998	NAFTA–2,692	Men's suit.

APPENDIX—Continued

Subject firm	Location	Date Received at Governor's office	Petition No.	Articles produced
Dana Corporation—Sprague Prutsman (Wkrs).	Traverse City, MI	10/21/1998	NAFTA–2,693	Mirror brackets.
Tultex Corporation (UNITE)	Martinsville, VA	10/16/1998	NAFTA–2,694	
Textron Turf Care (UAW)	Racine, WI	09/25/1998	NAFTA–2,695	Turf care equipment.
Tri Clover (Co.)	St. Charles, MO	10/20/1998	NAFTA–2,696	Fittings for biopharm & pharmaceutical.
Standard Manufacturing (Co.)	Orlando, FL	09/25/1998	NAFTA–2,697	Automotive axles.
Coltec Industries—Fairbank Morse (USWA).	Beloit, WI	10/12/1998	NAFTA–2,698	Diesel engines.
Longview Fiber (WCIW)	Leavenworth, WA	10/26/1998	NAFTA–2,699	Soft wood dimension lumber.
Lincoln Brass Works (Wkrs)	Waynesboro, TN	10/23/1998	NAFTA–2,700	Brass gas valves.
PL Subsidiary, PL Garment Finishers (Co.).	Dublin, GA	10/26/1998	NAFTA–2,701	Denim blue jeans.
Cordis Corporation (Co.)	Miami Lakes, FL	10/27/1998	NAFTA–2,702	Disgnostic catheters.
Household Products (Co.)	Asheboro, NC	10/29/1998	NAFTA–2,703	Household consumer products.
Jayo Sportswear (UNITE)	Bethlehem, PA	10/29/1998	NAFTA–2,704	Ties and neckwear.
Rexnord Chain (USWA)	Indianapolis, IN	10/23/1998	NAFTA–2,705	Chains for oil rigs.
Electronic Components and Systems (Co.).	Tuscon, AZ	10/27/1998	NAFTA–2,706	Circuit board assemblies.
Detroit Steel Products (Co.)	Morristown, IN	10/26/1998	NAFTA–2,707	Springs—heavy truck.
Northern Cheyenne Pine (Wkrs)	Ashland, MT	10/27/1998	NAFTA–2,708	Lumber.
Clar Mar (Co.)	Cherryville, NC	10/29/1998	NAFTA–2,709	Ladies sportswear.
Bulk Pack (Co.)	Denison, TX	10/30/1998	NAFTA–2,710	Woven polypropylene bulk bags.
A.L. Gebhardt Tannery (Wkrs)	Milwaukee, WI	09/29/1998	NAFTA–2,711	Leather.
Halliburtion Energy Services (Wkrs).	Casper, WY	10/29/1998	NAFTA–2,712	Oil field services.
Clarion Manufacturing Corp. of America (Wkrs).	Walton, KY	10/30/1998	NAFTA–2,713	Wiring.
Dealers Manufacturing (Co.)	Portage, WI	10/28/1998	NAFTA–2,714	Automotive engines.

[FR Doc. 98–30361 Filed 11–12–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

Gengeral Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 6th day of November 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–30233 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–54; Application Number D–09643]

Class Exemption Relating to Certain Employee Benefit Plan; Foreign Exchange Transactions Executed Pursuant to Standing Instructions

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974

(ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The class exemption permits certain foreign exchange transactions between employee benefit plans and certain banks and broker-dealers which are parties in interest with respect to such plans, pursuant to standing instructions. The exemption affects participants and beneficiaries of employee benefit plans involved in such transactions, as well as banks and broker-dealers which act as dealers in foreign exchange.

EFFECTIVE DATES: Section II is effective for transactions occurring from June 18, 1991 to January 12, 1999. Section III is effective for transactions occurring after January 12, 1999.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210 (202) 219–8971 (not a toll-free number) or Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, (202) 219–4600, ext. 105 (not a toll-free number).

Paperwork Reduction Act Analysis: Pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. Chapter 35 and 5 CFR Part 1320, the information collection request (ICR) in this class exemption was published for public comment on February 3, 1997 (62 FR 5051). Based upon information received by the Department of Labor (the Department), the estimated information collection burden has been adjusted (see Respondents and Proposed Frequency of Response and Estimated Annual Burden, below). The Office of Management and Budget (OMB) has approved this ICR with the control number OMB 1210–0111, which expires on November 30, 2001. Persons are not required to respond to this ICR unless it displays a currently valid OMB control number.

Respondents and Proposed Frequency of Response: The Department staff estimates that approximately 35 parties will seek to take advantage of the class exemption in any given year. The respondents will be banks and broker-dealers acting as fiduciaries of plans which engage in foreign exchange transactions with such plans.

Estimated Annual Burden: The Department staff estimates the annual burden hours for preparing disclosure materials and maintaining records required under the class exemption to be 4,200 hours.

Supplementary Information

The proposed exemption was initially requested in an application dated July 18, 1984 (Application No. D–5700), submitted by the American Bankers Association (ABA) pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Pursuant to the foregoing authority, the Department proposed additional conditions with respect to the relief requested by the Applicant.

On February 17, 1994, the Department granted PTE 94–20 (59 FR 8022), a class exemption which permits purchases and sales of foreign currencies between employee benefit plans and certain banks or broker-dealers which are parties in interest with respect to such plans provided that such transactions are directed by a plan fiduciary who is independent of the bank or broker-dealer and the other conditions of the exemption are met. PTE 94–20 provides an exemption from the prohibited transaction restrictions of section 406(a)(1)(A) through (D) of the Act and from the sanctions resulting from section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code. PTE 94–20 did not provide relief for all of the transactions described in the 1984 ABA exemption request.

In response to the notice of proposed exemption for PTE 94–20, a number of commenters (the Commenters) expressed concern regarding the lack of relief for foreign exchange transactions executed pursuant to standing instructions. As explained in greater detail in the preamble to PTE 94–20, the Commenters requested that the Department expand the exemption to include retroactive and prospective relief for foreign exchange transactions entered into pursuant to a "standing authorization" (hereinafter standing instruction). Many of the Commenters also requested that the Department amend the definition of the term "directed transaction" by modifying the requirement that the independent plan fiduciary effect the foreign exchange transaction at a specific exchange rate.

The Commenters represented that the utilization of standing instructions is an integral component in foreign exchange transactions involving employee benefit plans. In this regard, the Commenters indicated that, without the ability to execute foreign exchange transactions with plans pursuant to standing instructions, plans would lose investment income and incur higher exchange rates on small transactions.

Based upon the comments and additional information received following publication of the proposal to PTE 94–20, the Department concluded that it might be appropriate, under limited circumstances, to provide relief from section 406(b)(1)and (b)(2) of the Act for foreign exchange transactions entered into pursuant to standing instructions. However, pursuant to the requirements of section 408(a) of the Act, the Department is required to offer interested persons an opportunity to present their views and an opportunity to request a hearing before granting an exemption from section 406(b) of the Act. Therefore, in order not to have delayed the publication of PTE 94–20, the Department determined to separately consider exemptive relief from sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of the Act for foreign exchange transactions between a plan and a party in interest bank or, broker-dealer where such transactions are engaged in pursuant to a standing instruction.

During the Department's consideration of the standing instruction issue, the ABA made a supplemental submission on September 1, 1992, in which they limited their request for relief for standing instruction transactions and suggested additional conditions regarding such transactions. Over the course of the following two years, the Department solicited further information from the ABA and other interested parties. As a result of the suggestions and comments received from those parties, as well as the imposition of additional conditions by the Department, the Department believed that a number of its concerns regarding standing instruction [1] transactions have been addressed.

On February 3, 1997, the Department published a notice in the **Federal Register** (62 FR 5051) of the pendency of a proposed class exemption from the restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and (b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975 (c)(1)(A) through (E) of the Code for foreign exchange transactions, between a bank or broker-dealer and an employee benefit plan with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction.

The notice of pendency gave all interested persons an opportunity to submit written comments or request a public hearing on the proposed class exemption by April 4, 1997. The Department received three public comment letters and no requests for a public hearing in response to the notice.

[1] For a discussion of those Comments, see the proposed exemption at 62 FR 5052–54.

Upon consideration of the record as a whole, the Department has determined to grant the proposed class exemption, subject to certain modifications. These modifications and the comments are discussed below.

Discussion of the Comments

Section III(i) of the proposed exemption contains a condition which requires that a bank or broker-dealer which engaged in a covered transaction, furnish the authorizing plan fiduciary with a confirmation statement for each covered transaction. The confirmation statement must disclose the time of the exchange.[2] All of the Commenters objected to this requirement. According to the Commenters, time stamping confirmation statements is not a current industry practice, nor a practice which could be easily implemented. The Commenters indicated that the cost of disclosing the time of the transaction on the confirmation statements would far outweigh any benefits to be gained.

One Commenter explained in greater detail why the inclusion of the time on the confirmation statement was not only impractical but also unresponsive to our concern that a plan fiduciary be able to monitor the rates charged in foreign exchange transactions. According to the Commenter, a time-stamp enables a plan to look at the rates available at the time stamped, without regard to whether those rates would have been available for transactions the size of that particular plan's transaction. In addition, the information may be misleading because the trade may or may not have been batched with other trades to achieve a better rate for the client plan. Where trades are aggregated prior to conversion, it may take several hours before the investment manager desegregates the trades and allocates pieces to each of its clients. The trade is not time-stamped until it has been allocated to each client and booked into the trade entry system. The trade entry system uses a current time-stamp and cannot be manipulated to reflect the time when the actual transaction occurred. Thus, the rate at the time that the order is stamped may have nothing to do with the rate at which the trade was executed.

In addressing the Department's concern regarding the ability of plan fiduciaries to monitor the rates charged in foreign exchange transactions, the Commenter noted that there are a variety of sources from which foreign exchange price quotes are available. These include Reuters, electronic brokerage systems and the Internet. The Commenter indicated that the foreign exchange market is very transparent as a result of new technologies and that any plan which engages in foreign exchange trading can easily access at least one of the sources of foreign currency rates. Thus, plan fiduciaries have the ability to monitor prices for trades by reviewing the highs and lows of the day as displayed on one of the reporting services. In addition, the Commenter noted that in order to comply with banking safety and soundness requirements, banks must have a system for detecting trades which are off market i.e., whose currency spreads deviate significantly from other trades in the same currency. These internal safeguards enable a bank to monitor its own traders to maintain the integrity of their foreign currency pricing systems.

The Department has considered the comments regarding the requirement for inclusion of the time of the transaction on the confirmation statement and has determined to delete this requirement from the final exemption.

The Department wishes to point out that ERISA's general standards of fiduciary conduct would apply to the standing instruction arrangements permitted by this class exemption. Section 404 of ERISA requires, among other things, that a fiduciary discharge his duties with respect to a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion.[3] Specifically, the investment manager or independent plan fiduciary must be capable of periodically monitoring the actions taken by the bank or broker-dealer in the course of its execution of foreign exchange transactions pursuant to standing instructions. In considering whether to authorize a bank or broker-dealer to execute foreign exchange transactions pursuant to standing instructions, a fiduciary should take into account its ability to provide adequate oversight of the bank or broker-dealer.

Under section I of the proposed exemption, relief was provided for transactions involving income item conversions, as well as for *de minimis* purchase or sale transactions. The definition of "income item conversion" under section IV(g) was limited to transactions involving the exchange of income conversion items into U.S. dollars. The Department imposed this limitation because of concerns regarding the ability of a bank to maintain converted funds in an interest bearing account. The ABA requested that the Department expand the scope of the final exemption to include the conversion of foreign denominated income receipts into another foreign currency pursuant to standing instructions. The Commenter represents that plans benefit from foreign exchange conversions under standing instructions because the foreign exchange trades can be done quickly and the plans can begin to earn interest on the funds as soon as possible. The ABA further represents that some financial institutions have interest bearing investments or investment pools that will accept currencies that are not U.S. dollars. Accordingly, the ABA suggested that the Department modify the final exemption to permit the conversion of income items into non-U.S. dollars under any of the following circumstances: (1) Income items which are received in a foreign currency are exchanged into another foreign currency and the exchanged funds are held in an interest bearing investment vehicle pending further investment instruction; (2) the conversion is executed pursuant to a standing instruction and the reinvestment of the exchanged foreign currency occurs within a prescribed period of time, such as 24 hours; and (3) the standing instruction directs that an income item be converted from one foreign currency into another foreign currency. According to the ABA, plans will receive the benefit of only going through one conversion instead of two, thus, saving the cost of one foreign exchange transaction. In this regard, the Department is unable to conclude that income item conversions into non-U.S. dollars should be permitted under the final exemption if the plan is not able to earn interest on the conversion amounts which are held by the bank for more than 24 hours after conversion. We note, however, that such conversions may be appropriate where interest is earned on amounts held for more than 24 hours after conversion as long as the bank does not determine the non-U.S.

[2] Under the proposal, this requirement would be deemed satisfied if the bank or broker-dealer engaged in the covered transactions only once a day and the time of such conversions is set forth in the bank's or broker-dealer's written policies and procedures which are provided to the independent plan fiduciary.

[3] The investment manager or other independent plan fiduciary must act prudently with respect to the decision to enter into such an arrangement, such as considering the effect of restrictions on funds transfers by foreign governments, as well as to the negotiation of the specific terms under which the bank or broker-dealer will engage in foreign exchange transactions on behalf of the plan including whether the bank or broker-dealer may use non-affiliated foreign custodians. In addition, the investment manager or other independent plan fiduciary must fully understand the benefits and risks associated with engaging in foreign exchange transactions pursuant to standing instructions following disclosure by the bank or broker-dealer of all relevant information.

currency into which the income item is converted. Accordingly, the Department has determined to modify the definition of the term income item conversion in the final exemption to provide relief for transactions in which the bank has a standing instruction that requires the conversion of income items from one foreign currency into another foreign currency and either the converted funds are transferred to an interest bearing account within 24 hours of the conversion and held therein pending further investment direction from the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan. In response to the Commenter's third suggestion, the Department does not believe that the Commenter has adequately demonstrated that such further relief is warranted. Therefore, the Department has determined not to adopt the Commenter's last suggestion.

Section IV (g) and (h) of the proposed exemption define the terms "income item conversion" and "de minimis purchase or sale transaction" to limit relief to transactions involving no more than 100,000 in U.S. dollars or the equivalent thereof for each transaction. Two Commenters urged the Department to reconsider the $100,000 limitation for such transactions. The ABA stated that the $100,000 limitation may add costs to employee benefit plan foreign exchange transactions. It was explained, for example, that banks may hold foreign securities through a global custody network of affiliated and non-affiliated subcustodians. Under these circumstances, securities issued in a foreign country are commingled with the securities of a number of the bank's clients and held in omnibus accounts at the bank's subcustodians in that foreign country. For tax reasons, omnibus accounts may be further divided into several subaccounts maintained at the subcustodians. According to the Commenter, foreign exchange conversions are transacted at either the omnibus account level or the subaccount level to expedite the conversion and to enable the conversion to be bundled. Since the process of allocating income items to individual accounts is not done until after the conversion takes place, a bank would not know the amount of any particular plan's assets that are involved at the time of the foreign exchange transaction. Thus, the Commenter noted that a bank could not determine whether a transaction met the $100,000 limitation proposed by the Department for income conversions. The Commenter argues that, if a plan was unable to take advantage of the omnibus or subaccount system, the plan would be precluded from receiving the benefit of bundling its income conversion items with the bank's other customers to get a more favorable foreign exchange rate. In addition, the Commenters represent that plans would incur increased custody costs if the omnibus or subaccounts system was not available for plan foreign exchange transactions.

Both Commenters urged the Department to raise the dollar limitation for *de minimis* purchases and sales and income conversions. According to the Commenters, $100,000 is no longer an adequate limitation for either purchase and sale transactions or income conversions. The ABA suggested that the Department adopt a floating cap based on the size of a plan's total assets. Under this approach, a plan with $50 million or more in total assets would be limited to $500,000 under the exemption. Plans with total assets of less than $50 million would be limited to $100,000 for each foreign exchange transaction. As an alternative suggestion, the Commenter urged the Department to raise the dollar limitation to $500,000 and inform small plans in the preamble to the final class exemption that it may be prudent to utilize standing instructions with a lower dollar limit.

One of the major reasons cited by the ABA for the utilization of standing instructions by plans was that obtaining specific directions from plans for relatively small transactions was time consuming and not in the best interests of plans because of increased transaction costs. At the time the Department proposed relief for income item conversions and *de minimis* purchases and sales, such relief was based on the premise that the exemption would only cover transactions involving the receipt of relatively small amounts of foreign currency. In this regard, the conditions proposed by the Department were specifically designed to address foreign exchange transactions in the context of small transactions. Although the ABA initially suggested a $500,000 limitation, the Department believed at the time that a limitation of $100,000 was a more appropriate measure for transactions which are intended to be relatively small. The Department recognizes that, over the past several years, plans have increased foreign investments so that $100,000 may no longer be an appropriate limitation for income item conversions or *de minimis* purchases and sales. However, the Department is not persuaded by the argument that a foreign exchange transaction involving $500,000 should be properly viewed as a small transaction for purposes of this exemption. After considering the issue, the Department has decided to modify the final exemption to increase the limitation to $300,000. The Department believes that increasing the dollar limitation to $300,000 will make it easier for those banks which use the omnibus/subaccount system to monitor the amount of a plan's assets which are involved in a foreign exchange transaction. In addition, a $300,000 limitation will ensure that the transactions that a plan is permitted to engage in pursuant to this exemption will only be those which are relatively small. Accordingly, the Department has modified the definitions of the terms "income item conversion" and "*de minimis* purchase or sale transaction" to increase the dollar limitation to no more than 300,000 in U.S. dollars or the equivalent thereof.[4]

Sections II(d) and III(d) of the proposed class exemption require banks and broker-dealers to maintain written policies and procedures regarding the handling of foreign exchange transactions for plans which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan. A Commenter represents that, since a subaccount typically holds the securities of a number of customers which are not ERISA covered plans, foreign exchange traders would not always know whether the funds involved in a specific foreign exchange transaction contain plan assets. It is the view of the Department that sections II(d) and III(d) will be deemed satisfied if bank policies and procedures for handling foreign exchange transactions require the bank or broker-dealer to always assume that foreign exchange trades of amounts held in subaccounts involve plan assets.

Section III(h) of the proposed exemption required that the written policies and procedures provided to the authorizing fiduciary disclose the time(s) each day that the bank or broker-dealer will establish the specific rate of exchange or the range of exchange rates, as well as the time(s) that the conversions will take place. The ABA requested that the Department clarify whether this condition requires that a

[4] Although the Department believes that the $300,000 limitation is appropriate for large plans that purchase and sell foreign securities, it further notes that such dollar limitation may not be appropriate for smaller plans (e.g., plans with aggregate plan assets of less than $50 million). It is the responsibility of the investment manager or other plan fiduciary, consistent with its duties under section 404 of ERISA, to utilize standing instructions with a dollar limitation that is prudent under the particular circumstances.

bank with several locations in different time zones engage in foreign exchange transactions at all locations at the same time period based on a specific time zone (i.e., 10:00 a.m. New York and 4 p.m. London).

The Department notes that the purpose of this condition is to provide the authorizing fiduciary with the information necessary to effectively monitor the rates that the plans are charged. The Department does not interpret this condition to require that a bank's foreign exchange desks located in different time zones establish foreign exchange rates simultaneously with their U.S. affiliate. Accordingly, nothing contained in section III(h) would preclude a bank or broker-dealer from setting exchange rate(s) at different times if the bank or broker-dealer engages in foreign exchange transactions at locations in different time zones, provided that this information is provided to the authorizing fiduciary.

Two Commenters requested that the Department delete the requirement under section III(f) of the proposal that a non-affiliated custodian provide notice to the bank or broker-dealer that good funds have been received no later than two business days following receipt of such funds by the foreign custodian. The Commenters noted that, while non-affiliated subcustodians are generally required to send notice promptly, the banks do not control the actions of their non-affiliated subcustodians and thus cannot monitor or control when notice of good funds will be provided. The Commenters also noted that even absent this requirement, conversions will still have to be executed by the bank either at the next scheduled time for such transactions following receipt of notice from the non-affiliated subcustodian that good funds have been received or under some circumstances not more than 24 hours after receipt of such notice.

After considering the comments, the Department has determined to delete this requirement as it pertains to non-affiliated custodians of the bank or broker-dealer. In this regard, the Department expects the bank or broker-dealer to act prudently with respect to the selection and continued retention of a non-affiliated foreign custodian. Any such determination should reflect the capability of the foreign affiliate to promptly notify the bank or broker-dealer of its receipt of good funds.

The prospective conditional relief under the proposal is effective for covered transactions entered into after May 5, 1997. The ABA urged the Department to delay application of the prospective conditions of the exemption for sixty days after publication of the final class exemption. According to the ABA, the banking industry needs sufficient time to change their practices to meet the requirements and conditions of the final exemption. The Department finds merit in this comment and has modified the final exemption to make the prospective conditions effective sixty days after publication of this final class exemption.

The proposed exemption provided conditional retroactive relief for foreign exchange transactions which were executed pursuant to standing instructions from June 18, 1991, until May 5, 1997. The ABA questioned why the Department did not provide retroactive relief for transactions which were executed pursuant to standing instructions prior to June 18, 1991.

The Department does not believe that the Commenter has sufficiently demonstrated the need for an earlier effective date. Therefore, the Department cannot conclude that an earlier effective date is warranted.

One Commenter expressed concern regarding the provision in section III(g)(1) of the proposed class exemption which limits the number of times per day that a bank or broker-dealer could establish a rate of exchange or a range of rates to be used for transactions covered by the exemption. The Commenter stated that they could see no purpose in this limitation. Moreover, the Commenter believes that in highly active markets it would not be in the best interests of plans to set an arbitrary limit.

The Department finds merit in the Commenter's argument and has determined to delete this limitation from the final exemption. We note, however, that the written policies and procedures provided to the authorizing fiduciary must disclose, among other things, the time(s) each day that the rate(s) will be established.

One Commenter requested that the final exemption be expanded to include relief for "a limited standing instruction," in order to permit transactions to occur at market prices within one business day after the instruction is given without the requirement that a specific amount of foreign currency and a specific exchange rate be directed, provided that a fiduciary independent of the broker-dealer specifies a price range and a quantity range in which the transaction should be conducted. The Department does not believe that it has sufficient information on the record at this time to make the findings necessary to provide further exemptive relief. Moreover, the Department does not believe that a sufficient showing has been made that the conditions suggested by the Commenter would adequately protect the interests of participants and beneficiaries of plans which engage in transactions pursuant to the limited standing instructions. Finally, we note that while the class exemption is only available to banks, broker-dealers and their domestic affiliates, many of the conditions in the exemption apply to both domestic and foreign affiliates. Accordingly, we have added a new paragraph (l) which defines the term "foreign affiliate", to the final class exemption to clarify this distinction.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties with respect to the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department finds that the exemption is administratively feasible, in the interests of plans and their participants and beneficiaries and protective of the rights of participants and beneficiaries of the plans.

(3) The class exemption is applicable to a transaction only if the conditions specified in the class exemption are met; and

(4) The class exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I Covered Transactions

(a) For the period from June 18, 1991 to January 12, 1999, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Employee Retirement Security Act of 1974 (ERISA or the Act) and the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the following foreign exchange transactions, between a bank or broker-dealer and an employee benefit plan with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section II below are met:

(1) An income item conversion; or

(2) A *de minimis* purchase or sale transaction.

(b) Effective after January 12, 1999, the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the following foreign exchange transactions, between a bank or broker-dealer, and an employee benefit plan with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest, pursuant to a standing instruction, if the conditions set forth in section III below are met:

(1) An income item conversion; or

(2) A *de minimis* purchase or sale transaction.

Section II Retroactive Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank or the broker-dealer in comparable arm's length foreign exchange transactions involving unrelated parties.

(c) Neither the bank, the broker-dealer nor any foreign affiliate thereof, has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of those assets.

(d) The bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(e) The exchange rate used by the bank or broker-dealer for a particular foreign exchange transaction did not deviate by more than 10% (above or below) the interbank bid and asked rates at the time of the transaction as displayed on Reuters or another independent service in the foreign currency market for such currency; provided, however, that a prohibited transaction shall not be deemed to have occurred solely because records demonstrating compliance with this section with respect to specific transactions have been lost, destroyed or are not available to the bank or broker-dealer. Nothing in this section shall be deemed to relieve the bank or broker-dealer of its responsibility to demonstrate compliance with the conditions of this exemption.

(f) A written confirmation statement is furnished with respect to each covered transaction to the independent plan fiduciary that authorized the standing instruction. The confirmation statement shall include:

(A) Account name;

(B) Transaction date;

(C) Exchange rates;

(D) Settlement date;

(E) Currencies exchanged;

(i) Identity of foreign currency sold;

(ii) Amount sold;

(iii) Identity of currency purchased; and

(iv) Amount purchased.

The confirmation shall be issued in no event more than 5 business days after execution of the transaction.

Section III Prospective Conditions

(a) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms generally available in comparable arm's-length foreign exchange transactions between unrelated parties.

(b) At the time the foreign exchange transaction is entered into, the terms of the transaction are not less favorable to the plan than the terms afforded by the bank or broker-dealer in comparable arm's-length foreign exchange transactions involving unrelated parties.

(c) Neither the bank, the broker-dealer, nor any foreign affiliate thereof has any discretionary authority or control with respect to the investment of the plan assets involved in the transaction or renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to the investment of those assets.

(d) The bank or broker-dealer maintains at all times written policies and procedures regarding the handling of foreign exchange transactions for plans with respect to which the bank or broker-dealer is a trustee, custodian, fiduciary or other party in interest or disqualified person which assure that the person acting for the bank or broker-dealer knows that he or she is dealing with a plan.

(e) The covered transaction is performed under a written authorization executed in advance by a fiduciary of the plan whose assets are involved in the transaction, which plan fiduciary is independent of the bank or broker-dealer engaging in the covered transaction or any foreign affiliate thereof. The written authorization must specify:

(1) The identities of the currencies in which covered transactions may be executed; and (2) That the authorization may be terminated by either party without penalty on no more than ten days notice.

(f)(1) Income item conversions are executed within no more than one business day from the date of receipt of notice by the bank or broker-dealer that such items are good funds, and a foreign custodian which is an affiliate of the bank or broker-dealer, provides such notice to the bank or broker-dealer within "one business day" of its receipt of good funds;

(2) *De minimis* purchase and sale transactions are executed within no more than one business day from the date that either the bank or broker-dealer receives notice from a foreign custodian that the proceeds of a sale of foreign securities denominated in foreign currency are good funds, or the direction to acquire foreign currency was received by the bank or broker-dealer, and a foreign custodian which is an affiliate of the bank or broker-dealer, provides such notice to the bank or broker-dealer within one business day of its receipt of good funds from a sale.

(g)(1) At least once each day, at the time(s) specified in its written policies and procedures, the bank or broker-dealer establishes either a rate of exchange or a range of rates to be used

for income item conversions and *de minimis* purchase and sale transactions covered by this exemption.

(2) Income item conversions are executed at the next scheduled time for conversions following receipt of notice by the bank or broker-dealer from the foreign custodian that such funds are good funds. If it is the policy of the bank or broker-dealer to aggregate small amounts of foreign currency until a specified minimum threshold amount is received, then the conversion may take place at a later time but in no event more than 24 hours after receipt of notice.

(3) *De minimis* purchase and sale transactions are executed at the next scheduled time for such transactions following receipt of either notice that the sales proceeds denominated in foreign currency are good funds, or a direction to acquire foreign currency. If it is the policy of the bank or broker-dealer to aggregate small transactions until a specified threshold amount is received, then the execution may take place at a later time but in no event more than 24 hours after receipt of either notice that the sales proceeds have been received by the foreign custodian as good funds, or a direction to acquire foreign currency.

For purposes of this paragraph (g), the range of exchange rates established by the bank or broker-dealer for a particular foreign currency cannot deviate by more than three percent [above or below] the interbank bid and asked rates as displayed on Reuters or another nationally recognized independent service in the foreign exchange market, for such currency at the time such range of rates is established by the bank or broker-dealer.

(h) Prior to the execution of the authorization referred to in paragraph (e), the bank or broker-dealer provides the independent fiduciary with a copy of the bank's or broker-dealer's written policies and procedures regarding the handling of foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions. The policies and procedures must, at a minimum, contain the following information:

(1) Disclosure of the time(s) each day that the bank or broker-dealer will establish the specific rate of exchange or the range of exchange rates for the covered transactions to be executed and the time(s) that such covered transactions will take place. The bank or broker-dealer shall include a description of the methodology that the bank or broker-dealer uses to determine the specific exchange rate or range of exchange rates;

(2) Disclosure that income item conversions and *de minimis* purchase and sale transactions will be executed at the first scheduled transaction time after notice that good funds from an income item conversion or a sale have been received, or a direction to purchase foreign currency has been received. To the extent that the bank or broker-dealer aggregates small amounts of foreign currency until a specified minimum threshold amount is met, a description of this practice and disclosure of the threshold amount; and

(3) A description of the process by which the bank's or broker-dealer's foreign exchange policies and procedures for income item conversions and *de minimis* purchase and sale transactions may be amended and disclosed to plans.

(i) The bank or broker-dealer engaging in the covered transaction furnishes to the independent fiduciary a written confirmation statement with respect to each covered transaction not more than five business days after execution of the transaction.

1. With respect to income item conversions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that good funds were received;

(C) Transaction date;

(D) Exchange rate;

(E) Settlement date;

(F) Identity of foreign currency;

(G) Amount of foreign currency sold;

(H) Amount of U.S. dollars or other currency credited to the plan; and

2. With respect to *de minimis* purchase and sale transactions, the confirmation shall disclose the following information:

(A) Account name;

(B) Date of notice that sales proceeds denominated in foreign currency are received as good funds or direction to acquire foreign currency was received;

(C) Transaction date;

(D) Exchange rates;

(E) Settlement date;

(F) Currencies exchanged:

i. Identity of the currency sold;

ii. The amount sold;

iii. Identity of the currency purchased; and

iv. The amount purchased;

(j) The bank or broker-dealer, maintains, within territories under the jurisdiction of the United States Government, for a period of six years from the date of the transaction, the records necessary to enable the persons described in paragraph (l) of this section to determine whether the applicable conditions of this exemption have been met, including a record of the specific exchange rate or range of exchange rates the bank or broker-dealer established each day for foreign exchange transactions effected under standing instructions for income item conversions and *de minimis* purchase and sale transactions. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the bank's or broker-dealer's control, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the bank or broker-dealer shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained by the bank or broker-dealer, or are not made available for examination by the bank or broker-dealer, or its affiliate as required by paragraph (k) of this section.

(k)(1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j) of this Section are available at their customary location for examination, upon reasonable notice, during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service.

(B) Any fiduciary of a plan who has authority to acquire or dispose of the assets of the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such fiduciary.

(C) Any contributing employer to the plan involved in the foreign exchange transaction or any duly authorized employee or representative of such employer.

(2) None of the persons described in subparagraphs (B) and (C) shall be authorized to examine a bank's or broker-dealer's trade secrets or commercial or financial information of a bank or broker-dealer, which is privileged or confidential.

Section IV Definitions and General Rules

For purposes of this exemption,

(a) A *foreign exchange transaction* means the exchange of the currency of one nation for the currency of another nation.

(b) The term *standing instruction* means a written authorization from a plan fiduciary, who is independent of the bank or broker-dealer engaging in the foreign exchange transaction and any foreign affiliate thereof, to the bank or broker-dealer to effect the transactions specified therein pursuant

to the instructions provided in such authorization.

(c) A *bank* means a bank which is supervised by the United States or a State thereof, or any domestic affiliate thereof.

(d) A *broker-dealer* means a broker-dealer registered under the Securities Exchange Act of 1934, or any domestic affiliate thereof.

(e) A *domestic affiliate* of a bank or broker-dealer means any entity which is supervised by the United States or a State thereof and which is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank or broker-dealer.

(f) The term *control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(g) An *income item conversion* means: (1) The conversion into U.S. dollars of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends or other distributions or payments with respect to a security, tax reclaïms, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by the bank or broker-dealer on behalf of the plan from the plan's foreign investment portfolio; or (2) the conversion into any currency as required and specified by the standing instruction of an amount which is the equivalent of no more than 300,000 U.S. dollars of interest, dividends, or other distributions or payments with respect to a security, tax reclaims, proceeds from dispositions of rights, fractional shares or other similar items denominated in the currency of another nation that are received by the bank or broker-dealer on behalf of the plan from the plan's foreign investment portfolio, provided that the converted funds are either transferred to an interest bearing account which provides a reasonable rate of interest within 24 hours of the conversion and held therein pending reinvestment by the plan or the bank reinvests such proceeds within 24 hours of the conversion at the direction of the plan.

(h) A *de minimis purchase or sale transaction* means the purchase or sale of foreign currencies in an amount of no more than 300,000 U.S. dollars or the equivalent thereof in connection with the purchase or sale of foreign securities by a plan.

(i) For purposes of this exemption the term *employee benefit plan* refers to a pension plan described in 29 CFR § 2510.3–2 and/or a welfare benefit plan described in 29 CFR § 2510.3–1.

(j) For purposes of this exemption, the term *good funds* means funds immediately available in cash with no sovereign or other governmental impediments or restrictions to the exchange or transfer of such funds.

(k) For purposes of this exemption, the term *business day* means a banking day as defined by federal or state banking regulations.

(l) For purposes of this exemption, the term *foreign affiliate* of a bank or broker-dealer means any non-U.S. entity which is directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such bank or broker-dealer.

Signed at Washington, DC this 6th day of November 1998.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–30291 Filed 11–12–98; 8:45 am]

BILLING CODE 4510–29–P

THE NATIONAL BIPARTISAN COMMISSION ON THE FUTURE OF MEDICARE PUBLIC MEETING

Establishment of the Medicare Commission Included in Chapter 3, Section 4021 of the Balanced Budget Act of 1997 Conference Report

The Medicare Commission is charged with holding public meetings and publicizing the date, time and location in the **Federal Register**.

The National Bipartisan Commission on the Future of Medicare will hold a public meeting on Wednesday, December 2 and possibly on Thursday, December 3, 1998 at the Dirksen Senate Office Building, Room 106, Washington, DC. Please check the Commission's web site for additional information: *http://Medicare.Commission.Gov*

Wednesday, December 2, 1998
1:00 pm–5:00 pm
Tentative Agenda:
Members of the Commission to discuss pending issues.

(Tentative date for additional meeting)
Thursday, December 3, 1998
9:30 pm–11:30 am
Tentative Agenda:
Members of the Commission to discuss pending issues.

If you have any questions, please contact the Bipartisan Medicare Commission, ph: 202–252–3380.

Authorized for publication in the **Federal Register** by Julie Hasler, Office Manager, The National Bipartisan Commission on the Future of Medicare.

I hereby authorize publication of the Medicare Commission meetings in the **Federal Register**.

Julie Hasler,

Office Manager, National Bipartisan Medicare Commission.

[FR Doc. 98–30342 Filed 11–12–98; 8:45 am]

BILLING CODE 1132–00–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–388]

PP&L, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PP&L, Inc. (the licensee) to withdraw its June 17, 1998, application for proposed amendment to Facility Operating License No. NPF–22 for the Susquehanna Steam Electric Station, Unit 2, located in Luzerne County, Pennsylvania.

The proposed amendment would have revised the Susquehanna Steam Electric Station's Technical Specifications (TSs) to add notations to TSs 3.3.7.5, 4.3.7.5, 3.4.2, and 4.4.2 that the acoustic monitor for safety relief valve "J" may be inoperable beginning June 15, 1998, until the next unit shutdown of sufficient duration to allow for containment entry, not to exceed the ninth refueling and inspection outage (spring 1999). .

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 23, 1998 (63 FR 34200). However, by letter dated July 13, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 17, 1998, and the licensee's letter dated July 13, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 5th day of November 1998.

For the Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30418 Filed 11–12–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Boiling-Water Reactor Licensees Use of the BWRVIP–05 Report To Request Relief From Augmented Examination Requirements on Reactor Pressure Vessel Circumferential Shell Welds; Issue

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Generic Letter (GL) 98–05 to all holders of operating licenses for nuclear power reactors, except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel, to inform them that the NRC staff has completed its review of the "BWR Vessel and Internals Project (BWRVIP), BWR Reactor Pressure Vessel Shell Weld Inspection Recommendations (BWRVIP–05)," and that they may request permanent (i.e., for the remaining term of operation under the existing, initial license) relief from the inservice inspection requirements of 10 CFR 50.55a(g) for the volumetric examination of circumferential reactor pressure vessel welds, by demonstrating that: (1) At the expiration of the license, the circumferential welds will continue to satisfy the limiting conditional failure probability for circumferential welds stated in the NRC staff's July 28, 1998, safety evaluation, and (2) licensees have implemented operator training and established procedures that limit the frequency of cold over-pressure events to that specified in the staff's July 28, 1998, safety evaluation. Addressees will still need to perform their required inspections of "essentially 100 percent" of all axial welds.

The generic letter is available in the NRC Public Document Room under accession number 9811030134.

DATES: The generic letter was issued on November 10, 1998.

ADDRESSES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Gene Carpenter, at (301) 415–2169.

SUPPLEMENTARY INFORMATION: The generic letter requires no specific action or written response. Any action on the part of an addressee to request relief from the inservice inspection requirements of 10 CFR 50.55a(g) is strictly voluntary.

Dated at Rockville, Md., this 10th day of November 1998.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Director, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30417 Filed 11–12–98; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in November 1998. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in December 1998.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to change the applicable percentage to 85 percent, effective for plan years beginning on or after July 1, 1997. (The amendment also provides for a further increase in the applicable percentage—to 100 percent—when the Internal Revenue Service adopts new mortality tables for determining current liability.)

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in November 1998 is 4.26 percent (*i.e.*, 85 percent of the 5.01 percent yield figure for October 1998).

(Under section 774(c) of the RPA, the amendment to the applicable percentage was deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans has therefore remained 80 percent for plan years beginning before January 1, 1998. For "partial" RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's 1997 premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.)

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between December 1997 and November 1998. The rate for December 1997 in the table (which reflects an applicable percentage of 85 percent) applies only to non-RPU plans. However, the rates for months after December 1997 apply to RPU (and "partial" RPU) plans as well as to non-RPU plans.

For premium payment years beginning in:	The assumed interest rate is:
December 1997	5.19
January 1998	5.09
February 1998	4.94
March 1998	5.01
April 1998	5.06
May 1998	5.03

For premium payment years beginning in:	The assumed interest rate is:
June 1998	5.04
July 1998	4.85
August 1998	4.83
September 1998	4.71
October 1998	4.42
November 1998	4.26

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in December 1998 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 6th day of November 1998.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–30447 Filed 11–12–98; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

New Application Procedures for Federal Jobs (Automated Resume Processing)

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice with request for written comments.

SUMMARY: This notice announces approval for Federal agencies to restrict application format for employment consideration to the resume when applications will be processed using automation.

Beginning on November 13, 1998, agencies may continue to accept the *Optional Application for Federal Employment* (OF–612), resumes, or other written formats when considering applicants for Federal employment; or agencies may choose to restrict application format to the resume when applications will be processed using automation.

The OPM pamphlet, *Applying for Federal Job* (OF–510), which describes what applicants should include in resumes or applications submitted for consideration for Federal jobs, will be updated to include a sample resume document and to explain new agency application processing options. Applicants can get copies of the updated pamphlet beginning in December 1998 from the USAJOBS Governmentwide Automated Employment Information System.

OPM has implemented an online resume builder on the USAJOBS web site at www.usajobs.opm.gov. The online resume builder allows applicants to prepare a resume that they can print for personal use; save and/or edit on the web site for future use; and electronically submit for agency-specified job opportunities in the Federal Jobs Database. The online resume builder contains all of the data elements outlined in the *Applying for a Federal Job* pamphlet as required for resumes submitted for Federal employment. The resume builder produces a resume suitable for both manual and electronic processing.

This action is being taken to continue and expand employment application options for both Federal agencies and job applicants.

The Office of Personnel Management and other Federal agencies rate applicants for Federal jobs under the authority of 5 U.S.C. 1104, 1302, 3301, 3304, 3320, 3361, 3393, and 3394.

DATES: Written comments will be considered if received on or before December 14, 1998.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Richard Whitford at 202–606–1031 (rawhitfo@opm.gov) or Claire Gibbons at 202–606–1221 (cxgibbon@opm.gov).

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

SUPPLEMENTARY INFORMATION: In December 16, 1994, **Federal Register** notice (59 FR 65086) OPM announced a new application process that became effective on January 1, 1995. Under the new procedures, agencies filling positions in the competitive service, the excepted service and the Senior Executive Service could no longer require the SF–171, *Application for Federal Employment*, as the only acceptable application form for employment, but also had to inform applicants for most jobs that they could apply with a resume, the *Optional Application for Federal Employment* (OF–612), or any other written format of their choice, including the SF–171. Authorization of the SF–171 as an official form expired on December 31, 1994. Exceptions for the creation of special forms for unique jobs or jobs filled through automation were allowed. The new procedures were established to implement a National Performance Review (NPR) recommendation to OPM to eliminate standard forms because the length and complexity discouraged applicants from seeking Federal employment. An interagency task force of 16 Federal agencies recommended the new application procedures that let applicants choose the format of their application. The new procedures were reviewed and accepted by the National Partnership Council, the Interagency Advisory Group, unions, and organizations representing major constituency groups. As the proliferation of Government forms would be counter to the NPR objective to simplify the application process, agencies were advised that they could seek OMB approval for agency-specific forms only for unique jobs with highly specialized requirements or for special forms needed for a computer-assisted application system.

The Office of Management and Budget (OMB) approved the new application process for a period of three years which ended on December 31, 1997. However, due to requests received by the Federal staffing community, authorization for the *Optional Application for Federal Employment*, OF–612, was extended for a period of three years through December 31, 2000.

At the time the Notice was issued, the use of electronic application processing systems was not widespread in Federal agencies. Now more than three years later, the staffing environment has changed. Given full delegation of examining authority and continued downsizing, agencies are looking for new ways to perform staffing work more efficiently and cost effectively. Today's automated technology allows agencies to accept employment applications via fax, email and the world wide web. Applications can be processed by automated systems that are capable of applying sophisticated search routines to evaluate the competencies, qualifications and skills that match the knowledge, skills and abilities of jobs being filled. To effectively use much of this technology, the application format must be limited to the resume.

The use of the resume is not burdensome for job applicants. The resume is the standard for applying for employment in most segments of the

American job market. The resume allows job seekers to apply for most positions without having to seek out special forms and can be easily prepared using a typewriter or personal computer. The resume is compatible with new innovative ways for job seekers to quickly and easily apply for Federal jobs.

The following Questions and Answers give more information on the new application procedures:

(1) Why did OPM develop the new procedures?

OPM developed the new procedures to provide agencies with an additional option for application receipt to take advantage of current technology. The use of automated systems for the development, movement and processing of resumes is becoming standard within the human resources field. Rather than requiring agencies to make individual requests to OMB for the approval of a resume approach for Federal employment application, OPM determined it made more sense to move the initiative ahead on a Governmentwide basis.

(2) Must agencies adopt the resume approach for Federal employment application?

No. Agencies may continue to use the application procedures established in January 1995, i.e., agencies may accept resumes, the *Optional Application for Federal Employment* (OF-612), or any other written format of the applicant's choice. The new procedures simply allow agencies choosing to use automated systems for the receipt or processing of applications to restrict applications to the resume format. Agencies may make the choice on an agency-wide basis, for individual departments or bureaus, or on an announcement-by-announcement basis.

(3) Do the new procedures change existing policy on the content requirements of resumes submitted for Federal employment consideration?

No. The data elements identified in the pamphlet, *Applying for a Federal Job*, describe the required content of a resume or application filed for Federal employment. Agencies may, at their discretion, choose to define fewer data elements as acceptable in an application. Agencies may not add additional elements except as related to the job being filled (i.e., competencies, knowledges, skills and abilities; date of birth for law enforcement positions where age is a factor, etc.).

(4) May agencies require use of the USAJOBS resume builder; an agency specific online resume builder; or other automated application filing method?

No. Agencies must accept resumes created from any source; e.g., online resume builder; resume preparation software; word processing software; or typewriter, as long as the resume meets the specific agency parameters for format, content and length. Agencies accepting applications in other formats must be sure that the automated methods for applying are available and accessible to job seekers.

(5) May agencies specify the format or layout of resumes submitted for automated processing?

Yes. Agencies using automated systems may establish basic format and length guidelines for optimal resume processing. The guidelines may include requirements for the order in which the resume elements are presented; font size; resume length; and restrictions on the use of graphics, such as boxes and lines. The purpose of allowing agencies to establish format and length guidelines is to provide maximum integration of resumes with electronic application receipt and processing systems. For example, many automated application scanning systems deliver the best character recognition when standard font sizes, such as 12 point or 10 characters per inch (cpi), are used; other systems limit the size of the computer files that may be accepted into the system or passed to other systems. When resumes are not formatted to basic guidelines, manual processing must be applied which reduces the efficiencies gained by automation and delays the process of filling jobs. While agency guidelines for resumes will be permitted to accommodate the technology being employed, agency guidelines cannot be so specific as to establish only "one" acceptable resume document. Agencies are warned against establishing requirements that would result in the arbitrary rejection of resumes from employment consideration for failure to follow instructions, i.e., name must be centered and entered on line 2.25, or only resumes prepared in Times Roman 12 pt. font will be considered.

Agencies opting to require resumes for automated processing must take steps to guarantee access to the application process for all job seekers. Agencies are responsible for establishing procedures to assist job applicants who do not possess the keyboard skills required to prepare a resume or who do not have access to a typewriter, word processor, or on-line resume developer. Vacancy announcements must contain a contact point; i.e., name and telephone number, that job seekers may call if they are unable to submit a resume and need assistance applying.

The online resume builder on the USAJOBS web site meets all of the basic requirements for resume preparation for electronic processing. Resumes created on the USAJOBS resume builder are automatically formatted at the time of transmission to meet agency specified requirements. This meets agency needs without burdening job seekers.

(6) What provisions have been made for applicants with disabilities?

The resume builder on the USAJOBS web site will be made available in text format for use with text readers by the visually impaired.

The revised pamphlet, *Applying for a Federal Job*, will be available in braille, large print and on audio tape and computer disk. The pamphlet tells applicants what to include in their resumes or applications for Federal jobs. Furthermore, information on the Federal application process is available in text format for use with text readers by the visually impaired on the USAJOBS web site and computer bulletin board.

(7) How will OPM publicize the new application process?

OPM's Employment Information Office regularly distributes new releases and mailings to Federal offices, State Employment Service offices, State Vocational Rehabilitation Services offices, colleges and universities, and other major constituency groups. This year's mailings will include updated information on the application process.

(8) How will applicants find out about the new procedures?

Updated information on the application process will be distributed through the USAJOBS Governmentwide automated employment information system. Applicants may connect to the system (1) on the world wide web at http://www.usajobs.opm.gov; (2) by telephone at 912–757–3100 (TDD 912–744–2299) or at their local OPM Service Center (see blue pages listings in local phone directories); (3) by computer bulletin board at 912–757–3100 or telnet fjob.opm.gov; or (4) through touch screen kiosks located in more than 200 OPM offices, Federal buildings, and college campuses nationwide.

(9) May applicants use commercial software to prepare their resume, the *Optional Application for Federal Employment*, or application in another format?

Yes. Applicants may use commercial software to prepare their resume, *Optional Application for Federal Employment*, or other application format. At all times, however, applicants are responsible for making sure that their application contains the

information requested in the pamphlet, *Applying for a Federal Job*, and adheres to the requirements specified in the vacancy announcement.

(10) Can an agency design its own form and seek OMB approval for its use?

Yes. OMB will continue to consider requests for agency-specific forms for unique jobs with highly specialized requirements or special forms needed for a computer-assisted application system. However, the necessity for these requests should be reduced with the blanket approval for the use of resumes only for automated application processing.

(11) Can a Federal agency require its own employees to file for vacancies using a particular form?

Yes, but only when recruiting from its own employees. For example, an agency may require a particular form, such as the *Optional Application for Federal Employment*, for internal merit promotion actions. OMB approval is required for any specific form that seeks job-related information from non-agency employees. Non-agency employees include former employees with reinstatement eligibility, transfer eligibles from other agencies, and nonstatus applicants. For this purpose an agency is an "executive agency" as defined in 5 U.S.C. 105, for example, the Department of Agriculture, the Department of the Navy, and the Environmental Protection Agency.

(12) How may agencies handle incomplete applications, i.e., applications that do not contain all the information requested in the vacancy announcement?

Each agency should establish policy on how to handle incomplete applications. Agencies may:

—Not consider incomplete applications;
—Ask applicants for the missing information; or
—Rate incomplete applications as submitted.

All applicants for a particular vacancy must be treated the same way. Agency vacancy announcements should state the policy on incomplete applications.

(13) Should applicants continue to submit proof of 5 or 10 point veterans' preference or proof of Agency/Interagency Career Transition Assistance Program eligibility with their applications?

Yes. Applicants should be advised, when allowed by the application method, to submit proof with their applications if they are claiming 5 or 10 point veteran's preference or eligibility for priority consideration under the Agency or Interagency Career Transition Assistance Program. When the application method, such as an email transmission of resumes, does not support the attachment of special forms or documents to the application, applicants should be advised of how and by when they should submit their claim, i.e., mail and/or fax, postmarked by, etc.

(14) Why do many automated application processing systems require that the application format be limited to the resume?

Many automated application processing systems rely on optical character recognition for translating data on a printed document into a computer file that can be searched for data elements, such as name and address; skills; work experience; and education. In order to reliably capture the data from the document it must be clear and easy to read. Since hand written documents and information typed into confined boxes on forms are often difficult to read, the optical character recognition systems cannot reliably capture data presented in this manner.

Other automated systems rely on the electronic movement of application information from one automated system to another. Specifically formatted application forms may not be able to be properly translated from a sending automated system to a receiving system. The generic text contained in the resume can be converted to a format that is universally acceptable from one automated system to another.

(15) How will agencies certify that the information contained in applications is correct and that applicants meet suitability requirements for Federal employment?

Agencies will continue to determine suitability and obtain certification of application information from the *Declaration for Federal Employment* (OF 306). Agencies should continue to obtain the *Declaration for Federal Employment* before individuals are appointed. Agencies should not routinely ask applicants to submit the *Declaration* along with their resumes or applications. A major reason for creating the *Declaration* was to separate qualifications information from suitability information so that agencies could better protect the privacy of individuals by restricting access to more sensitive background data. Given the privacy concerns and the intent to reduce the burden on applicants, OPM continues to strongly encourage agencies to require the *Declaration* only from job finalists except where to do so would have a significantly adverse impact on the hiring process.

(16) May agencies permit the use of official time and Government resources to develop and submit electronic applications for job vacancies?

Agencies may establish their own policy on the use of official time and resources for the preparation and submission of electronic applications for job vacancies. The guiding principle in determining whether or not Federal employees should be allowed to use Government time and resources in pursuit of alternative employment is whether such use is in the best interest of the agency and, therefore, the Federal Government.

(17) How is resume data collected on the USAJOBS resume builder secured?

The resume data collected on the USAJOBS resume builder falls under the Privacy Act. A Privacy Act notice is available on the system to users. OPM uses secure transactions to encrypt resume data when it is moved to and from the USAJOBS web site to create and edit resumes. Resume access on the USAJOBS web site is secured by password, name and Social Security Number. Job seekers uncomfortable with submitting resumes over the Internet continue to have the option to submit resumes using traditional application methods selected by agencies such as hand-delivery, mail or fax.

[FR Doc. 98–30327 Filed 11–12–98; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on November 18, 1998, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Request for Reconsideration of Blanket Deputation for Office of Inspector General Special Agents.

(2) Year 2000 Issues.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the board, Phone No. 312–751–4920.

Dated: November 26, 1998.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–30535 Filed 11–10–98; 10:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Appointment to the Senior Executive Service Performance Review Board

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: The Railroad Retirement Board (Board) is announcing the membership on its Senior Executive Service Performance Review Board.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Leonard S. Harris, Bureau of Personnel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, telephone (312) 751–4323.

SUPPLEMENTARY INFORMATION: Agencies are required to publish notices of appointments to their Senior Executive Service Performance Review Boards (5 U.S.C. 4314 (c)(4) and 5 CFR 430.307(b)).

The members of the Railroad Retirement Board's Performance Review Board are:

Chairman

Robert J. Duda—Director of Operations

Members

John L. Thoresdale—Director of Policy and Systems

Frank J. Buzzi—Chief Actuary

Steven A. Bartholow—Deputy General Counsel

Rachel L. Simmons—Attorney-Advisor/Assistant to Chair

James C. Boehner—Assistant to the Labor Member

Joseph M. Waechter—Assistant to the Management Member.

Dated: November 2, 1998.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–30426 Filed 11–12–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23527; 812–11346]

Fundamental Funds, Inc., et al.; Notice of Application

November 6, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act.

SUMMARY OF THE APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory agreements ("Interim Agreements") for a period beginning on the date the requested order is issued ("Order Date") and continuing through the date the Interim Agreements are approved or disapproved by the shareholders of certain registered investment companies, but in no event longer than 120 days from the Order Date ("Interim Period"). The order also would permit the payment of all fees earned under the Interim Agreements following shareholder approval.

APPLICANTS: Fundamental Funds, Inc. ("Fundamental Funds"), Fundamental Fixed-Income Fund ("Fixed-Income Fund"), The California Muni Fund ("Muni Fund," together with Fundamental Funds and Fixed-Income Fund, the "Funds"), and Cornerstone Equity Advisors, Inc. ("Cornerstone").

FILING DATES: The application was filed on October 8, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 27, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Funds, 67 Wall Street, New York, NY 10005. Cornerstone, 67 Wall Street, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Funds are registered under the Act as open-end management investment companies. Fundamental Funds, a Maryland corporation, is organized as a series investment company and currently offers a single portfolio. Fixed-Income Fund, a Massachusetts business trust, is organized as a series company and currently offers three portfolios. Muni Fund, a Massachusetts business trust, offers a single portfolio. Cornerstone is registered as an investment adviser under the Investment Advisers Act of 1940.

2. On May 31, 1998, the boards of directors of the Funds ("Boards"), including a majority of directors who are not "interested persons" under section 2(a)(19) of the Act, decided not to renew the Funds' investment advisory agreement with Fundamental Portfolio Advisors, Inc. ("FPA Agreements"). Instead, the Boards entered into an interim investment advisory agreement with Tocqueville Asset Management L.P. ("Tocqueville") in reliance upon rule 15a-4 under the Act. Tocqueville's selection was made pending approval by the Funds' shareholders of an agreement and plan of reorganization ("Tocqueville Reorganization") whereby assets of each of the Funds would be transferred to a separate newly-created series of The Tocqueville Trust. In August 1998, the Boards decided to abandon the plans for the Tocqueville Reorganization and pursue other investment management arrangements.

3. On September 25, 1998, in accordance with section 15(c) of the Act, the Boards approved the Interim Agreements with Cornerstone pending its approval as successor adviser to the Funds and voted to recommend that the Interim Agreements be submitted to Funds' shareholders for approval.[1] Applicants anticipate that the Funds will distribute the proxy materials to the Funds' sharholders in November, 1998 and hold the shareholder meeting no later than January 26, 1999.

4. Applicants request an exemption to permit: (1) the implementation prior to obtaining shareholder approval, of the Interim Agreements for a period beginning on the Order Date and continuing through the date the Interim

[1] Each Board consisted solely of two disinterested director. Each Board currently consists of a single disinterested director.

Agreements are approved or disapproved by the shareholders of the Funds, but in no event longer than 120 days from the Order Date; and (ii) Cornerstone to receive, upon approval of the Interim Agreements by the Funds' shareholders, any and all fees earned under the Interim Agreements during the Interim Period. Applicants state that the Interim Agreements will be the same as the FPA Agreements that had been approved by the Funds' shareholders, except with respect to the parties, the effective and termination dates, and the inclusion of escrow arrangements described below.

5. Fees earned under the Interim Agreements during the Interim Period will be maintained in an interest-bearing escrow account with an unaffiliated bank acting as escrow agent. The escrow agent will release the amounts held in the escrow account (including any interest earned): (i) to Cornerstone, only upon approval of the Interim Agreements by the shareholders of the relevant Fund; or (ii) to the relevant Fund, in the absence of approval by its shareholders. Before amounts are released from the escrow account, the Boards will be notified.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the registered investment company. Applicants state that, as a result of the timing of Cornerstone's selection as the new investment adviser, the Funds were unable to solicit shareholder approval of the Interim Agreements.

2. Rule 15a-4 under the Act provides, in pertinent part, that if an investment advisor contract with a registered investment company is terminated by assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) the new contract is approved by that company's board of directors (including a majority of non-interested directors); and (i) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved the company's shareholders. Applicants state that they already have relied on rule 15a-4 for a 120 day period and therefore require a Commission order for the Interim Period.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants states that the requested relief meets this standard.

4. Applicants represent that the Interim Agreements will have the same terms and conditions as the FPA Agreements, except for the parties, dates of commencement and termination and the inclusion of escrow arrangements. Applicants also assert that each Fund will receive, during the Interim Period, the same investment advisory services, provided in substantially the same manner and at the same fee levels, and by personnel having substantially equivalent Qualifications, as it received under the FPA Agreements. Applicants state that, in the event there is any material change in the personnel providing material services, Cornerstone will apprise and consult the Boards to assure that the Boards are satisfied that the services provided by Cornerstone will not be diminished in scope or quality.

5. Applicants also state that the Boards diligently discharged their responsibilities by closely examining and reviewing numerous possibilities for management of the Funds during the period that the Funds relied on rule 15a–4. In light of various business considerations, operational issues, and due diligence issues, the selection of a new interim investment adviser was time-consuming. Applicants state, however, that the Boards conducted this search in a timely and efficient manner.

6. Applicants contend that to deprive Cornerstone of its fees for the Interim Period would be an unduly harsh and unreasonable penalty. Applicants note that the fees payable to Cornerstone under the Interim Agreements will not be released to Cornerstone by the escrow agent without the approval of the Funds' shareholders.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Interim Agreements will have substantially identical terms and conditions as the FPA Agreements except for the parties, dates of commencement and termination and escrow provisions.

2. Fees earned by Cornerstone in respect of the Interim Agreements during the Interim Period will be paid into an interest-bearing escrow account with an unaffiliated escrow agent, and amounts in the account (including interest earned on such paid fees) will be paid (a) to Cornerstone only upon approval of the related Fund shareholder, or (b) to the Funds, in the absence of such approval by the shareholders of the Funds.

3. Each Fund will hold a meeting of shareholders to vote on approval of the Interim Agreements on or before the 120th day following the Order Date.

4. Cornerstone will pay the cost of soliciting shareholder approval of the Interim Agreements.

5. Cornerstone will take all appropriate steps so that the scope and quality of advisory and other services provided to the Funds under the Interim Agreements will be at least equivalent, in the judgment of the Boards, to the scope and quality of services that were provided under the FPA Agreements. If personnel providing material services during the Interim Period change materially. Cornerstone will apprise and consult the Boards to assure that the Boards are satisfied that the services provided will not be diminished in scope or quality.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30406 Filed 11–2–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23528; 812–11204]

Nike Securities L.P., et al.; Notice of Application

November 6, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would supersede a prior order and permit a terminating series of a unit investment trust ("UIT") to sell portfolio securities to a new series of the UIT.

APPLICANTS: Nike Securities L.P. (the "Sponsor"), First Trust Special Situations Trust (the "Trust"), any future UIT sponsored by the Sponsor (together with the Trust, the "Trusts")

and certain series of the Trusts (each, a "Series" or "Trust Series").[1]

FILING DATES: The application was filed on June 29, 1998. Applicants have agreed to file an amendment to the application, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. December 1, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 1001 Warrenville Road, Lisle, Illinois 60532.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Each Trust Series will be a series of one of the Trusts, each a UIT registered under the Act.[2] The Sponsor will be the sponsor of the Trusts. Each Trust Series will be created under the laws of one of the United States pursuant to a trust agreement, which will contain information specific to that Trust Series, and which will incorporate by reference a master trust indenture between the Sponsor and a financial institution that is a bank within the meaning of section 2(a)(5) of the Act and that satisfies the criteria in section 26(a) of the Act (the "Trustee").

2. Each Trust Series will hold a portfolio of equity securities of domestic and/or foreign companies. The Trust Series generally are designed so seek above-average total return through capital appreciation, dividend income, or both.

3. Applicants anticipate that many, if not all, of the securities in each Trust Series will be actively traded (*i.e.*, have had an average daily trading volume in the preceding six months of at least 500 shares and equal in value to at least U.S. $25,000) on (a) an exchange (an "Exchange") which is either a national securities exchange which meets the qualifications of section 6 of the Securities Exchange Act of 1934, or a foreign securities exchange (a "Foreign Exchange") which meets the qualifications set forth in the proposed amendments to rule 12d3–1(d)(6) under the Act[3] and that releases daily closing prices, or (b) the Nasdaq-National Market System ("Nasdaq-NMS") (the securities meeting these requirements are referred to in this notice as "Equity Securities").

4. Each Trust Series will terminate on a date after a specified period, generally one or two years. The Sponsor intends that, as each Trust Series terminates, a new Trust Series ("New Trust Series") having the same or a similar investment objective or investment strategy, will be offered for the next period.

5. Each Trust Series has or will have a contemplated date (the "Rollover Date") on which holders of units in that Trust Series (the "Rollover Trust Series") may at their option redeem their units in the Rollover Trust Series and receive in return units of the New Trust Series, which will be created on or about the Rollover Date.

6. Applicants anticipate that there will be some overlap in the Equity Securities selected for the portfolios of each Rollover Trust Series and the related New Trust Series. In connection with its termination, absent the requested relief, each Rollover Trust Series would sell all of its Equity Securities on the applicable Exchange or Nasdaq-NMS. Likewise, a New Trust Series would acquire its Equity Securities on the applicable Exchange or on Nasdaq-NMS. This procedure would result in the unitholders of both the Rollover Trust Series and the New Trust Series incurring brokerage commissions on the same Equity Securities.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from selling securities to, or purchasing securities from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, in pertinent part, any person directly or indirectly controlling, controlled by or under common control with, such other person. Each Trust Series will have a common sponsor. Since the sponsor of a Trust Series may be deemed to control the Trust Series, all of the Trust Services may be deemed to be under common control and, thus, affiliated persons of each other.

2. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliates solely by reason of having common investment advisers, directors, and/or officers, to purchase securities from, or sell securities to, one another at an independently determined price, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraph (e).

3. Paragraph (e) of the rule requires an investment company's board of directors to adopt and monitor certain procedures to assure compliance with the rule. Since a UIT does not have a board of directors, the Trust Series would be unable to comply with this requirement.

4. Section 17(b) of the Act provides that the SEC will exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policies of the registered investment companies involved; and (c) the proposed transaction is consistent with the general provisions of the Act. Section 6(c) of the Act provides that the SEC may exempt classes of transactions if the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request relief under section 6(c) and 17(b) to permit a

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[1] Any future Trust that relies on the relief will comply with the terms and conditions of the application.

[2] The requested order would supersede a prior order. Investment Company Act Release Nos. 20946 (Mar. 8, 1995) (notice) and 20985 (Apr. 4, 1995) (order).

[3] Investment Company Act Release No. 17096 (Aug. 3, 1989) (proposing amendments to rule 12d3–1). The proposed amended rule defined a "Qualified Foreign Exchange" to mean a stock exchange in a country other than the United States where: (1) trading generally occurred at least four days a week; (2) there were limited restrictions on the ability of registered investment companies to trade their holdings on the exchange; (3) the exchange had a trading volume in stocks for the previous year of at least U.S. $7.5 billion; and (4) the exchange had a turnover ratio for the preceding year of at least 20% of its market capitalization. The version of the amended rule that was adopted did not include the part of the proposed amendment defining the term "Qualified Foreign Exchange."

Rollover Trust Series to sell Equity Securities to a New Trust Series and to permit the New Trust Series to purchase the Equity Securities.

5. Applicants state that the terms of the proposed transactions meet the standards of sections 6(c) and 17(b). Applicants represent that purchases and sales between Trust Series will be consistent with the policy of each Trust Series. Applicants further state that permitting the proposed transactions would result in savings on brokerage fees for the Trust Series.

6. Applicants state that the condition that the Equity Securities must be actively traded on an Exchange or the Nasdaq-NMS protects against overreaching. In addition, applicants state that the Sponsor will certify to the Trustee, within five days of each sale of Equity Securities from a Rollover Trust Series to a New Trust Series: (a) that the transaction is consistent with the policy of both the Rollover Trust Series and the New Trust Series, as recited in their respective registration statements and reports filed under the Act, (b) the date of the transaction, and (c) the closing sales price on the Exchange or on the Nasdaq-NMS for the sale date of the Equity Securities. The Trustee will then countersign the certificate, unless, in the unlikely event that the Trustee disagrees with the closing sales price listed on the certificate, the Trustee immediately informs the Sponsor orally of the disagreement and returns the certificate within five days to the Sponsor with corrections duly noted. Upon the Sponsor's receipt of a corrected certificate, if the Sponsor can verify the corrected price by reference to an independently published list of closing sales prices for the date of the transactions, the Sponsor will ensure that the price of units of the New Trust Series, and distributions to holders of the Rollover Trust Series with regard to redemption of their units or termination of the Rollover Trust Series, accurately reflect the corrected price. To the extent that the Sponsor disagrees with the Trustee's corrected price, the Sponsor and the Trustee will jointly determine the correct sales price by reference to a mutually agreeable, independently published list of closing prices for the date of the transaction.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each sale of Equity Securities by a Rollover Trust Series to a New Trust Series will be effected at the closing price of the Equity Securities sold on the applicable Exchange or the Nasdaq-NMS on the sale date, without any brokerage charges or other remuneration except customary transfer fees, if any.

2. The nature and conditions of the transactions will be fully disclosed to investors in the prospectus of each Rollover trust Series and New Trust Series.

3. The Trustee of each Rollover Trust Series and New Trust Series will (a) review the procedures discussed in the application relating to the sale of Equity Securities from a Rollover Trust Series and the purchase of those securities for deposit in a New Trust Series, and (b) make any changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a) through (d) of rule 17a-7.

4. A written copy of these procedures and a written record of each transaction pursuant to the order will be maintained as provided in rule 17a-7(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30404 Filed 11–12–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23526; 812–11292]

Simms Funds, et al.; Notice of Application

November 6, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit certain limited partnerships to transfer their assets and liabilities to corresponding series of a new registered open-end management investment company in exchange for the series' shares.

APPLICANTS: Simms Funds ("Trust"), Simms Capital Management, Inc. ("Simms Capital"), Simms Partners (U.S.) L.P. ("U.S. Partnership"), Simms Partners (International) L.P. ("International Partnership") (collectively, the "Partnerships"), Robert A. Simms ("Simms"), and Thomas L. Melly ("Melly").

FILING DATES: The application was filed on September 3, 1998 and amended on October 26, 1998. Applicants will amend the application during the notice period, the substance of which as been included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing request should be received by the SEC by 5:30 p.m. on November 27, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549; Applicants, 55 Railroad Avenue, Greenwich, CT, 06830.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Attorney Adviser, at (202) 942–0574, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. no. 202–942–8090).

Applicant's Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust initially will offer three portfolios, two of which ("Funds") will correspond to the partnerships in terms of investment objectives and policies. The two Funds are the U.S. Equity Fund and the International Equity Fund.

2. The Partnerships were organized as Delaware limited partnerships on July 1, 1996, and are not registered under the Act in reliance on section 3(c)(1) of the Act.

3. Simms Capital serves as the managing general partner of the Partnerships. Simms Capital is registered under the Investment Advisers Act of 1940 ("Advisers Act").

4. Simms is President and Chief Executive Officer of Simms Capital. Simms also serves as a trustee of the Trust and is a general partner of each Partnership. Melly, a principal of Simms Capital and a limited partner of each Partnership, also serves as a trustee

of the Trust. As of September 30, 1998, Simms' interests in the U.S. Partnership and International Partnership were 9.9% and 10./9%, respectively. Melly's interests in the U.S. Partnership and International Partnership were 14.83% and 35.24%, respectively.

5. Applicants propose that, pursuant to an Agreement and Plan of Reorganization ("Plan"), each Partnership would transfer to the corresponding Fund all of its assets and liabilities, in exchange for shares of the Fund, and distribute the Fund shares received to the partners of the Partnership in liquidation of the Partnership ("Reorganization"). Following each Reorganization, the partners of each Partnership will constitute all of the holders of the corresponding Fund (except for shares representing seed capital). Fund shares delivered to the Partnerships will have an aggregate net asset value ("NAV") equal to the NAV of the assets transferred by the Partnerships to the Funds. Each Reorganization is expected to close on or about December 1, 1998. The expenses of each Reorganization will be borne by Simms Capital.

6. On September 14, 1998, the board of trustees of the Trust ("Board"), including a majority of the disinterested trustees, approved the Reorganizations as in the best interest of the Funds and their shareholders. The Board concluded that: (a) the Reorganizations are desirable as a business matter from the point of view of the Trust; (b) the terms of each Reorganization are reasonable and fair, do not involve overreaching on the part of any person concerned, and are consistent with the policies of the Funds; and (c) the interests of the existing shareholders of the Funds will not be diluted as a result of the Reorganizations. Among other things, the Board considered the possibility of adverse tax consequences to future shareholders of the Funds resulting from the carrying forward of unrealized capital gains from the Partnerships to the Funds. These findings, and the basis upon which the findings were made, have been fully recorded in the minute book of the Trust.

7. Simms Capital has determined that it would be in the best interests of each Partnership to enter into the Reorganizations. Accordingly, Simms Capital will execute the Plan on behalf of each Partnership and will notify each limited partner of its actions. Simms Capital also will provide each limited partner with a copy of the corresponding Fund's prospectus or preliminary prospectus, and will allow ample time for any limited partner who does not want to become a shareholder of the corresponding Fund to liquidate their partnership interest prior to the Reorganization.

8. Each Reorganization will not be effected until: (a) the Trust's registration statement on Form N–1A is effective; (b) the SEC has issued the requested order; and (c) the Trust and the Partnerships have received an opinion of counsel that no gain or loss will be recognized by the Funds upon the transfer of the Partnerships' assets and the Funds' assumption of the Partnerships' liabilities.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" as, among other things, any person directly or indirectly controlling, controlled by, or under common control with, the other person; any officer, director, partner, copartner or employee of the other person; or, if the other person is an investment company, its investment adviser. Under section 2(a)(9) of the Act a person who owns 25% or more of the outstanding voting securities of a company is presumed to control such a company.

2. Applicants state that each partnership, Simms Capital (as managing general partner of the Partnerships), Simms (as general partner of the Partnerships), and Melly are affiliated persons of the Trust or affiliated persons of an affiliated person of the Trust because: (a) the Partnerships and the Trust may be deemed to be under the control of Simms Capital and Simms; and (b) Melly, a trustee of the Trust, may be deemed to control the International Partnership because he owns more than 25% of that partnership. Thus, applicants state that the proposed Reorganizations may be deemed to be prohibited under section 17(a) of the Act.

3. Rule 17a–7 exempts certain purchase and sale transactions otherwise prohibited by section 17(a) if an affiliation exists solely by reason of having a common investment adviser, common directors, and/or common officers, provided, among other requirements, that the transaction involves a cash payment against prompt delivery of a security. Applicants state that the relief provided by rule 17a–7 may not be available for the Reorganization because the Reorganization will be effected on a basis other than cash. Applicants also state that Simms and Melly, trustees of the Trust, are deemed to be affiliated persons of the partnerships because they own, control, or hold with power to vote, individually, 5% or more of each partnership. As a result, applicants state that the Funds and the partnerships are affiliated in a manner other than that stated in rule 17a–7.

4. Section 17(b) of the Act authorizes the SEC to exempt any person from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

5. Applicants state that each Reorganization satisfies the requirements of section 17(b). Applicants state that because Fund shares will be issued to the Partnerships and their partners at NAV their interests will not be diluted. Applicants also state that the investment objectives and policies of each Fund are substantially similar to its corresponding Partnership and after the Reorganization partners of the Partnerships will hold substantially the same assets as Fund shareholders as they held as partners. Applicants also state that the Trust's Board, including a majority of the disinterested trustees, has approved the Reorganizations, and that each Reorganization will comply with rule 17a–7(b) through (f).

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the condition:

1. The Reorganizations will comply with the terms of rule 17a–7(b) through (f).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30405 Filed 11–12–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Revocation of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration by the Final Order of the United States District Court for the Southern District of New York, dated

September 3, 1998, the United States Small Business Administration hereby revokes the license of Minority Equity Capital Company, Inc., a New York corporation, to function as a small business investment company under the Small Business Investment Company License No. 02/02–5288 issued to Minority Equity Capital Company, Inc. on May 17, 1971 and said license is hereby declared null and void as of September 30, 1998.

Dated: November 2, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–30379 Filed 11–12–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region III—National Advisory Council; Public Hearing

The Small Business Administration Region III National Advisory Council located in the geographical area of Washington, DC, will hold a public meeting at 9 a.m. on Wednesday, November 18, 1998 at the Renaissance Madison Hotel at 515 Madison Street, Seattle, Washington 98104, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call: Mrs. Toy Tolson, Office of the Advisory Council, U.S. Small Business Administration, 409 3rd Street, SW, 7th Floor, Washington, DC 20416–2551, (202) 205–6434.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–30378 Filed 11–12–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Region IX—Honolulu District Advisory Council; Public Hearing

The Small Business Administration Region IX Honolulu District Advisory Council located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 10 a.m. on Tuesday, December 1, 1998 at the Business Information and Counseling Center, 111 Bishop Street, Suite 204, Training Center, Honolulu, HI 96813, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

For further information, write or call: Andrew K. Poepoe, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2–235, Honolulu, Hawaii 96850–4981, (808) 541–2965.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–30377 Filed 11–12–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Region 1 Advisory Council Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10 a.m. on Monday, December 8th, 1998 at the Eastern Maine Development Corporation, 1 Cumberland Place, Suite 300, Bangor, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

FOR FURTHER INFORMATION CONTACT: Mary McAleney, District Director, U.S. Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, 207–622–8242.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 98–30380 Filed 11–12–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2921]

Notice of Receipt of Application for a Presidential Permit for a Tunnel to be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

Notice is hereby given that the Department of State has received an application from Cox Communications San Diego, a Delaware corporation, for a Presidential Permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, seeking authorization to construct an underground tunnel between San Diego, California, and Tijuana, Baja California, Mexico. The proposed tunnel will carry fiber optic cables. The tunnel will be eight inches in diameter, ten feet deep under the border wall and 130 feet in distance, connecting to a pole on the Mexican side.

As required by E.O. 11423, the Department of State is circulating this application to concerned agencies for comment.

Interested parties may submit comments regarding this application in writing by December 14, 1998, to Mr. David E. Randolph, Coordinator, U.S.-Mexico Border Affairs, Office of Mexican Affairs, Room 4258, Department of State, Washington, DC 20520. The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of Mexican Affairs during normal business hours.

FOR FURTHER INFORMATION CONTACT: David E. Randolph, Coordinator, U.S.-Mexico Border Affairs at the above address, by telephone at (202) 647–8529 or by fax at (202) 647–5752.

Dated: November 2, 1998.

David E. Randolph,

Coordinator, U.S.-Mexico Border Affairs.

[FR Doc. 98–30324 Filed 11–12–98; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 20, 1998 (63 FR 44668–44669).

DATES: Comments must be submitted on or before December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Haldeman, (202) 366–2881, Office of Budget and Finance, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration

Title: Fiscal Vendor Satisfaction Survey.

OMB Number: 2125-NEW.

Type of Request: New Collection.

Affected Public: Employees of private firms from which FHWA procures products and services.

Abstract: The mission of the FHWA's Office of Budget and Finance is the administration of fiscal programs to ensure an effective budget process and proper utilization and accounting for agency resources. In addition, the office works to improve the financial management practices of State Highway Agencies. Some of these functions include: (1) The planning, coordination, and administration of FHWA programs, as they relate to the budget process; (2) the allocation and administration of fiscal and ceiling control aspects of personnel resources within employment ceilings, fiscal limitations, and other established criteria; (3) the administration of a nationwide highway project reporting system; and (4) the administration of a system of accounting for agency resources and programs. A survey of FHWA's vendors to be selected at random will provide feedback to help focus on accounting operations and organization toward a customer service/ satisfaction-oriented way of doing business. The information will be collected on a standardized questionnaire via mail. Respondents will be advised of the purpose for the survey and the confidentiality of their responses by an accompanying letter. The questionnaire will request respondents if their telephone calls are answered in a timely manner; if their inquiries receive timely responses; if their invoices are paid in a timely fashion; and if the members of the finance staff are accessible, professional, and courteous in providing assistance and resolving payment issues. The sample size of respondents will be approximately 200. The results of the surveys will be analyzed and presented in a report to management. This report will be used for ongoing improvements to FHWA's payment process.

Estimated Total Annual Burden Hours: 33.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on November 6, 1998.

Vanester M. Williams,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–30440 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–98–069]

Public Hearing; CSX Railroad Bridge across the Mobile River, Mile 13.3, at Hurricane, Alabama

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Coast Guard will hold a public hearing on whether the CSX Railroad Bridge across the Mobile River at Hurricane, Alabama, is an unreasonable obstruction to navigation which should be altered. The Coast Guard has received complaints that the bridge is unreasonably obstructive to navigation. The hearing will allow interested parties to present comments and information concerning the bridge.

DATES: The hearing will start at 10 a.m. on December 7, 1998. Comments must be received by December 18, 1998.

ADDRESSES: The hearing will be held in the Killian Auditorium at the International Trade Center, 250 North Water Street, Mobile, Alabama 36602. Written comments may be submitted to, and will be available for examination from 8 a.m. to 4 p.m., Monday through Friday, except holidays, at the office of the Director, Western Rivers Operations, Bridge Branch, 1222 Spruce Street, St. Louis, Missouri 63103–2398.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch, Director, Western Rivers Operations, Bridge Branch, telephone (314) 539–3900 ext. 378.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard has received complaints alleging that the CSX Railroad Bridge is unreasonably obstructive to navigation. The preliminary Coast Guard investigation indicates there were 73 marine collisions with the bridge between 1986 and 1997. These collisions have caused moderate to heavy damage to the bridge. In addition, the restrictive navigation channel of the bridge caused delays to the passage of waterway traffic. Based on this information, the bridge appears to be a hazard to navigation and many require increasing the horizontal clearance on the bridge to meet the needs of navigation.

Procedural

Any person who wishes may appear and speak or present evidence at this public hearing. Persons planning to speak at the hearing should notify the Director, Western Rivers Operations, Bridge Branch at the location listed under **ADDRESSES** or the telephone number listed in **FOR FURTHER INFORMATION CONTACT** any time prior to the hearing indicating the amount of time required. Depending upon the number of scheduled statements, the Coast Guard may limit the amount of time allocated to each person. Any time limitations will be announced at the beginning of the hearing.

Written statements and exhibits may be submitted in place of, or in addition to, oral statements and will be made a part of the hearing record. Written statements and exhibits may be delivered at the hearing or mailed in advance to the Director, Western Rivers Operations, Bridge Branch. Transcripts of the hearing will be made available for purchase upon request.

Information on Services for Individuals With Disabilities

For information about facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the Director, Western Rivers Operations, Bridge Branch at the number under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Authority: 33 U.S.C. 513; 49 CFR 1.46.

Dated: October 23, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 98–30445 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Financial Responsibility Advisory Material

AGENCY: Federal Aviation Administration, Associate

Administrator for Commercial Space Transportation, DOT.

ACTION: Notice of availability of advisory material.

SUMMARY: This is a notice of availability of an Advisory Circular (AC), which provides guidance as to an acceptable means of compliance with certain conditions of insurance coverage required for the conduct of licensed launch activities.

FOR FURTHER INFORMATION CONTACT: Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, U.S. Department of Transportation (202) 366–9320.

SUPPLEMENTARY INFORMATION: This notice announces the availability of Advisory Circular Number 440–1, issued November 3, 1998, by the Associate Administrator for commercial Space Transportation concerning financial responsibility requirements for licensed launch activities. The FAA Advisory circular System provides guidance and advisory information to the public on aviation and aerospace matters, including acceptable methods of demonstrating compliance with Federal Aviation Regulations and Commercial Space Transportation Regulations.

Part 440 of the Commercial Space Transportation, FAA, DOT Regulations, 14 CFR Ch. III, prescribes insurance and other financial responsibility requirements for the conduct of licenses launch activities. One condition of insurance coverage provides that each insurance policy obtained by a launch licensee under Part 440 be placed with an insurer that is licensed to do business in any State, territory, possession of the United States, or the District of Columbia. Advisory Circular Number 440–1 states that a licensee satisfies the condition if policies of insurance obtained under Part 440 contain a service of suit clause in which the insurer agrees to submit to the jurisdiction of a court of competent jurisdiction within the United States and designates an authorized agent with the United States for service of legal process.

A copy of Advisory Circular Number 440–1 may be obtained from the Associate Administrator for Commercial Space Transportation (AST), Federal Aviation Administration, Room 331, 800 Independence Avenue, SW., Washington, DC 20591. Internet users may obtain a copy by accessing AST's webpage at *http://ast.faa.gov*. Issued in Washington, DC, on November 3, 1998.

Patricia Grace Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 98–30368 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) Hosted Forum on the Capabilities of the Global Positioning System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics. Requests to make presentations to the assembled forum should be made to the point of contact listed.

DATES: November 16–17, 1998, 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Fair Oaks hotel, 11787 Lee Jackson Memorial Highway, Fairfax, VA 22033, adjacent to the Fair Oaks Mall.

POINT OF CONTACT: Registration, submission of suggested discussion topics and requests to make presentations may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.albers@faa.gov.

SUPPLEMENTARY INFORMATION: Open to the aviation industry with attendance limited to space available. Participants are requested to register their intent to attend this meeting by October 30, 1998. names, affiliations, telephones and facsimile numbers should be sent to the point of contact listed.

Dated: September 22, 1998.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 98–30374 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Supplemental Draft Environmental Impact Statement; Little River, Miller, and Sevier Counties, Arkansas, and Bowie County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Supplemental Draft Environmental Impact Statement (SDEIS) will be prepared for a proposed highway project in Little River, Miller, and Sevier Counties, Arkansas, and Bowie County, Texas.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Romero, Environmental Specialist, Federal Highway Administration, Arkansas Division, 700 West Capitol Avenue, Room 3130, Little Rock, Arkansas, 72201–3298, Telephone: (501) 324–6430; or Walter Waidelich, District Engineer, Federal Highway Administration, Texas Division, Suite 826, Federal Office Building, 300 East Eighth Street, Austin, Texas 78701, Telephone (512) 916–5988.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department, and the Texas Department of Transportation, will prepare a Supplemental Draft Environmental Impact Statement (SDEIS) on a proposal to construct a four-lane, divided, fully controlled access facility located on new alignment. The proposed Supplemental Draft EIS is a follow up to a Draft EIS dated February, 1997.

The overall project will serve southwest Arkansas and northeast Texas, including Little River, Miller, and Sevier Counties, Arkansas, and Bowie County, Texas. The Supplemental Draft EIS will address new alternatives in the vicinity of Texarkana, AR, Texarkana, TX, and Ashdown, AR which were identified through the public involvement activities related to the circulation of the Draft EIS in 1997. The new alternatives introduce the concept of a northern loop facility for Texarkana connecting with Interstate Highway (IH) IH–30 (W) and

US59(S) on the west side of Texarkana and connecting with IH–30(E) and US71(S) on the east side of Texarkana. This facility has the potential to divert through US71 traffic around the two cities, and reduce traffic volumes along the stretch of IH–30 between the northern loop termini and other routes through Texarkana. The northern loop alternatives add approximately 18 miles (29 kilometers) of new alignment to the project. Revisions to previously studied alternatives will add approximately 5 miles (8 km) of additional new alignment to the project.

The east-west connector portion of the proposed northern loop, along with a new northern extension from the loop crossing the Red River, result in environmental consequences that were not thoroughly documented as a part of the 1997 DEIS. The Northern Loop alternatives will include major environmental issues at different locations than those studied in the Draft EIS such as floodplain encroachments, a crossing of the Red River, wetlands, and archaeological sites on the Red River floodplain. In addition to documenting the engineering and environmental aspects of the new northern loop alignments, the SDEIS will provide a comparative analysis of the project's alternatives with the goal being the identification of a preferred alternative for the entire project, from Texarkana to DeQueen, AR.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies and to private organizations who have expressed interest in the project in the past, and to major Arkansas and northeast Texas newspapers. Formal public hearings will be held in Arkansas and Texas during the circulation of the SDEIS. Public notice will be given of the time and place of the public involvement sessions and the public hearings. The SDEIS will be available for public and agency review and comment prior to the public hearings. The US Army Corps of Engineers, the US Environmental Protection Agency, and the US Department of Interior are Cooperating Agencies for the EIS. A formal scoping meeting for the Northern Loop Alternatives will be held and opportunity for public comment will be provided.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to either the FHWA Arkansas or Texas Division at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Elizabeth A. Romero,

Environmental Specialist, Federal Highway Administration, Little Rock, Arkansas.

Walter C. Waidelich,

District Engineer, Federal Highway Administration, Austin, Texas.

[FR Doc. 98–30348 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Steuben County, NY

AGENCY: Federal Highway Administration, New York State Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The action to be evaluated by this environmental impact statement is the reconstruction of the U.S. Route 15 juncture with NYS Route 17 (the Southern Tier Expressway) in Steuben County, New York. This proposed action would improve capacity at the interchange and provide for the separation of local and regional traffic.

FOR FURTHER INFORMATION CONTACT: Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, (518) 431–4125; or Peter White, Regional Director, New York State Department of Transportation Region 6, 107 Broadway, Hornell, New York 14843, (607) 324–8404.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FWHA), in cooperation with the New York State Department of Transportation (NYSDOT), will evaluate various alternatives which will consider development of a fully directional interchange at the juncture of U.S. Route 15 with NYS Route 17 in Steuben County, New York. Each build option would include the complete reconfiguration/reconstruction of the existing interchange to provide direct connections for the primary movements between Route 15 and Route 17 while accommodating local high volume traffic flows and local access. Additionally there would be new expressway and ramp construction, pavement rehabilitation/reconstruction, bridge and culvert rehabilitation/replacement, drainage, lighting and signalization. The proposed project limits extend along NYS Route 17 from Exit 43 (NYS Route 415) easterly to Exit 45 (NYS Route 352) approximately two miles; and along U.S. Route 15 from its intersection NYS Route 17, southerly to its overpass with NYS Route 417 approximately two miles. The proposed action is anticipated to result in a balanced transportation system that will supply sufficient capacity, improved mobility and access; meet current/future traffic demand; eliminate current bridge deficiencies; reduce or eliminate vehicular conflicts/accidents; separate local and regional traffic flows, as well as provide improved local service access between the City of Coming, the Villages of Riverside and painted Post, and the Hamlet of Gang Mills.

Alternatives under consideration include: no build or the null alternative; separation of local and expressway traffic through the relocation of Hamilton Street and the upgrade of Route 15 to a limited access expressway; development of a half or full diamond interchange at Route 417; retainage or elimination of the Route 352 flyover to Route 17; the development of collector-distributor roads along Route 17 between Exit 44 and Exit 45; and retention or elimination of local access at Exit 44. The environmental, socio-economic, and engineering viability implications of each alternative will be examined. The no action alternative will also be analyzed as a base line for gauging, the impacts of the build alternates.

Input from Federal, state and local governments, local agencies, private organizations, and the community will be solicited during the development of the Environmental Impact Statement (EIS). A public scoping, meetings and a formal public hearing will be scheduled. Public notice will be given to identify the time and place for the meeting and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Comments, questions, and suggestions pertaining to the proposed action are invited from interested parties to ensure that all significant issues are identified and addressed. Comments should be directed to the FHWA or the NYSDOT at the addresses provided above.

VOL 63 ISS 219 NO 13 1998 UMI

Issued on November 4, 1998.

Douglas P. Conlan,

District Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 98–30425 Filed 11–12–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 567X)]

CSX Transportation, Inc.; Abandonment Exemption; in Allegheny County, PA

On October 26 1998, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Lower Allegheny Branch extending from milepost 0.00 to milepost 0.85 in Pittsburgh, together with a 0.15-mile line segment of connecting track that joins the Lower Allegheny Branch to a nearby line of the Consolidated Rail Corporation (Conrail),[1] a total distance of 1.00 mile in Allegheny County, PA. The line traverses U.S. Postal Service Zip Code 15233 and includes no stations.

The line does not contain any federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions specified in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 12, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 3, 1998. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 567X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001; and (2) Charles M. Rosenberger, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before December 3, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30434 Filed 11–12–98; 8:45 am]

BILLING CODE 4915–00–P

[1] The Lower Allegheny Branch is accessed over trackage rights from Conrail's Etna Yard in Pittsburgh and Conrail's Preble Avenue Industrial Track via the 0.15-mile connecting track owned by CSXT.

UNITED STATES INFORMATION AGENCY

Administrative Services to the NIS College and University Partnerships Program (NISCUPP)

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs' Specialized Programs Branch of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition to assist in the administration of the Fiscal Year 1999 NIS College and University Partnerships Program (NISCUPP) competition. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to assist in the administration of the technical and academic review of approximately 65 to 85 proposals for the Fiscal Year 1999 NIS College and University Partnerships Program competition (E/ASU–99–05).

The NISCUPP supports linkages between U.S. institutions of higher education and institutions of higher edcuation from the New Independent States in specified fields and disciplines.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act).

Projects must conform with Agency requirements and guidelines outlined in the Scolicitation Package. USIA projects are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the announcement's title and reference number, E/ASU–99–06.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Monday, December 21, 1998. Faxed application documents will not be accepted.

Documents postmarked by the due date but received at a later date will not be accepted. It is the responsibility of each applicant to ensure compliance with the deadline.

Approximate Program Dates: Grant should begin on or about February 15, 1999 and end approximately five months later.

FOR FURTHER INFORMATION CONTACT: The Specialized Programs Branch (E/ASU), Room 349, U.S. Information Agency,

301 4th Street, S.W., Washington, D.C. 20547, phone: (202) 619–4126, fax: (202) 401–1433. Send a message via Internet to: jcebra@usia.gov to request a Solicitation Package containing more detailed award criteria. Please request required application forms and standard guidelines for preparing proposals, including specific criteria for preparation of the proposal budget.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202–401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Please specify USIA Program Officer Jonathan Cebra on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 7 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASU–99–06,* Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, projects must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in programs administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal, in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement): The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

SUPPLEMENTARY INFORMATION:

Overview

Objectives

The recipient of this award will administer the technical and independent academic reviews for the Fiscal Year 1999 NIS College and University Partnerships Program. The NISCUPP is designed to support linkages between U.S. and NIS institutions of higher education in the fields of business/economics, law, journalism/communications, education, and public administration/public policy/political science.

The NISCUPP supports curriculum development, faculty and staff development, educational reform, community outreach and collaborative research through three-year grants of up to $300,000 each.

Guidelines

Project Description

The recipient of this award shall review proposals for compliance with the technical requirements published in the Request for Proposals (RFP) for the FY 1999 NISCUPP competition. (The FY 1999 NISCUPP RFP will be provided in the application packet mailed to applicants, and also is available upon request by the applicant, and on the Internet via USIA's website at http://www.usia.gov/education/rfps).

The recipient will also coordinate the academic review of technically eligible, comprehensive proposals and provide the Agency with a detailed academic appraisal report on each eligible proposal, extensively summarizing the panel discussion in terms of the academic review criteria published in the FY 1999 NISCUPP RFP. The recipient shall arrange for the review of applications regionally or thematically by panels of experts representing eligible fields and themes. These experts should be highly familiar with the New Independent States.

In preparing a submission, the applicant shall designate a coordinator, subject to Agency approval, to implement and chair all the technical and academic reviews, and to provide detailed summaries of the academic review discussions. The applicant should plan to prepare correspondence to be sent to NISCUPP applicants by the Agency in response to inquiries regarding the technical and academic review of their proposals, and to notify applicants of the status of their proposals. All official documents should highlight the U.S. Government's role as program sponsor and funding source.

Eligibility

Only non-profit organizations *based in the Washington, D.C. metropolitan area,* with experience in international education and educational exchanges, are eligible to compete for this cooperative agreement award from the Agency.

Proposed Budget

Please provide a detailed line-item budget as part of your grant proposal, which translates the activities described in the proposal narrative into specific cost requirements. Please use explanatory notes where necessary to describe the costs included in specific line items and how the amounts were derived. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a break-down reflecting both the administrative budget and the program budget.

For further clarification, applicants may provide separate sub-budgets for each program component, phase, location, or activity in order to facilitate USIA decisions on funding.

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Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will be reviewed by the program office. Proposals may be reviewed by the Office of the General Counsel or by other Agency elements. Funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA grants officer. Technical Format Requirements for this competition are included in the check list in the PSI accompanying this RFP.

Panelists will review proposals received in response to this solicitation according to the following criteria:

1. *Quality of Program Plan/Ability to Achieve Program Objectives:* Proposal agendas and plans should adhere to the program overview and guidelines described above and in the Application Package. Objectives should be reasonable, feasible, and flexible. A proposal should clearly demonstrate how an organization will meet the program's objectives and plan.

2. *Institution's Record/Ability/Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the project's goals. Proposals should demonstrate responsible fiscal management and full compliance with all reporting requirements for any past Agency grants the applicants have administered, as determined by USIA's Office of Contracts.

3. *Cost-Effectiveness/Cost-Sharing:* The overhead and administrative components of proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should attempt to maximize cost-sharing through private sector support as well as institutional direct funding contributions.

4. *Project Evaluation:* Proposals should include an effective evaluation plan which defines and articulates a list of anticipated outcomes clearly related to the project goals and activities, and provide procedures for ongoing project monitoring and mid-term corrective action.

5. *Suport of Diversity:* Proposals should demonstrate the applicant's commitment to promoting the awareness and understanding of diversity.

Application Submission

The complete proposal for this competition (E/ASU 99–06) must meet the due date of December 21, 1998. There will be no exception to this deadline.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: December 2, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–30441 Filed 11–12–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

NIS College and University Partnerships Program

ACTION: Request for proposals.

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Accredited, post-secondary educational institutions meeting the provisions described in IRS regulation 26 CFR 1.501(c) may apply to develop a partnership with (a) foreign institution(s) of higher education from the New Independent States in specified fields.

Proposed projects must be eligible in terms of countries/localities and disciplines as described in the section entitled "Eligibility" below.

Participating institutions exchange faculty and administrators for a combination of teaching, lecturing, faculty and curriculum development, collaborative research, and outreach, for periods ranging from one week (for planning visits) to an academic year. The FY 99 program will also support the establishment and maintenance of Internet and/or e-mail communication facilities as well as interactive distance learning programs at foreign partner institutions. Applicants may propose other project activities not listed above that are consistent with the goals and activities of the NIS College and University Partnerships Program.

The NIS College and University Partnership Program awards up to $300,000 for up to a three-year period to defray the cost of travel and per diem with an allowance for educational materials and some aspects of project administration. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Please note that USIA's NIS College and University Partnerships Program (NISCUPP) is intended exclusively for college and university partnerships throughout the NIS in the following fields: Law, business/economics, education, public administration/public policy/government/urban and regional economic development, and journalism/communications. Other similar United States Government linkage programs include USIA's College and University Affiliations Program, which supports linkages with institutions in selected countries worldwide, and the Sustaining Partnerships into the Next Century (SPAN) program, funded by the United States Agency for International Development (USAID) and administered by the International Research & Exchange Board (IREX) which supports partnerships, including university partnerships, in the Russian Federation which contribute to USAID's strategic objectives. USIA and USAID cooperate in order to effectively distribute assistance funding and avoid duplication of efforts. Applicants interested in USIA's College and University Affiliations Program should contact USIA's Specialized Programs Branch at (202) 619–5289. Applicants interested in USAID's SPAN program should contact IREX at (202) 628–8188.

Overall grant-making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us

with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program cited above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1992 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Announcement Title and Number: All communications with USIA concerning this RFP should refer to the NIS College and University Partnerships Program and reference number E/ASU–99–05.

Deadline For Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on Friday, February 19, 1999. Faxed documents will not be accepted at any time. Documents postmarked by the due date but received at a later date will not be accepted.

Approximate program dates: Grants should begin on or about August 15, 1999.

Duration: August 15, 1999–August 14, 2002.

FOR FURTHER INFORMATION, CONTACT: Office of Academic Programs; Advising, Teaching, and Specialized Programs Division; Specialized Programs Branch, (E/ASU) room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC. 20547, fax: (202) 401–1433 to request a Solicitation Package containing more detailed award criteria; all application forms; and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. Please specify USIA Program Officer Sam Eisen (telephone: 202–619–4097, e-mail: seisen@usia.gov) on all inquiries and correspondences regarding partnerships with institutions in Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, or Uzbekistan. Please specify USIA Program Officer Jonathan Cebra (telephone: 202–619–4126, e-mail: jcebra@usia.gov) on all inquiries and correspondences regarding partnerships with institutions in Armenia, Azerbaijan, Belarus, Georgia, Moldova, or Ukraine.

To Download a Solicitation Package via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package via Fax on Demand: The entire Solicitation Package may be received via the Bureau's "Grants Information Fax on Demand System", which is accessed by calling 202/401–7616. Please request a "Catalog" of available documents and order numbers when first entering the system.

Interested applicants should read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition in any way with applicants until the Bureau proposal review process has been completed.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–99–05, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub.L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy", USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

SUPPLEMENTARY INFORMATION:

Guidelines

The NIS College and University Partnership Program is limited to the following specific academic disciplines:

(1) Law;

(2) Business/economics/accounting/trade;

(3) Education/continuing education/civic education/educational reform;

(4) Government/public policy/public administration/urban and regional economic development; and

(5) Journalism/communications.

Proposals must focus on curriculum, faculty, and staff development at the NIS partner institution(s) in one or more of these eligible disciplines. Administrative reform at the foreign partner should also be a project component. Proposals in the field of economic development should focus on utilizing university resources to conduct educational outreach which will promote trade and investment in the region.

Projects should involve the development of new academic programs or the building and/or restructuring of an existing program or programs, and should promote higher education's role in the transition to market economies and open democratic systems.

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Feasibility studies to plan partnerships will not be considered.

Whenever feasible, participants should make their training and personnel resources, as well as results of their collaborative research, available to government, NGOs, and business.

Participating institutions should exchange faculty and/or staff members for teaching/lecturing and consulting. At least once during the grant period, one U.S. participant should be in residence at the foreign partner institution for one semester to serve in a coordinating role. (Exception: Proposals for partnerships with institutions in Tajikistan should not include travel by U.S. participants to Tajikistan.)

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. U.S. and foreign partner institutions are encouraged to consult about the proposed project with USIA E/ASU staff in Washington, DC. Preference will be given to proposals which demonstrate evidence of previous relations with the foreign partner institution(s). Preference will be given to proposals which do not duplicate partnership activities currently supported by USIA.

Guidelines

U.S. Partner and Participant Eligibility

In the U.S., participation in the program is open to accredited two- and four-year colleges and universities, including graduate or professional schools. Applications from consortia of U.S. colleges and universities are eligible. Secondary U.S. partners may include relevant non-governmental organizations, non-profit service or professional organizations. If a lead U.S. institution in a consortium is responsible for submitting an application on behalf of a consortium, the application must document the lead school's stated authority to represent the consortium. Participants representing the U.S. institution who are traveling under USIA grant funds must be faculty, staff, or advanced graduate students from the participating institution(s) and must be U.S. citizens.

Foreign Partner and Participant Eligibility

Overseas, participation is open to recognized institutions of post-secondary and continuing education. Secondary foreign partners may include relevant governmental and non-governmental organizations, non-profit service or professional organizations. Participants representing the foreign institutions must be faculty, staff or advanced students of the primary or secondary partner institution, and be citizens, nationals, or permanent residents of the country of the foreign partner, and be qualified to hold a valid passport and U.S. J–1 visa.

Foreign partners from the following countries are eligible:

Armenia;

Azerbaijan;

Belarus—foreign partners must be independent institutions; state universities are not eligible;

Georgia;

Kazahkstan—preference will be given to proposals for partnerships with institutions located in the Atyrau region;

Kyrgyzstan—potential applicants should contact USIA before preparing proposals;

Moldova;

Russia—preference will be given to proposals which: (1) Designate partner institutions outside of Moscow and St. Petersburg; (2) are in the field of business administration and designate partner institutions which have been designated by the Russian government for inclusion in the Presidential Management Training Initiative—a partial list of such institutions can be found in the POGI; (3) designate partner institutions in regions which have been identified by the U.S.-Russian Joint Commission on Economic and Technical Cooperation for Regional Initiatives—such regions currently include: Khabarovsk kraj, Sakhalin oblast, Samara olbast, and Novgorod oblast. Proposals for partnerships with institutions in Novgorod in regional economic development focusing on tourism are encouraged.

Tajikistan—in consideration of the State Department Warning advising U.S. citizens to defer travel to Tajikistan, proposals for partnerships with institutions in Tajikistan should not include travel by U.S. participants to Tajikistan;

Turkmenistan;

Ukraine—preference will be given to proposals for partnerships with institutions located in the Kharkiv region;

Uzbekistan;

Partnerships including a secondary foreign partner from a non-NIS country are eligible; however, with the exception noted below, USIA will not cover overseas non-NIS partner institution costs.

USIA encourages proposals which build upon established collaboration between U.S. institutions and partners in Central and Eastern Europe in order to support faculty and curriculum development in the NIS and to promote regional cooperation. Funds may be budgeted for the exchange, within the context of this partnership agreement and under the guidance of the U.S. partner institution, of faculty between NIS institutions and institutions of higher learning in Central and Eastern Europe (Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Poland, Romania, Serbia and Montenegro, Slovakia, Solvenia).

Ineligibility

A proposal will be deemed technically ineligible if:

(1) It does not fully adhere to the guidelines established herein and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) One of the partner institutions is ineligible;

(5) The academic discipline(s) is/are not listed as eligible in the RFP, herein;

(6) The amount requested of USIA exceeds $300,000 for the three-year project.

Please refer to program-specific guidelines (POGI) in the Solicitation Package for further details.

Notice

The terms and conditions published in this RFP are binding and may not be modified by an USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 2, 1998.

John P. Loiello,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–30443 Filed 11–12–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Summer Institute for the Study of the United States for Foreign Secondary School Educators

ACTION: Request for proposals (RFP).

SUMMARY: The Branch for the Study of the United States of the U.S. Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program entitled "Summer Institute for the Study of the United States for Foreign Secondary School Educators." Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(C) may apply to develop and implement a six-week graduate-level American Studies program designed for a multinational group of up to 30 secondary school teacher trainers and curriculum developers.

This program is intended to provide participants with a deeper understanding of the U.S. society, institutions, culture and values—past and present—so that textbooks, curricula and teaching about the United States in foreign secondary schools and teacher training institutions will be improved. Tentative program dates are June 19 through July 30, 1999.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in the disciplines and sub-disciplines that comprise American Studies, and that can demonstrate expertise in conducting graduate-level programs for foreign educators. *Applicant institutions must have a minimum of four years' experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have a doctoral degree in American studies or a related discipline. Staff escorts traveling under the USIA cooperative agreement must have demonstrated qualifications for this service.

The program must conform with Agency requirements and guidelines as outlines in the Solicitation Package. USIA programs are subject to the availability of funds.

Program Information

Overview and Objective: The Summer Institute for the Study of the U.S. aims to provide a deeper understanding of U.S. civilization among foreign educators who are concerned professionally with teaching or writing about the United States. It is further intended to encourage and support their efforts to improve the quality of teaching, textbooks, and curricular materials about the United States at secondary schools and teacher training institutions abroad.

The institute should be organized around a central theme or themes in American civilization, and the program as a whole should examine various aspects of U.S. society, culture, values and institutions—past and present—providing a good overview for participants. It should be designed as intensive, academically rigorous program that is organized through an integrated series of lectures, readings, seminar discussions, curricular research and independent study opportunities, faculty consultations, site visits and regional travel.

Institutions submitting proposals are encouraged to design thematically coherent programs in ways that draw upon the particular strengths and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. Within the limits of the program's thematic focus and organizing framework, programs should be designed to:

A. Draw from a variety of academic disciplines in order to deepen the participants' understanding of the unity, diversity, and complexity of U.S. society, culture, and institutions. Major issues and debates in U.S. society, past and present, including their origins and the role they have played in the development of U.S. civilization, should also be examined;

B. Give participants a multi-dimensional view of U.S. society and institutions that reflects a broad range of perspectives, including the views of scholars and of experts outside the university, such as government officials, public intellectuals and cultural critics, journalists, and other professionals; and,

C. Enhance teaching about the U.S. in foreign secondary schools and teacher training institutions by making appropriate scholarly resources, pedagogical and bibliographic materials available to participants. Participants should return home with an ability to communicate a deeper and more informed view of the U.S. to students and colleagues, and to continue their research, study and curriculum development activities.

The program should be six weeks in length, and must include:

A. An academic residency segment at a U.S. college or university campus (or other appropriate location) of a minimum of four weeks in length.

B. A study tour segment of a maximum of two weeks in length that takes participants to up to three additional regions of the U.S. If appropriate, a visit to Washington, D.C. should be included at or near the end of the program.

Program Dates: Tenative program dates are June 19 through July 30, 1999. Based on these dates, participants would be booked to arrive on June 18 and depart July 31, 1999. USIA is willing to consider adjustment of these program dates, based on the needs of the host institution. However, the institute must be 42 program days in length, and should take place sometime between June 12 and August 28, 1999.

Participants: The program should be designed for a total of 30 highly-motivated foreign secondary school teacher trainers, textbook writers, curriculum developers, and education ministry officials, whose professional assignments require significant knowledge of U.S. civilization, and who have broad responsibility for curriculum design and improvement. Participants will be involved in the teaching of English language, American literature, U.S. government, history, geography, social studies, or other courses that include U.S. studies content. Participants will be drawn from all regions of the world, and will be fluent in the English language.

Participants will be nominated by U.S. Information Service (USIS) posts abroad, and selected by the staff of USIA's Branch of the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Program Guidelines: The conception, design, structure and content of the institute program is entirely the responsibility of the organizers. However, given the many possible approaches to a program on U.S. civilization, organizers are expected to submit proposals that articulate in concrete detail how they intend to organize and implement the institute.

Consistent with the institute's overall thematic organization, the program should engage the constituent disciplines that make up American studies (e.g., literature, history, political science, economics, geography, sociology, etc.) as vehicles for helping foreign educators understand, teach, and write about the United States.

The selected grant organization will be responsible for most arrangements associated with this program. This includes the organization and implementation of all presentations and program activities, arrangement of all domestic travel, provision of

appropriate lodging, subsistence, and ground transportation for participants, orientation and briefing of participants, preparation of any necessary support materials (including a pre-program mailing to participants), and working with program presenters to achieve maximum program coordination and effectiveness.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines: Unless special circumstances warrant, based on a group of 30 participants, the total USIA-funded budget (program and administrative) should not exceed $236,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $56,000. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive line item budget for the entire program, based on the specific guidance provided in the Solicitation Package. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete budget guidelines and formatting instructions for the institution program.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number: E/AES–99–05.

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact: U.S. Information Agency, Office of Academic Programs, Branch of the Study of the United States, E/AES—Room 252, 301 4th Street, S.W., Washington, D.C. 20547, *Attn:* Richard Taylor, Telephone number: (202) 619–4557, *FAX number:* (202) 619–6790, *E-mail address:* rtaylor@usia.gov.

Please specify USIA Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the Bureau proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling (202) 401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All copies must be received at the U.S. Information Agency by 5:00 p.m. Washington, D.C. time on Friday, January 29, 1999. Faxed documents will not be accepted, nor will documents postmarked January 29, 1999 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions given in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Ref.: E/AES–99–05, Office of Grants Management, E/XE, Room 326, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants should also submit the "Executive Summary" and "Proposal Narrative" section of the proposal on a 3.5 inch diskette formatted for DOS. This material must be provided in ACCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom, and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, social-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should account for advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement): The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program-specific requirements, including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Geographic Area Offices. Eligible proposals will then be forwarded to panels of senior USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria: Technical eligible applications will be competitively reviewed according to the criteria stated

below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. *Overall quality:* Proposals should exhibit originality and substance, consonant with the highest standards of Americna teaching and scholarship. The various program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program planning:* Proposals should demonstrate careful and detailed planning. The organization and structure of the Institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment.

3. *Institutional capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conductive to a collegial atmosphere.

4. *Support for diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity throughout the program. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. *Evaluation and follow-up:* The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should detail the provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Administration and management:* The proposals should indicate evidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. *Cost effectiveness:* The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hayes Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries . . .; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: November 3, 1998.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–30442 Filed 11–12–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Summer Institute for Economic Policy Officials: American Institutions and the Formulation of U.S. International Economic Policy; Request for Proposals (RFP).

SUMMARY: The U.S. Information Agency's Branch for the Study of the United States announces an open competition for an assistance award program entitled: "Summer Institute for Economic Policy Officials: American Institutions and the Formulation of U.S. International Economic Policy." Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501 (C) may apply to develop and implement a three-week post-graduate level program designed for a multinational group of 15 experienced mid-level economic affairs professionals.

The program is intended to provide participants with a deeper understanding of U.S. economic policies in the international arena, with particular reference to how the political, economic, social and cultural institutions of American life affect the formulation of those policies. Tentative program dates are any three week period between June 6 and August 14, 1999.

USIA is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in a scholarly discipline related to the subject of the institute and that can demonstrate expertise in conducting post-graduate programs for foreign educators. *Applicant institutions must have a minimum of four years experience in conducting international exchange programs.* The project director or one of the key program staff responsible for the academic program must have an advanced degree in a relevant discipline. Staff escorts traveling under the USIA cooperative agreement support must have demonstrated qualifications for this service.

Programs must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA programs are subject to the availability of funds.

Program Information:

Overview and Objectives

"The Summer Institute for Economic Policy Officials: American Institutions and the Formulation of U.S. International Economic Policy," is intended to provide mid-career

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economic affairs professionals from abroad with the opportunity to increase their understanding of the economy, politics, society, and culture of the United States at the end of the 20th century. Specifically, the Institute seeks to provide grantees with a deeper understanding of how U.S. international economic policy is formulated, with special reference to how the political, economic, social and cultural institutions of American life affect the formulation of those policies. Our working assumption is that the economic policy decisions of the United States and its actions in the international arena are to a significant degree a reflection of fundamental, albeit shifting, cultural values, embedded in U.S. institutions, public and private, and that a fuller understanding of those institutions will lead in turn to a better understanding of U.S. policies and actions abroad.

Accordingly, the program should provide participants with an overview of the major issues in international economic policy, together with both a broad-gauged historical overview of major U.S. institutional and cultural trends—not only economic, but political, social, and cultural. In addition, grantees should have the opportunity to explore particular issues and themes as they bear on the formulation of economic policies, both globally and regionally. At the program's end, participants should have a fuller and more nuanced understanding of the diversity and complexity of contemporary American life, as well as a greater appreciation of the manifold ways in which contemporary American institutional arrangements and cultural values influence U.S. decisions and actions in the international economic arena.

The Institute should be designed as a coherent, thoughtfully integrated and academically stimulating program that presents a multi-dimensional view of the United States through a series of lectures, readings, panel presentations, and round table discussions. While the program is intended to be a intensive academic seminar designed for a non-academic audience, the program organizers are encouraged to include a mix of presenters, including university scholars as well as other professionals from government, the private sector, and the media.

The program should be three weeks in length, including at least two weeks of residency at a U.S. college or university, and, depending on the program's design, an integrated study tour segment not to exceed one week in length. Part of that study tour should include a trip to Washington, DC. All travel should substantively extend and complement the residency portion of the program.

Program Dates

Tentative program dates are any three-week period between June 6 and August 21, 1999. The institute must be a total of 21 program days in length.

Participants

The program should be designed for 15 highly-motivated and experienced mid-level professionals whose day-to-day work focuses on some aspect of their country's bilateral economic relationship with the United States. Many will come from their country's Ministry of Economic Affairs; others will be professionals employed by universities or other non-governmental organizations concerned with international economic, commercial and trade issues. While participants will not be required to possess either a formal or in-depth knowledge of American life and institutions, most are likely to have a working understanding of the United States by virtue of their professional work. Some may have had substantial prior study or work experience in U.S. Participants will be drawn from all regions of the world and will be fluent in English.

Participants will be nominated by U.S. Information Service posts abroad, and selected by the staff of USIA's Branch for the Study of the United States in Washington, D.C. USIA will cover all international travel costs directly.

Program Guidelines

The conception, design, structure and, ultimately, the content of the institute program is entirely the responsibility of the organizers. However, given the many possible approaches to the development of such a program, organizers are expected to submit proposals that articulate in concrete detail now they intend to organize and implement the institute.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines: Unless special circumstances warrant, based on a group of 15 participants, the total USIA-funded budget (program and administrative) should not exceed $131,000, and USIA-funded administrative costs as defined in the budget details section of the solicitation package should not exceed $39,500. Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Any grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. Applicant proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program.

The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete budget guidelines and formatting instructions for the institute program.

Announcement Name and Number: All communications with USIA concerning this announcement should refer to the above title and reference number E/AES–99–12.

FOR FURTHER INFORMATION: To request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact:

U.S. Information Agency, Office of Academic Programs, Branch for the Study of the United States, E/AES—Room 252, 301 4th Street, SW, Washington, DC 20547, Attention: William Bate. Telephone number: (202) 619–4557. Fax number: (202) 619–6790. Internet address: wbate@usia.gov.

Please specify USIA Program Officer William Bate on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFP deadline has passed, USIA staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. The "Table of Contents" listing available documents

and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington DC time on Friday, January 29, 1999. Faxed documents will not be accepted, nor will documents postmarked January 29, 1999 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Information Agency, Reference: E/AES–99–12, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW, Washington, DC 20547.

Applicants should also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. This material must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines: Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement): The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program-specific requirements, including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the years 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process: USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Geographic Area Offices. Eligible proposals will then be forwarded to panels of senior USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of the USIA Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all carry equal weight in the proposal evaluation:

1. Overall Quality: Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program should reflect an overall design whose various elements are coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. Program Planning: Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment.

3. Institutional Capacity: Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and media resources should be accessible to participants; housing, transportation and other logistical arrangements should be fully adequate to the needs of participants and should be conducive to a collegial atmosphere.

4. Support for Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. Experience: The proposal should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. Evaluation and Follow-up: The proposal should include a plan for evaluating activities during the Institute and at its conclusion. Proposals should comment on provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. Administration and Management: The proposals should indicate envidence of continuous on-site administrative and managerial capacity as well as the means by which program activities will be implemented.

8. Cost Effectiveness: The proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the

ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice: The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided buy the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal USIA procedures.

Dated: November 6, 1998.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–30444 Filed 11–12–98; 8:45 am]

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federal register

Friday
November 13, 1998

Part II

Department of Agriculture

Department of Health and Human Services

Proposed Joint Institute for Food Safety Research; Public Meeting; Notice

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DEPARTMENT OF AGRICULTURE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Proposed Joint Institute for Food Safety Research; Public Meeting

AGENCIES: United States Department of Agriculture (USDA), Department of Health and Human Services (DHHS).

ACTION: Notice; public meeting; establishment of public docket.

SUMMARY: On July 4, 1998, President Clinton directed the Secretaries of Agriculture and Health and Human Services to report back to him within 90 days on the creation of the Joint Institute for Food Safety Research, which would: (1) develop a strategic plan for conducting food safety research activities consistent with the President's Food Safety Initiative; and (2) efficiently coordinate all Federal food safety research, including research conducted with the private sector and academia. The report to the President articulates the concept of the Institute and provides a proposed structure, operating principles, goals and outcomes, and an implementation schedule for the Institute. This report can be obtained from Ms. Sarah Poythress, (202) 720–4423 or by email at spoythress@reeusda.gov.

The USDA and DHHS are announcing a public meeting to solicit input from individuals regarding the role of the Joint Institute for Food Safety Research. Agency personnel will use the input as they begin to develop a detailed proposal for the Institute. The ultimate goal of the Institute's research agenda is to reduce the incidence of adverse human health effects associated with the consumption of food. The objective of creating the Institute—and all other Administration food safety activities—is to reduce the incidence of foodborne illness to the greatest extent feasible. Scientific information about prevention of foodborne illness and detection of organisms that may cause it is critical to reduce further the incidence of foodborne illness.

The meeting is open to the public. Written comments and suggestions on issues that may be considered in the meeting may be submitted to the CSREES Docket Clerk at the address below.

DATES: The meeting will be held on December 1, 1998, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held in Room 107A, Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah Poythress, (202) 720–4423 or by email at spoythress@reeusda.gov.

SUPPLEMENTARY INFORMATION: Persons wishing to present comments orally at this meeting are requested to pre-register by contacting Ms. Sarah Poythress at (202) 720–4423, by fax at (202) 720–8987 or by e-mail to spoythress@reeusda.gov. Participants may reserve a 5-minute comment period when they register. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions, following the presentations. Reservations will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting or may be mailed to Ms. Sarah Poythress, USDA/CSREES, Room 305A, Jamie L. Whitten Federal Building, 1400 Independence Avenue, SW, Washington, DC 20250–2201. *Please provide five copies of the comments.* Written comments must be postmarked by December 18, 1998, to be considered. All comments and the official transcript of the meeting, when it becomes available, will be available for review for six months at the address listed above from 8:30 a.m. to 4:30 p.m., Monday through Friday.

Participants who require a sign language interpreter or other special accommodations should contact Ms. Poythress by Friday, November 20, 1998 as directed above.

Done in Washington, DC, on this 29th day of October, 1998.

Eileen Kennedy,

Deputy Under Secretary, Research, Education, and Economics, United States Department of Agriculture.

William Raub,

Deputy Assistant Secretary for Science Policy, Department of Health and Human Services.

[FR Doc. 98–30336 Filed 11–12–98; 8:45 am]

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Friday
November 13, 1998

Part III

Department of Housing and Urban Development

Notice of Regulatory Waiver Requests Granted; Notice

183-247 98-6

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4378–N–02]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public notice of the granting of regulatory waivers from April 1, 1998 through June 30, 1998.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (Reform Act), HUD is required to make public all approval actions taken on waivers of regulations. This notice is the thirtieth in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the Reform Act), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This is the thirtieth notice of its kind to be published under section 106 of the Reform Act. This notice updates HUD's waiver-grant activity from April 1, 1998 through June 30, 1998.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 58.73 (involving the waiver of a provision in 24 CFR part 58) would come early in the sequence, while waivers of 24 CFR part 990 would be among the last matters listed.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.)

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between July 1, 1998 through September 30, 1998.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: November 4, 1998.

Andrew Cuomo,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development April 1, 1998 Through June 30, 1998

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

For Items 1 and 2, Waivers Granted for 24 CFR Parts 5 and 882, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

1. Regulation: 24 CFR 5.613(a)(1) and 24 CFR 882.605(c).

Project/Activity: Housing Authority of Pierce County, Washington; Section 8 Rental Certificate Program, Special Assistance on Behalf of Manufactured Home Owners.

Nature of Requirement: HUD's regulation at 24 CFR 5.613(a)(1) provide that the Total Tenant Payment for families whose initial lease is effective on or after August 1, 1982, shall be the highest of: (1) 30 percent of Monthly Adjusted Income; (2) 10 percent of Monthly Income; or (3) the Welfare Rent. HUD's regulation at 24 CFR 882.605(c) caps the amount of rent that can be paid for a manufactured home pad space at 110 percent of the applicable Fair Market Rent.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 1998.

Reasons Waived: The manufactured home and belongings of a disabled program participant were destroyed in a flood. The waivers made it possible for her to receive assistance in a replacement manufactured home.

2. Regulation: 24 CFR 5.613(a)(1) and 24 CFR 882.605(c).

Project/Activity: Housing Authority of Pierce County, Washington; Section 8 Rental Certificate Program, Special Assistance on Behalf of Manufactured Home Owners.

Nature of Requirement: HUD's regulation at 24 CFR 5.613(a)(1) provides that the Total Tenant Payment for families whose initial lease is effective on or after August 1, 1982, shall be the highest of: (1) 30 percent of Monthly Adjusted Income; (2) 10 percent of Monthly Income; or (3) the Welfare Rent. HUD's regulation at 24 CFR 882.605(c) caps the amount of rent that can be paid for a manufactured home pad space at 110 percent of the applicable Fair Market Rent.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 1998.

Reasons Waived: The waiver, which covers nineteen elderly/disabled program participants, provided these participants with the opportunity to continue to receive rental assistance without moving their units to new sites. Because of the age and health problems of the program participants and their low income levels, moving the manufactured home units to new sites was not feasible.

For Items 3 and 4, Waivers Granted for 24 CFR Parts 91 and 92, Contact: Cornelia Robertson Terry, Field Management Division, Office of Executive Services, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7184, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

3. Regulation: 24 CFR 91.105.

Project/Activity: Jefferson County, Alabama requested that HUD waive the required thirty day comment period for its proposed amendments to the Community Development Block Grant (CDBG) and HOME Investment Partnership activities described in its Consolidated Plan. The County wished to provide assistance to tornado victims who had not been assisted by the Federal Emergency Management Agency and other agencies.

Nature of Requirement: HUD's Consolidated Plan regulations are located in 24 CFR part 91. The regulations require that each jurisdiction adopt a citizen participation plan that provides for public participation in the development of the jurisdiction's consolidated plan. Under § 91.105(k), the jurisdiction must follow its citizen participation plan.

Granted by: Saul N. Ramirez, Jr., Assistant Secretary for Community Planning and Development.

Date Granted: May 8, 1998.

Reasons Waived: The citizen participation plan adopted by Jefferson County requires a thirty-day public comment period for any amendments to the consolidated plan. The County was allowed to substitute a ten-day comment period. Failure to approve the waiver would have caused undue hardship to persons displaced by a recent tornado.

4. Regulation: 24 CFR 92.101(c).

Project/Activity: The Northeast Minnesota Housing Consortium.

Nature of Requirement: HUD's HOME program regulations are located at 24 CFR part 92. Subpart C of 24 CFR part 92 describes the requirements for units of local government wishing to form a consortium for purposes of participating in the HOME program. Section 92.101(c) provides that a unit of local government located within a non-urban county that wishes to participate as a member of a consortium must sign the HOME consortium agreement.

Granted by: Saul N. Ramirez, Jr., Assistant Secretary for Community Planning and Development.

Date Granted: April 22. 1998.

Reasons Waived: The waiver extended the deadline for signature of the consortium agreement. The consortium requested the extension due to difficulties in obtaining all of the necessary signatures. Among the difficulties described in the waiver request submitted by the consortium were the large number of local jurisdictions participating in the consortium and the remote rural location of each of the participating jurisdictions.

For Items 5 and 6, Waivers Granted for 24 CFR Part 203, Contact: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–7000; telephone (202) 708–2700 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

5. Regulation: 24 CFR 203.49(c).

Project/Activity: Mortgagees (Corinthian Mortgage Corporation and First Nationwide Mortgage Company) requested an extension of the initial change date for Adjustable Rate Mortgage (ARM) loans beyond the 12–18 month window period as required by 24 CFR 203.49.

Nature of Requirement: HUD's single family mortgage insurance program regulations are located at 24 CFR part 203. Section 203.49(c) provides that interest rate adjustments for ARMs must occur on annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the mortgagor's first debt service payment.

Granted by: Art Agnos, Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: Two waivers, one on May 15, 1998 and one on May 19, 1998.

Reasons Waived: The waiver permitted the lenders to securitize several loans. The waiver permitted the lenders to extend the initial interest rate adjustment dates on several ARM loans, thus rendering the loans eligible for placement in Ginnie Mae pools. Ineligibility of the loans for delivery to Ginnie Mae would have resulted in financial hardship to the mortgagee.

6. Regulation: 24 CFR 203.255(b)(5).

Project/Activity: A request was submitted to HUD for a waiver of the regulatory requirements located at 24 CFR 203.255(b)(5). The program participant requested that HUD permit the use of an automated risk assessment, based on scoring of the loan application, in lieu of the subjective review by a Direct Endorsement underwriter.

Nature of Requirement: HUD's single family mortgage insurance program regulations are located at 24 CFR part 203. The regulation at § 203.255(b)(5) requires that lender's Direct Endorsement underwriter personally review a borrower's credit and capacity to repay a mortgage to be insured by HUD.

Granted by: Art Agnos, Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Dates Granted: April 9, 1998.

Reasons Waived: HUD granted the waiver so that lenders, borrowers, and HUD may enjoy the enhanced benefit of automated underwriting technologies. The use of these technoiogies will reduce the time and cost to originate a HUD-insured mortgage. The waiver renders no harm to prospective borrowers or to HUD. The benefits of automated risk assessment technologies to borrowers, including reduced processing/underwriting costs, would be lost without the waiver.

For Items 7 Through 10, Waivers Granted for 24 CFR Parts 570, 574, and 576 Contact: Cornelia Robertson Terry, Field Management Division, Office of Executive Services, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7184, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

7. Regulation: 24 CFR 570.200(h).

Project/Activity: Clayton County, Georgia requested that HUD waive 24 CFR 570.200(h) to allow the County to use Community Development Block Grant (CDBG) funds to cover costs incurred by the County in preparing the CDBG specific portions of its first Consolidated Plan as a new urban county.

Nature of Requirement: The regulation at 24 CFR 570.200(h)(1)(i) states that a grantee may only use CDBG funds to pay pre-award costs if, among other things, the activity for which the costs are being incurred is included in a Consolidated Plan or an amended Consolidated Plan Action Plan prior to the costs being incurred.

Granted by: Saul N. Ramirez, Jr., Assistant Secretary for Community Planning and Development.

Date Granted: April 8, 1998.

Reasons Waived: As a new urban county, Clayton County had to incur planning and administrative costs in the preparation of CDBG specific portions of its Consolidated Plan. Non-reimbursement of these and other related start-up costs would have imposed a burden on Clayton County, and made it very difficult for the County to implement its CDBG program.

8. Regulation: 24 CFR 574.540.

Project/Activity: The City of New York, NY requested that HUD waive the regulations governing the Housing Opportunities for Persons with AIDS (HOPWA) program, which provide for the potential deobligation of funds which are not expended in a timely manner.

Nature of Requirement: The HOPWA program regulations at 24 CFR 574.540 provide that HUD may deobligate any amount of grant funds that have not been expended within a three-year period from the date of the signing of the grant agreement.

Granted by: Saul Ramirez, Jr., Assistant Secretary for Community Planning and Development

Date Granted: April 22, 1998.

Reasons Waived: The City requested the waiver due to delays in securing funding for the supportive services to be used in connection with its HOPWA projects. The waiver will allow the City to continue to use up to $16,216,996 in current unexpended funds from the City's Fiscal Year 1995 HOPWA formula allocation.

9. Regulation: 24 CFR 576.21.

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Project/Activity: Fort Wayne, Indiana requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 states that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse counseling, and education to homeless persons.

Granted by: Saul N. Ramirez. Jr., Assistant Secretary for Community Planning and Development.

Date Granted: March 26, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The requirement was waived because the City was able to successfully demonstrate that other activities under the program are being carried out in the locality.

10. Regulation: 24 CFR 576.21.

Project/Activity: Hennepin County, Minnesota requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 states that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse counseling, and education to homeless persons.

Granted by: Saul N. Ramirez, Jr., Assistant Secretary for Community Planning and Development.

Date Granted: May 29, 1998.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." The County stated that its emergency shelters are currently being funded through other local funds, but it has limited funds to provide the services necessary to move homeless families out of emergency shelter and into permanent housing. The County stated that if the waiver were granted, essential service funds would be used by the County's Family Homeless Prevention and Assistance Program to stabilize families exiting emergency shelters and reduce homeless relapses within the community at an average cost of $300 per family. Based on this statement by the County, HUD granted the regulatory waiver.

For Item 11, Waiver Granted for 24 CFR Part 811, Contact: James B. Mitchell, Acting Director, Special Projects Division, Office of Multifamily Housing Programs, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC. 20410–7000; telephone (202) 708–3730 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–766–8391.

11. Regulation: 24 CFR 811.104(b).

Project/Activity: Spinnaker Landing Apartments, Palm Beach County, Florida (Project No. FL002–HG402).

Nature of Requirement: HUD's regulations governing the tax exemption of obligations of public housing agencies are located at 24 CFR part 811. Section 811.104(b) prohibits payment of a fee of a Housing Authority other than for actual expenses of a bond refunding transaction.

Granted by: Art Agnos, Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: March 15, 1998.

Reasons Waived: The refunding bonds are being issued on terms which will reduce debt service to strengthen the financial condition of the project, and redeem 1988 bonds which are in default. The Internal Revenue Code low-income rent restrictions will apply during the new financing term. The Palm Beach County Housing Authority will receive a fee of $32,500 for its participation in this transaction. Because this fee will be paid by the project owner and not from refunding bond proceeds or from debt service reserve residual balances, HUD found good cause to waive § 811.104(b).

For Item 12, Waiver Granted for 24 CFR Part 882, Contact: Cornelia Robertson Terry, Field Management Division, Office of Executive Services, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7184, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

12. Regulation: 24 CFR 882.408(a).

Project/Activity: The Los Angeles Housing Authority requested that HUD waive its regulations at 24 CFR 882.408(a), which govern its Section 8 Certificate and Moderate Rehabilitation Programs.

Nature of Requirement: The regulations at 24 CFR 882.408(a) state that the initial gross rent for any project unit must not exceed the applicable Moderate Rehabilitation Fair Market Rent (FMR) in effect on the date that the agreement to enter into a Housing Assistance Payment Contract is executed, except by up to ten percent in cases where the HUD Field Office has approved an area-wide exception rent.

Granted by: Saul N. Ramirez, Jr., Assistant Secretary for Community Planning and Development.

Date Granted: June 11, 1998.

Reasons Waived: At the time the affected housing project was conditionally selected for a Section 8 Single Family Occupancy (SRO) grant (September 1996), the maximum allowable contract rent was $506 with a base rent of $422. On October 1, 1997, the FMR for the Los Angeles-Long Beach area was greatly reduced, lowering the maximum allowable contract rent from $506 to $437, and the base rent from $422 to $365. The waiver will allow the Housing Authority to use the FMR in effect at the time the project was conditionally selected for funding.

For Item 13, Waiver Granted for 24 CFR Part 882, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

13. Regulation: 24 CFR 882.605(c).

Project/Activity: Central Oregon Regional Housing Authority; Section 8 Rental Certificate Program, Special Assistance on Behalf of Manufactured Home Owners.

Nature of Requirement: The regulation caps the amount of rent that can be paid for rental of a manufactured home pad space at 110 percent of the applicable Fair Market Rent.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 24, 1998.

Reasons Waived: Approval of the waiver made it possible for the elderly/disabled program participant to continue to receive assistance without moving her manufactured home to a new site. Because of her age and poor health, a move would have been a severe hardship. The program participant also lacked the financial resources necessary to move.

For Items 14 and 15, Waivers Granted for 24 CFR Part 891, Contact: Willie Spearmon, Director, Office of Business Products, Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6132, Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

14. Regulation: 24 CFR 391.130.

Project/Activity: Home Sweet Home Development.

Nature of Requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.130 (entitled "Prohibited relationships") provides that Officers and Board members of either the Sponsor or Owner may not have any financial interest in any contract with the Owner or any firm which has a contract with the Owner. This restriction applies so long as the individual is serving on the Board and for a period of three years following resignation or final closing, whichever occurs later.

Granted by: Art Agnos, Acting General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: May 22, 1998.

Reasons Waived: The Walker Point Development Corporation is a not-for-profit

organization, and will complete the rehabilitation of the Home Sweet Home units at cost without a profit.

15. Regulation: 24 CFR 891.130.

Project/Activity: The Sponsor of Jacob Blake Manor requested approval to use a site owned by a former Board member.

Nature of Requirement: HUD's regulations at 24 CFR part 891 describe the policies and procedures governing supportive housing for the elderly and persons with disabilities. The regulation at § 891.130 (entitled "Prohibited relationships") provides that Officers and Board members of either the Sponsor or Owner may not have any financial interest in any contract with the Owner or any firm which has a contract with the Owner. This restriction applies so long as the individual is serving on the Board and for a period of three years following resignation or final closing, whichever occurs later.

Granted by: Ira Peppercorn, General Deputy Assistant Secretary for Housing.

Date Granted: June 5, 1998.

Reasons Waived: Term of the former Board member in question expired prior to approval of the Sponsor/Owner for a fund reservation.

For Items 16 Through 29, Waivers Granted for 24 CFR Part 982, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4126, Washington, DC 20410; telephone (202) 401–8812 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

16. Regulation: 24 CFR 982.303(b).

Project/Activity: Oakland Housing Authority, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 2, 1998.

Reasons Waived: The waiver was granted to help keep the large family (consisting of two adults and seven children) together and to prevent them from becoming homeless again.

17. Regulation: 24 CFR 982.303(b).

Project/Activity: Department of Housing and Community Development of the Commonwealth of Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 1998.

Reasons Waived: Approval of the waiver prevented further hardship to a seriously ill certificate holder whose illnesses prevented her from seeking a suitable rental unit during much of the time her rental certificate was in effect.

18. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the County of Santa Clara, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 14, 1998.

Reasons Waived: Approval of the waiver supported the intensive treatment and counseling program of a disabled child in the family and helped protect the family from the threat of homelessness.

19. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the County of Santa Clara, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: April 20, 1998.

Reasons Waived: Waivers were granted to prevent further hardship to two certificate holders whose ability to seek housing was severely limited by serious health problems that limited their mobility.

20. Regulation: 24 CFR 982.303(b).

Project/Activity: Chicago Section 8 Housing Program, Illinois; Section 8 Rental Voucher Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 5, 1998.

Reasons Waived: The waiver provided extra search time for two rental voucher holders whose ability to seek suitable housing was limited due to their disabilities.

21. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the County of Contra Costa, California; Section 8 Rental Certificate Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 12, 1998.

Reasons Waived: The waiver provided extra search time to a certificate holder forced to relocate after a violent crime against her daughter.

22. Regulation: 24 CFR 982.303(b).

Project/Activity: Quincy Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 14, 1998.

Reasons Waived: The waiver provided extra search time to the rental certificate holder whose disability severely limited her ability to locate appropriate housing.

23. Regulation: 24 CFR 982.303(b).

Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 1998.

Reasons Waived: The waiver was granted to an elderly certificate holder whose disability made it difficult for her to seek appropriate housing.

24. Regulation: 24 CFR 982.303(b).

Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 1998.

Reasons Waived: The waiver was granted to a certificate holder whose disability made it difficult for her to seek appropriate housing.

25. Regulation: 24 CFR 982.303(b).

Project/Activity: Boston Housing Authority, Massachusetts; Section 8 Rental Certificate Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: May 15, 1998.

Reasons Waived: The waiver was granted to provide extra search time to a certificate holder whose disability made it difficult to seek appropriate housing.

26. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority and Urban Renewal Agency of Lane County, Oregon; Section 8 Rental Certificate Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 1998.

Reasons Waived: The waiver was granted to provide extra search time to two certificate

holders whose disabilities made it difficult for them to seek appropriate housing.

27. Regulation: 24 CFR 982.303(b).

Project/Activity: Department of Housing and Community Development of the City and County of Honolulu, Hawaii; Section 8 Rental Voucher Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 4, 1998.

Reasons Waived: The waiver provided extra search time to a disabled voucher holder who was hospitalized during the entire period her rental voucher was in effect.

28. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of Marin County, California; Section 8 Rental Voucher Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 5, 1998.

Reasons Waived: The waiver was granted to a disabled voucher holder whose disability made it difficult to find suitable housing in a tight rental market.

29. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of Santa Clara, California; Section 8 Rental Certificate Program.

Nature of Requirement: The Regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate/voucher holder may seek housing to be leased under the program.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 10, 1998.

Reasons Waived: The waiver was granted to grant additional search time to an elderly certificate holder who was hospitalized and unable to seek housing during much of the time that his certificate was in effect.

For Item 30, Waiver Granted for 24 CFR Part 1005, Contact: Jacqueline Johnson, Deputy Assistant Secretary for Native American Programs, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4130, Washington, DC 20410; telephone (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

30. Regulation: 24 CFR 1005.112.

Project/Activity: A request was made by Norwest Mortgage, Inc. of Minneapolis, MN, that the Office of Native American Programs consider an alternative to the certification that provides for lender acknowledgment and agreement to comply with all applicable tribal laws when the lender originates a loan under the Section 184 Loan Guarantee Program.

Nature of Requirement: Lenders participating in the Section 184 Loan Guarantee Program must certify that they acknowledge and agree to comply with all applicable tribal laws when originating a Section 184 loan for a tribal member.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: June 12, 1998.

Reasons Waived: Norwest Mortgage, Inc. has developed procedures for the necessary discussions that must take place with a tribe before the origination and closing of a 184 loan on trust land or other eligible service area. Norwest Mortgage, Inc. will obtain a letter from the applicable tribe advising HUD of the tribe's confidence or belief that Norwest Mortgage, Inc. has made the effort necessary to familiarize itself with the tribe's laws. A copy of the tribe's letter will be included with each 184 loan file for tribal members.

[FR Doc. 98–30293 Filed 11–12–98; 8:45 am]

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federal register

Friday
November 13, 1998

Part IV

Department of Labor

Employment And Training Administration

Invitation To Comment on Proposed Minimum Performance Criteria for UI PERFORMS Tier I Measures; Notice

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DEPARTMENT OF LABOR

Employment And Training Administration

Invitation to Comment on Proposed Minimum Performance Criteria for UI PERFORMS Tier I Measures

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice and opportunity to comment on proposed minimum performance criteria for UI PERFORMS Tier I measures.

SUMMARY: The purpose of this notice is to explain and invite comment on the proposed minimum performance criteria for nine UI PERFORMS Tier I measures. UI PERFORMS is the Department's management system for promoting continuous improvement in Unemployment Insurance performance.

DATES: Written comments must be received by the close of business January 12, 1999.

ADDRESSES: Comments should be submitted to Ms. Grace A. Kilbane, Director, Unemployment Insurance Service, U. S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW, Room S–4231, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra King, Director, Division of Performance Review, Unemployment Insurance Service, U. S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W, Room S–4231, Washington, DC 20210, 202–219–5223, extension 160, or Andrew Spisak, who can be contacted at the same address or at 202–219–5223, extension 157. (These are not toll free numbers.) Workgroup papers are available upon request.

SUPPLEMENTARY INFORMATION:

Background

When the State-Federal Performance Enhancement Work Group (PEWG) established the outlines of the UI PERFORMS system for promoting continuous improvement in UI operational performance, it identified 10 key measures for which uniform national criteria would be set. It called these "Tier I" measures. The criteria for these measures were to be interpreted as minimum levels which States would always be expected to meet or exceed, similar to the criteria which implement the current Secretary's Standards for first payment and lower authority appeals promptness.

The PEWG's successor, the Performance Enhancement Group (PEG), ratified the meaning of the performance criteria and established three workgroups—Appeals, Benefits, and Tax—to develop recommendations for the criteria. Each group included Federal staff from the National and Regional Offices, and at least two State representatives. The PEG developed guidelines for the workgroups to follow in developing their recommendations. The PEG also deferred setting a criterion for cashiering timeliness until that measure can be applied more uniformly.

PEG materials related to the establishment of performance criteria were provided in UIPL No. 19–98. UIPL No. 34–98 described the process for establishing the performance criteria. The workgroup members are identified in Appendix A, and PEG members are identified in Appendix B.

The workgroups' reports were presented to the PEG at its meeting in Washington, DC, on September 28–30, 1998. The PEG reviewed the workgroups' recommendations, both in terms of the individual Tier I measures and in light of their cumulative burden, and recommended appropriate adjustments. The PEG's decisions were reported in UIPL 4–99 (October 20, 1998), which solicited the comments of the State Employment Security Agencies on the proposed performance criteria.

Performance Criteria Principles

a. *PEWG Guidance.* The PEWG originally addressed the subject of developing performance criteria at its meetings in April and October 1994 and recommended the following principles:

- Criteria should be set for only a few elements.
- Measures would have agreed-on validity.
- Validity would include the attribute that the measures would have the same meaning in all States so that inter-State comparisons are valid.
- The criteria would be interpreted as performance floors, similar to the criteria for the current Secretary's Standards, which the criteria will replace.
- States would be expected to meet or exceed the criteria, unless attaining the established levels was not "administratively feasible" for the period measured.
- Through their annual State Quality Service Plans (SQSP), States would be encouraged to establish their own targets above these minimum levels.
- Regarding the levels selected:
- The implications for customer service should be considered.
- They should be no lower than existing criteria for Secretary's Standards or Desired Levels of Achievement, if set for measures which remain the same as Quality Appraisal measures.
- Face validity is important. The measures should balance levels necessary to sustain quality customer service with the administrative feasibility of attaining and exceeding those levels.
- Levels should take into account recession impacts on performance.
- In the application of these standards:
- Missing a criterion will require corrective action; a State that does not want to undertake a Corrective Action Plan will have to demonstrate that either (a) the measurement of its performance was incorrect and the criterion was really attained, or (b) attaining the criterion at the time was not administratively feasible.
- Persistent performance below the established criterion would be required before the Department of Labor would initiate stronger action. The Department of Labor would have to ensure that the State was not treated differently than other States and that the Department's judgments were as free as possible of subjective considerations. The Department of Labor must conclude that the performance deficiencies reflected systemic, not random or temporary (such as recessionary), causes.

b. *PEG Guidance.* More recently, the PEG addressed the subject of benchmarks at its first two meetings and set down the following guidelines for performance criteria:

- The criteria should be minimum or floor values which every State is expected to meet or exceed.
- They should reflect levels which are administratively feasible.
- The levels chosen should reflect good customer service.
- They should reflect actual State experience using three years of data, if available.
- Where there is a current and/or similar criterion, a replacement should not be set lower unless there is a justification.
- The criteria should be set on validated data, if available.
- They should have "face validity" to the public.

One objective of the criteria is to facilitate continuous improvement for the system as a whole, specifically by encouraging States to perform at levels above the minimum and by helping to raise the performance of States not meeting the criteria. The proposed criteria include the notion that minimum performance levels need to be set at levels which are both

administratively feasible and high enough to convince the public that UI is serious about conducting a quality program.

Periodic Review and Affirmation or Revision

The PEWG and PEG stressed that the system is committed to reviewing measures and performance criteria periodically, so setting criteria is not a one-time event. The first set of UI PERFORMS criteria will be reviewed five years from the date of issuance, with the exception of the criteria for nonmonetary determinations timeliness, nonmonetary determinations quality, and new status determinations accuracy, which will be reviewed after two years. Additional performance data will have been collected for the measures, and States will have had their first opportunity to validate the data prior to the reviews. Subsequent reviews will occur at approximately five-year intervals.

Effective Date

Except as noted below, these criteria will be used to assess SESA performance effective with the fiscal year (FY) 2000 planning cycle. Because the FY 2000 planning cycle will use performance data which in part predate the issuance of this directive, States whose performance for one or more of the Tier I measures does not meet or exceed the criteria will be required to submit "transition plans", in lieu of corrective action plans, identifying the steps the State will take to achieve the minimum performance criteria. Performance assessment in subsequent SQSP cycles is described in section, "Performance Assessment", below.

Summary of Minimum Performance Criteria

Measure	Criteria effective FY 2000	Criteria effective FY 2002
First Payment Timeliness	1. 87% within 14/21 days 2. 93% within 35 days	1. 90% within 14/21 days. 2. 95% within 35 days.
Nonmonetary Determinations Timeliness		1. 80% of separation determinations within 21 days. 2. 80% of nonseparation determinations within 14 days.
Nonmonetary Determinations Quality		75% of all determinations with passing scores (> 80 points)—all programs, separation and nonseparation combined.
Lower Authority Appeals Timeliness	1. 60% of decisions within 30 days 2. 80% of decisions within 45 days 3. 95% of decisions within 75 days	1. 60% of decisions within 30 days. 2. 85% of decisions within 45 days. 3. 95% of decisions within 75 days
Higher Authority Appeals Timeliness	1. 50% of decisions within 45 days 2. 80% of decisions within 75 days. 3. 95% of decisions within 120 days.	No change.
Lower Authority Appeals Quality	80% of all benefit appeals with combined scores equal to at least 85% of potential points.	No change.
Timeliness of New Status Determinations	1. 60% of determinations made within 90 days of quarter ending date (QED). 2. 80% of determinations made within 180 days of QED.	No change.
New Status Determinations Accuracy		No more than six cases from an acceptance sample of 60 cases can fail the evaluation.
Timeliness of Transfer from Clearing Account to Trust Fund.	Maximum of two days to transfer funds from the State clearing account to the UI trust fund.	Maintenance of an annual ratio* ≤1.75.

*Ratio of the monthly average daily available balance (line 10, ETA 8414 report) to the average daily transfer to the trust fund (line 3, ETA 8405 report, divided by the number of days in the month).

Tier I Measures: Definitions and Recommended Criteria

First Payment Timeliness

Definition	Recommended criteria
Number of days elapsed from week-ending date of the first compensable week in benefit year to date payment is mailed, made in person, or offset or intercept is applied. Universe of first full and partial payments from ETA 9050 report. One aggregate measure including intrastate and interstate for State UI, UCFE, and UCX.	1. 87 percent within 14/21 days. 2. 93 percent within 35 days. In conjunction with implementation of the consolidated UI PERFORMS regulation: 1. 90 percent within 14/21 days. 2. 95 percent within 35 days.

The PEG balanced the positive impact of new technologies, such as telephone certification, on first payment time lapse, against countervailing factors such as alternative base year legislation. The consensus was to use the existing Secretary's Standards criteria (87 percent timely for 14/21 days and 93 percent timely for 35 days) for intrastate UI first payments and apply them to a combined first payment measure (intrastate UI + interstate UI + UCFE + UCX). Based on calendar year (CY) 1997 data, which are available for 51 of the 53 agencies, 49 States meet both the 14/21-day and 35-day proposed criteria, and the performance of two States is within five percentage points of both of the proposed criteria.

In concert with the incorporation of the regulation defining the current criteria (20 CFR 640) into the single UI PERFORMS regulation, the percentages will be raised to 90 percent within 14/

21 days and 95 percent within 35 days. It is anticipated that the revised criteria will be effective with the FY 2002 SQSP. Current data suggest that most States could reasonably be expected to meet the higher standards.

In addition, the PEG agreed that it is necessary to maintain a monitoring mechanism for the first payment promptness of the individual programs included in the aggregate Tier I measure—UI intrastate, UI interstate, UCFE, and UCX—by including separate measures for each program in Tier II. Data collected in the ETA 9050 report will be used to monitor 14/21-day and 35-day first payment promptness for these programs. A complete list of Tier II measures is provided in Appendix C.

Nonmonetary Determinations Timeliness

Definition	Recommended criteria
Number of days elapsed from date of detection of any issue potentially affecting the claimant's benefit rights to date of the determination. Measure includes intrastate and interstate for State UI, UCFE, and UCX (ETA 9052 report).	1. 80 percent of separation determinations within 21 days. 2. 80 percent of nonseparation determinations within 14 days. (Implementation postponed until FY 2002 SQSP.)

The PEG took into consideration the significant changes in the way nonmonetary timeliness data are collected. Time lapse is measured from date of detection to date of determination; universe data, not sample data, are reported; and separations include issues arising from both new and additional initial claims. The PEG agreed that in order to assure an acceptable level of customer service, the criteria should be set at levels no lower than 80 percent of separation determinations made within 21 days of the detection date and 80 percent of nonseparation determinations made within 14 days from the date of detection.

Because the majority of States are performing below the proposed minimum criteria, the PEG postponed their implementation until the FY 2002 SQSP. Until the implementation of these criteria, States may be required to develop or revise transition plans to raise performance, but will not be subject to any sanctions initiated by the Department of Labor.

The Department of Labor, in consultation and cooperation with the States, will analyze the nonmonetary timeliness data in order to identify the causes of performance that is below the minimum levels. The results of this analysis and State performance data collected in the ETA 9052 report will be used to review the minimum performance criteria after two years.

Although States have adopted new technologies and procedures that have significantly reduced differences in the adjudicatory processes for intrastate and interstate claims, the PEG agreed that measures for both intrastate and interstate separation determinations (21 days), and intrastate and interstate nonseparation determinations (14 days) should be established under Tier II to monitor performance for these components of the aggregate Tier I measure.

Nonmonetary Determination Quality

Definition	Recommended criteria
Application of Quality Performance Instrument to quarterly samples of nonmonetary determinations selected from the universe of determinations reported on ETA 9052 (time lapse) report; quality scores reported on ETA 9056 report.	75 percent of all determinations with passing scores (> 80 points)—all programs, separation and nonseparation combined. (Implementation postponed until FY 2002 SQSP.)

In setting minimum performance levels for this measure, the PEG took into consideration the changes in the way in which nonmonetary adjudication quality data are collected: quarterly samples, versus annual samples, are selected from universes that include all adjudications, not only determinations for which a week was claimed. The PEG decided that in order to assure an acceptable minimum level of customer service and take into account the administrative feasibility of meeting the criterion (face validity), the criterion should be set no lower than 75 percent of the separation and nonseparation determinations receiving a score of more than 80 points, based on the weighted aggregate scores from four quarterly samples.

However, because the majority of States are performing below the proposed minimum criterion, the PEG postponed its implementation until the FY 2002 SQSP. Until the implementation of this criterion, States may be required to develop or revise transition plans to raise performance, but will not be subject to any sanctions initiated by the Department of Labor.

The Department of Labor, in consultation and cooperation with the States, will analyze the nonmonetary quality data in order to identify the causes of performance that is below the minimum levels. The results of this analysis and State performance data collected in the ETA 9056 report will be used to review the minimum performance criterion after two years.

Lower Authority Appeals Timeliness

Definition	Recommended criteria
Number of days from date of request for hearing to date of decision (ETA 9054 report); includes State UI, UCFE, and UCX, intrastate and interstate.	1. 60 percent of decisions within 30 days. 2. 80% of decisions within 45 days; increase to 85% of decisions within 45 days in conjunction with implementation of the consolidated UI PERFORMS regulation. 3. 95% of decisions within 75 days.

The PEG decided that the first criterion of 60 percent in 30 days is adequate and should remain the same. The current Secretary's Standard criterion of 80 percent of the decisions within 45 days will remain the minimum criterion for the FY 2000 and FY 2001 planning cycles. In concert with the incorporation of the regulation defining the current criteria (20 CFR part 650) into the single UI PERFORMS regulation, the criterion will be raised to 85 percent, effective with the FY 2002 SQSP. This will help ensure that a greater percentage of the cases are disposed of as efficiently as possible, that cases are not allowed to accumulate for long periods of time, and that parties to an appeal receive a hearing and decision in a reasonable amount of time.

The PEG established a third criterion of 95 percent within 75 days to provide an impetus for States to reduce the time taken to address cases that have not been decided within 45 days.

Higher Authority Appeals Timeliness

Definition	Recommended criteria
Number of days from date of request for hearing to date of decision (ETA 9054 report); includes State UI, UCFE, and UCX, intrastate and interstate.	1. 50 percent of decisions within 45 days. 2. 80 percent of decisions within 75 days. 3. 95 percent of decisions within 120 days.

To encourage improved performance, the PEG increased the 45-day timeliness criterion from 40 percent to 50 percent. Forty percent does not reflect an adequate level of customer service, and most States far exceed the 40 percent level. Based on CY 1997 data, only a few States would not meet a 50 percent standard.

The 75-day timeliness standard remains the same at 80 percent, and a third criterion of 95 percent in 120 days is established. The third criterion is important because there should remain some incentive for States to decide cases over 75 days, and there should be some accountability for older cases. Simply because a case is over the 75-day limit, it should not receive less consideration than a newer case. The absence of a third level can create an incentive for a State to take care of its new cases, thereby improving its overall reported performance, rather than attending to older cases.

Lower Authority Appeals Quality

Definition	Recommended criteria
Quality of lower authority benefit appeals based on application of a standard review instrument to quarterly samples of appeals (ETA 9057 report).	80 percent of all benefit appeals with combined scores equal to at least 85% of potential points.

The PEG agreed to change the criterion from 80 percent of cases scoring 80 percent or more of the potential evaluation points to 80 percent of cases scoring 85 percent or more of the potential evaluation points.

This criterion is intended to make sure that both States and individual Hearing Officers provide a quality product. A quality product is one where, in the view of the State's customers and the various review bodies, the customer is receiving a considered, due-process product, both when attending the hearing and when reading the decision. This standard reflects the goals of UI PERFORMS by seeking to raise the individual Hearing Officer's scores, while maintaining a high level of performance for the State.

Timeliness of New Status Determinations

Definition	Recommended criteria
Number of days from last day of the quarter (Quarter Ending Date—QED) in which liability occurred to date of determination (ETA 581 report).	1. 60 percent of determinations made within 90 days of QED. 2. 80 percent of determinations made within 180 days of QED.

The old measure combined performance for both new and successor employers, and the desired level of achievement was 80 percent of determinations made within 180 days from the date of liability. The new 180-day measure applies to status determinations for new employers. Timeliness is measured from the ending

date of the quarter in which liability was incurred and is based on universe data, as opposed to sample data. The PEG set the minimum performance criterion at 80 percent of new employer status determinations completed within 180 days of the QED.

For the new 90-day measure, the PEG set a criterion of 60 percent of new employer status determinations completed within 90 days of the QED. This standard balances State performance against maintaining an acceptable level of customer service. In CY 1997, only four States would have failed to meet the criterion of 60 percent, with scores of 57.9%, 51.8%, 50.9%, and 40.5%.

New Status Determinations Accuracy

Definition	Recommended criteria
Accuracy of new status determinations from an annual tax performance acceptance sample drawn from all new status determinations..	No more than six cases from an acceptance sample of 60 cases can fail the evaluation. New standard implies: 1. At least 95 percent of the samples will *pass* if State accuracy rate is ≥ 94.5%. 2. At least 90 percent of the samples will *fail* if State accuracy rate is ≤ 82.4%. (Implementation postponed until FY 2002 SQSP.)

The PEG believes the current standard, that no more than two of the 60 sample cases can fail the evaluation and still pass the acceptance sample, is too rigid. New Status Determinations Accuracy data for CY 1996 shows that 24 of the 46 States reporting data failed. In CY 1997, 22 of the 47 States reporting data failed.

Acceptance sample results are affected to some extent by the subjectivity of the reviewer, which can vary from State to State. If there are ten evaluative areas in the case, with a review of 60 cases, there are actually 600 evaluative questions. A failure in any one of the ten evaluative areas fails the case. Under the current criterion, if more than two cases in the SESA's sample fails, the entire acceptance sample fails. States can actually have good tax measures but appear to have failing programs based on the acceptance sample results.

One of the purposes of the performance measures is to provide information to SESA managers on the quality of the tax functions within their State so they can strive to improve processes where warranted. Setting the standard at six or fewer failed cases enables States to accomplish this goal and takes into account the subjectivity of the review from State to State.

Because many States do not meet the current standard, the PEG postponed the implementation of the revised minimum performance levels until the FY 2002 SQSP. Until the implementation of these criteria, States may be required to develop or revise transition plans to raise performance, but will not be subject to any sanctions initiated by the Department of Labor.

The Department of Labor, in consultation and cooperation with the States, will analyze the new status determinations accuracy data in order to identify the causes of performance that is below the minimum levels and identify ways to reduce variation in the application of the accuracy evaluation. The results of this analysis and State acceptance sample data will be used to review the minimum performance criteria after two years.

Timeliness of Transfer from Clearing Account to Trust Fund

Definition	Recommended criteria
Effective for the FY 2000 and FY 2001 SQSP: Average number of days funds are on deposit in the Clearing Account before transfer to Trust Fund (8414 report). Effective with the FY 2002 SQSP: Ratio of the monthly average daily available balance (line 10, ETA 8414 report) to the average daily transfer to the trust fund (line 3, ETA 8405 report, divided by the number of days in the month).	Maximum of two days to transfer funds from the State clearing account to the UI trust fund for two years until reporting consistency issues are resolved. Maintenance of an annual ratio ≤1.75. After 5 years, maintenance of an annual ratio ≤1.0.

The current measure—the number of days funds are on deposit in the clearing account before transfer to the State account in the Unemployment Trust Fund (UTF)—is over fifteen years old. Substantial changes in banking law (especially deregulation and Federal Reserve policy—e.g. elimination of float in the banking system) and technology have combined to make the current criterion obsolete. More expeditious check clearing, the proliferation of electronic payments, and the growth of check clearinghouses independent of the Federal Reserve system all work to expedite cash flow.

The purpose of the immediate deposit requirements (Section 3304(a)(3), FUTA and Section 303(a)(4), SSA) is to ensure that unemployment funds are deposited to the credit of the State account in the UTF as soon as possible. The UTF offers greater safety and a higher historical return than State bank accounts, while providing similar liquidity. The law is also concerned about the loss of interest to the UTF from delays in transfer.

A better focus of State compliance with the immediate deposit requirement is the actual transfer of funds from the clearing account to the UTF rather than the amount of time funds remain in the clearing account before transfer. A time-based measure is arbitrary because checks clear at different rates between States and banks. The proposed balance ratio eliminates the arbitrary factors because it measures only available balances, that is, funds available after checks have cleared and reserve requirements have been met.

Some consistency issues have been identified in the data reported in the ETA 8414 and ETA 8405 reports. Because the proposed ratio is based on these data, the PEG agreed that the current desired level of achievement of a maximum of two days to transfer funds from the State clearing account to the UI trust fund should be maintained for a period of two years, during which States and the Department of Labor will resolve the reporting issues.

Performance Assessment

a. *Continuous Assessment.* In a continuous improvement environment, both the Federal partner and the SESA will routinely access performance data to monitor program performance and initiate corrective action whenever it appears to be warranted. Therefore, under UI PERFORMS, the SESAs will develop Corrective Action Plans (CAPs) alone, or in collaboration with their Regional Office, whenever a serious performance issue is detected based on cumulative performance data. CAPs will also result from Program Reviews conducted during the year by the Federal partner.

b. *Annual Assessment.* Continuous assessment will be augmented with an annual assessment of program performance which will occur in conjunction with the SQSP process, and will form the basis for performance improvement planning for the upcoming SQSP. This assessment will utilize the most recent 12 months of performance data that are available. For data reported monthly, the reporting period will include the 12 months ending June 30 of each year; for data reported each quarter, the four quarters ending with the second calendar quarter; and for data reported annually, the calendar year ending December 31.

Because of the lag that must be built into this process, it is possible that more current data will show that a performance problem may have already been corrected. In that case, the State and the Region will need to reference that more current information.

c. *SESA/Regional Negotiation.* Identification of the specific areas for which Program Improvement Plans will be submitted in the SQSP will be finalized through negotiations between the SESAs and the Regional Office. For mandated Tier I, program review, or program reporting performance areas, a CAP will be prepared if performance is unsatisfactory and an effective plan is not already in place. For Tier II areas of negotiated performance (or Tier I above the minimum performance level), a Continuous Improvement Plan (CIP) will be prepared to reflect that negotiation.

Solicitation of Comments and Issuance

Unemployment Insurance Program Letter 4–99 (October 20, 1998) described the recommended criteria, their rationale, and phase-in schedule and solicited the comments of State Employment Security Administrators. The criteria were also discussed in workshops that were held at the UI Directors' meeting in Coeur D'Alene, Idaho, October 20–22, 1998. The workshops included not only the presentation of the proposed levels and their rationale, but also questions and discussion.

After all comments have been assimilated and the criteria modified as appropriate, the new minimum performance criteria will be promulgated via a UIPL, anticipated in early calendar year 1999.

Appendices

The members of the Performance Criteria Workgroups are in Appendix A; the members of the Performance Enhancement Group are in Appendix B; UI PERFORMS Tier II Measures are in Appendix C.

Signed at Washington, D.C., on November 6, 1998.

Raymond L. Bramucci,

Assistant Secretary of Labor for Employment and Training.

Appendix A—Performance Criteria Workgroups

National Office Coordination and Technical Assistance

Andrew Spisak
Burman Skrable
Tom Stengle

Benefits Group

Barbara Chandler, Ohio Bureau of Employment Services
Terry Clark, National Office
Walter Harris, New York Regional Office
William McGann, New Jersey Department of Labor
Bob Whiting, National Office

Appeals Group

Jack Bright, National Office
Dan Kassner, Alaska Department of Labor
Robert P. McWilliams, Kentucky UI Commission
Pat O'Neal, Seattle Regional Office
Hazel Warnick, National Association of UI Appellate Boards
Sonja Weisgerber, Kansas Department of Human Resources

Tax and Cash Management Group

Connie Carter, Atlanta Regional Office
Cindy Guthrie, Missouri Division of Employment Security
Connie Peterkin, National Office
Wendy Tyson, Wyoming Department of Employment

Appendix B—Performance Enhancement Group

Grace A. Kilbane, Director, Unemployment Insurance Service, U.S. Department of Labor
Dale Ziegler, Assistant Commissioner, Unemployment Insurance Division, Washington Employment Security Department
Alice Carrier, Director, Operational Support, Connecticut State Labor Department
Donald Peitersen, Director, Office of Unemployment Insurance, Colorado Department of Labor & Employment
Dave Murrie, Deputy Administrator, Oklahoma Employment Security Commission
Gay Gilbert, Deputy Administrator, Ohio Bureau of Employment Services
Reynel (Renny) Dohse, Bureau Chief of Job Insurance, Iowa Workforce Development
David Henson, Director, Office of Regional Management, ETA, U.S. Department of Labor
Cheryl Atkinson, Deputy Director, Unemployment Insurance Service, U.S. Department of Labor
Ed Strong, Regional Administrator for Employment and Training, Philadelphia Regional Office, U.S. Department of Labor
Robert Kenyon, Regional Director for Unemployment Insurance, Dallas Regional Office, U.S. Department of Labor
Dianna Milhollin, Director, Unemployment Insurance Division, Atlanta Regional Office, U.S. Department of Labor
Betty Castillo, Chief, Division of Program Development and Implementation, Unemployment Insurance Service, U.S. Department of Labor
Sandra King, Chief, Division of Performance Review, Unemployment Insurance Service, U.S. Department of Labor

Appendix C—UI Performs Tier II Measures

1. Workshare First Payments Timeliness
2. Continued Weeks Payments Timeliness
3. Nonmonetary Issue Detection Timeliness
4. Workshare Continued Weeks Payment Timeliness
5. Nonmonetary Determinations Implementation Timeliness
6. Implementation of Appeals Decision Timeliness
7. Employer Tax Appeal Timeliness
8. Combined Wage Claim Wage Transfer Timeliness
9. Combined Wage Claim Billing Timeliness
10. Combined Wage Claim Reimbursements Timeliness
11. Wage /Tax Report Filing Timeliness
12. Securing Delinquent Reports Timeliness
13. Resolving Delinquent Reports Timeliness
14. Contributions Payments Timeliness
15. Lower Authority Appeals Due Process Quality
16. Higher Authority Appeals Quality—[to be developed]
17. Employer Tax Appeals Quality—[to be developed]
18. Posting Contributions Accuracy
19. Delinquent Reports Resolution Quality

20. Collection Actions Quality
21. Field Audits Quality
22. Employer Accounts Posting Accuracy
23. Employer Billings Accuracy
24. Employer Credits/Refunds Accuracy
25. Benefit Charging Accuracy
26. Experience Rating Accuracy
27. Benefit Payment Accuracy
28. Lower Authority Appeals, Case Aging
29. Higher Authority Appeals, Case Aging
30. Turnover of Receivables Liquidated or Written
31. Writeoff of Receivables
32. Assessment of Receivables to Taxes Due
33. Audit Penetration, Employers
34. Audit Penetration, Wages
35. Audit Targeting, Percent Change in Annual Total Wages
36. Trust Fund Solvency
37. Timeliness of Deposit to the Clearing Account
38. Timeliness of Intrastate UI First Payments
39. Timeliness of Interstate UI First Payments
40. Timeliness of UCFE First Payments
41. Timeliness of UCX First Payments
42. Timeliness of Intrastate Separation Determinations
43. Timeliness of Intrastate Nonseparation Determinations
44. Timeliness of Interstate Separation Determinations
45. Timeliness of Interstate Nonseparation Determinations

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Part V

Federal Reserve System

Federal Reserve Bank Services; Notice

Department of the Treasury

Fiscal Service

Fee Structure for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System; Notice

VOL 63 ISS 219 NO 13 1998 UMI

FEDERAL RESERVE SYSTEM

[Docket No. R–1023]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved fee schedules for Federal Reserve priced services and electronic connections and a Private Sector Adjustment Factor (PSAF) for 1999 of $115.8 million. These actions were taken pursuant to the requirements of the Monetary Control Act of 1980, which requires that, over the long run, fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF.

DATES: The fee schedules become effective on January 4, 1999, with the exceptions noted below. For the Fedwire® funds transfer service, the volume-based transfer fees and off-line surcharges take effect on February 1, 1999. For the book-entry securities service, the new fee structure and levels become effective on February 1, 1999, and the change in the applicability of the account-maintenance fee takes effect on July 1, 1999. The PSAF becomes effective on January 4, 1999.

FOR FURTHER INFORMATION CONTACT: For questions regarding the fee schedules: Erik Kiefel, Financial Services Analyst, Check Payments, (202/721–4559); Wes Horn, Manager, ACH Payments, (202/452–2756); Stephen Cohen, Financial Services Analyst, Funds Transfer and Book-Entry Securities Services, (202/452–3480); Myriam Payne, Senior Financial Services Analyst, Multilateral Settlement Services, (202/452–3219); Michael Bermudez, Financial Services Analyst, Noncash Collection Service, (202/452–2216); Kate Connor, Senior Financial Services Analyst, Special Cash Services, (202/452–3917); or Anne Paulin, Senior Information Technology Analyst (electronic connections), (202/452–2560), Division of Reserve Bank Operations and Payment Systems. For questions regarding the Private Sector Adjustment Factor: Martha Stallard, Senior Accountant, Division of Reserve Bank Operations and Payment Systems, (202/452–3758). For users of Telecommunications Device for the Deaf (TDD) *only*, please contact Diane Jenkins (202/452–3749).

Copies of the 1999 fee schedule for the check service are available from the Board or the Reserve Banks.

SUPPLEMENTARY INFORMATION:

I. Priced Services

A. *Overview*—The Federal Reserve Banks continue to meet the Monetary Control Act's requirement that the Federal Reserve recover, over the long run, its direct and indirect costs, including imputed costs and profits, of providing priced services.[1] Over the period 1988 through 1997, the Reserve Banks recovered 99.6 percent of their total costs for providing priced services, including imputed expenses, special project costs that were budgeted for recovery, and targeted after-tax profits, or return on equity (ROE).

For 1998, the Reserve Banks estimate that they will recover 102.2 percent of the costs of providing priced services, including imputed expenses and targeted ROE. Reserve Banks project that they will recover 101.0 percent of their costs of providing priced services in 1999. The primary risk to the 1999 projections lies in the uncertain cost to upgrade the security of electronic connections to the Federal Reserve.

In their 1999 fee schedules, the Reserve Banks include several changes that reduce fees to depository institution customers and provide a continued economic incentive for those customers to make greater use of electronic payment services. In particular, the price index for electronic payment services (automated clearing house, funds transfer, book-entry securities, and electronic check) and electronic connections is projected to decline by approximately 17.5 percent in 1999, and the index for paper-based payment services (check and noncash collection) is expected to increase 2.8 percent. The overall 1999 price index for Federal Reserve services is projected to decrease 3.5 percent, compared with an overall decline of 4.0 percent in 1998.[2]

The following are the key changes in fee structures and fee levels for priced services in 1999:

- The Reserve Banks will reduce the fee for a Fedwire funds transfer for the third consecutive year. The price index for a Fedwire funds transfer will decline by almost 30 percent from the 1998 level. (Including the reductions for 1999, the price index for Fedwire funds transfers has declined more than 40 percent since 1996. Including 1999, the average on-line transfer fee for a Fedwire funds transfer has declined 48 percent since 1996.) The 1999 fee reductions are expected to save depository institution customers approximately $27.8 million next year. Reserve Banks will implement a volume-based pricing structure for the funds transfer service that recognizes the scale economies and differences in demand for large-value transfers. The funds transfer service's volume-based pricing structure will be similar to that employed by other domestic and international large-value transfer systems.
- The Reserve Banks will reduce the fee for an on-line Fedwire book-entry securities transfer almost 25 percent in 1999. (Including changes in other fees, the price index for the book-entry securities service has declined more than 15 percent since 1996.) The fee reduction is expected to save depository institutions approximately $1.4 million in 1999. The Reserve Banks will implement a fee structure for the service that will split the transfer fee between the originator and receiver of a transfer (rather than charge the entire transfer fee to the originator), convert the off-line fee to a surcharge, and apply the existing account-maintenance fee more broadly.
- The Reserve Banks will implement an enhanced multilateral settlement service in 1999 that will offer finality characteristics similar to the Fedwire funds transfer service and provide settlement arrangements with an automated mechanism to submit settlement files to the Reserve Banks.[3] The fees and fee structure for the new and existing multilateral settlement

[1] These imputed costs, such as taxes that would have been paid, and the return on capital that would have been earned had the services been provided by a private business firm are referred to as the Private Sector Adjustment Factor (PSAF). The PSAF is based on data developed in part from a model comprised of the nation's fifty largest (by asset size) bank holding companies (BHCs). Based on consolidated financial data for the holding companies in the model for each of the last five years, the targeted ROE is the budgeted after-tax profit that the Federal Reserve would have earned had it been a private business firm. In setting fees, certain costs or adjustments to costs are treated differently in the pro forma income statement for priced services that is published in the Board's Annual Report and the Board's annual **Federal Register** notice on priced service fees. In order to compare total expenses in the pro forma income statement with total expenses in Table 3 in this notice, the amortization of the initial retirement plan over funding required by Statement of Financial Accounting Standards No. 87, and the deferred costs of automation consolidation must be deducted from the pro forma expenses. These adjustments are detailed in Note 10 to the pro forma income statement in the Annual Report. Under the procedures used to prepare the pro forma income statement, the Reserve Banks recovered 100.4 percent of priced services expenses, including targeted ROE, for the period 1988 to 1997.

[2] These estimates are based on a chained Fisher Ideal price index. This index was not adjusted for quality changes in Federal Reserve priced services.

[3] The Board recently approved enhancements to the Reserve Banks' net settlement services. To better reflect the ability of these services to accommodate net and gross transactions, the Federal Reserve now refers to this service as the multilateral settlement service.

services have been revised by lowering the per-entry fee, introducing a settlement file fee, increasing the off-line surcharge, and introducing a minimum monthly fee.

• After several years of significant price reductions, Reserve Banks plan further, more modest price reductions in 1999 for the automated clearing house (ACH) service. (Including the reductions for 1999, the price index for the ACH service has decreased more than 40 percent since 1996.) The 1999 price reductions are expected to save depository institution customers approximately $6.2 million next year. Working with other industry participants, the Reserve Banks also plan to expand their efforts to educate depository institutions and end users about the benefits of the ACH. This campaign, coupled with the fee decreases for 1999, is expected to spur commercial ACH growth and help broaden the use of electronic payment systems.

• Fees for paper check products, which include forward processed, fine sort, and returned checks, will increase about 2.6 percent on a volume-weighted basis (a 3.7 percent increase from January 1998 fee levels). (Including the fee increases in 1999, the price index for the paper check service has increased about 2 percent since 1996.) This increase will be driven primarily by increases in fine sort and returned check fees. Fees for forward-processed items will remain stable. Fees for payor bank services, which include electronic check products, will increase about 0.6 percent (a 1.2 percent increase from January 1998 fee levels). The check service has experienced dramatic growth in the electronic products it offers, and the Reserve Banks project continued robust growth during 1999. Electronic check presentment, truncation, and imaging volumes are each estimated to grow more than 20 percent in 1998 and projected to sustain similar rates of growth in 1999. Reserve Banks now provide paying banks with electronic check data for approximately 25 percent of the checks they collect; of the checks collected through the Federal Reserve, 16.5 percent are presented electronically.

• Fee structures and schedules will take effect on January 4, 1999, with the following exceptions: The fee and fee structure changes for the Fedwire funds transfer and book-entry securities transfer services will take effect on February 1, 1999. (During January 1999, the basic transfer fee for the funds transfer service will be set at $0.34, a $0.06 reduction from the 1998 per-transfer fee.) The broader application of the existing book-entry account maintenance fee will become effective on July 1, 1999.

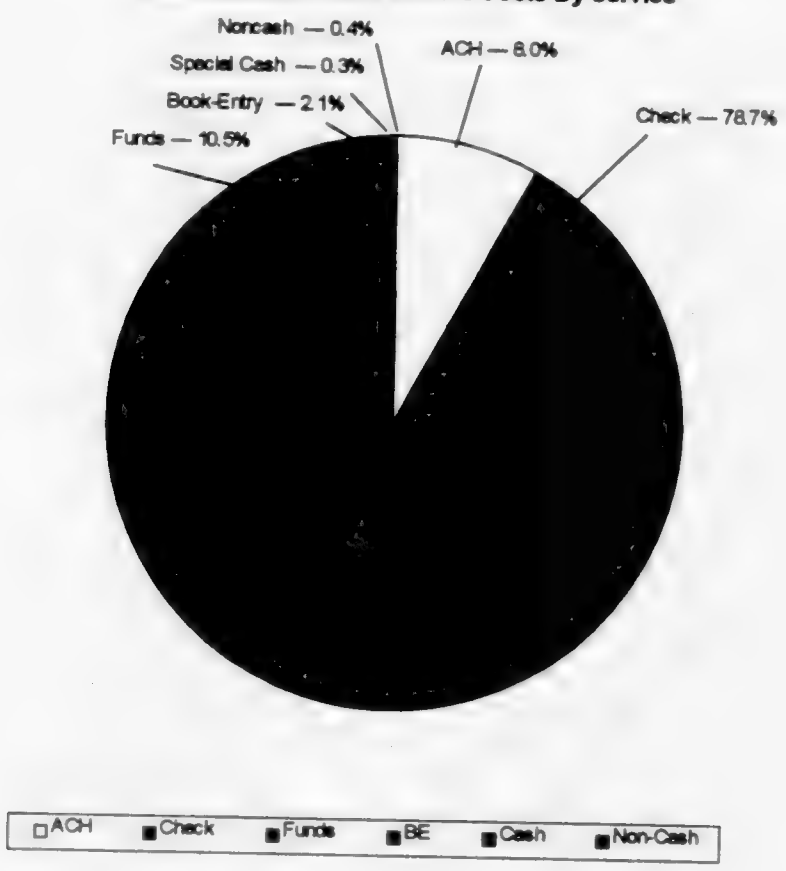
Table 1 presents an overview of the budgeted 1998, estimated 1998, and projected 1999 cost recovery performance for individual priced services.

TABLE 1
[In percent]

Priced service	1998 budget	1998 estimate	1999 budget
All Services	100.8	102.2	101.0
Check	100.4	100.9	100.4
ACH	100.4	103.9	104.6
Funds transfer	103.1	108.1	101.5
Book-entry	100.0	108.5	104.5
Noncash collection	126.8	130.0	117.3
Special cash	102.4	104.0	104.3

The aggregate cost-recovery rate is heavily influenced by the check service, which accounts for almost 80 percent of total priced services costs. The electronic services (ACH, Fedwire funds transfer, and Fedwire book-entry securities transfer) account for 20 percent of costs. The noncash collection and special cash services represent a de minimis proportion of priced services expenses. Figure 1 shows the proportion of 1998 estimated priced services costs attributable to each service.

Figure 1
1998 Estimated Priced Service Costs By Service



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1. *1999 Projected Performance*—In 1999, the Reserve Banks project that they will recover 101.0 percent of total expenses, including imputed expenses, targeted ROE, and full retirement of debt associated with the automation consolidation special project. The 1999 fees for priced services are projected to yield a net income of $64.2 million, compared with a targeted ROE of $56.0 million. The book-entry securities service will recover approximately $1.7 million of automation consolidation special project expenses and financing costs, completing the debt retirement for this project.[4]

The price index for electronic payment services (automated clearing house, funds transfer, book-entry securities, and electronic check) and electronic connections is projected to decline by approximately 17.5 percent in 1999, and the index for paper-based payment services (check and noncash collection) is expected to increase 2.8 percent. The overall 1999 price index for Federal Reserve services is projected to decrease 3.5 percent, compared with an overall decline of 4.0 percent in 1998. Figure 2 compares the Federal Reserve's price index for priced services with the gross domestic product price deflator.

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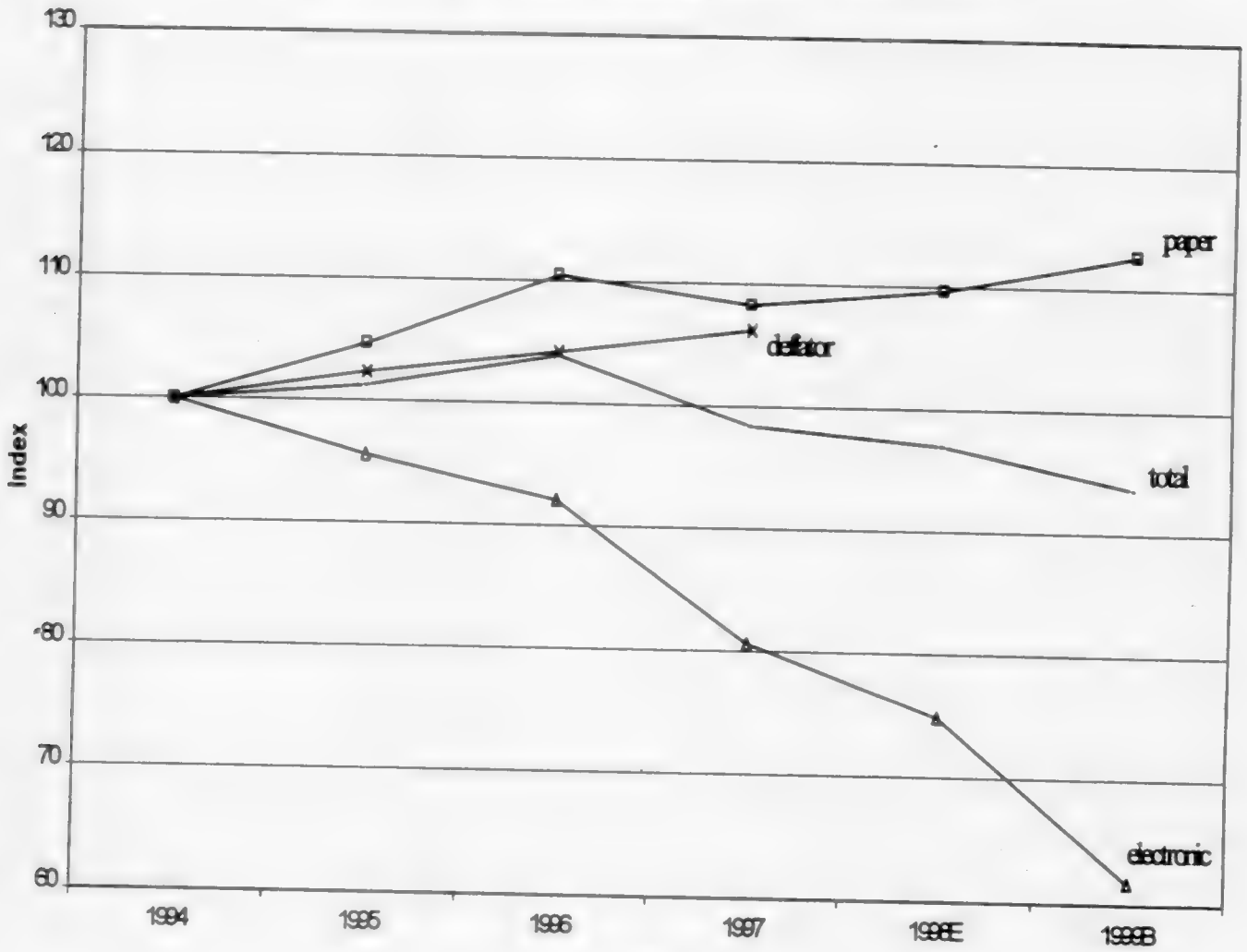
[4] Under an existing Board policy, the Reserve Banks may defer and finance development costs if the development costs would have a material effect on unit costs, provided that a conservative period is set for full cost recovery and a financing factor is applied to the deferred portion of development costs. The financing rates represent the weighted-average imputed costs of the Federal Reserve's long-term debt and equity. This methodology is similar to the approach a private firm would use in financing such costs. Starting in 1992, the Reserve Banks deferred and financed the special project costs for automation consolidation that were associated with employee retention and severance benefits and excess mainframe computer capacity. By the end of 1999, priced services will have recovered fully their portion of these deferred expenses and accumulated finance charges. The deferred costs for the automation consolidation project have been financed at rates of 16.9 percent and 17.2 percent, respectively, in 1998 and 1999.

Figure 2—Federal Reserve Payment Services Price Index

Chained Fisher Ideal Index Compared With GDP Price Deflator



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The significant decline in the price index for electronic payment services reflects, in large part, the increased ability of the Reserve Banks to capitalize on the scale economies inherent in providing payment services through centralized electronic payment processing applications. Between 1992 and 1998, the Reserve Banks' automated processing functions were consolidated into three sites, significantly reducing the cost of providing electronic payment services.

2. *Allocation of Corporate Overhead Costs to Priced Services*—In 1997, the Reserve Banks changed the method used to allocate corporate overhead costs among the priced services.[5] In 1997 and 1998, and to a much smaller extent in 1999, the Reserve Banks used their increased flexibility to allocate these costs among priced services to accelerate the retirement of debt associated with the automation consolidation special project. For 1999, the allocation of corporate overhead costs largely returns to the expense-ratio methodology used to allocate these costs to priced services in total and to other Reserve Bank activities.[6] Table 2 shows the allocation of corporate overhead costs to each priced service for the years 1997 through 1999.

TABLE 2—CORPORATE OVERHEAD ALLOCATIONS TO PRICED SERVICES

[$ millions]

Year	Check	ACH	Funds transfer	Book-entry	Noncash collection	Special cash	Total
1997 Actual	30.7	0.0	12.3	0.0	0.0	0.3	43.3
1998 (Est)	27.2	0.0	17.7	0.0	0.1	0.2	45.1
1999 (Bud)	37.2	3.9	6.0	0.0	0.1	0.2	47.4

3. *1998 Estimated Performance*—The Reserve Banks estimate that priced services revenue will yield a net income of $70.3 million in 1998, compared with a targeted ROE of $52.3 million. Revenue in 1998 is estimated to recover 102.2 percent of the costs of providing priced services, including imputed expenses, costs related to the automation consolidation special project, and targeted ROE, compared with a targeted recovery rate of 100.8 percent.[7] The Reserve Banks recovered a larger percentage of costs than targeted primarily because of a larger-than-expected reduction in expenses related to the System's prepaid pension costs and higher-than-anticipated volume in the funds transfer and book-entry securities services. Approximately $23.1 million in automation consolidation special project costs will be recovered in 1998, leaving $1.6 million in accumulated costs to be financed and recovered.

4. *1997 Performance*—In 1997, the Reserve Banks' priced services revenue yielded a net income of $47.3 million, compared with a targeted ROE of $45.8 million. The Reserve Banks recovered 100.2 percent of total expenses, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a targeted recovery rate of 100.5 percent.

5. *Long-Term Aggregate Cost Recovery*—Table 3 summarizes the cost and revenue performance for priced services since 1988. The costs recovered through 1999 include Reserve Banks' recovery of $130.0 million in transition costs associated with the automation consolidation project (special project costs) and $11.8 million in deferred financing costs. In addition to fee reductions in electronic payment services, the consolidation initiative has dramatically improved the Reserve Banks' disaster recovery and information security capabilities, increased the System's responsiveness to change, and enhanced the central bank's management of payment system risk.

Because the revenue from the Reserve Banks' priced services recovers imputed profits and imputed costs that are not actually incurred, the Federal Reserve's provision of priced services has consistently had a positive effect on the level of earnings transferred by the Federal Reserve to the Treasury. Over the past ten years, priced services revenue has exceeded operating costs by more than $900 million.

[5] Certain corporate overhead costs are not closely related to any particular priced service; these costs include some or all of the following activities: Reserve Bank and System administrative functions, central mail operations, legal, budget preparation and control, expense accounting, records management and contingency planning, motor vehicles, and audit. Therefore, the Federal Reserve, consistent with industry practice, allocates these costs among priced services based on management decision rather than fixed allocation rules. The Federal Reserve continues to allocate corporate overhead costs to priced services in total and to other Reserve Bank activities based on their proportion of total Reserve Bank costs.

[6] The only exception to the expense-ratio methodology for allocating corporate overhead costs among priced services in 1999 is a shift of $1.1 million in costs from the book-entry securities service to the funds transfer service. The book-entry service is the only service that has not yet fully retired its automation consolidation special project costs.

[7] Through August 1998, the Reserve Banks recovered 101.1 percent of total priced services expenses, including imputed expenses, automation consolidation special project costs, and targeted ROE.

TABLE 3.—PRO FORMA COST AND REVENUE PERFORMANCE (a) [8]

[$ millions]

Year	Revenue (b)	Operating costs and imputed expenses (c)	Special project costs recovered (d)	Total expense [2+3]	Net income (ROE) [1−4]	Target ROE (e)	Recovery rate after target ROE (percent)[1/(4+6)]	Special project costs deferred and financed (f)
	1	2	3	4	5	6	7	8
1988	667.7	641.1	3.2	644.3	23.4	32.7	98.6	0.0
1989	718.6	692.1	4.6	696.7	21.9	32.9	98.5	0.0
1990	746.5	698.1	2.8	700.9	45.6	33.6	101.6	0.0
1991	750.2	710.0	1.6	711.6	38.6	32.5	100.8	0.0
1992	760.8	731.0	11.2	742.2	18.6	26.0	99.0	1.6
1993	774.5	722.4	27.1	749.5	25.0	24.9	100.0	12.5
1994	767.2	748.3	8.8	757.1	10.1	34.6	96.9	33.9
1995	765.2	724.0	19.8	743.8	21.4	31.5	98.7	36.3
1996	815.9	736.4	26.8	763.2	52.7	36.7	102.0	30.1
1997	818.8	743.7	27.7	771.4	47.3	45.8	100.2	20.3
1998 (Est)	838.6	745.3	23.1	768.3	70.3	52.3	102.2	1.6
1999 (Bud)	843.5	777.6	1.7	779.4	64.2	56.0	101.0	0.0

a. The revenues and expenses for 1988 through 1993 include the definitive securities safekeeping service, which was discontinued in 1993.
b. Includes net income on clearing balances.
c. Imputed expenses include interest on debt, taxes, FDIC insurance, and the cost of float. Credits for prepaid pension costs under SFAS 87 and the charges for post-retirement benefits in accordance with SFAS 106 are included beginning in 1993.
d. Special project costs include research and development expenses for evaluating a different computer processing platform for electronic payments from 1988 through 1990, check image project costs from 1988 through 1993, and automation consolidation costs from 1992 through 1998.
e. Targeted ROE is based on the ROE included in the private sector adjustment factor (PSAF) and has been adjusted for taxes, which are included in column 2. Targeted ROE has not been adjusted to reflect automation consolidation special project costs deferred and financed.
f. Totals include financing costs.

B. Service-Specific Discussions

1. *Check*—Table 4 presents the actual 1997, estimated 1998, and projected 1999 cost recovery performance for the check service.

TABLE 4.—CHECK PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1 · 4]	Target ROE	Recovery rate after target ROE (percent) [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1997	621.6	589.4	7.5	596.9	24.7	35.3	98.3	7.5
1998 (Est)	651.5	596.3	8.4	604.7	46.8	40.9	100.9	0.0
1999 (Bud)	685.3	637.1	0.0	637.1	48.2	45.1	100.4	0.0

a. *1997 Performance*—The check service recovered 98.3 percent of total expenses in 1997, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE. Higher-than-expected costs because of write-offs for adjustment problems associated with infrastructure changes at one Reserve Bank were largely responsible for this lower-than-expected recovery rate. The volume of checks collected increased 3.0 percent from 1996 levels because of several factors: (1) The exit of several correspondent banks from the interbank check market, (2) the introduction of new check products, and (3) increased reliance on Reserve Bank check processing by banks undergoing operational changes resulting from merger and acquisition activity.

b. *1998 Performance*—Through August 1998, the check service has recovered 101.3 percent of total expenses, including imputed expenses, targeted ROE, and the completion of debt retirement related to automation consolidation special project costs. The Reserve Banks estimate that the check service will recover 100.9 percent of its costs for the full year compared with the targeted 1998 recovery rate of 100.4 percent. This estimated cost recovery rate, however, may be adversely affected by potential write-offs associated with adjustment and reconcilement problems at one Reserve Bank. Even if the ultimate write-off is higher than currently estimated, the Reserve Banks expect that they would still be able to achieve full cost recovery in 1998.

For the first eight months of 1998, total forward-processed check volume has increased 5 2 percent over the year-earlier time period. The Reserve Banks estimate that the total volume of forward-processed checks collected during full-year 1998 will increase 5.1 percent over 1997 levels. Fine sort volume fell 0.5 percent through August 1998 compared with the same period in 1997 and is expected to decline further by the end of 1998. Total forward check collection volume (processed and fine sort) has increased 4.3 percent through August 1998, and is estimated to grow 2.5 percent for the full year.

[8] Calculations on this table and subsequent pro forma cost and revenue tables may be affected by rounding.

Returned check volume has decreased by 3.6 percent through August 1998 compared with the first eight months of 1997 and is expected to decrease 4.1 percent for full-year 1998 as customers' merger-related quality problems are resolved and greater competition erodes volume in several Districts.

The check service has experienced substantial growth in electronic check products. Reserve Banks now provide paying banks with electronic check data for approximately 25 percent of the checks they collect. Growth and penetration rates for electronic check products are summarized in table 5.

TABLE 5.—ELECTRONIC CHECK PRODUCT GROWTH AND PENETRATION RATES

[In percent]

	Penetration rate through August 1998	Year-to-date growth through August 1998	Estimated 1998 growth
Electronic Check Presentment	16.4	29.7	25.9
Truncation	4.1	28.4	33.0
Non-Truncation	12.3	30.1	23.5
Electronic Check Information	8.6	−4.7	−11.3

Beginning this year, all Reserve Banks provide check image services, and check image volumes are growing rapidly. Through August 1998, check image volume has grown 139.8 percent. For the remainder of the year, the growth in check image volume is expected to slow somewhat, with the year-over-year growth rate declining to approximately 105.6 percent. The Reserve Banks provide check image services for approximately 3.6 percent of all checks they collect; these services are generally provided as an adjunct to electronic check presentment.

c. *1999 Pricing*—The Reserve Banks continue to improve operational efficiency in check processing through changes to their operating environment and new product offerings. For example, over the next several years, the Reserve Banks plan to implement an enterprise-wide adjustment system that will enable them to process adjustment cases more efficiently. In addition, the Reserve Banks have adopted a new check automation strategy. Under this strategy, the Reserve Banks will consolidate check data processing at several sites, allowing them to improve efficiency and reduce costs over the long term. Also, by mid-year 1999, Reserve Banks expect to offer electronic deposit options for all major check products to improve internal processing efficiency.

In 1999, fees for paper-based check products, which include forward-processed, fine sort, and returned checks, are expected to increase on a volume-weighted basis about 2.6 percent over current prices and 3.7 percent over January 1998 prices, mainly because of a 25 percent increase in fine sort fees. (Including the fee increases in 1999, the price index for the paper check service has increased about 2 percent since 1996.) Prices for forward-processed checks will decrease 0.3 percent from current fee levels, or 0.2 percent from January 1998 prices. Prices for return items will increase 2.8 percent from current fee levels, or 6.2 percent from January 1998 prices.

Prices for payor bank services would increase 0.6 percent over current prices and 1.2 percent over January 1998 levels. Payor bank services include electronic information, electronic check presentment, truncation, image products, and large dollar return notifications. Higher magnetic ink character recognition (MICR) information fees account for most of this fee increase. Prices for electronic check presentment products, which include both truncation and non-truncation products, would decrease 0.2 percent on a volume-weighted basis in 1999.

Table 6 summarizes key check fees.

TABLE 6.—SELECTED CHECK FEES

Products	1998 price ranges	1999 price ranges
Items:	(per item)	(per item)
Forward-processed		
City	$0.002 to 0.080	$0.002 to 0.080
RCPC	$0.003 to 0.180	$0.003 to 0.180
Fine Sort		
City	$0.002 to 0.013	$0.002 to 0.015
RCPC	$0.003 to 0.01[illegible]	$0.003 to 0.018
Qualified returned checks		
City	$0.065 to 1.110	$0.065 to 1.110
RCPC	$0.068 to 1.560	$0.065 to 1.750
Raw returned checks		
City	$0.90 to 5.00	$0.90 to 5.75
RCPC	$0.90 to 5.00	$0.90 to 5.75
Cash letters:	(per cash letter)	(per cash letter)
Forward processed	$1.50 to 9.00	$2.50 to 9.00
Forward fine-sort	$3.00 to 14.00	$3.00 to 14.00
Returned checks: raw & qualified	$1.75 to 12.00	$1.75 to 12.00
Payor bank services:	(min.) (per item).	(min.) (per item)
MICR information	$5–$30 $0.001–0.0060.	$5–$30 $0.001–0.0060

TABLE 6.—SELECTED CHECK FEES—Continued

Products	1998 price ranges	1999 price ranges
Electronic presentment	$2–$14 $0.001–0.0045.	$3–$14 $0.001–0.0045
Truncation	$2–$25 $0.004–0.0170.	$3–$25 $0.004–0.0170

For 1999, the Reserve Banks project that the check service will recover 100.4 percent of total costs, including imputed expenses and targeted ROE. Total expenses, excluding special project costs, are projected to increase approximately $40.8 million, or 6.8 percent, from estimated 1998 expenses. The increased costs reflect the anticipated addition of staff and equipment to process increased check volume, the development and implementation of the enterprise-wide adjustment system, the implementation of the future check automation strategy, and a higher allocation of corporate overhead costs.

Total revenue is expected to increase approximately $33.8 million, or 5.2 percent, in 1999. Forward check-collection revenue is projected to increase $15.4 million, or 3.9 percent. Returned check revenue is expected to grow $4.1 million, or 3.2 percent. Revenue from payor bank services is projected to increase $9.2 million, or 15.0 percent. Other operating and imputed revenues account for the remaining increase in revenue. Paper-based check products—forward collection and returns—will account for about 80 percent of total check revenues in 1999. The Reserve Banks expect payor bank services to account for about 10 percent of the check service's total revenues in 1999. Other operating and imputed revenues account for the remaining 10 percent.

The Reserve Banks expect a modest volume increase for paper-based check products in 1999. Total forward check collection volume (processed and fine sort) is projected to increase 1.4 percent in 1999, reflecting a projected increase of 3.1 percent in processed volume and a decrease of 9.5 percent in fine sort volume. Returned check volume is projected to increase 2.2 percent. Volumes for electronic check presentment with paper checks subsequently delivered, electronic presentment of truncated checks, and check imaging are expected to grow 28.7 percent, 19.2 percent, and 66.4 percent, respectively. Electronic check information volume is expected to decline 15.1 percent as volume continues to shift to electronic check presentment products.

The Reserve Banks view interstate branch banking and competition in the interbank check collection market as important external factors affecting their volume projections for paper-based products. Although interstate branch banking may eventually reduce the size of the interbank check collection market, Reserve Bank check collection volumes may increase in 1999 as banks focus on resolving merger-related operational concerns. In addition, some Reserve Banks have seen increased check collection and returned check volumes as smaller third-party processors and correspondent banks have exited the interbank check collection market. Thus, the projected volume increase for paper-based products appears reasonable. The projection of substantially increased volumes and penetration rates for electronic and image services, however, may be optimistic given the level of resources that most banks are committing to year 2000 preparations.

2. *Automated Clearing House (ACH)*—Table 7 presents the actual 1997, estimated 1998, and projected 1999 cost recovery performance for the commercial ACH service.

TABLE 7.—ACH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1 – 4]	Target ROE	Recovery rate after target ROE (percent) [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1997	72.7	53.1	11.1	64.2	8.5	4.0	106.6	10.8
1998 (Est)	68.2	49.6	12.0	61.6	6.6	4.0	103.9	0.0
1999 (Bud)	65.1	57.8	0.0	57.8	7.4	4.5	104.6	0.0

a. *1997 Performance*—The ACH service recovered 106.6 percent of total expenses, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, in 1997. ACH volume in 1997 was 9.7 percent higher than 1996 volume.

b. *1998 Performance*—Through August 1998, the ACH service recovered 105.3 percent of total expenses, including imputed expenses, targeted ROE, and the completion of debt retirement related to automation consolidation special project costs. For the full year, Reserve Banks estimate that the service will recover 103.9 percent of total expenses, compared with the targeted 1998 recovery rate of 100.4 percent. The estimated overrecovery is due to lower-than-budgeted overhead and support costs. Through August 1998, commercial ACH volume has increased 13.2 percent over the same period in 1997. For the full year, Reserve Banks expect commercial volume to increase 11.5 percent, compared with the 15.4 percent increase originally projected. Volume growth is projected to be lower than planned due to the aggressive 1998 volume target and consolidation in the banking industry.

c. *1999 Pricing*—After several years of significant price reductions, Reserve Banks plan further, more modest price reductions in 1999 for the automated

clearing house (ACH) service (see table 8). (Including the reductions for 1999, fees for ACH items have decreased more than 40 percent since 1996.) These changes support the System's strategic direction to encourage the migration from a paper-based to a more electronic payments system.

TABLE 8

[In dollars]

Fee category	1998 fee	1999 fee
Item originated in small file [9]	0.008	0.007
Item received	0.008	0.007
Premium cycle surcharge	0.005	0.000
Return item surcharge	0.040	0.000

The Reserve Banks will reduce the fee for items originated in small files by one mill, generating $0.2 million in aggregate savings to depository institutions in 1999. In addition, the Reserve Banks will reduce the fee for forward items received by one mill, saving customers $3.4 million in 1999. Finally, the Reserve Banks will eliminate both the premium and return-item surcharges, generating an additional $2.5 million in fee reductions. Based on 1998 volume estimates, changes to the ACH fee schedule will reduce fees to depository institutions by a total of approximately $6.2 million in 1999.

In addition to the fee changes, the Reserve Banks have received approval to no longer accept paper or telephone return items and paper notifications of change, beginning in January 1999. Instead, depository institutions will be expected to submit those items electronically (either through a computer connection or a voice response system). A facsimile service will be available in limited circumstances in which an item cannot be submitted electronically. This change is intended to expedite the return of items and help move the ACH service to a more electronic environment. In addition, the Reserve Banks now offer a new product to enable receiving depository financial institutions (RDFIs) that use a third-party processor for their ACH processing to receive a copy of their ACH items so that they can provide remittance information to their customers.

The Reserve Banks project that the ACH service will recover 104.6 percent of its costs in 1999, including imputed expenses and targeted ROE. Expenses in 1999 are projected to be $8.2 million, or 16.5 percent, higher than 1998 estimated costs, excluding 1998 special project costs. Total expenses for 1999 are projected to decline $3.9 million, or 6.3 percent, from their 1998 level when special project costs are included in the 1998 estimate. Total revenue in 1999 is projected to be $65.1 million, or 4.4 percent less than the 1998 estimate. The lower revenue is attributable to 1999 price reductions and potential changes in the way the Reserve Banks provide services to private-sector ACH operators. The Reserve Banks are evaluating the way they treat private-sector ACH operators and their customers with respect to fees and deadlines to determine if an alternative approach would better promote competition in the market for ACH services.

ACH volume in 1999 is projected to increase 14.5 percent over 1998 estimates. This volume projection includes the expected effects of marketing and education initiatives that are planned for next year.

3. *Funds Transfer and Multilateral Settlement*—Table 9 presents the actual 1997, estimated 1998, and projected 1999 cost recovery performance for the funds transfer and multilateral settlement services.

TABLE 9.—FUNDS TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue 1	Operating costs and imputed expenses 2	Special project costs recovered 3	Total expense [2+3] 4	Net income (ROE) [1 – 4] 5	Target ROE 6	Recovery rate after target ROE (percent) [1/(4+6)] 7	Special project costs deferred and financed 8
1997	97.8	78.6	7.4	85.9	11.9	5.1	107.4	0.0
1998 (Est)	94.2	80.7	0.2	80.9	13.3	6.2	108.1	0.0
1999 (Bud)	71.2	65.0	0.0	65.0	6.2	5.2	101.5	0.0

a. *1997 Performance*—For 1997, the funds transfer and multilateral settlement services recovered 107.4 percent of total expenses, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a targeted recovery rate of 104.3 percent. Operating costs were 2.1 percent lower than original budget estimates because of greater-than-expected efficiencies realized from processing funds transfers in a centralized processing environment and a decrease in overhead costs.

Funds transfer on-line volume increased 8.2 percent over the 1996 level, compared with a budgeted increase of 4.2 percent. This volume increase was due to strong economic activity.

b. *1998 Performance*—Through August 1998, the funds transfer and multilateral settlement services recovered 110.9 percent of total expenses, including imputed expenses, targeted ROE, and the completion of debt retirement related to automation consolidation special project costs. For full-year 1998, the Reserve Banks estimate that the funds transfer and multilateral settlement services will recover 108.1 percent of total expenses, compared with a targeted recovery rate of 102.8 percent. The higher recovery rate is primarily attributable to a large increase in on-line transaction revenue and small increases in electronic connection and off-line transaction revenues.

On-line funds transfer volume through August 1998 has increased 10.1 percent relative to the same period in 1997. This robust volume growth is above historical trend and is attributable mainly to sustained strong economic growth. For the full year, the Reserve Banks expect volume to increase 7.3 percent, compared with the more conservative original target of 3.8 percent.

c. *1999 Funds Transfer Pricing*—Starting in 1998 and continuing through first quarter 1999, the Reserve Banks are consolidating their off-line transfer processing functions at the Federal Reserve Banks of Boston and Kansas

[9] Small files contain fewer than 2,500 items; large files contain 2,500 items or more.

City. By consolidating the off-line portion of the funds transfer business, the Reserve Banks expect to reduce total off-line processing costs, streamline off-line activity, and ensure uniform customer service levels nationwide.

The Reserve Banks will implement a block-declining price structure for the basic funds transfer fee on February 1, 1999. Under the new price structure, a per transfer fee of $0.34 will be charged for the first 2,500 funds transfers originated and received by a depository institution each month; a per transfer fee of $0.27 will be charged for additional transactions up to 80,000 transfers each month; and, for every transaction above 80,000 transfers each month, a per transfer fee of $0.21 will be assessed. Prior to implementing the block-declining price schedule, the Reserve Banks will lower the basic funds transfer fee from $0.40 to $0.34 for January 1999.

On average, basic funds transfer fees will decline by 35.0 percent under the new structure compared with the current fee level. (Including the reductions for 1999, fees for Fedwire funds transfers have declined nearly 50 percent since 1996. Including 1999, the average on-line transfer fee for a Fedwire funds transfer has declined 48 percent since 1996.) This third consecutive reduction in the funds transfer fee will save depository institutions approximately $27.8 million in 1999, reflecting both the continued benefit of scale economies from centralized processing and the reduction of corporate overhead allocations in 1999. The implementation of a volume-based pricing structure will bring Fedwire pricing in line with other funds transfer and payment messaging systems and is expected to increase the efficiency of the service.

The Reserve Banks will increase the off-line transaction surcharge from $12.00 to $13.00 to reflect more fully the costs of processing off-line transfers and to encourage off-line customers with higher transfer volume to install electronic connections. This increase will become effective on February 1, 1999.

Reserve Banks project that the Fedwire funds transfer service will recover 101.5 percent of total expenses, including imputed expenses and targeted ROE, in 1999. Total costs are expected to decline $15.6 million, or 19.4 percent, from the 1998 estimate primarily because of a significant reduction in the allocation of corporate overhead to the service. Lower data processing costs associated with automation consolidation also contribute to the lower costs. Excluding corporate overhead expenses, total costs for the funds transfer service are projected to decline $3.9 million, or 6.2 percent, from 1998 to 1999. Service revenue is projected to decline $23.0 million, or 24.4 percent, in 1999 compared with the 1998 estimate as a result of the lower fees contained in the volume-based pricing structure.

On-line funds transfer volume is expected to increase 5.8 percent over 1998 estimated levels. This volume projection is consistent with long-term historical trends for the service and reflects an anticipated slowdown in growth relative to the high volume growth over the last three years.

d. *1999 Multilateral Settlement Pricing*—During the first quarter of 1999, the Reserve Banks will implement an enhanced multilateral settlement service that will allow participants in settlement arrangements to submit settlement files to them via a computer interface connection or a Fedline® terminal. The enhanced service will improve operational efficiency over current methods and reduce settlement risk to participants by granting settlement finality on the settlement day. It also enables Reserve Banks to manage and limit risk by incorporating risk controls that are as robust as those used currently in the Fedwire funds transfer service. The Reserve Banks will continue to offer the current "settlement sheet" and Fedwire-based multilateral settlement services.[10] The settlement sheet service, however, will be phased out gradually and all participating arrangements will need to make plans to migrate to the enhanced service by year-end 2001.

The Reserve Banks will adopt a price structure for the enhanced service that is similar to the price structure for the current settlement sheet service. The new price structure will consist of a fixed charge for each settlement file and a fixed price for each settlement entry on the file. The Reserve Banks also will assess the same prices for the enhanced service and the current settlement sheet service. This approach will eliminate an economic incentive for clearing arrangements to postpone migrating to the enhanced service.

The Reserve Banks will imp lement a fee of $0.95 for each settlement entry on a settlement file or settlement sheet submitted to the Reserve Banks. This is a reduction of $0.05 from the current $1.00 per entry fee. A $12.00 fee will be charged for each settlement file or settlement sheet submitted to the Reserve Banks. This is a new fee designed to recover the fixed costs associated with maintaining static settlement information for each arrangement and processing daily settlements. Each settlement arrangement that incurs total settlement charges of less than $60 during a calendar month will pay a minimum fee that raises total charges for the month to $60. This minimum fee is designed to recover the fixed costs of supporting arrangements that are not active users of the Reserve Banks' multilateral settlement services, including those arrangements that use Reserve Bank multilateral settlement services as contingency back-up to another settlement method.

The current off-line surcharge for arrangements that submit settlement information via non-electronic means (fax, phone, or paper) will increase from $10.00 to $13.00. The revised surcharge will be consistent with the Fedwire funds transfer and book-entry securities transfer off-line surcharges, and, similarly, it will reflect more fully the costs of processing off-line settlements. The higher fee will provide an additional economic incentive for settlement participants to migrate to the more efficient enhanced service. The off-line origination surcharge will be waived by Reserve Banks that do not provide an electronic submission capability for the settlement sheet service. The current $10.00 surcharge for telephone notification will increase to $13.00 in 1999.

Fees for the Fedwire-based multilateral settlement service used by national, small-dollar and large-dollar settlement arrangements will remain unchanged for 1999. A per transfer fee is also charged for each Fedwire funds transfer sent and received into or out of the settlement account for Fedwire-based arrangements.

4. *Book-Entry Securities*—Table 10 presents the actual 1997, estimated 1998, and projected 1999 cost recovery performance for the book-entry securities service.[11] [12]

[10] The settlement sheet service refers to the transmission to a Reserve Bank of settlement information that is then posted to participants' accounts via the Reserve Banks' accounting system.

[11] Includes purchase and sale activity.

[12] The Reserve Banks provide securities transfer services for securities issued by the U.S. Treasury, federal government agencies, government sponsored enterprises, and certain international institutions. The priced component of this service, reflected in this notice, consists of the revenues, expenses, and volumes associated with the transfer of all non-Treasury securities. For Treasury securities, the Reserve Banks act as fiscal agents for the Treasury Department, which assesses fees for the securities transfer component of the service. The Reserve Banks assess a fee for the money settlement component of a Treasury securities transfer; this component is not treated as a priced service.

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TABLE 10.—BOOK-ENTRY SECURITIES TRANSFER PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1−4]	Target ROE	Recovery rate after target ROE (percent)[1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1997	17.1	14.4	1.5	15.9	1.3	0.9	101.9	3.6
1998 (Est)	18.5	13.7	2.4	16.1	2.5	1.0	108.5	1.6
1999 (Bud)	16.7	13.2	1.7	15.0	1.8	1.0	104.5	0.0

a. *1997 Performance*—The book-entry securities service recovered 101.9 percent of total expenses in 1997, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE. On-line volume increased 0.3 percent from the 1996 level, compared with a budgeted decrease of 3.4 percent. This higher-than-budgeted volume may partially have been the result of increased securities movements associated with mergers and higher-than-expected mortgage refinancing activity, which affects activity in the mortgage-backed securities market.

b. *1998 Performance*—Through August 1998, the book-entry securities service recovered 104.3 percent of total expenses, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE. For full-year 1998, the Reserve Banks estimate that the book-entry securities service will recover 108.5 percent of total costs compared with a targeted recovery rate of 100.0 percent. This overrecovery is attributable to higher-than-expected transaction volume.

On-line volume has increased 17.5 percent through August 1998 compared with the same period in 1997. This large increase in volume is due to a significantly higher level of repackaging and new issuance of mortgage-backed securities. For the full year, the Reserve Banks estimate that on-line volume will increase 14.5 percent, which is significantly higher than the original budgeted 0.8 percent volume decline.

c. *1999 Pricing*—Starting in 1998 and continuing through first quarter 1999, the Reserve Banks are consolidating their off-line processing functions at the Federal Reserve Banks of Boston and Kansas City. By consolidating the off-line portion of the book-entry securities transfer service, the Reserve Banks expect to reduce total off-line activity costs, streamline off-line activity, and ensure uniform customer service levels nationwide.

Starting February 1, 1999, the Reserve Banks will split the current $2.25 on-line origination fee into a basic transfer fee charged to the sending bank and receiving bank of both on-line and off-line transfers. The Reserve Banks will implement a $0.85 fee for each securities transfer and reversal sent and received, a 24.4 percent fee decrease in the total fee per transfer. (Including changes in other fees, the price index for the book-entry securities service has declined more than 15 percent since 1996.) The Reserve Banks also will convert the current $10 off-line fee into an off-line surcharge and raise this surcharge to $13 to be consistent with the off-line surcharge in the Fedwire funds transfer and multilateral settlement services. An additional pricing change, applying the existing account-maintenance fee to all joint-custody collateral accounts, will be implemented on July 1, 1999. Delaying implementation of this change until mid-year 1999 will allow affected customers time to consolidate accounts, make any necessary system changes, and notify pledgees.

Changing the on-line transfer fee to a fee assessed to both senders and receivers more accurately aligns the costs and benefits to participants in a transfer. The new price structure promotes pricing consistency with other Federal Reserve electronic payment services and is consistent with practices in the securities industry. The decision to charge for all joint-custody accounts held by a customer, rather than just the first account, is intended to implement a consistent, cost-based, Systemwide pricing practice following the completion of the Reserve Banks' conversion to the centralized National Book-Entry System (NBES). Prior to the conversion of all Reserve Banks to NBES, account maintenance pricing for joint custody securities accounts was different across the Reserve Banks. During the transition to NBES, the interim pricing practice for these accounts was standardized to charge one account-maintenance fee per customer regardless of the number of pledgees. This interim practice achieved consistency and minimized the effect on customers converting to the new system but resulted in reduced revenue and incomplete recovery of processing costs.

The Purchase and Sale service represents less than 3.0 percent of the costs and revenues of the book-entry securities service. Provision of the service is consolidated at the Federal Reserve Bank of Chicago. The Reserve Banks will increase the transaction fee for securities purchases and sales from $34 to $40 to recover the costs of providing the service.

The Reserve Banks project that the book-entry securities service will recover 104.5 percent of costs in 1999, including imputed expenses, targeted ROE, and the complete retirement of debt relating to automation consolidation special project costs. Total expenses, excluding special project costs, are projected to decrease $0.5 million, or 3.6 percent, in 1999 versus the 1998 estimate because full implementation of NBES (the New York District was the last to convert in February 1998) and full consolidation at Federal Reserve Automation Services (FRAS) have created scale economies that lower per-item data processing costs.

Book-entry securities transfer service revenue is expected to decline $1.8 million, or 9.9 percent, in 1999 compared with the 1998 estimate as a result of the fee levels contained in the new pricing structure and price levels. The reduced fees are expected to save depository institutions approximately $1.4 million in 1999.

The Reserve Banks expect on-line book-entry securities transfer volume to decline 4.0 percent in 1999 from the 1998 estimated level. According to Reserve Bank projections, the unusually high volume growth rate in 1998 is an aberration and 1999 volume will likely decline from its 1998 level. In addition, some volume losses are expected as

large customers consolidate their operations.

5. *Noncash Collection*—Table 11 lists the actual 1997, estimated 1998, and projected 1999 cost recovery performance for the noncash collection service.

TABLE 11.—NONCASH COLLECTION PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1−4]	Target ROE	Recovery rate after target (ROE) (percent) [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1997	4.4	3.5	0.3	3.8	0.7	0.2	110.9	0.0
1998 (Est)	3.7	2.7	0.0	2.7	1.0	0.2	130.0	0.0
1999 (Bud)	2.6	2.0	0.0	2.0	0.5	0.1	117.3	0.0

a. *1997 Performance*—The noncash collection service recovered 110.9 percent of total expenses in 1997, including imputed expenses, automation consolidation special project costs budgeted for recovery, and targeted ROE, compared with a target recovery rate of 103.8 percent. Volume for 1997 decreased 17.1 percent from 1996 volumes compared with a 19.6 percent budgeted volume decline.

b. *1998 Performance*—Through August 1998, the noncash collection service recovered 135.0 percent of its costs. For full-year 1998, the Reserve Banks estimate that the noncash service will recover 130.0 percent of costs, including imputed expenses and targeted ROE, compared with the projected recovery rate of 126.8 percent. The higher recovery rate is attributable to higher-than-expected revenue from additional called bond activity generated by lower interest rates and slightly higher-than-budgeted coupon volume. The higher recovery rate also reflects lower costs resulting from efficiencies gained from full-year centralized operations at the Jacksonville Branch.

Through August, volume has decreased 13.8 percent compared with the same period in 1997. The Reserve Banks estimate that full-year 1998 volume will decline 14.1 percent from 1997 levels compared with a 19.7 percent budgeted volume decline.

c. *1999 Pricing*—The Reserve Banks will retain 1999 fees at their 1998 levels. The Reserve Banks project that the noncash collection service will recover 117.3 percent of total costs, including imputed expenses and targeted ROE, in 1999. These fees will yield a ten-year recovery rate for the noncash collection service of approximately 96 percent. Total expenses are projected to decline $0.6 million, or 23.0 percent, in 1999, and total revenues are projected to decline $1.1 million, or 30.3 percent, because of a projected volume decline of 26.0 percent. Volume declines will continue as the number of unmatured bearer municipal securities declines. New issues of bearer municipal securities effectively ceased in mid-1983 when the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) removed the tax advantage for investors.

6. *Special Cash*—Priced special cash services represent a very small portion (approximately 0.05 percent) of overall cash services provided by the Reserve Banks to depository institutions. Special cash services include wrapped coin, nonstandard packaging of currency orders and deposits, and registered mail shipments of currency and coin.

Table 12 presents the actual 1997, estimated 1998, and projected 1999 cost recovery performance for the special cash service.

TABLE 12.—SPECIAL CASH PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs and imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1 . 4]	Target ROE	Recovery rate after target ROE(percent) [1/(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1997	5.1	4.7	0.0	4.7	0.4	0.3	102.5	0.0
1998 (Est)	2.6	2.4	0.0	2.4	0.2	0.1	104.0	0.0
1999 (Bud)	2.6	2.5	0.0	2.5	0.2	0.0	104.3	0.0

a. *1997 Performance*—In 1997, the special cash service recovered 102.5 percent of total expenses, including imputed expenses and targeted ROE, compared with a targeted recovery rate of 102.3 percent.

b. *1998 Performance*—Through August 1998, the special cash service recovered 101.8 percent of total expenses, including imputed expenses and targeted ROE. For full-year 1998, the Reserve Banks estimate that the special cash service will recover 104.0 percent of total expenses, compared with a targeted recovery rate of 103.5 percent. Costs are lower than budgeted in most offices.

Revenue is estimated to decline approximately $2.5 million, or 49.4 percent, in 1998 compared with 1997, due mainly to the reclassification of cash access as a nonpriced service. Before 1998, nonstandard access to cash services was treated as a priced service. In anticipation of implementing the uniform cash access policy in May 1998,

the Federal Reserve concluded that, due to the governmental nature of this function, the costs and revenue associated with nonstandard access should be treated as a nonpriced service.[13]

In June 1998, the Chicago office began offering a nonstandard packaging service for a fee of $12.00 per order or deposit. The Detroit Branch offers this service for the same fee.

c. *1999 Pricing*—For 1999, the Reserve Banks project that the special cash service will recover 104.3 percent of costs, including imputed expenses and targeted ROE. Total costs in 1999 are projected to rise $0.1 million, or 2.7 percent, from the 1998 level. Revenue in 1999 is expected to increase $0.1 million, or 2.6 percent, from the 1998 level.

The Cleveland, Cincinnati, and Pittsburgh offices will implement a uniform District fee of $1.80 per box for wrapped coin to replace the previous range of $1.95 to $2.25 per box. The Helena office will reduce its wrapped coin fee from $2.90 to $2.50 per box to reflect more accurately the cost of providing this service.

The El Paso and San Antonio offices will reduce the registered mail surcharge from $100 to $80 to reflect more accurately the costs of providing this service. The San Antonio office plans to discontinue this service in April 1999.

II. Private Sector Adjustment Factor

A. *Overview*—The Board has approved a 1999 PSAF for Federal Reserve priced services of $115.8 million. This amount represents an increase of $7.3 million, or 6.7 percent, from the 1998 PSAF of $108.5 million.

As required by the Monetary Control Act, the Federal Reserve's fee schedule for priced services includes "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs are based on data developed in part from a model comprising consolidated financial data for the nation's fifty largest (in asset size) bank holding companies (BHCs).

The methodology for calculating the PSAF involves determining the value of Federal Reserve assets that will be used in providing priced services during the coming year. Short-term assets are assumed to be financed with short-term liabilities; long-term assets are assumed to be financed with a combination of long-term debt and equity derived from the BHC model.

Imputed capital costs are determined by applying related interest rates and rates of return on equity from the BHC model. The long-term debt and equity rates are based on BHCs in the model for each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

The PSAF comprises these capital costs as well as imputed sales taxes, expenses of the Board of Governors related to priced services, and an imputed FDIC insurance assessment on clearing balances held with the Federal Reserve Banks to settle transactions.

B. *Asset Base*—The total estimated value of Federal Reserve assets to be used in providing priced services in 1999 is reflected in table 13. Table 14 shows that the assets assumed to be financed through debt and equity are projected to total $651.4 million. This represents a net increase of $35.1 million, or 5.7%, from 1998 assets of $616.3 million, as shown in table 15. This increase results from a building project in one District, offset somewhat by a lower asset base associated with Federal Reserve Automation Services (FRAS).

C. *Cost of Capital, Taxes, and Other Imputed Costs*—Table 15 also shows the financing and tax rates and the other required PSAF recoveries approved for 1999 and compares the 1999 rates with the rates used for developing the PSAF for 1998. The pre-tax return on equity rate increased from 22.4% for 1998 to 23.5% for 1999. The increase is a result of stronger 1997 BHC financial performance included in the 1999 BHC model relative to the 1992 BHC financial performance used in the 1998 BHC model.

D. *Capital Adequacy*—As shown in table 16, the amount of capital imputed for the 1999 PSAF totals 27.2% of risk-weighted assets and 3.0% of total assets. The capital to risk-weighted asset ratio well exceeds the 8% guideline for adequately capitalized state member banks and BHCs. The capital to total asset ratio meets the 3% guideline for adequately capitalized institutions that are rated composite 1 under the CAMELS rating system.

III. Analysis of Competitive Effect

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System." In this analysis, Board staff assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services because of differing legal powers or constraints or because of a dominant market position of the Federal Reserve deriving from such legal differences. If the fees or fee structures create such an effect, the Federal Reserve must further evaluate the changes to assess whether their benefits—such as contributions to payment system efficiency, payment system integrity, or other Board objectives—can be retained while reducing the hindrances to competition.

The Board does not believe that the fees and fee structures will have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Assuming the Reserve Banks' volume and cost projections are accurate, the fees are set to provide the Federal Reserve a return on equity at least equal to that earned on average by large bank holding companies during the past five years. Moreover, the 1999 fee schedules enable the Reserve Banks to continue to recover all actual and imputed costs of providing priced services over the long run; these fees also provide for projected full cost recovery in 1999. Therefore, the Board believes the 1999 Reserve Bank price and service levels will not adversely affect the ability of other service providers to compete effectively with the Reserve Banks in providing similar services.

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[13] The uniform cash access policy provides for a base level of free currency access to all depository institutions but restricts the number of offices served and the frequency of access. Depository institutions that meet minimum volume thresholds can obtain more frequent free access. Fees are charged for additional access beyond the free level.

Table 13
Comparison of Pro Forma Balance Sheets
for Federal Reserve Priced Services
(millions of dollars — average for year)

	1999	1998
Short-term assets		
Imputed reserve requirement on clearing balances	$ 757.7	$ 750.4
Investment in marketable securities	6,819.6	6,753.5
Receivables [14]	69.1	69.0
Materials and supplies [14]	4.1	4.3
Prepaid expenses [14]	20.2	14.1
Items in process of collection	3,470.7	2,922.8
Total short-term assets	11,141.4	10,514.1
Long-term assets		
Premises [14,15]	386.6	360.4
Furniture and equipment [14]	150.3	145.2
Leasehold improvements and long-term prepayments [14]	21.1	23.3
Total long-term assets	558.1	528.9
Total assets	$11,699.5	$11,043.0
Short-term liabilities		
Clearing balances and balances arising from early credit of uncollected items	$ 7,577.3	$ 7,503.9
Deferred credit items	3,470.7	2,922.8
Short-term debt [16]	93.4	87.4
Total short-term liabilities	11,141.4	10,514.1
Long-term liabilities		
Long-term debt [16]	207.6	185.1
Total liabilities	11,349.0	10,699.2
Equity [16]	350.5	343.8
Total liabilities and equity	$11,699.5	$11,043.0

NOTE: Details may not add to totals due to rounding.

[14]Financed through PSAF; other assets are self-financing.

[15]Includes allocations of Board of Governors' assets to priced services of $0.4 million for 1999 and $0.5 million for 1998.

[16]Imputed figures represent the source of financing for certain priced services assets.

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Table 14
Derivation of the 1999 PSAF
(millions of dollars)

A. Assets to be financed[17]			
Short-term		$ 93.4	
Long-term[18]		558.1	
			$651.4
B. Weighted average cost			
1. Capital Structure[19]			
Short-term debt	14.3%		
Long-term debt	31.9%		
Equity	53.8%		
2. Financing rates/costs[19]			
Short-term debt	5.1%		
Long-term debt	6.6%		
Pre-tax equity[20]	23.5%		
3. Elements of capital costs			
Short-term debt	$ 93.4 x 5.1% =	$ 4.8	
Long-term debt	207.6 x 6.6% =	13.7	
Equity	350.5 x 23.5% =	82.4	
			$ 100.8
C. Other required PSAF recoveries			
Sales taxes		$ 8.7	
Federal Deposit Insurance assessment		2.8	
Board of Governors expenses		3.4	
			14.9
D. Total PSAF recoveries			$ 115.8
As a percent of capital		17.8%	
As a percent of expenses[21]		18.2%	

NOTE: Details may not add to totals due to rounding.

[17] Priced service asset base is based on the direct determination of assets method.

[18] Consists of total priced long-term assets, including the priced portion of FRIT assets.

[19] All short-term assets are assumed to be financed with short-term debt. Of the total long-term assets, 37.2% are assumed to be financed with long-term debt and 62.8% with equity.

[20] The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.

[21] Systemwide 1999 budgeted priced service expenses less shipping are $636.9 million.

Table 15
Comparison of 1999 and 1998 PSAF Components

	1999	1998
A. Assets to be financed (millions of dollars)		
Short-term	$ 93.4	$ 87.4
Long-term	558.1	528.9
Total	$651.4	$616.3
B. Cost of capital		
Short-term debt rate	5.1%	5.1%
Long-term debt rate	6.6%	6.8%
Pre-tax return on equity	23.5%	22.4%
Weighted average long-term cost of capital	17.2%	16.9%
C. Tax rate	32.0%	32.1%
D. Capital structure		
Short-term debt	14.3%	14.2%
Long-term debt	31.9%	30.0%
Equity	53.8%	55.8%
E. Other required PSAF recoveries (millions of dollars)		
Sales taxes	$ 8.7	$ 9.1
Federal Deposit Insurance assessment	2.8	2.6
Board of Governors expenses	3.4	2.8
F. Total PSAF		
Required recovery	$ 115.8	$ 108.5
As percent of capital	17.8%	17.6%
As percent of expenses	18.2%	18.1%

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Table 16
Computation of 1999 Capital Adequacy
for Federal Reserve Priced Services
(millions of dollars)

	Assets	Risk Weight	Weighted Assets
Imputed reserve requirement on clearing balances	$ 757.7	0.0	$ 0.0
Investment in marketable securities	6,819.6	0.0	0.0
Receivables	69.1	0.2	13.8
Materials and supplies	4.1	1.0	4.1
Prepaid expenses	20.2	1.0	20.2
Items in process of collection	3,470.7	0.2	694.1
Premises	386.6	1.0	386.6
Furniture and equipment	150.3	1.0	150.3
Leases, leasehold improvements & long-term prepayments	21.1	1.0	21.1
Total	$11,699.5		$ 1,290.2

Imputed Equity for 1999	$350.5
Capital to Risk-Weighted Assets	27.2%
Capital to Total Assets	3.0%

NOTE: Details may not add to totals due to rounding.

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AUTOMATED CLEARING HOUSE FEE SCHEDULE

	Fees
Origination (per item or record):	
Items in small files[22]	**$0.007**
Items in large files[22]	$0.006
Addenda record	$0.002
[Return item surcharge	**$0.00]**
[Premium cycle surcharge	**$0.00]**
Receipt (per item or record):	
Item	**$0.007**
Addenda record	$0.002
[Return item surcharge	**$0.00]**
Input file processing fees (per file):	
Small file	$1.75
Large file	$6.75
Monthly fees:	
Account servicing fee (per routing number)	$25.00
Information Extract File	$10.00
Return item/notification of change (NOC) fees[23]:	
Voice response return/NOC[24]	$2.00
[Telephone return	**N/A]**
[Paper return/NOC	**N/A]**
Nonelectronic input/output fees[25]:	
Tape input/output	$25.00
Paper output	$15.00
Diskette output	$15.00
Facsimile return/NOC[26]	$15.00

[22] Small files contain fewer than 2,500 items; large files contain 2,500 items or more.

[23] The Reserve Banks also assess a $15 fee for every government paper return/NOC they process. This service is not considered a priced service. The fee includes the transaction fee in addition to the conversion fee.

[24] The fee includes the transaction fee in addition to the voice-response fee.

[25] These services are offered in contingency situations only.

[26] The fee includes the transaction fee in addition to the conversion fee.

FUNDS TRANSFER AND MULTILATERAL SETTLEMENT FEE SCHEDULE

	Fees
Funds transfer:	
January 1999 basic transfer fee (originations and receipts)	$0.34
Volume-based pricing fees (originations and receipts)[27]	
Per transfer for the first 2,500 transfers per month	$0.34
Per transfer for additional transfers up to 80,000 per month	$0.27
Per transfer for every transaction over 80,000 per month	$0.21
Surcharge[27]	
Off-line transfer originated or received	$13.00
Telephone notification	$13.00
Multilateral settlement:	
Basic fee	
Settlement charge per entry	$0.95
Settlement file charge	$12.00
Surcharge	
Off-line origination per file[28]	$13.00
Telephone notification per file	$13.00
Minimum monthly fee	$60.00
Fedwire-based, small-dollar arrangement per settlement day[29]	$100.00
Fedwire-based, large-dollar arrangement per settlement day[29]	$100.00 - $175.00

[27] Effective February 1, 1999.

[28] The off-line origination surcharge will be waived by Reserve Banks that do not provide an electronic submission capability for the settlement sheet service.

[29] Participants in arrangements and settlement agents are also charged the applicable Fedwire transaction fee for each Fedwire transfer into and out of the settlement account.

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BOOK-ENTRY SECURITIES FEE SCHEDULE

Book-entry securities transfer:	Fees
Basic transfer fee[30]	
Transfer originated	**$0.85**
Transfer received	**$0.85**
Reversal originated	**$0.85**
Reversal received	**$0.85**
Surcharge[30]	
Off-line transfer originated or received	**$13.00**
Off-line reversal originated or received	**$13.00**
Monthly maintenance fees	
Account maintenance (per account)[31]	**$15.00**
Issues maintained (per issue/per account)	$0.45
Purchase & sale:	
Transaction fee	**$40.00**

[30] Effective February 1, 1999. The 1998 fees and fee structure will remain in effect during January 1999.

[31] Through June 30, 1999, the current practice of charging a monthly account maintenance fee to the customer's first priced custody account will remain in effect. Starting July 1, 1999, each book-entry securities priced collateral account will be charged the monthly maintenance fee.

NONCASH COLLECTION FEE SCHEDULE

	Fees
Coupon collection:	
Cash letters:	
with five or fewer coupon envelopes	$7.50
with six to fifty coupon envelopes	$15.00
Coupon envelopes:	
five or fewer	$4.75
six to fifty	$3.00
Return items	$15.00
Bond collection:	$50.00 [32]

[32] Plus actual shipping expense.

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SPECIAL CASH SERVICES FEE SCHEDULE

	Fees
Wrapped coin (per box):	
All Fourth District offices	**$1.80**
Helena	**$2.50**
Nonstandard Packaging:	
All Seventh District offices (per order or deposit)[33]	**$12.00**
Helena (per coin bag)	$3.00

Registered Mail Fees:[34]

	Surcharge	Insurance Fee[35]
Boston	$30.00	**$0.45**
[Cleveland	**N/A]**	
[Cincinnati	**N/A]**	
Helena	$8.50	**$0.37**
All Tenth District offices	$12.00	$0.26
El Paso and San Antonio[36]	**$80.00**	$0.24
All Twelfth District offices	$14.00	$0.20 (Continental U.S.) $0.30 (Other locations)

[33] $1s to $20s only. This service only applies to customers ordering in excess of $50,000 per week.

[34] Depository institutions also pay all postal fees and any insurance charges (provided through the U.S. Postal Service) in addition to Federal Reserve Bank charges.

[35] Per $1,000 being shipped using registered mail service. This insurance charge applies only to shipments over $25,000 for all Tenth District offices, the El Paso and San Antonio offices, and all Twelfth District offices.

[36] The San Antonio office will no longer offer the registered mail service effective April 1, 1999.

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ELECTRONIC CONNECTION FEE SCHEDULE[37]

The Reserve Banks charge fees for the electronic connections used by depository institutions to access priced services and allocate the cost and revenue associated with electronic access to the various priced services. The Reserve Banks will maintain 1999 electronic access fees at their 1998 levels.

Connection types:	Fees
Dial - receive only (FLASH-*Light*)[38]	$30.00 per month
Dial - receive and send (Fedline)	$75.00 per month
Link encrypted dial	$200.00 per month
High-speed dial @ 56 kbps	$350.00 per month
Multi-drop leased line	$450.00 per month
Dedicated leased line (to 9.6 kbps)	$750.00 per month
High-speed leased line @ 19.2 kbps	$850.00 per month
High-speed leased line @ 56 kbps	$1,000.00 per month
High-speed leased line @ 128 kbps	$1,800.00 per month
High-speed leased line @ 256 kbps	$2,000.00 per month
Cross-district	Actual cost[39]
Contingency testing options:[40]	
Premium dedicated dial test connection	$500.00 per month
Basic dedicated dial test connection	$250.00 per month
Shared dial test connection	$150.00 per month
Third-party contingency site dial test connection	$45.00 per month

[37] Installation, training, contingency hardware, and software certification are not considered priced services, and the fees for these services are not listed here. For a copy of the full electronic access fee schedule, contact the local Federal Reserve Bank.

[38] FLASH-*Light* support will be discontinued on March 31, 1999.

[39] The customer will pay the actual costs of the circuit and a monthly surcharge to cover an equitable share of expenses associated with customer support, depreciation of hardware (that is, link encryption units), and other overhead expenses. This fee must be, at a minimum, equivalent to the standard fee for the particular type of leased line connection.

[40] Use of Dial Test connections should not exceed 60 hours per month for the Premium service and 120 hours per year for the Basic and Shared services. Customers exceeding this guideline should establish a Dedicated Leased Line connection for testing.

By order of the Board of Governors of the Federal Reserve System, November 4, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–30338 Filed 11–12–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Fiscal Service

Fee Structure for the Transfer of U.S. Treasury Book-Entry Securities Held on the National Book-Entry System

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing a new fee structure and fees to be charged starting February 1, 1999, on the transfer of book-entry Treasury securities between accounts maintained on the National Book-Entry System (NBES).

The Treasury fee for an on-line book-entry security transfer will be reduced by nine percent in 1999. In addition, the Treasury will implement a fee structure for book-entry transfers that will split the on-line transfer fee between the originator and receiver of a transfer (rather than charge the entire transfer fee to the originator), and add a surcharge for off-line transfers. These changes will result in total Treasury fees paid by depository institutions being reduced by 9% or almost $1.4 million in 1999. With the reduction in the charge made by the Federal Reserve for the movement of funds, the total reduction in fees paid by depository institutions is about 24% or $5.1 million.

Starting January 1, 1999, Treasury will discontinue charging a fee for the transfer of a book-entry Treasury security sent from or received to a collateral account established under 31 CFR Part 225 (Treasury Circular 154).

Treasury absorbs the costs of original issues, account maintenance, interest and redemption payments, and the costs associated with stripping and reconstituting Treasury securities.

EFFECTIVE DATE: The new fee structure and fees will be effective February 1, 1999. The effective date for the elimination of fees for a Treasury security transfer to or from a Circular 154 account is January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, Room 510, E St. Building, Washington, DC 20239–0001, telephone (202) 219–3350.

Diane M. Polowczuk, Government Securities Specialist, Bureau of the Public Debt, Room 510, E St. Building, Washington, DC 20239–0001, telephone (202) 219–3350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee structure for the transfer of Treasury book-entry securities from one book-entry account to another book-entry account maintained on NBES.

Based on the latest review of book-entry costs and volumes, Treasury has decided to reduce the on-line fees and increase the off-line fees from the levels currently in effect. In addition, Treasury has developed a new fee structure which more accurately allocates the fees based on costs, as described below.

Starting February 1, 1999, the Treasury will split the current on-line origination fee into a basic transfer fee charged to the sending bank and receiving bank of both on-line and off-line transfers. This fee will be $0.75 for each securities transfer and reversal sent and received, a nine percent fee decrease per transfer. The current off-line transfer fee will be replaced by an off-line surcharge of $13.00 in addition to the basic transfer fee.

Changing the on-line transfer fee to a fee assessed to both senders and receivers more accurately aligns the costs and benefits to participants in a transfer. The off-line surcharge more clearly identifies the costs associated with the additional processing necessary for off-line transfers. This price structure also promotes pricing consistency with similar electronic payment services in the secondary market and other depository systems.

Treasury, in keeping with the practice of not charging a fee on other Treasury security transfers sent from or received to a fiscal collateral account, will no longer charge a fee on transfers sent from or received to a Circular 154 collateral account.

Treasury does not charge a fee for original issues, account maintenance, interest and redemption payments, and for the actual stripping and reconstituting of Treasury securities.

The pricing structure and fees described in this notice apply only to the transfer of Treasury book-entry securities held on NBES. The Federal Reserve System assesses a fee to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies on NBES. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate **Federal Register** notice published by the Board of Governors of the Federal Reserve System in the issue of the **Federal Register** (FR Doc. 98–30338).

The following is the Treasury fee schedule that will be effective February 1, 1999, for the book-entry transfers on NBES:

TREASURY-NBES FEE SCHEDULE [1]

[Effective February 1, 1999]

Transfer type	Basic fee [2]	Off-line [2] surcharge	Funds [3] movement fee	Total fee
On-line transfer originated	$0.75	$0.00	$0.10	$0.85
On-line transfer received	0.75	0.00	0.10	0.85
On-line reversal transfer originated	0.75	0.00	0.10	0.85
On-line reversal transfer received	0.75	0.00	0.10	0.85
Off-line transfer originated	0.75	13.00	0.10	13.85
Off-line transfer received	0.75	13.00	0.10	13.85
Off-line account switch received	0.75	0.00	0.10	0.85
Off-line reversal transfer originated	0.75	13.00	0.10	13.85
Off-line reversal transfer received	0.75	13.00	0.10	13.85

[1] Treasury does not charge a fee for original issues, account maintenance, interest and redemption payments, and for the stripping and reconstituting of Treasury book-entry securities.

[2] No fees are currently charged for transfers sent from or received to collateral accounts supporting borrowings from the Federal Reserve or Treasury deposits; Discount, Treasury Tax and Loan (31 CFR Part 203), and Treasury Circular 176 (31 CFR Part 202). Effective January 1, 1999, no fee will be charged for transfers sent from or received to collateral accounts under Treasury Circular 154 (31 CFR Part 225).

[3] The funds movement fee is not a Treasury fee, but is charged by the Federal Reserve for the cost of moving funds associated with the transfer of a Treasury book-entry security.

Authority: 31 CFR 357.45.

Dated: November 4, 1998.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 98–30339 Filed 11–12–98; 8:45 am]

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November 13, 1998

Part VI

Department of the Interior

Fish and Wildlife Service
50 CFR Part 20

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR PART 20

RIN 1018–AE93

Migratory Bird Hunting; Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule revises the waterfowl hunting frameworks and the season dates for those States in the Lower Region of the Mississippi Flyway. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits the taking of these designated species during the 1998–99 season.

DATE: This rule takes effect on November 13, 1998.

ADDRESSES: The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW., Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1998

On March 20, 1998, the Service published in the **Federal Register** (63 FR 13748) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory birds, designated as "migratory game birds" in conventions between the United States and several foreign nations for their protection and management, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. All other birds designated as migratory (under 10.13 of Subpart B of 50 CFR part 10) in the aforementioned conventions may not be hunted.

On May 29, 1998, the Service published in the **Federal Register** (63 FR 29518) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1998–99 duck hunting season. The May 29 supplement also provided detailed information on the 1998–99 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 25, 1998, the Service held a public hearing in Washington, DC, as announced in the March 20 and May 29 **Federal Registers** to review the status of migratory shore and upland game birds. The Service discussed hunting regulations for these species and for other early seasons. On July 17, 1998, the Service published in the **Federal Register** (63 FR 38700) a third document specifically dealing with proposed early-season frameworks for the 1998–99 season. The July 17 supplement also established the final regulatory alternatives for the 1998–99 duck hunting season for all States except Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee. On August 5, 1998, the Service published in the **Federal Register** (63 FR 41926) a fourth document dealing specifically with the final regulatory alternatives for the 1998–99 duck hunting season for the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee.

On August 6, 1998, the Service held a second public hearing in Washington, DC, as announced in the March 20, May 29, and July 17 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 25, 1998, the Service published a fifth document in the **Federal Register** (63 FR 45350) which dealt specifically with proposed frameworks for the 1998–99 late-season migratory bird hunting regulations.

On August 28, 1998, the Service published a sixth document in the **Federal Register** (63 FR 46124) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for the 1998–99 season. A seventh document published in the August 31, 1998, **Federal Register** (63 FR 46336) amended subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

The Service published final late-season frameworks for migratory game bird hunting regulations, from which State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1998–99 in the September 29, 1998, **Federal Register** (63 FR 51998). A tenth document published in the September 30, 1998, **Federal Register** (63 FR 52322) amended subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for species subject to late-season regulations and those for early seasons that States previously deferred.

This document is the eleventh in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations for the 1998–99 season. It deals specifically with revising the current duck hunting frameworks in the Lower Region of the Mississippi Flyway and the previously-selected and published hunting season dates for those eligible States that opt to change their seasons, as directed by Congress in Division C, Title 1, Section 150 of the Omnibus Appropriations Bill.

Background

Current duck hunting frameworks provide for earliest opening and latest closing dates for duck seasons of October 1 and January 20 in the Atlantic Flyway, and the Saturday nearest October 1, and the Sunday nearest January 20 in the Mississippi, Central, and Pacific Flyways. January 20 (or the Sunday nearest) is the latest closing date that has been allowed since the flyway management system for waterfowl began in 1948, except for an experimental extension of the framework closing date to January 31 in Mississippi during 1979–84.

In March 1998, the Lower-Region Regulations Committee (representing the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee) of the Mississippi Flyway Council recommended that the Service allow a January 31 framework closing date. The other three Flyway Councils and the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended no change in the framework dates. However, the Upper-Region Regulations Committee recommended that if an extension were authorized, it should be coupled with a commensurate reduction in season length and/or bag limits in the participating States to offset the predicted increase in harvest.

In order to address the request of the Lower-Region Regulations Committee of the Mississippi Flyway Council, the Service announced (May 29 **Federal Register**) that it would consider extending the framework closing date for those six States only (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee), with the requirement that the predicted additional harvest be offset with a reduction in season length. The States interested in this approach were to develop an analysis to assist the Service in predicting how many days of reduction in season length would be appropriate.

The proposal generated extensive public comment in opposition to the change, including comments from many State fish and wildlife agencies in all four Flyways (detailed comments are available in the August 5 **Federal Register**). The primary reasons for the opposition were:

(1) A perception of inequity because the Service would not be offering other States the option of an extension;

(2) Concern that the Flyway Councils did not have a role in developing the proposal and would not have the opportunity to meet and discuss concerns or alternatives before it was finalized; and

(3) Concerns that the Service would not be able to predict the effects of the proposed extensions on harvest or duck populations and guarantee the season-length reduction would be sufficient to completely offset the expected increase in harvest.

Because of the broad-based opposition to the proposal, the Service decided to withdraw it. The Service published the decision in the August 5 **Federal Register**. The Service further announced that it would support an overall review of framework dates by the Flyway Councils, the National Flyway Council, and the International Association of Fish and Wildlife Agencies. Interest in conducting such a review was recently expressed by the National Flyway Council, and the Service is committed to working with the above organizations to accomplish the review in time for consideration of duck-hunting regulatory alternatives for the 2000–2001 hunting season.

Congressional Action Subsequent to Final Frameworks

As stated previously, the Service published final late-season frameworks for migratory game bird hunting regulations, from which all State wildlife conservation agency officials selected late-season hunting dates, hours, areas, and limits for 1998–99 in the September 29, 1998, **Federal Register**. Duck hunting frameworks for the Mississippi Flyway, which includes the States of Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee, consisted of the following:

"Outside Dates: Between the Saturday nearest October 1 (October 3) and the Sunday nearest January 20 (January 17).

Hunting Seasons and Duck Limits: 60 days with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 2 redheads."

On October 19, 1998, Congress specified the following in Division C, Title I, Section 150 of the Omnibus Appropriations Bill:

"Sec. 150.

(a) Extension of Agreement for State of Mississippi.—The Secretary of the Interior shall offer to reinstate the Memorandum of Agreement between the Mississippi Department of Wildlife Conservation and the United States Fish and Wildlife Service concerning the framework closing dates for the 1979–1980 through 1981–1982 duck hunting seasons, executed in November 1979, for the 1998–1999 duck hunting season in the State of Mississippi, except that—

(1) the duck hunting season shall end on January 31, 1999; and

(2) the total number of days for the duck hunting season in the State of Mississippi shall not exceed 51 days.

(b) Extension of Agreement to Other States.—At the request of any other State represented on the Lower Region Regulations Committee of the Mississippi Flyway Council, the Secretary of the Interior shall extend the agreement described in subsection (a) to that State for the 1998–1999 duck hunting season if the State agrees to reduce the total number of days of the duck hunting season in the State to the extent necessary to result in no net increase in the duck harvest in the State for that season."

Therefore, following the directive provided by Congress, the Service will reinstate the 1979 Memorandum of Agreement (MOA) between the Mississippi Department of Wildlife Conservation and the Service concerning the framework closing dates for the 1998–1999 duck hunting season in the State of Mississippi. The Service has also extended the offer to the other five States in the Lower Region of the Mississippi Flyway with the following guidelines:

1. The extension will apply only to duck hunting seasons (ducks, mergansers, and coots).

2. In participating States, the maximum season length will be reduced from 60 to 51 days.

3. If a season closing date after the Sunday nearest January 20 is selected for any portion of a State, the 51-day maximum season length will apply throughout the State.

Based on these guidelines, the States of Alabama, Mississippi, and Tennessee have opted to enter into a Memorandum of Agreement for the 1998–1999 duck hunting season and extend the framework closing date to January 31. Arkansas, Kentucky, and Louisiana declined to participate in the framework extension. Revised season dates for Alabama, Mississippi, and Tennessee are included herein.

Public Comment

The Service, by this rule, is revising the 1998–99 duck season hunting dates for the States of Alabama, Mississippi, and Tennessee without the standard notice for public comment. As required by the Administrative Procedure Act (5 U.S.C. 553(b)(B)), the Service has found that the notice and public procedure required by the APA are impracticable, and contrary to the public interest for the following reasons: (1) the Service is revising the frameworks at the direction of Congress; (2) public comment cannot change the Congressional action; (3) providing a comment period at this time would preclude the affected States from selecting and beginning their upcoming duck hunting seasons on time; and (4) the Service has already received extensive public comment on the issue.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with EPA on June 9, 1988. The Service published a Notice of Availability in the June 16, 1988, **Federal Register** (53 FR 22582). The Service published its Record of Decision on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Considerations

As in the past, the Service designs hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. Consultations previously conducted regarding the 1998–99 regulatory proposals also cover the regulatory actions herein. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The Service's biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Regulatory Flexibility Act

In the March 20, 1998, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act. One measure was to update the 1996 Small Entity Flexibility Analysis (Analysis) documenting the significant beneficial economic effect on a substantial number of small entities. The 1996 Analysis

estimated that migratory bird hunters would spend between $254 and $592 million at small businesses. The Service has updated the 1996 Analysis with information from the 1996 National Hunting and Fishing Survey. Nationwide, the Service now estimates that migratory bird hunters will spend between $429 and $1,084 million at small businesses in 1998. No negative or cost impacts are predicted as the result of the hunting season framework extension. Copies of the 1998 Analysis are available upon request from the Office of Migratory Bird Management.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. Comments may also be e-mailed to: Exsec@ios.doi.gov.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress and has been declared major. Because this rule establishes hunting seasons, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act

The Service examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, the information collection requirements of the Migratory Bird Harvest Information Program have been approved by OMB and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve Service harvest estimates for all migratory game birds in order to better manage these populations. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. The Service annually prescribes frameworks from which the States make selections and employs guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulation. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects.

Effective Date

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after the final rulemaking, the States would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

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List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: November 6, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, the Service amends title 50, chapter I, subchapter B, part 20, subpart K as follows:

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742 a–j.

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Note - The following annual regulations provided for by §§20.104 and 20.105 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS AND DELINEATIONS OF GEOGRAPHICAL AREAS. SPECIAL RESTRICTIONS MAY APPLY ON FEDERAL AND STATE PUBLIC HUNTING AREAS AND FEDERAL INDIAN RESERVATIONS.

2. Section 20.104 is amended by revising the entries for Tennessee to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 28 and September 28 Federal Registers.

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 1998, Federal Register (63 FR 46336).

	Sora & Virginia Rails	Clapper & King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

• • • • •

MISSISSIPPI FLYWAY

• • • • •

Tennessee				
Reelfoot Zone	Nov. 14-Nov. 18 & Nov. 21-Jan. 8	Closed	Oct. 31-Dec. 14	Nov. 14-Feb. 28
State Zone	Dec. 5-Dec. 11 & Dec. 19-Jan. 17	Closed	Oct. 31-Dec. 14	Nov. 14-Feb. 28

• • • • •

3. In Section 20.105, paragraphs (a), (e) and (f) are amended by revising the entries for the following States in alphabetical order to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise restricted by State regulations. Area descriptions were published in the August 28 (63 FR 46124) and September 29 (63 FR 51988) Federal Registers.

(a) Common Moorhens and Purple Gallinules
(Atlantic, Mississippi, and Central Flyways)

NOTE: The following seasons are in addition to the seasons published previously in the August 31, 1998, Federal Register (63 FR 46336). The zones named in this paragraph are the same as those used for setting duck seasons.

	Season Dates	Limits Bag	Limits Possession
• • • • •			
MISSISSIPPI FLYWAY			
• • • • •			
Tennessee			
Reelfoot Zone	Nov. 14-Nov. 18 &	15	30
	Nov. 21-Jan. 8	15	30
State Zone	Dec. 5-Dec. 11 &	15	30
	Dec. 19-Jan. 17	15	30
• • • • •			

• • • • •

(e) Waterfowl, Coots, and Pacific Flyway Seasons for Common Moorhens and Purple Gallinules

• • • • •

MISSISSIPPI FLYWAY

Flyway-wide Restrictions

Duck Limits: The daily bag limit of 6 ducks may include no more than 4 mallards (no more than 2 of which may be females), 1 black duck, 1 pintail, 1 canvasback, 2 redheads, and 2 wood ducks. The possession limit is twice the daily bag limit.

Merganser Limits: The merganser limits include no more than 1 hooded merganser daily and 2 in possession.

	Season Dates	Limits Bag	Limits Possession
Alabama			
Ducks:			
North Zone	Dec. 12-Jan. 31	6	12
South Zone	Dec. 12-Jan. 31	6	12
Mergansers	Same as for ducks	5	10

	Season Dates	Limits Bag	Limits Possession
Alabama (cont.)			
Coots	Same as for ducks	15	30

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Geese:			
Dark Geese:			
North Zone:			
SJBP Zone	Dec. 28-Jan. 31	2	4
Rest of North Zone	Dec. 12-Jan. 31	2	4
South Zone	Dec. 12-Jan. 31	2	4
Light Geese	Same as for dark geese	5	5
. . . . .			
Mississippi			
Ducks:			
Zone 1	Dec. 12-Jan. 31	6	12
Zone 2	Dec. 12-Jan. 31	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
. . . . .			
Tennessee			
Ducks:			
Reelfoot Zone	Nov. 14-Nov. 15 &	6	12
	Nov. 21-Jan. 8	6	12
State Zone	Dec. 5-Dec. 11 &	6	12
	Dec. 19-Jan. 31	6	12
Mergansers	Same as for ducks	5	10
Coots	Same as for ducks	15	30
. . . . .			

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(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definition

Youth Hunters: Includes youths 15 years of age or younger.

NOTE: The following seasons are in addition to the seasons published previously in the August 31 (63 FR 46334) Federal Register. Bag and possession limits will conform to those set for the regular season.

	Season Dates
. . . . .	
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
Statewide	Feb. 6
. . . . .	
Mississippi	
Ducks, mergansers, coots, moorhens, gallinules, and geese:	
Statewide	Feb. 6
. . . . .	
Tennessee	
Ducks, mergansers, and coots:	
Reelfoot Zone	Jan. 18
State Zone	Feb. 6
. . . . .	

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[FR Doc. 98-30530 Filed 11-12-98; 8:45 am]
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federal register

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Part VII

The President

Notice of November 12, 1998—
Continuation of Emergency Regarding
Weapons of Mass Destruction

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Presidential Documents

Title 3—

The President

Notice of November 12, 1998

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, I declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons ("weapons of mass destruction") and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency first declared on November 14, 1994, and extended on November 14, 1995, November 12, 1996, and November 13, 1997, must continue in effect beyond November 14, 1998. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order 12938.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 12, 1998.

[FR Doc. 98–30694
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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 3633/P.L. 105–357

Controlled Substances Trafficking Prohibition Act (Nov. 10, 1998; 112 Stat. 3271)

H.R. 3723/P.L. 105–358

United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999 (Nov. 10, 1998; 112 Stat. 3272)

H.R. 4501/P.L. 105–359

To require the Secretary of Agriculture and the Secretary of the Interior to conduct a study to improve the access for persons with disabilities to outdoor recreational opportunities made available to the public. (Nov. 10, 1998; 112 Stat. 3275)

H.R. 4821/P.L. 105–360

To extend into fiscal year 1999 the visa processing period for diversity applicants whose visa processing was suspended during fiscal year 1998 due to embassy bombings. (Nov. 10, 1998; 112 Stat. 3276)

S. 459/P.L. 105–361

Native American Programs Act Amendments of 1998 (Nov. 10, 1998; 112 Stat. 3278)

S. 1364/P.L. 105–362

Federal Reports Elimination Act of 1998 (Nov. 10, 1998; 112 Stat. 3280)

S. 1718/P.L. 105–363

To amend the Weir Farm National Historic Site Establishment Act of 1990 to authorize the acquisition of additional acreage for the historic site to permit the development of visitor and administrative facilities and to authorize the appropriation of additional amounts for the acquisition of real and personal property, and for other purposes. (Nov. 10, 1998; 112 Stat. 3296)

S. 2241/P.L. 105–364

To provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes. (Nov. 10, 1998; 112 Stat. 3300)

S. 2272/P.L. 105–365

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S. 2500/P.L. 105–367

To protect the sanctity of contracts and leases entered into by surface patent holders with respect to coalbed methane gas. (Nov. 10, 1998; 112 Stat. 3313)

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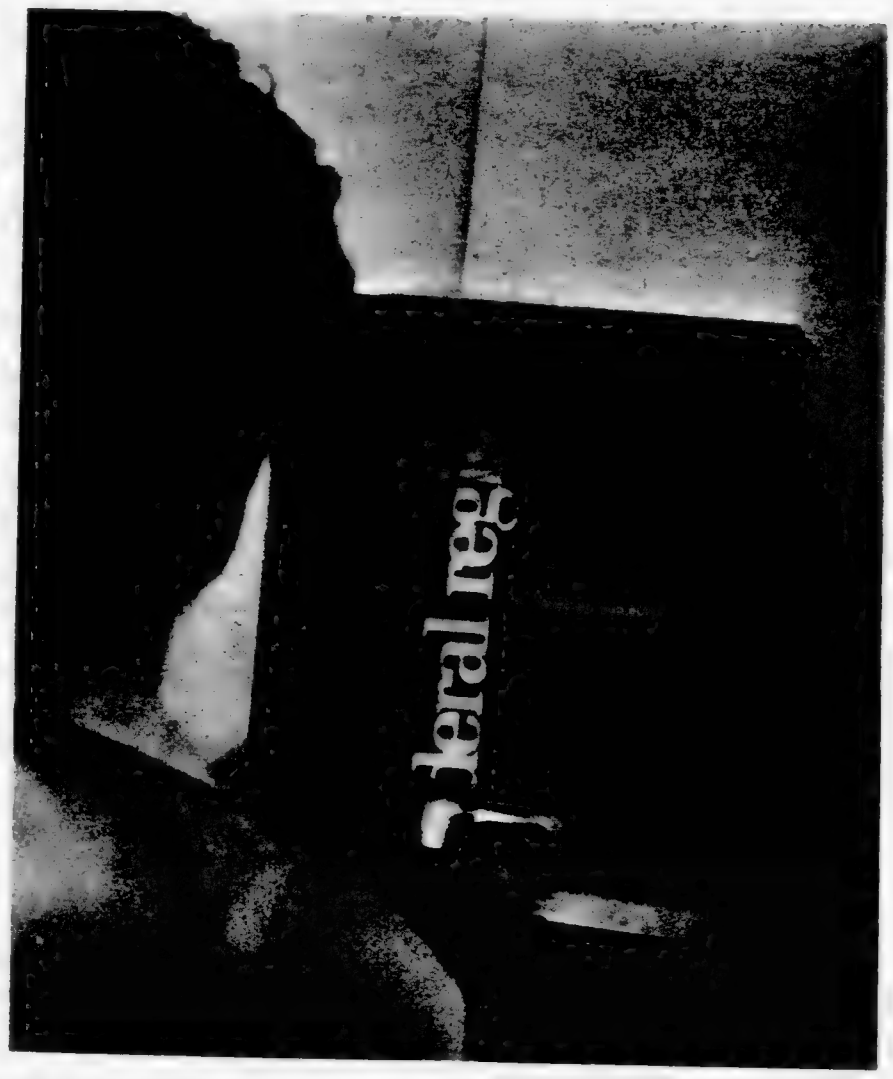

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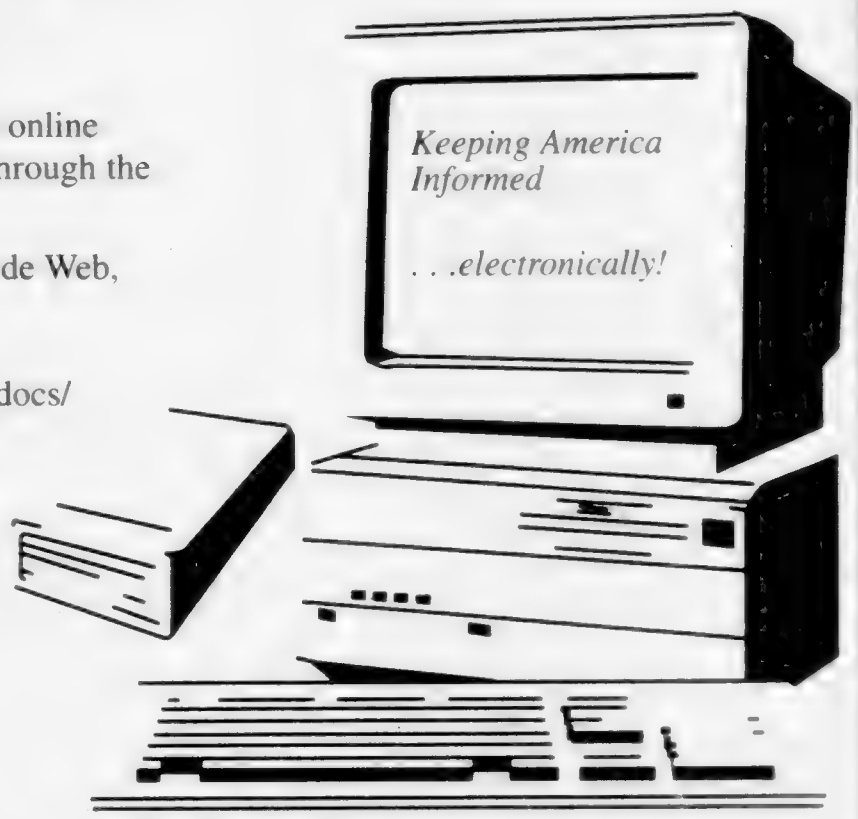

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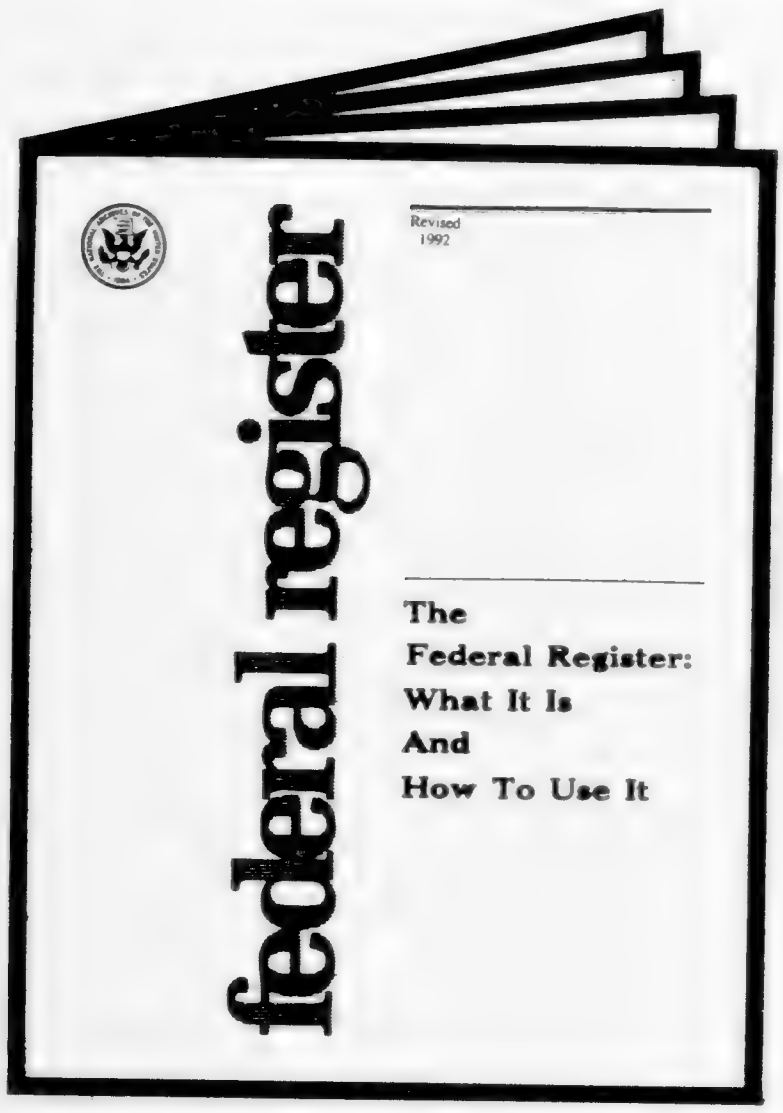

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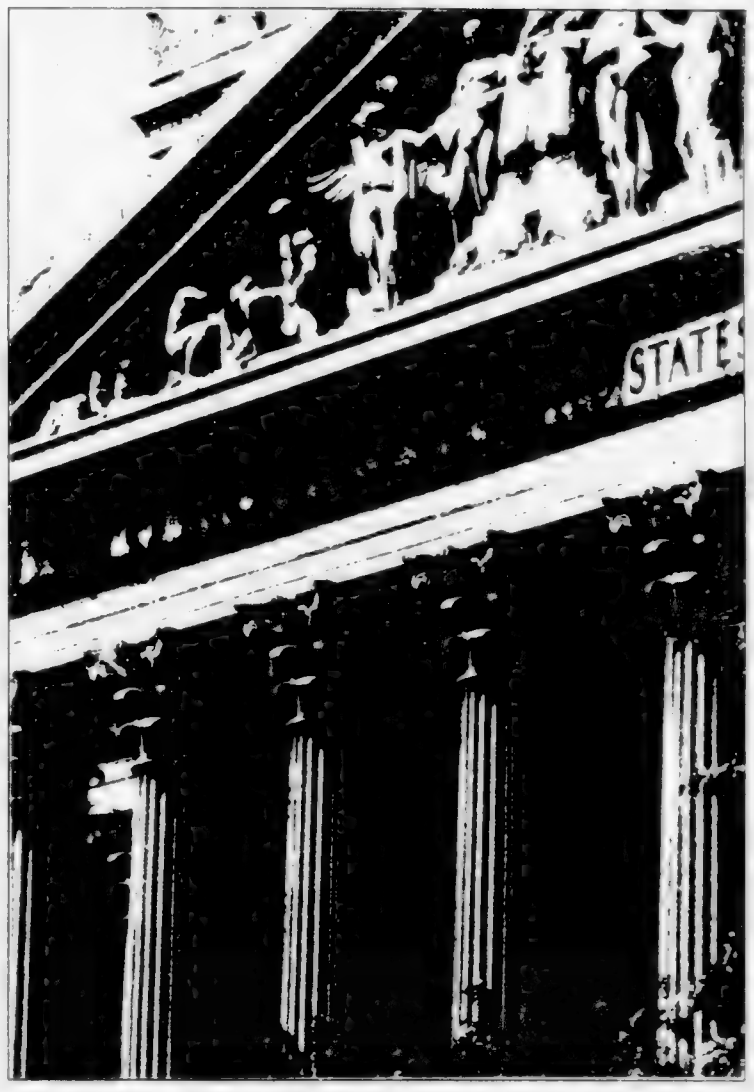

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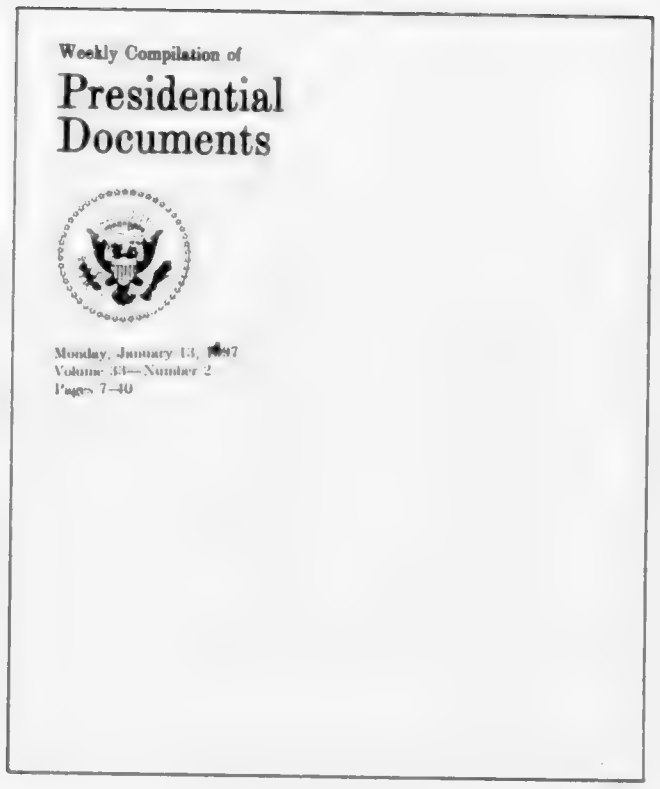

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**OFFICE
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5 CFR P

RIN 3206-

**Reductio
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AGENCY:
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ACTION:

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Rules and Regulations

Federal Register
Vol. 63, No. 220
Monday, November 16, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 351

RIN 3206–AH95

Reduction In Force Offers of Vacant Positions

AGENCY: Office of Personnel Management.

ACTION: Final rulemaking.

SUMMARY: The Office of Personnel Management is issuing final regulations that clarify existing policy on reduction in force offers of vacant positions.

DATES: These regulations are effective December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon, or Jacqueline R. Yeatman, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Background

On May 13, 1998, OPM published proposed regulations (63 FR 26531) to clarify OPM policy on offers of vacant positions to employees under authority of OPM's part 351 reduction in force regulations.

Comments

OPM received three comments on these proposed rules: one from an agency, and two from employees' union.

The agency supported the regulation as proposed.

One union local suggested that the final regulation specifically provide that agencies may also make voluntary offers of positions under authority other than the part 351 reduction in force regulations.

This suggestion was not adopted as unnecessary because an agency always has the right to make offers of vacant positions apart from the reduction in force regulations (e.g., reassignment to positions at the same grade). In addition, agencies may make voluntary offers of lower-graded positions in lieu of reduction in force actions. This option was referenced in the Supplementary Information section of the proposed regulations. Also, agencies may make offers of vacant positions that would not be permissible under the reduction in force regulations (e.g., offers of vacant positions in different competitive areas, or below the applicable grade limits for reduction in force offers of assignment).

The second employees' union noted that its employees are not covered by title 5, United States Code, and asked whether its employees are administratively covered by OPM's part 351 reduction in force regulations.

In a separate letter, OPM explained that coverage of these employees was at the option of the employing agency rather than a right provided to the employees under title 5, United States Code.

Final Regulations

These final regulations revise § 351.704(a)(1) to clarify longstanding OPM policy that an offer of assignment to a vacant position under authority of part 351 must be consistent with §§ 351.201(b) and 351.701, including the grade limits applicable to bump and retreat set forth in §§ 351.701(b)(2) and 351.701(c)(2).

These final regulations also revise § 351.704(a)(1) to clarify longstanding OPM policy that an agency may offer an employee assignment to a vacant position in lieu of separation by reduction in force under part 351.

These final regulations do not affect the agency's right to make offers of vacant positions under other authority.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503, Section 351.801 also issued under E.O. 12828, 58 FR 2965.

2. In § 351.704, paragraph (a)(1) is revised to read as follows:

§ 351.704 Rights and prohibitions.

(a)(1) An agency may satisfy an employee's right to assignment under § 351.701 by assignment to a vacant position under § 351.201(b), or by assignment under any applicable administrative assignment provisions of § 351.705, to a position having a representative rate equal to that the employee would be entitled under § 351.701. An agency may also offer an employee assignment under § 351.201(b) to a vacant position in lieu of separation by reduction in force under 5 CFR part 351. Any offer of assignment under § 351.201(b) to a vacant position must meet the requirements set forth under § 351.701.

* * * * *

[FR Doc. 98–30328 Filed 11–13–98; 8:45 am]
BILLING CODE 6325–01–P

Office of Personnel Management

5 CFR Part 532

RIN 3206–AI30

Prevailing Rate Systems; Redefinition of Philadelphia, PA, and New York, NY, Appropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final rule to redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund Federal Wage System (FWS) wage area to the area of application of the New York, NY, wage area. This change is being made so that the wage area definition of Ocean County will be more reflective of the transportation and commuting patterns in central New Jersey.

DATES: Effective: December 16, 1998. Federal Wage System employees

stationed in Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, will be moved from the Philadelphia, PA, wage schedule to the New York, NY, wage schedule on the first day of the first applicable pay period beginning on or after this date.

FOR FURTHER INFORMATION CONTACT: Mark Allen at (202) 606–2848, or send an email message to maallen@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is engaged in an ongoing project to review the geographic definitions of selected Federal Wage System (FWS) appropriated fund wage areas. On June 23, 1998, OPM published a proposed rule to redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund FWS wage area to the area of application of the New York, NY, wage area (63 FR 34134). The proposed rule provided a 30-day period for public comment, during which OPM received several comments requesting that Lakehurst Naval Air Station, the main employer of FWS workers in Ocean County, remain in the Philadelphia FWS wage area. The comments we received are addressed below, following an introduction to this issue.

The Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by majority vote that OPM redefine Ocean County, NJ, excluding the portion occupied by the Fort Dix Military Reservation, from the area of application of the Philadelphia, PA, appropriated fund FWS wage area to the area of application of the New York, NY, wage area. FPRAC is composed of representatives from the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Veterans Affairs, OPM, the American Federation of Government Employees, the Metal Trades Department, the National Association of Government Employees, and the National Federation of Federal Employees.

Section 532.211 of title 5, Code of Federal Regulations, lists the following criteria that OPM uses to determine appropriate FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Ocean County is located in central New Jersey and is bordered by Burlington County to the West and Monmouth County to the North. FPRAC studied the appropriate wage area definition of Ocean County exhaustively. Based on their analysis of the regulatory criteria, the management members of FPRAC found no compelling reason to change the wage area designation of Ocean County. The labor members of the Committee argued that the transportation facilities and commuting patterns criteria favor placing Ocean County in the New York wage area. After failing to reach consensus, the Committee voted to accept the labor recommendation, with the Chairman of the Committee casting the tie-breaking vote in support of the labor position. The management members of FPRAC filed a minority report in opposition to the FPRAC majority recommendation.

After careful consideration, OPM finds it appropriate to accept the FPRAC recommendation in this case. OPM has not overruled an FPRAC recommendation concerning the definition of an FWS wage area since the Committee was established in 1972. The distance, geographic features, and overall population, employment, and the kinds and sizes of private industrial establishments criteria do not clearly favor defining Ocean County to one wage area more than another. However, we find that the transportation facilities and commuting patterns criteria clearly favor defining Ocean County to the New York wage area rather than to the Philadelphia wage area.

The largest employer of FWS workers in Ocean County is Lakehurst Naval Air Station, although several other smaller employment sites will be affected by the redefinition of Ocean County to the New York wage area. Employees with official duty stations in the Fort Dix Military Reservation portion of Ocean County will remain in the Philadelphia wage area. Employees with official duty stations at Lakehurst Naval Air Station and other facilities in Ocean County will be moved from the Philadelphia wage schedule to the New York wage schedule on the first day of the first applicable pay period beginning on or after 30 days after the issuance of this final regulation.

The comments received in response to the proposed rule raised issues that had been considered and discussed exhaustively during the deliberations of the Federal Prevailing Rate Advisory Committee on this matter. Commenters suggested that there is no clear demonstration of need to cause a change in the definitions of the Philadelphia and New York wage areas. FPRAC found that a demonstrated need exists to make this change. We find that this change is necessary so that the wage area definition of Ocean County will be in line with the regulatory criteria for defining FWS wage areas. This change will enable the wage area definition of Ocean County to be more reflective of the transportation and commuting patterns in central New Jersey.

Commenters suggested that the use of commuting patterns and transportation facilities to justify a change is not supportable, citing the fact that 14 percent of the resident workforce of Ocean County commutes to work in the New York survey area, and citing anecdotal evidence that few blue-collar workers are included in this percentage. FPRAC found that the percentage of the Ocean County resident workforce commuting to New York is significant enough to favor removing the county from the Philadelphia wage area and redefining it to the New York wage area. Also, FPRAC received additional anecdotal evidence from local employees in Ocean County that significant numbers of blue-collar workers commute from Ocean County to jobs in New York, and that transportation facilities between Ocean County and New York are far better than between Ocean County and Philadelphia. We find that the commuting pattern and transportation facility information fully supports defining Ocean County to the New York wage area.

Commenters pointed out that Ocean County is contiguous to the Philadelphia survey area but not contiguous to the New York survey area. While this is true, the distance criteria for defining FWS wage areas shows that Ocean County is about the same distance by road from the center of the New York survey area as it is from the center of the Philadelphia survey area. Therefore, OPM finds that the distance criterion does not clearly favor defining Ocean County to one wage area more than another.

Commenters stated that placing adjacent Department of Defense installations (Fort Dix, McGuire Air Force Base, and Lakehurst Naval Air Station) in separate wage areas would unnecessarily force the installations to compete for the same employees to fill positions in skilled aircraft maintenance occupations, thereby increasing the potential for disruptions in accomplishing mission critical work at the installations. Although not part of

the regulatory criteria for defining FWS wage areas, FPRAC considered this issue carefully before making its recommendation to OPM. Should agencies experience recruitment or retention problems in particular occupations at an installation, OPM would consider the approval of requests for special rates to address those problems.

Commenters stated that Lakehurst Naval Air Station is conducting cost comparisons with private industry to consider contracting out certain work, and that certain FWS employees at the installation will be placed at a competitive disadvantage during these studies if paid from the higher New York wage schedule. Although not among the regulatory criteria for defining FWS wage areas, FPRAC considered this issue carefully before making its recommendation to OPM. OPM finds that it is not appropriate to preclude the appropriate redefinition of an FWS wage area on the basis that the redefinition may increase the likelihood that it may be possible for private sector companies to more easily win contracts to provide services to Federal agencies.

Commenters requested that OPM redefine Ocean County to the New York wage area, while leaving both the Fort Dix Military Reservation and Lakehurst Naval Air Station portions of Ocean County in the Philadelphia wage area. Under the regulatory criteria for defining FWS wage areas, a county may not be split between two wage areas except in unusual circumstances and as an exception to the regulatory criteria. The Fort Dix Military Reservation portion of Ocean County will continue to be defined to the Philadelphia wage area because the activity would otherwise be split between two wage areas. With most of the Fort Dix Military Reservation in Burlington County, and a lesser portion of the installation in Ocean County, we believe this represents an example of an appropriate exception to the regulatory criteria. OPM defines several counties in a similar manner, using exceptions to the regulatory criteria in certain wage areas to avoid splitting individual installations among two or more wage areas. Although Lakehurst Naval Air Station is adjacent to the Fort Dix Military Reservation portion of Ocean County, Lakehurst Naval Air Station is a separate installation. We do not believe it is appropriate to recognize that Ocean County is linked more closely to New York than to Philadelphia under the regulatory criteria for defining FWS wage areas, but then refuse to acknowledge that the major FWS employer in the county should be treated in accordance with the appropriate wage area definition of the county.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management,

Janice R. Lachance,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix C to Subpart B of Part 532 [Amended]

2. Appendix C to subpart B is amended by revising the wage area listings for the New York, New York, and Philadelphia, Pennsylvania, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

New York

* * * * *

New York

Survey Area

New York:
- Bronx
- Kings
- Nassau
- New York
- Queens
- Suffolk
- Westchester

New Jersey:
- Bergen
- Essex
- Hudson
- Middlesex
- Morris
- Passaic
- Somerset
- Union

Area of Application. Survey area plus:

New York:
- Putnam
- Richmond
- Rockland

New Jersey:
- Monmouth
- Ocean (excluding the Fort Dix Military Reservation)
- Sussex

* * * * *

Pennsylvania

* * * * *

Philadelphia

Survey Area:

Pennsylvania:
- Bucks
- Chester
- Delaware
- Montgomery
- Philadelphia

New Jersey:
- Burlington
- Camden
- Gloucester

Area of Application. Survey area plus:

Pennsylvania:
- Lehigh
- Northampton

New Jersey:
- Atlantic
- Cape May
- Cumberland
- Hunterdon
- Mercer
- Ocean (Fort Dix Military Reservation only)
- Warren

* * * * *

[FR Doc. 98–30511 Filed 11–13–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 244, 274a, and 299

[INS No. 1608–93]

RIN 1115–AC30

Temporary Protected Status, Exception to Registration Deadlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations by providing additional exceptions to the deadlines for initial registration for Temporary Protected Status (TPS). Eligible persons who did not register for TPS because they are or were in a status or a condition that made it unnecessary or discouraged registration during the initial registration period may now apply for late registration. This rule also makes conforming changes to reflect the redesignation by the Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) of section 240 of

the Immigration and Nationality Act (Act) as section 244, and makes other minor conforming changes to reflect current Service procedures.

DATES: This rule is effective November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Pearl Chang, Chief, Residence and Status, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington DC 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Temporary Protected Status (TPS), as provided for by section 244 of the Act, affords temporary protection in the United States to persons of designated foreign states that are experiencing ongoing civil strife, environmental disaster, or certain other extraordinary and temporary conditions. As originally promulgated in 1991, the regulations at 8 CFR part 240 limited TPS registration to aliens who applied during the registration period established by **Federal Register** notice initially designating a particular country for TPS. This formulation left otherwise eligible aliens who, for one reason or another, failed to register for TPS with the prospect of having to return to their home countries while the conditions precipitating the TPS designation remained. Many such aliens were maintaining an immigration status or pursuing a pending immigration application which they hoped or assumed would allow them to remain legally in the United States permanently or at least until the conditions in their home countries improved.

On November 5, 1993, the Service published an interim rule in the **Federal Register** at 58 FR 58935 which addressed this problem with respect to nonimmigrants and immigrants by creating an exception to the initial registration deadlines for TPS. This final rule broadens that exception to persons otherwise eligible for TPS who are or were in a status or a condition that made it unnecessary or discouraged registration during the initial registration period, including parolees and pending asylum applicants.

Specifically, the exception in the interim rule was limited to otherwise eligible aliens who are or were in any valid nonimmigrant or immigrant status on the date their country was designated for TPS, and who did not register during the initial registration period (usually comprising the entire first period of designation). Pursuant to the interim rule, such persons may apply for TPS during any extension of the designation, provided the application is submitted within 30 days of the expiration of the previous nonimmigrant or immigrant status, or by February 3, 1994, (90 days after the effective date of that rule), whichever is later. The interim rule also provided a finding of lawful status as a nonimmigrant for those persons who fell out of status between the end of the first period of registration and the effective date of that rule. 8 CFR 244.10(f)(2)(v). (N.B. IIRIRA amended section 212(a)(9)(B) of the Act as of April 1, 1997, to define "unlawfully present" such that an alien is present in the United States after the expiration of a period of stay authorized by the Attorney General or present in the United States without being admitted or paroled). This definition applies only for purposes of 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act. Nevertheless, those aliens who file for TPS after April 1, 1997, and within 30 days of the expiration of their previous status will not accrue time in unlawful presence after their previous status expires and before they register for TPS. This finding of nonimmigrant status will continue in effect until such time as the Service may issue a final (or interim) regulation implementing a comprehensive definition of unlawful presence.)

Discussion of Comments

The comment period for the interim rule closed on December 6, 1993. The following is a discussion of those comments and the Service's response.

The Service received five comments to the interim rule. All commenters were supportive of allowing late initial TPS registration under certain circumstances. Several commenters, however, urged that the eligibility for late registration be extended to other groups. The Service agrees with the majority of those commenters that applicants for asylum and minors whose parents registered for TPS, but did not register any or all of their children, should be eligible for such late initial registration. In addition, the Service believes that the following groups should also be eligible: (1) Those with an application for nonimmigrant status, resident status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal; and (2) those present subsequent to parole under section 212(d)(5) of the Act.

The Service does not, however, agree with the commenter who requested that DED Salvadorans should be eligible for late registration because TPS for El Salvador has already been terminated.

The Service does not agree with the request that those who do not meet the basic eligibility requirements, including physical presence in the United States by the date specified in the TPS **Federal Register** notice, should be eligible for initial late registration.

Finally, the Service agrees with both commenters who suggested that the application period for initial late registration be extended beyond the 30 days specified in the interim rule to provide additional time for the distribution of information regarding TPS to the affected aliens. This final rule extends the late initial registration period to 60 days from the date of the TPS notice's publication in the **Federal Register** for all grandfathered (otherwise ineligible) applicants. The final rule also provides 60 days to register for TPS for those who become eligible for late registration.

In addition, the final rule provides that those persons who would otherwise have been eligible for TPS during the first period of registration who: (1) Were in a valid status during that period of registration; (2) fell out of valid status during any subsequent period of registration; and (3) were prevented from registering for TPS by the regulation in effect at the time, will be held to have maintained a valid status during that period.

Persons covered by this exception must meet all other requirements of TPS including presence in the United States at the time the foreign state in question was designated for TPS. This rule is not intended to extend protection to persons who arrived in the United States, whether legally or illegally, after the designation was made, nor is it intended to cover persons who were not in valid immigrant or nonimmigrant status during the initial registration period.

Technical Amendments

This rule also changes all references to section 240 of the Act to section 244 as required by IIRIRA. Finally, this rule modifies several definitions within section 244 to better comport with the rest of 8 CFR. Specifically, the definition of *Act* is removed because it duplicates the definition at 8 CFR 1.1(b) which controls. The term *state* is changed to *foreign state* (although the definition remains the same) for clarity. The definition of *charging document* is revised to comport with the definition of that term in § 3.13.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

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This rule allows certain aliens to apply for TPS; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988 Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Lists of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 244

Administrative practice and procedure, Immigration, Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration.

Accordingly, the interim rule amending 8 CFR parts 103, 240, and 299 (part 240 at the time of the interim rule has since been redesignated as part 244) which was published at 58 FR 58935 on November 5, 1993, is adopted as a final rule with the following changes and part 274a is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

§ 103.1 [Amended]

2. Section 103.1(f)(3)(iii)(HH) is amended by revising the reference to "part 240" to read "part 244."

§ 103.7 [Amended]

3. In § 103.7(b)(1), the entry for "Form EOIR–40" is amended by revising the reference to "section 244 of the Act" to read "section 244 of the Act as it existed prior to April 1, 1997." Further, in § 103.7(b)(1), the entry for "Form I–821" is amended by revising the reference to "section 244A of the Act" to read "section 244 of the Act as amended by section 308(a)(7) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996".

§ 103.12 [Amended]

4. In § 103.12 paragraph (a)(4)(ii) is amended by revising the reference to "section 244A of the Act" to read "section 244 of the Act".

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED FOREIGN STATES

5. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

6. Section 244.1 is amended by removing the definitions of the terms *Act* and *State*, revising the definition of *Charging document*, and adding the definition of *Foreign state* immediately after the definition of *Felony*, to read as follows:

§ 244.1 Definitions.

* * * * *

Charging document means the written instrument which initiates a proceeding before an Immigration Judge. For proceedings initiated prior to April 1, 1997, these documents include an Order to Show Cause, a Notice to Applicant for Admission Detained for Hearing before Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien. For proceedings initiated after April 1, 1997, these documents include a Notice to Appear, a Notice of Referral to Immigration Judge, and a Notice of Intention to Rescind and Request for Hearing by Alien.

* * * * *

Foreign state means any foreign country or part thereof as designated by the Attorney General pursuant to section 244 of the Act.

* * * * *

§ 244.1 [Amended]

7. Section 244.1 is amended by:

a. Revising the reference to "section 244A" to read "section 244" in the definition for *Felony*;

b. Revising the reference to "section 244A(c)" to read "section 244" in the definition for *Prima Facie*; and by

c. Revising the reference to "section 244A(b)" to read "section 244(b)" in the definition for *Register*.

8. Section 244.2 is revised to read as follows:

§ 244.2 Eligibility.

Except as provided in §§ 244.3 and 244.4, an alien may in the discretion of the director be granted Temporary Protected Status if the alien establishes that he or she:

(a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;

(b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;

(c) Has continuously resided in the United States since such date as the Attorney General may designate;

(d) Is admissible as an immigrant except as provided under § 244.3;

(e) Is not ineligible under § 244.4; and

(f)(1) Registers for Temporary Protected Status during the initial registration period announced by public notice in the **Federal Register**, or

(2) During any subsequent extension of such designation if at the time of the initial registration period:

(i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;

(ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

(3) Eligibility for late initial registration in a currently designated foreign state shall also continue until January 15, 1999, for any applicant who would have been eligible to apply previously if paragraph (f)(2) of this section as revised had been in effect before November 16, 1998.

(g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

§ 244.4 [Amended]

9. In § 244.4, paragraph (a) is amended by revising the reference to "§ 240.1" to read "§ 244.1".

§ 244.5 [Amended]

10. In § 244.5, paragraph (a) is amended in the first sentence by revising the term "state" to read "foreign state", and by revising the reference to "section 244A" to read "section 244". Paragraph (a) is further amended by revising the reference to "§ 240.13" to read "§ 244.13" in the next to last sentence.

11. In § 244.5, paragraph (b) is amended in the last sentence by revising the reference to "§ 240.13" to read "§ 244.13".

§ 244.6 [Amended]

12. Section 244.6 is amended in the last sentence by revising the reference to "§ 240.9" to read "§ 244.9".

13. Section 244.7 is revised to read as follows:

§ 244.7 Filing the application.

(a) An application for Temporary Protected Status shall be filed with the director having jurisdiction over the applicant's place of residence.

(b) An application for Temporary Protected Status must be filed during the registration period established by the Attorney General, except in the case of an alien described in § 244.2(f)(2).

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in § 244.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a foreign state is designated under section 244(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the director under paragraph (a) of this section during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under § 244.3(c) or § 244.4. Eligibility for Temporary Protected Status in the latter instance shall be decided by the Executive Office for Immigration Review during such proceedings.

§ 244.8 [Amended]

14. Section 244.8 is amended in the last sentence by revising the term "district director" to read "director".

§ 244.9 [Amended]

15. Section 244.9 is amended by:

a. Revising the term "designated state" to read "designated foreign state" in paragraph (a)(1) second sentence of the introductory text;

b. Revising the reference to *section 244A(c)(2)* to read *section 244(c)(2)* in paragraph (a)(3) heading; and by

c. Revising the reference to "§ 240.2(f)(2)" to read "§ 244.2(f)(2)" in paragraph (a)(4).

§ 244.10 [Amended]

16. In § 244.10, paragraph (a) is amended by revising the reference to "§ 240.5" to read "§ 244.5".

17. In § 244.10, paragraph (b) is amended by revising the reference to "§§ 240.2, 240.3, and 240.4" to read "§§ 244.2, 244.3, and 244.4".

18. Section 244.10 is further amended by:

a. Revising the term *district director* to read *director*, in the heading for paragraph (c);

b. Revising the term "district director" to read "director" wherever that term appears in paragraph (c) introductory text;

c. Revising the phrase "under § 240.4 or inadmissable under § 240.3(c)" to read "under § 244.4 or inadmissible under § 244.3(c)" in paragraph (c)(1);

d. Revising the term "district director's" to read "director's" in paragraph (c)(2);

e. Revising the reference to "240.11 and 240.18" to read "240.11, and 244.18" in paragraph (c)(2);

f. Revising the term "designated state" to read "designated foreign state" in the last sentence of paragraph (e)(1) introductory text;

g. Revising the reference to "§ 240.13" to read "§ 244.13" in paragraph (e)(2);

h. Revising the term "designated state" to read "designated foreign state" in paragraph (f)(2) introductory text;

i. Revising the reference to "§ 240.15" to read "§ 244.15" in paragraph (f)(2)(iii); and by

j. Revising the reference to "§ 240.2(f)(2)" to read "§ 244.2(f)(2)" in paragraph (f)(2)(v).

§ 244.11 [Amended]

19. Section 244.11 is amended in the last sentence by revising the reference to "§ 240.19" to read "§ 244.19" and by revising the term "state's" to read "foreign state's".

§ 244.12 [Amended]

20. Section 244.12 is amended by:

a. Revising the term "state's" to read "foreign state's" in paragraph (a);

b. Revising the reference to "§ 240.14" to read "§ 244.14" in paragraph (b); and by

c. Revising the reference to "§ 240.18(b)" to read "§ 244.18(b)" in paragraph (d).

§ 244.13 [Amended]

21. In § 244.13, paragraph (b) is amended by revising the term "state's" to read "foreign state's", and by revising the reference to "section 244A(b)(3)" to read "section 244(b)(3)".

§ 244.14 [Amended]

22. Section 244.14 is amended by:

a. Revising the term *district director* to read *director* in the heading in paragraph (a), revising the term "district director" to read "director", and by revising the reference to "section 244A" to read "section 244" in paragraph (a) introductory text;

b. Revising the reference to "§ 240.15" to read "§ 244.15" in the last sentence in paragraph (a)(2);

c. Revising the term *district director* to read *director* in the heading of paragraph (b);

d. Revising the phrase "section 236 or section 242 of the Act" to read "sections 235, 236, 237, 238, 240, or 241 of the Act" in paragraph (b)(2);

e. Revising the phrase "§ 240.4 or inadmissible under § 240.3(c)" to read "§ 244.4 or inadmissible under

§ 244.3(c)" in the first sentence in paragraph (b)(3); and by

f. Revising the reference to "§ 240.10(d)" to read "§ 244.10(d)" in paragraph (c).

§ 244.15 [Amended]

23. In § 244.15, paragraph (a) is amended in the first sentence by revising the reference to "section 244A(c)(3)(B)" to read "section 244(c)(3)(B)".

§ 244.17 [Amended]

24. In § 244.17, paragraph (a) is amended in the second sentence by revising the term "countries" to read "foreign states" and by revising the reference to "section 244A(b)" to read "section 244(b)".

§ 244.18 [Amended]

25. Section 244.18 is amended by:

a. Revising the reference to §§ 240.3(c) and 240.4" to read "§§244.3(c) and 244.4" in the first sentence of paragraph (a); and by

b. Revising the reference to "district director" to read "director" wherever it appears in paragraph (c).

§ 244.19 [Amended]

26. Section 244.19 is amended in the first sentence by revising the term "state" to read "foreign state", and by changing the term "state's" to read "foreign state's" in the last sentence.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

27. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

§ 274a.12 [Amended]

28. In § 274a.12 paragraph (c)(19) is amended by revising the reference to "section 244A" to read "section 244" and by revising the reference to "part 240" to read "part 244".

Dated: June 15, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–30480 Filed 11–13–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–234–AD; Amendment 39–10885; AD 98–23–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires modification of the emergency evacuation slide/raft system. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the container release cable of the emergency evacuation slide/raft system from jamming, which could result in the inability to open the emergency exit doors or to correctly deploy the emergency evacuation slide/rafts, and consequent delay or impedance of passengers exiting the airplane during an emergency.

DATES: Effective December 21, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on September 17, 1998 (63 FR 49677). That action proposed to require modification of the emergency evacuation slide/raft system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,200 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $37,440, or $1,560 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–23–17 Airbus Industrie: Amendment 39–10885. Docket 98–NM–234–AD.

Applicability: Model A300 series airplanes equipped with Air Cruisers emergency evacuation slide/rafts having part numbers (P/N) D30457-Series, serial numbers (S/N) 1001 through 2268 inclusive, or P/N D30477-Series, S/N 4001 through 4211 inclusive, on which the actions described in Air Cruisers Service Bulletin S.B. 25–88, Revision 3, dated May 4, 1983, have been not accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the container release cable of the emergency evacuation slide/raft system from jamming, which could result in the inability to open the emergency exit doors or to correctly deploy the emergency evacuation slide/rafts, and consequent delay, or impedance of passengers exiting the airplane during an emergency, accomplish the following:

(a) Within 36 months after the effective date of this AD, modify the emergency evacuation slide/raft system, in accordance with Airbus Service Bulletin A300–25–0465, dated October 31, 1997.

Note 2: The Airbus service bulletin references Air Cruisers Service Bulletin S.B. 25–88, Revision 3, dated May 4, 1983, as an additional source of service information for modifying the emergency evacuation slide/raft system.

(b) As of the effective date of this AD, no person shall install an evacuation slide/raft system having Air Cruisers P/N D30457-Series, S/N 1001 through 2268 inclusive, or P/N D30477-Series, S/N 4001 through 4211 inclusive, on any airplane, unless the slide/raft system has been modified in accordance with this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modification shall be done in accordance with Airbus Service Bulletin A300–25–0465, dated October 31, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–121–243(B), dated March 11, 1998.

(f) This amendment becomes effective on December 21, 1998.

Issued in Renton, Washington, on November 4, 1998.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30167 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–45–AD; Amendment 39–10881; AD 98–23–14]

RIN 2120–AA64

Airworthiness Directives; Industrie Aeronautiche e Meccaniche Model Piaggio P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Industrie Aeronautiche e Meccaniche (I.A.M.) Model Piaggio P–180 airplanes. This AD requires inspecting the elevator and aileron control retaining pins for proper installation and damage, and replacing any improperly installed or damaged pins. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy. The actions specified by this AD are intended to prevent the retaining pins from interfering with the flight control elements, which could result in loss of the cable retaining function with consequent loss of control of the airplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from I.A.M. Ronald Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–45–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. David O. Keenan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would

apply to certain I.A.M. Model Piaggio P–180 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 9, 1998 (63 FR 48141). The NPRM proposed to require inspecting the elevator and aileron control retaining pins for proper installation and damage, and replacing any improperly installed or damaged pins. Accomplishment of the proposed action as specified in the NPRM would be in accordance with I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Italy.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 5 airplanes in the U.S. registry will be affected by the inspection, that it will take approximately 3 workhours per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $900, or $180 per airplane. These figures do not account for any damaged or improperly installed retaining pins found during the inspection that will need to be replaced.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–23–14 Industrie Aeronautiche E Meccaniche: Amendment 39–10881; Docket No. 98–CE–45–AD.

Applicability: Model Piaggio P–180 airplanes, serial numbers 1001, 1002, 1004, and 1006 through 1033, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the retaining pins from interfering with the flight control elements, which could result in loss of the cable retaining function with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, inspect the elevator and aileron control retaining pins for proper installation and damage in accordance with the Accomplishment Instructions section in I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996. Prior to further flight, replace any improperly installed or damaged pins in accordance with the service bulletin.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996, should be directed to I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The inspection and replacement required by this AD shall be done in accordance with I.A.M. Piaggio Service Bulletin (Mandatory) No. SB–80–0089, dated May 22, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I.A.M. Rinaldo Piaggio S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Italian AD No. 96–158, dated July 1, 1996.

(f) This amendment becomes effective on December 18, 1998.

Issued in Kansas City, Missouri, on November 4, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30166 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–04]

Modification of Class D Airspace and Establishment of Class E Airspace; Klamath Falls, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D surface airspace at Klamath Falls International Airport by amending the effective hours to coincide with the Klamath Falls Airport Traffic Control Tower (ATCT). This action also establishes a Class E surface airspace area when the ATCT is closed. The effect of this action is to clarify when two-way radio communication with the ATCT is required and to provide adequate Class E airspace for instrument approach procedures when the tower is closed.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–04, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 15, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by modifying the Klamath Falls, OR, Class D surface area and by establishing a Class E surface area (63 FR 13153). This establishment of the Class E surface area provides the additional airspace necessary to allow terminal operations to and from the en route environment when the control tower is not in operation. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas extending upward from the surface of the earth are published in paragraph 5000 and paragraph 6002, respectively, of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class D airspace at Klamath Falls, OR, by amending the effective hours to coincide with the ATCT associated hours of operation. This action also establishes Class E surface area when the ATCT is closed. The intended effect of this rule is to clarify when two-way radio communication with the ATCT is required and to provide adequate Class E airspace for instrument approach procedures when the ATCT is closed.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 General.

* * * * *

ANM OR D Klamath Falls, OR [Revised]

Klamath Falls International Airport, OR
(Lat. 42°09′22″N, long. 121°43′59″W)

That airspace extending upward from the surface to and including 6,600 feet MSL within a 5.4-mile radius of the Klamath Falls International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

ANM OR E2 Klamath Falls, OR [New]

Klamath Falls International Airport, OR
(Lat. 42°09′22″N long. 121°43′59″W)

Within a 5.4-mile radius of the Klamath Falls International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on October 29, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–30588 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 98–AGL–42]

Establishment of Class E Airspace; Crosby, ND; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects one error in the legal description of a final rule that was published in the **Federal Register** on Thursday, September 10, 1998 (63 FR 48427), Airspace Docket No. 98–AGL–42. The final rule established Class E Airspace at Crosby, ND.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 98–24290, Airspace Docket No. 98–AGL–42,

published on September 10, 1998 (63 FR 48427) rule established Class E Airspace at Crosby, ND. One error was discovered in the legal description for the Class E airspace for Crosby, ND. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace Crosby, ND, as published in the **Federal Register** September 10, 1998 (63 FR 48427), (FR Doc. 98–24290), is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

AGL SD E5 Crosby, ND [Corrected]

On page 48428, Column 1, in the Class E airspace designation for Crosby, ND, incorporated by reference in Sec. 71.1, change the coordinates for the Crosby Municipal Airport, ND to "(lat. 48° 55′ 43″N, long 103° 17′50″ W)".

Issued in Des Plaines, IL on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30593 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–52]

Establishment of Class E Airspace; Duluth St. Mary's Hospital Heliport, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Duluth St. Mary's Hospital Heliport, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 190° helicopter point in space approach, and a GPS SIAP 330° helicopter point in space approach, have been developed for St. Mary's Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action creates controlled airspace with a radius of 6.0 miles for the point in space serving St. Mary's Hospital Heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 14, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Duluth St. Mary's Hospital Heliport, MN (63 FR 43653). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Duluth St. Mary's Hospital Heliport, MN, to accommodate aircraft executing the proposed GPS SIAP 190° helicopter point in space approach, and GPS SIAP 330° helicopter point in space approach, at Duluth St. Mary's Hospital Heliport by creating controlled airspace for the heliport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraphs 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN Duluth St. Mary's Hospital Heliport, MN [New]

St. Mary's Hospital Heliport, MN

Point in Space Coordinates
(Lat. 46°47′38″N., long. 92°05′52″W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving St. Mary's Hospital Heliport excluding that airspace within the Duluth, MN, Class D airspace area, and the Duluth, MN, Duluth Sky Harbor, MN, and the Superior, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30586 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–53]

Modification of Class E Airspace; Valparaiso, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

VOL 63 ISS 220 NO 16 1998 UMI

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Valparaiso, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for Porter County Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, August 14, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Valparaiso, IN (63 FR 43652). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Valparaiso, IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP and GPS Rwy 27 SIAP at Porter County Municipal Airport by increasing the radius the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Valparaiso, IN [Revised]

Valpariso, Porter County Municipal Airport, IN

(Lat. 41°27′15″ N., long. 87°00′22″ W.)

Issued in Des Plaines, Illinois on October 29, 1998.

Mauren Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30585 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Final Rule: Requirements for Child-Resistant Packaging; Minoxidil Preparations With More Than 14 mg of Minoxidil Per Package

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is issuing a rule to require child-resistant ("CR") packaging for minoxidil preparations containing more than 14 mg of minoxidil in a single package. The Commission has determined that child-resistant packaging is necessary to protect children under 5 years of age from serious personal injury and serious illness resulting from handling or ingesting a toxic amount of minoxidil. The Commission takes this action under authority of the Poison Prevention Packaging Act of 1970.

DATES: Effective May 17, 1999. For metered finger mechanical sprayer applicators and extender attachments, this rule will not apply until November 16, 1999. This rule applies to preparations packaged on or after those dates.

FOR FURTHER INFORMATION CONTACT: Laura Washburn, Directorate for Compliance, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0400 ext. 1452.

SUPPLEMENTARY INFORMATION:

A. Background

1. Relevant Statutory and Regulatory Provisions

The Poison Prevention Packaging Act of 1970 ("PPPA"), 15 U.S.C. 1471–1476, authorizes the Commission to establish standards for the "special packaging" of any household substance if (1) the degree or nature of the hazard to children in the availability of such substance, by reason of its packaging, is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substance and (2) the special packaging is technically feasible, practicable, and appropriate for the substance.[1]

Special packaging, also referred to as "child-resistant" ("CR") packaging, is

[1] Chairman Brown and Commissioner Moore voted to approve this notice. Commissioner Gall voted to approve the notice, except that she would have deferred action on metered finger sprayers and extender attachments.

(1) designed or constructed to be significantly difficult for children under 5 years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and (2) not difficult for "normal adults" to use properly. 15 U.S.C. 1471(4). Household substances for which the Commission may require CR packaging include (among other categories) foods, drugs, or cosmetics as these terms are defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321). 15 U.S.C. 1471(2)(B). The Commission has performance requirements for special packaging. 16 CFR 1700.15, 1700.20.

Section 4(a) of the PPPA, 15 U.S.C. 1473(a), allows the manufacturer or packer to package a nonprescription product subject to special packaging standards in one size of non-CR packaging only if the manufacturer (or packer) also supplies the substance in CR packages of a popular size, and the non-CR packages bear conspicuous labeling stating: "This package for households without young children." 15 U.S.C. 1473(a), 16 CFR 1700.5.

2. Minoxidil

Topical minoxidil is a liquid medication applied to the scalp to stimulate hair regrowth for individuals with androgenetic alopecia, a common form of genetic hair loss. In February 1996, the Food and Drug Administration ("FDA") approved the sale of topical minoxidil as an over-the-counter ("OTC") drug available without a prescription. A tablet form of minoxidil is also available by prescription for treatment of severe hypertension. Like most oral prescription drugs, the prescription form of minoxidil must be in special packaging. 16 CFR 1700.14(a)(10). However, special packaging is not required for topical drugs unless the Commission takes specific action to require it.

Topical minoxidil first became available by prescription in 1988. The OTC preparation is currently marketed as a two percent solution in 60 percent alcohol, propylene glycol, and water. The package instructions direct the user to apply one milliliter (20 milligrams of minoxidil) to the scalp twice a day. This application generally must continue for four months, and further application is necessary to maintain the newly grown hair. The most prevalent package size contains 60 milliliters of the preparation (1200 milligrams of minoxidil) which is a 30-day supply if used as directed.(2) [2] On November 14, 1997, the FDA approved for OTC use a 5% minoxidil solution for men. The package size is also 60 milliliters, and the recommended dosage is one milliliter (50 milligrams of minoxidil) applied twice a day. The total contents of this package is 3000 milligrams.

The Commission is aware of ten manufacturers that have FDA's approval to market the OTC two percent minoxidil solution. In addition, the Commission knows of six other companies—probably repackagers or relabelers—that sell the OTC minoxidil formulation. The year after FDA approved OTC status for topical minoxidil preparations, retail sales of topical minoxidil were about $200 million (approximately 8 million packages). (3)

Topical minoxidil formulations are generally packaged either for men or for women. The formulations are the same, but the packaging and instructions are different. All the bottles the Commission is aware of are secured with CR senior friendly ("SF") continuous threaded closures. In addition to the primary closure, the packages the Commission staff examined contain one or more applicators that are reasonably expected to be used to replace the primary closure.

The Commission staff examined nine topical minoxidil packages for men. These packages contained dropper applicators. In six of these, the droppers were CR/SF, the other three droppers were non-CR. Four of the packages for men also contained a metered finger mechanical sprayer applicator (hereafter referred to as a "finger sprayer") in addition to the dropper applicator. None of the finger sprayers are CR. (4 and 8).

Hair loss for women occurs as a thinning of the hair over a broad area on the top of the scalp rather than at the vertex. All four of the topical minoxidil packages for women that the staff examined contained the finger sprayer. Two products for women included a CR/SF dropper in addition to the finger sprayer. Three packages for women included an extender attachment to fit onto the finger sprayer applicator allowing the solution to be applied closer to the scalp than the finger sprayer alone would manage. Neither the finger sprayers nor the extenders in the packages intended for women were CR. (4 and 8).

3. CR Packaging for Applicators

As explained in the notice of proposed rulemaking ("NPR")(63 FR 13019), because the topical minoxidil formulations are packaged with applicators that are reasonably expected to replace the primary closure of the product, the Commission has determined that the applicators themselves must be CR if the Commission requires CR packaging for the product.

Under the PPPA, a "package" is defined as:

> the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household.

15 U.S.C. 1471(3). This definition focuses on how the product is packaged in the home where it is "contained for consumption, use or storage" rather than its packaging in the store. This is fully consistent with the purpose of the statute, to reduce child poisonings from available household substances.

The exclusions from the definition of "package" also indicate that Congress was concerned with the package as maintained in the home. Congress excluded containers used only to transport the product. *Id.*

The legislative history of the statute also supports the view that the "package" includes applicators that are reasonably expected to be used as closures in the home. The Senate Commerce Committee Report notes: "The term 'package' was defined here to [sic] in order to make explicit that special packaging refers to that package in which the substance is kept in or around the house." S. Rep. 845, 91st Cong., 2d Sess. 9 (1970).

Thus, the Commission concludes that when an applicator is packaged with a product that requires CR packaging and the applicator is reasonably expected by the Commission to replace the original closure of the packaging, that applicator must also be CR. This does not mean that every applicator packaged with a substance requiring CR packaging must itself be CR. It is permissible for an applicator, such as a dropper, to be packaged with a product so long as the applicator cannot be used to replace the original closure. As discussed in the NPR, this view reflects the long held interpretation of the Commission staff. 63 FR 13021.

Because the Commission has not previously addressed this question explicitly in a regulation, the minoxidil rule expressly states that applicators packaged with topical minoxidil that are reasonably expected to replace the original closures would be required to be CR and SF. The Commission recognizes that its other rules, such as the rule covering oral prescription drugs or acetaminophen, do not contain such a provision. When previous special packaging rules were issued, few

[2] Numbers in parentheses refer to documents listed at the end of this notice.

packages contained applicators that could be used as closures. Thus, previous rules did not expressly state that such applicator closures are "packages" under the PPPA. In order to clarify the issue, the Commission is including such a statement in the minoxidil rule. The lack of such a statement in previous PPPA rules is not to be construed to mean applicator closures are exempt from special packaging requirements.

The Commission did not receive any comments questioning its interpretation of the PPPA as covering applicators that are reasonably expected to be used to replace the primary closure.

4. The Proposed Rule

On March 17, 1998, the Commission issued an NPR that proposed requiring CR packaging for minoxidil preparations containing more than 14 mg of minoxidil in a single package. 63 FR 13019.

The Commission received five comments in response to the proposed rule. The American Academy of Pediatrics commented in support of the rule and expressed agreement with the Commission's position that the CR packaging requirement should include applicators expected to replace original closures on minoxidil products. Other comments and the Commission's responses are discussed below.(7)

Packaging Issues

Comment: One comment from the Closure Manufacturers Association ("CMA") stated that the Commission had no data to demonstrate that CR extender finger sprayers are technically feasible and practicable. The commenter stated that the preamble in the NPR had stated that technology does not exist for the development or use of CR finger sprayers with extenders. The commenter concluded that therefore continuing with the proposed rule "would be a violation of the [PPPA] statute and the Administrative Procedures [sic] Act."

Response: CMA apparently misunderstood the statement in the NPR which noted that CR extender sprayers are not currently on the market. The fact that a particular CR closure is not currently being marketed does not mean it is not technically feasible and practicable. As explained in section E.2. of the preamble, technical feasibility refers to the capability of producing a CR closure, not whether one is actually on the market. Similarly, practicability means that mass production methods can be used to produce CR packaging for the substance, not that it is currently being done. Neither CMA nor any other commenters have presented any information indicating that a CR extender sprayer could not be developed or could not be mass produced. In fact, as discussed below, some companies said they would need more time to produce CR applicators for minoxidil products, but they did not question their ability to make any of the available applicators CR.

CMA's comments refer only to the extended sprayer. It is important to note that the PPPA does not require that every package design must be made CR. The Commission has no information indicating that a CR extended sprayer could not be made. However, even if it could not, other CR packaging applicators exist that are technically feasible, practicable and appropriate exist. Thus, this rulemaking does not violate the PPPA or any other statute.

Comment: One commenter indicated that CR droppers are not a good barrier because children can chew through the bulb.

Response: When testing CR dropper packaging, if a child chews through or pulls out the dropper bulb this would count as a failure since the child gains access to the product. The Commission's data indicate that dropper assemblies currently on the market pass the CR packaging test protocol and meet the requirements of the PPPA.

Comment: The same commenter requested that the Commission prohibit applicators that could be used as substitutes for original closures because of cost, time, and potential competitive imbalance.

Response: Under the PPPA, the Commission cannot prescribe specific packaging designs. 15 U.S.C. 1472(d). Thus, companies may use any packaging that meets the requirements of the special packaging protocol. Similarly, any applicator (if it is reasonably expected to replace the original closure) that meets these requirements could be used. Moreover, as pointed out in the proposed rule, an applicator that would not be used to replace the original closure, such as a dropper without a reclosable feature, would also be acceptable.

Effective Date for Finger Sprayers

Comment: Three commenters indicated that the proposed effective date of one year was too short. One commenter requested a total of 34 months (22 months in addition to a one year effective date). Another commenter stated that 27–36 months would be necessary to incorporate a CR finger sprayer.

Response: After reviewing the process for commercialization of a CR finger sprayer, the Commission agrees that more than one year may well be necessary. Thus, the Commission will allow companies to request a stay of enforcement to provide additional time to produce CR finger sprayers and extender sprayers, and it would anticipate granting such requests until such time as it determined that an enforcement stay was no longer appropriate. This issue is discussed further in section F of the preamble.

Cost Considerations

Comment: One commenter indicated that the additional cost of CR droppers instead of non-CR droppers was greater than $0.05 as suggested in the NPR.

Response: The commenter has since indicated to CPSC staff that the $0.05 estimate is in fact within the range of increased cost for a CR dropper.

Comment: One commenter stated that there would be a competitive disadvantage to generics if exclusive agreements for spray packaging were made with a brand product.

Response: The commenter supplied no data and the Commission has no data to support this claim. In fact, two different companies commenting on the NPR provided information about the timing for developing a finger sprayer. Even if there were an exclusive agreement, it would not prevent other companies, such as the commenter from developing a CR finger sprayer independently. The estimated incremental cost of the CR sprayer will be a little more than double the 13–15 cents currently paid for the non-CR finger sprayer, according to one commenter. This is not a substantial cost increase relative to the product cost, even for less expensive generic minoxidil products. Moreover, several of the generic brands do not currently include a finger sprayer with their products. Also, a generic company is not necessarily a small company. The commenter, for example, is a large generic pharmaceutical manufacturer.

B. Toxicity of Minoxidil

The Commission's Directorate for Epidemiology and Health Sciences reviewed the toxicity of minoxidil. Either as prescription tablets or a topical liquid, when it is ingested, minoxidil is rapidly and almost completely (over 95 percent) absorbed by the gastrointestinal tract and is distributed systematically throughout the body. Because minoxidil is very poorly absorbed through the skin, a topical solution of two percent minoxidil is considered safe when used on the skin as directed but can be harmful if ingested. (2)

The tablet form of minoxidil is prescribed for use as an antihypertensive drug. It lowers blood pressure by relaxing the smooth muscle of the arteries. The body's nervous system responds by causing the heart to beat faster (tachycardia) and with more force (increased cardiac output) to compensate for the drop in blood pressure. (2)

The most prominent effects from therapeutic ingestion of minoxidil are increased heart rate, increased cardiac output and decreased blood pressure. When blood pressure becomes abnormally low (hypotension), it can lead to lethargy and lightheadedness with the possibility of damage to the heart and other tissues with high oxygen demand, if left untreated. Less frequent effects include salt and fluid retention and edema, aggravation of angina, and pericardial effusion (massive fluid accumulation around the heart) in patients with renal impairment. Repeated ingestion over several months can produce hypertrichosis (overstimulated hair growth) particularly to the face and to a lesser extent to the limbs and scalp. Less severe symptoms of nausea, headache, fatigue, and dermatologic reactions have been occasionally reported. (2)

Prescription minoxidil is available as 2.5 mg, 5 mg, and 10 mg tablets. The effective dosage is usually between 0.2 to 1 mg/kg/day (roughly 5 to 40 mg/day for an adult) depending on the individual and the desired antihypertensive response. Use in children has been limited with a similar effective body weight-normalized dose range as adults (0.2 to 1 mg/kg/day). Because of possible adverse effects, the maximum recommended daily therapeutic dosage is 100 mg in adults and 50 mg for children under the age of 12. (2)

C. Incident Data

As discussed more extensively in the NPR, the staff reviewed several sources for information of adverse health effects from ingestions of minoxidil. These sources are the American Association of Poison Control Centers ("AAPCC"), the FDA Spontaneous Reporting System ("SRS"), published reports in the medical literature, and reports from the injury surveillance databases maintained by the Commission. The most commonly cited injuries are prolonged hypotension and tachycardia that require hospitalization. There were reports of two deaths associated with minoxidil overdose.

AAPCC Data. The AAPCC collects reports made to participating poison control centers throughout the United States. A retrospective study by AAPCC evaluated AAPCC records of all minoxidil exposures from 1985 through 1991. (The study did not distinguish between ingestions of minoxidil tablets and topical solution.) During this time period, 285 incidents were reported. About half (51 percent) of these occurred in children under six years of age. (2)

Annual AAPCC data on pediatric exposures to children under five years of age reported four accidental ingestions of topical minoxidil liquid in 1995, none of which led to serious toxicity. (Prior to 1995, topical minoxidil was not given a specific code within the AAPCC database.) In 1996, the number of reported cases increased to 43, one of these exhibited moderate effects. For 1997, the AAPCC had 52 reports of children under age five ingesting topical minoxidil. Half of these were referred to a health care facility for observation or treatment. However no serious outcomes were reported. (2 and 6)

Because incidents involving minoxidil tablets (rather than topical solutions) are coded in a category that includes "other vasodilators," it is not possible to isolate incidents specific to minoxidil tablets. There were two childhood ingestions of "other vasodilators" reported in 1995 that resulted in a moderate toxicity. (2)

FDA/SRS Database

The SRS is a database maintained by the FDA for reports of adverse reactions detected after a drug goes on the market. Drug manufacturers are required to report any known incidents of adverse effects associated with their products. However, the incident reports are not verified by the FDA, and therefore, the adverse effects may reflect underlying diseases or reactions to multiple drugs.

There have been 16,795 SRS reports on topical minoxidil between 1983 and March 1997. Most of the reported adverse effects were dermal reactions to excessive application of topical minoxidil to the scalp. However, FDA specifically cited five overdose *ingestion* cases involving topical minoxidil. As discussed in more detail in the NPR, three of these led to serious outcomes. (2)

CPSC Databases

CPSC has several databases for poison incidents. The staff reviewed cases from 1988 to June 1998 in the National Electronic Injury Surveillance System ("NEISS"). NEISS monitors emergency room visits to a statistically-based sample of selected hospitals throughout the United States. Three childhood poisoning cases associated with minoxidil were reported in the NEISS database during that time period. One was an ingestion of an unknown quantity of topical minoxidil by a two-year-old male. The child was seen in an emergency room with normal temperature, pulse, and respiration and was released the same day without treatment. It is not known whether the minoxidil package was secured with a child-resistant closure at the time of the incident. (2)

There is less information concerning the two more recent incidents that were reported since the NPR. One case involved minoxidil tablets and the other resulted from topical minoxidil in a spray bottle. Neither child was hospitalized. No other details are available at this time. (6)

The staff also reviewed CPSC's Injury and Potential Injury Incident ("IPII") files of consumer product-related incidents reported through letters, telephone calls, media articles and death certificate files of consumer product-related deaths. There were no minoxidil-related injuries or deaths found in these databases for the 1988 to June 1998 time period. (2)

Medical Literature

Five case reports of injuries following minoxidil ingestion were found in the published literature. Two cases involved young children. In one instance, a two-year-old ingested an unconfirmed number of minoxidil tablets. In the second instance, a three-year-old swallowed an estimated 1–2 milliliters of three percent minoxidil solution (30–60 milligrams). Both children were seen at hospitals experiencing moderate tachycardia but no other reported abnormalities. The three other reports were intentional ingestions by adults of minoxidil tablets (one case) or two percent liquid (two cases) and were discussed in the NPR. (2)

D. Level for Regulation

The Commission is issuing a rule requiring special packaging for minoxidil products containing more than 14 mg of minoxidil in a single package. This is based on the maximum recommended therapeutic dose of minoxidil for an adult. The 14 mg dose level corresponds to 1.4 mg/kg for a 10 kg child. The equivalent minoxidil dose for the average 70 kg adult would be approximately 100 mg. The regulated dose level is expected to reasonably protect children under five years of age from serious personal injury or illness. (2) The Commission proposed this level and received no comments on it.

E. Statutory Considerations

1. Hazard to Children

As noted above, the toxicity data concerning ingestion of minoxidil demonstrate that minoxidil can cause serious illness and injury to children. Moreover, it is available to children in OTC topical minoxidil preparations. Although as far as the Commission is aware, all primary product containers for topical minoxidil products currently use CR packaging, all applicators are not CR. Some packages contain applicators that are reasonably expected to be used as closures after first use which are not CR. The Commission concludes that a regulation is needed to ensure that products subject to the regulation, including applicators which it is reasonable to expect may be used to replace the original closures, will be placed in CR packaging by any current as well as future manufacturers.

Pursuant to section 3(a) of the PPPA, 15 U.S.C. 1472(a), the Commission finds that the degree and nature of the hazard to children from handling or ingesting minoxidil is such that special packaging is required to protect children from serious illness. The Commission bases this finding on the toxic nature of minoxidil products and their accessibility to children in the home.

2. Technical Feasibility, Practicability, and Appropriateness

In issuing a standard for special packaging under the PPPA, the Commission is required to find that the special packaging is "technically feasible, practicable, and appropriate." 15 U.S.C. 1472(a)(2). Technical feasibility may be found when technology exists, or can be readily developed and implemented, to produce packaging that conforms to the standards. Practicability means that special packaging complying with the standards can utilize modern mass production and assembly line techniques. Packaging is appropriate when complying packaging will adequately protect the integrity of the substance and not interfere with its intended storage or use.

a. Primary Product Containers

The primary product containers for all topical minoxidil products that the Commission is aware of have continuous threaded reclosable packaging. All of these closures that the staff examined were CR and SF. Thus, it is clear that CR packaging for primary product containers is technically feasible, practicable and appropriate. (4 and 8)

b. Applicators

As discussed above, topical minoxidil packages contain applicators—droppers and/or metered finger mechanical sprayers—which it is reasonable to expect may replace the original closures. Eight products have droppers that are CR and SF. This indicates that such droppers are technically feasible, practicable and appropriate. (4 and 8)

The Commission knows of eight minoxidil products that include a non-CR finger sprayer. Child-resistance for a finger sprayer means that it must be significantly difficult for children to obtain an amount above the regulated level by, for example, (1) removing the finger sprayer closure from the container or (2) activating the finger sprayer mechanism. One packaging manufacturer has developed a prototype CR finger sprayer applicator which the manufacturer believes can be modified to pass senior adult effectiveness testing. In addition, two product manufacturers commenting on the NPR indicated that they could develop a finger sprayer that would meet special packaging requirements. As discussed above, an applicator that cannot be used as a closure does not need to be CR. (4 and 8)

Three products for women also contain an extender to be used with the finger sprayer. Under the proposed rule, when the extender is attached to the finger sprayer, this applicator mechanism must be CR. That is, it must be significantly difficult for children to (1) remove the combined finger sprayer and extender from the container, (2) activate the combined finger sprayer and extender to obtain an amount above the regulated level, and (3) remove the extender. Currently no finger sprayers with extenders are CR. As noted above, CR/SF finger sprayer could be developed. Some modifications to the extender may be needed so that it would operate with the CR finger sprayer. (4 and 8)

As discussed above, the Commission received one comment from CMA questioning whether an extender sprayer was feasible and practicable. However, since the finger sprayer and the extender use essentially the same mechanism, the Commission believes that the extender sprayer could be made CR/SF. The Commission is not aware of any data indicating otherwise.

3. Other Considerations

In establishing a special packaging standard under the PPPA, the Commission must consider the following:

a. The reasonableness of the standard;

b. Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

c. The manufacturing practices of industries affected by the PPPA; and

d. The nature and use of the household substance. 15 U.S.C. 1472(b).

The Commission has considered these factors with respect to the various determinations made in this notice, and finds no reason to conclude that the rule is unreasonable or otherwise inappropriate.

F. Effective Date

The PPPA provides that no regulation shall take effect sooner than 180 days or later than one year from the date such final regulation is issued, except that, for good cause, the Commission may establish an earlier effective date if it determines an earlier date to be in the public interest. 15 U.S.C. 1471n.

Primary closures and droppers. Primary product containers for topical minoxidil are already CR and SF. Droppers are available CR and SF that can be used to replace the original closures. Thus, the Commission proposed that a final rule with respect to child-resistance of primary closures and dropper applicators would take effect six months after publication of the final rule. The Commission has no additional information that would change this aspect of the proposed effective date.

Finger sprayer and extender. The Commission stated in the NPR that it was aware of one packaging manufacturer that had developed a prototype CR finger sprayer that the manufacturer believed could be modified to pass senior adult effectiveness testing in approximately 12 months. The Commission also recognized that additional time might be needed to provide commercial quantities of this type of packaging. Thus, the Commission proposed an effective date with respect to metered finger sprayer applicators and extenders that would be 12 months after publication of the final rule. The Commission also proposed that if additional time appeared necessary to produce commercial quantities of these applicators, manufacturers could request a temporary stay of enforcement for the finger sprayer and extender.

As discussed above, the Commission received comments indicating that more than 12 months would be necessary to convert to a CR metered finger sprayer. Two commenters indicated that a design could be modified, tested, and in commercial use in approximately 27 to

36 months. The Commission agrees that this time seems reasonable due to the complexity of developing a finger sprayer that is metered and has two CR features. Because companies will need to commit resources to develop this type of packaging, companies may request a stay of enforcement immediately after this final rule is published, and the Commission would anticipate granting such requests until such time as it determined that an enforcement stay were no longer appropriate. Companies requesting a stay of enforcement should provide the Commission with a timeline or schedule that will outline the steps they will take to bring this type of CR packaging to commercial use. They should include an estimated initial production date and current and proposed packaging specifications.

G. Regulatory Flexibility Act Certification

When an agency undertakes a rulemaking proceeding, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare proposed and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the Act provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As noted in the NPR, the Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to require special packaging for topical minoxidil products containing more than 14 mg of minoxidil in a single package. Based on this assessment, the Commission concluded that the proposed requirement for minoxidil products would not have a significant impact on a substantial number of small businesses or other small entities. The Commission requested additional information on the possible impact on small business, but received no such comments. One commenter (not a small business) supplied cost estimates for the CR finger sprayer. The expected cost is not substantial relative to the retail cost of the product. Moreover, the Commission is unaware of any small firms that supply a finger sprayer with their product. Thus, the Commission continues to conclude that the rule would not have a significant effect on a substantial number of small entities.

H. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the proposed PPPA requirements for minoxidil-containing products.

In the NPR, the Commission concluded that the rule would have no adverse effect on the environment and that neither an environmental assessment nor an environmental impact statement is required. The Commission has no information that would alter this conclusion.

I. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, "no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard." 15 U.S.C. 1476(a). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the PPPA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, State or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the rule requiring CR packaging for products containing more than 14 mg minoxidil would preempt non-identical state or local special packaging standards for such minoxidil containing products.

In accordance with Executive Order 12612 (October 26, 1987), the Commission certifies that the rule does not have sufficient implications for federalism to warrant a Federalism Assessment.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

1. The authority citation for part 1700 continues to read as follows:

Authority: Pub. L. 91–601, secs. 1–9, 84 Stat. 1670–74, 15 U.S.C. 1471–76. Secs 1700.1 and 1700.14 also issued under Pub. L. 92–573, sec. 30(a), 88 Stat. 1231, 15 U.S.C. 2079(a).

2. Section 1700.14 is amended by adding new paragraph (a)(28) to read as follows (although unchanged, the introductory text of paragraph (a) is included below for context):

§ 1700.14 Substances requiring special packaging.

(a) *Substances.* The Commission has determined that the degree or nature of the hazard to children in the availability of the following substances, by reason of their packaging, is such that special packaging meeting the requirements of § 1700.20(a) is required to protect children from serious personal injury or serious illness resulting from handling, using, or ingesting such substances, and the special packaging herein required is technically feasible, practicable, and appropriate for these substances:

* * * * *

(28) *Minoxidil.* Minoxidil preparations for human use and containing more than 14 mg of minoxidil in a single retail package shall be packaged in accordance with the provisions of § 1700.15(a), (b) and (c). Any applicator packaged with the minoxidil preparation and which it is reasonable to expect may be used to replace the original closure shall also comply with the provisions of § 1700.15(a), (b) and (c).

* * * * *

Dated: October 30, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

1. Briefing memorandum from Val Schaeffer, Ph.D., EH, to the Commission, "Proposed Rule to Require Child-Resistant Packaging for Topical Minoxidil," February 10, 1998.

2. Memorandum from Val Schaeffer, Ph.D., EH, to Marilyn Wind, Ph.D., Director, Health Sciences Division, "Toxicity Assessment of Topical Minoxidil" November 14, 1997.

3. Memorandum from Marcia P. Robins, EC, to Val Schaeffer, Ph.D., EH, "Economic Considerations of a Proposal to Require Child-Resistant Packaging for Drug Preparations Containing Minoxidil," January 5, 1998.

4. Memorandum from Charles Wilbur, EH, to Val Schaeffer, Ph.D., EH, "Technical

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Feasibility, Practicability, and Appropriateness Determination for the Proposed Rule to Require Special Packaging for Products Containing Minoxidil," December 16, 1997.

5. Memorandum from Michael T. Bogumill, CRM, to Val Schaeffer, Ph.D., EH, "Special Packaging of Oral Prescription Drugs in Dropper Bottles," December 17, 1997.

6. Briefing memorandum from Suzanne Barone, Ph.D., EH, to the Commission, "Final Rule to Require Child-Resistant Packaging for Topical Minoxidil," October 9, 1998.

7. Memorandum from Martha A. Kosh, OS, Comments on the Proposed Rule for Requirements for Child-resistant Packaging; Minoxidil Preparation with More than 14 mg of Minoxidil per Package (CP98–3), June 2, 1998.

8. Memorandum from Charles Wilbur, EH, to Suzanne Barone, Ph.D., EH, "Technical Feasibility, Practicability, and Appropriateness Determination for the Final Rule to Require Special Packaging for Products Containing Minoxidil," August 21, 1998.

9. Memorandum from Marcia P. Robins, EC, to Suzanne Barone, Ph.D., EH, "Child-Resistant Packaging for Preparations Containing Minoxidil: Small Business Effects," August 24, 1998.

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DEPARTMENT OF THE INTERIOR

Office of the Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SPATS No. UT–039–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving a proposed amendment to the Utah regulatory program (the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Utah proposed changes in its requirements for coal mine permit application approval at section 40–10–11 of the Utah Code Annotated (UCA, or the "Utah Code"). The State proposed the changes to update language used to describe the approval process and information that needs to be documented during that process. In addition, Utah proposed to change paragraph (f) of UCA 40–10–11(2) to clarify limitations on the authority of the Division of Oil, Gas and Mining and of the Board of Oil, Gas and Mining with respect to property right disputes. Utah also proposed to revise provisions concerning a permit applicant's list of violations of air and water protection provisions at subsection (3) of UCA 40–10–11 in response to an amendment required by OSM and described at 30 CFR 944.16(f)(2). The amendment revised the Utah program to be consistent with the Surface Mining Control and Reclamation Act of 1977 (SMCRA) regulations and to improve operational efficiency.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, telephone: (303) 844–1424; e-mail address: jfulton@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on the Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments can be found at 30 CFR 944.15, 944.16, and 944.30.

II. Proposed Amendment

Utah submitted a proposed amendment (SPATS No. UT–039–FOR, administrative record No. 1117) to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) by letter dated June 8, 1998. The State submitted the proposed amendment at its own initiative and in response to a requirement at 30 CFR 944.16(f)(2) imposed by the Director resulting from OSM's review of a previous amendment to the Utah Code.

The proposed amendment consisted of revisions to UCA 40–10–11. This section of the Utah Code pertains to actions by the Division of Oil, Gas and Mining (the Division) to approve or deny coal mine permit applications. UCA 40–10–11 also includes provisions for considering, during the permit approval/denial process, an applicant's violations of air and water protection provisions, whether an area proposed for mining includes prime farmlands, and information related to land ownership and the probable impacts of mining on the hydrologic balance.

Most of the changes Utah proposed reword existing provisions of UCA 40–10–11 in current writing style and break-up existing provisions into subsections. In that context, specific changes included: Recodifying existing provisions of UCA 40–10–11(1) as subsections (1)(a)(i) and (ii), (1)(b), (1)(c), and (1)(c)(i) and (ii); recodifying existing provisions of UCA 40–10–11(2)(d) to include subsections 1(d)(i) and 2(d)(ii); recodifying existing provisions of UCA 40–10–11(2)(e)(i) to include subsections (e)(i)(A) and (B); recodifying, in part, existing provisions of UCA 40–10–11(2)(f)(i) to include subsection (2)(f)(i)(A), and adding new subsection (2)(f)(i)(B); recodifying existing provisions of UCA 40–10–11(3) as subsections (3)(a)(i), (ii), and (3)(b) and (c); and recodifying existing provisions of UCA 40–10–11(4)(a) as (4)(a)(i) and (ii). Utah proposed to reword several parts of UCA 40–10–11(1), (2), (3), (4) and (5) as well.

In two cases, the State either expanded existing provisions of the Utah Code or added a new provision. At UCA 40–10–11(2)(f)(i)(B), Utah added a new statement to the effect that nothing in UCA 40–10–11(2) shall be construed "* * * to authorize the board or divisions to adjudicate property right disputes * * *" in cases where permit applications involve lands on which the private mineral estate has been severed from the private surface estate. Second, at recodified UCA 40–10–11(3)(c), Utah proposed to preclude permit issuance in cases in which the Board finds that an applicant or operator controls, or has controlled, mining operations with a demonstrated pattern of willful violations. Such a pattern includes violations of SMCRA, the implementing regulations, or of any State or Federal programs enacted under SMCRA or under other provisions of the approved Utah program, in addition to violations of the Utah Code. The State proposed this new provision in response to the required amendment described at 30 CFR 944.16(f)(2). That section requires the Utah Code's provision for denying permits on the basis of patterns of violations to be no less stringent than the Federal counterpart provision at section 510(c) of SMCRA. The required amendment resulted from OSM's review of a previous amendment to the Utah Code (UT–024–FOR; 60 FR 37002, July 19, 1995; administrative record No. UT–1066). OSM later reiterated the need for Utah to amend UCA 40–10–11(3) in its review of Code amendment UT–035–FOR (62 FR 41845, August 4, 1997; administrative record No. UT–1098).

OSM announced receipt of this proposed amendment in the July 8, 1998, **Federal Register** (63 FR 36868; administrative record No. UT–1120). That announcement provided an opportunity for anyone to request a public hearing or meeting on the amendment's substantive adequacy. It also invited public comment on its

adequacy. No one requested a public hearing or meeting, so OSM did not hold either one. The public comment period ended on August 7, 1998.

III. Director's Findings

In accordance with SMCRA and 30 CFR 731.15 and 732.17, and as discussed below, the Director finds that the proposed program amendment submitted by Utah on June 8, 1998, is no less stringent than SMCRA. Accordingly, the Director approves Utah's amendment.

1. Nonsubstantive Revisions to the Utah Code

Utah proposed revisions to the following previously approved provisions of the Utah Code that are nonsubstantive in nature. These proposed revisions consist of recodification changes. They also include wording and punctuation changes made to reflect contemporary writing style and to make the State's provisions clearer or more specific. Corresponding SMCRA provisions are listed in parentheses.

UCA 40–10–11(1)(a)(i), (a)(ii), (1)(b), (1)(c), (c)(i), and (c)(ii), decision to approve, deny, or require modification of a permit application after receipt of a complete application and reclamation plan (section 510(a) of SMCRA);

UCA 40–10–11(2), (2)(a), (2)(b), and (2)(c), required finding that the permit application is complete and all requirements of UCA 40–10 have been complied with; required demonstration in the application and finding by the Division as a prerequisite to Division approval that reclamation requirements under UCA 40–10 can be accomplished; and finding that an assessment has been made of mining's cumulative impacts on the hydrologic balance and that the operation is designed to prevent material damage to the hydrologic balance outside the permit area (sections 510(b), (b)(1), (b)(2), and (b)(3) of SMCRA);

UCA 40–10–11(2)(d), (d)(i), and (d)(ii), demonstration in the application and finding by the Division that the proposed mining area is not in an area designated as unsuitable for mining or under study for that designation (section 510(b)(4) of SMCRA);

UCA 40–10–11(2)(e), (2)(e)(i), (e)(i)(A), and (e)(i)(B), demonstration in the application and finding by the Division that the proposed mining will not adversely affect farming on alluvial valley floors in certain cases (sections 510(b)(5) and (b)(5)(A) of SMCRA);

UCA 40–10–11(2)(e)(ii), demonstration in the application and finding by the Division that the proposed mining will not materially damage surface and ground water systems that supply alluvial valley floors, with certain exceptions (section 510(b)(5)(B) of SMCRA);

UCA 40–10–11(2)(f), (2)(f)(i), and (f)(i)(A), requirement for the surface owner's written consent to surface mining where the private mineral estate has been severed from the private surface estate, with the provision that UCA 40–10–11(2)(f) shall not be construed to change any property right established under State law (section 510(b)(6) and (b)(6)(A) of SMCRA, with no SMCRA counterpart to recodified UCA 40–10–11(2)(f)(i)(A));

UCA 40–10–11(2)(f)(iii), requirement for an application to include documentation, consistent with state law, that establishes the status of the surface-subsurface legal relationship as an alternative to including a conveyance expressly granting or reserving the right to extract coal by surface mining in cases where the private surface estate has been severed from the private mineral estate (section 510(b)(6)(C) of SMCRA);

UCA 40–10–11(3)(a)(i), (a)(ii), and (3)(b), requirement for an applicant to submit a list of violations with the permit application and for the Division to consider such violations in deciding to approve or deny a permit (section 510(c) of SMCRA);

UCA 40–10–11(4)(a)(i), (a)(ii), and (4)(b), permit findings required in some cases if the area proposed to be mined contains prime farmland (section 510(d)(1) and (2) of SMCRA); and

UCA 40–10–11(5)(a), provision that the prohibition against permit issuance at UCA 40–10–11(3) shall not apply to a permit application if the violation resulted from an unanticipated situation that occurred at a surface mine on lands eligible for remining under a permit held by the person applying for a mining permit (section 510(e) of SMCRA).

Because the proposed revisions to these previously-approved statutory provisions are nonsubstantive in nature, the Director finds these proposed statutory provisions are no less stringent that SMCRA. The Director approves these proposed changes to the Utah Code.

2. UCA 40–10–11(2)(f)(i)(B), Limitation on Division and Board Authority in Property Rights Disputes

Utah proposed to add UCA 40–10–11(2)(f)(i)(B) to provide that nothing in subsection (2) of UCA 40–10–11 shall be construed to authorize the Board or Division to adjudicate property right disputes. The counterpart provision in SMCRA is at section 510(b)(6)(C). The State's proposed provision is very similar to the SMCRA provision except for its reference to the "Division" and the "Board" not having the power to adjudicate disputes, while SMCRA refers to the "regulatory authority". The Division is the regulatory authority in Utah and the Board oversees the Division's activities, is the rulemaking body, and hears appeals of actions taken by the Division. UCA 40–10–6 describes the duties, functions, and powers of the Division and Board but does not specifically describe their authority with respect to property rights disputes, particularly those that might arise when permit applications involve lands on which the private surface estate is severed from the private mineral estate. Utah's proposed addition of UCA 40–10–11(2)(f)(i)(B) provides the necessary clarification of Division and Board authority in such cases and is consistent with SMCRA in that respect.

For the reasons explained above, the Director finds Utah's proposed addition of UCA 40–10–11(2)(f)(i)(B) to be consistent with, and no less stringent than, the counterpart provision at section 510(b)(6)(C) of SMCRA. Accordingly, the Director approves the proposed revision to the Utah Code.

3. UCA 40–10–11(3)(c), List of Violations in Permit Applications

Utah proposed to revise UCA 40–10–11(3) in response to the required amendment described at 30 CFR 944.16(f)(2). During its review of a previous amendment to the Utah Code, OSM noted that the part of UCA 40–10–11(3) dealing with patterns of violations only addressed violations of the State statute. OSM explained that Utah's provision needed to require consideration of other violations as well and cited previous rulemaking in support of that explanation. Specifically, in finding No. 7 of the final rule announcing its approval of amendment UT–024–FOR (60 FR 37002, 37006, July 19, 1995; administrative record No. UT–1066), OSM concluded that UCA 40–10–11(3) was less stringent than SMCRA. As a result, OSM imposed a required amendment at 30 CFR 944.16(f)(2). That subsection specifically required Utah to revise UCA 40–10–11(3) to provide that the pattern of violations determination include violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

With this amendment, Utah's proposed change addresses the required amendment at 30 CFR 944.16(f)(2) by

revising UCA 40–10–11(3) to add a provision at new subsection (3)(c). That provision requires including violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, or other provisions of the approved Utah program in findings of patterns of violations. As proposed, UCA 40–10–11(3)(c) is no less stringent than the counterpart provision at section 510(c) of SMCRA and satisfies the requirement described at 30 CFR 944.16(f)(2). The Director approves Utah's revision at UCA 40–10–11(3)(c) and removes the required amendment at 30 CFR 944.16(f)(2).

IV. Summary and Disposition of Comments

Following are summaries of all written comments OSM received on the proposed amendment.

1. Public Comments

The Utah Mining Association responded in June 30, 1998, letter by expressing its support for the proposed amendment and urging OSM to approve it (administrative record No. UT–1121). The Mining Association said it worked closely with the Division to develop the amendment and was involved in its consideration and passage in the 1998 session of the Utah Legislature. Also, the Mining Association stated that, in its opinion, changes proposed in this amendment are consistent with SMCRA and are supported by the Utah coal industry.

2. Federal Agency Comments

OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Utah program, as required by 30 CFR 732.17(h)(11)(i).

The Utah Field Office of U.S. Department of the Interior, Fish and Wildlife Service (FWS) responded in a letter dated July 20, 1998 (administrative record No. UT–1123). FWS offered no comments on the proposed amendment.

3. Environmental Protection Agency (EPA) Concurrence and Comments

OSM is required by 30 CFR 732.17(h)(11)(ii) to solicit EPA's written concurrence on provisions of the proposed amendment relating to air and water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). None of the changes Utah proposed in amendment UT–039–FOR pertain to air or water quality standards. As a result, OSM did not request EPA's concurrence.

Nevertheless, OSM solicited EPA's comments on the proposed amendment as required by 30 CFR 732.17(h)(11)(i) (administrative record No. UT–1118). OSM did not receive any comments from EPA.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

OSM solicited comments on the proposed amendment from the Utah SHPO and the ACHP as required by 30 CFR 732.17(h)(4) (administrative record No. UT–1118). OSM did not receive any comments from the SHPO or ACHP.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on June 8, 1998.

The Director approves, as discussed in: Finding No. 1, UCA 40–10–11(1) through (1)(c)(ii), recodification and rewording of provisions pertaining to the decision to approve, deny, or require modification of a permit application after receipt of a complete application and reclamation plan; UCA 40–10–11(2)(a), (b), and (c), reworded requirement for a finding of permit application completeness and compliance with UCA 40–10, for demonstration in the application and finding by the Division that reclamation requirements under UCA 40–10 can be accomplished, and for a finding that an assessment has been made of mining's cumulative impacts on the hydrologic balance and that the operation is designed to prevent material damage to the hydrologic balance outside the permit area; UCA 40–10–11(2)(d), (d)(i), and (d)(ii), recodified and reworded requirement for a demonstration in the application and finding by the Division that the proposed mining area is not in an area designated as unsuitable for mining or under study for that designation; UCA 40–10–11(2)(e), (e)(i), (e)(i)(A), (e)(i)(B), recodified and reworded requirement for a demonstration in the application and finding by the Division that the proposed mining will not adversely affect farming on alluvial valley floors in certain cases; UCA 40–10–11(2)(e)(ii), reworded requirement for a demonstration in the application and finding by the Division that the proposed mining will not materially damage surface and ground water systems that supply alluvial valley floors, with certain exceptions; UCA 40–10–11(2)(f), (f)(i), and (f)(i)(A), recodified and reworded requirement for the surface owner's written consent to surface mining where the private mineral estate has been severed from the private surface estate, with the provision that UCA 40–10–11(2)(f) shall not be construed to change any property right established under State law; UCA 40–10–11(2)(f)(iii), reworded requirement for documentation in an application establishing the status of the surface-subsurface legal relationship as an alternative to a conveyance expressly granting or reserving the right to extract coal by surface mining where the private surface estate has been severed from the private mineral estate; UCA 40–10–11(3)(a)(i), (a)(ii), and (3)(b), recodified and reworded requirement for an applicant to submit a list of violations with the permit application and for the Division to consider such violations in deciding to approve or deny a permit; UCA 40–10–11(4)(a)(i), (a)(ii), and (4)(b), recodified and reworded provision requiring permit findings in some cases prime farmland to be mined; and UCA 40–10–11(5)(a), reworded provision that the prohibition against permit issuance at UCA 40–10–11(3) shall not apply to a permit application if the violation resulted from an unanticipated situation that occurred at a surface mine on lands eligible for remining under a permit held by the person applying for a mining permit; Finding No. 2, UCA 40–10–11(2)(f)(i)(B), provision that nothing in subsection (2) of UCA 40–10–11 shall be construed to authorize the Board or Division to adjudicate property right disputes; and Finding No. 3, UCA 40–10–11(3)(c), requirement that the pattern of violations determination include violations of SMCRA, the implementing Federal regulations, any State or Federal programs enacted under SMCRA, and other provisions of the approved Utah program.

To implement this decision, OSM is amending the Federal regulations at 30 CFR Part 944, which codify decisions concerning the Utah program. By making this final rule effective immediately, OSM is expediting the State program amendment process. OSM encourages States to make their programs conform to the Federal standards without undue delay.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10) describe how OSM must make decisions on proposed State regulatory programs and program amendments. As required by those provisions, OSM must base its decision on a State amendment solely on a determination of whether the amendment is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

Under section 702(d) of SMCRA (30 U.S.C. 1292(d)), agency decisions on proposed State regulatory program provisions are not major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). Consequently, an environmental impact statement is not required for this rule.

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State amendment that is the subject of this rule is based on counterpart Federal regulations. An economic analysis of those Federal regulations was prepared and certification made that they would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. The Department relied upon the data and assumptions for the counterpart Federal regulations in making the determination as to whether this rule would have a significant economic impact.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more on any governmental entity or the private sector in any given year.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 14, 1998.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as follows:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
June 8, 1998	November 16, 1998	UCA 40–10–11(1)(a)(i), (a)(ii), (1)(b), (1)(c), (c)(i), and (c)(ii); (2), (2)(a), (2)(b), (2)(c), (2''d), (2)(d)(i), (d)(ii), (2)(e), (2)(e)(i), (e)(i)(A), (e)(i)(B), (e)(ii), (2)(f), (2)(f)(i), (f)(i)(A), (f)(i(B), and (f)(iii); (3)(a)(i), (a)(ii), (3)(b), and (3)(c); (4)(a)(i), (a)(ii), and (4)(b); and (5)(a).

§ 944.16 [Amended]

3. Section 944.16 is amended by removing and preserving paragraph (f) in its entirety.

[FR Doc. 98–30547 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–068]

RIN 2115–AE46

Special Local Regulations; City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Augusta Port Authority's Head of the South Rowing Regatta. The event will be held from 7 a.m. to 6 p.m. Eastern Standard Time (EST) each day on November 13 and 14, 1998, on the Savannah River at Augusta, GA. These regulations are necessary for the safety of life on navigable waters during the event.

DATES: This rule becomes effective at 6:30 a.m. and terminates at 6:30 p.m. EST each day on November 13 and 14, 1998.

FOR FURTHER INFORMATION CONTACT: LTJG A. Cooper, Project Manager, Coast Guard Group Charleston at (803) 724–7621.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are needed to provide for the safety of life during the Head of the South Rowing Regatta. The regulations are intended to promote safe navigation on the Savannah River immediately before, during, and after the race by controlling the traffic entering, exiting, and traveling within the regulated area. The anticipated number of participants and spectator vessels poses a safety concern which is addressed in these special local regulations. There will be approximately 6000 participants racing singles, doubles, four, and eight person rowing shells on a fixed course. The event will take place in an area of limited commercial traffic on the Savannah River at Augusta, GA between mile marker 200.2 and marker 197.0.

In accordance with 5 U.S.C. 553, good cause exists for not publishing a notice of proposed rulemaking for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical, as immediate action is needed to minimize potential danger to the public. The permit request to hold this event was only recently received by the Coast Guard, leaving insufficient time for a full comment period and delayed effective date.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of executive order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area encompasses less than 3 nautical miles on the Savannah River, entry into which is prohibited for only twelve hours on each day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), The Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, because these regulations will only be in effect for two days in a limited area of the Savannah River that is seldom used for commerce.

Collection of Information

These regulations contain no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

This action has analyzed in accordance with the principals and criteria contained in Executive Order 12612 and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action, and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35T07–068 is added to read as follows:

§ 100.35T07–068 Head of the South Rowing Regatta; Savannah River, Augusta, GA.

(a) *Definitions:*

(1) *Regulated area.* A regulated area is established on that portion of the Savannah River at Augusta, GA, between mile markers 200.2 and 197.0. The regulated area encompasses the width of the Savannah River between these two points.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Charleston, SC.

(b) *Special Local Regulations.* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Coast Guard Patrol Commander. After termination of the Head of the South Rowing Regatta on November 13–14, 1998, all vessels may resume normal operations.

(c) *Dates.* This section becomes effective at 6:30 a.m. and terminates at 6:30 p.m. EST each day, on November 13 and 14, 1998.

Dated: November 4, 1998.

Norman T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 98–30596 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 98–290]

Extension of the Commission's Initial Non-Delinquency Period for C and F Block Installment Payments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order denies the requests of several licensees seeking a waiver of the October 29, 1998, deadline for late installment payments on their licenses. On July 31, 1998, broadband PCS C and F block licensees were required to resume making installment payments on their licenses. However, in accordance with an earlier ruling, licensees that failed to meet the July 31, 1998, deadline were allowed to submit their payment on or before October 29, 1998, without being considered delinquent, if they paid a 5 percent late payment fee.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Julie Buchanan at (202) 418–0660 Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission Order, WT Docket No. 97–82, FCC 98–290, adopted and released on October 29, 1998. The full text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, 445 Twelfth Street, S.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036. (202) 857–3800.

Synopsis

1. On July 31, 1998, broadband PCS C and F block licensees were required to resume making installment payments on their licenses. However, in accordance with the *Order on Reconsideration of the Second Report and Order*, 63 FR 17111 (April 8, 1998) ("*Reconsideration Order*"), licensees that failed to meet the July 31, 1998,

deadline may submit their payment on or before October 29, 1998, without being considered delinquent, if they pay a 5 percent late payment fee. Several licensees have filed requests seeking a waiver of the October 29, 1998, deadline for late payments. For the reasons stated below, the Commission denies these requests.

2. A licensee asked the Commission to suspend its installment payment for 12 months. It claimed that, without a waiver of the Commission's rules, its inability to fulfill both its obligation to the Commission and its obligation to its principal creditor would threaten the provision of service to its customers and the expansion of its system. Another licensee argued that, due to the collapse of financial markets after the issuance of the *Reconsideration Order*, the Commission should extend the non-delinquency period another 180 days. In addition, another petitioner sought an extension until January 31, 1999, for the resumption of its installment and accrued interest payment obligations. It asserts that it needs more time to finalize negotiations for capital placement in light of recently discovered problems with its original capitalization plan. Another petitioner requested relief through December 31, 1998, in order to allow it time to receive anticipated funding. Funding delays also caused another licensee to seek an extension until December 13, 1998, or whatever time period the Commission provides to other C block licensees that also are seeking waivers. Finally, another licensee asked for a two-week grace period to accommodate last-minute delays with a needed stock subscription.

3. The Commission declines to waive the October 29, 1998, late payment deadline in response to the individual situations presented. In order for a waiver of the PCS rules to be granted, one of two tests must be met. Pursuant to § 24.819 of the Commission's Rules, the entity requesting a waiver must demonstrate either that: (1) "the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and that grant of the waiver is otherwise in the public interest" or (2) "the unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest."

4. Although the specific concerns raised by each petitioner vary, all revolve around the same theme—the inability to raise capital. The challenge of raising capital to finance C and F block licenses exists in varying degrees for all licensees and does not constitute "unique facts and circumstances." In formulating, as well as reconsidering, the restructuring options, the Commission addressed the challenges of raising capital. Further, the Commission does not believe that the underlying purpose of its rules would be frustrated by their application here or that it would serve the public interest to delay their enforcement. As the Commission stated in the *Reconsideration Order*, "[n]o matter what deadline we establish, it is inevitable that some licensees will seek more time to pay."

5. Although the Commission is sympathetic to the difficulties certain licensees are facing in securing capital, the Commission made it clear that it "will not entertain any requests for an extension" beyond the 60-day non-delinquency period that originally was established for initial payments not submitted by the payment resumption date for C and F block licensees. Further, the Commission ratified a firm deadline for late payments in the *Reconsideration Order*. Despite the fact that its rules, as amended effective March 16, 1996, allow an automatic grace period for installment payments not made within a non-delinquency period, the Commission determined that such a grace period is not appropriate for the initial July 31 payment. First, licensees have already enjoyed a payment suspension since the spring of 1997. Second, in the *Reconsideration Order*, the Commission provided additional relief by extending to 90 days the original 60-day non-delinquency period for initial payments. A further extension of the non-delinquency period would only serve to undermine the Commission's enforcement of its payment deadlines. Therefore, licensees that failed to make payment by July 31, 1998, and fail to make full payment by October 29, 1998, including the 5 percent late payment fee, will be subject to the automatic cancellation of their licenses.

6. Accordingly, it is ordered that, pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and 309(j), the requests filed for a waiver of the October 29, 1998, late payment deadline for C and F block licensees are denied and the waiver request filed seeking an extension until January 31, 1999 for the resumption of installment and accrued interest payment obligations is dismissed as moot.

List of Subjects

47 CFR Part 1

Administrative practice and procedure.

47 CFR Part 24

Personal communications services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30551 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 96–98; FCC 98–224]

Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717; Implementation of the Local Competition Provisions of the Telecommunications Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On September 28, 1998, the Commission released a Memorandum Opinion and Order and Order on Reconsideration in CC Docket 96–98, declaring that an Order issued by the Pennsylvania Commission on July 15, 1997, unlawfully exceeded state jurisdiction over telecommunications numbering administration, unlawfully discriminated against Petitioners, and constituted an unlawful barrier to entry. It also required the Pennsylvania Commission to provide area code relief in the 215, 610, and 717 area codes. The Commission also reconsidered a portion of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, where authority was delegated to state commissions to implement area code relief. The Commission delegated additional authority to state commissions to order NXX code rationing, under certain conditions, so that state commissions may have more flexibility to assure that the area codes they have will last until implementation of relief.

EFFECTIVE DATE: December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Gregory Cooke or Jared Carlson, Network Services Division, Common Carrier Bureau, (202) 418–2320.

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SUPPLEMENTARY INFORMATION: This summarizes the Commission's Memorandum Opinion and Order and Order on Reconsideration in CC Docket 96–98, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996.

Paperwork Reduction Act

No impact.

Analysis of Proceeding

Background

1. *Overview.* Numbering Plan Areas (NPAs) are known commonly as area codes, and are the first three digits of a ten-digit telephone number. The second three digits of a telephone number are known as the NXX code or central office code (CO code). The NXX code is used by some carriers, particularly wireline carriers, for billing purposes. NXX codes are assigned to particular switches or rate centers in an area code and carriers base charges for telephone calls, in part, on the distance between the rate center from which a call originates and the rate center at which the call terminates. NXX codes are an integral part of addressing calls and routing them throughout the telephone network, and are normally associated with a specific geographic location within the area code from which they are assigned. Usually, a whole NXX code that includes 10,000 line numbers is assigned to an entity for use at a switch or point of interconnection that the entity owns or controls, and the entity assigns the line numbers to its individual customers.

2. According to industry guidelines that govern the NXX code administrators, applicants must certify a need for North American Numbering Plan (NANP) numbers and must be licensed or certified to operate in the area. These codes are assigned on a first-come, first-served basis, unless a jeopardy condition exists. The guidelines further provide that, once an area code is in jeopardy, the code administrator will notify the appropriate regulatory authorities, the NANP Administrator (NANPA), and affected parties that the area code is in jeopardy and will invoke special conservation procedures.

3. *Jurisdiction.* The Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), gives the Commission plenary jurisdiction over numbering issues that pertain to the United States. In the Local Competition Second Report and Order, the Commission delegated the authority to implement new area codes to the state commissions, but retained broad authority over numbering. Under the Commission rules, states can introduce new area codes through the use of: (1) A geographic split, which occurs when the geographic area served by an area code is split into two or more geographic parts and one part maintains the old area code and one (or more) receive a new area code; (2) an area code boundary realignment, which occurs when the boundary lines between two adjacent area codes are shifted to allow the transfer of some NXX codes from an area code for which NXX codes remain unassigned to an area code for which few or no NXX codes are left for assignment; or (3) an area code overlay, which occurs when a new area code is introduced to serve the same geographic area as an existing area code.

4. The Commission stated that the delegation of functions associated with initiation and planning of area code relief was made only to those states wishing to perform those functions, and that those functions would be performed by the new NANPA for those states that did not wish to perform such functions. The Commission specifically declined to delegate to states the task of NXX code allocation or assignment, stating that to do so would vest in fifty-one separate commissions oversight of functions that the Commission centralized to the new NANPA. The Commission noted that a uniform, nationwide system of numbering, including allocation of NXX codes, is essential to the efficient delivery of telecommunications services in the United States.

5. *Pennsylvania Commission Orders.* In 1996, the NXX code administrator for Pennsylvania filed petitions with the Pennsylvania Commission requesting that the Pennsylvania Commission address the depletion of NXX codes in area codes 412, 215, 610, and 717. On July 15, 1997, the Pennsylvania Commission entered an order addressing NXX code depletion in the four Pennsylvania area codes 412, 215, 610, and 717 (Pennsylvania Commission Order). On July 28, 1997, the Pennsylvania Commission issued a letter to the NXX code administrator requiring the rationing of NXX codes in those four area codes at the rate of three per month.

6. The Pennsylvania Commission Order required a geographic split for area code 412 but did not order traditional area code relief to the 610, 215, and 717 area codes. Instead the order required implementation of transparent area code overlays and, eventually, number pooling, to relieve the need for additional NXX codes in area codes 215, 610, and 717. The Pennsylvania Commission described the use of the transparent area codes as an interim measure to help relieve the need for additional NXX codes, and stated that this relief was optional for competitive local exchange carriers and for wireless carriers, who could choose to participate or wait for assignment of NXX codes in the old area code under the lottery procedures.

7. On December 18, 1997 and February 5, 1998, the Pennsylvania Commission adopted orders that clarified and implemented the July 15, 1997 Order (Pennsylvania Commission Orders II and III).

8. Between July 18 and July 30, 1997, several parties filed motions for reconsideration of the Pennsylvania Commission Order with the Pennsylvania Commission. On August 14 and 15, 1997, several parties also appealed the Pennsylvania Commission Order to the Commonwealth Court of Pennsylvania. On February 26, 1998, the Commonwealth Court of Pennsylvania granted the Pennsylvania Commission's request to remand the case, requiring that the Pennsylvania Commission enter a subsequent Order on or before May 29, 1998, addressing all issues necessary for implementation of conventional area code relief in area codes 215, 610, and 717.

9. On February 26, 1998, the Pennsylvania Commission adopted two Orders that tentatively approved a geographic split of the 717 area code (Pennsylvania Commission Order IV) and the creation of a new area code that would overlay the 215 and 610 area codes (Pennsylvania Commission Order V). Both orders expressly stated that the provisions of the Pennsylvania Commission's first three Orders shall remain in force and effect, to the extent not rescinded or modified in the Orders. On May 21, 1998, the Pennsylvania Commission adopted two additional Orders approving area code relief plans for area codes 717 (Pennsylvania Commission Order VI), and area codes 215 and 610 (Pennsylvania Commission Order VII). The orders stated that while the lack of any available NXXs mandated immediate conventional area code relief, the Pennsylvania Commission anticipated that number pooling will be implemented in the foreseeable future and that could delay further need for disruptive area code relief. The Pennsylvania Commission directed the NXX code administrator to reserve 15 NXX codes in the 717 NPA and 15 NXXs in the new area code created by the 717 split to be available for pooling or porting, either on a long-term or trial basis. Similarly, it directed the same in area codes 215 and 610.

Discussion

10. The actions taken by the Pennsylvania Commission in its two most recent orders resolve certain issues raised by the petitioners. State commissions need additional guidance and clarification, however, as to the limits of their authority over area code relief and number conservation as they address decisions in this area. Although we wish to support state commissions' efforts to develop innovative ways to address the problem of NXX code depletion, we are also mindful that the 1996 Act assigned to the Commission the responsibility for implementing a national numbering policy.

11. The Commission, the state commissions, and the industry are working together to develop methods to conserve and promote efficient use of numbers that do not undermine the uniform scheme of numbering. The North American Numbering Council (NANC) will make recommendations to the Commission on number pooling, and other number conservation measures, and those recommendations will have the benefit of industry expertise and will be in large part the product of industry consensus. The Commission anticipates using the NANC recommendations to conduct a rulemaking to establish national standards and regulations for number pooling architecture, administration, and implementation, and possibly other number conservation methods.

12. *Delegation of Additional Authority to States.* In the Local Competition Second Report and Order, the Commission did not delegate any authority to state commissions in the area of NXX code allocation or administration. Therefore, a state commission ordering NXX code rationing, or any other NXX code conservation measure, is, under the current regulatory structure, acting outside the scope of its delegated authority. The Commission understands the exigencies of NXX code rationing in the Pennsylvania situation and other states. We believe that state commissions may need flexibility to become involved in attempts to conserve NXX codes in order to extend the lives of area codes within their borders. Therefore, the Commission is reconsidering on its own motion the portion of the Local Competition Second Report and Order where the authority was delegated to state commissions to implement new area codes. We specifically delegate a limited amount of additional authority to state commissions that will allow them to order NXX code rationing in certain situations. This authorization is effective immediately upon publication in the **Federal Register**.

13. The Commission agrees with commenters asserting that the rationing of NXX codes should only occur when it is clear that an NPA will run out of NXX codes before implementation of a relief plan. The Commission therefore delegates authority to state commissions to order NXX code rationing, only in conjunction with area code relief decisions, if the industry has been unable to reach consensus on a rationing plan to extend the life of an area code until implementation of relief. A state commission, therefore, may only impose an NXX rationing plan if the state commission has decided on a specific form of area code relief (i.e., a split, overlay, or boundary realignment) and has established an implementation date. At that point, a state commission may work with the NXX code administrator to devise an NXX code rationing plan based on whatever mechanisms the state commission and the NXX code administrator deem most appropriate, including a lottery. State commissions and NXX code administrators also may consider imposing a usage threshold that a carrier must meet in its NXXs before obtaining another NXX in the same rate center.

14. The Commission clarifies that state commissions do not have authority to order return of NXX codes or 1,000 number blocks to the code administrator, either pursuant to a pooling trial or pursuant to a number rationing scheme implemented as part of a state-ordered area code relief plan. Such actions fall outside of the authority granted the states to initiate traditional area code relief, and would interfere with the code administrator's functioning pursuant to rules delegating to the code administrator the authority to manage the United States CO code number resource.

15. The Commission is aware that some states are conducting number pooling trials and encourages those efforts. At this time, however, the Commission declines to delegate to state commissions the authority to order number pooling, in view of the activity occurring at the federal level to develop such national standards. Until the Commission conducts a rulemaking to develop regulations on number pooling we encourage number pooling experiments in the states, provided that such experiments do not violate previous Commission decisions regarding numbering administration and area code relief, and provided that carrier participation is voluntary. State commissions may order that a certain number of NXX codes in a new area code be withheld from assignment and saved for number pooling. No carrier, however, may be denied a NXX code so that it can be saved for pooling purposes. Further, state commissions should proceed with the understanding that they ultimately may have to change their number pooling methods to conform to national standards.

16. The Commission encourages state commissions conducting pooling trials to work cooperatively with the NXX code administrator, and to conduct these trials in a manner consistent with industry guidelines. Further, states conducting pooling trials must ensure that numbering resources are available for carriers that do not have the LNP technology to participate in number pooling.

17. In addition, the Commission grants to Illinois limited authority to continue its pooling initiative despite the trial's mandatory nature. To prevent multiple, inconsistent mandatory pooling trials throughout the country, we limit this grant of authority to Illinois. Other states that are considering innovative number conservation methods that the Commission has not addressed, or number pooling trials that fall outside the guidelines adopted in this Order, should request from the Commission an additional, limited delegation of authority to implement these methods.

18. *State Commission Authority.* The Commission clarifies that the actions mandated by the Pennsylvania Commission in its July 1997 Order exceeded the scope of the authority the Commission has delegated to the state commissions. The Commission has not delegated jurisdiction over numbering issues to the states. The text of the Local Competition Second Report and Order is clear that the Commission delegated to state commissions the authority to implement new area codes; however, the Commission specifically declined to delegate to state commissions the authority to administer or allocate NXX codes.

19. While the Pennsylvania Commission itself was not actually assigning the NXX codes, it ordered carriers and the NXX code administrator to implement several measures, including 1,000 block pooling, 1,000 block reclamation, the return of NXX codes, and NXX code rationing, that are part of NXX code administration.

20. *Compliance With Numbering Administration Regulations.* The Pennsylvania Commission's original plan violated the Commission's regulations, which were promulgated to ensure that telecommunications

numbers are made available on an equitable basis.

21. *Availability of Numbering Resources.* The original Pennsylvania plan did not facilitate entry into the telecommunications marketplace by making numbering resources available on an efficient and timely basis to carriers. The measures contained in the plan were unproven and could have deprived carriers of the numbers they needed to provide their services. Such measures are not a substitute for area code relief after jeopardy has been declared.

22. Further, measures such as those ordered by the Pennsylvania Commission could affect negatively the routing of calls in the United States. For example, although the Pennsylvania Commission and the PaOCA asserted that the "transparent overlays" did not conflict with the requirements for 911 or E911 service, and that no solution in the Pennsylvania Commission Order adversely affected roaming, the record supports a finding that there is at least a potential for disruption in 911 service if wireless carriers must participate in the "transparent overlays" in order to obtain numbers. The record also indicates a potential for service disruption if Pennsylvania wireless customers who have numbers assigned from the "transparent overlays" or whose carriers are attempting to participate in 1,000 block number pooling roam outside of Pennsylvania.

23. *Discrimination Against an Industry Segment.* The Commission agrees with Petitioners that the Pennsylvania Commission's original reliance on the use of number pooling and transparent overlays unduly disfavored wireless and non-LRN capable carriers because it did not provide adequate assurance that those carriers would have access to numbering resources. Therefore, the measures mandated in the July 15, 1997 Order violated the Commission's rule requiring that numbering administration not unduly favor or disfavor any particular telecommunications industry segment. The original plan also unduly disfavored wireless carriers because its implementation would have caused service problems for wireless carriers and their customers, but similar burdens would not have been placed on other types of carriers. Additionally, because of the NXX code rationing plan that the Pennsylvania Commission ordered, the original plan also would have unduly disfavored carriers that could not participate in the transparent overlays and number pooling.

24. *Technological Neutrality.* The Commission does not determine whether Pennsylvania's original proposed methods would have been "technology-neutral," and therefore inconsistent with the Commission's rule requiring that numbering administration not unduly favor or disfavor any telecommunication technology, if carriers that could not have participated in the transparent overlays and number pooling had other access to numbering resources. It is not necessary to resolve that question in this order.

25. *Section 253.* The Commission will not address arguments raised under section 253 of the Communications Act in this Order.

26. *Area Code Relief in Pennsylvania.* We are not ordering area code relief for area codes 215, 610, and 717, as requested by Petitioners, because the Pennsylvania Commission has acted to provide for such relief. Because wireline carriers have implemented LNP or will be implementing LNP soon in the area codes at issue, it does not appear that the Pennsylvania Commission still intends to implement transparent overlays, but the Pennsylvania Commission Orders VI and VII did not specifically rescind the earlier Orders' provisions regarding transparent overlays. Implementation of transparent overlays is beyond the state commissions' jurisdiction, and, as discussed above the Commission has misgivings about the use of transparent overlays as an effective method of area code relief because of their impacts on some carriers.

27. The Pennsylvania Commission's original imposition of NXX rationing measures was inconsistent with this Order's delegation of authority to state commission, because the state commission imposed the rationing plan when the area codes were in jeopardy, without having chose an area code relief method and established a relief date. Because the Pennsylvania Commission has ordered area code relief and because the NXX code situation in Pennsylvania is exigent, however, the current NXX code rationing plan may continue.

28. Until area code relief is implemented in the 215, 610, and 717 area codes in Pennsylvania, we grant additional authority to the Pennsylvania Commission, if requested, to hear and address claims of carriers claiming that they do not, or in the near future will not, have any line numbers remaining in their NXX codes, and will be unable to serve customers if they cannot obtain an NXX, or that they are using or will have to use extraordinary and unreasonably costly measures to provide service. The Pennsylvania Commission should work with the code administrator to ensure that those carriers have access to NXXs outside of the parameters of the rationing plan.

29. *Referral to the NANC.* The Commission asks the NANC for a recommendation as to whether, in the future, the state commissions or the NANPA, Lockheed Martin IMS, should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan should receive and NXX or multiple NXXs outside of the parameters of the ration plan if it demonstrates that it has no numbers and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service. Recommendation from NANC is requested within 60 days of the effective date of the order.

Final Regulatory Flexibility Certification

30. As permitted by section 605(b) of the Regulatory Flexibility Act (RFA), the Commission certifies that a regulatory flexibility analysis is not necessary because the amendments to the rules adopted in this Order will not impose a significant economic impact on a substantial number of small entities as defined by statute, or by the Small Business Administration (SBA). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one that (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The rule expands state commissions' authority to implement area code relief by granting additional authority to the state commissions to, under certain conditions, ration NXX codes in conjunction with area code relief decisions. Because state commissions will be the entities complying with the rules, and because the expansion of the rule simply supplements authority that the state commissions already have, we can certify that a regulatory flexibility analysis is unnecessary. This certification conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

31. The Commission's Office of Public Affairs, Public Reference Branch, will send a copy of the certification, along with the Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. section 801(a)(1)(A), and

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to the Chief Counsel for Advocacy of the Small Business Associations, 5 U.S.C. section 605(b).

Ordering Clauses

32. Accordingly, pursuant to section 1, 4(i), 201–205, 251, 253, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 251, 253, and 403, and pursuant to section 1.2 of the Commission's Rules, 47 C.F.R. 1.2, *It is ordered* that the Petition for Declaratory Ruling filed by Nextel Communications, Inc., Sprint PCS, Vanguard Cellular Systems, Inc., 360 Communications Company, and Bell Atlantic Mobile, Inc. is *Granted* to the extent described herein.

33. *It is further ordered*, that, pursuant to section 1, 4(i), 201–205, 251, 253, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 251, 253, and 403, and pursuant to section 1.2 of the Commission's Rules, 47 C.F.R. 1.2, we reconsider on our own motion a portion of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Second Report and Order and Memorandum Opinion and Order, CC Docket No. 96–98, 11 FCC Rcd 19392 (1996) (Local Competition Second Report and Order), and authorize state commissions to order NXX code rationing in conjunction with area code relief decisions, consistent with the terms as defined in this Order. Pursuant to the authority contained in section 408 of the Communications Act, as amended, 47 U.S.C. 408, this authorization is effective immediately upon publication in the **Federal Register**. The remaining policies and requirements set forth herein are effective upon release of this Order.

34. *It is further ordered*, that the Chief, Common Carrier Bureau, is directed to determine whether state commissions should be delegated additional authority to implement innovative or experimental number conservation efforts.

35. *It is further ordered*, that the NANC, within 60 days of the effective date of this Order, provide a recommendation as to whether, in the future, the state commissions or the NANPA should perform the function of evaluating whether a carrier that is subject to an NXX code rationing plan if it demonstrates that it has no number and cannot provide service to customers or is having to rely on extraordinary and costly measures in order to provide service.

36. *It is further ordered*, that the Commission's Office of Public Affairs, Public Reference Branch, will send a copy of this certification, along with this Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Association, 5 U.S.C. 605(b). A copy of this certification will also be published in the **Federal Register**.

37. *It is further ordered*, that PageNet's Motion to accept late-filed reply comments is hereby accepted.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 52 of Title 47 of the Code of Federal Regulations is amended as follows.

PART 52—NUMBERING

1. The authority citation for Part 52 continues to read as follows:

Authority: Sec. 1,2,4,5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3,4, 201–05, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

2. Revise paragraph (a) of section 52.19 to read as follows:

§ 52.19 Area code relief.

(a) State commissions may resolve matters involving the introduction of new area codes within their states. Such matters may include, but are not limited to: Directing whether area code relief will take the form of a geographic split, an overlay area code, or a boundary realignment; establishing new area code boundaries; establishing necessary dates for the implementation of area code relief plans; and directing public education efforts regarding area code changes.

* * * * *

[FR Doc. 98–30495 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–115; RM–9292]

Radio Broadcasting Services; Stevensville, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 283A to Stevensville, Montana, in response to a petition filed by L. Topaz Enterprises, Inc. *See* 63 FR 38786, July 20, 1998. The coordinates for Channel 283A at Stevensville are 46–30–24 and 114–05–18. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–115, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Stevensville, Channel 283A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30494 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–111; RM–9299]

Radio Broadcasting Services; Elko, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of L. Topaz Enterprises, Inc., allots Channel 233C3 to Elko, NV, as the community's third local commercial FM service. *See* 63 FR 38784, July 20, 1998. Channel 233C3 can be allotted to Elko in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 40–49–48 North Latitude and 115–45–36 West Longitude. With this action, this proceeding is terminated.

DATES: Effective December 21, 1998. A filing window for Channel 233C3 at Elko, NV, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–111, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 233C3 at Elko.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30491 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–110; RM–9311]

Radio Broadcasting Services; Humboldt, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of C.R. Communications, Inc., allots Channel 244A to Humboldt, NE, as the community's first local aural service. *See* 63 FR 8784, July 20, 1998. Channel 244A can be allotted to Humboldt in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 kilometers (1.4 miles) southeast, at coordinates 40–09–00 North Latitude and 95–55–43 West Longitude, to avoid a short-spacing to Station KZKX, Channel 245C1, Seward, NE. With this action, this proceeding is terminated.

DATES: Effective December 21, 1998. A filing window for Channel 244A at Humboldt, NE, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–110, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Humboldt, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30492 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–124; RM–9305]

Radio Broadcasting Services; Whitefish, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Whitefish, Montana, in response to a petition filed by Whitefish Broadcasting Company. *See* 63 FR 39805, July 24, 1998. The coordinates for Channel 286A at Whitefish are 48–24–42 and 114–20–18. Canadian concurrence has been obtained for this allotment. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–124, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Whitefish, Channel 286A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–30493 Filed 11–13–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 220
Monday, November 16, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–265–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120 series airplanes. This proposal would require removing the thermal insulating blankets from the upper rear nacelle structure; re-positioning the engine exhaust duct; and replacing the engine exhaust bracket with a new engine exhaust bracket, if necessary. For certain airplanes, this proposal also would require installing new stainless steel plates onto the upper rear nacelle structure. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fretting of the titanium thermal insulating blankets, which could result in an increased risk of fire in the engine exhaust duct of the tail pipe.

DATES: Comments must be received by December 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Linda M. Haynes, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6091; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–265–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–265–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–120 series airplanes. The DAC advises that it has received reports of fire in the engine exhaust duct of the tail pipe. Investigation revealed that the aft section of the engine exhaust duct is subject to vibration that causes relative motion between the layers of insulation blankets and the engine exhaust duct. As a result, the titanium thermal insulating blankets are subject to fretting. Such fretting produces titanium dust, which under intense heat, could spontaneously ignite. This condition, if not corrected, could result in an increased risk of fire in the engine exhaust duct of the tail pipe.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 120–54–0035, Change 02, dated May 29, 1998, which describes procedures for removing the thermal insulating blankets from the upper rear nacelle structure; re-positioning the engine exhaust duct with the use of shims; and replacing the engine exhaust bracket with a new engine exhaust bracket, if necessary. For certain airplanes, the service bulletin also describes procedures for installing new stainless steel plates onto the upper rear nacelle structure. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directives 97–11–03, dated December 3, 1997, and 97–11–03R1, dated July 6, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 171 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 9 work hours per airplane to accomplish the actions on airplanes listed in "Part I" of EMBRAER Service Bulletin 120–54–0035, Change 02, at an average labor rate of $60 per work hour. Required parts would cost approximately $337 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators of airplanes listed in "Part I" of the service bulletin is estimated to be $877 per airplane.

It would take approximately 2 work hours per airplane to accomplish the actions on airplanes listed in "Part II" of EMBRAER Service Bulletin 120–54–0035, Change 02, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators of airplanes listed in "Part II" of the service bulletin is estimated to be $120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 98–NM–265–AD.

Applicability: Model EMB–120 series airplanes, serial numbers (S/N) 120003, 120004, and 120006 through 120336 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fretting of the titanium thermal insulating blankets, which could result in an increased risk of fire in the engine exhaust duct of the tail pipe, accomplish the following:

(a) For airplanes identified in "Part I" of the effectivity listing of EMBRAER Service Bulletin 120–54–0035, Change 02, dated May 29, 1998: Within 2,400 flight hours after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) in accordance with the service bulletin.

(1) Remove the thermal insulating blankets from the upper rear nacelle structure.

(2) Install new stainless steel plates onto the upper rear nacelle structure.

(b) For airplanes identified in "Part II" of the effectivity listing of EMBRAER Service Bulletin 120–54–0035, Change 02, dated May 29, 1998: Within 2,400 flight hours after the effective date of this AD, remove the thermal insulating blankets from the upper rear nacelle structure in accordance with the service bulletin.

(c) For all airplanes: Prior to further flight following accomplishment of either paragraph (a) or (b) of this AD, as applicable, re-position the engine exhaust duct with the use of shims in accordance with EMBRAER Service Bulletin 120–54–0035, Change 02, dated May 29, 1998. If it is not possible to re-position the engine exhaust duct with the use of shims as specified in the service bulletin, prior to further flight, replace the rear exhaust duct bracket with a new rear exhaust duct bracket, in accordance with the "NOTE" in paragraph 1.3.1.1 of the Planning section of the service bulletin.

(d) As of the effective date of this AD, no person shall install on any airplane a thermal insulating blanket having part number (P/N) 120–35411–025, –035, –036, 120035413–001, or 12035411–002.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directives 97–11–03, dated December 3, 1997, and 97–11–03R1, dated July 6, 1998.

Issued in Renton, Washington, on November 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30537 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–U

VOL 63 ISS 220 NO 16 1998 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–57]

Proposed Modification of Class E Airspace; Fostoria, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Fostoria, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 099° helicopter point in space approach, has been developed for Fostoria Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace; for Fostoria, OH, in order to include the point in space approach serving Fostoria Community Hospital Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–57, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–57." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Fostoria, OH, to accommodate aircraft executing the proposed GPS SIAP, 099° helicopter point in space approach for Fostoria Community Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Fostoria, OH [Revised]

Fostoria Metropolitan Airport, OH
(Lat. 41° 11′ 27″N., long. 83° 23′ 40″W)
Fostoria Community Hospital, OH
Point In Space Coordinates

(Lat. 41° 10′ 08″N., long. 83° 26′ 31″W)
That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Fostoria Metropolitan Airport, and within a 6.0-mile radius of the Point in Space serving Fostoria Community Hospital, excluding the airspace within the Tiffin, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30592 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–60]

Proposed Establishment of Class E Airspace; Bellevue, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Bellevue, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 052° helicopter point in space approach, has been developed for Bellevue Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to establish controlled airspace for Bellevue, OH.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–60, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

This official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemkaing by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–60." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Bellevue, OH, to accommodate aircraft executing the proposed GPS SIAP, 052° helicopter point in space approach for Bellevue Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective

September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * * *

AGL OH E5 Bellevue, OH [New]

Bellevue Hospital, OH
Point In Space Coordinates
(Lat. 41°16'33"N., long. 82°51'10"W)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving Bellevue Hospital, excluding the airspace within the Sandusky, OH, and Norwalk, OH, Class E airspace areas.

* * * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30591 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–59]

Proposed Modification of Class E Airspace; Sandusky, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Sandusky, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 097° helicopter point in space approach, has been developed for Providence Hospital Heliport and Firelands Community Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Sandusky, OH, in order to include the point in space approach serving Providence Hospital Heliport and Firelands Community Hospital Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–59, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–59." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Sandusky, OH, to accommodate aircraft executing the proposed GPS SIAP, 097° helicopter point in space approach for Providence Hospital Heliport and Firelands Community Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subject in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amended 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Sandusky, OH [Revised]

Sandusky, Griffing Sandusky Airport, OH
(Lat. 41°26′00″ N., long. 82°39′08″ W)
Firelands Community Hospital, OH
Providence Hospital, OH
Point In Space Coordinates
(Lat. 41′26′32″ N., long 82°43′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Griffing Sandusky airport, and within 6.0-mile radius of the Point in Space serving Firelands Community Hospital and Providence Hospital, excluding the airspace within the Port Clinton, OH, and Norwalk, OH, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30590 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–58]

Proposed Modification of Class E Airspace; Norwalk, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Norwalk, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 037° helicopter point in space approach, has been developed for Fisher-Titus Medical Center Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Norwalk, OH, in order to include the point in space approach, serving Fisher-Titus Medical Center Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–58, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–58." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Norwalk, OH, to accommodate aircraft executing the proposed GPS SIAP, 037° helicopter point in space approach for Fisher-Titus Medical Center Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Norwalk, OH [Revised]

Norwalk-Huron County Airport, OH
(Lat. 41°14′41″N., long. 82°33′04″W)
Fisher-Titus Medical Center, OH
Point in Space Coordinates
(Lat. 41°12′53″N., long. 82°36′37″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Norwalk-Huron County Airport and within 2.5 miles each side of the 338° bearing from the airport extending from the 6.3 mile radius to 8.8 miles northwest of the airport, and within a 6.0-mile radius of the Point in Space serving Fisher-Titus Medical Center, excluding that airspace within the Willard, OH, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30589 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–55]

Proposed Modification of Class E Airspace; Monroe, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Monroe, MI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 210° helicopter point in space approach, has been developed for Mercy Memorial Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Monroe, MI, in order to include the point in space approach serving Mercy Memorial Hospital Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–55, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–55." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availablity of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Monroe, MI, to accommodate aircraft executing the proposed GPS SIAP, 210° helicopter point in space approach for Mercy Memorial Hospital Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA

Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Monroe, MI [Revised]

Monroe, Custer Airport, MI
(Lat. 41°56′24″N., long. 83°26′05″W)
Mercy Memorial Hospital, MI
Point in Space Coordinates
(Lat. 41°56′05″N., long. 83°23′34″W)
That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Custer Airport, and within a 6.0-mile radius of the Point in Space serving Mercy Memorial Hospital, excluding that airspace within the Detroit, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30587 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–56]

Proposed Modification of Class E Airspace; Fremont, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Fremont, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 090° helicopter point in space approach, has been developed for Memorial Hospital of Sandusky County Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify existing controlled airspace for Fremont, OH, in order to include the point in space approach serving Memorial Hospital of Sandusky County Heliport.

DATES: Comments must be received on or before December 31, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–56, 2300 East Devon Avenue, DES Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT:

Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–56." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

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The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Fremont, OH, to accommodate aircraft executing the proposed GPS SIAP, 090° helicopter point in space approach for Memorial Hospital of Sandusky County Heliport by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would de depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103; 40113; 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Fremont, OH [Revised]

Fremont Airport, OH
(Lat. 41° 20′ 03″N., long. 83° 09′ 36″W.)
Memorial Hospital of Sandusky County, OH
Point In Space Coordinates
(Lat. 41° 20′ 18″N., long 83° 08′ 57″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Fremont Airport, and within a 6.0-mile radius of the Point in Space serving Memorial Hospital of Sandusky County.

* * * * *

Issued in Des Plaines, Illinois on October 29, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–30584 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–094–FOR]

Illinois Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to and explanatory information for a previously proposed amendment to the Illinois regulatory program (Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions concern areas unsuitable for surface coal mining operations, permitting, violation information, impoundments, explosives, revegetation, and administrative and judicial review. Illinois intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, to clarify existing regulations, and to improve operational efficiency.

DATES: We will accept written comments until 4:00 p.m., e.s.t., December 1, 1998.

ADDRESSES: You should mail or hand deliver written comments to Andrew R. Gilmore, Director, Indianapolis Field Office at the address listed below.

You may review copies of the Illinois program, the proposed amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone: (317) 226–6700.

Illinois Department of Natural Resources, Office of Mines and Minerals, 524 South Second Street, Springfield, Illinois 62701–1787, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: agilmore@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. You can find background information on the Illinois program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the June 1, 1982, **Federal Register** (47 FR 23883). You can find later actions concerning the Illinois program at 30 CFR 913.15, 913.16, and 913.17.

II. Discussion of the Proposed Amendment

By letter dated February 26, 1998 (Administrative Record No. IL–5009), Illinois sent us an amendment to revise its regulations in response to letters dated January 6 and June 17, 1997 (Administrative Record Nos. IL–1951 and IL–2000, respectively), that we sent to Illinois under 30 CFR 732.17(c) and in response to required program amendments at 30 CFR 913.16. Illinois also proposed to amend its program to clarify existing regulations. We announced receipt of the proposed amendment in the April 6, 1998, **Federal Register** (63 FR 16719) and invited public comment on its

adequacy. The public comment period ended May 6, 1998.

During our review of the amendment, we identified concerns relating to 62 IAC 1773.15(c)(11), written findings for permit application approval; 62 IAC 1778.14(c), required information in permit application; 62 IAC 1816.116 and 1817.116, revegetation standards; 62 IAC 1816.117(c)(3) and 1817.117(c)(3), tree and shrub vegetation; 62 IAC 1847.3, hearings; 62 IAC 1847.3(g), burden of proof for permit hearings; 62 IAC 1847.9(g), burden of proof for bond release hearings; and editorial errors in various regulations. We notified Illinois of these concerns on June 2, 1998 (Administrative Record No. IL–5019). By letter dated November 5, 1998 (Administrative Record No. Il–IL–5025), Illinois sent us a revised amendment package. Illinois proposed the following changes to its amendment.

1. General

Illinois corrected typographical errors, punctuation, citation references, and other editorial-type errors throughout the amended regulations. Illinois also simplified its use of numbers: for example, in 62 IAC 1701.5. Appendix A, in the definition of "Head-of-hollow fill," a reference to "twenty (20) degrees" was changed to "20 degrees"; in 62 IAC 1761.12(c), references to "one hundred (100) feet" were changed to "100 feet"; in 62 IAC 1773.15(a), a reference to "sixty (60) days" was changed to "60 days"; in 62 IAC 1774.11(a)(1), a reference to "five (5) years" was changed to "five years"; and in 62 IAC 1800.40, a reference to "sixty (60) percent" was changed to "60%."

2. 62 IAC 1761.12 Procedures for Areas Designated by Act of Congress

In section 1761.12(b)(2), Illinois proposes to replace the reference to "Section 1761.11(a), (f) or (g)" with a reference to "Section 1761.11(a)(6) and (7)."

3. 62 IAC 1764 State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations

In section 1764.15(a), Illinois added the heading "Processing of Petitions"; and in section 1764.15(c), Illinois added the heading "Land Report and Public Comment."

4. 62 IAC Part 1773 Requirements for Permits and Permit Processing

Illinois removed its reference to 1816.116(a)(2)(B) and 1816.117(a)(2)(B) at 62 IAC 1773.15(c)(11) and added the following provision for written findings at 62 IAC 1773.15(c)(13):

(13) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 62 Ill. Adm. Code 1816.116(a)(2)(B) or 1817.116(a)(2)(B), the site of the operation is land eligible for remining as defined in 62 Ill. Adm. Code 1701. Appendix A.

5. 62 IAC Part 1774.13 Permit Revisions

At 1774.13(b)(3), Illinois is changing a reference from "1773.19(b)" to "1773.19(a)(3)(A) and (C)."

6. 62 IAC 1778.14 Violation Information

At 62 IAC 1778.14(c), Illinois proposes to replace its currently proposed introductory language with the following language:

(c) A list of all violation notices received by the applicant during the three-year period preceding the application date, and a list of all outstanding violation notices received prior to the date of the application by any surface coal mining operation that is deemed or presumed to be owned or controlled by the applicant under the definition of "owned or controlled" and "owns or controls" in 62 Ill. Adm. Code 1773.5. For each notice of violation issued pursuant to 62 Ill. Adm. Code 1843.12 or under a Federal or State program for which the abatement period has not expired, the applicant shall certify that such notice of violation is in the process of being corrected to the satisfaction of the agency with jurisdiction over the violation. For each violation notice reported, the list shall include the following information, as applicable:

7. 62 IAC Part 816 Permanent Program Performance Standards for Surface Mining Activities and 62 IAC Part 817, Permanent Program Performance Standards for Underground Mining Operations

a. At 62 IAC 1816.49(a)(3)(B) and 1817.49(a)(3)(B), concerning impoundments, Illinois proposes to replace the reference to "Practice Standard 378, Ponds, April 1987" with a reference to "Practice Standard IL 278, Ponds, June 1992."

b. At 62 IAC 1816.66(d), relating to explosives, Illinois added the heading "Proximity to buildings and other facilities."

c. Illinois added the following new revegetation provision at 62 IAC 1816.116(a)(2)(G) and 1817.116(a)(2)(G):

(G) Other Management Practices:

The Department shall approve the use of deep tillage for prime farmland and high capability land as a beneficial practice that will not restart the five year period of responsibility, if the following conditions are met:

(i) The Permittee has submitted a request to use the practice and has identified the field that will be deep tilled;

(ii) One or more hay crops, or other acceptable row crops, have been grown or will be grown to dry out the subsoil prior to deep tilling the field; and

(iii) The Department has determined that the use of deep tillage will be beneficial to the soil structure and long term crop production of the field and the benefits will continue well beyond the responsibility period.

The Department shall notify the permittee in writing of its decision. Such written notice shall be in the form of an inspection report or other document issued by the Department.

Illinois proposed the above provision to replace a provision at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) that also concerned deep tillage. We had disapproved the provision at 62 IAC 1816.116(a)(2)(F)(i) and 1817.116(a)(2)(F)(i) on May 29, 1996 (61 FR 26801). By letter dated June 15, 1998 (Administrative Record No. IL–5024), Illinois submitted explanatory information and supporting documentation for consideration of the above proposed provision.

d. Illinois proposes to delete the following language from 62 IAC 1816.116(a)(4)(ii):

The Department may approve a field to represent non-contiguous areas less than or equal to four acres of the same capability if it determines that the field is representative of reclamation of such areas. These areas shall be managed and vegetated in the same manner as the representative field.

e. Illinois proposes to withdraw the revisions currently proposed for 62 IAC 1816.117(c)(3) and 1817.117(c)(3) that would have limited the number of plots needed to sample tree or shrub areas to 200 for areas of 50 acres or more.

8. 62 IAC Part 1847 Administrative and Judicial Review

a. Illinois proposes the following revised language for 62 IAC 1847.3(g)(2):

(2) In all other proceedings held under this Section, the party seeking to reverse the Department's decision shall have the burden of proving by a preponderance of evidence that the Department's decision is in error.

b. Illinois proposes the following revised language for 62 IAC 1847.9(g):

(g) Burden of proof. The party seeking to reverse the Department's proposed release of bond shall have the burden of proving by a preponderance of the evidence that the Department's decision is in error.

III. Public Comment Procedures

We are reopening the comment period on the proposed Illinois program amendment to provide you an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials sent to us. Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the program approval criteria of 30 CFR

732.15. If the amendment is approved, it will become part of the Illinois program.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. We may not consider in the final rulemaking or include in the administrative record any comments we receive after the close of the comment period (see **DATES**) or at locations other than the Indianapolis Field Office.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–30546 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–093–FOR]

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Illinois abandoned mine land reclamation plan (Illinois plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois is proposing revisions and additions to the Illinois plan relating to agency reorganization, legal opinion, definitions, project priorities, utilities and other facilities, eligible coal lands and water, eligible non-coal lands and water, project selection, annual grant process, liens, rights of entry, public participation, bidding requirements and conditions, contracts, and contractor responsibility. Illinois intends to revise the Illinois plan to be consistent with the corresponding Federal regulations and SMCRA and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., e.s.t., December 16, 1998. If requested, we will hold a public hearing on the amendment on December 11, 1998. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on December 1, 1998.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Illinois program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204.

Illinois Department of Natural Resources, 524 South Second Street, Springfield, Illinois 62701–1787.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: agilmore@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. As enacted in 1977, lands and waters that were mined or affected by mining and abandoned or left in an inadequate reclamation status before August 3, 1977, and for which there was no continuing reclamation responsibility under State or Federal

law, are eligible for reclamation. The AML Reclamation Act of 1990 (Pub. L. 101–508, Title VI, Subtitle A, Nov. 5, 1990, effective Oct. 1, 1991) amended SMCRA, 30 U.S.C. 1231 *et. seq.*, to provide changes in the eligibility of project sites for AML expenditures. Title IV of SMCRA now provides for reclamation of certain mine sites where the mining occurred after August 3, 1977. These include interim program sites where bond forfeiture proceeds were insufficient for adequate reclamation and sites affected any time between August 4, 1977, and November 5, 1990, for which there were insufficient funds for adequate reclamation due to the insolvency of the bond surety. Title IV provides that a State with an approved AML Plan has the responsibility and primary authority to implement the program.

II. Background on the Illinois Plan

On June 1, 1982, the Secretary of the Interior approved the Illinois plan. You can find background information on the Illinois plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 1, 1982, **Federal Register** (47 FR 23886). You can find later actions concerning the Illinois plan and amendments to the plan at 30 CFR 913.25.

III. Description of the Proposed Amendment

By letter dated October 22, 1998 (Administrative Record No. IL–5022), Illinois sent us an amendment to its plan under SMCRA. Illinois sent the amendment in response to a letter dated September 26, 1994 (Administrative Record No. IL–700–AML), that we sent to Illinois under 30 CFR 884.15(d). The amendment also includes changes made at Illinois' own initiative. Illinois proposes to amend the narrative and policy sections of its plan and its regulations at Title 62 Part 2501 and Title 44 Part 1150 of the Illinois Administrative Code (IAC). Below is a summary of the changes proposed by Illinois. The full text of the amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Changes in the Narrative of the Illinois Abandoned Mine Reclamation Plan.

1. Introduction

Illinois revised this section to describe the history of the Illinois Abandoned Mined Lands Reclamation Program, the creation of the Department of Natural Resources, and the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977.

2. State Reclamation Plan.

a. General. Illinois reorganized its State reclamation plan. Illinois also removed references to the Soil Conservation Service (SCS) and replaced them with references to the Natural Resource Conservation Service (NRCS).

b. Eligible Coal Lands and Water. Illinois added this section in response to 30 CFR 874.12(e). Illinois stated that 62 IAC 2501.10, Eligible Coal Lands and Water, provides the eligibility guidelines that correspond to this citation.

c. Exclusion of Certain Non-coal Reclamation Sites. Illinois added this section in response to 30 CFR 875.16. Illinois states that 62 IAC 2501.11, Eligible Non-coal Lands and Water, provides the eligibility guidelines that correspond to this citation.

d. Authorization by the Governor. Illinois revised this section by stating that P.A. 81–1020, the Abandoned Mined Lands and Water Reclamation Act, as amended, contains the Governor's authorization required by 30 CFR 884.13(a).

e. Legal Opinion. Illinois revised this section by providing a letter from the chief legal officer of the Department of Natural Resources as the legal opinion required by 30 CFR 884.13(h).

f. Project Selection. Illinois revised this section by stating that Sections 2501.7, 2501.8, 2501.10, 2501.11, 2501.13, 2501.16, and 2501.34 of the rules entitled "Abandoned Mined Lands Reclamation" provide the guidelines for project selection required by 30 CFR 884.13(c)(2).

g. Coordination of Reclamation Activities. Illinois revised the existing language in this section by changing the word "semi-annual" to "annual."

h. Reclamation of Private Land. Illinois revised this section to include an explanation of language found at 62 IAC 2501.25(b)(2).

i. Public Participation. Illinois revised the public participation sections for preparation of the original state plan, promulgation of rules and plan amendments, public participation in the reclamation program, compliance with Executive Order 12372, and the list of regional clearinghouses.

j. Administration. Illinois revised the administration section to reflect the reorganization of the Division of Abandoned Mined Lands Reclamation, within the Office of Mines and Minerals, Department of Natural Resources. They also updated the list of other State offices and agencies.

k. Personnel. Illinois revised the description of its administrative and management structure and its personnel staffing policies.

l. Procurement. Illinois removed a paragraph about Section 9.01 of the Illinois Purchasing Act.

m. Reclamation Activity. Illinois revised the amount of acreage in need of reclamation and the amount of acreage funded through the emergency response program. They also added a new paragraph on the reclamation activity entitled "Reclamation of Mine Subsidence."

n. Reports. Illinois added this section as a response to 30 CFR 884.13(f). Illinois states that the Department will submit the OSM–76 Form, or its electronic counterpart, in the Abandoned Mine Land Inventory System at the time of project completion as 30 CFR 884.13(f) requires.

o. Priorities. Illinois added this section in response to 20 ILCS 1920/2.03(4). Illinois states that legislative measures will be taken to ensure compatibility between state statutes and Federal regulations.

B. Changes in 62 IAC 2501

1. Reference Changes

Illinois made the following statutory reference changes throughout 62 IAC 2501: Ill. Rev. Stat. 1991, ch 96½, pars. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1985, ch. 96½, par. 8001.03(a)(7) was changed to 20 ILCS 1920/1.03(5); Ill. Rev. Stat. 1985, ch. 96½, par. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1991, ch. 127, par. 1001–1 *et seq.* was changed to 5 ILCS 100; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.02(a) was changed to 20 ILCS 1920/1.02; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.03(a) was changed to 20 ILCS 1920/2.03(a); Ill. Rev. Stat. 1985, ch. 96½, par. 8003.05 was changed to 20 ILCS 1920/3.05; Ill. Rev. Stat. 1989, ch. 96½, par. 8002.09(b) was changed to 20 ILCS 1920/2.09; Ill. Rev. Stat. 1983, ch. 96½, par. 800.04(d) was changed to 20 ILCS 1920/2.04(d); and Ill. Rev. Stat. 1985, ch. 127, pars. 133b1 *et seq.* was changed to 30 ILCS 605.

Illinois also made the following title changes throughout 62 IAC 2501: all references to the "Council" have been changed to the "Department"; and all references to "Soil Conservation Service" have been changed to "Natural Resource Conservation Service."

2. Section 2501.1, Scope

In this section, Illinois removed the existing language and replaced it with the following:

This Part implements the Abandoned Mined Lands and Water Reclamation Act [20 ILCS 1920], which provides that the Department of Natural Resources shall administer a program for the reclamation of Abandoned Mined Lands ("AML"). This act is complementary to Title IV of the federal Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, P.L. 95–87, as amended).

3. Section 2501.4, Definitions

Illinois removed the definition of "Council," added a definition for "Department," and revised the definition of "Federal Office."

4. Section 2501.7, Objectives and Priorities

Illinois removed the language found at section 2501.7(c)(4). They also added new sections 2501.7(d) and (e) to read as follows:

(d) Generally, projects lower than a priority 2 should not be undertaken until all known higher priority coal projects either have been accomplished, are in the process of being reclaimed, or have been approved for funding by OSM, except in those instances where such lower priority projects may be undertaken in conjunction with a priority 1 or 2 site in accordance with OSM's "Final Guidelines for Reclamation Programs and Projects" (61 FR 68777–68785, December 30, 1996).

(e) When the Department finds in writing that the adverse effects of coal mining practices have an adverse economic impact upon a community, a project shall be designated as a priority 1 or 2 threat to the general welfare, regardless of the nature of the problem conditions.

Finally, at Section 2501.7(f), Illinois changed the date by which the Department may make expenditure obligations on lands mined for substances other than coal. The date was changed from August 14, 1994, to August 31, 1999.

5. Section 2501.8, Utilities and Other Facilities

In this new section, Illinois provides guidance on use of AML funds for water supplies. Section 2501.8(a) allows the Department to use up to 30 percent of the annual AML funds for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. Section 2501.8(b) provides that adverse effects on water supplies that occurred both before and after August 3, 1977, are eligible for AML funds, in spite of the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominantly by mining processes undertaken and abandoned before August 3, 1977. Section 2501.8(c) provides that adverse effects on water supplies that occurred both before and after the dates (and under the criteria) set forth in Section 2501.10(d) are eligible for AML funds, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominately by mining processes undertaken and abandoned before those dates. Finally, section 2501.8(d) provides that enhancement of facilities or utilities includes upgrading to meet any local, State, or Federal public health or safety requirement. Enhancement does not include service area expansion not necessary to address a specific abandoned mine land problem.

6. Section 2501.10, Eligible Coal Lands and Water

In this section, Illinois removed section 2501.10(b) and redesignated section 2501.10(a) as Section 2501.10. Sections 2501.10 (a)(1) through (3) were redesignated as sections 2501.10(a) through (c). Illinois added new sections 2501.10(d) through (h) to read as follows:

(d) Notwithstanding subsections (a), (b) and (c) of this section, coal lands and waters damaged and abandoned after August 3, 1997 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site, or

(B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and

(2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.

(e) The Department may expend funds available under subsections 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and abatement of any site eligible under Subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department determines that the reclamation priority of the site is the same or more urgent that the reclamation priority for the lands and water eligible pursuant to subsections (a), (b) or (c) above that quality as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(a)).

(f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mine Reclamation Federal Trust Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Federal Trust Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.

(h) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.

7. Section 2501.11, Eligible Non-Coal Lands and Water

Illinois added this new section to provide reclamation eligibility guidelines for non-coal lands and water. Non-coal lands and water are eligible for reclamation activities if they were mined or affected by mining processes; they were mined before August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; the operator, permittee, or agent of the permittee has no continuing responsibility for reclamation under statutes of the State or Federal Government due to bond forfeiture, and the forfeited bond is insufficient to pay the total cost of reclamation; the Governor agrees that reclamation is necessary and submits a letter of request to the Federal Office; it is necessary for the protection of the public health and safety, general welfare and property; and the lands and water are not designated for remedial action under the

Uranium Mill Tailings Radiation Control Act of 1978 or have been listed for remedial action under the Comprehensive Response Compensation and Liability Act of 1980.

8. Section 2501.13, Preliminary Project Selection

Illinois revised the language in section 2501.13(a). Currently, this section requires the Department to select reclamation projects from an abandoned mine site database that contains all known abandoned mine sites in the State affected prior to August 3, 1977 and which contain problem conditions. Illinois revised section 2501.13(a) to require the Department to select reclamation projects from a database that contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11.

In section 2501.13(b), Illinois revised the list of problem conditions the Department is to use to determine which sites are in the most need of reclamation. New section 2501.13(b)(9) provides that flooding of roads or improved property caused by sedimentation from AML sites is a problem condition. New section 2501.13(b)(10) provides that hazardous recreational water bodies is a problem condition. Existing sections 2501.13(b)(9) and (10) were redesignated as sections 2501.13(b)(11) and (12). Finally, Illinois added new section 2501.13(b)(13) to provide that coal refuse material or spoilbanks adversely affecting lands or water resources is a problem condition.

Illinois made minor wording changes in section 2501.13(c)(3).

9. Section 2501.16, Final Selection and Project Deferment

Illinois revised section 2501.16(a) to require the Department to select from those abandoned mine sites identified under section 2501.13 projects for reclamation. The Department must base its selection upon the following criteria and consideration: satisfactory funding levels to complete reclamation; a complete application from the owner(s) of property that contains the significant portion of problem conditions on a site; and evidence that a timely Consent for Entry can be obtained from the owner(s) of the project site. Finally, Illinois removed section 2501.16(c).

10. Section 2501.19, Annual Grant Process

Illinois removed the language found in this section and replaced it with language requiring the Department to submit an annual grant application to OSM in accordance with the requirements of 30 CFR 886 to cover allowable costs of the AML program. These allowable costs include the actual costs of construction, operation and maintenance, planning and engineering, construction inspection, other necessary administrative costs, and up to 90 percent of the costs of acquisition of land. This section also requires the Department to provide copies of the annual AML grant application to the public upon written request to the Department. Finally, the Department must circulate notices of annual AML grant applications through the Illinois State Library System and the Illinois State Clearinghouse.

11. Section 2501.22, Reclamation Activities

Illinois revised this section to allow the Department to enter into cooperative agreements, as necessary and appropriate, with any person or governmental entity to reclaim abandoned land. The cooperative agreements may concern the furnishing of services, plans, layouts, materials, or any incidental services needed to reclaim the land. All parties that enter into a cooperative agreement must agree to comply with all applicable requirements of State and Federal law.

12. Section 2501.25, Reclamation on Private Lands

Illinois added new language at 2501.25(b)(3) to allow the Department to waive a lien if it finds, before construction, that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit. In section 2501.25(b)(5), Illinois revised the existing language to allow landowners to file petitions for a hearing to determine the increase in market value of reclaimed land. The landowners are to file the petitions with the Department through the Director of the Office of Mines and Minerals. At section 2501.25(c)(2), Illinois added language to provide that a reclamation lien created under Section 2.09 of the State Act will continue to exist until satisfied, subject only to the 40-year limitation period and the requirements of Sections 13–118 through 13–121 of the Code of Civil Procedure [735 ILCS 5/13–118 *et seq.*]. Finally, Illinois added new section 2501.25(c)(3) to allow the Department to request appropriate foreclosure action by the Attorney General to satisfy the lien if the reclaimed property is transferred for an actual consideration in excess of the fair market value of the property after reclamation, and the lien is not satisfied at the time of transfer.

13. Section 2501.28, Rights of Entry

Illinois made minor word changes in section 2501.28(a).

14. Section 2501.40, Public Participation

Illinois added this new section to provide for public participation in the AML program and projects. Section 2501.40(a) provides that any interested party may submit information and comments to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the AML Division at any time. Section 2501.40(b) requires that the Department handle verbal and written requests for information as quickly as possible, and that requests made under the Freedom of Information Act (5 ILCS 140) be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources. Section 2501.40(c) requires the Department to have available, upon request, copies of the Illinois State Reclamation Plan for Abandoned Mined Lands, Office of Mines and Minerals Annual and Bi-Annual Reports, specific project reports, and brochures and program materials. However, the availability of such reports, brochures and program materials can not be deemed a waiver of the Department's right to charge fees for its actual cost of reproducing and certifying public records requests under the Freedom of Information Act. Further, the Department may charge fees for its actual cost for providing multiple copies of free publications. Finally, section 2501.40(d) was added to read as follows:

> (d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

C. Changes in 44 IAC 1150

1. Reference Changes

Illinois made the following statutory reference changes throughout 44 IAC 1150: Ill. Rev. Stat. 1985, ch. 96½, pars. 8001.01 *et seq.* and Ill. Rev. Stat. 1991, ch.127, par. 1005–75 were changed to

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20 ILCS 1920 and 5 ILCS 100/5–75, respectively.

Illinois made the following title changes throughout 44 IAC 1150: all references to the "Abandoned Mined Lands Reclamation Council" and "Council" have been changed to the "Illinois Department of Natural Resources" or "Department'; all references to "him" have been revised to "him/her" or some other gender neutral reference; and all references to the "Executive Director" have been changed to the "Director of the Office of Mines and Mineral," "Director of the Department," or "Director," as appropriate.

2. Section 1150.10, Purpose

Illinois revised the language in this section to read as follows:

> The Abandoned Mined Lands and Water Reclamation Act ("Act") [20 ILCS 1920] provides that the Illinois Department of Natural Resources shall administer a program for the reclamation of abandoned lands and waters in accordance with the Act. This Part describes standard procedures for the Department's Office of Mines and Minerals, Division of Abandoned Mined Lands Reclamation, for advertising, bidding and awarding contracts for construction on abandoned mined lands ("AML") reclamation projects. This Part also prescribes standard procedures for obtaining the necessary outside professional services as needed in the administration of the AML program. The purpose is to prescribe procedures which will implement the AML program in a way which satisfies the requirements of the various State of Illinois purchasing laws, as well as federal grant requirements for funding pursuant to the Surface Mining Control and Reclamation Act of 1977, as amended (30 USC 1201 *et seq.*).

3. Section 1150.20, Scope

Illinois removed the first sentence in this section and made minor word changes.

4. Section 1150.30, Applicability

Illinois removed the existing language in this section, and replaced it with applicability guidelines for this part and its subparts. Section 1150.30(a) states that this part applies to all contracts by the Division of Abandoned Mined Lands Reclamation for reclamation construction and professional services contracts. Section 1150.30(b) states that subpart B applies to the advertising, bidding and awarding of contracts for construction on planned reclamation projects that have been designed in the normal course of the AML program. Section 1150.30(c) states that subpart C applies to construction contracts that are needed to minimize emergency conditions which involve public health and safety danger and cannot wait for normal program abatement procedures. Finally, section 1150.30(d) states that subpart D applies to the selection of Consultants to provide professional services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selections Act [30 ILCS 535].

5. Section 1150.100, Definition of Terms

Illinois removed the following definitions: "Council" and "Executive Director."

Illinois added the following definitions: "AML"; "AVS"; "bid"; "Department"; "OSM"; "subconsultant"; and "subcontractor."

Illinois revised the following definitions: "advertisement"; "award"; "Contract"; "contract bond"; "Department of Transportation"; "equipment"; "plans"; "specifications"; and "proposal."

6. Section 1150.200, Bidding Requirements and Conditions

Illinois revised section 1150.200(a)(1) to require the Department of Transportation to prequalify each bidder as provided in 44 Ill. Adm. Code 650. In section 1150.200(a)(4), Illinois revised the language to require the Department to send a written Notice of its action to the Contractor. Minor word changes were made at sections 1150.200(a)(4)(B), 1150.200(a)(4)(H), and 1150.200(a)(4)(K). At section 1150.200(a)(4)(M), a recommendation from OSM that the contractor is not eligible for an AML contract under 30 CFR 874.16 is added to the list of grounds for contractor suspension.

Illinois revised section 1150.200(a)(5) to read as follows:

> In all actions suspending a contractor's eligibility to bid on reclamation project contracts, the Contractor may protest the Department's action by submitting to the Director of the Department a written statement of objection setting forth the facts and circumstances of the action which are alleged to be legally or otherwise objectionable. The written statement of objection must be received by the Director within 14 calendar days of the objectionable action. The Director shall provide the Contractor with a hearing in accordance with procedures set forth in 17 Ill. Adm. Code 2530. Notwithstanding the provisions of Sections 2530.320—2530.350 concerning initiation of proceedings by the Department, the Contractor shall initiate the proceedings.

In section 1150.200(b)(1), Illinois revised the language to require the Department to publish notice to bidders and advertisement for bids in the Illinois Procurement Bulletin once, no less than 14 days before the bid opening. Section 1150.200(b)(2) was revised to provide that the Department of Transportation will publish the Illinois Procurement Bulletin. Finally, at section 1150.200(b)(3), Illinois made minor wording changes.

In section 1150.200(c)(1), Illinois removed the existing language and replaced it with language requiring the Department of Transportation to furnish a proposal form to prequalified, prospective bidders, stating the location and description of the contemplated construction, showing the estimate of the various quantities and kinds of work to be performed and/or materials to be furnished, and having a schedule of items for which unit bid prices are invited. The proposal form also will state the time in which the work must be completed, the amount of the proposal guaranty, labor requirements, and the date, time and place of the opening of proposals. Finally, the form will include Special Provisions and requirements that adapt the Standard Specifications to AML projects and provide for project specific conditions and requirements.

Illinois revised section 1150.200(g)(1) to read as follows:

> The prospective bidder shall, before submitting a bid, carefully examine the provisions of the contract. The bidder shall inspect in detail the site of the proposed work, investigate and become familiar with all the local conditions affecting the contract and fully acquaint itself with the detailed requirements of construction. Submissions of a bid shall be a conclusive assurance and warranty that the bidder has made these examinations and that the bidder understands all requirements for the performance of the work. If his/her bid is accepted, the bidder will be responsible for all errors in the proposal resulting from his/her failure or neglect to comply with this subsection (g)(1). The Department will, in no case, be responsible for any costs, expenses, losses, or change in anticipated profits resulting from such failure or neglect of the bidder to make these examinations.

Illinois added a new section 1150.200(g)(2) which prohibits bidders from taking advantage of any error or omission in the proposal and advertised contract. If bidders want an explanation or interpretation of the plans, specifications or any contract documents, they may submit requests in writing to the Supervisor of Project Management. The requests must allow sufficient time for the Department to respond in writing to all prospective bidders before submission of their bids. All responses to bidder requests will be supplied to all prospective bidders in the form determined by the Department if the Department determines that the information would aid competition. Oral explanations, interpretations, or instructions given before the submission

of bids unless at a pre-bid conference will not be binding on the Department.

Illinois made minor word changes in section 1150.200(h) and 1150.200(i)(1). New section 1150.200(i)(2) was added to require bidders to submit separate proposals on each individual contract if a combination bid is submitted on two or more proposals. If separate bids are not submitted, the Department will not consider the combination bid. If the bidder wants to submit a combination bid, the bidder must state the amount of the combination bid for the entire combination in the place provided in the proposal form. Illinois added new section 1150.200(i)(3) to read as follows:

(3) If a combination bid is submitted on any stipulated combination, and errors are found to exist in computing the gross sum bid on any one or more of the individual proposals, corrections shall be made, by the Department and the amount of the combination bid shall be corrected so that it will be in the same proportion to the sum of the corrected gross sum bid as the combination bid submitted was to the sum bid submitted.

The following provisions shall govern combination bidding:

(A) A combination bid which is submitted for 2 or more proposal and awarded on that basis shall have the bid prorated against each proposal in proportion to the bid submitted for each proposal.

(B) Separate contracts shall be executed for each individual proposal included in the combination.

(C) The completion date for all contracts awarded on a combination bid shall be the latest completion date designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts. The working days for all contracts awarded on a combination bid shall be the largest number of working days designated in any one or more of the contracts included in the combination, unless otherwise provided in the contracts.

(D) An extension of time for any one or more contracts awarded on a combination bid shall automatically extend all contracts awarded on the combination.

(E) In the event the Contractor fails to complete any one or all of the contracts on the combination bid by the contract completion date plus any authorized extension, or the contract working days plus any authorized extension, the liquidated damages shall be determined from the schedule of deductions for each day of overrun in contract time as provided in the contract, based on the combination bid total, and shall be computed on the combination and prorated against the 2 or more individual contracts based on the dollar value of each.

(F) The plans and Special Provisions for each separate contract shall be construed separately for all requirements, except as described in subsections (a) through (e) above.

Finally, at section 1150.200(m), Illinois removed language prohibiting a bidder from resubmitting a withdrawn proposal at the same letting.

7. Section 1150.300, Award and Execution of Contract

At section 1150.300(a)(2), Illinois revised the language to allow the Department to reject any or all proposals, to waive technicalities, or to advertise for new proposals if the Department believes that it will serve the best interests of the Department.

Illinois revised section 1150.300(b)(1) to require the Department to award the contract within 45 days after the opening of proposals to the lowest responsible and qualified bidder. The Department must notify the successful bidder that his/her bid has been accepted and, subject to sections 1150.300(b) (2) and (3), he/she will be the Contractor. New section 1150.300(b)(2) states that the State is not bound by a contract until the Department executes it. The Department may cancel the award any time before execution in order to protect the public interest and integrity of the bidding process or for any reason if, in the judgement of the Department, the best interest of the Department will be served. Finally, section 1150.300(b)(3) was revised to allow a bidder to withdraw his/her bid 45 days after the opening of proposals, or the time specified on the Notice to Bidders.

Illinois added a new section 1150.300(c), entitled "Notice of Contract Award," to require the Department to publish each and every contract that is let or awarded in the next available Illinois Procurement Bulletin.

Illinois revised section 1150.300(d)(1) require the Department to return the guaranty checks promptly. Section 1150.300(d)(2) was revised to allow the two lowest bidders to substitute bid bonds for their guaranty checks after a period of three working days after the date of opening proposals has elapsed.

Illinois added new section 1150.300(e), entitled "Applicant Violator System" to read as follows:

(1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

(2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to the bidder an Ownership/Control ("O/C") information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

(3) All subcontractors who will receive 10% or more of the total contract funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.

(4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.

(5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of a subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.

(6) Any person denied an AML contract or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not invoive exercise of independent judgement or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.

(7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.

(8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM and the Lexington AVS Office, to predetermine eligibility for AML contracts.

Illinois removed the existing language at section 1150.300(f) and replaced it with language requiring the Contractor to furnish a performance and payment bond with good and sufficient sureties in the full amount of the contract as the penal sum to the Department. The surety shall be acceptable to the Department, shall waive notice of any changes and extensions of time, and shall submit its bond on the form furnished by the Department.

8. Section 1150.400, Contracts Involving Expenditures of $30,000.00 or Less

Illinois revised this section to allow the Department to waive the prequalification and bidding requirements of Section 1150.300 when the reclamation project expenditures are $30,000.00 or less.

9. Section 1150.500, Emergency Contracting

In section 1150.500(b)(1), Illinois made minor word changes. This section requires the Department to maintain a list of prequalified contractors for the type of construction work encountered in AML Emergency reclamation projects. Illinois proposes to add language requiring the Department to include on this list those contractors who have demonstrated responsibility and competence through past performance on AML Emergency reclamation projects. Finally, Illinois removed the word "prequalified" from the remaining text in this section and replaced it with the word "listed."

10. Section 1150.700, Applicability

Illinois revised this section to state that this subpart applies to all architectural, engineering, or land surveying professional services provided to the Department under a contract. This section does not apply to those services covered by the Architectural, Engineering, and Land Surveying Qualifications Based Selections Act [30 ILCS 535] and related services that may be performed by persons not required to be licensed under the Illinois Architecture Practice Act of 1989 [225 ILCS 305]; the Professional Engineering Practice Act of 1989 [225 ILCS 325]; the Structural Engineering Licensing Act of 1989 [225 ILCS 340]; or the Illinois Professional Land Surveyor Act of 1989 [225 ILCS 330].

11. Section 1150.800, Prequalification

Illinois removed the existing language in this section and replaced it with language requiring the Department of Transportation to prequalify all architectural, engineering, or land surveying consultants wanting to provide services to the Department of Natural Resources relating to the AML program.

12. Section 1150.900, Subcontracting

Illinois removed the existing language in this section and replaced it with the following:

(a) Professional Services Consultants may subcontract no more than 50 percent of the project work.

(b) The Professional Services contract shall include the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the contract [30 ILCS 505/9.04].

(c) If at any time a Professional Services Consultant who had not intended to utilize the services of a subconsultant, decides to utilize a subconsultant, the Department and the Consultant shall file an amendment to the original contract with the Comptroller stating the names and addresses of all subconsultants and the anticipated amount of money which they will receive pursuant to the original contract [30 ILCS 505/9.04].

13. Section 1150.1000, Requests for Proposals

In this section, Illinois removed the existing language and replaced it with language requiring a selection committee, consisting of the Director of the Office of Mines and Mineral, the Manager of the AML Reclamation Division, and the Supervisor of the Project Management Section, or their designees, to select firms to provide architectural, engineering, and land surveying services on AML reclamation projects. When evaluating the proposals, the committee must take into consideration the following qualification factors: the ability of professional personnel; the past record and experience on AML projects and projects with similar professional disciplinary requirements; the firm's performance data on file; the willingness of the firm to meet time requirements; the location of the Consultant's office in relation to the project site and the Department's AML office that will be managing the project; the workload of the consultant; and any other qualifications based on factors that the Department may determine in writing are applicable on a project specific basis. The committee must also assign knowledgeable technical staff to provide preliminary technical review, as necessary and appropriate, to assure that all project considerations are taken into account. Formal and informal submissions of verbal and written estimates of costs or proposals in terms of dollars, hours required, percentage of construction cost, or any other measure of compensation may not be solicited before the committee selects a firm for negotiation. Finally, the committee can conduct discussions and require public presentations by the Consultants, deemed to be the most qualified, regarding their qualifications, approach to the project, and ability to furnish the required services.

14. Section 1150.1200, Selection Procedure

Illinois removed the existing language in this section, and replaced it with guidelines for selecting a consultant to provide architectural, engineering, and land surveying services on AML reclamation projects. Section 1150.1200(a) requires the committee to select, on the basis of evaluations, discussions and any presentations, at least three qualified Consultants to provide services for the project. The Consultants must be ranked in order of qualifications, and the committee must contact the Consultant ranked most preferred to negotiate a contract for fair and reasonable compensation. Section 1150.1200(b) provides that if less than three Consultants submit letters of interest and are determined to be qualified, the Department may proceed to contract negotiation as described in section 1150.1200(a). Section 1150.1200(c) states that the decision of the Department shall be final and binding. Finally, section 1150.1200(d) requires the Department to publish each and every contract awarded by the Department in the next available Illinois Procurement Bulletin.

15. Section 1150.1300, Contract Negotiations

The existing language in this section was removed and replaced with the following:

(a) The Department shall prepare a written description of the scope of the proposed services, entitled "Scope of Work," to be used as a basis for negotiations and shall negotiate a contract with the highest ranked qualified Consultant at a compensation that the Department determines in writing to be fair and reasonable. In making this decision, the Department shall take into account the estimated value, scope, complexity, and professional nature of the services to be rendered.

(b) If the Department is unable to negotiate a satisfactory contract with the Consultant that is most preferred, negotiations with that Consultant will be terminated. The Department shall then begin negotiations with the next ranked Consultant. If the Department is unable to negotiate a satisfactory contract with that Consultant, negotiations with that Consultant shall be terminated. The Department shall then begin negotiations with the next ranked Consultant.

(c) If the Department is unable to negotiate a satisfactory contract with any of the selected Consultants, the Department shall re-evaluate the architectural, engineering, or land surveying services requested, including the estimated value, scope, complexity, and fee requirements. The Department shall then compile a second list of not less than three qualified Consultants and proceed in accordance with the provisions of the Subpart.

(d) A Consultant negotiating a contract with the Department shall negotiate any approved subcontracts for architectural, engineering, and land surveying services at compensation that the Consultant determines in writing to be fair and reasonable based upon a written description of the proposed services of the subconsultant.

16. Section 1150.1325, Exemptions

Illinois added this new section to provide that the provisions of Sections 1150.1000, 1150.1100, and 1150.1200 of this Part do not apply to architectural, engineering, and land surveying contracts of less than $25,000. The provisions also do not apply to the procurement of these services by the Department when the Department determines in writing that it is in the best interests of the State to proceed with the immediate selection of a firm, or in emergencies when immediate services are necessary to protect the public health, safety and general welfare from the adverse effects of mining.

17. Section 1150.1350, Firm Performance Evaluations

Illinois added this new section to require the Department to evaluate the performance of each consultant upon completion of a contract. The evaluation must be made available to the Consultant when he/she requests it. The Consultant may respond in writing to the evaluation, and the evaluation and response must be retained solely by the State. The evaluation and response cannot be made available to any other person or firm and is exempt from disclosure under the Freedom of Information Act [54 ILCS 140].

IV. Public Comment Procedures

Under the provisions of 30 CFR 884.15(a), we are requesting comments on whether the amendment satisfies the applicable State reclamation plan approval criteria of 30 CFR 884.14. If we approve the amendment, it will become part of the Illinois plan.

Written Comments

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on December 1, 1998. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have spoken.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

V. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

This rule does not require an environmental impact statement since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–30545 Filed 11–13–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 181

[CGD 92–065]

RIN 2115–AE37

Hull Identification Numbers for Recreational Boats

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: For several years the Coast Guard has been working on a regulatory project to expand the existing 12-character Hull Identification Number (HIN) required for all recreational boats manufactured in or imported into the United States. Many State law enforcement personnel, bankers, insurers, and theft investigators favor a longer HIN containing vessel-specific characters and a check digit. They believe it would deter both boat theft and the alteration of HIN's for fraudulent purposes. Therefore, the purpose of this notice is to solicit comments from interested people, groups, and businesses about whether the expected benefits to society of an expanded HIN format outweigh the paperwork burdens on boat manufacturers.

DATES: Comments must reach the Coast Guard on or before February 16, 1999.

ADDRESSES: You may mail comments to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 92–065), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or deliver them to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alston Colihan, Office of Boating Safety, Recreational Boating Product Assurance Division, 202–267–0981. A copy of this notice may be obtained by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or may be found on the Internet at the Office of Boating Safety Web Site at URL address *www.uscgboating.org*.

SUPPLEMENTARY INFORMATION:

Request for Comments

Persons submitting comments should include their names and addresses, identify this notice (CGC 92–065) and the specific area of concern to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want us to acknowledge receipt of your comments, please enclose a stamped, self-addressed postcard or envelope.

Background and Purpose

The Secretary of Transportation is required to establish the Vessel Identification System (VIS) (46 U.S.C. chapters 125, 131, and 313) for use by the public and law enforcement officials. The Secretary has delegated to the Commandment, U.S. Coast Guard, the authority to implement VIS. VIS will provide a nationwide pool of vessel and vessel owner information that will help in identification and recovery of stolen vessels and deter vessel theft.

Regulatory History

The Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** (59 FR 23651) on May 6, 1994, to expand the existing 12-character HIN to include certain vessel-specific information similar to the Vehicle Identification Number (VIN) on an automobile. A check digit in the expanded HIN would have made alteration of an HIN more difficult, thereby helping to prevent fraud in the sale of vessels. The comment period closed on September 9, 1994.

Various parties commenting on the proposal opposed the 19-character HIN and one comment from an association sought an extension of the comment period. Therefore, on November 9, 1994, a notice announcing a workshop and the reopening of the comment period was published in the **Federal Register** (59 FR 55823). The purpose of the workshop was to receive oral comments on the proposed 19-character HIN and explore various alternatives. Several organizations, including the International Organization for Standardization (ISO), the National Association of State Boating Law Administrators, the National Marine Manufacturers Association, the American Boat and yacht Council, the National Association of Marine Investigators, and the North American Paddlesports Association were specifically invited to give oral presentations. The comment period for the NPRM was extended until January 9, 1995.

The major obstacle to the proposed 19-character HIN is the increased information collection burdens, particularly on small entities and the builders of high-volume, low cost boats, such as canoes, kayaks, and inflatables.

The Coast Guard received 114 comments on the proposal, the majority of which were opposed to a 19-character HIN format or recommended a different format. None of the comments from State, insurance, theft investigation, or law enforcement organizations indicated that they would support exceptions to the proposed requirements for small entities or builders of high-volume, lost-cost boats. Preliminary estimates of the time required to manually calculate the check digit for a single boat is 15 minutes.

Several comments, including one from the National Marine Manufacturers Association, which represents approximately 200 of the larger boat manufacturers, indicated that the International Standards Organization had finalized a HIN standard consisting of the existing Coast Guard 12-character HIN format preceded by a 2-character country code and a hyphen. The comments indicated that manufacturers would be using the ISO HIN standard beginning with the 1996 model year. If the Coast Guard adopted a different HIN format, manufacturers would have to place two different HIN's in the same location, creating worldwide documentation and importation problems for all involved.

Federal agencies with regulatory programs are subject to the Paperwork Reduction Act, which is enforced by the Office of Management and Budget (OMB). The intent of the Act is to ensure that the Federal Government imposes only the minimum burden on the public in collecting information and maintaining records and that the information collected or maintained is necessary and useful. Regulations requiring manufacturers to display labels, such as HIN's, are examples of collection-of-information requirements.

During the comment period, OMB contacted the Coast Guard and indicated that it had received many negative comments on the project and that OMB would be taking a very close look at the proposed collection of information requirements. None of the comments in favor of the proposal for a 19-character HIN were willing to allow exceptions for builders of high volume, low-cost boats. Therefore, because of Coast Guard concerns about information-collection burdens and the OMB comments, the

Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) in the **Federal Register** on February 21, 1997 (62 FR 7971). The Coast Guard indicated that it would align the HIN with the recently adopted ISO 14-character HIN standard. The comment period closed May 22, 1997.

The Coast Guard received 31 comments nearly all of which were opposed to the 14-character ISO HIN format. Some of the comments indicated that, if the Coast Guard were to adopt the ISO format, instead of a 17- or 19-character HIN format, some States might refuse to participate in the development of the Vessel Identification System (VIS).

Discussion

There are two opposing views about how to expand the HIN format: (1) the States, bankers, insurers, and theft investigators favor an expanded format with vessel-specific characters and a check digit to deter both boat theft and the alteration of HIN's for fraudulent purposes; and (2) boat builders favor the recently adopted 14-character ISO HIN format. The Coast Guard is developing the Vessel Identification System (VIS), which will provide a nationwide pool of vessel and vessel owner information that will help in identifying and recovering of stolen vessels and deterring vessel theft. If just a few States with large recreational vessel populations refuse to participate in VIS, the usefulness of the system could be seriously jeopardized. However, the Coast Guard lacks detailed information about the anticipated costs and benefits of the HIN format favored by the States, bankers, insurers, and theft investigators. Also, we will believe that, if an expanded HIN format consisting of vessel-specific characters and a check digit is ever adopted, the Coast Guard should be allowed to exempt small manufacturers and manufacturers of high-volume, low-cost boats to minimize costs and information collection burdens. Therefore, the Coast Guard encourages you to comment on (1) the expected benefits of an expanded Hull Identification Number with vessel-specific characters and a check digit; (2) the manner in which the Coast Guard should exempt small entities and the builders of high-volume, low cost boats, such as canoes, kayaks, and inflatables; and (3) the estimated burdens and costs to boat manufacturers if the HIN regulations were revised to require vessel-specific characters and a check digit. We particularly need your help in answering the following questions:

1. *Expanded Hull Identification Number.* What are the expected benefits if the HIN regulations include vessel specific characters delineating a vessel's length, hull material, and means of propulsion and a check digit to help detect fraudulent alterations of HIN's? What are the estimated numbers of thefts that would be prevented? What are the estimated numbers of lost or stolen boats that would be recovered? What is the estimated value of insurance company losses that would be prevented? What are the estimated numbers of fraud attempts that would be prevented? What are the estimated reductions in investigatory expenditures?

1. *Small entities.* The Coast Guard believes that, if it returns to a proposal for regulations to require an HIN consisting of additional vessel-specific characters and a check digit, then we have to be able to exempt some builders to minimize costs and information collection burdens on small manufacturers and manufacturers of high-volume, low-cost boats. Should the Coast Guard consider exempting all builders of non-powered boats? Should the Coast Guard consider exempting manufacturers of boats that sell for less than a certain amount? What alternatives are available that would reduce adverse impacts on small entities and builders of high-volume, low-cost boats?

3. *Costs and burdens.* Preliminary estimates of the time required to manually calculate the check digit for a single boat is 15 minutes. Is this estimate valid? How does this estimate translate into annual costs for manufacturers of various types of recreational boats?

Additional information about the benefits of an expanded HIN consisting of vessel-specific characters and a check digit and possible exceptions for small entities and builders of high-volume, low-cost boats is needed if the Coast Guard is to reconsider an expanded HIN.

Dated: November 5, 1998.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–30597 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 97–213, FCC 98–282]

Communications Assistance for Law Enforcement Act

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Further Notice of Proposed Rulemaking* (Further NPRM) addresses alleged deficiencies in industry-developed technical requirements for wireline, cellular and broadband Personal Communications Services (PCS) carriers to comply with the assistance capability requirements prescribed by the Communications Assistance for Law Enforcement Act of 1994 (CALEA, or the Act). The Act authorizes the Commission to establish, by rule, technical requirements or standards that meet the assistance capability requirements, if industry or standards setting organizations have failed to set such standards, or if any party believes that an industry standard is deficient.

DATES: Comments are due December 14, 1998; reply comments are due January 13, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking*, CC Docket 97–213, FCC 98–282, adopted October 22, 1998, and released November 5, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–C404), 445 Twelfth Street, S.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of the Further Notice of Proposed Rulemaking

1. The Further NPRM addresses alleged deficiencies in industry-developed technical requirements for wireline, cellular, and broadband PCS carriers to comply with the assistance capability requirements prescribed by CALEA. Industry developed these technical requirements in an attempt to satisfy the "safe harbor" provision of the Act, which permits telecommunications carriers to be found in compliance with

CALEA if carriers comply with publicly available technical requirements adopted by an industry association or standard-setting organization, or by the Commission. The Act authorizes the Commission to establish, by rule, technical requirements or standards that meet the assistance capability requirements, if industry or standards-setting organizations have failed to set such standards, or if any party believes that an industry standard is deficient. The Commission has received four petitions for rulemaking asking us to establish such requirements or standards pursuant to our statutory authority under the Act. In addition, in response to a *Public Notice* the Commission's Wireless Telecommunications Bureau and Office of Engineering and Technology released on April 20, 1998, we have received numerous comments disputing whether certain specific technical requirements are necessary to comply with CALEA.

2. In light of petitioners' claims that the interim standard adopted by industry is deficient with regard to particular technical requirements it currently includes, this Further NPRM analyzes those specific requirements and reaches tentative conclusions regarding which of them meet the definitions of CALEA Section 103. The Further NPRM also seeks comment on a range of issues associated with the Commission's obligations under the Act. In addition, we seek comment on what role, if any, we can or should play in assisting telecommunications carriers other than wireline, cellular, and broadband PCS carriers to set standards for, or to achieve compliance with, CALEA's requirements.

3. Since 1970, telecommunications carriers have been required to cooperate with law enforcement agencies in conducting electronic surveillance. Recent advances in technology, however, most notably the introduction of digital transmission and processing techniques and the proliferation of wireless services, have hampered the law enforcement community's ability to conduct lawfully authorized surveillance. CALEA was enacted in 1994 to address such problems, and to ensure that law enforcement surveillance efforts would not be unintentionally thwarted by the development and deployment of new telecommunications technologies and services. At the same time, however, Congress recognized the need to protect privacy interests within the context of court-authorized electronic surveillance. In defining the terms and requirements of the Act, therefore, Congress sought to balance three important policies: "(1) to preserve a narrowly focused capability for law enforcement agencies to carry out properly authorized intercepts; (2) to protect privacy in the face of increasingly powerful and personally revealing technologies; and (3) to avoid impeding the development of new communications services and technologies." Based on these considerations, Congress envisioned that the requirements of CALEA would serve as "both a floor and a ceiling," defining the minimum capabilities that should be provided to law enforcement, while also establishing limits as to what can be provided.

4. CALEA directs carriers to ensure that their equipment, facilities, and services are capable of meeting certain requirements to assist law enforcement in carrying out lawfully authorized electronic surveillance. To accomplish this, the Act sets out general assistance capability requirements that telecommunications carriers must meet, and defines the obligations of the industry, the law enforcement community, and the Commission in developing the technical requirements or standards necessary to meet these requirements. To date, industry and the law enforcement community, although they have reached agreement on many issues, disagree on whether certain specific features and/or technical requirements must be provided by carriers to comply with the Act's assistance capability requirements. Consequently, as authorized by the Act, representatives of industry, law enforcement, and the privacy community have petitioned the Commission to establish such technical requirements or standards. In this Further NPRM, therefore, we consider whether certain specific technical requirements are necessary for wireline, cellular and broadband PCS carriers to meet CALEA's assistance capability requirements. Below we discuss the relevant provisions of the Act.

CALEA Assistance Capability Requirements

5. The basic requirements for meeting CALEA's mandates are contained in Section 103, which establishes four general "assistance capability requirements" that carriers must meet to achieve compliance. Specifically, Section 103 requires a telecommunications carrier to:

(a) [E]nsure that its equipment, facilities, or services that provide a customer or subscriber with the ability to originate, terminate, or direct communications are capable of—

(1) Expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber of such carrier concurrently with their transmission to or from the subscriber's equipment, facility, or service, or at such later time as may be acceptable to the government;

(2) Expeditiously isolating and enabling the government, pursuant to a court order or other lawful authorization, to access call-identifying information that is reasonably available to the carrier—

(A) Before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and

(B) In a manner that allows it to be associated with the communication to which it pertains,

except that, with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), such call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number);

(3) Delivering intercepted communications and call-identifying information to the government, pursuant to a court order or other lawful authorization, in a format such that they may be transmitted by means of equipment, facilities, or services procured by the government to a location other than the premises of the carrier; and

(4) Facilitating authorized communications interceptions and access to call-identifying information unobtrusively and with a minimum of interference with any subscriber's telecommunications service and in a manner that protects—

(A) The privacy and security of communications and call-identifying information not authorized to be intercepted; and

(B) Information regarding the government's interception of communications and access to call-identifying information.

6. CALEA does not specify how these four assistance capability requirements are to be met. Rather, it states only that telecommunications carriers, in consultation with manufacturers and telecommunications support service providers, must ensure that the carriers' equipment, facilities, and services comply with the requirements. Manufacturers and telecommunications support service providers are subject to a "cooperation" requirement, i.e., they are required to make available to carriers the features and modifications necessary for carriers to comply with the requirements "on a reasonably timely basis and at a reasonable charge." Additionally, the Attorney General of the United States must consult with appropriate industry associations and

standards-setting organizations; with representatives of users of telecommunications equipment, facilities, and services; and with state utility commissions "to ensure the efficient and industry-wide implementation of the assistance capability requirements."

7. Section 107(a)(2) of CALEA contains a "safe harbor" provision, stating that "[a] telecommunications carrier shall be found to be in compliance with the assistance capability requirements under Section 103, and a manufacturer of telecommunications transmission or switching equipment or a provider of telecommunications support services shall be found to be in compliance with section 106, if the carrier, manufacturer, or support service provider is in compliance with publicly available technical requirements or standards adopted by an industry association or standard-setting organization, or by the Commission under subsection (b), to meet the requirements of Section 103." Thus, the Act envisions that an industry association or a standards-setting organization would set applicable standards. Individual carriers, however, are free to choose any technical solution that meets the assistance capability requirements of CALEA, whether based on an industry standard or not. Carriers, therefore, have some degree of flexibility in deciding how they will comply with CALEA's Section 103 requirements. CALEA specifically states, however, that the absence of industry standards does not relieve a carrier of its obligation to comply with the assistance capability requirements.

8. In addition to the safe harbor provision, section 107 also defines certain Commission responsibilities under the Act. Specifically, upon petition, section 107(b) authorizes the Commission to establish, by rule, technical requirements or standards necessary for implementing Section 103. Section 107(b) provides that a petition may be filed with the Commission (1) if industry associations or standard-setting organizations fail to issue technical requirements or standards, or (2) if a government agency or any other person believes that requirements or standards that were issued are deficient.

9. Section 107(b) specifies five factors that the Commission must consider as part of its efforts to establish technical requirements or standards to meet the assistance capability requirements of Section 103. Such technical requirements or standards must:

- Meet the assistance capability requirements of Section 103 by cost-effective methods;
- Protect the privacy and security of communications not authorized to be intercepted;
- Minimize the cost of such compliance on residential ratepayers;
- Serve the policy of the United States to encourage the provision of new technologies and services to the public; and
- Provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under Section 103 during any transition period.

10. Section 107(c) authorizes the Commission to extend the compliance date for telecommunications carriers' equipment, facilities, and services. On September 11, 1998, the Commission exercised its authority under section 107(c) by extending the deadline for compliance with Section 103 requirements from October 25, 1998 to June 30, 2000. This extension applies to all telecommunications carriers proposing to install or deploy, or having installed or deployed, any equipment, facility or service prior to the effective date of Section 103, for that part of the carrier's business on which the new equipment, facility or service is used.

Development of Industry Interim Standard J–STD–025

11. Since early 1995, Subcommittee TR45.2 of the Telecommunications Industry Association (TIA) has been working to develop an industry standard that would satisfy the assistance capability requirements of Section 103 for wireline, cellular, and broadband PCS carriers. The standards-setting effort has included participation by industry and law enforcement. In 1996, the Subcommittee received from the Federal Bureau of Investigation (FBI) a document known as the Electronic Surveillance Interface (ESI). The ESI was law enforcement's recommendation for the logical and physical interfaces between a wireline, cellular, or broadband PCS carrier's network and a law enforcement agency's electronic surveillance collection facility. The ESI was developed at the request of industry to describe law enforcement's vision and recommendations for the interface. The ESI defined the requirements for the delivery of both call content and call-identifying information to a law enforcement agency (LEA).

12. By the spring of 1997, TIA developed a final draft of a proposed CALEA industry standard. The draft standard defined services and features to support lawfully authorized electronic surveillance and the interfaces to deliver authorized intercepted communications and call-identifying information to a LEA. Specifically, the draft standard defined the intercept function in terms of five broad categories: access, delivery, service provider administration, collection, and law enforcement administration. This standard was submitted for balloting to all participants in the standards-setting process under procedures of the American National Standards Institute (ANSI). The law enforcement community unanimously opposed adoption of this standard, and it was voted down. The FBI, on behalf of this community, attached a lengthy critique of the draft standard to its ballot, including specific recommendations for changes.

13. The FBI's objections to the draft standard centered around a list of technical capabilities that it contended are necessary to meet CALEA's requirements, but that were not included in the industry interim standard. The FBI's list, which has come to be known as the "punch list," originally contained 11 items, and now contains nine items. Specifically, the FBI's punch list identifies the following capabilities it believes must be provided under CALEA:

(1) Content of subject-initiated conference calls—Would enable law enforcement to access the content of conference calls supported by the subject's service (including the call content of parties on hold).

(2) Party hold, join, drop—Messages would be sent to law enforcement that identify the active parties of a call. Specifically, on a conference call, these messages would indicate whether a party is on hold, has joined or has been dropped from the conference call.

(3) Subject-initiated dialing and signaling information—Access to all dialing and signaling information available from the subject would inform law enforcement of a subject's use of features (such as the use of flash-hook and other feature keys).

(4) In-band and out-of-band signaling (notification message)—A message would be sent to law enforcement whenever a subject's service sends a tone or other network message to the subject or associate (e.g., notification that a line is ringing or busy).

(5) Timing information—Information necessary to correlate call-identifying information with the call content of a communications interception.

(6) Surveillance status—Message that would verify that an interception is still functioning on the appropriate subject.

(7) Continuity check tone (c-tone)—Electronic signal that would alert law enforcement if the facility used for delivery of call content interception has failed or lost continuity.

(8) Feature status—Would affirmatively notify law enforcement of any changes in features to which a subject subscribes.

(9) Dialed digit extraction—Information would include those digits dialed by a subject after the initial call setup is completed.

14. After the close of balloting, Subcommittee TR45.2 held a number of meetings and made changes to the draft industry standard, including a number of changes recommended by the FBI. However, based on the concerns discussed below, none of the FBI punch list items were added to the industry standard. The Subcommittee recommended that the revised standard be considered as a joint TIA/Committee T1 Interim Standard and reballoted under TIA procedures rather than ANSI's. An interim standard, however, is valid for a period of only three years and is considered by ANSI as a "trial use." TIA adopted the recommendations, and the revised draft standard was submitted for voting in the fall of 1997. Because no law enforcement agencies are members of the TIA or Committee T1, however, only industry entities were eligible to cast ballots.

15. The industry unanimously approved the draft standard as fulfilling the requirements mandated by CALEA. In December 1997, the TIA and Committee T1, sponsored by the Alliance for Telecommunications Industry Solutions, announced the joint publication of interim standard J–STD–025, *Lawfully Authorized Electronic Surveillance* (J–STD–025, interim standard, or industry interim standard). This standard defines services and features required to support lawfully authorized electronic surveillance and specifies interfaces necessary to deliver intercepted communications and call-identifying information to a LEA. TIA stated that compliance with J–STD–025 satisfies the "safe harbor" provisions of CALEA.

Petitions for Rulemaking

16. In July 1997, before the industry interim standard was released, the Cellular Telecommunications Industry Association (CTIA) filed a petition for rulemaking on behalf of its members requesting that the Commission establish a standard to implement the requirements of Section 103, pursuant to the Commission's authority under section 107(b). CTIA contended that the standards setting process was deadlocked, and that it was unlikely that a standard would be developed in the near future. CTIA attached to its petition the draft industry standard that ultimately became J–STD–025, and argued that this draft standard met the functional requirements of CALEA in their entirety.

17. In August 1997, comments on the CTIA petition were filed jointly by the Center for Democracy and Technology (CDT) and the Electronic Frontier Foundation (EFF). CDT/EFF generally supported CTIA's request to adopt the proposed industry standard; however, they recommended the deletion of provisions relating to subject location and packet-mode information. In March 1998, following adoption of the industry interim standard, DoJ/FBI jointly filed a motion to dismiss CTIA's Petition for Rulemaking on the grounds that the December 1997 adoption of the interim standard rendered CTIA's petition moot. As discussed below, we agree, and dismiss CTIA's July 1997 Petition for Rulemaking.

18. On March 26, 1998, CDT filed a petition for rulemaking, requesting that the Commission intervene in the implementation of CALEA. CDT reiterated the position it and EFF had enunciated in August 1997, arguing that J–STD–025 goes too far in permitting location information capabilities and fails to protect the privacy of packet-mode communications. CDT further argued that the additional surveillance enhancements sought by the FBI in the punch list are not required under CALEA. CDT stated that the telecommunications industry and the FBI had failed to agree on a plan for preserving a narrowly-focused surveillance capability that would protect privacy and, further, were now mired in an argument over designing additional surveillance features into the nation's telecommunications system. Finally, CDT stated that compliance with J–STD–025 was not reasonably achievable and requested that the Commission indefinitely delay implementation of CALEA while a more narrowly-focused standard consistent with the intent of CALEA is developed.

19. On March 27, 1998, DoJ and the FBI jointly filed a petition for expedited rulemaking, asking the Commission to correct deficiencies in the industry standard by establishing additional technical standards that meet the requirements of CALEA. DoJ/FBI claim that the interim standard adopted by industry is deficient because: (1) It does not ensure that law enforcement will be able to receive all of the communications content and call-identifying information that carriers are obligated to deliver under CALEA; and, (2) it fails to ensure that information will be delivered in a timely manner. DoJ/FBI set forth, as a proposed rule, the features (*i.e.*, the punch list items) they believe should be added to the interim standard to correct its deficiencies. DoJ/FBI request that the Commission leave the industry interim standard in effect pending the issuance of a final decision.

20. On April 2, 1998, TIA filed a petition for rulemaking, asking the Commission to resolve the dispute as to whether the interim standard is overinclusive or underinclusive. TIA requested that we: (1) Immediately announce suspension of enforcement of CALEA until we make our determination of a permanent standard; (2) establish a reasonable compliance schedule of at least 24 months to implement the permanent standard; (3) undertake an expedited schedule for establishing a permanent standard; and (4) remand any further technical standardization work to TIA Subcommittee TR45.2.

21. On April 20, 1998, the Commission's Wireless Telecommunications Bureau and Office of Engineering and Technology released a *Public Notice* in this proceeding soliciting comment on the above petitions, as well as soliciting comment on whether the October 25, 1998 deadline for compliance with CALEA's capability requirements should be extended. The *Public Notice* also requested specific comment on the scope of the assistance capability requirements necessary to satisfy the obligations imposed by CALEA. In particular, the *Public Notice* requested analyses of whether the technical requirements discussed in the petitions from CDT and from DoJ/FBI are necessary for carriers to meet CALEA's Section 103 requirements. Finally, the *Public Notice* requested comment on remanding any additional standards development to TIA Subcommittee TR45.2.

22. A number of parties petitioned the Commission to extend the October 25, 1998 deadline for complying with the core features of CALEA, and on September 11, 1998, the Commission released a *Memorandum Opinion and Order* (*Extension Order*) granting such an extension until June 30, 2000. Pursuant to our authority under section 107(c) of CALEA, we determined that compliance with the assistance capability requirements of Section 103 was not reasonably achievable by any telecommunications carrier through the application of available technology by CALEA's compliance deadline of

October 25, 1998. Therefore, we granted a blanket extension of CALEA's compliance deadline until June 30, 2000, for all telecommunications carriers similarly situated to the petitioners, *i.e.*, those carriers proposing to install or deploy, or having installed or deployed, any equipment, facility or service prior to the effective date of Section 103, for that part of the carrier's business on which the new equipment, facility or service is used.

Authority and Approach

23. Section 107(b) of CALEA empowers the Commission to establish, by rule, technical requirements or standards to meet the assistance capability requirements of Section 103. Additionally, section 301(a) of CALEA states that "[t]he Commission shall prescribe such rules as are necessary to implement the requirements of [CALEA]."

24. In fulfilling our obligations under CALEA, our evaluation in this proceeding will closely follow the plain language of the Act. Pursuant to our statutory authority, we will separately examine the two contested features of the J–STD–025 standard (i.e., the location information and packet-mode features opposed by CDT) and the punch list items sought by the FBI, to determine whether each meet the mandates of Section 103.

25. As an initial matter, we will first determine whether the specific item we are evaluating meets the assistance capability requirements set forth in Section 103(a)(1)–(4). In doing so, we propose to interpret these provisions narrowly. As noted above, we look to the plain language, its context, and, if necessary, any legislative history that assists in ascertaining Congressional intent. Specifically, we explore below the intent of Congress' use of the terms "equipment, facilities or services" in Section 103(a)(1) as it relates to the content of subject-initiated conference calls. We also seek to interpret Section 103(a)(2)'s provision that call-identifying information must be provided to a LEA only if that information is "reasonably available" to a telecommunications carrier. In this regard, we tentatively conclude that before we can make a determination whether a specific technical requirement meets the mandates of Section 103's assistance capability requirements, the Commission must determine whether the information to be provided to a LEA under Section 103(a)(2) is reasonably available to the carrier. The Act does not specify how the term "reasonably available" should be defined or interpreted, and the Act's legislative history offers little additional guidance. We therefore request comment on what factors the Commission should use in determining whether the information to be provided to a LEA under Section 103(a)(2) is reasonably available.

26. Specifically, we request comment on how cost should be considered in our determination of reasonable availability. Further, we note that carriers use a variety of system architectures and different types of equipment, leading us to believe that reasonable availability is also likely to vary from carrier to carrier. Commenters should discuss how the Commission can evaluate whether a particular technical requirement is reasonably available in these circumstances and discuss how the application or interpretation of these terms in Section 103(a)(2) is similar to or different from the application or interpretation of "reasonably achievable" in section 109(b), and the factors listed there.

27. We also ask commenters to evaluate the type of information that has been traditionally available under pen register and trap-and-trace authorizations, and whether the provision of such information to LEAs, in light of the statutory definitions of "pen register" and "trap and trace device", and judicial interpretations of them, provide guidance or represent possible factors for determining "reasonable availability."

28. Finally, we also invite comment on whether and, if so, under what circumstances and to what extent, information that does not qualify as call-identifying information under Section 102(2) or otherwise is not "reasonably available" under Section 103(a)(2), may nevertheless qualify as call content information under Section 103(a)(1) and the definitions of "wire and electronic communications" in 18 U.S.C. § 2510(1), (12). Commenters should take into account that the provisions of Section 103(a)(1) do not include a criterion of "reasonable availability."

29. If we conclude that the item in question constitutes a technical requirement that meets the Section 103 assistance capability requirements, we will then proceed to analyze each of the factors identified by section 107(b) and seek comment on whether a particular technical requirement: (1) Meets the assistance capability requirements of Section 103 by cost-effective methods; (2) protects the privacy and security of communications not authorized to be intercepted; (3) minimizes the cost of such compliance on residential ratepayers; and, (4) serves the policy of the United States to encourage the provision of new technologies and services to the public. Additionally, section 107(b)(5) requires the Commission to provide a reasonable time and conditions for compliance with and the transition to any new standard, including defining the obligations of telecommunications carriers under Section 103 during any transition period. Thus, we will also seek comment on issues bearing on our section 107(b)(5) determinations. If, on the other hand, we tentatively conclude that a specific technical requirement falls outside of the parameters of the assistance capability requirements established by Section 103, we will seek comment on our tentative conclusion, and request that commenters responding to this conclusion provide support for their agreement or disagreement by thoroughly analyzing the section 107(b) factors mentioned above.

30. We emphasize that, because CALEA specifically requires us to consider the section 107(b) factors, commenters are strongly encouraged to provide us with information as detailed and specific as possible. For sections 107(b)(1) and (3), for example, we seek detailed comment regarding the costs of adding a feature to a telecommunications carrier's network and on what, if any, impact of such costs will have on residential ratepayers. Commenters should consider the costs to manufacturers in developing the equipment or software needed to implement the technical requirement, as well as the cost to carriers to install and deploy such equipment. Commenters should be specific as to which entities would incur the cost of adding particular features; e.g., manufacturers, local exchange carriers (LECs), interexchange carriers (IXCs), or commercial mobile radio service (CMRS) providers, etc. Commenters should also be specific as to what costs would be incurred for hardware, as opposed to software upgrades to carriers' networks, and whether some of these upgrades would have other uses in the networks. If costs are likely to be passed on to residential ratepayers, those costs should be identified, as well as specific mechanisms that could be used to minimize such costs.

31. Under section 107(b)(2), if a party believes that a proposed technical requirement would not protect the privacy and security of communications not authorized to be intercepted, we request comment on modifications or alternative technical requirements that would enable Section 103's capability requirements to be met. In addition, we

seek detailed information on whether our determination that a particular feature must be provided under CALEA will encourage or discourage the provision of new technologies and services to the public. Will the implementation of a particular technical requirement constrain a carrier's ability to develop new services or technologies? Commenters should provide a projected timeline for each technical requirement, identifying the time needed to develop, test, and deploy it. Additionally, commenters should address the extent to which the capacity requirements of section 104 should affect our determinations under section 107(b). Finally, we ask for comment on any conditions necessary for compliance and any specific obligations that should be imposed on telecommunications carriers during the transition to a new standard.

32. We note that the tentative conclusions we reach in this Further NPRM focus on the technical requirements that the petitioners have asked us to address in their petitions pending before us; *i.e.*, the two contested features of J–STD–025 and the nine punch list items. In making our tentative decision, we recognize that CALEA requires carriers to ensure that their networks can provide the capabilities defined in Section 103, but does not mandate use of, or adherence to, any particular standard. In other words, compliance with the industry standard is voluntary, not compulsory. As a result, carriers are free to develop CALEA solutions in any manner they choose. Thus, a carrier may choose to utilize an industry standard as a safe harbor, or they may choose to implement other solutions that meet the capability requirements of Section 103. However, in order for an adopted industry standard to satisfy the safe harbor provision of section 107(a), it must incorporate all of the technical requirements that we ultimately determine meet the assistance capability requirements of Section 103.

33. We note further that this proceeding does not involve any attempt to interpret statutes other than CALEA or define the scope of authorizations needed by LEAs to intercept or obtain call content or call-identifying information. Rather, this proceeding is limited to determining, as a safe harbor, what capabilities each carrier must provide if and when presented with a proper authorization or court order to expeditiously provide LEAs access to call content and call-identifying information.

34. We believe that industry is in the best position to determine how to implement these technical requirements most effectively and efficiently. Standards-setting organizations, manufacturers, and/or individual telecommunications carriers should develop the technical requirements consistent with our ultimate determinations reached in this proceeding. We tentatively conclude that it would then be appropriate for industry, in consultation with the law enforcement community, to develop a final "safe harbor" standard for CALEA compliance. We seek comment on this conclusion.

35. Finally, we also note that manufacturers and carriers are free to develop and deploy additional features and capabilities, beyond those required by CALEA, in efforts to assist law enforcement agencies in conducting lawfully-authorized electronic surveillance. Such capabilities, however, will not be subject to any of CALEA's obligations, including cost recovery, and will not affect any party's obligations under CALEA in any way. Thus, nothing in the instant Further NPRM should be construed as limiting or proposing to limit telecommunications manufacturers, carriers or support service providers' ability to negotiate with law enforcement agencies to add additional capabilities to the carrier's systems, nor to define a maximum level of capabilities available to law enforcement under the applicable provisions of law. We now turn to a discussion of whether we should reexamine the uncontested portions of J–STD–025 as part of our section 107(b) inquiry.

Industry Interim Standard J–STD–025

36. The industry interim standard, J–STD–025, which applies only to wireline, cellular, and broadband PCS carriers, specifies that telecommunications carriers are to provide LEAs with two telecommunications channels to perform electronic surveillance—call content channels (CCCs) and call data channels (CDCs). J–STD–025 defines the five functions of the intercept architecture to be used. Those functions are:

- Access—Provides the LEA with the ability to isolate the subject's call content or call-identifying information accurately and unobtrusively. The access function helps to prevent the unauthorized access, manipulation, and disclosure of intercept controls, call content, and call-identifying information.
- Delivery—Accepts call content and call-identifying information from the access function and delivers it to one or more LEA collection functions. Ensures that the call content and call-identifying information that are delivered are authorized for a particular LEA, and thus also prevents the unauthorized access, manipulation, and disclosure of intercept controls, call content, and call-identifying information.
- Collection—Receives and processes call content and call-identifying information for the subject. (This function is the responsibility of the LEA.)
- Service Provider Administration—Controls the carrier's electronic surveillance functions. (This function is beyond the scope of the interim standard.)
- Law Enforcement Administration—Controls the LEA electronic surveillance functions. (This function is the responsibility of the LEA, and is also beyond the scope of the interim standard.)

37. In seeking to fulfill our obligations under the Act, the Commission acknowledges the immense time and effort both industry and government representatives have put into the development of CALEA standards. We also appreciate the input and involvement of privacy organizations in this proceeding. We further note that the Act expresses a preference for industry to set CALEA standards, in consultation with the Attorney General, and that the Act's legislative history also reveals that Congress envisioned that industry would have primary responsibility in defining standards. Consequently, we believe that the most efficient and effective method for ensuring that CALEA can be implemented as soon as possible is to build on the work that has been done to date.

38. We therefore do not intend to reexamine any of the uncontested technical requirements of the J–STD–025 standard. Instead, we will make determinations only regarding whether each of the location information and packet-mode provisions currently included within J–STD–025, and the nine punch list items that are currently not included, meet the assistance capability requirements of Section 103. We base this approach on the fact that the issues raised in the petitions and comments filed in this proceeding focus solely on the location information and packet-mode provisions of J–STD–025 and the nine punch list items sought by the FBI. Accordingly, these features will be evaluated separately. We further note that no party has raised any specific challenges to J–STD–025 other than with respect to these issues, and we have not been presented with any

compelling reason to reexamine the entire standard. We tentatively conclude that by limiting our inquiry to only these specific technical issues, we will better enable manufacturers and carriers to build on the extensive work already completed or in process, and permit them to deploy CALEA solutions on a more expedited basis. Accordingly, the uncontested technical requirements are beyond the scope of this proceeding.

39. In establishing technical requirements or standards, section 107(b)(5) requires the Commission to provide a "reasonable time" for carriers to comply with and/or transition to any new standards and to define the obligations of telecommunications carriers under Section 103 during any transition period. We previously concluded in our decision under section 107(c) that telecommunications carriers must have installed CALEA-compliant equipment and facilities based on the "core" features of J–STD–025 by June 30, 2000. A footnote in that decision indicated that the "core" of J–STD–025 excludes both the location information feature and the packet-mode feature. We now clarify those findings as follows. J–STD–025 represents an attempt by industry to develop a standard that carriers may choose to adopt voluntarily as a means to comply with CALEA's "safe harbor" provision set forth in section 107(a). We further recognize that the statute leaves carriers with the discretion to choose to comply with CALEA by other means. We emphasize that in requiring carriers to comply with the core features of J–STD–025 by June 30, 2000, we did not intend for the *Extension Order* to alter the substantive requirements of CALEA. Rather, we meant only to extend the deadline for compliance. Thus, we now clarify our *Extension Order* by requiring that by June 30, 2000, carriers must either have installed the core features of J–STD–025 to take advantage of the "safe harbor" provision of section 107(a) of CALEA or have otherwise developed an individual solution and installed capabilities that meet the assistance capability requirements of Section 103. We believe that this approach is more consistent with the language of the statute and the legislative history on this point. In addition, we now propose to modify footnote 139 of the *Extension Order* to include the location information feature as part of the core of J–STD–025 which, if chosen by carriers as a means to qualify for the "safe harbor," must be implemented by the June 30, 2000 deadline.

40. As detailed in the *Extension Order*, an extension until June 30, 2000, provides sufficient time for manufacturers to produce CALEA compliant equipment based on the core features of J–STD–025 or to develop individual network solutions and provides telecommunications carriers sufficient time to purchase, test and install such equipment throughout their networks. We further recognize that the additional "non-core" technical requirements we propose to be adopted in this rulemaking may require additional time for manufacturers to design and develop these capabilities and for telecommunications carriers to incorporate them into their networks. Thus, we will consider establishing another deadline or an implementation schedule for telecommunications carriers to comply with any new technical requirements we ultimately adopt in the instant proceeding. We seek comment on this proposal. Specifically, we ask carriers and manufacturers to supply us with timelines that detail how they plan to develop and deploy the additional technical requirements noted herein.

Location Information

41. J–STD–025 includes a "location" parameter that would identify the location of a subject's "mobile terminal" whenever this information is reasonably available at the intercept access point and its delivery to law enforcement is legally authorized. Location information would be available to the LEA irrespective of whether a call content channel or a call data channel was employed.

42. We tentatively conclude that location information is call-identifying information under CALEA. The Act states that call-identifying information is "dialing or signaling information that identifies the origin, direction, destination, or termination of each communication generated or received by a subscriber by means of any equipment, facility, or service of a telecommunications carrier." We believe, that location information identifies the "origin" or "destination" of a communication and thus is covered by CALEA.

43. We also observe that in the wireline environment, irrespective of the precise nature of law enforcement's surveillance authorization, LEAs have been able to obtain location information routinely from the telephone number because the telephone number corresponds with location. With the telephone number, location information is available from a LEA's own 911/Enhanced 911 (E911) database or from the telephone company's electronic records, such as the Loop Maintenance Operating System (LMOS).

44. We note, however, that the location feature as it currently appears in J–STD–025 is unclear. In particular, we note that this feature refers to the identification of the location of a subject's "mobile terminal," but does not specifically state whether it is the precise location of the mobile terminal or handset that is intended, or simply the location of the cell site to which the terminal or handset is connected. Also unstated in J–STD–025 is whether continuous location tracking is intended to be provided, or only the location at the beginning and termination of the call.

45. In view of the above analysis, we tentatively affirm that location information should be construed to mean cell site location at the beginning and termination of a call. We seek comment on these proposals and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement or standard. We note that location information is already included in J–STD–025, the interim standard adopted by industry, and was opposed solely by the privacy groups. Therefore, we request comment in particular on whether our proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Since the location information feature was included by industry in J–STD–025, we find that the June 30, 2000 CALEA compliance deadline is also sufficient for development and implementation of compliant equipment that includes this feature.

46. Finally, we tentatively conclude that location information is reasonably available to telecommunications carriers, because this technical requirement was developed by industry and is included in the interim standard. However, we request comment on how the Commission should decide or interpret the term "reasonably available" in the context of the proposed location information requirement. For example, it appears that location information is already available through the wireless carriers' billing, hand-off and system use features. Additionally, wireless carriers will be required to have a location information capability as part of their E911 obligations. We seek comment as to whether the location information feature in these other contexts can be used to address the needs of law enforcement under CALEA. We request comment on any other issues that may impact our determination as to whether the location information that would be

required to be provided to a LEA is reasonably available to carriers.

47. Commenters should also note CALEA's express statement that "with regard to information acquired solely pursuant to the authority for pen registers and trap and trace devices (as defined in section 3127 of title 18, United States Code), . . . call-identifying information shall not include any information that may disclose the physical location of the subscriber (except to the extent that the location may be determined from the telephone number)." We agree with DoJ/FBI that this provision does not exclude location information from the category of "call-identifying information," but simply imposes upon law enforcement an authorization requirement different from that minimally necessary for use of pen registers and trap and trace devices. We seek comment on this issue.

Packet-Mode

48. J–STD–025 provides for LEA access to call-identifying information and the interception of wire and electronic telecommunications, regardless of whether the telecommunications are carried in circuit-mode or in packet-mode. It further states that the "call-identifying information associated with the circuit-mode content surveillance is provided on the [call data channel]," but does not specifically address whether call-identifying information, if any, associated with packet-mode surveillance must be provided over a call data channel.

49. Packet data and packet-switching technology are potentially usable for both information services and telecommunications services. We first observe that Section 103(b)(2)(A) of CALEA expressly excludes "information services" from its assistance capability requirements. Thus, packet data and packet-switching technology is subject to these requirements only to the extent it is used to provide telecommunications services, and not for information services. Packet-mode telecommunications services are expected to grow rapidly in the near future. J–STD–025 appears to be appropriately limited to apply only to "telecommunications services" as defined by the Commission. Second, we observe that CALEA requires telecommunications carriers to provide information to the LEA "in a manner that protects . . . the privacy and security of communications . . . not authorized to be intercepted." This mandate would seem to be violated if the carrier were to give the LEA both call-identifying and call content information when only the former were authorized. Under those circumstances, the LEA would be receiving call content information without having the requisite authorization.

50. The record before us, however, is not sufficiently developed to support a proposal of any particular CALEA technical requirements for packet-mode telecommunications. Additional analysis is needed. We are aware that packet-mode technology is rapidly changing, and that different technologies may require differing CALEA solutions. We do not believe that the record sufficiently addresses packet technologies and the problems that they may present for CALEA purposes. While it is premature to impose any particular technical requirements for packet-mode telecommunications at this time, it is appropriate to ask for a full range of comment on this issue.

51. In seeking to develop a full record, we first set forth an analytical framework we believe will prove useful for evaluating the issue of setting CALEA technical requirements for packet-mode telecommunications. First, we advise commenters to consider the difference between connection-oriented and connectionless packet-mode services, and also between permanent virtual circuits, which have no per-call information, and switched virtual circuits. With these distinctions in mind, we request that commenters provide detailed comments regarding whether and, if so, how the statutory requirements of Section 103(a) of CALEA apply to packet-mode telecommunications. We request comment on what constitutes the equivalent of "call-identifying information" for packet-mode telecommunications services within the context of CALEA. Will packet-mode call-identifying information (or its equivalent) be reasonably available to carriers and, thus, subject to the provisions of Section 103(a)(2) of CALEA? How could packet-mode call content and call-identifying information (or its equivalent) be separated for delivery to law enforcement in compliance with CALEA?

52. In addition, we seek comment on the other section 107(b) factors that we must consider in establishing technical requirements. Specifically, we seek comment on any cost-effective methods for incorporating CALEA packet-mode requirements into a telecommunications carrier's system, and whether or not this can be accomplished in a manner that minimizes costs to residential ratepayers. Further, we request additional comment on whether the inclusion of packet-mode technical requirements to meet the assistnace capability requirements envisioned by Section 103 raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of such technical requirements would have a positive or negative effect on the provision of new technologies and services to the public. Commenters are also asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy packet-mode technical requirements in telecommunications systems. Finally, we recognize that packet-mode issues are complex, and that relative to the other issues under consideration herein, additional time may be required to resolve them.

Content of Subject-initiated Conference Calls

53. This capability would permit the LEA to monitor the content of conversations connected via conference call set up by the facilities under surveillance. Surveillance of all portions of a conference call would continue, even if any party to the call utilized services such as hold, call waiting, or three-way calling. For example, if anyone involved in a conference call were placed on hold, all remaining conversations would continue to be available to the LEA for monitoring. The ability to monitor would continue even after the subject drops off the conference call.

54. We tentatively conclude that the provision of the content of subject-initiated conference calls is a technical requirement that meets the assistance capability requirements of Section 103. With appropriate lawful authorization, the LEA is entitled to "intercept, to the exclusion of any other communications, all wire and electronic communications carried by the carrier within a service area to or from equipment, facilities, or services of a subscriber." TIA asserts that we must first determine whether a conference call capability would unduly expand Title III's concept of "facilities" before deciding whether such a capability is required under CALEA. We note, however, that the plan language of CALEA's Section 103 includes the terms "equipment" and "services", in addition to "facilities" thus, extending LEAs entitlement to access the "services and equipment", as well as the "facilities", of a subscriber. According to the legislative history, "conference calling" is one of the "features and

services" that is covered by CALEA. We seek comment on this proposal. We also seek comment as to how the Commission should define or interpret Section 103's use of the phrase "equipment, facilities, or services" in the context of subscriber-initiated conference calls.

55. We recognize that not all carriers' system architecture is the same. Some carriers, for example, may have systems that support continuation of conference calls after the subscriber drops off the call, while others may not. For those network configurations in which, when a subscriber drops off a conference call, the call nevertheless remains routed through the subscriber's "equipment, facilities, or services," we tentatively interpret CALEA as requiring the carrier to continue to provide the LEA the call content of the remaining parties, pursuant to court order or other lawful authorization. For those configurations, however, in which, when the subscriber drops off the call, the call is either disconnected or rerouted, and the "equipment, facilities, or services of a subscriber" are no longer used to maintain the conference call, we tentatively conclude that CALEA does not require the carrier to provide the LEA access to the call content of the remaining parties. Moreover, in some cases where the call is re-routed, the content of the call may no longer be classifiable as "communications carried by the carrier within a service area" pursuant to Section 103(a)(1) and (d). Thus, under such circumstances, CALEA would not require the carrier to modify its system architecture in order to support this particular technical requirement. We seek comment on this tentative conclusion. Commenters should address how Sections 103(a)(1) and (d) should be interpreted in this context. Also, we tentatively conclude that CALEA does not extend to conversations between a participant of the conference call other than the subject and any person with whom the participant speaks on an alternative line (*e.g.*, when A, the subjects, is on a conference call with B and C, we tentatively conclude that C's conversation with D on call waiting is beyond CALEA's requirements. We also seek comment on this tentative conclusion.

56. Additionally, we seek comment on the section 107(b) factors that we must consider in establishing a technical requirement or standard. Are there cost-effective methods of incorporating access to conference call content into a telecommunications carrier's system? Can it be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Would, for example, networks have to be redesigned in such a way as to preclude certain new technologies or services? Finally, commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems.

Party Hold, Join, Drop on Conference Calls

57. This item also involves features designed to aid a LEA in the interception of conference calls. This feature would permit the LEA to receive from the telecommunications carrier messages identifying the parties to a conversation at all times. The party hold message would be provided whenever one or more parties are placed on hold. The party join message would report the addition of a party to an active call or the reactivation of a held call. The party drop message would report when any party to a call is released or disconnects and the call continues with two or more other parties.

58. We tentatively conclude that party hold/join/drop information falls within CALEA's definition of "call-identifying information" because it is "signaling information that identifies the origin, direction, destination, or termination of each communication generated or received" by the subject. For example, party join information appears to identify the origin of a communication; party drop, the termination of a communication; and party hold, the temporary origin, temporary termination, or re-direction of a communication. This capability also appears to be necessary to enable the LEA to isolate call-identifying and content information because, without it, the LEA would be unable to determine who is talking to whom, and, more accurately, to focus on the subject's role in the conversation. Further, by isolating the call-identifying information in this manner, the LEA can ascertain and isolate third parties who are not privy to the communications involving the subject, thereby furthering the minimization concept.

59. Accordingly, we propose that provision of party hold/join/drop information, if reasonably available to the carrier, is a technical requirement that meets the assistance capability requirements of Section 103. We base this conclusion on the statutory language found in Sections 103(a)(2) and 102(2). We note, however, that LEA access to this information would be required only in those cases where the carrier's facilities, equipment or services are involved in providing the service; in other words, when a network signal is generated. To the extent that customer premises equipment (CPE) is used to provide such features, we tentatively conclude that party hold/join/drop information could not be made available to the LEA since no network signal would be generated. For example, many telephone sets have a "hold" button that does not signal the network—thus, from the carrier's point of view, the call's status is unchanged. We seek comment on this tentative conclusion. We also seek comment on TIA's assertion that party/hold/join drop information is already substantially available to the LEA and, if so, whether it is or needs to be provided in real time.

60. We seek comment on our proposal and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement or standard. Are there cost-effective methods of incorporating a party hold/join/drop capability into a telecommunications carrier's system? Can it be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Further, commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems.

Subject-initiated Dialing and Signaling Information

61. This capability would permit the LEA to be informed when a subject using the facilities under surveillance

uses services such as call forwarding, call waiting, call hold, three-way calling. DoJ/FBI requests this information for each communication initiated by the subject. This capability would require the telecommunications carrier to deliver a message to the LEA, informing the LEA that the subject has invoked a feature which would place a party on hold, transfer a call, forward a call, or add/remove a party to a call.

62. We tentatively conclude that subject-initiated dialing and signaling information fits within the definition of call-identifying information contained in section 102(2) of CALEA. For example, call-forwarding signaling information identifies the direction and destination of a call, and call-waiting signaling information identifies the origin and termination of each communication. We request comment on whether remote operation of these features should affect our tentative conclusion. For example, a subject may be able to change some aspects of his/her service from a pay telephone, as well as from the subject's telephone.

63. We also tentatively conclude that access to subject-initiated dialing and signaling information may be necessary in order for the LEA to isolate and correlate call-identifying and call content information. Knowing what features a subject is using will ensure that the LEA receives information "in a manner that allows it to be associated with the communication to which it pertains." For example, without knowing that a subject has switched over to a call on call-waiting, the LEA may not be able to associate the call-identifying information with the call content to which it pertains and thus could be more likely to mistake one call for another. Once again, to the extent CPE is used to perform any of the functions described here, and no network signal is generated, that information will not be reasonably available to a carrier, and thus, should not be required to be provided.

64. We observe that signaling data indicating that the subject is accessing his/her voice mail is properly classified as "call-identifying information." The contents of the voice mail fall outside the scope of CALEA. This is because voice mail "permits a customer to retrieve stored information from . . . information storage facilities," and CALEA does not apply to information services. The requirement we propose below is consistent with this distinction because it provides only the call identifying information and is not capable of providing voice content.

65. Accordingly, we propose to include information on subject-initiated dialing and signaling that is reasonably available to the carrier as a technical requirement necessary to meet the assistance capability requirements of Section 103. We base our conclusion regarding subject-initiated dialing and signaling information that is reasonably available to the carrier on the statutory language found in Section 103(a)(2). We seek comment on this proposal and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement or standard. Are there cost-effective methods of providing subject-initiated dialing and signaling information? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal or tentative conclusion raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems. In addition, excluding those CPE-controlled features noted above, and consistent with our proposed ruling regarding voice mail as noted above, we request comment on whether information required to provide LEAs with subject-initiated dialing and signaling activity is reasonably available to carriers. Finally, we recognize that some commenters assert that at least portions of this technical requirement may be provided through other features of J–STD–025. We request comment on the accuracy of these contentions. Commenters should demonstrate clearly how the features required are provided, or not provided, elsewhere in J–STD–025.

In-band and Out-of-band Signaling

66. This technical requirement would allow a telecommunications carrier to send a notification message to the LEA when any network message (ringing, busy, call waiting signal, message light, *etc.*) is sent to a subject using facilities under surveillance. For example, if someone leaves a voice mail message on the subject's phone, the notification to the LEA would indicate the type of message notification sent to the subject (such as the phone's message light, audio signal, text message, *etc.*). For calls the subject originates, a notification message would also indicate whether the subject ended a call when the line was ringing, busy (a busy line or busy trunk), or before the network could complete the call.

67. We believe that certain types of in-band and out-of-band signaling information, such as notification that a voice mail message has been received by a subject, constitute call-identifying information under CALEA; while there may be other types of in-band and out-of-band signaling information that would constitute call content information and thus would raise questions as to under what authority they should be provided to the LEA. However, for purposes of this proceeding, we do not address such questions of whether or what type of authorization LEAs would need to access such information. This is up to the judicial branch. Unless necessary to establish technical standards under CALEA's safe harbor, it is not our intention to specifically decide whether certain types of in-band or out-of-band signaling is either call content or call-identifying information since CALEA requires carrier have the ability to provide access to both. We request comment on what types of in-band and out-of-band signaling should constitute a technical requirement necessary to meet the assistance capability requirements envisioned by Section 103.

68. Also, in the event that we ultimately determine that in-band and out-of-band signaling is a technical requirement necessary to meet the assistance capability requirements under Section 103, we request comment on whether there are cost-effective methods of providing in-band and out-of-band signaling to a LEA. Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this requirement raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical

requirement in telecommunications systems.

Timing Information

69. In those cases where the LEA has obtained authorization to intercept both content and call-identifying information, this capability would require that a telecommunications carrier send call timing information to the LEA so that the LEA could associate the call-identifying information with the actual content of the call. There would be two elements to this capability:

(1) Each call-identifying message (answer message, party join message, party drop message, etc.) would be time stamped within a specific amount of time from when the event triggering the message occurred in the intercept access point. This time-stamp would allow the LEA to associate the message to the call content information (i.e., the conversation).

(2) A carrier would be required to send the message to the LEA within a defined amount of time from the event to permit the LEA to associate the number dialed to the conversation.

70. We tentatively conclude that time stamp information fits within the definition of call-identifying information contained within section 102(2) of CALEA and will allow such information "to be associated with the communication to which it pertains." We propose to include timing information that is reasonably available to the carrier as a technical requirement necessary to meet the assistance capability requirements of Section 103(a). We seek comment on this proposal. We base this conclusion on the statutory language found in Section 103(a)(2), and on our tentative conclusion that such information falls within the definition of call-identifying information in section 102(2). A time stamp permits identification of a given call from a series of calls made within a short timeframe, and is necessary to allow a LEA to associate call-identifying information with the communication to which it pertains. We note, however, that CALEA does not impose a specific timing requirement on carriers. Rather, it states that carriers must "expeditiously" isolate and enable the government to access call-identifying information "before, during, or immediately after the transmission of a wire or electronic communication (or at such later time as may be acceptable to the government); and in a manner that allows it to be associated with the communication to which it pertains." Therefore, we seek comment on what is a reasonable amount of time to require the carriers to deliver the time stamped message to the LEA. We note that DoJ/FBI have requested delivery within 3 seconds of the beginning of the event and with an accuracy of 100 milliseconds. Commenters should address whether this is a reasonable time frame, and whether there are any technical barriers to implementing such a requirement. Commenters proposing an alternative time frame should also address technical feasibility and how such a time frame will satisfy the requirements of the statute.

71. In addition, we seek comment, as required by section 107(b), on the factors that we must consider in establishing a technical requirement. Are there cost-effective methods of providing timing information to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Further, we request comment on whether this proposal raises issues regarding the protection of privacy and security of communications which are not authorized to be intercepted. Additionally, we solicit comment on whether the inclusion of this technical requirement within the assistance capability requirements envisioned by Section 103 would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems.

Surveillance Status

72. This capability would require the telecommunications carrier to send information to the LEA to verify that a wiretap has been established and is still functioning correctly. This information could include the date, time, and location of the wiretap; identification of the subscriber whose facilities are under surveillance; and identification of all voice channels that are connected to the subscriber. This information would be transmitted to the LEA when the wiretap is activated, updated or deactivated, as well as periodically (varying from once every hour to once every 24 hours).

73. CALEA requires carriers to ensure that authorized wiretaps can be performed in an expeditious manner, and we believe that a surveillance status message could assist carriers and LEAs in determining the status of such wiretaps. We tentatively conclude, however, that a surveillance status message does not fall within any of the provisions of Section 103. We do not believe that it is call-identifying information as defined by CALEA, since the information such a feature would provide is unrelated to any particular call. Nor does a surveillance status message appear to be required under Section 103(a)(1), since it is not necessary to intercept either wire or electronic communications carried on a carrier's system. Nor are we persuaded by the FBI's interpretation that a surveillance status message is required by CALEA's direction that a carrier "shall ensure" that its system is capable of meeting the Section 103(a) requirements. Rather, we note that the Act expressly states: "a telecommunications carrier shall ensure that its equipment, facilities, or services . . . are capable of" intercepting communications and allowing LEA access to call-identifying information. We interpret the plain language of the statute to mandate compliance with the capability requirements of Section 103(a), but not to require that such capability be proven or verified on a continual basis.

74. Thus, we tentatively conclude that the surveillance status punch list item is not an assistance capability requirement under Section 103. However, we invite comment as to how, generally, carriers intend to ensure that wiretaps remain operational. How, specifically, would "human intervention" be exercised? For example, do carriers plan to periodically check the circuit manually and notify the LEA that the wiretap remains operational? Further, to the extent commenters continue to believe that an automated surveillance status message is necessary to implement the requirements of Section 103, we seek comment on the 107(b) factors that the Commission must evaluate under CALEA. In what manner could such a feature be provided? Are there cost effective methods of providing surveillance status information to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Could such provision of surveillance status messages compromise the privacy and security of communications not authorized to be intercepted? Would the provision of such information constrain a carrier's ability to develop and deploy new technologies and services? What period of time would be required to develop and deploy such a feature? And, to the extent that this information were to fall under the definition of call-identifying information, is it reasonably available to carriers?

Continuity Check Tone

75. This technical requirement would require that, in cases where a LEA has obtained authority to intercept wire or electronic communications, a C-tone or dial tone be placed on the call content channel received by the LEA from the telecommunications carrier until a user of the facilities under surveillance initiates or receives a call. At that point, the tone would be turned off, indicating to the LEA that the target facilities were in use. This capability would permit correlation between the time a call is initiated and the time the connection is established. The C-tone would also verify that the connection between the carrier's switch and the LEA is in working order.

76. As with the case of surveillance status messages, we believe that continuity tone could assist the LEA in determining the status of a wiretap, but that this technical requirement is not necessary to meet the mandates of Section 103(a). Similar to our reasoning regarding surveillance status messages, we do not believe that a continuity tone falls within CALEA's definition of call-identifying information, nor does it appear to be required under Section 103(a)(1), since it is not necessary to intercept either wire or electronic communications carried on a carrier's system. Furthermore, as explained above, the plain language of the statute mandates compliance with the capability requirements of Section 103(a), but does not require that such capability be proven or verified on a continual basis. Thus, we tentatively conclude that the continuity tone punch list item is not an assistance capability requirement under Section 103.

77. However, to the extent commenters continue to believe such a technical requirement is necessary to implement the requirements of Section 103, we seek comment on the 107(b) factors that the Commission must evaluate under CALEA. In what manner could such a feature be provided? Are there cost effective methods of providing a continuity tone to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Could provision of a continuity tone somehow compromise the privacy and security of communications not authorized to be intercepted? For example, could such a tone be detected by the subscriber whose facilities are under surveillance? Would the provision of such information constrain a carrier's ability to develop and deploy new technologies and services? And finally, what period of time would be required to develop and deploy such a feature?

Feature Status

78. This technical requirement would require a carrier to notify the LEA when specific subscription-based calling services are added to or deleted from the facilities under surveillance, including when the subject modifies capabilities remotely through another phone or through an operator. Examples of such services are call waiting, call hold, three-way calling, conference calling, and call return. Also, the carrier would be required to notify the LEA if the telephone number of the facilities under surveillance was changed or service was disconnected.

79. Similar to surveillance status messages and continuity tones, we believe that feature status messages could be useful to a LEA, but that provision of these messages from a carrier to a LEA is not required to meet the mandates of Section 103(a). First, we believe it is clear that feature status messages do not constitute call-identifying information because they do not pertain to the actual placement or receipt of individual calls. Further, feature status messages do not appear to be required under Section 103(a)(1) because they are not necessary to intercept either wire or electronic communications carried on a carrier's system. Rather, they would simply aid a LEA in determining how much capacity is required to implement and maintain effective electronic surveillance of a target facility, information that could be useful in assuring that an interception is fully effectuated and the intercepted material delivered as authorized. However, as noted by AT&T, the information that would be provided by feature status messages can be provided by other means, such as a subpoena to the carrier. In any event, we reiterate our view that the plain language of the Act mandates compliance with the assistance capability requirements of Section 103(a), but does not require carriers to implement any specific quality control capabilities to assist law enforcement. Thus, we tentatively conclude that the feature status punch list item does not meet the assistance capability requirements of Section 103.

80. We note, however, that at least some of the information that would be provided by feature status messages—for example, a change to the phone number of the facilities under surveillance—must be provided to the LEA expeditiously if electronic surveillance is to be effective. We request comment on whether this information can be provided in such an expeditious manner by other means. We also request comment on any other aspects or interpretations of a feature status capability that might cause at least some portion of this feature to meet the assistance capability requirements of Section 103. To the extent commenters believe that such a capability is necessary to implement the requirements of Section 103, we seek a particularized description of such a capability and comment on the 107(b) factors that the Commission must evaluate under CALEA. In what manner could such a capability be provided? Are there cost effective methods of providing feature status messages to a LEA? Can this requirement be accomplished in a manner that minimizes costs to residential ratepayers? Could provision of feature status messages to a LEA compromise the privacy and security of communications not authorized to be intercepted? Would the provision of such information constrain a carrier's ability to develop and deploy new technologies and services? And finally, what period of time would be required to develop and deploy such a capability?

Dialed Digit Extraction

81. This capability would require the telecommunications carrier to provide to the LEA on the call data channel any digits dialed by the subject after connecting to another carrier's service (also known as "post-cut-through digits"). One example of such dialing and signaling would occur when the subject dials an 800 number to access a long distance carrier. After connecting to the long distance carrier through the 800 number, the subject then dials the telephone number that is the ultimate destination of the call.

82. We tentatively conclude that post-cut-through digits representing all telephone numbers needed to route a call, for example, from the subscriber's telephone through its LEC, then through IXC and other networks, and ultimately to the intended party are call-identifying information. We seek additional comment on whether such call-identifying information is reasonably available to the carrier originating the call. Currently, the second set of numbers a subject dials (the final destination of the call) apparently is transmitted over the CCC (the content portion of the connection) and not over the CDC (a separate signaling channel). This method of transmission raises two primary questions: (1) Since the post-cut-through digits are provided on the content portion of the connection,

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should those numbers be considered content for purposes of CALEA?; and (2) Technically, how can such post-cut-through digits be extracted from the content channel and delivered to a LEA by a carrier? We seek comment on whether originating, intermediate, or terminating carriers can deliver such call-identifying information by cost-effective means. We are also aware of the concerns expressed by industry and privacy advocates that this dialed digit extraction feature could prove to be inordinately expensive to design, build, and incorporate into telephone network infrastructures. The record established thus far does not reflect any specific cost estimates but does raise the possibility that there may be newly available, less expensive solutions for this feature, although it is not clear if such solutions have the capability of separating post-cut-through call-identifying digits from those dialed to perform other functions. We seek comment on this proposal and, as required by section 107(b), on the other factors that we must consider in establishing a technical requirement. Can it be accomplished in a manner that minimizes costs to residential ratepayers? Additionally, we solicit comment on whether our proposal would positively or negatively affect the provision of new technologies and services to the public. Commenters are asked to provide detailed information regarding the amount of time and conditions that they believe will be necessary to successfully develop and deploy this technical requirement in telecommunications systems. Finally, we request detailed comment on how the privacy and security of communications that are not authorized to be intercepted can be protected. In particular, we request comment on whether and how such call-identifying information can be distinguished from digits dialed to perform other functions (e.g., to input a credit card number or to access information services after the call reaches its final destination in the PSTN).

Disposition of J–STD–025

83. We believe that the technical requirements proposed herein can be most efficiently implemented by permitting Subcommittee TR45.2 of the TIA to develop the necessary specifications in accord with our determinations. We note that CALEA contemplates that standards will be developed either "by an industry association or standard-setting organization, or by the Commission." We note that LEAs, carriers, and manufacturers are voting members of the Subcommittee. While we could undertake this task, we believe that the Subcommittee already has the experience and resources in place to resolve these issues more quickly. Both law enforcement agencies and telecommunications manufacturers and carriers participate on the Subcommittee. The Subcommittee worked diligently over a period of several years to craft J–STD–025 and both LEAs and privacy groups agree with—or, at least do not raise any specific objections to—the vast majority of the features of that standard. A Commission-based standard-setting activity would necessarily have to rely heavily on the Subcommittee to modify J–STD–025 in any event, and thus would very likely take longer than industry-based processes to develop a final safe harbor standard. Our decision to rely on industry to develop the final technical specifications reflects our commitment to achieve a CALEA solution as expeditiously as possible.

84. Accordingly, we expect TIA to undertake the task of modifying J–STD–025 to be consistent with the technical requirements we ultimately adopt in this proceeding. Further, we expect the TIA to complete any such modifications to J–STD–025 within 180 days of release of the Report and Order in this proceeding. While this is an ambitious schedule, we believe it is achievable because the TIA has been examining CALEA technical standards issues for several years, and the modifications to J–STD–025 are likely to be relatively limited. In fact, all of the technical requirements that we have identified for modification were previously considered in detail by TIA Subcommittee TR45.2. We note that any telecommunications carrier conforming with the revised standard will be considered to have complied with CALEA's safe harbor provisions under section 107(a)(2). We consider 180 days a sufficient time period for industry to adopt revised technical standards compliant with CALEA and we believe that industry will be able to comply with the core requirements of J–STD–025 (excluding the packet-mode feature) by June 30, 2000. Therefore, we do not plan to extend the CALEA compliance deadline for the core J–STD–025 requirements beyond that date, except in the case of individual extenuating circumstances, to which the criteria of section 107(c) of CALEA would apply. Based on comments received in response to this Further NPRM, we will set a separate deadline for compliance with the additional technical requirements that we determine CALEA mandates. We seek comment on these tentative findings and conclusions.

Other Technologies and Systems

85. We seek comment on what role, if any, the Commission can or should play in assisting those telecommunications carriers not covered by J–STD–025 to set standards for, or to achieve compliance with, CALEA's requirements. Insofar as such carriers argue that CALEA contemplates multiple or different standards for services such as paging, digital dispatch and wireless data, we seek comment regarding how our determinations regarding J–STD–025, the FBI's punch list items, and location and packet-mode information will affect the requirements and standards already adopted or currently being established by these other industry segments. For example, can the Commission's determinations in this rulemaking proceeding be adapted to these other technologies? Further, we request comment on if and how we should consider the impact of the technical requirements we ultimately adopt in this proceeding on these other technologies and services.

Other Matters

86. As previously discussed, in March 1998 CDT submitted a petition for rulemaking to the Commission. In its petition, CDT requests relief from the Commission under section 109 (as well as section 107) of CALEA. CDT argues that "compliance with CALEA is not reasonably achievable with respect to equipment, facilities, and services deployed after January 1, 1995, for the simple reason that carriers have had to make changes to their systems not knowing what was required to comply with CALEA." Lack of a CALEA standard, or a dispute about the CALEA standard, however, is not grounds for a rulemaking under section 109. Rather, a section 109 determination by the Commission presupposes that the final requirements that must be met by telecommunications carriers under Section 103 are in place. Those requirements, however, are still in dispute. Accordingly, we are herein dismissing without prejudice that portion of CDT's petition that relies on section 109.

87. Also, as previously discussed, in July 1997 CTIA filed a petition for rulemaking requesting that the Commission establish a standard to implement the mandates of Section 103, and in March 1998 DoJ/FBI submitted a motion to dismiss that petition on the grounds that the December 1997 adoption of J–STD–025 rendered CTIA's petition moot. CTIA agrees with DoJ/FBI

that its petition is moot, both because the adoption of the industry interim standard supersedes its request for the Commission to establish a CALEA standard by rule and because its request in its petition to extend the CALEA compliance deadline has been addressed in this proceeding. We agree. Accordingly, we herein dismiss as moot CTIA's July 16, 1997 Petition for Rulemaking.

Initial Regulatory Flexibility Analysis

88. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules suggested in this Communications Assistance for Law Enforcement Act, Further Notice of Proposed Rulemaking (CALEA Further NPRM). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the CALEA Further NPRM provided above on the first page, in the heading. The Secretary shall send a copy of the CALEA Further NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA) in accordance with paragraph 603(a).

Need for and Objectives of the Proposed Rules

89. This *Further Notice of Proposed Rulemaking* responds to the legislative mandate contained in the Communications Assistance for Law Enforcement Act, Pub. L. No. 103–414, 108 Stat. 4279 (1994) (codified as amended in sections of 18 U.S.C. and 47 U.S.C.).

Legal Basis

90. The proposed action is authorized under the Communications Assistance for Law Enforcement Act, Public Law 103–414, 108 Stat. 4279 (1994) (codified as amended in scattered sections of 18 U.S.C. and 47 U.S.C.). The proposed action is also authorized by sections 1, 4, 201, 202, 204, 205, 218, 229, 332, 403 and 503 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 201–205, 218, 229, 301, 303, 312, 332, 403, 501 and 503.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

91. The proposals set forth in this proceeding may have a significant economic impact on a substantial number of small telephone companies identified by the SBA. We seek comment on the obligations of a telecommunications carrier for the purpose of complying with CALEA.

92. The RFA generally defines "small entity" as having the same meaning as the term "small business," "small organization," and "small governmental jurisdiction" and the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). The SBA has defined a small business for Standard Industrial Classification (SIC) categories 4812 (Radiotelephone Communications) and 4813 (Telephone Communications, Except Radiotelephone) to be small entities when they have fewer than 1,500 employees. We first discuss generally the total number of small telephone companies falling within both of those SIC categories. Then, we discuss the number of small businesses within the two subcategories, and attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

93. *Telephone Companiès (SIC 483).* Consistent with our prior practice, we shall continue to exclude small incumbent LECs from the definition of a small entity for the purpose of this IRFA. Nevertheless, as mentioned above, we include small incumbent LECs in our IRFA. Accordingly, our use of the terms "small entities" and "small businesses" does not encompass "small incumbent LECs." We use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by SBA as "small business concerns."

94. *Total Number of Telephone Companies Affected.* Many of the decisions and rules adopted herein may have a significant effect on a substantial number of the small telephone companies identified by SBA. The United States Bureau of the Census (the Census Bureau) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Some of these providers—for example, all SMR providers—are not covered by this Further NPRM, and it seems certain that some of the 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this Further NPRM.

95. *Wireline Carriers and Service Providers.* SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2,295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions and rules recommended for adoption in this NPRM.

96. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services (LECs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the Telecommunications Relay Service (TARS). According to our most recent data, 1,347 companies reported that

they were engaged in the provision of local exchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,347 small incumbent LECs that may be affected by the decisions and rules recommended for adoption in this NPRM.

97. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TARS. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXCs that may be affected by the decisions and rules recommended for adoption in this NPRM.

98. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 57 companies reported that they were engaged in the provision of competitive access services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 57 small entity CAPs that may be affected by the decisions and rules recommended for adoption in this NPRM.

99. *Operator Service Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator service providers nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 25 companies reported that they were engaged in the provision of operator services. Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator service providers that may be affected by the decisions and rules recommended for adoption in this NPRM.

100. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned are operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules recommended for adoption in this NPRM.

101. *Cellular and Mobile Service Carriers:* In an effort to further refine our calculation of the number of radiotelephone companies affected by the rules adopted herein, we consider the categories of radiotelephone carriers, Cellular Service Carriers and Mobile Service Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to Cellular Service Carriers and to Mobile Service Carriers. The closest applicable definition under SBA rules for both services is for telephone companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of Cellular Service Carriers and Mobile Service Carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 792 companies reported that they are engaged in the provision of cellular services and 117 companies reported that they are engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Cellular Service Carriers and Mobile Service Carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity Cellular Service Carriers and fewer than 138 small entity Mobile Service Carriers that might be affected by the actions and rules adopted in this NPRM.

102. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However,

licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commissioner's auction rules.

103. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TARS. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules recommended for adoption in this NPRM.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

104. The rules proposed in the NPRM require telecommunications carriers to establish policies and procedures governing the conduct of officers and employees who are engaged in surveillance activity. Those proposed rules require telecommunications carriers to maintain records of all interceptions of communications and call identification information. Further, those proposed rules require telecommunications carriers classified as Class A companies pursuant to 47 U.S.C. § 32.11 to file individually with the Commission a statement of its processes and procedures used to comply with the systems security rules promulgated by the Commission. Telecommunications carriers classified as Class B companies pursuant to 47 U.S.C. § 32.11 may elect to either file a statement describing their security processes and procedures or to certify that they observe procedures consistent with the security rules promulgated by the Commission.

105. We tentatively conclude that a substantial number of telecommunications carriers, who have been subjected to demands from law enforcement personnel to provide lawful interceptions and call-identifying information for a period time preceding CALEA, already have in place practices for proper employee conduct and recordkeeping. We seek comment on this tentative conclusion. As a practical matter, telecommunications carriers need these practices to protect themselves from suit by persons who claim they were the victims of illegal surveillance. By providing general guidance regarding the conduct of carrier personnel and the content of records in this Further NPRM, the Commission permits telecommunications carriers to use their existing practices to the maximum extent possible. Thus, we tentatively conclude that the additional cost to most telecommunications carriers for conforming to the Commission regulations contained in this Further NPRM, should be minimal. We seek comment on this tentative conclusion.

Significant Alternatives to Proposed Rules Which Minimize Significant Economic Impact on Small Entities and Accomplish Stated Objectives

106. As we noted in Part I of this IRFA, *supra*, the need for the proposed regulations is mandated by Federal legislation. The legislation is specific on the content of employee conduct and recordkeeping regulations for telecommunications carriers, which removes from Commission discretion the consideration of alternative employee conduct and recordkeeping regulations for smaller telecommunications carriers. The legislation, however, provides for Commission discretion to formulate compliance reporting requirements for telecommunications carriers that favor smaller telecommunications carriers, and in the NPRM the Commission exercised that discretion by proposing rules that allow smaller carriers the option to file a certification of compliance with the Commission instead of a statement of the policies, processes and procedures they use to comply with the CALEA regulations.

Federal Rules That May Overlap, Duplicate, or Conflict With the Proposed Rules

107. As we noted in Part I of this IRFA, *supra*, the need for the proposed regulations is mandated by Federal legislation. The purpose of CALEA was to empower and require the Federal Communications Commission and the Department of Justice to craft regulations pursuant to specific statutory instructions. Because there were no other Federal Rules in existence before CALEA was enacted, there are no duplicate Federal Rules. In addition, there are no overlapping, duplicating, or conflicting Federal Rules to the Federal Rules proposed in this proceeding.

Ordering Clauses

108. Accordingly, pursuant to sections 1, 4, 229, 301, 303, and 332 of the Communications Act of 1934, as amended, and 107(b) of the Communications Assistance for Law Enforcement Act, 47 U.S.C. sections 151, 154, 229, 301, 303, 332, and 1006(b), *it is ordered* that this Further Notice of Proposed Rulemaking is hereby adopted. *It is further ordered* that the Petition for Rulemaking filed by the Cellular Telecommunications Industry Association on July 16, 1997 *is dismissed* as moot. *It is further ordered* that the Petition for Rulemaking filed by the Center for Democracy and Technology *is dismissed* without prejudice to the extent the petition seeks relief under section 109 of CALEA, 47 U.S.C. section 1008. *It is further ordered* that the Commission *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30552 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Application of Earned Value Management (EVM)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would effect a change to the NASA FAR Supplement relative to the application of Earned Value Management (EVM) at NASA. The proposed change would establish NASA-wide clauses and provisions compatible with those used by DoD. Specifically, the change would clarify the role of the Defense Contract Management Command (DCMC) with

respect to its responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria, and with NASA Policy Directive 9501.3, Earned Value Performance Management, and DoD 5000.2-R.

DATES: Comments should be submitted on or before January 15, 1999.

ADDRESSES: Interested parties should submit written comments to Kenneth A. Sateriale, NASA Headquarters, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by e-mail to kenneth.sateriale@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Sateriale, (202) 358-0491.

SUPPLEMENTARY INFORMATION:

Background

EVM is a commonly used performance (i.e. cost, schedule, and technical) measurement tool for program managers in the aerospace industry. NASA and DoD are major customers in the Government sector of the aerospace industry, and cooperate to align their business practices wherever practicable in order to realize cost and resource efficiencies. Therefore, they have collaborated closely over the last several years to align their approaches to the use of EVM. This change completes that alignment process.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) since the changes do no more than align NASA practices with those already in place at DoD, which shares essentially the same industry sector. This proposed rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1842 and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1842 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1842 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1)

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Subpart 1842.3 is added to read as follows:

Subpart 1842.3—Contract Administration Office Functions

§ 1842.302 Contract administration functions. (NASA supplements paragraph (a))

(a) In addition to the responsibilities listed in FAR 42.302(a), responsibility for reviewing earned value management system (EVMS) plans and verifying initial and continuing contractor compliance with NASA and DoD EVMS criteria is normally delegated to DCMC.

3. Section 1842.7003 is added to read as follows:

1842.7003 Modified cost performance report.

(a) Modified cost performance reporting is required for RDT&E contracts with values between $25 million and $60 million, and production contracts with values less than $250 million. Modified cost performance reporting for RDT&E contracts with values of $25 million or less may be required at the discretion of the contracting officer.

(b) The contracting officer shall insert the clause at 1852.242–76, Modified Cost Performance Report, in solicitations and contracts, other than for firm-fixed-price, time-and-materials, or labor-hour, when modified cost performance reporting is required.

(c) The contracting officer shall insert the provision at 1852.242–77, Modified Cost Performance Report Plans, in solicitations for contracts, other than firm-fixed-price, time-and-materials, or labor-hour, when modified cost performance reporting is required.

4. Subpart 1842.74 is added to read as follows:

Subpart 1842.74—Earned Value Management

1842.7401 Earned Value Management Systems (EVMS).
1842.7402 Solicitation provision and contract clause.

Subpart 1842.74—Earned Value Management

1842.74 Earned Value Management Systems (EVMS).

(a) Earned value is a management technique that relates resource planning to schedules and to technical cost and schedule requirements. All work is planned, budgeted, and scheduled in time-phased "planned value" increments constituting a cost and schedule measurement baseline. There are two major objectives of an earned value system: to encourage contractors to use effective internal cost and schedule management control systems; and to permit the customer to be able to rely on timely data produced by those systems for determining product-oriented contract status. Any system used by the contractor in planning and controlling the performance of significant contracts shall be certified as meeting the NASA EVM Criteria (the Criteria), unless waived by the NASA Chief Financial Officer (CFO).

(b) Criteria-based EVMS is required in RDT&E contracts with a total estimated final value of $60 million or more, with a period of performance in excess of one year, and production contracts with a total value of $250 million or more. On RDT&E contracts with a total anticipated value greater than $25 million but less than $60 million, or production contracts less than $250 million, the Criteria normally is not applied. However, noncriteria-based EVM is required on these contracts, and is optional on contracts valued at $25 million or less at the discretion of the contracting officer. NASA Center CFO's have been delegated the authority to waive this requirement for contracts meeting the thresholds established for noncriteria contracts.

(c) When an offeror or contractor is required to provide an EVMS plan to the Government, the contracting officer shall forward a copy of the plan to the cognizant administrative contracting officer (ACO) to obtain the assistance of the ACO in determining the adequacy of the proposed EVMS plan.

1842.7402 Solicitation provision and contract clause.

When the Government requires Earned Value Management, the contracting officer shall insert:

(a) The provision at 1852.242–74, Notice of Earned Value Management System, in solicitations; and

(b) The clause at 1852.242–75, Earned Value Management System, in solicitations and contracts.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 1852.242–74, 1852.242–75, 1852.242–76, and 1852.242–77 are added to read as follows:

1852.242–74 Notice of Earned Value Management System.

As prescribed in 1842.7402(a), insert the following provision:

Notice of Earned Value Management System

(XXX)

(a) The offeror shall provide documentation that the cognizant Administrative Contracting Officer (ACO) has recognized that the proposed earned value management system (EVMS) complies with the EVMS criteria of NASA Policy Directive (NPD) 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(b) If the offeror proposes to use a system that does not meet the requirements of paragraph (a) of this provision, the successful offeror shall submit a plan for compliance with the NASA EVM criteria as described in NPD 9501.3.

(1) The plan shall—

(A) Describe the EVMS the offeror intends to use in performance of the contract;

(B) Distinguish between the offeror's existing management system and modifications proposed to meet the criteria;

(C) Describe the management system and its application in terms of the criteria;

(D) Describe the proposed procedure for administration of the criteria as applied to subcontractors; and

(E) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with EVMS criteria.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and evaluate the successful offeror's plan for EVMS, including the selection of subcontracted effort to which EVMS would be applied, within sixty days following contract award.

(c) Offerors shall identify in their proposals the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of EVMS.

(End of Provision)

1852.242–75 Earned Value Management Systems.

As prescribed at 1842.7402(b), insert the following clause:

Earned Value Management System

(XXX)

(a) In the performance of this contract, the Contractor shall use an earned value management system (EVMS) that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(b) If, at the time of award, the Contractor's EVMS has not been recognized by the cognizant ACO as complying with EVMS criteria or the Contractor does not have an existing cost schedule control system (C/SCS) that has been accepted by the Government, the Contractor shall apply that system to the contract and be prepared to demonstrate to the ACO that its EVMS complies with the EVMS criteria referenced in paragraph (a) of this clause.

(c) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, the exercise of significant contract options, or the incorporation of major contract modifications. The objectives of the integrated baseline review are for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(d) Unless a waiver is granted by the ACO, Contractor proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the Contractor shall disclose EVMS changes to the ACO and the NASA CO at least 14 calendar days prior to the effective date of implementation.

(e) The Contractor agrees to provide access to all pertinent records and data requested by the ACO or a duly authorized representative. Access is to permit Government surveillance to ensure that the EVMS complies, and continues to comply, with the criteria referenced in paragraph (a) of this clause.

(f) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: (Insert list of applicable subcontractors)

(End of clause)

1852.242–76 Modified Cost Performance Report.

As prescribed in 1842.7003(b), insert the following clause:

Modified Cost Performance Report

(XXX)

(a) The Contractor shall use management procedures in the performance of this contract that provide for:

(1) Planning and control of costs;

(2) Measurement of performance (value for completed tasks); and

(3) Generation of timely and reliable information for the Modified Cost Performance Report (M/CPR).

(b) As a minimum, these procedures must provide for—

(1) Establishing the time-phase budgeted cost of work scheduled (including work authorization, budgeting, and scheduling), the budgeted cost for work performed, the actual cost of work performed, the budget at completion, the estimate at completion, and provisions for subcontractor performance measurement and reporting;

(2) Applying all direct and indirect costs and provisions for use and control of management reserve and undistributed budget;

(3) Incorporating changes to the contract budget base for both Government directed changes and internal replanning;

(4) Establishing constraints to preclude subjective adjustment of data to ensure performance measurement remains realistic. The total allocated budget may exceed the contract budget base only after obtaining prior written approval of the NASA Contracting Officer. For cost-reimbursement contracts, the contract budget base shall exclude changes for cost growth increases, other than for authorized changes to the contract scope; and

(5) Establishing the capability to accurately identify and explain significant cost and schedule variances, both on a cumulative basis and a projected-at-completion basis.

(c) The Contractor may use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer (ACO) as complying with the earned value management system criteria provided in NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs.

(d) The Government may require integrated baseline reviews. Such reviews shall be scheduled as early as practicable and should be conducted within 180 calendar days after contract award, the exercise of significant contract options, or the incorporation of major modifications. The objectives of the integrated baseline review are for the Government and the Contractor to jointly assess areas, such as the Contractor's planning, to ensure complete coverage of the statement of work, logical scheduling of the work activities, adequate resourcing, and identification of inherent risks.

(e) The Contractor shall provide access to all pertinent records, company procedures, and data requested by the ACO, or authorized representative, to—

(1) Show proper implementation of the procedures generating the cost and schedule information being used to satisfy the M/CPR contractual data requirements to the Government; and

(2) Ensure continuing application of the accepted company procedures in satisfying the M/CPR data item.

(f) The Contractor shall submit any substantive changes to the procedures and their impact to the ACO for review.

(g) The Contractor shall require a subcontractor to furnish M/CPR in each case where the subcontract is other than firm-fixed-price, time-and-materials, or labor-hour, is 12 months or more in duration, and has critical or significant tasks related to the prime contract. Critical or significant tasks shall be identified by either the Government or the Contractor. Each subcontractor's reported cost and schedule information shall be incorporated into the Contractor's M/CPR.

(End of clause)

1852.242–77 Modified Cost Performance Report Plans.

As prescribed in 1842.7003(c), insert the following provision;

Modified Cost Performance Plans

(XXX)

.(a) The offeror shall submit in its proposal a written summary of the management procedures it will establish, maintain, and use in the performance of any resultant contract to comply with the requirements of the clause at 1852.242–74 Modified CostPerformance Report.

(b) If the offeror proposes to use a cost/schedule control system that has been recognized by the cognizant Administrative Contracting Officer as complying with the earned value management system criteria of NASA Policy Directive 9501.3, Earned Value Management, or DoD 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information Systems Acquisition Programs, the offeror may submit a copy of the documentation of such recognition instead of the written summary required by paragraph (a) of this provision.

(End of provision)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To List the Redband Trout in the Great Basin as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We (the U.S. Fish and Wildlife Service) announce a 90-day finding for a petition to list the redband trout (*Oncorhynchus mykiss* ssp.) in the Great Basin as an endangered or threatened species throughout its range, pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing at the level of the Great Basin population of redband trout as a whole or at the level of each of the six subpopulations may be warranted. We are initiating a status review to determine if listing any or all of the subpopulations is warranted. All further reference in this notice to redband trout in the Great Basin will identify this fish as the Great Basin redband trout.

DATES: The finding announced in this document was made on November 6, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by January 15, 1999.

ADDRESSES: Information, written comments and materials, or questions concerning this petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Antonio Bentivoglio, biologist, at the above address or telephone 503–231–6179.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information present, we are required to promptly commence a review of the status of the species if one has not already been initiated under our internal candidate assessment process.

We have made a 90-day finding on a petition to list the Great Basin redband trout (*Oncorhynchus mykiss* ssp.). The petition, dated September 4, 1997, was submitted by the Oregon Natural Desert Association, Oregon Trout, Native Fish Society, and Oregon Council of Trout Unlimited, and was received by us on September 8, 1997. The petition requests the listing of the indigenous redband trout in the Great Basin as endangered or threatened throughout its range in southeastern Oregon, northeastern California, and northwestern Nevada, in particular the redband trout populations in Catlow, Fort Rock (Silver Lake), Harney (Malheur Lake), Goose Lake, Warner, and Chewaucan (Lake Abert/Summer Lake) basins (together these six closed basins make up the Great Basin as described in the petition). The petition also requests the designation of critical habitat concurrent with listing. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to taxonomy, ecology, threats, and past and present distribution of the Great Basin redband trout.

The petition, supporting documentation, and other information available in our files have been reviewed to determine if substantial information is available to indicate that the requested action may be warranted. On the basis of the best scientific and commercial information available, we find the petitioned action may be warranted for the Great Basin redband trout because of threats to existing populations and declines in population numbers. A status review will be commenced in accordance with the final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) published on May 8, 1998.

At the time the petition was received, we were operating under the final listing priority guidance for fiscal year 1997, published December 5, 1996 (61 FR 64475), and the extension of that listing priority guidance published October 23, 1997 (62 FR 55268). The fiscal year guidance clarified the order in which we would continue to process the backlog of rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6); and (2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995, and April 1996. Based on biological considerations, the guidance established a "multi-tiered approach that assigned relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance called for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, third priority (Tier 3) to resolving the conservation status of candidate species and processing administrative findings on petitions, and lowest priority (Tier 4) to preparation of proposed or final critical habitat designations, and processing delistings and reclassifications from endangered to threatened status. On November 10, 1997, we notified the petitioners that based on the listing priority guidance for fiscal year 1997, the processing of their petition fell under Tier 3. We further indicated that our Oregon State Office (which was assigned the

responsibility for processing the petition) would continue to direct personnel and budget toward accomplishment of ongoing Tier 2 and Tier 3 activities for species judged to be in greater need of the Act's protection than Great Basin redband trout. As these higher priority activities were accomplished, and personnel and funds became available however, we would proceed with the 90-day finding on the petition for Great Basin redband trout.

On May 8, 1998, final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502) was published. This new guidance changed the four tier priority system to a three-tier system. Under the three tier system, first priority (Tier 1) is completion of emergency listings for species facing the greatest risk to their well-being. Second priority (Tier 2) is processing final decisions on pending proposed listings; processing new proposals to add species to the lists; processing 90-day and 12-month administrative findings on petitions to add species to the lists and petitions to delist or reclassify species; and delisting or downlisting actions on species that have achieved or are moving toward recovery. Third priority (Tier 3) is processing petitions for critical habitat designations and preparing proposed and final critical habitat designations. Under this new guidance, the processing of this petition finding is a Tier 2 action.

Both rainbow trout and redband trout belong in the species *Oncorhynchus mykiss*. The generally accepted geographic boundary between rainbow and redband trout is the crest of the Cascade Mountains. Trout in the species *O. mykiss* found east of the crest of the Cascade Mountains are referred to as interior redband trout and those west of the crest as coastal rainbow trout. Behnke (1992) clearly includes Great Basin redband trout as part of the interior redband trout complex but states that "their classification is a matter of personal preference and professional judgment." Williams et al. (1989) recognize three subspecies within the Great Basin redband trout complex—the Catlow Valley redband trout (*O. mykiss* ssp.), Goose Lake redband trout (*O. mykiss* ssp.) and Warner Valley redband trout (*O. mykiss* ssp.), but did not name them using subspecific designation. Other researchers have stated that although the Great Basin redband trout have no subspecific designation, any or all of the basins might contain distinct subspecies (Williams et al. 1989, Behnke 1992, Kowtow 1995).

Although Great Basin redband trout are not officially described as a subspecies, the petitioners supply supporting information for the recognition of the Great Basin redband trout as a Distinct Vertebrate Population Segment (DPS). In accordance with our policy on DPSs, for a taxon to be considered a DPS, two elements must be considered—discreteness and significance of the taxon (February 7, 1996; 61 FR 4721). Discreteness refers to the separation of a population segment from other members of the species based on either (1) physical, physiological, ecological, or behavioral factors, or (2) international boundaries that result in significant differences in exploitation control, habitat management, conservation status, or regulatory mechanisms. Great Basin redband trout, in each of the six basins, are physically isolated from each other and are isolated from outside aquatic influences by the presence of mountain ranges. Because of this, the redband trout in each of the six basins would be considered discrete.

Significance refers to the biological and ecological importance or contribution of a discrete population to the species throughout its range. Examples of significance include—(1) persistence of a discrete population segment in a unique or unusual ecological setting; (2) evidence that loss of a discrete segment would result in a significant gap in the range of the species; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or, (4) evidence that the discrete segment differs markedly from other populations of the species in genetic characteristics (61 FR 4721). The petitioners provide the following justification relating to example (1). Among all *Oncorhynchus mykiss*, Great Basin redband trout are the only group that exists in isolated desert watersheds that have been physically isolated from other watersheds for thousands of years. Equally important is the fact that these fish are adapted to harsh, high desert environments characterized by hot summers, cold winters, large diurnal temperature fluctuations, drought, intermittent stream flows and alkali waters. The petitioners provide the following justification relating to example (2). Hatchery rainbow trout stocked in any of the six basins, do not appear to survive long enough to reproduce. This appears to be due to the unique ecologically harsh parameters found in these six basins. If Great Basin redband trout are lost from these basins there is little likelihood that hatchery stocked trout would be able to survive in this area, thus a significant gap in the range of the species would occur. The petitioners provide the following justification relating to example (4). Publications by Berg (1987), Phelps et al. (1996), and Currens (1997) indicate evidence of genetic differences among the populations of redband trout in the Great Basin. Currens' (1997) allozyme data appear to indicate that, for the Great Basin redband trout, each basin's redband trout population is genetically distinct.

For these reasons, we believe that the Great Basin redband trout should be considered discrete and significant. Whether all six basins are one DPS or six separate DPSs has yet to be determined, and would be a focal issue of the status review.

In most basins, interior redband trout have adfluvial life histories, migrating between highly productive rearing areas in lakes with adjacent marshes and spawning areas in streams, or between productive marshes and streams. Marshes and lakes provide connections among various stream populations. During drought episodes that cause complete desiccation of the lakes and marshes, streams provided refuges for populations that return to the lakes when they refill (Kowtow 1995). Great Basin redband trout abundance is generally correlated with healthy riparian vegetation, presence of undercut banks, large woody debris and general stream habitat complexity. In-stream habitat varies from higher gradient channels to lakes and marshes with spawning occurring in loose gravel and well-oxygenated water. Water temperatures should not exceed 21 degrees Celsius and those above 26.6 degrees Celsius can be lethal. The smaller stream-resident redband are generally insectivorous while larger lake-resident fishes eat insects and small fishes (Kunkel 1976, Lee 1997, Bowers et al. 1979, Charlon et al 1970).

The petition contains a substantial amount of information relating to the decline of Great Basin redband trout. The petitioners assert that the Great Basin redband trout has evolved in and is therefore adapted to the harsh Great Basin environment. However, human impacts have decreased suitable habitat, which has led to the decline of Great Basin redband trout. Although exact historic distribution is unclear, the petitioners cite references stating that declines have occurred (Kowtow 1995, Dambacher and Stevens 1996, Bowers and Perkins 1996, Lee et al. 1997).

The petitioners indicate that declines in Great Basin redband trout have been most strongly associated with the destruction, modification, and

curtailment of this trout's aquatic habitat and range through degradation of riparian and stream habitat. The petition provides information regarding effects of habitat degradation and its relationship to Great Basin redband trout. The petitioners indicate that habitat degradation from improper livestock grazing practices, irrigation, stream channel manipulation, and timber harvest affects redband trout by increasing erosion of banks, increasing sedimentation, reducing stream bottom complexity, widening and shallowing of the stream cross section, increasing stream temperature, reducing streamside vegetation, fragmenting populations, dewatering streams, reducing watertables, and reducing the amount of large woody debris (Fleichner 1994, Bowers et al. 1979, Lee et al. 1997, USDA 1996). The petitioners present the effects of such degradation for each individual basin and as widespread occurrences in the Great Basin.

The petitioners provide evidence that introgression and competition by introduced fishes are threats to the continued existence of Great Basin redband trout. Introgression (i.e., introduction of a gene from one gene complex into another) resulting from Great Basin redband trout interbreeding with stocked hatchery rainbows reduces the native redband offspring's ability to survive harsh Great Basin conditions; introduced non-native fishes (both hatchery rainbows and exotic species like brook trout, carp, bass, catfish and crappie) compete with native redband for resources and can degrade the habitat (Hosford and Pribyl 1983, Kowtow 1995, Lee et al. 1997).

The petitioners also assert that threats to Great Basin redband trout remain because of the inadequacy of existing regulations. Emergency fishing regulations, conservation/protective designations by government agencies and professional societies, water quality protection measures, and other current and planned conservation measures have failed to stop the decline of Great Basin redband trout.

We reviewed the petition, as well as other available information, published and unpublished studies and reports, and agency files. On the basis of the best scientific and commercial information available, we find that there is sufficient information to indicate that listing of the Great Basin redband trout as threatened or endangered, throughout all or parts of its range, may be warranted. The petitioners also requested that critical habitat be designated for this species. Designation of critical habitat is not petitionable under the Act. However, if the 12-month finding determines that the petitioned action to list the Great Basin redband trout is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule.

Information Solicited

When we make a finding that substantial information exists to indicate that listing a species may be warranted, we are also required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information concerning the following—(1) information on historic distribution and information on current distribution in each basin; (2) habitat conditions in each basin; (3) basic biology including age-frequency distribution of the population(s) in each basin; (4) ongoing efforts to protect Great Basin redband trout and their habitat; (5) threats to the species and its habitat; (6) any information regarding distinct vertebrate population segment status of Great Basin redband trout as one unit or as six individual units; and (7) metapopulation dynamics and interactions between lake and stream morph fishes. In addition to information pertaining to the Great Basin redband trout, we are requesting any information in categories 1–7, above, that relates to Interior redband trout. "Interior redband trout" is a common term referring to any rainbow/redband type trout found east of the crest of the Cascade Mountains.

References Cited

A complete list of all references cited herein is available on request from the Oregon State Office (See **ADDRESSES** section).

Author

The primary author of this document is Antonio Bentivoglio, biologist, Oregon State Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–30541 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List Agave Eggersiana and Solanum Conocarpum as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list two plants, *Agave eggersiana* and *Solanum conocarpum* (marron bacora), under the Endangered Species Act of 1973, as amended. The Service finds that the petition presents substantial information indicating that listing these species may be warranted. A status review is initiated.

DATES: The finding announced in this document was made on October 16, 1998. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by January 15, 1999.

ADDRESSES: Questions, comments, data, or information concerning this petition should be sent to the Field Supervisor, Boquerón Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander (see **ADDRESSES** section); telephone 787/851–7297, facsimile 787/851–7440.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. Following a positive finding, section 4(b)(3)(B) of the Act requires the Service to promptly commence a status review of the species.

The Service published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this petition finding is a Tier 2 action.

The Service has made a 90-day finding on a petition to list two plants, *Agave eggersiana* and *Solanum conocarpum* as endangered. The petition, dated November 20, 1996, was submitted by the Department of Planning and Natural Resources, Division of Fish and Wildlife, of the U.S. Virgin Islands.

Agave eggersiana, of the family Agavaceae (century plant family), is known only from the island of St. Croix of the U.S. Virgin Islands. Members of the genus *Agave* are robust perennial herbs with large succulent or fibrous leaves with a stiff spine at the apex. The inflorescence (mode of flower bearing) is paniculate, racemose or spikelike, often from 5 to 7 meters (m) (16 to 23 feet (ft)) in height, and the flowers are borne in umbellate (flat-topped inflorescence whose rays arise from a common point) or cymose (a broad, more or less flat-topped flower whose central flowers open first) clusters. Flowers are large, with a funnelform or tubular yellow or green perianth. The fruit is a many-seeded capsule with flattened black seeds. *Agave eggersiana* is currently known from an apparently small number of wild and cultivated plants on privately owned land in St. Croix, (D. Nellis, pers. comm. 1997). It is known to be in cultivation in St. Croix and at the Fairchild Botanical Garden in Florida. Habitat on the island of St. Croix is under intense pressure for both residential and tourism development (Acevedo-Rodriguez 1996, R. Boulon and B. Kojis, pers. comm. 1996). *Agave eggersiana* was considered a category 2 candidate for listing as endangered or threatened by the Service, as published in the Notice of Review dated September 30, 1993 (58 FR 51144). At that time, a category 2 species was one for which the Service had information that proposing as endangered or threatened may be appropriate but for which sufficient information was not currently available to support a proposed rule. Designation of category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596).

Solanum conocarpum (marron bacora), of the family Solanaceae, is known only from the island of St. John of the U.S. Virgin Islands. *Solanum conocarpum* is an unarmed shrub which may reach 3 m (9.8 ft) in height. Leaves are from 3.5 to 7 centimeters (cm) (1.4 to 2.7 inches (in)) long and 1.6 to 3 cm (.62 to 1.2 in) wide, oblong-elliptic or oblanceolate (a leaf broader at the distal third than at the middle), coriaceous (leathery texture), glabrous (not hairy), with a yellowish midvein. The plant's young parts are densely covered with appressed (flatly pressed), multicellular hairs. The flowers are usually paired and in nearly sessile (not stalked) lateral or terminal cymes (flat-topped flower cluster). The corolla (inner circle of floral envelopes) is light violet, greenish at the center and about 2 cm (.78 in) wide. The fruit, a berry, is ovoid-conical, 2 to 3 cm (.78 to 1.2 in) long, and turns from green to yellow (Acevedo-Rodriguez 1996).

Solanum conocarpum is only known from a few old collections and from two recent collections. Old collections and reports indicate that the species may have occurred on St. Thomas and one herbarium specimen from Virgin Gorda has been located; however, the identification is questionable since the specimen has no flowers or fruit. Only two plants are currently known to exist and both are located on the island of St. John. One individual is found within the Virgin Islands National Park (Park) and the other is located on privately owned land (Acevedo-Rodriguez 1996, Woodbury and Weaver 1987, R. Boulon and B. Kojis, pers. comm. 1996). Privately owned land on St. John is under intense pressure for residential and tourism development. One individual is known from the Park, and while the National Park Service is aware of its presence, management practices such as trail and facility maintenance and construction may affect the species. Both feral pigs and donkeys are present in the Park and may adversely impact the vegetation. Information provided by the Virgin Island Department of Planning and Natural Resources indicates that the species may be functionally dioecious (male and female flowers on different plants), thereby making its rarity even more critical. *Solanum conocarpum* was among the plants being considered as a category 1 candidate by the Service, as published in the Notices of Review dated September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). Category 1 candidates were species for which the Service had substantial information supporting the appropriateness of proposing to list them as endangered or threatened. In the Notice of Review of September 30, 1993 (58 FR 51144), the species was reclassified to category 2 due to a lack of available information on the species distribution and abundance.

The Service has reviewed the petition, its accompanying information, and other literature and information in our files. On the basis of the best scientific and commercial information available, the Service finds that the petition presents substantial information that listing these two plant species may be warranted. The finding is based on information which indicates that the species are restricted to very few localities and subject to potential impacts from both residential and tourism development. The Service is in need of additional information on the species, including its distribution and abundance, biology, the location of any additional populations, and current or planned activities in the areas where the plants occur and there possible impacts. Within nine months from the date the petition finding is made, a finding will be made as to whether listing *Agave eggersiana* and *Solanum conocarpum* is warranted, as required by section 4(b)(3)(B) of the Act.

References Cited

Acevedo-Rodriguez, Pedro. 1996. Flora of St. John. The New York Botanical Garden. Bronx, New York. 581 pp.

Center for Plant Conservation. 1992. Report on the Rare Plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

Woodbury, R.O. and P.L. Weaver. 1987. The Vegetation of St. John and Hassel Island, U.S. Virgin Islands. U.S. Department of the Interior, National Park Service. 101 pp.

Author

The primary author of this document is Susan Silander, Boquerón Field Office (see **ADDRESSES** section).

Authority

The authority for the action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 16, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–30540 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List Silene spaldingii (Spalding's catchfly) as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We (U.S. Fish and Wildlife Service) are announcing a 90-day finding on a petition to list *Silene spaldingii* (Spalding's catchfly) under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial information indicating that listing this plant species may be warranted. With publication of this finding, we are initiating a status review for this species, which occurs in southeastern Washington, adjacent portions of Idaho and Oregon, and northwestern Montana.

DATES: The finding announced in this document was made on November 5, 1998. To be considered in the 12-month finding for this petition, information and comments concerning this finding should be submitted to us by January 15, 1999.

ADDRESSES: Data, information, comments, or questions concerning this finding should be submitted to the Supervisor, Snake River Basin Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. The petition finding and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Edna Rey-Vizgirdas, botanist, at the above address (telephone: 208/378–5243).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days following receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is that substantial information was presented, we also are required to promptly commence a review of the status of the species involved, if one has not already been initiated under our internal candidate assessment process.

The processing of this petition conforms with our listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). This guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency listings, second priority (Tier 2) to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants, or reclassify species from threatened to endangered status, and delisting or downlisting (reclassifying from endangered to threatened status) actions. The processing of critical habitat designations are the lowest priority actions and are placed in Tier 3. The processing of this petition finding is a Tier 2 action.

We have made a 90-day finding on a petition to list *Silene spaldingii* (Spalding's catchfly). The petition, dated February 23, 1995, was submitted by the Biodiversity Legal Foundation (BLF) of Boulder, Colorado, the Montana and Washington Native Plant Societies, and Mr. Peter Lesica of Missoula, Montana (BLF et al. 1995). The petition requested listing of *Silene spaldingii* within the conterminous United States as threatened or endangered under the Act, and was received by us on February 27, 1995. The petition requested that the species be listed as threatened or endangered across its entire known historic range, which includes southeastern Washington, adjacent portions of Oregon and Idaho, and northwestern Montana. The petition submitted information stating that this species is threatened by improper livestock grazing practices, competition with non-native and woody vegetation, improper herbicide application, inbreeding depression, and fire suppression.

A member of the pink family (Caryophyllaceae), *Silene spaldingii* is a long-lived perennial herb that grows 20 to 40 centimeters (cm) (8 to 16 inches (in)) tall (Lesica 1993, Lesica and Heidel 1996). It has four to seven pairs of lance-shaped leaves, and a spirally arranged inflorescence (flower cluster) consisting of small greenish-white flowers which range from 1 to 2 cm (0.4 to 0.8 in) long (Lesica 1993, Lesica and Heidel 1996). The foliage is lightly to densely covered with sticky hairs. The species was originally described by Watson (1875).

The distribution and habitat of *S. spaldingii* are limited. This species is primarily restricted to slopes, flats, or swales (marshy lands) in mesic grasslands or steppe vegetation of the Palouse region in southeastern Washington, northwestern Montana, and adjacent portions of Idaho and Oregon; one plant was located in British Columbia, directly adjoining a Montana population. Large-scale ecological changes in the Palouse region over the past several decades, including agricultural conversion, changes in fire frequency, and alterations of hydrology, have resulted in the decline of numerous sensitive plant species including *S. spaldingii* (Tisdale 1961). More than 98 percent of the original Palouse prairie habitat has been lost or modified by agricultural conversion, grazing, invasion of non-native species, altered fire regimes, and urbanization (Noss et al. 1995).

Silene spaldingii is currently known from approximately 94 occurrences or sites in Idaho, Oregon, Montana, and Washington; only 12 percent of these (11 sites) contain more than 100 individuals (Heidel 1995, Lichthardt 1997, Idaho Conservation Data Center 1998, Montana Natural Heritage Program (MNHP) 1998, Oregon Natural Heritage Program (ONHP)1998, Washington Natural Heritage Program (WNHP) 1998). This species is State listed as endangered in Oregon, and threatened in Washington. In Idaho and Montana, there are no State Endangered Species Acts, but *Silene spaldingii* is listed by the Idaho Conservation Data Center and MNHP as very rare (Lesica and Heidel 1996, Lichthardt 1997, Idaho Conservation Data Center 1998, MNHP 1998, ONHP 1998, WNHP 1998). The estimated total number of individuals for *S. spaldingii* is fewer than 14,000 (Heidel 1995).

Habitat degradation and competition associated with the invasion of exotic plant species continues to threaten this species, including sites on public lands. For example, the population of *S. spaldingii* in the Kramer Palouse Biological Study Area in Washington declined from 147 to 10 individuals during the period from 1981 to 1994,

apparently due to encroachment by the exotic yellow star-thistle (*Centaurea solstitialis*) and woody vegetation (Heidel 1995). Exotic plant species compete for water, nutrients, and light, in addition to competition for pollinators (Lesica and Heidel 1996). Herbicide application to reduce or eliminate the exotics has the potential to kill non-target species such as *S. spaldingii* (BLF et al.1995).

Fire suppression apparently contributes to a decline in suitable habitat conditions for *S. spaldingii* (B. Heidel, MNHP, pers. comm. 1998), facilitating the encroachment of woody vegetation and other plant species. Fire may be necessary for survival of *S. spaldingii* populations; Lesica (1992) found that recruitment of *S. spaldingii* was enhanced following fire.

Silene spaldingii reproduces by seed and requires bumblebees to pollinate the flowers. Competition for pollinators has been noted at a number of *S. spaldingii* sites that have large populations of other flowering plant species. Reduced pollinator activity has the potential to adversely affect fertility and fitness of the species, resulting in inbreeding depression and declines in small populations (Lesica 1993, Lesica and Heidel 1996).

Climatic fluctuations can also adversely affect this species, and contribute to the extirpation of small populations. For example, a *S. spaldingii* population at Wild Horse Island (Montana) declined from approximately 250 to 10 plants, due primarily to drought conditions in the late 1980's (BLF et al. 1995, Heidel 1995, Lesica 1988). Such reductions in population size are often exacerbated by other factors including pollinator competition and poor reproductive success.

We have reviewed the petition, the literature cited in the petition, and other information available in our files. On the basis of the best scientific and commercial information available, we find that the petition presents substantial information that listing of *Silene spaldingii* may be warranted. The available information suggests that the species' restricted range and small population size increase the likelihood of extirpation from random or localized events such as trampling, herbicide application, drought, competition, and reduced pollinator activity. At least 25 *S. spaldingii* populations may have been extirpated; two of these are known to have been extirpated since 1991 (Heidel 1995, Lichthardt 1997, MNHP 1998, WNHP 1998).

We hereby announce the formal review of the species' status pursuant to this 90-day finding. We request any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of *S. spaldingii*. Of particular interest, is information regarding the existence and status of additional populations, environmental factors determining distribution, pollinators, and genetic variability in known populations.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** section).

Author

The primary author of this document is Edna Rey-Vizgirdas, Snake River Basin Office (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: November 5, 1998.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 98–30539 Filed 11–13–98; 8:45 am]

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VOL 63 ISS 220 NO 16 1998 UMI

Notices

Federal Register
Vol. 63, No. 220
Monday, November 16, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Pretty Tree Bench Prescribed Burn Project, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a Forest Service proposal to implement management prescribed burning and cutting and a travel management plan for the Pretty Tree Bench Project Area of the Escalante Ranger District, Dixie National Forest. The area is located approximately 14 miles northeast of Escalante, Utah and approximately 1 mile west of Boulder, Utah. The project would be implemented in accordance with direction in the Dixie National Forest Land and Resource Management Plan (LRMP).

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate and contribute to the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the preparation of the Draft Environmental Impact Statement (DEIS) should be submitted by December 14, 1998.

ADDRESSES: Submit written comments to: District Ranger, Escalante Ranger District, 755 West Main, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kevin R. Schulkoski, District Ranger, 435–826–5400.

SUPPLEMENTARY INFORMATION: The proposed project covers an analysis area of approximately 33,938 acres of National Forest System Lands. There are approximately 2,749 acres of wilderness and an additional 1,459 acres of RARE II Inventoried Roadless Area (IRA) within the project boundary. No treatment activities are planned within the wilderness acres. In the RARE II Inventoried Roadless Area (IRA), there would be management prescribed burning on 83 acres of ponderosa pine, management prescribed cutting and burning on 85 acres of pinyon-juniper, and management prescribed burning on 24 acres of sagebrush. No roads would be constructed or reconstructed in the IRA. Of the several thousand additional acres of unroaded/undeveloped land within the project boundary, approximately 60% were included in unroaded/undeveloped inventory in 1983/1984 and also included in the 1997 update prepared by the Dixie National Forest.

The proposed actions, including travel management and road closures, would occur in Sections 8, 17, 18, 19, 20, 21, 28, 29, 30, 31, 32, and 33, Township 32 South, Range 4 East; Sections 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36, township 32 South, Range 3 East; Sections 1, 2, 3, 4, 9, 10, 11, 12, 15, 25, 35, and 36, Township 33 South, Range 3 East; and Sections 4, 5, 6, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33, and 34, Township 33 South, Range 4 East, Salt Lake Base Meridian, Garfield County, Utah.

The Proposed Action would implement management direction and projects identified in the LRMP. This project EIS will be tiered to the LRMP EIS, which provides goals, objectives, standards and guidelines for the various activities and land allocations on the Forest.

The purpose of the Proposed Action is to provide the appropriate levels of prescribed fire and other management actions to create healthier vegetation conditions, enhance elk and deer winter range, reduce ground and ladder fuels in ponderosa pine and mixed conifer types and reduce density within the pinyon/juniper. In addition, the proposal includes a travel management plan which would close some roads year round and some roads on a seasonal basis. An Off-Highway Vehicle (OHV) loop served by an existing trailhead would be included. Under the proposal, no roads would be constructed or reconstructed and there would be no management activities in the Box-Death Hollow Wilderness Area. The treatments are designed to move the project area closer to proper functioning condition. The proposed actions would be located in Management Areas 7A (Wood Products and Utilization), 6A (Livestock Grazing), 2A (Semi-primitive Recreation), 5A (Big Game Winter Range), 8A2 (Box Death Hollow CO2) and 2B (Rural and Roaded Recreation Opportunities).

Under the Proposed Action, approximately 200–250 acres of sagebrush would be burned and reseeded. Where needed, to ensure that management prescribed fire will carry in the sagebrush component, pinyon-juniper would be cut and scattered. This activity is needed to increase the sagebrush age class variety which is presently mature to over-mature and being succeeded by pinyon and juniper.

Approximately 450–500 acres of oak would be burned with a repeat burn in 3–5 years if necessary. This activity is needed to move about ⅓ of the existing oak vegetation out of a single aged stand structure.

The Proposed Action would cut and burn 3,000–3,500 acres of pinyon-juniper with follow-up reseeding to control erosion. This stand replacement activity is needed because the current stand densities were not identified as desirable biological conditions. Treatment would eliminate the current stand structure and age class resulting in early seral vegetation conditions. The components of early seral conditions are: shrub, grass and forb species. These specieis are our desired biological conditions.

Prescribed fire would be used to underburn approximately 7,000 acres of ponderosa pine and if needed, this treatment would be repeated in 3–5 years. This activity is needed to alleviate the unnatural fuel build up and loading, which has resulted from fire suppression. Treatment would maintain existing ponderosa pine trees while reducing the risk of these pines to a catastrophic wildfire event.

In the mixed conifer, the Proposed Action would underburn approximately 300–350 acres and if needed, the treatment would be repeated in 3–5 years. This activity is needed to

decrease current levels of fuel loading and thus avoid large scale tree mortality from future catastrophic events.

Within the Aspen component, approximately 700 acres would be burned by stand replacing fire. If necessary, understory (encroaching) conifers would be cut to build a sufficient fuel bed to carry the fire. A temporary fence would be constructed to protect regeneration, if deemed necessary. This treatment is necessary to provide age class and structural diversity and strengthen the overall health of the community.

On approximately 1,000 acres of aspen, understory conifers would be removed through non-commercial cutting. This action is needed to promote younger age classes and diverse structure. Succession would be set-back allowing a more pure aspen stand condition.

Approximately 302 acres of aspen would be commercially and non-commercially clear cut in patches up to 40 acres. This action would provide for age and structure diversity and would strengthen the overall health of the aspen community.

The Proposed Action would emphasize the use of native seed in restoring disturbed areas and would also utilize non-native seed, where necessary for erosion control and big game forage. With the Proposed Action, a Travel Management Plan would be implemented. Major roads (arterial) would remain open all year and other roads (collector) would be opened seasonally or closed year round. An OHV loop trail would be developed from existing jeep trails, forest development roads (collector) and the Great Western Trail. The existing trailhead at the north end of Forest Development Road 566 is sufficiently developed to accommodate the additional use from the proposed OHV loop trail.

Preliminary issues that have been identified through scoping to date include concerns about commercial aspen harvest, use of native seed only, reconstructing and realigning certain wet sections of Road Draw road, and year long or seasonal closure of Road Draw road to provide a big game corridor. Other issues include concerns about cutting any trees in any inventoried unroaded/undeveloped areas and the effects of the proposal on roadless area characteristics.

Tentative alternatives to the Proposed Action include: No action (the project will not take place but current management will continue); elimination of any cutting, even for pre-ignition preparation, in unroaded/undeveloped areas; The use of only native seed throughout the project; The reconstruction of Road Draw road; The closure of Road Draw road seasonally, or year long.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative will include mitigation measures and monitoring requirements.

Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The Forest Service is seeking comments from individuals, organizations, and local, state, and Federal agencies who may be interested in or affected by the proposed action.

Scoping notices have been sent to the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, 755 West Main, P.O. box 246, Escalante, Utah 84726.

A public review of the proposed project was held on February 3, 1998 with the Boulder, Utah City Council. In general, the Boulder City Council expresses concurrence with the Proposed Action. The entire project areas lies within National Forest System lands. No federal or local permits, licenses or entitlements would be needed. There are no potential conflicts with the plans and policies of other jurisdictions.

The comment period on the Draft EIS will be 45 days from the date of the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in the proposed action participate at this time. To be most helpful, comments on the DEIS should be as specified as possible and may discuss the adequacy of the statement or the merits of the alternatives discussed (see CEQ Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS, City of Angoon v. Hodel, (9th Circuit, 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp.1334. 1338 (E.D. Wis. 1980). This is to ensure that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final.

The DEIS is expected to be available for review by January 1999. The Record of Decision and Final Environmental Impact Statement is expected to be available by March 1999.

Dated: November 6, 1998.

Hugh C. Thompson,

Forest Supervisor, Dixie National Forest.

[FR Doc. 98–30508 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Aquarius Ecosystem Restoration Project, Dixie National Forest, Garfield County, UT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Notice is hereby given that the Forest Service, USDA, will prepare an environmental impact statement (EIS) for a Forest Service proposal to implement an ecosystem restoration and associated road construction project on the Escalante Ranger District, Dixie National Forest. The area is located approximately 18 miles northwest of Escalante, Utah. The project would be implemented in accordance with direction in the Land and Resource Management Plan for the Dixie National Forest (LRMP).

The agency gives notice that the environmental analysis process is underway. Interested and potentially affected persons, along with local, state, and other federal agencies, are invited to participate and contribute to the environmental analysis. The Dixie National Forest invites written input regarding issues specific to the proposed action.

DATES: Written comments to be considered in the preparation of the Draft Environmental Impact Statement (DEIS) should be submitted on or before December 13, 1998.

ADDRESSES: Submit written comments to: District Ranger Escalante Ranger District 755 West Main, P.O. Box 246, Escalante, Utah 84726.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Kevin R. Schulkoski, District Ranger, 435–826–5400.

SUPPLEMENTARY INFORMATION: The Aquarius Ecosystem Restoration Project

(AERP) is located within the Dixie National Forest, Escalante and Teasdale Ranger Districts. It is approximately 18 miles northwest of Escalante, Utah. The 81,104 acre project area is comprised of 4 major watersheds; Pleasant Creek, Boulder Creek, Antimony Creek, and Escalante River. The project is located in parts of Township 30 South, Range 2 East; Township 30 South, Range 3 East; Township 31 South, Range 1 West; Township 31 South, Range 1 East; Township 31 South, Range 2 East; Township 31 South, Range 3 East; Township 32 South, Range 1 West; Township 32 South, Range 1 East; Township 32 South, Range 2 East; Township 32 South, Range 3 East; Township 33 South, Range 1 West; Township 33 South, Range 1 East; Township 34 South, Range 1 West; Township 35 South, Range 1 West; and Township 36 South, Range 1 West.

Elevations range from 9,000 to 11,000 feet. The forest type is primarily Englemann spruce/subalpine fir, with a strong component of aspen. Other vegetation types represented include sagebrush, blue spruce, mixed conifer and ponderosa pine.

Dixie Forest LRMP management areas within the analysis area are: 1 General Forest Direction, 10A Research Natural Area, 2A Semi-Primitive Recreation Opportunities, 2B Rural and Roaded Recreation Opportunities, 4B Wildlife Habitat Management, 4D Aspen Management for Wildlife, 6A Livestock Grazing, 7A Timber Management, 9A Riparian Management.

Several actions are proposed within the project area to move existing conditions toward desired future conditions. These activities include commercial timber harvest, aspen regeneration, management ignited prescribed fire and travel management.

Activities proposed within the project area contribute to meeting the goals and objectives, management direction and standards and guidelines found in the Dixie LRMP.

Proposed Actions within 16,215 total acres of aspen forest would include using prescribed fire only, on an estimated 50 acres to regenerate a young healthy stand.

Use mechanical treatments with or without fire on approximately 3,100 acres of aspen forest. This includes both commercial treatments. Patch cuts or clear cut harvest treatments may be used in blocks of 40 acres or less where aspen areas are accessible (within ¼ mile of an existing road) and contain sufficient quality and volume to make it economical to harvest. Fire would be used after cutting treatments to remove residual conifer and stimulate additional aspen suckering. Approximately 50% of the harvest areas will be followed up by fire.

These activities are needed because the desired condition of the area is to maintain a mosaic of aspen and conifer stands with a variety of age classes across the landscape. Currently, many aspen dominated stands have either a growing component of understory conifer trees or lack of an aspen seedling class capable of replacing the maturing aspen. Most of the aspen stands across the landscape are of similar size and age class. The proposed treatments are designed to convert deteriorating aspen stands to young healthy aspen seedlings on approximately 20% of the existing aspen stands. This will enhance the opportunity to sustain aspen forests over the long-term in properly functioning condition and provide forest projects to forest industry.

The aspen acres proposed for prescribed fire are isolated and do not provide economic commercial opportunities.

The objectives of the treatments in the aspen component include: increase species diversity across the landscape to reduce catastrophic losses associated with forest pests and fire; increase the amount of aspen clones in the early to young stage on up to 20% of the existing stands; maintain aspen component within spruce/fir dominated stands; reduce conifer invasion in the aspen type; improve or maintain the visual form, color and textural diversity in the landscape viewed by forest users; improve structural diversity associated with wildlife habitat; and provide opportunity for community based forestry businesses. Proposed Actions within the 31,827 total acres of Englemann spruce/subalpine fir forests would include:

Approximately 200 acres of aspen within the spruce/fir type would be treated with prescribed stand replacement fire only to stimulate aspen regeneration and eliminate existing aspen and conifer trees.

Approximately 12,000 acres would be treated with commercial mechanical harvest. Tree thinning or an intermediate treatment under an individual tree selection system (reducing stand densities while maintaining a variety of tree sizes), would be implemented. An uneven aged structure is desired.

Approximately 1,600 acres of seral aspen within the spruce/fir would be regenerated with commercial harvest treatments with or without fire. Fire would be used after the cutting treatments to remove residual conifer and stimulate additional aspen suckering. Approximately 50% of the harvest areas will be followed up with fire. Treatments in blocks of 40 acres or less would be used.

These activities are needed because the desired conditions for the spruce/fir stands are to maintain land densities at moderate levels with a variety of age classes and to provide for a mix of aspen clones within this type. Forest management can prevent large scale mortality and loss caused by the spruce beetle. Many spruce/fir stands are densely stocked with trees and are declining in tree growth and vigor and lack larger size classes due to past spruce beetle activity. Seral aspen clones are maturing and succeeding to conifer trees.

The seral aspen component is being replaced by spruce/fir forest type. There is a lack of aspen clones in the early to young stage. More aspen is currently being lost than replaced by aspen regeneration. The invading conifer needs to be removed so that aspen regeneration may be initiated to sustain prue stand conditions for aspen.

The purpose of the proposed action in the coniferous forest is to: improve species diversity and forest structure and pattern characteristics; increase the number of mature (old) stage spruce; manage risk of bark beetles infestations and other insects and diseases at endemic levels; increase seral aspen and representation of young aspen clones in the spruce/fir type; and provide opportunity for community based forestry business.

Transportation Management would include the following road closures: 16.3 miles of existing roads would be utilized for harvest and regeneration activities and would be closed with physical barriers upon project completion; 39.6 miles of existing roads would be improved for project activities and would be obliterated and revegetated upon project completion; 13.25 miles of new road construction would be required for project implementation and then would be closed with physical barriers upon project completion; 7.6 miles of new road construction would be required for project implementation and then obliterated and revegetated upon project completion; approximately 15 miles of roads that are not being utilized for harvest activities will be closed and obliterated.

These activities are needed because many travel routes throughout the area were not properly located and constructed with proper drainage devices and have created erosion problems. Road densities are excessive

to the Forest Service ability to maintain roads to agency standards.

The purpose of the proposed travel management plan is to restore watershed values in areas where unacceptable soil and water resource damage is occurring (closing and rehabilitating unneeded roads will reduce the occurring adverse impacts); reduce long-tern maintenance costs; provide access to treatment areas, trailheads, dispersed recreation areas, and other areas of high recreation use; provide for safe travel on Forest roads; and reduce road densities to maintain or improve wildlife habitat effectiveness.

Trailhead development is proposed as follows: Construction of a trailhead for the Powell Point trail (#6.0) at the junction of the Powell Point non-motorized trail and the end of FS road (#1516). Construction would include a parking area, signs and information kiosk. Construction of a trailhead for the Gap trail (#1.51) at the end of Forest road (#1370). Construction would include a parking area, signs and information kiosk. Construction of a trailhead at Clayton Guard Station to serve Grass Lakes (#1.61), Pacer Lake (#4.0), Poison Creek (#3.0) and Antimony Lake (#2.0) motorized trails. Construction would include a parking area, signs and an information kiosk. Construction of a trailhead for the North Creek lakes non-motorized trail (#1.5) Construction would include a parking area, signs and an information kiosk. Construct a parking area at the end of the road #0176 at Row Lakes.

The activities are needed because: a comparison of the desired future condition and the existing forest condition indicated that motorized and non-motorized recreation use is increasing. There is a need to provide safe public access for this use. Existing trailheads are essentially rudimentary and undeveloped. There is a need to design and construct trailheads which include information kiosk, parking and signing. Due to the absence of designated trailheads, damage to the soil and water resources has occurred. There is a need to reduce and prevent resource damage.

Preliminary issues that have been identified through scoping to date include road closures, management activities in areas which have unroaded characteristics, prescribed burning versus cutting in aspen stands and managing timber stands to favor aspen over spruce.

Tentative alternatives to the proposed action include: No Action (the project will not take place, but current management will continue); elimination of timber harvest in areas which have unroaded characteristics; and an alternative which regenerates aspen by burning and does not include commercial aspen timber harvest.

As lead agency, the Forest Service will analyze and document direct, indirect, and cumulative environmental effects for a range of alternatives. Each alternative will include mitigation measures and monitoring requirements. Hugh C. Thompson, Forest Supervisor, Dixie National Forest, is the responsible official.

The Forest Service is seeking comments from individuals, organizations, and local, state and Federal agencies who may be interested in or affected by the proposed action.

Scoping notices have been sent to the Dixie National Forest NEPA mailing list. Other interested individuals, organizations, or agencies may have their names added to the mailing list for this project at any time by submitting a request to: Kevin R. Schulkoski, District Ranger, Escalante Ranger District, 755 West Main, PO Box 246, Escalante, Utah 84726.

A public field review of the proposed project was held on September 29, 1998. Twenty one people representing different organizational, business, governmental and individual interests participated in the meeting.

Approximately 120 acres of private land lie within the analysis area. No actions are proposed on private land. The remaining acres lie within National Forest System lands. No federal or local permits, licenses or entitlements would be needed. There are no known conflicts with the plans and policies of other jurisdictions. The comment period for the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. Vermont Yankee Nuclear Power Corp. Versus NRDC, 435 U.S. 519, 553 (1978).

Also, environmental objections that could have been raised at the DEIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon Versus Hodel, (9th Circuit, 1986) and Wisconsin Heritages, Inc versus Harris, 490 F. Supp. 1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible, it is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The DEIS is expected to be available for review by March 1999. The Record of Decision and Final Environmental Impact Statement are expected to be available by May 1999.

Dated: November 4, 1998.

Hugh C. Thompson,

Forester Supervisor, Dixie National Forest.

[FR Doc. 98–30509 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval To Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for a new information collection, the Fruit and Vegetable Agricultural Practices Survey.

DATES: Comments on this notice must be received by January 20, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Fruit and Vegetable Agricultural Practices Survey.

Type of Request: Intent to Seek Approval to Conduct an Information Collection.

Abstract: The Fruit and Vegetable Agricultural Practices Survey will be conducted by the National Agricultural Statistics Service. Survey data will be analyzed by the Food and Drug Administration as part of a pilot study on agricultural practices related to microbial food safety. Data on sources of microbial contamination on produce, including water; manure; worker, field and facility sanitation; and crop identification systems will be collected. These data will be used by the Food and Drug Administration to analyze current agricultural practices and to develop a baseline to evaluate changes in farm practices. The survey will be conducted in California and New York. This survey is in compliance with President Clinton's October 1997 directive entitled "Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables." These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 60 minutes per response.

Respondents: Fruit and vegetable growers and fruit and vegetable packinghouses.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden on Respondents: 1,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Larry Gambrell, the Agency OMB Clearance Officer, at (202) 720–5778.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Larry Gambrell, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, D.C., November 3, 1998.

Donald M. Bay,

Administrator, National Agricultural Statistics Service.

[FR Doc. 98–30562 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funding Availability (NOFA) for the section 515 Rural Rental Housing Program

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 515 Rural Rental Housing loan funds and section 521 Rental Assistance (RA) for new construction, including applications for the Nonprofit Set-Aside for eligible nonprofit entities, the set-aside for the 100 most Underserved Counties and Colonias (Cranston-Gonzalez Act), and the set-aside for Empowerment Zones and Enterprise Communities (EZ/ECs). This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration.

DATES: The closing deadline for receipt of all applications, including the set-asides, in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on January 15, 1999. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application for rural rental housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, TDD (602) 280–8701, Steve Langstaff

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800, Robert P. Anderson

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, "Sam" Mitchell

Connecticut—Served by Massachusetts State Office

Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, TDD (302) 697–4303, W. Arthur Greenwood

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3000, TDD (808) 933–6902, Abraham Kubo,

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5627, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3117, TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604,

(785) 271–2721. TDD (785) 271–2767, Gary Shumaker
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7325, TDD (606) 224–7422, Paul Higgins
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson
Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9115, TDD (207) 942–7331, Dale D. Holmes
Maryland—Served by Delaware State Office
Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, Donald Colburn
Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 337–6635 (ext. 1609), TDD (517) 337–6795, Philip Wolak
Minnesota State Office, 410 AgriBank Building 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7823, TDD (651) 602–3799, Mary Ann Erickson
Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy
Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Gary Frisch
Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 586–0819, MaryLou Falconer
Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer
Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (702) 887–1222, TDD (702) 885–0633 (ext. 13), William L. Brewer
New Hampshire—Served by Vermont State Office,
New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630, George Hyatt, Jr.
New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771, TDD (701) 250–4794, Kathy Lake
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Patsy Graumann
Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3350, TDD (503) 414–3387, Jillene Davis
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2187, TDD (717) 237–2187, Gary Rothrock
Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 Ext. 254, TDD 1–800–274–1572, Lourdes Colon
Rhode Island—Served by Massachusetts State Office
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5690, TDD (803) 765–5697, Larry D. Floyd
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, G. Benson Lasater
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, TDD (254) 742–9712, Eugene G. Pavlat
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4323, TDD (801) 524–3309, Robert L. Milianta
Vermont & New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6020, TDD (802) 223–6365, Russell Higgins,
Virgin Islands—Served by Florida State Office
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt
Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis
Western Pacific Territories—Served by Hawaii State Office
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass
Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620, TDD (715) 345–7614, Sherry Engel
Wyoming State Office, 100 East B, Federal Building, Room 1005, P.O. Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles E. Huff

FOR FURTHER INFORMATION CONTACT: Some States may have a loan limit that is lower than the National maximum ($2.5 million) established in this Notice; therefore, applicants must contact the appropriate Rural Development State Office listed elsewhere in this Notice for funding limitations. For general information, applicants may contact Linda Armour, Cynthia L. Reese-Foxworth, or Carl Wagner, Senior Loan Officers, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Rural Rental Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

Explanation of 60–Day NOFA Application Deadline

The Agency is using a 60-day application period so that the NOFA process will coincide with the time restraints placed upon our customers by participating lenders and State Housing Finance Agencies (SHFA). Participating lenders such as commercial banks leverage their funds with RHS funds. State organizations can provide Community Development Block Grants (CDBG) and HOME funds as another means of leveraging RHS funds. SHFAs have certain timeframes whereby applicants can apply for tax credits. Therefore, to assist as many of our customers as possible in obtaining leveraged funds and to participate with other funding sources, a 60-day application period is provided.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

Section 515 of the Housing Act of 1949 (42 U.S.C. 1485) provides RHS the authority to make loans to any individual, corporation, association, trust, Indian tribe, public and private nonprofit organizations, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities for elderly, handicapped, or disabled persons or families of low or moderate income as well as other persons and families of low income in rural areas. Rental assistance is a tenant subsidy available to very-low and low-income families residing in rural rental housing facilities with RHS financing, and is requested with application for such facilities.

B. Distribution Methodology

The total amount available for FY 1999 for section 515 is $114 million. Of that amount, $79 million is available for new construction as follows:

Set-Aside for Nonprofits	$7,560,000
Set-Aside for Underserved Counties and Colonias	4,200,000
Set-Aside for EZ/EC	7,250,000
General Reserve	5,740,000

State Rental Assistance (RA)	
Designated Reserve	1,500,000
Regular Section 515 Funds ...	52,750,000

The General Reserve will first be used for hardships, emergencies, and cooperative housing requests. If funds remain, the Administrator may consider group home requests. Group home requests must be located in a designated place and must be submitted under this NOFA.

The remaining $35 million will be available for repair and rehabilitation loans and for equity loans.

For fiscal year 1999, the Administrator has determined that it would not be practical to allocate funds to States because of funding constraints; therefore, section 515 new construction funds will be distributed to States based on a National competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart E.

2. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

C. Eligible Prior Year Applications

The Rural Housing Service published a Final Rule, in the **Federal Register** (62 FR 67216, on December 23, 1997) outlining its application and review process for section 515 Rural Rental Housing new construction program. The implementation proposal for those regulations provided that some applicants who filed acceptable loan requests in prior years could proceed with their loan requests provided they were in compliance with the newly published regulations. The following States have applications on hand from prior years in designated places that will count toward the $2.5 million maximum that a State may receive:

Alabama
Colorado

Applicants are advised to contact those States to ascertain the amount the State is eligible to compete for in the National NOFA.

II. Funding Limits

A. Individual loan requests may not exceed $1 million. This applies to regular Section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more. States may establish a lower limit than $1 million.

B. No State may receive more than $2.5 million from regular section 515 funds. Reserve funds, including set-aside funds, are not included in this cap.

II. Rental Assistance (RA)

New construction RA will be held in the National Office for use with section 515 Rural Rental Housing loans.

III. Application Process

All applications for section 515 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart E and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart E as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for the following:

1. Application information;

2. Any restrictions on funding availability (applications that do not conform to or exceed the State's limit on size of project or dollar amount will be returned to the applicant); and

3. List of designated places for funding new section 515 facilities.

V. Areas of Special Emphasis or Consideration

A. The selection criteria contained in 7 CFR part 1944, subpart E includes two optional criteria, one set by the National office and one by the State office. This fiscal year, the National office initiative will be used in the selection criteria as follows: In states where RHS has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide State Resources (State funds, State RA, HOME funds, CDBG funds, or LIHTC) for RHS proposals; or where the State provides preference or points to RHS proposals in awarding these State Resources, 20 points will be provided to loan requests that include such State Resources. No State selection criteria will be used this fiscal year.

B. $7.56 million is available nationwide in a set-aside for eligible Nonprofit organizations as defined in 42 U.S.C. 1485(w).

C. $4.2 million is available nationwide in a set-aside for the 100 most Underserved Counties and Colonias.

D. $7.25 million is available nationwide in a set-aside for EZ/ECs.

E. $1.5 million is available nationwide in a set-aside for the State Rental Assistance Program. These funds are available for States with viable State Rental Assistance Programs. In order to participate, States are to submit specific written information about the State RA program, i.e., a memorandum of understanding, documentation from the provider, etc., to the National office.

Dated: November 10, 1998.

Jan E. Shadburn,

Administrator, Rural Housing Service.

[FR Doc. 98–30665 Filed 11–13–98; 8:45 am]

BILLING CODE 3410–XV–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 15, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will result in authorizing small entities to furnish the commodities and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Jack, Scissors, Hand
5120–00–106–7598
NPA: Knox County ARC, Knoxville, Tennessee.

Odor Barrier Waste Storage Container
7240–00–NIB–0001
7240–00–NIB–0002
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.

Skirt, Female Service, Dress Blue,
CG 8410–01–452–3387
8410–01–452–3388
8410–01–452–3389
8410–01–452–3390
8410–01–452–3391
8410–01–452–3393
8410–01–452–3394
8410–01–452–3395
8410–01–452–3396
8410–01–452–3397
8410–01–452–3398
8410–01–452–3399
8410–01–452–3400
8410–01–452–3402
8410–01–452–3404
8410–01–452–3653
8410–01–452–3654
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8410–01–452–3680
8410–01–452–3681
8410–01–452–3682
8410–01–452–6191
8410–01–452–6195
8410–01–452–6197
NPA: Vocational Guidance Services, Cleveland, Ohio

Service

Food Service Attendant, U.S. Coast Guard, 259 High Street, South Portland, Maine
NPA: Goodwill Industries of Northern New England, Portland, Maine

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for deletion from the Procurement List.

The following service has been proposed for deletion from the Procurement List:

Laundry Service,

Naval Undersea Warfare Center, Keyport, Washington

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–30573 Filed 11–13–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 15, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 2, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published a notice (63 F.R. 36211) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List.

Meals Operations Rations Commercial (MORC) Kits

Morc Kits

8790–01-E59–0239A
8790–01-E59–0240A
8790–01-E59–0241A
8790–01-E59–0242A
8790–01-E59–0243A
8790–01-E59–0244A

Infantry Kits

8790–01-E59–0239B
8790–01-E59–0240B
8790–01-E59–0241B
8790–01-E59–0242B
8790–01-E59–0243B
8790–01-E59–0244B

Supplemental Kits For Sandwiches

8790–01-E59–0239C
8790–01-E59–0240C
8790–01-E59–0241C
8790–01-E59–0242C

Variety Pack

8790–01-E59–0239D
(100% of the requirement of the Kansas National Guard)

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–30574 Filed 11–13–98; 8:45 am]

BILLING CODE 6353–01–P

CENSUS MONITORING BOARD

U.S. Census Monitoring Board; Public Meeting

AGENCY: U.S. Census Monitoring Board.

ACTION: Notice of public hearing.

SUMMARY: This notice, in compliance with Pub. L. 105–119, sets forth the meeting date, time and place for a public meeting of the U.S. Census Monitoring Board. The meeting agenda will include a review of the U.S. Census Bureau's planning and preparation for the 2000 Census.

DATES: Monday, November 23, 1998.

TIME: 12 P.M. to 4 P.M.

LOCATION: Federal Building #3, Suitland Federal Center Suitland, Maryland.

FOR FURTHER INFORMATION CONTACT: Contact Estela B. Mendoza, Communications Director (Presidential Members), U.S. Census Monitoring Board, Phone (301) 457–9903, or Michael Miguel, Communications Director (Congressionally Appointed Members), U.S. Census Monitoring Board, Phone (301) 457–5080.

Mark R. Johnson,

Executive Director.

[FR Doc. 98–30606 Filed 11–13–98; 8:45 am]

BILLING CODE 1179–00–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1003]

Grant of Authority; Establishment of a Foreign-Trade Zone, Gregg County, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ". . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, Gregg County, Texas (the Grantee), has made application to the Board (FTZ Docket 75–97) requesting the establishment of a foreign-trade zone at the Gregg County Airport, Gregg County, Texas, adjacent to the Shreveport-Bossier City, Louisiana, Customs port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (62 FR 54821, 10/22/97); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report and finds that the requirements of the Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 234, at the site described in the application, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 4th day of November 1998.

Foreign-Trade Zones Board.

William M. Daley,

Secretary of Commerce, Chairman and Executive Officer.

ATTEST:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–30567 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle From Japan: Final Results and Partial Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review

SUMMARY: On May 8, 1998, the Department of Commerce (the Department) published the preliminary results and partial recission of the administrative review of the antidumping duty order on roller chain, other than bicycle, from Japan. This review covers fourteen manufacturers/exporters/resellers of roller chain from Japan during the period April 1, 1996, through March 31, 1997.

Based on our analysis of the comments received and the correction of certain clerical errors, we have changed our results from those presented in our preliminary results as described below in the "*Changes From the Preliminary Results*" section of this notice. The final results are listed below in the section "*Final Results of Review.*"

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Ron Trentham or Cameron Werker, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6320 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act)

by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 353 (April 1997). Although the Department's new regulations, codified at 19 CFR 351 (62 FR 27926 (May 19, 1997)) ("Final Regulations"), do not govern this administrative review, citations to these regulations are provided, where appropriate, as a statement of current Departmental practice.

Background

On May 8, 1998, the Department published its preliminary results of review, Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan, 63 FR 25450 (RC 96–97 Preliminary Results), of the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9926, April 12, 1973).

We gave interested parties an opportunity to comment on the preliminary results. We received comments from: (1) Daido Kogyo Company Ltd. (DK); (2) Izumi Chain Mfg. Company Ltd., (Izumi); (3) Pulton Chain Company Inc. (Pulton); (4) R.K. Excel Company Ltd. (RK);

(5) Kaga Chain Manufacturer (Kaga); (6) Oriental Chain Company (OCM); (7) Sugiyama Chain Company, Ltd. (Sugiyama); and (8) Tsubakimoto Chain Co./U.S.-Tsubaki (Tsubakimoto), (collectively, the respondents), and the petitioner (the American Chain Association (ACA)), on July 2, 1998.

On July 13, 1998, the same parties submitted rebuttal comments. We received additional comments and rebuttal comments on September 1, 1998, and September 9, 1998, respectively, from Izumi, Sugiyama, Tsubakimoto, the petitioner, and from an interested party, Jeffrey Chain Company (Jeffrey Chain). We held a hearing on September 24, 1998, to give interested parties the opportunity to express their views directly to the Department. A segment of this hearing was closed to the public in order to protect certain proprietary information. Based on our analysis of the comments received and the correction of certain clerical and computer programming errors, we have made changes from the preliminary results, as described below in "Changes From the Preliminary Results" and "Interested Party Comments" section of this notice. The final results are listed below in the section "Final Results of Review." The Department has now completed this administrative review in accordance with Section 751(a) of the Act.

Scope of the Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

On March 24, 1998, the Department determined that certain models of silent timing chain produced and exported by Kaga for use in automobiles are outside the scope of the antidumping finding. (See Final Scope Ruling: Kaga's Request for Scope Ruling on Automotive Silent Timing Chain, March 24, 1998 on file in room B–099 of the Main Commerce Building).

Verification

As provided in section 782(i) of the Act, on July 6, 1998, the Department conducted a partial verification, at the Department in Washington, D.C., of the differences in merchandise (DIFMER) information provided by Sugiyama. We used standard verification procedures, including examination of relevant accounting, sales, and other financial records containing relevant information. Our verification results are outlined in the verification report on file in the Central Records Unit (CRU) in room B–099 of the main Commerce building, (see Memorandum to Holly Kuga from the Team, Regarding the "Verification of the Cost of Manufacture and Variable Cost of Manufacture Questionnaire Responses of Roller Chain, Other than Bicycle, from Japan—Sugiyama Chain Co., Ltd.,—Administrative Review, 1996–1997," dated August 13, 1998 (Sugiyama Verification Report)).

Partial Rescission of Review

In our preliminary results, we determined that during the period of review (POR), Peer Chain Co., (Peer) made no shipments of subject merchandise to the United States. We confirmed with the United States Customs Service (Customs) that Peer did not have entries of subject roller chain during the POR. Therefore, we rescinded this review with respect to Peer.

Hitachi Metals Techno, Ltd. (HMTL) is affiliated with a roller chain producer subject to this annual review. During this POR, HMTL and HMTL/Hitachi Maxco, Ltd., made no shipments of roller chain to the United States. We confirmed with Customs that HMTL and HMTL/Hitachi Maxco, Ltd., did not have entries of subject roller chain during the POR. Consequently the issue of a separate review rate for HMTL and HMTL/Hitachi Maxco, Ltd., is moot and we rescinded the review for this reason with respect to these parties.

In addition, we determined in our preliminary results that we did not have a basis to consider Daido Tsusho (DT), Nissho Iwai Corporation (NIC) and Alloy Tool Steel Inc. (ATSI) for separate rates in this review and rescinded the reviews for these entities. See RC 96–97 Preliminary Results at 25451.

Changes From the Preliminary Results

We calculated export price (EP), constructed export price (CEP), and normal value (NV) based on the same methodology used in the preliminary results with the exceptions discussed below. Where applicable, we have cited to the relevant interested party comment; otherwise, we address these changes further in the company-specific final analysis memoranda on file in the CRU.

1. We modified the model match methodology with regard to matching similar merchandise. See the Department Position to Model Match Comment 1, below.

2. With respect to DK, we have made a CEP-offset adjustment to NV in our calculations and have corrected one clerical error. See the Department Position to DK Comments 1 and 2 below.

3. We have corrected for a programming error for RK which overstated the quantity and understated

the price of RK's chain sold in kits in the United States.

4. We have determined that the use of facts otherwise available is warranted for Sugiyama and Kaga.

Facts Available (FA)

In accordance with section 776(a) of the Act, we have determined that the use of adverse facts available is warranted for Izumi, Kaga, OCM, Pulton, and Sugiyama for these final results of review.

1. Application of FA

Section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e), facts otherwise available in reaching the applicable determination. In this review, as described in detail below, the above-referenced companies failed to provide the necessary information in the form and manner requested, and, in some instances, the submitted information could not be verified. Thus, pursuant to section 776(a) of the Act, the Department is required to apply, subject to section 782(d), facts otherwise available.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Pursuant to section 782(e) of the Act, notwithstanding the Department's determination that the submitted information is "deficient" under section 782(d) of the Act, the Department shall not decline to consider such information if all of the following requirements are satisfied: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

2. Selection of Facts Available

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (Oct. 16, 1997) (Pipe and Tubes From Thailand).

A. Total FA

Sugiyama

1. Application of FA

In accordance with section 782(d) of the Act, on August 15, 1997, December 30, 1997, and January 19, 1998, the Department issued supplemental questionnaires to Sugiyama, addressing multiple deficiencies in its questionnaire responses. In addition, Department officials met with Sugiyama's counsel to discuss these deficiencies and how they could be cured. See Memorandum to the File from Cameron Werker (February 6, 1998) on file in the CRU. However, as we discuss below, the information submitted by Sugiyama in its supplemental questionnaire responses continued to be inadequate and/or inappropriate for use in our margin analysis.

In the preliminary results, the Department excluded from its margin calculations home market sales submitted by Sugiyama after the deadline for submission of factual information, and determined to apply adverse FA to those U.S. transactions where the NV relied in whole or in part on the untimely submitted sales. At that point, we explained that we would address the appropriateness of including these untimely sales in our margin analysis in the final results. See RC 96–97 Preliminary Results at 25456. We further found that Sugiyama had failed to cooperate to the best of its ability, and determined that, in selecting among the FA to apply to the sales in question, an adverse inference was warranted. We consequently assigned, as adverse FA, the rate of 42.48 percent that was calculated for Kaga in the preliminary results. Id.

Following the preliminary determination, on June 8, 1998, we met with Sugiyama's counsel, who informed us of additional deficiencies in the company's questionnaire responses. Specifically, Sugiyama's counsel informed the Department that: (1) the company failed to report key information regarding certain affiliated reseller relationships; (2) the company failed to report any home market sales of chain purchased from other manufacturers subject to this review, and resold in the home market; (3) the company does not maintain and, therefore, was unable to report standard or product costs; and (4) Sugiyama reported estimated model-specific overhead, material usage, and labor cost allocations based on the company's "experience," rather than supporting documentation. For a detailed discussion of these deficiencies, see Memorandum to the File from Jack K. Dulberger Regarding "Meeting with Representatives of Sugiyama Chain Company, Ltd., Regarding the 1996–97 Administrative Review of Roller Chain, Other Than Bicycle, from Japan" (June 17, 1998) on file in the CRU.

Given the potentially significant impact of these data deficiencies on our margin analysis, we decided to conduct a limited verification of Sugiyama's reported DIFMER information (variable and fixed cost of manufacturing data). The purpose of this partial verification was to ascertain the reliability of the DIFMER response, so that the Department would be able to decide whether to proceed with regular verification of Sugiyama's facilities in Japan. We conducted this verification on July 6, 1998, in Washington, D.C., and concluded that Sugiyama was unable to demonstrate the reliability and completeness of its cost data. Taking into account the fact that the unreliable DIFMER data affected a significant portion of total U.S. sales, we were unable to ascertain what portion of U.S. sales would be affected by the unreported affiliations and unreported home market sales, and other known deficiencies in the response, we determined to cancel the scheduled verification of Sugiyama in Japan. For a more detailed discussion of our verification findings, *see* the Sugiyama Verification Report.

We further determined that Sugiyama failed to satisfy the five requirements enunciated by section 782(e) of the Act. First, a significant portion of the company's home market sales was untimely submitted. Second, because Sugiyama lacked necessary documentation to support its reported costs (*see* Summary of Results of the Partial-Verification section in the Memorandum to Maria Harris Tildon from Holy Kuga Regarding "Determination of FA Based on Unreliable and/or Deficient Data for

Sugiyama" (August 14, 1998) (Sugiyama FA Memorandum) on file in the CRU), a substantial portion of its response data could not be verified. Third, because over 40 percent of the company's home market sales were untimely submitted, additional home market sales were not reported at all, and Sugiyama failed to disclose in its questionnaire responses relevant information regarding certain corporate affiliations, the information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Fourth, Sugiyama did not demonstrate that it acted to the best of its ability in providing the necessary information. As explained above, and as detailed in the Sugiyama FA Memorandum, after the November 17 deadline established for submission of new factual information in this review, Sugiyama continued to submit partial corrections to its timely submitted data and to the untimely submitted home market affiliated sales information that it provided to the Department for the first time on January 27, 1998. Finally, even if Sugiyama's submissions contained complete and accurate information, the Department would not be able to use it without undue difficulty in light of the magnitude of the submitted corrections and clarifications.

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for Sugiyama's submissions. We have thus concluded that a determination predicated upon total FA is warranted in this case.

2. Selection of FA. As discussed above, we found significant problems with Sugiyama's submissions. Although we addressed the company's deficiencies with respect to the home market sales database in several supplemental questionnaires, Sugiyama failed to report a significant portion of its home market sales. Specifically, Sugiyama originally reported that one of its affiliated home market resellers had sales to two customers in the home market during the POR. However, in its revised database submitted in January 1998, Sugiyama included previously unreported sales by that reseller to multiple additional customers. After careful review of this submission, we discovered that Sugiyama had increased its home market sales database by more than 40 percent. *See RC 1996–1997 Preliminary Results* at 25456. Moreover, following the preliminary results, Sugiyama disclosed additional reporting problems, including its failure to report key information regarding company affiliations, which precluded the Department from conducting an arms-length test, or from determining what percentage of U.S. sales was affected by this omission without admitting new information from Sugiyama. As described in detail in the Sugiyama FA Memorandum, during the partial-verification in Washington, D.C., we found that much of Sugiyama's cost data was not verifiable. The company's cost allocations were estimates based on Sugiyama's "experience," rather than supporting documentation, and were not representative of POR costs. Accordingly, because Sugiyama did not act to the best of its ability to comply with the request for information, under section 776(b) an adverse inference is warranted. However, because the company substantially cooperated throughout the course of this review, we are resorting to FA that are less adverse to the interests of Sugiyama. *See, e.g., Fresh Cut Flowers from Colombia; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 53287, 53291–53292 (Oct. 14, 1997) (*Fresh Cut Flowers—Colombia 1997*). As FA, we have applied the rate of 12.68 percent, the margin calculated for another respondent in the 1990–1991 administrative review of this proceeding. This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Sugiyama in future reviews of this proceeding.

Kaga

1. Application of FA. In accordance with section 782(d) of the Act, the Department provided Kaga with the opportunity to explain its deficiencies in our supplemental questionnaires of October 31, 1997, and March 25, 1998. Although Kaga responded to our supplemental requests for information, the information provided was deficient. On April 1, 1998, we received a call from counsel for Kaga, who stated that in responding to our March 25, 1998, request for information regarding missing values, other errors had been discovered. We instructed Kaga to submit revised sales tapes for the U.S. and home market by April 6, 1998, and cautioned Kaga that we would not grant any other extensions to correct for data errors. At the same time, we informed Kaga that if we found errors or had difficulty in using the data on the revised tapes, we may proceed with our determination based on FA. However, in letters submitted on April 28, and April 29, 1998, Kaga admitted that its sales tapes submitted on April 6, 1998, in response to our March 25, 1998, request for information were rife with incorrect price and expense data. Moreover, following the preliminary results, in its letter of June 30, 1998, and in its July 2, 1998, case brief, Kaga disclosed programming errors affecting all CEP sales and an undetermined number of EP sales, and reported conversion and coding errors affecting an undetermined number of U.S. and home market sales. As stated above, the Department issued multiple information requests providing Kaga ample opportunities to cure its deficiencies. Given that Kaga failed to provide the necessary information in the form and manner requested, even after being provided several opportunities to cure these deficiencies, the Department is required, under section 782(d), to apply, subject to section 782(e), facts otherwise available.

We further determine that Kaga failed to satisfy several of the requirements enunciated by section 782(e) of the Act. First, a significant portion of the company's U.S. and home market sales data was untimely submitted. Second, Kaga's information is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination pursuant to subsection (e)(3), since the reported programming errors affect all CEP sales and an undetermined number of EP sales. Further, no information exists on the record regarding the number of U.S. and home market gross unit prices which are incorrect due to Kaga's miscalculations in converting gross unit prices from a per-link to a per-foot basis. In addition, no information exists on the record regarding the number of models of conveyor chain which were incorrectly coded as industrial chain by Kaga. Third, Kaga did not demonstrate that it acted to the best of its ability in providing the necessary information under subsection (e)(4). As noted above, Kaga failed to provide the necessary information even after the Department issued multiple supplemental questionnaires providing Kaga ample opportunity to cure its deficiencies. Fourth, to attempt to correct all of the errors in Kaga's responses would be unduly burdensome on the Department. Thus, even if the Department attempted to correct the responses, given the numerous errors in Kaga's information on the record, the information could be used without undue difficulties, as required by subsection (e)(5).

For the reasons stated above, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available for Kaga's submissions. Thus, the use of facts available is warranted in this case.

2. Selection of FA

As discussed above, we found significant problems with Kaga's submissions. Although the Department provided Kaga with the opportunity to explain its deficiencies in our supplemental questionnaires of October 31, 1997, and March 25, 1998, the information provided was deficient. In a submission dated April 28, 1998, Kaga stated that it had discovered inadvertent and previously undisclosed errors. Kaga reported that, as a result of a programming error, home market packing and indirect selling expenses were not calculated properly. For U.S. sales, Kaga stated that the price for two chain models were reported incorrectly. Further, Kaga reported that, as a result of programming errors, the reported U.S. packing and commission values were incorrect. It also noted that the reported indirect selling expenses for both EP customers were incorrect. For the CEP customer, Kaga stated that brokerage, date of sale, sales invoice date, date of shipment, and date of receipt of payment were not reported as requested in the Department's questionnaire. On April 29, 1998, Kaga submitted a letter stating that it had found an additional error in the U.S. sales data base. Kaga stated that due to this programming error, the amount reported for U.S. inland freight from warehouse to one EP customer was incorrect.

In its July 2, 1998, case brief, Kaga reiterated that it had discovered two programming errors in the data processing. According to Kaga, the first error was that only a single character was allowed to the left of the decimal for U.S. gross unit price, resulting in an understatement of Kaga's U.S. sales prices. This, Kaga noted, affected sales to one EP customer and all CEP sales. The second error, affecting only CEP sales, according to Kaga, occurred in its computer submission of January 22, 1998 when in the data processing the prices from Kaga's affiliated importer to its unaffiliated U.S. customers were mistakenly deleted and, instead, used the transfer prices from Kaga to its affiliated importer were used.

In addition, Kaga stated that it found three other errors by the company itself. First, it reported that it miscalculated the per-foot gross unit prices for "several of its chains" when converting from a per-link basis for the Department. Second, Kaga noted that it "mistakenly coded several models of conveyor chain . . . as industrial chain." Third, Kaga stated that it included an invoice in the home market sales data which represents an adjustment in price to a pre-existing sale, and that any observation associated with this invoice should be deleted from the home market data base.

As the record evidence demonstrates, despite numerous opportunities, Kaga continued to provide erroneous data, the magnitude of which prevented the Department from using Kaga's information in the margin calculations. We thus find that Kaga did not act to the best of its ability to comply with the request for information under section 776(b) and that, under section 776(b), an adverse inference is warranted. However, because Kaga made an effort to comply throughout the course of this review, we are resorting to facts available that are less adverse to the interests of Kaga. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Germany, 63 FR 8953, 8955 (February 23, 1998); and Fresh Cut Flowers-Colombia 1997. Therefore, we have assigned Kaga an adverse FA rate of 12.68 percent (the rate calculated for another respondent in the 1990–1991 review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and is thus sufficiently adverse to induce cooperation by Kaga in future reviews of this proceeding. For a detailed discussion of this issue see the Memorandum From Tom Futtner, Acting Director, AD/CVD Enforcement, Group II, Office 4, to Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration regarding "Antidumping Duty Administrative Review: Roller Chain, Other than Bicycle, from Japan (1996–1997)—Determination of Facts Available for Kaga Industries, Co., Ltd." (November 4, 1998), on file in the CRU.

OCM. For purposes of the preliminary results, the Department concluded that OCM failed verification and that the determination based on the total adverse FA was warranted for this company. We, accordingly, assigned OCM an adverse FA rate of 17.57 percent and articulated detailed reasons for our decision in the RC 96–97 Preliminary Results and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding "Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle from Japan (1996–1997): Determination of Facts Available Based on Results of Verification of Oriental Chain Manufacturing Co., Ltd." (April 30, 1998) (OCM FA Memorandum), on file in the CRU. For the final results, we have reexamined our verification results and considered the interested party comments (see the Department Position to OCM Comments 1 through 13). We continue to find that OCM did not act to the best of its ability in responding to the Department's questionnaire, however, as we explained in the preliminary results, because OCM made substantial efforts to cooperate throughout the course of this review, we are resorting to FA that are less adverse to the interests of the company. Therefore, we are assigning OCM an adverse FA rate of 12.68 percent, which constitutes a rate calculated for another respondent in a previous review and is a significant increase from OCM's current cash deposit rate and is thus sufficiently adverse to induce cooperation in future segments of this proceeding.

Pulton. For purposes of the preliminary results, the Department concluded that, because Pulton refused to permit verification, a determination based on the total adverse FA was warranted for this company. We, accordingly, assigned an adverse FA rate and articulated detailed reasons for our decision in RC 96–97 Preliminary Results and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding "Application of Total Facts Available to Pulton Chain Company, Ltd., (Pulton) in the Administrative Review of Roller Chain, Other than Bicycle from Japan (Roller Chain) Covering the POR: April 1, 1996 through March 31, 1997" (April 30, 1998), on file in the CRU. For the final results, we have considered the interested party comments (see the Department Position to Pulton Comments 1 and 2), and continue to find that Pulton's refusal to permit the Department to verify the information in this review demonstrates that it failed to cooperate by not acting to the best of its ability. Thus, consistent with the Department's practice in cases where a respondent withdraws its participation in a proceeding, in selecting FA for Pulton in this review, an adverse inference is warranted. Therefore, we are assigning Pulton an adverse FA rate of 17.57 percent, which constitutes ■ rate calculated for another respondent in a previous review.

Izumi. For purposes of the preliminary results, the Department concluded that Izumi failed verification and that a determination based on the total adverse FA was warranted for this company.

We, accordingly, assigned Izumi an adverse FA rate of 17.57 percent and articulated detailed reasons for our decision in the RC 96–97 Preliminary Results and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding "Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle from Japan (1996–1997): Determination of Facts Available Based on Results of Verification of Izumi Chain Manufacturing Co., Ltd."(April 30, 1998) (Izumi FA Memorandum), on file in the CRU. For the final results, we have reexamined our verification results and considered the interested party comments (see the Department Position to Izumi Comment 1). However, as we explained in the preliminary results, because Izumi made substantial efforts to cooperate throughout the course of this review, we are resorting to FA that are less adverse to the interests of the company. Therefore, we are assigning Izumi an adverse FA rate of 12.68 percent, which constitutes a rate calculated for another respondent in a previous review.

B. Partial FA for DK and Enuma Chain Manufacturing Company (Enuma)

For purposes of the preliminary results, the Department concluded that because DK and Enuma failed to report DIFMER and/or constructed value (CV) data, an adverse FA was warranted for all unmatched DK and Enuma sales. We, accordingly, assigned DK and Enuma an FA rate of 42.48 percent for any unmatched sales and articulated detailed reasons for our decision in the *RC 96–97 Preliminary Results* and the Memorandum from the Senior Director, AD/CVD Enforcement, Group II, Office 4, to the Acting Deputy Assistant Secretary, Import Administration, regarding "Application of Partial Facts Available for Certain U.S. Sales of Roller Chain Manufactured by Daido Kogyo Co., Ltd., and Enuma Chain Manufacturing Co., Ltd., and Kaga Industries Co., Ltd." (April 30, 1998), on file in the CRU. For the final results, we find that the 42.48 percent calculated rate for Kaga in the preliminary results is not valid. *See* the discussion on FA for Kaga, above. However, since these two respondents refused to provide this information, we are continuing to assign DK and Enuma an adverse FA rate based on the highest rate from the proceeding which has not been invalidated. For purposes of the final results, that rate changed from 42.48 percent to 17.57 percent.

3. Corroboration of Information Used as Facts Available

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is described in the Statement of Administrative Action (SAA) (at 870) as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom* 62 FR 2801 (January 15, 1997) (*AFBs 1997*).

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (September 9, 1997) that it will consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse [FA], the Department will disregard the margin and determine an appropriate margin. *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record of the 1987–1988 or 1990–1991 administrative reviews, where we calculated the 17.57 and 12.68 percent rates, respectively, which would indicate that the 17.57 or 12.68 percent rates are irrelevant or inappropriate as adverse FA rates for certain respondents in the instant review. Therefore, we have applied, as FA, the 17.57 and 12.68 percent margins from prior administrative reviews of this finding.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioner and nine of the respondents and rebuttal comments from one other domestic interested party.

General Issues

Model Match

Comment 1: Sugiyama argues that the Department should modify its model match methodology to take account of the fundamentally different physical characteristics, uses, and manufacturing processes between plated and unplated chain. According to Sugiyama, these differences are reflected in significant cost and price disparities. Sugiyama claims that the Department's preliminary model match methodology ignores these differences, and by matching expensive plated chain to unplated chain, significantly distorts the dumping margin.

RK states that, in the preliminary results, the Department erred in matching U.S. sales of a certain model of chain with home market sales of several different models of chain. RK notes that section 771(16)(B) and (C) of the Act authorize the Department to match U.S. sales of subject merchandise with sales in the comparison market of "similar merchandise," namely, merchandise that is either "like that merchandise [sold in the United States] in component material or materials and in the purpose for which used, and approximately equal in commercial value to that merchandise," or merchandise that is of the "same general class or kind" as the subject merchandise, used for a like purpose, and which can "reasonably be

compared" with the product sold in the United States. According to RK, in creating an effective model match methodology to identify "similar" products, the Department must consider the specific facts and circumstances regarding the product(s) under review and must base the model match system on commercially significant physical characteristics of the subject merchandise (*i.e.*, physical characteristics that affect the commercial value and sales price of the product(s) under review).

Further, RK argues that the Department has a statutory duty to compare products that are the most similar so that the resulting dumping calculations will be as accurate and reliable as possible. RK concludes that both the statute and the Department's model matching decisions in other cases establish the principle that it is inappropriate and unreasonable for the Department to make comparisons between products with important physical differences that directly affect commercial value. Thus, RK contends that it would be unreasonable for the Department to match sales of certain chain models where the models differ fundamentally in terms of their components and materials, their purposes and uses, and their respective commercial values. Accordingly, RK recommends that the Department adjust its model match methodology (1) to account for different types of seals (*e.g*, O-ring versus XW-ring), (2) to account for different types of materials, and (3) to ensure that the model match system does not permit matches across chain type or material.

RK further recommends that the Department adjust its model match methodology to prevent matches across pitch length because almost all parties, including the petitioner, have stated on the record that it is inappropriate to match chains across pitch length. In addition, RK requests that the Department adjust its model match methodology to reflect the consensus of all parties to this review, including the petitioner, that models of chain that differ in terms of certain key characteristics, such as material, finish, and number of strands, should never be considered "identical" or "similar" merchandise for purposes of model-match in this proceeding.

Kaga contends that the Department's preliminary model match methodology does not result in identical or reasonably similar home market matches based on physical characteristics, commercial value, purposes for which used and other factors which the Department is required by statute to analyze. Kaga argues that by potentially allowing one model match characteristic to determine foreign like product, the Department's methodology essentially relies on the DIFMER test (*i.e.*, the test to determine if the difference in variable costs of manufacturing is greater than 20 percent of the total cost of manufacturing of the U.S. product) to eliminate inappropriate matches.

Kaga maintains that the DIFMER test should be used in conjunction with a model match methodology, which first attempts to eliminate the matching of models which are dissimilar in components, commercial value and the purposes for which they are used. Kaga states that, once merchandise has been determined to be sufficiently similar, the DIFMER test should be applied to eliminate matches that may appear similar based only on an analysis of physical characteristics, commercial value and purpose for which the products are used, as required by the statute. Kaga argues that, because different types of chain (*i.e.*, industrial, motorcycle, leaf, silent timing, and conveyor chain) have very different characteristics, components, uses and commercial value, they should not be matched to each other. Kaga states that pitch is one of the most basic measures of roller chain, noting that virtually all parties, including the petitioner, have agreed that the Department should not cross pitch for model match purposes. Kaga further argues that the Department should not match chain that differ in terms of number of strands and number of attachments. Kaga asserts that chain with different numbers of strands differ in both physical characteristics and uses, and that the presence of attachments distinguishes attachment chain from non-attachment chain in terms of components, purpose for which it is used and commercial value. In addition, Kaga urges that, for the final results, the Department not match sidebow (sidebar) chain to standard roller chain for the final results. Kaga explains that standard roller chain cannot be used in an application which requires sidebow chain because it does not have the necessary flexibility.

More specifically, Kaga contends that the Department matched two models of chain that have two critical distinctions, which render them significantly different from each other. Kaga maintains that one chain is a coupling specifically designed for use with a sprocket, which has additional parts not found on the other chain. According to Kaga, these special features are not captured in the reported VCOM of the product, but do result in increased cost and thus increased price. Moreover, Kaga argues that it sold such a small amount of the chain coupling that it cannot reasonably be considered to have been sold "in the ordinary course of trade."

Finally, Kaga asserts that the Department's model match criteria do not meet the statutory definition of identical merchandise because there are certain physical characteristics which are not accounted for in the Department's matching criteria. Kaga cites "F" series chain as an example, and claims that although "F" series chain is identical to standard chain with the exception of a straight contour side plate, this is a significant physical difference. Thus, Kaga recommends that, in the final results, the Department use the CONNUMs developed by Kaga that take into account these differences. Kaga concludes that in cases where all 18 physical characteristics match, the Department should apply the DIFMER test and make a DIFMER adjustment if the VCOM of the home market and U.S. model are not the same.

The petitioner also urges the Department to consider refining its model match methodology. However, the petitioner recommends that this modification should closely parallel the three-tier approach set out in the antidumping statute. According to the petitioner, the Department should first seek to determine whether a particular U.S. sale can be matched with a contemporaneous sale of an identical product (based on the Department's 18 characteristics) in the comparison market. The petitioner believes that the Department's approach with regard to matching identical merchandise satisfies the statutory criteria set out in section 771(16)(A) of the Act and should be retained.

If such identical matches do not exist, the petitioner next recommends that the Department make a "similar merchandise" match under section 771(16)(B) of the Act. Under this test, the merchandise must be identical with respect to the first five elements (type, number of strands, material, finish, and pitch) of the Department's model match criteria in order to be considered similar merchandise. According to petitioner, if these five criteria match, the program should then select the most similar model through examination of the remaining 13 product characteristics. If such a match cannot be made, the petitioner notes that the Department should then seek to make a match under the general "class or kind" standard set out in section 771(16)(C) of the Act.

Under this ruling of comparison, the petitioner maintains that the

Department should institute a test for "class or kind" of merchandise under section 771(16)(C) of the Act to determine which models share the greatest number of the first five of the model match characteristics. The petitioner states that, where two or more home market models share the same number of characteristics (out of the first five), the program should select the most similar product through examination of the remaining 13 criteria, and then calculate an average VCOM if multiple models share the same overall number of characteristics. The petitioner argues that this is in accordance with section 771(16)(C) of the Act, which provides that if the Department is satisfied that a particular home market model is (i) "produced in the same country and by the same person and of the same general class or kind" as the model sold in the United States, and (ii) "like" that model "in the purposes for which used," then it may be used as a comparison model provided the Department determines that the chain products "may be reasonably compared."

In response to Sugiyama's request that the Department match plated chain only to other plated chain and unplated chain only to other unplated chain, the petitioner states that it would not object to the proposed refinement of the Department's model match methodology, provided that (1) it can be accomplished by resort to verifiable information that is already on the record in this review; and (2) it is applied to all respondents. The petitioner believes that the five elements listed above are the most important for determining matches and does not agree with RK that seal type should be added to the five basic model matching criteria or used to create unique chain types. According to the petitioner, under its recommended refinements to the model match methodology, the models that RK is concerned about would not be matched to each other because they differ in one or more of the first five elements.

Further, the petitioner disagrees with Kaga's claim that there are certain physical characteristics that are not accounted for in the Department's model match criteria. According to the petitioner, Kaga's one example is not so significant as to justify an abandonment of the Department's model match criteria. Moreover, the petitioner notes that minor physical differences can easily be taken into account by comparing the VCOMs of the home market and U.S. models and making a DIFMER adjustment, where warranted.

The petitioner notes that section 771(16)(C) of the Act requires that the foreign like product need only be "of the same general class or kind as the subject merchandise." Moreover, the petitioner points out that it need not share similar "component material or materials" with the U.S. model nor does the comparison model need to be "approximately equal in commercial value" to the U.S. model. In short, the petitioner concludes that section 771(16)(C) of the Act imposes a reasonableness test. Namely, the Department must be accorded some degree of flexibility when determining whether two roller chain models "may reasonably be compared." Thus, the petitioner does not agree with Kaga and RK that chain which differ with respect to one or more of the first five model match criteria can never be used for comparison purposes.

The petitioner asserts that there appears to be no dispute that all of the comparison models questioned by RK and Kaga satisfy the third criterion of the definition, namely, that they were produced in Japan by the same companies that manufactured the U.S. models and are clearly all part of the same general class or kind of merchandise. Moreover, the petitioner contends that, contrary to RK and Kaga's arguments, the comparison chain models are clearly put to uses which are "like" those of the U.S. models, and emphasizes that the uses in question need only be similar in nature and not identical.

Department Position: We agree in part with RK, Kaga, Sugiyama and the petitioner. Based on our analysis of the written comments submitted to the Department since the preliminary results in this proceeding, we find that the model match methodology used in our preliminary results should be modified with regard to identifying similar merchandise. To continue to rely on the model match methodology used in our preliminary results would, in some cases, yield inappropriate results; namely, it would group physically diverse chain that has vastly different uses and different commercial values together as similar merchandise.

For purposes of calculating NV, section 771(16) of the Act defines "foreign like product" as merchandise which is either (1) identical or (2) similar to the merchandise sold in the United States. *See* section 771(16) (A) (B) and (C); *see* also 19 CFR 351.411(a). Where there are no identical products sold in the home or other foreign markets, the Department will identify, by employing an appropriate product matching methodology, the product sold in the foreign market that is most similar to the product sold in the United States. Because the antidumping statute does not detail the methodology that must be used in determining what constitutes "similar" merchandise, the Department has broad discretion, implicitly delegated to it by Congress, to apply an appropriate model match methodology to determine which home market models are properly comparable with U.S. models under the statute. *See, e.g., Koyo Seiko Co., Ltd, et al.* v. *United States*, 66 F.3d 1204 (Fed. Cir. 1995). The Courts will uphold the Department's model match methodology as long as it is reasonable. *See, e.g., AK Steel Corporation, et al.* v. *United States*, Slip Op. 97–152, Court No. 96–05–01312 (CIT 1997) (*AK Steel*); *NTN Bearing Corp. of America, et al.* v. *United States*, 924 F. Supp. 200 (CIT 1996); *SKF USA Inc., et al.* v. *United States*, 876 F. Supp. 275 (CIT 1995).

In this case, in identifying which physical characteristics should be given the most weight in our determination of appropriate product comparisons, we considered comments from all parties, based upon which we then developed a product matching methodology predicated upon 18 physical characteristics, as outlined in our supplemental questionnaire of December 19, 1997. According to our revised methodology, we attempted to match U.S. sales to contemporaneous sales of identical products in the home market using these 18 product characteristics. Where all 18 product characteristics matched, we considered U.S. and home market models to be identical. Where we found no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product (models which shared the greatest number of physical characteristics with the models sold in the United States). Further, we made a DIFMER adjustment to the home market sales price to account for the actual physical differences between the products sold in the United States and the home market. In those instances, where there were no sales of identical or similar merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the CV of the product sold in the U.S. market during the comparison period. *See RC 96–97 Preliminary Results* at 25457.

For the final results of this review, we conclude, based on the interested parties' comments, that our model match methodology should be further modified. As explained by Sugiyama, RK and Kaga, relying on the above model match methodology would match

chain so physically diverse that they could not be used in similar functions and have different commercial values.

Accordingly, we have amended our matching methodology as follows: roller chain models will be considered "identical" if they match with regard to all 18 characteristics; roller chain models will be considered "similar" for purposes of model matching only if they share all of the first six characteristics, as outlined in our supplemental questionnaire of December 19, 1997. Based on the comments of respondents and petitioner in this and previous reviews, we have concluded that the following six criteria must be identical for merchandise to be considered similar: (1) type of chain; (2) number of strands; (3) material; (4) finish; (5) pitch; and (6) type of seal. We will then select the most "similar" model through a hierarchical ranking of the remaining 12 product characteristics based on the order in which they are incorporated into the CONNUM. We find that this modification to our model matching methodology will yield more accurate results and minimize the effects of potential distortions to our calculations. *See AK Steel* at 42 (the CIT upheld the Department's departure from the original model match methodology, where the facts relied upon by the Department were clearly articulated and were rationally connected to its choice). Although the petitioner does not agree that type of seal should be one of the six criteria, we have concluded based on the comments of respondents (RK, DK, and Enuma) that type of seal is a distinguishing characteristic and an important differentiating feature between types of motorcycle chain.

With respect to RK's comment that the Department should not match specific models of chain, we note that under our modified model match methodology, these chains would no longer be considered similar for model match purposes. Further, with respect to the company-specific model match comments made by Kaga and Sugiyama, we note that the Department's decision to apply total FA to these parties renders their comments moot. *See* the Facts Available Section above.

Comment 2: Sugiyama states that where more than one home market product is considered "equally similar" to the U.S. product being analyzed, the Department's computer program randomly selected a single home market match. According to Sugiyama, the Department should correct the programming language to include all equally similar home market products in the product comparison.

Responding to Sugiyama's error allegation, the petitioner points out that Sugiyama was the only respondent to raise this issue. The petitioner states that it was unable to determine whether this alleged error actually occurred. The petitioner takes the position that, if the Department determines that such an error in fact occurred, it agrees that the Department should revise its program for the final results. However, the petitioner insists that any program correction be written by the Department itself.

Department Position: We disagree with Sugiyama's allegation that the Department's preliminary model match program randomly selected a home market match where more than one home market product was considered "equally similar" to the U.S. product being analyzed. On the contrary, an analysis of the Department's model match program shows that where there was more than one possible home market match, the program selected the "most similar" contemporaneous home market match.

Company-Specific Issues

DK

Comment 1: DK asserts that the Department erred in finding no difference in the LOT between DK's home market and U.S. sales and asserts that it is entitled to a CEP offset. First, DK claims that the Department incorrectly identified the stage of marketing of CEP sales. Second, DK argues that even conceding this stage of marketing definition, the Department was incorrect in finding that sales to DK's unaffiliated home market customers and sales to Daido Corporation (Daido Corp.) (DK's affiliated U.S. sales subsidiary) were at the same stage in the marketing process. Third, DK asserts that the Department's quantitative and qualitative analysis of selling activities in the home and U.S. markets is in error.

With regard to the first issue, DK argues that the term CEP is defined in section 772(b) of the Act to mean the price after all costs have been deducted back to the factory door. Citing *Sorenson* v. *Secretary of the Treasury*, 475 U.S. 851, 860, 106 S.Ct. 1600, 1606, 80 L.Ed. 2d 855 (1986), DK argues that in designating the CEP LOT to be the sale between the exporter and the U.S. importer, the Department disregarded "[t]he normal rule of statutory construction [which] assumes that 'identical words used in different parts of the same Act are intended to have the same meaning.'"

DK argues that based on this statutory definition, the Department should not have designated the CEP LOT as the level of the constructed sale from the exporter to the importer. Nevertheless, assuming that the CEP LOT is at the level of the constructed sale from the exporter to the importer, DK argues that the CEP sales and home market sales to unaffiliated customers are still not at the same stage in the marketing process.

Citing *Dynamic Random Access Memory Semiconductors of one Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent not to Revoke Order*, 63 FR 11411, 11415 (March 9, 1998)/(*DRAMs Preliminary 96–97)* and Dynamic Random Access Memory Semiconductors of one Megabit or Above From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent not to Revoke Order, 62 FR 12794, 12798 (March 18, 1997) (*DRAMs Preliminary 95–96*), DK contends that sales to unaffiliated home market customers and to affiliated U.S. importers are at different stages in the marketing process because there is a significant difference in the "nature" of the commercial activities associated with home market sales and with CEP sales. In addition, DK argues, the home market sales occur in a "competitive environment," while the affiliated U.S. importer sales are made in a "non-competitive environment" with a corresponding lower level of commercial activity. DK further asserts that Daido Corp., a national distributor in the United States, and DK, a national distributor in Japan, "play exactly the same roles" in their respective markets such that sales to Daido Corp. cannot be at the same stage of marketing as sales to unaffiliated home market customers. DK concludes that not only is the Department's finding here in error, but that the marketing stage for sales to Daido Corp. is less advanced than that for sales to home market customers.

As to a comparison between the selling functions, DK claims that the Department incorrectly disregarded significant quantitative and qualitative differences between the selling functions performed in Japan for home market sales and those performed in Japan for CEP sales. Quantitatively, DK argues that only three of the selling functions overlap between home market sales and sales to Daido Corp. DK does not specify the three it is alluding to.

In addition, DK refutes the Department's assertion that advertising and technical services are negligible items since DK did not claim them as

selling expenses. DK notes that it did not claim either item as a direct selling expense, however it did claim advertising expenses as one of the categories in indirect selling expenses. With regard to technical services, DK contends that although there is no accounting categorization for technical services, they nevertheless occur and are accounted for in the costs of salaries for local sales office personnel and engineers.

DK further argues that the Department incorrectly ignored significant qualitative differences between home market sales and sales to Daido Corp. in three areas: developing and maintaining a customer base, maintaining inventory, and maintaining local sales offices. DK argues that these areas demonstrate qualitatively different selling functions for home market sales and CEP sales.

In particular, DK argues that since it, DT, and Daido Corp. are all affiliated with one another, deal in large quantities, and employ electronic ordering, DK need make only a limited effort in maintaining a customer base. Moreover, its records maintenance and collections activities are negligible. DK contends that this differs with the records maintenance and collections activities it carries out for its more numerous home market customers. DK further argues that while it maintains significant inventories for servicing the needs of home market customers, such as the need to rapidly ship a model to a customer, neither DK nor DT (DK's affiliated Japanese trading company) maintain such inventory for sales to Daido Corp., rather they sell only on a made-to-order basis. DK asserts that neither it nor DT maintain inventory for CEP sales. Moreover, DT does not act as an independent distributor by buying chain for its own account, holding inventory, and selling therefrom. Since DT does not own a warehouse, it arranges for freight forwarders to merely hold merchandise at the port while waiting for DK to complete manufacturing of an entire order. Finally, DK asserts that developing and maintaining home market customers and maintaining local offices "are at the heart of" doing business in the home market. DK argues that, by contrast, it and DT make "almost no effort" in these activities with respect to Daido Corp. because of the latter's "captive customer" status.

DK concludes that it has demonstrated a difference in LOT in the two markets and that the LOT of CEP sales is at a less advanced stage than the LOT of home market sales. However, since data is unavailable to show a consistent level of price differences in the home market at different levels of trade, it is entitled to a CEP offset in lieu of a LOT adjustment.

The petitioner agrees with the Department's preliminary results finding that DK is not entitled to a LOT adjustment or a CEP offset. First, the petitioner disagrees with DK's argument that its CEP and home market transaction are at different levels of trade. Specifically, the petitioner states that once U.S. selling expenses and U.S. profit are deducted from the CEP, the sale is at the same LOT as DT's EP price sales.

Moreover, citing prior roller chain reviews, the petitioner asserts that DK's proposed definition of the starting point for comparing CEP and home market transactions as at the "factory door" was previously rejected by the Department. (*See Final Results of Antidumping Administrative Review, and Determination not to Revoke in Part: Roller Chain, other than Bicycle, from Japan*, 62 FR 60472, 60479–80 (November 10, 1997) (*Roller Chain 95–96); and Notice of Final Results of Antidumping Administrative Review, and Determination not to Revoke in Part: Roller Chain, other than Bicycle, from Japan*, 62 FR 64322, 64325–26 (December 4, 1996) (*Roller Chain 94–95*). Furthermore, the petitioner cites *Borden Inc.* v. *United States*, (Consolidated Court No. 96–08–01970, Slip. Op. 98–36, 1998 Ct. Intl. Trade, at 66 (March 26, 1998) (*Borden*), to demonstrate that this position has been upheld by the CIT. Specifically, the petitioner points out that regarding the Department's antidumping regulations, the court found that a CEP offset adjustment based on a "factory door" approach would be "distortive" because it would lead to an "automatic CEP offset."

The petitioner also disagrees with DK's argument that the commercial environment for its CEP sales was significantly different than the one for home market sales, necessarily resulting in differing selling activities associated with each type of sale. Further, the petitioner notes that DK did not specifically challenge the Department's finding that no substantive differences appeared between the selling activities performed by DK and DT for EP and CEP sales. In support of the Department's conclusions, the petitioner notes that in the home market, Daido Corp. sells directly to OEMs and through various distributors while for U.S. sales, DT sells directly to OEMs and through DK's U.S. distributor, thus the sales seem to be made at parallel levels of trade.

The petitioner also contends that there is a possibility that the inventory maintained by DK in Japan for its home market customers could easily be used to fill orders for Daido Corp., although the petitioner offers no specific evidence regarding its concern. In addition, the petitioner disagrees with DK that significant differences existed between the selling activities it performed for sales in the two markets.

Finally, the petitioner points out that the Department found that three of the selling activities performed for home market sales were nominal in nature. With respect to four of the six remaining selling activities discussed by Department (inventory/warehousing, preparing chain for shipment, bill collection, and record maintenance), the petitioner contests DK's distinction between the activities performed for home market and those performed for U.S. sales as "merely differences in degree and not in kind." As far as maintaining a customer base in Japan, the petitioner notes that DK did expend additional resources for this activity. Nevertheless, notwithstanding the differences in the latter category, the petitioner concludes that the Department's analysis that sales in the two markets were not made at different LOTs is clearly substantiated by the evidence on the record of this review, and is consistent with the Department's finding for this respondent in the two most recent prior segments of this proceeding.

Department Position: Based on our analysis of the record information, for these final results, we find that a LOT difference exists between DK's U.S. CEP sales and its home market sales.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*). The statute and the SAA clearly support analyzing the LOT of CEP sales at the level of the constructed sale to the U.S. importer—that is, the level after

expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has clearly adopted this interpretation in previous cases. *See e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50872 (September 23, 1998) (*DRAMs Final Results 96–97); see also Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea*, 63 FR 8945 (February 23, 1998) (*SRAMs 1996*). We note that DK, in the hearing, conceded the correctness of the Department's designation of CEP LOT as at the level of the constructed sale from the exporter to the importer. *See* Hearing Transcript, (October 2, 1998) at 49.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

Customer categories such as distributors, retailers, or end-users are commonly used by petitioners or respondents to describe different LOTs, but, without substantiation, they are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed LOTs.

Our analysis of the marketing process in both the home market and United States begins with goods being sold by the producer and extends to the sale to the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT.

Unless we find that there are different selling functions for sales to the U.S. and home market sales, we will not determine that there are separate LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

If the comparison-market sale is at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See e.g., Carbon Steel Plate* at 61732.

In the questionnaire the Department issued to DK and the other respondents, we requested that they provide information about their channels of distribution in the home and U.S. markets, including selling activities performed and classes of customer. Specifically, we requested information about the following nine types of selling activities: (1) developing and maintaining customers; (2) maintaining inventory; (3) preparing chain for shipment; (4) maintaining customer records; (5) collecting bills; (6) maintaining local offices; (7) technical assistance; (8) advertising; and (9) "other activities" (to which DK responded with information regarding liability insurance).

DK sells to two types of customers in the home market (*i.e.*, OEMs and distributors). We found that there was one LOT in the home market—direct sales of roller chain from DK to the unaffiliated home market customers.

DK sales in the U.S. market are made exclusively through its affiliated trading company, DT, who either sells directly to two types of unaffiliated U.S. customers (*i.e.*, OEMs and distributors), or to Daido Corp., DK's U.S. subsidiary. We have designated the former as EP sales because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of the record. We have designated the sales through Daido Corp. as CEP sales because the first sale to an unaffiliated purchaser in the United States was made by Daido Corp. after importation.

We first compared the home market sales to the EP sales, including the selling functions performed for each. We initially note that the structure of the two distribution systems appears very similar in that both DK and DT sell directly to OEMs and distributors. Moreover, we note that there are not substantial differences in selling activities. For home market sales, DK performs the following nine types of selling activities: developing and maintaining customers; maintaining inventory; preparing chain for shipment; maintaining customer records; collecting bills; maintaining local offices; technical assistance; advertising; and providing liability insurance. Based on a careful review of the record evidence, we found that DK/DT performed the following five selling activities for EP sales: developing and maintaining customers, preparing chain for shipment, maintaining customer records, collecting bills, and advertising. Although more selling activities were performed in the home market, we concluded from the overlap that there were not significant differences in selling activities performed in the home and EP markets. Consequently, based on all of the above, we consider home market sales and EP sales to be at the same LOT.

We then compared the U.S. EP sales to the CEP sales. As noted above, EP sales are to two classes of customers while DK makes all of its CEP sales through DT, an affiliated trading company. DT, in turn, resells the merchandise to Daido Corp., its affiliated U.S. sales subsidiary. Daido Corp. then makes CEP sales to unaffiliated customers in the United States (*i.e.*, OEMs and distributors). These differ from EP sales, where DT sells directly to unaffiliated customers, in that DT makes all of its CEP sales through Daido Corp., an affiliated U.S. subsidiary. Thus, because the EP sales are made directly to the OEMs and distributors, while the CEP sales are to Daido Corp. who then sells to OEMs and distributors, we find that the EP and CEP sales appear to be made at different points in the chain of distribution.

Since we have determined that EP and CEP are at different LOTs, we next examined whether the CEP and home market sales were at the same LOT. For purposes of our analysis, we examined information regarding the distribution systems for CEP and home markets sales, including the quantitative and qualitative aspects of the selling functions, the classes of customer, and the selling expenses for each of the companies described above.

Based on our analysis of the record evidence, we have found that DK's CEP and home market transactions are at different stages in the marketing process

and thus at different LOTs. As we noted above, on the home market side, DK sells directly to OEMs and distributors. However, CEP sales go through Daido Corp. to OEMs and distributors in the United States. Therefore, sales to Daido Corp. appear to be at an earlier point in the chain of distribution than DK home market sales to OEMs and distributors.

We then compared the selling functions performed for home market sales and for CEP sales and we found that at the level of the constructed sale from the exporter (DT) to the importer (Daido Corp.), only three selling activities overlap between home market and CEP sales: preparing chain for shipment; maintaining customer records; and collecting bills.

Further, we found that DK performs several selling activities for home market sales not performed by DK/DT for CEP sales. Chief among these are maintaining inventory; maintaining local offices; and developing and maintaining customers. With regard to the first of these items, we note that DK maintains an inventory of finished chain at its home market warehouse which enables it to ship a model to a home market customer within one or two days from receipt of order. In contrast, DT does not maintain a warehouse in Japan for purposes of maintaining an inventory for U.S. sales. Rather, Daido Corp. in the United States maintains an inventory for such sales. Since DT ships to Daido Corp. from the port only when a complete shipment is available, it arranges for freight forwarders to hold the merchandise (DT does not own a warehouse) at the port while waiting for DK to complete manufacturing of an entire order. This is clearly different from maintaining inventory for servicing the needs of home market customers. This distinction is similar to and consistent with prior treatment of such activity. *See Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 63 FR 35190, 35192–93 (June 29, 1998) (*Steel Pipe and Tube 1998*), where we found two levels of trade in the home market based, in significant part, on the differences in the area inventory maintenance and inventory-related selling activities. In *Steel Pipe and Tube 1998*, one group of affiliated resellers did not take merchandise into inventory prior to sale (merchandise was stocked at the production mill prior to direct shipment to the resellers' customers), while another group of affiliated resellers made sales to customers from inventory that the resellers maintained at their locations. The Department found that the latter group had "the responsibility of storing merchandise before purchasers have been found." *Steel Pipe and Tube 1998* at 35193. The Department further noted that inventory maintenance gave rise to additional selling functions performed by resellers in this LOT (*i.e.*, forecasting, planning, ordering, incurring inventory carrying costs, and delivery-related functions) which were not performed by the resellers who did not maintain inventory. The Department further found that "inventory maintenance is a principal selling function that distinguishes these levels [of trade]." *Id.*

In summary, DK has clearly described its process in the CEP market as temporarily stockpiling or staging roller chain at its freight forwarders' facilities at the port, which we find to be different from maintaining inventory for servicing the needs of home market customers, in that in maintaining a warehouse inventory, orders can be filled immediately. However, U.S. sales cannot be filled immediately from the port of export. Rather, the U.S. customer must wait until full shiploads are accumulated and transported to the United States.

Although the petitioner argues that inventory maintained by DK in Japan for home market customers could be used to fill CEP sales, we note that DK's questionnaire responses consistently describe how for CEP sales, DK and DT operate as previously described. We note that DK has clearly explained how it stages merchandise from DK's factory at the port until the full order is available, and then consolidates all merchandise consolidated into a single shipment for Daido Corp. We find nothing in the record contradicting this description.

With respect to the remaining activities for home market sales, developing and maintaining home market customers and maintaining local offices, we note that DK/DT do not perform any such activities for CEP sales.

Finally, as to the two home market selling activities we discussed as negligible in our preliminary results, DK clarified the extent to which these selling activities—advertising and technical services—were performed for home market customers. DK pointed out that its engineering and sales office personnel provide technical assistance, including design services, to home market customers. In addition, DK claimed advertising expenses as one of the categories of its indirect selling expenses. In comparison, we find that these selling activities were performed for home market but not for CEP sales.

Based on our analysis of the record evidence, we conclude that there are significant differences between the selling functions performed in Japan for home market sales and those performed in Japan for CEP sales.

The Department considers the totality of the circumstances in evaluating whether qualitatively and quantitatively different selling functions are performed for purchasers at different places in the chain of distribution. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Canada*, 63 FR 9182, 9193 (February 24, 1998). The record evidence in this review indicates that there are significant quantitative and qualitative differences in the selling activities performed by DK and DT/DK for sales in the home market and CEP sales to the United States. This finding supports our conclusion that the home market and CEP sales occur at different stages of marketing and thus at different LOTs.

In addition, based on the above analysis, we determined that DK sold the subject merchandise during the POR at a LOT in the home market which was more advanced than the LOT of the CEP sales of subject merchandise in the United States. Since we found that DK has a single LOT in the home market, we cannot quantify the difference in prices at two (or more) home market LOTs. Consequently, we do not have the data necessary to make a LOT adjustment for DK. Therefore, we have made a CEP-offset adjustment to NV in our calculations for DK pursuant to section 773(a)(7)(B) of the Act. We have made no adjustment for purposes of comparisons to EP sales since we have determined home market and EP sales to be at the same LOT.

Comment 2: The petitioner states that the Department failed to deduct international freight and packing expenses for DK's CEP sales. Specifically, DK reported international freight expenses and U.S. packing expenses under the variable names "INFRTDKY" and "DKPACKU," respectively. According to the petitioner, the Department, however, used different variable names in calculating CEP. The petitioner requests that the Department revise its program for the final results. We received no comment on this issue from DK.

Department Position: We agree with the petitioner and have corrected these adjustments in our calculations for the final results.

Sugiyama

Comment 1: Sugiyama argues that, for the final results, the Department shou'd calculate a margin for Sugiyama based

on all verifiable data, including the sales information submitted to the Department after the questionnaire responses were due. Sugiyama claims that this untimely submitted information was nonetheless verifiable and, thus, it provides the Department with a reasonable basis for actual margin analysis. Sugiyama explains that the information was untimely submitted because the company was dependent on receiving certain sales data from its shareholder, over whom Sugiyama had no control. Therefore, according to the company, the untimeliness factor is not an indication of Sugiyama's failure to cooperate. Sugiyama concludes that the Department should accept this information instead of applying adverse FA.

Notwithstanding Sugiyama's assertion that the Department should use its information, Sugiyama further argues that, if the Department determines to use FA in this situation, the Department must be guided by the standard articulated by the CIT in *Borden*, where the Court rejected the Department's use of adverse FA, despite the fact that the respondent in that case provided less than ideal information to the Department. Thus, according to the company, applying adverse FA to Sugiyama in this review would be inappropriate in light of the *Borden* decision.

The petitioner notes that the Department conducted a partial verification of Sugiyama in Washington, D.C. on July 6, 1998, and conditioned its undertaking a full verification in Japan on Sugiyama's successful partial verification. The petitioner takes the position that Sugiyama's responses, unless successfully verified, should be rejected by the Department.

Department Position: We disagree with Sugiyama. As we explained in detail in the "Application of Facts Available" section of this notice, as well as in the Sugiyama Verification and FA Memoranda, the record amply demonstrates that the information provided by Sugiyama during the course of this proceeding was deficient, untimely and unverifiable. Thus, sections 776(a)(2) (A), (B), and (D) of the Act mandate that the Department reject Sugiyama's responses and apply total FA. Moreover, Sugiyama has no basis to complain about a lack of opportunities to cure its deficiencies under section 782(d) of the Act. As the record demonstrates, the Department issued several supplemental questionnaires, held numerous meetings with the counsel, and even conducted an atypical "mini-verification" procedure to provide Sugiyama with the final opportunity to prove that its information was complete and reliable.

Furthermore, Sugiyama misinterprets the CIT's *Borden* decision. Decided on a specific set of facts, the Court in *Borden* held that the Department did not abuse its discretion by applying total FA to the respondent who submitted untimely and deficient data. The Court was concerned, however, that the Department prematurely concluded that adverse inference was warranted in applying FA, where the Department did not make an additional finding that the respondent had failed to act to the best of its ability. *See Borden*, Slip Op. at 74–76. Thus, in light of the Department's findings with respect to Sugiyama's submissions (*see* the Sugiyama Verification Report and the Sugiyama FA Memoranda), the decision to apply total FA is entirely consistent with *Borden*. The issue of drawing an adverse inference in applying FA to Sugiyama, the proper focus of the *Borden* decision, is addressed in the Facts Available section, above.

Comment 2: With respect to the Department's decision to cancel the verification in Japan, Sugiyama claims that it devoted much time and many resources to prepare for the verification, and was fully organized to host the Department's verifiers. Sugiyama asserts that it brought to the Department's attention DIFMER issues in advance of the verification, as soon as the company discovered these errors during the preparation for verification. Although Sugiyama acknowledges that certain aspects of its DIFMER methodology were problematic, and that the Department has discretion to decide upon its appropriateness, the company disagrees that these issues justified the cancellation of the entire verification.

Elaborating on the DIFMER problems contained in Sugiyama's responses, the company disagrees that 43 percent of its U.S. sales are affected by the rejected DIFMER data. Rather, Sugiyama points out, assuming that certain alleged programming errors and home market sales omissions are corrected by the Department, only 11 percent, by quantity, of U.S. sales are affected. Sugiyama maintains that the Department's action in declining to verify Sugiyama was unnecessary and urges the Department to accept as verified all information it submitted and to use that information in calculating a dumping margin for Sugiyama.

Sugiyama next proposes the following alternatives that the Department should consider in dealing with the company's DIFMER deficiencies: (1) calculate a margin for all sales with identical matches, and apply the resulting margin to the similar match sales as a "surrogate" for DIFMER; (2) calculate a margin for all sales with identical matches, and simply omit the DIFMER adjustment in calculating the margin for U.S. sales with similar matches; (3) calculate a margin for all sales with identical matches, but apply the DIFMER only where it would increase the NV; (4) calculate a margin for all sales, applying the maximum DIFMER of 20 percent to all sales with similar matches, in accordance with *Gray Portland Cement from Mexico*, 63 FR 12764, 12779 (March 16, 1998); or (5) apply only a partial FA rate to all U.S. sales with similar matches. Sugiyama points out that the last option would be consistent with the Department's decision in this review to apply partial FA for non-identical merchandise to two respondents (DK and Enuma), who refused to provide the DIFMER information as requested by the Department. If the Department selects this last option, Sugiyama proposes that the Department apply a less adverse rate of 17.57 percent from the preliminary results.

Department Position: We disagree with Sugiyama's argument that our cancellation of a full verification was unnecessary. As the petitioner noted (*see* comment 1, above), the Department conditioned its undertaking a full verification of Sugiyama in Japan on the success of the partial verification conducted in Washington. For the reasons discussed in the "*Facts Available*" section above, Sugiyama's partial verification was not successful. Therefore, it was appropriate for the Department not to conduct the full verification in Japan.

Furthermore, as discussed in the "*Facts Available*" section, above, the Department has determined that the information provided by Sugiyama is unreliable and inadequate for the purpose of calculating a margin for the final determination. Because we concluded that Sugiyama failed to provide its responses to the Department's questionnaire in the form and manner requested, and some of these responses were untimely, section 776(a) requires the Department to use facts otherwise available with respect to Sugiyama.

Comment 3: Assuming that the Department maintains its decision enunciated in the August 14, 1998, FA Memorandum, to apply total FA to Sugiyama, the company argues that, consistent with *Fresh Cut Flowers—Colombia 1997*, the Department should select a non-adverse FA rate normally applied to "cooperative" respondents. Sugiyama claims that an adverse rate is

designed to provide an incentive for unwilling or unmotivated respondents to cooperate with the Department's request for information, rather than to punish for methodological errors made by actively participating respondents, such as Sugiyama.

Sugiyama further explains that its efforts to respond to the Department's requests, although "imperfect," demonstrate that the company acted to the best of its ability and that it did not knowingly withhold information. Sugiyama claims that it undertook major efforts to prepare responses, including thousands of hours of data collection and preparation, even though the company had not been involved in antidumping proceedings in recent years, and thus did not have in place systems designed to readily collect the information requested by the Department.

Sugiyama asserts that the application of the 42.48 percent adverse FA rate from the preliminary results would force the company to shut down and end its participation entirely. Sugiyama contends that the cooperative FA rate that was used in the preliminary results for other companies who, like Sugiyama, acted to the best of their ability to cooperate, would adequately serve to carry out the FA policy without forcing the company into insolvency.

Jeffrey Chain, a U.S. producer and importer of roller chain, joins Sugiyama in its efforts to persuade the Department to apply a less adverse FA rate that would recognize Sugiyama's participatory efforts in this proceeding. Jeffrey Chain argues that the Department's decision should take into account the fact that Sugiyama substantially cooperated in this review. Thus, according to Jeffrey Chain, the rate selected by the Department should be consistent with the rates applied to other cooperative respondents in this review, and one which encourages cooperative behavior from future respondents in the proceeding. Jeffrey Chain notes that, under section 776 of the Act, the Department must distinguish between respondents who comply with the Department's requests for information, and those who refuse to comply, to generally encourage respondents' participation and cooperation.

Jeffrey Chain reminds the Department that Sugiyama prepared numerous questionnaire responses and was prepared for the Department's verification, thereby manifesting "substantial compliance" with the Department's requests for information. Moreover, Jeffrey Chain contends that the record does not demonstrate that Sugiyama did not cooperate fully with, or refused to provide information to, the Department. Jeffrey Chain concludes that, in light of Sugiyama's relatively low margins in past segments of the proceeding, a less adverse FA rate used for other cooperative respondents in the preliminary results would be sufficiently adverse to ensure Sugiyama's future participation and prevent it from benefitting from its failure to submit certain information in the current segment.

The petitioner supports the Department's decision expressed in the August 14, 1998, Memorandum to apply total FA to Sugiyama. However, the petitioner acknowledges that Sugiyama substantially cooperated with the Department in this review. The petitioner suggests that the Department is in a "unique position" to evaluate whether Sugiyama acted to the best of its ability, a decision which the petitioner defers to the Department. Were the Department to determine for the final results that Sugiyama, in fact, substantially cooperated in the review, the petitioner claims it would support a less adverse FA rate of 17.57 percent.

Department Position: We disagree, for the reasons discussed in the Facts Available section above, with Sugiyama's arguments that it acted to the best of its ability, and find that an adverse inference is warranted for Sugiyama for these final results of review. Because we have determined that the 42.48 percent rate calculated for Kaga for the preliminary results of this review is no longer valid (*see* the Department Position to Pulton Comment 2, below), it is not necessary to address the company's arguments regarding the merits of this rate. However, we have considered Sugiyama's efforts, throughout the course of this review, to comply with the Department's requests for information and, accordingly, assigned to Sugiyama a less adverse FA rate of 12.68 percent. As noted previously, this rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Sugiyama in future reviews of this proceeding.

Comment 4: Sugiyama made several comments regarding LOT, calculation of DIFMER, its related resellers' cutting cost, discounts, and FA for one particular sale with a date of sale prior to the POR.

Department Position: We note that the Department's decision to apply total FA for Sugiyama for the final results renders these comments moot.

RK

Comment 1: RK states that in the preliminary results, the Department made a programming error that substantially overstated the quantity and substantially understated the price of RK's motorcycle chain sold in kits in the United States. RK argues that for the final results, the Department should make minor adjustments in programming language so that the amount and price of chain sold in the United States in kits are calculated accurately.

The petitioner agrees with RK that the Department made a clerical error with respect to the treatment of RK's U.S. kit sales and does not object to the correction proposed by RK.

Department Position: We agree with RK and the petitioner and have made the appropriate changes to RK's margin calculation program.

Pulton

Comment 1: Citing the Department's *Antidumping Duties; Countervailing Duties; Final Rule* 19 CFR Part 351 et al., 62 Fed. Reg. 27296, 27340 (1998), Pulton claims that, in determining whether a company has acted to the best of its ability, the Department considers, on a case-specific basis, whether the failure to respond was caused by practical difficulties that made the company "unable to respond." Pulton contends that it withdrew from verification due to such practical difficulties.

Pulton argues that, given its lack of personnel resources, it would have been commercially impossible and overly burdensome to submit to verification. In support of this argument, Pulton states that it is a small company that employs only two people in its Foreign Trade Division and that most employees speak only a minimal amount of English. Pulton asserts that submitting to verification would have served to shut down its Foreign Trade Division for two weeks, resulting in substantial lost sales.

Pulton claims however, that because it responded in a timely manner to the main questionnaire and all of the Department's supplemental questionnaires, it has clearly acted to the best of its ability to comply with the Department's requests. Pulton asserts that, because most of its records are manually created and maintained, it would have been difficult to produce documents at verification at a reasonable speed. Pulton, in fact, questions whether any company, such as itself, which lacks significant computer capability, could pass a verification in the present day.

Citing *Borden* at 76, Pulton argues that, since there is no evidence on the record that it could have responded fully to the Department's verification requests, an adverse inference is unwarranted.

Pulton claims that the circumstances in this case are similar to those of *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185, 1192 (Fed. Cir. 1993) (*Allied-Signal*), where the Court of Appeals for the Federal Circuit (CAFC) found that the Department's decision to characterize a respondent as uncooperative was unreasonable. Pulton argues that, as in *Allied-Signal*, the Department's conclusion that Pulton failed to cooperate to the best of its ability was unreasonable.

The petitioner argues that relevant cases and the Department's decisions clearly indicate that the agency should not choose a more favorable margin for Pulton simply because it made a business judgement that participating in verification was not cost-effective. The petitioner argues that there is no evidentiary support (*i.e.*, an affidavit or other certified submission) in the record for Pulton's assertion that verification would have shut down Pulton's Foreign Trade Division for two weeks, or that it would have cost the company a substantial amount in lost sales.

The petitioner further claims that Pulton has not cited any cases where the Department did not impose an adverse FA margin simply because it would have been costly and difficult for a respondent to comply with verification, or where the Department's decision to apply an adverse FA margin under such circumstances has been overturned. The petitioner differentiates this case from *Borden*, by arguing that the respondent in *Borden* clearly had attempted to comply with the Department's requests by making a number of attempts to generate the requested cost data. In contrast, Pulton provided the Department with a speculative rationale that the verification would have been impossible simply because Pulton had predetermined that participation would be too expensive.

The petitioner also refutes the relevance of *Allied-Signal* by arguing that, in *Allied-Signal*, the respondent had alerted the agency of its difficulty in responding to the Department's questionnaire, and had indicated its willingness to participate in a simplified review process. Pulton, on the other hand, merely submitted a short, unsubstantiated letter asserting that it would "not be cost-effective to participate in verification" because of the expense of submitting to verification, Pulton's insufficient staff support and the small value of its roller chain sales to the United States. The petitioner further argues that there is no indication that Pulton ever sought to work out an accommodation with the Department.

According to the petitioner, Pulton's situation is analogous to *Empressa Nacional Siderurgica, S.A.* v. *United States*, 880 F. Supp. 876, 880 (CIT 1995) (*Empressa Nacional*). In that case, the respondent argued on the basis of *Allied-Signal* that, as a result of its cooperation, the Department should not have chosen as BIA the highest rate calculated in the preliminary determination. The Court disagreed, noting that the respondent, ENSIDESA, "did not request an extension of time until the last day before the information was due," and that despite receiving the extension, it informed the Department on the due date that it was not submitting any of the data requested.

Department Position: We disagree with Pulton and continue to use an adverse inference in applying total FA. The facts on the record have not changed since the preliminary determination, where we applied total adverse FA to Pulton. The reasons for this decision were articulated in detail in the Memorandum to Maria Harris Tildon from Holly A. Kuga Regarding the "Application of Total Facts Available to Pulton (April 30, 1998) (Pulton FA Memorandum). We disagree with Pulton that it acted to the best of its ability simply because it submitted its responses to all sections of the Department's questionnaire in a timely manner. As the Department explained in the Pulton FA Memorandum, Pulton's timely responses were meaningless, because the Department was unable to check the completeness and accuracy of this information in light of Pulton's sudden refusal to undergo verification. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Venezuela*, 63 FR 8946, 8947 (Febr. 23, 1998) (*Steel Wire Rod From Venezuela*); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania*, 61 FR 24274, 24275 (May 14, 1996).

Moreover, Pulton made no attempt to seek guidance from the Department prior to the scheduled verification so that reasonable accommodations could be made to help the company overcome its practical difficulties without undermining the integrity of the verification process. Instead, Pulton made a calculated business decision that it was not "cost effective" to participate in verification. In light of the above, we reiterate our position from the preliminary results that Pulton did not act to the best of its ability.

Pulton's reliance on the *Borden* decision is misplaced. In *Borden*, unlike in this case, the respondent was fully prepared to undergo the verification process, making several attempts to comply with the Department's requests for certain cost data, which were eventually rejected for untimeliness and incompleteness prior to verification. The Court generally agreed that the application of total FA in that case was appropriate, but disagreed that adverse inference was warranted in the selection of FA, where the Department made no finding that the respondent did not act to the best of its ability. *See Borden* at 74–76. In this case, unlike in *Borden*, we made a finding that Pulton did not act to the best of its ability, and articulated, in detail, the reasons for our decision in the Pulton FA Memorandum and *RC 1996–1997 Preliminary Results*.

Pulton's reliance on *Allied-Signal* is similarly inappropriate. In *Allied Signal*, the CAFC found that the Department's decision to characterize a respondent as "uncooperative" was unreasonable, where the respondent "alerted the ITA to its difficulty in responding to the questionnaire and indicated its willingness to participate in a simplified review process." *Allied-Signal* at 1192. Unlike in *Allied-Signal*, Pulton made no such effort to approach the Department to seek accommodations, but simply informed us shortly before the verification was to commence that it was not willing to participate. Thus, consistent with the Department's practice in cases where the respondent withdraws its participation in a proceeding, in selecting FA for Pulton in this review, an adverse inference is warranted.

Comment 2: Pulton notes that the 42.48 percent margin used by the Department as FA for Pulton was calculated for Kaga in the preliminary results and it is the second highest calculated rate ever applied to any respondent in the history of this proceeding. Pulton states that, when the Department relies on secondary information as FA, it is required, to the extent practicable, to corroborate this information from independent sources. Pulton argues that Kaga's preliminary results margin has not been corroborated because the Department did not examine its reliability or relevance. Pulton argues that, while the Department assumed that this margin was properly calculated, Kaga's May 18, 1998, letter disclosed that "the data processing firm which produced Kaga's U.S. sales diskette made a programming

error in transferring U.S. selling price data from Kaga's diskette into the ITA's required format." Pulton claims that this indicates that the data used was rife with error and, therefore, unreliable.

Pulton next takes issue with the relevance of the 42.48 percent rate, noting that it reached a settlement with the Department in the 1993–1994 review for a 17.57 percent rate, following the CIT's invalidation of the 43.29 percent rate because it was "extremely outdated" and "no other calculated rate in this investigation has ever come close to this level." *See Pulton Chain* v. *U.S.*, Slip Op. 97–162 at 8 (CIT 1997) (*Pulton*). Pulton argues that the 42.48 percent rate, which is remarkably close to the invalidated 43.29 percent rate, is "arbitrary and capricious and has no basis in law or fact." Pulton concludes that there is nothing in this proceeding to indicate that 43.29 percent is in any way relevant to its own situation. Pulton suggests that the Department use the information Pulton submitted to calculate a margin in this review, or at least abstain from using an adverse inference in selecting FA.

The petitioner argues that the 42.48 percent rate calculated for Kaga should be imposed on Pulton, and if that rate is recalculated due to errors in Kaga's submission, Pulton should receive the highest calculated rate or 17.57 percent, whichever is higher. The petitioner notes that the Department was not required to corroborate the 42.48 percent rate because the statute only requires corroboration if the agency "relies on secondary information rather than on information obtained in the course of an investigation or review."

Citing *Fresh Cut Flowers—Columbia 1997* at 62 FR 53291, the petitioner states that, as a matter of policy, a respondent like Pulton, who has not cooperated in the review and has refused to undergo verification, should not receive a margin lower than the one applied to Kaga, who participated fully.

Addressing Pulton's argument with respect to the 42.48 percent rate that was invalidated by the CIT in *Pulton*, the petitioner contends that the rate was rejected in part because it was "never used as an assessment rate and was apparently considered likely to be inaccurate when promulgated." In this case, unlike in *Pulton*, the petitioner claims that the 42.48 percent rate was ■ calculated rate for Kaga in the preliminary results of this proceeding.

Citing the *Steel Wire Rod from Venezuela*, the petitioner argues that the Department should not rely on Pulton's information to perform margin calculations because, absent verification, it is not possible to check whether Pulton has submitted accurate data and, consequently, there is no assurance that the resulting margins will be sufficient. Petitioner states that the statute, under section 776(a) of the Act, expressly provides that the Department shall use FA if the respondent fails to provide the necessary information, or if the information is unverifiable, the situation that Pulton has created in this review.

Department Position: Because the 42.48 percent rate calculated for Kaga for the preliminary results of this review has been changed for these final results and is no longer under consideration (*see* discussion on FA for Kaga in *"Facts Available" (FA)* section, above), it is not necessary to address the arguments regarding the merits of this rate. As explained in detail in the Pulton FA Memorandum, we are continuing to assign Pulton an adverse FA rate, only now that rate has been changed from 42.48 to 17.57 percent, the highest rate from previous segments of this proceeding, excluding the invalidated 43.29 percent rate.

Kaga

Comment 1: Kaga states that, subsequent to the Department's preliminary determination, it discovered two programming errors made in assembling its data in the proper computer format. The first error, according to Kaga, occurred when only a single character was allowed to the left of the decimal for U.S. gross unit price (GRSUPRU), resulting in an understatement of Kaga's U.S. sales prices. According to Kaga, this affected both EP and CEP sales. The second error (which affects only CEP sales) occurred in its computer data submission of January 22, 1998, when the prices from Kaga's affiliated importer to its unaffiliated U.S. customers were mistakenly deleted and, instead, used the transfer prices from Kaga to its affiliated importer were used. Kaga states that it submitted the correct prices in its first computer data submission filed on September 12, 1997.

In addition, Kaga states that it found three other errors which it made. First, according to Kaga, it miscalculated the per-foot gross unit prices for several of its chains sold in the home market when converting from a per-link basis in its books to a per-foot basis for the Department. Second, Kaga states that it mistakenly coded several models of conveyor chain as industrial chain. Kaga argues that the information showing that those models are conveyor chain is already on the record as part of Kaga's product catalog. Third, Kaga claims that it included an invoice in the sales data, which represents an adjustment in price to a pre-existing sale rather than a sale, and requests that any observations associated with the invoice be deleted from its home market data base.

Kaga requests that it be allowed to submit the correct price information as well as any invoices which the Department deems necessary, and that the Department correct Kaga's programming and clerical errors for purposes of the final results.

Kaga contends that the Department's regulations allow for the correction of errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional errors. Furthermore, Kaga contends that the CIT in *Koyo Seiko Co., Ltd.*, v. *United States*, 746 F.Supp. 1108, 1110 (CIT 1990) (*Koyo Seiko*), and the CAFC in *NTN Bearing Corporation* v. *United States 74f.3d 1204,1208* (CAFC (1995) (*NTN 1995*), ruled that the Department should not only correct its own errors but those made by the respondents, so that the Department may fulfill its obligation to determine dumping margins as accurately as possible.

Kaga states that the purpose of the preliminary results is to give parties an opportunity for comment and request that the Department correct these errors in order to calculate accurate dumping margins. Further, Kaga contends that the Department must correct errors when they are obvious on their face or when correct evidence is already on the record. Further, Kaga states that in the interest of calculating the most accurate dumping margins, the Department must not knowingly use incorrect information. According to Kaga, these principles require that the Department correct the errors generated by the data processing firm because they are obvious and apparent on the record and the errors made by Kaga itself because these errors are simply clerical in nature.

The petitioner claims that the proposed corrections and new data submitted with Kaga's case brief reflect significant errors that the Department should not accept at this late stage of the proceeding. Moreover, the petitioner notes that the new data is untimely under 19 CFR 353.31(a)(1)(ii) (1997). The petitioner acknowledges that the Department has some discretion in determining whether to accept late filed evidence. However, the petitioner contends that the CIT in *Usinor Sacilor* v. *United States*, 872 F. Supp 1000,1008 (CIT 1994) (*Usinor*), *Sugiyama Chain Co.*, v. *United States*, 797 F. Supp 989,

995 (CIT 1992) (*Sugiyama*), and *NSK Ltd.* v. *United States*, 798 F. Supp. 721, 725 (CIT 1992) (*NSK*), have affirmed the Department's decisions to reject proposed corrections submitted after the deadlines. Moreover, with respect to at least one correction proposed by Kaga, the petitioner argues that Kaga has not cited to any evidence on the record, nor has it now provided information to support its claim. The petitioner argues that the extensive changes requested by Kaga do not meet at least four of the Department's six conditions for correction of clerical errors because: (i) the alleged errors are more substantial than the kinds the Department previously has labeled clerical; (ii) much of the information needed to corroborate the proposed changes either is not on the record or could only be reconciled by the Department through extensive manual review and, moreover, the reliability of any such corrected information would be questionable; (iii) although Kaga alerted the Department prior to the preliminary determination to submissions errors, Kaga has failed to offer a credible reason why it was so slow in discovering these errors; (iv) Kaga waited to supplement the record and still has not provided fully corrected information; and (v) the proposed corrections would affect several portions of the response and entail "substantial revision," under the Department's six-pronged test for determining whether it will accept corrections of clerical errors. *See Certain Fresh Cut Flowers From Colombia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833, 42834 (August 19, 1996) (*Fresh Cut Flowers—Colombia 1996*)). Furthermore, according to petitioner, the new submission Kaga wants to make cannot be used unless the agency determines that it is "reliable." The petitioner argues that, given the nature and extent of the proposed changes, this standard can only be satisfied through a full scale verification of Kaga.

According to the petitioner, although Kaga focuses on how its facts are analogous to the *Koyo Seiko* and *NTN* decisions, both cases are factually distinct from Kaga's situation. First, the petitioner argues that, unlike *Koyo Seiko*, where the Department did not dispute that "the errors were purely clerical and would not require further examination of the facts," the resolution of the issues raised by Kaga in this review would require "extensive additional examination," and the petitioner would require verification of the materials that Kaga submitted with its case brief. Further, the petitioner states that, although several of Kaga's alleged errors involve manipulation of data, the necessary corrective steps are much more complicated than most purely clerical errors. Second, the petitioner points out that the *Koyo Seiko* court noted that the respondent in that case "notified Commerce of the errors promptly upon their discovery." The petitioner claims that, although Kaga may have notified the Department of its errors soon after discovery, the errors should have been uncovered at an earlier date. Moreover, the petitioner asserts that, although in *Koyo Seiko* the Department was already in possession of an accurate hard copy of U.S. sales figures in the administrative record, this is not the case here. Third, the petitioner notes that, unlike *Koyo Seiko*, the Department did not previously possess accurate pricing information for affected EP transactions. In addition, the petitioner maintains that the accuracy of several other proposed corrections cannot be determined without undertaking an extensive, manual review of the computerized data in Kaga's September 12, 1997, submissions and that there is no evidence on the record to support some of the proposed changes. Fourth, the petitioner contends that, whereas in *NTN* the clerical errors were limited to coding errors and an error involving the listing of sales, the correction of Kaga's errors is a significantly more involved exercise. Finally, the petitioner notes that in other cases (*e.g.*, *Sugiyama* and *RHP Bearings* v. *United States*, 19 CIT 1389, 1390 (1995)), the Department and the courts have been more reluctant to label a respondent's error clerical.

In response to the petitioner's comments, Kaga states that it is not seeking to submit new information. It emphasizes that it is simply asking the Department to correct certain ministerial errors contained in its sales data submission of January 22, 1998. Kaga contends that the correction of the programming errors will not require submission of new information.

Kaga claims that none of the court cases cited by the petitioner supports its argument. According to Kaga, each case is different from Kaga's situation. Kaga contends that, contrary to the petitioner's interpretation of *Usinor*, the court in that case held that the Department abused its discretion in rejecting the plaintiff's corrections. According to Kaga, *Sugiyama* involves corrections of ministerial errors in the final results of the administrative review, not the preliminary result which is exactly Kaga's situation. Finally, Kaga argues that the ACA is wrong in characterizing the decision in *NSK* as standing for the proposition that "the submission of detailed factual information at the prehearing state of an administrative review is clearly untimely under any circumstances." Kaga maintains that the petitioner fails to note that the *NSK* decision involved the submission of detailed new information. Kaga notes that it does not seek to submit "detailed new information."

Further, Kaga claims that the ministerial errors which it has discovered fully meet the Department's six requirements for accepting clerical errors because: (i) the company has demonstrated that its errors are clerical in nature; (ii) its corrective documentation is reliable and Kaga invites the Department to conduct a verification of its records; (iii) ample record evidence exists to demonstrate Kaga's willingness, cooperation, and expedience in reporting its errors; (iv) Kaga informed the Department of all its clerical errors by July 2, 1998, the due date for submission of the case brief ; (v) Kaga's clerical errors do not constitute substantial revision; and (vi) Kaga has not been verified, thus the corrections do not contradict verified information.

Department Position: We agree with the petitioner that Kaga has not satisfied the Department's standard for clerical error corrections and, thus, the requested corrections have not been made. As a result of the *NTN* decision, we have reevaluated our policy for accepting clerical errors of respondents. *See* Preamble to Antidumping Duties, 62 FR 27296 (May 17, 1997). We may now accept corrections of such errors if all of the following conditions are satisfied: (1) the error in question must be demonstrated to be a clerical error, not a methodological error, an error in judgement, or a substantive error; (2) we must be satisfied that the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent must have availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documentation, must be submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error must not entail a substantial revision of the response; and (6) the respondent's corrective documentation must not contradict information previously determined to be accurate at verification. *See Fresh Cut Flowers—Colombia 1996*.

As noted above, in its case brief of July 2, 1998, Kaga claimed to have discovered two programming errors made in assembling its data in the

proper computer format. The first programming error, according to Kaga, occurred when a single character was allowed to the left of the decimal for U.S. gross unit price (GRSUPRU) resulting in an understatement of Kaga's U.S. sales prices. This error, Kaga claimed, affected sales to one EP customer and all CEP sales. We have applied the six criteria set forth in *Fresh Cut Flowers—Colombia 1996* and have found that Kaga did not meet the second criterion for accepting corrections of errors; namely, that the corrective documentation provided in support of the clerical error is reliable. An examination of the arguments and supporting documents provided in Kaga's case brief and the record of the proceeding demonstrates that, contrary to Kaga's claim, the decimal programming error affects EP sales only. Further, the price list submitted by Kaga for its EP customer does not reconcile with a number of invoices from Kaga to the EP customer. In order to reconcile the prices on the list with the invoices necessitates a conversion from a per-link basis for each model of chain, and we discovered that in several instances it would appear that Kaga failed to perform the conversion correctly. Thus, we are not satisfied that the corrective documentation provided by Kaga in support of its error allegation is reliable.

The next programming error, affecting only CEP sales, according to Kaga, occurred in its computer submission of January 22, 1998, when the prices from Kaga's affiliated importer to its unaffiliated U.S. customers were mistakenly deleted and, instead, used the transfer prices from Kaga to its affiliated importer were used. Kaga claims that the correct prices for CEP sales were submitted on the record in Kaga's September 12, 1997, submission). To support this claim Kaga submitted the invoices issued during the POR by Kaga's affiliated reseller to its unaffiliated customers. We find that the CEP prices provided in Kaga's September 12, 1997 submission do not reconcile in most instances with the invoices issued by Kaga's affiliated reseller to its unaffiliated customer. Therefore, because we are not satisfied that the corrective documentation provided by Kaga in support of its second error allegation is reliable, we conclude that Kaga did not satisfy the second condition from *Fresh Cut Flowers—Columbia 1996* that the corrective documentation provided in support of the error allegation be reliable.

In addition to the alleged programming errors discussed above, Kaga, in its July 2, 1998, case brief also claimed that it found three other errors made by Kaga itself. First, Kaga reported that it miscalculated the per-foot gross unit prices for "several of its chains" when converting from a per-link basis for the Department. According to Kaga, in order to determine the per-foot price of models of chain, the per-foot gross unit price is derived by dividing the total sales price of the piece by the total length in feet. In reviewing the conditions set forth in *Fresh Cut Flowers—Colombia 1996*, we find that Kaga failed to meet the fourth condition: although Kaga alleged its own errors no later than July 2, 1998, the due date for its case brief, Kaga did not provide the information needed to correct the alleged errors, nor the number of home market gross unit prices (GRSUPRH) and U.S. GRSUPRUs, which are incorrect due to Kaga's miscalculations in converting gross unit prices from ■ per-link to a per foot basis. Thus, Kaga failed to provide corrective documentation under the fourth condition set forth in *Fresh Cut Flowers—Colombia 1996*.

Second, Kaga noted that it "mistakenly coded several models of conveyor chain * * * as industrial chain" and argued that the information showing that those models are conveyor chain is already on the record as part of Kaga's product catalog. Kaga represented that corrections need to be made to several fields in Kaga's U.S. and home market databases to reflect the accurate physical characteristics of the incorrectly coded chain. In this instance, we find that in its July 2, 1998, case brief, Kaga failed to provide any information regarding the specific models of conveyor chain which were incorrectly coded, nor did it provide the number of U.S. and home market transactions affected by its coding error. Thus, we are not satisfied that Kaga provided corrective documentation required by the fourth condition in *Fresh Cut Flowers—Colombia 1996*.

Third, Kaga claimed that it included an invoice in the home market sales data which represents an adjustment in price to a pre-existing sale, and that any observation associated with this invoice should be deleted from the home market sales data base. As above, Kaga did not attach any evidence to its case brief to corroborate its claim. Therefore, Kaga failed to provide corrective documentation required by the fourth condition in *Fresh Cut Flowers—Colombia 1996*.

Comment 2: Kaga states that on March 24, 1998, the Department issued *Final Scope Ruling— Antidumping Finding on Roller Chain, Other Than Bicycle from Japan—Request by Kaga Industries Co., Ltd., for a Ruling on Automotive Silent Timing Chain*. Kaga maintains that the sole factor excluding Kaga's automotive timing chain from the scope of the antidumping finding is the fact that the chain models do not have rollers. According to Kaga, based on the Department's scope ruling, with the stated exceptions of models 25 and 35 and leaf chain, all chain manufactured by Kaga without rollers should be excluded from the scope of the antidumping finding.

Kaga claims that several models of Kaga chain lack rollers, but were not listed among the excluded silent timing chain in the Department's March 24, 1998 final scope ruling. Therefore, Kaga requests that the Department remove all C163, C168, and 05T chain from the database used to calculate Kaga's antidumping duty margin.

The petitioner states that the Department has adopted formal procedures for addressing scope questions affecting antidumping orders. Further, the petitioner maintains that these procedures were followed when the Department considered Kaga's request that certain silent timing chain be excluded from the scope of the antidumping finding. According to the petitioner, Kaga seeks through its case brief to circumvent these established procedures and obtain additional exclusion from the roller chain finding without subjecting its request to full consideration by the parties and the Department. The petitioner states that it strongly objects to this "back door" approach to scope questions and urges the Department to deny Kaga's request. The petitioner points out that Kaga has the option of submitting a formal ruling request in the 1997–98 roller chain review.

Department Position: We agree with the petitioner that the Department has a formal and established procedure for addressing scope questions. Kaga's instant request for exclusion of the above noted models is untimely as part of the administrative review proceeding and was not in accordance with the regulations governing scope procedures. Therefore, we are not excluding the requested models from the 1996–97 review of roller chain. Kaga may file a scope request regarding the models of chain in question in accordance with 19 CFR 351.225(1998) at any time in the future.

Comment 3: Kaga argues that the Department in its computer program erroneously made an adjustment for commission on CEP sales and an adjustment for CEP profit on EP sales.

According to the petitioner, based on a review of Department's computer

program, there is no evidence that the Department made such programming errors.

Kaga next argues that the Department should not have applied FA to certain U.S. sales of leaf chain which did not indicate the number of strands. According to Kaga, by virtue of its physical construction, leaf chain cannot be multi-strand. Kaga argues that this contention is supported by information contained in its product catalog which is on the record of this proceeding. Therefore, Kaga requests that the Department treat these models as single strand chain for purposes of the final results and that the Department not resort to FA.

The petitioner responds that some, *but not all*, of the sales to which the Department applied FA were leaf chain. However, the petitioner agrees that, given the unique characteristics of leaf chain, it should not be considered to be multi-strand. Further, the petitioner states that, if the Department can confirm from the evidence already on the record that a particular sale to which the Department applied FA is a leaf chain sale, the petitioner would not object to a programming change to treat these sales as single strand chain.

Finally, Kaga claims the Department based the calculation of CEP profit on an exchange rate of 100 yen/dollar. For purposes of the final results, Kaga requests that the Department use the actual average exchange rate for the period which Kaga calculated and appended to its case brief. Kaga argues that this would be in accordance with the Department's preference to use actual exchange rates data.

According to the petitioner, Kaga does not identify the source of the exchange rates appended to its case brief, nor does it disclose how the individual monthly averages were calculated. The petitioner argues that, given these uncertainties, and given the fact that the new information is untimely, it should be rejected by the Department.

Department Position: The Department has determined that total FA is warranted for Kaga in this review. Therefore, Kaga's arguments, discussed above, regarding (1) programming errors, (2) the application of FA to certain U.S. sales, and (3) the Department's calculation of CEP profit, are moot.

OCM

Comment 1: Verification—Home Market Sales Reporting Methodology. Reiterating the reasons, described in its November 17, 1997 supplemental response, that OCM could not report all home market sales of the foreign like product within the time provided for submitting the questionnaire response, the company claims that it, in fact, reported home market sales of models which were identical to models sold to the United States, as well as all home market sales of standard roller chain models which were similar to U.S. attachment or special chain models. OCM based its similar model decision on type of chain (all chain sold in the United States during the POR was industrial chain), number of strands, material, finish, and pitch length. OCM asserts that, when a standard chain and attachment or special chain are identical in these characteristics, the chain will usually differ in terms of only two product characteristics. For attachment chain, the difference would lie in the type and spacing of the attachment. For special chain, the difference would lie in the special feature plus a dimension, such as pitch length.

OCM disagrees with the Department's statement in the *Memorandum from Cameron Werker and Frank Thomson to Holly Kuga Re: Verification of Responses of Oriental Manufacturing Co., Ltd. in the Antidumping Duty Administrative Review of Roller Chain, other than Bicycle, from Japan*, at 8, (April 30, 1998) (OCM Verification Report) that, despite the Department's request in the verification agenda that OCM provide a list of all home market models of roller chain, OCM failed to provide an adequate list. OCM claims that, contrary to this statement, the company presented a list that contained all home market models of the same type and pitch length as those models sold in the United States during the POR (Verification Exhibit 4 (VE 4-list)). OCM argues that the Department never indicated that the verification list of home market models was inadequate and that, consequently, it should now be assumed that the list was in fact considered by the Department to be adequate. OCM asserts that the fact that it only presented a list of home market models with the same type and pitch length as those models sold in the United States does not in any way support the OCM Verification Report's summary of findings that "OCM's stated methodology for reporting home market sales clearly excludes certain similar models [the Department] would have used in model matching."

Next, OCM states that it would be factually incorrect to link the finding in the OCM Verification Report that "there could be cases in which the pitch length is different between products, but the products could still be characterized as similar for the purposes of product matching" to the Department's finding that "OCM's stated methodology for reporting home market sales clearly excludes certain similar models we would have used in model matching." OCM maintains that home market models with different pitch lengths than the U.S. model will ordinarily not be most similar because they will have less than 16 product characteristics in common. OCM states that, in general, five other product characteristics change with the pitch length. Meanwhile, according to OCM, when pitch lengths are identical, the U.S. model and the most similar home market model will have 16 product characteristics in common. OCM maintains that there is only one instance in this review whereby a home market model with a different pitch length from a U.S. model is the most similar match.

Department Position: We disagree with OCM's statement that it reported all appropriate identical and similar home market models of roller chain. First, we disagree with OCM's assertion that the list provided at verification should be assumed adequate because, according to OCM, the Department never indicated that the list was inadequate. A review of the OCM Verification Report clearly demonstrates that the list provided at verification was not consistent with the requirements of the Department's January 16, 1998, verification agenda, and that the Department made multiple attempts to obtain more complete information regarding home market sales at verification. Specifically, upon receiving OCM's list at verification, the Department informed OCM that the list was not complete as required by the Department's verification agenda. In response to the Department's questions regarding whether a complete list could be provided, company officials explained that, because there were thousands of home market roller chain models, it would not have been practical or useful to list all of these models (*see* OCM Verification Report at 8). Also at verification, OCM conceded that its list was not complete given that "while they consider pitch length to be the defining characteristic of roller chain, there could be cases in which the pitch length is different between products, but the products could still be characterized as similar for the purposes of product matching." *See* OCM Verification Report at 8. We also note OCM's statement that when a standard chain and attachment or special chain are identical in terms of type of chain, number of strands, material, finish, and pitch length, then for special chain, the different characteristics would lie in the

special feature plus a dimension such as pitch length, is inherently contradictory.

Furthermore, the Department was aware of OCM's statements in its questionnaire response that it did not report all home market sales, given the limited time and large number of models which OCM sold in the home market. As articulated in the OCM FA Memorandum, it has been the Department's practice in previous segments of this proceeding to allow respondents (*e.g.*, Pulton and Izumi) to report only a limited number of home market sales, contingent upon a determination by the Department that the reported home market sales constitute all appropriate home market comparison sales. We afforded OCM the same latitude in this review. However, unlike other cases, we have determined that OCM's reported home market sales do not constitute all appropriate home market comparison sales. The request for a complete list of all home market sales was a means by which to determine whether OCM had reported all appropriate home market comparison sales. Namely, by reviewing which models had been sold, but not reported, we could determine whether, in fact, OCM had reported all models of the same type and pitch as those sold in the United States, and whether more similar models had been sold in the home market than had been reported for comparison purposes. We note that OCM, during verification, provided us with a second (much shorter) list of models that it suggested should have been reported to the Department but, in fact, had not been.

Despite the failure of OCM to provide a complete list of home market sales at verification, the Department nevertheless attempted to use the information available to ascertain the appropriateness of the home market sales which were reported. However, we were unsuccessful in this attempt. OCM's suggestion that the Department should now accept OCM's home market reporting methodology is inappropriate given the fact that, at verification, OCM did not provide the necessary documentation to support its claim that it had reported the most appropriate home market comparison models.

Finally, OCM incorrectly links the Verification Report summary of findings statement that OCM's reporting of home market sales "clearly excludes certain models [the Department] would have used in model matching" solely with the above discussion. In fact, this finding was based partly on the above issue, but also on other factual discoveries made at verification. Please see the Department's position to comments 3, 4, 9, 10 and 13, below.

Comment 2: Verification—Pitch Length of Specific Models. OCM contests the OCM Verification Report statements on page 9 that

> The Department found models in the brochure with slightly different pitch lengths than those reported in verification exhibit 4 that were similar in regard to the other roller chain characteristics (see OCM Extra Heavy Duty Chain models on page 7 of Verification Exhibit 4). Company officials stated that, given their adopted methodology, even though these other characteristics were similar, because the pitch length was not identical to the U.S. model, these products would not have been placed on the list in Verification Exhibit 4.

OCM argues that the fact that it omitted certain models from the VE–4 list does not necessarily mean it excluded models from the reported home market sales database that the Department might have used as comparisons for U.S. sales. Since the models referenced from the product brochure are groups of models with the same pitch length but other different dimensions, OCM notes that models with different pitch lengths almost never have any other physical dimensions in common and, therefore, would be less similar than models with the same pitch and few other characteristics that differed.

Department Position: Based on the Department's determination in these final results of review that products that are not identical with respect to six specific characteristics, including pitch, should not be considered similar merchandise for purposes of our calculations, this point is moot. We note however, that at the time we issued our questionnaire, and even in the preliminary results, we were considering the possibility that matching across pitch and the other five characteristics was appropriate. Had we not amended our matching methodology for these final results, OCM's reporting methodology would not necessarily have resulted in identification of the most appropriate home market matches for all U.S. sales.

Comment 3: Verification—Models Included in the Home Market Sales Database. OCM disputes the OCM Verification Report statement on page 13 that

> Contrary to OCM's assertion that its home market database was constructed exclusive of roller chain models containing non-standard links or chain that was endless, we found that nine of the ten sales reviewed from June 1996 in OCM's home market data base contained either an offset link, joint link, connecting link, or was endless as evidenced from the June 1996 home market sales ledger. Verification Exhibit 12 contains supporting documentation.

OCM claims that 8 of the 9 home market sales referenced above are of a standard chain model sold with a loose connecting link provided for use by the customer in assembling the chain. OCM claims that the Japanese symbol for "loose" appears on the sales ledger lines for these sales and that this distinction was explained to the verifiers. OCM also claims that the ninth home market sale referenced above was a special chain and, therefore, the connecting, or joint link discussion does not apply.

OCM suggests, therefore, that the Department's OCM Verification Report summary of findings statements that (1) OCM reported sales in the home market of models it specifically stated that it intended to exclude and did not report certain models of home market sales which were identical to U.S. sales, and (2) Company officials were unable to fully explain all the discrepancies, with a minor exception, are invalid. According to OCM, the minor exception consists of seven U.S. sales of special configuration chain. OCM notes that, although it sold identical merchandise in the home market, while preparing its U.S. sales database, it did not recognize these seven sales as special chain and so did not include the identical merchandise in its reported home market sales. OCM further contests the Department's conclusion that the Department was unable to determine what percentage of reported sales was affected by OCM's failure to report costs for endless chain or chain with offset, joint, or connecting links. OCM suggests that this conclusion by the Department implies that the failure to report such costs was an error. OCM maintains that the Department's statement that "OCM's reported variable cost of manufacture for home market models covers different models than those identified in the sales listing" is, thus, no longer relevant. According to OCM, it only reported home market sales of standard chain as it intended and, therefore, properly reported costs for only standard chain.

With regard to this issue, OCM claims that, at verification, the verifiers did not identify the nine sales they believed to contain a connecting link, joint link, attached offset link, or endless chain. OCM claims that it was not able to correct the Department's error until now because it did not become aware of the error until after the OCM Verification Report was filed and, therefore, the case brief is the earliest opportunity it had to discuss this error.

Department Position: We disagree with OCM. We maintain that our

Verification Report is accurate in all respects. Notwithstanding OCM's claim that its home market database was constructed without roller chain models containing non-standard links or chain that was endless, we found that nine out of ten sales reviewed at verification contained some type of non-standard link (*see* OCM Verification Report at 13 and Verification Exhibit 12). Moreover, when asked by the Department at verification why those specific sales appeared in the home market sales database, given that OCM officials had just informed the verification team that the home market sales listing excluded such models, company officials repeatedly stated that the sales were mistakenly entered onto the home market sales listing (*see* OCM Verification Report at 13). Contrary to OCM's statements in its case brief, these comments by OCM officials, directly confronted with these specific sales at verification, demonstrate that the Department did, in fact, identify the nine sales it believed to contain non-standard links, and that the Department verifiers asked company officials to explain the discrepancy. Therefore, OCM's contention that the OCM Verification Report was the first time OCM was made aware of the nine sales is clearly incorrect. Furthermore, given the discussions on this exact point between the verification team and company officials, OCM's assertion that it would have explained that these sales were of standard chain with loose connecting links provided for use by the customer in assembling the chain, is at best self-serving. Because of the importance of this finding at verification, we discussed this issue at great length with company officials, and, in fact, pointed out these specific sales from the home market sales ledger in requesting an explanation of the nature of these sales and models. Company officials repeatedly asserted that these sales should not have been reported because they contained joint or connecting links, and stated that "temporary work staff with no knowledge of roller chain was hired to construct the home market data base." Therefore, OCM's claim that this finding is "incorrect" and that the "ITA made a mistake" represents a post-hoc attempt to correct one of its numerous verification failures to accurately present and explain information requested by the verifiers that is crucial to complete a successful verification.

Notwithstanding these facts, OCM does not dispute that the nine sales identified by the Department comprised special chain and that at least eight of those identified contained a connecting link. Whether or not the links were connected to the chain or not, as belatedly argued by OCM, the fact that the non-standard links were included with the chain is not disputed. Company officials were clearly unaware whether such sales were reported in the home market sales listing, or to what extent such sales were reported. Furthermore, OCM obviously failed to report the costs of these extra non-standard links, which appeared in nine of ten sales reviewed, since OCM maintains it did not account for the "loose" non-standard links in its cost reporting. Moreover, OCM's inability to accurately identify the sales it intended to report (*see* OCM Verification Report at 13) demonstrates that not only could the Department not determine the magnitude of this discrepancy, but neither could OCM. Therefore, we are likewise unable to determine the extent of products for which OCM did not report cost.

Comment 4: Verification—Unreported Home Market Sales. OCM next points to the OCM FA Memorandum, in which the Department makes the following statement:

> OCM also provided a list of standard chain models sold in the home market that it believed should have been included in its home market sales data base. OCM noted that this list was not necessarily inclusive.

OCM contests the Department's conclusion that six of the eleven models presented by OCM in this list (VE–4) should have been reported in OCM's home market database. OCM claims that page 14 of the OCM Verification Report confirms that six of the models in question were either not sold in Japan, were sold "outside the 90–60 day rule period," or were "home market sales of special configuration chain" and, therefore, were correctly omitted from the home market sales database.

OCM further disputes the OCM Verification Report conclusion that the Department was "unable to determine the magnitude of the unreported home market sales of these models." OCM asserts that VE–4, in fact, lists the number of home market sales for each model and the date of each sale. OCM further states that the discussion at verification regarding these models occurred prior to the discussion regarding special configuration chain, and that this is probably the reason that the Department did not realize that the five models were actually special chain. OCM asserts that the possibility that the sales of these five models might be special configuration chain was never raised by anyone, and now that OCM has identified these sales as being properly excluded from the home market data base, the statements in the OCM FA Memorandum and OCM Verification Report are "no longer correct." OCM also notes that it has no recollection of stating that "this list was not necessarily all inclusive."

OCM claims that the above argument proves that the OCM Verification Report summary of findings is invalid and, in fact, lends support to the OCM assertion that it acted consistently in not reporting sales of special configuration chain in the home market sales database.

Department Position: We disagree with OCM. First, OCM's above assertion that the Verification Report confirms that six of the models in question were not sold in Japan is incorrect. Page 14 of the OCM Verification Report clearly states that

> Examination of the "sales by model" book confirmed that there were sales of six of the 11 models identified in verification exhibit 4 which had not been reported in the home market sales database but should have been reported.

Further, regarding the list provided at the start of verification, which is contained in verification exhibit 4, we do not understand OCM's statement it has no recollection of stating that, "this list was not necessarily all inclusive." Even before introductory comments could be made by the Department at the start of verification, OCM officials were in the process of hand-writing a list of roller chain models sold in the United States, which potentially were also sold in the home market and, therefore, should have been reported in OCM's home market database (*see* OCM Verification Report at 2). As stated by OCM officials themselves, the list was constructed at the very last minute, and only after noticing that the home market database did not contain some major standard models (*e.g.* models 100–3R and 100–4R). Therefore, OCM officials noted 11 of these types of roller chain models on a piece of paper (*see* Verification Exhibit 4), and submitted this hand-written note to the Department verifiers, stating that it was a cursory list and that, given the "last minute nature" of its preparation, it may or may not include models sold in both the U.S. and home markets that may not have been reported in the home market database (*see* OCM Verification Report at 2).

Furthermore, we continue to conclude that we are unable to determine the magnitude of the unreported home market sales of these models (*i.e.*, the models contained in VE–4, which were

described at the beginning of verification as models that may have been improperly excluded from the home market database). We disagree with OCM that the spreadsheet presented at verification as supporting documentation for the above-referenced list of models is a comprehensive list of all home market sales, reporting the date of each sale related to the models contained in the above-referenced list. While we do not dispute that the spreadsheet was reconciled to the "sales by models" book to ascertain the completeness of the worksheet, we note that it was not possible to completely review OCM's records, given the structure and nature of the records, to establish that these were the only sales of these models made in the home market and that, in fact, these were the only unreported models. Therefore, we were, in fact, unable to determine the magnitude of the unreported home market sales of these models.

Additionally, OCM did not at any time prior to, or during, verification state that sales of these models were properly excluded from its home market database because they constituted special chain. Specifically, OCM stated that it hired temporary employees who were not knowledgeable about roller chain to assist with the compilation of the sales databases. OCM officials further stated that, rather than select all appropriate sales from its records, the temporary employees were instructed not to include any models containing a non-standard link or attachment on the databases, and even given the instructions, there were still discrepancies in the databases that OCM officials were unaware of prior to their discovery by the Department at verification. OCM could not explain many of the discrepancies, and simply attributed them to the inexperience of the temporary work staff. *See* OCM Verification Report at 12 and 13. OCM's post-hoc argument that these sales were properly excluded from the home market sales database, thereby rendering the Department's statements regarding this issue in the OCM FA Memorandum and the OCM Verification Report inaccurate, is without merit and contrary to facts on the record. Therefore, our conclusions in the OCM Verification Report regarding these sales have not changed.

Comment 5: Verification—Price Discrepancy for One Sale. OCM refutes the OCM Verification Report statement that "OCM incorrectly over-reported the price for observation 691 (invoice number DF–1384) by 6.4 percent." OCM claims that the price reported for U.S. observation 691 was, in fact, the same price as on the invoice for DF–1384. OCM claims that the page of the invoice that contains this price was not included in Verification Exhibit 17.

Department Position: We agree with OCM that the price it reported for U.S. observation 691 is the same price as recorded on the invoice. The OCM Verification Report contained a typographical error in that it was not U.S. observation 691 that was incorrect, but rather U.S. observation 693. The price for U.S. observation 693 was incorrectly over-reported by 6.4 percent.

Comment 6: Verification—Home Market Inland Freight. OCM disputes the Department's findings regarding inland freight in the OCM verification report. Specifically, OCM refutes the conclusion that

> The freight rates in the August 15 response did not include all home market destinations as identified on the freight rate contracts. For example, company officials confirmed that OCM shipped goods to customers in Yokohama, Sakata, Sapporo, Shintome (sic—Shintone), and Awazu, for which there are rates in the above-mentioned contracts, but were not included in Attachment B22 of the August 15 response. * * * We were unable to determine which sales in the home market sales listing were shipped to these destinations because, although OCM provided a complete list of customer names in its questionnaire responses, it did not provide a key code to the location of each home market customer is (sic—in) response to the Department's request for ("Destination") in the original questionnaire.

OCM claims that it did provide a key code to the location of each home market customer in the form of area code listings and that it included, at Attachment B–22 of its questionnaire response, an inland freight cost chart linking the area codes in the home market customer list to destination names (*i.e.*, prefectures and cities). OCM notes, however, that it failed to list certain cities in the above-discussed chart; thus, "identifying the shipments which went to Yokohama, Sakata, Sapporo, Shintone and Awazu requires some knowledge of Japanese geography." (Brief at 21) Notwithstanding this statement, OCM claims that, by using the customer list and the inland freight cost chart, the Department should have been able to identify sales to Yokohama, Sakata, and Awazu.

OCM states that since Yokohama is located in the Kanto area and the freight rate reported in the verification report for Kanto "is approximately the same as that reported by OCM * * * for the Kanto area * * * the ITA should have had no problem here." (Brief at 22) OCM makes a similar claim with regard to the Tohoku region, and for Awazu in the Hokuriku area.

Regarding shipments to Sapporo, OCM states that, while its transportation carrier in Hokkaido has one freight rate for Sapporo and one rate for all other locations in Hokkaido, it applied only the Sapporo rate to all Hokkaido shipments, in order to simplify the inland freight cost calculation. Furthermore, OCM acknowledges that it "provided less than complete information" for Sapporo and Shintone. Finally, OCM also acknowledges that its area code designation for shipments to another region was incorrectly reported.

Department Position: We disagree with OCM regarding the findings at verification with respect to OCM's reported home market inland freight. In its case brief, OCM states that for three of the destinations in question, there should have been no problem determining the freight rate because all that is needed to determine which inland freight rate to use is a "knowledge of Japanese geography." It is not reasonable for a respondent to expect that the Department should have such a level of detailed knowledge at its finger-tips in the course of conducting administrative reviews. It is incumbent upon the respondent to provide all the necessary information and detail for the Department to be able to ascertain if certain expenses were properly reported. As it is the respondent's burden to explain its methodology and what it has reported to the Department, we requested at verification that OCM explain under which area code these locations should be characterized. We established rates from OCM's source documentation, but at no time did OCM inform the Department that the areas of Yokohama, Sakata, and Awazu fit into any area codes already listed in OCM's inland freight cost chart. Therefore, as stated in the OCM Verification Report, "we were unable to determine which sales in the home market sales listing were shipped to these destinations." We further disagree with OCM's claim that, since the freight rates in the source documents are "approximately" the same as the reported freight costs, we should have accepted its reported freight costs. The point of verification is to determine the accuracy of the reported values by tying them to those in the source documents, not to accept "approximate" values at verification for data that was never provided in response to the Department's antidumping questionnaire.

Regarding the latter two locations, OCM has acknowledged that it provided "less than complete information" (Brief at 22), which left the Department unable

to determine which sales in the home market sales listing were shipped to these destinations.

Comment 7: Verification—Weights Used to Calculate Home Market Freight and Brokerage. OCM argues that, notwithstanding the problems regarding the product-specific weights it used for its freight calculations, the Department should accept its reported home market freight and brokerage costs. OCM states that, while it would have been easy to merely use the weights listed in its catalog, it attempted to refine the chain weights. Therefore, in some cases, it used weights from the catalog; in other cases, it used weights from a "master list" of the refined chain weights, or a third weight which incorporated the packing material weight. OCM argues that the discrepancies between these weights are minor and do not justify disregarding its reported inland freight and brokerage and handling charges. For example, OCM states that the maximum difference between the catalog weight and the weight used to calculate the inland freight and brokerage and handling charges was 3.81 percent. OCM recommends that the Department utilize weights listed in its catalog, which are accurate weights and used by OCM in the ordinary course of business, to calculate revised inland freight and brokerage and handling charges for the final results of review. In those cases where a model's weight is not listed in its catalog, OCM recommends using the "master list" weights.

Department Position: We disagree with OCM that the Department should accept its reported home market freight and brokerage costs. As OCM notes in its argument, it attempted to "refine" its chain weights, although OCM never explained what it meant by "refine." OCM further notes that, in certain instances, it utilized the catalog weights; in other instances it used weights from a "master list of the refined chain weights, and in still other instances, it used a third weight which incorporated the packing material weight." While the Department applauds OCM's efforts to "refine" its chain weights for purposes of reporting its inland freight and brokerage expenses, OCM was unable to explain or substantiate the weight reported for the models selected at verification. Furthermore, OCM could not substantiate the weights reported on the "master list" when asked to do so at verification. Moreover, after OCM was unable to reconcile the weights for the models selected using one or more of the above-referenced methodologies, OCM officials explained that they were mistaken regarding the methodology, and that the product catalog was used to determine the reported weights. We were still unable to reconcile all the freight expenses in the sales listing using the catalog weights (*see* OCM Verification Report at 20). In short, the Department was unable to reconcile the reviewed model-specific freight charges to the reported company freight rates by using either the product weights listed in the catalog or the weights provided by the "master list" (*see* OCM FA Memorandum).

Moreover, we disagree with OCM's recommendation that the Department simply use the weights listed in its catalog or the "master list," in instances where the catalog does not report the weight, as a surrogate for weight. First, it is OCM's responsibility to report the accurate weight of each product. OCM's suggestion that the Department go through its home market sales database and match each product to the catalog in order to assign a "correct" weight would be burdensome and overly time-consuming. Moreover, OCM's suggestion that we use the "master list" weights when the catalog does not report a weight, and catalog weights where they exist, would constitute the use of unsubstantiated information, given that we were unable to reconcile either the "master list" or the catalog weights to any source documents. Therefore, we do not agree with this assertion.

Comment 8: Verification—Material Costs. OCM notes that only one reference exists in the Verification Report's summary of findings regarding the Department's testing of its methodology for updating material costs. The reference notes that OCM used the material costs for the four largest selling chain models to update its standard material costs to the POR, which OCM agrees with. OCM then notes that the Department conducted an extensive exercise to arrive at a 1996 material cost for model 40 chain. This exercise resulted in a cost significantly lower than the standard cost figure from 1993. OCM states that this is consistent with everything OCM explained to the Department regarding material cost changes between the standard cost system and the POR costs.

Department Position: As noted by OCM, the summary of findings section of the OCM Verification Report does contain a reference to the materials cost adjustment calculated by OCM. The OCM Verification Report also contains a detailed description of the procedures and results of each test conducted by the Department on this issue, and although the Department found that the 1996 reported cost of model 40 chain was lower than the standard cost figure from 1993 as stated by OCM, the OCM verification report contains substantially more relevant information regarding OCM's methodology. Specifically, we found that although OCM's standard costs for raw material inputs were developed using the standard cost survey covering the period April 1993 through September 1993, OCM calculated its raw materials cost variance for purposes of the dumping calculation as the difference between the prices paid for raw materials during December 1993 and December 1996. We note that OCM failed to disclose in its questionnaire response that for purposes of calculating a raw material cost variance it substituted December 1993 costs for the standard costs (reflective of the period April 1993 through September 1993) and compared this substitute to raw material costs incurred in only December 1996 rather than for the POR.

At verification, we compared the December 1993 prices paid for raw material inputs to the standard raw material costs for models 40, 50, 60 and 80, to determine if the reported December 1993 data was reflective of the standard costs. We found that the December 1993 material costs were not reflective of the April through September 1993 standard costs, thus indicating that the reported variance (between December 1993 and December 1996 costs) was not reflective of what the raw material price variance would be between the standard costs and the 1996 material costs. Moreover, we found an additional discrepancy in the reported December 1993 cost of the roller contained in model 80–1R. This discrepancy was due to the fact that OCM sourced this roller from two vendors in December 1993, but calculated the cost based on purchases from only one vendor, thus further bringing into question the validity of the data.

We selected the next three highest selling models and tested the difference between the April through September 1993 standard costs and December 1996 actual costs. We found that the average reduction in material costs for these three models was significantly different from the average reduction in materials costs for the four models discussed above (*see* OCM Verification Report at 22 through 24).

Further, we note that in attempting to calculate a material cost variance, OCM did not account for differences in material usage between the period used to derive the standard costs, or even December 1993, and the POR. Therefore, although OCM is correct in stating that the models the Department tested at

verification showed material costs which were lower in 1996 than 1993, this result was based on incomplete and inappropriate cost data provided by OCM and, therefore, is unreliable for purposes of calculating a dumping margin.

Thus, OCM, in its comment, fails to address the results of all the tests conducted by the Department at verification, which identify discrepancies in OCM's calculations as well as evidence that OCM's material cost adjustment based on four models is not representative of the subject merchandise as a whole. For a more extensive analysis of our findings at verification on this issue, see the OCM FA Memorandum, which details the differences between the cost methodology OCM reportedly utilized in its questionnaire response and that which OCM described at verification, as well as our verification findings.

Lastly, OCM seems to discuss only the Summary of Findings section of the OCM Verification Report regarding any discrepancies and conclusions resulting from verification. First, the OCM Verification Report, like any other Verification Report, draws no conclusions. It is simply designed to report the findings from verification. Second, the Summary of Findings section is just that, a summary. The full text of the verification report contains detailed accounts of all procedures and results of the verification, and must be read in its entirety in order to fully understand the full scope of the verification.

Comment 9: Verification—Whether to Compare Standard Chain to Special Chain. OCM refers to a worksheet in the OCM Verification Report (exhibit 24–C) in support of its argument that special configuration chain should not be compared to standard configuration chain. OCM notes that this exhibit illustrates that, for model 40–1R, various special chains are significantly higher in cost than the standard chain model. OCM's purpose of including these figures was to illustrate that special chain has a substantially higher production cost than standard chain and, thus, the two types of chain should not be compared. OCM claims that the OCM Verification Report states that the verifiers confirmed the accuracy of the figures on the worksheet, but disagreed with OCM's methodology for making the comparison between special and standard chain. The verifiers determined that the special models cost more (but significantly less than that which OCM calculated) than the standard chain because the verifiers multiplied the special configurations' manufacturing costs by three due to a differential in the number of links in the special and standard chains. OCM argues that, regardless of the cost differential disagreement between its methodology and the verifiers methodology, the fact remains that special chain is significantly more expensive to produce than standard chain.

Department Position: As stated by OCM, the purpose of the worksheets contained in exhibit 24–C of the OCM verification report was to illustrate the cost differences between a standard model chain (*i.e.*, model 40–1R) and the same model chain with non-standard links (*i.e.*, connecting link, offset link, both connecting and offset links, and endless connection). After reviewing the worksheets provided by OCM at verification and receiving explanations from company officials of the calculations contained therein, we found that the cost differences were not as OCM portrayed them. In fact, after recalculating the costs of the chain with non-standard links, which was necessary because the 40–1R model used by OCM as the base model contained 240 links while all the other comparison models with special links contained 70 or 71 links, we found that the cost differences between the base model and the comparison models were dramatically less than calculated by OCM (assuming the cost data used for these tests had been reliable) (*see* OCM Verification Report at 24 and 25). Again, if the cost data had been reliable, based on the recalculation at verification, the standard model chain and the same model with a non-standard link were comparable according to the Department's matching criteria and DIFMER test.

Comment 10: FA—Whether OCM Provided the Necessary Information in the Form and Manner Requested. OCM asserts that it provided the necessary information in the form and manner requested. OCM addresses, in turn, the Department's findings that (1) "OCM * * * did not report all appropriate home market sales and cost information," and (2) the Department was "unable to verify the accuracy and completeness of OCM's costs."

Regarding the Department's finding that "OCM * * * did not report all appropriate home market sales and cost information," OCM first addresses sales issues. OCM argues that it reported all home market sales of models which were identical to those models sold in the United States, but due to the extraordinary burden, it did not report all home market sales of the foreign like product. OCM refers to its explanation in the November 17 supplemental response for its failure to report all home market sales of the foreign like product in the time permitted. Specifically, OCM reiterates that (1) since its electronically stored data base is purged after 100 days, OCM would have had to manually input the data, which would be an impossible task given that its sales ledger contained approximately 148,000 line items; and (2) the research time to locate the data relevant to the requested product characteristics for every home market special chain model and attachment chain model sold during the relevant period could have taken months. OCM states the Department never objected to its response statements, and that this non-response suggests implicit agreement that OCM would not have to report all home market sales. In fact, OCM cites the OCM FA Memorandum, which states that it would allow OCM to report limited home market sales contingent upon a determination that it had reported all appropriate home market comparison sales.

OCM notes that, for U.S. sales of attachment chain or special chain models, where no identical merchandise was sold in the home market, it selected as similar the standard chain models identical to the U.S. models in terms of the following characteristics: type of chain; material; finish; number of strands; and pitch length. OCM states that the similar model issue is not overly significant (*i.e.*, 49 out of 117 U.S. models, and 246 out of 696 U.S. sales lacked an identical match). OCM believes that the Department's concern with its home market sales reporting focused on the "extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States." OCM refers to the OCM FA Memorandum, in which we stated that

> In its most recent supplemental response, OCM did not revise its model match selections in accordance with the Department's instruction re: revised model match methodology (*i.e.*, it continued to identify identical and similar product matches based on the four product characteristics discussed above, rather than the 18 characteristics the Department deemed appropriate for model match) * * * and
>
> OCM's stated matching methodology clearly excludes certain home market sales of identical and similar merchandise we would have used in model matching since the Department's matching methodology is based on 18 product characteristics, not just the four product characteristics used by OCM.

OCM claims that, in fact, there is no evidence that OCM's model match methodology excluded certain home market sales of merchandise the

Department would have used. Moreover, the Department's OCM FA Memorandum and OCM Verification Report do not specifically identify models excluded by OCM that the Department would have used in model matching.

OCM further states that it is unclear if the summary of findings in the OCM Verification Report are based on the notion that OCM used just five, rather than 18, product characteristics to select similar home market models. If so, OCM contends, the above explanation demonstrates that there is no supporting evidence for this finding.

OCM next addresses the OCM Verification Report statement, in which we stated that

> Company officials acknowledged, however, that while they consider pitch length to be the defining characteristic of roller chain, there could be cases in which the pitch length is different between products, but the products could still be characterized as similar for purposes of product matching.

OCM acknowledges that this statement is true, but insists that it does not in any way undercut its sales reporting methodology because only in very rare cases would a model with a different pitch length be most similar to a U.S. model. OCM reiterates that models with different pitch lengths will differ in at least six product characteristics, whereas models with the same pitch length (*i.e.*, standard models that are the base chain of the attachment chain and have the same pitch length) will only vary by two or three product characteristics in most cases. OCM notes that, in determining home market similar matches, it selected the standard chain model of the same pitch length as the most similar model.

Regarding configuration of models, OCM reiterates that it included only standard configuration chain sales in the home market sales data base because (1) special configurations are physically different from the standard configuration of the same model, (2) the manufacturing cost for special chain is significantly higher than that of standard chain, and (3) at the time it prepared the home market data base, OCM believed that its U.S. sales were all made in standard configuration. OCM claims that its position that only home market standard configuration chain sales should be compared with U.S. standard configuration chain sales is consistent with and supported by the statute. OCM states that the first choice in the hierarchy of merchandise that can serve as the foreign like product is defined by section 771(16)(A) of the Act as "The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise." Because special configuration chain is not "identical in physical characteristics with" standard chain, it would not be the first choice in the hierarchy and should not be compared to standard chain. Instead, standard chain is the first choice in the hierarchy described in the statute, and this is correctly what OCM used in reporting the foreign like product.

OCM next repeats its arguments regarding the Department's finding that nine of the ten sales examined in OCM's June 1996 sales ledger contained an offset link, a joint link, a connecting link, or was endless. OCM states that this finding is incorrect.

Referencing the issue raised in *Comment 3* regarding the seven U.S. sales of special configuration chain, OCM claims that its error with regard to reporting home market sales of special configuration chain does not support the preliminary results notice conclusion that the Department was "unable to determine the extent of unreported home market sales of merchandise identical or similar to merchandise sold in the United States."

OCM claims that the preliminary results notice and OCM FA Memorandum cite one cost reporting discrepancy (*i.e.*, that OCM did not report variable costs of manufacture (VCOMs) for certain models of chain sold in both the U.S. and home markets during the POR.) OCM states that it has already demonstrated that the Department was wrong in concluding that OCM reported sales of special chain in the home market sales data base, so in fact OCM reported the correct VCOM's for all models. OCM acknowledges, however, that it reported the incorrect VCOM for the seven U.S. sales of special chain, but insists that this was the only discrepancy for this issue.

According to OCM, the above comments demonstrate that the Department may not predicate its use of total FA on allegations that OCM's method for selecting home market identical and similar models was inappropriate, since its methodology resulted in the selection of all identical and most similar home market models. OCM asserts that the descriptions of its model match methodology should resolve any doubts that the Department had about OCM's similar model selection methodology and should put to rest the Department's assertion that OCM "excluded certain home market sales of identical and similar models we would have used in model matching."

Department Position: We disagree with OCM's claim that it provided the necessary information in the form and manner requested as required by section 776(a)(2)(B) of the Act. Regarding the first of OCM's three assertions meant to support the above claim, we continue to maintain that OCM did not report all appropriate home market sales and cost information. OCM itself states that it unilaterally decided which product characteristics to use in selecting similar home market models to U.S. sales (*i.e.*, 5 of the 18 product characteristics identified by the Department). As stated in the OCM FA Memorandum, and acknowledged by OCM, the Department allowed OCM to report limited home market sales contingent upon a determination at verification that it had reported all appropriate home market comparison sales. OCM had every opportunity to justify and substantiate the appropriateness and accuracy of its home market reporting methodology during verification. However, in almost every instance, we found unexplained discrepancies. First, OCM's questionnaire response claimed that it reported all home market sales of merchandise identical to that sold in the United States. However, at verification, we discovered that OCM had, in fact, made certain sales of specialty chain in the United States, but did not report home market sales of the same merchandise. Second, at verification, OCM officials informed us that they had directed their staff to report home market sales of only standard chain with no special links (*i.e.*, not to report standard chain with non-standard links). However, since certain chain sold to the United States contained non-standard links, this methodology clearly would result in exclusion of models that might have been the most appropriate matches for certain U.S. sales. Third, while reviewing the reported sales at verification, we found that OCM had reported some home market sales of standard chain with non-standard links (despite its intention otherwise). Finally, we note that OCM classified standard chain with a loose attachment as plain standard chain. Therefore, we disagree with OCM that its methodology resulted in the selection of all identical and most similar home market models.

We also disagree with OCM's contentions regarding our findings that "we were unable to verify the accuracy and completeness of OCM's costs." First, with respect to cost, we note that OCM failed to report any cost for specialty chain or for standard chain with non-standard links. Second, OCM's questionnaire responses did not contain

accurate information on how the cost differences were calculated. Furthermore, we found at verification discrepancies in OCM's calculations as well as evidence that OCM's material cost adjustment based on four models is not representative of the rest of the subject merchandise.

In addition, in adjusting reported standard labor costs, OCM did not address the issue of standard production times, which are a part of the calculated model-specific labor costs. Finally, with respect to both the material and the labor cost variances, we note that the data used to calculate those variances does not correspond to the period on which the standard costs are based (*i.e.*, OCM compared costs between two periods, neither of which corresponded to the standard cost base period). For further discussion *see* the Department Position for Comment 11, the OCM FA Memorandum and the OCM Verification Report.

Comment 11: FA—Whether the Findings of Verification Justify Use of Total FA. OCM claims that, with the exception of the chain weights and freight rates, the numbers submitted by OCM consistently matched those in its accounting records and could be traced through the accounting system. OCM notes that, although the Department found that the cost data could not be verified, the OCM verification report states that OCM's reported 1993 cost data "reconciled * * * with" internal cost ledgers. OCM also notes that the Department verified that the four models used to update the material costs were, in fact, the four top selling models to all markets during the POR, and that the Department successfully traced the December 1996 material costs through OCM's accounting system and financial statements. OCM goes on to state that the accuracy of its labor cost data used to update the standard costs to the POR, and its factory overhead expenses used in the VCOM calculations, were likewise confirmed.

OCM states that the above information contradicts the Department's preliminary results conclusions that (1) the information could not be verified, (2) the Department could not establish whether the reported costs reflect actual costs for the POR, and (3) the Department was unable to establish the credibility of the information contained in OCM's questionnaire responses. OCM then asserts that these statements make no sense in light of the overall OCM Verification Report. OCM states, however, that if the cost data it submitted was not the data the Department wanted it to report, the issue is a reporting problem, not a verification problem. OCM acknowledges the problems it had reconciling standard costs to actual costs.

OCM states that, since the problems were in fact reporting issues rather than verification issues, there are three implications arising from this. First, the Department can no longer claim that OCM failed verification and use that as a rationale for total FA. Second, the CAFC's decision in *Olympic Adhesives, Inc.* v. *United States*, 899 F.2d 1565 (Fed. Cir., 1990) (*Olympic Adhesives*), restrains the Department from using total FA where a company reported standard costs because it could not report actual costs, and because the facts show that OCM complied with section 782(c)(1) of the Act. Third, OCM claims that, since a failed verification no longer supports the use of total FA, OCM has now met the five criteria contained in 19 USC 1677m(e) in which Congress directs the Department to use information submitted by a respondent even if it does not meet all applicable requirements established by the Department. Thus, OCM concludes that evidence cited by the preliminary results notice does not support the proposition that OCM's "information cannot be verified."

Department Position: We disagree with OCM's claim that, with the exception of the chain weights and freight rates, the information submitted by OCM consistently matched that in its accounting records and could be traced through the accounting system. OCM's statement that the OCM Verification Report states that OCM's reported 1993 cost data "reconciled * * * with" internal cost ledgers is accurate, but disingenuous. Specifically, the 1993 materials costs were the result of an extensive research survey, the findings of which were recorded in the "Unit Materials and Weight Book." The information contained in this book was subsequently transferred to OCM's "Cost of Production Book," which is the basis for OCM's 1993 costs (*see* OCM Verification Report at 21). However, the fact that some information from the standard cost research survey could be traced through OCM's internal records is not the real issue. Rather, the issue is that OCM did not utilize the data from its standard cost research survey. Instead, OCM reported material cost information from December 1993, a month outside the period used to derive the standard costs.

Furthermore, even though the four models OCM used to update the material costs were in fact the four top selling models to all markets during the POR, they did not comprise a significant percentage of total sales during the POR and, therefore, did not reflect an actual variance for OCM's costs. We do not agree with OCM, however, that this is a reporting problem. Clearly, OCM elected to use data that did not correspond to the variance it was attempting to calculate, although it did not so state in its questionnaire response. Thus, the supposed variance is invalid. (*see* OCM Verification Report at 23). The fact remains that the Department found that the cost data could not be verified. *See* OCM comments 8 and 10.

OCM's assertion that the accuracy of its labor cost data used to update the standard costs to the POR, and factory overhead expenses used in the VCOM calculations were likewise confirmed, are also inaccurate. The Department was able to confirm the accuracy of OCM's aggregate factory overhead expenses for 1996; however, in attempting to ascertain the validity of OCM's reported labor cost data, which was used to update the standard costs to the POR, we found that OCM did not calculate a variance between standard and actual POR production times, which should be a part of the reported model-specific labor costs (*see* OCM FA Memorandum at 7).

Furthermore, we found that OCM attempted to calculate a labor rate variance based on the periods April 1993—March 1994 and April 1996—March 1997 while standard labor costs were based on the period April 1993—September 1993. As an explanation for this, OCM stated that, since the standards were an average, the fact that the labor rate variance was calculated based on comparison of two 12 month periods and the standard rates were based on six months should not matter. We disagree with OCM that this was an appropriate methodology for calculating its labor and overhead variances.

The Department's position in the preliminary results of this review that we could not reconcile OCM's reported material and labor costs to its internal books and records and, therefore, could not establish whether the reported costs reflect actual costs for the POR are consistent with our findings at verification and detailed in the OCM Verification Report. The fact remains that the Department was unable to establish the credibility of the information contained in OCM's questionnaire responses.

Comment 12: FA—Whether OCM Acted to the Best of its Ability. OCM argues that the OCM Verification Report statement that "OCM has not * * * acted to the best of its ability in providing the necessary information" is incorrect. OCM refers to the conclusion

that "OCM elected not to follow the Department's clear instructions * * * that OCM must report all appropriate home market sales and utilize an appropriate cost methodology." OCM claims it has already addressed the Department's findings regarding its reporting of home market sales.

Regarding cost-related examples cited by the preliminary results notice, OCM first addresses the following statement:

> For example, the company used standard cost data to report model-specific material and labor costs, even though the Department does not accept standard costs for purposes of antidumping analysis.

OCM asserts that it stated in its August 15, 1997, response that it did not maintain product-specific actual cost data. OCM states that penalizing it for failing to report non-existent data is contrary to sections 776(a) and 782(c)(1) of the Act, as well as *Olympic Adhesives* and *Borden*.

OCM maintains that it attempted to calculate product-specific actual costs, but that none of its ideas, or those of the Department suggested in meetings between OCM's counsel and the Department on November 18, 1997 and December 18, 1997, were achievable in a reasonable amount of time. OCM reiterates the four ideas it considered to produce model-specific actual manufacturing costs, and outlines the reasons that it could not execute these ideas. OCM then acknowledges that, while one of the Department's verifiers was able to calculate actual 1996 material costs for one model using documents provided at verification, this task would have taken one individual roughly 1.5 to 3 work weeks to calculate the costs for all models sold in the United States. OCM next notes that, for labor costs, it would have been impossible to calculate actual costs because OCM does not maintain information about labor or machine time spent on each product.

OCM asserts that the Department's position that standard costs are unacceptable "for purposes of antidumping analysis" is inconsistent with section 782(d)(c)(1) of the Act. OCM claims that there is compelling evidence that OCM acted to the best of its ability because: (1) OCM actively and aggressively attempted to produce the information requested; (2) none of the possible methods to calculate a model-specific actual cost were reasonable; and, (3) OCM suggested and subsequently submitted an alternative form of data.

OCM next addresses the Department's concern that, in calculating a variance between standard and actual costs for the POR, the company compared data that did not reflect either the period used to calculate the standard costs (April 1993–September 1993) or the POR (April 1996–March 1997). OCM asserts that it used POR data (December 1996) for both material and labor costs, but acknowledges that it did not use the standard cost base period (April 1993–September 1993) in updating its calculations. In the case of labor costs, OCM asserts that, since labor cost data from the standard cost data period was not available, its conduct in this regard clearly reflected acting to the best of its ability to provide responsible and responsive information to the Department.

Regarding material costs, OCM believes that December was an appropriately representative month in both 1993 and 1996 to update the standard material costs, as the material costs did not change very much from month to month and December reflected a month within both the POR and the end of the calendar year. OCM argues that, just because other time periods could have been used, this does not indicate that OCM did not act to the best of its ability by choosing December of 1993 and 1996. OCM claims that the fact that December 1993 is not part of the standard cost base period does not establish that the choice of December 1993 is indicative that OCM did not act to the best of its ability.

Finally, OCM addresses the Department's concern that it "calculated its variance for its four highest selling models of roller chain and applied a simple average of these variances to the standard costs reported for all other models." OCM first notes that this statement applies exclusively to material costs. Next, OCM estimates that it would take an inordinate amount of time to calculate updated model-specific material cost figures. OCM then asserts that, while it "certainly could have used more than four models" to update the material cost figures, the fact that it only used four models is not a basis for concluding that OCM did not act to the best of its ability.

Department Position: There is no disagreement among all parties in this review that OCM failed to follow the Department's instructions to report its home market sales of roller chain models and the product characteristics related to those products. Rather, as stated numerous times above, OCM unilaterally decided which of the 18 characteristics selected by the Department were most important. Notwithstanding OCM's actions, the Department accepted OCM's reporting methodology with the understanding that it was incumbent upon OCM to demonstrate, at verification, that its limited reporting methodology was in fact appropriate. As discussed above (*see* OCM comments 1 through 4), we found at verification that: (1) OCM's methodology, as stated, was not reflected in the actual home market database; (2) OCM did not provide complete and accurate home market sales in accordance with its stated methodology; and (3) OCM omitted sales of roller chain models that could have been deemed similar to U.S. models that did not have identical matches.

Second, regarding cost issues, the Department neither rejected OCM's reported standard costs or deemed them unverifiable just because they were standard costs. Rather, upon finding the deficiencies between the methodology explained in the questionnaire responses and those explained at verification, coupled with the fact that OCM failed to report costs of the "loose" links sold (and packaged) with certain models of chain, we determined that we were unable to establish the credibility of OCM's reported costs. *See* OCM comments 8 and 10 as well as the OCM Verification Report and OCM FA Memorandum. Thus, we disagree with OCM that it acted to the best of its ability in providing the necessary information. While we understand the stated problems OCM encountered in the compilation of all the necessary data in order to accurately respond to the Department's questionnaire and supplemental questionnaires, our findings at verification clearly demonstrate that OCM did not act to the best of its ability in providing the necessary information.

Comment 13: Whether the Department's Decision to Use Adverse FA is in Accordance with Law and is Supported by Substantial Evidence. OCM contends that, in order for the Department to apply adverse FA, it must first determine that OCM did not cooperate to the best of its ability. OCM asserts that there is no basis for such a finding. First, it has reported all home market sales of all identical and most similar home market models. Second, the existence of the seven unmatched U.S. sales is insignificant. Third, it has demonstrated that it properly excluded home market sales of the models the Department claimed should have been reported. Fourth, two models with the same pitch length will be more similar than two models with different pitch lengths, despite possibly having certain other characteristics in common. Fifth, its matching selection process, which is based on matching home market

standard chain sales against U.S. sales of standard chain, attachment chain or special chain (all of which were the same pitch length as the home market models) was appropriate. Sixth, it actively and aggressively sought to find a method for producing VCOM and TCOM information that would be acceptable to the Department and, in fact, suggested an alternative form of the information, namely, the appropriate cost data that represented updated material, labor and overhead costs. Therefore, OCM concludes that there is no evidence in the preliminary results notice, or in the OCM FA Memorandum to support the Department's position that OCM did not act to the best of its ability to comply with the Department's information request. OCM argues that there are only indirect references in the OCM FA Memorandum about counsel being "informed" and "reminded" about OCM's obligations. OCM asserts that, just because the Department "instructed," "informed" and "reminded" it of its obligations does not mean that OCM did not act to the best of its ability.

OCM argues that, other than the seven U.S. sales of special configuration chain, there should be no issue regarding OCM's sales reporting, and that there is no impediment to calculating actual dumping margins for all identical models. OCM also states that its standard costs updated to the POR should be used (in VCOM and TCOM) in calculating difference in merchandise adjustments for similar model matches. OCM argues that, if the Department continues to determine that its cost information is unusable, then the Department should use a non-adverse FA rate for OCM's U.S. sales which do not have an identical home market model match. OCM argues that the Department should correct the errors identified herein and revise OCM's dumping margin accordingly.

Petitioner notes that, in its case brief, OCM argues that many of the Department's findings were based on its own mistakes in reviewing the company's data at verification and on an erroneous interpretation of OCM's model match criteria. Petitioner recognizes that, while it was not present during verification and thus cannot evaluate several of OCM's fact-specific arguments, an examination of the available materials indicates that the Department conducted a thorough analysis of the relevant information, documented significant weakness in OCM's questionnaire responses, and, after giving OCM opportunities to submit revised materials, correctly determined that it had no choice but to apply an FA margin.

Petitioner notes that the Department concluded that it could not rely on OCM's submitted data in calculating dumping margins because the data failed to satisfy the requirements of section 782(e) of the Act. Specifically, petitioner states that the Department found that it could not reconcile OCM's material and labor costs with its internal books and records, that OCM failed to report all appropriate home market sales and cost information after being informed of deficient responses, that the Department could not determine the extent of unreported home market sales or VCOM's, and that OCM did not act to the best of its ability to report data as the Department requested.

Petitioner argues that while OCM asserts that it did not fail verification, OCM acknowledged that the Department has questioned whether its data "is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination," and whether OCM has acted to the best of its ability to provide the requested information. Petitioner asserts that, consequently, OCM's data fail the third prong of the "facts available" test, regardless of the accuracy of the information itself.

Petitioner then addresses OCM's argument that, although the company was unable to submit certain information in the form requested, it attempted to work with the Department to provide information in alternate forms, and therefore acted to the best of its ability to provide the requested information. Petitioner notes that OCM suggests that the Department cannot penalize a company by imposing an FA margin for failure to produce nonexistent data. Petitioner acknowledges that the courts have explained that the mere inability to report requested information because ■ respondent does not record such information in its system does not itself exempt the respondent from application of best information available, the predecessor to FA. *Cf. Hussey Copper, Ltd.* v. *United States*, 834 F. Supp. 413, 424 (CIT 1993).

Petitioner argues that there is ample support on the record to justify application of an FA margin to OCM. However, petitioner also acknowledges that the OCM Verification Report did, in fact, indicate that there were substantial areas of OCM's responses in which the Department found virtually no discrepancies. Moreover, petitioner notes that OCM has not participated in recent roller chain proceedings. Petitioner concludes that it ultimately supports the Department's decision to apply a less adverse FA margin to OCM.

Department Position: We disagree with OCM. As fully discussed in OCM comments 1 through 4 and 8 through 12, above, we were unable to establish the credibility of the home market sales and cost data reported in OCM's questionnaire responses. Moreover, as discussed in the comments above, we continue to determine that OCM did not act to the best of its ability in providing all the necessary data. As in the preliminary results, we continue to find that, in determining the dumping margin for OCM, the application of adverse FA is warranted in this case. *See* the OCM FA Memorandum for a discussion of the adverse facts available rate applied to OCM.

Tsubakimoto

Comment 1: Scope of the Tsubakimoto Revocation Notice. Tsubakimoto argues that the petitioner's attempt to limit the scope of the Department's revocation notice with respect to Tsubakimoto is untimely. Tsubakimoto states that on two prior occasions, the petitioner has attempted to contest the Department's determination to revoke the order as it applies to Tsubakimoto. Tsubakimoto notes that the petitioner filed a complaint with the Court of International Trade (CIT) contesting the Department's *Revocation in Part of Antidumping Finding: Roller Chain, Other than Bicycle, From Japan*, 54 FR 33259 (August 14, 1989) (1989 *Revocation Notice*). However, the CIT dismissed the case as being untimely filed. *See American Chain Association* v. *United States*, 13 CIT 1090, 1092, and 1095, 746 F. Supp. 112 (December 28, 1989). Furthermore, Tsubakimoto contends that the petitioner attempted to circumvent the findings of the CIT by subsequently filing a challenge to the final results of the Department's 1986–1987 administrative review. Tsubakimoto notes that once again the CIT dismissed the case, stating the "antidumping duty determination was revoked without timely challenge." *See American Chain Association* v. *United States*, 14 CIT 666, 746 F. Supp 116 (September 17, 1990). Tsubakimoto continues that in this same ruling the CIT stated that a revocation "becomes final when a litigant misses the statutory deadline for challenging that determination, as the plaintiff did here." Id.

In the subject administrative review, Tsubakimoto argues that the petitioner is trying to address an issue which it has twice before been precluded from challenging by the CIT. Tsubakimoto

argues that if the Department permits the petitioner to challenge the scope of the revocation, it will unlawfully extend the statutory deadline for challenging such a determination. Tsubakimoto, therefore, requests that the Department dismiss the petitioner's comments as untimely and continue its current practice with respect to the Tsubakimoto revocation.

The petitioner argues that Tsubakimoto's "timeliness" argument is merely a diversionary tactic, with no basis in law or fact. Regarding the CIT's dismissal of its challenge of the Department's *1989 Revocation Notice*, the petitioner maintains that there is no evidence that any of the parties ever contemplated that the appeals might potentially address the current scope question. The petitioner asserts that for Tsubakimoto to suggest otherwise is disingenuous. The petitioner stresses that throughout the course of this review, it has emphasized that it is not seeking coverage of roller chain manufactured by Tsubakimoto, but is seeking to clarify that the scope of the revocation is consistent with its express terms—that it is limited to roller chain that is *both* manufactured *and* exported by Tsubakimoto. The petitioner maintains that this question is timely and notes that in the three prior reviews it consistently requested that the Department calculate margins for all merchandise by a certain other manufacturer even if that merchandise had been exported by Tsubakimoto. The petitioner argues however that it was not until the beginning of the current review that Tsubakimoto admitted that it was, in fact, exporting roller chain to the United States manufactured by the company in question. *See* Comment 4 below for further discussion of this allegation.

Department Position: The Department has considered petitioner's request for an administrative review of Tsubakimoto as a reseller of chain produced by other Japanese companies rather than as a challenge to the Department's final determination of Tsubakimoto's revocation. As stated by petitioner, it is not attempting to alter the scope of the revocation notice since it is not seeking coverage of roller chain manufactured by Tsubakimoto, but rather, is seeking clarification regarding merchandise which is exported by Tsubakimoto but manufactured by another Japanese producer. In that regard, we agree that clarification is warranted and have reviewed the evidence on the record. *See* Tsubakimoto Comment 2 for further discussion of revocation of Tsubakimoto as a reseller/exporter.

Comment 2: Revocation of Tsubakimoto as a Reseller/Exporter.

The petitioner submits that the Department's preliminary determination that the 1989 revocation applies to Tsubakimoto in both its capacity as a manufacturer/exporter and reseller/exporter is not supported by the relevant facts on the record, is otherwise contrary to law, and should be reversed in the final results.

The petitioner first argues that, in determining the scope of the Department's revocation determination with respect to Tsubakimoto, it is important to consider the language of the revocation notice. Specifically, the notice states, in relevant part that "This partial revocation applies to all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto * * *" *See 1989 Revocation Notice*. The petitioner contends that by its very terms, the revocation only applies to merchandise that has been both manufactured and exported by Tsubakimoto since it is a fundamental tenet of statutory construction that "the plain and unambiguous meaning of a statute prevails in the absence of clearly expressed legislative intent to the contrary." *F.lli de Cecco di Felippo Fara San Martino S.p.A.* v. *United States*, Consolidated Court No. 96–08–01930, 1997 Ct. Int'l Trade LEXIS at 17 (October 2, 1997). The petitioner further states that only "the most extraordinary showing of contrary intentions" will lead the courts to disregard the plain meaning of statutory language. *Id.* Arguing that these principles of construction apply when determining the scope of the Tsubakimoto revocation, the petitioner contends that it is clear on its face that the phase "merchandise manufactured and exported by Tsubakimoto" only reached roller chain actually produced by Tsubakimoto. In order to cover merchandise manufactured by the other parties, the petitioner maintains that the phrase would have to have been written in the disjunctive (*e.g.*, "merchandise manufactured or exported by Tsubakimoto").

The petitioner argues that past Department determinations support the straightforward reading of the Tsubakimoto revocation notice, citing *Steel Wire Strand for Pressed Concrete from Japan* 55 FR 28796 (1990) (*Steel Wire Strand from Japan*) as the only other case in which the Department has been called upon to interpret the phrase "manufactured and exported." The petitioner notes that the Department determined that "the exclusion in that case was applicable only to merchandise manufactured and exported by the respondent, not to merchandise exported by the respondent that had been *produced* by another manufacturer."

The petitioner further argues that when the Department seeks to reach beyond merchandise produced by a named foreign respondent, it carefully tailors the language of its revocation notices to accomplish this objective. *See e.g., Steel Wire Rope from the Republic of Korea: Effective Date of Revocation in Part of Antidumping Duty Order*, 63 FR 20380 (April 24, 1998), *Pressure Sensitive Plastic Tape from Italy: Final Results of Antidumping Administrative Review and Revocation in Part*, 53 FR 16444 (May 9, 1988), *Spun Acrylic Yarn from Japan: Final Results of Antidumping Administrative Review and Revocation in Part*, 52 FR 43781 (November 16, 1987), *Elemental Sulphur from Canada: Preliminary Results of Administrative Review of Antidumping Finding and Intent to Revoke in Part*, 49 FR 32632 (August 15, 1984), and *Ferrite Cores (of the Type Used in Consumer Electronic Products) from Japan: Preliminary Results of Antidumping Administrative Review and Intent to Revoke in Part*, 52 FR 11524 (April 9, 1987). In each of these cases, the petitioner states that the Department used language stipulating that the scope of the notice covered merchandise "manufactured and/or exported" by the entity in question. The petitioner also cites the Department's approach to the potential revocation of other Japanese roller chain producers and exporters in the 1980–1981 review (*see Roller Chain other than Bicycle from Japan: Preliminary Results of Administrative Review of Antidumping Finding and Tentative Determination to Revoke in Part*, 47 FR 44597 (October 8, 1982)), in which the Department also used the language "manufactured and exported," as illustrative of their argument. The petitioner argues that the quoted language clearly demonstrates that (1) the Department understood the phrase "manufactured and exported by" to require both elements (*i.e.*, both production and exportation); and (2) when formulating revocation language applicable to a reseller/exporter, the Department was quite careful to specify the precise source of the chain in question.

Therefore, the petitioner maintains that the Department was simply wrong when it stated in *RC 96–97 Preliminary Results* that "determinations in other administrative proceedings concerning roller chain from Japan indicate that Tsubakimoto was revoked as a manufacturer/exporter and reseller/

exporter." The petitioner contends that the prior determinations clearly demonstrate that the language employed in that notice was intended to limit the revocation to roller chain that is both manufactured and exported by Tsubakimoto (*i.e.*, not to include roller chain produced by other manufacturers and exported by Tsubakimoto).

The petitioner does not dispute Tsubakimoto's claim that the Department calculated margins for roller chain "manufactured and exported by Tsubakimoto" but also for roller chain which Tsubakimoto purchased from affiliated suppliers and sold during the period looked at for revocation. However, the petitioner states that this in no way undermines the clear and unambiguous language of the Tsubakimoto revocation notice. The petitioner suggests that roller chain manufactured by one of the affiliated suppliers was not treated as Tsubakimoto-manufactured chain in the 1986–1987 review, but rather was treated as roller chain purchased from an "outside independent" company, as articulated in Tsubakimoto's questionnaire response at the time. The petitioner notes that the Department did not collapse Tsubakimoto and the supplier in question but instead permitted Tsubakimoto to report the "constructed value" of the supplier-manufactured chain based upon the prices that Tsubakimoto paid the affiliated supplier for the chain. Lastly on this point, the petitioner states that there is no evidence that the margins calculated for the roller chain purchased from affiliated suppliers has a material impact on Tsubakimoto's weighted-average dumping margin. In fact, the petitioner contends that the weighted-average margin would have been *de minimis* whether or not it included the affiliated-party sales. The petitioner then asserts that the margins calculated for roller chain purchased from affiliated suppliers did not directly affect the antidumping duties owed on Tsubakimoto-produced chain or vice versa since the assessment rates were calculated on a sale-by-sale basis, and that these transaction-specific margins were not used in assessing antidumping duties on the Tsubakimoto exports. To support this argument, the petitioner cites *Roller Chain other than Bicycle from Japan; Final Results of Antidumping Duty Administrative Review and Intent to Revoke in Part*, 54 FR 3099, 3100 (January 23, 1989) (*1989 RC Final Results*), which states that "Individual differences between United States price and foreign market value may vary from the percentage stated above."

The petitioner continues by arguing that the affiliated producer in question (as mentioned above) was listed separately in the 1986–1987 notice of initiation. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews* 52 FR 18937 (1987). The petitioner maintains that the Department would have had an obligation to calculate margins for roller chain manufactured by this company even if it had not initiated a review of Tsubakimoto-produced chain. As it turned out, the petitioner continues, the affiliated producer in question was responsible for providing data with respect to its direct U.S. sales, while Tsubakimoto was responsible for furnishing data concerning the affiliated producer's chain which it resold to the United States. However, the petitioner maintains that this does not mean that these two sales channels bore no relationship whatsoever. The petitioner asserts that they were merely two different avenues through which identical chain reached the U.S. market. Moreover, the petitioner notes that the final results notice of the 1980–1983 backlog reviews presumably identifies a cash deposit rate for any sales of the affiliated producer's merchandise through Tsubakimoto since it has a rate for the manufacturer's merchandise exported by all others. The petitioner suggests that given the fact that in subsequent reviews this affiliated producer has received antidumping margins over the *de minimis* cut-off, the Department could well have concluded that if this affiliated producer's roller chain were covered by the Tsubakimoto revocation notice, the affiliated producer would restructure its selling activities so as to avoid/evade the strictures of the U.S. antidumping laws. In other words, the petitioner suggests that the affiliated producer could potentially have used Tsubakimoto as a conduit to sell dumped product to the United States. The petitioner states that had it been aware that the revocation notice was intended to reach sales of the affiliated producers'-manufactured roller chain, it would have raised the issue as part of the 1986–1987 proceeding.

Moreover, the petitioner contends that the relevant Customs Service liquidation instructions separately addressed roller chain "produced by Tsubakimoto." The petitioner states that following the completion of the 1986–1987 roller chain administrative review, the results were challenged in the U.S. Court of International Trade (CIT). As a result, the petitioner continues, on March 23, 1989, the Department communicated to the Customs Service that "The Court of International Trade, however, has enjoined the liquidation of unliquidated entries of roller chain, other than bicycle, from Japan, produced by Tsubakimoto Chain, which are covered by the final results * * *" The petitioner argues that it is patently obvious that these liquidation instructions only applied to roller chain produced by Tsubakimoto itself and did not apply to roller chain manufactured by other Japanese roller chain producers. Furthermore, the petitioner notes that following the termination of the CIT appeal, Customs instructions were sent out on September 20, 1989 stating that "effective immediately, field offices may resume liquidation of future entries of the subject merchandise manufactured by Tsubakimoto without regard to antidumping duties." The petitioner adds that the above instructions were modified on October 26, 1989 to read that only roller chain that was both "manufactured and exported by Tsubakimoto" was to be liquidated "without regard to antidumping duties."

The petitioner warns that Tsubakimoto's assertion that the Department "has never issued separate cash deposit rates or assessment instruction for any entries by Tsubakimoto of chain manufactured by affiliated parties" should be carefully considered. The petitioner states that while the statement may potentially be correct depending on the intended meaning of the term "separate," it hides a larger truth. Specifically, the petitioner asserts that since 1989, the Department has consistently calculated antidumping cash deposit rates for the affiliated producer's-manufactured roller chain which exceeded the *de minimis* cut-off. The petitioner argues that if Tsubakimoto has chosen not to post the applicable antidumping cash deposits on its affiliated producer's exports, it has done so unilaterally, without consulting the Department or the Customs Service.

Lastly, the petitioner maintains that there is absolutely no support in the record of the 1986–1987 review for the proposition that the Department had determined to collapse Tsubakimoto and its affiliated producer as alluded to by Tsubakimoto in its June 19, 1997 submission. The petitioner states that all three companies were treated as "independent companies" as requested by Tsubakimoto.

Tsubakimoto argues that the Department properly determined in its preliminary results "that the 1989 notice of revocation in part applies to

Tsubakimoto in both its capacity as a manufacturer/exporter and reseller/exporter of roller chain." *See RC 96–97 Preliminary Results.* Tsubakimoto maintains that the record shows, throughout the course of the antidumping proceeding, the Department has consistently treated Tsubakimoto's sales of subject merchandise in the same manner (*i.e.*, sales of chain manufactured by affiliated companies were treated as Tsubakimoto sales for review purposes). Tsubakimoto states that neither the language of the revocation, nor the underlying proceedings that lead up to the revocation, contain any reference that the Department was excluding sales made by Tsubakimoto of chain produced by other parties.

Tsubakimoto asserts that in the 1986/1987 administrative review, as well as in all prior reviews, the Department calculated its antidumping margin with respect to Tsubakimoto based upon all sales made by Tsubakimoto. *See RC 1989 Final Results. See also Roller Chain, Other Than Bicycle, From Japan: Final Results of Antidumping Duty Administrative Review,* 51 FR 43755 (December 4, 1986). Tsubakimoto reiterates its claim that the record is devoid of any evidence which indicates that the Department intended to exclude any reviewed sales from the revocation. Tsubakimoto continues that, based upon its submitted sales data (both as a manufacturer and reseller), the Department concluded that "there is no likelihood of resumption of sales at less than fair value by Tsubakimoto." *RC 1989 Final Results* at 3101. Also citing the *RC 1989 Final Results,* Tsubakimoto states that the Department, when identifying Tsubakimoto, stated that "This review covers Tsubakimoto * * *, a manufacturer/exporter of Japanese roller chain." Tsubakimoto argues that this sentence reveals that the Department reviewed Tsubakimoto both in its role as a manufacturer and exporter of subject merchandise without any limitation as to the manufacturer of the chain being exported. Moreover, Tsubakimoto notes that the Department's revocation notice stated that revocation applies to "all unliquidated entries of this merchandise manufactured and exported by Tsubakimoto and entered, or withdrawn from warehouse, for consumption on or after September 1, 1983." *See 1989 Revocation Notice.*

Tsubakimoto further states that subsequent to the revocation notice, the Department continued its practice and has never issued separate cash deposit rates or assessment instructions for Tsubakimoto entries manufactured by affiliated producers. Tsubakimoto notes that following the *1989 Revocation Notice,* the Department instructed the Customs Service to liquidate Tsubakimoto's entries without regard to the manufacturer of the chain. Moreover, Tsubakimoto notes that in *RC 96–97 Preliminary Results,* the Department stated that "the Department's determinations in other administrative proceedings concerning roller chain from Japan indicate that Tsubakimoto was revoked as a manufacturer/exporter and reseller/exporter." Furthermore, Tsubakimoto argues, the concept of assessment rates does not pertain to either the weighted-average margin analysis or the final results on which the Department based its revocation. Tsubakimoto asserts that there was no separate rate established for Tsubakimoto's sales of chain made by other producers; no separate margin analysis programs or printouts issued; and all of the final results consistently listed only one cash deposit rate for Tsubakimoto.

Therefore, Tsubakimoto maintains that, given the Department's practice and based upon the underlying facts of the record, the revocation applies to all imports by Tsubakimoto. Tsubakimoto argues that it would be illogical, and contrary to law, for the Department to review all of Tsubakimoto's sales as one channel of trade and to calculate one unified weighted-average margin and only revoke the order with respect to one type of chain.

Tsubakimoto further argues that the petitioner's argument that the Department should adopt certain principles relating to statutory construction is completely irrelevant to the present matter. Tsubakimoto states that there is no statutory mandate that the Department follow any particular course of analysis when applying its past determinations. Tsubakimoto maintains that the Department is guided by the general principles that its actions be in accordance with law, reasonable, and supported by substantial evidence. Tsubakimoto claims that these guiding principles give the Department the discretion which is necessary in many cases when the Department is interpreting and applying its own previous determinations as it is in this case.

Tsubakimoto refutes the relevance of the cases cited by the petitioner in its attempt to emphasize the significance of the language "manufactured and exported." Tsubakimoto states that with regard to *Wire Strand from Japan,* the language of the determination clearly shows that the company in question was not exporting products manufactured by another producer during the relevant period of time and that if it were to export merchandise manufactured by another manufacturer, such merchandise would be subject to cash deposits, etc. Tsubakimoto argues that in the instant case, Tsubakimoto was exporting chain manufactured by other producers, a fact of which the Department and the petitioner were well aware. Moreover, according to Tsubakimoto, the Department's determinations were based on its analysis of all of Tsubakimoto's sales. Tsubakimoto therefore maintains that the petitioner had every opportunity during each of the respective reviews, and the revocation proceeding itself, to object to the Department's treatment of Tsubakimoto's sales of chain produced by other manufacturers but did not do so and that it is now too late. Tsubakimoto argues that the petitioner's citations to other non-chain notices are equally unpersuasive and that the petitioner's argument is based on a literal reading of the language in each notice without any attempt to analyze the facts of each individual case. Regarding the petitioner's citation to roller chain determinations in 1982 and 1983, Tsubakimoto notes that the Department clearly specified different channels of trade when it wished to treat the channels differently. In the present case, Tsubakimoto states that the Department did not add any language to its notices, either during the reviews, or in the revocation, that indicated that Tsubakimoto's sales of chain produced by other manufacturers were to be treated differently.

Tsubakimoto next states that it does not understand how the petitioner's argument that Tsubakimoto purchased chain from "outside independent" companies supports its claim that the Department has not consistently treated Tsubakimoto sales without regard to manufacturer. Tsubakimoto contends that the petitioner has failed to contradict the fact that the Department always requested Tsubakimoto to include its sales of chain made by other producers in its questionnaire response; that the Department has always published one margin rate for all of Tsubakimoto's U.S. sales; and that the Department, knowing that its analysis leading up to the revocation included sales of chain made by another producer, never stated in any notice that it intended to, or was in fact, distinguishing between Tsubakimoto's sales of chain it produced from sales of chain produced by other manufacturers. Tsubakimoto also stresses that it is very important to note that the petitioner has

failed to identify even one instance in any of the numerous proceedings leading up to the revocation, as well as the revocation proceeding itself, where it requested the Department treat Tsubakimoto's sales differently based on the manufacturer of the chain. Tsubakimoto hypothesizes that the reason for this is that the petitioner never objected to such treatment during the relevant proceedings.

Tsubakimoto maintains that the facts alleged by the petitioner that transaction-specific margins were applied to individual Tsubakimoto exports, even if true and if there were facts on the record to support the allegation, is meaningless to the issue at hand. Tsubakimoto notes that sale-specific assessment rates are not relevant to whether the Department will revoke a finding or an order. Tsubakimoto continues that, individual assessments on each export, if true, is not significant because this is true of Tsubakimoto-made chain as well, thus, if the petitioner's argument is true, the margin calculated for other sales of Tsubakimoto-made chain did not affect the margin calculated for another sale of Tsubakimoto-made chain.

Tsubakimoto discounts the petitioner's statement that there is no evidence that the margins calculated on sales of chain made by another producer "had a material impact on Tsubakimoto's weighted average dumping margin." Tsubakimoto contends that there are no facts on this record to support this claim. Tsubakimoto also discounts the petitioner's argument that it is significant that one of Tsubakimoto's suppliers was listed separately in the 1986–1987 notice of initiation. Tsubakimoto notes that the petitioner failed to mention that not all of the suppliers were so listed. Nevertheless, Tsubakimoto maintains that the Department's initiation of the supplier in question was proper since there was more than one channel of trade for that supplier which had to be analyzed separately. Tsubakimoto argues that this initiation notice did not in any way controvert the fact that the Department eventually issued one single margin rate for Tsubakimoto.

Tsubakimoto argues that the petitioner's assertion that had it known the revocation notice was intended to reach sales of an affiliated producer-manufactured roller chain it would have raised the issue in the 1986–1987 proceeding is nothing more than post hoc rationalization and irrelevant.

Tsubakimoto concludes that the Department's preliminary decision is fully supported by fact and law and is consistent with how the Department has treated Tsubakimoto in every proceeding leading to the revocation.

Department Position: We disagree with petitioner that the Department's revocation of Tsubakimoto applies only to merchandise that has been both produced and exported by Tsubakimoto. Petitioner's briefs did not provide any new arguments that we did not consider in making our preliminary results finding. Therefore, as we stated in the *RC 96–97 Preliminary Results*, the evidence on the record demonstrates that the Department revoked Tsubakimoto with respect to both the manufacturer/exporter and reseller/exporter operations the company conducts. Although, as petitioner argues, regarding the principles of construction, the phrase "manufactured and exported" used by the Department in the 1989 *Revocation Notice* could be read to limit Tsubakimoto's revocation to roller chain manufactured by Tsubakimoto, we continue to find that other factors demonstrate the revocation also covers Tsubakimoto as a reseller. Specifically, the *de minimis* margin calculated in the 1986–1987 administrative review, which is the foundation of the revocation under the Department's regulations at that time (*see* 19 CFR 353.54 (1987)) included sales made by Tsubakimoto of roller chain it purchased from two other Japanese manufacturers. Therefore, the Department's revocation was based upon Tsubakimoto's pricing practices as both a manufacturer/exporter and reseller/exporter (*see RC 96–97 Preliminary Results*). We disagree with the petitioner's contention that the margins calculated for the roller chain purchased from affiliated suppliers are not relevant to the overall Tsubakimoto dumping margin. All sales used to calculate the dumping margin which resulted in the eventual revocation are equally important to the overall calculation regardless of whether they raise or lower the margin.

The petitioner argues that the margins calculated for roller chain from affiliated suppliers did not directly affect the antidumping duties owed on Tsubakimoto-produced chain or vice versa since the margins were calculated on a sale-by-sale basis. Although petitioner's statements are technically correct, we find that they shed no light on whether the Department revoked Tsubakimoto as a reseller of another company's product. The Department calculates transaction-specific dumping margins in all reviews. These margins are then weight-averaged for purposes of calculating a single cash deposit rate. In addition, during the early and middle 1980's, the Department, in some cases, was still issuing "master list" assessment instructions. Where the Department had started to move toward issuing assessment rates, rather than "master list" (i.e., transaction-specific) assessment instructions, the assessment rates issued were importer-specific rates. Therefore, the fact that the Department calculated transaction-specific margins for the subject roller chain reviews does not support the petitioner's argument regarding the Department's treatment of Tsubakimoto as a reseller of another manufacturer's product.

We agree with the petitioner's contention that the affiliated producer in question was listed separately in the 1986–1987 notice of initiation and that the Department would have had an obligation to calculate margins for roller chain manufactured by this company even if it had not initiated a review of Tsubakimoto-produced chain. Our determination in no way excludes the affiliated supplier from the order with respect to the roller chain it manufactures and exports to the United States.

Therefore, we have continued to apply the revocation to Tsubakimoto as a manufacturer/exporter and reseller/exporter.

Comment 3: Tsubakimoto's Allegation of New Information. In its July 13, 1998, rebuttal brief, Tsubakimoto argues that the petitioner included two items of new information in its July 2, 1998, case brief. Specifically, Tsubakimoto states that the following two statements, made by the petitioner, are untimely submissions of new factual information and should be stricken from the record: (1) that "individual assessment rates were calculated for shipments of purchased chain, and these rates were calculated as if the chain had been purchased from an unrelated party," and (2) that "it is the ACA's further understanding that for these pre-revocation administrative transactions, the antidumping duties assessed on roller chain purchased from related manufacturers varied from those assessed on individual shipments of Tsubaki-manufactured chain." *See* petitioner's July 2, 1998 case brief at 7 and 16.

The petitioner responded to Tsubakimoto's allegation of new information on July 21, 1998, when it indicated where in the record of this segment of the proceeding the information can be found on which it based its two statements concerning assessment instructions. According to the petitioner, the passages in question "flow directly" from the standard

assessment language used by the Department in two previously published **Federal Register** notices. *See* petitioner's July 21, 1998 letter at 2.

With regard to the first statement in question, the petitioner states that this argument was presented in nearly identical terms in its July 30, 1997 submission. In that submission, the petitioner stated:

"* * * it should be emphasized that separate margins were calculated for the various shipments of roller chain which Tsubakimoto exported to the United States. Thus the margins calculated for roller chain purchased from related suppliers did not directly affect the antidumping duties owed on Tsubakimoto-produced chain or vice versa."

See Roller Chain, Other Than Bicycle, From Japan; Final Results of Antidumping Duty Administrative Review and Intent to Revoke In Part, 54 FR 3100 (Jan. 14, 1989) ("The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above.").

See petitioner's July 21, 1998 letter at 4. Since the arguments presented in its July 30, 1997 and the July 21, 1998 submissions are nearly identical, the petitioner concludes that there is no basis for Tsubakimoto's claim that the passage in question represents new information to the record of this proceeding.

With respect to the second statement, the petitioner notes that the passage in question is found in footnote 5 of its July 2, 1998 case brief. This footnote states in its entirety:

"It is the ACA's information and belief that, in administrative reviews covering earlier time periods, the Commerce Department also calculated margins on a transaction-specific basis. *See*, e.g., Roller Chain, Other than Bicycle, from Japan, 52 FR 17425 (1987) (April 1, 1981 through September 1, 1983). It is the ACA's further understanding that for these pre-revocation administrative transactions, the antidumping duties assessed on roller chain purchased from related manufacturers varied from those assessed on individual shipments of Tsubaki-manufactured chain. *Contra* Tsubaki Submission at 2, 3 (July 23, 1997)."

See petitioner's July 21, 1998 letter at 5. The petitioner observes that this footnote cites the final determination of the roller chain review for Tsubakimoto for the period April 1, 1981 through September 1, 1983. According to the petitioner, the notice of final results for the 1981–1983 reviews expressly stated that:

"* * * the Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions on Tsubakimoto directly to the Customs Service."

See petitioner's July 21, 1998 letter at 6. The petitioner states that its understandings as to the Department's approach to the appraisement of the Tsubakimoto sales follow directly from this passage of the published notice. Although the petitioner acknowledges that the notice of final results for the 1981–1983 reviews is not on the record of this segment of the proceeding, it states that it is absurd to argue, as Tsubakimoto has done, "that a party to an administrative proceeding may not characterize statements in a published **Federal Register** notice in its case brief." *See* petitioner's July 21, 1998 submission at 6. Furthermore, the petitioner contends that if Tsubakimoto's argument was accepted, parties to antidumping proceedings could not cite to any agency notices or court decisions in their briefs unless copies of those determinations had previously been submitted to the agency within the 180-day window set out in 19 CFR 351.31(a)(1)(ii).

Department Position: We agree with the petitioner that the two statements identified by Tsubakimoto do not contain new factual information. After analyzing the arguments presented by Tsubakimoto and the petitioner, we find that both of the petitioner's statements are assertions based upon information already contained in the record of this proceeding. *See* Memorandum To the File from Mark Manning, *Tsubakimoto Chain Co.'s Allegation of New Information Contained in the American Chain Association's Case and Rebuttal Briefs in the Administrative Review of Roller China, Other Than Bicycle, From Japan*, dated August 5, 1998. Briefs are intended to provide parties the opportunity to argue facts already on the record. The petitioner's case brief was timely submitted, and did not contain factual information not already on the record. Therefore, we determine that it is appropriate to leave the statements contained in the petitioner's case brief on the record of this proceeding.

Izumi

Comment 1: Adverse Facts Available. The petitioner argues that the Department assigned Izumi a relatively favorable FA rate of 17.57 percent because of Izumi's "substantial efforts to cooperate" during the review, even though the Department found that Izumi had "not demonstrated * * * that it acted to the best of its ability" to provide the requested information on Izumi's direct sales to the United States. The petitioner argues that Izumi's minimal efforts to comply with the Department's repeated requests for information over the course of this proceeding cannot be viewed as "cooperation." Therefore, the petitioner maintains that Izumi's substantial failures in this proceeding should subject it to the higher FA rate of 42.48 percent, the rate calculated for Kaga in the preliminary results of review.

The petitioner notes that under the "best information available" standard that preceded the current "facts available" rule, the Department utilized a two-tier approach for selecting the appropriate rate, pegged to the company's level of cooperation. The petitioner acknowledges that best information available is no longer the law, but states that the two-tier approach developed under this standard is relevant to understanding the Department's decisions on FA.

The petitioner theorizes that the purported "substantial efforts to cooperate" appear primarily to have consisted of (1) the submission of inadequate responses to the Department's questionnaire, and (2) participation in a failed verification. The petitioner maintains that Izumi substantially failed to cooperate in this review, citing the *RC 96–97 Preliminary Results*, which states that Izumi failed to comply with the Department's repeated requests for third country sales and appropriate cost information. Further, citing the same notice, the petitioner states that "Izumi had not demonstrated on the record that it acted to the best of its ability in providing the necessary information" and had "elected not to follow the Department's clear instructions, which were enunciated in several questionnaires, that Izumi must report all appropriate third country sales and an appropriate cost methodology." The petitioner claims that Izumi clearly chose not to provide critical data requested by the agency and, thereby, made it impossible for the Department to calculate antidumping margins for the company's U.S. sales.

The petitioner further argues that Izumi is an experienced player in the proceedings, and that it has demonstrated in the past, that when it desires, it can provide more comprehensive data. Moreover, the petitioner argues that Izumi's failure to provide the Department with the requested information hindered the Department's ability to calculate

accurate dumping margins and had the same practical effect as the decision by the Pulton Chain Company to withdraw from the proceeding.

Given Izumi's failure to cooperate, the petitioner contends that the Department's application of a relatively-favorable facts available margin is at odds with prior precedent. The petitioner cites the CIT's decision to uphold the Department's determination to apply a calculated margin, which was higher than that provided in the petition, as FA for a "large sophisticated company with demonstrated ability to participate in the antidumping investigation" which failed to provide adequate cost of production and constructed value information. *See Empressa Nacional*. The petitioner states that the Court was not receptive to the company's argument that the Department should have taken into consideration its "previous extensive cooperation," including the fact that it responded in a timely fashion to the Department's other questionnaires. The petitioner argues that Izumi's faulty responses to the Department's questionnaires should carry no more weight here.

The petitioner also cites *Extruded Rubber Thread from Malaysia; Final Results of Antidumping Administrative Review*, 63 FR 12752 (March 16, 1998) as a recent case in which the Department applied "the highest rate calculated for any respondent in any segment of the proceeding" to a company which submitted responses to all questionnaires, passed its sales verification, and verified parts of its cost response. In applying a high adverse FA margin for this company, the petitioner states that the Department explained that it was unable to reconcile a number of the company's costs, and that even if some of the accounting staff was inexperienced at the time of verification, the company was experienced in the antidumping proceedings, and that the company had control over the documents necessary to prepare its response and conduct verification. The petitioner notes that the above-referenced company received the same adverse FA margin as a company that did not cooperate at all in the same review. The petitioner further cites *Pipes and Tubes from Thailand* as another example of where the Department applied an adverse inference to a company who had failed to provide complete responses at verification due to its lack of preparation. The petitioner argues that Izumi's timely submission of some of the requested information should not protect it from a more adverse FA margin.

The petitioner also argues that the facts surrounding Izumi's responses to the Department's requests are distinguishable from the cases cited by the Department in the *RC 96–97 Preliminary Results*, where a respondent may not have acted to the best of its ability to comply, but was deemed sufficiently cooperative to warrant a less adverse fact available rate. For example, the petitioner states that in *Fresh Cut Flowers—Columbia 1997*, the Department noted that the respondent in question "faced difficult circumstances during the review period." The petitioner asserts that it knows of no such circumstances facing Izumi in the instant review. Moreover, the petitioner claims that with the exception of the rate applied to companies that did not respond to the Department's questionnaires, or responded after the deadline, the margin selected for the company in the *Fresh Cut Flowers—Columbia 1997* case was the highest imposed in the proceeding. The petitioner also states Izumi's situation is distinguishable from that in *AFBs 1997*. In *AFBs 1997*, the petitioner notes that although the Department may not have selected the highest potential margin, the rate chosen was more than twice as high as that received by any other respondent. Moreover, the petitioner continues, the Department had determined that "use of the flawed response would have yielded a more favorable margin" for the respondent. The petitioner contends that, unlike *AFBs 1997*, there is no assurance that the rate chosen in the preliminary results for Izumi will encourage cooperation in the future because it was not possible for the Department to compare the chosen rate to Izumi's calculated rate due to the flawed response. The petitioner argues that, presumably, Izumi would have "acted to the best of its ability" to provide missing data if it believed that the data would have produced a favorable margin. In fact, the petitioner contends, the 17.57 percent rate, which has been imposed in prior review proceedings, has not prompted any measurable change in Izumi's level of cooperation. *See Final Results of Antidumping Duty Administrative Review and Partial Termination: Roller Chain, Other than Bicycle, from Japan*, 57 FR 6806 (February 28,1992).

Izumi argues that it acted to the best of its ability and responded to all of the Department's requests for information. Izumi maintains that the problems encountered at verification were the result of Izumi's unsophisticated record keeping and accounting systems. Izumi emphasizes that it is not a large sophisticated company as portrayed by the petitioner; rather, its records are not computerized and it has no formal cost accounting system. Moreover, Izumi contends that it is a family-owned operation that is so small it is not required to file its financial statements with the Japanese Ministry of Trade and Industry.

Izumi states that it was required to submit a great deal of sales data as well as detailed data concerning the physical characteristics of each model sold in the U.S. and home markets-much of which it states was correctly reported. Izumi identifies only one instance in which its data contained errors (*i.e.*, where it omitted certain sales to the Philippines). Izumi further states that it also provided cost information to the best of its ability. Izumi contends that, despite its efforts being hindered by the fact that it has no cost accounting system, it did its best to report its costs based on the methodology used to report its costs in the original investigation.

Given these facts, Izumi argues that there is no basis for assigning Izumi an adverse FA rate under the guidelines set forth by the CIT in *Borden*. Izumi first states that *Borden* makes clear that the standards the Department used to apply "best information available" under the pre-URAA amendments to the Act no longer apply. Therefore, Izumi maintains that the petitioner's reliance on the old "two-tiered" methodology is unavailing. Izumi next states that *Borden* drew a distinction between "an unwillingness, rather than simply an inability to cooperate." Izumi argues that nothing in the record of the present review indicates an unwillingness on the part of Izumi to cooperate. Lastly, Izumi notes that, like the respondent in *Borden*, Izumi does not have a cost accounting system, which lead to the submission of information that the Department found to have problems.

Izumi asserts that the petitioner's contention that an inadequate response is the equivalent of deliberate non-cooperation is ridiculous. Izumi argues that if the petitioner was correct, the Department would always have to make the most adverse assumptions in assigning FA since an adequate response can never be subject to the application of FA. Moreover, Izumi maintains that the petitioner's argument that Izumi provided more comprehensive data in prior reviews is untrue. Izumi contends that it did not behave any differently in this review than it has in past reviews. Izumi also asserts that it had difficulty in obtaining third county data as the great volume of

data had to be manually reviewed and separated by country, and that it had difficulties in accumulating the cost data given the above-referenced lack of a cost accounting system. Izumi states that it has always done its best to respond fully and completely to the Department's requests for information and that the petitioner's characterizations of Izumi's efforts as non-cooperative are inaccurate.

Furthermore, Izumi maintains that, contrary to the petitioner's assertion that the Department did not make an adverse inference in assigning Izumi a preliminary margin, the Department did, in fact, make an adverse inference with regard to Izumi. Izumi contends that the rate assigned for the preliminary results is higher than any calculated rate for Izumi for the past five reviews. Izumi states that the non-adverse FA rate for Izumi in the immediately preceding review (1995–1996) was only 2.26 percent. Izumi maintains that the resulting 600 percent increase in the deposit rate can hardly be characterized as favorable. Izumi argues, that even if the Department was justified in making an adverse inference in determining Izumi's rate, it was correct not to use the most adverse rate. Izumi asserts that there is nothing in the statute which mandates the use of an adverse inference where a respondent has been cooperative. Thus, Izumi argues, the cases cited by the petitioner do not bind the Department in this case. Izumi states, that unlike *Pipes and Tubes from Thailand*, a case cited by the petitioner, the Department has already found that Izumi did significantly cooperate with the Department. Regarding *Fresh Cut Flowers—Columbia 1997*, Izumi states that its situation is similar in that it has made significant efforts to both respond to the Department's questionnaires and undergo verification.

Finally, Izumi argues that the Department should also reject the petitioner's demand that the Department use the rate assigned to Kaga for the preliminary results. Izumi maintains that Kaga's rate was the result of serious clerical errors, is not reliable, and should not be used as the basis for Izumi's rate. Also, Izumi states that the Department assigned Kaga's rate as the most adverse facts available rate to another respondent in this review which refused to undergo verification.

Department Position: We agree with Izumi, in part. For the reasons explained in the *RC 96–97 Preliminary Results* and the Izumi FA Memorandum, the application of section 782(e) of the Act does not overcome section 776(a)'s direction to use FA for Izumi's submissions. Thus, the use of FA is warranted in this case. Furthermore, because Izumi did not act to the best of its ability to comply with the request for information under section 776(b), an adverse inference is warranted. We note that, unlike in *Borden*, however, as stated in the *RC 96–97 Preliminary Results*, because Izumi made substantial efforts to cooperate throughout the course of this review, including undergoing verification, we are continuing to resort to FA that are less adverse to the interest of Izumi. Therefore, we used for Izumi an adverse FA rate of 12.68 percent (a rate calculated for another respondent in the 1990–1991 review of this proceeding). This rate is a significant increase from the company's current cash deposit rate and thus is sufficiently adverse to induce cooperation by Izumi in future reviews of this proceeding. If, in subsequent reviews, it is determined that the adverse FA rate assigned to Izumi is not prompting Izumi to completely and accurately report all requested information, the selection of the facts available rate may be revisited.

Comment 2: Affiliation. Izumi maintains that Company X, [1] an affiliated Japanese producer of roller chain, is a separate entity from Izumi. Izumi further argues that Company X's ownership interest in Izumi, which was verified by the Department, has not changed significantly during the almost 20 year history in which the Department has had responsibility for the case. Izumi contends that this relationship is well known to the Department and that the Department has always calculated a separate margin for each company. Furthermore, Izumi contends that Company X does not hold a controlling interest in Izumi and that the sole Company X director on Izumi's Board of Directors is affirmatively prohibited from voting in matters which affect Company X. Izumi requests that the Department continue to treat the two companies as separate entities.

Department Position: In our preliminary results, we noted that the majority of Izumi's home market sales were made to Company X, and therefore, we would be reviewing the appropriateness of continuing our analysis of Izumi as a separate entity for the purposes of the final determination. In order to conduct our analysis of whether to collapse Izumi and Company X into one entity under the antidumping law, the Department issued a questionnaire to Izumi on May 27, 1998 and a supplemental questionnaire on July 16, 1998. In order to gain additional information, we also issued a questionnaire to Company X on July 16, 1998. Izumi filed timely responses on June 24, 1998 and August 3, 1998, and Company X filed a timely response to its questionnaire on August 3, 1998. The parties submitted their case and rebuttal briefs on this issue on September 1, 1998 and September 9, 1998, respectively.

Due to the proprietary nature of this issue, we are unable to discuss publicly the information on the record. Therefore, we have summarized the parties' proprietary arguments, and the Department's comments, in a separate decision memorandum that has been placed on the record of this proceeding. *See Decision Memorandum: Roller Chain, Other than Bicycle, from Japan—Izumi Chain Mfg. Co. Ltd., Affiliation Issue, 1996–1997 Administrative Review*, November 4, 1998 (*Izumi Decision Memorandum*).

After analyzing the information provided by Izumi and Company X in their questionnaire responses and the arguments presented in the parties' briefs, we have determined that there is not sufficient evidence on the record of this case to determine that Izumi and Company X should be collapsed under the antidumping law. *See* the *Izumi Decision Memorandum* at 23. However, we will request additional information for this analysis and further examine this issue in the context of the ongoing 1997–1998 administrative review of this order.

[1] Due to the proprietary nature of the affiliation, we have referred to the company in question as 'Company X'.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period April 1, 1996 through March 31, 1997:

Manufacturer/exporter	Weighted-average margin percentage
Daido Kogyo Company Ltd.	00.03
Enuma Chain Mfg. Company	00.03
Izumi Chain Mfg. Company Ltd.	12.68
Kaga Kogyo/Kaga Industries	12.68
OCM Chain Company	12.68
Pulton Chain Company Inc.	17.57
R.K. Excel Company Ltd.	00.28
Sugiyama Chain Company, Ltd.	12.68

Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries.

The following deposit requirements shall be effective upon publication of

this notice of final results of administrative review for all shipments of the subject merchandise from Japan that are entered or withdrawn from warehouse, for consumption on or after the publication date, as provided by 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates listed above, except if the rate is less than 0.5 percent and, therefore, de minimis, the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results of review in which that manufacturer participated; and (4) if neither the exporter or the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 15.92 percent, the "all others" rate based on the first review conducted by the Department in which a "new shipper" rate was established in the final results of antidumping finding administrative review (48 FR 51801, November 14, 1983). These requirements shall remain in effect until publication of the final results of the next administrative review.

For duty assessment purposes, we have calculated importer-specific assessment rates for roller chain. For CEP sales we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the estimated entered value of subject merchandise sold during the POR to that importer. We calculated the estimated entered value by subtracting international movement expenses and expenses incurred in the United States from the gross sales value. For assessment of EP sales, for each importer, we calculated a per unit importer-specific assessment amount by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of subject merchandise sold to that importer during the POR.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 4, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30414 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On July 8, 1998, the Department of Commerce (The Department) published the preliminary results of review in the antidumping duty administrative review on stainless steel plate from Sweden. (63 FR 36877). The review covers two manufacturers/exporters (Avesta Sheffield AB (Avesta) and Uddeholm Tooling AB, Bohler-Uddeholm Corporation and Uddeholm Limited (collectively Uddeholm)) of the subject merchandise to the United States and the period June 1, 1996 through May 31, 1997.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: John Totaro or Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1998).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). On July 8, 1998, the Department published in the **Federal Register** the preliminary results of antidumping duty administrative review of this antidumping finding (63 FR 36877) for the period June 1, 1996 through May 31, 1997. The Department has now completed this review in accordance with section 751(a) of the Act.

Scope of the Review

Imports covered by this review are shipments of stainless steel plate which is commonly used in scientific and industrial equipment because of its resistance to staining, rusting and pitting. Stainless steel plate is classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7219.11.00.00, 7219.12.00.05, 7209.12.00.15, 7219.12.00.45, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.21.00.05, 7219.21.00.50, 7219.22.00.05, 7219.22.00.10, 7219.22.00.30, 7219.22.00.60, 7219.31.00.10, 7219.31.00.50, 7220.11.00.00, 7222.30.00.00, and 7228.40.00.00. Although the subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

On November 21, 1997, Avesta and Avesta Sheffield NAD, Inc. requested clarification to determine whether stainless steel slabs that are manufactured in Great Britain and rolled into hot bands in Sweden are within the scope of the antidumping finding. On December 22, 1997, the Department determined that British slabs rolled into hot bands in Sweden are within the scope of the finding.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of

this administrative review. We received timely comments from Uddeholm and Avesta. We received timely rebuttal comments from petitioners, Allegheny Ludlum Steel Corp., G.O. Carlson, Inc., and Lukens, Inc.

Avesta

Comment 1: Avesta argues that the Department should establish the CEP profit ratio based on Avesta's consolidated annual financial statement. Respondent argues that the Department based the CEP profit ratio on the financial statements of Avesta Sheffield, NAD, Inc. (the North American Division) rather than the consolidated financial statements of the whole company. Avesta argues that section 772(d)(3) requires the Department to adjust CEP for an amount of profit allocable to U.S. sales and that the Department's practice has been to base this calculated profit on revenues and expenses associated with total sales of subject merchandise (both in the home market and in the United States). In addition, Avesta argues that under section 772(f)(2)(C), the Department has three alternatives for calculating CEP profit including relying on the respondent company's financial reports covering the production and sales of merchandise in all countries, and that in this case the only information available to the Department is the financial report for the consolidated company which indicates that Avesta incurred a loss during the period of review (POR). Therefore, respondent urges the Department to set the CEP profit ratio to zero.

Petitioners did not object to Avesta's comment.

Department's Position: The Department agrees with Avesta. Consistent with the provisions of sections 772(d)(3) and 772(f)(2)(C) of the Act, as amended, the Department is applying a CEP profit ratio of zero on all sales made in the United States due to the fact that Avesta incurred a loss during the POR.

Comment 2: Avesta argues that the Department should recalculate CEP profit applying the profit ratio only to U.S. selling expenses related to economic activities in the United States, excluding foreign and U.S. movement charges as well as indirect selling expenses and inventory carrying costs incurred in Sweden. Respondent argues that the Department incorrectly applied the profit ratio to foreign movement charges, U.S. movement charges, indirect selling expenses incurred in Sweden, and imputed inventory carrying costs incurred in Sweden prior to export to the U.S. Respondent argues that movement expenses are not classified as selling expenses within the meaning of section 772(d) of the Act, and therefore should not be included in the CEP profit calculation. In addition, Avesta argues that the expenses associated with economic activity in the U.S. do not include those indirect selling expenses and inventory costs incurred in the home market prior to exportation, and therefore the CEP profit ratio should not be applied to the expenses in calculating total CEP profit.

Petitioners offered no objections to respondent's comments.

Department's Position: The Department agrees in part with respondent. Both the SAA, at 823, and the Department's regulations, at 19 CFR 351.402(b), explain that, under section 772(d) of the Act, we only deduct from CEP the expenses associated with commercial activity in the United States which relate to the resale to an unaffiliated purchaser. *See also, Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 33320, 33344 (June 18, 1998). The movement expenses and imputed expenses at issue are, by definition, not associated with economic activities in the United States, movement expenses have been deducted from CEP and, therefore, should not be included in "total United States expenses" for purposes of calculating the CEP profit ratio. These expenses are associated with the sale of the merchandise to the affiliated reseller. However, "total United States expenses" includes all selling expenses (direct and indirect) associated with the unaffiliated sale in the United States. Therefore, consistent with the Department's methodology, we have calculated total actual profit using total U.S. selling expenses, deducted from the U.S. starting price as directed by Section 772(d)(1) of the Act. *See, e.g., Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe From Germany; Final Results of Antidumping Duty Administrative Review,* 63 FR 13217 (March 18, 1998). For purposes of these final results of review, we have not included inventory carrying costs (DINVCARU) or U.S. movement expenses in total U.S. expenses as these expenses were not deducted from CEP. However, we have included in total U.S. expenses all selling expenses incurred in making the sale to the U.S. unaffiliated customer.

Comment 3: Avesta states that the Department erred by deducting the cost of brokerage and handling at the U.S. port of entry (USOTRE1U) twice in the calculation of net price. Petitioners have not objected to Avesta's requested correction.

Department's Position: We agree with Avesta and have adjusted the final margin calculation program to adjust for USOTRE1U only once.

Comment 4: Avesta contends that the Department erred in the preliminary results of review by matching U.S. sales of CONNUMU 2422151, 2423121, and 2423151 with home market sales of CONNUMH 2323152 rather than CONNUMH 2623152. Respondent states that CONNUMU 2422151, 2423121, and 2423151 are all heat resistant steels. Similarly, respondent argues that CONNUMH 2623152 and 2622152 are also a heat resistant steels whereas CONNUMH 2323152 is a "general service and wet corrosion" steel that has a different purpose and use than heat resistance steels and is therefore not comparable to the U.S. CONNUMs. Based on the chemical differences and uses of the home market CONNUMs, respondent urges the Department to compare CONNUMU 2422151, 2423121 to home market CONNUM 2622152, and U.S. CONNUM 2423151 to home market CONNUM 2623152.

Petitioner objected to the information in Avesta's case brief discussing the chemical and physical specifications of the home market and U.S. CONNUMs as new factual information. However, petitioner did not offer any objection to the proposed changes in the matching methodology utilized in the preliminary results of review.

Department's Position: We agree with respondent. The Department incorrectly matched CONNUMU 2422151, 2423121, and 2423151 with CONNUMH 2323152. For purposes of the final results of review, the Department has compared U.S. CONNUMs 2422151, 2423121 to home market CONNUM 2622152, and U.S. CONNUM 2423151 to home market CONNUM 2623152 due to the fact that these are the most similar products based on product specifications. In response to petitioner's comment, the Department has determined that Avesta's submission in its case brief does not constitute new factual information under § 351.301 of the Department's regulations. Consistent with the Department's request in the original questionnaire, Avesta provided detailed product specification and concordance information in its October 8, 1997, section A response in Exhibits A–36 and A–37. In conclusion, the Department is comparing the above

mentioned U.S. CONNUMs to home market CONNUMs 2622152 and 2623152.

Uddeholm

Comment 5: Uddeholm contends that the Department did not deduct further manufacturing expenses in its calculation of CEP and normal value. Uddeholm argues that it reported cutting and grinding expenses incurred in connection with its sales in the United States and Canada as further manufacturing expenses, but inconsistent with section 772(d)(2) of the Act, the Department did not adjust for these expenses in calculating CEP. Uddeholm also points out that the Department did adjust for further manufacturing expenses reported by the other respondent in the case, Avesta, but failed to make the same adjustment on Uddeholm sales. Further, Uddeholm contends that the Department should make a similar adjustment to normal value as a circumstance of sale adjustment as instructed by the statute.

Petitioners argue that the expenses Uddeholm reported as "cutting and grinding expenses" in fact included expenses both for cutting and grinding and for two other processing operations, milling and slitting. As such, petitioners allege that the "cutting and grinding expenses" reported by respondent are overly broad for purposes of utilizing these expenses as adjustments to U.S. price and normal value. In addition, petitioners argue that Uddeholm's Canadian customers were charged separately for cutting and grinding expenses, whereas only 50 percent of U.S. customers were charged separately for these same expenses. Petitioners therefore contend that Uddeholm's difference in pricing methodology is an indication that cutting and grinding costs were "bundled" with the end price and are distortive of actual U.S. price as these expenses were not recovered. Petitioners argue that the only accurate means of determining the true further manufacturing cost of cutting and grinding would be to create two sets of sales one where the customer was charged separately for these expenses and one where no charges were assessed. Absent this separation, petitioners argue that there is insufficient record evidence to warrant allowing adjustments for further manufacturing from U.S. price and normal value.

Department's Position: Pursuant to § 351.402 of its regulations, the Department adjusts U.S. price for expenses associated with commercial activities in the United States that relate to the sale to an unaffiliated purchaser. The Department will not make an adjustment for expenses related solely to the sale to an affiliated importer. Similarly, under § 351.410 of the Department's regulations, the Department is authorized to make circumstance of sale adjustments to normal value for differences in direct selling expenses. Direct selling expenses are defined as expenses such as commissions, credit expenses, guarantees, and warranties, that result from and bear a direct relationship to the particular sale in question. In the instant review, the cutting and grinding expenses incurred by Uddeholm in the U.S. market are expenses associated with economic activity in the United States and are properly deducted from CEP. However, the cutting and grinding expenses incurred in the comparison market are not direct selling expenses as defined in § 351.410 and have therefore not been deducted from normal value.

In response to petitioner's concern, the Department has reviewed the record to determine the manner in which cutting and grinding expenses are incurred and/or charged to the unaffiliated customer in both the U.S. and comparison markets. Upon review of the record the Department has determined that there is no evidence to indicate that Uddeholm's U.S. cutting and grinding costs are bundled with the U.S. end price, nor is there evidence to indicate that there is a dual pricing structure where cutting and grinding expenses are charged to customers in the comparison market and only charged 50 percent of the time to U.S. customers. The evidence on the record merely indicates that cutting and grinding expenses are incurred in both the U.S. market and the comparison market on sales to unaffiliated customers and these expenses are reported as a price adjustment. Therefore, for purposes of these final results of review, the Department is adjusting Uddeholm's U.S. price for the reported cutting and grinding expenses but is not applying a circumstance of sale adjustment to normal value for similar expenses incurred in the comparison market. This is consistent with the Department's treatment of Avesta's reported cutting and grinding expenses in both the preliminary and final results of review.

Comment 6: Uddeholm states that the Department did not compare U.S. sales to the weighted-average normal values for the calendar month in which the U.S. sale occurred. Respondent contends that the Department should have matched sales within the most contemporaneous month (*e.g.*, June 1996 to June 1996). However, the margin program has compared all U.S. sales to the weighted average normal value for June 1996 which is an error which should be corrected. Petitioners offered no objections to respondent's argument.

Department's Position: The Department has reviewed the margin program and has corrected this error for the final results of review.

Comment 7: Uddeholm states that the Department did not use contemporaneous weighted-average third country indirect expenses to calculate the CEP offset. Based upon an analysis of the margin program discussed in Comment 6, above, respondent argues that the CEP offset calculated for June 1996 was used for all CEP sales during the POR. Petitioners did not rebut respondent's argument.

Department's Position: The Department has reviewed the margin program and has corrected this error for the final results of review.

Comment 8: Uddeholm notes that the Department used the incorrect profit ratio to calculate CEP profit. The Department's analysis memo indicates that the calculated CEP profit ratio was the result of total operating profit divided by total actual expenses. However, in transcribing the result to the margin calculation program the Department used the incorrect number. Petitioners did not rebut respondent's requested change.

Department's Position: The Department agrees with respondent and has corrected the final margin calculation program consistent with respondent's comment.

Final Results of Review

As a result of this review, we have determined that the following margins exist for the period June 1, 1996, through May 31, 1997:

Company	Margin percentage
Avesta Sheffield AB	25.05
Uddeholm Corporation	9.47

The Department shall determine, and the U. S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. For assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR. Individual differences between U.S.

price and normal value may vary from the percentages stated above.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of stainless steel plate from Sweden entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rates stated above; (2) for previously investigated or reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 4.46 percent, which was the "all others" rate in the LTFV investigation. The deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with § 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: November 5, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30566 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on advanced Technology; Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, December 8, 1998 from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST: who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; Applied Technology Program/Manufacturing Extension Partnership (ATP/MEP) Cooperation on Dissemination; Changes in ATP Procedures for the FY 1999 Competitions; NIST Diversity Initiatives; Chemical Science and Technology laboratory's Process for Setting Project Priorities; Update on Status of Advanced Encryption Standard; Measurements and Data for Aircraft Fire Suppression; and a tour of the Advanced Chemical Sciences Laboratory. Discussions scheduled to begin at 8:30 a.m. and to end at 9:10 a.m. on December 8, 1998, on staffing of management positions at NIST and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, will be closed.

DATES: The meeting will convene December 8, 1998, at 8:30 a.m. and will adjourn at 5 p.m. on December 8, 1998.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity 80, includes 38 participants), Administration Building, at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 7, 1998, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 10, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30577 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–13–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Egypt

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In a Memorandum of Understanding dated October 22, 1998, the Governments of the United States and Arab Republic of Egypt agreed to permit special carryforward of up to 10 percent for Categories 338/339 (cotton knit shirts) in 1998, and that to the extent this special carryforward is used, it will be charged against the 1999 specific limit for these categories at a one to one and one-fourth (1 to 1 1/4) ratio. The current limit for Categories 338/339 is being adjusted for this special carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67829, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to increase the limit for Categories 338/339 to 3,329,394 dozen [1], as provided for under the Uruguay Round Agreement on Textiles and Clothing and a Memorandum of Understanding dated October 22, 1998 between the Governments of the United States and the Arab Republic of Egypt.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30568 Filed 11–13–98; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of extension of cancer treatment clinical trials demonstration project.

SUMMARY: This notice is to advise interested parties of a one-year extension of a demonstration project in which the DoD provides CHAMPUS reimbursement for eligible beneficiaries who receive cancer treatment under approved National Institutes of Health, National Cancer Institute (NCI) clinical trials. Participation in these clinical trials will improve access to promising cancer therapies for CHAMPUS eligible beneficiaries when their conditions meet protocol eligibility criteria. DoD financing of these procedures will assist in meeting clinical trial goals and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. At this time, there is insufficient demonstration data for a full evaluation of costs associated with enrollment in clinical trials. Extending the demonstration for an additional year will allow sufficient time for patient accrual to clinical trials and collection of data which allows for comprehensive economic analysis. This demonstration also affects TRICARE, the managed health care program that includes CHAMPUS. This demonstration project, which is under the authority of 10 U.S.C., section 1092, will expire December 31, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen K. Larkin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1745.

SUPPLEMENTARY INFORMATION:

A. Background

On January 24, 1996, the Department provided notice in the **Federal Register** (61 FR 1899) of an expansion of an existing demonstration for breast cancer treatment clinical trials to include all cancer treatment clinical trials under approved National Cancer Institute (NCI) clinical trials. The demonstration purpose is to improve beneficiary access to promising new therapies, assist in meeting the National Cancer Institute's clinical trial goals, and arrival at conclusions regarding the safety and efficacy of emerging therapies in the treatment of cancer. The January 24, 1996, notice anticipated the possibility of extending the demonstration.

The NCI trials program is the principal means by which the oncology community has developed clinical evidence for the efficacy of various treatment approaches in cancer therapy. Participating institutions include NCI's network of comprehensive and clinical cancer centers, university and community hospitals and practices, and military treatment facilities. Despite this extensive network which includes the nation's premier medical centers, cure rates for most types of cancer remain disappointing, highlighting the significant effort still required for improvement. The principal means by which advances in therapy will be realized is through application of research to victims of cancer. In support of NCI's efforts to further the science of cancer treatment, the Department expanded its breast cancer demonstration to include all NCI-sponsored phase II and phase III clinical trials. This expanded demonstration will enhance current NCI efforts to determine safety and efficacy of promising cancer therapies by expanding the patient population available for entry into clinical trials and stabilizing the referral base for these clinical activities. While this demonstration provides an exception to current CHAMPUS benefit limitations, the Department hypothesizes that this increased access to innovative cancer therapies will occur at a cost comparable to that which the Department has experienced in paying for conventional therapies under the standard CHAMPUS program. Results of this demonstration will provide a framework for determining the scope of DoD's continued participation in the NCI's research efforts.

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30477 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Naval Hospital

Jacksonville (NAVHOSPJAX), Florida, has been designated a regional Specialized Treatment Services facility (STSF) for total joint replacement. The application for this STSF designation was submitted by NAVHOSPJAX and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent for TRICARE Region 3 will oversee that the STSF maintains the quality and standards required for specialized treatment services. This designation covers the following Diagnostic Related Groups:

209—Major Joint and Limb Reattachment Procedures of Lower Extremity
491—Major Joint and Limb Reattachment Procedures of Upper Extremity

DoD beneficiaries who reside in the NAVHOSPJAX STS Catchment Area must be evaluated by NAVHOSPJAX before receiving TRICARE/CHAMPUS cost sharing for procedures that fall under the above Diagnostic Related Groups, in accordance with TRICARE/CHAMPUS Nonavailability Statement policy. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for a nonmedical attendant, will be reimbursed by NAVHOSPJAX in accordance with the provision of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to NAVHOSPJAX. If the procedures cannot be performed at NAVHOSPJAX, Humana Military Healthcare Services will provide a medical necessity review prior to issuance of a Nonavailabilty Statement or other similar authorizations. The NAVHOSPJAX STSF Catchment Area includes zip codes within TRICARE Region 3 that fall within a 200-mile radius South and West of NAVHOSPJAX.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Phillip Garbark, NAVHOSPJAX, (904) 777–7372, or Commander Donald Rosenbaum or Lieutenant Colonel Richard Heekin, (904) 777–7370; or Lt. Col Teresa Sommese, TRICARE Management Activity, (703) 618–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30473 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Dwight D. Eisenhower Army Medical Center (EAMC), Fort Gordon, Georgia, has been designated a regional Specialized Treatment Services facility (STSF) for Neurosurgery, Orthopedic Surgery, General Surgery, Peripheral Vascular Surgery, and Head and Neck Surgery. The application for this STSF designation was submitted by the Lead Agent for TRICARE Region 3 and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent will oversee that the STSF maintains the quality and standards required for specialized treatment services. This designation covers the following Diagnostic Related Groups:

001—Craniotomy, Age Greater than 17, Except for Trauma
004—Spinal Procedures
049—Major Head and Neck Procedures
191—Pancreas, Liver and Shunt Procedures with CC
110—Major Cardiovascular Procedures with CC
111—Major Cardiovascular Procedures without CC
286—Adrenal and Pituitary Procedures
209—Major Joint and Limb Reattachment Procedures of Lower Extremity
491—Major Joint and Limb Reattachment of Upper Extremity

DoD beneficiaries who reside in the EAMC STS Catchment Area must be evaluated by EAMC before receiving TRICARE/CHAMPUS cost sharing for procedures that fall under the above Diagnostic Related Groups, in accordance with TRICARE/CHAMPUS Nonavailability Statement policy. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for a nonmedical attendant, will be reimbursed by EAMC in accordance with the provisions of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to EAMC. If the procedure cannot be performed at EAMC, Humana Military Healthcare Services will provide a medical necessity review prior to issuance of a Nonavailability Statement or other similar authorizations. The EAMC STSF Catchment Area is defined by zip codes in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region 3 that fall within a 200-mile radius of EAMC.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Colonel Richard Traugott, EAMC, (706) 787–8288; or Lt. Col. Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30478 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DOD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Brooke Army Medical Center (BAMC) and Wilford Hall Medical Center (WHMC), hereinafter referred to as Destination San Antonio, have been designated the Regional Specialized Treatment Service facilities (STSFs) for DRGs 1, 3, 4, 49, 104–107, 110–111, 191, 209, 491, 286, and 357. The application for the STSF designation was submitted by the Lead Agency for TRICARE Region 6 and approved by the Assistant Secretary of Defense (Health Affairs). The Lead

Agent will oversee that the STSFs maintain the quality and standards required for specialized treatment services. DoD beneficiaries residing within a 200-mile radius of Destination San Antonio facilities falling into the above patient category must be evaluated by Destination San Antonio staff before receiving care for these DRGs under direct military care or TRICARE/CHAMPUS cost sharing. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for a nonmedical attendant, will be reimbursed by Destination San Antonio facility in accordance with the provisions of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to a Destination San Antonio facility. If the care for these DRGs cannot be performed at the Destination San Antonio facilities, the TRICARE Managed Care Support Contractor for Region 6 will provide a medical necessity review prior to issuance of an Inpatient Care Authorization or Non-availability Statement.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT:

For DRSs 49, 191, 209, 491, and 286, contact Wilford Hall Medical Center, Office of the Medical Staff, at (210) 292–6002. For DRGs 1, 3, and 4 contact COL Baskin or LTC Anders at (202) 916–3203/2225. For DRGs 104–107 and 110–111 contact Brooke Army Medical Center's Nurse Coordinator, Cardiothoracic Surgery Service, at (210) 916–3392. For DRG 357, contact COL Morton at (210) 916–2525. The TRICARE Management Activity points of contact are Lt. Col. Teresa Sommese at (703) 681–3628, extension 5029, or Mr. Tariq Shahid at (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30479 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136]

Submission for OMB Review; Comment Request Entitled Commercial Item Acquisitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Commercial Item Acquisitions.

DATES: Comments may be submitted on or before December 16, 1998.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0136, Commercial Item Acquisitions in all correspondence.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DOD, NASA, and GSA amended the Federal Acquisition Regulation to include streamlined/simplified procedures for the commercial items. As part of the steamlined procedures, a new solicitation provision was developed to take the place of the multitude of certifications and representations used in Government solicitations. This new provision is significantly shorter and collects less information than the corresponding provisions used in non-commercial acquisitions.

The new estimated number of respondents is based on FY 97 FPDS data. In reviewing the burden associated with this clearance, it became clear that the majority of burden hours previously requested actually related to requirements in other FAR parts and was already approved under existing clearances. This clearance now addresses only information collections required by FAR Part 12, Commercial Item Acquisitions. This information collection is centered in the provision at 52.212–3. It is possible that this clearance still double counts responses approved under other clearances. A review is underway to identify and correct any such double counting.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *18.7* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *118,000;* responses per respondent, *12.1* total annual responses, *1,427,800;* preparation hours per response, *.312;* and total response burden hours, *445,450.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: November 9, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–30486 Filed 11–13–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Coalition Warfare

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board Task Force on Coalition Warfare will meet in closed session on November 24 and December 14, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will address how best to make future U.S. military capabilities, embodied by JV2010, coalition compatible.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30474 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Space Superiority

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Space Superiority will meet in closed session on January 27–28 at Los Angeles AFB, CA; on February 16, at the NRO, Westfield Complex, Chantilly, VA; and on March 24–25, 1999 at US Space Command, Peterson AFB, CO.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and compile recommendations on how best to respond to the evolving space environment in a manner which would preserve U.S. leadership, superiority and dominance in national security space capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30475 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Advisory Committee on Women in the Services, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 10(a), Pub. L. 92–463, as amended, notice is hereby given of a forthcoming Quarterly Executive Committee Meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the Executive Committee Meeting is to provide transitional training to the incoming 1999 Executive Committee members and an Awards Presentation for the 1998 Executive Committee members. The Awards presentation Hosted by the Secretary of Defense is opened to the public. All other portions are for training only and are not open to the public.

DATES: December 7, 1998, 8:30 a.m.–4 p.m.

ADDRESSES: SECDEF Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Sandy Lewis, ARNGUS, DACOWITS and Military Women Matters, OASD (Force Management Policy), 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: Meeting agenda:

Monday, December 7, 1998

Time

2 p.m.

Event

Executive Committee Awards Presentation (Secretary of Defense Conference—3E869, Please be seated by 1:45 p.m.)

Dated: November 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 98–30476 Filed 11–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 16, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfeld@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 9, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Addendum to Federal Direct PLUS Loan Promissory Note Endorser.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 44,160.
Burden Hours: 22,080
Abstract: This form is the means by which an endorser for a Federal Direct PLUS Loan borrower with an adverse credit history applies for and promises to repay the Federal Direct PLUS Loan if the borrower does not repay it.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Direct PLUS Loan Application and Promissory Note.
Frequency: On occasion.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 176,640.
Burden Hours: 88,320
Abstract: This form is the means by which a Federal PLUS Loan borrower promises to repay his or her loan.

[FR Doc. 98–30529 Filed 11–13–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 98–73–NG, 98–75–NG, 98–70–NG, 98–74–NG, 98–79–NG, 98–78–NG, 98–77–NG, 97–78–NG, 98–81–NG, 98–80–LNG, 96–80–NG, 96–02–NG, 96–03–NG, 98–84–NG, and 98–82–NG]

Orders Granting, Amending, and Transferring Authorizations to Import and/or Export Natural Gas, Including Liquefied Natural Gas

Clinton Energy Management Services, Inc.,
Rumford Power Associates Limited, Partnership
Rochester Gas and Electric Corporation
Enron Energy Services, Inc.
Transcanada Gas Services Inc.
Duke Energy Trading and Marketing, L.L.C.
BC Gas Utility Ltd.
Dynegy Marketing and Trade (Formerly) Natural Gas Clearinghouse
Interenergy Corporation and Interenergy Resources Corporation
Ferrell International Limited
Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.)
Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.)
Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.)
Koch Energy Trading, Inc.
CXY Energy Marketing (U.S.A.) Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, and transferring various natural gas, including liquefied natural gas, import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on November 9, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import and Export Activities, Office of Fossil Energy.

Appendix—Orders Granting, Amending, and Transferring Import/Export Authorization

DOE/FE Authority

Order No.	Date issued	Importer/Exporter FE docket no.	Two-Year Maximum		Comments
			Import volume	Export volume	
1420	10/13/98	Clinton Energy Management Services, Inc., 98–73–NG.	400 Bcf		Import and export up to a combined total from and to Canada and Mexico, over a two–year term beginning on the date of first delivery.
1421	10/22/98	Rumford Power Associates Limited Partnership, 98–75–NG.	34 Bcf		Import and export up to a combined total from and to Canada over a two–year term beginning on the date of first delivery.
1422	10/22/98	Rochester Gas and Electric Corporation, 98–70–NG.	200 Bcf	.....	Import from Canada over a two–year term beginning December 1, 1998, through November 30, 2000.
1423	10/23/98	Enron Energy Services, Inc., 98–74–NG.	200 Bcf		Import and export up to a combined total from and to Canada and Mexico, over a two–year term beginning on the date of first delivery.
1424	10/26/98	TransCanada Gas Services Inc., 98–79–NG.	700 Bcf	300 Bcf	Import from Canada, and export up to a combined total to Canada and Mexico, over a two–year term beginning on the date of first delivery.
1425	10/26/98	Duke Energy Trading and Marketing, L.L.C. 98–78–NG.	200 Bcf		Import and export up to an aggregate total, including LNG from and to Canada and Mexico, and import LNG from other countries over a two–year term beginning October 31, 1998, and ending October 30, 2000.

Order No.	Date issued	Importer/Exporter FE docket no.	Two-Year Maximum		Comments
			Import volume	Export volume	
1426	10/26/98	BC Gas Utility Ltd., 98–77–NG.	25 Bcf	25 Bcf	Import and export from and to Canada, over a two–year term beginning on the date of first delivery after November 30, 1998.
1316–A	10/27/98	Dynegy Marketing and Trade, (Formerly Natural Gas Clearinghouse), 97–78–NG.	.....	.....	Name change.
1427	10/29/98	Interenergy Corporation and Interenergy Resources Corporation, 98–81–NG.	73 Bcf	73 Bcf	Import and export from and to Canada over a two–year term beginning on date of first delivery after October 31, 1998.
1428	10/29/98	Ferrell International Limited, 98–80–LNG.	45 Bcf	.....	Import LNG from foreign countries over a two–year term beginning on date of first shipment.
1224–A	10/29/98	Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.), 96–80–NG.	.....	.....	Name change.
1151–A	10/29/98	Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.), 96–02–NG.	.....	.....	Name change.
1152–A	10/29/98	Statoil Energy, Inc. (Formerly Eastern Energy Marketing, Inc.), 96–03–NG.	.....	.....	Name change.
1429	10/30/98	Koch Energy Trading, Inc., 98–84–NG.	73 Bcf	.....	Import from Canada over a two–year term beginning on November 3, 1998, through November 2, 2000.
1431	10/30/98	CXY Energy Marketing (U.S.A.) Inc., 98–82–NG.	200 Bcf		Import and export up to an aggregate from and to Canada and Mexico, over a two–year term beginning January 1, 1999, through December 31, 2000.

[FR Doc. 98–30556 Filed 11–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; Broad Based Solicitation for Submission of Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation number DE–PS36–99GO10383, broad based solicitation for submission of financial assistance applications involving research, development, and demonstration for renewable energy and energy efficiency technologies.

SUMMARY: The DOE Office of Energy Efficiency and Renewable Energy (EERE) has a continuing interest in receiving applications for grants and cooperative agreements supporting renewable energy and energy efficiency basic research, directed and applied research, cooperative demonstrations, and related activities. The Broad Based Solicitation will provide specific information and will consist of two parts: the first part is generic and will consist of guidelines and requirements for submitting applications; the second part will be specific to designated program areas of interest and will consist of individual supplemental announcements issued at a later date. These individual supplemental announcements will contain technology specific information, anticipated programmatic funding levels, eligibility requirements, evaluation criteria, any cost sharing requirements, application deadlines, and any other requirements specific to the supplemental announcements.

Notices of release of the detailed supplemental announcements will be published separately in the **Federal Register** as they become available. It is anticipated that the initial supplemental announcements will be in the following program areas: (1) Innovative technologies that will increase the efficiency or lower the cost of producing and converting biomass to transportation fuels; (2) demonstration programs to obtain operational data regarding alternative fuel and advanced technologies for use by fleet managers in making vehicle acquisition decisions; (3) research, development and demonstration of innovative concepts applicable to trucks and other heavy vehicles so they can be more energy efficient and able to use alternative fuels while simultaneously reducing emissions; (4) the use of artificial intelligence techniques to synthesize and extract patterns of heavy-duty truck performance under a variety of real-world operating conditions from real-time operational data on fuel efficiency, cost effectiveness, and emissions of heavy-duty trucks; (5) component technology development in the areas of hydrogen production, storage, and utilization; and (6) geothermal technology innovation in the areas of drilling, energy conversion, fracture detection and analysis, heat recovery systems, by-product recovery, and waste management.

All information regarding the solicitation will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the first part of the Solicitation the week of November 9, 1998.

ADDRESSES: The first part of the Solicitation will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicitations.htm. It is DOE's intention not to issue hard copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on November 4, 1998.

John W. Meeker,

Chief, Procurement, Golden Field Office.

[FR Doc. 98–30557 Filed 11–13–98; 8:45 am]

BILLING CODE 6450–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–113–005]

Colorado Interstate Gas Co.; Notice of Tariff Filing

November 9, 1998.

Take notice that on November 4, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fifth Revised Sheet No. 303 to be effective October 1, 1998.

It has been pointed out that in CIG's filing in compliance with the order that was issued on September 29,1998 in Docket No. RP98–113–003 CIG inadvertently left out the word "TF–1" on Fifth Revised Sheet No. 303. CIG is filing herein to correct this error.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30522 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–800–000]

Eastern Shore Natural Gas Company; Notice of Pre-Certificate Site Visit

November 9, 1998.

On November 16, 1998, the Office of Pipeline Regulation (OPR) staff will conduct a pre-certificate site visit, with representatives of Eastern Shore Natural Gas Company, of the proposed pipeline route near Delaware City in New Castle County, Delaware and near New London in Chester County, Pennsylvania.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee at (202) 208–1611.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30515 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–45–000]

El Paso Natural Gas Company; Notice of Application

November 9, 1998.

Take notice that on October 30, 1998, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP99–45–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to abandon certain facilities located in Pima County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to abandon in place approximately 1,792 feet of Line No. 1008 and abandon by removal approximately 3,214 feet of the same line. Applicant states that it was prepared to replace and lower a section of pipe due to the encroachment of a residential subdivision. Applicant indicates that due to its subsequent determination to abandon the 5,006 foot section of Line 1008 because of deterioration, Applicant isolated approximately 1,792 feet of this section which was already exposed for the replacement and lowering, by appropriately cutting and capping each end. Applicant further states that it thus proposes to abandon this 1,792-foot section of Line No. 1008 in place and the remaining 3,214 feet of pipe by removal. Applicant asserts that the proposal herein will not result in a change of service, does not affect Applicant's ability to perform its obligations to provide transportation service on its system, and will not adversely affect Applicant or its customers in any way.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 30, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30517 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–79–001]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 9, 1998.

Take notice that on November 5, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective November 2, 1998:

Substitute Third Revised Sheet No. 269

Equitrans states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in the captioned docket. In its October 29 Order, the Commission required Equitrans to: (1)

incorporate GISB standard 1.3.2 (v) and (vi) either verbatim or by reference; (2) to eliminate the premature Version 1.3 GISB standards; and (3) to include the current Version 1.2 GISB standards. Equitrans has incorporated by reference GISB standard 1.3.2. (v) and (vi) and the corrected references to Version 1.2 and Version 1.3 of the GISB standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30506 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–52–000]

Florida Gas Transmission Co.; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on November 3, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP99–52–000 a request pursuant to § 157.205 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point in East Baton Rouge Parish, Louisiana for the City of Zachary (Zachary), under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT states that the proposed delivery point would be constructed adjacent to FGT's 24-inch and 30-inch Mainline and would include two 3-inch hot taps, less than 50 feet of 3-inch line, electric flow measurement equipment, and any related appurtenant facilities necessary for FGT to deliver up to 1500 MMBtu per day to Zachary.

FGT states further that the estimated cost of the facilities would be approximately $41,775, which would be fully reimbursed by Zachary.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30520 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–77–001]

Kentucky West Virginia Gas Company L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 9, 1998.

Take notice that on November 5, 1998, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective November 2, 1998:

Substitute Third Revised Sheet No. 120
Substitute First Revised Sheet No. 174

Kentucky West states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in the captioned docket. In its October 29 Order, the Commission required Kentucky West to: (1) Incorporate GISB standard 1.3.2 (v) and (vi) either verbatim or by reference; (2) to eliminate the premature inclusion of GISB Version 1.3 standards; (3) to include the current Version 1.2 GISB standards; and (4) to include the missing tariff language from § 13.1 (e)(vi) on Sheet No. 120. Kentucky West has incorporated by reference GISB standard 1.3.2 (v) and (vi), the corrected references to Version 1.2 and Version 1.3 of the GISB standards and included the missing tariff language on Sheet No. 120.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30523 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–466–000]

Minnesota Power & Light Company; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, Minnesota Power & Light Company tendered for filing a signed Service Agreement with United Power Association under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30501 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4301–001]

Mountainview Power Company; Notice of Filing

November 9, 1998.

Take notice that on October 30, 1998, Mountainview Power Company, pursuant to the Commission's October 16, 1998 order, filed its compliance filing in the above-captioned docket.

Mountainview Power Company has served this compliance filing upon all parties on the service list complied by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 19, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30504 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–465–000]

New England Power Pool; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, the New England Power Pool Executive Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL), Agreement dated September 1, 1971, as amended, signed by El Paso Power Services Company (El Paso). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of El Paso's signature page would permit NEPOOL to expand its membership to include El Paso. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make El Paso a member in NEPOOL.

NEPOOL requests an effective date of January 1, 1999, for commencement of participation in NEPOOL by El Paso Power Services Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30502 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–464–000]

Niagara Mohawk Power Corporation; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and West Penn Power d/b/a Allegheny Energy. This Transmission Service Agreement specifies that West Penn Power d/b/a Allegheny Energy has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and West Penn Power d/b/a Allegheny Energy to enter into separately scheduled transactions under which NMPC will provide transmission service for West Penn Power d/b/a Allegheny Energy as the parties may mutually agree.

NMPC requests an effective date of October 23, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and West Penn Power d/b/a Allegheny Energy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30503 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–78–001]

Nora Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 9, 1998.

Take notice that on November 5, 1998, Nora Transmission Company, (Nora) tendered for filing as part of the its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective November 2, 1998:

Substitute Third Revised Sheet No. 173

Nora states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in the captioned docket. In its October 29 Order, the Commission required Nora to: (1) incorporate GISB standard 1.3.2 (v) and (vi) either verbatim or by reference; (2)

to eliminate the premature Version 1.3 GISB standards; and (3) to include the current Version 1.2 GISB standards. Nora has incorporated by reference GISB standard 1.3.2 (v) and (vi) and corrected the references to Version 1.2 and Version 1.3 of the GISB standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30507 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–467–000]

Southern Company Services, Inc.; Notice of Filing

November 9, 1998.

Take notice that on November 2, 1998, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies), tendered for filing Amendment No. 10, to The Southern Company System Intercompany Interchange Contract (IIC) dated October 31, 1998, as amended. The amendment reflects modifications in the procedure used to determine generation unit ratings under the IIC. The amendment does not apply to unit power sale agreements and similar bulk power sale arrangements.

SCSI requests an effective date of January 1, 1999, for this submittal.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30500 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–48–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on November 2, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–48–000, a request pursuant to §§ 157.205 and 157.212 of the Commission's regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a delivery point, including measurement and appurtenant facilities, for service to the city of Calera (Calera) in Shelby County, Alabama, under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct and operate a new delivery point at or near Mile Post 31.2 on its 6-inch Bessemer-Calera Line and 8-inch Bessemer-Calera Loop Line in Shelby County, Alabama so it can provide transportation service to Calera, so that Calera may provide natural gas service to commercial and residential customers in Shelby County, Alabama.

Southern estimates the cost to construct this point of delivery will be $201,550. Southern says Calera has agreed to reimburse Southern for the cost of constructing and installing the facilities. Southern states that it will transport gas on behalf of Calera under its existing service agreements pursuant to Southern's Rate Schedules FT and FT–NN and Rate Schedule IT. Southern relates that Calera does not propose to add any transportation demand to its firm service as a result of the addition of the delivery point. Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If not protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30518 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–49–000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on November 2, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–49–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon a measurement facility in Chatham County, Georgia under Southern's blanket certificate issued in Docket No. CP82–406–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to abandon a measurement facility at its Savannah #3 meter station. Southern states that the American 500B diaphragm meter at the Savannah #3 Meter Station is no longer necessary. It was originally installed to measure gas at low flow rates but has

not been in use in many years. Southern states that the abandonment of facilities will not result in any termination or interruption of existing service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30519 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–35–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

November 9, 1998.

Take notice that on October 26, 1998, as supplemented October 29, 1998, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP99–35–000, a request pursuant to Section 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (18 CFR Sections 157.205 and 157.216), for authorization to abandon by removal the Germany Oil-Church Point Receipt Meter located on Texas Gas's Church Point 4-Inch Line in Acadia Parish, Louisiana, under Texas Gas's blanket certificate issued in Docket No. CP82–407–000, all as more fully set forth in the request on file with the Commission and open to public.

It is stated that this meter station was constructed in 1988 to receive gas from Germany Oil Company for transportation for various shippers and reported in Texas Gas's 1988 annual Report of Blanket Certificate Activities under Texas Gas's blanket certificate issued in Docket No. CP82–407–000.

It is further stated that the facilities to be removed consist of a 2-inch skid-mounted meter and related facilities. Texas Gas states that it estimates the cost of removal would be $500.

Texas Gas states that it is requesting authorization to abandon this meter station as the producer has plugged and abandoned the site, and the landowner has requested return of the land.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30516 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–30–000]

Trunkline Gas Company; Notice of Filing

November 9, 1998.

Take notice that on October 30, 1998, Trunkline gas Company (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

Trunkline states that the purpose of this filing is to comply with Section 24 of the General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1 which requires that at least 30 days prior to the effective date of adjustment, Trunkline shall make a filing with the Commission to reflect the adjustment, if any, required to Trunkline's Base Transportation Rates to reflect the result of the Interruptible Storage Revenue Credit Surcharge Adjustment. Trunkline further states that due to the minimal interruptible storage activity, no adjustment is required to Base Transportation Rates.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 16, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30505 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–375–005]

Wyoming Interstate Company, Ltd.; Notice of Informal Settlement Conference

November 9, 1998.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, November 12, 1998. The conference will begin at 8:30 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possibility of settlement in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations 18 CFR 385.214.

For additional information, contact John P. Roddy at (202) 208–0053.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30521 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–7–000, et al.]

American Ref-Fuel Company of Delaware Valley, L.P., et al.; Electric Rate and Corporate Regulation Filings

November 4, 1998.

Take notice that the following filings have been made with the Commission:

1. American Ref-Fuel Company of Delaware Valley, L.P.

[Docket No. EC99–7–000]

Take notice that on October 29, 1998, American Ref-Fuel Company of Delaware Valley, L.P. (ARC Delaware) submitted for filing with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR Part 33, a "Petition of American Ref-Fuel Company of Delaware Valley, L.P. for an Order Under Section 203 of the Federal Power Act Approving the Transfer of Jurisdictional Assets."

Applicant has requested that the Commission, by order issued no later than December 16, 1998, authorize the transfer of 50 percent of the partnership interests in ARC Delaware. ARC Delaware is the lessee of a waste to energy generating facility located in the City of Chester, Delaware County, Pennsylvania.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Systems Power Pool

[Docket No. ER91–195–034]

Take notice that the following informational filing has been made with the Commission and is available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1998, Western Systems Power Pool filed certain information as required by the Commission's June 1, 1992 order in Docket No. ER91–195–000.

3. Boston Edison Co.

[Docket No. ER99–333–000]

Take notice that on October 27, 1998, Boston Edison Company (Boston Edison) filed, for informational purposes only, amended true-up to actual reports for calendar years 1995 and 1996 regarding charges to Cambridge Electric Light Company for the use of Station 509. Boston Edison's charges for the use of Station 509 are governed by its FERC Rate Schedule No. 101. A report for calendar year 1995 charges was previously accepted for filing in Docket No. ER97–2067–000. A report for calendar year 1996 charges was previously accepted for filing in Docket No. ER98-1985–000.

4. New England Power Pool

[Docket No. ER99–407–000]

Take notice that on October 30, 1998, the New England Power Pool (NEPOOL or Pool) Executive Committee, filed a request for termination of memberships in NEPOOL, with an effective date of November 1, 1998, of QST Energy (QST) and CNG Energy Services ("CNG"). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by QST and by CNG. The New England Power Pool Agreement, as amended (the NEPOOL Agreement), has been designated NEPOOL FPC No. 2.

The Executive Committee states that terminations of QST and CNG with an effective date of November 1, 1998 would relieve these entities, at their requests, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove QST and CNG from membership in the Pool.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Mississippi Power Co.

[Docket No. ER99–363–000]

Take notice that on October 29, 1998, Mississippi Power Company tendered for filing an informational filing required under the Transmission Facilities Agreement between Mississippi Power Company and Gulf States Utilities Company (Entergy) dated February 25, 1982.

6. Unitil Power Corp.; Fitchburg Gas and Electric Light Co.; Unitil Resources, Inc.; Shamrock Trading, LLC; The Dayton Power and Light Co.; NEV California, L.L.C.; New Energy Holdings, Inc.; New Energy Ventures, L.L.C.; NEV East, L.L.C.; NEV Midwest, L.L.C.; DPL Energy; Progress Power Marketing, Inc.; Atlanta Gas Light Services, Inc.; f/n/a/ The Energy Spring, Inc.; Anker Power Services, Inc.; Philadelphia Gas Works; Vastar Power Marketing, Inc.; Hinson Power Co.

[Docket Nos. ER99–350–000; ER99–351–000; ER99–352–000; ER98–3526–001; ER99–355–000; ER97–4653–004; ER96–1387–010; ER97–4636–004; ER97–4652–004; ER97–4654–004; ER96–2601–009; ER96–1618–010; ER97–542–005; ER97–3788–004; ER98–124–001; ER95–1685–013; and ER95–1314–014]

Take notice that the following informational filings have been made with the Commission are available for public inspection and copying in the Commission's Public Reference Room:

On October 28, 1998, Unitil Power Corp. filed certain information as required by the Commission's September 25, 1997 order in Docket Nos. ER97–2460–000, *et seq.*

On October 28, 1998, Fitchburg Gas and Electric Light Company filed certain information as required by the Commission's September 25, 1997 order in Docket Nos. ER97–2460–000, *et seq.*

On October 28, 1998, Unitil Resources, Inc. filed certain information as required by the Commission's September 25, 1997 order in Docket Nos. ER97–2460–000, *et seq.*

On October 28, 1998, Shamrock Trading, L.L.C. filed certain information as required by the Commission's August 7, 1998 order in Docket No. ER98–3526–000.

On October 28, 1998, The Dayton Power and Light Company filed certain information as required by the Commission's September 30, 1996 order in Docket No. ER96–2602–000.

On October 28, 1998, NEV California, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4653–000.

On October 28, 1998, New Energy Holding, Inc. filed certain information as required by the Commission's September 6, 1996 order in Docket No. ER96–1387–000.

On October 28, 1998, New Energy Ventures, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4636–000.

On October 28, 1998, NEV East, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4652–000.

On October 28, 1998, NEV Midwest, L.L.C. filed certain information as required by the Commission's November 12, 1997 order in Docket No. ER97–4654–000.

On October 28, 1998, DPL Energy filed certain information as required by the Commission's September 30, 1996 order in Docket No. ER96–2601–000.

On October 28, 1998, Progress Power Marketing, Inc. filed certain information as required by the Commission's August 2, 1996 order in Docket No. ER96–1618–000.

On October 28, 1998, Atlanta Gas Light Services, Inc. (f/n/a/ The Energy Spring, Inc.) filed certain information as required by the Commission's January 8, 1997 order in Docket No. ER97–542–000.

On October 28, 1998, Anker Power Services, Inc. filed certain information

as required by the Commission's September 19, 1997 order in Docket No. ER97–3788–000.

On October 28, 1998, Philadelphia Gas Works filed certain information as required by the Commission's November 19, 1997 order in Docket No. ER98–124–000.

On October 28, 1998, Vastar Power Marketing, Inc. filed certain information as required by the Commission's October 26, 1995 order in Docket No. ER95–1685–000.

On October 28, 1998, Hinson Power Company filed certain information as required by the Commission's August 29, 1995 order in Docket No. ER95–1314–000.

7. Mississippi Power Co.

[Docket No. ER99–374–000]

Take notice that on October 29, 1998, Mississippi Power Company (Mississippi) tendered for filing an informational filing of schedules showing charges produced by the formula rate under the Transmission Facilities Agreement (TFA) between Mississippi Power Company and Alabama Power Company (Alabama) for the calendar year January 1, 1999 through December 31, 1999. Also included are work papers showing determination of total net investment and the derivation of total fixed expenses and cost of capital used in the formula rate.

8. New England Power Pool

[Docket No. ER99–408–000]

Take notice that on October 30, 1998, the New England Power Pool Executive Committee, filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Select Energy, Inc. (Select Energy). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of Select Energy's signature page would permit NEPOOL to expand its membership to include Select Energy. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Select Energy a member in NEPOOL. NEPOOL requests an effective date of December 1, 1998, for commencement of participation in NEPOOL by Select Energy.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Deseret Generation & Transmission Co-operative

[Docket No. ER99–409–000]

Take notice that on October 30, 1998, Deseret Generation & Transmission Co-operative (Deseret), tendered for filing a proposed rider to its Rate Schedule A, which has been designated as FERC Electric Tariff Original Volume No. 1. The proposed rider sets forth a formula by which Deseret's rates for electric power for service to certain marginal loads of a retail customer of its member, Garkane Power Association, Inc. (Garkane), will be determined. The formula ties the price that Garkane will pay for electric power to serve the marginal loads of its retail customer to an oil commodity index. The rates that Deseret will recover from Garkane will not exceed the rates set forth in Rate Schedule A over the life of the rider.

Deseret requests a waiver of the Commission's notice requirements for an effective date of October 30, 1998.

The proposed rider is being filed in order to assist Garkane in retaining a retail customer that Garkane is in danger of losing due to fluctuations in oil commodity pricing. Deseret has determined that loss of a such a Member retail load would adversely impact Deseret and all of its members, including Garkane.

Copies of this filing have been served upon Bridger Valley Electric Association, Dixie-Escalante Rural Electric Association, Flowell Electric Association, Garkane Power Association, Inc., Moon Lake Electric Association, Inc., Mount Wheeler Power, Inc.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Deseret Generation & Transmission Co-operative

[Docket No. ER99–410–000]

Notice is hereby given that effective the 31st day of December 1998, Rate Schedule FERC No. 3, effective October 16, 1996, and filed with the Federal Energy Regulatory Commission by Deseret Generation & Transmission Co-operative will terminate by its own terms. Notice of the termination has been served on Kanab City, Utah by Deseret Generation & Transmission Co-operative.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Cogentrix Energy Power Marketing, Inc.

[Docket No. ER99–411–000]

On October 30, 1998, Cogentrix Energy Power Marketing, Inc. (CEPM), a North Carolina corporation, petitioned the Commission for acceptance of CEPM's First Revised Rate Schedule FERC No. 1, providing for the sale of electricity at market-based rates to affiliates that are not public utilities with a franchised electric service territory. CEPM is a wholly-owned indirect subsidiary of Cogentrix Energy, Inc., a developer, owner, and operator of independent power facilities. CEPM has no affiliates that are public utilities with a franchised electric service territory.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER99–416–000]

Take notice that on October 29, 1998, Commonwealth Edison Company (ComEd), tendered for filing service agreements establishing Associated Electric Cooperative, Inc. (AECI) and Cleco Corporation (CLECO) as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales. ComEd requests an effective date of August 31, 1998 for the AECI Service Agreement to coincide with the first day of service to AECI under this Service Agreement. ComEd requests an effective date of September 4, 1998 for the CLECO Service Agreement to coincide with the first day of service to CLECO under this Service Agreement. Accordingly, ComEd seeks waiver of the Commission's notice requirements. Copies of the filing were served on ASCI, CLECO and the Illinois Commerce Commission.

Comment date: November 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Co.

[Docket No. ER99–417–000]

Take notice that on October 30, 1998 Virginia Electric and Power Company tendered for filing four documents relating to the provision of capacity and energy from the John H. Kerr Demand Reservoir and the Philpott Project to preference customers of the Southeastern Power Administration: Contract No. 89–00–1501–1149 between the United States of America, Department of Energy, Acting by and through Southeastern Power Administration and Virginia Electric and Power Company; Service Agreement for Network Integration Transmission Service to Southeastern

Power Administration; Network Operating Agreement Between Virginia Electric and Power Company and Southeastern Power Administration; and Service Agreement for Firm Point-to-Point Transmission Service between Virginia Electric and Power Company and Southeastern Power Administration. Virginia Power requests that the Commission waive its notice requirements to allow the contracts to become effective on November 1, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Central Vermont Public Service Corp.

[Docket No. OA97–196–002]

Take notice that on October 29, 1998, Central Vermont Public Service Corporation (Central Vermont) tendered for filing its compliance filing in the above-captioned docket.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Northern States Power Co. (Minnesota) and Northern States Power Co. (Wisconsin)

[Docket No. OA97–406–002]

Take notice that on October 29, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (together NSP) filed pursuant to Section 37.4 of the Commission's Regulations proposed revisions to their Standards of Conduct and Implementing Procedures on file with the Commission as required by Order 889, Open Access Same-time Information Systems (Formerly Real-time Information Network) and Standards of Conduct, FERC Stats. & Regs. (Regulations Preambles 1991–1996) ¶ 31,035 (1996), Order 889–A, III FERC Stats. & Regs. (Regulations Preambles) ¶ 31,049, Order 889–B, 81 FERC ¶ 61,253 (1997). The proposed revisions are being submitted to comply with certain changes required by the Commission in its order dated September 29, 1998. Arizona Public Service Company, 84 FERC ¶ 61,320 (1998).

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Dayton Power and Light

[Docket No. OA97–418–002]

Take notice that on October 29, 1998, The Dayton Power and Light Company (Dayton) tendered for filing an amendment to its Standards of Conduct in compliance with an order issued by the Commission in Docket No. OA97–418–001.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Maine Power Co.

[Docket No. OA97–422–002]

Take notice that on October 29, 1998, Central Maine Power Company (CMP) tendered for filing, pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), and the Commission's September 29, 1998 Order issued in the above referenced docket, the revised Standards of Conduct to be followed by CMP personnel.

CMP requests that the Standards of Conduct become effective on October 30, 1998.

CMP served copies of the filing upon the Maine Public Utilities Commission.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric & Power Co.

[Docket No. OA97–439–004]

Take notice that on October 29, 1998, Virginia Electric & Power Company filed a letter of notification that, in compliance with Ordering Paragraph N of the Commission's September 29, 1998 order in the above-referenced proceeding, Virginia Electric & Power Company has revised its posting on the OASIS by adding job descriptions of the immediate supervisors of its transmission operations and wholesale merchant units.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Maine Electric Power Co.

[Docket No. OA97–462–002]

Take notice that on October 29, 1998, Maine Electric Power Company (MEPCO) tendered for filing, pursuant to Section 37.4(c) of the Code of Federal Regulations, 18 CFR 37.4(c), and the Commission's September 29, 1998 Order issued in the above referenced docket, the revised Standards of Conduct to be followed by MEPCO personnel.

MEPCO requests that the Standards of Conduct become effective on October 30, 1998.

MEPCO served copies of the filing upon the Maine Public Utilities Commission.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Bangor Hydro-Electric Co.

[Docket No. OA97–519–002]

Take notice that on October 29, 1998, Bangor Hydro-Electric Company tendered for filing notice that it has posted revised organizational charts and job descriptions on its OASIS.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Citizens Utilities Co.

[Docket Nos. OA97–520–002, OA97–520–001, OA97–610–002 and OA97–610–001]

Take notice that on October 29, 1998, Vermont Electric Division (VED) of Citizens Utilities Company (Citizens) tendered for filing in compliance with the Commission's September 29, 1998 order in the above-referenced dockets, revisions to the Standards of Conduct for VED and the revised OASIS pages showing organizational charts and job descriptions.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The United Illuminating Co.

[Docket No. OA97–597–002]

Take notice that on October 29, 1998, The United Illuminating Company (UI) tendered for filing revisions to its Policy Implementing the FERC Standards of Conduct (Policy). In these revisions, UI supplements its organizational chart posted on OASIS in accordance with the Commission's Order in *The United Illuminating Co., et. al.*, Docket Nos. OA97–597–001, *et. al.* (Sept. 29, 1998).

UI requests an effective date of October 29, 1998.

Copies of this filing were served upon all persons listed on the official service list compiled by the Secretary in Docket No. OA96–521–000.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30514 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–184–000, et al.]

Idaho Power Co., et al. and Electric Rate and Corporate Regulation Filings

November 5, 1998.

Take notice that the following filings have been made with the Commission:

1. Idaho Power Company

[Docket No. ER99–184–000]

Take notice that on October 13, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a Confirmation Agreement under Idaho Power Company FERC Electric Tariff No. 6, Market Rate Power Sales Tariff, between Idaho Power Company and Washington Water Power Company.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Bridgeport Energy, L.L.C.

[Docket No. ER99–390–000]

Take notice that on October 29, 1998, Bridgeport Energy, L.L.C. (Bridgeport) tendered for filing a letter requesting an amended effective date of August 1, 1998, for its Installed Capability Purchase and Sale Agreements under Bridgeport's FERC Electric Tariff, Original Volume No. 1 with Northeast Utilities Service Company and Duke Energy Trading and Marketing, L.L.C.

Comment date: November 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER99–391–000]

Take notice that on October 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Baltimore Gas and Electric Company (BGE), dated October 28, 1998. This Service Agreement specifies that BGE has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and BGE to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 28, 1998 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER99–392–000]

Take notice that on October 30, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Commonwealth Edison Company (CEC), dated October 28, 1998. This Service Agreement specifies that CEC has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and CEC to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of October 28, 1998 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Company

[Docket No. ER99–393–000]

Take notice that on October 30, 1998, Florida Power & Light Company (FPL) filed a Service Agreement with Jersey Central Power and Light Company, Metropolitan Edison Company and Pennsylvania Electric Company, individually and collectively doing business and referred to as GPU Energy for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on October 5, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Public Service Company

[Docket No. ER99–394–000]

Take notice that on October 30, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with Illinois Power Company. This umbrella service agreement provides for Southwestern's sale and Illinois Power Company's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Southwestern requests that the Service Agreement become effective on October 30, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER99–395–000]

Take notice that on October 30, 1998, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff Original Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term and Non-Firm Point-to-Point Transmission Service with Merchant Energy Group of the Americas, Inc.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements to allow the Service Agreements to become effective October 13, 1998.

A copy of this filing was caused to be served upon Merchant Energy Group of the Americas, Inc. as noted in the filing letter.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Illinois Power Company

[Docket No. ER99–399–000]

Take notice that on October 30, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing an amendment to the existing firm point-to-point transmission agreements under which Wagner Castings Company is taking transmission service pursuant to

its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of October 1, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER99–400–000]

Take notice, that on October 30, 1998, Southern California Edison Company (SCE) tendered for filing a change in rate for scheduling and dispatching services as embodied in SCE's agreements with the following entities:

Entity	FERC rate schedule No.
1. Arizona Electric Power Cooperative	132.23
2. Arizona Public Service Company	348.7
3. California Department of Water Resources	112.54, 113.34, 342.8
4. City of Los Angeles Department of Water and Power	163.33
5. Imperial Irrigation District	268.15
6. Metropolitan Water District of Southern California	292.10
7. M-S-R Public Power Agency	339.8
8. Pacific Gas and Electric Company	256.2, 318.10
9. PacifiCorp	275.13
10. Southern California Water Company	349.3

SCE requests that the revised rate for these services be made effective January 1, 1999.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Electric and Gas Company

[Docket No. ER99–401–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Delaware Municipal Electric Corporation (DMEC) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon DMEC and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Public Service Electric and Gas Company

[Docket No. ER99–402–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Merchant Energy Group of the Americas, Inc. (MEGA) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon MEGA and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Public Service Electric and Gas Company

[Docket No. ER99–403–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Central Hudson Enterprises Corporation (CHEC) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon CHEC and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Electric and Gas Company

[Docket No. ER99–404–000]

Take notice that on October 30, 1998, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to PECO Energy Company (PECO) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's regulations and make the agreement effective as of September 30, 1998.

Copies of the filing have been served upon PECO and the New Jersey Board of Public Utilities.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. MidAmerican Energy Company

[Docket No. ER99–405–000]

Take notice that on October 30, 1998, MidAmerican Energy Company tendered for filing a proposed change in its Rate Schedule for Power Sales, FERC Electric Rate Schedule, Original Volume No. 5. The proposed change consists of certain reused tariff sheets consistent with the quarterly filing requirement.

MidAmerican states that it is submitting these tariff sheets for the purpose of complying with the requirements set forth in *Southern Company Services, Inc.*, 75 FERC ¶ 61,130 (1996), relating to quarterly filings by public utilities of summaries of short-term market-based power transactions. The tariff sheets contain summaries of such transactions under the Rate Schedule for Power Sales for the applicable quarter.

MidAmerican proposes an effective date of the first day of the applicable quarter for the rate schedule change. Accordingly, MidAmerican requests ■ waiver of the 60-day notice requirement for this filing. MidAmerican states that this date is consistent with the requirements of the *Southern Company Services, Inc.* order and the effective

date authorized in Docket No. ER96–2459–000.

Copies of the filing were served upon MidAmerican's customers under the Rate Schedule for Power Sales and the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. New Century Services, Inc.

[Docket No. ER99–406–000]

Take notice that on October 30, 1998, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies) tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and PacifiCorp Power Marketing, Inc.

The Companies request that the Agreement be made effective on October 22, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Idaho Power Company

[Docket No. ER99–413–000]

Take notice that on October 30, 1998, Idaho Power Company tendered for filing the Agreement for Load Following Services Between the Montana Power Company and Idaho Power Company.

Idaho Power requests that the filing be made effective September 30, 1998.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER99–414–000]

Take notice that on October 30, 1998, the Midwest ISO Participants submitted Amendment No. 1 to the Midwest ISO Agreement. The Amendment clarifies the start-up costs for which reimbursement is required.

The filing has been served on all parties in Docket Nos. ER98–1438 and EC98–24–000.

Comment date: November 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER99–412–000]

Take notice that on October 30, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing seven executed service agreements for firm point-to-point transmission service and five executed service agreements for non-firm point-to-point transmission service.

The effective dates of the firm point-to-point transmission service agreements are: GPU Advanced Resources—August 4, 1998; DTE Edison America, Inc., DTE Energy Trading and Ensearch Energy Services, Inc.—August 6, 1998; Koch Energy Trading, Inc.—October 1, 1998; CSW Energy Services, Inc.—October 2, 1998; and Statoil Energy Trading, Inc.—October 7, 1998.

The effective dates for the non-firm point-to-point transmission service agreements are: GPU Advanced Resources—August 4, 1998; DTE Edison America, Inc. and Ensearch Energy Services, Inc.—August 6, 1998; CSW Energy Services, Inc.—October 2, 1998; and Statoil Energy Trading, Inc.—October 7, 1998.

A copy of this filing has been served on each of the transmission customers that are parties to the service agreements.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Commonwealth Chesapeake Company, L.L.C.

[Docket No. ER99–415–000

Take notice that on October 30, 1998, Commonwealth Chesapeake Company, L.L.C. tendered for filing pursuant to Rules 205 and 207, a petition for blanket waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective on the in-service date of its proposed generating facility.

Commonwealth Chesapeake Company L.L.C. intends to sell wholesale electric capacity and energy, and it proposes to make such sales subject to rates, terms, and conditions to be mutually agreed to with the purchasing party. Rate Schedule No. 1 provides for the sale of capacity and energy at agreed prices.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Louisville Gas and Electric Company

[Docket No. ES99–8–000]

Take notice that on October 29, 1998, Louisville Gas and Electric Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $300,000,000 of short-term debt on or before November 30, 2000 with a final maturity no later than November 30, 2001.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Kentucky Utilities Company

[Docket No. ES99–9–000]

Take notice that on October 29, 1998, Kentucky Utilities Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 204 of the Federal Power Act, to issue not more than $150,000,000 of short-term debt on or before November 30, 2000 with a final maturity no later than November 30, 2001.

Comment date: November 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Kevin Sagara

[Docket No. ID–3251–000]

Take notice that on October 30, 1998, Kevin Sagara (Applicant) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application under Section 305(b) of the Federal Power Act to hold the following positions:

Assistant Secretary, El Dorado Energy, LLC
Assistant Secretary, Enova Energy, Inc.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Bob Thomas

[Docket No. ID–3252–000]

Take notice that on October 30, 1998, Bob Thomas filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Treasurer, People's Electric Cooperative
Director, Secretary/Treasurer, People's Electric Corporation
Director, Western Farmers Electric Cooperative

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. S.F. Howe

[Docket No. ID–3253–000]

Take notice that on October 30, 1998, S.F. Howe filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Director, Secretary, People's Electric Cooperative
Director, President, People's Electric Cooperative

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. R. J. Ethridge

[Docket No. ID–3254–000]

Take notice that on October 30, 1998, R. J. Ethridge filed an application for authorization under Section 305(b) of the Federal Power Act to hold the following positions:

Executive President and General Manager, People's Electric Cooperative
Director, CoBank

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30527 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–140]

Grand River Dam Authority; Notice of Availability of Final Environmental Assessment

November 9, 1998.

A final environmental assessment (FEA) is available for public review. The FEA analyzes the environmental impacts of an application filed by Grand River Dam Authority (licensee) to permit Paul Stanten d/b/a Hanger 51-Shangri-La Airpark, (permittee) to construct new marina docking facilities on Isles' End Cove of Grand Lake, the project reservoir. The permittee requests permission to construct 6 floating boat docks containing a total of 146 boat-slips. The marina would be located on the northwest shore of the cove's mouth. In the FEA, staff concludes that approval of the licensee's proposal would not constitute a major Federal action significantly affecting the quality of the human environment. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30528 Filed 11–13–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–1]

Agency Information Collection Activities: Second Submission for OMB Review; Comment Request; Collection of Data from Industries with Cooling Water Intake Structures (EPA ICR No. 1828.02)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501, *et seq.*), this document announces the resubmission of the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR number 1828.02). This resubmission responds to OMB's disapproval on September 21, 1998 of EPA ICR No. 1828.01, a prior version of this Information Collection Request. In its statement disapproving ICR number 1828.01, OMB directed EPA, among other things, to document that the information to be collected is necessary for the proper performance of the functions of the Agency, including the practical utility of the information being collected. The Disapproval Statement also raised issues concerning the burdensomeness of the screener questionnaire itself. As explained below, EPA believes that this resubmission addresses OMB's objections to the first ICR. EPA has revised the screener questionnaire since its first submission to OMB, resulting in a 40 hour reduction (from 50 to 10 hours) in the estimated time required to complete the screener. The ICR describes the information collection activities and their expected need (including practical utility), burden and cost. It also describes the collection methodology that EPA will use to distribute the data collection instrument and includes the revised data collection instrument.

DATES: Comments must be submitted on or before December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer by phone at (202) 260–2740, e-mail at farmer.sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr. In all requests, refer to EPA ICR No. 1828.02. The References cited in the ICR are located in the Water Docket under docket number W–98–25-I. The references are available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M., Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

SUPPLEMENTARY INFORMATION:

Title: Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (EPA ICR No. 1828.02). This is a new collection.

Abstract: As EPA explained in a **Federal Register** notice on May 8, 1998, announcing the submission of ICR No. 1828.01 (63 FR 25473), the Agency is currently developing regulations under section 316(b) of the Clean Water Act ("CWA"), 33 U.S.C. section 1326(b). Section 316(b) provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact. The intent is to minimize the impingement and entrainment of fish and other aquatic organisms as they are drawn into a facility's cooling water intake. A consent decree in a lawsuit against the Agency brought by a coalition of environmental groups establishes a seven year schedule for EPA to propose and take final action with respect to regulations addressing impacts from cooling water intake structures. *Cronin* v. *Reilly,* United States District Court for the Southern District of New York, 93 Civ. 0314 (AGS)(Consent Decree entered October 10, 1995).

This resubmission addresses questions raised by OMB regarding the compliance of ICR No. 1828.01 with the requirements of the PRA and its implementing regulations. In its

Disapproval Statement, OMB stated that EPA had not established that the information to be collected is necessary for the proper performance of the Agency's functions, including that it will have practical utility, as required by 5 CFR 1320.9(a). OMB directed EPA to provide evidence that: (1) "significant adverse environmental impacts are occurring as a result of cooling water intake structures;" (2) "point sources are not currently using best technology available to minimize such impacts;" and (3) "a national regulatory approach of the type this information collection is designed to support would be more effective at implementing the statutory requirements than the current approach relying on site specific information, best professional judgement of NPDES permit writers, and state regulations tailored to meet local conditions and concerns."

As detailed in section 2(b) of the ICR, the resubmission provides further information regarding adverse environmental impacts from cooling water intake structures, more fully explains EPA's need for information on the types of technologies that may qualify as BTA, and provides further documentation of the need for a national regulatory approach. EPA is specifically requesting comment on the practical utility of the information being collected in the revised screener questionnaire.

The revised screener questionnaire contains scoping and stratifying questions. EPA intends to use data from the scoping questions to determine what facilities are potentially subject to section 316(b). EPA intends to use data from stratifying questions to support the development of the sample frame for a detailed industry questionnaire that will follow the screener. The screener questionnaire collects information on such topics as cooling water use within industry groups; cooling water intake structure location, design configurations, construction, and capacity; and types of intake water sources. EPA also is collecting some basic economic data at the facility and firm level (e.g., total revenue, number of employees) that will enable the Agency to ensure representation of a broad variety of facility and firm sizes in the sample frame for the detailed questionnaire. The detailed questionnaire will seek more detailed information on the use of cooling water by individual facilities and other important engineering and environmental data.

EPA has the authority to collect this information under section 308 of the CWA (33 U.S.C. section 1318). All recipients of the screener questionnaire are required to complete and return the questionnaire to EPA. The survey instrument will be mailed after OMB approves the ICR. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on the screener questionnaire under ICR No. 1828.01 was published on September 18, 1997 (62 FR 49007). EPA received six sets of comments (75 comments in all). EPA's response to these comments are presented in Attachment 5 of the ICR. A notice announcing that EPA had sent the ICR to OMB for review and approval was published on May 8, 1998 (63 FR 25473). EPA only received one comment letter. The letter came from a public utility; however, the request did not seek information from public utilities.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 10 hours per response. EPA has reduced the burden of the screener questionnaire to 10 hours from 50 hours by significantly reducing the scope and number of questions in the screener. More specifically, EPA has modified or removed all questions except those needed to help EPA determine the subset of in-scope facilities that will receive the detailed industry questionnaire in the future. In particular, EPA has reduced the burden of the question requesting cooling water flow rates (Question 11) by limiting the amount of data sought to one representative year, instead of five years, and by allowing estimates based on best engineering judgement where exact data are not readily available. Question 11 was considered to be the most burdensome question in the screener questionnaire. EPA has included definitions of key terms in the body of the questionnaire and also has included a glossary at the end of the questionnaire. This lengthens the questionnaire considerably, but also helps ensure that the questions are clear and are interpreted consistently by respondents. EPA is specifically seeking comment on whether the inclusion of these definitions both within the text of the questionnaire and in a glossary is helpful or adds to the screener's burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Nonutility Power Producers (SIC 49 and all other Industrial Self-Generators), Paper and Allied Products (SIC 2611, 2621, and 2631), Chemical and Allied Products (SIC 28 except 2895, 2893, 2851, and 2879), Petroleum and Coal Products (SIC 2911), and Primary Metals (SIC 3312, 3315, 3316, 3317, 3353, 3363, 3365, and 3366).

Estimated number of respondents: 2,600.

Frequency of Response: This is a one time collection.

Estimated total Annual Hour Burden: 25,870 hours.

Estimated total annualized cost burden: $8,000.

Because the screener questionnaire is now shorter and less burdensome, EPA has shortened the response time from 60 to 45 days.

Send comments on the Agency's need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden (including the use of automated collection techniques) to the following addresses. Please refer to EPA ICR No. 1828.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 10, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–30598 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5496–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 26, 1998 Through October 30, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D-AFS-L65307-WA Rating *LO, Sand Ecosystem Restoration Project, Implementation, Leavenworth Range District, Wenatchee National Forest, Chelan County, WA.

SUMMARY: EPA used a screening tool to conduct a limited review of the action. Based upon the screen, EPA does not foresee having any environmetal objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

ERP No. D–BLM–K67048–AZ Rating EO2, Yarnell Gold Mining Project, Construction and Operation an Open-pit Gold Mine and Ore Processing Facility, Yavapai County, AZ.

SUMMARY: EPA expressed environmental objections due to potential significant adverse impacts to air quality, noise, and the stability of the proposed North Waste Rock Dump (NWRD). PM10 emissions from the project would result in concentrations far exceeding the maximum allowable increase over the baseline concentration (increment) for PM10. EPA recommended control measures and monitoring at the mine. EPA also recommended that the NWRD be eliminated from the project and that the BLM select Alternative 3 as the preferred alternative. EPA recommended that additional information be provided in the FEIS regarding geochemistry; waste rock sampling and handling; monitoring; reclamation bonding; socioeconomic impacts; and mitigation for impacts to air and water quality and nosie and blasting impacts.

ERP No. DS–AFS–L67004–ID Rating EO2, Thompson Creek Mine (TCM), Updated Information, Prevent and/or Control Potential Acid-Rock Drainage, Plan of Operations Approval, Custer County, ID.

SUMMARY: EPA expressed environmental objections based on the narrow scope of the alternatives analysis and precicted adverse water quality effects. EPA requested additional information regarding embankment stability and uncertainties associated with the modeling predictions.

ERP No. DS–BLM–J03011–00 Rating LO, TransColorado Gas Pipeline Transmission Project, Updated Resource Information, Construction, Operation and Maintenance, COE Section 404 and 10 Permits, Right-of-Way Grants and Special Use Permit, La Plata, Delta, Dolores, Garfield, Mesa, Montezuma, Montrose, Rio Blanco, San Miguel Counties, CO and San Juan County, NM.

SUMMARY: EPA expressed lack of environemental objections.

ERP No. D2–BLM–J65212–WY Rating EC2, Newcastle Resource Management Plan, Implementation, Updated Information, Evaluates Alternatives for the Use of Public/Federal Lands and Resources in Portions of Wyoming, Crook, Niobrara and Weston Counties, WY.

SUMMARY: EPA expressed environmental concerns about potential impacts to air quality, water quality and habitat. EPA suggested the Final EIS include analysis of the environmental impacts for all alternatives.

Final EISs

ERP No. F–DOI–K40222–TT. Palau Compact Road Construction, Implementation, Funding, Republic of Palau, Babeldaob Island, Trust Territory of the Pacific Islands.

SUMMARY: EPA continued to express environmental concerns regarding the potential direct and long term impacts of the Palau Compact Road. EPA supported the position of the US Department of the Interior's, that road construction should not begin until long term protection of environmental mitigation sites has been approved by the Republic of Palau.

Dated: November 10, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–30575 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5496–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 2, 1998 Through November 6, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980452, Legislative Draft EIS,USA, AK, Alaska Army Lands Withdrawal Renewal for Fort Wainwright and Fort Greely West Training Area, Approval of Permits and Licenses, City of Fairbanks, City of North Pole and City of Delta Junction, North Star Borough, AK, *Due:* February 7, 1999, *Contact:* Anthony Rekas (703) 614–4991.

EIS No. 980453, Draft EIS, NPS, TX, Lyndon B. Johnson National Historical Park, Package 227, General Management Plan, Implementation, Blanco and Gillespie Counties, TX, *Due:* December 28, 1998, Contact: Leslie Starhart (303) 969–2719.

EIS No. 980455, Draft EIS, NPS, NB, SD, Missouri National Recreational River, General Management Plan, Implementation, Cedar and Dixon Counties, NB and Yakton, Clay and Union Counties, SD , *Due:* January 12, 1999, *Contact:* Michael Madell (402) 221–3493.

EIS No. 980456, Draft EIS, FHW, UT, Southeast Highland Drive, Improvements from 9400 South to I–15 Sandy City and Drape City, Salt Lake County, UT, *Due:* January 11, 1999, *Contact:* Tom Allen (801) 963–0182.

EIS No. 980457, Draft EIS, BLM, UT, Grand Staircase-Escalante National Monument Management Plan, Implementation, Cedar City, UT, *Due:* February 12, 1999, *Contact:* Peter Wilkins (435) 865–5100.

EIS No. 980458, Final EIS, GSA, NY, Governors Island Disposition of Surplus Federal Real Property, Implementation, Upper New York Bay, NY, *Due:* December 14, 1998, *Contact:* Peter A. Sneed (212) 264–3581.

EIS No. 980459, Draft EIS, USA, ND, Maple River Dam and Reservoir, Construction and Operation, Flood Control, Cass County Joint Water Resource District, Cass County, ND, *Due:* December 28, 1998, *Contact:* Col. Chris Conrad (703) 695–7824.

EIS No. 980460, Draft EIS, AFS, MT, Clancy-Unionville Vegetation Manipulation and Travel Management Project, Implementation, Helena National Forest, Helena Ranger District,

Lewis and Clark and Jefferson Counties, MT, *Due:* December 28, 1998, *Contact:* Dave Turner (406) 449–5490.

EIS No. 980461, Draft Supplement, UAF, NY, Griffiss Air Force Base (AFB) Disposal and Reuse Implementation, Updated Information, Oneida County, NY, *Due:* December 28, 1998, *Contact:* Jonathan D. Farthing (210) 536–2787.

Amended Notices

EIS No. 980438, Draft Supplement, FHW, CA, CA–1 Improvement, Carmel River Bridge to CA–1/Pacific Grove (Route 68) Interchange, Updated and Additional Information, Funding Section 404 Permit, Monterey County, CA, *Due:* December 21, 1998, *Contact:* John R. Schultz (916) 498–5041. The notice for the above DSEIS should have appeared in the 11/06/98 **Federal Register**. The 45-day Comment Period is Calculated from 11/06/98.

Dated: November 10, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–30576 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–2]

Gulf of Mexico Program Policy Review Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Policy Review Board meeting.

SUMMARY: The Gulf of Mexico Program will hold its Policy Review Board Meeting.

DATES: The meeting will be held on December 10 and 11, 1998.

ADDRESSES: The meeting site will be the Magnolia Plantation Hotel, 16391 Robinson Road, Gulfport, MS; telephone (601) 832–8400.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

SUPPLEMENTARY INFORMATION: The meeting is from 1:00 p.m. until 5:00 p.m. on December 10 and from 8:30 a.m. until 12:00 p.m. on December 11. Agenda items will include a Guiding Policies presentation and discussion, a joint Modeling Program presentation, and a Nature Conservancy/Gulf of Mexico Program/National Oceanic and Atmospheric Administration Joint Marine Habitat Initiative presentation. The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 98–30600 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–3]

Gulf of Mexico Program Public Health Focus Team Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Health Focus Team meeting.

SUMMARY: The Gulf of Mexico Program will hold its Public Health Focus Team Meeting.

DATES: The meeting will be on December 8, 9, and 10, 1998.

ADDRESSES: The meeting site will be the River House Conference Facility, Stennis Space Center, MS; telephone (228) 688–7618.

FOR FURTHER INFORMATION CONTACT: James D. Giattina, Director, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–1172.

SUPPLEMENTARY INFORMATION: The meeting is from 1:00 p.m. until 5:05 p.m. on December 8, from 8:00 a.m. until 5:00 p.m. on December 9, and from 8:00 a.m. until 12:00 p.m. on December 10. Agenda items will include: Focus Team By-Laws review, Selection of Focus Team Co-Chairs, Finalization of the Operational Performance Plan, Review of assessment framework for selection of areas to be targeted Gulf-wide for sewage pollution abatement to shellfish growing waters, and Informational Presentations on proposals, on-going projects, and other topics. The meeting is open to the public.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 98–30599 Filed 11–13–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–98–21–C (Auction No. 21); DA 98–2246]

Wireless Telecommunications Bureau Postpones December 15, 1998 Auction Date for 528 Multilateration Location and Monitoring Service Licensees; Commencement of the Auction Postponed to February 23, 1999

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In a letter dated October 22, 1998, to the Wireless Telecommunications Bureau, MicroTrax™ requested a temporary delay of the Location and Monitoring Service auction. On October 23, 1998, the Wireless Telecommunications Bureau released a Public Notice seeking comment on MicroTrax's request for temporary delay. By this Public Notice, the Bureau postpones the commencement of the Location and Monitoring Service auction.

DATES: Commencement of the Location and Monitoring Service auction is scheduled for February 23, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth Burnley, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660; Kathryn Garland, Operations at (717) 338–2801; Bob Reagle, Operations at (202) 418–0660.

SUPPLEMENTARY INFORMATION: The following is a summary of a Public Notice released by the Wireless Telecommunications Bureau on November 10, 1998. The complete text of this Public Notice is available in its entirety for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, 2025 M Street, N.W., Room 5608, Washington, D.C., 20554, and also may be retrieved from the FCC World Wide Web Auctions site at http://www.fcc.gov/wtb/auctions.

Synopsis of the Public Notice

1. In a letter dated October 22, 1998, to the Wireless Telecommunications Bureau ("Bureau"), MicroTrax™ ("MicroTrax") requested a temporary delay of the Location and Monitoring Service ("LMS") auction. On October 23, 1998, the Bureau released a Public Notice seeking comment on MicroTrax's request for temporary delay of the auction. *See* "Wireless Telecommunications Bureau Seeks Comment on Request for Stay of Location and Monitoring Service

Auction; Comment Sought on Request for Temporary Delay from MicroTrax," *Public Notice*, DA 98–2144 (rel. October 23, 1998), 63 FR 57688 (October 28, 1998) ("*LMS Stay Public Notice*"). The Bureau received nine comments in response to the *LMS Stay Public Notice*.

2. MicroTrax, and other commenters, specifically note that information on Federal usage of the 902–928 MHz band has not been released by the National Telecommunications and Information Administration ("NTIA"). Pursuant to authority delegated by 47 CFR 0.131, the Bureau will postpone the commencement of the LMS auction to give potential bidders a reasonable opportunity to consider deployment and technical information that NTIA is currently compiling regarding government primary users occupying the 902–928 MHz band. Commencement of the LMS auction is now scheduled for February 23, 1999.

3. In light of this action, any applications manually filed to date will be returned. However, the window for filing the FCC Form 175 will remain open until 5:30 p.m. ET on January 25, 1999. The following critical dates now apply to the rescheduled LMS auction:

Pre-Auction Deadlines:

- Short Form Application (FCC Form 175)—January 25, 1999; 5:30 p.m. ET.
- Upfront Payments (via wire transfer)—February 8, 1999; 6:00 p.m. ET.
- Auction—February 23, 1999.

A subsequent Public Notice will be released announcing a complete list of revised pre-auction deadlines.

Federal Communications Commission.

Amy Zoslov,

Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau.

[FR Doc. 98–30639 Filed 11–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 17, 1998, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum re: Budget Variance Summary Report for the Nine Months Ending September 30, 1998.

Discussion Agenda: Memorandum and resolution re: Final Statement of Policy for Section 19 of the Federal Deposit Insurance Act.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 10, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 98–30655 Filed 11–12–98; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Unlimited Express Corporation, 149–15 177th Street, 2nd Floor, Jamaica, NY 11434, Officer: Danny Chi-Shiung Yin, Managing Director

Universal Freight Forwarders, Inc., 8225 N.W. 80th Street, Miami, FL 33166, Officers: Luz M. Rios, President, Matilde Portela, Vice President

Southern Cross Shipping Co., 2200 Severn Avenue #Q–105, Metairie, LA 70001, Brian Leslie Scheele, Sole Proprietor

Dated: November 9, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–30485 Filed 11–13–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Federal Trade Commission (FTC) is soliciting public comments on proposed extensions of Paperwork Reduction Act clearance for information collection requirements associated with five rules issued and enforced by the Commission. OMB has extended the expiration for these clearances by 180 days, from September 30, 1998 to March 29, 1999. The FTC proposes that OMB extend its approval for the regulations an additional three years from the prior expiration date of September 30, 1998.

DATES: Comments must be submitted on or before January 15, 1999.

ADDRESSES: Send written comments to Gary M. Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580, 202–326–2753. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Gary M. Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580, 202–326–2753.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The relevant information collection requirements are as follows:

1. The Funeral Rule, 16 CFR Part 453 (OMB Control Number: 3084–0025), ensures that consumers who are purchasing funeral goods and services have accurate information about the terms and conditions (especially prices) for such goods and services. The Rule requires that funeral providers disclose this information to consumers and maintain records to facilitate enforcement of the Rule.

Estimated annual hours burden: The estimated burden associated with the collection of information required by the Rule is 22,300 hours for recordkeeping and 57,900 hours for disclosures, for a total of 80,200 hours. This estimate is based on the number of funeral providers (approximately 22,300), the number of funerals annually (approximately 2.3 million), and the time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that funeral providers retain copies of price lists and statements of funeral goods and services selected by consumers. Based on a maximum average burden of one hour per provider per year for this task, the total burden for the 22,300 providers is 22,300 hours. This estimate is unchanged from 1995.

Disclosure: The Rule requires that funeral providers (1) maintain current price lists for funeral goods and services, (2) provide written documentation of the funeral goods and services selected by consumers making funeral arrangements, and (3) provide information about funeral prices in response to telephone inquiries.

Maintaining current price lists requires that funeral providers revise their price lists from time to time through the year to reflect price changes. Based on a maximum average burden of two hours per provider per year for this task, the total burden for 22,300 providers is 44,600 hours. This estimate is unchanged from the FTC's previous estimate in 1995.

The original rulemaking record indicated that 87 percent of funeral providers provided written documentation of funeral arrangements, even in the absence of the Rule's requirements.[1]

Accordingly, the Rule imposes a disclosure burden on 2,899 providers (13 percent of 22,300 providers). These providers are typically the smallest funeral homes. The disclosure requirement can be satisfied through the use of a standard form (an example of which is available to the industry in the Compliance Guide to the Funeral Rule). Based on an estimation that these smaller homes arrange, on average, approximately 20 funerals per year and that it would take each of them about 3 minutes to record prices for each consumer on the standard form, FTC staff estimates that the total burden associated with this disclosure requirement is one hour per provider not already in compliance, for a total of 2,899 hours.

The Funeral Rule also requires funeral providers to answer telephone inquiries about the provider's offerings or prices. Industry data indicate that only about nine percent of funeral purchasers make telephone inquiries, with each call lasting an estimated three minutes. Only about half of that additional time is attributable to disclosures required solely by the Rule, since many providers would provide the requested information even without the Rule. Thus, assuming that the average purchaser makes two calls per funeral to compare prices, the estimated burden is 10,350 hours [(½×3 minute call×2 calls/funeral)×207,000 funerals (nine percent of 2,300,000 funerals/year)]. This burden likely will decline over time as consumers increasingly rely on the Internet for funeral price information.

In sum, the disclosure total is 57,849 hours (44,600+2,899+10,350), rounded to 57,900 hours. The total estimated hours burden associated with the Rule for both recordkeeping and disclosure requirements is 80,200 (Recordkeeping: 22,300 hours+Disclosure: 57,900 hours).

[1] The original version of the Funeral Rule required that funeral providers retain a copy of and give each customer a separate "Statement of Funeral Goods and Services Selected." The 1994 amendments to the Rule eliminated that requirement, allowing instead for such disclosures to be incorporated into a written contract, bill of sale, or other record of a transaction that providers use to memorialize sales agreements with customers.

Estimated annual cost burden: $3,900,000, rounded ($3,560,000 in labor costs and $340,300 in non-labor costs).

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below are averages.

Clerical personnel, at an hourly rate of $10, can perform the recordkeeping tasks required under the Rule. Based on the estimated hour burden of 22,300 hours, the estimated cost burden for recordkeeping is $223,000 ($10 × 22,300 hours).

The two hours required of each provider, on average, to update price lists should consist of approximately 1.5 hours of managerial or professional time, at $75 per hour, and .5 hours of clerical time, at $10 per hour, for a total of $117.50 per provider. Thus, the estimated total cost burden for maintaining price lists is $2,620,250 ($117.50 × 22,300 providers) (rounded to $2,620,000).

The cost of providing written documentation of the goods and services selected by the consumer is 2,899 hours of managerial or professional time at approximately $75 per hour, or $217,425 (rounded to $217,000).

The cost of responding to telephone inquiries about offerings or prices is 10,350 hours of managerial or professional time at $75, or $766,250 (rounded to $766,000).

The total labor cost of the three disclosure requirements imposed by the Funeral Rule is $3,337,000 ($2,620,000+$217,000+$766,000). The total labor cost for recordkeeping and disclosures is $3,560,000 ($223,000 for recordkeeping + $3,337,000 for disclosures).

Capital or other non-labor costs: The Rule imposes minimal capital costs and no current start-up costs. The Rule first took effect in 1984 and the revised Rule took effect in 1994, so funeral providers should already have in place capital equipment to carry out tasks associated with Rule compliance. Moreover, most funeral homes already have access, for other business purposes, to the ordinary office equipment needed for compliance, so the Rule likely imposes minimal additional capital expense.

Compliance with the Rule, however, does entail some expense to funeral providers for printing and duplication of price lists. Based on a rough estimate of 300 pages per year per provider for copies of the various price lists, at 5 cents per page, and 22,300 providers, the total cost burden associated with printing and copying is $334,500. In

addition, the estimated 2,899 providers not already providing written documentation of funeral arrangements apart from the Rule will incur additional printing and copying costs. Assuming that those providers use the standard two-page form shown in the Compliance Guide, at 5 cents per page, at an average of 20 funerals per year, the added cost burden would be $5,798, rounded to $5,800. Thus, estimated non-labor costs are $340,300.

The cost of training associated with Rule compliance is generally included in continuing education requirements for licensing and voluntary certification programs. Moreover, the FTC has provided its Compliance Guide to all funeral providers at no cost, and additional copies are available on the FTC web site or by mail. Accordingly, the Rule imposes no additional training costs.

2. The Used Car Rule 16 CFR Part 455 (OMB Control Number: 3084–0108), facilitates informed purchasing decisions by consumers by requiring used car dealers to disclose information about warranty coverage, if any, and the mechanical condition of used cars they offer for sale.

Estimated annual hours burden: The FTC is requesting approval for an estimated burden of 2,225,000 hours relating solely to disclosure requirements.[2] This estimate is based on the number of used car dealers (approximately 80,000 according to industry sources [3]), the number of used cars sold by dealers annually (approximately 30,000,000, according to industry data), and the time needed to fulfill the information collection tasks required by the Rule.[4] The current estimated annual burden reflects a small decrease from the prior estimate, attributable to a more accurate estimate of the number of used cars sold by dealers.

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide in the window of each used car they offer for sale. The component tasks associated with the requirement include (1) ordering and stocking Buyers Guide forms, (2) entering applicable data on Buyers Guides, (3) posting the Buyers Guides on vehicles, and (4) making any necessary revisions in Buyers Guides.

Dealers should need no more than an average of one hour per year to obtain Buyers Guide forms, which are readily available from many commercial printers or could be produced by an office word-processing or desk-top publishing system. Based on a universe of 80,000 dealers, the annual hours burden for producing or obtaining and stocking Buyers guides is 80,000 hours.

Copying vehicle-specific data from dealer inventories to the Buyers Guide forms may take up to two minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process. Adding the warranty information may take an additional one minute for vehicles offered with a warranty, and only seconds for vehicles offered with no warranty (in which case dealers merely check off the "no warranty" box). FTC staff estimates the overall average time needed to fill out Buyers Guides is 2.5 minutes per vehicle. Applied to an estimate of 30,000,000 used cars, this amounts to 1,250,000 hours.

Although there will be substantial variance in the time required to post the Buyers Guides on each used car, FTC staff estimates that, on average, dealers will spend 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and physically attach it to one of its windows. Based on 30,000,000 vehicles sold, the burden associated with this task is 875,000 hours. Insofar as dealers are able to integrate this process into other activities perform in their ordinary course of business, this estimate likely overstates the actual burden.

If negotiations between buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Guide to reflect the actual terms of sale. According to the rulemaking record, bargaining over warranty coverage rarely occurs. Allowing for revision in 2% of sales, at two minutes per revision, staff estimates that dealers will spend 20,000 hours annually revising Buyers Guides.

Estimated annual cost burden: $31,500,000, consisting of $22,500,000 in labor costs and $9,000,000 in non-labor costs.

Labor costs: Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of $10 per hour and an estimate of 2,225,000 burden hours for disclosure requirements, the total labor cost burden would be approximately $22,500,000.

Capital or other non-labor costs: The cost of the Buyers Guide form itself is estimated to be 30 cents per form, so that forms for 30 million vehicles would cost dealers $9,000,000. In making this estimate, staff conservatively assumes that all dealers will purchase preprinted forms instead of producing them internally, although dealers may produce them at minimal expense using current office automation technology. Capital and start-up costs associated with the Rule are de minimis.

3. The Consumer Product Warranty Rule, 16 CFR part 701 (OMB Control Number: 3084–0111), prevents deception by providing consumers with information to assess written warranty terms. The Rule requires that written warranties disclose certain material facts regarding their terms and conditions.

Estimated annual hours burden: In 1995, FTC staff estimated that the required disclosures imposed an average annual burden of 8 hours on each of approximately 4,241 warrantors of products. Because there have been no changes to the Rule's requirements, staff has no reason to believe that this estimate requires revision. Based on this assumption, the total compliance burden relating to disclosures is approximately 34,000 hours (rounded from 33,928).[5] Nonetheless, this estimate likely overstates substantially the actual burden because most warrantors would disclose the terms and conditions of their warranties even in the absence of the Rule.

Estimated annual cost burden: $340,000, consisting solely of labor costs.

Labor cost: The work required to comply with the Rule (ensuring that warranties are printed and included with the product) mostly involves clerical or production staff. Based on an average hourly rate of $10 for these employees and the total hours burden of 34,000 hours, the annual labor cost is approximately $340,000.

Capital or other non-labor cost: The Rule imposes no appreciable current capital or start-up costs. Because it has been in effect since 1976, the vast majority of warrantors have already

[2] The Used Car Rule does not impose any recordkeeping requirements.

[3] Source: 1997 Used Car Market Report ("ADT Market Report"), published by ADT Automotive 435 Metroplex Drive, Nashville, Tennessee 37211.

[4] A relatively small number of dealers opt to contract with outside companies to perform the various tasks associated with complying with the Rule Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to "dealers," incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule.

[5] The Consumer Product Warranty Rule imposes no recordkeeping requirement.

modified their warranties to include information required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, which providers would already have available for general business use.

4. The Pre-Sale Availability Rule, 16 CFR Part 702 (OMB Control Number: 3084–0112), ensures that consumers can make informed purchasing decisions by requiring that the terms of written warranties for consumer products be made available to consumers prior to purchase. The Rule requires retailers to make warranty information available to consumers and requires warrantors (i.e., manufacturers) to provide retailers with materials necessary to do so. The Rule also requires catalog and door-to-door sellers to make warranty information available.

The FTC is seeking approval for an estimated disclosure burden of 2,760,000 hours.[6] This estimate is based on the number of large and small retailers and manufacturers, according to census data, the estimated scope of the compliance burden for businesses by type. FTC staff first calculated burden estimates by type of business in the early 1980s. Staff believes that estimates remain valid for manufacturers, and that subsequent amendments to the Rule to allow more flexibility have reduced the burden on retailers by approximately 50 percent.[7] Approximately 6,552 large retailers and 422,100 small retailers spend an annual average of 26 hours and 6 hours, respectively, to comply with the Rule, for a cumulative combined total of 2,702,952 hours for retailers. Approximately 146 large manufacturers and 4,095 small manufacturers spend an annual average of 52 hours and 12 hours, respectively, for a cumulative total of 56,732 hours for manufacturers. Thus, the combined cumulative total for retailers and manufacturers is 2,759,684 hours, or approximately 2,760,000 hours (rounded from 2,759,684 hours).

Estimated annual cost burden: $27,600,000, consisting solely of labor costs.

Labor costs: Most of Rule 702's disclosure requirements involve simple clerical functions such as maintaining copies of the warranties at the retail level and, at the manufacturer level, ensuring that copies of warranties are provided to retailers. Assuming a clerical labor cost rate of $10/hour and an estimate of 2,760,000 burden hours of disclosures, that total annual labor cost burden is approximately $27,600,000.

Capital or other non-labor costs: The capital or start-up costs imposed by the Rule are de minimis. because the Rule has been in effect since 1976, and the amended Rule since 1987, the vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails simply filing warranties in binders and posting an inexpensive sign indicating warranty availability.[8] Manufacturer compliance entails providing retailers with a copy of the warranties included with their products.

5. The Informal Dispute Settlement Procedures Rule, 16 CFR Part 703 (OMB Control Number: 3084–0113), helps to ensure that consumers are fully informed regarding informal dispute settlement procedures in product warranties. The Rule imposes certain requirements when a warrantor requires, as part of a written warranty, that consumers first use an informal dispute settlement mechanism (IDSM) to seek resolution of a warranty dispute before pursuant remedies in court. The Rule requires that affected warrantors disclose certain information to consumers. It also requires that warrantors, through IDSMs, retain: (1) individual records for each dispute; (2) indexes that categorize disputes by product model and show the extent to which the warrantor has abided by decision of the resolution process; and (3) statistical summaries that classify disputes according to various status and final disposition categories. Affected entities must conduct an annual audit of their dispute resolution procedures and report to the FTC.

Estimated annual hours burden: The FTC is requesting approval for an estimated burden of 4,333 recordkeeping hours and 1,625 disclosure hours, for a total burden estimate of approximately 6,000 hours. This estimate is based on the number of warranty disputes handled by IDSMs and the average time needed to fulfill the information collection tasks required by the Rule.

Recordkeeping: The Rule requires that IDSMs maintain individual case files, update indexes, complete semi-annual statistical summaries, and submit an annual audit report to the FTC. Since maintenance of individual case records is necessary in the ordinary course of business, the Rule imposes little additional recordkeeping burden. FTC staff estimates that retaining additional information that would not otherwise be kept adds a burden of 30 minutes per case. Staff estimates also that IDSMs require an additional 10 minutes per case for compilation of the indexes, statistical summaries, and annual audit required by the Rule, resulting in a total recordkeeping requirement of 40 minutes per case. Finally, staff estimates that the two IDSMs affected by the Rule handle, combined, about 6,500 covered disputes annually. Thus, the total recordkeeping burden associated with the Rule is approximately 4,333 hours.

Disclosure: The Rules requires that affected warrantors disclose information about the dispute settlement mechanism in the written warranty, and that IDSMs disclose certain information upon request. The incremental cost of a warrantor's required disclosure is negligible. IDSMs must provide certain information, such as their annual audits, to anyone who requests it. In addition, on request, IDSMs must also provide consumers who have had a dispute before them with a copy of records relating to their disputes. FTC staff estimates that the average hour burden of copying and producing this information is approximately 15 minutes for each dispute handled by an IDSM. Based on an estimate of 6,500 disputes annually, the hour burden associated with copying and providing these disclosures is 1,625 hours.

Estimated annual cost burden: $303,000 (rounded), consisting of $103,000 in labor costs and $200,000 in non-labor costs.

Labor costs: Assuming that IDSMs would use skilled clerical personnel, at an hourly rate of $20, to maintain the records required by the Rule, the labor cost of the 4,333 recordkeeping burden hours is approximately $86,660. Assuming that IDSMs would use less skilled labor, at an hourly rate of $10, to reproduce records, the labor costs of the 1,625 hours disclosure burden hours is approximately $16,250. The combined total labor cost for recordkeeping and disclosures is $102,910, rounded to $103,000.

Capital or other non-labor costs: The Rule imposes no appreciable current capital or start-up costs. Because it has been in effect since 1976, the vast majority of warrantors have already

[6] The Pre-Sale Availability Rule does not impose any recordkeeping requirement.

[7] To comply with Rule 702, sellers need only maintain specimen copies of the warranties provided to them by manufacturers. The Rule allows seller substantial flexibility in how to maintain those copies, since the Rule states only that the warranty must be made readily available upon request. If the warrantor prints the warranty on the product's package, for example, the retailer has no further obligation since consumers can readily review the warranty by looking at the package.

[8] Although some retailers may choose to display a more elaborate or expensive sign, that is not required by the Rule.

developed systems to retain the records and provide the disclosures required by the Rule. Rule compliance does not require the use of any capital goods, other than ordinary office equipment, to which providers would already have access.

The only additional cost imposed on IDSMs operating under the Rule that would not be incurred for other IDSMs is the annual audit requirement. One of the two IDSMs currently operating under the Rule estimates the total annual costs of this requirement to be less than $100,000. Since there are two IDSMs operating under the Rule, the total non-labor cost imposed by them is an estimated $200,000. This total includes copying costs of roughly $20,000, which is based on estimated copying costs of 5 cents per page and several conservative assumptions or estimates. Staff estimates that the "average" dispute-related file is about 25 pages long and that a typical annual audit file is about 200 pages in length. For purposes of estimating copying costs, staff conservatively assumes that every consumer complainant requests a copy of the file relating to his or her dispute. Staff also assumes that, for 1,000 of the estimated 6,500 disputes each year, consumers request copies of warrantors' annual audit reports (although, based on requests for audit reports made directly to the FTC, the indications are that considerably less requests are actually made). Thus, the estimated total annual copying costs for average-sized files would be approximately $8,125 (25 pages/file ×.05 × 6,500 requests) and $10,000 for copies of annual audits (200 pages/audit report ×.05 × 1,000 requests), rounded to a total of $20,000.

Combined with estimated annual labor cost of $103,000, total estimated annual cost burden is $303,000 ($200,000 + $103,000).

Debra A. Valentine,

General Counsel.

[FR Doc. 98–30604 Filed 11–13–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246]

Submission for OMB Review; Comment Request Entitled Packing List Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0246).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Packing List clause. The information collection was previously published in the **Federal Register** on September 3, 1998 at 63 FR 47025, allowing for a 60-day comment period. No comments were received.

DATES: *Comment Due Date:* December 16, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and may also be submitted to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT:

Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0246, concerning Packing List clause. A uniquely numbered Government credit card has been authorized for making payment for orders under $25,000 placed against certain schedule contracts. Acceptance of the card is not mandatory. In order to verify receipt of orders placed orally the cardholder's name and telephone number must be included on the packing list.

B. Annual Reporting Burden

Respondents: 4,000; *annual responses:* 931,219; *average hours per response:* .02; *burden hours:* 31.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: November 9, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–30572 Filed 11–13–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–02–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. The Second Longitudinal Study of Aging (LSOA II)–(0920–0411)—Revision—National Center for Health Statistics (NCHS). The Second Longitudinal Study of Aging is a second-generation, longitudinal survey of a nationally representative sample of civilian, non-institutionalized persons 70 years of age and older. Participation is voluntary, and individually identified data are confidential. The LSOA II replicates portions of the first Longitudinal Study of Aging (LSOA), particularly the causes and consequences of changes in functional status. In addition, the LSOA II is designed to monitor the impact of changes in Medicare, Medicaid, and managed care on the health status of the elderly and their patterns of health care utilization. Both LSOAs are joint projects of the National Center for Health Statistics (NCHS) and the National Institute on Aging (NIA).

The Supplement on Aging (SOA), part of the 1984 National Health Interview Survey (NHIS), established a baseline on 7,527 persons who were then aged 70 and older. The first LSOA reinterviewed them in 1986, 1988 and 1990. Data from the SOA and LSOA have been widely used for research and policy analysis relevant to the older population.

In 1994, 9,447 persons aged 70 and over were interviewed as part of the National Health Interview Survey's Second Supplement on Aging (SOA II) between October of 1994 and March of 1996. The first LSOA II re-interview wave was conducted between May 1997 and March 1998. The LSOA II will re-interview the SOA II sample two

additional times: in 1999 and 2001. As in the first LSOA, these reinterviews will be conducted using computer assisted telephone interviewing (CATI). Beyond that, LSOA II will use methodological and conceptual developments of the past decade.

The LSOA II contains substantive topics on scientifically important and policy-relevant domains, including: (1) Assistance with activities of daily living, (2) chronic conditions and impairments, (3) family structure, relationships, and living arrangements, (4) health opinions and behaviors, (5) use of health, personal care and social services, (6) use of assistive devices and technologies, (7) health insurance, (8) housing and long-term care, (9) social activity, (10) employment history, (11) transportation, and (12) cognition. This new data will result in publication of new national health statistics on the elderly and the release of public use micro data files. The total annual burden hours are 6,854.

Respondent	Number of respondents	Number of responses/ respondent	Avg. burden per response (in minutes)
Practice	50	1	0.75
Telephone Locator Calls	8,472	1	0.05
Telephone Interview	8,222	1	0.75
Mailout Interview	250	1	0.90

2. 1999 National Health Interview Survey, Basic Module (0920–0214)—Revision—National Center for Health Statistics. The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. Due to the integration of health surveys in the Department of Health and Human Services, the NHIS also has become the sampling frame and first stage of data collection for other major surveys, including the Medical Expenditure Panel Survey, the National Survey of Family Growth, and the National Health and Nutrition Examination Survey. By linking to the NHIS, the analysis potential of these surveys increases. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally-mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2000."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a redesign of the data collection system from paper questionnaires to computer assisted personal interviews (CAPI). Those redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the third full year of data collection using the Basic Module on CAPI, and for implementation of the first "Periodic Module", which include additional detail questions on conditions, access to care, and health care utilization. This data collection, planned for January–December 1999, will result in publication of new national estimates of health statistics, release of public use micro data files, and a sampling frame for other integrated surveys. The 1999 Basic Module will include a few new questions on health insurance, and program participation. The Basic Module of the new data system is expected to be in the field at least until 2006. The total annual burden hours are 48,600.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/responses (in hrs.)
Family Core (adult family member)	42,000	1	0.35
Adult Core (sample adult)	42,000	1	0.35
Child Core (adult family member)	18,000	1	0.25
Periodic Module (sample adult)	42,000	1	0.35

3. National Tuberculosis Surveillance Activity Form (CDC 72.9)—(0920–0026)—Extension—The National Center for HIV, STD and TB Prevention (NCHSTP)—Tuberculosis (TB) is transmitted when contagious TB patients aerosolize Mycobacterium tuberculosis and susceptible persons (i.e., "contacts") are exposed. Some contacts are especially endangered by TB if they become infected—children younger than 5 years old, and anyone with an illness that weakens the immune system (e.g., the acquired immunodeficiency syndrome, AIDS). The prompt evaluation of all contacts is crucial for finding early TB cases and latent infections. For latent TB infections, treatment with isoniazid preventive therapy can prevent new TB cases from developing.

Evaluation, follow-up, and preventive therapy for contacts comprise the most efficient approach for finding and treating recent TB infections and preventing future cases. Therefore, it is one of the highest priorities for the national TB control strategy, second only to finding and treating contagious cases. NCHSTP is requesting an extension of this package with a few modifications. The Program Management Reports, which was a part of this OMB submission has been separated from this request as they are undergoing significant revision. The new Program Management Reports will be submitted as a new package. The total burden hours are 400.

Report	Number of respondents	Number of responses/ respondent (in hrs.)	Avg. burden/response (in hrs.)
Report of Verified Case of Tuberculosis	1600	1	0.25

4. Lead Exposure and Blood Pressure During Pregnancy Study (Charles Drew Medical)—(0923–0015)—EXTENSION—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. Disadvantaged minorities in large urban areas have higher than national blood lead levels.

Some of these groups also suffer from disproportionately high rates of hypertension. Previous data shows a relationship between higher blood lead levels and higher blood pressure, even at the lowest lead exposure. To facilitate this effort, this study examines the relationship between lead exposure history in inner city minorities and blood pressure, using a group at special risk for elevated blood pressure, pregnant women. Elevated blood lead and elevated blood pressure are two problems that disproportionately affect minority groups. Establishing a link between blood pressure and lead exposure, especially utilizing two new biomarkers of lead exposure, bone lead and serum lead, can provide a new tool for dealing with elevated blood pressure nationwide.

This request is for a 3-year extension. Two previously approved questionnaires will continue to be used to collect socioeconomic data, and data pertaining to risk factors for elevated blood pressure and lead exposure. A new questionnaire assessing social stress (Scale of Chronic Social Role Stressors) and a 16 item, four response choice scale will be added to better control for social stress factors affecting blood pressure. The total annual burden hours are 838.

Type of respondent	Number of respondents per Year	Number of responses/ respondent	Avg. burden per Response (in hrs)
Screening Questionnaire	583	1	0.5
Perceived Stress Scale	583	1	0.08
Risk Questionnaire	330	2	0.75
St. Francis Medical Center Participants	292	1	0.008

5. Substance—Specific Applied Research Program Epidemiologic Studies on Lead (Morehouse School of Medicine)—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA), and its 1986 Amendments, The Superfund Amendments and Reauthorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. Lead exposure has been associated with negative pregnancy outcomes in humans, including low birth weight, spontaneous abortion, congenital malformation, and various neurological effects in newborns and young children. The level of lead considered to be toxic has been lowered over the years by major research groups, organizations, and agencies. While lead has been shown to affect all organs, the brain or nervous system seems to be the most sensitive to lead toxicity, especially in young children. Blood lead levels as low as 10 "μ/dL have been shown to result in delayed cognitive development, reduced IQ scores, and impaired hearing.

This study, originally approved by OMB in 1995, examines the long-term effects of low and marginal toxic blood lead levels in neonates and preschool African-American children in the Atlanta area. This study is divided into two components, (i) prevalence of lead exposure in children of preschool age and (ii) longitudinal health effects of low and marginal lead exposure. These studies are conducted concurrently.

The primary focus of the prevalence study is the evaluation of the relationship between socio-economic status, elemental blood lead levels within the home environment, and blood lead levels of preschool aged children. The objective of the longitudinal study is the evaluation of the relationship between lead levels found in maternal and cord blood and adverse health effects in the infant, including deficits in behavioral, cognitive and physical development. To correlate cognitive and behavioral development with varying blood lead levels, each newborn is to undergo a series of psychometric testing at birth, then again at 6 months, 1, and 2 years of age. Evaluations of physician development will be conducted by reviewing the medical records of each newborn within the first year after birth.

This request is for a 3-year extension of the current OMB approval; however we are requesting a new OMB authority (and number) as the old number (0923–0015) will now apply only to the Substance Specific Applied Research Program (AMHPS) [King/Drew Lead Study in-Person Interview, Lead and Hypertension Screening Questionnaire/ Risk Factor Questionnaire]. The requests for OMB approval for the two studies has been separated, with the King/Drew investigation retaining the old OMB number (0923–0015). The total annual burden hours are 882.*

Study	Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Prevalence	Child Questionnaire	400	1	0.333

Study	Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Longitudinal	Family Questionnaire	400	1	0.083
	Household Questionnaire	400	1	0.333
	Environmental Survey	400	1	0.25
	Day Care Center Participation	20	1	0.25
	Hospital/Clinic Participants	1	1	0.083
Childhood Lead Poisoning Questionnaire				
	Family Questionnaire	600	1	0.083
	Household Questionnaire	12	1	0.333
	Environmental Survey	12	1	0.166
	Home Visits	600	9	0.25
Neurobehavioral and Developmental Testing in Children				
	Brazelton Assessment	600	2	0.583
	Denver Screening	600	1	0.5
	Bayley Scales	600	2	1
	Fagan Battery	600	1	0.666

* Estimate of annualized burden was determined by taking the total burden and dividing it by 5 years.

Dated: November 4, 1998.

Charles W. Gollmar,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30459 Filed 11–13–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.–5:30 p.m., December 2, 1998. 8:30 a.m.–2:30 p.m., December 3, 1998.

Place: Holiday Inn Hotel and Conference Center, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: The agenda will include:

1. NCID Update
2. EID Plan: Release and Implementation
3. Scientific Updates:
   Pandemic Influenza Preparedness
   Hepatitis C Update
4. Emergency Preparedness
5. International Outbreak Response
7. Prevention Research
8. Minority Health
9. Program Update: Hospital Infections Program
10. Late breaking scientific reports
11. Comments from CDC Director
12. Discussion and Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board April 1998; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0078.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 9, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30534 Filed 11–13–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Revised Promulgation for Fiscal Year 1999

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of allocation of title XX—social services block grant allotments for Fiscal Year 1999.

SUMMARY: This issuance sets forth the individual revised allotments to States for Fiscal Year 1999, pursuant to title XX of the Social Security Act, as amended (Act). The initial **Federal Register** notice was published on November 21, 1997 based on the authorization level of $2.380 billion. The grant awards for Fiscal Year 1999 will be issued based upon the appropriation amount of $1.190 billion.

FOR FURTHER INFORMATION CONTACT: John J. Jolley, (202) 401–5284.

SUPPLEMENTARY INFORMATION: For Fiscal Year 1999, the allotments are based upon the Bureau of Census population statistics contained in its reports "Estimates of the Population of U.S. Regions, and States by Selected Age Groups and Sex: 1990 and 1996 (CB97–64, released April 21, 1997), and "1990 Census of Population and Housing" (CPH–6–AS and CPH–6–CNMI) published April 1992, which was the most recent data available from the

Department of Commerce at the time of the Department's initial promulgation.

EFFECTIVE DATE: The allotments are effective October 1, 1998.

FISCAL YEAR 1999 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

	Initial FY 99 Allotment	Revised FY 99 allotment
ALABAMA	38,121,040	30,576,918
ALASKA	5,415,275	4,343,597
AMERICAN SAMOA	88,560	71,034
ARIZONA	39,503,853	31,686,074
ARKANSAS	22,392,654	17,961,167
CALIFORNIA	284,395,631	228,113,973
COLORADO	34,106,421	27,356,789
CONNECTICUT	29,208,585	23,428,231
DELAWARE	6,467,998	5,187,987
DISTRICT OF COLUMBIA	4,844,307	3,885,623
FLORIDA	128,467,816	103,044,143
GEORGIA	65,598,878	52,616,915
GUAM	410,345	329,138
HAWAII	10,562,909	8,472,518
IDAHO	10,607,516	8,508,297
ILLINOIS	105,691,543	84,775,276
INDIANA	52,109,758	41,797,281
IOWA	25,443,765	20,408,465
KANSAS	22,945,779	18,404,829
KENTUCKY	34,650,625	27,793,295
LOUISIANA	38,816,907	31,135,074
MAINE	11,089,270	8,894.713
MARYLAND	45,249,220	36,294,437
MASSACHUSETTS	54,349,023	43,593,397
MICHIGAN	85,591,682	68,653,160
MINNESOTA	41,555,770	33,331,918
MISSISSIPPI	24,230,457	19,435,270
MISSOURI	47,809,654	38,348,164
MONTANA	7,841,890	6,289,987
NEBRASKA	14,738,113	11,821,453
NEVADA	14,300,966	11,470,817
NEW HAMPSHIRE	10,366,639	8,315,090
NEW JERSEY	71,263,952	57,160,876
NEW MEXICO	15,282,317	12,257,959
NEW YORK	162,235,224	130,129,009
NORTH CAROLINA	65,331,237	52,402,240
NORTH DAKOTA	5,745,366	4,608,363
N. MARIANA ISLANDS	82,069	65,828
OHIO	99,678,535	79,952,237
OKLAHOMA	29,449,462	23,621,438
OREGON	28,584,089	22,927,322
PENNSYLVANIA	107,556,110	86,270,846
PUERTO RICO	12,310,345	9,874,138
RHODE ISLAND	8,832,162	7,084,284
SOUTH CAROLINA	33,000,170	26,469,464
SOUTH DAKOTA	6,530,447	5,238,077
TENNESSEE	47,461,721	38,069,086
TEXAS	170,648,082	136,876,970
UTAH	17,842,752	14,311,686
VERMONT	5,254,691	4,214,792
VIRGIN ISLANDS	410,345	329,138
VIRGINIA	59,550,185	47,765,253
WASHINGTON	49,361,974	39,593,281
WEST VIRGINIA	16,290,433	13,066,570
WISCONSIN	46,034,301	36,924,152
WYOMING	4,291,182	3,441,961
Total	2,380,000,000	1,909,000,000

Dated: November 4, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–30564 Filed 11–13–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs. The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATE: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of expiration
Advisory Committee for Pharmaceutical Science	January 22, 2000
Medical Imaging Drugs Advisory Committee	February 28, 2000
Gastrointestinal Drugs Advisory Committee	March 3, 2000
Advisory Committee for Reproductive Health Drugs	March 23, 2000
Arthritis Advisory Committee	April 5, 2000
Veterinary Medicine Advisory Committee	April 24, 2000
Anesthetic and Life Support Drugs Advisory Committee	May 1, 2000
Blood Products Advisory Committee	May 13, 2000
Pulmonary-Allergy Drugs Advisory Committee	May 30, 2000
Drug Abuse Advisory Committee	May 31, 2000
Science Advisory Board to the National Center for Toxicological and Research	June 2, 2000
Peripheral and Central Nervous System Drugs Advisory Committee	June 4, 2000
Psychopharmacologic Drugs Advisory Committee	June 4, 2000
Transmissible Spongiform Encephalopathies Advisory Committee	June 9, 2000
Science Board to the Food and Drug Administration	June 26, 2000
Allergenic Products Advisory Committee	July 9, 2000
Cardiovascular and Renal Drugs Advisory Committee	August 27, 2000
Endocrinologic and Metabolic Drugs Advisory Committee	August 27, 2000
Oncologic Drugs Advisory Committee	September 1, 2000
Anti-Infective Drugs Advisory Committee	October 7, 2000
Dermatologic and Ophthalmic Drugs Advisory Committee	October 7, 2000
Biological Response Modifiers Advisory Committee	October 28, 2000

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

Dated: November 5, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30457 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Veterinary Medicine Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Veterinary Medicine Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 10 and 11, 1998, 8:30 a.m. to 4 p.m.

Location: Holiday Inn, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Jacquelyn L. Pace, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6650, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12546. Additional information about the meeting will be provided on the Center for Veterinary Medicine Internet Home Page (http://www.fda.gov/cvm) after November 1, 1998. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss a proposed framework on how to evaluate the potential public health hazard from resistant pathogens and resistance genes associated with the use of antimicrobials in food animals.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by December 3, 1998. Oral presentations from the public are tentatively scheduled for the morning of December 11, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 3, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 5, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30548 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Oncologic Drugs Advisory Committee. This meeting was announced in the **Federal Register** of October 29, 1998. The meeting will be open to the public. The amendment is being made to cancel the entire session on November 17, 1998. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Karen M. Templeton–Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 29, 1998 (63 FR 58054), FDA announced that a meeting of the Oncologic Drugs Advisory Committee would be held on November 16 and 17, 1998. On page 58054, beginning in the second column, the *Date and Time*, *Agenda*, and *Procedure* portions of this meeting are amended and the *Closed Committee Deliberations* portion is removed to read as follows:

Date and Time: The meeting will be held on November 16, 1998, 8:30 a.m. to 5:30 p.m.

Agenda: On November 16, 1998, the committee will discuss: (1) New drug application (NDA) 20–886 Panretin® (alitretinoin) Gel 0.1%, Ligand Pharmaceuticals, Inc., indicated for the first-line topical treatment of cutaneous lesions in patients with acquired immune deficiency syndrome (AIDS)-related Kaposi's sarcoma; and (2) NDA 21–041 DepoCyt™ (cytarabine liposome injection), DepoTech Corp., indicated for the intrathecal treatment of lymphomatous meningitis.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 9, 1998. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9 a.m., and 1:45 p.m. and 2 p.m. on November 16, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 9, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, an open public session will be conducted for interested persons who have submitted their request to speak by November 9, 1998, to address issues specific to the submission or topic before the committee.

Dated: November 5, 1998

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30453 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0535]

Agency Information Collection Activities; Announcement of OMB Approval; Protection of Human Subjects; Recordkeeping Requirements for Institutional Review Boards (IRB's)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Protection of Human Subjects; Recordkeeping Requirements for Institutional Review Boards (IRB's)" has been approved by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1998 (63 FR 41577), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0130. The approval expires on October 31, 2001.

Dated: November 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30454 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0268]

Agency Information Collection Activities; Announcement of OMB Approval; Patent Term Restoration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Patent Term Restoration" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 4, 1998 (63 FR 41576), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0233. The approval expires on October 31, 2001.

Dated: November 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30456 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0549]

Guidance for Industry on Advisory Committees: Implementing Section 120 of the Food and Drug Administration Modernization Act of 1997; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 2, 1998 (63 FR 58745). The document announced the availability of a guidance for industry entitled "Advisory Committees: Implementing Section 120 of the Food and Drug Administration Modernization Act of 1997." The document published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Marcelle M. Stenbakken, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

In FR Doc. 98–29186, appearing on page 58745 in the **Federal Register** of Monday, November 2, 1998, the following correction is made:

On page 58746, in the second column, in the first paragraph, in line two, "January 4, 1999" is corrected to read "February 1, 1999".

Dated: November 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30455 Filed 11–13–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4369–N–11]

Notice of Proposed Information Collection for Public Comment Consolidated Planning

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of proposed information collection for public comments.

SUMMARY: The proposed information collection requirements for Consolidated Planning for Community Planning and Development (CPD) programs described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 15, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Sheila E. Jones, Department of Housing and Urban Development, 451 7th Street, SW, Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sal Sclafani, Acting Director, Policy Division 202–708–0614, ex. 4364.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended). As required under 5 CFR 1320.8(d)(1), HUD and OMB are seeking comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection for information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information submission of responses.

Title of Proposal: Consolidated Plan.

Description of the Need for the Information and Proposed Uses: The

information is needed to provide HUD with preliminary assessment as to the statutory and regulatory eligibility of proposed grantee projects. A secondary need is informing citizens of intended uses for program funds.

Agency Form Numbers (if applicable): The Department's collection of this information is in compliance with statutory provisions of the Cranston-Gonzalez National Affordable Housing Act of 1990 that requires participating jurisdictions submit a Comprehensive Housing Affordability Strategy (Section 216(5)), the 1974 Housing and Community Development Act, as amended, that requires states and localities to submit applications for these formula grant programs.

Members of the Affected Public: State and local governments participating in the Community Development Block Grant Program (CDBG), the HOME Investment Partnerships (HOME) program, the Emergency Shelter Grants (ESG) program, or the Housing Opportunities for Persons with AIDS/HIV (HOPWA) program.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response and hours of response: Since the original approval of the Consolidated Planning paperwork reduction estimate in 1995 (OMB Control Number 2506–0117), additional localities have qualified for assistance under the Community Development Block Grant (CDBG) program, thus increasing the overall burden calculation. Additionally, this submission includes paperwork estimates associated with narrative information required by the Consolidated Annual Performance and Evaluation Report. Reporting on annual performance was not included in the original Consolidated Plan paperwork estimate that was submitted to OMB. There have been several minor regulatory changes made to existing CDBG regulations and those for the HOME Investment Partnerships (HOME) program which have resulted in a slight increase in overall burden hours calculations. Each of these regulatory changes have been submitted for comment in the National Register and to OMB independently.

The revised paperwork estimates are as follows:

Task	Number of respondents	Frequency of response	Total U.S. burden hours
Consolidated Plan:			
Localities	1,000	1	332,025
States	50	1	48,900
Performance Report:			
Localities	1,000	1	150,000
States	50	1	12,000
Abbreviated Strategy	.....	.....	7,000
Total	.....	.....	549,925

Status of the proposed information collection: Reinstatement, with minor changes of a previously approved collection for which approval is near expiration and the request for OMB approval's for three years. The current OMB approval expires December 31, 1998.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–30482 Filed 11–13–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4380–N–05]

Notice of Submission of Proposed Information Collection: Comment Request

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: January 15, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and must be received within sixty (60) days from the date of this Notice. Comments should be sent to: Ms. Shelia Jones, Reports Liaison Officer, Dept. of Housing and Urban Development, 451 7th Street, SW., Room 7230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, Office of Block Grant Assistance; (202) 708–1322, ext. 4378 (this is not a toll-free number). Copies of the proposed forms and other available documents may be obtained from Mrs. Aidara.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB an information collection package with respect to a Notice of Funding Availability (NOFA) for the HUD Colonias Initiative. A request for emergency processing, essential to secure the funding appropriated October 27, 1997, was approved on July 29, 1998.

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65, approved October 27, 1997) (FY 1998 HUD Appropriations Act) allocated $25,000,000 to test comprehensive approaches to developing a job base through economic development, developing affordable low- and moderate-income rental and homeownership housing, and increasing the investment of both private and nonprofit capital in rural and tribal areas of the U.S. Of that amount, $5 million has been targeted for the HUD Colonias NOFA to address housing and other development needs of colonia residents in the four border states where colonias are found (California, Arizona, New Mexico, and Texas). Of the $5 million, $1 million may be provided to

one or more private or nonprofit intermediary organization(s) that would provide capacity-building loans, grants, or technical assistance to local nonprofit organizations serving colonia residents. The $4 million may be used by organizations serving colonias to provide decent, safe, sanitary, and accessible affordable housing as well as to address related development needs. Examples of likely activities are: new housing construction, self-help construction training, homeownership assistance, installation of water wells or septic systems, refinancing of debt to convert contracts-for-deed, surveying or replatting of existing subdivisions, and other related activities to support housing development.

Eligible applicants are organizations (for profit and non-profit) providing assistance to and for residents of colonias in any of the four colonia States.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35):

Title of Proposal: NOFA: HUD Colonias Initiative.

OMB Control Number, if applicable: 2506–0167.

Description of the need for the information and proposed use: The information collection is essential so that HUD staff may determine the eligibility, qualifications and capability of applicants to carry out the HUD Colonias Initiative activities. HUD will review the information provided by the applicants against the selection criteria contained in the NOFA in order to rate and rank the applications and select the best and most qualified applications for funding. The selection criteria are:

(1) Capacity of the Applicant and Relevant Organizational Staff;

(2) Need/Extent of the Problem;

(3) Soundness of Approach; and

(4) Financial Feasibility/Leverage Resources.

Agency form numbers, if applicable: SF–424 (including a maximum 25 page application in response to the Factors for Award)

Members of affected public: Eligible applicants are organizations (for profit and nonprofit) providing assistance to and for residents of colonias in any of the four colonia States.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of applicants is 25, with approximately 8 recipients. The proposed frequency of the response to the collection of information is one-time; the application need be submitted only one time. Preparation time of 80 hours per application is estimated for a total of 2000 hours. Annual recordkeeping (including electronic payments) is estimated at 2016 hours for 8 grant recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–30481 Filed 11–13–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4340–FA–06]

Announcement of Funding Awards for the Historically Black Colleges and Universities Program Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Historically Black Colleges and Universities (HBCUs) Program. This announcement contains the names and addresses of the awardees and the amount of the awards made available by HUD to provide assistance to the HBCUs.

FOR FURTHER INFORMATION CONTACT: Delores Pruden, Historically Black Colleges and Universities Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th St., SW, Washington, DC 20410; telephone (202) 708–1590 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service toll-free at 1–800–877–8339. Information may also be obtained from a HUD field office, see Appendix A for names, addresses and telephone numbers, or for general information, applicants can call Community Connections at 1–800–998–9999.

SUPPLEMENTARY INFORMATION: This program is authorized under section 107(b)(3) of the Housing and Community Development Act of 1974 (the 1974 Act) (42 U.S.C. 5307(b)(3)), which was added by section 105 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235). The program is governed by regulations contained in 24 CFR 570.400 and 570.404, and in 24 CFR part 570, subparts A, C, J, K, and O.

This notice announces FY 1998 funding of $6.5 million to HBCUs to be used to stimulate economic and community development activities in the HBCUs' locality. The FY 1998 grantees announced in this Notice were selected for funding consistent with the provisions in the NOFA published in the **Federal Register** on March 31, 1998 (63 FR 15527).

The Catalog of Federal Domestic Assistance number for this program is 14.237.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards in Appendix B.

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

Appendix A—Community Planning and Development (CPD) Directors With Historically Black Colleges and Universities Located Within their Jurisdiction

Zita Blankenship, Acting, Beacon Ridge Tower, 600 Beacon Parkway West, Suite 300, Birmingham, AL 35209–3144, 205–290–7630

Bill M. Parsley, TCBY Tower, 425 West Capitol Avenue, Suite 900, Little Rock, AR 72201–3488, 501–324–6375

John Perry, Richard B. Russell Federal Building, 75 Spring Street SW, Atlanta, GA 30303–3388, 404–331–5139

Ben Cook, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, 502–582–6142
Gregory Hamilton, Hale Boggs Federal Building, 501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, 504–589–7212
Joseph O'Connor, City Crescent Building, 10 South Howard Street, 5th Floor, Baltimore, MD 21201–2505, 410–962–2520
Jeanette Harris, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, MI 48226–2592, 313–226–4343
Frank Mason, Acting, Doctor A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, MS 39269–1016, 601–965–4765
Ann Wiedl, Robert A. Young Federal Building, 1222 Spruce Street, Third Floor, St. Louis, MO 631286, 314–539–6524
Lana Vacha, 200 North High Street, Columbus, OH 43215–2499, 614–469–6743
David H. Long, 500 West Main Street, Suite 400, Oklahoma City, OK 73102, 405–553–7571
Joyce Gaskins, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107–3380, 215–656–0624
Louis E. Bradley, Strom Thurmond Federal Building, 1835 Assembly Street Columbia, SC 29201–2480, 803–765–5564
Virginia E. Peck, John J. Duncan Federal Building, 710 Locust Street, Third Floor, Knoxville, TN 37902–2526, 423–545–4391
Katie Worsham, 1600 Throckmorton Street, PO Box 2905, Fort Worth, TX 76113–2905, 817–885–5483
John T. Maldonado, Washington Square, 800 Dolorosa Street, San Antonio, TX 78207–4563, 210–475–6821
Joseph K. Aversano, The 3600 Centre, 3600 West Broad Street, Richmond, VA 23230–4920, 804–278–4539
Ronald J. Herbert, 820 First Street NE, Suite 450, Washington, DC 20002–4205, 202–275–0994
Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, 910–547–4005
Jose Cintron, Acting, Gables One Tower, 1320 South Dixie Highway, Coral Gables, FL 33146–2926, 305–662–4570
Carmen R. Caberra, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, PR 00918–1804, 787–766–5576
James N. Nichol, Southern Bell Tower, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, 904–232–3587
Lynn B. Daniels, 339 Sixth Avenue, Sixth Floor, Pittsburgh, PA 15222–2515, 412–644–2999

Appendix B—1998 Funding Awards for Historically Black Colleges and Universities

Alabama

1. Dr. Victor B. Ficker, President, Gadsden State Community College, Valley Street Campus, PO Box 227, Gadsden, AL 35902–0227, Phone: 256–549–8221, FAX: 256–549–8444, Grant Amount: $300,000

Arkansas

2. Dr. Trudie Kibbie Reed, President, Philander Smith College, 812 West 13th Street, Little Rock, AR 72202, Phone: 501–370–5275, FAX: 501–370–5278, Grant Amount: $275,129
3. Dr. Lawrence A. Davis, Jr., Chancellor, University of Arkansas @ Pine Bluff, 1200 North University Drive, PO Box 4008, Pine Bluff, AR 71601, Phone: 501–543–8471, FAX: 501–543–8003, Grant Amount: $365,898

District of Columbia

4. Dr. H. Patrick Swygert, President, Howard University, 2400 6th Street, NW., Washington, DC 20059, Phone: 202–806–2500, FAX: 202–806–5934, hp__swygert@capstone.howard.edu, Grant Amount: $365,898

Georgia

5. Dr. Portia Holmes Shields, President, Albany State University, 504 College Drive, Albany, GA 31705, Phone: 912–430–4604, FAX: 912–430–3836, e-mail: pshields@fld94.alsnet.peachnet.edu, Grant Amount: $365,897
6. Dr. Robert M. Franklin, Jr., President, Interdenominational Theological Center, 671 Beckwith Street, SW., Atlanta, GA 30314, Phone: 404–527–7702, FAX: 404–527–0901, Grant Amount: $330,000
7. Dr. Carlton E. Brown, President, Savannah State University, PO Box 20449, Savannah, GA 31404, Phone: 912–356–2240, FAX: 912–356–2998, e-mail: wolfej@tigerpaw.ssc.peachnet.edu, Grant Amount: $361,943

Louisiana

8. Dr. Norman C. Francis, President, Xavier University of New Orleans, 7325 Palmetto Street, New Orleans, LA 70125, Phone: 504–483–7541, FAX: 504–485–7904, e-mail: nfrancis@xula.edu, Grant Amount: $365,898

Mississippi

9. Dr. Vivian Presley, Coahoma Community College, 3240 Friars Point Road, Clarksdale, MS 38614, Phone: 601–627–2571, FAX: 601–627–9451, Grant Amount: $300,000
10. Dr. James E. Lyons, Sr., President, Jackson State University, PO Box 17390, 1400 J.R. Lynch Street, Jackson, MS 39217, Phone: 601–968–2323, Fax: 601–968–2948, e-mail: jelyons@ccaix.jsums.edu, Grant Amount: $365,897

North Carolina

11. Dr. Gloria R. Scott, President, Bennett College, 900 E. Washington Street, Greensboro, NC 27401, Phone: 336–370–8626, Fax: 336–272–7143, e-mail: gscott@bennett1.bennett.edu, Grant Amount: $365,897
12. Dr. Mickey L. Burnim, Chancellor, Elizabeth City State University, PO Box 790, Elizabeth City, NC 27909, Phone: 919–335–3230, Fax: 919–335–3731, e-mail: burnimml@alpha.ecsu.edu, Grant Amount: $365,897
13. Dr. Willis B. McLeod, Chancellor, Fayetteville State University, 1200 Murchinson Road, Fayetteville, NC 28301, Phone: 910–486–1141, Fax: 910–486–4732, Grant Amount: $365,897
14. Dr. Edward B. Fort, Chancellor, North Carolina A&T State University, 1601 E. Market Street, Greensboro, NC 27411, Phone: 336–334–7940, Fax: 336–334–7082, e-mail: fort@jade.ncat.edu, Grant Amount: $365,897

South Carolina

15. Dr. David Swinton, President, Benedict College, 600 Harden Street, Columbia, SC 29204, Phone: 803–254–7253, Fax: 803–253–5060, Grant Amount: $365,898

Texas

16. Dr. Joseph T. McMillan, Jr., President, Huston-Tillotson College, 900 Chicon Street, Austin, TX 78702, Phone: 512–505–3003, Fax: 512–505–3190, Grant Amount: $278,057
17. Dr. Lee Monroe, President, Paul Quinn College, 3837 Simpson Stuart Road, Dallas, TX 75241, Phone: 214–302–3515, Fax: 214–302–3559, Grant Amount: $250,000
18. Dr. James M. Douglas, President, Texas Southern University, 3100 Cleburne Avenue, Houston, TX 77004, Phone: 713–313–7034, Fax: 713–313–1092, e-mail: preaplwillia@china.tsu.edu, Grant Amount: $365,897

Virginia

19. Dr. Eddie N. Moore, Jr., President, Virginia State University, PO Box 9001, Petersburg, VA 23806, Phone: 804–524–5070, Fax: 804–524–6506, Grant Amount: $380,000

[FR Doc. 98–30484 Filed 11–13–98; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4380–FA–04]

HUD Colonias Initiative; Announcement of Funding Awards—Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1998 HUD Colonias Initiative (HCI). The notice contains the names of award winners and the amounts of the awards.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7182, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1322. The TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.) Information on the HUD Colonias Initiative, community

development and consolidated planning, and other HUD programs may also be obtained from the Community Connections information center at 1–800–998–9999 (voice) or 1–800–483–2209 (TTY); by email at amcom@aspensys.com; or by internet at gopher://amcom.aspensys.com. The HUD Home Page address on the World Wide Web is http://www.hud.gov.

SUPPLEMENTARY INFORMATION. The purpose of the competition was to award grants totalling $5 million to private organizations to administer projects to address the housing needs of colonia residents in rural areas of California, Arizona, New Mexico, and Texas. Of that amount, $4 million was targeted to private organizations already serving colonias residents to provide direct housing assistance in each of the four states, with at least one grantee to be selected in each state. The remaining $1 million was targeted to an intermediary organization that would be able to provide capacity-building loans, grants, or technical assistance to local nonprofit organizations serving colonia residents. This capacity-building grantee would have demonstrated experience in providing technical assistance in housing development to colonias or areas with similar economic and social conditions that exist in colonias and the capacity to administer a program to increase the capacity of colonia-based organizations to address housing needs.

The assistance made available in this announcement is authorized by Title II of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Act, 1998 (Pub. L. 105–65, 111 Stat. 1357, approved October 27, 1997) (FY 1998 HUD Appropriations Act). The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on July 15, 1998 (63 FR 38252) and an amendment published on August 7, 1998 (63 FR 42550). Applications were rated and selected for funding on the basis of selection criteria contained in those Notices.

There was no Catalog of Federal Domestic Assistance number for this program.

A total of $5,000,000 was awarded to 7 applicants. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and amounts of the awards below.

Housing Assistance Grant Awardees

SouthEastern Arizona Governments Organization, Bisbee, Arizona, $460,000
Coachella Valley Housing Coalition, Indio, California, $800,000
Tierra del Sol, Las Cruces, New Mexico, $640,000
Proyecto Azteca, San Juan, Texas, $791,000
Community Development Corporation of Brownsville, Brownsville, Texas, $800,000
Laredo-Webb County Community, Action Agency, Laredo, Texas, $509,000

Capacity Building Grant Awardee

Housing Assistance Council, Washington, D.C., $1,000,000

Dated: November 5, 1998.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 98–30483 Filed 11–13–98; 8:45 am]
BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–010; COC–61627]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 75 acres of National Forest System land for 50 years to protect the Mt. Emmons Bog natural resource and scientific research area. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before February 16, 1999.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 28, 1998, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch 2);

Gunnison National Forest

Sixth Principal Meridian

T. 14 S, R. 86 W.,

Sec. 6, E½ of lot 10 excluding Mineral Survey (MS) 6523, E½NW¼ of lot 10, NE¼SW¼ of lot 10, W½ of lot 11 excluding MS 6523 and 20749, SE¼NW¼SE¼, E½NE¼NW¼SE¼, W½NE¼SE¼ excluding MS 20749, N½SE¼NE¼SE¼, S½NE¼NE¼SE¼, and W½NW¼NE¼SE¼ excluding MS 20749.

The area described contains approximately 75.6 acres of National Forest System land in Gunnison County. This application is subject to valid existing rights.

The purpose of this withdrawal is to protect an unique wetland fen which is a natural biogeochemical laboratory that is vital to scientific research in the global change processes.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, may present their views in writing to the Colorado State Director. If it is determined that a public meeting should be held, the public meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2). Notice of the meeting would be published in the **Federal Register.**

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 98–30526 Filed 11–13–98; 8:45 am]
BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Capitol Reef National Park, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of final environmental impact statement and general management plan for Capitol Reef National Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a final Environmental Impact Statement and General Management Plan (FEIS/

GMP) for Capitol Reef National Park, Utah.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Capitol Reef National Park, Telephone: (435) 425–3791 x101.

Planning and Environmental Quality, Intermountain Support Office—Denver, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80228, Telephone: (303) 969–2851.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes four alternatives to future direction of park resources management, to adaptive use of the Sleeping Rainbow Ranch, to interpretation of the Fruita Rural Historic District, and to amount of visitor services. Alternative A (preferred) is designed to protect and preserve exceptional resources, the quality of visitor experience, and the wilderness characteristics of certain portions of the park. Alternative B focuses on removing many existing developments to restore and enhance natural and historic resources and the wilderness qualities of the park. Alternative C continues actions identified in the 1982 General Management Plan which emphasizes visitor services and facilities, including development in some backcountry areas. Alternative D, the No Action Plan, would maintain visitor services and resource protection at current limited levels throughout the life of the plan.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on vegetation and wildlife, endangered species, scenic values, archeological and historic resources, visitor services, and economy of adjacent communities.

FOR FURTHER INFORMATION CONTACT: Superintendent, Capitol Reef National Park, at the above address and telephone number.

Dated: October 27, 1998.

John A. King,

Director, Intermountain Region, National Park Service.

[FR Doc. 98–30488 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Draft Environmental Assessment (EA)

AGENCY: National Park Service, Interior.

ACTION: Notice of release of draft environmental assessment.

SUMMARY: This notice announces the release of a draft environmental assessment (EA) on a proposal to repair a Portland Borough Authority waterline at Slateford Farm within the Delaware Water Gap National Recreation Area.

EA Comment Period: Comments on or before December 11, 1998.

Copies available at: Website: www.nps.gov/dewa

Park Headquarters, River Road, Bushkill, PA 18324
Warren County Library, Belvidere, NJ 07823
Kemp Library, East Stroudsburg University, E Stroudsburg PA 18301
State Library of PA, PO Box 1601, Harrisburg, PA 17105
Easton Area Public Library, 6th and Church Street, Easton, PA 18042
Sussex County Library, 125 Morris Turnpike, Newton, NJ 07860
New Jersey State Library, 185 West State Street CN 520, Trenton, NJ 08625
Eastern Monroe Public Library, 1002 North Ninth Street, Stroudsburg, PA 18360
Pike County Library, 201 Broad Street, Milford, PA 18337

This draft environmental assessment, prepared by the National Park Service, deals with the environmental consequences of allowing Portland Borough Authority (PBA) to repair a section of underground waterline which has become exposed by a storm water discharge stream. PBA is requesting permission to access the site, stabilize the eroded channel and re-cover the waterline. Once the line is covered, the channel must be stabilized upstream to where bedrock is exposed; otherwise, downcutting will continue and ultimately expose the line again.

SUPPLEMENTARY INFORMATION: PBA operates and maintains a water system that passes through DEWA properties at the southern end of the park in the area of Slateford Farm. The water system services the Borough of Portland. There is the potential for significant damage to this exposed waterline that may result from exposure to the weather, impact damage from flood debris or crushing.

The EA is available for public comment. Any member of the public may file a written comment. Comments should be addressed to the Superintendent, Delaware Water Gap National Recreation Area, River Road, Bushkill, PA 18324.

FOR FURTHER INFORMATION CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, 717–588–2418.

Dated: November 3, 1998.

William G. Laitner,

Superintendent.

Congressional Listing for Delaware Water Gap NRA

Honorable Frank Lautenburg, U.S. Senate, SH–506 Hart Senate Office Building, Washington, DC 20510–3002
Honorable Robert G. Torricelli, U.S. Senate, Washington, DC 20510–3001
Honorable Richard Santorum, U.S. Senate, SR 120 Senate Russell Office Bldg., Washington, DC 20510
Honorable Arlen Specter, U.S. Senate, SH–530 Hart Senate Office Bldg., Washington, DC 20510–3802
Honorable Paul McHale, U.S. House of Representatives, 511 Cannon House Office Bldg., Washington, DC 20515–3815
Honorable Joseph McDade, U.S. House of Representatives, 2370 Rayburn House Office Bldg., Washington, DC 20515–3810
Honorable Margaret Roukema, U.S. House of Representatives, 2244 Rayburn House Office Bldg., Washington, DC 20515–3005
Honorable Tom Ridge, State Capitol, Harrisburg, PA 17120
Honorable Christine Whitman, State House, Trenton, NJ 08625
Honorable Joe Battisto, State Representative, 206 South Capitol Building, Harrisburg, PA 17120–0028

[FR Doc. 98–30489 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Oil and Gas Management Plan/ Environmental Impact Statement, Big Thicket National Preserve, Texas

AGENCY: National Park Service, United States Department of the Interior.

ACTION: Notice of Intent to Prepare and Oil and Gas Management Plan/ Environmental Impact Statement for Big Thicket National Preserve.

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Oil and Gas Management Plan/Environmental Impact Statement for Big Thicket National Preserve in Hardin, Jefferson, Liberty, Orange, Tyler, Jasper, and Polk Counties, Texas, and is initiating the scoping process for this document. This statement will be approved by John E. Cook, Intermoutain Regional Director, National Park Service.

The Oil and Gas Management Plan/ Environmental Impact Statement is needed to

address the issues of how the National Park Service can protect its resources and values, ensure public safety, and minimize conflicts with visitors and park management while recognizing the rights of private mineral owners to develop their oil and gas resources. In the Oil and Gas Management Plan/ Environmental Impact Statement and its accompanying public involvement process, the National Park Service will formulate and evaluate the environmental impacts of a reasonable range of alternatives that will provide protection for resources and values at Big Thicket National Preserve while allowing for exploration and development of the private mineral estate. Distinct management issues include identifying which park resources and values are most sensitive to oil and gas exploration and development disturbance, defining impact mitigation requirements to protect such resources and values, establishing reasonable performance standards and providing pertinent information to oil and gas owners and operators that will facilitate operations planning.

PUBLIC INFORMATION AND COMMENTS: A public scoping newsletter will be mailed in November 1998, to invite public participation in the scoping process and to describe the planning process. The general public and affected or interested parties are encouraged to provide comments and suggestions, and to identify issues and other reasonable alternatives that should be addressed in the Oil and Gas Management Plan/ Environmental Impact Statement.

An Open House meeting will be held on December 3, 1998, at the Beaumont Hilton in Beaumont, Texas. The public and affected or interested parties may request additional meetings in other Texas cities. These requests should be made no later than January 17, 1999.

FOR FURTHER INFORMATION CONTACT: If you would like to be placed on the mailing list or request a meeting in your city, please contact Linda Dansby, EIS Team Leader, P.O. Box 728, Santa Fe, New Mexico 87504, 505/988–6095 or Superintendent, Big Thicket National Preserve, at 409/839–2691, ext. 223.

Dated: November 6, 1998.

Richard R. Peterson,

Superintendent, Big Thicket National Preserve.

[FR Doc. 98–30487 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–395]

Effects on U.S. Trade of the European Union's Association Agreements With Selected Central and Eastern European Partners

AGENCY: United States International Trade Commission.

ACTION: Cancellation of public hearing.

SUMMARY: November 9, 1998, the Commission received notice that the only scheduled witnesses for the hearing scheduled for November 18, 1998, in this matter were withdrawing their request to appear. Therefore, the public hearing in connection with this investigation, scheduled to be held beginning at 9:30 a.m. on November 18, 1998, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, D.C., is canceled. Notice of institution of this investigation and the scheduling of the hearing was published in the **Federal Register** of June 11, 1998 (63 FR 32030). To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received not later than COB November 25, 1998. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, S.W., Washington, D.C.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Manifold, Office of Economics (202–205–3271 or e-mail to dmanifold@usitc.gov). The media should contact Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

List of Subjects

Eastern Europe, Association Agreements, international trade.

Issued: November 10, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30571 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–162 (Review)]

Melamine From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on melamine from Japan.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) should proceed in the subject five-year review.[1] The Commission ruled that interested party responses to the notice of institution (63 FR 41282, August 3, 1998) are adequate.[2] Accordingly, the Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on melamine from Japan would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354) or Robert Eninger (202–205–3194), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

[1] Commissioner Crawford dissenting.

[2] A record of the Commissioners' votes and statements by Chairman Bragg and Commissioner Crawford are available from the Office of the Secretary and at the Commission's web site.

accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30461 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Review)]

Polychloroprene Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on polychloroprene rubber from Japan.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) should proceed in the subject five-year review. The Commission ruled that interested party responses to the notice of institution (63 FR 41284, August 3, 1998) are adequate.[1] Accordingly, the Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501) or Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30460 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–114 (Review)]

Stainless Steel Plate From Sweden

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on stainless steel plate from Sweden.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) should proceed in the subject five-year review. The Commission ruled that interested party responses to the notice of institution (63 F.R. 41288, August 3, 1998) are adequate.[1] Accordingly, the Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on stainless steel plate from Sweden would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela Luskin (202–205–3189) or Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30462 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–115 (Review)]

Synthetic Methionine From Japan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission decision to conduct a full five-year review concerning the antidumping duty order on synthetic methionine from Japan.

SUMMARY: On November 5, 1998, the Commission determined that a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) should proceed in the subject five-year review. The Commission ruled that interested party responses to the notice of institution (63 F.R.41290, August 3, 1998) are adequate.[1] Accordingly, the

[1] A record of the Commissioners' votes and a statement by Chairman Bragg are available from the Office of the Secretary and at the Commission's web site.

[1] A record of the Commissioners' votes and statements by Chairman Bragg and Commissioners Crawford and Koplan are available from the Office of the Secretary and at the Commission's web site.

[1] A record of the Commissioners' votes and a statement by Chairman Bragg are available from the

Commission hereby gives notice of a full review to determine whether revocation of the antidumping duty order on synthetic methionine from Japan would be likely to lead to continuation or recurrence of material injury. A schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Elizabeth Sweet (202–205–3455) or George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30463 Filed 11–13–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday and Wednesday, December 1–2, 1998, at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210. December 1 will be an all day meeting and December 2 will be half day, both days beginning at 9:00 a.m.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting.
- Workforce Investment Act of 1998.
- Other Matters of Interest of the Committee.
- Veterans Employment Opportunities Act of 1998.

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–219–9116 no later than November 23, 1998.

Signed at Washington, D.C. this November 9, 1998.

Espiridion (Al) Borrego,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 98–30569 Filed 11–13–98; 8:45 am]

BILLING CODE 4510–79–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 98–12]

Promotion of Distance Education Through Digital Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of request for information.

SUMMARY: As required by section 403 of the Digital Millenium Copyright Act, enacted October 28, 1998, the Copyright Office is initiating its study of the promotion of distance education through digital technologies, for the purpose of making recommendations to the Congress. Presently, the Copyright Office is establishing parameters for its study of the issues. Through this preliminary notice, the Office seeks to identify all interested parties and determine what matters those parties deem relevant and important. The Office anticipates the possibility of consultations and public meetings, as well as the submission of formal statements. At this time, the Copyright Office is soliciting only the identification of any and all potentially interested parties and an identification of the issues with which they may be concerned.

DATE: Written submissions are due by December 7, 1998.

ADDRESSES: If sent by mail, an original and five copies of written submissions should be addressed to Shira Perlmutter, Associate Register for Policy and International Affairs, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and five copies of written submissions should be brought to the Office of Policy and International Affairs, Office of the Register, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: Shira Perlmutter, Associate Register for Policy and International Affairs, or Sayuri Rajapakse, Attorney-Advisor, Office of Policy and International Affairs. Telephone (202) 707–8350. Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

In April 1998, Senator Orrin G. Hatch, Chairman of the Senate Committee on the Judiciary, with Senators Patrick J. Leahy and John Ashcroft, sent a letter to the Register of Copyrights requesting the Copyright Office to facilitate a series of discussions to be held on the subject of an exemption for digital distance education to be included in the Digital Millenium Copyright Act of 1998 ("DMCA"). Senators Hatch, Leahy and Ashcroft further requested the Copyright Office to report its findings to the Committee, and to develop policy options and legislative recommendations.

On April 27–28, 1998, the Register of Copyrights and her staff held intensive discussions with certain interested parties, including representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives. Through the process of negotiation it was possible to identify some areas of potential agreement among the parties. It also became clear,

Office of the Secretary and at the Commission's web site.

however, that many complex and interrelated issues were involved. All of these issues could not be given appropriate consideration in the time available. On April 29, 1998, at the conclusion of the discussions, the Copyright Office submitted its recommendations to Senators Hatch, Leahy and Ashcroft in the form of statutory language for a narrow amendment to 17 U.S.C. 110(2), and a proposal for a study of the issues involved in interactive digital distance education. Rather than amending section 110(2) in the DMCA, the Senate mandated a broad study of the overall subject by the Copyright Office. Such a study was also incorporated into the version of the bill passed by the House.

On October 28, 1998, H.R. 2281, the Digital Millenium Copyright Act, was enacted into law. Section 403 requires that the Copyright Office consult with representatives of copyright owners, nonprofit educational institutions, and nonprofit libraries and archives, and thereafter to submit to Congress recommendations on how to promote distance education through digital technologies, including interactive digital networks, while maintaining an appropriate balance between the rights of copyright owners and the interests of users. Such recommendations may include legislative changes.

The Register of Copyrights has been instructed to consider:

(1) The need for an exemption from exclusive rights of copyright owners for distance education through digital networks;

(2) The categories of works to be included under any distance education exemption;

(3) The extent of appropriate quantitiative limitations on the portions of work that may be used under any distance education exemption;

(4) The parties who should be entitled to the benefits of any distance education exemption;

(5) The parties who should be designated as eligible recipients of distance education materials under any distance education exemption;

(6) Whether and what types of technological measures can or should be employed to safeguard against unauthorized access to, and use or retention of, copyrighted materials as a condition of eligibility for any distance education exemption, including, in light of developing technological capabilities, the exemption set out in section 110(2) of title 17, United States Code;

(7) The extent to which the availability of licenses for the copyrighted works in distance education through interactive digital networks should be considered in assessing eligibility for any distance education exemption; and

(8) Such other issues relating to distance education through interactive digital networks that the Register considers appropriate.

Request for Information

The Copyright Office is initiating its study of the issues related to the promotion of distance education through digital technologies. In order to assist in planning and establishing paramenters for the study, the Office is hereby seeking identification of any potentially interested parties and the issues with which they may be concerned. After this preliminary information is gathered, the Office will determine what additional activities are helpful and appropriate. Such additional activities may include consultations and public meetings, as well as the submission of formal statements.

Written submissions will be accepted from all interested parties. While there is no prescribe format for these initial informational statements, any written submission should include the interested party's name, title, organization, mailing address, telephone number, facsimile number, and e-mail address, if available, and a list and short description of any issues that he or she considers relevant and important.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 98–30563 Filed 11–13–98; 8:45 am]

BILLING CODE 1410–30–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following extension of a currently approved collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until January 15, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Copies of the information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: To ensure that federal credit unions make safe and sound investments, the rule requires that they establish written investment policies and review them annually, document details of the individual investments monthly, ensure adequate broker/dealer selection criteria and record credit decisions regarding deposits in certain financial institutions.

OMB Number: 3133–0133.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: 12 CFR 703 Investment and Deposit Activities.

Respondents: 6,900.

Estimated No. of Respondents/Recordkeepers: 6,900.

Estimated Burden Hours Per Response: 42.8 hours.

Frequency of Response: Other.

Estimated Total Annual Burden Hours: 295,481.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on November 1, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30490 Filed 11–13–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date & time: December 14 and 15, 1998; 8:30 a.m.–5 p.m.

Place: Room 1120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact persons: Tatsuya Suda, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1949.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Networking Research Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30471 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Stellar Astronomy and Astrophysics Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 1 and 2 (2) and on December 8 and 9 (3). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 9:00 am to 5:00 pm each day.

Contact person: Dr. Terry Oswalt, Program Director, Stellar Astronomy and Astrophysics, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1825.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30470 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: December 16, 1998 8:00 PM–9:00 PM; December 17, 1998 8:00 AM–6:00 PM; December 18, 1998 8:00 AM–6:00 PM.

Place: Argonne National Laboratory, Advanced Photon Source, 9700 Cass Avenue, Chicago, IL 60439.

Type of Meeting: Closed.

Contact Person: Donald Burland, Executive Officer, Division of Chemistry, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1848.

Purpose of Meeting: To review the management and operations of the ChemMatCARS Facility.

Agenda: Review the cost, schedule, management and operations of the ChemMatCARS Facility.

Reason for Closing: The project being reviewed includes information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future funding. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30472 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Date & time: Wednesday, December 2, 1998 8:30 am–5 p.m. Thursday, December 3, 1998 8:30 am–5 p.m.

Place: Sycamore Hall, W. Alton Jones Campus, University of Rhode Island 401 Victory Highway, West Greenwich, RI.

Type of meeting: Part-Open—(see Agenda, below).

Contact person: Dr. Donald F. Heinrichs, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1580.

Purpose of meeting: To carry out Committee of Visitors (COV) review, and evaluate the existing capabilities and services, management structure and operations including possible recompetition of elements of the research vessel fleet required for research sponsored by the National Science Foundation.

Agenda:

Closed: December 3 8:30 am to 5 p.m.

To review the merit review processes covering funding decisions made during the immediately preceding three years concerning the Academic Fleet Review Program.

Open: December 2, 8:30 am to 5 p.m.

To discuss and review academic fleet use and use-trends, specialized capabilities, research program projects, and financial and management analyses of operations including potential cost savings approaches.

Reason for closing: During the closed session, the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30465 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: November 30–December 2, 1998.

Time: 5:00 p.m.–8:30 p.m., Monday, November 30; 8:30 a.m.–5:30 p.m., Tuesday, December 1; 8:30 a.m.–2:30 p.m., Wednesday, December 2, 1998.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of meeting: Open.

Contact person: Dr. Richard Greenfield, Director, Division of Atmospheric Sciences, National Science Foundation, Suite 775, 4201 Wilson Boulevard, Arlington, Virginia 22230, 703–306–1520.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

GEO Facilities Long-Range Planning
NSF/GEO Role in Information Technology
NSF/GEO Role in Environmental Research
NSF/GEO Role in SMET Workforce of the Future
Scientific Planning for the New Millenium (GEO Vision 2000)
COV Preparations/GPRA Considerations
EHR Program Evaluation Criteria

Note: A detailed agenda will be posted on the NSF Homepage approximately one week prior to the meeting on http://www.geo.nsf.gov/adgeo/advcomm/start.htm

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30466 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and Time: December 3–5, 1998, 8:30 a.m.–5 p.m.

Place: Room 1020 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd Douglas, Program Officer, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Research Experiences for Undergraduates (REU) program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30464 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and time: December 11, 1998, 8:30 a.m.–5 p.m.

Place: O'Hare Hilton, O'Hare International Airport, Chicago, Illinois.

Type of meeting: Closed.

Contact person: Lloyd Douglas, Program Officer, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate applications concerning the Mathematical Sciences Postdoctoral Research Fellowship Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30468 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Mathematical Sciences (1204).

Date and time: December 11, 1998, 8:30 a.m.–5 p.m.

Place: O'Hare Hilton, O'Hare International Airport, Chicago, Illinois.

Type of meeting: Closed.

Contact person: Dr. Lloyd Douglas, Program Officer, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate applications concerning the Mathematical Sciences Postdoctoral Research Fellowship Program as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personnal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30469 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Social Behavioral and Economic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Social, Behavioral, and Economic Sciences (1766).

Date and time: December 8, 1998; 9 a.m. to 5 p.m., December 9, 1998; 9 a.m. to 12 p.m.

Place: Room 730, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Open.

Contact person: Ann T. Lanier, Division of Science Resources Studies; Research and Development Statistics Program; 4201 Wilson Blvd., Suite 965; Arlington, VA 22230; Telephone (703) 306–1772, ext. 6937; Fax: (703) 306–0508; Internet: alanier@nsf.gov

Minutes: Minutes may be obtained from the contact person at the above address.

Purpose of meeting: To review and comment on issues affecting the Survey of Scientific and Engineering Research Facilities at Colleges and Universities.

Agenda: The advisory panel will use the first day to review the final draft of the 1998 S&E Research Facilities Report. The morning of the second day will be used to review and discuss the proposed follow-up survey to the 1998 Survey of Scientific and Engineering Research Facilities at Colleges and Universities; the 1999 Instructional Facilities Survey—Pilot Study; and how the three data collection efforts will be integrated into the 2000 Survey of Scientific and Engineering Research Facilities.

Dated: November 9, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–30467 Filed 11–13–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 72, Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste.

2. *Current OMB Approval Number:* 3150–0132.

3. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses and amendments may be submitted at any time. Applications for renewal of licenses would be required every 20 years for an Independent Spent Fuel Storage Installation (ISFSI) and every 40 years for a Monitored Retrievable Storage (MRS) facility.

4. *Who is required or asked to report:* Vendors of casks for the storage of spent fuel, licensees and applicants for a license to possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and the Department of Energy for licenses to receive, transfer, package and possess power reactor spent fuel, high-level waste, and other radioactive materials associated with spent fuel and high-level waste storage in an MRS.

5. *The number of annual responses:* 92.

6. *The number of hours needed annually to complete the requirement or request:* 21,529 (an average of approximately 167 hours per response for applications and reports, plus approximately 765 hours annually per recordkeeper).

7. *Abstract:* 10 CFR Part 72 establishes requirements, procedures, and criteria for the issuance of licenses to receive, transfer, and possess power reactor spent fuel and other radioactive materials associated with spent fuel storage in an ISFSI, and requirements for the issuance of licenses to the Department of Energy to receive, transfer, package, and possess power reactor spent fuel and high-level radioactive waste, and other associated radioactive materials, in an MRS. The information in the applications, reports and records is used by NRC to make licensing and other regulatory determinations. The revised estimate of burden reflects an increase primarily because of the addition of requirements for decommissioning funding requirements, financial assurance provisions, documentation additions for decommissioning and license termination, and notification of incidents.

Submit, by January, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 6th day of November 1998.

For the U. S. Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30559 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Company, et al. (South Texas Project, Units 1 and 2); Order Approving Application Regarding Proposed Corporate Merger of Central and South West Corporation and American Electric Power Company, Inc.

I

Houston Lighting & Power Company; City Public Service Board of San Antonio; Central Power and Light Company (CPL); City of Austin, Texas; and STP Nuclear Operating Company are holders of Facility Operating Licenses Nos. NPF–76 and NPF–80, issued on March 22, 1988, and March 28, 1989, respectively. Facility Operating Licenses Nos. NPF–76 and NPF–80 authorize the holders to possess the South Texas Project, Units 1 and 2 (STP), and authorize STP Nuclear Operating Company to use and operate STP in accordance with the procedures and limitations set forth in the operating licenses. The Nuclear Regulatory Commission (NRC) issued Licenses Nos. NPF–76 and NPF–80 on March 22, 1988, and March 28, 1989, respectively, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). The facility is located in Matagorda County, Texas.

II

Under cover of a letter dated June 19, 1998, CPL submitted an application dated June 16, 1998, for consent under 10 CFR 50.80 to allow the indirect transfer of CPL's interest in STP that would occur in connection with a proposed merger of Central and South West Corporation (CSW, the parent holding company of CPL) and American Electric Power, Inc. (AEP). Under the proposed merger, CSW would become a wholly-owned subsidiary of AEP, with CPL remaining a wholly-owned subsidiary of CSW. Houston Lighting & Power Company; City Public Service Board of San Antonio; City of Austin, Texas; and STP Nuclear Operating Company are not involved in the merger. The application was supplemented by a letter dated June 23, 1998, and enclosures thereto.

CPL and the other current licensees would continue to hold the licenses, and no direct transfer of the licenses would result from the merger. On August 5, 1998, a Notice of Consideration of Approval of Application Regarding Proposed Merger was published in the **Federal Register**

(63 FR 41876). An Environmental Assessment and Finding of No Significant Impact was published in the **Federal Register** on September 28, 1998 (63 FR 51629).

Under 10 CFR 50.80, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information contained in the application dated June 16, 1998, and enclosures to the letter dated June 23, 1998, the NRC staff has determined that the proposed merger will not affect the qualifications of CPL as holder of Facility Operating Licenses Nos. NPF–76 and NPF–80, and that the transfer of control of the licenses, to the extent effected by the proposed merger, is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth herein. These findings are supported by a safety evaluation dated November 5, 1998.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended; 42 U.S.C. §§ 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the Commission approves the application regarding the merger agreement between CSW and AEP subject to the following: (1) CPL shall provide the Director of the Office of Nuclear Reactor Regulation with a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from CPL to its proposed parents, or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent of CPL's consolidated net utility plant, as recorded on its books of account, and (2) should the merger not be completed by December 31, 1999, this Order shall become null and void, unless upon application and for good cause shown this date is extended.

This Order is effective upon issuance.

IV

By December 14, 1998, any person adversely affected by this Order may file a request for a hearing with respect to issuance of the Order. Any person requesting a hearing shall set forth with particularity how such person's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is to be held, the Commission will issue an order designating the time and place of such hearing.

The issue to be considered at any such hearing shall be whether this Order should be sustained.

Any request for a hearing must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, by the above date. Copies should also be sent to the Office of the General Counsel and to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to John O'Neill, Jr., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128, counsel for CPL.

For further details with respect to this action, see the application from CPL dated June 16, 1998, submitted under cover of a letter dated June 19, 1998, from Shaw, Pittman, Potts, and Trowbridge, counsel for CPL, supplemental letter dated June 23, 1998, and enclosures thereto, and the safety evaluation dated November 5, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Dated at Rockville, Maryland, this 5th day of November 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30558 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation, Oconee Nuclear Station, Units 1, 2, and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.46(b) to the Duke Energy Corporation (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would exempt the licensee from the provisions in 10 CFR 50.46(b), with respect to the emergency core cooling performance requirements during the performance of the proposed Keowee Emergency Power and Engineered Safeguards Functional (KEP/ESF) Test on Unit 3.

The emergency core cooling system (ECCS) is designed to assure that the consequences of the spectrum of loss of coolant accidents (LOCAs), coincident with a loss of offsite power (LOOP), are within the performance criteria specified in 10 CFR 50.46(b). As explained in the licensee's letter dated October 21, 1998, the planned test on Unit 3 could challenge these performance criteria in the extremely unlikely event that a LOCA and LOOP occurred coincident with the test. The licensee has chosen to address this issue with an exemption request. Therefore, pursuant to 10 CFR 50.12, the licensee applied for an exemption from 10 CFR 50.46.

The Need for the Proposed Action

The proposed action is required to exempt the licensee from the requirement to maintain an ECCS that is designed to conform to the criteria in 10 CFR 50.46(b) during the 10-second time interval when the test is actually being performed during the 24-hour test period. The action is needed to allow the test to be performed.

As stated in its September 17, 1998, letter, the licensee has planned a modification that would add voltage and frequency protection for Oconee loads when supplied from a Keowee hydro unit. The protection would separate Oconee loads from a Keowee unit if that unit's voltage or frequency becomes greater than 110 percent or less than 90 percent of rated value at any time after loading. The planned design would delay the loading of Oconee loads on the underground power path until the Keowee unit reaches greater than 90 percent voltage and frequency. The existing design allows early loading of the underground path Keowee unit at approximately 60 percent voltage. As a result of considering the frequency overshoot the Keowee units experience during an emergency start, and to resolve questions that arose concerning whether the preferred loading design for the emergency power system is 60 percent loading or 90 percent loading,

the Keowee Emergency Power and Engineered Safeguards Functional Test is planned.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that exemption from the requirements of 10 CFR 50.46(b) to allow the licensee to perform the Keowee Emergency Power and Engineered Safeguards Functional Test to increase the reliability of the emergency electrical power system is appropriate.

The planned test will be performed with Unit 3 at cold shutdown and its engineered safeguards (ES) loads on the Standby Bus. The other two Oconee units will be operating and should not be affected by the test. However, in the unlikely event that a real LOCA/LOOP were to occur on either of the operating units during the simulated LOCA/LOOP on Unit 3 (probability, according to the licensee, of approximately 2E–9), the Oconee emergency power system (EPS) for Oconee Units 1, 2, and 3 could be in a condition outside its design bases. The EPS may not be capable of handling the electrical loading of two instantaneous LOCA/LOOP events without some safety-related equipment being adversely affected. However, the EPS would be able to handle the electrical loading if the two events are offset in time by approximately 10 seconds to allow the first unit's load to reach a steady-state condition prior to starting of the second unit's emergency loads. Therefore, this 10-second window of vulnerability causes an infinitesimally small, but non-zero, increase in the probability of a malfunction of equipment important to safety and the potential consequences of a LOCA/LOOP event during the performance of the test.

The exemption will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impacts. Accordingly, the Commission concludes that there are no significant nonradiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action (the no-action alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of the Oconee Nuclear Station, Units 1, 2, and 3," dated March 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on November 4, 1998, the staff consulted with the South Carolina State official, Virgil R. Autry of the Division of Radioactive Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based on the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated October 21 and September 17, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Dated at Rockville, Maryland, this 9th of November 1998.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30560 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Incorporated, River Bend Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License No. NPF–47, issued to Entergy Operations, Incorporated [1] (the Licensee), the holder of Facility Operating License No. NPF–47, which authorizes operation of the River Bend Station, Unit 1 (RBS) (the facility) located approximately 2 miles east of the Mississippi River in West Feliciana, Parish, Louisiana, approximately 2.7 miles southeast of St. Francisville, Louisiana and approximately 18 miles northwest of the city limits of Baton Rouge, Louisiana.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in accordance with the licensee's amended application for exemption dated May 15, 1997, as supplemented August 12, 1998, which requests an exemption from the criticality accident monitoring requirements of 10 CFR 70.24(a) specifically for areas containing incore detectors (which are not in use) and unirradiated fuel while it is handled, used, or stored. 10 CFR 70.24 requires in each area in which special nuclear material is handled, used, or stored a monitoring system that will energize clear audible alarms if accidental criticality occurs. RBS does not currently maintain instrumentation which provides criticality accident monitoring; however, the licensee does maintain gamma-sensitive radiation detection instrumentation which will energize clearly audible alarm signals if accidental criticality occurs.

The Need for the Proposed Action

The purpose of 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. At a commercial nuclear power plant, the inadvertent criticality with which 10 CFR 70.24 is concerned could

[1] Entergy Operations, Incorporated is authorized to act as agent for Entergy Gulf States, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

occur during fuel handling operations. The special nuclear material that could be assembled into a critical mass at a commercial nuclear power plant is in the form of nuclear fuel; the quantity of other forms of special nuclear material that is stored onsite in any given location is small enough to preclude achieving a critical mass. Because the fuel is not enriched beyond 5.0 weight percent uranium-235, and because commercial nuclear plant licensees have procedures and features that are designed to prevent inadvertent criticality, the staff has determined that it is unlikely that an inadvertent criticality could occur due to the handling of special nuclear material at a commercial power reactor. Therefore, the requirements of 10 CFR 70.24 are not necessary to ensure the safety of personnel during the handling of special nuclear materials at commercial power reactors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that inadvertent or accidental criticality will be precluded through compliance with the RBS TSs, the design of the fuel storage racks providing geometric spacing of fuel assemblies in their storage locations, and administrative controls imposed on fuel handling procedures.

The proposed exemption would not result in an increase in the probability or consequences of accidents, affect radiological plant effluents, or result in a change in occupational or offsite dose. Therefore, there are no radiological impacts associated with the proposed exemption.

The proposed exemption would not result in a change in nonradiological effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed exemption, the staff considered denial of the requested exemption. Denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of RBS, NUREG–1073, dated January 1985.

Agencies and Persons Consulted

In accordance with its stated policy, on September 21, 1998, the staff consulted with the Louisiana State Official, Dr. Stan Shaw, of the Louisiana Department of Environmental Quality, Radiation Protection Division, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 12, 1998, which is available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 6th day of November 1998.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30561 Filed 11–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Privacy Act; Systems of Records

AGENCY: Nuclear Waste Technical Review Board.

ACTION: Annual Notice of Systems of Records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to publish annually a description of the systems of records it maintains containing personal information. In this notice the Board provides the required information on two systems of records.

FOR FURTHER INFORMATION CONTACT: Michael Carroll, Deputy Director, Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201, (703) 235–4473.

SUPPLEMENTARY INFORMATION: The Board currently maintains two systems of records under the Privacy Act. Each system is described below.

NWTRB–1

SYSTEM NAME:

Administrative and Travel Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees and applicants for employment with the Board, including NWTRB contractors and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records containing the following information:

(1) Time and attendance;

(2) Payroll actions and deduction information requests;

(3) Authorizations for overtime and night differential;

(4) Credit cards and telephone calling cards issued to individuals;

(5) Destination, itinerary, mode and purpose of travel;

(6) Date(s) of travel and all expenses;

(7) Passport number;

(8) Request for advance of funds and voucher with receipts;

(9) Travel authorizations;

(10) Name, address, social security number, and birth date; and,

(11) Employee public transit subsidy applications and vouchers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 100–203, Part E.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information is used "in house." Notwithstanding the above, access may also be gained under the following conditions:

(a) In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate

agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

(b) A record from the system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

(c) A record from this system of records may be disclosed to a federal agency, in response to this request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefits by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computer disk.

RETRIEVABILITY:

By type of document, then name.

SAFEGUARDS:

Access is limited to employees having a need to know. Records are stored in locked file cabinets in a controlled access area in accordance with federal guidelines or in password protected electronic databases.

RETENTION AND DISPOSAL:

Records retention and disposal authorities are contained in the "General Records Schedules" published by National Archives and Records Administration, Washington, DC. Records within NWTRB are destroyed by shredding or purging.

SYSTEM MANAGER AND ADDRESS:

Nuclear Waste Technical Review Board, 12300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201, Attention: Office of Administration.

NOTIFICATION PROCEDURE:

Requests by an individual to determine if NWTRB–1 contains information about him/her should be directed to the Systems Manager listed above. Required identifying information: Complete name, social security number, and date of birth.

RECORD ACCESS PROCEDURE:

Same as notification procedures above, except individual must show official photo identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Subject individuals, timekeepers, travel officers, official personnel records, GSA for accounting and payroll, and travel agency contract.

SYSTEM EXEMPTED FROM CERTAIN PARTS OF THE ACT:

None.

NWTRB–2

SYSTEM NAME:

Mailing Lists.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Those who receive reports in compliance with statutory authority and those individuals who have requested Board reports, newsletters, meeting transcripts and/or press releases.

CATEGORIES OF RECORDS IN THE SYSTEM:

List of names, addresses and materials requested.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 100–203, Part E.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Distribution of Board reports, newsletters, meeting transcripts, and press releases. Information is used "in house." Notwithstanding the above, access may also be gained under the following condition.

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statutes, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer disk.

RETRIEVABILITY:

By name and type of information requested.

SAFEGUARDS:

Access is limited to employees having a need to know. Lists are kept in password protected electronic databases.

RETENTION AND DISPOSAL:

Requesters are sent periodic requests to update their records and/or remain on the mailing list. Nonrespondents and all asking to be deleted are purged from the list.

SYSTEM MANAGER AND ADDRESS:

Nuclear Waste Technical Review Board, 2300 Clarendon Boulevard, Suite 1300, Arlington, VA 22201, Attention: Office of Administration.

NOTIFICATION PROCEDURES:

Requests by an individual to determine if NWTRB–2 contains information about him/her should be directed to the System Manager (above). Required identifying information: complete name and address.

RECORD ACCESS PROCEDURE:

Same as notification procedure above, except individual must show official photo identification before viewing records.

CONTESTING RECORD PROCEDURE:

Same as notification procedure.

RECORD SOURCE CATEGORIES:

Statutory reporting authority and requests from individuals to be placed on a distribution.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: October 16, 1996.

William D. Barnard,

Executive Director.

Editorial note: This document was received in the Office of the Federal Register on November 9, 1998.

[FR Doc. 98–30525 Filed 11–13–98; 8:45 am]

BILLING CODE 6820–AM–M

VOL 63 ISS 220 NO 16 1998 UMI

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. § 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Board of Directors of the Presidio Trust will be held from 10:00 a.m. to 12:00 p.m. (PST) on Wednesday, December 2, 1998, at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purpose of this meeting is to consider future planning efforts to support the General Management Plan Amendment. Public comment on this topic will be received and memorialized in accordance with the Trust's Public Outreach Policy.

TIME: The meeting will be held from 10:00 a.m. to 12:00 p.m. (PST) on Wednesday, December 2, 1998.

ADDRESSES: The meeting will be held at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415–561–5300.

Dated: November 10, 1998.

Karen A. Cook,

General Counsel.

[FR Doc. 98–30654 Filed 11–13–98; 8:45 am]

BILLING CODE 4310–4R–U

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form 12b–25, SEC File No. 270–71, OMB Control No. 3235–0058

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following:

Form 12b–25 is filed pursuant to Exchange Act Rule 12b–25 by issuers who are unable to timely file all or any required portion of an annual, quarterly or transition report. Approximately 4,474 respondents file Form 12b–25 annually for a total annual burden of 11,185 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC. 20503; (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 6, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30513 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–7609; 34–40649; International Series Release No. 1168]

Frequently Asked Questions About the Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Frequently Asked Questions.

SUMMARY: The Securities and Exchange Commission ("we" or "Commission") is publishing guidance in the form of Frequently Asked Questions to clarify some recurring issues raised by the Commission's earlier guidance to public companies regarding Year 2000 disclosure obligations.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Joseph Babits, Office of Chief Counsel, Division of Corporation Finance at 202–942-2900.

Year 2000 Disclosure Frequently Asked Questions

The Commission's earlier guidance on Year 2000 disclosure obligations is in our interpretive release entitled "Statement of the Commission Regarding Disclosure of Year 2000 Issues and Consequences by Public Companies, Investment Advisers, Investment Companies, and Municipal Securities Issuers" (Rel. No. 33–7558, Jul. 29, 1998) ("Release").

Companies typically address their Year 2000 issues as part of their Management's Discussion and Analysis of Financial Condition and Results of Operation, found in Item 303 of Regulation S-K and S-B (otherwise known as "MD&A"). The MD&A section can be found in companies' annual and quarterly reports. The Release and these FAQs primarily interpret MD&A in the Year 2000 context.

We intend to continue reviewing Year 2000 disclosures until companies no longer face material Year 2000 issues. As our Division of Corporation Finance reviews Year 2000 disclosure, companies may receive comments on their disclosure.

Since the issuance of the Release, interested persons have raised several questions. The following addresses the most frequently asked questions:

Can a Company Comply With the Release's Guidance if it Does Not Respond to Every Issue Described in the Release?

The Release should not be used as a "checklist." Merely because a matter was addressed in the Release does not mean it applies to every company. The Release interprets many rules and regulations in the Year 2000 context. However, as stated in the Release, for Year 2000 disclosure to be meaningful, companies for which Year 2000 issues present a material event or uncertainty have to address four categories of information: state of readiness; costs; risks; and contingency plans. The level of detail that a company provides under each category depends on each company's facts and circumstances.

What constitutes meaningful disclosure for some of these categories may vary over time. For example, the information elicited by the risks and contingency plan categories are likely to be more important in 1999 than 1998. Accordingly, the level of detail for those categories may grow each quarter. For the cost category, disclosure is required only if historical or estimated Year 2000 costs are material. Finally, the Release suggested that companies disclose certain matters and gave examples of

situations that do not apply to every company.

Under the "cost" category, what should be included as a Year 2000 cost?

The Release states that companies must disclose material historical and estimated costs. The types of Year 2000 costs will vary for each public company. Typical costs include external consultants and professional advisors; purchases of software and hardware; and the direct costs (*e.g.*, compensation and fringe benefits) of internal employees working on Year 2000 projects. Companies often disclose the types and amounts of Year 2000 costs to their Board of Directors or Audit Committee. If internal costs are not known, that fact should be disclosed. If a company has records of some but not all of its internal costs, then disclosure of the type and amount of these known costs should be made, along with the types of internal costs incurred for which the company cannot determine the amount.

For example, a semiconductor manufacturer has hired outside consultants to assist its internal information systems group to address its Y2K issues. The company's plan includes upgrading existing software applications to make them Y2K compliant, replacing some hardware required by the software upgrade, fixing some internally created software code, and contacting suppliers of various services and materials regarding their readiness and plans for Y2K. The Company does not have a project tracking system that tracks the cost and time that its own internal employees spend on the Y2K project. It is expected the Company would disclose:

- The costs incurred to date and estimated remaining costs for the outside consultants, software and hardware applications.
- A statement that the company does not separately track the internal costs incurred for the Y2K project, and that such costs are principally the related payroll costs for its information systems group.

Under the "Risks" Category, What Level of Detail Should a Company Include in its "Reasonably Likely Worst Case Scenario"?

Under this category, companies must describe potential consequences that they believe are reasonably likely to occur. The "reasonably likely worst case scenario" is intended to elicit disclosure of the impact on a company if its systems, both information technology and non-information technology, do not function and it has to implement its contingency plan. For example, if a company is uncertain about a supplier and its contingency plan is to stockpile inventory, then disclosure of this potential consequence and its costs are required. Companies need not address all possible catastrophic events, including failure of the power grid or telecommunications, unless a company becomes aware that a material disruption in these basic infrastructures is reasonably likely to occur.

However, if a company is unable to obtain assurances as to whether a material and significant relationship, such as a key supplier for raw materials, components or electrical power for a manufacturer, will be impacted by Y2K, then a statement to that effect should be made. For example, if a company buys component parts from a sole supplier, and that sole supplier is unwilling to disclose if its parts will be Y2K compliant, and as a result of that, the company is unable to determine if its products will be Y2K compliant, a statement to that effect should be made. Disclosure of the related contingency plan, in the event the supplier is not Y2K compliant, such as switching to another supplier, and the ability to make such a switch, should also be discussed.

What is an example of good Year 2000 disclosure?

This is probably the most frequently asked question. The SEC historically has not identified any particular disclosure as "good" disclosure for a variety of reasons. We recognize the potential value of pointing out good disclosure, but there are good reasons not to do so, including the risk of establishing a boilerplate template and the differing circumstances each company and industry faces. The best way to draft meaningful disclosure is to closely read the Release and the existing rules and regulations that the Release interprets.

Due to the importance of the Year 2000 issue, after we are able to review the quality of the Year 2000 disclosure in the third quarter Form 10–Qs which will be filed by mid-November, we may provide some sample Year 2000 disclosures. The purpose of these samples would be to illustrate how companies should be following our guidance. We would provide different types of samples to show how "one size doesn't fit all" for Year 2000 disclosure.

Dated: November 9, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30512 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40642; File No. SR–CBOE–98–43]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Continued Listing of Options on the Nasdaq-100 Index

November 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 2, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties and to grant accelerated approved to the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing this rule change to inform the Commission that the Nasdaq Stock Market, Inc. ("Nasdaq") has determined to change the weighting methodology of its Nasdaq-100 Index® ("Index"). The Exchange seeks continued approval to list and trade options on the Index after Nasdaq has instituted these changes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE currently lists and trades European-style, cash-settled options on the Nasdaq-100 Index ("NDX") pursuant to approval by the Commission.[3] The Nasdaq-100 Index is a capitalization-weighted index of one hundred of the largest non-financial securities trade on the Nasdaq Stock Market[sm]. The CBOE has been informed that Nasdaq plans, as of December 18, 1998 (after the close of trading), to calculate the Index under a "modified capitalization-weighted" methodology, which is a hybrid between equal weighting and conventional capitalization weighting.[4] The Exchange is requesting that the Commission approve the continued listing and trading of options on the NDX after this change is instituted by Nasdaq.

The Monday following the expiration Friday when Nasdaq institutes this change, December 21, 1998, the CBOE will bring up new series of options overlying the Index under the current symbol, NDX. The outstanding series will continue to settle based on the present calculation method and will be traded under a new symbol. Nasdaq has stated that the new methodology is expected to: (1) retain in general the economic attributes of capitalization weighting; (2) promote portfolio weight diversification (thereby limiting domination of the Index by a few large stocks); (3) reduce Index performance distortion by preserving the capitalization ranking of companies; and (4) reduce market impact on the smallest component securities from necessary weight rebalancings.

Under the new methodology, the component securities will be categorized as either "Large Stocks" or "Small Stocks," depending on whether their current percentage weights (after taking into account scheduled weight adjustments due to stock repurchases, secondary offerings, or other corporate actions) are greater than, or less than, or equal to, the average percentage weight in the Index (*i.e.*, as a 100-stock index, the average percentage weight in the Index is 1.0%). The categorization will be conducted on a quarterly basis to coincide with Nasdaq's quarterly scheduled weight adjustment procedures.

These quarterly categorizations will result in an Index rebalancing if either one or both of the following two weight distribution requirements are *not* met: (1) The current weight of the single largest market capitalization stock in the Index is less than or equal to 24.0% and (2) the "collective weight" of those stocks whose individual current weights exceed 4.5%, when added together, is less than or equal to 48.0%.

If either one or both of these requirements are not met upon quarterly review, a weight rebalancing will be performed in accordance with the following rules. First, relating to requirement (1) above, if the current weight of the single largest stock in the Index exceeds 24.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% be enough for the adjusted weight of the largest stock to be set to 20.0%. Second, relating to requirement (2) above, for those stocks whose individual current weights or adjusted weights in accordance with the preceding step are in excess of 4.5%, if their "collective weight" exceeds 48.0%, then the weights of all Large Stocks will be scaled down proportionately towards 1.0% by just enough for the "collective weight," so adjusted, to be set to 40.0%.

The aggregate weight reduction among the Large Stocks resulting from either or both of the above rescalings will then be resdistributed to the Small Stocks in the following manner. In the first iteration, the weight of the largest Small Stock will be scaled upwards by a factor that sets it equal to the average index weight of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by the same factor reduced in relation to each stock's relative rank among the Small Stocks such that the smaller the stock in the ranking, the less the scale-up of its weight.

In the second iteration, the weight of the second largest Small Stock, already adjusted in the first iteration, will be scaled upwards by a factor that sets it equal to the average index weight of 1.0%. The weights of each of the smaller remaining Small Stocks will be scaled up by this same factor reduced in relation to each stock's relative ranking among the Small Stock such that, once again, the smaller the stock in the ranking, the less the scale-up of its weight.

Additional iterations will be performed until the accumulated increase in weight among the Small Stocks exactly equals the aggregated weight reduction among the Large Stocks from rebalancing in accordance with weight distribution requirement (1) and/or weight distribution requirement (2).

Then, to complete the rebalancing procedure, once the final percent weights of each stock in the Index are set, the Index share weights will be determined based upon the last sale prices and aggregate capitalization of the Index at the close of trading on the Thursday in the week immediately preceding the week of the third Friday in March, June, September, and December. Changes to the Index weights will be made effective after the close of trading on the third Friday in March, June, September, and December and an adjustment to the Index divisor will be made to ensure continuity of the Index.

The CBOE will notify market participants of the Nasdaq's decision to alter the calculation methodology through a notice to members and member firms in advance of the changeover. The Exchange believes this action will be adequate to prevent any problems because, as mentioned above, the Exchange will continue to list outstanding series under a different symbol that will settle under the old methodology; thus, there will be no change to outstanding contracts. The Exchange has employed the same system for introducing new series after a change in the calculation of the index value or settlement value of an Index in the past.[5]

2. Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[6] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

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[3] Exchange Act Release No. 33428 (January 5, 1994), 59 FR 1576 (January 11, 1994).

[4] The Exchange will notify the Commission in the event Nasdaq is unable to implement this new methodology as of December 18, 1998. Telephone calls between Timothy Thompson, Director of Regulatory Affairs, Legal Department, CBOE, and Kelly McCormick, Attorney, Division of Market Regulation, Commission, on November 5, 1998.

[5] Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (approving SR–CBOE–92–09, which requested to continue to list and trade NDX options after a change in the exercise settlement value of the Nasdaq–100) and Exchange Act Release No. 37089 (April 9, 1996), 61 FR 16660 (April 16, 1996) (approving SR–CBOE–96–12, which requested to allow the DBOE to continue to list and trade SPX options after a change to A.M. settlement).

[6] 15. U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of all such filings will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–98–43 and should be submitted by December 7, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and, in particular, the requirements of Section 6(b)(5) of the Act.[8] Section 6(b)(5) of the Act requires, among other things, that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general to protect investors and the public interest. Specifically, the Commission finds that the proposal to modify the weighting methodology of the Nasdaq–100 Index from a capitalization-weighted index to a modified capitalization index will contribute to the maintenance of fair and orderly markets consistent with investor protection by ensuring that no one stock or group of stocks dominate the Index. Moreover, the Commission believes the proposal will have the effect of reducing the potential influence of any one stock on the movement of the Index.

The Commission believes that the proposed weighting method does not present any new or novel regulatory issues because the proposal adopts a method that is similar to one previously approved for the continued listing of options underlying the GSTI Composite Index.[9] The Index will be calculated using a modified capitalization-weighted method, which is a hybrid between equal weighting and capitalization weighting. Under the new methodology, based upon quarterly examinations, the Index will be rebalanced if either one or both of the following two weight distribution requirements are not met. The first requires the then current weight of the single largest stock in the Index to be less than or equal to 24.0%. The second requirement looks at the "collective weight" of the stocks whose individual current weights exceed 4.5%; these stocks when added together, must be less than or equal to 48.0%. If either one of these two requirements is not met, a weight rebalancing must be performed in accordance with defined rules. In approving this proposal, the Commission believes that the new methodology should help reduce the likelihood that one or a few stocks will dominate the Index and have an undue effect on the Index value.

The Exchange stated that Nasdaq plans to implement this new methodology as of December 18, 1998 (after the close of trading). The Exchange proposes to bring up a new series of options overlying the Index, based on the new methodology, on the Monday following the expiration Friday, December 21, 1998. The new series of options will be signified by the current symbol, NDX. Any outstanding series will continue to list under a different symbol and continue to settle under the old methodology. CBOE will notify market participants of the new calculation by a notice to members and member firms in advance of the changeover. The Commission believes that these procedures will help to ensure investors have been adequately notified about the impending change prior to its implementation, and should provide them with sufficient time to make any desired adjustments to their positions.

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. By accelerating the effectiveness of the Exchange's rule proposal, the Commission will enable the continued listing and trading of options on the Index without interruption after the change in the weighting methodology. In addition, the Commission believes that the proposed weighting method does not present any new or novel regulatory issues as the proposal adopts a weighting method that will assist in ensuring that one or a few components will not dominate the Index. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act [10] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed change (File No. SR–CBOE–98–43) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30498 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

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[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] Exchange Act Release No. 38852 (July 18, 1997), 62 FR 40128 (July 25, 1997).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34–40645; File No. SR–CBOE–98–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Exercise Advice Procedures

November 6, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 27, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

CBOE subsequently filed an amendment to the proposed rule change on November 3, 1998.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to clarify certain existing exercise advice procedures for cash-settled and noncash-settled options, and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to the summary fines set forth in Rule 17.50. The proposed rule change also makes minor, non-substantive changes to Rules 11.1 and 17.50. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set for in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify certain existing exercise advice procedures for cash-settled and noncash-settled options, and to provide that the failure to submit an exercise advice in a timely manner will be designated as a minor rule violation subject to the summary fines set forth in Rule 17.50. The proposed rule change also makes minor, non-substantive changes to Rules 11.1 and 17.50. Substantive changes to Exchange rules are explained below.

[3] Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE, to Kelly McCormick, Attorney, Division of Market Regulation, Commission, dated October 27, 1998 ("Amendment No. 1"). Amendment No. 1 clarifies the Business Conduct Committee's authority to impose sanctions under proposed rules 17.50(c)(2) and (d)(2); makes technical corrections to the proposed rule language; clarifies amendments to proposed rules 11.1.05 and 11.1.07; and elaborates on the statutory basis for the proposed rule change.

Restrictions on Exercise of Index Options

It is the Exchange's policy that, with the exception of the last business day prior to expiration, exercises of cash-settled index options are prohibited when trading in such options is delayed, halted, or suspended, unless otherwise determined by the President of the Exchange or his designee. Under this policy, however, the exercise of a cash-settled index option may be processed and given effect while trading in the option is delayed, halted, or suspended if it can be documented that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension. This policy is currently reflected in Exchange Regulatory Circular RG91–11. The CBOE is proposing to amend rule 11.1.05 so that this policy is explicitly stated. The CBOE believes the amendment clarifies Rule 11.1.05. In addition, the Exchange proposes to reflect this policy in Rule 4.16, the Exchange's general rule regarding exercise restrictions, so that members are not required to refer to other Exchange rules and circulars. The proposed amended Rule 11.1.05 cross-references Rule 4.16.

Exercise Notice Procedures for Cash-Settled Index Options

Rule 11.1.03 requires that members notify the Exchange of certain exercise decisions concerning cash-settled index options and sets forth procedures for providing such notifications to the Exchange. The Exchange proposes to amend Rule 11.1.03 to clarify that Rule 11.1.03 is only applicable to American-style, cash-settled index options and not to European-style, cash-settled index options.

Exercise Notices Inconsistent With Just and Equitable Principles of Trade

Currently, Rule 11.1.07 provides that submitting or preparing an exercise instruction after the exercise cutoff time in any expiring option on the basis of material information released after the cutoff time is activity inconsistent with just and equitable principles of trade. This provision applies to expiring noncash-settled equality options. The Exchange has also considered it to be a violation of just and equitable principles of trade to prepare or submit an exercise advice or advice cancel after the applicable deadline in any non-expiring American-style, cash-settled index option on the basis of material information released after the deadline.

The Exchange believes that this general policy will be more effectively communicated to the membership if it is moved to proposed Rule 11.1.03(e), the procedures paragraph for American-style, cash-settled index options and if it is repeated in proposed Rule 11.1.06(f), the procedures paragraph for noncash-settled equity options. In this way, a member who refers to .03 or .06 will be made aware of the policy without referring to other interpretations of the Rule.

Therefore, the Exchange proposes to add new paragraph(e) to Rule 11.1.03 which governs the exercising of American-style, cash-settled index option contracts to specify that preparing or submitting an exercise advice or advice cancel after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of Rule 11.1, is activity inconsistent with just and equitable principles of trade. Similarly, proposed new paragraph (f) in Rule 11.1.06 will specify that preparing or submitting an exercise instruction, contrary exercise advice, or advice cancel after 4:30 p.m. Chicago Time on the basis of material information released after such time, in addition to constituting a violation of Rule 11.1, is activity inconsistent with just and equitable principles of trade. Accordingly, the general provision currently found in Rule 11.1.07 establishing this policy will no longer be necessary and will be deleted.

Options Not Subject to Exercise by Exception

The Exchange proposes to clarify the requirements in Exchange Rule 11.1.06(c) applicable to exercise decisions and instructions for noncash-settled equity options not subject to the exercise by exception provisions of The Options Clearing Corporation's Rule 805. Proposed new paragraph (c) of Rule 11.01.06 will clarify that a member must deliver to the Exchange, no later than 4:30 p.m. Chicago Time, each exercise instruction prepared, submitted, or accepted by the member, for all noncash-settled equity option contracts not subject to the automatic exercise procedures of exercise by exception. Proposed new paragraph 11.1.06(d) clarifies that a member is excused from compliance with the exercise instruction requirements when the exceptions enumerated in Rule 11.1(b) apply and the member complies with Interpretation .01 of the Rule. Paragraphs (c)–(e) of the Rule are thus being deleted and replaced with new paragraphs (c) and (d).

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Other Clarifications to Rule 11.1

The Exchange is also proposing to revise Rule 11.1.03(c) concerning the preparation of exercise advices prior to the purchase of American-style, cash-settled index option contracts to mirror the same provision applicable to noncash-settled equity options in Rule 11.1(d). In addition, the Exchange proposes to amend Rule 11.1 to more accurately reference the "preparation, submission, or acceptance" of exercise instructions. As amended, the proposed rule takes into account the different sources of the exercise instructions (*i.e.*, Clearing Members "prepare" exercise instructions for proprietary accounts, members "submit" exercise instructions to Clearing Members, and members "accept" exercise instructions from customer accounts). Finally, throughout Rules 11.1 and 17.50, the Exchange has corrected references to terms that have previously been defined in the Exchange rules. For example, reference to "Member" or "Member Organization" have been corrected to refer to the term "member" as previously defined in Section 1.1 of the Constitution.

Summary Fine for Failure to Submit an Exercise Advice

The Exchange proposes to make the failure to submit a contrary execise advice, advice cancel, or exercise instruction in a timely manner pursuant to Rule 11.1.06, relating to the exercise or nonexercise of a noncash-settled equity option, a minor rule violation subject to the procedure and summary fine provisions of Rule 17.50. The Exchange will add new paragraph (8) to Rule 17.50(g) to provide that the failure of any member to follow the advice procedures in Rule 11.1.06 will subject the member to the summary fines specified by Rule 17.50. In any 12-month period, the first infraction will result in a Letter of Information sent to the member. The second infraction will result in a Letter of Caution, and subsequent infractions will result in a fine of $500.

As with other summary fines imposed pursuant to Rule 17.50, a member will be permitted to contest the Exchange's determination. Rule 17.50(c)(1) permits members to seek review by the Business Conduct Committee ("BCC") of the Exchange for fines imposed by new paragraph (8).

Calculation of Summary Fines for Failure to Submit Accurate Trade Information

Both Rule 17.50(g)(4)(b) and (5)(b) impose an escalation of the total fines for repeated violations of rule 6.51. The Exchange has modified paragraphs (4)(b) and (5)(b) of the rule regarding the calculation of the total fine to be imposed after a member incurs two fines for failure to submit or report accurate trade information in any 18-month period. If a member has incurred two fines under Rule 17.50(g)(4) or, similarly, two fines under 17.50(g)(5), in any 18 month period, any subsequent fine will be calculated by adding the amount of the fine assessed for the current violation to the amount of the next most recent fine incurred by the member under the rule.[4]

The proposed rule change also would amend Rule 17.50.03(a) to change from the fifth day of the month to the tenth day of the month the date by which the Exchange shall attempt to serve members fined pursuant to Rule 17.50(g)(4) or (g)(5) and to change from the twentieth day of the month to the twenty-fifth day of the month the date by which a member may request verification of the fine by the Exchange. These changes will provide the Exchange with more time to process these fines at the beginning of the month while preserving the current time frame in which members may request verification of these fines.

Exchange Discretion To Bring Disciplinary Action

The Exchange is also proposing to modify the summary fine appeal provisions under Rule 17.50(c)(2) and (d)(2). The Exchange proposes to clarify in these proposed sections that the BCC and the Appeals Committee must determine that the conduct serving as the basis for the action under review is in violation of an Exchange rule before a sanction may be imposed. The BCC and the Appeals Committee, however, may only review the alleged conduct to determine if it violates the rules charged.[5] If the alleged conduct would constitute a violation of the rule charged, the BCC or the Appeals Committee could determine that the conduct at issue did not rise to a level that would trigger a summary fine but nonetheless was in violation of an Exchange rule. In such a case, the BCC or the Appeals Committee could impose a disciplinary sanction for that conduct as part of its decision concerning the summary fine appeal.

The Exchange also is proposing to modify Rule 17.50(f) to conform the rule to a rule of the Chicago Stock Exchange.[6] Proposed Rule 17.50(f) has been modified to clarify that the Exchange has the discretion not to issue a summary fine under Rule 17.50 in appropriate circumstances such as when extenuating circumstances exist or no remedial purpose would be served by the issuance of the fine. In addition, the Exchange would have the discretion to commence a formal disciplinary proceeding under Rule 17.2 whenever the Exchange determines that a rule violation is not minor in nature.

The Exchange proposes to implement the proposed rule change within 45 days after its approval by the Commission. The purpose of this time interval is to give the Exchange the opportunity to inform members of the approval of the proposed rule change in the Exchange's Regulatory Bulletin before the rule change is put into effect. The Exchange will publish the effective date of the rule change in the Exchange's Regulatory Bulletin and will notify the Commission of the effective date by letter.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular. The Exchange believes the proposed rule change refines and enhances its rules relating to the exercise of options contracts and the procedures for minor rule violations thereby making both processes more efficient and effective. Accordingly, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(5)[9] because it is designed to promote just and equitable principles of trade, of prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating clearing, and settling securities transactions, and to protect investors and the public interest.

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[4] An example of the calculation of summary fines is as follows: In January, Member XYZ incurs a fine of $100 under Rule 17.50(g)(4) for violation of Rule 6.51 (based on the percentage of times that the members submitted inaccurate or no transaction times). In February, Member XYZ incurs a second fine under Rule 17.50(g)(4) and the appropriate fine is deemed to be $250. In March, Member XYZ incurs a third fine for $100 and, pursuant to the Rule 17.50(g)(4)(b), must pay a total of $350 calculated by adding the third fine incurred ($100) to the next most recently incurred fine ($250). In April, Member XYZ incurs a fourth fine of $250 and, pursuant to Rule 17.50(g)(4)(b), must pay a total of $600 calculated by adding the fourth fine ($250) to the total fine most recently incurred ($350).

[5] Amendment No. 1.

[6] *See* Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (approving Chicago Stock Exchange Article XII, Rule 9).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] Id.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–33 and should be submitted by December 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30550 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[(Release No. 34–40652; File No. SR–NASD–98–78)]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Equity Option Hedge Exemption

November 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),[1] notice is hereby given that on October 15, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend Rule 2860(B)(3)(A)(vii) of the NASD, to make permanent the Equity Option Hedge Exemption, which has been operating as a pilot program since 1990. Below is the text of the proposed rule change. Deletions are bracketed.

Rule 2860. Options.

* * * * *

(b)(3)(A)(vii) Equity Option Hedge Exemption

a. The following positions, where each option contract is "hedged" by 100 shares of stock or securities readily convertible into or economically equivalent to such stock, or, in the case of an adjusted option contract, the same number of shares represented by the adjusted contract, shall be exempted from established limits contained in (i) through (vi) above:

1. long call and short stock;
2. short call and long stock;
3. long put and long stock;
4. short put and short stock.

b. Except as provided under the OTC Collar Exemption contained in paragraph (b)(3)(A)(viii), in no event may the maximum allowable position, inclusive of options contracts hedged pursuant to the equity option position limit hedge exemption in subparagraph a. above, exceed three times the applicable position limit established in subparagraph (b)(3)(A)(i) through (v) with respect to standardized equity options, or subparagraph (b)(3)(A)(ix) with respect to conventional equity options.

[c. The Equity Option Hedge Exemption is a pilot program authorized by the Commission through December 31, 1998.]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Position limits impose a ceiling on the number of options contracts of each options class on the same side of the market that can be held or written by a member, an investor, or a group of investors acting in concert. NASD Rule 2860(b)(3) provides that the position limits for equity options are determined according to a five-tiered system in which more actively traded stocks with larger public floats are subject to higher position limits. Currently, the five tiers for standardized equity options[2] are 4,500, 7,500, 10,500, 20,000 and 25,000 contracts. The position limits for conventional equity options[3] are three times the limits for standardized equity

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Standardized equity options are exchange-traded options issued by the Options Clearing Corporation ("OCC") that have standard terms with respect to strike prices, expiration dates and the amount of the underlying security.

[3] A conventional option is any option contact not issued, or subject to issuance by, the OCC.

options.[4] NASD rules do not specifically govern how a particular equity option falls within one of the five position limit tiers. Rather, the NASD's position limit rule provides that the position limit established by an options exchange for a particular equity option is the applicable position limit for purposes of the NASD's rule.[5]

The NASD's Equity Option Hedge Exemption ("Hedge Exemption") provides for an automatic, limited exemption from position limits for equity options that are hedged using one of the four most commonly used hedge positions: (1) long stock and short calls; (2) long stock and long puts; (3) short stock and long calls; and (4) short stock and short puts. The Hedge Exemption applies to accounts in which the option contract is either (i) hedged by 100 shares of stock, (ii) hedged by securities that are readily convertible into, or economically equivalent to, such stock, or (iii) in the case of an adjusted options contract, hedged by the number of shares represented by the adjusted contract.

Under the Hedge Exemption, the largest standardized equity options position (combining hedged and unhedged positions) that may be established may not exceed three times the basic position limits, *i.e.*, 13,500, 22,500, 31,500, 60,000, or 75,000 contracts, depending on the basic position limits of the underlying security. Likewise, the largest conventional equity options position (combining hedged and unhedged positions) that may be established may not exceed three times the basic position limits on conventional equity options, *i.e.*, 40,500, 67,500, 94,500, 180,000, or 225,000 contracts.

The Hedge Exemption has been operating as pilot program since its inception in 1990.[6] The Commission recently extended the deadline of the pilot program until December 31, 1998, to give the NASD time to adopt it on a permanent basis.[7]

NASD Regulation believes that the Hedge Exemption is an important component of the options position limit rules and should be continued on a permanent basis. NASD Regulation staff has over eight years experience administering the Hedge Exception and has concluded that it is both an important and necessary tool for market participants to manage their market exposure by allowing them the flexibility to hold larger options positions in cases where such positions are hedged. In addition, NASD Regulation believes that the Hedge Exemption should be made permanent to achieve parity with the other options self-regulatory organizations which have in effect a permanent, substantively identical equity option hedge exemption.[8]

Finally, NASD Regulation believes that continuing the Hedge Exemption on a permanent basis will not pose any risk to the options or underlying equity market. NASD rules require each member to report options positions of any account which has established an aggregate position of 200 or more option contracts of the put class and the call class on the same side of the market covering the same underlying security.[9]

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that making the Hedge Exemption permanent will maintain the depth and liquidity of the options markets by permitting investors to hedge greater amounts of stock than would otherwise be permitted under NASD rules. Making the Hedge Exemption permanent also will promote consistency among the rules of the NASD and the other options self-regulatory organizations. NASD Regulation notes that the higher position limits currently available under the Hedge Exemption have not resulted in disruptions of the underlying equities market, and it will continue monitoring the market effects, if any, from the Hedge Exemption. Lastly, NASD Regulation will continue to monitor use of the Hedge Exemption to ensure that members are complying with all applicable requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectivess of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies there with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–78 and should be submitted by December 7, 1998.

[4] *See* Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746 (June 19, 1998).

[5] For equity options that do not trade on an options exchange, the NASD's position limit rule provides that the limit for conventional equity options shall be three times the basic limit of 4,500 contracts, such as 13,500 contracts, unless the member can demonstrate to the Association that the underlying security meets the standards for higher limits and the initial listing standards for standardized options trading.

[6] *See* Exchange Act Release No. 27697 (February 9, 1990), 55 FR 5535 (February 15, 1990).

[7] *See* Exchange Act Release No. 39865 (April 14, 1998), 63 FR 19992 (April 22, 1998).

[8] *See* American Stock Exchange Rule 904; Chicago Board Options Exchange Rule 4.11; Philadelphia Stock Exchange Rule 1001; Pacific Exchange Rule 6.8.

[9] *See* Rule 2860(b)(5).

[10] 15 U.S.C. 78*o*(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 98–30549 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40644; File No. SR–PCX–98–44]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Fees for the Use of Exchange-Sponsored Hand Held Terminals for Options Floor Brokers

November 5, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 11, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On October 29, 1998, the Exchange filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its Schedule of Fees and Charges for Exchange Services by adding charges for the use of exchange-sponsored hand held terminals for options floor brokers.

The text of the proposed rule change is available at the Office of the Secretary, PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. With the use of hand held terminals, PCX Member Firms have the advantage of sending their orders electronically to either (1) a floor broker's exchange-sponsored terminal located in the trading crowd;[4] (2) a Member Firm booth located on the trading floor; or (3) to POETS,[5] where they will be automatically executed by Auto-Ex[6] or maintained in Auto-Book.[7]

Proposal. The Exchange proposes to charge a monthly equipment fee of $200 for each exchange-sponsored hand held terminal to be billed to the Floor Broker registered to use it. In addition, the Exchange proposes to charge $0.03 per contract for orders of 10 contracts or less which are not directed to POETS through a Member Firm Interface ("MFT"),[8] and are executed via the exchange-sponsored hand held terminal. This per contract charge will be billed to the order flow provider.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[9] of the Act, in general, and furthers the objectives of Section 6(b)(4),[10] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (e)(2) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the amended proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change and Amendment No. 1 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange.

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation, SEC dated October 27, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange clarifies the proposal to indicate that these fees are for exchange-sponsored hand held terminals only.

[4] *See* Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 26662 (May 13, 1998) (Order approving File No. SR–PCX–97–28).

[5] The Pacific Option Exchange Trading System ("POETS") is the Exchange's automated options trading system. *See generally* Securities Exchange Act Release No. 27633 (Jan. 18, 1990), 55 FR 2466 (Jan. 24, 1990) (Order approving File No. SR–PSE–89–26).

[6] Orders executed by Auto-Ex may be automatically executed at the disseminated bid or offering price. *Id.*

[7] Auto-Book maintains non-marketable limit orders based on limit price and time of receipt. *Id.*

[8] The MFI is an electronic order delivery and reporting system that allows member firms to route orders for execution by the automatic execution feature of POETS as well as to route limit orders to the Options Public Limit Order Book. Orders that do not reach those two destinations are defaulted to a member firm booth. MFI also provides member firms with instant confirmation of transactions to their systems.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(e)(2).

All submissions should refer to File No. SR–PCX–98–44 and should be submitted by December 1, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30497 Filed 11–13–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 2919]

Bureau of Political-Military Affairs; Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collections.

DSP–9, Statement of Registration, OMB No. 1405–0002

DSP–5, Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, OMB No. 1405–0003

DSP–61, Application/License for Temporary Import of Unclassified Defense Articles, OMB No. 1405–0013

DSP–83, Non-Transfer and Use Certificate, OMB No. 1405–0021

DSP–85, Application/License for Permanent/ Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data, OMB No. 1405–0022

DSP–73, Application/License for Temporary Export of Unclassified Defense Articles, OMB No. 1405–0023

Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services, OMB No. 1405–0025

DSP–94, Authority to Export Defense Articles and Services Sold under the Foreign Military Sales (FMS) Program, OMB No. 1405–0051

DSP–119, Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, OMB No. 1405–0092

Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, OMB No. 1405–0093

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposals submitted to OMB:

[13] 17 CFR 200.30–3(a)(12).

Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Statement of Registration.
Frequency: Every one to four years.
Form Number: DSP–9.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 5,000.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 10,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.
Frequency: On occasion.
Form Number: DSP–5.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 20,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Temporary Import of Unclassified Defense Articles.
Frequency: On occasion.
Form Number: DSP–61.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 30 minutes.
Total Estimated Burden: 4,500 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Non-Transfer and Use Certificate.
Frequency: On occasion.
Form Number: DSP–83.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 17,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Permanent/ Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data.
Frequency: On occasion.
Form Number: DSP–85.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 1,000.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 1,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application/License for Temporary Export of Unclassified Defense Articles.
Frequency: On occasion.
Form Number: DSP–73.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 2,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Statement of Political Contributions, Fees, or Commissions in Connection with the Sale of Defense Articles or Services.
Frequency: On occasion.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 1 hour.
Total Estimated Burden: 12,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Authority to Export Defense Articles and Services Sold Under the Foreign Military Sales (FMS) Program.
Frequency: On occasion.

Form Number: DSP–94.
Respondents: Business and foreign government representatives.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 30 minutes.
Total Estimated Burden: 1,250 hours.
(Total Estimated Burden based on number of forms received per year)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data.
Frequency: On occasion.
Form Number: DSP–119.
Respondents: Business and non-profit organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 30 minutes.
Total Estimated Burden: 1,150 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Reinstatement.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements.
Frequency: On occasion.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 4,500.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 3,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Existing collection without an OMB control number.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Prior Approval for Brokering Activity.
Frequency: On occasion.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 500.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 2,000 hours.
(Total Estimated Burden based on number of forms received per year.)
Type of Request: Existing collection without an OMB control number.
Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.
Title of Information Collection: Brokering Activity Reports.
Frequency: Annual.
Form Number: none.
Respondents: Business organizations.
Estimated Number of Respondents: 500.
Average Hours Per Response: 2 hours.
Total Estimated Burden: 4,000 hours.
(Total Estimated Burden based on number of forms received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from the Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, SA–6, Room 200, Department of State, Washington, DC 20522–0602, (703) 875–6644. Public comments and questions should be directed to Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: November 3, 1998.

John P. Barker,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 98–30524 Filed 11–13–98; 8:45 am]

BILLING CODE 4710–25–P

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Larry P. Bevan, Assistant Director for Management Trade and Development Agency, 1621 N. Kent Street, Arlington, CA 22209–2131 (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314 (c)(1) through (5), U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the Trade and Development Agency: Lois E. Hartman, Deputy Director (retired), Office of Human Resources, Agency for International Development; Theodore Carter, Senior Legal Advisor (retired), Agency for International Development; and Margaret Thome, Director of Administrative Services, Agency for International Development.

Dated: November 9, 1998.

Larry P. Bevan,

Assistant Director for Management.

[FR Doc. 98–30538 Filed 11–13–98; 8:45 am]

BILLING CODE 8040–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4620]

Oil Pollution Act of 1990 (OPA 90) Phase-out Requirements for Single Hull Tank Vessels

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard requests public comment on whether we should recognize a single hull tank vessel converted to include double sides or a double bottom as a different hull design when applying the vessel phase-out dates under the Oil Pollution Act of 1990 (OPA 90). If we recognize a converted tank vessel as a different hull design, the vessel would fall under a different category in the OPA 90 phase-out schedule and would probably have a later phase-out date. Recent inquiries by the maritime industry indicate an interest in converting single hull tank vessels to include double sides or double bottoms to increase the vessels' operational lives past their original OPA 90 phase-out dates.

DATES: Comments must reach the Docket Management Facility on or before January 15, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1998–4620), U.S.

Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, please contact Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G-MSO–2), U.S. Coast Guard Headquarters, telephone 202–267–1053. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this notice by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify the docket number (USCG–1998–4620) and the specific section of this notice to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed postcard or envelope.

The Coast Guard is opening a 60-day comment period for your responses to this notice. Copies of this notice will be mailed to U.S.–flag tank vessel owners and posted on our Marine Safety Regulations web site at http://www.uscg.mil/hq/g-m/regs/current.html.

The Coast Guard plans no public meeting concerning this notice. Persons may request a public meeting by writing to the Docket Management Facility at the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial. If it determines that the opportunity for oral presentations will be helpful, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose:

Section 4115 of the Oil Pollution Act of 1990 (OPA 90) amended Title 46, United States Code, by adding a new section 3703a. This section contains the double hull requirements and a phase-out schedule for single hull tank vessels operating in U.S. waters. It requires an owner to remove a single hull tank vessel from bulk oil service on specific dates, depending on a vessel's gross tonnage, build date, and hull configuration. The phase-out schedule allows more years of service for single hull tank vessels configured to include double sides or double bottoms than for single hull tank vessels without these hull configurations.

The OPA 90 timetable for double hull requirements and the phase-out schedule for single hull tank vessels are implemented in Title 33 Code of Federal Regulations (CFR) part 157, Appendix G. Both OPA 90 and the implementing regulations are silent on if or when a vessel owner can convert a single hull tank vessel to include double sides or a double bottom to qualify for a later phase-out date. As a result, some vessel owners have asked the Coast Guard to clarify the types of vessel conversions permitted and their associated phase-out dates.

A 1997 inquiry to the Coast Guard asked if a single hull tank vessel with wing cargo tanks reconfigured as segregated ballast tanks or void spaces to create double sides would qualify for a different OPA 90 phase-out date. We indicated that this type of conversion and an associated later phase-out date was acceptable provided that the modified tanks meet the double side dimension requirements applied to new tank vessels in 33 CFR 157.10d(c)(1). Converted double side segregated ballast tanks must also provide protection to the full extent of a vessel's cargo tank length. In 1998, we received a similar inquiry from the same source asking if hull conversions completed after a single hull tank vessel's original phase-out date qualified the vessel to reenter bulk oil service with a later phase-out date.

Recent inquiries by the maritime industry indicate a continued interest in converting single hull tank vessels to include double sides or double bottoms to increase the vessels' operational lives past their original OPA 90 phase-out dates. The Coast Guard is using this notice to assist us in determining the full impacts of these requests.

Since OPA 90 and current regulations do not explicitly address issues such as modifications to hull designs or allowing recently converted vessels to reenter operations with new phase-out dates, the Coast Guard is interested in your feedback to help us develop a clear and detailed policy. Specifically, we are interested in your comments on the following:

1. If the Coast Guard does not allow single hull tank vessels to qualify for later OPA 90 phase-out dates by converting the single hulls to single hulls with double sides or double bottoms, what would be the effect on U.S. oil transportation and supplies?

2. If single hull tank vessels which have passed their initial phase-out date could qualify for later phase-out dates, and reenter service by converting their single hulls with double sides or double bottoms, what would be the effect on U.S. oil transportation and supplies?

3. If single hull tank vessels could qualify for later phase-out dates through these types of hull conversions, what would be the effect on the conversion of the tank vessel fleet to double hull tank vessels? Would there be an adverse impact on the marine environment?

4. Are there any other concerns regarding whether we should recognize a single hull tank vessel converted to include double sides or a double bottom as a different hull design when applying the vessel phase-out dates under OPA 90?

The Coast Guard will consider all comments submitted to this docket. We will publish our final decision regarding the effect of tank vessel hull conversions on the OPA 90 phase-out schedule in the **Federal Register**.

Dated: November 9, 1998.

Joseph J. Angelo,

Director of Standards, Acting Assistant Commandant for Maine Safety and Environmental Protection.

[FR Doc. 98–30594 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this

notice to advise the public of a meeting of the FAA Aviation Rulemaking Advisory Committee to discuss General Aviation and Business Airplane Issues.

DATES: The meeting will be held on December 17, 1998, from 9 a.m. to 1 p.m. Arrange for presentations by December 10, 1998.

ADDRESSES: The meeting will be held at the General Aviation Manufacturers Association (GAMA), 1400 K Street NW, Suite 801, Washington, DC 20005–2485.

FOR FURTHER INFORMATION CONTACT: Carolina E. Forrester, Federal Aviation Administration, Office of Rulemaking (ARM–206), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9690; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on December 17, 1998, from 9 a.m. to 1 p.m. at GAMA.

The agenda will include:

1. Opening remarks;

2. Committee Administration;

3. Discussion of Tasks assigned by the FAA:

Airworthiness Standards for Commuter Category Airplane Seats

Airworthiness Standards for Part 23 Turbofan/Turbojet Airplanes

4. A discussion of future meeting dates, locations, activities, and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by December 10, 1998, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Executive Director, or by bringing the copies to the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on November 9, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–30579 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Capital City Airport, Lansing, Michigan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Capital City Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas W. Schmidt, Executive Director, Capital City Airport of the Capital Region Airport Authority at the following address: Capital City Airport, Lansing, Michigan 48906.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Capital Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jack D. Roemer, Program Manager, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111 (734–487–7282). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Capital City Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 9, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Capital Region Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 26, 1999.

The following is a brief overview of the application.

PFC Application No.: 98–03–C–00–LAN.

Level of the PFC: $3.00.

Proposed charge effective date: June 1, 2002.

Proposed charge expiration date: June 31, 2005.

Total estimated PFC revenue: $3,306,343.00.

Brief description of proposed projects: Terminal Improvements Including Passenger Enclosed Walkways, Mutual Users Flight Information Display System (MUFIDS), Extend Existing Baggage Claim Conveyors, Baggage Claim Expansion and Ground Level Concourse. Construct Commuter Walkways, Install Landside Signage, Upgrade Security Access Control System, Rehabilitate Air Carrier Ramp, Rehabilitate Runway 10R/28L and Taxiway B, Rehabilitate and Expand ARFF Building, Acquire ARFF Vehicle, NPDES Permit and Mitigation, Acquire Land—Vector Property, Rehabilitate and Extend West Service Road, PFC Consultant Fees.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: Part 135 and Air Taxi Operations.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Capital Region Airport Authority.

Issued in Des Plaines, Ill., on November 6, 1998.

Benito DeLeon,

Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30581 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 201, Des Plaines, Illinois 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Mary Rose Loney, Commissioner, of the City of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, Illinois 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (847) 294–7335. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 22, 1998, the FAA determined that the application to use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 29, 1999.

The following is a brief overview of the application.

PFC application number: 19–06–U–00–MDW.

Level of the proposed PFD: $3.00.

Actual charge effective date: August 1, 1998.

Estimated charge expiration date: August 1, 2020.

Total estimated PFC revenue: $187,179,775.

Brief description of proposed project(s): Midway Terminal Development.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Chicago Department of Aviation.

Issued in Des Planes, Illinois on November 2, 1998.

Benito De Leon,

Anager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30582 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–03–C–00–DUJ) To Impose and Use a Passenger Facility Charge (PFC) at Dubois-Jefferson County Airport, Dubois, Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Dubois-Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. John Carter, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert W. Shaffer, Airport Manager of Clearfield-Jefferson Counties Regional Airport Authority at the following address: P.O. Box 299, Falls Creek, Pennsylvania 15840.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Clearfield-Jefferson Counties Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: John Carter, Project Manager, Harrisburg, Airports District Office, 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011. (717) 730–2836. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at DuBois-Jefferson County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 5, 1998, the FAA determined that the application to impose and use a PFC submitted by the Clearfield-Jefferson Counties Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 5, 1999.

The following is a brief overview of the application.

Application number: 9–03–C–00–DUJ.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 2000.

Proposed charge expiration date: November 1, 2002.

Total estimated PFC revenue: $142,511.

Brief description of proposed projects:

—Installation of a new Airport Beacon
—Terminal Building Expansion and Modification
—Runway, Taxiway, and Apron Overlays
—Cargo Apron Expansion
—Preparation of PFC Application and Administration

Class or classes of air carriers, which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Clearfield-Jefferson Counties Regional Airport Authority.

Issued in Jamaica, New York on November 6, 1998.

Thomas Felix,

Manager, Planning & Programming Branch, AEA–610, Eastern Region.

[FR Doc. 98–30583 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Minot International Airport, Minot, North Dakota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 16, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Michael Ryan, Airport Director, of the Minot International Airport at the following address: City of Minot, North Dakota, 25 Airport Road, Suite 10, Minot, North Dakota 58701–1457.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Minot, North Dakota under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Irene R. Porter, Manager, Bismarck Airports District Office, 2000 University Drive, Bismarck, North Dakota 58504, (701) 250–4385. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Minot International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 20, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Minot, North Dakota was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 19, 1999.

The following is a brief overview of the application.

PFC application number: 98–03–C–00–MOT.

Level of the proposed PFC: $3.00.

Proposed charge effective date: April 1, 1999.

Proposed charge expiration date: June 30, 2000.

Total estimated PFC revenue: $228,720.00.

Brief description of proposed project(s): Runway 8/26 restoration and extension; Preparation of Passenger Facility Charge Application; Preparation of Airport Master Plan.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Airport Director's office at the Minot International Airport, Minot, North Dakota.

Issued in Des Plaines, Ill., on November 2, 1998.

Benito De Leon,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 98–30580 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33662 (Sub-No. 1)]

The Burlington Northern And Santa Fe Railway Company—Trackage Rights Exemption—Omaha Public Power District

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33662 [1] to permit the trackage rights to expire on December 31, 1998, in accordance with the agreement of the parties.[2]

DATES: This exemption is effective on December 16, 1998. Petitions to reopen must be filed by December 7, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33662 (Sub-No. 1) must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Sarah Whitley Bailiff, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street,

[1] On September 22, 1998, The Burlington Northern and Santa Fe Railway Company (BNSF) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Omaha Public Power District (OPPD) to grant local trackage rights to BNSF between milepost 56.3 in Collegeview and milepost 6.0 in Arbor, in Otoe and Lancaster Counties, NE, a distance of approximately 50.3 miles. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Omaha Public Power District,* STB Finance Docket No. 33662 (STB served Oct. 7, 1998). The exemption became effective on September 29, 1998, 7 days after the verified notice was filed, and the trackage rights agreement was scheduled to be consummated on October 1, 1998.

[2] Trackage rights normally remain in effect unless discontinuance authority or approval of a new agreement is obtained. *See Milford—Bennington Railroad Company, Inc.—Boston and Maine Corporation and Springfield Terminal Railway Company,* Finance Docket No. 32103 (ICC served Sept. 3, 1993).

N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 5, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30649 Filed 11–13–98; 8:45 am]

BILLING CODE 4910–00–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Request for Information.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Request for Information. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 15, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Request for Information.

OMB Number: 1515–0068.

Form Number: Customs Form 28.

Abstract: Customs Form 28 is used by Customs personnel to request additional information from importers when the invoice or other documentation provide insufficient information for Customs to carry out its responsibilities to protect revenues.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 60,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 30,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: November 9, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–30542 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Certificate of Compliance for Turbine Fuel Withdrawals

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Compliance for Turbine Fuel Withdrawals. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 15, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Certificate of Compliance for Turbine Fuel Withdrawals.

OMB Number: 1515–0209.

Form Number: N/A.

Abstract: This information is collected to ensure regulatory compliance for Turbine Fuel Withdrawals to protect revenue collections.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 12 hours.

Estimated Total Annual Burden Hours: 240.

Estimated Total Annualized Cost on the Public: N/A.

Dated: November 2, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–30543 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Entry of Articles for Exhibition

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Entry of Articles for Exhibition. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 15, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Entry of Articles for Exhibition.

OMB Number: 1515–0106.

Form Number: N/A.

Abstract: This information is used by Customs to substantiate that the goods imported for exhibit have been approved for entry by the Department of Commerce.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 40.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 530.

Estimated Total Annualized Cost on the Public: N/A.

Dated: October 27, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–30544 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts and refunds of Customs duties. For the quarter beginning October 1, 1998, the rates will be 7 percent for overpayments and 8 percent for underpayments. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278, (317) 298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties shall be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Interest rates are determined based on the short-term Federal rate. The interest rate that Treasury pays on overpayments will be the short-term Federal rate plus two percentage points. The interest rate paid to the Treasury for underpayments will be the short-term Federal rate plus three percentage points. The rates will be rounded to the nearest full percentage.

The interest rates are determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury based on the average market yield on outstanding marketable obligations of the U.S. with remaining periods to maturity of 3 years or less, and fluctuate quarterly. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 98–46 (*see*, 1998–39 IRB 10, dated September 28, 1998), the IRS determined that the rates of interest for the first quarter of fiscal year (FY) 1999 (the period of October 1—December 31, 1998) will be 7 percent for overpayments and 8 percent for underpayments. These interest rates are subject to change for the second quarter of FY–1999 (the period of January 1—March 31, 1999).

For the convenience of the importing public and Customs personnel the following list of Internal Revenue Service interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Overpay-ments (percent)
Prior to 070174	063075	6	6
070175	013176	9	9
020176	013178	7	7
020178	013180	6	6
020180	013182	12	12
020182	123182	20	20
010183	063083	16	16

Beginning date	Ending date	Under-payments (percent)	Overpay-ments (percent)
070183	123184	11	11
010185	063085	13	13
070185	123185	11	11
010186	063086	10	10
070186	123186	9	9
010187	093087	9	8
100187	123187	10	9
010188	033188	11	10
040188	093088	10	9
100188	033189	11	10
040189	093089	12	11
100189	033191	11	10
040191	123191	10	9
010192	033192	9	8
040192	093092	8	7
100192	063094	7	6
070194	093094	8	7
100194	033195	9	8
040195	063095	10	9
070195	033196	9	8
040196	063096	8	7
070196	033198	9	8
040198	123198	8	7

Dated: November 10, 1998.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 98–30570 Filed 11–13–98; 8:45 am]

BILLING CODE 4820–02–P

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federal register

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Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 11 and 52
Federal Acquisition Regulation: Use of Brand Name Item Descriptions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11 and 52

[FAR Case 96–018]

RIN 9000–AH85

Federal Acquisition Regulation; Use of Brand Name Item Descriptions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to provide for the use of brand name purchase descriptions, including "brand name or equal," "brand name—no substitute," and "brand name as target"; and to add two new related solicitation provisions.

DATES: Comments should be submitted on or before January 15, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.96–018@gsa.gov. Please cite FAR case 96–018 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405 (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAR case 96–018.

SUPPLEMENTARY INFORMATION:

A. Background

While indicating that performance specifications are the preferred method for describing the Governments needs, the proposed rule provides three types of brand name purchase descriptions, "brand name or equal," "brand name no substitute," and "brand name as target," for use based on the degree of flexibility of the Government's requirement. The rule also proposes two solicitation provisions providing guidance to offerors responding to "brand name or equal" and "brand name as target" purchase descriptions.

The proposed guidance at FAR 11.104–3 permits contracting officers to describe their needs by identifying brand names as targets rather than as "brand name or equal." The rule would permit solicitations to include salient physical, functional, or performance characteristics of the brand name. However, since needs would be described as targets, offerors could propose alternatives for consideration by the Government that are not identical to the brand name. In addition to looking at alternatives exceeding the target's characteristics, agencies could consider alternatives that were not fully compliant with the salient characteristics of the brand name target (*i.e.*, that were "less than equal" to the brand name but represented a better overall value for the intended use). This will allow contracting officers a simple way to describe needs and enhance their flexibility to make tradeoffs between price and quality to achieve a best value decision. Public comment is sought regarding whether the rule should speak in terms of "desired" characteristics rather than "salient" characteristics, since the latter term is generally associated with the brand name or equal approach, where requirements are fixed and agencies are denied the opportunity to consider offers that fall below the "or equal" level.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule affects how purchase descriptions may be written for competitive procurements. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The IRFA is summarized as follows:

The objective of the proposed rule is to provide more comprehensive, uniform FAR guidance on the appropriate use of brand name purchase descriptions, as there are currently many differing interpretations of this issue. Application of the proposed guidance should result in more consistent use of such purchase descriptions in Federal acquisitions. The rule will apply to all large and small entities that offer supplies to the Government that are brand name items or are comparable to such items. It is anticipated that the selected approach will be the most advantageous to small entities, while achieving the objective of the rule, because this approach best enables the Government to express its requirements clearly and describe the degree of flexibility with which offered supplies or services will be evaluated as "equals."

A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 96–018), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 11 and 52

Government procurement.

Dated: November 9, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 11 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 11 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 11—DESCRIBING AGENCY NEEDS

2. Section 11.104 is revised and sections 11.104–1, 11.104–2, and 11.104–3 are added to read as follows:

11.104 Use of brand name purchase descriptions.

While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of a brand name purchase description may be advantageous under certain circumstances.

11.104–1 Brand name or equal.

Brand name or equal purchase descriptions shall include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an "equal" item must meet to be acceptable for award. Use

brand name or equal descriptions when the salient characteristics are firm requirements.

11.104–2 Brand name—no substitute.

Brand name—no substitute purchase descriptions may be used when—

(a) A particular brand name product has a feature or features essential to the Government's requirements, and market research indicates that other companies' similar products do not meet or cannot be modified to meet the agency's legitimate needs; and

(b)(1) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302–1); or

(2) The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures and the amount does not exceed the simplified acquisition threshold.

11.104–3 Brand name as target.

To the extent authorized by agency regulations, for other than sealed bidding acquisitions, contracting officers may identify one or more brand name products as targets for addressing agency needs. The solicitation shall identify the items intended use and may, but need not, include salient physical, functional, or performance characteristics. Use brand name as target purchase descriptions when there are desirable, but not firm, requirements.

3. Section 11.106 is added to read as follows:

11.106 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.211–X1, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

(b) The contracting officer shall insert the provision at 52.211–X2, Brand Name as Target, when brand name as target purchase descriptions are included in a solicitation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Sections 52.211–X1 and 52.211–X2 are added to read as follows:

52.211–X1 Brand name or equal.

As prescribed in 11.106(a), insert the following provision:

Brand Name or Equal (Date)

(a) If items in this solicitation are identified as "brand name or equal," the purchase description reflects the characteristics and level of quality that will satisfy the Government's needs. The salient physical, functional, or performance characteristics that "equal" products must meet are specified in the solicitation.

(b) To be considered for award, offers of "equal" products, including "equal" products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as cuts, illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate "equal" products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an "equal" product, the offeror shall provide the brand name product referenced in the solicitation.

(End of provision)

52.211–X2 Brand Name as Target.

As prescribed in 11.106(b), insert the following provision:

Brand Name as Target (Date)

(a) If items in this solicitation are identified as "brand name as target", the specified brand name item(s) reflects the characteristics and level of quality that will satisfy the Government's needs. Offerors are encouraged to offer these or similar items that will provide comparable performance and quality at a reasonable price.

(b) To be considered for award, offers of substitute products, including other products of the brand name manufacturer, must—

(1) Identify the salient physical, functional, or performance characteristics of the offered item; and

(2) Include descriptive literature, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer.

(c) The Contracting Officer will evaluate offered substitute products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that a substitute product is being offered, the offeror shall provide the target brand name product referenced in the solicitation.

(End of provision)

[FR Doc. 98–30438 Filed 11–13–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**

In the **List of Public Laws** printed in the *Federal Register* on November 13, 1998, H.R. 4110, Public Law 105-368, was printed incorrectly. It should read as follows:

H.R. 4110/P.L. 105–368

Veterans Programs Enhancement Act of 1998 (Nov. 11, 1998; 112 Stat. 3315)

Last List November 13, 1998

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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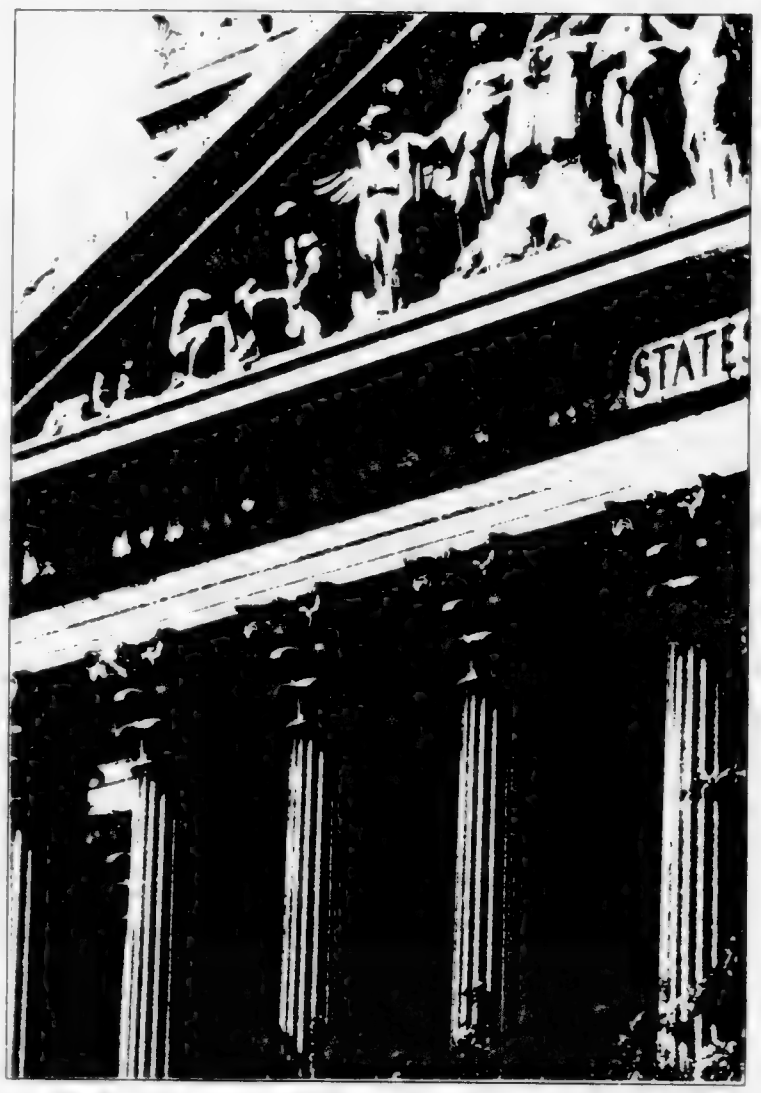

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Rules and Regulations

Federal Register
Vol. 63, No. 221
Tuesday, November 17, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206–AH47

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: As part of continuing efforts to streamline the appointing system, the Office of Personnel Management (OPM) is issuing final regulations on nonpermanent employment. These regulations eliminate "outside-the-register authority" for term appointments; permit OPM to extend the length of term appointments when justified; clarify the crediting of prior service for the required trial period, and allow certain excepted service employees whose positions are brought into the competitive service to serve the full 4-year period allowed for term appointment. The regulations also add several categories of individuals to the list of those eligible for noncompetitive temporary and term appointments on the basis that they are currently eligible for permanent appointment and also clarifies the conditions for making nonpermanent appointments based on a veteran's eligibility for a veterans readjustment appointment (VRA). To help agencies control the costs of workers' compensation by returning more injured employees to duty, the regulations permit the reappointment of injured non-permanent employees to any position for which qualified.

EFFECTIVE DATE: December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Diane Tyrrell or Michael Mahoney on 202–606–0830, FAX 202–606–2329, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On September 9, 1996 (61 FR 47450), OPM published proposed regulations and received comments from four Federal agency headquarters, three agency components, and three employee organizations. Following is a summary of each regulatory provision and the relevant comments.

Eliminating the Outside-the-Register Hiring Mechanism for Term Appointments

Two agency headquarters objected to the elimination of outside-the-register procedures for term appointments on the basis that agencies should have the flexibility to select from "immediately available and qualified candidates * * * using the latest computer technology." We have not adopted these comments.

In the past when OPM (or agencies under delegated examining) maintained standing registers, it was appropriate for the register-holding office to authorize outside-the-register appointments when those registers did not have candidates available for certification. Now, however, OPM has delegated full examining authority to agencies. Agencies can announce individual positions as needed and can tailor examining procedures as appropriate. Further, since term appointees may serve for long periods of time and have benefits similar to those enjoyed by permanent employees, it is appropriate that term and permanent employees be appointed in the same manner. We have, therefore, adopted the proposal to eliminate outside-the-register procedures for term appointment.

Extending Term Appointments

We proposed to permit OPM to extend term appointments beyond the 4-year limit without the need for a variation to the regulation under Civil Service Rule 5.1 as currently required. In response, three agency headquarters and two employee organizations recommended OPM delegate the extension authority to agencies. One agency field component recommended that the regulations authorize agencies to make term appointments for up to 5–7 years through the end of 2001, or permit the noncompetitive reappointment of individuals who have served the maximum time for term appointment in order to complete the work for which they were hired. A third employee organization objected to any expansion of the term authority on the basis that term appointments are not specifically authorized by law.

After considering these dissimilar comments, we believe our original proposal represents a reasonable compromise. Therefore, the final regulations permit OPM to extend term appointments beyond the 4-year limit. The purpose of term appointments remains the same as defined in 5 CFR 316.301; such appointments are appropriate when the need for an employee's services is not permanent, e.g., for project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of permanent employees who would otherwise be displaced.

Agencies should determine whether a permanent appointment may be more appropriate if there is a need for continuing the term appointment for an extended period of time. Overly long extensions or consecutive term appointments reflect a permanent need and, therefore, must be staffed accordingly. When seeking OPM approval to extend term appointments, agencies must document the reasons for the continued need of the individual. The requirement to make such requests using the variation process is no longer necessary.

We are also adopting the proposal to clarify that agencies may make term appointments in any increments so long as the appointment is for more than 1 year and no more than 4 years. For example, when an agency makes a term appointment for 13 months, the agency may extend that appointment up to the 4-year limit in as many increments as the agency chooses. The vacancy announcement for a term appointment of less than 4 years should make clear the possibility of extension up to the 4-year limit.

Trial Period for Term Appointment

There were no comments on our proposal to require crediting prior service toward the trial period required for term appointment in the same way that prior service is credited for the probationary period in 5 CFR 315.802, i.e., same agency, same line of work, and no more than a single break in service not exceeding 30 days. The final regulations have adopted the proposal with no changes.

Crediting Excepted Service Toward Time Limit for Term Appointment

One agency commented on our proposal to allow former excepted service employees whose positions were brought into the competitive service when OPM revoked an excepted appointing authority to serve up to the full 4-year period for term appointments rather than have the amount of their prior time-limited excepted service subtracted from the maximum time limit for term appointment. The agency suggested that the regulatory language itself contain a fuller explanation. We have adopted this suggestion in 5 CFR 316.702.

Categories Eligible for Noncompetitive Term and Temporary Appointments

One agency headquarters commented on the proposal to add four categories of individuals eligible for noncompetitive term and temporary appointments based on their eligibility for permanent appointment under various authorities. The agency recommended the final regulations permit noncompetitive term appointments of mentally retarded and disabled employees who have successfully performed while employed under excepted service appointments, 5 CFR 213.3102 (t) and (u). We have not adopted this suggestion. Individuals who serve under these two excepted service authorities are eligible for conversion to career or career-conditional appointments under 5 CFR 315.709 if there is no break in service between their excepted service and the career or career-conditional appointment. A term appointment would constitute a break in service for this purpose and would prevent conversion. Also, since an individual can serve indefinitely under the (t) and (u) authorities unless the appointment is made with a specific time limitation, a term appointment in the competitive service would be less advantageous to the employee since it has a fixed ending date.

Selecting Term Employees for Permanent Positions

Although no specific regulatory language was proposed, two agencies questioned our interpretation of Civil Service Rule 3.1 and parallel regulation 5 CFR 315.703. One agency component recommended a new Executive Order (E.O.) to change Civil Service Rule 3.1 so that term employees could more easily be converted to permanent appointments. In our proposal we pointed out that conversion is possible only when all the conditions of 5 CFR 315.703 are met, including the requirement that the term employee has been within reach for permanent appointment. We explained that in this context, within reach means that the term employee could have been selected for a permanent position *that was actually announced and filled.* We explained that it was not sufficient for the vacancy announcement to have stated that positions could be filled by term *or* permanent appointment or that an individual selected for a term appointment might later be converted to a permanent appointment without further competition.

In commenting on our explanation, the two agencies suggested that when positions are announced as "term, may become permanent," the conversion from term to permanent is made based on a prior competitive selection from a *register which was used to make appointments conferring competitive status.* According to the agencies' reasoning, the conversion from term to permanent would thus be based on prior competition and would, therefore, be in keeping with merit system requirements since all applicants knew of the possible conversion and had a fair opportunity to apply. These agencies see the term appointment as an interim step necessary because of funding constraints.

OPM's view is that *unless permanent appointments were actually made* from the register referred to above, it cannot be said that the register was used to make appointments conferring competitive status. An amendment to E.O. 10577 or enactment of a Federal statute would be necessary before we could issue regulations authorizing individuals to be converted from term to permanent on the basis of a vacancy announcement that said an individual selected for a term appointment might later be converted to permanent appointment.

Two employee organizations recommended OPM seek legislative change to permit temporary and term employees to compete for permanent positions under agency merit promotion procedures. This is a matter outside the scope of the regulations in 5 CFR part 316.

Temporary Employees Injured on the Job

Two agencies commented (one by telephone) on the proposed provision to permit agencies to noncompetitively reappoint former temporary employees who were injured on the job *to any position for which they qualify* if their injury disqualified them for reappointment to their original position or one with the same qualification requirements. (Other former temporary employees who were *not* injured on the job may be noncompetitively reappointed only to their original positions or one with the same qualification requirements.) For all reappointments, time under the initial appointment and reappointment must adhere to the limits for temporary appointments, but time spent on workers' compensation does not count toward any time limit.

One agency recommended that we allow agencies to reappoint former temporary employees who are injured on the job for a minimum of 120 days, even if they had less time remaining under their original temporary appointment. This 120 days would not count toward time remaining under the original temporary appointment. The 120-day period would provide the necessary time for the Department of Labor to calculate a "loss of wage earning capacity." Without such a determination, individuals would return to the long term workers' compensation rolls after expiration of the temporary appointment, and Federal agencies would not have reduced their costs for workers' compensation.

On the basis of this comment, we have changed the regulatory provision to permit reappointment of former temporary employees injured on the job for a minimum of 120 days. See 5 CFR 316.402.

Eliminating the TAPER Authority

In response to the Governmentwide need in connection with the President's initiative to provide opportunity for welfare recipients to enter the workforce, OPM will not eliminate the TAPER (temporary appointment pending establishment of a register) authority at this time. We recognize the need to retain a more simple and flexible examining process required by agencies when filling Worker-Trainee (GS–1 and WG–1 and –2) positions with applicants with limited education and experience. This appointing authority and examining process will continue to be monitored and evaluated to determine the necessity for its continuation.

Editorial

One agency objected to our proposed deletion of 5 CFR 316.305 relating to the eligibility of certain term employees for within-grade increases. Because the section duplicates material already included in 5 CFR part 531, subpart D, we have not adopted the agency's suggestion.

We have made editorial changes in 5 CFR 316.201 of the regulations to clarify

that Worker-Trainee promotions are authorized under these regulations when they are consistent with 5 CFR 330.501; in 5 CFR 316.403(b)(1) of the regulations to correct a reference to retired disabled veterans; and in 5 CFR 316.701(b)(1) and 5 CFR 316.702(b)(1) of the regulations, which permit agencies to retain employees whose public or private enterprise or excepted positions are brought into the competitive service. This language makes it clear that if they are retained in continuing positions, they are given status quo appointments. We have also removed reference to temporary and term appointments made based on eligibility under 5 U.S.C. 3304(c) ("Ramspeck appointments") due to the repeal of the Ramspeck Act.

Other

One agency commented that agencies be allowed to make excepted service appointments on a term basis. Excepted appointments are not covered by 5 CFR part 316. However, unless the specific excepted service authority provides otherwise, agencies may make an excepted appointment on a time limited basis for more than 1 year. Such excepted appointments are comparable to term appointments in the competitive service, but there is no maximum time limit unless specified by a particular excepted service authority. (Excepted appointments not-to-exceed 1 year are defined in 5 CFR 213.104(a)(1) as temporary and are subject to the maximum time limits 5 CFR 213.104(b)(1).

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulation pertains only to Federal employees and agencies.

List of Subjects in 5 CFR Part 316

Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 316 of title 5, Code of Federal Regulations, as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

2. In § 316.201, paragraph (b) is revised to read as follows:

§ 316.201 Purpose and duration.

* * * * *

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS–1, WG–1, and WG–2 and may reassign or promote the appointees to other positions through grade GS–3, WG–4, or equivalent grades in the Federal Wage System consistent with § 330.501 of this chapter. Agencies are authorized to reassign or promote Worker-Trainees under this authority.

3. Section 316.301 is revised to read as follows:

§ 316.301 Purpose and duration.

(a) An agency may make a term appointment for a period of more than 1 year but not more than 4 years to positions where the need for an employee's services is not permanent. Reasons for making a term appointment include, but are not limited to: project work, extraordinary workload, scheduled abolishment, reorganization, contracting out of the function, uncertainty of future funding, or the need to maintain permanent positions for placement of employees who would otherwise be displaced from other parts of the organization. Agencies may extend appointments made for more than 1 year but less than 4 years up to the 4-year limit in increments determined by the agency. The vacancy announcement should state that the agency has the option of extending a term appointment up to the 4-year limit.

(b) OPM may authorize exceptions beyond the 4-year limit when the extension is clearly justified and is consistent with applicable statutory provisions. Requests to make and/or extend appointments beyond the 4-year limit must be initiated by the employing office and sent to the appropriate OPM service center.

4. Section 316.302 is revised to read as follows:

§ 316.302 Selection of term employees.

(a) *Competitive term appointment.* An agency may make a term appointment under 5 CFR part 332 competitive procedures.

(b) *Noncompetitive term appointment.* An agency may give a noncompetitive term appointment, without regard to the requirements of parts 332 and 333 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans readjustment appointment (VRA) under § 307.103 of this chapter. Term appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are competitive service appointments not excepted VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career or career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, 315.703, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of having left a term appointment prior to serving the 4-year maximum amount of time allowed under the appointment. Reappointment must be to a position in the same agency appropriate for filling under term appointment and for which the individual qualifies. Combined service under the original term appointment and reappointment must not exceed the 4-year limit; or

(8) Conversion in the same agency from a current temporary appointment when the employee is or was within reach on a certificate of eligibles for term appointment *at any time during service in the temporary position. Within reach* means that the person could have been selected for the position under competitive hiring procedures, including veterans' preference. The certificate must have been actually used for term appointment. The person must have been continuously employed in the position from the date found within reach to the date converted to a term appointment.

(c) Term employees are eligible for an extension of their appointment in accordance with the time limits in § 316.301 even if their eligibility for noncompetitive appointment expires or is lost during the period they are serving under term employment.

5. In § 316.304, paragraph (a) is revised to read as follows:

§ 316.304 Trial period.

(a) The first year of service of a term employee is a trial period regardless of the method of appointment. Prior Federal civilian service is credited toward completion of the required trial

period in the same manner as prescribed by § 315.802 of this chapter.

* * * * *

§ 316.305 [Removed]

6. Section 316.305 is removed.

7. Section 316.402 is revised to read as follows:

§ 316.402 Procedures for making temporary appointments.

(a) *Competitive temporary appointments.* In accordance with the time limits in § 316.401, an agency may make a temporary appointment under 5 CFR part 332 competitive procedures or under 5 CFR part 333 "outside-the register" procedures when there are insufficient eligibles on the appropriate register.

(b) *Noncompetitive temporary appointments.* In accordance with the time limits in § 316.401, an agency may give a noncompetitive temporary appointment, without regard to the requirements of parts 332 and 333 of this chapter, to an individual who is qualified for the position and who is eligible for:

(1) Reinstatement under § 315.401 of this chapter;

(2) Veterans readjustment appointment under § 307.103 of this chapter. Temporary limited appointments under this section are permitted only at the grade levels authorized for VRA appointments. Such appointments are not VRA appointments and do not lead to conversion to career-conditional appointment;

(3) Career-conditional appointment under §§ 315.601, 315.604, 315.605, 315.606, 315.607, 315.608, 315.609, or 315.711 of this chapter;

(4) Appointment under 5 U.S.C. 3112 (veterans with compensable service-connected disability of 30% or more). The disability must be documented by a notice of retirement of discharge due to service-connected disability from active military service dated at any time, or by a notice of compensable disability rating from the Department of Veterans Affairs, dated within the last 12 months;

(5) Appointment under 31 U.S.C. 732(g) for current and former employees of the General Accounting Office;

(6) Appointment under 28 U.S.C. 602 for current and former employees of the Administrative Office of the U.S. Courts;

(7) Reappointment on the basis of being a former temporary employee of the agency who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter. An agency may not reappoint a former temporary employee if the individual has already served the maximum time allowed in § 316.401 or if the position has been filled under temporary appointment for the maximum time allowed in § 316.401. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements;

(8) Reappointment on the basis of being a former temporary employee who was originally appointed from a certificate of eligibles or under the provisions of part 333 of this chapter and who sustained a compensable injury while serving on the temporary appointment. Reappointment must be to the same position or another position appropriate for temporary appointment with the same qualification requirements. If the compensable injury disqualifies the former individual from performing such a position, reappointment may be to any position for which the individual is qualified. Reappointment must be for a minimum of 120 days.

(c) *Extension of temporary appointments.* An individual who receives a valid temporary appointment will be eligible for an extension in accordance with § 316.401 even if his or her eligibility for noncompetitive appointment expires or is lost during the authorized period of temporary employment.

8. In § 316.403, paragraph (b)(1) is revised to read as follows:

§ 316.403 Designation of provisional appointments.

* * * * *

(b)* * *

(1) Noncompetitive temporary appointments of disabled veterans under § 316.402(b)(5), when the appointments are intended to afford eligibility for conversion in accordance with § 315.707 of this chapter and section 3112 of title 5, United States Code;

* * * * *

9. In § 316.701, paragraph (b)(1) is revised to read as follows:

§ 316.701 Public or private enterprise taken over by Government.

* * * * *

(b)* * *

(1) When an agency retains an employee under paragraph (a) of this section in a position which it determines to be a continuing one, the agency gives the employee a status quo appointment and shall decide on a timely basis whether it will convert that individual's employment to career or career-conditional under § 315.701 of this chapter.

* * * * *

10. In § 316.702, paragraphs (b)(1) and (d) are revised to read as follows:

§ 316.702 Excepted positions brought into the competitive service.

* * * * *

(b)(1) When an agency retains an employee under paragraph (a) of this section who was serving in an excepted position under an indefinite appointment or an appointment without time limit, the agency gives the employee a status quo appointment and may convert that employee's appointment to career or career-conditional under § 315.701 of this chapter.

* * * * *

(d) An employee who was serving under an excepted appointment with a definite time limit longer than 1 year may be retained under a term appointment. The term appointment is subject to all conditions and time limits applicable to term appointments. Service under excepted appointment does not count against the maximum time limit for term appointment in the competitive service.

[FR Doc. 98–30613 Filed 11–16–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–108–AD; Amendment 39–10882; AD 98–23–01]

RIN 2120–AA64

Airworthiness Directives; Parker Hannifan Airborne Dry Air Pumps, Conversion Kits, and Coupling Kits

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–23–01, which was sent previously to all known U.S. owners and operators of aircraft and engines equipped with certain Parker Hannifin Airborne dry air pumps, conversion kits, and coupling kits, utilizing part number (P/N) B1–19–1 flexible coupling that has a date code resembling a clockface and indicating a manufacture date of either "12/97" or "5–6/98". This AD requires replacing the affected flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350). The AD resulted from reports

of failure of the affected flexible coupling due to a manufacturing defect of this coupling. The actions specified by this AD are intended to prevent failure of the primary dry air pump caused by defective flexible coupling, which could result in loss of primary attitude and direction references during instrument flight rules (IFR) operations.

DATES: Effective November 20, 1998, to all persons except those to whom it was made immediately effective by priority letter AD 98–23–01, issued October 29, 1998, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–108–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Copies of the applicable service information may be obtained from the Parker Hannifin Corporation, Airborne Division, 711 Taylor Street, Elyria, Ohio 44035; telephone: (440) 937–1315; facsimile: (440) 937–5409. This information may also be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roy Boffo, Aerospace Engineer, FAA, Chicago Aircraft Certification Office, Systems and Flight Test Branch, 2300 E. Devon Avenue, Des Plaines, Illinois 60018; telephone: (847) 294–7564; facsimile: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Discussion

On October 29, 1998, the FAA issued priority letter AD 98–23–01, which applies to aircraft or engines equipped with certain Parker Hannifin Airborne dry air pumps, conversion kits, and coupling kits, utilizing P/N B1–19–1 flexible coupling that has a date code resembling a clockface and indicating a manufacture date of either "12/97" or "5–6/98". This AD requires replacing the affected flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350), in accordance with Parker Hannifin Airborne Service Letter No. 48, dated October 20, 1998.

That AD resulted from approximately 50 reports of failure of the flexible coupling on certain Parker Hannifin Airborne dry air pumps, conversion kits, and coupling kits installed in aircraft or engines. To this date, no accidents have occurred due to the failure of this coupling. This condition could result in loss of primary attitude and direction references during instrument flight rules (IFR) operations.

This condition is attributed to a manufacturing defect of Lots 1 and 2 of the B1–19–1 flexible coupling. This coupling was shipped between January 1, 1998, and October 13, 1998. Dry air pumps, conversion kits, and flexible coupling kits that incorporate any of the part numbers and serial numbers referenced in the Applicability section of this AD could have this manufacturing defect.

Dry air pumps that could incorporate the part number (P/N) B1–19–1 flexible coupling are installed as original equipment on many airplanes, particularly Cessna, Raytheon, Piper, and Mooney airplanes. In addition, Parker Hannifin holds a parts manufacturer approval (PMA) for field replacements. The dry air pumps are the primary vacuum source on small single-engine airplanes and the secondary vacuum source on larger twin-engine airplanes.

The affected flexible coupling was shipped from Parker Hannifin between January 1, 1998, and October 13, 1998.

Airborne dry air pumps, conversion kits, or coupling kits that were installed or modified prior to January 1, 1998, would not incorporate the affected coupling. A check of the maintenance records would show whether the dry air pump, conversion kit, or coupling kit was installed or modified prior to January 1, 1998.

Those Airborne dry air pumps, conversion kits, or coupling kits installed or modified between January 1, 1998, and October 13, 1998, could incorporate the affected coupling, depending on when the material was received. The coupling could be held as spares or obtained from salvaged parts. For this reason, any dry air pump, conversion kit, or coupling kit with flexible coupling, P/N B1–19–1, that was installed or modified after January 1, 1998, could be affected by the above condition. The flexible coupling has a date code that resembles a clockface and indicates a manufacture date of either "12/97" or "5–6/98".

Relevant Service Information

Parker Hannifin issued Airborne Service Letter No. 48, dated October 20, 1998, which specifies procedures for:

—Removing the dry air pump from the aircraft;

—Inspecting and identifying the P/N B1–19–1 flexible coupling; and

—Replacing the P/N B1–19–1 flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350).

The FAA's Determination and Explanation of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other aircraft or engines equipped with the above-referenced flexible coupling, the FAA issued priority letter AD 98–23–01 to prevent failure of the primary dry air pump caused by defective flexible coupling, which could result in loss of primary attitude and direction references during IFR operations.

Determination of the Effective Date of the AD

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 29, 1998, to all known U.S. operators of aircraft or engines equipped with the above-referenced flexible coupling. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–108–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–23–01 Parker Hannifin Corporation: Amendment 39–10882; Docket No. 98–CE–108–AD.

Applicability: The following Airborne dry air pumps, conversion kits, and coupling kits, with flexible coupling, part number (P/N) B1–19–1, that:

1. Have a date code resembling a clockface on the coupling and indicating a manufacture date of either "12/97" or "5–6/98"; and

2. Are installed in, but not limited to, the following aircraft or engine models, certificated in any category, that are listed in the Appendix to this AD:

Item	Part number	Serial numbers
Dry Air Pump	211CC	2AP1 through 10AP319.
Dry Air Pump	211CC–9	1AP1 through 2AP5.
Dry Air Pump	E211CC	11AN543 through 11AN642 and 2AP1 through 7AP442.
Dry Air Pump	212CW	2AP1 through 7AP286.
Dry Air Pump	E212CW	1AP1 through 7AP492.
Dry Air Pump	215CC	12AN719 through 12AN940 and 1AP1 through 9AP3510.
Dry Air Pump	215CC–9	2AP1 through 7AP95.
Dry Air Pump	216CW	12AN521 through 12AN660 and 1AP1 through 10AP2695.
Conversion Kit	300–1	4AP120 through 4AP122 and 8AP256 through 8AP258.
Conversion Kit	300–2	2AP30 through 2AP43, 4AP134, 4AP136, and 4AP137.
Conversion Kit	300–3	1AP1 through 1AP3.
Coupling Kit	350	1AP through 9AP and N/A (see Note 1 below).

Note 1: Some of the part number 350 coupling kits incorporated serial numbers 1AP through 9AP, while others were marked with "N/A" in the serial number block.

Note 2: The affected flexible coupling was shipped from Parker Hannifin between January 1, 1998, and October 13, 1998. Dry air pumps, conversion kits, or coupling kits that were installed or modified prior to January 1, 1998, would not incorporate the affected coupling. This AD allows the aircraft owner or pilot to check the maintenance records to determine whether the dry air pump, conversion kit, or coupling kit was installed or modified since January 1, 1998. See paragraph (d) of this AD for authorization.

Note 3: This AD applies to any aircraft or engine equipped with Airborne dry air pumps, conversion kits, and coupling kits, that have flexible coupling, part number (P/N) B1–19–1. Aircraft or engines with the P/N B1–19–1 flexible coupling are affected regardless of whether they have been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft or engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the primary dry air pump caused by defective flexible coupling, which could result in loss of primary attitude and direction references during instrument flight rules (IFR) operations, accomplish the following:

(a) Within 2 calendar days after the effective date of this AD or prior to further flight after the effective date of this AD, whichever occurs later, replace any affected flexible coupling with P/N B1–7–3 flexible coupling (part of Parker Hannifin flexible coupling kit, Airborne P/N 350) in accordance withParker Hannifin Airborne Service Letter No. 48, dated October 20, 1998.

(b) If parts have been ordered from Parker Hannifin, but are not available, accomplish the following:

(1) Operate the aircraft in visual flight rules (VFR) conditions only;

(2) Operate the aircraft during daytime hours only; and

(3) When parts become available, replace the coupling prior to further flight.

(c) As of the effective date of this AD, no person shall install, on any aircraft or engine,

any of the affected Airborne dry air pumps, conversion kits, and coupling kits, with part number (P/N) B1–19–1 flexible coupling that has a date code resembling a clockface on the coupling and indicating a manufacture date of either "12/97" or "5–6/98".

(d) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether the existing dry air pump, conversion kit, or coupling kit was installed or modified since January 1, 1998. If the dry air pump, conversion kit, or coupling kit was not installed or modified since January 1, 1998, the AD does not apply and the owner/operator must make an entry into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished, provided that:

(1) The aircraft is operated in VFR conditions only; and

(2) The aircraft is operated during daytime hours only.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Chicago Aircraft Certification Office (ACO), 2300 E. Devon Avenue, Des Plaines, Illinois 60018. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago ACO.

(g) The replacement required by this AD shall be done in accordance with Parker Hannifin Airborne Service Letter No. 48, dated October 20, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Parker Hannifin Corporation, Airborne Division, 711 Taylor Street, Elyria, Ohio 44035. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on November 20, 1998, except those persons to whom it was made immediately effective by priority letter AD 98–23–01, issued October 29, 1998, which contained the requirements of this amendment.

APPENDIX TO AD 98–23–01; DOCKET NO. 98–CE–108–AD

Part name	Part No.	Airplane/engine make/model
Dry Air Pump	211CC, 215CC, E211CC	AIRPLANES Aerospatiale / TB9, TB10, TB20. Beech / 19, 19A, B19, 23, B23, C23, 24, A24, A24R, B24R, C24R, 76, 77, E95. Cessna / F152, FA152, 172, FR172K, R172K, 177, 177RG, FR182, R182, TR182, T182, T303, 336, 337, F337, T337G, P337, FT337, 411, 411A, 421A, 421B, 421C. Grumman / AAA1B, AA1C, AA5A, AA5B, GA7. Lake / LA–4–200, 250. Maule / M4–210. Mooney / M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K. Navion / G, H. Piper / PA–18, PA18–150, PA–22–108, PA–23–235, PA–23–250, PA–24–180, PA–24–250, PA–24–260, PA–24–400, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28R–180, PA–28–181, PA–28R–200, PA–28–201T, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA28–235, PA–28–236, PA–30, PA–31–300, PA–31–310, PA–31–325, PA–31–350, PA–31P–350, PA–32–260, PA–32–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32–301, PA–32–301T, PA–32R–301, PA–32R–301T, PA–34–200, PA–34–200T, PA–38–112, PA–39, PA–44–180, PA–44–180T. Rockwell / 100, 112, 112A, 112B, 112TC, 112TCA, 114, 114A, 180. Lovaux Ltd. / Optica OA7, Series 300 (FLS Aerospace). ENGINES Textron Lycoming / 0–235, 0–290, 0–320, 0–360, 0–435, 0–540, IO–320. IO–360, IO–540, IO–720, TIO–360, TIO–540, GO–480, GSO–480. Continental / 0–300, GO–300, IO–360, TSIO–360, TSIO–520, GTSIO–520. United Aircraft / PT6A, PT6B.
Dry Air Pump	211CC–9, 215CC–9	AIRPLANES Cessna / 150, A150K, A150L, A150M, F150K, F150L, F150M, FA150K, FA150L, FA150M, 152, A152, 172, 177, 337. ENGINES Textron Lycoming / 0–320. Continental / C90–16, 0–200.
Dry Air Pump	212CW, E212CW, 216CW	AIRPLANES Beech / A23, A23A, E33, E33A, F33A, F33C, V35A, V35A–TC, 36, A36, A36TC, B36TC, B55, 58, 76. Britten Norman / BN–2A. Cessna / 152, A152, 172, 180, 182H thru M, 182N and P, F182, R182, TR182, T182, 185, U206, TU206, 207, T207, 210, T210, P210, T303, 310P, 310R, 335, 340, 340A, 401, 401A, 401B, 402, 402A, 402B, 414, 414A. Helio / H295. Maule / M4–220. Mooney / M20K, M22. Navion / G, H. Piper / PA–31–325, PA–31–350, PA–31P–350, PA–34–200, PA–34–200T, PA–39, PA–44–180, PA–44–180T, PA–46–310P, PA–46–350.

APPENDIX TO AD 98–23–01; DOCKET NO. 98–CE–108–AD—Continued

Part name	Part No.	Airplane/engine make/model
		ENGINES
		Textron Lycoming / LIO–360, GO–435, TIO–541.
		Continental / E–185, E–225, IO–346, O–470, IO–470, TSIO–470, IO–520.
		Franklin / 6A–335, 6A–350.
Conversion Kit	300–1	Cessna / 172A, 172B thru 172H.
		Piper / PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160.
Conversion Kit	300–2	Beech / 35 thru S35, 35–33 thru 35–A33, 35–B33.
		Cessna / 175 thru 175A, 175B, 175C, P172D, 180 thru 180H, 182 thru 182H, 185 thru 185D, 210, 210A thru 210J, 210–5, 210–5A.
Conversion Kit	300–3	Cessna / 150, 150A thru 150H.
Coupling Kit	350	Coupling kit may have been put on any of the above list airplanes or engines.

Issued in Kansas City, Missouri, on November 4, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30170 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 125

[Docket No. 28537; SFAR 50–2]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correcting amendment; correction.

SUMMARY: This document contains a correction to the final rule published in the **Federal Register** (63 FR 23604) on April 29, 1998. The final rule corrected an error in the February 26, 1997, final rule, which inadvertently removed section 3 of SFAR No. 50–2 concerning special flight rules in the vicinity of Grand Canyon National Park. The April 1998 final rule corrected the error by reinstating section 3.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: David L. Catey, (202) 267–8166.

Correction of Publication

In final rule FR Doc. 98–11335, on page 23604 in the **Federal Register** issue of April 29, 1998, make the following corrections:

On page 23604, in the first column, in the heading, "14 CFR Parts 91, 93, 121, and 135" should read "14 CFR Parts 91, 121, and 135".

On page 23604, in the first column, in the heading, "[Docket No. 28537; Amendment Nos. 91–257, 121–270, 135–72, 93–76]" should read "[Docket No. 28437; SFAR 50–2]".

Issued in Washington, DC, on November 4, 1998.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 98–30090 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone Acetate and Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of American Home Products Corp. The supplemental NADA provides for the use of a trenbolone acetate and estradiol benzoate ear implant in heifers fed in confinement for slaughter for increased rate of weight gain.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Home Products Corp., 800 Fifth St. NW., Ft. Dodge, IA 50501, filed supplemental NADA 141–043 that provides for use of an implantation containing 200 milligrams (mg) trenbolone acetate and 28 mg estradiol benzoate (Synovex® Plus) in heifers fed in confinement for slaughter for increased rate of weight gain. The supplemental NADA is approved as of September 30, 1998, and the regulations are amended in 21 CFR 522.2478 by adding paragraph (c)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food producing animals qualifies for 3 years of marketing exclusivity beginning September 30, 1998, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or, in the case of food producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use in confined heifers for increased rate of weight gain for which the supplemental application is approved.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to

the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.2478 is amended by adding paragraph (c)(2) to read as follows:

§ 522.2478 Trenbolone acetate and estradiol benzoate.

* * * * *

(c) * * *

(2) *Heifers*—(i) *Amount.* 200 milligrams of trenbolone acetate and 28 milligrams of estradiol benzoate (one implant consisting of 8 pellets, each pellet containing 25 milligrams of trenbolone acetate and 3.5 milligrams of estradiol benzoate) per animal.

(ii) *Indications for use.* For increased rate of weight gain in heifers fed in confinement for slaughter.

(iii) *Limitations.* Implant subcutaneously in ear only. Not for dairy or beef replacement heifers.

Dated: November 3, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–30611 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[FRL–6187–8]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program and Revision of the Specification for the Mixing Chamber Associated With Animal Toxicity Testing of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This direct final rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program to September 1, 2000. The time period for use of these alternative methods originally expired on January 1, 1997 and was previously extended to September 1, 1998. The purpose of today's extension is to grant temporary flexibility until a final performance-based analytical test method approach rulemaking is promulgated. EPA expects to finalize the performance-based analytical test methods approach rulemaking before September 1, 2000. This direct final rule also makes certain revisions to the procedures applicable to health effects testing of fuels and fuel additives.

EFFECTIVE DATE: This direct final rule is effective January 19, 1999, unless EPA receives adverse comment or a request for a public hearing by December 17, 1998. In the " Proposed Rules" section of today's **Federal Register**, EPA is publishing a proposed rule that matches the substance of this direct final rule. If the Agency receives adverse comment or a request for a public hearing by December 17, 1998, EPA will withdraw this direct final rule by publishing timely withdrawal in the **Federal Register**.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Joseph R. Sopata, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (6406J), Washington, D.C. 20460. Materials relevant to this direct final rule have been placed in docket A–98–21 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Joseph R. Sopata, Chemist, Fuels & Energy Division, at (202) 564–9034. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Joseph R. Sopata, (202) 564–9034, or Anne-Marie C. Pastorkovich, Attorney/Advisor, Fuels & Energy Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those that use analytical test methods to comply with the RFG program and manufacturers of fuels and fuel additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories. Manufacturers of gasoline and diesel fuel. Manufacturers of additives for gasoline and diesel fuel.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. RFG Standards & Test Methods Utilized at § 80.46

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as anti-dumping standards for non-reformulated, or conventional gasoline, used in the rest of the country, beginning in January 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NOx emissions, and meet certain content standards for oxygen, benzene, and heavy metals. EPA published the final RFG regulations in the **Federal Register** on February 16, 1994.[1]

[1] The RFG and anti-dumping regulations are located at 40 CFR part 80, subparts D, E, and F. The final rule establishing the RFG and anti-dumping standards was published in the February 16, 1994 **Federal Register** at 59 FR 7716. Amendments were published at 59 FR 36944 (June 20, 1994), 59 FR 39258 (August 2, 1994), 59 FR 60715 (November 28, 1994), 60 FR 2699 (January 11, 1995), 60 FR 6030 (February 1, 1995), 60 FR 35488 (July 10, 1995), 60 FR 40006 (August 1, 1995), 60 FR 65571 (December 20, 1995), 61 FR 12030 (March 25, 1996), 61 FR 20736 (May 8, 1996), 61 FR 35673 (July 8, 1996),

Continued

Refiners, importers, and oxygenate blenders are required, among other things, to test RFG and conventional gasoline for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on. Based upon comments received from the regulated industry during the RFG and anti-dumping rulemaking, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. Language was adopted in §§ 80.46(f)(3) and (g)(9)(i), which permitted the use of alternative analytical test methods for aromatics and oxygenates, respectively, until January 1, 1997. These sections were later amended by a November 13, 1996 final rule published in the **Federal Register** to permit the use of alternative analytical test methods for these two parameters until September 1, 1998.[2]

As explained in the February 16, 1994 final rule, the Agency will undertake a rulemaking to consider establishing a performance-based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. The Agency envisions that a performance-based approach could provide additional flexibility to the regulated industry in its choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. The Agency further believes that the establishment of a performance-based test method approach may help advance the purposes of the "National Technology Transfer and Advancement Act of 1995," section 12(d) of Public Law 104–113 and Office of Management and Budget (OMB) circular A–119.[3] In general, the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 are designed to encourage the adoption of standards developed by "voluntary consensus bodies" and to reduce reliance on government-unique standards "where an existing voluntary standard would suffice."[4] Today's direct final rule provides an extension of deadline for use of certain alternative test methods until such time as a notice-and-comment rulemaking to establish performance-based standards is completed. Issues related to the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 will be appropriately explored in detail in connection with that rulemaking.

EPA originally expected to finalize action on such a rulemaking by September 1, 1998; however, the Agency now realizes that it will not complete rulemaking until after that date. Refiners and importers will need several months to determine whether these alternative methods qualify under the envisioned performance based analytical test method approach. Therefore the Agency is extending the deadline for the use of alternative test methods at §§ 80.46(f)(3) and 80.46(g)(9) until September 1, 2000. This extension of the deadline would allow parties to make long-term purchasing decisions based on all the testing options that could be made available at the conclusion of the performance-based rulemaking. EPA reasonably expects to complete rulemaking before September 1, 2000.

III. Revision of the Specification for the Mixing Chamber Associated With Animal Toxicity Testing of Fuels and Fuel Additives at § 79.57(e)(2)(iii)(C)

The fuels and fuel additives registration program is authorized by section 211 of the Clean Air Act and codified in 40 CFR part 79. In accordance with sections 211(a) and (b)(1) of the Act, basic registration requirements applicable to gasoline and diesel fuel have been in existence since 1975. On June 27, 1994, EPA published a **Federal Register** document announcing final additional regulations for registration of designated fuels and fuel additives as authorized by sections 211(b)(2) and 211(e) of the Clean Air Act as amended in 1990.[5] The additional regulations require manufacturers, as part of the registration program, to conduct tests and submit information related to the health effects of their fuel and fuel additive products. The health effects testing requirements are organized in three tiers. Tier 1 requires analysis of combustion and evaporative emissions of fuels and fuel additives and a survey of existing scientific information on the public health and welfare effects of these emissions. Tier 2 requires manufacturers to conduct specified health effects tests to screen for adverse health effects of fuel and fuel additive emissions. Additional testing may be required under Tier 3 at EPA's discretion.

A provision of the health effects testing regulations requires that the emission moderation apparatus must function such that the average concentration of hydrocarbons leaving the apparatus shall be within 10 percent of the average concentration of hydrocarbons entering the mixing chamber. The Agency now believes that this specification for the mixing chamber (or any alternative emission moderation apparatus) at §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B) is likely unachievable in a typical laboratory setting. Additionally, the regulations require that the mean exposure concentration in the inhalation test chamber shall be within 10 percent of the target concentration for the single species being controlled on 90 percent or more of the exposure days and that daily monitoring of CO, CO_2, oxides of nitrogen, oxides of sulfur and total hydrocarbons in the exposure chamber shall be required. 40 CFR 79.57(e)(2)(iv)(B). EPA now believes that the required mean exposure concentration in the inhalation test chamber is unachievable for total hydrocarbons and particulate. The Agency believes that the reason that these specifications are unachievable for hydrocarbons and particulate is because of the cohesive qualities that such compounds share. These shared cohesive tendencies result in a tendency to fall out of the exposure atmosphere as it passes through the apparatus.

EPA believes that a more appropriate specification for particulate and hydrocarbon compounds would be 15%. The Agency believes the modified emission dilution requirements at §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B), will provide for sufficient quality control assurances and thereby negate the need for §§ 79.57(e)(2)(iii)(C) and

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61 FR 58304 (November 13, 1996), 62 FR 9872 (March 4, 1997), 62 FR 12572 (March 17, 1997), and 62 FR 30260 (June 3, 1997). EPA proposed several additional modifications to the RFG and anti-dumping regulations at 62 FR 37338 (July 11, 1997). Some of these proposed modifications were included in a final rule published at 62 FR 68196 (December 31, 1997), while others will be the subject of a future final rule. Please refer to the December 31, 1997 final rule for more information.

[2] See 61 FR 58304 (November 13, 1996). The final rule did not become effective until May 1, 1998, due to an inadvertent administrative error. *See* the correction notice announcing the new effective data 63 FR 24117 (May 1, 1998).

[3] *See* "OMB Circular A–119; Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," 63 FR 8546 (February 19, 1998).

[4] *Id.*

[5] The fuels and fuel additives registration regulations are located in 40 CFR part 79. Testing requirements for fuels and fuel additives are in subpart F. The final rule establishing these regulations was published in the June 27, 1994 **Federal Register** at 59 FR 33042. Amendments were published at 61 FR 36506 (July 11, 1996), 61 FR 58744 (November 18, 1996), 62 FR 12564 (March 17, 1997) and 62 FR 12572 (March 17, 1997).

79.57(e)(2)(v)(B).[6] Accordingly, the Agency is deleting §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), and modifying §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B).

IV. Additional changes related to animal toxicity testing of fuels and fuel additives

A. Vascular Perfusion Technique

Section 79.66(e)(5)(iii)(B) states that for the vascular perfusion technique, the animals shall be perfused in situ by a generally recognized technique.[7] Section 79.62(d)(7)(v) states that the lungs and trachea of the whole-body perfusion-fixed test animals are examined for inhaled particle distribution.

The methods for vascular perfusion cited in the regulation perfuse only the systemic vascular system with fixative. Using the methods cited, the lungs are neither fixed nor inflated. This is because no pressure (either air or fixative) is applied to the airways to counteract the pressure being applied through the blood vessels, so that the airspaces of the lungs collapse under the pressure from the vascular fixation. The collapsed, unfixed lungs are not useful for histopathological examination, or for examination of inhaled particle distribution.

EPA is modifying the systemic vascular perfusion fixation procedure by including intratracheal instillation of the lungs with fixative via the trachea during the fixation process. This would preserve the lungs for examination and achieve the whole-body fixation needed for neurotoxicity endpoints.

B. Correction of Animal Numbers

Section 79.62(d)(1)(ii)(B) states, in part, "Forty rodents, 25 females and 10 males * * *" EPA is amending this section to reflect a correct total of 35 rodents.

[6] Sections 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) did not previously contain reference to hydrocarbons, but have been modified by this direct final rule to include specific requirements for both hydrocarbons and particulate. Sections 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), which are deleted by this action, specifically addressed hydrocarbons only, and are no longer necessary.

[7] Standard techniques for vascular perfusion in the following references are cited: Zeman, W., and Innes, J.R.M., *Craigie's Neuroanatomy of the Rat* (New York: Academic, 1963); Hayat, M.A., "Vol. 1. Biological applications," *Principles and Techniques of Electron Microscopy* (New York: Van Nostrand, Reinhold, 1970); and Spencer, P.S., and Schaumbur, H.H., (eds.). *Experimental and Clinical Neurotoxicology* (Baltimore: Williams and Wilkins, 1980).

V. Environmental and Economic Impacts

This rule is expected to have no negative environmental impact. The change in the deadline for the use of certain alternative test methods preserves the status quo of the RFG program and will result in no reduction in the emission benefits of the program. The changes to the fuels and fuel additives registration regulations are not expected to have any negative environmental impact on the public health and environmental benefits associated with the fuels and fuel additives testing program. In fact, today's changes with regard to health testing requirements add certainty and correct errors and, as a result, may enhance the benefits of the program.

Today's direct final rule would have a positive impact on the great majority of entities regulated by the RFG regulation, because it permits continued flexibility with respect to the use of alternative test methods. This flexibility will continue through September 1, 2000 or until such time as EPA issues final regulations for performance-based analytical test methods. The proposed changes to the health effects testing requirements are minor and are not expected to result in any additional compliance costs for regulated parties.

VI. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this direct final rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. Specifically, it grants the regulated industry flexibility in the use of alternative test methods until September 1, 2000 (or until such time as EPA completes final rulemaking) and corrects certain errors in existing registration requirements for fuels and fuel additives. It is not expected to result in any additional compliance costs for regulated parties, including small entities. A regulatory flexibility analysis has therefore not been prepared.

VII. Executive Order 12866

Under Executive Order 12866,[8] the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[9]

EPA has determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

[8] 58 FR 51736 (October 4, 1993).

VIII. Paperwork Reduction Act

Today's direct final rule does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the applicable information collection requirements (ICRs) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned the following OMB control numbers: 2060–0297 ("Registration of Fuels and Fuel Additives; Health-Effects Research Requirements for Manufacturers—40 CFR part 79, subpart F"), 2060–0150 ("Registration of Fuels and Fuel Additives: Requirements for Manufacturers"), and 2060–0277 ("Standards for Reformulated Gasoline"). Copies of these ICRs may be obtained from Sandy Farmer, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. Include the ICR title and/or OMB number in any correspondence. Nothing in today's direct final rule will result in any additional reporting, recordkeeping, testing, or other informational burdens.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general

[9] *Id.* at section 3(f)(1)–(4).

notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this rule does not include a Federal mandate as defined in UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Effects on Tribal, State, and Local Government Entities

This direct final rule does not establish any regulatory requirements which would significantly or uniquely affect tribal governments within the meaning of E.O. 13084, "Consultation and Coordination with Indian Tribal Governments."

XI. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates ■ mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's direct final rule does not create a mandate on state, local or tribal governments. The direct final rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this direct final rule.

XII. Applicability of E.O. 13045: Children's Health Protection

This direct final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

Today's direct final rule extends the time period during which certain alternative analytical test methods may be used. This would preserve the status quo under the existing RFG program until such time as a performance-based test method rule is issued. The extension will result in no reduction in the RFG program's environmental or health benefits and presents no health or safety risks that will adversely affect children.

Today's changes and corrections to the health effects testing regulations for fuels and fuel additives will add certainty and facilitate compliance by regulated parties. As a result, any impact on children's health resulting from these changes and corrections would reasonably be expected to be positive.

XIII. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA), section 12(d) of Public Law 104–113, is designed to encourage the adoption of standards developed by "voluntary consensus bodies" and to reduce reliance on government-unique standards where existing voluntary standards would suffice.

Today's direct final rule provides an extension of deadline for use of certain analytical test methods for the RFG program until such time as a notice-and-comment rulemaking to establish performance-based analytical test methods is completed. Today's action does not establish new technical standards or analytical test methods. The Agency plans to address the NTTAA in detail in an upcoming rulemaking to establish performance-based analytical test methods.

For a more detailed discussion, please refer to **SUPPLEMENTARY INFORMATION**, section II, "RFG Standards and Test Methods Utilized at § 80.46," above.

XIV. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective January 19, 1999.

List of Subjects

40 CFR Part 79

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling.

Dated: November 3, 1998.

Carol M. Browner,

Administrator.

For the reasons described in the preamble, parts 79 and 80 of Title 40 of the Code of Federal Regulations are amended as follows:

PART 79 [AMENDED]

1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545, and 7601.

* * * * *

2. Section 79.57 is amended by removing and reserving paragraphs (e)(2)(iii)(C) and (e)(2)(v)(B) and by revising paragraphs (e)(2)(iv)(B) and (e)(2)(vi)(B), to read as follows:

§ 79.57 Emission generation.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(C) [Reserved]

* * * * *

(iv) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the

exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

(v) * * *

(B) [Reserved]

* * * * *

(vi) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

3. Section 79.62 is amended by revising paragraph (d)(1)(ii)(B), to read as follows:

§ 79.62 Subchronic toxicity study with specific health effects assessment.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Thirty-five rodents, 25 females and ten males, shall be added for each test concentration or control group when combining a 90-day toxicity study with a fertility assessment.

* * * * *

4. Section 79.66 is amended by adding a sentence to the end of paragraph (e)(5)(iii)(B), to read as follows:

§ 79.66 Neuropathology assessment.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) *Perfusion technique.* * * * In addition, the lungs shall be instilled with fixative via the trachea during the fixation process in order to preserve the lungs and achieve whole-body fixation.

* * * * *

PART 80—[AMENDED]

5. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

* * * * *

6. Section 80.46 is amended by revising paragraphs (f)(3) and (g)(9) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) *Alternative test method.* (i) Prior to September 1, 2000, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption," for purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) * * *

(9)(i) Prior to September 1, 2000, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography," for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraphs (g)(1) through (g)(8) of this section.

* * * * *

[FR Doc. 98–30401 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–6186–1]

Tennessee; Final Approval of State Petroleum Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final determination on the State of Tennessee's application for final approval.

SUMMARY: The State of Tennessee has applied for partial approval of its underground storage tank program for petroleum under subtitle I of the Resource Conservation and Recovery Act (RCRA). The State of Tennessee is not requesting approval of the underground storage tank program for hazardous substances. The Environmental Protection Agency (EPA) has reviewed Tennessee's application and has reached a final determination that Tennessee's underground storage tank program for petroleum satisfies all of the requirements necessary to qualify for approval. Thus, EPA is granting final approval to the State of Tennessee to operate its underground storage tank program for petroleum. This approval does not include hazardous substance underground storage tanks under subtitle I of RCRA.

EFFECTIVE DATE: Final approval for the State of Tennessee's petroleum underground storage tank program shall be effective at 1:00 pm Eastern Standard Time on January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone number: (404) 562–9441.

SUPPLEMENTARY INFORMATION:

A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes the Environmental Protection Agency (EPA) to approve State underground storage tank programs to operate in the State in lieu of the federal underground storage tank (UST) program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the federal program for the seven elements set forth at RCRA section 9004(a) (1) through (7); and (2) provide for adequate enforcement of compliance with UST standards of RCRA Ssction 9004(a).

On September 1, 1996, the State of Tennessee submitted an official

application to obtain final partial program approval to administer the underground storage tank program for petroleum. On July 10, 1998, EPA published a tentative decision announcing its intent to grant Tennessee final approval for petroleum. Further background on the tentative decision to grant approval appears at 63 FR 37311, July 10, 1998.

Along with the tentative determination, EPA announced the availability of the application for public comment and the date of a public hearing on the application. EPA requested advance notice for testimony and reserved the right to cancel the public hearing for lack of public interest. Since there was no public request, the public hearing was canceled. No public comments were received regarding EPA's approval of Tennessee's underground storage tank program.

The following statutory provisions are broader in scope than the federal program and are not part of the approved program: Tennessee Code Annotated, Title 68, Chapter 215—section 102(a)(3), insofar as it refers to the intent to develop long range plans to meet future petroleum underground storage tank demands; section 102(a)(5), insofar as it provides for a fund; section 104, insofar as it applies to persons other than underground storage tank owners and operators; section 106(a)(6), insofar as it requires any person who deposits petroleum in underground storage tanks to notify the owner or operator of state notification requirements; section 106(c)(2), insofar as it applies to persons other than owners and operators placing petroleum substances in an underground storage tank; section 107(f)(9), insofar as it provides for rule development for the assessment and collections of fees; section 109, insofar as it allows for levying and collection of annual fees to operate the UST fund and develop rules; section 110, insofar as it establishes a petroleum underground storage tank fund; section 111, insofar as it refers to uses of the state underground storage tank fund; section 112, insofar as it establishes a petroleum underground storage tank board; section 113, insofar as it establishes board meetings, public hearings, and board compensation; section 115, insofar as it establishes cost recovery and apportionment of liability for cleanups; section 117, insofar as it applies to persons other than underground storage tank owners and operators; section 125, insofar as it applies to the state UST fund; and section 128, insofar as it requires a report to the General Assembly.

The following regulatory provisions are broader in scope than the federal program and not part of the approved program: Tennessee Department of Environment and Conservation, Underground Storage Tank Program Rules, Chapter 1200–1–15—section-.09, insofar as it refers to guidelines and procedures for administering the Tennessee petroleum underground storage tank fund; section-.10, insofar as it refers to annual fees, the use, collection and failure to pay fees; and section-.11, insofar as it requires underground storage tank fees, use, collection failure to pay, and fee notices.

B. Decision

I conclude that the State of Tennessee's application for final program approval meets all of the statutory and regulatory requirements established by Subtitle I of RCRA. Accordingly, Tennessee is granted final approval to operate its underground storage tank program for petroleum. The State of Tennessee now has the responsibility for managing all regulated petroleum underground storage tank facilities within its border and carrying out all aspects of the underground storage tank program except with regard to hazardous substance underground storage tanks where EPA will retain regulatory authority. Tennessee also has primacy enforcement responsibility for petroleum underground storage tanks, although EPA retains the right to conduct enforcement actions for all regulated underground storage tanks under section 9006 of RCRA.

C. Administrative Requirements

1. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

2. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its underground storage tank program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from today's action. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Tennessee is not approved to implement the underground storage tank program in Indian Country. This rule has no effect on the underground storage tank program that EPA implements in the Indian Country within the State. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

4. Compliance With Executive Order 13045

Executive Order 13045 applies to any rule that the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and that EPA determines that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The Agency has determined that the final rule is not a covered regulatory action as defined in the Executive Order because it is not economically significant and does not address environmental health and safety risks. As such, the final rule is not subject to the requirements of Executive Order 13045.

5. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

6. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The section 202 and 205 requirements do not apply to today's action because it is not a "Federal mandate" and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the Tennessee program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a "Federal mandate" duties that arise from participation in a voluntary Federal program. Tennessee's participation in an approved UST program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Tennessee program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing state law which are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

7. Certification Under the Regulatory Flexibility Act

EPA has determined that this approval will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being approved by EPA. EPA's approval does not impose any additional burdens on these small entities. This is because EPA's approval would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This rule approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

8. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

9. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by an information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), 6991c.

Dated: October 19, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30720 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7701]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date Certain Federal assistance no longer available in Special flood hazard areas
Region I				
Connecticut:				
Plymouth, town of, Litchfield County	090138	Sept. 4, 1975, Emerg.; Oct. 15, 1982, Reg.; Nov. 6, 1998, Susp.	Nov. 6, 1998	Nov. 6, 1998.
Windham, town of, Windham County	090119	June 26, 1975, Emerg.; Feb. 3, 1982, Reg.; Nov. 6, 1998, Susp.	.....do	Do.
Region IV				
North Carolina: Carteret County, unincorporated areas.	370043	Nov. 19, 1971, Emerg.; May 15, 1980, Reg.; Nov. 6, 1998, Susp.	.....do	Do.
Region V				
Minnesota: East Grand Forks, city of, Polk County.	275236	Jan. 19, 1973, Emerg.; Sept. 15, 1977, Reg.; Nov. 6, 1998, Susp.	.....do	Do.
Region I				
Maine:				
Sidney, town of, Kennebec County	230247	May 10, 1976, Emerg.; March 18, 1987, Reg.; Nov. 20, 1998, Susp.	Nov. 20, 1998 ...	Nov. 20, 1998.
Vienna, town of, Kennebec County	230249	May 3, 1976, Emerg.; Aug. 19, 1985, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Massachusetts: Sudbury, town of, Middlesex County.	250217	Aug. 1, 1975, Emerg.; June 1, 1982, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Region III				
West Virginia: Berkeley County, unincorporated areas.	540282	July 29, 1975, Emerg.; Aug. 4, 1988, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Region IV				
North Carolina:				
Grifton, town of, Lenoir and Pitt Counties.	370192	April 10, 1975, Emerg.; Feb. 17, 1982, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Raleigh, city of, Wake County	370243	Aug. 31, 1973, Emerg.; Aug. 15, 1978, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Region VI				
Arkansas: West Memphis, city of, Crittenden County.	050055	June 6, 1974, Emerg.; July 16, 1980, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Texas:				
Gonzales County, unincorporated areas	480253	Nov. 8, 1973, Emerg.; Aug. 15, 1978, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Guadalupe County, unincorporated areas.	480266	Sept. 22, 1972, Emerg.; March 1, 1979, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Victoria County, unincorporated areas ..	480637	April 16, 1979, Emerg.; Sept. 18, 1987, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Region VII				
Iowa:				
Carlisle, city of, Warren County	190274	December 17, 1974, Emerg.; Aug. 4, 1987, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Indianola, city of, Warren County	190275	June 1, 1977, Emerg.; July 31, 1979, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Norwalk, city of, Warren County	190631	March 3, 1993, Emerg.; Nov. 20, 1998, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Warren County, unincorporated areas ..	190912	Nov. 19, 1990, Emerg.; July 1, 1991, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Region IX				
California:				
Firebaugh, city of, Fresno and Madera Counties.	060046	June 20, 1975, Emerg.; Aug. 23, 1982, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Fresno County, unincorporated areas ...	065029	June 30, 1970, Emerg.; December 1, 1982, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Madera County, unincorporated areas ..	060170	March 3, 1972, Emerg.; Aug. 4, 1987, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Winters, city of, Yolo County	060425	April 11, 1975, Emerg.; Dec. 1, 1978, Reg.; Nov. 20, 1998, Susp.	.....do	Do.
Nevada: Lyon County, unincorporated areas	320029	April 20, 1982, Emerg.; Sept. 30, 1982, Reg.; Nov. 20, 1998, Susp.	.....do	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: November 3, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–30707 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 199

[CGD 84–069]

RIN 2115–AB72

Lifesaving Equipment; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document corrects the regulations [CGD 84–069], which the Coast Guard published Thursday, October 1, 1998 (63 FR 52802). The regulations revised the lifesaving equipment requirements for U.S. inspected vessels.

DATES: Effective on November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Chief, Lifesaving and Fire Safety Standards Division (G–MSE–4), U.S. Coast Guard Headquarters, by e-mail at *RMarkle@comdt.uscg.mil*, telephone at 202–267–1444, or fax at 202–267–1069.

SUPPLEMENTARY INFORMATION:

Background

This project is part of the President's Regulatory Review Initiative to remove or revise unnecessary government regulations. This project removed numerous obsolete sections from the Code of Federal Regulations (CFR) and eliminated others by consolidating the lifesaving requirements for most U.S. inspected vessels in the new subchapter W in 46 CFR chapter I. Subchapter W also replaced many prescriptive regulations with performance-based alternatives.

You can find more detailed background information in the preamble of the final rule published on October 1, 1998 (63 FR 52802), under **SUPPLEMENTARY INFORMATION.**

Need for Correction

As published, the final regulations contain typographical errors that may mislead the reader and need to be corrected.

List of Subjects in 46 CFR Part 199

Cargo vessels, Incorporation by reference, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements, Vessels.

Accordingly, 46 CFR part 199 is corrected by making the following amendments:

PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

1. The authority citation for part 199 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 46 CFR 1.46.

§ 199.10 [Amended]

2. In § 199.10(A) amend Table 199.10(a) by, in the first entry for "D" and in the first entry for "I", under the column heading "Vessel Type", removing the symbol ">" and adding, in its place, the symbol "≥"; and in the second entry for "D", under the column heading "Vessel Type", removing the symbol ">" and adding, in its place, the symbol "<".

§ 199.630 [Amended]

3. In § 199.630(a) amend Table 199.630(a) by, in the entry for "199.201(b)", under the column heading "Lakes, bays, and sounds", removing "199.630(g)[2 3]" and adding, in its place, "199.630(g)".

Dated: November 10, 1998.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 98–30726 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 97–157, FCC 98–261]

Reallocation of Television Channels 60–69, the 746–806 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order*, the Commission reconsiders its decisions in the *Report and Order* in this proceeding, and declines to change its decision to allow no new television (TV) permittees to operate in channels 60–69. The Commission also declines to change the status of low-power TV and TV translators in channels 60–69.

DATES: Effective November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Sean White, Office of Engineering and Technology, (202) 418–2453.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinon and Order*, adopted October 5, 1998, and released October 9, 1998. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–C404), 445 Twelfth Street, SW, Washington, DC. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of Memorandum Opinion and Order

1. In this *Memorandum Opinion and Order*, the Commission addresses four petitions for reconsideration of the *Report and Order*, 63 FR 6669, February 10, 1998, in this proceeding. In the *Report and Order*, the Commission reallocated TV channels 63, 64, 68, and 69 to the fixed and mobile services, and designated them for the exclusive use of public safety, and channels 60–62 and 65–67 for commercial use pursuant to a future auction. The Commission also declined to adopt additional protections for low-power TV and TV translator stations beyond those adopted in its *DTV Proceeding*, See *In re Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service* (DTV Proceeding), MM Docket No. 87–268, *Fifth Report and Order*, 62 FR 26996, May 16, 1997, (on reconsideration, 63 FR 13546, March 20, 1998); *Sixth Report and Order*, 62 FR 26684, May 14, 1997, (on reconsideration, 63 FR 15774, April 1998), and stated that no new applications will be considered for the provision of analog TV service in channels 60–69, but that current applicants would, at a later date, be afforded an opportunity to amend their applications to seek channels below 60 upon which to provide service. The Commission received petitions for reconsideration of the *Report and Order* from four parties. Three of these parties requested reconsideration of the decision to consider granting no new applications in channels 60–69, and one requested reconsideration of the decision to provide no additional protection to low-power TV and TV translator stations.

2. The Commission found that it had the authority to dismiss license applications when the public interest so demands. The Commission also found that it was the intention of Congress in the Balanced Budget Act of 1997 that channels 60–69 were to be reallocated

with all due haste, with only "grandfathering" for current licensees in the band. The Commission also concluded, however, that it was important to maximize the utility of the 746–806 MHz band for public safety and new commercial services. In addition, any TV application granted would have no allotment for a DTV channel and would be required to cease analog operations at the end of the DTV transition period. For these reasons, the Commission decided not to authorize additional new analog full-service television stations on channels 60–69. Upon reconsideration in this *Memorandum Opinion and Order*, the Commission affirmed its authority to make these decisions, and held that it had been presented with no persuasive arguments to change the decisions made in the *Report and Order*. The Commission stated that it would provide applicants a later opportunity to amend their applications to seek a channel below 60, but would not authorize additional new full-service analog TV stations in channels 60–69.

List of Subjects in 47 CFR Part 2

Frequency allocations and radio treaty matters, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30553 Filed 11–16–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 253

[DFARS Case 97–D025]

Defense Federal Acquisition Regulation Supplement; Weighted Guidelines—Federally Funded Research and Development Centers

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to exempt contract actions with Federally Funded Research and Development Centers (FFRDCs) from the weighted guidelines method of establishing profit and fee objectives. The fee for an FFRDC is based on assessment of need and, therefore, should not be subject to the risk-based approach used in the weighted guidelines method. The rule instead requires contracting officers to establish fee objectives for FFRDCs in accordance with the DoD FFRDC Management Plan.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

A proposed rule with request for comments was published in the Federal Register on September 15, 1997 (62 FR 48205). Two sources submitted comments in response to the proposed rule. All comments were considered in the development of the final rule.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to contract actions with Federally Funded Research and Development Centers. The rule is not applicable to small businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 215 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215 and 253 are amended as follows:

1. The authority citation for 48 CFR Parts 215 and 253 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–4 is amended by revising paragraph (b)(1) introductory text, paragraph (c)(2) introductory text, and paragraphs (c)(2)(A) and (c)(2)(B) to read as follows:

215.404–4 Profit.

(b) * * *

(1) Departments and agencies shall use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action that requires cost analysis, except on cost-plus-award-free contracts (see 215.404–74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

* * * * *

(c) * * *

(2) When using a structured approach, the contracting officer—

(A) Shall use the weighted guidelines method (see 215.404–71), except as provided in paragraphs (c)(2)(B) and (c)(2)(C) of this subsection.

(B) Shall use the modified weighted guidelines method (see 215.404–72) on contract actions with nonprofit organizations other than FFRDCs.

* * * * *

3. Section 215.404–72 is revised to read as follows:

215.404–72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.

(a) *Definition.* As used in this subpart, a nonprofit organization is a business entity—

(1) That operates exclusively for charitable, scientific, or educational purposes;

(2) Whose earnings do not benefit any private shareholder or individual;

(3) Whose activities do not involve influencing legislation or political campaigning for any candidate for public office; and

(4) That is exempted from Federal income taxation under section 501 of the Internal Revenue Code.

(b) For nonprofit organizations that are entities that have been identified by the Secretary of Defense or a Secretary of a Department as receiving sustaining support on a cost-plus-fixed-fee basis from a particular DoD department or agency, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, with the following modifications:

(1) *Modifications to performance risk (Blocks 21–24 of the DD Form 1547).* (i) If the contracting officer assigns a value from the standard designated range (see 215.404–71–2(c)), reduce the fee objective by an amount equal to 1 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(ii) If the contracting officer assigns a value from the alternate designated range, reduce the fee objective by an amount equal to 2 percent of the costs in Block 18 of the DD Form 1547. Show the net (reduced) amount on the DD Form 1547.

(2) *Modifications to contract type risk (Block 25 of the DD Form 1547).* Use a designated range of −1 percent to [illegible] percent instead of the values in 215.404–71–3. There is no normal value.

(c) For all other nonprofit organizations except FFRDCs, compute a fee objective for covered actions using the weighted guidelines method in 215.404–71, modified as described in paragraph (b)(1) of this subsection.

215.404–75 [Redesignated as 215.404–76]

4. Section 215.404–75 is redesignated as section 215.404–76.

5. A new section 215.404–75 is added to read as follows:

215.404–75 Fee requirements for FFRDCs.

For nonprofit organizations that are FFRDCs, the contracting officer—

(a) Should consider whether any fee is appropriate. Considerations shall include the FFRDC's—

(1) Proportion of retained earnings (as established under generally accepted accounting methods) that relates to DoD contracted effort;

(2) Facilities capital acquisition plans;

(3) Working capital funding as assessed on operating cycle cash needs; and

(4) Provision for funding unreimbursed costs deemed ordinary and necessary to the FFRDC.

(b) Shall, when a fee is considered appropriate, establish the fee objective in accordance with FFRDC fee policies in the DoD FFRDC Management Plan.

(c) Shall not use the weighted guidelines method or an alternate structured approach.

PART 253—FORMS

253.215–70 [Amended]

6. Section 253.215–70 is amended in paragraph (b)(4) by revising the parenthetical to read "(see 215.404–76)".

[FR Doc. 98–30713 Filed 11–16–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 98–4723]

RIN 2127–AF73

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This document amends Standard No. 108, the Federal motor vehicle safety standard on lighting, to remove paragraph S7.8.2.3 relating to headlamps aimed by moving the reflector relative to the lens and headlamp housing, or vice versa. This paragraph has been superseded by paragraph S7.8.2.2, which retains the requirements of S7.8.2.3 for headlamps with movable parts that are not visually/optically aimable and prescribes requirements for headlamps with movable parts that are visually/optically aimable. Paragraph S7.8.2.3 is therefore redundant and can be removed without creating a burden on any person.

DATES: The amendment is effective November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Boyd, Office of Safety Performance Standards, NHTSA (Phone: 202–366–6346).

SUPPLEMENTARY INFORMATION: Paragraph S7.8.2.2 of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, as in effect until May 1, 1997, read as follows:

S7.8.2.2 If a headlamp is aimed by moving the reflector relative to the lens and headlamp housing, or vice versa, it shall conform with the photometrics applicable to it with the lens at any position relative to the reflector within the aim range limits of paragraph S7.8.3 and S7.8.4 or any combination.

Paragraph S7.8.4 as in effect until May 1, 1997, read as follows:

S7.8.4 When a headlamp system is tested in a laboratory, the range of horizontal aim shall be not less than 2.5 degrees from the nominal correct aim position for the intended vehicle application.

Standard No. 108 was amended on March 10, 1997, to adopt specifications for visually/optically aimable headlamps, representing the consensus of a NHTSA Advisory Committee on Regulatory Negotiation (62 FR 10710). The amendments were effective on May 1, 1997. As part of that rulemaking action, a new paragraph S7.8.2.2 was adopted, and existing S7.8.2.2, as shown above, was redesignated S7.8.2.3. At the same time, a clarifying amendment was made to S7.8.4, to insert "±" before "2.5 degrees." No amendment was made to paragraph S7.8.3.

Grote Industries, a manufacturer of lighting equipment, has questioned whether S7.8.2.2 and S7.8.2.3 are in conflict. Upon review, NHTSA has concluded that there is no conflict, but that it acted erroneously in redesignating S7.8.2.2 and that it should have removed S7.8.2.2 rather than redesignating it.

NHTSA wishes to correct this error. However, there is the possibility that a manufacturer who complied with the requirements of S7.8.2.2 before May 1, 1997, may have continued to do so after it was redesignated S7.8.2.3 as of May 1, 1997. Continued compliance is technically possible because S7.8.3 was not amended, and S7.8.4 only in a minor respect. Therefore, the agency must determine whether removal of S7.8.2.3 would create an obligation or remove an option not otherwise available.

The agency has decided that removal of S7.8.2.3 would not create an obligation or remove an option not otherwise available. The preamble to the final rule adopting new paragraph S7.8.2.2 explained that "requirements for the aiming of movable reflector headlamps have been clarified and expanded to cover headlamps which are visually/optically aimable" (at 10713). In other words, paragraph S7.8.2.2 retained the requirements of S7.8.2.3 for headlamps with movable parts that are not visually/optically aimable, as well as extending these requirements to headlamps with movable parts that are visually/optically aimable. Paragraph S7.8.2.3 is therefore redundant and can be removed without creating a burden on any person.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. Further, it has been determined that the rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The purpose of the rulemaking action is to correct an error and to remove an obsolete requirement. Since the final rule will not impose or reduce costs, preparation of a full regulatory evaluation is not warranted. Vehicles with movable reflector headlamps that are not visually/optically aimable are presumed to comply with both the new and obsolete requirement.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. This final rule will not have a significant effect upon the environment. The composition of lighting equipment will not change from those presently in production.

Regulatory Flexibility Act

The agency has also considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. Sec. 601 *et seq.*). For the reasons stated above in the paragraph on

Executive Order 12866 and the DOT Regulatory Policies and Procedures, I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. Sec. 605(b)). The amendment primarily affects manufacturers of motor vehicles. Manufacturers of motor vehicles are generally not small businesses within the meaning of the Regulatory Flexibility Act.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." (13 CFR 121.105(a)) SBA's size standards are organized according to Standard Industrial Classification Codes (SIC), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies" has a small business size standard of 1,000 employees or fewer.

For manufacturers of passenger cars and light trucks, NHTSA estimates there are at most five small manufacturers of passenger cars in the U.S. Since each manufacturer serves a niche market, often specializing in replicas of "classic" cars, production for each manufacturer is fewer than 100 cars per year. Thus, there are at most 500 cars manufactured per year by U.S. small businesses.

In contrast, in 1998, there are approximately nine large manufacturers producing passenger cars, and light trucks in the U.S. Total U.S. manufacturing production per year is approximately 15 to 15 and a half million passenger cars and light trucks per year. NHTSA does not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production per year.

Further, small organizations and governmental jurisdictions are not be significantly affected as the price of motor vehicles ought not to change as the result of this final rule.

Executive Order 12612 (Federalism)

This rulemaking action has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that this rulemaking action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

§ 571.108 [Amended]

2. Section 571.108 is amended by removing paragraph S7.8.2.3.

Issued on: November 3, 1998.

James R. Hackney,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 98–30731 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 111298A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific cod in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from trawl catcher/processors and trawl catcher vessels to vessels using fixed gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 1998 total allowable catch (TAC) of Pacific cod to be harvested.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 12, 1998, until 2400 hrs, A.l.t., December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

As of October 31, 1998, the Acting Administrator, Alaska Region, NMFS, has determined that approximately 4,097 metric tons (mt) of Pacific cod remain in the catcher/processor allocation and 5,975 mt remain in the catcher vessel allocation. Trawl catcher/processors will not be able to harvest 1,500 metric tons (mt) of Pacific cod, and the trawl catcher vessels, 5,000 mt of Pacific cod, allocated to those sectors under § 679.20(a)(7)(i)(B).

Therefore, in accordance with § 679.20(a)(7)(ii)(B), NMFS is apportioning the projected unused amount, 1,500 mt, of Pacific cod from trawl catcher/processors to vessels using fixed gear and 5,000 mt from trawl catcher vessels to vessels using fixed gear.

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Pacific cod TAC. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only disrupt the FMP's objective of providing a portion of the Pacific cod TAC for fixed gear in the BSAI. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is taken under 50 CFR 679.20, and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30693 Filed 11–12–98; 4:43 pm]

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7 CFR Pa

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Proposed Rules

Federal Register
Vol. 63, No. 221
Tuesday, November 17, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A6; FV98–930–2]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Hearing on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 930, hereinafter referred to as the "order." The order regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The purpose of the hearing is to receive evidence on two proposals to amend the order. The proposals were submitted by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. One proposed amendment would clarify the current limitation on the number of Board members that may represent a single "sales constituency." The second would simplify the method used to establish volume regulations for tart cherries.

DATES: The hearing will begin at 9:00 a.m. in Grand Rapids, Michigan on December 1, 1998, and, if necessary, will continue the next day beginning at 9:00 a.m. A second hearing session will begin at 9:00 a.m. in Salt Lake City, Utah on December 3, 1998, and, if necessary, will continue the next day beginning at 9:00 a.m.

ADDRESSES: The Grand Rapids hearing will be held at the Hilton Grand Rapids Hotel, 4747 28th Street SE, Grand Rapids, Michigan 99512. The Salt Lake City hearing will be held in the Conference Room at the Utah Department of Agriculture and Food, 350 North Redwood Road, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This administrative action is taken pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Board submitted a proposal to clarify the current limitation on the number of Board members that may represent a single "sales constituency." The definition of that term would be clarified to reduce uncertainty over which types of industry organizations are intended to be included under that definition. A second Board proposal would simplify its method of calculating the optimum supply of tart cherries used in establishing annual volume regulations.

The Board works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Board believes that the proposed changes would improve the administration, operation, and functioning of the order.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such conforming changes to the order which may be necessary as a result of the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional

process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Cherry Industry Administrative Board:

Proposal No. 1

Revise § 930.16 to read as follows:

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers. An organization which receives consignments of cherries and does not direct where the consigned cherries are sold is not a sales consituency.

Proposal No. 2

In § 930.50, revise paragraph (a) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum Supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years, reduced by the sales that represent dispositions of restricted cherries qualifying for diversion credit, unless the Board votes to do otherwise, to which shall be added a desirable carryout inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 3

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: November 12, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–30828 Filed 11–13–98; 12:58 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–99–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which begins on June 1, 1999. This proposal would establish salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by December 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This proposed rule would

establish the quantity of spearmint oil produced in the Far West, by class, that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which begins on June 1, 1999. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to authority contained in sections 985.50, 985.51, and 985.52 of the order, the Committee recommended the salable quantities and allotment percentages for the 1999–2000 marketing year at its October 7, 1998, meeting. With 6 members in favor, 1 member opposed, and 1 member abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 1 (Scotch) spearmint oil of 1,199,290 pounds and 65 percent, respectively. The member in opposition favored the establishment of a lower salable quantity and allotment percentage. With 6 members in favor and 2 members abstaining, the Committee recommended the establishment of a salable quantity and allotment percentage for Class 3 (Native) spearmint oil of 1,125,755 pounds and 55 percent, respectively. The member abstaining does not currently produce Native spearmint oil. The chairman, as is traditional with this committee, abstained on both the Scotch and the Native spearmint oil recommendations.

This proposed rule would limit the amount of spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which begins on June 1, 1999. Salable quantities and allotment percentages have been placed into effect each season since the order's inception in 1980.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the marketing order). Spearmint oil is also produced in the Midwest. The production area covered by the marketing order accounts for approximately 65 percent of the annual U.S. production of Scotch spearmint oil and approximately 90 percent of the annual U.S. production of Native spearmint oil.

When the order became effective in 1980, the United States produced nearly 100 percent of the world's supply of Scotch spearmint oil, of which approximately 80 percent was produced in the regulated production area in the Far West. International production characteristics have changed in recent years, however, with foreign Scotch spearmint oil production contributing significantly to world production. Although still a leader in production, the Far West's market share has decreased to approximately 39 percent of the world total. Therefore, the Committee's recommendation for Scotch spearmint oil could maintain market stability by avoiding extreme fluctuations in supplies and prices, and would help the industry remain competitive on an international level by hopefully regaining some of the Far West's historical share of the global market. The Committee's recommendation is intended to foster market stability so that the Far West's Scotch spearmint oil market share will not only be retained, but expanded as well.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was $11.00. With approximately 90 percent of the U.S. production located in the Far West, the method of calculating the Native spearmint oil salable quantity and allotment percentage primarily utilizes information on price and available supply as they are affected by the estimated trade demand.

The proposed salable quantity and allotment percentage for each class of spearmint oil for the 1999–2000 marketing year is based upon the Committee's recommendation and the data presented below.

(1) Class 1 (Scotch) Spearmint Oil

(A) Estimated carry-in on June 1, 1999—598,929 pounds. This figure is derived by subtracting the estimated 1998–99 marketing year trade demand of 900,000 pounds from the revised 1998–99 marketing year total available supply of 1,498,929 pounds.

(B) Estimated world production for the 1998–99 marketing year—3,280,758 pounds. This figure is based on information the Committee has compiled.

(C) Estimated Far West production for the 1998–99 marketing year—1,278,508 pounds.

(D) Approximate Far West percentage of total world production in 1998–99—39 percent. This is down from the 1980 level of approximately 80 percent.

(E) Total estimated allotment base for the 1999–2000 marketing year—1,845,061 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(F) Recommended 1999–2000 allotment percentage—65 percent. This figure is based upon recommendations made at the October 7, 1998, meeting, as well as at the five Scotch spearmint oil production area meetings held during September.

(G) The Committee's computed 1999–2000 salable quantity—1,199,290 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

(H) Estimated available supply for the 1999–2000 marketing year—1,798,219 pounds. This figure is derived by adding the computed salable quantity to the estimated June 1, 1999, carry-in volume, and represents the total amount of Scotch spearmint oil that could be available to the market during the 1999–2000 marketing year.

(I) Estimated trade demand for Far West Scotch spearmint oil during the 1999–2000 marketing year—910,000 pounds. This figure is based upon estimates provided to the Committee by buyers of spearmint oil.

(J) Estimated carry-out on June 1, 2000—888,219 pounds. This figure is the difference between the 1999–2000 estimated trade demand and the 1999–2000 estimated available supply.

(2) Class 3 (Native) Spearmint Oil

(A) Estimated carry-in on June 1, 1999—54,815 pounds. This figure is the difference between the estimated 1998–99 marketing year trade demand of 1,170,000 pounds and the revised 1998–99 marketing year total available supply of 1,224,815 pounds.

(B) Estimated trade demand (domestic and export) for the 1999–2000 marketing year—1,155,000 pounds. This figure is based on the average of the three most recent years' sales figures and input from spearmint oil buyers.

(C) Salable quantity required from 1999 production—1,100,185 pounds. This figure is the difference between the estimated 1999–2000 marketing year trade demand and the estimated carry-in on June 1, 1999.

(D) Total estimated allotment base for the 1999–2000 marketing year—2,046,828 pounds. This figure represents a one percent increase over the revised 1998–99 allotment base.

(E) Computed allotment percentage—53.8 percent. This percentage is computed by dividing the required salable quantity by the total estimated allotment base.

(F) Recommended allotment percentage—55 percent. This is the Committee's recommendation based on the computed allotment percentage and input received at the four Native spearmint oil production area meetings held during September.

(G) The Committee's recommended salable quantity—1,125,755 pounds. This figure is the product of the recommended allotment percentage and the total estimated allotment base.

The salable quantity is the total quantity of each class of spearmint oil which handlers may purchase from or handle on behalf of producers during ■ marketing year. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's allotment base for the applicable class of spearmint oil.

The Committee's recommended Scotch spearmint oil salable quantity of 1,199,290 pounds and allotment percentage of 65 percent are based on the Committee's goal of maintaining market stability by avoiding extreme fluctuations in supplies and prices, and thereby helping the industry remain competitive on the international level. The Committee's recommended Native spearmint oil salable quantity of 1,125,755 pounds and allotment percentage of 55 percent are based on anticipated supply and trade demand during the 1999–2000 marketing year. The proposed salable quantities are not expected to cause a shortage of spearmint oil supplies. Any unanticipated or additional market demand for spearmint oil which may develop during the marketing year can be satisfied by an increase in the salable quantities. Both Scotch and Native spearmint oil producers who produce more than their annual allotments during the 1999–2000 season may transfer such excess spearmint oil to a producer with spearmint oil production less than his or her annual allotment or put it into the reserve pool.

This proposed regulation, if adopted, would be similar to those which have been issued in prior seasons. Costs to producers and handlers resulting from this proposed action are expected to be offset by the benefits derived from a stable market, a greater market share, and possible improved returns. In conjunction with the issuance of this proposed rule, the Committee's marketing policy statement for the 1999–2000 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends volume regulations, fully meets the intent of section 985.50 of the order. During its discussion of potential 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The establishment of these salable quantities and allotment percentages would allow for anticipated market needs. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand. This rule also provides producers with information on the amount of spearmint oil which should be produced for next season in order to meet anticipated market demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 9 spearmint oil handlers subject to regulation under the order, and approximately 124 producers of Class 1 (Scotch) spearmint oil and approximately 110 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 9 handlers regulated by the order would be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 29 of the 124 Scotch spearmint oil producers and 14 of the 110 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the SBA category of large businesses.

This proposed rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. The Committee

recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market. This action is authorized by the provisions of sections 985.50, 985.51 and 985.52 of the order.

Small spearmint oil producers generally are not extensively diversified and as such are more at risk to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

The order has contributed extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year to year. For example, between 1971 and 1975 the price of Native spearmint oil ranged from $3.00 per pound to $11.00 per pound. In contrast, under the order, prices have stabilized between $10.50 and $11.50 per pound for the past ten years. The average price for Native spearmint oil in 1997 was $11.00.

Alternatives to the proposal included not regulating the handling of spearmint oil during the 1999–2000 marketing year, and recommending either higher or lower levels for the salable quantities and allotment percentages. The Committee reached its recommendation to establish salable quantities and allotment percentages for both classes of spearmint oil after careful consideration of all available information, including: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Based on its review, the Committee believes that the salable quantity and allotment percentage levels recommended will achieve the objectives sought.

Without any regulations in effect, the Committee believes the industry would return to the pattern of cyclical prices of prior years, as well as suffer the potentially price depressing consequence that a release of the nearly 1.3 million pounds of spearmint oil reserves would have on the market. According to the Committee, higher or lower salable quantities and allotment percentages would not achieve the intended goals of market and price stability, with market share maintenance and growth.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Finally, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. Thirty days is deemed appropriate because this rule would need to be effective as soon as possible to provide producers sufficient time prior to the beginning of the 1999–2000 marketing year to adjust their cultural and marketing plans accordingly. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 985.218 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.218 Salable quantities and allotment percentages—1999–2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

(a) Class 1 (Scotch) oil—a salable quantity of 1,199,290 pounds and an allotment percentage of 65 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,125,755 pounds and an allotment percentage of 55 percent.

Dated: November 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30673 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 79 and 80

[FRL–6187–5]

Use of Alternative Analytical Test Methods in the Reformulated Gasoline Program and Revision of the Specification for the Mixing Chamber Associated with Animal Toxicity Testing of Fuels and Fuel Additives

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule extends the time period during which certain alternative analytical test methods may be used in the Federal reformulated gasoline (RFG) program to September 1, 2000. The time period for use of these alternative methods originally expired on January 1, 1997 and was previously extended to September 1, 1998. The purpose of today's proposed extension

is to grant temporary flexibility until a final performance-based analytical test method approach rulemaking is promulgated. EPA expects to finalize the performance-based analytical test method approach rulemaking before September 1, 2000. This proposed rule also makes certain revisions to the procedures applicable to health effects testing of fuels and fuel additives.

DATE: Comments must be received in writing by December 17, 1998.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Joseph R. Sopata, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (6406J), Washington, D.C. 20460. Materials relevant to this direct final rule have been placed in docket A–98–21 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Joseph R. Sopata, Chemist, Fuels & Energy Division, at (202) 564–9034. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Joseph R. Sopata, (202) 564–9034, or Anne-Marie C. Pastorkovich, Attorney/Advisor, Fuels & Energy Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by this action are those that use analytical test methods to comply with the RFG program and manufacturers of fuels and fuel additives. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Oil refiners, gasoline importers, oxygenate blenders, analytical testing laboratories. Manufacturers of gasoline and diesel fuel. Manufacturers of additives for gasoline and diesel fuel.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists all types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be regulated. To determine whether your business is regulated by this proposed action, you should carefully examine the applicability criteria in parts 79 and 80 of title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. RFG Standards & Test Methods Utilized at § 80.46

Section 211(k) of the Clean Air Act (the Act) requires that EPA establish standards for RFG to be used in specified ozone nonattainment areas (covered areas), as well as anti-dumping standards for non-reformulated, or conventional gasoline, used in the rest of the country, beginning in January 1995. The Act requires that RFG reduce VOC and toxics emissions from motor vehicles, not increase NO_x emissions, and meet certain content standards for oxygen, benzene, and heavy metals. EPA published the final RFG regulations in the **Federal Register** on February 16, 1994.[1]

Refiners, importers, and oxygenate blenders are required, among other things, to test RFG and conventional gasoline for various gasoline parameters or qualities, such as sulfur levels, aromatics, benzene, and so on. Based upon comments received from the regulated industry during the RFG and anti-dumping rulemaking, EPA concluded that it would be appropriate to temporarily allow the use of alternative analytical test methods for measuring the parameters of aromatics and oxygenates. Language was adopted in §§ 80.46(f)(3) and (g)(9)(i), which permitted the use of alternative analytical test methods for aromatics and oxygenates, respectively, until January 1, 1997. These sections were later amended by a November 13, 1996 final rule published in the **Federal Register** to permit the use of alternative analytical test methods for these two parameters until September 1, 1998.[2]

As explained in the February 16, 1994 final rule, the Agency will undertake a rulemaking to consider establishing a performance-based analytical test method approach for the measurement of the reformulated gasoline (RFG) parameters at § 80.46. The Agency envisions that a performance-based approach could provide additional flexibility to the regulated industry in its choice of analytical test methods to be utilized for compliance under the RFG and conventional gasoline programs for analytical test methods that differ from the designated analytical test method. The Agency further believes that establishment of a performance-based test method approach may help advance the purposes of the "National Technology Transfer and Advancement Act of 1995," section 12(d) of Public Law 104–113 and Office of Management and Budget (OMB) Circular A–119.[3] In general, the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 are designed to encourage the adoption of standards developed by "voluntary consensus bodies" and to reduce reliance on government-unique standards "where an existing voluntary standard would suffice."[4] Today's proposed rule provides an extension of deadline for use of certain alternative test methods until such time as a notice-and-comment rulemaking to establish performance-based standards is

[1] The RFG and anti-dumping regulations are located at 40 CFR part 80, subparts D, E, and F. The final rule establishing the RFG and anti-dumping standards was published in the February 16, 1994 **Federal Register** at 59 FR 7716. Amendments were published at 59 FR 36944 (June 20, 1994), 59 FR 39258 (August 2, 1994), 59 FR 60715 (November 28, 1994), 60 FR 2699 (January 11, 1995), 60 FR 6030 (February 1, 1995), 60 FR 35488 (July 10, 1995), 60 FR 40006 (August 1, 1995), 60 FR 65571 (December 20, 1995), 61 FR 12030 (March 25, 1996), 61 FR 20736 (May 8, 1996), 61 FR 35673 (July 8, 1996), 61 FR 58304 (November 13, 1996), 62 FR 9872 (March 4, 1997), 62 FR 12572 (March 17, 1997), and 62 FR 30260 (June 3, 1997). EPA proposed several additional modifications to the RFG and anti-dumping regulations at 62 FR 37338 (July 11, 1997). Some of these proposed modifications were included in a final rule published at 62 FR 68196 (December 31, 1997), while others will be the subject of a future final rule. Please refer to the December 31, 1997 final rule for more information.

[2] See 61 FR 58304 (November 13, 1996).

[3] *See* "OMB Circular A–119: Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," 63 FR 8546 (February 19, 1998).

[4] *Id.*

completed. Issues related to the National Technology Transfer and Advancement Act of 1995 and OMB Circular A–119 will be appropriately explored in detail in connection with that rulemaking.

EPA originally expected to finalize action on such a rulemaking by September 1, 1998; however, the Agency now realizes that it will not complete rulemaking until after that date. Refiners and importers will need several months to determine whether these alternative methods qualify under the envisioned performance-based analytical test method approach. Therefore the Agency is proposing to extend the deadline for the use of alternative test methods at §§ 80.46(f)(3) and 80.46(g)(9) until September 1, 2000. This extension of the deadline would allow parties to make long-term purchasing decisions based on all the testing options that could be made available at the conclusion of the performance-based rulemaking. EPA reasonably expects to complete rulemaking before September 1, 2000.

III. Proposed Revision of the Specification for the Mixing Chamber Associated With Animal Toxicity Testing of Fuels and Fuel Additives at § 79.57(e)(2)(iii)(C)

The fuels and fuel additives registration program is authorized by section 211 of the Clean Air Act and codified at 40 CFR part 79. In accordance with sections 211(a) and (b)(1) of the Act, basic registration requirements applicable to gasoline and diesel fuel have been in existence since 1975. On June 27, 1994, EPA published a **Federal Register** document announcing final additional regulations for registration of designated fuels and fuel additives as authorized by sections 211(b)(2) and 211(e) of the Clean Air Act as amended in 1990.[5] The additional regulations require manufacturers, as part of the registration program, to conduct tests and submit information related to the health effects of their fuel and fuel additive products. The health effects testing requirements are organized in three tiers. Tier 1 requires analysis of combustion and evaporative emissions of fuels and fuel additives and a survey of existing scientific information on the public health and welfare effects of these emissions. Tier 2 requires manufacturers to conduct specified health effects tests to screen for adverse health effects of fuel and fuel additive emissions. Additional testing may be required under Tier 3 at EPA's discretion.

A provision of the health effects testing regulations requires that the emission moderation apparatus must function such that the average concentration of hydrocarbons leaving the apparatus shall be within 10 percent of the average concentration of hydrocarbons entering the mixing chamber. The Agency now believes that this specification for the mixing chamber (or any alternative emission moderation apparatus) at §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B) is likely unachievable in a typical laboratory setting. Additionally, the regulations require that the mean exposure concentration in the inhalation test chamber shall be within 10 percent of the target concentration for the single species being controlled on 90 percent or more of the exposure days and that daily monitoring of CO, CO_2, oxides of nitrogen, oxides of sulfur and total hydrocarbons in the exposure chamber shall be required. 40 CFR 79.57(e)(2)(iv)(B). EPA now believes that the required mean exposure concentration in the inhalation test chamber is unachievable for total hydrocarbons and particulate. The Agency believes that the reason that these specifications are unachievable for hydrocarbons and particulate is because of the cohesive qualities that such compounds share. These shared cohesive tendencies result in a tendency to fall out of the exposure atmosphere as it passes through the apparatus.

EPA believes that a more appropriate specification for particulate and hydrocarbon compounds would be 15%. The Agency believes the modified emission dilution requirements at §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) will provide for sufficient quality control assurances and thereby negate the need for §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B).[6] Accordingly, the Agency is proposing to delete §§ 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), and proposing to modify §§ 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B).

IV. Additional Changes Related to Animal Toxicity Testing of Fuels and Fuel Additives

A. Vascular Perfusion Technique

Section 79.66(e)(5)(iii)(B) states that for the vascular perfusion technique, the animals shall be perfused in situ by a generally recognized technique.[7] Section 79.62(d)(7)(v) states that the lungs and trachea of the whole-body perfusion-fixed test animals are examined for inhaled particle distribution.

The methods for vascular perfusion cited in the regulation perfuse only the systemic vascular system with fixative. Using the methods cited, the lungs are neither fixed nor inflated. This is because no pressure (either air or fixative) is applied to the airways to counteract the pressure being applied through the blood vessels, so that the airspaces of the lungs collapse under the pressure from the vascular fixation. The collapsed, unfixed lungs are not useful for histopathological examination, or for examination of inhaled particle distribution.

EPA is proposing to modify the systemic vascular perfusion fixation procedure by including intratracheal instillation of the lungs with fixative via the trachea during the fixation process. This would preserve the lungs for examination and achieve the whole-body fixation needed for neurotoxicity endpoints.

B. Correction of Animal Numbers

Section 79.62(d)(1)(ii)(B) states, in part, "Forty rodents, 25 females and 10 males . . ." EPA is proposing to amend the section to reflect a correct total of 35 rodents.

V. Environmental and Economic Impacts

This proposed rule is expected to have no negative environmental impact. The proposed change in the deadline for the use of certain alternative test methods preserves the status quo of the RFG program and will result in no reduction in the emission benefits of the program. The proposed changes to the fuels and fuel additives registration

[5] The fuels and fuel additives registration regulations are located in 40 CFR part 79. Testing requirements for fuels and fuel additives are in subpart F. The final rule establishing these regulations was published in the June 27, 1994 **Federal Register** at 59 FR 33042. Amendments were published at 61 FR 36506 (July 11, 1996), 61 FR 58744 (November 18, 1996), 62 FR 12564 (March 17, 1997) and 62 FR 12572 (March 17, 1997).

[6] Sections 79.57(e)(2)(iv)(B) and 79.57(e)(2)(vi)(B) did not previously contain reference to hydrocarbons, but are proposed to be modified to include specific requirements for both hydrocarbons and particulate. Sections 79.57(e)(2)(iii)(C) and 79.57(e)(2)(v)(B), which are proposed to be deleted, specifically address hydrocarbons only, and would no longer be necessary.

[7] Standard techniques for vascular perfusion in the following references are cited: Zeman, W., and Innes, J.R.M., *Craigie's Neuroanatomy of the Rat* (New York: Academic, 1963); Hayat, M.A., "Vol. 1. Biological applications," *Principles and Techniques of Electron Microscopy* (New York: Van Nostrand, Reinhold, 1970); and Spencer, P.S., and Schaumbur, H.H., (eds.). *Experimental and Clinical Neurotoxicology* (Baltimore: Williams and Wilkins, 1980).

regulations are not expected to have any negative environmental impact on the public health and environmental benefits associated with the fuels and fuel additives testing program. In fact, today's proposed changes with regard to health testing requirements add certainty and correct errors and, as a result, may enhance the benefits of the program.

Today's proposed regulation would have a positive impact on the great majority of entities regulated by the RFG regulation, because it permits continued flexibility with respect to the use of alternative test methods. This flexibility will continue through September 1, 2000 or until such time as EPA issues final regulations for performance-based analytical test methods. The proposed changes to the health effects testing requirements are minor and are not expected to result in any additional compliance costs for regulated parties.

VI. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this proposed rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's proposed regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. Specifically, it would grant the regulated industry flexibility in the use of alternative test methods until September 1, 2000 (or until such time as EPA completes final rulemaking) and would correct certain errors in existing registration requirements for fuels and fuel additives. It is not expected to result in any additional compliance costs for regulated parties, including small entities. A regulatory flexibility analysis has therefore not been prepared.

VII. Executive Order 12866

Under Executive Order 12866 [8], the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[9]

EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Paperwork Reduction Act

Today's proposed rule does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the applicable information collection requirements (ICRs) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the following OMB control numbers: 2060–0297 ("Registration of Fuels and Fuel Additives; Health-Effects Research Requirements for Manufacturers—40 CFR part 79, subpart F"), 2060–0150 ("Registration of Fuels and Fuel Additives: Requirements for Manufacturers"), and 2060–0277 ("Standards for Reformulated Gasoline"). Copies of these ICRs may be obtained from Sandy Farmer, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–2740. Include the ICR title and/or OMB number in any correspondence. Nothing in today's proposed rule will result in any additional reporting, recordkeeping, testing, or other informational burdens.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under Section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this proposed rule does not include a Federal mandate as defined in UMRA. The proposed rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of $100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Effects on Tribal, State, and Local Government Entities

This proposed rule would not establish any regulatory requirements which would significantly or uniquely affect tribal governments within the meaning of E.O. 13084, "Consultation and Coordination with Indian Tribal Governments."

XI. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule would not create a mandate on state, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

[8] 58 FR 51736 (October 4, 1993).

[9] *Id.* at section 3(f)(1)–(4).

XII. Applicability of E.O. 13045: Children's Health Protection

This proposed rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

Today's proposed rule extends the time period during which certain alternative analytical test methods may be used. This would preserve the status quo under the existing RFG program until such time as a performance-based test method rule is issued. The proposed extension will result in no reduction in the RFG program's environmental or health benefits and presents no health or safety risks that will adversely affect children.

Today's proposed changes and corrections to the health effects testing regulations for fuels and fuel additives will add certainty and facilitate compliance by regulated parties. As a result, any impact on children's health resulting from the proposed changes and corrections would reasonably be expected to be positive.

XIII. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (NTTAA), Section 12(d) of Public Law 104–113, is designed to encourage the adoption of standards developed by "voluntary consensus bodies" and to reduce reliance on government-unique standards where existing voluntary standards would suffice.

Today's proposed rule would provide an extension of deadline for use of certain analytical test methods for the RFG program until such time as a notice-and-comment rulemaking to establish performance-based analytical test methods is completed. Today's action does not establish new technical standards or analytical test methods. The Agency plans to address the NTTAA in detail in an upcoming rulemaking to establish performance-based analytical test methods.

For a more detailed discussion, please refer to **SUPPLEMENTARY INFORMATION**, section II, "RFG Standards and Test Methods Utilized at § 80.46," above.

List of Subjects

40 CFR Part 79

Environmental protection, Fuel additives, Gasoline, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling.

Dated: November 3, 1998.

Carol M. Browner,

Administrator.

For the reasons described in the preamble, parts 79 and 80 of Title 40 of the Code of Federal Regulations are proposed to be amended as follows:

PART 79—[AMENDED]

1. The authority citation for part 79 continues to read as follows:

Authority: 42 U.S.C. 7414, 7524, 7545, and 7601.

2. Section 79.57 is proposed to be amended by removing and reserving paragraphs (e)(2)(iii)(C) and (e)(2)(v)(B) and by revising paragraphs (e)(2)(iv)(B) and (e)(2)(vi)(B), to read as follows:

§ 79.57 Emissions Generation.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(C) [Reserved]

(iv) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, CO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

(v) * * *

(B) [Reserved]

(vi) * * *

(B) These procedures include requirements that the mean exposure concentration in the inhalation test chamber on 90 percent or more of the exposure days shall be controlled as follows:

(*1*) If the species being controlled is hydrocarbon or particulate, the mean exposure concentration must be within 15 percent of the target concentration for the single species being controlled.

(*2*) For other species, the mean exposure concentration must be within 10 percent of the target concentration for the single species being controlled.

(*3*) For all species, daily monitoring of CO, NO_2, NO_X, SO_X, and total hydrocarbons in the exposure chamber shall be required. Analysis of the particle size distribution shall also be performed to establish the stability and consistency of particle size distribution in the test exposure.

* * * * *

3. Section 79.62 is proposed to be amended by revising paragraph (d)(1)(ii)(B), to read as follows:

§ 79.62 Subchronic toxicity study with specific health effects assessment.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(B) Thirty-five rodents, 25 females and ten males, shall be added for each test concentration or control group when combining a 90-day toxicity study with a fertility assessment.

* * * * *

4. Section 79.66 is proposed to be amended by adding a sentence to the end of paragraph (e)(5)(iii)(B), to read as follows:

§ 79.66 Neuropathology assessment.

* * * * *

(e) * * *

(5) * * *

(iii) * * *

(B) *Perfusion technique.* * * * In addition, the lungs shall be instilled with fixative via the trachea during the fixation process in order to preserve the lungs and achieve whole-body fixation.

* * * * *

PART 80—[AMENDED]

5. The authority citation for part 80 continues to read as follows:

Authority: Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

6. Section 80.46 is proposed to be amended by revising paragraphs (f)(3) and (g)(9) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

* * * * *

(f) * * *

(3) *Alternative test method.* (i) Prior to September 1, 2000, any refiner or importer may determine aromatics content using ASTM standard method D–1319–93, entitled "Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Flourescent Indicator Adsorption," for

purposes of meeting any testing requirement involving aromatics content; provided that

(ii) The refiner or importer test result is correlated with the method specified in paragraph (f)(1) of this section.

(g) * * *

(9)(i) Prior to September 1, 2000, and when the oxygenates present are limited to MTBE, ETBE, TAME, DIPE, tertiary-amyl alcohol, and C1 to C4 alcohols, any refiner, importer, or oxygenate blender may determine oxygen and oxygenate content using ASTM standard method D–4815–93, entitled "Standard Test Method for Determination of MTBE, ETBE, TAME, DIPE, tertiary-Amyl Alcohol and C1 to C4 Alcohols in Gasoline by Gas Chromatography," for purposes of meeting any testing requirement; provided that

(ii) The refiner or importer test result is correlated with the method set forth in paragraphs (g)(1) through (g)(8) of this section.

* * * * *

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF02

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) is proposing regulations that would authorize for the next 5 years the incidental, unintentional take of small numbers of polar bears (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) during year-round oil and gas industry operations (exploration, development, and production) in the Beaufort Sea and adjacent northern coast of Alaska.

Under the provisions of the Marine Mammal Protection Act (Act), the Service will allow the taking of these marine mammals only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaska Natives. If these findings are made, the Service will establish specific regulations for the activity that set forth: permissible methods of taking; means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and requirements for monitoring and reporting.

Through the preparation of a draft Environmental Assessment, and the knowledge learned from four years of monitoring interactions between marine mammals and oil and gas industry activities, the Service has proposed a finding that the total expected takings of polar bear and walrus during oil and gas industry exploration, development and production activities would have a negligible impact on these species, and there would be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaska Natives.

DATES: Comments on the proposed rule must be received by December 11, 1998.

ADDRESSES: Written comments should be submitted by mail to Supervisor, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503. Comments may also be hand delivered to the same address. Comments and materials received in response to this proposal will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Bridges, Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503, (907) 786–3800, FAX (907) 786–3816, or Internet John__Bridges@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Act gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service the authority to allow, on request by U.S. citizens [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographical region the incidental, but not intentional, taking of small numbers of marine mammals. The Service may grant permission for periods of up to 5 years.

If the Service finds, based on the best scientific evidence available, that the taking of marine mammals will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses, the taking of marine mammals may be allowed. Also, the Service will publish regulations that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. The Service issues Letters of Authorization (LOA), upon request and receipt of appropriate data, to individual entities to conduct activities pursuant to the regulations.

The term *take* as defined by the Act means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment as defined by the Act, as amended in September 1994, "* * * means any act of pursuit, torment, or annoyance which—

(i) Has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) Has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

As a result of 1986 amendments to the Act, the Service on September 29, 1989, published a final rule (54 FR 40338) amending 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact." Negligible impact is now defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." [50 CFR 18.27(c)]. "Unmitigable adverse impact means an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met." Id.

Oil and gas exploration, development, and production activities conducted in marine mammal habitat risk violating the moratorium on the taking of marine mammals and, therefore, violating the terms of the Act. It is probable that in

a period of five years, takes of polar bear and/or walrus will occur. Although there is no legal requirement for the oil and gas industry (Industry) to obtain incidental take authority, they have chosen to seek authorization to avoid the uncertainties of oil and gas industry activities in marine mammal habitat.

On December 17, 1991, BP Exploration (Alaska), Inc. (BPXA), for itself and on behalf of Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digicon Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Services, Inc., Mobil Oil Corporation, Northern Geophysical of America, Texaco Inc., Unocal Corporation, and Western Geophysical Company, petitioned the Service for the promulgation of regulations pursuant to Section 101(a)(5) of the Act.

Regulations were issued on November 16, 1993 (58 FR 60402), that allowed the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus in the event that such a taking occurred in the course of oil and gas exploration, development, or production activities during year-round operations in the Beaufort Sea, in Alaskan State waters and Outer Continental Shelf (OCS) waters and the adjacent northern coast of Alaska. The regulations were issued for a period of 18 months. The Secretary of the Interior directed the Service to develop and begin implementing a polar bear habitat conservation strategy prior to extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. *The Habitat Conservation Strategy for Polar Bears in Alaska* was developed to ensure that the regulations fully meet with the intent of the 1973 *International Agreement on the Conservation of Polar Bears*. On August 17, 1995, the final rule and notice of availability of a Completed Final Polar Bear Habitat Conservation Strategy was issued (60 FR 42805); and the regulations were extended for an additional 42 months to expire on December 15, 1998.

Specifically, a north/south line at Barrow, Alaska, including all Alaska state waters and the OCS waters and east of that line to the Canadian border defines the offshore geographic region. The same north/south line at Barrow, 25 miles inland and east to the Canning River defines the onshore region. The Arctic National Wildlife Refuge was excluded from the proposal.

Summary of the Current Request

On August 28, 1997, BPXA submitted a petition for rule making pursuant to Section 101(a)(5)(A) of the Act, and Section 553(e) of the Administrative Procedure Act (APA). The request seeks regulations to allow the incidental, but not intentional, taking of small numbers of polar bears and Pacific walrus in the event that takings occur in the course of oil and gas exploration, development, and production operations in Arctic Alaska. Specifically, BPXA requested an extension of the current incidental take regulations beginning at 50 CFR 18.121 for an additional five-year term from December 16, 1998, through December 15, 2003. The request was submitted by BPXA for itself and on behalf of ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company.

The geographical extent of this request is the same as the previous regulations; it is a north/south line at Barrow, Alaska, including all Alaska State waters and OCS waters, and east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Service excludes the Arctic National Wildlife Refuge from this proposal.

Summary of Proposed Rule

The Service proposes specific regulations to allow the incidental, unintentional take of polar bear and Pacific walrus in the Beaufort Sea and northern coast of Alaska. The regulations would be in effect year-round for a five year period expected to begin at the expiration of the current regulations (December 15, 1998) for entities conducting oil and gas industry activities. This proposed regulation does not authorize the intentional harassment, hunting, capturing or killing of polar bear or walrus. Under these regulations, Industry operations will continue while functioning under the restrictions of the Act.

These regulations do not permit the actual activities associated with oil and gas exploration, development, and production, but rather allow the incidental, unintentional take of the two species of marine mammals. The Department of the Interior's Minerals Management Service (MMS) and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands, respectively, and the State of Alaska is responsible for activities on State lands and in State waters.

Concern has been directed at polar bear encounter incidents where human life is in jeopardy. When human activity occurs in polar bear habitat, polar bear/human encounters are possible. In over 25 years of industry activity in this area, only one polar bear died for the protection of human life. Each person operating under these regulations will have polar bear interaction training and knowledge of polar bear interaction plans. The Service authorizes deterrent activities under Section 109(h)(1) of the Act, and lethal takes (kills) in defense of self or others are authorized by Section 101(c) of the Act.

The proposed regulations authorizing the incidental take of polar bears and Pacific walrus is directed to incidents that occur between Industry and the two species during year-round oil and gas activities that might cause minor disturbances to polar bears or Pacific walrus, especially those incidents that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity.

The proposed regulations include requirements for monitoring and reporting, and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. The regulations are based on the finding that exploration, development, and production activities in this area may involve the taking of the two aforementioned species of marine mammals. The Service believes that the total impact of the takings will have a negligible impact on these species and on their availability for subsistence uses. Monitoring reports submitted for each exploration, development, and production activity conducted from 1993–1997 support this believe.

Subsequent to establishing regulations, the Service requires a LOA to conduct activities pursuant to these regulations. Where there is the likelihood of taking polar bear or walrus, each group or individual conducting an oil and gas industry-related activity may request a LOA. The proposed regulations require those who request a LOA to submit a plan to monitor the effects on polar bear and walrus that are present during the authorized activities. Also, each applicant for a LOA must identify, in a Plan of Cooperation, measures taken to minimize adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request for a LOA is evaluated on the specific activity and the specific location, and the Service

specifically conditions each LOA for that activity and location.

Description of Activity

In accordance with 50 CFR 18.27, Industry has submitted a request for the promulgation of incidental take regulations pursuant to Section 101(a)(5)(A) of the Act.

Activities that are covered in the petition are exploration activities such as geological and geophysical surveys which include: geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, air gun and water gun seismic data collection, explosive seismic data collection, geological surveys, and drilling operations. The latter include: drill ships, floating drill platform such as the Kulluk, ice pads, artificial islands, caisson-retained islands, and two types of bottom-founded structures: (1) concrete island drilling system, and (2) single steel drilling caisson.

Development and production activities are located on the North Slope along the shores of the Beaufort Sea. This region contains more than 11 separate oil and gas fields. All of the fields lie within the range of polar bears, while those in the offshore/near shore may encounter Pacific walrus on an irregular basis. At present, seven fields are in production: Prudoe Bay, Kuparuk, Endicott, Lisburne, Milne Point, Niakuk, and Point McIntyre. Additional fields expected to be in production over the next few years are: Northstar, Badami, Liberty, Tarn, and Alpine. The Trans-Alaska Pipeline System transports oil from each of the producing fields 800 miles south to Valdez, Alaska.

Potential sources of incidental take are noise, physical interactions, and permitted and unpermitted discharges (oil spills). Oil and gas well drilling operations will include artificial islands, caisson-retained islands, ice island, bottom-founded structures and ice pads and drill ships.

During the life of these proposed regulations, the Service anticipates a similar level of activity as during the previous five years, with the addition of a number of new developments as mentioned above. Because of the large number of variables influencing exploration activity, any predictions as to the exact dates and locations of the operations that will take place over the next five years would be highly speculative. However, requests for LOAs must include specific details regarding dates, duration, and geographic locations of proposed activities.

Biological Information

Polar bears and Pacific walrus utilize the proposed area as habitat which is vital to their survival, more so for polar bears than the Pacific walrus. The geographical area is the land and water area east of a north/south line through Barrow, Alaska. The onshore area is 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is outside of the proposed area. Offshore, the area extends through Alaska State waters and into the OCS waters of the Beaufort Sea from Barrow east to the Canadian border.

Walrus

The Pacific walrus primarily occurs in the waters of the Chukchi Sea along the western coast of Alaska. Most of the population congregates near the ice edge of the Chukchi Sea pack ice during the summer. The primary summer range of the walrus does not extend east of Point Barrow. In the winter, walrus occur in areas where there are polynyas, open leads, or thin ice in which they can create and maintain breathing holes, and major winter concentrations occur in the southeastern Bering Sea. Walrus do occur in the Beaufort Sea but in small numbers. Data from the Service's Marking, Tagging, and Reporting Program show that from 1994 through 1997, 73 walrus were reported killed by Barrow hunters. Tagging certificates shows that nearly all walrus were taken west of Barrow. Based on four years of monitoring Industry's activities in the Beaufort Sea required as a condition to LOAs, only two walrus were observed by on-site monitors.

Polar bear

Polar bears occur only in the Northern Hemisphere, where their distribution is circumpolar, and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. The Service estimates the world population at 21,000–28,000, with possibly as many as 5,000 bears in Alaska. The most extensive north-south movements of polar bears occur with the ice in the spring and fall.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs, sometimes one and rarely three, are usually born in December, and the family group emerges from the den in late March or early April. Only pregnant females den for an extended period during the winter. Other polar bears may burrow out depressions to escape harsh winter winds. The average reproduction interval for polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these conditions, a polar bear may produce about ten cubs in her lifetime.

The fur and blubber of the polar bear provide vital protection from the cold air and frigid water. Newly emerged cubs of the year may not have a sufficient layer of blubber to maintain body heat when immersed in water for long periods of time. For this reason the mother is very protective of the cubs. Cubs abandoned prior to the normal weaning age of 2.5 years likely will not survive.

Ringed seals (*Phoca hispida*) are the primary prey species of the polar bear; occasionally, they hunt bearded seals (*Erignathus barbatus*) and walrus calves. Polar bears scavenge on marine mammal carcasses washed up on shore. They also eat non-food items such as Styrofoam, plastic, car-batteries, anti-freeze and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. The most significant source of mortality are humans. Since 1972, with the passage of the Act, only Alaska Natives hunt polar bears in Alaska and use bears for their subsistence needs and manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, providing takes are non-wasteful. From 1980–1997, the total annual harvest averaged 103 bears. The majority of this harvest (70 percent) came from the Chukchi Sea area.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas industry activities such as air and vessel traffic, noise from air traffic, seismic surveys, ice breakers, supply ships and drilling may frighten or displace walrus. However, as previously stated in this document, the primary range of the Pacific walrus is west of Point Barrow and the likelihood of many walrus being in the Beaufort Sea is small. Therefore, it is unlikely that oil and gas industry activities will result in more than a negligible impact on the species. Likewise, activities during the ice covered periods and the onshore development and production activities should not impact the species.

Stationary drilling structures may affect the movement of walrus. Walrus are attracted to certain activities or repelled from others by noise or smell. In the 1989 drilling season an incident

occurred in a Chukchi Sea operation where a young walrus surfaced in the center hole (moonpool) of the drill ship. A cargo net removed the walrus from the drilling area, after which the walrus left the scene of the incident and was not seen again.

The majority of the population congregates during the summer months (open water season) in the southern region of the Chukchi Sea pack ice between Long Strait and Wrangle Island to the west and Point Barrow, Alaska, to the east. These animals stray or are blown by storms into the proposed regulation area. The remainder of the population, primarily adult males, stay in the Bearing Sea, especially along the Anadyr Gulf coast and in several areas in northern Bristol Bay.

In winter, walrus are found in two major regions where open leads, polynyas, or thin ice occur (Fay et al. 1984). Generally, one group ranges from the Gulf of Anadyr into the region southwest of St. Lawrence Island, and a second group is found in the southeastern Bering Sea from south of Nunivak Island into northwestern Bristol Bay. No impacts to walrus are expected during winter oil and gas industry activities since the winter range of the Pacific walrus is not within the geographical area of the proposed regulations.

Seismic surveys generally take place on solid ice or open water. Since most walrus activity occurs near the ice edge, interactions with walrus and the seismic activity are unlikely.

Subsistence

Few walrus are harvested in the Beaufort Sea along the northern coast of Alaska. The walrus constitutes a small portion of the harvest for the village of Barrow. For the four year period that the current incidental take regulations have been in place, 1994 through 1997, 73 walrus were reported taken by Barrow hunters. Reports indicate that all but one of the 73 walrus were taken west of Point Barrow, outside the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik have not reported taking any walrus this time.

Polar Bear

Oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska may affect the polar bear. Drill ships and icebreaker activity may be physical obstructions to normal movement. Noise, sights, and smells produced by activities may attract or repel bears. These disruptions may introduce detrimental changes in the bears' natural behavior.

Exploration activities during the open-water season are not likely to impact the movements or natural behavior of the polar bear. Although polar bears have been documented in open water, miles from the ice edge or ice floes, they normally are found near the ice edge. Therefore, it is unlikely that exploration activities in the open-water season will have more than a negligible impact on the polar bear.

Winter oil and gas activities have a greater possibility of having detrimental impacts on the polar bear. Polar bears that continue to move over the ice pack throughout the year are likely to encounter Industry activities. Curious polar bears are likely to investigate drill ships and artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for Industry/bear interactions.

Offshore drill sites within the pack ice may modify the habitat by creating open water leads down current from the activity. Polar bears are attracted to open water leads which create temporary niches for subadult or non-breeding ringed seals, the primary prey species for the polar bear. Polar bears attracted to these artificial open water leads create possibilities of Industry/polar bear encounters.

Polar bear interaction plans are developed for each operation. Industry personnel participate in a polar bear interaction training program while on-site. These training programs and interaction plans insure that the activity and possible interactions have the least detrimental effect on industry personnel and the polar bear. Occasionally, work is performed on the ice adjacent to elevated drill ships or platforms. In such cases, well-lighted and open work areas are provided to reduce the likelihood of an encounter with an undetected polar bear.

Winter seismic activity (survey crews) have a potential of disturbing denning females which are sensitive to noise disturbances. Denning females may stop seeking a preferred denning site, or may abandon dens, thereby risking the lives of their offspring. Prior to initiating seismic survey activity, Industry provides the Service with the proposed survey route. Through satellite observations of radio collared bears the Service is able to inform Industry of known denning sites, and from knowledge of the geographical area the Service can identify areas of probable denning sites. Industry cooperates with the Service to alter survey routes to pass within no less than one mile of denning sites. As a result of the ongoing cooperative operating procedures, Industry activities avoid known den sites within all practicable limits.

Subsistence

The polar bear is not a primary subsistence species of the villages of Barrow, Nuiqsut or Kaktovik. Preliminary data from the Service's Marking, Tagging, and Reporting Program indicate that from July 1, 1993, to June 30, 1997, a total of 83 polar bears were reported harvested by the Natives of Barrow; 5 polar bears from the village of Nuiqsut; and 9 polar bears from the village of Kaktovik. Hunting success varies considerably from year-to-year because of variable ice and weather conditions.

Industry works with the local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. It is assumed that oil and gas exploration, development, and production will not have more than a negligible impact on subsistence activities.

Oil Spills

The accidental discharge of oil into the environment during Industry activities could result from operational spills during refueling, handling of lubricants and liquid products, and during general maintenance. The spills are small in quantity, generally less than a barrel of oil per incident. Drilling units maintain onboard cleanup equipment and train personnel to handle operational spills. These spills do not pose a threat to polar bear or walrus.

A blowout (i.e., the loss of control of a well during drilling) is a potentially more serious type of spill accident. However, based on data calculated by the MMS, the probability of a major blowout in the Beaufort Sea is extremely low; data compiled by that agency verify that although blowouts occur during exploratory drilling on the OCS, no oil has been spilled.

Based upon historical data, the probability of a blowout not occurring is calculated to be 99.36 percent. This data set includes all blowouts including those caused by gas or water, as well as oil. All blowouts do not necessarily result in the release of oil.

Swimming polar bears are directly impacted by contacting oil-contaminated waters. Bears that are fouled by oil may suffer thermoregulatory problems, ingest oil, and exhibit other detrimental effects such as inflammation of the nasal passages or damage to their renal and central nervous system.

The Service acknowledges that while there is a low probability of oil spills

connected with a blowout, the potential negative effects to polar bears or their habitats may be significant. Bears that contact oil are likely to die. The Service balances the probability of an oil spill with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill are significant but the probability of occurrence is low, a finding of negligible impact may be appropriate.

Due to the small number of walrus in the Beaufort Sea area, impacts resulting from oil spills are foreseen as negligible.

Conclusions

Based on the previous discussion and monitoring results from the previous five years' monitoring program, the Service makes the following preliminary findings regarding the proposed action.

Impact on Species

The Service finds, based on the best scientific information available and the results of four years of monitoring data, the effects of oil and gas related exploration, development, and production activities for the next five years in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat and on the availability of the species for subsistence uses if certain conditions are met. Oil and gas activities have occurred in the Beaufort Sea and the adjacent northern coast of Alaska for many years. To date, there has been only one documented case of a lethal take of a polar bear at an exploratory drill site. In the event of a catastrophic spill, the Service would reassess the impacts to the polar bear and/or walrus populations and reconsider the appropriateness of authorization for taking thorough Section 101(a)(5)(A) of the Act.

The finding of "negligible impact" applies to exploration, development, and production activities related to oil and gas activities. The following are generic conditions that are proposed to eliminate interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. The Service may expand the conditions in the LOA's based upon site specific and species specific reasons.

(1) These regulations do not authorize intentional taking of polar bear or walrus. When an intentional take (e.g., harassment associated with deterrent activities and/or lethal take) situation arises, the Service can allow such action under the authority of Section 109(h)(1) or Section 101(c) of the Act.

(2) For the protection of pregnant polar bears during denning activities (selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities will be restricted in specific locations during certain specified times of the year. These restrictions will be applied on a case-by-case basis in response to a request for each LOA. In potential denning areas, pre-activity surveys, as determined by the Service, may be required to determine the presence or absence of denning activity.

(3) Each activity authorized by a LOA will require a site-specific plan of operation, and a site-specific monitoring and reporting plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with the finding that the cumulative total of takes will have a negligible impact on polar bear and Pacific walrus. their habitat, and where relevant, on the availability of the species for subsistence uses.

Impact on Subsistence

Polar bear and Pacific walrus contribute a small amount of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, this does not mean that the harvesting of these species is not important to Alaska Natives. To ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible, prior to receipt of a LOA, Industry must provide evidence to the Service that a plan of cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, Alaska Nanuuq Commission, and the North Slope Borough. This plan of cooperation will provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for subsistence, the Service will reevaluate its findings regarding permissible limits to take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of the monitoring program is to determine short-term and direct effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Plans must identify the methods used to assess the effects on the movements, behavior, and habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported each year, and reviewed by the Service. The Service bases each year's monitoring objective on the previous year's monitoring results.

The Service requires an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of a LOA. The applicant must submit an annual monitoring and reporting plan, at least 90 days prior to initiation of proposed activity, for each exploratory activity; and the applicant must submit a final monitoring report to the Service no later than 90 days after completion of the exploratory activity. Since development production activities are continuous long-term activities, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until expiration of the regulations, whichever occurs first. The Service will require that the operator submit development and production activity monitoring results associated with LOAs annually for review by the Service no later than January 15 for the previous activity. The Service requires annual approval of the monitoring results for continued operation under the LOA.

Required Determinations

The Service has prepared a draft Environmental Assessment in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, the Service will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section entitled, FOR FURTHER INFORMATION CONTACT.

Through preparation of a Record of Compliance for a Rulemaking Document, the Department of the Interior has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12866. The proposed regulations are not likely to result in: (1) an annual effect on the economy of $100 million or more, with the Service estimating actual Industry and Federal government costs associated with developing petitions, specific regulations, and LOAs at $500,000–$1 million (Note that without specific regulations and LOAs, the cost

to Industry resulting from lost profits, relinquishing leases earlier than expected, and writing off bonus payments against current income; and the cost to American society from lost royalties and tax payments might be substantial if incidental takes occurred and legal challenges succeeded in long-term stoppages of oil and gas operations on Federal and State lands and waters. However, it is unlikely that such stoppages will occur, but if any such cessation of activities did occur, they likely would be only short-term and would not have an annual effect on the economy surpassing $100 million.); (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has also been determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Oil companies and their contractors, conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the proposed regulations. These potential applicants have not been identified as small businesses. The Record of Compliance for this proposed rule is available from the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT**.

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt them from civil and criminal liability. The proposed rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The reinstatement of authority (under OMB Number 1018–0070) to collect information contained in this rule was submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). On April 1, 1998, the Service published a notice in the **Federal Register** with a 60-day comment period announcing to the public its intention to seek OMB approval for the collection of information associated with this rulemaking. On September 22, 1998, the Service published a **Federal Register** notice with 30-day comment period announcing to the public that this collection of information has been submitted to OMB for reinstatement. On October 24, 1998, OMB granted approval of our request for reinstatement of this information collection requirement.

This rulemaking is not a significant rule subject to OMB review under Executive Order 12866. The Service has determined that the rapidly approaching expiration of the current regulation necessitates a public comment period of less than 60 days. Therefore, comments on this Proposed Rule will be accepted through December 11, 1998.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

For the reasons set forth in the preamble, the Service proposes to amend part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows: 16 U.S.C. 1361 *et seq.*

2. Subpart J is revised to read as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 Specified activity and specified geographical region.
18.122 Effective dates.
18.123 Permissible methods.
18.124 Prohibitions.
18.125 Level of activity.
18.126 Measures to ensure availability of species for subsistence.
18.127 Requirements for monitoring and reporting.
18.128 Letters of Authorization.
18.129 Information collection requirements.

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

§ 18.121 Specified activity and specified geographical region.

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and Pacific walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The specified geographical area is defined by a North/South line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border and in area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded from this proposal.

§ 18.122 Effective dates.

Regulations in this subpart are effective for a five year period, beginning December 16, 1998, for year-round oil and gas exploration, development, and production activities.

§ 18.123 Permissible methods.

(a) A Letter of Authorization (see § 18.128) permits the incidental, but not intentional, take of polar bear and walrus by U.S. citizens:

(1) Conducting geological and geophysical surveys;

(2) Drilling exploratory wells and associated activities; and

(3) Drilling production wells and performing production support operations.

(b) The operator must conduct methods and activities identified in § 18.123(a) in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and walrus, their habitat and on the availability of these marine mammals for subsistence uses.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.124 Prohibitions.

(a) These regulations do not authorize intentional takes of polar bear or walrus. (Pursuant to Section 109(h)(1) and Section 101(c) of the Marine Mammal Protection Act, the Service may authorize the intentional take (e.g., harassment associated with deterrent activities, and taking in defense of self or others.)

(b) Letters of Authorization prohibit any take that fails to comply with the terms and conditions of these specific regulations.

§ 18.125 Level of activity.

When a U.S. citizen requests a Letter of Authorization, the Service will determine whether the level of activity identified in the request exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is greater, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, the service may allow the authorization to stand as is, add further conditions, or withdraw the authorization.

§ 18.126 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies measures to minimize adverse effects on the availability of polar bear and walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The applicant should contact affected subsistence communities to discuss potential conflicts with the location, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that exploration activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or walrus are properly mitigated.

§ 18.127 Requirements for monitoring and reporting.

(a) The Service requires holders of Letters of Authorization to cooperate with the Service and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of the activities on polar bear and walrus.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects of the activity on the populations of polar bear and walrus that are present during the on-going activities. The Service's Alaska Regional Director must approve the plan which identifies the survey techniques that determine the actions of the polar bear and walrus in response to the on-going activity. The monitoring program must document the actions of these marine mammals and estimate the actual level of take. The monitoring requirements will vary depending on the activity, the location, and the time.

(d) The operator must develop a polar bear awareness and interaction plan if the activity is on ice or in an area of active ice movement. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(e) At its discretion, the Service may place an observer on site of the activity, on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of the activity on polar bear and walrus.

(f) For exploratory activities, holders of a Letter of Authorization must submit a report to the Service's Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to the Service's Alaska Regional director by January 15 each year for the preceding calendar year's activities. Reports must include, at a minimum, the following information:

(1) Dates and time so activity;

(2) Dates and locations of polar bear or walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities including an estimate of the level of take.

§ 18.128 Letters of Authorization.

(a) Each person or entity conducting an oil and gas exploration, development, or production activity in the geographical area described in § 18.121, that may take a polar bear or walrus in execution of those activities, should apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. At least 90 days prior to the start of the proposed activity, the operator must submit the application for authorization to the Service's Alaska Regional Director.

(b) An application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration, the specific location and the estimated area affected by that activity;

(2) A plan to monitor the behavior and effects of the acitivity on polar bear and walrus;

(3) A polar bear awareness and interaction plan;

(4) Where relevant, a Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting.

(c) In accordance with § 18.27(f), decisions made concerning withdrawals of Letters of Authorization, either on an individual or class basis, will be made only after notice and opportunity for public comment.

(d) The requirement for notice and public comment in § 18.128(c) will not apply should the Service determine that an emergency exists which poses a significant risk to the well-being of the species or stocks of polar bear or walrus.

§ 18.129 Information collection requirements.

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. It is necessary to collect the information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. The Service will use the information to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization.

(b) For the initial year only, the Service estimates a 200 hour application burden. For the initial year and annually thereafter, the Service estimates 8 hours per LOA, 4 hours for monitoring, and 8 hours per monitoring report for each of 5 companies for each of 3 active sites (20 hours x 5 companies x 3 sites). Therefore, the Service estimates that there is a total 1,100 hour public burden associated with this rulemaking for the full 3-year period of OMB authorization (200 hours to complete a one-time request for specific regulations; 8 hours for each LOA request, 4 hours per monitoring activity, and 8 hours for each monitoring report). Responses to this information collection are required to obtain a benefit pursuant to Section 101(a)(5) of the Marine Mammal Protection Act. Direct comments regard the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop-224 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

Dated: November 10, 1998.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–30605 Filed 11–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981106278–8278–01; I.D. 101598B]

RIN 0648–AL76

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 1999 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule and proposed 1999 initial specifications; request for comments.

SUMMARY: NMFS proposes initial specifications for the 1999 fishing year for Atlantic mackerel, squid, and butterfish (MSB). Regulations governing these fisheries require NMFS to publish specifications for the upcoming fishing year and to provide an opportunity for the public to comment. This action is intended to fulfill this requirement and promote the development and conservation of the U.S. MSB fisheries. This action also proposes making an inseason adjustment of as much as 15,000 mt to the 1999 mackerel joint venture processing (JVP) annual specifications. Further, it proposes to grant the Administrator, Northeast Region, NMFS (Regional Administrator), the authority to prohibit incidental catches of *Loligo, Illex*, or butterfish when the Regional Administrator determines that closure of the incidental fishery is necessary to assure that the *Loligo, Illex*, or butterfish annual specifications will not be exceeded.

DATES: Public comments must be received on or before December 14, 1998.

ADDRESSES: Copies of the Mid-Atlantic Fishery Management Council's quota paper and recommendations, the Environmental Assessment, and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

Comments should be sent to Jon C. Rittgers, Acting Regional Administrator, Northeast Region Office, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Please mark the envelope, "Comments—1999 MSB specifications."

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council) appear at 50 CFR part 648. These regulations require NMFS to publish a proposed rule specifying the initial annual amounts of the initial optimum yield (IOY), as well as the amounts for allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP. Regulations implementing Amendment 4 to the FMP allow the Council to recommend specifications for these fisheries for up to 3 consecutive years. Procedures for determining the initial annual amounts are found in § 648.21.

The following table contains the proposed initial specifications for the 1999 Atlantic mackerel, *Loligo* and *Illex* squids, and butterfish fisheries as recommended by the Council.

PRELIMINARY INITIAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 1999

[mt]

Specifications	Squid		Atlantic Mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	[1] N/A	16,000
ABC	21,000	19,000	383,000	7,200
IOY	21,000	19,000	[2] 75,000	5,900
DAH	21,000	19,000	[3] 75,000	5,900
DAP	21,000	19,000	50,000	5,900
JVP	0	0	10,000	0
TALFF	0	0	0	0

[1] Not applicable.
[2] OY may be increased during the year, but the total will not exceed 383,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.

1999 Proposed Specifications

Atlantic Mackerel

The FMP provides that ABC in U.S. waters for the upcoming fishing year is that quantity of mackerel that could be caught in U.S. and Canadian waters minus the estimated catch in Canadian waters, while still maintaining a spawning stock size in the year following the year for which catch estimates and quotas are being prepared, equal to, or greater than, 900,000 mt or a catch associated with $F_{0.1}$, whichever is less. Therefore, the ABC specification for Atlantic mackerel is proposed at 383,000 mt. This level of ABC is the catch associated with a fishing mortality rate of $F_{0.1}$ while taking into account a projected Canadian catch of 22,000 mt. The proposed IOY for the 1999 Atlantic mackerel fishery is set at 75,000 mt, equal to the proposed DAH plus TALFF. The specification for DAH is computed by adding the estimated recreational catch, the proposed DAP and JVP. The recreational component of DAH is estimated to be 15,000 mt. DAP and JVP components of DAH have historically been estimated using the Council's annual processor survey. However, for the years 1994 through 1998, response was low and did not contain projections from the large, known processors. In addition, inquiries regarding the utilization of displaced New England

groundfish trawlers for possible entry into the Atlantic mackerel fishery have led the Council to recommend no change to the DAP for the 1999 fishery. This led to the Council recommendation that JVP be reduced to 10,000 mt in 1999 (reduced from 15,000 mt in 1998 and from 25,000 mt in 1997). The Council position was that, even though joint venture (JV)-caught mackerel could negatively effect U.S. processing and exports, some specification of JVP was necessary to support U.S. harvesters who are currently restrained by the limited capacity of the U.S. processing sector. Several years ago, the Council concluded that, even though JVs are necessary in the short term, the long-term policy should be to eliminate JVP to promote the development of the U.S. processing and export industry for Atlantic mackerel, which is one of the primary objectives of the current FMP.

The Council has recommended and NMFS proposes an initial specification of 10,000 mt of JVP for the 1999 fishery. The Council also recommended and NMFS proposes a DAP of 50,000 mt yielding a DAH of 75,000 mt, which includes the 15,000 mt recreational component.

Current MSB regulations allow for inseason adjustments of the annual specifications. These regulations authorize the Regional Administrator, in consultation with the Council, to make adjustments during the fishing year by publication in the **Federal Register** stating the reasons for such action and providing a 30-day public comment period. Therefore, in conjunction with this proposed initial annual specifications action, the Regional Administrator is seeking Council input and public comment on a proposed inseason adjustment to the 1999 mackerel JVP annual specifications of as much as 15,000 mt (with a resultant increase to as much as 15,000 mt in IOY and DAH), in the event additional JV applications are submitted. NMFS believes that announcing this inseason adjustment during this proposed rule process will facilitate more timely use of the existing regulatory provision, allowing inseason increases to specifications including JVP. This action could provide another opportunity for U.S. vessels to participate in JV fisheries without any negative impacts on the Council's long-term goal to Americanize the fishery. If additional JV applications are received, the 1999 mackerel JVP specifications may be increased by as much as 15,000 mt by publication of a final rule in the **Federal Register** without further consultation with the Council.

An IOY level that keeps TALFF at zero is recommended for the 1999 Atlantic mackerel fishery. The Fisheries Act of 1995, P.L. 104–43, prohibits a specification of TALFF unless recommended by the Council and proposed by NMFS. In 1992, the Council used testimony from both the domestic fishing and processing industries and the analysis of nine economic factors found at § 648.21(b)(2)(iii) to determine that mackerel produced from directed foreign fishing would directly compete with U.S. processed products, thus limiting markets available to U.S. processors. The industry was nearly unanimous in its assessment that a specification of TALFF would impede the growth of the U.S. fishery. The Council sees no evidence that this evaluation has changed. Further, the Council believes that an expanding mackerel market and uncertainty regarding world supply, due to the economic and political restructuring in Eastern Europe and to the recent declines in the North Sea mackerel stock, has resulted in increased opportunities for U.S. producers to increase sales to new markets abroad. The U.S. industry has been successful in capturing an increased market share for mackerel in the Caribbean, North Africa, and Japan over the past several years, and a number of factors indicate that market expansion for U.S. Atlantic mackerel is likely to continue. The U.S. Atlantic mackerel stock abundance remains high. Also, the continued low abundance of several important groundfish stocks in the Gulf of Maine, southern New England, and Georges Bank is causing further restrictions in fishing effort for those species. This increases the need for many fishermen to redirect their effort to underutilized species. Atlantic mackerel is considered a prime candidate for innovation in harvesting, processing, and marketing.

As a supplement to the quota paper for the 1993 and 1994 fisheries, benefit-cost and sensitivity analyses were prepared by the Council and NMFS. Results of the analyses indicated that, in the long term, a specification of zero TALFF will yield positive benefits to the fishery and to the Nation. In its 1998 and 1999 quota papers, the Council provided additional analyses of the costs and benefits of directed foreign fishing which indicated that the conclusions reached in prior analyses of zero TALFF have not changed.

The Council also recommended and NMFS proposes that four special conditions imposed in previous years continue to be imposed on the 1999 Atlantic mackerel fishery as follows: (1) JVs are allowed south of 37°30'N. lat., but river herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel; (2) the Regional Administrator should ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) the mackerel OY may be increased during the year, but the total should not exceed 383,000 mt; and (4) applications from a particular nation for a JV for 1999 will not be decided on until the Regional Administrator determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

The proposed maximum OY (Max OY) for *Loligo* squid is 26,000 mt. It represents the harvest level associated with a fishing mortality rate of F_{50}, which is the management target adopted in Amendment 6 to the FMP (F_{50} is defined as the fishing mortality rate that results in 50 percent of the maximum spawning potential of the stock). The Council recommended and NMFS proposes an IOY of 21,000 mt, which is equal to ABC. In Amendment 5 to the FMP, the Council concluded that U.S. vessels have the capacity to, and will harvest the OY on an annual basis: so DAH equals OY. The Council also concluded that U.S. fish processors, on an annual basis, can harvest that portion of the OY that will be harvested by U.S. commercial fishing vessels: so DAP equals DAH and JVP equals zero. Since U.S. fishing vessels have the capacity to harvest the entire OY, there is no portion of the OY that can be made available for foreign fishing: so TALFF equals zero. These determinations were made in Amendment 5 to the FMP. The proposed IOY/DAH/DAP of 21,000 mt for the 1999 fishery represents no change from the final 1998 IOY/DAH/DAP specifications.

The FMP sets the Max OY for *Illex* squid at 24,000 mt. The Council recommended and NMFS proposes an ABC of 19,000 mt (unchanged from 1998), which is equal to the quota associated with the target fishing mortality rate of F_{50} proposed by the 21st Stock Assessment Workshop (SAW 21) and adopted by the Council in Amendment 6 to the FMP. This amendment changed the definitions of overfishing for the squids and butterfish. SAW 21 recommended that the management target for *Illex* squid be a harvest associated with a fishing mortality of F_{50} (a fishing mortality rate that produces 50 percent of the maximum spawning potential of the stock). This recommendation is due, in

part, to the conclusion that *Illex* squid has a life span of only 1 year and is, therefore, susceptible to recruitment overfishing. This level of fishing is analogous to the Falkland Islands *Illex* squid management target of 40 percent proportional escapement. SAW 21 recommended that a real-time management system will be necessary to maximize the utilization of the U.S. squid stocks while preventing recruitment overfishing of the stock. A real-time management system will take several years to develop and implement. In the interim, the management strategy is to specify the allowable harvest for *Loligo* and *Illex* squids at a level associated with F_{50}, which should be sustainable over a wide range of stock levels.

SAW 21 concluded that the U.S. *Illex* squid stock is now fully exploited. As in the case of *Loligo* squid, Amendment 5 eliminated the possibility of JVP and TALFF for the *Illex* squid fishery.

Butterfish

The FMP sets the Max OY for butterfish at 16,000 mt. Based on the most current stock assessments, the Council recommends and NMFS proposes an ABC of 7,200 mt for the 1999 fishery, unchanged since 1996. Commercial landings of butterfish have been low at 2,013 mt, 3,489 mt, and 2,798 mt for the 1995 through 1997 fisheries, respectively. Lack of market demand and the difficulty in locating schools of market size fish have caused severe reductions in the supply of butterfish. Discard data from the offshore fishery is lacking, and high discard rates could be reducing potential yield.

The Council recommended and NMFS proposes an IOY and DAH for butterfish of 5,900 mt. Amendment 5 eliminated the possibility of JVP or TALFF specifications for butterfish except for a bycatch TALFF specification if TALFF is specified for Atlantic mackerel. However, since the Council recommended and NMFS proposes no TALFF for Atlantic mackerel, no bycatch TALFF is necessary for butterfish.

Closure of the Fishery

Current MSB regulations allow the Assistant Administrator for Fisheries, NOAA, to close the directed fishery in the EEZ for *Loligo* squid, *Illex* squid, or butterfish when 95 percent of DAH has been harvested. The closure would remain in effect for the remainder of the fishing year, with incidental catches allowed. On August 25, 1998, NMFS determined that 95 percent of the DAH for *Illex* squid had been harvested and closed the directed fishery for *Illex* squid (63 FR 45763, August 27, 1998). An incidental catch trip limit of 5,000 lb (2.27 mt) was then instituted for all vessels issued Federal permits for *Illex* squid. Since the closure, the landings of Illex squid have exceeded 100 percent of the DAH for *Illex* squid. During the August 1998 Council meeting, the majority of the Council members agreed by consensus that the provisions for closure of the fishery should also allow for the prohibition of incidental catches when the entire DAH is harvested. Current regulations do not provide for the prohibition of incidental catches of *Loligo* squid, *Illex* squid, or butterfish when 100 percent of the DAH has been harvested. Therefore, in conjunction with this proposed initial annual specifications action, NMFS is seeking public comment on a regulatory change to authorize the Regional Administrator to prohibit incidental catches through publication in the **Federal Register** when the Regional Administrator determines that closure of the incidental *Loligo* squid, *Illex* squid, or butterfish fishery is necessary to assure that 100 percent of DAH will not be exceeded.

Classification

This action is authorized by 50 CFR Part 648 and complies with the National Environmental Policy Act.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS has completed an IRFA for this proposed rule, pursuant to 5 U.S.C. 603. The IRFA indicates that the proposed rule could have a significant impact on a substantial number of small entities. A summary of this IRFA follows. A copy of the complete IRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**).

The IRFA assumes that all vessels prosecuting these fisheries would be impacted by these quota specifications. Therefore, the substantial number (greater than 20 percent) criteria would be met. For *Loligo* squid, butterfish, and Atlantic mackerel, gross revenues are not expected to decrease as a consequence of the proposed actions. In 1997, *Loligo* squid landings were 16,203 mt. The proposed IOY specification for *Loligo* squid in 1999 would be 21,000 mt. In 1997, butterfish landings were 2,797 mt. The proposed IOY specification for butterfish in 1999 would be 5,900 mt. In the case of Atlantic mackerel, the 1999 IOY was reduced from 80,000 mt in 1998 to the proposed level of 75,000 mt in 1999. Both specifications far exceed recent harvest of Atlantic mackerel in the 1997 fishery of 15,406 mt. In addition, the proposed reduction in IOY in 1999 is due to a reduction in the JV specification by 5,000 mt. The only JV activity in recent years was in 1998, when the JV operation was not able to harvest the entire JV allocation of 10,000 mt. Therefore, the Council concluded that the proposed reduction in the initial JV specification should not affect revenues in the fishery. In addition, the measure to allow an inseason increase in the specification would moderate any unanticipated affects.

In 1997, *Illex* squid landings were 13,632 mt valued at $6.1 million. The proposed ABC specification for *Illex* squid in 1999 is 19,000 mt. In past years, a surplus existed between the 1998 ABC specification and what has been landed. However, due to overharvesting in 1998, 22,610 mt of *Illex* squid have been harvested as of September 1998. This means that the 1999 proposal equates to a decrease of 7.9 million lb (3,585 mt) from 1998, valued at $1.975 million. The Council's Amendment 5 document indicates that the directed fishery accounts for 99.7 percent of the total landings, meaning that $1,969,000 of the revenue associated with the quota overage would be attributed to moratorium vessels and only $6,000 to incidental catch vessels. According to 1998 NMFS permit records, 75 vessels hold *Illex* squid moratorium permits and 64 had *Illex* squid landings in 1998; 1,504 hold incidental catch permits. This would mean that each moratorium vessel could have revenue losses of $31,000 and each incidental catch vessel would have negligible revenue losses. This raises the question of the significance of the impact on the moratorium vessels. When dividing the 1998 overage value of $1.975 million by the 64 moratorium vessels, this leads to an ex-vessel price of $551 per mt. Multiplying that value by the total harvest in 1998 of 22,610 mt of *Illex* leads to revenues of $12,458,110. When divided by the 64 moratorium vessels this leads to $195,000. Dividing the revenue losses of $31,000 of each moratorium vessel by this value equates to a 16% loss in average gross revenues. Therefore, this loss is anticipated to have a substantial impact on most moratorium vessels, as defined by the Regulatory Flexibility Act (RFA). In light of this impact, the RFA requires alternatives to be considered to moderate the impact. However, while several alternatives were analyzed, they were rejected because the target in the FMP would be exceeded resulting in overfishing. Overfishing cannot be allowed to continue despite the obvious benefits of higher landings.

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List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 10, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.22, paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* The Assistant Administrator shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When it is projected that DAH will be attained for mackerel, the Assistant Administrator may close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section may be prohibited. The Assistant Administrator shall close the directed fishery in the EEZ for *Loligo*, *Illex*, or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When it is projected that DAH will be attained for *Loligo*, *Illex*, or butterfish, the Assistant Administrator may close the *Loligo*, *Illex*, or butterfish fishery in the EEZ, and the incidental catches specified for *Loligo*, *Illex*, or butterfish in paragraph (c) of this section may be prohibited.

* * * * *

[FR Doc. 98–30692 Filed 11–12–98; 4:43 pm]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 63, No. 221
Tuesday, November 17, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

ENVIRONMENTAL PROTECTION AGENCY

Draft Unified National Strategy for Animal Feeding Operations; Meeting

AGENCY: Department of Agriculture and Environmental Protection Agency.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) and the U.S. Environmental Protection Agency (EPA) will conduct 11 public listening sessions where interested individuals can ask questions and provide feedback on the draft Unified National Strategy for Animal Feeding Operations. This national strategy is one of the key actions in the Clean Water Action Plan announced by President Clinton in February 1998.

The public is invited to attend the sessions and attain a better understanding of the draft strategy. After a brief overview of the draft strategy, a question and answer discussion will be held. Those who wish to speak at a session may either make arrangements in advance by calling the contact listed for the session or sign up at the session. Time for each speaker will be limited to allow time for all to be heard.

All are encouraged to provide detailed written comments concerning the draft strategy. Written comments will not be accepted at the sessions, but addressed envelopes will be provided for mailing written comments. Written comments will be accepted through January 19, 1999, and should be mailed to Denise C. Coleman, Program Analyst, USDA Natural Resources Conservation Service, ATTN: AFO, P.O. Box 2890, Washington, DC 20013–2890, or sent via e-mail to denise__c.coleman@usda.gov.

DATES AND LOCATIONS: The meetings will be held November 16 through December 15 at the following locations:

Location	Date
Tulsa, OK	November 16.
Harrisburg, PA	November 17.
Ontario, CA	November 23.
Madison, WI	November 30.
Seattle, WA	December 3.
Des Moines, IA	December 4.
Chattanooga, TN	December 9.
Indianapolis, IN	December 10.
Fort Worth, TX	December 10.
Denver, CO	December 14.
Annapolis, MD	December 15.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about a specific meeting, contact one of the following or visit the World Wide Web at http://cleanwater.gov.

Location	Contact Person	Phone	Address
Tulsa, OK	Ronnie Clark, USDA–NRCS	405–742–1204	USDA Agri-Center Bldg., 100 USDA, Suite 203, Stillwater, OK 74074–2655.
	Brad Lamb, EPA Region 6	214–665–6683	1445 Ross Ave. (6WQ–AG), Dallas, TX 75202.
Harrisburg, PA	Janet Oertly, USDA–NRCS	717–237–2200	1 Credit Union Place, Suite 340, Harrisburg, PA 17110–2993.
	Joe Piotrowski, EPA Region 3	215–814–2310	1650 Arch Street, Philadelphia, PA 19103.
Ontario, CA	Jeff Vonk, USDA–NRCS	530–757–8215	2121–C 2nd Street, Suite 102, Davis, CA 95616–5475.
	Virginia Donahue, EPA Region 9	415–744–2275	75 Hawthorne Street, San Francisco, CA 94105.
Madison, WI	Pat Leavenworth, USDA–NRCS	608–276–8732 x229	6515 Watts Road, Suite 200, Madison, WI 53719–2726.
	Steve Jann, EPA Region 5	312–886–2446	77 West Jackson Blvd., Chicago, IL 60604–7804.
Seattle, WA	Joe Roberto, EPA Region 10	206–553–1669	1200 6th Ave., Seattle, WA 98101.
	Leonard Jordan, USDA–NRCS	509–323–2900	Rock Pointe Tower II, W. 316 Boone Avenue, Suite 450, Spokane, WA 99201–2348.
Des Moines, IA	Leroy Brown, USDA–NRCS	515–284–6655	693 Federal Building, 210 Walnut Street, Suite 693, Des Moines, IA 50309–2180.
	Ralph Summers, EPA Region 7	913–551–7418	726 Minnesota Ave., Kansas City, KS 66101.
Chattanooga, TN	Roosevelt Childress, EPA Region 4	404–562–9279	Atlanta Federal Center, 61 Forsyth St., SW, Atlanta, GA 30303.
	James Ford, USDA–NRCS	617–736–5471	675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203–3878.
Indianapolis, IN	Bob Eddleman, USDA–NRCS	317–290–3200	6013 Lakeside Blvd., Indianapolis, IN 46278–2933.

Location	Contact Person	Phone	Address
	Steve Jann, EPA Region 5	312–886–2446	77 West Jackson Blvd., Chicago, IL 60604.
Fort Worth, TX	Brad Lamb, EPA Region 6	214–665–6683	1445 Ross Ave., Dallas, TX 75202.
	John Burt, USDA–NRCS	254–742–9800	W.R. Poage Building, 101 South Main Street, Temple, TX 76501–7682.
Denver, CO	Mike Reed, EPA Region 8	303–312–6132	One Denver Place, 999 18th St., Denver, CO 80202–2413.
	Steve Black, USDA–NRCS	313–236–2886 x202	655 Parfet Street, Room E200C, Lakewood, CO 80215–5517.
Annapolis, MD	Joe Piotrowski, EPA Region 3	215–814–2310	1650 Arch St., Philadelphia, PA 10103.
	Dave Doss, USDA–NRCS	410–757–0861 x314	John Hanson Business Center, 339 Busch's Frontage Road, Suite 301, Annapolis, MD 21401–5534.

SUPPLEMENTARY INFORMATION: Over the past quarter century, the United States has made tremendous progress in cleaning up its rivers, lakes, and coastal waters. While pollution from factories and sewage treatment plants has been dramatically reduced, runoff from city streets, agricultural activities (including animal feeding operations), and other sources continues to degrade the environment and puts drinking water at risk.

In February 1998, President Clinton released the Clean Water Action Plan (CWAP), which provides a blueprint for restoring and protecting water quality across the Nation. The CWAP identifies polluted runoff as the most important remaining source of water pollution and provides for a coordinated effort to reduce polluted runoff from a variety of sources. As part of this effort, the CWAP calls for USDA and EPA to develop a Unified National Strategy to minimize the water quality and public health impacts of animal feeding operations (AFOs).

The draft Unified National Strategy for AFOs discusses the relationships between AFOs and environmental and public health, and establishes a national performance expectation for all AFO owners and operators. The strategy presents a series of actions that USDA and EPA will take to minimize public health impacts and improve water quality while complementing the long-term sustainability of livestock production.

Background

AFOs are agricultural enterprises where animals are kept and raised in confined situations. Approximately 450,000 AFOs in the United States congregate animals, feed, manure and urine, dead animals, and production operations on a small land area. USDA data indicate that the vast majority of farms with livestock are small; about 85 percent of these farms have fewer than 250 animal units. About 6,600 AFOs had more than 1,000 animal units in 1992 and are considered to be large operations.

In the past several decades, domestic and export market forces, technological changes, and industry adaptations have led to substantial changes in the animal production industry. These factors have promoted expansion of confined production units, with growth in both existing areas and new areas; integration and concentration of some of the industries; geographic separation of animal production and feed production operations; and the concentration of large quantities of manure and wastewater on farms and in some watersheds.

AFOs can pose a number of risks to water quality and public health, mainly because of the amount of animal manure and wastewater they generate. Manure and wastewater from AFOs have the potential to contribute pollutants, such as nutrients (e.g., nitrogen, phosphorus), sediment, pathogens, heavy metals, hormones, antibiotics, and ammonia to the environment. These pollutants can cause several types of water quality and public health impacts.

Even though many diverse sources contribute to water pollution, States report that agriculture is the most widespread source of pollution in the Nation's surveyed rivers. In the 22 states that categorized impacts from specific types of agriculture, animal operations impact about 35,000 river miles of those miles assessed. While there are other potential environmental impacts associated with AFOs (e.g., odor, habitat loss, ground water depletion), this strategy focuses on addressing surface and ground water quality problems. Once implemented, however, this strategy will indirectly benefit other resources.

USDA and EPA's National Performance Expectation

To minimize water quality and public health impacts from AFOs and land application of animal waste, this draft Unified National Strategy for AFOs establishes a national performance expectation that all AFO owners and operators develop and implement technically sound and economically feasible Comprehensive Nutrient Management Plans (CNMPs). A CNMP identifies actions that will be implemented to meet clearly-defined nutrient management goals at an agricultural operation. The following types of actions are contained in a CNMP:

Feed Management—Where possible, animal diets and feed should be modified to reduce the amounts of nutrients in manure.

Manure Handling and Storage—Manure needs to be handled and stored properly to prevent water pollution from AFOs.

Land Application of Manure—Land application is the most common, and usually most desirable, method of utilizing manure because of the value of the nutrients and organic matter. Land application in accordance with the CNMP should minimize water quality and public health risk.

Land Management—Tillage, crop residue management, grazing management, and other conservation practices should be used to minimize movement to surface and ground water of soil, organic materials, nutrients, and pathogens from lands where manure is applied.

Record Keeping—AFO operators should keep records that indicate the quantity of manure produced and ultimate utilization, including where, when, and in what amounts nutrients were applied.

Other Utilization Options—In vulnerable watersheds, where the potential for environmentally sound land application is limited, alternative uses of manure, such as the sale of manure to other farmers, composting and sale of compost to home owners,

and using manure for power generation, may need to be considered.

AFO owners and operators may seek technical assistance for the development and implementation of CNMPs from qualified specialists. These specialists should assist in implementation and provide ongoing assistance through periodic reviews and revisions of CNMPs, as appropriate.

Relationship of Voluntary and Regulatory Programs

Voluntary and regulatory programs serve complementary roles in providing AFO owners and operators and the animal agricultural industry with the assistance and certainty they need to achieve individual business and personal goals, and in ensuring protection of water quality and public health.

Voluntary Program for Most AFOs

Voluntary programs provide an enormous opportunity to help AFO owners and operators and communities address water quality and public health concerns surrounding AFOs. For the vast majority of AFOs, voluntary efforts will be the principal approach to assist owners and operators in developing and implementing CNMPs, and in reducing water pollution and public health risks associated with AFOs. While CNMPs are not required for AFOs participating in voluntary programs, they are strongly encouraged as the best possible means of managing potential water quality and public health impacts from these operations.

There are three types of voluntary programs to assist AFO owners and operators. USDA and EPA are both committed to promoting locally led conservation as one of the most effective ways to help AFO owners and operators achieve their conservation goals. Environmental education can bring an awareness of possible water quality problems and inform AFO owners and operators about practices that will address such problems. A variety of financial and technical assistance programs exist to provide AFO owners and operators advice in developing CNMPs and implementing solutions and to defray the costs of approved/needed structures (e.g., waste storage facilities for small operations) or to implement other practices, such as installation of conservation buffers to protect water quality.

Regulatory Program for Some AFOs

Impacts from certain higher risk AFOs are addressed through National Pollutant Discharge Elimination System (NPDES) permits under the authority of the Clean Water Act. AFOs that meet certain specified criteria in the NPDES regulations are referred to as concentrated animal feeding operations or CAFOs.

NPDES permits will require CAFOs to develop CNMPs and to meet other conditions that minimize the threat to water quality and public health and otherwise ensure compliance with the requirements of the Clean Water Act. NPDES permits will also ensure that the animal waste from CAFOs will be disposed of properly and require reporting on whether the permittee has a CNMP for land application of animal waste and whether it is being implemented properly. The draft strategy identifies three categories of CAFOs that are priorities for the regulatory program:

Significant Manure Production—Large facilities (those with greater than 1,000 animal units) produce quantities of manure that are a risk to water quality and public health whether the facilities are well managed or not.

Unacceptable Conditions—Facilities that have constructed conveyances that discharge animal waste to waters or have a direct discharge to waters that pass through the facility or come into direct contact with animals represent a significant risk to water quality and public health.

Significant Contributors to Water Quality Impairment—A facility or a collection of facilities that is significantly contributing to, or is likely to significantly contribute to, impairment of a waterbody and nonattainment of a designated use is also a priority for the NPDES permitting program.

The draft strategy supplements these regulatory program priorities with two types of incentives for some types of AFOs. Smaller CAFOs that meet certain conditions may exit the regulatory program at the end of their permit term if they correct the problem(s) that caused them to be covered by the regulatory program. The draft strategy also describes a "good faith incentive" for some AFOs to avoid being covered by the regulatory program if they have and are implementing a CNMP.

Strategic Issues

The draft Unified National Strategy for AFOs addresses seven strategic issues. The discussion of each strategic issue identifies several action items.

Building Capacity for CNMP Development and Implementation—The successful implementation of this strategy depends on the availability of qualified specialists from either the private or public sector to assist in the development and implementation of CNMPs. The draft strategy describes actions to substantially increase AFO owners and operators' access to technical assistance for developing and implementing CNMPs.

Accelerating Voluntary, Incentive-Based Programs—The draft strategy sets out a desired outcome that all AFOs will have CNMPs by 2008. Several actions, including review and revision of USDA's practice standards, development of CNMP guidance, fair and equitable program delivery, and options for financial assistance, are directed toward achieving this objective.

Implementing and Improving the Existing Regulatory Program—The draft strategy clarifies the applicability and the requirements of the existing regulatory program, identifies permitting and enforcement priorities, and describes EPA's plans to strengthen and improve existing regulations.

Coordinated Research, Technical Innovation, Compliance Assistance, and Technology Transfer—USDA and EPA will establish coordinated research, technical innovation, technology transfer, and compliance assistance activities, and establish a single point information center.

Encouraging Industry Leadership—The animal agriculture industry can play a key role in helping to encourage adoption of CNMPs and in addressing water quality problems on individual AFOs. The draft strategy includes possible actions that USDA and EPA may take to promote industry involvement.

Data Coordination—Several kinds of data are useful in assessing and managing the water quality impacts of AFOs. USDA and EPA's efforts to coordinate on data sharing will both protect the trust relationship between USDA and farmers and provide regulatory authorities with information that is useful in protecting water quality and public health.

Performance Measures and Accountability—USDA and EPA believe that it is critical to establish performance measures to gauge success in implementing this draft strategy and meeting relevant goals in each agency's strategic plan established under the Government Performance and Results Act. USDA and EPA will develop an approach for measuring the effectiveness of efforts to minimize the water quality and public health impacts of AFOs.

Next Steps

USDA and EPA published the draft Unified National Strategy for AFOs in the **Federal Register** for public review

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on September 21, 1998. The draft strategy is also available on the World Wide Web at http://www.nrcs.usda.gov or http://www.epa.gov/owm/afostrat.htm.

USDA and EPA welcome your comments on the draft Unified National Strategy for AFOs. Comments are due by January 19, 1999.

Dated: November 9, 1998.

Glenda Humiston,

Deputy Under Secretary, Natural Resources and the Environment, Department of Agriculture, Washington, DC.

J. Charles Fox,

Assistant Administrator for Water, Environmental Protection Agency, Washington, DC.

[FR Doc. 98–30666 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Agdia Incorporated of Elkhart, Indiana, an exclusive license to S.N. 08/499,803, "A Monoclonal Antibody to Vitellin of the Corn Earworm, *Helicoverpa zea*," filed July 7, 1995, U.S. Patent No. 5,656,437, issued August 12, 1997. Notice of Availability was published in the **Federal Register** on December 14, 1995.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 401, Building 005, BARC–W, 10300 Baltimore Avenue, Beltsville MD 20705–2350.

FOR FURTHER INFORMATION CONTACT: W.J. Phelps of the Office of Technology Transfer at the Beltsville address given above; telephone 301–504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Agdia Incorporated has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) calendar days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–30670 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–111–1]

Availability of an Environmental Assessment and Finding of No Significant Impact for Field Testing Pseudorabies Vaccine, Modified Live Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed live viral pseudorabies vaccine for use in swine. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing 14 days after the date of this notice, unless new, substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a veterinary biological product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and finding of no significant impact and the product meets all other requirements for licensure.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Technical Writer-Editor, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–5338; fax (301) 734–4314; or e-mail: Jeanette.B.Greenberg@usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

In determining whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA). APHIS has concluded that field testing the unlicensed veterinary biological product will not significantly affect the quality of the human environment. Based on this finding of no significant impact (FONSI), we have determined that there is no need to prepare an environmental impact statement.

The EA and FONSI have been prepared by APHIS concerning the field testing of the following unlicensed veterinary biological product:

Requester: Ambico, Inc.

Product: Pseudorabies Vaccine, Modified Live Virus

Field test locations: Iowa, Indiana, and Minnesota.

The above-mentioned vaccine is for use as an aid in the program to eradicate

pseudorabies in the U.S. swine population. The vaccine contains live pseudorabies virus with gI and tk gene deletions, which significantly reduce the pathogenicity of the vaccine virus compared with the wild type virus.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize shipment of the above product for the initiation of field tests 14 days from the date of this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA and FONSI that were generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and FONSI, APHIS does not intend to issue a separate EA to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 10th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30674 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–059N]

Meeting on HACCP-based Inspection Models Project for Slaughter Plants; Models Phase

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Agency is holding a public meeting to discuss its HACCP-based Inspection Models Project for slaughter plants. The morning session will provide general information on the Inspection Models Project and a briefing on the project's Baseline phase, which documents plant performance under current inspection procedures. By the time of the meeting, the Baseline phase will be completed for the first group of plants to participate in the project. The afternoon session will focus in some detail on the upcoming Inspection Models phase in this group of plants and will conclude with an open discussion.

DATES: The meeting will be held on December 2, 1998, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel in Washington, DC, 10 Thomas Circle NW (at Massachusetts Avenue and 14th Street), Washington DC 20009, (202) 842–1300. Transcripts of the meeting will be available in the FSIS Docket Room, Room 102, 300 12th Street SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Jennifer Callahan of the FSIS Planning Staff at (202) 501–7138 or FAX (202) 501–7642. Attendees who require a sign language interpreter or other special accommodation should contact Ms. Callahan at the above numbers by November 25, 1998.

SUPPLEMENTARY INFORMATION: The Inspection Models Project is an outgrowth of the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) Systems Final Rule, published on July 25, 1996. The PR/HACCP rule calls for the establishment of a HACCP-based food safety system to reduce the risk of foodborne illness from meat and poultry products.

In a **Federal Register** Notice of June 10, 1997, FSIS requested public comments on the design and development of new inspection models for slaughter and processing in a HACCP environment (62 FR 31553). This notice summarized recommendations by the National Academy of Sciences and the General Accounting Office that FSIS reduce its reliance on organoleptic (sensory) inspection and redeploy its resources by using inspection methods that are based on the risks inherent in meat and poultry slaughter operations. To accomplish these objectives, new inspection methods must be developed and tested that are consistent with the meat and poultry inspection laws and the systems now required by the PR/HACCP rule. The inspection models project is helping to define the respective responsibilities of FSIS and the regulated industry in slaughter establishments operating under HACCP systems.

A draft project protocol of July 7, 1998 identifies two objectives: (1) Determine the effectiveness of the present inspection system in slaughter establishments by collecting and analyzing organoleptic and microbial data on carcasses produced under the current system—the Baseline phase; and (2) test new inspection models at establishments where plant personnel perform slaughter process control and FSIS inspectors perform oversight and verification inspection activities and collect and analyze data to determine the effectiveness of the models and ensure the safety and wholesomeness of the products—the Inspection Models phase.

A public meeting was held in Washington DC on July 27, 1998 (63 FR 39068, July 21, 1998) to discuss the project. Baseline data were collected in three poultry plants and two hog plants from August through November. This public meeting will discuss results from the Baseline phase in these initial five plants and projected activities in the plants during the upcoming Inspection Models phase.

The meeting is open to the public on a space-available basis.

Done in Washington, DC, on November 9, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–30646 Filed 11–16–98; 8:45 am]

BILLING CODE 3410 DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR parts 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR part 215. The intended effect of this action is to inform interested members of the public which newspapers will be used

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to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after November 18, 1998. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Kristine M. Lee; Regional Appeals and Litigation Coordinator; Northern Region; PO, Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

Northern Regional Office

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington:

The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

Beaverhead/Deerlodge—Montana Standard

Bitterroot—Ravalli Republic

Clearwater—Lewiston Morning Tribune

Custer—Billings Gazette (Montana)

Bismarck Tribune (North Dakota)

Rapid City Journal (South Dakota)

Flathead—Daily Interlake

Gallatin—Bozeman Chronicle

Helena—Independent Record

Idaho Panhandle—Spokesman Review

Kootenai—Daily Interlake

Lewis & Clark—Great Falls Tribune

Lolo—Missoulian

Nez Perce—Lewiston Morning Tribune

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: November 10, 1998.

Kathleen A. McAllister,

Deputy Regional Forester.

[FR Doc. 98–30659 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity To Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice; Newspapers for Legal Notices.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR part 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR part 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publications of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

EFFECTIVE DATE: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR part 215 shall begin November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Momper, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 25127, Lakewood, Colorado 80225, Area Code 303–275–5161.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester: *The Denver Post*, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the *Rocky Mountain News*, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in *The Rapid City Journal*, published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: *Coloradoan*, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: *Greeley Tribune*, published daily in Greeley, Weld County, Colorado.

Boulder District: *Boulder Daily Camera*, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: *Clear Creek Courant*, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: *Granby Sky High News*, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahrge and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: *Grand Junction Daily Sentinel*, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: *Delta County Independent*, published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: *Gunnison County Times*, pubished weekly in Gunnison, Gunnison County, Colorado.

Norwood District: *Telluride Daily Planet*, published daily in Telluride, San Miguel County, Colorado.

Ouray District: *Montrose Daily Press*, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: *Pueblo Chieftain*, published daily in Pueblo, Pueblo County, Colorado.

Comanche District: *Plainsman Herald*, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *La Junta Tribune Democrat*, published daily in La Junta, Otero County, Colorado, and in the *Ark Valley Journal*, published weekly in La Junta, Otero County, Colorado.

Cimarron District: *Tri-State News*, published weekly in Elkhart, Morton County, Kansas.

South Platte District: *Daily News Press*, published published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the *High Timber Times*, published weekly in Conifer, Jefferson County, Colorado, and in the *Fairplay Flume*, published weekly in Fairplay, Park County, Colorado.

Leadville District: *Herald Democrat*, published weekly in Leadville, Lake County, Colorado.

Salida District: *The Mountain Mail*, published daily in Salida, Chaffee County, Colorado.

South Park District: *Fairplay Flume*, published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: *Gazette Telegraph*, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decisions

Hahns Peak-Bears Ears District: *Steamboat Pilot*, published weekly in Steamboat Springs, Routt County, Colorado is the newspaper of record for decision made by the Hans Peak Bears Ears District Ranger. Additional notice to inform local communities about decision made by the District Ranger will also be placed in the *Hayden Valley Press*, published weekly in Hayden, Routt County, Colorado and in the *Northwest Colorado Daily Press*, published daily in Craig, Moffat County, Colorado.

Yampa and District: *Steamboat Pilot*, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District; North Park District: *Jackson County Star*, published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Saturday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: *Aspen Times*, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: *Meeker Herald*, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: *Summit Daily News*, published daily in Frisco, Summit County, Colorado.

Eagle District: *Eagle Valley Enterprise*, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: *Vail Trail*, published weekly in Vail, Eagle County, Colorado.

Rifle District: *Citizen Telegram*, published weekly in Rifle, Garfield County, Colorado.

Sopris District: *Valley Journal*, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: *The North Platte Telegraph*, published daily in North Platte, Lincoln County, Nebraska.

Pine District: *The Chadron Record*, published weekly in Chadron, Dawes County, Nebraska.

Samuel R. McKelvie National Forest: *The Valentine Midland News*, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal*, published daily in Rapid City, Pennington County, South Dakota.

Fall River and Wall Districts: *The Rapid City Journal*, published daily in Rapid City, Pennington County, South Dakota.

Fort Pierre National Grassland: *The Capital Journal*, published Monday thru Friday in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decision

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: *Sheridan Press*, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: *Buffalo Bulletin*, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: *Lovell Chronicle*, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: *Northern Wyoming Daily News*, published daily in Worland, Washakie County, Wyoming.

Paintrock District: *Greybull Standard*, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden District: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decision

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

Wind River District: *The Dubois Frontier,* published weekly in Dubois, Teton County, Wyoming.

Lander District; *Wyoming State Journal,* published twice weekly in Lander, Fremont County, Wyoming.

Dated: November 9, 1998.

Lyle Laverty,

Regional Forester.

[FR Doc. 98–30658 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pend Oreille Priest Beetle Project; Idaho Panhandle National Forests, Bonner County Idaho and Pend Oreille County, Washington; Colville National Forests, Pend Oreille County, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of proposed activities in forest stands infested with Douglas-fir bark beetle. Activities include reducing fuels in urban interface areas, restoring historic vegetation patterns in areas of significant mortality, and accomplishing other ecosystem restoration opportunities to benefit aquatic, watershed and wildlife habitat areas in the southern portion of the Priest Lake and the Newport Ranger Districts.

DATES: Written comments and suggestions should be received on or before December 17, 1998. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1999. A Final Environmental Impact Statement will be published no sooner than February 16, 1999.

ADDRESSES: Submit written comments and suggestions on the proposal or requests to be placed on the project mailing list to Kent Dunstan, Priest Lake Ranger District, 32203 Hwy. 57, Priest River, ID 83856.

FOR FURTHER INFORMATION CONTACT: Pete Zimmerman, Sandpoint Ranger District, 1500 Hwy. 2, Suite 110, Sandpoint, ID 83864, (208) 263–5111.

SUPPLEMENTARY INFORMATION: Snow, ice and wind during the winter of 1996–97 damaged trees on the Idaho Panhandle (IPNF) and Colville National Forests. These events created a tremendous amount of forest debris on the ground in many areas including tops, limbs, and standing dead and down trees. Douglas-fir bark beetle populations increased after breeding in the winter storm damaged and weakened trees. Standing trees were attacked in the spring and summer of 1998. Aerial detection surveys conducted in 1998 showed extensive numbers of dead, mature Douglas-fir trees on national forest system, state, and private lands, especially in areas of past ice and winter storm damage.

Since the bark beetle outbreak is so widespread, we recognize there is not much we can do to control or stop it. There is, however, an opportunity to care for the lands affected by the beetle by focusing on restoration of the ecosystems where the beetle is causing significant amounts of the Douglas-fir trees to die.

With the amount of downed fuels and high level of public use in certain areas, the risk of severe fires is much higher. Fires igniting in these areas will be more difficult to control and the increased fuel loading is likely to result in more intense fires. Highly used recreation areas and areas adjacent to private land are particularly vulnerable because the potential for ignition is greater. In areas where urban or private values are at risk due to fuel accumulations related to the Douglas-fir beetle outbreak, fuels would be treated by timber harvest, burning and/or piling so as to reduce the risk of losing these values to wildfire.

In many of the beetle-attacked stands, there is almost twice as much Douglas-fir on the landscape than what was historically present, and a significant decrease of seral species such as ponderosa pine, white pine and larch, which are more resistant to insects and some diseases. In these areas, the intent would be to restore stand composition and structure to more closely resemble historic vegetation conditions. Regeneration harvest activities would be proposed in stands of at least five acres in size where greater than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak. Activities include harvest, site preparation and/or fuels hazard reduction with fire or by mechanical methods and tree planting.

In stands affected by Douglas-fir beetle that do not meet criteria for urban interface or vegetation restoration, selective harvest treatment activities would be proposed in stands where less than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak and also in areas of special management need or where public safety issues are a concern. Activities include harvest and fuel hazard reduction by fire or mechanical methods.

Aquatic, watershed and wildlife restoration activities would include closing or obliterating roads for watershed health and wildlife security and modifying, by reconstruction, other road elements that pose risks to watersheds. These activities may not be associated with timber sales. Where activities are associated with timber sales and along haul routes, watershed restoration would be achieved when practical.

Prescribed fire use to reduce fuel hazard and to prepare sites for regeneration would not be limited to timber harvest areas but may also be used where harvest is not practical.

Pest management techniques, including application of pheromones to protect high valued stands, would be used in those areas where such treatment would likely be effective.

As part of the proposed action, timber harvest will not occur in: (1) Allocated old-growth that maintains old-growth characteristics, (2) Riparian Habitat Conservation Areas, (3) Inventoried Roadless Areas, (4) stands where a minimum number of snags cannot be maintained, (5) areas of known populations of sensitive plant species, (6) areas where they result in a likely to adversely affect determination for Threatened or Endangered Species, (7)

areas where harvest can affect sphagnum peatlands, and (8) proposed or designated Research Natural Areas. In addition, no permanent roads will be constructed as part of the Proposed Action. Temporary roads may be a part of the proposed action.

Preliminary issues identified are loss of road access, risk of fire in untreated areas, loss of timber value, effects on plants, wildlife and fish, and amount of ecosystem restoration accomplished.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, under which there would be no change from current management of the Forest. Additional alternatives will represent a range of strategies to accomplish the goals of this project. The Idaho Panhandle National Forests Land and Resource Management Plan and the Colville National Forest Plan as amended provide guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supercede Forest Plan guidelines established for riparian areas.

Public participation will begin with the publication of this notice. Comments provided by the public and other agencies will be used to develop alternative strategies to this proposal. The public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1999. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. A final environmental impact statement will be published after all comments are reviewed and responded to. Two Records of Decision will be published at that time: one for the Priest Lake Ranger District and one for the Newport Ranger District.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency ti withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denies, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

We are the responsible officials for this environmental impact statement and will decide which projects will be implemented. Addresses are: Priests Lake Ranger District, 32203 Hwy 57, Priest River, ID 83856 and Colville National Forest, 765 S. Main St., Colville, WA 99114.

Dated: November 9, 1998.

Kent L. Dunstan,

District Ranger, Priest Lake Ranger District, Idaho Panhandle National Forests.

Dated: November 10, 1998.

Robert L. Vaught,

Forest Supervisor, Colville National Forest.

[FR Doc. 98–30656 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Coeur d'Alene Beetle Project, Coeur d'Alene River Ranger District, Idaho Panhandle National Forests, Kootenai and Shoshone Counties Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the potential environmental effects of proposed activities in forest stands infested with Douglas-fir bark beetle. Activities include reducing fuels in urban interface areas, restoring historic vegetation patterns in areas of significant mortality, and accomplishing other ecosystem restoration opportunities to benefit aquatic, watershed and wildlife habitat areas in the western and central portions of the Coeur d'Alene River Ranger District.

DATES: Written comments and suggestions should be received on or before December 17, 1998. The draft environmental impact statement is expected to be filed with the

Environmental Protection Agency (EPA) and available for public review in January, 1999. A Final Environmental Impact Statement will be published no sooner than February 16, 1999.

ADDRESSES: Submit written comments and suggestions on the proposal or requests to be placed on the project mailing list to Susan Jeheber-Mathews, Coeur d'Alene River Ranger District, 2502 East Sherman Ave., Coeur d'Alene ID 83814–5899.

FOR FURTHER INFORMATION CONTACT: Sherri Lionberger at Coeur d'Alene River Ranger District, 2502 East Sherman Ave., Coeur d'Alene, ID 83814–5899 (208) 664–2318.

SUPPLEMENTARY INFORMATION: Snow, ice and wind during the winter of 1996–97 damaged trees on the Idaho Panhandle National Forests (IPNF). These events created a tremendous amount of forest debris on the ground in many areas including tops, limbs, and standing dead and down trees. Douglas-fir bark beetle populations increased after breeding in the winter storm damaged and weakened trees. Standing trees were attacked in the spring and summer of 1998. Aerial detection surveys conducted in 1998 showed extensive numbers of dead, mature Douglas-fir trees on national forest system, state, and private lands, especially in areas of past ice and winter storm damage.

Since the bark beetle outbreak is so widespread, we recognize there is not much we can do to control or stop it. There is, however, an opportunity to care for the lands affected by the beetle by focusing on restoration of the ecosystems where the beetle is causing significant amounts of the Douglas-fir trees to die.

With the amount of downed fuels and high level of public use in certain areas, the risk of severe fires is much higher. Fires igniting in these areas will be more difficult to control and the increased fuel loading is likely to result in more intense fires. Highly used recreation areas and areas adjacent to private land are particularly vulnerable because the potential for ignition is greater. In areas where urban or private values are at risk due to fuel accumulations related to the Douglas-fir beetle outbreak, fuels would be treated by timber harvest, burning and/or piling so as to reduce the risk of losing these values to wildfire.

In many of the beetle-attacked stands, there is almost twice as much Douglas-fir on the landscape than what was historically present, and a significant decrease of seral species such as ponderosa pine, white pine and larch, which are more resistant to insects and some diseases. In these areas, the intent would be to restore stand composition and structure to more closely resemble historic vegetation conditions. Regeneration harvest activities would be proposed in stands of at least five acres in size where greater than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak. Activities include harvest, site preparation and or fuels hazard reduction with fire or by mechanical methods and tree planting.

In stands affected by Douglas-fir beetle that do not meet criteria for urban interface or vegetation restoration, selective harvest treatment activities would be proposed in stands where less than 50% of the stand within the area is projected to die from the current Douglas-fir beetle outbreak and also in areas of special management need or where public safety issues are ■ concern. Activities include harvest and fuel hazard reduction by fire or mechanical methods.

Aquatic, watershed and wildlife restoration activities would include closing or obliterating roads for watershed health and wildlife security and modifying, by reconstruction, other road elements that pose risks to watersheds. These activities may not be associated with timber sales. Where activities are associated with timber sales and along haul routes, watershed restoration would be achieved when practical.

Prescribed fire used to reduce fuel hazard and to prepare sites for regeneration would not be limited only to timber harvest areas but may also be used where harvest is not practical.

Pest management techniques, including application of pheromones to protect high valued stands, would be used in those areas where such treatment would likely be effective.

As part of the proposed action, timber harvest will not occur in (1) Allocated old-growth that maintains old-growth characteristics, (2) Riparian Habitat Conservation Areas, (3) Inventoried Roadless Areas, (4) stands where a minimum number of snags can not be maintained, (5) areas of known populations of sensitive plant species, (6) areas where they result in a likely to adversely affect determination for Threatened or Endangered Species, (7) areas where harvest can affect sphagnum peatlands, and (8) proposed or designated Research Natural Areas. In addition, no permanent roads will be constructed as part of the Proposed Action. Temporary roads may be a part of the proposed action.

Preliminary issues identified are loss of road access, risk of fire in untreated areas, loss of timber value, effects on plants, wildlife and fish, and amount of ecosystem restoration accomplished.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, under which there would be no change from current management of the Forest. Additional alternatives will represent a range of strategies to accomplish the goals of this project. The Idaho Panhandle National Forests Land and Resource Management Plan provides guidance for management objectives within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. Inland Native Fish Strategy guidelines (USDA Forest Service, 1995) supersede Forest Plan guidelines established for riparian areas.

Public participation will begin with the publication of this notice. Comments provided by the public and other agencies will be used to develop alternative strategies to address damage to timber as a result of beetle infestations in the Idaho Panhandle National Forests. The public is encouraged to visit with Forest Service officials during the analysis and prior to the decision. The Forest Service is also seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed actions.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1999. At that time, the EPA will publish a Notice of Availability of the draft environmental impact statement in the **Federal Register**. The comment period on the draft environmental impact statement will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. A final environmental impact statement will be published after all comments are reviewed and responded to. One Record of Decision will be published at that time.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the

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reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns regarding the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft environmental impact statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

I am the responsible official for this environmental impact statement and will decide which projects will be implemented. My address is Coeur d'Alene River Ranger District, 2502 East Sherman Ave., Coeur d'Alene, ID 83814–5899.

Dated: November 9, 1998.

Susan Jeheber-Matthews,

District Ranger.

[FR Doc. 98–30657 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Maximum Dollar Amount on Loan and Grant Awards Under the Rural Economic Development Loan and Grant Program for Fiscal Year 1999

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) hereby announces the maximum dollar amount on loan and grant awards under the Rural Economic Development Loan and Grant (REDLG) program for Fiscal Year (FY) 1999. The maximum dollar award on zero-interest loans for FY 1999 is $450,000. The maximum dollar award on grants for FY 1999 is $330,000. The maximum loan and grant awards stated in this notice are effective for loans and grants made during the fiscal year beginning October 1, 1998, and ending September 30, 1999. REDLG loans and grants are available to Rural Utilities Service electric and telephone utilities to assist in developing rural areas from an economic standpoint.

FOR FURTHER INFORMATION CONTACT: Patricia Wing, Loan Specialist, Rural Business-Cooperative Service, USDA, STOP 1521, Room 6870, 1400 Independence Avenue, SW, Washington, DC 20250, Telephone: (202) 720–9558. FAX: (202) 720–6561. E-mail: PWing@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The maximum loan and grant awards are calculated as 3.0 percent of the projected program level for zero-interest loans and grants during the fiscal year. The projected program level for zero-interest loans during FY 1999 is $15,000,000, and the projected program level for grants is $11,000,000. Applying the specified 3.0 percent to these program levels results in the maximum loan award of $450,000 and the maximum grant award of $330,000.

Dated: November 6, 1998.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 98–30671 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Associated Electric Cooperative; Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact with respect to its action related to the construction of a 200 megawatt simple cycle combustion turbine electric generation plant in Northwest Missouri by Associated Electric Cooperative (Associated). The finding of no significant impact is the conclusion of an environmental assessment prepared by RUS. The environmental assessment is based on a environmental analysis submitted to RUS by Associated. RUS conducted an independent evaluation of the environmental analysis and concurs with its scope and content. The environmental analysis has been incorporated by reference in the environmental assessment.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250, telephone (202) 720–0468, E-mail bquigel@rus.usda.gov.

SUPPLEMENTARY INFORMATION: The preferred site for the plant is located in south-central Nodaway County, Missouri, approximately 5.5 miles southeast of Maryville and ½ mile southwest of the intersection of Highways N and F. The proposed project involves two 100-megawatt (nominal), simple-cycle combustion turbine generators. Simple-cycle units are typically used for peak power generation and operate only a few hundred to a few thousand hours per year. The combustion turbines for the proposed plant would be Westinghouse 501D5 simple-cycle/dry low-nitrogen oxides combustors. Initially, fuel for the combustion turbines would be natural gas only. Each main generating unit would be approximately 40 feet wide and 140 feet long. The exhaust stack

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would be 50 feet high. Together the combustion turbines would occupy less than six acres of a site located in Nodaway County in northwest Missouri. A maintenance building approximately 90 by 45-foot, a small control building, and a water storage container would also be located on the site next to the combustion turbines. A 150-foot high microwave tower would be located on the site, enabling control of the plant from a remote location. The plant would be connected to one of Associated's 161-kilovolt transmission lines. Natural gas would be supplied from either a 24-or 30-inch diameter gas line which passes northeast to southwest through northwestern Missouri. It is estimated that approximately 200 feet of two, 10 inch gas transmission lines will need to be constructed outside the proposed plant boundary to connect the plant to the existing gas line in the area.

Alternatives considered to constructing the project as proposed included no action, load management, power purchases, renewable energy, combined cycle combustion turbine technology, and an alternative site location.

Copies of the environmental assessment and finding of no significant impact along with the environmental analysis are available for review at, or can be obtained from, RUS at the address provided herein or from Jerry Bindel, Associated Electric Cooperative, P.O. Box 754, Springfield, Missouri, 65801–0754 telephone (417) 885–9272. Mr. Bindel's E-mail address is jbindel@aeci.org. These documents are also available at Maryville Public Library, 5th and Main Street, Maryville, Missouri. Interested parties wishing to comment on the adequacy of the environmental assessment should do so within 30 days of the publication of this notice. RUS will take no action that would approve clearing or construction activities related to the proposed combined cycle power plant prior to the expiration of the 30-day comment period.

Dated: November 10, 1998.

Blaine D. Stockton, Jr.,

Assistant Administrator, Electric Program.

[FR Doc. 98–30669 Filed 11–16–98; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket Number: 980929249–8283–02]

Fastener Quality Act; Statutorily Required Study; Re-Opening of Comment Period

AGENCY: United States Department of Commerce.

ACTION: Notice of inquiry; re-opening of comment period.

SUMMARY: On October 7, 1998, the Commerce Department published a request for comment concerning a study of the Fastener Quality Act (FQA) mandated by Pub. L. No. 105–234 (63 FR 53870). The comment period of that request for comment closed on November 6, 1998. This notice re-opens the comment period for that request, through November 30, 1998. In addition, this notice makes clear that comments received between November 6 and today will be considered as timely filed.

DATES: Comments must be received no later than November 30, 1998.

ADDRESSES: Comments must be submitted to: Dr. James E. Hill; Chief, Building Environment Division; Building and Fire Research Laboratory; National Institute of Standards and Technology; Building 226, Room B–306; Gaithersburg, MD 20899. Comments may also be submitted by e-mail to: fqastudy@nist.gov.

FOR FURTHER INFORMATION CONTACT: Dr. James Hill; Telephone: 301–975–5851; E-mail: james.hill@nist.gov. The Fastener Quality Act and the existing implementing regulations can be viewed at NIST's FQA website: http://www.nist.gov/fqa/fqa.htm.

SUPPLEMENTARY INFORMATION: On August 14, 1998, President Clinton signed Public Law 105–234. This law amended the Fastener Quality Act (FQA) by creating an exemption for certain aircraft fasteners. The new law also requires the Secretary of Commerce to submit to Congress a report on: (1) Changes in fastener manufacturing processes that have occurred since the enactment of the Fastener Quality Act; (2) a comparison of the Fastener Quality Act to other regulatory programs that regulate the various categories of fasteners, and an analysis of any duplication that exists among programs; and (3) any changes in that Act that may be warranted because of the changes reported under paragraphs (1) and (2). By notice published on October 7, 1998, the Commerce Department solicited public comments, through November 6, 1998, on the issues raised by the Secretary's reporting requirement (63 FR 53870).

Today's notice re-opens the period for public comment first announced in the October 7 notice, through November 30, 1998, and makes clear that comments received between November 6 and today will be considered as timely filed. For further information on the topics raised in the Secretary's reporting requirement and specific questions for which the Department seeks information, please refer to the October 7 notice.

Authority: Pub. L. No. 105–234.

Dated: November 10, 1998.

Andrew J. Pincus,

General Counsel.

[FR Doc. 98–30725 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–BW–P

DEPARTMENT OF COMMERCE

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of the 1996–1997 Antidumping Duty Administrative Review of Sulfanilic Acid from the People's Republic of China.

SUMMARY: On July 13, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China (PRC). The review covers the period August 1, 1996 through July 31, 1997, and all PRC exporters of the subject merchandise.

We gave all interested parties an opportunity to comment on our preliminary results. Based on our review of the comments received, the margins in the final results have changed from those presented in the preliminary results.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: LaVonne Jackson, Doug Campau or Nithya Nagarajan, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1998).

Background

On July 13, 1998, the Department of Commerce published in the **Federal Register** (63 FR 37528) the preliminary results of its administrative review of the antidumping duty order on sulfanilic acid from the PRC (57 FR 37524, August 19, 1992). This review covers exports of subject merchandise to the United States for the period of August 1, 1996 through July 31, 1997, and all exporters of sulfanilic acid, including, but not limited to, the following thirteen firms: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Industry Co. ("Zhenxing"); Mancheng Xinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Beijing; Hainan Garden Trading Company; Yude Chemical Industry Company ("Yude") and Shunping Lile Chemical Factory. We have now completed the administrative review in accordance with section 751(a) of the Act.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Use of Facts Otherwise Available

Only two firms, Yude and Zhenxing, responded to the Department's questionnaire and demonstrated that they are entitled to a separate rate. All firms that have not demonstrated that they qualify for a separate rate are deemed to be part of a single enterprise under the common control of the government (the "PRC enterprise"). Therefore, all such entities receive a single margin, the "PRC rate." We preliminarily determined in accordance with section 776(a) of the Act, that resort to facts otherwise available is appropriate in arriving at the country-wide rate because companies deemed to be part of the PRC enterprise for which a review was requested have not responded to the Department's antidumping questionnaire. Because PRC exporters of this product did not respond to the Department's questionnaire, the Department finds that the "PRC enterprise" has failed to cooperate by not acting to the best of its ability to comply with a request for information.

Where the Department must resort to facts otherwise available because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing from the facts available. Section 776(b) also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Statement of Administrative Action (SAA) accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* H. Doc. 3216, 103rd Cong. 2d Sess. 870 (1996). If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department will, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

In the present case the Department has based the country-wide margin on the final best information available margin from the investigation, which was originally based on information from the petition. *Notice of Final Determination of Sales at Less Than Fair Value*, 57 FR 37524 (August 19, 1992). *See also Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from South Africa*, 61 FR 24272 (May 14, 1996). In accordance with section 776(c) of the Act, we corroborated the data contained in the petition, as adjusted for initiation purposes, to the extent possible. The petition data on major material inputs are consistent with Indian import statistics, and also with price quotations obtained by the U.S. Embassies in Pakistan and India. Both of these corroborating sources were placed on the record during the investigation and have been added to the record of this review. In addition, we note that the petition used World Bank wage rates which we have repeatedly found to be a probative source of data. With regard to the values contained in the petition, the Department was provided no useful information by the respondent or other interested parties, and we are aware of no other independent sources of information that would enable us to further corroborate the margin calculation in the petition. We note that the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Based on these reasons, we preliminarily find that the information contained in the petition has probative value.

Accordingly, we have relied upon the information contained in the petition. We have assigned to all exporters other than Yude and Zhenxing a margin of

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85.20 percent, the margin in the petition, as adjusted by the Department for initiation purposes.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received comments from Yude, Zhenxing, PHT International, Inc. ("PHT") (collectively Respondent), and from the Petitioner, Nation Ford Chemical Company.

Comment 1: Petitioner contends that the Department should apply the country-wide rate of 85.20 percent as the facts available to calculate Respondent's dumping margin because Zhenxing and PHT failed to disclose what they called Respondent's "affiliation" with Baoding Import Export Company ("Baoding"), a PRC trading company, until the relationship was discovered by the Department during verification.

Petitioner contends that Baoding and the Respondent are affiliated parties. According to the Petitioner, Zhenxing's U.S. sales of sodium sulfanilate during the period of review (POR) were made through Baoding. Petitioner argues that record evidence indicates that Baoding represented itself as the export agent of Zhenxing and that Respondents themselves characterized Baoding as a brokerage house to facilitate the export of sodium sulfanilate. Therefore, Petitioner reasons that Baoding, acting as Zhenxing's agent, is affiliated with Zhenxing. Petitioner argues that if Zhenxing and Baoding are affiliated, Baoding's failure to respond to the Departments original and subsequent questionnaires constitutes failure of Zhenxing to report all sales made by themselves and their affiliates.

Petitioner states that Respondent addressed the issue of the PRC trading company only in post-verification submissions. Petitioner contends that the Department typically rejects such unsubstantiated, eleventh hour claims made by Respondent that have failed to disclose material information in their questionnaire responses. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53813 (Oct. 16, 1997).

Furthermore, Petitioner claims that fees paid by the Respondent to Baoding for its services are direct selling expenses which the Department was not able to verify. Consequently, a material part of the calculation of CEP has not been verified. Therefore, Petitioner contends that the Department must conclude that the Respondent did not act to the best of its ability to provide this information and that the Department cannot use the new information discovered at verification and provided in post-verification submissions to calculate the margin because it is not credible and cannot be verified.

Respondent argues that Baoding was not the exporter of the subject merchandise, is not related to PHT and acted only as the brokerage house to facilitate the process of moving the goods from the factory to the port and through export customs in China, and that PHT simply purchased these services from Baoding. Respondent contends that Zhenxing only sells the subject merchandise to PHT, and neither sold nor intends to sell the subject merchandise directly to any unaffiliated U.S. buyers or to Baoding. Respondent argues that the criteria set forth in *Engineered Process Gas Turbo-Compressor Systems from Japan*, 62 FR 24394 (May 5, 1997), for determining affiliation are not applicable to this case. Respondent argues that the relationship between PHT and Baoding was not one of principal and agent within the context of a sales transaction. Respondent claims that this relationship was a simple contractual relationship and that Baoding was not an agent/reseller of sodium sulfanilate because Baoding did not act as a sales agent in negotiating the price or other terms of sale, interact with U.S. customers, maintain inventory of the subject merchandise, take title to the merchandise or bear risk of loss or process or otherwise add value to the merchandise. Therefore, Baoding was not required to respond to the Department's questionnaire with respect to those sales. Finally, Respondent states that its response to the Department's supplemental questionnaire with respect to Baoding was timely.

Department's Position: We agree with Respondent. On May 1, 1998, after the conclusion of verification and prior to calculating our preliminary results of review, the Department issued a supplemental questionnaire requesting further clarification on the relationship between Zhenxing, PHT, and Baoding and the services provided by Baoding for sales of sodium sulfanilate. Respondent submitted their response on May 14, 1998, stating that Baoding was unaffiliated with either PHT or Zhenxing. Respondent stated that Zhenxing does not sell the subject merchandise to Baoding and that Baoding has no function regarding sales of the subject merchandise. According to the Respondent, Baoding's function is to facilitate the exportation of the merchandise. Baoding provides the documents necessary for the exportation and helps to arrange the delivery of goods to port. In addition, Baoding did not take title to the subject merchandise nor does Baoding assume the management, storage or shipment of the subject merchandise. In return for its brokerage and handling services, Baoding is paid a fee by PHT consistent with standard industry practice. Based on this information, the Department determined that Baoding was unaffiliated to either PHT or Zhenxing for purposes of the preliminary results of review and adjusted normal value to include the cost of brokerage and handling expenses incurred by Zhenxing and PHT to make sales via Baoding, valued in an appropriate market economy surrogate country. For purposes of these final results of review, the Department has not received any additional information to indicate that Baoding is affiliated with either PHT or Zhenxing, therefore, consistent with our findings in the preliminary results of review, we have adjusted for the additional brokerage and handling expenses incurred on sales via Baoding.

Comment 2: Petitioner contends that the Department should apply the country-wide rate of 85.20 percent as the facts available to calculate Respondent's dumping margin because the Department was unable to verify a significant portion of the factors of production information submitted by the Respondent. Petitioner argues that discrepancies found at verification related to (1) coal usage, (2) electricity usage, and (3) labor hours understated the Respondent's factors of production and that new information used to recalculate Respondent's energy usage was untimely. Petitioner also argues that Respondent never corrected the usage data either in their supplemental questionnaire response or prior to the start of the factors of production verification.

Petitioner further contends that the Department's preliminary results of review correcting said discrepancies is inappropriate because the discrepancies involve major factors of production, the record of the review contains no explanation of the reasons for the discrepancies and the discrepancies that were discovered all favored Respondent, indicating a pattern of under-reporting.

Respondent argues that neither the Department's observation at verification of what it perceived to be unreconciled coal purchases in comparison to total coal usage, nor the difference between total predicted amount of electricity reported by Zhenxing and Zhenxing's final electricity consumption is

significant. Further, Respondent argues that these verification findings did not create a pattern of under-reporting factors of production.

Department's Position: The Department agrees with Respondent regarding the use of verified information for coal usage, electricity, and labor factors of production. It is the Department's practice to allow respondents to correct for minor errors during the course of verification. In the instant case, while conducting the verification, Department officials noted certain errors in Zhenxing's factors of production response. Department officials then proceeded to verify and ensure that they obtained the most accurate factors of products which tied to the company's actual books and records. At the conclusion of verification, the Department determined that the errors found were minor in nature and did not require a revised response to be submitted. Therefore, in order to ensure that the most accurate factors of production were used to calculate NV in the preliminary results of review, the Department utilized the verified factors of production for coal usage, electricity, and labor. In regard to the Petitioner's argument that these discrepancies indicated a pattern of under-reporting, the Department has determined that the errors noted during verification were insignificant and did not constitute a pattern or under-reporting on behalf of the Respondent. Contrary to Petitioner's allegation, not every discrepancy involved favored Respondent. For purposes of the final results, the Department has therefore continued to use the verified information for these factors of production.

Comment 3: Petitioner claims that the use of Indian import prices for aniline as the surrogate value for aniline used by the PRC Respondent in this case is inappropriate because, it claims, the plain language of the statute does not permit the Department to use imported aniline prices when the NME respondents use domestically-sourced aniline. Petitioner argues that the Department incorrectly based the surrogate value for aniline on Indian sulfanilic acid production processes, instead of reported PRC production processes. Petitioner states that the Department must first identify the NME factors of production and then, using those same factors, obtain surrogate values from a market economy at a similar level of economic development. Petitioner contends that because Respondent uses domestically-sourced aniline to manufacture sulfanilic acid, the Department must value aniline using prices for aniline domestically produced in India. Petitioner argues that the Department has recently stated a clear preference for using domestic market prices in the surrogate country to value factors of production. As support for this position, Petitioner cites *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty New Shipper Administrative Review*, 63 FR 3085, 3087 (Jan. 21 1998) ("*Magnesium*"); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61966 (Nov 20, 1997) ("*Carbon Steel Plate*"); and *Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9163 (Feb. 28, 1997) ("*Brake Drums*"). Petitioner also argues that the profitability of surrogate country producers in export markets is irrelevant to the Department's valuation of the factors of production utilized by the NME under investigation.

Petitioner contends that the values for imported aniline used in the preliminary results cannot be used because these values are based on subsidized prices and are not an accurate reflection of the price of aniline. Petitioner cites *Brake Drums* and *Tehnoimportexport* v. *United States*, 783 F. Supp. 1401 (CIT 1992) ("*Tehnoimportexport*"). According to the Petitioner, the Department has determined that the Indian Advanced License program is a countervailable subsidy under U.S. law. *Preliminary Affirmative Countervailing Duty Determination: Sulfanilic Acid From India*, 57 FR 35785 (Aug. 11, 1992); *Countervailing Duty Order: Sulfanilic Acid From India*, 58 FR 12026 (Mar. 2, 1993). Under this program, the normal 85% duty on imported aniline is not collected if sulfanilic acid produced with imported aniline is subsequently exported. Petitioner contends that Indian sulfanilic acid producers receive a government subsidy to the extent that they pay duty-free prices for imported aniline.

Petitioner states that the Department is precluded from using prices for imported aniline due to the reasons stated above. Petitioner argues that the statute requires the Department to use, instead, published domestic price information reported in Chemical Business and Chemical Weekly to value aniline in this review. Petitioner maintains that these publications are reliable sources, as evidenced by the Department's use of these sources in several antidumping investigations and reviews involving PRC products. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19030 (Apr. 30, 1996) ("*Bicycles*"). Petitioner also argues that the Department used Chemical Weekly data as the surrogate value for another input, sulfuric acid, in the preliminary results of this case. Petitioner states that the domestic prices are contemporaneous, product specific, tax exclusive and publicly available and are therefore a reliable basis for use as a surrogate value.

Respondent argues that the Department correctly valued aniline using Indian import statistics because Indian sulfanilic producers used imported aniline to produce sulfanilic acid for export. Respondent refers to the initial investigation and the 1993–94 and 1994–95 administrative reviews of this case, in which the Department previously used Indian import statistics for valuing aniline. Respondent cites *Nation Ford Chemical Co.* v. *United States*, 985 F. Supp. 133 (CIT 1997) and *Nation Ford Chemical Co.* v. *United States*, 985 F. Supp. 138 (CIT 1997), in which the Court of International Trade (CIT) affirmed the Department's determinations in the 1993–94 and 1994–95 reviews, respectively, to use Indian import values as a surrogate for PRC aniline costs. Respondent also contends that the CIT determined that Petitioner's argument that the Department must use the Indian domestic price for aniline because Chinese producers use domestic aniline was erroneous because there was no basis in the statute for arguing that the factors of production must be ascertained in a single fashion. *Nation Ford Chemical Co.*, 985 F. Supp. at 136 (citing *Lasko Metal Prod., Inc.* v. *United States*, 43 F.3d 1442, 1446 (Fed. Cir. 1994) ("*Lasko*") and 19 U.S.C. 1677b(c)(3)). In addition, Respondent contends that the CIT further stated that it was reasonable for the Department to conclude that Indian domestic prices were not adequately representative of the situation in the PRC. Respondent contends that the Court also notes that although a surrogate value must be representative of the situation in the non-market economy (NME), that does not mean that the Department must duplicate the exact production experience at the expense of choosing a surrogate value that most accurately represents what would be the fair market value of aniline in a market-economy PRC.

Respondent contends that the CIT has determined that the Indian subsidy program would have no impact on the price of imported aniline, and therefore

rejected the identical subsidy argument Petitioners are making in this review. Respondent relies upon the CAFC's statement in Lasko that, in the underlying case, the best available information on what the supplies used by the Chinese manufacturers would cost in a market economy country was the price charged for those supplies on the international market. Respondent argues that, similarly, the best available information on the value of aniline used by the Indian producers to make sulfanilic acid for export is the import price for aniline, which reflects the cost of aniline on the international market.

Respondent also cites *Tehnoimportexport*, in which the CIT acknowledged that the Department has frequently used import statistics in NME country cases. Respondent argues further that the Department uses import statistics for at least one factor in almost every dumping case against China, even though the Chinese producers source the product from a domestic manufacturer in China. *See Notice of Final Determination of Sales at Less Than Fair Value: Sebacic Acid from the People's Republic of China*, 59 FR 28053 (May 31, 1994); *Bicycles*, and *Brake Drums*.

Respondent contends that the issue is which surrogate value from India best represents what the cost of aniline would be in China to the Chinese producer if the price were set by market forces. Respondent argues that the CIT states in *Tehnoimportexport*, 783 F. Supp. at 1406, that when the Department is faced with the decision between two reasonable alternatives and one alternative is favored over the other, the Department has the discretion to choose. Respondent also relies upon *Union Camp* v. *United States*, 941 F. Supp. 108, 116 (CIT 1996), *remand aff'd*, 963 F. Supp. 1212 (CIT 1997), and *Magnesium Corp. of America* v. *United States*, 938 F. Supp. 870 (CIT 1996) for the proposition that the Department has such discretion. Finally, Respondent argues that the Department's antidumping regulations published on May 19, 1997, state that aberrational surrogate input values should be disregarded. Respondent further argues that the Department has determined that the domestic price for aniline was aberrational because it did not reflect a market price for aniline but, instead, a price which has been inflated by India's protection of its national aniline industry.

Department's Position: We agree with Respondent that the Indian import values for aniline provide a better approximation than Indian domestic prices of what the aniline used by the Chinese manufacturers would cost were the PRC a market economy country. Evidence on the record of this review indicates that a two-tier pricing system for aniline exists in India as a result of the combination of an 85% tariff on imports of aniline and the effects of the Advanced Licence Program, which waives that tariff when imported aniline is used in the production of sulfanilic acid for export. Thus, Commerce had two main options in selecting a surrogate value for aniline: the Indian domestic price paid by the Indian producers of sulfanilic acid for the domestic market and the duty-free, Indian import price for aniline paid by Indian producers of sulfanilic acid for the export market. As the CIT has recognized with respect to prior reviews, the Department reasonably used the average Indian import price because the Indian price for domestically-produced aniline is artificially inflated due to a protective tariff that bears no relationship to the situation governing the aniline respondents source domestically in the PRC. Furthermore, because the costs constructed using the surrogate methodology are the costs for Chinese production for the export market, the costs incurred by Indian producers manufacturing sulfanilic acid for the export market are a better surrogate than are the costs incurred by Indian producers in manufacturing sulfanilic acid for their domestic market.

Petitioner cites *Magnesium, Carbon Steel Plate* and *Brake Drums* for the proposition that domestic prices are preferred unconditionally to import prices for factor valuation purposes. However, the three cases cited above refer to "tax-exclusive domestic prices," and together with the Department's position above on the tariff problem, suggest that domestic prices are preferred only if both domestic and import prices are available on a tax-and duty-exclusive basis, all else being equal. When this is not the case, the Department must decide on a case-by-case basis which price is more appropriate for factor valuation purposes. In this case, because of the tariff problem discussed above, as well as uncertainty about the indirect taxes, if any, that the domestic price reflects, the Department has determined that the import price is more appropriate.

Petitioner's claim that the "factor of production" to be valued is "domestic aniline," such that the statute requires the value of this factor to be assigned based on aniline produced domestically in India, has no support in law or fact. There is no indication on the record that the aniline used by the Chinese producers, which their public response indicates is locally sourced rather than imported, is physically or chemically different from the aniline that is produced in India or imported into India, or that the sulfanilic acid "production process" is different in either China or India depending upon whether imported or domestically sourced aniline is used. There is no reason why the Department must base its valuation on "domestic" (Indian-produced) aniline simply because the PRC factories use "domestic" (PRC-produced) aniline. Aniline is a generic, fungible input, not altered by whether it is imported or sourced in the same country in which it is used. The factor to be valued in this case is not "domestic aniline" but simply "aniline."

Nor is the Department compelled to use Indian domestic values simply because some domestic market exists. The CIT has long recognized that the Department has often used import statistics (to value both inputs imported into NME countries and imports sourced locally in NME countries) and that import prices into the surrogate country are an acceptable reflection of the value of that input in the surrogate country. *See, e.g., Tehnoimportexport* and the *Nation Ford* cases cited above. In this case, as in prior reviews of this order, the prices for domestically produced aniline on the record of this review are not suitable for use as surrogates for the PRC cost of aniline, because these prices are artificially high due to India's 85% import tax.

With respect to the question of whether Indian producers could profitably produce sulfanilic acid for export using Indian-sourced aniline, we note that we have not based our choice of surrogate value for aniline on Respondent's suggestion that this would not be possible.

No such finding is necessary. The aniline purchase choices of Indian manufacturers of sulfanilic acid (as reflected in the record) are relevant primarily as an indication that the price of aniline, when used for production of sulfanilic acid for sale in India, is unusually high, and thus, inappropriate for purposes of valuation of PRC export production costs for sulfanilic acid.

Petitioner's argument that the aniline import values are "subsidized prices" which therefore cannot be used as surrogate values misses the mark. Assuming, for the purposes of argument, that the Indian Advanced License program identified in 1992 as constituting a subsidy to Indian-produced sulfanilic acid would still be found to be countervailable, this

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program would constitute a subsidy to Indian-produced sulfanilic acid, not to aniline imported into India from other countries. Thus, Commerce would avoid using, as a surrogate value, the export value of Indian-produced sulfanilic acid, but not the import value of aniline. The Indian Import Statistics used by the Department to value aniline are pre-tariff prices, which are unaffected by whether or not subsequently added duties charged to the importer are waived on a given shipment. The sort of subsidy the Department is concerned with when it uses import prices is a producer-country subsidy that would artificially lower the import price. India has no interest in subsidizing aniline produced in other countries and imported into India. Because any subsidy which may be associated with the importation of aniline under the Advanced License Program for purposes of producing sulfanilic acid for export is a subsidy not to aniline but to sulfanilic acid, it does not provide a reason for rejecting aniline import values for purposes of serving as surrogates for the cost of aniline (not sulfanilic acid) to PRC producers. Therefore, for the purposes of these final results, the Department has continued to use Indian import prices as the surrogate value for aniline.

Finally, there is no merit to Petitioner's inference that prices published in certain Indian periodicals can only be rejected as surrogate values for Chinese prices if the periodicals are found to be unreliable sources of data. The problem with this data is not its reliability as to Indian prices, but the inappropriateness in this case of Indian domestic price data for aniline as a surrogate value for aniline sourced in China by the Chinese respondent.

Comment 4: Petitioner argues, alternatively, that the Department should adjust the import statistics to include import duties and an importers' mark-up in order to reflect what they call the true cost of imported aniline. Petitioner contends that the Indian Advance License program is similar to duty drawback. In the case of duty drawback, the customs duty refunded to the importer would be added to the U.S. price under 19 U.S.C. 1677a(d)(1)(B) if the Respondent could show that the importer took advantage of the duty drawback program. Petitioner argues that there is no evidence that any of the Indian producers of sulfanilic acid took advantage of the Advanced License program. Petitioner contends that the burden is on the Respondent to show Indian sulfanilic acid producers either did not pay customs duties or received refunds of customs duties payable on imports of aniline upon the exportation of finished sulfanilic acid. Petitioner also argues that the fact that the Indian Advanced License program has been found to be a countervailable subsidy under U.S. law provides another reason why the Department should add the import duties to the import values used as the surrogate value of aniline. Petitioner also argues that based on the absence of evidence on record that Indian sulfanilic acid producers purchased imported aniline directly and not through importers the Department should conclude that importer/middlemen import aniline and re-sell to sulfanilic acid producers with a mark-up added. Petitioner contends that the appropriate rate for the importers' mark-up is 28.44 percent of the CIF value. This rate is based upon information placed on record by the Petitioner establishing profit rates for Indian import trading companies. Petitioner contends that the Department should add 28.44 percent of the CIF value to the surrogate cost of aniline.

Respondent contends that, in the two *Nation Ford* cases cited above, the CIT determined that the Department was justified in not adding import duties and an importer mark-up to import prices because there was evidence on the record that Indian producers did not pay import duties on the aniline used to produce sulfanilic acid for export and there was no evidence on the records of an importer's markup. Respondent argues that the Court stated that the Department's refusal to add import duties or markups on imported aniline given the absence of proof that Indian producers paid import duties or markups on imported aniline was supported by the record.

Department's Position: We agree with Respondent that we should not add to the Indian import values an amount corresponding to the 85% tax levied by the Indian government on imported aniline which is not subsequently used in the manufacture of another product for export. Because these Indian import duties do not represent costs that a PRC producer would pay if the PRC were a market economy, it is the Department's practice to refrain from including any such duties in an NME surrogate price. *See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order,* 62 FR 6173, 6177 (February 11, 1997) (Comment 3); *Certain Helical Spring Lockwashers from the PRC,* 58 FR 48833, 48843 (September 20, 1993) (Comments 12 and 13). In this case, there are also two additional reasons for not adding on the amount of the import tax. The 85% tax at issue is not only unique to India; it is also abnormally high for an import tax, and is, furthermore, not even paid by producers of sulfanilic acid for the export market.

Respondent has placed on the record of this review published Indian government materials describing the operation of the Advance License system and its use to avoid payment of duties on aniline used to produce sulfanilic acid for export from India. Respondent has also placed on the record, *inter alia,* a letter from an Indian sulfanilic acid exporter explaining in detail how it imports aniline duty free, works with an Indian sulfanilic acid producer to produce sulfanilic acid from the imported aniline, and then exports the sulfanilic acid without paying duty on the imported aniline, and a letter from an Indian sulfanilic acid producer stating that it uses imported aniline to produce sulfanilic acid. Thus, Petitioner's claim that there is no evidence on the record of this review that Indian producers of sulfanilic acid used the Advance License program and thus avoided payment of the 85% duty is without basis.

Also without basis is Petitioner's claim that the Department must add the 85% import tax to the import values absent the same type of evidence required to support a duty drawback adjustment to U.S. price. The PRC Respondent in this review is not seeking a duty drawback adjustment to a United States price for sulfanilic acid exports from India (the country granting the duty drawback), and is not privy to the confidential documents of the Indian sulfanilic acid companies involved. What we are attempting to determine in this case is a surrogate value for Chinese aniline. The question of whether particular Indian exporters of sulfanilic acid imported sufficient aniline to qualify for duty drawback might be relevant if we were determining the U.S. price of Indian sulfanilic acid. However, it is simply immaterial to the question of the value of Chinese aniline.

Finally, Petitioner has no basis for insisting that the 85% duty be added onto the aniline import value because of an alleged subsidy to the price of imported aniline. As explained above, any subsidy that may exist is a subsidy to Indian-produced sulfanilic acid, not to aniline produced elsewhere and imported into India.

The record also provides no support for Petitioner's contention that we must add to the constructed valuation of the cost of the Chinese aniline an amount corresponding to an importer's markup.

The Chinese producers of sulfanilic acid source their aniline directly, not through a middleman. Furthermore, the record contains no indication that Indian producers of sulfanilic acid for exportation pay an importer's markup. Indeed, the only arrangement reflected in the record involves a tolling arrangement rather than purchase of aniline from an importer. In the *Nation Ford* cases, the CIT rejected a similar claim by petitioner. Because the record of this review involves similar facts, we again determine that it is not appropriate to increase the cost of aniline by the cost of a hypothetical importer's markup.

Comment 5: Respondent, relying upon the Department's verification findings in this review, contends that the Department used incorrect factors of production (FOP) for aniline and sulfuric acid when calculating the material costs for producing crude sulfanilic acid. Respondent states that the factors verification report accurately reported the consumption of raw materials and production of crude sulfanilic acid, but that these values were not carried over into the computer programs.

Petitioner argues that, in the preliminary results, the Department used the aniline and sulfuric acid usage amounts Respondent originally reported in its questionnaire response and that the Department, acting on its own initiative, corrected the denominator of the calculations to use the appropriate yield data. However, Respondent did not correct the numerators of the calculations in its supplemental questionnaire response or prior to the start of the production verification. Petitioner contends that Respondent brought these alleged errors to the Department's attention for the first time in its case brief.

Petitioner argues that pursuant to *NTN Bearing Corp. v. United States*, 74 F.3d 1204 (Fed. Cir. 1995), the Department's policy is to correct a respondent's alleged clerical errors that are brought to the Department's attention for the first time in the respondent's case brief only if all applicable criteria are met. Petitioner refers to the Department's decisions *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less In Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 63 FR 20585, 20611 (Apr. 27, 1998), citing *Certain Fresh-Cut Flowers From Columbia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 42833 (Aug. 19, 1996). Petitioner argues that the alleged errors fail to meet at least three of the criteria outlined in the Department's policy: Respondent has not established that the alleged error is a clerical error and not an error in judgement or a substantive error, the Respondent did not avail itself of the earliest possible time to correct the alleged error, and the alleged clerical errors entail a substantial revision of the Respondent's response. Petitioner concludes that these alleged errors entail a substantial revision of the Respondent's data and may not be corrected under the Department's policy.

Department's Position: We agree with Respondent and have corrected the FOP data for aniline and sulfuric acid used to calculate material costs for producing crude sulfanilic acid. When it issued the preliminary results of this review, the Department intended to correct both the FOP and the yield to reflect verified totals. However, when making this correction, we inadvertently did not substitute the original FOP for the verified FOP. Respondent noted this error based on the preliminary analysis memo dated July 6, 1998. In accordance with § 351.224(a) of the Department's regulations, the Department disclosed the calculation of material costs for producing crude sulfanilic acid in the preliminary analysis memo. In response, the Respondent brought the errors to the Department's attention.

Comment 6: Petitioner contends that, in the preliminary results, the Department failed to calculate and deduct from the CEP starting price the inventory carrying costs incurred by PHT during the time between the exportation of the subject merchandise from the PRC and the delivery to the first unaffiliated customer in the United States. Petitioner argues that the costs of carrying inventory during the time of exportation from the PRC and delivery to the first unaffiliated customer in the United States were not related to Zhenxing's sales to PHT. Therefore, those expenses must be calculated and deducted from the CEP starting price pursuant to 19 CFR 351.402(b) because they relate to the sale to the first unaffiliated customer in the United States.

Respondent cites *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 33320, 33344 (June 18, 1998), in which the Department stated that its regulations clearly direct that any expense that is related solely to the sale to an affiliated importer in the United States should not be deducted from the starting price. Respondent argues that, similarly, the inventory carrying costs in this case should not be deducted from the starting price.

Department's Position: The Department agrees with Petitioner in part. Pursuant to 19 CFR 351.402, the Department, in calculating the CEP, deducts from the starting price those expenses associated with economic activity in the United States. Inventory carrying costs between Zhenxing and PHT are not associated with economic activities in the United States because, they are not associated with PHT's sales to unaffiliated U.S. parties. Therefore, the Department has not deducted the inventory carrying costs between Zhenxing and PHT from the starting price in calculating CEP. However, Petitioner is correct in arguing that the Department should adjust the U.S. price for inventory carrying costs incurred by PHT prior to its sale and delivery to unaffiliated U.S. customers. The Department has corrected the final CEP calculation for these inventory carrying costs. (*See* Final Analysis Memo dated November 10, 1998.)

Comment 7: Petitioner contends that the Department failed to calculate an assessment rate applicable to PHT. Petitioner states that this failure is contrary to the Department's regulations, which state the assessment rate for each importer of the subject merchandise under review will normally be calculated by dividing the dumping margin found for the subject merchandise examined by the entered value of such merchandise for normal customs purposes. 19 CFR 351.212(b)(1).

Department's Position: We agree with the Petitioner. The Department has calculated an importer specific assessment rate for PHT and has included a reference to this calculation in the final results of this review.

Comment 8: Petitioner contends that the Department's preliminary calculation of electricity usage by Zhenxing contained critical errors. Petitioner states that the number of kilowatt hours of electricity reported in Zhenxing's records did not reconcile to the actual electricity bills and, as a result, the Department used, as facts otherwise available, the number of kilowatt hours reported on the electricity bills. Petitioner adds that because the August 1996 bill was missing the Department stated that it would use "the highest monthly amount recorded on the available electricity

bills." Petitioner contends that the Department used an incorrect number of hours (the number for March 1997) as the facts available for the missing August 1996 number of hours. Additionally, Petitioner states the Department did not use the correct number of hours reported on the July1997 bill in its calculation. Petitioner concludes that the Department should require Respondent to submit all of the actual electricity bills for the record and actual amounts should be used to calculate energy usage.

Respondent argues that the Department's calculation of electricity usage is accurate and that the Department was correct in selecting the March 1997 figure as a surrogate value for August 1996, because the March figure is truly the highest monthly amount recorded on the available electric bills.

Department's Position: We agree with the Respondent in part. Consistent with the preliminary results of this case, as facts available we have used the number of kilowatt hours reported on Respondent's actual electric bills in determining the quantities of electricity used. Additionally, as facts available, we used the highest monthly kilowatt usage recorded on a verified electric bill (*i.e.*, that for March 1997) as the electricity consumption factor for August 1996, for which the electricity bill could not be located.

We agree with Petitioner that the Department made an error in the process of transferring to the energy usage portion of its computer program the verified number of kilowatt hours billed for July 1997. The Department has corrected this error in calculating the final results.

Comment 9: Respondent contends that, with respect to the credit expenses incurred on U.S. sales, the Department should have calculated a daily interest rate using a 365 day year rather than a 360 day year. Respondent cites the Department's Antidumping Manual, which states that the imputed credit costs are calculated using 365 days unless a firm uses 360 days as a credit base rather than 365 days, in which case 360 days would be used in the calculation. Respondent argues that the Department did not state in the preliminary results that the Respondent uses 360 days as a credit base.

Petitioner contends that Respondent's argument that the Department must use 365 days in the U.S. credit expense calculation because it did not state in the disclosure arguments that Respondent uses 360 days as a credit base is incorrect. Petitioner argues that the burden to establish the appropriate credit base was on the Respondent and that Respondent has no standing to contest the Department's use of 360 days instead of 365 days in the credit expense calculation.

Department's Position: We agree with the Respondent. The Department's normal practice is to calculate credit costs by dividing the number of days between shipment and payment by 365, then multiplying by the interest rate and unit price. Only if the record shows that a firm uses 360 days as the credit base do we divide the number of days by 360. In this case there is no indication that either Zhenxing or PHT used a 360 day credit base. Therefore, the Department has corrected its final calculation of imputed credit costs utilizing 365 days rather than 360 days.

Clerical Errors

Petitioner contends that the Department's preliminary calculation of the materials cost of crude sulfanilic acid contained a clerical error which understates the constructed value of the subject merchandise. Respondent agrees with the Petitioner that the Department should correct the clerical error in the calculation of crude sulfanilic acid. We agree and have corrected the calculation of the materials cost of crude sulfanilic acid.

Respondent argues that the Department erred when it used a conversion factor of 2.2 pounds per kilogram rather than the factor of 2.204623 provided in The New International Webster's Comprehensive Dictionary of the English Language for converting values expressed in dollars per kilogram to dollars per pound in the calculation of net U.S. prices and dumping margins for PHT's sales. Petitioner states in its rebuttal brief that it does not object to the Department's use of a more precise factor. The Department has revised its preliminary calculations to reflect the conversion value of 2.204623 pounds per kilogram.

Respondent argues that the Department compounded the preceding error when it attempted to convert values expressed in dollars per kilogram to dollars per pound by multiplying dollars by the incorrect factor rather than dividing the dollars per kilogram by the correct factor. Petitioner does not object to the correction of this error. The Department has corrected the final values to reflect the correct conversion formula.

Final Results of Review

As a result of our review of the comments received, we have determined that the following margins exist:

Manufacturer/ producer/exporter	Time period	Margin (percent)
Yude Chemical Industry, Co./ Zhenxing Chemical Industry, Co. ...	8/1/96–7/31/97	.29
PRC Rate[1]	8/1/96–7/31/97	85.20

[1] This rate will be applied to all firms other than Yude and Zhenxing, including all firms which did not respond to our questionnaire requests.

[*] Exporters Yude and Zhenxing have been collapsed for the purposes of this administrative review. *See Sulfanilic Acid from the People's Republic of China: Preliminary Results of Antidumping Administrative Review*, 63 FR 37528 (July 13, 1998).

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Because the number of transactions involved in the review and other simplification methods prevent entry-by-entry assessments, we have calculated exporter/importer-specific assessment rates by dividing the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. While the Department is aware that the entered value of the reviewed sales is not necessarily equal to the entered value of entries during the POR (particularly for CEP sales), the use of the entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales.

The following deposit requirements will be effective upon publication of these final results for all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(c) of the Act: (1) No cash deposit will be required for Yude and Zhenxing as the rate above is de minimis (*i.e.*, less than .5 percent); (2) the cash deposit rate for all other PRC exporters (*i.e.*, the PRC rate) will be 85.20%; and (3) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the

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rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.211.

Dated: November 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30741 Filed 11–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of 1996–1997 antidumping duty administrative review and new shipper review and notice of determination not to revoke order in part of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: On July 10, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China. In addition, on August 5, 1998, the Department of Commerce published a notice of intent not to revoke the order in part. The period of review is June 1, 1996, through May 31, 1997. Based on our analysis of comments received, we have made changes to the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins are listed below in the section entitled *Final Results of Review.*

We have determined that sales have been made below normal value during the period of review. Accordingly, we will instruct the Customs Service to assess antidumping duties based on the difference between export price or constructed export price and normal value.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith or James Breeden, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington D.C. 20230; telephone (202) 482–0189 and (202) 482–1174, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, all references to the Department of Commerce's ("the Department's") regulations are to 19 CFR 353 (April 1997).

Background

On July 10, 1998, we published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on tapered roller bearings ("TRBs") from the People's Republic of China ("PRC"). *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review, 63 FR 37339 (July 10, 1998) ("Preliminary Results"). In addition, on August 5, 1998, we published a notice of intent not to revoke the order in part. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Notice of Intent Not to Revoke the Antidumping Duty Order in Part, 63 FR 41801 (August 5, 1998). We gave interested parties an opportunity to comment on our Preliminary Results and held a public hearing on September 9, 1998. The following parties submitted comments and/or rebuttals: The Timken Company ("Timken"); Wafangdian Bearing Factory ("Wafangdian"), Luoyang Bearing Factory ("Luoyang"); China National Machinery Import & Export Corp. ("CMC"); Liaoning MEC Group Co. Ltd. ("Liaoning"); Wanxiang Group Corp. ("Wanxiang"); Xiangfan Machinery Import & Export (Group) Corp. ("Xiangfan"); Zhejiang Machinery Import & Export Corp. ("Zhejiang"); Zhejiang Changshan Bearing (Group) Co., Ltd. ("ZX"); Premier Bearing and Equipment, Ltd. ("Premier"); Peer Bearing Company/Chin Jun Industrial Limited ("Chin Jun"); and L&S Bearing.

We have conducted this administrative review and new shipper review in accordance with section 751(a) of the Act.

Scope of Review

Merchandise covered by this review includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Changes Since the Preliminary Results

We have made certain changes to our margin calculations pursuant to comments we received from interested parties and clerical errors we discovered since the Preliminary Results.

For All Companies

The changes we have made that affect all companies and the comments discussing these changes are listed below.

Valuation of Certain Steel Inputs—Comments 3, 4, and 20
Valuation of Scrap—Comment 5
Valuation of Labor—Comment 10

Valuation of Overhead, SG&A, and Profit—Comments 14, 15, and 18
Valuation of Brokerage and Handling—Comment 24
Valuation of Boxes for Packing—Comment 35

For Premier

We changed our treatment of those sales for which Premier did not report factors of production ("FOP") data. As facts available we are using the weight-averaged margin calculated for those U.S. sales for which FOP data were reported. See our response to Comment 26.

We have also recalculated Premier's margin to apply its actual costs for inland freight. See our response to Comment 27.

For CMC

We did not use CMC's most recent database in the Preliminary Results. We have corrected this error for the final results. See our response to Comment 34.

For Chin Jun

In the Preliminary Results, we did not match all of Chin Jun's sales to the appropriate FOP data. We have reviewed our calculations and made the necessary changes. See our response to Comment 37.

Analysis of Comments Received

1. Valuation of Factors of Production

1(a) Material Valuation

Comment 1: Use of Indian Bearing Manufacturers' Annual Reports for Steel Input Values

Timken argues that the values for bearing quality steel used in the production of certain TRB components should be based upon the published annual reports of Indian bearing manufacturers. Timken contends that the Department's stated preference is to use reliable domestic market prices versus equally reliable import prices. Timken cites to Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China, 62 FR 61964 (November 20, 1997) ("Carbon Plate") for this position. Therefore, the Department should use the material costs incurred in India by bearing manufacturers.

Timken argues further that, in comparison to the other values available to the Department, data on Indian bearing manufacturers' raw material costs are more narrowly descriptive of bearing quality steel. Moreover, the Indian bearing manufacturers' price information is contemporaneous with the period of review ("POR"). Timken notes that, while the Department has rejected the use of Indian bearing manufacturers' data in the past, it did so because the available information was from only one bearing producer. That one manufacturer, SKF India, produced more than just bearings and its information did not correspond precisely to the POR. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order, 62 FR 6189, 6193 (February 11, 1997) ("TRBs VII"). Timken notes that, in this review, the information on the record includes contemporaneous data from eight Indian manufacturers that produce only or almost exclusively antifriction bearings.

Moreover, Timken argues that the materials cost data from the Indian bearing manufacturers are sufficiently detailed to separate the various steel inputs used in the production of TRB components. In support of using the Indian bearing manufacturers' data, Timken contends that the affidavit it submitted from one of its industry experts attests that the same grade of bearing quality steel is typically used for all types of antifriction bearings produced in India and China. Because of this, and the fact that the Indian financial statements are sufficiently detailed, Timken argues that the costs reported by the Indian bearing producers are the best source of surrogate values for bearing quality steel bars used by the Chinese TRB manufacturers.

Respondents disagree, arguing that the Indian producers' steel prices are inherently flawed because several of the producers do not provide separate prices for bar, rod, and sheet steel. Instead, several companies' annual reports provide a single figure for all types of steel used in the factory, including steel used in textile bearings, ball bearings, and other types of products which are not subject to this review. Furthermore, these companies' annual reports could include innumerable types of steel including tube steel, stainless steel, or machined "green parts." Given this fact, the respondents maintain, the Department cannot know what types of steel were included in the material cost calculations.

Additionally, respondents argue that the Indian producers' prices for steel or any other factor input include Indian duties and internal taxes. Finally, respondents point out that Timken's suggestion of using Indian producers' values has been rejected by the Department in two prior reviews. *See* Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results and Partial Termination of Antidumping Duty Administrative Review, 62 FR 6173 (February 11, 1997) ("TRBS VIII") and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review, 62 FR 61276 (November 17, 1997) ("TRBs IX").

Department's position: We have not adopted Timken's suggestion to use Indian bearing manufacturers' data on steel cost. Of the eight Indian manufacturers cited by Timken, only three break out steel costs according to the type of steel used in the production of bearings (*e.g.*, steel bar, steel sheet, steel strip). Because the other five companies' annual reports do not specify the types of steel used in production, we are unable to accurately value the specific types of steel used in the production of subject merchandise.

For the three companies that do break out their steel costs by broad types of steel, only Asian Bearing separately identifies "steel bars," the steel input used by the Chinese respondents to produce certain TRB components (cups, cones, & rollers). However, because Asian Bearing provides an average cost for steel bar and does not provide specific costs according to the type of bar used (*i.e.*, hot-rolled versus cold-rolled), the Department is unable to accurately value the two types of steel bar used in the production of cups and cones versus that used in the production of rollers. Furthermore, the annual report does not specify whether the steel bar is only used by Asian Bearings in the production of tapered roller bearings or whether it is used to produce other products manufactured by the company. To the extent that Asian Bearings uses hot-rolled and cold-rolled steel bars in different proportions than the PRC TRB producers, Asian Bearings' average cost of steel bars is not an accurate value to apply to the PRC procucers' factors.

Additionally, section 773(c)(1) of the Act states that, for purposes of determining normal value ("NV") in a nonmarket economy ("NME") country, "the valuation of the factors of production shall be based on the best available information regarding the values of such factors * * *." As set forth in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 61 FR 65527

(December 13, 1996) ("TRBs IV–VI"), TRBs VII, and TRBs IX, the Department's preference is to value factors using published information. We have a longstanding practice of relying, to the extent possible, on public statistics on surrogate countries to value any factors for which such information is available over company-specific data. *See* Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992). In our view, public statistics provide a more representative value for these material inputs than a single company's information.

Because we have other surrogate data that allow us to value hot-rolled and cold-rolled bar individually and because the other data are taken from public statistics (not a single company's information), we are not using the data on materials costs from the Indian bearing manufacturers' financial statements.

Comment 2: Use of Indian Import Statistics for Steel Input Values

Timken argues that, as an alternative to the cost data of the Indian bearing producers, Indian (not Indonesian) import statistics are the next best source from which to value bearing quality steel bar used in the production of cups and cones. First, Timken questions the reliability of the benchmark used by the Department to evaluate, and subsequently discard, Indian import data on bearing quality steel bars. In doing so, Timken contends that the U.S. import statistics used by the Department as an indication of the world market price and, hence, as a benchmark for bearing quality steel are far lower than the world market price for this type of steel. Second, Timken argues that, when compared to other indicia of world market prices (including the costs reported by the Indian bearing manufacturers), the Indian import statistics are a reliable source from which to obtain steel bar values.

Timken supports its argument by noting that the U.S. import statistics for bearing quality steel bar are skewed by large volumes of imports from Japan of carbon steel bar used in the manufacturing of wheel hub units and not in the production of TRBs. Timken notes that, when those imports are removed, the average value of U.S. imports is $889 per MT. Timken states that another reason for the variation in the prices between U.S. and Indian import statistics is the physical difference in the steel itself. Timken argues that the U.S. import statistics include two types of bearing quality steel: case-hardened and through-hardened, which vary significantly in price. Therefore, the U.S. statistics do not exclusively represent the type of steel used by the PRC producers (through-hardened), and they are unreliable as a basis for evaluation of Indian values.

Timken argues that several market prices confirm a benchmark of $900 per MT for 52100 grade steel. Timken notes that the price charged by SKF for sales from its subsidiary Ovako, Timken's own large-quantity prices, and U.S. imports from Sweden confirm the accuracy of a $900 per MT benchmark.

Finally, Timken contends that, measured against a more reliable world benchmark, Indian import statistics for harmonized tariff schedule ("HTS") category 7228.30 (for hot-rolled steel bars and rods) are on par with world market prices, around $900 per MT. Timken insists that the reliability of the Indian import values is also supported by the values found in the Indian bearing producers' annual reports.

Respondents argue against the use of Indian import data when calculating material costs for steel used in the production of cups and cones. Respondents note that in prior reviews, as well as in the Preliminary Results, the Department correctly determined, after a comprehensive analysis, that the Indian import statistics for category 7228.30 were unreliable.

Respondents contend that Timken's argument that the U.S. import statistics for category 7228.30.20 are skewed is speculative. Respondents refute Timken's attempt to distinguish between different types of steel used by arguing that there is no evidence on the record that the Chinese producers used case-hardened versus through-hardened nor is there documentation on the record as to the price differentials between case-or through-hardened steel or between different grades of bearing steel.

Respondents also disagree with Timken's suggestion that Indian bearing manufacturers' steel costs establish the accuracy of Indian import statistics. Respondents contend that Timken's use of steel bar prices for Asian Bearing at $938 per MT does not support the validity of Indian import data at a price of $1,384 per MT. Furthermore, respondents point out that the information in Asian Bearing's annual report does not indicate if the steel bars used are hot-rolled, cold-rolled, case-hardened or through-hardened, nor is the grade indicated, which Timken has argued is of vital importance when analyzing the reliability of a surrogate or benchmark. If Timken wanted to compare import statistics with actual transaction prices, respondents add, it should look to the actual prices paid by the Chinese respondents themselves. According to respondents, such prices prove that the Indian import prices are not reliable or reasonable surrogate values.

Department's position: In selecting a surrogate value for steel used in the production of cups and cones, the Department has consistently found that data for Indian import category 7228.30 (hot-rolled bars and rods of alloy steel) are unreliable. In examining Indian import statistics, we were unable to isolate bearing quality steel because none of the eight-digit tariff categories within the Indian basket category 7228.30 specifically included bearing quality steel bar. We examined each of the Indian eight-digit categories and found that only the "Others" category (7228.3019) could contain the type of bearing quality steel used in the production of cups and cones, in addition to other types of alloy steel. In comparing these data to other market values, including U.S. imports from category 7228.30.20 (the only import category on the record which explicitly contains only bearing quality steel), the Department found the Indian values to be unreliable because the values for these imports were significantly higher (*See* Memorandum to the File: "Selection of a surrogate country and steel value sources," dated June 1, 1998).

The Department used U.S. import data under HTS category 7228.30.2000 (Other Bars and Rod, Ball Bearing Steel, Not Furthermore Worked Than Hot-Rolled or Extruded) as a benchmark for hot-rolled bearing quality steel bar because these data are specific to the type of steel used by the Chinese respondents and are the most precise source of market prices for this product on the record. The use of such a benchmark was upheld on numerous occasions and most recently in *Peer Bearing* v. *United States*, 12 F. Supp. 2d 445 (CIT 1998) ("Peer").

We do not agree that Japanese values included in the U.S. import statistics create a distortion which would make the U.S. statistics an inappropriate benchmark. Timken's argument is speculative because the affidavit submitted in support of this claim does not definitively indicate that the Japanese imports are not bearing quality steel of the type used in the production of TRBs.

Furthermore, we disagree with Timken's argument regarding the unreliability of U.S. import statistics as a benchmark due to the inclusion of two

types of bearing quality (case-hardened and through-hardened) steel which vary significantly in price. There is no definitive evidence on the record indicating that the Indian import statistics do not also include case-hardened and through-hardened steel as well.

Finally, even if we were to accept Timken's argument and disregard U.S. imports from Japan, the Indian import prices of $1,384 per MT remain substantially higher than a potentially re-calculated average U.S. import price of $889. Thus, even if the Department were to accept Timken's argument that an appropriate benchmark for steel used in the production of cups and cones should be $900 per MT, based on SKF's transfer prices, Timken's own steel prices, and U.S. imports from Sweden, the Indian import values are still over 50 percent higher than Timken's proposed benchmark. We therefore continue to base our comparison on the U.S. benchmark.

Comment 3: Reliability of Indonesian Import Statistics

Timken argues that Indonesian import statistics are not reliable as the basis for valuing bearing quality steel bar used by the Chinese manufacturers in the production of cups and cones because (1) there is no evidence of a significant bearing industry in Indonesia that would import substantial amounts of bearing quality steel bar; and (2) the Indonesian tariff category selected by the Department is too broad to be a reliable indicator of bearing quality steel prices.

With respect to the first point, Timken contends that the record in the instant proceeding indicates that there were only two significant bearing producers operating in Indonesia during the POR: PT Logam and PT NSK. Timken argues that, using U.S. import statistics to determine the ratio of bearing units to weight for the size ranges manufactured at PT Logam and PT NSK, it can be deduced that the two companies together produced at most 2,650 MT of bearings. However, Timken maintains, Indonesian imports under heading 7228.30 for the period of January–October 1997 (excluding NME imports) were 24,853 MT. Timken therefore argues that because the Indonesian bearing producers could have used no more than 20 percent of the steel imports for their own production, the remainder of imports under heading 7228.30 must have consisted of non-bearing quality steel.

Timken also argues that Japanese export statistics show that only 2,974 MT of Japan's exports to Indonesia during the POR were exported under tariff categories which might include bearing quality steel bars used in the production of cups and cones. The balance (9,405 MT), Timken argues, consisted of other types of alloy steel bar. Furthermore, looking at the same export statistics, Timken argues that a substantial quantity (1,570 MT) of the total Japanese exports under category 7228.30 consisted of "other" alloy steel bar that had a value far below any benchmark estimate of world market prices for bearing quality steel. Therefore, Timken continues, Indonesian imports under heading 7228.30 are not solely or even primarily bearing quality steel.

With respect to the second point, Timken argues that the Indonesian tariff category selected by the Department is too broad and includes a variety of hot-rolled alloy steel bars that are excluded from the corresponding Indian tariff category. For example, Timken states that the Indonesian category includes different qualities of alloy steel bar, including bright bar of alloy tool steel, other bright bar, spring steel, sulphur bearing steel, and tool and die steel.

Respondents argue that Indonesian import statistics are reliable in valuing steel bar because there is ample evidence of a significant bearing industry in Indonesia due to the presence of two large multinational bearing factories and the fact that Indonesia actually exports bearings. Respondents also argue that the Indonesian import values are reliable because they are comparable to the U.S. import values for the same category of steel, unlike the Indian values which are considerably higher.

Respondents also argue that the volume of Indonesian imports under 7228.30 is not too large to be a reliable indicator of bearing quality steel. Respondents argue that Timken has not proven that there is not a significant bearing industry in Indonesia. Respondents also reject Timken's argument that Indonesian imports are too large. Respondents explain that Indonesia, unlike the United States, does not produce much bearing steel, and, therefore, must import most of it.

Respondents state that it is quite possible that both Indonesian and Indian tariff classifications for this input include steel which is not bearing quality. Additionally, respondents contend that Timken has not provided any evidence that the Indian tariff classification 7228.3019 actually includes bearing quality steel. Given these difficulties, respondents believe that the Department correctly used U.S. prices as a benchmark to determine steel values for cups and cones and, thus, cross-check the validity of the Indonesian import statistics.

Respondents dispute Timken's contention that the Indonesian steel category is unreliable because it is overly broad. Respondents state that the Indonesian data are consistent with U.S. prices for bearing quality steel and, therefore, are more reliable than the Indian values. Respondents also maintain that even if the Indian category contained "bearing quality steel bar used in tapered roller bearings," the Department would be under no obligation to use those data unless it determined that these data were reasonable and reliable, which has not been the case.

Department's Position: In determining a value for the steel used in the production of cups and cones, the Department reviewed several data sources, including: U.S., Indian, and Indonesian import statistics, and Japanese export data in order to determine the most accurate value for steel inputs. As explained in comment 2 above, we are not using import data from India, the primary surrogate country, because the import category for hot-rolled bars and rods of alloy steel bars is an "others" category which includes several types of steel in addition to bearing quality steel and bearing quality steel cannot be segregated. Moreover, when compared with the U.S. import statistics for the HTS category which only includes bearing quality steel bars and rods, the Indian values are unreliably high.

A similar comparison was made between the U.S. benchmark and Indonesian import statistics. As correctly pointed out by Timken and respondents, the Indonesian import category 7228.30 most probably includes several types of hot-rolled bars and rods of alloy steel, in addition to the bearing quality steel bars and rods used in cup and cone production. However, when compared with the benchmark, the Indonesian data are consistent.

Nevertheless, we were persuaded by Timken's arguments regarding the volume of steel imported into Indonesia versus the volume of bearing quality steel that could actually be consumed in Indonesia. Thus, we have looked more closely at the Indonesian import values. In particular, we examined Japanese data on exports to Indonesia. The Japanese export statistics provide a breakdown of the broad six-digit 7228.30 category into several more narrowly defined eight-digit categories. As Timken correctly points out, these statistics indicate approximately 2,974 metric tons of exports were made to

Indonesia during the POR under Japanese HS code 7228.30.900, "Bars and Rods, of Other Alloy Steel," a category which would include bearing quality steel bar.

Based on our review of these data, the Department has decided to use the Japanese export data to Indonesia for category 7228.30.900 to value steel bar as best available information. In using these data, we have isolated the narrowest category most likely containing bearing quality steel bar.

In our calculation of the average per MT price of the Japanese exports to Indonesia, we excluded one shipment, the value of which was far below the average price, and another shipment, the value of which was far above the average price. On this basis, we calculated an average price of $755 per MT. This value is consistent with the U.S. benchmark of approximately $750 per MT.

Because this Japanese tariff category is the narrowest category which could contain bearing quality steel and because it is consistent with our benchmark, we believe it is the best alternative for valuing steel used in the production of cups and cones. Moreover, we view the data on Japanese exports to Indonesia as an Indonesian value, *i.e.*, it is a value from a country comparable to the PRC. Although the data are from Japanese statistics, we have used those statistics to "refine" the Indonesian data in an attempt to make the import category conform better to the input used by the PRC TRB producers.

Comment 4: Steel Input Values Falling Outside the Period of Review

Timken argues that, if the Department relies on Indonesian import statistics, such data should be limited to the POR. Timken contends that, in the Preliminary Results, the Department departed from recent precedent in prior TRBs from the PRC cases in using factor values for a period of time outside the POR.

Respondents contend that Timken's arguments are without merit because the Department routinely uses data which fall outside the POR when necessary to ensure a reasonable surrogate value. In Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 63 FR 16758 (April 6, 1998) ("Hand Tools 1998"), respondents state that the Department used Indian import statistics for the period April 1995 through March 1996 to value steel for a POR of February 1996 through January 1997. Respondents point out that there was only an overlap of two months in that case, and the rest of the data were from outside the POR. Furthermore, respondents argue that data from a greater period of time will include a greater volume of imports and, thus, will be less likely to be affected by price fluctuations.

Department's Position: We agree with Timken. Whenever possible, the Department attempts to use data that are contemporaneous with the POR. See TRBs IX, 62 FR at 61283. Since we have sufficient data from the POR to calculate a reasonably accurate value, we do not need to use data from ouside the POR. Therefore, for the final results, the data used to value hot-rolled bars and rods used in the production of cups and cones are contemporaneous with the POR. See Comment 3 above and the Memorandum to Susan Kuhbach; "Factors of Production Values Used for the Final Results," dated November 9, 1998.

Comment 5: Proper Import Category for Steel Scrap Valuation

Timken argues that if the Department uses an import category for alloy steel scrap for purposes of valuing roller scrap, the value used should be based on Indian imports under HTS category heading 7204.29.09, not 7204.29. Timken contends that the Department departed from recent precedent in the Preliminary Results by using category 7204.29. Specifically, Timken notes that in TRBs VII, the Department used the more narrow category of 7204.29.09. Timken further argues that subcategory 7204.29.09 "waste and scrap of other alloy steel" includes bearing steel and is, therefore, a more appropriate subcategory from which to value roller scrap.

Respondents argue that the Department properly valued roller scrap steel using the broader six-digit category 7204.29 "waste and scrap of other alloy steel." Respondents contend that Timken offers no evidence that bearing quality steel is included only in the "other" eight-digit subcategory (7204.29.09), except for the fact that the Department has used this subcategory in prior reviews. Furthermore, respondents assert that it is incumbent upon Timken to establish the reason bearing quality steel could not be classified under the broader Indian customs category and by using the broader category, the Department ensures that bearing quality steel is included in the data.

Department's position: We agree with Timken that it is appropriate to exclude specific subcategories that do not relate to the type of scrap that would be generated from TRB roller production. In the Preliminary Results, the Department used the broad six-digit Indian import data under category 7204.29 (which included subcategories: 7204.29.01, "waste and scrap of high speed steel," and 7204.29.09, "others") to value scrap derived in the production of rollers. We disagree with respondents that in using the broader 7204.29 category the Department ensures that bearing quality steel is included in the data because although both subcategories 7204.29.01 and 7204.29.09 contain scrap derived from alloy steel, subcategory 7204.29.01 ("waste and scrap of high speed steel") contains the residue from high speed steel which is not the same type of steel used in bearing production. Therefore, subcategory 7204.29.09 ("other") is the only subcategory under the broader 7204.29 category that could possibly contain scrap generated from bearing quality steel.

Therefore, consistent with prior reviews, we determine that category 7204.29.09 best captures the type of scrap generated from the production of rollers and we have recalculated the surrogate value for this scrap excluding data from subcategory 7204.29.01. However, the Department notes that we continue to use the broad category 7204.29 to value scrap from the production of cups and cones because the Indonesian import data do not provide a further breakdown of this category into subheadings. Therefore, for scrap generated from cups and cone production, we used data under Indonesian import category 7204.29, "other waste and scrap of alloy steel."

Comment 6: Scrap Valuation

Timken argues that the values used by the Department for scrap in the Preliminary Results are too high when compared with world market prices for scrap. Timken contends that the PRC bearing producers' scrap consists of low quality turnings, shavings, and chips. Timken states that the scrap values selected by the Department reflect prices of high-quality scrap, not the residue from bearing production. Timken supports its argument by noting that scrap prices reported in the American Metal Market for "shop turnings," a low quality scrap, averaged only $82 per MT delivered, whereas the value the Department selected cup and cone scrap was $150 per MT. Furthermore, Timken argues that U.S. import data, which the Department has insisted are a reliable indicator of world market prices, show that "turnings" scrap imported under heading 7204.41.0060 was valued at $104 per

MT during the POR. Timken argues, by comparison with these and other prices, the Indonesian value at $150 per MT is not representative of Chinese scrap values.

Respondents argue that Timken does not provide evidence that the scrap it is using as a basis of comparison is derived from bearing quality steel. Respondents point out that the U.S. import statistics for HTS 7204.29.00 (the tariff heading used to develop Indonesian surrogate data for scrap from cup and cone production), shows a scrap value of $128 per MT. Thus the Indonesian value is consistent with the U.S. import price for alloy steel waste.

Department's position: We disagree with Timken that the import categories selected by the Department to value scrap generated from the production of cups, cones, and rollers do not reasonably reflect the value of scrap generated in the PRC production process. Timken's comparison of the surrogate value used for scrap generated from cup and cone production to other scrap values is the equivalent of comparing apples to oranges. While the PRC cup and cone production process may generate lower quality scrap, it remains bearing-quality steel scrap. Timken, however, is looking at values for scrap from steel which is of a grade and value inferior to that. The HTS category which Timken uses for its comparison (7204.41.0060 "borings, shovelings, and turnings" does not include scrap generated from bearing quality steel.

Since steel used in the production of cups and cones is bearing quality steel, the scrap resulting from the production thereof must be of a corresponding grade. For that reason, it is appropriate to use an import category for scrap containing alloy steel, as is the case for import category 7204.29.

Regarding Timken's argument that the scrap values selected by the Department should be adjusted to reflect the low quality of the scrap generated in the Chinese production process there are no further subcategories under 7204.29 which differentiate between different values of scrap within that particular broad category. Of the information contained on the record, only the broad U.S. HTS categories 7204.41 and 7204.49 provide for a break-down of scrap into sub-categories based on the size and quality of scrap. However, these categories do not include bearing quality steel.

The Department has not adjusted the values for scrap from the Preliminary Results, with the exception of the change described in Comment 5 above relating to roller scrap.

1(b) Labor Valuation

Comment 7: Using labor costs reported by Indian bearing manufacturers

Timken argues that the best available information regarding surrogate labor rates is the data provided by the Indian bearing producers' financial statements. In response to the Department's rejection of this information on the basis that it is not possible to allocate direct labor hours to the subject merchandise because these companies produce other products, Timken asserts that the Indian companies produce only or almost exclusively antifriction bearings. *See* Memorandum to Susan Kuhbach: "Selection of surrogate labor wage rates for preliminary results of review," dated June 30, 1998) ("Wage Rates Memo"). Timken contends that neither in this review nor any other segment involving TRBs or antifriction bearings has any party indicated that hourly labor costs within the same company vary according to the type of antifriction bearing produced. Moreover, Timken argues that the data from the International Labor Organization's ("ILO") *Yearbook of Labor Statistics* ("YLS"), which the Department used in its Preliminary Results, are less reliable because the YLS categories cover broad groups of industries, including companies that do not produce bearings at all.

Wafangdian and Luoyang disagree with Timken and contend that the Indian bearing producers' financial statements show that labor rates vary widely among producers. Furthermore, in contrast to the Chinese data, the Indian financial statements include labor costs associated with selling, general, and administrative expenses ("SG&A"). CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier argue that it would be a vast overstatement to use the Indian bearings producers' labor rates because they include the costs of senior management and of labor used in the production of merchandise other than bearings. Moreover, as upheld recently in Peer, the Department should use objective, industry-wide values that represent the industry norm rather than company-specific values because the surrogate producer is not the subject of valuation. Therefore, the Department should reject Timken's argument and continue to apply widely published YLS data for the final results.

Department's position: In order to provide for transparency and predictability, it has been the Department's policy in NME cases to rely, to the extent possible, on publicly available statistical information from the first choice surrogate country to value FOP over company-specific data. *See* TRBs IX. While we acknowledge that such data (e.g., YLS data) cover different types of labor and different products, their public, published nature makes them preferable to financial report data, which could vary dramatically, depending on which producers' data go into the calculation. Therefore, contrary to Timken's assertion, we continue to believe that the use of the Indian bearing companies' data in valuing labor costs could lead to distortive results and the use of public statistical information for valuing labor aids in increasing the transparency and predictability of our calculations.

Comment 8: The Yearbook of Labor Statistics vs. Investing, Licensing & Trading Conditions Abroad

If the Department declines to use company-specific data, Timken argues that the Department should base surrogate labor rates on data from the Investing, Licensing & Trading Conditions Abroad; India ("IL&T") as it has done in the past three administrative reviews of this case, rather than on the YLS data. According to Timken, the IL&T is preferable for two reasons: (1) it provides separate wage ranges for various skill categories, which the YLS does not, and (2) its data are more contemporaneous with the POR than the YLS data.

In response to the Department's contention that the monthly wages reported by the IL&T are the wages mandated by Indian law and not the wages actually paid, Timken argues that the Department has no basis to assume that the actual wages are different from the wages mandated by the government. Timken also rejects the Department's argument that the IL&T rates should not be used because they do not include fringe benefits paid to workers. Timken argues that the cost of such benefits is easily calculated as exemplified by the Department's past practice.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier concur with the Department that the wages reported in the IL&T are based on wages stipulated by Indian law rather than a survey of average wages actually paid, and that these wage rates do not include benefits normally added to base pay. Respondents refer to the notation in the IL&T which states that "these rates are purely indicative; wages vary greatly by state and industry." Accordingly, the Department properly applied the YLS labor rate which represents the industry norm and more accurately reflects the cost of labor in India. Furthermore, respondents argue that Timken has overlooked the Department's extensive

application of the YLS single average Indian labor rate as a surrogate in recent antidumping reviews involving China.

Wafangdian and Luoyang argue that the IL&T data are based on theoretical values. Given the Department's preference to use actual values, the YLS data are preferable because they are based on actual values collected by government agencies.

Department's Position: We disagree with Timken's contention that the IL&T data represent surrogate labor values preferable to the YLS. Consistent with the Department's practice we have applied a single average labor rate to all reported skill levels. *See,* e.g., Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440, 12446 (March 13, 1998) ("Manganese Metal"); Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 61794, 61780 (November 19, 1997); Heavy Forged Hand Tools from the People's Republic of China: Final Results of Antidumping Administrative Reviews, 62 FR 11814, 11815 (March 13, 1997). Therefore, the specificity afforded by the IL&T data with regard to different wages for different skill levels is not an important consideration.

Moreover, the Department learned in a past NME case that the reported average monthly wages provided in the IL&T are based solely on wages stipulated by Indian law rather than on any survey of average wages actually paid. *See* Manganese Metal. Given that wages in India vary considerably by industry and region, there is no basis on which to conclude that wages mandated by Indian law reflect average wage rates across the Indian economy. Also, it appears from the text in the IL&T data that the wage rates do not include additional mandatory and voluntary benefits which normally add an additional 40–50% to the base pay. The Department, in choosing a surrogate labor value, seeks to obtain the average fully-loaded cost (i.e., including all costs and benefits in addition to basic wage) of employing labor on as industry-specific a basis as possible. Unlike the IL&T, the YLS provides fully-loaded labor rates for the basic metals industry in India as a whole. Accordingly, we have continued to use YLS for the final results.

Comment 9: Valuation of SG&A and Indirect Labor

Timken argues that indirect and SG&A labor rates are understated and are significantly higher than the wage rates applied to direct labor. Timken claims that all evidence on the record indicates that indirect and SG&A labor consists of highly skilled workers who would receive a much higher compensation, compared to direct production workers who are predominately unskilled. Thus, by using the YLS' single undifferentiated hourly labor rate for all workers in manufacturing, the Department disregarded the significant differences in labor costs among different skill levels for direct workers and different specialized skills for indirect and administrative workers. Timken suggests using the IL&T, which provides labor rates by skill levels, to reflect the higher skill levels of the indirect and SG&A laborers.

Wafangdian and Luoyang reject Timken's contention and suggestion. They argue against using the IL&T because these data are based on estimated differences between skill levels and the evidence on the record does not establish the skill level of indirect laborers involved in the production of the subject merchandise. Therefore, the Department has no reliable means to develop a rate for indirect labor.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier contend that the Department's valuation of indirect and SG&A labor is consistent with prior reviews and avoids the aberrations that would result if a blended rate was applied to direct labor and separate surrogate skilled rates were applied to indirect and SG&A labor as suggested by Timken. Respondents also comment that Timken's recommendation to apply IL&T data is inappropriate as they contain no basket category for overhead and SG&A labor.

Department's Position: As explained above, we have used YLS data for wage rates. The YLS data provide a single blended labor rate relevant to the fabricated metals industry for India as a whole. This blended labor rate includes direct, indirect, and SG&A labor hours, as well as among skilled, semi-skilled, and unskilled workers. Also, as respondents note, it would be inconsistent to apply a blended rate to direct labor and a separate surrogate skilled rate to indirect and SG&A labor. For these reasons, we have continued to apply the blended rate from the YLS to SG&A and indirect labor for our final results.

Comment 10: YLS Category 381 vs. 382

Timken argues that if the Department decides to continue using the YLS in the final determination, it should apply the wage rate for category 382 (manufacture of machinery, except electrical) rather than category 381 (manufacture of fabricated metal products, except machinery and equipment) as used in the Preliminary Results. Timken notes that subcategory 3829 02 of the United Nations' *International Standard Industrial Classification of All Economic Activities* ("ISIC") includes the manufacture of bearings, gears, gearing and driving elements. Moreover, in previous administrative reviews where the Department relied upon the YLS, it applied the wage rate for category 382.

Wafangdian and Luoyang state that it is not clear that the Department should use category 382. First, they argue that the ISIC definitions referenced by Timkens may not be used by the ILO. Second, the ISIC definition for subcategory 3829 02 may be limited to driving elements that include bearings for driving elements only, rather than TRBs in general. Absent this information, the Department should continue to use category 381.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier note that in the 1990–93 reviews, Timken argued that the Department should not use category 382 for purposes of labor costs because the category was "too broad." Respondents argue that Timken cannot have it both ways. Furthermore, respondents state that category 381 has been used in prior administrative reviews of bearing and steel cases and that it accurately reflects the cost of labor engaged in the manufacture of metal products.

Department's Position: We agree with Timken with respect to the use of ISIC major group 382. Upon further review, we found that labor associated with bearing production is included in category 382 and that the labor categories that comprise ISIC major group 381 are not relevant to bearing production. Therefore, the Department has used major group 382 for the final results of these reviews.

Comment 11: Number of Labor Hours Used To Produce TRBs

Timken argues that the verifications conducted by the Department confirm its allegation that labor usage is uniformly understated by respondents. Timken asserts that respondents excluded from their responses any labor hours in which direct labor workers were not actively producing bearings. Timken substantiates its argument by referring to the verifications conducted at Xiangfan and Luoyang in which the Department discovered that labor hours reported were understated due to, respectively, the reporting of standard

processing times as opposed to actual hours worked and the omission of downtime from the reported direct labor hours. Timken argues the relevant issue is whether direct laborers would have been paid for idle time or downtime in the surrogate country. As such, respondents should have reported total hours on site as opposed to the hours for which work was paid. Overall, Timken maintains that the Department should increase the number of labor hours for all respondents, using data provided by Timken as "facts available." At the least, for those respondents that reported direct labor hours accurately but omitted idle time, Timken suggests that the Department increase indirect labor hours to account for the missing labor.

CMC, Liaoning, Wanxiang, Xiangfan, Zhejiang, and Premier object to Timken's argument. They contend that Timken is attempting to expand the definition of direct labor beyond its reasonable terms. Noting that Timken's argument to capture "total hours on-site" and not merely for which work was paid, would serve to double count the labor dedicated to indirect labor tasks. Therefore, the Department should not engage in Timken's speculative adjustments and should apply the reported and verified labor data from respondents.

Department's Position: It is the Department's practice to value labor by determining the number of hours (including downtime) which are needed to produce the subject merchandise in the facilities in the state-controlled-economy country and applying the surrogate wage rate. At verification, we closely examined respondents' accounting systems to determine how they calculated the labor hours reported in their submissions. As Timken notes, we did find inconsistencies in the labor data reported by Xiangfan and Luoyang. For these companies, we made adjustments in our Preliminary Results to accurately reflect the total amount of actual labor hours worked. Additionally, for Luoyang and Wafangdian we increased the amount of labor hours by the amount of unreported downtime associated with the production of the subject merchandise in order to capture total labor hours. Thus, were we to adjust indirect labor by the amount of idle time as Timken recommends, we would increase the indirect labor percentage and decrease the total direct labor figure by the amount of labor that was reclassified. The net result of this adjustment would yield no difference in the total labor used by these companies to produce the subject merchandise.

In summary, for certain companies we discovered at verification unreported labor hours related to downtime. For these companies, and for those companies for which we were unable to verify certain aspects of the labor hours reported, we corrected the reported hours appropriately. For other companies, the number of labor hours verified. For these companies, no changes were made to the reported figures.

1(c) Overhead, SG&A and Profit

Comment 12: Adjustment to Factory Overhead and SG&A Ratios

Timken argues that the methodology used by the Department in the Preliminary Results deliberately understates factory overhead and SG&A costs and, consequently, NV. This distortion, according to Timken, is due to the fact that the Department used reported materials and labor costs, calculated as the average of the reported costs of eight Indian bearings producers, as the denominator in deriving the surrogate overhead and SG&A ratios. However, the Department then applied these ratios to the lower cost of materials and labor it calculated using other, lower-valued surrogate sources. Timken contends that the Indian producers' materials costs on average are much higher than the Department's calculated total materials costs because the Indian producers use higher cost materials (than those reflected in the surrogate materials values), and because their material costs include high import duties paid in India.

Timken argues that the Department has the legal authority to adjust surrogate overhead and SG&A ratios in order to derive the most accurate dumping margin possible. Therefore, Timken contends, the Department should adjust the denominator used in calculating the overhead and SG&A ratios by the ratio of Indonesian steel and labor values to the eight-producer average materials and labor costs. An alternative methodology, Timken suggests, would be to make a similar adjustment using only the reported costs of Asian Bearing Company ("Asian"), rather than the eight-producer average. This alternative would be reasonable, Timken claims, because Asia Bearing reportedly produces only antifriction bearings and has clearly identified its raw material inputs in its financial statements.

Respondents state that the Department should continue its practice of not making these kind of adjustments to surrogate values. They cite Peer to support the Department's practice of not adjusting surrogates as upheld by the court in previous reviews. Moreover, the Department should not make Timken's proposed adjustment because the record is unclear as to what the exact materials used by the Indian factories are. Therefore, an adjustment would not necessarily improve the reliability of the overhead or SG&A data. Furthermore, respondents contend, the fact that the Indian producers' reported costs are higher merely reflects the fact that these factories are more modern and located in a more industrialized country than are the PRC factories. In fact, argue respondents, the surrogate ratios are already too high and should, instead, be lowered. Finally, respondents state that differences in overhead costs reflect the unique circumstances of each respective company. Adjusting the costs of one to reflect the costs of another would be "mixing apples and oranges."

Likewise, respondents urge the Department to reject Timken's alternative proposal of adjusting the surrogate values using Asian Bearing's reported costs only. Respondents argue that the Department has repeatedly rejected the use of this company's data in the past because the company is a "sick" company. Moreover, it would be inappropriate to rely simply on the reported costs of one factory where public data, more reflective of the industry generally, are available.

Respondents also object to Timken's proposal to adjust the surrogate value ratios. According to respondents, the Act, requires the Department to value NME factor inputs using the best available information. The Indian producers' costs, as reported in their financial statements, represent the best available information for valuing factory overhead and SG&A. The Act does not, respondents continue, require the Department to substitute specific Indian producers' costs for Chinese FOP data.

Department's Position: We disagree with Timken's contention that an adjustment to our surrogate ratios for factory overhead and SG&A is necessary. Timken has raised this issue in earlier reviews, and our position (which was upheld in Peer) is unchanged.

First, Timken is incorrect in stating that the Department calculated overhead and SG&A costs as a percentage of materials and labor costs. Rather, we calculated these ratios as a percent of direct materials inputs, direct energy inputs, as well as the "Consumption of Traded Goods." Neither direct nor indirect labor was included in either the numerator or denominator of the surrogate ratios.

Second, consistent with our methodology discussed, among other places, in TRBs VIII and TRBS IX (62 FR at 6178 and 62 FR 61287, respectively) although we prefer to base our surrogate values on industry-wide, public information for producers of merchandise under review during the POR, such information is not available for factory overhead and SG&A rates in this review. For these final results, we therefore have based our surrogate values for overhead and SG&A (excluding labor) on the average reported costs of Indian producers of like or similar merchandise. In deriving these ratios, we used the average of the Indian producers' reported data with respect to the numerator (reported overhead and SG&A expenses) and the denominator (direct input costs excluding labor), thus yielding internally consistent ratios. These ratios, when multiplied by our calculated FOP values, constitute the best available information concerning overhead and SG&A expenses that would be incurred by a PRC bearings producers given such FOP data. Timken's recommended adjustment (including the proposed alternative adjustment based solely on Asia Bearing's reported costs) would itself distort the ratios rather than correct the alleged distortions in our calculations.

Third, with regard to Timken's assertion that the reported Indian producers' materials costs include high import duties which have the effect of lowering the calculated surrogate ratios for overhead and SG&A, we note that Timken has not provided any information regarding the amount of import duties that are included, nor has Timken provided a means of identifying and eliminating such duties from our calculations. Although we would not normally include import duties in the surrogate values for materials costs, we have no evidence as to the amount of duties, if any, included in the Indian producers' reported costs. Therefore, we did not deduct an amount for import duties from the reported materials costs for the Indian producers when calculating the overhead and SG&A ratios.

We likewise disagree with the contention of respondents that the Department's calculated costs for overhead and SG&A are, in fact, too high because they are based on the reported costs of Indian producers which are much more sophisticated than the PRC producers. For the reasons enumerated above, the average of the reported costs of the Indian bearings producers represent the best surrogate information available for valuing overhead and SG&A in this review. (As detailed in Comment 14 below, for our final results we have only used the reported cost data of six of the Indian producers.)

Comment 13: Excluding "Consumption of Traded Goods" From Overhead Rate Calculation

Timken argues that the Department should exclude the category "Consumption of Traded Goods" from the denominator in calculating the factory overhead ratio because this traded goods category includes items which are only purchased and sold—but not produced—by the Indian bearings producers and, therefore, have nothing to do with the producers' manufacturing operations. Timken notes that the traded goods category is listed separately in the producers' financial statements from those products noted as "manufactured and sold." Thus, because traded goods are neither produced directly nor used as inputs in manufacturing other products, the producers do not incur any factory overhead expense for these products.

Respondents argue that "Consumption of Traded Goods" should be included in the denominator of the factory overhead ratio. Respondents counter Timken's argument by noting that the Department has specifically rejected Timken's argument for excluding this category in previous reviews. *See*, e.g., TRBs IX. Respondents further contend that Timken is making an implicit argument that other expenses, such as depreciation, warehousing and maintenance expenses, incurred as a result of these traded goods should be included in the numerator of the overhead ratio, whereas the traded goods amount itself should not be included in the denominator. This, respondents state, would distort the costs of these Indian producers and, therefore, is illogical.

Department's Position: The Department has addressed this issue previously in TRBs VIII and TRBs IX (62 FR at 6182 and 62 FR at 61288, respectively). In both cases, we rejected Timken's argument that the "Consumption of Traded Goods" category should be excluded from the denominator of the overhead ratio. As we explained in TRBs IX, these traded goods are not overhead expenses but, instead, reflect the common practice of manufacturers of purchasing finished and semi-finished goods to meet their clients' demand. The Indian bearings producers incur the expense of, inter alia, purchasing and warehousing these products. Because these purchased goods are an integral portion of the costs of goods sold, they are ordinary business expenses that we cannot ignore. Therefore, for the final results we have included "Consumption of Traded Goods" as a component of the denominator of the factory overhead ratio.

Comment 14: Excluding Asian Bearing Company and National Engineering Company

Respondents argue that the Department should not include the companies Asian and National Engineering Company ("NEI") among the list of Indian bearings producers utilized for calculating factory overhead, SG&A and profit ratios. Respondents contend that, in past reviews, the Department has deliberately excluded data from Asian on the grounds that it is a "sick" company (as defined under Indian law) and that its accounting practices are suspect. Respondents further contend that the calculated overhead and SG&A ratios for Asian and NEI are clearly aberrational and, as such, not reflective of the Indian bearings industry. Respondents also argue that NEI's data are clearly extraordinary and, as such, should not be used. Therefore, respondents argue, the Department should exercise its discretion to exclude aberrational data by basing its overhead, SG&A and profit calculations on the reported data for the remaining six Indian bearing producers only.

Timken counters that Asian's data should not be excluded merely on the grounds that it is a "sick" company. In fact, Timken argues, having sick company status has enabled Asian to reduce certain overhead and SG&A costs such as interest and depreciation charges. There is, moreover, no evidence or reason to believe that any of Asian's other direct, overhead or SG&A costs would be affected by the company's sick status. Furthermore, Timken continues, there is no justification for excluding a sick company from a sample of companies meant to reflect the industry at large. Any industry or country has a certain number of non-profitable companies, and this should be reflected in the industry-wide data. Finally, the fact that Asian's interest expense accounts for a slightly higher portion of its total costs is not a basis for excluding this company.

With regard to NEI's data, Timken argues that simply because the overhead rate of this company is different from that of the other companies does not establish that NEI's rates are unreliable or aberrational. Timken argues that if by this logic NEI's data were aberrational,

then another Indian producer FAG should also be excluded on the grounds that its ratios are extraordinarily low. Timken, citing TRBs VIII, notes that the Department acknowledges that differences in various companies' overhead and SG&A ratios can be due to differences in the input materials used, the payment of import duties on the input materials, the capital structure of the company, and the company's accounting practices. Thus, in this case, argues Timken, the differences in the ratios of the various Indian bearings producers could result from the fact that some of them are more fully integrated and, therefore, have higher capital costs. Given these differences in company structure and practice, Timken argues, taking an average of all eight of the Indian producers' reported costs yields the most reasonable mix of different practices, and most fairly serves as a surrogate.

Department's Position: We agree with respondents that data for Asian and NEI should be excluded from the average of reported costs for Indian bearings producers. In the Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof From the People's Republic of China, 56 FR 67590, 67594 (December 31, 1991), the Department stated that, "we believe that Asian is not an appropriate surrogate primarily because the Auditor's Report notes that the financial statements are not presented in accordance with the generally accepted accounting principles ("GAAP") of India." In this review, the Auditor's Report included with Asian's 1996–97 financial statements expresses a clear reservation about how certain interest expenses (with their corresponding effects on depreciation and other expenses) have been reported, noting that the methodology is not in accordance with accounting principles recommended by the Institute of Chartered Accountants of India. The Auditor's Report also notes that Asian continues to be a "sick" company as defined by India's Sick Industrial Companies Act. Likewise, the auditors' endorsement of NEI's 1996–97 Financial Statements, as contained in the Auditor's Report, includes qualifications regarding, inter alia, the company's treatment of various overhead and SG&A expenses.

With regard to Timken's arguments concerning Asian and NEI, although we recognize, as respondents argue, that the overhead and SG&A ratios for Asian and NEI generally are higher than those of the other six producers, this apparent difference is not our primary reason for excluding the Asian and NEI data. Rather, we have excluded the data for Asian and NEI in calculating surrogate overhead, SG&A and profit ratios primarily because, according to the Auditor's Reports, the methodology used in recording and reporting the financial condition of these two companies appears, in certain instances, to be inconsistent with the methodology (i.e., Indian GAAP) used by the remaining six companies. Given these significant differences, it would be incongruous to combine the reported data of all eight companies.

Comment 15: Excluding Excise Duties From the Overhead Calculation

Respondents argue that the Department improperly included excise duties in the overhead costs of the Indian producers on which the Department based its calculation of the surrogate overhead ratio. Respondents argue this is incorrect because excise duties are not paid on exported merchandise but, rather, only on goods consumed in the domestic market. The Act, respondents note, states that the cost of materials should be "exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used." Respondents further argue that it has been the established practice of the Department to exclude Indian excise taxes in other proceedings. *See*, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the PRC, 61 FR 19026, 19039 (April 30, 1996) ("Bicycles from the PRC"). Respondents also notes that the Department, in the preamble to the current regulations, states that " * * * Congress has now established conclusively that dumping comparisons are to be tax-neutral in all cases."

Timken counters that the Indian producers report that this excise tax is paid on finished products and, therefore, does not apply to raw materials. Thus, Timken contends, this tax is not within the plain language of the Act. Moreover, according to Timken, the fact that some of the Indian producers reported excise tax while others did not indicates that this amount represents a net excise tax paid, with any refunded amount already deducted.

Timken continues by arguing that the record only indicates that such taxes are merely "refundable," and does not explicitly state that the excise duties were, in fact, actually recovered. They state that there is no basis to assume that all excise taxes would be refunded, that all Indian producers obtained or could obtain refunds, or that PRC producers, operating in a market economy, would not pay any taxes on finished goods. Timken concludes by arguing that the Department's past practice of excluding "refundable" taxes in PRC cases is at odds with Department practice in market economy cases where the respondent is required to show that the refundable taxes were paid on material inputs that were used in the manufacture of subject merchandise, and that these taxes were actually recovered from the government.

Department's Position: We agree with respondents that the excise tax reportedly paid by the Indian bearings producers should not be included in the overhead cost calculation. In the final determination of Bicycles from the PRC (61 FR at 19039), we stated that " * * * it is the Department's practice to use, if possible, tax exclusive values as surrogates in NME cases. * * * Moreover, we have found in previous cases involving products from India that excise duties and/or taxes paid by Indian producers were refundable to the producer by the Indian government. * * * Therefore, we have not only removed the amount of excise duty and/or tax from TI's financial data, but also from the financial data of the other Indian producers, where possible, which we have used to calculate surrogate percentages."

With regard to Timken's arguments, we note that the fact that some of the Indian producers do not appear to be reporting excise tax paid may only reflect that they have not separately itemized that expense in their statements; it does not necessarily indicate, as Timken contends, that this represents net excise tax paid, exclusive of any refunded amount. Moreover, there is no evidence on the record to suggest that these Indian companies did not recover the refundable taxes. In order, therefore, to be consistent with the intent of the Act and general Department practice, in these final results we have excluded the excise tax, where it has been specifically identified, from the reported costs of the Indian bearings producers.

Comment 16: Excluding "Net Loss (Gain) on Fixed Assets Sold"

Respondents contend that the Department improperly included the category "Net Loss (Gain) on Fixed Assets Sold" as an element of overhead. This category should be excluded from overhead expenses, respondents argue, because these losses (gains) are incurred independent of manufacturing or selling activities.

Timken counters that, contrary to the assertion of respondents, it is reasonable to expect that the sales of fixed assets by companies, whose primary business included bearings, would be related to the production or sale of bearings. Losses arising from the sale of these assets reflect the fact that depreciation charges for these assets in prior years were inadequate to fully account for the decline in value over the assets' life. Likewise, losses on assets employed in sales or generally in support of corporate operations reflect the same adjustment to depreciation. Thus, these losses represent overhead costs tied to bearings manufacture. Timken further notes that in previous reviews, the Department has included these losses in our overhead calculation.

Department's Position: We agree with Timken that the "Net Loss (Gain) on Fixed Assets Sold" should be included in the calculation of the overhead ratio. The Department has addressed this issue previously in TRBs VIII. In that review, we stated that losses "* * * incurred in selling fixed assets used to manufacture merchandise clearly [are] related to manufacturing activities." *See* TRBs VIII, 62 FR at 6184. For that reason, in our final results of this review we have continued to included this category as an overhead expense.

Comment 17: Excluding "Other Expenses" From Factory Overhead and SG&A Calculations

Respondents argue that the category "Other Expenses" or "Miscellaneous Expenses" noted in several of the Indian producers' financial statements should not be included in the overhead and SG&A calculations because there is insufficient information to determine whether all of these expenses are related to the production of TRBs. Moreover, assuming all expenses are related to TRBs production, there is insufficient information to determine the extent to which these should be properly categorized as overhead, SG&A or some other expense. Respondents continue by noting that some of these "other" expenses, such as "auditors' fees," "director's fees," and expenses related to "Agricultural & Dairy Farm," which are specified in some producers' financial statements are clearly irrelevant to TRBs production in the PRC and, as such, should be excluded.

Respondents also argue that it is improper to allocate "other" and "miscellaneous" expenses to only overhead and SG&A because these may also include expenses related to labor or raw materials. Thus, argue respondents, these unspecified expenses ought to be allocated equally to raw materials, labor, overhead and SG&A.

Timken counters that it is unreasonable for respondents to suggest that the Department exclude an entire category of expenses on the grounds that its description is not sufficiently precise to either relate the expenses directly to the production of TRBs, or to classify them as overhead or SG&A. In allocating these other expenses to overhead and SG&A, absent specific information as to the cost category of each expense the Department has relied, as in the past, on its general expertise of accounting practices and principles. Moreover, Timken continues, the financial statements of many of the producers do, in fact, provide considerable detail for a large portion of these other costs. The line-item detail that is available for some of the expenses confirms that these expenses are properly classified as either overhead or SG&A. Thus, absent specific evidence to the contrary, the Department is correct in categorizing these costs as overhead and SG&A.

Department's Position: We agree with the Timken that the "other" and "miscellaneous" expenses have been properly classified as part of factory overhead or SG&A (with the exception of those expenses detailed in the following comment below). We recognize the fact that there is limited information regarding any of the expenses included in these catch-all categories. However, most of the financial statements do include separate itemized categories for raw materials consumed, and payments to and provisions for employees. Contrary to the assertion of respondents, there is no reason to believe that materials and labor costs are also included in the "other" or "miscellaneous" expense categories. Consequently, all expenses not identified as direct material inputs, direct or indirect labor, energy, or other costs which the Department values separately (such as packing, freight, etc.) have been included in either the overhead or SG&A category. Where it was unclear whether an expense would be more properly categorized as overhead rather than SG&A (or vice-versa), we generally allocated the expense amount evenly between the two categories.

With regard to respondents' contention that several of the expenses included as overhead or SG&A are not relevant to TRB production in the PRC, and with regard to the issue of surrogate values for overhead and SG&A in general, we cite to the Department's position on these matters in Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, From the Republic of Romania; Final Results and Recission in Part of Antidumping Duty Administrative Review, 61 FR 51427 (October 2, 1996) ("TRBs from Romania"). In that review, we stated, "[t]he Department generally does not dissect the overhead rate on a surrogate country and apply only components relevant to the producer. It is generally not possible to break the surrogate overhead value into its individual components at a level of detail that would be necessary to value each individual component of the NME producer's overhead. * * * Rarely, if ever, will it be known that there is an exact correlation between overhead expense components of the NME producer and the components of the surrogate overhead expenses. Therefore, * * * the Department normally bases normal value completely on factor values from a surrogate country on the premise that the actual experience in the NME cannot meaningfully be considered. Accordingly, Department practice is to accept a valid surrogate overhead rate as wholly applicable to the NME producer in question." *See* TRBs from Romania, 61 FR at 51429. For these reasons, we have continued to include these other expenses in our overhead and SG&A calculations for the final results.

Comment 18: The Double-Counting of Certain Expenses

Respondents argue that, in the Preliminary Results, the Department included in its surrogate overhead or SG&A calculations expenses related to packing, freight, discounts and rebates, commissions, and brokerage. Because these types of expenses are also valued directly (individually) elsewhere in the Department's FOP calculation, they have been double-counted. For the final results, respondents argue that these types of expenses should be excluded from the overhead and SG&A calculations.

Department's Position: We agree, in part, with respondents that, where certain costs have been separately calculated elsewhere in the FOP calculations, they should not be included in overhead or SG&A. Consequently, where it was possible to distinguish expenses directly related to packing, freight, discounts and rebates, and brokerage from other expense categories in the Indian producers' financial statements, we have excluded those expense items from the overhead and SG&A calculations for the final results.

We disagree with respondents' contention, however, that commissions should likewise be excluded. These are

standard selling costs and, as such, are properly categorized under SG&A. Whether PRC producers have commissioned sales staff is irrelevant. As discussed in the Department's Position under the previous comment, the Department does not tailor surrogate overhead or SG&A rates to match the circumstances in the NME country. We note that in our Preliminary Results, where commissions were identified separately in the Indian producers' financial statements, we incorrectly included these as labor costs. For these final results, however, we have included all commission expenses, where possible, as part of SG&A only.

Comment 19: Offsetting Interest and Other Expense With Interest and Other Income

Respondents argue that the Department should offset the interest expense and other expenses which it has included in the surrogate overhead and SG&A calculations with interest revenue and other revenues, respectively.

Timken counters that there is no evidence in the financial statements that the interest or other income earned by these Indian producers relate to their TRB operations. Timken argues the Department's practice with regard to market economy cases is to offset expenses only in cases where the corresponding income is short term in nature and earned on investment activity related to the subject merchandise.

Department's Position: We agree with the Timken that interest expense and other expenses should not be offset with interest and other income. There is no evidence on the record to indicate that these expense and income categories are related to each other and to the production of TRBs. For the final results, therefore, no offsets to interest and other expenses have been made.

2. Market Economy Inputs

For those TRB producers which purchased steel from market economy suppliers and paid in hard currency, the Department, in its Preliminary Results, valued steel inputs at actual prices paid in market economy currencies. However, consistent with our past practice, we used surrogate data for TRB producers who purchased imported steel inputs from trading companies and paid in renminbi. Because this methodology was subject to court challenge (*see Olympia Industrial, Inc.* v. *United States*), Slip Op. 98–49 (CIT 1998) ("*Olympia II*"), we have reexamined our approach for the final results, and considered the comments received from interested parties as discussed below.

Comment 20: Use of Market Economy Inputs

Timken argues that the Department should not regard the prices paid by respondents for imported steel inputs as "market prices." In the final results, Timken urges the Department to reject the import values used in the Preliminary Results because they are not reliable indicators of market economy prices for steel inputs.

In support of its position, Timken maintains that the statute directs the Department to use the prices in one or more market economies which (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise (*see* section 773(c)(4) of the Act). Thus, Timken argues that, unless the Department determines that the country of origin is comparable to China and is a significant producer of the subject merchandise, it would be unlawful to use import values that do not meet these two criteria.

Furthermore, Timken believes that it is likely that steel exported to the PRC is dumped or otherwise atypical of the price normally charged in the country of origin. Therefore, Timken argues, the price of steel imported to the PRC does not reflect the price charged in the exporting country, as required by the statute. Moreover, Timken contends that the use of a steel price from a country that is not at a level of economic development comparable to that of the PRC will distort the Department's NME methodology. Timken also argues that if the Department were to use import prices, it must reject values that do not represent arm's length sales, that do not reflect commercial quantities, or that otherwise do not reasonably reflect the actual cost of production in a comparable market economy country.

Timken also states that in *Olympia II*, the CIT reviewed its earlier remand order which instructed the Department to examine whether the import data submitted by Chinese trading companies were reliable. Timken argues that the Court did not require the Department to automatically accept import prices from market economy suppliers as factor values without examining whether such values are reliable and adequate in accordance with section 773(c)(4) of the Act.

Wafangdian and Luoyang argue that the Department should apply the three-pronged test set forth in the *Olympia II* remand to test the reliability of the reported import prices (*i.e.*, value and volume of steel imports, type and quality of the imported steel, and consumption of imported steel by the NME producers; *see Olympia II*, Slip Op. 98–49 at 7). Specifically, Wafangdian and Luoyang suggest that the Department apply the test on a shipper-by-shipper basis by determining if (1) the trading company imports the steel, (2) the steel is used to produce the subject merchandise, (3) the value of the steel is reliable and non-aberrational, and (4) the quantity is meaningful. These respondents urge the Department to use actual prices wherever possible in the interest of fairness, accuracy, and predictability.

In response to Timken's arguments, Wafangdian and Luoyang contend that the statute is silent on the issue of prices on inputs imported into an NME. However, they argue that section 351.408(c)(1) of the new regulations directs the Department to use the price paid to the market economy supplier in cases where an FOP is imported from a market economy supplier and paid for in hard currency. Citing section 773(c)(1) of the Act, which requires the Department to value the FOP data using "the best available information regarding the values of such factors in a market economy country," these respondents claim that the best available information is the price actually paid for the input. They agree with Timken that aberrational prices should be rejected, but argue that as long as the transaction is bona fide, the price should be presumed to be valid.

With respect to Timken's argument that the Department should investigate whether the prices of imported inputs are reliable, Wafangdian and Luoyang assert that it is clear from *Lasko Metal Products, Inc.* v. *United States*, 43 F.3d 1442, 1443 (Fed. Cir. 1994) ("*Lasko*"), that the import price is the best available information if the input is used to produce the subject merchandise and the import price is not aberrational. The same standard should be applied to situations where the NME importer is a trading company, which is the case in *Olympia II*, according to Wafangdian and Luoyang.

Another group of respondents believes that Timken's argument with respect to the use of actual import prices involves a strained interpretation of the statute. They say that Timken is wrong in asserting that the statute requires that the country of origin must be at the same level of economic development as the importing country and that the exporting country must be a significant producer of the merchandise. These respondents argue that the statute grants the Department broad discretion to determine which is the best available

information as demonstrated by long-established Department practice and court rulings. These respondents urge the Department to use the actual import prices paid by trading companies in market economy currencies.

Department's Position: The Department interprets section 773(c)(1) of the Act as authorizing a narrow exception to the statutory preference for selected surrogate country data. This exception applies only when the NME producer sources an input from a market-economy source and pays in a market-economy country currency. The court upheld this interpretation in *Lasko*. However, nothing in the *Lasko* decision alters the statutory mechanism for selection of surrogate values. Thus, as the court acknowledged in *Olympia Indus., Inc.* v. *United States*, Slip. Op. 97–44 (April 10, 1997) ("*Olympia I*"), import prices that pass through a trading company are not actual costs to the producer but rather, an alternative surrogate value. Specifically, the court states in *Olympia II*, "As with the surrogate country data, it may be true that the trading company data does not represent actual prices paid for the steel input by the PRC * * * manufacturers, And, in this sense, the use of trading company data would also create a fiction" (*see Olympia II*, Slip Op. 98–49 at 12). Therefore, the question is whether trading company import prices, as alternate surrogate data, are preferable to surrogate data from a market-economy country that is a significant producer and at a level of comparable economic development.

To assess the reliability of the Chinese trading company's steel prices, we have examined the factors outlined in the *Olympia II* remand: (1) the value and volume of steel imports, (2) the type and quality of the imported steel, and (3) consumption of imported steel by the NME producer. The record evidence demonstrates that the Chinese trading company purchased steel from a market-economy country, in a convertible currency. This company used a portion of the steel in its own production of TRBs but also sold a portion of the steel to an unrelated manufacturer. Based on the invoices for the imported steel, and the specifications of the steel sourced by the factories domestically, we conclude that the imported steel is of the same grade and has the same range of sizes as steel that the NME manufacturers used to produce the subject merchandise.

Regarding the value of the steel imported by the trading company, we found that the price paid by the trading company is within the range of prices created by the actual steel prices paid by PRC producers and our surrogate value. Consequently, the price paid by the PRC trading company is not aberrational. With respect to volume and consumption of steel by the NME producer we note that the amount of steel imported by the trading company was significant and that the NME producer in question consumed a significant amount of imported steel to produce the subject merchandise.

Based on the above, we are using the trading company import steel price as surrogate data for those companies that actually used the imported steel.

3. Exchange Rates

Comment 21: Exchange Rates

Wafangdian and Luoyang contend that the conversion of foreign-currency denominated surrogate factor values using the POR average exchange rate is contrary to the Act which, they argue, requires conversion based on the date of sale. Section 773A(a) of the Act states, "[i]n an antidumping proceeding * * * [the Department] shall convert foreign currencies into United States dollars using the exchange rate in effect on the date of sale of the subject merchandise. * * *" These parties state that conversion of factor values based on date of sale would be consistent with Department practice, citing Hand Tools 1998 and Notice of Final Determination of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China, 62 FR 9160 (February 28, 1997) ("Brake Drums and Rotors").

Timken counters that the use of daily exchange rates to convert foreign-currency denominated surrogate values is "falsely accurate" when the surrogate values themselves are annual averages of factor utilization rates and surrogate values. For example, Timken states that steel values are based on average import statistics for the POR, labor rates are based on annual YLS data, and overhead, SG&A and profit are based on annual reports. Timken states that section 773(c)(1) of the Act requires that the Department use "the best information regarding the values of such factors * * * considered to be appropriate by the [Department]," and that the Statement of Administrative Action ("SAA") (at 841) states that the Department's practice is to "ensure that the process of currency conversion does not distort dumping margins." Consequently, Timken contends that if the best surrogate values are annual averages then conversion of those values to dollars requires an average exchange rate. Timken asserts that, by applying an average exchange rate to the average surrogate values, Commerce is in fact applying a daily exchange rate.

Alternatively, Timken states that if respondents had desired a daily exchange rate they should have provided daily production factors. Timken states that if the Department decides that a daily rate should be used then, to avoid distortion, it should attempt to compute daily or, at least, weekly or monthly surrogate values.

Department's Position: In NME cases, the underlying data for valuing factors are often expressed in multiple currencies, including U.S. dollars. In fact, many of the factor values, such as the surrogate values obtained from certain import data and wage rates, will already be expressed in dollars. Because of this, the Department typically does not calculate NV in terms of the domestic currency of the surrogate country. Instead, individual factor values that are expressed in currencies other than dollars, are converted to dollars using an average POR exchange rate. Consequently, NV is expressed in dollars and no currency conversion, pursuant to section 773(A) of the Act, is necessary.

We acknowledge that the Department converted certain surrogate factor values denominated in foreign currencies to U.S. dollars on the date of sale in Hand Tools 1998. However, we disagree with respondents that it is the Department's practice to put foreign currency denominated surrogate values in U.S. dollars by using a date of sale exchange rate. In fact, the Department has had a long-standing practice of converting such values using a POR/POI average exchange rate. Both prior to and since the implementation of the URAA, it has been the Department's practice to convert POR/POI-contemporaneous foreign currency surrogate values to U.S. dollars using the average POR/POI exchange rate (*see*, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium and Nitrided Vanadium From the Russian Federation, 60 FR 27957 (May 26, 1995); and the public versions of the surrogate valuation memoranda for the following PRC final determinations: Certain Cased Pencils, Polyvinyl Alcohol, Natural Bristle Paint Brushes and Brush Heads, Brake Drums and Brake Rotors [1], Collated Roofing Nails, Pure Magnesium, and Manganese Metal, dated October 31, 1994, March 22, 1996, September 20, 1996, February 21, 1997, May 15, 1997 and January 14, 1998, and March 9, 1998, respectively. See Memorandum to File, "Placement of

[1] Despite respondents' assertion to the contrary, surrogate values were converted to U.S. dollars based on a POI average exchange rate, as is clear in the calculation memorandum.

Prior Surrogate Valuation Memoranda on Record," dated November 9, 1998 ("Prior Surrogate Valuation Memoranda"). Additionally, since the decision in Hand Tools 1998, the Department has continued to use POR-average exchange rates in other cases (*see*, e.g., Porcelain-on-Steel Cooking Ware From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent Not To Revoke Antidumping Duty Order, In Part, 63 FR 27261 (May 18, 1998)), continuing the practice of using average exchange rates as detailed in that cases preliminary determination at 63 FR 1434, 1436; and the public version of the calculation memorandum dated August 7, 1998 for Sebacic Acid From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 63 FR 43373 (August 13, 1998). See Prior Surrogate Valuation Memoranda.

Finally, when read as a whole, along with the SAA and various court decisions, we do not believe that the Act requires the conversion of surrogate values to U.S. dollars using a daily exchange rate. The SAA states that the URAA "*tracks existing practice*, the goal of which is to ensure that the process of currency conversion does not distort dumping margins." *See* SAA at 841. As detailed above, the use of POR/POI average exchange rates to convert surrogate values has been the Department's general practice, with origins prior to the implementation of the URAA. Given the language of the SAA, we disagree that the intent of section 773A(a) of the Act was to change the Department's practice in this regard. Additionally, the courts have given great deference to the Department in applying section 773(c)(1) of the Act in resolving any variance between Department practice and other provisions of the Act in NME cases. *See*, e.g., Lasko. Section 773(c)(1) states that in NME cases "the valuation of the factors of production shall be based on the best available information," and the Department has stated that it has an obligation to choose surrogate values that emphasize "accuracy, fairness, and predictability". *See* Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans From the People's Republic of China, 56 FR 55271, 55275 (October 25, 1991). Since, as Timken notes, we are converting POI/POR average values, use of a POI/POR average exchange rate may enhance the accuracy of our calculations.

In addition, there are other instances where the Department uses an exchange rate other than one tied to a sale date. For example, when computing NV based on CV in a market economy case, the Department does not require respondents in antidumping proceedings to convert foreign currency purchases of input products based on the date of a sale, but rather on the date the currency transaction took place. In the portion of section 773A(a) dealing with transactions in the forward market there is an indication that the intent of this section was to make currency conversions based on the date of sale only if the conversion is "directly linked to an export sale under consideration." This indicates that this section does not address currency conversion for inputs used in the production process. Instead, this provision seems to clearly address conversion of NV, circumstance of sale adjustments, and actual movement charges associated with sales. We therefore are continuing to use an average currency conversion rate in this case.

4. Freight

Comment 22: Ocean Freight

Respondents argue that the Department should use ocean freight rates provided by the Federal Maritime Commission ("FMC") rather than rate quotes received from private shipping companies when calculating ocean freight costs. Respondents propose that the Department use these values because they represent actual costs and fulfill the Department's statutory obligation of calculating dumping margins as accurately as possible. Respondents suggest that the shipping company rate quotes are uncorroborated and potentially inflated. Because the FMC data are numerically closer to freight costs derived from IM–145 data, respondents suggest that they are the accurate and appropriate values to use. Citing Carbon Plate, respondents state that the Department has consistently relied on actual costs and not theoretical quotations in dumping cases.

Timken suggests that respondents' data, a 1995 Federal Maritime Commission & Company Quotes report for 20- and 40-foot containers shipped from China to the United States, do not reflect actual costs for the POR. Timken points out that there is neither evidence supporting the FMC data as actual costs, nor evidence showing that the Maersk rate quotes the Department used in its Preliminary Results were inflated. Timken finds that the name of the FMC report, specifically the phrase "Company Quotes," suggests that the FMC information does not reflect actual costs. Timken finds that the Maersk rate quotes are contemporaneous with the POR, where the FMC data are not, and that the FMC data do not provide any advantage over the source used for the Preliminary Results. Furthermore, Timken concludes that the Maersk quotes also contain surcharges and adjustments which may not be included in the FMC data, making the FMC data more appealing to respondents. Timken notes that in Carbon Plate, IM–145 data were used because the values published in *Shipping Intelligence Weekly* were "average earnings" and rates for only the most efficient vessels. Maersk data are neither averages nor limited to certain vessels. Timken also points out that the Maersk data are more detailed and not affected by transfer prices which are possibly included in the values reported in respondents' exhibit.

Department's Position: We agree with Timken and have continued to use the Maersk rate quotes for valuing ocean freight. The Maersk rates quotes reflect actual ocean freight costs that Chinese TRB producers would face, are contemporaneous with the POR, and include all the applicable surcharges incurred for the shipment of TRBs.

Comment 23: Application of Sigma

Wafangdian and Luoyang argue that the Department disregarded the Court's decision in Sigma Corporation v. United States, 117 F.3d 1401 (Fed. Cir. 1997) ("Sigma") by applying the SG&A, overhead and profit ratios to the inland freight component of input costs. Additionally, Wafangdian and Luoyang argue that the Department's practice of limiting the amount of inland transportation included in the surrogate valuation of an imported input to the shorter of the distance between the port and the factory or the distance between the domestic supplier and the factory is inaccurate in certain circumstances. Specifically, Wafangdian and Luoyang state that, if the distance is shorter than 25 kilometers, then this distance already is included in the surrogate value and, therefore, should not be separately valued. Furthermore, Wafangdian and Luoyang argue that the Department aggravates this double-counting by applying overhead, SG&A and profit to the surrogate value calculation.

With respect to respondents' first point, Timken replies that Sigma does not address the issue of application of overhead, SG&A and profit rates to the inland freight component of input costs, nor does it require the Department to distort these rates as suggested. In fact, Timken states, when the Department adds the freight component prior to the application of these rates, it takes into

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account the fact that the denominator of the rates includes such freight costs, as admitted by respondents.

Department's Position: We agree with Timken that Sigma does not address the issue of the application of the overhead, SG&A and profit ratios and the appropriateness of applying these ratios to the freight component of input costs. Given that the Indian financial statements include these costs, which are included in the denominator of the ratio calculations, it is appropriate to apply these ratios to the freight component of input costs. We also disagree with respondents' second point that the inland freight from the Chinese port to respondents' factory is included in the import price which we are using as the surrogate value. Rather, it is clear from the purchase invoice that the input was sold to respondents under "Cost and Freight—Chinese Port" terms. As a result, we have followed our normal practice of including in the surrogate a valuation of the imported input which is the shorter of the distance between the port and the factory or the distance between the domestic supplier and factory (*see*, e.g., Natural Bristle Paintbrushes and Brush Heads From The People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review, 62 FR 60228, 60230 (November 7, 1997)).

Comment 24: Surrogate Value for Brokerage and Handling

Wafangdian and Luoyang argue that the Department made an error when it calculated the surrogate value for brokerage and handling in the Preliminary Results. The FOP memorandum used in the Preliminary Results indicates that the Department used brokerage and handling data for the period August-October 1993. In order to calculate the corresponding value for the POR, the Department used an inflator which was obtained by dividing the average wholesale price index ("WPI") for the POR by the WPI for 1993. Wafangdian and Luoyang claim that the surrogate value used was for the period October 1993-January 1994 (not August-October 1993). Furthermore, they argue, as a denominator, the Department should use the average WPI for the few months corresponding to the source data and not the average WPI for the entire 1993.

Timken responds that the Preliminary Results clearly indicates that the Department used surrogate brokerage and handling data for the period August–October 1993. Therefore, Timken argues, the Department should either continue to use the average WPI for the entire 1993 or use the WPI for the period August–October 1993.

Department's Position: We agree with respondents that the average WPI for 1993 is unnecessarily broad. Moreover, we note that the FOP memorandum used in the Preliminary Results incorrectly stated that the source data were for the period August–October 1993. The dates of the data should correspond with the shipping dates, which are actually October 1993 to February 1994. Therefore, to calculate the most accurate value for brokerage and handling, we have inflated the monthly source data by the corresponding monthly WPI. In addition, when making these adjustments, we noted that all observations for each shipment date were identical, but some shipments had more observations than others. Consequently, using all observations (as was done in the Preliminary Results) gives disproportionate weight to certain sales. Therefore, we determine that it is more appropriate to use only one observation from each shipment date. We then calculated a simple average of those values.

5. Miscellaneous Issues

Comment 25: Valuation of Electricity Inputs

Timken contends that the Department should change its methodology for valuing electricity and use average electricity rates for large industries in the areas where Indian bearing producers are located rather than a simple average of Indian regional electricity prices for large industries. Timken states that it is an abuse of discretion for the Department to adopt a less accurate national average rate for India and ignore the available evidence specific to the production of bearings where there is (data of) greater precision on the record. Timken dismisses the Department's precedents in Notice of Final Determination of Sales at Less Than Fair Value; Polyvinyl Alcohol From the People's Republic of China, 61 FR 14057, 14062 (March 29, 1996) ("PVA") and Manganese Metal (63 FR at 12446) as to valuation of electricity as irrelevant because those cases dealt with the relationship between energy prices and the location of the industry, and specifically, with the reasons for regional differences in electricity prices. Timken argues that the Department should select an industry-specific surrogate value for electricity as it does for material inputs such as bearing quality steel, labor and other capital costs including overhead, SG&A, and profits ratios so that its surrogate valuation is predictable and rational.

Respondents argue to the contrary that the Department should continue to apply average Indian electricity rates for the purpose of the final results. Respondents state that the Department has a well-settled practice of using electricity rates from the country as a whole as a surrogate value and cites recent cases. *See*, e.g., PVA, 61 FR at 14062; Manganese Metal, 63 FR at 12446; Notice of Preliminary Results of the Antidumping Duty Administrative Review of Chrome-plated Lug Nuts from the People's Republic of China, 63 FR 31719, 31722 (June 10, 1998) ("Lug Nuts"); and Notice of Preliminary Results of Antidumping Administrative Review of Sulfanic Acid from the People's Republic of China, 62 FR 25917, 25919 (May 12, 1997) ("Sulfanic Acid").

Department's Position: We agree with respondents. The Department established a practice of using a simple average of country-wide Indian state electricity rates as a surrogate value for Chinese electricity rates unless a party has shown that a company can be located only in a specific state (*See* Manganese Metal, 63 FR at 12446, PVA, 61 FR at 14062, Sulfanic Acid, 62 FR at 25919 and Lug Nuts, 63 FR at 31722.) Timken's argument of using industry and state-specific electricity rates as a surrogate value was considered and rejected in PVA, 61 FR at 14062, wherein we stated, "* * * [t]here is insufficient basis to assume that the electricity rates from the Indian states selected by Timken are more appropriate for surrogate value than electricity rates in other states. Other factors beside production level, such as methods of generation and transmission as well as overall demand, are determinants of price. Since there is not sufficient information on the record to weigh the appropriateness of using one Indian state's electricity rates over those in another, we have based the surrogate value on the simple average of all Indian state rates. * * *" In Manganese Metal, 63 FR at 12446, we again rejected a similar industry and state-specific electricity rates argument and explained that, "* * * [t]here is insufficient evidence on the record from which to conclude that the developments affecting the electricity prices of Indian ferromanganese necessarily reflect conditions in which the PRC manganese metal producers likewise must operate. * * * In lieu of concrete evidence that the higher state-specific rates are directly a result of the presence of manufacturers of identical or comparable merchandise, Departmental

practice in past cases has been to take a simple average of electricity rates for the surrogate country as a whole." In the instant case, there is no evidence on the record to show that there is a direct or causal relationship between the presence of TRB producers in a locale and the electricity rates for that locale.

We disagree with Timken's assertion that the Department is abusing its discretion by using a simple average of country-wide electricity rates as a surrogate value. Electricity prices are subject to a number of influences specific to the location of the plant. These include: local market conditions, state intervention, methods of transmission, distribution of power generation and privatization. Simply put, there are more variables to consider and weigh than the location of the industry because of the nature of the electricity industry in India. Thus, it is fair and reasonable to use a simple average for large industries in all Indian states as a surrogate value for electricity rates.

Comment 26: Premier has acted to the best of its ability

Premier argues that the Department's use of adverse facts available in the Preliminary Results, because it was unable to supply information from its unaffiliated suppliers, was not appropriate; nor was it consistent with the Department's past treatment. Premier argues that, despite its incomplete questionnaire response, it has cooperated to the best of its ability. Premier notes that it has provided evidence of its attempts to contact its suppliers in order to acquire FOP data and has provided, in several cases, its suppliers' letters refusing to provide these data. Premier suggests that because this concrete evidence is now on the record, Premier has proven that it acted to the best of its ability in cooperating with the Department in this review and therefore, should not be adversely treated in the application of facts available. According to Premier, its actions in this review are identical to those in TRBS VIII where Premier cooperated with the Department, yet was unable to provide FOP data for all of its sales. The Department should, therefore, not resort to an adverse rate for those sales not covered by the FOP data supplied by Premier. Premier suggests that the Department use a methodology like that used for Chin Jun in the Preliminary Results of this review, where the Department applied a weighted average margin calculated from those sales for which acceptable data were available to sales not represented by FOP data.

Timken insists that the Department rely upon adverse facts available when substantial data are missing for a particular respondent, as in the case of Premier. Timken cites TRBs IV–VI showing that the Department applied "best information available" to determine margins for Peer and Chin Jun when FOP data were not available. The Department used the company specific dumping margin from the previous POR for these sales. Timken also cites *National Steel* v. *United States*, 870 F. Supp. 1130, 1136 (CIT 1994) where the Court of International Trade found that the "quality and completeness of the data, and not Peer's cooperation are the determining factors in establishing the appropriateness of the partial BIA rate."

Timken suggests that the Department is not required by the statute to analyze the reasons why a respondent was not able to provide the information requested by the Department. According to the Timken, citing *Koyo Seiko Co., Ltd.* v. *United States*, 905 F. Supp. 1112, 1116–17 (CIT 1995), the Department has the authority to "resort to the highest rate assigned * * * in a previous review as partial BIA for those sales." Timken suggests that the Department should create an incentive for Premier's suppliers to come forward in the future by applying an adverse rate to those sales that are not represented by FOP data. According to Timkin, if the Department applies Premier's calculated margin to sales that are not represented by FOP data, this only encourages producers to sell through exporters that have separate rates. If an adverse rate was applied to these producers, it would encourage them to come forward in the future and supply the factor values.

Timken further contends that Premier has not shown that it has acted to the best of its ability to provide factor information in this review. Timken reminds the Department that Premier has participated in all of the Department's reviews of this case. According to Timken, Premier's efforts to prove that it attempted to provide the factors data bring into question the accuracy and completeness of Premier's responses. Timken notes that there were inconsistencies between the lists of suppliers in various responses and suggests that this could reflect additional insufficiencies in Premier's sales listings. Timken suggests that the Department reject all of Premier's partial responses and apply adverse facts available to all of Premier's sales.

Department's Position: We are continuing to apply a partial adverse facts available rate to Premier's U.S. sales that are lacking corresponding FOP data. Section 776(b) of the Act provides that an adverse inference may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. Furthermore, section 353.37 of the Department's regulations states that "[I]f an interested party refuses to provide factual information requested by the Secretary or otherwise impedes the proceeding, the Secretary may take that into account in determining what is the best information available" (54 FR 12784).

In this case, we determine that Premier has not acted to the best of its ability. Premier was unable to provide letters from all of its suppliers responding to Premier's request for information. Instead, it relies heavily on an affidavit from its marketing executive stating that he had contacted the companies listed in Premier's response. Moreover, Premier submitted contradictory information as to whom its suppliers were, correcting misinformation only after repeated questions by the Department. Taking into account that this is the tenth review of the antidumping order on TRBs from the PRC, and that Premier has participated in several reviews, we find that Premier has not acted to the best of its ability.

For these reasons, the Department finds that applying adverse facts available is appropriate. Therefore, as in the Preliminary Results, we are applying a rate of 25.56 percent ad valorem to Premier's U.S. sales for which factors data was not provided.

Comment 27: Premier's Inland Freight Expenses

Premier claims that its inland transportation was provided by market-economy companies. Upon the Department's request, Premier clarified information in its response concerning the use of market economy freight forwarders to transport goods from China to the United States. Premier contends that these freight forwarders are Hong Kong companies and were paid in hard currency. Premier insists that the Department should apply the actual market economy inputs to value these factors for the final results.

Department's Position: Premier has reported that its freight forwarding expenses, including inland freight charges, were paid in hard currency. Absent evidence on the record to the contrary, for purposes of these final results, the Department has recalculated Premier's margin to apply its actual costs for inland freight.

Comment 28: Revocation of Order for Luoyang

Luoyang argues that the Department should revoke the order with respect to TRBs produced and/or exported by Luoyang. Luoyang states that it provided the Department with the necessary certifications stating that it had not sold subject merchandise as less than fair value during the current review period and would not do so in the future, and agreed to reinstatement of the order if goods were subsequently sold at less than NV. Luoyang states that after corrections are made, it will receive a zero dumping margin in the final results.

Timken argues that Luoyang does not qualify for revocation because it received a margin of 2.35 percent in TRBs IX and received a margin of 1.82 percent in the Preliminary Results. Therefore, according to Timken, Luoyang does not currently have three consecutive years of no dumping, as required by the Department's regulations (*see* 19 CFR 353.25(a)(2)(i)), to qualify for revocation, even though it did have three consecutive years of no dumping prior to the 1995–96 review.

Department's Position: As Timken points out, Luoyang received a margin of 2.35 percent in the preceding review. Given that Luoyang does not meet the Department's first criterion for revocation, namely that at the time of revocation that a respondent have three years of no sales of subject merchandise at less than fair value, we are not revoking the order with respect to this respondent.

Comment 29: Luoyang's Imported Steel Surrogate Value

Timken notes several apparent discrepancies between Luoyang's FOP database, the verification report, and the Department's calculation memorandum, with regard to Luoyang's use of imported steel.

Luoyang states that any inconsistencies in its database were clarified prior to verification, confirmed by the Department at verification, and reflected in the Department's Preliminary Results.

Department's Position: We agree with Luoyang that our Preliminary Results reflected the clarifications to its FOP database submitted prior to verification, and that these clarifications were verified by the Department. Therefore, no adjustments were necessary.

Comment 30: Luoyang's Well and Circulation Pump Electricity

Luoyang contends that the Department improperly included the electricity Luoyang used to power its well and water circulation pumps as part of its electricity factor usage. Luoyang argues that, because this electricity is used to provide water as a coolant for the turning and grinding stages of production and cannot be directly linked to production output, it should be included in overhead rather than considered as a direct cost. Consistent with the Department's decision in TRBs VIII that power which cannot be directly linked to production output be incorporated as overhead, Luoyang states that the electricity used by the well and circulation pumps should be included in overhead.

Timken counters that section 773(c)(3) of the Act requires that the Department separately identify, quantify and value all "energy and utilities consumed" in producing subject merchandise. Timken contends that, given the statutory language, there is no basis for allocating electricity usage between direct costs and other activities. Furthermore, Timken states that there is no apparent method for splitting the energy costs of the eight Indian producers between direct input costs and overhead, nor does Luoyang offer any such methodology.

Department's Position: As explained in the Preliminary Results, we separately quantified and valued the energy consumed in producing the subject merchandise separate from overhead. This means that we did not include the Indian producers' energy in calculating overhead, and our overhead ratio is net of energy. Therefore, it is appropriate to value Luoyang's electricity as a direct cost.

Our treatment of electricity in this case can be distinguished from TRBs VIII, where we incorporated the consumption of energy as part of overhead. The present case is distinct because we have been able to directly quantify and value energy as a factor input. Furthermore, as Timken has noted, it would be impossible to split the energy costs of the Indian producers between direct input costs and overhead. Thus, any attempt to make the adjustment Luoyang has recommended, would lead to inaccurate overhead and SG&A ratios. Therefore, we have not altered our calculation methodology for these final results.

Comment 31: Factor Value for Cages for Luoyang

Luoyang alleges that, in the Preliminary Results, the Department erroneously applied an imported steel input value for one of the TRB components instead of applying the scrap value. Luoyang argues that it reported that a particular TRB component was manufactured with scrap sourced within the factory. Luoyang explains that, rather than selling the scrap derived from the production of non-subject merchandise, Luoyang instead reuses the recovered scrap in the manufacture of a TRB component. Accordingly, Luoyang maintains, the factor value of the reused scrap steel should equate to the scrap value and not the full imported steel value.

Timken argues that Luoyang does not use "scrap" to manufacture certain components, but Luoyang, as described in the verification report, uses the same piece of steel sheet to cut patterns for components of different sizes. Timken contends that these smaller pieces cannot be defined as "scrap" because they are new steel material. Furthermore, Timken maintains that scrap is not sold in uniform cut-to-size batches and that the raw material used for both the larger and smaller components was steel sheet, not scrap.

Department's Position: We agree with Timken. As set forth in TRBs IV–VII we have valued scrap-steel inputs as new steel because the scrap input reported by Luoyang was not purchased as scrap, but rather, Luoyang paid the full price for this steel. According to Luoyang's verification report, the pattern for the TRB component in question is cut from the same material that a larger non-subject merchandise component is made from. *See* Memorandum to Susan H. Kuhbach: "Verification of Factors of Production for Luoyang Bering Corporation (Group) Company Limited" dated June 18, 1998. Therefore, this component was made from first quality steel sheet and not from scrap as Luoyang maintains. Furthermore, as indicated in the verification report, the steel sheet that remains when the larger component is cut, is never recorded as scrap nor is it entered into the scrap warehouse. Therefore, we valued the steel input for this component from the market-economy source reported by Luoyang and not as scrap.

Comment 32: Reported Amounts for Pallets for Luoyang

Luoyang maintains that in the Preliminary Results the Department correctly concluded that the pallets used to ship the subject merchandise were reported in kilograms. Luoyang contends that it provided the requested per-unit amount of packing materials in its revised factors of production database. Therefore, Luoyang argues that the Department should continue to use these data for the final results.

Timken argues that based on Luoyang's confusing descriptions of the data, it is unclear whether the pallets were reported in kilograms, on a per-kilogram basis, or on a per-unit basis, and that the Department must ascertain what was actually reported and make any necessary correction to the final results.

Department's Position: We agree with Luoyang. In the Preliminary Results, we assumed that Luoyang's usage of pallets was reported on a per kilogram basis. Upon further review, the pallets used by Luoyang were reported in kilograms. Therefore, we are not changing our treatment of Luoyang's pallet valuation.

Comment 33: Imported Steel for Tolled Bearing Production

Respondent CMC argues that it appears the Department erroneously applied surrogate values rather than the actual costs of imported steel which was used by one of its suppliers through a tolling arrangement. Citing a memorandum issued in conjunction with the Preliminary Results (*see* Memorandum to Richard Moreland: "Market Economy Inputs," dated June 30, 1998), CMC notes that the Department indicated that it would use the price actually paid for this imported steel when calculating CMC's margin in the Preliminary Results. CMC asks the Department to use the imported price in its final results.

Department's Position: Contrary to CMC's assertion, we did, in fact, use the price of the steel imported by CMC to value steel for this producer. We have modified the description in the log of the margin program to more clearly reflect the use of this value.

Comment 34: Imported Steel for One of CMC's Suppliers

Timken argues that the Department should not apply an imported steel value to reported steel factors for one of CMC's suppliers, as CMC provided no evidence that this steel was imported. Further, Timken notes that it appears that the Department did not use the most recent database submitted by this supplier in its preliminary calculations.

Respondent CMC agrees with Timken that the Department used the wrong data submission in its preliminary calculation. CMC argues, however, that the Department should use the value of imported steel value for this factor.

Department's Position: We agree that we erred in our Preliminary Results by using the wrong database, and we have corrected this for the final results. We have continued to value steel factors for this producer using the surrogate value for steel. CMC did not provide any support for its claim in earlier responses that this supplier used imported steel, and, further, CMC reclassified this steel as "domestic" in its most recent data submission.

Comment 35: Surrogate packing costs for boxes

In our Preliminary Results, we calculated surrogate values for the packing materials using Indian import statistics. Wafangdian argues that the Indian import statistics for wooden crates (which is one of several types of packing material used by TRB producers and exporters) included an aberrational figure, the cost of crates imported from Germany. According to Wafangdian, the cost of the German crates was not only extraordinarily high compared to other imported crates, but also substantially higher than Indonesian surrogate values for packing materials. Wafangdian, therefore, asks the Department to exclude the German value from its calculation of the surrogate packing cost.

Timken agrees that the calculation of the surrogate packing cost is erroneous, but not for the reason claimed by Wafangdian. Timken notes that, while the Department's calculation is in "Rs. per kilo," Indian import data for wooden crates are recorded in kilos only for April and May 1996, whereas later import statistics are recorded in number of units. Therefore, Timken says, the Department should use only the import data for the period April-May 1996.

Department's Position: We disagree with Wafangdian that the German prices should be excluded from the calculation. Because we do not have specific information on the sizes of the boxes being imported, it is inappropriate to selectively exclude certain imports from the calculations. Therefore, we believe it is appropriate to use the average value for all wooden crates within HTS category 4415.1000 in its entirety.

We agree with Timken with respect to the reporting of the value in the Indian import statistics and we acknowledge that the numbers reported for April 1996—March 1997 are labeled as number of units. However, we question whether this was simply a labeling error, given the inconsistent treatment of Nepal's exports to India. In that case, the data did not change from one reporting period to the next; however, in one instance the figures are reported in kgs and in another they are reported in units. Moreover, it is not appropriate to only use April and May 1996 data, as Timken has suggested, since these data are outside of the POR. Therefore, to confirm that we are using data reported only in Rs/kg, we have obtained the same Indian import statistics for HTS category 4415.1000 for the months June 1996 through January 1997. The monthly statistics for June 1996 through January 1997 are all reported in kgs. Therefore, for these final results, we used only data that are clearly labeled as Rs/kg and we calculated a POR average of 116.31 Rs/kg. Since these data are contemporaneous with the POR, no inflation adjustment is necessary.

Comment 36: Surrogate for boxes used by Wafangdian

Wafangdian argues that the Department should use Indonesian import statistics to value its wooden boxes (HTS 4415.10110), rather than Indian import statistics, because this figure is more specific to the plywood boxes used by Wafangdian during the POR.

Department's Position: We have not adopted Wafangdian's suggestion. There is no evidence on the record that indicates that the boxes used by Wafangdian are more like the boxes covered by Indonesian import statistics than those covered by Indian import statistics. Therefore, we have continued to use Indian import statistics for valuing the wooden boxes used by Wafandian.

Comment 37: Inappropriate use of facts available

Chin Jun claims that the Department inadvertently resorted to facts available for models where FOP data were available. Chin Jun argues that these models were produced by ZX and that the Department, therefore, should use ZX's FOP data.

Department's Position: We agree with Chin Jun that ZX's FOP data should be applied to the appropriate corresponding U.S. sales. We have reviewed our calculations and made the necessary changes.

Final Results of the Review

As a result of our analysis of the comments we received, we determine the following weighted-average margins to exist for the period June 1, 1996, through May 31, 1997:

Manufacturer/exporter	Margin (percent)
Wafangdian	0.00
Luoyang	3.20
CMC	0.03
Xiangfan	33.18
Zhejiang	0.05
Wanxiang	0.00
Liaoning	0.02
Premier	7.21

Manufacturer/exporter	Margin (percent)
Chin Jun	0.04
ZX (the new shipper)	0.00
PRC Rate	33.18

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to export price sales for these final results, we divided the total dumping margins (calculated as the difference between NV and export price) for each importer/customer by the total number of units sold to that importer/customer. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the relevant order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer for the review period will be almost exactly equal to the total dumping margins.

For constructed export price sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had reviewed those sales of merchandise actually entered during the POR.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of TRBs entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the PRC companies named above will be the rates shown above, except that for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for all remaining PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 33.18 percent (the proceeding's highest margin); (3) for non-PRC exporters, Premier and Chin Jun, the cash deposit rates will be the rates established above; (4) for non-PRC exporters of subject merchandise from the PRC, other than Premier and Chin Jun, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26(b) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d) or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30739 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054; A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Reviews

SUMMARY: On July 10, 1998, the Department of Commerce (the Department) published the preliminary results of the 1996–97 administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054) (*see Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews*, 63 FR 37344 (July 10, 1998) (*TRB Prelim*)). The review of the A–588–054 finding covers one manufacturer/exporter of the subject merchandise to the United States during the period October 1, 1996, through September 30, 1997. The review of the A–588–604 order covers one manufacturer/exporter and the period October 1, 1996, through September 30, 1997. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received we have changed the results from those presented in our preliminary results of review.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Ranado or Stephanie Arthur, Office of AD/CVD Enforcement III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–3518 or 6312, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are in reference to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to 19 CFR part 351 (April 1, 1998).

Background

On August 18, 1976, the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On

October 2, 1997 (62 FR 51628), the Department published the notice of "Opportunity to Request Administrative Review" for both TRB cases. Two respondents, Koyo Seiko Co., Ltd. (Koyo) and NTN Corporation (NTN), requested administrative reviews.[1] We initiated the A–588–054 and A–588–604 administrative reviews for the period October 1, 1996, through September 30, 1997, on November 26, 1997 (62 FR 63069). On July 10, 1998, we published in the **Federal Register** the preliminary results of the 1996–97 administrative reviews of the antidumping duty order and finding on TRBs from Japan (*see TRB Prelim* at 37348). The Department has now completed these reviews in accordance with section 751 of the Act, as amended.

Scope of the Review

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30. Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except for those manufactured by NTN Corporation (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes. The written description remains dispositive.

The A–588–054 review covers TRB sales by one TRB manufacturer/exporter, Koyo Seiko Ltd. (Koyo). The review of the A–588–604 case covers TRB sales by one manufacturer/exporter, NTN Corporation (NTN). The period of review (POR) for both cases is October 1, 1996 through September 30, 1997.

[1]While two additional respondents (NSK Ltd. and Fuji Heavy Industries) requested reviews in both the A–588–054 and A–588–604 cases, both later withdrew their requests in a timely manner (*see TRB Prelim* at 37344).

Analysis of Comments Received

We received case briefs from NTN and the petitioner, The Timken Co. (Timken), on August 10, 1998. We received rebuttal briefs from the same two parties, as well as from Koyo, on August 17, 1998. All comments in the case and rebuttal briefs we received are addressed below in the following order:

1. Adjustments to Normal Value
2. Adjustments to United States Price
3. Cost of Production and Constructed Value
4. Miscellaneous Comments Related to Level of Trade, the Arm's-Length Test, Sample Sales, and Model Matching
5. Clerical Errors

1. Adjustments to Normal Value

Comment 1: Timken argues that as in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan, Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558 (January 15, 1998) (*95/96 TRB Final*), there is once again a discrepancy between the total home market billing adjustments reported in NTN's computer sales tape and the total figures reported in its supplemental questionnaire response. Thus, Timken contends that NTN's sales tape is inconsistent with its questionnaire response and, given these inconsistences, the Department should adjust the sales tape to conform to the questionnaire response.

NTN claims that there is no merit to Timken's claim because there is no discrepancy between NTN's sales data and its reported figures. NTN argues that the alleged discrepancy is solely the result of Timken's manipulation of NTN's data and that there is no evidence to show that its sales data and its questionnaire response are inconsistent. Furthermore, NTN notes that in its May 19, 1998 supplemental response it has supplied information requested by the Department reconciling the billing adjustment totals reported on its computer tape and in its volume and value worksheet. Since there is no reason to doubt the accuracy of these data, NTN contends, the Department should accept NTN's home market billing adjustments as reported.

Department's Position: We agree with the petitioner. In the *95/96 TRB Final* Timken argued that because there were certain inconsistencies between NTN's computer tape home market billing adjustment total and the billing adjustment figure reported in NTN's volume and value worksheet, the Department should modify accordingly the reported adjustments to be consistent with those appearing on the volume and value reconciliation worksheets (*see 95/96 TRB Final* at 2563). For the current review, as Timken has indicated, these same inconsistencies exist between NTN's reported data and its volume and value reconciliation worksheets (provided as Exhibits A–2a through A–2c of NTN's May 19, 1998 supplemental questionnaire response). NTN attempts to explain such inconsistencies in its supplemental response at page 4 and at Exhibit A–2c, using a hypothetical example which purportedly demonstrates why it claims the totals reported on the sales tape and the totals reported on the volume and value worksheet are not necessarily equal. However, NTN's attempt to reconcile these totals does not sufficiently explain the significant discrepancies between them. Therefore, for these final results, we have adjusted NTN's reported home market billing adjustment total to be consistent with that on its volume and value worksheet. For a detailed description of our methodology, please refer to the proprietary version of the Department's Final Analysis Memorandum for NTN, dated November 9, 1998.

Comment 2: Timken claims that Koyo's indirect selling expenses (ISEs) have been allocated improperly. Timken maintains that Koyo reported selling expenses that could not be identified to a particular market or general and administrative expenses (G&A) on the basis of "various factors, such as number of employees working in the offices responsible for sales to the different markets, etc." *See* Timken case brief at 11, quoting Koyo section D questionnaire response dated February 11, 1998 at 22. Timken asserts that despite the Department's additional request for a detailed explanation of this allocation, Koyo instead submitted exhibit D–22 to its supplemental response which does not explain Koyo's allocation of its expenses between home market and export sales. In fact, Timken believes that exhibit D–22 demonstrates that Koyo allocated home market and export ISEs in a radically different fashion, and that this exhibit indicates that export selling expenses have not been properly allocated to export sales. Timken claims that despite repeated requests, Koyo has failed to provide information justifying its expense allocation. For these reasons Timken maintains that the Department should substitute an allocation of these

expenses between home market, U.S., and third-country exports that is supported by the record, such as allocation on the basis of cost of goods sold (COGS) or sales value.

Koyo responds that Timken fails to identify any flaws in its allocation methodology; rather, Timken simply asserts that there must be something wrong because Koyo's methodology results in the allocation of different proportional amounts of individual ISEs to home market and export sales. Koyo believes that the information Timken has provided demonstrating that, as a percentage of COGS, the ratio of the amounts of certain expenses allocated to export sales and home market sales varies among expenses, should be rejected based on the fact that Koyo's methodology is well established and has been used in numerous antifriction bearings (AFBs) and TRB reviews.

Koyo also claims that even if petitioner's proposal would lead to more accurate results, "it is unconscionable for petitioner to wait this many years before coming forward with a proposed revision to a well-established and repeatedly accepted methodology." Koyo rebuttal brief at 5. Koyo argues that at some point in time the interest in predictability in the methodologies used to calculate margins outweighs the quixotic desire to achieve more precise results. *Id.* Koyo asserts that this can be seen in *Shikoku Chemicals Corp.* v. *United States* 795 F. Supp. 417, 421 (1992), in which the Court of International Trade (CIT) stated: "[a]t some point, Commerce must be bound by its prior action so that parties have a chance to purge themselves of antidumping liabilities." *Id.*

Furthermore, Koyo asserts that its selling expense allocation methodology has been subject to numerous verifications by the Department in both the AFBs and TRBs reviews in which the Department has never found any distortions with its methodology nor any reason to reallocate its ISEs. Koyo cites to a recent CIT decision (*Timken Co.* v. *United States*, Slip Op. 98–92 (July 2, 1998) (*Timken 98–92*)), in which the CIT noted that "the Department may rely on the knowledge of a respondent's records and database obtained from past reviews in determining the reasonableness of its reporting methodologies in a current review." Koyo rebuttal brief at 6. Koyo claims that the Department's 1995–96 verification report, which Koyo attaches as an exhibit to its rebuttal brief, clearly lays out the details of its methodology. Koyo asserts that, as can be seen from exhibit 3 of this report, different expenses are allocated to export and home market sales on a different basis, which Koyo believes is "more relevant to the particular expenses involved, and thus provides a far more reasonable basis for allocation than simply allocating everything on the basis of COGS or sales value, as suggested by Timken." *Id.* Koyo believes that it is not surprising, given the detail of its allocation bases, that its methodology would lead to different ratios for the different expense types allocated to export and home market sales. Thus, Koyo claims that its methodology is sufficiently accurate to account for differences in the manner in which the different categories of ISEs were incurred. In addition, Koyo notes that the ratios Timken generated as a percentage of COGS are understandably different, given that in selling for export, Koyo "deals almost exclusively with a single entity in each country. . . while in selling in the home market Koyo must deal with a broad range of customers." *Id.* at 7. As a result, the ISEs allocated to one market would understandably differ from those allocated to another.

Finally, Koyo argues that Timken's assertion that "apparently * * * Koyo has limited the expenses attributed to export sales to those attributable to its export sales department" is wrong. Koyo rebuttal brief at 7, quoting Timken case brief. Koyo believes that Timken reaches this conclusion based on the fact that the heading "export department" appears at the top of the chart listed in exhibit D–22 of its supplemental response. However, Koyo claims that this heading describes the offices to which the expenses were allocated (*i.e.*, to third-country sales and U.S. sales, all of which are within the "export department"), not the offices from which the expenses were obtained. *Id.* at 8. Further, Koyo asserts that as can be seen from verification Exhibit 3 of its 1995–96 home market verification report, the expenses were obtained from all of Koyo's offices, "including its branch offices throughout Japan, its head office in Osaka, and the departments within some of its plants that have sales responsibilities." *Id.*

Department's Position: We disagree with petitioner. Timken claims that the Department must reject Koyo's ISEs because it has not allocated these expenses properly and has failed to provide a detailed explanation of these expenses, despite the Department's additional request for information. In our supplemental questionnaire we requested that Koyo provide further clarification concerning its ISEs. Koyo not only submitted the referenced exhibit D–22, but also provided the Department with further explanation of both its U.S. and home market ISEs (*see* Koyo's 1996–97 supplemental questionnaire, May 15, 1998, pages 19 and 27 and exhibits B–14 (consolidated HM sales worksheet), C–11 (export selling expenses incurred in Japan), C–24 (Reconciliation of Marine Insurance and export sales value), C–25 (1996/1997 SG&A allocation worksheet), and D–22 (fiscal year SG&A allocation worksheet). The additional information provided by Koyo demonstrates that it made a reasonable attempt to answer our questions and supply the Department with the appropriate material regarding its ISE allocation methodology.

Timken also believes that Koyo's exhibit D–22 proves that its ISEs are allocated in a disproportionate manner between home market and export sales. As mentioned in past TRBs reviews (*see 95/96 TRB Final* at 2569), we believe that Koyo's allocation methodology does not produce distortive results. As Koyo stated, in our 1995–96 verification report we specifically reviewed Koyo's ISE allocation and noted that we found no discrepancies with its allocation methodology. In fact, we specifically stated that:

> Because its allocation methodologies have been repeatedly verified in past TRBs reviews, and because Koyo's methodology has not changed for this review, this report does not describe them in detail. Nevertheless, we did review these allocations in detail at this verification and found no discrepancies.

See Koyo Seiko 95–96 Home Market Verification report dated June 20, 1997 at 10.

While we have not verified Koyo's allocation in this review, because its allocation methodology for its ISEs is identical in this review to that used in the 1995–96 review, we have no reason to believe that Koyo's allocation methodology produces distortive results. Further, we agree with Koyo that its allocation methodology provides a more accurate allocation than Timken's proposed methodology of allocating ISEs by COGS or sales value. For instance, based on exhibit 3 of Koyo's 1995–96 home market verification report, it is clear that Koyo's ISE allocation varies by market (home market and U.S.). This allocation methodology is very detailed and yields more accurate results than Timken's proposed methodology. We have reviewed this allocation in past AFBs and TRBs reviews and, as stated previously, have verified this expense in detail without discrepancy.

In addition, petitioner's claim that Koyo's exhibit D–22 indicates that export selling expenses have not properly been allocated to export sales seems to be based on a misunderstanding of the exhibit. The heading on exhibit D–22 reads "export department." It appears as though Timken misinterprets this to mean that Koyo has limited the expenses attributed to export sales to those attributable to its export sales department. However, exhibit 3 of Koyo's 1995–96 verification report, which Koyo has attached to its rebuttal brief in this review to explain its methodology to address Timken's related concern, clearly indicates that Koyo's expenses were obtained from all of Koyo's offices, not just the export department. Specifically, page two of this exhibit, titled "Key to Koyo's SG&A Allocation Methodology", details this allocation and gives further explanation of the nature of the expenses incurred. Based on a review of Koyo's ISEs we believe that this heading simply describes the office to which the expenses were allocated (*i.e.*, to third-country sales and U.S. sales which are within the "export department"), not the entirety of Koyo's export selling expenses. Also, as stated above, we have verified documentation regarding this issue in past TRBs reviews without discrepancy.

Therefore, because Koyo's ISEs have been thoroughly examined in numerous TRB reviews and verifications without discrepancy, and because the record in this review indicates that Koyo's allocation produces reasonably accurate results, for these final results we have accepted Koyo's reported ISEs.

Comment 3: Timken argues that the Department should not make an adjustment to normal value (NV) for Koyo's home market billing adjustments because they are distortive, have not been reported to the best of Koyo's ability, and are not accurate.

Timken claims that in the *95/96 TRB Final* at 2566 the Department stated that:

> [W]e have granted claims for PSPAs [post-sale price adjustments] as direct adjustments to NV if we determined that a respondent, in reporting these adjustments, acted to the best of its ability in providing information and meeting the requirements we have established with respect to these adjustments, and that its reporting methodology was not unreasonably distortive.

First, Timken notes that Koyo reported customer-specific lump-sum adjustments because Koyo's records do not permit transaction-specific adjustments. Timken asserts that the resulting lump-sum billing factors produce distortive results because Koyo has calculated these factors on the basis of customer codes used for sales to a single customer rather than those for specific "ship-to" or "bill-to" codes. While it may be asserted that these adjustments should be aggregated because they were all granted to the same customer, Timken believes this is not clear from the record evidence because Koyo's response does not contain a full listing of all the customer codes that it aggregated. Regardless, Timken claims that "these lump-sum adjustments were granted for specific, identified sets of sales which, in some instances, did not include any in-scope merchandise, and [that] these lump-sum adjustments attributable to one set of sales have distorted the amounts attributed to other sales of similar merchandise reported by Koyo." Timken case brief at 16. Therefore, Timken avers, Koyo's adjustments must be rejected.

Second, Timken asserts that even if the Department determined that Koyo's calculations were not distortive, the calculations should still be rejected because Koyo did not act to the best of its ability in reporting its adjustments. Specifically, Timken claims that Koyo is able to report its data more accurately because, based on exhibit B–12 (Billing Adjustment for Selected Home Market Customers) of its supplemental response, "it appears as though Koyo could have not only excluded sales to customers who made no purchases of similar merchandise, but also could have calculated individual ratios for each individual customer code." Timken case brief at 17. To further support this claim, Timken adds that, after comparing exhibit B–1 (Home Market Customer Codes) of Koyo's section B response to exhibit B–12, it is clear that Koyo is able to distinguish between customers who purchased TRBs which were under four inches in outside diameter from those who did not because all of the customers that appear in exhibit B–12 who did not purchase under-four-inch TRBs are excluded from the Exhibit B–1 customer list. Therefore, Timken argues that Koyo did not act to the best of its ability in reporting home market lump-sum billing adjustments. *Id.*

Third, Timken claims that the exact same ratio has been used to calculate lump-sum PSPAs, reported as BILADJH2, for each customer regardless of when the sale took place. Timken claims that exhibit B–12 of Koyo's supplemental response shows that these ratios have been calculated based on POR data. These POR-specific ratios, Timken asserts, were applied to sales transactions occurring outside the POR, *i.e.*, during the "window" months included in Koyo's home market sales data. Timken alleges that applying these ratios to sales outside of the review period produces inaccurate results. For the reasons stated above, Timken believes the Department should reject all of Koyo's negative home market lump-sum billing adjustments.

In response to Timken's arguments, Koyo first clarifies that Timken's argument applies only to its lump-sum billing adjustments, reported as BILADJH2. Koyo argues that Timken's challenge to its longstanding practice of aggregating lump-sum billing adjustments for customers to which Koyo has assigned multiple customer codes to calculate a customer-specific BILADJH2 must be rejected because it is "based on the false premise that lump-sum adjustments recorded for a particular customer code applied to sales only to that customer code." Koyo rebuttal brief at 8–9. Moreover, Koyo points out that the CIT has already upheld the Department's post-URAA acceptance of its PSPAs as "supported by substantial evidence and fully in accordance with law." *Id.*, quoting *Timken 98–92* at 16.

Koyo explains that, as the Department is aware, it negotiates with its customers lump-sum billing adjustments covering both scope and non-scope merchandise (*see* Koyo's 1996–97 TRB Section B Questionnaire Response at 12–14 (February 10, 1998), and Koyo's TRB Supplemental Questionnaire Response at 15 (May 15, 1998)), and that a single customer may have multiple customer codes reflecting shipment to different locations. After Koyo has negotiated a lump-sum adjustment with a customer, Koyo continues, the salesman must then enter that adjustment into Koyo's books. For customers with multiple customer codes, Koyo claims the salesman has the discretion to choose the customer code under which to enter the adjustment. However, Koyo claims that this adjustment may have applied to sales shipped to various other destinations (*i.e.*, customer codes), in addition to that to which the salesman assigns the adjustment. Thus, Koyo asserts that "the fact that a particular lump-sum adjustment is entered under a particular customer code does not mean that the adjustment applied only to shipments to that customer." Koyo rebuttal brief at 9. Accordingly, Koyo claims that its "well-established methodology properly aggregates all lump-sum adjustment amounts and all sales amounts from multiple customer codes for a single customer to ensure consistency between

the numerator and denominator of the adjustment factor calculation." *Id.* at 9–10. Koyo argues that the CIT upheld the fact that it reports its lump-sum billing adjustment in a non-distortive manner and to the best of its ability.

Koyo also argues that Timken's claim fails as a legal matter for it has always calculated its lump-sum billing adjustments for each customer, not each customer code, and that the Department has nevertheless accepted its lump-sum billing adjustments. Koyo asserts that it is inappropriate for Timken to now propose that the Department change this policy because, according to *Shikoku Chemicals,* 795 F.Supp. at 421, "[p]rinciples of fairness prevent [the Department] from changing its methodology at this late stage." Koyo rebuttal brief at 11, quoting *Shikoku Chemicals.* Further, Koyo claims that the Department's acceptance of its allocated billing adjustment is consistent with what Koyo maintains was one of the goals of the URAA, which was to liberalize certain reporting requirements imposed on respondents in antidumping reviews. Koyo states that following this Congressional mandate, the Department has adopted a more lenient policy of accepting allocations, as evidenced in its new regulations (*e.g.,* 19 CFR 351.401(g)(1)) and its decisions, such as that to accept Koyo's allocated lump-sum adjustments. According to Koyo, the CIT specifically approved the Department's new policy of "substitut[ing] a rigid rule with a more reasonable method . . . especially in light of the more lenient statutory instructions of section 782(e) of the Act." *Id.,* quoting *Timken 98–92* at 16.

Koyo also asserts that it has calculated all of its home market expenses on the basis of POR data, and then applied those factors to sales within the extended POR, including the window months (*i.e.,* the three months prior to and two months after the POR itself), and has done so in every TRBs and AFBs review. Further, Koyo argues that "the Department has consistently accepted this methodology, and, indeed, Timken has never before challenged it." *Id.* at 12.

Finally, Koyo asserts that if the Department were to accept any of Timken's suggested fundamental changes to its reporting methodology, it could not do so in this review because the CIT has repeatedly held that the Department may not apply retroactively changes in policy. *Id.,* citing *Badger-Powhatan* v. *United States,* 633 F Supp. 1364 (CIT 1986). This is particularly so, Koyo continues, when a party has relied on past practice to its own detriment. *Id.,* citing *IPSCO, Inc.* v. *United States,* 687 F. Supp. 614 (CIT 1988). Also, Koyo argues that the courts have repeatedly prohibited the Department from penalizing parties for failing to provide information never requested (*see e.g., Olympic Adhesives Inc.* v. *United States,* 899 F 2d. 1656, 1572–75 (Fed. Cir. 1990)). Therefore, Koyo maintains that if the Department were to impose such a significant reporting change, it could only do so in the next review.

Department's Position: We agree with Koyo. As Timken points out, in *95/96 TRB Final* we granted Koyo's claims for its lump-sum billing adjustments as direct adjustments to NV because we determined that Koyo, in reporting these adjustments, acted to the best of its ability in providing information and met the requirements with respect to these adjustments, and that its reporting methodology was not unreasonably distortive (*see* section 782(e) of the Act). We did not treat Koyo's lump-sum billing adjustment as a direct or indirect selling expense, but as a direct adjustment to identify the correct starting price. Koyo's record in the 1995–96 review and the instant review are identical with respect to its lump-sum billing adjustment. Based on this information, we believe that for the current review Koyo acted to the best of its ability in providing information regarding its PSPAs, and that its methodology is not unreasonably distortive.

Also, our decision to accept Koyo's methodology was recently upheld by the CIT in *Timken 98–92* at 16, in which the CIT ruled that "Commerce's decision to accept the PSPAs at issue [including Koyo's BILADJH2] is supported by substantial evidence and is fully in accordance with the post-URAA statutory language and the direction of the SAA [Statement of Administrative Action]." Koyo's allocation methodology in the current review is identical to that used in both the 1994–95 and 1995–96 reviews. Accordingly, as in past reviews, we have accepted Koyo's lump-sum billing adjustment in this review because it was not feasible for Koyo to report this adjustment on a more specific basis, and a review of its allocation methodology demonstrates that it does not cause unreasonable inaccuracies or distortions (*see 95/96 TRB Final* at 2566 and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews,* 63 FR 33320, 33328 (June 18, 1998) (*96/97 AFB Final*)).

In applying this standard we have not rejected an allocation method solely because the allocation includes adjustments granted on non-scope merchandise. However, such allocations are not acceptable where we have reason to believe that respondents did not grant such adjustments in proportionate amounts with respect to sales of out-of-scope and in-scope merchandise. We have made this determination by examining the extent to which the out-of-scope merchandise included in the allocation pool is different from the in-scope merchandise in terms of value and physical characteristics, and the manner in which it is sold. Significant differences in such terms may increase the likelihood that respondents did not grant price adjustments in proportionate amounts with respect to sales of subject and non-subject merchandise. While we scrutinize any such differences carefully between in-scope and out-of-scope sales in terms of their potential for distorting reported per-unit adjustments on the sales involved in our analysis, it would be unreasonable to require that respondents provide sale-specific adjustment data on non-scope merchandise in order to prove that there is no possibility for distortion. Such a requirement would defeat the purpose of permitting the use of reasonable allocations by a respondent that has cooperated to the best of its ability.

With respect to Timken's assertion that Koyo records its lump-sum billing adjustment in a distortive manner, we disagree. As explained by Koyo, its lump-sum billing adjustment is incurred at one customer "ship-to" location but may be recorded under numerous customer codes. More importantly, however, is the fact that regardless of which "ship-to" location Koyo records its lump-sum billing adjustment, Koyo records this billing adjustment on a customer-specific basis. Given the large number of sales involved, it is reasonable for Koyo to record this adjustment on a customer, not "ship-to", basis (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 62 FR 54043, 54050–1 (October 17, 1997) (*95/96 AFB Final*)). While our preference is for transaction-specific reporting, we recognize that this is not always possible, and therefore it is inappropriate to reject allocations that are not unreasonably distortive where a fully cooperating respondent is unable to report the information in a more specific manner (*see* section 782(e) of the Act). We have verified this

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allocation on numerous occasions in past TRBs and AFBs reviews and have determined that Koyo's allocation produces reasonably accurate results.

In addition, in past AFBs and TRBs reviews we have allowed Koyo to calculate a billing adjustment factor on a POR (12-month) basis and apply this factor to the additional window period (the three months prior to and two months after the POR). Timken alleges that this method is distortive but offers no evidence to support its claim. We have reviewed this method in numerous TRBs and AFBs reviews and determined that Koyo's methodology does not produce distortive results (*see, e.g., 95/96 TRB Final* and 96/97 AFB Final).

Based on our examination of the record in these reviews, we are satisfied that Koyo's records do not allow it to report this billing adjustment on a transaction-specific basis. Further, we believe that Koyo acted to the best of its ability in calculating the reported adjustment on as narrow a basis as its records allowed. Furthermore, we have verified Koyo's allocation methodology in past reviews and have determined that it does not produce distortive results, and there is no information on the record of this review to reasonably lead us to conclude otherwise in this case. Therefore, for these final results we have made a direct adjustment to NV for Koyo's lump-sum billing adjustments.

2. Adjustments to United States Price

Comment 4: NTN argues that the Department's decision to ignore adjustments to its U.S. ISEs for expenses incurred when financing cash deposits for antidumping duties is contrary to both the Department's position in past reviews and judicial precedent, and that it inappropriately denies an adjustment for expenses incurred solely as a result of the existence of an antidumping order.

NTN asserts that the CIT has previously held that these imputed interest expenses do not constitute selling expenses, and cites *PQ Corp.* v. *United States*, 11 CIT 53, 67 (1987) (*PQ Corp*), in which the CIT stated, "if deposits of estimated antidumping duties entered into the calculation of present dumping margins, then those deposits would work to open up a margin where none otherwise exists." NTN case brief at 3, quoting *PQ Corp.* NTN claims that the rationale in *PQ Corp* applies similarly to the payment of interest on cash deposits, and asserts that if the Department were to allow interest expenses from prior reviews to affect the calculation of margins for present reviews, it would cause an unending cycle which would prevent the Department from ever revoking an antidumping order. *Id.* at 4.

NTN maintains that the CIT, in *Timken* v. *United States*, Slip Op. 97–87 (July 3, 1997) (*Timken*), upheld NTN's adjustments to U.S. ISEs for interest incurred when financing cash deposits, and notes that the Department itself argued in support of such an adjustment. NTN argues that, as set forth in *Timken*, interest expenses attributable to cash deposit financing do not result from selling merchandise in the United States.

NTN also references the CIT's decision in *Federal Mogul Corp.* v. *United States*, Slip Op. 96–193 (December 12, 1996), claiming that the CIT explicitly rejected the petitioner's argument that interest expenses constituted selling expenses because they were incurred as a result of NTN's "decision" to sell the subject merchandise at less than fair value. Additionally, argues NTN, the Court rejected the petitioner's argument that allowing such an adjustment was duplicative of interest paid on the refund of excess cash deposits. NTN states that the CIT noted that section 737(b) and section 778 of the Act compensate NTN for dumping duties paid by NTN but which the Department later determines that NTN does not owe. Conversely, NTN holds, the adjustment for interest expenses on cash deposits is an actual expense for which the statute does not compensate NTN. Therefore, the Department should not ignore adjustments to NTN's U.S. ISEs for expenses incurred when financing cash deposits. *Id.* at 4 and 5.

Timken responds by quoting at some length *95/96 TRB Final* at 2571, in which the Department rejected NTN's claim for a downward adjustment to U.S. ISEs for interest incurred when financing cash deposits, because the Department found that financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping order. Therefore, Timken concludes that the Department should continue to reject NTN's claim for an adjustment to U.S. ISEs for interest incurred on cash deposits.

Department's Position: We disagree with NTN that we should allow an adjustment to NTN's U.S. ISEs for expenses which NTN claims are related to financing of cash deposits. Antidumping duties, cash deposits of antidumping duties, and other expenses such as legal fees associated with participation in an antidumping case are not expenses that we should deduct from U.S. price. To do so would involve a circular logic that could result in an unending spiral of deductions for an amount that is intended to represent the actual offset for the dumping (*see, e.g., 95/96 TRB Final* at 2571, *Certain Cut-to-Length Carbon Steel Plate from Germany; Final Results of Antidumping Duty Administrative Review*, 62 FR 18390, 18395 (April 15, 1997), and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 57 FR 28360, 28413–4 (June 24, 1992) (*90/91 AFB Final*)). Underlying our logic in all of these instances is an attempt to distinguish between business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of an antidumping duty order.

Financial expenses allegedly associated with cash deposits are not a direct, inevitable consequence of an antidumping duty order. As we stated previously in the *95/96 TRB Final* at 2571: "* * * money is fungible. If an importer acquires a loan to cover one operating cost, that may simply mean that it will not be necessary to borrow money to cover a different operating cost." (*See also 96/97 AFB Final*). There is nothing inevitable about a company having to finance cash deposits and there is no way for the Department to trace the motivation or use of such funds even if it were.

Even if a respondent has a loan amount that equals its cash deposits or can demonstrate a "paper trail" connecting the loan amount to cash deposits, we do not consider the loan amount to be related to the cash deposits and will not remove it from the ISEs. Moreover, the result should not be different where an actual expense can not be associated in any way with the cash deposits. We reject imputation of an adjustment because there is no real opportunity cost associated with cash deposits when the paying of such deposits is a precondition for doing business in the United States. As a result, we have not accepted NTN's reduction in ISEs based on actual borrowings to finance cash deposits nor will we accept such a reduction based on imputed borrowings. We consider all financial expenses the affiliated importer incurred with respect to sales of subject merchandise in the United States to be ISEs under section 772(d)(1)(D) of the Act.

Over time, the Department has reexamined its policy with respect to this difficult issue. Although in past reviews we have removed expenses for financing cash deposits, we have

reexamined this issue and our current policy is to deny the adjustment. The Department has concluded that our new policy is reasonable and best reflects commercial reality with respect to affiliated-importer situations (*see 96/97 AFB Final* at 33348; *see also 95/96 TRB Final* at 2571).[2] In accordance with our current policy, for these final results we have continued to deny NTN's adjustment to U.S. ISEs for interest incurred when financing cash deposits.

Comment 5: NTN argues that the Department should have calculated constructed export price (CEP) profit on a level-of-trade (LOT)-specific basis. NTN claims that the Department noted that prices differed significantly based on the LOT at which merchandise was sold. NTN claims that selling expenses also differed by LOT and this had an effect on prices but that this difference does not account entirely for the different price levels. NTN further emphasizes that Section 772 (f)(2)(C) of the Act expresses a preference for the profit calculations to be performed as specifically as possible and on as narrow a basis as possible. Finally, NTN asserts that because the Department calculated constructed value (CV) profit on a LOT-specific basis and matched U.S. and home market sales by LOT, the calculation of CEP profit should also take LOT into account.

Timken argues that the Department rejected the identical argument by NTN in its final results of the sixth review of the AFBs case, stating that "neither the statute nor the SAA require us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. * * * [T]he statute and SAA, by referring to "the" profit, "total actual profit", and "total expenses" imply that we should prefer calculating a single profit figure" (*see Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.; Final Results of Antidumping Duty Administrative Reviews*, 62 FR 2081, 2125 (January 15, 1997) (*94/95 AFB Final*)). For these same reasons, Timken contends that the Department should again reject NTN's assertion that CEP profit should be calculated on a LOT-specific basis.

Department's Position: We agree with Timken. Neither the statute nor the SAA requires us to calculate CEP profit on a basis more specific than the subject merchandise as a whole. *See 94/95 AFB Final* at 2125; *see also 95/96 TRB Final* at 2570. Respondent's suggestion would not only add a layer of complexity to an already complicated exercise with no increase in accuracy, but a portion of the CEP profit calculation would be more susceptible to manipulation. As we stated in *94/95 AFB Final* at 2125: "We need not undertake such a calculation (*see Daewoo Electronics* v. *International Union*, 6 F. 3d 1511, 1518–19 (CAFC 1993)). Finally, subdivision the CEP profit calculation would be more susceptible to manipulation. Congress has specifically warned us to be wary of such manipulation of the profit allocation (*see* S. Rep. 103–412, 103d Congress, 2d Sess at 66–67)." Therefore, consistent with our recent treatment of this issue in the above-cited cases, for these final results we have not changed our CEP profit calculation.

Comment 6: NTN asserts that the Department should exclude export price (EP) sales from the calculation of the CEP profit adjustment and argues that Section 772(f) of the Act clearly states that the CEP profit adjustment is to be based on the expenses incurred in the United States as a percentage of total expenses. NTN contends that Section 772(d) of the Act contains no provision for the inclusion of EP expenses and that the canon of statutory construction, *expressio unius est exclusio alterius*, indicates that the absence of such a provision precludes its inclusion. *See* NTN case brief at 13. NTN further asserts that the SAA similarly states that "the total expenses are all expenses incurred by or on behalf of the foreign producer and exporter and the affiliated seller in the United States with respect to the production and sale of . . . the subject merchandise sold in the United States and the foreign like product sold in the exporting country (if Commerce requested this information in order to determine the normal value and constructed export price)." *Id.*, quoting SAA at 154. Similarly, NTN contends that sales revenue for EP sales also should be excluded from the calculation of CEP profit. NTN states that the definition of "total actual profit" for CEP in Section 772(f) of the Act clearly mandates that total profit be calculated using only CEP transactions. Therefore, NTN claims that the Department has calculated CEP profit in a manner contrary to that specified by the plain language of the statute.

Timken responds that the Department should continue to include EP sales in the calculation of CEP profit, as it did for the *95/96 TRB Final*. Timken asserts that this methodology corresponds with the Department's September 4, 1997 Policy Bulletin, which states that section 772(f)(2)(D) of the Act explicitly states that the calculation of total actual profit must include all revenues and expenses resulting from the respondent's EP, CEP, and home market sales. *See* Policy Bulletin 97.1, September 4, 1997.

Department's Position: We disagree with NTN. Policy Bulletin 97.1 regarding the calculation of CEP profit indicates that section 772(f)(2)(D) of the Act clearly states that the calculation of total actual profit is to include all revenues and expenses resulting from the respondent's EP sales as well as from its CEP and home market sales. The basis for total actual profit is the same as the basis for total expenses under section 772(f)(2)(C) of the Act. The first alternative under this section states that, for purposes of determining profit, the term "total expenses" refers to all expenses incurred with respect to the subject merchandise sold in the United States (as well as in the home market). Thus, where the respondent makes both EP and CEP sales to the United States, sales of the subject merchandise would necessarily encompass all such transactions. Therefore, as in the *95/96 TRB Final*, because NTN had EP sales, we have included these sales in the calculation of CEP profit. *See also* Policy Bulletin 97.1, *op cit.*

Comment 7: Timken argues that because NTN has reported sale and payment dates for its CEP sales, the Department should calculate transaction-specific credit costs as it did in *95/96 TRB Final*, rather than accept NTN's customer-specific averages as reported in the current review. Timken asserts that NTN's customer-specific reporting methodology is distortive because it has the effect of understating its credit costs.

Citing *94/95 AFB Final* at 2101, NTN responds that Timken has provided no record basis for its assertion, and that the Department and CIT have both previously upheld its current methodology in past reviews.

Department's Position: We agree with petitioner. The data on the record for this review permit the calculation of transaction-specific credit costs. It bears noting that it was not necessary to make changes to our final margin program because we already recalculated NTN's

[2] Although the CIT recently upheld our determination to grant the same type of offset for purposes of the 94–95 TRB review (*see Timken 98–92*), it has not precluded the Department from adopting its current policy of denying the type of adjustment at issue. It bears noting that in *Timken 98–92*, it was emphasized to the court that the applicable Commerce policy at the time of the 94–95 TRB review was to allow the adjustment and that the new policy to deny the adjustment should not be retroactively applied to the 94–95 review. See *Id.* at 6–7. In the instant review, however, the current and reasonable policy is to deny the adjustment and retroactive application of policy changes is not, therefore, at issue.

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reported U.S. credit expense for our preliminary results, as we did in *95/96 TRB Final*. *See* NTN Preliminary Margin Program, at lines 728–735.

Comment 8: Timken believes that NTN has improperly adjusted the ISEs of its U.S. subsidiary, NTN Bearing Company of America (NBCA). NTN's adjustment for a particular expense [3], Timken asserts, is inconsistent with its basic allocation approach and has the effect of diluting the expense ratio. Timken argues that the Department should accordingly deny this particular claimed adjustment to NTN's U.S. ISEs. Further, Timken claims that even if the adjustment in question is reasonable, the amount does not make sense because the "adjusted" amount represents a disproportional amount of the expense at issue, and the allocation results in an understatement of NBCA's ISEs.

NTN responds that neither of Timken's arguments is a valid basis for denying its adjustment to U.S. ISEs. NTN asserts that the adjustment in question to U.S. ISEs does not have the distortive effects on the calculation imagined by Timken. NTN claims that it is clear from both its February 17, 1998 questionnaire response and its May 19, 1998 supplemental response that the expense in question was allocated correctly. Also, NTN maintains that Timken misunderstands the nature of the expense. Finally, NTN claims that due to the nature of the expense, the difference in amounts associated with this particular expense is reasonable.

Department's Position: We disagree with petitioner. Because certain of NTN's U.S. expenses were incurred solely for non-scope merchandise, in order to ensure an accurate allocation of its U.S. expenses, NTN first removed all such expenses from the pool of U.S. ISEs. *See* exhibit C7, worksheet 3 of NTN's February 17, 1998 questionnaire response. The remaining U.S. ISEs which were incurred for either scope or non-scope merchandise, but which could not be specifically tied to either scope or non-scope products, were then allocated to scope and non-scope merchandise. In previous TRBs (and AFBs) administrative reviews, we examined and verified NTN's adjustment allocation methodology and found it to be reasonable. *See, e.g., Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 64720, 64726 (December 9, 1993) (*90/92 TRB Final*), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 63 FR 20585, 20595 (April 27, 1998) (*93/94 TRB Final*). Because NTN's approach for adjusting its U.S. ISEs remains unchanged for the current review, and there is no information on the record of this review which should call into question our practice of accepting NTN's approach, we have made no modifications for these final results.

Comment 9: Timken argues that the Department failed to adjust U.S. prices for reported export selling expenses even though both respondents reported information on these expenses. In addition, Timken claims that the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, Title II, § 224, December 8, 1994) made no substantive changes in the statutory requirement that CEP be adjusted for ISEs. *See* Timken case brief at 1.

Citing section 772a(e)(2) of the Act (prior to the URAA amendment), Timken claims that since the Antidumping Act of 1921, Congress has specified that the U.S. prices of affiliated importers are to be adjusted for "expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise" and that the Department has implemented this provision in its regulation providing for price reduction for "[e]xpenses generally incurred by or for the account of the exporter in selling the merchandise, or attributable under generally accepted accounting principles to the merchandise." *Id.* at 1 and 2, quoting 19 CFR 353.41(e)(2). In practice, Timken believes that these provisions direct the Department to adjust U.S. prices for expenses incurred in the home market that were attributable to export sales as well as ISEs incurred in the United States. Further, citing Sen. Rep. No. 412, 103d Cong., 2d Sess. 65 (1994), Timken claims that this was changed by the URAA to "any selling expenses not deducted under subparagraph (A), (B), or (C) [of section 772a(d)(1) of the Act]" in which Congress specified it intended "that this category will, as under current practice, encompass those expenses that do not result from, or cannot be tied directly to, specific sales, but that may reasonably be attributed to such sales." *Id.* at 2.

Finally, Timken asserts that under section 772a(e) of the pre-URAA Act, expenses are only referred to as those "incurred by or for the account of the exporter in the United States", while under section 772a(d) of the new law this has been expanded to include adjustment for expenses "incurred by or for the account of the *producer* or exporter, or the affiliated seller in the United States" (emphasis supplied). *Id.* at 3, quoting the pre-URAA and post-URAA language of section 772a(d). Therefore, Timken believes that Congress has codified the Department's practice by expanding the adjustment to include expenses incurred by *producers* or exporters.

Both NTN and Koyo argue that the Department's treatment of export selling expenses in this review is consistent with its past practice in all post-URAA TRBs reviews (*i.e., 95/96 TRB Final* at 2575). At page 2 of its rebuttal brief, Koyo cites *Timken 98–92* at 11, in which the CIT upheld the Department's reliance on the language in the SAA that U.S. ISEs are those associated with economic activities occurring in the United States. Both respondents claim that the Department has acted in conformity both with the law and with its now-established policy of not deducting export selling expenses from U.S. price.

Further, Koyo claims that the only new argument offered by Timken is its reliance on the URAA's added word *producer* to section 772a(d) of the Act, expanding the reference to include expenses "incurred by or for the account of the producer or exporter * * *". *See* Koyo rebuttal brief at 2 and 3. Koyo alleges that this new argument fails for two reasons. First, Koyo states the Department has already defined the "expenses" at issue in section 772a(d) of the Act, as those "associated with economic activity in the United States." Koyo also argues that the CIT has upheld this definition in *Timken 98–92*, and Koyo asserts that a limitation on the scope of the relevant expenses "must be satisfied before it is necessary for the Department to consider the identity of the party—the producer or the exporter—that incurred the expenses." See *Koyo* rebuttal brief at 3. If the expenses at issue do not meet the geographic test, Koyo avers, the identity of the party incurring them is irrelevant. Second, Koyo clarifies that in the current case, they are both the producer and exporter. "Consequently, the addition by the URAA of the word "producer" does not expand the

[3] The "particular expense" at issue involves discussion of proprietary information. A complete discussion of the expense is included in the proprietary version of our Final Analysis Memorandum for NTN, dated November 9, 1998.

coverage of the provision any further than it did prior to the URAA in these circumstances." *Id.*

Department's Position: We agree with respondents. As we stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11834, (March 13, 1997), *95/96 TRB Final* at 2575, and *94/95 AFB Final* at 2124, we will deduct from CEP only those expenses associated with economic activities in the United States which occurred with respect to sales to the unaffiliated U.S. customer. We found no information on the record for this review period to indicate that the export selling expenses for the respondents that were incurred in their respective home markets were associated with activities occurring in the United States.

Also, it is clear from the SAA that under the new statute we should deduct from CEP only those expenses associated with economic activities in the United States. The SAA also indicates that "constructed export price is now calculated to be, as closely as possible, a price corresponding to an export price between non-affiliated exporters and importers." SAA at 823.

Further, in *Timken 98–92*, the CIT ruled that "Commerce's decision to limit U.S. ISEs to those expenses incurred in the United States is supported by substantial evidence and fully in accordance with law." *Timken 98–92* at 11. We note that the record in this case on this issue is identical to that in *Timken 98–92*. Koyo and NTN have clearly demonstrated that their export selling expenses were not associated with economic activity in the United States. Therefore, no additional adjustment to Koyo's or NTN's U.S. prices would be appropriate.

3. Cost of Production (COP) and Constructed Value (CV)

Comment 10: NTN claims that the Department's decision to use the higher of transfer price or actual cost for affiliated-party inputs in calculating COP and CV is distortive, and that this methodology has no basis in the antidumping law. NTN maintains that section 773(f)(2) of the Act addresses the circumstances under which the Department should disregard some transactions. NTN contends that such circumstances would be those where a transaction between related parties does not reflect "the amount usually reflected in sales of merchandise under consideration in the market under consideration." NTN case brief at 20, quoting section 773(f)(2) of the Act. NTN declares that there is no evidence that its reported affiliated-party input data do not reflect the amount usually reflected in sales of this merchandise in the market under consideration. NTN also argues that no statutory language mandates the use of the higher of transfer price or actual cost for affiliated-party inputs in calculating COP and CV and, thus, it is unreasonable and contrary to law to follow this methodology. Therefore, NTN concludes that instead of using the higher of transfer price or actual cost, the Department should use NTN's affiliated-party input data as reported.

The petitioner contends that the Department's use of the higher of transfer price or actual cost to value affiliated-party inputs is in accordance with section 773(f)(3) of the Act, which provides that when major inputs are transferred at prices below-cost, the Department may calculate the value of the major input using cost of production. Timken states that NTN has asserted that no evidence exists to show that NTN's reported affiliated-party data do not reflect the amount usually reflected in sales of this merchandise in the market under consideration. However, Timken argues that by making this assertion, NTN ignores the commercial reality that below-cost sales are generally not at market prices, and below-cost home market sales are by statute "out of the ordinary course of trade." Timken rebuttal brief at 12. Timken argues that since NTN reported below-cost transfer prices, the Department correctly substituted cost of production for related-party inputs instead of using NTN's affiliated-party input data as reported.

Department's Position: We disagree with NTN's contention that it is not appropriate for the Department to rely on section 773(f) (2) and (3) of the Act in this instance. We note that section 351.407 (a) and (b) of the Department's regulations sets forth certain rules that are common to the calculation of CV and COP. This section states that for the purpose of section 773(f)(3) of the Act the Department will determine the value of a major input purchased from an affiliated person based on the higher of: (1) the price paid by the exporter or producer to the affiliated person for the major input; (2) the amount usually reflected in sales of the major input in the market under consideration; or (3) the cost to the affiliated person of producing the major input. Furthermore, we have relied on this methodology in *Final Results of Antidumping Duty Administrative Review; Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 62 FR 18448, 18464 (April 15, 1997), *94/95 AFB Final* at 2115, and *95/96 TRB Final* at 2573. In each of these determinations the Department concluded that in the case of a transaction between affiliated persons involving a major input, we will use the highest of the transfer price between the affiliated party, the market price between unaffiliated persons involving the major input, or the affiliated supplier's cost of producing this input.

Accordingly, for the final results we have continued to rely on the higher of transfer price or actual cost for NTN's affiliated-party inputs when calculating COP and CV.

4. Miscellaneous Comments Related to Level of Trade, Arm's-Length Test, Sample Sales, and Model Matching

Level of Trade

As set forth in section 773(a)(1)(B) of the Act, to the extent practicable we have determined NV based on sales in the comparison market at the same LOT as the EP and CEP transactions. When we were unable to find comparison sales at the same LOT as the EP or CEP sales, we compared the U.S. sales to sales at a different LOT in the comparison market. We determined the LOT of EP sales on the basis of the starting prices of sales to the United States. We based the LOT of CEP sales on the price in the United States after making the CEP deductions under section 772(d) of the Act but before making the deductions under section 772(c) of the Act. Where home market prices served as the basis of NV, we determined the NV LOT based on starting prices in the NV market. Where NV was based on CV, we determined the NV LOT based on the LOT of the sales from which we derived SG&A and profit for CV. In order to determine the LOT of U.S. sales and comparison sales, we reviewed and compared distribution systems, including selling functions, classes of customer, and the extent and level of selling expenses for each claimed LOT. Customer categories such as distributor, original equipment manufacturer (OEM), or wholesaler are commonly used by respondents to describe LOTs but are insufficient to establish a LOT. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Different LOTs

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are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them. See *94/95 AFB Final* at 2105.

In accordance with section 773(a)(7)(A) of the Act, where we established that the comparison sales were made at a different LOT than the sales to the United States, we made a LOT adjustment if we were able to determine that the differences in LOTs affected price comparability. We determined the effect on price comparability by examining sales at different LOTs in the comparison market. Any price effect must be manifested in a pattern of consistent price differences between foreign market sales used for comparison and foreign market sales at the LOT of the export transaction. To quantify the price differences, we calculated the difference in the average of the net prices of the same models sold at different LOTs. We used the average difference in net prices to adjust NV when NV was based on a LOT different from that of the export sale and the price differential was due to differences in LOT. If there was a pattern of no price differences, the differences in LOTs did not have a price effect and, therefore, no adjustment was necessary.

Section 773(a)(7)(B) of the Act provides for an adjustment to NV when NV is based on a LOT different from that of the CEP if the NV level is more remote from the factory than the CEP and if we are unable to determine whether the difference in LOTs between the CEP and NV affects the comparability of their prices (*see, e.g., 96/97 AFB Final* at 33330). This latter situation can occur when there is no home market LOT equivalent to the U.S. LOT or where there is an equivalent home market level but the data are insufficient to support a conclusion on price effect. This adjustment, the CEP offset, is identified in section 773(a)(7)(B) of the Act and is the lower of the following:

- The ISEs on the home market sale, or
- The ISEs deducted from the starting price used to calculate CEP.

The CEP offset is not automatically granted each time we use CEP (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–3 (November 19, 1997)). The CEP offset is made only when the LOT of the home market sale is more advanced than the LOT of the CEP sale and there is not an appropriate basis for determining whether there is an effect on price comparability.

We determined that for Koyo there were two home market LOTs and one U.S. LOT (*i.e.*, the CEP LOT). Because neither of the home market LOTs was equivalent to the CEP LOT and because NV represented a price more remote from the factory than the CEP, we made a CEP offset adjustment to NV in our CEP comparisons for Koyo.

For NTN we found that there were three home market LOTs and two (one EP and one CEP) LOTs in the United States. Because there were no home market LOTs equivalent to NTN's CEP LOT, and because NV for NTN represented a price more remote from the factory than the CEP, we made a CEP offset adjustment to NV in our CEP comparisons. We also determined that NTN's EP LOT was equivalent to one of its LOTs in the home market. Because we determined that there was a pattern of consistent price differences due to differences in LOTs, we made a LOT adjustment to NV for NTN in our EP comparisons where the U.S. EP sale matched to a home market sale at a different LOT.

Comment 11: Timken states that the Department matched NTN's EP sales to one of the home market LOTs because it was determined that selling activities of each are virtually the same. In addition, Timken states, because the Department found a pattern of consistent price differences between NTN's different home market LOTs, the Department made a LOT adjustment when comparing EP sales with home market sales at a different LOT. However, Timken claims that there are additional selling activities associated with NTN's EP sales, which the Department did not consider in its LOT analysis. Timken argues that these additional selling activities are sufficient to place these EP sales at a different LOT than any of NTN's three home market LOTs and that as a result, there is no basis for the Department to quantify any LOT adjustment. Therefore, Timken contends that the Department should not make a LOT adjustment to NTN's EP sales.

NTN responds that the Department should continue to grant a LOT adjustment to NV when an EP sale matched to a home market sale at a different LOT. NTN maintains that Timken's allegation of differences in selling activities between EP sales and a home market LOT is invalid because the stated "additional selling activities" are not really selling activities. NTN argues that in keeping with *95/96 AFB Final* at 54060 ("NTN Japan provided adequate factual information to support its claim with regard to differences and similarities of its HM levels of trade and EP level of trade"), the Department should not deny NTN's LOT adjustment. In addition, NTN cites *Mitsubishi Heavy Indus.* v. *United States*, Slip Op. 98–82 (June 23, 1998) (*Mitsubishi Heavy Indus.*), in which the CIT examined the types of activities which are selling activities and those which would not qualify as selling activities. Because of the comparison that can be drawn between *Mitsubishi Heavy Indus.* and the present review, NTN asserts that the Department should not deny NTN a LOT adjustment to NV when an EP sale matched to a home market sale at a different LOT.

Department's Position: We disagree with Timken. As stated in *96/97 AFB Final* at 33331, differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in LOTs. While there are a few individual selling functions that vary, we determine that these functions, by themselves, do not offset the many similarities of the selling functions performed by the respondent at the EP and home market LOTs . Although we have determined that there is a qualitatively minimal difference in selling functions between one of the home market LOTs and the EP LOT, the two LOTs are similar enough to be considered the same LOT, such that that home market LOT can be used in determining whether there is a pattern of consistent price differences between that LOT and the LOT at which certain EP sales are made.

Comment 12: NTN contends that the Department should have relied on its LOT-based U.S. and home market selling expense data as reported, instead of reallocating these selling expenses without regard to LOT. NTN states that in the Department's *Analysis Memo for Preliminary Results of the 1996–97 Review—NTN Corporation*, dated July 2, 1998 (*Prelim Analysis Memo*), the Department indicated that it did not utilize NTN's LOT distinctions for most U.S. and certain home market selling expenses, and instead recalculated these expenses without regard to LOT. NTN claims that the Department disallowed NTN's allocations of certain home market expenses due to the complexity of NTN's original LOT-specific methodology. NTN asserts, however, that its methodology does not distort the dumping margin, whereas the Department's reallocation does. Further, NTN insists that the alleged complexity of its methodology is an insufficient reason to justify reallocating NTN's home market selling expenses. In the past, NTN maintains, the Department

has found NTN's "complex methodology" to be reasonable; no evidence has been presented showing that NTN's methodology is now unreasonable.

NTN argues that in past reviews the Department accepted its methodology for reporting selling expenses. For instance, NTN asserts, in *Tapered Roller Bearings and Parts Thereof from Japan, etc.; Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR at 57629, 57636 (November 7, 1996) (*92/93 TRB Final*) the Department determined that NTN's LOT-based reporting was not acceptable based "solely on our discovery of a discrepancy in NTN's reported total U.S. sales value for scope merchandise during the POR." NTN case brief at 6, quoting *92/93 TRB Final*. NTN holds that it is clear from the language of the determination that the only reason the Department rejected NTN's reported expenses was an alleged discrepancy in reported numbers. Therefore, NTN contends, its reporting methodology meets the Department's criteria and accounts for the consistent price differences between LOTs better than the reallocation of selling expenses does.

In addition, NTN states that the Department determined that different LOTs existed in the U.S. and Japanese markets for its sales (*see TRB Prelim* at 37347–8), and that the decision to allocate certain U.S. and home market expenses without regard to LOT voids the LOT determination made in the preliminary results, insofar as the effect that different LOTs have on price is lessened by this reallocation. Furthermore, NTN argues that the Department's mandate is to administer the antidumping laws as accurately as possible (see *Böwe-Passat* v. *United States*, 17 CIT 335, 340 (1993)). Because the Department's reallocation of these expenses without regard to LOT eliminates the effect of LOT on price, NTN asserts, the Department's decision to reallocate these expenses is a direct violation of this mandate. Therefore, NTN concludes, the Department should rely on NTN's LOT-specific expense data to calculate U.S. and home market selling expenses.

Timken argues that the record supports the Department's reallocation of NTN's indirect selling expense data without regard to LOTs. Timken states that the Department rejected NTN's allocation of U.S. selling expenses because there was no evidence to demonstrate that these expenses varied according to LOT. With regard to NTN's home market selling expenses, Timken claims that the Department correctly rejected NTN's data because of its "complexity", and that this is reasonable. Timken contends that the record fails to show that NTN's home market expenses were incurred differently based on LOT, and does not contain evidence that NTN's methodology reasonably allocates those expenses.

Timken states that although the *92/93 TRB Final* upheld NTN's position, the results from that review period are currently on remand for the issue at hand. Timken notes that in remanding those results, the CIT cited a third review of TRBs in which it did not support the proposition that NTN's expenses varied by LOT (*see Timken* v. *United States*, 989 F. Supp. 234, 249 (1997)).

Timken refers to the *95/96 TRB Final*, in which the Department reallocated NTN's home market and U.S. selling expense data without regard to LOT, rather than relying on NTN's data as reported. In that review Timken states that the record did not contain "quantitative and narrative evidence" demonstrating that sales at different LOTs incurred different amounts of expenses. Timken rebuttal brief at 4. Likewise, Timken argues that in the past four AFBs administrative reviews the Department also rejected NTN's allocation of U.S. and home market selling expense data by LOT. Therefore, Timken concludes that the Department should continue to reallocate NTN's home market and U.S. selling expense data without regard to LOT.

Department's Position: We agree with Timken. We have determined that, for a majority of the expenses in question, NTN's LOT-specific selling expense allocation methodology bears no relationship to the manner in which NTN actually incurred these selling expenses. In *Timken Co.* v. *United States*, 930 F. Supp. 621 (CIT 1996) (*Timken 1*), the CIT ordered the Department to accept NTN's LOT-specific allocations and per-unit LOT expense adjustment amounts only if NTN's expenses demonstrably varied according to LOT. *See Id.* at 628. By ordering us to ascertain whether these expenses actually varied according to LOT, the CIT, in essence, indicated that NTN's use of its LOT-specific per-unit expense adjustments did not necessarily mean that NTN incurred the expenses differently due to differences in LOTs. Rather, additional evidence must also exist which demonstrates that NTN actually sold differently to each LOT by performing different activities/functions or by performing the same activities/functions to a different degree when selling to each LOT. In accordance with this order, in our remand results pursuant to *Timken 1* we did not allow NTN's allocation of its expenses by LOT due to the lack of quantitative and narrative evidence on the record demonstrating that the expenses in question demonstrably varied according to LOT; in the instant review we applied the same standards articulated by the CIT in *Timken 1*. In other words, as in our *95/96 TRB Final*, we have examined the record and determined that in most instances no evidence exists demonstrating that NTN's home market and U.S. expenses allocated by LOT actually varied according to LOT.

However, for certain of NTN's U.S. packing material and packing labor expenses, NTN's response indicates that NTN incurred these expenses only when selling to one specific U.S. LOT. In addition, NTN's narrative explanation clearly indicates that certain of NTN's packing expenses individually differed by LOT. Because these expenses were unique to a single LOT, NTN (1) allocated each total expense amount solely to this LOT, (2) calculated a single allocation ratio for this LOT, and (3) applied this ratio only to U.S. sales at this LOT. NTN's response clearly indicates that these expenses demonstrably varied according to LOT (*see* NTN questionnaire response, February 17, 1998, at exhibit C–7). Therefore, for our preliminary results we applied our recalculated ratios for certain of NTN's U.S. packing and U.S. labor expenses only for sales to the one LOT for which these expenses were incurred.

In addition, after further review of the record, we have also determined that NTN's home market packing labor and packing material expenses demonstrably varied according to LOT. Section A and exhibit B–4 of NTN's response clearly demonstrate that different methods of packing are required depending upon LOT. As indicated above, NTN has allocated all of its home market expenses by LOT, but has not provided record evidence (except for home market packing) demonstrating that they were incurred differently by LOT. Therefore, for these final results we have accepted only NTN's allocation of home market packing expenses according to LOT.

Lastly, we note NTN's comment that the Department disallowed NTN's allocations of certain home market expenses solely due to the allegedly complex nature of NTN's LOT-specific methodology. It is not the Department's current practice to reject such allocations on the basis of complexity; however, we inadvertently indicated in

our *Prelim Analysis Memo* at 7 that it is Department policy to do so. As stated above, we denied NTN's allocations because the record lacked quantitative and narrative evidence that the expenses in question varied demonstrably according to LOT (see *Prelim Analysis Memo* at 2), and not because the allocations themselves were too complex.

Comment 13: NTN contends that the Department should have made a LOT adjustment for CEP sales based on selling price differences by using the transaction to the first unaffiliated U.S. customer. With regards to its EP sales, NTN asserts that the Department matched home market sales at the same LOT, and, where no such match was possible, the Department made a LOT adjustment in accordance with the URAA. However, NTN states that the Department found no equivalent home market LOT for NTN's CEP sales because "there were significant differences between the selling activities associated with the CEP sales and those associated with the home market sales at each of the home market LOTs." NTN case brief at 8, quoting *Prelim Analysis Memo* at 7. NTN claims that this method of determining LOTs is a violation of the URAA, and thus suggests that the Department use the transaction to the first unaffiliated U.S. customer to determine the LOT adjustment.

NTN cites *Borden Inc.* v. *United States*, 4 F. Supp. 2d 1221 (CIT 1998) (*Borden*), in which the CIT mandated that the Department first determine what selling activities are performed at demonstrably different LOTs, then analyze patterns of NV sales at the different LOTs. In keeping with *Borden*, NTN argues that the Department should make LOT adjustments for CEP sales based on selling price differences. NTN asserts that such an approach is not only consistent with the Department's model-match methodology, but evidence on the record demonstrates that NTN's performance of different selling activities at each LOT affected price comparability. Also, NTN claims that the Department's current methodology eliminates the possibility that CEP transactions can be granted a price-based LOT adjustment. NTN argues that it is unreasonable for the Department to refuse to make a price-based adjustment when there are significant differences in prices among home market LOTs, and U.S. sales are subsequently matched to home market sales at different LOTs.

Timken states that under section 773(a)(7)(A) of the Act, the statutory provision for LOT adjustments specifies that "[t]he price [used to determine normal value] shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the [normal value] price * * *". Timken rebuttal brief at 5, quoting section 773(a)(7)(A) of the Act. Timken contends, therefore, that for CEP sales NTN failed to demonstrate that LOT differences between CEP and NV sales result in price differences between the two.

Timken cites the SAA, which states that the Department "will require evidence from the foreign producers that functions by the sellers at the same level of trade in the U.S. and foreign markets are similar, and that different selling activities are actually performed at the allegedly different levels of trade." *See* SAA at 159. Petitioner asserts that NTN has not identified any home market LOTs that possess the same selling functions as those which support CEP sales. Therefore, Timken claims, there is no common ground on which to compare CEP and NV sales, and thus the Department should not grant NTN a price-based LOT adjustment to NV for comparisons to CEP sales.

Department's Position: We disagree with NTN. As stated in our *95/96 TRB Final* at 2578, our methodology does not preclude LOT adjustments to NV for CEP sales. Rather, we do not make a LOT adjustment where the facts of the case do not support such an adjustment. Based upon our examination of the information on the record, for this review we found that the respondent did not have a home market LOT equivalent to its CEP LOT. As a result, because we lacked the information necessary to determine whether there is a pattern of consistent price differences between the relevant LOTs, we did not make a LOT adjustment for NTN when we matched a CEP sale to a sale of the foreign like product at a different LOT.

Furthermore, section 772(d) of the Act indicates clearly that we are to base CEP on the U.S. resale price, as adjusted for U.S. selling expenses and profit. As such, the CEP reflects a price exclusive of all selling expenses and profit associated with economic activities occurring in the United States. *See* SAA at 823. As the term CEP makes clear, these adjustments are necessary in order to arrive at a "constructed" export price. The adjustments we make to the starting price, specifically those made pursuant to Section 772(d) of the Act ("Additional Adjustments to Constructed Export Price"), normally change the LOT. Accordingly, we must determine the LOT of CEP sales exclusive of the expenses (and associated selling functions) that we deduct pursuant to this section (*see, e.g., Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 62 FR 18476, 18480 (April 15, 1997)). As stated earlier, because none of NTN's home market LOTs were equivalent to the LOT of its CEP sales, we were unable to make a LOT adjustment for such sales.

Arm's-Length Test

Comment 14: NTN asserts that the Department's 99.5 percent arm's-length test is not a reasonable basis for determining whether affiliated-party sales were at prices comparable to those to unaffiliated parties. NTN argues that in applying the arm's-length test the Department only considers the average percent difference in pricing between affiliated-and unaffiliated-party sales and ignores other factors which greatly influence price such as the terms and quantities of each affiliated-party sale. NTN further contends that the Department's 99.5 percent threshold is not really a "test", since it fails to provide an objective standard to determine whether affiliated-party sales are at arm's length. Instead, NTN claims, the test weighs sales against an average which does not reflect the full range of prices paid in the transactions examined. Therefore, NTN asserts, the use of the 99.5 percent figure as a baseline to decide if sales are at arm's length does not address the fact that some arm's-length sales fall outside this narrow range. NTN proposes that a figure such as 95 percent be used to reflect more adequately the range of arm's-length prices in these transactions.

Timken claims that in accordance with section 773(a)(1)(B) of the Act, the Department properly excluded those home market sales to affiliated parties which were not at arm's length. Timken argues that NTN, by proposing that other factors be used to determine whether home market sales to affiliates are at arm's length, recognizes that it is wholly within the Department's discretion to devise a methodology to select such sales. Additionally, Timken asserts that NTN has provided no evidence supporting its claim that the Department's 99.5 percent test was contrary to law or produced inaccurate results.

Timken also points out that one of the factors suggested by NTN for inclusion in the arm's-length test, terms of sale, was reportedly the same for all of NTN's home market sales, while NTN did not report terms of payment because so many different terms existed. Thus, Timken concludes, even if the

Department agreed with NTN, NTN's suggestion could not be adopted.

Department's Position: We disagree with NTN. Our 99.5 percent arm's-length test is a reasonable method for establishing a fair basis of comparison between affiliated- and unaffiliated-party sales. NTN asserts that additional factors, such as quantity and payment terms, should be taken into consideration when comparing affiliated- and unaffiliated-party sales, but fails to establish that the Department must abandon its existing test. NTN also argues that our use of the 99.5 percent threshold is distortive but provides no quantitative evidence demonstrating that a lowering of the threshold would yield more accurate results. Furthermore, the CIT has upheld the validity of our arm's-length test on numerous occasions. For example, in *Usinor Sacilor* v. *United States*, 872 F. Supp 1000, 1004 (CIT 1994), the CIT clearly indicated that it would not overturn the agency's arm's-length test unless it was shown to be unreasonable and stated that "[g]iven the lack of evidence showing any distortion of price comparability, the court finds application of Commerce's arm's-length test reasonable." Likewise, in *Micron Technology Inc.* v. *United States*, 893 F. Supp. 21, 38 (CIT 1995), because the CIT found that the plaintiff failed to "demonstrate that Commerce's customer-based arm's-length is unreasonable" and failed to "point to record evidence which tends to undermine Commerce's conclusion," the CIT sustained the 99.5 percent arm's-length test, given a lack of evidence showing a distortion of price comparability. Further, in *NTN Bearing Corp. of America, American NTN Bearing Manufacturing Corp. and NTN Corp.* v. *United States*, 905 F. Supp. 1083 (CIT 1995), NTN argued, as here, that there were numerous factors influencing the price of a related-party transaction and the Department cannot make a meaningful price comparison without examining them. The CIT disagreed with NTN and stated that the Department has broad discretion in devising an appropriate methodology to determine whether particular related-party prices are, in fact, comparable to unrelated-party prices. *Id.* at 1099.

NTN has not provided any information on the record to support its assertion that our arm's-length test is distortive or unreasonable. Therefore, because NTN has failed to demonstrate that the 99.5 percent threshold produces distortive results or that the Department's methodology is unreasonable, in accordance with the CIT decisions cited above and the *95/96 TRB Final*, we have not altered our 99.5 percent arm's-length test for these final results.

Sample Sales

On June 10, 1997, the Court of Appeals for the Federal Circuit (CAFC) held that the term "sale" entails both a transfer of ownership to an unrelated party and consideration. *NSK Ltd.* v. *United States*, 115 F.3d 965, 975 (Fed. Cir. 1997) (*NSK*). The CAFC determined that samples which NSK had given to potential customers at no charge and with no other obligation on the recipient's part lacked consideration. Moreover, the CAFC found that, since free samples did not constitute "sales," they should not have been included in calculating U.S. price.

In light of the CAFC's opinion, we have revised our policy with respect to samples. The Department will now exclude from its dumping calculations sample transactions for which a respondent has established that there is either no transfer of ownership or no consideration.

This new policy does not mean that the Department automatically will exclude from its analysis any transaction to which a respondent applies the label "sample." In fact, for these reviews we determined that there were instances where it is appropriate not to exclude such alleged samples from our dumping analysis. It is well-established that the burden of proof rests with the party making a claim and in possession of the needed information (*see, e.g., NTN Bearing Corporation of America* v. *United States*, 997 F.2d 1453, 1458–59 (CAFC 1993), (citing *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1583 (CAFC 1993), and *Tianjin Machinery Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992)).

With respect to HM sales and our calculation of NV, in addition to excluding sample transactions which do not meet the definition of "sales," the statute authorizes the Department to exclude sales designated as samples from our analysis, pursuant to section 773(a)(1) of the Act, when a respondent has provided evidence demonstrating that the sales were not made in the ordinary course of trade, as defined in section 771(15) of the Act.

Comment 15: NTN asserts that its home market sample sales should be excluded from the Department's margin calculations. NTN states that this is in accordance with section 773(a)(1)(B) of the Act and *NSK Ltd.* v. *United States*, 969 F. Supp. 34, 43 and 52 (CIT 1997) (*NSK1*), in which the CIT mandated that sample sales not be included in the home market database.

NTN also asserts that its U.S. sample sales should be excluded from the Department's analysis in accordance with the CAFC's decision in *NSK*, arguing that in that case the CAFC ordered that zero-priced sample sales should be excluded when calculating margins.

Timken responds that in order for the Department to exclude "samples" from a respondent's home market and U.S. databases, the respondent must provide ample evidence to support any claim for exclusion of those transactions, and also must bear the burden of establishing that home market sales are not in the ordinary course of trade. Timken cites *Nachi-Fujikoshi Corp* v. *United States*, 798 F. Supp. 716, 718 (CIT 1992) (*Nachi*), in which the CIT ruled that the plaintiff could not rely on a verification report where it failed to prove that alleged sample sales were outside the ordinary course of trade. In addition, Timken finds no evidence on the record which would support the exclusion of alleged sample sales. Timken argues that NTN has not demonstrated adequately that its home market sample sales are outside the ordinary course of trade and that such sales, therefore, do not warrant exclusion from the home market database.

Timken asserts that the CAFC in *NSK* did not establish a *per se* exclusion for so-called sample sales. Rather, Timken claims, the CAFC held that sales which lacked consideration did not constitute sales for purposes of the antidumping law. Timken notes that the Department's preliminary margin program already excludes zero-priced sales, *i.e.*, those lacking consideration, and claims that the *NSK* decision does not support the exclusion of sales NTN alleges are samples.

Department's Position: We disagree with NTN. We examined the record to determine whether NTN's U.S. samples lacked consideration and were unable to find any information whatsoever in either NTN's narrative or sales database regarding sample transactions. As noted above, the party in possession of the information has the burden of producing that information, particularly when seeking a favorable adjustment or exclusion. Because NTN did not provide any information in its response or elsewhere that would have aided us in determining whether NTN received anything of value from its U.S. customers for the transactions in question, we cannot conclude that NTN received no consideration for these alleged samples. While NTN's database does include sales which are zero-

priced, we are unable to determine from the record if these transactions represent the sales which NTN apparently argues should be excluded from the U.S. database in accordance with the *NSK* decision. Furthermore, the mere fact that a sale has a reported unit price of zero does not establish that a transaction lacked exchange of consideration. The CAFC's *NSK* decision that certain transactions should be excluded hinged on two factors: (1) that the transaction at issue was zero-priced and (2) that the transaction lacked an exchange of consideration. As is evident in our September 15, 1997 redetermination pursuant to the CIT's *NSK1* decision, NSK in that case established that its zero-priced transactions were free samples or promotional expenses, and not sales. By contrast, in this review NTN has not provided any detailed information on the record demonstrating that its alleged zero-priced transactions were in fact samples and lacked an exchange of consideration. *See 96/97 TRB Final* at 33343.

We have also evaluated whether NTN's alleged home market sample sales qualify for exclusion from the home market database in light of the CAFC's *NSK* decision. As noted above, we exclude sample transactions from dumping calculations only if a respondent has demonstrated either that there is no transfer of ownership or no consideration. Because evidence on the record clearly indicates that NTN received consideration for all home market sales it claims are samples, none of its home market sample sales meet either criteria for exclusion established by *NSK*. *See* NTN questionnaire response at B–15.

Therefore, because NTN's alleged U.S. and home market sample sales do not qualify for exclusion under *NSK*, we have included these sales in our U.S. and home market databases for these final results.

Comment 16: NTN argues that sample sales and sales with abnormally high profits are outside the ordinary course of trade, and hence should not be included in the calculation of NV. NTN asserts that under section 773(a)(l)(B)(i) of the Act normal value must be based on home market sales made in the "ordinary course of trade", which is defined in section 771(15) of the Act as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." NTN argues that the Department's regulations indicate examples of sales outside the ordinary course of trade, including merchandise sold with abnormally high profits, and merchandise sold pursuant to unusual terms (*e.g.*, samples). NTN cites *Monsanto Co.* v. *United States*, 12 CIT 937, 940 (1988), which held that the ordinary course of trade provision "prevents dumping margins from being based on sales which are not representative" of those in the home market. NTN case brief at 22. In other words, NTN holds, the comparison between NV and U.S. sales is done on an "apples to apples" basis when NV is based solely on representative sales. *Id.*

NTN asserts that the Department should find its sales with abnormally high profits to be outside the ordinary course of trade and therefore exclude these sales from the calculation of NV. NTN proposes that sales with profits exceeding a certain level be considered to be outside the ordinary course of trade. NTN claims that if the Department compares home market sales with abnormally high profits to U.S. sales, an "apples to apples" comparison would not result. NTN also cites the CAFC's decision in *CEMEX. S.A.* v. *United States*, 133 F. 3d 897 (Fed. Cir. 1998) (*CEMEX*), in which the CAFC upheld the Department's finding that sales of certain types of cement were outside the ordinary course of trade due to significant differences in profit levels.

Similarly, NTN contends that because sample sales and sales with abnormally high profits are outside the ordinary course of trade, they should not be included in the calculation of CV profit. NTN asserts that under section 773(e)(2)(A) of the Act, CV must be calculated, in part, using "amounts incurred for profits . . . in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country. . . ." Because NTN's sample sales and sales with abnormally high profits are outside the ordinary course of trade, NTN claims, including sample sales or sales with abnormally high profits in the calculation of CV profit violates the statutory language and the Department's regulations. NTN maintains that the Department should accept NTN's reported figures to avoid the distortion that would occur from including sales outside the ordinary course of trade in the calculation of CV profit. NTN contends that just as sales outside the ordinary course of trade must not be included in the calculation of NV, neither should they be included in the calculation of CV profit.

Timken contends that the Department has appropriately retained NTN's alleged high-profit and sample sales in the database used to compute NV and CV profit. In keeping with *Nachi* (798 F. Supp. at 718), Timken argues that it is the respondent's burden to prove that sales are outside the ordinary course of trade. However, Timken claims that there is nothing in the record to show that any of NTN's alleged sample and high-profit sales are outside the ordinary course of trade, and thus the Department has properly included these sales in the calculation of both normal value and CV profit. Timken asserts that NTN's interpretation of *CEMEX* is incorrect, because while the CAFC did find that some sales were outside the ordinary course of trade due to significant differences in profit levels along with other factors, these profits were lower than average.

Department's Position: We agree with Timken. With regard to sample sales that NTN claims are outside the ordinary course of trade, our practice is to exclude home market sales transactions from our calculations when an interested party demonstrates that such sales were made outside the ordinary course of trade. Accordingly, we have examined the record with respect to NTN's alleged home market sample sales to determine if these sales qualify for such an exclusion. In its original questionnaire response NTN only states that "samples are provided to customers for the purpose of allowing the customer to determine whether a particular product is suited to the customer's needs" and that "the purpose . . . would not be the same as those purchased in the normal course of trade." *See* NTN questionnaire response at B–14 and B–15. Furthermore, NTN did not provide additional information in its supplemental response clearly demonstrating that its alleged sample sales were outside the ordinary course of trade. *See* NTN's supplemental response dated May 19, 1998. However, the mere fact that a respondent identified sales as samples does not necessarily render such sales outside the ordinary course of trade (*see 94/95 AFB Final* at 2124 and *95/96 TRB Final* at 2582). For these reasons, we disagree with NTN that its home market sample sales should be excluded from our margin calculations.

Similarly, with regard to NTN's abnormally high-profit sales, the presence of profits higher than those of other sales does not necessarily place the sales outside the ordinary course of trade. In order to determine that a sale is outside the ordinary course of trade due to abnormally high profits, there must be unique and unusual characteristics related to the sales in

question which make them unrepresentative of the home market. *See CEMEX* at 900. Furthermore, in the *CEMEX* case low profit was only one of five factors which, considered together, demonstrated that the home market sales in question were outside the ordinary course of trade. However, in the instant case NTN has provided no information other than the numerical profit amounts to support its contention that these home market sales had abnormally high profits. There is no evidence in this review that these profits were abnormal. The mere existence of high profits by itself is not evidence that these same profits were abnormally high, and is not sufficient to find sales to be outside the ordinary course of trade. For this reason, we disagree with NTN that its sales with alleged abnormally high profits should not be included in the calculation of NV and CV profit.

Model Matching

Comment 17: NTN argues that the Department should consider both the sum-of-the-deviations method and differences in cost when ranking non-identical home market TRBs for model-matching purposes, rather than the sum-of-the-deviations method exclusively. NTN contends that the exclusive use of the sum-of-the-deviations method to select model matches is distortive and fails to rank properly merchandise most similar to that sold in the United States. To illustrate its argument, NTN points to a hypothetical situation involving two potential home market matches for a U.S. TRB model: model A, which has a sum-of the-deviations total of 20 percent and a difference-in-merchandise (difmer), or cost deviation, total of 19.5 percent, and model B, which has a sum-of-the-deviations total of 20.1 percent but a cost deviation total of one percent. Using the Department's current matching methodology, NTN asserts, the U.S. model would be paired improperly with model A in the home market despite that fact that the difmer value for model B when compared to the U.S. TRB model is significantly lower.

Timken asserts that the Department's current model-matching methodology conforms to the statutory requirements for selecting identical and similar merchandise. Relying on *Koyo Seiko Co.* v. *United States*, 66 F.3d 1204, 1209 (Fed. Cir. 1995), Timken argues that the Department has been afforded broad discretion in implementing the requirement to select similar matches and contends that NTN has failed to demonstrate that the Department's model-matching methodology is in error.

Department's Position: We disagree with NTN. The Act provides general guidance in selecting the products sold in the foreign market to be compared to U.S. sales. Section 773(a)(1) states that the preferred basis for NV is the price at which the foreign like product is first sold for consumption in an exporting or third-country market. Foreign like product, in turn, is defined at section 771(16) of the Act as:

> merchandise in the first of the following categories in respect of which a determination for the purposes of subtitle B of this title can be satisfactorily made.
>
> (A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.
>
> (B) Merchandise—
>
> (i) produced in the same country and by the same person as the merchandise which is the subject of the investigation,
>
> (ii) like that merchandise in component material or materials and in the purposes for which used, and
>
> (iii) approximately equal in commercial value to that merchandise.

Pursuant to Section 771(16), the Department must first search for home market merchandise which is identical in physical characteristics to that sold in the United States. When products sold to the United States do not have identical matches in the foreign market, the statute directs us to use similar merchandise which meets the requirements set forth under 771(16)(B).

For purposes of the current and previous TRBs administrative reviews, when determining appropriate product comparisons for U.S. sales we first attempt to match U.S. TRB models to identical models sold in the home market. If an identical model is unavailable, we apply our "sum-of-the-deviations" methodology to determine those models most similar to the U.S. models, using five physical criteria of TRBs: inside diameter, outside diameter, width, load rating, and Y2 factor. Because each of these criteria is quantitatively measured, we derive the overall sum-of-the-deviations for all five characteristics and use this absolute value to rank models. *See, e.g., Prelim Analysis Memo* at 8 and *93/94 TRB Final* at 20589. In order to satisfy the statutory requirement set forth in section 771(16)(B)(iii) of the Act that similar merchandise be "approximately equal in commercial value", prior to assigning sum-of-the-deviations values for ranking purposes we eliminate as possible matches those models for which the variable cost of manufacturing (VCOM) differences exceed 20 percent of the total cost of manufacturing (TCOM) of the U.S. model.

NTN, however, argues that the exclusive use of the sum-of-the-deviations method to rank non-identical TRB models is distortive and suggests that the Department alter its model-matching methodology to incorporate cost variances (calculated as the absolute value of the difference between the U.S. and home market VCOM divided by the U.S. TCOM) between U.S. and home market models as an additional ranking factor. In other words, NTN suggests using the cost variances not only to determine commercial comparability for purposes of section 771(16)(B) of the Act, but also to select most similar home market TRB models.

The statute does not require the Department to follow NTN's suggested methodology. Furthermore, the CIT has explicitly recognized the Department's broad discretion to determine what constitutes similar merchandise for the purpose of determining NV. For example, in *Timken Co.* v. *United States*, 630 F. Supp. 1327, 1338 (CIT 1986), the CIT emphasized that it is the purview of the Department and not of interested parties to determine what methodology should be used. In *NTN Bearing Corp. of America, American NTN Bearing Mfg. Corp, and NTN Corp.* v. *United States*, 18 C.I.T. 555 (Slip Op. 94–96 at 10), the CIT held that the Department was not required to adopt a particular matching methodology advanced by NTN, noting again the latitude accorded the Department in the selection of a methodology to implement section 771(16) of the Act.

Section 771(16) directs us to select home market comparison merchandise which is, preferably, physically identical to merchandise sold in the United States. If identical comparison merchandise is unavailable, we may then select merchandise which is physically similar, after adjusting for any differences in the physical characteristics of the comparison merchandise (the so-called difmer adjustment). The statute is silent, however, as to the precise manner in which similar merchandise is to be identified. As indicated above, our TRBs product-comparison methodology conforms with the express language of section 771(16) of the Act; if the preferred (*i.e.*, identical) match is unavailable, our margin program then searches for commercially comparable merchandise which is physically the most similar to the U.S. merchandise as determined using the aforementioned five physical criteria of TRBs. While NTN suggests that cost deviation values

be added as a matching criterion, we note that the selection of similar merchandise is based on a product's physical characteristics and not differences in cost. Furthermore, our matching methodology satisfies NTN's apparent concerns that dissimilar merchandise may be compared because it precludes the pairing of models whose cost deviation exceeds 20 percent and provides for a difmer adjustment to NV if non-identical TRB models are matched. *See* Final Margin Program for NTN, November 9, 1998, at lines 1088–1090.

NTN's argument fails to demonstrate that our model-match methodology is distortive, unreasonable, or is otherwise not in accordance with the statute. Moreover, the courts have upheld our use of this methodology. Therefore, for these final results we have not adopted NTN's suggestion for modifying our model-match methodology.

Comment 18: NTN argues that our preliminary results computer program incorrectly matches sales first by time of sale, then by LOT. Specifically, NTN contends that in any given month within the "contemporaneity" window [4], if the Department is unable to find a home market sale at the same LOT to compare to a U.S. sale in that particular month, the program incorrectly searches for a comparison home market sale at a different LOT in the same month. NTN asserts that the program should instead search for a home market comparison sale at the same LOT as the U.S. sale but in a different month within the contemporaneity window.

Petitioner responds that the sales match portion of the preliminary results program operates correctly in that it first exhausts all possible matches at the same LOT before looking for a match at a different LOT.

Department's Position: We agree with Timken. Our sales match programming contains a series of instructions which is designed to first search for a match at the same LOT before looking for a match at a different level. For each of the ten passes in our multi-level array sales match, with each "pass" representing the next-most-similar merchandise, the variable "CAT" is set to the LOT of the U.S. sale to be matched. Our program uses this index variable to search for corresponding same-LOT NVs (which have been organized according to LOT) within the contemporaneity window. If, after searching each of the six window months, a same-LOT match is not found, the program will begin searching for a match at a different LOT by setting the "CAT" variable to a different LOT than that of the U.S. sale, and only then begin searching at that different LOT in each of the window months.

While the "IF" statement at lines 1388–1389 of the computer program to which NTN refers appears to elevate time period over LOT in our matching hierarchy, the program is instead assigning a "flag" variable depending on which iteration of the loop is in progress (*i.e.*, the first loop searches for same-level matches, the second searches for matches at the next closest LOT, and so on). As Timken notes, our program correctly operates by exhausting all possible same-LOT matches within the contemporaneity window before searching for a different LOT match; therefore, we have made no changes for these final results.

Clerical Errors

While reviewing our final results program for NTN, we discovered that our program contained the following additional clerical errors: (1) when calculating CEP profit, we inadvertently divided expenses for EP sales by the exchange rate even though the expense values were already reported in yen; (2) we failed to deduct NTN's U.S. discounts from gross unit price; and (3) we did not include a particular category of affiliated customers for purposes of NTN's LOT test. Therefore, although no party to this proceeding commented on these issues, to ensure the calculation of an accurate margin, we have nevertheless corrected the errors for these final results.

Comment 19: Timken states that in order to obtain the higher of transfer price and actual cost to calculate COP and CV for NTN's affiliated-party inputs, the Department created a variable called ADDON, which subtracts transfer price from actual cost. When the result is positive (that is, actual cost is greater than transfer price), ADDON is added to the total cost of manufacturing, interest expense, and G&A to compute a cost variable called RCOP. However, before this calculation is done, ADDON is multiplied by a variable called RELPTY, which is the percentage of inputs for a given part number that have been supplied by affiliated suppliers. Since ADDON is an actual amount, there is no reason to multiply it by RELPTY, because this calculation incorrectly reduces the actual cost difference. Therefore, Timken contends that the Department should modify the program so that it does not reduce the ADDON value by RELPTY.

Department's Position: We agree with Timken and have corrected our computer program for these final results such that the difference between actual cost and transfer price (ADDON) is not multiplied by the percentage of inputs for a given part number that have been supplied by NTN's affiliated suppliers.

Final Results of Reviews

Based on our review of the comments, for these final results we have made changes in our preliminary margin calculation program for NTN. We determine that the following percentage weighted-average margins exist for the period October 1, 1996 through September 30, 1997:

Manufacturer/exporter	Margin (percent)
For the A–588–054 case:	
Koyo Seiko	7.62
For the A–588–604 case:	
NTN	19.78

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries each importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative reviews, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rates for the reviewed companies will be those rates established in these final results of reviews;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the less-than-fair-value investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by

[4] Defined as the month of the sale, plus the three months prior to and two months after that sale.

the Department, the cash deposit rate will be 18.07 percent for the A–588-054 case, and 36.52 percent for the A–588–604 case (*see 90/92 TRB Final*).

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the assessment rate.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30740 Filed 11–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Rosa Jeong, Marian Wells or Annika O'Hara, Office of Antidumping/Countervailing Duty Enforcement, Group I, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3853, 482–6309, or 482–3798, respectively.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers or exporters of stainless steel sheet and strip in coils from France. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the "petitioners").

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 37539 (July 13, 1998) (*Initiation Notice*)), the following events have occurred:

On July 14, 1998, we issued countervailing duty questionnaires to the Government of France (GOF), the European Commission (EC), and the producers/exporters of the subject merchandise. On August 6, 1998, we postponed the preliminary determination of this investigation until November 9, 1998 (*see Notice of Postponement of Preliminary Determination for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy and the Republic of Korea*, 63 FR 43140 (August 12, 1998)).

On September 14, 1998, we received responses from the GOF, the EC, and Usinor (whose Ugine Division is the sole producer of the subject merchandise that exported to the United States during the period of investigation). On October 2, 1998, we issued supplemental questionnaires to the GOF, the EC, and Usinor. We received responses to the supplemental questionnaires from the EC on October 13, 1998 and from Usinor and the GOF on October 21, 1998.

On August 19, 1998, the petitioners requested that the Department investigate three programs which the Department did not include in its initiation. After a review of the petitioners' submissions, we determined that they did not allege the elements necessary for imposition of a countervailing duty with respect to these programs. Accordingly, we declined to include the three programs in our investigation. *See* Memorandum to Richard W. Moreland, Deputy Assistant Secretary for AD/CVD Enforcement, "Petitioners" Supplemental Allegations," dated October 27, 1998, on file in the Central Records Unit of the Department of Commerce.

Scope of Investigation

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15,

7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, rectangular in shape, of a width of not more than 9.5 mm, and a thickness of not more than 6.35 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of these investigations. These excluded products are described below: Flapper valve steel is defined as stainless steel strip in coils with a chemical composition similar to that of AISI 420F grade steel and containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of 185 kgf/mm^2, plus or minus 10, yield strength of 150 kgf/mm^2, plus or minus 8, and hardness (Hv) of 540, plus or minus 30.

Also excluded is suspension foil, a specialty steel product used, *e.g.*, in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 μm, with a thickness tolerance of plus-or-minus 2.01 μm, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth, and must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these investigations. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths of 1.016 to 228.6 mm, and a thickness between 0.0127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available, *e.g.*, under the trade name "Arnokrome III."[1]

Electrical resistance alloy steel is also not included in the scope of these investigations. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available, *e.g.*, under the trade name "Gilphy 36."[2]

Finally, certain stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives) is also excluded. This steel is similar to ASTM grade 440F, but containing higher levels of molybdenum. This steel contains, by weight, carbon of between 1.0 and 1.1 percent, sulphur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and cobalt. This steel is sold under, *e.g.*, the proprietary name GIN4Mo.[3]

All interested parties are advised that additional issues pertaining to the scope of these investigations are still pending. Furthermore, the exclusions outlined above are subject to further revision and refinement. The Department plans on notifying interested parties of its determinations on all scope issues in sufficient time for parties to comment before the final determination.

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Gin4Mo" is the proprietary grade of Hitachi Metals America, Ltd.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Injury Test

Because France is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from France materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from France of the subject merchandise (*see Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Alignment with Final Antidumping Duty Determination

On July 22, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel sheet and strip in coils.

Period of Investigation

The period for which we are measuring subsidies (the POI) is calendar year 1997.

Company History

The GOF identified the Ugine Division of Usinor as the only producer of the subject merchandise that exported to the United States during the POI.

In the early 1980s, Ugine (then called Ugine Aciers) was one of several producers of stainless steel in France. In 1982, the French steel company Sacilor acquired a controlling interest in Ugine. In the following year, Sacilor bought a majority of the shares in another stainless steel producer, Forges de Gueugnon, which was merged with one part of Ugine and renamed Ugine-Gueugnon. During the same time, Usinor was a separate steel company with one division called Usinor Châtillon producing stainless steel. In 1987, the GOF placed Usinor and Sacilor in a holding company named Usinor Sacilor. At the same time, Ugine-Gueugnon and Usinor Châtillon were combined into one company called Ugine Aciers de Châtillon et Gueugnon (Ugine ACG).

In 1991, Ugine ACG merged with Sacilor and became Ugine **s.a.**, a subsidiary of the Usinor Sacilor holding company. In 1994, Ugine **s.a.** was partially privatized when Usinor Sacilor sold approximately 40 percent of its equity in the company to the general public. However, in 1995, Usinor Sacilor bought back the shares in Ugine **s.a.** and obtained a near 100 percent control of the company. In late 1995, Ugine **s.a.** was converted into a division of Usinor Sacilor and became "the Ugine Division," producing stainless steel and alloys. Finally, in 1997, Usinor Sacilor was renamed Usinor.

The GOF was the majority owner of both Usinor and Sacilor until the mid-1980s. In 1986, the GOF emerged as the sole owner of both companies after a capital restructuring. In 1987, the GOF created the Usinor Sacilor holding company which continued to be wholly owned by the GOF until 1991 when Credit Lyonnais, a government-owned bank, bought 20 percent of the equity in the company.

In July 1995, the first partial privatization of Usinor Sacilor, combined with a capital increase, took place. The shares were sold through a public offering of shares which consisted of a French public offering, an international public offering, and an employee offering. In accordance with the French privatization law, a certain portion of the shares were also sold to a group of so-called "stable shareholders," some of which were government-owned banks and other entities. After this privatization, the stable shareholders held approximately 15 percent of Usinor's total shares, 10 percent of which were held by government-owned or controlled entities. The GOF continued to own 9.8 percent of the shares directly. A second offering of shares to employees took place in June 1996.

In early 1997, the GOF transferred (without remuneration) a small part of its stake in Usinor to individual French shareholders and company employees who had held on to their shares for 18 months following the July 1995 privatization. In October 1997, the GOF sold most of its remaining shares on the market, leaving it with approximately one percent of the shares. These shares were to be given away for free in August 1998.

Change in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI (*i.e.*, in this case, 1984 for Usinor) and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization. For further discussion of our privatization methodology, *see, e.g., Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination: Stainless Steel Plate in Coils From Italy*, 63 FR 47246 (September 4, 1998).

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

In the current investigation, we are analyzing: (1) the privatization of Ugine in 1994 and the subsequent buy-back of Ugine's shares by Usinor (1995); (2) the 1994 sale of Centrale Siderurgique de Richemont (CSR); and (3) the privatization of Usinor in 1995, 1996 and 1997.

Subsidies Valuation Information

Benchmarks for Loans and Discount Rates

To calculate the countervailable benefit from loans and non-recurring grants in 1997, we used Usinor's company-specific cost of long-term, fixed rate loans as reported by Usinor. For other years, we used the rates for average yields on long-term private sector bonds in France as published by the OECD. For years in which Usinor was determined to be uncreditworthy, we added a risk premium to the benchmark interest rate in accordance with the methodology consistent with our practice in *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) (*Certain Steel from France*).

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the *GIA*. In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies for Usinor Sacilor based on the average useful life (AUL) of its non-

renewable physical assets as 14 years. This remand determination was affirmed by the Court in *British Steel plc* v. *United States*, 929 F. Supp. 426 (CIT June 6, 1996) (*British Steel II*).

As discussed below, the current investigation includes untied, non-recurring subsidies that were found to be countervailable in *Certain Steel from France—i.e.*, PACS, FIS, and Shareholders' Advances. Because we have already assigned a company-specific allocation period of 14 years to those previously investigated subsidies, we preliminarily determine that it is more appropriate to continue to allocating those subsidies over 14 years.

In the concurrent investigations of stainless steel sheet and strip from Italy and Korea, we invited parties to comment on whether an alternative approach may be more appropriate. One option identified is to determine an individual AUL for each year in which a non-recurring subsidy is provided to a company, rather than to determine a company-specific AUL for non-recurring subsidies that could change with each investigation and result in different allocation periods for the same subsidy. We also welcome any additional comments on this issue not raised above.

This investigation includes no other non-recurring subsidies that have been preliminarily determined to be countervailable. Accordingly, we have not calculated a new company-specific allocation period for subsidies not previously investigated. If it becomes necessary for the purposes of the final determination, we will calculate a new company-specific allocation period for Usinor based on information provided in the current proceeding.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Preliminarily Determined To Be Countervailable GOF Programs

A. Loans with Special Characteristics (PACS)

A plan was agreed upon in 1978 to help the principal steel companies, Usinor, Sacilor, Chatillon-Neuves-Maisons, and their subsidiaries, restructure their massive debt. This plan entailed the creation of a steel amortization fund, called the Caisse d'Amortissement pour l'Acier (CAPA), for the purpose of ensuring repayment of funds borrowed by these companies prior to June 1, 1978. In accordance with the restructuring plan of 1978, bonds previously issued on behalf of the steel companies and pre-1978 loans from Credit National and Fonds de Developpement Economique et Social (FDES) were converted into "loans with special characteristics," or PACS. As a result of this process, the steel companies were no longer liable for the loans and bonds, but did take on PACS obligations.

In 1978, Usinor and Sacilor converted 21.1 billion French francs (FF) of debt into PACS. From 1980 to 1981, Usinor and Sacilor issued FF8.1 billion of new PACS. PACS in the amount of FF13.8 billion, FF12.6 billion and FF2.8 billion were converted into common stock in 1981, 1986 and 1991, respectively.

In *Certain Steel from France* and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products from France*, 58 FR 6221 (January 27, 1993) (*Lead and Bismuth*), the Department determined that the conversion of PACS to common stock in 1981 and 1986 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 conversion of PACS continues to yield a countervailable benefit during our POI.

Consistent with our practice in *Certain Steel from France*, we have treated the 1986 equity infusion as a non-recurring grant received in the year PACS were converted to common stock. Because Usinor was uncreditworthy in the year of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of each equity infusion appropriately allocated to Usinor after its privatization. We divided this amount by Usinor's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 0.63 percent *ad valorem*.

B. Shareholders' advances

The GOF provided Usinor and Sacilor grants in the form of shareholders' advances during the period 1982 to 1986. The purpose of these advances was to finance the revenue shortfall needs of Usinor and Sacilor while the GOF planned for the next major restructuring of the French steel industry. These shareholders' advances carried no interest and there was no precondition for receipt of these funds. These advances were converted to common stock in 1986.

In *Certain Steel from France* and *Lead and Bismuth*, the Department determined that the shareholders' advances constituted countervailable grants because no shares were received for them. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find that these grants constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, subsidies dating back to 1984 continue to provide countervailable benefits during the POI of this case.

Consistent with our practice in *Certain Steel from France*, we have treated these advances as non-recurring grants. Because Usinor was uncreditworthy in the years of receipt, we used a discount rate that includes a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of each grant appropriately allocated to Usinor after its privatization. We divided this amount by Usinor's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 0.50 percent *ad valorem*.

C. Steel Intervention Fund (FIS)

The 1981 Corrected Finance Law granted Usinor and Sacilor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Siderurgique (FIS), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor and Sacilor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In *Certain Steel from France* and *Lead and Bismuth*, the Department determined that the conversion of FIS bonds to common stock in 1986 and 1988 constituted equity infusions on terms inconsistent with commercial considerations because Usinor Sacilor was found to be unequityworthy during those years. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our earlier finding. Therefore, we continue to find

that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. Using the allocation period of 14 years, the 1986 and 1988 conversions of FIS bonds yield a benefit during our POI.

We have treated the 1986 and 1988 equity infusions as non-recurring grants given in the years the FIS bonds were converted to common stock. Because Usinor was uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the "Change in Ownership" section above to determine the amount of each equity infusion appropriately allocated to Usinor after its privatization. Dividing this amount by Usinor's total sales during the POI, we preliminarily determine the countervailable subsidy to be 1.60 percent *ad valorem*.

D. Investment/Operating subsidies

During the period 1991 to 1997, Usinor received investment and operating subsidies through a variety of government programs. The subsidies were provided by the following sources: 1) the European Coal and Steel Community (ECSC) for research and development; 2) health insurance offices for investments to reduce work-related illnesses and accidents, 3) water agencies for projects in the public interest, such as water protection, pollution control and water rehabilitation. The subsidies are classified as investment, equipment or operating subsidies depending on how the funds are used.

Pursuant to section 771(5)(D)(i) of the Act, we preliminarily determine that these grants provide a financial contribution in the form of a direct transfer of funds from the ECSC and the GOF to Usinor, providing benefit in the amount of the grants.

With the exception of ECSC grants, the GOF claims that these grants are not countervailable because they are not specific. Citing to the extreme burden of providing all pertinent details of each subsidy, however, the GOF has not provided any information to demonstrate that any of these grants are not specific. Therefore, as facts available, we preliminarily determine that these subsidies are specific under section 771(5A)(D) of the Act.

Because the investment/operating subsidies received during the period 1991–1997 are less than 0.5 percent of Usinor's sales during the respective years of receipt, we have expensed these grants in the years of receipt. To calculate the *ad valorem* rate of the subsidy, we divided the 1997 benefit by Usinor's total sales during the POI. Accordingly, we determine the countervailable subsidy to be 0.11 percent *ad valorem*.

E. Myosotis project

Since 1988, Usinor has been developing an innovative continuous thin-strip casting process called "Myosotis," in a joint venture with the German steelmaker Thyssen. The Myosotis project is intended to eliminate the separate hot-rolling stage of Usinor's steelmaking process by transforming liquid metal directly into a coil between two to five millimeters' thick.

To assist this project, the GOF, through the Ministry of Industry and Regional Planning and L'Agence pour la Maîtrise de L'Energie (AFME), entered into three agreements with Usinor Sacilor (in 1989) and Ugine (in 1991 and 1995). The first agreement, dated December 27, 1989, covered a three-year period and established schedules for the initial and subsequent payments to Usinor. These payments were contingent upon the submission of progress reports including a statement of investment outlays. The final payment was contingent upon the submission of a final program report and a statement of total expenses. The three installments were paid in 1989, 1991, and 1993. The 1991 Agreement between Ugine and the AFME covered the cost of some equipment for the project. This agreement resulted in two disbursements to Ugine from the AFME in 1991 and 1992. The 1995 agreement with Ugine provided interest-free reimbursable advances for the final two-year stage of the project, with the goal of casting molten steel from ladles to produce thin strips. The first reimbursable advance was made in 1997. Repayment of one-third of the reimbursable advance is due July 31, 1999. The remaining two-thirds are due for repayment on July 31, 2001.

We preliminarily determine that the assistance under this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. They provide financial contributions in the form of a direct transfer of funds from the GOF to Usinor. Pursuant to section 771(5A)(D) of the Act, the reimbursable advance provides a benefit in the difference between the amount of the benchmark interest due and the zero interest paid by Usinor.

With respect to specificity, the GOF has claimed that this program is available to all industrial sectors in France. However, the GOF has not supported its claim with documentation demonstrating that the program was used by other industries. Accordingly, we preliminarily determine that this program is specific within the meaning of section 771(5A)(D) of the Act because the grants and the advance were provided exclusively to Usinor (and Thyssen).

We preliminarily determine the subsidies provided between 1989 and 1993 to be non-recurring grants based on the analysis set forth in the Allocation section of the *GIA*. Because the amounts received during these years were less than 0.5 percent of Usinor or Ugine's sales during their respective year of receipt, we expensed these grants in the years of receipt.

With respect to the reimbursable advance received in 1997, we are treating this advance as a long-term interest-free loan. Pursuant to the Department's general practice regarding fixed-rate, long-term loans, we have assumed that a payment on a comparable commercial loan taken out at the same time would not be due until 1998. Because there would be no effect on Usinor's cash flow during the POI (*i.e*, no payment would have been made on a benchmark loan during the POI), we preliminarily determine that there is no benefit attributable to the POI. *See GIA* at 37228–29.

Accordingly, we preliminarily determine the countervailable subsidy rate for this program to be 0.00 percent *ad valorem*.

The GOF and Usinor have claimed that this program constitutes a noncountervailable (*i.e.*, "green-light") research subsidy pursuant to section 771(5B)(B) of the Act. The GOF and Usinor note that in November 1996, the EC approved the Myosotis assistance under Article 2 of the State Aids Code, which permits certain research and development assistance provided it does not exceed 25 percent of the total cost of the project. The GOF and Usinor argue that the Department likewise should find this program not countervailable because the project meets the requirements for "green-light" treatment as established under section 771(5B)(B) of the Act.

We have not addressed this claim because the subsidy rate of 0.00 percent as calculated above for this program, even treated as countervailable, has no impact on the net countervailable subsidy rate of this investigation.

F. Related party grants

Usinor's financial statements identify "grants from related parties" in the years 1992–1995. Information provided by Usinor demonstrates that these grants do not constitute a separate program

from the Myosotis program and investment/operating subsidies discussed above. Specifically, a yearly breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis program or investment/operating subsidies. Therefore, we have determined that this program will not be investigated as a separate program. *See* "Myosotis" and "Investment/Operating Subsidies" sections of this notice.

G. Ugine 1991 Grant

Ugine's 1991 financial statements indicate that Ugine received FF 26,318 thousand in subsidies and also note that FF 16,295 thousand of "share" in subsidies were posted to income. Information provided by Usinor indicates that these amounts reflect the funds received under the Myosotis project as well as investment and operating subsidies. Specifically, a breakdown of these grants shows that the amount of each grant corresponds to the amounts provided under the Myosotis program or investment/operating subsidies. Because Myosotis and investment/operating subsidies are being investigated separately in this proceeding, we have determined that this program will not be investigated as a separate program. *See* "Myosotis" and "Investment/Operating Subsidies" sections of this notice.

EC Programs

European Social Fund. The European Social Fund (ESF), one of the Structural Funds operated by the EC, was established in 1957 to improve workers' employment opportunities and raise their living standards. The main purpose of the Fund is to render the employment of workers easier and to increase their geographical and occupational mobility within the European Union. It provides support for vocational training, employment, and self-employment.

The member states are responsible for identifying and implementing the individual projects that are selected to receive ESF financing. The member states must also contribute to the financing of the projects. In general, the maximum benefit provided by the ESF is 50 percent of the project's total cost for projects geared toward Objectives 2, 3, 4, and 5b (see below). For Objective 1 projects, the ESF contributes a maximum of 75 percent of the project's total cost.

Like the other EC Structural Funds, the ESF contributes to the attainment of the five different objectives identified in the EC's framework regulations for Structural Funds: Objective 1 is to promote development and structural adjustment in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to combating long-term unemployment and creating jobs for young people and people excluded from the labor market, Objective 4 focuses on the adaptation of workers to industrial changes and changes in production systems, and Objective 5 pertains to rural development. Recently, the EC added a sixth objective under which assistance is provided to sparsely populated areas in northern Europe.

Ugine s.a. received an ESF grant for worker readaptation training in 1995. In the same year, the company also received an approximately equivalent amount from the GOF as cofinancing for the project. In 1997, the Ugine Division of Usinor received an ESF grant for training workers in a new production process at its cold-rolling mill in Isbergues. No GOF cofinancing of this project was received during the POI.

The Department considers worker assistance programs to provide a countervailable benefit to a company when the company is relieved of a contractual or legal obligation it would otherwise have incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 30287, 30294 (June 14, 1996) (*Pasta From Italy*). Usinor has stated that the ESF grants did not relieve the company of any contractual or legal obligations. The GOF has not provided any information as to whether the grants relieved the company of any such obligations and we have no information about the exact purpose or use of the 1995 grant. However, as discussed further below, its small size resulted in the grant being expensed in the year of receipt. We have, therefore, decided not to seek further information about the exact purpose of this grant or whether it relieved Ugine of any legal or contractual obligations.

The 1997 grant was provided to train Ugine's workers in a new production process. Since companies normally incur the costs of training to enhance the job-related skills of their employees, we preliminarily determine that the 1997 ESF grant relieved Ugine of an obligation it would have otherwise incurred.

We preliminarily determine that the 1997 ESF grant is countervailable within the meaning of section 771(5) of the Act. The grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to the recipient in the amount of the grant.

Consistent with prior cases, we have examined the specificity of the funding. Because the EC has not provided any information about the distribution of ESF grants, we are assuming for purposes of this preliminary determination, as facts available under section 776(b) of the Act, that the funds provided by the EC are specific.

The Department normally considers the benefits from worker training programs to be recurring. *See GIA* at 37255. However, consistent with the Department's past practice and our understanding that ESF grants relate to specific, individual projects which require separate government approval, we are treating the benefit as a non-recurring grant. *See Stainless Steel Wire Rod from Italy*, 63 FR 40474, 40488 (July 29, 1998) and *Pasta from Italy* at 30295. As stated above, the value of the 1995 ESF grant and the accompanying GOF contributions were less than 0.5 percent of Ugine's total sales in that year. Similarly, the 1997 ESF grant was less than 0.5 percent of Ugine's 1997 sales. Therefore, that grant was expensed in the year of receipt. Dividing the amount of the ESF grant by the Ugine Division's 1997 total sales, we preliminarily determine the countervailable subsidy to be 0.00 percent *ad valorem* for this program.

II. Programs Preliminarily Determined Not To Be Countervailable GOF Programs

A. Purchase of power plant

In 1994, Usinor sold the shares of Centrale Siderurgique de Richemont (CSR) to Electricite de France (EDF), a government-owned entity. CSR was set up to convert gas generated by steel plants in the Lorraine region into electricity for sale to l'Union Siderurgique de L'Energie (USE). USE, in turn, sold the electricity to steel producers in the region. At the time of the transaction, both CSR and USE were owned by Usinor and Usinor factories purchased their electricity from USE.

In addition to the physical assets of CSR (*i.e.*, land, buildings, plant and equipment), the 1994 transaction also provided EDF the exclusive right to supply electricity to USE for a 15-year period. Prior to the transaction, Usinor and EDF conducted independent valuations of the transaction based on detailed projections of future costs and revenues associated with the operation of CSR and sales of electricity to USE. The projected revenues were calculated using detailed estimates of yearly outputs, consumption and rates. Similarly, projected costs were based on estimated costs for purchasing gas,

operating expenses, as well as costs for developing an electric power system. After negotiations, Usinor and EDF agreed on a purchase price of FF 1 billion, which represented a compromise between the independent valuations of the transaction by Usinor and EDF.

We examined whether Usinor received more than a reasonable market price from the EDF in this transaction. We preliminarily determine that although FF 1 billion represented a large gain over the book value of CSR's physical assets, the purchase price was based on a reasonable valuation of the future sales of electricity by EDF to Usinor. The valuation is supported by reasonable estimates of projected costs and revenues. There is no evidence to indicate that the transaction was anything other than an arm's length transaction for full market value. Accordingly, we preliminarily determine that this program does not constitute a countervailable subsidy within the meaning of section 771(5) of the Act.

B. Related party loans

Usinor's 1992 and 1993 financial statements identify "interest free loans to related parties" in the amounts of FF 622 million in 1993 and FF 455 million in 1992. According to Usinor, these loans consist of interest-free advances *by* Usinor and other Usinor Group entities to non-consolidated entities within the Usinor Group. Information provided by Usinor indicates that the funds for these loans were provided out of Usinor's self-generated cash flow. Because there is no financial contribution as defined under section 771(5)(D) of the Act, we preliminarily determine that these loans do not constitute a countervailable subsidy.

C. Work/training contracts

Employers who hire young people (16–25 years of age) through various government-administered work/training or apprenticeship contracts may receive grants and an exemption from social security contributions. The contracts also impose training requirements for those employees and establish minimum compensation set in proportion to the SMIC (the indexed minimum wage) according to the age of the young person and the duration of the contract. This program is administered by Delegation Generale a l'Emploi et a la Formation Professionnelle of Ministere de l'Emploi et de la Solidarite at the national level, and locally by Directions Departementales du Travail, de l'Emploi et de la Formation Professionnelle (DDTEFP) (Departmental Labor, Employment and Professional Training Head Offices). The purpose of this program is to encourage the permanent employment of young people.

Usinor has entered into two types of such contracts: (1) apprenticeship contracts and (2) contracts of specific duration (including qualification agreements and adaptation agreements). Any employer can hire an apprentice and enter into an apprenticeship contract providing training for the apprentice. Qualification and adaptation agreements require approval by the DDTEFP. Approval is dependent upon (1) adoption of an agreement with an educational institution or training entity; and (2) the company's approval of a standard agreement adopted by the GOF and an occupational organization. Usinor received lump-sum payments and exemptions from social security contributions as a result of these contracts.

We analyzed whether the benefits provided under this program are specific "in law or fact" within the meaning of section 771(5A) of the Act. We preliminarily determine that the program is not *de jure* specific because the receipt of the benefits, in law, is not contingent on export performance or on the use of domestically sourced goods over imported goods; nor are the benefits limited to an enterprise, industry or region.

Pursuant to section 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exists: (1) the number of enterprises, industries or groups thereof, which use a subsidy is limited; (2) there is predominant use of a subsidy by an enterprise, industry, or group; (3) there is disproportionate use of a subsidy by an enterprise, industry, or group; or (4) the manner in which the authority providing a subsidy has exercised discretion indicates that an enterprise or industry is favored over others. As explained in the Statement of Administrative Action (SAA) (H.R. Doc. No. 316, Vol. I, 103d Cong., 2d Session (1994) at 931), the fourth criterion normally serves to support the analysis of other *de facto* specificity criteria.

Assistance under this program was distributed to a wide variety of industries in the majority of the regions of France. Therefore, the program is not limited based on the number of users. The evidence also indicates that the steel industry did not receive a predominant or a disproportionate share of the total funding. Given our findings that the number of users is large and that there is no predominant or disproportionate use of the program by the steel industry, we do not reach the issue of whether administrators of the program exercised discretion in awarding benefits. Accordingly, we preliminarily determine that this program is not specific and has not conferred countervailable subsidies within the meaning of section 771(5) of the Act.

D. Electric arc furnaces

In 1996, the GOF agreed to provide assistance in the form of reimbursable advances to benefit Usinor's research and development efforts to improve and increase the efficiency of the melting process—the first stage in steel production. The first disbursement of funds occurred on July 17, 1998.

The Department deems benefits to have been received at the time that there is an effect on the recipient's cash flow. *See GIA* at 37228–29. Because Usinor did not receive any payments until 1998, there is no benefit during the POI of this investigation. On this basis, we preliminarily determine that this program did not provide any countervailable benefits within the meaning of section 771(5) of the Act.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the responses, we determine that Usinor did not apply for or receive benefits under the following programs during the POI:

GOF Programs

A. *Export Financing under Natexis Banque Programs*
B. *DATAR Regional Development Grants (PATs)*
C. *DATAR 50 Percent Taxing Scheme*
D. *DATAR Tax Exemption for Industrial Expansion*
E. *DATAR Tax Credit for Companies Located in Special Investment Zone*
F. *DATAR Tax Credits for Research*
G. *GOF Guarantees*
H. *Long-Term Loans from CFDI*

EC Programs

A. *Resider II Program*
B. *Youthstart*
C. *ECSC Article 54 Loans*
D. *ECSC Article 56(2)(b) Redeployment/ Readaptation Aid*

E. Grants from the European Regional Development Fund (ERDF)

IV. Programs Preliminarily Determined Not To Exist

Forgiveness of shareholders' loans

Usinor's 1994 and 1995 financial statements indicate that the balance in the account identified as "loans granted

by the shareholders" or "borrowings granted by the shareholders" was reduced from FF 2.161 billion in 1993 to FF 1.92 billion in 1994 (*i.e.*, a reduction in the amount of FF 241 million). At the end of 1995, the balance in the same account was zero. The petitioners alleged that the reduction in the loan balance represented a debt forgiveness by the GOF in order to make the company more attractive to investors prior to its privatization.

Information provided by Usinor and the GOF indicates that there was no loan forgiveness. Rather, the decreases of the loan balances in the financial statements represent a combination of loan payments by the company and the elimination of any disclosure requirement in accordance with GAAP, due to a reduction in shareholdings. Specifically, the 1995 reduction reflects the elimination of disclosure requirements applicable to loans from Credit Lyonnais, as the result of the reduction in Credit Lyonnais' ownership interest in Usinor from 20 percent to less than 10 percent at the time of Usinor's privatization. There were no disclosed shareholder loans at the end of 1995 because there were no shareholders with an interest of 10 percent or greater. International accounting standards require disclosure of transactions between a business entity and owners of more than 10 percent of shares. For 1994, the reduction is accounted for by repayments of certain outstanding loans during that year as supported by repayment documentation. On this basis, we preliminarily determine that this program does not exist.

V. Programs for Which We Need More Information

Resider I

The EC's September 14, 1998 questionnaire response on Resider II included information about a predecessor program, Resider I, which was in effect between 1988 and 1992. The purpose of both Resider programs, which are financed by the EC's structural funds, is to diversify economic activities in steel-producing areas that are adversely affected by the restructuring of the steel industry.

In its September 15, 1998 response, Usinor stated that it had not applied for, used, or benefitted from subsidies under Resider II during the POI. As indicated above, we have, therefore, preliminarily determined that Resider II was not used during the POI. However, with respect to Resider I, we asked Usinor in our October 2, 1998 supplemental questionnaire if the company had received any form of aid under this program. In its October 22, 1998 supplemental response, the company stated that it had been unable to locate information to respond to this question but that it would try to do so for verification.

The EC's response indicated that both Resider I and II are administered by government agencies in the member states and that these agencies maintain files on the individual companies that receive benefits under these programs. Therefore, in our October 2 supplemental questionnaire to the GOF, we requested information regarding Usinor's use of the Resider programs. In its October 22, 1998 response, the GOF stated that it had been unable to obtain this information but that it would try to do so for verification.

Because we do not have sufficient information to make a preliminary determination with respect to Resider I, we have decided to seek more information on this program before our final determination.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for Usinor, the sole manufacturer of the subject merchandise. We preliminarily determine that the total estimated net countervailable subsidy rate is 2.84 percent *ad valorem*. Because we only investigated one producer/exporter, Usinor's rate will also serve as the "all others" rate. Therefore, the "all others" rate is 2.84 percent ad valorem. In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip in coils from France which are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated above. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the publication of this notice. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30736 Filed 11–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Eva Temkin or Christopher Cassel, Office of CVD/AD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to certain producers and exporters of stainless steel sheet and strip in coils from the Republic of Korea. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section of this notice.

Petitioners

The petition in this investigation was filed by Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steelworkers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the "petitioners").

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Initiation of Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 37539 (July 13, 1998) (*Initiation Notice*)), the following events have occurred. On July 17, 1998, we issued countervailing duty questionnaires to the Government of Korea (GOK), and the producers/exporters of the subject merchandise. On August 6, 1998, we postponed the preliminary determination of this investigation until no later than November 9, 1998. (*see Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 43140 (August 12, 1998)).

We received responses to our initial questionnaires from the GOK and three of the five producers of the subject merchandise, Pohang Iron & Steel Company, Ltd. (POSCO), Inchon Iron & Steel Co., Ltd. (Inchon), and Dai Yang Metal Co., Ltd. (Dai Yang), on September 10, 1998. Also on September 10, 1998, we received responses from seven trading companies that are involved in exporting the subject merchandise to the United States: POSCO Steel Service & Sales Company, Ltd. (POSTEEL), Hyosung Corporation (Hyosung), Samsun Corporation (Samsun), Samsung Corporation (Samsung), Hyundai Corporation (Hyundai), Daewoo Corporation (Daewoo), and Sunkyong Ltd. (Sunkyong). On October 5, 1998, we issued supplemental questionnaires to all of the responding parties. We received their supplemental responses on October 21, 1998.

Scope of Investigation

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold-rolled sections, rectangular in shape, of a width of not more than 9.5 mm, and a thickness of not more than 6.35 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of these investigations. These excluded products are described below: Flapper valve steel is defined as stainless steel strip in coils with a chemical composition similar to that of AISI 420F grade steel and containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between

0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of 185 kgf/mm2, plus or minus 10, yield strength of 150 kgf/mm2, plus or minus 8, and hardness (Hv) of 540, plus or minus 30.

Also excluded is suspension foil, a specialty steel product used, *e.g.*, in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 μm, with a thickness tolerance of plus-or-minus 2.01 μm, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth, and must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these investigations. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths of 1.016 to 228.6 mm, and a thickness between 0.0127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available, *e.g.*, under the trade name "Arnokrome III."[1]

Electrical resistance alloy steel is also not included in the scope of these investigations. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available, *e.g.*, under the trade name "Gilphy 36."[2]

Finally, certain stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives) is also excluded. This steel is similar to ASTM grade 440F, but containing higher levels of molybdenum. This steel contains, by weight, carbon of between 1.0 and 1.1 percent, sulphur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and cobalt. This steel is sold under, *e.g.* the proprietary name GIN4Mo.[3]

All interested parties are advised that additional issues pertaining to the scope of these investigations are still pending. Furthermore, the exclusions outlined above are subject to further revision and refinement. The Department plans on notifying interested parties of its determinations on all scope issues in sufficient time for parties to comment before the final determination.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Injury Test

Because the Republic of Korea (Korea) is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Korea materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC announced its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Korea of the subject merchandise (*see Certain Stainless Steel Sheet and Strip from France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Alignment With Final Antidumping Duty Determination

On July 22, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel sheet and strip in coils.

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Use of Facts Available

Both Sammi Steel Co., Ltd. (Sammi) and Taihan Electric Wire Co., Ltd. (Taihan), two producers of subject merchandise, failed to respond to the Department's questionnaire. Section 776(a)(2) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. In such cases, the Department must use the facts otherwise available in reaching the applicable determination. Because Sammi and Taihan failed to submit the information that was specifically requested by the Department on two separate occasions, and because the GOK also failed to provide the information requested, we have based our preliminary determination for these companies on the facts available. In addition, the Department finds that by not providing the requested information, respondents have failed to cooperate to the best of their abilities.

In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available when the party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* section 351.308(c) of the Department's regulations. In the absence of

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Gin4Mo" is the proprietary grade of Hitachi Metals America, Ltd.

information from the GOK and the respondents, we consider the petition, as well as our findings from the *Final Affirmative Countervailing Duty Determinations and Final Negative Critical Circumstances Determinations: Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) (*Steel Products from Korea*), to be appropriate bases for a facts available countervailing duty rate calculation.

In *Steel Products from Korea*, we determined a country-wide *ad valorem* subsidy rate of 4.64 percent based on many of the same programs alleged in this case. Therefore, we are using the highest published *ad valorem* rate of 4.64 percent that was calculated in *Steel Products from Korea* as representative of the benefits from the industry-wide subsidies alleged in this petition, and received by the other respondents in this investigation. In addition, we are also applying a facts available rate to Sammi and Taihan for a subsidy program newly reviewed in this investigation, POSCO's two-tiered pricing structure to domestic customers. We found this program to be countervailable, and calculated company-specific program rates for Dai Yang and Inchon; as discussed below, we used Inchon's calculated rate for this program as adverse facts available for Sammi and Taihan. (A detailed discussion of this program can be found in the "Programs Preliminarily Determined to be Countervailable" section of this notice.)

Therefore, in Taihan's case, we used the 4.64 rate from *Steel Products from Korea* because the subsidy programs alleged in this investigation, with the exception of the one new allegation, are virtually identical to the programs for which the 4.64 rate in *Steel Products from Korea* was calculated. In addition, in accordance with section 776(b)(4) of the Act, for the two-tiered pricing program, we are applying the highest calculated company-specific rate for this program to Taihan as adverse facts available, 5.51 percent *ad valorem*, the company-specific program rate for Inchon. We added this 5.51 percent rate to the 4.64 percent rate (representing the program rates of the other subsidy allegations) to arrive at a total *ad valorem* rate of 10.15 percent as adverse facts available for Taihan.

In Sammi's case, in addition to applying the 4.64 rate from *Steel Products from Korea* for most of the programs covered in this investigation and the 5.51 rate for POSCO's two-tiered pricing structure, we calculated rates for three other programs that have not previously been investigated, and which were Sammi-specific subsidy allegations. These newly alleged programs are: (1) 1992 emergency loans to Sammi Steel; (2) the "national subsidy" provided to Sammi; and (3) POSCO's purchase of Sammi Specialty Steel for more than adequate remuneration. There programs are dealt with individually below in the "Programs Preliminarily Determined to be Countervailable" section of this notice. As provided for in the Act, we used the data in the petition as adverse facts available for the calculation of the program rates for the 1992 emergency loans to Sammi Steel and the "national subsidy" provided to Sammi. We used information provided in the petition and in POSCO's questionnaire responses (public version on file in the Department's Central Records Unit, Room B–099), for the calculation of the program rate for POSCO's purchase of Sammi Specialty Steel for more than adequate remuneration. We then added the rates for these three programs and the rate representing the subsidy conferred by POSCO's two-tiered pricing structure to the other programs' rate of 4.64 percent *ad valorem* calculated in *Steel Products from Korea*, which is representative of the benefits from the other industry-wide subsidies alleged in the petition and received by the other respondents. We thus arrived at a total *ad valorem* rate of 29.23 percent as adverse facts available for Sammi.

The Statement of Administrative Action accompanying the URAA clarifies that the information from the petition and prior segments of the proceeding is "secondary information." *See* Statement of Administrative Action, accompanying H.R. 5110 (H.R. Doc. No. 103–316) (1994) (SAA), at 870. If the Department relies on secondary information as facts available, section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that to corroborate secondary information means simply that the Department will satisfy itself that the secondary information to be used has probative value. However, where corroboration is not practicable, the Department may use uncorroborated information.

With respect to the programs for which we did not receive information from cooperative respondents, the information was corroborated either through the exhibits attached to the petition or by reviewing determinations in other proceedings in which we found virtually identical programs in the same country to be countervailable. Specifically, with respect to Taihan, the programs alleged in the current investigation were virtually identical to those found to be countervailable in *Steel Products from Korea*. We were unable to corroborate the rate we used for Taihan, because the petition did not contain countervailing duty rate information for these programs. Therefore, it was not practicable to corroborate such a rate. However, we note that the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. Further, in Sammi's case, (in addition to the programs from *Steel Products from Korea* discussed above), we corroborated the three newly-alleged programs with the information provided in the petition, *i.e.*, Sammi's financial statements for years 1993 through 1996, and numerous public press articles. Specifically, Sammi's financial statements show a line item entitled "national subsidy." The financial statements further indicate that Sammi's debt burden was very high and that the company was not making interest payments that reflected the significant debt load. This demonstrates that the GOK may have entrusted or directed government and/or commercial banks to provide the type of emergency loan package to Sammi in 1992 that was alleged in the Petition. Moreover, news articles indicate that the GOK was trying to rescue Sammi, and that this effort included both the emergency loans in 1992 and POSCO's purchase of Sammi Specialty Steel for more than adequate remuneration.

Additionally, the Department initiated an investigation with respect to a fourth new allegation, "Financial Assistance in Conjunction with the 1997 Sammi Steel Company Bankruptcy." *see Initiation Notice*. The petitioners allege that the GOK mitigated the effects of Sammi's bankruptcy with the use of countervailable subsidies. According to petitioners, when Sammi filed for receivership in March 1997, the GOK (1) provided grants and other rescue aid which was directed through a consortium of Sammi's rivals, and (2) rescheduled Sammi's debt through a combination of loan forgiveness and reduced interest rate loans.

We requested information concerning this program from the GOK and Sammi. While Sammi chose not to cooperate in this investigation, the GOK responded to the Department's questionnaires, stating that there was no consortium and that there were no grants. The GOK further stressed that Sammi's debt was addressed in the context of normal

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bankruptcy proceedings. Neither the information in the GOK's response nor that in the petition is complete enough to make a determination about this program. Because we have received no information from Sammi, we do not have sufficient evidence to stop investigating this program. We will continue to search for information that will enable us to make a facts available determination about this program in our final determination.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: In *Steel Products from Korea*, we stated that the three-year corporate bond yield "was the best indicator of a market rate in Korea." *See* 58 FR at 37346. Because the applicable facts of this investigation are virtually identical to those in *Steel Products from Korea*, in conformance with that prior decision, we have used the three-year corporate bond yield as our long-term benchmark. For variable rate loans for which the benefit is calculated on the interest payment during the POI, we have used as our benchmark the three year over-the-counter corporate bond rate, as reported by the GOK in its September 10, 1998, questionnaire response (public version on file in the Department's Central Records Unit, Room B–099). We have also used the three-year corporate bond yield to calculate the benefit from fixed rate loans provided under the Energy Savings Fund.

For years in which the companies under investigation have been deemed uncreditworthy, we calculated the discount rates according to the methodology described in the *General Issues Appendix*, which is appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37225, 37227 (July 9, 1993) (*GIA*). Specifically, due to the necessary use of adverse facts available with regard to Sammi, we used the highest commercial bank loan interest rates available, and added a risk premium equal to 12 percent of the commercial lending rate, in accordance with the methodology outlined in the *GIA*.

Benchmarks for Short-Term Financing: For those programs that require the application of a short-term interest rate benchmark, we used as our benchmark the company-specific, weighted-average, short-term interest rates for won-denominated loans for the POI. The three responding companies provided to the Department their respective company-specific interest rate.

Allocation Period

In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies (IRS Tables). *See* the *GIA*. In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*).

In recent countervailing duty investigations, it has been our practice to follow the Court's decision in *British Steel II*, and to calculate a company-specific allocation period for all countervailable non-recurring subsidies. In this investigation, the only responding company for which it was necessary to examine the company-specific AUL was POSCO, as neither Inchon nor Dai Yang received non-recurring grants. However, our analysis of the data submitted by POSCO regarding the AUL of its assets has revealed several problems.

First, POSCO included special accelerated depreciation expenses and a depreciation of salvage value in its calculated AUL. POSCO reported that the accelerated depreciation is permitted in accordance with Korean GAAP for plant and equipment which operate for a standard eight-hour work day, and for facilities and equipment which operate longer than a standard eight-hour day. However, since POSCO is a producer of steel products, it appears to be the company's normal course of business to operate its facilities longer than a standard eight-hour day. With respect to the depreciation of salvage values, POSCO stated that pursuant to changes in Korean tax law as of January 1, 1995, "companies were permitted to fully depreciate the remaining 10 percent of the acquisition cost of depreciable assets acquired prior to January 1, 1995 that had not been fully depreciated as of December 31, 1993." *See* POSCO's September 10, 1998, questionnaire response at 8 (public version on file in the Cental Records Unit of the Department of Commerce, Room B–099). However, while POSCO stated that the depreciation of this salvage value is included in the amounts for regular depreciation for 1995 through 1997, we do not have sufficient information to determine how to treat this salvage value in calculating POSCO's AUL. Further, we note that POSCO's calculations of its AUL show an item for "Revaluations," a term which is not explained in the response.

Based on the concerns outlined above, we preliminarily determine that POSCO's calculation of its company-specific AUL should not be used to determine the appropriate allocation period for non-recurring subsidies. Rather, for purposes of this preliminary determination, we are using 15 years as set out in the IRS Tables. We intend to request clarification and additional information concerning POSCO's AUL data during the course of this investigation.

While we have not used POSCO's company-specific AUL because of the concerns outlined above, even if we were to use the company-specific data submitted by POSCO, the facts of this case pose additional concerns and possible inconsistencies. In particular, this investigation covers countervailable non-recurring subsidies benefitting POSCO, *i.e.*, GOK infrastructure investments at Kwangyang Bay. These same non-recurring subsidies to the same company were previously found countervailable in *Certain Steel Products From Korea*. *See* 58 FR at 37346. In that investigation, the Department allocated the benefits from these GOK investments over 15 years based on information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets. Under current Department practice, previously allocated subsidies within the same proceeding are not given a new allocation period. Rather, it is our policy to retain the allocation period originally established for the subsidies in subsequent administrative reviews of the same preceding.

We note here that in the concurrent investigation of stainless steel sheet and strip in coils from France, the Department preliminarily determined that it is more appropriate to continue allocating non-recurring subsidies over the company-specific AUL of 14 years, which was calculated as a result of *British Steel II*. Although this was a company-specific AUL, it was the AUL applied in a prior investigation of the same subsidies to the same company that are currently being examined in the investigation of stainless steel sheet and strip in coils from France. The issue we

are presented with is whether the allocation period, once established for a subsidy to a company, should change in different proceedings. If the allocation period did not change across proceedings, the same GOK infrastructure investments described above will be allocated over 15 years in both the current investigation and in the recently initiated administrative review of *Certain Steel From Korea*. That review covers calendar year 1997. However, if we were to adopt different allocation periods for different proceedings, the same subsidy to the same company would be allocated over different periods, since POSCO calculated an AUL of 9 years, assuming the calculation presented by and based on company-specific data was accepted by the Department. Thus, the same subsidy to the same company would have different allocation periods across separate proceedings: 15 years in Certain Steel and 9 years in this investigation.

We encourage parties to comment on this issue and whether an alternative approach may be more appropriate. One option may be to retain the allocation period of a subsidy previously investigated in a prior investigation, rather than assign a new company-specific allocation period based on company-specific AUL data. As described above, this would conform with our practice in administrative reviews of the same countervailing duty order. Alternatively, an additional option would be to determine an individual AUL for each year in which a non-recurring subsidy is provided to a company, rather than to determine a company-specific AUL for non-recurring subsidies that could change with each investigation and result in different allocation periods for the same subsidy, as detailed above. We also welcome any additional comments on this issue not raised above.

This investigation also includes non-recurring grants to Sammi that have not been previously investigated. However, because we have no information from Sammi, we are basing the countervailing duty rate for Sammi on the facts available. Thus, as facts available, we are using the 15 years as set out in the U.S. Internal Revenue Service's Class Life Asset Depreciation Range System (for a more detailed discussion see the *GIA*).

Treatment of Subsidies Received by Trading Companies: We required responses from the trading companies because the subject merchandise may be subsidized by means of subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise is exported to the United States by an unaffiliated trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. During the POI, POSCO and Inchon exported subject merchandise to the United States through trading companies. We required that the trading companies provide responses to the Department with respect to the export subsidies under investigation. One of the trading companies, POSTEEL, is affiliated with POSCO within the meaning of section 771(33)(E) of the Act because POSCO owned 95.3 percent of POSTEEL's shares as of December 31, 1997. The other trading companies are not affiliated with POSCO. Additionally, according to its response, Inchon is affiliated with one of the trading companies, Hyundai. This reported affiliation is based upon cross-shareholdings and common board members within the Hyundai group. The trading company, Hyundai, did respond to the Department's questionnaire concerning subsidies that it had received during the POI. However, because the status of affiliation does not affect the calculated subsidy rate for Inchon for the purpose of including subsidies provided to trading companies in Inchon's rate, we have not made a determination of the affiliation of Inchon and Hyundai within the meaning of section 771(33)(E) of the Act.

Under section 351.107 of the Department's Regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the "Explanation of the Final Rules" (the Preamble), there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *See Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27303 (May 19, 1997).

In this investigation, we preliminarily determine that it is not appropriate to establish combination rates. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producers; second, the difference in the levels of subsidies conferred upon individual trading companies with regard to the subject merchandise is insignificant. Combination rates would serve no practicable purpose because the calculated subsidy rate for a producer and a combination of any of the trading companies would effectively be the same rate. For these reasons we are not calculating combination rates in this investigation.

Instead, the rates that we have calculated for the producers of subject merchandise include the subsidies received by the trading companies. To reflect those subsidies that are received by the exporters of the subject merchandise in the calculated *ad valorem* subsidy rate, we used the following methodology. For each of the seven trading companies, we calculated the benefit attributable to the subject merchandise. We then factored that amount into the calculated subsidy rate for the relevant producer. In each case, we determined the benefit received by the trading companies for each export subsidy, and weighted the average of the benefit amounts by the relative share of each trading company's value of exports of the subject merchandise to the United States. These calculated *ad valorem* subsidies were then added to the subsidies calculated for the producers of subject merchandise. Thus, for each of the programs below, the listed ad valorem subsidy rate includes countervailable subsidies received by both the producing and trading companies.

Creditworthiness

As stated in our *Initiation Notice*, we initiated an investigation of Inchon's creditworthiness from 1991 through 1997, and of Sammi's creditworthiness from 1990 to 1997, to the extent that nonrecurring grants, long-term loans, or loan guarantees were provided in those years.

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. If a company receives comparable long-term financing from commercial sources, that company will normally be considered creditworthy. In the absence of comparable commercial borrowing, the Department examines the following factors, among others, to determine whether or not a firm is creditworthy:

1. Current and past indicators of a firm's financial health calculated from that firm's financial statements and accounts.
2. The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow.
3. Future financial prospects of the firm including market studies, economic forecasts, and projects or loan appraisals.

For a more detailed discussion of the Department's creditworthiness criteria, *see, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France,* 58 FR 37304 (July 9, 1993) (*Certain Steel from France);* and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from the United Kingdom,* 58 FR 37393 (July 9, 1993).

Inchon

In accordance with the Department's past practice, the receipt by a firm of comparable long-term commercial loans, provided without a government guarantee constitutes dispositive evidence that the firm is creditworthy. *See, e.g., Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring from Canada,* 62 FR 5201 (February 4, 1997). During the years under investigation, Inchon received numerous loans from both government-owned and private banks. Because petitioners also alleged that Inchon received government-directed credit, we have also looked at Inchon's bond issuances as comparable commercial financing. Even if the existence of these loans does not, on its own, constitute dispositive evidence that the firm is creditworthy, it is evidence that Inchon was capable of managing its long-term debt obligations.

In addition, we considered Inchon's present and past financial health, as reflected in various financial indicators calculated from the firm's financial statements and accounts, in making our determination. To this end, we calculated Inchon's financial indicators for the years 1988 through 1996. In our examination of Inchon's relevant financial ratios, we did not find that the company would be unable to meet its debt obligations. Furthermore, Inchon's financial health remained relatively stable over the years examined, without the appearance of any significant deterioration.

Although a number of the financial indicators were found to be weak during certain years, the medium- and long-term indicators do not support a determination that Inchon was uncreditworthy in any of the years examined. Furthermore, while there is a possibility that Inchon's long-term commercial financing (*e.g.* bonds) may not be dispositive evidence of creditworthiness because of government direction of credit, it serves as further evidence that Inchon was capable of meeting its long-term debt obligations. Based on these observations, we preliminarily find that Inchon was creditworthy for the years under investigation. *See* Creditworthiness Memorandum, on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099.

Sammi

Because Sammi and the GOK chose not to respond with regard to this allegation, we used the information and financial data provided in the petition as the facts available in accordance with section 776(b) of the Act. (For further discussion, see the "Facts Available" section of this notice.) Petitioners alleged that Sammi was uncreditworthy during the period of 1983 through 1997 (although we deemed it appropriate to investigate only the 1990 through 1997 time period). *See Initiation Notice.* To illustrate the deterioration of Sammi's financial health, petitioners provided press articles and debt and profit ratios for the years of 1990 to 1996 based on the company's financial data. *See* the June 10, 1998, Petition at Exhibit 11 and 13, and their June 24, 1998, submission at Attachment 3. Based on this information, it appears that the company was nearly insolvent, as Sammi had shown a profit only once since 1991 and lacked strong future prospects. We reviewed the financial data of Sammi that was provided in the petition. The data indicate that, during the years 1990 through 1997, Sammi was not in good financial condition. The company's current ratio, quick ratio, and times interest earned ratios were low, indicating that Sammi may have had difficulty servicing new debt. In addition, the company's profit margins were low or negative. Further, it appears from such documentation that Sammi was having increasing difficulty in meeting its financial obligations.

In many cases, the Department considers a company to be creditworthy if it is able to procure commercial loans. However, in this case, the company's ability to obtain commercial loans is unclear, as information provided by petitioners indicates that the GOK may have been directing commercial banks to provide emergency financing to Sammi in order to avoid the company's bankruptcy. Based on this information, we preliminarily determine that Sammi was uncreditworthy from 1990 through 1997.

I. Programs Preliminarily Determined To Be Countervailable

A. Direction of Credit

In the 1993 investigation of *Steel Products from Korea,* the Department determined (1) that the GOK influenced the practices of lending institutions in Korea; (2) that the GOK regulated long-term loans provided to the steel industry on a selective basis; and (3) that the selective provision of these regulated loans resulted in a countervailable benefit. Accordingly, all long-term loans received by the producers/exporters of the subject merchandise were treated as countervailable. The determination in that investigation covered all long-term loans bestowed through 1991. *See* 58 FR at 37339.

In this investigation, petitioners allege that the GOK continued to control the practices of lending institutions in Korea through the POI, and that the steel sector received a disproportionate share of low-cost, long-term credit, resulting in the conferral of countervailable benefits on the producers/exporters of the subject merchandise. Petitioners assert, therefore, that the Department should countervail all long-term loans received by the producers/exporters of the subject merchandise that were still outstanding during the POI.

1. The GOK's Credit Policies Through 1991. As noted above, we previously found significant GOK control over the practices of lending institutions in Korea through 1991, the period investigated in *Steel Products From Korea.* This finding of control was determined to be sufficient to constitute a government program and government action. *See* 58 FR at 37342. We also determined that (1) the Korean steel sector, as a result of the GOK's credit policies and control over the Korean financial sector, received a disproportionate share of regulated long-term loans, so that the program was, in fact, specific, and (2) that the interest rates on those loans were inconsistent with commercial considerations. *Id.* at 37343. Thus, we countervailed all long-term loans received by the steel sector from all lending sources.

In this investigation, we provided the GOK with the opportunity to present new factual information concerning the government's credit policies prior to 1992, which we would consider along with our finding in the prior investigation. The GOK has not

provided new factual information that would lead us to change our determination in *Steel Products from Korea*. Therefore, we preliminarily determine that the provision of long-term loans in Korea through 1991 results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. This finding is in conformance with the SAA, which states that "section 771(5)(B)(iii) encompasses indirect subsidy practices like those which Commerce has countervailed in the past, and that these types of indirect subsidies will continue to be countervailable." SAA at 925. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the regulated loans are provided at interest rates less than the benchmark rates described under the "Subsidies Valuation" section, above.

We also preliminarily determine that all regulated long-term loans provided to the producers/exporters of the subject merchandise through 1991 were provided to a specific enterprise or industry, or group thereof, within the meaning of section 771(5A)(D)(iii)(III) of the Act. This finding is in conformance with our determination in *Steel Products from Korea*. *See* 58 FR at 37342.

POSCO, Inchon and Dai Yang all received long-term loans prior to 1992 that were still outstanding during the POI. These included loans with both fixed and variable interest rates for all three responding companies. To determine the benefits from the regulated loans with fixed interest rates, we applied the Department's standard long-term loan methodology and calculated the grant equivalent for the loans. For the variable-rate loans, we compared the amount of interest paid during the POI on the regulated loans to the amount of interest that would have been paid at the benchmark rate. We then summed the benefit amounts from all of the loans attributable to the POI and divided the total benefit by each company's total sales. On this basis, we determine the countervailable subsidy rates to be 0.15 percent *ad valorem* for POSCO, 0.04 percent *ad valorem* for Inchon, and 0.06 percent *ad valorem* for Dai Yang.

2. The GOK's Credit Policies From 1992 Through 1997. We have also examined the GOK's credit policies during the period 1992 through 1997. Because of the complexity of this issue and the conflicting information on the record, which we discuss below, we will continue to seek additional information on whether the GOK's practices during this period confer a countervailable subsidy. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the countervailability of the GOK's credit policies during this period and provide all parties with an opportunity to comment on our analysis.

In its questionnaire responses, the GOK asserts that there was no government policy to direct long-term credit to the Korean steel industry during the period 1992 through 1997, and that it was not involved in the lending activities of Korean financial institutions. The GOK states that the lending decisions and loan distributions of financial institutions in Korea reflect commercial considerations. The GOK states that its role in the financial sector is limited to monetary and credit policies as well as bank supervision and examination.

Evidence submitted to the Department by the GOK indicates that some deregulatory measures affecting the Korean financial sector have been taken since 1991. These include a four-stage interest rate deregulation plan that, according to the GOK, virtually eliminated all government control over deposit and lending rates in Korean won. For example, rates on corporate bonds and all bank loans, other than those assisted by Bank of Korea (BOK) rediscounts, were deregulated by November 1993. Also, information submitted to the Department by the GOK indicates that there have been reforms to the process by which commercial bank presidents are selected. The reforms include a procedure, implemented in 1993, whereby bank chairmen are selected by committees consisting of shareholder representatives, corporate clients, and ex-bank presidents. In 1997, the GOK further amended the Banking Act to prescribe that a candidate for bank president, recommended by a candidate recommendation committee, must be elected by an affirmative vote of a two-thirds majority of the non-permanent directors of the bank.

However, other information in the record indicates that the GOK may still exert substantial influence over the lending decisions of financial institutions. For example, recent GOK policies appear to be aimed, in part, at promoting certain sectors of the economy, such as high technology and small and medium sized enterprises (SMEs). *See, e.g.*, "KDB Financial Support for Korean Industries," from the Korea Development Bank appended to "Memorandum From Case Analyst to File, Re: Articles on Korean Financial System" (on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099) ("Korean Financial System Memo"). Other official information on the record appears to suggest that the GOK may have continued the practice of directing credit after 1991. Independent commentators have also noted the GOK's continued involvement in the financial system. *See, e.g., Deep Pockets*, "The Economist" (May 3, 1997), appended to Korean Financial System Memo; *Financing Foreign Operations, South Korea*, The Economist Intelligence Unit, 1997, page 20 (1997), appended to Korean Financial System Memo; *The Korean Economy in 1997: Crisis and Response*, by Thomas Byrne, appended to Korean Financial System Memo.

As noted above, in light of this conflicting information, at verification and during the course of this proceeding, we will gather additional information in order to make a determination as to whether credit provided after 1991 is countervailable. During verification, we plan to meet with various individuals who are knowledgeable about the financial sector in Korea in order to gather information about the differences between the GOK's credit policies in the 1980s and the 1990s; the lending practices of government-owned banks and of commercial lending institutions; the role of securities (public and corporate bonds) in the financial system; and the impact of the GOK's financial liberalization on the lending practices of Korean banks after 1991.

B. Loans From the Energy Savings Fund

Established in accordance with Article 51 of the "Rationalization of Energy Utilization Act" (Energy Use Act), the Energy Saving Fund provides financing at below-market interest rates for investment by businesses in facilities that rationally and efficiently use energy. Overall responsibility for the program lies with the Ministry of Industry and Energy (MIE), but the operation and management of the program is entrusted to the Korea Energy Management Corporation (KEMC). While the Energy Use Act was repealed in 1995, the MIE, under the new "Energy Use Rationalization Act," provides financing for this program from special government accounts.

Korean companies obtain financing under this program by submitting an application to the KEMC. If the KEMC is satisfied that the applicant's business plans are intended for the rationalization of energy use, it will then issue a recommendation, and forward the company's application to a

bank. The KEMC will transfer funds to the bank, which will in turn provide the funds to the applicant. The interest rate charged under the Energy Saving Fund was set at 7.0 percent. POSCO and Inchon paid interest on Energy Saving Fund (ESF) loans during the POI, and the interest rates paid by the companies were less than the 7.0 percent rate prescribed by the program. POSCO received two ESF loans, both in 1994, and both at interest rates below 7.0 percent. Inchon also received two ESF loans, one before 1992 and one after 1992. The pre-1992 ESF loan was at a rate below the prescribed interest rate set by the program.

We preliminarily determine that the program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act and, in accordance with section 771(5)(E)(ii) of the Act, provides a benefit to the recipient based on the difference between the interest rate on the program loan and the benchmark rate described in the "Subsidies Valuation" section, above. We also preliminarily determine that the loans provided to POSCO and the pre-1992 loan made to Inchon were specific within the meaning of section 771(5A)(D)(iii)(IV) of the Act, because the interest rates charged to POSCO and Inchon were less than the program interest rate prescribed by the program's regulations. We note that the ESF loan received by Inchon before 1992 would also be found to be countervailable under our determination in the 1993 investigation of *Steel Products from Korea* that the GOK directed credit to the steel industry. *See also* the "Direction of Credit" section in this preliminary determination.

To calculate the benefit from the Energy Savings Loans, we employed the Department's standard long-term loan methodology, using as our benchmark the rate described in the "Subsidies Valuation" section of the notice, above. We divided the benefit attributable to the POI by each company's total sales during 1997. On this basis, we preliminarily determine the countervailable subsidy to be less than 0.005 percent *ad valorem* for POSCO and for Inchon.

We have not yet made a determination on whether the post-1992 ESF loan provided to Inchon is countervailable. According to the information provided by the GOK and Inchon, the interest rate on the post-1992 loan is in accordance with the prescribed rates under the ESF program. Thus, we must make a specificity determination on the ESF program under section 771(5A)(D) of the Act. The information on the record regarding the specificity of the ESF program is inconclusive. Therefore, we are seeking additional information on this program and will make our determination of the specificity of the program in our final determination. We will offer all interested parties an opportunity to comment on any additional factual information obtained concerning this program.

C. 1992 "Emergency Loans" to Sammi Steel

The petition alleges that in 1992 the GOK directed a package of 132 billion won in "emergency loans" to Sammi in order to save the company from bankruptcy. Because Sammi and the GOK chose not to respond with regard to this allegation, we used the information and data provided in the petition as adverse facts available, in accordance with section 776(b) of the Act. This information, in conjunction with our finding that Sammi was uncreditworthy during the year in question, indicates that Sammi was the recipient of a government-directed emergency loan package in 1992, and that this loan package provided a financial contribution in accordance with section 771(5)(D)(i) of the Act. In addition, because this emergency loan package was only provided to Sammi, we preliminary determine that the program is specific under section 771(5A)(D) of the Act.

Under section 771(5)(E)(ii) of the Act, the benefit from a countervailable loan is based upon the difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market. Because the loans in question are part of a government-directed emergency loan package to forestall Sammi's bankruptcy, it is reasonable to assume that the company would not have been able to actually obtain alternative financing absent the participation of the government. Therefore, for this preliminary determination, as facts available, we are treating these emergency loans of 132 billion won as interest-free loans which are rolled over from year to year. A review of Sammi's 1996 financial statements indicate that the company is paying little interest on outstanding debt, interest that may not have been sufficient to cover even its short-term debt. Thus, we are calculating the benefit from these interest-free loans using the Department's standard long-term variable rate loan methodology. To calculate the benefit from this program during the POI, we took the amount of the loans, 132 billion won, and calculated the amount of interest that would have been paid on that amount. As facts available, we have used as a benchmark interest rate the highest available commercial loan rate, plus a risk premium. For a more detailed discussion, *see* the "Subsidies Valuation" section of this notice. We divided the benefit attributable to the POI by Sammi's total sales during 1996. We used the sales figure reported in Sammi's 1996 financial statements as a proxy for the 1997 sales because we do not have any information of the value of Sammi's sales for the POI. On this basis, we preliminarily determine the countervailable subsidy conferred to be 3.18 percent ad valorem.

Petitioners have argued that under the application of adverse facts available, with no other information on the record, the emergency loans received by Sammi should be treated as grants. However, for the purposes of this preliminary determination, it is appropriate to treat this emergency loan package as loans. When this program was initially alleged, it was alleged that the GOK had provided a large amount of money to Sammi in the form of loans. *See* the June 10, 1998, Petition at page 56 (public version on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099). Moreover, the information provided in the petition which was the basis for the Department's initiation of an investigation into this program, describes this program as a loan package. *See* the June 10, 1998 Petition at Exhibit 8 (public version on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099).

D. "National Subsidy" to Sammi

The petitioners allege that in 1993 Sammi received a "national subsidy" in the amount of 39 million won. They provide the company's 1993 financial statement, which has an entry for the alleged subsidy, although the nature of the subsidy is not explained. Neither Sammi nor the GOK submitted any information to the record explaining this subsidy. Therefore, in accordance with 776(b) of the Act, we used the information provided in the petition. We find this program to be countervailable because this subsidy was given only to Sammi, and thus, it is specific under section 771(5A)(D) of the Act, and a financial contribution was provided to Sammi under section 771(5)(D)(ii) of the Act.

Because no other information was provided, we are treating this "national subsidy" as a grant bestowed upon

Sammi. In order to calculate the rate for this program, we employed the Department's grant methodology. *See GIA*, 58 FR at 37225–31. However, because the total amount of the national subsidy is less than 0.50 percent of Sammi's 1993 sales, we have expensed the grant in the year of receipt. Thus, there is no benefit under this program during the POI.

E. Purchase of Sammi Specialty Steel Division for More than Adequate Remuneration

In February 1997, POSCO purchased the specialty steel bar and pipe division of Sammi for 719.4 billion won. This division became POSCO's Changwon facility. Petitioners alleged that POSCO was directed by the government to purchase the Sammi Specialty Steel Division as a matter of national interest as opposed to one of economic merit. Petitioners alleged that the GOK used its ownership in POSCO as a vehicle for the subsidization of Sammi. Thus, petitioners allege that POSCO's purchase of the Sammi Specialty Steel Division was for more than adequate remuneration.

As noted in the "Use of Facts Available" section of this notice, Sammi refused to respond to the Department's questionnaires. POSCO has provided certain documents relevant to this purchase, but Sammi's refusal to respond to our questionnaires means that significant portions of information required by the Department to analyze this program have not been provided. Thus, in making this preliminary determination, we have relied on both information provided by POSCO and information provided in the petition with respect to this allegation. In accordance with section 776(b) of the Act, the Department may use an inference that is adverse to the interest of a party when selecting from facts otherwise available when the party has failed to cooperate with a request for information. As discussed in the "Use of Facts Available" section, we determined that Sammi has failed to cooperate by not answering the Department's questionnaire.

Based on the information on the record, we preliminarily determine that the actions of POSCO should be considered as an action of the GOK because POSCO is a government-controlled company. During the POI, the GOK was the largest shareholder of POSCO. We also note that POSCO is one of three companies designated as a "Public Company" by the GOK. One of the other "Public Companies" is the state-run utility company, KEPCO. This determination that POSCO should be treated as a government-owned provider of a good or service is consistent with other cases involving the provision of a good or service by government-owned companies. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela*, 62 FR 55014 (October 22, 1997).

Over the course of this investigation, we have reviewed numerous documents that relate to this purchase, including the valuation studies and the purchase contract between POSCO and Sammi. The amount paid by POSCO was significantly higher than the value defined by POSCO's own interim valuation report. Ostensibly, Sammi used the proceeds from the sale to pay debts owed by its other divisions. It appears as though the purchase price agreed upon by POSCO and Sammi included money both for the assets that POSCO was purchasing and for the repayment of debt associated with these assets. *See* POSCO's October 21, 1998, supplemental questionnaire response at Exhibit F–12, public version on file in the public file of the Central Records Unit of the Department of Commerce, Room B–099.

According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Because no information was provided by Sammi with respect to this program, as facts available the adequacy of remuneration was based on a comparison of the value and profitability of Sammi's bar and pipe division, as described in POSCO's valuation report, with the actual purchase price. On this basis, the Department preliminarily determines that POSCO made this purchase for more than adequate remuneration, thereby conferring a benefit under section 771(5)(E)(iv) of the Act. In accordance with section 771(5A)(D)(i) of the Act, we find that this program is specific to Sammi.

To calculate a countervailing duty rate for this purchase, we treated the excessive remuneration, *i.e.*, the amount paid for Sammi by POSCO in excess of POSCO's own valuation, as a non-recurring grant and allocated it over the average useful life of assets in the industry. For a discussion of the AUL, see the "Subsidies Valuation" section of this notice. Based on this methodology, we calculated a countervailable subsidy of 15.90 percent *ad valorem* for Sammi for this program during the POI.

F. Kwangyang Bay

Petitioners requested that the Department investigate whether the GOK's infrastructure development at Kwangyang Bay continues to provide a countervailable subsidy to POSCO's steel production. The Department previously determined that the Korean government's infrastructure development at Kwangyang Bay constituted a specific countervailable subsidy to POSCO, because POSCO was found to be the predominant user of the infrastructure. *See Steel Products from Korea*, 58 FR at 37346–47. Because POSCO still produces steel products at Kwangyang Bay, we requested information on this program to determine whether the GOK has made additional investments since 1991, at Kwangyang Bay.

1. GOK Infrastructure Investments at Kwangyang Bay Pre-1992. In *Steel Products from Korea*, the Department investigated the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. During this period of time, the GOK's investments at Kwangyang Bay included: construction of an industrial waterway, construction of a railroad station, construction of a road to Kwangyang Bay, dredging of the harbor, and construction of three finished goods berths. We determined that the GOK's provision of infrastructure to POSCO at Kwangyang Bay was countervailable because we found POSCO to be the predominant user of the GOK's investments. The Department has consistently held that a countervailable subsidy exists when benefits under a program are provided, or are required to be provided, in law or in fact, to a specific enterprise or industry or group of enterprises or industries. *See Steel Products from Korea*, 58 FR at 37346.

No new factual information or evidence of changed circumstances has been provided to the Department with respect to the GOK's infrastructure investments at Kwangyang Bay over the period 1983–1991. Therefore, to determine the benefit from the GOK's investments to POSCO during the POI, we relied on the calculations performed in the 1993 investigation of *Steel Products from Korea*, which were placed on the record of this investigation by POSCO. In measuring the benefit from this program in the 1993 investigation, the Department treated the GOK's costs of constructing the infrastructure at Kwangyang Bay as untied, non-recurring grants in each year in which the costs were incurred. The Department used as its discount rate the three-year corporate bond rate

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on the secondary market, which was the average cost of long-term fixed rate debt in Korea at that time.

We applied the Department's standard grant methodology and then allocated the GOK's infrastructure investments over a 15-year time period as described in the "Allocation" section of the notice, above. We used as our discount rate the three-year corporate bond rate on the secondary market used in *Steel Products from Korea*. We then summed the benefits received by POSCO during 1997, from each of the GOK's yearly investments over the period 1983–1991. We then divided the total benefit attributable to the POI by POSCO's total sales for 1997. On this basis, we preliminarily determine a countervailable subsidy of 0.29 percent *ad valorem* for the POI for POSCO.

2. GOK Infrastructure Investments at Kwangyang Bay Post-1991. The GOK has made the following additional infrastructure investments at Kwangyang Bay since 1991: construction of a road from Kwangyang to Jinwol, construction of a container terminal, and construction of the Jooam Dam. The GOK states that pursuant to Article 29 of the Industrial Sites and Development Act, it is the national and local governments' responsibility to provide basic infrastructure facilities throughout the country, and the nature of the infrastructure depends on the specific needs of each area and/or the types of industries located in a particular area. Depending upon the type of infrastructure built, the GOK provides services to companies through the use of the infrastructure facilities and charges fees for these services based on published tariff rates applicable to all users.

With respect to the GOK's post-1991 infrastructure investments at Kwangyang Bay, the GOK argues that the construction of the infrastructure was not for the benefit of POSCO. The GOK reports that the purpose of developing the Jooam Dam, which was fully constructed in 1993, was to meet the rising demand for water by area businesses and households. The supply capacity of the Sueochon dam, which was constructed prior to 1991, could not meet the area's water needs and therefore a second dam at Kwangyang Bay was built. The GOK further reports that the construction of the Jooam Dam did not benefit POSCO because POSCO receives all of its water supply from the Sueochon Dam. In *Steel Products from Korea*, we determined that POSCO was the predominant user of the Sueochon Dam, and on this basis treated the government's full investment costs for constructing that dam as countervailable subsidies benefitting POSCO.

The GOK developed the container terminal according to the Kwangyang Container Terminal Development Plan. The purpose of the container terminal was to provide another major southern port with a container terminal in order to relieve congestion at Pusan, and to encourage the further commercial development of the region. The GOK states that, given the nature of the merchandise imported, produced, and exported by POSCO at Kwangyang Bay, this container terminal cannot be used by POSCO's operations. According to the responses from the GOK and POSCO, neither steel products nor steel inputs are shipped through the container terminal at Kwangyang Bay, nor, given the nature of those products, would they be shipped through the container terminal.

The road from Kwangyang to Jinwol was constructed in 1993. The road between the two cities is a by-pass route constructed to relieve a transportation bottleneck in the area. The GOK states that this is a general service, public access road available for, and used by, all residents and businesses in the area of Kwangyang Bay. According to the GOK response, the reason for building the public highway was not to serve POSCO, but to provide general infrastructure to the area as part of the GOK's continuing development of the country.

Based on the information on the record regarding the GOK's infrastructure investments at Kwangyang Bay since 1991, we preliminarily determine that these investments are not providing countervailable benefits to POSCO. However, we will further investigate the GOK's infrastructure investments at verification to ascertain whether or not, in fact, the facilities were built for POSCO's benefit.

G. Port Facility Fees

The GOK reports in its September 10, 1998, questionnaire response that, since 1991, POSCO has built new port facilities at Kwangyang Bay, at the company's own expense. However, since titles to port facilities must be transferred to the GOK in accordance with Article 17–1 of the Harbor Act, POSCO had to revert these facilities to the GOK. In return, POSCO has the right to use the port facilities free of charge, and can charge other users a usage fee until the company recovers all of its investment costs.

In the 1993 investigation of *Steel Products from Korea*, the Department found that POSCO, which built port berths at Kwangyang Bay, but, by law, had to deed them to the GOK, was exempt from paying fees for use of the berths. POSCO was the only company entitled to use the berths at the port facility free of charge. The Department determined that because this privilege was limited to POSCO, and because the privilege relieved POSCO of costs it would otherwise have had to pay, POSCO's free use of the berths at Kwangyang Bay constituted a countervailable benefit. The Department stated that each exemption from payment of the fees, or "reimbursement" to POSCO, creates a countervailable benefit because the GOK is relieving POSCO of an expense the company would have otherwise incurred. *See Steel Products from Korea*, 58 FR at 37347–348.

With respect to the present investigation, because POSCO remains exempt from paying port facility fees which it otherwise would have to pay, and therefore the government is not collecting revenue that it is otherwise due, we preliminarily determine that POSCO's free use of the port facilities provides a financial contribution to the company within the meaning of section 771(5)(D)(ii) of the Act. We also preliminarily find that the exemption from paying port facility charges is a specific subsidy under section 771(5A)(D)(iii)(IV) of the Act, because POSCO was the only company exempt from paying port facility fees during the POI.

Because the exemption of the port facility fees are not "exceptional" benefits and are received automatically on a regular and predictable basis without further government approval, we preliminarily determine that this fee exemption provides a recurring benefit to POSCO. Therefore, we have expensed the benefit from this program in the year of receipt. *See GIA*, 58 FR at 37226. To measure the benefit which POSCO received during the POI for the free use of the facilities, we calculated the amount of the fees which POSCO would have had to pay for the use of the facilities during the POI. We then divided this benefit amount by POSCO's total sales for the POI. On this basis, we preliminarily determine that POSCO received a countervailable subsidy of 0.03 percent *ad valorem* during the POI.

H. Export Industry Facility Loans

In *Steel Products from Korea*, 58 FR at 37328, the Department determined that export industry facility loans (EIFLs) are contingent upon export, and are therefore export subsidies to the extent that they are provided at preferential rates. In this investigation,

we provided the GOK with the opportunity to present new factual information concerning these EIFLs, which we would consider along with our finding in the prior investigation. The GOK has not provided new factual information that would lead us to change our determination in *Steel Products from Korea*. Therefore, we continue to find that EIFLs are provided on the basis of export performance and are export subsidies under section 771(5A)(B) of the Act. We also preliminarily determine that the provision of loans under this program results in a financial contribution within the meaning of section 771(5)(D)(i) of the Act. In accordance with section 771(5)(E)(ii) of the Act, a benefit has been conferred to the recipient to the extent that the EIFLs are provided at interest rates less than the benchmark rates described under the "Subsidies Valuation" section, above.

Dai Yang was the only respondent with outstanding loans under this program during the POI. To calculate the benefit conferred by this program, we compared the actual interest paid on the loan with the amount of interest that would have been paid at the applicable benchmark interest rate. When the interest that would have been paid at the benchmark rate exceeds the interest that was paid at the program interest rate, the difference between those amounts is the benefit. We divided the benefits derived from the loans by total export sales. On this basis, we preliminarily determine that Dai Yang received from this program during the POI a countervailable subsidy of 0.04 percent *ad valorem*.

I. Short-Term Export Financing

The Department determined that the GOK's short-term export financing program was countervailable in *Steel Products from Korea*, 58 FR at 37350. Petitioners allege that this program may also have benefitted the producers and/or exporters of the subject merchandise. In this investigation, the GOK reports that the BOK, under the "Detailed Rules of Trade Financing Related to the Aggregate Ceiling Loans" (Detailed Rules), provides discounts on foreign trade bills to commercial banks, which, in turn, extend short-term loans to exporters. Under the aggregate credit ceiling system established in 1994, the BOK allocates a credit ceiling every month to each commercial bank, including branches of Korean and foreign banks. This ceiling is based on each bank's loan performance, *i.e.*, each bank's discounting of commercial loans, foreign trade financing, and loans for the production of parts and material. These banks then provide loans to exporters using the funds received from the BOK and funds generated from their own sources to discount trade bills.

There are two types of trade financing: production financing and raw material financing. A bank provides production financing when a company needs funds for the production of export merchandise or the production of raw materials used in the production of exported merchandise. A bank extends raw material financing to exporters which require financing for the importation or local purchase of raw materials used in the production of exported merchandise.

During the POI, POSCO and Dai Yang both received export financing. These two companies report that they entered into credit ceiling loan agreements with commercial banks in accordance with Articles 12 and 13 of the Detailed Rules to receive production financing. The loan agreements outlined the maximum amount of credit which POSCO and Dai Yang were eligible to receive, the periods covered by the loan agreements, the applicable interest rates, and the penalty interest rates.

When the exporting company purchases raw materials from a supplier on a letter of credit basis, the supplier presents the letter of credit to the exporter's bank for payment. The bank, in turn, pays the purchase price to the supplier and debits the trade loan against the exporter's line of credit. The exporter pays the full amount of each trade loan after about 90 days, which is the average period from production to sales. Interest is paid by the exporter against each trade loan at the time the loans are received. Both Dai Yang and POSCO reported that they paid all of their export financing during the POI in a timely manner and incurred no overdue interest penalties.

In accordance with section 771(5A)(B) of the Act, we preliminary determine that this program constitutes an export subsidy because receipt of the financing is contingent upon export performance. A financial contribution is provided to Dai Yang and POSCO under this program within the meaning of section 771(5)(D)(i) of the Act. In order to determine whether this export financing program confers a countervailable benefit to Dai Yang and POSCO, we compared the interest rate the companies paid on the export financing received under this program during the POI with the interest rate they would have paid on a comparable short-term commercial loan. See discussion above in the "Subsidies Valuation Information" section with respect to short-term loan benchmark interest rates.

Because loans under this program are discounted (*i.e.*, interest is paid up-front at the time the loans are received), the effective rates paid by POSCO and Dai Yang on their export financing are discounted rates. Therefore, it was necessary to derive from company-specific weighted-average interest rates for short-term won-denominated commercial loans, a discounted benchmark interest rate. We compared this discounted benchmark interest rate to the discounted interest rates charged on the export financing and found that the program interest rates were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that this program confers countervailable benefits because the interest rates charged on the loans were less than what POSCO would have had to pay on a comparable short-term commercial loan.

To calculate the benefit conferred by this program, we compared the actual interest paid on the loans with the amount of interest that would have been paid at the applicable discounted benchmark interest rates. When the interest that would have been paid at the benchmark rate exceeded the interest that was paid at the program interest rate, the difference between those amounts is the benefit. Because neither POSCO nor Dai Yang was able to segregate their production financing applicable to only subject merchandise exported to the United States, we divided the benefits derived from the loans by total exports. On this basis, we preliminarily determine that POSCO received from this program during the POI a countervailable subsidy of less than 0.005 percent *ad valorem*, and that Dai Yang received a countervailable subsidy of 0.04 percent *ad valorem* during the POI.

J. Reserve for Export Loss " Article 16 of the TERCL

Under Article 16 of the Tax Exemption and Reduction Control Act (TERCL), a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a

three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of taxes owed amounts to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. During the POI, Dai Yang, Inchon, Samsun, Samsung, Sunkyong, and Daewoo used this program. Although POSCO did not use this program during the POI, its exports of the subject merchandise were shipped through trading companies which did use this program during the POI (Samsun, Samsung, Sunkyong, and Daewoo). Neither Inchon nor Dai Yang shipped through any trading companies that received benefits from this program, although both Inchon and Dai Yang received benefits as exporters.

We preliminarily determine that the Reserve for Export Loss program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program, we calculated the tax savings by multiplying the balance amounts of the reserves as of December 31, 1996, by the corporate tax rate for 1996. We treated the tax savings on these funds as short-term interest-free loans. Accordingly, to determine the benefits, the amounts of tax savings were multiplied by the companies' weighted-average interest rates for short-term won-denominated commercial loans for the POI, described in the "Subsidies Valuation Information" section, above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we preliminarily determine a countervailable subsidy of less than 0.005 percent *ad valorem* attributable to POSCO, a subsidy of 0.15 percent *ad valorem* for Inchon, and a countervailable subsidy of 0.01 percent *ad valorem* attributable to Dai Yang.

K. Reserve for Overseas Market Development—Article 17 of the TERCL

Article 17 of the TERCL operates in a manner similar to Article 16, discussed above. This provision allows a domestic person engaged in a foreign trade business to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account over a three-year period, after a one-year grace period. As is the case with the Reserve for Export Loss, the balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of taxes owed amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. The following exporters of the subject merchandise received benefits under this program during the POI: Dai Yang, Hyosung, Hyundai, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Although Inchon and POSCO did not use this program during the POI, these companies' exports of the subject merchandise were shipped through trading companies which did use this program during the POI: Inchon shipped through Hyundai, and POSCO shipped through Hyosung, POSTEEL, Samsun, Samsung, and Sunkyong, and Daewoo. Dai Yang did not ship through trading companies during the POI.

We preliminarily determine that the Reserve for Overseas Market Development program constitutes an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also preliminarily determine that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan.

To determine the benefits conferred by this program during the POI, we employed the same methodology used for determining the benefit from the Reserve for Export Loss program. We used as our benchmark interest rate, each company's respective weighted-average interest rate for short-term won-denominated commercial loans for the POI, described in the "Subsidies Valuation Information" section above. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we preliminarily calculate a countervailable subsidy of 0.01 percent *ad valorem* for this program during the POI for POSCO, 0.01 percent *ad valorem* for Inchon, and 0.01 percent *ad valorem* for Dai Yang.

L. Investment Tax Credits

Under the TERCL, companies in Korea are allowed to claim investment tax credits for various kinds of investments. If the tax credits cannot all be used at the time they are claimed, the company is authorized to carry them forward for use in later tax years. During the POI, the respondents used various investment tax credits received under the TERCL to reduce their net tax liability. In *Steel Products from Korea*, we found that investment tax credits were not countervailable (*see* 58 FR at 37351); however, there were changes in the statute effective in 1995 which have caused us to revisit the countervailability of the investment tax credits.

POSCO claimed or used the following tax credits in its fiscal year 1996 income tax return which was filed during the POI: (1) tax credits for investments in facilities for research and experimental use and investments in facilities for vocational training or assets for business to commercialize new technology under Article 10; (2) tax credits for vocational training under Article 18; (3) tax credits for investment in productivity improvement facilities under Article 25; (4) tax credits for investment in specific facilities under Article 26; (5) tax credits for temporary investment under Article 27; and (6) tax credits for specific investments under Article 71 of TERCL. Inchon claimed or used: (1) tax credits for investments in technology and human resources under Article 9; and (2) tax credits for investment in productivity improvement facilities under Article 25. Dai Yang also claimed or used tax credits under Articles 9 and 25.

For these specific tax credits, a company normally calculates its authorized tax credit based upon three or five percent of its investment, *i.e.*, the company receives either a three or five percent tax credit. However, if a company makes the investment in domestically-produced facilities under these Articles, it receives a 10 percent tax credit. Under section 771(5A)(C) of the Act, which became effective on January 1, 1995, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies receive a higher tax credit for investments made in domestically-produced facilities, we preliminarily determine that investment tax credits received under Articles 10,

18, 25, 26, 27, and 71 constitute import substitution subsidies under section 771(5A)(C) of the Act. In addition, because the GOK foregoes collecting tax revenue otherwise due under this program, we also preliminarily determine that a financial contribution is provided under section 771(5)(D)(ii) of the Act. Therefore, we preliminarily determine this program to be countervailable.

To calculate the benefit from this tax credit program, we examined the amount of tax credit the companies deducted from their taxes payable for the 1996 fiscal year. In its fiscal year 1996 income tax return filed during the POI, POSCO deducted from its taxes payable, credits earned in the years 1992 through 1995, which were carried forward and used in the POI in addition to POSCO's 1996 deduction. We first determined the amount of the tax credits claimed which were based upon the investment in domestically-produced facilities. We then calculated the additional amount of tax credits received by the company because it earned tax credits of 10 percent on investments in domestically-produced facilities rather than the regular three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POI and divided that amount by POSCO's total sales for the POI. Neither Inchon nor Dai Yang carried forward any tax credits from previous years. Therefore, to calculate their rates we calculated the additional amount of the tax savings earned on investments in domestically-produced facilities and divided that amount by each company's total sales for the POI. On this basis, we preliminarily determine a countervailable subsidy of 0.27 percent *ad valorem* to POSCO, 0.06 percent *ad valorem* to Inchon, and 0.41 percent *ad valorem* to Dai Yang from this program during the POI.

M. Electricity Discounts Under the Requested Load Adjustment Program

Petitioners alleged that the respondents are being charged utility rates at less than adequate remuneration and, hence, the production of the subject merchandise is receiving countervailable benefits from this subsidy. Petitioners alleged that the respondents are receiving these countervailable benefits in the form of utility rate discounts.

The GOK reports that during the POI the government-owned KEPCO provided the respondents with three types of discounts under its tariff schedule. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. (See the discussion below in "Programs Preliminarily Determined To Be Not Countervailable" with respect to the Power Factor Adjustment and Summer Vacation and Repair Adjustment discount programs.)

With respect to the Requested Load Adjustment (RLA) program, the GOK introduced this discount in 1990, to address emergencies in KEPCO's ability to supply electricity. Under this program, customers with a contract demand of 5,000 KW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 KW or more, are eligible to enter into a RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per KW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POI, KEPCO granted 44 companies RLA discounts even though KEPCO did not need to request these companies to reduce their respective loads. The GOK reports that because KEPCO increased its capacity to supply electricity in 1997, it reduced the number of companies with which it maintained RLA contracts in 1997. In 1996, KEPCO entered into RLA contracts with 232 companies.

We analyzed whether this electricity discount program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of sections 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as being eligible to participate in the electricity discount programs. The RLA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. We preliminarily find that the RLA electricity program is not *de jure* specific under section 771(5A)(D)(i) of the Act because the regulation does not explicitly limit eligibility of the program.

We next examined data on the distribution of assistance under the RLA to determine whether the electricity discount program meets the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the RLA were distributed to a limited number of customers, *i.e.*, a total of 44 customers during the POI. Given the data with respect to the small number of companies which received RLA electricity discounts during the POI, we preliminarily determine that the RLA program is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act.

Because the electricity discounts are not "exceptional" benefits and are received automatically on a regular and predictable basis without further government approval, we preliminarily determine that these discounts provide a recurring benefit to POSCO and Inchon; Dai Yang did not receive benefits under this program. We have expensed the benefit from this program in the year of receipt. *See GIA*, 58 FR at 37226. To measure the benefit from this program, we summed the electricity discounts which POSCO and Inchon received from KEPCO under the RLA program during the POI. We then divided that amount by each company's total sales value for 1997. On this basis, we preliminarily determine that POSCO and Inchon each received a countervailable subsidy of less than 0.005 percent *ad valorem* from this discount program during the POI.

Given the information the GOK provided on the record regarding KEPCO's increased capacity to supply electricity and the resulting decrease in KEPCO's need to enter into a large number of RLA contracts during the POI, we will further investigate the *de facto* specificity of this discount program at verification. It is the GOK's responsibility to demonstrate to the Department the basis on which KEPCO chose the 44 customers with which it entered into the RLA contracts during the POI.

N. Loans From the National Agricultural Cooperation Federation

According to Dai Yang's September 10, 1998, questionnaire response, the company received a loan administered by the National Agricultural Cooperation Federation (NACF). The loan was given at an interest rate which is below the benchmark interest rate described in the "Subsidies Valuation" section of the notice, above. Moreover,

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under the terms of this loan, the regional government (that of Ansan City) paid a portion of the interest. Although Dai Yang claims that this program is only available to small- and medium-sized enterprises, the loan approval criteria indicates otherwise. Applications for these loans are evaluated on a point system. The applicant receives 5 out of a possible 100 "points" if it is a "promising small & medium size business." However, the most heavily weighed factor in the approval of a loan application is the applicant's "ratio of exports sales to total sales." With the exception of the evaluation item "enterprise ability," which is weighted at 15 points, the export sales factor accounts for twice as many points as any other ranking factor. Under section 771(5A)(B) of the Act, an export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. After examination of this program, we preliminary determine this program to be a *de facto* export subsidy pursuant to section 771(5A)(B) of the Act. In addition, by paying a portion of the interest on the loan, the actions of the Ansan City government confer a benefit in accordance with section 771(5)(E)(ii) of the Act. Therefore, we preliminarily determine this program to be countervailable.

We preliminarily determine that this loan should be treated as a short-term loan because it is rolled over annually with a revised interest rate. To calculate the benefit conferred under this program, we employed the Department's short-term loan methodology, using as our benchmark the rate described in the "Subsidies Valuation" section of the notice, above. We divided the benefit calculated in the POI by Dai Yang's total sales during 1997. On this basis, we preliminarily determine the countervailable subsidy attributable to Dai Yang during the POI to be 0.01 percent *ad valorem*.

O. POSCO's Two-Tiered Pricing Structure to Domestic Customers

In our supplemental questionnaire, we requested information from POSCO and the other respondents regarding an allegation that the GOK mandates that POSCO subsidize local manufacturers by selling them steel at 30 percent below the international market price. In response to this allegation, POSCO stated that no such program exists. However, in its response, POSCO provided information regarding its pricing structure in the domestic and export markets.

POSCO maintains three different pricing systems which serve different markets: domestic prices in Korean won for products that will be consumed in Korea, direct export prices in U.S. dollars or Japanese yen, and local export prices in U.S. dollars. According to POSCO's response, local export prices are provided to those domestic customers who purchase steel for further processing into products that are exported.

POSCO is the only Korean producer of hot-rolled stainless steel coil, which is the main input in the subject merchandise. During the POI, POSCO sold hot-rolled stainless steel coil to domestic producers of subject merchandise, including Dai Yang and Inchon, which used this input to produce exports of the subject merchandise. However, a portion of the domestic demand for this product is met through imports, primarily from Japan. According to its response, POSCO determines its domestic prices for hot-rolled stainless steel coil with reference to the price of imports. Since imports are subject to import duties, POSCO sets its domestic price in Korean won to compete with the duty-inclusive import price. However, for domestic customers, such as Dai Yang and Inchon, purchasing hot-rolled stainless steel coil to be manufactured for export, POSCO sets the local export price at slightly below the duty-exclusive import price because such imports are eligible for duty drawback.

As noted earlier, POSCO is a government-controlled company. POSCO sets different prices for the identical product for domestic purchasers based upon that purchaser's anticipated export performance. Domestic purchasers which use the raw material to produce a product for export are charged a lower price than those domestic purchasers which do not export. Therefore, this pricing scheme is an export subsidy under section 771(5A)(B) of the Act. A financial contribution is also provided under this program under section 771(5)(D)(iii) of the Act.

Under section 771(5)(E)(iv) of the Act, a benefit from the provision of a good or a service is provided when the good is provided for less than adequate remuneration. The adequacy of remuneration is determined in relation to prevailing market conditions for the good being purchased in the country which is subject to the investigation. Prevailing market conditions include price, quantity, availability, marketability, transportation, and other conditions of purchase or sale.

In their supplemental questionnaire responses, Dai Yang and Inchon provided their delivered prices of hot-rolled stainless steel coil used to produce the subject merchandise during the POI. These data included delivered prices of the input sourced from both POSCO and foreign suppliers. To determine the benefit under this program, we compared the prices charged by POSCO for the input to the prices charged by the foreign suppliers. We then divided the amount of the price savings by the value of exports of the subject merchandise during the POI. For the purposes of this preliminary determination, we consider it appropriate to calculate the benefit in this way because POSCO sets its prices to domestic purchasers based upon import prices. Thus, the use of Dai Yang's and Inchon's input prices provide a reasonable basis for determining the difference in POSCO's prices to domestic consumers for domestic consumption and POSCO's prices to domestic producers for export consumption. On this basis, we preliminarily determine that Dai Yang received no benefit from this program, and that Inchon received a countervailable subsidy of 5.51 percent *ad valorem* from this program during the POI.

II. Program Preliminarily Determined To Be Not Countervailable

Electricity Discounts Under Power Factor Adjustment and Summer Vacation and Repair Adjustment Programs

As noted above, the GOK reported that KEPCO provided the respondents with three types of discounts under its tariff schedule during the POI. These three discounts were based on the following rate adjustment programs in KEPCO's tariff schedule: (1) Power Factor Adjustment; (2) Summer Vacation and Repair Adjustment; and (3) Requested Load Adjustment. (See the separate discussion above in regard to the countervailability of the Requested Load Adjustment program.)

With respect to the Power Factor Adjustment (PFA) program, the GOK reports that the goal of the PFA is to improve the energy efficiency of KEPCO's customers which, in turn, provides savings to KEPCO in supplying electricity to its entire customer base. Customers who achieve a higher efficiency than the performance standard (*i.e.*, 90 percent) receive a discount on their base demand charge. Therefore, any customer who installs a proper facility to measure its power factor and achieves a power factor greater than 90 percent receives a discount on its demand charge.

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The GOK states that the PFA is not a special program, but a normal factor used in the calculation of a customer's electricity charge which was introduced in 1989. The PFA is available to all general, educational, industrial, agricultural, midnight power, and temporary customers who meet the eligibility criteria. The eligibility criteria are that a customer must: (1) have a contract demand of 6 KW or more, (2) have a power factor that exceeds the 90 percent standard power factor, and (3) have proper facilities to measure its power factor. If these criteria are met, a customer always receives a PFA discount on its monthly electricity invoice. According to the response of the GOK, there are no limitations on the types of customers or industries which can receive the PFA discounts from KEPCO. During the POI there were over 600,000 recipients of the PFA discounts.

With the aim of curtailing KEPCO's summer load by encouraging customer vacations or the repair of their facilities during the summer months, the GOK introduced the Summer Vacation and Repair Adjustment (VRA) in 1985. Under this program, a discount of 550 won per KW is given to customers, if they curtail their maximum demand by more than 50 percent, or 3,000 KW, through a load adjustment or maintenance shutdown of their production facilities during the summer months. Eligible customers apply for a VRA discount during the period June 1 to June 15 of each year. If KEPCO finds the application in order, KEPCO and the customer prepare a contract with respect to the discount.

The GOK states that this discount program is available to all industrial and commercial customers with a contract demand of 500 KW or more. The GOK states that the VRA is one of several programs that KEPCO operates as part of its broad long-term strategy of demand-side management which includes curtailing peak demand, and is the most effective of these programs. The GOK submitted information demonstrating that hundreds of KEPCO customers, from a wide and diverse range of industries, received VRA discounts during the POI.

We analyzed whether these two electricity discount programs are specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of sections 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identified companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the PFA, all general, educational, industrial, agricultural, midnight power, and temporary customers who have the necessary contract demand are eligible to participate in the discount program. Likewise, the VRA discount program is available to a wide variety of companies across all industries, provided that they have the required contract demand and can reduce their maximum demand by a certain percentage. Therefore, we preliminarily determine that the electricity programs are not *de jure* specific under section 771(5A)(D)(i) of the Act.

We then examined data on the distribution of assistance under these programs to determine whether the electricity discount programs meet the criteria for *de facto* specificity under section 771(5A)(D)(iii) of the Act. We found that discounts provided under the PFA and VRA were distributed to a large number of firms in a wide variety of industries. Given the data with respect to the large number of companies and industries which received electricity discounts under these programs during the POI, we preliminarily determine that the PFA and VRA programs are not *de facto* specific under section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that the PFA and VRA discount programs are not countervailable.

III. Programs Preliminarily Determined To Be Not Used

Based on the information provided in the questionnaire response, we preliminarily determine that the companies under investigation either did not apply for or did not receive benefits under the following programs during the POI:

A. Excessive Duty Drawback

Petitioners alleged that under the Korean Customs Act, Korean exporters may have been receiving an excessive abatement, exemption, or refund of import duties payable on raw materials used in the production of exported goods. The Department has found that the drawback on imported raw materials is countervailable when the raw materials are not physically incorporated into the exported item, and therefore, the amount of duty drawback is excessive. In *Steel Products from Korea*, we determined that certain Korean steel producers received excessive duty drawback because they received duty drawback at a rate that exceeded the rate at which imported inputs were actually used. *See* 58 FR at 37349.

The GOK reports that under Article 3 of *The Act on Special Cases concerning the Refundment of Customs Duties, etc. Levied on Raw Materials for Export*, the refund of duties only applies to imported raw materials that are consumed, *i.e.*, physically incorporated, into the finished merchandise. Items used to produce a product, but which do not become physically incorporated into the final product, do not qualify for duty drawback. POSCO is one of the producer/exporters of the subject merchandise to receive duty drawback for inputs consumed in the production of the subject merchandise which was subsequently exported during the POI. The raw materials imported by POSCO to produce the subject merchandise that were eligible for duty drawback are nickel, chrome, and stainless steel scrap. During the POI, Inchon and Dai Yang received duty drawback on imports of hot-rolled stainless steel coils which were consumed in the production of the subject merchandise.

The GOK states that in order to determine the appropriate amount of duty drawback a producer/exporter is eligible to receive, the National Technology Institute (NTI) routinely conducts surveys of producers of exported products to obtain their raw material input usage rate for manufacturing one unit of output. In determining an input usage rate for a raw material, the NTI factors recoverable scrap into the calculation. In addition, the loss rate for each imported input is reflected in the input usage rate. The GOK states that the factoring of reusable scrap into usage rates is done routinely for all products under Korea's duty drawback regime. The NTI maintains a materials list for each product, and only materials and sub-materials that are physically incorporated into the final product are eligible for duty drawback. The NTI then compiles this information into a standard usage rate table which is used to calculate a producer/exporter's duty drawback eligibility. The GOK explains that because POSCO is the primary producer of subject merchandise, the NTI's most recently completed survey (from 1993), consisted of requesting information from POSCO.

The GOK states that there is no difference in the companies' rates of import duty paid and their rates of drawback received. The rates of import duty are based on the imported materials and the rates of drawback depend on the exported merchandise and the usage rate of the imported materials. POSCO, Inchon, and Dai Yang pay import duties based on the rates applicable to the prices of the

imported raw material. They then receive duty drawback based on the amount of that material consumed in the production of the finished product according to the standard input usage rate. Accordingly, the rates at which POSCO, Inchon, and Dai Yang receive duty drawback are the amounts of import duty paid on the amount of input consumed in producing the finished product.

In the current investigation, the GOK and the companies report that POSCO, Inchon, and Dai Yang have not received duty drawback on imported raw materials that were not consumed in the production of exported merchandise. They also state that the applicable duty drawback rates are calculated in a manner which accounts for recoverable scrap. Based on the duty drawback studies provided in the response, the GOK has factored recoverable scrap into the calculation of input usage rates. In *Steel Products from Korea*, we found that when recoverable scrap is factored into the usage rate, the relevant loss and waste rates are not excessive. Based on these factors, we preliminarily determine that POSCO, Inchon, and Dai Yang have not received excessive duty drawback.

B. Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act.

C. Reserve for Investment under Article 43–5 of TERCL.

D. Export Insurance Rates Provided by the Korean Export Insurance Corporation. 1E. Special Depreciation of Assets on Foreign Exchange Earnings.

IV. Programs Preliminarily Determined Not To Exist

Based on information provided by the GOK, we preliminarily determine that the following program does not exist:

Unlimited Deduction of Overseas Entertainment Expenses

In *Steel Products from Korea*, 58 FR at 37348–49, the Department determined that this program conferred benefits which constituted countervailable subsidies because the entertainment expense deductions were unlimited only for export business activities. In the present investigation, the GOK reported that Article 18–2(5) of the Corporate Tax Law, which provided that Korean exporters could deduct overseas entertainment expenses without any limits, was repealed by the revisions to the law dated December 29, 1995. According to the GOK, beginning with the 1996 fiscal year, a company's domestic and overseas entertainment expenses are deducted within the same aggregate sum limits as set by the GOK. As a result of the revision to the law, overseas entertainment expenses are now treated in the same fashion as domestic expenses in calculating a company's income tax. Therefore, we determine that this program is no longer in existence.

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated individual rates for each of the companies under investigation.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip from the Republic of Korea, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts indicated below. Since the estimated preliminary net countervailing duty rates for POSCO and Dai Yang are *de minimis*, these two companies will be excluded from the suspension of liquidation. This suspension will remain in effect until further notice.

In accordance with section 705(5)(A)(ii) of the Act, the all others rate is the rate calculated for Inchon. We preliminarily determine that the total estimated net countervailable subsidy rates for POSCO and Dai Yang are 0.75 percent *ad valorem* and 0.58 percent *ad valorem*, respectively, which is *de minimis*. Therefore, we preliminarily determine that no countervailable subsidies are being provided to POSCO or Dai Yang for their production or exportation of stainless steel sheet and strip in coils.

COMPANY AD VALOREM RATE

[In Percent]

Producer/Exporter	Net subsidy rate
POSCO	0.75
Inchon	5.77
Dai Yang	0.58
Sammi	29.23
Taihan	10.15
All Others Rate	5.77

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the publication of this notice.

Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30737 Filed 11–16–98; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–825]

Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Craig W. Matney, Gregory W. Campbell, or Alysia Wilson, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1778, 482–2239, or 482–0108, respectively.

Preliminary Determination: The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of stainless steel sheet and strip in coils from Italy.

Petitioners

The petition in this investigation was filed by the Allegheny Ludlum Corporation, Armco Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation, United Steel Workers of America, AFL–CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, Inc. (collectively referred to hereinafter as the "petitioners").

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see Notice of Initiation of Countervailing Duty Investigations: Certain Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 37539 (July 13, 1998) (*Initiation Notice*)), the following events have occurred. On July 13, 1998, we issued questionnaires to the Government of Italy (GOI), the European Commission (EC), Acciai Speciali Terni S.p.A. (AST), and Arinox S.r.l. (Arinox). On August 6, 1998, we postponed the preliminary determination of this investigation until November 9, 1998 (*see Notice of Postponement of Time Limit for Countervailing Duty Investigations: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 63 FR 43140 (August 12, 1998)).

We received responses to our initial questionnaires from the GOI, the EC, AST, and Arinox between July 29 and September 14. Between September 21 and October 16, 1998, we issued supplemental questionnaires to the GOI, the EC, AST, and Arinox. We received responses to these supplemental questionnaires between October 9 and October 22, 1998.

Scope of Investigation

For purposes of these investigations, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold-rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this petition are the following: (1)Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4)flat wire (i.e., cold-rolled sections, rectangular in shape, of a width of not more than 9.5 mm, and a thickness of not more than 6.35 mm), and (5)razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of these investigations. These excluded products are described below: Flapper valve steel is defined as stainless steel strip in coils with a chemical composition similar to that of AISI 420F grade steel and containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of 185 kgf/mm2, plus or minus 10, yield strength of 150 kgf/mm2, plus or minus 8, and hardness (Hv) of 540, plus or minus 30.

Also excluded is suspension foil, a specialty steel product used, e.g., in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202

grade stainless steel of a thickness between 14 and 127 μm, with a thickness tolerance of plus-or-minus 2.01 μm, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth, and must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of these investigations. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths of 1.016 to 228.6 mm, and a thickness between 0.0127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available, e.g., under the trade name "Arnokrome III."[1]

Electrical resistance alloy steel is also not included in the scope of these investigations. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available, e.g., under the trade name "Gilphy 36."[2]

Finally, certain stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives) is also excluded. This steel is similar to ASTM grade 440F, but containing higher levels of molybdenum. This steel contains, by weight, carbon of between 1.0 and 1.1 percent, sulphur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and cobalt. This steel is sold under, e.g. the proprietary name GIN4Mo.[3]

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Gin4Mo" is the proprietary grade of Hitachi Metals America, Ltd.

All interested parties are advised that additional issues pertaining to the scope of these investigations are still pending. Furthermore, the exclusions outlined above are subject to further revision and refinement. The Department plans on notifying interested parties of its determinations on all scope issues in sufficient time for parties to comment before the final determination.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (1998).

Injury Test

Because Italy is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Italy materially injure, or threaten material injury to, a U.S. industry. On August 9, 1998, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Italy of the subject merchandise (*see Certain Stainless Steel Sheet and Strip From France, Germany, Italy, Japan, the Republic of Korea, Mexico, Taiwan, and the United Kingdom*, 63 FR 41864 (August 9, 1998)).

Alignment With Final Antidumping Determination

On July 22, 1998, the petitioners submitted a letter requesting alignment of the final determination in this investigation with the final determination in the companion antidumping duty investigation. *See Initiation of Antidumping Investigations: Stainless Steel Sheet and Strip in Coils From France, Germany, Italy, Japan, Mexico, South Korea, Taiwan, and the United Kingdom*, 63 FR 37521 (July 13, 1998). Therefore, in accordance with section 705(a)(1) of the Act, we are aligning the final determination in this investigation with the final determinations in the antidumping investigations of stainless steel sheet and strip in coils.

Period of Investigation

The period of investigation for which we are measuring subsidies (the POI) is calendar year 1997.

Company History of AST

Prior to 1987, Terni, S.p.A, (Terni), a main operating company of Finsider, was the sole producer of stainless steel sheet and strip in coils (sheet and strip) in Italy. Finsider was a holding company that controlled all state-owned steel companies in Italy. Finsider, in turn, was wholly-owned by a government holding company, Istituto per la Ricostruzione Industriale (IRI). As part of a restructuring in 1987, Terni transferred its assets to a new company, Terni Acciai Speciali (TAS).

In 1988, another restructuring took place in which Finsider and its main operating companies (TAS, Italsider, and Nuova Deltasider) entered into liquidation and a new company, ILVA S.p.A. was formed. ILVA S.p.A. took over some of the assets and liabilities of the liquidating companies. With respect to TAS, part of its liabilities and the majority of its viable assets, including all the assets associated with the production of sheet and strip, were transferred to ILVA S.p.A. on January 1, 1989. ILVA S.p.A. became operational on the same day. Part of TAS's remaining assets and liabilities were transferred to ILVA S.p.A. on April 1, 1990. After that date, TAS no longer had any manufacturing activities. Only certain non-operating assets remained in TAS.

From 1989 to 1994, ILVA S.p.A. consisted of several operating divisions. The Specialty Steels Division, located in Terni, produced subject merchandise. ILVA S.p.A. was also the majority owner of a large number of separately incorporated subsidiaries. The subsidiaries produced various types of steel products and also included service centers, trading companies, and an electric power company, among others. ILVA S.p.A. together with its subsidiaries constituted the ILVA Group (ILVA). ILVA was wholly-owned by IRI. All subsidies received prior to 1994 were received by ILVA or its predecessors.

In October 1993, ILVA entered into liquidation and became known as ILVA Residua. On December 31, 1993, two of ILVA's divisions were removed and separately incorporated: AST and ILVA Laminati Piani (ILP). ILVA's Specialty Steels Division was transferred to AST while its carbon steel flat products operations were placed in ILP. The remainder of ILVA's assets and liabilities, along with much of the

redundant workforce, were left in ILVA Residua.

In December 1994, AST was sold to KAI Italia S.r.L. (KAI), a privately-held holding company jointly owned by German steelmaker Hoesch-Krupp (50 percent) and a consortium of private Italian companies called FAR Acciai (50 percent). Between 1995 and the POI, there were several restructurings/changes in ownership of AST and its parent companies. As a result, at the end of the POI, AST was owned 75 percent by Krupp Thyssen Stainless GmbH and 25 percent by Fintad Securities S.A.

Change in Ownership

In the *General Issues Appendix* (*GIA*), attached to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37226 (July 9, 1993), we applied a new methodology with respect to the treatment of subsidies received prior to the sale of the company (privatization) or the spinning-off of a productive unit.

Under this methodology, we estimate the portion of the purchase price attributable to prior subsidies. We compute this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which nonrecurring subsidies would be attributable to the POI and ending one year prior to the privatization. We then take the simple average of the ratios. The simple average of these ratios of subsidies to net worth serves as a reasonable surrogate for the percent that subsidies constitute of the overall value of the company. Next, we multiply the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduce the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization. For further discussion of our privatization methodology, *see, e.g., Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Stainless Steel Plate in Coils from Italy*, 63 FR 47246 (September 4, 1998) (*Italian Plate*).

With respect to spin-offs, consistent with the Department's position regarding privatization, we analyze the spin-off of productive units to assess what portion of the sale price of the productive units can be attributable to the repayment of prior subsidies. To perform this calculation, we first determine the amount of the seller's subsidies that the spun-off productive unit could potentially take with it. To calculate this amount, we divide the value of the assets of the spun-off unit by the value of the assets of the company selling the unit. We then apply this ratio to the net present value of the seller's remaining subsidies. We next estimate the portion of the purchase price going towards repayment of prior subsidies in accordance with the privatization methodology outlined above.

AST, the GOI and the EC have all expressed the opinion that the sale of AST to a private consortium in an arm's length transaction extinguished all prior subsidies. An analogous argument was rejected in the *GIA*. There is no basis for distinguishing the sale of AST from other sales that we have analyzed under the *GIA* methodology. *See, e.g., Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Trinidad and Tobago*, 62 FR 55003 (October 22, 1997) (*Wire Rod from Trinidad and Tobago*); *Final Affirmative Countervailing Duty Determination: Steel Wire Rod from Canada*, 62 FR 54972 (October 22, 1997); and *Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Italy*, 63 FR 40474 (July 29, 1998) (*Wire Rod from Italy*). Therefore, we have applied the methodology set forth in the *GIA* for the 1994 privatization. After the 1994 privatization of AST, there were numerous changes in the ownership structure of the parent companies of AST. AST provided information for only one of these changes. We have preliminarily applied the methodology to that transaction, and we are evaluating whether it is appropriate to apply the change in ownership methodology to the other post-privatization transactions. We request interested parties to comment on this issue.

Subsidies Valuation Information

Benchmarks for Long-term Loans and Discount Rates: Consistent with the Department's finding in *Wire Rod from Italy*, 63 FR at 40476–77, we have based our long-term benchmarks and discount rates on the Italian Bankers' Association (ABI) rate. Because the ABI rate represents a long-term interest rate provided to a bank's most preferred customers with established low-risk credit histories, commercial banks typically add a spread ranging from 0.55 percent to 4 percent onto the rate for other customers depending on their financial health.

In years in which AST or its predecessor companies were creditworthy, we added the average of that spread onto the ABI rate to calculate a nominal benchmark rate. In years in which AST or its predecessor companies were uncreditworthy (*see Creditworthiness* section below), we calculated the discount rates in accordance with our methodology for constructing a long-term interest rate benchmark for uncreditworthy companies. Specifically, we added to the ABI rate a spread of 4 percent in order to reflect the highest commercial interest rate available to companies in Italy. We added to this rate a risk premium equal to 12 percent of the ABI, as described in section 355.44(b)(6)(iv) of the Department's 1989 Proposed Regulations, which remain a statement of the Department's practice (*see Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comment*, 54 FR 23366, 23374 (May 31, 1989) (*1989 Proposed Regulations*).

Additionally, information on the record of this case indicates that published ABI rates do not include amounts for fees, commissions and other borrowing expenses. Since such expenses raise the effective interest rate that a company would experience and it is the Department's practice to use effective interest rates, where possible, we are including an amount for these expenses in the calculation of our effective benchmark rates. While we do not have information on the expenses that would be applied to long-term commercial loans, information on the record shows that borrowing expenses on overdraft loans range from 6 to 11 percent of interest charged. For purposes of this preliminary determination, we are assuming that the level of borrowing expenses on overdraft loans approximates the level on long-term commercial loans. Accordingly, we are increasing the nominal benchmark rate by 8.5 percent, representing the average reported level of borrowing expenses, to arrive at an effective benchmark rate.

Allocation Period: In the past, the Department has relied upon information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets in determining the allocation period for non-recurring subsidies. *See* the *GIA*. In *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) held that the IRS information did not necessarily reflect a reasonable period based on the actual commercial and competitive benefit of the subsidies to

the recipients. In accordance with the Court's remand order, the Department calculated a company-specific allocation period for non-recurring subsidies based on the average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *See British Steel plc* v. *United States*, 929 F. Supp. 426, 439 (CIT 1996) (*British Steel II*).

In recent countervailing duty investigations, it has been our practice to follow the Court's decision in *British Steel II*, and to calculate a company-specific allocation period for all countervailable non-recurring subsidies. In this investigation, we examined the company-specific AUL for both AST and Arinox because both received non-recurring subsidies. In the case of Arinox, we preliminarily determine a company specific AUL of their non-renewable physical assets of 12 years.

However, our analysis of the data submitted by AST regarding the AUL of its assets has revealed several problems. It appears that the methodology used to value AST's assets during and subsequent to AST's privatization may be distorting the company-specific AUL calculation. Moreover, it appears that AST has not included all of its non-renewable physical assets in the AUL figure it reported. Furthermore, the methodology used to value ILVA's assets is unclear and may be distortional.

Based on the concerns outlined above, we preliminarily determine that AST's calculation of its company-specific AUL should not be used to determine the appropriate allocation period for non-recurring subsidies. Rather, for purposes of this preliminary determination we are using the 15 years as set out in the IRS Tables. We intend to request clarification and additional information concerning AST's AUL data in the course of this investigation.

While we have not used AST's company-specific AUL because of the concerns outlined above, even if we were to use the company-specific data submitted by AST, the facts of this case pose additional concerns and possible inconsistencies. In particular, this investigation covers countervailable non-recurring subsidies benefitting AST that were found to be countervailable in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (April 18, 1994), (*Electrical Steel from Italy*), *i.e.*, equity infusions, equity infusions to Terni and ILVA, benefits from the 1988–90 restructuring (called debt forgiveness: Finsider-to-ILVA restructuring in *Initiation Notice*), debt forgiveness: ILVA-to-AST (included under this debt forgiveness are the following programs from the *Initiation Notice:* working capital grants to ILVA, 1994 debt payment assistance by IRI, and ILVA restructuring and liquidation grant), Law 675/77, and ECSC Article 54 Loans. *See* 63 FR at 37543. In *Electrical Steel From Italy*, the Department allocated these subsidies over 15 years based on information from the U.S. Internal Revenue Service (IRS) for the industry-specific average useful life of assets. Under current Department practice, previously allocated subsidies within the same proceeding are not given a new allocation period. Rather, it is our policy to retain the allocation period originally established for the subsidies in subsequent administrative reviews of the same preceding.

We note here that in the concurrent investigation of stainless steel sheet and strip in coils from France, the Department preliminarily determined that it is more appropriate to continue allocating non-recurring subsidies over the company-specific AUL of 14 years, which was calculated as a result of *British Steel II*. Although this was a company-specific AUL, it was the AUL applied in a prior investigation of the same subsidies to the same company that are currently being examined in the investigation of stainless steel sheet and strip in coils from France. The issue we are presented with is whether the allocation period, once established for a subsidy to a company, should change in different proceedings. If the allocation period did not change across proceedings, the same subsidies described above would be allocated over 15 years in both the current investigation and under the countervailing duty order on *Electrical Steel From Italy*. However, if we were to adopt different allocation periods for different proceedings, the same subsidy to the same company would be allocated over different periods, since AST has calculated an AUL of 9 years, assuming the calculation presented by and based on company-specific data was accepted by the Department. Thus, the same subsidy to the same company would have different allocation periods across separate proceedings: 15 years in *Electrical Steel From Italy* and 9 years in this investigation.

We encourage parties to comment on this issue and whether an alternative approach may be more appropriate. One option may be to retain the allocation period of a subsidy previously investigated in a prior investigation, rather than assign a new company-specific allocation period based on company-specific AUL data. As described above, this would conform with our practice in administrative reviews of the same countervailing duty order. Alternatively, an additional option would be to determine an individual AUL for each year in which a non-recurring subsidy is provided to a company, rather than to determine a company-specific AUL for non-recurring subsidies that could change with each investigation and result in different allocation periods for the same subsidy, as detailed above. We also welcome any additional comments on this issue not raised above.

Equityworthiness

In analyzing whether a company is equityworthy, the Department considers whether that company could have attracted investment capital from a reasonable private investor in the year of the government equity infusion, based on information available at that time. *See GIA*, 58 FR at 37244. Our review of the record has not led us to change our finding in *Final Affirmative Countervailing Duty Determination: Grain-Oriented Electrical Steel from Italy*, 59 FR 18357 (April 18, 1994), (*Electrical Steel from Italy*), in which we found AST's predecessors unequityworthy from 1984 through 1988, and from 1991 through 1992.

In measuring the benefit from a government equity infusion into an unequityworthy company, the Department compares the price paid by the government for the equity to a market benchmark, if such a benchmark exists. In this case, a market benchmark does not exist, so we used the methodology described in the *GIA*, 58 FR at 37239. *See, also, Wire Rod from Trinidad and Tobago*, 62 FR at 55004. Following this methodology, equity infusions made on terms inconsistent with the usual practice of a private investor are treated as grants. Use of this methodology is based on the premise that an unequityworthiness finding by the Department is tantamount to saying that the company could not have attracted investment capital from a reasonable investor in the infusion year. This determination is based on the information available in that year.

Creditworthiness

When the Department examines whether a company is creditworthy, it is essentially attempting to determine if the company in question could obtain commercial financing at commonly available interest rates. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) (*Certain Steel from France*); *Final*

Affirmative Countervailing Duty Determination: Steel Wire Rod from Venezuela, 62 FR 55014 (Oct. 21, 1997).

Terni, TAS and ILVA were found to be uncreditworthy from 1983 through 1993 in *Electrical Steel from Italy* at 18358 and *Wire Rod from Italy* at 40477. No new information has been presented in this investigation that would lead us to reconsider these findings. Therefore, consistent with our past practice, we continue to find Terni, TAS and ILVA uncreditworthy from 1985 through 1993. *See, e.g., Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295, 37297 (July 9, 1993). There was no allegation by petitioners that Arinox was uncreditworthy. Therefore, we did not analyze its creditworthiness. In accordance with section 355.44(b)(6)(i) of the Department's *1989 Proposed Regulations*, 54 FR at 23380, we did not analyze AST's creditworthiness in 1994 through 1997 because AST did not negotiate the terms of loans with the GOI or EC during these years.

I. Programs Preliminarily Determined To Be Countervailable

GOI Programs

A. Equity Infusions to Terni and ILVA

The GOI, through IRI, provided new equity capital to Terni or ILVA in every year from 1984 through 1992, except in 1989 and 1990. We preliminarily determine that these equity infusions constitute countervailable subsidies within the meaning of section 771(5) of the Act. These equity infusions provided a financial contribution, as described in section 771(5)(D)(i) of the Act, and were not consistent with the usual investment practices of private investors (*see Equityworthiness* section above). Because these equity infusions were limited to Finsider and its operating companies and ILVA, we preliminarily determine that they are specific within the meaning of section 771(5A)(D) of the Act.

AST did not report, in its response to our questionnaires, the 1988 equity infusion provided to ILVA. We have public information from *Electrical Steel from Italy* on the existence and amount of this infusion and are including it in our calculations for the preliminary determination.

We have treated these equity infusions as non-recurring grants given in the year the infusion was received because each required a separate authorization. Because Terni and ILVA were uncreditworthy in the years of receipt, we used discount rates that include a risk premium to allocate the benefits over time. Additionally, we followed the methodology described in the *Change in Ownership* section above to determine the amount of each equity infusion appropriately allocated to AST after its privatization. We divided this amount by AST's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 0.12 percent *ad valorem* for AST.

B. Benefits from the 1988–90 Restructuring of Finsider (called Debt Forgiveness: Finsider-to-ILVA Restructuring in Initiation Notice)

As discussed above in the *Company History of AST* section of this notice, the GOI liquidated Finsider and its main operating companies in 1988 and assembled the group's most productive assets into a new operating company, ILVA S.p.A. In 1990, additional assets and liabilities of TAS, Italsider and Finsider went to ILVA.

Not all of TAS's liabilities were transferred to ILVA S.p.A.; rather, many remained with TAS and had to be repaid, assumed or forgiven. In 1989, Finsider forgave 99,886 million lire of debt owed to it by TAS. Even with this debt forgiveness, a substantial amount of liabilities left over from the 1990 transfer of assets and liabilities to ILVA S.p.A. remained with TAS. In addition, losses associated with the transfer of assets to ILVA S.p.A. were left behind in TAS. These losses occurred because the value of the transferred assets had to be written down. As TAS gave up assets whose book value was higher than their appraised value, it was forced to absorb the losses. These losses were generated during two transfers as reflected in: (1) an extraordinary loss in TAS's 1988 Annual Report and (2) a reserve against anticipated losses posted in 1989 with respect to the 1990 transfer.

Consistent with our treatment of the 1988–90 restructuring in *Electrical Steel from Italy*, 59 FR at 18359, we preliminarily determine that the debt and loss coverage provided to ILVA constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. The debt and loss coverage provided a financial contribution as described in section 771(5)(D)(i) of the Act. Because this debt and loss coverage was limited to TAS, AST's predecessor, we preliminarily determine that it is specific within the meaning of section 771(5A)(D) of the Act.

In calculating the benefit from this program, we followed our methodology in *Electrical Steel from Italy*, except for the correction of a calculation error which had the effect of double-counting the write-down from the first transfer of assets in 1988 by including it in the calculations of losses generated upon the second transfer of assets in 1990. We have treated Finsider's 1989 forgiveness of TAS' debt and the loss resulting from the 1989 write-down as grants received in 1989. The second asset write down and the debt outstanding after the 1990 transfer were treated as grants received in 1990. We treated these as non-recurring grants because they were a one-time, extraordinary event. Because ILVA was uncreditworthy in these years, we used discount rates that include a risk premium to allocate the benefits over time. Finally, we followed the methodology described in the *Change in Ownership* section above to determine the amount of each benefit appropriately allocated to AST after its privatization and subsequent changes in ownership. We divided this amount by AST's total sales during the POI. Accordingly, we preliminarily determine the countervailable subsidy to be 1.52 percent *ad valorem* for AST.

C. Debt Forgiveness: ILVA-to-AST (Included Are The Following Programs From the Initiation Notice: Working Capital Grants to ILVA, 1994 Debt Payment Assistance by IRI, and ILVA Restructuring and Liquidation Grant)

As of December 31, 1993, the majority of ILVA's viable manufacturing activities had been separately incorporated into either AST or ILP; ILVA Residua was primarily a shell company with liabilities far exceeding assets. In contrast, AST and ILP, now ready for privatization, had operating assets and relatively modest debt loads.

The liabilities remaining with ILVA Residua after the privatization of AST and ILP had to be repaid, assumed, or forgiven. AST has stated that IRI, in accordance with Italian Civil Code, bears responsibility for all liabilities remaining in ILVA Residua. Furthermore, information submitted by AST indicates that the EC has approved IRI's plan to cover ILVA Residua's remaining liabilities when its final liquidation occurs.

Although this debt has yet to be eliminated completely by any specific act of the GOI or its holding company IRI, we preliminarily determine that AST (and consequently the subject merchandise) received a countervailable subsidy in 1993 when the bulk of ILVA's debt was placed in ILVA Residua, rather than being placed also with AST and ILP.

The placing of this debt with ILVA Residua was equivalent to debt forgiveness for AST. In accordance with our past practice, debt forgiveness is treated as a grant which constitutes a financial contribution under section

771(5)(D)(ii) and provides a benefit in the amount of the debt forgiveness. Because the debt forgiveness was received only by privatized ILVA operations, we preliminarily determine that it is specific under section 771(5A)(D) of the Act.

As noted above, certain operating assets (*e.g.*, pipe and tube operations) and non-operating assets (*e.g.*, cash, bank deposits) remained in ILVA Residua. Some of these assets have been privatized or otherwise used to fund repayment of the liabilities remaining in ILVA Residua. The EC, in its monitoring of the ILVA liquidation, has accounted for the fact that certain assets have been privatized or otherwise used to fund repayment of ILVA Residua's liabilities. The Department has followed similar methodology. We have also subtracted the amount of debt (*i.e.*, 253 billion lire) that was tied to Cogne Acciai Speciali (CAS), an ILVA subsidiary privatized in 1994, which was left behind in ILVA Residua. This amount was countervailed in *Wire Rod from Italy* (*see* 63 FR at 40478). We have attributed ILVA Residua's remaining residual indebtedness as of the end of 1997 to AST based on the proportion of assets assigned to AST to the total viable assets assigned to AST, ILP, and other ILVA operations which were privatized, as appropriate, and considered this amount as debt forgiveness. For the final determination, we intend to examine further the liquidation of ILVA Residua's assets as well as any liquidation costs that might not have been accounted for in the EC monitoring process.

We treated the debt forgiveness to AST as a non-recurring grant because it was a one-time, extraordinary event. The discount rate we used in our grant formula included a risk premium based on our determination that ILVA was uncreditworthy in 1993. (For purposes of the final determination we will examine the issue of whether it is more appropriate to analyze the creditworthiness of AST rather than ILVA in 1993.) We followed the methodology described in the *Change in Ownership* section above to determine the amount appropriately allocated to AST after its privatization and subsequent changes in ownership. We divided this amount by AST's total sales during the POI. Accordingly, we determine the estimated net subsidy to be 3.47 percent *ad valorem* for AST.

D. Law 796/76: Exchange Rate Guarantees

Law 796/76 established a program to minimize the risk of exchange rate fluctuations on foreign currency loans. All firms that had contracted foreign currency loans from the European Coal and Steel Community (ECSC) or the Council of Europe Resettlement Fund (CER) could apply to the Ministry of the Treasury (MOT) to obtain an exchange rate guarantee. The MOT, through the Ufficio Italiano di Cambi (UIC), calculated loan payments based on the lira-foreign currency exchange rate in effect at the time the loan was approved. The program established a floor and ceiling for exchange rate fluctuations, limiting the maximum fluctuation a borrower would face to two percent. If the lira depreciated against the foreign currency, AST was still able to purchase foreign currency at the established ceiling rate, and the UIC would absorb a loss in the amount of the difference between the ceiling rate and the actual rate. If the lira appreciated against the foreign currency, the UIC would realize a gain in the amount of the difference between the floor rate and the actual rate.

This program was terminated effective July 10, 1992, by Decree Law 333/92. However, the exchange rate guarantees continue on any loans outstanding after that date. AST had two outstanding ECSC loans during the POI that benefitted from these guarantees. Arinox did not receive foreign exchange rate guarantees under this program.

We preliminarily determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act, to the extent that the lira depreciates against the foreign currency beyond the two percent band. When this occurs, the borrower receives a benefit in the amount of the difference between the two percent floor and the actual exchange rate.

The GOI did not provide information regarding the types of the enterprises that have used this program. However, we have previously found the steel industry to be a dominant user of the exchange rate guarantees provided under Law 796/76. Therefore, we preliminarily determine that the program is specific under section 771(5A)(D) of the Act. *See Final Affirmative Countervailing Duty Determination: Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Italy*, 60 FR 31996 (June 19, 1995).

Once a loan is approved for exchange rate guarantees, access to foreign exchange at the established rate is automatic and occurs at regular intervals throughout the life of the loan. Therefore, we have treated benefits under this program as recurring grants. The benefit was calculated as the difference between the total payment due (*i.e.*, the sum of interest, principal, and any guarantee fees paid by AST) in foreign currency converted at the current exchange rate minus the total payment due in foreign currency at the established (ceiling) rate. We divided this amount by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy to AST for this program to be 0.86 percent *ad valorem*.

E. Law 675/77

Law 675/77 was designed to provide GOI assistance in the restructuring and reconversion of Italian industries. There are six types of assistance available under this law: (1) grants to pay interest on bank loans; (2) mortgage loans provided by the Ministry of Industry (MOI) at subsidized interest rates; (3) grants to pay interest on loans financed by IRI bond issues; (4) capital grants for the South; (5) VAT reductions on capital good purchases for companies in the South; and (6) personnel retraining grants. During the POI, AST had two outstanding loans financed by IRI bond issues for which it received interest contributions from the GOI. Arinox did not receive assistance under this program.

Under Law 675/77, IRI issued bonds to finance restructuring measures of companies within the IRI group. The proceeds from the sale of the bonds were then re-lent to IRI companies. During the POI, AST had two outstanding loans financed by IRI bond issues for which the effective interest rate was reduced by interest contributions made by the GOI. In addition to interest contributions on these variable rate long-term loans, the GOI also made other financial contributions relating to "expenses" associated with the loans.

We preliminarily determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. These loans provided a financial contribution as described in section 771(5)(D)(i) of the Act.

With regard to specificity, a number of different industrial sectors have received benefits under Law 675/77. However, in *Electrical Steel from Italy*, the Department determined that assistance under this law was specific because the steel industry was a dominant user of the program (the steel industry received 34 percent of the benefits). *See Electrical Steel from Italy*, 59 FR at 18361. In the instant proceeding, the GOI submitted additional information regarding the distribution of benefits under this

program. While it is unclear whether this information reflects the distribution of benefits at the time the subsidies in question were given, the new information is nevertheless consistent with our previous finding of specificity. Therefore, we preliminarily find the program to be specific.

To measure the benefit from these loans, we compared the benchmark interest rate to the amounts paid by AST on these loans during the POI. We divided the resulting difference by AST's total sales during the POI. Accordingly, we determine the estimated net subsidy from this program to be 0.04 percent *ad valorem* for AST.

F. Law 488/92

Law 488/92 provides grants for industrial projects in depressed regions of Italy. The subsidy amount is based on the location of the investment and the size of the enterprise. The funds used to pay benefits under this program are derived in part from the GOI and in part from the Structural Funds of the EU. To be eligible for benefits under this program, the enterprise must be located in one of the regions in Italy identified in EU Objectives 1, 2 or 5b. Arinox received assistance under this program because it is located in an economically depressed region, AST did not.

We preliminarly determine that this program constitutes a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act. Because assistance is limited to enterprises located in certain regions, we preliminarily determine that the program is specific under section 771(5A)(D) of the Act.

Under this program Arinox received one grant, disbursed in two tranches during the POI. We have treated benefits under this program as non-recurring because each grant requires separate government approval. The benefit to Arinox was calculated as the sum of the two tranches provided. Because this sum is greater than 0.5 percent of Arinox's sales, we allocated the benefit over Arinox's AUL. We divided the benefit allocated to the POI by Arinox's total sales during the POI. Accordingly, we determine the countervailable subsidy to Arinox for this program to be 0.12 percent *ad valorem*.

EC Programs

A. ECSC Article 54 Loans

Article 54 of the 1951 ECSC Treaty established a program to provide industrial investment loans directly to the iron and steel industries to finance modernization and the purchase of new equipment. Eligible companies apply directly to the EU for up to 50 percent of the cost of an industrial investment project. The Article 54 loan program is financed by loans taken out by the European Union, which are then refinanced at slightly higher interest rates than those at which the EU obtained them. AST had two long-term, fixed-rate loans outstanding during the POI under this program. Arinox did not receive loans under this program.

We preliminarily determine that these loans constitute a countervailable subsidy within the meaning of section 771(5) of the Act. This program provides a financial contribution, as described in section 771(5)(D)(i) of the Act. The Department has found Article 54 loans to be specific in several proceedings, including *Electrical Steel from Italy*, 59 FR at 18362, and *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Italy*, 58 FR 37327, 37335 (July 9, 1993), because loans under this program are provided only to iron and steel companies. The EU has also indicated on the record of this investigation that Article 54 loans are for steel undertakings. Therefore, we preliminarily determine that this program is specific.

AST had two long-term, fixed-rate loans outstanding during the POI, each one denominated in a foreign currency. Consistent with *Electrical Steel from Italy*, 59 FR at 18362, we have used the lira-denominated interest rate discussed in the *Subsidies Valuation Information* section of this notice as our benchmark interest rate. The interest rate charged on one of AST's two ECSC loans was lowered part way through the life of the loan. Therefore, for the purpose of calculating the benefit, we have treated this loan as if it were contracted on the date of this rate adjustment. We used the outstanding principal as of that date as the new principal amount, to which the new, lower interest rate applied. As our interest rate benchmark, we used the long-term, lira-based rate in effect on the date of the downward rate adjustment.

To calculate the benefit under this program, we employed the Department's standard long-term loan methodology. We calculated the grant equivalent and allocated it over the life of each loan. We followed the methodology described in the *Change in Ownership* section above to determine the amount appropriately allocated to AST after its privatization and subsequent changes in ownership. We divided this benefit by AST's total sales during the POI. Accordingly, we determine the countervailable subsidy to AST for these two loans together to be 0.06 percent *ad valorem*.

B. European Social Fund

The European Social Fund (ESF), one of the Structural Funds operated by the EU, was established to improve workers' opportunities through training and to raise their standards of living throughout the Community by increasing their employability. Like other EU Structural Funds, there are five different Objectives (sub-programs) identified under ESF: Objective 1 covers projects located in underdeveloped regions, Objective 2 addresses areas in industrial decline, Objective 3 relates to the employment of persons under 25, Objective 4 funds training for employees in companies undergoing restructuring, and Objective 5 pertains to agricultural areas.

During the POI, AST received ESF assistance under Objectives 2 and 4, and Arinox received assistance under Objective 2. In the case of AST, the Objective 2 funding was to retrain production, mechanical, electrical maintenance, and technical workers, and the Objective 4 funding was to train AST's workers to increase their productivity. Arinox stated that the grants it received were for worker training.

The Department considers worker training programs to provide a countervailable benefit to a company when the company is relieved of an obligation it would have otherwise incurred. *See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30287, 30294 (June 14, 1996) (*Pasta From Italy*). Since companies normally incur the costs of training to enhance the job-related skills of their own employees, we preliminarily determine that this ESF funding relieves AST and Arinox of obligations they would have otherwise incurred.

Therefore, we preliminarily determine that the ESF grants received by AST and Arinox are countervailable within the meaning of section 771(5) of the Act. The ESF grants are a financial contribution as described in section 771(5)(D)(i) of the Act which provide a benefit to the recipient in the amount of the grant.

Consistent with prior cases, we have examined the specificity of the funding under each Objective separately. *See Wire Rod from Italy*, 63 FR at 40487. In this case, the Objective 2 grants received by AST and Arinox were funded by the EU, the GOI, and the regional government of Umbria acting through the provincial government of Terni for AST and the regional government of

Liguria for Arinox. In *Pasta From Italy*, 61 FR at 30291, the Department determined that Objective 2 funds provided by the EU and the GOI were regionally specific because they were limited to areas within Italy which are in industrial decline. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding. Regarding funding provided by the regional governments, neither government provided information on the distribution of its grants under Objective 2. Therefore, since these governments failed to cooperate to the best of their ability by not supplying the requested information on the distribution of grants under Objective 2, we are assuming for purposes of this preliminary determination, as adverse facts available under section 776(b) of the Act, that the funds provided by the provincial governments of Terni and Liguria are also specific.

In the case of Objective 4 funding, the Department has determined in past cases that the EU portion is *de jure* specific because its availability is limited on a regional basis within the EU. The GOI funding was also determined to be *de jure* specific because eligibility is limited to the center and north of Italy (non-Objective 1 regions). *See Wire Rod from Italy*, 63 FR at 40487. No new information or evidence of changed circumstances has been submitted in this proceeding to warrant reconsideration of this finding.

The Department normally considers the benefits from worker training programs to be recurring. *See GIA*, 58 FR at 37255. However, consistent with the Department's determination in *Wire Rod from Italy*, 63 FR at 40488, that these grants relate to specific, individual projects, we have treated these grants as non-recurring grants because each required separate government approval. Because the amount of funding for each of AST's projects was less than 0.5 percent of AST's sales in the year of receipt, we have expensed these grants received in the year of receipt. Two of AST's grants were received during the POI. For these grants, we divided this benefit by AST's total sales during the POI and calculated a benefit of 0.01 percent *ad valorem* for ESF Objective 2 funds and 0.03 percent *ad valorem* for ESF Objective 4 funds.

Arinox received ESF Objective 2 grants in 1991 and 1992. Because the amount of funding for each of Arinox's projects project was more than 0.5 percent of Arinox's sales in the year of receipt, we have allocated these grants over its AUL. In allocating Arinox's benefits, we used the appropriate discount rate which corresponded to the year in which the funds were approved by the GOI. Accordingly, we determine the countervailable subsidy under the ESF Objective 2 program for Arinox to be 0.34 percent *ad valorem*.

II. Programs Preliminarily Determined to be Not Countervailable

A. AST Participation in the THERMIE Program

The EU provided funds to AST for the development of a demonstration project (pilot plant) through an EU program promoting research and development in the field of non-nuclear energy (THERMIE). The objective of the THERMIE program is to encourage the development of efficient, cleaner, and safer technologies for energy production and use. The THERMIE program is part of a larger program categorized under the EU's Fourth Framework Programme which covers activities in research and technological development from 1994–1998. Arinox did not receive funds from this program.

The objective of AST's demonstration plant is to reduce energy consumption in the production of stainless steel by eliminating some of the traditional production steps through the adoption of "strip casting" technology. In *Italian Plate*, as well as in the instant proceeding, the EU has requested noncountervailable (green light) treatment for this project as a research and development subsidy under section 771(5B)(B)(ii)(II) of the Act.

In *Italian Plate*, 63 FR at 47252, the Department preliminarily determined that the THERMIE program did not merit green light treatment because it did not meet the statutory requirement that "the instruments, equipment, land or buildings be used exclusively and permanently (except when disposed on a commercial basis) for the research activity" (*see* section 771(5B)(B)(i) of the Act). No new information has been submitted on the record in the instant proceeding to warrant a reconsideration of this finding.

However, in *Italian Plate*, we did not have sufficient information to determine if the technology and the demonstration plant provided a benefit to subject merchandise. Furthermore, we did not have information on the distribution of project funds by industry or by company for the year in which AST's project was approved.

In the instant proceeding, it is clear that the project does have applications to the subject merchandise. Also, in this proceeding, the EU has submitted information on the distribution of assistance under the THERMIE program for 1995 and 1996. Based on the information on the record, there is no indication that this program is *de jure* specific. Additionally, based on an examination of the distribution information, it appears that the program benefitted a large number of users in different industries, and that neither AST nor the steel industry received a disproportionate share of the benefits (*see* Memorandum to Susan Kuhbach from Case Analysts, dated November 9, 1998.) Therefore, we preliminarily determine that the THERMIE program is not specific within the meaning of section 771(5A)(D) of the Act and, consequently, not countervailable.

III. Programs for Which We Need More Information

GOI Programs

A. Law 10/91

In its October 9 response, AST stated that it received a grant under Law 10/91 in a year prior to the POI.

Law 10/91 is designed to provide grants to fund energy conservation projects. Companies seeking assistance under this program can apply under Article 8, 10, 11, 12, 13, or 14 of the Law. According to the GOI, aid under articles 8, 10, and 13 is limited to the autonomous regions and the provinces of Trento and Bolzano, while aid under articles 11, 12, and 14 is available throughout Italy. AST received its grant under article 12.

In its October 23 response, the GOI provided a description and certain usage information regarding this program. Because we did not seek additional clarifying information on specificity prior to our preliminary determination, we intend to do so prior to our final determination. After we collect additional information and conduct verification, we will prepare an analysis memorandum addressing the countervailability of this program, and provide all parties an opportunity to comment on our analysis. However, we note that even if this program were found to be specific, the grant received by AST was less than 0.5 percent of AST's sales in the year of receipt. Therefore, the benefit would be expensed in the year of receipt and no benefit would be allocated to the POI.

IV. Programs Preliminarily Determined To Be Not Used

A. Pre-Privatization Employment Benefits (Law 451/94)

Law 451/94 authorized early retirement packages for Italian steel workers from 1994–1996. The program,

as described by the GOI, was designed to comply with the EC's reorganization of the iron and steel industry, specifically in regards to reducing productive capacity. The law entitled men of at least 50 years of age and women of 47 years of age with at least 15 years of pension contributions to retire early. AST and Arinox employees made use of this program during the three years of the program.

In *Wire Rod from Italy*, we determined that Italian companies such as AST and Arinox could not simply lay off workers, but instead would be required to provide early retirement assistance to them. Hence, we reviewed other GOI programs that would be widely used by Italian companies in order to determine what obligations AST and Arinox would have to their workers who retired early in the absence of Law 451. In *Wire Rod from Italy*, we determined that the *Cassa Integrazione Guadagni* (CIG)-Extraordinary program provided the best benchmark for Law 451. Like Law 451, CIG-Extraordinary addresses workers whose companies are restructuring, reorganizing, and/or downsizing.

New information submitted on the record in the instant proceeding indicates that a different program, "CIG-Mobility," provides a more appropriate benchmark to Law 451. Like CIG-Extraordinary, CIG-Mobility was not developed for particular Italian industries and is used by a wide variety of them. However, whereas CIG-Extraordinary addresses temporary layoffs, CIG-Mobility is designed to address assistance to workers who are being permanently laid off. Because Law 451 also addresses an employees' permanent separation from the company, we preliminarily determine that CIG-Mobility is a more appropriate benchmark to determine what costs AST and Arinox would have incurred in laying off employees had they not been able to take advantage of Law 451.

Under CIG-Mobility, a company must make a final payment to the employee upon the employees' departure from the company. Since employees at AST and Arinox were eligible to use Law 451 from 1994–1996 only, the companies would have incurred the payments to the employees under the benchmark program prior to the POI. Because it is the Department's practice to treat early retirement benefits as recurring grants which are expensed in the year of receipt, the companies did not incur costs under the benchmark program during the POI. *See GIA*, 58 FR at 37226. Therefore, Law 451 does not provide a financial contribution during the POI which relieves AST and Arinox of costs that they otherwise would incur if they participated in more broadly used early retirement programs.

B. Benefits from the 1982 Transfer of Lovere and Trieste to Terni (called Benefits Associated With the 1988–90 Restructuring in the *Initiation Notice*)

C. Decree Law 120/89: Recovery Plan for the Steel Industry

D. Law 181/89: Worker Adjustment and Redevelopment Assistance

E. Law 345/92: Benefits for Early Retirement

F. Law 706/85: Grants for Capacity Reduction

G. Law 46/82: Assistance for Capacity Reduction

H. Loan to KAI for Purchase of AST

I. Debt Forgiveness: 1981 Restructuring Plan

J. Law 675/77: Mortgage Loans, Personnel Retraining Aid and VAT Reductions

K. Law 193/84: Interest Payments, Closure Assistance and Early Retirement Benefits

L. Law 394/81: Export Marketing Grants and Loans

M. Law 341/95 and Circolare 50175/95

N. Law 227/77: Export Financing and Remission of Taxes

EC Programs

A. ECSC Article 56 Conversion Loans, Interest Rebates and Redeployment Aid

B. European Regional Development Fund

C. Resider II Program and Successors

D. 1993 EU Funds

Verification

In accordance with section 782(i)(1) of the Act, we will verify the information submitted by the respondents prior to making our final determination.

Suspension of Liquidation

In accordance with section 703(d)(1)(A)(i) of the Act, we have calculated an individual rate for each company investigated. Because the rate for Arinox is *de minimis*, and the Department does not include *de minimis* rates in the calculation of the all-others rate, AST's rate also will serve as the all-others rate. We preliminarily determine that the total estimated net countervailable subsidy rate is 6.11 percent *ad valorem* for AST and 0.46 percent *ad valorem* for Arinox.

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of stainless steel sheet and strip from Italy, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of the merchandise in the amounts listed above. Since the estimated preliminary net countervailing duty rate for Arinox is *de minimis*, it will be excluded from the suspension of liquidation. The suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 57 days from the date of publication of this preliminary determination, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. An interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments

included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the publication of this notice. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the publication of this notice. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: November 9, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30738 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 87–13A04.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted originally to The Association for Manufacturing Technology ("AMT") on May 19, 1987. Notice of issuance of the Certificate was published in the **Federal Register** on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

Export Trade Certificate of Review No. 87–00004, was issued to The Association for Manufacturing Technology on May 19, 1987 (52 FR 19371, May 22, 1987) and previously amended on December 11, 1987 (52 FR 48454, December 22, 1987); January 3, 1989 (54 FR 837, January 10, 1989); April 20, 1989 (54 FR 19427, May 5, 1989); May 31, 1989 (54 FR 24931, June 12, 1989); May 29, 1990 (55 FR 23576, June 11, 1990); June 7, 1991 (56 FR 28140, June 19, 1991); November 27, 1991 (56 FR 63932, December 6, 1991); July 20, 1992 (57 FR 33319, July 28, 1992); May 10, 1994 (59 FR 25614, May 17, 1994); December 1, 1995 (61 FR 13152, March 26, 1996); October 11, 1996 (61 FR 55616, October 28, 1996; and May 6, 1998 (63 FR 31738, June 10, 1998).

AMT's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): DT Industries, Inc., Springfield, MO; Motoman, Inc., West Carrollton, OH; and Precision Industrial Automation, Inc., Cincinnati, OH;

2. Delete Banner Welder, Inc.; Crouch Machinery, Inc.; Danly-Komatsu, L.P.; and J. M. Montgomery Manufacturing, Inc. as "Members" of the Certificate; and

3. Change the listing of the company name for the current "Members" cited in this paragraph to the new listing cited in parenthesis as follows: M T R Ravensburg, Inc. (Machine Tool Research, Inc.) and Buffalo Forge Company (Buffalo Machine Tools of Niagara, Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: November 10, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–30630 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, 41 CFR Part 101–6, and after consultation with GSA, the Secretary of Commerce has determine that the renewal of the Manufacturing Extension Partnership National Advisory Board is in the public interest in connection with the performance of the duties imposed on the Department by law.

The Committee was first established in October 1996 to advise MEP regarding their programs, plans, and policies. In renewing the Board, the Secretary has established it for an additional two years. During the next two years, the Board plans to study the variety of business models that the centers have adopted to deliver services within their local markets; look at the program evaluation metrics and its effect on center operations and impact; and address ways that the Board can raise awareness of MEP and build stronger relationships with programs that have complimentary missions.

The Board will consist of nine members to be appointed by the Director of the National Institute of Standards and Technology to assure a balanced membership that will represent the views and needs of customers, providers, and others involved in industrial extension throughout the United States.

The Board will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Copies of the Board's revised charter will be filed with the appropriate committees of the Congress and with the Library of Congress.

Inquiries or comments may be directed to Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland, 20899; telephone: 301–975–5020.

Dated: November 12, 1998.
Robert E. Hebner,
Acting Deputy Director, NIST.
[FR Doc. 98–30742 Filed 11–16–98; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110998E]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research and research/enhancement permits (1179, 1185, 1186); Issuance of scientific research permits (1162, 1167).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received permit applications from Natural Resource Scientists, Inc.,(NRSI) in Red Bluff, CA (1185) and Idaho Department of Fish and Game (IDFG) at Boise, ID (1179, 1186); NMFS has issued permits to Salmon Protection and Watershed Network (SPAWN) (1162) and Peter B. Moyle (1167).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before December 17, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1162, 1167, and 1185: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permits 1179 and 1186: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1162, 1167, and 1185: Tom Hablett, Protected Resources Division, (707–575–6066).

For permits 1179 and 1186: Robert Koch, Portland, OR (503–230–5424).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Issuance of permits, as required by the ESA, is based on a finding that such permits: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits are issued in accordance with and are subject to parts 217-222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in This Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*O. kisutch*), and Steelhead trout (*O. mykiss*).

To date, protective regulations for threatened California Central Valley (CCVa) steelhead under section 4(d) of the ESA have not been promulgated by NMFS. This notice of receipt of applications requesting takes of this species is issued as a precaution in the event that NMFS issues protective regulations that prohibit takes of threatened CCVa steelhead. The initiation of a 30-day public comment period on these applications, including their proposed takes of threatened CCVa steelhead, does not presuppose the contents of the eventual protective regulations.

New Applications Received

IDFG requests two 5-year permits (1179, 1186) that would authorize an annual direct take of adult and juvenile, threatened, naturally produced and artificially propagated, Snake River spring/summer (SnRS/S) chinook salmon associated with a hatchery supplementation program at the Pahsimeroi River in ID (1186), and at the headwaters of the Salmon River (Sawtooth Hatchery), East Fork Salmon River, and South Fork Salmon River in ID (1179). Permit 1186 would replace permit 922 which expires on December 31, 1998. Permit 1179 would replace permits 919, 920, and 921 which expire on December 31, 1998. The enhancement of ESA-listed SnRS/S chinook salmon stocks is expected by increasing the genetic integrity of the species and by providing egg-to-adult survival improvement through hatchery rearing as compared to natural incubation and rearing. IDFG proposes to retain a percentage of the ESA-listed adult salmon that return to the respective watersheds each year for broodstock and to release all of the ESA-listed adult salmon not retained for broodstock to spawn naturally. ESA-listed adult salmon retained for broodstock are proposed to be transported to a hatchery and spawned. The resulting progeny are proposed to be reared in the hatcheries, tagged with internal identifiers, and released in the respective streams of origin when ready to outmigrate to the ocean. Annual incidental takes of ESA-listed species associated with adult and juvenile fish releases are also requested.

NRSI (1185) requests a 5-year permit for takes of adult and juvenile, threatened, CCVa steelhead associated with fish population studies on the Mokelumne and Merced Rivers within the Evolutionarily Significant Unit (ESU). Steelhead studies conducted by NRSI consist of three assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, and (3) migratory trends. ESA-listed fish will be observed or captured, anesthetized, handled (weighed and measured), allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also requested.

Permits Issued

Notice was published on July 14, 1998 (63 FR 37851), that an application had been filed by SPAWN for a scientific research permit. Permit 1162 was issued to SPAWN on October 28, 1996, and authorizes takes of juvenile, threatened, central California coast (CCC) coho salmon associated with fish population and habitat studies on San Geronimo Creek and its tributaries within the ESU. ESA-listed fish may be captured, handled and released. Permit 1162 expires on June 30, 2003.

Notice was published on July 14, 1998 (63 FR 37851), that an application had been filed by Peter B. Moyle for a scientific research permit. Permit 1167 was issued to Peter B. Moyle on October 28, 1998, and authorizes takes of juvenile, threatened, CCC coho salmon associated with fish population and habitat studies throughout the ESU. ESA-listed fish may be observed. Permit 1167 expires on June 30, 2003.

Dated: November 9, 1998.

Patricia A. Montanio,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30618 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 103098B]

Magnuson-Stevens Act Provisions; Atlantic Shark Fisheries; Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Application for EFP; request for comments.

SUMMARY: NMFS announces the receipt of an application for an EFP. If granted, this EFP would authorize, over a period of 1 year, collections of a limited number of sharks from the large coastal, pelagic, and small coastal groups from Federal waters in the Atlantic Ocean for the purpose of shark identification training.

DATES: Written comments on the applications must be received on or before December 2, 1998.

ADDRESSES: Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. The application and copies of the regulations under which exempted fishing permits are subject may also be requested from this address.

FOR FURTHER INFORMATION CONTACT: Margo Schulze, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: This EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and regulations at 50 CFR 600 concerning scientific research activity, exempted fishing, and exempted educational activity.

Special Agent Paul Raymond intends to conduct a series of shark species identification courses for NMFS enforcement, United States Coast Guard, and Florida Marine Patrol personnel. In order to obtain specimens for this "hands-on" training, Special Agent Raymond has requested that Mr. Eric Sanders, a former commercial fisherman, be authorized to collect a maximum of 234 sharks (i.e., two individuals per the 39 federally-managed species for three training sessions for a total of 234 fish) by bottom longline. Fishing will occur in the Atlantic Ocean off east central Florida. Issuance of an EFP is necessary because possession of five large coastal shark species is prohibited and because the commercial fishery for large coastal sharks is closed for extended periods.

The proposed collections involve activities otherwise prohibited by regulations implementing the Fishery Management Plan for Sharks of the Atlantic Ocean. The applicant requests authorization to fish for and to possess large coastal sharks outside the Federal commercial seasons and to fish for and to possess prohibited species.

NMFS finds that this application warrants further consideration because Atlantic sharks are extremely difficult to identify by species once the carcasses have been commercially dressed and the primary diagnostic characteristics (head, fins, and tail) have been removed. Therefore, thorough "hands-on" training of Federal and state personnel that will be enforcing Atlantic shark regulations is extremely critical to the effectiveness of the regulations. A final decision on issuance of EFPs will depend on the submission of all required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and on any consultations with any appropriate Regional Fishery Management Councils, states, or Federal agencies.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 6, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30617 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101498A]

Marine Mammals; File No. 881–1443

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Alaska SeaLife Center, Box 1329, Seward, AK 99664 (907/224–2600) has been issued an amendment to scientific research Permit No. 881–1443.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On August 6, 1998, notice was published in the **Federal Register** (63 FR 42010) that an amendment of Permit No. 881–1443, issued March 23, 1998 (63 FR 14905), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 881–1443 authorizes the Alaska SeaLife Center to (1) import from Canada, three juvenile Steller sea lions (*Eumetopias jubatus*) and two juvenile harbor seals (*Phoca vitulina*); (2) obtain six additional harbor seals from U.S. facilities; and (3) conduct research activities on these animals over a five-year period. These studies may assess nutritional physiology, metabolic development, and clinical health under captive conditions.

This amendment now authorizes the Holder to: (1) collect whiskers or toenails from each harbor seal for background concentrations of stable isotopes of carbon and nitrogen; (2) feed the harbor seals fish, or inject them with solution containing stable isotopes of carbon and nitrogen; and (3) collect serial biopsies of blubber and muscle to assess lipid profiles.

Dated: November 5, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30705 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 10, 1998

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 62564, published on November 24, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
341	2,010,672 dozen.
352/652	11,379,895 dozen.
363	28,961,581 numbers.
369–S [2]	1,905,819 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30686 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339/638/639 is being increased for carryforward. The sublimit for Categories 338–S/339–S/638–S/639–S, which is currently filled, remains unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 61296, published on November 17, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to increase the limit for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,420,716 dozen of which not more than 1,072,170 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30685 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63524, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 17, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
237	280,910 dozen.
239pt. [2]	1,412,946 kilograms.
334/634	298,915 dozen.
335/635	442,159 dozen.
336/636	520,251 dozen.
338	5,675,721 dozen.
339	1,507,559 dozen.
340/640	681,170 dozen.
341/641	278,715 dozen
342/642	137,267 dozen.
347/348	1,006,622 dozen.
351/651	341,101 dozen.
352/652	882,365 dozen.
359–C/659–C [3]	1,534,958 kilograms.
363	46,750,187 numbers.
369–F/369–P [4]	2,501,057 kilograms.
369–S [5]	755,390 kilograms.
638/639	242,511 dozen.
647/648	722,377 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[4] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30684 Filed 11–16–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 59549.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Thursday, November 19, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting to discuss Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–30829 Filed 11–13–98; 2:17 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 59549.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:30 a.m., Thursday, November 19, 1998.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting to discuss Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–30830 Filed 11–13–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Adverse Registration Actions by the National Futures Association With Respect to Agricultural Trade Option Merchants and Their Associated Persons and Applicants for Registration in Either Category

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA) to deny, condition, suspend, modify, restrict or revoke the registration of any agricultural trade option merchant (ATOM) or any associated person (AP) of an ATOM or to deny or condition an application for registration in either category. In addition, the Commission is authorizing NFA to perform record custodianship functions with respect to such adverse registration actions. The Commission has previously authorized NFA to perform various functions with respect to processing registration records for ATOMs and their APs, and applicants therefore, including granting such registrations where appropriate and serving as the official custodian of those Commission records. 63 FR 18821 (April 16, 1998). This Order does not authorize NFA to accept or act upon requests for exemption or to render "no-

action" opinions with respect to applicable registration requirements. This Order generally will confirm NFA's authority regarding the ATOM and ATOM AP registration categories to the authority delegated by the Commission to NFA concerning the other categories of registration under the Commodity Exchange Act (Act).[1]

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, or Lawrence B. Patent, Associate Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5000, or electronically at [kbrowning@cftc.gov] or [lpatent@cftc.gov].

SUPPLEMENTARY INFORMATION:

Introduction

On April 16, 1998, the Commission published interim final rules in the **Federal Register** authorizing NFA to perform registration processing functions with respect to ATOMs and their APs.[2] These functions include: (1) processing and, where appropriate, granting applications for registration for ATOMs and their APs; and (2) establishing and maintaining systems of records regarding ATOMs and their APs and serving as the official custodian of those Commission records.[3] By the Order below, issued on this date, the Commission is authorizing NFA to assume the performance of additional registration functions on behalf of the Commission, specifically, to deny, condition, suspend, modify, restrict or revoke the registration of any ATOM or any ATOM AP or to deny or condition an application for registration in either category. In addition, the Commission is authorizing NFA to perform record custodianship functions with respect to such adverse registration actions.

Further, this Order does not authorize NFA to accept or act upon requests for exemption or to render "no-action" opinions with respect to applicable registration requirements. This Order will conform NFA's authority concerning the ATOM and ATOM AP registration categories to the authority delegated by the Commission to NFA concerning the other categories of registration under the Act.[4]

The Commission further notes that, in enacting Section 227 of the Futures Trading Practices Act of 1992, Congress added Section 8a(11) to the Act, 7 U.S.C. 12a(11) (Supp. IV 1992), which provided rulemaking authority for the Commission to modify or suspend the registration of any person charged with a felony if the Commission determines that continued registration of the person may pose a threat to the public interest or may threaten to impair public confidence in any market regulated by the Commission. The Commission adopted Rule 3.56 to implement this authority. The Commission expects that NFA will promptly notify the Commission when NFA becomes aware that any registrant has been charged with a felony.[5]

United States of America Before the Commodity Futures Trading Commission

Order Authorizing the Performance of Registration Functions

I. Authority and Background

Section 8a(10) of the Act (7 U.S.C. 12a(10) (1994)) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act and subject to the provision of the Act applicable to registrations granted by the Commission. Section 17(o)(2) of the Act provides that the Commission may authorize any registered futures association, in this case NFA, in performing Commission registration functions, to deny, condition, suspend, restrict or revoke any registration, subject to Commission review.[6]

NFA submitted under cover of a letter dated August 27, 1998, amendments to its rules to govern adverse actions against ATOMs, ATOM APs and applicants for registration in either category. These amendments reflect actions taken by NFA's Board of Directors at a meeting on August 20, 1998. NFA's rule amendments establish procedures for conducting adverse registration actions with respect to the ATOM and ATOM AP registration categories. In particular, NFA will conduct a fitness review of each ATOM and ATOM AP registration applicant. In appropriate circumstances, NFA will institute adverse registration actions against ATOMs, their APs or applicants for registration in either category based on the statutory disqualifications provided under Sections 8a(2) and 8a(3) of the Act. NFA also will review the financial statements submitted by prospective ATOMs with their registration applications to determine whether such statements demonstrate compliance with the $50,000 minimum net worth requirement provided under Commission Rule 3.13(d)(i). In those instances where the listed financial data fail to satisfy this requirement, NFA will institute adverse registration actions.

Upon consideration, the Commission has determined to authorize NFA, effective, November 17, 1998, to deny, condition, suspend, modify, restrict or revoke the registration of any ATOM, any ATOM AP or an applicant for registration in either category in accordance with the standards established by the Act and rules promulgated thereunder. In addition, the Commission is authorizing NFA to perform record custodianship functions with respect to such adverse registration actions. Separately, by letter dated September 10, 1998, the Commission's Division of Trading and Markets permitted amendments to NFA bylaws and NFA Registration Rules 201 and 501(a) to become effective without Commission approval in order to implement these grants of authority.

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and certified NFA as the official custodian of such records for this

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[1] 7 U.S.C. 1 *et seq.* (1994).

Although "agricultural trade option merchant" and "associated person of an agricultural trade option merchant" are not registration categories defined by the Act, they are, nevertheless, registration categories "under the Act" by virtue of the Commission's promulgation of rules creating these registration categories under Section 4c(b) of the Act (its plenary authority over the regulation of options) and under Section 8a(5) of the Act (its general rulemaking authority). 62 FR 18821, 18825, n. 20.

[2] 63 FR 18821. These interim final rules became effective on June 15, 1998. *Id.*

[3] Under cover of a letter dated June 18, 1998, NFA submitted to the Commission amendments to its bylaws and rules to govern these two registration processing functions.

[4] The Commission has previously authorized NFA to perform registration processing functions, and to take adverse registration actions, with respect to futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transactions merchants, associated persons of any of the foregoing entities, floor brokers and floor traders, as well as applicants for registration in any of the aforementioned categories. *See* 49 FR 15940 (April 13, 1983); 49 FR 35158 (August 3, 1983); 48 FR 51809 (November 14, 1983); 48 FR 8226 (March 5, 1984); 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 59 FR 38957 (August 1, 1994); and 62 FR 36050 (July 3, 1997).

[5] In this regard, the Commission notes that ATOMs and their APs, as well as applicants for registration in either category, are required to supplement their respective registration applications to include any changes to the information provided thereon and report such changes to the NFA. *See* Commission Rule 3.13(e)(4).

[6] 7 U.S.C. 21(o)(2) (1994).

agency.[7] The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain, and to serve as official custodian of, the Commission's registration records with respect to adverse actions against ATOMs, their APs and applicants for registration in either category from this time forward. This determination is based upon NFA's representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records.

In maintaining the Commission's registration records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are necessary and acceptable to the Commission to ensure the security and integrity of the ATOM, ATOM AP or applicant records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Section 8a(10) of the Act, to authorize NFA, effective November 17, 1998, to perform the following registration functions:

(1) To deny, condition, suspend, modify, restrict or revoke registration under the Commodity Exchange Act as an agricultural trade option merchant, an associated person of an agricultural trade option merchant or an applicant for registration in either category; and

(2) To establish and to maintain a system of records regarding such adverse actions involving agricultural trade option merchants, associated persons of agricultural trade option merchants and applicants for registration in either category and to serve as the official custodian of those Commission records. NFA shall perform these functions in accordance with the standards established by the Act and the regulations promulgated thereunder.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission be allowed to authorize NFA to perform any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning standards and procedures to be followed in administering these functions.

This Order does not, however, authorize NFA to accept or act upon requests for exemption from registration or to render "no-action" opinions or interpretations with respect to applicable registration requirements.

Nothing in this Order or in Section 8a(10) or 17 of the Act shall affect the Commission's authority to review the granting of a registration application by NFA in the performance of Commission registration functions or to review any adverse registration action taken by NFA. See also Sections 17(o) (3) and (4) of the Act, 7 U.S.C. 21(o) (3) and (4) (1994), and 17 CFR Part 171.

Issued in Washington, DC on November 10, 1998 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 98–30647 Filed 11–16–98; 8:45 am]

BILLING CODE 6351–01–M

[7] 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 7, 1986); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993); and 59 FR 38957 (August 1, 1994).

DEPARTMENT OF DEFENSE

Ballistic Missile Defense Organization; Preparation of the National Missile Defense Deployment Environmental Impact Statement

AGENCY: Ballistic Missile Defense Organization, DOD.

ACTION: Notice of intent.

SUMMARY: This notifies the public that the Ballistic Missile Defense Organization (BMDO) intends to prepare an Environmental Impact Statement (EIS) for a potential National Missile Defense (NMD) deployment, should the U.S. Government make such a decision. In 1996, at the direction of the Secretary of Defense, NMD was designated a Major Defense Acquisition Program. Concurrently, BMDO was tasked with developing an NMD system that could be deployed within three years. This three-year development period is to culminate in the year 2000. In the year 2000, a Department of Defense (DoD) Deployment Readiness Review will be held to review the technical readiness of NMD elements. Thereafter, the United States government will determine whether the threat, developed capability, and other pertinent factors justify deploying an operational NMD system by the year 2003. BMDO is preparing an EIS to evaluate the potential environmental impacts of deployment of an NMD system.

Because the three-year development period is combined with an additional three-year deployment option, the total effort is referred to as the NMD "3+3" program. Should the deployment option not be exercised in the year 2000, improvements in NMD system element technology would continue, while an ability to deploy a system within three years of a decision would be maintained.

The EIS is intended to support BMDO's planning for a potential deployment of an NMD system. The decision to be made is whether to deploy such a system. This decision will be based on an analysis of the potential limited strategic ballistic missile threat to the United States from a rogue nation, technical readiness of the NMD system for deployment, and other factors including potential environmental impacts. If the decision is to deploy, then sites would be selected from the range of locations studied in the EIS. The EIS will provide the U.S. Government with the information necessary to properly account for the environmental impacts of this decision.

The NMD system would be a fixed, land-based, non-nuclear, hit-to-kill missile defense system with land and space-based sensor support capable of responding to a limited strategic ballistic missile threat to the United States by a rogue nation. The NMD system would consist of five elements: Ground-based Interceptors (GBIs); Battle Management Command, Control, and Communications, which includes the Battle Management Command and Control (BMC2), communication lines, and the In-Flight Interceptor Communications System (IFICS) as subelements; X-Band Radar (XBR); Upgraded Early Warning Radar (UEWR); and Defense Support Program (DSP) satellites/Space-Based Infrared System (SBIRS) satellites. All elements of the NMD system would work together to protect the 50 United States against a limited strategic ballistic missile attack by a rogue nation.

Proposed Action and Alternatives

The alternatives to be considered in this EIS are the No-Action Alternative and the Proposed Action. A No-Action Alternative would be a DoD recommendation not to deploy an NMD

system but to continue NMD system development to improve NMD system capabilities. With the Proposed Action Alternative, NMD elements and element locations would be selected from the range of locations studied in the EIS. The potential NMD element deployment locations would made maximum use of existing DoD land. The following paragraphs detail potential regions and locations that the U.S. Government would consider as possible sites for each element.

Under the current Proposed Action an initial GBI missile field of 20 missiles could be located at one of the following locations: Clear Air Station (AS), Alaska; Eielson AFB, Alaska; Fort Greely, Alaska; Yukon Maneuver Area (Fort Wainwright), Alaska; Grand Forks Air Force Base (AFB), North Dakota; or Stanley R. Mickelsen Safeguard Complex (SRMSC) Missile Site Radar Site, North Dakota (the SRMSC is centered around the town of Langdon). Wherever the GBIs may be deployed, they would not be fired from their deployment site except in the Nation's defense.

A BMC2 site could be located at one of the following locations: Clear AS, Alaska; Eielson AFB, Alaska; Fort Greely, Alaska; Yukon Maneuver Area (Fort Wainwright), Alaska; Cavalier AS, North Dakota; Grand Forks AFB, North Dakota; or SRMSC Missile Site Radar Site, North Dakota. Also, additional BMC2 facilities would be retrofitted into the existing United States Space Command communication and control facilities at Colorado Springs and other DoD command centers in the United States.

Approximately 14 IFICS could be located at geographically separated locations in the general vicinity of other NMD elements and in the New England states. Identification of potential locations for IFICS is still in progress and will be based on operational requirements. When possible, the IFICS would be located on or near existing DOD installations. Locations tentatively identified to date include: Clear AS, Alaska; Eareckson AS (Shemya Island), Alaska; Eielson AFB, Alaska; Fort Greely, Alaska; Yukon Maneuver Area (Fort Wainwright), Alaska; Grand Forks AFB, North Dakota; Minot AFB, North Dakota, Missile Alert Facility ECHO (near the town of Hampden), North Dakota; SRMSC Missile Site Radar Site, North Dakota; and the Western Aleutians. Studies for potential locations for IFICS sites are still in their early stages. As the studies progress the North Dakota and Alaska locations listed above may be refined and potential locations identified in the New England states. This updated information will be announced in the **Federal Register** and additional scoping will be conducted to obtain public input regarding the potential environmental effects of deploying an IFICS at those locations.

One XBR would be deployed and the following locations are under consideration: Eareckson AS (Shemya Island), Alaska; Cavalier AS, North Dakota; SRMSC Missile Site Radar Site, North Dakota; SRMSC Remote Sprint Launch Site 1, North Dakota; SRMSC Remote Sprint Launch Site 2, North Dakota; and SRMSC Remote Sprint Launch Site 4, North Dakota.

Any deployment may require elements of the system to utilize existing fiber-optic lines, power lines, and other utilities. Some existing lines used to support the deployed system may require modifications. Deployment of elements to some locations may require the acquisition of new rights-of-way and installation of new utility and fiber optic cable. Potential new fiber optic cable locations include North Dakota and Alaska and an oceanic fiber optic cable along the Aleutian Islands from Seward or Whittier, Alaska, to Eareckson AS (Shemya Island), Alaska.

Scoping Process

This EIS will assess environmental issues associated with deployment alternatives. Scoping will be conducted to identify environmental concerns and issues to be addressed in the EIS. Public scoping meetings will be held as part of the process. The schedule for the scoping meetings is as follows: (1) 1 December from 5–8 p.m. at the Cavalier County Courthouse Meeting Room, 901 3rd Street, Langdon, North Dakota; (2) 2 December from 5–8 p.m. at the Grand Forks Civic Auditorium, 615 1st Avenue, North, Grand Forks, North Dakota; (3) 7 December from 5–8 p.m. at the Carlson Community Activity Center, 2010 2nd Avenue, Fairbanks, Alaska; (4) 8 December from 5–8 p.m. at Anderson School, Main Street, Anderson, Alaska; (5) 9 December from 5–8 p.m. at the Delta Junction Community Center, 2288 Deborah Street, Delta Junction, Alaska; (6) 10 December from 5–8 p.m. at Loussac Library, 3600 Denali Street, Anchorage, Alaska; and (7) 16 December from 3–8 p.m. at the Days Inn, 2000 Jefferson Davis Highway, Arlington, Virginia.

Public input and comments are solicited concerning the deployment alternatives and environmental issues related to the proposed NMD deployment program. To ensure the program office will have sufficient time to fully consider public input on issues, written comments should be mailed to ensure receipt no later than January 15, 1999.

Comments concerning the EIS should be addressed to: SMDC–EN–V (Julia Hudson), U.S. Army Space and Missile Defense Command, 106 Wynn Drive, Huntsville, AL 35805, telephone (256) 955–4822.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30627 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Department of Defense Acquisition University.

ACTION: Board of Visitors Meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Tuesday, December 1, 1998 from 0900 until 1600. The purpose of this meeting is to report back to the BoV on continuing items of interest. The agenda will also include further discussion and an update on efforts directed toward consolidation of the DAU structure into a unified educational institute.

The meeting is open to the public, however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–845–6756.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 98–30623 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby

given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: December 1998 (800am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 7400 Defense Pentagon, Washington, DC 20301–7400.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC, 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30621 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows.

DATES: November 13, 1998 (9:00 a.m. to 8:00 p.m.).

ADDRESSES: The Defense Intelligence Agency, Bolling AFB, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30622 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

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DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Space Superiority

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Space Superiority met in closed session on November 4–5, 1998 at the NRO, Westfield Complex, Chantilly, VA. Due to an administrative oversight, this meeting was not previously announced.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and compile recommendations on how best to respond to the evolving space environment in a manner which would preserve U.S. leadership, superiority and dominance in national security space capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30624 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Space Superiority

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Space Superiority will meet in closed session on December 18, 1998 at the NRO, Westfield Complex, Chantilly, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will review and compile recommendations on how best to respond to the evolving space environment in a manner which would preserve U.S. leadership, superiority and dominance in national security space capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30625 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Investment Strategy for the DARPA

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Investment Strategy for the DARPA will meet in closed session on November 11, December 9–11, 1998, and January 13–14, 1999 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, the meeting to be held on November 11, 1998, is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine DARPA's Investment Strategy, focusing particularly on an assessment of

DARPA's mix of near, mid, and far term technologies.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: November 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30626 Filed 11–16–98; 8:45 am]

BILLING CODE 5000–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Deadline for Submission of Donation Application for the Battleship Ex-NEW JERSEY (BB 62)

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the deadline of May 17, 1999 for submission of a donation application for the Battleship ex-NEW JERSEY (BB 62), located at the Naval Inactive Ship Maintenance Facility, Bremerton, WA. ,A donation is anticipated pursuant to under the authority of 10 U.S.C. Section 7306. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any not-for-profit or nonprofit entity. Transfer of a vessel under this law shall be made at no cost to the United States. Government. The transferee will be required to maintain the vessel in a condition satisfactory to the Secretary of the Navy as a static museum/memorial. Prospective transferees must submit a comprehensive, detailed application addressing their plans for managing the significant financial, technical, and environmental and curatorial responsibilities that accompany ships donated under this program. In accordance with Section 1012 of Public Law 105–261, a condition of the transfer of the Battleship ex-NEW JERSEY is that the transferee locate the vessel in the State of New Jersey.

DATES: Application deadline is May 17, 1999.

ADDRESSES: Applications should be sent to Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Carvalho, Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, telephone number (703) 602–5450.

(Authority: 10 U.S.C. 7306.)

Dated: November 5, 1998.

Ralph Corey,

Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 98–30714 Filed 11–16–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–473–000]

California Independent System Operator Corporation; Notice of Filing November 10, 1998.

Take notice that on October 28, 1998, the California Independent System Operator Corporation filed a request to extend for six months the current grid management charge formula and assessment provisions which are part of the settlement offer filed on April 7, 1998, and accepted by the Commission on June 1, 1998, in ER98–211–000, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 20, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30668 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–414–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 10, 1998.

Take notice that on November 5, 1998, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, effective October 23, 1998, the following tariff sheets:

Substitute Fourth Revised Sheet No. 174A
Substitute Original Sheet No. 174B

FGT states that on September 23, 1998, FGT proposed revisions to the provisions currently contained in Section 9 of the General Terms & Conditions (GT&C) of FGT's Tariff regarding electronic communications of certain transactional and non-transactional data. Specifically, FGT proposed that the electronic communication provisions that are transactional in nature and related to capacity release be included in the capacity relinquishment provisions of Section 18 of the GT&C of FGT's Tariff in a new Section 18.L, "Capacity Release—Transactional Electronic Communications." Subsequently, on October 23, 1998, the Commission issued an order accepting FGT's filing subject to FGT's "removing any language providing for the reimbursement of subscription and licensing charges incurred for the TECM."

FGT states that in the instant filing, FGT is complying with the Commission order by removing language providing for such subscription and licensing charges.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30638 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–53–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

November 10, 1998.

Take notice that on November 4, 1998, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–53–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon delivery lateral facilities located in Polk County, Texas, under Koch Gateway's blanket certificate issued in Docket No. CP82–430, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway proposes to abandon by removal two 2-inch taps and a dual 2-inch meter station, and abandon in place approximately 6,100 feet of 2-inch pipeline delivery lateral (Index 59–7) all located in Polk County, Texas. Koch Gateway states that these facilities formerly served Corrigan City Gate and Champion International Paper Company on behalf of Entex Inc. (Entex), the local distribution company. Koch Gateway states that this delivery lateral and associated facilities are inactive and obsolete since it placed into service newer facilities to serve Entex at this point. Koch Gateway states that the abandonment of the obsolete facilities will have no impact on current services provided to Entex.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30635 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

November 10, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Thursday, November 19, 1998 and continuing on Friday, November 20, 1998, if necessary, at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–0583, Bob Keegan at (202) 208–0158, or Edith A. Gilmore at (202) 208–2158.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30642 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Riverside Canal Power Company; Notice of Filing

[Docket No. ER98–4302–001]

November 10, 1998.

Take notice that on October 28, 1998, Riverside Canal Power Company, pursuant to the Commission's October 16, 1998 order, filed its compliance filing in the above-captioned docket.

Riverside Canal Power Company has served this compliance filing upon all parties on the service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 18, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30667 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–28–001]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 10, 1998.

Take notice that on November 5, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective November 1, 1998.

On October 1, 1998, Transco filed in the referenced docket to eliminate its Transportation By Others (TBO) surcharge effective November 1, 1998. On October 30, 1998 the Commission issued a letter order (October 30 Order), which accepted Transco's revised tariff sheets effective November 1, 1998 and directed Transco to file revised tariff sheets within 15 days of the October 30 Order to remove the TBO tracking provisions from its tariff. The purpose of the instant filing is to comply with the October 30 Order by eliminating Section 44 of the General Terms and Conditions of Transco's FERC Gas Tariff. Transco is also filing to remove a reference to the TBO surcharge in Section 33 of the General Terms and Conditions.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30640 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–139–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

November 10, 1998.

Take notice that on November 5, 1998, KN Interstate Gas Transmission Co. (KNI) tendered for filing to become a part of KNI's FERC Gas Tariff, the following revised tariff sheets to be effective December 5, 1998:

Third Revised Volume No. 1–A

Second Revised Sheet No. 0
First Revised Sheet No. 13
Second Revised Sheet No. 16
First Revised Sheet No. 18
First Revised Sheet No. 34
First Revised Sheet No. 42
Third Revised Sheet No. 43
First Revised Sheet No. 45
Second Revised Sheet No. 60
First Revised Sheet No. 70
First Revised Sheet No. 71
Second Revised Sheet No. 73
Second Revised Sheet No. 75
Second Revised Sheet No. 90
First Revised Sheet No. 100
First Revised Sheet No. 123

Third Revised Volume No. 1–B

First Revised Sheet No. 0
First Revised Sheet No. 3
Fourth Revised Sheet No. 6
Second Revised Sheet No. 7
Second Revised Sheet No. 8
Third Revised Sheet No. 9
First Revised Sheet No. 10
Second Revised Sheet No. 31
First Revised Sheet No. 32
Second Revised Sheet No. 35
Third Revised Sheet No. 36
Second Revised Sheet No. 42
Third Revised Sheet No. 43
First Revised Sheet No. 47
First Revised Sheet No. 48A
Second Revised Sheet No. 51
Second Revised Sheet No. 52
First Revised Sheet No. 53
Second Revised Sheet No. 54
Second Revised Sheet No. 55
Third Revised Sheet No. 73
First Revised Sheet No. 75
First Revised Sheet No. 76
First Revised Sheet No. 83

KNI states that it is making this housekeeping filing as an effort to clarify and correct various sections of KNI's FERC Tariff.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30641 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–152–019, et al.]

North American Energy Conservation, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 9, 1998.

Take notice that the following filings have been made with the Commission:

1. North American Energy Conservation, Inc. et al.

[Docket Nos. ER94–152–019 et al.]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, North American Energy Conservation, Inc. filed certain information as required by the Commission's February 4, 1995 order in Docket Nos. ER94–152–000 and EL94–9–000.

On October 29, 1998, C.C. Pace Energy Services filed certain information as required by the Commission's order issued July 25, 1994, in Docket No. ER94–1181–014.

On October 29, 1998, Sonat Power Marketing, Inc. filed certain information as required by the Commission's order issued August 18, 1995 in Docket No. ER95–1050–015.

On October 29, 1998, PG&E Energy Services, Inc., Energy Trading Corporation filed certain information as required by the Commission's order issued October 20, 1995, in Docket No. ER95–1614–016.

On October 29, 1998, Coral Power L.L.C. filed certain information as required by the Commission's order issued December 6, 1995, in Docket No. ER96–25–013.

On October 29, 1998, Dartmouth Power Associates Limited Partnership filed certain information as required by the Commission's order issued January 19, 1996, in Docket No. ER96–149–003.

2. PanEnergy Lake Charles Generation, Inc. et al.

[Docket Nos. ER96–1335–012 et al.]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, PanEnergy Lake Charles Generation, Inc. filed certain information as required by the Commission's order issued May 17, 1996, in Docket No. ER96–1335–000.

On October 29, 1998, Sonat Power Marketing filed certain information as required by the Commission's order issued August 18, 1995 in Docket No. ER95–1050–000 and the Commission's order issued August 12, 1996, in Docket No. ER96–2343–000.

On October 29, 1998, AYP Energy, Inc. filed certain information as required by the Commission's order issued October 8, 1996, in Docket No. ER96–2673–008.

On October 29, 1998, Exact Power Company, Inc. filed certain information as required by the Commission's order issued January 14, 1997, in Docket No. ER97–382–000.

On October 29, 1998, Engage Energy, US, L.P. filed certain information as required by the Commission's order

issued December 30, 1996, in Docket No. ER97–654–000.

On October 29, 1998, NP Energy, Inc. filed certain information as required by the Commission's order issued February 24, 1997, in Docket No. ER97–1315–000.

3. NICOR Energy Management Services Company et al.

[Docket No. ER97–1816–005 et al.]

Take notice that the following information filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, NICOR Energy Management Services Company filed certain information as required by the Commission's April 8, 1997, order in Docket No. ER97–1816–004.

On October 29, 1998, Columbia Energy filed certain information as required by the Commission's September 3, 1997, order in Docket No. ER94–968–000.

On October 29, 1998, DTE Energy Trading, Inc. filed certain information as required by the Commission's order issued September 24, 1997, in Docket No. ER97–3834–000.

On October 29, 1998, Infinite Energy filed certain information as required by the Commission's order issued October 2, 1998, in Docket No. ER97–3923–000.

On October 29, 1998, British Columbia Power Exchange Corporation filed certain information as required by the Commission's order issued September 2, 4 1997, in Docket No. ER97–4024–000.

On October 29, 1998, Bridgeport Energy, L.L.C. filed certain information as required by the Commission's order issued June 24, 1998, in Docket No. ER98–2783–000.

4. Washington Water Power et al.

[Docket No. ER99–358–000 et al.]

Take notice that the following information filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, Washington Water Power filed certain information as required by the Commission's November 29, 1996, order in Docket No. ER98–2157–000.

On October 29, 1998, American Electric Power filed certain information as required by the Commission's October 31, 1997, order in Docket No. ER97–4143–000.

On October 29, 1998, Consolidated Edison Company of New York filed certain information as required by the Commission's March 14, 1997 in Docket No. ER97–707–000, *et al.*

On October 29, 1998, Oklahoma Gas and Electric Company filed certain information as required by the Commission's order issued December 18, 1997, in Docket No. ER98–511–000.

On October 29, 1998, PECO Energy Company filed certain information as required by the Commission's order issued February 14, 1997, in Docket No. ER97–316–000.

On October 29, 1998, PP&L, Inc. filed certain information as required by the Commission's order issued July 17, 1997, in Docket No. ER97–3055–000.

On October 29, 1998, Southern Company Services, Inc. filed certain information as required by the Commission's order issued April 30, 1996, in Docket No. ER96–780–000.

On October 29, 1998, Virginia Electric and Power Company filed certain information as required by the Commission's order issued August 13, 1996, in Docket No. ER98–3771–000.

On October 29, 1997, Western Resources filed certain information as required by the Commission's order issued May 1, 1998, in Docket No. ER98–2157–000.

5. PJM Interconnection, L.L.C.

[Docket No. ER99–371–000]

Take notice that on November 4, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing an amended notice of termination of four service agreements for Network Integration Transmission Service under the PJM Open Access Transmission Tariff. These agreements were necessary to accommodate the Pennsylvania Retail Competition Pilot program under which service will end in January 1999.

Copies of this filing were served upon the parties to the service agreements, and the Pennsylvania Public Utility Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power Corporation et al

[Docket No. ER99–420–000 et al]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1998, Florida Power Corporation filed certain information as required by the Commission's June 26, 1997 order in Docket No. ER97–2846–000 and the Commission's April 14, 1998 order in Docket No. ER98–2182–000.

On October 30, 1998, Entergy Services, Inc. filed certain information as required by the Commission's December 17, 1997 order in Docket No. ER96–2709–000.

On October 30, 1998, Western Power Services, Inc. filed certain information as required by the Commission's May 16, 1995 order in Docket No. ER95–748–000.

On October 30, 1998, Sandia Energy Resources Company filed certain information as required by the Commission's September 26, 1996 order in Docket No. ER96–2538–000.

On October 30, 1998, Duke Energy Marketing Corp. filed certain information as required by the Commission's December 14, 1995 order in Docket No. ER96–109–000.

On October 30, 1998, NorAm Energy Services, Inc. filed certain information as required by the Commission's July 24, 1994 order in Docket No. ER94–1247–000.

On October 30, 1998, Oklahoma Gas and Electric Co. filed certain information as required by the Commission's December 18, 1997 order in Docket No. ER98–511–000.

On October 30, 1998, Central and South West Services, Inc. filed certain information as required by the Commission's January 2, 1998 order in Docket No. ER98–542–000.

On October 30, 1998, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy Operating Companies) filed certain information as required by the Commission's November 15, 1996 order in Docket No. ER96–2504–000.

On October 30, 1998, New England Power Company filed certain information as required by the Commission's February 25, 1998 order in Docket Nos. EC98–1–000 and ER98–6–000.

On October 30, 1998, Oklahoma Gas and Electric Co. filed certain information as required by the Commission's December 18, 1997 order in Docket No. ER98–511–000.

On October 30, 1998, Portland General Electric Company filed certain information as required by the Commission's September 22, 1998 order in Docket No. ER98–3671–000.

7. UtiliCorp United Inc.

[Docket No. ER99–468–000]

Take notice that on November 3, 1998, UtiliCorp United Inc. (UtiliCorp), tendered for filing service agreements with Constellation Power Source, Inc., for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER99–469–000]

Take notice that on November 3, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and PP&L, Inc. (PP&L), dated November 2, 1998. This Service Agreement specifies that PP&L has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, First Revised Volume No. 5. The Sales Tariff allows GPU Energy and PP&L to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of November 2, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–471–000]

Take notice that on November 3, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to TransCanada Power Marketing, Ltd., (TC).

Con Edison states that a copy of this filing has been served by mail upon the TC.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER99–484–000]

Take notice that on November 3, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Letter Agreement between Entergy Services, Inc., and Cajun Electric Power Cooperative, Inc., for the installation of a new delivery point off of EGS's 69 KV Line No. 206.

Entergy Services requests that the Letter Agreement be made effective April 17, 1998.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Entergy Services, Inc.

[Docket No. ER99–486–000]

Take notice that on November 3, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Letter Agreement between Entergy Services, Inc., and Cajun Electric Power Cooperative, Inc., for the installation of a new delivery point off of EGS's 69 KV Line No. 230, servicing Warren Petroleum.

Entergy Services requests that the Letter Agreement be made effective April 17, 1998.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–487–000]

Take notice that on November 3, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing four Letter Agreements between Entergy Services, Inc., and Sam Rayburn G&T Electric Cooperative, Inc., for construction to the Peachcreek, Hightower Onalaska and Bold Springs delivery points.

Entergy Services requests that the Letter Agreements be made effective as of October 13, 1998. In seeking an October 13, 1998, effective date, Entergy Services requests waiver of the Commission's sixty-day notice requirement.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Ocean State Power and Ocean State Power II

[Docket No. ER99–491–000]

Take notice that on November 3, 1998, Ocean State Power (OSP) and Ocean State Power II (OSP II) (collectively, Ocean State), tendered for filing the following supplements (the Supplements) to their rate schedules with the Federal Energy Regulatory Commission (FERC or the Commission) for OSP I Supplement No. 19 to Rate Schedule FERC No. 3, Supplement No. 21 to Rate Schedule FERC No. 4, OSP II Supplement No. 21 to Rate Schedule FERC No. 7, Supplement No. 22 to Rate Schedule FERC No. 8.

Copies of the Supplements have been served upon Ocean State's power purchasers, the Massachusetts Department of Public Utilities, and the Rhode Island Public Utilities Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Company

[Docket No. ER99–492–000]

Take notice that on November 3, 1998, Carolina Power & Light Company (CP&L), tendered for filing the following agreements intended to supersede in its entirety the Power Coordination Agreement (PCA), as amended, between CP&L and the North Carolina Electric Membership Corporation (NCEMC), Power Supply Agreement, Network Operating Agreement and Network Service Agreement.

CP&L has requested an effective date of January 1, 1999.

CP&L states that copies of the filing have been served on NCEMC as well as the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER99–493–000]

Take notice that on November 3, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, an umbrella Service Agreement with Arizona Public Service Company under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Virginia Electric and Power Company

[Docket No. ER99–494–000]

Take notice that on November 4, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service

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with Strategic Energy, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide non-firm point-to-point service to the Transmission Customers under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of November 4, 1998, the date of filing the Service Agreement.

Copies of the filing were served upon Strategic Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Virginia Electric and Power Company

[Docket No. ER99–495–000]

Take notice that on November 4, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Strategic Energy, Inc., under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of November 4, 1998, the date of filing the Service Agreement.

Copies of the filing were served upon Strategic Energy, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Virginia Electric and Power Company

[Docket No. ER99–496–000]

Take notice that on November 4, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Cinergy Capital and Trading, Inc., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to Cinergy Capital and Trading, Inc., under the terms and conditions of the Tariff.

Virginia Power requests an effective date of November 4, 1998.

Copies of the filing were served upon Cinergy Capital and Trading, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. New Century Services, Inc.

[Docket No. ER99–497–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and UtiliCorp United, Inc.

The Companies request that the Agreement be made effective on October 19, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services, Inc.

[Docket No. ER99–498–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and UtiliCorp United, Inc.

The Companies request that the Agreement be made effective on October 19, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. New Century Services, Inc.

[Docket No. ER99–499–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and El Paso Power Services Company.

The Companies request that the Agreement be made effective on October 30, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. New Century Services, Inc.

[Docket No. ER99–500–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and El Paso Power Services Company.

The Companies request that the Agreement be made effective on October 30, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Southwestern Public Service Company

[Docket No. ER99–501–000]

Take notice that on November 24, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Texas-New Mexico Power Company. This umbrella service agreement provides for Southwestern's sale and Texas-New Mexico Power Company's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Southwestern Public Service Company

[Docket No. ER99–502–000]

Take notice that on November 4, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with ONEOK Power Marketing Company (ONEOK). This umbrella service agreement provides for Southwestern's sale and ONEOK's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. PP&L, Inc.

[Docket No. ER99–503–000]

Take notice that on November 4, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated October 26, 1998, with Rainbow Energy Marketing Corporation (REMC) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds REMC as an eligible customer under the Tariff.

PP&L requests an effective date of November 4, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to REMC and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Lakeside Energy Services, LLC

[Docket No. ER99–505–000]

Take notice that on November 4, 1998, Lakeside Energy Services, LLC (Lakeside), petitions the Commission for acceptance of Lakeside Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Lakeside intends to engage in wholesale electric power and energy purchases and sales as a marketer. Lakeside currently has no affiliates and is not in the business of generating or transmitting electric power.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Ohio Edison Company

[Docket No. ER99–507–000]

Take notice that on November 4, 1998, Ohio Edison Company tendered for filing revisions to Appendices A and B of Service Agreements with American Municipal Power-Ohio, Inc., under FERC Electric Tariff, Second Revised Volume No. 2. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Arizona Public Service Company

[Docket No. ER99–508–000]

Take notice that on November 4, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreement to provide Firm Point-to-Point Transmission Service to PacifiCorp under APS'' Open Access Transmission Tariff.

A copy of this filing has been served on PacifiCorp and the Arizona Corporation Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Northeast Utilities Service Company

[Docket No. ER99–509–000]

Take notice that on November 4, 1998, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Burlington Electric Department (BED).

NUSCO states that a copy of this filing has been mailed to BED.

NUSCO requests that the rate schedule change become effective on December 1, 1998.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. PP&L, Inc.

[Docket No. ER99–510–000]

Take notice that on November 4, 1998, PP&L, Inc. (PP&L), filed a Service Agreement dated October 27, 1998 with Cinergy Capital & Trading, Inc. (Cinergy), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Volume No. 5. The Service Agreement adds Cinergy as an eligible customer under the Tariff.

PP&L requests an effective date of November 4, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Cinergy and to the Pennsylvania Public Utility Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER99–511–000]

Take notice that on November 4, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Mutual Netting/Closeout Agreements between PacifiCorp and Idaho Power Company and MIECO, Inc.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

32. Carolina Power & Light Company

[Docket No. ER99–513–000]

Take notice that on November 4, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Baltimore Gas & Electric Company, Energy Transfer Group, L.L.C., and Williams Energy Services Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

33. Joe Bob Perkins, David G. Tees, Hugh Rice Kelly, Marc Kilbridge, Richard B. Dauphin, and Linda Geiger

[Docket Nos. ID–3184–002, ID–3186–002, ID–3187–002, ID–3188–002, ID–3189–002 and ID-3190–002]

Take notice that on November 2, 1998, the following officers and a Director of El Dorado Energy, LLC, tendered for filing with the Federal Energy Regulatory Commission (Commission) abbreviated applications pursuant to Section 305(b) of the Federal Power Act and the Commission's Order in El Dorado Energy, LLC, 85 FERC ¶ 61,006 (1998), to hold jurisdictional interlocks:

Joe Bob Perkins
David G. Tees
Hugh Rice Kelly
Marc Kilbridge
Richard B. Dauphin
Linda Geiger

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

34. Frederick P. Stratton, Jr.

[Docket No. ID–3255–000]

Take notice that on November 2, 1998, Frederick P. Stratton, Jr., filed with the Federal Energy Regulatory Commission, an application for authority to hold the following interlocking positions under Section 305(b) of the Federal Power Act:

Director, Wisconsin Electric Power Company
Director, BANK ONE CORPORATION
Director, The First National Bank of Chicago

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

35. Richard C. Green, Jr.

[Docket No. ID–3256–000]

Take notice that on November 2, 1998, Richard C. Green, Jr. (Applicant), tendered for filing with the Federal Energy Regulatory Commission, an Application for Authority to Hold Interlocking Positions under Section 305(b) of the Federal Power Act as follows:

Director, Chairman, and Chief Executive Officer, UtiliCorp United, Inc.
Director BHA Group Holdings Inc.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30643 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

November 10, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Minor License.
b. *Project No.:* P–696–010.
c. *Date filed:* October 27, 1998.
d. *Applicant:* PacifiCorp.
e. *Name of Project:* American Fork Hydroelectric Project.
f. *Location:* On American Fork Creek, near the City of American Fork, Utah County, Utah, about 3 miles east of Highland, Utah. The project affects about 28.8 acres of federal lands within the Uinta National Forest.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Michael B. Burke, Projects Manager, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, Oregon 97232, (503) 813–6656.
i. *FERC Contact:* Gaylord W. Hoisington (202) 219–2756.
j. *Comment Date:* 60 days from the filing date in paragraph c.
k. *Brief Description of the Project:* The existing project consists of: (1) A 29-foot 9-inch wide and 4.5-foot-high reinforced concrete diversion dam; (2) a 6-foot-wide 6-foot-long intake; (3) a 6-foot-long 6-foot-wide manually operated sluice gate; (4) a 2-foot-long 2-foot-wide manually operated upstream sluice gate; (5) a 28-inch-diameter welded steel pipe flowline approximately 1,666-foot-long which transitions into a 33-inch-diameter riveted steel penstock 253-foot-long that transitions into a 20-inch-diameter riveted steel penstock 61-foot-long; (6) an approximately 2,700-square-foot brick powerhouse; (7) one turbine generator unit with a rated capacity of 1,050 kilowatts; and (8) other appurtenances.
l. With this notice, we are initiating consultation with the *Utah State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.
m. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30636 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

November 10, 1998.

a. *Type of filing:* Notice of Intent To File Application for New License.
b. *Project No.:* 6418.
c. *Date filed:* November 2, 1998.
d. *Submitted By:* Judith A. Burford, current licensee.
e. *Name of Project:* A.J. Allen Power Plant.
f. *Location:* On East Brush Creek, a tributary of the Eagle River, in Eagle County, Colorado. The project occupies 1.008 acres of land within the White River National Forest.
g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.
h. *Expiration date of original licenses:* July 31, 2003.
i. The project consists of: (1) an 8-inch-diameter 970-foot-long steel pipeline; (2) a rock pile diversion structure; (3) an 8-inch-diameter PVC intake line; (4) a gate valve just upstream of the turbine; (5) a 9-foot by 11-foot concrete and wood powerhouse containing a Pelton impulse turbine having a rated capacity of 27 horsepower (20 kilowatts) and a belt driven 8-kW alternator; (6) a 115-volt 112-foot-long transmission line; and (7) other appurtenances.
j. Pursuant to 18 CFR 16.7, information on the project is available at: Ms. Jean A. Johnson, P.O. Box 610, Eagle, CO 81631, Phone: (970) 328–6867.
k. *FERC contact:* Héctor M. Pérez (202) 219–2843.
l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by July 31, 2001.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30637 Filed 11–16–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–2]

Science Advisory Board; Notification of Public Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, notice is hereby given that the Science Advisory Board's (SAB) Environmental Engineering Committee, will meet Tuesday through Thursday, December 1–3, 1998 in Room 3709 of the Mall at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The meeting will begin at 8:30 am on December 1st and adjourn

no later than 3:00 pm on December 3rd. All times noted are Eastern Time. This meeting is open to the public. Due to limited space, seating at meetings will be on a first-come basis. For further information concerning this meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are *not* available from the SAB Office.

No reviews are being conducted at this meeting. The EEC will consider two draft subcommittee reports for approval. These are the Quality Management Subcommittee's draft report on the implementation of the Agency's quality program and the draft report of the Retrospective Subcommittee on attributes of successful SAB advice. (Copies of these drafts will be available from Ms. Mary Winston, address below.)

The EEC will consider four commentaries currently in preparation to determine whether they should be forwarded to the Executive Committee for consideration or ended. The commentaries address measures of technology performance, environmental impacts of natural hazards, waste reuse, and the toxicity characteristic leaching procedures. (Copies of these drafts will be available at the meeting. Contact Ms. Mary Winston, address below, for advanced copies, if available.) EEC members will brief the committee on the progress of proposed commentaries on sources of PM 2.5 and barriers to Pollution Prevention. Members will also have the opportunity to identify other topics for potential commentaries.

The EEC has received written requests for three reviews; Agency staff will provide preliminary briefings on these requests which will enable the EEC to refine the charge and determine the expertise needed for the subsequent reviews. Two requests are from the Office of Research and Development—Wet Weather Pollution Research and Research on the Natural Attenuation of Contaminants in Ground Water, Soils and Sediments to Support Decisions on Site Remediation and Restoration. The Office of Emergency and Remedial Response is seeking EEC input on whether average or "Not to Exceed" concentrations are most appropriate for the development of cleanup goals at waste sites. (Copies of the requests can be obtained from Ms. Mary Winston, address below. Copies of any hand-outs distributed at the meeting in the course of these briefings will be available subsequently through Ms.Winston.)

Agency staff will brief the EEC on topics of mutual interest including brown fields, environmental justice, industrial ecology, and sediments. The EEC will select FY99 activities, then attend to the practicalities of scheduling and completing the work. (Copies of any hand-outs distributed at the meeting in the course of these briefings will be available subsequently through Ms. Mary Winston, address below.)

Members of the public desiring additional information about the meeting should contact Kathleen White Conway, Designated Federal Officer, Environmental Engineering Committee, Science Advisory Board (1400), Room 3702L, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (202) 260–2558; fax at (202) 260–7118; or via E-mail at conway.kathleen@epa.gov. A copy of the draft Agenda is available from Ms. Mary Winston at (202) 260–2554; fax at (202) 260–7118; or via E-Mail at winston.mary@epa.gov.

Members of the public who wish to make a brief oral presentation to the Committee must contact Ms. Conway in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, Wednesday, November 25, 1998 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889. Individuals requiring special accommodation at SAB meetings, including wheelchair access, should contact the appropriate DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: November 12, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–30827 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00255; FRL–6045–2]

Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic Pollutants; Notice of Availability and Solicitation of Public Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and solicitation of public comments.

SUMMARY: EPA is making available for public review and comment the draft Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants. This document outlines the Agency's comprehensive approach to identify and take action to reduce releases of and exposures to PBT pollutants. Also available for public review and comment in connection with this document is the draft EPA Action Plan for Mercury. Interested parties may request copies of these documents as set forth in the "ADDRESSES" unit of this notice.

DATES: Comments must be received by February 16, 1999.

ADDRESSES: Each comment must bear the docket control number OPPTS–00255. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions under Unit IV. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be

clearly marked as such. Three sanitized copies of any comments containing information claimed as CBI must also be submitted and will be placed in the public record for this notice. Persons submitting information on any portion of which they believe is entitled to treatment as CBI by EPA must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

To obtain copies of the draft Multimedia Strategy for Priority PBT Pollutants and the draft EPA Action Plan for Mercury contact: Pollution Prevention Information Clearinghouse (7409), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–1023, facsimile number: 202–260–0178, e-mail: PPIC@epa.gov.

FOR FURTHER INFORMATION CONTACT: Sam K. Sasnett, Pollution Prevention Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–8020, e-mail: sasnett.sam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of the draft Multimedia Strategy for Priority PBT Pollutants and the draft EPA Action Plan for Mercury are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for these documents under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). Copies are also available electronically from the EPA Home Page (http://www.epa.gov/pbt/) under "Strategy."

B. Fax-on-Demand

For Fax-on-Demand, use a faxphone to call 202–401–0527 and select item 4045 for a copy of the draft Multimedia Strategy for Priority PBT Pollutants and item 4046 for the draft EPA Action Plan for Mercury.

II. Background

This **Federal Register** notice announces the availability of and requests comment on the draft Multimedia Strategy for Priority PBT Pollutants and the draft EPA Action Plan for Mercury.

EPA has developed this draft national strategy to overcome the remaining challenges in addressing priority PBT pollutants. These pollutants pose risks because they are toxic, persist in ecosystems, and accumulate in fish and other animals further up the food chain. Consumption of fish is a significant exposure pathway for humans. These pollutants travel long distances, transfer rather easily among air, water, and land and linger for generations, making EPA's traditional single-statute approaches less than the full solution to reducing risks from PBTs. The fetus and young child may be at particular risk for developmental effects.

This strategy fortifies and builds on existing EPA commitments related to priority PBTs, such as the 1997 Canada-U.S. Binational Toxics Strategy (BNS), the North American Agreement on Environmental Cooperation, and the recently released Clean Water Action Plan. EPA is forging a new approach to reduce risks from and exposures to priority PBT pollutants through increased coordination among EPA national and regional programs. This approach also requires the significant involvement of stakeholders, including international, state, local, and tribal organizations, the regulated community, environmental groups, and private citizens.

A primary function of the strategy is to establish and implement national action plans on priority PBT pollutants. The PBT strategy targets for immediate focus the 12 PBT substances included in the Canada-U.S. Binational Toxics Strategy Level 1 list. As they are developed, these national action plans will be appended to the strategy. In this manner the strategy will continue to be a living document. One such draft action on mercury is also being made available for review and public comment at this time. It illustrates an action plan that is national and even international in scope and describes the kinds of actions EPA may take to reduce risks posed by other priority PBT pollutants. Each substance or group of substances will present its own set of action opportunities.

EPA's strategy realizes that the 12 Binational Toxics Strategy Level 1 substances are not the only PBTs we need to be concerned about. The strategy calls for developing a process to select additional pollutants of concern. Once these pollutants are selected, action plans will be developed to address environmental and human health problems associated with them. Other activities include preventing the introduction of new PBTs into commerce, identifying research needs for priority PBTs, and measuring the results of PBT reduction activities, preferably in terms of environmental and human health impacts.

III. Comments

EPA is requesting comment on the overall approach of the strategy and its proposed individual components, including the development and implementation of national action plans, the 12 initial pollutants for which EPA intends to develop such plans, the process for selection of additional PBT substances for national action plans, approaches for the prevention of the introduction (and reintroduction) of new PBT substances, and means of measuring progress in the reduction of PBTs in the environment. EPA is particularly interested in whether the strategy clearly articulates its goals and is comprehensive enough, whether there are major activities or approaches not articulated, and whether the directions outlined in the strategy are appropriate.

EPA also is requesting comment on the Mercury Action Plan. EPA is interested in comments on its overall approach to reducing exposure to mercury. EPA also invites comments on the applicability of the approach outlined for mercury to other PBT pollutants and the usefulness of the Mercury Action Plan as a model for other action plans that may be developed under the PBT Initiative.

IV. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number OPPTS–00255 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file

format. All comments and data in electronic form must be identified by the docket control number OPPTS–00255. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: November 9, 1998.

Lynn R. Goldman,

Assistant Administrator for Prevention Pesticides and Toxic Substances.

[FR Doc. 98–30719 Filed 11–16–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

Sunshine Act Meeting; Open Commission Meeting—Thursday, November 19, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, November 19, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No.	Bureau	Subject
1	Mass Media	Title: Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996 (MM Docket No. 97–247). Summary: The Commission will consider establishing a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television ("DTV") licensees.
2	Mass Media	Titile: Ancillary or Supplementary Use of Digital Television Capacity by Noncommercial Licensees. Summary: The Commission will consider whether to impose limits on remunerative activities undertaken by noncommercial television licensees on their DTV capacity.
3	Mass Media	Title: Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies and Termination of (MM Docket No. 96–16)—EEO Streamlining Proceeding. Summary: The Commission will consider and invite comments regarding proposed broadcast and cable equal employment rules and policies to be consistent with the D.C. Circuit's decision in the Lutheran Church.
4	Common Carrier	Title: Changes to the Board of Directors of the National Exchange Carrier Association, Inc. (CC Docket No. 97–21) and Federal-State Joint Board on Universal Service (CC Docket No. 96–45). Summary: The Commission will consider action concerning a revised organizational structure for administering the universal service support mechanisms and other related issues.
5	International	Title: Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992; and Direct Broadcast Satellite Public Interest Obligations (MM Docket No. 93–25). Summary: The Commission will consider implementing Section 335 of the Communications Act regarding public interest requirements for Direct Broadcast Satellite Systems.
6	Wireless Telecommunications	Title: 1998 Biennial Regulatory Review—Spectrum Aggregation Limits for Wireless Telecommunications Carriers; Cellular Telecommunications Industry Association's Petition for Forbearance from the 45 MHz CMRS Spectrum Cap; Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap (WT Docket No. 96–59); and Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services (GN Docket No. 93–252). Summary: The Commission will evaluate the Commercial Mobile Radio Service (CMRS) spectrum cap, 47 C.F.R. Section 20.6, as part of the biennial regulatory review, and consider a petition for forbearance from the 45 MHz CMRS spectrum cap filed by the Cellular Telecommunications Industry Association.
7	Office of Engineering and Technology	Title: Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service (ET Docket No. 95–18). Summary: The Commission will consider petitions for reconsideration or clarification of the allocation of the 1990–2025/2165–2200 MHz bands to the mobile-satellite service and further proposals concerning the Broadcast Auxiliary Service allocation in the 2 GHz band, and the reallocation of the 2110–2150 MHz band pursuant to the Balanced Budget Act of 1997.
8	Office of Engineering and Technology; International and Wireless Telecommunications.	Title: Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku Band Frequency Range (RM–9147) and Amendment of the Commissions Rules to Authorize Subsidiary Terrestrial Use of the 12.2–12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates (RM–92–45).

Item No.	Bureau	Subject
		Summary: The Commission will consider a petition for rule-making that proposes that NGSO FSS operations be permitted in the 10.7–12.7 GHz, 12.75–13.25 GHz, 13.75–145 GHz, and 17.3–17.8 GHz segments of the Ku-band and a petition for rulemaking that proposes that terrestrial use of the 12.2–12.7 GHz band be permitted for the retransmission of local television and provision of one-way data services by DBS providers.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its—inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Dated: November 12, 1998.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30872 Filed 11–13–98; 2:58 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2103]

1999 Maximum Reimbursement Fee for Amateur Operator License Examinations

October 28, 1998.

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This Public Notice announces that, effective January 1, 1999, the maximum allowable reimbursement fee for an amateur operator license examination will be $6.49. This amount is based on a 1.5% increase in the Department of Labor Consumer Price Index between September, 1997, and September, 1998.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Washington, D.C. 20554, (202) 418–0690.

DATES: January 1, 1999.

SUPPLEMENTARY INFORMATION: Effective January 1, 1999, the maximum allowable reimbursement fee for an amateur operator license examination will be $6.49. This amount is based upon a 1.5% increase in the Department of Labor Consumer Price Index between September, 1997, and September, 1998.[1]

Volunteer examiners (VEs) and volunteer-examiner coordinators (VECs) may charge examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating examinations for amateur operator licenses. The amount of any such reimbursement fee from any one examinee for any one examination session, regardless of the number of elements administered, must not exceed the maximum allowable fee. Where the VEs and the VEC both desire reimbursement, they jointly decide upon a fair distribution of the fee.

This announcement is made pursuant to § 97.527 of the Commission's Rules, 47 CFR 97.527.

Federal Communications Commission.

D'wana R. Terry,

Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 98–30744 Filed 11–16–98; 8:45 am]

BILLING CODE 6712–01–P

[1] Consumer Price Index Detailed Report, U.S. Department of Labor, Bureau of Labor Statistics (September 1998).

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1258–DR]

Kansas; Amendment No. 1 to the Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1258–DR), dated November 5, 1998 and related determinations.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared ■ major disaster by the President in his declaration of November 5, 1998:

Chase, Coffey, Franklin, Harvey, Lyon, Neosho, Sumner and Wilson Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30711 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: October 29, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Platte and Ray Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30708 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1253–DR]

Missouri; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1253–DR), dated October 14, 1998, and related determinations.

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 14, 1998:

Barton, Chariton, and Linn Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30709 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3128–EM]

New Mexico; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of New Mexico (FEMA–3128–EM), dated July 2, 1998, and related determinations.

EFFECTIVE DATE: October 15, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective October 15, 1998.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30712 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1257–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1257–DR), dated October 21, 1998, and related determinations.

EFFECTIVE DATE: November 4, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas, is hereby amended to include Categories C through G under the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 21, 1998:

Austin, Bastrop, Bexar, Burleson, Caldwell, Calhoun, Colorado, Comal, DeWitt, Fayette, Goliad, Gonzales, Guadalupe, Hays, Jackson, Karnes, Montgomery, Refugio, Victoria, Waller, Wharton, and Wilson Counties for Categories C through G under the Public Assistance Program (already designated for Categories A and B under the Public Assistance Program and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 98–30710 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

NAME: Federal Interagency Committee on Emergency Medical Services (FICEMS).

DATE OF MEETING: December 3, 1998.

PLACE: Room N–309, Building N, National Emergency Training Center (NETC), 16825 South Seton Avenue in Emmitsburg, Maryland 21727.

TIME: 10:00 a.m.

PROPOSED AGENDA: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Design Subcommittee and Technology Subcommittee Reports; presentation of member agency reports; reports of other Interested parties.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact William Troup, United States Fire Administration, 16825 South Seton Avenue, Emmitsburg, Maryland 21727, (301) 447–1231, on or before Monday, November 30, 1998.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on March 4, 1999.

Dated: November 2, 1998.

Carrye B. Brown,

U.S. Fire Administrator.

[FR Doc. 98–30706 Filed 11–16–98; 8:45 am]

BILLING CODE 6718–08–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–011432–007.

Title: Pacific Latin American Agreement.

Parties: Sea-Land Service, Inc., A.P. Moller-Maersk Line.

Synopsis: The proposed amendment deletes the West Coast of South America from the geographic scope of the Agreement and makes appropriate changes to other Agreement provisions to reflect this deletion. The parties have requested a shortened review period.

Agreement No.: 203–011638.

Title: Sea Girt Chassis Cooperative, L.L.C. Limited Liability Company Operating Agreement.

Parties: Atlantic Container Lines, China Ocean Shipping Company, Mediterranean Shipping Company, Polish Ocean Lines, Company Maritime d'Affretement.

Synopsis: Under the proposed agreement, the parties will establish, operate, utilize, and administer a chassis pool at the Sea Girt Marine Terminal in the Port of Baltimore. The initial term of the agreement is one year with unlimited automatic renewals.

By Order of the Federal Maritime Commission.

Dated: November 10, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–30633 Filed 11–16–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No. 2233: Pronto Cargo Corporation, 7330 N.W. 66th Street, Miami, FL 33166; date reissued, October 14, 1998.

Bryant L. VanBrakle,

Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–30677 Filed 11–16–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 4394.
Name: CAP Worldwide, Inc.
Address: 3126 Airfreight Road, Bldg. 2, Suite 200, P.O. Box 60583, Houston, TX 77205.
Date Revoked: October 19, 1998.
Reason: Surrendered license voluntarily.

License Number: 4353.
Name: Cargo Maritime Services, Inc.
Address: 9345 N.E. 6th Avenue, Suite 401, Miami Shores, FL 33138.
Date Revoked: September 24, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2856.
Name: Cimpex Inc.
Address: 7032 N.W. 50th Street, Miami, FL 33166.
Date Revoked: October 15, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2936.
Name: Contrak Forwarding Company.
Address: 219 East 44th Street, 6th Floor, New York, NY 10017.
Date Revoked: October 21, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4222.
Name: D.L. International Forwarders, Inc.
Address: 8550 West Flagler Street, Suite 111, Miami, FL 33144.
Date Revoked: September 23, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4148.
Name: Fleura Meler d/b/a/ US Western Forwarders.
Address: 19528 Ventura Blvd., #380, Tarzana, CA 91356.
Date Revoked: October 22, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2680.
Name: Fuentes International, Inc.
Address: 5321 S.W. 1st Street, Miami, FL 33134.
Date Revoked: October 18, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2392.
Name: Gerald R. Boudreaux.

Address: 3445 N. Causeway Blvd., Suite 603, Metairie, LA 70002.
Date Revoked: September 30, 1998.
Reason: Surrendered license voluntarily.
License Number: 4010.
Name: Megatrans International, Inc.
Address: 5113 West Rio Vista Avenue, Tampa, FL 33634–5323.
Date Revoked: October 8, 1998.
Reason: Failed to maintain a valid surety bond.
License Number: 3544.
Name: Myung Ku Moon d/b/a/ Trade Trans Line.
Address: 26521 Hawkhurst Drive, Rancho Palos Verdes, CA 90275.
Date Revoked: October 25, 1998.
Reason: Failed to maintain a valid surety bond.
License Number: 2938.
Name: Rosa N. Aviles d/b/a/ RNA Shipping Co.
Address: 1695 Lee Road, C–101, Winter Park 32789.
Date Revoked: September 30, 1998.
Reason: Surrendered license voluntarily.
License Number: 1816.
Name: Sequoia Forwarders Company.
Address: 2348 W. Witendale, Suite G, Visalia, CA 93278.
Date Revoked: September 23, 1998.
Reason: Failed to maintain a valid surety bond.
License Number: 4414.
Name: Transglobal Solutions.
Address: 1808 Arlington Avenue, Torrance, CA 90501.
Date Revoked: October 9, 1998.
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 98–30678 Filed 11–16–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 30, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Michael Barrington; Daniel E. Berce; Marvin Blum; Daniel J. Craine; Joseph B. Craine; Patrick D. Craine; Charles Cummins; Richard Davidovich; Jack Fikes; Walker Friedman; Robert L. Ginsburg; Clarke Johnson; Kenneth Jones; Holt Hickman; J. Michael Holt; William Landreth; G. Malcolm Louden; Bill Marshall; Timothy J. McKibben; Jack Miller; Terry R. Montesi; Clifton Morris; Breck Ray; Debbie Reynolds; William E. Rosenthal; Robert W. Semple; Scott Sherman; Edward L. Smith; J. Scott Tindall; Duer Wagner, Jr.; and D. Field Yow, Jr., all of Fort Worth, Texas; and Bryan Chandler; Gregory G. Kuelbs; John A. Kuelbs, all of Southlake, Texas; Dean O. Cochran, Denton, Texas; Douglas K. Higgins, Arlington, Texas; Polley P. Holley, Edina, Minnesota; and Charles O. Semple, Midland, Texas; all to acquire voting shares of Worth Bancorporation, Inc., Fort Worth, Texas, and thereby indirectly acquire voting shares of Lake Worth National Bank, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, November 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30644 Filed 11–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. NBC Capital Corporation, Starkville, Mississippi; to merge with First National Corporation of West Point, West Point, Mississippi, and thereby indirectly acquire National Bank of the South, Tuscaloosa, Alabama, and The First National Bank of West Point, West Point, Mississippi.

In connection with this application, Applicant also has applied to acquire First National Finance Company, West Point, Mississippi, and thereby engage in making, acquiring, or servicing loans or other extensions of credit, pursuant to § 225.28(b)(1) of Regulation Y.

2. Simmons First National Corporation, Pine Bluff, Arkansas; to merge with Lincoln Bankshares, Inc., Lincoln, Arkansas, and thereby indirectly acquire Bank of Lincoln, Lincoln, Arkansas.

Board of Governors of the Federal Reserve System, November 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30645 Filed 11–16–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System

TIME AND DATE: 11:00 a.m., Monday, November 23, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 13, 1998

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30874 Filed 11–13–98; 3:10 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0880]

Iceberg Water Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Iceberg Industries Corp. to market test a product designated as "Borealis Iceberg Water" that deviates from the U.S. standard of identity for bottled water. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for bottled water.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Iceberg Industries Corp., 447 Kenmount Rd., Box 13518, St. John's Newfoundland, Canada A1B 4B7.

The permit covers limited interstate marketing tests of products identified as "borealis iceberg water" that deviates from the U.S. standard of identity for bottled water (21 CFR 165.110) in that the source of the water is an iceberg. The test product meets all the requirements of the standard with the exception of the source definition. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States.

Under this temporary permit, the bottled water will be test marketed as "Borealis Iceberg Water."

This permit provides for the temporary marketing of 75,000 cases of the 24 x 350 milliliters and another 75,000 cases of the 12 x 1 liters (L), giving 150,000 cases in total. The total fluid weight of the test product will be 403,694 gallons or 1,530,000 L. The test product will be manufactured at Enterprise Atlantic Limited Water Bottling Plant, Daniel's Point, Trepassy, Newfoundland, Canada A0A 4B0. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than February 16, 1999.

Dated: November 5, 1998.

Elizabeth Campbell,

Acting Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–30607 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0946]

Expansion of Medical Device Industry Initiatives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) initiated a pilot program in 1996 involving the medical device industry. This pilot program, which was formally adopted in 1997, was shown to optimize resource utilization, enhance FDA/industry communication, and provide firms prompt closure to corrected inspection observations and nonviolative inspections. This program includes eligibility criteria and procedures for preannounced inspections, the annotation of items on form FDA–483–List of Observations (FDA–483) with promised or completed corrections, and postinspection notification to establishments regarding their compliance status.

DATES: The pilot program is effective January 1, 1999. Written comments should be submitted by January 4, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Denise D. Dion, Office of Regulatory Affairs (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5645, FAX 301–443–6919.

SUPPLEMENTARY INFORMATION: During the FDA/medical device industry grassroots forums in 1995, several issues were discussed concerning FDA's interaction with the medical device industry. A decision was made to consider action on three of the issues discussed. These included instituting: (1) Preannounced inspections, (2) listing promised or completed corrective actions on FDA–483 items, and (3) postinspection notification to establishments regarding their compliance status.

After considering these issues, the agency decided to initiate a pilot program involving the medical device industry in fiscal year (FY) 1996. The pilot program occurred during the 1996 calendar year and was then formally evaluated. The pilot program included criteria and procedures for preannounced inspections, the annotation of FDA–483 items with promised or completed corrections, and postinspection correspondence.

The program was restricted to inspections of medical device manufacturers that manufactured only medical device products, and it did not include manufacturers of products that cross different program areas like devices/drugs/biologics.

Although the pilot program did not include those inspections performed under State contract for FDA, the contracts were modified after permanent adoption of the Medical Device Initiatives.

Implementation of the program was not shown to decrease the level of necessary enforcement. Previous FDA experience had indicated that the overall out-of-compliance rate for preannounced foreign inspections was comparable to, or even greater than, the overall out-of-compliance rate for domestic inspections where preannouncements generally were not made.

Preannounced inspections were offered to those medical device firms that met the criteria for inclusion in the pilot program. FDA–483 annotations and the postinspection notification were done for all medical device inspections. The annotations and the notifications were independent of whether the inspection was preannounced.

The purpose of the pilot program was to optimize resource utilization, enhance FDA/industry communication, and provide firms prompt closure to corrected inspection observations and nonviolative inspections, and inspections in which voluntary action only is indicated.

There were 1,034 domestic medical device inspections (excluding bioresearch monitoring inspections) conducted during the pilot program. FDA received 432 completed industry feedback questionnaires and summary questionnaire data from FDA investigators for all 1,034.

The investigators' questionnaire data showed that 844 (or 81 percent) of the inspections were preannounced (the others were either not eligible for preannouncement or were begun prior to April 3, 1996, the start of the pilot program). Of those that were preannounced, 69 percent had inspection time savings due to preannouncement. Investigators reported that 83 percent of those preannounced inspections were facilitated by the preannouncement for the following reasons: Inspections had quicker startups; inspections had records more readily available; and inspections had personnel more readily available.

Investigators reported that 443 FDA–483's, Inspection Observations, were issued during this pilot program. The investigators reported that during 83 percent of the inspections, they were notified by the firm of corrections made during the inspection. Investigators reported that during 78 percent of the inspections, the time spent to annotate the FDA–483's was worthwhile.

Of the 1,034 inspections conducted under this pilot program, 893 (or 89 percent) of the inspections were classified "no action indicated" (NAI) or "voluntary action indicated" (VAI). Seven-hundred sixty-nine (or 86 percent of the 893 NAI/VAI inspections) postinspection letters were issued by the end of the pilot program period, December 31, 1997. Due to a time lag between conclusion of the inspection and issuance of the letters, additional letters were sent but not reported as part of the pilot evaluation.

The industry's questionnaire data indicated that in 90 percent of the inspections that were preannounced, the preannouncements were helpful to the firms in preparing for the inspection. Industry responded that during 93 percent of the inspections, the firm's personnel were notified during the inspection of noncompliances found by the inspection team and that in 86 percent of the inspections, the firms notified the FDA inspection team of corrective actions. In 78 percent of the inspections, the FDA inspection team was able to verify that corrective actions had been made.

The industry respondents reported that 95 percent of them felt that the FDA–483 annotations were appropriate and 94 percent felt that they were helpful. Ninety-five percent of the respondents found the postinspection letters helpful and 95 percent of the respondents felt the pilot program helped to increase the spirit of cooperation between their establishment and FDA.

Twenty-one of the investigator responses stated that the preannouncements compromised the inspection process. Further evaluation of these 21 responses revealed that 19 of the respondents had misunderstood and thus inaccurately answered this question. The remaining two have been evaluated and FDA has concluded that the problems described by these investigators do not warrant discontinuing the program. Because of the positive findings of the evaluation, the program was formally adopted as the Medical Device Initiatives program in FY 1997. The elements of the Medical Device Industry Initiatives Program are described in Attachment A of a new inspection guide entitled "Guide to Inspections of Medical Device Manufacturers," dated December 1997 and posted to FDA's World Wide Website at "www.fda.gov/ora".

With some industry-specific caveats, FDA is prepared to begin another yearlong pilot program of the initiatives to provide similar coverage to the other program areas, including drugs (both human and animal) and biologics. Only FDA–483 annotation and postinspection notification will be piloted in the foods program area. Upon completion of the pilot program, FDA will perform an evaluation to evaluate the effectiveness in optimizing resources, enhancing FDA/industry communication, and providing firms prompt closure to corrected inspection observations and nonviolative inspections, or inspections in which voluntary action only is indicated. In addition, the impact on violative situations will be evaluated.

The elements of the agency initiatives are as follows:

I. Preannounced Inspections

A. Basic Premises

1. Preannouncement of inspections is intended to be applied only to those drug, medical device and biologics, except for blood and plasma collection and processing firms, that meet the criteria for consideration. Preannouncement of inspections is not applicable for manufacturers of or other operators dealing in only food, blood or plasma product commodities.

2. The eligibility of an individual firm for preannounced inspection is at the discretion of the inspecting office using clearly described criteria. (See section I.B of this document.)

3. The implementation of this preannounced inspection program is intended to be flexible, based on appropriate considerations of the agency and the firm.

4. The preannouncement should generally be no less than 5 calendar days in advance of the inspection. Should a postponement be necessary, the decision as to the time of rescheduling rests with the investigator/team, but the new inspection date should not be later than 5 calendar days from the originally set date. Inspections may be conducted sooner than 5 calendar days if requested by the firm and if this date is acceptable to the investigator/team.

5. To participate in the preannouncement portion of the program, firms are expected to meet the commitment to have appropriate records and personnel available during the inspection.

6. Preannounced inspections will not limit an investigator's authority to conduct the inspection. Inspections will be as in depth as necessary.

B. Criteria for Consideration

The criteria to be used by the inspecting office to determine whether it is appropriate to preannounce a planned inspection will include:

1. Type of Inspection:

a. Premarket inspections (PMA, NDA, prelicense, etc.),

b. Foreign inspections,

c. Bioresearch monitoring inspections,

d. Quality system (QS) or good manufacturing practice (GMP) inspections:

Biennial routine inspections,

Initial inspections of newly registered establishments,

Initial inspections of new facilities, and

Initial inspections under new management and/or ownership.

e. Non-QS/GMP inspections other than:

Government Wide Quality Assurance (GWQAP) inspections with short deadlines,

Immediate and urgent responses to complaints,

Immediate and urgent followup to information from any source, and

Immediate hazard to health recall followup inspections.

f. Recall followup inspections at manufacturers/initial importers/U.S. designated agent.

2. Eligibility Criteria:

a. GMP inspections of firms with nonviolative histories (inspections classified as no action indicated (NAI) or voluntary action indicated (VAI)). For VAI, adequate corrections of conditions observed and listed on FDA–483 during the previous inspection were verified and did not lead to any further agency action.

b. To remain eligible for preannounced inspections, firms must have a history of having individuals and/or documents identified in previous preannounced inspections reasonably available at the time of inspection.

C. Procedures

1. The investigator or coordination group designated to conduct the inspection will contact or, if unavailable at the time of call, leave word for the most responsible individual at the facility.

2. Changes in dates should be kept to a minimum. If a change is made, a new date should be provided as soon as possible that will facilitate the inspection and accommodate the investigator's schedule.

3. Preannouncements are normally limited to the investigator (or lead investigator or coordinating group for a team inspection) informing the firm of an upcoming inspection. Usually it will be appropriate to inform the firm as to the purpose, estimated duration, and the number of agency personnel expected to take part in the inspection. The products or processes to be covered should also be described if this will facilitate and be consistent with the objectives of the inspection.

4. When known, specific records/personnel will be requested at the time the inspection is scheduled.

II. FDA–483 Annotations

A. Basic Premise

1. For inspections in all program areas, the investigator will annotate the FDA–483 at the time of issuance to acknowledge an establishment's promised or completed corrective action. The firm should review the annotations on this issued FDA–483 to ensure that there are no misunderstandings about promised corrective actions.

2. A reportable item will not be deleted from the FDA–483 because the establishment has promised or completed a corrective action. The investigator will continue to have the latitude to delete the observation if the establishment's response to the observation clearly shows that the observation is in error or to clarify the observation based on additional information provided.

3. FDA investigators will continue to report only significant observations on the FDA–483 and to discuss these and other less significant observations with the establishment's management.

B. Procedures

1. Investigators and analysts will discuss all observations with the management of the establishment as they are observed, or on a daily basis, to minimize surprises, errors, and misunderstandings when the FDA–483 is issued. This discussion will include those observations that may be written on the FDA–483 and oral observations. Industry should use this opportunity to ask questions about the observations, request clarification, and inform the inspection team what corrections have been or will be made as soon as possible during the inspection. Investigators are encouraged to verify the establishment's completed corrective actions as long as the verification does not unreasonably extend the duration of the inspection.

2. Where practical, FDA–483 observations should include the number of records of a given type examined, for example, "Two out of 50 records examined were * * *."

3. If the establishment has promised and/or completed a corrective action to an FDA–483 observation prior to the completion of the inspection, all copies of the FDA–483 should be annotated (either following each observation or at the end of the FDA–483) with one or more of the following comments, as appropriate:

Item # _____ reported corrected but not verified.

Item # _____ corrected and verified.

Correction of items_____, _____ and promised by 00/00/98.

No comment at this time.

4. If an observation made during a prior inspection is noted as not being corrected or is a reoccurring observation, it is appropriate to note this on the FDA–483.

5. All corrective action taken by the establishment and verified by FDA should be discussed in detail in the establishment inspection report and reported using the Compliance Achievement Reporting Systems (CARS).

III. Postinspection Notification

A. Basic Premise

1. FDA will issue postinspection notification to establishments regarding their compliance status for all inspections except foreign drug establishments. Foreign drug establishments have traditionally and will continue to receive correspondence from FDA upon evaluation and closure of each inspection.

2. The two new categories under which firms will receive postinspection notification are:

a. NAI situations where no FDA–483 was issued or only limited, less significant deficiencies were reported.

b. VAI situations where an FDA–483 was issued but all profile classes were found acceptable. In this circumstance, no further action is contemplated based on the inspection.

3. The postinspection notification letters that are issued under this pilot program will be mailed under the signature of the district director, in that district in which the establishment is located, or the Director of the Center of Compliance, as appropriate.

4. For those inspections where further action is being considered, FDA's existing modes of notification will continue to be used.

Dated: November 5, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30608 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0335]

Agency Information Collection Activities; Announcement of OMB Approval; Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled " Good Laboratory Practices (GLP) Regulations for Nonclinical Laboratory Studies" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 1998 (63 FR 51357), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0119. The approval expires on October 31, 2001.

Dated: November 4, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30609 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0373]

Agency Information Collection Activities; Announcement of OMB Approval; FDA Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled " FDA Recall Regulations" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 14, 1998 (63 FR 49130), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0249. The approval expires on October 31, 2001.

Dated: November 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30610 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Form #HCFA–R–0264–a,b,c,d,e]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services (DHHS), is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, part 1320 and is essential to the mission of the Agency. The Agency cannot reasonably comply with the normal clearance procedures because of a statutory deadline imposed by section 4319 of the Balanced Budget Act of 1997. Without this information, HCFA would not be able to properly implement all of the requirements set forth in the statute prior to the statute's sunset provision, causing a statutorily ordered deadline to be missed. Also, an unanticipated event has occurred, which may contribute to the missing of the statutory deadline. In particular, HCFA inadvertently referenced the incorrect statutory section in the location of the previous notice justifying the need for emergency clearance, published in the **Federal Register** on October 16, 1998, at 63 FR 55631. While the correct section of statute mandating the collection was denoted elsewhere in the notice, a commentor pointed out that the statutory citation specifically justifying the need for emergency clearance was incorrect. Therefore, HCFA is correcting its oversight by republishing its request for OMB review and approval of this collection. Lastly, emergency clearance is requested because public harm will likely result if the normal clearance procedures are followed. Studies by the Government Accounting Office and the Office of the Inspector General have found that Medicare payments for items of durable medical equipment are far greater than prices paid by other insurers and are sometimes greater than prices available to the general public at retail outlets. And, the payments provided under Medicare fee schedules often represent unreasonably high markups from actual prices paid by suppliers. The use of the standard OMB approval process will cause the nonfulfillment the statutory requirements set forth in section 4319 of the Balanced Budget Act of 1997 that seek to address these issues, resulting in public harm by allowing the unnecessary loss of public Medicare trust fund dollars.

HCFA is requesting OMB review and approval of this collection within six working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individual designated below within five working days.

During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New collection;

Title of Information Collection: Collection of DMEPOS Supplier Data in Support of the Medicare DMEPOS Competitive Bidding Demonstration using form (HCFA–R–0264) and Supporting Statute Section 4319 of the Balanced Budget Act of 1997;

Form No.: HCFA–R–0264;

Use: Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of categories of

durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six month period required between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. HCFA intends to operate the demonstration in two rounds, the first of two years, and the second of one year. HCFA has announced that it intends to operate its first demonstration in Polk County, Florida, which is the Lakeland-Winter Haven Metropolitan Area.

There are five forms that are required for the demonstration. The first, HCFA–R–0264A, will be filled out by suppliers to describe the attributes of their organization, including quality of services and financial data. Form HCFA–R–0264B will be filled out by suppliers for each of the categories of DMEPOS for which they bid, and includes information about their supply of that category of equipment or supplies, and the prices that they bid for each item in that category. Form HCFA–R–0264C will be used by site inspectors who gather information at the facilities of bidders. Form HCFA–R–0264D is used to gather data by telephone from referral sources of business for the bidding suppliers, and form HCFA–R–0264E is used to gather data by telephone from banks and other financial institutions for financial and business references.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not it should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Improve beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

HCFA plans to mail the bidding package, including the referenced forms A and B, to potential bidders at the first demonstration sites in Polk County, Florida on November 16, 1998, and to request bidder submissions by December 16, 1998. The remaining forms C, D and E will be used for inspections and reference checking in the three months following the bid submissions. These forms will be used by HCFA or its agents to gather information regarding bidders who have made financially attractive bids and are being evaluated for quality, financial stability, and other attributes for consideration as demonstration suppliers.

Frequency: Two times at each demonstration site;

Affected Public: Business or other for-profit, and not-for-profit institutions;

Number of Respondents: 2,040;

Total Annual Responses: 2,040;

Total Annual Hours: 25,260

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, OR E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designee referenced below, within five working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room: N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, Fax Number: (410) 786–0262, Attn: John Burke

or

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: November 10, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–30661 Filed 11–16–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December, 1998.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: December 2, 1998; 9 a.m.–5 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, December 2, from 9 a.m. to 5 p.m. Agenda items will include, but not be limited to: a report on the Anthrax Vaccine Expert Committee, a presentation on options for coverage of the Hepatitis A vaccine, an update on the Vaccine Safety Action Plan, reports from the Department of Justice, the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on December 2. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Melissa Palmer, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign up in Conference Rooms G and H on December 2. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Melissa Palmer at the address mentioned above.

Agenda items are subject to change as priorities dictate.

Dated: November 10, 1998.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 98–30676 Filed 11–16–98; 8:45 am]

BILLING CODE 4160–15–P

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health (NIH), announces the establishment of the Director's Council of Public Representatives (Committee).

This Committee will advise the Director, NIH on issues and concerns that are important to the broad development of NIH programmatic and research priorities. The Committee will also assist the NIH in enhancing the participation of the public in NIH activities that have an impact on the public, in increasing public understanding of the NIH and its programs, and in bringing important matters of public interest forward for discussion in public settings.

Unless renewed by appropriate action prior to its expiration, the charter for the Director's Council of Public Representatives will expire two years from the date of establishment.

Dated: November 9, 1998.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 98–30695 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel In Vivo Efficacy in Disease-Related Models.

Date: December 4, 1998.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North, Conference Room C, 6130 Executive Boulevard, Rockville, MD 20852.

Contact Person: Lalita D. Palekar, PHD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–622B, Rockville, MD 20892–7405, 301/496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Committee Management Office, NIH.

[FR Doc. 98–30699 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board Cancer Institute Special Emphasis Panel, NCI Special Emphasis Panel for Review of 2 R5 Applications/Education Grant, Teleconference Meeting.

Date: December 1, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Cancer Institute, 6130 Executive Blvd., Room 611–A, Rockville, MD 20892.

Contact Person: Mary Bell, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301/496–7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93,393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Committee Management Office, NIH

[FR Doc. 98–30701 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL EYE INSTITUTE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.

Date: December 7–8, 1998.

Open: December 7, 1998, 9:00 a.m. to 10:00 a.m.

Agenda: Opening remarks by the Director, Intramural Research Program, on matters concerning the intramural program of the NEI.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 7, 1998, 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Closed: December 8, 1998, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 9000 Rockville Pike, Building 10, Room 10B16, Bethesda, MD 20892.

Contact Person: Robert B. Nussenblatt, MD, Director, Intramural Research Program, National Eye Institute, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, 301–496–3123.

(Catalogue of Federal Domestic Assistance Program No. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Program Analyst, NIH CMO.

[FR Doc. 98–30698 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Novel Strategies for Modulating Antigen-Specific T Cells.

Date: December 2, 1998.

Time: 11:00 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Solar Building, Room 4C–05, 6003 Executive Boulevard, Rockville, MD 20852–7610, (Telephone Conference Call).

Contact Person: Allen C. Stoolmiller, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C05, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–496–7966.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30696 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Crystallographic Synchrotron Beamlines.

Date: December 9, 1998.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bruce K. Wetzel, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 9, 1998.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 98–30702 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 13, 1998, 4:00 PM to November 13, 1998, 5:00 PM, ANA Hotel, 2401 M Street, NW, Washington, DC, 20037 which was published in the **Federal Register** on November 4, 1998, 63FR213.

The meeting will be held at the Washington Monarch Hotel. The times and dates will remain the same. The meeting is closed to the public.

Dated: November 9, 1998.

Anna Snouffer,

Program Analyst, NIH CMO.

[FR Doc. 98–30697 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, November 12, 1998, 8:00 a.m. to November 13, 1998, 3:00 p.m., ANA Hotel, 2401 M Street, NW, Washington, DC 20037 which was published in the **Federal Register** on November 4, 1998, 63 FR 213.

The meeting will be held at the Washington Monarch Hotel. The times and dates remain the same. The meeting is closed to the public.

Dated: November 9, 1998.

Anna Snouffer,

Program Analyst, NIH CMO.

[FR Doc. 98–30700 Filed 11–16–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Alaska Land Managers Forum

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. (1988) and 41 CFR 101–6.1015(b). The Department of

the Interior hereby gives notice of a public meeting of the Alaska Land Managers Forum to be held on Wednesday, December 2, 1998, beginning at 9:15 a.m. It will take place in Room 220 of the South Kaloa Building, 1689 C Street, Anchorage, Alaska. This meeting will be held to receive and discuss work group reports on recreation and tourism, and announce winners of the 1998 awards program. The agenda will also include several briefing items.

FOR FURTHER INFORMATION CONTACT: Ronald B. McCoy at (907) 271–5485 or Sally Rue at (907) 465–4084.

Ronald B. McCoy,

Office of the Secretary, Department of the Interior.

[FR Doc. 98–30715 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–RP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. 003483–6

Applicant: Biological Resources Division, Pacific Island Ecosystems Research Center, Hawaii National Park, Hawaii.

The applicant requests a permit to take (capture, harass, band, mark, radio-tag, collect blood, fecal samples, and feathers, hold, transport, release, and recapture,) the palila (*Loxioides bailleui*), Hawaii 'akepa (*Loxops coccineus coccineus*), akiapola'au (*Hemignathus munroi*), Hawaii creeper (*Oreomystis mana*), large Kauai solitaire (=kama'o) (*Myadestes myadestinus*), small Kauai solitaire (=*puaiohi*) (*Myadestes palmeri*), Kauai 'o'o or 'o'o'a'a (*Moho braccatus*), Kauai 'akialoa (*Hemignathus procerus*), Kauai nukupu'u (*Hemignathus lucidus hanapepe*), Molokai creeper (=*kakawahie*) (*Paroreomyza flammea*), Oahu creeper (=*alauwahio*) (*Paroreomyza maculata*), Molokai thrush (=oloma'o) (*Myadestes lanaiensis rutha*), 'o'u (*Psittirostra psittacea*), crested honeycreeper (='*akohekohe*) (*Palmeria dolei*), Maui 'akepa (*Loxops coccineus ochraceus*), Maui parrotbill (*Pseudonestor xanthophrys*), po'ouli (*Melamprosops phaeosoma*), Maui nukupu'u (*Hemignathus lucidus affinis*), Hawaiian dark-rumped petrel (='*ua'u*) (*Pterodroma phaeopygia sandwichensis*), Hawaiian hawk (='io) (*Buteo solitarius*), and nightingale reed-warbler (*Acrocephalus luscinia*), and take (capture, band, weigh, collect blood, fecal samples, and feathers, attach radio transmitters, release, recapture) the Laysan duck (*Anas laysanensis*) for ecological and demographic studies on the Islands of Hawaii, Kauai, Oahu, Maui, Molokai, Lanai, Saipan, Commonwealth of the Northern Mariana Islands, and Laysan for the purpose of enhancing their survival. Notwithstanding the collection of blood from Laysan ducks, the applicant has previously conducted all of the above activities under subpermit BRDHFS–5.

Permit No. 003249–0

Applicant: William E. Stewart, La Mesa, California.

The applicant requests a permit to take (harass) the California least tern (*Sterna antillarum browni*) in conjunction with predator control activities in San Diego County, California, for the purpose of enhancing its survival.

Permit No. 769304

Applicant: Jeffrey Halstead, Bighorn Institute, Palm Desert, California.

The applicant requests an amendment to his permit to take (capture, mark, collect biological data) the Fresno kangaroo rat (*Dipodomys nitratoides exiles*) in Madera and Kings counties, California, in conjunction with scientific research and surveys, for the purpose of enhancing its survival.

Permit No. 804864

Applicant: Kent R. Beaman, Beaman Biological Consulting, Loma Linda, California.

The applicant requests a permit renewal/amendment to take (presence/absence survey) the California gnatcatcher (*Polioptila californica*) and the Quino checkerspot butterfly (*Euphydryas editha quino*) throughout Riverside, Orange, San Diego, and Los Angeles counties for the purpose of enhancing their survival.

Permit No. 744878–5

Applicant: Institute For Wildlife Studies, Arcata, California.

The applicant requests a permit amendment to take (harass by handling, measuring, and banding) the San Clemente loggerhead shrike (*Lanius ludovicanus mearnsi*) throughout its range on San Clemente Island, California, for the purpose of enhancing its survival.

Permit No: 780566

Applicant: Ruben S. Ramirez, Jr., Diamond Bar, California.

The applicant requests a permit renewal to take (capture by pitfall trap, and attach radio telemetry) the arroyo southwestern toad (*Buffo microscaphus californicus*) throughout its range for the purpose of enhancing its survival.

Permit No. 807078–3

Applicant: Point Reyes Bird Observatory, Stinson Beach, California.

The applicant requests a permit amendment to take (band and monitor) the San Clemente loggerhead shrike (*Lanius ludovicianus mearnsi*) on San Clemente Island, California, for the purpose of enhancing the survival of the species.

Permit No. 796012

Applicant: Debra Crowe, CH2MHILL, Sacramento, California.

The applicant requests a permit renewal/amendment to take (collect) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) and Riverside fairy shrimp (*Streptocephalus wootonii*) within vernal pools in the Central Valley/Foothills of California, for the purpose of enhancing their survival.

Permit No. 821229

Applicant: David Crawford, Impact Sciences, Inc., Agoura Hills, California.

The applicant requests a permit amendment to take (presence/absence survey) the Delhi Sands flower-loving fly (*Raphionmidas terminatus abdominalis*) in San Bernardino and Riverside counties, California, for the purpose of enhancing its survival.

Permit No. 789253

Applicant: Brian D. Foster, Coronado, California.

The applicant requests permit renewal and amendment to take (mark nests) the California least tern (*Sterna antillarum* (=*albifrons browni*) and western snowy plover (*Charadrius alexandrinus nivosus*) within the State of California, for the purpose of enhancing their survival.

Permit No. 800930

Applicant: Viviane Marquez, Marquez and Associates Biological Consultants, Chula Vista, California.

The applicant requests a permit renewal to take (presence/absence

survey) the southwestern willow flycatcher (*Empidonax traillil extimus*) in San Diego, Riverside, Orange, and Imperial counties, California, for the purpose of enhancing its survival.

DATES: Written comments on these permit applications must be received on or before December 17, 1998.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Recovery, Planning and Permits, Ecological Services, Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated November 6, 1998.

Thomas Dwyer,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 98–30660 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Atlantic Coastal Fisheries Cooperative Management Act; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: National Marine Fishery Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) will hold a joint meeting to discuss coordination of activities that support Atlantic States Marine Fisheries Commission coastal fisheries management plans under the Atlantic Coastal Fisheries Cooperative Management Act and the Atlantic Striped Bass Conservation Act. The meeting is open to the public.

DATES: The meeting will convene on December 10, 1998 at 1 p.m. and will adjourn at approximately 4:30 p.m.

ADDRESSES: U.S. Fish and Wildlife Service, 4401 N. Fairfax Dr., Arlington, VA. 22203.

FOR FURTHER INFORMATION CONTACT: Morgan McCosh, Fisheries Program—Division of Fish and Wildlife Management Assistance, USFWS 4401 N. Fairfax Dr., Arlington, VA, 22203. Telephone: (703) 358–1718.

SUPPLEMENTARY INFORMATION: NMFS–USFWS hold semi-annual coordination meetings established under a Memorandum of Understanding to develop and implement a program to support interstate fishery management efforts associated with the Atlantic Coastal Fisheries Cooperative Management Act (Pub. L. 103–206). The main agenda items for this meeting are discussion of the 1997–1998 Workplan; an update on implementation of the Atlantic Coast Cooperative Statistics Program; status of cooperative coastal/citizen tagging efforts; distribution of FY 1999 Atlantic Coastal Act funds; Socio-economic study and other reports; and ASMFC Fishery Management Plan work for 1999.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Morgan McCosh (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting date.

Dated: November 12, 1998.

Rowan Gould,

Acting-AD-Fisheries, Fish and Wildlife Service.

[FR Doc. 98–30732 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Plan for the Use and Distribution of the Red Lake Band of Chippewa Indians of the Red Lake Reservation in Minnesota Indian Judgment Funds in Docket Nos. 189–A and 189–B Before the United States Court of Federal Claims

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the plan for the use and distribution of judgment funds awarded to the Red Lake Band of Chippewa Indians in Docket Nos. 189-A and 189-B is effective as of July 28, 1998.

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, MS–4631–MIB, 1849 C Street, NW, Washington, D.C. 20240. Telephone number: (202) 208–2475.

SUPPLEMENTARY INFORMATION: The Act of October 19, 1973, as amended (25 U.S.C. 1401 *et seq.*), requires that a plan be prepared and submitted to Congress for the use and distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on September 27, 1997, in satisfaction of the award granted to the Red Lake Band of Chippewa Indians before the United States Court of Federal Claims in Docket Nos. 189–A and 189–B. The plan for the use and distribution of the funds was submitted to Congress on May 1, 1998, by letters dated April 28, 1998. The receipt of the letters by the Senate and the House of Representatives was recorded in the Congressional Record published on May 5, 1998. The plan became effective on July 28, 1998, since a joint resolution disapproving it was not enacted. The plan reads as follows:

Plan—For the Use and Distribution of Red Lake Band of Chippewa Judgment Funds in Docket 189–A and 189–B in the United States Court of Claims

The funds appropriated on September 27, 1997, in satisfaction of an award granted to the Red Lake Band of Chippewa Indians of the Red Lake Reservation in Minnesota in Docket 189–A and 189–B before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses (including interest for amounts advanced or borrowed by the Red Lake Band), shall be distributed as herein provided.

A. Per Capita Distribution

Eighty percent of the Red Lake Band of Chippewa Indians share of the funds remaining after expenses in this award shall be distributed in the form of per capita payments (in sums as equal as possible) to all persons who were born on or prior to and living on January 27, 1998, and who are enrolled members of the Red Lake Band of Chippewa Indians.

The per capita shares of living competent adults shall be paid directly to them, with the exception that the per capita shares of nursing home residents and incarcerated persons shall be paid into Individual Indian Money accounts for withdrawal upon application. The per capita shares of deceased individual beneficiaries shall be determined in accordance with 43 CFR, Subpart D. Per capita shares of legal incompetents and minors shall be handled as provided in

25 U.S.C. 1403(b)(3), except that by Order of the Red Lake Tribal Court, minors' funds may be withdrawn for damages, reparations or restitutions to victims of crime.

B. Programming

Twenty (20) percent of the funds remaining after expenses shall be invested by the Secretary to be used by the Red Lake Band of Chippewa Indians on a budgetary basis on programs which may include but are not limited to: tribal administration and operations, economic development, community development, tribal education programs and land acquisition.

C. General Provisions

The Secretary, in arranging for per capita payments to be made, shall withhold sufficient shares for individuals whose eligibility may be in question. Those shares shall be held in a separate interest bearing account pending determination of enrollment appeals. Funds not used to pay shares and pro rata interest to successful applicants shall be available for use in the programming aspect of the plan.

None of the funds distributed per capita or made available under this plan for programming shall be subject to Federal or State income taxes, nor shall such funds nor their availability be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act, or except for per capita shares in excess of $2,000 any Federal or federally assisted programs.

This notice is published in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Dated: November 6, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–30632 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Construction of Replacement Education Facilities

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Revised Instructions and Ranking Criteria.

SUMMARY: The Bureau of Indian Affairs (BIA) is announcing its intention to revise the instructions governing the priority ranking process for construction of replacement education facilities and the criteria used in ranking applications. The revised process will not provide for new school starts nor grade level expansions, but will include application ranking criteria for facilities master plans, which can affect application point values and ranking order. The revised procedures will provide more continuity, objectivity and accountability in the priority ranking for construction of replacement education facilities; address the handling of emergency needs; and accommodate federal/tribal financial partnerships for education facilities construction projects. (Catalog of Federal Domestic Assistance Program Number: 15.062 "Replacement and Repair of Indian Schools.")

DATES: Comments on the proposed revisions must be received on or before December 1, 1998.

ADDRESSES: Direct written comments on the proposed revisions to Dr. Kenneth G. Ross, Special Assistant to the Director, Office of Indian Education Programs, 201 Third St., NW, Suite 510, Albuquerque, New Mexico 87102.

Copies of the proposed revised instructions and ranking criteria are available upon request from the BIA Office of Indian Education Programs at 1849 C Street NW, MS–3512 MIB, Washington, DC 20240 or at 201 Third St., NW, Suite 510, Albuquerque, New Mexico 87102.

The proposed revisions are also available from BIA Area and Education line offices and from the BIA Facilities Management and Construction Center, 201 Third St. NW, Suite 500, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth G. Ross, Special Assistant to the Director, Office of Indian Education Programs, 201 Third St. NW, Suite 510, Albuquerque, New Mexico 87102, (505) 766–3850.

SUPPLEMENTARY INFORMATION: This Notice is published under authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs in the Departmental Manual at 209 DM 8. 25 U.S.C. 2005(c) directs the BIA to publish, in the **Federal Register**, the system used to determine priorities for school construction projects and to submit a current priority ranking for school construction projects at the time any budget request is presented to Congress. The Conference Report for the FY1992 Interior and Related Agencies Appropriation Act, House Report No. 256, 102d Cong., 1st Sess. 46 (1991), indicated that Congress desired the Department to continue efforts to revise the priority ranking process for new school construction. The Conference Report stated that emphasis should be given to tribal consultation and to improving the objectivity of the ranking process, to providing continuity to the priority ranking list, and to providing procedures for handling emergency needs. The BIA plans to hold tribal consultation hearings on the proposed revisions. Tribes with schools under their jurisdiction and BIA-funded school boards shall receive advance, written notice of the consultation hearing schedule.

Dated: November 6, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–30651 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–98–7122–00–8829]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the Operation of the 1998 BEST in the DESERT TERRIBLE's TOWN "250" off road desert race.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1998 BEST in the DESERT TERRIBLE'S TOWN "250" and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 a.m. December 4, 1998, through 6:00 p.m. December 6, 1998, Pacific Standard Time.

Closure Area: As described below, an area within T. 12 S. to T. 21 S.R. 46 E. to R. 55 E.

1. The closure is from the California, Nevada border on the west side, Nevada test site boundary on the east. Town of Beatty on the north, Clark County Line on the south.

Exceptions to the closure are: State Route 160; US 95.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the courses are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure, unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle including an off-highway vehicle (OHV), which is legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law enforcement Officer or fail to follow their orders or direction.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR part 8340, subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR part 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf Recreation Manager or Ron Crayton or Ken Burger BLM Rangers, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: November 5, 1998.

Michael F. Dwyer,

Las Vegas Field Office Manager.

[FR Doc. 98–30634 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Lumber River 2 (a)(ii) Wild and Scenic River Eligibility Report, Environmental Assessment, and Finding of No significant Impact, Lumber River, North Carolina

AGENCY: National Park Service, DOI.

ACTION: Publication of final report and recommendation.

SUMMARY: The National Park Service is publishing the final study report recommending designation of 81 miles of the Lumber River, North Carolina, as a state and locally-managed component of the National Wild and Scenic Rivers System.

ADDRESSES: Copies of the final report are available from: Mary Rountree, National Park Service, 100 Alabama Street, NW, Atlanta, Georgia, 30303, telephone (404) 562–3175.

FOR FURTHER INFORMATION CONTACT: Mary Rountree or Wallace Brittain, National Park Service, 100 Alabama Street, NW, Atlanta, Georgia, 30303, telephone (404) 562–3175.

SUPPLEMENTARY INFORMATION: On April 15, 1996, North Carolina Governor James Hunt petitioned Interior Secretary, Bruce Babbitt to include 115 miles of the Lumber River (from State Route 1412/1203 to the North Carolina and South Carolina border) in the National Wild and Scenic Rivers System). Under Section 2(a)(ii) of the National Wild and Scenic Rivers Act (Pub. L. 90–542, as amended), the Secretary has the authority to add a river to the national system at the request of a state, provided the following conditions have been met: the river possesses values of regional or national significance and is free-flowing; the river has been designated as a state wild and scenic river; and the state has an adequate program to manage the river and permanently protect the river's outstanding resources.

The National Park Service found that two reaches of the river, totaling 81 miles, met all requirements for wild and scenic river designation. The upper reach extends from State Route 1412/1203 to the Scotland and Robeson County lines, at the end of Maxton Airport Swamp (22 miles) and the lower reach begins at Back Swamp and runs through the city of Lumberton and the town of Fair Bluff, to the North Carolina and South Carolina border (59 miles). The National Park Service found that the remaining reach of the river (34 miles, from the Scotland and Robeson County to Back Swamp) does not have adequate state or local mechanism that ensure future protection of the river's outstanding resources in accordance with the Wild and Scenic Rivers Act.

The National Park Service classified segments of the 115-mile river nomination as wild, scenic, or recreational, in accordance with Section 2(b) of the Wild and Scenic Rivers Act. The river segment from State Route 1412/1203 to the Scotland and Robeson County lines was classified as scenic. The segment (not recommended for designation) from the Scotland and Robeson County lines to Back Swamp was classified as scenic. The segment encompassing the city of Lumberton and the city's Extraterritorial Jurisdiction (from Back Swamp to Jacob Swamp Canal) was classified as recreational. The segment from Jacob Swamp Canal to the upstream town limits of the town of Fair Bluff was classified as scenic. The segment from the downstream town limits of Fair Bluff to the North Carolina and South Carolina border was classified as recreational.

The National Park Service found that designation of the Lumber river as a component of the National Wild and Scenic Rivers System would not significantly impact the quality of the natural and human environment and that an environmental assessment fulfills the requirements of the national Environmental Policy Act.

Dated: October 26, 1998.

Suzette Kimball,

Associate Regional Director, Natural Resource Stewardship & Science.

[FR Doc. 98–30650 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 7, 1998. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 2, 1998.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Cleburne County

Titan II ICBM Launch Complex 373–3 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), S of AR 16;3.3 mi. E of jct. with AR 25, Heber Springs vicinity, 98001436

Faulkner County

Titan II ICBM Launch Complex 374–5 Site (Cold War Reseurces Associated with the 308th Strategic Missile Wing in Arkansas MPS), E of US 65; 0.4 mi. N of jct. with E. Cadron Ridge Rd., Springhill vicinity, 98001433

Titan II ICBM Launch Complex 374–1 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), SE of jct. of AR 36 and AR 310, Mount Vernon vicinity, 98001435

Titan II ICBM Launch Complex 374–6 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), O.3 mi. N of Republican Rd., 0.8 mi. E of US 65, Republican vicinity, 98001437

Pulaski County

Mims—Breedlove—Priest—Weatherton House, 2108 Beechwood Ave., Little Rock, 98001432

Van Buren County

Titan II ICBM Launch Complex 374–7 Site (Cold War Resources Associated with the 308th Strategic Missile Wing in Arkansas MPS), W. of US 65; 1.7 mi. N of jct. with AR 124, Southside vicinity, 98001434

CONNECTICUT

Fairfield County

Benedict House and Shop, 57 Rockwell Rd., Ridgefield, 98001440

Hartford County

Naubuc Avenue—Broad Street Historic District, Roughly along Broad St. and Naubuc Ave., East Hartford, 98001439

New London County

Lester, Timothy, Farmstead, Jct. of Crary, Browning and Terry Rds., Griswold, 98001441

LOUISIANA

Washington Parish

Warren House, 29296 LA 25 N, Franklinton vicinity, 98001442

MASSACHUSETTS

Middlesex County

Belmont Railroad Station, 1 Common St., Belmont, 98001443

MINNESOTA

Pope County

Lakeside Pavilion, S. Lakeshore Dr. and First Ave. SW, Glenwood, 98001444

NEW YORK

Dutchess County

Poughkeepsie Savings Bank (Poughkeepsie MRA), 21 Market St., Poughkeepsie, 98001445

TENNESSEE

Anderson County

Ritz Theatre and Hoskins Rexall Drug Store No. 2, 111–121 N. Main St., Clinton, 98001446

UTAH

Summit County

House at 60 Sampson Ave. (Mining Boom Era Houses TR), 60 Sampson Ave., Park City, 98001449

Utah County

American Fork Historic District, Roughly along 100 S, from 300 W to 200 E, American Fork, 98001447

Eddington, Dr. Elmo and Rhea, House (Lehi, Utah MPS), 617 North 100 East, Eehi, 98001459

Gardner, James H. and Rhoda H., House (Lehi, Utah MPS), 187 East 300 North, Lehi, 98001454

Goodwin, Samuel I. and Olena J., House (Lehi, Utah MPS), 80 West 400 North, Lehi, 98001453

Knudsen, Christian and Sarah, House (Lehi, Utah MPS), 123 S, Center St., Lehi, 98001458

Lehi Main Street Historic District (Lehi, Utah MPS), Roughly along Main St., between 200 West and Center Sts., and 51 N. Center St., Lehi, 98001450

Lehi North Branch Meetinghouse (Lehi, Utah MPS), 1190 North 500 West, Lehi, 98001455

Lehi Ward Tithing Barn—Centennial Hall (Lehi, Utah MPS), 651 North 200 East, (rear), Lehi, 98001456

People's Co-op Buildin (Lehi, Utah MPS), 151 E. State St., Lehi, 98001457

Smith, John Y. and Emerette C., House (Lehi, Utah MPS), 518 North 100 East, Lehi, 98001452

Webb, Thomas and Mary, House (Lehi, Utah MPS), 388 North 200 East, Lehi, 98001451

Washington County

Graff, George and Bertha, House (Santa Clara, Utah MPS), 2865 Santa Clara Dr., Santa Clara, 98001461

Hafen, Hans George, House (Santa Clara, Utah MPS), 3003 Santa Clara Dr., Santa Clara, 98001462

Reber, Frederick and Anna Maria, House (Santa Clara, Utah MPS), 2988–2990 Santa Clara Dr., Santa Clara, 98001448

Santa Clara Tithing Company (Santa Clara, Utah MPS), 3105 Santa Clara Dr., Santa Clara, 98001460

WEST VIRGINIA

Gilmer County

Gilmer County Poor Farm Infirmary, Off Sycamore Rd. on Recreation Center Rd., Glenville, 98001465

Glenville Truss Bridge, Conrad Court, over Little Kanawha R., Glenville, 98001477

Ruddell General Store, 6 Court St., Glenville, 98001469

Stouts Mill Bridge, Duskcamp Rd., over Little Kanawha R., Stouts Mill, 98001476

Whiting House, 301 E. Main St., Glenville, 98001480

Hardy County

Stump Family Farm, WV 7, Southfork of the Potomac R., Moorefield vicinity, 98001471

Jefferson County

Rellim Farm, Leetown Rd., S of WV 9, Kearneysville, 98001467

Marshall County

Cameron Downtown, Roughly Bounded by Church St., Waynesburg Ave., Main St., and Park St., Cameron, 98001473

Monongalia County

Morgantown Wharf and Warehouse Historic District, Roughly along Monongahela R. from Warren St. to Walnut St., Morgantown, 98001466

Monroe County

Nickell Homestead and Mill, McClung Rd., Ronceverte vicinity, 98001472

Morgan County

Ambrose Chapel, Winchester Grade Rd., Stotlers Crossroads vicinity, 98001470

Nicholas County

Halstead, Capt. John, Farm, Whitewater Rd., Cty Rd. 9, Kesslers Cross Lanes vicinity, 98001475

Lockwood Historic District, Roughly along WV 39, Lockwood, 98001468

Mason—Drennen House, Jct. of WV 39 and WV 129, Drennen vicinity, 98001474

Randolph County

Baldwin—Chandlee Supply Cmpany—Valley Supply Company, Jct. of 11th and Railroad Sts., Elkins, 98001478

Irons, Dr. John C., House, 116 Second St., Elkins, 98001479

WISCONSIN

Shawano County

Laney School, N1675 Laney Rd., Maple Grove, 98001463

Vernon County

Tollackson Mound Group (Boundary Increase), Address Restricted, Harmony vicinity, 98001464

[FR Doc. 98–30679 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Nebraska in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Nebraska in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detailed assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma.

In 1941, human remains representing six individuals were recovered from site 25CD7 during excavations at the Wynot Ossuary, Cedar County, NE conducted by R.B. Cuming during excavations conducted by the WPA. No known individuals were identified. The 16 associated funerary objects include an iron knife blade fragment, glass beads, and leather fragments.

Based on the presence of green and red staining and preservation of the bone, these burials have been determined to date to the historic period. Based on the location and types of associated funerary objects present, these individuals have been determined to be Native American. Because historic Ponca burials are present in adjacent Knox County, NE, these human remains have also been attributed to the Ponca.

At an unknown date, human remains representing one individual was removed from a locality known as "Devil's Nest" (Site 25KX0), Knox County, NE by person(s) unknown and presented to the University of Nebraska. No known individual was identified. No associated funerary objects are present.

Based on copper staining on the bones, anterior wear, and femoral abduction suggesting horseback riding, this individual has been determined to be Native American from the historic period. Based on the presence of historic Ponca cemeteries in Knox County, NE, this individual is being affiliated with the Ponca.

Based on the above mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seven individuals of Native American ancestry. Officials of the University of Nebraska have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 16 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma.

This notice has been sent to officials of the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Priscilla Grew, University of Nebraska, 302 Canfield Administration Building, Lincoln, NE 68588-0433; telephone: (402) 472-3123, before December 17, 1998. Repatriation of the human remains and associated funerary objects to the Ponca Tribe of Nebraska and the Ponca Tribe of Oklahoma may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: November 5, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30680 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR.

A detailed assessment of the human remains was made by Oregon State Museum of Anthropology (OSMA) professional staff in consultation with representatives of the Confederated Tribes of the Umatilla Reservation.

In 1957 or earlier, human remains representing two individuals were removed from the area of Upper Birch Creek or Pierson Creek in Umatilla County, OR and donated to OSMA by a donor whose name is withheld at the request of OSMA. No known individuals were identified. No associated funerary objects are present.

In 1972, human remains representing five individuals were recovered from an eroding area of the west bank of the Snake River at Farewell Bend, Malheur County by officers from the Malheur County Sheriff's Office and transferred to the OSMA. No known individuals were identified. The one associated funerary object is a basalt flake.

Based on skeletal morphology and archeological context, the individuals from the two sites above have been identified as Native American. Historical documents, ethnographic sources, and oral history indicate that Cayuse people have occupied this north-eastern area of Oregon surrounding these two sites since precontact times. The Cayuse are one of the Confederated Tribes of the Umatilla Reservation.

In 1965, human remains representing two individuals were recovered from site 35UM35, within the town of Umatilla, OR during legally authorized excavations conducted by University of Oregon archeologists. No known individuals were identified. The approximately five associated funerary objects include one pounder, a piece of quartzite, bones of a gray fox, fragments of mussel shell, and unworked flakes.

In 1985, human remains representing one individual were recovered along the Pendleton-John Day Highway on the north bank of Granite Creek, Umatilla County, OR by an Oregon Department of Transportation construction crew. No known individual was identified. No associated funerary objects are present.

Based on skeletal morphology and archeological context, the individuals from the two sites above have been identified as Native American. Historical documents, ethnographic sources, and oral history indicate that Umatilla people have occupied this north-eastern area of Oregon surrounding these two sites since precontact times. The Umatilla are one of the Confederated Tribes of the Umatilla Reservation.

Based on the above mentioned information, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of ten individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the three objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Confederated Tribes of the Umatilla Reservation.

This notice has been sent to officials of the Confederated Tribes of the Umatilla Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Melvin Aikens, Oregon State Museum of Anthropology, 1224 University of Oregon, Eugene, OR 97403-1224; telephone: (541) 346-5115, before December 17, 1998. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Reservation may begin after that date if no additional claimants come forward.

Dated: November 4, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30681 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item from the Island of O'ahu, HI in the Possession of the Milwaukee Public Museum, Milwaukee, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Milwaukee Public Museum, Milwaukee, WI which meets the definition of "unassociated funerary object" under Section 2 of the Act.

The cultural item is a round basalt game stone known as an *ulumaika*.

Prior to 1913, Mr. M.B. Wengler excavated the *ulumaika* from a grave in the suburbs of Honolulu on the Island of O'ahu, HI. Also prior to 1913, Mr. Wengler sold or traded this *ulumaika* to Mr. William H. Ellsworth of Milwaukee, WI. In 1913, Mr. Ellsworth donated this *ulumaika* to the Milwaukee Public Museum.

Based on known Native Hawaiian tradition and practices, this cultural item is consistent with Native Hawaiian funerary objects. Collections documentation and consultation evidence presented by Hui Malama I Na Kupuna O Hawai'i Nei support the conclusion that this cultural item was placed with human remains.

Officials of the Milwaukee Public Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Milwaukee Public Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and Hui Malama I Na Kupuna O Hawai'i Nei.

This notice has been sent to officials of the Hui Malama I Na Kupuna O Hawai'i Nei and the Office of Hawaiian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Ann McMullen, Ph.D., Curator of North American Ethnology, Milwaukee Public Museum, 800 West Wells Street, Milwaukee, WI 53233; telephone: (414) 278-2786; fax: (414) 278-6100 before December 17, 1998. Repatriation of this object to Hui Malama I Na Kupuna O Hawai'i Nei may begin after that date if no additional claimants come forward.

Dated: November 5, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30682 Filed 11–16–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 30, 1998, and published in the **Federal Register** on July 9, 1998, (63 FR 37139), Research Biochemicals, Inc., which has changed its name to Sigma Aldrich Research Biochemicals, Inc., One Three Strathmore Road, Attn: Richard A. Milius, PhD, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
4–Bromo–2, 5–dimethoxyamphetamine (7391)	I
4–Bromo–2, 5–dimethoxyphenethylamine (7392)	I
2, 5–Dimethoxyamphetamine (7396)	I
3, 4–Methylenedioxyamphetamine (7400)	I
N–Hydroxy–3, 4–methylenedioxyamphetamine (7402)	I
3, 4–Methylenedioxy–N–ethylamphetamine (7404)	I
3, 4–Methylenedioxymethamphetamine (7405)	I
1–[1–(2–Thienyl) cyclohexyl]piperidine (7470)	I
Heroin (9200)	I
Amphetamine (1100)	II
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II

The firm plans to manufacture the listed controlled substances for laboratory reference standards and neurochemicals.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Research Biochemicals, Inc. to manufacture the listed controlled

substances is consistent with the public interest at this time. DEA has investigated Research Biochemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: October 19, 1998.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 98–30631 Filed 11–16–98; 8:45 am]

BILLING CODE 4410–09–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Cost Accounting Standards Board; Notice of Open Public Meeting

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Notice.

SUMMARY: The Cost Accounting Standards Board (CASB) hereby extends an invitation for interested parties to attend an open meeting with the Board and its staff on Tuesday, December 1 and Wednesday, December 2, 1998. Currently, the Board anticipates holding the December 1 meeting from 8:30 a.m. until 12:30 p.m., and the December 2 meeting from 1–5 p.m. These meetings will be held in room 2010 of the New Executive Office Building, 725 17th Street, NW, Washington, DC. During these meetings, the Board would like to hear the views of interested parties concerning various topics on the Board's current agenda of issues meriting regulatory consideration. In addition, the Board welcomes the views of interested parties concerning topics they believe the Board should undertake in light of recent changes in the cost-based Federal contracting/accounting environment (including the impact of acquisition reform).

DATES: The meetings will be held on December 1, 1998, from 8:30 a.m. to 12:30 p.m. and on December 2, 1998, from 1 p.m. to 5 p.m. Due to time and seating considerations, individuals desiring to attend these meetings, or to make a presentation before the Board, must notify the CASB staff, in writing, no later than November 23, 1998.

ADDRESSES: The meetings will be held in room 2010, New Executive Office Building, 725 17th Street, NW., Washington, DC. Requests to attend these meetings must be in writing, and must be addressed to Ms. Barbara Diering, Special Assistant, Cost Accounting Standards Board, Office of Federal Procurement Policy, 725 17th Street, NW, room 9001, Washington, DC 20503. Attn: CASB Docket No. 98–01.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Diering, Special Assistant, Cost Accounting Standards Board (telephone 202–395–3256).

SUPPLEMENTARY INFORMATION: The Cost Accounting Standards Board will hold open public meetings on Tuesday, December 1, and Wednesday, December 2, 1998. The purpose of these public meetings will be to hear the views of interested persons concerning various topics on the Board's current agenda of regulatory issues, as well as to consider the views of interested persons concerning the Board's potential future agenda in light of recent changes in the cost-based Federal contracting/accounting environment.

To gain admittance, individuals desiring to attend these meetings must notify the Board's staff, in writing, at the above listed address, by the deadline noted. If an individual desires to make a presentation to the Board at either of these sessions, he or she is required to submit a brief outline of the presentation when making the request. In addition, a full written statement must be submitted one week prior to these meetings. In lieu of making an oral presentation, individuals may submit a written statement for the record.

To obtain entrance to the New Executive Office building, all potential attendees must include in their request: (1) Their full name; (2) organizational affiliation (if any); (3) date of birth; (4) social security number; and, (5) country of citizenship. Also, due to time and potential space limitations in the meeting room, the Board will notify individuals of their attendance and/or speaking status (date and time) prior to the meeting. Time allocations for oral presentations will depend on the number of individuals who desire to appear before the Board.

AGENDA: The Board, in particular, solicits presentations on the following:

I. *Comments on topics where new promulgations are currently under consideration by the Board.*
   1. Accounting for the cost of post-retirement benefit plans other than pension plans sponsored by Government contractors.
   2. Cost accounting practice changes.
   (a) The definition of what constitutes a change to a cost accounting practice.
   (b) The Board's consistency requirements.
   (c) The Board's contract price and cost adjustment requirements for resolving the cost impact of a voluntary change to a cost accounting practice (cost impact process).
   (d) Circumstances where an exemption from the Board's contract price and cost adjustment requirements for existing CAS-covered contracts or subcontracts might be appropriate.
   3. Accounting for the cost of employee stock option plans under government contracts.
   4. Accounting for the cost of internally developed and used computer software.
   5. Allocation of selling and marketing costs.

II. Suggested additional changes to existing Standards or regulations not listed above (e.g., CAS contract applicability thresholds; funding criteria for validation of contractor long-term liabilities; etc.).

III. Suggestions for broader guidelines that the Board might follow in the future in selecting its agenda items in light of changes in the Federal cost-based contracting/accounting environment (e.g., the impact of acquisition reform).

Also, within given time constraints, the Board will be pleased to hear comments on any other matter that may be of interest to affected parties.

Richard C. Loeb,

Executive Secretary, Cost Accounting Standards Board.

[FR Doc. 98–30619 Filed 11–16–98; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m., Thursday, November 19, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

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STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Five (5) Personnel Actions. Closed pursuant to exemptions (2) and (6).
2. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
3. Administrative Action under Section 109 of the Federal Credit Union Act. Closed pursuant to exemption (8).

RECESS: 10:00 a.m.

TIME AND DATE: 10:30 a.m., Thursday, November 19, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from Two (2) Federal Credit Unions to Convert to Community Charters.
2. Request from a Corporate Federal Credit Union for a National Field of Membership (FOM) Amendment.
3. NCUA's 1999/2000 Operating Budget.
4. Proposed Rule: Amendments to Part 712, NCUA's Rules and Regulations, Credit Union Service Organizations (CUSOs).
5. Interim Final Rule: Amendments to Part 708a, NCUA's Rules and Regulations, Mergers/Conversions of Federally-Insured Credit Unions to Non-Credit Union Status.
6. Proposed Operating Fee Scale.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–30772 Filed 11–12–98; 5:00 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section A (Education & Access category) to the National Council on the Arts will be held on December 7–10, 1998. The panel will meet from 9:30 a.m. to 7:00 p.m. on December 7th and 8th, from 9:30 a.m. to 6:30 p.m. on December 9th, and from 9:30 a.m. to 3:30 p.m. on December 10th in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

A portion of this meeting, from 1:30 p.m. to 3:30 p.m. on December 10th, will be open to the public for a policy discussion on field issues and needs, Leadership Initiatives, Millennium projects, and guidelines.

The remaining portions of this meeting, meet from 9:30 a.m. to 7:00 p.m. on December 7th and 8th, from 9:30 a.m. to 6:30 p.m. on December 9th, and from 9:00 a.m. to 1:30 p.m. on December 10th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5691.

Dated: November 10, 1998.

Kathy Plowitz-Worden,

Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30734 Filed 11–16–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Theater Section B (Education & Access and Heritage & Preservation categories) to the National Council on the Arts will be held on December 10–11, 1998. The panel will meet from 3:30 p.m. to 5:30 p.m. on December 10th and from 9:30 a.m. to 2:30 p.m. on December 11th in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5691.

Dated: November 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–30735 Filed 11–16–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Panel, Folk & Traditional Arts Section (Folk Arts Infrastructure Initiative category) to the National Council on the Arts will be held on December 3–4, 1998. The panel will meet from 9:00 a.m. to 5:30 p.m. on December 3rd, and from 9:00 a.m. to 3:00 p.m. on December 4th, in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C. 20506. A portion of this meeting, from 12:45 p.m. to 1:45 p.m. on December 4th, will be open to the public for a policy discussion.

The remaining portions of this meeting, meeting from 9:00 a.m. to 5:30 p.m. on December 3rd and from 9:00 a.m. to 12:45 p.m. and 1:45 p.m. to 3:00 p.m. on December 4th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance

under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: November 10, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–30733 Filed 11–16–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 16, 23, 30, and December 7, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 16

Tuesday, November 17

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 23—Tentative

Tuesday, November 24

10:30 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of November 30—Tentative

Monday, November 30

2:00 p.m.
Meeting on DC Cook (Public Meeting) (Contact) John Stang, 301–415–1345)
3:30 p.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 7—Tentative

Tuesday, December 8

9:00 a.m.
Briefing on EDO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)
11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meeting call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the 'Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 13, 1998.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc. 98–30853 Filed 11–13–98; 2:57 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

The White House

Washington

October 22, 1998.

Dear Mr. President: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two deferrals of budgetary resources, totaling $167.6 million.

The deferrals affect programs of the Department of State and International Security Assistance.

Sincerely,
William J. Clinton.

The Honorable Albert Gore
President of the Senate
Washington, D.C. 20515

The White House

Washington

October 22, 1998.

Dear Mr. Speaker: In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report two deferrals of budgetary resources, totaling $167.6 million.

The deferrals affect programs of the Department of State and International Security Assistance.

Sincerely,
William J. Clinton.

The Honorable Newt Gingrich
Speaker of the House of Representatives
Washington, D.C. 20510

Deferral No. D99–1

Deferral of Budget Authority

Report Pursuant to Section 1013 of P.L. 93–344

Agency: Department of State.
Bureau: Other.
Account: United States Emergency Refugee and Migration Assistance Fund [1] (11X0400).
New budget authority:—
Other budgetary resources: $82,857,659
Total budgetary resources: 82,857,659
Amount deferred for entire year:
$82,857,659

Justification: This deferral withholds funds available for emergency refugee and migration assistance for which no determination has been made by the President to provide assistance as required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94–141) and section 414(b)(1) of the Refugee Act of 1980 (Public Law 96–212) amended section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for emergency refugee and migration assistance to the Secretary of State, but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

[1] This account was the subject of a similar deferral in FY 1998 (D98–7).

Estimated programmatic effect: None.

Deferral No. D99–2

Deferral of Budget Authority

Report Pursuant to Section 1013 of P.L. 93–344

Agency: International Assistance Programs.
Bureau: International Security Assistance.
Account: Economic support fund [2] (72X1037, 728/91037)[3]
New budget authority:—
Other budgetary resources:
$262,603,378
Total budgetary resources: 262,603,378
Amount deferred for entire year:
$84,777,327

Justification: This deferral withholds funds available for international assistance pending the development of country-specific plans that assure that aid is provided in an efficient manner. Funds also are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund has no effect on the availability of funds for the International Fund for Ireland.

Estimated programmatic effect: None.

[FR Doc. 98–30620 Filed 11–16–98; 8:45 am]
BILLING CODE 3110–01–P

POSTAL RATE COMMISSION

Tour of Advo, Inc.

AGENCY: Postal Rate Commission.
ACTION: Notice of Commission Visit.

SUMMARY: Members of the Postal Rate Commission, accompanied by members of the Commission's Advisory and Consumer Advocate staffs will tour the Columbia, MD facility of Advo Inc. on Tuesday, November 17, 1998, beginning at 9:15 am. Following the tour, the group will meet with executives of Advo and businesses that utilize saturation mail to learn about industry trends.

DATES: The visit is scheduled for November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6820.

Dated: November 12, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–30754 Filed 11–16–98; 8:45 am]
BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 16, 1998.

A closed meeting will be held on Thursday, November 19, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, November 19, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.
Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

November 12, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–30795 Filed 11–13–98; 11:36 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40653; File No. SR–NASD–98–82]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Increase in Advertising Fee Rates

November 10, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 1998, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposal as establishing or changing a fee under Section 19(b)(3)(A)(ii), which renders the proposal effective upon receipt of this filing by the Commission. The NASD, however, will make the filing effective on January 1, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Section 13 of Schedule A of the NASD By-Laws to increase the review charge for advertisements, sales literature, and other such material filed or submitted. Set forth below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

* * * * *

Schedule A to the NASD By-Laws

Section 13—[Service] *Review* Charge for Advertisement, Sales Literature, and Other Such Material Filed or Submitted

There shall be a [service] *review* charge for each and every item of

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[2] This account was the subject of a similar deferral in FY 1998 (D98–1).

[3] The amounts deferred by account are:
72X1037 $30,771,075
728/91037 54,006,252

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

advertisement, sales literature, and other such material, whether in printed, video, electronic or other form, filed with or submitted to the Association, except for items that are filed or submitted in response to a written request from the Association's Advertising Regulation Department issued pursuant to the spot check procedures set forth in the Association's Rules as follows: (1) for printed material reviewed, [$50.00] *$75.00*, plus $10.00 for each page reviewed in excess of 10 pages; and (2) for video or audio media, [$50.00] *$75.00*, plus $10.00 per minute for each minute of tape reviewed in excess of 10 minutes.

Where a member requests expedited review of material submitted to the Advertising Regulation department there shall be a [service] *review* charge of $500.00 per item plus $25 for each page reviewed in excess of 10 pages. Expedited review shall be completed within three business days, not including the date the item is received by the Advertising Regulation Department, unless a shorter or longer period is agreed to by the Advertising Regulation Department. The Advertising Regulation Department may, in its sole discretion, refuse requests for expedited review.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Advertising/Investment Companies Regulation Department evaluates member firms' advertisements and sales literature for compliance with applicable rules of the NASD, SEC, Municipal Securities Rulemaking Board and Securities Investor Protection Corporation. These public communications include print, television and radio advertisements, or electronic communications such as Web sites. They also include brochures, form letters, mailers and telemarketing scripts. The rules address investor protection concerns and require all communications to be accurate and to provide a sound basis for making an investment decision. The rules prohibit the use of exaggerated or misleading statements.

The Department operates three principal programs: filings, investigations and spot checks. The filings program is by far the largest in terms of communications reviewed and resources used. Approximately 1,450 member firms submitted sales material last year, either voluntarily or pursuant to a rule requirement. The Department also investigates misleading communications and provides expertise to Enforcement and the District Offices concerning the complex provisions of the SEC and NASD advertising rules. Finally, the Department conducts targeted spot checks of member communications that may not be subject to the filing requirements, but which must comply with the applicable rules.

The Department needs additional resources to enhance its operations and provide timely, high quality reviews. Significant increases in filing volume and workload have hampered the Department's operations. For example, between 1994 and 1997, the number of communications reviewed in the filings and spot check programs increased 43%, from 42,681 to 61,096. The Department expects filing volume to continue to increase in subsequent years.

NASD Regulation therefore intends to dedicate additional staff and resources to the Department, as well as to the other departments whose programs are related to the regulation of member communications with the public. The Cost of the additional staff and resources will be covered from the increase in advertising fee rates.

Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) [3] of the Act, which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees, and other charges. NASD Regulation believes that the proposed rule change reasonably provides for an increase in the regular filing fees for advertising to help defray the costs associated with the significant increase in advertising activities and possible advertising rule violations.

[3] 15 U.S.C. 78o–3.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSAD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness on the Proposed Rule Change And Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [4] and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a due, fee or other charge. However, the NASD has determined to implement the rule change on January 1, 1999. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of Act.[5]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] In reviewing this proposal, the Commission considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

SR–NASD–98–82 and should be submitted by December 8, 1998.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30717 Filed 11–16–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40657; File No. SR–NSCC–98–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Modifying the Automated Customer Account Transfer Service

November 10, 1998.

On June 5, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–98–06) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and on June 17, 1998, amended the proposed rule change.[1] Notice of the proposal was published in the **Federal Register** on October 5, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's automated customer account transfer service ("ACATS") enables members of NSCC to effect automated transfers of customer accounts among NSCC members.[3] The proposed rule change expands the types of eligible ACATS participants and the kinds of accounts that may be transferred. Additionally, it permits NSCC to transmit date to clearing agencies in order to expand the automated settlement capabilities of ACATS.[4]

A. Users

Currently, only NSCC members, primarily broker-dealers, may participate in ACATS. The proposed rule change permits a qualified securities depository ("QSD") to also effect customer account transfers through ACATS on behalf of its participants.[5] Thus the proposed rule change permits ACATS transfers between two participants of a QSD and between a QSD participant and an NSCC member.

B. Transfers

The proposed rule change sets forth three categories of ACATS transfers: (1) Receiving members[6] initiated full account transfers; (2) delivering member[7] initiated partial account transfers; and (3) receiving member initiated partial account transfers. Categories one and two, while previously available are modified by the proposal. Category three is a new addition to ACATS.

1. Receiving Member Initiated Full Account Transfers

Under the revised ACATS, a receiving member is required to submit transfer information to NSCC in automated format. The "transfer initiation request" paper form is no longer accepted by NSCC.[8]

Currently, once a delivering member rejects a receiving member's transfer request, the receiving member is required to reinitiate the ACATS process. The rule filing provides that in response to certain enumerated categories of delivering member rejections, the receiving member may make corrections to its customer account transfer request. This allows a receiving member to adjust its customer account transfer request by submitting corrections to NSCC within one business day after notification of a delivering member's rejection. A delivering member must then either reject the adjusted transfer request by submitting a new rejection to NSCC or submit to NSCC detailed customer account asset data. If the delivering member fails to respond to the adjusted transfer request within the time frame established by NSCC, NSCC will delete the request from ACATS and will notify the receiving and delivering members.

To the extent that a receiving member determines that any information as reported on the tranfer initiation request is inaccurate, the rule filing provides that the receiving member may cause an adjustment to be made by submitting corrected data to NSCC. Similarly, if a delivering member determines that the account number of its customer as reported on the transfer initiation request is inaccurate, it may cause that adjustment to be made by submitting corrected data to NSCC.

Under the revisions, upon submission of customer account asset data, the delivering member is required to specify the quantity of mutual fund services eligible book share mutual fund assets ("mutual fund assets") to be processed, if any, and to indicate whether the transfer is a full or a partial transfer. A full transfer will cause all mutual fund assets, whether greater or lesser than the quantity specified, to be transferred. A partial transfer will cause only the quantity specified or, if the account has less than such amount, such lesser amount to be transferred. Since the actual quantity registered on the records of the mutual fund may be adjusted between the time of the transfer request submission and settlement of the ACATS transfer (due for example to reinvested dividends or capital gains), this modification provides ACATS participants with a means to transfer the quantity of assets available on settlement date (*i.e.*, a full transfer). In addition, the rule filing states that if the transfer is not confirmed or rejected by the mutual fund processor or fund member within the time frame established by NSCC, it will be deleted from the Fund/Serv system[9] by NSCC. As a result, such transfer requests will no longer pend in NSCC's systems for an indefinite period of time.

The proposed rule change permits a receiving member to accelerate the transfer of a customer account by

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[6] 17 CFR 200–30–3(a)(2).

[1] 15 U.S.C. 78s (b)(1).

[2] Securities Exchange Act Release No. 40487 (September 28, 1998), 63 FR 53479.

[3] ACATS complements New York Stock Exchange ("NYSE") and National Association of Securities Dealers ("NASD") rules that require NYSE and NASD members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames. For a description of ACATS as it was before the revisions approved by this order, refer to Securities Exchange Act Release No. 22481 (September 30, 1985), 50 FR 41274 (SR–NSCC–85–07); Securities Exchange Act Release No. 34879 (October 21, 1994), 59 FR 54229 (SR–NSCC–94–13); and NSCC Rule 50.

[4] NSCC stated that another reason for the redesign is to make the ACATS system Year 2000 compliant.

[5] QSD is a defined term in NSCC's Rule 1 as a registered clearing agency, pursuant to section 3(a)(23) of the Act, that has entered into an agreement with NSCC pursuant to which it will act as a securities depository for NSCC and will effect book-entry transfers of securities for NSCC with respect to NSCC's continuous net settlement system. The Depository Trust Company is the only registered clearing agency that has entered into such an agreement with NSCC.

[6] The proposed rule change defines the receiving member as a NSCC member or QSD to who a customer's full account is to be transferred.

[7] The proposed rule change defines the delivering member as the NSCC member or QSD which currently has the account.

[8] A receiving member will be able to continue to utilize the facilities of NSCC to submit physical documentation that a delivering member may need in order to act upon the receiving member's request.

[9] For a complete description of NSCC's Fund/SERV system refer to Securities Exchange Act Release No. 31937 (March 1, 1993), 58 FR 12609 (File No. SR–NSCC–92–14) (order approving proposed rule change regarding Fund/SERV system).

accepting the report detailing the customer account asset data on the business day it receives the report from NSCC. However, under these new circumstances, if a delivering member submits a timely adjustment to an account for which an accelerated acceptance has been received by NSCC, it will cause such accelerated acceptance to be void.

To the extent an ACATS transfer is between two NSCC members, the proposed rule change differentiates between the processing of continuous net settlement ("CNS") eligible and non-CNS eligible items that are otherwise eligible at The Depository Trust Company ("DTC"). The rule filing does not change the processing of CNS eligible items. The proposed rule change provides that NSCC will produce ACATS instruction files for all non-CNS eligible items that are otherwise eligible at DTC. The instruction files will be similar to DTC deliver orders (*i.e.*, naming the receiving and delivering participants, the quantity of the securities to be delivered, and the value for such delivery). Any such deliveries are subject to the rules of DTC. If a delivering member does not want instruction files to be submitted to DTC, it may request at the time the account asset details are submitted or pursuant to a standing instruction filed with NSCC that separate receive and deliver instructions be produced. In such instance, it is up to the delivering member to initiate the delivery of the asset.

Under the proposed rule change, foreign currency assets may be transferred from a delivering member to a receiving member. ACATS will produce receive and deliver instructions but will not specify a value for such assets.

To the extent that either a receiving member or a delivering member (or both) is a participant of a QSD, such transfer will be processed as ACATS transfers with NSCC members as both the receiving member and the delivering member with the exceptions specified below:

i. For all DTC eligible assets, other than United States dollar cash balances ("cash"), assets covered by a standing instruction filed by a delivering member with NSCC, and assets for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will issue an instruction file to DTC specifying the quantity of each asset to be delivered with a deliver value of zero.

ii. For all non-DTC eligible assets (other than assets available at other registered clearing agencies and cash), assets covered by standing instruction filed by a delivering member with NSCC and asset for which a receive/deliver instruction request was received from a delivering member at the time asset details were submitted, NSCC will produce receive and deliver instructions naming the receiving member and the delivering member. All such receive and deliver instructions will specify no value. Unlike a transfer between NSCC members, NSCC will not debit and credit the value of assets being transferred between participants of a QSD or between a participant of a QSD and a member of NSCC.[10]

iii. If the account has a cash balance, NSCC will issue an instruction to DTC indicating the participants to be debited and credited and the corresponding amount.

2. Delivering Member Initiated Partial Account Transfers

The proposed rule change permits a delivering member to initiate some types of partial account transfers. In addition to the transfer of residual credit positions, delivering members are able to: Deliver a partial account (in the form of cash or securities); initiate the delivery of a position which was purchased by the delivering member for the benefit of a customer's account and which the customer wants custodied at the receiving member; obtain the return of cash previously paid with respect to fail positions for which delivery is unable to be completed;[11] and obtain the return of cash or securities mistakenly delivered through ACATS other than mutual fund assets and positions eligible for processing at The Options Clearing Corporation ("OCC"), the Government Securities Clearing Corporation ("GSCC"), or the Participants Trust Company ("PTC").[12]

A delivering member may initiate a transfer by submitting to NSCC those transfer details that are required by NSCC. NSCC will reject the transfer if the details contain an edit or format error. NSCC will notify the delivering member if a transfer is rejected in which case the delivering member must reinitiate the transfer as if it had never been previously submitted.

A receiving member may reject the transfer by submitting information on the same day as the transfer request is received. No action will be required by the receiving member if it determines to accept the transfer. A receiving member may not submit corrections, and ■ delivering member may not make adjustments to such transfer request.

Settlement date is one business day following the day NSCC receives the transfer request unless the request includes option assets which are eligible for processing at OCC in which case the settlement date for all assets shall be two business days following the day NSCC receives the transfer request.

3. Receiving Member Initiated Partial Account Transfers

Under the proposed rule change, a receiving member may submit a request to initiate the transfer of a partial customer account. The request will be delivered by NSCC to the delivering member on the same day that it is received by NSCC. Each day NSCC will produce a report that indicates all of the requests received by NSCC that day. A delivering member may respond to a receiving member's request for a partial account transfer at any time by the delivering member initiating a partial account transfer as described in the delivering member initiated transfer section above. No action is required by the delivering member if it determines not to respond to a request, and no transfer will occur.

C. Agreement With DTC

NSCC is entering into an agreement with DTC to permit DTC to obtain access to ACATS on behalf of its participants.[13] NSCC's agreement with DTC will permit ACATS to be used for the transfer of accounts between two DTC participants or between a DTC participant and an NSCC member.

D. Linkage Agreements

NSCC currently has an agreement in place with OCC regarding the transfer of options positions within customer accounts being transferred pursuant to ACATS. The agreement provides that NSCC may send instructions to OCC for the delivery and receipt of options positions on behalf of ACATS participants that are members of NSCC as well as of OCC.

In order to broaden the types of assets which can be transferred through

[10] Under the current ACATS rule, the delivering firm is debited the current market value of the assets and the member receiving firm is credited the current market value of the assets. The member delivering firm recovers its money by making delivery of the assets. Under the proposed rule change, whenever a QSD participates in the ACATS process, the assets will be delivered on a no value basis.

[11] This service may only be initiated to the extent that the fail is between two NSCC members.

[12] This service may only be initiated to the extent that the delivery is between two NSCC members.

[13] This agreement will be similar to the current agreement between NSCC and DTC regarding DTC's access to NSCC's mutual funds services.

ACATS based on instructions from NSCC, the proposed rule change permits NSCC to establish links with other registered clearing agencies ("RCA"), such as DTC, PTC, and GSCC. Once an agreement has been reached with the applicable RCA, to the extent a transfer involves an asset position eligible for delivery at such RCA and both the receiving member and delivering member have an account there, NSCC will issue instructions to the applicable RCA indicating the delivering or receiving participant and the quantity of assets to be delivered and received. The instructions will not specify a value unless the transfer is between two members of NSCC and the assets to be transferred are government securities (where a nominal value shall be specified) [14] or mortgage-backed securities. If the assets are mortgage-backed securities, on settlement date NSCC will debit the deliverer the value and credit the receiver the value of the assets.

E. Indemnification Provision

The proposed rule change includes indemnification provisions similar to those currently in use by users of ACATS. While the revised rule includes such provisions, it does not preclude participants from entering into separate indemnification arrangements which are broader than those contained in the rule.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[15] Section 17A(b)(3)(A)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets this standard because the changes to ACATS such as the ability to electronically transfer accounts not only to and from broker-dealers but not to and from banks and other financial institutions, the ability to do partial transfers, the ability to make certain corrections to instructions, and the ability to electronically transfer U.S. government and mortgage-backed securities, should provide a more efficient method for the transfer of customer assets and should encourage use by more financial institutions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of sections 17A(b)(3) (A) and (F) of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–06) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30716 Filed 11–16–98; 8:45 am]

BILLING CODE 8010–01–M

[14] On June 17, 1998, NSCC amended the proposed rule change (File No. NSCC–98–06) to include the transfer of government securities where a nominal value is specified.

[15] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3146]

State of Kansas

As a result of the President's major disaster declaration on November 5, 1998, and an amendment thereto on November 9, 1998, I find that Butler, Chase, Coffey, Cowley, Franklin, Harvey, Lyon, Neosho, Sedgwick, Sumner, and Wilson counties in the State of Kansas constitute a disaster area due to damages caused by severe storms and flooding which occurred beginning October 30, 1998 and continuing. Applications for loans for physical damages may be filed until the close of business on January 4, 1999, and for loans for economic injury until the close of business on August 5, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Allen, Anderson, Bourbon, Chautauqua, Crawford, Douglas, Elk, Greenwood, Harper, Kingman, Johnson, Labette, Linn, Marion, McPherson, Miami, Montgomery, Morris, Osage, Reno, Wabaunsee, and Woodson in the State of Kansas; and Grant, Kay, and Osage in the State of Oklahoma may be filed until the specified date at the above location.

The interest rates are:

Physical Damage:	*Percent*
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 314611 and for economic injury the numbers are 9A5100 for Kansas and 9A5200 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 10, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–30662 Filed 11–16–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3145]

State of Texas; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency dated November 6, 1998, the above-numbered Declaration is hereby amended to include the Counties of Atascosa, Brazoria, Galveston, Liberty, Matagorda, Nueces, and San Jacinto in the State of Texas as a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred October 17 through October 31, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Frio, Hardin, Jefferson, Jim Wells, Kleberg, La Salle, McMullen, Polk, and Trinity in the State of Texas. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 19, 1998 and for economic injury the termination date is July 19, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 9, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–30663 Filed 11–16–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Renewal of Treatment on Government Procurement of Products from Countries Designated under the Caribbean Basin Economic Recovery Act

Under the authority delegated to me by the President in section 1–201 of Executive Order 12260 of December 31, 1980, I hereby direct that products of countries, listed below, designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701, et. seq.), shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 1999. Additionally, products of Panama shall continue to be treated as eligible products for purposes of section 1–101 of Executive Order 12260 until September 30, 2000. Such treatment shall not apply to products originating in these countries that are excluded from duty free treatment under 19 U.S.C. 2703(b). Decisions on the subsequent renewal of this treatment beyond September 30, 1999, and September 30, 2000 for Panama, will be based on beneficiaries' efforts to improve domestic procurement practices, their support for relevant international initiatives, including in the World Trade Organization (WTO) Working Group on Transparency in Government Procurement, and the Free Trade Area of the Americas (FTAA) Negotiating Group on Government Procurement, including support for an FTAA Agreement on Transparency as an element of business facilitation, and on progress toward accession to the WTO Government Procurement Agreement.

Charlene Barshefsky,

United States Trade Representative.

List of Countries Designated as Beneficiary Countries for Purpose of the Caribbean Basin Economic Recovery Act (CBERA):

Antigua and Barbuda, Aruba, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic; El Salvador; Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, the Netherlands Antilles, Nicaragua, Panama, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Montserrat, Netherlands Antilles, Saint Kitts-Nevis, British Virgin Islands.

[FR Doc. 98–30703 Filed 11–16–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reports, Forms and Recordkeeping Requirements

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 USC Chapter 35). Section 3507 of Title 44 of the United States Code, requires that agencies prepare a notice for publication in the **Federal Register**, listing information collection request submitted to OMB for approval or renewal under that Act. OMB reviews and approves agency submissions in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms and the reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

The **Federal Register** Notice with a 60-day comment period soliciting comments on information collection 2120–0034 was published on September 4, 1998 (63 FR 47340).

DATES: Comments on this notice must be received on or before December 17, 1998.

FOR FURTHER INFORMATION CONTACT: Copies of the DOT information collection requests submitted to OMB may be obtained from Ms. Judith Street, Federal Aviation Administration, Corporate Information Division, ABC–100, 800 Independence Ave., SW., (202) 267–9895, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Commuter Operations and General Certification and Operations Requirements.

OMB Control Number: 2120–0593.

Form(s): FAA Form 8400–6.

Type of Request: Revision of a currently approved collection.

Affected Public: Transition of some 135 carriers to part 121 rules.

Abstract: The regulation requires that certain commuter operators conduct their operations under part 121 instead of part 135. Affected operators include those conducting scheduled, passenger-carrying operations with airplanes with 10–30 seats. The reporting requirements are similar but different between parts 121 and 135. This submission reflects only the additional burden associated with part 135 carriers transitioning to part 121 standards.

There will be a change to the collection of information. The transition portion of this rule is complete. However, Part 119 continues to cover new carriers and some ongoing requirements. The burden associated with the transition portion will be removed, and only burden associated with new carriers and ongoing requirements will be reflected in the updated submission.

Estimated Burden: The estimated total annual burden is 8,803 hours.

ADDRESSES: Written comments on the DOT information collection request should be forwarded, within 30 days of publication, to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, Washington, D.C. 20503, ATTN: FAA Desk Officer. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB official of your intent immediately.

Comments Are Invited On

Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC, on November 9, 1998.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 98–30688 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–62–P

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements filed during the week ending November 6, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4709
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 AFR–TC3 0057 dated October 20, 1998 r1–23
PTC23 AFR–TC3 0058 dated October 20, 1998 r24–36
Africa-Japan/Korea & Southwest Pacific Resos
PTC23 AFR–TC3 0054 dated October 16, 1998—Minutes
PTC23 AFR–TC3 Fares 0027 dated October 27, 1998
PTC23 AFR–TC3 Fares 0028 dated October 27, 1998—Tables
Intended effective date: April 1, 1999.

Docket Number: OST–98–4710
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 ME–TC3 0053 dated October 16, 1998
Middle East–TC3 Resolutions r1–51
PTC23 ME–TC3 0053 dated October 20, 1998—Minutes
PTC23 ME–TC3 Fares 0023 dated October 27, 1998—Tables
Intended effective date: April 1, 1999.

Docket Number: OST–98–4711
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC123 0056 dated October 27, 1998
Reso 015v—Add-on Amounts (except in USA)
Intended Effective Date: April 1, 1999.

Docket Number: OST–98–4712
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC31 N/C 0072 dated October 30, 1998 r1–4
PTC31 N/C 0073 dated October 30, 1998 r5
Expedited Japan/TC3—North America/Caribbean Resos
PTC31 S/CIRC 0055 dated October 30, 1998 r6–7
Expedited Circle Pacific Resos
Intended effective date: December 15, 1998.

Docket Number: OST–98–4713
Date Filed: November 4, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC31 N/C 0074 dated October 20, 1998
TC3-Central/South America Reso 002n
Intended effective date: December 15, 1998.

Dorothy W. Walker,
Federal Register Liaison.

[FR Doc. 98–30690 Filed 11–16–98; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 6, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4686.
Date Filed: November 2, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: November 30, 1998.
Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. 41108 and subpart Q, applies for a certificate of public convenience and necessity authorizing it to provide scheduled foreign air transportation of persons, property and mail between a point or points in the United States either directly or via intermediate points and a point or points in France and beyond France to points in their countries to the full extent authorized by the U.S.-France Air Transport Agreement.

Docket Number: OST–97–3187.
Date Filed: November 3, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 1, 1998.
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V. pursuant to 49 U.S.C. 41302 and subpart Q, requests an amendment and re-issuance of its Foreign Air Carrier Permit issued by Order 95–3–11, to permit TAESA to engage in scheduled air transportation of persons, property and mail on the following Mexico-U.S. scheduled combination routes for; the coterminal points Guadalajara and Leon (El Bajio), Mexico, on the one hand, and Ontario, California on the other hand.

Docket Number: OST–98–4688.
Date Filed: November 3, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 1, 1998.
Description: Application of Air Evac Services, Inc. pursuant to 49 U.S.C. 41102 and subpart Q, requests authority to engage in interstate charter air transportation of passengers and cargo.

Docket Number: OST–98–4707.
Date Filed: November 4, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 2, 1998.
Description: Application of Trans World Airlines, Inc. pursuant to 49 U.S.C. 41101 and subpart Q, requests a certificate to engage in scheduled foreign air transportation of persons, property and mail between any point in the United States, on the one hand, and any point in Canada, on the other hand.

Docket Number: OST–98–4685.
Date Filed: November 6, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 4, 1998.
Description: Application of Federal Express Corporation pursuant to 49 U.S.C. 41102 and subpart Q, applies for a new certificate of public convenience and necessity authorizing scheduled foreign air transportation of property and mail between points in the United States, on the one hand, and points in France, on the other hand.

Dorothy W. Walker,
Federal Register Liaison.

[FR Doc. 98–30689 Filed 11–16–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Joint Special Committee 182/ EUROCAE Working Group 48; Minimum Operational Performance Standards (MOPS) for an Avionics Computer Resource

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee

(SC)–182/EUROCAE Working Group (WG)–48 meeting to be held December 9–11, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks; (2) Review and Approval of the Agenda; (3) Review of Meeting Report: Joint RTCA SC–182/EUROCAE WG–48 Meeting (9/09–11/98); (4) Review MOPS Draft 1.3: Inclusion of selected comments; (5) Discuss and recommend for inclusion in draft 1.4: Comments 14, 36, 38, 43–66; (6) Portability and DO–178B objectives achieved independent of the platform; (7) Working Group Sessions; (8) Working Group Reports; (9) Other Business; (10) Date and Place of Next Meeting (03/09–11/99, location to be announced).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 9, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30728 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting; Design Assurance Guidance for Airborne Electronic Hardware

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a joint RTCA Special Committee 180 and EUROCAE Working Group 46 meeting to be held December 15–17, 1998, starting at 8:30 a.m. on December 15. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: (1) Chairman's Introductory Remarks; (2) Review and Approval of Meeting Agenda; (3) Review and Approval of Minutes of Previous Joint Meeting; (4) Leadership Team Meeting Report; (5) Review Action Items; (6) Review Issue Logs; (7) Issue Team Status; (8) Plenary Disposition of Document Comments; (9) New Items for Consensus; (10) Special Committee 190 Committee Activity Report; (11) Other Business; (12) Establish Agenda for Next Meeting; (13) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 9, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30727 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Palm Beach International Airport, West Palm Beach, Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites pubic comment on the application to impose and use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 17, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerry L. Allen, Director of Planning and Development of the Palm Beach County Department of Airports at the following address: Palm Beach International Airport, Building 846, West Palm Beach, Florida 33406–1491.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Palm Beach Department of Airports under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Ganley, P.E., Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822. Phone: (407) 812–6331, ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Palm Beach International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 9, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Palm Beach County Department of Airports was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 17, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–04–C–00–PBI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1999.

Proposed charge expiration date: March 1, 2002.

Total estimated PFC revenue: $18,933,000.

Brief description of proposed project(s): Extend Runway 9L–27R by 1,200 feet to the west and 811 feet to the east; Acquire approximately 10.577 acres of land located in the Runway 31 Runway Protection Zone; Update the Facility Management System, the Multiple User Flight Information System, and Audio Systems in the main terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Palm Beach County Department of Airports.

Issued in Orlando, Florida on November 9, 1998.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 98–30729 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–98–4736]

Crowley American Transport, Inc.; Notice of Application to Increase Service in the Non-Contiguous Domestic Trade for Puerto Rico

Crowley American Transport, Inc. (Crowley), by application dated September 30, 1998, as amended on November 9, 1998, has applied for an increase in the authorized level of the container service that it provides to the Commonwealth of Puerto Rico (Puerto Rico), pursuant to section 656(d) of Subtitle B, Title VI, of the Merchant Marine Act, 1936, as Amended (1936 Act). Crowley has requested that this increase in its authorized service level be made on the basis of the information on growth in Real Gross Product for Puerto Rico provided in support of the application filed by Sea-Land Service, Inc. for a similar increase in its container service to Puerto Rico in Docket 98–4297.

This application is Crowley's first request for such adjustment as permitted under section 656(d) and contains adjustments for growth in Puerto Rico's RGP for Fiscal Years 1996, 1997 and 1998. A summation of the service level increases requested by Crowley is attached hereto as Table I.

Any person, firm or corporation having an interest in this application for increased service authorization, and who desires to submit comments concerning Crowley's application, should refer to the docket number that appears on this notice and must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Such comments must be filed in triplicate and received no later than 5:00 P.M. Eastern Time, December 17, 1998.

The application and all comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By Order of the Maritime Administrator.

Dated: November 10, 1998.

Joel C. Richard,

Secretary, Maritime Administration.

TABLE I.—CROWLEY AMERICAN TRANSPORT, INC.; REQUESTED INCREASE IN AUTHORIZED NON-CONTIGUOUS DOMESTIC SERVICE FOR THE COMMONWEALTH OF PUERTO RICO

Default and authorized level of service as of August 9, 1995: 220,750 TEUs.

Increase for Puerto Rico Fiscal Year 1996 (July 1, 1995 to June 30, 1996).

Growth in Real Gross Product: +3.3 percent.
Proration, August 9, 1995 to June 30, 1996 = 326/366 Days (1996 was a leap year) = .89.
(.89) × (3.3) = 2.94 percent.
Increase = (.0294) × (220,750) = 6,490 TEUs.
Total as of June 30, 1996 = 227,240 TEUs.

Increase for Puerto Rico Fiscal Year 1997 (July 1, 1996 to June 30, 1997).

Growth in Real Gross Product: +3.2 percent.
Increase = (.032) × (227,240) = 7,272 TEUs.
Total as of June 30, 1997 = 234,512 TEUs.

Increase for Puerto Rico Fiscal Year 1998 (July 1, 1997 to June 30, 1998).

Growth in Real Gross Product: +3.0 percent (Tentative).
Increase = (.030) × (234,512) = 7,035 TEUs.
Total as of June 30, 1998 = 241,547 TEUs.

[FR Doc. 98–30730 Filed 11–16–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

Dates and Times: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on December 17, 1998, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on November 30, 1998. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by December 3, 1998, to the address given below. If sufficient time is available, questions received after the December 3 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by December 3 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Clarion Hotel, 9191 Wickham Road, Romulus, MI. Suggestions for specific R&D topics as described below and questions for the December 17, 1998, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW, Washington, DC 20590. The fax number is (202) 366–5930.

SUPPLEMENTARY INFORMATION: In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This is the twenty-second meeting in that series, and it will be held on December 17, 1998, at the Clarion Hotel, 9191 Wickham Road, Romulus, MI.

NHTSA requests suggestions from interested parties on the specific agenda topics to be presented. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on November 30, 1998. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the information numbers or the E-mail address listed elsewhere in this notice or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/. NHTSA asks that the suggestions be limited to six, in priority order, so that the presentations at the December 17 R&D meeting can be most useful to the audience. Specific R&D topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other R&D topics of specific interest to their organizations. Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by close of business November 30, 1998.

Specific R&D topics are:

Fiscal Year 1999 R&D Research Efforts,
International Harmonized Research Activities (IHRA),
On-line tracking system for NHTSA's research projects, and
Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Status of advanced air bag research,
Demonstration of CD ROM for child restraint/vehicle compatibility,
Preparation of new dummies for assessment of advanced air bag technology,
Status of research on restraint systems for rollover protection,
Improved frontal crash protection (program status, problem identification, offset testing),
Advanced glazing research,
Vehicle aggressivity and fleet compatibility,
Upgrade side crash protection,
Upgrade seat and occupant restraint systems,
Child restraint/air bag interaction (CRABI) dummy testing,
Truck crashworthiness/occupant protection,
National Transportation Biomechanics Research Center (NTBRC),
Head and neck injury research,
Lower extremity injury research,
Thorax injury research,
Human injury simulation and analysis,
Refinements to the Hybrid III dummy, and
Advanced frontal test dummy.

Specific Crash Avoidance R&D topics are:

National Advanced Driving Simulator (NADS),
Intelligent vehicle initiative,
Status and plans for anti-lock brake system (ABS) research and testing,
Human factors guidelines for crash avoidance warning devices,
Drowsy driver monitoring,
Driver workload assessment,
Rearend collision avoidance system guidelines,
Road departure collision avoidance system guidelines,
Intersection collision avoidance system guidelines,
Lane change/merge collision avoidance system guidelines.

National Center for Statistics and Analysis (NCSA) topic is:

Special crash investigation studies of air bag cases.

Separately, questions regarding research projects that have been submitted in writing not later than close of business on December 3, 1998, will be answered. The summary minutes of the meeting, copies of materials handed out at the meeting, and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The summary minutes, handouts, and answers to the questions will also be available on NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366–5930, or by E-mail at rgibbons@nhtsa.dot.gov by close of business December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: rgibbons@nhtsa.dot.gov.

Issued: November 10, 1998.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 98–30675 Filed 11–16–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33556 (Sub-No. 2) et al.]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company; et al.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 21; Notice of Acceptance of Responsive Applications.

SUMMARY: The Board is accepting for consideration the responsive application filed by Ontario Michigan Rail Corporation (OMR)[1] in STB Finance Docket No. 33556 (Sub-No. 2), and the responsive application filed by Canadian Pacific Railway Company (CPR) and St. Lawrence & Hudson Railway Company Limited (SL&H) in STB Finance Docket No. 33556 (Sub-No. 3). The responsive applications relate to the primary application filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW), Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC).[2]

DATES: The effective date of this decision is November 17, 1998. Comments regarding the responsive filings must be filed with the Board by December 11, 1998. Rebuttal in support of the responsive filings must be filed with the Board by January 11, 1999. Briefs (not to exceed 50 pages for the primary applicants and not to exceed 25 pages for all other parties) must be filed with the Board by February 19, 1999.[3]

ADDRESSES: An original and 25 copies of all comments referring to the responsive applications in STB Finance Docket No. 33556 (Sub-No. 2) and STB Finance Docket No. 33556 (Sub-No. 3) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, Attn: STB Finance Docket No. 33556, 1925 K Street, N.W., Washington, DC 20423–0001.[4]

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.[5] Further details are discussed below.

In addition, one copy of each document filed in these proceedings must be served on: the U.S. Secretary of Transportation; the U.S. Attorney General; Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2514; FAX: (202) 219–3289] and on each of applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, N.W., Suite 600, Washington, DC 20036–1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710.

In addition, one copy of all comments filed in these proceedings must be served on the responsive applicants' representatives: Fritz R. Kahn, Esq., Fritz R. Kahn, P.C., Suite 750 West, 1100 New York Avenue, N.W., Washington, D.C. 20005–3934 (representing OMR); and Terence M. Hynes, Esq., Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006 (representing CPR and SL&H).

In addition, one copy of all documents filed in these proceedings must be served on all other persons designated parties of record on the Board's service list in STB Finance Docket No. 33556. *See* the service list attached to Decision No. 9 (served September 28, 1998), as modified in Decision No. 13 (served October 20, 1998).[6]

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: By application filed with the Board on July 15, 1998, the primary applicants seek approval and authorization under 49 U.S.C. 11321–26 for: (1) The acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp. and through it of ICR and its railroad affiliates; and (2) the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. A related application for terminal trackage rights in Springfield, IL, was also filed in STB Finance Docket No. 33556 (Sub-No. 1), seeking relief contingent upon approval of the primary application. In Decision No. 6, served August 14, 1998, and published that day in the **Federal Register** at 63 FR 43744–51, the Board accepted for consideration the primary application and the related filing. In Decision No. 11, served October 2, 1998, the Board extended the procedural schedule at the request of various parties and directed that inconsistent and responsive applications be filed by October 27, 1998.[7]

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[1] Although OMR referred to its filing as an "inconsistent application," the relief sought by OMR is conditional to, rather than in lieu of, approval of the primary application. Accordingly, OMR's filing is a responsive application and will be referred to as such. *See* 49 CFR 1180.3(h).

[2] CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN. IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

[3] The briefs should succinctly present all arguments on which parties intend to rely, supported by clear references to any portions of the evidentiary record supporting their positions.

[4] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision. Parties must clearly label each formal filing with an identification acronym and number. *See* 49 CFR 1180.4(a)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing.

[5] In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the **Federal Register** at 63 FR 28442–44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

[6] Members of the United States Congress and Governors are not parties of record and therefore need not be served with copies of filings, unless any such Member or Governor is designated as a party of record. *See* Decision No. 6 (served Aug. 14, 1998), slip op. at 9.

[7] By motion filed November 2, 1998 (designated as ECA–8), Exxon Chemical Americas (ECA) requests that the public version of its comments filed on October 27, 1998, be reclassified as confidential because its public version filed on that date inadvertently included information that should have been redacted. ECA states that it has served corrected copies of the public version of its comments on all parties of record. ECA's motion will be granted.

Responsive Filings: Conditions Requested

In STB Finance Docket No. 33556 (Sub-No. 2), as a condition to any approval of the CN/IC transaction, OMR seeks to require CN to convey its 50% interest in the CNCP Niagara-Detroit Partnership (NDP), owner of the Detroit River Tunnel Company (DRTC), to OMR.[8] In STB Finance Docket No. 33556 (Sub-No. 3), CPR seeks a similar condition requiring CN to convey its one-half interest in DRTC to CPR's affiliate SL&H, which would result in CPR's indirect ownership of 100% of DRTC.

In its application, OMR requests that its proposed divestiture be found to be a minor transaction.[9] Even if OMR's requested relief is a minor transaction, a responsive applicant is required to submit certain information, including operational data and a discussion of the public interest justification in support of the application. *See* 49 CFR 1180.6 and 1180.8. The filing by OMR provides rudimentary financial and operational evidence. On the basis of this information alone, however, the Board will be unable to determine whether there will be significant changes in traffic patterns or whether OMR's proposed acquisition and operation of the DRTC will be in the public interest in terms of OMR's ability to cover, through tunnel operating profits, the fixed charges that will arise from the proposed financing.

We previously reserved the right to require the filing of supplemental information from any party or individual if necessary to complete the record in this matter. *See* Decision No. 6, slip op. at 7 n.14, 63 FR at 43747 n.14. To enable the Board to assess the impact of OMR's proposal, OMR will be required to submit no later than December 1, 1998, the following information: (1) the operational data prescribed at 49 CFR 1180.8(b); (2) information regarding carrier usage of the existing tunnel and the impact of projected traffic increases on carrier facilities on both sides of the Detroit River; (3) identity and amount of financing for each expected source of capital, as outlined on page 2 of the verified statement of Patrick J. O'Neill; (4) method(s) and amount of financing expected to be undertaken by any prospective partnership group to fund construction and ongoing operations of the proposed Detroit-Windsor Tunnel; (5) balance sheet of OMR giving effect to construction and financing of the tunnel, as estimated for the beginning of the first year of post-construction operations, including the proposed method of handling interest on debt financing during construction; and (6) income statements showing expected revenues, expenses, fixed charges, and net income from operations for the first year of operations and for a normal year of operations.

Responsive Filings Accepted

The responsive applications filed by OMR, CPR, and SL&H are in substantial compliance with the applicable regulations. We are accepting for consideration the responsive application by CPR and SL&H. Subject to the supplemental filing requirement above, we are accepting for consideration the responsive application by OMR.

Public Inspection

The responsive filings are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC. The responsive filings may also be obtained upon request from the applicants' representatives named above.

Proceedings Consolidated

The responsive filings in STB Finance Docket No. 33556 (Sub-Nos. 2 and 3) are consolidated for disposition with the primary application in STB Finance Docket No. 33556 (and the embraced Sub-No. 1 proceeding).

Comments May Be Submitted

Interested persons may participate formally by submitting written comments regarding any or all of these responsive filings, subject to the filing and service requirements specified above. Such comments (referred to as "Response[s]" in the procedural schedule) must be filed with the Board by December 11, 1998. Comments must include the following: the commenter's position in support of or in opposition to the transaction proposed in the responsive filing; any and all evidence, including verified statements, in support of or in opposition to such proposed transaction; and specific reasons why approval of such proposed transaction would or would not be in the public interest.

Requests for Affirmative Relief Will Not Be Accepted

Because the responsive applications accepted for consideration in this decision contain proposed conditions to approval of the primary application in STB Finance Docket No. 33556, the Board will entertain no requests for affirmative relief with respect to these responsive applications. Parties may only participate in direct support of or in direct opposition to these responsive applications as filed.

Electronic Submissions

In addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 26, 1998, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[10]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

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[8] In addition, OMR seeks the divestiture of CN's one-half interest in The Canada Southern Railway Company and The Niagara River Bridge Company, switching railroads also owned by NDP. OMR states that these rail properties are potential sources of needed traffic to support the DRTC.

[9] Although OMR filed a description of its anticipated inconsistent application on the August 31, 1998 due date for such submissions, OMR failed to file a petition for waiver or clarification with respect to its proposed relief. In Decision No. 7 (served September 18, 1998), however, we granted CPR's petition for waiver or clarification by finding, among other things, that CPR's similar divestiture proposal constituted a minor transaction. A similar conclusion is warranted here with respect to OMR's proposal.

[10] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

It is ordered:

1. The responsive applications in STB Finance Docket No. 33556 (Sub-Nos. 2 and 3) are accepted for consideration, and are consolidated for disposition with the primary application in STB Finance Docket No. 33556 (and the embraced Sub-No. 1 proceeding), subject to the requirement that OMR file the supplemental information outlined in this decision no later than December 1, 1998.

2. The parties shall comply with all provisions as stated above.

3. The motion in ECA–8 to reclassify as confidential the public version of ECA's comments filed on October 27, 1998, is granted.

4. This decision is effective on November 17, 1998.

Decided: November 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30704 Filed 11–16–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 101–05]

Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury

Dated: October 29, 1998.

By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b), and Executive Order (E.O.) 11822, dated December 10, 1974, it is ordered that:

1. The Deputy Secretary shall report directly to the Secretary.

2. The Chief of Staff shall report directly to the Secretary and shall exercise supervision over the Director, Secretary's Scheduling Office, and the Executive Secretary.

3. The Executive Secretary shall report directly to the Chief of Staff and shall exercise supervision over the functions of the Executive Secretariat Correspondence Unit; the Office of Public Correspondence; and, for purposes of administrative and managerial control, over the Special Assistant to the Secretary (National Security). The Special Assistant to the Secretary (National Security) shall report to the Secretary and the Deputy Secretary.

4. The following officials shall report through the Deputy Secretary to the Secretary and shall exercise supervision over those officers and organizational entities set forth on the attached organizational chart:

Under Secretary (International Affairs)
Under Secretary (Domestic Finance)
Under Secretary (Enforcement)
General Counsel
Assistant Secretary (Legislative Affairs and Public Liaison)
Assistant Secretary (Public Affairs)
Assistant Secretary (Economic Policy)
Assistant Secretary (Tax Policy)
Inspector General
Assistant Secretary (Management) and Chief Financial Officer
Commissioner of Internal Revenue
Comptroller of the Currency
Director, Office of Thrift Supervision

5. The Assistant Secretary (Management) serves as the Department's Chief Financial Officer pursuant to Chapter 9 of Title 1, U.S.C., and serves as the Department's Chief Operating Officer for purposes of the Presidential Memorandum, "Implementing Management Reform in the Executive Branch," dated October 1, 1993.

6. The Deputy Assistant Secretary (Information Systems) reporting to the Assistant Secretary (Management) and Chief Financial Officer is designated as the Department's Chief Information Officer pursuant to Division E of the Clinger-Cohen Act of 1996, and E.O. 13011, dated July 16, 1996, and shall have direct access to the Secretary to the extent required by that Act and related statutes.

7. The Deputy Secretary is authorized, in that official's own capacity and that official's own title, to perform any functions the Secretary is authorized to perform and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by the Deputy Secretary in that official's own title is hereby affirmed and ratified as the action of the Secretary.

8. The Under Secretaries, the General Counsel, and the Assistant Secretaries are authorized to perform any functions the Secretary is authorized to perform. Each of these officials will ordinarily perform under this authority only functions which arise out of, relate to, or concern the activities or functions of, or the laws administered by or relating to, the bureaus, offices, or other organizational units over which the incumbent has supervision. Each of these officials shall perform under this authority in the official's own capacity and the official's own title and shall be responsible for referring to the Secretary any matter on which action would appropriately be taken by the Secretary. Any action heretofore taken by [the Deputy Secretary or] any of these officials in that official's own title is hereby affirmed and ratified as the action of the Secretary.

9. The following officials shall, in the order of succession indicated, act as Secretary of the Treasury in case of the death, resignation, absence or sickness of the Secretary and other officers succeeding the incumbent, until a successor is appointed, or until the absence or sickness shall cease:

a. Deputy Secretary;

b. The following individuals, in the order of the date on which they were first appointed to a position within the Department requiring appointment by the President by and with the advice and consent of the Senate:

- Under Secretary (International Affairs);
- Under Secretary (Domestic Finance); and
- Under Secretary (Enforcement);

c. General Counsel; and

d. Assistant Secretaries, appointed by the President with Senate confirmation, in the order designated by the Secretary.

10. *Cancellation.* Treasury Order 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury," dated May 4, 1995, is superseded as of this date.

Robert E. Rubin,

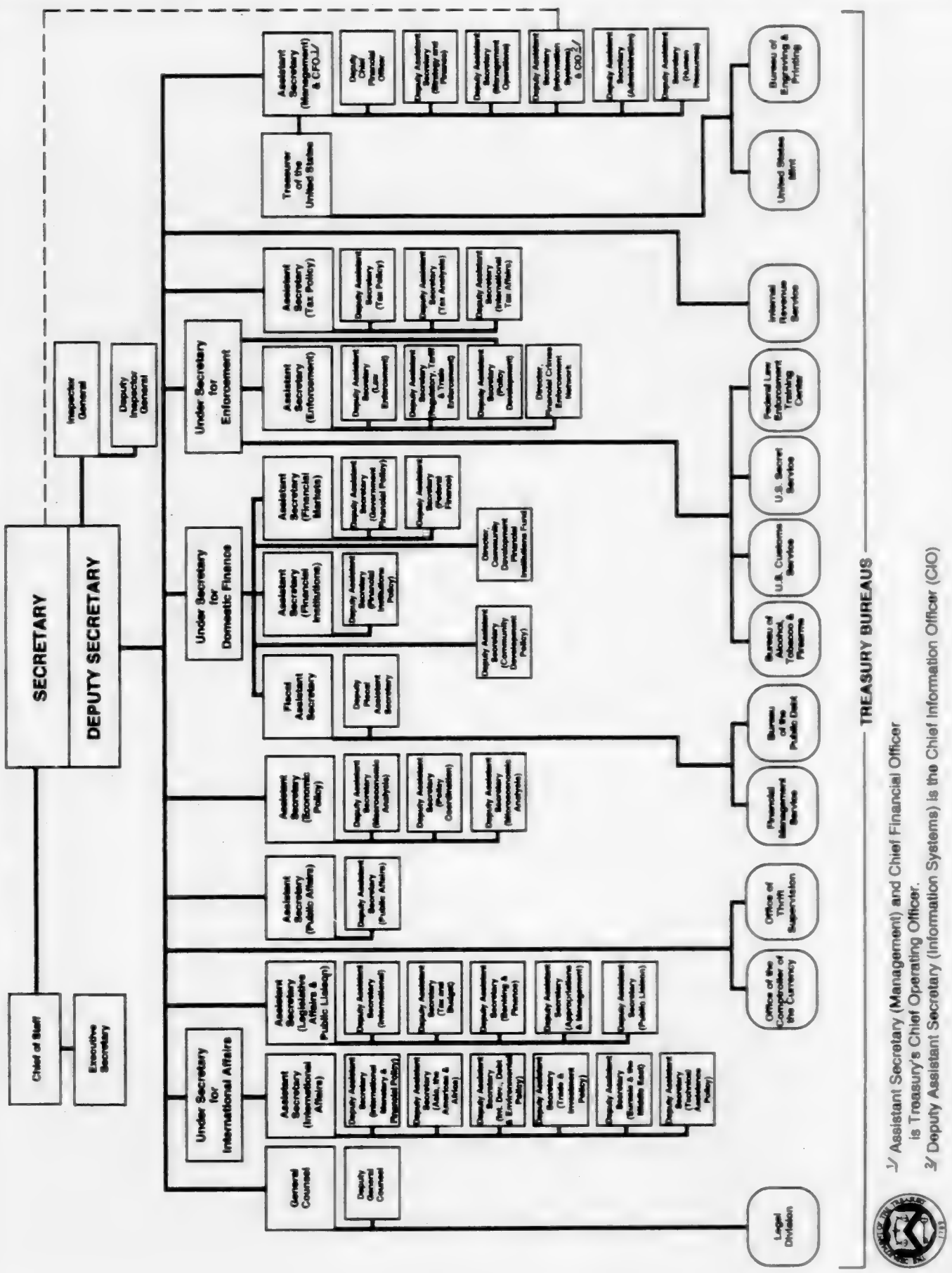
Secretary of the Treasury.

Attachment

BILLING CODE 4810–25–P

VOL 63 ISS 221 NO 17 1998 UMI

THE DEPARTMENT OF THE TREASURY



[FR Doc. 98–29720 Filed 11–16–98; 8:45 am]

BILLING CODE 4810–25–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–9–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–9–95 (TD 8702), Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations (§ 1.367(a)–3).

DATES: Written comments should be received on or before January 19, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Transfers of Domestic Stock or Securities by U.S. Persons to Foreign Corporations.

OMB Number: 1545–1478.

Regulation Project Number: INTL–9–95.

Abstract: This regulation relates to certain transfers of stock or securities of domestic corporations pursuant to the corporate organization, reorganization, or liquidation provisions of the Internal Revenue Code. Transfers of stock or securities by U.S. persons in tax-free transactions are treated as taxable transactions when the acquirer is a foreign corporation, unless an exception applies under Code section 367(a). This regulation provides that no U.S. person will qualify for an exception unless the U.S. target company complies with certain reporting requirements.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–30615 Filed 11–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–41–93]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–41–93 (TD 8703), Automatic Extension of Time for Filing Individual Income Tax Returns; Automatic Extension of Time To File Partnership Return of Income, Trust Income Tax Return, and U.S. Real Estate Mortgage Investment Conduit Income Tax Return (§ 1.6081–4).

DATES: Written comments should be received on or before January 19, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Automatic Extension of Time for Filing Individual Income Tax Returns; Automatic Extension of Time To File Partnership Return of Income, Trust Income Tax Return, and U.S. Real Estate Mortgage Investment Conduit Income Tax Return.

OMB Number: 1545–1479.

Regulation Project Number: IA–41–93.

Abstract: Internal Revenue Code section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return. Under regulation section 1.6081–4, an individual required to file an income tax return is allowed an automatic 4-month extension of time to file if (a) an application is prepared on Form 4868, Application Extension of Time to File U.S. Individual Income Tax Return, or in such other manner as may be prescribed by the Internal Revenue Service, (b) the application is filed on or before the date the return is due, and (c) the application shows the full amount properly estimated as tax.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

The burden for the collection of information is reflected in the burden for Form 4868, Application for Automatic Extension of Time to file U.S. Individual Income Tax Return.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 10, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–30616 Filed 11–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Open Meeting of the Electronic Tax Administration Advisory Committee (ETAAC).

SUMMARY: In 1998 the IRS established the Electronic Tax Administration Advisory Committee (ETAAC). The primary purpose of ETAAC is to provide an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC offers constructive observations about current or proposed policies, programs, and procedures, and suggests improvements.

There will be a meeting of ETAAC Thursday, December 3, 1998. The meeting will be held in the Longworth House Office Building, Washington, D.C. A summarized version of the agenda along with a list of topics that are planned to be discussed are listed below.

Summarized Agenda for Meeting Thursday, December 3, 1998

8:30—Meeting Opens
12:00—Break for Lunch
1:00—Meeting Resumes
3:00—Meeting Adjourns

The topics that are planned to be covered are as follows:

(1) Presentation on alignment of the IRS and ETA Strategic Plans
(2) Importance of ETA to Modernization Effort
(3) Presentation on how ETA is and will be supported
(4) Quarterly Progress Report from ETA (strategic level)
(5) Congress' expectations for ETAAC
(6) Strategic Plan
(7) Presentation on how ETAAC will work with the IRS to assist it in meeting its ETA objectives

Note: Last minute changes to these topics are possible and could prevent advance notice.

SUPPLEMENTARY INFORMATION: ETAAC reports to the Assistant Commissioner, Electronic Tax Administration, who is the executive responsible for the electronic tax administration program. Increasing participation by external stakeholders in the development and implementation of the Internal Revenue Service' (IRS') strategy for electronic tax administration will help achieve the goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members are not paid for their time or services, but consistent with Federal regulations, they are reimbursed for their travel and lodging expenses to attend the public meetings, working sessions, and an orientation each year.

DATES: The meeting will be open to the public, and will be in a room that accommodates approximately 150 people, including members of ETAAC and IRS officials. Seats are available to members of the public on a first-come, first-served basis. To get your name on the access list, *notification of intent to attend this meeting must be made with Ms. Robin Marusin by November 27, 1998. Ms. Marusin can be reached at 202–622–8284.* Notification of intent should include your name, organization and phone number. If you leave this information for Ms. Marusin in a voice-mail message, please spell out all names. A draft of the agenda will be available via facsimile transmission the week prior to the meeting. Please call Ms. Robin Marusin on or after Monday, November 23, 1998, to have a copy of the agenda faxed to you. Please note that a draft agenda will not be available until that date.

FOR FURTHER INFORMATION CONTACT: To get on the access list to attend this meeting, to have a copy of the agenda faxed to you, or to get general information about ETAAC call Robin Marusin at 202–622–8184.

Robert E. Barr,

Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 98–30614 Filed 11–16–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–31: OTS No. 1260]

Central Federal Savings and Loan Association of Wellsville, Wellsville, Ohio; Approval of Conversion Application

Notice is hereby given that on November 6, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Central Federal Savings and Loan Association of Wellsville, Wellsville, Ohio, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 200 West Madison Street, Suite 1300, Chicago, Illinois 60606.

Dated: November 10, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–30628 Filed 11–16–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–32: OTS Nos. H–2170 and 04626]

The Neodesha Savings & Loan Association, FSA, Neodesha, Kansas; Approval of Conversion Application

Notice is hereby given that on November 6, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Neodesha Savings & Loan Association, FSA, Neodesha, Kansas, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039–2010.

Dated: November 10, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–30629 Filed 11–16–98; 8:45 am]

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Corrections

Federal Register

Vol. 63, No. 221

Tuesday, November 17, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board (AFEB)

Correction

In notice document 98–30082, appearing on page 63033, in the issue of Tuesday, November 10, 1998, make the following corrections:

1. On page 63033, the subject line is corrected to read as set above.

2. On page 63033, in the second column, under the heading **SUMMARY:**, in the seventh line, "0700" should read "0730".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Improvements to the Chesapeake & Delaware Canal and Connecting Channels, Delaware and Maryland

Correction

In notice document 98–30084, beginning on page 63033, in the issue of Tuesday, November 10, 1998, make the following corrections:

On page 63033, in the third column, the subject line is corrected to read as set above.

On page 63033, in the third column, under the heading **SUMMARY:**, in the sixth line, "Cheaspeake" should read "Chesapeake".

On page 63034, in the second column, the billing code, "3710-08-M" should read "3710-GR-M".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[AMS–FRL–6155–3]

RIN 2060–AF76

Control of Emissions of Air Pollution From Nonroad Diesel Engines

Correction

In rule document 98–24836, beginning on page 56968, in the issue of Friday, October 23, 1998, make the following correction.

§ 86.884–8 [Corrected]

On page 56995, in the second column, the table in § 86.884–8(c)(4) is corrected to read as follows:

Maximum rated horsepower	Exhaust pipe diameter (inches)
HP<50	1.5
50≤HP<100	2.0
100≤HP<200	3.0
200≤HP<300	4.0
300≤HP<500	5.0
HP≥500	6.0

* * * * *

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40546; File No. SR-NASD-98-73]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Subscribers Who Receive Nasdaq Level 1 and Last Sale Data Through Automated Voice Response Services

Correction

In notice document 98–28109, beginning on page 56055, in the issue of Tuesday, October 20, 1998, make the following correction:

On page 56056, in the first column, in the first full paragraph, in the second line from the bottom, "not be made" should read "now be made".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–37; Amendment 39–10857; AD 96–18–08 R1]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW2000 Series Turbofan Engines

Correction

In rule document 98–28534 beginning on page 57048, in the issue of Monday, October 26, 1998, make the following correction:

§ 39.13 [Corrected]

On page 57050, in the third column, in paragraph (l), in the first line, "(m)" should read "(k)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ANM-10]

Correction to Class E Airspace; Akron, CO

Correction

In the issue of Friday, September 4, 1998, on page 47155, in the first column, in the correction of 98-23896, in the last line the correction should read by removing "(Lat. 40°10'32"N, long. 103°13'19"W)" and adding "(Lat. 40° 10'32"N, long. 103° 13'20"W)".

BILLING CODE 1505-01-D

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Veterans Programs Enhancement Act of 1998 (Nov. 11, 1998; 112 Stat. 3315)

Last List November 13, 1998

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Federal Register

Vol. 63, No. 222

Wednesday, November 18, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC02

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Implementation of WIC Mandates of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994 and Public Law 103–227, the Pro-Children Act of 1994

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends regulations governing the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) to incorporate certain nondiscretionary provisions of the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, the Pro-Children Act of 1994, enacted on August 31, 1994, the Cash Management Improvement Act of 1990, enacted on October 24, 1990, and the Personal Work Responsibility and Reconciliation Act of 1996, enacted on August 22, 1996. The provisions in this final rule include: prohibiting smoking in WIC facilities; increasing by one the family size of an otherwise income ineligible pregnant woman for purposes of determining WIC eligibility; allowing State agencies to deem income eligible pregnant women presumptively eligible (for a period not to exceed 60 days) without a determination of nutritional risk; increasing the national breastfeeding promotion and support expenditure; and providing WIC services at more Community and Migrant Health Centers and Indian Health Service facilities. These provisions are intended to strengthen services to participants, increase State agency flexibility and promote good health practices.

DATES: This rule is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Shirley R. Watkins, Under Secretary for Food, Nutrition and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule provides State and local agencies with greater flexibility: (1) in a certification process, (2) in the use of funds recovered as a result of violations in the food delivery system, and (3) the administration of their infant formula rebate contracts and management of their food funds. However, the economic impact on program operations will not be significant.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements that are subject to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The information collection burden for this final rule was previously approved under OMB #0584–0043.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 June 24, 1983).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Section 204 of Public Law 103–448, the Healthy Meals for Healthy Americans Act of 1994, enacted on November 2, 1994, reauthorized the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). The statutory authorities for a wide range of WIC Program functions in areas such as income eligibility determinations,

program outreach, referral and access, coordination, breastfeeding promotion, program operations, and cost containment were amended by section 204. In addition, section 1043 of Pub.L. 103–227, the Pro-Children Act of 1994, enacted on August 31, 1994, prohibits smoking within any indoor facility owned or leased or contracted for by an entity that receives Federal funds for the provision of regular or routine health care or day care, or early childhood development (Head Start) services. WIC Program clinics are included among the services covered by this legislation. These provisions serve the interests of the President and Congress by improving coordination among programs, promoting positive pregnancy outcomes and healthy babies, and reducing administrative burdens for State and local agencies. In addition, section 724(e)(1)(B)(i) of Pub.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, made a further amendment regarding coordination with other programs and section 4 of Pub.L. 101–453, the Cash Management Improvement Act of 1990, made a change requiring States to pay the United States interest on advances of Federal funds. These provisions are all nondiscretionary. Further, State agencies have already been informed that these provisions may be implemented prior to the issuance of amendments to the program regulations. For these reasons, the Under Secretary for Food, Nutrition and Consumer Services has determined that, in accordance with 5 U.S.C. 553 prior notice and comment is unnecessary and contrary to the public interest. Since this rule merely codifies the cited statutory provisions, it also constitutes an interpretive rule for which notice and comment are not required by 5 U.S.C. 553.

1. Definition of Nutritional Risk—246.2

Section 204(a) of Public Law 103–448 amended section 17(b)(8)(B) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)(8)(B)) (CNA) to change the legislative categorization of alcoholism and drug abuse from predisposing nutritional risk conditions to conditions that directly affect the nutritional health of a person. This reclassification is consistent with new nutrition and health knowledge, and better represents the classification of these conditions currently used by States. As a result, homelessness and migrancy now become the only specific legislative examples of conditions that predispose persons to inadequate dietary patterns or nutritionally related medical conditions in the CNA. Accordingly, the definition of nutritional risk in Section 246.2 has been revised to reflect these changes.

2. Prohibition on Smoking in WIC Clinics Provision—246.6(b)(4)

Sections 1043 (b) and (d) of Pub. L. 103–227, the Pro-Children Act of 1994, require that after December 26, 1994, smoking shall not be permitted in any indoor facility, or portion thereof, that is owned, leased, or contracted for by any person that receives Federal funds for children's services funded under certain programs administered by the U.S. Department of Health and Human Services, the U.S. Department of Education, and the U.S. Department of Agriculture. Section 1042(2) of the Act defines "children's services" as: the provision on a routine or regular basis of health, day care, education, or library services; WIC clinics are specifically identified in the Act as "children's services". The definition of "person" includes State and local agencies as well as corporations and individuals. Additionally, fiscal year 1996, 1995 and 1994 appropriations acts for the WIC Program contained provisions prohibiting the use of appropriated funds to pay administrative expenses of WIC clinics that had no announced policy prohibiting smoking within the space used to carry out the Program. The no-smoking provision in Pub. L. 103–227 is intended to protect children under the age of 18 from exposure to environmental tobacco smoke while they are receiving education, library, day care, health care, and early childhood development services in indoor facilities. The Administration's goal in implementing this legislative requirement reflects a strong health protection policy regarding smoking and environmental tobacco smoke exposure.

In response to the legislative provisions contained in Pub. L. 103–227, section 246.6 is amended to require all local agency agreements to contain a provision prohibiting smoking in the space used to carry out the WIC Program during the time any aspect of WIC services are performed. The smoking prohibition applies to the portion of the facility used for WIC Program services. If that portion of the building is simultaneously used for other purposes, such as community activities or privately sponsored events, smoking must be prohibited at these other events as well. This change to the regulations merely formalizes the current policy directive, which all State agencies have been operating under since fiscal year 1994. That directive prohibits the allocation of nutrition service and administrative funds to any WIC clinic that does not prohibit smoking within the space used for WIC services during the time the services are being performed. This regulation therefore merely codifies the current policy, and places no additional burden on State or local agencies.

3. Service to Pregnant Women Provisions—246.7(d)(1)(iv), 246.7(d)(1)(v), 246.7(d)(2)(vii), 246.7(e)(1)(iii)

a. Family Size Provision

Section 204(c)(1) of Pub. L. 103–448 amended Section 17(d) of the CNA to add a new subparagraph section 17(d)(2)(C), which extends WIC eligibility for certain pregnant women. The provision stipulates that an income-ineligible pregnant woman satisfies income guidelines if the guidelines would be met by increasing the number of individuals in her family by one individual. Although the law states that the family size of the pregnant woman is to be increased by "one," we do not believe, in cases where the pregnant woman is expecting multiple births, that Congress intended to totally preclude counting such multiple births. As such, section 246.7(d)(2)(vii) is amended to allow the family size of a pregnant woman to be increased by the number of embryos or fetuses in utero. This provision allows the WIC Program to use the same definition of family size currently used by the Department of Health and Human Services' (DHHS) Medicaid Bureau, thereby improving coordination between the WIC and Medicaid Programs. It also results in certain women having access to the health benefits of WIC during pregnancy who previously would have had to wait for the birth of their babies to be eligible.

The legislation does not specifically address whether the same income eligibility determination process can be used for the pregnant woman's other family members, who may also apply for WIC services. However, it is impractical and administratively burdensome to require two different income-screening procedures, based on categorical status, for one family. To do so forces a WIC local agency to activate the adjunctive eligibility process unnecessarily because the local agency would have to first refer the family members to the Medicaid Program for certification, and then ask the family members to return to the WIC Program so that they may be determined as adjunctively income eligible for WIC. Therefore, in situations where the family size has been increased for a

pregnant woman, the same increased family size may also be used for any of her categorically eligible family members.

In rare instances, the consideration of unborn children in this manner may conflict with an applicant's cultural, personal, or religious beliefs. In recognition of these issues, the regulation requires State agencies to allow such applicants to waive the automatic increase in family size.

b. Certification Prior to Documentation of Nutritional Risk

Program regulations permit categorically eligible applicants to be certified for WIC benefits only if, in addition to meeting residency and income requirements, they are determined to be at nutritional risk. In order to determine nutritional risk, height, weight, and bloodwork must be obtained. Many State agencies have expressed concerns regarding the availability of bloodwork data for pregnant women at the time of their application. In some cases, State or local agencies may not have the essential equipment or staff onsite to perform the bloodwork assessment. In these situations, the agencies usually have to contract out for that service, or refer the women to health centers and/or providers to obtain the necessary data. State agencies also reported that the bloodwork data requirement has resulted in barriers to participation for pregnant women. They also reported that this requirement could, in fact, be an impediment to enrollment of eligible pregnant women early in pregnancy. Early enrollment is an important program objective, as well as a legislative requirement.

In response to concerns related to improved and expedited access to program benefits for pregnant women, section 204(c)(2) of Pub.L. 103–448, amended section 17(d)(3)(B) of the CNA to allow State agencies to consider pregnant women who are income eligible for the WIC Program to be presumed to be nutritionally at risk and thus eligible to participate in the program. These women may be certified immediately without the results of a nutritional risk evaluation. The law requires that a nutritional risk evaluation be completed, however, not later than 60 days from the date the pregnant woman is certified for participation. The law stipulates that, if the subsequent assessment determines that the woman does not meet nutritional risk criteria, her certification terminate on the date of the determination. The joint statement of explanation accompanying S.1614 (Congressional Record, October 6, 1994, S14454) clarifies the positions of the Senate Committee on Agriculture, Nutrition and Forestry and the House Committee on Education and Labor on this provision concerning presumptive eligibility for pregnant women. The Committees expressed their view that the dietary risk assessment be performed before—or as soon as possible after—the presumptively eligible pregnant woman begins receiving WIC benefits. Local agencies thus should strive to complete the dietary assessment at certification. Ideally, local agencies should complete the full nutrition risk assessment at certification or at the earliest possible date thereafter. This allows the WIC staff to begin to offer appropriate counseling on program nutrition and diet, as well as complete, appropriate health care referrals at the earliest opportunity. This information also is invaluable in developing an appropriate food package.

While the law uses the word "terminate" in connection with the necessary action when a pregnant woman is later found not to meet the nutritional risk criteria, what is really happening is that the pregnant woman is being found ineligible for the program. Accordingly, this action will be treated like an initial determination. That is, while the pregnant woman must be given an opportunity to appeal the action, as required under section 246.7(j)(5), there is no requirement of 15 days notice of the action as for suspensions and most disqualifications (under section 246.7(j)(6)) and for the expiration of certification periods (under section 246.7(j)(8)). Nor will the pregnant woman be able to receive benefits while awaiting the fair hearing decision. Section 246.9(g) will continue to require benefits pending resolution of the fair hearing only for those participants who timely appeal an action under section 246.7(j)(6).

Further, if the nutritional risk evaluation is not completed within the 60-day timeframe, the pregnant woman's participation may not be extended beyond the initial 60-day certification period. However, as set forth in section 246.7(j)(8) for all cases of the expiration of a certification period, the pregnant woman must be notified not less than 15 days before the expiration of the period that the certification period is about to expire. Similarly, pregnant women who appeal the expiration of their certification may not receive WIC benefits while awaiting the fair hearing decision. The regulations are amended at section 246.7(e)(1)(iii) to reflect these legislative provisions.

4. Coordination of WIC and Medicaid Program Provisions—246.4(a)(8)

Section 204(e) of Pub.L. 103–448 amended section 17(f)(1)(C)(iii) of the CNA to require coordination between the WIC Program and State Medicaid Programs, including Medicaid programs that use coordinated care providers under a contract entered into under section 1903(m) or a waiver granted under section 1915 (b) of the Social Security Act (42 U.S.C. 1396 b(m) or 1396n(b)).

Soon after enactment of Pub.L. 103–448, section 729(e)(1)(B)(i) of Pub.L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub.L. 104–193), amended section 17(f)(1)(C)(iii) of the CNA to replace the listing of specific programs with which WIC must coordinate with a plan to coordinate WIC operations with other services or program that may benefit participants in, or applicants for, the program. As such, the State agency now determines which services or programs it will coordinate with to meet the specific needs of its participants and applicants. Section at 246.4(a)(8) is amended to reflect this later change. Although no longer required by law, the Department strongly encourages State agencies to continue to coordinate with Medicaid managed-care providers to ensure that WIC participants have access to medical benefits, thereby improving their health status.

5. WIC Services at Community and Migrant Health Centers—246.4(a)(8) and 246.7(b)(3)

Section 204(ω) of Pub.L. 103–448 amended section 17(j) of the CNA to require that the Secretary of Agriculture and the Secretary of the Department of Health and Human Services establish and carry out an initiative to provide WIC services at substantially more community and migrant health centers. The legislation stipulates that the initiative shall include: (1) Activities to improve the coordination of WIC and health care services at facilities funded by the Indian Health Service (IHS); and (2) the development and implementation of strategies to ensure that, to the maximum extent feasible, new community and migrant health centers and other federally-supported health care facilities established in medically underserved areas provide WIC services. The law further stipulates that the initiative may also include: (1) Outreach and technical assistance for State and local agencies and the facilities named above; (2)

demonstration projects in selected States or local areas; and (3) other activities as the Secretaries find appropriate.

This mandate also reinforces opportunities for the WIC Program, community and migrant health centers and IHS facilities to further implement mutual objectives that are consistent with this legislation. The objectives are: (1) To increase coordination and co-location of WIC with Community and Migrant Health Centers and with IHS facilities; (2) to ensure that newly constructed, federally supported health facilities are coordinated with WIC State agencies to maximize service integration; improve access to health care for participants of all three programs, especially underserved, vulnerable, and hard-to-reach potential eligibles; and (3) to enlist the support of primary care personnel at health centers and IHS clinics and WIC personnel to reinforce health messages such as breastfeeding promotion, immunization screening and delivery, drug abuse education and referrals. The WIC Program will benefit from this initiative through improved access to health care for WIC participants as well as by expansion of opportunities for newly co-located clinic sites to accommodate rapidly increasing WIC participation levels. Projected participation levels are more likely to be met with increased facility infrastructure capacity for WIC. In addition, community and migrant health centers and IHS facilities may benefit from increased co-location and coordination with WIC by enhancing service utilization by clients seeking a one-stop, health care shopping opportunity. In compliance with this legislative provision, this rule amends section 246.7(b)(3) to require that, where feasible, State agencies provide WIC services at community and migrant health centers, Indian Health Services facilities, and other federally supported health care facilities established in medically underserved areas.

These changes are intended to improve access to health care for WIC participants, and will make WIC more accessible to high-risk populations served at community and migrant health centers, IHS facilities and other federally supported health care facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program. The Department will supplement these regulatory requirements with numerous other promotional activities designed to facilitate increased co-location and coordination between WIC and these service providers. These efforts include a cataloging of site locations, the development of a best practices guide, and continued provision of infrastructure and other funding and support that facilitate improved WIC access to eligible persons also being served in IHS facilities, community and migrant health centers, and other federally health care supported facilities established in medically underserved areas provide supplemental foods and nutrition education under the special supplemental nutrition program.

6. Income Eligibility Guidelines Provision Section—246.7(d)(1)(iii)

Section 204(g) of Pub.L. 103–448 amended Section 17(f)(18) of the CNA to allow State agencies to implement annual WIC income eligibility guidelines concurrently with the implementation of annual income eligibility guidelines under the Medicaid Program established under Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.). Section 17(f)(18) was subsequently redesignated as section 17(f)(17) by section 729(e)(10) of Pub.L. 104–193. Congress' purpose in allowing this concurrent implementation is to facilitate closer coordination between the programs and ease Program access for applicants. Section 246.7(d)(1)(iii) is amended accordingly. State agencies that choose not to coordinate implementation with the Medicaid guidelines must implement the amended WIC income eligibility guidelines not later than July 1 of each year.

7. Priority Consideration for Migrant Populations—246.7(f)(2)(iii)(A)

Section 204(f) of Pub.L. 103–448 amended section 17(f)(3) of the CNA to require State agencies to ensure local agencies provide priority consideration to serving migrant participants who are residing in the State for a limited period of time. Current WIC regulations already address this legislative change at section 246.7(f)(2)(iii)(A).

8. Breastfeeding Promotion and Support Activities—246.14(c)(1)

Section 123(a)(6) of Pub.L. 101–147 amended section 17(h)(3) of the CNA to earmark $8 million annually in State agency Nutrition Services and Administration (NSA) grants for the promotion and support of breastfeeding among WIC mothers. Section 204(l) of Pub.L. 103–448 further amended section 17(h)(3) to establish a new formula for determining the minimum national breastfeeding promotion and support expenditure. The new formula increased the national annual minimum expenditure from $8 million to an amount equal to $21 per pregnant and breastfeeding woman participating in the WIC Program nationwide, based on the average number of pregnant women and breastfeeding women participating during the last three months for which the Department has final data. Beginning on October 1, 1996, and each October 1 thereafter, this per participant amount will be adjusted for inflation using the same index that is used for NSA funds. The Department applauds Congress' support for breastfeeding as the optimal method of infant feeding.

To ease transition in fiscal year 1995, section 17(h)(3)(F) provided that State agencies could spend the same amount it expended for breastfeeding promotion and support expenditures in fiscal year 1994, in lieu of meeting the $21 per pregnant and breastfeeding woman minimum. This provision allowed those State agencies that were unable to meet the $21 per pregnant and breastfeeding woman target immediately to gradually move in that direction.

Section 17(h)(3)(G) provided a similar allowance for fiscal year 1996, except that the State agency must expend more than the amount expended in fiscal year 1995 for breastfeeding promotion and support and must have the Secretary's approval. All State agencies were required to expend the minimum $21 per pregnant and breastfeeding woman for breastfeeding promotion and support expenditure beginning in fiscal year 1997. Because the transition period is now past and the new formula is mandatory, this final rule only reflects the new formula and not the transition period exceptions for fiscal years 1995 and 1996. This rule amends section 246.14(c)(1) to reflect the new formula.

9. Standards for the Collection of Breastfeeding Data—246.25(b)(3)

Section 204(m) of Pub.L. 103–448 and section 729(g)(1)(A) of Pub.L. 104–193 amended section 17(h)(4) of the CNA to require the development of standards for the collection of breastfeeding data. The legislation requires that not later than 1 year after the date of enactment, the Secretary must develop uniform requirements for collection of data regarding the incidence and duration of breastfeeding among participants in the program. The Department, after consulting with the National Association of WIC Directors, has developed the breastfeeding data specifications. This information will be collected as part of the biennial reporting in section 246.25(b)(3).

10. Use of Recovered Program Funds in Year Collected—246.14(e)

Section 246.14(e) of the WIC regulations allows the State agency to retain funds collected through (a) the recovery of claims assessed against food vendors or (b) funds not paid to food vendors as a result of reviews of food instruments prior to payment. However, Federal guidelines on refunds limited State agencies in their use and retention of vendor collections (Title 7, section 5.4.B.1., of the General Accounting Office's Manual for the Guidance of Federal Agencies). This guidance provides that "unless otherwise authorized by law, refunds should be deposited to the credit of the appropriation account initially charged with the overpayment." This prohibition from using vendor collections to offset food costs in a year other than the year of the initial obligation was problematic. State agencies reported that they frequently did not receive funds collected from vendors until after closeout of the year in which the initial obligation of funds occurred. As a result, they were required to remit most of their vendor collections to FNS for reallocation rather than receiving the opportunity to use these funds to offset their own WIC Program's food costs. Section 204(h) of Pub.L. 103–448 amended section 17(f) of the CNA of 1966 to provide that "a State agency may use funds recovered as a result of violations in the food delivery system in the year in which the funds are collected for the purpose of carrying out the program." This legislative provision overrides the General Accounting Office's guidance, and permits State agencies to use vendor collections received after the source fiscal year is closed out to offset program expenditures from the year in which collected. In addition, the legislation expands the purposes for which vendor collections may be used to include any program cost, rather than being restricted to food costs. Regulations at 246.14(e) are amended to reflect these legislative changes.

11. Prohibition on Interest Liability to Federal Government on Rebate Funds—246.15(a)

Section 4 of the Cash Management Improvement Act of 1990 (CMIA) (Pub.L. 101–453) amended 31 U.S.C. 6503(c) to require States to pay the United States interest on advances of Federal funds. This change became effective November 1992. Section 6503(d) of Title 31 of the U.S. Code and implementing regulations at 31 CFR Part 205 require an annual reconciliation of interest earned by States on advances of Federal funds and interest lost to States as a result of being forced to use their own funds in anticipation of receiving Federal funds. Congress, through Pub.L. 103–448, has provided an exception to this requirement, however, for receipts earned by WIC State agencies for rebates from infant formula and other foods. Section 204(p) of Pub.L. 103–448 amended section 17(h)(8)(J) of the CNA to stipulate that State agencies shall not incur any interest liability to the Federal government on rebate funds from infant formula and other foods, provided that all interest earned by the State is used for program purposes. Section 246.15(a) is revised to conform with the applicable provisions of the CMIA, and the specific WIC exemptions of the Pub.L. 103–448.

12. Funds for Technical Assistance and Research Evaluation Projects—246.16(a)(6)

Section 17(g)(5) of the CNA, as reflected at section 246.16(a)(6) of the WIC regulations, states that up to one-half of 1 percent of the sums appropriated for each fiscal year, not to exceed $5,000,000, shall be available to the Secretary for evaluating program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems, preparing the biennial Participation Report to Congress described in section 246.25(b)(3), and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations. Section 204(k) of Pub.L. 103–448 amended 17(g)(5) of the CNA to expand the purposes to include technical assistance and research projects of the programs under section 17. The effect of adding the reference to "programs under this section" was to extend the permissible use of these funds to listed activities as they relate to the WIC Farmers' Market Nutrition Program authorized under section 17(m) of the CNA. Section 246.16(a)(6) is amended accordingly to reflect this legislative change.

13. Spendback Funds—246.16(b)(3)(i)

Section 246.16(b)(3)(i) of the WIC regulations reflects the provision in section 17(i)(3)(A)(i) of the CNA that not more than 1 percent of the funds allocated to a State agency for food costs incurred in any fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year. Section 204(s) of Pub.L. 103–448 amended sections 17(i)(3)(A)(i) and 17(i)(3)(H) of the CNA to increase the maximum spendback authority from 1 percent of the total food funds to 3 percent of the total food funds, with the Secretary's approval. A State agency may be permitted to expend not more than 3 percent of the amount of funds allocated to a State for supplemental foods for a fiscal year for expenses incurred for supplemental foods during the preceding fiscal year, if the Secretary determines that there was a significant reduction in the State's infant formula cost containment savings that resulted in the State not being able to at least maintain its level of participation. Section 246.16(b)(3)(i) is amended to reflect the increase in the percentage of spendback authority as per this provision.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Public assistance programs, Reporting and recordkeeping requirements, WIC, Women.

For reasons set forth in the preamble, 7 CFR part 246 is amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN

1. The authority citation for Part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.2, the definition of *Nutritional risk* is revised to read as follows:

§ 246.2 Definitions.

* * * * *

Nutritional risk means:

(a) Detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements;

(b) Other documented nutritionally related medical conditions;

(c) Dietary deficiencies that impair or endanger health;

(d) Conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or

(e) Conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, homelessness and migrancy.

* * * * *

3. In § 246.4, paragraph (a)(8) is revised to read as follows:

§ 246.4 State Plan.

(a) * * *

(8) A description of how the State agency plans to coordinate program operations with other services or programs that may benefit participants in, or applicants for, the program.

* * * * *

4. In § 246.6, paragraphs (b)(4) through (b)(9) are redesignated as (b)(5) through (b)(10). A new paragraph (b)(4) is added to read as follows:

§ 246.6 Agreements with local agencies.

* * * * *

(b) * * *

(4) Prohibits smoking in the space used to carry out the WIC Program during the time any aspect of WIC services are performed.

* * * * *

5. In § 246.7:

a. Paragraphs (b)(3) through (b)(5) are redesignated as paragraphs (b)(4) through (b)(6), and a new paragraph (b)(3) is added;

b. Paragraph (d)(1)(iii) is revised;

c. Paragraphs (d)(2)(vii) and (d)(2)(viii) are redesignated as paragraphs (d)(2)(viii) and (d)(2)(ix), and a new paragraph (d)(2)(vii) is added;

d. Paragraph (e)(1)(iii) is redesignated as paragraph (e)(1)(iv), and a new paragraph (e)(1)(iii) is added.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(b) * * *

(3) State agencies shall provide WIC services at community and migrant health centers, Indian Health Services facilities, and other federally health care supported facilities established in medically underserved areas to the extent feasible.

* * * * *

(d) * * *

(1) * * *

(iii) *Implementation of the income guidelines.* On or before July 1 each year, each State agency shall announce and transmit to each local agency the State agency's family size income guidelines, unless changes in the poverty income guidelines issued by the Department of Health and Human Services do not necessitate changes in the State or local agency's income guidelines. The State agency may implement revised guidelines concurrently with the implementation of income guidelines under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396 of *et seq.*). The State agency shall ensure that conforming adjustments are made, if necessary, in local agency income guidelines. The local agency shall implement (revised) guidelines not later than July 1 of each year for which such guidelines are issued by the State.

(2) * * *

(vii) *Income eligibility of pregnant women.* A pregnant woman who is ineligible for participation in the program because she does not meet income guidelines shall be considered to have satisfied the income guidelines if the guidelines would be met by increasing the number of individuals in her family by the number of embryos or fetuses in utero. The same increased family size may also be used for any of the pregnant woman's categorically eligible family members. The State agency shall allow applicants to waive this increase in family size.

* * * * *

(e) * * *

(1) * * *

(iii) A pregnant woman who meets income eligibility standards may be considered presumptively eligible to participate in the program, and may be certified immediately without an evaluation of nutritional risk for a period up to 60 days. A nutritional risk evaluation of such woman shall be completed not later than 60 days after the woman is certified for participation. Under this subsequent determination process, if the woman does not meet nutritional risk criteria, the woman shall be determined ineligible and may not participate in the program after the date of the determination. Notification of the ineligibility determination shall be given in accordance with paragraph (j)(5) of this section. In addition, if the nutritional risk evaluation is not completed within the 60 day timeframe, the woman's participation shall end when her initial certification period expires. As set forth in paragraph (j)(8) of this section, notification must be given prior to any expiration of the certification period.

* * * * *

6. In § 246.14:

a. The second through the fifth sentences of the introductory text of paragraph (c)(1) are revised, the sixth through the ninth sentences are removed, and a new sixth sentence is added;

b. Paragraph (e) is revised.

The revisions read as follows:

§ 246.14 Program costs.

* * * * *

(c) * * *

(1) * * * During each fiscal year, each State agency shall expend, for nutrition education activities and breastfeeding promotion and support activities, an aggregate amount that is not less than the sum of one-sixth of the amount expended by the State agency for costs of NSA and an amount equal to its proportionate share of the national minimum expenditure for breastfeeding promotion and support activities. The amount to be spent on nutrition education shall be computed by taking one-sixth of the total fiscal year NSA expenditures. The amount to be spent by a State agency on breastfeeding promotion and support activities shall be an amount that is equal to at least its proportionate share of the national minimum breastfeeding promotion expenditure as specified in paragraph (c)(1) of this section. The national minimum expenditure for breastfeeding promotion and support activities shall be equal to $21 multiplied by the number of pregnant and breastfeeding women in the Program, based on the average of the last three months for which the Department has final data. On October 1, 1996 and each October 1 thereafter, the $21 will be adjusted annually using the same inflation percentage used to determine the national administrative grant per person. * * *

* * * * *

(e) *Recovery of vendor claims.* The State agency may retain funds collected through the recovery of claims assessed against food vendors or funds not paid to food vendors as a result of reviews of food instruments prior to payment. The State agency may use funds recovered from vendors for food and/or nutrition services and administration costs. Funds recovered as a result of violations in the food delivery system of the program may be used for costs incurred in the year in which the funds are collected, or in the year in which the initial obligation of funds incurred. The State agency shall not credit any vendor recoveries until after the vendor has had full opportunity to correct or justify the error or apparent overcharge in accordance with § 246.12(r)(5)(iii). The State agency shall report vendor collections to FNS through routine reporting procedures. The State agency shall maintain documentation to support the amount and use of funds retained under this paragraph by the State agency.

7. In § 246.15, paragraph (a) is revised to read as follows:

§ 246.15 Program income other than grants.

(a) *Interest earned on advances.* Interest earned on advances of Program funds at the State and local levels shall be treated in accordance with the provisions of 31 CFR Part 205, which

implement the requirements of the Cash Management Improvement Act of 1990. However, State agencies will not incur an interest liability to the Federal government on rebate funds for infant formula or other foods, *provided* that all interest earned on such funds is used for program purposes.

* * * * *

8. In § 246.16, paragraphs (a)(6) and (b)(3)(i) are revised to read as follows:

§ 246.16 Distribution of funds.

(a) * * *

(6) Up to one-half of 1 percent of the sums appropriated for each fiscal year, not to exceed $5,000,000 shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, providing technical assistance to improve State agency administrative systems preparing the biennial Participation Report to Congress described in § 246.25(b)(3), and administering pilot projects, including projects designed to meet the special needs of migrants, Indians, rural populations, and to carry out technical assistance and research evaluation projects of this program and the WIC Farmers' Market Nutrition Program.

(b) * * *

(3) * * *

(i) Not more than 1 percent of the amount of funds allocated to a State agency for supplemental foods for a fiscal year may be expended by the State agency for food costs incurred in the preceding fiscal year. FNS may authorize a State agency to expend not more than 3 percent of the amount of funds allocated to the State agency for supplemental foods for a fiscal year for expenses incurred for supplemental foods during the preceding fiscal year, if FNS determines that there has been a significant reduction in infant formula cost containment savings that affected the State agency's ability to at least maintain its participation level;

* * * * *

Dated: November 14, 1998.

Shirley R. Watkins,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 98–30753 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–141–AD; Amendment 39–10888; AD 98–24–01]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace (Jetstream) Model 4101 airplanes, that requires repetitive detailed visual inspections to detect cracking or other damage of certain diaphragm support structures of the forward equipment compartment; and repair, if necessary. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct failure of the two diaphragms that support the upper structure of the forward equipment compartment, which could accelerate fatigue damage in adjacent structure and result in reduced structural integrity of the airframe.

DATES: Effective December 23, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 23, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on January 8, 1998 (63 FR 1074). That action proposed to require repetitive detailed visual inspections to detect cracking or other damage of certain diaphragm support structures of the forward equipment compartment; and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Flight With Known Cracks

One commenter, the manufacturer, requests that the proposed AD be revised to allow operators to continue operation of an unrepaired airplane for up to 300 flight cycles following detection of cracking of certain diaphragm support structures of the forward equipment compartment. The commenter states that, during full-scale fatigue testing, failure of both diaphragms occurred, and the test continued for another 24,000 flight cycles before either of the diaphragms was replaced. The commenter further states that, during the period between detection of the cracking and replacement of the diaphragms, no damage was detected that would cause concern regarding the structural integrity of the airplane. In light of these fatigue testing data, the commenter notes that the compliance time of 300 flight cycles after detection of cracking, as specified in the service bulletin, is already a very conservative threshold.

The FAA does not concur. It is the FAA's policy to require repair of known cracks prior to further flight, except in certain cases of unusual need, as discussed below.

This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is incorporated. The FAA's policy regarding flight with known cracks does allow deferral of repairs in certain cases, if there is an unusual need for a temporary deferral. Unusual needs include such circumstances as legitimate difficulty in acquiring parts to accomplish repairs. Because the FAA is not aware of any unusual need for repair deferral in regard to this AD, the FAA has determined that any subject diaphragm that is found to be cracked must be repaired prior to further flight in accordance with a method approved by the FAA. However, operators may request approval of an alternative method of compliance if data are

provided to substantiate that such a method would provide an acceptable level of safety.

Request To Remove Requirement for Repetitive Inspections After Repair

One commenter, the manufacturer, requests that the requirement to continue the repetitive inspections following the installation of an improved diaphragm be removed from the proposal. The commenter states that, during full-scale fatigue testing, no new cracking of the diaphragms was detected following repair of the diaphragms until 65,700 total flight cycles. Based on these data, the commenter states that an inspection threshold of 20,000 landings after installation of a new diaphragm, and a repetitive inspection interval thereafter of 6,000 landings, would be adequate to ensure that any cracking would be detected in a timely manner. The commenter further states that such an inspection threshold and repetitive interval will be added to the Airworthiness Limitations specified in Chapter 5 of the Jetstream 4100 Airplane Maintenance Manual (AMM).

The FAA does not concur with the commenter's request to remove the requirement for repetitive inspections of the diaphragm following replacement. First, the commenter implies that an improved diaphragm is available; however, the FAA is not aware of any such improved part. Further, the lack of specific data in the service bulletin regarding the repair prevents the FAA from determining whether elimination of the repetitive inspection requirement is warranted. Also, though the FAA acknowledges the manufacturer's intent to incorporate a program of repetitive inspections into the Airworthiness Limitations specified in Chapter 5 of the AMM, the FAA would have to engage in further rulemaking in order to require such an inspection program.

Although the FAA does not concur with the request to remove the repetitive inspection requirement following accomplishment of a repair, paragraph (b) of this AD contains a provision for requesting approval of an alternative method of compliance to address operators' unique circumstances. In accordance with paragraph (b) of this AD, an operator may submit a repair method, along with a proposed repetitive inspection program or data to support elimination of the repetitive inspection requirement, for consideration by the FAA. No change to the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,300, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–01 British Aerospace Regional Aircraft [Formerly Jetstream Aircraft Limited British Aerospace (Commercial Aircraft) Limited]: Amendment 39–10888. Docket 97–NM–141–AD.

Applicability: Jetstream Model 4101 airplanes, constructors numbers 41004 through 41098 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the two diaphragms that support the upper structure of the forward equipment compartment, which could accelerate fatigue damage in adjacent structure and result in reduced structural integrity of the airframe, accomplish the following:

(a) Prior to the accumulation of 4,500 total landings, or within 300 landings after the effective date of this AD, whichever occurs later: Perform a detailed visual inspection to detect cracking or other damage of the diaphragms installed between station 4 and station 8 of the forward fuselage, in accordance with Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996.

(1) If no cracking or other damage is detected, repeat the inspection thereafter at intervals not to exceed 3,000 landings.

(2) If any cracking or other damage is detected, prior to further flight, repair the diaphragm in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 3,000 landings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager,

International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with Jetstream Alert Service Bulletin J41–A53–023, dated December 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 007–12–96.

(e) This amendment becomes effective on December 23, 1998.

Issued in Renton, Washington, on November 9, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30536 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–21]

Revision of Class D Airspace; San Diego-Gillespie Field, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class D airspace area at San Diego-Gillespie Field, CA by lowering the ceiling from 2,900 feet Mean Sea Level (MSL) to 2,400 feet MSL. The proposed modification of the San Diego, CA, Class B airspace area would create a narrow 300 foot corridor northeast of Gillespie Field. This corridor would reduce the available airspace for aircraft that are approaching or overflying Gillespie Field from the northeast. Lowering the Gillespie Field Class D airspace ceiling will create an 800 foot corridor along this same route, thereby increasing navigable airspace for aircraft operating under Visual Flight Rules (VFR).

EFFECTIVE DATE: The direct final rule published at 63 FR 50140 is effective 0901 UTC, December 31, 1998.

ADDRESSES: Send comments on the direct final rule confirmation date in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 98–AWP–21, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Assistant Chief Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT:

Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520.10, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: On September 21, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments, which revised the Class D airspace at San Diego-Gillespie Field, CA by lowering the ceiling of the Class D from 2,900 feet Mean Sea Level (MSL) to 2,400 feet MSL. (FR Document 98–25208, 63 FR 50140, Airspace Docket No. 98–AWP–21). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 31, 1998. No adverse comments were received; therefore this document confirms that this direct final rule will become effective on that date.

Issued in Los Angeles, California, on October 30, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 98–30792 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–20]

Revision of Class E Airspace, San Diego, North Island NAS, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises the Class E airspace area at San Diego North Island NAS, (NZY), CA.

DATES: The direct final rule published in 63 FR 46166 is effective at 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Specialist, AWP–520.10, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone: (310) 725–6613.

SUPPLEMENTARY INFORMATION: On August 31, 1998, the FAA published in the **Federal Register** a direct final rule; request for comments, which revised the Class E airspace area at NZY, CA. (FR Document 98–23367, 63 FR 46166, Airspace Docket No. 98–AWP–20). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on December 3, 1998. No adverse comments were received, therefore this document confirms that this direct final rule will become effective on that date.

Issued in Los Angeles, California on October 27, 1998.

John G. Clancy,

Manager, Air Traffic Division, Western Pacific Region.

[FR Doc. 98–30790 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 10

[Docket No. 98N–0361]

Administrative Practices and Procedures; Internal Review of Decisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations governing the internal review of agency decisions by inserting a statement that sponsors, applicants, or manufacturers of drugs (including human drugs, animal drugs, and human biologics) or devices may request review of a scientific controversy by an appropriate scientific advisory panel, or advisory committee. This amendment implements the "Dispute Resolution" provision of the Food and Drug Administration Modernization Act (FDAMA). This document is intended to clarify that sponsors, applicants, or manufacturers of drugs, or devices may request review of scientific controversies by an appropriate scientific advisory panel or advisory committee.

EFFECTIVE DATE: December 18, 1998.

FOR FURTHER INFORMATION CONTACT:

For information regarding this final rule: Suzanne M. O'Shea, Office of the Chief Mediator and Ombudsman (HF–7), Food and Drug Administration, 5600 Fishers Lane, rm. 14–105, Rockville, MD 20857, 301–827–3390.

For information about requesting section 404 of FDAMA (21 U.S.C. 360bbb-1) reviews in the Center for Biologics Evaluation and Research: Rebecca A. Devine, Associate Director for Policy, Center for Biologics Evaluation and Research (HFM–001), Food and Drug Administration, 1401 Rockville Pike, suite 200 North, Rockville, MD 20852–1448, 301–827–0373, or

For information about requesting section 404 reviews in the Center for Devices and Radiological Health: James G. Norman, Senior Policy Analyst-Acting Ombudsman, Center for Devices and Radiological Health (HFZ–001), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–4690, or

For information about requesting section 404 reviews in the Center for Drug Evaluation and Research: Murray M. Lumpkin, Deputy Director for Review Management, Center for Drug Evaluation and Research (HFD–002), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5400, or

For information about requesting section 404 reviews in the Center for Veterinary Medicine: Marcia K. Larkins, Ombudsman, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0137.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, President Clinton signed into law FDAMA (Pub. L. 105–115). Section 404 of FDAMA amends the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*) by adding a new provision, Dispute Resolution (section 562 of the act (21 U.S.C. 360bbb-1)). The dispute resolution provision states that:

> If, regarding an obligation concerning drugs or devices under this Act or section 351 of the Public Health Service Act, there is a scientific controversy between the Secretary and a person who is a sponsor, applicant, or manufacturer and no specific provision of the Act involved, including a regulation promulgated under such Act, provides a right of review of the matter in controversy, the Secretary shall, by regulation, establish a procedure under which such sponsor, applicant, or manufacturer may request a review of such controversy, including a review by an appropriate scientific advisory panel described in section 505(n) or an advisory committee described in section 515(g)(2)(B). Any such review shall take place in a timely manner. The Secretary shall promulgate such regulations within 1 year after the date of the enactment of the Food and Drug Administration Modernization Act of 1997.

Section 404 of FDAMA requires FDA to create a procedure to resolve scientific controversies if no other mechanism for resolving the dispute is contained in the act or regulations issued under the act. The act and agency regulations currently set forth many varied processes that regulated industry may use to resolve disputes under certain specified circumstances. In addition to these specific processes, § 10.75 (21 CFR 10.75) provides that any interested person may obtain review of any agency decision by raising the matter with the supervisor of the employee who made the decision. If the issue is not resolved at the supervisor's level, the interested person may request that the matter be reviewed at the next higher supervisory level. This process may continue through the agency's entire supervisory chain of command through the Centers to the Deputy Commissioner for Operations, and then to the Commissioner of Food and Drugs (the Commissioner).

FDA's formal processes are supplemented by several ombudsman offices to facilitate the resolution of disputes informally. The Office of the Chief Mediator and Ombudsman has been established within the Commissioner's Office to resolve intercenter disputes, disputes that have gone through the Center Directors but are still at issue, or other disputes where the complainant has concerns about raising the issue with a Center. Several FDA Centers have established Center Ombudsman's offices to resolve disputes most appropriately handled at the Center level. For further information about any FDA ombudsman office, contact the information contact persons listed previously.

In the **Federal Register** of June 16, 1998 (63 FR 32733 and 32772), FDA published a direct final rule and a companion proposed rule amending § 10.75 to add another method of resolving scientific controversies in light of section 404 of FDAMA. This amendment stated that sponsors, applicants, or manufacturers of drugs (including human drugs, animal drugs, and human biologics), or devices may request review of scientific controversies by an appropriate scientific advisory panel or advisory committee. (Hereafter in this document, the term advisory committee includes scientific advisory panels.) By this amendment, FDA clarified that sponsors, applicants, and manufacturers of drugs, biologics, and devices are not limited solely to requesting internal supervisory review, but also have the right to request review of scientific controversies by appropriate advisory committees. FDA believes that in appropriate circumstances, advisory committees can provide the agency with useful insight and advice about the resolution of scientific controversies.

FDA initially used the direct final rule approach to rulemaking because it believed the amendment to § 10.75 was noncontroversial and in accord with FDAMA. In accordance with FDA's procedures for direct final rulemaking, the direct final rule stated that if FDA received no significant adverse comments, the direct final rule would go into effect on October 29, 1998. The direct final rule stated further that if FDA received any significant adverse comments, it would withdraw the direct final rule and consider all comments received on the companion proposed rule in the development of a final rule

using the usual notice and comment rulemaking procedures. The comment period for the companion proposed rule ended on August 31, 1998. FDA received significant adverse comments in response to the direct final rule and the companion proposed rule. Therefore, in the **Federal Register** of September 23, 1998 (63 FR 50757), FDA withdrew the direct final rule.

The essence of the significant adverse comments was that the amendment to § 10.75 failed to provide a procedure that sponsors, applicants, and manufacturers could follow to request section 404 reviews. The comments suggested that the regulation called for by section 404 of FDAMA contain information such as the process for selecting members of an advisory committee convened to conduct a section 404 review, the timeframes for conducting the reviews, the standards for granting or denying a section 404 review, and the weight to be given to advisory committee recommendations.

FDA acknowledges the usefulness of much of this kind of information, but concludes that it should not be included in § 10.75. Because of the significant differences among FDA Centers in applicable laws, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management, FDA is adopting a Center-based approach to the implementation of section 404 of FDAMA. Each affected Center is responsible for developing and administering its own processes for handling requests for section 404 reviews and is issuing a guidance document containing specific information of the type suggested by the comments. The substantive differences in the programs in the affected Centers, and the different matters that could be the subject of a request for advisory committee review, preclude inclusion of this type of information in § 10.75.

In this final rule, information that is applicable to all requests for section 404 review has been added to the language amending § 10.75. It is expected that Centers will fully evaluate each request for section 404 review, and will not unreasonably deny a sponsor, applicant, or manufacturer such review. The amendment to § 10.75 now provides that if a Center denies a request for section 404 review, the reason(s) for such denial will be set forth in writing to the requester. A Center's decision to deny section 404 review may be reviewed through the agency's supervisory chain of command, to the Deputy Commissioner for Operations, then to the Commissioner. Persons should ordinarily exhaust Center mechanisms for appealing denials of section 404 review before seeking review by the Deputy Commissioner. Denial of a request for section 404 review is not final agency action subject to judicial review.

Section 10.75 provides that requests for reviews of Center denials be submitted to the Chief Mediator and Ombudsman who shall, by informal means, facilitate the review of the denial on behalf of the Deputy Commissioner for Operations. The role of the Chief Mediator and Ombudsman in the review of a Center's denial of a request for section 404 review is to ensure that all appropriate means of informally resolving the dispute have been used before review by the Deputy Commissioner. The Chief Mediator and Ombudsman will not make an independent determination of whether a section 404 review should be granted, but will work informally with the Center and the person denied section 404 review, to develop a mutually acceptable approach, taking into account all relevant factors.

II. Response to Comments

FDA received five comments on the proposed rule; two from trade associations, one from a private company, one from a university medical clinic, and one from an FDA employee.

1. One comment objected to FDA's conclusion that it was required to issue a regulation establishing a procedure for requesting review of scientific controversies only if procedures to request review of scientific controversies do not otherwise exist. According to the comment, section 404 of FDAMA requires FDA to establish a procedure to be used when there are no other specific provisions for requesting review of the particular type of scientific controversy at issue.

FDA disagrees with this interpretation. Section 404 of FDAMA states "If * * * there is a scientific controversy * * * and no specific provision of the Act * * * including a regulation * * * provides a right of review of the matter in controversy, the Secretary shall, by regulation, establish a procedure * * *." The plain language of section 404 of FDAMA is that FDA must establish a procedure if scientific controversies could arise for which the act or regulations currently provide no right of review. In light of § 10.75, which permits any interested person to obtain review of any FDA decision, FDA concludes that no additional procedure is required.

However, as explained in the proposed rule, notwithstanding the existence of this universal dispute resolution provision, FDA recognizes that in appropriate circumstances, review by an advisory committee can provide the agency with useful insight and advice about the resolution of a scientific controversy. For this reason, FDA is amending § 10.75 to indicate that sponsors, applicants, or manufacturers seeking review of scientific controversies are not limited to internal supervisory review, but may also request review by an advisory committee.

2. One comment asserted that Congress' intent in enacting section 404 of FDAMA was to provide a procedure for resolving disputes by expert committees who are not part of FDA's normal administrative processes. The comment also suggested that the procedure should solicit nominees from the public and FDA for inclusion on an advisory committee roster. According to the comment, the procedure should require prompt conflict of interest checks and periodic updates, in order to assure the timely disposition of controversies. In order to simplify the creation of a panel as much as possible, the comment suggested that the number of persons participating on each panel should be limited to three.

FDA disagrees with this comment. The comment did not identify any specific language in section 404 of FDAMA suggesting that a procedure must be developed to use committees outside FDA's normal advisory committee processes. In fact, section 404 of FDAMA suggests the opposite, by its references to sections 505(n) and 515(g)(2)(B) of the act (21 U.S.C. 355(n) and 360e(g)(2)(B)), the statutory provisions covering FDA's existing drug and device advisory committees.

As noted previously, FDA implementation of section 404 of FDAMA is Center-based. The Centers' existing advisory committee structures and processes for managing advisory committees provide significant flexibility. Each Center may tailor its current processes as necessary to ensure that section 404 reviews are conducted in a timely way by persons with appropriate qualifications.

3. Two comments suggested specific timeframes for conducting section 404 reviews, and a third comment requested additional information about the timeframe for section 404 review. One suggested timeframe would require that a committee be constituted within 10 days of a written request for review, and the request be immediately forwarded to the committee. Also within 10 days of the request, FDA would be required to state its agreement with or opposition to the substantive points in the request, and forward its response to the

committee. Within 20 days of the committee's receipt of FDA's response, a 21 CFR part 14 informal hearing would be convened, unless the parties agree to have the committee decide on the papers. If a hearing occurs, the committee would provide its written decision to the parties within 20 days after the end of the hearing. If there is no hearing, the committee's decision would be required no later than 20 days after the committee receives FDA's response to the request for review.

The second suggested timeframe would require FDA to respond to requests for section 404 review within 30 days. When review is granted, the issue would be presented to the committee within 60 days. FDA would be required to resolve the matter within 90 days of receiving the advisory committee's conclusions and recommendations.

FDA recognizes that section 404 of FDAMA requires that reviews take place in a timely manner, but concludes that specific timeframes should not be included in a regulation of general applicability. For example, the second suggested timeframe outlined previously appears to be based on the timeframes established in section 120 of FDAMA and performance goals associated with the reauthorization of the Prescription Drug User Fee Act (21 U.S.C. 379g *et seq.*), both of which apply only to human drugs and biologics. It would be inappropriate to develop general timeframes based on requirements and commitments that do not apply to all affected FDA Centers. Each Center's section 404 processes incorporate timeframes as appropriate, taking into account applicable statutory and regulatory provisions, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management.

4. One comment suggested that representatives of the Office of the Chief Mediator and Ombudsman serve as executive secretaries of advisory committees convened to conduct section 404 reviews.

FDA disagrees with this suggestion. The efficiency of the Center-based approach to implementation of section 404 of FDAMA could be diminished by appointment of an executive secretary who is not an employee of the Center. Efficiency will be best promoted by using executive secretaries who are fully familiar with the advisory committee procedures. Center employees are most likely to have that expertise. The staff within the Office of the Chief Mediator and Ombudsman will continue to serve as an additional informal dispute resolution resource apart from the Centers.

5. A comment suggested that the advisory committee's conclusions should be accepted as binding unless FDA determines that the weight of record evidence does not support the decision, that the committee applied incorrect legal standards or that the committee otherwise acted inconsistently with the law.

FDA rejects this comment. Nothing in the language of section 404 of FDAMA, section 505(n) of the act, or section 515(g)(2)(B) of the act suggests that it would be appropriate to treat advisory committee recommendations as binding. Section 505(n) of the act contemplates convening advisory committees to provide "expert scientific advice and recommendations * * *." When FDA receives a recommendation from an advisory committee convened under section 515(g)(2)(B) of the act, the agency is to affirm or reverse the order referred to the committee and state the reasons therefore. FDA accords the recommendations of all advisory committees significant weight, but believes it would be an unauthorized delegation of FDA authority to treat advisory committee recommendations as binding. FDA action on section 404 advisory committee recommendations is not final agency action subject to judicial review, unless otherwise required by law.

6. A comment suggested that FDA must grant advisory committee review unless the committee itself declines to review the issue. Another comment seemed to assume that all requests for section 404 reviews will be granted.

FDA disagrees with these comments. The plain language of section 404 of FDAMA provides sponsors, applicants, and manufacturers only the right to *request* review of a scientific controversy by an advisory committee. FDA believes that the agency, not a particular advisory committee, is in the best position to evaluate whether individual requests for section 404 review present appropriate issues to be raised before an advisory committee.

Furthermore, although FDA endorses section 404's goal of facilitating the resolution of disputes by expanding access to the independent experts who serve on advisory committees, it concludes that § 10.75 should include only those aspects of the process for obtaining section 404 reviews that are applicable to all affected Centers. Therefore, § 10.75 includes a general mandate that requests for section 404 reviews shall not be unreasonably denied, and provides information about the process to be followed if requests are denied.

To implement the rule's overall mandate that requests for section 404 reviews shall not be unreasonably denied, the Center guidance documents provide information about granting or denying requests. Although Centers differ with respect to applicable laws, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management, there are some situations in which all Centers would be likely to conclude that a section 404 review would not be appropriate. For example, the nature of the dispute may not be amenable to advisory committee review, the controversy might be more quickly and easily resolved in some other manner, or the issue may not be material to FDA's ultimate decision. Additionally, a section 404 review would be appropriate only if the matter relates to agency action on the requesting sponsor's own product. For example, a section 404 review would not be appropriate if it were requested for anti-competitive purposes, such as to prolong the review of a competitor's product. Furthermore, some issues are reviewed by advisory committees under regulatory processes that already provide for advisory committee review, and so section 404 review may be inappropriate given the preceding, or subsequent, regulatory processes.

7. A comment suggested that the term "scientific controversy" be defined as "one involving issues related to matters of technical expertise requiring some specialized education, training, or experience to understand and resolve."

FDA concludes that a definition of scientific controversy is not necessary in § 10.75. The Center guidance documents may define a scientific controversy if the Centers conclude that a definition would be useful to its specific processes.

8. A comment suggested that § 10.75 outline the steps an applicant, sponsor, or manufacturer must take to request a section 404 review. Another comment also requested information about how the review will take place and the general content and required number of copies of requests.

FDA concludes that this information should not be included in § 10.75. Under the Center-based approach FDA has selected to implement section 404 of FDAMA, each Center is providing information about the steps an applicant, sponsor, or manufacturer must take to request a section 404 review in guidance documents. The Centers' processes are tailored to take into account their applicable statutory

and regulatory provisions, existing appeal and dispute resolution mechanisms, and approaches to advisory committee management. It would not be feasible to incorporate all these particulars in one regulation of general applicability.

9. One of the comments interpreted the proposed amendment to § 10.75 to require applicants, sponsors, and manufacturers to seek review through the supervisory chain before submitting a request for a section 404 review.

FDA concludes that this issue is most appropriately addressed in Center-guidance documents rather than § 10.75. The points at which it is appropriate to request a section 404 review will vary depending on the scientific issue presented, the regulatory mechanism involved, and the relevant Center's organizational structure. Both the applicant, sponsor, or manufacturer and the agency have an interest in resolving scientific controversies at the earliest appropriate time.

10. Two comments suggested that persons other than sponsors, manufacturers, and applicants be given the right to request a review of a scientific controversy under section 404 of FDAMA. According to one comment, physicians, pharmacists, and/or their professional organizations should be permitted to request section 404 reviews. The comment identified compounding and unlabeled indications as potential sources of scientific controversy that might benefit from review under section 404 of FDAMA. The other comment requested that FDA employees be permitted to request review of disputes by advisory committees. According to this comment, advisory committee reviews would enable FDA to resolve issues with greater public input and on a more timely basis.

FDA disagrees with the suggestions that persons other than sponsors, manufacturers, and applicants be given the right to request a review of a scientific controversy under section 404 of FDAMA. By limiting the right to request a section 404 review to sponsors, applicants, and manufacturers, Congress indicated the kind of scientific controversies it had in mind: Those arising within the context of FDA's regulation of a specific product. Thus, a section 404 review would not be available to resolve broad public health controversies unrelated to the regulation of a specific product, or to resolve FDA's policy issues. The agency will continue to use 21 CFR part 15 hearings, public meetings, and advisory committee meetings to help resolve general scientific and policy issues.

Moreover, FDA regulations provide persons other than sponsors, applicants, and manufacturers other processes for seeking review of FDA decisions. Citizen petitions may be submitted by any person. A citizen petition may request the Commissioner to issue, amend, or revoke any regulation or order, or to take or refrain from taking any other form of administrative action. (See 21 CFR 10.30.) Any person may request reconsideration of part or all of a decision made by the Commissioner in response to any type of administrative petition. (See 21 CFR 10.33 and 10.25.) Finally, as noted in the proposed rule, any person may request review of any decision made by an FDA employee, other than the Commissioner, on any matter. (See § 10.75.)

11. Two comments expressed concern that FDA could retaliate against persons who request section 404 reviews, and for this reason suggested that persons be permitted to request section 404 reviews on behalf of sponsors, manufacturers and applicants, or that persons be permitted to request section 404 reviews anonymously.

Although FDA takes concerns about retaliation very seriously, it disagrees with the comment because, as explained in the previous response, the comments' proposed changes have the potential to significantly change the kinds of controversies reviewed under section 404.

FDA reiterates and reaffirms its commitment to an environment in which challenges to agency decisions can be raised without fear of adverse consequences. By memo dated June 29, 1995, Commissioner Kessler reminded all FDA employees that companies are free to vigorously challenge agency positions and requirements, and to freely voice their views. By letter of the same date, Commissioner Kessler assured members of Congress that any act or threat of retaliation by any FDA employee is totally unacceptable and will not be tolerated. Anyone who believes retaliation has occurred, or is likely to occur, is urged to contact the Center Ombudsmen, Center Management, or the Office of the Chief Mediator and Ombudsman. If merited, specific allegations of retaliation will be forwarded to FDA's Office of Internal Affairs which investigates allegations of employee misconduct in cooperation with the Department's Inspector General's Office. FDA believes that its employees are highly sensitive to the need to avoid even the appearance of impropriety, and strive to make complex clinical, scientific, legal, and factual decisions fairly and even-handedly. Accordingly, FDA believes that sponsors, manufacturers, and applicants will not be dissuaded from requesting review of issues under section 404 of FDAMA.

III. Agency Guidance

As explained previously, each FDA Center is providing detailed information in guidance documents about the implementation of section 404 of FDAMA. For further information, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)) and the Unfunded Mandate Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule does not impose any requirements on the regulated industry, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

The final rule contains no new collections of information. Therefore,

clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 10

Administrative practice and procedure, News media.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated to the Commissioner of Food and Drugs, 21 CFR part 10 is amended as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 551–558, 701–706; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

2. Section 10.75 is amended by redesignating paragraph (b) as paragraph (b)(1) and by adding paragraph (b)(2) to read as follows:

§ 10.75 Internal agency review of decisions.

* * * * *

(b)(1) * * *

(2) A sponsor, applicant, or manufacturer of a drug or device regulated under the act or the Public Health Service Act (42 U.S.C. 262), may request review of a scientific controversy by an appropriate scientific advisory panel as described in section 505(n) of the act, or an advisory committee as described in section 515(g)(2)(B) of the act. The reason(s) for any denial of a request for such review shall be briefly set forth in writing to the requester. Persons who receive a Center denial of their request under this section may submit a request for review of the denial. The request should be sent to the Chief Mediator and Ombudsman.

Dated: November 12, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30812 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97N–0524]

RIN 0910–AA43

Food Labeling: Warning and Notice Statement: Labeling of Juice Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration is correcting a final rule that appeared in the **Federal Register** of July 8, 1998 (63 FR 37030). The final rule revised the food labeling regulations to require a warning statement on fruit and vegetable juice products that have not been processed to prevent, reduce, or eliminate pathogenic microorganisms that may be present. The document was published with several inadvertent editorial errors. This document corrects those errors.

DATES: The regulation is effective September 8, 1998; however, compliance for juice other than apple juice and apple cider is not required until November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

In FR Doc. No. 98–18287, appearing in the **Federal Register** of Wednesday, July 8, 1998, the following corrections are made:

1. On page 37038, in the third column, in the fourth full paragraph, in the sixth line, "(Ref. 9)" is corrected to read "(Ref. 7)".

2. On page 37040, in the first column, in the last line of the first full paragraph, "(Ref. 10)" is corrected to read "(Ref. 8)".

3. On page 37040, in the third column, in the second full paragraph, in the eleventh line, "(Ref. 11)" is corrected to read "(Ref. 9)" and in that same paragraph, in the fifteenth and eighteenth lines, "(Ref. 12)" is corrected to read "(Ref. 10)".

5. On page 37041, in the last line of the third column, "(Ref. 13)" is corrected to read "(Ref. 11)".

6. On page 37044, in the third column, in the fourth paragraph, in the twenty-fifth line, "(Ref. 14)" is corrected to read "(Ref. 12)".

7. On page 37047, in the second column, in the second full paragraph, in the twentieth line, "(Ref. 15)" is corrected to read "(Ref. 13)".

§ 101.17 [Corrected]

8. On page 37056, in the third column, in § 101.17(g)(7)(i)(B), beginning in the fourth line, "Hazard Analysis Critical Control Points" is corrected to read "Hazard Analysis and Critical Control Point".

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30814 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Fenbendazole Suspension; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulation concerning veterinary prescription use of Hoechst Roussel Vet's fenbendazole suspension for cattle. The amendment clarifies the oral dose of fenbendazole suspension used as a dewormer in cattle.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, is sponsor of new animal drug application (NADA) 128–620 that provides for oral, veterinary prescription use of Panacur® (fenbendazole) 10 percent suspension. The drug is used as a dewormer in cattle, including dairy cattle of breeding age at 5 milligrams per kilogram (mg/kg) of body weight, and only in beef cattle at 10 mg/kg of body weight. The regulations are amended in 21 CFR 520.905a to clarify the approval.

The amendments clarify the drug dose used to treat various classes of animals and insert certain technical revisions. No additional safety or effectiveness data were required. A revised freedom

of information summary is provided to reflect the clarification.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 520.905a is amended by removing paragraph (a); by redesignating paragraphs (b) and (c) as paragraphs (a) and (b); by adding paragraph (c); by revising the heading of paragraph (d)(2); by redesignating paragraph (d)(3) as paragraph (d)(4); by redesignating paragraphs (d)(2)(ii), (d)(2)(ii)(A), and (d)(2)(ii)(B) as paragraphs (d)(3)(i), (d)(3)(ii), and (d)(3)(iii); by adding a heading for newly redesignated paragraph (d)(3); by redesignating paragraphs (d)(2)(i)(A) and (d)(2)(i)(B) as paragraphs (d)(2)(ii) and (d)(2)(iii) to read as follows:

§ 520.905a Fenbendazole suspension.

* * * * *

(c) *Related tolerances.* See § 556.275 of this chapter.

(d) * * *

(2) *Cattle including dairy cows of breeding age*—* * *

* * * * *

(3) *Beef cattle*—* * *

* * * * *

Dated: November 9, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–30750 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 806

[Docket No. 98N–0439]

Medical Devices: Reports of Corrections and Removals; Delay of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; delay of effective date.

SUMMARY: The Food and Drug Administration (FDA) published in the **Federal Register** of August 7, 1998 (63 FR 42229), a direct final rule. The direct final rule notified the public of FDA's intention to amend the regulations that govern reports of corrections and removals of medical devices to eliminate the requirement for distributors to make such reports. This document delays the effective date of the direct final rule.

EFFECTIVE DATE: The effective date of the direct final published at 63 FR 42229 rule is delayed until February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Rosa M. Gilmore, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20857, 301–827–2970.

SUPPLEMENTARY INFORMATION: FDA solicited comments concerning the direct final rule for a 75-day period ending October 21, 1998. FDA stated that the effective date of the direct final rule would be on December 21, 1998, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comment.

However, FDA has not yet received approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) of the information collection requirements in this rule. Therefore, FDA is revising the effective date of this rule to February 22, 1999. By that date, FDA expects to have received clearance from the Office of Management and Budget (OMB) for the information collection requirements in the rule. This document delays the effective date of the direct final rule.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, notice is given that no objections or requests for a hearing were filed in response to the August 7, 1998, final rule. Accordingly, the amendments issued thereby are effective February 22, 1999.

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30876 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK 15–1703a; FRL–6188–7]

Approval and Promulgation of State Implementation Plans; Alaska

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is approving in part and disapproving in part portions of the revisions to the State of Alaska Implementation Plan which were submitted to EPA by the Director of the Alaska Department of Environmental Conservation (ADEC) on January 8, 1997 and March 17, 1998. These revisions consist of certain changes to the ADEC rules for air quality control (18 AAC 50), updated Alaska statutes related to air pollution, and the "In Situ Burning Guideline for Alaska (revised 5/94)." These revisions were submitted in accordance with the requirements of section 110 and Part D of the Clean Air Act (hereinafter the Act).

DATES: This action is effective on January 19, 1999.

ADDRESSES: Copies of the State's request and other information supporting this proposed action are available for inspection during normal business hours at the following locations: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, and State of Alaska, Department of Environmental Conservation, 410 Willoughby Avenue, Juneau, Alaska, 99801. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, EPA, 401 M Street, SW, Washington, D.C. 20460, as well as the above addresses.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Senior Air Pollution Scientist, Office of Air Quality (OAQ–107), EPA, Seattle, Washington, (206) 553–4253.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act Amendments of 1990, Title V, require States to develop operating permit programs for most stationary sources. While Title V operating permit programs are not approved as part of the state implementation plan (SIP) under section 110 of the Act, many provisions of the SIP will interact closely with the Title V operating permit program. As

such, many States will be revising provisions of their SIPs to facilitate and improve the relationship between their SIP and their Title V operating permit program. The ADEC amended numerous provisions of its current rules for air pollution sources and submitted them to EPA on January 8, 1997, and March 17, 1998, as revisions to the Alaska SIP. ADEC also submitted updated Alaska statutes related to air pollution (specifically, the 1993 Alaska Act (Chapter 74 State Legislative Act 1993)), and the "In Situ Burning Guideline for Alaska (revised 5/94)."

On August 18, 1998 (63 FR 44208), EPA proposed to approve portions of the rules submitted by ADEC, along with portions of the updated Alaska statutes and the "In Situ Burning Guideline for Alaska (revised 5/94)." In that proposal, EPA indicated that it was taking no action at that time on the provisions relating to the permitting of stationary sources, including the construction of new and modified stationary sources, Part D new source review, and prevention of significant deterioration (PSD) permitting, but would propose action on those provisions in a separate notice. In addition, EPA indicated that it was taking no action on a number of provisions which are unrelated to the purposes of the implementation plan. See the August 18, 1998 **Federal Register** for complete descriptions of the portions of the ADEC submittals which were proposed for approval, the portions which will be acted on at a later date, and the portions which will not be acted upon. The August 18, 1998 **Federal Register** also contains a discussion of EPA's review of the ADEC submittals and its findings with regard to the portions of the submittals which EPA proposed for approval.

II. Response to Comments

EPA received comments from three entities on its proposed approval of portions of the ADEC submittal. One commentor (an Alaskan industry) supported EPA's proposed approval and encouraged EPA to complete its action on the provisions relating to the permitting of new and modified stationary sources. One commentor (the ADEC) supported EPA's proposed approval, but pointed out that EPA had proposed to approve AS 46.14.110(e) and (g), which had been repealed by the Alaska Legislature and was no longer in effect. EPA agrees with the commentor that it cannot approve a repealed statutory provision and is correcting its error in this final action.

One commentor (representing three environmental organizations) opposed EPA's proposed approval of the ADEC's request to remove 18 AAC 50.110 "Air Pollution Prohibited" from the federally-approved Alaska SIP. The commentor disagreed with EPA's characterization of this section as a general nuisance provision that is not relied upon to meet any requirement of the Clean Air Act or EPA regulations. The commentor indicated that 18 AAC 50.110 in fact provides a mechanism for regulating pollutants that are not otherwise regulated by ambient air quality standards and/or permitting requirements and equipment-specific standards, and cited examples of where this provision had been used in the past to regulate sources of criteria pollutants. The commentor also pointed out that neither ADEC nor EPA had provided an adequate justification for removing this section from the EPA-approved SIP.

EPA has considered the comments regarding its proposed approval of the removal of 18 AAC 50.110 from the SIP and has reevaluated the documentation submitted by ADEC in support of its request. In light of the information provided by the commentor and the lack of documentation submitted by ADEC, EPA finds the request for removal of 18 AAC 50.110 to be unapprovable. Specifically, ADEC has not demonstrated that the removal of 18 AAC 50.110 would comply with the requirements for SIP revisions set forth in sections 110(l) and 193 of the Act. EPA is therefore disapproving the ADEC request to remove 18 AAC 50.110 from the Alaska SIP. Note that EPA is not making any determination regarding whether 18 AAC 50.110 could be removed from the SIP, but only that ADEC has not submitted the necessary demonstrations required by the Act and EPA regulations for EPA to approve this specific SIP submittal.

III. Final Action

EPA is approving in part and disapproving in part portions of the rules submitted by ADEC, and is approving portions of the updated Alaska statutes and the "In Situ Burning Guideline for Alaska (revised 5/94)." Specifically, EPA is approving the following provisions of 18 AAC 50 as adopted by ADEC and effective on January 18, 1997: Section 005; Section 010, except for subsections (7) and (8); Section 025; Section 030; Section 035; Section 045; Section 050; Section 055, except for paragraph (d)(2)(B) (note that paragraph (a)(9) was not submitted by ADEC); Section 060; Section 065; Section 070; Section 075; Section 200; Section 201; Section 205; Section 220; Section 240; Section 245; Section 400, paragraphs (a), (b)(1), and (c); Section 420; Section 430; Section 900; and Section 990, subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), (14), (15), (16), (17), (19), (20), (23), (24), (25), (26), (29), (31), (32), (33), (34), (35), (37), (39), (40), (42), (43), (45), (47), (48), (50), (51), (53), (58), (59), (60), (61), (62), (63), (65), (66), (67), (69), (70), (71), (72), (74), (75), (78), (79), (80), (81), (83), (84), (85), (86), (89), (90), (91), (92), (93), (94), (95), (96), (97), (99), and (100). (Note that 18 AAC 50, Sections 700 through 735 were already approved by EPA on September 27, 1995 (60 FR 49765).) EPA is also approving the requested revocation of 18 AAC 50: Section 010 "Applicability of Local Government Regulations;" Section 070 "Motor Vehicle Emissions;" and Section 900 "Definitions," subsections (19) "emission allowance," (27) "maximum combustion efficiency," (30) "opacity," (45) "ug/m3," (46) "regional supervisor," and (48) "wood smoke control area." EPA is approving as federally enforceable provisions of the SIP, the following provisions of the Alaska Statutes: AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990(1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a) (enacted 1993). Finally, EPA is approving the "In Situ Burning Guidelines for Alaska (revised 5/94)."

EPA is disapproving the ADEC request to remove 18 AAC 50.110 "Air Pollution Prohibited" (effective 5/26/72) from the EPA-approved SIP.

EPA is taking no action at this time on the following provisions of 18 AAC 50 which relate to the permitting of new and modified stationary sources: Section 015; Section 020; Section 100; Section 210; Section 215; Section 225; Section 230; Section 250; Section 300; Section 305; Section 310; Section 315; Section 320; Section 400, paragraphs (b)(2) through (b)(5); Section 910; and Section 990, subsections (1), (7), (13), (21), (22), (27), (28), (30), (36), (38), (41), (44), (46), (49), (52), (54), (55), (56), (57), (64), (68), (73), (76), (77), (82), and (98). Additionally, EPA is taking no action at this time on the revocation of Section 520 "Emission and Ambient Monitoring" (effective 7/21/91) and Section 900 "Definitions," subsections (52) and (54) (effective 4/23/94). Finally, EPA is taking no action at this time on the following provisions of the Alaska Statutes which relate to the permitting of new and modified stationary sources: AS 46.14.120(a); AS 46.14.130(a); AS 46.14.240(a); AS 46 14.250(a); and AS 46.14.990(4), (5), (9), (11), (12), (14), (19), (20), (21), and (23) (enacted 1993).

EPA is taking no action on the following provisions of 18 AAC 50 which do not relate to the purposes of

the SIP under section 110 of the Act, or which implement other provisions of the Clean Air Act (e.g., NSPS, NESHAP, Title V): Section 010, subsections (7) and (8); Section 040; Section 055, paragraph (d)(2)(B); Section 080; Section 235; Section 300, paragraphs (f) and (h)(10); Section 310, paragraph (h); Section 315, paragraph (e)(6); Section 322; Sections 325 through 380; Section 400, paragraphs (b)(6) through (b)(10); Section 410; and Section 990, subsections (12), (18), (87), and (88) .

IV. Administrative Requirements

A. Executive Order 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled, "Regulatory Planning and Review" review.

The final rule is not subject to E.O. 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks" because it is not an "economically significant" action under E.O. 12866.

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget ■ description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of a portion of the State request under Section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

E. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. § 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. § 804(2).

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

H. Alaska's Audit Law

Nothing in this action should be construed as making any determination or expressing any position regarding Alaska's audit privilege and penalty immunity law (Alaska Audit Act, AS 09.25.450 et seq., enacted in 1997) or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Alaska's audit privilege and penalty immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 5, 1998.

Chuck Findley,

Acting Regional Administrator, Region X.

Note: Incorporation by reference of the Implementation Plan for the State of Alaska was approved by the Director of the Office of the Federal Register on July 1, 1982.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(28) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(28) On January 8, 1997, the Director of the Alaska Department of Environmental Conservation submitted the Alaska air quality regulations, 18 Alaska Administrative Code (AAC) 50 (with the exception of 18 AAC 50.055(a)(9), 50.085, 50.090, 50.110, 50.300(g), and 50.310(l) which were not submitted), as effective on January 18, 1997. On March 17, 1998, the Director of the Alaska Department of Environmental Conservation resubmitted 18 AAC 50.055(a)(3) and (b)(6). EPA has approved the following provisions of 18 AAC 50, as effective on January 18, 1997: Section 005; Section 010, except for subsections (7) and (8); Section 025; Section 030; Section 035; Section 045; Section 050; Section 055, except for paragraph (d)(2)(B) and (a)(9); Section 060; Section 065; Section 070; Section 075; Section 200: Section 201; Section 205; Section 220; Section 240; Section 245; Section 400, paragraphs (a), (b)(1), and (c); Section 420; Section 430; Section 900; and Section 990, subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), (14), (15), (16), (17), (19), (20), (23), (24), (25), (26), (29), (31), (32), (33), (34), (35), (37), (39), (40), (42), (43), (45), (47), (48), (50), (51), (53), (58), (59), (60), (61), (62), (63), (65), (66), (67), (69), (70), (71), (72), (74), (75), (78), (79), (80), (81), (83), (84), (85), (86), (89), (90), (91), (92), (93), (94), (95), (96), (97), (99), and (100). On January 8, 1997, the Director of the Alaska Department of Environmental Conservation submitted the current Alaska Statutes for air pollution control, specifically the 1993 Alaska Act (Chapter 74 State Legislative Act 1993). EPA has approved as federally enforceable provisions of the SIP, the following provisions of the Alaska Statutes, as effective June 25, 1993: AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990(1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a). On January 8, 1997, the Director of the Alaska Department of Conservation submitted the "In Situ Burning Guidelines for Alaska (revised 5/94)."

(i) Incorporation by reference.

(A) 18 AAC 50.005; 18 AAC 50.010, except for subsections (7) and (8); 18 AAC 50.025; 18 AAC 50.030; 18 AAC 50.035; 18 AAC 50.045; 18 AAC 50.050; 18 AAC 50.055, except for paragraphs (d)(2)(B) and (a)(9); 18 AAC 50.060; 18 AAC 50.065; 18 AAC 50.070; 18 AAC 50.075; 18 AAC 50.200; 18 AAC 50.201; 18 AAC 50.205; 18 AAC 50.220; 18 AAC 50.240; 18 AAC 50.245; 18 AAC 50.400, paragraphs (a), (b)(1), and (c); 18 AAC 50.420; 18 AAC 50.430; 18 AAC 50.900; and 18 AAC 50.990, subsections (2), (3), (4), (5), (6), (8), (9), (10), (11), (14), (15), (16), (17), (19), (20), (23), (24), (25), (26), (29), (31), (32), (33), (34), (35), (37), (39), (40), (42), (43), (45), (47), (48), (50), (51), (53), (58), (59), (60), (61), (62), (63), (65), (66), (67), (69), (70), (71), (72), (74), (75), (78), (79), (80), (81), (83), (84), (85), (86), (89), (90), (91), (92), (93), (94), (95), (96), (97), (99), and (100); as effective on January 18, 1997.

(B) AS 46.14.510(b); AS 46.14.550; AS 46.14.560; AS 46.14.990(1), (2), (3), (6), (7), (8), (10), (13), (15), (16), (17), (18), (22), (24), and (25); and AS 45.45.400(a); as effective on June 25, 1993.

(C) Remove the following provisions of 18 AAC 50, as effective on June 2, 1988, from the current incorporation by reference: 18 AAC 50.010; 18 AAC 50.070; 18 AAC 50.900, subsections (19), (27), (30), (45), (46), and (48).

[FR Doc. 98–30721 Filed 11–17–98; 8:45 am]
BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA #1–10–98; FRL–6189–4]

Availability of Federally-Enforceable State Implementation Plans for All States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Section 110(h) of the Clean Air Act, as amended in 1990 (the "Act"), requires EPA by November 15, 1995, and every three years thereafter, to identify the Federally-enforceable State Implementation Plans (SIPs) in each

State and to publish notice in the **Federal Register** of the availability of such documents. This notice of availability fulfills the three-year requirement of making these SIP compilations for each State available for public inspection. The original notice of availability was published on November 1, 1995 (60 FR 55459).

EFFECTIVE DATE: November 18, 1998.

ADDRESSES: You may contact the regional offices regarding requirements of applicable implementation plans for their States. The SIP compilations are available for public inspection during normal business hours at the appropriate EPA regional office listed below. If you want to view these documents, you should make an appointment with the appropriate EPA office and arrange for a mutually agreeable time.

Region 1: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

Regional Contact: Donald Cooks (617/565–3508)
EPA, Office of Ecosystem Protection, John F. Kennedy Federal Building, One Congress Street, Boston, MA 02203–2211

Region 2: New Jersey, New York, Puerto Rico, and Virgin Islands

Regional Contacts: Paul Truchan (212/637–4249)
EPA, Air Programs Branch, 290 Broadway, New York, NY 10007–1866

Region 3: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

Regional Contact: Harold A. Frankford (215/814–2108)
EPA, Office of Air Programs (3AP20), Air Protection Division, 1650 Arch Street, Philadelphia, PA 19103. See also: www.epa.gov/reg3artd/index.htm

Region 4: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

Regional Contact: Dick Schutt (404/562–9033)
EPA, Air Planning Branch, 61 Forsyth Street, S.W., Atlanta, GA 30303

Region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin

Regional Contacts: Madelin Rucker for the States of Michigan, Minnesota and Wisconsin (312/886–0661); Ryan Bahr (312/353–4366) for the States of Illinois, Indiana, and Ohio
EPA, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, IL 60604–3507. See also http://www.epa.gov/ARD–R5/sips/

Region 6: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

Regional Contact: Bill Deese (214/665–7253)
EPA, Multimedia Planning and Permitting Division, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2733. See also: http://www.epa.gov/earth1r6/6pd/air/sip/sip.htm

Region 7: Iowa, Kansas, Missouri, and Nebraska

Regional Contact: Ed West (913–551–7330)
EPA, Air and Toxics Division, Air Branch, 726 Minnesota Avenue, Kansas City, KS 66101. See also: http://www.epa.gov/region07/

Region 8: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

Regional Contact: Laurie Ostrand (303/312–6437)
EPA, Air & Radiation Program, Air Quality Planning and Management Unit, 999 18th Street, Suite 500, Denver, CO 80202–2466

Region 9: Arizona, California, Hawaii, Nevada, American Samoa, and Guam

Regional Contacts: Julie Rose (415/744–1184) and Cynthia Allen (415/744–1189)
EPA, Air Division, AIR–4, 75 Hawthorne Street, San Francisco, CA 94105

Region 10: Alaska, Idaho, Oregon, and Washington

Regional Contact: Montel Livingston (206/553–0180)
EPA, Office of Air Quality (OAQ 107), 1200 6th Avenue, Seattle, WA 98101. See also: hhtp://www.epa.gov/r10earth/

FOR FURTHER INFORMATION CONTACT: Julie Rose, (415) 744–1184.

SUPPLEMENTARY INFORMATION: National ambient air quality standards (NAAQS) are set for criteria pollutants, which are widespread common pollutants known to be harmful to human health and welfare. The present criteria pollutants are: Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, and Sulfur oxides. See 40 CFR Part 50 for a technical description of how the levels of these standards are measured and attained. SIPs provide for implementation, maintenance, and enforcement of the standard in each state. Areas within each state that are designated nonattainment are subject to additional planning and control requirements. Accordingly, different regulations or programs in the SIP will apply to different areas. EPA lists the designation of each area at 40 CFR part 81.

States are required to develop SIPs containing strategies for controlling emissions from pollution sources. See CAA title I; 40 CFR Part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans. SIPs are legal documents, formally adopted, committing States to carry out their air pollution control strategies and including regulations, which are both specific and enforceable, for sources of air pollution. These control strategies and regulations are submitted in accordance with the Act and, upon approval by EPA, become part of the Federally-enforceable SIP. (See 40 CFR Part 52—Approval and Promulgation of Implementation Plans (with Subparts presenting the status for each State and territory). The first section in the Subpart for each State is the "Identification of plan" section which provides chronological development of the State SIP. The identification of plan section identifies the State-submitted rules and plan elements which have been Federally approved. The goal of the State-by-State SIP compilation is to identify those rules under the "Identification of plan" section which are currently Federally enforceable. In addition, some of the SIP compilations may include control strategies, such as transportation control measures, local ordinances, State statutes, and emission inventories, or may include regulations provided in other sections of the State-specific subpart of part 52. Some of the SIP compilations may not identify these other Federally enforceable elements.

In some cases, further information on the content of approved SIPs is available from the Internet. For those regions where such information is available, an address for this information is provided in the regional contacts list above.

You should note that, when States have submitted their most current State regulations for inclusion into Federally-enforceable SIPs, EPA will begin its review process of submittals as soon as possible. Until EPA approves a submittal, State-submitted regulations will be State-enforceable only; therefore, State-enforceable SIPs may exist which differ from Federally-enforceable SIPs. As EPA approves these State-submitted regulations, the regional offices will continue to update the SIP compilations to include these applicable requirements.

This notice identifies the appropriate EPA regional offices to which you may

address questions of SIP availability and SIP requirements. In response to the 110(h) requirement, the original notice of availability was published in the **Federal Register** on November 1, 1995 at 60 FR 55459.

Dated: November 10, 1998.

Carol M. Browner,

U.S. EPA Administrator.

[FR Doc. 98–30743 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL–048–1–9901a; FRL–6188–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving the sections 111(d)/129 State Plan submitted by the Alabama Department of Environmental Management (ADEM) for the State of Alabama on September 11, 1998, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Municipal Waste Combustors (MWCs) with capacity to combust more than 250 tons per day of municipal solid waste (MSW). *See* 40 CFR part 60, subpart Cb.

DATES: This direct final rule is effective January 19, 1999 without further notice, unless EPA receives adverse comments by December 18, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Kimberly Bingham, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Copies of materials submitted to EPA may be examined during normal business hours at the following locations: EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; and at the Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562–9038 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION:

I. Background

On December 19, 1995, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new MWCs and EG applicable to existing MWCs. The NSPS and EG are codified at 40 CFR part 60, Subparts Eb and Cb, respectively. *See* 60 FR 65387. Subparts Cb and Eb regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

On April 8, 1997, the United States Court of Appeals for the District of Columbia Circuit vacated subparts Cb and Eb as they apply to MWC units with capacity to combust less than or equal to 250 tons per day of MSW (small MWCs), consistent with their opinion in *Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F.3d 1395 (D.C. Cir. 1996), *as amended*, 108 F.3d 1454 (D.C. Cir. 1997). As a result, subparts Cb and Eb apply only to MWC units with individual capacity to combust more than 250 tons per day of MSW (large MWC units).

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules. *See* 60 FR 65414.

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart Cb, as it applies to large MWC units only.

II. Discussion

ADEM submitted to EPA on September 11, 1998, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing MWCs under their direct jurisdiction in the State of Alabama: Public Participation Demonstration That the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Legal Authority; Emission Limits and Standards; Compliance Schedule; Inventory of MWC Plant/Units; MWC Emissions Inventory; Source Surveillance, Compliance Assurance, and Enforcement Procedures; Submittal of Progress Reports to EPA; Federally Enforceable State Operating Permit (FESOP) for the Solid Waste Disposal Authority of the City of Huntsville MWC facility; and applicable State of Alabama statutes and rules of the ADEM. ADEM submitted its Plan after the Court of Appeals vacated subpart Cb as it applies to small MWC units. Thus, the Alabama State Plan covers only large MWC units. As a result of the *Davis* decision and subsequent vacatur order, there are no EG promulgated under sections 111 and 129 that apply to small MWC units. Accordingly, EPA's review and approval of the Alabama State Plan for MWCs addresses only those parts of the Alabama State Plan which affect large MWC units. Small units are not subject to the requirements of the Federal Rule and not part of this approval. Until EPA again promulgates EG for small MWC units, EPA has no authority under section 129(b)(2) of the Act to review and approve State Plans applying state rules to small MWC units.

The approval of the Alabama State Plan is based on finding that: (1) ADEM provided adequate public notice of public hearings for the proposed plan and FESOP which allow ADEM to implement and enforce the EG for large MWCs, and (2) ADEM also demonstrated legal authority to adopt emission standards and compliance schedules applicable to the designated facility; enforce applicable laws, regulations, standards, and compliance schedules; seek injunctive relief; obtain information necessary to determine compliance; require recordkeeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

In part F and attachment C of the Plan, ADEM cites the following references for the legal authority: Opinion of the Region 4 Administrator in response to the Governor of the State of Alabama; The Alabama Environmental Management Act, section 22–22A, *Code of Alabama* 1975, as amended; The Alabama Air Pollution Control Act, section 22–28, *Code of Alabama* 1975, as amended; The ADEM Administrative Code, Rule 335–3–1–.04. These statutes and regulations are contained in appendix C. On the basis of these statutes and rules of the State of Alabama, the State Plan and FESOP are approved as being at least as

protective as the Federal requirements for existing large MWC units.

ADEM cites all emission standards and limitations for the major pollutant categories as conditions in the FESOP for the City of Huntsville MWC, the only designated facility in the State of Alabama subject to these standards and limitations (in appendix B of the Plan). These standards and limitations in the FESOP have been approved as being at least as protective as the Federal requirements contained in subpart Cb for existing large MWC units.

ADEM submitted the compliance schedule for the City of Huntsville MWC, the only large MWC under their direct jurisdiction in the State of Alabama. Part G of the Plan and the FESOP contain conditions consistent with 40 CFR part 60, subparts B and Cb, specifications for compliance schedules. This portion of the Plan and FESOP have been reviewed and approved as being at least as protective as Federal requirements for existing large MWC units.

In part G of the Plan, ADEM submitted an emissions inventory of all designated pollutants for the City of Huntsville MWC, the only large MWC under their direct jurisdiction in the State of Alabama. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing large MWC units.

ADEM includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in part G of the State Plan and as conditions in the FESOP for the City of Huntsville MWC. In part G, the ADEM also cites its legal authority to provide for periodic inspection and testing and provisions for making reports of MWC emissions data, correlated with emission standards that apply, available to the general public. Part G of the State Plan outlines the authority to meet the requirements of monitoring, recordkeeping, reporting, and compliance assurance. These referenced State of Alabama rules are contained in appendix C of the Plan. This portion of the Plan and FESOP have been reviewed and approved as being at least as protective as the Federal requirements for existing large MWC units.

As stated in part G of the Plan, ADEM will provide progress reports of Plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the Plan has been reviewed and approved as meeting the Federal requirement for State Plan reporting.

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce subpart Cb, as it applies to large MWC units only.

III. Final Action

This action approves the State Plan submitted by ADEM for the State of Alabama to implement and enforce Subpart Cb, as it applies to large MWC units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 19, 1999 without further notice unless the Agency receives adverse comments by December 18, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 19, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful

and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Municipal waste combustors, Reporting and recordkeeping requirements.

Dated: November 4, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart B—Alabama

2. Part 62.100 is amended by adding paragraphs (b)(4) and (c)(4) to read as follows:

§ 62.100 Identification of plan.

* * * * *

(b) * * *

(4) State of Alabama Plan for Implementation of 40 CFR part 60, Subpart Cb, For Existing Municipal Waste Combustors, submitted on September 11, 1998, by the Alabama Department of Environmental Management.

(c) * * *

(4) Existing municipal waste combustors.

3. Subpart B is amended by adding a new § 62.104 and a new undesignated center heading to read as follows:

Metals, Acid Gases, Organic Compounds and Nitrogen Oxide Emissions From Existing Municipal Waste Combustors With the Capacity To Combust Greater Than 250 Tons Per Day of Municipal Solid Waste

§ 62.104 Identification of sources.

The plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of municipal solid waste (MSW) at the following MWC sites:

(a) Solid Waste Disposal Authority of the City of Huntsville MWC, Huntsville, Alabama.

(b) [Reserved]

[FR Doc. 98–30602 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6175–2]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to delegate the authority to implement and enforce specific national

emission standards for hazardous air pollutants (NESHAPs) to the Pinal County Air Quality Control District (PCAQCD) in Arizona. The preamble outlines the process that PCAQCD will use to receive delegation of any future NESHAP, and identifies the NESHAP categories to be delegated by today's action. EPA has reviewed PCAQCD's request for delegation and has found that this request satisfies all of the requirements necessary to qualify for approval. Thus, EPA is hereby granting PCAQCD the authority to implement and enforce the unchanged NESHAP categories listed in this rule.

DATES: This rule is effective on January 19, 1999 without further notice, unless EPA receives adverse comments by December 18, 1998. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the request for delegation and other supporting documentation are available for public inspection (docket number A–96–25) at the following location: U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, California 94105–3901.

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1200.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112(l) of the Clean Air Act, as amended in 1990 (CAA), authorizes EPA to delegate to state or local air pollution control agencies the authority to implement and enforce the standards set out in 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories. On November 26, 1993, EPA promulgated regulations, codified at 40 CFR Part 63, Subpart E (hereinafter referred to as "Subpart E"), establishing procedures for EPA's approval of state rules or programs under section 112(l) (*see* 58 FR 62262).

Any request for approval under CAA section 112(l) must meet the approval criteria in 112(l)(5) and 40 CFR Part 63, Subpart E. To streamline the approval process for future applications, a state or local agency may submit a one-time demonstration that it has adequate authorities and resources to implement and enforce any CAA section 112 standards. If such demonstration is approved, then the state or local agency would no longer need to resubmit a demonstration of these same authorities and resources for every subsequent request for delegation of CAA section 112 standards. However, EPA maintains the authority to withdraw its approval if the State does not adequately implement or enforce an approved rule or program.

On October 30, 1996, EPA approved the Pinal County Air Quality Control District's (PCAQCD's) program for accepting delegation of section 112 standards that are unchanged from Federal standards as promulgated (*see* 61 FR 55910). The approved program reflects an adequate demonstration by PCAQCD of general resources and authorities to implement and enforce section 112 standards. However, formal delegation for an individual standard does not occur until PCAQCD obtains the necessary regulatory authority to implement and enforce that particular standard, and EPA approves PCAQCD's formal delegation request for that standard.

PCAQCD informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards by incorporating section 112 standards into the Pinal County Air Quality Control District Code of Regulations. The details of this delegation mechanism are set forth in a Memorandum of Agreement (MOA) between PCAQCD and EPA, and are available for public inspection at the U.S. EPA Region IX office (docket No. A–96–25).

On August 18, 1998, PCAQCD requested delegation for several individual section 112 standards that have been incorporated by reference into the Pinal County Air Quality Control District Code of Regulations. The standards that are being delegated by today's action are listed in a table at the end of this rule.

II. EPA Action

A. Delegation for Specific Standards

After reviewing PCAQCD's request for delegation of various national emissions standards for hazardous air pollutants (NESHAPs), EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91. Accordingly, PCAQCD is granted the authority to implement and enforce the requested NESHAPs. These delegations will be effective on January 19, 1999. A table of the NESHAP categories that will be delegated to PCAQCD is shown at the end of this rule. Although PCAQCD will have primary implementation and enforcement responsibility, EPA retains the right, pursuant to CAA section 112(l)(7), to enforce any applicable emission standard or requirement under CAA section 112. In addition, EPA does not delegate any authorities that require implementation through rulemaking in the **Federal Register**, or where Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112.

After a state or local agency has been delegated the authority to implement and enforce a NESHAP, the delegated agency becomes the primary point of contact with respect to that NESHAP. Pursuant to 40 CFR sections 63.9(a)(4)(ii) and 63.10(a)(4)(ii), EPA Region IX waives the requirement that notifications and reports for delegated standards be submitted to EPA as well as to PCAQCD.

In its August 18, 1998 request, PCAQCD included a request for delegation of the regulations implementing CAA section 112(i)(5), codified at 40 CFR Part 63, Subpart D. These requirements apply to state or local agencies that have a permit program approved under title V of the Act (see 40 CFR 63.70). PCAQCD received final interim approval of its title V operating permits program on October 30, 1996 (see 61 FR 55910). State or local agencies implementing the requirements under Subpart D do not need approval under section 112(l). Therefore, EPA is not taking action to delegate 40 CFR Part 63, Subpart D to PCAQCD.

PCAQCD also included a request for delegation of the regulations implementing CAA sections 112(g) and 112(j), codified at 40 CFR Part 63, Subpart B. These requirements apply to major sources only, and need not be delegated under the section 112(l) approval process. When promulgating the regulations implementing section 112(g), EPA stated its view that "the Act directly confers on the permitting authority the obligation to implement section 112(g) and to adopt a program which conforms to the requirements of this rule. Therefore, the permitting authority need not apply for approval under section 112(l) in order to use its own program to implement section 112(g)" (*see* 61 FR 68397). Similarly, when promulgating the regulations implementing section 112(j), EPA stated its belief that "section 112(l) approvals do not have a great deal of overlap with the section 112(j) provision, because section 112(j) is designed to use the title V permit process as the primary vehicle for establishing requirements" (*see* 59

FR 26447). Therefore, state or local agencies implementing the requirements under sections 112(g) and 112(j) do not need approval under section 112(l). As a result, EPA is not taking action to delegate 40 CFR Part 63, Subpart B to PCAQCD.

B. Delegation Mechanism for Future Standards

Today's document serves to notify the public of the details of PCAQCD's procedure for receiving delegation of future NESHAPs. As set forth in the MOA, PCAQCD intends to incorporate by reference, into the Pinal County Air Quality Control District Code of Regulations, each newly promulgated NESHAP for which it intends to seek delegation. PCAQCD will then submit a letter to EPA Region IX, along with proof of regulatory authority, requesting delegation for each individual NESHAP. Region IX will respond in writing that delegation is either granted or denied. If a request is approved, the delegation of authorities will be considered effective upon the date of the response letter from Region IX. Periodically, EPA will publish in the **Federal Register** a listing of the standards that have been delegated. Although EPA reserves its right, pursuant to 40 CFR section 63.96, to review the appropriateness of any future delegation request, EPA will not institute any additional comment periods on these future delegation actions. Any parties interested in commenting on this procedure for delegating future unchanged NESHAPs should do so at this time.

C. Opportunity for Public Comment

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal for this action should adverse comments be filed. This rule will be effective January 19, 1999 without further notice unless the Agency receives adverse comments by December 18, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 19, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because delegations of authority to implement and enforce unchanged Federal standards under section 112(l) of the Clean Air Act do not create any new requirements but simply transfer primary implementation authorities to the State. Therefore, because this action does not impose any new requirements, I certify that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to a private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the delegation action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Date Signed: September 28, 1998.

David P. Howekamp,

Director, Air Division, Region IX.

Title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by revising paragraph (a)(3) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(3) *Arizona.* The following table lists the specific Part 63 standards that have been delegated unchanged to the air pollution control agencies in the State of Arizona. The (X) symbol is used to indicate each category that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ARIZONA

Subpart	Description	ADEQ [1]	MCESD [2]	PDEQ [3]	PCAQCD [4]
A	General Provisions	X			X
F	Synthetic Organic Chemical Manufacturing Industry	X			X
G	Synthetic Organic Chemical Manufacturing Industry: Process Vents, Storage Vessels, Transfer Operations, and Wastewater.	X			X
H	Organic Hazardous Air Pollutants: Equipment Leaks	X			X
I	Organic Hazardous Air Pollutants: Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.	X			X
L	Coke Oven Batteries	X			X
M	Perchloroethylene Dry Cleaning	X			X
N	Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.	X			X
O	Ethylene Oxide Sterilization Facilities	X			X
Q	Industrial Process Cooling Towers	X			X
R	Gasoline Distribution Facilities	X			X
T	Halogenated Solvent Cleaning	X			X
U	Group I Polymers and Resins	X			X
W	Epoxy Resins Production and Non-Nylon Polyamides Production	X			X
X	Secondary Lead Smelting	X			X
CC	Petroleum Refineries	X			X
DD	Off-Site Waste and Recovery Operations	X			X
EE	Magnetic Tape Manufacturing Operations	X			X
GG	Aerospace Manufacturing and Rework Facilities	X			X
JJ	Wood Furniture Manufacturing Operations	X			X
KK	Printing and Publishing Industry	X			X
OO	Tanks—Level 1	X			X
PP	Containers	X			X
QQ	Surface Impoundments	X			X
RR	Individual Drain Systems	X			X
VV	Oil-Water Separators and Organic-Water Separators	X			X
JJJ	Group IV Polymers and Resins	X			X

[1] Arizona Department of Environmental Quality.
[2] Maricopa County Environmental Services Department.
[3] Pima County Department of Environmental Quality.
[4] Pinal County Air Quality Control District.

[FR Doc. 98–30722 Filed 11–17–98; 8:45 am]
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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54 and 69

[CC Docket Nos. 96–45 and 97–160; FCC 98–279]

Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, we select a platform for the federal mechanism to estimate non-rural carriers' forward-looking cost to provide the supported services. The model platform we adopt combines the best elements from each of the three models currently in the record. The model platform we adopt will allow the Commission to estimate the cost of building a telephone network to serve subscribers in their actual geographic locations, to the extent known. To the extent that telephone companies cannot supply the actual geographic location of the customer, the model platform assumes that those customers are located near roads. The model also allows the Commission to adjust engineering assumptions to reflect any evolution in the definition of supported services, and to assure that the model assumes a network architecture that will not impede rural Americans' ability to use the internet and other advanced telecommunications and information services. As such, we believe the federal model platform we adopt will serve as a solid foundation for further decisions that will determine the amount of universal service support to be provided to non-rural eligible telecommunications carriers.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Chuck Keller, Common Carrier Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order in CC Docket Nos. 96–45 and 97–160, adopted October 22, 1998 and released October 28, 1998. The full text is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., N.W., Washington, DC.

Summary of Fifth Report and Order in CC Docket Nos. 96–45 and 97–160

I. Overview

1. Since well before passage of the 1996 Act, the Commission has had in place policies to ensure the availability of telephone service in rural and high cost areas, as well as support mechanisms for low income consumers. Traditionally, consumers in high cost and rural areas of the nation have received universal service support through implicit subsidies in interstate and intrastate rates. Universal service has helped ensure that consumers in all parts of the country, even the most remote and sparsely populated areas, are not forced to bear prohibitively high rates in order to obtain phone service. Universal service also has been designed to ensure that low-income consumers have access to local phone service at reasonable rates. Long distance rates and rates for certain intrastate services have been priced above cost in many instances, in order to keep local telephone rates at affordable levels throughout the country. The universal service program has benefited all telephone subscribers throughout the country by helping to ensure that all Americans are connected to the network, and therefore telephonically accessible to one another. Universal service support has increased subscribership levels by ensuring that residents in rural and high cost areas are not prevented from receiving phone service because of prohibitively high local telephone rates. As of today, approximately 94 percent of the households in the United States subscribe to telephone service, a subscribership rate that is among the best in the world.

2. In the 1996 Act, Congress established a "pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening up all telecommunications markets to competition." One of the principal goals of the telephony provisions of the 1996 Act is reforming universal service support so that the universal service objectives set forth in the 1996 Act continue to be met as local exchange and exchange access markets move from monopoly to competition. In the 1996 Act, Congress codified the Commission's long-standing commitment to ensuring universal service and directed that "[c]onsumers * * * in rural, insular, and high cost areas should have access to telecommunications and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to [those] in urban areas." The 1996 Act also directed the Commission to reform universal service support mechanisms to ensure that they are compatible with the pro-competitive goals of the 1996 Act. In requiring incumbents to open their local markets to competitive entry, Congress rendered unsustainable the existing universal service support system, which is based on a complex system of implicit and explicit subsidies. Rate structures that contain implicit support flows, such as artificially inflated interstate access charges and business rates, are sustainable in a monopoly environment but not in a competitive environment. Absent restructuring of the universal service system, competitors would enter markets where rates are artificially high relative to costs, and would not enter markets where rates are kept artificially low. Moreover, absent rate restructuring, such systematic market entry strategies would threaten to erode altogether the system of universal service. Incumbents would continue to have to serve the high cost customers without the offsetting benefit of the high-profit revenue streams that previously subsidized serving these high cost areas.

3. In order to sustain universal service in a competitive environment, Congress found: (1) that universal service support should be explicit; (2) that all carriers (rather than only interexchange carriers) that provide telecommunications service should contribute to universal service on a competitively neutral, equitable, and non-discriminatory basis; and (3) that, as a general matter, any carrier (rather than only the incumbent local exchange carrier) should be eligible to receive, on a competitively neutral, equitable, and non-discriminatory basis, the appropriate level of support for serving a customer in a high cost area.

4. In the *Universal Service Order*, 62 FR 32862 (June 17, 1997), the Commission adopted its plan to implement a system of universal service support for rural, insular, and high cost areas to replace the existing high cost programs and the implicit federal subsidies with explicit, competitively neutral federal universal service support mechanisms. The first steps were implemented on January 1, 1998. For instance, as of that date the new universal service rules require equitable and non-discriminatory contributions from all providers of interstate telecommunications service rather than exclusively from interstate long distance providers. Also, as of January 1, 1998, competitive eligible telecommunications carriers are also eligible to receive federal universal service support for serving customers in high cost, rural, and insular areas. This order, which adopts the platform of a federal mechanism that would allow support amounts to be determined based on forward-looking cost, is the first step towards further revisions of federal support mechanisms. This estimate will be used to determine the level of support provided to eligible non-rural telecommunications carriers, beginning July 1, 1999.

5. In the *Universal Service Order*, the Commission also agreed with the Joint Board that the appropriate level of federal universal service high cost support should be based on forward-looking economic cost rather than embedded cost. The Joint Board found that, for purposes of administering a federal high cost support system based on forward-looking cost, a forward-looking cost model would be an essential part of determining support levels in an efficient way. The Joint Board also found that determining costs with a cost model would provide other benefits, such as the ability to determine costs at smaller geographic levels than would be practical using the existing cost accounting system. By using a cost model, universal service support can be targeted to support the high cost customers within a carrier's service area. Moreover, a forward-looking economic cost mechanism eliminates incentives to invest inefficiently. Also, because all eligible carriers will receive the same level of support when they win a customer and because the level of support is not based on the specific technology that the carrier used to deliver the supported service, the new universal service mechanism will be competitively and technologically neutral. Finally, the use of a forward-looking cost model allows the Commission to ensure that universal service support amounts are based on a network that will provide the supported services and not impede the provision of advanced services. In contrast, a support system based on the existing network, which is in some cases of lower quality, would not provide sufficient support for necessary upgrades. Basing support on the forward-looking cost of a network that is capable of providing the supported services will ensure that universal service support is based on a network with the capacity to ensure service

quality and access to advanced services in rural areas.

6. In determining the appropriate level of high cost support, the Commission is committed to ensuring that "[q]uality services [are] available at just, reasonable, and affordable rates," and that "[c]onsumers * * * in rural, insular, and high cost areas, should have access to telecommunications and information services * * * that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charges for similar services in urban areas," as required by the statute. In agreeing with the Joint Board that forward-looking economic cost will provide sufficient support for an efficient carrier to provide the supported services for a particular geographic area, the Commission specifically rejected arguments that support should be based on a carrier's embedded cost. As the Joint Board recognized, providing support based on embedded cost provides the wrong signals to potential market entrants. If embedded costs exceed forward-looking costs, such support would encourage inefficient entry. In contrast, providing support based on embedded costs that are below forward-looking economic costs would dissuade market entry even where such competition would be economically efficient. The Commission concurred with the Joint Board's finding that the use of forward-looking economic costs as the basis for determining support will send the correct signals for entry, investment, and innovation. The Commission found that a forward-looking economic cost methodology creates the incentive for carriers to operate efficiently and tends not to give carriers an incentive to inflate their costs or to refrain from efficient cost-cutting.

7. As noted above, our process of estimating forward-looking costs is proceeding in two stages. Consistent with the Joint Board's recommendation, the Commission in the *Universal Service Order* concluded that it would need to estimate costs based on a careful analysis of efficient network design, engineering practices, available technologies, and current technology costs. That is, to estimate forward-looking costs accurately, the Commission decided to look at all of the costs and cost-causative factors that go into building a network. The Commission decided to do this in two stages: first, it would look at the network design, engineering, and technology issues relevant to constructing a network to provide the supported services. Second, the Commission said that it would look at the costs of the components of the network, such as cabling and switch costs, and various capital cost parameters, such as debt-equity ratios and depreciation rates ("input values").

8. This Order includes our conclusions as to the platform selection, the first of the two stages. In the *Universal Service Order*, the Commission concluded that two industry-proposed cost models should continue to be considered and developed further and stated that it might also consider models or model components submitted by other parties or developed by Commission staff. Both of the industry-proposed models have improved in significant ways since the *Universal Service Order* was adopted, and Commission staff has developed a separate model. Below we adopt a synthesis of the best aspects of each of the three models before us in this proceeding. We recognize that, of necessity, models estimate the forward-looking cost of providing the supported services. Such analysis is, however, the only practicable method that presently exists for determining forward-looking costs on a widescale basis, and we expect that the synthesis model will generate accurate estimates of the forward-looking of providing the supported services. The federal mechanism that we select in this Order to estimate forward-looking cost will serve as the foundation for determining the final universal service support requirements. The Commission intends to issue Orders on the input values to be used in the selected mechanism and the further recommendations of the Joint Board in time to implement the federal mechanism for non-rural carriers by July 1, 1999. Because inputs are critical to determining the cost of providing the supported services, the Order we adopt today does not identify the amount of high cost support that will be provided to non-rural carriers beginning July 1, 1999. The selected platform alone is not dispositive of the cost calculations generated by the mechanism. That determination also depends upon the selection of input values and the resolution of the issues recently referred back to the Joint Board, such as benchmark levels. Moreover, we note that the selection of the synthesis platform is based solely on our evaluation of its performance for determining non-rural carriers' forward-looking costs for universal service purposes. We have not evaluated it for any other purpose.

9. We recognize that the task of establishing a model to estimate forward-looking costs is a dynamic process that will need to be reviewed and adjusted periodically. We must balance the needs to provide predictability and certainty with the need to account for changes that inevitably will occur over time, such as technological advances. For example, a party recently submitted data in support of basing support on the use of wireless technologies in some instances. The Commission therefore intends, before the end of this year, to begin more detailed consideration of possible future modification of the model to reflect new technologies. Among other things, the Commission may consider how the model should be updated in the future to account for changes in material prices, technology, and other circumstances. We also will address issues related to the administration of high cost support, including the transition by which routine use of the model and updating of model data will be provided by the administrator of universal service support mechanisms, subject to Commission oversight. In addition, we expect that, both before we implement the model for non-rural carriers on July 1, 1999, and on an ongoing basis, we will find opportunities to make technical improvements. In such cases, we delegate to the Common Carrier Bureau the authority to make changes or direct that changes be made as necessary and appropriate to ensure that the platform of the federal mechanism operates as described in this Order.

II. Procedural History

A. Universal Service Order

10. Prior to the 1996 Act, three explicit universal service programs were in place to provide assistance to small incumbent local exchange carriers (LECs) and LECs that served rural and high cost areas: high cost loop support, dial equipment minutes (DEM) weighting, and the Long-Term Support program. Other mechanisms also have historically contributed to maintaining affordable rates in rural areas, including subsidies implicit in intrastate rates and interstate access charges. Section 254 required the Commission to institute a Federal-State Joint Board on universal service and implement the recommendations from the Joint Board by May 8, 1997. After receiving the recommendations of the Joint Board, the Commission adopted the *Universal Service Order*.

11. In the *Universal Service Order*, the Commission adopted a forward-looking economic cost methodology for non-rural carriers that will calculate support in four steps. First, a forward-looking

economic cost mechanism selected by the Commission, in consultation with the Joint Board (federal mechanism), would be used to calculate non-rural carriers' forward-looking economic cost of providing the supported services in high cost areas. Second, the Commission would establish a nationwide benchmark that represents the revenue that carriers receive as a result of providing service. Third, the Commission would calculate the difference between the forward-looking economic cost and the benchmark. Fourth, federal support would be 25 percent of that difference, corresponding to the percentage of loop costs that historically has been allocated to the interstate jurisdiction. In the *Universal Service Order*, the Commission stated that, once states have taken steps to identify the subsidies implicit in intrastate rates, the Commission may reassess the amount of federal support that is necessary to achieve the Act's goals. In response to issues raised by commenters and the state Joint Board members, the Commission referred back to the Joint Board questions related to how federal support should be determined. For example, the Joint Board is reviewing how best to determine the support amount, given the forward-looking cost of providing the supported services in an area, and the appropriate share to be provided by the federal mechanism. Although many of the proposals under consideration by the Joint Board and pending before the Commission on reconsideration might alter some of those four steps, the proposals would generally still require the Commission to adopt a mechanism for determining the forward-looking cost of providing the supported services.

12. In the *Universal Service Order*, the Commission concluded that two industry-proposed models, the HAI Model and the Benchmark Cost Proxy Model, that had been submitted for consideration in the proceeding that led up to the *Order* were not sufficiently accurate for adoption as the federal cost mechanism, but that the two models should continue to be considered and developed further.

13. The Commission stated that it might consider, for the federal mechanism, alternative algorithms and approaches submitted by parties other than the model sponsors or that could be generated internally by Commission staff. The Commission noted that one possible outcome of this approach would be development of a hybrid or synthesis model that combines selected components of different models with additional components and algorithms drawn from other sources. The Commission presently has three models before it: (1) the Benchmark Cost Proxy Model, Version 3.0 (BCPM); (2) the HAI Model, Version 5.0a (HAI); and (3) the Hybrid Cost Proxy Model, Version 2.5 (HCPM).

B. Further Notice and the Model Development Process

14. In a July 18, 1997 *Further Notice of Proposed Rulemaking (Further Notice)*, 62 FR 42457 (August 7, 1997), the Commission established a multi-phase plan to develop a federal mechanism that would send the correct signals for entry, investment, and innovation. The *Further Notice* divided questions related to the cost models into "platform design" issues and "input value" issues. The *Further Notice* subdivided the platform issues into four topic groups, and sought comment on each group separately in order to develop a focused dialogue among interested parties. The four groups were: (1) customer location platform issues; (2) outside plant design platform issues; (3) switching and interoffice platform issues; and (4) general support facilities, expenses, and all inputs issues.

15. In the *Further Notice*, we also requested that parties provide information about the platform design and input values that would allow the mechanism developed in this proceeding to estimate the forward-looking cost of non-rural carriers in Alaska and insular areas. In addition, the Commission indicated in the *Further Notice* that, in selecting a federal mechanism, we might consider alternative approaches to BCPM and HAI, such as the development of a hybrid model that combines components of BCPM or HAI with each other or with algorithms drawn from other sources. After reviewing the comments received in response to the *Further Notice*, the Common Carrier Bureau released two public notices as guidance to parties wishing to submit cost models for consideration as the federal mechanism. The Bureau's guidance provided recommendations on the platform design of the customer location, outside plant, switching, and transport components of a cost model.

16. During the course of the model development process, proponents of BCPM and HAI submitted a series of revisions to model components and intermediate output data. In a *Public Notice* released on November 13, 1997, the Bureau requested that model proponents by December 11, 1997 submit versions of their model platforms that incorporated the Bureau's guidance. The Bureau stated its expectation that the Commission would evaluate the models submitted at that time to select the platform for the federal mechanism. Updated versions of BCPM, HAI, and HCPM were filed with the Commission on December 11, 1997. On August 7, 1998, HCPM released a clustering algorithm to group customers into serving areas. The Bureau has continued to receive minor refinements to all three models.

C. Design of a Forward-Looking Wireline Local Telephone Network

17. To understand the assumptions made in the models, it is necessary to understand the layout of the current wireline local telephone network. In general, a telephone network must allow any customer to connect to any other customer. In order to accomplish this, a telephone network must connect customer premises to a switching facility, ensure that adequate capacity exists in that switching facility to process all customers' calls that are expected to be made at peak periods, and then interconnect that switching facility with other switching facilities which routes the call to its destination. A "wire center" is the location of a switching facility, and there are geographic boundaries that define the area in which all customers are connected to a given wire center. By requiring the models to use existing incumbent LEC wire center locations, the *Universal Service Order* imposed some uniformity in the models' network design.

18. Within the boundaries of each wire center, the wires and other equipment that connect the central office to the customers' premises are known as *outside plant*. Outside plant can consist of either copper cable or optical fiber cable or a combination of optical fiber and copper cable, as well as associated electronic equipment. Copper cable generally carries an analog signal that is compatible with most customers' telephone equipment, but thicker, more expensive cables must be used to carry signals over greater distances. Optical fiber cable carries a digital signal that is incompatible with most customers' telephone equipment, but the quality of the signal degrades significantly less with distance compared to a signal carried on copper wire. Generally, when a neighborhood is located too far from the wire center to be served with copper cables alone, an optical-fiber cable will be deployed to a point within the neighborhood, where a piece of equipment will be placed that converts the digital signal carried on optical fiber cable to an analog, electrical signal that is compatible with

customers' telephones. This equipment is known as a digital loop carrier remote terminal, or DLC. Because of the cost of DLCs, the models are designed so that a single DLC is shared among a number of customers. From the DLC, copper cables of varying gauge extend to all of the customer premises in the neighborhood. Where the neighborhood is close enough to the wire center to serve entirely on copper cables, a copper trunk connects the wire center to a central point in the serving area, called the serving area interface (SAI), and copper cables will then connect the SAI to the customers in the serving area. The portion of the loop plant that connects the central office with the SAI or DLC is known as the *"feeder" plant,* and the portion that runs from the DLC or SAI throughout the neighborhood is known as the *"distribution" plant.*

19. A model's estimate of the cost of serving the customers located within a given wire center's boundaries includes the model's calculation of switch size, the lengths, gauge, and number of copper and fiber cables, and the number of DLCs required. These factors depend, in turn, on how many customers the wire center serves, where the customers are located within the wire center boundaries, and how they are distributed within neighborhoods. Particularly in rural areas, some customers may not be located in neighborhoods at all but, instead, may be scattered throughout outlying areas. In general, the models divide the area served by the wire center into smaller areas that will be served from a single DLC, known as *"serving areas."* All cable within a serving area, with the exception of that which connects a DLC to a central office, is considered distribution plant.

20. The model proponents agree that forward-looking design requires that wire centers be interconnected with one another using optical fiber networks known as Synchronous Optical Network (SONET) rings. The infrastructure to interconnect the wire centers is known as the "interoffice" network, and the carriage of traffic among wire centers is known as *"transport."* In cases where a number of wire centers with relatively few people within their boundaries are located in close proximity to one another, it may be more economical to use the switching capacity of a single switch to process the calls of the customers in the boundaries of all the wire centers. In that case, a full-capacity switch (known as a "host") is placed in one of the wire centers and less expensive, more limited-capacity switches (known as "remotes") are placed in the other wire centers. The remotes are then connected to the host with interoffice facilities. Switches that are located in wire centers with enough customers within their boundaries to merit their own full-capacity switches and that do not serve as hosts to any other wire centers are called "stand-alone" switches.

21. The models under consideration in this proceeding differ in several important ways in estimating the forward-looking cost of designing a telephone network. For example, the three models in this proceeding rely on different sets of data and assumptions to ascertain the number of customers in each wire center and the geographic location of those customers. The models also use different methods to calculate switch size, the size, type, and number of fiber and copper cables, and the routing of those cables.

III. Customer Location and Outside Plant Design

22. We first consider the customer location and outside plant algorithms of BCPM, HAI, and HCPM in light of the criteria identified in the *Universal Service Order.* As the Bureau pointed out in the *Outside Plant Public Notice,* the criteria suggest that the models "should be considered both from an engineering perspective, to ensure that the network provides the type and quality of service specified in the *[Universal Service] Order,* and from an economic perspective, to ensure that the network design minimizes costs and maximizes efficiency." We conclude that the customer location and outside plant platform of the federal mechanism should consist of a synthesis of the best ideas presented by the model proponents, including HAI's use of geocoded customer location data, BCPM's use of the road network to estimate the locations of customers for whom no geocode data are available, HCPM's approach to identifying customer serving areas based on natural clusters of customers, and HCPM's ability to design plant to the precise customers locations within each serving area.

A. Discussion

23. In this section, we identify the combination of data and algorithms that locate customers and design outside plant to serve those customers in a way that best meets the criteria identified in the *Universal Service Order.* As an initial matter, we observe that all three models design a network that is capable of providing the supported services. We also conclude, as explained below, that each of the models meets a reasonable standard for ensuring that the network designed does not impede the provision of advanced services.

24. We identify five distinct aspects of the customer location and loop design portions of a cost model that can have a significant bearing on the model's ability to estimate the least-cost, most-efficient technology for serving a particular area. These include: (i) the extent to which the model uses actual customer location data to locate customers, (ii) the method of determining customer locations in the absence of actual data, (iii) the algorithms employed to group customers into serving areas, (iv) the model's ability to design plant directly to the customer locations within the serving area, and (v) adherence to sound engineering and cost minimization principles in both the design of distribution plant within each serving area and the design of feeder plant to connect each serving area to the associated central office.

1. Determining Customer Location

25. Each model has a method for determining where customers are located. The issues raised are whether to use actual geocode data, to the extent they are available, and what method to use for determining surrogate customer locations where geocode data are not available. We conclude that HAI's proposal to use actual geocode data, to the extent that they are available, is the preferred approach, and BCPM's proposal that we use road network information to determine customer location where actual data are not available, provides the most reasonable method for determining customer locations.

26. The starting point that all three models use in determining customer location is publicly available information from the Census Bureau, which provides the number of customers within each Census Block (CB). Thus, at a minimum, each model has information about the number of customers within a specified geographic area. In urban areas, CBs tend to be relatively small, and often contain only one city block. In rural areas, however, CBs typically are much larger. It is therefore important to have a reasonable method for determining customer locations more precisely within the CB.

27. *Use of Geocode Data.* Only HAI includes a specific proposal for using actual latitude and longitude data to identify customer locations. Many commenters from across the spectrum of the industry agree that geocode data that identify the actual geographic locations of customers are preferable to algorithms intended to estimate

customer locations based solely on such information as Census data. We agree with Ameritech that proxy techniques for estimating customer locations are unnecessary and inappropriate for companies that can identify the actual customer dispersion of their customers with geocode data. We conclude that a model is most likely to select the least-cost, most-efficient outside plant design if it uses the most accurate data for locating customers within wire centers, and that the most accurate data for locating customers within wire centers are precise latitude and longitude coordinates for those customers' locations.

28. Recent public comment demonstrates support for the use of accurate geocode data in the federal mechanism when available. At present, the only geocode data in the record of this proceeding are those prepared for the HAI model by the HAI sponsors' consultants, PNR Associates (PNR). Many commenters recognize that, in addition to the current sources of geocode data, more comprehensive geocode data are likely to be available in the future. Nevertheless, some commenters still question whether PNR's geocode data set should be used in the federal mechanism. We note that our conclusion that the model should use geocode data to the extent that they are available is not a determination of the accuracy or reliability of any particular source of that data. We anticipate, however, that a reasonable source of verifiable geocode data can be determined at the inputs stage of this proceeding. At a minimum, PNR's data is now available for review, and interested parties may comment upon and suggest improvements to the accuracy of that database. Thus, while we conclude that the federal mechanism should use geocode data to the extent available, we do not in this Order adopt a particular source of geocode data. The final choice of what source or sources of geocode data to use in determining customer location will be decided at the inputs phase of this proceeding.

29. We also conclude that the federal mechanism should not discard geocode data in favor of surrogating below some "break point" percentage in each CB. The BCPM sponsors contend that actual geocode data should be used in conjunction with surrogate data only when the percentage of customer locations in a given area for whom precise geocode data are known is above 80 percent. The BCPM sponsors suggest that the combined use of actual and surrogate customer locations below this threshold will lead to clusters with "unnatural distributions." The BCPM sponsors have provided no concrete evidence or statistical support for their position that significant anomalies will result from mixing actual and surrogate geocode points, nor provided adequate justification for the proposed level of the break point. We find that actual geocode data, to the extent available, provide the most reliable customer location information. BCPM has not persuaded us that geocode data should be discarded simply because the available geocode data for a given area may be limited. We therefore decline to adopt BCPM's suggestion that the model use surrogate geocode data in instances where only low percentages of actual geocode data are available.

30. *Surrogate Location Methodology.* Where actual customer location information is unavailable, the models must use other means to identify customer locations. Each model has developed a method for determining the location of customers in the absence of geocoded customer location data.

31. In the absence of geocoded customer data, HAI distributes all "surrogate" customers uniformly around the boundaries of a CB. The HAI proponents contend that this distribution results in a conservative placement of customers because it assumes they are maximally separated from one another.

32. BCPM uses CB data and a grid approach that allocates customers to microgrids using road network data, based on the assumption that customers are located along roads. The BCPM proponents argue that many roads lie in the interior of CBs, not just along CB boundaries, and that customer location correlates with roads. Information about the correlation between "road mileage" and "housing units" presented by the BCPM proponents for the state of Kentucky suggests that customers tend to live near roads. BCPM also notes that most rights of way follow roads.

33. In the absence of geocode data, HCPM locates customers based on CB-level data by assuming that customers are distributed evenly across a square grid cell with the same area as the average size of a CB in the wire center.

34. Recent comments in this docket support the use of road network to place surrogate customer locations. We conclude that, in the absence of precise customer location data, BCPM's rationale of associating road networks and customer locations provides the most reasonable approach in determining customer locations. We find that BCPM's assumption that customers generally live along roads is reasonable. Moreover, we find that BCPM's method of associating customers with the distribution of roads is more likely to correlate to actual customer locations than uniformly distributing customers throughout the CB, as HCPM proposes, or uniformly distributing customers along the CB boundary, as HAI proposes. HCPM's surrogating method, for example, would be more likely than the other two models to locate customers in uninhabitable areas such as bodies of water or national parks. As BCPM notes, HAI's surrogating method might well associate customer locations in ditches, bodies of water, or other uninhabitable areas that may constitute CB boundaries. Moreover, HAI's method of placing surrogate locations along CB boundaries may result in the identification of false customer clusters, as surrogates from adjoining CBs are placed near one another along the common CB boundary. In addition, we note that BCPM has taken steps to identify and exclude certain types of roads or road segments that are unlikely to be associated with customer locations. We also note that the proponents of HAI have recently proposed a road surrogate methodology premised on the rationale that customers locations correspond to roads. Therefore, we adopt BCPM's proposal to use road network information as the basis for locating within a CB boundary customers whose precise locations are unknown.

35. We adopt BCPM's set of guidelines for excluding from the surrogating process the types of roads and road segments (such as interstate highways, bridges, and on- and off-ramps) that are unlikely to be associated with customer locations. Beyond these conclusions, we do not select a particular algorithm in this Order for placing surrogate points along roads. We conclude that the selection of a precise algorithm for placing road surrogates pursuant to these conclusions should be conducted in the inputs stage of this proceeding as part of the process of selecting a geocode data set for the federal mechanism.

2. Algorithms Employed to Group Customers Into Serving Areas

36. Once customer locations have been identified, each model must determine how to group and serve those customers in an efficient and technologically reasonable manner. A model will most fully comply with the criteria in the *Universal Service Order* if it uses customer location information to the full extent possible in determining how to serve multiple customers using a single set of electronics. Moreover, the model should strive to group customers

in a manner that will allow efficient service. As discussed below, we conclude that a clustering approach, as first proposed by HAI in this proceeding, is superior to a grid-based methodology in modeling customer serving areas accurately and efficiently. In addition, we conclude that the federal high cost mechanism should use the HCPM clustering module.

37. The model proponents have identified two methods—clustering and gridding—for grouping customers into serving areas. HAI identifies groups of customers based on their proximity to one another to create "clusters" of customers. HAI defines a "serving area" as a main cluster and those outlier clusters in close proximity. BCPM determines serving areas by means of a multi-step process that begins by placing grids over a map of CBs that make up a wire center. Once the grids are populated with customer location data, serving areas are determined based on technological limitations such as the number of lines that can be served from a single DLC. Although it originally proposed a gridding approach, HCPM subsequently developed a clustering algorithm.

38. To meet the *Universal Service Order's* criteria, a clustering algorithm should group customer locations into serving areas in an efficient manner to minimize costs while maintaining a specified level of network performance quality. This is consistent with actual, efficient network design. In other words, an efficient service provider would design its network using the most efficient method of grouping customers, in order to minimize costs.

39. The advantage of the clustering approach to creating serving areas is that it can identify natural groupings of customers. That is, because clustering does not impose arbitrary serving area boundaries, customers that are located near each other, or that it makes sense from a technological perspective to serve together, may be served by the same facilities. There are two main engineering constraints that must be accounted for in any clustering approach to grouping customers in service areas. Clustering algorithms attempt to group customers on the basis of both a distance constraint, so that no customer is farther from a DLC than is permitted by the maximum distance over which the supported services can be provided on copper wire, and on the basis of the maximum number of customers in a serving area, which depends on the maximum number of lines that can be connected to a DLC remote terminal.

40. In contrast, the chief advantage of the gridding approach is its simplicity. Placing a uniform grid over a populated area, and concluding that any customers that fall within a given grid cell will be served together, is simpler to program than an algorithm that identifies natural groupings of customers. The simplicity of the grid-based approach, however, can generate significant artificial costs. Because a simple grid cannot account for actual groupings of customers, grid boundaries may cut across natural population clusters. Serving areas based on grids may therefore require separate facilities to serve customers that are in close proximity, but that happen to fall in different grids. The worst-case scenario would involve a natural cluster of customers that, given distance and engineering constraints, could be served as a single serving area but that happened to be centered over the intersection of a set of grid lines. This would result in the division of the natural population cluster into four serving areas instead of one. As a result, a gridding approach cannot reflect the most cost-effective method of distributing customers into serving areas. In order best to meet the *Universal Service Order's* criteria, we conclude that the federal mechanism should use a clustering methodology, rather than a grid-based methodology, to determine serving areas.

41. Having determined that a clustering approach should be used, we must determine which clustering approach to adopt for use in the federal mechanism. Two types of clustering algorithms have been proposed in this proceeding, agglomerative and divisive. The HAI clustering algorithm is a "nearest neighbor" algorithm, a type of agglomerative approach, which forms clusters by joining customer locations to the nearest adjacent location in a sequential fashion. The HCPM sponsors have developed a divisive algorithm that they describe as tending "to create the smallest number of clusters and is also by far the most efficient algorithm in terms of computer run-time."

42. The agglomerative approaches to clustering, including the HAI nearest neighbor algorithm, work as follows. Initially, each location constitutes its own individual cluster. This initial state is modified by merging the two closest clusters together, reducing the total number of clusters by one. This modification is repeated until merging is no longer feasible from an engineering standpoint. In the HAI nearest-neighbor algorithm, distance is measured from the two customer locations that are closest together. The HAI nearest-neighbor method contains an additional constraint that no customer locations are joined if the distance between them is more than two miles.

43. In the divisive approach advocated by HCPM, all customer locations initially are grouped in a single cluster. If one or more engineering constraints are violated, the original cluster is divided into a new "parent" cluster and a "child" cluster. Customer locations are added to the child cluster until it is full, i.e., until no more locations can be added without violating the line count and maximum distance constraints. This process continues until the original cluster has been subdivided into a set of clusters that conform to the line count and maximum distance constraints.

44. The clustering module developed by the HCPM sponsors includes several optimization routines that seek to lower the cost of constructing distribution areas by reassigning certain customer locations to different clusters. One routine, called "simple reassignment," reassigns a customer location to a different cluster if the location is closer to that cluster's center. The routine operates sequentially, taking account of both the maximum distance and line count constraints. After the reassignment, cluster centers are re-computed and the routine is repeated. The process continues until no more reassignments can be made. The second routine, called "full optimization," considers customer locations one by one. It measures the effect each customer location has on the location of cluster centers, and moves a location from one cluster to another if the total distance from all customer locations to their cluster centers is reduced. The routine moves the customer location that gives the most distance reduction at each step. It continues until no more distance reduction is possible.

45. While some commenters express concern that the HCPM clustering algorithm has not undergone extensive review, most agree that the HCPM clustering algorithm introduces innovations and improvements over previous models. For example, Bell Atlantic notes that HCPM's ability to limit redistribution of customers from their geocoded locations by assigning them to small microgrids is a substantial improvement over the approaches of HAI and BCPM. GTE contends that the HCPM clustering algorithm is a significant improvement over the HAI clustering approach.

46. While we are cognizant of the concern expressed by commenters that the HCPM clustering algorithm has been available for review for a more limited time than the HAI clustering algorithm,

we note that the HCPM clustering algorithm and test data have been made available for public comment. Commission staff have met with and discussed issues relating to HCPM with the model sponsors and interested parties. The BCPM sponsors have performed an initial analysis of the HCPM clustering algorithm and while they suggest certain improvements to the HCPM clustering algorithm, no major flaw has been identified. Moreover, we observe that clustering algorithms, including in particular the divisive algorithm that HCPM employs, are a generally accepted and thoroughly tested part of statistical theory.

47. We find that the HCPM clustering algorithm provides the least-cost, most-efficient method of grouping customers into serving areas. The HCPM clustering algorithm tends to create the smallest number of clusters and is more efficient in terms of computer run-time. The divisive algorithm has greater ability to minimize costs while conforming to technological constraints and network quality standards. By considering at all times the most efficient assignment of a customer to a particular cluster, HCPM's divisive clustering algorithm ensures that customers will be served at the least cost possible. In establishing the least-cost, most-efficient method of grouping customers into serving areas, we note that fixed costs (i.e., those that do not vary with the number of lines) associated with DLC terminal devices in serving areas militate in favor of selecting an algorithm that generates a small number of large clusters rather than a larger number of small clusters. On the other hand, with a small number of clusters, the average distance of a customer from a central point of a cluster, and consequently the variable costs associated with cable and structures, tends to be greater than it would be if there were more clusters. In low-density rural areas, it is likely that fixed costs will be the most significant cost driver. Consequently, a clustering algorithm such as HCPM's that generates the smallest number of clusters should provide the least-cost, most-efficient method of determining customer serving areas in rural areas. In addition, a practical advantage of the divisive algorithm is that it runs in a small fraction of the time required for the agglomerative approaches. Hence it is more compatible with the criterion that the model platform be available for review. Therefore, we conclude that HCPM's clustering algorithm is superior to alternative algorithms designed to group customers into serving areas and adopt it for use in the federal mechanism.

3. Outside Plant Design

In designing outside plant, a model will most fully comply with the *Universal Service Order's* criteria if it designs a network that reflects as accurately as possible the available data on customer locations, adheres to sound engineering and forward-looking, cost-minimizing principles, and does not impede the provision of advanced services. We conclude that HCPM's outside plant design algorithms best meet the criteria developed in the *Universal Service Order*, including the requirement that the technology assumed in the model is the "least-cost, most-efficient, and reasonable technology for providing the supported services." We therefore conclude that the federal mechanism should incorporate HCPM's outside plant design algorithm.

a. Designing Plant to Customer Locations

49. We first consider the manner in which each of the models designs outside plant once customer location and serving areas have been identified. After selecting a model that determines customer locations as accurately as possible and identifies efficient serving areas, it is important that the model design a network that takes the greatest advantage of that information. Thus, the model's method of designing outside plant should provide the best estimation of the design of outside plant to customer locations.

50. The HCPM loop design modules build loop plant directly to individual microgrids in which customers are located. The microgrids that HCPM is able to design closely reflect the underlying customer locations. If an accurate source of geocoded customer locations is used, the model is capable of building plant directly to every customer location with an error of no more than a few hundred feet for any individual customer.

51. By contrast, HAI and BCPM design outside plant by modifying the distribution areas so that they have square or rectangular dimensions and relocating customers so that they are distributed uniformly within the distribution area. In doing so, HAI and BCPM discard or distort customer location data. For example, although BCPM initially locates customers based on road network information, these customers are subsequently relocated into a square distribution area that is smaller than the quadrant in which the road network containing these customers is located. HAI's approach of designing plant to simplified customer locations within rectangularized serving areas, instead of to actual customer locations, could result in a systematic underestimation of outside plant costs. Sprint has observed that HAI's simplification of actual clusters to rectangles can result in an underestimation of plant costs. Sprint has shown that, under certain circumstances, HAI's conversion of actual clusters into rectangular distribution areas results in a shorter maximum cable length—and thus a lower cost of service—within the rectangularized cluster than in the actual, underlying cluster. Commission staff analysis has also revealed that HAI's approach to distributing customers evenly within its rectangularized serving areas can also result in a systematic underestimation in less dense areas when compared to the cost of constructing plant to serve the underlying customer locations within the clusters. BCPM's approach of designing plant to square customer serving areas that are significantly smaller than the areas over which the customers are actually distributed is likely to have similar infirmities.

52. The HAI model also sacrifices accuracy by assuming that customers are dispersed uniformly within its distribution areas. As a result, the boundaries of HAI's distribution areas are unlikely to correlate exactly with the boundaries of the clusters, so some customers located inside a cluster may be shifted beyond the boundaries of that cluster. Commenters have criticized this "squaring up" of cluster areas to create distribution areas, as well as the assumption that customers are uniformly distributed throughout the distribution area. We agree that inaccuracies may be introduced by modifying the geographical boundaries of distribution areas and the location of customers within those areas for purposes of constructing outside plant.

53. The models also have other elements that help ensure that an adequate amount of plant is constructed. For example, all three models categorize the terrain where plant is being built based on factors that affect the difficulty of building plant, such as soil type, depth to bedrock, and slope. HAI uses multipliers to reflect increased costs in areas with difficult terrain. BCPM uses separate structure cost tables for each of three terrain categories to reflect higher cost in more difficult areas. HCPM incorporates BCPM's approach. We find that the federal model should account for terrain factors in determining structure costs.

For the reasons stated elsewhere in this Order, we conclude that the federal platform should employ HCPM's outside plant algorithms, which take terrain factors into account in determining the cost of outside plant.

54. Thus, both BCPM and HAI, by relocating customers so as to distribute them uniformly in square or rectangular distribution areas, create an apparent systematic downward bias in the required amount of distribution plant that is constructed in less dense areas. In contrast, HCPM's outside plant design algorithm is capable of designing plant directly to, or very nearly to, precise customer locations and thus should generate estimates of distribution plant that are sufficient to reach actual customer locations. HCPM therefore has a significant advantage in estimating sufficient outside plant over HAI and BCPM in its ability to avoid the distortions associated with adjusting customer locations to establish square or rectangular distribution areas. This is particularly important for ensuring that the federal mechanism estimates the cost of a sufficient amount of plant. By designing plant to serve actual customer locations instead of simplified representations of customer locations, HCPM is substantially more likely to estimate the correct amount of plant necessary for providing the supported services. As a result, HCPM's outside plant cost estimates are likely to reflect more accurately the forward-looking cost of providing the supported services and thus comport more fully with the *Universal Service Order's* criteria.

b. Cost Minimization Principles

55. We conclude that the outside plant module should be able to perform optimization routines through the use of sound network engineering design to use the most cost-effective forward-looking technology under a variety of circumstances, such as varying terrain and density. Each of the three model proponents has made some effort to consider alternative plant designs and select the most economical approach, or to place limits on investment in certain circumstances in order to control costs. The ability of a model to perform optimization routines is a significant factor in its ability to estimate the least-cost, most-efficient technology under a variety of conditions, as the first criterion in the *Universal Service Order* requires. For example, assuming that the price of fiber cable or DLC electronics continues to drop, an optimizing model might shift the mix of fiber and analog copper towards fiber and away from copper.

56. HAI and BCPM have made efforts to incorporate cost minimization principles into their respective approaches. Both models permit main feeder routes to be angled towards areas of population concentration in order to reduce feeder costs. BCPM also economizes the cost of DLC equipment in the central office by connecting multiple DLC remote terminals with a single central office terminal where possible, and limits distribution investment by limiting total distribution plant within a distribution area to the total road distance in the area. In HAI, for feeder plant that is less than 9,000 feet in length, the model chooses between fiber or copper cable technologies based on life-cycle cost minimization. In determining plant mix, HAI also can choose between aerial and buried plant based in part on the alternative with the lower life-cycle cost. We have concerns, however, that the effectiveness of these cost minimization principles are tempered by their practicality in actual use. For example, the angling of feeder routes toward population centers without regard to considerations such as rights of way may lead to significantly lower cost estimates than are practicable in reality. More importantly, however, neither HAI nor BCPM would recompute the type of technology deployed in response to a change in relative input prices, a key feature of ensuring that costs are minimized, subject to technological and service quality constraints.

57. In contrast, HCPM selects the optimal type, number, and placement of DLCs, which are sized based on the number of lines served. For example, in a distribution area with 400 lines, HCPM would determine, based on input values for equipment prices, whether it is more economical to place one DLC with a maximum capacity of 500 lines or two DLCs each with a maximum capacity of 250 lines. HCPM also considers the relative costs of placing various feeder technologies (fiber or T–1 on copper) and selects the most economical technology. HCPM further selects the lowest relative cost of different feeder routings.

58. HCPM uses an algorithm developed for network planning purposes in both its feeder and distribution segments. This algorithm selects a feeder or distribution routing network by weighing the relative benefits of minimizing total route distance (and therefore structure costs) and minimizing total cable distance (and therefore cable investment and maintenance costs.) HCPM also selects technologies (e.g., fiber vs. copper, aerial vs. buried) on the basis of annual cost factors that account for both operating expenses and capital expenses over the expected life of the technology.

59. In reviewing the current models, we conclude that HCPM's explicit optimization routines are superior to those in BCPM and HAI. In addition, because the platform that we adopt for the federal mechanism may be in place for a significant time period during which relative costs may change, the impact of optimization may increase in importance over time.

60. We do not agree, as some parties have argued, that the models' outside plant design parameters should be verified by comparing the design of the model networks in specific locations to the design of incumbent LECs' existing plant in those locations in all cases. While we recognize that certain factors such as terrain, road networks, and customer locations are fixed, the design of the existing networks under these conditions may not represent the least-cost, most-efficient design in some cases. The Commission, in the *Universal Service Order*, adopted the Joint Board's recommendation that universal service support should be based on forward-looking economic costs. Existing incumbent LEC plant is not likely to reflect forward-looking technology or design choices. Instead, incumbent LECs' existing plant will tend to reflect choices made at a time when different technology options existed or when the relative cost of equipment to labor may have been different than it is today. Incumbent LECs' existing plant also was designed and built in a monopoly environment, and therefore may not reflect the economic choices faced by an efficient provider in a competitive market. Although we do not believe that a forward-looking platform can meaningfully be verified by comparing its network to an embedded network, we note that the platform is only one of many considerations used to set actual levels of support.

c. Service Quality

61. The *Universal Service Order's* first criterion specifies that a model should not "impede the provision of advanced services." In the *Universal Service Order*, the Commission disallowed a model's use of loading coils because their use may impede high-speed data transmission. During the model development process, the Bureau recommended that model proponents "demonstrate how their models permit standard customer premises equipment (CPE) available to consumers today, such as 28.8 Kbps or 56 Kbps modems, to perform at speeds at least as fast as

the same CPE can perform on the typical existing network of a non-rural carrier." The BCPM proponents propose that testing a model network's capability to support data transmission over a 28.8 Kbps modem is a "conservative approach" to identifying whether a model may impede advanced services because network access at 28.8 Kbps is "widely available today in urban areas" and "modem speeds of 33.6 Kbps and even 56 Kbps are becoming more and more common." We agree that a reasonable standard for ensuring that a model's network does not impede the provision of advanced services would ensure the reasonable performance of 28.8 Kbps modems. We find that proponents of the BCPM, HAI, and HCPM have demonstrated that their models allow 28.8 modems to work at reasonable rates, which will permit all customers to have access to high-speed data transmission.

4. Maximum Copper Loop Length

62. We now turn to the issue of the maximum loop length that the federal mechanism should permit. We note that, in making this determination, we must examine whether the models use the least-cost, most efficient, and reasonable technology while not impeding the provision of advanced services. HAI and BCPM proponents disagree on the maximum loop length over which a copper loop will carry a signal of appropriate quality, without the use of expensive electronics. The HCPM sponsors state that an 18,000 foot copper loop is capable of meeting current Bellcore standards, but they otherwise take no position on the appropriate length of copper loops. The maximum copper loop length will affect the model's cost estimates because a longer loop length will permit more customers to be served from a single DLC. As noted above, reducing the number of DLCs tends to reduce the overall cost. In the models, the "fiber-copper cross-over point" determines when carriers will use fiber cable instead of copper cable. BCPM asserts that Bell Labs standards call for loops not to exceed 12,000 feet. The proponents of BCPM further assert that copper loops longer than 13,600 feet will require the use of an expensive extended-range line card in the DLC to provide advanced services, the additional cost of which will outweigh the cost savings from using longer loops. Taking into consideration loading and resistance, the BCPM default provides that loop lengths that exceed 12,000 feet will be fiber cables. HAI contends that copper lengths may extend to 18,000 feet using only a slightly more expensive line card in the DLC.

63. The Commission sought comment on this issue in the *Further Notice* and a *Public Notice Requesting Further Comment*. A few commenters contend that use of the HAI standard would impede access to advanced services and violate Carrier Serving Area (CSA) design standards. The HAI proponents disagree, and contend that there is no support for the claim that a 18,000 foot copper loop is too long to support advanced services such as ISDN and Asymmetric Digital Subscriber Line (ADSL). The HAI proponents note that there are two ADSL standards, ADSL1 and ADSL2. The HAI proponents contend that no commenter alleges that the facilities modeled by HAI are unable to support ADSL1. Although the HAI proponents admit that their plant design cannot support ADSL2 using a loop length of 18,000 feet, they argue that the higher speed of ADSL2 is not a component of basic service supported by universal service.

64. We conclude that the federal mechanism should assume a maximum copper loop length of 18,000 feet. The record supports the finding that a platform that uses 18,000 foot loop-lengths will support at appropriate quality levels the services eligible for universal service support. Although BCPM has presented evidence that the provision of some, high-bandwidth advanced services may be impaired over 18,000-foot loops, we conclude that the BCPM sponsors have not presented credible evidence that the 18,000-foot limit will not provide service at an appropriate level, absent the use of expensive DLC line cards. We also disagree with BCPM's interpretation of the Bell Labs standards manual. The publication states, in pertinent part, that "[d]emands for sophisticated services are requiring the outside plant network to support services ranging from low-bit rate transmission to high-bit rates. To meet this demand, a digital subscriber carrier is being placed into the network starting at 12,000 feet from the serving [wire center]." The document is referring to the design of digital loop carrier systems and related outside plant that will "accommodate a wide range of transmission applications including voice, data, video, sensor control, and many others." This design standard seems to exceed the service quality standards for universal service. We find that the public interest would not be served by burdening the federal universal service support mechanism with the additional cost necessary to support a network that is capable of delivering very advanced services, to which only a small portion of customers currently subscribe. Accordingly, we conclude that the federal mechanism should assume a maximum copper loop length of 18,000 feet.

IV. Switching and Interoffice Facilities

A. Discussion

65. We conclude that the federal universal service mechanism should incorporate, with certain modifications, the HAI 5.0 switching and interoffice facilities module. We find that HAI's module satisfies the relevant criteria set forth in the *Universal Service Order* and would be simpler to implement than BCPM's module. In our evaluation of the switching modules in this proceeding, we note that, for universal service purposes, where cost differences caused by differing loop lengths are the most significant cost factor, switching costs are less significant than they would be in, for example, a cost model to determine unbundled network element switching and transport costs.

66. We find that both models meet the *Universal Service Order's* requirement that a model assume the least-cost, most-efficient and reasonable technology to provide the supported services. Both models assume the use of modern, high-capacity digital switches, and interconnect switching facilities with state-of-the-art SONET rings. The *Further Notice* recommended that the federal mechanism should be capable of separately identifying host, remote, and stand-alone switches and of distributing the savings associated with lower-cost remote switches among all lines in a given host-remote relationship. In the *Further Notice*, we requested "engineering and cost data to demonstrate the most cost-effective deployment of switches in general and host-remote switching arrangements in particular," and sought comment on "how to design an algorithm to predict this deployment pattern." No party has developed an algorithm that will determine whether a wire center should house a stand-alone, host, or remote switch. As noted above, however, both models can incorporate either a single blended cost curve that assumes a mix of host, remote, and stand-along switches, or use the Bellcore Local Exchange Routing Guide (LERG) to assume the existing deployment of switches and host-remote relationships. In the inputs stage of this proceeding we will weigh the benefits and costs of using the LERG database to determine switch type and will consider alternative approaches by which the selected model can incorporate the efficiencies gained through the

deployment of host-remote configurations.

67. Both models also permit a significant amount of flexibility to ensure the allocation of a reasonable portion of the joint and common costs of the switching and interoffice functions to the cost of providing the supported services. As discussed below, however, BCPM's allocation methodology would introduce an additional degree of complexity to the inputs stage of this proceeding that we conclude is not administratively justified in light of the potential marginal gains in accuracy. We find that HAI's switching and interoffice modules satisfy the *Universal Service Order's* requirements to associate and allocate the costs of the network elements and functionalities necessary to provide the supported services, and do so in a less complex manner than BCPM's module, while still providing a degree of detail that is sufficient for the accurate computation of costs for federal universal service purposes.

68. We also find that HAI's switching module more fully satisfies the requirement that data, computations, and assumptions be available for review and comment. HAI's modules use a spreadsheet program that reveals all computations and formulas, allows the user to vary input costs, and provides a simple, user-adjustable allocation factor. BCPM also uses a spreadsheet program that reveals its computations and formulas, but its default costs and allocation factors are based on results from the proprietary Switching Cost Information System (SCIS) and Switching Cost Model (SCM) models, and the defaults used to generate the results that BCPM uses in its modules have not been placed on the record in this proceeding. To minimize concerns regarding BCPM's use of proprietary data, the Commission could, in the inputs stage of the proceeding, substitute other inputs in place of the SCIS and SCM results for the cost amounts and allocation factors. Because the SCIS and SCM generate such detailed results, however, the process of trying to determine input values to replace the SCIS and SCM results would inject a significant degree of complexity into the inputs phase of this proceeding. We conclude that this additional complexity in the inputs phase is not justified by potential gains in accuracy. As noted above, we find that HAI's modules compute and allocate switching and interoffice costs with a degree of accuracy that is sufficient for the computation of federal universal service costs and in a manner that more readily provides for public review.

69. We find that both models generally satisfy the requirement that each network function and element necessary to provide switching and interoffice transport is associated with a particular cost, though HAI satisfies the criterion more thoroughly than BCPM. AT&T contends that the BCPM 3.0 signaling network calculations indicate no explicit modeling of signaling costs. In BCPM, signaling costs used to develop per-line investments are provided through a user input table that its proponents assert reflects the cost of building a modern SS7 network. The signaling cost for a wire center is based on a weighted average of residence and business lines associated with that wire center. Users have the option of using the provided default values or entering their own values. In contrast to HAI, which explicitly models the cost of signaling, BCPM 3.0 simply adds on a signaling cost to the cost of switching based upon an input table of costs. Although this technically satisfies the criterion that any network function or element necessary to produce supported services must have an associated cost, we find that it is not likely to produce results that are as accurate as an estimate obtained through the explicit cost estimation used in HAI. The HAI 5.0 Switching and Interoffice Module computes signaling link investment to end office or tandem links between segments connecting different networks. HAI always equips at least two signaling links per switch and computes the required SS7 message traffic according to call type and traffic assumptions. We therefore conclude that HAI employs a more reliable method of assigning an associated cost to the network functions or elements, such as switching and signaling, that are necessary to produce supported services.

70. Thus, although we conclude that either model's switching and interoffice modules could be used to adequately model universal service costs for these functionalities, we conclude that the federal mechanism should incorporate the HAI modules. Moreover, parties recently have identified certain aspects of HAI's interoffice module with respect to which the progress of state proceedings has shown a need for minor changes in the model's coding. These changes were identified too late in the proceeding to be included in this Order. Because general agreement exists among the parties as to the need to make them, however, we delegate to the Common Carrier Bureau the authority to make these changes.

V. Expenses and General Support Facilities

71. We now consider the algorithms of HAI and BCPM for calculating expenses and general support facilities (GSF) costs in light of the criteria identified in the *Universal Service Order*. The most relevant of the criteria to expense and GSF issues is the ninth, which requires that the models make a reasonable allocation of joint and common costs. With this criterion, the Commission intended to "ensure that the forward-looking economic cost [calculated by the federal mechanism] does not include an unreasonable share of the joint and common costs for non-supported services." Therefore, the platform of the federal mechanism must permit the reasonable allocation of joint and common costs for such non-network related costs as GSF, corporate overhead, and customer operations. In addition, the criterion requires that "[t]he cost study or model must include the capability to examine and modify the critical assumptions and engineering principles." Therefore, it is important that the platform's method of calculating expenses and GSF costs must be sufficiently flexible. It is also important that we select model components that are compatible with one another to compute cost estimates in a reasonable time. In light of these considerations, we conclude that the platform for the federal mechanism should consist of HAI's algorithm for calculating expenses and GSF costs, as modified to provide some additional flexibility in calculating expenses offered by BCPM.

Discussion

72. Although we sought comment on alternative measures for estimating forward-looking GSF investment and other expenses, most commenters only address which expenses should be calculated on a per-line basis and which expenses should be calculated as a percentage of investment. We agree that the majority of expenses can be estimated accurately on the basis of either lines or investment. Other commenters argue, however, that GSF investment and other expenses should be based on ARMIS data for individual companies to ensure accuracy. GTE argues that, without empirical evidence, neither calculating expenses on a per-line nor a per-investment basis is entirely satisfactory. GTE proposes a time-series forecasting model, which it attaches to its comments. While we find that most expenses can be estimated accurately based on either number of lines or investment, we agree that

neither investment ratios nor per-line calculations may be entirely satisfactory for estimating the forward-looking costs of certain expenses. Further, we observe that many of the input questions regarding how best to calculate expenses will be resolved in the input selection stage of this proceeding, and find that the platform of the federal mechanism must be sufficiently flexible to allow for the correct resolution of these issues. In this way, we can best ensure that the model will correctly allocate joint and common costs and includes sufficient flexibility to allow the modification and examination of critical assumptions.

73. The Florida Public Service Commission agrees with our tentative conclusion that the cost of land, which comprises a large portion of GSF, should vary by state in order to reflect differing land values. In addition, the Florida Commission argues that, because of varying labor costs, state-specific expense-to-investment percentages should be used to estimate plant-specific operating expenses and state-specific per-line values should be used to estimate plant non-specific expenses. We note that there may be other variables, in addition to land values and labor costs, that may vary by state, and find that the model should allow GSF and expense calculations to vary by state. Both models allow the user to make different assumptions by state, thus both models provide the same degree of flexibility in this regard.

74. Because BCPM permits users to estimate all operating expenses (including GSF expenses) either as a per-line amount or as a percentage of investment and to adjust these amounts easily, it is somewhat more flexible than HAI in this regard. Because the federal mechanism must be sufficiently flexible to accommodate the decisions we will be making in the input selection phase of this proceeding, the HAI developers have made minor changes in their model so that expenses can be calculated on a per-line or percentage-of-investment basis. As noted above, many of the issues regarding the appropriate method of calculating forward-looking expenses will be resolved when we determine the input values that should be used in the federal mechanism.

75. We adopt our tentative conclusions in the *Further Notice* with respect to GSF investment and other expenses and conclude that the federal mechanism should: (1) be capable of calculating GSF investment and expenses by state; (2) provide the user with the capability to calculate each category of expense based either on line count or investment ratios; and (3) permit users to use different ratios or per-line amounts to calculate expenses for different size companies. We also conclude that the combination of model components that the Commission selects in this Order should be capable of generating cost estimates for the supported services within a reasonable time. The model will not be used to make final support calculations until next year, but it is important that the Commission and the Universal Service Joint Board can use the selected platform in the near term in connection with the issues that the Joint Board is considering in light of the *Referral Order*.

76. We find that the HAI and BCPM modules for computing expenses and GSF are roughly comparable, and conclude that the federal mechanism should incorporate the HAI module. Although, as noted above, the BCPM module may be somewhat more flexible, and therefore create the possibility for somewhat more fine-tuning at the inputs stage, we have thoroughly tested HAI's module and conclude that it generates accurate results. We also observe that expenses and GSF represent a small percentage of the total cost of providing the supported services. We therefore conclude that the practical benefits of using the HAI module outweigh those of using the BCPM module and that, in the interest of administrative efficiency, the federal mechanism should incorporate HAI's expense and GSF module.

VI. Conclusion

77. In this Order, we select a platform for the federal mechanism to estimate non-rural carriers' forward-looking cost to provide the supported services. To generate the most accurate estimates possible, we have selected the best components from the three models on the record. The model components selected are all generally available to the parties, and a software interface to merge the selected components is also available on the Commission's World Wide Web site. Thus, the federal platform is available for use by states, other interested policymakers, and the public. Pursuant to the plan established in the *Further Notice of Proposed Rulemaking*, we will continue to evaluate model input values with the intention of selecting inputs for the federal platform at a later date. Once input values have been selected, the federal platform will be used to generate cost estimates.

VII. Procedural Matters and Ordering Clauses

A. Final Regulatory Flexibility Act Certification

78. The Regulatory Flexibility Act (RFA) requires a Final Regulatory Flexibility Analysis (FRFA) in rulemaking proceedings, unless we certify that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." It further requires that the FRFA describe the impact of the rule on small entities. The RFA generally defines "small entity" as having the same meaning as the term "small business concern" under the Small Business Act, 15 USC 632. The Small Business Administration (SBA) defines a "small business concern" as one that "(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. Section 121.201 of the SBA regulations defines a small telecommunications entity in SIC code 4813 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level. In the *Further Notice of Proposed Rulemaking (Further Notice)* released July 18, 1997, the Commission considered regulatory flexibility issues relating to the selection of a mechanism to determine the forward-looking economic costs of non-rural LECs for providing supported services, but certified that there was no significant economic impact on a substantial number of small entities. The Commission found that non-rural LECs do not meet the criteria established by the SBA to be designated as a "small business concern." Non-rural LECs are not small business concerns pursuant to the SBA guidelines because they are generally large corporations, affiliates of such corporations, or dominate in their field of operation. No comments were filed in response to the certification.

79. We therefore certify, pursuant to section 605(b) of the RFA, that this Report and Order will not have ■ significant economic impact on a substantial number of small entities. The Office of Public Affairs, Reference Operations Division, will send a copy of this Certification, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 USC 801(a)(1)(A), and to the Chief Counsel for Advocacy of the Small Business Administration, 5 USC 605(b). A copy of this final certification will also be published in the **Federal Register**.

B. Ordering Clauses

80. Accordingly, it is ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act as amended, 47 USC 151, 154(i), 154(j), and 254, that the Fifth Report & Order in CC Docket Nos. 96–45 and 97–160, FCC 98–279, is adopted, effective 30 days after publication of a summary in the **Federal Register**.

81. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Certifications, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

47 CFR Part 54

Universal service.

47 CFR Part 69

Communications common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30687 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 110498A]

Fraser River Sockeye and Pink Salmon Fisheries; Inseason Orders

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason orders.

SUMMARY: NMFS publishes the Fraser River salmon inseason orders regulating fisheries in U.S. waters. The orders were issued by the Fraser River Panel (Panel) of the Pacific Salmon Commission (Commission) and subsequently approved and issued by NMFS during the 1998 sockeye and pink salmon fisheries within the Fraser River Panel Area (U.S.). These orders established fishing times, areas, and types of gear for U.S. treaty Indian and all-citizen fisheries during the period the Commission exercised jurisdiction over these fisheries. Due to the frequency with which inseason orders are issued, publication of individual orders is impracticable. The 1998 orders are therefore being published in this document to avoid fragmentation.

DATES: Each of the following inseason orders was effective when issued and upon announcement on telephone hotline numbers as specified at 50 CFR 300.97(b)(1) (See **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Comments may be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140.

SUPPLEMENTARY INFORMATION: The Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon was signed at Ottawa on January 28, 1985, and subsequently was given effect in the United States by the Pacific Salmon Treaty Act (Act) at 16 U.S.C. 3631–3644.

Under authority of the Act, Federal regulations at 50 CFR part 300, subpart F, provide a framework for implementation of certain regulations of the Commission and inseason orders of the Commission's Panel for sockeye and pink salmon fisheries in the Fraser River Panel Area (U.S.). Each year these regulations apply to fisheries for sockeye and pink salmon in the Fraser River Panel Area (U.S.) during the period when the Commission exercises jurisdiction over these fisheries.

Under past agreements, the regulations close the Fraser River Panel Area (U.S.) to sockeye and pink salmon fishing unless opened by Panel regulations or by NMFS' inseason orders that give effect to Panel orders. The Commission's agreement for 1998 Fraser fisheries provided for set open and closed periods for U.S. Fraser fisheries and the Panel restricted these open periods as required to meet agreed to conservation and allocation objectives. During the fishing season, NMFS may issue orders that establish fishing times and areas consistent with the annual Commission regime and inseason orders of the Panel. Such orders must be consistent with domestic legal obligations. The Regional Administrator, Northwest Region, NMFS, issues the inseason orders. Official notice of these inseason actions of NMFS is provided by two telephone hotline numbers described at 50 CFR 300.97(b)(1). Inseason orders must be published in the **Federal Register** as soon as practicable after they are issued. Due to the frequency with which inseason orders are issued, publication of individual orders is impractical. The 1998 orders are, therefore, being published in this document to avoid fragmentation.

The initial Commission regulations for U.S. Fraser fisheries were as follows:

1. U.S. gill net and purse seine fisheries in Areas 6, 7, and 7A will be open Monday through Friday of each week during the period July 27 through August 21, and will remain closed at all other times during the Panel control period.

2. U.S. reef net fishery in Areas 7 and 7A will be open Saturdays and Sundays, July 25 through August 23, and will remain closed at all other times during the Panel control period.

3. The treaty Indian fishery in Areas 4B, 5, and 6C will be open noon Sundays through noon Fridays, July 26 through August 21, and will remain closed at all other times during the Panel control period.

The above regulations were modified by the following inseason orders which were adopted by the Panel and issued for U.S. fisheries by NMFS during the 1998 fishing season. The times listed are local times, and the areas designated are Puget Sound Management and Catch Reporting Areas as defined in the Washington State Administrative Code at Chapter 220–22.

Order No. 1998–1: Issued 3:00 p.m., July 24, 1998.

Treaty Indian Fishery

Areas 4B, 5 and 6C: Open for drift gillnets from 12:00 noon, July 26 to 12:00 noon, July 31.

All-citizen Fishery

Areas 7, 7A: During the period from 12:01 a.m., July 25 through 11:59 p.m., July 26, the reef net fishery will be open only from 5:00 a.m. to 9:00 p.m. on July 25 and from 5:00 a.m. to 9:00 p.m. on July 26.

Order No. 1998–2: Issued 5:00 p.m., July 24, 1998.

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing closed from 12:01 a.m., July 27 to 4:00 a.m., July 28. Open from 4:00 a.m. July 28 to 7:00 a.m., July 29. Closed from 7:00 a.m., July 29 to 11:59 p.m., July 31.

All-citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., July 27 to 11:59 p.m., July 31.

Area 7 and 7A drift gillnet fishery: Closed from 12:01 a.m., July 27 to 7:10 a.m., July 29. Open from 7:10 a.m. to 11:59 p.m., July 29. Closed from 12:01 a.m., July 30, to 11:59 p.m., July 31.

Area 7 and 7A purse seine fishery: Closed from 12:01 a.m., July 27 to 5:00 a.m., July 30. Open from 5:00 a.m. to 9:00 p.m., July 30. Closed from 9:00 p.m., July 30 to 11:59 p.m., July 31.

Order No. 1998–3: Issued 5:00 p.m., Friday, July 31, 1998.

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon, August 2 to 12:00 noon, August 7.

Areas 6, 7, and 7A: Open to net fishing from 12:01 a.m., August 3 to 5:00 a.m., August 6. Closed from 5:00 a.m., August 6 to 11:59 p.m., August 7.

All-citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., August 3 to 11:59 p.m., August 7.

Areas 7 and 7A: During the period from 12:01 a.m., August 1 to 11:59 p.m., August 2, the reef net fishery will only be open from 5:00 a.m. to 9:00 p.m. on August 1 and from 5:00 a.m. to 9:00 p.m. on August 2.

Drift gillnet fishery: Closed from 12:01 a.m., August 3 to 7:20 a.m., August 6. Open from 7:20 a.m. to 11:59 p.m., August 6. Closed from 12:01 a.m. to 7:20 a.m., August 7. Open from 7:20 a.m. to 11:59 p.m., August 7.

Purse seine fishery: Closed from 12:01 a.m., August 3 to 5:00 a.m., August 6. Open from 5:00 a.m. to 9:00 p.m., August 6. Closed from 9:00 p.m., August 6 to 5:00 a.m., August 7. Open from 5:00 a.m. to 9:00 p.m., August 7. Closed from 9:00 p.m. to 11:59 p.m., August 7.

Order No. 1998–4: Issued 5:00 p.m., August 7, 1998.

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon, August 9 to 12:00 noon, August 14.

Areas 6, 7, and 7A: Closed to net fishing from 12:01 a.m., to 11:59 p.m., August 10.

All-Citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., August 10 to 11:59 p.m., August 14.

Area 7 and 7A: During the period from 12:01 a.m., August 8 to 11:59 p.m., August 9, the reef net fishery will be open from 5:00 a.m. to 9:00 p.m. on August 8 and from 5:00 a.m. to 9:00 p.m. on August 9.

Drift gillnet and purse seine fishing: Closed from 12:01 a.m. to 11:59 p.m., August 10.

Order No. 1998–5: Issued 5:00 p.m., August 10, 1998

Treaty Indian Fishery

Areas 6, 7, and 7A: Net fishing open 12:01 a.m., August 11 to 5:00 a.m., August 12. Closed from 5:00 a.m., August 12 to 11:59 p.m., August 13.

All-citizen Fishery

Areas 7, 7A: Gillnets closed from 12:01 a.m., August 11 to 7:30 a.m., August 12. Open from 7:30 a.m. to 11:59 p.m., August 12. Closed from 12:01 a.m. to 7:30 a.m., August 13. Open from 7:30 a.m. to 11:59 p.m., August 13.

Purse seines: Closed from 12:01 a.m., August 11 to 5:00 a.m., August 12. Open from 5:00 a.m. to 9:00 p.m., August 12. Closed from 9:00 p.m., August 12 to 5:00 a.m., August 13. Open from 5:00 a.m. to 9:00 p.m., August 13. Closed from 9:00 p.m., August 13 to 11:59 p.m., August 13.

Order No. 1998–6: Issued at 5:00 p.m., August 13, 1998.

Treaty Indian Fishery

Areas 6, 7, and 7A: Closed to net fishing from 12:01 a.m., August 14 to 11:59 p.m., August 14.

All-citizen Fishery

Areas 7 and 7A: Drift gillnets closed from 12:01 a.m., August 14 to 7:30 a.m., August 14. Open from 7:30 a.m. to 11:59 p.m., August 14.

Purse seines: Closed from 12:01 a.m., August 14 to 5:00 a.m., August 14. Open from 5:00 a.m. to 9:00 p.m., August 14. Closed from 9:00 p.m. to 11:59 p.m., August 14.

Order No. 1998–7: Issued 5:00 p.m., August 14, 1998.

Treaty Indian Fishery

Areas 4B, 5, and 6C: Open for drift gillnets from 12:00 noon, August 16 to 12:00 noon, August 21.

Areas 6, 7, and 7A: Closed to net fishing from 12:01 a.m., to 11:59 p.m., August 17. Open from 12:01 a.m., August 18 to 11:59 p.m., August 21.

All-citizen Fishery

Area 6: Closed to net fishing from 12:01 a.m., August 17 to 11:59 p.m., August 21.

Areas 7 and 7A: During the period from 12:01 a.m., August 15 to 11:59 p.m., August 16, the reefnet fishery will be open only from 5:00 a.m. to 9:00 p.m., on August 15 and from 5:00 a.m. to 9:00 p.m., on August 16.

Drift gillnets: Closed from 12:01 a.m. to 7:35 a.m., August 17. Open from 7:35 a.m. to 11:59 p.m., August 17. Closed from 12:01 a.m., August 18 to 5:00 a.m., August 20.

Purse seines: Closed from 12:01 a.m. to 5:00 a.m., August 17. Open from 5:00 a.m. to 9:00 p.m., August 17. Closed from 9:00 p.m., August 17 to 5:00 a.m., August 20.

Order No. 1998–8: Issued 5:00 p.m., August 19, 1998.

Treaty Indian Fishery

Areas 6, 7, and 7A: Closed to net fishing from 5:00 a.m. to 11:59 p.m., August 21.

All-citizen Fishery:

Areas 7 and 7A: Drift gillnets closed from 5:00 a.m., August 20 to 7:35 a.m., August 21. Open from 7:35 a.m. to 11:59 p.m., August 21.

Purse seines: Closed from 5:00 a.m., August 20 to 5:00 a.m., August 21. Open from 5:00 a.m. to 9:00 p.m., August 21. Closed from 9:00 p.m. to 11:59 p.m., August 21.

Order No. 1998–9: Issued 5:00 p.m., August 21, 1998.

All-citizen Fishery

Areas 7 and 7A: Closed to reef net fishing from 12:01 a.m., August 22 to 11:59 p.m., August 23.

Classification

This action is authorized by 50 CFR 300.97, and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 3636(b).

Dated: November 12, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30834 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 110998G]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Maryland

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of Maryland has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Maryland for the remainder of calendar year 1998, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification

to advise the State of Maryland that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Maryland.

DATES: Effective 0001 hours November 13, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in Maryland is 2.03910 percent, or 226,570 lb (102,770 kg).

Section 648.100(e)(4) stipulates that any overages of commercial quota landed in any state be deducted from that state's annual quota for the following year. In the calendar year 1997, a total of 214,948 lb (97,499 kg) were landed in Maryland, creating a 26,694 lb (12,108 kg) overage that was deducted from the amount allocated for landings in the state during 1998 (63 FR 23227, April 28, 1998). The resulting quota for Maryland was 199,876 lb (90,662 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish a notice in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of Maryland has attained its quota for 1998.

The regulations at § 648.4(b) provide that Federal permit holders agree as a condition of the permit not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours November 13, 1998, further landings of summer flounder in Maryland by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective November 13, 1998, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Maryland for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30794 Filed 11–13–98; 11:42 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 222
Wednesday, November 18, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 316

RIN 3206 AI45

Temporary and Term Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations to provide the possibility for promotion of employees appointed as worker-trainees under TAPER appointments through grade GS–4, WG–5, or equivalent grades in the Federal Wage System.

DATES: Written comments will be considered if received on or before December 18, 1998.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6500, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Diane Tyrrell, 202–606–0830, FAX 202–606–0390, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: In striving to meet the goals under the President's welfare to work initiative, Federal agencies have used the TAPER (temporary appointment pending the establishment of a register) authority as their primary appointing authority to appoint employees into the worker trainee program. Using this authority, the current regulations do not allow for promotion beyond the GS–3, WG–4 and equivalent level. Based on the success to date with the use of this authority, agencies would like more flexibility to be able to advance employees beyond the current limits. Currently, these employees must compete for other opportunities or remain at this grade level until completion of the three year period under the program. Agencies have voiced concern regarding the undue restriction of this grade level limitation.

Program Background

The worker-trainee program was initiated in 1968 and was developed and used, at that time, extensively as a vehicle to competitively hire unskilled, disadvantaged workers. By 1979, activity under this program became very limited and as a result too costly for the Office of Personnel Management (OPM) to maintain registers. Rather than completely eliminate the program, OPM retained the worker trainee as an option under the TAPER authority. Today, it is once again being used widely in connection with the welfare to work program.

Incentive For Change

Agencies have had positive experiences in the recruitment of individuals from the welfare rolls. Currently, employees who are eager and show an ability to excel beyond the current grade level limits of GS–3, WG–4 and equivalent, are forced to remain at this level. In an effort to provide maximum opportunity to those hired into the worker-trainee program, while remaining consistent with the intent of the program, agencies have expressed interest in providing promotion opportunity beyond the current program limits. This enhancement would allow promotion beyond the GS–3, WG–4 levels when appropriate, and would further the overall goals of the welfare to work program.

Justification for New Limit

While there is a need to recognize employee performance and provide advancement opportunity, OPM must balance this with the original intent of the program to provide opportunity for "trainees" to acquire or improve basic skills. This program was designed and continues to function as a "trainee" program for those individuals who are newly hired into government service. Based on classification standards, the highest grade level to which employees would be expected to advance under this program would be to the GS–4, WG–5 or equivalent. We therefore find this to be an appropriate level at which to limit advancement in the worker-trainee program.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

List of Subjects in 5 CFR Part 316

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 316 of title 5, Code of Federal Regulations, as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302: E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Subpart B—TAPER Employment

2. Section § 316.201 paragraph (b) is revised to read as follows:

§ 316.201 Purpose and duration.

* * * * *

(b) *Specific authority for Worker-Trainee positions.* Agencies may make TAPER appointments to positions at GS–1, WG–1 and WG–2 and may reassign or promote the appointees to other positions through grade GS–4, WG–5, or equivalent grades in the Federal Wage System consistent with § 330.501 of this chapter. Agencies are authorized to reassign or promote Worker-Trainees under this authority.

[FR Doc. 98–30842 Filed 11–17–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV98–930–1 PR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1998–99 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on the establishment of final free and restricted percentages for the 1998–99 crop year. The percentages are 60 percent free and 40 percent restricted. The percentages would establish the proportion of cherries from the 1998 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Comments must be received by December 3, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698 or E-mail: moabdocket_clerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632, or E-mail: Jay_N_Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This proposal is issued under marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule would establish final free and restricted percentages for tart cherries for the 1998–99 crop year, beginning July 1, 1998, through June 30, 1999. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District seven—Utah. Districts five, six, eight and nine (Oregon, Pennsylvania, Washington, and Wisconsin, respectively) would not be regulated for the 1998–99 season.

The order prescribes under § 930.52 that upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million pound requirement shall not be regulated in such crop year. Therefore, for this season, handlers in the districts of Oregon, Pennsylvania, Washington, and Wisconsin would not be subject to volume regulation. They were also not subject to volume regulation during the last season.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and dividing that figure by the current year's USDA crop forecast. The carryin inventory figure reflects the amount of cherries that handlers actually have in inventory. If the resulting quotient is 100 percent or more, the Board should establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board should establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage.

The Board met on June 18–19, 1998, and computed, for the 1998–99 crop year, an optimum supply of 287.4 million pounds. The Board recommended that the carryout figure be zero pounds. Carryout is the amount

of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 292.5 million pounds; a 46 million pound carryin added to that equaled a total available supply of 338.5 million pounds. The carryin figure reflects the amount of cherries that handlers actually have in inventory. The optimum supply was subtracted from the total estimated available supply resulting in a surplus of 51.1 million pounds of tart cherries. An adjustment for changed economic conditions of 37.0 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 125.1 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (258 million pounds) and resulted in 66 percent free and 34 percent restricted for the 1998–99 crop year. The Board recommended these percentages by a 15 to 2 vote, with one abstention. Those Board members voting against the recommendation disagreed with the computation of the carryin figure because they thought that the figure should also include the amount in the inventory reserve. Record evidence received during the promulgation of the order indicated that the carryin figure reflects the amount of cherries that handlers actually have in inventory (not in the primary or secondary reserve). The Board recommended the percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand nformation for the 1998–99 crop year:

	In millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	287.4
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the June meeting	287.4
Preliminary Percentages:	
(4) Less carryin as of July 1, 1998	46.0
(5) Tonnage requirement for current crop year	241.4
(6) USDA crop estimate	292.5
(7) Surplus (item 6 minus item 5)	51.1
(8) Economic adjustment to surplus	37.0
(9) Adjusted surplus (item 7 plus item 8)	88.1
(10) USDA crop estimate for regulated districts	258.0

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10) x 100	66	34

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

Section 930.50(d) of the order requires the Board to meet no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. The Board met on September 10–11, 1998, and recommended final free and restricted percentages of 60 and 40, respectively. The Board recommended that the interim percentages and final percentages be the same percentages. At that time, the Board had available actual production amounts to review and made the necessary adjustments to the percentages.

The Secretary establishes final free and restricted percentages through an informal rulemaking process. These percentages would make available the tart cherries necessary to achieve the optimum supply figure calculated earlier by the industry. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used a revised optimum supply figure for its final free and restricted percentage calculations. The figure is 288.6 million pounds instead of the 287.4 million pound figure used in June. This is because the 3-year average sales figure used at the June meeting by necessity required an estimate of June 1998 sales. The 3-year average sales figure used in the final calculations reflects actual sales through the 1997–98 crop year.

The optimum supply, therefore is 288.6 million pounds. The actual production recorded by the Board was 339.9 million pounds, which is a 47.4 million pound increase from the USDA crop estimate of 292.5 million pounds. The increase in the crop is due to very favorable growing conditions in portions of the State of Michigan this season. For the current crop year, 305.3 million pounds of tart cherries were produced in the regulated districts.

A 38.8 million pound carryin (actual carryin as opposed to the 46 million pounds originally estimated) was subtracted from the optimum supply of 288.6 million pounds, which yields a tonnage requirement for the current crop year of 249.8 million pounds. Subtracted from the actual production in all districts of 339.9 million pounds reported by the Board is the tonnage required for the current crop year (249.8 million pounds) which results in a 90.1 million pound surplus. An adjustment for changed economic conditions of 31.4 million pounds was added to the surplus, pursuant to section 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 121.5 million pounds of tart cherries. The total surplus of 121.5 million pounds is divided by the 305.3 million pound volume of tart cherries produced in the regulated districts. This results in a 40 percent restricted percentage and a corresponding 60 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information for the 1998–99 crop year:

	In millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	288.6
(2) Less carryout	0
(3) Optimum Supply calculated by the Board at the September meeting	288.6
Final Percentages:	
(4) Less carryin as of July 1, 1998	38.8
(5) Tonnage required current crop year	249.8
(6) Board reported production	339.9
(7) Surplus (item 6 minus item 5)	90.1
(8) Economic adjustment to surplus	31.4
(9) Adjusted surplus (item 7 plus item 8)	121.5
(10) Production in regulated districts	305.3

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10) x 100	60	40

As previously mentioned, the Board recommended an economic adjustment be made in computing both the

preliminary and final percentages for the 1998–99 crop year. This is authorized under § 930.50. These subsections provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having bearing on the marketing cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions.

The order provides that the 3-year average of all sales be used in determining the optimum supply of cherries. In recent seasons, however, sales to export markets have risen dramatically. In 1997, export sales of 61.1 million pounds were 379 percent of 1994 sales (16.1 million pounds). The increase in export sales to those destinations exempt from volume regulation (countries other than Canada, Japan, and Mexico) was even greater, rising from 12.2 million pounds to 48.7 million pounds. Export sales to countries other than Canada, Japan and Mexico were exempt from volume regulations as a way for the tart cherry industry to find and expand new markets for their products. Including this volume of sales in the optimum supply formula, however, results in an overestimate of the volume of tart cherries that can be profitably marketed in unrestricted markets. Thus, the Board recommended adjusting its estimate of surplus cherries by adding exempt export sales.

By recommending this marketing policy modification, the Board believes that it will provide stability to the marketplace and the industry will be in a better situation for future years since new markets will have been developed. Board members were of the opinion that, if this adjustment is not made, growers could be paid less than their production costs, because handlers would suffer financial losses that would probably be passed on. Handlers would have to meet their reserve obligations by other means. In addition, the value of cherries already in inventory could be depressed due to the overabundant supply of available cherries, a result inconsistent with the intent of the order and the Act.

The Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal would be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release shall be made available to handlers the first week of December and the first week of May. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are released for free use by such handler. Approximately 29 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release would be made available to every handler and released to such handler in proportion to its percentage of the total regulated crop handled. If such handler does not take such handler's proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 1,400 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced and pureed. During the period 1993/94 through 1997/98, approximately 89 percent of the U.S. tart cherry crop, or 281.1 million pounds, was processed annually. Of the 281.1 million pounds of tart cherries processed, 63 percent was frozen, 25 percent canned and 4 percent utilized for juice. The remaining 8 percent was dried or assembled into juice packs.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1997/98, approximately 88 percent of domestic tart cherry acreage is located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 67 percent of the total. Michigan produces about 78 percent of the U.S. tart cherry crop each year. In 1997/98, tart cherry acreage in Michigan decreased to 26,800 from 27,300 in the previous year.

In crop years 1987/88 through 1997/98, tart cherry production ranged from a high of 359 million pounds in 1987/88 to a low of 189.9 million pounds in 1991/92. The price per pound to tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuation in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices which they received often did not come close to covering the costs of production. They also testified that production costs for most growers range

between 20 and 22 cents per pound, which is well above average prices received during 1993–1995.

The industry has demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

In discussing the possibility of marketing percentages for the 1998–99 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in June 1998 of preliminary free and restricted percentages and in the final and free and restricted percentages proposed in this rule (60 percent free and 40 percent restricted).

The Board discussed the demand for tart cherries is inelastic at high and low levels of production. At the extremes, different factors become operational. The order's promulgation record stated that in very short crops there is limited but sufficient exclusive demand for cherries that can cause processor prices to double and grower prices to triple. In the event of large crops, there seems to be no price low enough to expand tart cherry sales in the marketplace sufficient to market the crops.

In considering alternatives, the Board discussed not having volume regulation this season. Board members stated that no volume regulation would be detrimental to the tart cherry industry. Returns to growers would not even cover their production costs for this season. Growers would continue to go out of business since many would not receive any money for their crop.

The Board discussed the fact that the general quality of the crop for this season is fair to good. Alternative products used by food processing and preparation establishments instead of cherries are apples and blueberries which can be substituted for cherries if cherries cannot be sold at consistent prices.

As mentioned earlier, the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages proposed to be established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the level of benefits of this rulemaking is difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule needs to be in place as soon as possible to achieve its intended purpose of making the optimum supply quantity computed by the Board available to handlers marketing 1998–99 crop year cherries. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Subpart—Supplementary Regulations is added, consisting of § 930.251, to read as follows:

Subpart—Supplementary Regulations

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.251 Final free and restricted percentages for the 1998–99 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 1998, which shall be free and restricted, respectively, are designated as follows: Free percentage, 60 percent and restricted percentage, 40 percent.

Dated: November 9, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30672 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–02–P

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

RIN 3052–AB85

Statement on Regulatory Burden

AGENCY: Farm Credit Administration.

ACTION: Notice of intent; comment period extension.

SUMMARY: The Farm Credit Administration (FCA) Board extends the comment period on the Regulatory Burden Notice for 60 more days so interested parties have additional time to identify those regulations and policies that impose unnecessary burdens on Farm Credit System (FCS) institutions.

DATES: Please send your comments to us on or before January 19, 1999.

ADDRESSES: You may mail or deliver comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may also submit comments via electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of the FCA's interactive website at "www.fca.gov." Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On August 18, 1998, we published a notice in the **Federal Register** seeking information and guidance about how to reduce regulatory burdens on FCS institutions. The comment period will expire on November 20, 1998. *See* 63 FR 44176, August 18, 1998. In response to a request, we now extend the comment period until January 19, 1999, so you will have more time to respond.

Dated: November 12, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–30810 Filed 11–17–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require a one-time inspection of the main landing gear (MLG) wheel assemblies to determine whether certain parts are installed, and follow-on corrective actions, if necessary. For certain airplanes, this proposal also would require eventual modification of MLG wheel assemblies, which would terminate the requirements of this AD. This proposal is prompted by incidents of multiple tie bolt failures on certain BFGoodrich wheel assemblies. The actions specified by the proposed AD are intended to prevent failure of multiple tie bolts of MLG wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew.

DATES: Comments must be received by January 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–251–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–251–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that tie bolts have failed on certain BFGoodrich wheel assemblies that are installed on the main landing gear (MLG) of Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. Most of the incidents of

failure of multiple tie bolts (that is, failure of more than one bolt on a single wheel) resulted only in flat tires. However, since 1989, there have been several incidents that resulted in high-energy release of the wheel rim and consequent damage to the airplane. In one incident, failure of both tires on the left MLG resulted in a rejected takeoff (RTO). Failure of the wheel tie bolts has been attributed to fatigue, which may be caused by improper torquing of the tie bolts. Although the specific cause of failure has not been identified on a few wheel tie bolts, other causes of failure have been identified as improper maintenance, wear, corrosion, or a combination of several factors. Failure of multiple wheel tie bolts, if not corrected, could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew.

Explanation of Relevant Service Information

The FAA has reviewed and approved BFGoodrich Aerospace Service Bulletins 3–1439–32–13 and 3–1398–32–16, both dated August 20, 1993. The service bulletins describe procedures for corrective actions if certain wheel assemblies are installed on the MLG. The corrective actions include modification of the wheel assembly by replacement of existing tie bolts, nuts, and washers with new, improved Inconel tie bolts and nuts, and new, thicker washers. The service bulletins also describe new torque values, procedures for inspecting the new tie bolts to ensure that they did not crack during torquing, and a procedure for stamping a new part number on the wheel assembly once it has been modified. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time visual inspection of the MLG wheel assemblies to determine whether certain part numbers are installed on the airplane, and follow-on corrective actions, if necessary.

If certain part numbers are installed, the proposed AD would require repetitive replacement of all tie bolts, nuts, and washers of the MLG wheel assembly with new parts; or repetitive visual inspections to detect fractures of the tie bolts of the MLG wheel assembly, and replacement of discrepant parts with new parts. Alternatively, the proposed AD would require revisions to the FAA-approved maintenance program to require one of those actions. If those certain part numbers are installed, the proposed AD also would require eventual accomplishment of corrective actions specified in the service bulletins described previously, except as discussed below. Accomplishment of these corrective actions would terminate the requirements of this AD.

Differences Between Proposed Rule and Service Bulletins

Operators should note that the service bulletins specify replacement of wheel tie bolts with new parts only when broken wheel tie bolts have been found. This proposed AD would require, at every fifth tire change, replacement of the existing wheel tie bolts, washers, and nuts with parts having the same part number, or repetitive visual inspections at intervals not to exceed 100 flight cycles; or alternatively, revisions to the FAA-approved maintenance program to require one of these actions.

The service bulletins also specify that existing parts can continue to be used if there are no discrepancies in those parts. This proposed AD would require eventual modification of affected wheel assemblies by replacement of existing wheel tie bolts, washers, and nuts with new, improved parts, which would constitute terminating action for the requirements of this AD. The FAA has determined that long-term continued operational safety would be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed modification is in consonance with these conditions.

Explanation of the Applicability of the Rule

The FAA notes that its general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of airplane, an AD is issued so that it is applicable to the airplane, rather than the item. The reason for this is simple: making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator.

Cost Impact

There are approximately 460 airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the one-time inspection proposed by this AD on U.S. operators is estimated to be $7,080, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the repetitive visual inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive inspections, if accomplished, is estimated to be $60 per airplane, per inspection cycle.

Should an operator elect to accomplish the replacement, such replacement would require no additional work hours if accomplished during a regularly scheduled tire change. Required parts would cost $2,840 per airplane ($710 per wheel). Based on these figures, the cost impact of the replacement, if accomplished, is estimated to be $2,840 per airplane, per replacement cycle.

Should an operator elect to accomplish the revisions to the FAA-approved maintenance program, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the maintenance program revision, if accomplished, is estimated to be $60 per airplane.

Should an operator be required to accomplish the necessary modification of the wheel assembly, it would require no additional work hours per airplane,

if the modification is accomplished during a regularly scheduled tire change. Required parts would cost $4,848 per airplane ($1,212 per wheel). Based on these figures, the cost impact of any necessary modification is estimated to be $4,848 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–251–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of multiple tie bolts of main landing gear (MLG) wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time visual inspection of the MLG wheel assemblies to determine the part number (P/N) of each assembly. If no wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane, no further action is required by this AD.

(b) Except as provided by paragraph (d) of this AD, if any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane, within 60 days after the effective date of this AD, accomplish the actions specified by paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish the actions specified by (b)(1)(i) or (b)(1)(ii) of this AD.

(i) Replace all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual. Thereafter, repeat the replacement of tie bolts, nuts, and washers, at intervals not to exceed 5 tire changes, until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. Or

(ii) Perform a visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual. Thereafter, repeat the inspection at intervals not to exceed 100 flight cycles until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. If any fracture of any tie bolt is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

(2) Revise the FAA-approved maintenance program as specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Revise the FAA-approved maintenance program to require replacement of all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual, at intervals not to exceed 5 tire changes. Or

(ii) Revise the FAA-approved maintenance program to require a visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual, at intervals not to exceed 100 flight cycles. If any fracture of any tie bolt is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

Note 2: After the maintenance program has been revised to include the procedures specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, operators are not required to subsequently record AD compliance each time the replacement or inspection is performed.

(c) If any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane: Except as provided by paragraph (d) of this AD, within 2 years after the effective date of this AD, modify any BFGoodrich Aerospace wheel assembly, having P/N 3–1398–1, 3–1439–2, or 3–1439–3; by replacing all existing tie bolts, nuts, and washers, with new, improved parts; and by converting the P/N of the MLG wheel assembly to 3–1398–2 (for BFGoodrich wheel assemblies having the old P/N 3–1398–1), 3–1439–5 (for BFGoodrich wheel assemblies having the old P/N 3–1439–2), or 3–1439–6 (for BFGoodrich wheel assemblies having the old P/N 3–1439–3), as applicable; in accordance with BFGoodrich Aerospace Service Bulletin 3–1439–32–13, or BFGoodrich Aerospace Service Bulletin 3–1398–32–16, both dated August 20, 1993, as applicable. Such modification constitutes terminating action for the requirements of this AD, and the FAA-approved maintenance program procedures specified by paragraph (b)(2) of this AD may be removed following accomplishment of the requirements of this paragraph.

(d) Airplanes on which the modification required by paragraph (c) of this AD is accomplished within the compliance time specified in paragraph (b) of this AD are not required to accomplish the actions required by paragraph (b).

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 10, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30767 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–AWA–2]

RIN 2120–AA66

Proposed Modification of the Tampa Class B Airspace Area; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Tampa, FL, Class B airspace area. Specifically, this action proposes to rename two existing subareas, reconfigure the boundaries of three subareas, and create an additional subarea within the Tampa Class B airspace area. The FAA is proposing this action to efficiently align the Tampa Class B airspace area as a result of a reduction in flying operations at MacDill Air Force Base (AFB), to enhance safety, and to manage aircraft operations in the Tampa, FL, terminal area.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Send comments on the proposal in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket, AGC–200, Airspace Docket No. 97–AWA–2, 800 Independence Avenue, SW; Washington, DC 20591. Comments may also be sent electronically to the following Internet address: 9-nprm-cmts@faa.dot.gov. The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 97–AWA–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be avaiable for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will also be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the **Federal Register**'s webpage at http://www.access.gpo.gov/nara/index.html for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

The TCA area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increases the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier or military aircraft, or another GA aircraft. The basic causal factor common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean seal level (MSL), with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

On June 21, 1988, the FAA published the Transponder With Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356). This rule requires all aircraft to have an altitude encoding transponder when

operating within 30 NM of any designated TCA (now known as Class B airspace areas) primary airport from the surface up to 10,000 feet MSL. This rule excluded those aircraft that were not originally certificated with an engine-driven electrical system (or those that have not subsequently been certified with such a system), balloons, or gliders.

On October 14, 1988, the FAA published the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published the Airspace Reclassification Final Rule (56 FR 65638). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in the remainder of the NPRM.

Background

In April 1991, the Defense Base Realignment and Closure Commission recommended the termination of all flight operations at MacDill AFB (situated within the Tampa Class B airspace area) by September 1993. However, in 1995, the Commission amended its findings and recommended that the base continue to have an active flying mission. As a result of the 1995 change, an Air Force unit consisting of 12 KC–135 aircraft was transferred to MacDill AFB. Notwithstanding the return of an active Air Force flying mission and the basing of National Oceanic and Atmospheric Administration aircraft, the level of aircraft operations at MacDill AFB remains significantly lower than the level existing previously. Based on the reduction in the number of operations at MacDill AFB and the FAA's periodic review of Class B airspace areas, in 1992, an ad hoc committee, consisting of representatives from local user groups, was formed to develop recommendations for modifying the Tampa Class B airspace area.

Pre-NPRM Public Input

As announced in the **Federal Register** on January 4, 1993 (58 FR 120), two pre-NPRM informal airspace meetings were held on February 16 and 17, 1993, in Tampa and St. Petersburg, FL, to allow local interested airspace users an opportunity to present input on the design of the proposed alteration of the Tampa Class B airspace area. The response to the proposed Class B airspace area modification from all participants was favorable. One written comment was received during the 60-day comment period, which supported the proposal. Except for the addition of a new subarea C in the vicinity of MacDill AFB, there have been no changes to the proposal since the informal airspace meetings were held in 1993.

Other Public Meetings

Due to the fact that this informal airspace meeting was held in 1993, the FAA will be conducting further meetings on this proposal. The dates and times of these proposed meetings will be announced in the **Federal Register**.

The coordinates for this airspace docket area based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

The Proposal

The FAA proposes to amend 14 CFR part 71 by modifying the Tampa, FL, Class B airspace area. Specifically, this action (depicted on the attached chart) proposes to amend one point in the legal description of Area A; reduce the size of Area B; establish a new Area C in the vicinity of MacDill AFB; realign the boundaries and rename the current Area C as Area D; and realign the boundaries and rename the current Area D as Area E. These modifications would provide additional airspace for nonparticipating aircraft operating below the floor of the Tampa Class B airspace area, and enhance the flow of air traffic in the Tampa terminal area.

Area A would be unchanged except for amending the coordinates of the Tampa airport surveillance radar (ASR) to reflect the position of the new ASR–9 radar installed at Tampa.

Area B, which encompasses that Class B airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL, would be reduced in size. The modified Area B would be bounded by Interstate 75 (I–75) on the east, a new subarea C (with a floor of 1,700 feet MSL) in the vicinity of MacDill AFB to the south, and by the Tampa 10 NM arc. The remaining section of the current Area B (i.e., that portion located to the south of MacDill AFB, east of Albert Whitted Airport, and southward to the 10 NM arc of the Sarasota-Bradenton Class C airspace area), would be removed from Area B and incorporated into the modified Area D and the modified Area E. This proposed change would raise the floor of Class B airspace in the realigned segment from the current 1,200 feet MSL. The floor of Class B airspace was originally set at 1,200 feet MSL in that area to accommodate the extensive high performance, low altitude jet traffic transiting between MacDill AFB and the offshore training areas. With the termination of the fighter training mission at MacDill AFB, there is no longer a requirement to retain Class B airspace below 3,000 feet MSL over that portion of Tampa Bay extending from MacDill AFB southward to the 10 NM arc of the Sarasota-Bradenton Class C airspace area, as exists in the current configuration. The proposed higher floor of the Class B airspace area would result in more efficient use of the airspace and provide additional altitudes for use by GA aircraft transitioning over Tampa Bay between the Orlando/Lakeland area, and Albert Whitted and St. Petersburg-Clearwater Airports. Further, this change would reduce the amount of air traffic transitioning over Tampa International Airport and lessen air traffic congestion around the St. Petersburg Very High Frequency Omnidirectional Range/Tactical Air Navigation station.

The FAA proposes to create a new Area C, extending upward from 1,700 feet MSL to and including 10,000 feet MSL, in the vicinity of MacDill AFB. The new Area C would allow for nonparticipating aircraft operations in the MacDill AFB traffic pattern, below the floor of the Tampa Class B airspace area.

The current Area C, consisting of that airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL, would be renamed Area D. As described above, the modified Area D would absorb most of the airspace over Tampa Bay to the south of MacDill AFB that is currently part of Area B. This action would raise the floor of the Class B airspace in that area from 1,200 feet MSL to 3,000 feet MSL.

The current Area D, consisting of that airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL, would be renamed Area E. The modified Area E would generally retain the same lateral dimensions of the current Area D, except that the segment of the existing boundary line, which runs northward from Anna Maria Island to lat. 27°40′42″N., long. 82°44′21″W., would be moved to the east and realigned along the Skyway Bridge/I–275. As described above, this

modification would merge a portion of the current Area B airspace into the renamed Area E. The effect of this modification would be to raise the floor of the Class B airspace between Skyway Bridge and Anna Maria Island from the current 1,200 feet MSL, to 6,000 feet MSL. This change would benefit aircraft navigating along the coastline and transiting that airspace located between Egmont Key and the Skyway Bridge. Class B airspace clearance would no longer be required for aircraft operating below 6,000 feet MSL in that area. This proposal to modify the Tampa Class B airspace area would enhance safety and improve the flow of air traffic in the Tampa Class B airspace area. Further, the proposal would benefit nonparticipating VFR operations by providing higher altitudes for use by aircraft transitioning over Tampa Bay.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its minimal costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble and the full Regulatory Evaluation is in the docket.

The FAA has determined that modification of the Tampa Class B airspace area would increase the operational efficiency of the Class B airspace while maintaining aviation safety in the terminal area. Also, clearer boundary definition and changes to lateral limits of the subareas would leave more available airspace for transitioning VFR aircraft. The proposed rule would impose only negligible costs on some airspace users and would potentially reduce circumnavigation costs to some operators. The proposed rule would not impose additional administrative costs on the FAA, since any potential increased operations workload could be absorbed by current personnel and equipment. Changes to aeronautical charts would occur during the chart cycle and would cause no additional costs beyond normal updates of charts.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regualtory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial nuber of small entities. If the determination is that it would, the agency must prepare ■ regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some negligible circumnavigation costs only upon individuals operating in the Tampa Class B airspace. Therefore, the FAA does not anticipate any adverse impacts to occur as a result of the modified Class B airspace area.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The proposed rule would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandates." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million adjusted annually for inflation in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan. That plan, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Conclusion

In view of the minimal or zero cost of compliance of the proposed rule and the

enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS, C, CLASS D, AND CLASS E AIRSPACE AREAS, AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation for reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 3000—Subpart B—Class B Airspace

* * * * *

ASO FL B Tampa, FL [Revised]

Tampa International Airport (Primary Airport)
(Lat. 27°58′32″N., long. 82°32′00″W.)
Tampa ASR (lat. 27°59′16″N., long. 82°32′42″W.)
MacDill AFB (MCF) (lat. 27°51′00″N., long. 82°31′18″W.)
St. Petersburg VORTAC (PIE)
(Lat. 27°54′28″N., long. 82°41′04″W.)
Saratoga-Bradenton International Airport
(Lat. 27°23′43″N., long. 82°33′14″.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by an area beginning at lat. 27°54′30″N., long. 82°30′56″W., then clockwise along the 5-mile arc of the Tampa ASR to lat. 27°57′44″N., long. 82°27′17″W., to the point of beginning.

Area B. That airspace extending upward from 1,200 feet MSL to and including 10,000 feet MSL beginning at the intersection of the Tampa ASR 10-mile arc and the PIE VORTAC 132° radial, then clockwise along the Tampa ASR 10-mile arc to US Highway 301, then south along US Highway 301 to Interstate 75, then south along Interstate 75 to the Tampa ASR 12.5-mile arc, then clockwise along the Tampa ASR 12.5-mile arc to the PIE VORTAC 132° radial, then northwest via the PIE VORTAC 132° radial to the point of beginning.

Area C. That airspace extending upward from 1,700 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Tampa ASR 10-mile arc and the PIE VORTAC 132° radial, then northeast along the line 1.5 miles from the parallel to Runway 04/22 at MCF AFB until intercepting the 4.5-mile arc from the MCF AFB airport reference point, then direct to the intersection of Interstate 75 and the Tampa ASR 12.5-mile arc, then clockwise along the Tampa ASR 12.5-mile arc until intercepting the PIE VORTAC 132° radial, then northwest via the PIE VORTAC 132° radial to the point of beginning.

Area. D. That airspace extending upward from 3,000 feet MSL up to and including 10,000 feet MSL bounded by a line beginning at the shoreline due west of and to the intersection of Highway 19 and Highway 52, at Hudson, FL, then east along Highway 52 to Interstate 75, then south along the eastern edge of Interstate 75 to Highway 54, then east along Highway 54 to Highway 39–301 at Zephyrhills, FL, then south on Highway 39 to Highway 60, then west on Highway 60 to lat. 27°56′16″N., long. 82°10′59″W., then south along the railroad to Highway 301 at Parrish, FL, then southwest along Highway 301 to the 10-mile arc of the Sarasota-Bradenton, FL, Class C airspace area, then counterclockwise along the 10-mile arc of the Sarasota-Bradenton Class C airspace area to U.S. Route 19, then northwest along U.S. Route 19 to Interstate 275, then north along Interstate 275 to lat. 27°42′26″N., long. 82°40′45″W. (the north end of the Skyway Bridge), then north along the mainland shoreline to the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of U.S. Route 19 and the 10-mile arc of the Sarasota-Bradenton Class C airspace area, then counterclockwise along the 10-mile arc of the Sarasota-Bradenton Class C airspace area to intercept the 30-mile arc of the Tampa ASR, then clockwise along the Tampa ASR 30-mile arc to long. 82°59′59″W., then north along long. 82°59′59″W., to the 30-mile arc to the Tampa ASR, then clockwise along the Tampa ASR 30-mile arc to intercept Highway 39–301, then south on Highway 39–301 to Highway 54 at Zephyrhills, Fl.; and that airspace bounded by a line beginning at Highway 60 and Highway 39, then south along Highway 39 to the Tampa ASR 30-mile arc, then clockwise along the Tampa ASR 30-mile arc to the 10-mile arc of the Sarasota-Bradenton Class C airspace area, then counterclockwise along the 10-mile arc of the Sarasota-Bradenton Class C airspace area to intercept Highway 301.

* * * * *

Issued in Washington, DC, on October 30, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

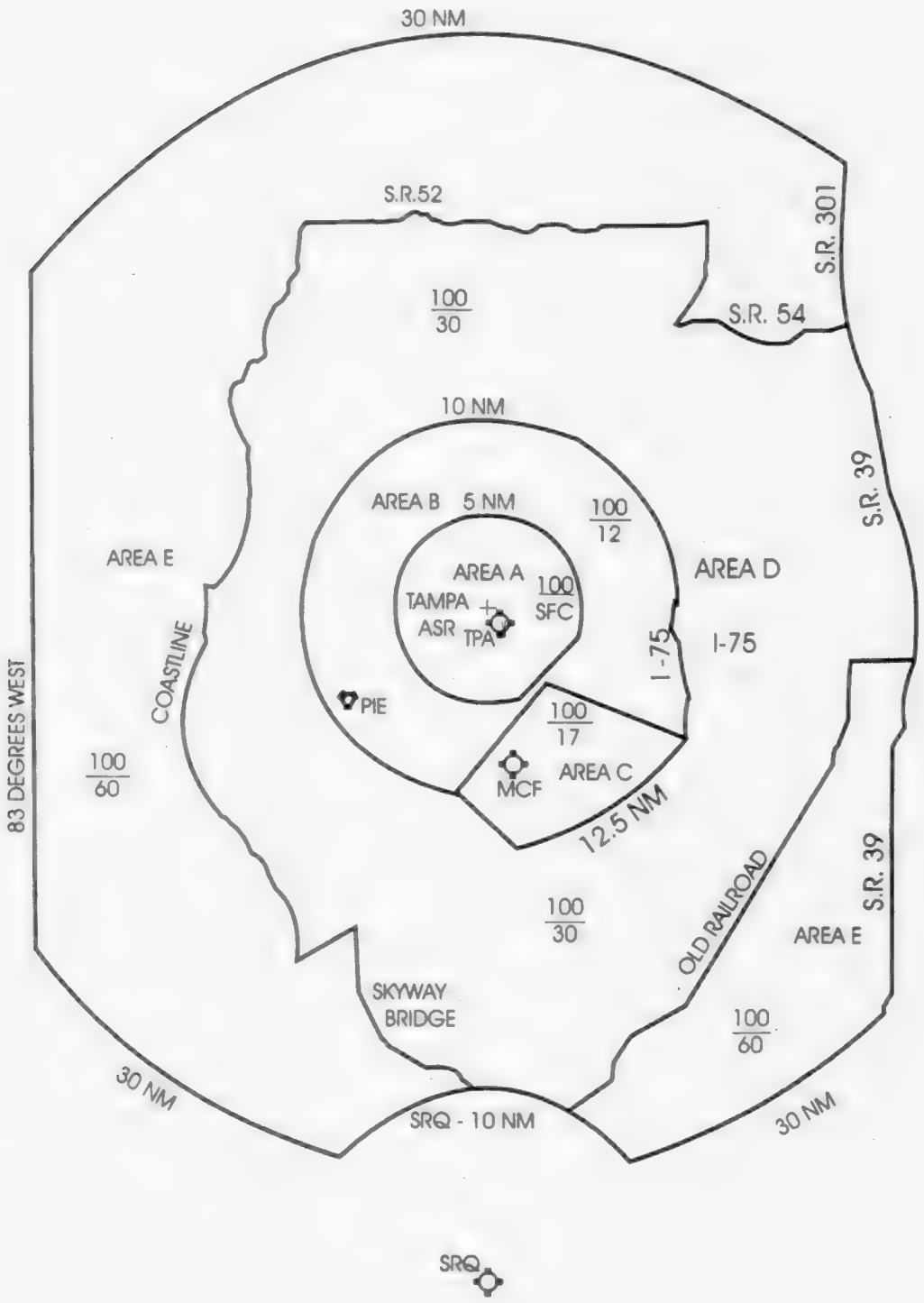
Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix—Tampa, FL, Class B Airspace Area

BILLING CODE 4910–13–M

TAMPA, FL CLASS B

(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Air Traffic Publications
ATA-10

[FR Doc. 98–30092 Filed 11–17–98; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–16]

Proposed Removal of Class E airspace; Anaconda, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would remove the Class E airspace at Anaconda, MT, which is no longer necessary because of recent airspace amendments to adjacent airspace areas.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 98–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–16, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ANM–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to remove Class E airspace at Anaconda, MT. This amendment would remove airspace no longer necessary because of an airspace amendment at Bert Mooney Airport, Butte, MT (final rule document 98–14169, 63 FR 29103, Thursday, May 26, 1998). The Butte, MT, Class E airspace fully encompasses all of the operations necessary for Bowman Field, Anaconda, MT. The intended effect of this proposal is designed to provide efficient use of the navigable airspace.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involve an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Anaconda, MT [Removed]

* * * * *

Issued in Seattle, Washington, on October 26, 1998.

Helen Fabian Parke,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–30789 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–053]

RIN 2115–AE47

Drawbridge Operation Regulation; Chef Menteur Pass, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a change to the regulation governing the operation of the U.S. Highway 90 swing span bridge across Chef Menteur Pass, mile 2.8 at Lake Catherine, Orleans Parish, Louisiana. The proposal would permit the draw to remain closed to navigation from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays.

Vehicular traffic has become congested during peak traffic hours by commuters who work in the Almonaster Development District in Orleans Parish. This change in drawbridge operating regulations will provide for the uninterrupted flow of vehicular traffic for commuters en route to work during this period, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 7 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

The Commander, Eighth Coast Guard District Bridge Administration Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the address given above, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Phil Johnson, Bridge Administration Branch, at the address given above, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–98–053) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger that 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. This proposed rule may be changed in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eight Coast Guard District at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Discussion of Proposed Rule

The U.S. Highway 90 bridge is a swing structure which provides a vertical clearance of 11 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position and a horizontal clearance of 97 feet between fenders. Navigation on the waterway consists of tugs with tows, commercial fishing vessels and recreational craft. Vehicular traffic crossing the bridge during peak rush hour traffic periods has increased significantly during recent years. This is the only route available for motorists, who live in the Lake Catherine area who commute to work at the Almonaster Development District, without a long detour for more than 25 miles by backtracking north to State Route 433, thence south via Interstate 10 to U.S. 11, thence south and return to U.S. 90.

The Coast Guard is considering changing the regulation governing the operation of the drawbridge to permit the draw to remain closed to navigation from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. The proposed regulation would allow for the fee flow of vehicular traffic, while still serving the reasonable needs of navigational interests.

Data provided by the Louisiana Department of Transportation and Development shows that from July 6, 1998 through July 20, 1998, from 5:30 a.m. to 7:30 a.m. weekdays, excluding Federal holidays the average number of vehicles which crossed the bridge was 150. Of those vehicles, an average of 127 were west bound and 23 were eastbound. This indicates that the majority of the vehicular traffic is westbound from the Lake Catherine area toward the Almonaster Development District during this time frame. Information taken from bridge tender logs shows that from July 1997 through June 1998, the number of vessels that passed the bridge and required openings of the draw averaged one vessel daily, during the proposed 5:30 a.m. to 7:30 a.m. closure period on weekdays, excluding Federal holidays.

This proposed rule will necessitate the redesignation of § 117.435 as § 117.434; § 117.436 as § 117.435; and a new § 117.436 to be added as Chef Menteur Pass. All redesignations are administrative in nature and will not substantively affect existing operating regulations.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the number of vessels impaired during the proposed closed-to-navigation period is minimal. Commercial fishing vessels still have ample opportunity to transit this waterway before and after the peak vehicular traffic periods.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

The proposed rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will continue to be able to pass the bridge in the early morning, prior to 5:30 a.m. and at any time during the day after 7:30 p.m., as well as 24 hours per day on weekends and Federal holidays.

Additionally, an alternate route is available by transiting Rigolets Pass, approximately 20 miles east of Chef Menteur Pass, via the Intracoastal Waterway. Thus, the economic impact is expected to be minimal. There is no indication that other waterway users would suffer any type of economic hardship if they are precluded from transiting the waterway during the two hours per day that the draw is scheduled to remain in the closed-to-navigation position. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§§ 117.435 and 117.436 [Redesignated]

2. § 117.435 is redesignated as § 117.434; § 117.436 is redesignated as § 117.435; and a new § 117.436 is added to read as follows:

§ 117.436 Chef Menteur Pass.

The draw of the U.S. Highway 90 bridge, mile 2.8, at Lake Catherine, shall open on signal; except that, from 5:30 a.m. to 7:30 a.m. Monday through Friday except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: October 2, 1998.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 98–30595 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–15–M

PRESIDIO TRUST

36 CFR Parts 1001, 1002, 1003, 1004, 1005, and 1006

RIN 3212–AA01

Management of the Presidio

AGENCY: The Presidio Trust.

ACTION: Proposed rule; partial extension of public comment period.

SUMMARY: This action extends until January 8, 1999 the period for public comment on a portion of the proposed rule published in the **Federal Register** (63 FR 50024–50055) on September 18, 1998 concerning management of the area under the administrative jurisdiction of the Presidio Trust (proposed 36 CFR Parts 1001, 1002, 1003, 1004, 1005 and 1006). The period for public comment on the remaining portion of this proposed rule (proposed 36 CFR Parts 1007, 1008, and 1009) closed on November 17, 1998.

DATES: Comments on Parts 1001, 1002, 1003, 1004, 1005 and 1006 of the proposed rule must be received by January 8, 1999.

ADDRESSES: Written comments on Parts 1001, 1002, 1003, 1004, 1005 and 1006 of the proposed rule must be sent to Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052.

FOR FURTHER INFORMATION CONTACT: Karen A. Cook, General Counsel, The Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

SUPPLEMENTARY INFORMATION: By publication in the **Federal Register** on September 18, 1998 (63 FR 50024–50055), the Presidio Trust proposed regulations for management of the Presidio and for exercising its authorities in the following nine parts:

Part 1001—General provisions
Part 1002—Resource protection, public use and recreation
Part 1003—Vehicles and traffic safety
Part 1004—Commercial and private operations
Part 1005—Rights-of-way
Part 1006—Presidio Trust symbols
Part 1007—Requests under the Freedom of Information Act
Part 1008—Requests under the Privacy Act
Part 1009—Administrative claims under the Federal Tort Claims Act

The area under the administrative jurisdiction of the Presidio Trust was formerly under the administrative jurisdiction of the National Park Service (NPS) and is adjacent to an area that continues to be under the administrative jurisdiction of the NPS. At the request of the NPS, the Presidio Trust is extending the public comment period on Parts 1001, 1002, 1003, 1004, 1005 and 1006 of the proposed regulations from the original deadline of November 17, 1998 to January 8, 1999. In the meantime, the Presidio Trust's final interim regulations at 36 CFR Parts 1001, 1002, 1004, and 1005, which were adopted by the Presidio Trust and published in the **Federal Register** on June 30, 1998 (63 FR 35694), will remain in effect.

The comment period on Parts 1007, 1008, and 1009 of the proposed regulations closed on November 17, 1998, and the Trust expects to issue final regulations on these topics following consideration of comments received.

Authority: Pub. L. 104–333, 110 Stat. 4097 (16 U.S.C. 460bb note).

Dated: November 12, 1998.

Karen A. Cook,

General Counsel.

[FR Doc. 98–30786 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–4R–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AL–048–1–9901b; FRL–6188–8]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by the Alabama Department of Environmental Management (ADEM) for

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the State of Alabama on September 11, 1998, for implementing and enforcing the Emissions Guidelines applicable to existing Municipal Waste Combustors with capacity to combust more than 250 tons per day of municipal solid waste. The Plan was submitted by the ADEM to satisfy certain Federal Clean Air Act requirements. In the final rules section of this **Federal Register**, the EPA is approving the Alabama State Implementation Plan revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by December 18, 1998.

ADDRESSES: Written comments should be addressed to Kimberly Bingham at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Alabama Department of Environmental Management, Air Division, 1751 Congressman W.L. Dickinson Drive, Montgomery, Alabama 36109.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham at (404) 562-9038 or Scott Davis at (404) 562–9127.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: November 4, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30603 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6175–3]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Arizona; Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the 1990 Clean Air Act (CAA), the Pinal County Air Quality Control District (PCAQCD) requested delegation of specific national emission standards for hazardous air pollutants (NESHAPs). In the Rules section of this **Federal Register**, EPA is granting PCAQCD the authority to implement and enforce specified NESHAPs. The direct final rule also explains the procedure for future delegation of NESHAPs to PCAQCD. EPA is taking direct final action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by December 18, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted requests are available for public inspection at EPA's Region IX office during normal business hours (docket number A–96–25).

FOR FURTHER INFORMATION CONTACT: Mae Wang, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1200.

SUPPLEMENTARY INFORMATION: This document concerns delegation of unchanged NESHAPs to the Pinal County Air Quality Control District. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. Section 7412.

Dated: September 28, 1998.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 98–30723 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AB02

Acquisition Regulation: Financial Management Clauses for Management and Operating (M&O) Contracts

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) proposes to amend its Acquisition Regulation to designate certain Department of Energy Acquisition Regulation (DEAR) M&O contract clauses and Federal Acquisition Regulation (FAR) clauses as Standard Financial Management Clauses to be included in M&O contracts unless the Chief Financial Officer (CFO) concurs in a deviation. Additionally, this proposed rule will revise selected existing financial management clauses and add financial management related clauses.

DATES: Written comments must be submitted no later than January 19, 1999.

ADDRESSES: Comments should be addressed to: Michael L. Righi, Office of Policy (HR–51), Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Michael L. Righi (202–586–8175) at the address above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Detailed List of Changes
III. Public Comments
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. Review Under the National Environmental Policy Act
G. Review Under Small Business Regulation Enforcement Fairness Act of 1996

I. Background

On November 15, 1990, Congress enacted the Chief Financial Officers Act of 1990 (the Act), Pub. L. 101–576. The Act requires that each Federal agency implement improvements in its systems of accounting, financial management, and internal controls. DOE has since developed and tested various policies, practices, and procedures in its efforts to implement the mandates contained in the Act. These efforts have included a review of the Department's financial relationship with, and data received from, its M&O contractors. Today's proposed rule would include new policies and changes to existing policy in the Department's acquisition regulations.

II. Detailed List of Changes

1. The authority citation for Part 970 would be restated.

2. Section 970.3201 would be revised by replacing the word "bank" in the first sentence with the words "financial institution." This would permit DOE to utilize a financial institution, other than a bank, to provide services with regard to a special account. The second sentence would be deleted and its requirements incorporated into Section 970.3202.

3. Section 970.3202 would be amended by revising paragraphs (b) and (c). Paragraph (b) would be revised by replacing the word "bank" with the words "financial institution" and adding the words "or, at the option of the Government, by direct payment or other payment mechanism to the contractor" at the end of the sentence. Also, the term "letter-of-credit" would be changed to "payments cleared financing arrangement" in order to implement the Automatic Standard Application for Payment (ASAP) that has replaced letter-of-credit. These changes would be consistent with similar changes to Section 970.5204–16 with regard to a special financial institution account, payments cleared financing arrangement, and the use of other payment mechanisms.

Paragraph (c) would be revised by replacing the word "bank" with the words "financial institution" throughout the paragraph to be consistent with similar revisions as previously stated. In the second sentence the word "revenues" would be replaced with the word "collections" to include any type of collection. Also, a provision would be added to require that the agreement among DOE, the contractor, and the financial institution incorporate all applicable requirements, as determined by the Office of CFO.

4. Section 970.3270 would be revised by establishing a section entitled Standard Financial Management Clauses, which requires that certain clauses be included in all M&O contracts, and requires that deviations have the approval of the Head of the Contracting Activity and the written concurrence of the Department's CFO.

5. Section 970.3271 would be removed and these requirements would be incorporated into Section 970.3202.

6. Section 970.5204–9 would be revised. Specifically, paragraph (a) would be revised by replacing the word "revenues" in the first sentence with the words "collections accruing to the contractor in connection with the work under this contract" to require accounting for any type of collection accruing to the contractor under the contract, and by deleting the word "fixed."

Paragraph (b) would be revised by adding language to allow for inspection and audit of accounts and records by DOE's designees, in accordance with provisions of the clause, Access to and ownership of records.

Paragraph (d) would be revised by identifying other types of information as property of the Government. In addition, the word "revenues" would be replaced with the words "collections accruing to the contractor in connection with the work under this contract" and the words "and fee accruals" would be added. Also, a reference to the Access to and ownership of records clause would be added for clarity.

Paragraph (f) would be revised by making a minor editorial change, adding the word "and" between the words "time" and "in."

7. Section 970.5204–13 would be amended by revising paragraph (d)(15) by replacing the word "bank" in the first sentence with the words "financial institution" to be consistent with similar changes to other sections regarding a financial institution account and by adding in the second sentence the words "to employees" to clarify that payments as described in this sentence are to employees.

8. Section 970.5204–15 would be revised. Specifically, paragraph (a) would be revised by replacing the words "revenues and receipts" with the word "collections" to include any type of collection. The fourth sentence would be revised to require that collections are processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract.

Paragraph (b) would be revised by deleting the word "fixed" in the first sentence to include any type of fee. In the second sentence the words "revenues and receipts" would be replaced with the words "collections accruing to the contractor in connection with the work under this contract * * *" to include any type of collection. The second sentence would also be revised to require the processing of and accounting for such collections in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract.

Paragraph (c) would be revised by replacing the words "revenues and receipts" with the word "collections" to include any type of collection and by deleting the word "fixed" to include any type of fee. The word "commitments" would be replaced with the word "encumbrances" throughout the paragraph because appropriations are encumbered rather than committed at the contractor level. Also, the word "available" would be added throughout the paragraph where reference is made to "funds" and "collections" for clarity and consistency with the first sentence of the paragraph. In the second sentence the words "either" and "or is equal to zero" would be deleted to clarify when notice should be given to DOE in regard to the requirements of this paragraph. Additionally, for consistency with other references to the clause entitled "Termination," the word "article" in the last sentence would be replaced with the word "clause."

Paragraph (d) would be revised by replacing the word "commitment(s)" with the word "encumbrance(s)" throughout the paragraph. The words "such as Approved Funding Programs" would be added in the first sentence between the words "plans" and "or" to reflect the current terminology used for financial plans. In the second sentence the word "instruction" would be replaced with the word "directives" for consistency with the first sentence. In the third sentence the words "to use its best efforts" would be deleted to require contractor compliance with other requirements of such plans and directives. Also, the words "the authorized financial levels of" would be replaced with the words "that any limitation on" to state more clearly that such financial plans contain cost and encumbrance limitations. A typographical error would be corrected and a minor editorial change would be made in the third sentence. The word "directives" would replace the word "directive" and the word "promptly"

would be deleted between the words "to" and "notify" and inserted between the words "DOE" and "in." A typographical error would also be corrected in the note to paragraph (d) by replacing the word "provided" with the word "provide." Also, in the note the word "article" would be replaced with the word "clause" for consistency with other revised paragraphs of this section.

Paragraph (e) would be revised by replacing the word "article" with the word "clause" for consistency with other references to the clause entitled "Termination."

9. Section 970.5204–16 would be revised. Specifically, paragraph (a) would be revised by changing the language to require payment of the fixed-fee in accordance with a schedule determined by the contracting officer. The term "letter-of-credit" would be changed to "payments cleared financing arrangement" in order to implement the ASAP that has replaced letter-of-credit. In paragraph (a) of Note 2 the term "letter-of-credit" also would be changed to "payments cleared financing arrangement."

Paragraph (c) would be revised by replacing the words "special bank account" with the words "special financial institution account" throughout the paragraph. This change would permit DOE to utilize a financial institution, other than a bank, to provide services with regard to a special account. In the first sentence, the term "letter-of-credit" would be replaced with "payments cleared financing arrangement prescribed by DOE" as described in paragraph (a) above and the language would be revised to allow payment of funds, at the option of the Government, by direct payment or other payment mechanism to the contractor. Since collections are processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract, the second sentence of this paragraph would be deleted. In the third sentence the words "and, if applicable, fees earned" would be inserted between the words "allowable" and "under" since payment of fees earned may or may not be made from the special financial institution account. Also, an editorial correction would be made in the third sentence by replacing the word "mingled" with the word "commingled." Additionally, a typographical error would be corrected in the fourth sentence by replacing the word "on" with the word "of."

Paragraph (d) would be revised by replacing the words "special bank account" with the words "special financial institution account" throughout the paragraph to be consistent with similar revisions as previously stated.

Paragraph (e) would be revised to include penalty provisions for unallowable costs as stated in sections 306 (b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. Also, the word "voucher" would be replaced with "Statement of Costs Incurred and Claimed." Note 4 would be revised to require the inclusion of an alternative paragraph (e) in contracts with nonintegrated contractors which also includes such penalty provisions.

Paragraph (f) would be revised by deleting the word "fixed" in the first sentence. The requirement for an assignment of the contractor's rights to any "collections accruing to the contractor in connection with the work under this contract" would be added with regard to the payment by the Government to the contractor of the unpaid balance of allowable costs and fee. Under exception (B), minor changes would be made to the last sentence—"should" would change to "shall," the clause title referenced would be updated, and the last word, "and," would be deleted. Exception (D), "Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement," would be added to the exceptions to the requirement that contractors provide a release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under the contract. In addition, in the last sentence of paragraph (f) the words "financial institution" would replace the word "bank" to be consistent with similar revisions as previously stated.

Paragraph (i) would be revised by replacing the word "revenues" with the word "collections" in the title as well as the text of the paragraph. Also, the language would be changed to require collections, exclusive of the contractor's fee and other specified collections, not the property of the Government, to be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of the contract and, to the extent consistent with those requirements, to be deposited in the special financial institution account or otherwise made available for payment of allowable costs under the contract, unless otherwise directed by the contracting officer. In addition, the words "financial institution" would replace the word "bank" to be consistent with similar revisions as previously stated.

10. Section 970.5204–20 would be amended by revising the introductory statement and paragraph (a). In the second sentence the words "theft" and "fraud" would be deleted and the words "loss," "mismanagement," and "misappropriation" would be added. Also, in the fourth and fifth sentences of paragraph (a) the word "internal" would be deleted before the word "controls." These changes would be incorporated for consistency. Also, in the second sentence the word "obligations" would be replaced with the word "encumbrances" and the words "and fees that are earned" would be added. The contractor cannot obligate Federal funds. It can only encumber such funds. Therefore, contractor management controls should be adopted that reasonably ensure that all encumbrances and costs incurred and fees earned under the contract are in compliance with applicable clauses, and other current terms, conditions, and intended purposes. In the second sentence the word "revenues" would be replaced with the words "collections accruing to the contractor in connection with the work under this contract" to ensure all collections are properly recorded, managed, and reported. Additionally, an editorial correction would be made by replacing the word "system" with the word "systems" in the last sentence of the paragraph.

11. Section 970.5204–XX, "Financial Management System," would be added: to require compliance with DOE policies for maintaining and administering a financial management system; to require the contractor to submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems; to require the contractor to notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from the approved plan; and, as requested by the contracting officer, to require the contractor to submit any such deviation to DOE for written approval.

12. Section 970.5204–XX, "Integrated Accounting," would be added to require compliance with DOE procedures if an integrated accounting system is used.

13. Section 970.5402–XX, "Liability with respect to Cost Accounting Standards," would be added to address M&O contractor liability for increased costs resulting from noncompliance with provisions set forth in FAR 52.230–2, "Cost Accounting Standards,"

and FAR 52.230–6, "Administration of Cost Accounting Standards."

14. Section 970.5204–XX, "Work for others funding authorization," would be added to ensure that the Government is not liable for costs incurred by a contractor performing work for others utilizing its own funding.

III. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information which has been submitted in a document and may be exempt from public disclosure are set forth in 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity: (2) write regulations to minimize litigation: and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction: (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftmenship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This proposed rule would only apply to M&O contractors, which are all large entities. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This proposed rule will not affect States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of Energy has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Pursuant to appendix A of subpart D of 10 CFR part 1021, National Environmental Policy Act Implementing Procedures (57 FR 15122, 15152, April 24, 1992) (Categorical Exclusion A6), the Department of Energy has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on November 9, 1998.

Richard H. Hopf,

Director of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254).

2. Section 970.3201 is revised to read as follows:

970.3201 General.

It is the policy of the DOE to finance management and operating contracts through advance payments and the use of special financial institution accounts.

3. Section 970.3202 is amended by revising paragraphs (b) and (c) to read as follows:

970.3202 Advance payments.

* * * * *

(b) Advance payments shall be made under a payments cleared financing arrangement for deposit in a special financial institution account or, at the option of the Government, by direct payment or other payment mechanism to the contractor.

(c) Prior to providing any advance payments, the contracting officer shall enter into an agreement with the contractor and a financial institution regarding a special financial institution account where the advanced funds will be deposited by the Government. Such agreement shall:

(1) Provide that DOE shall retain title to the unexpended balance of funds in the special financial institution account including collections, if any, deposited by the contractor;

(2) Provide that the title in paragraph (c)(1) of this section shall be superior to any claim or lien of the financial institution of deposit or others; and

(3) Incorporate all applicable requirements, as determined by the Office of Chief Financial Officer.

* * * * *

4. Section 970.3270 is revised to read as follows:

970.3270 Standard financial management clauses.

(a) The following DEAR and FAR clauses are standard financial management clauses that shall be included in both integrated and nonintegrated management and operating contracts: DEAR 970.5204–9, Accounts, records, and inspection; DEAR 970.5204–15, Obligation of funds; DEAR 970.5204–16, Payments and advances; DEAR 970.5204–20, Management controls; DEAR 970.5204–XX, Liability with respect to Cost Accounting Standards; DEAR 970.5204–XX, Work for others funding authorization; FAR 52.230–2, Cost Accounting Standards; and FAR 52.230–6, Administration of Cost Accounting Standards.

(b) The following clauses are standard financial management clauses that shall be included in integrated management and operating contracts: DEAR 970.5204–XX, Financial management system; and DEAR 970.5204–XX, Integrated accounting.

(c) Any deviations from the standard financial management clauses specified in paragraphs (a) and (b) of this section require the approval of the Head of the Contracting Activity and the written concurrence of the Department's Chief Financial Officer.

5. Section 970.3271 is removed.

6. In section 970.5204–9 revise the introductory paragraph; clause title; and paragraphs (a) (including the note), (b), (d), and (f) to read as follows:

970.5204–9 Accounts, records, and inspection.

As prescribed in 970.0407 and 970.3270, insert the following clause.

Accounts, Records, and Inspection (Month and Year TBE)

(a) *Accounts.* The contractor shall maintain a separate and distinct set of accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract; and the receipt, use, and disposition of all Government property coming into the possession of the contractor under this contract. The system of accounts employed by the contractor shall be satisfactory to DOE and in accordance with generally accepted accounting principles consistently applied.

Note: *If the contract includes the clause for "Price Reduction for Defective Cost or Pricing Data" set forth at FAR 52.215–22, paragraph (a) above should be modified by adding the words "or anticipated to be incurred" after the words "allowable costs incurred."*

(b) *Inspection and audit of accounts and records.* All books of account and records relating to this contract shall be subject to inspection and audit by DOE or its designees in accordance with the provisions of Clause ____, Access to and ownership of records, at all reasonable times, before and during the period of retention provided for in paragraph (d) of this clause, and the contractor shall afford DOE proper facilities for such inspection and audit.

* * * * *

(d) *Disposition of records.* Except as agreed upon by the Government and the contractor, all financial and cost reports, books of account and supporting documents, system files, data bases, and other data evidencing costs allowable, collections accruing to the contractor in connection with the work under this contract, other applicable credits, and fee accruals under this contract, shall be the property of the Government, and shall be delivered to the Government or otherwise disposed of by the contractor either as the contracting officer may from time to time direct during the progress of the work or, in any event, as the contracting officer shall direct upon completion or termination of this contract and final audit of accounts hereunder. Except as otherwise provided in this contract, including provisions of Clause ____, Access to and ownership of records, all other records in the possession of the contractor relating to this contract shall be preserved by the contractor for a period of three years after final payment under this contract or otherwise disposed of in such manner as may be agreed upon by the Government and the contractor.

* * * * *

(f) *Inspections.* The DOE shall have the right to inspect the work and activities of the contractor under this contract at such time and in such manner as it shall deem appropriate.

* * * * *

7. Section 970.5204–13 is amended by revising paragraph (d)(15) to read as follows (note following paragraph (d)(15) remains unchanged):

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

Allowable Costs and Fixed-Fee (Management and Operating Contracts) (June 1997)

* * * * *

(d) * * *

(15) Establishment and maintenance of financial institution accounts in connection with the work hereunder, including, but not limited to, service charges, the cost of disbursing cash, necessary guards, cashiers, and paymasters. If payments to employees are made by check, facilities and arrangements for cashing checks may be provided without expense to the employees, subject to the approval of the contracting officer.

* * * * *

8. Section 970.5204–15 is revised to read as follows:

970.5204–15 Obligation of funds.

As prescribed in 970.1508(c), insert the following clause.

Obligation of Funds (Month and Year TBE)

(a) *Obligation of funds.* The amount presently obligated by the Government with respect to this contract is _____ dollars ($_____). Such amount may be increased unilaterally by DOE by written notice to the contractor and may be increased or decreased by written agreement of the parties (whether or not by formal modification of this contract). Estimated collections from others for work and services to be performed under this contract are not included in the amount presently obligated. Such collections, to the extent actually received by the contractor, shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract. Nothing in this paragraph (a) is to be construed as authorizing the contractor to exceed limitations stated in financial plans established by DOE and furnished to the contractor from time to time under this contract.

(b) *Limitation on payment by the Government.* Except as otherwise provided in this contract and except for costs which may be incurred by the contractor pursuant to the clause entitled "Termination," or costs of

claims allowable under the contract occurring after completion or termination and not released by the contractor at the time of financial settlement of the contract in accordance with the clause entitled "Payments and Advances," payment by the Government under this contract on account of allowable costs shall not, in the aggregate, exceed the amount obligated with respect to this contract, less the contractor's fee. Unless expressly negated in this contract, payment on account of those costs excepted in the preceding sentence which are in excess of the amount obligated with respect to this contract shall be subject to the availability of

(1) Collections accruing to the contractor in connection with the work under this contract and processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract, and

(2) Other funds which DOE may legally use for such purpose, provided DOE will use its best efforts to obtain the appropriation of funds for this purpose if not otherwise available.

(c) *Notices—Contractor excused from further performance.* The contractor shall notify DOE in writing whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, plus the contractor's best estimate of collections to be received and available during the ____ day period hereinafter specified, is in the contractor's best judgment sufficient to continue contract operations at the programmed rate for only _____ days and to cover the contractor's unpaid fee, and outstanding encumbrances and liabilities on account of costs allowable under the contract at the end of such period. Whenever the unexpended balance of available funds (including collections available under paragraph (a) of this clause, less the amount of the contractor's fee then earned but not paid, is in the contractor's best judgment sufficient only to liquidate outstanding encumbrances and liabilities on account of costs allowable under this contract, the contractor shall immediately notify DOE and shall make no further encumbrances or expenditures (except to liquidate existing encumbrances and liabilities), and, unless the parties otherwise agree, the contractor shall be excused from further performance (except such performance as may become necessary in connection with termination by the Government) and the performance of all work hereunder will be deemed to have been terminated for the convenience of the Government in accordance with the provisions of the clause entitled "Termination."

(d) *Financial plans; cost and encumbrance limitations.* In addition to the limitations provided for elsewhere in this contract, DOE may, through financial plans, such as Approved Funding Programs, or other directives issued to the contractor, establish controls on the costs to be incurred and encumbrances to be made in the performance of the contract work. Such plans and directives may be amended or supplemented from time to time by DOE. The contractor hereby agrees

(1) To comply with the specific limitations (ceilings) on costs and encumbrances set forth in such plans and directives,

(2) To comply with other requirements of such plans and directives, and

(3) To notify DOE promptly, in writing, whenever it has reason to believe that any limitation on costs and encumbrances will be exceeded or substantially underrun.

Note: *This paragraph (d) may be omitted in contracts which expressly or otherwise provide a contractual basis for equivalent controls in a separate clause.*

(e) *Government's right to terminate not affected.* The giving of any notice under this clause shall not be construed to waive or impair any right of the Government to terminate the contract under the provisions of the clause entitled "Termination."

9. Section 970.5204–16 is amended by: revising the introductory paragraph; clause title; clause paragraphs (a) (notes remain unchanged); last sentence of alternate paragraph (a); (c); (d) (including note 3); (e) (including note 4); adding alternate paragraph (e); revising paragraphs (f), and (i) to read as follows:

970.5204–16 Payments and advances.

As prescribed in 970.3270, insert the following clause.

Payments and Advances (Month and Year TBE)

(a) *Installments of fixed-fee.* The fixed-fee payable under this contract shall become due and payable in periodic installments in accordance with a schedule determined by the contracting officer. Fixed-fee payments shall be made by direct payment or withdrawn from funds advanced or available under this contract, as determined by the contracting officer. The contracting officer may offset against any such fee payment the amounts owed to the Government by the contractor, including any amounts owed for disallowed costs under this contract. No fixed-fee payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(a) * * * No base fee or award fee pool amount earned payment may be withdrawn against the payments cleared financing arrangement without prior written approval of the contracting officer.

* * * * *

(c) *Special financial institution account—use.* All advances of Government funds shall be withdrawn pursuant to a payments cleared financing arrangement prescribed by DOE in favor of the financial institution or, at the option of the Government, shall be made by direct payment or other payment mechanism to the contractor, and shall be deposited only in the special financial institution account referred to in the Special Financial Institution Account Agreement, which is incorporated into this contract as Appendix ____..No part of the funds in the special financial institution account shall be commingled with any funds of the contractor or used for a purpose other than that of making payments for costs allowable and, if applicable, fees earned under this contract or payments for other items specifically approved in writing by the contracting officer. If the contracting officer determines that the balance of such special financial institution account exceeds the contractor's current needs, the contractor shall promptly make such disposition of the excess as the contracting officer may direct.

(d) *Title to funds advanced.* Title to the unexpended balance of any funds advanced and of any special financial institution account established pursuant to this clause shall remain in the Government and be superior to any claim or lien of the financial institution of deposit or others. It is understood that an advance to the contractor hereunder is not a loan to the contractor, and will not require the payment of interest by the contractor, and that the contractor acquires no right, title or interest in or to such advance other than the right to make expenditures therefrom, as provided in this clause.

Note 3: *The following paragraph (e) shall be included in management and operating contracts with integrated contractors.*

(e) *Review and approval of costs incurred.* The contractor shall prepare and submit annually as of September 30, a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures accrued (i.e., net costs incurred) for the period covered by the Cost Statement. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended. DOE, after audit and appropriate adjustment, will approve such Cost Statement. This approval by DOE will constitute an acknowledgment by DOE that the net costs incurred are allowable under the contract and that they have been recorded in the accounts maintained by the contractor in accordance with DOE accounting policies, but will not relieve the contractor of responsibility for DOE's assets in its care, for appropriate subsequent adjustments, or for errors later becoming known to DOE.

Note 4: *The following paragraph (e) shall be included in management and operating contracts with nonintegrated contractors.*

(e) *Certification and penalties.* The contractor shall prepare and submit a "Statement of Costs Incurred and Claimed" (Cost Statement) for the total of net expenditures incurred for the period covered by the Cost Statement. It is anticipated that this will be an annual submission unless otherwise agreed to by the contracting officer. The contractor shall certify the Cost Statement subject to the penalty provisions for unallowable costs as stated in sections 306(b) and (i) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256), as amended.

(f) *Financial settlement.* The Government shall promptly pay to the contractor the unpaid balance of allowable costs and fee upon termination of the work, expiration of

the term of the contract, or completion of the work and its acceptance by the Government after:

(1) Compliance by the contractor with DOE's patent clearance requirements, and

(2) The furnishing by the contractor of:

(i) An assignment of the contractor's rights to any refunds, rebates, allowances, accounts receivable, collections accruing to the contractor in connection with the work under this contract, or other credits applicable to allowable costs under the contract;

(ii) A closing financial statement;

(iii) The accounting for Government-owned property required by the clause entitled "Property"; and

(iv) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(A) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible to exact statement by the contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided that such claims are not known to the contractor on the date of the execution of the release; and provided further that the contractor gives notice of such claims in writing to the contracting officer promptly, but not more than one (1) year after the contractor's right of action first accrues. In addition, the contractor shall provide prompt notice to the contracting officer of all potential claims under this clause, whether in litigation or not (see also Contract Clause ____, DEAR 970.5204–31, "Insurance—Litigation and Claims");

(C) Claims for reimbursement of costs (other than expenses of the contractor by reason of any indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents; and

(D) Claims recognizable under the clause entitled, Nuclear Hazards Indemnity Agreement.

(3) In arriving at the amount due the contractor under this clause, there shall be deducted, (i) any claim which the Government may have against the contractor in connection with this contract, and (ii) deductions due under the terms of this contract, and not otherwise recovered by or credited to the Government. The unliquidated balance of the special financial institution account may be applied to the amount due and any balance shall be returned to the Government forthwith.

* * * * *

(i) *Collections.* All collections accruing to the contractor in connection with the work under this contract, except for the contractor's fee and royalties or other income accruing to the contractor from technology transfer activities in accordance with this contract, shall be Government property and shall be processed and accounted for in accordance with applicable requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract and, to the extent consistent with those requirements, shall be deposited in the special financial institution account or otherwise made available for payment of allowable costs under this contract, unless otherwise directed by the contracting officer.

* * * * *

10. Section 970.5204–20 is amended by revising the introductory statement and paragraph (a) to read as follows:

970.5204–20 Management controls.

In accordance with 970.0901 and as prescribed in 970.3270, the following clause shall be used in management and operating contracts:

Management Controls (Month and Year TBE)

(a) The contractor shall be responsible for maintaining, as an integral part of its organization, effective systems of management controls for both administrative and programmatic functions. Management controls comprise the plan of organization, methods, and procedures adopted by management to reasonably ensure that: the mission and functions assigned to the contractor are properly executed; efficient and effective operations are promoted; resources are safeguarded against waste, loss, mismanagement, unauthorized use, or misappropriation; all encumbrances and costs that are incurred under the contract and fees that are earned are in compliance with applicable clauses and other current terms, conditions, and intended purposes; all collections accruing to the contractor in connection with the work under this contract, expenditures, and all other transactions and assets are properly recorded, managed, and reported; and financial, statistical, and other reports necessary to maintain accountability and managerial control are accurate, reliable, and timely. The systems of controls employed by the contractor shall be documented and satisfactory to DOE. Such systems shall be an integral part of the contractor's management functions, including defining specific roles and responsibilities for each level of management, and holding employees accountable for the adequacy of the management systems and controls in their areas of assigned responsibility. The contractor shall, as part of the internal audit program required elsewhere in this contract, periodically review the management systems and controls employed in programs and administrative areas to ensure that they are adequate to provide reasonable assurance that the objectives of the systems are being accomplished and that these systems and controls are working effectively.

* * * * *

11. Section 970.5204–XX is added to read as follows:

970.5204–XX Financial management system.

As prescribed in 970.3270, insert the following clause.

Financial Management System (Month and Year TBE)

The contractor shall maintain and administer a financial management system that includes the currently existing integrated accounting system and is suitable to provide proper accounting in accordance with DOE requirements for assets, liabilities, collections accruing to the contractor in connection with the work under this contract, expenditures, costs, and encumbrances; permits the preparation of accounts and accurate, reliable financial and statistical reports; and assures that accountability for the assets can be maintained. The contractor shall submit to DOE for written approval an annual plan for new financial management systems and/or subsystems and major enhancements and/or upgrades to the currently existing financial systems and/or subsystems. The contractor shall notify DOE thirty (30) days in advance of any planned implementation of any substantial deviation from this plan and, as requested by the contracting officer, shall submit any such deviation to DOE for written approval before implementation.

12. Section 970.5204–XX is added to read as follows:

970.5204–XX Integrated accounting.

As prescribed in 970.3270, insert the following clause.

Integrated Accounting (Month and Year TBE)

Integrated accounting procedures are required for use under this contract. The contractor's financial management system shall include an integrated accounting system that is linked to DOE's accounts through the use of reciprocal accounts and that has electronic capability to transmit monthly and year-end self-balancing trial balances to the Department's Primary Accounting System for reporting financial activity under this contract in accordance with requirements imposed by the contracting officer pursuant to the Laws, regulations, and DOE directives clause of this contract.

13. Section 970.5204–XX is added to read as follows:

970.5204–XX Liability with respect to Cost Accounting Standards.

As prescribed in 970.3270, insert the following clause.

Liability With Respect to Cost Accounting Standards (Month and Year TBE)

(a) The contractor is not liable to the Government for increased costs or interest resulting from its failure to comply with the clauses of this contract entitled, "Cost Accounting Standards," and "Administration of Cost Accounting Standards," if its failure to comply with the clauses is caused by the contractor's compliance with published DOE financial management policies and procedures or other requirements established by the Department's Chief Financial Officer or Procurement Executive.

(b) The contractor is not liable to the Government for increased costs or interest resulting from its subcontractors' failure to comply with the clauses at FAR 52.230–2,

"Cost Accounting Standards," and FAR 52.230–6, "Administration of Cost Accounting Standards," if the contractor includes in each covered subcontract a clause making the subcontractor liable to the Government for increased costs or interest resulting from the subcontractor's failure to comply with the clauses; and the contractor seeks the subcontract price adjustment and cooperates with the Government in the Government's attempts to recover from the subcontractor.

14. Section 970.5204–XX is added to read as follows:

970.5204–XX Work for others funding authorization.

As prescribed in 970.3270, insert the following clause.

Work for Others Funding Authorization (Month and Year TBE)

Any uncollectible receivables resulting from the contractor utilizing contractor corporate funding for reimbursable work shall be the responsibility of the contractor, and the United States Government shall have no liability to the contractor therefor. The contractor is permitted to provide advance payment utilizing contractor corporate funds for reimbursable work to be performed by the contractor for a non-Federal entity in instances where advance payment from that entity is required under the Laws, regulations, and DOE directives clause of this contract and such advance cannot be obtained. The contractor is also permitted to provide advance payment utilizing contractor corporate funds to continue reimbursable work to be performed by the contractor for a Federal entity when the term or the funds on a Federal interagency agreement required under the Laws, regulations, and DOE directives clause of this contract have elapsed. The contractor's utilization of contractor corporate funds does not relieve the contractor of its responsibility to comply with all requirements for Work for Others applicable to this contract.

[FR Doc. 98–30386 Filed 11–17–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[I.D. 110998B]

Pacific Tuna Fisheries; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: NMFS will convene a public hearing on proposed regulations necessary to implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) according to the provisions of the Tuna Conventions Act of 1950.

DATES: The public hearing will be held on December 1, 1998.

ADDRESSES: The hearing will be held at the Embassy Suites Hotel located at 601 Pacific Highway, San Diego, California 92101. Copies of proposed regulations and associated material will be available from Dr. William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 Ocean Boulevard, Suite 4200, Long Beach, California 90802–4213.

FOR FURTHER INFORMATION CONTACT: Mr. Svein Fougner, Assistant Administrator for Sustainable Fisheries, Southwest Region, NMFS, 562–980–4030.

SUPPLEMENTARY INFORMATION: At its 61st meeting in June 1998, the IATTC acted to set a 1998 quota on yellowfin tuna in its regulatory area, set a quota on bigeye tuna to be implemented by prohibiting sets on floating objects once the quota is reached, prohibit the use of vessels that tend fishery aggregating devices, and prohibit at-sea transhipments of fish caught by purse seines. NMFS is requesting public comments on regulations implementing the recommendations of the IATTC, which will soon be published in the **Federal Register** with a 30-day period for public comment.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Svein Fougner at the number above at least 5 days prior to the meeting date.

Dated: November 12, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30838 Filed 11–17–98; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 981109280–8280–01; I.D. 101498F]

RIN 0648–AM03

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic States; Recreational-for-hire Fisheries; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: This notice announces that the Gulf of Mexico Fishery Management Council (Council) is considering whether there is a need to impose additional management measures limiting entry into the recreational-for-hire (i.e., charter vessel and headboat) fisheries for reef fish and coastal migratory pelagic fish in the exclusive economic zone (EEZ) of the Gulf of Mexico and, if there is a need, what management measures should be imposed. If the Council determines that there is a need to impose additional management measures, it may initiate a rulemaking to do so. Possible measures include the establishment of a limited entry program to control participation or effort in the recreational-for-hire fisheries for reef fish and coastal migratory pelagics. If a limited entry program is established, the Council is considering November 18, 1998, as a possible control date. Consideration of a control date is intended to discourage new entry into the fisheries based on economic speculation during the Council's deliberation on the issues.

DATES: Comments must be submitted by December 18, 1998.

ADDRESSES: Comments should be directed to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619–2266; Fax: 813–225–7015.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles or Robert Sadler, 727–570–5305.

SUPPLEMENTARY INFORMATION: The recreational-for-hire fisheries for reef fish and coastal migratory pelagic fish in the EEZ of the Gulf of Mexico are

managed respectively under the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico (Gulf) and the Coastal Migratory Pelagic Resources of the Gulf and South Atlantic (FMPs). The FMP for the Gulf of Mexico reef fish resources was prepared by the Council; the FMP for coastal migratory pelagic resources was prepared jointly by the Council and the South Atlantic Fishery Management Council. Both FMPs were implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. The FMPs regulate these two recreational-for-hire fisheries and require permits for charter and headboat vessels participating in them. Landings of the vessels are regulated through bag, possession, and size limits. There also is a recreational quota for red snapper.

In both the red snapper and king mackerel fisheries, the recreational sector, including recreational-for-hire vessels, has frequently exceeded the allocations set for that sector when total allowable catch (TAC) is set annually. To prevent the recreational sector from exceeding its allocation, the Council must either reduce the bag limits or take some other action to reduce the effort and/or landings (e.g., seasonal closures, increased size limits). Reduction of the bag limits is the most effective way to control landings, but such reductions have adverse economic impacts on the recreational-for-hire vessels. When the bag limit is reduced to a lower level, some of the clientele of these vessels cease to fish and to pay for fishing trips. The Council is, therefore, considering limited entry or other effort limitation programs for recreational-for-hire vessels.

Implementation of an effort limitation program for these recreational-for-hire fisheries in the EEZ would require preparation of amendments to the FMPs by the Council and publication of proposed implementing rules with a public comment period. NMFS' approval of the amendments and issuance of final implementing rules also would be required.

As the Council considers management options, including limited entry or access-controlled regimes, some fishermen who do not currently participate in the recreational-for-hire fisheries, and have never done so, may decide to enter the fisheries for the sole purpose of establishing a record of landings. When management authorities begin to consider use of a limited access management regime, this kind of speculative entry often is responsible for a rapid increase in fishing effort in fisheries that are already fully developed or overdeveloped. The original fishery problems, such as overcapitalization or overfishing, may be exacerbated by the entry of new participants.

In order to avoid this problem, if management measures to limit participation or effort in the fisheries are determined to be necessary, the Council is considering November 18, 1998, as the control date. After that date, anyone entering these recreational-for-hire fisheries may not be assured of future participation in the fisheries if ■ management regime is developed and implemented limiting the number of fishery participants.

The Council previously established a control date of October 16, 1995, (60 FR 53576, October 16, 1995) for the recreational-for-hire fishery for Gulf king mackerel. It is the Council's intent that the November 18, 1998 control date established by this advance notice of proposed rulemaking supersede the October 15, 1995, control date for that sector of the fishery.

Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the recreational-for-hire fisheries. Fishermen are not guaranteed future participation in these fisheries, regardless of their entry date or intensity of participation in the fisheries before or after the control date under consideration. The Council subsequently may choose a different control date or it may choose ■ management regime that does not make use of such a date. The Council may choose to give variably weighted consideration to fishermen active in the fisheries before and after the control date. Other qualifying criteria, such as documentation of landings and sales, may be applied for entry. The Council also may choose to take no further action to control entry or access to the fisheries, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30835 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 110998F]

RIN 0648–AJ33

Fisheries of the Northeastern United States; Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan; Amendments to Address the Sustainable Fisheries Act Requirements and Other Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted Amendment 7 to the Atlantic Sea Scallop Fishery Management Plan (Amendment 7) for Secretarial review and is requesting comments from the public. Included in Amendment 7 are the new Sustainable Fisheries Act requirements for Atlantic sea scallops.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Comments on the proposed amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Amendment 7 to the Atlantic Sea Scallop FMP."

Copies of Amendment 7, its regulatory impact review, initial regulatory flexibility analysis, the final supplemental environmental impact statement, and the supporting documents for Amendment 7 are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273.

SUPPLEMENTARY INFORMATION: Amendment 7 proposes to: (1) Establish a 10-year stock rebuilding schedule; (2) initiate a new overfishing definition and rebuilding target for Atlantic sea scallops; (3) revise the specification of optimum yield; (4) continue the Mid-Atlantic closed areas, with a sunset date of March 1, 2001; (5) implement a system for closing and opening areas to improve yield per recruit; (6) establish an annual monitoring and adjustment

system to ensure stock rebuilding; and (7) add measures to those that the Council may implement through the framework adjustment process.

A proposed rule that would implement Amendment 7 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Fishery Conservation and Management Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 7 to be considered in the approval/disapproval decision on the FMP amendment. All comments received by January 19, 1999, whether specifically directed to the FMP amendment or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the FMP amendment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 12, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30836 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 110698B]

RIN 0648–AK21

Fisheries off West Coast States and in the Western Pacific; Bottomfish and Seamount Groundfish Fisheries; Amendment 5

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Western Pacific Fishery Management Council (Council) has submitted Amendment 5 to the Fishery Management Plan for Bottomfish and Seamount Groundfish of the Western Pacific Region (FMP) for Secretarial review. Amendment 5 would establish a limited access program for the Mau Zone bottomfish fishery in the eastern portion of the Northwestern Hawaiian Islands (NWHI). The Mau Zone, which is one of two bottomfish management subareas in the NWHI, encompasses an area between 161°20′ and 165° 00′ W. longitude in the U.S. exclusive economic zone around the Hawaiian Islands. This action is intended to conserve and support the long-term productivity of the bottomfish stocks by preventing the potential for excessive harvest capacity and to improve the low economic returns in the fishery.

DATES: Written comments on the amendment must be received on or before January 19, 1999.

ADDRESSES: Written comments should be sent to Charles Karnella, Administrator, Pacific Islands Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396. Copies of Amendment 5, including its Regulatory Impact Review and Environmental Assessment, are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, Fishery Management Specialist, Pacific Islands Area Office, NMFS at (808) 973–2985 or Kitty Simonds at (808) 522–8220.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any amendment to a fishery management plan it has prepared to NMFS for review, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an amendment, immediately publish a notice that the amendment is available for public review and comment. NMFS will consider all public comments received during the comment period in determining whether to approve the amendment for implementation.

Amendment 5 would (1) restrict participation in the Mau Zone bottomfish fishery to vessel owners who hold limited access permits; (2) adopt, based on biological and economic factors, a long-term target number of 10 vessels that would be allowed to fish for bottomfish in the Mau Zone; (3) establish qualifying criteria for allocating initial limited access permits based on historic participation in the fishery (December 17, 1991, control date) and landings of bottomfish from the Mau Zone up to December 31, 1996; (4) prohibit the transfer, lease, charter, or sale of permits to reduce the number of vessels in the fishery in order to achieve the target number; (5) revoke limited access permits issued to partnerships or corporations upon a change in more than 50 percent ownership in the permitted vessel or its replacement; (6) limit the amount of time a permit holder may register a limited access permit for use with a leased or chartered vessel; (7) limit the length of replacement vessels to 60 ft (18.3 m); (8) require permit holders to make a minimum of five landings of at least 500 lb (227 kg) each of bottomfish management unit species each year from the Mau Zone to qualify for permit renewal; (9) require the Council to undertake a 5-year comprehensive review of the limited access program to determine its effectiveness in meeting the objectives of the FMP; (10) have the Council develop criteria to allow new entry into the Mau Zone when the number of permitted vessels falls below 10; and (11) reserve 20 percent of the long-term target number of limited access permits, i.e., two permits, for a Western Pacific Community Development Program that may be developed by the Council and approved by the Secretary of Commerce. Amendment 5 describes the above measures in detail, including such other requirements as establishing a fee for processing Mau Zone permits, specifying an appeals process for permit actions, and prohibiting the retention of incidentally caught bottomfish in the Mau Zone without a limited access permit.

Public comments on Amendment 5 must be received by January 19, 1999 to be considered by NMFS in the decision to approve/disapprove Amendment 5. A proposed rule to implement Amendment 5 has been submitted for Secretarial review and approval. NMFS expects to publish the proposed rule and request public comment on the proposed regulations in the near future.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30839 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 101498C]

RIN 0648–AJ50

Fisheries of the Exclusive Economic Zone off Alaska; Amendment 56 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 56 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to notice of availability.

SUMMARY: This document contains a correction to the notice of availability pertaining to Fisheries of the Exclusive Economic Zone published in the **Federal Register** on October 26, 1998 (63 FR 57094). That document erroneously used the symbol "not equal to" instead of the percent symbol when referring to fishing mortality rates.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

Correction

In the notice of availability **Federal Register** document 98–28600, on page 57095, correct the not equal to symbol to read "%" in the following places:

a. In the first column, in the last paragraph, lines 3, 4, and 10.

b. In the second column, in the first incomplete paragraph, lines 1, 2, 5 (twice), 11, and 12.

Dated: November 12, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30837 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

VOL 63 ISS 222 NO 18 1998 UMI

Notices

Federal Register

Vol. 63, No. 222

Wednesday, November 18, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Research, Education, and Economics; Notice of Strategic Planning Task Force Meeting

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of Meeting.

SUMMARY: The United States Department of Agriculture announces a meeting of the Strategic Planning Task Force on Research Facilities.

SUPPLEMENTARY INFORMATION: The Strategic Planning Task Force on Research Facilities, currently consisting of 14 members, is scheduled to meet for the sixth of eight planned meetings. The meeting is scheduled to be held at the National Agriculture Library, Beltsville, Maryland, beginning at 1 p.m. on December 1 and concluding at 3 p.m. on December 4. The meeting will be a review of the data collected by the Task Force and will begin discussion and plans for the development of the final report.

Times and dates: December 1, 1998, 1 p.m.–5 p.m.; December 2, 1998, 8 a.m.–5 p.m.; December 3, 1998, 8 a.m.–5 p.m.; and December 4, 1998, 8 a.m.–3 p.m.

Place: National Agricultural Library Conference Room, Beltsville, Maryland.

Type of meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

FOR FURTHER INFORMATION CONTACT: Mitch Geasler, Project Director, Strategic Planning Task Force on Research Facilities, Room 344–A Jamie L. Whitten Building, USDA, 1400 Independence Avenue SW., Washington, DC 20250–0113. Telephone 202–720–3803.

Done at Washington, DC, this 12th day of November, 1998.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 98–30852 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region; Supplemental Environmental Impact Statement for Sheep Flats Diversity Unit Timber Sales, Grand Mesa, Uncompahgre and Gunnison National Forest, Mesa County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement an environmental impact statement.

Responsible Official: The Responsible Official for this Supplemental Environmental Impact Statement is Mr. Robert Storch, Forest Supervisor of the Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416.

SUMMARY: The Forest Service prepared and issued a final environmental impact statement in June 1998 about four (4) proposed timber sales: Valley View, Sheep Flats, Grove Creek, and Leon. These sales are located on the Grand Mesa National Forest, Collbran Ranger District. The Forest Service will supplement this environmental impact statement by developing and presenting additional information concerning soils and watershed resources. Errors and inconsistencies in the June 1998 EIS will also be corrected.

DATES: Publication of Draft Supplemental EIS: December 1998. Publication of Final Supplemental EIS: March 1999. Publication of Record of Decision: April 1999.

ADDRESSES: Send written comments to Mr. Robert Storch, Forest Supervisor of the Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50, Delta, Colorado 81416. Send electronic mail comments to Pam Bode, Project Leader at pam.bode/r2__gmug@fs.fed.us.

SUPPLEMENTARY INFORMATION: The Forest Supervisor will use this Supplemental Environmental Impact Statement to reconsider his decision concerning how to manage the timber resource within Sheep Flats Diversity Unit. The Forest Service is proposing to harvest four timber sales on this National Forest System land. Even-aged and uneven-aged silvicultural systems are considered in Engelmann spruce, subalpine fir, and aspen stands. These sales are scheduled to be offered within a five to ten year period after this analysis.

Initial scoping of interested parties identified three preliminary issues. These are: (1) Constructing roads and harvesting timber within areas that were identified as Salt Creek Roadless Area and Priest Mountain Roadless Area during the 1979 RARE II inventory, (2) harvesting old growth timber, and (3) cumulative impacts on ecosystems from logging operations in and around the sale areas.

Five alternatives were studied in the June 1998 EIS. Alternative 1 is No Action. Alternatives 2 and 4 harvest suited timber but do not enter the Salt Creek or Priest Mountain Roadless Area. Alternatives 3 and 5 enter both the Salt Creek and Priest Mountain Roadless Areas. Alternatives 2 and 3 emphasize maintenance of current old growth attributes and wildlife habitat networks while moderately improving timber structural diversity. Alternatives 4 and 5 emphasize improvement of timber structural diversity and production of wood fiber for timber industry. The selected action in the June 1998 Record of Decision was a combination of Alternatives 3 and 5. This action will be reconsidered when the Final Supplemental EIS is complete and a new decision will be published.

News releases were issued, field tours have been conducted, and public meetings have occurred over the past six years. No additional scoping is planned for this project. News releases will be issued to inform the public that a Supplemental EIS will be prepared. These releases will outline the analysis schedule, and identify the period of opportunity for comment. The comment period on the Draft Supplemental Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**. The parties that expressed interest previously have been informed individually by mail that this analysis is continuing.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of supplemental environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft supplemental environmental impact stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the supplemental EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the supplement. Comments may also address the adequacy of the supplement or its merits. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 9, 1998.

Robert L. Storch,

Forest Supervisor.

[FR Doc. 98–30859 Filed 11–17–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the District of Columbia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 12:45 p.m. on December 4, 1998, at JC Penney, Government Relations Office (Suite 1015), 1156 15th St., N.W., Washington, D.C. 20036. The purpose of the meeting is to hear from lending industry representatives on the use of credit scoring methods in relationship to minority loan applicants, to receive updates from subcommittees, to review an outline for a memorandum to the Commission on recent developments in lending and discrimination issues, and continue planning future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Steven Sims, 202–862–4815, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–30757 Filed 11–17–98; 8:45 am]

BILLING CODE 6335–01–F

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Missouri Advisory Committee to the Commission will convene at 3 p.m. and adjourn at 5 p.m. on December 3, 1998, at the Holiday Inn, 102 South 3rd, St. Joseph MO 64501. The purpose of the meeting is to plan future activities and receive civil rights monitoring issues from members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TTD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–30758 Filed 11–17–98; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Internet Export Finance Matchmaker.

OMB Number: None.

Type of Request: Regular Submission.

Burden: 333 hours.

Number of Respondents: 1700.

Avg. Hours Per Response: Exporters, 10 minutes; Export Service Firms, 30 minutes.

Needs and Uses: The Office of Finance assists U.S. firms in identifying trade finance opportunities and promotes the competitiveness of U.S. financial services in international trade. The Office of Finance interacts with private financial institutions in insurance, banking, leasing, factoring, barter, and counter trade; U.S. financing agencies, such as the Export-Import Bank and the Overseas Private Investment Corporation; and multilateral development banks, such as the World Bank, Asian Development Bank, and others. To facilitate contact between exporters and financial institutions, the Office of Finance is developing an interactive Internet trade finance matchmaking program to link exporters seeking trade finance with banks and other financial institutions. The information collected from financial institutions regarding the trade finance products and services they offer will be compiled into a database. An exporter will be able to electronically submit a form identifying the potential export transaction and type of financing requested. This information will be electronically matched with the financial institution(s) that meet the requirements of the exporter. After a match has been made, a message will be electronically sent to both the exporter and the financial institution containing

the information about the match, and contact information for either party to initiate communication. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters.

Affected Public: Businesses or other for-profit.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit; voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: November 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 98–30777 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Mission/Exhibition Evaluation.

Agency Form Number: ITA–4075P.

OMB Number: 0625–0034.

Type of Request: Regular Submission.

Burden: 167 hours.

Number of Respondents: 2,000.

Avg. Hours Per Response: 5 minutes.

Needs and Uses: U.S. Department of Commerce (DOC) and DOC-certified trade missions and exhibitions are overseas events planned, organized and led by government and non-government export promotion agencies such as industry trade associations; agencies of federal, state and local governments; chambers of commerce; regional consortia; and other export oriented groups. This form is used to: (1) Evaluate the effectiveness of DOC or DOC-certified overseas trade events through the collection of information relating to required performance measures; (2) document the results of participation in DOC trade events; (3) evaluate results reported by small to mid-sized, new-to-exports/new-to-market U.S. companies; (4) document the successful completion of trade promotion activities conducted by overseas DOC offices; and (5) identify strengths and weaknesses of DOC trade promotion programs, in the interest of improving service to the U.S. business community. This request is being submitted to revise this information collection form to enable participants to quickly and clearly address whether or not their overall objective(s) were met by participating in a particular trade mission or exhibition.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30779 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Bureau: International Trade Administration.

Title: Application for an Export Trade Certificate of Review.

Agency Form Number: ITA–4093P.

OMB Number: 0625–0125.

Type of Request: Regular Submission.

Burden: 960 hours.

Number of Respondents: 30.

Avg. Hours Per Response: 32 hours.

Needs and Uses: Title III of the Export Trading Company Act of 1982 (Pub. L. 97–290, 96 Stat. 1233–1247), requires the Department of Commerce to establish a program to evaluate applications for an Export Trade Certificates of Review (antitrust preclearance for joint export related activities), and with the concurrence of the Department of Justice, issue such certificates where the requirements of the Act are satisfied. The Act requires that Commerce and Justice conduct economic and legal antitrust analyses prior to the issuance of a certificate. The collection of information is necessary to conduct the required economic and legal antitrust analyses. Without the information, there could be no basis upon which a certificate could be issued.

In the Department of Commerce, the economic and legal analyses are performed by the Office of Export Trading Company Affairs and the Office of the General Counsel, respectively. The Department of Justice analyses will be conducted by its Antitrust Division. The purpose of such analyses is to make a determination as to whether or not to issue an Export Trade Certificate of Review.

A certificate provides its holder and the members named in the certificate (a) immunity from government actions under state and Federal antitrust laws for the export conduct specified in the certificate; (b) some protection from frivolous private suits by limiting their liability in private actions from treble to actual damages when the challenged activities are covered by an Export Certificate of Review. Title III was enacted to reduce uncertainty regarding application of U.S. antitrust laws to export activities—especially those involving actions by domestic competitors. Application for an export trade certificate of review is voluntary.

Affected Public: Businesses or other for-profit, not-for-profit institutions, state, local or tribal Government.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30780 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Trade Fair Certification Program: Application.

Agency Form Number: ITA–4100P.

OMB Number: 0625–0130.

Type of Request: Regular Submission.

Burden: 700 hours.

Number of Respondents: 70.

Avg. Hours Per Response: 10 hours.

Needs and Uses: Private trade show organizers, trade associations, U.S. agents of foreign fair authorities, and other entities use this form to apply for certification of their ability to organize and manage a U.S. pavilion at a foreign trade show. The Department of Commerce uses information from the form to evaluate if both the show and the organizer meet the Department's high standards in areas such as recruiting, delivering show services, attracting small and medium size firms, booth pricing, and being an appropriate marketing venue for U.S. firms. The form asks organizers to respond to 23 questions ranging from simple name and address to pricing options to outlining their experience and marketing plans. Potential exhibitors look to trade fair certification to ensure they are participating in a viable show with a reliable organizer. The form also includes information on where to apply, procedures, and a commitment by the applicant to abide by the terms set forth for program participation.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days of the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30781 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Certified Trade Mission: Application for Status.

Agency Form Number: ITA–4127P.

OMB Number: 0625–0215.

Type of Request: Regular Submission.

Burden: 60 hours.

Number of Respondents: 60.

Avg. Hours Per Response: 1 hour.

Needs and Uses: Certified Trade Missions are overseas events that are planned, organized and led by both Federal and non-Federal government export promotion agencies such as industry trade associations, agencies of state and local governments, chambers of commerce, regional groups and other export-oriented groups. The Certified Trade Missions-Application for status form is the vehicle by which individual firms apply, and if accepted, agree to participate in the Department of Commerce's (DOC) trade promotion events program, identify the products or services they intend to sell or promote, and record their required participation fees. This submission only renews use of the form; no changes are being made. The form is used to (1) collect information about product/services that a company wishes to export; (2) modify several questions based on comments received from DOC trade event managers and participants.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days after the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30782 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Marketing Data Form.

Agency Form Number: ITA–466P.

OMB Number: 0625–0047.

Type of Request: Regular Submission.

Burden: 3,000 hours.

Number of Respondents: 4,000.

Avg. Hours Per Response: 45 minutes.

Needs and Uses: There is a necessity to have proper information about companies participating in U.S. exhibitions, Trade Missions, and Matchmakers and their products to publicize and promote participation in these export promotion events. The Marketing Data Form (MDF) provides information necessary to produce export promotion brochures and directories to arrange appointments and prospect calls on behalf of the participants with key prospective buyers, agents, distributors, or government officials. Specific information is also requested in terms of the participants objectives regarding agents, distributors, joint venture or licensing partners and any special requirements for prospective agents, for example, physical facilities, technical

capabilities, financial strength, staff, representation of complementary lines, etc.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20503 within 30 days of the publication of this notice.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30783 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review: Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Product Characteristics-Design Check-Off List.

Agency Form Number: ITA–426P.

OMB Number: 0625–0035.

Type of Request: Regular Submission.

Burden: 1,000 hours.

Number of Respondents: 2,000.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The International Trade Administration (ITA) sponsors up to 120 overseas trade fair events each fiscal year. In addition, there is a Matchmaker Program of approximately 20 events annually, which is a combination of multi-stop trade missions and small equipment presentations. Trade fairs involve U.S. firms exhibiting their goods and services at American pavilions at internationally recognized events worldwide. In the case of Matchmakers, ITA organizes U.S. Company missions, traveling to 2 or 3 foreign locations. Matchmakers combine exhibit booth/product presentation orientation and by-appointment only meetings in facilities capable of accommodating 20–40 U.S. firms.

The Product Characteristics-Design Check off list seeks from participating U.S. firms information on the physical nature, power (utility) and graphic requirements of the products and services to be displayed, and to ensure the availability of utilities active product demonstrations. This form also allows U.S. firms to identify special installation instructions that can be critical to the proper placement and hookup of their equipment and/or graphics. Without the timely and accurate submission of form ITA–426P, Product Characteristics-Design Check Off List, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of U.S. participants. The anticipated result would be diminished program productivity, then declining participation by U.S. firms. A second possible result would be reduced private sector funds and possibly the discontinuation of this type of U.S. international trade event program.

Affected Public: Businesses or other for profit, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection can be obtained by calling or writing Linda Engelmeier, Department Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington D.C. 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: November 12, 1998.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30784 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35).

Agency: National Telecommunications and Information Administration.

Title: Telecommunications and Information Infrastructure Assistance Program Structured Reporting System.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden: 7,498 hours.

Number of Respondents: 46 (multiple responses).

Avg. Hours Per Response: Ranges between 8 and 40 hours depending on the requirement.

Needs and Uses: The purpose of the Telecommunications and Information Infrastructure Assistance Program is to promote the widespread and efficient use of advanced telecommunications in the public and nonprofit sectors to serve communities nationwide. It does this by providing matching funds to public and nonprofit sector organizations to use "information infrastructure" to provide community-wide information, health, life-long learning, public safety and other public services. In order to monitor and assess the impacts of the funded projects, certain reports are required. These reports are used to ensure that grant recipients are effectively promoting the efficient and widespread use of advanced telecommunications services to serve American communities and to comply with the Government Performance and Results Act.

Affected Public: Not-for-profit institutions, federal government, state, local or tribal government.

Frequency: Quarterly, annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Tim Fain, (202) 395–3561.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Tim Fain, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: November 10, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–30805 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–832]

Initiation of Antidumping Duty Investigation: Dynamic Random Access Memory Semiconductors From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of antidumping investigation.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Alexander Amdur at (202) 482–5346, John Conniff at (202) 482–1009 or Ron Trentham at (202) 482–6320, Import Administration—Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigation

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

The Petition

On October 22, 1998, the Department of Commerce ("the Department") received a petition filed in proper form by Micron Technology, Inc. ("petitioner"). The Department received supplemental information to the petition on November 5, 1998. In accordance with section 732(b) of the Act, petitioner alleges that imports of dynamic random access memory semiconductors of one megabit and above ("DRAMs") from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. The Department finds that petitioner filed the petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping investigation it is requesting the Department to initiate. *See* Determination of Industry Support for the Petition below.

Scope of Investigation

The products covered by this investigation are DRAMs from Taiwan, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in Taiwan, but packaged or assembled into finished semiconductors in a third country are included in the scope. Wafers fabricated in a third country and assembled or packaged in Taiwan are not included in the scope.

The scope of this investigation includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules ("SIPS"), single in-line memory modules ("SIMMs"), dual in-line memory modules ("DIMMs"), memory cards or other collections of DRAMs whether mounted or unmounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items that alter the function of the module to something other than memory, such as video graphics adapter ("VGA") boards and cards, are not included in the scope. Modules containing DRAMs made from wafers fabricated in Taiwan, but either assembled or packaged into finished semiconductors in a third country, are also included in the scope.

The scope includes, but is not limited to, video RAM ("VRAM"), Windows RAM ("WRAM"), synchronous graphics RAM ("SGRAM"), as well as various types of DRAM, including fast page-mode ("FPM"), extended data-out ("EDO"), burst extended data-out ("BEDO"), synchronous dynamic RAM ("SDRAM"), and "Rambus" DRAM ("RDRAM"). The scope of this investigation also includes any future density, packaging or assembling of DRAMs. The scope of this investigation does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under subheadings 8542.13.80.05, 8542.13.80.24 through 8542.13.80.34 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Also included in the scope are Taiwanese DRAM modules, described above, entered into the United States under subheading and 8473.30.10.90 of the HTSUS or possibly other HTSUS numbers. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

As we discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by December 2, 1998. Comments should be addressed to Import Administration's Central Records Unit at Room 1874, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC, 20230. This period of scope consultation is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that petitions be filed on behalf of a domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product to define the industry. However, while both the Department and the ITC must apply the same statutory definition of domestic like product, they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information.

Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. As noted earlier, the scope of the petition is limited to DRAMs of one megabit and above. This is petitioner's sole proposed domestic like product. The Department has no basis on the record to find this domestic like product definition clearly inadequate. The Department has, therefore, adopted the domestic like product definition set forth in the petition.

In this case, the Department determined that the petition and supplemental information contained adequate evidence of sufficient industry support; therefore, polling was not necessary. *See* Initiation Checklist, dated November 12, 1998, (public document on file in the Central Records Unit of the Department of Commerce, Room B–099). Additionally, no person who would qualify as an interested party pursuant to section 771(9)(A),(C), or (D) of the Act has expressed opposition to this petition. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Less Than Fair Value Allegation

Petitioner identified the following Taiwanese producers/exporters in the petition: Mosel-Vitelic, Inc., Winbond Electronics, Acer Semiconductor Manufacturing Inc., Powerchip Semiconductor Corp., United Microelectronics Corporation, Taiwan Semiconductor Manufacturing Corporation, Macronix International Co., Ltd., Alliance Semiconductor Corporation, Etron Technology, Inc., Taiwan Memory Technology, Inc. and G-Link Technology Corp. Petitioner further identified Vanguard International Semiconductor Corporation ("Vanguard") and Nan Ya Technology Corporation ("Nan Ya") as two major producers/exporters of DRAMs from Taiwan. Petitioner based export price ("EP") on price quotes obtained by petitioner's sales personnel in the ordinary course of business. These price quotes were for delivery of 4x4 16 Megabit EDO DRAMs. Petitioner explained that it is Micron's practice to receive verbal quotes without written documentation and supplied an affidavit signed by a Micron sales representative attesting to the validity of the price quotes. All U.S. market price quotes were denominated in dollars and petitioner made no adjustments to these price quotes.

With respect to normal value ("NV") petitioner used prices, based on written price quotes for 4x4 16 megabit EDO DRAMs produced by Vanguard and Nan Ya. The price quotes were obtained by a private market research firm. Petitioner made no adjustment to these home market price quotes.

Petitioner alleged that sales of the foreign like product were made at prices below the cost of production within the meaning of section 773(b) of the Act and requested the Department to initiate a country-wide sales below cost investigation. To support this claim, petitioner compared the home market prices to each company's cost of production ("COP"). Petitioner calculated the COP for Vanguard and Nan Ya based on Micron's actual production experience with adjustments for known differences in costs incurred in Taiwan and the United States.

Petitioner determined the die sizes, mask levels, metal levels, and process technologies from examination of actual DRAM die from Vanguard and Nan Ya. For the purposes of the petition, the processing yields were assumed to be the same as those experienced by Micron. Petitioner derived labor rates from the Bureau of Labor Statistics. Because the most recent data available for Taiwan was from 1996, petitioner adjusted the labor rates for the 1997 inflation rate.

Petitioner adjusted utility expenses using the ratio of U.S. energy costs to Taiwanese energy costs, based on OECD energy price data. For Vanguard, petitioner derived general and administrative ("G&A") expenses, interest expenses, and research and development ("R&D") expenses from the company's financial statements for the six months ending June 30, 1998. *See* Exhibit 6 of the petition. Financial statements for the 1997 fiscal year were not available so these represent the most recent publicly available financial statements for Vanguard.

Petitioner was unable to obtain financial statements for Nan Ya and therefore based its G&A expenses and R&D expenses on Vanguard's financial statements. Interest expenses were calculated using the 1997 consolidated financial statements of Nan Ya's parent company, Nan Ya Plastics. *See* Exhibit 5 of the supplement to the petition.

Petitioner utilized Micron's intellectual property expenses, which reflect royalties paid to other companies for use of their technology in DRAM production. Again, petitioner believes that this estimate is conservative since Micron maintains a larger patent portfolio than either Vanguard or Nan Ya. By having a smaller patent portfolio, Vanguard and Nan Ya need more licensing agreements for DRAMs production.

Petitioner conservatively estimated a profit rate of zero for constructed value. Because the home market prices of Vanguard and Nan Ya were lower than the COP, normal value was based on CV for comparison to the U.S. prices. Petitioner used exchange rates as published by the Federal Reserve Bank of New York for currency conversions.

Based on comparisons of EP to NV, the petitioner estimated dumping margins from 48 to 69 percent.

Initiation of Cost Investigations

Pursuant to section 773(b) of the Act, petitioners provided information demonstrating reasonable grounds to believe or suspect that sales in the home market of Taiwan were made at prices below the COP and, accordingly, requested the Department to conduct a country-wide sales-below-COP investigation in connection with the requested antidumping investigation in Taiwan. The Statement of Administrative Action ("SAA"), accompanying the URAA, H.R. Doc. No. 103–316, vol. 1 at 833 (1994), states that an allegation of sales below COP need not be specific to individual exporters or producers. The SAA also states that "Commerce will consider allegations of below-cost sales in the aggregate for a foreign country, just as Commerce currently considers allegations of sales at less than fair value on a country-wide basis for purposes of initiating an antidumping investigation." *Id.*

Further, the SAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below-cost sales have occurred before initiating such an investigation." Reasonable grounds will "exist when an interested party provides specific factual information on costs and prices, observed or

[1] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

constructed, indicating that sales in the foreign market in question are at below-cost prices." *Id.* Based upon the comparison of the prices from the petition for the representative foreign like products to its adjusted costs of production, in accordance with section 773(b)(2)(A)(i) of the Act, we find the existence of "reasonable grounds to believe or suspect" that sales of these foreign like products in Taiwan were made below their respective COP's. Accordingly, the Department is initiating the requested country-wide cost investigation.

Initiation of Antidumping Investigation

We have examined the petition on DRAMs from Taiwan and have found that it meets the requirements of section 732 of the Act, including the requirements concerning allegations of the material injury or threat of material injury to the domestic producers of a domestic like product by reason of the complained-of imports, allegedly sold at less than fair value. Therefore, we are initiating an antidumping duty investigation to determine whether imports of DRAMs from Taiwan are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determination by April 1, 1999.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the authorities of Taiwan. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition (as appropriate).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by December 7, 1998, whether there is a reasonable indication that imports of DRAMs from Taiwan are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination in the investigation will result in this investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 771 (i) of the Act.

Dated: November 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30855 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the fifth review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1996 through July 31, 1997. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0189.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (*i.e.*, November 9, 1998), the Department of Commerce ("the Department") is extending the time limit for completion of the final results to not later than March 8, 1999. *See* November 2, 1998 Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement Richard W. Moreland to Assistant Secretary for Import Administration Robert LaRussa on file in the public file of the Central Records Unit, B–099 of the Department.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 351.213(h)(2).

Dated: November 4, 1998.

Susan Kuhbach,

Acting Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 98–30854 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–829, A–533–814, A–588–844, A–580–830, A–469–808, A–583–829]

Notice of Preliminary Determinations of Sales at Less Than Fair Value and Postponement of Final Determinations—Stainless Steel Round Wire From Canada, India, Japan, Spain, and Taiwan; Preliminary Determination of Sales at Not Less Than Fair Value and Postponement of Final Determination—Stainless Steel Round Wire From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Schauer (Canada, Spain) at (202) 482–4852; Diane Krawczun (India) at (202) 482–0198; Jarrod Goldfeder (Japan), at (202) 482–1784; or Gabriel Adler (the Republic of Korea, Taiwan) at (202) 482–1442, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 1998).

Preliminary Determinations

We preliminarily determine that stainless steel round wire from Canada, India, Japan, Spain, and Taiwan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. We also preliminarily determine that stainless steel round wire from the Republic of Korea (Korea) is not being sold, or is not likely to be sold, in the United States at less than fair value. The estimated margins are shown in the *Suspension of Liquidation* section of this notice.

Case History

These investigations were initiated on May 6, 1998. *See Initiation of Antidumping Duty Investigations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan*, 63 FR 26150

(May 12, 1998) (*Initiation Notice*). Since the initiation of the investigations, the following events have occurred:

On May 19, 1998, the Department invited interested parties to submit comments regarding model matching.

On June 5, 1998, the United States International Trade Commission (the ITC) preliminarily determined that there is a reasonable indication that imports of the products under these investigations are materially injuring the United States industry.

On June 12, 1998, the Department selected the following companies as respondents in these investigations: Central Wire Industries Ltd. (Central Wire) and Greening Donald Co. Ltd. (Greening Donald) in the Canada proceeding; Raajratna Metal Industries Limited (Raajratna) in the India proceeding; Suzuki Metal Industries Co., Ltd. (Suzuki) and Nippon Seisen Co., Ltd. (Nippon Seisen), in the Japan proceeding; Korea Sangsa in the Korea proceeding; Inoxfil S.A. in the Spain proceeding; and Tien Tai and Rodex in the Taiwan proceeding (collectively "respondents"). *See Selection of Respondents*, below. On June 15, 1998, the Department issued an antidumping questionnaire to each of the selected respondents.

The respondents submitted their initial responses to that questionnaire in July and August 1998. After analyzing these responses, we issued supplemental questionnaires to the respondents to clarify or correct the initial questionnaire responses. We also determined to treat Tien Tai and its affiliated producer Kuang Tai Metal Industrial Co., Ltd. (Kuang Tai), as a single entity (*i.e.*, to collapse the two producers) for purposes of the investigation of wire from Taiwan. *See* Memorandum to Richard W. Moreland, dated August 11, 1998. In addition, we determined to collapse Korea Sangsa with its affiliated producer Korea Welding Electrode Co., Ltd. (Koweld). *See* Memorandum to Richard W. Moreland, dated September 24, 1998. The Department required that both Tien Tai and Korea Sangsa resubmit their questionnaire responses, consolidating their sales and cost data with that of their respective affiliated parties.[1]

On August 24, 1998, the petitioners filed a timely request for a 50-day postponement of the preliminary determinations. We granted the request. *See Notice of Postponement of Preliminary Antidumping Determinations: Stainless Steel Round Wire from Canada, India, Japan, the Republic of Korea, Spain, and Taiwan*, 63 FR 46999 (September 3, 1998).

[1] Unless otherwise specified, any references below to Tien Tai or Korea Sangsa should be understood to refer to the collapsed entities of Tien Tai/Kuang Tai and Korea Sangsa/Koweld, respectively.

Postponement of Final Determinations and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, if in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

We received requests from respondents for postponement of the final determinations in the Canada, India, Japan, Korea, Spain and Taiwan investigations. In their requests for an extension of the deadline for the final determinations, the respondents consented to the extension of provisional measures to no longer than six months. Because the preliminary determinations with respect to the Canada, India, Japan, Spain, and Taiwan investigations are affirmative, the respondents filing the requests account for a significant proportion of exports of the subject merchandise in their respective cases, and there is no compelling reason to deny the respondents' requests, we have extended the deadline for issuance of the final determinations for these cases until the 135th day after the date of publication of these preliminary determinations in the **Federal Register**.

We also received a request from the petitioners for a postponement of the final determination in the Korea investigation. Because the preliminary determination with respect to that investigation is negative and there is no compelling reason to deny the petitioners' request, we have extended the deadline for issuance of the final determination for this case until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigations

The period of the investigations (POI) is January 1, 1997 through December 31, 1997. This period corresponds to each respondent's four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, March 1998).

Scope of Investigation

The scope of these investigations covers stainless steel round wire (SSRW). SSRW is any cold-formed (*i.e.*, cold-drawn, cold-rolled) stainless steel product of a cylindrical contour, sold in coils or spools, and not over 0.703 inch (18 mm) in maximum solid cross-sectional dimension. SSRW is made of iron-based alloys containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Metallic coatings, such as nickel and copper coatings, may be applied.

The merchandise subject to these investigations is classifiable under subheadings 7223.00.1015, 7223.00.1030, 7223.00.1045, 7223.00.1060, and 7223.00.1075 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

On June 1, 1998, two Canadian producers of SSRW, Greening Donald and Central Wire, submitted comments on the scope of the investigation of stainless steel round wire from Canada in response to our solicitation of such comments in the Initiation Notice. These respondents argued in their submission that, because the stainless steel wire rod input used in producing the SSRW is not produced in Canada and because cold-drawing does not constitute "substantial transformation" of the wire rod, the SSRW is not "from Canada" and should not be the subject of an antidumping investigation. On June 5, 1998, the petitioners submitted rebuttal comments to the Canadian producers' argument. We have analyzed the two Canadian producers' comments and concluded that the product in question is within the scope of this investigation. *See* Memorandum to Richard W. Moreland, dated November 12, 1998, for a full discussion and analysis of this issue.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. However, section 777A(c)(2) of the Act gives the Department discretion, when faced with a large number of exporters/producers, to limit its examination to a reasonable number of such companies if it is not

practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either: (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined.

After consideration of the complexities expected to arise in these proceedings (including issues of model matching) and the resources available to the Department, we determined that it was not practicable in these investigations to examine all known producers/exporters of subject merchandise. Instead, we found that, given our resources, we would be able to investigate the nine producers/exporters with the greatest export volume, as identified above. These companies accounted more than 50 percent of all known exports of the subject merchandise during the POI from their respective countries. For a more detailed discussion of respondent selection in these investigations, see Respondent Selection Memorandum dated June 12, 1998.

Facts Available

Suzuki (Japan), Nippon Seisen (Japan), and Inoxfil (Spain) failed to respond to our questionnaire. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because these firms failed to respond to our questionnaire and because the relevant subsections of section 782 of the Act do not apply, we must use facts otherwise available to calculate the dumping margins for these companies.

Section 776(b) of the Act provides that adverse inferences may be used against a party that has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also* Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 316, Vol.1, 103d Cong., 2d Sess. 870 (1994) (SAA). The lack of response by Suzuki, Nippon Seisen, and Inoxfil to the Department's antidumping questionnaire constitutes a failure by these respondents to act to the best of their ability to comply with a request for information, within the meaning of section 776 of the Act. Thus, the Department has determined that, in selecting among the facts otherwise available, an adverse inference is warranted.

Because we were unable to calculate margins for the respondents in the Japan or Spain investigations, we assigned these respondents the highest margins in the respective petitions (recalculated by the Department, as appropriate). This approach is consistent with Department practice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Germany*, 63 FR 10847 (March 5, 1998). The highest petition margins are 29.56 percent in the Japan investigation, and 35.80 percent in the Spain investigation.[2]

Section 776(b) states that an adverse inference may include reliance on information derived from the petition or any other information placed on the record. See also SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

During our pre-initiation analysis of the petition, we reviewed the adequacy and accuracy of the secondary information in the petition from which the margins were calculated, to the extent that appropriate information was available for this purpose. *See Initiation Notice* at 26151. However, with respect to certain data included in the margin calculations included in the petition (*e.g.*, gross U.S. and home market unit prices), the Department was provided no information by the respondents or other interested parties, and is aware of no other independent sources of information, that would enable it to further corroborate the remaining components of the margin calculation in the petition. The implementing regulation to section 776 of the Act, at 19 CFR 351.308(c), states "[t]he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using the secondary information in question." Additionally, we note that the SAA at 870 specifically states that, where "corroboration may not be practicable in a given circumstance", the Department may nevertheless apply an adverse inference. We note further that the Department has used as the facts available margins developed in the petition that are based in part on foreign market research in other cases. *See, e.g., Stainless Steel Wire Rod From Germany*, and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Melamine Institutional Dinnerware Products From Indonesia*, 61 FR 43333 (August 22, 1996). Finally, we note that the margins calculated for respondents in the other round wire investigations are in many instances of the same order of magnitude as the margins in the corresponding petitions, suggesting that the information contained in the round wire petitions is generally reliable.

Product Comparisons

We have relied on five criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: grade, thickness, tensile strength, coating, and surface finish. A detailed description of the matching criteria, as well as our matching methodology, is contained in the Preliminary Determination Memorandum, dated November 12, 1998 (Preliminary Determination Memorandum).

Fair Value Comparisons

To determine whether sales of stainless steel round wire from Canada, India, the Republic of Korea, and Taiwan[3] were made in the United States at less than fair value, we compared the export price (EP) or constructed export

[2] We note that, at the time of initiation, we did not accept the U.S. and home market packing data set forth in the petition with respect to the Japan case, and we revised the dumping margins in that petition so as to not reflect any adjustment for packing. In reviewing the petition margin calculations for the preliminary determination in the Japan case, we noted that the denominator for the margins was erroneously based on home market price, rather than U.S. price. We have revised the margins accordingly. *See* memorandum from Jarrod Goldfeder to the file, dated November 12, 1998.

With respect to the Spain investigation, we note that, at the time of initiation, we revised petition margins based on price-to-price comparisons because the petitioners had not provided sufficient support for the home market freight figures used in their calculations. We made no additional revisions to the petition margins in reviewing those calculations for the preliminary determination in the Spanish case.

[3] As stated above, because the respondents in the Japan and Spain proceedings did not respond to our requests for information, we based the margins for these respondents on total adverse facts available. *See Facts Available* above. Thus, the discussion of price adjustments in this section does not apply to the respondents in those proceedings.

price (CEP) to the normal value, as described in the *Export Price and Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average normal values.

Export Price and Constructed Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation, by or for the account of the producer or exporter of the merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as adjusted under sections 772(c) and (d) of the Act.

Consistent with these definitions, we have found that Central Wire, Greening Donald, Raajratna, Korea Sangsa, Rodex, and Tien Tai made EP sales during the POI. These sales are properly classified as EP sales because they were made by the exporter or producer outside the United States to unaffiliated customers in the United States prior to the date of importation.

We also found that Central Wire and Korea Sangsa made CEP sales during the POI because they made sales through an affiliated reseller in the United States after the date of importation.

For all respondents, we calculated EP and CEP, as appropriate, based on packed prices charged to the first unaffiliated customer in the United States. (Where sales were made through consignment sellers, we did not consider the consignment seller to be the customer; rather, the relevant customer was the consignment seller's customer.) For all respondents except Rodex, we based the date of sale on the date of the invoice issued to the U.S. customer. For Rodex, we based the date of sale on the date of Rodex's sales confirmation to its U.S. customer, because the terms of U.S. sales were firmly set on this date.

In accordance with section 772(c)(2) of the Act, we reduced the EP and CEP by movement expenses and export taxes and duties, where appropriate. Section 772(d)(1) of the Act provides for additional adjustments to the CEP. Generally, where sales were made through an unaffiliated consignment seller for the account of the exporter, we deducted commissions from the CEP. Where sales were made through an affiliated reseller, we deducted direct and indirect selling expenses that related to commercial activity in the United States, *in lieu* of the commission paid to the affiliated reseller.

Section 772(d)(3) of the Act requires that the CEP be adjusted for the profit allocated to the selling expenses of a producer/exporter's affiliated reseller. For Central Wire and Korea Sangsa, which made sales through affiliated resellers, we calculated a CEP-profit ratio following the methodology set forth in section 772(f) of the Act.

We made company-specific adjustments as follows:

Central Wire (Canada)

We based EP and CEP on delivered and FOB prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses, including foreign inland freight from the factory to the customer or to the U.S. affiliate, U.S. brokerage and handling fees, and Customs duties. We also made deductions for post-sale price adjustments corresponding to claims and billing errors.

In addition, for CEP sales, we made deductions for U.S. inland freight to the customer, imputed credit, commissions, indirect selling expenses and inventory carrying costs associated with commercial activity in the United States, U.S. repacking costs, and the cost of further processing the merchandise in the United States.

Greening Donald (Canada)

We based EP sales on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from factory to the customer, Customs duties, and U.S. brokerage and handling fees. We also increased the starting price by the amount of reported freight revenue.

Raajratna (India)

We based EP on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the factory to the customer, domestic brokerage and handling fees, international freight, and marine insurance. Although Raajratna reported duty drawback for its U.S. sales, we did not make an addition to EP for duty drawback because Raajratna failed to meet our two-pronged test for making such an adjustment.[4] *See* Raajratna Analysis Memorandum, dated November 12, 1998, for a full discussion of this issue.

Korea Sangsa (Korea)

We based EP and CEP on delivered and FOB prices to unaffiliated customers in the United States. For both EP and CEP sales, we made deductions from the starting price, where appropriate, for movement expenses including foreign brokerage and inland freight from the factory to the foreign port, and international freight. We also made adjustments for billing errors and early payment discounts, and we increased the starting price by the amount of duty drawback because it met our two-pronged test described above.

In addition, for CEP sales, we made deductions for U.S. movement expenses, including U.S. inland freight to the customer, U.S. warehousing, U.S. brokerage and handling fees, and Customs duties. We also made deductions for direct and indirect selling expenses associated with commercial activity in the United States, including imputed credit, warranty expenses, miscellaneous other direct selling expenses (such as bank charges), indirect selling expenses, and inventory carrying costs.

Rodex (Taiwan)

We based EP on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the factory to the customer, domestic brokerage and handling fees, international freight, and marine insurance. We also increased the starting price by the amount of duty drawback because it met our two-pronged test described above.

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[4] Section 772(c)(1)(B) of the Act provides for an upward adjustment to U.S. price for duty drawback on import duties which have been rebated (or which have not been collected) by reason of the exportation of the subject merchandise to the United States. The Department applies a two-pronged test to determine whether a respondent has fulfilled the statutory requirements for a duty drawback adjustment. *See Steel Wire Rope from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 61 FR 55965, 55968 (October 30, 1996). In accordance with this test, the Department grants a duty drawback adjustment if it finds that:

(1) import duties and rebates are directly linked to and are dependent upon one another, and

(2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on exports of the manufactured product.

Tien Tai (Taiwan)

We based EP on delivered prices to unaffiliated customers in the United States. We made deductions from the starting price, where appropriate, for movement expenses including foreign inland freight from the factory to the customer, domestic brokerage and handling fees, international freight, and marine insurance.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that normal value be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP or CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

All respondents had viable home markets of stainless steel round wire, and they reported home market sales data for purposes of the calculation of normal value. Although Raajratna reported its home market sales, it claimed that normal value should be based on third-country sales because, according to Raajratna, the merchandise sold to the United States is more similar to merchandise sold to third countries rather than merchandise sold in the home market. We disagreed with Raajratna because the merchandise sold in the home market provided an adequate basis for comparison, and, as discussed above, the Act directs us to base normal value on home market sales when possible. Therefore, we based normal value for Raajratna on home market sales. *See* Preliminary Determination Memorandum at 5.

Adjustments we made in deriving the normal values for each company are described in detail in *Calculation of Normal Value Based on Home-Market Prices* and *Calculation of Normal Value Based on Constructed Value*, below.

B. Cost of Production Analysis

Based on allegations contained in the petitions, and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of stainless steel round wire made in Canada, India, the Republic of Korea, and Taiwan were made at prices below the cost of production (COP). *See Initiation Notice*, 63 FR at 26150, and Memorandum to Richard Moreland, dated May 6, 1998 (*Initiation Checklist*) at 7–14. As a result, the Department has conducted investigations to determine whether the respondents made sales in their respective home markets at prices below their respective COPs during the POI within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated a weighted-average COP for stainless steel round wire, based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for the home-market general and administrative (G&A) expenses and packing costs. We relied on the COP data submitted by each respondent in its cost questionnaire response, except, as discussed below, in specific instances where the submitted costs were not appropriately quantified or valued.

Greening Donald

We disallowed certain offsets Greening Donald had made to its reported variable overhead expenses. We revised Greening Donald's fixed overhead expense to be on the same basis as its reported direct materials and variable overhead expenses. *See* Greening Donald Preliminary Determination Analysis Memorandum, dated November 12, 1998, for a more complete description of these changes.

Korea Sangsa

We revised the reported G&A by excluding dividend income, rental income, other miscellaneous income, and certain foreign exchange gains and losses. We also revised the reported net financing expense ratio to include net foreign exchange losses related to cash and borrowing.

Rodex

We increased Rodex's reported direct material costs (which are comprised exclusively of purchases of wire rod) to account for net foreign exchange losses during the POI. We made two adjustments to overhead costs: we increased Rodex's reported direct labor and fixed and variable overhead costs to account for a year-end auditor's adjustment, and we reclassified certain costs reported as variable overhead to fixed overhead, consistent with our examination of these costs at verification. We also increased the average per-kg. packing cost to account for an overstatement in the denominator (total weight of packed merchandise) used in the calculation of those costs.

Tien Tai

During the POI, respondent Kuang Tai (the collapsed affiliate of Tien Tai) became affiliated by virtue of stock ownership with a supplier of a major input in the production of round wire (*i.e.*, wire rod). In calculating cost of production, the respondent relied on the transfer price of the major input for all POI purchases. For purchases of wire rod from this supplier after the date on which Kuang Tai became an affiliate, we applied the major-input rule set forth in section 773(f)(3) of the Act and 19 CFR 351.407(b), and we relied on the greater of cost of production, transfer price, or market value.

In addition, we increased Tien Tai's reported G&A ratio to account for stock bonuses to employees.

2. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for each respondent to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities [5] and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, taxes, rebates, commissions and other direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) or the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

[5] In accordance with section 773(b)(2)(C)(i) of the Act, we determined that sales made below the COP were made in substantial quantities if the volume of such sales represented 20 percent or more of the volume of sales under consideration for the determination of normal value.

Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

We found that, for certain models of SSRW, more than 20 percent of the home-market sales of Central Wire, Greening Donald, Raajratna, Korea Sangsa, Tien Tai, and Rodex were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SSRW for which there were no comparable home-market sales in the ordinary course of trade, we compared EPs or CEPs to CV in accordance with section 773(a)(4) of the Act. *See Calculation of Normal Value Based on Constructed Value*, below.

C. Calculation of Normal Value Based on Home-Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the home market that did not fail the cost test.

Central Wire

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses including inland freight and insurance. We also adjusted the starting price for claims and billing errors. In addition, we made circumstance-of-sale (COS) adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Central Wire claimed that a number of its sales were outside the ordinary course of trade and therefore not an appropriate basis for normal value. We examined Central Wire's claims and agreed that some of the home market sales were outside the ordinary course of trade. We therefore excluded these sales from our analysis. A full discussion of this issue requires reference to business-proprietary information; *see* Central Wire Preliminary Analysis Memorandum, dated November 12, 1998.

As discussed in the *Level of Trade/ CEP Offset* section of this notice below, we preliminarily determined that it was appropriate to make a CEP offset to normal value.

In a letter dated October 27, 1998, Central Wire argued that the Department should treat "quantity bands" as a matching criterion and, when comparing sales involving non-identical quantity bands, make a quantity adjustment. This proposal for an entirely new model-match criterion and quantity adjustment came too late in our preparations for these preliminary determinations. We may consider Central Wire's proposal in preparing our final determinations in these investigations.

Greening Donald

We calculated normal value based on delivered or FOB prices and made deductions from the starting price, where appropriate, for movement expenses including freight and freight revenue. We also adjusted the starting price for claims and billing errors. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Greening Donald claimed that a number of its sales were outside the ordinary course of trade and therefore not an appropriate basis for normal value. We examined Greening Donald's claims and agreed that certain home market sales were outside the ordinary course of trade. We therefore excluded these sales from our analysis. A full discussion of this issue requires reference to business-proprietary information; *see* Greening Donald Preliminary Analysis Memorandum, dated November 12, 1998.

Raajratna

We calculated normal value based on delivered, FOB or ex-factory prices and made deductions from the starting price, where appropriate, for inland freight. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These expenses included credit-insurance expenses and imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Korea Sangsa

We calculated normal value based on delivered or FOB prices, and we made deductions from the starting price, where appropriate, for movement expenses including inland freight and insurance. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included bank charges, processing fees, and imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

As discussed in the *Level of Trade/ CEP Offset* section of this notice below, we preliminarily determined that it was appropriate to make a CEP offset to normal value.

Rodex

We calculated normal value based on delivered prices. We made deductions from the starting price, where appropriate, for movement expenses including inland freight. We also adjusted the starting price for claims and billing errors. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit, bank charge, and warranty expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

Tien Tai

We calculated normal value based on delivered and FOB prices. We made deductions from the starting price, where appropriate, for movement expenses including inland freight and warehousing. We also adjusted the starting price for early payment discounts. In addition, we made COS adjustments for direct expenses, where appropriate, in accordance with section 773(a)(6)(C)(iii) of the Act. These included imputed credit expenses. In accordance with sections 773(a)(6)(A) and (B) of the Act, we deducted home market packing costs and added U.S. packing costs.

D. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where normal value cannot be based on comparison-market sales, normal value may be based on constructed value. Accordingly, for those models of SSRW for which we could not determine the normal value based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based normal value on constructed value.

Section 773(e)(1) of the Act provides that constructed value shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling,

general, and administrative expenses (SG&A), profit, and U.S. packing costs. With the exception of Raajratna, we calculated the cost of materials and fabrication based on the methodology described in the *Calculation of COP* section of this notice, above. We based SG&A and profit for every respondent on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

Raajratna's direct materials costs reported on its constructed-value database did not correspond with its supporting documents included in Raajratna's response. Therefore, we revised Raajratna's reported direct materials costs for constructed value to agree with its supporting documentation. As a result, we also revised the cost of manufacture, general and administrative expenses, and interest expenses accordingly. These revisions are described in further detail in Raajratna's Preliminary Analysis Memorandum, dated November 12, 1998.

In addition, for each respondent we used U.S. packing costs as described in the *Export Price and Constructed Export Price* section of this notice, above.

We made adjustments to constructed value for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from and adding U.S. direct selling expenses to constructed value. For comparisons to CEP, we made COS adjustments by deducting direct selling expenses incurred on home market sales from constructed value.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP transaction. The normal-value level of trade is that of the starting-price sales in the comparison market or, when normal value is based on constructed value, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether normal-value sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal-value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in these investigations, we obtained information from each respondent about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondents for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

With respect to each respondent's EP sales, in these investigations we found a single level of trade in the United States, and a single, identical level of trade in the home market. It was thus unnecessary to make any level-of-trade adjustment for comparison of EP and home market prices. Two respondents, Central Wire and Korea Sangsa, also made CEP sales. For Central Wire, we found that (1) the adjusted CEP level of trade was significantly less advanced than the single home market level of trade, (2) a level-of-trade adjustment could not be quantified, and (3) a CEP offset was appropriate. For Korea Sangsa, we found that the adjusted CEP level of trade was essentially the same as that of the single home market level of trade, such that no level-of-trade adjustment or CEP offset was necessary. For a detailed level-of-trade analysis with respect to each respondent, *see* Preliminary Determination Memorandum, dated November 12, 1998.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act. The Department's preferred source for daily exchange rates is the Federal Reserve Bank.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we generally substitute the benchmark rate for the daily rate, in accordance with established practice. (An exception to this rule is described below.) Further, section 773A(b) of the Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement is deemed to occur when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent for eight consecutive weeks. (For an explanation of this method, *see* Policy Bulletin 96–1: Currency Conversions (61 FR 9434, March 8, 1996).) Such an adjustment period is required only when a foreign currency is appreciating against the U.S. dollar. Since the Korean won did not appreciate against the U.S. dollar in a sustained manner during the POI, no such adjustment period was required.

Our preliminary analysis of Federal Reserve U.S. dollar-Korean won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have considered the won's decline at the end of 1997 as nothing more than a sudden but only momentary drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, in making this

preliminary determination, the Department used daily rates exclusively for currency-conversion purposes for home market sales matched to U.S. sales occurring between November 1, 1997, and December 31, 1997.

The Department welcomes comments from interested parties on all aspects of the above methodology. For the purposes of the final determination, we will also analyze the implications, if any, of the decline in the won during 1997 for price averaging and whether multiple averages are warranted. The Department is also considering this issue in the LTFV investigation on *Mushrooms from Indonesia. See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Preserved Mushrooms from Indonesia,* 63 FR 41783 (August 5, 1998).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.[6]

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of stainless steel round wire from Canada, India, Japan, Spain, and Taiwan, except for subject merchandise produced and exported by Tien Tai (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are provided below. We note that, while the margin for Korea Sangsa is included in this list, that margin is *de minimis*, and we are not suspending liquidation of entries of stainless steel round wire from Korea:

Exporter/Manufacturer	Weighted-average margin percentage
Canada:	
Central Wire	11.89
Greening Donald	5.30
All Others	10.23
India:	
Raajratna	18.97
All Others	18.97
Japan:	
Nippon Seisen	29.56
Suzuki	29.56
All Others	15.20
Korea:	
Korea Sangsa	[1] 1.33
All Others	0.00
Spain:	
Inoxfil	35.80
All Others	24.40
Taiwan:	
Rodex	3.95
Tien Tai	[1] 1.83
All Others	3.95

[1] De Minimis.

Section 733(b)(3) of the Act directs the Department to exclude all zero and *de minimis* weighted-average dumping margins, as well as dumping margins determined entirely under facts available under section 776 of the Act, from the calculation of the "all others" rate. Accordingly, we have excluded the *de minimis* dumping margin for Tien Tai from the calculation of the "all others" rate for the Taiwan investigation.

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. This provision contemplates that we weight-average the facts-available margins to establish the all-others rate. Where the data do not permit weight-averaging of the facts-available rates, the SAA, at 873, provides that we may use other reasonable methods. Inasmuch as we do not have the data necessary to weight-average the respondents' facts-available rates, we have based the all-others rates for Japan and Spain on a simple average of the margins in the respective petitions, as we revised at the time of initiation of these investigations.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations. If our final antidumping determinations are affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of these preliminary determinations or 45 days after the date of our final determinations.

Public Comment

For all round wire investigations, case briefs must be submitted no later than 110 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several round wire cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If these investigations proceed normally, we will make our final determinations of these investigations no later than 135 days after the date of publication of this notice in the **Federal Register**.

These determinations are published pursuant to sections 733(f) and 777(i)(I) of the Act.

Dated: November 12, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30857 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

[6] We were able to conduct sales and cost verifications of Rodex prior to the issuance of this preliminary determination. Our findings of verification with respect to Rodex are reflected in this determination.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India; Final Results and Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On July 13, 1998, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1996 through December 31, 1996 (63 FR 37534). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Christopher Cassel, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4012, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers/exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which this review was requested are:

Calcutta Ferrous Ltd.,
Carnation Industries Ltd.,
Commex Corporation,
Crescent Foundry Co. Pvt. Ltd.,
Delta Enterprises,
Dinesh Brothers (P) Ltd.,
Kajaria Iron Castings Pvt. Ltd.,
Kejriwal Iron & Steel Works Pvt. Ltd.,
Metflow Corporation,
Nandikeshwari Iron Foundry Pvt. Ltd.,
Orissa Metal Industries,
Overseas Iron Foundry,
R.B. Agarwalla & Company,
R.B. Agarwalla & Co. Pvt. Ltd.,
RSI Limited,
Seramapore Industries Pvt. Ltd.,
Shree Rama Enterprise,
Shree Uma Foundries,
Siko Exports,
SSL Exports,
Super Iron Foundry,
Uma Iron & Steel, and
Victory Castings Ltd.

Delta Enterprises, Metflow Corporation, Orissa Metal Industries, R.B. Agarwalla & Co. Pvt. Ltd., Shree Uma Foundries, Siko Exports, and SSL Exports reported, through company certifications submitted on the record, that they did not export the subject merchandise to the United States during the period of review. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we are rescinding the review with respect to these companies. This review also covers 19 programs.

In the notice of preliminary results, we invited interested parties to comment on the preliminary results (63 FR 37534, July 13, 1998). On August 12, 1998, case briefs were submitted by the Engineering Export Promotion Council of India and the exporters of certain iron-metal castings from India (respondents), and the Municipal Castings Fair Trade Council and its members (petitioners). On August 19, 1998, rebuttal briefs were submitted by the respondents and petitioners.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department of Commerce (Department) is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (1998).

Scope of the Review

Imports covered by this administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the Government of India (GOI) and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results are outlined in the public versions of the verification reports, which are on file in the Central Records Unit, Room B–099 of the Main Commerce Building.

Analysis of Programs

Based upon the responses to our questionnaires, the results of verification, and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Pre-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Dinesh Brothers (Dinesh). *See* Comment 1 below. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.20
Commex Corporation	0.13
Crescent Foundry Co. Pvt. Ltd	0.08
Dinesh Brothers Pvt. Ltd	1.04
Kajaria Iron Castings Pvt. Ltd	0.33
Nandikeshwari Iron Foundry Pvt. Ltd	0.22
R.B. Agarwalla & Company	0.34
RSI Limited	0.37
Seramapore Industries Pvt. Ltd	0.53
Super Iron Foundry	1.11
Uma Iron & Steel	0.34
Victory Castings Ltd	0.30

B. Post-Shipment Export Financing

In the preliminary results, we found that this program conferred countervailable subsidies on the subject

merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Calcutta Ferrous (Calcutta) and Dinesh. *See* Comment 1 below for Dinesh and the Memo to the File regarding the Calculations for the Final Results of the Review dated November 10, 1998 (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*Calculation Memo*) for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.29
Carnation Industries Ltd	0.03
Commex Corporation	0.35
Crescent Foundry Co. Pvt. Ltd	0.31
Dinesh Brothers Pvt. Ltd	0.23
Kajaria Iron Castings Pvt. Ltd	0.42
Nandikeshwari Iron Foundry Pvt. Ltd	0.27
R.B. Agarwalla & Company	0.35
RSI Limited	0.20
Seramapore Industries Pvt. Ltd	0.05
Super Iron Foundry	0.12
Uma Iron & Steel	0.53
Victory Castings Ltd	0.40

C. Post-Shipment Export Credit in Foreign Currency (PSCFC)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Calcutta and Dinesh. *See* Comment 1 below for Dinesh and the *Calculation Memo* for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	0.02
Dinesh Brothers Pvt. Ltd	0.05
Nandikeshwari Iron Foundry Pvt. Ltd	0.08
R.B. Agarwalla & Company	0.11
RSI Limited	0.08

D. Income Tax Deduction Under § 80 HHC

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Dinesh. *See* Comment 1 below. Our findings for the other companies have not changed as as result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	2.91
Carnation Industries Ltd.	2.92
Commex Corporation	4.79
Crescent Foundry Co. Pvt. Ltd.	4.53
Dinesh Brothers Pvt. Ltd.	1.82
Kejriwal Iron & Steel Works Pvt. Ltd.	11.76
Nandikeshwari Iron Foundry Pvt. Ltd.	3.71
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company	2.73
RSI Limited	2.73
Seramapore Industries Pvt. Ltd.	4.16
Shree Rama Enterprise	10.85
Super Iron Foundry	1.93
Uma Iron & Steel	0.40
Victory Castings Ltd.	2.17

E. Import Mechanisms (Sale of Licenses)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, have not led us to change our preliminary findings. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Carnation Industries Ltd.	0.24
Kajaria Iron Castings Pvt. Ltd.	0.68
Kejriwal Iron & Steel Works	1.00
RSI Limited	0.03
Seramapore Industries Pvt. Ltd.	0.73

F. Exemption of Export Credit From Interest Taxes

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has led us to modify our findings from the preliminary results for Calcutta and Dinesh. *See* Comment 1 below for Dinesh and the *Calculation Memo* for Calcutta. Our findings for the other companies have not changed as a result of our review of the record and our analysis of the comments submitted by the interested parties. Accordingly, the net subsidies for this program are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd.	0.06
Carnation Industries Ltd.	0.13
Commex Corporation	0.06
Crescent Foundry Co. Pvt. Ltd.	0.06
Dinesh Brothers Pvt. Ltd.	0.13
Kajaria Iron Castings Pvt. Ltd.	0.26
Nandikeshwari Iron Foundry Pvt. Ltd.	0.13
R.B. Agarwalla & Company	0.11
RSI Limited	0.22
Seramapore Industries Pvt. Ltd.	0.07
Super Iron Foundry	0.16
Uma Iron & Steel	0.11
Victory Castings Ltd.	0.18

II. Programs Found To Be Not Used

In the preliminary results, we found that the producers/exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Market Development Assistance (MDA)
2. Rediscounting of Export Bills Abroad (EBR)
3. International Price Reimbursement Scheme (IPRS)
4. Cash Compensatory Support Program (CCS)
5. Programs Operated by the Small Industries Development Bank of India (SIDBI)
6. Export Promotion Replenishment Scheme (EPRS) (IPRS Replacement)
7. Export Promotion Capital Goods Scheme
8. Benefits for Export Oriented Units and Export Processing Zones
9. Special Imprest Licenses
10. Special Benefits
11. Duty Drawback on Excise Taxes
12. Payment of Premium Against Advance Licenses
13. Pre-Shipment Export Financing in Foreign Currency (PCFC)

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: Use of Denominator for Dinesh

Respondents state that the Department misread Dinesh Brothers' (Dinesh) sales information and consequently used the wrong 1996 f.o.b. values to calculate the company's *ad valorem* subsidy rates. As a result of this error, the Department's calculations overstate the countervailing duty applicable to the company for the period of review.

Petitioners counter stating that the sales values used in the Department's calculations are consistent with the information provided in the company's response. They argue that the burden is on respondents to provide clear, complete responses to the Department's inquires.

Petitioners state that even if the Department has erred and used the wrong values, this issue highlights a continuing problem with respect to this order. That is, respondents often supply vague information in their questionnaire responses and then clarify the information only if the Department requests a further explanation or the respondents explain the information at verification. In this case, petitioners argue the Department did not feel it was necessary for Dinesh to explain the reporting of its sales values and the company was not verified. For these reasons, petitioners urge the Department to affirm its use of the sales values used in determining Dinesh's program benefits in the preliminary calculations.

Department's Position

Though we agree with petitioners that Dinesh's sales values were not clearly presented in the company's questionnaire response, after a further examination of the record, we agree with respondents that we did not use the correct f.o.b. values to calculate Dinesh's program benefits. In conducting our preliminary calculations, we incorrectly read Dinesh's sales chart and thus used the wrong 1996 f.o.b. values to calculate the company's *ad valorem* subsidy rates. Therefore, we have recalculated the *ad valorem* subsidies under each program using the correct f.o.b. values as our denominators. The program rates reported above and the final subsidy rate and cash deposit rate for Dinesh listed below reflect the use of the correct sales values.

Comment 2: Sale of Import License by Carnation

When calculating the benefit which Carnation Industries Ltd. (Carnation) received from the sale of an import license, respondents state that the Department mistakenly used an overstated revenue figure as the numerator in its calculation. They argue that the Department incorrectly used the amount of revenue Carnation earned on the sale as reported in the company's financial statements. Respondents state that this amount is inclusive of the sales price plus the tax which Carnation paid to the State of West Bengal. They state that Carnation did not receive the tax, and therefore, the correct amount of the benefit to Carnation is the sales price minus the tax.

Petitioners state that the respondents' argument must be rejected because the Department's regulations clearly state that: "{i}n calculating the amount of a benefit, the Secretary will not consider the secondary tax consequences of the benefit." *See Countervailing Duties: Proposed Rule*, 62 FR 8818, 8856 (February 26, 1997). Petitioners further state that the Department's policy is clear from previous cases and has been upheld by the courts. *See, e.g., Certain Steel Products from Belgium; Final Affirmative Countervailing Duty Determinations*, 58 FR 37273, 37275 (July 9, 1993); *Geneva Steel* v. *United States*, 914 F. Supp. 563, 609–610 (CIT 1996); *Ipsco, Inc.* v. *United States*, 687 F. Supp. 614, 621–22 (CIT 1988); and *Michelin Tire Corp.* v. *United States*, 6 CIT 320, 328 (1983), *vacated on other grounds*, 9 CIT 38 (1985) (*Michelin Tire*).

In this review, petitioners state that the record clearly establishes that the benefit received from the sale of the license was the amount reported in the company's financial statements. Carnation's claim that it initially received something less than that amount is not supported by record evidence. Moreover, whether Carnation was obligated to pay taxes on the revenue earned is inconsequential to the Department's analysis. Therefore, the Department should affirm its preliminary results in this matter.

Department's Position

We agree with petitioners. Not only is the Department's long-standing policy to disregard secondary tax consequences of countervailable benefits, but also the statute is clear in regard to permissible offsets to subsidies. Section 771(6) of the Act provides an exclusive list of offsets which may be deducted from the amount of a gross subsidy, and an offset for income tax payments is not included in that list. For purposes of determining the net subsidy, the Department, pursuant to section 771(6), may subtract from the gross countervailable subsidy the amount of:

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) Any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

In *Michelin Tire*, the court upheld the Department's policy of disregarding secondary tax consequences, rejecting a claim that after-tax considerations should be included in the calculation of a subsidy. In its decision the court stated that: "[T]hese effects [secondary tax effects] are too uncertain to be considered a necessary part of a subsidy calculation in these circumstances." *See* 6 CIT 320, 328 (1983), *vacated on other grounds*, 9 CIT 38 (1985). Therefore, based on the statute, case precedent, and the Department's policy to disregard secondary tax effects on subsidies, we have not altered our calculation of the subsidy which Carnation received from the sale of an import license during the review period.

Comment 3: Use of a Rupee-Loan Interest Rate Benchmark

Respondents contest the Department's use of a rupee-loan interest rate, rather than a dollar-denominated interest rate, to calculate the benefit on PSCFC loans. Respondents note that the Department has determined that PSCFC loans are denominated in dollars and that the discount rate is based on a dollar interest rate. Therefore, the Department should have used as its benchmark to determine the benefit conferred by PSCFC loans, a dollar-related interest rate. Respondents assert that since the Indian banks offering PSCFC financing could themselves borrow dollars at a rate linked to the London Interbank Offering Interest Rate (LIBOR), the appropriate benchmark to determine the subsidy element of the loans, if any, would be a LIBOR-linked rate.

Respondents contend that the Department's use of a benchmark, other than a LIBOR-linked rate, is inconsistent with item (k) of the "Illustrative List of Export Subsidies," Annex I to the *Agreement on Subsidies and Countervailing Measures* (Illustrative List). Item (k) provides that an "export credit" is a subsidy only if governments or government-controlled banks provide "export credits at rates below those which they actually have to pay for the funds so employed." Respondents assert

that PSCFC loans should not be viewed as subsidies so long as they are not provided at rates that are below the rates at which the banks themselves could borrow U.S. dollars. Accordingly, PSCFC loans should not be considered beneficial to the extent that they are provided at rates above the appropriate benchmark—a LIBOR-linked rate.

Petitioners argue that respondents are erroneously confusing the terms "export credit" and "packing credit," the type of financing provided to castings exporters, when discussing item (k). Petitioners note that the Department has consistently interpreted the term "export credit" to refer to medium- and long-term loans and therefore, item (k) does not apply to the short-term export loans which are under review.

Additionally, petitioners assert that the Department has consistently rejected the cost-to-government" methodology of item (k). In support of their argument, petitioners cite to the Department's determinations in *Extruded Rubber Thread from Malaysia; Final Results of Countervailing Duty Administrative Review*, 60 FR 17515, 17517 (April 6, 1995) and *Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review*, 56 FR 12175, 12177 (March 22, 1991). Petitioners also cite to the 1989 final results of *Certain Textile Mill Products from Mexico*, in which the Department stated:

> When we have cited the Illustrative List as a source for benchmarks to identify and measure export subsidies, those benchmarks have been consistent with our long-standing practice of using commercial benchmarks to measure the benefit to a recipient of a subsidy program. The cost-to-government standard in item (k) of the Illustrative List does not fully capture the benefits provided to recipients of FOMEX financing. Therefore, we must [sic] use a commercial benchmark to calculate the benefit from a subsidy, consistent with the full definition of "subsidy" in the statute.

54 FR 36841, 36843 (September 5, 1989). Petitioners further point out that the Department upheld its repudiation of the "cost-to-government" standard contemplated in item (k) in the *Statement of Administrative Action: Agreement on Subsidies and Countervailing Measures* (SAA). The SAA states that "* * * the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement, and items (k) and (l) of the Illustrative List use a cost-to-the-government standard which is inappropriate for CVD purposes." *See* H.R. Doc. No. 103–316, Vol. 1, 927–928 (1994). The petitioners assert that this language restates the Department's long-standing practice that the "cost-to-government" approach contemplated in item (k) does not adequately capture the benefits provided under short-term export financing programs. Therefore, the Department should reject respondents' argument and continue using a non-preferential interest rate based on comparable, rupee-based financing as a benchmark.

Department's Position

We disagree with respondents that the Department should use a LIBOR-linked interest rate as the benchmark in measuring the benefits conferred by the PSCFC program. In examining whether a short-term export loan confers countervailable benefits, the Department must determine whether "there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." *See* Section 771(5)(E)(ii) of the Act.

In determining whether there is a difference between the amount the companies paid on the PSCFC loans and the amount they would have paid on a comparable commercial loan, we used, as our benchmark, where available, a company-specific interest rate for rupee-denominated short-term working capital loans obtained on the market during the review period. In the absence of a company-specific rate, we used the "cash credit" interest rate which is for domestic working capital finance and is comparable to pre- and post-shipment export finance. *See Certain Iron-Metal Castings From India; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 64669, 64671 (December 6, 1996) (*1994 Castings Prelim*). In accordance with section 771(5)(E)(ii) of the Act, because the interest rate on PSCFC loans is less than what a company would have to pay on a comparable short-term commercial loan, we determined that PSCFC loans confer countervailable benefits.

We have also determined that PSCFC loans are limited to exporters, and only exporters have access to LIBOR-linked interest rates. Because we found that PSCFC loans are limited to exporters and that non-exporters do not have access to these low-cost financing rates, loans with interest rates linked to LIBOR clearly do not represent the "comparable commercial loan that the recipient could actually obtain on the market." The fact that commercial banks may borrow at LIBOR-linked rates is, therefore, irrelevant to our finding.

Petitioners correctly note that the Department has consistently rejected the "cost-to-government" standard of item (k) of the Illustrative List. The SAA specifically states that "* * * the Illustrative List has no direct application to the CVD portion of the Subsidies Agreement, and items (k) and (l) of the Illustrative List use a cost-to-the-government standard which is inappropriate for CVD purposes." *See*0 H.R. Doc. No. 103–316, Vol. 1, 927–928 (1994). For these reasons, we maintain that the correct benchmark to use in determining whether PSCFC loans confer countervailable benefits upon exports of the subject merchandise to the United States, is the "comparable" commercial loan rate that the Indian exporters would actually obtain on the market.

Comment 4: Double-Counting of Subsidies

Respondents state that, for purposes of the section 80 HHC tax program (80 HHC), earnings from the sale of import licenses may be deducted from taxable income to determine the tax payable by the exporter. Therefore, because revenue from the sale of licenses is also part of the deductions under 80 HHC, to countervail this revenue once as a direct subsidy, and then to countervail the tax deduction, which is made up of the same revenue, is to double count the subsidy from the import license sales.

Respondents also contend that the Department is double-counting the subsidy from the export financing programs. The financing programs reduce a company's expenses in financing exports, which in turn increases the company's profits on export sales. Because the 80 HHC deduction increases as export profits increase, the financing programs increase the 80 HHC deduction. Therefore, according to respondents, to countervail the export financing as a separate program from the 80 HHC, is to double-count the subsidies conferred by the export financing programs.

Respondents note that they appealed this issue of double-counting to the Court of Appeals for the Federal Circuit (CAFC) and in *Kajaria Iron Castings Pvt. Ltd.* v. *United States*, No. 97–1490 (Fed. Cir. September 8, 1988) (*Kajaria*), the CAFC ruled in favor of the respondents. Accordingly, respondents assert that the Department should revise its position on the issue double-counting for the final results of this review.

Petitioners respond that the Department has analyzed this issue of double-counting extensively in prior proceedings. *See, e.g., Certain Iron-Metal Castings from India; Final Results of Countervailing Duty Administrative Review*, 62 FR 32299–301 (June 13,

1997) (*1994 Castings Final*). Petitioners contend that the Department's prior findings on this issue should be upheld in this administrative review on the basis of (1) The facts on the record; (2) because the subsidies being countervailed are separate and distinct; (3) because the Department has a consistent policy of not examining the tax consequences of tax exemptions related to loans and grants; and (4) there is no reasonable way for the Department to isolate the alleged effects on respondents' export tax liability. In addition, petitioners argue that the Department has explained in earlier reviews that the 80 HHC income tax exemption for export earnings is a countervailable subsidy that is separate and distinct from the subsidies received from export financing programs and the sale of import licenses, and therefore, each subsidy program should be separately countervailed.

Also, petitioners contend that it is not the Department's policy to examine the secondary tax effects of subsidies. Petitioners indicate that the Department's determination to separately countervail these different subsidies is supported by the courts' affirmance of the agency's policy to disregard any secondary effect of a direct subsidy on a company's financial performance. In support of this, petitioners cite *Saarstahl AG* v. *United States*, 78 F.3d 1539, 1543 (Fed. Cir. 1996). Petitioners assert that this approach is proper and reasonable given the difficulties inherent in an effort to calculate secondary effects. Petitioners cite to *Michelin Tire Corp.* v. *United States*, in which the court stated, "These {secondary} effects are too uncertain to be considered a necessary part of a subsidy calculation." *See* 6 CIT 320, 328 (1983), *vacated on other grounds*, 9 CIT 38 (1985).

Petitioners further note that the legislative history of the URAA also makes clear that in determining whether a countervailable subsidy exists, the Department is not required to consider the effect of the subsidy. *SAA* at 246, 926 (codified at 19 U.S.C. 1677(5)(C)). The SAA explains that:

> [T]he Administration wants to make clear its view that the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review.

Id. at 926. Petitioners state that when applied to the alleged double-counting issue, this means that the Department does not have to consider whether subsidies in the form of grants or loans have any effect on the 80 HHC tax program when determining whether subsidies under 80 HHC are countervailable.

Petitioners further indicate that though respondents argue that the Department should correct for the alleged double-counting issue by making adjustments to the 80 HHC subsidy percentage, they do not provide any comment on how the Department should do this. According to petitioners, the Department has acknowledged in earlier reviews that the adjustments requested by the respondents cannot be accomplished due to the multiple variables, which affect a company's costs, that would have to be isolated.

Department's Position

Respondents' argument that the subsidies provided under the export financing and import licensing programs have been countervailed twice, by also countervailing the full amount of the 80 HHC tax deduction, is incorrect. In *Kajaria*, the CAFC reviewed the Department's decision to countervail that portion of the Cash Compensatory Support (CCS) rebates found to be excessive, and to also countervail those over-rebates under the 80 HHC program. Under the CCS program, the GOI rebated indirect taxes on inputs consumed in the production an exported product. The CCS rebates were considered by the GOI to be export income. Under the GOI's 80 HHC program only profit from export income is exempt from tax liability. With respect to these particular facts, the CAFC in its decision concluded that by first countervailing the CCS over-rebates, as a distinct program, and then countervailing the same over-rebates again as tax exempt export income under the 80 HHC program, the Department had improperly double-counted the over-rebates.

In its decision, the court stated:

> * * * Commerce must avoid double-counting subsidies, *i.e.*, countervailing both the full amount of a subsidy and the non-taxation of that subsidy, when the party under investigation provides documentation that allows Commerce to separate the tax deduction based on the fully countervailed subsidy from the otherwise countervailable portion of the tax deduction.

Kajaria, No. 97–1490 at 24–25. In the present review, neither the interest saved under the export financing programs nor the proceeds earned on the sales of import licenses are deemed to be export income. There is no evidence on the record which demonstrates a direct link between these separate and distinct program subsidies and a specific tax exemption subsidy program, *i.e.*, the 80 HHC tax deduction. The respondents in this review did not provide either income and tax statements, or government descriptions of the subsidy programs which demonstrate that the export financing and import license subsidies are considered by the GOI to be export income and that the profit derived from such income is specifically exempt from tax liability under 80 HHC.

With respect to the export financing programs, the respondents stated that under these schemes, the GOI provides exporters with short-term export lending to finance their working capital requirements. The respondents' contention that as a result of such financing, an exporter realizes a reduction of interest expenses which in turn increases profits on export sales, is speculative. It is incorrect for respondents to assume that every rupee saved on interest costs increases the profits of the company by one rupee and therefore, the concessional financing programs increase the 80 HHC deduction since the deduction increases as profits from exports increase. Thus, we find no basis for the respondents' argument that, by countervailing the export financing programs and the 80 HHC deduction in full, the benefit to the exporter from the financing programs is being countervailed twice.

In regard to the sale of import licenses, the record is void of any indication that the profit a company realizes from the sale of an import license is exempt from tax liability. What evidence respondents did put on the record shows, for example, that Carnation Industries reported and documented on the record that the revenue it earned from the sale of an import licence during the review period was taxed by the State of West Bengal. Therefore, we find no basis for the respondents' argument that revenue earned from the sale of an import license constitutes export income, the profits from which may be deducted from taxable income under 80 HHC. Accordingly, we determine that the subsidy from the import license sale is not being double-counted by also countervailing in full the 80 HHC tax deduction.

Comment 5: Exclusion of Income Earned on Non-Subject Merchandise

According to respondents, where a company was able to break down revenues relating to subject castings versus revenues relating to non-subject merchandise, the Department should have calculated the 80 HHC subsidy based on revenues and profits relating to subject castings only. Respondents assert that by not factoring out

incentives received on sales of merchandise other than subject castings, the subsidies found to be conferred by the 80 HHC program are greater than they ought to be. The respondents submit that it is *ultra vires* to countervail income earned on merchandise other than subject castings because only subject castings are covered by the order.

Respondents claim that two companies, Kejriwal Iron & Steel (Kejriwal) and R.B. Agarwalla & Co. (R.B. Agarwalla) were able to break down revenues relating to subject castings versus revenues relating to non-subject merchandise. Kejriwal submitted a calculation showing export incentives received on sales of non-subject merchandise. The company factored out these incentives when calculating the benefit the 80 HHC program provided to subject castings. R.B. Agarwalla submitted an 80 HHC calculation demonstrating that a portion of its income was directly related to non-subject merchandise, and subtracted out this income in determining the benefit to subject castings provided by the tax program. Respondents assert, for these companies, the Department should revise its 80 HHC calculations countervailing only the income earned on subject castings.

Respondents note that the CAFC in *Kajaria*, stated that the Department improperly included revenue received on non-subject castings in determining the countervailing duty to be imposed on subject castings. *See Kajaria*, No. 97–1490 at 25–27. Respondents state that though the court's decision related to IPRS rebates received on non-subject castings, the court's ruling on the non-countervailability of tax deductions relating to non-subject castings applies to this review since the exporters received revenue on non-subject castings during the period of review. Therefore, in keeping with the decision in *Kajaria*, the Department should recalculate the 80 HHC benefit by deducting all revenues received on non-subject castings for those companies which were able to break down revenues relating to subject castings versus non-subject merchandise.

Petitioners note the respondents' argument has been rejected in prior reviews. Since the facts of this review are no different from the prior reviews, the Department should continue its policy of allocating the benefit from the 80 HHC program over total exports. The 80 HHC program is an export subsidy and the benefits provided under this program are not tied to the production or sale of a particular product or products. Petitioners assert that it does not matter whether an exporter is able to separate its revenues between subject and non-subject castings, because the 80 HHC program is an "untied" subsidy program.

Department's Position

We disagree with respondents that for the final results the Department should revise its benefit calculations for the 80 HHC tax exemption program in light of *Kajaria*. The circumstances and the record developed in this review are different from those in the case of *Kajaria*. In *Kajaria*, the Court ruled that the record showed that the IPRS rebates for non-subject merchandise were deemed by the GOI to be export income. Further, the Court found that profits derived from that export income were specifically exempt from income tax liability under the 80 HHC program. In short, rebates specifically identified as export income under one program were directly linked to the exemption from tax liability of profits derived from such export income under another subsidy program. It is clear from the CAFC's opinion that its holding was limited to the particular circumstances in *Kajaria*. The facts and record in this review are not the same as those in *Kajaria*. Thus, no revision to the 80 HHC benefit calculation is warranted.

During this administrative review, no exporter submitted information for the record which demonstrated that IPRS rebates were received for the sale of non-subject merchandise to the United States. In fact, no exporter submitted information that demonstrated that any alleged benefits received for non-subject merchandise were expressly denominated as export income, and that the profits derived from such export income were expressly exempt from tax liability under the 80 HHC program.

As mentioned above, respondents claim that the export incentives which Kejriwal received on the sale of non-subject merchandise should be factored out of the Department's calculation of the benefit to subject castings from the 80 HHC tax deduction. We disagree with the respondents. Kejriwal provided no documentation on the record to support its claim that the export incentives received were in fact export income earned on the sale of non-subject merchandise. Further, nowhere on the record does Kejriwal or the GOI indicate that export incentives are export income and that the section 80 HHC specifically exempts profits derived from that export income. Because the record is void of such information, we have not modified the 80 HHC benefit calculation for Kejriwal to exclude, from the computation, these export incentives.

In like manner, R.B. Agarwalla did not provide any documentation to support its claim that a portion of its income listed as duty drawback received on non-subject merchandise is specifically denominated as export income by the GOI. There is no information on the record which indicates that duty drawback is considered to be export income and that the section 80 HHC specifically exempts the profits derived from that income. Therefore, we have not made any adjustments to the 80 HHC benefit calculation for R.B. Agarwalla to take into account the duty drawback the company received on non-subject merchandise.

The burden of creating an adequate record lies with respondents and not with the Department. *NTN Bearing Corp. of America* v. *United States*, 997 F.2d 1453, 1458 (Fed. Cir. 1993), *quoting Tianjin Mach. Import & Export Corp.* v. *United States*, 806 F. Supp. 1008, 1015 (CIT 1992). In this review, neither Kejriwal nor R.B. Agarwalla developed such a record with respect to the *Kajaria*-type adjustment they are requesting. Moreover, the Department need not engage in any kind of subsidy tracing exercise. On this point, the CAFC was very clear:

> [W]e are mindful of the government's argument that Commerce does not engage in subsidy tracing because of the burden involved in sorting the tax treatment of subsidies. Again, our decision does not mean that in every review or investigation Commerce must trace the tax treatment of subsidies on non-subject merchandise when a tax deduction results in a countervailable subsidy to determine if the deduction is partially based on the subsidy on non-subject merchandise.

Kajaria, No. 97–1490 at 27. Accordingly, the Department has not made any adjustment to the 80 HHC calculations in the final results of this review to determine the subsidy bestowed on exports of the subject merchandise. Because respondents did not provide to the Department documentation with respect to export profits derived from export income earned on non-subject merchandise which is specifically exempt under the 80 HHC, we have continued to employ our "untied" benefit methodology to calculate the net subsidy attributable to exports of the subject merchandise for those exporters which claimed the 80 HHC tax deduction during the period of review. It is the Department's consistent and long-standing practice to attribute a benefit from an export subsidy that is not tied to a particular product or

market to all products exported by a firm. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey*, 61 FR 30366, 30370, (June 14, 1996) (*Pasta from Turkey*), and the *1994 Castings Final*, 62 FR 32303.

When an exporter cannot demonstrate to the Department that a subsidy is tied to specific merchandise, then the benefit is not tied to any specific product manufactured or exported by a firm, and therefore, the benefit is "firm-wide." If a subsidy is firm-wide and not "tied" to specific merchandise, then the benefit from that subsidy is allocated over the firm's total exports, in the case of an export subsidy. By allocating the "untied" benefit provided under the 80 HHC over a company's total exports, we are making an "apples-to-apples" comparison. This "untied" benefit methodology accurately produces the net subsidy attributable to exports of the subject merchandise and provides for fair results. For these reasons, our calculation of the subsidy under section 80 HHC remains unchanged from the preliminary results.

Even if Kejriwal and R.B. Agarwalla demonstrated to the Department that their respective export incentives and duty drawback were in fact export income earned on non-subject merchandise (with respect to duty drawback, documentation would also have to indicate that imported pig iron was not incorporated into the subject merchandise) and that the 80 HHC specifically exempts profits derived from that export income, each company's net program subsidy rate would remain essentially unchanged. By factoring out export income attributable to non-subject merchandise from the 80 HHC deduction, we would adjust the benefit (the numerator) to reflect the 80 HHC tax deduction attributable to subject merchandise only. Because adjusting the benefit in this manner is contrary to the Department's long-standing practice with regard to the attribution of subsidies and our tying principles, we would then have to adjust the denominator. Since the numerator would reflect only subject merchandise, we would follow our long-standing principles for attribution, and divide the recalculated benefit only by exports of subject merchandise to determine the net subsidy rate for each company. Once all income attributable to non-subject merchandise is factored out of the calculation of the benefit, the amount that remains would be attributable solely to subject merchandise. As noted, the adjustments made would affect both the numerator and denominator and would result, in this proceeding, in net subsidy rates identical to the rates obtained by the Department's current methodology of considering the benefit of the 80 HHC program as "untied."

Comment 6: Penalty Interest Paid

According to respondents, in calculating the benefits received by castings exporters from post-shipment export loans, the Department failed to take into account penalty interest paid at interest rates higher than the benchmark. Respondents argue that where a company paid interest on loans at rates both less than and greater than the benchmark rate, all interest—including the overdue penalty interest paid at rates greater than the benchmark rate—needs to be taken into account when determining the actual benefit to the company from the loans. The respondents assert that the methodology employed by the Department virtually eliminates the overdue penalty interest paid from the calculation of the benefit from the post-shipment export loans.

The preliminary calculations demonstrate that where an export loan was initially taken at a preferential rate, the Department calculated the interest paid at the preferential interest rate and compared it to interest that would have been paid at the benchmark rate. Respondents argue that this methodology does not take into account all the interest paid by the exporter on the loan since it ignores overdue interest that the exporter may also have paid on the loan.

Respondents assert that the Department should have adjusted the benefit on the post-shipment export loans by the excess overdue interest paid by the company at the penalty interest rate, because that rate is greater than the benchmark rate. Rather than account for the excess interest paid on the loans, the Department calculated a zero benefit where the interest rate on the portion of the loan overdue was higher than the benchmark rate. The respondents argue that the Department should correct its methodology so as to take into account the overdue penalty interest paid on the loans, because the benefit received by an exporter on any particular loan is a function of both the interest paid at a rate lower than the benchmark and the additional interest paid at a rate higher than the benchmark.

Petitioners state that the Department should reject the respondents' methodology for calculating the countervailable benefit under the export financing programs, because it would permit a non-allowable offset to the countervailable benefit under the programs. In addition, petitioners argue that respondents fail to explain why an offset for penalty interest should be allowed when payment of that interest does not fall within the statute's list of allowable offsets under section 771(6) of the Act.

The penalty interest, petitioners assert, merely assures that the terms of the program are met. The costs associated with such penalty interest charges are, therefore, due to the recipient's failure to comply with the terms of the loan. The penalty which is based on the company's non-compliance with the terms of the program, represents nothing more than a secondary economic effect. Petitioners note that the Department has previously determined that a secondary economic effect should not be used as an offset to a program's benefit. *See, e.g., Oil Country Tubular Goods from Canada; Final Affirmative Countervailing Duty Determination*, 51 FR 15037 (April 22, 1986), *Fabricas El Carmen, S.A.* v. *United States*, 672 F. Supp. 1465 (CIT 1987), *vacated in part (on other grounds), Fabricas El Carmen, S.A.* v. *United States*, 680 F. Supp. 1577 (CIT 1988).

Petitioners further note that the Department has, in a comparable situation, refused to offset preferential with non-preferential loans. *See Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews*, 56 FR 38116, 38117 (August 12, 1991) (*OCTG from Argentina*). In that case, respondents claimed that a loan-by-loan analysis overstated the benefit received and that, taken together, the loans received by the company provided no preferential benefit. In rejecting this argument, the Department asserted:

> [I]t only examines loans received under programs that may potentially be counteravailable [sic] if the interest rate is preferential when compared with the benchmark interest rate. We do not consolidate these preferential loans with non-countervailable commercial loans to examine whether the aggregate interest rate paid on a series of loans is preferential. It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan.

Id. Petitioners argue that, by extension, the Department cannot, under the terms of the statute, offset the less favorable interest period of a loan (the period during which the loan was overdue) with the period in which the loan was provided on preferential terms. This is particularly the case, petitioners state, when the higher penalty interest was a result of the company's failure to comply with the terms of the program.

Therefore, the Department is correct in calculating a zero benefit during the period in which the penalty rate exceeded the benchmark rate.

Department's Position

An adjustment to the benefit under the export financing programs in the form advocated by respondents would be an impermissible offset to the benefit. In accordance with section 771(6) of the Act, the Department may subtract from the gross countervailable subsidy the amount of:

(A) Any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) Any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

As petitioners correctly note, penalty interest under the export financing programs does not fall within this list of allowable offsets.

Additionally, in light of how the post-shipment export financing programs operate, respondents' approach is inaccurate. As we explained in the preliminary results, exporters discount their export bills with Indian commercial banks to finance their operations. *See Certain Iron Metal Castings from India; Preliminary Results of Administrative Review*, 63 FR 37536 (July 13, 1998) (*1996 Castings Prelim*). By discounting an export bill, the company receives payment from the bank in the amount of the export bill, net of interest charges. The loan is considered "paid" once the foreign currency proceeds from an export sale are received by the bank. If those proceeds are not paid within the negotiated period, then the loan is considered "overdue." In essence, however, this overdue period is a new loan, because the original "discounted loan period" is fully accounted for, that is, the company has received payment from the bank and the interest on that payment has already been deducted. For the overdue loan, the bank will charge the company interest on the original amount of the loan at a higher interest rate. The overdue interest rate varies depending on the period for which the loan is overdue. To determine whether interest charged on the "overdue" loan confers a countervailable benefit, we compared the overdue interest rate with the benchmark rate. If the overdue interest rate was higher than the benchmark rate, we found no benefit. Therefore, the adjustment suggested by respondents is inappropriate given the way in which the export financing programs operate.

Comment 7: Company-Specific Benchmarks

Respondents disagree with the Department's use of a company-specific benchmark interest rate for determining the benefits which Calcutta Ferrous and Crescent Foundry respectively received under the pre- and post-shipment export financing programs. Respondents note that, for companies which did not have commercial short-term loans during the review period, the Department used as its benchmark the "cash credit" short-term interest rate which was provided by the GOI.

Respondents argue that since commercial loans were available to borrowers at the cash credit rate during the review period, it was inappropriate to use a higher rate as a benchmark for Calcutta Ferrous and Crescent Foundry merely because these companies borrowed at rates higher than the cash credit rate on certain commercial loans. It is the respondents' contention that, where a company borrows at a rate which is lower than the common benchmark, it is appropriate to use the lower, company-specific rate. However, where a company borrows at a rate higher than the common commercial rate, then the higher rate should not be the benchmark used for that company. Respondents argue that there is no reason to assume that a company, which happened to borrow at a higher rate, could not have taken loans at the lower rate during the period of review, and therefore, the Department should use the lower commercial rate. Thus, the Department should cap Calcutta Ferrous' and Crescent Foundry's benchmark rate at the level of the cash credit short-term interest rate which was found available to borrowers in India during the period of review.

Petitioners state that the respondents' argument should be rejected as it is inconsistent with the Department's preferred benchmark methodology. As directed by the Act, the Department is to measure the benefit obtained through a loan program by finding the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." *See* section 771(5)(E)(ii) of the Act. In measuring the benefit, it is the Department's preference to use company-specific rates where available and to use national averages (such as the cash credit rate) only in the event that the investigated firm did not take out any comparable commercial loans during the period. *See* Preamble to the Proposed Regulations, 62 FR 8829, 8830 (February 26, 1997). By using a company-specific benchmark rate for those companies which received, and paid interest on, short-term working capital loans obtained on the market during the period of review, the Department appropriately followed statutory and regulatory policy. For the remaining companies which did not receive, and pay interest on, comparable commercial loans, the Department used, as a benchmark, the next best rate, the national-average cash credit rate.

Petitioners further state that the respondents' argument is not in accordance with the Department's statutory guidelines, since, in certain cases, respondents' methodology would substitute the second best (*i.e.*, a national average rate) when the first best alternative (*i.e.*, a company-specific rate) is available. The respondents' proposed approach is simply a results-oriented argument designed to lower the countervailing duty rate applied to short-term, preferential loan programs. Moreover, it is mere speculation on the part of respondents to claim that companies which borrow at rates above the national-average rate could also borrow at the lower rate. Petitioners contend that it is this type of ambiguity that the statute and regulations address and therefore, the Department must reject respondents' proposed approach.

Department's Position

We disagree with the respondents' argument that the Department used inappropriately high benchmarks to calculate the benefits from the pre- and post-shipment export financing programs for Calcutta Ferrous and Crescent Foundry. As stated in section 771(5)(E)(ii) of the Act, in the case of a loan, a benefit is conferred "if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would *pay on a comparable commercial loan that the recipient could actually obtain on the market*" (emphasis added).

During the review period, four of the twelve respondent companies received, and paid interest on, domestic working capital loans which were obtained in a commercial banking market. Accordingly, for these four companies, we used as our benchmark in determining the benefits each company received under the export financing programs, a company-specific rate; this benchmark was a weight-averaged rate based on the interest rates each company paid on its respective

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commercial working capital loans. It is the Department's policy to use a company-specific benchmark rate in determining the benefit conferred by a government program. *See, e.g., Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13634 (comment 9) (March 9, 1998).

For all other respondent companies which did not receive, and pay interest on, comparable commercial loans during the period of review, we used as our benchmark the next best alternative—the national-average "cash credit" rate. In the 1994 administrative review of this order, the Department determined that, in the absence of a company-specific benchmark, the most "comparable" short-term benchmark to measure the benefit under the export financing programs, is the cash credit interest rate. The cash credit interest rate is for domestic working capital finance and thus, comparable to pre- and post-shipment export financing.

Respondents argue that since commercial loans were available at the cash credit rate during the review period, it was inappropriate for the Department to use higher benchmark rates for Calcutta Ferrous and Crescent Foundry simply because these companies borrowed at higher rates on certain loans. As noted above, it is the Department's policy to use, when determining the benefit conferred by a loan provided under a government program, the interest rate a company would have paid on a comparable loan obtained on the market. During the review period, both Calcutta Ferrous and Crescent Foundry obtained commercial loans on the market. The market determined the interest rates at which these companies could borrow, and those rates were higher than the national-average cash credit rate. Respondents state that the Department should not assume that a company which happened to borrow at a rate higher than the national-average could not have taken loans at the lower rate during the period, and therefore, the Department should use the lower commercial rate. We find no basis for this argument. If Calcutta Ferrous and Crescent Foundry actually could have borrowed at the national-average rate, then the interest rates charged by the banks on the commercial loans would have reflected that. The fact that they did not is an indication that they could not. It would be unreasonable to expect a company to incur higher than necessary costs. Therefore, we disagree with respondents' argument that the Department should cap Calcutta Ferrous' and Crescent Foundry's company-specific benchmark rates at the level of the cash credit rate.

Comment 8: Countervailability of Advance Licenses

Petitioners argue that the Department improperly failed to countervail Advance Licenses which, they contend, are export subsidies. According to petitioners, Advance Licenses constitute a countervailable subsidy within the meaning of Item (a) of the Illustrative List, which defines one type of export subsidy as "[t]he provision by governments of direct subsidies to any firm or any industry contingent upon export performance." Because Advance Licenses are issued to companies based on their status as exporters, and because products imported under such licenses are duty-free, petitioners state these licenses provide a subsidy based on the requirement that an export obligation be met.

Petitioners claim that the Department has in this, as in prior reviews, mistakenly confused the nature of the Advance License program with a duty drawback program. For a duty drawback program not to be countervailed, it must meet certain conditions as outlined in Item (i) of the Illustrative List. Item (i) provides that "[t]he remission or drawback of import charges [must not be] in excess of those levied on imported goods that are consumed in the production of the exported products (making normal allowance for waste)." This condition, according to petitioners, has not been met with respect to the Advance License program because the GOI makes no attempt to determine the amount of the imported duty-free material that is consumed in the production of the exported product.

According to petitioners, there is no evidence on which to base a conclusion that the amount of raw materials imported was not excessive vis-a-vis the products exported. The GOI's concern that a sufficient amount of value has been added to the exported products does not regulate the amount of raw materials incorporated to the exports. Petitioners argue that the yardstick used by the GOI for measuring compliance with the Advance License program falls short of any determination of whether the amount of raw materials imported was excessive in relation to the amount of raw materials found in the exported castings.

Petitioners further argue that no evidence on the record demonstrates that the GOI attempts to determine the grade of pig iron being imported or exported, and without knowing this information, the amount of pig iron consumed in the production of exported subject castings cannot be ascertained. Additionally, the GOI's system of fixing "input/output norms" is hampered because exporters, who experience delays in the delivery of raw material inputs imported under an Advance License, may purchase the inputs on the domestic market. Thus, there is no way to ensure that the amount of raw materials imported was not excessive in relation to the amount of raw materials found in the exported castings.

Moreover, petitioners argue that an exporter's ability to transfer Advance Licenses to other companies is further evidence that this program is not equivalent to a drawback program because the licenses are not solely limited to the importation of duty-free materials. The GOI permits Advance Licenses to be transferred between companies under certain conditions and when transferring a license, an exporter would receive in return a monetary payment. For this and the above-indicated reasons, petitioners state that the Department should countervail in full the value of Advance Licenses received by the respondents during the period of review.

Respondents explain that the purpose of the Advance License scheme is to allow for the importation of raw materials duty free for the production of exported products. They state that if Indian exporters did not have Advance Licenses, the exporters would simply import the raw materials, pay duty, and then receive drawback upon export. Respondents argue that just because Advance Licenses are slightly different from a duty drawback system, in that they allow duty free imports rather than provide for remittance of duty upon exportation, does not make them countervailable.

In response to the petitioners' claim that the GOI makes no attempt to determine the amount of imported material that is consumed in the production of exported products, respondents counter that the GOI does maintain such checks which have been verified by the Department in prior reviews. Respondents note that in prior reviews the Department has never found excessive imports, and this is one of the reasons why Advance Licenses have not been found to be countervailable. *See 1994 Castings Final.*

Respondents refute petitioners' claim that the GOI is concerned only with ensuring that a sufficient amount of value is added to exported products. According to respondents, the question of value of exports arises only in determining whether an exporter is eligible to receive an Advance License. Respondents also rebut petitioners'

claim that the GOI does not attempt to determine the grade of pig iron imported or exported. They state if more expensive grades of pig iron were imported than exported, and the pig iron was sold for a premium in the domestic market instead of producing exported castings, then the premium might be a subsidy. However, the respondent companies did not sell domestically any imported pig iron, rather they used it to produce castings for export. Additionally, respondents state that if a license was transferred for a fee during the review period, this might be a subsidy. However, in this review, all the licenses were used to import pig iron duty free for exported finished castings. Therefore, for these reasons, the Department should reject the petitioners' arguments regarding the Advance License scheme, and once again find the program to be a non-countervailable equivalent to duty drawback.

Department's Position

As we have discussed in prior reviews, petitioners have only pointed out the administrative differences between a duty drawback system and the Advance License scheme used by Indian exporters. *See 1994 Castings Final.* Such administrative differences can also be found between a duty drawback system and a bonded warehouse. Each of these systems has the same function: each exists so that exporters may import raw materials to be consumed in the production of an exported product without the assessment of import duties.

The purpose of the Advance License program is to allow a company to import raw materials used in the production of an exported product without first having to pay duty. Companies importing under Advance Licenses are obligated to export the products made using the duty-free imports. Item (i) of the Illustrative List specifies that the remission or drawback of import duties levied on imported goods that are consumed in the production of an exported product is not a countervailable subsidy, if the remission or drawback is not excessive.

In prior reviews, we have determined that Advance Licenses are equivalent to duty drawback. The licenses allow companies to import, net of duty, raw materials which are physically incorporated into the exported products. Further, we have found no evidence in this review, or in a prior review, that imports under Advance Licenses have been excessive, or that castings exporters have transferred such licenses. Accordingly, our determination that the provision of Advance Licenses is not countervailable remains unchanged for this review. However, if in a future review of this order, new information becomes available to the Department in regard to the manner in which the Advance License program operates, we will reevaluate at that time our determination of the program's non-countervailability.

Comment 9: Countervailability of the Duty Entitlement Passbook Scheme

Petitioners state the GOI has established during this review period the Duty Entitlement Passbook Scheme (Passbook Scheme) which is related to the Advance Licence scheme. Petitioners contend that this new scheme extends the export subsidies provided under the Advance License program and therefore is similarly countervailable. The purpose of the Passbook Scheme, which commenced in April 1996, is to widen the Advance License program, giving exporters greater flexibility in paying import duties. *See Memo to Barbara Tillman: Verification of the Government of India's Questionnaire Response in the 1996 Administrative Review* at 9, dated June 29, 1998, (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*GOI VR*). Upon the exportation of goods by a Passbook holder, the GOI "calculates, on the basis of standard input/output norms, the deemed import content of the exports and determines the basic customs duty payable on those imports." *Id.* at 8. The Passbook holder, upon receiving credit for the equivalent amount of the customs duty from the GOI, can "pay the customs duties on any imported goods," not just the duties on the imported goods from which the credits were originally determined. *Id.* at 8.

Consequently, petitioners argue, just as with the Advance License program, the Passbook Scheme lacks an adequate monitoring system to ensure that the credits provided to Passbook holders are not excessive. No evidence on the record demonstrates that the GOI attempts to determine the grade of pig iron either imported or exported in the finished goods to ensure that the amount of input material exported equals the amount imported. Moreover, the flexibility exporters have in using the Passbook credits to pay duties on any imports highlights that the Passbook Scheme is very much unlike a traditional duty drawback program. Therefore, petitioners assert that the Department should find the Passbook Scheme countervailable.

Respondents state the Passbook Scheme, like the Advance License program, operates in a manner equivalent to a duty drawback program allowing for imports of pig iron which is consumed in the production of exported castings. Therefore, the Passbook Scheme, for the same reasons as the Advance License program, is not a countervailable subsidy. Respondents argue that simply because the Passbook Scheme has been referred to as an "export incentive" does not make it a countervailable subsidy. Duty Drawback of Excise Duty, the Advance License program, and the Passbook Scheme are all "export incentives" because they are for exports; however, they are not, as the Department has previously determined, countervailable subsidies unless they provide excessive rebates.

Respondents further state that if the castings exporters did, in fact, use their Passbook credits to import products other than pig iron, a subsidy might exist; however, there is no evidence on the record that this was done by any of the castings exporters. Therefore, based on the reasons presented, the Department should find the Passbook Scheme, like the Advance License program, to be a non-countervailable equivalent to the duty drawback program.

Department's Position

Petitioners first alleged that the Passbook Scheme might be an export subsidy in their May 27, 1998 letter to the Department. *See Letter in regard to Pre-verification Comments* at 12, dated May 27, 1998, public version of the letter is on file in the Central Records Unit of the Department of Commerce (Room B–099). In accordance with section 351.301(d)(4)(B) of the Department's regulations, we found the petitioners' allegation of a new export subsidy to be untimely. *See Memo to the File: Untimely Allegations of New Subsidies,* dated June 5, 1998 on file in the Central Records Unit of the Department of Commerce (Room B–099). Because the allegation was untimely, we rejected petitioners' subsidy allegation with respect to the Passbook Scheme in this review. During the June 1, 1998 verification meeting with the GOI, the Passbook Scheme was discussed as an extension of the Department's inquiry of the Advance License program. However, because the Passbook Scheme was not a program under examination in this review, the Department did not obtain enough information to analyze whether the scheme is, or is not, a countervailable subsidy. If a future review of this order is requested by petitioners, we will

examine whether to initiate on the Passbook Scheme provided that petitioners file their allegation on a timely basis.

Comment 10: Kajaria's Long-Term Loans From the IDBI

Petitioners assert that the Department erred in the preliminary results of this review by not addressing the long-term loan assistance which Kajaria Iron Castings (Kajaria) received from the Industrial Development Bank of India (IDBI). Petitioners argue that the loan assistance is countervailable because (1) it is provided by the government; (2) it is export-oriented; (3) it allows a principal repayment holiday; and (4) it is likely provided on preferential terms.

To begin with, petitioners state, according to the agency's substantive regulations, the Department will investigate a loan provided by a government-owned bank only when the "government-owned bank provided the loan at the direction of the government or with funds provided by the government." *See* proposed 19 CFR 355.44(b)(9)(ii), 54 FR 23366, 23381 (May 31, 1989). Since the GOI owes 74 percent of the IDBI's shares and 10 out of the 16 IDBI board members are government employees, petitioners contend this criterion is satisfied. *See* GOI VR at 10.

Petitioners further assert that evidence on the record demonstrates that the long-term loan was export-oriented. Petitioners note that during verification Kajaria officials stated that the company exports all of its merchandise. *See Memo to Barbara Tillman: Verification of Kajaria Iron Castings Ltd.'s Questionnaire Response in the 1996 Administrative Review* at 2, dated June 29, 1998, (public version) on file in the Central Records Unit of the Department of Commerce (Room B–099) (*Kajaria VR*).

Petitioners also argue that there is no evidence on the record to demonstrate that Kajaria's principal repayment schedule is normal with respect to commercial, long-term lending. In addition, petitioners state that both Kajaria and the GOI failed to demonstrate at verification that the loan was provided on commercial terms. The GOI simply stated at verification that "[t]here is no consistency in regard to the interest rates or terms and conditions offered by banks on long-term financing." *See* GOI VR at 12. According to petitioners, it is likely that alternative long-term rates were significantly higher than the rate Kajaria received, as most of the short-term financing reported by the responding companies ranged as high as 22 percent. For these reasons, petitioners urge the Department to countervail the long-term loan assistance which Kajaria received from the IDBI.

Respondents contend that the loans received by Kajaria were not provided on terms "inconsistent with commercial considerations," which is the criterion for finding such loans countervailable. *See* proposed regulations 19 CFR 355.44(b)(9)(ii), 54 FR at 23381. Respondents assert that a grace period before paying principal is consistent with commercial, long-term loans. Many commercial loans permit a grace period for repayment of principal until the facility, for which the loan was taken, is operational. This was, in fact, the reason for the delayed payment of principal on Kajaria's loan.

With respect to petitioners' argument that there was an "additional benefit" owing to the interest rate Kajaria paid on the loan, respondents state that short-term loans are more often than not provided at rates higher than those on long-term loans. Long-term construction loans are often secured by the facility being built, and this generally results in lower, not higher rates. Respondents also note that the Reserve Bank of India stated at verification that commercial long-term rates are "usually lower than both the prime lending rate and the cash credit rate." *See* GOI VR at 12.

Further, respondents argue that petitioners' statement that Kajaria's export-orientation had any bearing on the approval of the loan is pure speculation. Respondents argue that there is nothing in the loan documents provided by Kajaria or in the company's verification report to suggest that the loan was contingent upon exports or that Kajaria's "export-orientation" was taken into account by the lenders. In fact, the IDBI specifically stated at verification that "the project financing given to Kajaria was not tied to any expectation of exports." *Id.* at 11. Therefore, the Department should reject petitioners' arguments relating to Kajaria's long-term loans provided by the IDBI.

Department's Position

At our verification meeting with Kajaria officials, we inquired about the long-term loans which the company received from the IDBI. The officials explained that these long-term loans were received for the construction of a pig iron plant, which commenced production in February 1998. However there was insufficient time remaining before the scheduled date of the final results of this review to fully examine Kajaria's long-term financing. Therefore, in accordance with section 351.311(c)(2) of the Department's regulations, we are deferring an examination of Kajaria's long-term loans from the IDBI until a future administrative review of the company is requested.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1996 through December 31, 1996, we determine the net subsidy for the reviewed companies to be as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	3.48
Carnation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	3.27
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.41
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.64
RSI Limited	3.63
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed below of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. As discussed in the *1996 Castings Prelim*, the GOI terminated the PSCFC scheme effective February 8, 1996. All PSCFC loans received by respondents were repaid in their entirety (principal and interest) during the period of review. We verified that no residual benefits have been provided or received, and there is no evidence that a substitute program has been established. Therefore, in determining the cash deposit rates for the five castings producers/exporters which used the PSCFC program, we have not included the subsidy conferred by this program during the review period. We

determine that the cash deposit rates for the reviewed companies are as follows:

Net subsidies—producer/exporter	Net subsidy rate—percent
Calcutta Ferrous Ltd	3.46
Camation Industries Ltd	3.32
Commex Corporation	5.33
Crescent Foundry Co. Pvt. Ltd	4.98
Dinesh Brothers Pvt. Ltd	3.22
Kajaria Iron Castings Pvt. Ltd	1.69
Kejriwal Iron & Steel Works Pvt. Ltd	12.76
Nandikeshwari Iron Foundry Pvt. Ltd	4.33
Overseas Iron Foundry	3.74
R.B. Agarwalla & Company Pvt. Ltd	3.53
RSI Limited	3.55
Seramapore Industries Pvt. Ltd	5.54
Shree Rama Enterprise	10.85
Super Iron Foundry	3.32
Uma Iron & Steel	1.38
Victory Castings Ltd	3.05

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and the Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e) (now 19 CFR 351.212(c)), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies, except those covered by this review, will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. *See 1994 Castings Final*. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Results of Countervailing Duty Administrative Review: Certain Iron-Metal Castings From India*, 61 FR 64676 (December 6, 1996) (*1993 Castings Final*). These rates shall apply to all non-reviewed companies, including those companies for which the review is being rescinded, until a review of a company assigned these rates is requested and completed. In addition, for the period January 1, 1996 through December 31, 1996, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: November 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–30856 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 92–5A001.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to Aerospace Industries Association of America ("AIA") on April 10, 1992. Notice of issuance of the Certificate was published in the **Federal Register** on April 17, 1992 (57 FR 13707).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 92–00001, was issued to Aerospace Industries Association of America on April 10, 1992 (57 FR 13707, April 17, 1992) and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992); October 8, 1993 (58 FR 53711, October 18, 1993); November 17, 1994 (59 FR 60349, November 23, 1994); and June 26, 1995 (60 FR 36262, July 14, 1995).

AIA's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): The Aerostructures Corporation, Nashville, TN (Controlling Entity: The Carlyle Group, Washington, DC); Alliant Techsystems Incorporated, Hopkins, MN; Barnes Aerospace, Windsor, CT (Controlling Entity: Barnes Group, Inc., Bristol, CT); CMS, Inc., Tampa, FL (Controlling Entity: Daimler-Benz North American Corporation, New York, NY); Ducommun Incorporated, Long Beach, CA; Dynamic Engineering Incorporated, Newport News, VA; Esterline Technologies, Bellevue, WA; Intertubine Corporation, Peabody, MA (Controlling Entity: NV Interturbine, The Netherlands); Kistler Aerospace Corporation, Kirkland, WA; Litton Industries, Inc., Woodland Hills, CA; MOOG Inc., East Aurora, NY; Pacific Scientific Company, Duarte, CA; Robinson Helicopter Company, Inc., Torrance, CA; Rockwell Collins, Inc.,

Cedar Rapids, IA (Controlling Entity: Rockwell International Corporation, Costa Mesa, CA); Rolls-Royce North America, Inc., Reston, VA (Controlling Entity: Rolls Royce plc, London, England); Triumph Controls, Inc., North Wales, PA (Controlling Entity: Triumph Group, Inc., Wayne, PA); United Defense, L.P., Arlington, VA (Controlling Entity: The Carlyle Group, Washington, DC); Veridian Corporation, Alexandria, VA; and Woodward Governor Company, Rockford, IL.;

2. Delete as "Members" of the Certificate: Ceridian Corporation, Minneapolis, MN; Chrysler Technologies Corporation, Arlington, VA; E-Systems, Inc., Dallas, TX; FMC Corporation, Chicago, IL; Heath Tecna Aerospace Co., Kent, WA; Hercules Incorporated, Wilmington, DE; Loral Vought Systems Corporation, Dallas, TX; Lord Corporation, Erie, PA; Martin Marietta Corporation, Bethesda, MD; McDonnell Douglas Corporation, Berkeley, MO; Rockwell International Corporation, Seal Beach, CA; Rohr, Inc., Chula Vista, CA; Teledyne, Inc., Los Angeles, CA; Texas Instruments Incorporated, Dallas, TX; Westinghouse Electric Corporation, Pittsburgh, PA; and Williams International Corporation, Walled Lake, MI; and

3. Change the listing of the company name for the current "Members" cited in this paragraph to the new listing cited in parenthesis as follows: GEC-Marconi Electronic Systems Corporation (Marconi North America Inc.); General Motors Hughes Electronics (Hughes Electronics Corporation); Lockheed Corporation (Lockheed Martin Corporation); and Thiokol Corporation (Cordant Technologies Inc.).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: November 12, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–30745 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 980107004–8216–02]

Approval of Withdrawal of Sixteen Federal Information Processing Standards (FIPS) Publications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce has approved the withdrawal of sixteen Federal Information Processing Standards (FIPS) Publications.

Sixteen FIPS are being withdrawn because they are obsolete, or have not been updated to adopt current voluntary industry standards. Federal agencies and departments are directed by the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, to use technical standards that are developed in voluntary consensus standards bodies. Consequently, there no longer is a need for FIPS that duplicate voluntary industry standards.

EFFECTIVE DATE: This withdrawal is effective November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley M. Radack, telephone (301) 975–2833, National Institute of Standards and Technology, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: On February 24, 1998, notice was published in the **Federal Register** (63 FR 9199) proposing withdrawal of nineteen Federal Information Processing Standards (FIPS) Publications, because the technical specifications that they adopt are obsolete and are no longer supported by industry.

Withdrawal means that the FIPS will no longer be part of a subscription series that is provided by the National Technical Information Service, and that NIST will no longer be able to support the standards by answering implementation questions or updating the FIPS when the voluntary industry standards are revised. Current voluntary industry standards should be used by agencies in their procurement actions when appropriate, in accordance with OMB Circular A–119, Federal Participation and Use of Voluntary Standards.

This notice provides only the FIPS publication number, title, and the technical specifications number for each of the sixteen FIPS Publications being withdrawn:

- FIPS 41, Computer Security Guidelines for Implementing the Privacy Act of 1974
- FIPS 69–1, FORTRAN (ANSI X3.9–1978/R1989)
- FIPS 100–1, Interface Between Data Terminal Equipment (DTE) and Data Circuit-Terminating (DCE) for Operation with Packet-Switched Data Networks (PSDN), or Between Two DTEs, by Dedicated Circuit (ANSI X3.100–1989)
- FIPS 120–1, Graphical Kernel System (GKS) (ANSI X3.124–1985/R1991; X3.124.1–1985/R1991; X3.124.2–1988/R1994; X3.124.3–1989; and ISO/IEC 8651–4:1991)
- FIPS 125–1, MUMPS (ANSI/MDC X11.1–1990)
- FIPS 128–2, Computer Graphics Metafile (CGM) (ANSI/ISO 8632.1–4:1992 [1994]; 8632:1992/Amd.1:1994 & Amd. 2:1995; MIL–D–28003A+Amd.1; and ATA Spec. 2100, Version 2.1)
- FIPS 138, Electrical Characteristics of Balanced Voltage Digital Interface Circuits
- FIPS 142, Electrical Characteristics of Unbalanced Voltage Digital Interface Circuits
- FIPS 143, General Purpose 37-Position and 9-Position Interface Between Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA–RS–449)
- FIPS 146–2, Profiles for Open Systems Internetworking Technologies (POSIT)
- FIPS 148, Procedures for Document Facsimile Transmission
- FIPS 153–1, Programmer's Hierarchical Interactive Graphics System (PHIGS) (ANSI/ISO 9592.1,2,3:1989; 9592.1a,2a,3a,4:1992; 9593.1:1990; 9593.2–1990; 9593.4:1991; and 9593.1/AM1, 3/AM1, 4/AM1:1991)
- FIPS 154, High Speed 25-Position Interface for Data Terminal Equipment and Data Circuit-Terminating Equipment (EIA–530–1987)
- FIPS 177–1, Initial Graphics Exchange Specification (IGES) (ANSI/US PRO–100–1993, Version 5.2, LEP Application Protocol, IP–110–1994, and Engr. Dwg. (Class II) Subset (MIL–D–28000A), Dec. 1992 Version)
- FIPS 178, Video Teleconferencing Services at 56 to 1,920 kb/s (ITU–T Recommendations H.221–1993, H.230–1993, H.242–1993, H.261–1993, and H.320–1993)
- FIPS 179–1, Government Network Management Profile (GNMP)

The written comments submitted by interested parties and other materials

available to the Department relevant to these publications were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the withdrawal of the sixteen FIPS Publications, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

Because of comments received, NIST will delay the withdrawal of three FIPS that had been proposed for withdrawal in the February 24, 1998, notice. FIPS 183, Integration Definition for Function Modeling (IDEFO), and FIPS 184, Integration Definition for Information Modeling (IDEF1X), will be retained until voluntary industry standards are available. FIPS 160, C (ANSI/ISO 9899:1992), will be retained until NIST's validation program for the C programming language ends later this year, and then the FIPS will be withdrawn at that time. NIST will publish a **Federal Register** notice announcing the withdrawal of FIPS 160 before December 31, 1998.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

Authority: Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, Public Law 104–106.

Dated: November 12, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30796 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Initiation of Review of Management Plan/Regulations of the Stellwagen Bank National Marine Sanctuary; Intent To Prepare a Draft Environmental Impact Statement and Management Plan; Public Scoping Meetings

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS) National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of intent to prepare environmental impact statement; notice of scoping meetings.

SUMMARY: The Stellwagen Bank National Marine Sanctuary (SBNMS or Sanctuary) was designated in November 1992, and consists of 638 square nautical miles of open ocean over and surrounding Stellwagen Bank, occurring between Cape Ann and Cape Cod, Massachusetts. The present management plan for the Sanctuary was completed in July 1993. In accordance with Section 304(e) of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 *et seq.*), the Marine Sanctuaries Division (MSD) of the National Oceanic and Atmospheric Administration (NOAA) is initiating review of the management plan, to evaluate substantive progress toward implementing goals for the Sanctuary, and to make revisions to the plan and regulations as necessary to fulfill the purposes and policies of the NMSA.

The revised management plan will likely involve changes to existing policies and regulations of the Sanctuary, to address contemporary issues and challenges, and to better protect and manage the Sanctuary's resources and qualities. The review process is composed of four major stages: information collection and characterization; preparation and release of a draft management plan/environmental impact statement, and any proposed amendments to the regulations; public review and comment; and preparation and release of a final management plan/environmental impact statement, and any final amendments to the regulations. NOAA anticipates completion of the revised management plan and concomitant documents will require approximately eighteen months.

NOAA will conduct public scoping meetings to gather information and other comments from individuals, organizations, and government agencies on the scope, types and significance of issues related to the Sanctuary's management plan and regulations. The scoping meetings are scheduled for the second week in December 1998, as detailed below. All interested persons are invited to attend, and to provide oral comments. Interested persons may also submit written comments at the scoping meetings, or to the address below. Written comments should be received by January 15, 1999.

DATES AND ADDRESSES: Scoping meetings will be held at:

(1) Cape Cod Community College, Commons Building, Upper Commons Room, 2240 Iyanough Road, West Barnstable, MA, Tuesday, December 8, 1998, 7–9 p.m.;

(2) National Marine Fisheries Service (New England Region), 1st Floor Conference Room, One Blackburn Drive, Gloucester, MA, Wednesday, December 9, 1998, 7–9 p.m.; and

(3) New England Aquarium, Education Center, Central Wharf, Boston, MA, Thursday, December 10, 1998, 7–9 p.m.

Written comments may be sent to Stellwagen Bank National Marine Sanctuary (Management Plan Review), Scituate Coast Guard Station, 175 Edward Foster Road, Scituate, MA 02066. Comments will be available for public review at the same address.

FOR FURTHER INFORMATION CONTACT: Brad Barr, Sanctuary Manager, at (508) 747–1691. The Sanctuary office is located at 14 Union Street, Plymouth, MA. Following December 15, 1998, the Sanctuary office will be located at the Scituate address listed above.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: November 13, 1998.

Capt Evelyn Fields,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 98–30863 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111298C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for a scientific research permit (1184) and modifications to scientific research permits (1074, 1124).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Garcia and Associates (GAA) in San Anselmo, CA (1184); NMFS has received applications for modifications to existing permits from: Pacific Lumber Company in Scotia, CA (PALCo) (1074), and Idaho Department of Fish and Game at Boise, ID (IDFG) (1124).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before December 18, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1074 and 1184: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707–575–6066).

For permit 1124: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1074 and 1184: Tom Hablett, Protected Resources Division, (707–575–6066).

For permit 1124: Leslie Schaeffer, Portland, OR (503–230–5433).

SUPPLEMENTARY INFORMATION:

Authority

Permits are requested under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the below application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species are covered in this notice: Chinook salmon (*Oncorhynchus tshawytscha*), Coho salmon (*O. kisutch*), Sockeye salmon (*O. nerka*), and Steelhead trout (*O. mykiss*).

New Application Received

GAA (1184) requests a 5-year permit for takes of adult and juvenile, threatened, central California coast coho salmon, and adult and juvenile, endangered, southern California coast steelhead associated with fish population studies throughout the Evolutionarily Significant Units (ESUs) within California. Salmon and steelhead studies conducted by GAA will consist of four assessment tasks for which ESA-listed fish are proposed to be taken: (1) Presence/absence, (2) population estimates, (3) fish rescue, and (4) tissue/scale sampling for genetic studies. ESA-listed fish will be observed or captured, anesthetized, handled (weighed, measured, fin-clipped), allowed to recover from the anesthetic, and released. Indirect mortalities associated with the research are also requested.

Modification Requests Received

PALCo (1074) requests modification 1 to permit 1074 for authorization to include takes of adult and juvenile, threatened coho salmon for enhancement purposes in Yager Creek Basin within the California portion of the southern Oregon/northern California coast (SONCC) coho salmon ESU. PALCo will conduct an adult sampling program in Humboldt County. These studies are to determine: (1) population estimates; (2) hatchery to wild salmonid ratios; (3) stream utilization; and (4) genetic heritage. Adults will be trapped, measured, sampled for tissues and/or scales, marked and released (if not being retained for broodstock). Spawner surveys are also proposed, including the handling and sampling of carcasses. The propagation program conducted at the PLC's Yager Creek Hatchery is to rebuild depleted populations of coho salmon to naturally self-sustaining levels. Both wild and hatchery-produced adults will be used for broodstock. The control of disease, maintenance of genetic viability, and the annual releases of juveniles are in accordance with the guidance of NMFS and the California Department of Fish and Game. Modification 1 is requested to be valid for the duration of the permit, which expires on June 30, 2003.

IDFG requests modification 1 to permit 1124. The permit authorizes annual takes of adult and juvenile, endangered, Snake River (SnR) sockeye salmon; adult and juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and juvenile, threatened, SnR fall chinook salmon associated with scientific research in the state of Idaho. Research activities conducted under this permit are expected to provide information about ESA-listed fish population status and dynamics, life history traits, survival rates, behavior features, and fish health. For modification 1, IDFG requests an increase in the annual take of juvenile, threatened, naturally produced, SnR spring/summer chinook salmon. IDFG underestimated parr production and emigration of this species in 1998. ESA-listed juvenile fish are proposed to be captured, handled, and released. Modification 1 is requested to be valid for the duration of the permit, which expires on December 31, 2002.

Dated: November 12, 1998.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30840 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111298B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permits (1174, 1176, 1178) and a modification to a scientific research permit (1053)

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has issued permits to: Mr. Harold Brundage III, of Environmental Research and Consulting, Inc., Chadds Ford, PA (ECRI) (1174), Mr. W. Coleman Long, of US Army Corps of Engineers, Wilmington, DE (COE) (1176), and Michael P. Sissenwine, Ph.D., Northeast Fisheries Science Center, National Marine Fisheries Service, Woods Hole, MA (NEFSC) (1178); and NMFS has issued a modification to a scientific research permit to Molly Lutcavage, Ph.D., New England Aquarium, Boston, MA (NEA) (1053).

DATES: Written comments or requests for a public hearing on any of the applications must be received on or before December 18, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1053, 1174, and 1178: Protected Resources Division, F/NER3, One Blackburn Dr., Gloucester, MA 01930 (978–281–9328).

For permits 1176: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 1174 and 1176: Terri Jordan, Silver Spring, MD (301–713–1401);

For permits 1053 and 1178: Michelle Rogers, Silver Spring, MD (301–713–1401)

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the ESA, is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Permits and modifications are issued in accordance with and are subject to parts 217–222 of Title 50 CFR, the NMFS regulations governing listed species permits.

Species Covered in this Notice

The following species are covered in this notice: Green turtle (*Chelonia mydas*), Hawksbill turtle (*Eretmochelys imbricata*), Kemp's ridley turtle (*Lepidochelys kempii*), Leatherback turtle (*Dermochelys coriacea*), Loggerhead turtle (*Caretta caretta*), and Shortnose sturgeon (*Acipenser brevirostrum*).

Permits and Modifications Issued

Notice was published on September 1, 1998 (63 FR 46416), that NEA had filed an application for a modification to permit 1053. Modification 1 was issued on November 19, 1998, and authorizes NEA to conduct direct in-water capture of 8 leatherback turtles, which will be satellite tagged, PIT tagged, blood sampled, weighed, measured, and photographed. The turtles will be captured using a breakaway hoop net, a method that has been used successfully to capture porpoise, pinnipeds, and small cetaceans. Modification 1 also authorizes a 2-year extension to permit 1053. Modification 1 is valid for the duration of the permit, which expires on December 31, 2000.

Notice was published on August 3, 1998 (63 FR 41229), that an application had been filed by ECRI. Permit 1174 was issued on October 22, 1998, and authorizes ECRI to sample for and collect shortnose sturgeon in the Delaware River and Estuary system and in the lower Susquehanna River/Chesapeake Bay Complex. The objectives of the study are to collect data on current distribution, abundance, length structure and movements of shortnose sturgeon in the Delaware River Estuary and in the low Susquehanna River and Chesapeake Bay. Emphasis will be placed on calculating reliable population estimates, determining aggregation areas, and obtaining information on juvenile shortnose sturgeon. Information on population size and length distribution for the Delaware River population will be compared with that during the 1980s. Permit 1174 expires on August 31, 2003.

Notice was published on August 31, 1998 (63 FR 46218), that an application had been filed by COE. Permit 1176 was issued on November 9, 1998, and authorizes COE to use hatchery bred shortnose sturgeon to test the potential impacts of blasting to deepen Wilmington harbor in North Carolina. COE will place hatchery raised sturgeon in wire cages below the surface and subject them to a series of tests blasts to determine the effect that the harbor deepening will have on wild sturgeon in the harbor. As required by a September 13, 1996, biological opinion, additional protective measures will be taken during the test blasting to prevent wild sturgeon from being affected. These measures include relocation of any wild sturgeon found to be in the area prior to the blasts and air bubble curtains. Due to contract awards schedule, the test blast schedule would likely begin in November, 1998 and may continue through January, 1999. Permit 1176 expires on December 31, 1999.

Notice was published on September 15, 1998 (63 FR 49335), that an application had been filed by NEFSC. Permit 1178 was issued on October 29, 1998, and authorizes NEFSC to take listed sea turtles taken incidental to fisheries in the Northwest Atlantic Ocean. The work will be conducted by scientific observers aboard such vessels. The following species and take numbers have been authorized: 300 loggerhead, 85 leatherback, 10 Kemp's ridley, 10 hawksbill, and 10 green turtles. NEFSC is authorized to measure, photograph, flipper tag, scan for PIT tags, resuscitate (if necessary) and release turtles taken by foreign and domestic commercial fishing vessels operating in state waters and the Exclusive Economic Zone. Further, NEFSC is authorized to bring to shore, when feasible, dead sea turtles for necropsy. Necropsy will only be performed by personnel currently permitted to conduct such research. This research supports the NMFS mission of assessing the impacts of commercial fisheries on marine resources of interest to the United States. Permit 1178 expires on December 31, 2003.

Dated: November 12, 1998.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30841 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102998C]

Marine Mammals; Permit No. 1024 (P77–2#69)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 1024 submitted by the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92038 [Co- Investigator: Dr. Rennie S. Holt) has been granted to increase the number of Antarctic fur seals to be taken annually.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289).

SUPPLEMENTARY INFORMATION: On September 15, 1998, notice was published in the **Federal Register** (63 FR 49337) that an amendment of permit no. 1024, issued December 30, 1996 (62 FR 1875), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: November 9, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30831 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110498C]

Marine Mammals; File No.914–1470

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that University of Southern Mississippi, Department of Biological Sciences, USM Box 5018, Hattiesburg, MS 39401 [Principal Investigator: Mr. Bobby L. Middlebrooks], has been issued a permit to import fluid and tissue samples of bottlenose dolphin *(Tursiops truncatus* and *gilli)*, beluga whale (*Delphinapterus leucas*), and Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) held captive in facilities in Nassau, Bahamas, Honduras, and Finland for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On September 15, 1998, notice was published in the **Federal Register** (63 FR 49337) that a request for a scientific research permit to import samples had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: November 12, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30832 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Wednesday, December 2, 1998, from 9 a.m. to 11:30 a.m. and from 1 p.m. to 4 p.m. The session from 9 a.m. to 11:30 a.m. will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion of NTIS' long range plans. The closed session discussion is scheduled to begin at 9 a.m. and end at 11:30 a.m. on December 2, 1998. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on December 2, 1998, at 9 a.m. and adjourn at 4 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation from 1 p.m. to 4 p.m. on December 2, 1998. Approximately thirty minutes will be set aside on December 2, 1998, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 Telephone: (703) 605–6400; Fax (703) 605–6700.

Dated: November 10, 1998.

Donald W. Corrigan,

Acting Director.

[FR Doc. 98–30849 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Brazil and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to

the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Brazil and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Aggregate Limit 200–227, 237, 239pt. [1], 300–326, 331–348, 350–352, 359pt. [2], 360–363, 369–D [3], 369pt. [4], 400–431, 433–438, 440–448, 459pt. [5], 464, 469pt. [6], 600–629, 631, 633–652, 659pt. [7], 666, 669–P [8], 669pt. [9] and 670, as a group.	544,207,428 square meters equivalent.
Sublevels within the aggregate	
218	6,762,406 square meters.
219	24,688,791 square meters.
225	11,834,212 square meters.
300/301	9,171,379 kilograms.
313	56,792,206 square meters.
314	9,298,311 square meters.
315	27,894,932 square meters.
317/326	25,359,027 square meters.
334/335	181,974 dozen.
336	101,098 dozen.
338/339/638/639	1,819,750 dozen.
342/642	535,814 dozen.
347/348	1,314,263 dozen.
350	203,896 dozen.
361	1,374,921 numbers.
363	29,344,134 numbers.
369–D	655,395 kilograms.
410/624	13,524,815 square meters of which not more than 2,735,601 square meters shall be in Category 410.
433	18,990 dozen.
445/446	74,391 dozen.
604	641,996 kilograms of which not more than 490,670 kilograms shall be in Category 604–A [10].
607	5,961,398 kilograms.
647/648	606,584 dozen.
669–P	2,184,653 kilograms.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[2] Category 359pt.: all HTS numbers except 6406.99.1550.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369pt.: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[6] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[7] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[8] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[9] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[10] Category 604–A: only HTS number 5509.32.0000.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

The conversion factor for merged Categories 338/339/638/639 is 10 (square meters equivalent/category unit).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator "pt."

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30797 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on

embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67830, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group I	
200–227, 300–326, 360–363, 369(1) [2], 369pt. [3], 400–414, 464, 469pt. [4], 600–629, 666, 669pt. [5] and 670, as a group.	233,958,436 square meters equivalent.
Group II	
237, 239pt. [6], 331–348, 350–352, 359(1) [7], 359(2) [8], 359pt. [9], 431, 433–438, 440–448, 459pt. [10], 631, 633–652, 659(1) [11], 659(2) [12], 659pt. [13], and 443/444/643/644/843/844(1), as a group.	842,148,945 square meters equivalent.
Sublevels in Group II	
359(1)	642,706 kilograms.
659(1)	690,724 kilograms.
Within Group II subgroup	
351	1,222,151 dozen.
651	321,445 dozen.

[1] These limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369(1): only HTS number 6307.10.2005.

[3] Category 369pt.: all HTS numbers except 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 6406.10.7700 and HTS number in 369(1).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[5] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 359(1): only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[8] Category 359(2): only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[9] Category 359pt.: all HTS numbers except 6406.99.1550 and HTS numbers in 359(1) and 359(2).

[10] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[11] Category 659(1): only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[12] Category 659(2): only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659pt.: all HTS numbers except 6406.99.1510, 6406.99.1540 and HTS numbers in 659(1) and 659(2).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30798 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67831, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	14,051,165 square meters.
314	7,478,793 square meters.
334/634	156,421 dozen.
336/636	1,038,204 dozen.
338/339	4,176,074 dozen.
345	206,479 dozen.
363	44,958,680 numbers.
369–S [2]	720,820 kilograms.
641	1,343,145 dozen.
647/648	481,433 dozen.
Group II.	
200, 201, 220–227, 237, 239pt. [3], 300, 301, 331–333, 350, 352, 359pt. [4], 360–362, 600–604, 606 [5], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [6], 666, 669pt. [7], 670, 831, 833–838, 840–858 and 859pt. [8], as a group.	112,440,569 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 359pt.: all HTS numbers except 6406.99.1550.

[5] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[6] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[7] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–30800 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, and Memoranda of Understanding (MOUs) dated November 6, 1996 and June 20, 1997, between the Governments of the United States and Nepal establish limits for the period January 1, 1999 through December 31, 1999.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended; and Memoranda of Understanding dated November 6, 1996 and June 20, 1997 between the Governments of the United States and Nepal, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
336/636	248,267 dozen.
340	358,576 dozen.
341	1,151,784 dozen.
342/642	312,957 dozen.
347/348	807,673 dozen.
363	7,303,400 numbers.
369–S [1]	954,810 kilograms.
640	180,469 dozen.
641	406,913 dozen.

[1] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Nepal.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 6, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Nepal becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Nepal.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30799 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

November 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 363 is being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 60828, published on November 13, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to increase the limit for Category 363 to 8,061,300 numbers [1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30801 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Thailand

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward, recrediting unused carryforward, and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 65246, published on December 11, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 5, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 18, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Group II	
237, 331–348, 350–352, 359–H [2], 359pt. [3], 431, 433–438, 440, 442–448, 459pt. [4], 631, 633–652, 659–H [5], 659pt. [6], 831, 833–838, 840–858 and 859pt. [7], as a group.	322,661,640 square meters equivalent.
Sublevels in Group II	
338/339	2,315,889 dozen.
638/639	2,200,813 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[3] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.90.2060 (Category 359–H); and 6406.99.1550.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540.

[7] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30803 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Export Visa Stamp for Certain Textile Products Produced or Manufactured in Mauritius

November 12, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new export visa stamp.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Beginning on December 1, 1998, the Government of Mauritius will start issuing a new export visa stamp for shipments of textile products, produced or manufactured in Mauritius and exported from Mauritius on or after December 1, 1998 to reflect the name change of the "Ministry of Trade and Shipping" to the "Ministry of Industry and Commerce." There will be a one-month grace period from December 1, 1998 through December 31, 1998, during which products exported from Mauritius may be accompanied by either the old or new export visa stamp. Products exported from Mauritius on or after January 1, 1999 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., room 3104, Washington, DC.

See 60 FR 62076, published on December 4, 1995.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 28, 1995, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain textile products, produced or manufactured in Mauritius for which the Government of the Mauritius has not issued an appropriate export visa.

Beginning on December 1, 1998, you are directed to amend further the directive dated November 28, 1995 to provide for the use of a new export visa stamp issued by the Government of Mauritius to accompany shipments of textile products, produced or manufactured in Mauritius and exported from Mauritius on or after December 1, 1998. This new visa stamp reflects the name change of the "Ministry of Trade and Shipping" to the "Ministry of Industry and Commerce."

Textile products exported from Mauritius during the period December 1, 1998 through December 31, 1998 may be accompanied by either the old or new export visa stamp. Products exported from Mauritius on or after January 1, 1999 must be accompanied by the new export visa stamp.

A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30802 Filed 11–17–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by November 12, 1998. Interested persons are invited to submit comments on or before November 30, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address Werfel—d@a1.eop.gov. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat—Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision,

extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 13, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Request for Comment on Planning and Implementation of the Learning Anytime Anywhere Partnerships Grant Competition.

Abstract: The Learning Anytime Anywhere Partnerships is a new grant competion. The information collected will be used by Dept. Of Education staff to help set priorities and plan implementation of the grant program. It is expected that comments will be received from college and university faculty and administrators, higher education associations, software developers and publishers, industry training groups and other interested organizations or individuals.

Additional Information: This emergency notice is needed to collect feedback in order to develop the grant application.

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 50; Burden Hours: 100.

[FR Doc. 98–30909 Filed 11–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 18, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel__d@a1.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIPS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J.

Dated: November 12, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Alaskan Native Educational Equity Program.

Frequency: Annually.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 200. Burden Hours: 3,200.

Abstract: The Alaskan Native Programs address the severe educational handicaps of Alaska Native school children. The Department uses the information to make grant awards. This collection involves a discretionary grant which falls under the Streamlined Discretionary Process, 1890–0001.

[FR Doc. 98–30773 Filed 11–17–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Program Interest; Comprehensive Nuclear-Test-Ban Treaty Research and Development Program

AGENCY: Department of Energy (DOE), Office of Nonproliferation and National Security, Office of Research and Development (NN–20).

ACTION: Notice of Program Interest—to fund unsolicited applications/proposals for financial assistance awards contributing to the mission of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) Research and Development (R&D) Program.

SUMMARY: The DOE is interested in receiving for consideration applications for Federal Financial Assistance Awards pursuant to the financial assistance rules contained in Title 10 CFR part 600 (10 CFR part 600, specifically 10 CFR

600.9). On behalf of the DOE CTBT R&D Program, DOE invites Unsolicited Applications/Proposals from interested and qualified Nonprofit Organizations, Institutions of Higher Education, and Commercial Organizations to pursue research that supports the CTBT R&D Program mission.

The CTBT R&D Program mission is: "to carry out research and development necessary to provide U.S. government agencies, that are responsible for monitoring and/or verifying CTBT compliance, with technologies, algorithms, hardware and software for integrated systems to detect, locate, identify and characterize nuclear explosions at the thresholds and confidence levels that meet U.S. requirements in a cost-effective manner." Program priorities focus on the advancement of seismic, infrasound, radionuclide, and hydroacoustic knowledge and capabilities. This Notice of Program Interest is intended to encourage the participation of Nonprofit Organizations, Institutions of Higher Learning, and Commercial Organizations in furthering these program mission interests.

DATES: This Notice of Program Interest expires September 30, 1999. This date is not a deadline for applications; applications may be submitted at any time. An updated notice may be issued after September 30, 1999.

ADDRESSES: Applicants seeking funding consideration by the CTBT R&D Program under this Notice of Program Interest are requested to mark and submit their Unsolicited Applications/Proposals, eight (8) total, as follows:

Original and copies #1–6: Leslie A. Casey, Treaty Monitoring Programs Manager, c/o CTBT R&D Program—Notice of Program Interest—NN–20, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–0420. DOE/NN–20 will initiate the objective merit review process.

Copy #7: John N. Augustine, Unsolicited Applications/Proposals Manager, c/o CTBT R&D Program—Notice of Program Interest—NN–20, U.S. Department of Energy, Federal Energy Technology Center (FETC), 626 Cochrans Mill Road, PO Box 10940, Pittsburgh, PA 15236–0940. DOE–FETC will assign a DOE identification number and acknowledge receipt of the proposal.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy (NN–20), 1000 Independence Ave., SW., Washington, DC 20585–0420. Attn.: Leslie A. Casey, Telephone Number: (202) 586–2151, Fax Number: (202) 586–0485.

SUPPLEMENTARY INFORMATION: Responses to this Notice of Program Interest must explain how the proposed work furthers the CTBT R&D Program mission and resolves program research issues. These are summarized on the Web Page: "http://www.ctbt.rnd.doe.gov/coordination/", under the heading "R&D Issues and Metrics". Successful applications will: demonstrate a knowledge of the CTBT R&D Program (as represented in the Reports Listing at the Program's web site—http://www.ctbt.rnd.doe.gov); offer novel or innovative approaches leading to performance improvements and cost reductions; and/or respond to ground truth data deficiencies.

Application Submission Requirements

Applications/proposals are to follow the "Guide for the Submission of Unsolicited Applications/Proposals," (DOE/PR–0014) which is available on the Web Page "http://www.fetc.doe.gov/business/index.html). This guide identifies What to Submit with respect to Departmental information requirements for Basic Information, Business and Financial Information, Technical Information, and Certifications. It is imperative that Unsolicited Applications/Proposals adequately address these requirements as omissions could delay proposal processing.

In addition, Unsolicited Applications/Proposals are to address the technical work to be performed and costs associated with that work. The required information and format are as follows:

(1) *Project Description:* (Provide a comprehensive, but succinct (350 character) summary of the proposed research project. It should convey the project objective, application, method, product and value to U.S. government agencies and other users).

(2) *Objective(s):* (State research objectives).

(3) *Application:* (Describe the product and how it is to be used. Discuss the product's merits over the current baseline and any technical uncertainties that could impede the performance of the resulting product).

(4) *User(s):* (Identify potential users and indicate whether they have expressed interest in the product).

(5) Prior Work: (Summarize the current state-of-the-art for the stated field of endeavor. Provide credentials of key participants and describe their previous relevant work. Cite applicable bibliographic references).

(6) Collaborators: (Identify other participants and describe their role and contribution).

(7) Proposed Work & Scientific Basis: (Specify the technical approach to manage the project; describe specific tasks and subtask activities to be conducted by Work Breakdown Structure (WBS) to achieve the research objectives; and identify key decision points (milestones). Relate these elements to how they further the stated research objectives and advance the state-of-the-art).

(8) Research Issues: (Identify the technical issues that will be addressed by the project; list potential barriers and explain how they will be overcome).

(9) Tasks: (By WBS element list the tasks, associated subtasks, and associated costs. Differentiate the cost for fully burdened labor, equipment, materials, other (such as travel, taxes, fee (if applicable), etc.) (Once Unsolicited Proposals are selected for funding, a complete break-down by cost element will be required.)

(10) Milestones: (List milestones (key decision points) and scheduled completion dates by task).

(11) Deliverables: (List deliverables (products) and scheduled completion dates by task).

Unsolicited Applications/Proposals will be evaluated against many factors. Some of the criteria that are likely to apply include: technical merit; applicant's familiarity with other ongoing work; the relevance and quality of the applicant's prior work; the effectiveness of the proposed technical approach; timeliness; cost; and the period of performance. Successful proposals will also facilitate evaluation against these criteria.

Funding Considerations

Financial Assistance Awards (Grants or Cooperative Agreements) are anticipated to be funded for project durations of 1–3 years and awards will generally range from $100,000 to $500,000. While Unsolicited Applications/Proposals may be considered for funding at any time following receipt, favorable consideration may be enhanced by timing submission to parallel DOE's review and funding cycle. Applications/proposals that are submitted by March 1, 1999 will support funding decisions in June/July, 1999 followed by contract negotiations over the summer in preparation for awards in early FY 2000.

Submission, Withdrawal, and Unsuccessful Applications

Unsolicited Proposals will be accepted on an ongoing basis. Unsolicited Applications/Proposals must state an acceptance period of 180 days; however, Unsolicited

Applications/Proposals may be withdrawn by the Applicant at any time by written notification to the DOE Unsolicited Applications/Proposals Manager previously identified. Unsolicited Applications/Proposals that are received may be considered for funding at any time following receipt. Unsolicited Applications/Proposals that are not selected in FY 98 may be reconsidered for funding in the following year. Unsolicited Applications/Proposals that are not funded and not withheld for reconsideration will be destroyed and the Applicant will be notified accordingly. A Federal Financial Assistance Award (Grant and Cooperative Agreements) application package which includes a sample award can be obtained from the DOE Contracting Officer previously identified or can be down-loaded from the DOE AL Web Page: "http://www.doeal.gov/cpd/" under the heading "Solicitations".

It is DOE policy to exercise extreme care to ensure that the proposal information is not duplicated, used or disclosed in whole or in part for any purpose other than to evaluate the proposal, without written permission of the Applicant. Furthermore, with respect to the Unsolicited Proposal evaluation, the Applicant is hereby informed that it is standard practice of the CTBT R&D program officials to include review by DOE laboratory managers and experts in the topic area of the proposal. If you are an expert and are willing to serve as a reviewer on a non-remunerative basis, the CTBT R&D Program would like to be notified of your interest. Serving as a technical reviewer could encompass these Unsolicited Proposals, subject to non-disclosure agreements, as well as other proposals related to the CTBT R&D Program. Interested individuals are requested to forward their résumé and cover letter expressing their interest to: Manager, Treaty and Monitoring Program (NN–20), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585–0420. Finally, proposal evaluation may include coordination with other government agencies or their designated contractors, primarily to check for duplication of effort and end user interest. This is an important integration practice appropriate to a full-scope, ongoing and mature program such as the CTBT R&D program.

Issued in Washington, DC on November 12, 1998.

Leslie A. Casey,

Treaty Monitoring Programs Manager, NN–20.

[FR Doc. 98–30785 Filed 11–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, December 3, 1998, 6 p.m.–9:30 p.m.

ADDRESSES: Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The Board plans to continue its discussion on waste management topics.
2. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on November 13, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–30864 Filed 11–17–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–142–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 5, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to be effective December 7, 1998:

Fourth Revised Sheet No. 70

ANR states that the purpose of this filing is to set forth in the pro forma service agreement contained in its tariff the specific types of discounts that ANR may agree to enter into with its shippers.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30819 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–1–000]

Burlington Resources Oil & Gas Company; Notice of Petition for Adjustment

November 12, 1998.

Take notice that on October 30, 1998, Burlington Resources Oil & Gas Company (Burlington), filed a petition for adjustment under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting an order from the Commission finding that Burlington has no Kansas ad valorem tax refund liability to Panhandle Eastern Pipe Line Company (Panhandle), under the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[1] Burlington's petition is on file with the Commission and open to public inspection.

The Commission's September 10 order on remand from the D.C. Circuit Court of Appeals[2] directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

Panhandle served Southland Royalty Company (Southland) with a Kansas ad valorem tax refund claim. Burlington states that Southland was merged into Burlington on January 1, 1996, i.e., Burlington is Southland's successor.

Burlington further states that Southland entered into a November 24, 1992 Letter Agreement with Panhandle, which terminated the applicable Gas Purchase Agreements giving rise to Southland's refund obligation to Panhandle. Burlington adds that Paragraph 7 of that Letter Agreement released the parties from any claims under those contracts. In view of this, Burlington contends that Panhandle's Kansas ad valorem tax refund claim is a claim against Southland that relates to the Southland-Panhandle contracts and that, as such, Panhandle assumed the risk of and liability for the subject refunds. Accordingly, Burlington contends that it does not owe any refunds to Panhandle.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

David P. Boergers,

Secretary.

[FR Doc. 98–30818 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

[1] See 80 FERC ¶ 61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996), cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–141–000]

KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

November 12, 1998.

Take notice that on November 5, 1998, KN Wattenberg Transmission Limited Liability Co. (KNW) tendered for filing to become a part of KNW's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective December 5, 1998:

First Revised Sheet No. 0
First Revised Sheet No. 16
First Revised Sheet No. 77
First Revised Sheet No. 80
First Revised Sheet No. 81
First Revised Sheet No. 82
First Revised Sheet No. 88
First Revised Sheet No. 91
First Revised Sheet No. 92
First Revised Sheet No. 93
First Revised Sheet No. 94
First Revised Sheet No. 95
First Revised Sheet No. 99

KNW is making this housekeeping filing as an effort to clarify and correct various sections of KNW's FERC Tariff.

KNW states that copies of the filing were served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30820 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP98–259–001 and TM99–2–31–001 (not consolidated)]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 6, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised volume No. 1, the following revised tariff sheets to be effective November 1, 1998:

Docket No. RP98–259–000

Substitute Thirteenth Revised Sheet No. 5
Substitute Thirteenth Revised Sheet No. ■

Docket No. TM99–2–31–000

Substitute Fourteenth Revised Sheet No. 5
Substitute Fourteenth Revised Sheet No. 6

NGT states that this filing is being submitted to reflect administrative corrections related to NGT's approved Electric Power Costs (EPC) surcharge with respect to its inclusion in the Maximum and Minimum Commodity and Overrun Rates.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30762 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–47–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

November 12, 1998.

Take notice that on November 2, 1998, NorAm Gas Transmission Company (NorAm), 1111 Louisiana Street, Houston, Texas 77210, filed in Docket No. CP99–47–000 a request pursuant to Sections 157.205, 157.211 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to abandon, construct, and operate certain facilities in Arkansas. NorAm makes such request under its blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

NorAm proposes to abandon, by sale and transfer to Arkla, the facilities list below which are located in Lafayette and Columbia Counties, Arkansas. The facilities will be sold to Arkla at their net book value of $140,931.73. Specifically, NorAm proposes to sell to Arkla a 1.53 mile segment of Line AM–39 that serves the Town of Buckner, Arkansas and nine rural delivery taps. NorAm also proposes to abandon a 5.33 mile segment of Line AM–39, Line AM–42 in its entirety, and approximately 1.6 miles of Line AM–44 used to deliver gas to the Town of Waldo, Arkansas and eight rural delivery taps.

It is stated that Arkla will operate these facilities as part of its distribution system to provide low-pressure service to its existing customers. It is averred that no service will be abandoned as a result of this proposed abandonment.

In conjunction with these abandonments, NorAm proposes to install a 2-inch meter station on Line AM–190 and a 3-inch meter station on Line AM–44 to continue deliveries to Arkla. NorAm estimates the cost to construct these two taps to be approximately $13,076.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–30765 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP99–144–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 6, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 1, 1999:

Fortheenth Revised Sheet Number 156
Thirteenth Revised Sheet Number 157

Northern Border proposed to increase the Maximum Rate from 3.683 cents per 100 Dekatherm-Miles to 3.716 cents per 100 Dekatherm-Miles and to decrease the Minimum Revenue Credit from 1.535 cents per 100 Dekatherm-Miles to 1.463 cents per 100 Dekatherm-Miles. The revised Maximum Rate and Minimum Revenue Credit are being filed in accordance with Northern Border's Tariff provisions under Rate Schedule IT–1.

The herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30816 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–419–001]

OkTex Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 12, 1998.

Take notice that on November 6, 1998, OkTex Pipeline Company (OkTex), filed the tariff sheets in compliance with the Commission's directives in Order No. 587–H.

OkTex states that the tariff sheets reflect the changes to OkTex's tariff that resulted from the Gas Industry Standards Board's (GISB) consensus standards that were adopted by the Commission in its July 15, 1998 Order No. 587–H in Docket No. RM96–1–008. OkTex further states that Order No. 587–H contemplates that OkTex will implement the GISB consensus standards for November 1998 business, and that the tariff sheets therefore reflect an effective date of November 2, 1998.

OkTex states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30761 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–55–000]

Portland Natural Gas Transmission System; Notice of Application

November 12, 1998.

Take notice that on November 6, 1998, Portland Natural Gas Transmission System (PNGTS), One Harbour Place, Portsmouth, New Hampshire 03801, filed in Docket No. CP99–55–000, an application, pursuant to Section 7(c) of the Natural Gas Act, for a certificate of public convenience and necessity authorizing the construction and operation of pipeline facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, PNGTS proposes to construct and operate a 4-inch diameter pipe that will extend three feet above ground and a 4-inch diameter valve and flange, near milepost 149.55 in Windham, Maine. PNGTS states that these facilities will be enclosed within a standard six-foot high and ten-foot square chain link fence located on PNGTS's permanent right-of-way. PNGTS expects to utilize these facilities to construct a delivery tap in Windham, Maine in the future to provide natural gas service. PNGTS is currently constructing its pipeline from the Canadian border to Portland, Maine. PNGTS contends that it is more efficient, less expensive, environmentally preferable, and safer to construct the proposed facilities during construction of the PNGTS pipeline rather than after the pipeline has been placed into operation. PNGTS states that the estimated cost of the project is $32,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 19, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for PNGTS to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–30763 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–140–000]

Questar Pipeline Company; Notice of Tariff Filing

November 12, 1998.

Take notice that on November 5, 1998, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of January 1, 1999:

Ninth Revised Sheet Nos. 5 and 5A
Eighth Revised Sheet No. 40
Third Revised Sheet No. 90
Original Sheet No. 90A

Questar tendered this tariff filing in compliance with the Commission's April 29 order that approved the Stipulation and Agreement (S&A) filed by the Gas Research Institute (GRI) on January 21, 1998. The S&A reflects the GRI Surcharge rates for 1999. Additionally, the S&A created a Voluntary Contribution Mechanism for shippers who voluntarily choose to contribute to GRI through a "check-the-box" mechanism. This filing incorporates both the 1999 GRI Surcharge rates and the Voluntary Contribution Mechanism into Questar's tariff.

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and

the Public Service Commission of Wyoming.

Any person desiring to be heart or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30821 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–50–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

November 12, 1998.

Take notice that on November 2, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP99–50–000, pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to relocate certain delivery point facilities including metering and apprutenant facilities where it serves Mississippi Valley Gas Company (MVG) authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern proposes to relocate the existing meter at its existing Clayton Village Delivery Point which is currently located at the end of MVG's 2-inch Clayton Village Line. Southern further proposes to relocate the facilities to a site at or near Mile Post 7.500 on Southern's 6-inch Starkville Lateral Line in Oktibbeha County, Mississippi. Southern reported that the estimated cost of the relocation of the delivery point facilities would be approximately $12,000. Southern continued that the new location would be more accessible to Southern's general operations in this area of its system.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 98–30764 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–93–001]

Texas Eastern Transmission Corporation; Notice of Supplemental Filing

November 12, 1998.

Take notice that on November 6, 1998, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following substitute revised tariff sheet to become effective December 1, 1998:

Sub Twenty-second Revised Sheet No. 35

Texas Eastern states that the above substitute tariff sheet is being filed to supplement Texas Eastern's October 15, 1998 filing in Docket No. RP99–92–000 (October 15 Filing) which reflects a decrease in the PCB-Related Costs component of Texas Eastern's currently effective rates. Texas Eastern states that due to a transposition error in the October 15 Filing, the Rate Schedule SCT Demand Charge for the Market Area path, M1–M3, was understated on the tariff sheet. Texas Eastern states that this supplemental filing is made for the sole purpose of correcting such SCT Demand Charge on Twenty-second Revised Sheet No. 35.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30822 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–92–001]

Texas Eastern Transmission Corporation; Notice of Supplemental Filing

November 12, 1998.

Take notice on November 6, 1998, that Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following substitute revised tariff sheet to become effective December 1, 1998:

Sub Twenty-third Revised Sheet No. 35

Texas Eastern states that the above substitute tariff sheet is being filed to supplement Texas Eastern's October 19, 1998 filing in Docket No. RP99–93–000 (October 19 Filing) in the subject docket. A tariff sheet was filed with a transposition error which occurred in Texas Eastern's Docket No. RP99–92–000 October 15, 1998 filing. The Rate Schedule SCT Demand Charge for the Market Area path, M1–M3, was understated on the tariff sheet. Texas Eastern states that this supplemental filing is made for the sole purpose of correcting such SCT Demand Charge on Twenty-third Revised Sheet No. 35 filed on October 19, 1998.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–30823 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–51–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

November 12, 1998.

Take notice that on November 3, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–51–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon an existing meter and associated appurtenant facilities at the St. Marie meter station in Valley County, Montana. Williston Basin makes such request under its blanket certificate issued in Docket No. CP82–487–000, et al., pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Williston Basin states that it was authorized to acquire and operate the St. Marie meter station pursuant to the Commission's Order dated February 13, 1985 in Docket Nos. CP82–487–000, et al., at 30 FERC ¶ 61,143. It is indicated that on October 10, 1989, Williston Basin filed a prior notice application in Docket No. CP90–24–000 to add additional metering to its existing metering capabilities to more accurately measure the volumes being delivered to the local distribution customer, Montana-Dakota Utilities Company (Montana-Dakota) at that meter station. In that docket Williston Basin was authorized to install an additional meter and a larger relief valve parallel to the existing metering. The new meter was used in conjunction with the smaller existing meter to measure winter load deliveries.

It is averred that the smaller meter at that site is not currently being used and that Williston Basin has determined that due to a reduction in usage in the area because of the closure of a Boeing aircraft test facility, two meters at that location are no longer required. Therefore, Williston Basin proposes herein to abandon the old rotary meter and associated appurtenant facilities at the St. Marie meter station.

Williston Basin states that the abandonment of the old meter and associated appurtenant facilities at the St. Marie meter station will not affect Williston Basin's peak day or annual transportation, since service will continue to be provided through the existing second meter at that site.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorizied effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–30817 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–488–000]

Wisconsin Public Service Corporation; Notice of Filing

November 9, 1998.

Take notice that on November 3, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an amendment to its February 22, 1993, Agreement with the City of Marshfield concerning the ownership and operation of combustion turbine generation. The amendment implements a revision to the capacity rating of the West Marinette Unit.

Wisconsin Public Service Requests waiver of the Commission's Regulations to permit the amendment to become effective on January 1, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before November 23, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–30771 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–92–000, et al.]

Medical Area Total Energy Plant, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 6, 1998.

Take notice that the following filings have been made with the Commission:

1. Medical Area Total Energy Plant, Inc.

[Docket No. EG98–92–000]

Take notice that on November 2, 1998, Medical Area Total Energy Plant, Inc. (MATEP), for good cause shown, hereby amends its application for determination of exempt wholesale generator (EWG) status, filed July 2, 1998, pursuant to 18 CFR 365.5 of the Commission's Regulations. MATEP amends its EWG application in order to demonstrate further that it is exclusively in the business of owning and operating electric generation facilities thereby qualifying for EWG status.

Copies of the amended application were served upon the Securities and Exchange Commission and the Massachusetts Department of Telecommunications and Energy.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Commonwealth Chesapeake Company, L.L.C.

[Docket No. EG99–15–000]

Take notice that on October 30, 1998, Commonwealth Chesapeake Company, L.L.C. (CCCo), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CCCo will own and operate an eligible facility (a 300–MW, oil-fired, electric generating facility) to be located in Accomack County, Virginia.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. ISO New England Inc.

[Docket No. ER98–3554–000]

Take notice that on October 30, 1998, ISO New England Inc. (ISO) tendered for filing proposed rates under Section 205 of the Federal Power Act for its FERC Tariff for Transmission Dispatch and Power Administration Services (the Tariff).

Pursuant to Section 35.13(a)(1) of the Commission's Regulations, 18 CFR 35.13(a)(1), the ISO seeks approval of the rates set forth in its Tariff and accompanying rate schedules.

The ISO requests that these rates be allowed to go into effect on January 1, 1999.

Copies of the filing were served upon all participants in the New England Power Pool (NEPOOL) and all non-participant entities that are customers under the NEPOOL Open Access Transmission Tariff, as well as on the utility regulatory agencies of the six New England States.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

[Docket No. ER98–4289–001]

Take notice that on November 2, 1998, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota) tendered for filing with the Federal Energy Regulatory Commission pursuant to the Commission's October 16, 1998 Order in this proceeding, a compliance filing related to its Market-Based Wholesale Power Sales Rate Schedule.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. CET Marketing L.P. and Cogen Energy Technologies L.P.

[Docket Nos. ER98–4412–000 and ER98–4423–000 (not consolidated)]

Take notice that on October 30, 1998, CET Marketing L.P. and Cogen Energy Technologies L.P. submitted with the Federal Energy Regulatory Commission (Commission) the Power Put and Interconnection Agreement between Niagara Mohawk Power Corporation and Cogen Energy Technologies, as requested by Commission Staff in the above-referenced proceeding.

A copy of this filing letter has been served on all parties on the Commission's official service list.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Co.

[Docket No. ER99–479–000]

Take notice that on October 30, 1998, Carolina Power & Light Company (CP&L) tendered for filing the Agreement Between North Carolina Eastern Municipal Power Agency and Carolina Power 7 Light Company Applicable to Remaining Supplemental load Beginning January 1, 1999. The Agreement is intended to supplement the 1981 Power Coordination Agreement, filed as FERC Rate Schedule No. 121.

CP&L requests an effective date of January 1, 1999.

CP&L states that copies of the filing have been served on the Power Agency as well as on the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Co., et. al., Baltimore Gas and Electric Co., Delmarva Power & Light Co., PECO Energy Co., PP&L, Inc., Potomac Electric Power Co., Public Service Electric and Gas Co., Jersey Central Power & Light Co., Metropolitan Edison Co., Pennsylvania Electric Co., UGI Utilities, Inc.

[Docket No. ER99–396–000]

Take notice that on October 30, 1998, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, PECO Energy Company, PP&L, Inc., Potomac Electric Power Company, Public Service Electric and Gas Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and UGI Utilities, Inc., submitted for filing amendments to the PJM Open Access Transmission Tariff, designated as PJM Interconnection, L.L.C., FERC Electric Tariff, First Revised Volume No. 1 (PJM OATT). The amendments modify the PJM OATT to include a new Schedule 1A—RTO Scheduling, System Control and Dispatch Service.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Allegheny Power Service Corp., on behalf of Monongahela Power Co. and The Potomac Edison Co., and West Penn Power Co. (Allegheny Power)

[Docket No. ER99–397–000]

Take notice that on October 30, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power Companies), filed Amendment No. 6 to the Power Supply Agreement between the Allegheny Power Companies.

The Allegheny Power Companies request a January 1, 1999 effective date for this amendment.

Copies of the filing have been served on the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Energy Co.

[Docket No. ER99–398–000]

Take notice that on October 30, 1998, Consumers Energy Company (CECo), tendered for filing revisions to Sections 1.18 and 34.1 of its Open Access Transmission Tariff. The proposed amendment would allow CECo to calculate the Load Ratio Share of its network transmission service customers on an annual basis, rather than by a rolling twelve month calculation of this ratio. According to CECo, the proposed amendment should have no material impact on transmission compensation.

Copies of the filing have been served on all CECo network transmission customers and the Michigan Public Service Commission.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Co.

[Docket No.ER99–418–000]

Take notice that on October 30, 1998, Pacific Gas and Electric Company (PG&E) tendered for filing a request to extend the Commission's October 2, 1998 Order through June 30,1999. An October 2, 1998 Order approved PG&E's California Independent System Operator's (ISO) Grid Management Charge (GMC) Pass-Through to existing wholesale contract customers for 1998. PG&E seeks an extension of this pass-through authority under the same terms and conditions through June 30, 1999. PG&E also seeks to add the City and County of San Francisco and the Northern California Power Agency to revised rate sheets for this tariff.

PG&E requests that its filing be made effective January 1, 1999.

This filing is part of the comprehensive restructuring proposal for the California electric power industry that is before the Federal Energy Regulatory Commission.

Copies of this filing have been served upon the California Public Utilities Commission and all other parties on the Service List to this proceeding.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. American Electric Power Service Corp.

[Docket No. ER99–421–000]

Take notice that on October 30, 1998, The American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Hoosier Energy REC, Inc. and for Potomac Electric Power Company, and a Network Integration Transmission Service Agreement for Buckeye Power Inc., all under the AEP Companies; Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after October 1, 1998.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Atlantic City Electric Co., et. al.

[Docket No. ER99–422–000]

Take notice that on October 30, 1998, Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, PECO Energy Company, PP&L, Inc., Potomac Electric Power Company, Public Service Electric and Gas Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and UGI Utilities, Inc. submitted an amendment to the Transmission Owners Agreement (TOA). The purpose of this modification to the TOA is to accommodate retail choice in the PJM region.

An effective date of January 1, 1999, has been requested for this modification.

A copy of this filing has been sent to the regulatory commissions of Pennsylvania, New Jersey, Maryland, Delaware, Virginia and the District of Columbia for their information, as well as to PJM Interconnection, L.L.C.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Cogentrix Energy Power Marketing, Inc.

[Docket No. ER99–452–000]

On October 30, 1998, Cogentrix Energy Power Marketing, Inc. (CEPM) filed a Notification of Change in Status, notifying the Commission that CEPM had become affiliated with additional generating companies, as a result of indirect acquisitions by its parent company, Cogentrix Energy, Inc. CEPM also submitted a market power analysis for each market in which a new affiliate owns or controls generation.

Comment date: November 19. 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Co. (Minnesota) and (Wisconsin)

[Docket No. ER99–463–000]

Take notice that on October 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) filed proposed Substitute First Revised Sheet Nos. 73 and 74, Schedule 4—Energy Imbalance Service, to the NSP Open Access Transmission Tariff (Tariff). The substitute tariff sheets replace First Revised Sheet Nos. 73 and 74 accepted for filing effective October 1, 1998, in the Commission's order dated April 30, 1998 in this docket. 83 FERC ¶ 61,203 (1998). The substitute tariff sheets are necessary because the CPEX price index to be used to determine the value of hourly imbalances is no longer published. NSP proposes the substitute tariff pages also be effective October 1, 1998, subject to refund.

In addition, NSP proposes to amend the comparable energy imbalance provisions pursuant to the Western Transmission Agreement (WTA) with Wisconsin Public Power, Inc. (WPPI) and the energy imbalance provisions pursuant to the pre-tariff TM–1 transmission service agreements with various municipal customers.

NSP states that it served a copy of the filing on parties to this consolidated proceeding, on affected Tariff customers and the utility commissions in Minnesota, Michigan, North Dakota, South Dakota and Wisconsin.

Comment date: November 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. American Electric Power Service Corp.

[Docket No. ER99–449–000]

Take notice that on November 2, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective on the dates specified in the initial filings.

A copy of this filing was served upon the parties and the State Utility Regulatory Commission's of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Citizens Utilities Co.

[Docket No. ER99–450–000]

Take notice on that on November 2, 1998, Citizens Utilities Company tendered for filing a Line Loss Amendment to Settlement Agreement. This Line Loss Amendment to Settlement Agreement is sponsored and entered into by all of the signatories to the Settlement Agreement in Docket Nos. ER95–1586–000, EL–96–17–000, and OA96–184–000, including Citizens, Burlington Electric Department, Central Vermont Public Service Corporation, the Vermont Department of Public Service, Vermont Marble Power Division of OMYA, Inc., Vermont Public Power

Supply Authority, Barton Village, Inc., Enosburg Falls Water & Light Department and the Village of Orleans. The Commission approved the Settlement Agreement by letter order issued on November 13, 1997, 81 FERC ¶ 61,197(1997).

Citizens proposes an effective date of January 1, 1999 for the Line Loss Amendment.

Copies of the filing have been served on all of the above persons, as well as all of the parties in Docket Nos. ER95–1586-000, EL96–17–000, and OA96–184–000.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. New England Power Pool

[Docket No. ER99–451–000]

Take notice that on November 2, 1998, the New England Power Pool Executive Committee filed for acceptance signature pages to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by FPL Energy Maine, Inc.; FPL Energy Power Marketing, Inc.; ESI Northeast Energy GP, Inc.; FPL Energy Maine Hydro LLC; FPL Energy Mason LLC; FPL Energy Wyman LLC; FPL Energy Wyman IV LLC; FPL Energy Avec LLC (the "Applicants"). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of the Applicants' signature pages would permit NEPOOL to expand its membership to include the Applicants. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make the Applicants members in NEPOOL. NEPOOL requests an effective date of January 1, 1999, for commencement of participation in NEPOOL by the Applicants.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. MidAmerican Energy Co.

[Docket No. ER99–453–000]

Take notice that on November 2, 1998, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309 tendered for filing an initial rate schedule consisting of an Interconnection Agreement dated October 9, 1998 between MidAmerican and Storm Lake Power Partners I LLC (SLPP) and a First Amendment thereto dated October 9, 1998 which includes Enron Wind Development Corp. (Enron Wind) as a party.

MidAmerican states that the Interconnection Agreement enables the interconnection of electric facilities owned by SLPP (or Enron Wind) and MidAmerican for the purpose of the delivery of power by SLPP (or Enron Wind) to MidAmerican. The First Amendment makes Enron Wind a party to the Interconnection Agreement subject to the terms of the First Amendment.

Copies of the filing were served on representatives of SLPP, Enron Wind, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. ER99–454–000]

Take notice that on November 2, 1998, Public Service Company of New Mexico (PNM) submitted for filing a Service Agreement executed October 15, 1998, for Firm Point-to-Point Transmission Service between PNM (Transmission Provider) and Constellation Power Source, Inc. (Transmission Customer), under the terms of PNM's Open Access Transmission Service Tariff. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of this filing have been served on Constellation Power Source, Inc. and the New Mexico Public Utility Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. The Montana Power Co.

[Docket No. ER99–455–000]

Take notice that on November 2, 1998, The Montana power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Conoco Pipe Line Company (Conoco) and the Colstrip Project Owners (Colestrip Owners) under Montana's FERC Electric Tariff, Second Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Conoco and Colstrip Owners.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Rochester Gas and Electric Corp.

[Docket No. ER99–457–000]

Take notice that on November 2, 1998, Rochester Gas and Electric Corporation (RG&E) filed a Service Agreement between RG&E and Allegheny Energy (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141–000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of October 12, 1998 for the Strategic Energy LTD. Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Commonwealth Edison Company

[Docket No. ER99–458–000]

Take notice that on November 2, 1998 Commonwealth Edison Company (ComEd) tendered for filing service agreements establishing Baltimore Gas & Electric (BGE), Cargill-Alliant, LLC (C-A), Constellation Power Source, Inc. (CONS), Duke Power (DUKE), Kentucky Utilities Company (KU) and Ameren Services Company (AMRN) as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of October 3, 1998 for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on BGE, C-A, CONS, DUKE, KU AMRN, LGE and the Illinois Commerce Commission.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Maine Public Service Co.

[Docket No. ER99–459–000]

Take notice that on November 2, 1998, Maine Public Service Company (Maine Public) filed an executed Service Agreement for Non-Firm Point-to-Point Transmission Service under Maine Public's Open Access Transmission Tariff with Energy Atlantic LLC.

Main Public requests waiver of the Commission's 60-day notice requirements so that the agreement can become effective on October 29, 1998.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Florida Power Corp.

[Docket No. ER99–460–000]

Take notice that on November 2, 1998, Florida Power Corporation (FPC) tendered for filing a service agreement between the City of Bartow, Florida and FPC for service under FPC's Cost-Based Wholesale Power Sales Tariff (CR–1), FERC Electric Tariff, Original Volume Number 9. This Tariff was accepted for filing by the Commission on April 20, 1998, effective as of October 29, 1997, in Docket No. ER98–374–000.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Central Hudson Gas and Electric Corp.

[Docket No. ER99–461–000]

Take notice that on November 2, 1998, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 35.12), a Service Agreement between CHG&E and Merchant Energy Group of the Americas, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Madison Gas and Electric Co.

[Docket No. ER99–462–000]

Take notice that on November 2, 1998, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Service Agreement with Merchant Energy Group of the Americas, Inc.

Comment date: November 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Nevada Power Co.

[Docket No. OA97–2–003]

Take notice that on November 2, 1998, Nevada Power Company tendered for filing a Statement of Policy and Code of Conduct pursuant to the Commission's order issued in the above-mentioned docket on September 18, 1998.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Gregory Power Partners, L.P.

[Docket No. QF99–32–000]

Take notice that on October 30, 1998, Gregory Power Partners, L.P., c/o LG&E Power Inc., 12500 Fair lakes Circle, Suite 350, Fairfax, Virginia 22033, filed with the Federal Energy Regulatory Commission, an Application for Certification of Qualifying Status of a Cogeneration Facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is an approximately 427 MW (net) topping-cycle cogeneration facility located in Gregory, Texas. The facility is interconnected with Central Power & Light Company.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Commonwealth Chesapeake Co., L.L.C.

[Docket No. EG99–15–000]

Take notice that on October 30, 1998, Commonwealth Chesapeake Company, L.L.C. (CCCo), filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CCCo will own and operate an eligible facility (a 300-MW, oil-fired, electric generating facility) to be located in Accomack County, Virginia.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30815 Filed 11–17–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–4]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, December 1, 1998 from 9:00 a.m. to 5:00 p.m., and Wednesday, December 2, 1998 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the Radisson Barcelo Hotel, 2121 P Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION:

Pursuant to the Federal Advisory Committee Act (Pub.L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a committee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, environmental justice community, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally

does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by November 24, 1998 will be considered by the Task Force at or subsequent to the meeting.

Dated: November 12, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–30846 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–7]

Notice of Proposed Settlement; Talisman Sugar Corporation Properties, Palm Beach and Hendry Counties, Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and under section 7003(d) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6973(d), the United States Environmental Protection Agency (EPA) proposes to enter into a "prospective purchaser agreement" (PPA) concerning property owned by the Talisman Sugar Corporation ("Talisman") in Palm Beach and Hendry Counties, Florida. EPA proposes to enter into the PPA with The Nature Conservancy ("TNC"), a non-profit District of Columbia corporation, and the South Florida Water Management District, (the "District"), a special ad valorem taxing authority established by the Florida legislature, which is responsible for management of water delivery in South Florida. The PPA concerns the acquisition by TNC and the District of certain real property presently owned or leased by Talisman in Palm Beach and Hendry Counties, Florida.

The real property in question (the "Property") consists of approximately 50,757 acres in the Everglades Agricultural Area ("EAA"). Most of the Property is currently owned by Talisman, but the Property includes certain parcels leased by Talisman. The Property is the subject of a Purchase and Sale Agreement between Talisman and the TNC (the "Purchase and Sale Agreement"), dated July 2, 1998, which gives TNC the right to purchase Talisman's interest in the Property.

TNC is also a party to a Cooperative Agreement with the United States Department of the Interior and the District (the "Cooperative Agreement"), dated July 24, 1998, pursuant to which portions of the Property may be transferred to the District. The purpose of TNC's and the District's participation in the Purchase and Sale Agreement and/or Coopertive Agreements is to further restoration of the Florida Everglades ecosystem. The PPA obligates TNC and the District to manage portions of the Property that they acquire in a manner that is consistent with the comprehensive Everglades restoration program envisioned by the Cooperative Agreement.

Pursuant to the PPA, TNC and the District will be protected from CERCLA liability and from liability under section 7003(d) of RCRA, 42 U.S.C. 6973(d), which may arise from their participation in the acquisition of the Property, as described above. This protection is contingent on TNC's and the District's management of the property as described above.

EPA will consider public comments on the proposed settlement for thirty (30) days. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d). EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–8909.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of publication.

Franklin E. Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 98–30953 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–3]

Proposed Administrative Penalty Assessments and Opportunity to Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed assessments of Clean Water Act Class I administrative penalties and opportunity to comment.

SUMMARY: EPA is providing notice of proposed administrative penalties for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalties.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a "Class I" administrative penalty proceeding. Class I proceedings under section 309(g) are conducted in accordance with proposed consolidated rules of practice governing the administrative assessment of civil penalties, published at 63 FR 9464 (Feb. 25, 1998).

EPA is providing notice of the following proposed Class I penalty proceedings initiated by the Water Division, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105:

In the Matter of S&H Dairy, Docket No. CWA–IX–FY98–28, filed September 28, 1998; proposed penalty, $5,000; for unauthorized discharge from the S&H Dairy, 4125 Bentley Road, Oakdale, CA 95361, on January 23, 1998, to a canal operated by the Oakdale Irrigation District; and

In the Matter of Bairos Brothers Dairy, Inc., Docket No. CWA–IX–FY98–27, filed September 28, 1998; proposed penalty, $5,000; for unauthorized discharge from the Bairos Brothers Dairy, 3037 Albers Road, Modesto, CA 95357, on January 23, 1998, to the Albers Lateral of the Oakdale Irrigation District.

Procedures by which the public may comment on a proposed Class I penalty or participate in a Class I penalty

proceeding are set forth in the proposed consolidated rules. The deadline for submitting public comment on a proposed Class I penalty is thirty days after issuance of public notice. The Regional Administrator of EPA, Region 9 may issue an order upon default if the respondent in the proceeding fails to file a response within the time period specified in the proposed consolidated rules.

FOR FURTHER INFORMATION CONTACT: Persons wishing to received a copy of the proposed consolidated rules, review the complaints, proposed consent orders, or other documents filed in these proceedings, comment upon the proposed penalties, or participate in any hearings that may be held, should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in these proceedings are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in these proceedings prior to thirty days after issuance of this notice.

Dated: October 28, 1998.

Alexis Strauss,

Acting Director, Water Division.

[FR Doc. 98–30845 Filed 11–17–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Fifth Meeting of the Advisory Committee for the 2000 World Radiocommunication Conference (WRC–2000 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–2000 Advisory Committee will be held on December 9, 1998, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2000 World Radiocommunication Conference. The Advisory Committee will consider any consensus views or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: The meeting will be held on Wednesday, December 9, 1998 at 10:00 a.m.–12:00 noon.

ADDRESSES: Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Damon C. Ladson, FCC International Bureau, Planning and Negotiations Division, at (202) 418–0420.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–2000 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2000 World Radiocommunication Conference (WRC–2000). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the WRC–2000 Advisory Committee. The WRC–2000 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the fifth meeting is as follows:

AGENDA—Fifth Meeting of the WRC–2000 Advisory Committee, Federal Communications Commission, 1919 M Street, N.W., Room 856, Washington, D.C. 20554

December 9, 1998; 10:00 a.m.–12:00 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fourth Meeting
4. IWG Reports
5. Consideration of Consensus Views and Issue Papers
6. Development of Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–30746 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[PR Docket No. 91–143; DA 98–2257]

Private Land Mobile Radio Service Rules, Arizona Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice approving an amendment to the Arizona Public Safety Regional Plan (Region 3 Plan) that revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the state of Arizona. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[1]

DATES: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, DC, (202) 418–0694.

SUPPLEMENTARY INFORMATION: By this notice, the minor amendment to the Region 3 Public Safety Radio Plan (Region 3 Plan) that proposes to revise the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the state of Arizona is approved. The amendment assigns certain frequencies to new users in Region 3. The amendment also includes minor non-frequency assignment changes or corrections to the plan. In accordance with the Public Safety National Plan, each region is responsible for planning its use of the public safety radio frequency spectrum in the 821–824–866–869 MHz bands.[2] The Region 3 Plan was originally adopted by the Commission on September 4, 1991,[3] and was subsequently revised by letter on May 24, 1995. On August 28, 1998, the Commission issued a Public Notice (Report No. WT 98–40) inviting interested parties to file comments regarding a proposed amendment to the Region 3 Plan that was filed with the Commission on June 12, 1998. We have reviewed the Region 3 request. The amendment is a minor change to the Region 3 Plan and includes concurrences from each of the adjacent Regions 5, 7, 27, 29, and 41. Further, we have received no comments in response to the Public Notice of August 28, 1998, referenced above. The amendment, is therefore, accepted and approved as submitted. The Secretary's office will place the amended Region 3 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694. The original Region 3 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, NW, Washington, DC. The original Region 3

[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[3] Order, Private Radio Docket 91–143, 6 FCC Rcd 5335 (1991).

Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30806 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 88–549; DA 98–2256]

Private Land Mobile Radio Service Rules, North Central Texas Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice approving an amendment to the North Central Texas Public Safety Regional Plan (Region 40 Plan) that revises the current channel allotments for radio frequencies in the 821-824/866–869 MHz bands within North Central Texas. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands. [1]

DATES: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, D.C., (202) 418–0694.

SUPPLEMENTARY INFORMATION: By this notice, the minor amendment to the Region 40 Public Safety Radio Plan (Region 40 Plan) that proposes to revise its current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within the North Central Texas area, is approved. The amendment assigns certain frequencies within Region 40 for low power interoperability purposes. In accordance with the Public Safety National Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[2] The Region 40 Plan was originally adopted by the Commission on June 22, 1989,[3] and was subsequently modified by letter on December 31, 1992. On August 28, 1998, the Commission issued a Public Notice (Report No. WT 98–30) inviting interested parties to file comments to a proposed amendment that was filed with the Commission on July 17, 1997, to amend the Region 40 Plan. We have reviewed the Region 40 request. We have received no comments to the Public Notice of August 28, referenced above. The amendment is a minor change to the Region 40 Plan and is approved as submitted. The Secretary's office will place the amended Region 40 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694. The original Region 40 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, N.W., Washington, D.C. The original Region 40 Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30807 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 90–287; DA 98–2258]

Private Land Mobile Radio Service Rules, Northern California Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief Public Safety and Private Wireless Division released this Public Notice approving an amendment to the Northern California Public Safety Regional Plan (Region 6 Plan) that revises the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands within Northern California. In accordance with the National Public Safety Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[1]

DATES: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Joy Alford, Federal Communications Commission, Washington, D.C., (202) 418–0694.

SUPPLEMENTARY INFORMATION: By this notice, the minor amendment to the Region 6 Public Safety Radio Plan (Region 6 Plan) that proposes to revise the current channel allotments for radio frequencies in the 821–824/866–869 MHz bands in the Northern California area is approved. The amendment exchanges several channels previously allocated and designates new use for some channels which were allotted for use in specific counties. In accordance with the Public Safety National Plan, each region is responsible for planning its use of public safety radio frequency spectrum in the 821–824/866–869 MHz bands.[2] The Region 6 Plan was originally adopted by the Commission on November 20, 1990,[3] and was subsequently revised on July 22, 1992,[4] October 17, 1994,[5] and August 4, 1997.[6] On September 15, 1998, the Commission issued a Public Notice (DA 98–1777) inviting interested parties to file comments regarding a proposed amendment that was filed with the Commission on March 6, 1998, to amend the Region 6 Plan. We have reviewed the Region 6 request. We have received no comments in response to the Public Notice of September 15, 1998, referenced above. The amendment is a minor change to the Region 6 Plan and is approved as submitted. The Secretary's office will place the amended Region 6 Plan in the official docket file where it will remain available to the public. Questions regarding this public notice may be directed to Joy Alford, Wireless Telecommunications Bureau (202) 418–0694. The original Region 6 Public Safety Plan, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230) 1919 M Street, N.W., Washington, D.C. The original Region 6 Public Safety Plan, may also be ordered from the Commission's copy contractor, International Transcription Services, Inc., 1231 20th Street, N.W., Washington, DC 20036, Telephone (202) 857–3800.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30808 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–P

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[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987), at paragraph 57.

[3] Order, General Docket 88–549, 4 FCC Rcd 5401 (1989).

[1] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[2] Report and Order, General Docket No. 87–112, 3 FCC Rcd 905 (1987).

[3] Order, General Docket 90–287, 5 FCC Rcd 7132 (1990).

[4] Order, DA 92–1009, 7 FCC Rcd 4908 (1992).

[5] Order, 9 FCC Rcd 6128 (1994).

[6] Public Notice, Report No. WT–97–33.

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2303]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 10, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by December 3, 1998. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations (MM Docket No. 97–138).

Number of Petitions Filed: 5.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 98–30809 Filed 11–17–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. DA–RO–60006]

Notice of Opportunity To Submit Amici Curiae Briefs in Representation Proceeding Pending Before the Federal Labor Relations Authority

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of the opportunity to file briefs as amici curiae in a proceeding before the Federal Labor Relations Authority in which the Authority is determining the standard for evaluating a union petition for a representation election where an activity has unlawfully assisted the petitioning union.

SUMMARY: The Federal Labor Relations Authority provides an opportunity for all interested persons to file briefs as amici curiae on significant issues arising in a case pending before the Authority. The Authority is considering this case pursuant to its responsibilities under the Federal Service Labor-Management Relations Statute, 5 U.S.C. 7101–7135 (the Statute) and its Regulations, set forth at 5 CFR part 2422. The issues in this case concern the standard for evaluating a union petition for a representation election where an activity has unlawfully assisted the petitioning union.

DATES: Briefs submitted in response to this notice will be considered if received by mail or personal delivery in the Authority's Office of Case Control by 5 p.m. on or before Friday, December 18, 1998. Placing submissions in the mail by this deadline will not be sufficient. Extensions of time to submit briefs will not be granted.

ADDRESSES: Mail or deliver written comments to Peter J. Constantine, Director, Case Control Office, Federal Labor Relations Authority, 607 14th Street, NW., Suite 415, Washington, DC 20424–0001.

FORMAT: All briefs shall be captioned: *United States Army Air Defense Artillery Center, and Fort Bliss, Fort Bliss, Texas, Case No. DA–RO–60006, Amicus Brief.* Briefs shall also contain separate, numbered headings for each issue discussed. An original and four (4) copies of each amicus brief must be submitted, with any enclosures, on 8½×11 inch paper. Briefs must include a signed and dated statement of service that complies with the Authority's regulations showing service of one copy of the brief on all counsel of record or other designated representatives. 5 CFR 2429.27 (a) and (c). Copies of the Authority's decision granting the application for review in this case and a list of the designated representatives for the case may be obtained by mail or by facsimile by contacting Peter J. Constantine at the Authority's Case Control Office at the address set forth above.

FOR FURTHER INFORMATION CONTACT: Peter J. Constantine, at the address listed above or by telephone: (202) 482–6540.

SUPPLEMENTARY INFORMATION: On November 3, 1998, the Authority granted an application for review of the RD's Decision and Order in *United States Army Air Defense Artillery Center and Fort Bliss, Fort Bliss, Texas,* Case No. DA–RO–60006 (54 FLRA No. 127 (1998)). A summary of that case follows.

1. Background

Following organizing efforts, the National Federation of Federal Employees (NFFE) filed a petition pursuant to section 7111 of the Statute and § 2422.2 of the Authority's Regulations, 5 CFR 2422.2, (the Regulations in effect prior to March 15, 1996, are applicable in this case), seeking an election to represent a bargaining unit represented by the National Association of Government Employees (NAGE). NAGE filed an unfair labor practice (ULP) charge, claiming that the Activity unfairly aided NFFE in its attempt to collect signatures by allowing a non-employee NFFE organizer onto its premises. The Regional Director (RD) held the representation case in abeyance until the charge was resolved. NAGE contended that the Activity had permitted the non-employee NFFE organizer access to work areas where employees represented by NAGE worked. NAGE and the Activity settled the ULP charge. Without admitting a violation of the Statute, the Activity agreed to post a notice indicating that it would not permit NFFE access to its premises.

After the settlement of the ULP charge, NFFE argued that the RD should schedule an election and that no hearing was required because the ULP charge had been settled. Instead, the RD scheduled a hearing to determine whether the petition should be dismissed because of the Activity's alleged improper conduct. At the hearing, NFFE claimed that a large number of signatures were lawfully obtained by employees who were assisting NFFE in its organizing efforts and were not obtained by its non-employee organizer, and that there was no showing that its organizer unlawfully obtained any signatures supporting the showing of interest petition. NAGE contended that a hearing was appropriate in the circumstances of this case.

2. The Regional Director's Decision

The RD found that the Activity had improperly granted NFFE access to its premises. The RD determined, based on employees' testimony, that the organizer was seen in work areas during duty hours soliciting signatures, but that no one actually saw the organizer obtain signatures during those times. The RD also determined that NFFE obtained approximately 75 percent of the signatures it collected during a time period that roughly corresponded to the organizer's activity.

Relying on *Social Security Administration and National Treasury Employees Union,* 52 FLRA 1159 (1997) (*Social Security*), *rev'd in part sub nom. National Treasury Employees Union v. FLRA,* 139 F.3d 214 (D.C. Cir. 1998), the RD found that the Activity improperly assisted NFFE, in violation of section 7116(a)(3) of the Statute, when it failed to determine whether NFFE had other

means of contacting the employees it was seeking to organize, before permitting the NFFE organizer access to its premises, including common areas. According to the RD, the Activity permitted the NFFE organizer improper access when the only limit it placed on him was to solicit signatures of employees in work areas on their non-duty time.

The RD concluded that, under the totality of the circumstances, the Activity had unlawfully assisted NFFE, because it controlled the premises, it failed to verify whether NFFE had alternative means of contact, and it permitted NFFE access to the premises. The RD concluded that, because the unlawful assistance interfered with the employees' rights under section 7102 of the Statute, any cards signed during the period of the Activity's unlawful assistance were tainted. Therefore, the RD dismissed the petition.

3. The Application for Review

As applicable here, NFFE contends that its non-employee organizer had a right to be on the Activity's premises because NFFE represents employees at that Activity and because NFFE did not do anything illegal in its solicitation of the showing of interest. NFFE contends that the signatures on its showing of interest petition were validly obtained by bargaining unit employees. NFFE asserts that its organizer merely gathered the petition sheets from the employees who had obtained the signatures. NFFE also asserts that there was no showing that any of the signatures was improperly obtained.

NAGE asserts that the facts support the conclusion that the Activity unlawfully assisted NFFE in obtaining signatures.

Addressing NFFE's contentions, the Authority concluded that NFFE did not establish that the RD committed prejudicial procedural error in holding a hearing or that the RD disregarded Authority Regulations, and denied NFFE's application in these and other respects. NFFE did not raise and the Authority did not reach the question of whether the RD properly applied the standards set forth in *Social Security*.

Finding that there is an absence of precedent, the Authority granted the application for review on the issue of what standard should apply to evaluate whether the type of improper conduct alleged in this case warrants dismissal of an otherwise valid election petition.

4. Question on Which Briefs Are Solicited

The Authority has directed the parties in the case to file briefs addressing the following question: What standard should be used to determine whether an activity's improper conduct should lead to the dismissal of an election petition on the basis that the accompanying showing of interest was tainted?

As this matter is likely to be of concern to agencies, labor organizations, and other interested persons, the Authority finds it appropriate to provide for the filing of amicus briefs addressing these issues.

(**Authority:** 5 U.S.C. 7105(a)(2) (B) and (I)).

For the authority.

Peter J. Constantine,

Director, Case Control Office, Federal Labor Relations Authority.

[FR Doc. 98–30868 Filed 11–17–98; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 2, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303-2713:

1. Philip Bachman & Martha Bachman, both of Greeneville, Tennessee; to retain voting shares of Greene County Bancshares, Inc., Greeneville, Tennessee, and thereby indirectly retain voting shares of Greene County Bank, Greeneville, Tennessee.

2. James G. Tanner, III, Baton Rouge, Louisiana; to acquire voting shares of First National Bancshares of Eunice, Inc., Eunice, Louisiana, and thereby indirectly acquire voting shares of First Bank, Eunice, Louisiana.

Board of Governors of the Federal Reserve System, November 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30774 Filed 11–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 11, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Marlborough Bancorp, Marlborough, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Marlborough Co-Operative Bank, Marlborough, Massachusetts.

B. Federal Reserve Bank of Philadelphia, (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Commerce Bancorp, Inc., Cherry Hill, New Jersey; to acquire 100 percent of the voting shares of Prestige Financial

Corp., Flemington, New Jersey, and Prestige State Bank, Flemington, New Jersey.

C. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to acquire additional nonvoting common stock of United Bancshares, Inc., Philadelphia, Pennsylvania, and thereby increase its investment in United Bank of Philadelphia.

D. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Peotone Bancorp, Inc., Peotone, Illinois, and its subsidiary, Southwest Bancorp, Inc., Worth, Illinois; to retain direct and indirect ownership of 7.98 percent of the voting shares of Bank of the San Juans, Durango, Colorado.

Board of Governors of the Federal Reserve System, November 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30776 Filed 11–17–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1998.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Fleet Financial Group, Inc., Boston, Massachusetts; to acquire Merrill Lynch Specialists, Inc., New York, New York, and thereby engage in dealing to a limited extent in all types of ineligible securities; and in providing securities brokerage services, pursuant to § 225.28(b)(7)(i) of Regulation Y, and incidental activities (including related securities credit activities and custodial services as well as acting as a "conduit" or "intermediary" in securities borrowing and lending) *See Fleet Financial Group, Inc.*, 84 Fed. Res. Bull. 227 (1998).

Board of Governors of the Federal Reserve System, November 12, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–30775 Filed 11–17–98; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of Meeting on December 3 and 4.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a two-day meeting on Thursday, December 3 and Friday, December 4, 1998 in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., NW., Washington, DC.

The purposes of the meeting are to: (A) discuss the following issues: (1) Direct Loans and Loan Guarantees, (2) Social Insurance, and (3) Grant Accounting; and (B) hold a roundtable discussion on Accounting for National Property, Plant, and Equipment.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION, CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, sec. 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 13, 1998.

Wendy M. Comes,

Executive Director.

[FR Doc. 98–30869 Filed 11–17–98; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Financial Institution Data Match.

OMB No.: New.

Description: Section 372 of Pub. L. 104–193, requires State to establish procedures under which the State child support enforcement (IV–D) agency shall enter into agreements with financial institutions doing business in the State for the purpose of securing information leading to the enforcement of child support orders. States will develop and operate, a data match system in which each financial institution will provide quarterly the name, record address, social security number or taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support. H.R. 3130, the "Child Support Performance and Incentive Act of 1998", section 506 amends section 452 and 466(a)(17)(A)(i) of the PRWORA of 1996 to permit the Secretary of Health and Human Services, through the Federal Parent Locator Service (FPLS), to aid State CSE agencies in coordinating data matches with multi-state financial institutions.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Title	Number of respondents	Number of responses per respondent	Average burden per response	Burden
Financial on Data Match Tape	1,886	4	.5	3,772

Estimated Total Annual Burden Hours: 3,772.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: November 12, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–30843 Filed 11–17–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0308]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by December 18, 1998.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Veterinary Adverse Drug Reaction, Lack of Effectiveness, Product Defect Report—21 CFR Part 510—(OMB Control Number 0910–0012)

Section 512(l) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)), 21 CFR 510.300, 510.301, and 510.302 require that applicants of approved new animal drug applications (NADA's), submit within 15-working days of receipt, complete records of reports of certain adverse drug reactions and unusual failure of new animal drugs. Other reporting requirements of adverse reactions to these drugs must be reported annually or semiannually in a specific format.

This continuous monitoring of approved new animal drugs, affords the primary means by which FDA obtains information regarding potential problems in safety and effectiveness of marketed animal drugs and potential manufacturing problems. Data already on file with FDA is not adequate because animal drug effects can change over time and less apparent effects may take years to manifest themselves. Reports are reviewed along with those previously submitted for a particular drug to determine if any change is needed in the product or labeling, such as package insert changes, dosage changes, additional warnings or contraindications, or product reformulation.

Adverse reaction reports are required to be submitted by the drug manufacturer on FDA Forms 1932 or 1932a (voluntary reporting form), following complaints from animal owners or veterinarians. Product defects and lack of effectiveness complaints are submitted to FDA by the drug manufacturer following their own detection of a problem or complaints from product users or their veterinarians also using FDA Forms 1932 and 1932a. Form FDA 2301 is used for the required transmittal of periodic reports and promotional material for new animal drugs. Respondents to this collection of information are applicants of approved NADA's.

In the **Federal Register** of June 10, 1998 (63 FR 31788), the agency requested comments on the proposed collection of information using the reporting forms cited previously. In response, FDA received one comment to the docket. The comment expressed favor in submitting adverse drug reactions, lack of effectiveness and product defect reports (data), electronically and suggested that Form FDA 1932 be formatted in industry standard format (Microsoft Word or Word Perfect), so that these data can be submitted electronically. The Center for Veterinary Medicine (CVM), is developing procedures for electronic submission of adverse drug reactions, lack of effectiveness and product defects. Currently, CVM is not able to accept electronic submission of this specific data until the electronic submission data standards are in place and the hardware/software technology is set up. In the meantime, the current regulations do allow for acceptance of computerized reports under 21 CFR 510.302(c)(1), in lieu of Form FDA 1932. The information contained in a computerized report and the sequence in which it is presented must be equivalent to that required in the hard copy of Form FDA 1932 and should include the valid OMB control number identified with Form FDA 1932, i.e., 0910–0012. The computerized report must be submitted in duplicate to CVM for approval prior to initial use. Further, once the forms are approved and disseminated for use, CVM will post electronic copies via the Worldwide

Web (WWW). Both the computerized report and forms available via the WWW must be submitted via paper.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 2301	510.302a	190	19.74	3,750	0.5	1,875
Form FDA 1932	510.302b	190	15.25	2,900	1.0	2,900
Form FDA 1932a (voluntary)	510.302b	100	1.0	100	1.0	100
Total Burden Hours						4,875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Response per Recordkeeper	Hours per Recordkeeper	Total Hours
510.300(a) and 510.301(a)	190	15.26	3,750	10.35	38,812
510.300(b) and 510.301(b)	190	19.74	2,900	0.50	1,450
Total Burden Hours					40,262

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communication with industry. Other information needed to calculate the total burden hours (i.e., adverse drug reaction, lack of effectiveness, and product defect reports) are derived from agency records and experience.

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30752 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98P–0833]

Medical Devices; Exemptions From Premarket Notification; Class II Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing notice of a petition requesting exemption from the premarket notification requirements for a class II device, the audiometer. FDA is publishing this notice in order to obtain comments on this petition in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Written comments by December 18, 1998.

ADDRESSES: Submit written comments on this notice to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Heather S. Rosecrans, Center for Devices and Radiological Health (HFZ–404), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Pub. L. 94–295)), as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629)), devices are to be classified into class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval), if there is insufficient information to support classifying a device into class I or class II and the device is a life-sustaining or life-supporting device or is for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendment devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976, (generally referred to as postamendment devices) are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section 510(m)(1) of the act which requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each

type of class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that, 1 day after the date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the World Wide Web on the CDRH home page at "http://www.fda.gov/cdrh" or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Petition

FDA has received the following petition requesting an exemption from premarket notification for a class II device:

1. Hearing Industries Association, 21 CFR 874.1050, *Audiometer.*

IV. Comments

Interested persons may, on or before December 18, 1998, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 5, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–30813 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pilot Program for Streamlining Licensure of Blood and Blood Components; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Pilot Program for Streamlining Licensure of Blood and Blood Components." At the workshop, FDA will describe a pilot program that is under development and solicit input from blood and blood component manufacturers about streamlining the licensure review process.

Date and Time: The workshop will be held on Wednesday, December 9, 1998, 8:30 a.m. to 4:30 p.m.

Location: The workshop will be held at the Doubletree Hotel, 1750 Rockville Pike, Rockville, MD.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, or Cody Bridges, Laurel Consulting Group, 3030 Clarendon Blvd., suite 240, Arlington, VA 22201, 703–351–7676, FAX 703–528–0716, or email "cbridges@lcgnet.com".

Registration: Send or fax registration information (including name, title, firm name, address, telephone, and fax number) to Cody Bridges by Friday, November 27, 1998. Registration at the site will be done on a space available basis on the day of the workshop beginning at 7:30 a.m. There is no registration fee for the workshop.

If you need special accommodations due to a disability, please contact Cody Bridges at least 7 days in advance.

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 days after the workshop at a cost of 10 cents per page. The workshop transcript will also be available on CBER's website at "http://www.fda.gov/cber/minutes/workshop-min.htm".

Supplementary Information: FDA will sponsor a 1-day workshop to provide guidance to blood and blood component manufacturers on how to certify that they are in compliance with pilot monographs in lieu of traditional blood applications and supplements. Two pilot monographs to be discussed at the workshop apply to irradiation of blood and blood components and red blood cell immunization programs.

The objectives of the workshop are to describe FDA's pilot program and to solicit input from blood and blood component manufacturers about streamlining the licensure review process for certain blood products.

Dated: November 10, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30751 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 10, 1998, 8 a.m. to 5:30 p.m. and December 11, 1998, 8 a.m. to 3 p.m.

Location: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138

(301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 10, 1998, the committee will: (1) Hear updates on the Hepatitis C Virus (HCV) Lookback Guidance, malaria deferral, and supply issues regarding plasma derivatives; (2) hear informational summaries on the Donor Suitability Workshop and the Pilot Program for Streamlining the Licensure of Blood and Blood Components Workshop; and (3) discuss the topic of Hepatitis B Anti-Core (Anti-HBc) Re-entry. In the afternoon, the committee will discuss and provide recommendations on end user notification initiatives for plasma derivatives. On December 11, 1998, the committee will discuss and provide recommendations on the topic of inadvertent contamination of plasma pools for fractionation and recombinant B-Domain-Deleted Antihemophilic factor, sponsor: Genetics Institute.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 30, 1998. Oral presentations from the public will be scheduled from approximately 9 a.m. to 9:30 a.m.; 11:30 a.m. to 12 m.; and 3 p.m. to 3:30 p.m. on December 10, 1998, and from approximately 9 a.m. to 9:30 a.m. and 12 m. to 12:30 p.m. on December 11, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 30, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 9, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30749 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0966]

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 18, 1998, 8 a.m. to 5:30 p.m. Written comments must be submitted on or before Friday, December 4, 1998.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Addresses: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail "JBUTLER1@BANGATE.FDA.GOV". Comments should be identified with the docket number found in brackets in the heading of this document.

Contact Person: William Freas or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss possible deferral of blood or plasma donors based on geographical criteria linked to possible foodborne exposure to the agent of Bovine Spongiform Encephalopathy as a measure to reduce the potential for transmission of new variant Creutzfeldt-Jakob Disease (nvCJD) through blood and blood products. The potential effects of such deferrals on the supply of blood and blood products will be considered as part of the committee's deliberations.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the Dockets Management Branch (address above) on or before December 4, 1998, as described under the *Comments* caption. Oral presentations from the public will be scheduled between approximately 2:15 p.m. and 3:15 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before December 9, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Comments: Interested persons may, on or before December 4, 1998, submit to the Dockets Management Branch (address above) written comments regarding this subject. Received comments will be given to the committee for review and made available to the public. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 9, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30748 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0813]

Guidance for Industry on Fast Track Drug Development Programs: Designation, Development, and Application Review; Availability; Collection of Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Fast Track Drug Development Programs: Designation, Development,

and Application Review." This document provides guidance to industry on FDA's fast track program, which seeks to facilitate the development and expedite the review of new drugs that are intended to treat serious or life-threatening conditions and that have the potential to address unmet medical needs for such conditions. The guidance document is also intended to meet the requirement of section 112(b) of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: Written comments on the guidance document may be submitted by February 16, 1999. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–540), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on this guidance document to the Dockets Management Branch (HFD–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. After the comment period, comments may be submitted to one of the centers at the address below.

FOR FURTHER INFORMATION CONTACT: Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041; or Bette A. Goldman, Center for Biologics Evaluation and Research (HFM–500), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–5098.

SUPPLEMENTARY INFORMATION:

FDA is announcing the availability of a guidance for industry entitled "Fast Track Drug Development Programs: Designation, Development, and Application Review." This guidance document is intended to meet the requirement of section 112(b) of the Modernization Act (Pub. L. 105–115), which amends the Federal Food, Drug, and Cosmetic Act (the act) by adding new section 506 (21 U.S.C. 356) and directs FDA to issue guidance describing its policies and procedures pertaining to fast track products.

FDA's fast track programs are designed to facilitate the development and expedite the review of new drugs that are intended to treat serious or life-threatening conditions and that demonstrate the potential to address unmet medical needs (fast track products). In this guidance document, FDA discusses the regulations, policies, and procedures of the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) that are related to fast track products. This guidance document describes and clarifies the criteria and processes for designating a new drug as a product in a fast track drug development program and describes the diverse activities and programs that can facilitate the development and expedite the review of drugs that demonstrate the potential to advance the treatment of serious and life-threatening illnesses.

This guidance document is being issued as a Level 1 guidance consistent with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997). It is being implemented without prior public comment because the guidance document is needed to implement the Modernization Act. The agency understands the need for this document to be available immediately in order for there to be clear guidance to industry, the public, and agency reviewers about this very significant program. However, FDA also understands that many interested persons may wish to provide comments and suggest revisions to this guidance. FDA is, therefore, emphasizing that it is soliciting comment from all interested persons and is providing a 90-day comment period and establishing a docket for receipt of comments. The agency will give full consideration to all comments received and make any appropriate changes to the guidance in a timely manner.

This guidance document represents the agency's current thinking on its policies and procedures relating to products in fast track drug development programs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

This guidance document contains collections of information that require clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction of 1995. In a notice published in the **Federal Register** of October 21, 1998 (63 FR 56195), FDA announced that this collection of information has been submitted to OMB for emergency processing. The notice also solicited comments on the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless a currently valid OMB control number has been displayed.

Interested persons may, at any time, submit to the Dockets Management Branch (address above) written comments on the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 11, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30811 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0969]

"Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals"; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals." This draft guidance announces that FDA now believes it is necessary to evaluate the human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals when approving such drugs.

DATES: Written comments should be submitted by December 18, 1998.

ADDRESSES: Submit written requests for single copies of this draft guidance to

the Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist the office in processing your requests.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852. Comments should be identified with the full title of the draft guidance and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Margaret A. Miller, Office of New Animal Drug Evaluation (HFV–100), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1620.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's "Good Guidance Practices" (GGP's) require the agency to publish, as Level 1 guidance, a change in interpretation or policy that is of more than a minor nature (62 FR 8961, February 27, 1997). Therefore, FDA is announcing the availability of a draft guidance entitled "Guidance for Industry: Evaluation of the Human Health Impact of the Microbial Effects of Antimicrobial New Animal Drugs Intended for Use in Food-Producing Animals." The draft guidance describes the agency's current thinking on this subject.

Since the 1970's, FDA has evaluated the effects of an antimicrobial drug product on enteric bacteria of food-producing animals in determining whether certain feed uses of an antimicrobial new animal drug are safe under section 512 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b). Under section 512 of the act, an application for approval of a new animal drug must "include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use * * *" (21 U.S.C. 360b(d)(1)(A)) . Section 201(u) of the act (21 U.S.C. 321(u)) states that when "safe' is used in section 512, the term "has reference to the health of man or animal". In addition, section 512(d)(2) of the act states that, when determining the safety of a new animal drug, the agency "shall consider, among other relevant factors, (A) the probable consumption of such drug and of any substance formed in or on food because of the use of such drug, [and] (B) the cumulative effect on man * * * of such drug, taking into account any chemically or pharmacologically related substance * * *" (21 U.S.C. 360b(d)(2)).

In the past, FDA evaluated the human health impact of the microbial effects of only certain uses of antimicrobial new animal drugs in animal feeds (Ref. 1). However, based on scientific evidence referenced in the draft guidance, the agency now believes that sponsors of all antimicrobial new animal drugs intended for use in food-producing animals should provide information that will allow the agency to evaluate the human health impact of the intended use.

To assess the human health impact, the following two separate, but related aspects, should be evaluated: (1) The quantity of resistant enteric bacteria formed in the animal's intestinal tract following exposure to the antimicrobial new animal drug (resistance) and (2) changes in the number of enteric bacteria in the animal's intestinal tract that can cause human illness (pathogen load). In some cases, a preapproval study or studies may be needed. FDA recognizes that there is no standardized protocol established for determining the human health impact of the microbial effect(s) of an antimicrobial product, and that one standard study is likely to be inappropriate for all intended uses.

This draft guidance represents the agency's current thinking only about its authority under the act to consider the human health impact of the microbial effects associated with all uses of all classes of antimicrobial new animal drugs intended for use in food-producing animals. It does not provide technical guidance regarding the design of studies or types of information required to satisfy the requirements to demonstrate safety. The agency intends to solicit public comments on this issue at a meeting of the Veterinary Medicine Advisory Committee in Rockville, MD, on December 10 and 11, 1998, and possibly later at other public meetings that involve experts in public health.

The draft document does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

References that are cited in the draft guidance have been placed on display in the Dockets Management Branch (address above), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

II. Comment

Interested persons may, on or before December 18, 1998, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance using the World Wide Web (WWW). For WWW access, connect to CVM at "http://www.fda.gov/cvm".

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. U.S. Food and Drug Administration, "Human Health Safety Criteria," Center for Veterinary Medicine, Guideline 18.

2. Food and Drug Administration, "Penicillin Use in Animal Feeds," 42 FR 43769–43793, August 30, 1977.

3. Endtz, H., G. Ruiijs, et. al., "Quinolone Resistance in *Campylobacter* Isolated From Man and Poultry Following the Introduction of Fluoroquinolones in Veterinary Medicine," *Journal of Antimicrobial Chemotherapy*, 27, 199–208, 1991.

4. Aserkoff, B., and J. V. Bennett, "Effect of Antibiotic Therapy in Acute Salmonellosis on the Fecal Excretion of *Salmonella*," *New England Journal of Medicine*, 281, 636–640, 1969.

5. Seyfarth, A. M., H. C. Wegener, and N. Frimodt-Moller, "Antimicrobial Resistance in *Salmonella enterica* subsp. *enterica* serovar *typhimurium* from Humans and Production Animals," *Journal of Antimicrobial Chemotherapy*, 40, 67–75, 1997.

6. D'Aoust, J-Y., *Salmonella Species*, In: Food Microbiology Fundamentals and Frontiers, edited by Doyle, M. P., L. R. Beuchat, and T. J. Montville, ASM Press, Washington, DC, pp. 129–158, 1997.

7. Nachamkin, I., *Campylobacter jejuni*, In: Food Microbiology Fundamentals and Frontiers, edited by Doyle, M. P., L. R. Beuchat, T. J. Montville, ASM Press, Washington, DC, pp. 159–170, 1997.

8. Bates, J., J. Z. Jordens, and D. T. Griffiths, "Farm Animals as a Putative Reservoir for Vancomycin-resistant Enterococcal Infection in Man," *Journal of Antimicrobial Chemotherapy*, 34, 507–514, 1994.

9. Department of Agriculture, Food Safety Inspection Service, "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems; Final Rule," 61 FR 38805–38989, July 25, 1996.

10. Department of Agriculture, "Nationwide Beef Microbiological Baseline: Steers and Heifers," October 1992–September 1993; "Nationwide Broiler Chicken Microbiological Baseline," July 1994–June 1995; and "Nationwide Pork Microbiological Baseline: Market Hogs," April 1995–March 1996: Food Safety Inspection Service, Data Collection Programs, Microbiology Division.

11. U.S. Food and Drug Administration, "Microbiological Testing of Antimicrobial Drug Residues in Food," Center for Veterinary Medicine, Guideline 52.

Dated: November 10, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30747 Filed 11–17–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Services

North American Wetlands Conservation Council; Membership

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of policy and request for comments.

SUMMARY: The purpose of this action is to notify the public regarding an existing term rotation policy for membership of charitable and non-profit organizations of the North American Wetlands Conservation Council. This policy will assure broad representation from such organizations in keeping with the purposes of the North American Wetlands Conservation Act.

DATES: Comments on this policy must be received by January 19, 1999.

ADDRESSES: Comments regarding this notice should be addressed to: Director (FSW/NAWWO), U.S. Fish and Wildlife Service, 110 ARLSQ, 1849 C ST., NW, Washington, D.C. 20240. Comments received on this notice will be available for public inspection during normal business hours in Room 110, Arlington Square Building, 4401 No. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. David A. Smith, Executive Director, or Mr. Douglas A. Ryan, Wildlife Biologist, North American Waterfowl and Wetlands Office, 703/358–1784; Facsimile 703/358–2282.

SUPPLEMENTARY INFORMATION:

Background

The North American Wetlands Conservation Council (Council) was established by the North American Wetlands Conservation Act (Act), 16 U.S.C. 4401–4412, Public Law 101–233, and is comprised of nine members. The Council reviews and recommends wetland conservation projects to the Migratory Bird Conservation Commission, following criteria given in the Act. Two permanent Council seats are occupied by the Director of the U.S. Fish and Wildlife Service and the Secretary of the Board of the National Fish and Wildlife Foundation. Four of the seven non-permanent seats are Directors of State Fish and Wildlife agencies representing the four migratory bird flyways. Individuals representing non-governmental organizations (NGOs) that are actively participating in carrying out wetland conservation projects under the Act, the Plan, or the Tripartite Agreement (among the U.S., Canada, and Mexico) occupy the other three non-permanent seats. Appointment of the non-permanent members is at the discretion of the Secretary of the Interior (Secretary). The term for non-permanent seats is three years. In addition, the Secretary appoints an alternate member and may appoint ex-officio non-voting members to the Council.

What is the Policy?

In the Spring of 1998, the Secretary adopted a term rotation policy of two consecutive terms or six consecutive years for organizations occupying the three NGO Council seats. An NGO that has completed two terms would be eligible for full reappointment to the next vacancy among the three NGO seats and also eligible for appointment to either the alternate seat or an ex-officio seat.

Why Was the Policy Adopted?

The Secretary adopted a two-term rotation policy for NGO members on the Council for the following reasons:

- The purpose of the Act is to encourage partnership among public agencies and other interests for the conservation of wetlands and migratory birds in North America. This policy is intended to build broad support for the Act by opening the door to a variety of organizations to take full advantage of opportunities available through Council participation.
- All organizations that meet the requirements for NGOs stated above in the Act should be given full and fair consideration for Council membership.
- Given the detailed approval process, and frequent consideration of complex issues associated with Council participation, appointing any NGO representative to serve two consecutive terms is appropriate, as it would allow that representative to become familiar with Council operations and to reach their full potential for contributing to the work of the Council.
- While the Act requires that NGOs on the Council be active participants in wetlands conservation, it does not restrict Council participation to only those NGOs that are most active (i.e., in terms of matching dollars and services, and grants received).
- Each NGO can only represent its own organization, unlike State agencies on the Council that have the responsibility and capability to represent the flyways, of which they are a part.
- Regardless of appointment status, those NGOs that have contributed substantially to Act-funded projects are encouraged to continue as instrumental participants in project development and implementation.

In summary, the purpose of this action is to notify the public and invite any comments regarding the Secretary's existing term rotation policy for charitable and non-profit organizations on the North American Wetlands Conservation Council, to fully implement the purpose of the North American Wetlands Conservation Act.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR parts 1500–1508), the Service has determined that the policy published in this document is categorically excluded from the NEPA process as provided by 516 DM 2, Appendix 1.10 of the Departmental Manual.

Authorship: The primary author of this notice is Mr. Douglas A. Ryan, U.S. Fish and Wildlife Service North American Waterfowl and Wetlands Office, Arlington, Virginia.

Dated: November 6, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–30766 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a Proposed Residential Development Called Ocean Reef Club, Plats 18 and 19, Monroe County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Driscoll Properties, Inc. and Driscoll Foundation, Inc. previously obtained an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 et seq.), as amended (Act). The previous ITP authorized the take of the endangered Key Largo woodrat (*Neotoma floridana smalli*), Key Largo cotton mouse (*Peromyscus gossypinus allapaticola*), and Schaus swallowtail butterfly (*Heraclides aristodemus ponceanus*) in association with residential construction on 89 lots in Plats 18 and 19 of Ocean Reef Club, north Key Largo, Monroe County, Florida. However, the original ITP expired on May 31, 1995, and 70 of the 89 lots covered under that ITP were not altered. Accordingly, a new ITP is required to ensure compliance with the prohibitions of section 9 of the Act while residential construction occurs on the remaining undeveloped lots that still contain suitable habitat for the species listed above. Review of the undeveloped lots by the Fish and Wildlife Service (Service) indicated that 49 of the 70 lots still contain suitable habitat for the Key Largo woodrat, Key Largo cotton mouse, and Schaus swallowtail butterfly.

Forty-one of the 49 lots for which take of federally listed species will occur during construction related activities have been sold by Driscoll Properties, Inc. and Driscoll Foundation, Inc. to third parties. The Ocean Reef Community Association represents all third party lot owners.

Driscoll Properties, Inc., Driscoll Foundation, Inc., and Ocean Reef Community Association (Applicants), seek an ITP from the Service. The ITP would authorize for a period of 10 years the incidental take of the endangered Key Largo woodrat, Key Largo cotton mouse and Schaus swallowtail butterfly. The proposed residential development is called Ocean Reef Club, Plats 18 and 19 and will consist of 49 homes located on about 20 acres in section 24, Township 59 South, Range 40 East, and section 19, Township 59 South, Range 41 East, Monroe County, Florida (Project). Clearing of the 49 residential lots will destroy suitable habitat for the three species identified above. A more detailed description of the mitigation and minimization measures to address the effects of the Project to the protected species are outlined in the Applicant's Habitat Conservation Plan (HCP), the Service's Environmental Assessment (EA), and in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an EA and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, opinions from the public via this Notice on the Federal action, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service is specifically soliciting information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before December 18, 1998.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, Fish and Wildlife Service, Post Office Box 2676, Vero Beach, Florida 32961–2676. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE004859–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110, facsimile: 404/679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562–3909.

SUPPLEMENTARY INFORMATION: The Key Largo woodrat and Key Largo cotton mouse are subspecies that occur only on Northern Key Largo. They have been extirpated from much of the Key Largo due to clearing of tropical hardwood hammocks for urban development. The Schaus swallowtail butterfly is restricted to extreme Southeast Florida and the upper and middle keys. This butterfly is also dependant on tropical hardwood hammock vegetation and has been adversely affected by urban growth in South Florida and the Florida Keys.

The Key Largo woodrat represents the southern most subspecies of the eastern woodrat (*Neotoma floridana*). It is restricted to the tropical hardwood hammocks of Key Largo. Like the cotton mouse, the woodrat has experienced substantial declines in their range due principally to urban development on Key Largo. Extant woodrats are now found only north of the intersection of U.S. 1 and C.R. 905. More than 41 percent of the historical habitat of this species has been lost to urbanization. Like the cotton mouse, woodrats are vulnerable to habitat loss and fragmentation and the indirect affects of urban encroachment (e.g., competition with black rats and increased predation from domestic animals).

Key Largo woodrats, like other members of the genus *Neotoma*, are known for their construction of large stick nests. Nests are typically built at the base of a tree and are composed of sticks, twigs, and other organic matter. Woodrats are territorial in the vicinity of their nest sites, but probably interact socially under some form of hierarchy with other woodrats. Woodrats appear to attain their greatest densities in mature hardwood hammocks, with lower densities found adjacent to urban settings.

The Key Largo cotton mouse is larger and more reddish in appearance than other subspecies in Florida. It is found only on Key Largo in relict tropical hardwood hammock vegetation. Historically the Key Largo cotton mouse was found throughout Key Largo where tropical hardwood hammocks existed but development and the subsequent loss of tropical hardwood vegetation resulted in a range reduction of this species. It is now found only in North Key Largo, north of the intersection of U.S. 1 and C.R. 905.

Little is known about the Key Largo cotton mouse and much is inferred from other cotton mice populations in Florida. In general, this subspecies is considered a nocturnal tropical hardwood hammock dweller that constructs nests in logs, tree hollows and rock crevices. Key Largo cotton mice may breed at any time of the year and produce two to three litters per year. These cotton mice are omnivorous and are believed to rely heavily on the large fruit and berry crop produced by tropical hardwood hammock vegetation.

Key Largo cotton mice are threatened by habitat loss and fragmentation as well as the indirect effects of urbanization. As of 1991, 41.2 percent of all tropical hardwood hammock vegetation had been cleared to meet human needs. Residential and commercial development also lead to increases in feral or free-roaming domestic animals and provide habitat for black rats. Domestic animals and black rats compete with or prey upon Key Largo cotton mice.

The Schaus swallowtail butterfly is a large dark brown and yellow butterfly that inhabits tropical hardwood hammocks of extreme South Florida. Historically, the Schaus swallowtail butterfly was distributed from South Miami to Lower Matecumbe Key. More recently, Schaus swallowtail butterflies were known only from undisturbed tropical hardwood hammocks from Elliott Key in Biscayne National Park south to Northern Key Largo. Reintroductions have recently occurred from Southern Dade County to Lower Matecumbe Key. This species was federally listed due to habitat destruction, mortality associated with application of pesticides for mosquito control, and over-harvesting by collectors. These factors acting in combination with high natural mortality associated with predation of caterpillars resulted in substantial declines in the number and range of this species.

The Schaus swallowtail butterfly prefers dense, mature tropical hardwood hammocks where direct sunlight is filtered or dappled. Adults feed on a number of nectar producing plant species endemic to hardwood hammocks, but have most often been observed feeding on guava (*Psidium guajava*), cheese shrub (*Morinda royoc*), and wild coffee (*Psychotria undata*). Adults rarely feed in open areas exposed to direct sunlight. The eggs of this species are typically laid on wild lime (*Zanthoxylem fagara*) and torchwood (*Amyris elemifera*) with caterpillars subsequently eating young, tender shoots of these species.

The Applicant's HCP and the Service's EA describes the following minimization and mitigation strategy to be employed by the Applicant to offset the impacts of the Project to the Key Largo woodrat, Key Largo cotton mouse, and Schaus swallowtail butterfly. Many of the mitigation measures identified below were implemented and completed as part of the ITP previously issued to Driscoll Properties, Inc. and Driscoll Foundation, Inc.:

- Protect and convey through conservation easement 5.94 acres of tropical hardwood hammock to the Florida Game and Fresh Water Fish Commission (completed).
- Construct 10 rock piles within conservation easement to provide nesting habitat for woodrats (completed).
- Revegetate scarified portions of conservation easement (completed).
- Revegetate five acres of scarified land with tropical hardwood hammock vegetation (complete).
- Monitor revegetation success (ongoing).
- Sixty to 80 percent of each lot to not be disturbed (ongoing, pursuant to Monroe County ordinance).
- Hand clearing of vegetation from the footprint of construction activities and allowing a minimum of 14 days before mechanical removal of felled vegetation. This measure minimizes the potential for directly killing Key Largo woodrats or Key Largo cotton mice (ongoing).
- Deed restrictions to prohibit free ranging domestic animals (completed)

The EA considers the environmental consequences of two alternatives. A third alternative, acquisition of lots, was considered but not fully evaluated in the EA because ranking of lands suitable for acquisition under the State of Florida Conservation and Recreation Lands (CARL) acquisition program did not identify these lots (either singularly or in combination) as a priority properties. Their small size, proximity to adjacent residential areas, high cost, and low biological value likely preempted consideration for acquisition.

The no action alternative may result in the loss of habitat and exposure of the Applicants under Section 9 of the Act if lots were cleared. If the ITP were not issued and the Applicants did not remove vegetation from any of the lots, habitat for the three federally listed species would remain intact and probably provide suitable habitat in the future. The proposed action alternative is issuance of the ITP according to the HCP as submitted and described above. Under the proposed alternative, about 19.6 acres of suitable habitat will be destroyed during residential development. The effect of the minimization and mitigation strategy will be that about 11 acres of habitat will be protected or enhanced and another 11 to 15 acres will be preserved onsite through vegetation set asides.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP. An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

- Issuance of the ITP will not appreciably reduce the likelihood of survival and recovery of the affected species in the wild.
- The HCP contains provisions which sufficiently minimize and/or mitigate the impacts of issuing the ITP.
- Issuance of the ITP would not have significant effects on the human environment in the project area.
- The proposed take is incidental to an otherwise lawful activity.
- Adequate funding will be provided to implement the measures proposed in the submitted HCP and authorizing ITP.
- Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-

Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 10, 1998.

H. Dale Hall,

Deputy Regional Director.

[FR Doc. 98–30787 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1320–00]

Notice of Intent to Plan

AGENCY: Bureau of Land Management (BLM), Montana, Miles City Field Office, Interior.

ACTION: Notice of Intent to Plan, Spring Creek Coal Company's Coal Lease Application MTM 88405 for Certain Coal Resources in the Powder River Coal Region, Big Horn County, Montana.

SUMMARY: On June 26, 1998, Spring Creek Coal Company (SCCC) filed an application with the Bureau of Land Management (BLM) to lease a 150 acre tract containing about 19.8 million tons of Federally owned coal reserves near the Spring Creek Coal Mine. On June 3, 1998, Spring Creek Coal Company filed an application with the State of Montana Department of Natural Resources and Conservation (DNRC) to lease a 479 acre coal tract. The tract, which would consist of three separate state leases, contains an estimated 62.1 million tons of state owned coal.

As Co-Lead Agencies, the BLM and Montana DNRC will prepare one Environmental Assessment to evaluate the impacts of coal mining which would result from leasing the tracts of Federal and State coal.

The lands included in the coal lease applications are located in Big Horn County, Montana and are described as follows:

Federal Lease Tract MTM 88405

T. 8 S., R. 39 E., P.M.M.
Sec. 13: SW¼SW¼SW¼, SW¼SE¼SW¼SW¼;
Sec. 14: S½SW¼NE¼SE¼, S½NE¼SE¼SE¼, NW¼NE¼SE¼SE¼, S½SE¼SE¼, NW¼SE¼SE¼;
Sec. 23: NE¼NE¼, SE¼SW¼NW¼NE¼, N½SW¼NW¼NE¼, E½NW¼NE¼;
Sec. 24: NW¼SE¼NW¼NW¼, N½SW¼NW¼NW¼, N½NW¼NW¼.

150 acres, more or less

State of Montana Lease Tracts

Lease C–1099–XX

T. 8 S., R., 39 E., P.M.M.
Sec. 14: S½S½NW¼, SW¼, W½SE¼.

Lease C–1100–XX

T. 8 S., R., 39 E., P.M.M
Sec. 15: NE¼SW¼SE¼, SE¼SE¼, N½SE¼, S½SE¼NE¼.

Lease C–1101–XX

T. 8 S., R., 39 E., P.M.M
Sec. 23: N½N½NW¼, NW¼NW¼NE¼.

479.16 acres, more or less

This action could amend the Powder River Resource Management Plan (1984) if certain Federal coal leasing unsuitability designations on or adjacent to the Federal coal tracts are changed. The analysis will be based on existing statutory requirements and will meet the requirements of the Federal Land Policy and Management Act (FLPMA) of 1976 and the Surface Mining Control and Reclamation Act (SMCRA) of 1977.

DATES: Public scoping on the proposal will begin with the date of publication of this Notice and will end 30 days after publication. Any issues, concerns or alternatives should be submitted to BLM December 18, 1998, so they can be addressed in the environmental analysis.

To facilitate the planning effort, two public scoping meetings have been scheduled as follows:

1. December 3, 2 pm, Lame Deer, Montana, Dull Knife Memorial College Auditorium;
2. December 3, 7 pm, Hardin, Montana, Becker Hotel Conference Room, 200 North Center.
3. December 7, 1 pm, Sheridan, Wyoming, Fulmer Public Library, 335 W. Alger.

ADDRESSES: All submissions should be sent to the following address: Bureau of Land Management, Miles City Field Office, Dan Benoit, Team Leader, 111 Garryowen Road, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Dan Benoit, Team Leader, Bureau of Land Management, Miles City Field Office, (406) 232–7001, ext 206.

SUPPLEMENTARY INFORMATION: Spring Creek Coal Company is the lessee and operator of Federal Coal Lease MTM 069782 at the Spring Creek Mine. The proposed lease area adjoins the current lease to the north.

Due to its coal reserve base and configuration, the Spring Creek lease application area is a logical step to extend the life of the Spring Creek Mine. With the current permitted reserves of coal, the current level of production at the Spring Creek Mine can be maintained for approximately 19 more years.

The areas applied for would be mined as an extension of the Spring Creek Mine and would utilize the same methods as those currently being used. The leases being applied for would extend the life of the mine for an additional 8 years beyond what is currently permitted, and enable recovery of coal as a logical extension of the current pits at the Spring Creek Mine.

Dated: November 9, 1998.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 98–30860 Filed 11–17–98; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–98–1420–00]

Colorado: Filing of Plats of Survey

November 5, 1998.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215–7093, effective 10:00 am, November 5, 1998. All inquiries should be sent to this address.

Township	Range	Meridian	Group No.	Approval date
T. 13 S.	R. 85 W.	6	1216	October 1, 1998.
T. 04 N.	R. 84 W.	6	1134	October 13, 1998.
T. 05 N.	R. 92 W.	6	1188	October 23, 1998.
T. 03 N.	R. 75 W.	6	1208	October 23, 1998.
T. 01 S.	R. 78 W.	6	1198	October 26, 1998.
T. 45 N.	R. 03 W.	NM	Supplemental Plat	October 26, 1998.
T. 13 S.	R. 85 W.	6	1216	November 3, 1998.
T. 01 S.	R. 01 W.	UTE	1144	November 4, 1998.

Donald W. Ashbaugh,
Acting Chief Cadastral Surveyor for Colorado.
[FR Doc. 98–30861 Filed 11–17–98; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Nebraska State Museum, University of Nebraska-Lincoln, Lincoln, NE.

A detail assessment of the human remains was made by University of Nebraska professional staff in consultation with representatives of the Omaha Tribe of Nebraska.

In 1939, human remains representing an unknown number of individuals were removed from a historic Omaha cemetery (25 DK 2a) in Dakota County, NE during excavations under the direction of Stanley Bartos, Jr. No known individuals were identified. During NAGPRA inventory activity in 1994–1995, five individuals from this site were found in the University's collections.

In 1940, human remains representing an unknown number of individuals were removed from a historic Omaha cemetery (25 DK 10) in Dakota County, NE during excavations under the direction of John Champe. No known individuals were identified. During NAGPRA inventory activity in 1994–1995, three individuals from this site were found in the University's collections.

Prior to November 16, 1990, the University of Nebraska, Lincoln and the Omaha Tribe agreed to repatriate all individuals and associated funerary objects then identified from these two sites. Consultations with representatives of the Omaha Tribe during this time identified these two sites as historic Omaha cemeteries.

Based on the above mentioned information, officials of the University of Nebraska have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of eight individuals of Native American ancestry. Officials of the University of Nebraska have not determined the cultural affiliation of these Native American human remains because, pursuant to 25 U.S.C. 3009(2), these human remains are part of an action on a repatriation request pending on the date of enactment of NAPGRA and will therefore be repatriated to the Omaha Tribe.

In 1941, human remains representing two individuals were recovered from the Maxwell site (25 DK 13) near Homer, NE during excavations conducted by S. Bartos Jr. under the direction of John L. Champe and Paul Cooper. No known individuals were identified. No associated funerary objects are present.

Based on the degree of preservation and skeletal morphology, these individuals have been determined to be Native American from the historic period. Based on the apparent age of the remains and the location of this burial, this individual has been determined to be affiliated with the Omaha Tribe of Nebraska.

During the 1910s, human remains representing one individual were recovered during construction activity at 13th and I Street in Omaha, NE by Robert Gilder who donated the human remains to the University of Nebraska State Museum. No known individual was identified. No associated funerary objects are present.

Based on the condition of the remains and copper staining on a hand phalanx, this individual has been determined to be Native American. A historic Omaha village site is located several miles to the south of this burial site. Based on the apparent age of the remains and the location of this burial, this individual has been determined to be affiliated with the Omaha Tribe of Nebraska.

In 1940, human remains representing one individual were recovered from Emil Entenmann's cornfield in Stanton County, NE, and acquired by the Museum. No known individual was identified. No associated funerary objects are present.

Because glass beads are reported to have been associated with the burial, these human remains have been determined to be Native American from the historic period. During the historic period, the Omaha Tribe occupied the immediate vicinity of this burial. Consultation with representatives of the Omaha Tribe confirms this information that this burial is attributable to the Omaha Tribe.

Based on the above mentioned information, officials of the University of Nebraska-Lincoln have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent that physical remains of four individuals of Native American ancestry. Officials of the University of Nebraska-Lincoln have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Omaha Tribe of Nebraska.

This notice has been sent to officials of the Omaha Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Priscilla Grew, Vice Chancellor for Research, University of Nebraska-Lincoln, 302 Canfield Administration Building, Lincoln, NE 68588–0433; telephone (402) 472–3123, before December 18, 1998. Repatriation of the human remains to the Omaha Tribe of Nebraska may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: November 10, 1998.

Francis P. McManamon,
Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–30683 Filed 11–17–98; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–385 (Preliminary) and 731–TA–809–810 (Preliminary)]

Live Cattle From Canada and Mexico

AGENCY: United States International Trade Commission.
ACTION: Notice of withdrawal of petitions in countervailing duty and antidumping investigations.

SUMMARY: On November 10, the Department of Commerce and the Commission received a letter from petitioner in the subject investigations (Ranchers-Cattlemen Action Legal Foundation ("R–CALF"), Columbus, MT) withdrawing its petitions. Commerce has not initiated its investigations as provided for in sections 702(c) and 732(c) of the Tariff Act of 1930 (19 U.S.C. 1671a(c) and 1673a(c)). Accordingly, the Commission gives notice that its countervailing duty and antidumping investigations

concerning live cattle from Canada and Mexico (investigations Nos. 701–TA–385 (Preliminary) and 731–TA–809–810 (Preliminary)) are discontinued.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Issued: November 13, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30851 Filed 11–17–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–400]

Conditions of Competition in U.S. Forest Products Trade

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 9, 1998.

SUMMARY: Following receipt of a request on October 19, 1998, from the Committee on Finance, U.S. Senate, the Commission instituted investigation No. 332–400, *Conditions of Competition in U.S. Forest Products Trade*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Industry-specific information may be obtained from William Hoffmeier (202–205–3321), Vincent Honnold (202–205–3314), or William Lipovsky (202–205–3330), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact William Gearhart of the Office of the General Counsel (202-205–3091). News media should contact Peg O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The Committee on Finance has requested that the Commission investigate the conditions of competition in forest products trade, with special emphasis on trade barriers and forest practices that may distort domestic and international markets in Asia, Europe, and Latin America, and provide a report setting forth the results of that investigation. As requested by the Committee, the Commission will provide in its report, to the extent possible, the following:

- An overview of the global market for forest products, including consumption, production, capacity, and trade trends during 1994–98;
- A description of the U.S. forest products industry and the major foreign forest products industries in Asia, Europe, and Latin America, including recent changes in production, capacity, marketing practices and market shares;
- A description of trade patterns (both imports and exports) and conditions affecting U.S. forest products trade, including tariff and non-tariff barriers (especially in Asia, Europe, and Latin America), fluctuations in exchange rates, and competition from exporting countries;
- A description of Asian, European, and Latin American government policies affecting U.S. forest products trade, including factors such as financial and other domestic support programs, access to raw materials, regulatory enforcement, forestry practices that may distort domestic and/or international markets for forest products, as well as support from entities such as international financial institutions; and
- A comparison of the strengths and weaknesses of major U.S., Asian, European, and Latin American producers in such areas as raw materials, capital availability, technological capabilities, extent of plant and equipment modernization, present capacity and future planned capacity expansion, and government support.

The investigation will be limited to forest products covered in chapters 44, 47, and 48 of the Harmonized Tariff Schedules of the United States. The report will include information on future forest products supply and demand trends. As requested, the Commission will provide its completed report to the Committee by October 19, 1999.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on May 26, 1999. All persons will have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC, 20436, no later than 5:15 p.m., May 12, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., May 14, 1999; the deadline for filing post-hearing briefs or statements is 5:15 p.m., June 9, 1999. In the event that, as of the close of business on May 12, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after May 12, 1999, to determine whether the hearing will be held.

Written Submissions

In lieu of, or in addition to, participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on June 9, 1999. All submissions should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the

Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

Forest products, exports, imports, markets, trade, production, consumption, capacity, barriers, distortions, financial and government support, exchange rates, United States, Asia, Europe, Latin America, and future trends.

By order of the Commission.

Issued: November 12, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30850 Filed 11–17–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Petition for Nonimmigrant Filing Fee Exemption.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by November 20, 1998. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until January 19, 1999. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: *New information collection.*

(2) Title of the Form/Collection: Petition for Nomimmigrant Filing Fee Exemption.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form I–129W. Office of Adjudications, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Business or other for-profit. This addendum to Form I–129 will be used by the INS to determine if an H–1B petitioner is exempt from the additional filing fee of $500, as provided by the American Competitiveness and Workforce Improvement Act of 1998.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 100,000 responses at 15 minutes (.25) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 25,000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: November 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–30865 Filed 11–17–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Assistance, National White Collar Crime Center; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection: National Opinion Poll on White Collar Crime.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by November 24, 1998. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Mr. Stewart Shapiro, (202) 395–7857, Department of Justice Desk Officer, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Jenny Sundra Layne, 200 Commerce Drive, Suite 200, Morgantown WV 26505, or facsimile at (304) 291–2282. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should

address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* National Opinion Poll on White Collar Crime.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form:* None. National White Collar Crime Center, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract: Primary:* Individual or Households. *Other:* None. The NWCCC Training and Research Institute anticipates conducting a survey of public attitudes and perceptions of white collar crime. Particular areas of interest include seriousness, awareness, arrest and imprisonment, knowledge of prevention resources, victim risk behaviors, victim experience, and general demographics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 1810 respondents at 20 minutes per telephone interview.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 603 annual burdens hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: November 12, 1998.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–30755 Filed 11–17–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–98–89–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. The petitioner proposes to increase the maximum length of their trailing cables to 1,000 feet for the mining machine, loading machine, shuttle car, roof bolter, and the section ventilation fan while developing longwall panels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Cyprus Plateau Mining Corporation

[Docket No. M–98–90–C]

Cyprus Plateau Mining Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.323(e) (actions for excessive methane) to its Willow Creek Mine (I.D. No. 42–02113) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit more than 2 percent methane in a bleeder split of air immediately before the split joins another split of air. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Deitz Bros. Coal Company

[Docket No. M–98–92–C]

Deitz Bros. Coal Company, 137 W. 7th Street, Tuscarora, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1100–2 (quantity and location of firefighting equipment) to its 4 Ft. Vein (I.D. No. 36–08706) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three 10 quart pails are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Deitz Bros. Coal Company

[Docket No. M–98–93–C]

Deitz Bros. Coal Company, 137 W. 7th Street, Tuscarora, Pennsylvania 17851 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its 4 Ft. Vein (I.D. No. 36–08706) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit the gunboat to be operated without safety catches or other no less effective devices. The petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device and to use hoisting ropes with a safety factor in excess of the 4 to 8 to 1. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Bowie Resources, Inc.

[Docket No. M–98–94–C]

Bowie Resources, Inc., 1855 Old Hwy. 133, PO Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Bowie Mine (I.D. No. 05–04591) located in Delta County, Colorado. The petitioner proposes to use a portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine following the specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Bowie Resources, Inc.

[Docket No. M–98–95–C]

Bowie Resources, Inc., 1855 Old Hwy. 133, PO Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.901 (protection

of low- and medium-voltage three-phase circuits used underground) to its Bowie Mine (I.D. No. 05–04591) located in Delta County, Colorado. The petitioner proposes to use a portable diesel powered generator for utility power and to move electrically powered mining equipment in and around the mine following the specific procedures outlined in this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Mettiki Coal Corporation

[Docket No. M–98–96–C]

Mettiki Coal Corporation, 293 Table Rock Road, Oakland, Maryland 21550 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its Mettiki Mine (I.D. No. 18–00621) located in Garrett County, Maryland. The petitioner requests a modification of the standard to permit provision of two portable fire extinguishers at each temporary electrical installation. The petitioner proposes to store at each temporary electrical installation two multipurpose, dry chemical, portable fire extinguishers, each having at least a minimum capacity of 10 pounds of dry powder. The petitioner states that all portable fire extinguishers would be approved by the Underwriters Laboratories, Inc., or Factory Research Corporation, and each would have a rating of 2A 10BC or higher. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. The Pittsburg & Midway Coal Mining Company

[Docket No. M–98–97–C]

The Pittsburg & Midway Coal Mining Company, PO Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Sebree #1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. Due to a rock fall in front of the No. 2 Seal at the No. 7 entry in the North Submain return, examining the area every 7 days would be unsafe. The petitioner proposes to examine the inby and outby side of the rock fall at the No. 2 Seal once during each 24 hour period. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Oxbow Mining, Inc.

[Docket No. M–98–98–C]

Oxbow Mining, Inc., PO Box 535, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.380(d)(5) (escapeways; bituminous and lignite mines) to its Sanborn Creek Mine (I.D. No. 05–04452) located in Gunnison County, Colorado. The petitioner requests a modification of the standard to allow continued usage of the current secondary escapeway as an alternative intake escapeway instead of using the No. 3 Substation Return Airshaft. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov", or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 18, 1998. Copies of these petitions are available for inspection at that address.

Dated: November 10, 1998.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 98–30862 Filed 11–17–98; 8:45 am]

BILLING CODE 4510–43–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Commission will hold its next public meeting on Monday, November 23, 1998 and Tuesday, November 24, 1998 at the Embassy Suite Hotel, 1250 22nd Street NW., Washington, DC. The meeting is tentatively scheduled to begin at 9:30 a.m. on November 23, and at 9:00 a.m. on November 24.

The Commission will discuss demonstration program for frail elderly, care at the end of life, and its workplan on end-stage renal disease. It will consider beneficiary financial liability, access to care, and two quality issues: informed consumer choice and health care errors. Finally, it will discuss graduate medical education, the physician fee schedule, and payments to hospital outpatient departments.

Agendas were mailed on Monday, November 9, 1998. The final agenda will be available on the Commission's web sites (WWW.MedPAC.GOV).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, D.C. 20006. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, 202/653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call 202/653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 98–30770 Filed 11–17–98; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

SES Performance Review Board

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of members of the Performance Review Board for the National Endowment for the Arts. This notice supersedes all previous notices of the PRB membership of the Agency.

DATES: Upon publication.

FOR FURTHER INFORMATION CONTACT: Maxine C. Jefferson, Director of Human Resources, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 627, Washington, DC 20506, (202) 682–5405.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any response by the senior executive, and make recommendations to the appointing authority relative to the performance of the senior executive.

The following persons have been selected to serve on the Performance Review Board of the National Endowment for the Arts:

Scott Shanklin-Peterson, Senior Deputy Chairman

Karen K. Christensen, Deputy Chairman for Grants and Awards
Laurence M. Baden, Deputy Chairman for Management and Budget
Alfred B. Spellman, Jr., Deputy Chairman for Guidelines, Panel, and Council Operations
Richard P. Woodruff, Congressional and White House Liaison

Leon Williams,

Acting Director of Human Resources, National Endowment for the Arts.

[FR Doc. 98–30804 Filed 11–17–98; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On September 21, 1998, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 5, 1998 to the following applicant:

Erick Chiang Permit No. 99–012

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 98–30866 Filed 11–17–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 3–5, 1998, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, November 20, 1997 (62 FR 62079).

Thursday, December 3, 1998

8:30 A.M.–8:45 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:45 A.M.–10:30 A.M.: NEI Whole Plant Study and Options to Make 10 CFR Part 50 Risk-Informed (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding staff options to make 10 CFR Part 50 risk-informed and NEI Whole Plant Study to evaluate options for modifying 10 CFR Part 50 requirements.

10:45 A.M.–12:15 P.M.: Proposed Options to Make 10 CFR 50.59 Risk-Informed (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NEI regarding staff options to make 10 CFR 50.59 (Changes, tests and experiments) risk-informed.

1:15 P.M.–4:15 P.M.: Integrated Review of Assessment Processes and Improvements to the Senior Management Meeting Process (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NEI regarding the integrated review of the assessment processes, improvements to the Senior Management Meeting Process, changes to the inspection program, and related matters.

4:30 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports, including those on the role of frequency-consequence curves in risk-informed decisionmaking, NRC Safety Research Program, and on lessons learned from the review of the AP600 passive plant design.

Friday, December 4, 1998

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 A.M.–9:00 A.M.: Subcommittee Report (Open)—The Committee will hear a report of the Plant License Renewal Subcommittee regarding matters discussed during the November 18, 1998 meeting as well as a proposed ACRS report on license renewal activities.

9:00 A.M.–9:45 A.M.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, and organizational and personnel matters relating to the ACRS, including status of appointment of a new member to the ACRS.

[**Note:** A portion of this session may be closed to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of this Advisory Committee, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

9:45 A.M.–10:30 A.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

10:45 A.M.–11:00 A.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports. The EDO's responses are expected prior to the meeting.

11:00 A.M.–11:30 A.M.: Election of Officers for Calendar Year 1999 (Open)—The Committee will elect a Chairman and a Vice Chairman to the ACRS and a Member-at-Large to the Planning and Procedures Subcommittee.

1:15 P.M.–2:30 P.M.: Potential Items for Meeting with the NRC Commissioners (Open)—The Committee will discuss potential items for discussion during the ACRS meeting with the Commissioners on February 3, 1999. (The commission has not approved topics for this meeting.)

2:30 P.M.–7:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

Saturday, December 5, 1998

8:30 A.M.–2:00 P.M.: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

2:00 P.M.–2:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 29, 1998 (63 FR 51968). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its

consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch, at least five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Chief of the Nuclear Reactors Branch prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Chief of the Nuclear Reactors Branch if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss matters that relate solely to the internal personnel rules and practices of this Advisory Committee per 5 U.S.C. 552b(c)(2), and to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy, Chief of the Nuclear Reactors Branch (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m. EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW*.

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

The ACRS meeting dates for Calendar Year 1999 are provided below:

ACRS meeting No.	1999 ACRS meeting date
	January 1999—No meeting.
459	February 4–6, 1999.
460	March 10 (1:00 p.m.)–13, 1999.
461	April 7 (1:00 p.m.)–10, 1999.
462	May 5 (1:00 p.m.)–8, 1999.
463	June 2–4, 1999.
464	July 7–9, 1999.
	August 1999—No meeting.
465	September 1–3, 1999.
466	September 30–October 2, 1999.
467	November 4–6, 1999.
468	December 2–4, 1999.

Dated: November 13, 1998.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 98–30870 Filed 11–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 2, 1998, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 2, 1998—2:00 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 13, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–30871 Filed 11–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 24, 1998, through November 5, 1998. The last biweekly notice was published on November 4, 1998 (63 FR 59584).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 18, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for á hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 16, 1998.

Description of amendment request: The proposed amendments would lower the power level below which the turbine control valve (TCV) and turbine stop valve (TSV) closure scram signals and the end-of-cycle recirculation pump trip (EOC-RPT) signals are not in effect. The bypass setpoint (P_{bypass}) would be reduced from 30 percent rated power to 25 percent rated power. The licensee also proposes to delete the reference to turbine first stage pressure as a measure of core thermal power in the Technical Specifications. To ensure that the trip functions will not be inadvertently bypassed when they are required to be operable, a requirement would be added to periodically verify that TCV and TSV scram trip functions and the ECO-RPT trip functions are not bypassed at greater than or equal to 25 percent of rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated:

The probability of an accident previously evaluated will not increase as a result of this change because the setpoint change does not alter any of the initiators of an accident or cause them to occur more frequently.

The consequences of an accident previously evaluated are not impacted. LaSalle Units 1 and 2 each have approximately 30 percent bypass capability. Therefore, a scram on TCV or TSV closure signals is not needed until 30 percent core thermal power is reached, as adequate steam bypass capacity is available. A lower P_{bypass} remains conservative with respect to this criterion.

LaSalle utilizes power and flow dependent thermal limits. The power dependent portion of these thermal limits is dependent on the P_{bypass} setpoint. These limits provide assurance that adequate fuel thermal-mechanical margin is maintained through adherence to the thermal limits Technical Specification requirements.

Revised thermal limits have been determined based on the results of GE transient analyses. Adhering to these thermal limits ensures that the consequences of an accident or transient would not be increased from the consequences under the approved 30 percent setpoint. Adjustments to the thermal limits were determined through use of the NRC-approved ODYN reactor dynamic model for the limiting Load Rejection Without Bypass and the Feedwater Controller Failure events.

The deletion of the reference to turbine first stage pressure and rewording the Technical Specifications Notes does not affect either accident initiators or plant equipment, as they are administrative changes.

Adding the periodic verification that the bypass channels are set correctly ensures that scrams or EOC-RPT will not be inadvertently bypassed when Thermal Power is greater than or equal to 25 percent of Rated Thermal Power. The statement that specification 4.0.2 applies to the 18 month interval is needed, since the notes are not standard surveillance requirements and the interval is consistent with other similar instrumentation to which 4.0.2 currently applies.

Therefore, the proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

The setpoint change and proposed bypass verification notes ensure that the scrams for TSV closure and TCV fast closure, and EOC-RPT, will be enabled above 25 percent of rated thermal power, rather than above 30 percent of rated thermal power. This change results in simplified reload transient analyses and does not impact any other equipment.

No other physical modifications are being proposed by this submittal. The only plant operational impact is that between 25 percent and 30 percent power, the plant will now scram upon a turbine trip, which is an analyzed transient.

The remaining changes to Technical Specification wording are administrative in nature and consistent with other Technical Specifications.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety:

LaSalle Units 1 and 2 each have approximately 30 percent bypass capability. Therefore, a scram on TCV or TSV closure signals in not needed until 30 percent core thermal power is reached, as adequate steam bypass capacity is available. However, reduction of this setpoint to 25 percent power actually aids the plant transient response between 25 percent and 30 percent power.

The new thermal limits reflect the revised setpoint and have been determined based on revised limiting transient analyses that have included the new P_{bypass} value. If a transient were to occur, the revised operating limits ensure that adequate margin would be available to preclude violation of the Minimum Critical Power Ratio (MCPR) safety limit and the fuel thermal-mechanical limits.

All other UFSAR [Updated Final Safety Analysis Report] events are either bounded by the analyses performed or are not impacted by the P_{bypass} change.

The wording changes to the Technical Specifications do not change the requirement for the bypass function and for maintaining the bypass function and thus do not affect the analyses discussed above.

The addition of the Notes periodically verifying the TCV and TSV Closure Trip Functions are not bypassed at greater than or equal to 25 percent Rated Thermal Power ensures the trip functions will not be inadvertently bypassed when required to be Operable.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Duke Energy Corporation (DEC), et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: July 22 and October 22, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to reflect the licensee's planned use of fuel supplied by Westinghouse. The

Westinghouse fuel has different design characteristics from the fuel currently in use. Accordingly, the following changes would need to be made to the TS: Figure 2.1.1–1, "Reactor Core Safety Limits—Four Loops in Operation"; various core operating parameters specified by Surveillance Requirements 3.2.1.2, 3.2.1.3, and 3.2.2.2; Section 4.2.1, "Fuel Assemblies"; and Section 5.6.5, "Core Operating Limits Report (COLR)."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, addressing the three standards of 10 CFR 50.92(c):

First Standard

Implementation of this LAR [license amendment request] would not involve a significant increase in the probability or consequences of an accident previously evaluated. The revised Reactor Core Safety Limits Figure further restricts acceptable operation. Moving an uncertainty factor from the Improved Technical Specifications to the Core Operating Limits Report (COLR) does not exempt this factor from regulatory restrictions. COLR parameters are generated by NRC approved methods with the intent of ensuring that previously evaluated accidents remain bounding. The COLR is submitted to the NRC upon implementation of each fuel cycle or when the document is otherwise revised. No accident probabilities or consequences will be impacted by this LAR.

Second Standard

Implementation of this LAR would not create the possibility of a new or different kind of accident from any previously evaluated. The revised Reactor Core Safety Limits Figure further restricts acceptable operation. Moving an uncertainty factor from the Improved Technical Specifications to the COLR does not exempt this factor from regulatory restrictions. Since the parameter in question is not being deleted, the possibility of a new or different kind of accident from any previously evaluated does not exist.

Third Standard

Implementation of this LAR would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. Use of the ZIRLO™ cladding material has been reviewed and approved in Reference 1 (as listed in Chapter 2.1 of Topical Report DPC–NE–2009/DPC–NE–2009P, Duke Power Company Westinghouse Fuel Transition Report). ZIRLO™ cladding has been extensively used in Westinghouse nuclear reactors. The changes proposed in this LAR are necessary to ensure that the performance of the fission product barriers (cladding) will not be impacted following the replacement of one fuel design for another. No safety margin will be significantly impacted.

The NRC staff reviewed the licensee's analysis, and agrees that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: June 18, 1996. This notice supersedes the notice published on July 31, 1996 (61 FR 40015) in its entirety.

Description of amendment request: For Beaver Valley Power Station, Unit No. 1 (BVPS–1) only, the proposed amendment would revise Technical Specification (TS) 4.4.5 and associated Bases; the Bases for TS 3/4.4.6.2 would also be revised. The proposed changes are editorial in nature and are intended to provide consistency between the TSs and associated Bases. Index page XIX would be revised to reflect the revision of page numbers for TS Tables 4.4–1 and 4.4–2 due to shifting of text.

For Beaver Valley Power Station, Unit No. 2 (BVPS–2) only, the proposed amendment would implement a voltage-based repair criteria for steam generator tubes similar to the changes approved for BVPS–1 by License Amendment No. 198. The proposed changes are intended to reflect the guidance provided in NRC Generic Letter 95–05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking." The proposed changes would revise TSs 4.4.5 and 3.4.6.2 and associated Bases. TS Table 4.4–2 would be revised to reference TS 6.6 for reporting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the tube support plate (TSP). Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% throughwall electric discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Since tube-to-TSP proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics which maintain a margin of safety of 1.43 times the bounding faulted condition, main steamline break (MSLB) pressure differential. The Regulatory Guide (RG) 1.121 criterion requiring maintenance of a safety factor of 1.43 times the MSLB pressure differential on tube burst is satisfied by ⅞" diameter tubing with bobbin coil indications with signal amplitudes less than 8.6 volts, regardless of the indicated depth measurement.

The upper voltage repair limit (V_{URL}) will be determined prior to each outage using the most recently approved NRC database to determine the tube structural limit (V_{SL}). The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{NDE}) and growth (V_{GR}) to establish V_{URL}. Using the Generic Letter (GL) 95–05 NDE and growth allowances for an example, the NDE uncertainty component of 20% and a voltage growth allowance of 30% per full power year can be utilized to establish a V_{URL} of 5.7 volts. The 20% NDE uncertainty represents a square-root-sum-of-the-squares (SRSS) combination of probe wear uncertainty and analyst variability. The degradation growth allowance should be an average growth rate or 30% per effective full power year, whichever is larger.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated MSLB outside of containment but upstream of the main steam isolation valve (MSIV) represents the most limiting radiological condition relative to the plugging criteria. In support of implementation of the revised plugging limit, analyses will be performed to determine whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary-to-secondary leakage would result in postulated site boundary and control room doses exceeding 10 CFR 100, 10 CFR 50 Appendix A, and GDC–19 [General Design Criterion-19] requirements, respectively. A separate calculation has determined the maximum allowable MSLB leakage limit in a faulted loop. This limit was calculated using the technical specification reactor coolant system (RCS) Iodine-131 activity level of 1.0 microcuries per gram dose equivalent Iodine-131 and the recommended Iodine-131 transient spiking values consistent with NUREG–0800. The projected MSLB leakage rate calculation methodology prescribed in Section 2.b of GL 95–05 will be used to calculate the end-of-cycle (EOC) leakage. Projected EOC voltage distribution will be developed using the most recent EOC eddy current results and considering an appropriate voltage measurement uncertainty. The log-logistic probability of

leakage correlation will be used to establish the MSLB leakrate used for comparison with the faulted loop allowable limit. Therefore, as implementation of the voltage-based repair criteria does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes to the BVPS–1 Index, Specifications and associated Bases and the proposed change to BVPS–2 Table 4.4–2 are editorial in nature. Therefore, these changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Implementation of the proposed steam generator tube voltage-based repair criteria does not introduce any significant changes to the plant design basis. Use of the voltage-based repair criteria does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations as no outside diameter stress corrosion cracking (ODSCC) is occurring outside the thickness of the tube support plates. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging limit has been applied (during all plant conditions).

Duquesne Light Company will implement a maximum primary-to-secondary leakage rate limit of 150 gpd [gallons per day] per steam generator to help preclude the potential for excessive leakage during all plant conditions. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture during faulted plant conditions. The 150 gpd limit provides for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded.

The single through-wall crack lengths that result in tube burst at 1.43 times the MSLB pressure differential and the MSLB pressure differential alone are approximately 0.57 inch and approximately 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of approximately 0.41 inch long cracks at nominal leak rates and approximately 0.62 inch long cracks at the lower 95% confidence level leak rates. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential exists for the crevice to become uncovered during MSLB conditions, the leakage from the maximum permissible crack must preclude tube burst at MSLB conditions. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for MSLB conditions using the lower 95% leakrate data. Additionally, this leak-before-break evaluation assumes that the entire crevice area is uncovered during blowdown. Partial uncovery will provide benefit to the burst capacity of the intersection. Analyses have shown that only a small percentage of the TSPs are deflected greater than the TSP thickness during a postulated MSLB.

As steam generator tube integrity upon implementation of the voltage-based repair criteria continues to be maintained through inservice inspection and primary-to-secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

The proposed change to BVPS–1 Index, Specifications and associated Bases and the proposed change to BVPS–2 Table 4.4–2 are editorial in nature. These changes do not change the performance of plant systems, plant configuration or method of operating the plant.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The use of the voltage-based repair criteria at BVPS–2 maintains steam generator tube integrity commensurate with the criteria of RG 1.121. This guide describes a method acceptable to the Commission for meeting GDCs 14, 15, 30, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be repaired or removed from service. Upon implementation of the proposed criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The EOC distribution of crack indications at the tube support plate elevations will be confirmed to result in acceptable primary-to-secondary leakage during all plant conditions and that radiological consequences remain within the licensing basis.

In addressing the combined effects of loss-of-coolant-accident (LOCA) + safe shutdown earthquake (SSE) on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse. There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature. Second, there is a potential that partial through-wall cracks in tubes could progress to complete through-wall cracks during tube deformation or collapse.

The results of an analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation. Since the leak-before-break methodology is applicable to the reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes the pressurizer spray line break. Analysis results have demonstrated that no tubes were subject to deformation or collapse. No tubes have been excluded from application of the subject voltage-based steam generator tube repair criteria.

Addressing RG 1.83 considerations, implementation of the voltage-based repair criteria is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, the bobbin coil inspection will include 100% of the hot-leg TSP intersections and cold-leg intersections down to the lowest cold-leg TSP with known ODSCC, the determination of the TSPs having ODSCC will be based on the performance of at least 20% random sampling of tubes inspected over their full length, and rotating pancake coil inspection requirements for the larger indications left inservice to characterize the principal degradation as ODSCC.

As noted previously, implementation of the tube support plate intersection voltage-based repair criteria will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs reduces the RCS flow margin. Thus, implementation of the voltage-based repair criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

The proposed change to the BVPS–1 Index, Specifications and associated Bases and the proposed change to BVPS–2 Table 4.4–2 are editorial in nature. These changes will not reduce the margin of safety because they have no impact on any safety analysis assumptions.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the UFSAR or any BASES of the plant technical specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts &

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NRC Project Director: Robert A. Capra.

Duquesne Light Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of amendment request: October 15, 1998.

Description of amendment request: The proposed amendment would make several changes that are administrative in nature. The changes would (1) make editorial changes to delete obsolete material or material adequately described elsewhere, change action statement numbers, update the technical specification (TS) index pages, and make changes to be consistent with the guidance of the improved standard technical specifications (ISTS); (2) delete reporting requirements that duplicate reporting requirements contained in 10 CFR; and (3) relocate the requirement for meteorological monitoring instrumentation from the TS to the Licensing Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

a. This change deletes an expired Unit 1 license condition and a Unit 2 license requirement that is not required since it is redundant to the reporting requirements addressed in 10 CFR 50.73. Deleting these requirements does not involve any increase in the probability or consequences of an accident previously evaluated.

b. The reference to Specification 3.0.6 was omitted from Specification 3.0.1 in Unit 1 Amendment 213 and Unit 2 Amendment 90 and is being added to 3.0.1 to be consistent with the Improved Standard Technical Specifications of NUREG 1431. This does not involve any increase in the probability or consequences of an accident previously evaluated.

c. The Core Alteration definition has been updated to be consistent with the regulations and ISTS. The Offsite Dose Calculation Manual (ODCM) definition has been updated to be consistent with the change to Administrative Control 6.9.3. The Members of the Public definition has been changed to be consistent with 10 CFR 20.1003. This does not involve any increase in the probability or consequences of an accident previously evaluated.

d. Changing Table 3.3–6 Action Statement 36 to Action Statement 35 is an editorial change to eliminate redundant use of action statement numbers. This does not involve any increase in the probability or consequences of an accident previously evaluated.

e. The technical specification index is being revised to address removal of the Meteorological Monitoring specification and title and page number changes to the administrative control reporting requirements section. The Meteorological Monitoring specification is being relocated to the Licensing Requirements Manual (LRM). Relocating the Meteorological Monitoring requirements is in accordance with the guidance in the Commission's Final Policy Statement and revisions to 10 CFR 50.36 on the content of the technical specifications and the ISTS. The Meteorological Monitoring requirements do not meet any of the criteria, 1 thru 4 of 10 CFR 50.36 and can, therefore, be relocated from the Technical Specifications to the LRM. These changes do not involve any increase in the probability or consequences of an accident previously evaluated.

f. The exclusion area boundary is adequately described in each unit's UFSAR [Updated Final Safety Analysis Report], therefore, design feature 5.1 Site Location is also being modified by deleting the description of the exclusion area boundary. This does not involve any increase in the probability or consequences of an accident previously evaluated.

g. The change to refer to the Unit 1 Overpressure Protection System (OPPS) enable temperature in Specification 3.4.9.3 in lieu of specifying 275 °F was evaluated and found acceptable in the request for approval of Amendment 160. The deletion of the asterisk in Unit 2 Specification 3.9.8.1 was justified as part of the request for approval of Amendment 25. The inadvertent omission of the ACTION to take in the case that the temperature of the steam generator is precisely 50 °F above the cold leg temperature is being corrected. The cases of greater than and less than 50 °F are already included. These are editorial changes that do not involve any increase in the probability or consequences of an accident previously evaluated.

h. The administrative control reporting requirements have been modified to incorporate various ISTS requirements. This requires changing titles and eliminating requirements addressed elsewhere, removing reference to deleted sections, and replacing reference to the administrative control section reporting requirements in various specifications with reference to 10 CFR 50.4. The 1993 NRC final policy statement set forth the criteria for determination of those requirements to be included in TS. The reporting requirements being removed from the TS do not meet the criteria for inclusion in the TS; therefore, the reporting requirements have been modified to reflect those requirements provided in the ISTS. These are editorial changes that do not involve any increase in the probability or consequences of an accident previously evaluated.

i. The Technical Specification index has been modified to address the revised pages.

These changes have been determined to be editorial and administrative in nature, and as such, would not affect any accident assumptions or radiological consequences of an accident. Therefore, the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The editorial changes, the elimination of reporting requirements which duplicate 10 CFR requirements and administrative improvements to incorporate the ISTS requirements are all changes that are administrative in nature. The proposed changes will not affect any plant system or structure, nor will they affect any system functional or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed amendment modifies reporting requirements and incorporates associated editorial changes that do not impact the UFSAR design basis or accident analyses assumptions. This change does not introduce any new operational modes or physical modifications to the plant; therefore, no action will occur that will involve a significant reduction in a margin of safety. In addition, the proposed change does not affect radiological release limits, monitoring equipment or operating practices. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 23, 1998.

Description of amendment request: The proposed amendment would change Division III battery specific gravity acceptance criteria outlined in River Bend Station (RBS) Technical Specifications (TS). The change is required as a result of battery system design modifications which are scheduled to be implemented in April 1999 during refueling outage (RF) RF–8. During this time, the current Division III

battery will be replaced. The new battery, which also will have a greater capacity rating, will be supplied with a nominal specific gravity of 1.215 at 77°F in contrast to the existing Division III battery supplied with a nominal specific gravity of 1.210 at 77°F. Since TS Section 3.8.6, Table 3.8.6–1 values for specific gravity are based on the manufacturer's nominal specific gravity, these values will need to be updated.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The system loads, voltage requirements, and inrush currents have been calculated in accordance with IEEE Std. 485, "IEEE Recommended Practice for Sizing Large Lead Storage Batteries for Generating Stations and Substations." To support these design requirements at a capacity of 80%, a new battery must be installed. The nominal specific gravity of the new battery, as provided by the manufacturer of the battery, is 1.215 at 77°F.

A review of USAR Chapter 15, including Appendix 15A, was conducted to determine what accidents, if any, may be impacted by the proposed change to the Division III battery specific gravity.

USAR Sections 15.2, "Increase in Reactor Pressure;" 15.3, "Decrease in Reactor Coolant System Flow Rate;" and Section 15.6, "Decrease in Reactor Coolant Inventory" discuss accidents that involve the initiation of HPCS when reactor vessel level drops to the initiation point. The function of the HPCS System is to mitigate the consequences of an accident (i.e., to maintain reactor vessel coolant inventory after small breaks which do not depressurize the reactor vessel, or provide spray cooling heat transfer following larger breaks, Ref. USAR Section 6.3.1.2.1). The function of the Division III 125 Vdc Power System is to provide a highly reliable, continuous, and independent source of control and motive power for the HPCS System logic, HPCS diesel generator set control and protection, and all Division III related control (Ref. USAR Section 8.3.2.2.1). This is a support function for the HPCS System.

USAR Section 15.5, "Increase In Reactor Coolant Inventory," postulates an inadvertent HPCS actuation resulting from operator error. The proposed changes to the Division III battery specific gravity cannot result in an inadvertent HPCS actuation/injection. The proposed changes to the allowable specific gravity values provided in Technical Specification 3.8.6 are in agreement with the manufacturer's nominal specific gravity. The revision simply ensures that the battery has sufficient capacity to meet the energy requirements of its critical loads. The proposed change does not create any new internally generated missiles, nor does it affect the High Energy Line Break Analysis or any other accident described in Chapter 15 of the USAR. Neither the function nor the operation of the Division III battery is impacted by the proposed change.

The replacement Division III battery will be supplied by the manufacturer with a nominal specific gravity of 1.215 at 77°F. The battery manufacturer's rated performance is based on the specific gravity of the battery being maintained near the nominal specific gravity. Since the Division III design basis calculation depends on the battery manufacturer's rated performance, battery parameters upon which that performance is based must be monitored. The current Technical Specification values for specific gravity are based upon a nominal specific gravity of 1.210 at 77°F. The proposed values accurately reflect the manufacturer's nominal specific gravity. Testing the Division III battery to the proposed values provides assurance that the HPCS functions supported by the 125 Vdc System will not be adversely affected by the Division III battery.

The proposed changes will not affect failure modes of existing equipment. The proposed changes do not affect the ability of any structures, systems or components to perform their safety functions. Therefore, no undue risk to the health and safety of the public has been created by the proposed changes, nor is there any change in the radiological consequences at the site boundary.

By incorporating the correct value for battery specific gravity verification in Table 3.8.6–1, the Technical Specifications will accurately reflect the new design basis value for the Division III battery specific gravity. This change allows the performance of the Division III battery to be verified against the correct design basis value, thus providing assurance that the Division III 125 Vdc power system function will remain as assumed in the accident analysis. Therefore, the proposed change cannot affect any accidents previously evaluated (probability or consequences). Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. This request does not create the possibility of occurrence of a new or different kind of accident from any previously evaluated.

Since a battery's capacity decreases as specific gravity decreases below the manufacturer's nominal value, monitoring the battery's specific gravity is one means of ensuring that the battery will adequately supply the minimum energy required to support the system function assumed in the accident analysis.

All safety systems will continue to function as originally designed. The subject equipment will not function in a manner different than described in USAR Section 8.3.2.2. The functional and performance requirements of the Division III 125 Vdc System and its associated interfaces have not been altered. The proposed change simply ensures that the HPCS battery performance is verified against the correct design basis value. This value provides assurance that the HPCS System functions will not be adversely affected by the capacity of the battery. Therefore, the proposed changes do not create the possibility of occurrence of a new or different kind of accident from any previously evaluated.

3. This request does not involve a significant reduction in a margin of safety.

This proposed change updates the acceptance criteria of the current specific gravity for the Division III battery. This acceptance criteria is in accordance with manufactures recommendations. The design and license basis for the Division III systems and functions remain unchanged and the battery will continue to supply the 125 Vdc loads necessary to support these functions. This value will reflect the manufacturer's nominal specific gravity for the Division III battery. With the system functions supported as assumed in the accident analyses, the margin to safety remains unchanged.

As a result, the proposed change does not involve a significant reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

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NRC Project Director: John N. Hannon.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 8, 1998.

Description of amendment request: The proposed amendment would implement Boiling Water Reactor Owners Group (BWROG) Enhanced Option I–A (EIA) Reactor Stability Long Term Solution as documented in NEDO–32339, Revision 1, "Reactor Stability Long-Term Solution, Enhanced Option I–A." The EIA long term solution has been accepted by the NRC in Safety Evaluation Report, "Reactor Stability Long-Term Solution, Enhanced Option I–A Generic Technical Specifications (TS), NEDO–32339, Supplement 4."

The proposed changes to the RBS TS will enable the full implementation of the Enhanced Option I–A (EIA) long term solution to the neutronic/thermal hydraulic instability issue. Specifically, the proposed change deletes the limits

on power and flow conditions associated with the implementation of the guidance in General Electric Service Information Letter #380, Revision 1, "BWR Core Thermal Hydraulic Stability" (current TS 3.4.1, Figure 3.4.1–1 and RBS plant procedures), adds new specifications, to establish limits for Fraction of Core Boiling Boundary (FCBB) and the Period Based Detection System (PBDS), modifies the RPS instrumentation specification and the description of the contents of the Core Operating Limits Report (COLR) in current TS 5.6.5. The two new specifications require maintaining stability control and the availability of a stability detection system during operation in defined regions of the power and flow operating domain.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do no involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments allow the implementation of the Enhanced Option I–A (EIA) long term solution to the neutronic/thermal hydraulic instability issue. Current TS restrictions on power and flow conditions, number of operating recirculation loops, and operator actions implemented to reduce the probability of neutronic/thermal hydraulic instability are eliminated and new stability requirements consistent with NEDO–32339–A, Supplement 4, Revision 1, are imposed.

While the proposed amendments permit operation in regions of the power and flow operating domain postulated to be susceptible to neutronic/thermal hydraulic instability, the implementation of the EIA solution ensures there is not a significant increase in the probability or consequences of an accident previously evaluated. Operation in these regions does not increase the probability of occurrence of initiators and precursors of other previously analyzed accidents. The proposed amendments permit the implementation of the features of the EIA solution which prevent neutronic/thermal hydraulic instability. The features include pre-emptive reactor scram upon entry into the regions of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability—the Exclusion Region. The EIA solution prevents neutronic/thermal hydraulic instability during operation in regions of the power and flow operating domain previously excluded from operation and therefore does not significantly increase the probability of a previously analyzed accident.

The EIA solution also requires implementation of stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of stability control, to neutronic/thermal hydraulic instability. The modified rod block functions providing the restricted region entry alarm (RREA), boiling boundary limits, and PBDS functions are required on entry into the Restricted Region of the power to flow map. The boiling boundary limits, and Period Based Detection System (PBDS) functions are required on entry into the Monitored Region of the power to flow map. The EIA solution prevents or allows for detection and suppression of neutronic/thermal hydraulic instability during operation in these regions of the power and flow operating domain.

The EIA solution includes restrictions on power and flow conditions and actions associated with the modified APRM flow biased scram and RREA functions. Required actions include adherence to the boiling boundary limit stability control prior to entry and during operation in the region of the power and flow operating domain which is potentially susceptible to neutronic/thermal hydraulic instability—in the absence of stability control. In addition, the proposed amendments require operator actions based upon control room indications generated by a new PBDS. The PBDS is designed to provide alarm indication that conditions consistent with a significant degradation in the stability performance of the reactor have occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist. The PBDS also provides analog indication of the highest and second highest successive period confirmation count for all of the LPRMs monitored. This provides the plant operators with continuous indication of reactor stability operating conditions. The PBDS system provides indication only and does not affect plant structures, systems, or components in any way that could increase the probability or consequences of an accident. Rather, the improved control room indications provide the operator with more accurate and timely information.

The EIA solution allows for the "Setup" of APRM flow biased scram and control rod block function. The EIA solution requires adherence to certain boiling boundary limit stability controls prior to selection by the operator of APRM flow biased scram and control rod block function "Setup" setpoints. This "Setup" function allows operation in a region of the power and flow operating domain potentially susceptible to neutronic/thermal hydraulic instability provided the additional limits of the flow control boiling boundary (FCBB) and PBDS are met. After exiting the region requiring the stability control to be met, the setpoints can be manually reset to their normal values. Stability controls are required to be in place when setpoints are "Setup". As a backup EIA feature, the APRM flow biased setpoints automatically reset to their normal values above a pre-determined flow condition. This automatic reset to the more conservative setpoints ensures that the pre-emptive reactor scram will prevent operation as a result of an anticipated operational occurrence in the region most susceptible to neutronic/thermal hydraulic instability should the operator not select the more conservative setpoints appropriate for operation following exit from the region requiring stability control. The FCBB, PBDS, and automatic reset of the APRM flow biased scram and control rod block function "setup" setpoints allow for the use of the "setup" feature and help ensure that there is not an increase in the probability or consequences of an accident.

Operation in the regions of the power and flow operating domain excluded by current TS 3.4.1 and Figure 3.4.1–1 can occur as a result of anticipated operational occurrences. In the absence of operator actions the severity of these anticipated operational occurrences may increase due to the potential occurrence of neutronic/thermal hydraulic instability as a result of operation in these regions. Upon entry, as a result of an anticipated operational occurrence, into the region most susceptible to neutronic/thermal hydraulic instability the pre-emptive reactor scram prevents neutronic/thermal hydraulic instability. Therefore, the consequences of an accident do not significantly increase while operating with stability control in place.

The required EIA features is designed to limit possible neutronic/thermal hydraulic instabilities and to detect and suppress further neutronic/thermal hydraulic instabilities. These features include: a pre-emptive automatic scram, the control rod block and alarms associated with entry into the region susceptible to neutronic/thermal hydraulic instabilities, automatic reset of APRM flow biased setpoints, PBDS, FCBB, and the required operator actions, including manual reactor scram. Therefore, the proposed amendments prevent the occurrence of neutronic/thermal hydraulic instability during operation or as a consequence of an anticipated operational occurrence and do not significantly increase the consequences of any previously analyzed accident.

2. The proposed amendments do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendments eliminate existing restrictions on power and flow conditions and impose alternative restrictions which permit the implementation of the EIA long term stability solution. The current restrictions on the power and flow conditions do not prevent entry into regions of the power and flow operating domain most susceptible to neutronic/thermal hydraulic instability and therefore the possibility of neutronic/thermal hydraulic instability exists in the absence of operator action. The required features of the EIA solution implement a pre-emptive scram upon entry into the region most susceptible to neutronic/thermal hydraulic instability, without operator action. The accessible operating domain allowed by the proposed amendments is essentially a subset of the power and flow operating domain currently allowed. Initial conditions are bounded by the current initiators and precursors of accidents and anticipated operational occurrences. Accordingly, no new accident of initiator is present. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from that previously evaluated.

Concurrent with the implementation of the proposed amendments, a modified Flow

Control Trip Reference (FCTR) card, EIA FCTR card, and a new Period Based Detection System (PBDS) will be installed as required by the EIA solution. The function of the EIA FCTR card is to aid the operator in the identification of entry into regions of the power and flow operating domain potentially susceptible to neutronic/thermal hydraulic instability in the absence of stability controls and to initiate a pre-emptive scram upon entry into the regions most susceptible to neutronic/thermal hydraulic instability. This is accomplished by altering the existing values of setpoints of the APRM flow biased scram and the control rod block functions generated by the EIA FCTR card.

The design of the EIA digital FCTR card is a functional equivalent of the original analog FCTR card. The Failure Modes and Effects Analysis (FMEA) for the card detailed in NEDC–32339P-A Supplement 2 found no single failure that would increase the consequences of an accident. The EIA FCTR card maintains the original basis for the NMS interface functions of the analog FCTR card it replaces. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the environmental qualification values for the EIA FCTR cards. Therefore, the potential for spurious scrams or common mode failures induced by environmental effects (e.g., electromagnetic interference) is considered negligible. The installation of the EIA FCTR card will therefore not create the possibility of a new or different kind of accident from any accident previously evaluated.

The function of the PBDS is to provide the operator with an indication that conditions consistent with a significant degradation in the stability performance of the reactor has occurred and the potential for imminent onset of neutronic/thermal hydraulic instability may exist. This is accomplished by the installation of a new PBDS card in the Neutron Monitoring System in accordance with NRC approved BWROG and GE design. The PBDS card takes inputs from individual local power range monitors and provides analog indication of the highest and second highest successive period confirmation count, provides a Hi DR and Hi-Hi DR alarm, and INOP status indication to the operator in the control room. These displays can not create the possibility of a new or different kind of accident from any accident previously evaluated. The plant specific environmental conditions (temperature, humidity, pressure, seismic, and electromagnetic compatibility) have been confirmed to be enveloped by the PBDS environmental qualification values. Therefore, the installation of the PBDS card will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendments do not involve a significant reduction in the margin of safety.

The proposed amendments permit the implementation of the EIA long term solution to the stability issue. Under certain conditions, existing BWR designs are susceptible to neutronic/thermal hydraulic instability. GDC 10 of 10 CFR 50, Appendix A, requires that specified acceptable fuel design limits not be exceeded during anticipated operational occurrences. General Design Criterion (GDC) 12 of 10 CFR 50, Appendix A, requires thermal hydraulic instability to be prevented by design or be readily and reliably detected and suppressed. When the design of the reactor system does not prevent the occurrence of neutronic/thermal hydraulic instability, instability is considered an anticipated operational occurrence. The proposed amendments and the associated design modifications provide automatic features and operational information to the Control Room that replace the existing BWROG Interim Corrective Actions (ICAs). Thus the EIA solution assures compliance with GDC-10 and GDC 12 by providing for reliable detection and suppression and by the prevention of neutronic/thermal hydraulic instability. This therefore precludes neutronic/thermal hydraulic instability from becoming a credible consequence of an anticipated operational occurrence. As a result the margins of safety are maintained.

Analyses performed by the BWROG indicate that neutronic/thermal hydraulic instability induced power oscillations could result in conditions exceeding the MCPR SL prior to detection and suppression by the current design of the Neutron Monitoring System and Reactor Protection System. To ensure compliance with GDC 12 the BWROG developed Interim Corrective Actions (ICAs) to enhance the capability of the operator to readily and reliably detect and suppress neutronic/thermal hydraulic instability. The BWROG ICAs also provided additional guidance for monitoring local power range monitors beyond the requirements of current TS 3.4.1 to ensure adequate margin to the onset of neutronic/thermal hydraulic instability. Reliance on operator actions to comply with GDC 12 was accepted on an interim basis by the NRC pending final implementation of a long term solution to the stability issue. The modified design of the Reactor Protection System (APRM flow biased scram) and stability control prior to entry into a region of the power and flow operating domain which is potentially susceptible, in the absence of stability control, to neutronic/thermal hydfaulic instability implemented with the EIA solution prevents neutronic/thermal hydraulic instability. In addition, significant backup protection features, including the PBDS and specified operator actions, are required to be implemented. As a result, the margin to the onset of neutronic/thermal hydraulic instability provided by the existing TS requirements and BWROG ICAs recommendations is not reduced by the implementation of the EIA solution. The EIA solution assures compliance with GDC 12 by the prevention of neutronic/thermal hydraulic instability and therefore precludes neutronic/thermal hydraulic instability from becoming a credible consequence of an anticipated operational occurrence. The consequences of anticipated operational occurrences will not increase and the margin to the MCPR SL will not decrease upon implementation of the EIA solution. Therefore, the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005.

NRC Project Director: John N. Hannon.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 1, 1998.

Description of amendment request: The proposed change modifies Technical Specification (TS) 3.3.3.7.3 and Surveillance Requirement 4.3.3.7.3 for the broad range gas detection system. A change to Technical Specification Basis 3/4.3.3.7 has been included to support this change. This change to the TS is necessary for the installation of a new, more reliable broad range gas detection system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The broad range gas detection system has no effect on the accidents analyzed in Chapter 15 of the Final Safety Analysis Report. It's only effect is on habitability of the control room, which will be enhanced by installation of the new monitoring system and this change to the Technical Specifications. Qualitative analysis based on a quantitative risk assessment has shown that the impact on operator incapacitation and subsequent core damage risk of the periodic automatic background/reference spectrum check is negligible and that the probability of malfunction of the BRGMs due to a slowly increasing toxic chemical concentration is negligible.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of

accident from any accident previously evaluated?

Response: No.

The proposed Technical Specification change in itself does not change the design or configuration of the plant. The new broad range toxic gas monitoring system performs the same function as the old system, but it accomplishes this function with increased reliability.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The broad range gas detection system has no effect on a margin of safety as defined by Section 2 of the Technical Specifications. Its only effect is on habitability of the control room, which will be enhanced by installation of the new monitoring system and this change to the Technical Specifications.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn, 1400 L Street NW, Washington, DC 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: July 30, 1998 (LAR–222).

Description of amendment request: The proposed amendment will change the Improved Technical Specifications (ITS) to add a new Required Action for the existence of breaches in the Control Complex Habitability Envelope (CCHE) that are in excess of allowances. A new surveillance requirement for the performance of a periodic integrated leak test of the CCHE boundary on a 24-month frequency would also be added. Changes to the current Ventilation Filter Test Program (VFTP) are proposed to adopt current standards for laboratory testing, change acceptable values of control room emergency ventilation flow rate and filter differential pressure, and add the Auxiliary Building Ventilation Exhaust Filters to the VFTP. Conforming changes to the ITS Bases are also included.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The Control Room Emergency Ventilation System (CREVS) and the Control Complex Habitability Envelope (CCHE) are designed to limit the radiation dose to the control room operating staff following a design basis accident. Since these systems are only effective in limiting dose following an accident, the existence of limited breaches in the CCHE, the performance of periodic leak tests, and changes to the Ventilation Filter Test Program (VFTP) would not increase the probability of occurrence of any evaluated event. The features of the CREVS and the Control Complex emergency filters, or the CCHE have no direct function in mitigating the offsite consequences of any evaluated accident. The Auxiliary Building exhaust filters are not credited with reducing offsite doses, however, if available would filter releases from the Auxiliary Building. Adding them to the VFTP will not increase the consequences calculated for any evaluated accident.

The proposed changes are consistent with the revised control room operator dose calculations as presented in the Control Room Habitability Report dated July 1998. Since all calculated doses are within 10 CFR Part 50, Appendix A GDC 19 limits there is no significant increase in consequences.

It is conceivable that the existence of additional breaches in the CCHE could result in an increase in operator dose, however the low probability of a catastrophic reactor accident, the relatively short time allowed for breaches to be open in excess of approved dose calculation assumptions, and the ability to close breaches expeditiously makes the risk increase insignificant.

The changes to the ITS Bases improve information on the operation and function of CREVS, and establish that CREVS operability is dependent on maintaining CCHE integrity. The inclusion of this information reinforces the importance of maintaining the CCHE boundary, and will help to ensure the CREVS is capable of performing its intended safety function.

The Control Room Habitability Report, dated July 1998, provided with this LAR presents the methodology used and the results of the operator dose calculations for the Maximum Hypothetical Accident, toxic gas release, and other design basis accidents. The report provides the information needed for NRC review of LAR 222, Revision I and the associated unreviewed safety question. This evaluation concludes that the current level of CCHE integrity provides adequate protection for the control room operator.

Based on the foregoing, the proposed amendment does not significantly increase the probability or consequence of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither performance of periodic CCHE leak tests nor changes to the existing VFTP can create the possibility of a new or different kind of accident. During the period of time when CCHE breaches are greater than the design calculation, there exists the possibility that control room dose from an analyzed accident may be greater than specified in General Design Criterion 19. This condition will not however create the possibility of a new or different kind of accident. Since CREVS and the emergency filtration units function to provide protection following a radiological accident the changes proposed to improve their performance cannot create a new or different kind of accident. Changes to the Bases to provide better information on determining CREVS and CCHE operability cannot create the possibility of a new or different kind of accident.

3. Does not involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in a margin of safety. Neither performance of periodic CCHE leak tests nor changes to the existing VFTP can create a reduction in the margin of safety. The changes to both of these programs will result in improved assurance that the CREVS and CCHE will perform as expected if required for operator protection. Changes to the Bases of the CREVS Technical Specification which clarify the conditions necessary for operability will improve understanding of the requirements for maintaining control room habitability, and will not create a reduction in the margin of safety. The existence of additional breaches in the CCHE for short periods of time does not significantly increase the risk of control room operator exposure to airborne radioactivity or toxic gas. There is no change in the risk to the public since the CCHE has no direct function in mitigating the offsite consequences of any evaluated accident. Any event that could create these exposures has an extremely low probability of occurrence, and while the potential for higher operator exposure exists if additional breaches are open, the short duration allowed would not significantly increase the risk of exposure. Therefore, for the reason stated above the existing margin of safety would not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619

W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: September 30, 1998 (LAR–238).

Description of amendment request: The proposed amendment will correct the reactor coolant system (RCS) leakage detection capability of the Reactor Building atmosphere gaseous radioactivity monitor described in the Improved Technical Specification Bases and the Final Safety Analysis Report (FSAR). These documents currently identify that the gaseous radioactivity monitor is capable of detecting a one gallon per minute (gpm) RCS leak within one hour. The licensee has determined that it would take approximately 14 hours for this instrument to detect a one gpm RCS leak using currently accepted assumptions. The capability of other monitors to detect a one gpm RCS leak within one hour is not affected by this change.

The licensee cited several factors which contribute to the difficulty in reliably detecting RCS leakage increases of one gpm within one hour using a gaseous radioactivity monitor. These include the relatively long half-life of Xe-133 (primary nuclide of detection), fluctuations in background levels of radioactivity, the existence of minor RCS leaks, improved performance of nuclear fuel, and improved primary water chemistry control. Based on RCS radioactivity concentrations assumed in the Environmental Report, half-lives of the most abundant gaseous nuclides, and background radioactivity levels, the licensee indicated a one gpm leak can conservatively be detected in approximately 14 hours by the gaseous monitor. The licensee has determined that this change to the licensing basis is an unreviewed safety question.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The function of the RM–A6 gaseous radioactivity monitor is to detect leakage from the RCS that may develop as a result of a flaw in a pressure boundary component. The previously identified capability to detect a one gpm leak within one hour would have provided an earlier warning of a small RCS leak than the actual detection capability now identified. However, RCS loss of coolant accidents evaluated in the FSAR cover the full spectrum of break sizes up to and including a complete severance of the largest RCS piping. The results of these analyses demonstrate that the consequences of such leaks are acceptable.

No other equipment relies on the capability of the RM–A6 gaseous monitor's ability to detect RCS leakage to perform its function. Likewise, no accident analyses rely on RCS leak detection for successful mitigation. Identifying the detector's actual capability to detect an RCS leak will not increase the probability of occurrence of an RCS leak. Detection time for an RCS leak was a consideration in granting a partial exemption to General Design Criterion 4. However, the capability of the RCS piping to resist propagation of a flaw from a leak into a break was based on material fracture analysis and material properties, not on the ability to detect low levels of leakage.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The function of the RM–A6 gaseous radioactivity monitor is to detect RCS leakage that may develop from a flaw in a pressure boundary component. The monitor is a passive component that provides an indication of possible leakage for further operator evaluation. Identifying that a longer response time is required for the monitor to detect a small leak will not create the possibility of a new or different kind of accident. Existing analyses for small and large break loss of coolant accidents provide an evaluation of the full spectrum of RCS break sizes.

3. Involve a significant reduction in a margin of safety.

No. The RM–A6 gaseous radioactivity monitor is included in plant technical specifications as one of two containment atmosphere RCS leak detection instruments required to be operable to satisfy a limiting condition for operation. If the RM–A6 particulate monitor is not operable, then the response time of the containment atmosphere monitor will be increased. RCS piping analyses have demonstrated that the propagation of a small primary loop leak into a pipe break would not occur rapidly. NRC acceptance of the applicable analyses included significant safety factors for the propagation of flaws into pipe breaks which were based on low probability stress combinations of normal plus safe shutdown earthquake loads. Considering the actual detection capability of the RM–A6 gaseous monitor and the existence of other diverse leak detection capabilities, detection of a leak in a relatively short period of time is anticipated. In the event an RCS leak developed into a pipe break, current accident analyses would bound the effects of the pipe break on and off site. Therefore, the possibility of increased time to detect an RCS leak does not represent a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit No. 3 (CR–3), Citrus County, Florida

Date of amendment request: October 16, 1998 (LAR–229).

Description of amendment request: The proposed amendment would change the Crystal River Unit 3 (CR–3) Final Safety Analysis Report (FSAR), Improved Technical Specifications (ITS) and ITS Bases to resolve an Unreviewed Safety Question (USQ). This USQ was created by changing the normal standby position of valves DHV–34 and DHV–35 (low pressure injection (LPI) pump suction valves from borated water storage tank) from normally open to normally closed. Maintaining these valves normally closed is necessary to ensure assumptions used in fire protection analyses remain valid. The proposed amendment would also add new ITS surveillance requirements for verifying on a periodic basis that the LPI system components and piping, and the building spray suction piping, are full of water.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Valves DHV–34 and DHV–35 are located in the suction lines between the borated water storage tank (BWST) and the low pressure injection (LPI) and building spray (BS) pumps. These valves are maintained normally closed, and are designed to automatically open upon receipt of a reactor coolant system (RCS) low-low pressure signal

of 500 psig or a reactor building (RB) high pressure signal of 4 psig from the engineered safeguards actuation system (ESAS). The designed full stroke time of these valves is within the assumptions of the accident analyses performed for the specific design basis accidents that require the LPI and/or BS systems for accident mitigation. This is the original design basis for these valves. Therefore, the valves are fully capable of performing their intended safety functions while being maintained normally closed.

The failure of one of these valves to open does not impact the mitigation of previously analyzed accidents that require the operation of the LPI and/or BS systems, and cannot increase the probability of these accidents occurring. No RCS or secondary system pressure boundaries are compromised, no release paths for radioactive materials are created, and no challenge to any safety limit or acceptance limit are created by maintaining these valves normally closed.

A single, active failure causing one of these valves to fail to open upon demand would render one train of LPI and BS unavailable for accident mitigation. However, the accident analyses have already accounted for the possibility of only one train of LPI and BS being available, and the consequences of previously evaluated accidents would therefore remain unchanged.

Undetected voiding in the LPI piping and components, and BS suction piping, is highly unlikely to occur. Based on the design and physical layout of the LPI system and BS system, and the monitoring of the systems performed on a periodic basis, any potential for LPI piping and components and BS suction piping voiding will be quickly and easily recognized and corrected. Therefore, since voiding is not likely to occur, the consequence of previously evaluated accidents would not be significantly increased by the proposed change.

2. Create the possibility of a new or different kind of accident from previously evaluated accidents?

Failure of either valves DHV–34 or DHV–35 to open upon demand on an ESAS signal will not create the possibility of a new or different kind of accident. The LPI system and BS system are maintained in a standby condition during normal plant operations, and automatically actuate only after an accident has occurred to mitigate the effects of the initiating accident. No RCS or secondary system pressure boundaries are compromised, no release paths for radioactive materials are created, and no challenges to any safety limit or acceptance limit are created by maintaining these valves normally closed. Additionally, the possibility of undetected voiding in the LPI piping and components, and BS suction piping, is not likely to occur by maintaining these valves normally closed. Therefore, maintaining valves DHV–34 and DHV–35 normally closed will not be an initiator of a new or different kind of accident from previously evaluated accidents.

3. Involve a significant reduction in a margin of safety?

Maintaining valves DHV–34 and DHV–35 normally closed will not create a reduction in the margin of safety. Maintaining valves DHV–34 and DHV–35 normally closed will ensure the capability to safely shut down the reactor under certain postulated fire scenarios, but will result in an extremely small increase in the probability of failure of one train of LPI and BS to perform its safety functions. Based on use of the CR–3 Probabilistic Safety Analysis (PSA) model, and assuming the failure of either valve DHV–34 or DHV–35 to open, the impact on the core-damage frequency was estimated and determined to slightly increase from 7.38 E–6 to 7.41 E–6 per year. This increase (3 E–8 or 0.4%) is in the range considered acceptable in Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis," dated July 1998.

Maintaining these valves normally closed will not result in undetected voiding in the LPI piping and components, and BS suction piping, as a result of performance of periodic pressure monitoring. If voiding occurs, the Improved Technical Specifications specify the actions required to restore the affected systems to operable status, including correcting the external leakage creating the observed pressure decay. Therefore, the proposed monitoring will ensure the margin of safety is not reduced.

Based on these benefits and risks, there is no discernible change in the risk to the public in mitigating the offsite consequences of any evaluated accident since the failure of one train of LPI and/or BS for any reason is bounded by the assumptions of the accident analyses. Failure of valve DHV–34 or DHV–35 to open upon demand results in extremely low increases in the potential for reactor core damage. Therefore, the existing margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Attorney for licensee: R. Alexander Glenn, General Counsel, Florida Power Corporation, MAC–A5A, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Project Director: Frederick J. Hebdon.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 15, 1998.

Description of amendment request: The proposed amendment request would revise the TMI–1 Updated Final Safety Analysis Report (UFSAR) Chapter 14 postulated accident analysis radiological dose consequences resulting from application of revised atmospheric dispersion factors (X/Q) at the Technical Specification Section 5.1.1 defined exclusion area boundry (EAB) and low population zone (LPZ).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment has no effect on structures, systems or components. More extensive and recent meteorological data have been utilized for atmospheric dispersion factor (X/Q) determination for both EAB and LPZ. An evaluation of the design basis accidents with revised EAB and LPZ X/Q values results in increases in UFSAR Chapter 14 EAB and LPZ dose consequences which remain well within the guidelines of 10 CFR Part 100.

Therefore, this activity does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment has no impact on any plant structures, systems or components. The proposed change revises the atmospheric dispersion factors for EAB and LPZ used in the existing UFSAR Chapter 14 accident analyses, based on more extensive meteorological data. These changes only effect the postulated dose consequences of currently analyzed accidents. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment has no impact on structures, systems or components. The proposed revisions to the EAB and LPZ X/Q values are based on recent more extensive meteorological data and Regulatory Guide 1. 145 methods. The increased X/Q values provide a more accurate assessment of meteorological conditions which result in postulated dose consequences which remain well within the guidelines of 10 CFR Part 100. Therefore, this activity does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pitman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 19, 1998.

Description of amendment request: The proposed Technical Specification change request would add operability and surveillance requirements for the remote shutdown system similar to those in NUREG–1430, "Standard Technical Specifications—Babcock and Wilcox Plants" Section 3.3.18 entitled "Remote Shutdown System".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment adds operability and surveillance requirements for the existing TMI–1 remote shutdown system similar to those contained in NRC NUREG–1430, "Standard Technical Specifications—Babcock & Wilcox Plants". The addition of these requirements to Technical Specifications provides further assurance of remote shutdown system operability in the event that operators must place and maintain the unit in a safe shutdown condition from outside the control room. The function and operation of the remote shutdown system has not changed. Therefore, this activity has no affect on the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment has no impact on any plant structures, systems or components. The function and operation of the remote shutdown system has not changed. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment provides additional assurance of remote shutdown system operability. The function and operation of the remote shutdown system has not changed. Therefore, this activity does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: October 19, 1998.

Description of amendment request: The proposed change to the TMI–1 Technical Specification would revise the limit on reactor coolant system activity to a maximum allowable of 1.0 microcurie/gram dose equivalent I–131. The proposed revision provides an allowable reactor coolant system specific activity limit base on once-through steam generator (OTSG) inspection results performed each refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment has no effect on structures, systems or components. The existing steam line break criteria are maintained. This change only accounts for radiological consequences resulting from a revised maximum allowable reactor coolant system (RCS) specific activity limit of 1.0 μCi/gm. The new radiological consequences of the revised MSLB accident, which also incorporate more conservative values for atmospheric dispersion, are below 10 CFR 100 limits and 10 CFR 50, Appendix A, GDC–19 limits for the control room. The use of revised atmospheric dispersion factors for other TMI–1 accident analysis is addressed in a separate license amendment request submittal. Therefore, this activity does not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment has no impact on any plant structures, systems or components. OTSG tube structural integrity is maintained. Therefore, this activity does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment has no impact on structures, systems or components. OTSG tube structural integrity is maintained. The existing TMI–1 Technical Specification Section 3.1.4.1 Bases state that the limitations on the specific activity of the primary coolant ensure that the resulting 2-hour doses at the site boundary will be well within the Part 100 limit following associated design basis accidents postulated in conjunction with an assumed steady state primary-to-secondary steam generator tube leakage of 1.0 gpm. This margin of safety is preserved since resulting does consequences incorporating more conservative values for atmospheric dispersion remain well within the Part 100 limit. Therefore, this activity does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pitman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: October 23, 1998.

Description of amendment request: The proposed amendment would allow implementation of a feedwater leakage control system to address leakage through the primary containment feedwater penetration isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change implements a method of providing a qualified sealing system for the primary containment feedwater penetration isolation valves. This water sealing function, i.e., the FWLCS, constitutes a new operating mode of the Residual Heat Removal (RHR) system. The FWLCS introduces new piping that constitutes an extension of the reactor coolant system (RCS); however, such piping is designed to the same requirements as other RCS piping and as such introduces no significant increase in the probability of any accident previously evaluated. Notwithstanding, a postulated line break in any of the new FWLCS piping would not, by itself, introduce any new effects or consequences not already bounded by postulated line-break or LOCA events previously evaluated in the USAR. Since the proposed change does not affect any parameters or conditions that contribute to the initiation of any accidents previously evaluated, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the primary containment designed to mitigate the consequences of a loss-of-coolant accident (LOCA). Once the FWLCS mode has been initiated and a water seal for the seating surfaces of the primary containment feedwater penetration isolation valves has been established (within one hour after the accident), post-LOCA primary containment atmosphere will be prohibited from leaking through the feedwater penetrations and thus bypassing the secondary containment.

Calculations of post-accident DBA LOCA doses affected by this change use accepted ICRP 30 dose conversion factors and take credit for suppression pool scrubbing. Suppression pool scrubbing is effective in reducing iodine release but has no assumed effect on the removal of noble gases. Since the methodology and assumptions for scrubbing are acceptable to the NRC per the guidance in SRP Section 6.5.5 and the values for decontamination factors are conservative, considerable margin is preserved within the analysis. However, these calculations show increases in some of the previously evaluated post-accident doses when compared with dose calculations performed as part of the initial plant licensing basis. Although some of the newly calculated post-accident doses are larger than those that were previously approved, the increases remain small enough to be within the acceptance limits given in 10 CFR 50, Appendix A, GDC 19 and in 10 CFR 100.11.

Since all of the newly calculated post-accident doses resulting from the proposed addition of a water sealing system for the feedwater primary containment penetration isolation valves are below the 10 CFR 50, Appendix A, GDC 19 and 10 CFR 100.11 acceptance limits, IP has concluded that the proposed change does not result in a significant increase in the consequences of an accident previously evaluated.

2. The proposed change institutes a new operating mode of the RHR system (the FWLCS mode). When this mode is established, it will reduce primary containment atmosphere leakage to the environment in the event of a LOCA. Flow diverted from the RHR system to the FWLCS has been evaluated, and has been determined to have no adverse impact on the capability of the RHR system to perform its intended safety functions. Further, the additional piping added for the FWLCS is designed to appropriate requirements for the RCS, thus ensuring that RCS integrity is maintained per design. Sufficient isolation between the RCS and the RHR low-pressure piping will also be maintained per the FWLCS design. Thus, no safety functions are altered or impacted as a result of this change. Installing, operating, or testing the components that support the FWLCS mode has no influence on, nor does it contribute to the possibility of a new or different kind of accident or malfunction from those previously analyzed. Because the USAR analysis already assumes leakage through the feedwater primary containment penetrations following a design basis LOCA, and the subject change does not affect the type of accident(s) that are postulated to occur, the proposed change does not present the possibility of an accident of a different type. Additionally, the change in dose analysis methodology does not create an accident or malfunction of a different type since it only involves the analysis of the effects of accidents or malfunctions previously evaluated in the USAR.

Based on the above, IP has concluded that the proposed change will not create the possibility of a new or different kind of accident not previously evaluated.

3. The margin of safety impacted by the proposed change involves the dose consequences of postulated accidents which are directly related to the primary containment leakage rate, specifically those consequences associated with dose attributable to leakage through the feedwater lines which are secondary containment bypass leakage paths.

Although considerable conservatisms were included in the reanalysis, this reanalysis identified some dose values that increased above the previously licensed values as well as some dose values that decreased below the previously licensed values. However, all of the radiation dose consequences resulting from the proposed change will continue to be below the 10 CFR 50, Appendix A, GDC 19 and 10 CFR 100.11 acceptance criteria.

Except for providing a method of sealing the feedwater primary containment penetration isolation valves (and therefore the method of performing periodic leakage testing of these components) no other change in the method of primary containment leakage testing or secondary containment bypass leakage path testing is being proposed. All other primary and secondary containment bypass leakage testing will continue to be performed in accordance with existing Technical Specification requirements. Adequate programs are in place to ensure that proper maintenance and repairs are performed during the service life of the primary containment, systems and components penetrating the primary containment, and for all secondary containment bypass leakage paths.

As a result, IP has concluded that the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525.

NRC Project Director: Stuart A. Richards.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 28, 1998.

Description of amendment request: The proposed amendment request would resolve an unreviewed safety question (USQ) and amend the operating license to allow manual override capability for the containment isolation actuation signal to reactor coolant system letdown isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed modification does not change the probability of any accident previously evaluated since it does not change any mode of normal operation. Neither the accident signal (CIAS) nor the override feature is an initiator of an analyzed event. The consequences of an accident are also not changed significantly due to the fact that design and administrative controls ensure that previous accident analyses are bounding. The associated isolation valves will operate as they have in the past in response to an accident signal. There is no single failure that would prevent the letdown isolation function from occurring. The CIAS override feature can only be used if operators have verified that an UHE is the event which has taken place and safety functions are being met.

This ensures that no significant fuel failures will occur due to the event and the consequences of overriding CIAS will not adversely impact radiological conditions in the auxiliary building.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification does not create any failure mode which could impact the operation of the RCS or associated systems in a manner that would create a new or different kind of accident. With respect to the letdown isolation function, the plant will operate as it previously has and will respond the same way, automatically, to an accident signal. No new accidents have been identified.

3. The proposed change does not involve a significant reduction in a margin of safety.

The procedural restrictions associated with the use of the CIAS override feature will ensure that existing analyses addressing the consequences of an UHE will be bounding and that safety functions will be maintained as defined in EOPs. The radiological consequences of letdown restoration in the auxiliary building will be similar to normal operating conditions and will be bounded by that assumed in the EEQ analysis. RCS inventory and pressure control will be maintained within the established procedural limits.

Letdown restoration capability already exists after ESF reset. The modification permits letdown restoration to occur earlier than it would previously have been possible.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Attorney for licensee: Perry D. Robinson, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: William H. Bateman.

Philadelphia Electric Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 15, 1998.

Description of amendment request: The proposed Technical Specification (TS) changes involve revising TS Section 3/4.10 to include a new Special Test Exception allowing the reactor to be considered in operational condition (OPCON) 4 (cold shutdown) during inservice leak or hydrostatic testing with a reactor coolant water temperature greater than 200°F and less than or equal to 212°F. This is an exception to certain OPCON 3 (hot shutdown) requirements, including primary containment. The proposed TS changes will permit unrestricted access to the primary containment for the performance of required inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not make any physical alterations or modifications to plant systems or equipment. The proposed TS changes will permit the performance of inservice leak or hydrostatic testing, with the reactor in OPERATIONAL CONDITION (OPCON) 4 (COLD SHUTDOWN) and the average reactor coolant temperature greater than 200°F and less than or equal to 212°F. The probability of a leak in the reactor coolant pressure boundary during inservice leak or hydrostatic testing is not increased by considering the reactor in OPCON 4 with reactor coolant temperatures greater than 200°F and less than or equal to 212°F. The inservice leak and hydrostatic testing is performed water solid or near water solid. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in reactor coolant activity above TS limits is minimal. In addition, Secondary Containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of inservice leak or hydrostatic testing. Requiring the Secondary Containment to be operable will ensure that potential airborne radioactivity from leaks will be filtered through the Standby Gas Treatment System (SGTS), thereby limiting any radioactivity releases to the environment.

In the event of a large primary system leak, the reactor vessel would rapidly depressurize allowing the low pressure Emergency Core Cooling System (ECCS) subsystems to operate. The capability of the systems that are required for OPCON 4 would be adequate to keep the core flooded under this condition. Small system leaks would be detected by leakage inspections before significant inventory loss has occurred. This is an integral part of the hydrostatic testing program.

Therefore, the proposed TS changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not make any physical alterations or modifications to plant systems or equipment. The proposed TS changes do not adversely impact the operation of any plant equipment. Allowing the reactor to be considered in OPCON 4 during hydrostatic or inservice leak testing, with a reactor coolant temperature greater than 200°F and less than or equal to 212°F, is an exception to certain OPCON 3 (HOT SHUTDOWN) requirements, including primary containment integrity. The hydrostatic or inservice testing is performed water solid, or near water solid. The stored energy in the reactor core will be very low and the potential for failed fuel and a subsequent increase in coolant activity above TS limits is minimal. In addition, the Secondary Containment will be operable and capable of handling airborne radioactivity from leaks that could occur during the performance of hydrostatic or inservice leakage testing.

The inservice leak or hydrostatic test conditions remain unchanged. The potential for a system leak remains unchanged since the reactor coolant system is designed for temperatures exceeding 500°F with similar pressures. There are no alterations of any plant systems or components that cope with the spectrum of accidents.

Therefore, the proposed TS changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not make any physical alterations or modifications to plant systems or equipment. The proposed changes will permit the performance of inservice leak and hydrostatic testing with a reactor coolant temperature greater than 200°F and less than or equal to 212°F and the reactor in OPCON 4. Since the reactor vessel head will be in place, Secondary Containment integrity will be maintained, and all systems required in OPCON 4 will be operable in accordance with the applicable TS requirements. The proposed TS changes will not have any significant impact on any design basis accident or safety limit. The hydrostatic or inservice leak testing is performed water solid, or near water solid. The stored energy in the reactor core is very low and the potential for failed fuel and a subsequent increase in coolant activity would be minimal. In the event of a large primary system leak, the reactor pressure vessel would rapidly depressurize and the low pressure ECCS subsystems would function as designed to maintain adequate reactor core coverage. This would ensure that the fuel would not exceed peak clad temperature limits.

Also, requiring Secondary Containment integrity will assure that potential airborne radioactive material can be filtered through the SGTS. This will assure that any offsite doses remain well within the limits of 10 CFR 100 guidelines. Small system leaks would be detected by inspections before significant inventory loss could occur.

Therefore, this proposed TS change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Robert A. Capra.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: October 19, 1998.

Description of amendment request: The proposed amendment would eliminate restrictions imposed by Technical Specification (TS) 3.0.4 for the Filtration, Recirculation and Ventilation System (FRVS) during fuel movement and core alteration activities. Specifically, TS Limiting Conditions for Operation (LCOs) 3.6.5.3.1 and 3.6.5.3.2 would each be revised to add a note stating that the provisions of TS 3.0.4 are not applicable for initiation of handling of irradiated fuel in the secondary containment and core alterations provided that the plant is in Operational Condition 5, with reactor water level equal to or greater than 22 feet 2 inches.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC). FRVS will continue to function as designed. FRVS is an Engineered Safety Feature (ESF) designed to mitigate the consequences of an accident, and therefore, can not contribute to the initiation of any accident. For refueling accidents, the current design basis analysis of FRVS credits only the iodine removal capability of the FRVS ventilation unit and neglects the considerable iodine removal capability of the FRVS recirculation units. In addition, this proposed TS change will not increase the probability of occurrence of a malfunction of any plant equipment important to safety, since the time limits imposed by the current FRVS LCO Action Statements are not affected by these proposed changes. The proposed changes merely allow entry into the FRVS LCO Action Statement in order to support refueling activities.

Therefore, the proposed TS changes, which would permit the initiation of core alterations and handling of irradiated fuel with only one operable FRVS ventilation unit and four operable FRVS recirculation units for a limited seven day period under specific refueling conditions, would not result in the increase of the consequences of an accident previously evaluated.

Therefore, the proposed TS change does not involve an increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to plant SSC. The design and operation of the FRVS is not changed from that currently described in the [Updated Final Safety Analysis Report] UFSAR. FRVS will continue to function as designed to mitigate the consequences of an accident. No changes of any kind are being made to FRVS, or its support or supported systems. Deleting the restrictions imposed by TS 3.0.4 as proposed in this TS change request eliminates a compliance restriction imposed by the current TS. Since the current TS already provide a seven day period to perform refueling activities with inoperable FRVS ventilation and recirculation units, the proposed changes would not introduce plant operation in a configuration that is not already permitted in the TS. Therefore, there is no possibility that implementing this proposed TS change would create a different type of malfunction to the FRVS than any previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in the UFSAR regarding operation of FRVS.

Therefore, the proposed TS change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed TS change involves the elimination of TS 3.0.4 restrictions imposed on the FRVS LCO. The TS 3.0.4 requirements impose an unnecessary challenge to performing refueling activities when the FRVS LCO Action Statements already sufficiently define the remedial measures to be taken. The time limits imposed by the current FRVS LCO Action Statements are not affected by these proposed changes. The FRVS LCO will retain sufficient configuration controls to appropriately maintain the capability of FRVS to mitigate design basis refueling accidents, no new FRVS configurations will be permitted by the proposed changes, and there will be no reduction in any margin of safety resulting from this proposed TS change. Therefore, the proposed TS change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station (VCSNS), Unit No. 1, Fairfield County, South Carolina

Date of amendment request: September 18, 1998.

Description of amendment request: The proposed amendment would revise the VCSNS Technical Specifications (TS) to address the Best Estimate Analyzer for Core Operations—Nuclear (BEACON) core power distribution monitoring and support system. The BEACON system provides continuous core monitoring capabilities to augment the flux mapping system when rated thermal power (RTP) is greater than 25%. The proposed amendment would also make editorial changes to TS 3.3.3.2 and 4.3.3.2.c to delete the reference to F_{xy}.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change allows the Power Distribution Monitoring System (PDMS) to be used for measuring power distribution limits when Thermal Power is greater than 25% RTP. This includes relocating manufacturing and measurement uncertainty values from the Technical Specification to the COLR [core operating limit report]. Also included in this change is the addition of a new specification and bases section for the Power Distribution Monitoring System (PDMS). The Technical Specification Power Distribution Limits are not being changed; only the method in which they are measured is being changed. The probability of an accident is not significantly increased. The measurement of power distribution limits and the location of manufacturing and measurement uncertainty values are not initiators of any analyzed event. The change will not affect the consequences of any analyzed event. The power distribution limits will still be measured and verified to be within limits as required by the current Technical Specification Surveillance. The cycle-specific core operating limits, although not in Technical Specifications, will be followed in the operation of VCSNS. The actions as required by current Technical Specifications, when or if limits are exceeded are not being

changed. This change will not significantly affect the assumptions relative to the mitigation of accidents.

Each accident analysis addressed in the VCSNS Final Safety Analysis Report will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC-approved reload design methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed per requirements of 10 CFR 50.59, ensures that future reloads will not involve an increase in the probability or consequences of an accident previously evaluated.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change allows the Power Distribution Monitoring System (PDMS) to be used for measuring power distribution limits when Thermal Power is greater than 25% RTP. This includes relocating manufacturing and measurement uncertainty values from the Technical Specification to the COLR. Also included is the addition of a new specification and bases section for the Power Distribution Monitoring System. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. No hardware is being added to the plant as part of the change. The cycle specific variables are calculated using the NRC-approved methods and submitted to the NRC to allow the Staff to continue to trend the values of these limits. The Technical Specifications will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded. The change will not introduce any new accident initiators. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The proposed change allows the Power Distribution Monitoring System (PDMS) to be used for measuring power distribution limits when Thermal Power is greater than 25% RTP. The margin of safety presently provided by current Technical Specifications remains unchanged. Only the method in which the power distribution measurements are obtained is being changed. This method is verified by Westinghouse, and reviewed and approved by the NRC. Appropriate measures exist to control the values of the manufacturing and measurement uncertainties. The proposed amendment continues to require operation within the core limits, as obtained from NRC-approved reload design methodologies. Appropriate actions required to be taken when or if limits are violated remain unchanged.

Future changes to measurement and manufacturing uncertainties located in the current Technical Specification will be evaluated per the requirements of 10 CFR 50.59. Since the 10 CFR 50.59 process does not allow any reduction in the margin of safety, prior NRC approval is required prior to a reduction in the margin of safety. If the evaluation of the changes [does] not result in [an] unreviewed safety question, prior NRC approval will not be required. Additionally, the VCSNS Technical Specifications require that all revisions of the plant COLR be submitted to the NRC upon issuance.

Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Project Director: Herbert N. Berkow.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, Houston County, Alabama

Date of amendment request: October 12, 1998.

Description of amendment request: The proposed amendments would revise Section 6, "Administrative Controls," of the current Units 1 and 2 Technical Specifications (TS) to recognize additional management positions associated with the steam generator replacement project and providing them the ability to approve procedures regarding this project.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR [Final Safety Analysis Report]. The proposed changes have no impact on the probability of an accident. The change being proposed is administrative in nature and involves no physical alteration of the plant or changes to setpoints or operating parameters. The change will provide an appropriate level of review and approval of procedures related to the FNP steam generator replacement without impacting the operational attention of the current on-site plant management. There is no change in the FNP design basis as a result of this change and, as a result, does not involve a significant increase in the consequences of an accident previously evaluated.

(2) The proposed changes to the TS do not increase the possibility of a new or different kind of accident than any already evaluated in the FSAR. No new limiting single failure or accident scenario has been created or identified due to the proposed changes. Safety-related systems will continue to perform as designed. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes do not involve a significant reduction in the margin of safety. Adding individuals with the appropriate knowledge base to the list of individuals who can approve procedures, which may affect plant nuclear safety, is administrative in nature. There is no impact on the accident analyses. The training and experience requirements for the newly designated management positions are similar to those requirements for other FNP management positions. Therefore the established level of procedure review and approval is not adversely impacted. In addition, these changes allow FNP management to remain focused on plant operations. Thus the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama.

NRC Project Director: Herbert N. Berkow.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 28, 1998.

Description of amendment request: The proposed amendment would modify the requirements applicable when one or more trains of fuel handling building exhaust air or control room makeup and cleanup filtration are inoperable, and eliminate the need to enter Technical Specification 3.0.3 when multiple trains of these systems are inoperable. In addition, the proposed changes would align the actuating instrumentation and logic system required actions with those that are applicable to the systems. Finally,

an administrative change is proposed to remove a footnote that is no longer applicable to the facility.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes consist of:

(a) Assuring that the Specifications define consistent allowed outage times when the same safety function is addressed in multiple Specifications,

(b) Allowing a system to remain inoperable when appropriately restrictive administrative controls are placed on operations that could result in a challenge to the safety function of the system,

(c) Providing an appropriately short Allowed Outage Time for inoperability needed to permit required maintenance and testing that affects all trains of a system,

(d) Redefining system operability and associated actions in a manner consistent with the system design and function,

(e) Aligning a system to the actuated condition on the loss of an actuation channel,

(f) Using consistent terminology throughout the Specifications.

The proposed changes do not represent significant increases in the probability or consequences of an accident because:

(a) The alignment of the action times between actuating system and actuated system operability requirements do not affect the probability or consequences since inoperability of the actuated system has the same effect as inoperability of the actuating system. Since the changes proposed to the actuating system action times will reflect those of the actuated system action times, no change to the allowed outage time applicable to the safety function addressed and fulfilled by both, will occur.

(b) Administrative controls to prevent the conduct of operations that could lead to a challenge to the safety function of the system when the actuation system is inoperable, assures that the design bases functions of the system will not be challenged. Therefore, the probability or consequences of an event previously identified have not been significantly changed.

(c) Allowing up to 12 hours to recover from the inoperability of all three trains of Control Room Ventilation or two or more trains of Fuel Handling Building HVAC does not represent a significant change to the probability of an accident because the inoperability of these ventilation systems are not identified as precursors to a design basis event. The low likelihood of a design basis accident during the limited period of allowed inoperability of these systems does not represent a significant increase in the consequences of an accident.

(d) The redefinition of plant operability requirements into functional trains rather than individual components does not affect the required system functional operability. Therefore, this change does not represent an increase in the probability or consequences of an accident previously identified.

(e) The alignment of the Control Room Ventilation System to the same configuration it would be placed in from an actuation of the inoperable radiation monitoring channel places the system in the design condition. This alignment would result in maintaining the control room envelope pressurized and increases the protection afforded to the operators.

(f) The change in terminology does not change any requirements or actions in the Specification. Therefore this change does not represent an increase in the probability or consequences of any accident previously evaluated.

Based on the above discussion, the individual changes do not represent an increase in the probability or consequences of any accident previously evaluated.

In addition to the changes proposed to controls over Control Room Ventilation, Fuel Handling Building HVAC, and associated actuation logic, an administrative change is proposed to remove the footnote at the bottom of page 3/4 7–20. Since the footnote no longer has meaning or relevance to the operation of the facility, its removal does not increase the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes make the existing Specifications internally consistent, manually align a system to the actuated position, provide an alternative measure that assures [that] a safety function which is unavailable is not required to [be] perform[ed], provide an extended period of allowance for all trains of a system to be inoperable, and redefines system operability to reflect its functional design. The proposed changes do not introduce any new equipment into the plant or significantly alter the manner in which existing equipment will be operated. The systems affected by the proposed changes are not identified as contributing causal factors in design basis accidents, their function is to assist in mitigation of accidents postulated to occur. Since the proposed changes do not allow activities that are significantly different from those presently allowed, no possibility exists for a new or different kind of accident from those previously evaluated.

In addition to the changes proposed to controls over reactivity changes, an administrative change is proposed to remove the footnote at the bottom of page 3/4 7–20. Since the footnote does not perform any function and will never again apply to plant operations, its removal cannot create the possibility of a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes do not involve a significant reduction in a margin of safety because the ability of the Fuel Handling Building HVAC and Control Room Ventilation Systems will be maintained. The margin of safety is defined by the ability of the systems to limit the release of radioactive materials and limit exposures to operators respectively following a postulated design basis accident. The only aspect of the proposed change that can be postulated to have any effect on a margin of safety is the proposed allowance for all trains of Control Room Ventilation or Fuel Handling Building HVAC to be inoperable for a limited period. The low probability of a design basis event that would require the system to perform its safety function during the limited period allowed by the proposed action assures that the change does not involve a significant change in a margin of safety. Therefore, the proposed changes do not significantly affect these operating restrictions and the margin of safety which support the ability to make and maintain the reactor in a safe shutdown and limit the release of radioactive material is not affected.

In addition to the changes described above, an administrative change is proposed to remove the footnote at the bottom of page 3/4 7–20. Since the footnote is no longer applicable to the facility, its removal cannot result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92© are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 29, 1998.

Description of amendment request: The licensee proposes to use a revised methodology to calculate mass and energy release following a postulated large-break loss-of-coolant accident. The amendment request also included proposed changes to the Updated Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

This proposal updates the design large break loss of coolant accident (LBLOCA) analysis and methodology described in the UFSAR to support replacement of Westinghouse Model E Original Steam Generators (OSG) with Westinghouse Delta-94 Replacement Steam Generators (RSG).

A safety analysis has been performed, including evaluation of existing analyses and performance of bounding or confirming calculations, to determine effects of the proposed changes.

Analysis of mass and energy releases and resultant containment pressure and temperature response for the RSG concluded a small reduction in peak pressure and temperature for the RSG compared to the OSG. Thus, the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

Changes to the LBLOCA model caused by installation of the RSGs and associated changes in analysis methodology result in no change in radiological consequence as delineated in 10 CFR 100 and the Standard Review Plan (NUREG–0800). Consequences of this design basis accident have not increased.

Thus, changes in the LBLOCA design basis event analysis associated with replacement of OSGs with RSGs do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal updates the design basis large break loss of coolant accident (LBLOCA) analysis and methodology described in the Updated Final Safety Analysis Report (UFSAR) to support replacement of OSGs with RSGs.

Fit, form, and design function of RSG equipment is not significantly changed from OSG equipment. Analyses of LBLOCA mass and energy releases and resultant containment system response indicates that performance with RSGs remains within the existing design limits. Thus, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

A safety analysis has been performed, including evaluations of existing analyses and performance of bounding and/or confirming calculations, to determine the effect of the proposed changes. Results of these analyses demonstrate that the proposed license amendment and operation of STP Units with Delta-94 steam generators installed will not produce post-accident Containment pressures or temperatures exceeding existing Technical Specification limits. Consequently, there are no effects on dose analyses due to design basis LBLOCA performance of the RSGs. Radiological consequences of the postulated accident did not change, and all results remain within the acceptance criteria of 10 CFR 100 and the Standard Review Plan (NUREG–0800).

Thus, the change in LBLOCA analysis results and methodology descriptions in the UFSAR associated with replacement of Model E steam generators with Delta-94 steam generators do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 30, 1998.

Description of amendment request: The proposed amendment would change the Updated Final Safety Analysis Report and revise the offsite dose licensing basis to account for operation of the existing steam generators at reduced feedwater inlet temperatures, and to account for operation of the new replacement steam generators. The calculated offsite dose consequences would increase for the main steamline break, reactor coolant pump shaft seizure, and rod cluster control assembly ejection accidents. The proposed increases in offsite doses are minimal and all doses remain below the dose limits for their respective accidents, as specified by 10 CFR Part 100 and the Standard Review Plan (NUREG–0800).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This document updates the facilities' radiological design basis, as described in the Updated Final Safety Analysis Report, to address both a reduction in allowed nominal feedwater temperature for Model E steam generators from 440 °F to 420 °F and the replacement of Model E steam generators with Delta-94 steam generators. Therefore, these changes do not change the probability of an accident previously evaluated.

A safety analysis has been performed, including evaluations of existing analyses and performance of bounding and/or confirming calculations, to determine the impact of the proposed changes. Effects on the dose analyses due to the accompanying physical changes to the plant are slight. However, some improvements were made to the analytical models used in the analyses. These improvements were responsible for the majority of the increase in offsite doses. While the radiological consequences of some postulated accidents increased, all results remain within the acceptance criteria, as defined in 10 CFR 100 and the Standard Review Plan (NUREG–0800).

The radiological consequences of the postulated accidents remain within their respective acceptance criteria with the use of the revised analysis methodologies. Therefore, the change to allow operation of the Model E steam generators at a reduced feedwater temperature of 420°F and the replacement of Model E steam generators with Delta-94 steam generators do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This document updates the facilities' radiological design basis, as described in the Updated Final Safety Analysis Report, to address both a reduction in allowed nominal feedwater temperature for Model E steam generators from 440 °F to 420 °F and the replacement of Model E steam generators with Delta-94 steam generators. Since the proposed changes to the Updated Final Safety Analysis Report are analytical in nature, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

A safety analysis has been performed, including evaluations of existing analyses and performance of bounding and/or confirming calculations, to determine the impact of the proposed changes. Effects on the dose analyses due to the accompanying physical changes to the plant are slight. However, some improvements were made to the analytical models used in the analyses. These improvements were responsible for the majority of the increase in offsite doses. While the radiological consequences of some postulated accidents increased, all results remain within the acceptance criteria, as delineated in 10 CFR 100 and the Standard Review Plan (NUREG–0800), for the respective accidents.

The radiological consequences of the postulated accidents remain within their respective acceptance criteria with the use of the revised analysis methodologies. Therefore, the change to allow operation of the Model E steam generators at a reduced feedwater temperature of 420 °F and the replacement of Model E steam generators with Delta-94 steam generators do not

involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, N.W., Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: October 27, 1998.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.8.2.3, "Electrical Power Systems—DC Distribution—Operating," and the associated bases. The surveillance requirements for battery testing would be revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are adversely affected by the proposed changes to station battery testing methodology and frequency.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are adversely affected by the proposed changes in station battery testing methodology and frequency. The proposed changes do not alter the source term, containment isolation, or allowable radiological releases. The proposed changes are consistent with the most recent IEEE Standard 450–1995, "IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications," and the "Improved Standard Technical Specifications for Babcock and Wilcox Plants," NUREG–1430, Revision 1.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. The batteries are not an initiator or contributor to the initiation of an accident. No new accident scenarios, transient precursors, failure mechanisms, or limiting faults are introduced as a result of the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed TS changes do not significantly reduce or adversely affect the capabilities of any plant structures, systems or components. These changes increase the effectiveness and frequency of the battery tests being performed. Therefore, there is not a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Stuart A. Richards.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: October 27, 1998.

Description of amendment request: The proposed amendment would relocate a Technical Specification (TS) surveillance requirement from TS Section 3/4.6.5.1, "Shield Building-Emergency Ventilation System" to TS Section 3/4.6.5.2, "Shield Building Integrity." Administrative and bases changes would also be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiator is affected by the proposed changes to the Technical Specifications (TS) Index; TS Definition 1.6, "Shield Building Integrity"; TS 3/4.6.5.1, "Emergency Ventilation System"; TS 3/4.6.5.2, "Shield Building Integrity"; TS Bases 3/4.6.5.1, "Emergency Ventilation System"; or TS Bases 3/4.6.5.2, "Shield Building Integrity."

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions and assumptions are significantly affected by the above proposed changes. The proposed change to relocate existing TS Surveillance Requirement (SR) 4.6.5.1.d.4 to TS 3/4.6.5.2, and the subsequent application of the Limiting Condition for Operation (LCO) of TS 3/4.6.5.2 should the Emergency Ventilation System (EVS) be unable to produce the required negative pressure in the annulus space due to an opening in the ventilation boundary, would allow 24 hours to restore the capability of maintaining the required negative pressure in the annulus. The current SR 4.6.5.1.d.4 and associated TS LCO 3.6.5.1 would require entry into TS 3.0.3, thereby allowing only one hour for restoration before commencing plant shutdown. The allowed outage time of 24 hours is reasonable considering the limited leakage design of containment and the low likelihood of a Design Basis Accident (DBA) occurring during this time period. The proposed changes are consistent with the guidance of the "Improved Standard Technical Specifications for Combustion Engineering Plants," NUREG–1432, Revision 1 and the "Improved Standard Technical Specifications for Westinghouse Plants," NUREG–1431, Revision 1. The "Improved Standard Technical Specifications for Babcock and Wilcox Plants," NUREG–1430, Revision 1 does not contain guidance for shield building integrity because the DBNPS is the only Babcock and Wilcox-type plant with the containment vessel/annulus space/shield building design. The proposed changes do not alter the drawdown capability of the EVS. Since the likelihood of a DBA occurring during this 24 hour period is low and the containment is of a low leakage design, the radiological consequences of a previously evaluated accident are not significantly increased. The proposed changes do not alter the source term, containment isolation or allowable radiological releases.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. No new accident scenarios, transient precursors, failure mechanisms, or limiting failures are introduced as a result of the proposed changes.

3. Not involve a significant reduction in a margin of safety because the proposed TS changes do not significantly reduce or significantly adversely affect the capabilities of any plant structures, systems or

components. The capability of the shield building/EVS to respond when necessary and to maintain a negative pressure will not be significantly changed by these proposed TS changes. Accordingly, there is not a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Stuart A. Richards.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: October 28, 1998.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 6, "Administrative Controls." Several requirements would be modified and/or relocated to the Updated Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to Technical Specification (TS) 6.5.1.6 "[Station Review Board] Responsibilities"; TS 6.8.4.d, "Radioactive Effluents Control Program"; TS 6.10, "Record Retention"; TS 6.11, "Radiation Protection Program"; TS 6.12, "High Radiation Area"; and TS 6.15, "Offsite Dose Calculation Manual (ODCM)."

These changes proposed to TS 6.5.1.6, TS 6.8.4.d, TS 6.10, and TS 6.15 are administrative changes that improve or update the content of TS Section 6.0, "Administrative Controls."

The change proposed to TS 6.11 would relocate its content to the DBNPS Updated Safety Analysis Report, thereby removing it from the TS consistent with the NRC's NUREG–1430, Revision 1, "Improved Standard Technical Specifications for Babcock and Wilcox Plants."

The changes proposed to TS 6.12 are based upon the current revision to 10 CFR Part 20, "Standards for Protection Against Radiation," as published in the **Federal Register**, dated August 15, 1994, and TS approved by the NRC for the San Onofre Nuclear Generating Station Units 2 and 3 in Operating License Amendments 127 and 116, respectively. The changes to TS 6.12 also provide for the use of alternative methods for controlling access to high radiation areas and state-of-the-art radiation protection monitoring methods, such as closed circuit television and telemetry.

Under the proposed changes, the TS would continue to satisfy the applicable requirements of 10 CFR 50.36(c)(5).

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, these changes are administrative changes or are proposed pursuant to the current revision to 10 CFR Part 20, "Standards for Protection Against Radiation." The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes. As described above, these changes are administrative changes or are proposed pursuant to the current revision to 10 CFR Part 20, "Standards for Protection Against Radiation."

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative changes or are proposed pursuant to the current 10 CFR Part 20 requirements. These proposed changes do not reduce or adversely affect the capabilities of any plant structures, systems or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Stuart A. Richards.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: October 27, 1998.

Description of amendment request: This proposed amendment request would modify Technical Specification (TS) 4.2.b, "Steam Generator Tubes," to redefine the plugging limits for the Westinghouse Hybrid Expansion Joint sleeves (HEJs) and Westinghouse Laser Welded Sleeves (LWSs). Additional administrative changes are also proposed. The proposed changes are as follows:

1. TS 4.2.b.3.c.1 would be changed to correct an oversight from a previous amendment. The current TS 4.2.b.2.c.1 makes reference to TS 3.4.a.1.C. This reference is no longer valid because TS 3.4.a.1.C became TS 3.4.d as a result of TS Amendment 123. This change corrects an oversight from a previous amendment and is administrative.

2. TS 4.2.b.4.a would be revised to specify the updated revision of WCAP–14685 and the addendum to WCAP–13088.

3. TS 4.2.b.4.b would be revised to specify the corrected value for the plugging limit of the Westinghouse mechanical HEJ sleeves. The plugging limit would change from 24 percent to 23 percent or more sleeve wall degradation.

4. TS 4.2.b.4.e would be revised to specify the corrected value for the plugging limit of Westinghouse laser welded sleeves. The plugging limit would change from 25 percent to 23 percent or more sleeve wall degradation.

The associated bases pages for TS Section 4.2 would also be modified to reflect the above changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

The analysis of change in plugging limits was performed in accordance with RG 1.121 and ASME B&PV Code and, therefore, all required safety factors are met. The plugging limit or allowed degraded wall thickness value is not used in any accident analyses; therefore, this change has no significant

effect on any previously evaluated accidents. The change does not significantly increase the probability or consequences of an accident previously evaluated.

Because the maximum primary-to-secondary differential pressure parameter has changed, the conventional analysis techniques originally used to qualify the required weld width under predicted the shear stress in the LWS and LWR [laser weld repair] of HEJ welds. Consequently, a verification program using experimental analysis, as allowed by Section III of the ASME B&PV Code, was performed to show that the weld remains in compliance with the ASME B&PV Code. Using a different analysis technique to verify that the previously approved weld width for LWS and LWR of HEJs is still accurate does not increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Recalculating the allowable sleeve wall degradation and plugging limits and verifying the acceptability of the 0.015 inch weld width ensures that currently approved conditions are maintained. Requiring tubes to be plugged at a smaller sleeve wall degradation value does not result in any new or different conditions which could create a new or different accident.

Verification of the currently approved weld width using a different analysis technique does not have a physical effect on any plant equipment or operating parameters and, therefore, can not create a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

These TS changes are being made to ensure that the current margins of safety are maintained. This is accomplished by reducing the allowable sleeve wall degradation and plugging limit. Verifying the required, minimum weld width by an allowed, alternate analysis technique, as described by ASME B&PV Code, ensures that an adequate margin of safety is maintained and there is not a significant reduction in the margin of safety.

The minor administrative changes do not impact the technical content or implementation of the TS and therefore can not create a significant hazard.

The changes to the steam generator tube and sleeve plugging limits are necessary because of an increase in the normal operating differential pressure between the primary and secondary coolant systems. The differential pressure was increased as a result of the effects of extensive tube plugging on primary to secondary heat transfer. Since, per Regulatory Guide 1.121, the safety factor for mimimum acceptable wall thickness for steam generator tubes is based on normal operating pressures, it was found necessary to recalculate the plugging limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497.

NRC Project Director: Cynthia A. Carpenter.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 23, 1998.

Description of amendment request: The amendment would revise Technical Specification 3.5.1, "Emergency Core Cooling Systems—Accumulators," to increase the allowed outage time for the accumulators from 1 hour to 24 hours if an accumulator is inoperable for reasons other than not meeting its boron concentration requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The overall protection system performance will remain within the bounds of the accident analyses documented in Chapter 15 of the Updated Safety Analysis Report (USAR), WCAP–10961–P, and WCAP–11883, since no hardware changes are proposed. The impact of the increase in the accumulator AOT on core damage frequency for all the cases evaluated in WCAP–15049 is within the acceptance limit of 1.0E–06/yr for a total plant CDF less than 1.0E–03/yr. The incremental conditional core damage probabilities calculated in WCAP–15049 for the accumulator AOT increase meet the criterion of 5E–07 in Regulatory Guide DG–1065 for all cases except those that are based on design basis success criteria. As indicated in WCAP–15049, design basis accumulator success criteria are not considered necessary to mitigate large break LOCA events, and was only included in the WCAP–15049 evaluation as a worst case data point. In addition, WCAP–15049 states that the NRC has indicated that an ICCDP greater than 5E–07 does not necessarily mean the change is unacceptable.

The safety injection accumulators are credited in Section 15.6.5 of the Updated Safety Analysis Report for large and small break LOCA. There will be no effect on these analyses, or any other accident analysis, since the analysis assumptions are unaffected and remain the same as discussed in Section 15.6.5. Design basis accidents are not assumed to occur during allowed outage times covered by the Technical Specifications. As such, the ECCS Evaluation Model equipment availability assumptions made in Section 15.6.5 remain valid.

The safety injection accumulators will continue to function in a manner consistent with the above analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of, nor an increase in the number of challenges to, equipment assumed to function during an accident situation.

The proposed technical specification change does not involve any hardware changes nor does it affect the probability of any event initiators. There will be no change to normal plant operating parameters, engineered safety feature (ESF) actuation setpoints, accident mitigation capabilities, accident analysis assumptions or inputs. Therefore, this change will not increase the probability of an accident or malfunction.

The corresponding increase in CDF due to the proposed change to increase the AOT of the accumulators from one hour to 24 hours is not significant. Pursuant to the guidance in Section 3.5 of NEI 96–07, Revision 0, "Guidelines for 10 CFR 50.59 Safety Evaluations," the proposed increase in AOT does not "degrade below the design basis the performance of a safety system assumed to function in the accident analysis," nor does it "increase challenges to safety systems assumed to function in the accident analysis such that safety system performance is degraded below the design basis without compensating effects."

Therefore, it is concluded that this change does not increase the probability of occurrence of a malfunction of equipment important to safety.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change does not involve any change to the installed plant systems or the overall operating philosophy of WCGS.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. As described in Section 9.1 of the WCAP–15049 evaluation, the plant design will not be changed with this proposed Technical Specification AOT increase. All safety systems still function in the same manner and there is no additional reliance on additional systems or procedures. The proposed accumulator AOT increase has a very small impact on core damage frequency. The WCAP–15049 evaluation demonstrates that the small increase in risk due to increasing the accumulator AOT is within the acceptance criteria provided in Draft Regulatory Guide DG–1065. No new accident or transients can be introduced with

the requested change and the likelihood of an accident or transient is not impacted.

The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore, the possibility of a new or different malfunction of safety related equipment is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a significant reduction in a margin of safety. There will be no change to the Departure from Nucleate Boiling Ratio (DNBR) Correlation Limit, the design DNBR limits, or the safety analysis DNBR limits discussed in Bases Section 2.1.1.

The basis for the accumulator LCO, as discussed in Bases Section 3/4.5.1, is to ensure that a sufficient volume of borated water will be immediately forced into the core through each of the cold legs in the event the RCS pressure falls below the pressure of the accumulators, thereby providing the initial cooling mechanism during large RCS pipe ruptures. As described in Section 9.2 of the WCAP–15049 evaluation, the proposed change will allow plant operation in a configuration outside the design basis for up to 24 hours, instead of 1 hour, before being required to begin shutdown. The impact of this on plant risk was evaluated and found to be very small. That is, increasing the time the accumulators will be unavailable to respond to a large LOCA event, assuming design basis accumulator success criteria is necessary to mitigate the event, has a very small impact on plant risk. Since the frequency of a design basis large LOCA (a large LOCA with loss of offsite power) would be significantly lower than the large LOCA frequency of the WCAP–15049 evaluation, the impact of increasing the accumulator AOT from 1 hour to 24 hours on plant risk due to a design basis large LOCA would be significantly less than the plant risk increase presented in the WCAP–15049 evaluation. It is therefore concluded that the proposed change does not involve a significant reduction in the margin of safety as described in Technical Specification Bases Section 3/4.5.1.

As discussed previously, the performance of the accumulators will remain within the assumptions used in the large and small break LOCA analyses, as presented in USAR Section 15.6.5. Also, there will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: William H. Bateman.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: October 15, 1998.

Description of amendment request: The licensee proposes to extend the interval of submission of Effluent and Waste Disposal Reports from semi-annual to annual pursuant to 10 CFR 50.36a(a)(2). This action would require a change to Technical Specification (TS) 6.8.2.b, a reporting requirement, and textual changes in other parts of the TS to make the change consistent throughout.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The changes to the Yankee Nuclear Power Station Defueled Technical Specifications proposed above are administrative in nature. The proposed changes are consistent with the revised 10 CFR 50.36a, "Technical specifications on effluents from nuclear power reactors," which require the submittal of one Radioactive Effluent Release Report per year. Furthermore, the NRC has already concluded in issuing the 10 CFR 50.36a rule change that implementation of the proposed technical specifications changes would not result in a reduction to the public health and safety or common defense and security.

As such, the changes:

(1) Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative nature of the changes do not affect the operation of YNPS in the permanently defueled condition. Furthermore, the changes do not result in a change to the plant design, configuration, or operating procedures. Because the physical plant is not affected, and the only change is the frequency with which reports are submitted to the NRC, the probability of an accident previously evaluated is not increased and the radiological consequences of an accident previously evaluated are not increased.

(2) Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes described do not modify the design, configuration, or operating procedures for any plant systems or components. The accident analyses for the facility are not affected by the proposed changes. The changes do not introduce any new failure mechanisms. Therefore, the changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Will not involve a significant reduction in the margin of safety.

The changes described are administrative in nature. The changes do not modify the design, configuration, or operating procedures for any plant systems or components. The changes do not affect the facility's accident analyses. Radioactive effluent release limits remain unchanged. The submittal of reports to the NRC is an administrative function and is not included in the bases of any Technical Specifications to define or establish a margin of safety. Therefore, the proposed changes do not reduce the margin of safety as defined in the bases of any Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Seymour H. Weiss.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: October 16, 1998.

Description of amendment request: The amendment would change Technical Specification (TS) 3.3.1, "Reactor Protective System Instrumentation—Operating" and TS 3.3.2, "Reactor Protective System Instrumentation Shutdown" to clarify an inconsistency between TS wording and the design basis as described in the TS Bases and the Updated Final Safety Analysis Report.

Date of publication of individual notice in **Federal Register**: October 27, 1998 (63 FR 57320).

Expiration date of individual notice: November 27, 1998.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 17, 1998.

Brief description of amendments: The amendments revise Technical Specification 5.2.2.f regarding the senior reactor operator licensing requirement for the operations manager.

Date of issuance: November 4, 1998.

Effective date: November 4, 1998.

Amendment Nos.: 204 and 234.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments revise the facility's Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48258) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: September 19, 1998.

Brief description of amendment: This amendment revises Section 5.4.8 of the Oyster Creek Nuclear Generating Station Updated Final Safety Analysis Report (UFSAR) such that it incorporates the use of a freeze seal as a temporary part of the reactor coolant pressure boundary.

Date of Issuance: November 4, 1998.

Effective date: November 4, 1998.

Amendment No. 201.

Facility Operating License No. DPR–16. Amendment revised the UFSAR.

Date of initial notice in **Federal Register**: September 30, 1998 (63 FR 52307).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 4, 1998. .

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: July 23, 1998, as supplemented September 25, 1998. The September 25, 1998, supplement did not change the initial proposed no significant hazards consideration determination.

Brief description of amendment: The amendment establishes that the existing Safety Limit Minimum Critical Power Ratio in Technical Specification 2.1.A is applicable for Cycle 17.

Date of Issuance: November 5, 1998.

Effective date: November 5, 1998, to be implemented within 30 days.

Amendment No.: 202.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45525).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 5, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 29, 1997, as supplemented February 11, 12, March 7, 10, 11, 19, 20, April 29, June 30, and July 10,1997, June 20, June 22, July 24, September 15, and October 1, 1998.

Brief description of amendments: The amendments change the design basis of the cooling water system emergency intake line flow capacity. The changes also reclassify the intake canal for use during a seismic event, which would be an additional source of cooling water available during a design-basis earthquake. The amendments also reflect the completion of license conditions that were implemented as part of interim amendments 128/120 dated March 25, 1997, to reflect compensatory measures taken by Northern States Power until a seismically qualified emergency cooling water source could be provided.

Date of issuance: November 4, 1998.

Effective date: November 4, 1998, with full implementation within 30

days. Implementation of the USAR update shall be no later than June 1, 1999, as stated in License Condition 3.

Amendment Nos.: 140 and 131.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the licenses.

Date of initial notice in **Federal Register**: October 1, 1998 (63 FR 52772). The October 1, 1998, submittal provided revised USAR pages reflecting the change to the cooling water system emergency intake design bases. This information was within the scope of the October 1, 1998, **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: March 6, 1998.

Brief description of amendments: The proposed changes modify the technical specifications (TS) to eliminate reference to shutdown cooling (SDC) system isolation bypass valve inverters. This allows the licensee to replace the inverters with transfer switches.

Date of issuance: October 26, 1998.

Effective date: October 26, 1998, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2—143; Unit 3—134.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50939).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 26, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: December 30, 1997, as supplemented by letter dated April 9, 1998.

Brief Description of amendments: The amendments change the Technical Specifications to revise the surveillance requirements for the Auxiliary Building and Service Water Building batteries to remove the existing 1.75 volt minimum individual cell voltage associated with the "service test" acceptance criterion and replace it with a reference to the battery load profile specified in the Final Safety Analysis Report, Section 8.3.2.

Date of issuance: November 3, 1998.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—139; Unit 2—131.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17234). The April 9, 1998, letter provided clarifying information that did not change the scope of the December 30, 1997, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 3, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: August 6, 1998.

Brief description of amendment: Change Technical Specifications (TS) Surveillance and Bases Sections 3.3.2, "ESFAS Instrumentation," and 3.7.5, "AFW System" to clarify the intent of the surveillance testing requirements for the turbine driven auxiliary feedwater pump, which is consistent with the wording and intent of the Westinghouse Improved TS.

Date of issuance: October 26, 1998.

Effective date: October 26, 1998.

Amendment No.: 13.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: September 23, 1998 (63 FR 50941).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: November 6, 1996, as supplemented April 15, July 14, and October 16, 1998. The supplemental submittals contained clarifying information only, and did not change the initial no significant hazards consideration determination.

Brief description of amendments: The amendments revise the Technical Specifications (TS) Sections 3.4.1.4, 4.4.1.4, 3.4.1.5, 3.4.1.6, 4.4.1.6.1, 4.4.1.6.2, 4.4.1.6.3, 3/4.4.2 and 3/4.4.3 for Unit 1, and 3.4.1.4, 4.4.1.4, 3.4.1.5, 3/4.4, 3.4.1.6, 4.4.1.6.1, 4.4.1.6.2, and 4.4.1.6.3 for Unit 2, modifying the requirements for isolated loop startup to permit filling of a drained isolated loop via backfill from the reactor coolant system through partially opened loop stop valves.

Date of issuance: October 30, 1998.

Effective date: October 30, 1998.

Amendment Nos.: 215 and 196.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 4, 1996 (61 FR 64396).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following

amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By December 18, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: October 23, 1998, as supplemented October 26, 1998.

Brief description of amendments: The amendments clarify the conditions that constitute operable Individual Rod Position Indication (IRPI) system channels, provide for an allowed out of service time for inoperable IRPI indicator channels, and provide compensatory measures to be taken when any channel is determined to be inoperable.

Date of issuance: October 30, 1998.

Effective date: October 30, 1998.

Amendment Nos.: 139 and 130.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 30, 1998.

Attorney for licensee: J.E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

NRC Project Director: Cynthia A. Carpenter.

Dated at Rockville, Maryland, this 10th day of November 1998.

For the Nuclear Regulatory Commission.

William H. Bateman,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–30691 Filed 11–17–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Supplemental Information on the Implementation of the Final Rule on Radiological Criteria for License Termination

SUMMARY: This notice provides supplemental information regarding implementation of the Nuclear Regulatory Commission's (NRC's) Final Rule on Radiological Criteria for License Termination (License Termination Rule, LTR) which was issued on July 21, 1997 (62 FR 39058). The information provided in this notice pertains to: (1) The end of the "grandfathering period" on August 20, 1998; (2) issuance of the draft regulatory guide on the LTR for interim use; (3) availability of the NRC's screening computer code (DandD, Version 1) for calculating screening values to demonstrate compliance with the dose limits in the LTR; (4) screening values for building surface contamination for beta/gamma radiation emitters; (5) NRC plans to hold public workshops to discuss issues related to the draft guidance and implementation of the LTR; (6) staff plans to develop a standard review plan (SRP) for decommissioning; and (7) status of NRC decommissioning guidance documents.

SUPPLEMENTARY INFORMATION:

1. End of the Grandfathering Period

Subpart E to 10 CFR Part 20 contains a provision, 20.1401(b)(3), that the criteria in the LTR do not apply to sites that submit a sufficient decommissioning plan (DP) or license termination plan (LTP) before August 20, 1998, provided the NRC approves the DP or the LTP before August 20, 1999, and the plan is in accordance with the criteria identified in the Site Decommissioning Management Plan (SDMP) Action Plan (57 FR 13389; April 16, 1992). The period from the effective date of the LTR, August 20, 1997 through August 20, 1998, is referred to as the "grandfathering period," during which the criteria in the SDMP Action Plan could continue to be proposed. This notice reminds licensees that the grandfathering period has ended, and that all future requests to terminate a license must be in accordance with the provisions in Part 20, Subpart E. Note that the NRC review of the licensee plans submitted in accordance with 10 CFR 20.1401(b)(3), incorporating the SDMP Action Plan criteria, will continue through August 20, 1999.

2. Draft Regulatory Guide

The NRC has issued Draft Regulatory Guide DG–4006, "Demonstrating Compliance with the Radiological Criteria For License Termination," for a two-year interim use period (i.e., July 8, 1998 through July 7, 2000). NRC has also issued draft NUREG reports in support of DG–4006 (the applicable draft NUREG reports are referenced in DG–4006). A notice of availability of the Draft Regulatory Guide was published in the **Federal Register** on August 4, 1998 (63 FR 41604).

3. Availability of NRC DandD Screening Code

On August 20, 1998, NRC issued a screening computer code DandD, Version 1. The DandD code, when used with default parameters, is an acceptable method for licensees to calculate screening values to demonstrate compliance with the unrestricted use dose limit in the LTR. The DandD code can be installed by downloading the self-extracting program file, setup.exe, accessed through the web site: "http:/techconf.llnl.gov/radcri/java.html," clicking on "dose assessment," and then on "decontamination and decommissioning software." The installation instruction file "readme.txt" can also be downloaded, using the above web site, to help users installing the code. Important support documents (e.g., NUREG–1549, "Decision Methods for Dose Assessment to Comply With Radiological Criteria for License Termination" and NUREG/CR–5512, Vol. #3, "Residual Radioactive

Contamination From Decommissioning, Parameter Analysis) can also be accessed through the above web site. As discussed in DG–4006, use of DandD with the default parameters is intended for screening calculations only. If screening results indicate that remediation might be needed, a site-specific dose assessment is recommended before deciding on remedial actions. NRC expects pathway analysis/dose assessment codes other than DandD to be more appropriate for some conditions. Regulatory Guide DG–4006 contains guidance regarding the information required to support the use of other codes and models. In the interim period, NRC will review all dose assessment results on a case-by-case basis.

The DandD code, when used with the default parameter set, provides a method for calculating screening concentrations for radionuclides in soil, and screening levels for surface contamination on building surfaces. It should be noted that the screening values, based on DandD, differ from the criteria listed in the SDMP Action Plan. In most cases, the screening values for beta/gamma emitters are higher than the SDMP Action Plan criteria, while the values for alpha emitters are much lower.

During the two-year interim use period for the draft guidance (DG–4006), NRC plans to continue to refine the screening approach and to evaluate the extent of conservatism of the results of the DandD code. It may be more appropriate to develop a different screening method or approach for alpha emitters. NRC will assess the results of the DandD screening method, particularly the low screening values for alpha emitters, during the workshops to be held on the LTR guidance development. Note that DG–4006 clearly encourages the use of site-specific dose assessments, whenever needed, and recognizes that the screening values will not be appropriate in all cases.

4. Screening Values for Building Surface Contamination

The staff has developed, as a tool to facilitate the efficient implementation of the LTR, a screening table (Table 1) of unrestricted release values for building surface contamination of common beta/gamma emitting radionuclides. The screening table was derived using the DandD screening code, Version 1, and its default input parameters. Table 1 provides criteria which permit licensees to demonstrate compliance with the unrestricted release dose criterion in the LTR. The values in Table 1 correspond to surface concentrations of radionuclides contamination that would be deemed in compliance with the unrestricted use dose limit in 10 CFR 20.1402 (i.e., 0.25 mSv/yr, (25 mrem/yr)). The values correspond to screening "derived concentration guidelines" (DCGL) for each specific radionuclide based on the methodology described in DG–4006. Sites with building surface contamination levels below those listed in Table 1 would be deemed acceptable for release for unrestricted use in accordance with the dose criteria in 10 CFR 20.1402, provided that residual radioactivity has been reduced to "as low as reasonably achievable" (ALARA) levels. The table is intended for use as criteria to facilitate license termination for many simple routine decommissioning cases without a site-specific dose assessment. For facilities with contamination levels above those in Table 1, additional site-specific dose assessments may be necessary, and licensees should refer to DG–4006 regarding acceptable methods for conducting the appropriate dose assessment.

Table 1 does not include screening values for radionuclides that emit alpha particles, or for soil contamination. The NRC staff is assessing current screening approaches for sites with alpha emitters and for soil contamination. For such sites, licensees are encouraged to use, in the interim period, site-specific dose assessments based on actual site conditions.

5. Future Public Workshops

NRC will hold a series of public workshops over the two-year interim period to describe the status of the ongoing development of both DG–4006 and the SRP, to provide industry and other interested parties an opportunity to provide comments, and to discuss users' experiences with implementing the guidance. The future dates for the workshops are: December 1–2, 1998; January 21–22, 1999; March 18–19, 1999; June 16–17, 1999; August 18–19, 1999; and October 20–21, 1999. All workshops will be conducted in the Auditorium located at NRC's Headquarters (Two White Flint North Building, 11545 Rockville Pike, Rockville, MD 20852–2738). For further details on workshops, see the **Federal Register** notice published on October 21, 1998 (63 FR 56237).

6. Standard Review Plan

The NRC staff is developing an SRP for the evaluation of licensee submittals related to compliance with the radiological criteria in the LTR. The goal of the SRP is to enable NRC staff to evaluate information submitted by licensees in a timely, efficient, and consistent manner, and to determine if the decommissioning will be conducted such that the public health and safety is protected and the facility can be released in accordance with NRC's requirements. The development of the SRP will be coordinated with the effort to revise and finalize DG–4006. The web site "http://techconf.llnl.gov/cgi-bin/topics" provides updated information on the status of the guidance and the SRP, and a mechanism for the public to provide comments on the draft guidance.

7. Status of Decommissioning Guidance Documents

Guidance material in DG–4006 and the SRP will incorporate or supersede most existing NRC decommissioning guidance documents. Guidance documents will be revised to be consistent with the LTR, or they will be phased out. Table 2 lists the status of existing NRC guidance documents affected by the LTR and associated new guidance.

Under the SDMP Action Plan criteria, the tables of surface contamination values contained in Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors," and Policy and Guidance Directive FC 83–23, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Byproduct, Source, or Special Nuclear Material Licenses," were used as the decommissioning criteria for building surfaces. The values in Table 1 are intended to replace the tables in the above two documents for license termination purposes.

The surface contamination criteria in Regulatory Guide 1.86 have been applied by reactor licensees for license termination only. However, for materials licenses (under 10 CFR Parts 30, 40, and 70), the guidelines in Policy and Guidance Directive FC 83–23 have been used by licensees for two purposes: (a) As criteria for license termination, and (b) as criteria for unrestricted release of equipment and other materials during operations. On June 30, 1998, the Commission directed the NRC staff to develop a dose-based regulation for clearance of equipment and materials having residual radioactivity. The criteria that eventually emerge from this rulemaking effort are intended to replace the surface contamination values in Policy and Guidance Directive FC 83–23. Until that time, licensees may continue to use the criteria in Policy and Guidance Directive FC 83–23 for unrestricted

release of equipment and material, to the extent authorized by their licenses.

FOR FURTHER INFORMATION CONTACT: Mr. David N. Fauver, Low-Level Waste and Decommissioning Projects Branch, at (301) 415–6625, or Dr. Rateb (Boby) Abu Eid, Performance Assessment and High-Level Waste Integration Branch, at (301) 415–5811, both of the Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 12th day of November 1998.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

TABLE 1—ACCEPTABLE LICENSE TERMINATION SCREENING VALUES OF COMMON RADIONUCLIDES FOR BUILDING SURFACE CONTAMINATION

Radionuclide	Symbol	Acceptable screening levels [1] for unrestricted release (dpm/100 cm^2) [2]
Hydrogen-3 (Tritium).	^{3}H	1.2E+08
Carbon-14	^{14}C	3.7E+06
Sodium-22	^{22}Na	9.5E+03
Sulfur-35	^{35}S	1.3E+07
Chlorine-36	^{36}Cl	5.0E+05
Manganese-54 ..	^{54}Mn	3.2E+04
Iron-55	^{55}Fe	4.5E+06
Cobalt-60	^{60}Co	7.1E+03
Nickel-63	^{63}Ni	1.8E+06
Strontium-90	^{90}Sr	8.7E+03
Technetium-99 ..	^{99}Tc	1.3E+06
Iodine-129	^{129}I	3.5E+04
Cesium-137	^{137}Cs	2.8E+04
Iridium-192	^{192}Ir	7.4E+04

[1] Screening levels are based on the assumption that the fraction of removable surface contamination is equal to 0.1. For cases when the fraction of removable contamination is undetermined or higher than 0.1, users may assume, for screening purposes, that 100% of surface contamination is removable, and therefore the screening levels should be decreased by a factor of 10. Alternatively, users having site-specific data on the fraction of removable contamination (e.g., within the 10% to 100% range) may calculate site-specific screening levels using DandD Version 1.

[2] Units are disintegrations per minute per 100 square centimeters (dpm/100 cm^2). 1 dpm is equivalent to 0.0167 becquerel (Bq). The screening values represent surface concentrations of individual radionuclides that would be deemed in compliance with the 0.25 mSv/yr (25 mrem/yr) unrestricted release dose limit in 10 CFR 20.1402. For radionuclides in a mixture, the "sum of fractions" rule applies; see 10 CFR Part 20, Appendix B, Note 4. Refer to NRC Draft Guidance DG–4006 for further information on application of the values in this table.

TABLE 2—EXISTING GUIDANCE DOCUMENTS APPLICABLE TO DECOMMISSIONING THAT WILL REQUIRE REVISION OR DISCONTINUATION IN ORDER TO IMPLEMENT THE LICENSE TERMINATION RULE (LTR)

Decommissioning guidance document	Status with respect to LTR
Decommissioning Criteria in Action Plan to Ensure Timely Cleanup of Site Decommissioning Management Plan Sites (SDMP Action Plan) (57 FR 13389).	Superseded by LTR and DG–4006 (Note: Still applicable to sites "grandfathered" in accordance with 10 CFR 20.1401(b)).
Policy and Guidance Directive FC 83–23, "Guidelines for the Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Byproduct, Source, or Special Nuclear Material Licenses".	Superseded by DG–4006 for License Termination (Note: This document may continue to be used as criteria for unrestricted release of equipment and material from licensed material facilities during operational activities prior to license termination, to the extent authorized by the licensees).
Draft Branch Technical Position on "Screening Methodology for Assessing Prior Land Burials of Radioactive Wastes Authorized Under Former 10 CFR 20.304 and 20.302" (96 FR 28223).	Superseded by LTR and DG–4006.
"Preliminary Hazards Analysis for Contaminated Buildings at Formerly Licensed Sites".	Superseded by DG–4006.
NUREG/BR–0241, "NMSS Handbook for Decommissioning Fuel Cycle and Materials Licensees".	References to decommissioning criteria are superseded by the LTR and DG–4006. The Handbook will be updated as appropriate to be consistent with the LTR and current guidelines.
Regulatory Guide 1.86, "Termination of Operating Licenses for Nuclear Reactors".	Superseded by DG–4006
Draft NUREG/CR–5849, "Manual for Conducting Radiological Surveys in Support of License Termination".	Superseded by DG–4006.

[FR Doc. 98–30867 Filed 11–17–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

The meeting of the Railroad Retirement Board which was to be held on November 18, 1998, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611, has been canceled.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312–751–4920.

Dated: November 13, 1998.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 98–31008 Filed 11–16–98; 3:53 pm]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40660; International Series Release No. 1170; File No. SR–DTC–98–19]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to Enhancement of the Current Link With Deutsche Borse Clearing AG

November 10, 1998.

On September 15, 1998, The Depository Trust Company ("DTC") Filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–98–19) pursuant to Section 10(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on September 23, 1998.[2] The Commission received seven comment letters in response to the filing.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

Under the rule change, DTC will open an omnibus account at Deutsche Borse Clearing AG ("DBC") in order to create a two-way interface between DTC and DBC. Presently, DBC has an omnibus account at DTC which enables DBC and its participants to effect book-entry deliveries at DTC to DTC participants. The current link between DTC and DBC allows DBC and its participants to use the custody, book-entry, and delivery services of DTC for transactions involving securities that are eligible in both systems. The current link permits a DTC participant to settle a cross-border transaction with a DBC counterparty by making a book-entry delivery, on a free of payment basis, from its participant account at DTC to the DBC omnibus account at DTC and by identifying the DBC participant account to which the delivered securities should be credited.[4] Cash settlement of the transaction will take place outside of DTC.

However, under the current link a DBC participant cannot make a book-entry delivery of securities held in its account at DBC to a DTC participant's account at DTC. In order for a DBC participant to make a delivery of securities to a DTC counterparty's account at DTC, the DBC participant must deliver the physical securities to DTC.

The rule change will permit book-entry movements of securities from a DBC participant's account at DBC to a DTC counterparty's account at DTC. Thus, a DBC participant will be able to settle a cross-border transaction with a DTC counterparty by making a book-entry delivery, on a free of payment basis, from its participant account at DBC to the DTC omnibus account at DBC and by identifying the DTC participant account to which the delivered shares should be credited.[5] The receiving DTC participant can then redeliver the securities within DTC through a book-entry movement on either a free of payment or against payment basis.

If required, DBC will provide subcustody services such as income collection, maturity presentments, and reorganization processing on securities held in DTC's omnibus account at DBC in accordance with DBC procedures. Currently, DTC provides such services for securities held by DTC on behalf of DBC.

II. Comment Letters

The Commission received seven comment letters in response to the notice of the proposed rule change.[6] Five commenters, Credit Suisse First Boston Corporation, Salomon Smith Barney, Skadden Arps, Deutsche Bank, and BONY, expressed support for the proposed rule change. These comments stated generally that the proposed rule change would facilitate the efficient processing of cross-border securities transactions and would reduce risks and costs to participants of DTC and DBC.[7]

The STA expressed concern that under the proposed rule change some U.S. investors may receive transfer services from transfer agents that are not fully subject to U.S. regulation. In response to the STA's letter, Skadden Arps noted that the transfer agents for DaimlerChrysler ordinary shares, BONY and Deutsche Bank, are registered under Section 17A of the Act. Skadden Arps also stated that it believed that it is not necessary to subject all cross-border exchange links to Section 17A registration.

Thomson expressed concern that the proposed rule change might result in an expansion of the scope of certain self-regulatory organization rules governing the confirmation and affirmation of institutional securities trades. Thomson requested that the Commission clarify that the proposed rule change would not affect the exemption in those rules for trades that settle outside the United States.[8]

III. Discussion

Section 17A(b)(3)(F) of the Act[9] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F).

The Commission believes that the rule change should increase efficiency in the movement of securities positions and in the settlement of securities transactions among participants of DTC and DBC by reducing the need for the movement of physical securities. The link should not

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40445 (September 16, 1998), 63 FR 50950.

[3] *Infra* note 6.

[4] All deliveries of securities into or out of DBC's omnibus account at DTC are on a free of payment basis.

[5] All deliveries of securities into or out of DTC's omnibus account at DBC are on a free of payment basis.

[6] Letters from P. Howard Edelstein, President, Electronic Settlements Group, Thomson Financial Services ("Thomson") (October 14, 1998); Joseph D. Fashano, Director, Credit Suisse First Boston Corporation (October 20, 1998); Thomas L. Montrone, President, The Securities Transfer Association, Inc. ("STA") (October 21, 1998); Simon M. Lorne, Managing Director, Salomon Smith Barney (October 23, 1998); J. Michael Schell, Skadden, Arps, Slate, Meagher & Flom LLP ("Skadden Arps") (October 23, 1998); Jurgen Rebouillon, Senior Vice President, and Thomas Klee, First Vice President, Deutsche Bank AG ("Deutsche Bank") (October 23, 1998); Joseph M. Velli, Senior Executive Vice President, The Bank of New York ("BONY") (October 23, 1998).

[7] The comment letters submitted by Skadden Arps, Deutsche Bank, and BONY addressed the rule change with reference to the merger of Daimler-Benz Aktiengesellschaft and Chrysler Corporation into DaimlerChrysler AG. Skadden Arps is counsel to Daimler-Benz, and BONY and Deutsche Bank will serve as cotransfer agents for DaimlerChrysler ordinary shares.

[8] Specifically, Thomson referenced National Association of Securities Dealers Rule 11860, New York Stock Exchange ("NYSE") Rule 387(a)(5), Municipal Securities Rulemaking Board Rule G–15(d)(ii), American Stock Exchange Rule 423(5), Chicago Stock Exchange Article XV, Rule 5, Pacific Exchange Rule 9.12(a)(5), and Philadelphia Stock Exchange Rule 274(b). Those rules require that for certain securities transactions the facilities of a securities depository be used for the confirmation, acknowledgment, and book entry settlement of the transactions. However, those rules also state that they are not applicable to transactions that are to be settled outside the United States. *See, e.g.*, NYSE Rule 387(a)(5), Interpretation .10.

[9] 15 U.S.C. 78q–1(b)(3)(F).

only reduce the time and expense associated with physical movements of securities positions but should also reduce the risk of loss and erroneous processing that always exists with physical movements. The Commission also believes that the procedures for the link between DTC and DBC are consistent with DTC's safeguarding obligation in that all movements into or out of DTC's omnibus account at DBC and into or out of DBC's omnibus account at DTC will be on a free of payment basis.[10]

The Commission has taken account of the comment letters that it received in response to the proposed rule change. The Commission believes that the rule change should not affect the obligation of any entity to register as a transfer agent pursuant to Section 17A of the Act.[11] In addition, the Commission believes that the rule change should not have any effect on the rules of any self-regulatory organization other than DTC.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–DTC–98–19) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30826 Filed 11–17–98; 8:45 am]

BILLING CODE 8010–01–M

[10] In addition, DTC has obtained an opinion of counsel concerning German law and DTC's participation in DBC.

[11] The Commission notes that the entities that will perform transfer functions for shares in DaimlerChrysler are registered transfer agents.

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40658; File No. SR–NASD–98–71]

Self-Regulatory Organizations; Notice of Withdrawal of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Pilot Program To Provide Proprietary Trading Data via NasdaqTrader.com

November 10, 1998.

On September 29, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] to amend Rule 7010 of the Rules of the NASD, to establish a pilot program to provide proprietary trading data via Nasdaq's NasdaqTrader.com web site.

Notice of the proposed rule change was published on October 9, 1998 to solicit comment from interested persons.[3] The Commission received two comment letters concerning the proposed rule change.[4] On November 5, 1998, the NASD withdrew the proposal rule change.[5]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30824 Filed 11–17–98; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 40542 (October 9, 1998), 63 FR 55909 (October 19, 1998).

[4] Letters from Roland Beaulieu, President, Thomason Trading Services, Inc. ("Autex"), to Jonathan G. Katz, Secretary, SEC, dated October 22, 1998 and from Mari-Anne Pisarri, Pickard and Djinis LLP, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated October 13, 1998.

[5] Letter from Robert E. Aber, Senior Vice President and General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated November 4, 1998.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40659; File No. SR–NASD–98–69]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Mutual Fund Breakpoint Sales

November 10, 1998.

On September 10, 1998, the National Association of Securities Dealers, Inc. ("NASD"), through its regulatory subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] In its filing, NASD Regulation proposed to amend Interpretive Memorandum 2830–1 ("IM 2830–1") to clarify the application of the mutual fund breakpoint sales rule to modern portfolio investment strategies. Notice of the proposal was published in the **Federal Register** on October 6, 1998 ("Notice").[3] No comments were received on the proposal.

I. Description of the Proposal

Volume purchasers of mutual fund shares often enjoy lower sales charges when purchases reach certain levels (*e.g.*, $10,000, $25,000, $50,000, and so forth). Although funds do not have to offer such discounts under SEC or NASD rules, many funds use reduced fee schedules as a marketing tool to attract large investors. The term "breakpoint" refers to the amount of mutual fund shares that must be purchased before the volume sales charges are reduced. IM–2830–1 prohibits sales of mutual fund shares in amounts below breakpoints, if such sales are made to avoid the reduced volume sales charges. When the Association reviews a suspected violation, it looks at the facts and circumstances of a particular below-breakpoint sale to determine whether there is a bona fide reason for the sale.

NASD Regulation recognizes that the customers of NASD members, to meet their diversification needs and investment goals, may wish to allocate their portfolios among different assets, in a way that does not allow them to get the benefit of volume sales charge

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40500 (September 29, 1998), 63 FR 53740 (October 6, 1998) (File No. SR–NASD–98–69).

reductions. Thus, NASD Regulation believes that, under most circumstances, below-breakpoint sales made pursuant to a bona fide asset allocation program do not constitute a breakpoint violation. Moreover, NASD Regulation does not want to discourage its members from suggesting asset allocation investment options to those customers who would benefit from such strategies.

To aid in distinguishing between bona fide and improper below-breakpoint sales, NASD Regulation proposes amendment of IM–2830–1 to more precisely identify the facts and circumstances the staff will consider when reviewing a particular below-breakpoint sale. Specifically, IM–2830–1 will be amended to provide that NASD Regulation examination staff, in reviewing a below-breakpoint sale will consider, among other things, (1) whether a member has retained records demonstrating that the transaction was executed in accordance with a bona fide asset allocation program and (2) whether the particular customer involved was informed that volume sales reductions would not be available for the particular sale due to the allocation of the total purchase among a variety of funds.

II. Discussion

The Commission has determined to approve the Association's proposal to amend IM 2830–1. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act[4] and the rules and regulations thereunder that govern the NASD.[5] In evaluating a given proposal, the Commission examines the record before it. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[6]

The Commission believes that the proposal to amend IM–2830–1 to clarify the application of the mutual fund breakpoint sales rule to modern portfolio investment strategies such as a bona fide asset allocation plan is consistent with Section 15A(b)(6) of the Act in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[7]

The Commission agrees with NASD Regulation that the proposal promotes just and equitable principles of trade by providing enhanced guidance to both NASD members and the NASD Regulation examination staff regarding the application of the Association's breakpoint sales rule. The Commission further believes that the proposal, by drawing attention to the importance of (a) maintaining records describing the reasons for a particular asset allocation plan, and (b) disclosing breakpoint sales practices and discounts to customers, the rule should help to deter fraudulent and manipulative acts and practices by NASD members.

III. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[8] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–98–69) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30825 Filed 11–17–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78*o*–3.
[5] 15 U.S.C. 78s(b).
[6] 15 U.S.C. 78*o*–3.
[7] 15 U.S.C. 78*o*–3(b)(6).
[8] 15 U.S.C. 78*o*–3.
[9] 15 U.S.C. 78(c)f.
[10] 15 U.S.C. 78s(b)(2).
[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Demonstration to Improve Enrollment in State Buy-in to Medicare for Low-Income Medicare Beneficiaries

AGENCY: Social Security Administration.

ACTION: Notice, request for comments and solicitation for demonstration participation by States.

SUMMARY: Title IV of Division A, Social Security Administration, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277, directs the Commissioner of Social Security to expend $6,000,000 for Federal-State partnerships which will evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act (the Act). Administration of the Medicare buy-in programs described in titles XVIII and XIX of the Act is the responsibility of the Administrator of the Health Care Financing Administration (HCFA) in the Department of Health and Human Services. The Commissioner of Social Security is responsible for the Social Security and Supplemental Security Income (SSI) programs described in titles II and XVI of the Act.

The Medicare and Medicaid programs are statutorily linked to the programs administered by the Social Security Administration (SSA). Because of this linkage, SSA provides certain Medicare- and Medicaid-related services to HCFA, the States and to SSA's beneficiaries. Among these services are public service information activities about the Medicare and Medicaid programs, categorically needy Medicaid eligibility determinations in most States and referral activities for certain Medicaid benefits in all States. The scope of SSA's involvement in the Medicare and Medicaid programs is defined in the Act and in agreements between SSA and HCFA and between SSA and the States.

The demonstration project specified in Public Law 105–277 will assist SSA's low-income disabled beneficiaries and beneficiaries age 65 and over who are or could be eligible for Medicaid benefits to help pay their Medicare costs. SSA intends to work with HCFA to identify and investigate barriers and to foster enrollment of those beneficiaries in the Medicare buy-in programs. SSA is requesting public comment about these plans and soliciting States to express their interest in participating in this demonstration.

DATES: Interested persons are invited to submit comments on or before December 18, 1998. States interested in participating in this demonstration should submit expressions of interest on or before December 18, 1998 to the address below.

ADDRESSES: Written comments and expressions of State interest in participation should be addressed to Craig A. Streett, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Room 3–M–1 Operations Building, Baltimore, MD 21235, or should be electronically mailed to the internet address Craig.Streett@ssa.gov, or should be faxed to 410–966–0980. All comments and expressions of State interest in participation received at the internet address will be acknowledged by electronic mail to confirm receipt.

FOR FURTHER INFORMATION CONTACT: Craig A. Streett, (410) 965–9793. Individuals who use a telecommunications device for the deaf (TDD) may call 1–410–966–5609 between 7:00 AM and 7:00 PM, Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 226 of the Act [42 U.S.C. 426] describes the rules for entitlement to Medicare Hospital Insurance (HI) benefits, also known as Medicare Part A. Generally, Social Security beneficiaries who have attained age 65 are entitled to Medicare Part A benefits without filing an application or other request for those benefits, as are disabled beneficiaries who have received 24 consecutive months of Social Security benefits. Under section 226A of the Act [42 U.S.C. 426–1], certain individuals who suffer from end stage renal disease can also become entitled to Medicare HI benefits. Some individuals may also be entitled to Medicare HI benefits through purchase under the rules in sections 1818 and 1818A of the Act [42 U.S.C. 1395i–2 and 1395i–2a].

Section 1840 of the Act [42 U.S.C. 1395s] describes the rules for purchase of Medicare Supplementary Medical Insurance (SMI) benefits, also known as Medicare Part B. Generally, Medicare Part B benefits will begin when Medicare Part A benefits begin unless the beneficiary declines the Part B benefits. Usually the beneficiary is responsible for the payment of a monthly premium for Medicare Part B benefits. Section 1843 of the Act [42 U.S.C. 1395v] describes the agreements States may enter into to purchase SMI benefits for some individuals. The purchase of SMI benefits by a State for an individual is referred to as "Medicare Part B buy-in."

Section 1902(a)(10)(E) of the Act [42 U.S.C. 1396a(a)(10)(E)] requires each State's plan for medical assistance to provide for Medicare cost-sharing (including Medicare Part B buy-in) for certain groups of low-income individuals. Some of the groups of low-income individuals are:

1. Qualified Medicare beneficiaries (QMBs). QMBs are individuals who are eligible for Medicaid payment of their Medicare premiums, deductibles and coinsurance. QMBs must be entitled to Medicare HI benefits (through their own entitlement or by purchase). QMBs must also have income that does not exceed the Federal poverty level (FPL) after application of the SSI income exclusions, and have resources with values that do not exceed twice the SSI standards after application of the SSI resources exclusions.

2. Specified low-income Medicare beneficiaries (SLMBs). SLMBs are Medicare beneficiaries who would be QMBs but for income which exceeds the FPL but is less than 120 percent of the FPL after application of the SSI income exclusions. SLMBs are eligible for Medicare Part B buy-in.

3. Qualified individuals—1 (QI–1s). Subject to the availability of funding, QI–1s are Medicare beneficiaries who would be QMBs or SLMBs but for income which exceeds the allowable limit but is less than 135 percent of the FPL after application of the SSI income exclusions. QI–1s are eligible for Medicare Part B buy-in.

For most Medicare beneficiaries, Medicare entitlement is an automatic result of Social Security entitlement when other statutory factors of Medicare eligibility are met. Thus, most Medicare beneficiaries also are beneficiaries of the Social Security program administered by SSA. Because of the linkage between Medicare entitlement and Social Security entitlement in title II of the Act and the duties of the Commissioner of SSA in title VII of the Act, both SSA and HCFA have Medicare entitlement responsibilities. In addition, SSA performs additional enrollment and other Medicare-related activities under the auspices of agreements between HCFA and SSA.

Many States have entered into agreements with SSA for SSA to make categorically needy Medicaid eligibility determinations for the State's SSI beneficiaries under the authority in section 1634 of the Act [42 U.S.C. 1383c]. Acting on behalf of States with such agreements, SSA processes Medicare Part B buy-in for SSI beneficiaries who are eligible for this assistance under the rules in section 1843 of the Act.

Although Medicare entitlement usually is a product of the Social Security entitlement process, Medicare Part B buy-in eligibility determinations are a Medicaid process. Under title XIX of the Act, Medicaid is State-administered under the terms of State plans approved by HCFA. SSA plays only a limited role in qualifying individuals for Medicare Part B buy-in. SSA does make some buy-in decisions in certain States, but only for SSI beneficiaries. SSA also publicizes the availability of the Medicare Part B buy-in programs in its field offices and through the SSA toll-free number, 1–800–SSA–1213.

A lack of awareness about the Medicare Part B buy-in programs appears to be one of the major obstacles to enrollments. Other obstacles to enrollments have also been suggested, including the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local welfare offices.

Because of the low enrollments in the Medicare Part B buy-in programs, SSA will conduct a Medicare Part B buy-in demonstration to assist our beneficiaries. The two-part demonstration will be designed to identify and overcome the obstacles to Medicare Part B buy-in enrollments for QMBs, SLMBs and QI–1s. Conferring with HCFA, SSA intends to implement both internal and external components of the demonstration, and SSA invites States to form Federal-State partnerships with SSA to participate in this demonstration.

As currently envisioned, the internal component of the demonstration would involve increased Medicare Part B buy-in referral activities by SSA employees when contacted by Medicare-entitled beneficiaries. An example of this type of increased referral activities may be eligibility screening and subsequent direct notification of Medicaid State agencies when a Social Security beneficiary appears to be potentially eligible for Medicare Part B buy-in. Currently, SSA suggests that beneficiaries get in touch with the Medicaid State agency to discuss eligibility for Medicare Part B buy-in without identifying those beneficiaries to the State.

Medicare-entitled Social Security beneficiaries routinely contact SSA for a number of reasons, such as reports of the death of a spouse. When informed of a spouse's death, SSA recomputes the widow(er)'s benefit to determine if the widow(er) might be entitled to a larger monthly benefit. In all States, SSA could use these contacts to screen carefully for potential Part B buy-in eligibility and both refer the caller to the Medicaid State agency and provide identifying information about potential Medicare Part B buy-in eligibility to the Medicaid State agency for State-initiated followup.

The external component of the demonstration would involve Federal-State partnerships. State partners that wish to participate in the demonstration would provide ZIP code information that relates to areas within each State with a high proportion of low-income aged and disabled Medicare beneficiaries who could be eligible but are not participating in the Medicare Part B buy-in programs. State participants would join with SSA in publicizing this demonstration in the targeted communities. Some State partners also would be involved in

educating SSA employees about the State welfare Medicare buy-in application process, and/or providing welfare workers who would be assigned to take applications in SSA field offices at certain mutually agreeable, fixed times during the demonstration.

SSA expects to implement the external part of this demonstration in no more than 15 communities. That is, SSA and its State partners would identify three sets of up to five comparable communities in several States. Each set of five comparable communities would be selected to participate in each of the following three models:

1. Screening—Publicity would direct Medicare beneficiaries who may be potentially eligible for Medicare Part B buy-in to contact a toll-free telephone number staffed by SSA employees. SSA staff would perform an in-depth Medicare Part B buy-in eligibility screening if at all possible while the caller is on the telephone. Potential eligibles would then be referred to the local welfare office to file applications for benefits, and SSA would track the progress of those applications with the State partner.

2. Co-location—In addition to the publicity and screening efforts cited in the preceding model, potential Medicare Part B buy-in eligibles also would be invited to file an application for benefits with a State welfare worker stationed (for at least some fixed part of the week) at the local SSA office.

3. Application—In addition to the publicity and screening efforts cited in the preceding two models, potential Medicare Part B buy-in eligibles would be invited to file an application for those benefits, completing the appropriate forms with an SSA employee at the local SSA office.

SSA does not envision all three of these models starting at exactly the same time. Federal information collection clearance procedures, training, logistical details and mutual convenience for both the Federal and State partners will dictate starting dates. SSA expects these models to end within nine months after implementation.

SSA intends to employ an independent contractor to consult on the design of the demonstration and to conduct an evaluation of the net outcomes (e.g., increased applications to and enrollments in the buy-in programs) of the demonstrations. The role of the contractor in the design phase of the demonstration will be to advise SSA on how to implement the three models described above. SSA will be responsible for collecting data, and SSA will develop a management information system. The contractor will assist SSA and the States in specifying key data elements to enhance data comparability across sites. This system may include existing SSA administrative data as well as data collected through the demonstration. Designs that the contractor will consider include both experimental and nonexperimental approaches. An experimental design might involve a random assignment of cases to treatment and control groups, while a nonexperimental design could include the collection of analogous data from comparison sites. Each has important implications for the implementation of the three models and for the development of the management information system. State partners will be expected to cooperate with the contractor at key points of the design and evaluation activities. The contractor will be expected to consult with HCFA on its activities. Both the internal and external components of this demonstration will be designed to avoid duplicating any other Federal efforts.

The evaluation component will include analyses of the relative effectiveness of the three models in terms of increasing Medicare Part B buy-in applications from the eligible population and increasing enrollments in the buy-in programs. The evaluation also will include a comparison of buy-in program applications and enrollments under the SSA interventions versus HCFA publicity efforts. An appropriate design is critical to proper measurement of increases in Medicare Part B buy-in enrollments.

SSA invites the public to comment on its proposed demonstration design. SSA also invites States to express interest in participating in this demonstration. State partners in the demonstration may be asked to implement any or all of the models described above; however, if a State that wishes to participate would prefer participation in less than all three models, those preferences will be honored to the extent possible.

Authority: Division A, Title IV of Public Law 105–277.

Dated: November 13, 1998.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 98–30873 Filed 11–17–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice No. 2932]

Nigeria; Determination Under Presidential Proclamation

I hereby make the determination provided for in section 6 of Presidential Proclamation No. 6636, of December 10, 1993, that the suspension of entry into the United States as immigrants and nonimmigrants of persons who formulate, implement or benefit from policies that impede Nigeria's transition to democracy is no longer necessary. Restrictions imposed in said proclamation, pursuant to Section 212(f) of the Immigration and Nationality Act of 1952 as amended (8 U.S.C. 1182(f)), shall therefore lapse, and said proclamation shall terminate effective immediately.

This determination will be reported to Congress and published in the **Federal Register**.

Dated: October 26, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–30760 Filed 11–17–98; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice: 2924]

Extension of the Restriction on the Use of United States Passports for Travel to, in, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the possibility of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area ". . . where there is imminent danger to the public health or physical safety of United States travelers" within the meaning of 22 U.S.C. 221a and 22 C.F.R. 51.73(a)(3).

Accordingly, all United States passports shall remain invalid for travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at midnight November 24, 1999, unless extended or sooner revoked by Public Notice.

Dated: November 9, 1998.

Madeleine K. Albright,

Secretary of State.

[FR Doc. 98–30759 Filed 11–17–98; 8:45 am]

BILLING CODE 4710–06–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186; Automatic Dependent Surveillance—Broadcast (ADS–B)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–186 meeting to be held December 3, 1998, starting at 9:00 a.m. The meeting will be held at RTCA in the MacIntosh–NBAA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: (1) Chairman's Introductory Remarks/ Review of Meeting Agenda; (2) Review and Approval of Minutes of the Previous Meeting; (3) Review of SC–186 Work Plan, Organization, and Objectives; (4) Working Group (WG) Reports: a. WG–1 (Operations and Implementation); b. WG–2 (Separation Assurance); c. WG–3 (1090 MHz Minimum Operational Performance Standards (MOPS)); d. WG–4 (Application Technical Requirements); (5) Progress of SC–186/WG–51 Joint Working Relationship; (6) RTCA Policy on Intellectual Property/Proprietary Data Rights in RTCA–Sponsored/ Supported Activities and Standards; (7) Overview of 1090 MHz ADS–B MOPS; (8) Other Business; (9) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 12, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30791 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Alexandria International Airport, Alexandria, Louisiana

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposed to rule and invites public comment on the application to impose and use the revenue from a PFC at Alexandria International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 18, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Gammel, Manager of Alexandria International Airport at the following address: Mr. Scott Gammel, Airport Manager, England Economic & Industrial Development District, 1611 Arnold Drive, Alexandria, LA 71303.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Alexandria International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 3, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 11, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: May 1, 1999.

Proposed charge expiration date: November 1, 2020.

Total estimated PFC revenue: $5,378,352.00

PFC application number: 99–01–C–00–AEX.

Brief description of proposed project(s):

Projects to Impose and Use PFC's

ARFF Vehicle, New Terminal Building, and PFC Application Fees.

Proposed class of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Alexandria International Airport.

Issued in Fort Worth, Texas, on November 3, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–30793 Filed 11–17–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33674]

Livonia, Avon & Lakeville Railroad Corporation—Acquisition of Control Exemption—Ontario Central Railroad Corporation

Livonia, Avon & Lakeville Railroad Corporation (LAL), a Class III rail carrier, has filed a verified notice of exemption to acquire a controlling interest, through stock purchase, of Ontario Central Railroad Corporation (ONCT), a Class III rail carrier, which operates 14 miles of rail line between West Victor and Shortsville, NY.[1]

LAL owns and operates approximately 30 miles of rail line between Genessee Junction yard in Chili, NY, immediately south of Rochester, and Lakeville, NY. LAL also separately operates approximately 35 miles of track between Hammondsport, Bath and Wayland, NY, which is owned by the Steuben County Industrial Development Authority.[2]

Under the terms of an agreement with ONCT, LAL will acquire 3,000 shares of ONCT's treasury stock and 8,900 shares of ONCT's stock, which is currently authorized but unissued.

The earliest the transaction could be consummated was October 30, 1998, the effective date of the exemption (7 days after the exemption was filed).

LAL states that: (i) the railroads do not connect with each other; (ii) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33674, must be filed with the Office of the Secretary, Case Control Unit, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye St., N.W., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30652 Filed 11–17–98; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Ontario Central Railroad Corporation—Operations—Between Shortsville and Victor, NY,* Finance Docket No. 29761 (ICC served Nov. 3, 1981) (Modified Rail Certificate), and *Certificate of Designated Operator-Ontario Central Railroad Corp.*, D–OP 33 (U.S.R.A. Line No. 98/1022), *Cancellation of Certificate of Designate Operation—Consolidated Rail Corporation*, D–OP 6 (U.S.R.A. Line No. 98/1022) (ICC served Sept. 28, 1979).

[2] *See Livonia, Avon & Lakeville Railroad Corp.—Acquisition and Operation Exemption—Steuben County Industrial Development Agency*, STB Finance Docket No. 32941 (STB served May 22, 1996).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of proposed new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a new proposed system of records, the IRS Audit Trail Lead Analysis System (ATLAS).

DATES: Comments must be received no later than 30 days after the proposed system is published in the **Federal Register** (December 18, 1998). The proposed system of records will be effective 40 days after the proposed system is published in the **Federal Register** (December 28, 1998) unless the Service receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC. 20220. Persons wishing to review the comments should call 202–622–6240 to make an appointment with the Office of Governmental Liaison and Disclosure.

FOR FURTHER INFORMATION CONTACT: Michael Sincavage, Director, 6103/Privacy Operations, Governmental Liaison and Disclosure, Internal Revenue Service at 202–622–6240.

SUPPLEMENTARY INFORMATION: This report is to give notice of a proposed new Internal Revenue Service (IRS) system of records entitled "IRS Audit Trail Lead Analysis System (ATLAS)," which is subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended. The Service is establishing ATLAS to detect and counter unauthorized access, use, fraud and abuse of tax return information. This system provides protection by monitoring and tracking, through analysis of audit logs, accesses to and use of IRS electronic records. Outside of IRS Information Systems, the Office of the Chief Inspector/Treasury Office of Inspector General for Tax Administration will be the principal user of data contained in this system of records. The Office of the Chief Inspector will analyze the data contained in the system of records as part of its mission to detect and deter fraud, waste, and abuse. The Integrated Data Retrieval System Security Files, Treasury/IRS 34.018, will be incorporated into the proposed IRS ATLAS system of records. In accordance with the Office of Management and Budget Circular A–130, the notice covering Treasury/IRS 34.018 will be deleted from the IRS's inventory of systems of records on the date Treasury/IRS 34.020 becomes effective. The proposed system of records is published in its entirety below.

Dated: November 10, 1998.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

Treasury/IRS 34.020

SYSTEM NAME:

IRS Audit Trail Lead Analysis System (ATLAS)-Treasury/IRS.

SYSTEM LOCATION:

The ATLAS is located in an IRS facility in West Virginia. The users of the system are located in a facility in Ohio.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) IRS employees and contractors who have accessed, by any means, tax return or other IRS information contained within an IRS information system (i.e., its operating system,

network, or data base) which processes taxpayer information. (2) Individual taxpayers upon whom the IRS maintains paper or electronic records and whose records have been accessed. (3) Individuals who have illegally accessed, by any means, tax return or other IRS information contained within an IRS information system (i.e., its operating system, network, or data base) which processes taxpayer information.

CATEGORIES OF RECORDS IN THE SYSTEM:

The IRS information systems create audit logs of IRS employees or contractors who have accessed or other individuals who have illegally accessed taxpayer records. The audit logs are then processed by ATLAS to determine whether the accesses are consistent with the IRS policy, standards and practices regarding tax administration, and the confidentiality statutes within the U.S. Code.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 26 U.S.C. 6103, 7213, 7213A, 7214, 7608, 7801, 7802, and 18 U.S.C. 1030(a)(2)(B).

PURPOSE(S):

To enable the IRS to enhance protection of sensitive tax return information by assuring the public that its tax information is being protected in an ethical and legal manner, thereby promoting voluntary taxpayer compliance. The system is to detect and counter unauthorized access, use, fraud and abuse of tax return information. The system provides protection by monitoring and tracking, through analysis of audit logs, accesses to and use of IRS electronic records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of tax returns and tax return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulations;

(2) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) The agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(3) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(5) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of Federal labor actions or grievances or conducting administrative hearings or appeals or if needed in the performance of other authorized duties;

(6) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice; and

(7) Disclose information to the defendant in a criminal prosecution, the Department of Justice, or a court of competent jurisdiction where required in criminal discovery or by the Due Process Clause of the Constitution.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage, either by magnetic or optical media, and paper copy.

RETRIEVABILITY:

(1) Indexed by name, social security number (SSN) or other unique identifier assigned to an IRS employee or contractor who has been granted access to an IRS computer system, or other individuals who have illegally accessed an application which processes taxpayer information.

(2) Indexed by name, SSN, or other unique identifier assigned to an IRS employee or contractor who has been granted access to paper records.

(3) Retrieved by the Taxpayer Identification Number (SSN, EIN, or ITIN).

SAFEGUARDS:

Access controls will not be less than those described in TD P 71–10, Department of Treasury Security Manual, IRM 2.1.10 Internal Revenue Manual— Information Systems Security, and IRM 1(16)12 Internal Revenue Manual—Managers Security Handbook.

RETENTION AND DISPOSAL:

Records are maintained in accordance with record disposition handbooks, IRM 1(15)59.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Program Section, Telecommunication and Operations Division, Information Systems, Internal Revenue Service, Department of the Treasury, 1111 Constitution Ave., NW, Washington, DC 20220.

NOTIFICATION PROCEDURE:

This system of records is exempt from certain provisions of the Privacy Act.

RECORD ACCESS PROCEDURES:

This system of records is exempt from certain provisions of the Privacy Act and may not be accessed for the purpose of determining if the system contains a record pertaining to a particular individual.

CONTESTING RECORD PROCEDURES:

This system of records is exempt and may not be accessed for purposes of inspection or contest of record contents. Also, 26 U.S.C. 7852(e) prohibits Privacy Act amendment of tax records.

RECORD SOURCE CATEGORIES:

This system of records is exempt from the Privacy Act provision which requires that record source categories be reported. (See "Exemptions Claimed for the System," below.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

This system is exempt from 5 U.S.C. 552a(c)(3), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(4)(G), (H) and (I), and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (see 31 CFR 1.36)

[FR Doc. 98–30768 Filed 11–17–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0964]

Draft "Guidance for Industry: Content and Format of Chemistry, Manufacturing and Controls Information and Establishment Description Information for a Biological In Vitro Diagnostic Product;" Availability

Correction

In notice document 98–30094, beginning on page 63067, in the issue of Tuesday, November 10, 1998, make the following correction:

On page 63067, in the second column, in the **DATES:** section, in the fourth line, "1998" should read "1999".

BILLING CODE 1505-01-D

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Corrections

Federal Register
Vol. 63, No. 222
Wednesday, November 18, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Implementation of the Fertility Clinic Success Rate and Certification Act of 1992; Proposed Model Program for the Certification of Embryo Laboratories

Correction

In notice document 98–29374, beginning on page 60178, in the issue of Friday, November 6, 1998, make the following corrections:

1. On page 60178, in the second column, in the third full paragraph, in the second line, "received" should read "receive".

2. On the same page, in the third column, in the second full paragraph, in the fifth line, "determines" should read "determine".

3. On the same page, in the same column, in the third full paragraph, in the first line, "is" should read "in".

4. On page 60179, in the first column, in the second full paragraph, in the twelfth line from the bottom, "**Egister**" should read "**Register**".

5. On page 60181, in the second column, in the definition for "Sperm", in the first line, "reproduction" should read "reproductive".

6. On the same page, in the third column, in the first paragraph, in the fifth line, "of" should read "or".

7. On page 60183, in the second column, in paragraph iii., in the third line, "to determine if the accreditation organization" should be added after "organization".

8. On the same page, in the third column, in the third line from the bottom, "following." should read "following:".

9. On page 60184, in the first column, in the third line, "induce" should read "include".

10. On the same page, in the same column, in paragraph i., in the fifth line, "induce" should read "include".

11. On page 60186, in the first column, under *C. Quality Management*, in paragraph a., in the first line, "must" should be added after "manual".

BILLING CODE 1505-01-D

federal register

Wednesday
November 18, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 36

Noise Certification Standards for Propeller-Driven Small Airplanes; Proposed Rule

VOL 63 ISS 222 NO 18 1998 UMI

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 36

[Docket No. FAA–1998–4731; Notice No. 98–16]

RIN 2120–AG65

Noise Certification Standards for Propeller-Driven Small Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA is proposing changes to the noise certification standards for propeller-driven small airplanes. These proposals are based on the joint effort of the Federal Aviation Administration (FAA), the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for propeller-driven small airplanes. These proposed changes would provide uniform noise certification standards for airplanes certificated in the United States and in the JAA countries. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

DATES: Comments must be received on or before January 19, 1999.

ADDRESSES: Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4731, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following Internet address: 9-NPRM-CMTS@faa.dot.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mehmet Marsan, Office of Environment and Energy (AEE), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7703.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1998–4731." The postcard will be date stamped and mailed to the commenter.

Availability of the NPRM

An electronic copy of this document can be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339), the *Government Printing Office's* electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the *Government Printing Office's* webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by mail by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the FAA's Office of Rulemaking a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

Current Regulations

Under 49 U.S.C. 44715, the Administrator of the Federal Aviation Administration is directed to prescribe "standards to measure aircraft noise and sonic boom; * * * and regulations to control and abate aircraft noise and sonic boom." Part 36 of Title 14 of the Code of Federal Regulations contains the FAA's noise standards and regulations that apply to the issuance of type certificates for all types of aircraft. The standards and requirements that apply to propeller-driven small airplanes and propeller-driven commuter category airplanes are found in § 36.501 and Appendix G of Part 36. Appendix G addresses Takeoff Noise Requirements for propeller-driven small airplane and propeller-driven commuter category airplane Certification Tests on or after December 22, 1988. This appendix was added to part 36 in 1988 to require actual takeoff noise tests instead of the level flyover test that was formerly required under Appendix F, for airplanes for which certification tests were completed before December 22, 1988.

Appendix G specifies the test conditions, procedures, and noise levels necessary to demonstrate compliance with certification requirements for propeller driven small airplanes and propeller-driven, commuter category airplanes.

Government and Industry Cooperation

In June 1990 there was a meeting of the Joint Aviation Authorities (JAA) Council, which consists of JAA members from European countries, and the FAA. The FAA Administrator committed FAA to support the harmonization of the FAA regulations with the Joint Aviation Regulations (JAR). The Joint Aviation Regulations are being developed for use by the European authorities that are member countries of the JAA.

In January 1991, the FAA established the Aviation Rulemaking Advisory Committee to serve as a forum for the FAA to obtain input from outside the Government on major regulatory issues facing the agency. The FAA announced the renewal of ARAC on February 19, 1993 (58 FR 9230) and on March 1, 1995 (60 FR 11165). One area that ARAC deals with is noise certification issues. These issues involve the harmonization of 14 CFR part 36 (part 36) with JAR part 36, the associated guidance material including equivalent procedures, and the interpretation of the regulations. On May 3, 1994, the ARAC established the FAR/JAR Harmonization Working Group for Propeller-Driven Small Airplanes (59 FR 22885). The Working Group was tasked with reviewing the applicable provisions of subparts A and F, and appendices F and

G of part 36, and harmonizing them with the corresponding applicable provisions of JAR 36. The Working Group was asked to consider the current international standards and recommended practices, as issued under International Civil Aviation Organization (ICAO), Annex 16, Volume 1, and its associated Technical Manual, as the basis for development of these harmonization proposals. The Working Group was also asked to recommend a process whereby subsequent ICAO Annex 16 changes could be properly incorporated into JAR 36 and part 36.

The Working Group reviewed 16 items related to noise limits and measurement procedures in the regulations. For six of these items, the Working Group recommended that part 36 be amended to harmonize the regulations with JAR 36. For four of these items, the Working Group recommended that JAR 36 be amended to harmonize those regulations with part 36. For the six remaining items, the Working Group found that no harmonization is necessary. The Working Group also recommended changes to harmonize FAA and JAA interpretive and advisory material relating to noise limits for propeller-driven small airplanes. This NPRM reflects the six recommendations that address changes to part 36.

Discussion of Proposals

The proposed changes to appendix G would affect the provisions that establish noise measurement procedures (sec. G36.107), corrections to test results (sec. G36.201) and specific aircraft noise limits that are tied to aircraft weight (sec. G36.301).

Section G36.107 Noise Measurement Procedures

Currently, section G36.107 prescribes specific procedures for the placement of microphones, system calibration and consideration of ambient noise. The proposed changes would affect the microphone requirements of paragraph (a). Currently, microphones are required to be oriented in a known direction so that the maximum sound received arrives as nearly as possible in the direction for which the microphones are calibrated, and the microphone sensing elements must be placed four feet (1.2 m) above ground level.

The proposed change to section G36.107(a) would require the microphone to be a pressure-type microphone with a protective grid that is 12.7 mm in diameter. The microphone would have to be mounted in an inverted position so that the diaphragm is 0.7 mm above and parallel to a white-painted metal circular plate. The plate would have to be 40 cm in diameter and at least 2.5 mm thick. The plate would have to be placed horizontally and flush with the surrounding ground surface with no cavities below the plate. The microphone would have to be located three-quarters of the distance from the center to the edge of the plate along a radius normal to the line of flight of the test airplane.

The proposed changes, which would make the U.S. regulations consistent with the JAR, are supported by numerous studies, technical papers, and discussions with interested groups. The technical data indicate that an inverted microphone that measures reflected noise from a metal plate at ground level produces more consistent and reliable data. A microphone that is four feet above the ground is much more likely to be affected by variable ground reflections that can interact with the noise produced by the aircraft being measured. The microphone height reduction and the metal plate substantially eliminate these variations.

However, studies also show that measurements using the inverted microphone and metal plate technique produce consistently higher noise levels than those produced under the current procedure, with the difference being about 3 dB(A). Therefore, to maintain the present level of noise stringency, a corresponding change to section G36.301(b) is necessary as discussed below.

Section G36.201 Corrections to Test Results

Current section G36.201 prescribes corrections to be made to test results to account for the effects of differences between the conditions referenced in the prescribed procedures and existing conditions during an actual test.

Current section G36.201(b) requires atmospheric absorption correction for noise data obtained when the test conditions are outside those specified in appendix G, figure G1. Noise data collected outside the prescribed range of figure G1 are required to be corrected to 77 degrees F and 70 percent relative humidity by an FAA approved method. The FAA is proposing to change the 77 degrees F reference temperature to 59 degrees F, to be consistent with the ambient temperature requirement in current section G36.111(b)(2) that is used for performance calculations. By making the reference temperatures consistent for absorption and performance, delays and confusion that have been caused by the inconsistency in the current rule would be eliminated. The change would bring part 36 in line with Annex 16.

Current section G36.201(c) requires that helical tip Mach number and power corrections must be made if the propeller is a variable pitch type or if the propeller is a fixed pitch type and the test power is not within five percent of the reference power. The proposed change would provide an additional exception by stating that a correction is not necessary if the helical tip Mach number meets one of the following:

1. The number is at or below 0.70 and the test helical tip Mach number is within 0.014 of the reference helical tip Mach number.

2. The number is above 0.70 and at or below 0.80 and the test helical tip Mach number is within 0.007 of the reference helical tip Mach number.

3. The number is above 0.80 and the test helical tip Mach number is within 0.005 of the reference helical tip Mach number. For mechanical tachometers, if the helical tip Mach number is above 0.8 and the test helical tip Mach number is within 0.008 of the reference helical tip Mach number.

These additional proposed exceptions are based on an analysis of noise data from nine U.S.-manufactured aircraft. This analysis indicated that the proposed values are well within the Type 1 sound level meter as defined in International Electrotechnical Commission (IEC) Publication No. 651, which has been incorporated by reference in part 36. Adding this exemption would simplify some tests without degrading the results.

Current section G36.201(d)(1) requires that the measured sound levels must be corrected from the test day meteorological conditions by adding an increment equal to the result gained from the following equation:

$$\text{Delta (M)} = (\alpha - 0.7)\, H_T/1000.$$

In this equation, H_T is the height in feet of the test aircraft when directly over the noise measurement point, and α is the rate of absorption for the test day conditions at 500 Hz as referenced in Society of Automotive Engineers (SAE) Publication Aerospace Recommended Practice (ARP) 866A which has been incorporated by reference in part 36.

The equation in section G36.201(d)(1) is an approximation. The accuracy of the calculations can be improved by adopting the exact form of the equation. Therefore, the FAA proposes to change the equation to the exact form which reads as follows:

$$\text{Delta (M)} = (H_T\alpha - 0.7\, H_R)/1000.$$

In this equation H_T is the height in feet under test conditions, H_R is the height in feet under reference

conditions when the aircraft is directly over the noise measurement point, and α is the same as in the current rule, that is, the rate of absorption for the test day conditions at 500 Hz as specified in SAE ARP 866A.

The proposed equation would bring appendix G absorption calculations in line with the rest of part 36 absorption calculations and Annex 16.

Current section G36.201(d)(4) requires that the measured sound levels in decibels must be corrected for engine power by algebraically adding an increment equal to:

Delta (3)=17 log (P_R/P_T)

where P_T and P_R are the test and reference engine powers respectively.

The FAA proposes that the algebraic correction for engine power be changed to:

Delta (3)=K_3 log (P_R/P_T)

where P_R and P_T are the test and reference engine powers respectively obtained from the manifold pressure/torque gauges and engine rpm. Under this proposal, the value of K_3 would be determined from approved data from the test airplane. In the absence of flight test data and at the discretion of the Administrator a value of K_3 = 17 could still be used as under the current rule.

The only difference between the current formula and the proposed formula is the power correction constant. The current regulation requires the use of 17 for this constant. The K_3=17 value is an average value that was derived from FAA tests on seven aircraft where the variation was from 1.5 to 39.3. Although the use of an average value simplifies the test plan, it could penalize an applicant who can prove lower values of K_3 by test data. Therefore, the FAA proposes a formula that allows the applicant to use a lower value for K_3 when it has test data to support that value, or to continue to use a value of 17 with the Administrator's approval when test data is not available. The proposed formula is also consistent with the JAR.

Section G36.301 Aircraft Noise Limits

Current section G36.301(b) states that the noise level must not exceed 73 dB(A) up to and including aircraft weights of 1,320 pounds (600 kg.), and that for weights greater than 1,320 pounds the noise limit increases at the rate of 1 dB/165 pounds up to 85 dB(A) at 3,300 pounds, after which it is constant at 85 dB(A) up to and including 19,000 pounds.

As previously discussed, considerations of microphone location, configuration, and resulting noise limits are interrelated. Since the proposed changes to the noise measurement procedures of section G36.107(a) would result in increases in the measured noise levels of about 3 dB(A), the FAA proposes to increase the limits in section 36.301(b) from 73 dB(A) to 76 dB(A) and from 85 dB(A) to 88 dB(A). This change would account for the revised microphone height and configuration requirements. The increased limit is not expected to result in any increase or decrease in the noise stringency requirements of the current rule.

In addition to the dB(A) changes discussed, the FAA is proposing a change to the interpolation requirement of section G36.301(b). For weights greater than 1,320 pounds, the allowable dB(A) would increase "with the logarithm of airplane weight at the rate of 9.83 dB(A) per doubling of weight until the limit of 88 dB(A) is reached * * *," rather than at the rate of 1 dB/165 pounds up to 85 dB(A) at 3,300 pounds, as under the current rule. This change would harmonize interpolation under the FAA regulation with the comparable JAA regulation without change in noise stringency of the present Appendix G.

Paperwork Reduction Act

There are no requirements for information collection associated with this proposed rule that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. For this NPRM, the FAA has reviewed part 36 Appendix G and ICAO Annex 16 Volume I, Chapter 10. The review showed that the following two items were left unharmonized: (1) For fixed pitch type propellers, part 36 section G36.201 specifies a simplified data correction procedure if the engine test power is within 5% of the reference power. The Annex 16 does not have a corresponding simplification and, (2) The part 36 section G36.111 allows the use of maximum continuous installed power during the second segment of the flight path. The power definition in Annex 16 for the second segment is defined as maximum power in Chapter 10 section 10.5.2. The maximum installed power is typically lower than the maximum power and applicable only to older engines. The above two unharmonized items only effect a small percentage of the airplanes in the fleet and therefore are not significant enough to be considered as harmonization issues.

Regulatory Evaluation Summary

Four principal requirements pertain to the economic impacts of changes to the Federal Regulations. First, Executive Order 12866 directs Federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal government, and the private sector. In conducting these analyses, the FAA has determined that this rule: (1) would generate cost savings that would exceed any costs; (2) is not "significant" as defined under section 3(f) of Executive Order 12866 and Department of Transportation's (DOT) policies and procedures (44 FR 11034, February 26, 1979); (3) would not have a significant impact on a substantial number of small entities; and (4) would not impose restraints on international trade. Finally, the FAA has determined that the proposal would not impose a federal mandate on state, local, or tribal governments, or the private sector of $100 million per year. These analyses, available in the docket, are summarized below.

The benefit of the proposed rule is that it would harmonize the U.S. noise certification regulations with the European Joint Aviation Requirements for propeller-driven small airplanes. The proposed changes would provide nearly uniform noise certification standards for airplanes certificated in the United States and by the European Joint Aviation Authorities (JAA). This is expected to reduce the number of noise tests that need to be conducted. The costs to implement the proposal are negligible, if any. There are no additional costs imposed by this proposal.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact on a

substantial number of small entities. Because the costs imposed by this rule would be negligible, the Agency concludes that the proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The FAA has determined that the proposed rule would promote the sale of foreign products and services in the United States and the sale of U.S. products and services in foreign countries. This determination is based on the FAA's determination that the rule would align U.S. standards and JAA member standards for noise certification for propeller-driven small airplanes.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment (EA) or environmental impact statement (EIS). In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation. In accordance with FAA Order 1050.1D, paragraph 32, the FAA proposes that there are no extraordinary circumstances warranting preparation of an environmental assessment for this proposed rule.

Federalism Implications

The proposed regulations would not have substantial direct effects on the states, on the relationship between national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation would not have federalism implications warranting the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million a year, therefore the requirements of the Act do not apply.

List of Subjects in 14 CFR Part 36

Agriculture, Aircraft, Noise control.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 36 as follows:

PART 36—NOISE STANDARDS: AIRCRAFT TYPE AND AIRWORTHINESS CERTIFICATION

1. The authority citation for part 36 continues to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44715; sec. 305, Pub. L. 96–193, 94 Stat. 50, 57; E.O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902.

2. Appendix G of part 36 is amended by revising sections G36.107(a), G36.201(b), including Figure G1, G36.201(c), G36.201(d)(1), G36.201(d)(4), and G36.301(b), including Figure G2, to read as follows:

Appendix G to Part 36—Takeoff Noise Requirements for Propeller-Driven Small Airplane and Propeller-Driven Commuter Category Airplane Certification Tests on or After December 22, 1988

* * * * *

Sec. G36.107 Noise Measurement Procedures.

(a) The microphone must be a pressure type, 12.7 mm in diameter, with a protective grid, mounted in an inverted position such that the microphone diaphragm is 0.7 mm above and parallel to a white-painted metal circular plate. This white-painted metal plate shall be 40 cm in diameter and at least 2.5 mm thick. The plate shall be placed horizontally and flush with the surrounding ground surface with no cavities below the plate. The microphone must be located three-quarters of the distance from the center to the back edge of the plate along a radius normal to the line of flight of the test airplane.

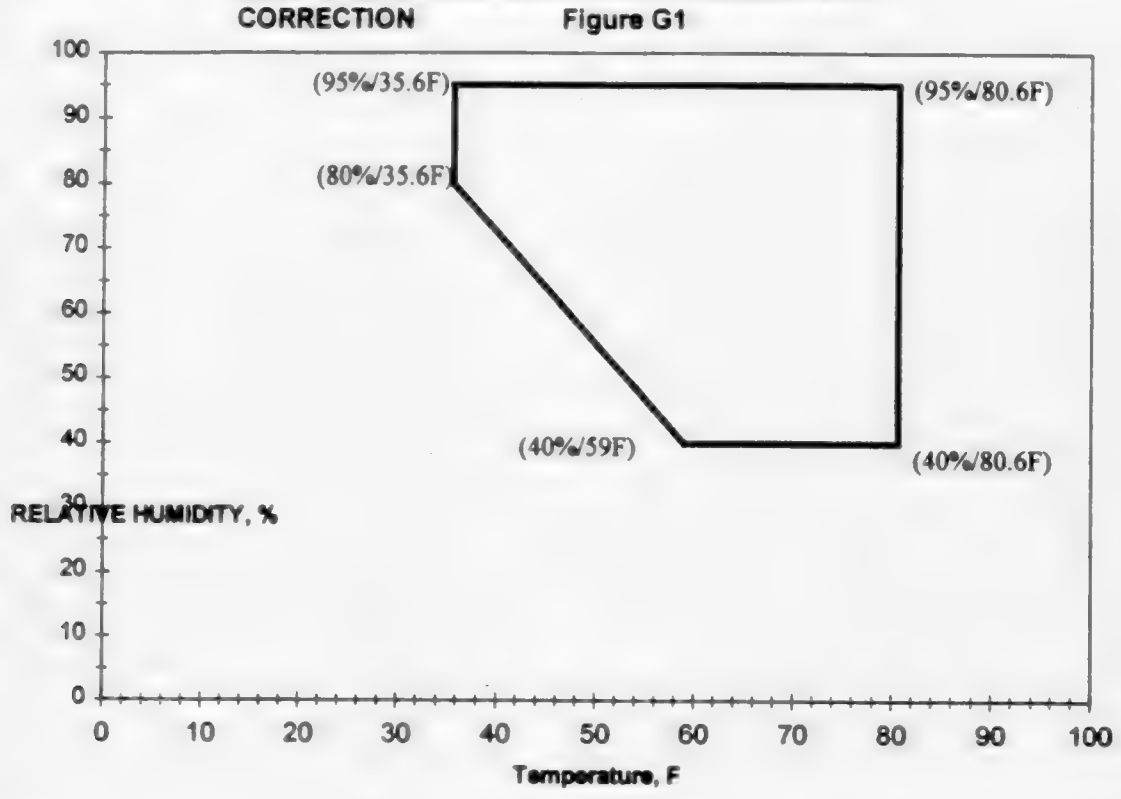
* * * * *

Sec. G36.201 Corrections to Test Results.

* * * * *

(b) Atmospheric absorption correction is required for noise data obtained when the test conditions are outside those specified in Figure G1. Noise data outside the applicable range must be corrected to 59 F and 70 percent relative humidity by an FAA approved method.

MEASUREMENT WINDOW FOR NO ABSORPTION CORRECTION Figure G1



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(c) Helical tip Mach number and power corrections must be made as follows:

(1) Corrections for helical tip Mach number and power corrections must be made if—

(i) The propeller is a variable pitch type; or

(ii) The propeller is a fixed pitch type and the test power is not within 5 percent of the reference power.

(2) No corrections for helical tip Mach number variation need to be made if the propeller helical tip Mach number is:

(i) At or below 0.70 and the test helical tip Mach number is within 0.014 of the reference helical tip Mach number.

(ii) Above 0.70 and at or below 0.80 and the test helical tip Mach number is within 0.007 of the reference helical tip Mach number.

(iii) Above 0.80 and the test helical tip Mach number is within 0.005 of the reference helical tip Mach number. For mechanical tachometers, if the helical tip Mach number is above 0.8 and the test helical tip Mach number is within 0.008 of the reference helical tip Mach number.

(d) * * *

(1) Measured sound levels must be corrected from test day meteorological conditions to reference conditions by adding an increment equal to—

$$\text{Delta (M)} = (H_T \alpha - 0.7\ H_R)/1000$$

where H_T is the height in feet under test conditions, H_R is the height in feet under reference conditions when the aircraft is directly over the noise measurement point and α is the rate of absorption for the test day conditions at 500 Hz as specified in SAE ARP 866A, entitled "Standard Values of Atmospheric Absorption as a function of Temperature and Humidity for use in Evaluating Aircraft Flyover Noise" as incorporated by reference under § 36.6.

* * * * *

(4) Measured sound levels in decibels must be corrected for engine power by algebraically adding an increment equal to—

$$\text{Delta(3)} = K_3 \log (P_R/P_T)$$

where P_R and P_T are the test and reference engine powers respectively obtained from the manifold pressure/torque gauges and engine rpm. The value of K_3 shall be determined from approved data from the test airplane. In the absence of flight test data and at the discretion of the Administrator, a value of $K_3 = 17$ may be used.

* * * * *

Sec. G36.301 Aircraft Noise Limits.

* * * * *

(b) The noise level must not exceed 76 dB (A) up to and including aircraft weights of 1,320 pounds (600 kg). For aircraft weights greater than 1,320 pounds, the limit increases from that point with the logarithm of airplane weight at the rate of 9.83 dB (A) per doubling of weight, until the limit of 88 dB (A) is reached, after which the limit is constant up to and including 19,000 pounds (8,618 kg). Figure G2 shows noise level limits vs airplane weight.

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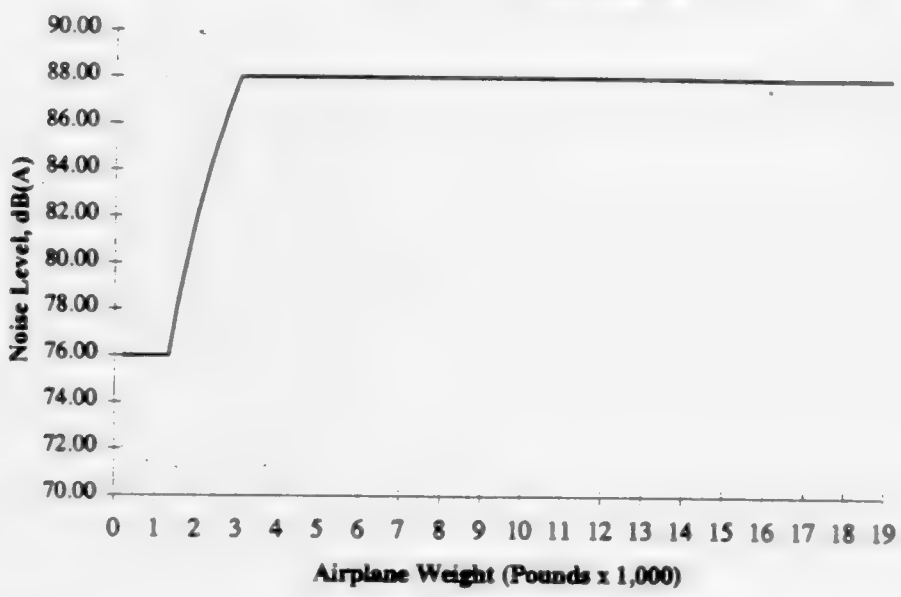
NOISE LEVELS vs AIRPLANE WEIGHT
FIGURE G2



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Issued in Washington, DC, on November 9, 1998.

James D. Erickson,

Director of Office of Environment and Energy.

[FR Doc. 98–30578 Filed 11–17–98; 8:45 am]

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Part III

Department of the Interior

Bureau of Reclamation

43 CFR Part 428
Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006–AA38

Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would add a new part to the Bureau of Reclamation's (Reclamation) regulations to supplement the Acreage Limitation Rules and Regulations in 43 CFR part 426 that implement the Reclamation Reform Act of 1982 (RRA). The proposed rule would require certain farm operators to submit RRA forms that describe the services they perform and the land they service. The rule would also address the eligibility of certain formerly excess land held in trusts or by legal entities to receive nonfull-cost Reclamation irrigation water.

DATES: Reclamation must receive written comments on this proposed rule by January 19, 1999. We will not necessarily consider comments received after the above date during our review of the proposed rule.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Administrative Record, Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240. You may also comment via the Internet to epetacchi@usbr.gov (see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**). In addition, you may hand-deliver comments to Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 208–3368, or Richard Rizzi, (303) 445–2900.

SUPPLEMENTARY INFORMATION: This section provides the following information:

I. Public Comment Procedures
II. Introduction
III. Summary of Proposed Changes
IV. Background
V. Public Involvement
VI. Public Comments and Responses on Advance Notice of Proposed Rulemaking
VII. Detailed Analysis of Proposed 43 CFR Part 428
VIII. Procedural Matters
IX. List of Subjects in 43 CFR Part 428

I. Public Comment Procedures

Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the proposal which the commenter is addressing. We may not necessarily consider or include in the Administrative Record for the final rule comments which we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**). We will not consider anonymous comments.

If you submit your comments via the Internet, please submit as an ASCII file avoiding the use of special characters and any form of encryption. Please include in the subject line "AA38" and include your name and return address in the body of your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 208–3368.

The administrative record and all comments, including names and home addresses of respondents, will be available for public review at the address listed above (see **ADDRESSES**), during the hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, except holidays. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Introduction

This proposed rule would supplement the Acreage Limitation Rules and Regulations, 43 CFR part 426, that govern implementation and administration of the RRA. The proposed rule would create a separate CFR part, 43 CFR part 428, addressing information requirements for certain farm operators, and the eligibility of certain formerly excess land that is operated by a farm operator who was the landowner of that land when it was ineligible excess land or land placed under recordable contract.

We are proposing this rule to address comments raised in both the rulemaking concluded on December 18, 1996 (the Acreage Limitation Rules and Regulations) and in the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** (61 FR 66827, Dec. 18, 1996). Among other things, the comments stated that although we collect information from landholders to verify compliance with the RRA, we do not collect this information from farm operators. Commenters pointed out that we, consequently, may not have adequate information to determine if the provisions of a farm operating arrangement constitute a "lease" under the acreage limitation provisions and thus require application of the nonfull-cost entitlements of the RRA. Other comments stated that we should analyze all farm operations in excess of 960 acres to determine compliance with the acreage limitation provisions of Federal reclamation law. Public comments from the ANPR are addressed below.

We believe that this rule balances the interests in enforcing the law with the interests of limiting paperwork burdens on the public. By limiting the applicability of the proposed rule as described below, we hope to target our resources to achieve compliance with the acreage limitation provisions of Federal reclamation law in an efficient manner. We seek comments on whether this rule will meet that goal.

III. Summary of Proposed Changes

The proposed rule would extend RRA certification and reporting forms requirements to farm operators who:

(1) Provide services to more than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity, or

(2) Provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres.

In addition, this part applies to the eligibility of formerly excess land held in trusts or by legal entities, that is operated by a farm operator who was the landowner of that land when it was ineligible excess land or land placed under recordable contract. The provisions of 43 CFR part 426 not specifically addressed in this rule are unchanged.

This section summarizes the differences between the existing regulations and the proposed rule. A detailed analysis can be found later in this preamble.

Certification and Reporting Requirements

Under 43 CFR part 426, landholders (direct or indirect landowners or lessees) whose total westwide landholdings exceed the RRA forms submittal thresholds must submit RRA forms. Farm operators do not now have to submit RRA forms. The new 43 CFR part 428 would extend certification and reporting requirements to farm operators who (1) provide services to more than 960 acres held by one trust or legal entity, or (2) provide services to the holdings of any combination of trusts and legal entities that exceed 960 acres. By extending the certification and reporting requirements to these farm operators, we can get information that we need to determine the following :

(1) Who has use or possession of the land being farmed under a farm operating arrangement; and

(2) Who is responsible for payment of operating expenses, and who is entitled to receive the profits from the farming operation as indicators of economic risk.

We need this information because the acreage limitation provisions apply to all owned or leased land. Use or possession of the land and who has all or a portion of the economic risk associated with the farming enterprises are the factors we use to determine if a farm operating arrangement is in fact a lease. If we determine that a farm operating arrangement is a lease, then the farm operator leasing the land will be subject to the acreage limitation provisions.

Excess Land Provisions

Part 426 provides that a seller of excess land may not receive Reclamation irrigation water if he or she again becomes the landholder of that land either voluntarily or involuntarily, with certain exceptions. This proposed rule would apply similar restrictions to farm operators who sold their excess land at an approved price, and provide services to that land if it is held in trust or by a legal entity. The only exceptions would be if the formerly excess land became exempt from application of the acreage limitation provisions or the full-cost rate was paid for deliveries of Reclamation irrigation water to the formerly excess land. This provision will not be effective until January 1, 2000, at which time all farm operating arrangements between farm operators and trusts or legal entities that meet the criteria will be affected. This includes farm operating arrangements that were in existence prior to January 1, 2000, as well as any farm operating arrangement initiated on or after that date. We believe this provision is consistent with the intent of the RRA excess land provisions, and that it parallels excess land provisions that apply to landholders.

The following example illustrates the situation this provision would address: Landowner A, a qualified recipient, owns 5,000 acres subject to the acreage limitation provisions, which is 4,040 acres more than his 960-acre ownership entitlement. Landowner A sells his excess land at a price that Reclamation approved to a trust benefitting 10 individuals who are each subject to the discretionary provisions; none of the beneficiaries' landholdings exceed their acreage limitation entitlements. The trustee of the trust then hires Landowner A to operate the land owned by the trust. Consequently, Landowner A continues to farm the entire 5,000 acres as a farm operator, and the land continues to receive Reclamation irrigation water at the nonfull-cost rate.

We do not believe the intent of the excess land provisions of Federal reclamation law has been met in the preceding example. As part of the rulemaking that was completed on December 18, 1996, we included as § 426.12(g) a provision that addresses this issue with regard to landholders. It provides that a district may not make Reclamation irrigation water available at the nonfull-cost rate to excess land disposed of by a landholder at a price Reclamation approved, whether or not under recordable contract, if the landholder later becomes a direct or indirect landholder of that land through either a voluntary or involuntary action. Section 426.12(g) provides specific exceptions to this provision.

We believe that, starting on January 1, 2000, this same concept should apply to farm operators who provide services to land held in trusts or by legal entities or any combination thereof that the farm operator formerly owned as excess and sold at an approved price. We are seeking comments on the following issues related to formerly excess land and farm operators:

- Should we apply this excess land provision more broadly or should we include other exceptions to the proposed provision?
- Should we not include either of the two exceptions provided in the proposed rule (the land is no longer subject to the acreage limitation provisions and payment of the full-cost rate for deliveries of Reclamation irrigation water to the land in question) or should we otherwise alter them in some manner?
- Is the effective date of January 1, 2000, reasonable for this excess land provision or should we apply some other date?

IV. Background

The RRA modernized Federal reclamation law, while retaining the principle of limiting the benefits of receiving Federally subsidized water to farmers with relatively small landholdings. The RRA adjusted the acreage limitations for farms eligible to receive nonfull-cost water. This change was intended to facilitate modern farming practices and to limit nonfull-cost water deliveries generally to landholdings of 960 acres or less, rather than the 160 acres established by the Reclamation Act of 1902. However, not only does the RRA provide a number of exceptions to the 960-acre limitation, such as those associated with certain involuntary acquisitions, it also provides for much lower entitlement levels for legal entities that benefit more than 25 natural persons. In addition, the RRA and the part 426 regulations include provisions that exempt trustees acting in a fiduciary capacity from application of the acreage limitation provisions if certain criteria are met.

The RRA does not force districts or landholders to conform to the new acreage limitation provisions; thus, the prior law provisions still apply to some districts and landholders. Any owned land subject to acreage limitations that exceeds a landholder's ownership entitlement is considered excess land, and must be sold to an eligible buyer at a price that Reclamation approves in order for that excess land to be eligible to receive Reclamation irrigation water at any price. Any owned or leased land subject to acreage limitations that exceeds a landholder's nonfull-cost entitlement is considered full-cost land and the landholder must pay the full-cost rate for any Reclamation irrigation water delivered to that land.

The part 426 regulations implement certain provisions of the RRA. They address the ownership and leasing of land on Federal Reclamation irrigation projects, the pricing of Reclamation irrigation water, and certain terms and conditions for delivery of Reclamation irrigation water. Under part 426, we require all landholders (individuals or legal entities that directly or indirectly own or lease land that is subject to acreage limitation provisions of Federal reclamation law) whose landholdings exceed established RRA forms submittal thresholds to file RRA forms. Landholders must provide information on RRA forms about the land they hold, and certify that they are in compliance with the acreage limitation provisions of Federal reclamation law. The

regulations also provide that a district may not make available Reclamation irrigation water to excess land disposed of by a landholder at a price Reclamation approved, whether or not under recordable contract, if the landholder subsequently becomes a direct or indirect landholder of that land through either a voluntary or involuntary action.

On December 11, 1996, the Natural Resources Defense Council (NRDC) and the Departments of Interior and Justice entered into an amended settlement contract in the case of *NRDC* v. *Underwood, No. Civ. S–88–375–LKK* (a full description of this litigation may be found in the preamble to the final rule for the Acreage Limitation Rules and Regulations (61 FR 66757, Dec. 18, 1996)). As a result, the Department of the Interior (Interior) published the ANPR and invited comments and suggestions on the following:

- Whether to limit nonfull-cost water deliveries to large trusts with landholdings in excess of 960 acres (or other applicable acreage thresholds under the RRA);
- The criteria used to determine whether landholdings in excess of 960 acres, operated under a trust agreement, should be eligible to receive nonfull-cost water deliveries;
- Whether nonfull-cost water deliveries to such landholdings are consistent with the principles of Federal reclamation law and sound public policy and, if not, how to implement a limit on such deliveries;
- What procedures might ensure fairness in transition to new regulations that would limit large trusts to 960 acres for nonfull-cost water, and what safeguards are necessary to avoid such trusts from adopting some other, as yet unregulated form, to escape acreage limitations; and
- The extent of Interior's statutory authority to address these issues, including the extent of Interior's legal authority to regulate: future trusts, trusts established from 1982 to the present, and trusts established before 1982.

Need for Applying Excess Land Provisions to Certain Farm Operators

In considering potential abuses of existing rules concerning trusts, we have focused on trusts that hold more than 960 acres westwide. In several instances, these large trusts were created by owners of excess lands who were required by Section 209 of the RRA to dispose of their interests in excess lands or face the permanent ineligibility of the lands for receipt of Reclamation irrigation water. By requiring the disposal of excess lands, the Congress was attempting to assure that the benefits of Federal irrigation water would be more widely distributed.

In some instances owners of excess lands sold or transferred their excess lands to large trusts. Then, some of these trusts, which are subject to more liberal acreage limitation provisions, entered into farm operating agreements with the former owners of such land, creating a situation where substantially the same enterprise continued to farm the same large acreage.

The foregoing practice has in fact occurred on a limited basis in the Central Valley Project in California, and we are further concerned that the practice may occur elsewhere in the future as recordable contracts under which excess lands have been temporarily made eligible to receive Reclamation irrigation water expire or other excess lands are sold.

While the foregoing arrangements are in literal conformance with existing regulations, we believe that they do not meet the intent of the law. To address this issue, we are proposing a change in how Section 209 is administered to attribute to former owners of excess lands any formerly excess land held in trusts and operated by the former owner of the excess lands. Essentially, we propose to treat the contractual relationship between the trust and the former owner of excess lands as a continuing financial interest in such lands by the former landowner, an interest that we can regulate in our rulemaking power granted by the Congress in Section 224 of the RRA. This change would eliminate any incentive for former owners of excess lands to use the large trust vehicle to maintain a continuing farming enterprise and would curb any abuse of congressional intent inherent in such arrangements.

We propose to apply this concept also to legal entities that hold formerly excess land and hire the former owner of such land under a farm operating arrangement. We do not believe there are many instances where legal entities have bought formerly excess land and then arranged for the former owner to farm the land as a farm operator. However, we are concerned that application of this concept only to trusts does not cover the full scope of possible arrangements and may result in a transfer of land ownership to various legal entities that will continue to arrange to have the land farmed in the same manner as the trust. We want to preclude such actions.

To ensure a transition and public education period, we will not implement this provision until January 1, 2000. This provides an opportunity for all trusts and legal entities that would be affected by the excess land provision (because their landholdings include formerly excess land and they have hired the former landholder to provide services to such land as a farm operator) to make other farming arrangements. In doing so, affected trusts and legal entities can avoid having to pay the full-cost rate for the delivery of Reclamation irrigation water to the formerly excess land, or even the ineligibility of such land, if they take action before January 1, 2000. Of course, affected trusts and legal entities could limit the consequences of the excess land provision at any time after January 1, 2000, by making alternative arrangements in how the formerly excess land is farmed. In addition, this proposed change will not affect the underlying trust itself. Trusts are still subject to the requirements of Section 214 of the RRA, and as such, the acreage limitation entitlements of the landholder(s) to whom the land held in trust is attributed will determine if the land is eligible to receive Reclamation irrigation water in the holdings of the trust.

Need for Certification and Reporting From Certain Farm Operators

In December 1987, the Congress amended the RRA by passing the audit provisions of the Omnibus Budget Reconciliation Act of 1987 (section 224[g] of the RRA as amended). Section 224[g] directed the Secretary of the Interior (Secretary), or his designee, to undertake audits of "those legal entities and individuals whose landholdings or operations exceed 960 acres. * * *" To comply with this mandate, we considered requiring all farm operators to submit RRA forms. However, by the time a proposed rule was published in the **Federal Register** (53 FR 21857, Jun. 10, 1988) we did not include that concept. Instead, we altered the general information requirements of the Acreage Limitation Rules and Regulations to make it clear that natural persons or legal entities operating land were required to provide records and information upon our request. This decision was confirmed in the final rules, which were effective on January 17, 1989 (53 FR 50530, Dec. 16, 1988). We then revised the RRA forms to require landholders to provide additional information concerning their farm operators.

Since 1989, we have learned that other approaches could be more effective and that this procedure places a greater burden on both the districts and us than if certain farm operators

were required to submit RRA forms. The current approach also greatly increases the likelihood that all farm operators providing services to more than 960 acres westwide will not be identified.

In order for the current system to work, information concerning farm operators must be gathered from all RRA forms landholders submit annually. That information then must be collated on a westwide basis to determine if any farm operator is providing services to more than 960 acres. The collation is required because any landholder, other than a trust, whose landholding exceeds 960 acres is either (a) not receiving Reclamation irrigation water on such land or (b) paying the full-cost rate for Reclamation irrigation water received on such land. In the case of the former, we have little interest in activities farm operators may have on land that is not receiving Reclamation irrigation water. In the case of the latter, determining that a farm operator is a lessee will have little effect on the eligibility of the land in question or the rate associated with the water deliveries to that land, since the full-cost rate is already being applied. What we need to identify are those farm operators providing services to multiple landholdings, the total of which exceed 960 acres. Then we must determine if the arrangements under which the services are being provided are leases for acreage limitation purposes.

We knew in 1988 that if only the name and address of farm operators were provided by landholders, it would be difficult to collate the data. This is due to the fact that operators may be providing services under different entity names and, if the operator is an individual, landholders may know the operator by different names (e.g., J. Smith, John Smith, Johnny Smith, Jack Smith, Smith Enterprises, etc.). In addition, there may be multiple farm operators that have the same name. If we relied only on addresses, we may be faced with multiple addresses for one farm operator which we would not be able to easily determine was the same person or entity (e.g., post office boxes, business address, residential address, etc.). Thus, we tried to use telephone numbers as the unique identifier, but this effort depends on the landholder providing such on their RRA forms. Regardless, we have determined that the current process does not ensure consistent application of the regulations and is inefficient. In addition, it is extremely difficult for us to verify that a landholder has or has not provided the required farm operator information, since there are few, if any, independent sources of information concerning farm operators to cross-check information.

We have considered requiring landholders to provide more information, such as taxpayer identification numbers, for their farm operators who are legal entities. But this would require the landholders to have such knowledge, resulting in a new burden on landholders. In addition, this approach would still result in the requirement for districts to gather the data and us to collate it, thereby increasing the associated burdens to all parties involved.

Conversely, if certain farm operators were required to submit RRA forms, then many of the difficulties in administration we experience on this issue would be resolved. For example, an operator would be required to include all land on which the operator was providing services westwide; thus, no data gathering by the districts or collation by us would be required. In fact, the districts would only be required to complete a new tabulation sheet concerning farm operators and include that sheet with their annual summary forms submittal. In addition, with RRA forms being submitted by farm operators, we would have a source of verification; specifically, the RRA forms submitted by landholders to whom the farm operator is providing services.

Impacts of the Proposed Rule

We believe that the proposed rule would help to ensure that the recipients of Reclamation irrigation water comply with the laws and regulations governing Federal Reclamation irrigation projects. It is difficult to determine exactly how many entities may be affected by the proposed changes, but, for the following reasons, we do not believe that the rules will be burdensome.

If the changes proposed today were adopted as final, it is possible that certain farm operators would need to submit RRA forms starting on January 1, 2000, and, after we reviewed the associated farm operating arrangement, the pricing and availability of Reclamation irrigation water could be affected for some farms. For landholders that on January 1, 2000, have a farm operator providing services to land the farm operator formerly owned as ineligible excess land or land placed under recordable contract, we would require those landholders or farm operators to pay full cost for any Reclamation irrigation water received on now eligible land.

We published a report in 1991 (The Reclamation Reform Act of 1982 Annual Report to the Congress, February 1991) that indicated there were approximately 80 farm operators who were providing services to more than 960 acres westwide. Also in that 1991 report, we disclosed that there were 35 trusts as of the end of 1990 that held more than 960 acres. Another large trust was found shortly thereafter for a total of 36. Recently we reviewed RRA forms submitted by districts for the 1997 water year and found 75 trusts that exceed 960 acres; this represents an 108 percent increase. We have no reason to believe there has been a larger increase in the number of farm operators providing services to more than 960 acres. Therefore, starting with the 1991 figure of 80 large operators, there may be approximately 165 such operators today. When the focus is narrowed to those farm operators who provide services to more than 960 acres held in trusts or by legal entities, the number of farm operators who may be affected by the proposed rule should decline towards 100. Those farm operators providing services to land they formerly owned as excess and sold at an approved price should be an even smaller number. But even these farm operators would not be immediately affected by the proposed excess land provisions and would only be impacted if they continued, on or after January 1, 2000, to have an arrangement to provide services to land they formerly owned as ineligible excess land or land placed under recordable contract.

Without the expanded information requirements in this rule, we simply do not have data readily available as to exactly how many farm operators would be affected by these provisions. The only way we will be sure in the near term about how many farm operators are providing services to more than 960 acres held in trusts or by legal entities is through the expansion of the RRA forms submittal requirements to farm operators.

Once implemented on January 1, 2000, the only impact for all of these farm operators would be that they would have to submit RRA forms. If a farm was affected by the excess land provision in the future, there is no reason the farm has to employ as a farm operator the individual or legal entity who formerly owned the land in question as excess. Therefore, an affected farm could hire a different farm operator and continue to receive Reclamation irrigation water at the nonfull-cost rate.

Authority for the Proposed Rule

Section 224(c) of the RRA gives the Secretary the authority to publish regulations to carry out the provisions of

the RRA and other provisions of Federal reclamation law. Our authority for the proposed application of the RRA forms requirements to certain farm operators is also section 224(c), which directs the Secretary to collect all data necessary to carry out the provisions of the RRA and other provisions of Federal reclamation law.

Section 224(g) provides that the Secretary must thoroughly audit compliance with the reclamation law of the United States, including with the RRA, by legal entities and individuals subject to the law. This section specifically directs the Secretary to audit legal entities and individuals whose landholdings or operations exceed 960 acres.

One of the primary purposes of the acreage limitation provisions of Federal reclamation law is to encourage the creation and preservation of small family farms, and this is accomplished by limiting the number of acres that any one landholder may own and receive Reclamation irrigation water on at any price. Allowing the former owner of ineligible excess land (ineligible excess land is not eligible to receive Reclamation irrigation water at any price) or land placed under recordable contract to receive Reclamation irrigation water as a farm operator circumvents one of the basic principles of Federal reclamation law.

V. Public Involvement

As part of the ANPR effort, on March 14, 1997, we held a public meeting in Sacramento, California concerning the ANPR. We also received 53 letters during the public comment period on the ANPR that was open from December 18, 1996, through April 17, 1997.

VI. Public Comments and Responses on Advance Notice of Proposed Rulemaking

The following section presents general public comments on the ANPR. These include comments on authority, process, relationship with other documents, relationship with other laws and mandates, water rights and contracts, westwide action, and other general comments that were not specifically directed toward the new 43 CFR part 428.

Comment 1. The manager of an irrigation district indicated that Reclamation should be prioritizing irrevocable trust reviews to speed up the process of compliance determinations which will assist the district in its monitoring responsibilities.

Response. We initially had a large backlog of trusts to review as well as other acreage limitation implementation actions to take. We have addressed most of this backlog. Regardless, trusts are considered to be conditionally approved when submitted to us to assist trustees and districts while a trust is being reviewed.

Comment 2. The same commenter raised concerns about reviewing only one part of the RRA regulations, without revisiting other parts.

Response. We throughly reviewed all aspects of the RRA during the rulemaking process that was completed on December 18, 1996. It was determined at that time the only issues that needed further review were those relating to trusts holding more than 960 acres westwide and how such land is farmed. In addition, we recognized that if action was to be taken with regard to large landholdings held in trust, we needed to ensure the land in question was not just transferred to some other type of landholding arrangement and continued to be farmed in the same manner.

Comment 3. Another commenter indicated that Reclamation must recognize its obligations to mitigate, conserve, and protect the interest of the people as well as the purpose and intent of the RRA. Reclamation must clarify policy with reference to protection of trust resources, uses, and values to be co-equal with water development and delivery.

Response. While we recognize our various responsibilities, the purpose of this rulemaking is specific to collecting information from farm operators providing services to more than 960 acres westwide held in trusts or by legal entities to determine if such farming arrangements are in fact leases for acreage limitation purposes. In addition, this proposed rule helps ensure the intent of the excess land provisions of Federal reclamation law will be met.

Comment 4. The same commenter suggests further that the proposed rule must include 6 concerns: 1. Must continue to focus on family farms. 2. The 960-acre limit must apply to operations, as well as farms. 3. Allowing subsidies to more than 960 acres is a violation of the intent of law. 4. There must be penalties for violation of the acreage limitation. 5. Limit the water subsidy to forcefully encourage water conservation measures. 6. The taxpayer should not subsidize any farming operation or corporation.

Response. We concur that one of the primary purposes of acreage limitation is to encourage and foster small family farms. The proposed rule is intended to facilitate the gathering of information to ensure operators providing services to more than 960 acres held in trusts or by legal entities are meeting the requirements of the RRA. In addition, we are proposing that steps be taken to ensure certain farm operators do not circumvent the intent of the excess land provisions of Federal reclamation law.

We have been advised in the past by the Office of the Solicitor that legislative action would be required to assess penalties for violation of the acreage limitation provisions. In addition, the RRA is specific as to the number of acres on which legal entities may receive nonfull-cost Reclamation irrigation water.

Comment 5. A beneficiary of a trust, writing on behalf of the beneficiaries of the trust, stated that proposed new regulations are not in accordance with law and are contrary to the legislative history of RRA.

Response. Since no new regulations were included as part of the ANPR issued on December 18, 1996, we urge everyone to examine the proposed regulations published with this Preamble. We believe section 224(c) of the RRA provides the authority necessary to promulgate these proposed regulations as follows:

> The Secretary may prescribe regulations and shall collect all data necessary to carry out the provisions of this title and other provisions of Federal reclamation law.

Comment 6. The same commenter stated that the Federal program benefits were intended to be limited by the concept of beneficial ownership, not by the concept of farm size. In 1979 the Congress included a farm size limitation in an earlier version of RRA, but deleted such limitation in all subsequent reviews of Reclamation regulations.

Response. We agree that the Congress has not limited farm size. However, the Congress did address and limit how much land could be owned or leased by an individual or entity and be eligible to receive Reclamation irrigation water at the nonfull-cost rate. The collection of RRA forms from certain farm operators will help ensure this provision is being enforced by providing us with sufficient information to determine if a farm operating arrangement is in fact a lease for acreage limitation purposes. The Congress also has made it clear that the excess land provisions are to preclude the accrual of speculative gain in the disposition of excess land, assist in fostering the wide distribution of benefits associated with the Reclamation program, and encourage the creation of family farms.

Comment 7. The same commenter stated that the proposed new regulations are a dangerous misuse of administrative power.

Response. We disagree. In fact, in 1987 (Public Law 100–203, section 5302[a]) the Congress directed Interior to use its administrative tools to ensure compliance with the acreage limitation provisions of the RRA. Section 224(c) of the RRA requires the Secretary to collect all data necessary to carry out the acreage limitation program and to prescribe regulations needed to carry out those provisions.

Comment 8. Eighteen members of the Congressional Western Water Caucus expressed concerns about the ANPR stating their belief that a rulemaking for trusts is unnecessary, because Interior already has the tools through audits and other investigation techniques to ensure compliance with the acreage limitation provisions enacted by the Congress and the existing regulations.

Response. We do not have sufficient information with regard to farm operators providing services to more than 960 acres held in trusts or by legal entities to determine if the operating arrangements are in fact leases for acreage limitation purposes. In addition, we believe that these proposed regulations will help ensure the intent of the excess land provisions is not being circumvented by farm operators farming the land they previously owned as ineligible excess land or under recordable contract.

Comment 9. The general manager of a California municipal utility district stated that he and his district were concerned about again reopening the rules and regulations. They feel that it is not appropriate or necessary to proceed with rulemaking at this time. If there is a perceived problem with larger trusts, Reclamation should step up the enforcement and audit procedures of such trusts to ensure they are complying with the law, rather than reopening the process once again.

Response. We agree that it is unnecessary to reopen 43 CFR part 426 to ensure compliance with the RRA by certain farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. By creating 43 CFR part 428, we hope to provide certainty to the vast majority of landholders that receive Reclamation irrigation water, while taking the necessary steps to ensure compliance with the RRA by those farm operators.

Comment 10. A representative of a national conservation group urged Reclamation to adopt policies that would ensure compliance with the intent of the RRA. Reclamation should limit irrigation subsidies to 960 acres, which will strengthen family farms, reduce the Federal deficit, and help protect the environment. Commenter urged that the current loopholes be closed and bring fairness to Federal irrigation programs.

Response. We are proposing these additional regulatory provisions to ensure compliance with the RRA by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. The proposed rule is intended to better ensure compliance by requiring certain farm operators to submit RRA forms. In addition, a perceived loophole associated with the excess land provisions would be closed.

Comment 11. The representative of a national taxpayers group stated support for strong reforms in the Federal water subsidy program. The concern is that each farming operation is only entitled to receive subsidized water on 960 acres, regardless of how many individuals benefit from the operation. In addition, they are urging encouragement of efficient use of water.

Response. We cannot change the law, but must enforce the acreage limitation provisions of the RRA. Part of this effort is to ensure farm operators providing services to more than 960 acres held in trusts or by legal entities are not lessees for acreage limitation purposes.

Comment 12. The representative of a brewery in San Francisco, California stated that he does not see why the taxpayers should subsidize large corporate farmers. He also has a concern about the impacts upon the environment in the Delta and the San Francisco Bay. Reclamation should adopt the concept of transparency to see through some of the fancy legal stuff that lets folks get around the spirit of the law.

Response. We cannot change the statute, but can take the proposed additional actions to obtain information needed to ensure compliance with the RRA by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities.

Comment 13. A commenter from San Carlos, California stated that Federal water subsidies should be limited to only farming operations which meet the 960-acre limit. Rulemaking must correct the trust arrangements. Reclamation should enforce the acreage limits by determining when land owned by different parties is actually being farmed as one operation.

Response. We are taking additional steps to obtain information needed to ensure compliance with the acreage limitation provisions of Federal reclamation law by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities.

Comment 14. The same commenter stated that Reclamation should penalize those who do not abide by the acreage limits. Improper water subsidies only aggravate our water shortages and encourage the inefficient use of resources.

Response. We vigorously enforce the acreage limitation provisions as defined by the Congress. However, we have been advised in the past by the Office of the Solicitor that legislative action would be required to assess penalties for violations of the acreage limitation provisions.

Comment 15. A commenter representing a water conservation group urged a strong stand in implementing the acreage limitation provisions of the RRA. Reclamation should write regulations that minimize the exceptions to the 960-acre limit on subsidized project water.

Response. We agree and the current Acreage Limitation Rules and Regulations (43 CFR part 426) only allow those exceptions to the 960-acre limit provided by statute.

Comment 16. The same commenter stated that Reclamation must take action to limit corporate welfare and reduce environmental impacts.

Response. Our proposed rule will not change the law, but it should help to ensure compliance with the RRA by those farm operators who provide services to more than 960 acres westwide held in trusts or by legal entities.

Comment 17. A commenter representing two irrigation districts in central Arizona stated that farmers of both districts thought that all RRA matters were laid to rest with the issuance of the revised regulations.

Response. Because of the concern over trusts holding more than 960 acres westwide, we chose to create a new 43 CFR part 428 to gather information from farm operators providing services to such trusts or legal entities or combination thereof. We are also concerned about whether the intent of the excess land provisions is being met in association with the practices of certain farm operators to provide services to the land the farm operator formerly owned as ineligible excess land or under recordable contract. Therefore, we have proposed in 43 CFR part 428 that action is taken to ensure such farm operators are in compliance with the intent of the excess land provisions.

Comment 18. The same commenter stated that the key question is whether Interior has the authority to regulate

trusts. It would take an act of the Congress to change section 214 of the RRA. Changing the application to trusts would undermine what farmers in Arizona have relied upon for more than 10 years. To now change the law through regulation is not consistent with sound public policy.

Response. We are seeking to enforce the RRA, including section 214, by adding a new 43 CFR part 428 to extend the information requirements to farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. We also want to ensure the intent of the excess land provisions is being met. No new provisions directly regulating trusts are being proposed.

Comment 19. The president of a water district in California stated that the law should be left alone, as the regulations work well and no change is necessary. This is important so that those working under the law can operate with some degree of certainty.

Response. We agree that certainty is important and so we have chosen to create a new 43 CFR part 428 to extend the information requirements to certain farm operators and to address an excess land issue, which will provide greater certainty for all water users.

Comment 20. A member of the Congress from California expressed concern that Reclamation use all its power to revise regulations so as to apply the 960-acre limit to all farms, including farms managed or operated through trusts, leases, creative management agreements, limited partnerships, or other devices used to evade the subsidy limit.

Response. We agree that the regulations must be equitably applied and, accordingly, have proposed provisions to obtain information concerning farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. In addition, we want to ensure that the intent of the excess land provisions is met by those farm operators.

Comment 21. The manager of an irrigation district indicated that he was concerned about reopening the rules and regulations. Trusts are not a problem in his district, but he sees Reclamation being able to step up enforcement and audit procedures regarding trusts to solve any problems and does not need to issue new regulations.

Response. We agree that enforcement is a key element in ensuring compliance with the RRA by certain farm operators. We intend the proposed rule to provide us with additional information needed for our enforcement activities and to address certain excess land concerns without disturbing the provisions of 43 CFR part 426.

Comment 22. A commenter representing a community alliance of small farmers expressed concerns that no farm operation should receive subsidized water for more than 960 acres.

Response. A key to any application of the acreage limitation provisions is in how certain terms are defined. The RRA defines landholding to include directly or indirectly owned or leased land. Any farm operator that is determined to be a landholder is subject to application of the acreage limitation provisions.

Comment 23. The same commenter stated that providing Federal water at less than full cost to large farm operations results in degradation of the communities and the well-being of farm workers.

Response. The Congress recognized the need to preserve small family farms when they limited the availability of nonfull-cost water.

Comment 24. Legal counsel for a trust in California commented that any attempt by Interior to: classify a trust as a "legal entity" under RRA; treat trustees as the owner of real property held in trust; or exempt *only* trustees from ownership/pricing limitations, would be inconsistent with common law of trusts and RRA.

Response. The proposed rule does not attempt to: classify a trust as a "legal entity" under RRA; treat trustees as the owner of real property held in trust; or exempt only trustees from ownership and pricing limitations.

Comment 25. The same commenter stated that Reclamation should stick to the following interpretation of RRA: that no one person can receive nonfull-cost water on more than 960 acres, no matter whether the land is owned, leased, involved in a trust or other entity.

Response. We have not altered that interpretation of the RRA; with the understanding that the acreage limitation provisions apply to legal entities as well as to individuals. Sections 214 of the RRA and 426.7 of the Acreage Limitation Rules and Regulations include provisions that exempt trustees acting in a fiduciary capacity from application of the acreage limitation provisions if certain criteria are met. These proposed rules have no impact on those provisions.

Comment 26. The same commenter stated that Reclamation has adequate tools to ensure compliance, and should "follow the money" to determine recipient of benefit of the nonfull-cost water.

Response. We generally do have adequate tools to ensure compliance. However, we believe we need additional information regarding farm operators involved in farming more than 960 acres westwide held in trusts or by legal entities. We also need additional information to determine if farm operators for trusts or legal entities formerly owned the land they are providing service to as ineligible excess land or under recordable contract. The new RRA forms requirements for farm operators are intended to address these issues.

Comment 27. The same commenter stated that nonfull-cost water to trusts should not be limited in any manner, and that Reclamation has no statutory authority to restrict the exemption on trusts in RRA section 214.

Response. We are required by statute to limit nonfull-cost water deliveries to land held in trust if the individuals or entities to whom the land held in trust is attributed exceed their acreage limitation entitlements. This requirement is addressed in 43 CFR part 426. The proposed rule would also limit such deliveries starting on January 1, 2000, if the land held in trust is being farmed by a farm operator and that farm operator formerly owned the land as ineligible excess or under recordable contract.

Comment 28. A national conservation group stated that no matter how many individuals benefit from a farming operation, the operation is only entitled to receive subsidized water on 960 acres. The limit applies both to the farm, and to each individual.

Response. The acreage limitation provisions are fully applied to any farm operation that is determined to be a landholder. The proposed rule does seek to ensure congressional intent associated with excess land is met by farm operators providing services to trusts or legal entities.

Comment 29. The same commenter stated that the proposed rule must address all large farming operations, not just trusts, because if Reclamation only regulates trusts, the trusts will find some other way to escape acreage limits.

Response. We recognize this possibility and included farm operators providing services to legal entities in both the proposed information requirements and the excess land provisions.

Comment 30. The same commenter stated that trusts are a "glaring loophole" in RRA's acreage limitations, and Reclamation must "close the loophole" in order to preserve the purpose of RRA. Reclamation should treat trusts like any other legal entity,

limiting them to subsidized water on no more than 960 acres for qualified recipients. The trusts provision of the RRA was intended to protect banks or other institutions acting in a purely fiduciary capacity.

Response. We are limiting this proposed rule to extending the information requirements to farm operators providing services to more than 960 acres westwide held in trusts or by legal entities. In addition, an excess land provision involving farm operators is included.

Comment 31. The same commenter stated that established precedent requires Reclamation to interpret the RRA trust exception narrowly to preserve the central purpose of the RRA. The regulations should read:

> An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitation imposed by title II nor any other provisions of Reclamation law. However, the interest of each beneficiary (qualified or limited recipients) in trust land in combination with other land he/she may own shall not exceed the ownership limitation of title II. Moreover, the quantity of land in a trust receiving irrigation water cannot exceed the ownership entitlement of title II.

Response. 43 CFR part 426 already addresses attribution of land held in trust to, generally, beneficiaries, and under certain circumstances to grantors or trustees. Acreage limitations clearly are applicable under those attribution requirements. There is no evidence that there have been any problems associated with those provisions and further clarification is not needed as part of this rulemaking.

Comment 32. The same commenter urged that the regulations must specifically address situations where the trustee serves as the farm operator of the trust property, clearly applying acreage limitations to the trustee as well as the trust.

Response. By requiring farm operators providing services to more than 960 acres westwide held in trusts or by legal entities to submit RRA forms annually, we will be better able to determine if a trustee who is also acting as a farm operator for the land held in trust is in fact a lessee of the land.

Comment 33. The same commenter stated that Reclamation should revise the rules governing "leases" to use criteria or indicators to determine whether a landholding is actually part of a larger farming operation. The commenter suggests that Reclamation use indicators similar to those suggested by the General Accounting Office (GAO).

Response. We already use the indicators suggested by the GAO in their 1989 report as indicators of economic risk, use, or possession, which are then used to determine if an operating arrangement is in fact a lease.

Comment 34. The same commenter stated that there are many reasons why limiting subsidies to large corporate farms is sound public policy, consistent with Federal reclamation law, including: (1) The purpose of the subsidy is to assist small family farms, not individual shareholders in large corporate farms or investors in a large business trust; (2) Limiting subsidies can benefit the environment, something Reclamation is required to do under a variety of statutes and treaties; and (3) Irrigation subsidies create economic inefficiencies and poor allocation of natural resources.

Response. The Congress was very clear as to how acreage limitations are to be applied to "large corporate farms." Specifically, under the discretionary provisions corporations that benefit more than 25 natural persons are to be limited recipients with a 640-acre ownership entitlement and a 320-acre nonfull-cost entitlement, if the corporation received Reclamation irrigation water on or before October 1, 1981. If the corporation first received such water after that date, they are to pay the full-cost rate for any Reclamation irrigation water received. For those "large corporate farms" that remain under prior law, they continue to have 160-acre ownership and nonfull-cost entitlements. We have no authority to further limit subsidies to such entities.

VII. Detailed Analysis of Proposed 43 CFR Part 428

Section 428.1

This section provides a statement of the purpose of these regulations.

Section 428.2

This section includes a statement of applicability. Rather than repeating provisions found in 43 CFR part 426, paragraph (b) of this section specifies that 43 CFR part 428 supplements part 426.

Section 428.3

This section defines the terms "Custom operator," "Farm operator," "we or us," and "you" for purposes of part 428.

Section 428.4

This section expands the RRA forms requirements to farm operators who provide services to more than 960 nonexempt acres westwide held by a single trust or legal entity, or any combination of trusts and legal entities. These requirements also apply to any indirect owner of a legal entity that is a farm operator that must submit RRA forms. Exemptions to this requirement are provided in § 426.18(g)(2) and (3) of this chapter.

Section 428.5

This section establishes how the information collection will occur. Paragraph (a) of this section specifies that we will determine what forms will be used.

Paragraph (b) of this section establishes that information must be provided by the farm operator for all nonexempt land to which the farm operator provides services westwide.

This section provides in paragraph (c) the types of information we would require to be submitted by each farm operator.

Section 428.6

This section specifies that farm operators required to submit forms must submit them to each district westwide that is subject to the acreage limitation provisions, and in which the farm operator provides services.

Section 428.7

This section describes what will happen if a farm operator fails to meet the RRA forms requirements. Paragraph (a) of this section provides that the district is not to deliver water to the land in question until the farm operator submits the required forms for that water year. In addition, the farm operator, landholder, or trustee of the land in question must not accept delivery of such water.

Paragraph (b) provides that after the farm operator submits the forms, we would restore eligibility for the land.

Paragraph (c) specifies that we will assess administrative costs as described in § 426.20(e) of this chapter if Reclamation irrigation water is delivered to land that is ineligible because the farm operator failed to submit required forms.

Section 428.8

This section provides that we could prosecute a farm operator for submitting false information on the required forms, and suspend the farm operator's eligibility to receive Reclamation irrigation water.

Section 428.9

This section addresses the eligibility of formerly excess land being farmed by certain farm operators. Paragraph (a) of this section provides (1) if a landholder

disposed of excess land at a price Reclamation approved, (2) the land is held in trust or by a legal entity, and (3) that former landholder is the direct or indirect farm operator of that land, then the farm operator and landholder may not receive water on such land.

Paragraph (b) of this section includes the following exceptions to the provisions included in paragraph (a) of this section: (1) The land becomes exempt from the acreage limitation provisions of Federal reclamation law or (2) the landholder or farm operator pays the full-cost rate for any Reclamation irrigation water delivered to the land in question, assuming the formerly excess land is otherwise eligible to receive Reclamation irrigation water. If a part owner of a legal entity that is the farm operator is the party that held the land as ineligible excess or under recordable contract and the full-cost rate is to be paid, then application of that rate will be based on the proportional share the part owner has in the legal entity.

Section 428.10

This section specifies that districts must not make water available to formerly excess land to which the former owner who sold it at an approved price is now providing services as a farm operator. Reference is made to the exceptions provided in § 428.9(b).

Section 428.11

This section establishes an effective date of January 1, 2000, for 43 CFR part 428. This section also specifies that on January 1, 2000, the excess land provisions found in § 428.9 will apply to any farm operating arrangements between farm operators and trusts or legal entities then in place and any future farm operating arrangements.

VIII. Procedural Matters

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) and Departmental Manual 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under NEPA is not required. The rule is categorically excluded from NEPA review under 40 CFR 1508.4, Departmental Manual 516 DM 2, Appendix 1, paragraph 1.6, and 516 DM 6, Appendix 9, paragraph 9.4A.1. In addition, the proposed rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in 516 DM 2, Appendix 2.

As provided in 516 DM 2, Appendix 1, paragraph 1.6, an action is excluded from review if it is a "Non-destructive data collection, inventory (including field, aerial and satellite surveying and mapping), study, research and monitoring activities." This rule requires an information collection, and would not have a significant effect on the human environment. As provided in 516 DM 6, Appendix 9, paragraph 9.4A.1, the following is excluded from review: "Changes in regulations or policy directives and legislative proposals where the impacts are limited to economic and/or social effects." The only impacts associated with the excess land provisions would be that certain farm operators that meet the criteria in the proposed regulations or the associated landholders would have to pay full cost for Reclamation irrigation water delivered to land to which the farm operator is providing services, the landholder would have to hire a different farm operator to provide the services, or the landholder and farm operator could not receive Reclamation irrigation water on that land. This provision will not be effective until January 1, 2000.

Executive Order 12866, Regulatory Planning and Review

Under Executive Order (E.O.) 12866, (58 FR 51735, Oct. 4, 1993), an agency must determine whether a regulatory action is significant and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. E.O. 12866 defines a "significant regulatory action" as a regulatory action meeting any one of four criteria specified in the Executive Order. This rulemaking is considered a significant regulatory action under criterion number 4, because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. We have therefore submitted the proposed rule to the OMB for review.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We provide some 140,000 Western farmers with irrigation water. We estimate that out of this number, fewer than 200 entities, not necessarily small entities, could be affected by the rule. The effect on most of these entities starting on January 1, 2000, would be limited to the annual completion of RRA forms. For some of these entities, the farm operator was also the owner of the land in question when the land was ineligible excess or under recordable contract. In cases where such a farm operating arrangement is still in place on January 1, 2000, or is implemented on or after that date, the full-cost rate would be applicable to all deliveries of Reclamation irrigation water to such land. However, the landholder in question could avoid paying the full-cost rate by hiring a different farm operator who did not formerly own the land in question as excess. Therefore, we have determined that the proposed rule will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Will not have an annual effect on the economy of $100 million or more. The rule could affect up to an estimated 200 farms, but the effects would not approach $100 million or more.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There could be an economic effect on fewer than an estimated 200 farms, but we do not anticipate that this will cause any noticeable increase in costs or prices.

(3) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule would only affect at most a small sector of the farming industry, and would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. This information collection is described below.

Existing Information Collection Under the Acreage Limitation Rules and Regulations

Sections 206, 224(c), and 228 of the RRA (43 U.S.C. 390ff, 390ww(c), and 390zz) require, among other things, that (1) as a condition to the receipt of Reclamation irrigation water, each

landholder must annually certify, in a form suitable to the Secretary, that they are in compliance with the provisions of the RRA, and (2) districts must annually submit to us, in a form suitable to the Secretary, records and information necessary to implement the RRA. These mandatory requirements are addressed in 43 CFR 426.18. To comply with these requirements, we provide forms for the landholders' and districts' use. The landholder forms have been approved by OMB under control number 1006–0005. The district summary forms have been approved under control number 1006–0006. Both clearances expire on December 31, 1999.

Information Collection Under the Proposed Rule

The proposed rule contains a change that would increase the reporting burden by requiring certain farm operators to submit RRA forms starting on January 1, 2000. We estimate that the reporting burden would be increased by less than 200 hours as a result of this change. The primary purpose of requiring those farm operators who provide services to more than 960 acres westwide held in trusts or by legal entities to complete and submit RRA forms would be to provide us with sufficient information to determine if the farm operating arrangement is a lease as defined in section 426.2 of this chapter.

As with all acreage limitation information collections, we would require farm operators to provide identifier information; such as name, address, telephone number, etc., and if the farm operator is an entity, information concerning the entity's organizational structure and part owners. In addition, farm operators would be required to provide information concerning the land to which they are providing services; such as legal descriptions, number of acres, etc. We would also require farm operators to provide information concerning the specific services they are providing, who decides when such services are needed, how the farm operator is compensated for the services, the control the farm operator has over the daily operation of the land in question, etc. If different services are provided to different land parcels, such distinctions would need to be specified.

In order to effectively administer and enforce the proposed excess land provisions, we would require farm operators to provide information as to whether the land to which services are being provided was formerly owned by the farm operator as ineligible excess land or under recordable contract.

At this time, we would like comments on the planned RRA forms requirements for farm operators. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) the accuracy of our burden estimate for the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. In addition, we would like comments on specific issues related to the proposed information collection including:

- Should the RRA forms submittal threshold for farm operators be 960 acres westwide held in trusts or by legal entities as provided in the proposed rules or some other figure (e.g., 40 acres, 240 acres, etc.)?
- Is the proposed definition of "farm operator" sufficient or should it be altered? For example, is there a way to define "farm operator" that reduces how many additional RRA forms would need to be submitted, other than through application of the forms submittal threshold.
- Is the definition of and exemption for "custom operator" included in the proposed rule sufficient?
- Should certain specific questions be asked of farm operators on the RRA forms? Examples of such include: Whether the farm operator is authorized to use his agreements with a landholder as collateral in any loan; whether the farm operator can sue or be sued in the name of the landholding; and whether the farm operator is authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

In considering the issues associated with certain farm operators being required to submit RRA forms, we would also like comments as to whether current RRA forms should be modified to accommodate the additional information requirements applicable to farm operators, or if an entirely new form only to be completed by farm operators providing services to more than 960 acres westwide held in trusts or by legal entities should be developed.

Submit comments on the RRA information collection changes to us along with written comments on the proposed rule, or separately (see **DATES, ADDRESSES,** and Public Comment Procedures under **SUPPLEMENTARY INFORMATION**, above).

Executive Order 12612, Federalism

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. A Federalism Assessment is not required. This proposed rule would supplement existing provisions for administering the RRA. The regulation would not significantly change the relationship or relative roles of the Federal and State Government. It would not lead to Federal control over traditional State responsibilities, or decrease the ability of the States to make policy decisions with respect to their own functions. This regulation would not affect the distribution of power and responsibilities among the various levels of government and does not preempt State law. In summary, this regulation would not have a significant impact on Federalism as described by E.O. 12612.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule would not result in imposition of undue additional fiscal burdens on the public. The rule would not result in physical invasion or occupancy of private property or substantially affect its value or use. Specifically, the rule would not result in the taking of contractual rights to storage water in Reclamation reservoirs or water rights established under State law.

Unfunded Mandates Reform Act of 1995

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required. The rule would require certain farm operators, which are not small governments, to submit RRA forms. The excess land provision of the rule will not affect small governments. These potential effects would not amount to costs of more than $100 million per year.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has

determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, *§ 428.4 Who must submit forms under this part.*)

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

IX. List of Subjects in 43 CFR Part 428

Agriculture, Irrigation, Reclamation, Reporting and recordkeeping requirements, Water resources.

Dated: November 10, 1998.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

For the reasons stated in the preamble, the Bureau of Reclamation proposes to add a new part 428 to title 43 of the Code of Federal Regulations as follows:

PART 428—INFORMATION REQUIREMENTS FOR CERTAIN FARM OPERATIONS IN EXCESS OF 960 ACRES AND THE ELIGIBILITY OF CERTAIN FORMERLY EXCESS LAND

Sec.

428.1 Purpose of this part.
428.2 Applicability of this part.
428.3 Definitions used in this part.
428.4 Who must submit forms under this part.
428.5 Required information.
428.6 Where to submit required forms and information.
428.7 What happens if a farm operator does not submit required forms.
428.8 What can happen if a farm operator makes false statements on the required forms.
428.9 Farm operators who are former owners of excess land.
428.10 Districts' responsibilities concerning certain formerly excess land.
428.11 Effective date.

Authority: 5 U.S.C. 301; 5 U.S.C. 553; 16 U.S.C. 590z-11; 31 U.S.C. 9701; and 32 Stat. 388 and all acts amendatory thereof or supplementary thereto including, but not limited to, 43 U.S.C. 390aa to 390zz-1, 43 U.S.C. 418, 43 U.S.C. 423 to 425b, 43 U.S.C. 431, 434, 440, 43 U.S.C. 451 to 451k, 43 U.S.C. 462, 43 U.S.C. 485 to 485k, 43 U.S.C. 491 to 505, 43 U.S.C. 511 to 513, and 43 U.S.C. 544.

§ 428.1 Purpose of this part.

This part addresses Reclamation Reform Act of 1982 (RRA) forms requirements for certain farm operators and the eligibility of formerly excess land that is operated by a farm operator who was the landowner of that land when it was excess.

§ 428.2 Applicability of this part.

(a) This part applies to farm operators who provide services to:

(1) More than 960 acres held (directly or indirectly owned or leased) by one trust or legal entity; or

(2) The holdings of any combination of trusts and legal entities that exceed 960 acres.

(b) This part also applies to farm operators who provide services to formerly excess land held in trusts or by legal entities if the farm operator previously owned that land when the land was ineligible excess or under recordable contract.

(c) This part supplements the regulations in part 426 of this chapter.

§ 428.3 Definitions used in this part.

Custom operator means an individual or legal entity that provides a specialized, farm-related service that a farm owner, lessee, sublessee, or farm operator employs for agreed-upon payments. This includes, for example, crop dusters, custom harvesters, grain haulers, and any other such services.

Farm operator means an individual or legal entity other than the owner, lessee, or sublessee that performs any portion of the farming operation. This includes farm managers, but does not include spouses, minor children, employees for whom the employer pays social security taxes, or custom operators.

We or us means the Bureau of Reclamation.

You means a farm operator.

§ 428.4 Who must submit forms under this part.

(a) You must submit RRA forms to us annually if:

(1) You provide services to more than 960 nonexempt acres westwide, held by a single trust or legal entity or any combination of trusts and legal entities; and

(2) You are not covered by the exceptions found in § 426.18(g)(2) and (3).

(b) Anyone who is the indirect owner of a legal entity that is a farm operator meeting the criteria of paragraph (a) of this section must submit forms to us annually.

§ 428.5 Required information.

(a) We will determine which forms you must use to submit the information required by this section.

(b) You must declare all nonexempt land to which you provide services westwide.

(c) You must give us other information about your compliance with Federal reclamation law, including but not limited to:

(1) Identifier information, such as your name, address, telephone number;

(2) If you are a legal entity, information concerning your organizational structure and part owners;

(3) Information about the land to which you provide services, such as a legal description, and the number of acres;

(4) Information about whether you formerly owned, as ineligible excess land or under recordable contract, the land to which you are providing services;

(5) Information about the services you provide, such as what they are, who decides when they are needed, and how much control you have over the daily operation of the land;

(6) If you provide different services to different land parcels, a list of services that you provide to each parcel;

(7) Whether you can use your agreement with a landholder as collateral in any loan;

(8) Whether you can sue or be sued in the name of the landholding; and

(9) Whether you are authorized to apply for any Federal assistance from the United States Department of Agriculture in the name of the landholding.

§ 428.6 Where to submit required forms and information.

You must submit the appropriate completed RRA form(s) to each district westwide that is subject to the acreage limitation provisions and in which you provide services.

§ 428.7 What happens if a farm operator does not submit required forms.

(a) If you do not submit required RRA form(s) in any water year, then:

(1) The district must not deliver irrigation water before you submit the required RRA form(s); and

(2) You, the trustee, or the landholder(s) who holds the land (including to whom the land held in trust is attributed) must not accept delivery of irrigation water before you submit the required RRA form(s).

(b) After you submit all required RRA forms to the district, we will restore eligibility.

(c) If a district delivers irrigation water to land that is ineligible because you did not submit RRA forms as required by this part, we will assess administrative costs against the district as specified in § 426.20(e). We will determine these costs under § 426.20(a)(1) through (3).

§ 428.8 What can happen if a farm operator makes false statements on the required forms.

If you make a false statement on the required RRA form(s), Reclamation can prosecute you under the following statement:

Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction. False statements by the farm operator will also result in loss of eligibility. Eligibility can only be regained upon the approval of the Commissioner.

§ 428.9 Farm operators who are former owners of excess land.

(a) You or a landholder may not receive irrigation water on land held in trust or by a legal entity if:

(1) You owned the land when the land was excess, whether or not under recordable contract;

(2) You sold the land at a price approved by Reclamation; and

(3) You are the direct or indirect farm operator of that land.

(b) This section does not apply if:

(1) The formerly excess land becomes exempt from the acreage limitations of Federal reclamation law; or

(2) You or the landholder pays the full-cost rate for any irrigation water delivered to your formerly excess land that is otherwise eligible to receive irrigation water. If you are a part owner of a legal entity that is the direct or indirect farm operator of the land in question, then the full-cost rate will apply to the proportional share of the land that reflects your interest in that legal entity.

§ 428.10 Districts' responsibilities concerning certain formerly excess land.

Districts must not make irrigation water available to formerly excess land that meets the criteria under § 428.9(a), unless an exception provided in § 428.9(b) applies.

§ 428.11 Effective date.

This part will be effective beginning on January 1, 2000. On that date the provisions of § 428.9 will apply to all farm operating arrangements between farm operators and trusts or legal entities that:

(a) Are then in effect; or

(b) Are initiated on, or after, January 1, 2000.

[FR Doc. 98–30756 Filed 11–17–98; 8:45 am]

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Federal Register

Wednesday
November 18, 1998

Part IV

Department of Education

High School Equivalency Program; College Assistance Migrant Program; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.141A—(HEP) and CFDA No. 84.149A—(CAMP)]

High School Equivalency Program; College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999 for the High School Equivalency Program (HEP) and the College Assistance Migrant Program (CAMP).

Purpose of Programs: The purpose of the HEP and CAMP programs is to provide grants to institutions of higher education (IHEs), or to private non-profit agencies working in cooperation with IHEs, to help migrant and seasonal farmworkers complete high school and succeed in postsecondary education.

Eligible Applicants—HEP and CAMP: The Secretary invites applications from IHEs or from private non-profit agencies working in cooperation with IHEs.

Deadline for Transmittal of Applications: January 25, 1999.

Applications Available: November 23, 1998.

Deadline for Intergovernmental Review: March 26, 1999.

Available funds: HEP FY 1999: $9,000,000.

Estimated Range of Awards: HEP $150,000–$495,000.

Estimated Average Size of Awards: HEP $375,000.

Estimated Number of Awards: HEP 25.

Available Funds: CAMP FY 1999: $4,000,000.

Estimated Range of Awards: CAMP $150,000–$450,000.

Estimated Average Size of Awards: CAMP $325,000.

Estimated Number of Awards: CAMP 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

SUPPLEMENTARY INFORMATION: The HEP program assists migrant and seasonal farmworkers to obtain a general education diploma (GED) and to be placed in postsecondary education or training, career positions, or the military. By locating the programs at IHEs, migrant and seasonal farmworkers also have opportunities to attend cultural events, academic programs, and other educational and cultural activities usually not available to them. The CAMP program assists migrant and seasonal farmworkers to successfully complete the first academic year of study in the college or university, and provides follow-up services to help students continue in postsecondary education.

Applicants should be aware that the selection criteria for awarding grants, and the 15 points for prior performance, have changed since the last grant competition. The selection criteria used to review applications, including the criterion for awarding points for prior performance, as required by the program statute are included in the application package.

The Congress has appropriated $9,000,000 for HEP and $4,000,000 for CAMP for FY 1999, which is an increase of approximately 18% for HEP and 92% for CAMP over the 1998 appropriation.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR Part 75 (Direct Grant Programs).

(3) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR Part 82 (New Restrictions on Lobbying).

(6) 34 CFR Part 85 (Governmentwide Debarment and Suspension) Non-procurement and Governmentwide Requirements for Drug-Free Workplace (Grants).

(7) 34 CFR Part 86 Drug-Free Schools and Campuses).

(b) 34 CFR Part 206 (Special Education Programs for Students Whose Families are Engaged in Migrant and Other Seasonal Farmwork.

(c) The definitions of a migratory child, a migratory agricultural worker and a migratory fisher contained in 34 CFR 200.40 and the definitions of farmwork, migrant farmworker and seasonal farmworker contained in 20 CFR 633.104.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the application or to obtain information on the program, call or write Mary L. Suazo, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Avenue, SW, Room 3E317, FOB 6, Washington, D.C. 20202–6135. Telephone Number: (202) 260–1396. Inquiries may be sent by e-mail to mary__suazo@ed.gov or by FAX at (202) 205–0089. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070d–2.

Dated: November 16, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 98–30955 Filed 11–17–98; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 1023/P.L. 105–369

Ricky Ray Hemophilia Relief Fund Act of 1998 (Nov. 12, 1998; 112 Stat. 3368)

H.R. 2070/P.L. 105–370

Correction Officers Health and Safety Act of 1998 (Nov. 12, 1998; 112 Stat. 3374)

H.R. 2263/P.L. 105–371

To authorize and request the President to award the congressional Medal of Honor posthumously to Theodore Roosevelt for his gallant and heroic actions in the attack on San Juan Heights, Cuba, during the Spanish-American War. (Nov. 12, 1998; 112 Stat. 3376)

H.R. 3267/P.L. 105–372

Salton Sea Reclamation Act of 1998 (Nov. 12, 1998; 112 Stat. 3377)

H.R. 4083/P.L. 105–373

To make available to the Ukrainian Museum and Archives the USIA television program "Window on America". (Nov. 12, 1998; 112 Stat. 3382)

H.R. 4164/P.L. 105–374

To amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders. (Nov. 12, 1998; 112 Stat. 3383)

S. 759/P.L. 105–375

To amend the State Department Basic Authorities Act of 1956 to require the Secretary of State to submit an annual report to Congress concerning diplomatic immunity. (Nov. 12, 1998; 112 Stat. 3385)

S. 1132/P.L. 105–376

Bandelier National Monument Administrative Improvement and Watershed Protection Act of 1998 (Nov. 12, 1998; 112 Stat. 3388)

S. 1134/P.L. 105–377

Granting the consent and approval of Congress to an interstate forest fire protection compact. (Nov. 12, 1998; 112 Stat. 3391)

S. 1408/P.L. 105–378

To establish the Lower East Side Tenement National Historic Site, and for other purposes. (Nov. 12, 1998; 112 Stat. 3395)

S. 1733/P.L. 105–379

To amend the Food Stamp Act of 1977 to require food stamp State agencies to take certain actions to ensure that food stamp coupons are not issued for deceased individuals, to require the Secretary of Agriculture to conduct a study of options for the design, development, implementation, and operation of a national database to track participation in Federal means-tested public assistance programs, and for other purposes. (Nov. 12, 1998; 112 Stat. 3399)

S. 2129/P.L. 105–380

Hawaii Volcanoes National Park Adjustment Act of 1998 (Nov. 12, 1998; 112 Stat. 3401)

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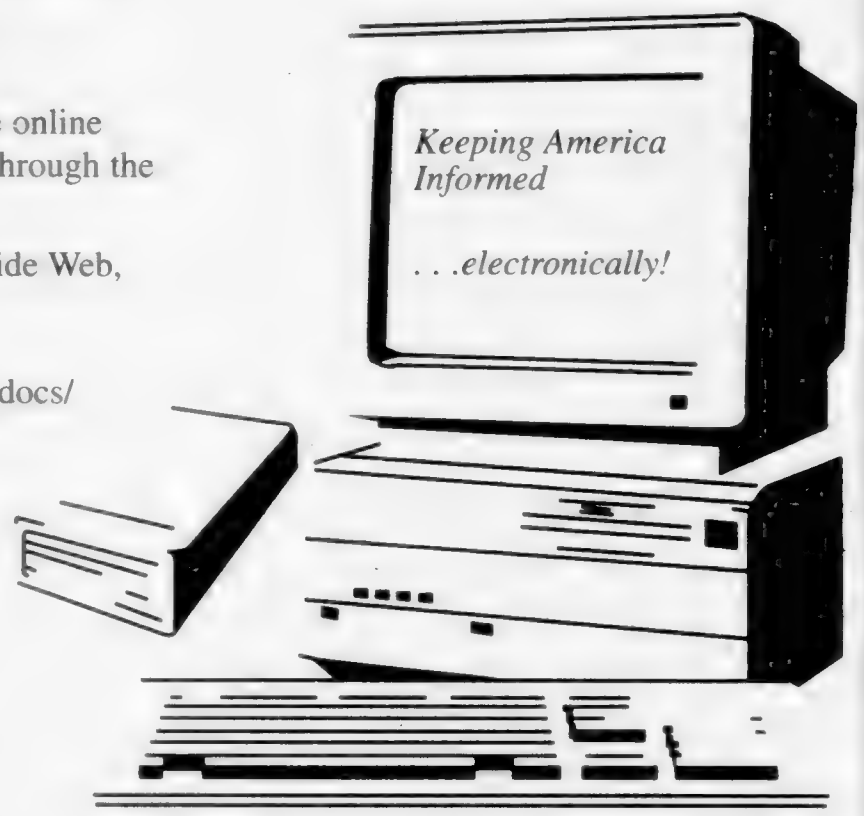

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Federal Register

Thursday
November 19, 1998

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Presidential Documents

Title 3—

The President

Presidential Determination No. 99–3 of November 6, 1998

Drawdown Under Section 506(a)(2)(A)(i)(II) of the Foreign Assistance Act of 1961, as Amended To Provide Emergency Disaster Relief Assistance for Honduras, Nicaragua, El Salvador, and Guatemala

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2)(A)(i)(II) of the Foreign Assistance Act of 1961, as amended ("the Act"), 22 U.S.C. 2318(a)(2), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, for the purpose of providing international disaster relief assistance to Honduras, Nicaragua, El Salvador, and Guatemala.

Therefore, I direct the drawdown of up to $30 million of articles and services from the inventory and resources of the Department of Defense for the Governments of Honduras, Nicaragua, El Salvador, and Guatemala for the purposes and under the authorities of chapter 9 of part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, November 6, 1998.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 46

[Docket Number FV98–359]

Regulations Under the Perishable Agricultural Commodities Act (PACA); Renewal of License

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is revising the PACA Regulations to provide for a three-year license renewal period for retailers and grocery wholesalers, and provide all other licensees the option of renewing their licenses on an annual, biennial, or triennial basis. The PACA Amendments of 1995 (1995 Amendments) provided for the gradual elimination of license fees for retailers and grocery wholesalers over a three-year period ending November 14, 1998. The 1995 Amendments also gave the Secretary of Agriculture the authority to determine the interval for renewing licenses and asked the Secretary to take due account of savings to the program when determining the appropriate intervals for license renewals.

EFFECTIVE DATE: December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Charles W. Parrott, Assistant Chief, PACA Branch, Room 2095-So. Bldg., Fruit and Vegetable Programs, AMS, USDA, Washington, D.C. 20250, Phone (202) 720–4180, Email__charles__w__parrott@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under authority of section 15 of the PACA (7 U.S.C. 499o).

Background

The Perishable Agricultural Commodities Act (PACA) establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. The PACA protects growers, shippers, distributors, and retailers dealing in those commodities by prohibiting unfair and fraudulent practices. In this way, the law fosters an efficient nationwide distribution system for fresh and frozen fruits and vegetables, benefiting the whole marketing chain from farmer to consumer. USDA's Agricultural Marketing Service (AMS) administers and enforces the PACA.

In accordance with the 1995 Amendments to the PACA, retailers and grocery wholesalers will no longer pay a license fee under the PACA after November 14, 1998, but will still be required to maintain a valid license. The 1995 Amendments also authorized the Secretary of Agriculture to determine the interval for renewing licenses for all licensees, taking into account the likely savings to the program. The House of Representatives Committee on Agriculture, in it's report accompanying the 1995 Amendments, asked USDA to examine promptly the necessity for a yearly renewal requirement for retailers and grocery wholesalers in an effort to move toward multi-year licenses.

A proposed rule to amend the regulations was published in the **Federal Register** on July 31, 1998 (63 FR 40842). The proposal provided for the shifting of retailers and grocery wholesalers to a mandatory three-year license renewal period and provided the option of multi-year licensing to all other licensees. Comments on the proposed rule were to be submitted by September 14, 1998. AMS received six comments.

This final rule gradually shifts retailers and grocery wholesalers to a triennial license renewal interval. Each of the remaining 10,000 licensees (commission merchants, brokers, wholesalers, processors, truckers, food service), all of which will continue to pay license fees, have the option of renewing their licenses every one, two, or three years. The option is available to both new license applicants and to existing licensees when they renew their license.

Beginning on the effective date of this rule, all new PACA licenses issued to retailers and grocery wholesalers will be valid for three years. AMS has determined that this rule will become effective on December 1, 1998, in order to give AMS and all licensees sufficient time to prepare for the new renewal procedure. Retailers and grocery wholesalers that are currently licensed will be shifted to a three year license over the next three years. AMS will mail each exisiting retailer or grocery wholesaler licensee a license renewal application at least 30 days prior to its PACA license anniversary date and notify each one of its new anniversary date.

Staggering the new triennial renewal period for retailers and grocery wholesalers over a three-year period will guard against an inundation of renewal applications three years from now which would increase program administrative costs. The phase-in will be implemented as follows: During the first year of the phase-in period, retailers and grocery wholesalers holding current licenses ending in the digits "0," "3," "6," or "9," will renew their licenses on a triennial basis; retailers and grocery wholesalers holding licenses that end in the digits "1," "4," or "7," will renew their licenses this year for a 2-year term, and thereafter on a triennial basis; and retailers and grocery wholesalers holding licenses that end in the digits "2," "5," or "8," will renew their licenses after one year, and thereafter on a triennial basis.

All remaining PACA licensees may choose to renew their licenses annually, biennially, or triennially. Licensees that choose biennial or triennial renewal will "lock in" the current license fee rate for a two or three-year period. This rule also provides for a refund of that portion of the license fee to those firms required to obtain a new license due to a change in legal status (*e.g.:* a partnership of two becomes a partnership of three individuals; a sole proprietor incorporates; or a firm re-incorporates), and to those firms that cease business operations or whose license terminates because of bankruptcy. In those instances, USDA will issue refunds only for the full years remaining on the license. To cover the administrative costs associated with processing the early termination of a license, USDA will assess the entity a $100 processing fee.

Comments

We received comments from North American Perishable Agricultural Receivers, Baltimore, Maryland; Western Growers Association, Newport Beach, California; Food Marketing Institute, Washington, D.C.; Food Distributors International (FDI), Falls Church, Virginia; National Grocers Association, Reston, Virginia; and Nardella, Inc., Philadelphia, Pennsylvania. All of the commentors strongly support the Department of Agriculture (USDA) proposal to amend the (PACA) regulations to provide for a three-year license renewal period for retailers and grocery wholesalers, and provide all other licensees the option of renewing their licenses for one, two, or three years.

In its favorable comment, FDI, however, questions the provision in the proposed rule that USDA would assess an entity a $100 processing fee for the early termination of a multi-year PACA license if the licensee was required to obtain a new license because of a change in legal status, ceased business operations, or whose license terminated because of bankruptcy. FDI states that USDA sets forth no rationale why the costs of early termination of a license is more than eight times USDA's $8 cost of renewing a license. In addition, FDI argues that in instances involving bankruptcy, USDA is claiming an asset of a bankrupt, i.e. a portion of the receivable refunded license fee. Such an asset, FDI states, should be returned to the bankrupt estate to ensure payment of claims against the estate—some of which may have arisen under PACA for which trust protection was not preserved.

USDA disagrees with FDI and believes that a $100 processing fee for early termination of a multi-year license is justified in that the refund request must be handled outside of the normal cycle of renewals and terminations. Early termination of a license includes updating agency records to show the reasons for early termination, preparing refund documentation for the National Finance Center along with an audit trail to verify that the refund was made, validating claims, responding to inquiries and disputes, and providing notice to trade publications that circumstances warranted the early termination of a firm's license. Because of the special handling required to refund multi-year license fees when an early termination occurs, USDA believes that the $100 processing fee is justified. USDA believes that the $100 fee is minimal in comparison to the net amount of $450 or $1000 that would be refunded to the licensee holding a biennial or triennial license. In any event, the multi-year license option is not mandatory for all licensees. An applicant or licensee that does not want to risk losing a $100 processing fee because of early termination of its license does have the option of annual renewal. Finally, USDA does not believe that the costs incurred by one licensee because of early license termination should be borne by all licensees. Under the circumstances, USDA is making no change to the final rule based on this comment.

Executive Orders 12866 and 12988

This final rule is issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), as amended, and has been determined to be not significant for the purposes of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The final rule is not intended to have retroactive effect. The final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), USDA has considered the economic impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. The PACA requires all businesses that operate subject to its provisions maintain a license issued by USDA. There are approximately 15,700 PACA licensees, a majority of which may be classified as small entities.

In accordance with the PACA Amendments of 1995, retailers and grocery wholesalers will no longer pay a fee to be licensed under the PACA after November 14, 1998. The final rule establishes a 3-year renewal cycle for all retailers and grocery wholesalers licensed under the PACA. Given that those PACA licensees will now renew their licenses every three years rather than annually as is currently required, we anticipate that they will have lower administrative costs and a reduction in their record keeping and reporting burden.

In addition, we project that the administrative costs and record keeping requirements for the remaining fee-paying licensees will, like the retailers and grocery wholesalers, be reduced if they choose the biennial or triennial renewal options. We believe that their greatest savings will result from choosing the triennial renewal option, with a lesser degree of savings resulting from the biennial renewal option.

Finally, we believe that that all fee-paying licensees would indirectly benefit from the cost savings realized from these revisions to the PACA program, which is funded through the fees paid by licensees. Any cost savings to the program will help delay the need for an increase in fees to fund the program.

Accordingly, based on the information in the above discussion, USDA has determined that the provisions of this rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and record keeping requirements covered by this final rule were approved by OMB on April 1, 1998, and expire on April 30, 2001.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.9, paragraphs, (j), (k), and (l) are added to read as follows:

§ 46.9 Termination, suspension, revocation, cancellation of licenses; notices; renewal.

* * * * *

(j) Beginning on December 1, 1998, the renewal period for new licenses issued to retailers and grocery wholesalers is three years.

(k) Beginning on December 1, 1998, commission merchants, brokers, and dealers (other than grocery wholesalers

and retailers) who are new or existing licensees, may choose to renew their licenses on an annual, biennial, or triennial basis. In the event that the holder of a multi-year license ceases business operations or undergoes a change in legal status that results in the issuance of a new license prior to the next license renewal date, a refund will be issued of any remaining full-year portion of advance fee paid, minus a $100 processing fee.

(l) Retailers and grocery wholesalers who are existing licensees as of December 1, 1998, will be phased into the three-year renewal process during the succeeding one-year as follows:

(1) Licenses held by retailers and grocery wholesalers ending in the digits "0," "3," "6," or "9," will be renewed on a triennial basis.

(2) Licenses held by retailers and grocery wholesalers ending in the digits "1," "4," or "7," will be renewed for two years and thereafter on a triennial basis.

(3) Licenses held by retailers and grocery wholesalers ending in the digits "2," "5," or "8," will renew their licenses after one year, and thereafter on a triennial basis.

Dated: November 13, 1998.

Larry B. Lace,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–30906 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 130

[Docket No. 98–070–3]

Closure of Harry S Truman Animal Import Center

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are closing the Harry S Truman Animal Import Center (HSTAIC) and amending the animal import regulations to remove all provisions related to HSTAIC. The facility, which has been used for high risk imports, such as ruminants from countries where foot-and-mouth disease exists, has been chronically under used and has never generated enough revenue to be self-sufficient.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3276; or e-mail: gary.s.colgrove@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Harry S Truman Animal Import Center (HSTAIC) is an offshore, maximum biosecurity animal import facility owned and operated by the Animal and Plant Health Inspection Service (APHIS), an agency of the United States Department of Agriculture. It is the only facility of its kind in the United States.

On August 10, 1998, we published in the **Federal Register** (63 FR 42593–42596, Docket No. 98–070–2) a proposal to close HSTAIC and amend the animal import regulations in 9 CFR parts 93 and 94, and the user fee regulations in 9 CFR part 130, to remove all provisions related to HSTAIC.

We solicited comments concerning our proposal for 60 days ending October 9, 1998. We received three comments by that date. One was from an individual; the other two from industry associations.

One comment, from an industry association, was completely supportive of our proposal to close HSTAIC.

The other industry association comment agreed that HSTAIC needs to close, but voiced two concerns.

The first concern was that there will be greater incentive to smuggle llamas and alpacas into Chile from other regions, with the risk that foot-and-mouth disease (FMD) or new diseases would appear in Chile. Chile is currently free of FMD, while other regions in South America are not. Llamas and alpacas from Chile can enter the United States without having to go through quarantine in HSTAIC. Without HSTAIC, llamas and alpacas from regions where FMD exists would not be directly imported into the United States.

We believe this situation is unlikely to lead to more smuggling of animals into FMD- and rinderpest-free regions, such as Chile. Since HSTAIC was dedicated in 1979, only 11 shipments of imported camelids have been quarantined in the facility. Demand for llamas and other camelids in the United States is now shrinking. As demand shrinks, so does the incentive for smuggling animals. Under these circumstances, we believe there is no significant risk.

The commenter's second concern was that any alternative high security import facility maintain high standards for safety and humane care. We agree completely. We are considering alternatives for importing ruminants and swine from regions where FMD or rinderpest exists. No alternative would be acceptable if high standards for safety and humane care were not included.

One comment objected to our proposal to close HSTAIC. The commenter stated: (1) The United States needs to have a facility like HSTAIC, and the facility should not have to be self-sustaining; (2) we should modify HSTAIC just enough to keep it operational, and make major renovations and repairs later; and (3) we underestimated the cost of closing HSTAIC.

As we explained in our proposed rule (see 63 FR 42593), under the statute authorizing HSTAIC, the facility was intended to be self-sustaining. Unfortunately, this has never happened. Demand to use HSTAIC has never been high enough to make it self-supporting. Demand is now falling. Instead of live animals, germplasm—embryos and semen—is now imported for breeding. Under these circumstances, we do not believe HSTAIC is needed. Industry representatives appear to agree; both comments we received from industry associations supported our proposal to close the facility.

We could delay closing HSTAIC, as the commenter suggested. The State of Florida has extended our sewage permit until August, 2003 (this action took place after our proposed rule was published). However, the longer we delay closing the facility, the longer our operating losses will continue, and the more it will cost to close the facility. If the commenter is correct, that we have underestimated the cost to close the facility, then it is even more important that we act quickly to minimize our losses. To do this, we must close HSTAIC as soon as possible.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

HSTAIC is a maximum-security APHIS animal import center that provides quarantine services for animals which would otherwise be excluded because they are being imported directly from countries where high-risk diseases such as foot-and-mouth disease (FMD), rinderpest, African swine fever, hog cholera, and swine vesicular disease are

found. HSTAIC was designed to be a self-supporting facility, to as great a degree as possible, with costs defrayed by charges to the importers of the animals who use the facility. However, this has not been the case. Instead, the facility has been underused and has never generated enough revenue to be self-sufficient.

Vital repairs and maintenance of the facility and its equipment has been accomplished by the use of agency funds that would otherwise have been directed toward pest eradication efforts. However, these costly short term repairs and maintenance have not been adequate to upgrade the facility. Regulations concerning the use of the facility were revised in the early 1990's so that any user of HSTAIC for a single animal importation would be responsible for paying all related costs, except capital expenses, incurred in qualifying and quarantining the imported animals at HSTAIC, but the deficit has persisted. At inception, a strong demand was projected for breeding stock in order to import strains of livestock that had specific traits needed for improving U.S. domestic breeds, particularly cattle from high disease-risk countries. However, after the first six imports, this had not occurred. The facility has not had the optimal three imports in any year and money for capital expenditures has not been appropriated. Therefore, we are closing the facility and removing from the CFR the current regulations concerning HSTAIC. Under the terms of this rule, the Center will not accept animals for quarantine after December 31, 1998, and APHIS will enter into an agreement with a prospective importer for final exclusive use of the facility only if it is certain that the animals will enter the Center on or before that date.

Since HSTAIC was dedicated in 1979 there have been 21 ruminant and swine importations. The first imports (cattle from Brazil) were released in July 1980. A total of 6,713 animals have been quarantined and released during this period, including cattle (633), swine (574), sheep and goats (460) and camelids (5,046). Several countries in Latin America (Bolivia, Brazil, Chile and Peru), Europe (France, Germany), Asia (China), and Africa (South Africa) were the sources of the imports. Of these, Chile, France and Germany are now recognized as FMD free. Certain regions in South Africa are also in the process of being recognized as free. The first six imports were cattle (3 from Brazil and 3 from Europe). Camelids have accounted for 11 imports (5 from Bolivia, 1 from Chile/Brazil and 5 from Peru). There have been three imports of swine (1 from China, 1 from France and 1 from Germany), and one import of sheep and goats (from South Africa). Eight out of the nine most recent imports have been camelids.

The above total, 21 imports in nearly 20 years, has fallen short of the anticipated three shipments of animals per year. Based on three months of isolation at the center for each group and one month between shipments for cleaning and disinfecting, with full use, there should have been 57 imports handled through HSTAIC. Furthermore, the size of individual imports has been smaller than the capacity of the facility, and thus importers have failed to take advantage of economies of scale, which would have reduced the per animal cost of using the facility, as costs per animal are lower as numbers increase. The capacity of the facility is about 400, plus sentinel animals. (This designation is for cattle. For smaller animals, such as sheep and goats, even larger numbers can be accommodated). Only 6,713 animals were actually imported and quarantined during the entire 21 years. The potential number should have been more than 22,800 animals.

The quarantine process is costly regardless of numbers, and is paid entirely by the importers. The average fee for the last 10 imports has been $1,920 (or $16 per day) per head. Each selected applicant has exclusive rights to use HSTAIC for the importation during the quarantine period and is responsible for paying all costs, excluding capital expenditure, incurred in qualifying and quarantining the specified animals through HSTAIC. A partial list of costs includes: expense for sentinel animals, laboratory tests, medical treatment, official travel by APHIS personnel, courier services to transport test samples to the Foreign Agricultural Disease Diagnostic Laboratory (FADDL), salaries of HSTAIC personnel, all supplies needed for animal care, maintenance, and testing and the post-quarantining cleaning and disinfection of HSTAIC, as well as utilities and overhead, including salaries and benefits of support staff. The operational cost of an average importation is high—between $750,000 and $1 million per import period. This cost would likely have increased, if the center remained open, since substantial infrastructure repairs are needed immediately and there is an ever-increasing requirement to maintain the aging facility. Expenses charged to selected importers vary by importation depending on the kind and number of animals in each shipment, and the country of origin.

Since operating costs while the facility is in use are charged entirely to the importers, if HSTAIC were fully utilized (that is, housing three importations during each year), it could probably be nearly self-supporting. However, due to underutilization, the minimum operating budget must cover costs borne by the facility in the absence of animal shipments. The facility has never had three imports in a single year since its opening. In fact, no quarantines at all occurred for two years (1986 and 1990), two imports each for only three years (1993, 1996 and 1998), and the remaining years have had only one import each year. Thus, up to two-thirds of operational costs have had to be covered from agency funds. During a non-used year, approximately $390,000 had to be allocated, from the agency budget, just to maintain the facility. In a partial-use year the deficits ranged between $130,000 and $260,000. Over the duration of the facility, the agency has diverted approximately $4 million in nominal dollars, or about $6.4 million in 1998 dollars, for operational expenditures to keep the facility ready for very few users.

These deficit amounts do not reflect the depreciation of the component parts of the facility and of replacement needs. While the property presently has no other purpose except maintaining readiness for the small number of importers of special livestock from countries that are not free from FMD, equipment, supplies and the physical plant still lose their value, whether with disuse or use, as they wear out or become obsolete. Furthermore, as the facility has aged, maintaining the building in useable condition has required more frequent upgrading of its components, which have varying degrees of life expectancy. The annual adjusted depreciation value of the various physical components of the facility is approximately $93,776 (obtained by straight line depreciation of all replaceable assets and equipment whose useful life is still active) or about $257/day. This is the cost of depreciation the facility has been incurring annually even with full use, the amount that should have been collected for the purpose of upgrading equipment. By initially excluding capital expenditures from the fee structure, the agency forfeited the opportunity to charge users approximately $1.8 million in nominal dollars (or about $2.4 million in 1998 dollars) that it could have been collecting over the entire period. Overall, the operational deficits and the capital expenditures have accounted for

about $8.8 million. If the facility were kept open, the agency would continue to incur similar losses, with only slight relief if these costs were prorated and added to user fees.

The agency has already spent over $1 million in the last five years to repair and modify an incinerator, test emissions, and replace stack pipes, in an effort to meet standards set by the U.S. Environmental Protection Agency (EPA) and the Florida Department of Environmental Protection (FDEP). Attempting to keep this aging facility in compliance with EPA/FDEP standards would continue to be expensive for the agency. (These needed repairs include repairing and upgrading the facility's wastewater treatment facility; replacing a generator, an incinerator, the roof, and underground fuel storage tanks; and upgrading the fire suppression/alarm and heating, ventilation, and air conditioning systems.) Currently about $4.5 million are needed to make the most urgently needed repairs. Closing the facility will make this unnecessary. The money and human resources needed to keep this facility operating can be diverted to other programs that play a more important role in protecting the United States against animal disease incursions. The cost of closing the facility, about $1 million, will be offset by the future saving the agency will realize.

Closure of the facility will not impact a substantial number of importers, because most importers do not use HSTAIC. Despite the original expectation that cattle and swine would be the predominant imports, over the last six years the facility has been used mainly by importers of llamas and alpacas. Using public funds in the maintenance of a facility that serves only specific importers places an undo burden on tax payers. This action is not expected to have a negative economic impact on this small number of entities, which can still import camelids into the United States from Chile and other countries, which are recognized as FMD free. The facility closure should produce positive budgetary impact for the agency.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Lists of Subjects

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 9 CFR parts 93, 94 and 130 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 is revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§§ 93.430 and 93.431 [Removed and reserved]

2. In part 93, §§ 93.430 and 93.431 are removed and reserved.

§§ 93.522 and 93.523 [Removed]

3. In part 93, §§ 93.522 and 93.523 are removed.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS.

4. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 135a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.1 [Amended]

5. In § 94.1, paragraph (b)(2) is removed and paragraphs (b)(3) and (b)(4) are redesignated as paragraphs (b)(2) and(b)(3), respectively.

PART 130—USER FEES

6. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a, 7 CFR 2.22, 2.80, and 371.2(d).

§ 130.1 [Amended]

7. In § 130.1, the definition of *Animal Import Center is* amended by removing the last sentence.

Done in Washington, DC, this 12th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30973 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–29–AD; Amendment 39–10899; AD 98–24–13]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH (ECD) (Eurocopter) Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Eurocopter Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, that currently requires initial and repetitive inspections of both surfaces of the tail boom vertical fin (vertical fin) spar, the skin, and the left-hand and right-hand frame sheets for cracks or loose rivets. That AD also requires repairing certain cracks, if found, and repairing and reporting those loose rivets and certain other cracks, if found. This amendment requires the same inspections, repairs, and reporting as the existing AD, but changes the reference to the service bulletin and

prohibits the use of blind rivets for the vertical fin spar repair. This amendment is prompted by an accident that occurred on April 15, 1997, resulting in one fatality. The actions specified by this AD are intended to prevent failure of the vertical fin and subsequent loss of control of the helicopter.

DATES: Effective December 4, 1998.

The incorporation by reference of Eurocopter Alert Service Bulletin MBB–BK 117–30–106, Revision 4, dated December 19, 1997, as listed in the regulations, is approved by the Director of the Federal Register as of December 4, 1998.

The incorporation by reference of Eurocopter Alert Service Bulletin No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of October 24, 1997 (62 FR 52655, October 9, 1997).

Comments for inclusion in the Rules Docket must be received on or before January 19, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–29–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Monschke, Aerospace Engineer, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On April 25, 1997, the FAA issued priority letter AD 97–09–16, to require inspecting both surfaces of the vertical fin spar, part number (P/N) 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the second lightening hole from the top of the vertical fin spar to the bottom edge of the fourth lightening hole, the outer skin (skin), and the left-hand and right-hand frame plates for cracks, loose rivets, or other anomalies. That priority letter AD required that the inspection be performed before further flight, then repeated at intervals not to exceed 100 hours time-in-service (TIS). That action was prompted by an accident involving a Eurocopter Model MBB–BK117 series helicopter that occurred on April 15, 1997, resulting in one fatality. A subsequent investigation revealed that the vertical fin had failed as a result of a fatigue crack that initiated on the left side of the vertical fin. The crack propagated across the spar cap and spar. A crack in the skin propagated horizontally toward the vertical fin leading edge until catastrophic overstress occurred. Inspections of other helicopters of the same type design revealed cracks in the vertical fin spars of three additional helicopters. That condition, if not corrected, could result in failure of the vertical fin and subsequent loss of control of the helicopter.

On September 26, 1997 the FAA issued AD 97–20–16, Amendment 39–10153 (62 FR 52655, October 9, 1997), superseding priority letter AD 97–09–16 to require the same initial and repetitive inspections of the vertical fin spar, and additionally, requiring the repair of certain cracks, if found, and reporting and repairing loose rivets and certain other cracks. That action was prompted by the issuance of Eurocopter Alert Service Bulletin (ASB) No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, which contains repair procedures for the cracks that were unavailable at the time of the release of priority letter AD 97–09–16. The requirements of both those ADs are intended to prevent failure of the vertical fin spar and subsequent loss of control of the helicopter.

Since the issuance of AD 97–20–16, Eurocopter has issued Eurocopter ASB MBB–BK117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, which replaces all previous revisions and specifies repair procedures for the spar cap as well as inspection requirements. It also deletes a reference that allows the use of blind rivets for the vertical fin spar repair.

These helicopter models are manufactured in The Federal Republic of Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Luftahrt-Bundesamt (LBA), the airworthiness authority for The Federal Republic of Germany, has kept the FAA informed of the situation described above. The LBA superseded AD No. 97–144/2, dated June 5, 1997, with AD 1997–144/3, effective May 11, 1998. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters of the same type design, this AD supersedes AD 97–20–16, Amendment 39–10153 (62 FR 52655, October 9, 1997) to require inspecting both surfaces of the vertical fin spar, P/N 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the third lightening hole from the top of the vertical fin spar to halfway between the fourth and fifth lightening hole (see Figure 1 for description of area to be inspected), the skin, and the left-hand and right-hand frame sheets for cracks or loose rivets. This inspection must be repeated at intervals not to exceed 100 hours TIS until the repair is accomplished. If a crack is found in the area of the fourth lightening hole of the vertical fin spar, including a crack in the cap or "c" channel area of the spar, or in the left-hand frame sheet, P/N 105–304161 or P/N 1120–30416, or in the right-hand frame sheet, P/N 105–304211 or P/N 1120–30421, before further flight, the crack must be repaired in accordance with the repair instructions that are an Appendix titled "Repair of BK117 Vertical Fin" to Eurocopter ASB MBB–BK 117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted. Thereafter, this AD requires that a visual inspection for cracks be performed at intervals not to exceed 300 hours TIS. If a crack or loose rivet is found in the area other than that described in paragraph (a) of this AD, including any crack that is found to extend into the skin, P/N 105–304011.18 or P/N 1120–30402.0, contact the Rotorcraft Standards Staff before further flight for further evaluation. If no crack is found, the repetitive visual inspection for cracks is required at intervals not to exceed 100 hours TIS until the repair specified in the repair instruction is accomplished. The repair must be accomplished within 600 hours TIS after October 24, 1997. Thereafter, the repetitive visual inspections for cracks are required at intervals not to exceed 300 hours TIS. The actions are required to be accomplished in accordance with the service bulletins described. The

short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, inspections, reporting, and repairs, if necessary, are required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 132 helicopters will be affected by this AD, that it will take approximately 4 work hours for each inspection and 35 hours for each repair, if necessary, per helicopter, and that the average labor rate is $60 per work hour. Required parts will cost approximately $302 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $348,744, assuming one inspection and one repair per helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–29–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10153 (62 FR 52655, October 9, 1997), and by adding a new airworthiness directive (AD), Amendment 39–10899, to read as follows:

AD 98–24–13 Eurocopter Deutschland GmbH (ECD): Amendment 39–10899. Docket No. 98-SW–29–AD. Supersedes AD 97–20–16, Amendment 39–10153, Docket No. 97–SW–15–AD.

Applicability: Model MBB–BK117 A–1, A–3, A–4, B–1, B–2, and C–1 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (f) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the tail boom vertical fin (vertical fin) and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove the tail rotor drive shaft between the intermediate and tail rotor gearboxes and the yaw servo (if installed). Thoroughly clean the vertical fin spar and adjacent areas and visually inspect the following for cracks or loose rivets:

(1) Both surfaces of the vertical fin spar, part number (P/N) 105–304061.03, P/N 1120–30406.03, or P/N 117–30423–03, paying particular attention to the area extending from the top edge of the third lightening hole from the top of the vertical fin spar to halfway between the fourth and fifth lightening hole (see Figure 1).

(2) The skin and left-hand and right-hand frame sheets.

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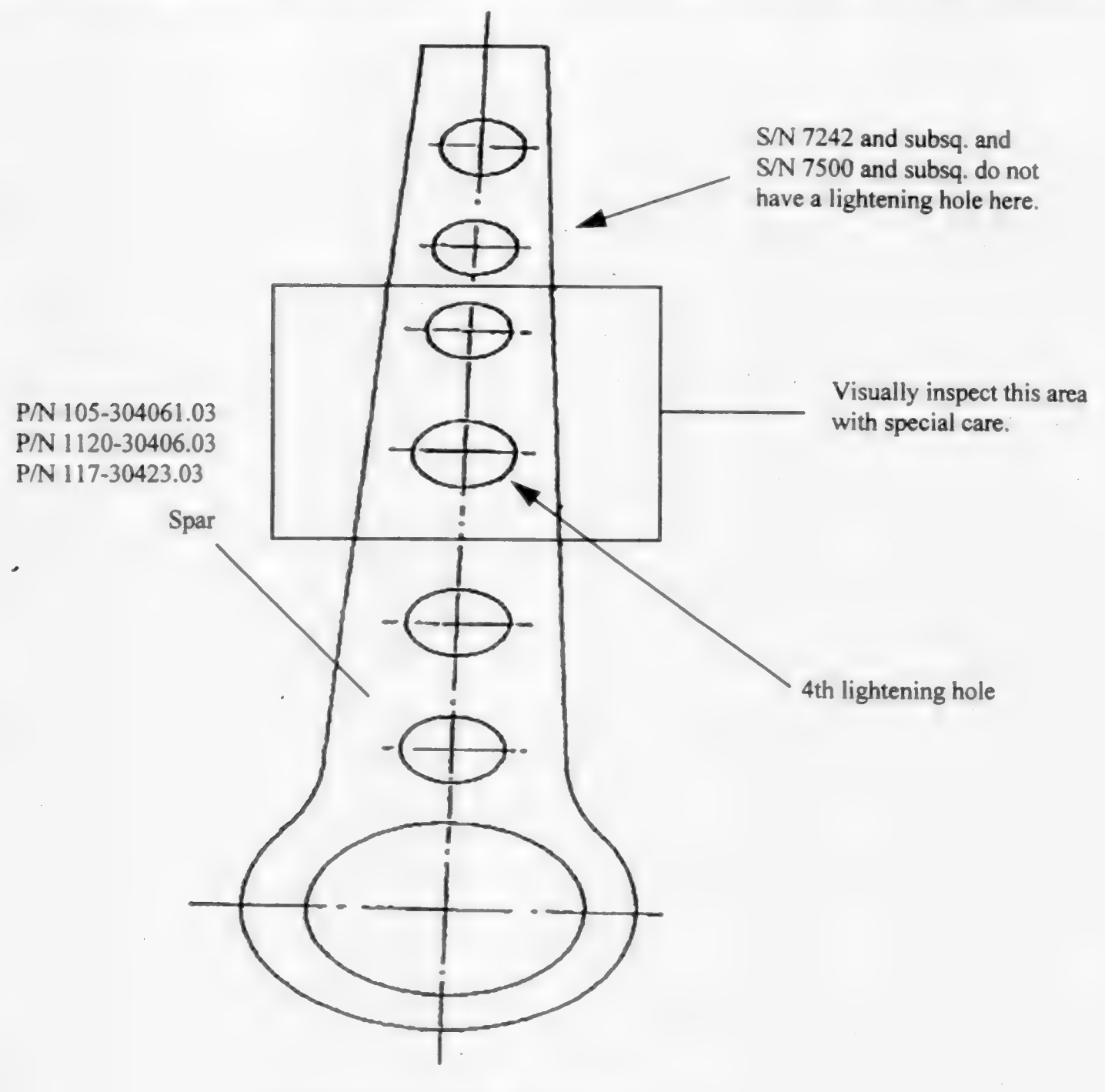

Figure 1

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(b) If a crack or loose rivet is found in the area described in paragraph (a) of this AD (see Figure 1), before further flight, repair in accordance with the Appendix, "Repair of BK117 Vertical Fin", to Eurocopter Alert Service Bulletin (ASB) MBB–BK 117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted.

Thereafter, perform the inspection described in paragraph (a) of this AD at intervals not to exceed 300 hours TIS.

(c) If a crack or loose rivet is found in the area other than that described in paragraph (a) of this AD, including any crack that is found to extend into the skin, P/N 105–304011.18 or P/N 1120–30402.08, before further flight, contact the Rotorcraft Standards Staff. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(d) If no crack or loose rivet is found as a result of the inspection required by paragraph (a) of this AD, until the repair is made in accordance with the Appendix, "Repair of BK117 Vertical Fin," to Eurocopter ASB MBB–BK 117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with the Appendix, "Repair of BK117 Vertical Fin," to Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted, perform the visual inspection required by paragraph (a) of

this AD at intervals not to exceed 100 hours TIS.

(e) Within 600 hours TIS after October 24, 1997, accomplish the repair to the vertical fin in accordance with the Appendix, "Repair of BK117 Vertical Fin," to Eurocopter ASB MBB–BK–117 No. ASB–MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with the Appendix, "Repair of BK117 Vertical Fin," to Eurocopter ASB No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted. If blind rivets were previously used to accomplish the vertical fin repair, they must be removed and replaced with solid rivets to comply with the requirements of this AD. Thereafter, perform the visual inspection required by paragraph (a) of this AD at intervals not to exceed 300 hours TIS.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(g) Special flight permits will not be issued.

(h) The inspections and repairs shall be done in accordance with the Appendix, "Repair of BK117 Vertical Fin," to Eurocopter Alert Service Bulletin MBB–BK 117–30–106, Revision 4, dated December 19, 1997, or in accordance with the Appendix, "Repair of BK117 Vertical Fin," to Eurocopter Alert Service Bulletin No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, except use of blind rivets is not permitted. The incorporation by reference of Eurocopter Alert Service Bulletin No. MBB–BK 117–30–106, Revision 3, dated May 5, 1997, was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of October 24, 1997 (62 FR 52655, October 9, 1997). The incorporation by reference of Eurocopter Alert Service Bulletin MBB–BK 117–30–106, Revision 4, dated December 19, 1997, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: Accomplishment of the requirements of Revision 3 of the referenced service bulletin, except for using solid rivets instead of blind rivets, or Revision 4 of the referenced service bulletin constitutes compliance with the requirements of this AD.

(i) This amendment becomes effective on December 4, 1998.

Note 4: The subject of this AD is addressed in Luftahrt-Bundesamt (Germany) AD 1997–144/3, effective May 11, 1998.

Issued in Fort Worth, Texas, on November 12, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–30788 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–39]

Amendment to Class E Airspace; Great Bend, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Great Bend, KS.

DATE: The direct final rule published at 63 FR 51812 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51812). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 1998.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30931 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–40]

Amendment to Class E Airspace; Pittsburgh, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Pittsburgh, KS.

DATE: The direct final rule published at 63 FR 51811 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51811). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice conforms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30930 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–41]

Amendment to Class E Airspace; Ulysses, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Ulysses, KS.

DATE: The direct final rule published at 63 FR 51809 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51809). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice that this direct final rule will become effective on that date.

Issued in Kansas City, MO on October 27, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30929 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–45]

Amendment to Class E Airspace; Burlington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Coffey County Airport, Burlington, KS. The FAA has developed Global Positioning System (GPS) Runway (RWY) 18 and RWY 36 Standard Instrument Approach Procedures (SIAPs) to serve Coffey County Airport, KS. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 18 and GPS RWY 36 SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the GPS RWY 18 and GPS RWY 36 SIAPs and to segragate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before January 11, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–45, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 18 and GPS RWY 36 SIAPs to serve the Coffey County Airport, Burlington, KS. The amendment to Class E airspace at Burlington, KS, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register,** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–45." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Burlington, KS [Revised]

Coffey County Airport, KS
(Lat. 38°18′09″N., long. 95°43′30″W.)
Boyd NDB
(Lat. 38°17′59″N., long. 95°43′18″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Coffey County Airport and within 2.5 miles each side of the 182° bearing from the Boyd NDB extending from the 6.5-mile radius to 9 miles south of the airport, and within 4 miles each side of the 360° bearing from the airport extending from the 6.5-mile radius to 8.6 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on October 29, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30928 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–47]

Amendment to Class E Airspace; Grinnell, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Grinnell Regional Airport, Grinnell, IA. The FAA has developed Global Positioning System (GPS) Runway (RWY) 13 and GPS RWY 31 Standard Instrument Approach Procedures (SIAPs) to serve Grinnell Regional Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrumental Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 13 and GPS RWY 31 SIAPs in controlled airspace. The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 13 and GPS RWY 31 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, March 25, 1999.

Comments for inclusion in the Rules Docket must be received on or before December 26, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–47, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 13 and GPS RWY 31 SIAPs to serve the Grinnell Regional Airport, Grinnell, IA. The amendment to Class E airspace at Grinnell, IA, will provide additional controlled airpsace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the

date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–ACE–47." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Grinnell, IA [Revised]

Grinnell Regional Airport, IA
(Lat. 41°42′33″N., long. 92°44′06″W.)
Grinnell NDB
(Lat. 41°42′35″N., long. 92°43′47″W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of Grinnell Regional Airport.

* * * * *

Issued in Kansas City, MO, on October 28, 1998.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 98–30927 Filed 11–1–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

[Docket No. 970728182–8272–02; I.D. 071697A]

RIN 0648–AG16

Magnuson-Stevens Act Provisions; Financial Disclosure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the rules of conduct and financial disclosure regulations applicable to Regional Fishery Management Council (Council) nominees, appointees, and voting members. The revisions would implement a provision of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that was amended by the Sustainable Fisheries Act (SFA) in 1996. The new provision prohibits Council members from voting on matters that would have a significant and predictable effect on a financial interest disclosed in accordance with existing regulations.

DATES: Effective February 17, 1999.

ADDRESSES: Comments regarding burden-hour estimates for the collection-of-information requirements contained in this final rule should be sent to George H. Darcy, F/SF3, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Margaret Frailey Hayes, Assistant General Counsel for Fisheries, NOAA Office of General Counsel, 301–713–2231.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 1996, the President signed into law the SFA, which made numerous amendments to the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Among those amendments was a provision that prohibits Council members from voting on matters that would have a significant and predictable effect on a financial interest disclosed in accordance with existing regulations. On August 7, 1997, NMFS published a proposed rule at 62 FR 42474 to implement the financial disclosure provisions of the SFA; comments were requested through September 8, 1997. Additional background information was included in the preamble of that proposed rule, and is not repeated here.

Comments on the August 7, 1997, Proposed Rule and Responses

1. *Comment.* The Office of Government Ethics (OGE) questioned NMFS' legal authority for issuing the rule of conduct proposed for § 600.225(b)(8).

Response. NMFS has authority under the Magnuson-Stevens Act to prescribe uniform standards for the Councils' practices and procedures (section 302(f)(6)) and to promulgate rules to carry out the provisions of the Act (section 305(d)). The rule of conduct is really a paraphrase of 18 U.S.C. 208; § 600.225(b)(8)(i) has been revised to match the statutory language more closely. Section 600.225(b)(8)(ii) continues the disqualification of all Council members from participating in matters "primarily of individual concern."

2. *Comment.* OGE stated that conduct rules for Council members should be issued as supplemental regulations to the standards of conduct to which all Federal employees are subject.

Response. That suggestion is inconsistent with an opinion of the Office of Legal Counsel, Department of Justice, dated December 9, 1993, which held that Council members are not Federal employees subject to the Executive Order on ethics or to the Government-wide standards of conduct. (Note, however, that Council members are considered special Government employees for purposes of the Federal conflict-of-interest statute, 18 U.S.C. 208.)

3. *Comment.* OGE found the proposed rule unclear as to who must file a financial disclosure report, i.e., whether all members and nominees must file, or only those with interests in harvesting, processing, or marketing activities. It also found the proposed rule overly broad in requiring affected individuals to disclose interests in an industry related to harvesting, processing, or marketing activities.

Response. NMFS has long interpreted section 302(j)(2) to require affected individuals to disclose financial interests in activities *related* to harvesting, processing, or marketing. If NMFS had read the financial-disclosure provision as narrowly as OGE suggests, many Council members such as fisheries association officers would have been subject to criminal liability under 18 U.S.C. 208. They would have been unable even to participate in Council deliberations on issues affecting their employment or other fiduciary interests. NMFS believes that Congress intended in the 1986 amendments to the Magnuson Act to allow persons with financial interests in activities related to harvesting, processing, or marketing to continue serving on Councils on the same footing as persons with more direct interests. The "price" of this participation was the disclosure of those interests, so that the public could be informed of possible biases by members affiliated with certain sectors of the fishing industry. In the 1996 amendments to the Magnuson-Stevens Act, Congress indicated no dissatisfaction with the agency's practice of requiring disclosure of financial interests in related activities, and did not amend section 302(j)(2).

4. *Comment.* Another commenter pointed out a perceived inconsistency in the proposed rule between the broad scope of the requirement for disclosing financial interests, and the narrow scope of financial interests that would disqualify a member from voting. The commenter would prefer that the disqualifying financial interests be broadened to match the disclosed interests, so that representatives of fishing industry groups would be subject to the recusal provisions of the SFA.

Response. The legislative history of the 1996 amendments to the Magnuson-Stevens Act indicates that Congress was concerned about members whose votes on Council actions might result in direct gain or loss to themselves or their companies. The SFA disqualifies members from voting on decisions that would have a "significant and predictable effect" on their financial interests. That phrase was defined as "a close causal link between the Council decision and an expected and substantially disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery." In developing the proposed rule, and again in considering the final rule, NMFS focused on the comparative aspect of the defined term. The disqualifying effect is not that the Council action will have a significant impact on the member's financial interest; the action must have a disproportionate impact as compared with that of other participants in the fishery sector. Therefore, the criteria for recusal are limited to persons whose financial interests are directly linked to harvesting, processing, or marketing activities.

5. *Comment.* OGE suggested that NMFS require all affected individuals to file a confidential disclosure of all their financial interests, in addition to the financial disclosure report required by the Magnuson-Stevens Act to be filed by affected individuals who have financial interests in harvesting, processing, or marketing activities.

Response. As noted above, Council members are not Federal employees for purposes of the OGE regulations. There is no explicit authority in the Magnuson-Stevens Act for requiring confidential financial disclosure, but NMFS expects that affected individuals with financial interests that are not required to be disclosed would seek advice from Departmental counsel regarding their participation in matters before their Councils.

6. *Comment.* OGE stated that members' financial disclosure forms should be available for inspection at Council meetings.

Response. NMFS agrees. This requirement appears in the current rule, and in the final rule at § 600.235(b)(3).

7. *Comment.* OGE found the criterion of a 10-percent share of an industry to be huge, eviscerating any potential restriction on industry participants. Besides lowering the percentage, OGE suggested a standard that would incorporate a dollar amount for the gross value of the individual's landings of fish.

On the other hand, the Western Pacific Fishery Management Council said that 10 percent is too low for small fisheries. The Council proposed a tiered approach for the Western Pacific, with a standard of 50 percent for fisheries smaller than 50 vessels; 25 percent for fisheries between 51 and 100 vessels; 15 percent for fisheries between 101 and 200 vessels; and 10 percent for fisheries larger than 200.

Response. NMFS does not believe a monetary standard, whether value of landings, value of fish processed, or value of fish marketed, is workable. OGE objected to the NMFS proposal but provided no alternative proportion, nor

did it provide any quantitative data or qualitative information to support its position.

While NMFS has no quantitative data on which to base the selection of 10 percent as the disqualifying industry share, qualitative information available from existing disclosure forms and other sources indicates that this value would accomplish the Congressional intent of disqualifying from voting only those current Council members whose financial interests would be disproportionately affected by Council actions, in comparison with the financial interests of other participants in the fishery sector.

NMFS does not agree with the suggested tiered approach for the Western Pacific, because a Council member owning nearly half the vessels in a small fishery would be able to vote on a matter that could disproportionately benefit his or her financial interest. NMFS received no other suggestions for a tiered approach, although the proposed rule specifically invited comments on this issue.

8. *Comment.* OGE questioned the need for a provision for voluntary recusal, at § 600.235(d), and its limitation to only those financial interests that have been disclosed.

Response. Any Council member may decline to vote on a matter before the Council for any reason. NMFS included a provision to remind members of this.

9. *Comment.* OGE was troubled by the statutory allowance of participation in deliberations by members who are recused, because active participation may have as much effect on the outcome as a vote. OGE recommended that § 600.235(e) be amended to clarify that only those who are recused under section 302(j) of the Magnuson-Stevens Act are allowed to participate, while members with other types of financial interests may be precluded from participating under 18 U.S.C. 208.

Response. This provision has been revised in accordance with OGE's recommendation with respect to particular matters of individual concern.

10. *Comment.* Concerning § 600.235(f)(4), OGE asked what would happen to a Council decision if the designated official determined that a Council member could vote, another Council member requested a review of that determination, and the NOAA General Counsel found that the member should not have voted.

Response. The provision has been clarified, at § 600.235(f)(5), to indicate, in accordance with section 302(j)(7)(E) of the Magnuson-Stevens Act, that the eventual ruling by the NOAA General Counsel will not disturb the Council decision.

11. *Comment.* The Western Pacific Fishery Management Council asked why a Council member should have the opportunity to request a review of a determination, if there will be no effect on the Council decision.

Response. Section 302(j)(7) of the Magnuson-Stevens Act provides for the request for a review, but states that the eventual ruling is not cause for invalidation or reconsideration of the Council's decision by the Secretary. The Council itself might decide to vote on the issue again at a later meeting, if review of the determination reversed the initial ruling. The General Counsel's ruling would also have precedential value for subsequent determinations.

12. *Comment.* OGE asked whether one Council member can question another member's action, if the designated official has not made a determination.

Response. There is legislative history indicating that only the member whose action is in question may request a determination by the designated official. Another member, however, is free to bring the issue to the attention of the designated official, who would then consider making a determination on his/her own initiative under § 600.235(f)(2).

Changes From the August 7, 1997, Proposed Rule

Section 600.225(b)(8)(i) has been revised to track more closely the provisions of 18 U.S.C. 208. Unless exempted, a Council member may not participate personally and substantially in a particular matter in which the individual, family members, or business associates have a financial interest. This rule of conduct does not apply to financial interests required to be disclosed under § 600.235(b), nor to members who are exempt under 18 U.S.C. 208(b) (1) or (2). Section 600.225(b)(8)(ii) continues the disqualification of all Council members from participating in matters "primarily of individual concern."

A definition of "Council decision" has been added to clarify that the recusal requirements do not apply to actions by Council committees. A committee vote is not binding on the Council and thus cannot have a "significant and predictable effect" on a member's financial interest. Under § 600.235(e), however, an affected individual who will be recused from voting on a Council decision must notify the Council of the recusal before participating in committee deliberations.

A definition of "financial interest in harvesting, processing, or marketing" has been added at § 600.235(a), to apply only to the disclosure and recusal provisions. The phrase "ownership interests" includes leases of fishing vessels and individual fishing quotas.

Section 600.235(b)(1) has been revised to use the term "financial interest in harvesting, processing, or marketing," which allows removal of some text that is now covered in the definition.

A sentence in the current regulations, which was inadvertently omitted from the proposed rule, has been added to § 600.235(b)(3) to require that financial interest forms be made available at Council meetings and hearings.

Two sentences have been added at the end of § 600.235(c)(2) to specify that financial interests of affected individuals and other participants will be judged based on the most recent fishing year for which information is available. For IFQ fisheries, however, the judgment will be based on the percentage of IFQs assigned to the affected individual.

Section 600.235(e) has been revised to clarify that only those recused under this section may participate in Council deliberations; members with financial interests in a particular matter, other than harvesting, marketing, or processing, may not participate if precluded by 18 U.S.C. 208 and § 600.225(b)(8)(i).

Section 600.235(f)(4) directs Council Chairs not to count the vote of a member who attempts to vote despite a recusal determination.

Section 600.235(f)(5) clarifies that the NOAA General Counsel's ruling on review of a recusal determination is not cause for invalidation or reconsideration of the Council's decision by the Secretary.

Section 3507 of the Paperwork Reduction Act (PRA) requires agencies to inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) of 15 CFR identifies the location of NOAA regulations for which OMB control numbers have been issued. This final rule amends § 902.1(b) by adding the control number for this collection of information.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial

number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. This collection-of-information requirement has been approved by OMB under control number 0648–0192. Public reporting burden is estimated to average 35 minutes per response to fill out and submit the Financial Interest Form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: November 13, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by adding in numerical order the following entry to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
• • •	• • •
50 CFR	
• • •	• • •
600.235	–0192
• • •	• • •

* * * * *

50 CFR Chapter VI

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

3. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.225, the last sentence in paragraph (b)(4) is removed, and paragraph (b)(8) is revised to read as follows:

§ 600.225 Rules of conduct.

* * * * *

(b) * * *

(8)(i) Except as provided in § 600.235(h) or in 18 U.S.C. 208, no Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter in which the member, the member's spouse, minor child, general partner, organization in which the member is serving as officer, director, trustee, general partner, or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment, has a financial interest. (Note that this financial interest is broader than the one defined in § 600.235(a).)

(ii) No Council member may participate personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest, even if the interest has been disclosed in accordance with § 600.235.

5. Section 600.235 is revised to read as follows:

§ 600.235 Financial disclosure.

(a) *Definitions.* For purposes of § 600.235:

Affected individual means an individual who is—

(1) Nominated by the Governor of a state or appointed by the Secretary of Commerce to serve as a voting member of a Council in accordance with section 302(b)(2) of the Magnuson-Stevens Act; or

(2) A representative of an Indian tribe appointed to the Pacific Council by the Secretary of Commerce under section 302(b)(5) of the Magnuson-Stevens Act who is not subject to disclosure and recusal requirements under the laws of an Indian tribal government.

Council decision means approval of a fishery management plan (FMP) or FMP amendment (including any proposed regulations); request for amendment to regulations implementing an FMP; finding that an emergency exists involving any fishery (including recommendations for responding to the emergency); and comments to the Secretary on FMPs or amendments developed by the Secretary. It does not include a vote by a committee of a Council.

Designated official means an attorney designated by the NOAA General Counsel.

Financial interest in harvesting, processing, or marketing (1) includes:

(i) Stock, equity, or other ownership interests in, or employment with, any company, business, fishing vessel, or other entity engaging in any harvesting, processing, or marketing activity in any fishery under the jurisdiction of the Council concerned;

(ii) Stock, equity, or other ownership interests in, or employment with, any company or other entity that provides equipment or other services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned, such as a chandler or a dock operation.

(iii) Employment with, or service as an officer, director, or trustee of, an association whose members include companies, vessels, or other entities engaged in harvesting, processing, or marketing activities, or companies or other entities providing services essential to harvesting, processing, or marketing activities in any fishery under the jurisdiction of the Council concerned; and

(iv) Employment with an entity providing consulting, legal, or representational services to any entity engaging in, or providing equipment or services essential to, harvesting, processing, or marketing activities in any fishery under the jurisdiction of the

Council concerned, or to any association whose members include entities engaged in the activities described in paragraphs (1) (i) and (ii) of this definition;

(2) Does not include stock, equity, or other ownership interests in, or employment with, an entity engaging in advocacy on environmental issues or in scientific fisheries research in any fishery under the jurisdiction of the Council concerned, unless it is covered under paragraph (1) of this definition. A financial interest in such entities is covered by 18 U.S.C. 208, the Federal conflict-of-interest statute.

(b) *Reporting.* (1) The Magnuson-Stevens Act requires the disclosure by each affected individual of any financial interest in harvesting, processing, or marketing activity, and of any such financial interest of the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88–195, "Statement of Financial Interests for Use by Voting Members and Nominees of Regional Fishery Management Councils" (Financial Interest Form), or such other form as the Secretary may prescribe.

(2) The Financial Interest Form must be filed by each nominee for Secretarial appointment with the Assistant Administrator by April 15 or, if nominated after March 15, 1 month after nomination by the Governor. A seated voting member appointed by the Secretary must file a Financial Interest Form with the Executive Director of the appropriate Council within 45 days of taking office; must file an update of his or her statement with the Executive Director of the appropriate Council within 30 days of the time any such financial interest is acquired or substantially changed by the affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee; and must update his or her form annually and file that update with the Executive Director of the appropriate Council by February 1 of each year.

(3) The Executive Director must, in a timely manner, provide copies of the financial disclosure forms and all updates to the NMFS Regional Administrator for the geographic area concerned, the Regional Attorney who advises the Council, the Department of Commerce Assistant General Counsel for Administration, and the NMFS Office of Sustainable Fisheries. The completed financial interest forms will be kept on file in the office of the NMFS Regional Administrator for the geographic area concerned and at the Council offices, and will be made available for public inspection at such offices during normal office hours. In addition, the forms will be made available at each Council meeting or hearing.

(4) Councils must retain the disclosure form for each affected individual for at least 5 years after the expiration of that individual's last term.

(c) *Restrictions on voting.* (1) No affected individual may vote on any Council decision that would have a significant and predictable effect on a financial interest disclosed in his/her report filed under paragraph (b) of this section.

(2) As used in this section, a Council decision will be considered to have a "significant and predictable effect on a financial interest" if there is a close causal link between the decision and an expected and substantially disproportionate benefit to the financial interest in harvesting, processing, or marketing of any affected individual or the affected individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee, relative to the financial interests of other participants in the same gear type or sector of the fishery. The relative financial interests of the affected individual and other participants will be determined with reference to the most recent fishing year for which information is available. However, for fisheries in which IFQs are assigned, the percentage of IFQs assigned to the affected individual will be dispositive.

(3) "Expected and substantially disproportionate benefit" means a quantifiable positive or negative impact with regard to a matter likely to affect a fishery or sector of the fishery in which the affected individual has a significant interest, as indicated by:

(i) A greater than 10-percent interest in the total harvest of the fishery or sector of the fishery in question;

(ii) A greater than 10-percent interest in the marketing or processing of the total harvest of the fishery or sector of the fishery in question; or

(iii) Full or partial ownership of more than 10 percent of the vessels using the same gear type within the fishery or sector of the fishery in question.

(d) *Voluntary recusal.* An affected individual who believes that a Council decision would have a significant and predictable effect on that individual's financial interest disclosed under paragraph (b) of this section may, at any time before a vote is taken, announce to the Council an intent not to vote on the decision.

(e) *Participation in deliberations.* Notwithstanding paragraph (c) of this section, an affected individual who is recused from voting under this section may participate in Council and committee deliberations relating to the decision, after notifying the Council of the voting recusal and identifying the financial interest that would be affected.

(f) *Requests for determination.* (1) At the request of an affected individual, the designated official shall determine for the record whether a Council decision would have a significant and predictable effect on that individual's financial interest. The determination will be based upon a review of the information contained in the individual's financial disclosure form and any other reliable and probative information provided in writing. All information considered will be made part of the public record for the decision. The affected individual may request a determination by notifying the designated official—

(i) Within a reasonable time before the Council meeting at which the Council decision will be made; or

(ii) During a Council meeting before a Council vote on the decision.

(2) The designated official may initiate a determination on the basis of—

(i) His or her knowledge of the fishery and the financial interests disclosed by an affected individual; or

(ii) Written and signed information received within a reasonable time before a Council meeting or, if the issue could not have been anticipated before the meeting, during a Council meeting before a Council vote on the decision.

(3) At the beginning of each Council meeting, or during a Council meeting at any time reliable and probative information is received, the designated official shall announce the receipt of information relevant to a determination concerning recusal, the nature of that information, and the identity of the submitter of such information.

(4) If the designated official determines that the affected individual may not vote, the individual may state for the record how he or she would have voted. A Council Chair may not allow such an individual to cast a vote.

(5) A reversal of a determination under paragraph (g) of this section may not be treated as cause for invalidation or reconsideration by the Secretary of a Council's decision.

(g) *Review of determinations.* (1) Any Council member may file a written request to the NOAA General Counsel for review of the designated official's determination. A request for review must be received within 10 days of the determination.

(2) A request must include a full statement in support of the review, including a concise statement as to why the Council's decision did or did not have a significantly disproportionate benefit to the financial interest of the affected individual relative to the financial interests of other participants in the same gear type or sector of the fishery, and why the designated official's determination should be reversed.

(3) If the request for review is from a Council member other than the affected individual whose vote is at issue, the requester must provide a copy of the request to the affected individual at the same time it is submitted to the NOAA General Counsel. The affected individual may submit a response to the NOAA General Counsel within 10 days from the date of his/her receipt of the request for review.

(4) The NOAA General Counsel must complete the review and issue a decision within 30 days from the date of receipt of the request for review. The NOAA General Counsel will limit the review to the record before the designated official at the time of the determination, the request, and any response.

(h) *Exemption from other statutes.* The provisions of 18 U.S.C. 208 regarding conflicts of interest do not apply to an affected individual who is in compliance with the requirements of this section for filing a financial disclosure report.

(i) *Violations and penalties.* It is unlawful for an affected individual to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required by this section, or to knowingly vote on a Council decision in violation of this section. In addition to the penalties applicable under § 600.735, a violation of this provision may result in removal of the affected individual from Council membership.

[FR Doc. 98–30898 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8784]

RIN 1545–AV89

Substantiation of Business Expenses—Use of Mileage Allowances to Substantiate Automobile Expenses; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to Treasury Decision 8784, which was published in the **Federal Register** on Thursday, October 1, 1998 (63 FR 52600) relating to the use of mileage allowances to substantiate automobile business expenses.

DATES: This correction is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Donna Crisalli, (202) 622–4920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of this correction are under section 274 of the Internal Revenue Code.

Need for Correction

As published, TD 8784 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the temporary regulations (TD 8784), which were the subject of FR Doc. 98–26226, is corrected as follows:

§ 1.274(d) –1T [Corrected]

On page 52601, column 1, § 1.274(d)-1T(a)(1) and (2), the last line of the paragraph, the language "guidance, see § 1.274(d)-1(a)(1)." is corrected to read "guidance, see § 1.274(d)-1(a)(1) and (2).".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–30875 Filed 11–18–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD08–98–068]

RIN 2115–AE47

Drawbridge Operating Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Clinton Railroad Drawbridge, Mile 518.0, Upper Mississippi River. The drawbridge will require twenty-four hours advance notice for openings from 21 December 1998 to 1 March 1999. This temporary rule is issued to allow bridge maintenance during winter conditions when closures of Army Corps of Engineers' locks upstream and downstream from the bridge preclude normal waterway traffic.

DATES: This temporary rule is effective from 12:01 a.m. on December 21, 1998 until 12:01 a.m. on March 1, 1999.

ADDRESSES: The public docket and all documents referred to in this notice will be available for inspection and copying at room 2.107f in the Robert A. Young Federal Building at Director, Western Rivers, Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Weibusch, Bridge Administrator; Director, Western Rivers Operations, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone number 314–539–3900, extension 378.

SUPPLEMENTARY INFORMATION:

Background

On October 3, 1998, the Union Pacific Railroad Company requested a temporary change to the operation of the Clinton Railroad swing bridge across the Upper Mississippi River, Mile 518.0 at Clinton, Iowa. Union Pacific Railroad Company requested that navigation temporarily provide twenty-four hours advance notice for bridge operation to facilitate required bridge maintenance, between December 21, 1998 and March 1, 1999, when icing conditions and Army Corps of Engineers' lock closures preclude normal river traffic.

In accordance with 5 U.S.C. 533, a notice of proposed rulemaking has not been published and good cause exists

for making this rule effective in less than 30 days from publication since the details of the operation were not known until late October 1998. Thus, following normal rule making procedures would be impractical. Delaying implementation of the regulation will adversely impact navigation and would result in unnecessary additional operating costs to the bridge owner.

Discussion of Temporary Rule

The Clinton Railroad Drawbridge swingspan has a vertical clearance of 18.7 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. This temporary drawbridge operation amendment has been coordinated with the commercial waterway operators who do not object. Winter conditions on the Upper Mississippi River, coupled with the closure of Corps of Engineers' locks 11, 12, 19 and 20 until March of 1999, will result in a significant decrease in vessel traffic and therefore substantially reduce the demand for bridge openings.

The Clinton Railroad Drawbridge, Mile 518.0 Upper Mississippi River, is located downstream from Lock 12 and upstream from Lock 19. Performing maintenance on this bridge during the winter is preferred by both waterway users and bridge owners since very few vessels, if any, are impacted during this timeframe. If this maintenance were performed during the commercial navigation season, there would be a significant number of delays to vessel traffic caused by the prolonged bridge closures. Additionally, vessel traffic would be burdened with a 24-hour-advance notification requirement during the heavily transited commercial navigation season.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic will be virtually nonexistent as a result of planned lock closures and ice accumulations during the maintenance period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this action to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this temporary rule under the principles and criteria contained in Executive Order 12612 and has determined that this temporary rule does not raise sufficient implications of federalism to warrant the preparation of a Federalism Assessment. The authority to regulate the permits of bridges over the navigable waters of the U.S. belongs to the Coast Guard by Federal statutes.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(a) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 12:01 a.m. on December 21, 1998, through 12:01 a.m. on March 1, 1999, § 117.T408 is added to read as follows:

§ 117.T408 Upper Mississippi River.

Clinton Railroad Drawbridge Mile 518.0 Upper Mississippi River. From 12:01 a.m. on December 21, 1998 through 12:01 a.m. on March 1, 1999, the drawspan requires twenty-four hours advance notice for bridge operation. Bridge opening requests must be made 24 hours in advance by calling the Clinton Yardmaster's office at 319–244–3204 anytime; 319–244–3269 weekdays between 7 a.m. and 3:30 p.m.; or page Mr. Darrell Lott and 800–443–7243, PIN#009096.

Dated: November 6, 1998.

A.L. Gerfin, Jr.

Captain, U.S. Coast Guard Commander, 8th Coast Guard Dist. Acting.

[FR Doc. 98–30958 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 67–7142a; FRL—6188–1]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: Environmental Protection Agency (EPA) approves a minor revision to the State Implementation Plan (SIP) for Washington. Pursuant to section 110 (a) of the Clean Air Act (CAA), the Washington Department of Ecology (WDOE) submitted a request dated January 8, 1998, to EPA to revise the SIP and include a variance to a permit issued by a local air pollution control agency, the Puget Sound Air Pollution Control Agency (PSAPCA), to the U.S. Army for the operation of three heat recovery incinerators located at Fort Lewis.

DATES: This action is effective on January 19, 1999 without further notice, unless EPA receives adverse comment by December 21, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Ms. Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and WDOE, P.O. box 47600, Olympia, Washington 98504.

FOR FURTHER INFORMATION CONTACT: Mahbubul Islam, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6985.

SUPPLEMENTARY INFORMATION:

I. Background

WDOE submitted a revision of the Washington SIP to EPA dated January 8, 1998 consisting of a minor amendment to PSAPCA Regulations I, Article 3, Section 3.23, Alternate Means of Compliance, (new) Subsection NOC#7216.

The U.S. Army has requested a variance to a permit issued by the PSAPCA for the operation of three heat recovery incinerators located at Fort Lewis. Through the permit approval process, PSAPCA determined that the incinerators employed the best available control technology (BACT) and the toxic air contaminants would not exceed acceptable source impact levels. The permit required the facility to meet emission limits specified in EPA guidance and use good combustion practices to minimize emissions of hazardous air pollutants (HAPs). Fort Lewis performed source testing of the three incinerator units and demonstrated their ability to meet the permit emission limits. However, the heat recovery incinerators cannot comply with the residence time requirements in the WDOE solid waste incinerator rule (WAC 173–434–160). The intent of the residence time design requirement is to assure adequate control of emissions without requiring extensive testing. Fort Lewis requested a variance from the residence time requirements, and will instead demonstrate compliance through annual source testing as specified in the permit.

II. Summary of Action

EPA is, by today's action, approving a permit variance issued to the U.S. Army, operator and owner of three heat recovery incinerators at Fort Lewis. PSAPCA held a public hearing on this variance request on December 1, 1997 at Fort Lewis. In addition, after a thirty day comment period, the Board of Directors of PSAPCA and WDOE held public hearings on December 11, 1997. No public comment was received during the comment period.

The U.S. Army requests that three heat recovery incinerators at Fort Lewis be granted a variance to WAC 173–434 160(2), requiring a one second residence time at 1800° F for all combustion gases after the last over fire air port. Due to the limited size of the incinerator firebox, the volume of airflow at design temperatures does not allow a residence time of one second. In order to comply with the residence time requirement, major structural modifications need to be made. The U.S. Army estimated that such a change to the incinerator building would cost in excess of $5 million. Such an additional cost burden on the American taxpayer is unwarranted since all air emission standards will be met by alternative means and there is no environmental or public health hazard caused by non-compliance with the one second residence time rule.

The residence time requirement is intended to minimize the formation of Dioxin during the initial combustion of refuse. This regulation was enacted before the carbon injection became the control method to minimize Dioxin emissions from incinerators. The Fort Lewis incinerator injects powder activated carbon into the flue gases to remove Dioxin from the stack gases. Source testings at Fort Lewis incinerators show that their dioxin emissions to the atmosphere are well below acceptable limits specified in the permit. Fort Lewis will conduct annual emission testings to ensure that they meet the permit requirements and protect human health and environment.

This variance is requested for one year, during which time a permanent solution will be sought. Fort Lewis will cooperate with WDOE during the rule making process to revise the incinerator rule so that it allows demonstrating compliance with the intent of the regulation (control of HAPs) through alternative mechanisms.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective January 19, 1999 without further notice unless the Agency receives adverse comments by December 21, 1998.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on January 19, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997),

applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

Dated: November 3, 1998.

Jane S. Moore,

Acting Regional Administrator, Region X.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(78) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(78) EPA approves a minor revision to the SIP dated January 8, 1998 to include a variance to a permit issued to the U.S. Army for the operation of three heat recovery incinerators located at Fort Lewis by local air pollution control agency, the Puget Sound Air Pollution Control Agency.

(i) Incorporation by reference.

(A) Puget Sound Air Pollution Control Agency, Notice of Construction No. 7216, Date: Nov 25, 1997.

[FR Doc. 98–30847 Filed 11–18–98; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[HCFA–1049–FC]

RIN 0938–AJ26

Medicare Program; Limited Additional Opportunity to Request Certain Hospital Wage Data Revisions for FY 1999

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period provides hospitals with a limited additional opportunity to request certain revisions to their wage data used to calculate the FY 1999 hospital wage index. In addition, it explains the criteria that must be met to request a revision, the types of revisions that will be considered, the procedures for requesting a revision, the implementation of wage index revisions, and other related issues. Requests for wage data revisions must be received by the date and time specified in the "DATES" section of this preamble. We will implement revisions to the hospital wage index in accordance with this final rule with comment period on a prospective basis only.

DATES: *Effective date:* The provisions of this final rule with comment period are effective on November 19, 1998.

Request date: Requests for wage data revisions will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. eastern standard time on December 3, 1998.

Comment date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. eastern standard time on December 21, 1998.

ADDRESSES: *Request for wage data revisions:* Revision request must be sent to the following address: Health Care Financing Administration, Center for Health Plans and Providers, Division of Acute Care, Mail Stop: C4–05–27, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attention: Stephen Phillips.

Comments: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1049–FC, P.O. Box 7517, Baltimore, MD 21244–1850.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses: Room 443-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Information collection requirements: For comments that relate to information collection requirements, mail a copy of comments to the following: Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke HCFA–1049–NC, and the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4531.

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1049–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

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I. Introduction

Section 1886(d)(3)(E) of the Social Security Act (the Act) requires that, as part of the methodology for determining prospective payments to hospitals for inpatient operating costs, the Secretary must adjust standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In addition, section 1886(d)(3)(E) of the Act requires that the hospital wage index be updated annually and that updates or adjustments to the hospital wage index be budget neutral.

In the July 31, 1998 **Federal Register** (63 FR 40966), we published hospital inpatient prospective payment rates and policies for Federal fiscal year (FY) 1999, including the hospital wage index. The FY 1999 wage index is based on data from Medicare cost reports for cost reporting periods beginning in FY 1995. This cost report data is submitted by hospitals and certified by hospitals. Before the calculation of the FY 1999 hospital wage index was published on July 31, 1998, we provided opportunities to hospitals to request wage data revisions and to verify wage data in HCFA's files. We established

deadlines for requesting wage data revisions.

Notwithstanding these deadlines, numerous hospitals have contacted us to request revisions to the data reflected in the FY 1999 hospital wage index. Many of these requests relate to issues arising from hospitals failing to report costs in the first place and failing to request revisions, or hospitals that failed to verify the final wage data. However, it has come to our attention that certain aspects of the development of the FY 1999 wage index may have led to some confusion among the hospital community.

In light of the totality of the circumstances, as discussed below in section III of this preamble, we are providing hospitals with an additional opportunity to request limited types of revisions to the wage data used to calculate the FY 1999 hospital wage index. This final rule with comment period explains the types of revisions we will consider, the procedures for requesting revisions, the implementation of wage index revisions, and related issues.

II. Development of the FY 1999 Wage Index

As noted above, the FY 1999 hospital wage index is based on data submitted by hospitals on Medicare cost reports for cost reporting periods beginning in FY 1995. These cost reports reflected changes to the manner in which we required hospitals to report certain types of costs, in particular, certain "wage-related costs."

The development of the FY 1999 wage index also reflected changes to the process for requesting wage data revisions. Under the timetable for developing the wage index for FY 1998, we released a public use wage data file in mid-August 1997, and hospitals could request corrections for certain errors (data entry or tabulation errors) up until September 15, 1997 (after publication of the final rule on August 29, 1997, thus necessitating publication of a subsequent correction notice). For the development of the FY 1999 wage index, we revised the timetable for making available public use wage data files and for requesting revisions to wage data.

The new process was designed so that the wage index published in the final rule would incorporate all revisions, including those to correct data entry or tabulation errors by the intermediary or HCFA as reflected in a "final" public use file released prior to publication of the final rule. We gave hospitals opportunities to examine the wage data used to construct the proposed and the final FY 1999 hospital wage indices, by making available two public use data files containing the FY 1995 hospital wage data. In memoranda dated February 2 and April 21, 1998, we instructed Medicare fiscal intermediaries to inform the hospitals they serve of the availability of the wage data files and the process and time frame for hospitals to request revisions. The proposed and the final wage data files were made available February 6 and May 14, 1998, respectively, through the Internet on HCFA's home page (http://www.hcfa.gov). We instructed fiscal intermediaries to advise hospitals of the alternative availability of these data through their representative hospital organizations or directly from HCFA.

Thus, under the timetable for developing the FY 1999 wage index, we made available the final public use wage data file in May (rather than August) and hospitals had to request corrections for data entry or tabulation errors by the intermediary or HCFA by June 5, 1998 (rather than mid-September as in past years).

After developing the final wage index, it came to our attention that hospitals may have been confused by certain aspects of the development of the FY 1999 wage index, as discussed below.

III. Provisions of the Final Rule With Comment Period

A. Limited Additional Opportunity to Request Certain Wage Data Revisions for FY 1999

As explained further below, in this final rule with comment period, we are providing hospitals a limited opportunity to request limited types of revisions to the wage data used to calculate the FY 1999 wage index. We are also addressing related issues. We are providing hospitals with an additional opportunity to request certain limited types of revisions because of the unique confluence of circumstances relating to the development and application of the FY 1999 wage index (as explained further below).

B. Criteria for Requesting Revisions and Explanation of the Types of Revisions

We are providing a window of opportunity from the date of publication of this final rule with comment period until the date and time specified in the **DATES** section of this preamble for hospitals to request revisions to their FY 1995 wage data, if they meet one of the following criteria:

- The hospital's data on the May 1998 public use file is recorded as zero on Line 28 of Worksheet S–3, Part III (wage-related costs).
- The hospital's data on the May 1998 public use file is recorded as zero in either column 3 or 4 (but not both), with nonzero data in the other column, for Lines 2, 4, 6, or 33 of Worksheet S–3, Part III.
- The hospital properly requested a wage data revision by March 9, 1998, the fiscal intermediary approved a revision (as reflected in a revised Worksheet S–3), but the fiscal intermediary or HCFA made a data entry or tabulation error.

We address each category in more detail below. We will not consider requests for other types of revisions. Requests from hospitals meeting these criteria must be limited to these specific criteria.

1. Zero Wage-related Costs on Line 28 of Worksheet S–3, Part III

The Medicare cost reports for cost reporting periods beginning in FY 1995 reflected changes to the wage data portions (Parts II, III, and IV) of Worksheet S–3. The FY 1999 wage index reflects, for the first time, these changes to the cost report. We discussed these changes in the rulemaking process for FY 1995, and we see no reason why hospitals should not have properly reported these costs. Most hospitals did report these costs, but it has come to our attention that a number of hospitals incorrectly reported zero costs or otherwise did not include costs on Line 28 of Worksheet S–3, Part III (wage-related costs).

If the May 1998 public use file reflects zero wage-related costs for a hospital, the hospital may request a revision to Line 28 of Worksheet S–3, Part III. The hospital must provide adequate verifiable documentation to support the costs.

2. Zero Costs or Zero Hours (But Not Both) on Lines 2, 4, 6, or 33 of Worksheet S–3, Part III

For certain categories of costs, hospitals are required to report *both* hours and dollars. It has come to our attention that a number of hospitals reported either (1) nonzero dollars but zero hours or (2) nonzero hours but zero dollars, on Lines 2, 4, 6, or 33 of Worksheet S–3. To calculate each hospital's average hourly wage, we summed the dollars (Column 3) and hours (Column 4), respectively, for lines 2, 4, 6, 32, and 33. However, if a hospital reported zero dollars or zero hours, but not both, for any of these lines (this situation did not arise on line 32), we excluded the corresponding nonzero amount for that line in

calculating the hospital's average hourly wage.

Under this final rule with comment period, we are permitting hospitals to request revisions if the hospital improperly reported zero dollars or zero hours, but not both, for Lines 2, 4, 6, or 33 of Worksheet S–3. In order for a hospital's request for revision to be granted, a hospital must satisfactorily justify that these costs and hours should be included. For example, if a hospital reported $500,000 in physician Part A salaries but reported zero hours attributable to physician Part A services, in order for a request to be granted, the hospital must report accurate hours related to those costs or otherwise explain why that $500,000 should be included in the calculation.

3. Data Entry or Tabulation Errors

On May 14, 1998, we made available a "final" public use wage data file. In the May 8 proposed rule, we stated, "If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data," the hospital had to request a revision by June 5, 1998 in order for the data to be revised.

It has come to our attention that the revised timetable for releasing the final wage file (May, rather than August) and the revised deadline for requesting revisions for data entry or tabulation errors (June 5, rather than mid-September) may have led to some confusion. If a hospital properly requested a revision by March 9, 1998, and the fiscal intermediary approved the revision (as reflected in a revised Worksheet S–3), but there was an error in data entry or tabulation, we will consider a hospital's request for revision to the wage data notwithstanding the June 5, 1998 deadline. Thus, we are effectively extending the June 5, 1998 deadline for correcting certain data entry or tabulation errors.

C. Rationale for Accepting Limited Types of Revisions

We will consider requests only for the limited types of revisions specified above. We will not consider requests for other types of revisions.

We are providing for these limited revisions because of the totality of the circumstances, including—

- The number of hospitals contacting us about the same types of problems;
- The hardship that might result for a number of hospitals if we did not revise the wage data;
- The changes to the Medicare cost report, reflected for the first time in the FY 1999 wage index;
- The revised statutory timetable for publishing the proposed and final hospital inpatient prospective payment system rules, effective for the first time for FY 1999 (see section 4644 of the Balanced Budget Act of 1997); and
- The revised timetable for finalizing wage data (including the revised timetable for releasing the final public use wage data file and the revised timetable for requesting corrections of data entry and tabulation errors), applied for the first time in developing the FY 1999 wage index.

None of these factors, by itself, would be sufficient grounds for making a mid-year revision. For example, we believe we should not make a wage index revision merely because a single individual hospital might receive significantly lower payments as a result of its failure to properly report costs or its failure to properly request revisions and verify data. In deciding which types of revisions we would make, we considered the factors above not only in combination with each other, but also in light of the previous opportunities we provided to hospitals to verify data and request revisions.

We evaluated the totality of the circumstances and decided it was appropriate to make limited types of revisions. As indicated earlier, we believe most problems with wage data arise because hospitals fail to properly report costs on the cost report, fail to properly request revisions, or fail to verify the data that the intermediary and HCFA are using to calculate the wage index. We believe it would *not* be necessary or appropriate to consider, at this time, requests for any and all types of revisions to the FY 1995 wage data. We note that, if we permitted hospitals to request any and all revisions, it would presumably take longer for hospitals to receive revised wage indexes for FY 1999.

Also, we emphasize that this final rule with comment period should not be construed as an acknowledgment that the development of the FY 1999 wage index, as reflected in the July 31 **Federal Register**, was in any way unfair or unreasonable. Moreover, it should not be construed as an acknowledgment that mid-year corrections may be appropriate in other contexts or in other years. Many of our policies reflect balancing the competing considerations of finality, accuracy, and certainty, and many aspects of developing payment rates and policies require the use of the best data available *at the time*. As stated above, we are providing for limited wage data revisions for FY 1999 because of the totality of the circumstances in this context.

D. Procedures for Submission of Requests and Evaluation of Requests

A hospital seeking a revision to its FY 1995 wage data under the applicable criteria must submit a written request to *both* its fiscal intermediary and HCFA, clearly explaining the basis for the request. Each request must include all information and supporting documentation needed for HCFA and the fiscal intermediary to determine whether the request meets the applicable criteria, and to verify the accuracy of the requested revision.

A hospital seeking a revision must submit its request to the HCFA official whose name appears in the **ADDRESSES** section of the preamble. The request must be received by date and time specified in the **DATES** section of this preamble.

Upon receipt of a request for revision, HCFA will confer with the hospital's fiscal intermediary as necessary and appropriate. We will review each request and the supporting documentation and make a decision as to whether to grant the request in full, reject it in full, or grant it in part and reject it in part.

E. Implementation of Wage Index Revisions

We will implement the wage index revisions we make in accordance with the process described in this final rule with comment period on a prospective basis only. We note that the timing of wage index revisions, as well as other adjustments described below, will depend in part on the number of the requests that we receive. Also, we note that this process might result in wage index revisions for hospitals that do not request revisions, not only hospitals in the same labor market area as hospitals that request revisions, but also all other hospitals. This is because the hospital wage index measures relative wage levels across geographic areas, and reflects the average hourly wage in each labor market area as well as the national average hourly wage.

IV. Other Related Issues

A. Budget Neutrality and Adjustment to Standardized Amounts

Under section 1886(d)(3)(E) of the Act, "adjustments or updates" to the hospital wage index for a fiscal year "shall be made in a manner that assures that aggregate payments . . . in the fiscal year are not greater than or less than those that would have been made in the year without such adjustment." Accordingly, to the extent that mid-year revisions to the hospital wage index would affect aggregate payments, we

will apply a budget neutrality adjustment to the standardized amounts so that aggregate payments "are not greater than or less than those that would have been made in the year without [mid-year wage index] adjustment." With respect to individual hospitals who do not request revisions, we anticipate that the combined impact of wage index revisions and the budget neutrality adjustment will be minimal, because the "cost" of permitting wage index revisions to some hospitals will be spread out over all prospective payment hospitals.

As discussed in numerous **Federal Register** documents, we calculate a budget neutrality adjustment by simulating payments with and without the adjustment to the wage indexes. We would implement the budget neutrality adjustment (on a prospective basis) at the same time we implement the revised wage indexes.

Also, we note that the capital prospective payment system incorporates the hospital wage index for operating costs. Accordingly, we will incorporate the wage index revisions made in accordance with this final rule with comment period into capital prospective payments, including the geographic adjustment factor (GAF).

B. The Relationship Between Wage Revisions and the MGCRB Process

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals to be reclassified to another geographic area for purposes of the wage index. For purposes of evaluating a hospital's application for reclassification for FY 2000, the MGCRB will use hospitals' average hourly wages incorporating all of the revisions made in accordance with this final rule with comment period at the time the MGCRB rules on the hospital's application.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Waiver of Notice of Proposed Rulemaking and 30-Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking to provide a period of public comment on a rule. However, we may waive that procedure if we find good cause that prior notice and comment would be impracticable, unnecessary, or contrary to public interest.

We find that it would be impracticable to undertake prior notice and comment procedures before implementing this final rule with comment period. This final rule with comment period provides hospitals with a limited opportunity to request very limited types of revisions to the wage data used to calculate the FY 1999 hospital wage index. As discussed earlier, we are providing this process for mid-year revisions because of the totality of the circumstances arising this year. These circumstances include the number of hospitals contacting us about the same types of wage data problems (reflecting apparent confusion about certain aspects of the development of the FY 1999 wage index) and the hardship that might result if we did not revise the wage data for these hospitals. If we delayed the wage data revision process in order to complete notice and comment procedures, we would delay the implementation of revised wage indexes and thus diminish the extent to which we address the potential hardship that might result for certain hospitals. Also, it is essential to finalize the FY 1999 wage index process expeditiously because the MGCRB will soon be evaluating and making decisions on applications for hospital geographic reclassification for FY 2000. The MGCRB's decision-making process for these applications requires analysis of the wage data used to calculate the FY 1999 wage index, and delaying the wage data revision process might result in problems in the MGCRB process.

For these reasons, we find that it would be impracticable to complete notice and comment procedures before providing hospitals with the opportunity to request revisions to the wage data used to calculate the FY 1999 wage index. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this document as a final rule with comment period. We are providing a 30-day period for public comment.

Also, we normally provide a delay of 30 days in the effective date of a regulation. However, if adherence to this procedure would be impracticable, unnecessary, or contrary to the public interest, we may waive the delay in the effective date. For the reasons discussed above, it is important that the provisions of this final rule with comment period have immediate effect so that we can finalize the FY 1999 wage index. Therefore, we find good cause to waive the usual 30-day delay in the effective date.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

While a hospital seeking a revision to its FY 1995 cost report wage data must submit a request, including all information and supporting documentation needed to determine whether the request meets the applicable criteria and to verify the accuracy of the requested revision, HCFA believes this request for information meets one of the exceptions to the definition of information under the PRA and is therefore not subject to the PRA. In summary, 5 CFR 1320.3(h)(9) states that information does not include, "facts or opinions solicited through nonstandardized follow-up questions designed to clarify responses to approved collections of information". Since we believe this voluntary request is not standardized and is designed only to provide hospitals with an additional opportunity to clarify information previously provided to HCFA in their 1995 cost report (HCFA–2552, OMB approval #0938–0050, current expiration date of 8/31/2000), HCFA believes that this exception to the PRA applies.

If you want to comment on this issue, please mail copies directly to the HCFA and OMB officials whose names appear

in the **ADDRESSES** section of this preamble.

VIII. Regulatory Impact Statement

We have examined the impacts of this final rule with comment period as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. For purposes of the RFA, all hospitals are considered to be small entities.

Section 1102(b) of the Act, requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 50 beds.

The implementation of this final rule with comment period will have isolated positive payment impacts in areas whose wage indexes include hospitals receiving wage data revisions as described above. We believe approximately 163 hospitals had zero on Line 28 of Worksheet S–3, Part III, on the May 1998 public use file. In addition, we believe approximately 127 hospitals had zero in either column 3 or 4 (but not both), with nonzero data in the other column, for Lines 2, 4, 6, or 33 of Worksheet S–3, Part III, on the May 1998 public use file. We do not know how many, if any, hospitals may be eligible under the third criterion: the hospital properly requested a wage data revision by March 9, 1998, the fiscal intermediary approved a revision, but the fiscal intermediary or HCFA made a data entry or tabulation error on the May 1998 public use file.

Of the approximately 163 hospitals potentially eligible under the first criterion, there are 59 rural hospitals (located in 15 different States) and 104 urban hospitals (located in 63 different MSAs). Of the approximately 127 hospitals potentially eligible under the second criterion, there are 40 rural hospitals and 87 urban hospitals.

All other hospitals' wage index values are likely to decrease slightly as a result of any revisions under this process. This is because the revisions will likely have the effect of slightly increasing the national average hourly wage ($20.7325 in the July 31, 1998 final rule (63 FR 40973)). Therefore, hospitals in areas without any revisions may experience a slight decrease in their wage index values when their area's unchanged average hourly wage is compared to the higher national average hourly wage.

In addition, as described above in section IV.A., we intend to implement any necessary budget neutrality adjustment at the same time we implement revised wage indexes. The impact of this adjustment will depend on the changes to the hospital wage index. With respect to hospitals in labor market areas whose average hourly wage is not affected, we believe the combined effect of the higher national average hourly wage and budget neutrality will be minimal. We will estimate and publish the entire impacts of payment changes associated with any revisions to hospitals' wage indexes in the subsequent document to this final rule with comment period.

IX. Contract With America Advancement Act (Public Law 104–121)

This rule has been determined to be a major rule as defined in Title 5, United States Code, section 804(2). Although the actual impact of this final rule with comment period cannot be determined prior to reviewing the revision requests, we believe it could range from $0 to $500 million. Ordinarily, under 5 U.S.C. 801, as added by section 251 of Pub. L. 104–121, a major rule shall take effect 60 days after the later of (1) the date a report on the rule is submitted to the Congress or (2) the date the rule is published in the **Federal Register**. However, section 808(2) of Title 5, United States Code, provides that, notwithstanding 5 U.S.C. 801, a major rule shall take effect at such time as the Federal agency promulgating the rule determines, if for good cause the agency finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. As indicated above, for good cause we find that it was impracticable to complete notice and comment procedures before publication of this rule. Accordingly, pursuant to 5 U.S.C. 808(2), this final rule with comment period is effective on November 19, 1998.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 30, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: November 3, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–30992 Filed 11–17–98; 10:27 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 440 and 441

[HCFA–2060–F]

RIN 0938–AJ05

Medicaid Program; Inpatient Psychiatric Services Benefit for Individuals Under Age 21

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends the CFR by adding a choice of accreditation organizations that a State Medicaid agency may use to fulfill the requirement for Medicaid approval of, and payment to, psychiatric facilities other than psychiatric hospitals or psychiatric units of acute care hospitals, that provide the "inpatient psychiatric services benefit for individuals under age 21". In response to comments received on a prior proposed rule, we are retaining the requirement for accreditation of psychiatric facilities, but we are offering alternatives to accreditation by the Joint Commission on Accreditation of Health Care Organizations. Accreditation of psychiatric facilities, other than psychiatric hospitals and psychiatric units in acute care hospitals, could be performed by the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or any other accrediting body with comparable standards that is recognized by the State. This change is being made while we continue to develop HCFA standards for psychiatric facilities based on our evaluation of the comments that we received on the proposed standards that were published in the NPRM. All of the comments on

the remaining provisions of the proposed rule will be addressed in a second final rule to be published at a future date.

EFFECTIVE DATE: This rule is effective December 21, 1998.

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FOR FURTHER INFORMATION CONTACT: Mary Kay Mullen (410) 786–5480.

SUPPLEMENTARY INFORMATION:

I. Background

Medicaid is the Federally assisted State program authorized under title XIX of the Social Security Act (the Act) to provide funding for medical care provided to certain needy aged, blind and disabled persons, families with dependent children, and low-income pregnant women and children. Each State determines the scope of its program, within limitations and guidelines established by the Act and the implementing regulations at 42 CFR chapter IV, subchapter C. Each State submits a State plan, for our approval, that provides the basis for granting Federal funds to cover part of the expenditures incurred by the State for medical assistance and the administration of the program.

Section 1902(a) of the Act specifies the eligibility requirements that individuals must meet in order to receive Medicaid. Other parts of the Act describe the eligibility groups in detail and specify limitations on what may be paid for as "medical assistance."

II. Statutory and Regulatory History

The Social Security Amendments of 1972 (Public Law 92–603) amended the Medicaid statute to, among other things, allow States the option of covering inpatient psychiatric hospital services for individuals under age 21. In this preamble, we will refer to the "inpatient psychiatric hospital services benefit for individuals under age 21" as the "psychiatric/21 benefit." Originally the statute required that the psychiatric/21 benefit be provided by psychiatric hospitals that were accredited by the Joint Commission on Accreditation of Hospitals. This organization is now called the Joint Commission on Accreditation of Healthcare Organizations. In this preamble, we will refer to this organization as the "Joint Commission".

In 1976, the Social and Rehabilitation Service, one of the Federal agencies that was later part of the merger that formed HCFA, published final regulations in 45 CFR part 249, implementing the psychiatric/21 benefit. These regulations allowed the coverage of this benefit in psychiatric facilities, other than psychiatric hospitals, that were accredited by the Joint Commission. The term "psychiatric facility" was used rather than the statutory term "psychiatric hospital" because the Joint Commission had modified its accrediting practices to encompass a broader range of settings providing psychiatric services. Since the statute then required Joint Commission accreditation, we wanted to keep our conditions of participation consistent with Joint Commission practices.

In 1981, we received comments from the Joint Commission expressing concern about our regulatory requirement for exclusive Joint Commission accreditation. The Joint Commission indicated that this Federal requirement was in conflict with Joint Commission policy that facilities should seek accreditation voluntarily. In response, we noted that the regulatory requirement for accreditation by the Joint Commission could not be removed because it was required by statute.

The Deficit Reduction Act of 1984 (DRA) amended section 1905(h) of the Act, removing the requirement for Joint Commission accreditation and adding the requirement that providers of the psychiatric/21 benefit meet the definition of a "psychiatric hospital" under the Medicare program as specified in section 1861(f) of the Act.

Despite this statutory change, based on our reading of Congressional intent, we did not remove the requirement for Joint Commission accreditation from § 441.151(b). Our reliance on Joint Commission accreditation was the only basis for coverage of the psychiatric/21 benefit in psychiatric facilities other than psychiatric hospitals. Our decision to retain the regulatory requirement for Joint Commission accreditation was based on the fact that, in enacting the 1984 amendment, the Congress gave no indication that it intended to narrow the psychiatric/21 benefit or alter our policy that had been in effect since 1976.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), amended section 1905(h) of the Act to specify that the psychiatric/21 benefit can be provided in psychiatric hospitals that meet the definition of that term in section 1861(f) of the Act "or in another inpatient setting that the Secretary has specified in regulations." This amendment, which was effective as if it had been enacted earlier as part of the DRA, affirmed and effectively ratified our preexisting policy as articulated in subpart D of 42 CFR part 441, which interpreted sections 1905(a)(16) and 1905(h) of the Act as not being limited solely to psychiatric hospital settings. OBRA '90 provides our authority to allow other inpatient settings in addition to the psychiatric hospital setting for the psychiatric/21 benefit without continuing to require that providers obtain Joint Commission accreditation.

III. Provisions of the Proposed Rule

In the NPRM, published November 17, 1994 (59–FR–59624) we proposed to delete the existing regulatory requirement for Joint Commission accreditation in § 441.151(b) and to establish HCFA standards that psychiatric facilities other than psychiatric hospitals would have to meet. In response to the many comments on the issue of accreditation that are discussed below, we have reconsidered our position and have retained the accreditation requirement, but we have provided additional accreditation options. Under the new rule we are not requiring the exclusive use of the Joint Commission. We are allowing the option of using additional organizations in order to increase the States' flexibility in the choice of accrediting organizations. We will continue to evaluate the comments on

the proposed standards for facilities that provide the psychiatric/21 benefit and we will publish these comments and responses in a second final rule at a future date.

This final rule revises the requirements in §§ 441.151 and 440.160 only for psychiatric facilities providing the psychiatric/21 benefit. The requirements governing psychiatric hospitals and psychiatric units in acute care hospitals are not changed.

IV. Analysis of and Responses to Public Comments

In the preamble to the proposed rule, we included a history of the requirement for accreditation by the Joint Commission which has been part of the psychiatric/21 benefit since it was first enacted. In the NPRM, we proposed to delete the requirement for Joint Commission accreditation of psychiatric facilities other than psychiatric hospitals from the regulations, since the requirement had been deleted from the statute. The NPRM proposed new HCFA standards for psychiatric facilities other than psychiatric hospitals or psychiatric units of acute care hospitals that provided this benefit. We received a large number of comments on the subject of accreditation, more than on any other issue raised in the proposed rule.

Comment: Most of the commenters stated that the NPRM did not sufficiently acknowledge the value of accreditation by a national body.

Response: We proposed in the NPRM to remove the requirement that providers of the Psychiatric/21 benefit obtain Joint Commission accreditation. Forty eight percent of the 100 commenters stated that the proposed rule gave insufficient attention to the importance and the value that such accreditation can provide. We recognize the value of accreditation as an effective process to measure quality of service provided under this benefit. In response to the concerns of those groups that asked us to retain the requirement for accreditation, we are doing so, but we are also giving states flexibility to choose accrediting bodies for psychiatric facilities that are not psychiatric hospitals or psychiatric units of acute care hospitals that include not only the Joint Commission, but also the Council on Accreditation of Services for Families and Children (COA), the Commission on Accreditation of Rehabilitation Facilities (CARF), or any other accrediting body with comparable standards, that is recognized by the State. We will continue to evaluate the comments received on the proposed HCFA standards.

Comment: Many commenters said that it is inefficient to survey providers that are accredited. Other commenters urged HCFA to encourage States to waive the conditions of participation for providers that are accredited by a national accrediting body. Several other commenters suggested that HCFA allow accreditation by a national organization to serve as a substitute for meeting the proposed HCFA standards. One commenter said that HCFA should not allow States to require accreditation in addition to HCFA standards, because this would create another layer of requirements and entail another survey.

Response: We plan to reevaluate whether imposition of our standards on psychiatric facilities that are not psychiatric hospitals or units of acute care hospitals but are already accredited is necessary to ensure the quality of services provided under this benefit.

Comment: A number of commenters objected to the proposed deletion of the requirement for Joint Commission accreditation, which they referred to as the industry standard of quality.

Response: We are aware that accreditation is recognized by many as a standard of quality and for this reason we are retaining the requirement. However we are offering alternatives to Joint Commission accreditation of psychiatric facilities that are not psychiatric hospitals or units of acute care hospitals by adding COA, CARF, or any other accrediting body, recognized by the State, with comparable standards. As previously stated, this change is necessary while we continue to develop HCFA standards based on the comments we received on the proposed standards that were published in the NPRM.

Comment: A few commenters supported the deletion of the accreditation requirement.

Response: We are continuing to retain the requirement for psychiatric facility accreditation in this final rule while we evaluate the need for HCFA standards based on the comments received on the proposed standards and the relationship of these proposed standards to accreditation.

Comment: One commenter said that if the regulatory requirement is deleted, the State should require Joint Commission accreditation. A few commenters indicated that States should have the option of requiring accreditation if they consider it necessary.

Response: We agree with those commenters who support States having the option of determining what accrediting body will be recognized by the State to accredit psychiatric/21 benefit providers. Accordingly, we have amended language in this final rule to expand accreditation beyond the Joint Commission to include COA, CARF, or any other accrediting body with comparable standards that is recognized by the State.

V. Provisions of the Final Regulations

This final rule, changes §§ 441.151 and 440.160 of the proposed rule, returning it to the current regulatory requirement of accreditation but adding as alternative options to Joint Commission accreditation of psychiatric facilities that are not psychiatric hospitals or psychiatric units of an acute care hospital, accreditation by COA, CARF, or any other accrediting body, recognized by the State, with comparable standards. The remaining provisions of the proposed rule, together with all related comments and responses will be published in a final rule at a future date.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on this issue for the information requirement discussed below.

Section 441.151 General Requirements

Section 441.151(d) states that a psychiatric facility, or an inpatient program in a psychiatric facility, must certify in writing that Medicaid services provided to persons who have reached the age of 22 years are still necessary in the setting in which it will be provided (or is being provided in emergency circumstances) in accordance with § 441.152.

While this IRC is subject to the PRA, we believe that the burden associated

with this ICR is exempt in accordance with 5 CFR 13220.3(b)(2) because the time and effort and financial resources necessary to comply with this requirement would be incurred by persons in the normal course of their activities. These are reasonable and customary State practices and the State would impose this standard for efficient utilization of Medicaid services in the absence of a Federal requirement. Therefore we have assigned one (1) token hour of burden.

We have submitted a copy of this final rule to OMB for its review of the information collection requirement described above. This requirement is not effective until it has been approved by OMB.

If you comment on this information collection requirement, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Security and Standards Group Division of HCFA Enterprise Standards Room N2–14–26, 7500 Security Boulevard Baltimore, MD 21244–1850 Attention: Louis Blank, HCFA–2060–F

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Allison Eydt, HCFA Desk Officer

VII. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 (EO 12866), the Unfunded Mandates Act of 1995, and the Regulatory Flexibility Act (RFA) (Public Law 96–354). EO 12866 directs agencies to assess all cost and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects, distributive impacts, and equity. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (100 million or more annually).

Section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

A. The Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 also requires (in section 202) that agencies perform an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million.

B. Regulatory Flexibility Act

The RFA requires us to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, non-profit organizations and governmental agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Intermediaries and carriers are not considered to be small entities.

This is not a major rule and there will be no additional costs to the Medicaid program as a result of this final rule.

For this reason we are not preparing an analysis for either the RFA or section 1102(b) of the Act, since we have determined, and we certify that this final rule would not result in a significant impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 440

Grant programs—health, Medicaid.

42 CFR Part 441

Family Planning, Grant programs—health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR Chapter IV is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

A. Part 440 is amended as follows:

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.160 is revised to read as follows:

§ 440.160 Inpatient psychiatric services for individuals under age 21.

"Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in § 441.151 of this subchapter.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

B. Part 441 is amended as follows:

1. The authority citation for part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.151 is amended by revising paragraphs (b) and (c) and adding a new paragraph (d) to read as follows:

§ 441.151 General requirements.

* * * * *

(b) By—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization, with comparable standards that is recognized by the State.

(c) Before the individual reaches age 21 or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(1) The date the individual no longer requires the services; or

(2) the date the individual reaches 22; and

(d) Certified in writing to be necessary in the setting in which it will be

provided (or is being provided in emergency circumstances) in accordance with § 441.152.

(Catalog of Federal Domestic Assistance Program No. 93,778 Medical Assistance Program)

Dated: June 2, 1998.

Nancy-Ann Min Deparle,

Administrator, Health Care Financing Administration.

Dated: August 12, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–30844 Filed 11–18–98; 8:45 am]

BILLING CODE 4120–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 1201

RIN 3045–AA15

Service of Process; Production or Disclosure of Official Material or Information; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** of Friday, January 30, 1998, (63 FR 4597). The regulations related to service of process and the production or disclosure of official material or information.

DATES: This correcting amendment is effective on November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Britanya Rapp, (202) 606–5000, ext. 258, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect persons who serve in the Office of Inspector General for the Corporation for National Service, and excludes persons who are subject to 5 U.S.C. 6322, those who request or release information under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, or those who make disclosures to the Office of Inspector General from the scope of the final regulations.

Need for Correction

As published, the final regulations omitted provisions that need to be included to clarify the scope of the regulations.

List of Subjects in 45 CFR Part 1201

Administrative practice and procedure, Courts, Freedom of information.

Accordingly, 45 CFR part 1201 is corrected by making the following correcting amendments:

PART 1201—[AMENDED]

1. The authority citation for part 1201 is revised to read as follows:

Authority: 42 U.S.C. 12501 *et seq.*

2. Amend § 1201.2 to add paragraphs (b) and (c) to read as follows:

§ 1201.2 Scope.

* * * * *

(b) Sections 1201.3 through 1201.10 do not apply to:

(1) Testimony or records provided in accordance with the Office of Personnel Management regulations implementing 5 U.S.C. 6322.

(2) Requests for, and release of, records under the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a.

(3) Disclosures to the Office of Inspector General or requests by the Office of Inspector General for official information or records.

(c) The procedures in this part apply to Corporation employees and official information within the Corporation Office of Inspector General. However, any determinations or other actions to be made by the General Counsel under this part, relating to employees or official information within the Office of Inspector General, shall be made by the Inspector General.

Dated: November 13, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–30952 Filed 11–18–98; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 5 and 90

[ET Docket No. 96–256, FCC 98–283]

Revision of the Experimental Radio Service Regulations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission revises the rules, which governs the Experimental Radio Service (ERS). This action will promote technical innovation and new services by encouraging experiments; ensure that experimental licenses do not result in abuse of our processes; eliminate unnecessary and burdensome experimental regulations; and protect public safety frequencies.

EFFECTIVE DATE: January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket—96–256, FCC 98–283, adopted October 22, 1998, and released October 27, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Report and Order

1. The Notice of Proposed Rule Making (Notice), 62 FR 68698, December 30, 1996, in this proceeding, proposed a number of changes to part 5. The Commission noted that Section 303(g) of the Communications Act of 1934, as amended (the Act), authorizes the Commission to provide for experimental use of frequencies and charges the Commission with encouraging the larger and more effective use of radio in the public interest. The Commission further noted that the primary purpose of the ERS is to provide for experimental uses of radio frequencies and for development of techniques and systems that are not otherwise permitted under existing service rules, and that the ERS provides opportunity for manufacturers, inventors, entrepreneurs, and students to experiment with new radio technologies, new equipment designs, characteristics of radio wave propagation, or new service concepts related to the use of the radio spectrum.

2. Additionally, the Commission observed that it last updated its ERS rules in 1983. Since that time, there have been significant changes in services and technologies, and the competitive and rapidly developing telecommunications market has increased the importance of maintaining current and useful rules to govern the ERS. The Commission stated that based on its experience, it believed that the ERS rules should be significantly modified to eliminate unnecessary and burdensome rules and to better promote experimentation, while ensuring that the experimental process is not abused.

3. To promote technical innovation, we are permitting longer license terms, blanket licensing of related multiple experiments, construction of satellite experimental facilities to begin prior to licensing, and electronic filing of experimental applications. In the Notice, the Commission observed that, although experimental licenses are currently granted for two years, it may be beneficial to certain segments of the communications industry—in particular, companies that desire to conduct experiments that involve ongoing research and development—to provide for a longer license period. Accordingly, the Commission proposed an additional licensing option that would give applicants the ability to apply for a five-year license. However, the Commission requested comment on the appropriate length for such an extended license period and on whether this new class of experimental license should be limited to certain parties, such as those involved in long-term product development.

4. We concur with the commenting parties that an option for a five-year licensing term is desirable for all ERS applicants. We see no need to limit this option to only certain types of applicants, or to establish special rules for those applicants undertaking market studies, but we will require an applicant seeking an extended license term to show a need for the requested license term. We also conclude that license terms which vary from two to five years would provide greater flexibility, would serve the public interest, and should be permitted. We note that, currently, even with two-year license terms, we permit applicants to apply for licenses of terms shorter than two years. Therefore, we will extend this practice and will now permit applicants to apply for licenses of a term greater than two years, up to a maximum of five years. We are providing for this additional licensing flexibility to all experimental applicants who demonstrate that they require a license term longer than the normal two years. All licenses will be renewable upon an adequate showing of need.

5. The Commission proposed to amend the rules governing the filing of experimental applications in order to simplify the filing process and to encourage applications to be filed. Specifically, the Commission proposed to delete the existing requirement for the filing of separate applications for fixed stations and for mobile stations and to allow an applicant to apply for all of the stations needed in its experimental system, including fixed stations and associated mobile units, with a single experimental license application. Similarly, the Commission proposed to amend its rules in order to permit the filing of a single application for multiple experiments, when doing so would be appropriate for the proposed project. Additionally, in order to facilitate the electronic filing of applications, the Commission proposed to amend its rules to permit the Commission's Office of Engineering and Technology (OET) to accept electronic signatures.

6. We are adopting our proposal to allow an applicant to apply for all of the fixed and mobile stations in its experimental system on a single license application, to permit the filing of a single application for related multiple experiments, and to permit OET to accept electronic signatures. We find that these actions will facilitate experimentation and decrease the regulatory burden on our licensees and staff. Additionally, we adopt the recommendations of commenting parties that we allow applicants to apply for a blanket experimental license for all related facilities, allow manufacturers to conduct experiments under blanket nationwide licenses, and allow experimental licensees to change emission characteristics provided that their authorized maximum emissions envelope is not exceeded. We find that dispensing with the existing requirements for applying for additional authorizations in these circumstances will facilitate experimentation, increase administrative efficiency, and eliminate unnecessary regulatory burdens on ERS licensees. However, we will require licensees who operate under blanket licenses to notify us of the specific details of each individual experiment, including location, number of base and mobile units, power, emission designator, and any other pertinent technical information not specified by the blanket license; and we will require licensees who change emission characteristics to submit written notification to us demonstrating that such changes will not exceed the maximum emissions envelope established in the existing authorization.

7. The Commission also proposed to permit ERS licenses to be issued to schools, as well as to individual students; to remove the current restriction that students be required to contact the Commission's local field office in advance of scheduled operation; and to modify the frequency bands used for student authorizations. Specifically, the Commission proposed to delete the 2483.5–2500 MHz band from the set of frequencies designated for student authorizations and to replace it with the 2402–2450 MHz and 10.00–10.50 GHz bands. The Commission requested comment on whether student experiments could be accommodated in those bands without causing harmful interference to existing users. In addition, the Commission requested comment on whether the 5725–5825 MHz band should be made available for student authorizations. Further, in § 5.405, which sets forth the power limitation governing student authorizations, the Commission proposed to remove the somewhat arcane reference to "dc plate power" and replace it with the more conventional requirement that the "effective isotropic radiated power" (EIRP) not exceed 4 watts, and requested comment on whether this power level would be appropriate, given the distances over which student experimenters typically would seek to communicate. Finally, the Commission requested comment about the level of supervision and the knowledge of radiofrequency emissions that may be required to supervise adequately elementary school-age children.

8. Because we find that these proposals will facilitate student use of the radio spectrum and are otherwise in the public interest, we are adopting them, as in the rules. We are not, however, authorizing use of the 5725–5825 MHz band for student experimentation because that band was recently allocated for use by a new category of unlicensed equipment, known as Unlicensed National Information Infrastructure (U–NII) devices, and we find that there would be too great a potential for harmful interference in the band if student use were permitted in addition to the authorized use of the band. Specifically, because U–NII devices may operate anywhere in the 5725–5825 MHz band, there would be no way to ensure that a student experiment in a particular geographic area would not operate on the same frequency as a U–NII device.

9. Further, we are making special temporary authorizations (STAs) easier to obtain by making them independent of other experimental licenses and by expediting their processing where circumstances warrant. Special temporary authorizations are currently issued in cases in which a need is shown for operation of an authorized station for a limited time only, in a manner other than that specified in an existing experimental license, but not in conflict with our ERS rules.

10. We find that there is no reason to require a regular experimental license as a precondition for obtaining an STA. Permitting STAs to be granted on a

stand-alone basis will decrease the burden on applicants and will increase administrative efficiency. Further, we find that it is in the public interest to grant STAs on short notice in some instances and to specify more clearly the information needed in an application for STA. These changes will, respectively, permit applicants greater flexibility and decrease the burden on applicants and increase administrative efficiency.

11. To prevent abuses of our Experimental License processes, we are limiting the size and scope of each market study on a case-by-case basis, and we will immediately terminate any such study that we determine to be in excess of this size and scope. Additionally, we are limiting STAs to single, non-renewable authorizations. The Commission observed that in some instances its experimental processes have been abused by companies attempting to establish under the guise of experimental licenses commercial businesses that would normally require permanent licenses. Such abuse can be particularly unfair when a commercial business is being provided under an experimental license in competition with a similar business provided under a permanent license. Accordingly, the Commission proposed that as a condition of granting experimental licenses for market studies, it would require licensees to limit the size and scope of each study. The Commission stated that it would determine the appropriate limits for market studies on a case-by-case basis and terminate any such study that exceeds these limits. We conclude that some limits on market studies are necessary. Therefore, we find it appropriate to specify limits for market studies on a case-by-case basis.

12. The Commission also observed that there has been some abuse of STAs. The Commission stated that STAs are intended for temporary, short-term operation, but in the past some parties have used them as substitutes for experimental licenses by requesting repeated extensions of the STA and thus have created unnecessary administrative and paperwork burdens on the Commission's staff. The Commission therefore proposed to amend its rules to state that in the absence of extenuating circumstances no extensions of STAs would be granted, and that holders of STAs who wish to continue experimentation must apply for regular experimental licenses at least 60 days prior to expiration of their STAs.

13. Accordingly, we will require STA holders who wish to continue operations beyond the expiration date of the STA to file an ERS application no later than 15 days prior to that date. In such cases where the ERS application has been timely filed, the STA shall continue in force automatically until action is taken on the application. We also clarify that an STA must not be in conflict with the ERS rules, but in some instances an STA—like a regular experimental authorization—may be in conflict with rules for non-experimental radio services. We believe that these decisions will best serve the public interest by preventing abuses of our processes while providing reasonable flexibility to holders of STAs.

14. To reduce the regulatory burden, we are eliminating the requirement that experimental licensees contact our Compliance and Information Bureau (CIB) before commencing operation; eliminating rules that specify that a construction permit be obtained in conjunction with an experimental license and that expiration dates of experimental licenses be distributed over the 12 calendar months; and permitting licensees to make discrete changes in emission characteristics without being required to submit applications for modification, provided that they establish that such changes would not exceed the maximum emissions envelope in the existing authorization. Further, we are consolidating and reorganizing the rules, including transferring wildlife and ocean buoy tracking operations from Part 5 to Part 90. Finally, to protect public safety frequencies, we are adopting new rules to ensure that experiments avoid those frequencies except when there is a compelling need to use them.

Final Regulatory Flexibility Analysis

15. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the Notice in ET Docket No. 96–256.[1] The Commission sought written public comments on the proposals in the Notice, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA") in this Report and Order conforms to the RFA, as amended by the Contract With America Advancement Act of 1996 (CWAAA), Pub. L. 104–121, 110 Stat. 847 (1996).[2]

Need For and Objective of the Rules

16. In this decision, the Commission revises its Experimental Radio Service rules. This action is needed to promote technical innovation and new services by encouraging experiments, ensure that experimental licenses do not result in abuse of the Commission's processes, eliminate unnecessary and burdensome experimental regulations, and protect public safety frequencies.

Summary of Issues Raised by the Public Comments in Response to the IRFA

17. No comments were filed in direct response to the IRFA. However, in general comments to the Notice, some parties recommended modifications to our proposals. Specifically, parties recommended granting blanket experimental license for all related facilities, allowing manufacturers to conduct experiments under blanket nationwide licenses, and allowing experimental licensees to change emission characteristics that do not exceed the maximum emissions envelope in their existing authorizations without license modifications. We agree that these recommendations will facilitate experimentation and increase efficiency, and are adopting them.

Description and Estimate of Small Entities Subject to Which Rules Will Apply

18. The RFA generally defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[3] Under the SBA, a "small business concern" is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any individual criteria established by the Small Business Administration (SBA).[4]

19. The Commission has not developed a definition of small entities applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. SBA has defined a small business for Standard Industrial Classification (SIC) category 4812 (Radiotelephone Communications) to be small entities when they have fewer than 1500 employees.[5]

20. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half of these are renewals and the

[1] 11 FCC Rcd 20130 (1996).

[2] Subtitle II of the CWAAA is "The Small Business Regulatory Enforcement Fairness Act of 1996" (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[3] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632).

[4] 15 U.S.C. 632.

[5] 13 CFR 121.201 Standard Industrial Classification (SIC) Code 4812.

other half are for new licenses. The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications, 70 percent, are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations in the FRFA, will be awarded to small entities, as that term is defined by the SBA.

Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules

21. Adoption of our proposals should decrease the regulatory burden on all experimental license applicants, including small entities. For example, we are permitting applicants the option of applying for a five-year experimental license, in addition to maintaining the current two-year license. We anticipate that a longer term license will reduce the number of renewal applications, and thereby decrease the regulatory burden. We are also removing an unnecessary requirement that STA applicants hold experimental licenses, and are clarifying the STA rules. We are also replacing existing Sections 5.55(a) and 5.55(b) of our rules with a single provision that will allow an applicant to apply for all of the stations in its experimental system, including fixed stations and associated mobile units, on one experimental license application; and similarly to modify Section 5.62 to permit the filing of only a single application for multiple related experiments. Additionally, this action increases the opportunities for students to obtain experimental authorizations, remove requirements that certain licensees notify the FCC's field offices prior to commencing operations, and eliminates obsolete rules. These changes should have a positive effect on small entities; however, we are unable to quantify all potential effects on such entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

22. We believe that our actions to revise our ERS rules will eliminate unnecessary and burdensome regulations for small entities. Section 303(g) of the Communications Act of 1934, as amended, charges the Commission with encouraging the larger and more effective use of radio in the public interest. We have considered the alternative of not making the proposed revisions; however, we believe that would not serve the public interest and would continue to place an unnecessary burden on iicensees.

Report to Congress

23. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Report and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 5

Radio.

47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble parts 5 and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

1. The entire part 5 of Title 47 of the Code of Federal Regulations is revised as follows:

PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

Subpart A—General

5.1 Basis and purpose.
5.3 Scope of service.
5.5 Definition of terms.

Subpart B—Applications and Licenses

5.51 Eligibility of license.
5.53 Station authorization required.
5.55 Filing of applications.
5.57 Who may sign applications.
5.59 Forms to be used.
5.61 Procedure for obtaining a special temporary authorization.
5.63 Supplementary statements required.
5.65 Defective applications.
5.67 Amendment or dismissal of applications.
5.69 Partial grants.
5.71 License period.
5.73 Experimental report.
5.75 Number of licenses required.
5.77 Change in equipment and emission characteristics.
5.79 Transfer and assignment of station authorization.
5.81 Discontinuance of station operation.
5.83 Cancellation provisions.
5.85 Frequencies and policy governing their assignment.
5.87 Frequencies for field strength surveys or equipment demonstrations.
5.89 School and student authorizations.
5.91 Notification to the National Radio Astronomy Observatory.
5.93 Limited market studies.

Subpart C—Technical Standards and Operating Requirements

5.101 Frequency stability.
5.103 Types of emission.
5.105 Authorized bandwidth.
5.107 Transmitter control requirements.
5.109 Antenna and tower requirements.
5.111 General limitations on use.
5.113 Adherence to program of research.
5.115 Station identification.
5.117 Suspension of transmission required.
5.119 Posting station licenses.
5.121 Retention of station records.
5.123 Inspection of stations.
5.125 Authorized points of communication.

2. The authority citation for part 5 is revised to read as follows:

Authority: Secs. 4, 302, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

PART 5—EXPERIMENTAL RADIO SERVICE (OTHER THAN BROADCAST)

Subpart A—General

§ 5.1 Basis and purpose.

(a) The rules following in this part are promulgated pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmissions and to issue licenses for radio stations.

(b) The purpose of this part is to prescribe the manner in which parts of the radio frequency spectrum may be made available for experimentation as defined and provided for in this part.

§ 5.3 Scope of service.

Stations operating in the Experimental Radio Service will be permitted to conduct the following type of operations:

(a) Experimentations in scientific or technical radio research.

(b) Experimentations under contractual agreement with the United States Government, or for export purposes.

(c) Communications essential to a research project.

(d) Technical demonstrations of equipment or techniques.

(e) Field strength surveys by persons not eligible for authorization in any other service.

(f) Demonstration of equipment to prospective purchasers by persons or state and local governmental subdivisions engaged in the business of selling radio equipment.

(g) Testing of equipment in connection with production or regulatory approval of such equipment.

(h) Development of radio technique, equipment or engineering data not

related to an existing or proposed service, including field or factory testing or calibration of equipment.

(i) Development of radio technique, equipment, operational data or engineering data related to an existing or proposed radio service.

(j) Limited market studies.

(k) Types of experiments that are not specifically covered under paragraphs (a) through (j) of this section will be considered upon demonstration of need for such additional types of experiments.

§ 5.5 Definition of terms.

For the purpose of this part, the following definitions shall be applicable. For other definitions, refer to part 2 of this chapter (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations).

Authorized frequency. The frequency assigned to a station by the Commission and specified in the instrument of authorization.

Authorized power. The power assigned to a radio station by the Commission and specified in the instrument of authorization.

Experimental radio service. A service in which radio waves are employed for purposes of experimentation in the radio art or for purposes of providing essential communications for research projects that could not be conducted without the benefit of such communications.

Experimental station. A station utilizing radio waves in experiments with a view to the development of science or technique.

Fixed service. A radiocommunication service between specified fixed points.

Fixed station. A station in the fixed service.

Harmful interference. Any radiation or induction that endangers the functioning of a radionavigation or safety service, or obstructs or repeatedly interrupts a radio service operating in accordance with the Table of Frequency Allocations and other provisions of part 2 of this chapter.

Landing area. As defined by 49 U.S.C. 40102(a)(28) of the Civil Aeronautics Act of 1938, as amended, any locality, either of land or water, including airdromes and intermediate landing fields, that is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

Land station. A station in the mobile service not intended for operation while in motion.

Mobile service. A radiocommunication service between mobile and land stations, or between mobile stations.

Mobile station. A station in a mobile service intended to be used while in motion or during halts at unspecified points.

Person. An individual, partnership, association, joint stock company, trust, or corporation.

Public correspondence. Any telecommunication that offices and stations, by reason of their being at the disposal of the public, must accept for transmission.

Radio service. An administrative subdivision of the field of radiocommunication. In an engineering sense, the subdivisions may be made according to the method of operation, as, for example, mobile service and fixed service. In a regulatory sense, the subdivisions may be descriptive of particular groups of licensees, as, for example, the groups of persons licensed under this part.

Station authorization. Any license or special temporary authorization issued by the Commission.

Subpart B—Applications and Licenses

§ 5.51 Eligibility of license.

(a) Authorizations for stations in the Experimental Radio Service will be issued only to persons qualified to conduct experimentation utilizing radio waves for scientific or technical operation data directly related to a use of radio not provided by existing rules; or for communications in connection with research projects when existing communications facilities are inadequate.

(b) Applicants eligible for authorizations in an established service, and seeking to develop operational data or techniques directed toward the improvement or extension of that service shall file applications and conduct such projects under the developmental rules of the established service.

(c) A station license shall not be granted to or held by a foreign government or a representative thereof.

§ 5.53 Station authorization required.

(a) No radio transmitter shall be operated in the Experimental Radio Service except under and in accordance with a proper station authorization granted by the Commission. However, construction of proposed experimental satellite facilities may begin prior to Commission grant of an authorization. Such construction will be entirely at the applicant's risk and will not entitle the applicant to any assurances that its proposed experiment will be subsequently approved or regular services subsequently authorized. Additionally, the applicant must notify the Commission's Office of Engineering and Technology in writing that it plans to begin construction at its own risk.

(b) Persons desiring to install and operate radio transmitting equipment under this part should first submit an application for a radio station license in accordance with § 5.59 of this part.

(c) If installation and/or operation of the equipment may significantly impact the environment, see § 1.1307 of this chapter, an environmental assessment as defined in § 1.1311 of this chapter must be submitted with the application.

§ 5.55 Filing of applications.

(a) To assure that necessary information is supplied in a consistent manner by all persons, standard forms are prescribed for use in connection with the majority of applications and reports submitted for Commission consideration. Standard numbered forms applicable to the Experimental Radio Service are discussed in § 5.59 of this part, and may be obtained by calling the FCC FORMS hotline, (202) 418–FORM. If no standard form is applicable, the informal application procedure outlined in § 5.59(f) of this part should be followed.

(b) Any application for radio station authorization and all correspondence relating thereto shall be submitted to the Commission's Office of Engineering and Technology, Washington, DC 20554. (Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(c) Each application for station authorization shall be specific and complete with regard to station location, proposed equipment, power, antenna height, and operating frequency; and other information required by the application form and this part.

(d) Applications involving temporary operation: When an experimental program is expected to last no more than six months, its operation shall be considered temporary and the special temporary authorization procedure outlined in § 5.61 of this part shall apply.

§ 5.57 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer or duly authorized employee, if the

applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible government entities, such as states and territories of the United States and political subdivisions thereof, the District of Columbia, and units of local government, including incorporated municipalities, shall be signed by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his/her absence from the United States. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his/her knowledge), he/she shall separately set forth reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

(d) Applications, amendments, and related statements of fact need not be submitted under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, title 18, Sec. 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to sec. 312(a)(1) of the Communications Act of 1934, as amended.

(e) "Signed," as used in this section, means an original handwritten signature; however, the Office of Engineering and Technology may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

§ 5.59 Forms to be used.

(a) *Application for experimental radio license.* Entities requesting an experimental authorization must submit FCC Form 442 (application). A single FCC Form 442 may be used for several radio components of an experimental program, however, unrelated experimental programs should be filed on separate applications.

(b) *Application for modification of experimental license.* An application for modification of experimental authorization shall be submitted on FCC Form 442. A blanket application may be submitted for modification of a group of authorizations of the same class as long as the scope of the modifications are specified in the application. The individual authorizations covered by such an application shall be clearly identified therein. However, application for modification to change location of an experimental authorization shall be filed as a separate application.

(c) *Application for renewal of experimental authorization.* Application for renewal of station license shall be submitted on FCC Form 405. A blanket application may be submitted for renewal of a group of station licenses in the same class in those cases in which the renewal requested is in exact accordance with the terms of the existing authorizations. The individual stations covered by such applications shall be clearly identified thereon. Unless otherwise directed by the Commission, each application for renewal of license shall be filed at least 60 days prior to the expiration date of the license to be renewed.

(d) *Application for consent to assign an experimental authorization.* Application on FCC Form 702 shall be submitted when the legal right to construct or to control the use and operation of a station is to be transferred as a result of a voluntary act (contract or other agreement) or an involuntary act (death or legal disability) of the grantee of a station authorization or by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings, or other court order, or by operation of law in any other manner. Such application must be accompanied by the FCC Form 442 of which only the certification need be signed by the proposed assignee. No other information is required to be submitted on this form.

(e) *Application for consent to transfer control of Corporation holding experimental authorization.* Application for consent to transfer control shall be submitted on FCC Form 703 whenever it is proposed to change the control of a corporation holding a station authorization.

(f) *Informal application.* (1) An application not submitted on a standard form prescribed by the Commission is considered to be an informal application. Each informal application shall be submitted normally in letter form, and with the original signed in accordance with § 5.57 of this part. Each application shall be clear and complete within itself as to the facts presented and the action desired.

(2) An informal application for authority to operate transmitting equipment will be accepted only under the conditions set forth for special temporary authorizations in § 5.61 of this part.

§ 5.61 Procedure for obtaining a special temporary authorization.

(a) The Commission may issue a special temporary authorization under this part in cases in which a need is shown for operation of a station for six months or less, provided such operation is not in conflict with the Commission's rules in this part. In cases in which an applicant sets forth compelling reasons why a special temporary authorization must be granted expeditiously, preference will be given to processing the application.

(b) Extensions of a special temporary authorization will be granted provided that an application for a regular experimental license has been filed at least 15 days prior to the expiration of the licensee's temporary authority. When such an application is timely filed, operations may continue in accordance with the other terms and conditions of the temporary authority pending disposition of the application, unless the applicant is notified otherwise by the Commission.

(c) An application for special temporary authorization may be filed as an informal application in the manner prescribed by § 5.59(f) of this part and shall contain the following information:

(1) Name, address, phone number (also e-mail address and facsimile number, if available) of the applicant.

(2) Description of why an STA is needed.

(3) Description of the operation to be conducted and its purpose.

(4) Time and dates of proposed operation.

(5) Class(es) of station (fixed, mobile, fixed and mobile) and call sign of station (if applicable).

(6) Description of the location(s) and geographical coordinates of the proposed operation. Indication of which coordinate datum (NAD–27 or NAD–83) applies.

(7) Equipment to be used, including name of manufacturer, model and number of units.

(8) Frequency(ies) desired.

(9) Maximum effective radiated power (ERP).

(10) Emission designator (see § 2.201 of this chapter) or describe emission (bandwidth, modulation, etc.)

(11) Overall height of antenna structure above the ground (if greater than 6 meters above the ground or an existing structure, see Part 17 of this Chapter concerning notification to the FAA).

§ 5.63 Supplementary statements required.

(a) Each applicant for an authorization in the Experimental Radio Service must enclose with the application a narrative statement describing in detail the program of research and experimentation proposed, the specific objectives sought to be accomplished; and how the program of experimentation has a reasonable promise of contribution to the development, extension, or expansion, or utilization of the radio art, or is along lines not already investigated. An applicant may request non-disclosure of proprietary information submitted under this part. These requests should follow the procedures for submission set forth in § 0.459 of this chapter.

(b) If the authorization is to be used for the purpose of fulfilling the requirements of a contract with an agency of the United States Government, the applicant shall submit a narrative statement describing the project, the name of the contracting agency, and the contract number.

(c) If the authorization is to be used for the sole purpose of developing equipment for exportation to be employed by stations under the jurisdiction of a foreign government, the applicant shall submit a narrative statement describing the project, any associated contract number, and the name of the foreign government concerned.

(d) The provisions of paragraph (a) of this section shall not be applicable to applications for an authorization in the Experimental Radio Service to be used for communications essential to a research project in which other means of communications are inadequate or not available. In such cases, applicants shall include as part of the application for an authorization the following:

(1) A description of the nature of the research project being conducted.

(2) A showing that communications facilities are necessary for the research project involved.

(3) A showing that existing communications facilities are inadequate or unavailable.

§ 5.65 Defective applications.

(a) Applications that are defective with respect to completeness of answers to required questions, execution or other matters of a purely formal character may not be received for filing by the Commission, and may be returned to the applicant with a brief statement as to the omissions.

(b) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, a failure to comply with such request will constitute a defect in the application.

(c) Applications that are not in accordance with the Commission's rules, regulations, or other requirements will be considered defective unless accompanied either by:

(1) a petition to amend any rule, regulation, or requirement with which the application is in conflict; or

(2) a request of the applicant for waiver of, or an exception to, any rule, regulation, or requirement with which the application is in conflict. Such request shall show the nature of the waiver or exception desired and set forth the reasons in support thereof.

§ 5.67 Amendment or dismissal of applications.

(a) Any application may be amended or dismissed without prejudice upon request of the applicant prior to the time the application is granted. Each amendment to, or request for dismissal of an application shall be signed, authenticated, and submitted in the same manner and with the same number of copies as required for the original application. All subsequent correspondence or other material that the applicant desires to have incorporated as a part of an application already filed shall be submitted in the form of an amendment to the application.

(b) Failure to prosecute an application, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice.

§ 5.69 Partial grants.

In cases in which the Commission grants an application in part, or with any privileges, terms, or conditions other than those requested, or subject to any interference that may result to a station if designated application or applications are subsequently granted, the action of the Commission shall be considered as a grant of such application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will coordinate with the applicant in an attempt to resolve problems arising from the grant.

§ 5.71 License period.

(a) The regular license period for stations in the Experimental Radio Service is either 2 or 5 years. An applicant desiring to apply for a 5-year license must provide justification for its need for a license of that duration. A license may be renewed upon an adequate showing of need.

(b) A license will not be granted for a period longer than that which is required for completion of the experimental project. If such period is estimated to be less than 2 years, or between 2–5 years, a statement to that effect by the applicant may facilitate grant of the application. See also § 5.69 of this part.

§ 5.73 Experimental report.

(a) Unless specifically stated as a condition of the authorization, licensees are not required to file a report on the results of the experimental program carried on under this subpart.

(b) The Commission may, as a condition of authorization, request the licensee to forward periodic reports in order to evaluate the progress of the experimental program.

(c) An applicant may request that the Commission withhold from the public certain reports and associated material and the Commission will do so unless the public interest requires otherwise. These requests should follow the procedures for submission set forth in § 0.459 of this chapter.

§ 5.75 Number of licenses required.

An application for a station embracing widely divergent and unrelated experimentations will normally require a separate license for each experiment. However, if the experiments are related or conducted by the same manufacturer, an applicant may apply for a blanket license encompassing the entire experimental program. If a blanket license is granted, licensees will be required to notify the Commission of the specific details of each individual experiment, including location, number of base and mobile units, power, emission designator, and any other pertinent technical information not specified by the blanket license.

§ 5.77 Change in equipment and emission characteristics.

(a) A change may be made in a licensed transmitter without specific authorization from the Commission provided that the change does not result in operations inconsistent with any term of the outstanding authorization for the station involved.

(b) Discrete changes in emission characteristics may be made without specific authorization from the Commission provided that the Commission is given written notification demonstrating that such changes will not exceed the maximum

emissions envelope established in the existing authorization. Changes made pursuant to such notification that become a permanent part of the licensee's experimental program must be listed in the licensee's next application for renewal.

(c) Prior authorization from the Commission is required before the following antenna changes may be made at a station at a fixed location:

(1) Any change that will either increase the height of a structure supporting the radiating portion of the antenna or decrease the height of a lighted antenna structure.

(2) Any change in the location of an antenna when such relocation involves a change in the geographic coordinates of latitude or longitude by as much as one second, or when such relocation involves a change in street address.

§ 5.79 Transfer and assignment of station authorization.

A station authorization, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, unless the Commission shall, after securing full information, decide that such a transfer is in the public interest and give its consent in writing. Requests for authority to transfer or assign a station authorization shall be submitted on the forms prescribed by § 5.59 of this part.

§ 5.81 Discontinuance of station operation.

In case of permanent discontinuance of operation of a fixed or land station in the Experimental Radio Service, or in case of permanent discontinuance of operation of all transmitter units listed in the license for a mobile station in the Experimental Radio Service, the licensee shall forward the station license to the Commission's Office of Engineering and Technology for cancellation.

§ 5.83 Cancellation provisions.

The applicant for a station in the Experimental Radio Services accepts the license with the express understanding:

(a) that the authority to use the frequency or frequencies assigned is granted upon an experimental basis only and does not confer any right to conduct an activity of a continuing nature; and

(b) that said grant is subject to change or cancellation by the Commission at any time without hearing if in its discretion the need for such action arises. However, a petition for reconsideration or application for review may be filed to such Commission action.

§ 5.85 Frequencies and policy governing their assignment.

(a) Stations operating in the Experimental Radio Service may be authorized to use any government or non-government frequency designated in the Table of Frequency Allocations set forth in part 2 of this chapter, provided that the need for the frequency requested is fully justified by the applicant.

(b) Each frequency or band of frequencies available for assignment to stations in the Experimental Radio Service is available on a shared basis only, and will not be assigned for the exclusive use of any one applicant, and such use may also be restricted to one or more specified geographical areas. Not more than one frequency in a band of frequencies will normally be assigned for the use of a single applicant unless a showing is made demonstrating that need for the assignment of additional frequencies is essential to the proposed program of experimentation.

(c) Frequency assignments will be made only on the condition that harmful interference will not be caused to any station operating in accordance with the Table of Frequency Allocation of part 2 of this chapter.

(d) *Use of Public Safety Frequencies.* Applicants in the Experimental Radio Service must avoid use of public safety frequencies except when a compelling showing can be made that use of such frequencies is in the public interest. Public safety frequencies are identified in subpart B (Public Safety Radio Services) and subpart C (Special Emergency Radio Service) of part 90 of this Chapter. In addition, subpart S of part 90 of this chapter contains rules for the assignment of frequencies that may be used by Public Safety Radio Services in the 806–824 MHz and 851–869 MHz bands. If an experimental license to use public safety radio frequencies is granted, the authorization will be conditioned to require coordination between the experimental licensee and the appropriate frequency coordinator and/or all of the public safety licensees in its intended area of operation.

(e) The Commission may, at its discretion, condition any experimental license or STA on the requirement that before commencing operation, the new licensee coordinate its proposed facility with other licensees that may receive interference as a result of the new licensee's operations.

(f) *Protection of FCC monitoring stations.* (1) Applicants are advised to give consideration, prior to filing applications, to the need to protect FCC monitoring stations from harmful interference. Geographical coordinates of such stations are listed in § 0.121(b) of this chapter. Applications for stations (except mobile stations) that will produce on any frequency a direct wave fundamental field strength of greater than 10 mV/m in the authorized bandwidth of service (–65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120π ohms) at the referenced coordinates, may be examined to determine the extent of possible interference. Depending on the theoretical field strength value or other ambient radio field signal levels at the indicated coordinates, a clause protecting the monitoring station may be added to the station authorization.

(2) In the event that calculated value of expected field strength exceeds 10 mV/m (–65.8 dBW/m^2) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. Prospective applicants may communicate with the Technology Division, Compliance and Information Bureau, telephone (202) 418–1210, Federal Communications Commission, Washington, DC 20554.

(3) Advance consultation is suggested particularly for those applicants who have no reliable data that indicates whether the field strength or power flux density figure indicated would be exceeded by their proposed radio facilities (except mobile stations). In such instances, the following is a suggested guide for determining whether an applicant should coordinate:

(i) All stations within 2.4 kilometers (1.5 statute miles);

(ii) Stations within 4.8 kilometers (3 statute miles) with 50 watts or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iii) Stations within 16 kilometers (10 statute miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iv) Stations within 80 kilometers (50 statute miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in § 0.121(c) of this

Chapter and also meets the criteria outlined in paragraphs (d) (2) and (3) of this section.

(5) The Commission will not screen applications to determine whether advance consultation has taken place. However, applicants are advised that such consultation can avoid objections from the Commission.

§ 5.87 Frequencies for field strength surveys or equipment demonstrations.

(a) Authorizations issued under §§ 5.3 (e) and (f) of this part will normally not have specific frequencies designated in a station license. Prior to the commencement of a survey or demonstration, the licensee will request a specific frequency assignment and submit the following information:

(1) Time, date and duration of survey.

(2) Frequency to be used.

(3) Location of transmitter and geographical area to be covered.

(4) Purpose of survey.

(5) Method and equipment to be used.

(6) Names and addresses of persons for whom the survey is conducted.

(b) [Reserved]

§ 5.89 School and student authorizations.

The Commission may issue an authorization to schools or students for the purpose of presenting experiments or technical demonstrations for school or school approved projects that require the use of radio for a limited period of time. Such authorizations may be granted at the discretion of the Commission.

(a) An application for a school or student authorization may be filed in letter form and must comply with the provisions of § 5.63, of this part except where specified below. The application must be accompanied by a signed statement from a member of faculty of the school, on appropriate letterhead, indicating the person under whose general supervision the project will be conducted. In the case of student authorizations, the letter must state that the project has the approval of the school.

(b) Frequencies in the following bands are available for assignment in authorizations issued under this section:

27.23–27.28 MHz.
460–461 MHz.
462.525–467.475 MHz.
2402–2483.5 MHz.
10.00–10.50 GHz.

(c) Operations under this section shall not exceed a peak envelope output power of 4 watts. The Commission may authorize a greater power if a satisfactory showing is made that such greater power is necessary and that appropriate measures will be taken to prevent interference.

(d) The frequency of operation must be measured or checked prior to each time of operation.

(e) Subject to the provisions of (b), (c) and (d), the provisions in subpart C of this part are waived insofar as such provisions require a station authorized under this section to observe the technical and operating restrictions set forth therein.

(f) The licensee holding an authorization issued under this section shall maintain a record of operation containing the following information:

(1) A brief description of the experimentation being conducted.

(2) The date and time of each period of operation.

(3) The frequency of operation as measured or checked at the beginning of each period of operation.

(g) The record of operation shall be retained for one month after the termination of the authorization.

§ 5.91 Notification of the National Radio Astronomy Observatory.

In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia, any applicant for a station authorization other than mobile, temporary base, temporary fixed, Personal Radio, Civil Air Patrol, or Amateur seeking a station license for a new station, or a construction permit to construct a new station or to modify an existing station license in a manner that would change either the frequency, power, antenna height or directivity, or location of such a station within the area bounded by 39 deg. 15′ N on the north, 78 deg. 30′ W on the east, 37 deg. 30′ N on the south and 80 deg. 30′ W on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box NZ2, Green Bank, West Virginia, 24944, in writing, of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity if any, frequency, type of emission, and power. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the twenty-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

§ 5.93 Limited market studies.

Unless otherwise stated in the instrument of authorization, licenses granted for the purpose of limited market studies pursuant to § 5.3(j) of this part are subject to the following conditions:

(a) All transmitting and/or receiving equipment used in the study shall be owned by the licensee.

(b) The licensee is responsible for informing anyone participating in the experiment that the service or device is granted under an experimental authorization and is strictly temporary.

(c) The size and scope of the experiment are subject to limitations as the Commission shall establish on a case-by-case basis. If the Commission subsequently determines that a market study is not so limited, the study shall be immediately terminated.

Subpart C— Technical Standards and Operating Requirements

§ 5.101 Frequency stability.

An applicant must propose to use a frequency tolerance that would confine emissions within the band of operation, unless permission is granted to use a greater frequency tolerance. Equipment is presumed to operate over the temperature range −20 to +50 degrees celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

§ 5.103 Types of emission.

Stations in the Experimental Radio Service may be authorized to use any of the classifications of emissions covered in part 2 of this chapter.

§ 5.105 Authorized bandwidth.

Each authorization issued to a station operating in this service will show, as the prefix to the emission classification, a figure specifying the maximum necessary bandwidth in kilohertz for the emission used. The authorized bandwidth is considered to be the occupied or necessary bandwidth, whichever is greater. This bandwidth should be determined in accordance with § 2.202 of this chapter.

§ 5.107 Transmitter control requirements.

Each licensee shall be responsible for maintaining control of the transmitter authorized under its station authorization. This includes both

ensuring that transmissions are in conformance with the operating characteristics prescribed in the station authorization and that the station is operated only by persons duly authorized by the licensee.

§ 5.109 Antenna and tower requirements.

(a) Applicants with fixed stations that use antennas that exceed 6 meters in height above the ground level or more than 6 meters in height above an existing building must comply with the requirements of part 17 of this chapter.

(b) The licensee of any radio station that has an antenna structure required to be painted and illuminated pursuant to the provisions of section 303(q) of the Communications Act of 1934, as amended, and part 17 of this chapter, shall perform the inspections and maintain the tower marking and lighting, and associated control equipment, in accordance with the requirements of §§ 17.43 through 17.57 of this chapter.

§ 5.111 General limitations on use.

(a) The following transmission limitations are applicable to all classes of stations in the Experimental Radio Service:

(1) Stations may make only such transmissions as are necessary and directly related to the conduct of the licensee's stated program of experimentation as specified in the application for license and the related station instrument of authorization, and as governed by the provisions of the rules and regulations contained in this part. All transmissions shall be limited to the minimum practical transmission time.

(2) When transmitting, the licensee must use every precaution to ensure that the radio frequency energy emitted will not cause harmful interference to the services carried on by stations operating in accordance with the Table of Frequency Allocations of part 2 of this chapter and, further, that the power radiated is reduced to the lowest practical value consistent with the program of experimentation for which the station authorization is granted. If harmful interference to an established radio service develops, the licensee shall cease transmissions and such transmissions shall not be resumed until it is certain that harmful interference will not be caused.

(b) If experimental stations are to be used to retransmit signals of any other station or to render any communications service to third parties, a full disclosure of this must be made in the application for license.

§ 5.113 Adherence to program of research.

(a) The program of experimentation as stated by an applicant in its application for license or in the station instrument of authorization, shall be substantially adhered to unless the licensee is authorized to do otherwise by the Commission.

(b) Where some phases of the experimental program are not covered by the general rules of the Commission or by the rules of this part, the Commission may specify supplemental or additional requirements or conditions in each case as deemed necessary in the public interest, convenience, or necessity.

§ 5.115 Station identification.

Each class of station in the experimental services shall, unless specifically exempted by the terms of the station authorization, transmit its assigned call sign at the end of each complete transmission: Provided, however, that the transmission of the call sign at the end of each transmission is not required for projects requiring continuous, frequent, or extended use of the transmitting apparatus, if, during such periods and in connection with such use, the call sign is transmitted at least once every thirty minutes. The station identification shall be transmitted in clear voice or Morse code. All digital encoding and digital modulation shall be disabled during station identification.

§ 5.117 Suspension of transmission required.

The radiations of the transmitter shall be suspended immediately upon detection or notification of a deviation from the technical requirements of the station authorization until such deviation is corrected, except for transmissions concerning the immediate safety of life or property, in which case the transmissions shall be suspended as soon as the emergency is terminated.

§ 5.119 Posting station licenses.

The current original authorization for each station shall be retained as a permanent part of the station records but need not be posted.

§ 5.121 Retention of station records.

Records required to be kept by this part shall be retained for a period of at least one year.

§ 5.123 Inspection of stations.

All stations and records of stations in the Experimental Radio Service shall be made available for inspection at any time while the station is in operation or shall be made available for inspection upon reasonable request of an authorized representative of the Commission.

§ 5.125 Authorized points of communication.

Generally, stations in the Experimental Radio Service may communicate only with other stations licensed in the Experimental Radio Service. Nevertheless, upon a satisfactory showing that the proposed communications are essential to the conduct of the research project, authority may be granted to communicate with stations in other services and U.S. Government stations.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

3. The authority citation for part 90 continues to read as follows:

Authority: Secs. 4, 251–2, 303, 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 251–2, 303, 309 and 332, unless otherwise noted.

4. Section 90.203 is amended by revising paragraph (a) introductory text and by adding a new paragraph (l), to read as follows:

§ 90.203 Type acceptance required.

(a) Except as specified in paragraphs (b) and (k) of this section, each transmitter utilized for operation under this part and each transmitter marketed as set forth in § 2.803 of part 2 of this chapter must be of a type that is included in the Commission's current Radio Equipment List as type accepted for use under this part; or, be of a type that has been type accepted by the Commission for use under this part in accordance with the procedures in paragraph (a)(2) of this section.

* * * * *

(l) Ocean buoy and wildlife tracking transmitters operating in the band 40.66–40.70 MHz or 216–220 MHz under the provisions of § 90.248 of this part shall be authorized under the notification procedure pursuant to subpart J of part 2 of this chapter.

5. A new § 90.248 is added to read as follows:

§ 90.248 Wildlife and ocean buoy tracking.

(a) The frequency bands 40.66–40.70 MHz and 216–220 MHz may be used for the tracking of, and the telemetry of scientific data from, ocean buoys and animal wildlife.

(b) Transmitters operating under the provisions of this section are not subject to the technical standards contained in §§ 90.205–90.217. In lieu thereof, the transmitters shall comply with the provisions in this section.

(c) Classes of emission are limited to N0N, A1A, A2A, A2B, F1B, J2B, F2A, F2B, and/or F8E.

(d) The authorized bandwidth shall not exceed 1 kHz.

(e) *Frequency stability.* (1) For transmitters operating in the 40.66–40.70 MHz frequency band, the frequency stability shall be sufficient to ensure that, at the carrier frequency employed, the sum of the authorized bandwidth plus the bandwidth required for frequency stability are confined within this band.

(2) In the 216–220 MHz frequency band, transmitters shall employ a minimum frequency stability of 0.005 percent (50 parts per million). The carrier frequency shall be selected to ensure that the sum of the authorized bandwidth plus the bandwidth required for frequency stability are confined within this band.

(3) The frequency stability standards shall be met over a temperature range of −30° to +50° centigrade at normal supply voltage and for a variation in the primary supply voltage from 85% to 115% of the rated supply voltage at a temperature of +20° C. For battery operated equipment, the equipment tests shall be performed using a new battery.

(f) The maximum peak transmitter output (carrier) power shall not exceed 1 milliwatt for airborne wildlife applications, 10 milliwatts for terrestrial wildlife applications or 100 milliwatts for ocean buoys.

(g) Emissions appearing outside of the authorized bandwidth shall be attenuated below the carrier power by at least 26 dB, following the procedures specified in § 90.210(m).

6. Section 90.259 is revised to read as follows:

§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1435 MHz.

Frequencies in the bands 216–220 MHz and 1427–1435 MHz may be assigned to applicants under this part provided the bands are listed in the individual radio service under which they establish eligibility. Use of these bands is limited to telemetering purposes, except that the 216–220 MHz band may also be used for wildlife and ocean buoy tracking operations pursuant to § 90.248. All operation is secondary to Federal Government operations, and operation in the 216–220 MHz band is also secondary to the maritime mobile service and operation in the 1427–1429 MHz band is also secondary to the space operation service (earth-to-space). Base stations authorized in these bands shall be used to perform telecommand functions with associated mobile telemetering stations. Base stations may also command actions by the vehicle itself, but will not be authorized solely to perform this function. Airborne use will not be authorized. Each application will be coordinated with the Federal Government by the Federal Communications Commission and is subject to such technical and operational limitations as may be imposed by the government. Each application should include precise information concerning emission characteristics, transmitter frequency deviation, output power, type and directional characteristics, if any, of the antenna, and the minimum necessary hours of operation.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No.971229312–7312–01; I.D. 111398A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Revisions

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces an increase to the monthly cumulative trip limit for Dover sole taken in the limited entry Pacific Coast groundfish fishery. This change is intended to ensure that the 1998 harvest guidelines and allocations are taken. NMFS also announces the last cumulative trip limit period in 1998 for the "B" platoon, those limited entry trawl vessels that are authorized to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet, and makes several housekeeping changes. These actions are authorized under the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Effective 0001 hours local time (l.t.) December 1, 1998, except for the trip limits for vessels operating in the "B" platoon, whose trip limit changes will become effective at 0001 hours l.t. November 16, 1998. These changes are in effect, unless modified, superseded, or rescinded, until the effective date of the 1999 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through December 4, 1998.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, 206–526–6140; or Svein Fougner, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The following trip limit change was recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its November 2–6, 1998, meeting in Portland, OR.

Increase to the Limited Entry Monthly Cumulative Trip Limit for Dover Sole

Preliminary landing estimates for Dover sole, which is within the DTS complex, consisting of Dover sole, thornyheads, and trawl-caught sablefish, indicate that the limited entry allocation would not be reached. The current monthly cumulative trip limits for the limited entry fishery for species in the DTS complex are: Dover sole, 18,000 lb (8,165 kg); longspine thornyheads, 7,500 lb (3,402 kg); shortspine thornyheads, 1,500 lb (680 kg), and trawl-caught sablefish, 5,000 lb (2,268 kg).

The best available information at the November 1998 Council meeting indicated that 1,390 mt of trawl-caught sablefish, 5,543 mt of Dover sole, 1,671 mt of longspine thornyheads, and 941 mt of shortspine thornyheads had been taken through September 30, 1998. The Dover sole landing levels for January through September are well below the levels that were projected for this period. Although the estimated attainment date for the shortspine thornyhead allocation is December 20, relatively little bycatch is expected to be taken in the Dover sole fishery during winter months, so increasing the Dover sole trip limit is not expected to result in increased bycatch and discard of shortspine thornyheads. Therefore, the Council recommended increasing the monthly cumulative trip limit of Dover sole on December 1, 1998, to 36,000 lb (16,329 kg). Longspine thornyheads and

trawl-caught sablefish also are projected to be below their limited entry allocations, but increases to their trip limits were not recommended because of expected bycatch of shortspine thornyheads.

Final Period for the "B" Platoon

NMFS also announces the last cumulative trip limit period in 1998 for the "B" platoon, those limited entry trawl vessels authorized (on their limited entry permit) to take their cumulative trip limits 2 weeks out of phase with the rest of the fleet. For vessels in the "B" platoon, the final cumulative trip limit period will be from November 16, 1998, through December 31, 1998. At any time during this period, each vessel in the "B" platoon is allowed to take and retain, possess, and land the equivalent of two 1-month cumulative limits (the November and December cumulative trip limits). Therefore, the "B" platoon cumulative trip limit for Dover sole between November 16 and December 31, 1998, is 54,000 lb (24,494 kg), which is derived by adding 18,000 lb (8,165 kg), the amount of the November cumulative trip limit, plus 36,000 lb (16,329 kg), the amount of the December cumulative trip limit.

Housekeeping

This document also updates portions of the 1998 annual specifications and management measures (63 FR 419, January 6, 1998), as amended. In Section IV., under *C. Trip Limits in the Open Access Fishery*, the introductory text at (1)(a) is deleted because it was replaced by paragraphs (1)(a)(i) and (ii) on October 1, 1998 (63 FR 53313, October 5, 1998). Also, paragraphs C(1)(a)(ii) and C(2)(a) are revised to include longline gear which was inadvertently deleted. These changes clarify the Council's intent.

NMFS Action

For the reasons stated above, NMFS concurs with the Council's recommendations and announces the following changes to the 1998 annual management measures (63 FR 419, January 6, 1998, as amended at 63 FR 24970, May 6, 1998; 63 FR 36612, July 7, 1998; and 63 FR 45966, August 28, 1998, 63 FR 53313, October 5, 1998).

1. In Section IV., under *A. General Definitions and Provisions*, paragraph (1)(c)(iii)(C) is revised to read as follows:

A. General Definitions and Provisions

* * * * *

(1) * * *

(c) * * *

(iii) * * *

(C) Special provisions will be made for "B" platoon vessels so that the amount of fish made available in 1998 to both "A" and "B" vessels is the same. For vessels in the "B" platoon, the final cumulative trip limit period will be from November 16, 1998, through December 31, 1998. At any time during this period, each vessel in the "B" platoon is allowed to take and retain, possess, and land the equivalent of two 1-month cumulative limits which is the sum of the cumulative trip limits for November and December 1998.

* * * * *

2. In Section IV., under *B. Limited Entry Fishery*, (4)(c)(i) is revised to read as follows:

B. Limited Entry Fishery

* * * * *

(4) * * *

(c) * * *

(i) The monthly cumulative trip limits for species in the Dover sole, thornyhead, and trawl-caught sablefish complex are: for Dover sole, 36,000 lb (16,329 kg); for longspine thornyheads, 7,500 lb (3,402 kg); for shortspine thornyheads, 1,500 lb (680 kg); and for trawl-caught sablefish, 5,000 lb (2,268 kg). For vessels in the "B" platoon, during November 16-December 31, 1998, the cumulative trip limit for Dover sole is 54,000 lb (24,494 kg); for longspine thornyheads, 15,000 lb (6,804 kg); for shortspine thornyheads, 3,000 lb (1361 kg); and for trawl-caught sablefish, 10,000 lb (4,536 kg).

* * * * *

3. In Section IV., under *C. Trip Limits in the Open Access Fishery*, paragraph (1)(a) is revised, paragraph (1)(e)(ii)(A) is revised, and the heading of paragraph (2)(a) is revised to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(1) * * *

(a) *All rockfish.* (i) *North of Cape Blanco.* Rockfish may not be taken and retained, possessed, or landed by any open access gear, including exempted trawl gear, north of Cape Blanco.

(ii) *South of Cape Blanco.* South of Cape Blanco the trip limit for rockfish taken with hook-and-line, longline or pot gear is 10,000 lb (4,536 kg) per vessel per fishing trip. Rockfish taken under this trip limit count toward cumulative trip limits.

* * * * *

(e) * * *

(ii) * * *

(A) All open access gear except setnets or trammel nets. For all open access gear except setnets or trammel nets, bocaccio may not be taken and retained, possessed, or landed north of Cape Blanco. South of Cape Mendocino, the monthly cumulative limit for bocaccio is 1,000 lb (454 kg) of which no more than 500 lb (227 kg) per trip may be taken and retained with hook-and-line, longline, or pot gear.

* * * * *

(2) * * *

(a) *Hook-and-line, longline, pot, setnet, trammel net.* * * *

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP. The determination to take these actions is based on the most recent data available. Because of the need for immediate action to implement these changes at the beginning of the final "B" platoon period which starts November 16, 1998, and because the public had an opportunity to comment on the action at the November 1998 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1) and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30954 Filed 11–16–98; 4:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 223
Thursday, November 19, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC30

Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Bloodwork Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to provide that hematological tests for anemia no longer be a mandatory part of each WIC applicant's certification intake process, so long as at least one nutrition risk factor is present for the applicant. This proposed rule would allow the State agency the discretion to obtain such tests at certification or within 90 days of the date of certification. Such tests would be used for the purposes of assessing nutritional status, providing nutrition education, further tailoring food packages to meet nutritional needs, and referring to appropriate health and social services in the community. The proposed revisions to current WIC Program regulations will accommodate a changing health care environment; facilitate improved coordination with other health programs serving WIC applicants; minimize potentially repetitive, costly, and invasive blood testing procedures; reduce inconvenience to applicants, and expedite services to needy individuals applying for WIC Program benefits.

DATES: To be assured of consideration, comments must be postmarked on or before January 19, 1999.

ADDRESSES: Comments should be sent to Ronald J. Vogel, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302, (703) 305–2730. All written comments will be available for public inspection during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at the above-noted address.

FOR FURTHER INFORMATION CONTACT: Barbara Hallman at (703) 305–2730 during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, Samuel Chambers, Jr., Acting Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. State and local agencies and participants would be most affected by this proposed rule. This proposal would provide State and local agencies with increased flexibility in meeting certification requirements for the Program. Participants and applicants would also be affected by changes in the certification process which should result in expedited receipt of program services.

Paperwork Reduction Act

This proposed rule imposes no new reporting or recordkeeping requirements which are subject to review by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995.

Executive Order 12372

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557. For reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115), this program is included in the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12998

This proposed rule has been reviewed under Executive Order 12998, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the EFFECTIVE DATE paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is required under section 202 of the UMRA, section 205 generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

The Department reassesses WIC Program regulations and operations on an ongoing basis to ensure the continuing efficiency and effectiveness of the program. The subject of blood testing requirements has repeatedly been identified as warranting consideration for change based on frequent expressions of concern from the WIC community, including health

and medical officials at both the State and local levels. Numerous concerns have been brought to the Department's attention on the WIC Program's current blood test requirements, which may have the consequences of delaying enrollment of WIC applicants, duplicating effort, and creating unnecessary administrative expense, and hardship to applicants.

Three specific concerns regarding changes in the delivery and operation of health care also compel the Department's reassessment of the blood testing requirements. First, WIC blood tests coincide with WIC certification periods, thus, the schedule of blood tests required at WIC certification does not generally correspond with State, local, and generally accepted periodicity schedules and guidelines. The Department has been informed that many health programs, as cost containment measures, are commonly limiting blood test screening to a specified minimum seen as medically necessary, consistent with State, local, and generally accepted guidelines and other auxiliary health programs such as lead poisoning prevention programs or Early and Periodic, Screening, Diagnosis and Treatment programs. Health care providers have expressed concerns to the Department that the WIC Program's certification schedule, of which blood testing is a mandatory part, is creating a barrier to public health care coordination by artificially dictating periodicity for hematological testing, rather than conforming to standard clinical practice used by the State and local health care system.

Second, the move towards managed care programs as the primary source of health care has affected the ability of WIC local agencies to obtain blood test referral data in a timeframe that coincides with WIC certification periods. The source of health care for WIC participants and others has been shifting in many States from local health department clinics, many of which collected bloodwork to meet WIC's needs on site at the WIC clinic, to managed care settings in which blood tests are performed off site from the WIC clinic and thus provided to WIC on a referral basis.

Third, bloodwork data obtained from referral sources is becoming more frequently the norm in WIC because of Federal, State and local policies limiting blood handling only to persons or laboratories with specified medical credentials, thereby precluding some WIC local agencies from collecting or analyzing blood samples.

The Proposal

In response to these major concerns, the Department is proposing changes in the timing of anemia tests, extending the age of the data that may be used, clarifying allowable costs for anemia tests, and making corresponding changes to State Plan requirements.

These topics are discussed in greater detail below.

1. Hematological Tests for Anemia (§ 246.7 (e), (e)(1), and (e)(1) (i)–(ii))

Given the logistical difficulties of current bloodwork requirements described above, the Department is proposing that hematological tests for anemia no longer be a mandatory part of each WIC applicant's certification intake process as long as at least one nutrition risk factor is present for the applicant. However, given the importance of anemia testing in the target population and WIC's long and successful track record in reducing national rates of anemia, this rule proposes to require such a test but would permit its completion within 90 days of the date of certification, except as noted for infants as discussed later in this preamble. The test data would be used for the critical purposes of appropriately assessing an applicant's nutritional status, providing nutrition education, tailoring food packages and referring to health care or social services. Although the Department considers the collection of blood test data at certification as optimal to assist with performing the most timely and complete nutrition assessment and providing appropriate nutrition education and referrals, this proposal addresses the practical realities faced by State agencies by providing flexibility to obtain this data up to 90 days after the certification intake process. State agencies would, however, be required to provide for blood tests at certification for income eligible applicants with no other documented risk conditions (with the exception of presumptively eligible pregnant women as discussed below) in order to determine if they are at nutritional risk due to anemia.

2. Timing of Hematological Tests (§ 246.7 (e), (e)(1), and (e)(1) (i)–(ii))

Age of Bloodwork Data

The Department has received comments from State agencies that the allowable age for bloodwork data limits local agency flexibility to coordinate with other health care programs. To address the concerns with the age of bloodwork data, this proposed rulemaking would expand the current regulatory standard from 60 days to 90 days as the maximum age of bloodwork data used to assess nutritional risk. The proposed 90-day limit should allow additional flexibility to coordinate referral data with other health care programs, yet at the same time assure that the data accurately represent the applicant's health status. This rulemaking would assist in assuring this by continuing to require that such data are reflective of the categorical nutritional status/risk of women applicants. Thus, for a pregnant woman the test must be conducted during pregnancy, and for a breastfeeding or a postpartum woman the test must be conducted after the termination of their pregnancy.

The categorical restrictions do not apply to infants and children. As such, State agencies may use bloodwork data obtained from an infant to certify a child applicant, provided such data is not more than 90 days old. For example, bloodwork data obtained when the infant was 10 months old may be used to certify a 13-month old child.

Timing of Bloodwork

This proposed rule is intended to allow sufficient flexibility to States to accommodate generally accepted recommendations of maternal and child health and medical experts. In April 1998, the Centers for Disease Control and Prevention (CDC) issued a document titled, "Recommendations to Prevent and Control Iron Deficiency in the United States." These recommendations are intended to guide primary health care providers in preventing and controlling iron deficiency in infants, preschool children, and women of childbearing age, particularly pregnant women—populations served by the WIC Program which are at high risk for iron-deficiency anemia. As such, the CDC recommendations stipulate that blood test results should be obtained at the earliest opportunity during pregnancy, from 4 to 6 weeks after delivery for postpartum and breastfeeding women, between 9 and 12 months of age for infants, and 6 months later (15–18 months) and annually from ages 2 to 5 years for children. This rule would provide States with the flexibility to conform to these recommendations to better assure that WIC staff have blood test data reflecting current status at appropriate times during the certification period yet provide that WIC participants receive timely nutrition care and referral during their certification periods.

For pregnant, breastfeeding, and postpartum women, a hematological test for anemia must be performed at

certification or within 90 days of the date of certification. The test may be from a referral source or may be conducted by WIC. The referral data may be up to 90 days old, so long as it is reflective of women applicants' categories, meaning the test must have been taken for pregnant women during pregnancy and for postpartum or breastfeeding women following termination of pregnancy.

Regarding pregnant women, current regulations at § 246.7(e)(1)(iii), which reflect WIC legislation, provide State agencies an additional flexibility by allowing them to presume that income-eligible pregnant women are nutritionally at risk and thus eligible to participate in the program. Presumptively eligible women can be certified immediately and can receive program benefits up until 60 days from the date they were certified, by which time a nutrition assessment must be conducted to establish nutritional risk. If the subsequent assessment determines that the woman does not meet nutritional risk criteria, the certification terminates on the date of the determination, or 60 days after the participant was certified, whichever is sooner. This proposed rule would eliminate the bloodwork requirement at certification or within the 60-day presumptive certification period for these women, further easing burden. However, under this proposal, if the nutrition assessment performed during the 60-day period does not include anemia testing and does not identify any other qualifying risk factor, a blood test must be performed or obtained from referral sources before that 60-day period elapses to permit continuity of service for women found to be anemic. This requirement enables such pregnant women to have the temporary presumptive certification extended to a full certification period without disruption to continued receipt of WIC benefits, should they be found anemic.

Consistent with the new CDC recommendations, all infants 9 months of age or older must have a hematological test for anemia between 9 and 12 months of age. Such test may be performed by the WIC agency or obtained from referral data. A blood test taken between 6 and 9 months of age may be used to meet the test requirement, however State agencies are encouraged to obtain blood test data between 9 and 12 months of age as recommended by CDC. In addition, recognizing that the CDC guidelines state that blood tests for anemia for infants under 6 months of age may be appropriate for preterm infants and low birthweight infants who were not fed iron-fortified formula, this proposal would permit, but not require, blood tests for such infants.

The Department also wishes to clarify that in cases where the State agency has opted to certify infants under 6 months of age up to their first birthday, as permitted in § 246.7(g)(1)(iv), such infants must receive a blood test between 9 and 12 months of age. The extension of the certification period up to the first birthday is only permitted provided the quality and accessibility of health care services are not diminished. A blood test for anemia is considered a critical component of health care services and thus, must be performed or obtained from referral services. As stated earlier in this preamble, the CDC recommendations identify the period between 9 and 12 months as the optimal timeframe for anemia testing for infants. Also considered as a critical component of health care services during the one-year period, is securing current length and weight measurements in order to assess the infant's growth.

State agencies that certify infants at 6 month intervals must ensure that infants 9 months of age or older receive a blood test. A blood test taken at 6 months of age may be used to meet the infant blood test requirement, because such data would fall within the 90-day age of bloodwork data timeframe.

For children, current provisions at Section 246.7(e)(1) allow State and local agency discretion to waive the blood test for children who were determined to be within the normal range at their last certification period, provided that such test is performed at least once every 12 months. The new CDC guidelines recommend a blood test between 9 and 12 months of age, 6 months thereafter (around 15 to 18 months of age), and annually thereafter for each year from ages 2 to 5 years of age. Thus, this rule proposes that State agencies perform a blood test between 12 and 24 months of age to permit them full flexibility to accommodate arrangements for bloodwork for these children within the CDC recommended 6-month timeframe following their infant bloodwork. While for most children, this would fall between 15 and 18 months of age, this proposal would expand the allowable timeframe to accommodate practical logistical difficulties and circumstances where, for example, there was no previous bloodwork during infancy, it was taken during infancy at a time other than the recommended 9 to 12 month period, or other logistical complications which made bloodwork during the optimal 15 to 18 month period infeasible. Nevertheless, because pediatric health authorities generally recommend that children have a blood test during the most vulnerable period of 15 to 18 months, when anemia is more likely to become manifest, State agencies are expected to make every effort to coordinate the scheduling of bloodwork for children between 12 and 24 months old within the recommended 15 to 18 month timeframe.

As for women, the referral bloodwork data allowed to be used to certify children and infants can be up to 90 days old. However, although bloodwork data obtained when an infant was between 9 and 12 months old may be used to certify a 12-month old child, such data cannot be used to fulfill the blood test that is required between 12 and 24 months of age nor can it be used to waive a blood test. Children who had an inadequate iron intake during infancy are at greatest risk of developing anemia between 12 and 24 months of age. Thus, it is critical that children receive a blood test for anemia during the period of 12–24 months of age. As such, the current provision at § 245.7(e) has been modified to state that for children ages two and older who were determined to be within the normal range at their last certification, the blood test may be waived, provided that a blood test is performed at least once every 12 months.

Other Nutrition Assessment Data

The Department again emphasizes that this proposal provides for flexibility only in the timing of the collection and age of anemia blood test data: If not completed at certification (using current data, or data up to 90 days old), it must be completed within 90 days of certification except as noted for infants as discussed earlier in this preamble. All other nutrition assessment data, e.g., height and weight, and dietary and medical assessment data, must be collected as currently required; namely: It must be collected at certification for breastfeeding and postpartum women, infants and children, and, for pregnant women unless the State agency has opted to implement presumptive eligibility for pregnant women. State agencies implementing presumptive eligibility must still collect height, weight and dietary and medical assessment data for pregnant women within 60 days of certification to determine eligibility. The Department considers the effort at certification to measure and record height or length and weight and collect dietary and other medical data for all applicants to be minimal but necessary during the intake process, and not subject to the difficulties related to bloodwork

assessment. These timely measurements and data are fundamental to the assessment of nutritional risk of all categories of applicants.

3. Allowable Costs for Anemia Tests (§ 246.14(c)(2) (i)–(iv))

Current WIC Program regulations (§ 246.14(c)(2) (i)–(iv)) stipulate that fees, equipment, salary and other costs associated with the collection of hematological data to test for anemia for certification purposes are allowable Program costs. This proposed rule would specify that collection of hematological data is not only for certification purposes, but also for health assessment and monitoring purposes. This proposal would also allow State agencies to perform one additional hematological test as medically necessary in follow-up to a finding of anemia within a certification period. The Department proposes changes in § 246.14(c)(2) and (c)(2) (i)–(iv) to clarify that this follow-up test for nutrition assessment purposes is an allowable WIC cost when deemed necessary for health monitoring as determined by the WIC competent professional authority (CPA).

While this rule would permit WIC to pay for one follow-up test, State agencies are encouraged to weigh the cost effectiveness of WIC expenditures for such purposes against other competing and critical WIC needs. The Department generally believes that follow up monitoring of blood values of persons with anemia is largely the responsibility of health care providers, and should be treated as a medical, rather than solely a nutritional, concern. As such, the Department encourages State agencies to explore other locally available sources for ongoing health care and assessments for WIC participants with anemia.

4. State Plan (§ 246.4(a)(11)(i))

State agencies must incorporate their blood test data requirements and timeframes in detail in the "Certification Procedures" section of their State Plan Procedure Manual.

Appropriate procedures that must be followed when blood test data are obtained include: (1) Make notations in the participant's file with respect to nutrition risk factors listed and priority as appropriate; (2) inform the woman or parent/guardian of the outcome and meaning of the blood test if the results show anemia; (3) provide follow-up nutrition education, if appropriate; (4) make adjustments in the food package, as appropriate; and (5) make referrals to health care or social services, as appropriate.

List of Subjects in 7 CFR Part 246

Administrative practice and procedure, Civil rights, Food assistance programs, Food and Nutrition Service, Food donations, Grant programs-health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Reporting and recordkeeping requirements, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.4, paragraph (a)(11)(i) is revised to read as follows:

§ 246.4 State Plan.

(a) * * *

(11) * * *

(i) Certification procedures, including a list of the specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, hematological data requirements including timeframes for the collection of such data, the State agency's income guidelines for Program eligibility, and any adjustments to the participant priority system made pursuant to § 246.7(e)(4) to accommodate high-risk postpartum women or the addition of Priority VII;

* * * * *

2. In § 246.7:

a. The introductory text of paragraph (e) is revised;

b. The introductory text of paragraph (e)(1) is removed;

c. Paragraphs (e)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(1)(iv) are redesignated as paragraphs (e)(1)(iii), (e)(1)(iv), (e)(1)(v), and (e)(1)(vi) respectively;

d. New paragraphs (e)(1)(i) and (e)(1)(ii) are added;

e. Newly redesignated paragraphs (e)(1)(iii), (e)(1)(iv) and (e)(1)(vi) are amended by adding a heading; and

f. Newly redesignated paragraphs (e)(1)(v) is revised.

The revisions and additions read as follows:

§ 246.7 Certification of participants.

* * * * *

(e) *Nutritional risk.* To be certified as eligible for the Program, applicants who meet the Program's eligibility standards specified in paragraph (c) of this section must be determined to be at nutritional risk. A competent professional authority on the staff of the local agency shall determine if a person is at nutritional risk through a medical and/or nutritional assessment. This determination may be based on referral data submitted by a competent professional authority not on the staff of the local agency. Nutritional risk data shall be documented in the participant's file and shall be used to assess an applicant's nutritional status and risk, tailor the food package to address nutritional needs, design appropriate nutrition education, and make referrals to health and social services for follow-up, as necessary and appropriate. Except as stated in paragraph (e)(1)(v) of this section, at least one nutritional risk must be documented at the time of certification in order for an income eligible applicant to receive WIC benefits.

(1) *Determination of nutritional risk.*—(i) *Required nutritional risk data.* At a minimum, height or length and weight shall be measured and documented in the applicant's file at the time of certification. In addition, a hematological test for anemia such as a hemoglobin, hematocrit, or free erythrocyte protoporphyrin test shall be performed at certification or within 90 days of the date of certification. However, such hematological tests are not required, but are permitted, for infants under nine months of age. All infants nine months of age and older (who have not already had a hematological test performed or obtained, between the ages of six and nine months, by a competent professional authority), shall between nine and twelve months of age have a hematological test performed or obtained from referral sources. This hematological test does not have to occur within 90 days of the date of certification. Only one test is required for children between 12 and 24 months of age. At the State or local agency's discretion, the hematological test is not required for children ages two and older who were determined to be within the normal range at their last certification. However, the hematological test shall be performed on such children at least once every 12 months. Hematological test data submitted by a competent professional authority not on the staff of the local agency may be used to establish nutritional risk. Height or length and weight measurements and, with the exceptions specified in this paragraph, hematological tests, shall be obtained for all participants, including those who are determined at nutritional

risk based solely on the established nutritional risk status of another person, as provided in paragraphs (e)(1)(iv) and (e)(1)(v) of this section.

(ii) *Timing of nutritional risk data.*

(A) *Weight and height or length.* Weight and height or length shall be measured for program participation at the time of certification.

(B) *Hematological test for anemia.* For pregnant, breastfeeding, and postpartum women, and child applicants, the hematological test for anemia shall be performed or obtained from referral sources at the time of certification or within 90 days of the date of certification. However, a State agency cannot use hematological data obtained from referral sources that is taken more than 90 days prior to the date of certification for program participation.

Infants nine months of age and older (who have not already had a hematological test performed, between six and nine months of age, by a competent professional authority or obtained from referral sources), shall between nine and twelve months of age have a hematological test performed or obtained from referral sources. Such a test may be performed more than 90 days after the date of certification. For pregnant women, the hematological test for anemia shall be performed during their pregnancy. For persons certified as postpartum or breastfeeding women, the hematological test for anemia shall be performed after the termination of their pregnancy. The participant or parent/guardian shall be informed of the test results when there is a finding of anemia, and notations reflecting the outcome of the tests shall be made in the participant's file. Nutrition education, food package tailoring, and referral services shall be provided to the participant or parent/guardian, as necessary and appropriate.

(iii) *Breastfeeding dyads.* * * *

(iv) *Infants born to WIC mothers or women who were eligible to participate in WIC.* * * *

(v) *Presumptive eligibility for pregnant women.* A pregnant woman who meets the income eligibility standards may be considered presumptively eligible to participate in the program, and may be certified immediately without an evaluation of nutritional risk for a period up to 60 days. A nutritional risk evaluation of such woman shall be completed not later than 60 days after the woman is certified for participation. A hematological test for anemia is not required to be performed within the 60-day period unless the nutrition risk evaluation performed does not identify a risk factor. If no risk factor is identified, a hematological test for anemia must be performed or obtained from referral sources before the 60-day period elapses. Under the subsequent determination process, if the woman does not meet any nutritional risk criteria, including anemia criteria, the woman shall be determined ineligible and may not participate in the program for the reference pregnancy after the date of the determination, unless she subsequently reapplies for program benefits and is found to be both income eligible and at nutritional risk. Notification of the ineligibility determination shall be given in accordance with paragraph (j)(5) of this section. In addition, if the nutritional risk evaluation is not completed within the 60-day timeframe, the woman's participation shall end. As set forth in paragraph (j)(8) of this section, notification must be given prior to expiration of the certification period.

(vi) *Regression.* * * *

* * * * *

3. In § 246.14, paragraph (c)(2) is revised to read as follows:

§ 246.14 Program costs.

* * * * *

(c) * * *

(2) The cost of Program certification and nutrition assessment procedures, including the following:

(i) Laboratory fees incurred for up to two hematological tests for anemia per individual per certification period conducted to assess nutritional status and determine whether such individual is at nutritional risk. The first test shall be to determine anemia status. The second test may be performed only in follow up to a finding of anemia when deemed necessary for health monitoring as determined by the WIC State agency;

(ii) Expendable medical supplies necessary to assess nutritional status and to determine whether persons are at nutritional risk;

(iii) In connection with nutrition assessment and nutritional risk determinations, medical equipment used for taking anthropometric measurements, such as scales, measuring boards, and skin fold calipers; and for blood analysis to detect anemia, such as spectrophotometers, hematofluorometers and centrifuges; and

(iv) Salary and other costs for time spent on nutrition assessment and certification.

* * * * *

Dated: October 2, 1998.

Samuel Chambers, Jr.,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 98–30917 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket Nos. 98AMA–FV–956–1; FV98–956–1]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 956

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order (order) for sweet onions and provides Walla Walla Sweet Onion producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Walla Walla Sweet Onion Committee (committee), the agency responsible for local administration of the order. The proposed changes would broaden the scope of the order by adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, a proposal is included to make a minor change in the committee's name. These changes are being proposed to improve the operation and functioning of the Walla Walla Sweet Onion marketing order program.

DATES: The referendum shall be conducted from November 25, 1998, through December 10, 1998. The representative period for the purpose of the referendum herein ordered is June 1, 1997, through May 31, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Curry, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, or Fax: (503) 326–7440; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0200; telephone: (202) 720–2491, or Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 25, 1998, and published in the April 1, 1998, issue of the **Federal Register** (63 FR 15787). Recommended Decision and Opportunity to File Written Exceptions issued on September 17, 1998, and published in the **Federal Register** on September 23, 1998 (63 FR 50802).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated on the record of a public hearing held in Walla Walla, Washington, on April 7, 1998, to consider the proposed amendment of Marketing Agreement and Order No. 956, regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained amendment proposals submitted by the committee and the U.S. Department of Agriculture.

The committee's proposals would add the authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, the committee proposed changing its name from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to allow such changes as may be necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on September 17, 1998, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by October 23, 1998. None were received.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1996–97 crop year, approximately 33 handlers were regulated under Marketing Order No. 956. In addition, there were about 64 producers of Walla Walla sweet onions in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Twenty-four of the 33 handlers are also producers who handle their own onions. There are seven commercial packinghouses that pack approximately 90 percent of all Walla Walla sweet onions. In the 1996–97 season, the average f.o.b. price for Walla Walla sweet onions was $8.70 per 50-pound sack. Total production for the 1996–97 season was 666,000 50-pound containers. A handler who packed over 550,000 50-pound units would exceed the SBA definition of a small handler. According to record evidence, there are two dominant handlers in the industry and at least one of these handlers could be considered a large handler under this definition. The record revealed that all Walla Walla sweet onion growers would be considered small producers. Therefore, it can be concluded that the majority of growers and handlers would be considered small businesses.

The marketing order, promulgated in 1995, currently defines the production area where onions must be grown to be designated as Walla Walla sweet onions. It also provides the authority to fund research and promotion activities through assessments on handlers, as well as establish container regulations. Although the marketing order as currently written addresses some of the marketing problems facing the industry, the Walla Walla sweet onion industry continues to experience marketing problems.

Economic data presented on the record indicates that the acres planted have decreased from 1,800 in 1988 to 900 acres planted in 1997. This is a 50% decrease since 1988. Similarly, acres harvested have decreased from 1,600 in 1988 to 900 in 1997.

In addition, the data shows production has decreased dramatically from 1,280,000 50-pound containers in 1988 to 666,000 50-pound containers in 1997. This is a 48% decrease in production in the last 10 years.

Total crop values have declined from $9,345,000 in 1989 to $5,794,000 in 1997. This is a 38% decrease in total crop values in 9 years.

U.S. per capita consumption of fresh onions has increased from 10.7 pounds per year in 1981 to 17.5 pounds per year in 1997. This is a 64% increase in per capita use of fresh onions, while the production of Walla Walla sweet onions has decreased. This increased consumption shows that this industry has the potential to improve.

In addition, economic data shows that competition from other sweet onion producing areas has increased dramatically. Producers of Walla Walla sweet onions have lost market share to other sweet onions such as Georgia Vidalia onions, California Imperial onions, Hawaii Maui Sweets, New Mex. Sweets from New Mexico, and Texas hybrid 1015Y's.

The acres harvested and production of Vidalia onions have increased by 236% and 447%, respectively, since 1989. The Vidalia sweet onion industry's normal harvesting and shipping season begins in the middle of April and ends in late July. The Vidalia onion industry has

been successful in extending its shipping season into September and October by establishing controlled atmosphere storage capabilities. This may be having a price dampening effect on Walla Walla sweet onions because of the overlap of shipping seasons and direct competition caused by the extended season of Vidalia onions.

Of the six sweet onion-producing areas in the U.S., Walla Walla sweet onion prices are lower than Maui, Vidalia and Texas onions. In addition, the economic report presented on the record shows that Vidalia onions always receive higher prices than Walla Walla sweet onions with an average price differential of $5 per 50-pound container.

The Walla Walla sweet onion season begins in middle or late June and continues until the end of July. The shipping season lasts for approximately six weeks. Prices for Walla Walla sweet onions at the beginning of the season start relatively high. As the season progresses, prices generally fall. This seasonal price behavior has resulted in producers harvesting onions before they are fully matured. This has led to poor quality onions being sold on the market that make an unfavorable impression on consumers, supermarkets, and other outlets that handle Walla Walla sweet onions. In addition, this situation appears to have shortened the marketing season.

The quality at the beginning of the season has a tendency to set the market tone for the remainder of the season. If quality is high at the beginning of the season, this makes a favorable impression on buyers as well as consumers. With high quality onions at the start of the season, consumers are likely to become repeat customers. However, if quality is low at the beginning of the season, receivers as well as consumers are disappointed. Initial low quality will result in consumers shopping for alternative sweet onions and they will not be repeat purchasers.

Minimum quality and size requirements are established under marketing orders to ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns. The objective of implementing quality control and size provisions under marketing orders is to make the markets work more efficiently, improve quality, and to market preferred sizes. The use of quality and size standards through a grading scheme benefits consumers by assuring the buyers that they are getting high quality produce of desirable size. This helps build consumer demand in the long run. Minimum quality and size standards are deemed desirable because they prevent the shipment of poor quality produce, which ends up harming producers' ability to sell their product and consumers' willingness to buy.

The reputation of Walla Walla sweet onions has deteriorated over the recent years due to the poor quality of some of the onions marketed. Record evidence indicated that a surveillance project conducted during the 1997 harvest season by the Washington State Department of Agriculture on behalf of the committee noted that a significant amount of onions sold within the immediate Walla Walla area did not meet minimum U.S. standards. Walla Walla sweet onions usually meet at least U.S. No. 2 grade, but only a small volume meets U.S. No. 1 grade.

Establishing quality and size provisions under the Walla Walla sweet onion marketing order would provide an incentive for producers to allow their onions to fully mature, resulting in a higher quality of onion marketed. Establishing quality and size requirements would ensure consistent quality and acceptable sizes of onions throughout the season. This tends to benefit consumers through a higher quality of onion and benefits producers with a higher demand for their product. In the long run, high quality, seasonal produce builds name recognition and helps enhance demand.

The Walla Walla sweet onion industry has attempted to voluntarily implement quality control. Prior to implementation of the marketing order, the Walla Walla Sweet Onion Commission, a voluntary organization composed of producers and handlers, implemented quality rules for its members. These rules restricted the sale of U.S. No. 2 grade onions and culls from fresh market use, and included random inspections. Common defects that caused the onions to fail to meet these requirements were seed stems, immaturity, and decay. Because of the voluntary nature of these imposed regulations, this project was unsuccessful.

Currently, the marketing order allows only onions grown in the designated production area to be marketed as Walla Walla sweet onions. Research activities as well as promotional activities are also authorized under the current order. Broadening the scope of the order by authorizing minimum quality and size requirements would add another marketing tool to help the industry solve marketing problems, especially those related to quality. Minimum quality and size requirements would allow the industry to improve their name recognition with a quality product. Amending the order by authorizing the establishment of minimum quality and size requirements would help to expand markets and deliver a more consistent quality product of desirable size to the consumer.

Without any quality and size provisions in place, industry members can place substandard product on the market that is severely impacting the credibility and marketability of all Walla Walla sweet onions. Because of these current practices, the industry is experiencing problems establishing and maintaining markets in areas that have traditionally been strong. The industry has lost markets due to poor quality, short shelf life and increased competition from other sweet onion producing areas.

Minimum quality and size requirements would help alleviate some of these problems and work to improve producer returns by strengthening consumer and retail demand. Mandatory inspection requirements would make all producers and handlers responsible for the quality of the industry's output. Poor quality would not be mixed with better quality. The record revealed that most handlers are already sorting by size. The Department's Market News Service reports prices for jumbo and medium onions, which further indicates that handlers are sorting by size. Most handlers also pack to a certain quality standards, usually based on U.S. grade standards. Therefore, handlers would not be required to drastically modify their packing operations or purchase new equipment. The committee considered grower and handler costs very seriously and even discussed the cost burden between larger and smaller handlers. The minimum quantity exemption should address such concerns.

Growers may be faced with a potential cost item related to improved equipment that could be needed in order to meet minimum quality or size standards. A handler testified that growers could update their mechanical seeders so that the seeds could be planted equidistant from each other, which would result in onions with better shape, more uniformity and larger size. There are increasingly more growers that are purchasing this equipment or contracting with other growers that have the seeders. Seed coating or pelleting is another alternative for better seed placement, which is less expensive than the purchase of a highly advanced seeder. The seed coating adds a clay-like

material to the exterior of the seed, so that the seeders do not cause two or three seeds to drop at the same time. It appears that costs associated with growers modifying their cultural practices to abide by minimum quality and size standards would be minimal and offset by improved producer returns.

A witness for the committee testified that the benefits of including the authority for minimum quality and size standards would far outweigh any negative impact to producers and handlers and the industry could start rebuilding markets and creating new ones.

The Federal-State Inspection Service Office that is responsible for inspecting Walla Walla sweet onions is currently located in Pasco, Washington, less than 50 miles from Walla Walla. According to record testimony, inspectors would be staffed in Walla Walla during the season if mandatory inspection was implemented.

Inspection costs in the State of Washington are computed on an hourly basis or a per unit basis, whichever is greater. If the hourly rate is used, the rate applies to the total number of the inspector's hours, including travel time. Depending upon the workload, inspectors could be based in Walla Walla during the season, which would lessen travel costs. Record testimony indicated that the hourly inspection rate is $26, with a two-hour minimum, or $52, for inspection or $208 for an eight-hour day. However, the State of Washington Agriculture Code regulations appearing at Chapter 16–400–210 WAC provide that the hourly inspection rate is $23, with no minimum time required. In accordance with the Rules of Practice and Procedure governing the formulation of marketing agreements and orders (7 CFR Part 900), official notice has been taken of the fees set forth in the State of Washington regulations at Chapter 16–400–210 WAC. The fee schedule will be used in our analysis. On a per unit basis, the inspection fee is $.04 per 50-pound unit.

As stated above, inspection costs are computed on an hourly basis or a per unit basis, whichever is greater. For example, if an inspection was requested on 100 50-pound containers and the inspection lasted one hour, the per unit cost for inspecting the lot would be $4, and the per hour cost would be $23. Under this scenario, the handler would be charged $23 for the inspection, the greater amount. This would average $.23 per unit.

Under the current fee schedule, it would be necessary for the inspection office to inspect over 4,600 50-pound units of onions per day in order to maintain the fee at $.04 per 50-pound unit. If handlers do not handle over 4,600 50-pound units per day, their inspection costs would be computed at the hourly rate. Even for handlers who normally handle that volume, there would be times during the season, particularly in the beginning and end of the season, where the volume of onions inspected would not be at a level where the $.04 per 50-pound unit could be used. The fees would convert to the hourly rate.

Record testimony indicated that the committee is concerned with increased costs associated with these proposals, particularly, the costs of inspection. The committee discussed options to address these concerns and developed two remedies intended to alleviate the cost burdens on small handlers. First, the committee recommended adding authority in the order for the committee to contract with the Federal-State Inspection Service and pay for all inspections of Walla Walla sweet onions. Second, the committee recommended an exemption from inspection for handlers of small lots of onions.

Under the scenario of contracting with the inspection service, each handler would pay a separate assessment for inspection costs at a per unit price. All handlers would pay the same price per bag for inspection, whether exempt or not. Under such a contract, the larger volume handlers would pay more of the inspection costs because they handle so many more units of onions. In this manner, the burden of inspection costs for smaller volume handlers could be minimized. This was discussed with representatives of the inspection service.

A Washington State inspector confirmed that travel costs would be lessened if an inspector was based in Walla Walla. However, the inspector indicated that $.04 per 50-pound unit would be the minimum cost for the inspection. Costs could increase depending on the workload. If the workload was light, such as late in the season when the quantities of onions are diminishing, it could be more costly for an inspector to conduct inspections on smaller lots. It could be necessary to convert the cost to an hourly cost, which would exceed $.04 per 50-pound unit.

There have been discussions regarding contractual relationships with the inspection service but factors such as inspection of small quantities would need to be addressed in the contract. The inspector testified that the inspection office must cover the cost of inspectors and if there was not a full day's work in Walla Walla, the inspector would need to travel elsewhere. These situations would need to be factored into any contractual agreements. A witness for the proposals testified that because of the variables associated with inspecting Walla Walla sweet onions, it is estimated the cost of inspection would range between $.04 and $.06 per 50-pound unit if the per unit price were used in a contractual agreement. The committee could consider only contracting with the inspection service during the busiest parts of the season in order to keep the inspection cost lower. The committee could also consider only regulating for part of the season.

Another option the committee developed to address the issues of costs on small handlers would provide an exemption for handlers who handle up to, but not more than 2,000 pounds of Walla Walla sweet onions per shipment. These handlers would be exempt from inspection requirements, but these exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. Handlers could make more than one exempt shipment per day as long as each shipment was at or below the 2,000-pound exemption. These exempt onions would not be exempt from assessments. The committee would be able to recommend modification of the minimum quantity exemption through informal rulemaking, if necessary. The committee would be responsible for monitoring compliance with this proposal. If necessary, the committee would conduct spot inspections at the committee's expense to ensure that inspection-exempt onions were meeting the established quality and size regulations.

Record testimony indicated the implementation of these proposals could necessitate that the committee increase the manager's work hours in order to monitor compliance with these provisions. This could result in the need to recommend an increase in the marketing order assessment rate. However, an increase is not expected because the increased production, demand, and expanded markets would help to supply ample funds to administer the program without increasing the assessment rate.

When the committee was considering amending the marketing order to include quality and size requirements, a compliance subcommittee was appointed to address concerns of small producers and handlers. The subcommittee is composed of producers and handlers who developed the

minimum quantity exemption provisions of the committee's proposals. The subcommittee considered different options during their deliberations and determined that the current proposed amendments were the most advantageous to small growers and handlers while still allowing quality objectives to be met.

Inspection requirements would not apply to shipments of Walla Walla sweet onions that are 2,000 pounds or less. However, these onions would be required to meet any minimum requirements in effect at the time of shipment. This would be enforced through periodic spot examinations conducted by the committee. A general consensus among industry members was that establishing a minimum quantity exemption was necessary to relieve any undue financial burden on small volume handlers. The committee would be responsible for monitoring compliance with this proposal by conducting spot inspections, if necessary, at the committee's expense. It is estimated that compliance with these proposals could increase administrative costs for the committee by $3,000, or a 3 percent increase in the current committee budget.

As previously stated, 7 commercial handlers pack 90 percent of the industry's crop. Approximately 26 handlers handle the remaining 10 percent. With the 2,000 pound inspection exemption implemented, it is estimated that 50 percent of the remaining 26 handlers would be exempt from mandatory inspection. This represents approximately 42 acres or 25,000 50-lb. units, which is 5 percent of the crop. Therefore, it appears that at least 13 handlers would be exempt from inspection, while 95 percent of the production would still be inspected. This proposed amendment would minimize the impact on small handlers without jeopardizing quality objectives.

These exempt onions would not be exempt from assessments. In addition, exempt onions would still be required to meet the minimum quality and size requirements established by the committee and approved by the Secretary. Committee staff would conduct spot inspections to monitor the exempt handlers' activities. The proposal allows for modification of this provision depending on industry needs. The committee does not believe it would ever recommend not having a minimum quantity exemption.

A witness for the proposals testified that the only cost increase would be the cost of inspection. He further stated that the cost of inspection is a minor cost item, compared to labor and growing costs. Walla Walla sweet onion production is labor-intensive and high cost. A premium price is necessary for the onions to pay the costs of production.

This witness testified that a grower normally has $1,800 to $2,000 an acre invested in production prior to harvest. Using this estimate and assuming a yield of 190 50-pound units per acre, inspection costs (estimated at $.04 to $.06 per 50-pound unit) are estimated to be $7.60 to $11.40 per acre, or an estimated 0.4 to 0.6 percent increase of pre-harvest cost.

Following is an example of possible costs associated with implementing quality and size standards. Testimony revealed that if a U.S. Commercial grade were established as a minimum quality standard, 5 to 10 percent of the onions would not meet that grade and would have to be disposed of in secondary outlets. Using last year's production figures (1996–97), 666,000 50-pound containers were produced for sale. If 10 percent would not make U.S. Commercial grade, 66,600 50-pound containers would need to be disposed of in secondary outlets. It is estimated that 5 percent of the crop, or 33,300 pounds, would be exempt from inspection. Therefore, approximately 566,100 50-pound containers would need to be inspected. Using the high inspection cost estimate of $.06 per container, inspection costs for the entire crop would be $33,966. Seven commercial packing houses pack 90 percent of the crop which would account for $30,569.40 of the costs. The remaining 26 small handlers would be responsible for the remaining inspection costs of $3,396.60, or approximately $131 per handler for inspection fees for that season.

Minimum quality and size standards would maintain the integrity of the product so that the commodities' overall quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns.

The ability of producers of Walla Walla sweet onions to increase the demand for their product depends on their ability to differentiate their product and to create a favorable image (including quality) with consumers. In recent years, this favorable image has deteriorated. Culling out low quality produce of undesirable size, even though the demand for it may be elastic, may increase total returns. The price increase from the higher quality sold is expected to be large enough to offset the effect of the reduced quantity sold, even after the costs of culling are covered.

Record evidence also shows that the collection of information under the marketing order would not be effected if the amendments were made to the marketing order. No increase in information collection would occur with the adoption of the amendments alone. However, if these proposals are implemented and the committee recommends regulations to impose quality and size requirements, it is possible that additional information would be needed from handlers to aid in administering the program effectively. It is also possible that because inspection certificates would be received by the committee, needed information could be collected from the certificates and the information collection requirements could be reduced. Whatever information collection changes result from any regulations, the committee and the Department would submit such changes to the Office of Management and Budget (OMB) for approval. Current information collection requirements for Part 956 are approved by OMB under OMB number 0581–0172.

The proposed amendment to modify the name of the committee from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee would have no regulatory impact on handlers or growers.

Accordingly, this action would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of quality and size requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these proposals as well as the hearing date were widely publicized throughout the Walla Walla sweet onion production area industry and all interested persons were invited to attend the meetings and the hearing and participate in committee deliberations on all issues. All committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Findings and Conclusions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the September 23, 1998, issue of the **Federal Register** (63 FR 50802) are hereby approved and adopted.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of sweet onions grown in the production area.

The representative period for the conduct of such referendum is hereby determined to be June 1, 1997, through May 31, 1998.

The agents of the Secretary to conduct such referendum are hereby designated to be Robert Curry, Marketing Specialist, and Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Dated: November 13, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 956 (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of sweet onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) The marketing agreement and order, as hereby proposed to be amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of sweet onions grown in the production area; and

(5) All handling of sweet onions grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

With one exception, the provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on September 17, 1998, and published in the **Federal Register** on September 23, 1998, shall be and are the terms and provisions of this order amending the order and are set forth in full herein. One change is made herein for clarity in § 956.70(a).

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In part 956, § 956.14 is added and reserved, and new §§ 956.15 and 956.16 are added to read as follows:

§ 956.15 Grade and size.

Grade means any of the officially established grades of onions, including maturity requirements and *size* means any of the officially established sizes of onions as set forth in the United States standards for grades of onions or amendments thereto, or modifications thereof, or variations based thereon, or States of Washington or Oregon standards of onions or amendments thereto or modifications thereof or variations based thereon, recommended by the committee and approved by the Secretary.

§ 956.16 Pack.

Pack means a quantity of Walla Walla Sweet Onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

§ 956.20 [Amended]

3. In § 956.20, paragraph (a) is amended by adding the word "Marketing" immediately following the word "Onion" in the first sentence.

4. In part 956, a new § 956.60 is added to read as follows:

§ 956.60 Marketing policy.

(a) *Preparation.* Prior to each marketing season, the committee shall consider and prepare a proposed policy for the marketing of Walla Walla Sweet Onions. In developing its marketing policy, the committee shall investigate relevant supply and demand conditions for Walla Walla Sweet Onions. In such investigations, the committee shall give appropriate consideration to the following:

(1) Market prices for sweet onions, including prices by variety, grade, size, quality, and maturity, and by different packs;

(2) Supply of sweet onions by grade, size, quality, maturity, and variety in the production area and in other sweet onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for Walla Walla Sweet Onions;

(5) Orderly marketing of Walla Walla Sweet Onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy, and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

5. Section 956.62 is revised to read as follows:

§ 956.62 Issuance of regulations.

(a) Except as otherwise provided in this part, the Secretary shall limit the shipment of Walla Walla Sweet Onions by any one or more of the methods hereinafter set forth whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of Walla Walla Sweet Onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of Walla Walla Sweet Onions differently, for different varieties or packs, or for any combination of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, markings or pack of the container or containers, which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof;

(4) Regulate the handling of Walla Walla Sweet Onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this part whenever the Secretary finds that such amendment would tend to effectuate the declared policy of the Act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever the Secretary finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the Act.

6. Section 956.64 is revised to read as follows:

§ 956.64 Minimum quantities.

During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this part, each handler may handle up to, but not to exceed, 2,000 pounds of Walla Walla Sweet Onions per shipment without regard to the inspection requirements of this part: *Provided*, That such Walla Walla Sweet Onion shipments meet the minimum requirements in effect at the time of the shipment pursuant to § 956.62. The committee, with the approval of the Secretary, may recommend modifications to this section and the establishment of such other minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, 956.63, and 956.70, or any combination thereof.

7. In part 956, a new center heading and § 956.70 are added to read as follows:

Inspection

§ 956.70 Inspection and certification.

(a) During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this subpart, no handler shall handle Walla Walla Sweet Onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate and are covered by a valid

inspection certificate, except when relieved from such requirements pursuant to §§ 956.63 or 956.64, or both. Upon recommendation of the committee, with approval of the Secretary, inspection providers and certification requirements may be modified to facilitate the handling of Walla Walla Sweet Onions.

(b) Regrading, resorting, or repacking any lot of Walla Walla Sweet Onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship Walla Walla Sweet Onions after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That such inspection requirements on regraded, resorted, or repacked Walla Walla Sweet Onions may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all Walla Walla Sweet Onions that are required to be inspected and certified in accordance with this section shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When Walla Walla Sweet Onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may enter into an agreement with an inspection service with respect to the costs of the inspection as provided by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 314 and 320

[Docket No. 98N–0778]

Bioavailability and Bioequivalence Requirements; Abbreviated Applications; Proposed Revisions

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its regulations on bioavailability and bioequivalence and on the content and format of an abbreviated application to reflect current FDA policy and to correct certain typographical and inadvertent errors. This action is intended to improve the accuracy and clarity of the regulations.

DATES: Written comments by February 2, 1999. FDA proposes that any final rule based on this proposal become effective 60 days after its date of publication in the **Federal Register**.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine F. Rogers, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA regulations require persons submitting a new drug application (NDA) to provide bioavailability information (21 CFR 314.50(c)(2)(vi) and (d)(3)), and persons submitting an abbreviated new drug application (ANDA) or abbreviated antibiotic application (AADA) to provide information pertaining to bioavailability and bioequivalence (§ 314.94(a)(7) and (d)(3) (21 CFR 314.94(a)(7) and (d)(3))).

FDA regulations in part 320 (21 CFR part 320) establish definitions and requirements for bioavailability and bioequivalence studies. FDA finalized the bioavailability and bioequivalence regulations on January 7, 1977 (42 FR 1624), and amended these regulations on April 28, 1992 (57 FR 17950). The 1992 amendments were designed to reflect statutory changes resulting from the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417).

Bioavailability, in general, refers to the rate and extent to which the active ingredient or active moiety is absorbed from a drug product and becomes available at the site of action. For drug products that are not intended to be absorbed into the bloodstream, bioavailability may be assessed by measurements intended to reflect the rate and extent to which the active ingredient or active moiety becomes available at the site of action (§ 320.1(a)). Bioequivalence, in general, refers to the absence of a significant difference in the rate and extent to which the active ingredient or active moiety in pharmaceutical equivalents or pharmaceutical alternatives becomes available at the site of drug action when administered at the same molar dose under similar conditions in an appropriately designed study. Where there is an intentional difference in rate (e.g., in certain controlled release dosage forms), certain pharmaceutical equivalents or alternatives may be considered bioequivalent if there is no significant difference in the extent to which the active ingredient or moiety from each product becomes available at the site of drug action (§ 320.1(e)).

II. Description of the Proposed Rule

The proposed rule would revise FDA regulations pertaining to abbreviated applications, bioavailability, and bioequivalence to reflect current agency policy, to correct typographical and inadvertent errors, and to clarify existing provisions. The proposed amendments follow.

Section 314.94(a)(9) establishes information requirements for the chemistry, manufacturing, and controls section of an abbreviated application. Section 314.94(a)(9) provides that an abbreviated application may have different inactive ingredients than the reference listed drug as long as the applicant identifies and characterizes the inactive ingredients in the proposed drug product and provides information demonstrating that the inactive ingredients do not affect the safety of the drug product. The proposed rule would amend this section to recognize the possibility that the use of different inactive ingredients may also affect a product's efficacy.

Section 314.94(a)(9)(v) establishes the requirements for inactive ingredient changes permitted in drug products intended for topical use. The proposed rule would revise this section to include solutions for aerosolization or nebulization as well as nasal solutions. This change is intended to clarify that these solutions may be characterized as drug products intended for topical use.

Section 314.127 (21 CFR 314.127) sets forth the reasons why FDA would refuse to approve an ANDA. The proposed rule would revise § 314.127(a)(8) to clarify that, consistent with current FDA policy, the applicant must show that different inactive ingredients would not affect a product's efficacy, in addition to the currently required showing for safety. This revision is necessary because a change in inactive ingredients may affect safety or efficacy or both. As the agency stated in the preamble to the proposed rule implementing the Drug Price Competition and Patent Term Restoration Act of 1984, "[i]t is well established that changing the inactive ingredients in a drug can adversely affect the drug's safety or effectiveness." (See 54 FR 28872 at 28902, July 10, 1989.) For example, an inactive ingredient that increases or decreases an active ingredient's efficacy may affect the safety of the drug product as well. If a drug is not achieving its therapeutic purpose, the drug may be unsafe for use. An ineffective drug may cause a patient to unwittingly delay effective treatment. Thus, safety and effectiveness are, to a great extent, intertwining principles.

Section 320.1(c) defines "pharmaceutical equivalents" as:

> * * * drug products that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety, in identical dosage forms, but not necessarily containing the same inactive ingredients, and that meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times and/or dissolution rates.

This definition has been the source of some confusion with regard to certain modified release systems, prefilled syringes, and other drug products that contain a reservoir that facilitates delivery or where residual volume may vary. In such products, the agency does not consider the amount that facilitates the action of the delivery system, but by design is not intended to be delivered to the site of drug action or to have any direct therapeutic effect, to be "active ingredient" for the purposes of evaluating the pharmaceutical equivalence of a drug product.

Therefore, to clarify the definition of "pharmaceutical equivalents" with regard to certain drug products such as prefilled syringes and those that use modified release systems, the agency is proposing to revise the definition of "pharmaceutical equivalents" in § 320.1(c) to state:

> * * * drug products in identical dosage forms that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety or, in the case of modified release dosage forms that require a reservoir or overage or such forms as prefilled syringes where residual volume may vary, that deliver identical amounts of the active drug ingredient over the identical dosing period; do not necessarily contain the same inactive ingredients; and meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and/or dissolution rates.

Subpart B of part 320 describes procedures for determining the bioavailability or bioequivalence of drug products, and refers to evidence that "demonstrates" in vivo bioavailability and bioequivalence. The proposed rule would modify current §§ 320.21, 320.22, 320.23, 320.24, and 320.25 to clarify that although bioequivalence may be "demonstrated" or "established," bioavailability can only be "measured." These verb changes also require that the words "in vivo" precede the word "bioequivalence."

Section 320.21 sets forth the requirements for submission of in vivo bioavailability and bioequivalence data. Section 320.21(b)(1) provides that any person submitting an abbreviated application must submit evidence demonstrating that the proposed drug product is bioequivalent to the reference listed drug or, under § 320.21(b)(2), provide "[i]nformation to show that the drug product is bioequivalent to the reference listed drug which would permit FDA to waive the submission of evidence demonstrating bioequivalence * * *." The proposed rule would revise § 320.21(b)(2) to clarify that the waiver would only pertain to the submission of evidence demonstrating the in vivo determination of bioequivalence.

Section 320.21(c)(1) provides that any person submitting a supplemental application to FDA must provide evidence or information regarding the product's bioavailability or bioequivalence if the supplemental application proposes "[a] change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application." The proposed rule would amend this provision to include a change in the manufacturing site because such a change may affect the bioavailability or bioequivalence of the drug product because of equipment, personnel, or environmental changes.

Section 320.21(d) states that "FDA may approve a full new drug application * * * that does not contain evidence of in vivo bioavailability or information to permit waiver of the requirement for in vivo bioavailability data," if, among other things, "[t]he application was under review by FDA on July 7, 1977" (§ 320.21(d)(1).) The agency is proposing to remove this paragraph because it has become outdated.

Section 320.21(f) inaccurately includes a reference to criteria set forth in § 320.24 as containing information under which FDA could waive the requirement for submission of evidence demonstrating in vivo bioavailability or bioequivalence. The proposed rule would replace the reference to § 320.24 with § 320.22.

Proposed § 320.22(a) would address another typographical error. Current § 320.22(a) states that "[e]xcept as provided in paragraph (g) of this section," FDA shall waive the requirement for the submission of evidence of in vivo bioavailability or bioequivalence under certain conditions. The proposed rule would substitute paragraph (f) for the reference to paragraph (g).

Section 320.22(b) sets forth the criteria under which a drug product's in vivo bioavailability or bioequivalence may be considered self-evident based on other data in an application showing that the proposed drug product is identical in certain respects to the "drug product that is the subject of an approved full new drug application" (see § 320.22(b)(1)(ii), (b)(2)(ii), and (b)(3)(ii)). The proposed rule would replace "approved full new drug application" with "approved full new drug application or abbreviated new drug application." This revision recognizes those instances when an approved abbreviated new drug application might be the reference listed drug because there is no approved full new drug application. The proposed rule would make a similar change to § 320.22(b)(3)(iii) because this provision also refers to a "drug product that is the subject of the approved full new drug application * * *."

Section 320.22(b)(3)(i) sets forth the criteria for waiver of the in vivo bioavailability or bioequivalence of a drug product that is "a solution for application to the skin, an oral solution, elixir, syrup, tincture, or similar other solubilized form" intended for either local or systemic effect. The proposed rule would amend § 320.22(b)(3)(i) to include a "solution for aerosolization or nebulization" and a "nasal solution" to clarify that "similar other solubilized form" includes solutions for aerosolization or nebulization and nasal solutions.

Section 320.22(c) provides that "FDA shall waive the requirement for the submission of evidence demonstrating

the in vivo bioavailability of a solid oral dosage form (other than an enteric coated or controlled release dosage form) * * *" unless, among other things, "FDA has evaluated the drug product under the criteria set forth in § 320.32 * * *." The reference to § 320.32 is a typographical error. The proposed rule would refer to § 320.33 because the relevant criteria are found in that provision. In addition, the proposed rule would clarify that FDA may waive this requirement not only for the submission of evidence of in vivo bioavailability but also for the submission of evidence of in vivo bioequivalence.

The proposed rule would also amend § 320.22(c) because "delayed release" is the preferred terminology for "enteric coated" and "extended release" is the preferred terminology for "controlled release."

Under § 320.22(e), "FDA, for good cause, may waive a requirement for the submission of evidence of in vivo bioavailability if waiver is compatible with the protection of the public health * * *." When the agency revised and finalized the regulations in 1992, it intended that § 320.22(e) clearly include waiver of in vivo bioequivalence testing, as the heading of the section suggests. Indeed, waiver of the submission of in vivo bioavailability data is related to waiver of in vivo bioequivalence testing in that bioequivalence is an assessment of comparative bioavailability. Because there may be some confusion about the scope of § 320.22(e), the proposed rule would clarify that FDA may, for good cause, waive not only the submission of evidence of in vivo bioavailability but also the submission of evidence of in vivo bioequivalence, if such a waiver is compatible with the protection of the public health. Such a waiver may be appropriate in cases where an abbreviated application uses inactive ingredients different from those in the reference listed drug (see § 314.94(a)(9)), and thus the other provisions regarding a waiver of a the requirement for the submission of evidence of in vivo bioavailability or bioequivalence do not apply. In such cases, a waiver of the submission of evidence of in vivo bioavailability or bioequivalence may, for good cause, be granted if compatible with the protection of the public health.

Section 320.24 sets forth the various types of evidence needed to establish bioavailability or bioequivalence. The agency is removing § 320.24(b)(1)(iii) because FDA does not encourage the use of animals in vivo bioavailability studies. Section 320.24(b)(5), which focuses on one method, in vitro testing, contains a typographical error, stating that the in vitro test acceptable to FDA is "unusually a dissolution rate test." The proposed rule would replace "unusually" with "usually."

Section 320.25 provides guidelines for the conduct of an in vivo bioavailability study. Section 320.25(a)(2) provides that "[a]n in vivo bioavailability study shall not be conducted in humans if an appropriate animal model exists and correlation of results in animals and humans has been demonstrated * * *." The agency is proposing to remove § 320.25(a)(2) because FDA does not encourage the use of animals in vivo bioavailability studies.

Section 320.25(d)(1) describes the purpose of a bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing. The agency has determined that § 320.25(d)(1) is inaccurate because it actually describes the purpose of a pharmacokinetic study, rather than a bioavailability study. Thus, the proposed rule would revise the introductory text of § 320.25(d)(1) to read "An in vivo bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing can be used to measure the following pharmacokinetic data: * * *."

Section 320.25(e)(1) describes the purpose of an in vivo bioavailability study involving a drug product that is a new formulation, a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing. The agency has determined that § 320.25(e)(1) is inaccurate because it also describes the purpose of a pharmacokinetic study, not a bioavailability study. Thus, the proposed rule would revise the introductory text of § 320.25(e)(1) to read "An in vivo bioavailability study involving a drug product that is a new formulation, a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing can be used to: * * *."

Section 320.26 provides guidance on the design of a single-dose in vivo bioavailability study, and § 320.27 provides guidance on the design of a multiple-dose in vivo bioavailability study. The proposed rule would add the word "bioequivalence" after "bioavailability" throughout these two sections because §§ 320.26 and 320.27 are also applicable to in vivo bioequivalence studies. This revision reflects current FDA policy. The proposed rule would also amend §§ 320.28 and 320.29 to include reference to bioequivalence because these sections are also applicable to in vivo bioequivalence studies.

The proposed rule would also amend § 320.26(b)(2)(i) by replacing "three" with "five." The proposed rule would also insert the word "active" before "metabolite(s)" in §§ 320.26(b)(2)(i) and 320.27(b)(3)(i). FDA is proposing these revisions because the drug elimination period (wash-out period) of three times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s), is inadequate, and because current analytical methods exist that usually are capable of detecting drug concentrations after five times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s).

Section 320.27(d)(1) states that, for the collection of blood samples during multiple-dose in vivo bioavailability studies, the maximum (Cmax) and minimum (Cmin) values should be defined on 2 or more consecutive days to establish that steady-state conditions are achieved. FDA no longer uses Cmax values in the determination of steady-state conditions and, in some cases, the predose trough level may not be the observed Cmin value. In addition, FDA recommends that sampling be done for at least 3 consecutive days. Therefore, the proposed rule would revise § 320.27(d)(1) to state:

> Whenever comparison of the test product and the reference material is to be based on blood concentration-time curves at steady-state, sufficient samples of blood should be taken to define adequately the predose blood concentration on 3 or more consecutive days to establish that steady-state conditions are achieved.

Section 320.27(d)(2) states that "[w]henever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady-state, sufficient samples of urine should be taken to define the rate and extent of urinary excretion on 2 or more consecutive days to establish that steady-state conditions are achieved." For the reasons stated previously, the proposed rule would revise this paragraph to state:

> Whenever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady-state, sufficient samples of urine should be taken to define the rate and extent of urinary excretion on 3 or more consecutive days to establish that steady-state conditions are achieved.

Section 320.30(c)(1) directs inquiries on bioavailability to the Division of Biopharmaceutics in the Center for Drug Evaluation and Research. The proposal

would update the name of the Division of Biopharmaceutics because it is now called the "Office of Clinical Pharmacology and Biopharmaceutics" (HFD–850).

Section 320.30(c)(2) directs inquiries on bioequivalence requirements and methodology to the Division of Bioequivalence in the Center for Drug Evaluation and Research. The proposal would update the mailing address for the Division of Bioequivalence because it is now located at Metro Park North II, 7500 Standish Pl., Rockville, MD 20855–2773.

Section 320.31 discusses the applicability of the investigational new drug application requirements to certain bioavailability or bioequivalence studies. Although FDA intended that this section apply to bioavailability or bioequivalence studies, § 320.31(b) only refers to bioavailability studies. The proposal would insert the words "or bioequivalence" after the word "bioavailability" in the introductory text of § 320.31(b) to clarify that this section applies to bioequivalence studies as well.

Broader issues concerning FDA's interpretation and application of the regulations applicable to bioequivalence issues have recently been the subject of controversy. The ability to characterize and quantify the components of drug products has evolved and continues to evolve with advances in the science of analytical chemistry. A more refined characterization of a drug product may complicate determinations about the components or quantity of components that may affect the safety of the drug product or contribute to its pharmacological effect. Changes to definitional concepts such as active and inactive ingredients are beyond the scope of these, for the most part, technical revisions to the regulations. However, FDA intends to address such issues in a future proposal.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant impact on small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (Pub. L. 104–114) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency has reviewed this proposed rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and these two statutes. With respect to the Regulatory Flexibility Act, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the proposed rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

The proposed rule would amend the bioavailability and bioequivalence regulations to reflect current FDA policy.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Request for Comments

Interested persons may, on or before February 2, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 314

Administrative practice and procedure, Confidential business information, Drugs, Reporting and recordkeeping requirements.

21 CFR Part 320

Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 314 and 320 be amended as follows:

PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

1. The authority citation for 21 CFR part 314 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 357, 371, 374, 379e.

2. Section 314.94 is amended in paragraph (a)(9)(ii) and the second sentence of paragraphs (a)(9)(iii) and (a)(9)(iv) by adding after the word "safety" the phrase "or efficacy" each time it appears, and by revising paragraph (a)(9)(v) to read as follows:

§ 314.94 Content and format of an abbreviated application.

* * * * *

(a) * * *

(9) * * *

(v) *Inactive ingredient changes permitted in drug products intended for topical use.* Generally, a drug product intended for topical use, solutions for aerosolization or nebulization, and nasal solutions shall contain the same inactive ingredients as the reference listed drug identified by the applicant under paragraph (a)(3) of this section. However, an abbreviated application may include different inactive ingredients provided that the applicant identifies and characterizes the differences and provides information demonstrating that the differences do not affect the safety or efficacy of the proposed drug product.

* * * * *

§ 314.127 [Amended]

3. Section 314.127 *Refusal to approve an abbreviated new drug application* is amended in the introductory text of paragraph (a)(8)(ii)(A), and in paragraphs (a)(8)(ii)(B) and (a)(8)(ii)(C) by adding after the word "safety" the phrase "or efficacy" each time it appears.

PART 320—BIOAVAILABILITY AND BIOEQUIVALENCE REQUIREMENTS

4. The authority citation for 21 CFR part 320 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 355, 357, 371.

5. Section 320.1 is amended by revising paragraph (c) to read as follows:

§ 320.1 Definitions.

* * * * *

(c) *Pharmaceutical equivalents* means drug products in identical dosage forms that contain identical amounts of the identical active drug ingredient, i.e., the same salt or ester of the same therapeutic moiety, or, in the case of modified release dosage forms that require a reservoir or overage or such forms as prefilled syringes where residual volume may vary, that deliver identical amounts of the active drug ingredient over the identical dosing period; do not necessarily contain the same inactive ingredients; and meet the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency and, where applicable, content uniformity, disintegration times, and/or dissolution rates.

* * * * *

6. Section 320.21 is amended by removing paragraph (d)(1) and redesignating paragraphs (d)(2) and (d)(3) as paragraphs (d)(1) and (d)(2), respectively, and by revising newly redesignated (d)(2)(i) and (d)(2)(ii); and by revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2), (c)(1), (e), and (f), the introductory text of paragraph (g), and paragraphs (g)(2) and (h) to read as follows:

§ 320.21 Requirements for submission of in vivo bioavailability and bioequivalence data.

(a) * * *

(1) Evidence measuring the in vivo bioavailability of the drug product that is the subject of the application; or

(2) Information to permit FDA to waive the submission of evidence measuring in vivo bioavailability.

(b) * * *

(1) Evidence demonstrating that the drug product that is the subject of the abbreviated new drug application is bioequivalent to the reference listed drug (defined in § 314.3(b) of this chapter); or

(2) Information to show that the drug product is bioequivalent to the reference listed drug which would permit FDA to waive the submission of evidence demonstrating in vivo bioequivalence as provided in paragraph (f) of this section.

(c) * * *

(1) A change in manufacturing site as well as a change in the manufacturing process, including a change in product formulation or dosage strength, beyond the variations provided for in the approved application.

* * * * *

(d) * * *

(2) * * *

(i) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of the drug product that is the subject of the application; or

(ii) Information to permit FDA to waive measurement of in vivo bioavailability.

(e) Evidence measuring the in vivo bioavailability and demonstrating the in vivo bioequivalence of a drug product shall be obtained using one of the approaches for determining bioavailability set forth in § 320.24.

(f) Information to permit FDA to waive the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence shall meet the criteria set forth in § 320.22.

(g) Any person holding an approved full or abbreviated new drug application shall submit to FDA a supplemental application containing new evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of the drug product that is the subject of the application if notified by FDA that:

* * * * *

(2) There are data measuring significant intra-batch and batch-to-batch variability, e.g., plus or minus 25 percent, in the bioavailability of the drug product.

(h) The requirements of this section regarding the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence apply only to a full or abbreviated new drug application or a supplemental application for a finished dosage formulation.

7. Section 320.22 is amended by revising paragraph (a), the second sentence of paragraph (b), paragraphs (b)(1)(ii), (b)(2)(ii), (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (c), the introductory text of paragraph (d), paragraphs (d)(2)(i) and (d)(4)(i), and the first sentence of paragraph (e) to read as follows:

§ 320.22 Criteria for waiver of evidence of in vivo bioavailability or bioequivalence.

(a) Any person submitting a full or abbreviated new drug application, or a supplemental application proposing any of the changes set forth in § 320.21(c), may request FDA to waive the requirement for the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of the drug product that is the subject of the application. An applicant shall submit a request for waiver with the application. Except as provided in paragraph (f) of this section, FDA shall waive the requirement for the submission of evidence of in vivo bioavailability or bioequivalence if the drug product meets any of the provisions of paragraphs (b), (c), (d), or (e) of this section.

(b) * * * FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of these drug products.

* * *

(1) * * *

(ii) Contains the same active and inactive ingredients in the same concentration as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(2) * * *

(ii) Contains an active ingredient in the same dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application.

(3) * * *

(i) Is a solution for application to the skin, an oral solution, elixir, syrup, tincture, a solution for aerosolization or nebulization, a nasal solution, or similar other solubilized form.

(ii) Contains an active drug ingredient in the same concentration and dosage form as a drug product that is the subject of an approved full new drug application or abbreviated new drug application; and

(iii) Contains no inactive ingredient or other change in formulation from the drug product that is the subject of the approved full new drug application or abbreviated new drug application that may significantly affect absorption of the active drug ingredient or active moiety.

(c) FDA shall waive the requirement for the submission of evidence measuring the in vivo bioavailability or demonstrating the in vivo bioequivalence of a solid oral dosage form (other than a delayed release or extended release dosage form) of a drug product determined to be effective for at least one indication in a Drug Efficacy Study Implementation notice or which is identical, related, or similar to such a drug product under § 310.6 of this chapter unless FDA has evaluated the drug product under the criteria set forth in § 320.33, included the drug product in the Approved Drug Products with Therapeutic Equivalence Evaluations List, and rated the drug product as

having a known or potential bioequivalence problem. A drug product so rated reflects a determination by FDA that an in vivo bioequivalence study is required.

(d) For certain drug products, bioavailability may be measured or bioequivalence may be demonstrated by evidence obtained in vitro in lieu of in vivo data. FDA shall waive the requirement for the submission of evidence obtained in vivo measuring the bioavailability or demonstrating the bioequivalence of the drug product if the drug product meets one of the following criteria:

* * * * *

(2) * * *

(i) The bioavailability of this other drug product has been measured;

* * * * *

(4) * * *

(i) The bioavailability of the other product has been measured; and

* * * * *

(e) FDA, for good cause, may waive a requirement for the submission of evidence of in vivo bioavailability or bioequivalence if waiver is compatible with the protection of the public health.

* * *

* * * * *

8. Section 320.23 is amended by revising the section heading and the first sentence of paragraph (a)(1) to read as follows:

§ 320.23 Basis for measuring in vivo bioavailability or demonstrating bioequivalence.

(a)(1) The in vivo bioavailability of a drug product is measured if the product's rate and extent of absorption, as determined by comparison of measured parameters, e.g., concentration of the active drug ingredient in the blood, urinary excretion rates, or pharmacological effects, do not indicate a significant difference from the reference material's rate and extent of absorption. * * *

* * * * *

9. Section 320.24 is amended by revising the section heading and the first, second, and last sentences of paragraph (a), by removing paragraph (b)(1)(iii), by revising the first, second, and last sentences of paragraph (b)(4), paragraphs (b)(5) and (b)(6), and the introductory text of paragraph (c) to read as follows:

§ 320.24 Types of evidence to measure bioavailability or establish bioequivalence.

(a) Bioavailability may be measured or bioequivalence may be demonstrated by several in vivo and in vitro methods. FDA may require in vivo or in vitro testing, or both, to measure the bioavailability of a drug product or establish the bioequivalence of specific drug products. * * * The method used must be capable of measuring bioavailability or establishing bioequivalence, as appropriate, for the product being tested.

(b) * * *

(4) Well-controlled clinical trials that establish the safety and effectiveness of the drug product, for purposes of measuring bioavailability, or appropriately designed comparative clinical trials, for purposes of demonstrating bioequivalence. This approach is the least accurate, sensitive, and reproducible of the general approaches for measuring bioavailability or demonstrating bioequivalence. * * * This approach may also be considered sufficiently accurate for measuring bioavailability or demonstrating bioequivalence of dosage forms intended to deliver the active moiety locally, e.g., topical preparations for the skin, eye, and mucous membranes; oral dosage forms not intended to be absorbed, e.g., an antacid or radiopaque medium; and bronchodilators administered by inhalation if the onset and duration of pharmacological activity are defined.

(5) A currently available in vitro test acceptable to FDA (usually a dissolution rate test) that ensures human in vivo bioavailability.

(6) Any other approach deemed adequate by FDA to measure bioavailability or establish bioequivalence.

(c) FDA may, notwithstanding prior requirements for measuring bioavailability or establishing bioequivalence, require in vivo testing in humans of a product at any time if the agency has evidence that the product:

* * * * *

10. Section 320.25 is amended by removing paragraph (a)(2), by redesignating paragraph (a)(3) as paragraph (a)(2), and by revising paragraph (d)(1), the introductory text of paragraph (e)(1), and paragraph (e)(1)(i) to read as follows:

§ 320.25 Guidelines for the conduct of an in vivo bioavailability study.

* * * * *

(d) *Previously unmarketed active drug ingredients or therapeutic moieties.* (1) An in vivo bioavailability study involving a drug product containing an active drug ingredient or therapeutic moiety that has not been approved for marketing can be used to measure the following pharmacokinetic data:

* * * * *

(e) *New formulations of active drug ingredients or therapeutic moieties approved for marketing.* (1) An in vivo bioavailability study involving a drug product that is a new dosage form, or a new salt or ester of an active drug ingredient or therapeutic moiety that has been approved for marketing can be used to:

(i) Measure the bioavailability of the new formulation, new dosage form, or new salt or ester relative to an appropriate reference material; and

* * * * *

11. Section 320.26 is amended by revising the section heading and paragraphs (a)(1) and (b)(2)(i) to read as follows:

§ 320.26 Guidelines on the design of a single-dose in vivo bioavailability or bioequivalence study.

(a) *Basic principles.* (1) An in vivo bioavailability or bioequivalence study should be a single-dose comparison of the drug product to be tested and the appropriate reference material conducted in normal adults.

* * * * *

(b) * * *

(2) * * *

(i) At least five times the half-life of the active drug ingredient or therapeutic moiety, or its active metabolite(s), measured in the blood or urine; or

* * * * *

12. Section 320.27 is amended by revising the section heading, introductory text of paragraph (a)(3), paragraphs (d)(1), (d)(2), and (e)(3); and by adding in paragraph (b)(3)(i) the word "active" before the word "metabolite(s)," to read as follows:

§ 320.27 Guidelines on the design of a multiple-dose in vivo bioavailability or bioequivalence study.

(a) * * *

(3) A multiple-dose study may be required to determine the bioavailability or bioequivalence of a drug product in the following circumstances:

* * * * *

(d) *Collection of blood or urine samples.* (1) Whenever comparison of the test product and the reference material is to be based on blood concentration-time curves at steady-state, sufficient samples of blood should be taken to define adequately the predose blood concentration on 3 or more consecutive days to establish that steady-state conditions are achieved.

(2) Whenever comparison of the test product and the reference material is to be based on cumulative urinary excretion-time curves at steady-state, sufficient samples of urine should be taken to define the rate and extent of

urinary excretion on 3 or more consecutive days to establish that steady-state conditions are achieved.

* * * * *

(e) * * *

(3) Other methods based on valid scientific reasons should be used to determine the bioavailability or bioequivalence of a drug product having dose-dependent kinetics (nonlinear system).

* * * * *

13. Section 320.29 is amended by revising the section heading and paragraph (a) to read as follows:

§ 320.29 Analytical methods for an vivo bioavailability or bioequivalence study.

(a) The analytical method used in an in vivo bioavailability or bioequivalence study to measure the concentration of the active drug ingredient or therapeutic moiety, or its metabolite(s), in body fluids or excretory products, or the method used to measure an acute pharmacological effect shall be demonstrated to be accurate and of sufficient sensitivity to measure, with appropriate precision, the actual concentration of the active drug ingredient or therapeutic moiety, or its metabolite(s), achieved in the body.

* * * * *

14. Section 320.30 is amended by revising paragraph (c) to read as follows:

§ 320.30 Inquiries regarding bioavailability and bioequivalence requirements and review of protocols by the Food and Drug Administration.

* * * * *

(c)(1) General inquiries relating to in vivo bioavailability requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Office of Clinical Pharmacology and Biopharmaceutics (HFD–850), 5600 Fishers Lane, Rockville, MD 20857.

(2) General inquiries relating to bioequivalence requirements and methodology shall be submitted to the Food and Drug Administration, Center for Drug Evaluation and Research, Division of Bioequivalence (HFD–650), 7500 Standish Pl., Rockville, MD 20855–2773.

§ 320.31 [Amended]

15. Section 320.31 *Applicability of requirements regarding an "Investigational New Drug Application* is amended in the introductory text of paragraph (b) by adding after the word "bioavailability" the phrase "or bioequivalence".

Dated: November 5, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–30880 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WA 67–7142b; FRL–6188–2]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Washington for the purpose of including a variance to a permit issued to the U.S. Army for the operation of three heat recovery incinerators located at Fort Lewis by local air pollution control agency, the Puget Sound Air Pollution Contol Agency (PSAPCA). In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by December 21, 1998.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101

The Washington State Department of Ecology, Air Quality Program, 300 Desmond Drive, Lacey, WA 98503

FOR FURTHER INFORMATION CONTACT: Mahbubul Islam, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6985.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Dated: November 3, 1998.

Jane S. Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 98–30848 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[I.D. 110998A]

Regulations Governing the Taking and Importing of Marine Mammals; Threatened Fish and Wildlife; Cook Inlet Beluga Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to conduct a status review and request for information.

SUMMARY: NMFS is initiating a status review of the Cook Inlet beluga whale (*Delphinapterus leucas*) to determine whether designation under the Marine Mammal Protection Act (MMPA) or a change in listing classification under the Endangered Species Act (ESA) is warranted. NMFS intends to undertake the review in conjunction with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council. The review will give consideration to the current status of Cook Inlet belugas, their distribution, abundance and trends, food habits, biohealth parameters, and reproductive parameters. The effects of the Native subsistence harvest, and the potential effects of other humanly induced impacts, as well as beluga natural mortality will also be examined. To ensure that the review is comprehensive, NMFS is requesting that interested parties submit pertinent information and comments regarding

the status of the Cook Inlet beluga whale.

DATES: Comments and information must be received by January 19, 1999.

ADDRESSES: Comments and information should be addressed to Chief, Marine Mammal Division (PR2), Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Steve Zimmerman, Protected Resources Management Division, Alaska Region, NMFS, (907) 586–7235; Brad Smith/ Barbara Mahoney, Protected Resources Management Division, Alaska Region, NMFS, (907) 271–5006; or Margot Bohan, Office of Protected Resources, NMFS (301) 713–2322.

SUPPLEMENTARY INFORMATION: Section 4 of the ESA and 50 CFR part 424 contain provisions that allow the Secretary of Commerce (Secretary) to add to or change the species' listing classification on the U.S. List of Endangered and Threatened Wildlife when necessary. MMPA section 115 contains similar provisions regarding determinations on the status of species pursuant to the MMPA. Currently, the Cook Inlet beluga whale is on the candidate species list under the ESA. The candidate species list serves to notify the public that NMFS has concerns regarding the species that may warrant an ESA threatened or endangered listing in the future. Ideally, the candidate list facilitates voluntary conservation efforts prior to a need for listing under the ESA. If the Secretary determines that there is substantial scientific or commercial information to indicate that a change in listing classification may be warranted, a status review is conducted. NMFS intends to undertake a review of the Cook Inlet population of beluga whales in collaboration with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council.

Background

Beluga whales are a circumpolar species. They are found in the waters of Canada, Alaska, Russia, Norway and Greenland. In Alaska, five populations are currently recognized and are found seasonally in (1) the Beaufort Sea, (2) the eastern Chukchi Sea, (3) the eastern Bering Sea, (4) Bristol Bay; and (5) Cook Inlet.

The Cook Inlet belugas make up a small, geographically isolated remnant population. In fact, the habitat range used by belugas in Cook Inlet appears to be decreasing. At present, the animals seem to concentrate near river mouths in the northern part of the inlet during much of the year. Limited sightings have occurred elsewhere in the recent past.

Because Cook Inlet belugas are geographically isolated, perturbations that are humanly-induced could have a dramatic effect on the population. The summer concentrations of this beluga population are exposed to the largest industrialized coastal area and to the largest human component in Alaska.

NMFS data indicate that the Cook Inlet population may also be declining in number. There are thought to be approximately 500 beluga whales in Cook Inlet, based on data collected between 1994 and 1998. The index count from the 1998 survey was the lowest reported to date and demonstrates a downward trend that has been ongoing over the last 4 years.

An increasing amount of information has revealed serious threats to this population. With its currently estimated rates of natural mortality and Native harvest, there is concern that the beluga population in Cook Inlet cannot be sustained by annual recruitment. Specifically, there is concern that Native subsistence harvests are exceeding sustainable removal levels. NMFS believes that maintaining a healthy beluga population and ensuring the long-term sustainability of a beluga whale subsistence harvest in Cook Inlet is in the best interest of all parties concerned. However, if present harvest levels continue to greatly exceed recruitment, the beluga whale population in Cook Inlet could become severely depleted in the foreseeable future. Effective actions must be developed and implemented soon to address such pressing conservation and management issues.

In light of these factors, NMFS is initiating a formal and comprehensive review of the status of the Cook Inlet beluga whale through a cooperative process with the Alaska Beluga Whale Committee and the Cook Inlet Marine Mammal Council. NMFS will obtain the best available information regarding the population's condition and sustainability to determine whether it warrants a depleted designation under the MMPA or a threatened or endangered listing under the ESA, or both.

Biological Information Solicited

To ensure that the review is comprehensive and is based on the best available data, NMFS is soliciting information and comments from any interested person concerning the status of Cook Inlet beluga whales. It is requested that data, information, and comments be accompanied by (1) supporting documentation, such as maps, logbooks, bibliographic references, personal notes, or reprints of pertinent publications and (2) the name of the person submitting the data, his/her address, and any association, institution, or business that the person represents.

Dated: November 12, 1998.

Ann D. Terbush,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30833 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 223

Thursday, November 19, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Members of Performance Review Boards

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: This notice announces the appointment of members of the Performance Review Boards (PRBs) for the U.S. Department of Agriculture (USDA). The USDA PRBs provide fair and impartial review of Senior Executive Service (SES) performance appraisals and make recommendations to the Secretary of Agriculture, regarding final performance ratings, performance awards, pay adjustments and Presidential Rank Awards for SES members.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Barbara Holland, Office of Human Resources Management, Executive Resources and Services Division, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC 20250, (202) 720–6047.

SUPPLEMENTARY INFORMATION: The publication of PRB membership is required by Section 4314(c)(4) of Title 5, U.S.C. The following membership list represents a standing register, from which specific PRBs will be constituted.

Ackerman, Kenneth D.
Acord, Bobby R.
Adams, Charles R.
Ahl, Alwynelle S.
Aldaya, George W.
Allen, Richard Dean
Amontree, Thomas S.
Anand, Rajen S.
Anderson, Margot H.
Andre, Pamela Q.
Army, Thomas J.
Arnold, Richard W.
Arnoldi, Joan M.
Arthur, John B.
Ashworth, Warren R.
Atienza, Mary E.
Baker, James Robert
Bange, Gerald A.
Barrett, Jr., Fred S.
Bartuska, Ann M.
Bateman, Victoria L.
Bay, Donald M.
Beck, Richard H.
Bell, Theodore O.
Bensey, Jr., Roger L.
Berg, Joel S.
Bernhard, Ronald R.
Betschart, Antoinette A.
Beyer, Wally
Billy, Thomas J.
Blackburn, Wilbert H.
Blackwell, Jack A.
Blanks, Jacqueline J.
Bosecker, Raymond Ronald
Bosworth, Dale N.
Bottum, John S.
Braley, George A.
Breeze, Roger
Bresnick, Arnold
Bryant, Arthur Ray
Buisch, William W.
Buntain, Bonnie J.
Burns, Denver P.
Burse, Sr., Luther
Burt, John P.
Campbell, Arthur C.
Carey, Ann E.
Carey, Priscilla B.
Carlin, David J.
Carpenter, Barry L.
Chambliss, Mary T.
Cherry, John P.
Cielo, Angel B.
Clark, Lawrence E.
Clayton, Kenneth C.
Cohen, Kenneth E.
Collins, Keith J.
Comanor, Joan M.
Conrad, Virgil L.
Conway, Roger K.
Conway, Thomas V.
Cooksie, Carolyn B.
Cooper, George E.
Coulter, Kyle Jane
Cruz, Jose
Davis, Harold W.
Dedrick, Allen R.
Dehaven, W. Ron
Delgado, Linda A.
Derfler, Philip S.
Dewhurst, Stephen B.
Dombeck, Michael P.
Donoghue, Linda R.
Dooms, Elnora C.
Douglas, Jr., Frederick C.
Drazek, Paul A.
Duncan, Charles N.
Duncan, III, John P.
Dunkle, Richard L.
Dunn, Michael V.
Eav, Bov Bang
Ebbitt, James R.
Elder, Alfred S.
Elias, Thomas S.
Ellis, Joanne H.
Estill, Elizabeth
Evans, Gary R.
Evans, Reba P.
Figueroa, Enrique E.
Fleischman, Joyce N.
Forsgren, II, Harvey L.
Fowler, Jerry L.
Franco, Robert
Franks, Jr., William Jesse
Frazier, Gregory
Frost, Alberta C.
Gadt, Larry O.
Galvin, Timothy J.
Gardner, Jr., William Earl
Geasler, Mitchell Ray
Gelburd, Diane E.
Gillam, Bertha C.
Gippert, Michael J.
Gipson, Chester A.
Glavin, Margaret Agnes
Goerl, Vincette L.
Golden, John
Gonzales, Miley I.
Gray, Rosalind D.
Graybeal, Nancy
Greene, Frank C.
Greenshields, Bruce L.
Grundeman, Arnold James
Gugulis, Katherine C.
Guldin, Richard W.
Hagy, III, William F.
Hall, David C.
Hamilton, Thomas E.
Hardy, Jr., Leonard
Harrington, Jr., Rube
Harris, Sharron L.
Harris, Jr., David H.
Hatamiya, Lon S.
Hatcher, Charles F.
Havlik, William J.
Hayes, Paula F.
Healy, Patricia E.
Hefferan, Colien J.
Hellickson, Key Sandra
Henneberry, Thomas J.
Hernandez, Humberto
Hewings, Adrianna D.
Hicks, Ronald F.
Hicks, Vicki J.
Hill, Ronald W.
Hobbie, Mary Kyle
Hobbs, Alma C.
Hobbs, Ira L.
Holbrook, David M.
Holman, Pred Dwight
Horn, Floyd P.
Horner, Withers G.
House, Carol C.
Hudnall, Jr., William J.
Humiston, Glenda
Jackson, Ruthie F.
Jacobs, Robert T.
Jakub, Lawrence M.
Janik, Philip J.
Jennings, Allen L.
Johnsen, Peter B.
Johnson, Allan S.
Johnson, Judith K.
Johnson, Phyllis E.

Jordan, John P.
Joslin, Robert C.
Jung, Christine M.
Kaiser, Jr., Harold F.
Kaplan, Dennis L.
Kearney, James
Keefe, Mary Ann
Keeney, Robert C.
Keith, Roderick
Kelly, James Michael
Kelly, Keith
Kelly, Michael W.
Kennedy, Anne Keys
Kennedy, Eileen T.
King, Alexander
King, Janet C.
King, R. Alan
King, Jr., Edgar G.
Knipling, Edward B.
Koopman, Robert B.
Kronenberger, Jr., Donald R.
Kuhn, Betsey A.
Laster, Danny B.
Laverty, Jr., Robert L.
Lee, Warren M.
Leo, Joseph J.
Leonhardt, Barbara A.
Lewis, David N.
Lewis, Jr., Robert
Lilja, Janice Grassmuck
Linden, Ralph A.
Little, James R.
Long, Richard D.
Ludwig, William E.
Lugo, Ariel E.
Lyons, James R.
Macias, Cheryl L.
Maloney, Kathryn P.
Manning, Gloria
Margheim, Gary A.
Martin, Christopher J.
Martinez, Wilda H.
Matz, Deborah
Maupin, Gary T.
Mausbach, Maurice J.
Mazie, Sara M.
McCutcheon, John W.
McDougle, Janice H.
McKee, Richard M.
McLean, Christopher A.
Mengeling, William L.
Mezainis, Valdis E.
Miller, Charles R.
Mills, Thomas J.
Mina, Mark T.
Moore, Eddie A.
Murrell, Kenneth D.
Nelson, Stephen F.
Nervig, Robert M.
Newman, Richard Odell
Ng, Allen
Nordstrom, Gary R.
Novak, Jon E.
O'Brien, Patrick Michael
Oberlander, Herbert
Offutt, Susan E.
Ohler, Barry A.
Olsen, Eric N.
O'Neil, Barbara T.
Onstad, Charles A.
Orr, David M.
Ortego, John R.
Osgood, Barbara T.
Otto, Ralph A.
Pandolfi, Francis P.
Paradis, Julia M.
Parham, Gregory L.
Parry, Jr., Richard M.
Pearson, James E.
Peer, Wilbur T.
Perry, James P.
Perry, Joan B.
Potts, Janet S.
Powers, Judy M.
Prchal, Robert J.
Prucha, John C.
Purcell, Robert L.
Pytel, Christine
Rains, Michael T.
Rawls, Charles R.
Read, Hershel R.
Reed, Anne F.T.
Reed, Craig A.
Reed, Pearlie S.
Reilly, Joseph T.
Rexroad, Jr., Caird E.
Reynolds, James R.
Rhoades, James D.
Riemenschneider, Robert A.
Riggins, Judith W.
Risbrudt, Christopher D.
Robinson, Bobby H.
Rockey, Sarah J.
Rominger, Richard E.
Roussopoulos, Peter J.
Rundle, Kathleen A.
Salwasser, Harold James
Satterfield, Steven E.
Scarbrough, Frank E.
Schipper, Jr., Arthur L.
Schroeder, James W.
Schumacher, Jr., August
Schwalbe, Charles P.
Sells, Danny DeVault
Sesco, Jerry A.
Sexton, Thomas J.
Seymour, Carol M.
Shackelford, Parks D.
Shadburn, Jan E.
Shands, Henry L.
Sheikh, Patricia R.
Shipman, David R.
Siddiqui, Islam A.
Simmons, Robert M.
Skeen, David
Smith, Dallas R.
Smith, Horace
Smith, Katherine R.
Smith, Peter Francis
Smith, Jr., William C.
Smulkstys, Inga P.
Smythe, Richard V.
Sommers, William T.
Soper, Jr., Richard S.
Sparks, John E.
Spence, Joseph
Spory, Gene P.
Sprague, G. Lynn
St. John, Judith B.
Steel, Patrick M.
Steele, W. Scott
Stenger-Castro, Frank W.
Stewart, Ronald E.
Stockton, Jr., Blaine D.
Stolfa, Patricia F.
Stommes, Eileen S.
Surina, John C.
Tanner, Steven N.
Thomas, Irving W.
Thompson, Clyde
Thompson-Long, Jill L.
Thompson, Paul E.
Thompson, Robin L.
Thornton, Samuel E.
Torgerson, Randall E.
Torres, Alfonso
Towns, Eleanor R.
Vail, Kenneth H.
Valsing, D. Charles
Van Klaveren, Richard W.
Vasquez, Jr., Victor
Verble, Sedelta D.
Viadero, Roger C.
Vogel, Frederic A.
Vogel, Ronald J.
Vonk, Jeffrey Ronald
Wachs, Lawrence
Wachsmuth, Ina K.
Walker, Elijah C.
Walker, Larry A.
Walsh, Thomas M.
Walton, Thomas E.
Watkins, Dayton J.
Watkins, Shirley R.
Weber, Barbara C.
Weber, Thomas A.
West, William L.
Whillock, Carl S.
White, Barbara A.
White, Jr., T. Kelley
Whiteman, Glenn D.
Whiting, Robert W.
Whitmore, Charles
Wilcox, Caren A.
Williams, John W.
Williams, Robert W.
Williamson, Robert L.
Willis, Joyce C.
Wilson, Edward M.
Witt, Timothy Blaine
Woteki, Catherine E.
Wu, Jeremy S.
Young, Jr., Robert W.
Zellers, Phillip
Zorn, Frances E.

Dated: November 12, 1998.

Richard E. Rominger,

Deputy Secretary.

[FR Doc. 98–30904 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 08/788,604, filed January 24, 1997, entitled "Methods and Compositions for the Simultaneous Control of Root Diseases Caused by Gaeumannomyces Graminis, Rhizoctonia, and Pythium" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Green-Releaf BioTech, Inc., of

Jacksonville, Florida, an exclusive license to Serial No. 08/788,604.

DATES: February 17, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Green-Releaf BioTech, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–30905 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–112–1]

Availability of an Environmental Assessment and Finding of No Significant Impact for Field Testing Marek's Disease Vaccine, Serotypes 1 and 3, Live Marek's Disease Virus Vector

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment and finding of no significant impact concerning authorization to ship for the purpose of field testing, and then to field test, an unlicensed live viral Marek's disease vaccine for use in poultry. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that field testing this veterinary vaccine will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared. We intend to authorize shipment of this vaccine for field testing 14 days after the date of this notice, unless new, substantial issues bearing on the effects of this action are brought to our attention. We also intend to issue a veterinary biological product license for this vaccine, provided the field test data support the conclusions of the environmental assessment and finding of no significant impact and the product meets all other requirements for licensure.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the docket number, date, and complete title of this notice when requesting copies. Copies of the environmental assessment and finding of no significant impact (as well as the risk analysis with confidential business information removed) are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Technical Writer-Editor, Center for Veterinary Biologics, Licensing and Policy Development, VS, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; telephone (301) 734–5338; fax (301) 734–4314; or e-mail: Jeanette.B.Greenberg@usda.gov.

SUPPLEMENTARY INFORMATION: Under the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*), a veterinary biological product must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. Prior to conducting a field test on an unlicensed product, an applicant must obtain approval from the Animal and Plant Health Inspection Service (APHIS), as well as obtain APHIS' authorization to ship the product for field testing.

In determining whether to authorize shipment and grant approval for the field testing of the unlicensed product referenced in this notice, APHIS conducted a risk analysis to assess the potential effects of this product on the safety of animals, public health, and the environment. Based on the risk analysis, APHIS has prepared an environmental assessment (EA). APHIS has concluded that field testing the unlicensed veterinary biological product will not significantly affect the quality of the human environment. Based on this finding of no significant impact (FONSI), we have determined that there is no need to prepare an environmental impact statement.

The EA and FONSI have been prepared by APHIS concerning the field testing of the following unlicensed veterinary biological product:

Requester: Tri Bio Laboratories, Inc.

Product: Marek's Disease Vaccine, Serotypes 1 and 3, Live Marek's Disease Virus Vector.

Field test locations: Wisconsin, North Carolina, and California.

The above-mentioned vaccine is for use as an aid in the prevention of Marek's disease in chickens. The vaccine contains live Marek's disease virus serotype 3 (which is nonpathogenic), into which were inserted three genes coding for glycoproteins from Marek's disease virus serotype 1.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Unless substantial environmental issues are raised in response to this notice, APHIS intends to authorize shipment of the above product for the initiation of field tests 14 days from the date of this notice.

Because the issues raised by field testing and by issuance of a license are identical, APHIS has concluded that the EA and FONSI that were generated for field testing would also be applicable to the proposed licensing action. Provided that the field test data support the conclusions of the original EA and FONSI, APHIS does not intend to issue a separate EA to support the issuance of the product license, and would determine that an environmental impact statement need not be prepared. APHIS intends to issue a veterinary biological product license for this vaccine following completion of the field test provided no adverse impacts on the

human environment are identified and provided the product meets all other requirements for licensure.

Authority: 21 U.S.C. 151–159.

Done in Washington, DC, this 12th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–30974 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Establishment of The Opal Creek Wilderness and Opal Creek Scenic Recreation Area, Willamette National Forest, Marion County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of establishment of a wilderness and scenic recreation area.

SUMMARY: Omnibus Parks and Public Lands Management Act of 1996, Pub. L. 104–333 ("Opal Creek Bill") provides for the establishment of the Opal Creek Wilderness and Scenic Recreation Area upon a determination by the Secretary of Agriculture that specified conditions are met within two years of enactment. The Secretary has determined that the conditions have been met, and the Opal Creek Wilderness and Scenic Recreation Area can be established. A copy of the establishment document appears at the end of this notice.

EFFECTIVE DATE: November 9, 1998.

ADDRESSES: A copy of the map depicting the Opal Creek Wilderness and Scenic Recreation Area, as well as a written legal description, are on file and available for public inspection in Forest Supervisor's Office, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Steve Sorseth, Wilderness Coordinator, Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440, phone 541–465–6494.

Dated: November 12, 1998.

Kimberly E. Bown,

Acting Regional Forester.

Establishment of the Opal Creek Wilderness and Opal Creek Scenic Recreation Area

Recitals

A. Section 1023 of the Omnibus Parks and Public Lands Management Act of 1996, Pub. L. 104–333; 110 STAT. 4215–4224 ("Opal Creek Bill") provides for the establishment of the Opal Creek Wilderness and Scenic Recreation Area upon a determination by the Secretary of Agriculture (Secretary) that specified conditions are met within two years of enactment [Opal Creek Bill, section 1023(c)(1)].

B. Pub. L. 104–333 was enacted November 12, 1996.

C. The conditions as specified in Opal Creek Bill section 1023(c)(2) are as follow:

1. The donation to the United States in acceptable condition and without encumbrance:

a. All right, title, and interest in the following patented parcels of land-Santiam Number 1, Mineral Survey Number 992, as described in patent number 39–92–0002, dated December 11, 1991; Ruth Quartz Mine Number 2, Mineral Survey number 994, as described in patent number 39–91–0012, dated February 12, 1991; Morning Star Lode, Mineral Survey Number 993, as described in patent number 36–91–0011, dated February 12, 1991;

b. All right, title, and interest held by any entity other than the Times Mirror Land and Timber Company, its successors and assigns in and to lands located in section 18, T. 8 S., R. 5 E., W.M., Marion County, Oregon, Eureka numbers 6, 7, 8 and 13 mining claims; and

c. An easement across the Hewitt, Starvation, and Poor Boy Mill Sites, Mineral Survey Number 990, as described in patent number 36–91–0017, dated May 9, 1991.

2. A binding agreement, in the form of a Purchase Option Contract, has been executed by the Secretary and the owners of record as of March 29, 1996, of the following interests, specifying the terms and conditions for the deposition of such interests to the United States Government:

a. The lode mining claims known as the Princess Lode, Black Prince Lode, and King Number 4 Lode, embracing portions of sections 29 and 32, T. 8 S., R. 5 E., W.M., Marion County, Oregon, the claims being more particularly described in the field notes and depicted on the plat of Mineral Survey Number 887, Oregon; and

b. Ruth Quartz Mine Number 1, Mineral Survey Number 994, as described in patent number 39–91–0012, dated February 12, 1991.

D. I have reviewed the record prepared by the Forest Service related to the real property described in Recital C, above.

Determinations

1. Based upon my review of the record, I make the following determinations on behalf of the Secretary:

a. The conditions described in Recital C1, above, were met when the Friends of Opal Creek donated the interests in real property described in Recital C1 to the United States in acceptable condition and without encumbrance in a Donation Deed dated October 23, 1998, and recorded in the Marion County, Oregon real property records on October 23, 1998, Reel 1534, Page 676, and a Right-of-Way Easement dated October 23, 1998 and recorded in the Marion County, Oregon real property records on October 23, 1998, Reel 1534, Page 675.

b. The condition of the binding agreement specifying the terms and conditions for the disposition of the real property interests described in Recital C2 was met by the Purchase Option and Contract ("Option") signed by the Friends of Opal Creek on July 29, 1998 and accepted by the Forest Service, on behalf of the Secretary on September 29, 1998. The Friends of Opal Creek met the terms and conditions of the Option when it transferred the interests in real property described in Recital C.2. to the United States in a Warranty Deed dated October 23, 1998, Reel 1534, page 674.

Establishment

Based on the above Determinations and the provisions of the Opal Creek Bill:

1. The Opal Creek Wilderness is established, and includes certain land in the Willamette National Forest as generally depicted on the map entitled "Proposed Opal Creek Wilderness and Scenic Recreation Area" dated July 1996, as described in section 1023(a)(2) of the Opal Creek Bill. A copy of that map is attached as Exhibit 1.

2. The part of the Bull of the Woods Wilderness that is located in the Willamette National Forest is incorporated into the Opal Creek Wilderness.

3. The Opal Creek Scenic recreation Area is established, as also generally depicted on the map entitled "Proposed Opal Creek Wilderness and Scenic recreation Area" dated July 1996 (Exhibit 1), as described in section 1023(a)(3) of the Opal Creek Bill.

4. Under the U.S. Department of Agriculture's delegations of authority, the Chief of the Forest Service may make the determination on behalf of the Secretary that the conditions is subsection 1023(c)(2) of the Opal Creek Bill have been met. The Secretary has delegated to the Under Secretary for Natural Resources and Environmental the authority to acquire and dispose of lands and interests in lands may be authorized for the protection, management, and administration of the

National Forest System under 7 CFR 2.20(a)(2)(ii). The Under Secretary, in turn, has delegated this authority to the Chief of the Forest Service under 7 CFR 2.60(a)(2). The authority to acquire and dispose of lands and interests in land includes the authority to determine whether certain conditions precedent to the acquisition or disposal, such as those specified in subsection 1023(c)(2) of the Opal Creek bill, have been met. Forest Service Manual 5404.14 further delegates authorities associated with the land adjustment program from the Chief to the Regional Foresters.

Inwitness whereof, the United States, by its Regional Forester, Pacific Northwest Region, Forest Service, has executed this document pursuant to the delegations of authority described above.

Dated: November 9, 1998.

Robert W. Williams,

Pacific Northwest Region, Regional Forester.

[FR Doc. 98–30912 Filed 11–18–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 981109281–8281–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases, and accounts receivables to provide a sound statistical basis for the formation of policy by various Government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases, and accounts receivable for 1998 and year-end inventories for 1997 and 1998. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1998 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The survey has been submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and approved under OMB Control Number 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of Census, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 10, 1998.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 98–30945 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 981109282–8282–01]

Annual Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering year-end inventories, annual sales, and purchases to provide a sound statistical basis for the formation of policy by various Government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar wholesale trade surveys conducted each year since 1978. It provides, on a comparable classification basis, annual sales and purchases for 1998 and year-end inventories for 1997 and 1998. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 457–2713.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on wholesale trade for the period between economic censuses. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating merchant wholesale establishments in the United States (with sales size determining the probability of selection) to report in the 1998 Annual Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The survey has been submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and approved under OMB Control Number 0607–0195. We will provide copies of the form upon written request to the Director, Bureau of Census, Washington, DC 20233–0001.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 10, 1998.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 98–30946 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–98]

Foreign-Trade Zone 184, Klamath Falls, OR; Reissuance of Grant of Authority

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Klamath Falls, Oregon, grantee of FTZ 184, requesting reissuance of the grant of authority for FTZ 184 to Klamath International Trade and Transportation Services, Inc., an Oregon for-profit corporation which is authorized to apply to the FTZ Board to

become the grantee of FTZ 184 under a special act of the Oregon Legislature, approved on June 12, 1997 (ORS 307.850, Section 2). Klamath International Trade and Transportation Services, Inc. has concurrently requested that the FTZ 184 grant of authority be reissued with Klamath International Trade and Transportation Services, Inc. as grantee. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 9, 1998.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 19, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 2, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Office of the Area Port Director, U.S. Customs Service, 511 NW Broadway, Rm 198, Portland, OR 97209

Dated: November 9, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–30988 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–811]

Hot Rolled Lead and Bismuth Carbon Steel Products From Germany: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on hot rolled lead and bismuth carbon steel products from Germany. The review covers one manufacturer/exporter and the period March 1, 1997, through February 28, 1998.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Stephanie Moore, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2849 or (202) 482–3692, respectively.

SUPPLEMENTAL INFORMATION: Because it is not practicable to complete this review within the initial time limits established by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limits for completion of the preliminary results until no later than March 31, 1999. *See* Decision Memorandum to Robert S. LaRussa, dated October 30, 1998, which is a public document on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 13, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30985 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–810]

Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limits of the preliminary results of the fifth antidumping duty administrative review of the antidumping duty order on hot rolled lead and bismuth carbon steel products from the United Kingdom. The review covers one manufacturer/exporter of the subject merchandise to the United States for the period March 1, 1997, through February 28, 1998.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1167.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the initial time limits established by the Uruguay Round Agreements Act, pursuant to 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limits for completion of the preliminary results until no later than March 31, 1999. *See Memorandum to Robert S. LaRussa*, dated November 5, 1998, which is a public document on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 18, 1998.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–30987 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–812]

Hot-Rolled Lead and Bismuth Carbon Steel Products From Germany: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits of preliminary results of review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on hot rolled lead and bismuth carbon steel products from Germany. The review covers one manufacturer/exporter and the period January 1, 1997, through December 31, 1997.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Copyak or Eric B. Greynolds,

Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTAL INFORMATION: Because it is not practicable to complete this review within the initial time limits established by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department is extending the time limits for completion of the preliminary results until no later than March 31, 1999. *See* Decision Memorandum to Robert S. LaRussa, dated October 30, 1998, which is a public document on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675(a)(3)(A)).

Dated: November 18, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–30986 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Docket No. 981103273–8273–01

RIN 0693–ZA24

Precision Measurement Grants et al; Notice of Financial Assistance

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the following programs of the National Institute of Standards and Technology (NIST) are offering financial assistance as follows: (1) the Precision Measurement Grants Program; (2) the 1999 Summer Undergraduate Research Fellowships (SURF) in the areas of Atomic, Molecular and Optical (AMO) and Radiation Physics, in Materials Science and Engineering, and in Manufacturing Engineering; (3) the Materials Science and Engineering Grants Program; and (4) the Fire Research Grants Program.

The Precision Measurement Grants Program is seeking proposals for significant, primarily experimental, research in the field of fundamental measurement or the determination of fundamental constants. Applicants must submit an abbreviated proposal for preliminary screening. Based on the merit of the abbreviated proposal, applicants will be advised whether a full proposal should be submitted. The programs "SURFing the Physics Laboratory," "SURFing the Materials Science and Engineering Laboratory," and "SURFing the Manufacturing Engineering Laboratory" will provide an opportunity for the Physics Laboratory (PL), the Materials Science and engineering Laboratory (MSEL), the Manufacturing Engineering Laboratory (MEL), and the National Science Foundation (NSF) to join in a partnership to encourage outstanding undergraduate students to pursue careers in science and engineering. The PL program will function by exposing students to world class atomic, molecular, optical (AMO) and radiation physicists and facilities in the NIST Physics Laboratory, and by strengthening undergraduate AMO physics curricula by forming the basis for ongoing collaborations. The MSEL program will function by providing research opportunities with internationally known NIST scientists in the fields of ceramics, solid state chemistry, metallurgy, polymers, neutron condensed matter science, and materials reliability. The MEL program will function by providing research opportunities with internationally known NIST scientists in the fields of intelligent systems, automated production, precision engineering, and manufacturing systems integration. The NIST Program Directors will work with physics, materials science, manufacturing engineering, intelligent systems, automated production, precision engineering, and other science-related department chairs and directors of multi-disciplinary centers of excellence to identify outstanding undergraduates (including graduation seniors) who would benefit from off-campus summer research in an honors academy environment. The Materials Science and Engineering Laboratory (MSEL) Grants Program, National Institute of Standards and Technology (NIST), is continuing its program for grants and cooperative agreements in the following fields of research: Ceramics, Metallurgy, Polymer Sciences, Neutron Scattering Research and Spectroscopy. Each applicant must submit one signed original and two copies of each proposal along with ■ Grant Application, (Standard Form 424 REV. 7/97 and other required forms), as referenced under the provisions of OMB Circular A–110 and 15 CFR 24. The Fire Research Grants Program is limited to innovative ideas in the fire research area generated by the proposal writer, who chooses the topic and approach, consistent with the program description/objectives of this notice.

DATES: The Precision Measurement Grants Program abbreviated proposals must be received at the address listed below no later than the close of business February 1, 1999. The semifinalists will be notified of their status by March 22, 1999, and will be requested to submit their full proposals to NIST by close of business on May 7, 1999. Selection of the awards will be made by Friday, August 15, 1999.

The Physics, MSEL and MEL SURF Programs' proposals must be received no later than the close of business February 15, 1999.

The MSEL Grants Program proposals must be received no later than the close of business September 30, 1999.

The Fire Research Grants Program proposals must be received no later than the close of business September 30, 1999.

ADDRESSES AND CONTACT INFORMATION: For the Precision Measurement Grants Program, applicants are requested to submit any technical questions and an abbreviated proposal (original and two (2) signed copies), with a description of their proposed work of no more than five (5) double spaced pages to: Dr. Barry N. Taylor, Chairman, NIST Precision Measurement Grants Committee, Bldg. 225, Rm. B161, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001, Tel: (301) 975–4220 E-mail: barry.taylor@nist.gov, Website: http://physics.nist.gov/ResOpp/grants/grants.html

For the remainder of the Grants Programs, applicant institutions must submit one signed original and two (2) copies of the proposal to: For the Physics, MSEL and MEL SURF Programs: Attn.: Ms. Anita Sweigert, National Institute of Standards and Technology, Building 221, Room B–160, Gaithersburg, MD 20899–0001, Tel: (301) 975–4200, E-mail: anita.sweigert@nist.gov

Websites for each program are as follows: Physics SURF Program, http://physics.nist.gov/ResOpp/surf/surf.html;MSEL SURF Program, http://www.msel.nist.gov/surf/surf.html; and MEL SURF Program, http://www.mel.nist.gov/opps/surf.htm

Technical questions for the Physics, MSEL and MEL SURF Programs should be directed to the following contact persons: for the Physics Surf Program, Dr. Marc Desrosiers, Tel: (301) 975–5639, E-mail: marc.desrosiers@nist.gov; for the MSEL SURF Program, Dr. Terrell

A. Vanderah, Tel: (301) 975–5785, E-mail: terrell.vanderah@nist.gov; and for the MEL SURF Program, Ms. Lisa Jean Fronczek, Tel: (301) 975–6633, E-mail: 1fronczek@nist.gov.

For the MSEL Grants Program, each application package should be clearly marked to identify the field of research and should be submitted to: Materials Science and Engineering Laboratory, Attn.: Ms. Patty Salpino, National Institute of Standards and Technology, Building 223, Room A305, Gaithersburg, Maryland 20899–0001, Tel: (301) 975–5731, E-mail: patty.salpino@nist.gov

For the Fire Research Grants Program: Building and Fire Research Laboratory (BFRL), Attn: Ms. Sonya Parkham, Building 226, Room B206, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001, Tel: (301) 975–6854, E-mail: sonya.parkham@nist.gov

With the Exception of the MSEL Grants Program, all administrative questions concerning these programs may be directed to the NIST Grants Office at (301) 975–6329. Administrative questions regarding the MSEL Grants Program should be directed to Ms. Marlene Taylor at (301) 975–5653.

SUPPLEMENTARY INFORMATION: *Catalog of Federal Domestic Assistance Name and Number:* Measurement and Engineering Research and Standards—11.609.

Authority: The authority for the Precision Measurement Grants Program is as follows: As authorized by Section 2 of the Act of March 3, 1901, as amended (15 U.S.C. 272 (b)(2) and (c)(3)), NIST conducts directly, supports through grants and cooperative agreements, a basic and applied research program in the general area of fundamental measurement and the determination of fundamental constants of nature. The authority for the Physics, MSEL and MEL SURF Programs is as follows: The Act of March 3, 1901, as amended (15 U.S.C. 278g–1) authorizes the National Institute of Standards and Technology to expend up to 1 per centum of the funds appropriated for activities of NIST in any fiscal year, as the Director deems appropriate, for financial assistance awards in the form of cooperative agreements to students at institutions of higher learning within the United States. These students must show promise as present or future contributors to the missions of NIST. Cooperative agreements are awarded to assure continued growth and progress of science and engineering in the United States, including the encouragement of women and minority students to continue their professional development. The authority for the MSEL Grants Program is as follows: As authorized under 15 U.S.C. 272 (b)(6) and (c)(16), the MSEL conducts a basic and applied research program directly and through grants and cooperative agreements to eligible recipients. The authority for the Fire Research Grants Program is as follows: As authorized by Section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 278f), the NIST Building and Fire Research Laboratory conducts directly and through grants and cooperative agreements, a basic and applied fire research program.

Program Description/Objectives

The program description/objectives for the Precision Measurement Grants Program are as follows: NIST sponsors these grants to encourage basic, measurement-related research in U.S. universities and colleges and to foster contacts between NIST scientists and those faculty members of U.S. academic institutions who are actively engaged in such work. The Precision Measurement Grants are also intended to make it possible for such faculty members to pursue new, fundamental measurement ideas for which other sources of support may be difficult to find. There is some latitude in research topics that will be considered under the Precision Measurement Grants Program. The key requirement is that the proposed project support NIST's ongoing work in the field of basic measurement science, which includes:

1. Experimental and theoretical studies of fundamental physical phenomena which test the basic laws of physics or which may lead to new or improved fundamental measurement methods and standards.

2. The determination of important fundamental physical constants.

In general, proposals for experimental research will be given preference over proposals for theoretical research because of the greater expense of experimental work. Proposals from workers at the assistant and associate professor level who have some record of accomplishment are especially encouraged in view of the comparative difficulty aspiring researchers have in obtaining funds.

Typical projects which have been funded through NIST Precision Measurement Grants Program include:

(1) Eötvös experiment-cryogenic version, D.F. Bartlett, University of Colorado.

(2) A test of local Lorentz invariance using polarized ^{21}Ne nuclei, T.E. Chupp, Harvard University.

(3) A new method to search for an electric dipole moment of the electron, L.R. Hunter, Amherst College.

(4) High-precision timing of millisecond pulsars, D.R. Stinebring, Princeton, University.

(5) Development of an atom interferometer gyroscope for tests of general relativity, M. Kasevich, Stanford Univerisity.

(6) Spectroscopy of francium: towards a precise parity nonconservation measurement in a laser trap, Luis A. Orozco, State University of New York at Stony Brook.

(7) Measurement of the magnetically-introduced QED birefringence of the vacuum, Siu Au Lee, Colorado State University.

(8) Measurement of Newton's constant G using a new method, J.H. Gundlach, Unversity of Washington.

The programm description/objectives for the Physics, MSEL and MEL SURF Programs are as follows: To build a mutually beneficial relationship between the student, the institution of higher learning and NIST. This is the sixth year of the Physics SURF Program which is partially funded by the NSF Physics Division as a Research Experience for Undergraduates (REU) site. This is the second year of a proposed three year MSEL SURF Program and the first year of proposed five year MEL SURF Program funded by the NSF Materials Science Division as a Research Experience for Undergraduates (REU) site. Between ten and twenty percent of the associated student stipends, travel and housing has been provided in cost sharing by the participating institutions in previous years.

NIST is one of the nation's premier research institutions for the physical sciences and, as the lead Federal agency for technology transfer, is providing a strong interface between government, industry and academia. On-site researchers at NIST come from a broad range of institutions. Owing to its unique mission to support the U.S. economy by working with industry, NIST embodies a special science culture, developed from a large and well-equipped research staff that enthusiastically blends programs that address the immediate needs of industry with longer-term research that anticipates future needs. This occurs in few other places that enables the Physics Laboratory, the Materials Science and Engineering Laboratory and the Manufacturing Engineering Laboratory to offer unique research and training opportunities for undergraduates, providing them a research-rich environment and exposure to state of the art equipment, to scientists at work, and to professional contacts that represent future employment possibilities.

Attending to the long term needs of many U.S. high-technology industries, NIST's Physics Laboratory conducts basic research in the areas of quantum, electron, optical, atomic, molecular, and radiation physics. NIST's Materials Science and Engineering Laboratory conducts basic research in the

electronic, magnetic, optical, superconducting, mechanical, thermal, chemical, and structural properties of metals, ceramics, polymers, and composits. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which individual atoms and molecules will serve as the fundamental building blocks of devices. NIST's Manufacturing Engineering laboratory conducts theoretical and experimental research in length, mass, force, vibration, acoustics, and ultrasonics, as well as intelligent machines, precision control of machine tools, information technology for the integration of all elements of a product's life cycle. Much of this applied research is devoted to overcoming barriers to the next technological revolution, in which manufacturing facilities are spread across the globe.

To achieve these goals, PL staff develop and utilize highly specialized equipment, such as polarized electron microscopes, scanning tunneling microscopes, lasers, and x-rays and synchrotron radiation sources. Research projects can be theoretical or experimental and will range in focus from computer modeling of fundamental processes through trapping atoms and choreographing molecular collisions, to standardization for radiation therapy.

Preparation of unique materials by atomic level tailoring of multi-layers, perfect single crystals, and nanocomposites are just some of the future technologies being developed and explored in NIST's MSEL. To achieve these goals, staff develop and utilize highly specialized equipment, such as high resolution electron microscopes, atomic force microscopes, a nuclear reactor, x-ray diffraction sources, lasers, magnetometers, plasma furnaces, melt spinners, molecular beam epitaxy systems, and power atomization chambers. Research projects can be theoretical or experimental and will range in focus from the structural, chemical, and morphological characterization of advanced materials made in the NIST laboratories to the accurate measurement of the unique properties possessed by these special materials.

MEL's research and development leads to standards, test methods and data that are crucial to industry's success in exploiting advanced manufacturing technology. Critical components of manufacturing at any level are measurement and measurement-related standards, not just of products, but increasingly of information about products and processes. Thus, MEL programs enhance both physical and information-based measurements and standards. Research projects can be theoretical or experimental, and will range in focus from intelligent machine control, characterizing a manufacturing process or improving product data exchange, to the accurate measurement of an artifact's dimensions.

SURF students will work one-on-one with our nation's top physical scientists both from NIST and from some of our nation's leading, high tech industries. It is anticipated that successful SURF students will move from a position of reliance on guidance from their research advisors to one of research independence during the twelve-week period. One goal of this partnership is to provide opportunities for our nation's next generation of scientists and engineers to engage in world-class scientific research at NIST, especially in ground-breaking areas of emerging technologies. This carries with it the hope of motivating these individuals to pursue a Ph.D. in physics, materials science, engineering, mathematics, physics, or computer science, and to consider research careers. SURFing the Physics Laboratory, SURFing the Materials Science and Engineering Laboratory and SURFing the Manufacturing Engineering Laboratory will help to forge partnerships with NSF and with post-secondary institutions that demonstrate strong, hands-on undergraduate science curricula, especially those with a demonstrated commitment to the education of women, minorities, and students with disabilities. These programs will be open to all U.S. citizens or U.S. permanent residents interested in AMO or radiation physics, materials science or manufacturing research.

The program description/objectives for the MSEL Grants Program are as follows: All proposals submitted must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. Ceramics Division, 852—The primary objective is to supplement division activities in the area of ceramic processing, tribology, composites, machining, interfacial chemistry, and microstructural analysis. The contact person for this division is: Dr. Ronald Munro and he may be reached at (301) 975–6127.

II. Polymers Division, 854—The primary objective is to support division programs in polymer blends, composites, electrical applications, as well as, dental and medical polymeric materials through participation in research on metrology, synthesis, processing and characterization of structure, mechanical, thermal and electrical properties. The contact person for this division is: Dr. Donald L. Hunston, and he may be reached at (301) 975–6837.

III. Metallurgy Division, 855—The primary objective is to develop techniques to predict, measure and control transformations, phases, microstructure and kinetic processes as well as mechanical, physical and chemical properties in metals and their alloys. The contact person for this division is: Dr. Robert J. Schaefer and he may be reached at (301) 975–5961.

IV. Metallurgy Division, 855—The primary objective is to develop new and improved sensors, measurement techniques, and analytical models for metallurgical structures and processes in order to facilitate the development and adoption of intelligent processing systems for materials. The contact person for this division is: Dr. Robert J. Schaefer and he may be reached at (301) 975–5961.

V. NIST Center for Neutron Research, 856—The primary objective is to develop high resolution cold and thermal neutron scattering research approaches and related physics, chemistry, macromolecular and materials applications. The contact person for this division is: Dr. John J. Rush and he may be reached at (301) 975–6231.

The program description/objectives for the Fire Research Grants Program are as follows:

A. *Fire Modeling and Applications:* To perform research, develop and demonstrate the application of analytical models for the quantitative prediction of the consequences of fires and the means to assess the accuracy of those models. This includes: developing methods to assess fire hazard and risk; creating advanced, usable modelling for the calculation of the effluent from building fires; modelling the ignition and burning of furniture, contents, and building elements such as walls; developing methods of evaluating and predicting the performance of building safety design features; developing a protocol for determining the accuracy of algorithms and comprehensive models; developing data bases to facilitate use of fire models; and developing methodologies to acquire, model, and display fire information.

B. *Large Fire Research:* To perform research and develop techniques to measure, predict the behavior and mitigate large fire events. This includes: understanding the mechanisms of large

fires that control gas phase combustion, burning rate, thermal and chemical emissions, and transport processes; developing field measurement techniques to assess the near- and far-field impact of large fires and their plumes; performing research on the use of combustion for environmental cleanup; predicting the performance and environmental impact of fire protection measures and fire fighting systems and techniques; and developing and operating the Fire Research Program large-scale experimental facility.

C. *Advance Fire Measurements:* To produce the scientific basis and robust measurement methods for characterizing fires and their effluents at full- and reduced-scales. This includes discrete point, volume-integrated, and time- and space-resolved measurements for such properties as temperature, smoke density, chemical species, and flow velocity. Laboratory and computational research are also performed to understand the underpinning fire phenomena to ensure the soundness of the developed measurement techniques.

D. *Materials Fire Research:* To perform research enabling the confident development by industry of new, less-flammable materials and products. This capability is based on understanding fundamentally the mechanisms that control the ignition, flame spread and burning rate of materials, as well as and the chemical and physical characteristics that affect these aspects of flammability. This includes: developing methods of measuring the response of a material to fire conditions that enable assured prediction of the full-scale performance of the final product; developing computational molecular dynamics and other mechanistic approaches to understand flame retardant mechanisms and the effects of polymer chemical structure on flammability; characterizing the burning rates of charring and non-charring polymers and composites; and delineating and modeling the enthalpy and mass transfer mechanisms of materials combustion.

E. *Fire Sensing and Extinguishment:* To develop understanding, metrology and predictive methods to enable high-performance fire sensing and extinguishment systems; and devising new approaches to minimize the impact of unwanted fires and the suppression process. This includes: performing research for the identification and in-situ measurement of the symptoms of pending and nascent fires and the consequences of suppression; devising or adapting monitors for these variables and the intelligence for timely interpretation of the data; developing methods to characterize the performance of new approaches to fire detection and suppression; determining mechanisms for deflagration and detonation suppression by advanced agents and principles for their optimal use; and modeling the extinguishment process.

Eligibility

For the Precision Measurement Grants Program, colleges and universities in the United States. As part of this research program since 1970, NIST has awarded Precision Measurement Grants to faculty members of U.S. universities and colleges for significant, primarily experimental research in the field of fundamental measurement or the determination of fundamental constants. For the Physics, MSEL and MEL SURF Programs, colleges and universities in the United States with degree granting programs in materials science, chemistry, engineering, computer science, mathematics, or physics. Participating students must be U.S. citizens or permanent U.S. residents. For the MSEL Grants Program, this program will be open to all U.S. citizens or U.S. permanent residents. For the Fire Research Grants Program, academic institutions, non-Federal agencies, independent and industrial laboratories, and research organizations.

Funding Availability

For all Grants programs listed below, awards are contingent on the availability of funds. For the Precision Measurement Grants Program, the annual budget is approximately $300,000. The annual awards must have scopes of work that are clearly severable into annual increments of meaningful work which represent solid accomplishments if continuing (i.e., multi-year) funding is not made available to the applicant. Because of commitments for supporting multi-year programs, only a portion of the budget is available to initiate new programs or renew existing ones in any one year.

For the Physics SURF Program, the NIST Physics Laboratory will commit approximately $50,000 to support cooperative agreements under this program. The NIST Physics Laboratory's REU Program is anticipating renewal of funding by the NSF at the level of $70,000 per year. The anticipated direct costs for stipends, travel, housing, and conference attendance for twenty-five students is about $150,000. The actual number of awards made under this announcement will depend on the level of cost sharing by our academic partners.

For the MSEL SURF Program, the NIST Materials Science and Engineering Laboratory anticipates receiving funding as a NSF REU Program at the level of $50,000 per year. For the MEL SURF Program, the NIST Manufacturing Engineering Laboratory anticipates receiving funding as a NSF REU Program at the level of $52,000 per year. It is anticipated that the funding for both of these programs would provide for the costs of stipends, travel and housing, and the conference attendance of eight students for each program. The actual number of awards made under this announcement will depend on the level of cost sharing by our academic partners.

For the MSEL Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, in relation to the mission of the MSEL program, and the availability of funds. The annual awards must have scopes of work that are clearly severable and can be easily separated into annual increments of meaningful work, which represent solid accomplishments if prospective funding is not made available to the applicant, (i.e., the scopes of work for each funding period must produce identifiable and meaningful results in and of themselves).

For the Fire Research Grants Program, the annual budget is $1.36 million. Because of commitments for the support of multi-year programs, only a portion of the budget is available to initiate new programs in any one year. Most grants and cooperative agreements are in the $10,000 to $100,000 per year range.

For all of the above programs, the issuance of awards is contingent upon the availability of funding.

Proposal Review Process and Evaluation Criteria

For the Precision Measurement Grants Program, to simplify the proposal writing and evaluation process, the following selection procedure will be used:

The abbreviated proposals will be reviewed on the basis of the evaluation criteria below. The NIST Precision

Measurement Grants Committee and the Outside Review Committee will then select approximately four to eight semifinalists and request that these candidates submit full proposals. The same committees will evaluate the detailed proposals based on the evaluation criteria, and the two grantees with the highest scores for fiscal year 2000 will be selected.

The evaluation criteria to be used in evaluating the preapplication proposals and full proposals include:

1. The importance of the proposed research—does it have the potential of answering some currently pressing question or of opening up a whole new area of activity?

2. The relationship of the proposed research to NIST's ongoing work—will it support one of NIST's current efforts to develop a new or improved fundamental measurement method or physical standard, or to better understand an important, but already existing, measurement method or physical standard?

3. The feasibility of the research—is it likely that significant progress can be made in a three year time period with the funds and personnel available?

4. The past accomplishments of the applicant—is the quality of the research previously carried out by the prospective grantee such that there is a high probability that the proposed research will be successfully carried out?

Each of these factors is given equal weight in the selection process.

For the Physics, MSEL and MEL SURF Programs, all proposals will be reviewed and ranked by a panel of three NIST scientists appointed by the Program Directors on the basis of the evaluation criteria. Proposals should include the following:

(A) Student Information:

(1) Official transcript for each student nominated with a recommended G.P.A. of 3.0 or better, out of a possible 4.0;

(2) A personal statement from each student and statement of commitment to participate in the 1998 SURF program, including a description of the student's prioritized research interests;

(3) A resume for each student; and

(4) Two letters of recommendation for each student.

(B) Information About the Applicant Institution:

(1) Description of the institution's education and research philosophy, faculty interests, on-campus research program(s) and opportunities, and overlapping research interests of NIST and the institution; and

(2) A statement addressing issues of academic credit and cost sharing.

For the Physics, MSEL and MEL SURF Programs, the evaluation criteria includes the following:

Evaluation of Student's Academic Ability and Commitment to Program Goals (70%): Includes, but is not limited to, evaluation of the following: completed course work; expressed research interest; prior research experience; grade point average in courses relevant to program; career plans; honors and activities.

Evaluation of Applicant Institution's Commitment to Program Goals (30%): Includes, but is not limited to, evaluation of the following: institution's focus on AMO physics, materials science, manufacturing research and all of its components, including but not limited to engineering, computer science, physics, and mathematics; overlap between research interests of the institution and NIST; emphasis on undergraduate hands-on research; undergraduate participation in research conferences/programs; on-campus research facilities; past participation by students/institution in such programs; and commitment to educate women, minorities, and persons with disabilities. In the spirit of a true partnership, successful applicant institutions will be encouraged to contribute some partial support to the program. A suggested level of participation would be to directly cover student travel (one round trip by common carrier) or housing costs (approximately $1500); stated intent to support the participating students at ■ research conference, and/or awarding of academic credit for the student research.

Award decisions shall be based upon total evaluation score.

For the MSEL Grants Program, proposals will be reviewed in a two-step process. First, a panel of at least three individuals knowledgeable about the particular scientific area described in the section above that the proposal addresses will conduct a technical review of proposals based on the evaluation criteria. Second, the chief of each division will make final award selections. In making final award selections, the chief of each division will take into account the score received by the applicant and the compatibility of the applicant's proposal with the program objectives of the particular division that the proposal addresses. These objectives are described above in the "Program Objectives" section. If an award is made to an applicant that does not receive the highest score in its category by technical reviewers, the Division Chief shall justify the selection in writing. Award decisions shall be based upon the total evaluation score.

For the MSEL Grants Program, the evaluation criteria the technical reviewers will use in evaluating the proposals includes the following:

1. *Rationality.* Reviewers will consider the coherence of the applicant's approach and the extent to which the proposal effectively addresses scientific and technical issues.

2. *Qualifications of Technical Personnel.* Reviewers will consider the professional accomplishments, skills, and training of the proposed personnel to perform the work in the project.

3. *Resources Availability.* Reviewers will consider the extent to which the proposer has access to necessary facilities and other support to accomplish project objectives.

4. *Technical Merit of Contribution.* Reviewers will consider the potential technical effectiveness of the proposal and the value it would contribute to the field of materials science and engineering.

Each of these factors will be given equal weight in the evaluation process.

For the Fire Research Grants Program, all proposals are assigned to the appropriate group leader of the five programs listed above in the program description/objectives. Proposals are evaluated for technical merit based on the evaluation criteria by at least three reviewers chosen from NIST professionals, technical experts from other interested government agencies and experts from the fire research community at large. Both the technical value of the proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration in the group leader's recommendation to the Division Chief. The Division Chief will make the final selections. If an award is made to an applicant that does not receive the highest score in its category by technical reviewers, the Division Chief shall justify the selection in writing. Applicants should allow up to 90 days processing time.

For the Fire Research Grants Program, the evaluation criteria includes the following:

a. Technical quality of the research: 0–35 points.

b. Potential impact of the results: 0–25 points.

c. Staff and institution capability to do the work: 0–20 points.

d. Match of budget to proposed work: 0–20 points.

Award Period

For the Precision Measurement Grants Program, NIST is now accepting applications for two new grants in the amount of $50,000 per year to be

awarded for the period October 1, 1999, through September 30, 2000 (fiscal year 2000). Each grant may be renewed for up to two additional years; however, future or continued funding will be at the discretion of NIST based on such factors as satisfactory performance and the availability of funds.

For the Physics, MSEL and MEL SURF Programs, these programs are anticipated to run between May 25 through August 13, 1999; adjustments may be made to accommodate specific academic schedules (e.g., a limited number of 10-week cooperative agreements).

For the MSEL Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, NIST has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST. Funding for each subsequent year of a multi-year proposal will be contingent upon satisfactory progress, in relation to the mission of the MSEL program, and the availability of funds.

For the Fire Research Grants Program, proposals will be considered for research projects from one to three years. When a proposal for a multi-year is approved, funding will initially be provided for only the first year of the program. If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC. Funding for each subsequent year of a multi-year proposal will be contingent on satisfatory progress, fit to the NIST Fire Research Program and the availability of funds.

Matching Requirements

Each of the above grants programs does not involve the payment of any matching funds, with the exception of the Physics, MSEL and MEL SURF Programs which use cost-sharing as an evaluation criterion.

Application Kit

An application kit, containing all required application forms and certifications is available by contacting: for the Precision Measurement Grants Program, Ms. Michelle Hane, (301) 975–4397; for the Physics, MSEL and MEL SURF Programs, Ms. Anita Sweigert, (301) 975–4200, websites for each program's application kit are as follows: for the Physics SURF Program, http://physics.nist.gov/ResOpp/surf/surf.html; for the MSEL SURF Program, http://www.msel.nist.gov/surf/surf.html; and for the MEL SURF Program, http://www.mel.nist.gov/opps/surf.htm; for the MSEL Grants Program, Ms. Patty Salphino, (301) 975–5731; and for the Fire Research Grants Program, Ms. Sonya Parham, (301) 975–6854. The application kit includes the following:

SF 424 (Rev 7/97)—Application for Federal Assistance
SF 424A (Rev 7/97)—Budget Information—Non-Construction Programs
SF 424B (Rev 7/97)—Assurances—Non-Construction Programs
CD 511 (7/91)—Certification Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying
CD 512 (7/91)—Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying
SF-LLL Disclosure of Lobbying Activities

Paperwork Reduction Act

The Standard Form 424 and other Standard Forms in the application kit are subject to the requirements of the Paperwork Reduction Act and have been approved by OMB under Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Additional Requirements

Primary Application Certification

All primary applicant institutions must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations must be provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater.

4. *Anti-Lobbying Disclosure.* Any applicant institution that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

5. *Lower-Tier Certifications.* Recipients shall require applicant/bidder institutions for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

Name Check Reviews

All for-profit and non-profit applicants will be subject to a name check review process. Name checks are intended to reveal if any individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Preaward Activities

Applicants (or their institutions) who incur any costs prior to an award being made do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been provided, there is no obligation on the part of NIST to cover pre-award costs.

No Obligation for Future Funding

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

False Statements

A false statement on an application is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,
2. A negotiated repayment schedule is established and at least one payment is received, or
3. Other arrangements satisfactory to DoC are made.

Indirect Costs

For the Physics, MSEL and MEL SURF Programs, no Federal funds will be authorized for Indirect Costs (IDC); however, an applicant may provide for IDC under his/her portion of Cost Sharing.

For each of the above grant programs, the total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agent prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Federal Policies and Procedures

Recipients and subrecipients under each of the above grant programs shall be subject to all Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards. Each of the above grant programs does not directly affect any state or local government.

Applications under these programs are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Executive Order Statement

This funding notice was determined to be "not significant" for the purposes of Executive Order 12866.

Dated: November 16, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–30981 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111098A]

Mid-Atlantic Fishery Management Council (MAFMC); Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and the New England Fishery Management Council will hold a public meeting.

DATES: The meetings will be held on Wednesday, December 2, 1998, from 10:00 a.m. until 5:00 p.m. and Thursday, December 3, 1998, from 8:00 a.m. until 3:00 p.m.

ADDRESSES: This meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–5900.

Council addresses: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904. New England Fishery Management Council, 5 Broadway, Saugus, MA.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16. or Paul Howard, Executive Director, New England Fishery Management Council; telephone: 781–231–0422.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review public hearing comments on the Spiny Dogfish Fishery Management Plan and develop recommendations for possible modifications to the management alternatives for consideration by the New England and Mid-Atlantic Councils.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30902 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111398C]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Demersal Committee and Atlantic States Marine Fisheries Commission (ASMFC) representatives will hold a public meeting.

DATES: The meeting will be held on Tuesday, December 8, 1998, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Philadelphia Airport, 45 Industrial Highway, Essington, PA; telephone: 610–521–2400.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 16.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to discuss possible changes in the commercial and recreational management systems for

summer flounder, scup, and black sea bass and make recommendations on the development of amendments to the plan.

Although other issues not contained in this agenda may come before the Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 16, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30977 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111098B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Social Sciences Advisory Panel, Groundfish Advisory Panel and Groundfish Oversight Committee in December, 1998 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). The Social Sciences Advisory Panel will consider issues involving the quality of economic and social impact analyses used in Council fishery management plans (FMPs). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held as follows:

1. December 2, 1998, 9:30 a.m., East Boston, MA.

2. December 15–16, 1998, 9:30 a.m., Peabody, MA.

ADDRESSES: The meetings will be held at the following locations:

1. East Boston—Holiday Inn Boston Logan Airport, 225 McClellan Highway, East Boston, MA 02128; telephone: (617) 569–5250.

2. Peabody—Holiday Inn, One Newbury Street (Route 1 North), Peabody, MA 01960; telephone: (978) 535–4600.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1097; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Wednesday, December 2, 1998, 9:30 a.m.—Social Sciences Advisory Panel Meeting

The Panel will evaluate the socio-economic data used to develop the Social and Economic Impact Analyses contained in the Monkfish FMP and in the whiting amendment to the Northeast Multispecies FMP and will recommend improvements for future analyses. It also will identify data collection requirements for the Annual Stock Assessment and Fisheries Evaluation (SAFE) Report.

Tuesday, December 15, 1998, 9:30 a.m.—Groundfish Advisory Panel Meeting

The Panel will develop advice to Groundfish Committee on options under consideration for Framework Adjustment 27, the 1999 annual plan adjustment to the Northeast Multispecies FMP, including measures that will be identified by the Council at its December 9–10 meeting.

Wednesday, December 16, 1998, 9:30 a.m.—Groundfish Oversight Committee Meeting

Review the December 15, 1998 Groundfish Advisory Panel meeting report; develop recommendations to the Council for Framework Adjustment 27 to the Northeast Multispecies FMP, including measures that will be identified by the Council at its December 9–10 meeting.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30901 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111398B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) ad-hoc policy committee for developing goals and objectives for a long-term technical assessment of non-catch salmon mortalities in Council salmon fisheries will hold a public meeting.

DATES: The meeting will be held on Wednesday, December 9, 1998, beginning at 11:00 a.m. and will continue until 5:00 p.m.

ADDRESSES: The meeting will be held at the Pacific States Marine Fisheries Commission, Conference Room, 45 SE 82nd Drive, Suite 100, Gladstone, OR; telephone: (503) 650–5400.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Salmon Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to begin developing goals and objectives for a long-term technical assessment of non-catch mortalities in Council fisheries.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: November 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30976 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110598E]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Marine Reserves, Snapper Grouper, Advisory PanelSelection, Dolphin/Wahoo, and Habitat Committees; and a Council Session.

DATES: The meetings will be held from November 30-December 4, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Ramada Inn, 1701 South Virginia Dare Trail, Kill Devil Hills, NC; telephone: (800) 635-1824; (252) 441-2151.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Susan Buchanan, Public Information Officer; telephone: (843) 571-4366; fax: (843) 769-4520; email: susan.buchanan@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

November 30, 1998, 1:30 p.m. to 5:00 p.m.—Marine Reserves Committee;

The Marine Reserves Committee will review results of the marine reserves workshop, review and revise the council's action plan regarding the use of reserves, revise the draft criteria for developing reserves, and develop committee recommendations regarding the Council's Marine Reserves Advisory Panel composition;

December 1, 1998, 8:30 a.m. to 12:00 noon; 1:30 p.m. to 3:00 p.m.—Snapper Grouper Committee;

The committee will hear presentations on assessments for red porgy, gag,and greater amberjack. The committee will also hear reports on the following: compliance with minimum size limits, information from last year's fishermen logbook reports, information concerning the experimental closed area of the Oculina Bank, and the status of golden tilefish and snowy grouper quotas. The committee will also take action on the seasonal framework as needed and hear the status of Snapper Grouper Amendments 8 and 9 and the emergency request for Amendment 9;

December 1, 1998, 3:00 p.m. to 5:00 p.m.—Advisory Panel Selection Committee (Closed Session);

The committee will review applications from those wishing to serve on Council advisory panels and develop recommendations for appointments to these panels;

December 2, 1998, 8:30 a.m. to 12:00 noon—Dolphin/Wahoo Committee;

NMFS will present the committee with the status of the Council's request to be designated true lead in dolphin and wahoo management as well as the status of the data request the Council submitted for dolphin and wahoo landings. The committee will then review the Dolphin/Wahoo Workshop Report and review and revise the options paper regarding possible dolphin/wahoo management actions;

December 2, 1998, 1:30 p.m. to 5:00 p.m.; December 3, 1998, 8:30 a.m. to 12:00 noon—Habitat Committee;

NMFS will present the committee with the status of the Habitat Plan and the Habitat Comprehensive Amendment. The committee will then hear presentations on sargassum;

December 3, 1998, 1:30 p.m. to 6:00 p.m.—Council Session;

The Council will hear the following Committee reports: Habitat, Snapper Grouper, Marine Reserves, and Advisory Panel Selection (Closed Session):

At 1:45 p.m., the Council will hear public comment on the Sargassum Plan before taking action to modify and approve the plan;

At 2:45 p.m., the Council will hear public comment on any proposed framework measures for the snapper grouper fishery before approving such measures as necessary;

At 4:15 p.m., the Council will review the Mackerel Advisory Panel request to allow the retention of Spanish mackerel in the gillnet fishery for spot and take action on this issue;

At 5:15 p.m., the Council will meet in closed session to appoint new advisory panel members;

December 4, 1998, 8:30 p.m. to 1:00 p.m.—Council Session;

The Council will hear the Dolphin/Wahoo Committee report, hear the status of the live rock aquaculture program, and NMFS reports on: The Report to Congress on overfished species, implementation of Snapper Grouper Amendment 8, Snapper Grouper Amendment 9 and the emergency regulations on Amendment 9, Golden Crab Framework #1, the 1998-1999 Mackerel Framework action, Mackerel Amendment 9, and status on quotas for the following species: Atlantic king mackerel, Gulf king mackerel (Eastern zone), Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, and South Atlantic octocorals. The Council will also review the NMFS Hightly Migratory Species Swordfish and Billfish Amendments and comment on the proposed regulations.

The Council will also hear reports on the International Conservation of Atlantic Tunas program, the Atlantic Coastal Cooperative Statistics Program, the Council/NMFS operations plan meeting, and agency and liaison reports before discussing other business.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues will not be of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by November 23, 1998.

Dated: November 13, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30900 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110698A]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Council (Council) and its standing committees will meet in Honolulu, HI, during the first week of December.

DATES: The meetings will be held on December 1–3, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The 98th Council meeting will be held at the Hawaii Prince Hotel, Mauna Kea Ballroom, 100 Holomoana Street, Honolulu, HI 96815; telephone: (808–956–1111).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Council's Standing Committees will meet on December 1, 1998 as follows:

7:30 a.m. to 9:00 a.m. —Enforcement

8:00 a.m. to 10:00 a.m.—Crustaceans

9:00 a.m. to 10:30 a.m.—VMS

10:30 a.m. to 12:30 p.m.—Pelagics and Bottomfish (concurrent)

1:30 p.m. to 3:00 p.m.—Indigenous Fishing Rights and Ecosystem & Habitat (concurrent)

3:00 p.m. to 5:00 p.m.—Precious Corals and Executive/Budget & Programming (concurrent)

The full Council will meet on December 2–3, 1998, from 9:00 a.m. to 5:00 p.m., each day.

Agenda

The full Council will meet to address the agenda items below. The order in which agenda items will be addressed can change. The Council will meet as late as necessary to complete its scheduled business.

9:00 a.m., Wednesday, December 2, 1998

A. Call to order, opening remarks, introductions

Approval of Agenda and 97th Council Minutes

B. Reports from the Islands, American Samoa, Guam, Hawaii, and Northern Mariana Islands

C. Enforcement

1. Reports from the U.S. Coast Guard, National Marine Fisheries Service Office of Enforcement, and NOAA General Counsel for Enforcement and Litigation, Southwest Region

2. Cooperative agreement for Guam and Northern Mariana Islands

3. Improving vessel safety through new technology and equipment

4. Standing Committee recommendations

5. Public comment

D. Vessel Monitoring System (VMS)

1. Report on NMFS Industry Advisory Panel and National VMS Program

2. Report on the Hawaii VMS program

3. Standing Committee recommendations

E. Pelagic Fishery Management Plan (FMP) issues

1. 2nd/3rd quarter 1998 longline fishery report (for Hawaii and American Samoa)

2. Status of area closure measure for American Samoa

3. Outline for a comprehensive data amendment

4. Blue marlin management options

5. Protected species interactions, considering: 3rd quarter 1998 turtle takes and research, 1998 bird takes, bird mitigation project and population dynamics workshop, other sources of mortality for seabirds, and reports of Food and Agricultural Organization (FAO) Rome expert consultations on shark fisheries, seabird/fishery interactions and fishing capacity

6. Sharks, including finning update and research initiatives

7. Report on the Asia-Pacific Economic Cooperation (APEC) meeting - Honolulu - October

8. Upcoming meetings: Interim Scientific Committee (ISC) - Honolulu - January, and Fourth Multilateral High Level Conference (MHLC4) - Honolulu - February

9. Scientific and Statistical Committee (SSC) and Standing Committee Recommendations

F. Crustaceans FMP issues (Northwestern Hawaiian Islands (NWHI) lobster fishery)

1. Update on the 1998 commercial fishing season

2. Results from the 1998 research cruise

3. Status of NMFS tagging project

4. Possible final action and framework regulatory measure for bank-specific harvest guidelines for NWHI lobster fishery (see F.4. continued)

5. SSC and Standing Committee Recommendations

G. Fishermen's Forum: Information needs

9:00 a.m., Thursday, December 3, 1998

H. Reports from Fishery Agencies and Organizations, including: Department of Commerce National Marine Fisheries Service Southwest Region, Southwest Fisheries Science Center, and NOAA General Counsel Southwest Region; Department of the Interior Fish and Wildlife Service

I. Precious corals FMP issues

1. Status of fishery

2. Findings of recent research in the Northwestern Hawaiian Islands

3. Plan Team, SSC and Standing Committee recommendations

J. Bottomfish FMP issues

1. Status of onaga, ehu and hapuupuu, and request to NMFS to remove from overfished list

2. Report on Hawaii Institute of Marine Biology (HIMB) and NMFS research activities

3. Report on state management in Main Hawaiian Islands (MHI)

4. Selection of preferred option for Federal management in MHI: considering delegation of authority to state and other options (see J.4. continued)

5. SSC and Standing Committee recommendations

K. Native Rights and Indigenous Fishing issues

1. Status of Marine Conservation Plans

2. Report of Community Development Program

3. NMFS Vessel Loan Programs

4. Report on Northern Mariana Islands turtle conservation workshop

5. SSC and Standing Committee recommendations

L. Ecosystem & Habitat issues

1. Comments on Draft Environmental Impact Statement (DEIS) for Farallon de Mendinilla, Commonwealth of the Northern Mariana Islands (CNMI)

2. Other issues/activities

3. Development of Coral Reef Ecosystem FMP, including goals and objectives, draft outline, proposed initial regulations, and research and assessment needs

M. Program Planning issues

1. Review of Council Programs

2. Report from Western Pacific Fisheries Information Network (WpacFIN)

3. SSC and Standing Committee recommendations

N. Administrative Matters

1. Administrative Reports

2. Meetings and Workshops

3. 99th Council Meeting

4. Review Advisory Panel applicants and select new members

5. Standing Committee recommendations

O. Other Business

1. Election of new officers for 1999

P. Supplemental information for agenda items F.4. and J.4

F.4.(Continued) Possible final action on framework regulatory measure for bank-specific harvest guidelines

1. The Council will be discussing and may be taking final action to establish a process for setting annual bank-specific harvest guidelines for the 1999 NWHI lobster season and beyond.

2. Action is being taken under the framework procedure for new measures in the Crustacean FMP.

3. At its April 1998 meeting, the Council requested the development of options governing the process by which the NMFS Southwest Regional Administrator, in consultation with the Council, allocates the annual harvest guideline among banks or areas to prevent overfishing and achieve optimum yield.

4. At its July 1998 meeting, the Council selected the partial bank-specific harvest guidelines alternative as its preferred option.

5. At its December 1998 meeting, the Council will also consider two new options: (1) full bank-specific harvest guidelines and (2) Necker- Maro-Gardner- bank-specific harvest guidelines. If it continues to endorse its preferred alternative, final Council action can be taken. Selection of a different alternative would be considered initial action under the Crustacean FMP framework process.

6. A background document summarizing this issue, need for framework management measure, and alternative actions is available for public comment (see **ADDRESSES**) and was distributed to all NWHI limited entry permit holders, Crustacean Advisory Panel, and Crustacean Plan Team members.

J.4. (Continued) Selection of preferred option for Federal management in MHI

1. The Council will be discussing and may be taking action to delegate authority to the State of Hawaii to manage bottomfish in the Federal Exclusive Economic Zone (EEZ) off the MHI, or other options so the state rules can be enforced in all MHI waters.

2. Other alternatives for the Council to help facilitate the effectiveness of the state's new bottomfish management plan, that will be considered at the meeting, include (1) status quo, (2) Council resolution, (3) regulatory fix, and (4) withdrawal of Federal management.

3. At its July 1998 meeting, the Council requested the development of options for assisting the state with MHI bottomfish management, including delegation of authority to the state.

4. A background document summarizing this issue and proposed alternative actions is available for public comment (see **ADDRESSES**).

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: November 16, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–30975 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111298D]

Marine Mammals; Scientific Research and Enhancement Permit (PHF# 116–1477)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Sea World of Texas, 10500 Sea World Drive, San Antonio, Texas, 78251, has applied in due form for a permit to take Hawaiian monk seals (*Monachus schauinslandi*) for purposes of scientific research and enhancement.

DATES: Written comments must be received on or before December 21, 1998.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (562/980-4001); and

Protected Species Program Manager, Pacific Islands Area Office, 2570 Dole Street, Room 106, Honolulu, HI 9682–2396 (808/973–2987).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this application would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222.23).

The application is for the permanent transfer of ten (10) currently captive, unreleasable female Hawaiian monk seals from the National Marine Fisheries Service's Kewalo Research Facility to Sea World of Texas for research and enhancement purposes. The primary objective of the proposed activity is to make the seals available for scientific research on an opportunistic basis in order to benefit the wild population of Hawaiian monk seals. A secondary objective is to increase public awareness of the status of the Hawaiian monk seal through education efforts and by providing an opportunity to observe the species in captivity.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: November 12, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–30899 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Spectrum Planning and Policy Advisory Committee; Notice of Meeting

ACTION: Notice of Recruitment of Private Sector Members, Spectrum Planning and Policy Advisory Committee (SPAC).

SUMMARY: The SPAC was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management may be enhanced. NTIA nominates candidates for membership; selection and appointment is made by the Secretary of Commerce. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications and spectrum management is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The membership reflects the Department's commitment to attaining balance and diversity. SPAC members must obtain a background investigation prior to appointment. These clearances are necessary so that members can be permitted access to relevant information needed in formulating recommendations to the U.S. Government. The SPAC meets approximately twice a year, and members are not compensated for their services.

On an as-needed basis, the SPAC seeks private-sector members with frequency management, electromagnetic compatibility, frequency assignment and related experience and expertise in the functional areas listed above. If you would like to be considered for membership on the SPAC, please send a fact sheet describing your company, provide details of your interest/activity in at least one of the functional areas listed above, and provide a short biographical. Material may be faxed to the number below.

DEADLINE: This request remains open for one year from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Inquires may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 4082, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–4487, or fax to 202–482–4396.

Dated: November 10, 1998.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 98–30903 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–60–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

November 13, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special swing, special shift, and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67834, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 13, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the period January 1, 1998 through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,360,813 dozen.
350/650	129,356 dozen.
351/651	353,702 dozen.
645/646	352,476 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–30943 Filed 11–18–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 4, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31046 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 7, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31047 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 11, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb. 202–418–5100.

Jean A. Webb.

Secretary of the Commission.

[FR Doc. 98–31048 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 14, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31049 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 18, 1998.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31050 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 21, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31051 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 28, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31052 Filed 11–17–98; 2:26 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.060A]

Indian Education Formula Grants to Local Educational Agencies

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose: Provides grants to support local educational agencies in their efforts to reform elementary and secondary school programs that serve Indian students in order to ensure that such programs are based on challenging State content standards and State student performance standards used for all students, and are designed to assist Indian students to meet those standards.

Eligible Applicants: Local educational agencies (LEAs) and certain schools funded by the Bureau of Indian Affairs, and Indian tribes under certain conditions.

Deadline for Transmittal of Applications: February 1, 1999. Applications not meeting the deadline will not be considered for funding in the initial allocation of awards. Applications not meeting the deadline *may* be considered for funding if the Secretary determines, under section 9117(d) of the Elementary and Secondary Education Act of 1965 (the Act) that funds are available and that reallocation of those funds to those applicants would best assist in advancing the purposes of the program. However, the amount and date of an individual award, if any, made under section 9117(d) of the Act may not be the same to which the applicant would have been entitled if the application had been submitted on time.

Deadline for Intergovernmental Review: April 5, 1999.

Applications Available: December 1, 1998.

Available Funds: $62,000,000.

Estimated Range of Awards: $3,000 to $1,400,000.

Estimated Average Size of Awards: $49,000.

Estimated Number of Awards: 1,474.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86.

For Applications or Information Contact: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–1683. Individuals who use a telecommunications device for the deal (TDD) may call the Federal Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request of the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

Anyone nay view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The Official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7811.

Dated: November 13, 1998.

Gerald N. Tirozzi,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 98–30908 Filed 11–18–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

AGENCY: Idaho Operations Office, DOE

ACTION: Notice of Availability of Solicitation Number DE–PS07–99ID13735—University Reactor Instrumentation (URI) Program.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, is soliciting applications for awards of financial assistance (i.e., grants) that will support educational institutions in updating their nuclear reactors or related radiation laboratory equipment and instrumentation. The issuance date of Solicitation Number DE–PS07–99ID13735 is November 18, 1998. The solicitation is available in its full text via the Internet at the following URL address: http://www.id.doe.gov/doeid/PSD/proc-div.html. The deadline for receipt of applications is 57 calendar days after the issuance date of the solicitation or by January 14, 1999.

ADDRESSES: Applications should be submitted to: Connie Osborne, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Connie Osborne, Contract Specialist at *osbornchl@id.doe.gov* or Linda Hallum, Contracting Officer at *hallumla@id.doe.gov*.

SUPPLEMENTARY INFORMATION: The solicitation is issued pursuant to 10 CFR 600.6(b). Eligibility for awards under this University Reactor Instrumentation (URI) Program will be restricted to U.S. colleges and universities having a duly licensed, operating nuclear research or training reactor. The purpose of this program is to upgrade, purchase, or maintain equipment and instrumentation related to the performance, control, or operational capability of the reactor facility. The program will increase the quality and/or efficiency of the operation of the reactor facility and/or will improve or expand the research and training capabilities of the reactor facility.

Issued in Idaho Falls on November 10, 1998.

Michael L. Adams,

Acting Director, Procurement Services Division.

[FR Doc. 98–30963 Filed 11–18–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Reedsport-Fairview Transmission Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Floodplain and Wetlands Involvement.

SUMMARY: This notice announces BPA's proposal to reconstruct or relocate a section of the Reedsport-Fairview No. 1 115-kilovolt (kV) transmission line located in Coos County, Oregon. This action will improve BPA's ability to maintain this section of line. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within any affected floodplain and wetlands. The assessment will be included in the environmental assessment being prepared for the proposed project in accordance with the requirements of the National Environmental Policy Act. A floodplain statement of findings will be included in any finding of no significant impact that may be issued following the completion of the environmental assessment.

DATE: Comments are due to the address below no later than December 4, 1998.

ADDRESS: Submit comments to Communications, Bonneville Power Administration—ACS–7, P.O. Box 12999, Portland, Oregon 97212. Internet address: comment@bpa.gov.

FOR FURTHER INFORMATION CONTACT: Nancy A. Wittpenn, Environmental Project Lead—ECN–4, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–3297, fax number 503–230–5699. Internet address: nawittpenn@bpa.gov.

SUPPLEMENTARY INFORMATION: The project would include the following types of activities that may involve work in wetlands and floodplains: constructing or removing transmission line structures and conductors and access road building or regrading. The project area is located in Coos County, Oregon. Wetlands and floodplains that may be affected by the project are in the Ross, Shinglehouse, Isthmus, and Coalbank Sloughs and located in T26S, R12W, Sections 7, 18, and 19; T26S, R13W, Sections 1, 3, 10, 12, 15, 23, and 37.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on November 10, 1998.

Thomas C. McKinney,

NEPA Compliance Officer.

[FR Doc. 98–30962 Filed 11–18–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–2–001; FERC Form No. 2]

Proposed Information Collection and Request for Comments

November 13, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received public comments from a regulated entity and a Federal agency in response to an earlier notice issued June 18, 1998, 63 FR 34369 (June 24, 1998) and has replied to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received on or before December 21, 1998.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form No. 2 "Annual Report of Major Natural Gas Companies."

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0028. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no substantive changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of companies filing this information. This increase reflects an adjustment to the Commission's regulatory burden for this information collection requirements. These are mandatory collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to implement the statutory provisions of Natural Gas Act (NGA), 15 U.S.C. 717. The NGA authorizes the Commission to prescribe rules and regulations concerning accounts, records and memoranda as appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the account in which particular outlays and receipts will be entered, charged or credited. The FERC Form 2 data is used for the following: to assess the financial conditions of natural gas pipeline companies; verification of cost data in various rate proceedings and supply programs, in the audit program implemented by the Office of Finance, Accounting and Operations (formerly Office of Chief Accountant) and to compute annual charges. Major natural gas pipeline companies are defined as having combined gas transported or stored for a fee that exceeds 50 million Dekatherms. The reporting requirements are found at 18 CFR 260.1.

5. Respondent Description: The respondent universe currently comprises on average, 59 companies subject to the Commission's regulations.

6. Estimated Burden: 87,615 total burden hours, 59 respondents, 1 response annually, 1,485 hours per response (average).

7. Estimated Cost Burden to Respondents: 87,615 hours ÷ 2,080 hours × $109,888 per year = $4,628,768. Average cost per respondent = $78,454.

Statutory Authority: Section 8, 10(9) of the Natural Gas Act (NGA), 15 U.S.C. 717g, 717i.

David P. Boergers,

Secretary.

[FR Doc. 98–30924 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–2A–001; FERC Form No. 2A]

Proposed Information Collection and Request for Comments

November 13, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received public comments from a Federal agency in response to an earlier notice issued June 18, 1998, 63 FR 34369–70 (June 24, 1998) and has replied to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W. Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at

(202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form No. 2–A "Annual Report of Non-Major Natural Gas Companies."

2. Sponsor: Federal Energy Regulatory Commission.

3. Control No.: OMB No. 1902–0030. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no substantive changes to the existing collection. There is a decrease in the reporting burden due to a decrease in the number of companies filing this information. This increase reflects an adjustment to the Commission's regulatory burden for this information collection requirement. These are mandatory collection requirements.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to implement the statutory provisions of Natural Gas Act (NGA), 15 U.S.C. 717. The NGA authorizes the Commission to prescribe rules and regulations concerning accounts, records and memoranda as appropriate for purposes of administering the NGA. The Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the account in which particular outlays and receipts will be entered, charged or credited. The FERC Form 2–A data is used for the following: to assess the financial conditions of natural gas pipeline companies; verification of costs data in various rate proceedings and supply programs, in the audit program implemented by the Office of Finance, Accounting and Operations (formerly Office of Chief Accountant) and to compute annual charges. Non-Major natural gas pipeline companies are defined as not meeting the filing threshold for FERC Form No. 2, but having combined gas transported or stored for a fee that exceeds 200,000 Dekatherms in each of the three previous calendar years. The reporting requirements are found at 18 CFR 260.2.

5. Respondent Description: The respondent universe currently comprises on average, 58 companies subject to the Commission's regulations.

6. Estimated Burden: 1,740 total burden hours, 58 respondents, 1 response annually, 30 hours per response (average).

7. Estimated Cost Burden to Respondents: 1,740 hours ÷ 2,080 hours × $109,888 per year = $91,926. Average cost per respondent = $1,585.

Statutory Authority: Sections 8, 10(a) of the Natural Gas Act (NGA), 15 U.S.C. 717g, 717i.

David P. Boergers,

Secretary.

[FR Doc. 98–30925 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–6–001 FERC Form No. 6]

Information Collection Submitted for Review and Request for Comments

November 13, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received comments from an oil pipeline company and from a federal agency in response to an earlier notice issued June 19, 1998, 63 FR 34639 (June 25, 1998). The Commission has responded to these comments in its submission to OMB.

DATES: Comments regarding this collection of information are best assured of having their full effect if received within 30 days of this notification.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, *Attention:* Federal Energy Regulatory Commission, Desk Officer, 725 17th Street, N.W., Washington, D.C. 20503. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. Collection of Information: FERC Form 6 "Annual Report for Oil Pipeline Companies"

2. Sponsor: Federal Energy Regulatory Commission

3. Control No.: OMB No. 1902–0022. The Commission is now requesting that OMB approve a three-year extension of the current expiration date, with no changes to the existing collection. There is an increase in the reporting burden due to an increase in the number of entities who are now subject to the Commission's jurisdiction and as a result must submit this annual report. Specifically, as a result of Order No. 571, 59 FR 59137 (November 16, 1994), jurisdictional companies that have revenues in excess of $350,000 in each of the previous three years are required to file page 700. Currently 5 companies in addition to the 148 respondents must file page 700 based on the earnings threshold. This is a mandatory information collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the provisions of the Interstate Commerce Act (ICA), 49 U.S.C. The ICA authorizes the Commission to make investigations and to collect and record data plus prescribe rules and regulations concerning accounts, records and memoranda as appropriate for purposes of administering the ICA. The Commission may prescribe a system of accounts for jurisdictional companies, and after notice and hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited. Every pipeline carrier subject to the provisions of Section 20 of the ICA must file with the Commission copies of the FERC Form 6.

The Commission's Office of Finance, Accounting and Operations (formerly Office of Chief Accountant) uses the information in the following manner: in its audit program; for continuous review of on the financial condition of regulated companies; verification in various rate proceedings and supply programs; and for computation of annual charges which are then assessed against oil pipeline companies to recover the Commission's annual costs.

5. Respondent Description: The respondent universe currently comprises on average, 153 companies subject to the Commission's jurisdiction

(148 who file the Form 6 plus 5 who must file page 700).

6. Estimated Burden: 20,622 total burden hours, 153 respondents, 1 response annually, (139 hours per response for the Form 6, 10 hours per response for the page 700) (average).

7. Estimated Cost Burden to Respondents: 20,572 hours + 2,080 hours per year × $109,888 per year = $1,086,835 (FERC Form 6), $2,642 (FERC Form 6—Page 700 only), total = $1,089,434 ($1,086,792 + $2,642) (average cost per respondent = $7,343 (Form 6), $528 (Page 700).

Statutory Authority: Section 20 of the Interstate Commerce Act (ICA), 49 U.S.C.

David P. Boergers,

Secretary.

[FR Doc. 98–30926 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–5–000]

Destin Pipeline Co., L.L.C.; Notice of Filing

November 13, 1998.

Take notice that on November 4, 1998, Destin Pipeline Company, L.L.C. (Destin) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

Destin states that it served copies of the standards of conduct on each of its shippers and interested state commissioners.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30922 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG99–1–000, MG99–2–000, MG99–3–000, and MG99–4–000]

Trunkline Gas Co., Trunkline LNG Co., Southwest Gas Storage Co., and Panhandle Eastern Pipe Line Co.; Notice of Filing

November 13, 1998.

Take notice that on November 2, 1998, Trunkline Gas Co. (Trunkline) Trunkline LNG Co. (Trunkline LNG), Southwest Gas Storage Co. (Southwest), and Panhandle Eastern Pipe Line Co. (Panhandle) filed standards of conduct under Order No. 497 *et seq.*,[1] Order No. 566 *et seq.*[2] and Order No. 599.[3]

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–30923 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991) *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F.2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. ¶ 31,064 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

November 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original License for a Major Water Project—5 Megawatts or Less (filed as an Applicant-Prepared Environmental Assessment).

b. *Project No.:* 11480–001.

c. *Date Filed:* November 25, 1997.

d. *Applicant:* Haida Corporation.

e. *Name of Project:* Reynolds Creek Hydroelectric Project.

f. *Project Location:* On the Southwest side of Prince of Wales Island in Southeast Alaska, about 10 miles east of Hydaburg. The project would not be located on federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant:* Mr. John Bruns, Haida Corporation, P.O. Box 89, Hydaburg, AK 99922, (907) 285–3721. *Applicant Contact:* Mr. Michael V. Stimac, HDR Engineering, Inc., 500 108th Avenue NE, Suite 1200, Bellevue, WA 98004–5538, (425) 453–1523.

i. *FERC Contact:* Carl J. Keller, 202–219–2831.

j. *Brief Description of Project:* The proposed project would consist of the following proposed facilities: (1) A 20-foot-long, 6-foot-high, concrete diversion dam; (2) a small concrete box-type intake structure with protective trash racks located on the left side of the diversion dam; (3) a 42-inch-diameter, 3,200-foot-long, steel penstock positioned above ground on saddled supports; (4) a 40-foot-wide, 100-foot-long, pre-engineered metal powerhouse, with one 1,500-kilowatt (kW) horizontal impulse turbine/generator (Phase 1) and a second 3,500-kW turbine/generator to be added (Phase 2); (5) an 80-foot-long tailrace; (6) access roads totaling 500 feet long; (7) an overhead 34.5-kilovolt, 10.9-mile-long transmission line on 300 foot centers; and (8) related appurtenances.

k. Deadlines for Filing Terms and Conditions, Recommendations, and Prescriptions; Applicant's Reply Comments; and Cost Statements under PURPA: See item (p) and standard paragraph D–10.

l. This notice also consists of the following standard paragraphs: A–4 and D–10.

m. *Location of Application:* A copy of the application, applicant's Draft Environmental Assessment, responses to information requests, and subsequent filings are available for inspection or reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. Copies of this information may also be viewed or printed by accessing the Commission's WebSite on the Internet at www.ferc.fed.us. For assistance, users can call (202) 208–2222. Copies of the above information can also be inspected from the applicant's contact located in item h. above.

n. *PURPA:* Haida Corporation intends to seek benefits under § 2210 of the Public Utilities Regulatory Policy Act of 1978 (PURPA), and believes that the proposed project meets the definition under § 292.202(p) of 18 CFR for a new dam or diversion. As such, the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the state agency exercising authority over the fish and wildlife resources of the state have mandatory conditioning authority under the procedures provided for at § 30(C) of the Federal Power Act.

o. *Submission of Cost Statements:* Within 60 days after the date for filing mandatory terms and conditions, the fish and wildlife agencies must file with the Commission Secretary, a cost statement of the reasonable costs the agency incurred in setting mandatory terms and conditions for the proposed project.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D10. Filing and Service of Responsive Documents—The Commission is requesting comments; final recommendations, terms, conditions, and prescriptions; and applicant's reply comments.

The Commission directs that all comments, and final recommendations, terms, conditions, and prescriptions concerning the application be filed with the Commission *within 90 days* from the issuance date of this notice. All reply comments by the applicant must be filed with the Commission within 135 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All findings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc 98–30919 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

November 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 11468–003.

c. *Date filed:* January 28, 1998.

d. *Applicant:* North Side Canal Company.

e. *Name of Project:* Crossroads Conduit Project.

f. *Location:* On the North Side canal system in Jerome County, Idaho (T. 7S. R. 16E., Sections 23, 24, and 25). The project would not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Randolph J. Hill, Ida-West Energy Company, P.O. Box 7867, Boise, ID 83707, (208) 395–8930.

i. *FERC Contact:* Any questions on this notice should be addressed to Hector Perez, E-mail address hector.perez@ferc.fed.us, or telephone 202–219–2843.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. The project would consist of these proposed facilities: (1) a 900-foot-long, 150-foot-wide forebay with a normal water surface elevation of 3,773.75 feet; (2) a primary overflow bypass channel with a crest elevation of 3,774 feet and a secondary overflow bypass channel with a crest elevation of 3,774.75 feet, both at the forebay; (3) a reinforced concrete intake structure; (4) a 10-foot-diameter, 1,750-foot-long steel penstock; (5) a reinforced concrete powerhouse with a 3,200-kilowatt turbine-generator unit; (6) a 125-foot-long tailrace; and (7) two access roads.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs:

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests or Motions To Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

David P. Boergers,

Secretary.

[FR Doc. 98–30920 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

November 13, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor New License.

b. *Project No.:* 2032–001.

c. *Date filed:* September 25, 1996.

d. *Applicant:* Lower Valley Power & Light, Inc.

e. *Name of Project:* Strawberry.

f. *Location:* On the Strawberry Creek, in Lincoln County, Wyoming. The project affects 25 acres of the Bridger National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Winston G. Allred, Lower Valley Power & Light, Inc., 345 North Washington Street, P.O. Box 188, Ofton, WY 83110, (307) 886–3175.

i. *FERC Contact:* Surender M. Yepuri, P.E.; (202) 219–2847.

j. *Deadline Date:* See attached paragraph D10.

k. *Status of Environmental Analysis:* This application has been accepted for

filing and is ready for environmental analysis at this time—see attached standard paragraph D10.

l. *Brief Description of Project:* The project consists of the following existing facilities: (1) a 22-foot-high, 110-foot-long reinforced concrete gravity dam with a 24-foot-long right abutment, a 40-foot-long overflow spillway with a crest elevation of 7,020 feet NGVD, a 16-foot-long intake sluice section, and a 30-foot-long left abutment; (2) a reservoir with a surface area of 2.8 acres at normal pool elevation of 7,021 feet; (3) an 11,300-foot-long, 36-inch-diameter steel penstock; (4) a powerhouse with three turbine-generator units with a total installed capacity of 1,500 kilowatts; (5) a substation; and (6) other appurtenances.

m. *Purpose of Project:* Power generated at the project will be utilized by the utility to supply its municipal utility customers.

n. This notice also consists of the following standard paragraph: D10.

o. Locations of the Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–2325. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at www.ferc.fed.us. For assistance, users may call (202) 208–2222. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 98–30921 Filed 11–18–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; RCRA Expanded Public Participation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: RCRA Expanded Public Participation, OMB Control Number 2050–0149, expiration date: 11/30/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1688.03.

SUPPLEMENTARY INFORMATION:

Title: RCRA Expanded Public Participation (OMB Control No. 2050–0149; EPA ICR No. 1688.03.) This is a request for extension of a currently approved collection.

Abstract: EPA has a statutory obligation, under section 7004, to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under the Act. The regulations implementing these requirements are codified at 40 CFR parts 124 and 270.

EPA promulgated requirements for providing additional opportunities for the public to be involved in the RCRA permitting process under 40 CFR part 124, sections 124.31 through 124.33 and in part 270, sections 270.62 and 270.66. The part 124 requirements apply to all types of hazardous waste treatment, storage, and disposal facilities, unless exempted under a specific section; the part 270 requirements apply only to hazardous waste combustors planning trial burns. These requirements are important components in: (1) Meeting its statutory mandate to promote public participation in the development, revision, and implementation of any regulation under RCRA; and (2) achieving EPA's goal of enhancing public involvement. EPA believes that these regulations encourage people to become involved in the permitting process and increase understanding of hazardous waste facilities. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Federal Register document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 09/04/98 (63 FR 47277); no comments were received.

Burden Statement: The annual reporting burden associated with activities related to both the pre-application meeting, estimated to

average 89.1 hours, and to the information repository, estimated to average 7.6 hours. The annual recordkeeping burden associated with activities related to both the pre-application meeting, estimated to average 0.5 hours (to retain documentation), and to the information repository, estimated to average 26.5 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of facilities that treat, store, or dispose of hazardous waste.

Estimated Number of Respondents: 395.

Frequency of Response: 790.

Estimated Total Annual Hour Burden: 7253 hours.

Estimated Total Annualized Cost Burden: $9,204.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1688.03 and OMB Control No. 2050–0149 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov); and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: October 11, 1998.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–30967 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–3]

National Advisory Council for Environmental Policy and Technology, Environmental Information and Public Access Committee (EIPAC) Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a two-day meeting of the Environmental Information and Public Access Committee (EIPAC) of the National Advisory Council for Environmental Policy and Technology (NACEPT). The NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. This meeting of the Environmental Information and Public Access Committee will focus on providing stakeholder input to the Agency on information management issues, especially information resource activities that may impact the proposed reorganization of EPA's IRM programs. Issues include public access to environmental information, quality and integration of media information, and the use of EPA data to respond to requirements of the Government Performance and Results Act and the National Environmental Performance Partnerships.

DATES: The two-day public meeting will be held on December 8–9, 1998, from 9:00 a.m. to 4:30 p.m. On both days, the meeting will be held at the Crown Plaza Hotel, 14th and K Streets, N.W., Washington, DC.

ADDRESSES: Material or written comments may be transmitted to the Committee through Deborah Ross, Designated Federal Officer for EIPAC, U.S. EPA, Office of Cooperative Environmental Management (1601–F), 401 M Street, S.W., Washington, D.C. 20460.

Additional information is available from Deborah Ross at telephone number (202) 260–9752.

Dated: November 6, 1998.

Gordon Schisler,

Deputy Director, Office of Cooperative Environmental Management.

[FR Doc. 98–30966 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6190–8]

Proposed CERCLA Administrative Settlement; Conservation Chemical Company of Illinois, Inc. Superfund Site, Gary, Lake County, Indiana

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(I), notice is hereby given of a proposed administrative settlement under section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of EPA's past response costs and future oversight costs, and the performance of specified future response activities at the Conservation Chemical Company of Illinois, Inc. site in Gary, Lake County, Indiana ("the Site"). The settling parties are as follows: Lucent Technologies Inc. (for Western Electric; Teletype; and Bell Telephone Laboratories); Gary Steel Supply Company; Bethlehem Steel Corporation; LaSalle Steel Company; AlliedSignal Inc. (for Universal Oil Products); K. A. Steel Chemicals Inc.; Union Oil Company of California d/b/a/ UNOCAL; The Steel Company (formerly known as Chicago Steel & Pickling); Union Carbide Corporation; Ansul, Incorporated (for Ansul Co.); Motorola Inc.; PPG Industries, Inc.; Crucible Materials Corporation, Trent Tube Division; American Chain & Cable Co., Inc.; and Navistar International Transportation Corp. (for International Harvester). EPA is providing the settling parties with orphan share compensation, to be credited against a portion of EPA's unreimbursed past costs. The settlement requires the settling parties to pay $258,304 to the Hazardous Substance Superfund for EPA's past costs through November 30, 1997. The settlement also requires the settling parties to pay all of EPA's future oversight costs, incurred in connection with the Site, on and after December 1, 1997. The settlement further requires the settling parties to fund and conduct substantial specified future cleanup activities at the Site. The settlement includes a covenant not to sue the settling partes pursuant section 107(a) of CERCLA, 42 U.S.C. 9607(a), and a covenant not to sue the settling parties for the judicial imposition of damages or civil penalties or to take administrative action for work completed under the

settlement, and approved by the Agency. The U.S. Department of Justice has approved this settlement, consistent with section 122(h) of CERCLA. For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the settlement. The Agency will consider all written comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any written comments received will be available for public inspection at U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

DATES: Written comments must be submitted on or before December 21, 1998.

ADDRESSES: The proposed settlement is available for public inspection at the U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. A copy of the proposed settlement may be obtained from Ms. Valerie Mullins, at the U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, telephone number (312) 353–5578. Written comments should reference the Conservation Chemical Company of Illinois, Inc., Gary, Indiana and EPA Docket No. V–W–98–C–497 and should be addressed to Cynthia N. Kawakami, Associate Regional Counsel, U.S. Environmental Protection Agency, Region 5, Office of the Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Ms. Valerie Mullins, at the U.S. Environmental Protection Agency, Region 5, Superfund Division, Emergency Response Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, telephone number (312) 353–5578.

Dated: November 3, 1998.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 98–30965 Filed 11–18–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 12, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on January 19, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., NW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0160.

Title: Section 73.158, Directional Antenna Monitoring Points.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 60.

Estimated time per response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 60 hours.

Total Annual Cost: $36,000.

Needs and Uses: Section 73.158 requires a licensee of an AM station using a directional antenna system to file an informal application to modify their station license to specify a new location for the field monitoring point when circumstances occur which make the present location no longer accessible or unsuitable. Section 73.158 also requires the licensee to file a request for a corrected station license when the descriptive routing to reach any of the monitoring points as shown on the station license is no longer correct due to road or building construction or other changes. These filings provide up-to-date directions for use by the Complaints and Investigations Bureau's inspectors in accurately locating the monitoring points and obtaining field strength measurements relevant to the Commission's enforcement program aimed at keeping electromagnetic interference to a minimum.

OMB Control Number: 3060–0321.

Title: Section 73.68, Sampling Systems for Antenna Monitors.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated Hours per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 200 hours.

Total Annual Cost: $0.

Needs and Uses: Section 73.68(b) requires that licensees of existing AM broadcast stations with antenna monitor sampling systems, meeting the performance standards specified in the rules, may file informal requests for approval of their sampling systems. Section 73.68(d) requires that a request for modification of the station license be submitted to the FCC when the antenna sampling system is modified or components of the sampling system are replaced. The informal request for approval of sampling systems is used by FCC staff to maintain complete technical information regarding licensees to insure that the sampling system is in full compliance with the Commission's Rules and will not cause interference to other facilities, thus reducing the service provided to the

public. The request for modification of station license is used to issue a new station license.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–30944 Filed 11–18–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–000050–066.

Title: United States/Australia New Zealand Association.

Parties: Australia New-Zealand Direct Line, Blue Star Line (North America) Ltd., and Columbus Line.

Synopsis: The proposed amendment clarifies the transshipment ports covered by the agreement and clarifies certain obligations of the members with respect to parents, subsidiaries, or affiliates.

Agreement No.: 202–008900–065.

Title: The "8900" Lines Agreements.

Parties: A.P. Moller-Maersk Line, National Shipping Company of Saudi Arabia, P&O Nedlloyd Limited, Sea-Land Service, Inc., and United Arab Shipping Company.

Synopsis: The proposed amendment eliminates various procedural requirements that currently apply to the parties' individual service contracts and a number of other requirements applying to Agreement contracts as well as individual contracts. The parties requested expedited review of their amendment.

Dated: November 13, 1998.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–30918 Filed 11–18–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Submission for OMB Review; Comment Request

The Federal Mediation and Conciliation Service (FMCS) is submitting the following public information request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR can be obtained by contacting David L. Helfert, Director of Communications, FMCS, 2100 K Street, N.W., Washington, D.C. 20427. Telephone: (202) 606–8100; Fax: (202) 606–4251; E-mail: FMCS02@erols.com.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: OMB Desk Officer for the Federal Mediation and Conciliation Service, Room 10235, Washington, D.C. 20503, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Type of Review: Extension.

Agency: Federal Mediation and Conciliation Service.

Title: National Customer Survey.

OMB Number: 3076–0014.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Total Respondents: 1200.

Frequency: Bi-annual.

Total Responses: 1200.

Average Time per Response: 25–30 minutes.

Estimated Total Burden Hours: 666.

Description: The National Customer Survey is designed to assess general awareness of the activities of FMCS as well as specific experience and satisfaction with services provided by FMCS.

Dated: November 16, 1998.

Vella M. Traynham,

Deputy Director.

[FR Doc. 98–30947 Filed 11–18–98; 8:45 am]

BILLING CODE 6372–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved for public comment proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the extension, without revision, of the Report of Assets and Liabilities of Non-U.S. Branches that are Managed or Controlled by a U.S. Branch or Agency of a Foreign Bank (FFIEC 002s). Both reports are currently approved collections of information. The Board is publishing the proposed revisions and extension on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions and the extension prior to giving its final approval. The Board will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before January 19, 1999.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

Written comments should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revisions and extensions of the collections of information may be requested from the Board's clearance officer whose name appears below.

Mary M. McLaughlin, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Proposal to revise and extend the following currently approved collections of information:

1. *Report Title:* Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 002.

OMB Number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 506.

Estimated Total Annual Responses: 2,024.

Estimated Time per Response: 23.15 burden hours.

Estimated Total Annual Burden: 46,856 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b). Except for select sensitive items, this information collection is not given confidential treatment (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks (U.S. branches) are required to file detailed schedules of assets and liabilities in the form of a condition report and a variety of supporting schedules. This balance sheet information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The Federal Reserve System collects and processes this report on behalf of all three agencies.

Current Actions: The proposed revisions to the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) that are the subject of this notice have been approved by the FFIEC for implementation as of the March 31, 1999, report date. The proposed revisions are summarized as follows:

High-Risk Mortgage Securities: The agencies are proposing to eliminate the High-Risk Mortgage securities items on Schedule RAL. U.S. branches report the fair value and amortized cost of "High-risk mortgage securities" in Memorandum items 5 and 6, respectively. The definition of high-risk mortgage securities was taken from the Supervisory Policy Statement on Securities Activities, which the FFIEC approved and the agencies adopted in December 1991, effective February 10, 1992 (57 FR 4029, February 3, 1992). In April 1998, the FFIEC and the agencies rescinded this policy statement and approved in its place a Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities, effective May 26, 1998 (63 FR 20191, April 23, 1998). In adopting the new policy statement, the agencies removed the previous policy statement's specific constraints concerning investments in high-risk mortgage securities, including its "high risk" tests. The new policy provides broader guidance covering all investment securities, including the establishment by each institution of appropriate risk limits. Accordingly, the agencies are proposing to eliminate the two memorandum items for high-risk mortgage securities.

Instructional Changes

Computer Software Costs—In March 1998, the American Institute of Certified Public Accountants (AICPA) issued Statement of Position (SOP) 98–1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use. SOP 98–1 provides guidance on whether costs of internal-use software should be capitalized (and then amortized) or expensed as incurred. Internal-use software has the following characteristics:

(a) The software is acquired, internally developed, or modified solely to meet the entity's internal needs, and

(b) During the software's development or modification, no substantive plan exists or is being developed to market the software externally. This SOP is effective for financial statements for fiscal years beginning after December 15, 1998. The SOP encourages earlier application in fiscal years for which annual financial statements have not been issued. For FFIEC 002 purposes, U.S. branches must adopt this SOP upon its effective date based on their fiscal year. Early application is permitted in the FFIEC 002 in accordance with the transition guidance in the SOP. The FFIEC 002 instructions will be revised to conform with SOP 98–1, including a new Glossary entry on computer software costs that summarizes SOP 98–1 and other relevant accounting standards.

Unsuitable Investment Practices—As mentioned above, the FFIEC and the agencies rescinded the Supervisory Policy Statement on Securities Activities in April 1998 and approved in its place a Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities. The new policy statement does not retain the section of the former policy statement addressing the reporting of securities activities, including a description of practices considered unsuitable when conducted in an institution's investment portfolio. In their **Federal Register** notice publishing the Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities (63 FR 20191), the agencies stated their intent to separately issue supervisory guidance on the reporting of investment securities. The agencies are proposing to add guidance on this reporting matter to the Glossary section of the FFIEC 002 instructions. This approach will make guidance more readily accessible to U.S. branches as they prepare the FFIEC 002.

Re-Booking Charged-Off Loans—When a U.S. branch makes a full or partial direct write-down of a loan or lease that is uncollectible, the branch establishes a new cost basis for the asset. Some U.S. branches may attempt to reverse the previous write-down and "re-book" the charged-off loan or lease after concluding that the prospects for

recovering the charge-off have improved. Re-booking a charged-off loan is not an acceptable practice under generally accepted accounting principles and, therefore, is not acceptable for FFIEC 002 purposes. The Glossary entry for "Assets Classified Loss" will be revised to indicate that once a new cost basis has been established for a loan or lease through a direct write-down of the asset, this cost basis may not be "written up" at a later date.

Consolidation of Subsidiaries—Some U.S. branches have requested that the FFIEC clarify whether subsidiaries of U.S. branches should be consolidated in the FFIEC 002. Consistent with U.S. generally accepted accounting principles (GAAP), subsidiaries that are controlled by a U.S. branch should be consolidated in the FFIEC 002. Accordingly, the general instructions will be revised to indicate that, consistent with GAAP, a U.S. branch should consolidate all entities in which it maintains a controlling financial ownership interest, e.g., a direct or indirect ownership interest of more than 50 percent of an entity's outstanding voting shares.

2. *Report Title:* Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Number: FFIEC 002S.

OMB Number: 7100–0273.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 130.

Estimated Total Annual Responses: 520.

Estimated Time per Response: 6 burden hours.

Estimated Total Annual Burden: 3,120 burden hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3105(b)(2), 1817(a)(1) and (3), and 3102(b) and is given confidential treatment (5 U.S.C. 552(b)(8)).

Small businesses are not affected.

Abstract: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file detailed schedules of their assets and liabilities in the form FFIEC 002. The FFIEC 002S is a separate supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is "managed or controlled" by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch's or agency's FFIEC 002. The data are used:

(1) To monitor deposit and credit transactions of U.S. residents;

(2) For monitoring the impact of policy changes;

(3) For analyzing structural issues concerning foreign bank activity in U.S. markets;

(4) For understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund (IMF) and the Bank for International Settlements (BIS) that are used in economic analysis; and (5) To provide information to assist in the supervision of U.S. offices of foreign banks, which often are managed jointly with these branches.

Current Actions: The proposal to extend for three years, without revision, the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S) that is the subject of this notice has been approved by the FFIEC.

Request for Comment: Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the Board's request for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection requests. Comments are invited on:

(a) Whether the proposed revisions to the FFIEC 002 and the extension of the FFIEC 002S collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Board of Governors of the Federal Reserve System, November 10, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–30769 Filed 11–18–98; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

[Document Nos. JFMIP–SR–98–1 & JFMIP–SR–98–2]

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: the JFMIP is seeking public comment on two exposure drafts titled "Core Financial System Requirements" and "Human Resources & Payroll Systems Requirements," both dated November 5, 1998. The exposure drafts are being issued to update the 1995 "Core Financial System Requirements" and the 1990 "Personnel-Payroll System Requirements." The exposure drafts incorporate new JFMIP requirements for Core Financial Systems and Human Resources & Payroll Systems. They are designed to provide financial managers with Governmentwide mandatory requirements for financial systems in order to process and record financial events effectively and efficiently, and to provide complete, timely, reliable, and consistent information for decision makers and the public.

DATES: Comments are due by January 8, 1999.

ADDRESSES: Copies of the financial system requirements exposure drafts have been mailed to Agency Senior Financial Officials and are available on the JFMIP website http://www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm. Comments should be addressed to JFMIP, 441 G Street NW., Room 3111, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Betty White, 202–512–9346, regarding the Core Financial System Requirements; and Dennis Mitchell, 202–512–5994, regarding the Human Resources & Payroll Systems Requirements.

SUPPLEMENTARY INFORMATION: The Federal Financial Management

Improvement Act of 1996 (FFMIA) mandated that agencies implement and maintain systems that comply substantially with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet in order to be substantially in compliance with systems requirements provisions under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

The Core Financial System Requirements document establishes standard requirements for the backbone modules of an agency's integrated financial management system. The major functions supported by a Core Financial System are: Core Financial System Management, General Ledger Management, Funds Management, Payment Management, Receipt Management, Cost Management, and Reporting. These seven functions provide common processing routines, support common data for critical financial management functions affecting the entire agency, and maintain the required financial data integrity control over financial transactions, resource balances, and other financial management systems.

This update reflects the most recent changes in laws and regulations, such as the Debt Collection Improvement Act, and clarifies previous requirements. It also incorporates requirements that were previously reflected in the technical requirements of the Financial Management System Software schedule Statement of Work. JFMIP's new Knowledgebase website can be used to identify the changes that have been made to the Core Financial System Requirements document. The new and changed requirements in the exposure draft can be easily identified with this tool. The Knowledgebase can be accessed through FinanceNet under the JFMIP Program Management Office website http://www.financenet.gov/fed/jfmip/pmo.htm. The Knowledgebase includes both mandatory requirements and value-added features. The exposure draft, however, contains only mandatory requirements on which the vendor software certification test will be based.

The Human Resources & Payroll Systems Requirements document is intended for human resources and payroll financial systems analysts, system accountants, and others who design, develop, implement, operate, and maintain financial management systems. The primary purposes for this update are to reflect: changes in statutes, regulations, and technology that have occurred since the document was originally published in May 1990, e.g., passage of the Chief Financial Officers Act of 1990, and FFMIA of 1996; changes in personnel practices brought about by the National Performance Review; and increased availability of commercial off-the-shelf software packages. This update also incorporates core functionalities of a Federal human resources system as defined by the Human Resources Technology Council.

Comments received will be reviewed and the exposure drafts will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 98–30941 Filed 11–18–98; 8:45 am]

BILLING CODE 1610–02–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service

Notice of Availability of Final Environmental Impact Statement; Disposition of Governors Island, Upper New York Bay, New York

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the General Services Administration (GSA) has filed with the U.S. Environmental Protection Agency, and made available to other government and interested private parties, the Final Environmental Impact Statement (FEIS) for the disposition of surplus federal real property known as Governors Island, Upper New York Bay, New York.

The Final EIS is on file at New York City Hall, Manhattan Community District #1, Brooklyn Community District #6, Andrew Heiskell Library for the Blind and Physically Handicapped, Mid-Manhattan Library, NY Public Library-New Amsterdam Branch, NY Public Library-Carroll Gardens Branch, NY Public Library-Red Hook Branch, Monograph Acquisition Services, Colorado State University Libraries-Ft. Collins, CO and General Services Administration.

Copies of the Executive Summary of the Final EIS are available upon request. A limited number of copies of the FEIS are available to fill single copy requests. Additional information may be obtained from General Services Administration, Region 2, Attention: Peter A. Sneed, 26 Federal Plaza, New York, New York, 10278, (212) 264–3581.

Written comments regarding the FEIS may be submitted until December 14, 1998 and should be addressed to General Services Administration in care of the above noted individual.

Dated: November 4, 1998.

Robert Martin,

Acting Regional Administrator (2A).

[FR Doc. 98–30881 Filed 11–18–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Proposed Data Collections Available for Public Comment and Recommendations

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 619–1053.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. 42 CFR 50 Subpart B: Sterilization of Persons in Federally Assisted Family Planning Projects—0937–0166—Extension no Change—These regulations and informed consent procedures are associated with Federally-funded sterilization services. Selected consent forms are audited during site visits and program reviews to ensure compliance

with regulations and the protection of the rights of individuals undergoing sterilization. Burden Estimate for Consent Form—*Annual Responses:* 40,000; *Burden per Response:* one hour; *Total Burden for Consent Form:* 40,000 hours—Burden Estimate for Recordkeeping Requirement—*Number of Recordkeepers:* 4,000; *Average Burden per Recordkeeper:* 2.5 hours; *Total Burden for Recordkeeping:* 10,000 hours. *Total Burden:* 50,000 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue S.W., Washington, DC, 20201. Written comments should be received within 60 days of this notice.

Dated: November 9, 1998.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 98–30883 Filed 11–18–98; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Project

Prostate and Colorectal Cancer Screening Policies in the Managed Care Environment—New—The National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control. Prostate and colorectal cancer are among the leading causes of cancer deaths in the U.S. Prostate cancer screening has increased rapidly during the past few years although it is unknown whether screening decreases prostate cancer mortality and conflicting screening guidelines exist. Evidence suggests that colorectal cancer screening can save lives and efforts are under way to increase participation in screening. An increasing number of people are served by managed care organizations where they may receive cancer screening tests. However, for both types of cancer screening little information is available on screening guidelines for practitioners of managed care organizations (HMOs). Therefore, the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Cancer Prevention and Control, intends to conduct a survey of HMOs to determine whether prostate and colorectal cancer screening guidelines exist within HMOs, and whether these guidelines are issued on the national level for all member plans or for each plan individually, and to determine the content of these guidelines. The total cost to respondents is estimated at $13,000.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
HMOs	550	1	0.17	92
Total				92

2. School Health Policies and Programs Study 2000 (SHPPS 2000)—New—The National Center for Chronic Disease Prevention and Health Promotion. The purpose of this request is to obtain OMB clearance to conduct a study of school health policies and programs in elementary, middle/junior, and senior high schools nationwide. A similar study was conducted in 1994 (OMB No. 0920-0340). SHPPS 2000 will assess the characteristics of eight components of school health programs at the elementary, middle/junior, and senior high school levels: health education, physical education and activity, health services, food service, school policy and environment, mental health and social services, faculty and staff health promotion, and family and community involvement. SHPPS 2000 data will be used to provide end-of-decade measures for 18 national health objectives for 2000 and as a baseline measure for at least 17 draft objectives for 2010. No other national source of data exists for these 2000 and draft 2010 objectives. The data also will have significant implications for policy and program development for school health programs nationwide. The total estimated cost to respondents $614,548.

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000

Questionnaire/activity	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Health Education	State officials	51	1.00	51.0
State Physical Education and Activity	State officials	51	1.00	51.0
State Health Services	State officials	51	1.00	51.0

ANNUAL BURDEN HOURS FOR SHPPS 2000 MAIN DATA COLLECTION, SPRING 2000—Continued

Questionnaire/activity	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Food Service	State officials	51	1.00	51.0
State Questionnaire on School Policy and Environment.	State officials	51	1.25	63.8
State Mental Health and Social Services	State officials	51	1.00	51.0
State Faculty and Staff Health Promotion	State officials	51	0.50	25.5
Assist with identifying state level respondents and with recruiting districts and schools.	State officials	51	1.00	51.0
District Health Education	District officials	1148	1.00	1148.0
District Physical Education and Activity	District officials	1148	1.00	1148.0
District Health Services	District officials	1148	1.00	1148.0
District Food Service	District officials	1148	1.00	1148.0
District Questionnaire on School Policy and Environment.	District officials	1148	1.25	1435.0
District Mental Health and Social Services	District officials	1148	1.00	1148.0
District Faculty and Staff Health Promotion	District officials	1148	0.50	574.0
Assist with identifying district and school level respondents and with recruiting schools.	District officials	350	1.00	350.0
Assist with identifying and scheduling school level respondents.	School officials	1539	1.00	1539.0
School Health Education	Health education lead teachers, principals, or designees.	1539	1.00	1539.0
School Physical Education and Activity	Physical education lead teachers, principals, or designees.	1539	1.00	1539.0
School Health Services	School nurses, principals, or designees	1539	1.00	1539.0
School Food Service	Food service managers, principals, or designees	1539	1.00	1539.0
School Questionnaire on School Policy and Environment.	Principals or designees	1539	1.50	2308.5
School Mental Health and Social Services	Counselors, principals, or designees	1539	1.00	1539.0
School Faculty and Staff Health Promotion	Principals or designees	1539	0.50	769.5
Health Education Classroom Teacher	Health education teachers (Average 1.5 per school).	2309	0.80	1847.2
Physical Education and Activity Classroom Teacher.	Physical education teachers (Average 2 per school).	3078	0.80	2462.4
Total		26,493		25,115.9

ANNUAL BURDEN HOURS FOR VALIDITY/RELIABILITY STUDY, SPRING 2000

Questionnaire	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
State Health Education	State officials	32	0.25	8.0
State Physical Education and Activity	State officials	32	0.25	8.0
State Health Services	State officials	32	0.20	6.4
State Food Service	State officials	32	0.20	6.4
State Questionnaire on School Policy and Environment.	State officials	32	0.40	12.8
State Mental Health and Social Services	State officials	32	0.25	8.0
State Faculty and Staff Health Promotion	State officials	32	0.20	6.4
District Health Education	District officials	82	0.25	20.5
District Physical Education and Activity	District officials	82	0.25	20.5
District Health Services	District officials	82	0.20	16.4
District Food Service	District officials	82	0.20	16.4
District Questionnaire on School Policy and Environment.	District officials	82	0.40	32.8
District Mental Health and Social Services	District officials	82	0.25	20.5
District Faculty and Staff Health Promotion	District officials	82	0.40	32.8
School Health Education	Health education lead teachers, principals, or designees.	82	0.80	65.6
School Physical Education and Activity	Physical education lead teachers, principals, or designees.	82	0.80	65.6
School Health Services	School nurses, principals, or designees	82	0.80	65.6
School Food Service	Food service managers, principals, or designees	82	0.80	65.6
School Questionnaire on School Policy and Environment.	Principals or designees	82	1.25	102.5
School Mental Health and Social Services	Counselors, principals, or designees	82	0.80	65.6
School Faculty and Staff Health	Principals or designees	82	0.40	32.8
Promotion Health Education Classroom Teacher	Health education teachers (Average 1.5 per school).	82	0.80	65.6

ANNUAL BURDEN HOURS FOR VALIDITY/RELIABILITY STUDY, SPRING 2000—Continued

Questionnaire	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
Physical Education and Activity Classroom Teacher.	Physical education teachers (Average 2 per school).	82	0.80	65.6
Total		1,536		810.4

ANNUAL BURDEN HOURS FOR SHPPS FIELD TEST, SPRING 1999

Questionnaire	Respondent	Number of respondents	Burden hours per respondent	Total burden hours
District Health Education	District officials	9	2.00	18.0
District Physical Education and Activity	District officials	9	2.00	18.0
District Health Services	District officials	9	2.00	18.0
District Food Service	District officials	9	2.00	18.0
District Questionnaire on School Policy and Environment.	District officials	9	2.50	22.5
District Mental Health and Social Services	District officials	9	2.00	18.0
District Faculty and Staff Health Promotion	District officials	9	1.00	9.0
School Questionnaire on School Policy and Environment (interview and reinterview).	Principals or designees	80	3.00	240.0
Health Education Classroom Teacher (interview and reinterview).	Health education teachers	80	1.60	128.0
Total		223		489.5

ANNUAL BURDEN HOURS ACROSS ALL SHPPS 2000 STUDY COMPONENTS

Study component	Number of respondents	Total burden hours
Main Study Data Collection, Spring 2000	26,493	25,115.9
Validity/Reliability Study, Spring 2000	1,536	810.4
Field Test, Spring 1999	223	489.5
Total	28,252	26,415.8

Kathy Cahill,

Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 98–30916 Filed 11–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–03–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Projects

1. Evaluation of the C. Everett Koop Community Health Information Center (CHIC)—New—The National Center for Chronic Disease Prevention and Health Promotion intends to conduct a survey of 25 individuals who pay for library research services from the CHIC and an additional 50 individuals who represent members of key intermediary organizations that the CHIC would like to reach but is currently not reaching. The specific topic area for this study relates to the ability of the CHIC to meet the health information needs of the general public.

The purpose of this survey is to determine:

The level of satisfaction with CHIC services among paying patrons who request services via telephone (the CHIC currently conducts a satisfaction survey with all walk-in patrons).

The level of knowledge about the CHIC among key intermediary individuals and organizations—the health information needs of key intermediary individuals and organizations.

How to market CHIC services to key intermediary individuals and organizations.

Results from this research will be used to help evaluate the effectiveness of the CHIC in meeting the health information needs of the general public. Results from this research will provide the government with information about the efficacy of health information centers. In addition, this information will also be used by the CHIC to further enhance their ability to deliver health information services to the public residing in the Delaware Valley. The total annual burden hours are 17.

Type of respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Paying Patrons	25	1	.17
Key Intermediaries	50	1	.25

2. Childhood Lead Poisoning Prevention Program Quarterly Report (0920–0282)—Extension—The National Center for Environmental Health requests an extension of the Childhood Lead Poisoning Prevention Program Quarterly Report. Section 317A of the Public Health Service Act as amended by The Lead Contamination Control Act of 1988 and the Preventive Health Amendments of 1992, mandates that grant applicants report quarterly the number of infants and children screened for elevated blood lead levels, the number found to have elevated blood lead levels, the number and type of medical referrals made for them, and the outcome of such referrals. State and local health agencies are the principal delivery points for childhood lead screening and related medical and environmental management activities. In FY 1998, CDC awarded 41 grants to fund childhood lead poisoning prevention programs. The purpose of the quarterly report is to report data collected by CDC's grantees. The report consists of narrative and data sections. The narrative section (1) provides highlights of quarterly activities, (2) reports issues and activities that have significant impact on the program, and (3) lists objectives and discusses progress towards meeting those objectives. The data section provides (1) screening and case confirmation activities, (2) environmental inspection and hazard remediation activities, and (3) medical case management activities. The total annual burden hours are 328.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hrs.)
Grantees	41	4	2

Kathy Cahill,

Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30915 Filed 11–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Service Activities and Research at DOE Sites; Citizens Advisory Committee; Notice of Meeting

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Fernald Health Effects Subcommittee; Hanford Health Effects Subcommittee; Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee; and Savannah River Site Health Effects Subcommittee; and the Inter-tribal Council on Hanford Health Projects: Meetings.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) and the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following Federal advisory committee meetings.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites.

Times and Dates: 8 a.m.–5 p.m., December 8, 1998; 8:30 a.m.–5:30 p.m., December 9, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 150 people.

Background: The Department of Health and Human Services (HHS) and the Department of Energy (DOE) have two Memoranda of Understanding (MOU) for public health activities and research at DOE sites. One transferred the responsibility for the management and conduct of energy-related analytic epidemiologic research to HHS, and HHS subsequently delegated program responsibility to CDC. The other is a separate MOU between ATSDR and DOE. This MOU addresses ATSDR public health responsibilities around DOE sites. In addition, ATSDR is required by law (Sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act) to conduct public health assessments, and where appropriate, other health activities, many of which are conducted at DOE sites.

Implementing these MOUs requires significant interaction with communities living in proximity to DOE sites. This committee was chartered in response to the requests by representatives of the communities surrounding DOE sites to provide consensus advice and recommendations on community concerns related to CDC's and ATSDR's activities related to the sites.

Purpose: This committee provides advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at respective DOE sites. Activities focus on providing a forum for community, American Indian Tribal, and labor interaction, and serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items will include presentations from each of the four established subcommittees; status of the Advisory Committee for Energy-Related Epidemiologic Research Subcommittee for Community Affairs; up to four break-out sessions with presentations post break-out; proposed evaluation of the health effects subcommittees; group discussions and public comments.

Name: Fernald Health Effects Subcommittee (FHES).

Time and Date: 8:30 a.m.–4 p.m., December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the Fernald, Ohio, site.

Matters to be Discussed: Agenda items include an update on worker studies related to the Fernald site from NIOSH; an update on risk assessment from NCEH; selection of FHES representative for an evaluation project; and subcommittee discussion.

Name: Inter-tribal Council on Hanford Health Projects (ICHHP) in Association with the Hanford Health Effects Subcommittee (HHES).

Time and Date: 8 a.m.–12 noon, December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The purpose of this meeting is to address issues that are unique to tribal involvement with the HHES, including considerations regarding a proposed medical monitoring program and discussion of cooperative agreement activities designed to provide support for capacity-building activities in tribal environmental health expertise and for tribal involvement in HHES.

Matters to be Discussed: Agenda items will include a dialogue on issues that are unique to tribal involvement with the HHES. This will include exploring cooperative agreement activities in environmental health capacity building and providing support for tribal involvement in and representation on the HHES.

Name: Hanford Health Effects Subcommittee (HHES).

Times and Dates: 1 p.m.–5 p.m., December 10, 1998; 8:30 a.m.–3:30 p.m., December 11, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the Hanford Nuclear Reservation.

Matters to be Discussed: Agenda items will include an update from the ICHHP; the review and approval of Minutes of the previous meeting; updates from ATSDR, NCEH, and NIOSH; reports from the Outreach, Public Health Assessment, Public Health Activities, and Studies Workgroups; and other issues and topics as necessary.

Name: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Time and Date: 8:30 a.m.–5:30 p.m., December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the INEEL.

Matters to be Discussed: Agenda items include an update on the status of research at the INEEL, discussion on document management at DOE; and subcommittee discussions.

Name: Savannah River Site Health Effects Subcommittee (SRSHES).

Time and Date: 8:30 a.m.–5:30 p.m., December 10, 1998.

Place: Salt Lake City Hilton, 150 West 500 South, Salt Lake City, Utah 84101, telephone 801–532–3344, fax 801–531–0705.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: This subcommittee reviews and provides consensus advice to CDC and ATSDR on their public health activities and research at the SRS.

Matters to be Discussed: Agenda items include an update from ATSDR on its research; the schedule for release to the public of the Phase II report; presentations by NCEH, ATSDR, and NIOSH on the design of their respective web pages; and subcommittee discussion.

All agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Information on the HHES and the ICHHP may be obtained from Leslie C. Campbell, Executive Secretary, HHES, or Marilyn Palmer, Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE (E–56), Atlanta, GA 30333, telephone 1–800–447–1544, fax 404–639–6075. Information on the FHES may be obtained from Steven A. Adams, Executive Secretary, FHES, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Information on the INEELHES may be obtained from Arthur J. Robinson, Jr., Executive Secretary, INEELHES, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Information on the SRSHES may be obtained from Paul G. Renard, Executive Secretary, SRSHES, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: November 13, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–30913 Filed 11–18–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1000]

Danbury Pharmacal, Inc.; Withdrawal of Approval of 61 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 61 abbreviated new drug applications (ANDA's). Danbury Pharmacal, Inc., notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: December 21, 1998.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug

Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: Danbury Pharmacal, Inc., 131 West St., Danbury, CT 16810, has informed FDA that the drug products listed in the following table are no longer marketed and has requested that FDA withdraw approval of the applications. Danbury Pharmacal, Inc., has also, by its request, waived its opportunity for a hearing.

ANDA No.	Drug
63–082	Clindamycin Hydrochloride Capsules USP, 75 milligrams (mg)
71–098	Propranolol Hydrochloride Tablets USP, 60 mg
71–183	Propranolol Hydrochloride Tablets USP, 90 mg
71–494	Oxazepam Tablets USP, 15 mg
71–498	Propranolol Hydrochloride and Hydrochlorothiazide Tablets USP, 40 mg/25 mg
71–501	Propranolol Hydrochloride and Hydrochlorothiazide Tablets USP, 80 mg/25 mg
71–905	Ibuprofen Tablets USP, 200 mg
72–113	Haloperidol Tablets USP, 10 mg
72–134	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 4 mg/25 mg
72–135	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 4 mg/50 mg
72–353	Haloperidol Tablets USP, 20 mg
72–539	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 2 mg/10 mg
72–540	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 4 mg/10 mg
72–541	Perphenazine and Amitriptyline Hydrochloride Tablets USP, 2 mg/25 mg
72–981	Fenoprofen Calcium Capsules USP
72–982	Fenoprofen Calcium Capsules USP
72–996	Indomethacin Capsules USP, 25 mg
72–997	Indomethacin Capsules USP, 50 mg
80–393	Reserpine Tablets USP, 0.25 mg
80–522	Isoniazid Tablets USP, 50 mg
80–523	Isoniazid Tablets USP, 100 mg
80–679	Reserpine Tablets USP, 0.1 mg
80–696	Chlorpheniramine Maleate Tablets USP, 4 mg
80–749	Reserpine Tablets USP, 1 mg
80–905	Phenytoin Sodium Capsules USP, 100 mg
80–907	Rauwolfia Serpentina Tablets USP, 50 mg
80–908	Propoxyphene Hydrochloride Capsules USP, 65 mg
80–914	Rauwolfia Serpentina Tablets USP, 100 mg
83–029	Propantheline Bromide Tablets USP, 15 mg
83–123	Brompheniramine Maleate Tablets USP, 4 mg
83–305	Niacin Tablets USP, 500 mg
83–712	Promethazine Hydrochloride Tablets USP, 12.5 mg
83–847	Trichlormathiazide Tablets USP, 2 mg
83–855	Trichlormethiazide Tablets USP, 4 mg
84–274	Meprobamate Tablets USP, 600 mg
84–347	Dicyclomine Hydrochloride Capsules USP, 10 mg
84–362	Glutethimide Tablets USP, 500 mg
84–*402	Bethanechol Chloride Tablets USP, 5 mg
84–602	Dicyclomine Hydrochloride Tablets USP, 20 mg
85–094	Triprolidine Hydrochloride Tablets USP, 2.5 mg
85–584	Quinidine Sulfate Tablets USP, 100 mg
86–086	Pentaerythritol Tetranitrate Tablets USP, 20 mg
86–580	Cyproheptadine Hydrochloride Tablets USP, 4 mg
86–900	Glycopyrrolate Tablets USP, 2 mg
86–901	Chlorzoxazone Tablets USP, 250 mg
86–902	Glycopyrrolate Tablets USP, 1 mg
87–419	Dipyridamole Tablets USP, 25 mg
87–432	Dipyridamole Tablets USP, 75 mg
87–550	Butalbital and Acetaminophen, 50 mg/325 mg
87–667	Sulfinpyrazone Tablets USP, 100 mg
87–767	Hydroxyzine Pamoate Capsules USP (equivalent to 50 mg Hydroxyzine Hydrochloride)
87–790	Hydroxyzine Pamoate Capsules USP (equivalent to 100 mg Hydroxyzine Hydrochloride)
87–874	Carisoprodol Compound Tablets
88–620	Amitriptyline Hydrochloride Tablets USP, 10 mg
88–621	Amitriptyline Hydrochloride Tablets USP, 25 mg
88–622	Amitriptyline Hydrochloride Tablets USP, 50 mg
88–633	Amitriptyline Hydrochloride Tablets USP, 75 mg
88–634	Amitriptyline Hydrochloride Tablets USP, 100 mg
88–635	Amitriptyline Hydrochloride Tablets USP, 150 mg
88–755	Thioridazine Hydrochloride Tablets USP, 25 mg
88–800	Dipyridamole Tablets USP, 50 mg

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective December 21, 1998.

Dated: November 4, 1998.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 98–30878 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0781]

Determination of Regulatory Review Period for Purposes of Patent Extension; Avapro®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Avapro® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Avapro® (irbesartan). Avapro® is indicated for the treatment of hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Avapro® (U.S. Patent No. 5,270,317) from Sanofi, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 7, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Avapro® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Avapro® is 1,616 days. Of this time, 1,246 days occurred during the testing phase of the regulatory review period, while 370 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: April 30, 1993. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 30, 1993.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: September 26, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Avapro® (NDA 20–757) was initially submitted on September 26, 1996.

3. *The date the application was approved*: September 30, 1997. FDA has verified the applicant's claim that NDA 20–757 was approved on September 30, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 194 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 19, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 18, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–30990 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICE

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 7, 1998, 8 a.m. to 5 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss and make recommendations on clinical trial requirements for future approval of coronary stents. An outline of the types of issues to be discussed by the committee can be found on the FDA website at "http://www.fda.gov/cdrh/upadvmtg.html". Single copies of this outline are also available to the public by contacting the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 1–800–638–2041 or 301–443–6597.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 30, 1998. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m., on December 7, 1998. Near the end of committee deliberations, a 30-minute open public hearing will be conducted for interested persons to address issues specific to the topics before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 30, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 12, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–30936 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0336]

Agency Information Collection Activities; Announcement of OMB Approval; Premarket Notification Submission 510(k), Subpart E

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Notification Submission 510(k), Subpart E" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 1998 (63 FR 46462), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

OMB has now approved the information collection and has assigned OMB control number 0910–0120. The approval expires on October 31, 2001.

Dated: November 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30879 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0168]

Agency Information Collection Activities; Announcement of OMB Approval; Supplements to Premarket Approval Applications for Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Supplements to Premarket Approval Applications for Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 8, 1998 (63 FR 54042), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0385. The approval expires on October 31, 2001.

Dated: November 11, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30989 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1001]

Draft Guidance for Industry: In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling." This draft guidance is intended to provide recommendations to sponsors and applicants of new drug applications (NDA's) and biologics license applications (BLA's) for therapeutic biologics (hereafter drugs) on carrying out in vivo drug metabolism and metabolic drug-drug interaction studies. The draft guidance reflects the current view that the metabolism of a new drug should be defined during drug development and that its interactions with other drugs should be explored as part of an adequate assessment of the safety and effectiveness of the drug.

DATES: Written comments may be submitted on the draft guidance by January 19, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of "In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling" are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, FAX 888–CBERFAX or 301–827–3844. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Shiew Mei Huang, Center for Drug Evaluation and Research (HFD–850), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5671, or David Green, Center for Biologics Evaluation and Research (HFM–579), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "In Vivo Drug Metabolism/Drug Interaction Studies—Study Design, Data Analysis, and Recommendations for Dosing and Labeling." Previous guidance from FDA on the use of in vitro approaches to study metabolism and metabolic drug-drug interactions is available in a document entitled "Drug Metabolism/Drug Interaction Studies in the Drug Development Process: Studies in Vitro." The present guidance should be viewed as a companion to this earlier guidance. The present guidance discusses study design, choice of interacting drugs, and data analysis and provides recommendations for dosing and labeling.

This draft level 1 guidance document is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on drug metabolism and drug-drug interactions. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30937 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0997]

Draft Guidance for Industry on Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation." This draft document provides guidance for industry on the chemistry, manufacturing, and controls (CMC) documentation to be submitted in new drug applications (NDA's) and abbreviated new drug applications (ANDA's) for metered dose inhalation aerosols, metered dose nasal aerosols, and inhalation powders.

DATES: Written comments may be submitted on the draft guidance document by February 17, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm." Written requests for single copies of the draft guidance should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Guirag Poochikian, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, rm. 10B45, Rockville, MD 20857, 301–827–1050.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Metered Dose Inhaler (MDI) and Dry Powder Inhaler (DPI) Drug Products; Chemistry, Manufacturing, and Controls Documentation." This draft guidance sets forth information that should be provided to ensure continuing drug product quality and performance characteristics for MDI's and DPI's. In addition to providing guidance on CMC documentation to be submitted in NDA's and ANDA's for DPI's and MDI's, the draft guidance covers CMC information recommended for inclusion in the application with regard to the components, manufacturing process, and the controls associated with each of these areas. The document does not address inhalation solutions or aqueous nasal sprays.

FDA intends to sponsor a public meeting in 1999 on MDI and DPI drug products. The comments submitted on

this draft guidance will be used to help develop the agenda for this meeting.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on CMC documentation to be submitted in NDA's and ANDA's for metered dose inhalation aerosols, metered dose nasal aerosols, and inhalation powders. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 13, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–30938 Filed 11–18–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Grant Award to the National Research and Training Center at the University of Illinois, Chicago, IL

AGENCY: Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), DHHS.

ACTION: Planned supplemental grant award to the Employment Intervention Demonstration Program (EIDP) Coordinating Center at the University of Illinois, Chicago, Illinois.

SUMMARY: This notice is to provide information to the public concerning a planned supplemental award by CMHS/SAMHSA to the existing grant to the National Research and Training Center (NRTC). This award will provide additional support for the EIDP Coordinating Center in order to expand coordination, data management, and dissemination of the EIDP study results. Upon receipt of a satisfactory application that is recommended for approval by an Initial Review Group and the CMHS National Advisory Council, up to $600,000 in Federal funds may be awarded to this organization over the remaining project period of the existing EIDP Coordinating Center grant which is scheduled to end on May 31, 2000.

This is not a formal request for applications. Grant funds will be provided only to the organization named above.

Authority/Justification: This grant will be made under the authority of Section 520A of the Public Health Service Act, as amended (42 U.S.C. 290bb–32).

The Catalog of Federal Domestic Assistance (CFDA) number is 93.125.

The goal of the EIDP is the generation of knowledge about effective approaches for enhancing employment for adults with severe mental illnesses through support for the implementation and evaluation of promising employment intervention programs. In FY 1995 the National Research and Training Center competed successfully to be the Coordinating Center for an expected EIDP involving approximately 4 sites. However, CMHS subsequently determined the program should fund 8 sites to maximize the potential benefits of the program. The purpose of this supplemental award is to fund the additional coordination and data management requirements imposed on NRTC for a program which has expanded to 8 sites and, building upon the expertise gained by the Coordinating Center during the first years of the study, to develop and implement a knowledge dissemination strategy for all 8 (rather than 4) sites. The supplemental work is inextricably linked to the current activities that the NRTC is already performing for the EIDP.

For the above reasons, only an application from the National Research and Training Center will be considered for this program.

CONTACT: Neal B. Brown, Chief, Community Support Programs Branch, Division of Knowledge Development and Systems Change, CMHS, SAMHSA, 5600 Fishers Lane, Room 11C–22, Rockville, MD 20857; (301) 443–3653.

Dated: November 13, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–30940 Filed 11–18–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA)

Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Center for Mental Health Services (CMHS) National Advisory Council in December, 1998.

A portion of the meeting will be open and will include a roll call, CMHS Director's Report, discussion of the HIV/AIDS Services Research Demonstration Program, report from the National Mental Health Association, update from the Consumer Affairs Specialist and a report on Mental Health U.S. 1998. Public comments are welcome during the open session. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will include the review, discussion, and evaluation of individual grant applications, and detailed discussion of information about the CMHS procurement plans. Therefore a portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(3), and (6) and 5 U.S.C. App. 2, § 10(d).

A summary of the meeting and a roster of Council members may be obtained from: Anne Mathews-Younes, Ed.D., Executive Secretary, CMHS National Advisory Council, 5600 Fishers Lane, Room 18 C–07, Rockville, Maryland 20857. Telephone: (301) 443–0554.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Center for Mental Health Services National Advisory Council.

Meeting Date: December 3–4, 1998.

Place: Georgetown University Conference Center, 3800 Reservoir Road, NW, Washington, D.C. 20057.

Open: December 3, 1998, 9:30 a.m.—5:00 p.m.; December 4, 1998, 9:00 a.m—1:00 p.m.

Closed: December 3, 1998, 9:00 a.m. to 9:30 a.m.

Contact: Anne Mathews-Younes, Room 18–07, Parklawn Building, Telephone: (301) 443–0554 and FAX: (301) 443–7912.

Dated: November 18, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–30939 Filed 11–18–98; 8:45 am]

BILLING CODE 4162–20–P

INTER-AMERICAN FOUNDATION

Board Meeting; Sunshine Act

TIME AND DATE: December 2, 1998, 11:30 a.m.–3:30 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

MATTERS TO BE DISCUSSED:

1. Approval of the Minutes of the June 8, 1998, Meeting of the Board of Directors.
2. Report on Impact of Hurricane Mitch and Foundation Response.
3. Report on Management Information System and Results Collection.
4. Report on External Affairs Initiative.
5. Report by the Board Audit Committee.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: November 17, 1998.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 98–31098 Filed 11–17–98; 3:44 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*).

Applicant: Avian Biotech International, Tallahassee, FL, PRT–004419.

The applicant requests a permit to import blood, tissue, and feather samples from captive-hatched birds worldwide for the purpose of scientific research of avian disease and sex determination.

Applicant: University of Miami, Miami, FL, PRT–004843.

The applicant requests a permit to import blood samples from birds housed at the Loro Parque, Canary Islands, Spain for the purpose of scientific research.

Applicant: Black Hills Reptile Gardens, Inc., Rapid City, SD, PRT–004418.

The applicant requests a permit to import 9 neonate West African dwarf crocodiles (*Osteolaemus tetrapsis tetrapsis*) from the Calgary Zoo, Canada for the purpose of enhancement to the propagation and survival of the species through captive breeding.

Applicant: American Museum of Natural History, NY,NY, PRT–004540.

The applicant requests a permit to import salvaged material from three geometric tortoises (*Psammobates geometricus*) from the Western Cape Nature Conservation Authority, South Africa for the purpose of enhancement of the species through scientific research.

Applicant: Robert I. Hale, Hillsboro, OR PRT–005021.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the enhancement of the survival of the species.

Applicant: Adriano Freire, Pembroke Pines, FL, PRT–005001.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the enhancement of the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: November 13, 1998.

MaryEllen Amtower,

Acting Chief, Branch Of Permits, Office of Management Authority.

[FR Doc. 98–30889 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–99–1320–01; COC 59748]

Notice of Public Hearing and Request for Comments on Environmental Assessment, Maximum Economic Recovery Report, and Fair Market Value; Application for Competitive Coal Lease COC 59748; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Juniper Coal Company requesting the Bureau of Land Management offer for competitive lease 14,785.64 acres of federal coal in Routt County, Colorado.

DATES: The public hearing will be held at 7 p.m., December 9, 1998. Written comments should be received no later than December 23, 1998.

ADDRESSES: The public hearing will be held in the Little Snake Field Office, 455 Emerson St., Craig, Colorado 81625. Written comments should be addressed to the Bureau of Land Management, Little Snake Field Office, at the address given above.

FOR FURTHER INFORMATION CONTACT: John Husband, Field Office Manager, Little Snake Field Office at the address above, or by telephone at (970) 826–5089.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on December 9, 1998, at 7 p.m., in the Little Snake Field Office at the address given above.

An application for coal lease was filed by Juniper Coal Company requesting the Bureau of Land Management offer for competitive lease federal coal in the lands outside established coal production regions described as:

T. 5 N., R. 88 W., 6th P.M.
Sec. 4, SE¼NW¼, and SW¼;
Sec. 5, lot 5, SW¼NE¼, E½,SW¼, SW¼SW¼, and SE¼;
Sec. 7, lot 17, SW¼NE¼, and SE¼; Tract 39, lots 15, and 16;
Sec. 8, all;
Sec. 9, W½W½, NE¼NW¼, and SE¼SW¼;
Sec. 17, N½N½, S½NW¼, and S½SW¼;
Sec. 18, lots 5, 12, 13, 16, and 17, N½NE¼, and SW¼NE¼;

Tract 39, lots 6, and 8;
Tract 40, lots 7, 9 to 11, inclusive, 14, and 15;
Sec. 19, lots 7, 8, 13, and 14;
Sec. 20, SW¼NE¼, NW¼, and W½SE¼;
Sec. 30, lots 7, 8, 13, and 14;
Sec. 31, lots 7, 8, 15, and 16.
T. 5 N., R. 89 W., 6th P.M.
Sec. 3, lots 19 to 24, inclusive;
Tract 42, lots 17, 18, 25, and 27;
Tract 45, lot 26;
Sec. 4, SE¼;
Sec. 9, lots 1, 2, and 7 to 10, inclusive;
Sec. 10, lots 2 to 15, inclusive;
Tract 45, lot 1;
Sec. 11, lots 6, 8, 10, and 14 to 19, inclusive;
Tract 37, lots 3 to 5, inclusive, 7, 9, 11, 12, and 20;
Tract 47, lots 13, and 21;
Sec. 12, lots 4 to 6, inclusive, and 9 to 11, inclusive;
Tract 47, lots 7, and 8;
Sec. 13, lots 1 to 3, inclusive, and 5 to 17, inclusive;
Tract 47, lot 4;
Sec. 14, lots 2, 3, and 5 to 17, inclusive;
Tract 47, lot 1;
Tract 52, lots 4, and 10;
Sec. 15, lots 1 to 16, inclusive;
Sec. 16, lots 3, 4, 9, and 10, inclusive;
Sec. 21, NE¼, and S½;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 33, N½;
Sec. 34, N½;
Sec. 35, N½;
Sec. 36, all.
T. 6 N., R. 88 W., 6th P.M.
Sec. 32, SE¼NE¼, E½SE¼, and SW¼SE¼;
Sec. 33, N½, and N½S½;
Sec. 34, W½NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 35, SW¼, N½SE¼, SW¼SE¼.

Containing approximately 14, 785.64 acres, more or less.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments on the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the December 9, 1998, public hearing should be received at the Little Snake Field Office prior to the close of business December 9, 1998. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The coast of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Little Snake Field Office at the above address prior to close of business on December 23, 1998.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Little Snake Field Office upon request A copy of the draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield, Lakewood, Colorado, 80215.

Dated: November 10, 1998.

Karen A. Purvis,

Solid Minerals Team, Resource Services.

[FR Doc. 98–30971 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Fort Davis National Historic, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Fort Davis National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Fort Davis National Historic Site. This statement will be approved by the Regional Director, Intermountain Region.

The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include no-action, the preferred alternative, and other alternatives addressing the following questions:

How can we best protect what is important for preserving the park and providing for visitor use for present and future generations?

What level and type of use is appropriate to meet the purpose and significance of the park?

What facilities are needed to meet the mission goals of the park regarding park operations, visitor use and interpretation, natural resource management, and partnerships?

What boundary adjustments have been made that are feasible to the National Park Service and enhance and support the purpose and significance of the park?

A scoping brochure has been prepared outlining the issues identified to date. After, December 15, 1998, copies of that information can be obtained at the general management plan website: *http://www.nps.gov/planning/foda* or from, Superintendent, Fort Davis National Historic Site, P.O. Box 1456, Fort Davis,

Texas 79734. The comment period for issue identification will close on February 15, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent, Jerry Yarbrough, Fort Davis National Historic Site, (915) 426–3224, ext. 11.

Dated: October 28, 1998.

John A. King,

Regional Director, Intermountain Region.

[FR Doc. 98–30959 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan; Pinnacles National Monument, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Pinnacles National Monument, California and initiate the scoping process for this document. This notice is in accordance with 40 CFR 1501.7 and 40 CFR 1508.22, of the regulations of the President's Council on Environmental Quality for the National Environmental Policy Act of 1969, Public Law 91–190.

BACKGROUND: The purpose of the GMP/EIS will be to state the management philosophy for the park and provide strategies for addressing major issues facing the area. Two types of strategies will be presented in the GMP: (1) Those required to manage and preserve cultural and natural resources; and (2) those required to provide for safe, accessible and appropriate use of those resources by visitors. Based on these strategies, the GMP will identify the programs, actions and support facilities needed for their implementation.

Persons wishing to comment or express concerns on the management issues and future management direction of Pinnacles National Monument should address these to the Superintendent, Pinnacles National Monument, 5000 Highway 146, Paicines, California 95043–9770. Questions regarding the plan should be addressed to the superintendent either by mail to the above address, or by telephone at (831) 389–4485. Comments on the scoping of the proposed GMP/EIS should be received no later than December 15, 1998.

Public scoping meetings to receive comments and suggestions on the plan will be held in November and December in communities in the vicinity of the park. The time and location of these meetings will be announced in the local and regional media.

The responsible official is John J. Reynolds, Regional Director, Pacific West Region, National Park Service. The draft GMP/EIS is expected to be available for public review in January, 2000, and the final GMP/EIS and Record of Decision completed in mid-summer 2000.

Dated: November 4, 1998.

John Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 98–30960 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Death Valley National Park; Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Death Valley National Park Advisory Commission will be held December 1 and 2, 1998; assemble at 8:30 a.m. at the Quality Inn, 1520 East Main Street, Barstow, California on December 1; assemble at 8:30 a.m. at the Board Room, Barstow College, 2700 Barstow Road, Barstow, California on December 2.

The main agenda will include:

- Overview of the General Management Plan (GMP).
- Discussion of GMP alternatives.
- Items for Discussion at Upcoming Meetings.
- Election of Commission Chair and Vice-Chair.

The Advisory Commission was established by Public Law 03–433 to provide for the advice on development and implementation of the General Management Plan.

Members of the Commission are Janice Allen, Kathy Davis, Michael Dorame, Mark Ellis, Pauline Esteves, Stanley Haye, Sue Hickman, Cal Jepson, Joan Lolmaugh, Gary O'Connor, Alan Peckham, Michael Prather, Robert Revert, Wayne Schulz, and Gilbert Zimmerman.

This meeting is open to the public.

Marian O'Dea,

Acting Superintendent, Death Valley National Park.

[FR Doc. 98–30961 Filed 11–18–98; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–399]

General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by African Trading Partners

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 6, 1998.

SUMMARY: Following receipt on October 15, 1998, of a request from the Office of the United States Trade Representative (USTR), the Commission instituted investigation No. 332–399, General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by African Trading Partners, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION: Information on service industries may be obtained from Mr. Richard Brown, Office of Industries (202–205–3438) and Mr. William Chadwick, Office of Industries (202–205-3390); economic aspects, from Mr. Hugh Arce, Office of Economics (202–205–3234); and legal aspects, from Mr. William Gearhart, Office of the General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

As requested by the USTR in a letter dated October 9, 1998, the Commission, pursuant to section 332(g) of the Tariff Act of 1930, has instituted an investigation and will prepare a report that (1) examines the content of schedules of commitments under the General Agreement on Trade in Services (GATS) for the countries specified below, explaining the commitments in non-technical language; and (2) seeks to identify the potential benefits and limitations of foreign commitments. The Commission will examine sector-specific commitments scheduled by Côte D'Ivoire, Egypt, Ghana, Kenya, Malawi, Mauritius, Morocco, Nigeria, Senegal, South Africa, Tunisia, Zambia, and Zimbabwe, with respect to the following industries:

- Distribution services (defined as wholesaling, retailing, and franchising services);

- Education services;
- Communication services (defined as basic and enhanced telecommunication, audiovisual, and courier services);
- Health care services;
- Professional services (defined as accounting, advertising, and legal services);
- Architectural, engineering, and construction (AEC) services;
- Land-based transport services (defined as rail and trucking services); and
- travel and tourism services.

In addition, the Commission will examine horizontal commitments relevant to the specified industries, such as those regarding investment, and temporary entry and stay of foreign workers. As requested by the USTR, the Commission plans to deliver its report to the USTR by October 15, 1999.

The investigation is the fifth in a series of Commission investigations requested by USTR. In the earlier reports, the Commission examined the commitments scheduled by selected trading partners with respect to all the industries delineated above, with the sole exception of basic telecommunication services. The four previous reports are: General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Eastern Europe, the European Free Trade Association, and Turkey (investigation No. 332–385, USITC Publication 3127, September 1998); General Agreement on Trade in Services: Examination of the Schedules of Commitments Submitted by Asia Pacific Trading Partners (investigation No. 332–374, USITC Publication 3053, August 1997); General Agreement on Trade in Services: Examination of South American Trading Partners' Schedules of Commitments (investigation No. 332–367, USITC Publication 3007, December 1996); and General Agreement on Trade in Services: Examination of Major Trading Partners' Schedules of Commitments (investigation No. 332–358, USITC Publication 2940, December 1995). These publications are available on the ITC Internet server (http://www.usitc.gov).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on June 2, 1999. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., May 17, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., May 17, 1999. The deadline for filing post-hearing briefs or statements is 5:15 p.m., June 15, 1999. In the event that, as of the close of business on May 17, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after May 17, 1999, to determine whether the hearing will be held.

Written Submissions

In lieu of, or in addition to, participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on 4 June 15, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

By order of the Commission.

Issued: November 10, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30886 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–127 (Review)]

Elemental Sulphur from Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on elemental sulphur from Canada.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on elemental sulphur from Canada would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 5, 1998.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION

Background

On November 5, 1998, the Commission determined that both domestic and respondent interested party responses to its notice of institution (63 F.R. 41280, August 3, 1998) of the subject five-year review were inadequate.[1] The Commission

[1] Chairman Bragg and Commissioner Koplan dissenting.

concluded that the domestic interested party group response was inadequate because the sole response by a domestic interested party, although individually adequate, accounted for a low share of domestic sulphur production, and therefore did not represent a sufficient willingness among domestic interested parties to participate in this review and an adequate indication that they will submit information requested throughout the proceeding. We note that recovered sulphur now accounts for most of domestic sulphur production, but that no recovered sulphur producers responded to the notice of institution. The Commission concluded that the respondent interested party group response was inadequate because the sole response by a respondent interested party, although individually adequate, accounted for a low share of subject imports and a low share of foreign production, and therefore did not represent a sufficient willingness among respondent interested parties to participate in this review and an adequate indication that they will submit information requested throughout the proceeding. The Commission did not find any other circumstances that would warrant conducting a full review. Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act. A record of the Commissioners' votes and the statement of Chairman Bragg are available from the Office of the Secretary and at the Commission's web site.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on December 3, 1998, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before December 8, 1998, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by December 8, 1998. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16c and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to extend the period of time for making its expedited determination in this review by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: November 13, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30887 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

[2] The Commission has found responses submitted by Freeport-McMoRan Sulphur Inc. and Husky Oil Ltd. to be adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–787 (Final)]

Extruded Rubber Thread From Indonesia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–787 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Indonesia of extruded rubber thread, provided for in subheading 4007.00.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 3, 1998.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of extruded rubber thread from Indonesia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 31, 1998, by North American Rubber Thread Co., Ltd., Fall River, MA.

The petition also alleged that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Indonesia of extruded rubber thread that were being subsidized by the Government of Indonesia. The Commission made an affirmative preliminary injury determination with regard to those imports. Subsequently, however, Commerce made a negative preliminary determination concerning whether manufacturers, producers, or exporters

[1] For purposes of this investigation, Commerce has defined the subject merchandise as "vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter."

of extruded rubber thread in Indonesia received subsidies. In the event Commerce makes an affirmative final determination regarding the issue of subsidies, the Commission will activate the final phase of its countervailing duty investigation on extruded rubber thread from Indonesia (inv. No. 701–TA–375). The briefing schedule, hearing, and other deadlines applicable to the final phase of inv. No. 731–TA–787, as outlined below, will also apply to inv. No. 701–TA–375.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on March 12, 1999, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on March 25, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 16, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 18, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is March 19, 1999. Parties may also file written testimony in connection with 4 their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is March 31, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before March 31, 1999. On April 19, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 21, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: November 16, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30978 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–386 and 731–TA–812–813 (Preliminary)]

Live Cattle from Canada and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–386 (Preliminary) and antidumping investigations Nos. 731–TA–812–813 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1671b(a) and 19 U.S.C. § 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of live cattle that are alleged to be subsidized by the Government of Canada, and imports from Canada and Mexico of live cattle that are alleged to be sold in the United States at less than fair value.[1] Unless the

[1] The products covered by these investigations are live cattle and calves for slaughter and feeder cattle and calves. Excluded from the scope are imports of dairy cows for the production of milk for human

Continued

Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. § 1671a(c)(1)(B) or 19 U.S.C. § 1673a(c)(1)(B)), the Commission must reach preliminary determinations in these investigations in 45 days.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 12, 1998.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION

Background

These investigations are being instituted in response to a letter filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation ("R-Calf") (Columbus, MT), and its supporting trade associations and individual cattlemen and cattlewomen. Counsel for R-Calf withdrew its petitions and addenda in countervailing duty investigation No. 701–TA–385 (Preliminary) and antidumping investigations Nos. 731–TA–809–810 (Preliminary) on November 10, 1998. The letter received on November 12, 1998 petitioning for institution of antidumping and countervailing duty investigations requested that the petition and addenda filed in the discontinued investigations be incorporated by reference in the instant investigations. The instant antidumping and countervailing duty investigations also shall incorporate the record from the discontinued investigations.

consumption and purebred cattle specially imported for breeding purposes and other cattle specially imported for breeding purposes. The merchandise subject to these investigations is included in subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States, with the exception of statistical reporting numbers 0102.90.4072 and 0102.90.4074.

Participation in the investigations and public service list

Persons (other than petitioners) wishing to participate in the investigations as parties must file new entries of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. (Persons who filed entries of appearance in countervailing duty investigation No. 701–TA–385 (Preliminary) and antidumping investigations Nos. 731–TA–809–810 (Preliminary) must file new entries of appearance.) Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in these investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. § 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the new application is made not later than seven days after the publication of this notice in the **Federal Register**. (Persons who filed APO applications in the discontinued investigations must file new applications.) A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 2, 1998, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Elizabeth Haines (202–205–3200) not later than November 30, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 7, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 13, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–30888 Filed 11–18–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Settlement Agreement in In Re Petoskey Manufacturing Co. Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that an Amended Settlement Agreement in *In re Petoskey Manufacturing Co.*, No. ST 90–81004 (W.D. Mich.), has been entered into by the United States on behalf of U.S. EPA and Petoskey Manufacturing Co., and was lodged with the United States District Court for the Western District of Michigan on November 10, 1998. Under the Amended Settlement

Agreement, the reorganized debtor will, *inter alia*, pay the United States $88,000 plus interest with respect to Petoskey Manufacturing Company Site in Petoskey, Michigan.

The Department of Justice will receive comments relating to the proposed Amended Settlement Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *In re Petoskey Manufacturing Co.*, D.J. Ref. No. 90–11–3–658A.

The proposed Amended Settlement Agreement may be examined at the Office of the United States Attorney for the Western Division of Michigan, 330 Ionia Ave. NW, Suite 501, Grand Rapids, MI 49503; the Region 5 Office of the United States Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Amended Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy of the proposed Amended Settlement Agreement, please enclose a check in the amount of $4.25 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30980 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that a proposed Consent Decree in *United States* v. *City of Portsmouth, et al.* and *State of New Hampshire* v. *City of Portsmouth, et al.*, consolidated as Civil Action No. 98–600–SD, was lodged with the United States District Court for the District of New Hampshire on October 30, 1998.

The claims in this civil action relate to the Coakley Landfill Superfund Site in North Hampton and Greenland, New Hampshire.

The proposed Consent Decree resolves the United States' claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, on behalf of the U.S. Environmental Protection Agency ("EPA"), against 28 municipal, corporate, and other defendants (the "Settling Defendants") for the performance of the Operable Unit Two management of migration remedial action at the Coakley Landfill Site and reimbursement towards costs incurred by EPA relating to Operable Unit Two. In addition, the Consent Decree resolves claims by the State of New Hampshire against the Settling Defendants relating to Operable Unit Two. The Consent Decree also provides for contribution by the United States on behalf of certain agencies of the United States (the "Settling Federal Agencies") towards the costs of performance of the Operable Unit Two work and Operable Unit Two EPA costs. Furthermore, the Consent Decree provides for contribution by three of the Settling Defendants towards the costs of performance of Coakley Landfill Operable Unit One source control work, which is being carried out by persons other than these three Settling Defendants pursuant to a previous consent decree, as well as for contribution to EPA oversight costs for such Operable Unit One work.

The twenty eight Settling Defendants are the City of Portsmouth, Town of North Hampton, Town of Newington, 1101 Islington Street, Inc., Automotive Supply Associates, Inc., BFI Waste Systems of North America, Inc., Booth Fisheries Corporation, Bournival, Inc., Customs Pools, Inc., Erie Scientific, Gary W. Blake, Inc., Great Bay Marine, Inc., GTE Operations Support Incorporated, K.J. Quinn & Co., Inc., Kmart Corporation, Mobil Oil Corporation, New England Telephone & Telegraph Company, Newington Midas Muffler, Northern Utilities, Inc., PMC Liquidation Inc., Public Service Company of New Hampshire, S&H Precision Manufacturing Co., Inc., Saef Lincoln-Mercury, Inc., Seacoast Volkswagen, Inc., Simplex Technologies, Inc., United Technologies Corporation, Waste Management of Maine, Inc., and Waste Management of New Hampshire, Inc. These defendants include former operators of the Coakley Landfill and generators and transporters of wastes taken to the Coakley Landfill.

Under the terms of the Consent Decree, the Hazardous Substances Superfund will receive $999,000 from the 28 Settling Defendants as a group towards EPA Operable Unit Two past costs and $251,000 from the United States on behalf of the Settling Federal Agencies towards EPA Operable Unit Two past costs. The Settling Defendants will also perform the Remedial Design and Remedial Action ("RD/RA") for Operable Unit Two as selected in EPA's Record of Decision dated September 30, 1994. In addition, the Settling Defendants will reimburse the EPA Hazardous Substances Superfund up to $60,000 in oversight costs relating to Operable Unit Two and, in the event that the United States or the State incurs future response costs other than oversight costs relating to Operable Unit Two, will reimburse the United States and the State for such future response costs. The United States, on behalf of the Settling Federal Agencies, will reimburse the Settling Defendants for 20.08% of the costs of Operable Unit Two work performed by the Settling Defendants, as well as 20.08% of oversight and future response costs paid by the Settling Defendants.

In addition, the Hazardous Substances Superfund will receive $18,706.22 from Great Bay Marine, Inc.; $16,250.00 from 1001 Islington Street, Inc.; and $18,706.22 from Bournival, Inc., three of the Settling Defendants, towards EPA Operable Unit One oversight costs. Also, Great Bay Marine, Inc. will pay $56,118.66; 1001 Islington Street, Inc. will pay $48,750.00; and Bournival, Inc. will pay $56,118.66, over time with interest, to the Coakley Landfill Trust, a trust account set up to pay for the Operable Unit One work being performed by other parties pursuant to the previous Coakley Operable Unit One decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. In addition, because the Consent Decree includes covenants not to sue the Settling Defendants under Section 7003 of RCRA, 42 U.S.C. 6973, the United States will provide an opportunity for a public meeting in the affected area, if requested within the thirty (30) day public comment period. *See* 42 U.S.C. § 6973(d). Any comments and/or requests for a public meeting should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Portsmouth, et al.*, Civil Action No. 98–600–SD, D.J. Ref. 90–11–2–678B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of New Hampshire, 55 Pleasant Street, Concord, New Hampshire 03301, at the Region I office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts 02203, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $62.25, payable to the Consent Decree Library for the 25 cent per page reproduction cost.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 98–30970 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Amended Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on October 30, 1998, the United States lodged a proposed amended consent decree, with the United States District Court for the Northern District of Illinois, in *United States, et al.* v. *the City of Rockford, Illinois,* Civil No. 98 C 50026, under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.* The Amended Consent Decree resolves certain claims of the United States and the State of Illinois against the City of Rockford, Illinois, under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. 9606(a) and 9607(a) at the Southeast Rockford Groundwater Contamination ("Site") located in Rockford, Winnebago County, Illinois. Under the proposed Amended Consent Decree, the City of Rockford reaffirms the term and provisions of the original Consent Decree entered by the Court on or about April 9, 1998 (to perform the remedial action selected by U.S. EPA in its September 30, 1995, Record of Decision), and the Plaintiffs will be paid approximately $14.7 million. The Amended Consent Decree resolves claims of Plaintiffs against the City of Rockford, as set forth in the Amended Consent Decree, and resolves potential claims the Plaintiffs may have against the Covenant Beneficiaries, as set forth in the Amended Consent Decree. The City of Rockford and Covenant Beneficiaries will receive the covenants not to sue and contribution protection specified in the Amended Consent Decree. The Department of Justice also provides Notice that under section 7003(d) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973(d), the public may request an opportunity for a public meeting at which time they may offer comment.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States, et al.* v. *The City of Rockford, Illinois,* (Civil No. 98 C 50026, N.D. Ill.), D.J. Ref. No. 90–11–3–945. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Illinois, Western Division, Rockford, Illinois; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, DC 20005, telephone No. (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $13.75 for the Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30969 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–4]

Cuong Trong Tran, M.D.; Denial of Application

On October 13, 1995, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Cuong Trong Tran, M.D. (Respondent), of Alexandria, Virginia, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated November 13, 1995, Respondent filed a request for a hearing, and following prehearing procedures, a hearing was held in Arlington, Virginia on June 3, 4 and 17, 1996, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument, and Respondent filed a letter in reply to the Government's submission. On January 13, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's application for a DEA Certificate of Registration should be denied. On April 24, 1998, Respondent filed exceptions to Judge Bittner's Opinion and Recommended Ruling, and subsequently, Government counsel filed a response to Respondent's exceptions. Thereafter, on May 14 and 21, 1998, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Ruling of the Administrative Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent graduated from medical school in 1965. He has been practicing as a general practitioner in Alexandria, Virginia since 1974. In 1979, a state inspector advised Respondent that a number of his patients were known drug abusers; that it appeared that the patients were seeing Respondent only to obtain drugs; and that Respondent should be more careful in prescribing to his patients. According to the inspector, Respondent indicated that he would be more careful.

Sometime prior to December 1990, DEA and a local police department received reports from local pharmacies and from the Virginia Board of Medicine that Respondent was excessively prescribing controlled substances over extended periods of time. As a result of

this information, investigators conducted a survey of 35 area pharmacies and determined that approximately 30 individuals were receiving a large number of controlled substance prescriptions from Respondent.

Between December 19, 1990 and February 21, 1991, two undercover officers and a cooperating individual went to Respondent's office in an attempt to obtain controlled substance prescriptions for no legitimate medical purpose. The cooperating individual went to Respondent's office on December 19, 1990 and January 10 and 16, 1991, wearing a concealed body wire which was monitored. During these visits, the cooperating individual had visible needle marks on his hands and arms from intravenous heroin use. At the first visit, the cooperating individual told Respondent that he had knee surgery in the past and that he had been taking pain killers for a long time. He indicated to Respondent that he needed to see him once a month, and asked for a specific controlled substance. After further conversation, Respondent asked "Where is the pain now?" and the cooperating individual reminded Respondent that it was an old knee injury and it was better. However, Respondent later asked whether the cooperating individual had knee pain and the individual answered, "Yes." Respondent issued the cooperating individual a prescription for Vicodin following a very cursory examination.

During the second visit, the individual indicated that he had run out of his medicine and referred to "that old knee injury from '85." Respondent told the cooperating individual that Vicodin "is addicting," to which the individual responded, "I know it's addicting, I've been taking it for five years and it's hard to get through without it, you know." Respondent nonetheless issued the individual a prescription for Vicodin. During the final visit, Respondent warned the individual of the addictive properties of Vicodin and advised him to take as little of the drug as possible and only when needed. Respondent did not examine the individual's knee.

An undercover police officer went to Respondent's office on eight occasions between December 19, 1990 and February 21, 1991. At first, the undercover officer indicated that he liked to feel a "little mellowed out." Respondent asked if the officer was nervous, to which he replied, "okay." The officer received a prescription for Valium. While Respondent's patient chart for the officer indicates that a physical examination was performed, the officer testified that there was no examination. During the second visit on December 27, 1990, Respondent asked if the undercover officer was nervous. The officer said, "Yeah * * * that Valium just didn't make me feel any better. * * *" Respondent refused the undercover officer's request for Percodan, but gave him a prescription for Xanax instead. According to the officer, Respondent listened to his breathing, but did not perform any other physical examination. At the next visit, the undercover officer indicated that he was not nervous, but that he wanted something stronger than Xanax. Respondent issued him a prescription for Ativan. For the next two visits, the undercover officer did not discuss any health problems whatsoever with Respondent and just asked for a prescription. Respondent warned the officer of the addictive nature of the prescribed drugs, but nonetheless issued prescriptions for Ativan. On the sixth visit, Respondent asked the officer if he felt "like [you're] a little nervous and everything," to which the officer responded, "yeah." Respondent gave the officer a prescription for Ativan. Finally, on the last two visits, the undercover officer indicated that he was feeling good. On one occasion, Respondent stated that the officer had come back too soon for another prescription. Respondent issued the officer Ativan prescriptions on both occasions.

A second undercover officer went to Respondent's office on four occasions between January 23 and February 21, 1991. During the first visit, the officer repeatedly asked for a prescription for Percodan. He offered to pay Respondent $100.00 instead of the $35.00 office visit charge. The officer told Respondent that he had obtained Percodan from another physician who told him that he had to have severe pain, but "between you and me I really don't have severe pain. * * *" He also told Respondent that he had sold Percodan in the past. Respondent asked the undercover officer if he had back pain, and the officer replied, "I guess if I have to, I'll have back pain." After further conversation, Respondent said "if you have pain come in here. I don't want to see you if you don't have pain." Respondent gave the officer a prescription for 30 Vicodin, telling him to take it only for pain. At the second visit, the undercover officer asked for Percocet and repeatedly said that he was not in any pain. Respondent issued the officer a prescription for 30 Vicodin, but told him not to take it if he was not in pain. During the next visit, the undercover officer indicated that he had run out of medicine. Respondent stated that the officer was back too soon for another prescription and should only take the drugs if he was in pain. The officer than stated, "So, if I don't have any pain, I don't get any, right?" The officer then stated that he had pain and asked Respondent to check his back. Respondent gave the officer a prescription for 20 Vicodin. On Respondent's final visit, Respondent again stated that the officer had returned too soon and repeatedly told the officer that he should only take the pills when he had pain and that they were addictive. The undercover officer said that, "if I have to come back, I'll make sure I have pain." Respondent issued the officer a prescription for 20 Vicodin.

After the pharmacy surveys and the undercover visits, search warrants were executed at Respondent's office in October 1991 and April 1992, during which various patient records were seized. Subsequently, a number of Respondent's patients were interviewed.

In her Opinion and Recommendation Ruling, Findings of Fact, Conclusions of Law and Decision, Judge Bittner went into great detail regarding the prescriptions discovered during the pharmacy surveys, the information contained in the patient charts, what was learned during the patient interviews and the testimony of some of these individuals in subsequent criminal trials. Since the Acting Deputy Administrator is adopting Judge Bittner's findings of fact in their entirety, there is no need for him to reiterate them. However, the Acting Deputy Administrator makes the following general findings regarding Respondent's prescribing to the individuals at issue.

In general, the individuals complained of headaches, backaches, pain in various other parts of the body, nervousness and anxiety. They usually saw Respondent two to five times a month for several years. At virtually every visit, they were prescribed controlled substances with little or no other treatment. Respondent performed little or no physical examinations and there were very few, if any, referrals to specialists. There was no apparent attempt by Respondent to determine the cause of the alleged problems. A number of the individuals were admitted drug abusers and exhibited some of the classic signs of drug abuse. Most of the individuals were required by Respondent to sign documents which essentially stated that they had been advised of the habit forming nature of the prescribed controlled substances; that they have tried other medications in the past, but the prescribed

controlled substances are the only medications that help; and that they assume all responsibility for the misuse of the medication prescribed by Respondent. Respondent told some of the individuals to avoid taking the prescriptions to certain pharmacies, particularly ones with computers; to take the prescriptions to various pharmacies; or to take the prescriptions to Maryland or Washington, D.C. to be filled.

One patient indicated that Respondent had a reputation in the community as a physician from whom it was easy to obtain drugs. A pharmacist called Respondent and told him that Respondent was issuing controlled substance prescriptions to an individual who was also getting such prescriptions from other physicians. Respondent told the pharmacist to go ahead and fill the presented prescription. Respondent refused to issue an individual another controlled substance prescription, indicating that some of his other patients had gotten him in trouble with DEA, and he stopped prescribing to another individual, telling her that he was having some troubles.

A pharmacist sent letters to Respondent regarding two patients asking Respondent for a diagnosis for the prescriptions issued since they were receiving a large number of prescriptions from Respondent. An insurance company wrote to Respondent regarding one of his patients seeking a diagnosis in light of an overabundance of prescriptions. There is no indication that Respondent replied to any of these letters.

One patient told Respondent that he had abused drugs in the past. Respondent routinely issued him controlled substance prescriptions for an alleged back problem. At some point, Respondent indicated that he could no longer issue the individual prescriptions for his back problem and the individual would have to have some other problem. The individual said that a tooth was bothering him when in fact he did not have a toothache. Respondent issued the individual controlled substance prescriptions regularly for five months for his alleged toothache. Thereafter, the patient chart indicates that Respondent prescribed the individual controlled substances supposedly for knee pain following surgery even though the individual was being treated by an orthopedist and he did not have any pain after the first week following surgery.

Experts for both the Government and Respondent reviewed Respondent's controlled substance prescribing. The Government experts essentially concluded that there was no legitimate medical purpose for Respondent's continued prescribing of controlled substances to the individuals at issue, or at the very least it was not good medicine. One expert found Respondent's prescribing to be clear abuse, gross misuse of addicting substances, inappropriate and indiscriminate. The other expert stated that with no tests to determine the cause, "the continued use of narcotics for headaches is reprehensible." He further testified that,

> I am not saying he is a bad doctor. I'm simply saying that he was duped many times over, and I think that's the reprehensible problem. He needed to think more clearly about why he was giving narcotics. There was one person here who had 500 prescriptions for a narcotic. I mean, * * * that's just never going to happen in real life with primary care physicians. It's just not going to happen. And yet it happened in his case, and it happened many times over * * *.

This expert also testified that when treating individuals with severe prolonged pain, he generally maintains them on narcotics for no more than one to two weeks and invariably refers them to a specialist if the narcotics are not successful. This expert further testified that while it is appropriate to warn patients of the addictive potential of controlled substances, he had never seen in his 35 years of practice a consent for, or a waiver for narcotics like the one that was used by Respondent.

Respondent's experts essentially felt that Respondent's prescribing was appropriate. However, neither of Respondent's experts were family practitioners. One of the experts felt that Respondent's patients described the normal signs of people suffering from migraine headaches and that prescribing of controlled substances is common for an acute migraine. But according to the expert, long-term use of controlled substances causes addiction which results in a vicious cycle because abrupt cessation of the medication will cause the patient to develop a headache. The expert testified that in such a situation, the patient needs to be hospitalized to manage the withdrawal from the controlled substances. Respondent's other expert indicated that if a patient with chronic pain made four or five visits to him and the pain was only alleviated by a narcotic, he would refer the patient to a specialist.

In 1992, Respondent was indicted in the United States District Court for the Eastern District of Virginia on 136 counts of prescribing controlled substances outside the usual curse of medical practice and for other than legitimate medical purposes in violation of 21 U.S.C. 841(a)(1). Following a jury trial, Respondent was found guilty of 127 counts of unlawful distribution of controlled substances.

As a result of his conviction, on April 26, 1993, the Virginia Board of Medicine (Medical Board) revoked Respondent's license to practice medicine in Virginia. Thereafter, DEA revoked Respondent's previous DEA Certificate of Registration by order published on July 12, 1993. See 58 Fed Reg. 37,506 (1993).

On February 28, 1994, the United States Court of Appeals for the Fourth Circuit reversed Respondent's conviction on 80 counts based upon insufficient evidence to convict, and reversed and remanded for a new trial the convictions on 47 counts because reputation evidence and a medical expert's hearsay opinion were improperly admitted into evidence. Subsequently Respondent was charged in a superseding indictment with 45 counts of unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). Respondent was tried on these counts in July 1994 and was acquitted on all charges. Following his acquittal, the Medical Board issued an order on August 15, 1994, vacating its earlier revocation of Respondent's medical license.

At the hearing in this matter, Respondent testified that he is "a changed man," and that he is now aware and more careful about giving narcotics to patients. However, he did not acknowledge that he had in any way improperly prescribed controlled substances. Respondent admitted that he told patients to go to different pharmacies, but said that he did so to encourage his patients to find the best price for their prescriptions. He denied that he ever told his patients to avoid having their prescriptions filled at pharmacies with computers or to spread their prescriptions among various pharmacies. Respondent further testified that pain is subjective, that he gives the patient the benefit of the doubt, and that "[m]y conscience say I have to trust people and now, after I go through that, I know you have to be careful not to trust people so much. * * *"

Respondent also testified that if he is issued a DEA registration, "I swear that I will not give controlled substances anymore, because this does not do any good to me." He stated that he needs a DEA registration in order to obtain hospital privileges, to be accepted by insurance companies as a provider, and to have his prescriptions for non-

controlled substances filled at pharmacies.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the pubic heath or safety. These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 Fed. Reg. 16,422 (1989).

Regarding factor one, it is undisputed that the Medical Board revoked Respondent's medical license following his conviction, but then reinstated it after his acquittal on all charges. Therefore, Respondent currently possesses an unrestricted state license to practice medicine and handle controlled substances. But, the Acting Deputy Administrator agrees with Judge Bittner that "inasmuch as state licensure is a necessary but not sufficient condition for DEA registration, * * * this factor is not dispositive."

As to factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, the Acting Deputy Administrator agrees with Judge Bittner that "[t]he record is replete with examples of Respondent's prescribing of controlled substances in a manner which is most charitably described as totally irresponsible." Pursuant to 21 CFR 1306.04, controlled substances may only be prescribed for legitimate medical purpose. There are many instances that suggest that Respondent was indiscriminately prescribing controlled substances. Respondent prescribed controlled substances to individuals on a regular basis over an extended period of time based solely on the subjective complaints of the individuals with little or no effort to determine the cause of the individual's problems or to refer them to specialists. Judge Bittner found the Government's expert who testified at the hearing to be "a knowledgeable, credible expert who thoroughly considered the information available to him." The expert found that there was no legitimate medical reason for Respondent's continued prescribing of controlled substances to almost all of the individuals.

The undercover visits raise serious concerns regarding Respondent's dispensing of controlled substances. One undercover officer repeatedly requested Percodan by name, told Respondent that he sold Percodan, and offered to pay Respondent $100.00 rather than the standard $35.00 office visit charge. In response to Respondent's question about whether he had any pain, the undercover officer stated that, "I guess if I have to, I'll have back pain." While Respondent refused to prescribe the undercover officer Percodan he did issue him prescriptions for Vicodin. The other undercover officer's patient chart indicates that Respondent performed a physical examination on the initial visit before issuing the officer a controlled substance prescription. However, the officer testified that Respondent did not perform any sort of an examination. As to the cooperating individual, Respondent issued him prescriptions for a narcotic even though the individual had visible needle marks on his hands and arms.

There are other indications in the record that Respondent himself was not completely comfortable with his prescribing of controlled substances to the individuals at issue. First, Respondent had his patients sign documents wherein the patients indicated that they would "take all the responsibility of the misuse of the medicine prescribed for my health by Tran-Cuong MD." As a DEA registrant, a physician must ensure that the controlled substances that he/she prescribes are only used for a legitimate medical purpose. These waivers are an attempt by Respondent to abrogate this responsibility. Second, according to a number of the individuals, Respondent told them to take their prescriptions to various pharmacies, to avoid pharmacies with computers and to take them to be filled at pharmacies in Maryland and Washington, D.C. Respondent contends that he never told the individuals to take their prescriptions to different pharmacies or to avoid pharmacies with computers, but that he only encouraged the individuals to find the best price for their medication. Since a number of the individuals related the same information, the Acting Deputy Administrator does not find Respondent's explanation credible. Finally, Respondent stopped prescribing controlled substances to at least two of the individuals stating that he was having trouble with DEA. This seems to suggest that Respondent himself doubted the legitimacy of the prescriptions that he had been issuing to these individuals.

The Acting Deputy Administrator concurs with Judge Bittner's finding "that Respondent prescribed controlled substances to numerous patients, over long periods of time, in contravention of his responsibility to establish that there was a medical need for these prescriptions."

Regarding factor three, while Respondent was initially convicted of 127 counts of unlawful distribution, these charges were ultimately disposed of by reversal, dismissal or acquittal. Therefore, there is no evidence that Respondent has been convicted of any charges relating to controlled substances.

As to factor five, Judge Bittner stated that "Respondent's continuing attempts to justify his prescribing practices warrant the inferences * * * that although Respondent clearly regrets the legal financial and personal difficulties that arose from his prescribing practices, he still does not fully acknowledge his wrongdoing.* * *"

Judge Bittner concluded that "Respondent is unwilling and/or unable to accept the responsibilities inherent in holding a DEA registration." Therefore, Judge Bittner found that Respondent's registration would be inconsistent with the public interest and recommended that his application be denied.

Respondent filed exceptions to Judge Bittner's recommendation stating that denial is too harsh a penalty since this is his first offense and he "was acquitted of criminal charges which were based on the same factual situation presented here." The Acting Deputy Administrator notes that these proceedings are not punitive in nature, but instead look to protect the public health and safety. See Richard J. Lanham, M.D., 57 Fed. Reg. 40,475 (1992); Richard A. Cole, M.D., 57 Fed. Reg. 8677 (1992). In evaluating this case, the Acting Deputy Administrator finds it noteworthy that Respondent was warned in 1979 that he was being conned by known drug abusers to issue them controlled substance prescriptions. Respondent

acknowledged this information, yet failed to exercise proper care in his future prescribing. In addition, while it is true that Respondent was acquitted of all criminal charges, a conviction is not a necessary prerequisite for denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and could justify revocation or denial. As Respondent's counsel noted in his closing argument at Respondent's second criminal trial:

> * * * because if Dr. Tran didn't notice what he should have noticed, that is not a crime. That may be bad doctoring. That may be carelessness. That may be a reason perhaps why someone shouldn't be a doctor * * *"

The Acting Deputy Administrator concludes that Respondent's careless and indiscriminate prescribing of controlled substances warrant the denial of his application for registration.

Also in his exceptions, Respondent contends that "this procedure has been a learning experience. I now realize the importance of maintaining detailed medical records on each patient * * * [and] I am a more enlightened man when it comes to prescribing controlled substances for a legitimate medical purpose *only*." Respondent says that he will only prescribe for a legitimate medical purpose and that he is a "changed man," but he does not acknowledge that he prescribed improperly. Therefore, the Acting Deputy Administrator is not confident that Respondent recognizes what needs changing in his handling of controlled substances. There is no evidence in the record how Respondent has changed or that he has attempted to better educate himself in the proper handling of controlled substances. As a result, the Acting Deputy Administrator does not believe that it is in the public interest for Respondent to be issued a registration at this time.

Finally, in his exceptions and during the hearing in this matter, Respondent indicated that if he is issued a DEA registration, he will refrain from dispensing controlled substances "because it not only get me in trouble, it doesn't do anything to me." According to Respondent without a DEA registration he cannot get hospital privileges, he is not accepted as a provider by insurance companies, pharmacies will not fill his non-controlled prescriptions, and pharmaceutical representatives refuse to give him samples of non-controlled substances. While Respondent's predicament is unfortunate, it does not justify granting him a DEA registration. Practitioners are issued DEA registrations so that they can responsibly handle controlled substances, not so that they can obtain hospital privileges. In light of Respondent's failure to acknowledge any wrongdoing, the lack of any details as to how he has changed, and the absence of any recent training in the proper handling of controlled substances, the Acting Deputy Administrator concludes that it would be inconsistent with the public interest to grant Respondent's application for DEA Certificate of Registration at this time.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration, executed by Cuong Trong Tran, M.D., be, and it hereby is, denied. This order is effective December 21, 1998.

Dated: November 13, 1998.

Donnie R. Marshall,

Acting Deputy Administrator.

[FR Doc. 98–30884 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1889–97]

Imposition of Fines Under Section 231 of the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice serves to clarify the Immigration and Naturalization Service (Service) policy involving the imposition of fines under section 231 of the Immigration and Nationality Act (Act). The Service will, in the future publicize criteria and implement procedures that will impose fines for violations of section 231(a) and (b), of the Act, in a more comprehensive manner. However, fines will not be imposed until the Service has notified the carriers of procedures and criteria that will be used in this process.

DATES: This notice is effective November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Una Brien, National Fines Office, Immigration and Naturalization Service, 1400 Wilson Blvd., Suite 210, Washington, DC 22209, telephone (202) 305–7018.

SUPPLEMENTARY INFORMATION: This notice announces the Service's plans to adopt new procedures to impose fine liability under section 231(a) and (b) of the act. Specifically the Service intends to begin to fine carriers for violations in accordance with procedures in section 231(a) and expand fine liability under 231(b) of the Act in accordance with procedures and criteria that are being developed. The Service will inform carriers of the procedures and criteria under which such fines may be levied via further publication in the **Federal Register**. These fines will not be imposed until the Service has informed the interested parties through publication in the **Federal Register** of the procedures and criteria. When these procedures and criteria are published as a notice of proposed rulemaking, carriers and others will have an opportunity for comment.

The collection of arrival and departure information for airport and seaport activity is addressed in section 231 of the Act and expanded upon in CFR part 231. This section delineates the transportation company's responsibility to provide manifests for arriving and departing passengers.

Presently, the Service only imposes fines for violations of section 231(b) of the act, with respect to the proper submission of departure manifests, Form I–94T. The Service plans to expand the imposition of section 231(a) and (b) fines for failure to present properly completed arrival and departure manifests, as required on Form I–94, Arrival-Departure Record; Form I–94T, Arrival-Departure Record (Transit Without Visa); and Form I–94W, Visa Waiver Nonimmigrant Arrival/Departure Document.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) Pub. L. 104–208, 110 Stat. 3009 (Sept. 30, 1996) requires the Service to develop an automated entry and exit control system that will collect a record of departure for every alien departing the United States and match these records of departure with the record of the alien's arrival in the United States. This will enable the Attorney General to identify, through on-line searching procedures, lawfully admitted nonimmigrants who remain in the United States beyond the authorized period of stay. Forms I–94 are used to record the arrival and departure of nonimmigrant aliens into and from the United States. Imposing fines under section 231 of the Act will encourage air and sea carriers to comply with regulations concerning the proper submission of Form I–94, I–94T, and I–94W.

The Service has defined the Form I–94 as the document which meets the manifest requirements. 8 CFR 231.1(a) The Form I–94 information is maintained in the Nonimmigrant Information System (NIIS). The reliability and timeliness of the information contained within NIIS has been a matter of concern and has been questioned by the General Accounting Office, the Department of Justice, Office of the Inspector General (OIG), and internally by the Service. At present, the Service is reviewing NIIS to identify problems and develop solutions for its deficiencies. In a recent OIG inspection report on overstays (Report Number I–97–08) the OIG stated that the Service needs to improve its departure data, particularly the collection of departure Forms I–94. "Given the long-standing failure to receive all departure records, INS should take immediate action to improve collection of these forms.
* * *"

Implementing a more comprehensive program to impose section 231 fines will be part of a multi-pronged approach (which includes training carriers and Service personnel on proper I–94 processing procedures and monitoring compliance) to improve data collection as required by Congress and the OIG.

Dated: November 10, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–30951 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request Revision of a Currently Approved Collection

ACTION: Notice of Information Collection; Revision of a Currently Approved Collection; Arrestee Drug Abuse Monitoring (ADAM, formerly Drug Use Forecasting) Program.

The Department of Justice, Office of Justice Programs, has submitted the information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until January 19, 1999.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency; including whether the information will have any practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Arrestee Drug Abuse Monitoring (ADAM, formerly Drug Use Forecasting) Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* No agency form number. Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Misdemeanor and felony arrestees in city and county jails and juvenile detention facilities. The ADAM program monitors the extent and types of drug use among arrestees. Currently the program operates in 35 cities. An additional 15 sites are proposed for establishment by the end of 1999, to bring the total to 50 cities, and 25 additional cities by the end of the year 2000, which will bring the total number of cities to 75. Data are collected in each city every three months from a new sample of arrestees. Participation is voluntary and anonymous and data collected include a personal interview and urine specimen.

In the next 6 months, OJP proposes to introduce new features to the program, the primary being.

—A redesigned data collection instrument

—A sample selection process to replace the current process

Implementation of these features will require special field testing in the current ADAM sites.

(5) *An estimate of the total number of respondents and amount of time estimated for an average respondent to respond:* Following is the maximum number of responses expected for the main ADAM questionnaire in Fiscal Year 1999 and 2000. The estimate assumes that 50 sites are in operation all quarters of FY 1999 and 75 sites are in operation all quarters of FY 2000. In FY 1999, 50000 adult male arrestees, 20000 adult female arrestees, 20000 juvenile male arrestees, and 10000 juvenile female arrestees will be interviewed (total = 100,000 at 20 minutes a response). In FY 2000, 75000 adult male arrestees, 30000 adult female arrestees, 30000 juvenile male arrestees, and 15000 juvenile female arrestees will be interviewed (total = 150,000 at 20 minutes a response). Additionally, addendum questionnaires will be administered to the same respondents at some number of sites for some number of quarters over the year. The estimate provided here is the maximum number of responses that will be obtained: it is assumed that all sites will field an addendum questionnaire in 3 out of the 4 quarters of the year. In FY 1999, the number of addendum questionnaires administered across all respondent types will be 300,000 at 10 minutes per response; and in FY 2000 the number of addendum questionnaires administered will be 450,000 at 10 minutes a response.

(6) An estimate of the total public burden (in hours) associated with the collection: 83,000 hours in FY 1999 and 125,000 hours in FY 2000.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Dr. K. Jack Riley 202–616–9030, Director, Arrestee Drug Abuse Monitoring (ADAM) Program, National Institute of Justice, room 7344, 810 7th Street NW, Washington, DC 20531. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Dr. K. Jack Riley.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 13, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–30882 Filed 11–18–98; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL LABOR RELATIONS BOARD

Privacy Act of 1974; Publication of Revised and Deleted Systems of Records Notice

AGENCY: National Labor Relations Board (NLRB).

ACTION: Amendments to systems of records for Payroll/Personnel Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, the National Labor Relations Board (NLRB) publishes this notice of its intention to establish a system of records to be entitled "NLRB–10, Payroll/Personnel Records," by combining three existing systems of records, NLRB–10, Pay Records—Retirement; NLRB–11, Payroll-Finance Records; and NLRB–13, Time and Attendance Records. This change is accomplished by modifying one entry and deleting two others, deleting two routine uses, dividing one routine use into two distinct uses for purposes of clarify, amending the language of four routine uses, adding two new routine uses, and updating the addresses of system locations; updating the citations referring to 29 CFR 102.117; as well as making several insignificant administrative language revisions.

All persons are advised that in the absence of submitted comments, views, or arguments considered by the NLRB as warranting modification of the notice as herewith to be published, it is the intention of the NLRB that the notice shall be effective upon expiration of the comment period without further action by this Agency.

DATES: The amended system of records notice will become effective without further notice 30 days from the date of this publication (December 21, 1998) unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: All persons who desire to submit written comments, views, or arguments for consideration by the NLRB in connection with the proposed new system of records shall file them with the Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

Copies of all such communications will be available for examination by interested persons during normal business hours in the Office of the Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

FOR FURTHER INFORMATION CONTACT: John J. Toner, Executive Secretary, National Labor Relations Board, Room 11600, 1099 14th Street, NW, Washington, DC 20570–0001.

SUPPLEMENTARY INFORMATION: 1. The following changes have been made to the proposed new system of records entitled, NLRB–10, Payroll/Personnel Records, by combining three existing systems: "NLRB–10, Pay Records Retirements"; "NLRB–11, Payroll-Finance Records"; and "NLRB–13, Time and Attendance Records"; and by deleting old routine uses Nos. 1 and 2 because the specified "need to know" in them is authorized by 5 U.S.C. 552a(b)(5).

2. Routine use No. 2 is new and is added to reflect the changes resulting from the installation of an electronic personnel/payroll system upgrading the earlier payroll, personnel, and time and attendance systems. The NLRB utilizes the Department of Agriculture, National Finance Center (NFC), and NFC's electronic Payroll/Personnel Processing System, PC–TARE, to prepare and electronically transmit data to NFC.

3. The language of routine use No. 8 has been amended to specify that on disclosure to an inquiring congressional office, the subject individual must be a constituent about whom the records are maintained.

4. Routine use No. 9 has been divided into two distinct uses Nos. 9 and 10 for purposes of clarity, one dealing solely with arbitrators, and the other with officials of labor organizations. The language has been amended to conform to the intent of routine use (e) in the Government-wide system of records OPM/GOVT–2, Employee Performance File System Records, to eliminate the NLRB requirement that the information that may be disclosed to a labor organization "shall be furnished in depersonalized form, i.e., without personal identifiers." Routine use (e) is a Government-wide system of records OPM/GOVT–2 which provides that the information will be "disclosed to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation." The NLRB is deleting the requirement that "[W]henever feasible and consistent with responsibilities under the Act, such information shall be furnished in depersonalized form, i.e., without personal identifiers," a requirement not contained in OPM/GOVT–2 routine use (e).

5. Routine use No. 11 has been amended by changing reference from "Agency" to "NLRB" for more specificity.

6. Routine use No. 12 is amended to specify more exactly the information that may be disclosed to a court or an adjudicative body in the course of presenting evidence or argument including disclosure to opposing counsel of witnesses in the course of civil discovery.

7. Routine use No. 14 is new and has been added pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PL 104–193), NLRB will disclose data from its Payroll/Personnel Records system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for use in the National Database of New Hires, part of the Federal Parent Locator Service (FPLS), and Federal Tax Offset System, DHHS/OCSE No. 09–90–0074.

FPLS is a computerized network through which States may request location information from Federal and state agencies to find noncustodial parents and their employers for purposes of establishing paternity and securing support. On October 1, 1997, the FPLS was expanded to include the National Directory of New Hires, a database containing employment information on employees recently hired, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. On October 1, 1998, the FPLS will be expanded further to include a Federal Case Register. The Federal Case Register will contain abstracts on all participants involved in child support enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

When individuals are hired by NLRB, the Agency may disclose to the FPLS their names, social security numbers, home addresses, dates of birth, dates of hire, and information identifying us as the employer. NLRB also may disclose

to FPLS names, social security numbers, and quarterly earnings of each NLRB employee, within 1 month of the end of the quarterly reporting period.

Information submitted by NLRB to the FPLS will be disclosed by the Office of Child Support Enforcement to the Social Security Administration for verification to ensure that the social security number provided is correct. The data disclosed by NLRB to the FPLS will also be disclosed by the Office of Child Support Enforcement to the Secretary of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

8. The address of system locations and managers in NLRB–10 has been changed from "NLRB, 1717 Pennsylvania Avenue, NW, Washington, DC 20570–0001" to "NLRB, 1099 14th Street, NW, Washington, DC 20570–0001."

9. References to 29 CFR 102.117 citations have been changed to read as follows for the paragraphs in Notifications Procedures, 29 CFR 102.117(f); Records Access Procedures, 29 CFR 102.117(g) and (h); and Contesting Records Procedures, 29 CFR 102.117(i).

A report of the proposal to establish this system of records was filed pursuant to 5 U.S.C. 552(r) with Congress and the Office of Management and Budget.

Dated: Washington, DC, October 22, 1998.

By direction of the Board.

John J. Toner,

Executive Secretary.

NLRB–10

SYSTEM NAME:

Payroll/Personnel Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Personnel Branch, National Labor Relations Board, 1099 14th Street, NW, Washington, DC 20570–0001. Each Washington and field office maintains a copy of time and attendance records for current employees in its office, and is authorized to maintain such records on former employees of that office. See the attached appendix for addresses of these offices.

Inactive records are stored at the appropriate Federal records center in accordance with provisions of applicable General Records Schedules issued by National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NLRB employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include employee's name, previous name if any, home address, date of birth, social security number, sex, race, time and attendance records, and employment histories, including prolonged leave without pay and monetary contributions to a retirement fund or thrift-savings plan made during employment and information relevant thereto. In addition, these records may also include:

A. Employment Payroll Records: These are magnetic tape and microfiche records containing information on current and former pay and leave status for individuals serviced by the automated payroll/personnel system.

B. Employee Pay Records: These are magnetic tape, microfiche, and individual paper folders containing information on savings bond deductions, savings account allotments, charitable contributions, child support and alimony, and Federal and state tax exemption certificates. The individual paper folders contain source documents, correspondence, and other papers in support of an active employee's pay and other allowances requested by the employee.

C. History of Earnings and Time and Attendance Records: These are paper copies and microfiche records containing information on earnings, time and attendance, leave, and other pay-related activities.

D. Copies of Retirement Records: These are copies of Individual Retirement Records, Civil Service Retirement (SF–2806) or the Federal Employees Retirement System (SF–3100) from the former payroll systems. These records will be used to update employees' records in cases of retroactive adjustments.

E. Former Employee Pay Records: These records are the employee pay records (A and C, above) for employees who have been separated, transferred, or retired. In addition to information contained in the Employee Pay Records, they include information related to retirement, separation or transfer, time and attendance, and leave. These records are destroyed after separation in accordance with the NARA General Records Schedule.

F. Unemployment Records: These records are the Unemployment Compensation Records for separated employees who seek unemployment benefits. They are maintained in a separate file.

G. Returned Check Records: These records are a manual log for recording and controlling checks issued to employees that were returned to the Agency because they were undelivered, erroneous, or canceled prior to conversion to cash.

H. Indebtedness Records: These records include source documents, correspondence, and other papers containing information regarding the Government's claims of debt against individuals covered by the system. These records are supplemented by hard copy or electronic records necessary to establish the identity and address of the individuals, including in certain cases, the taxpayer's mailing address provided by the Internal Revenue Service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Agency head is responsible for establishing and maintaining an adequate payroll system, covering pay, leave, time and attendance, and allowances, in accordance with 5 U.S.C. 8301, 29 U.S.C. 153(a) and (d), 154; the Debt Collection Act of 1982 and 49 FR 27470 (salary offset provisions published 7/3/84) and 5 U.S.C. 8501–8508, Unemployment Compensation for Federal employees, the Debt Collection Improvement Act of 1996, and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 Pub. L. 104–193, 316(f) codified at 42 U.S.C. 653.

PURPOSE:

These records document the payroll process as it relates to current and former NLRB employees, and are used to support various fiscal and personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records or information contained therein may be disclosed to:

1. Individuals who need the information in connection with the processing of an appeal, grievance, or complaint.

2. The U.S. Department of Agriculture, National Finance Center.

3. The Office of Personnel Management concerning pay and benefits for administering the Civil Service/Federal Employees Retirement Systems, and other information necessary for the office to carry out its Government-wide personnel management functions.

4. State and local authorities for the purpose of verifying tax collections, unemployment compensation claims, and administering public assistance programs.

5. The U.S. Department of Health and Human Services for the administration of the social security program.

6. The U.S. General Accounting Office for audit purposes.

7. Other agencies, offices, establishments, and authorities, whether Federal, State, or local, authorized or charged with the responsibility to investigate, litigate, prosecute, enforce, or implement a statute, rule, regulation, or order, where the record or information, by itself or in connection with other records or information, indicates a violation or potential violation of law, whether criminal, civil, administrative or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

8. A Member of Congress or to a Congressional staff member in response to an inquiry of the congressional office made at the written request of the constituent about whom the records are maintained.

9. An arbitrator to resolve disputes under a negotiated grievance arbitration procedure.

10. Officials of labor organizations recognized under 5 U.S.C. chapter 71, when disclosure is not prohibited by law; and the data is normally maintained by the Agency in the regular course of business and is reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining. The forgoing shall have the identical meaning as 5 U.S.C. 7114(b)(4) as interpreted by the FLRA and the courts.

11. The Department of Justice for use in litigation when either: (a) The NLRB or any component thereof: (b) an employee of the NLRB in his or her official capacity; (c) any employee of the NLRB in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or (d) the United States Government where the NLRB determines that litigation is likely to affect the NLRB or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the NLRB to be relevant and necessary to the litigation, provided that in each case the Agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

12. A court, magistrate, administrative tribunal, or other adjudicatory body in the course of presenting evidence or argument, including disclosure to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings, when: (a) The NLRB or any component thereof; or (b) any employee of the NLRB in his or her official capacity; or (c) any employee of the NLRB in his or her individual capacity where the NLRB has agreed to represent the employee; or (d) the United States Government is a party to litigation or has interest in such litigation, and determines that such disclosure is relevant and necessary to the litigation and that the use of such records is therefore deemed by the NLRB to be for a purpose that is compatible with the purpose for which the records were collected.

13. The U.S. Treasury Department for payroll purposes.

14. Names, social security numbers, home addresses, dates of birth, dates of hire, quarterly earnings, employer identifying information, and State of hire of employees may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions required by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (Welfare Reform law, Pub. L. 104–193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, on employment history cards, on microfiche, on computer disks and diskettes, on magnetic computer tapes, and on computer printouts.

RETRIEVABILITY:

Records are retrievable alphabetically by individual name and/or personal identifier (social security number).

SAFEGUARDS:

Maintained in file cabinets within the Payroll/Personnel Systems Unit. During duty hours, file cabinets are under surveillance of personnel charged with custody of the records, and after duty hours, records are behind locked doors. Computer records can be accessed only through use of confidential procedures and passwords. Access is limited to personnel who have a need for access to perform their official functions.

RETENTION AND DISPOSAL:

Files are disposed of according to applicable provisions of the General Records Schedules issued by the National Archives and Records Administration, and with General Accounting Office approval. Microfilm, magnetic strip ledgers, and microfiche are maintained for 56 years after the date of last entry, GRS 2.1.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, NLRB, 1099 14th St., NW., Washington, DC 20570–1000. (See the attached appendix for the titles and addresses of officials of other locations responsible for this system at their locations.)

NOTIFICATION PROCEDURE:

An individual may inquire as to whether this system contains a record pertaining to her or him by directing a request to the system manager in accordance with the procedures set forth in 29 CFR 102.117(f).

RECORD ACCESS PROCEDURE:

An individual seeking to gain access to records in this system pertaining to her or him should contact the appropriate manager in accordance with the procedures set forth in 29 CFR 102.117 (g) and (h).

CONTESTING RECORD PROCEDURE:

An individual may request amendment of a record pertaining to such individual maintained in this system by directing a request to the appropriate system manager in accordance with procedures set forth in 29 CFR 102.117(i).

RECORD SOURCE CATEGORIES:

Personnel Branch, timekeepers, supervisors, and National Finance Center.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix

Names and Addresses of NLRB Offices referenced in Notice of Records System shown below.

NLRB Headquarters Offices: 1099 14th Street, NW, Washington, DC 20570–0001

Offices of the Board

Members of the Board
Executive Secretary, Office of the Executive Secretary
Director, Office of Representation Appeals
Director, Division of Information

Solicitor
Inspector General, Office of Inspector General
Chief Administrative Law Judge, 1099 14th Street, NW, Room 5400 East, Washington, DC 20570–0001
Associate Chief Administrative Law Judge, San Francisco Judges, 901 Market Street, Suite 300, San Francisco, California 94103–1779
Associate Chief Administrative Law Judge, New York Judges, 120 West 45th Street, 11th Floor, New York, New York 10036–5503
Associate Chief Administrative Law Judge, Atlanta Judges, Peachtree Summit Building, 401 W. Peachtree Street, NW, Suite 1708, Atlanta, Georgia 30308–3510

Offices of the General Counsel

General Counsel
Associate General Counsel, Division of Operations Management
Associate General Counsel, Division of Advice
Associate General Counsel, Division of Enforcement Litigation
Director, Division of Administration
Director, Equal Employment Opportunity

NLRB Field Offices

Regional Director, Region 1, Thomas P. O'Neal, Jr. Federal Office Building, 10 Causeway Street, 6th Floor, Boston, Massachusetts 02222–1072
Regional Director, Region 2, Jacob K. Javits Federal Building, 26 Federal Plaza, Room 3614, New York, New York 10278–0104
Regional Director, Region 3, Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202–2387
Resident Officer, Albany Resident Office, Leo W. O'Brien Federal Building, Clinton Avenue at N. Pearl Street, Room 342, Albany, New York 12207–2350
Regional Director, Region 4, One Independence Mall, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania 19106–4404
Regional Director, Region 5, The Appraisers Store Building, 103 South Gay Street, 8th Floor, Baltimore, Maryland 21202–4026
Resident Officer, Franklin Court Building, 1099 14th Street, NW, Suite 5530, Washington, DC 20570–0001
Regional Director, Region 6, William S. Moorehead Federal Building, 1000 Liberty Avenue, Room 1501, Pittsburgh, Pennsylvania 15222–4173
Regional Director, Region 7, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Room 300, Detroit, Michigan 48226–2569
Resident Officer, Grand Rapids Resident Office, The Furniture Company Building, 82 Ionia Northwest, Room 330, Grand Rapids, Michigan 49503–3022
Regional Director, Region 8, Anthony J. Celebrezze Federal Building, 1240 East 9th Street, Room 1695, Cleveland, Ohio 44199–2086
Regional Director, Region 9, Federal Office Building, 550 Main Street, Room 3003, Cincinnati, Ohio 45202–3271
Regional Director, Region 10, Harris Tower, 233 Peachtree Street, NE, Suite 1000, Atlanta, Georgia 30303–1504
Resident Officer, The Burger-Phillips Center, 1900 3rd Avenue North, Third Floor, Birmingham, Alabama 35203–3502
Regional Director, Region 11, Republic Square, Suite 200, 4035 University Parkway, Winston-Salem, North Carolina 27106–3325
Regional Director, Region 12, Enterprise Plaza, Suite 530, 201 East Kennedy Boulevard, Tampa, Florida 33602–5824
Resident Officer, Jacksonville Resident Office, Federal Building, 400 West Bay Street, Room 214, Box 35091, Jacksonville, Florida 32202–4412
Resident Officer, Miami Resident Office, Federal Building, 51 Southwest 1st Avenue, Room 1320, Miami, Florida 33130–1608
Regional Director, Region 13, 200 West Adams Street, Suite 800, Chicago, Illinois 60606–5208
Regional Director, Region 14, 1222 Spruce Street, Room 8.202, Saint Louis, Missouri 63103–2829
Regional Director, Region 15, 1515 Poydras Street, Room 610, New Orleans, Louisiana 70112–3723
Regional Director, Region 16, Federal Office Building, 819 Taylor Street, Room 8A24, Fort Worth, Texas 76102–6178
Resident Officer, Houston Resident Office, 440 Louisiana Street, Suite 550, Houston, Texas 77002–2649
Resident Officer, San Antonio Resident Office, 615 E. Houston Street, Room 565, San Antonio, Texas 78205–2040
Resident Officer, El Paso Resident Office, PO Box 23159, El Paso, Texas 79923–3159
Regional Director, Region 17, 8600 Farley Street, Suite 100, Overland Park, Kansas 66212–4677
Resident Officer, Tulsa Resident Office, 224 South Boulder Avenue, Room 316, Tulsa, Oklahoma 74103–4214
Regional Director, Region 18, Federal Building, 110 South 4th Street, Room 234, Minneapolis, Minnesota 55401–2291
Resident Officer, Des Moines Resident Office, Federal Building, 210 Walnut Street, Room 439, Des Moines, Iowa 50309–2116
Regional Director, Region 19, Henry M. Jackson Federal Building, 915 Second Avenue, Room 2948, Seattle, Washington 98174–1078
Resident Officer, Anchorage Resident Office, Federal Office Building, 222 West 7th Avenue, Box 21, Anchorage, Alaska 99513–3546
Officer in Charge, Subregion 36, 222 SW Columbia Street, Room 401, Portland, Oregon 97201–6604
Regional Director, Region 20, 901 Market Street, Suite 400, San Francisco, California 94103–1735
Officer in Charge, Subregion 37, Prince Kuhio Federal Building, 300 Ala Moana Boulevard, Room 7318, Honolulu, Hawaii 96850–4980
Regional Director, Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017–5449
Resident Officer, San Diego Resident Office, Pacific Professional Center, 555 West Beech Street, Suite 302, San Diego, California 92101–2939
Regional Director, Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102–2570
Regional Director, Region 24, La Torre de Plaza, 525 F.D. Roosevelt Avenue, Suite 1002, San Juan, Puerto Rico 00918–1002
Regional Director, Region 25, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 238, Indianapolis, Indiana 46204–1577
Region Director, Region 26, Mid-Memphis Tower Building, 1407 Union Avenue, Suite 800, Memphis, Tennessee 38104–3627
Resident Officer, Little Rock Resident Office, TCBY Tower, 425 West Capitol Avenue, Suite 375, Little Rock, Arkansas 72201–3489
Resident Officer, Nashville Resident Office, 810 Broadway, 3rd Floor, Nashville, Tennessee 37203–3816
Regional Director, Region 27, Dominion Plaza, North Tower, 600 17th Street, 7th Floor, Denver, Colorado 80202–5433
Regional Director, Region 28, Security Building, 234 North Central Avenue, Suite 440 Phoenix, Arizona 85004–2212
Resident Officer, Albuquerque Resident Office, Western Bank Plaza, 505 Marquette Avenue, NW, Room 1820, Albuquerque, New Mexico 87102–2181
Resident Officer, Las Vegas Resident Office, Alan Bible Federal Building, 600 Las Vegas Boulevard South, Suite 400, Las Vegas, Nevada 89101–6637
Regional Director, Region 29, One MetroTech Center, Jay Street and Myrtle Avenue, 10th Floor, Brooklyn, New York 11201–4201
Regional Director, Region 30, Henry S. Reuss Federal Plaza, Suite 700, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203–2211
Regional Director, Region 31, 11150 W. Olympic Boulevard, Suite 700, Los Angeles, California 90064–1824
Regional Director, Region 32, Breuner Building, 2nd Floor, 1301 Clay Street, Room 300N, Oakland, California 94612–5211
Regional Director, Region 33, Hamilton Square Building, Suite 200, 300 Hamilton Boulevard, Peoria, Illinois 61602–1246
Regional Director, Region 34, 1 Commercial Plaza, 21st Floor, Church and Trumbull Street, Hartford, Connecticut 06103–3599

[FR Doc. 98–30911 Filed 11–18–98; 8:45 am]
BILLING CODE 7545–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23533; File No. 812–11142]

The Mutual Life Insurance Company of New York, et al.

November 13, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for Approval and Exemption under the Investment Company Act of 1940 ("1940 Act"). Order requested pursuant to Section 26(b) of the 1940 Act

approving the proposed substitution of securities and pursuant to Section 17(b) of the 1940 Act exempting the proposed transaction from the provisions of Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an Order approving the substitution of shares of the Money Market Portfolio Series (the "MONY Money Market Portfolio") of the MONY Series Fund, Inc. for shares of the Money Market Series ("OCC Money Market Portfolio") of the OCC Accumulation Trust (the "Trust"). Applicants also seek an Order exempting them from Section 17(a) of the 1940 Act to the extent necessary to permit Applicants to carry out the above-referenced substitution by redeeming shares of the OCC Money Market Portfolio in-kind or partly in-kind and using the redemption proceeds to purchase shares of the MONY Money Market Portfolio.

APPLICANTS: The Mutual Life Insurance Company of New York ("MONY") and MONY Life Insurance Company of America ("MONY America", and collectively with MONY "the Companies"), their respective separate accounts, MONY Variable Account A ("MONY Account") and MONY America Variable Account A ("MONY America Account", and collectively with the MONY Account "the Accounts"), OCC Accumulation Trust and MONY Series Fund (collectively with OCC Accumulation Trust, the Companies and the Accounts "the Applicants").

FILING DATE: The Application was filed on May 8, 1998, and amended and restated on September 16, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m., on December 8, 1998, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Frederick C. Tedeschi, Esq., The Mutual Life Insurance Company of New York, 1740 Broadway, New York, NY 10019. Copies to Deborah Kaback, Esq., Oppenheimer Capital, Two World Financial Center, New York, N.Y. 10281–1698.

FOR FURTHER INFORMATION CONTACT: Lorna MacLeod, Attorney, or Mark Amorosi, Special Counsel, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The complete Application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representations

1. MONY is a mutual life insurance company organized in the state of New York in 1842. MONY America is a stock insurance company organized in the state of Arizona. MONY America is the corporate successor of VICO Credit Life Insurance Company, incorporated in Arizona on March 6, 1969. MONY America is a wholly owned subsidiary of MONY. MONY and MONY America serve as sponsor and depositor of the MONY Account and MONY America Account, respectively.

2. MONY and MONY America established the MONY Account and MONY America Account on November 28, 1990 and March 27, 1987, respectively. The Accounts are segregated asset accounts registered with the Commission as unit investment trusts pursuant to the provisions of the 1940 Act and are used to fund certain individual and group flexible payment variable annuity contracts issued by the Companies and sold under the name "ValueMaster" ("ValueMaster Contracts").

3. The Accounts are currently divided into various sub-accounts ("Sub-Accounts"), five of which are available to owners of ValueMaster Contracts ("ValueMaster Contractowners") and which reflect the investment performance of the Bond, Equity, Managed, Money Market and Small Cap Series of the Trust, a registered investment company. ValueMaster Contractowners may transfer account values among the Sub-Accounts without any charge up to four times a year. For any additional transfers, a transfer charge is not currently imposed, however the Companies reserve the right to impose a charge, which will not exceed $25 per transfer. The ValueMaster Contracts are offered exclusively by agents of Oppenheimer Life Agency, Ltd., ("Oppenheimer Life"), which is not an affiliate of OpCap Advisors, a registered investment adviser and the Trust's investment manager. Neither Oppenheimer Life nor OpCap Advisors are affiliates of the Applicants. As of December 31, 1997, there were under 800 ValueMaster Contractowners with allocations totaling $2,166,258 to the OCC Money Market Portfolio, representing only 3% of the total assets invested in the Accounts by ValueMaster Contractowners. Oppenheimer Life is no longer actively selling the ValueMaster Contracts.

4. The Trust was established on May 12, 1994 and is a registered open-end management investment company consisting of seven separate series ("Portfolios") with differing investment objectives, policies and restrictions. The Trust currently also offers shares of its Portfolios to accounts of other unaffiliated life insurance companies, to serve as the investment vehicle for their respective variable annuity and life insurance contracts.

5. The OCC Money Market Portfolio seeks maximum current income consistent with stability of principal and liquidity through investment in a portfolio of high quality money market instruments. Shares of the OCC Money Market Portfolio are purchased, without sales charge, by the Money Market Sub-Accounts of the respective Accounts at the net asset value per share next determined following receipt of a purchase payment by the Sub-Accounts. Any dividend or capital gain distributions received from the Portfolio is reinvested in additional shares of the Portfolio and retained as assets of the Sub-Accounts. Shares are redeemed without any charge or fee to the Accounts to the extent necessary for the Companies to make annuity or other payments under the ValueMaster Contracts. As of December 31, 1997, the OCC Money Market Portfolio had assets of $2,166,067 all of which were attributable to ValueMaster Contractowners. For the calendar year 1997, net redemptions by the Accounts of shares of the OCC Money Market Portfolio, not including dividend or capital gain reinvestments, totaled $3,312,805.

6. Like the OCC Money Market Portfolio, the MONY Money Market Portfolio seeks maximum current income consistent with stability of principal and liquidity through investment in a portfolio of high quality money market instruments. Shares of the MONY Money Market Portfolio are currently offered by the Companies as a funding vehicle for their variable products and, as such, are held by a segregated account of each insurance

company. As of December 31, 1997, the MONY Money Market Portfolio had assets of $158,286,237. For the calendar year 1997, net sales of shares of the MONY Money Market Portfolio, not including dividend or capital gain reinvestments, totaled $5,418,168.

7. Under the Investment Advisory Agreement ("Advisory Agreement") between the Trust and OpCap Advisors, OpCap Advisors provide management and investment advisory services to the Trust and its Portfolios and is compensated by the Trust for services rendered to the OCC Money Market Portfolio on a monthly basis at the annual rate of .40 percent of the average daily net assets of the OCC Money Market Portfolio. Under the Advisory Agreement, OpCap Advisors has contractually agreed to limit the total expenses of the Portfolio to 1.00 percent of its average daily net assets. Pursuant to an Investment Advisory Agreement between the MONY Series Fund, Inc. and MONY America, MONY America provides management and investment advisory services to the MONY Money Market Portfolio of the MONY Series Fund, Inc. for an annual fee at the rate of .40% of the first $400 million of the aggregate average daily net assets of the portfolio; .35% of the next $400 million of the aggregate average daily net assets of the portfolio and .30% of the aggregate average daily net assets of the portfolio in excess of $800 million. For the year ended December 31, 1997, the ratio of net operating expenses to average net assets for the OCC Money Market Portfolio was .98% as compared to .46% for the MONY Money Market Portfolio for the year ended December 31, 1997.

8. The ValueMaster Contracts reserve to the Companies the right to replace the shares of the Portfolios held by the Accounts with shares of another portfolio, such as the MONY Money Market Portfolio, if (i) shares of the Portfolio should no longer be available for investment by the Accounts; or (ii) in the judgment of the Companies, further investment in the Portfolio should become inappropriate in view of the purpose of the ValueMaster Contracts, provided any such substitution is approved by the Commission and is in compliance with applicable rules and regulations. The Companies believe that further investment in shares of the OCC Money Market Portfolio is no longer appropriate in view of the purposes of the ValueMaster Contracts.

9. The decreasing asset base of the OCC Money Market Portfolio, based upon lack of interest by ValueMaster Contractowners in the Portfolio as evidenced by net redemption of Portfolio shares, has made it difficult for the Portfolio to retain current investors and attract new investors. Moreover, Oppenheimer Life Agency's limited effort in actively selling the ValueMaster Contract, coupled with a constant amount of fixed costs incurred by the Portfolio, can reasonably be expected to lead to an increase in the actual expenses of the OCC Money Market Portfolio in the future.

10. The relative small asset size of the OCC Money Market Portfolio hampers the ability to maintain optimal diversification. The MONY Money Market Portfolio can be expected to achieve greater diversification and more readily react to changes in market conditions. ValueMaster Contractowners will benefit through the more effective management of a larger portfolio such as the MONY Money Market Portfolio.

11. The Companies on their own behalf and on behalf of the Accounts respectively, propose to substitute shares of the MONY Money Market Portfolio for all shares of the OCC Money Market Portfolio attributable to the ValueMaster Contracts ("Substitution"). The Substitution will occur as soon as practicable after receipt of the Order. As of the effective date of the Substitution, the Companies will redeem shares of the OCC Money Market Portfolio. Simultaneously, the Companies will use the proceeds to purchase the appropriate number of shares of the MONY Money Market Portfolio. The Substitution will take place at relative net asset values of the Portfolios, with no change in the amount of any ValueMaster Contractowner's account value.

12. To alleviate the impact of brokerage fees and expenses upon the OCC Money Market Portfolio and ultimately OpCap Advisors, the Trust and OpCap Advisors propose that the redemption of the OCC Money Market Portfolio shares be accomplished, in part, by "in kind" transactions. Under the proposal, the Trust would transfer to the Companies their proportionate interest in cash and/or securities held by the OCC Money Market Portfolio on the date of the Substitution, and the Companies will then use such cash and/or securities to purchase shares of the MONY Money Market Portfolio. The valuation of any "in kind" transfers will be on a basis consistent with the valuation procedures of the OCC Money Market and MONY Money Market Portfolios.

Terms and Conditions

Applicants agree to the following terms and conditions:

1. The OCC Money Market and MONY Money Market Portfolios have substantially similar investment objectives, policies and restrictions.

2. The Substitution will take place at the net asset value of the respective shares, which both portfolios seek to maintain at $1.00 per share, with no change in the amount of any ValueMaster Contractowner's account value and without the imposition of any transfer or similar charge.

3. The valuation of any "in kind" transfer will be on a basis consistent with the valuation procedures of the OCC Money Market and MONY Money Market Portfolios.

4. ValueMaster Contractowners will not incur any fees or charges as a result of the proposed substitution. OpCap Advisors will assume any expenses and transaction costs, including legal and accounting fees and any brokerage commissions, relating to the Substitution. To the extent the OCC Money Market Portfolio incurs brokerage fees and expenses in connection with the redemption by the Companies of its shares, these expenses would be charged to the applicable Portfolio but borne by OpCap Advisors.

5. The proposed substitution will not cause the contract fees and charges currently being paid by existing contractowners to be greater after proposed substitution than before the substitution.

6. Before the Substitution occurs, the prospectuses for the Accounts will be supplemented to reflect the proposed Substitution (the "Application Supplements") and distributed to all ValueMaster Contractowners.

7. Within five days after the Substitution, the Companies will send to ValueMaster Contractowners written notice of the Substitution (the "Notice") stating that shares of the OCC Money Market Portfolio have been eliminated and that the shares of the MONY Money Market Portfolio have been substituted. The Companies will include in such mailing a second supplement to the prospectuses of the Accounts which discloses that the Substitution has occurred. The Notice will also advise ValueMaster Contractowners that for a period of thirty days from the mailing of the Notice, they may transfer all assets, as substituted, to any other available Sub-Account, without limitation and without the transfer being deemed a transfer for purposes of determining any transfer charge (the period from the date of the Application Supplements to

thirty days from the mailing of the Notice is the "Free Transfer Period").

8. The Substitution will not in any way alter the insurance benefits or contractual obligations of the Companies to ValueMaster Contractowners or tax benefits and consequences to ValueMaster Contractowners. Following the Substitution, ValueMaster Contractowners will be afforded the same surrender and other transfer rights as they currently have. Any applicable surrender (contingent deferred sales) charges will continue to be imposed but will not be affected in any way by the Substitution.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides, in pertinent part, that "[i]t shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution." Section 26(b) of the 1940 Act further provides that the Commission shall issue an order approving such substitution if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the share of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

3. Applicants assert that the purposes, terms and conditions of the proposed Substitution are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Applicants further assert that the Substitution will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940Act.

4. Section 17(a)(1) of the 1940 Act prohibits an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from selling any security or other property to such registered investment company. Section 17(a)(2) of the 1940 Act prohibits any of such affiliated persons, acting as principal, from purchasing any security or other property from such registered investment company. The transfer or proceeds emanating out of the redemption of share in-kind of the OCC Money Market Portfolio to the Money Market Sub-Account and the purchase by the Money Market Sub-Account of shares of the MONY Money Market Portfolio could be deemed to involve a sale between the OCC Money Market Portfolio and the Money Market Sub-Account (which may be considered to be affiliates of each other because all the shares of the OCC Money Market Portfolio are held by the Money Market Sub-Account), and a purchase between the Money Market Sub-Account and the MONY Money Market Portfolio, each of which is affiliated person of the other.

5. Section 17(b) provides that the Commission may grant an order exemption a proposed transaction provided: (a) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person; (b) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the 1940 Act; and (c) the proposed transaction is consistent with the general purposes of the 1940 Act.

6. Applicants assert that the terms of the proposed transaction are reasonable and fair and do not involve overreaching; the transaction is consistent with the policy of each investment company concerned and with the purposes of the 1940 Act; and the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

7. Applicants assert that the Substitution is an appropriate solution to the limited ValueMaster Contractowner interest or investment in the OCC Money Market Portfolio, which is currently and in the future may be expected to be, of insufficient size to promote consistent investment performance or to reduce operating expenses.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitution and related transactions involving in-kind redemptions and purchases should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30949 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23532; 812–11340]

T. Rowe Price Associates, Inc., et al.; Notice of Application

November 12, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act") under (i) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

SUMMARY OF APPLICATION: Applicants request an order that would permit certain registered investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: Price Blue Chip Growth Fund, Inc., T. Rowe Price Capital Appreciation Fund, T. Rowe Price Capital Opportunity Fund, Inc., T. Rowe Price Diversified Small-Cap Growth Fund, Inc., T. Rowe Price Dividend Growth Fund, Inc., T. Rowe Price Equity Income Fund, T. Rowe Price Equity Series, Inc., T. Rowe Price Equity Income Portfolio, T. Rowe Price Mid-Cap Growth Portfolio, T. Rowe Price New America Growth Portfolio, T. Rowe Price Personal Strategy Balanced Portfolio, T. Rowe Price Financial Services Fund, Inc., T. Rowe Price Growth & Income Fund, Inc., T. Rowe Price Growth Stock Fund, Inc., T. Rowe Price Health Sciences Fund, Inc., T. Rowe Price Index Trust, Inc., T. Rowe Price Equity Index 500 Fund, T. Rowe Price Extended Equity Market Index Fund, T. Rowe Price Total Equity Market Index Fund, Institutional

International Funds, Inc., Foreign Equity Fund, T. Rowe Price International Funds, Inc., T. Rowe Price International Discovery Fund, T. Rowe Price International Stock Fund, T. Rowe Price European Stock Fund, T. Rowe Price New Asia Fund, T. Rowe Price Japan Fund, T. Rowe Price Latin America Fund, T. Rowe Price Emerging Markets Stock Fund, T. Rowe Price Global Stock Fund, T. Rowe Price International Bond Fund, T. Rowe Price Global Government Bond Fund, T. Rowe Price Emerging Markets Bond Fund, T. Rowe Price International Series, Inc., T. Rowe Price International Stock Portfolio, T. Rowe Price Mid-Cap Growth, Inc., T. Rowe Price Mid-Cap Value Fund, Inc., T. Rowe Price New America Growth Fund, T. Rowe Price New Era Fund, Inc., T. Rowe Price New Horizons Fund, Inc., T. Rowe Price Real Estate Fund, Inc., T. Rowe Price Small Cap Stock Fund, Inc., T. Rowe Price Small Cap Stock Fund, T. Rowe Price Science & Technology Fund, Inc., T. Rowe Price Small-Cap Value Fund, Inc., T. Rowe Price Spectrum Fund, Inc., Spectrum Growth Fund, Spectrum Income Fund, Spectrum International Fund, T. Rowe Price Value Fund, Inc., T. Rowe Price Media & Telecommunications Fund, Inc., T. Rowe Price California Tax-Free Income Trust, California Tax-Free Bond Fund, California Tax-Free Money Fund, T. Rowe Price Corporate Income Fund, Inc., T. Rowe Price Fixed Income Series, Inc. T. Rowe Price Limited-Term Bond Portfolio, T. Rowe Price Prime Reserve Portfolio, T. Rowe Price GNMA Fund, T. Rowe Price High Yield Fund, Inc., T. Rowe Price New Income Fund, Inc., T. Rowe Price Personal Strategy Funds, Inc., T. Rowe Price Personal Strategy Balanced Fund, T. Rowe Price Personal Strategy Growth Fund, T. Rowe Price Personal Strategy Income Fund, T. Rowe Price Prime Reserve Fund, Inc., Reserve Investment Funds, Inc., Government Reserve Investment Fund, Reserve Investment Fund, T. Rowe Price Short-Term Bond Fund, Inc., T. Rowe Price Short-Term U.S. Government Fund, Inc., T. Rowe Price Tax Efficient Balanced Fund, Inc., T. Rowe Price State Tax-Free Income Trust, Maryland Tax-Free Bond Fund, Maryland Short-Term Tax-Free Bond Fund, New York Tax-Free Bond Fund, New York Tax-Free Money Fund, Virginia Tax-Free Bond Fund, Virginia Short-Term Tax-Free Bond Fund, New Jersey Tax-Free Bond Fund, Georgia Tax-Free Bond Fund, Florida Insured Intermediate Tax-Free Fund, T. Rowe Price Summit Funds, Inc., T. Rowe Price Summit Cash Reserves Fund, T. Rowe Price Summit Limited-Term Bond Fund, T. Rowe Price Summit GNMA Fund, T. Rowe Price Summit Municipal Funds, Inc., T. Rowe Price Summit Municipal Money Market Fund, T. Rowe Price Summit Municipal Intermediate Fund, T. Rowe Price Summit Municipal Income Fund, T. Rowe Price Tax-Exempt Money Fund, Inc., T. Rowe Price Tax-Free High Yield Fund, Inc., T. Rowe Price Tax-Free Income Fund, Inc., T. Rowe Price Tax-Free Insured Intermediate Bond Fund, Inc., T. Rowe Price Tax-Free Short-Intermediate Fund, Inc., T. Rowe Price U.S. Treasury Funds, Inc., U.S. Treasury Intermediate Fund, U.S. Treasury Long-Term Fund, U.S. Treasury Money Fund, Institutional Domestic Equity Funds, Inc., and Mid-Cap Equity Growth Fund (collectively, the "Price Funds"); T. Rowe Price Associates, Inc. ("T. Rowe Price") and Rowe Price-Fleming International, Inc. ("Price-Fleming"); and all other registered investment companies and their series that are advised or subadvised by T. Rowe Price or Price-Fleming or a person controlling, controlled by, or under common control with T. Rowe Price or Price-Fleming, and all other registered investment companies and their series for which T. Rowe Price or Price-Fleming in the future acts as an investment adviser or subadviser, other than funds which are not sponsored by T. Rowe Price or Price-Fleming (together with the Price Funds, the "Funds" or the "Price Funds").

FILING DATES: The application was filed on September 30, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 7, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing request should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, T. Rowe Price Associates, Inc., 100 E. Pratt Street, Baltimore, Maryland 21202.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel, (202) 942–7120, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. Each Price Fund is registered under the Act as an open-end management investment company and is organized either as a Maryland corporation or a Massachusetts business trust. Additional funds or series may be added in the future.[1] T. Rowe Price and Price Fleming (together, "Price") are registered under the Investment Advisers Act of 1940, and serve as investment advisers to the Price Funds. T. Rowe Price also provides the Price Funds with certain administrative services. Each Fund has entered into an investment advisory agreement with Price under which Price exercises discretionary authority to purchase and sell securities for the Funds.

2. Under an existing order, the Price Funds (other than the municipal funds) can use their cash reserves to purchase shares of the Reserve Investment Funds, Inc. ("Reserve Investment Funds").[2] There are two series of the Reserve Investment Funds and each is a money market fund that complies with rule 2a–7 under the Act.[3] Each manages the cash reserves of T. Rowe Price clients, principally, the Price Funds, and neither is offered to the public. T. Rowe Price receives no compensation for managing the Reserve Investment Funds.

3. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term instruments, either directly or through the Reserve Investment Funds. Other Funds may borrow money from the same or other

[1] All existing Funds that currently intend to rely on the order have been named as applicants, and any other existing or future Fund that subsequently may rely on the order will comply with the terms and conditions in the application.

[2] Reserve Investment Funds, Inc., Investment Company Act Release Nos. 22732 (July 2, 1997) (notice) and 22770 (July 29, 1997) (order).

[3] The Reserve Investment Fund invests in a variety of taxable money market instruments, and the Government Reserve Investment Fund invests only in money market securities backed by the full faith and credit of the U.S. government and fully collateralized repurchase agreements on those securities.

banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a portfolio security sold by a Fund has been delayed. Currently, the Funds have credit arrangements with their custodians (*i.e.*, overdraft protection) under which the custodians may, but are not obligated to, lend money to the Funds to meet the Funds' temporary cash needs.

4. If the Funds were to borrow money from any bank under their current arrangements or under other credit arrangements, the Funds would pay interest on the borrowed cash at a rate which would be significantly higher than the rate that would be earned by other (non-borrowing) Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit for serving as a middleman between a borrower and lender. Other bank loan arrangements, such as committed lines of credit, would require the funds to pay substantial commitment fees in addition to the interest rate to be paid by the borrowing fund.

5. Applicants request an order that would permit the funds to enter into lending agreements ("Interfund Lending Agreements") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants believe that the proposed credit facility would substantially reduce the Funds' potential borrowing costs and enhance their ability to earn higher rates of interest on short-term lendings. Although the proposed credit facility would substantially reduce the Funds' need to borrow from banks, the Funds would be free to establish committed lines of credit or other borrowing arrangements with banks. The Funds also would continue to maintain overdraft protection currently provided by their custodians.

6. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed anticipated volumes and the Funds have insufficient cash on hand to satisfy such redemptions. When the Funds liquidate portfolio securities to meet redemption requests, which normally are effected immediately, they often do not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

7. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to the Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if the Fund has undertaken to purchase a security with the proceeds from securities sold. When the Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Alternatively, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

8. While borrowing arrangements with banks will continue to be available to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or the Reserve Investment Funds. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

9. The interest rate charges to the Funds on any Interfund Loan (the "Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available to the Reserve Investment Funds from investments in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by Price each day an Interfund Loan is made according to a formula established by the Funds' directors (the "Directors") designed to approximate the lowest interest rate at which bank short-term loans would be available to the funds. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. Each Fund's Directors periodically would review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of each Fund's Directors.

10. The credit facility would be administered by T. Rowe Price's fund accounting and treasury departments (collectively, the "Credit Facility Team"). Under the proposed credit facility, the portfolio managers for each participating fund may provide standing instructions to participate daily as a borrower or lender. As in the case of the Reserve Investment Funds, T. Rowe Price on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it had determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Team would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After allocating cash for Interfund Loans, T. Rowe Price will invest any remaining cash in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds. The money market funds typically would not participate as borrowers because they rarely need to borrow cash to meet redemptions.

11. The Credit Facility Team would allocate borrowing demand and cash available for lending among the Funds on what the Team believes to be an equitable basis, subject to certain administrative procedures applicable to all funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction.

12. T. Rowe Price would (i) monitor the interest rates charged and the other terms and conditions of the loans, (ii) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations, (iii) ensure equitable treatment of each Fund, and (iv) make quarterly reports to the Directors concerning any transactions by the Funds under the credit facility and the interest rates charged. The

method of allocation and related administrative procedures would be approved by each Fund's Directors, including a majority of Directors who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act ("Independent Directors"), to ensure that both borrowing and lending Funds participate on an equitable basis.

13. T. Rowe Price would administer the credit facility as part of its duties under its existing management or advisory and service contract with each Fund and would receive no additional fee as compensation for its services. T. Rowe Price or companies affiliated with it may collect standard pricing, recordkeeping, bookkeeping, and accounting fees applicable to repurchase and lending transactions generally, including transactions effected through the credit facility. Fees would be no higher than those applicable for comparable bank loan transactions.

14. Each Fund's participation in the proposed credit facility will be consistent with its organizational documents and its investment policies and limitations. The prospectus of each Price Fund discloses that the Price Fund (other than the variable annuity and life portfolios) may borrow money for temporary purposes in amounts up to 33⅓% of its total assets.[4] Each Price Fund may mortgage or pledge securities as security for borrowings in amounts up to 33⅓% of its total assets. Each Fund may lend securities or other assets if, as a result, no more than 33⅓% of its total assets would be lent to other parties.

15. The prospectus of each Price Fund discloses that the Funds may borrow money and lend securities and other assets. The Statement of Additional Information ("SAI") for the Price Funds also provides that the Funds will not borrow from or lend to any other Price Fund unless each Fund applies for and receives an exemptive order from the SEC or the SEC issues rules permitting the transactions. If applicants' requested order is granted, each Fund will amend its SAI to reflect its ability and intention to engage in interfund lending and borrowing. All borrowings and loans by the Funds will be consistent with the organizational documents and investment policies of the respective Funds.

[4] Price Funds used exclusively as funding vehicles for variable annuity or life contracts have an operating policy which states "the Fund will limit borrowing for any variable annuity separate account to (1) 10% of net asset value when borrowing for any general purpose, and (2) 25% of net asset value when borrowing as a temporary measure to facilitate redemptions."

16. In connection with the credit facility, applicants request an order under (i) section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (ii) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (iii) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (iv) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management investment company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having Price as their common investment adviser, and because of the overlap of Directors and officers of the Funds.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a person with strong potential adverse interests to and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of that person and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because (i) Price would administer the program as a disinterested fiduciary; (ii) all Interfund Loans would consist only of uninvested cash reserves that the Fund otherwise would invest in short-term repurchase agreements or other short-term instruments either directly or through the Reserve Investment Funds; (iii) the Interfund Loans would not involve a greater risk than other similar investments; (iv) the lending Fund would receive interest at a rate higher than it could obtain through other similar investments; and (v) the borrowing Fund would pay interest at a rate lower than otherwise available to it under its bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) of the Act generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants believe that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b) and 12(d)(1) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d) was intended to prevent the pyramiding of investment companies in order to avoid duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there would be no duplicative costs or fees to the Funds or shareholders, and that Price would receive no additional compensation for its services in administering the credit facility. Applicants also note that the

purpose of the proposed credit facility is to provide economic benefits for all the participating Funds.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is an asset coverage of at least 300 per cent for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request exemptive relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined credit facility and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the SEC. Rule 17d–1 provides that in passing upon applications for exemptive relief from section 17(d), the SEC will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental investment limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms which are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, Price will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) more favorable to the lending Fund than the Repo Rate and the yield on the Reserve Investment Fund (for Price Funds which invest in that Fund) and the yield on the Government Reserve Investment Fund (for Price Funds which invest in that fund), and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans to the Fund (a) will be at an interest rate equal to or lower than any outstanding bank loan, (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowings from all sources immediately after the interfund borrowing total less than 10% of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceeds 10% of its total assets for any other reason (such as decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter: (a) Repay all its outstanding Interfund Loans, (b) reduce its outstanding indebtedness to 10% or less of its total assets, or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at last equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No equity, taxable bond or Money Market Fund may lend to another Fund through the credit facility if the loan would cause its aggregate outstanding loans through the credit facility to exceed 5%, 7.5% or 10%, respectively, of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. A Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions and 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by the lending Fund and may be repaid on any day by the borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. Price's Credit Facility Team will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Team will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. Price will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts for investment to the Funds.

13. Price will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Directors concerning the participation of the Funds in the credit facility and the terms and other conditions of any extensions of credit under the facility.

14. The Directors of each Fund, including a majority of the Independent Directors: (a) will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, Price will promptly refer the loan for arbitration to an independent arbitrator selected by the Directors of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[5] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Trustees setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity, and the rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, and such other information presented to the Fund's Directors in connection with the review required by conditions 13 and 14.

17. Price will prepare and submit to the Directors for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After commencement of operations of the credit facility, Price will report on the operations of the credit facility at the Directors' quarterly meetings.

In addition, for two years following the commencement of the credit facility, the independent public accountant for each Fund that is a registered investment company shall prepare an annual report that evaluates Price's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and it shall be filed pursuant to Item 77Q3 of Form N–SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) that the Interfund Rate will be higher than the Repo Rate, and if applicable the yield of the Reserve Investment Funds, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Directors; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan.

After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its SAI all material facts about its intended participation.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30893 Filed 11–18–98; 8:45 am]

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[5] If the dispute involves Funds with separate Boards of Directors, the Directors of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40662; File Nos. SR–AMEX–98–21; SR–CBOE–98–29; SR–PCX–98–31; and SR–PHLX–98–26]

Self-Regulatory Organizations; American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Pacific Exchange, Inc. and Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendments Thereto Relating to Expansion and Permanent Approval of the 2½ Point Strike Price Pilot Program

November 12, 1998.

I. Introduction

On June 17, 1998, the American Stock Exchange, Inc. ("AMEX"); on June 30, 1998, the Chicago Board Options Exchange, Inc. ("CBOE"); on June 19, 1998, the Pacific Exchange, Inc. ("PCX"); and on July 1, 1998, the Philadelphia Stock Exchange, Inc. ("PHLX") (referred to individually as "Exchange" and collectively as "Exchanges") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend and subsequently expand and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

permanently approve the 2½ Point Strike Price Pilot Program.

The AMEX submitted to the Commission Amendment No. 1 to its proposed rule change on July 13, 1998.[3] The CBOE submitted to the Commission Amendment No. 1 to its proposal on July 15, 1998.[4] The PCX submitted to the Commission Amendment No. 1 to its proposed rule change on July 7, 1998,[5] and Amendment No. 2 to its proposal on July 10, 1998.[6] The PHLX submitted to the Commission Amendment No. 1 to its proposed rule change on July 2, 1998,[7] and Amendment No. 2 to its proposal on July 8, 1998.[8]

On July 24, 1998, the proposed rule change and amendments were published for comment in the **Federal Register** [9] and the Commission granted accelerated approval to the portion of the proposal relating to the extension of the 2½ Point Strike Price Pilot Program for a six-month period ending on January 15, 1999, or until the Commission approves the request to expand the program and approve it permanently, whichever occurs first. The Commission received no comments on the proposal. This order approves the portions of the proposed rule change, as amended, relating to the expansion and permanent approval of the 2½ Point Strike Price Pilot Program.

II. Description of the Proposal

The 2½ Point Strike Price Pilot Program enables the Exchanges to each list a specified number of options trading at a strike price greater than $25 but less than $50 at 2½ point intervals. The Commission approved the original 2½ Point Strike Price Pilot Program proposed by the Exchanges and the New York Stock Exchange ("NYSE"), which is no longer a participant in the program, on July 19, 1995.[10] Pursuant to the original pilot program, the Exchanges, including the NYSE, were permitted to use 2½ point strike price intervals for a joint total of up to 100 option issues. Currently, each participating Exchange is allocated a whole number of classes based on the sum of the following: (1) one quarter of the first 50 issues; and (2) a percentage of the remaining 50 classes determined by each Exchange's *pro rata* share of the total number of equity option listings as of July 1, 1997.[11] In addition, the options originally selected by the NYSE, which have not been subsequently decertified or delisted, continue to be eligible for the pilot program, but are not counted against any Exchange's allotment. However, these classes may not be replaced by another selection in the event a class becomes ineligible or is decertified.

Because the program is limited to 100 option classes industry-wide and because each Exchange is allocated a specific number of option classes, some of the Exchanges have had to refuse requests to add option classes to the program. As a result, the Exchanges are proposing to expand the program from 100 to 200 eligible option classes. Generally, to provide for the orderly introduction of the new classes and insure that the Exchanges' systems capacity remains sufficient throughout the expansion, the Exchanges propose to add only 20 classes each calendar quarter for the 5 quarters following the Commission's grant of permanent approval of the program. Overall, each Exchange will be allocated a whole number of additional option classes based on the sum of the following: (1) one quarter of the first 50 issues; and (2) a percentage of the remaining 50 classes determined by each Exchange's *pro rata* share of the total number of equity option listings as of October 1, 1998.[12] Each Exchange will receive its allocation of additional option classes over the 5 quarters following the Commission's grant of permanent approval of the program. In addition, the options originally selected by the NYSE, which have not been subsequently decertified or delisted, will continue to be eligible for the program, but are not counted against any Exchange's allotment.

The Exchanges also are proposing to make the 2½ Point Strike Price Pilot Program permanent based on the success of the pilot program over a three-year period. The Exchanges and the Options Price Reporting Authority ("OPRA") represent that sufficient computer capacity is available to accommodate the proposed expansion and permanent approval of the 2½ Point Strike Price Pilot Program.[13]

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, relating to the expansion and permanent approval of the 2½ Point Strike Price Pilot Program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act [15] in that the expansion and permanent approval of the program should remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

The Commission believes that expanding the 2½ Point Strike Price Pilot Program by 100 option classes will provide investors with greater flexibility to tailor their positions in equity options with a strike price greater than $25 but less than $50. The Commission also believes that the proposed addition of 100 option classes to the program strikes a reasonable balance between the Exchange's desire to accommodate market participants by offering a wide array of investment opportunities and

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[3] *See* Letter from Scott G. Van Hatten, Legal Counsel, AMEX, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 10, 1998 ("AMEX Amendment No. 1").

[4] *See* Letter from Timothy H. Thompson, Director—Regulatory Affairs, CBOE, to Deborah Flynn, Attorney, Division, Commission, dated July 14, 1998 ("CBOE Amendment No. 1").

[5] *See* Letter from Robert P. Pacileo, Staff Attorney, PCX, to Deborah L. Flynn, Attorney, Division, Commission, dated July 2, 1998 ("PCX Amendment No. 1").

[6] *See* Letter from Robert P. Pacileo, Staff Attorney, PCX, to Deborah L. Flynn, Attorney, Division, Commission, dated July 8, 1998 ("PCX Amendment No. 2").

[7] *See* Letter from Linda S. Christie, Counsel, PHLX, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated July 1, 1998 ("PHLX Amendment No. 1").

[8] *See* Letter from Linda S. Christie, Counsel, PHLX, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated July 7, 1998 ("PHLX Amendment No. 2").

[9] Securities Exchange Act Release No. 40226 (July 17, 1998) 63 FR 39916.

[10] *See* Securities Exchange Act Release No. 35993, 60 FR 38073 (July 25, 1995) (order approving File Nos. SR–PHLX–95–08; SR–AMEX–95–12; SR–PSE–95–07; SR–CBOE–95–19, and SR–NYSE–95–12).

[11] The actual allotment of options issues for each Exchange as of July 1997 is: CBOE (31), AMEX (25), PHLX (23), and PCX (21). However, each Exchange may trade at 2½ point strike price intervals any multiply listed option selected by another Exchange for inclusion in the 2½ Point Strike Price Pilot Program.

[12] Each Exchange will receive the following allocation of the additional 100 option classes: AMEX (26), CBOE (29), PCX (22) and PHLX (23). The total allotment of options issues for each Exchange as of October 1, 1999, will be as follows: AMEX (51), CBOE (60), PCX (43), and PHLX (46). *See* Letters from Timothy Thompson, Director—Regulatory Affairs, CBOE, to Richard Strasser, Assistant Director, Division, Commission, dated November 5, 1998; Scott G. Van Hatten, Legal Counsel, AMEX, to Richard Strasser, Assistant Director, Division, Commission, dated November 4, 1998. Telephone conversations between Nandita Yagnik, Attorney, PHLX; Robert Pacileo, Attorney, PCX; and Terri Evans, Attorney, Division, Commission, on November 10, 1998.

[13] *See* AMEX 19b–4 filing, AMEX–98–21, and Amendment No. 1, *supra* note 3; CBOE 19b–4 filing, CBOE–98–29; PCX Amendment No. 1, *supra* note 5; and PHLX 19b–4 filing, PHLX–98–26.

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

the need to avoid unnecessary proliferation of options series.

In addition, the Commission believes that permanent approval of the pilot program is now appropriate given the length of time the pilot program has been in place and its past success. The Commission notes that the Exchanges have not reported any significant problems with the pilot program since its inception nor has the Commission received adverse comments concerning the operation of the pilot program. The Commission notes that the Exchanges and OPRA have represented that sufficient computer processing capacity is available to accommodate the expansion and permanent approval of the 2½ Point Strike Price Pilot Program. The Commission expects the Exchanges to continue to monitor the applicable options activity closely to detect any proliferation of illiquid options series resulting from the narrower strike price intervals and any capacity problems. Further, the Commission expects the Exchanges to promptly remedy such problems should they arise.

In the event the Exchanges propose to expand the program beyond the 200 option classes currently proposed or eliminate the price limits for the 2½ point strike price intervals, the Exchanges must submit a report to the Commission as well as an Exchange Act Rule 19b–4 filing of such proposal. The report should cover the one-year period prior to the date of the proposal and should include data and written analysis on the open interest and trading volume in affected series, and delisted options series (for all strike price intervals) on the selected program option classes. The report also should discuss any capacity problems that may have arisen and any other data relevant to the analysis of the program, including an assessment of the appropriateness of the 2½ point strike price intervals for the options selected by the reporting exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File Nos. SR–AMEX–98–21; SR–CBOE–98–29; SR–PCX–98–31; and SR–PHLX–98–26), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40655; File No. SR–CHX–97–19]

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change Establishing Rules Relating to Market-at-the-Close Orders

November 10, 1998.

I. Introduction

On September 12, 1997, the Chicago Stock Exchange, Incorporated ("Exchange" or "CHX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish rules and procedures governing market-at-the-close ("MOC") orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 39252 (Oct. 17, 1997), 62 FR 55444 (Oct. 24, 1997). The Commission did not receive any comments on the proposal. The Exchange filed with the Commission Amendment No. 1 to the proposed rule change on November 3, 1997,[3] and Amendment No. 2 on September 29, 1998.[4] This order approves the proposed rule change including, on an accelerated basis, Amendment Nos. 1 and 2.

II. Description of the Proposal

The Exchange does not currently maintain formal rules governing the entry or execution of MOC orders on the Exchange.[5] The Exchange therefore seeks to adopt Article XX, Exchange Rule 44, "Market-at-the-Close Orders," to establish formal procedures and better define the rights and obligations of Exchange members and customers with respect to MOC orders. As defined in the proposed rule change, the term "MOC order" means a market order which is to be executed in its entirety at the closing price on the primary market of the stock named in the order, and if not so executed, is to be treated as canceled.[6]

The Exchange proposes to adopt procedures that mirror those used by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex"). The similarity is intended to ensure that MOC orders sent to the Exchange will receive treatment comparable to MOC orders sent to the NYSE and the Amex. The Exchange has expressed concern that unless its MOC rules are functionally equivalent to those of the NYSE and the Amex, market participants may attempt to execute certain MOC orders on the Exchange that would otherwise be prohibited under the MOC rules of the NYSE and the Amex.

In its original form, the Exchange's proposal contemplated procedures and requirements for MOC orders entered on expiration days (*i.e.*, last trading day before monthly expiration of standardized contracts in derivative products and last trading day before expiration of quarterly index options) that differed from those for MOC orders entered on nonexpiration days. Amendment No. 2 eliminates the disparity and proposes a uniform version of the Exchange's MOC rules that would apply to all MOC orders irrespective of the date of entry.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the proposed rule change by redefining a term used in the rule text. *See* Letter from Charles R. Haywood, Foley & Lardner, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 31, 1997 ("Amendment No. 1").

[4] Amendment No. 2 eliminates the proposed requirements that the Exchange publish an independent list of MOC order imbalances that occur on the Exchange. In addition, Amendment No. 2 revises the proposal to establish identical procedures for MOC orders entered on expiration and non-expiration days. Finally, Amendment No. 2 provides that MOC orders may be entered on the Exchange after 2:40 P.M., Central Standard Time, only if the specialist determines that such MOC order could have been entered on the primary market. *See* Letter from David T. Rusoff, Foley & Lardner, to Michael Loftus, Attorney, Division of Market Regulation, Commission, dated September 28, 1998 ("Amendment No. 2").

[5] However, the Exchange does not prohibit the use of MOC orders. Generally, an Exchange specialist will voluntarily accept an MOC order if the specialist believes such order could be accepted on the New York Stock Exchange. Telephone conversation between David T. Rusoff, Attorney, Foley and Lardner; Daniel J. Liberti, Attorney, Exchange; and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (October 16, 1997).

[6] The Exchange's proposed MOC rule and procedures would apply to all securities listed on the Exchange (whether by exclusive listing or dual listing) and all securities traded on the Exchange pursuant to unlisted trading privileges. Electronic mail message from David T. Tusoff, Attorney, Foley and Lardner, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 9, 1998).

Under the amended proposal, no MOC order may be entered after 2:40 P.M., Central Standard Time, in any stock. Floor brokers representing MOC orders must indicate their irrevocable MOC interest to the specialist by 2:40 P.M. After 2:40 P.M., MOC orders may generally be entered only if the specialist determines that such MOC order could have been entered on the primary market. In order for specialists to determine whether MOC orders could have been entered on the primary market, specialist must monitor the publication of MOC order imbalances on the primary market through third-party vendors. If a specialist accepts an MOC order after 2:40 P.M., the specialist is required to document evidence that such MOC order could have been entered on the primary market.

Notwithstanding the above, the proposal prohibits the use of MOC orders entered after 2:40 P.M. for the liquidation of positions relating to a strategy involving any stock index options. The proposal further provides that no MOC order in any stock may be canceled or reduced in size after 2:40 P.M. Cancellations to correct a legitimate error, however, will continue to be permitted after 2:40 P.M.

An Exchange specialist only will be obligated to accept and guarantee execution of those MOC orders that are of a size and type that a specialist would otherwise be required to accept and guarantee execution of, if the orders did not have an MOC designation.[7]

The proposed rule change specifies the manner in which an Exchange specialist is required to executive MOC orders. When there is an imbalance between the buy and sell MOC orders on the Exchange, the specialist shall, at the close of the Primary Trading Sessions[8] on that day, execute the imbalance for its own account at the closing price on the primary market of the stock. The specialist shall then stop the remaining buy and sell MOC orders against each other and pair them off at the closing price on the primary market of the stock. The "pair off" transaction shall be reported to the consolidated last sale reporting system as "stopped stock." Where the aggregate size of the buy MOC orders on the Exchange equals the aggregate size of the sell MOC orders on the Exchange, the buy and sell MOC orders shall be stopped against each other and paired off at the closing price on the primary market of the stock. The transaction shall be reported to the consolidated last sale reporting system as "stopped stock."

Finally, the proposed rule change would include Interpretations and Policies, Section .01, "G Orders," as part of the new Exchange Rule 44. Under the provision, proprietary orders represented pursuant to Section 11(a)(1)(G) of the Act[9] ("G Orders") must be announced as such[10] and yield priority, parity, and precedence to any order which is for the account of a person who is not a member, member organization, or associated person thereof. Market orders to sell short at-the-close represented as G Orders must yield priority, parity, and precedence to limit orders not represented pursuant to Section 11(a)(1)(G) of the Act. For example, in executing paired-off MOC orders, a G Order to sell short at-the-market would yield to sell orders limited at the closing price that are not represented as G Orders. This will be the policy even if the G Order to sell short at-the-market theoretically could have been executed at a better price (and still satisfy the short sale rule in terms of a "plus" or "zero plus" tick) had their not been a pair-off on the transaction. This would not be applicable if the order was a market order to sell "long" or a market order to buy.

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[11] Specifically, the Commission believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange market be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[12]

MOC procedures were first developed for expiration days because many trading strategies that involve stock index derivatives require the unwinding of positions in the component stocks at the closing price on expiration days. The Commission recognizes, however, that institutional investors have developed an increasing number of composite-asset trading techniques and strategies that call for a single closing price on a daily basis, not just expiration days. As a result, there is a demonstrated interest in establishing greater price certainty at the close of trading each day.

Moreover, the national securities exchanges and broker-dealers have developed products to facilitate the trading of portfolios of securities. The Exchange's proposal represents an effort to accommodate the increased use of index-related trading by customers and member firms, and provide additional flexibility in order execution. The proposal also constitutes an attempt to minimize the excess market volatility that may emanate from the liquidation of stock positions related to trading strategies involving index derivative products. The Commission believes, based in part on the experience of other exchange markets, that MOC procedures may help reduce market volatility and may result in more orderly markets at the close of trading, especially on expiration days.

The proposal requires market participants to enter their MOC orders by 2:40 P.M., Central Standard Time, every trading day. In addition, floor brokers representing MOC orders must indicate their irrevocable MOC interest to the specialist by 2:40 P.M. every trading day. No MOC order in any stock may be canceled or reduced in size after 2:40 P.M. The Commission believes the 2:40 P.M. deadline for the entry of MOC orders on all trading days will allow Exchange specialists to make timely and reliable assessments of MOC order flow and evaluate the potential impact on closing prices. The Commission notes that because the MOC orders will be irrevocable, and because of other restrictions on MOC order entry after

[7] The execution parameters governing the Exchange's Guaranteed Execution System ("BEST System") require a specialist to accept and guarantee execution on all agency orders in Dual Trading System Issues from 100 up to and including 2,099 shares. Therefore, an Exchange specialist likewise would be required to accept and guarantee execution of an MOC order from 100 up to and including 2,099 shares. *See* Article XX, Exchange Rule 37(a)(1).

[8] The term "Primary Trading Session" is defined in Article IX, Exchange Rule 10(b), as being (i) the same hours the security is traded on its primary market, if the Exchange is not the primary market for such security (however, no later than 3:00 P.M. Central Standard Time for a security primarily listed on the Pacific Exchange), or (ii) from 8:30 A.M. to 3:00 P.M., Central Standard Time, Monday through Friday, if the Exchange is the primary market for such security.

[9] 15 U.S.C. 78k(a)(1)(G).

[10] In addition, the Exchange currently requires that orders to be executed pursuant to Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) must bear an identifying notation that will enable the executing member to disclose to other members that the order is subject to such provisions. *See* Article XX, Exchange Rule 24, "Record of Orders," Interpretations and Policies, .01.

[11] 15 U.S.C. 78f(b).

[12] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

2:40 P.M., MOC orders entered should reflect actual investor interest. In addition, because the MOC order entry deadline is twenty minutes in advance of the closing, the procedures should ameliorate the problem of significant shifts in MOC imbalances near the close of trading. The Commission therefore believes the 2:40 P.M. deadline for the entry of MOC orders should help effectuate more orderly closings on a daily basis and assist Exchange specialists in obtaining an accurate view of the buying and selling in MOC orders.

The Exchange's proposal states that no MOC order may be entered on the Exchange after 2:40 P.M. in any stock unless the specialist determines that such MOC order could have been entered on the primary market (*i.e.*, the NYSE or the Amex). Therefore, the MOC rules and procedures of the primary market will control a specialist's determination of whether an MOC order could be entered on the primary market. Consistent with the MOC rules and procedures of the primary markets, an MOC order generally may be entered on the Exchange after 2:40 P.M., if the primary market has disseminated notice of an MOC order imbalance for that particular stock, and the MOC order to be entered on the Exchange would serve to offset that disseminated MOC order imbalance (*e.g.*, the MOC order to be entered is on the contra-side of the imbalance).

Specifically, as soon as practicable after 3:40 P.M., Eastern Standard Time (2:40 P.M., Central Standard Time), every trading day, the NYSE (a "primary market") disseminates notice of MOC order imbalances of 50,000 shares or more in all NYSE-listed stocks.[13] The NYSE also disseminates MOC order imbalances of less than 50,000 shares if permission is obtained from an NYSE Floor Official,[14] or if the underlying stock was the subject of an informational imbalance dissemination made between 3:00 and 3:40 P.M., Eastern Standard Time.[15] It should be noted that the MOC order imbalances disseminated by the NYSE include "marketable" limit-at-the-close ("LOC") orders.[16] The NYSE also requires that an additional dissemination be made at 3:50 P.M., Eastern Standard Time, for any stock which was the subject of an imbalance dissemination at 3:40 P.M. Specifically, if at 3:50 P.M. the MOC order imbalance remains 50,000 shares or more, the 3:50 P.M. update must include the size and side of the imbalance.[17] If at 3:50 P.M. the MOC order imbalance is less than 50,000 shares, the 3:50 P.M. update must include a "no imbalance" message, or alternatively the size and side of the imbalance may be disseminated with Floor Official approval.

In addition, as soon as practicable after 3:40 P.M., Eastern Standard Time (2:40 P.M., Central Standard Time), every trading day, the Amex (a "primary market") disseminates notice of MOC order imbalances of 25,000 shares or more in all Amex-listed stocks, other than those that trade in units of less than 100 shares.[18] In certain instances, the Amex permits the dissemination of MOC order imbalances of less than 25,000 shares if permission is obtained from an Amex Floor Official.[19] Unlike the MOC procedures of the NYSE, the MOC order imbalances disseminated by the Amex do not include marketable LOC orders, and the Amex does not disseminate a supplementary update at 3:50 P.M.

To determine whether MOC orders may be entered on the primary market, the proposal requires specialists to monitor the publication of MOC order imbalances on the primary market through third-party vendors. For example, if through Bloomberg the NYSE disseminated notice of an MOC order imbalance of 100,000 shares for stock XYZ on the buy side, the Exchange specialist in stock XYZ could accept MOC orders on the sell side after 2:40 P.M., provided the MOC orders were for less than 100,000 shares. The Commission believes it is reasonable for the Exchange to require its specialists to monitor MOC order imbalances through third party vendors (*e.g.*, Bloomberg, Dow Jones, Reuters). An Exchange specialist may accept MOC orders on the contra-side of a disseminated MOC order imbalance only during a narrow period of time. Therefore, it is critical that Exchange specialists be immediately informed whether a particular stock is the subject of an MOC order imbalance. The Commission believes the proposal will ensure that Exchange specialists stay abreast of MOC order imbalances in a timely manner and accept MOC orders in conformance with the Exchange's rules. Furthermore, if an Exchange specialist does accept an MOC order after 2:40 P.M., the specialist must document evidence indicating that such MOC order could have been entered on the primary market.

While the Commission believes it is reasonable for the Exchange to restrict the entry of MOC orders after 2:40 P.M., the Commission also believes the Exchange's proposal makes adequate provision for the entry of certain corrective orders after the 2:40 P.M., deadline. In particular, the proposal allows specialists to accept the cancellation of an MOC order after 2:40 P.M. if the cancellation was done to correct a legitimate error. The Commission believes this measure will provide market participants with the flexibility necessary to rectify bona fide errors involving MOC orders.

The Commission also believes it is reasonable for the Exchange to prohibit the use of MOC orders entered after 2:40 P.M. for the liquidation of positions relating to a strategy involving any stock index options. The proposal restricts the entry of MOC orders after 2:40 P.M. to instances where there is an MOC order imbalance on the primary market. This restriction will help to ensure that the 2:40 P.M. deadline is concrete and enforceable and that only a limited class of orders will be excepted from the deadline. The Commission believes the Exchange has properly excluded from the excepted class any MOC order that relates to a strategy involving index options. The Commission notes that MOC procedures are principally

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[13] *See* NYSE Rule 116, Supplementary Material .40, "'Stopping' stock on market-at-the-close orders." NYSE Information Memo No. 98–20 (June 22, 1998) also provides information pertaining to MOC orders entered on the NYSE. The Commission recently approved revisions to the NYSE procedures that govern MOC orders. *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 33975 (June 22, 1998).

[14] This provision permits, but does not require, the publication of an MOC order imbalance which, although less than 50,000 shares, may be significantly greater than average daily volume in a particular stock.

[15] Between 3:00 and 3:40 P.M., imbalances of any size may be disseminated with Floor Official approval. These disseminations are informational only and do not limit MOC order entry before 3:40 P.M.

[16] This means that LOC orders to buy at a higher price than the last sale price would be included with the buy MOC orders, and LOC orders to sell at a lower price than the last sale price would be included with the sell MOC orders. LOC orders with a limit equal to the last sale price would not be included in the disseminated imbalance. LOC orders are entered for execution at the closing price, provided the closing price is at or within the limit specified.

[17] If the 3:50 P.M. imbalance dissemination reverses the 3:40 P.M. imbalance dissemination (*i.e.*, MOC order imbalance switches from buy side to sell side, and vice versa), only MOC orders which offset the 3:50 P.M. imbalance would be permitted to be entered thereafter.

[18] *See* Amex Rule 109, "'Stopping' Stock." The Commission approved amendments to the Amex rules and procedures governing MOC orders on June 24, 1998. *See* Securities Exchange Act Release No. 40123 (June 24, 1998), 63 FR 36280 (July 2, 1998).

[19] The Amex permits the dissemination of MOC order imbalances of less than 25,000 shares if the specialist (i) anticipates that the execution price of the MOC orders on the book will exceed the price change parameters of Amex Rule 154, Commentary .08, or (ii) believes that an order imbalance should otherwise be planned.

intended to reduce volatility at the close. The Commission believes the ban on the use of index options-related MOC orders after 2:40 P.M. will serve to reduce volatility at the close and in doing so will create greater price certainty.

The Commission believes it is appropriate for the Exchange to require all proprietary MOC orders that are represented pursuant to Section 11(a)(1)(G) of the Act,[20] including market orders to sell short at-the-close, to yield priority, parity, and precedence to any non-member MOC order. This requirement is consistent with Section 11(a) of the Act [21] in that it will help ensure the primacy of non-member MOC orders. Furthermore, because G Orders must be marked to indicate their status and must be disclosed to the Exchange's trading floor, the Commission is confident that Exchange specialists will execute members' proprietary MOC orders in accordance with the priority principles set forth in Section 11(a) of the Act and the rules thereunder.

As previously mentioned, Amendment No. 2 eliminates the requirement that the Exchange independently publish MOC order imbalances that occur on the Exchange. The Commission believes this revision is appropriate for several reasons. First, the public dissemination of multiple MOC order imbalances for the same stock by the primary market and the Exchange could prove confusing. Next, the modification remedies the anomalous situation that might arise if the Exchange's MOC order imbalance for a particular stock differed from the primary market's MOC order imbalance, and MOC orders could have been accepted on the Exchange after 2:40 P.M. but not the primary market, and vice versa. Finally, the Exchange has represented that a substantial MOC order imbalance (*i.e.*, 50,000 shares or more) has never occurred on the Exchange. Furthermore, because Exchange specialists only are obligated to accept and guarantee execution of relatively small MOC orders (100–2,099 shares), the specialist may decline to accept and guarantee execution of large MOC orders that would cause a substantial MOC order imbalance. The Commission believes that in the aggregate, these factors outweigh the benefits of publicly disseminating MOC order imbalances.[22]

The Exchange's proposal is substantially similar to the MOC rules currently in place at the NYSE,[23] the Amex,[24] and the Boston Stock Exchange ("BSE").[25] The similarity between the proposal and the MOC rules maintained by other national securities exchange will ensure that the Exchange does not become a haven for MOC orders that are prohibited on the other exchange markets. In addition, the standardization of rules will result in Exchange MOC orders being treated the same as MOC orders sent to the NYSE, Amex, and BSE.

The Commission understands that in the highly competitive markets of today, it is possible that a regional exchange which trades NYSE- and Amex-listed stocks, but does not have comparable closing procedures, could be utilized by market participants to enter MOC orders prohibited on such primary markets. Although the Commission has no reason to believe that the Exchange has become a significant alternative market to enter otherwise prohibited MOC orders, the Commission agrees with the Exchange that if this possibility were realized, it could have a negative impact on the fairness and orderliness of the national market system. Accordingly, the Commission believes that it is reasonable for the Exchange to adopt procedures for the handling of MOC orders that mirror those of the NYSE, Amex, and BSE. The adoption of consistent rules and procedures will help ensure the equal treatment of MOC orders among exchange markets and, in the event of unusual market conditions, offer the Exchange the same benefits in terms of potentially reducing volatility.

The Commission notes that prior to receiving parmanent approval for their MOC rules, the NYSE, Amex, and the BSE were required to first implement their MOC rules on a pilot basis. However, in consideration of the demonstrated benefits of MOC rules and procedures, the Commission believes there is no compelling reason to approve the Exchange's proposal on a pilot basis rather than permanently. The Commission also is confident that the Exchange will surveil the closing procedures to ensure against potential manipulations of the close through MOC transactions.

Finally, the Commission believes the structure of proposed Exchange Rule 44 will enable members and other market participants to locate and apply the Exchange's MOC guidelines without difficulty. Some exchange markets maintain their MOC rules and procedures in several sources, including rule books and informational memos to members. In contrast to such a decentralized approach, the Exchange's proposal presents all relevant information in one comprehensive rule. Furthermore, because the MOC procedures for expiration days are the same as those for non-expiration days, Exchange members and member organizations will follow identical procedures at the close on all trading days.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 revised the proposed rule change by redefining a term used in the rule text. The modification was intended to ensure that the proposed rule change remained consistent with current exchange market practice and did not include incorrect and obsolete terminology. The Commission notes that the modification proposed by Amendment No. 1 has been superseded by the revisions proposed by Amendment No. 2 and that the approval of Amendment No. 1 therefore will have no import on the proposed rule change.

Amendment No. 2 modifies the proposed rule change by eliminating the requirement that the Exchange independently publish MOC order imbalances that occur on the Exchange. Instead, the Exchange will rely on the primary market's dissemination of MOC order imbalances. Amendment No. 2 also specifies that Exchange specialists may accept MOC orders after 2:40 P.M. only if such orders could have been entered on the primary market. As a result, Amendment No. 2 addresses the anomalous situation that might arise if the Exchange's MOC order imbalance differed from the primary market's MOC order imbalance, and MOC orders could have been accepted on the Exchange after 2:40 P.M. but not the primary market, and vice versa. The Commission believes Amendment No. 2 makes the proposal consistent with the Exchange's goal of establishing MOC procedures that are uniform with those of the primary markets. Furthermore, the use

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[20] 15 U.S.C. 78k(a)(1)(G).

[21] 15 U.S.C. 78k(a).

[22] The Commission previously has indicated its view that the dissemination of MOC order imbalances allows specialists to determine the buying and selling interest in MOC orders and, if there is a substantial imbalance on one side of the market, provides the investing public with timely and reliable notice of the imbalance and with an opportunity to make appropriate investment decisions in response. *See e.g.*, Securities Exchange Act Release No. 40123 (June 24, 1998), 63 FR 36280 (July 2, 1998).

[23] *See supra* note 13.

[24] *See supra* note 18.

[25] *See* BSE Rules of Board, Chapter II, Section 22, "Procedures for Handling Market-On-Close ("MOC") Orders." The Commission permanently approved the BSE's rules and procedures governing MOC orders on October 9, 1998. *See* Securities Exchange Act Release No. 40538 (Oct. 9, 1998), 63 FR 55661 (Oct. 16, 1998).

of the primary market's MOC order imbalance will simplify MOC procedures for market participants and specialists, and will eliminate possible mix-ups that might have occurred due to the dissemination of multiple MOC order imbalances for the same securities. Finally Amendment No. 2 revises the proposal to establish identical procedures for MOC orders entered on expiration and non-expiration days. The Commission believes the adoption of uniform MOC procedures that do not vary from day-to-day will create certainty among market participants and will eliminate the confusion that may have arisen from procedural requirements that differed for expiration and non-expiration days. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[26] to approve Amendment Nos. 1 and 2 to the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2 to the proposed rule change, including whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–97–19 and should be submitted by December 21, 1998.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CHX–97–19), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30950 Filed 11–18–98; 8:45 am]

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[26] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40676; File No. SR–NASD–98–81]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Application of the Corporate Financing Rule to Certain Offerings by Charitable Organizations

November 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 29, 1998, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 2710 of the National Association of Securities Dealers, Inc. ("NASD" of "Association") to exempt certain offerings by charitable organizations from the pre-offering review requirements of the Corporate Financing Rule. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1)–(6) No change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

(A)–(C) No change.

(D) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Commission on Forms S–3, F–3 or F–10 (only with respect to Canadian issuers); [and]

(E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories; *and*

(F) offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A)–(E) No change.

(F) securities offered by a bank, savings and loan association, [church or other charitable institution,] or common carrier even though such offering may be exempt from registration with the Commission;

(G)–(H) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, The Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

When the Act was amended in the early 1980s to require that most SEC-registered broker/dealers be members of the NASD, the NASD regulated for the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

first time broker/dealers that assist churches and other non-profit charitable organizations that raise money through the issuance of securities. Certain church bond and similar offerings by religious and charitable organizations are exempt from SEC registration under Section 3(a)(4) of the Securities Act of 1933 ("Securities Act"),[3] but generally are subject to review by state regulatory authorities. NASD Rule 2710 (the "Corporate Financing Rule") subjects "church bond" offerings to a filing requirement with the Corporate Financing Department of NASD Regulation ("Department") so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule.

Department staff have found that the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under Rule 2710. Although initially there was an issue in some cases of appropriate compliance with SEC Rule 15c2–4,[4] the staff has not recently identified any problems in this area.

In order to more appropriately focus the review efforts of Department staff on the types of offerings that present significant regulatory issues, NASD Regulation proposes to amend the Corporate Financing Rule to exempt certain church bond offerings from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule. NASD Regulation proposes to implement the proposed rule change on the date of SEC approval.

(b) Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The elimination of the requirement in Rule 2710 to file certain church bond offerings will allow NASD Regulation to better allocate its Department staff resources.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Association consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Security and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–81 and should be submitted by December 10, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30890 Filed 11–18–98; 8:45 am]

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[3] 15 U.S.C. 77c(a)(4). The Commission notes that in order for the proposed exemption to apply the offering must qualify under Section 3(a)(4) of the Securities Act, which requires that the offering not be for pecuniary profit, and no part of the net earnings can inure to the benefit of any person, private stockholder, or individual.

[4] 17 CFR 240,15c2–4. Rule 15c2–4 under the Act requires that investor funds forwarded to a broker/dealer in a contingent offering be held in an escrow or special account, depending on whether the broker/dealer can carry customer funds or accounts, until the contingency is reached before the funds can be released to the issuer.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40679; File No. SR–NYSE–98–32]

November 13, 1998.

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Shareholder Approval of Stock Option Plans

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1998, the New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") filed with the Securities and Exchange Commission (the "Commission" or the "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Paragraphs 312.01, 312.03 and 312.04 of its Listed Company Manual (the "Manual"). The proposed rule change amends the Exchange's shareholder approval policy (the "Policy") with respect to stock option and similar plans ("Plans"). The text of the proposed rule change is as follows:

Text of the Proposed Rule Change

Italics indicates additions; [brackets] indicate deletions.

312.00 Shareholder Approval Policy

312.01 Shareholders' interest and participation in corporate affairs has greatly increased. Management has responded by providing more extensive and frequent reports on matters of interest to investors. In addition, an increasing number of important corporate decisions are being referred to shareholders for their approval. This is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

especially true of transactions involving the issuance of additional securities.

Good business practice is frequently the controlling factor in the determination of management to submit a matter to shareholders for approval even though neither the law nor the company's charter makes such approvals necessary.The Exchange encourages this growth in corporate democracy. *For example, due to the recent growth of officer and director equity-based compensation arrangements and the increased interest of shareholders in this area, companies may determine to submit stock option and similar plans to shareholders for approval, whether or not the Exchange requires such approval.*

* * * * *

312.03 Shareholder approval is a prerequisite to listing in four situations:
(a) Shareholder approval is required with respect to a stock option or purchase plan, or any other arrangement, pursuant to which officers or directors may acquire stock (collectively, a "Plan") except:

(1) for warrants or rights issued generally to security holders of the company;

(2) pursuant to a broadly-based Plan [that includes other employees (*e.g.* ESOPs)];

(3) where options or shares are to be issued to a person not previously employed by the company, as a material inducement to such person's entering into an employment contract with the company; or

(4) pursuant to a Plan that provides that (i) no single officer or director may acquire under the Plan more than one percent of the shares of the issuer's common stock outstanding at the time the Plan is adopted, and (ii) together with all Plans of the issuer (other than Plans for which shareholder approval is not required under subsections (1) to (3) above), does not authorize the issuance of more than five percent of the issuer's common stock outstanding at the time the Plan is adopted.

* * * * *

312.04 For the purpose of Para. 312.03:

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[(g) Whether a Plan is "broadly-based" depends on a variety of factors, including, but not limited to the number of officers, directors and other employees covered by the Plan and whether there are separate compensation arrangements for salaried employees and hourly employees. The Exchange will deem a Plan to be "broadly-based" if at least 20 percent of the company's employees are eligible to receive stock or options under the Plan and at least half of those eligible are neither officers nor directors (the "20 percent test"). However, this is a non-exclusive safe harbor and the fact that a Plan does not meet the 20 percent test does not mean that the Exchange will consider the Plan to be narrowly-based. The Exchange encourages a listed company adopting a Plan that does not meet the 20 percent test, but that the company believes is "broadly-based," to discuss the matter with the Exchange staff prior to filing a listing application covering the shares to be issued under the Plan.]

(g) "Officer" has the same meaning as defined by the Securities and Exchange Commission in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

(h) A Plan is "broadly-based" if, pursuant to the terms of the Plan:

at least a majority of the company's full-time employees in the United States, who are "exempt employees," as defined under Fair Labor Standards Act of 1938, are eligible to receive stock or options under the Plan; and

at least a majority of the shares of stock or shares of stock underlying options awarded under the Plan, during the shorter of the three-year period commencing on the date the Plan is adopted by the company or the term of the Plan, must be awarded to employees who are not officers or directors of the company.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As a prerequisite to listing, the Policy requires shareholder approval of stock option or purchase plans or any other arrangement pursuant to which either officers or directors acquire stock. The Policy also contains, however, four exemptions from this requirement, including an exemption for "broadly-based" Plans. The purpose of the proposed rule change is to amend the provisions in the mutual governing shareholder approval of Plans, including the definition of what constitutes a "broadly-based" Plan.

The Exchange historically had not provided a definition of what constitutes a "broadly-based" Plan other than to state that such a Plan must include employees other than officers and directors. The one example in the policy of such a Plan was an employee stock option plan, or "ESOP." In December of 1997, the Exchange filed a proposed rule change amending the Policy which was published for public comment [3] by the Commission as required under Section 19(b)(1) of the Act.[4] The Commission received no comments on the proposed rule change, which was subsequently approved on April 8, 1998.[5] Among other things, the Original Proposal codified existing Exchange interpretations regarding "broadly-based" plans. Specifically, that proposal stated that the definition of "broadly-based" required a review of a number of factors, including the number of persons included in the Plan, and the nature of the company's employees. The Exchange also codified a non-exclusive safe harbor for Plans in which at least 20 percent of a company's employees were eligible, provided that the majority of those eligible were neither officers nor directors.

Following the approval and effectiveness of the Original Proposal, the Exchange and the Commission received a significant number of inquiries and comments regarding the proposal. These originated primarily from the institutional investor community and focused on the definition of "broadly-based." Many commentators were concerned that the Original Proposal could be a "loop-hole" pursuant to which companies could establish Plans of significant size that included officers and directors without the need for shareholder approval. Commentators also expressed general concern regarding the potential dilutive effects of Plans.

In response to the inquiries and comments, the Exchange issued a Request for Comment on the definition of "broadly-based" Plans. The Exchange received 166 comments in response to that request. These comments are discussed in Section II.C., below. The

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[3] Exchange Act Release No. 39659 (February 12, 1998), 63 FR 9036 (February 23, 1998).

[4] 15 U.S.C. 78s(b)(1).

[5] Exchange Act Release No. 39839 (April 8, 1998), 63 FR 18481 (April 15, 1998) (the "Original Proposal").

Request for Comment indicated the Exchange's intention to establish a task force (the "Task Force") to review the comments and to make recommendations regarding potential changes to the definition of "broadly-based" Plan.

The Exchange thereafter established the Task Force to review the comments. The Task Force was composed of representatives of the Exchange's Legal Advisory Committee, Individual Investors Advisory Committee, Pension Managers Advisory Committee, and Listed Company Advisory Committee. In addition, members of the Task Force included representatives of other Exchange constituencies, including a representative from the Council of Institutional Investors. Following its deliberations, the Task Force recommended the following:

(1) Retain, but modify the definition of a "broadly-based" Plan. The new definition would classify a Plan as "broadly-based" if, pursuant to the terms of the Plan:

(a) At least a majority of the issuer's full-time, exempt U.S. employees[6] are eligible to participate under the plan; and

(b) At least a majority of the shares awarded under the Plan (or shares of stock underlying options awarded under the Plan) during the shorter of the three year period commencing on the date the Plan is adopted by the issuer, or the term of the Plan itself, are made to employees[7] who are not officers or directors of the issuer.[8]

(2) Establish the definition of a "broadly-based" Plan as an exclusive test, not a safe harbor.

(3) Revise the Exchange's general policy on shareholder approval issues to recognize the increased use of Plans as means to compensate officers and directors and state the Exchange's view that companies should consider submitting Plans to shareholder whether or not required by Exchange policy.

(4) Direct the Task Force or other appropriate group to immediately commence a study to establish a maximum overall dilution listing standard for all non-tax-qualified Plans that otherwise would be exempt from shareholder approval. The goal would be to complete this study in time for Exchange review prior to the year 2000 proxy statement season.

The rule amendments being proposed in this filing implement the first three Task Force recommendations. In addition, the Exchange has adopted the fourth recommendation and will direct the Task Force to consider a possible listing standard regarding a dilution test.

The Exchange believes that the Task Force's recommendations represent an effective and workable compromise regarding shareholder approval of Plans. The proposal blends tests based both on Plan eligibility and Plan awards. In addition, while providing certainty through the use of an exclusive test, the Exchange believes the proposed amendments also state a general Exchange policy recognizing the increased use of Plans by companies and the Exchange's view that companies should consider submitting Plans to shareholders, whether or not required under the Policy. The Exchange believes the amendments also provide consistency in coverage by adopting the Commission's definition of "officer," as contained in Rule 16a–1(f) under the Act. Finally, the Task Force recognizes that this proposal may only be an interim step in addressing this issue, and recommends that the Exchange consider an overall dilution test. Since the Exchange did not request comment on this issue in its original Request for Comment, the Exchange believes that further study of such a test is prudent.

2. Statutory Basis

The NYSE believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

As discussed, the Exchange issued a Request for Comment on the definition of a "broadly-based" plan. The Exchange received 166 comment letters in response to that solicitation.[10] As a general matter, the listed company community favored retaining the current shareholder approval policy with respect to stock option plans. In contrast, the institutional investor community generally favored a narrower definition of what constitutes a "broadly-based" plan, and suggested that such a definition be an exclusive test, not a non-exclusive safe harbor. The Task Force considered these comments in proposing the compromise position the Exchange is proposing in this filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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[6] *See* 29 U.S.C. 213(a) for the definition of "exempt employees."

[7] The Exchange proposes a two part test for determining whether a plan is broadly-based. In the first prong, a majority of the company's full-time employees who are "exempt employees" must be eligible to receive stock. As a general matter, "exempt employees" are salaried employees in an executive, administrative or professional capacity. The Task Force recommended limiting this prong of the definition to "exempt employees" since non-exempt employees often are covered by compensation arrangements that do not include stock options.

The second part of the test requires that at least a majority of the shares awarded under a Plan be awarded to employees who are not officers or directors of a company. This part of the test is not limited to "exempt employees," allowing the calculation of the "majority of shares awarded" to include both "exempt employees" and non-exempt employees who are not officers or directors. The focus of this requirement is to ensure that a company actually implements a Plan in a broadly-based fashion. In this regard, it does not matter whether the awards to persons other than officers or directors are to "exempt" or non-exempt employees. Telephone call between Michael Simon, Milbank, Tweed, Hadley & McCloy, and Kelly McCormick, Attorney, Division of Market Regulation, Commission, dated November 12, 1998.

[8] In this regard, the Exchange proposes to use the definition of "officer" contained in Commission Rule 16a–1(f) under the Act.

[9] 15 U.S.C. 78f(b)(5).

[10] Interested persons are directed to the public file, located at the places specified in Item IV below, to review the comments received by the NYSE. The public file contains: (1) a Summary of the Comment Letters (Exhibit B); (2) the NYSE Request for Comment (Exhibit 2A); (3) the Comment Letters in Response to the Request (Exhibit 2B); and (4) the Report of the NYSE Task Force (Exhibit 2C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission requests comment on whether the "actual participation" standard of paragraph 312.03(h) of the Manual (which states that at least a majority of the shares of stock or shares underlying options awarded under the Plan, during the shorter of the three-year period commencing on the date the Plan was adopted by the company or the term of the plan, must be awarded to employees who are not officers or directors), in conjunction with the "eligibility" portion of proposed paragraph 312.03(h), adequately addresses commenters' concerns regarding non-executive participation, as well as eligibility, in a Plan. The Commission requests comment on whether a company could meet the definition of a broadly-based plan by nominally complying with the participation prong and the thereby avoid the shareholder approval requirements. In particular, could a company either issue grants to non-executive employees in the first three years of the Plan but reserve a majority of the shares actually available under a Plan for executives and directors once the three years has elapsed? Alternatively, could a company not issue any grants during the first three years of the Plan but reserve all shares available under the Plan for grants only to executives and directors once the three years has elapsed? The Commission also requests comment on whether Section 162(m) of the Internal Revenue Code,[11] (which requires shareholder approval of applicable employee remuneration in excess of one million dollars for covered employees for the remuneration to be eligible for deduction as a trade or business expense) provides shareholders with additional protection by affording shareholders an adequate opportunity to vote on certain stock option plans.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–32 and should be submitted by December 10, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30948 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

[11] 26 U.S.C. 162(m).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40675; File No. SR–PCX–98–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Extension of PCX Specialist Evaluation Program for One Year

November 12, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to extend its specialist evaluation program for one year.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

On December 22, 1997, the Commission approved a one-year extension of the Exchange's pilot program for the evaluation of equity specialists.[3] The filing was intended to establish an overall score and individual passing scores for specialists, replace the "Bettering the Quote" criterion with "Price Improvement," and lower the weighting of the "Specialist Evaluation Questionnarie" criterion from 15% to 10% so that Price Improvement could be given a weight of 10%. Subsequently, on May 8, 1998, the Commission approved an Exchange proposal to codify the aforementioned changes.[4] The Exchange is now proposing to extend the pilot program for one year, to January 1, 2000.

The Exchange is requesting a one-year extension of the pilot program so that it will have an opportunity to continue reviewing and evaluating the program before seeking permanent approval. In that regard, on October 29, 1998, the Exchange submitted a report to the Commission responding to particular questions set forth in the May 8, 1998 pilot approval order. The Exchange believes that this program is operating successfully and without any problems, and on that basis, the Exchange believes that a one-year extension of the program is warranted. At this time, the Exchange is not seeking to modify the pilot program.

Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to promote just and equitable principles of trade.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 39477 (December 22, 1997), 62 FR 68334 (December 30, 1997) and Exchange Act Release No. 39358 (November 25, 1997), 62 FR 64035 (December 3, 1997).

[4] *See* Exchange Act Release No. 39976 (May 8, 1998), 63 FR 26834 (May 14, 1998).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–54 and should be submitted by December 10, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

[7] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–30892 Filed 11–18–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Federal Assistance To Provide Financial Counseling and Other Technical Assistance to Women

AGENCY: Small Business Administration.

ACTION: Program Announcement No. OWBO–99–012.

SUMMARY: The Small Business Administration (SBA) plans to issue program announcement No. OWBO–99–012 to invite applications from private, not-for-profit organizations to conduct Women's Business Center projects. The authorizing legislation is the Small Business Act, Section 29, 15 U.S.C. Section 656, *as amended* by Pubic Law 105–277, 111 Stat. 2592. SBA Headquarters must receive applications/proposals by the date and time that will be specified in the program announcement. SBA will select successful applicants by a competitive process. The successful applicants will receive an award to provide long term training and counseling to women who want to start or expand businesses. Service and assistance areas must include financial, management, marketing and government procurement/certification assistance. Applicants must include a plan to target women who are socially and economically disadvantaged. The applicant may propose specialized services that will assist women who are veterans, disabled, rural, home-based, etc. SBA will require award recipients to provide services locally and on the Internet via the SBA-funded Online Women's Business Center, *www.onlinewbc.org*. Each applicant must submit a five-year plan that describes proposed fund-raising, training and technical assistance activities. A center may receive financial assistance up to five years, however, the award will be issued annually to conduct a 12-month project. Award recipients must provide non-Federal matching funds as follows: one non-Federal dollar for each two Federal dollars in years 1 and 2; one non-Federal dollar for each Federal dollar in years 3 and 4; and 2 non-Federal dollars for each Federal dollar in year 5. Up to one-half of the non-Federal matching funds may be in the form of in-kind contributions.

DATES: SBA will mail program announcements to interested parties between late November and early December 1998. The approximate opening date will be late November 1998 and the approximate closing date will be late January 1999.

FOR FURTHER INFORMATION CONTACT: Sally Murrell, (202) 205–6673 or Mina Wales (202) 205–6621.

Sherrye P. Henry,

Assistant Administrator, SBA/Office of Women's Business Ownership.

[FR Doc. 98–30910 Filed 11–18–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice # 2929]

U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (Committee Renewal)

The Department of State has renewed the Charter of the U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC) for another two years, effective September 3, 1998.

The NPAFC is a venue for consultation and coordination of cooperative high seas fishery enforcement among Convention parties.

The NPAFC was established by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed on February 12 by Canada, Japan, the Russian Federation, and the United States, and entered into force on February 16, 1993. The U.S. Advisory Panel will continue to work with the U.S. Section to promote the conservation of anadromous fish stocks, particularly salmon, throughout their migratory range in the North Pacific Ocean, as well as ecologically related species.

The U.S. Section of the Commission is composed of three Commissioners who are appointed by the President. Each Commissioner is appointed for a term not to exceed four years, but is eligible for reappointment. The Secretary of State, in consultation with the Secretary of Commerce, may designate alternate commissioners. The Advisory Panel to the U.S. Section is composed of 14 members appointed by the Secretary in consultation with the Secretary of Commerce, and serve for a term not to exceed 4 years, and may not serve more than two consecutive terms.

The Advisory Panel will continue to follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will continue to be open to the public unless a determination is made in accordance with Section 10 of the FACA, 5 U.S.C.

Secs. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will continue to be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information on the renewal of the Advisory Panel, please contact Bernard Link, International Relations Officer in the Office of Marine Conservation in the Department of State, (202) 647–2335.

Dated: October 7, 1998.

Bernard E. Link,

International Relations Officer.

[FR Doc. 98–30972 Filed 11–18–98; 8:45 am]

BILLING CODE 4710–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4765]

Intent To Prepare a Programmatic Environmental Assessment for the Coast Guard "Optimize Training Infrastructure" Initiative

AGENCY: Coast Guard, DOT.

ACTION: Notice of intent; notice of meetings and request for comments.

SUMMARY: The Coast Guard announces its intent to prepare a Programmatic Environmental Assessment (PEA) on its "Optimize Training Infrastructure" (OTI) Initiative. The PEA will be prepared in accordance with Coast Guard procedures and policies (COMDTINST M16475.1C) and section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508). The OTI Initiative will provide answers to questions about how the Coast Guard training infrastructure (instruction methods, training personnel, and facilities) can best meet current and future performance needs in a financially constrained environment. In 1997, the Coast Guard evaluated their training programs and infrastructure in the preliminary phases of OTI Initiative and recommended that several options for realigning training facilities be considered. This may result in transfer of training activities from one training center to other centers. Four training centers may be directly affected by the action: Training Center (TRACEN) Petaluma, California; TRACEN Cape May, New Jersey; Reserve Training Center (RTC) Yorktown, Virginia; and Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina. Under the different alternatives, some installations would be expanded, some would be downsized, and one or two could be closed. The PEA will analyze the potential environmental and socioeconomic effects of the OTI Initiative, any alternatives developed during the scoping process, and a "no action" alternative. A preferred alternative will be identified in the PEA. This notice begins the public scoping process to gather public input on issues and concerns to be analyzed and addressed in the PEA. To assist in gathering public comments, three public scoping meetings will be held.

DATES: The meeting dates are—

1. December 7, 1998, from 6:30 p.m. to 9 p.m., Cape May, NJ.
2. December 8, 1998, from 6:30 p.m. to 9 p.m., Yorktown, VA.
3. December 10, 1998, from 6:30 p.m. to 9 p.m., Petaluma, CA.

A public open house will be held before each scoping meeting from 3:30 p.m. to 5:30 p.m.

Written comments must reach the Docket Management Facility on or before December 24, 1998.

ADDRESSES: The meeting locations are—

1. Cape May—Grand Hotel, Ocean Front and Philadelphia, Cape May, NJ;
2. Yorktown—County Library, 8500 George Washigton Highway, Yorktown, VA; and
3. Petaluma—Petaluma Community Center, 320 North McDowell Blvd, Petaluma, CA.

You may mail your comments to the Docket Management Facility, (USCG–1998–4765), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and documents referred to in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, the NEPA process, and NEPA documents, contact Ms. Susan Boyle, Environmental Branch Chief of the Coast Guard Maintenance and Logistics Command Pacific; telephone: 510–437–3973; e-mail: CoastGuard@ttsfo.com. For questions on the OTI Initiative, Contact LCDR Keith Curran, Reserve and Training Directorate, Coast Guard Headquarters; telephone: 202–267–2429; e-mail: CoastGuard@ttsfo.com. For questions on viewing or submitting material to the docket, contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation; telephone: 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (USCG–1998–4765) and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES**. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

Discussion

The purpose of this notice is twofold: (1) to announce the Coast Guard's intent to prepare a PEA and (2) to begin the process of gathering the public's comments on this action to assist the Coast Guard in developing the PEA.

In 1997, preliminary phases of the OTI Initiative sought to validate training infrastructure requirements and identify alternative actions. Phase 1 validated existing training courses, determined likely future needs, and identified alternative ways to deliver instruction. Phase 2 measured infrastructure use, determined infrastructure needs for training requirements, and identified ways to gain savings or spread the cost of overhead. Emphasis was on right sizing the capital plant while preserving necessary flexibility.

A number of options are being considered to accomplish this. Depending upon the option selected, training functions would be transferred from one facility to another, functions of a facility increased or decreased, or one or more facilities closed. The following alternatives were recommended for more in depth analysis:

1. Close either Training Center Cape May or Training Center Petaluma and consolidate training functions at the remaining training centers.
2. Close both Training Center Cape May and Training Center Petaluma and

consolidate training functions at RTC Yorktown and Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina.

3. Fill the unused classroom and dormitory spaces at all the training centers with non-training functions.

4. Maintain the status quo.

Training Center (TRACEN) Petaluma, California; TRACEN Cape May, New Jersey; Reserve Training Center (RTC) Yorktown, Virginia; and Aviation Technical Training Center (ATTC) Elizabeth City, North Carolina, would be directly affected by the "action" alternatives. Minor components of other Coast Guard facilities currently in leased spaces in Wildwood, NJ, Oklahoma City, OK, and Chesapeake, VA, may also be involved in the actions resulting from the OTI Initiative. The number of people affected at these facilities would be small in comparison to the total facility population; therefore, environmental and socioeconomic impacts to these facilities and host communities are expected to be minimal.

At the end of the 30-day public comment period announced in this notice and after considering input from the public, the Coast Guard will prepare the PEA. The PEA will evaluate a full range of resources for each alternative, including socio-economics, land use, infrastructure/transportation, hazardous materials and waste management, biological resources, cultural resources, air quality, noise, and water resources and will also identify a preferred alternative. Other resources, including geology, soils, and bathymetry, are not expected to be affected from the action and may not be evaluated in detail.

Once the PEA is approved for public review by the Commandant of the Coast Guard, it will be widely distributed. The PEA is anticipated to be available for public review in March 1999. This will once again be announced in the **Federal Register** and a second 30-day public comment period will follow to provide the public with the opportunity to comment on the environmental assessment. Formal hearings will be held at all communities in which there is substantial public interest. At the conclusion of this public comment period, the Commandant will weigh appropriate information and make a final decision. The NEPA process will conclude with the publication of this decision in the **Federal Register**.

Dated: November 16, 1998.

T.J. Barrett,

Director of Reserve and Training Directorate.

[FR Doc. 98–30991 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–21]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

CORRECTION: Federal Express.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before December 9, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 13, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29347.
Petitioner: Rhino Aviation.
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit J & A pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No: 28820.
Petitioner: Northern Air Cargo, Inc.
Sections of the FAR Affected:
14 CFR 119.67(a)(1).
Description of Relief Sought:
To allow Mr. Leonard F. Kirk to continue to serve as Director of Operations for NAC without holding an airline transport pilot certificate.

Docket No: 26734.
Petitioner: Sierra Industries, Inc.
Sections of the FAR Affected:
14 CFR 91.9(a) and 91.531(a)(1) and (2).
Description of Relief Sought:
To permit Sierra to continue to permit certain qualified pilots of its Cessna Model 500 Citation airplanes (Serial Nos. 0001 through 0349 only) equipped with supplemental type certificat4e (STC) No. SA8176SW or STC No. SA09377SC and either STC No. SA2172NM or STC No. SA645NW to operate those aircraft without a pilot who is designated as second in command.

Docket No: 29151.
Petitioner: Aramco Associated Company (AAC).
Sections of the FAR Affected:
14 CFR 91.609(c).
Description of Relief Sought:
To permit AAC to continue to operate its four Bell Model 212 helicopters (Registration Nos.N701H, N705H, N748H, and N749H; Serial Nos. 35096, 35088, 35060, and 35061, respectively) in part 91 operations until January 31, 2000, without a digital flight data recorder installed in each of those aircraft.

Docket No: 29355.
Petitioner: Crow Executive Air, Inc. (CEA).
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit CEA pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No: 29342.
Petitioner: Airbus Industrie.

Sections of the FAR Affected:
14 CFR 61.77(a).
Description of Relief Sought:
To permit Airbus to obtain special purpose pilot authorizations for 50 of its pilots to ferry newly manufactured U.S.-registered aircraft from France and Germany to the United States for delivery to a U.S. airline. The pilots will not be carrying persons or property for hire on these new aircraft.

Docket No: 29363.
Petitioner: Charter Fleet International.
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit CFI pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 29361.
Petitioner: Columbia Helicopters, Inc. (CHI).
Sections of the FAR Affected:
14 CFR 135.152(a).
Description of Relief Sought:
To permit CHI to operater 5 Boeing Chinook Model BV–234 and 12 Boeing/Kawasaki Vertol 107 Model BV/KV–107–II helicopters under part 135 without a Federal Aviation Administration (FAA)-approved digital flight data recorder installed in each aircraft.

Docket No.: 26297.
Petitioner: Fairchild Aircraft Incorporated.
Sections of the FAR Affected:
14 CFR 91.531(a)(3).
Description of Relief Sought:
To permit Fairchild to continue to allow its type-rated company pilots to conduct production and experimental test flights in SA227–CC and SA227–DC Metro 23 airplanes without a pilot designated as second in command (SIC). It also would continue to permit all operators of Fairchild commuter category airplanes (SA227–CC, SA227–DC, and other airplanes on the same type certificate) to conduct flight operations without a designated SIC pilot, provided the airplane is type certificated for single-pilot operations and is carrying nine or fewer passengers.

Docket No.: 29353.
Petitioner: The Air Group, Inc. (AGI).
Sections of the FAR Affected:
14 CFR 135.299(a).
Description of Relief Sought:
To permit AGI pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 28732.
Petitioner: Counsel for Vieques Air Link, Inc.
Sections of the FAR Affected:
14 CFR 121.356 and 121.591 through 121.713.
Description of Relief Sought:
To permit Vieques to operate its Britten-Norman BN–2A Mark III Tri-Islander aircraft in scheduled operations without a traffic alert and collision avoidance system installed on those aircraft and without meeting the dispatching and flight release requirements set forth in subparts U and V of part 121.

Dispositions of Petitions

Docket No.: 28673.
Petitioner: Counsel for the Experimental Aircraft Association (EAA) Blatt, Hammesfahr & Eaton.
Sections of the FAR Affected:
14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/Disposition:
To permit EAA to operate its B–17, which holds a limited airworthiness certificate, for the purpose of carrying its members for compensation or hire in its former military vintage airplane.
Disposition, Date, Exemption No.
GRANT, October 30, 1998, Exemption No. 6541A.

Docket No.: 26710.
Petitioner: Skydive DeLand, Inc.
Sections of the FAR Affected:
14 CFR 105.43(a).
Description of Relief Sought/Disposition:
To permit Skydive to allow nonstudent parachutists who are foreign nationals to participate in parachute jumping events sponsored by Skydive without complying with the parachute equipment and packing requirements.
Disposition, Date, Exemption No.:
Grant, October 30, 1998, Exemption No. 5542C.

Docket No.: 29216.
Petitioner: Mid East Jet, Inc.
Sections of the FAR Affected:
14 CFR 25.813(e).
Description of Relief Sought/Disposition:
To permit installation of interior doors between passenger compartments on a Boeing 757–200 series airplane.
Disposition, Date, Exemption No.
Partial Grant, October 19, 1998, Exemption No. 6834.

Docket No.: 28696.
Petitioner: Federal Express.
Sections of the FAR Affected:
14 CFR 25.1423(c).
Description of Relief Sought/Disposition:
Disposition, Date, Exemption No.
Partial Grant, August 28, 1998, Exemption No. 6652A.
Correction to: Partial Grant and Exemption No.

Docket No.: 29224.
Petitioner: Bombardier Aerospace.
Sections of the FAR Affected:
14 CFR C36.3(c).
Description of Relief Sought/Disposition:
To permit the sideline noise certification requirement for Bombardier de Havilland Canada DHC–8 Dash 8 Series 400 airplane to be demonstrated based on the requirement contained in section 3.3.1(a)(2) of Volume 1, Chapter 3 of Annex 16 (Amendment 5) to the Convention on International Civil Aviation (ICAO).
Disposition, Date, Exemption No.
Grant, October 19, 1998, Exemption No. 6833.

[FR Doc. 98–30932 Filed 11–18–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Certification Task Force

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given that the next plenary meeting of the RTCA Certification Task Force will be held December 2, 1998, starting at 9:00 a.m., at RTCA, 1140 Connecticut Avenue NW., Suite 1020, Washington, DC. This task force is reviewing the "end-to-end" certification of advanced avionics systems and, keeping safety as a first priority, developing recommendations for improving the timeliness and reducing the costs of certification.

This meeting agenda will include: (1) Welcome and Introductory Remarks by Task Force Co-chairs Mr. Tony Broderick (former FAA associate administrator and now consultant to Airbus and Mr. Ed Stimpson (General Aviation Manufacturers Association); (2) Task Force Working Group Presentations. The presentations will focus on initial observations and will outline initial recommendations. Time will be allocated for questions, answers, and general discussion.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact RTCA at (202) 833–9339 (phone), (202) 833–9434 (fax), or dclarke@rtca/org (e-mail). Members of the public may present a

written statement to the committee at any time.

Issued in Washington, DC, on November 16, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–30935 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application 99–04–C–00–DBQ to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Dubuque Regional Airport, Dubuque, Iowa

AGENCY: Federal Aviation Administration, (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before December 21, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth J. Kraemer, A.A.E., Airport Manager, Dubuque Regional Airport, at the following address: 11000 Airport Road, Dubuque, IA 52003.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Dubuque Airport Commission, Dubuque Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On November 6, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Dubuque Airport Commission, Dubuque, Iowa, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 20, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September, 1999.

Proposed charge expiration date: March, 2001.

Total estimated PFC revenue: $171,391.

Brief description of proposed project(s): Replace a Quick Response Vehicle; Environmental Assessment for Runway 18/36 Extension; Acquire Land for Runway 18/36 Extension; and Engineering and Grading for Runway 18/36 Extension (Phase 1).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application notice and other documents germane to the application in person at the Dubuque Regional Airport.

Issued in Kansas City, Missouri on November 6, 1998.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 98–30933 Filed 11–18–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20931, et. al.][1]

Coach USA, Inc., and Coach USA North Central, Inc.—Control—Nine Motor Passenger Carriers; Notice Tentatively Approving Finance Transactions

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transactions.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, and its wholly owned noncarrier subsidiaries, Coach USA North Central, Inc. (North Central), Coach USA Northeast, Inc. (Northeast), Coach USA South Central, Inc. (South Central), Coach USA Southeast, Inc. (Southeast), Coach USA West, Inc. (West), and Yellow Cab Service Corporation (Yellow Cab Service) (collectively, the subsidiaries), filed applications under 49 U.S.C. 14303 for the subsidiaries to acquire direct control of motor passenger carriers that are currently controlled by Coach or are subject to pending applications for control. The control applications that are the subject of this notice are in furtherance of an internal corporate reorganization plan by Coach. Persons wishing to oppose the applications must follow the rules under 49 CFR 1182.5 and 1182.8.[2] The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by January 4, 1999. Applicants may file a reply by January 19, 1999. If no comments are filed by January 4, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20931, *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695).]

SUPPLEMENTARY INFORMATION: With the growth in the number of Coach-controlled carriers, Coach has determined that it can best maintain and improve the management of its controlled operating carriers, and promote the future growth of Coach, by establishing noncarrier subsidiaries, organized primarily on a regional basis,[3]

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] Revised procedures governing finance applications filed under 49 U.S.C. 14303 were adopted in *Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers,* STB Ex Parte No. 559 (STB served Sept. 1, 1998).

[3] Yellow Cab Service is the exception. It will control those operating carriers that focus their services on premium, taxicab, and other specialized transportation services, rather than carriers in a specific region of the country.

that will directly control the existing and future operating carriers of Coach.[4] The transfer of control of each of the motor passenger carriers to one of the subsidiaries will be by a transfer of the ownership interest in each operating carrier (either the stock of the carrier or the stock of the carrier's parent) to the respective subsidiary. Coach will remain the sole owner of all of the stock of the subsidiaries and will indirectly control the operating carriers, providing certain management, corporate and administrative services and benefits to the subsidiaries. Coach submits that there will be no transfer of any federal or state operating authorities held by any of the carriers to be acquired by the subsidiaries and that they will continue operating in the same manner as before the acquisitions of control. Accordingly, Coach asserts that granting the application will not reduce competitive options available to the traveling public.

Coach submits that granting the application will allow the subsidiaries to maintain and improve the high quality of services that are now offered by Coach to each of the operating carriers it controls. According to Coach, by further decentralizing certain management functions, Coach and its subsidiaries will be better able to plan equipment utilization, develop financial plans and coordinate other short-and long-term operational strategies best designed to meet the specific and unique needs of the carriers assigned to each subsidiary, and their customers. Specifically, each subsidiary will maintain a database of assets, including the vehicles operated by each of the operating carriers, which will allow management to more effectively deploy vehicles, resulting in more timely and efficient service to the traveling public. Further, each of the subsidiaries will coordinate the safety and compliance programs of the carriers it controls, with the object of maintaining and raising safety performance levels for each of the operating carriers.

In STB Docket No. MC–F–20931, North Central will be responsible for Coach-controlled carriers that are based in the following states or areas: Illinios, Indiana, Iowa, Kentucky, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota, western New York, western Pennsylvania, West Virginia, and Wisconsin. North Central seeks control of the following nine[5] motor passenger carriers: Airlines Acquisition Company, Inc., d/b/a Airlines Transportation Company (MC–223575); Blue Bird Coach Lines, Inc. (MC–108531); Butler Motor Transit, Inc. (MC–126876); Gad-About Tours, Inc. (MC–198451); Keeshin Transportation, L.P. (MC–263222); Keeshin Charter Services, Inc. (MC–118044); Lenzner Transportation Management Services d/b/a Lenzner Coach Lines (MC–237433); Niagara Scenic Bus Lines, Inc. (MC–30787); and Wisconsin Coach Lines, Inc. (MC–123432).[6]

In STB Docket No. MC–F–20932, Northeast will be responsible for Coach-controlled carriers that are based in the following states or areas: Connecticut, Delaware, eastern New York, eastern Pennsylvania, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, and Washington, DC. Northeast seeks control of the following 30[7] motor passenger carriers: Brunswick Transportation Company, d/b/a The Maine Line (MC–109495); Cape Transit Corp. (MC–161678); Chenango Valley Bus Lines, Inc. (MC–141324); Clinton Avenue Bus Company (MC–223062),[8] Colonial Coach Corp. (MC–39491); Community Coach, Inc. (MC–76022); Community Transit Lines, Inc. (MC–145548); GL Bus Lines, Inc. (MC–180074); Gray Line Air Shuttle, Inc. (MC–218255); Gray Line New York Tours, Inc. (MC–180229); H.A.M.L. Corp. (MC–194792); Hudson Transit Corp. (MC–133403); Hudson Transit Lines, Inc. (MC–228); International Bus Services, Inc. (MC–155937); Leisure Time Tours (MC–142011); Mini Coach of Boston (MC–231090); Olympia Trails Bus Co., Inc. (MC–138146); Orange, Newark, Elizabeth Bus, Inc. (MC–206227);[9] Pawtuxet Valley Bus Lines (MC–115432); Progressive Transportation Services, Inc. (MC–247074); Red & Tan Tours, Inc. (MC–162174); Red & Tan Charter, Inc. (MC–204842); Rockland Coaches, Inc. (MC–29890); Suburban Trails, Inc. (MC–149081); Suburban Transit Corp. (MC–115116); Suburban Management Corp. (MC–264527); Syracuse & Oswego Coach Lines, Inc. (MC–117805); The Arrow Line, Inc. (MC–1934); Utica-Rome Bus Co., Inc. (MC–7914); and Van Nortwick Bros., Inc. (MC–149025).

In STB Docket No. MC–F–20933, South Central will be responsible for Coach-controlled carriers that are based in the following states or areas: Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, Tennessee, and Texas. South Central seeks control of the following eight motor passenger carriers: Americoach Tours, Limited (MC–212649); Bayou City Coaches, Inc. (MC–245246); Browder Tours, Inc. (MC–236290); El Expreso, Inc. (MC–244195); Gulf Coast Transportation, Inc. (MC–201397); Kerrville Bus Company, Inc. (MC–27530); Stardust Tours, Inc., d/b/a Gray Line Tours of Memphis (MC–318341); and Texas Bus Lines, Inc. (MC–37640).

In STB Docket No. MC–F–20934, Southeast will be responsible for Coach-controlled carriers that are based in the following states or areas: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia. Southeast seeks controls of the following seven motor passenger carriers: Air Travel Transportation, Inc., d/b/a Atlanta Airport Shuttle and Atlanta Airport Shuttle, Inc. (MC–166420); America Charters, Ltd. (MC–153814); American Sightseeing Tours, Inc. (MC–252353); Le Bus, Inc. (MC–210900); P&S Transportation, Inc. (MC–255382); Tippett Travel, Inc., d/b/a Marie's Charter Bus Lines (MC–174043); and Tucker Transportation Company, Inc. (MC–223424).

In STB Docket No. MC–F–20935, West will be responsible for Coach-controlled carriers that are based in the following states or areas: Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming. West seeks control of the following 14 motor passenger carriers: Airport Bus of Bakersfield (MC–163191); Antelope Valley Bus, Inc. (MC–125057); Arrow Stage Lines, Inc. (MC–29592); Black Hawk-Central City Ace Express, Inc. (MC–273611); California Charters, Inc. (MC–241211); Desert Stage Lines, Inc. (MC–140919); Grosvenor Bus Lines, Inc. (MC–157317); K–T Contract Services, Inc. (MC–218583); Gray Line Tours of Southern Nevada, Inc. (MC–127564); PCSTC, Inc. (MC–184852); Powder

[4] In addition to the instant applications, Coach states that it plans to file another application jointly with Coach Canada, Inc., pursuant to which that subsidiary will seek approval to acquire control of Coach-controlled motor passenger carriers based in Canada.

[5] On October 21, 1998, Coach and North Central filed a separate application for the control of two additional carriers in *Coach USA, Inc., and Coach USA North Central, Inc.—Control—Central Cab Company and Mountaineer Coach, Inc.*, STB Docket No. MC–F–20939.

[6] In *Coach USA, Inc.—Control—Clinton Avenue Bus Company; Orange, Newark, Elizabeth Bus, Inc.; and Wisconsin Coach Lines, Inc.*, STB Docket No. MC–F–20930, Coach seeks an exemption to acquire control over Clinton Avenue Bus Company, Orange, Newark, Elizabeth Bus, Inc., and Wisconsin Coach Lines, Inc. A notice was served and published in the **Federal Register** (63 FR 51397) on September 25, 1998, instituting an exemption proceeding. Comments were due by November 9, 1998.

[7] On October 21, 1998, Coach and Northeast filed a separate application for the control of one additional carrier in *Coach USA, Inc., and Coach USA Northeast, Inc.—Control—Bonanza Bus Lines, Inc.*, STB Docket No. MC–F–20937.

[8] *See supra* note 6.

[9] *See supra* note 6.

River Transportation Services, Inc. (MC–161531), Salt Lake Coaches, Inc. (SLC); [10] Valen Transportation, Inc. (MC–212398); and Worthen Van Service, Inc. (MC–142573).

In STB Docket No. MC–F–20936, Yellow Cab Service will be responsible for those Coach-controlled carriers that focus on specialized transportation services. Yellow Cab Service seeks control of the following four motor passenger carriers: Airport Limousine Service, Inc. (MC–315702); Pittsburgh Transportation Charter Services, Inc. (MC–319195); Metro Cars, Inc. (MC–276823); and Kansas City Executive Coach, Inc. (MC–203805).

Coach and the subsidiaries plan to acquire control of additional motor passenger carriers in the coming months. Coach anticipates that the subsidiaries will be well-positioned to aid in the assessment of possible future acquisitions of motor passenger carriers in the particular area in which each subsidiary functions. According to Coach, the subsidiaries will be able to make those assessments in view of the operations of the carriers under their control and with a view toward developing and carrying out a strategic growth plan best suited to their particular area. Coach asserts that, as a result of the transfer of control to the subsidiaries, the operating carriers will become stronger and more responsive competitors in the areas in which each operates. Thus, the traveling public will have a higher level of assurance of access to passenger services due to the ability of the management of each subsidiary to coordinate the movement of vehicles between and among the operating carriers. In addition, the traveling public will benefit from the strategic planning and coordination by each subsidiary, as well as the ability of management to be responsive to the concerns, complaints and issues raised by the traveling public.

Coach certifies that none of the carriers to be acquired by the subsidiaries holds an unsatisfactory safety rating from the U.S. Department of Transportation; that each has sufficient liability insurance; and none is domiciled in Mexico or owned or controlled by persons of that country; and that approval of the transactions will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from the applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the applications, we find that the proposed acquisitions of control are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the applications.[11] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on January 4, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; and (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530.

Decided: November 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30982 Filed 11–18–98; 8:45 am]

BILLING CODE 4915–00–P

[10] Coach states that SLC does not yet hold federally issued operating authority but has filed an application with the Federal Highway Administration. In *Coach USA, Inc.—Continuance in Control—Salt Lake Coaches, Inc.*, STB Docket No. MC–F–20928 (STB served Sept. 4, 1998). Coach's continuance in control of SLC was approved upon SLC's becoming a motor passenger carrier.

[11] Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33677]

St. Lawrence & Atlantic Railroad (Quebec) Inc.; Acquisition and Operation Exemption—Line of Canadian National Railway Company

St. Lawrence & Atlantic Railroad (Quebec) Inc. (SL&AQ), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire overhead trackage rights from Canadian National Railway Company (CN), over approximately 15.83 miles of rail line owned by St. Lawrence & Atlantic Railroad Company (SL&A) between Island Pond, VT (MP 0.00 on CN's Sherbrooke Subdivision) and the United States/Canada border, near Norton, VT (MP 15.83 on CN's Sherbrooke Subdivision).

This transaction is related to STB Finance Docket No. 33678, *Emons Transportation Group, Inc., and Emons Railroad Group, Inc.—Continuance in Control Exemption—St. Lawrence & Atlantic Railroad (Quebec) Inc.*, wherein Emons Transportation Group, Inc. and Emons Railroad Group, Inc. have filed a petition for exemption to continue in control of SL&AQ once it acquires CN's overhead trackage rights and becomes a Class III rail carrier.[1]

SL&AQ intends to consummate the transaction and begin operations on or soon after the effective date of this notice *i.e.*, November 5, 1998, and upon approval and effectiveness of the related petition for exemption in STB Finance Docket No. 33678.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33677, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly &

[1] Emons Transportation Group, Inc., and Emons Railroad Group, Inc., noncarriers, currently control through stock ownership four Class III rail common carriers: Maryland and Pennsylvania Railroad Company (M&P), Yorkrail, Inc. (YRK), Penn Eastern Rail Lines, Inc. (PERL), and SL&A. Emons Transportation Group Inc. controls all four carriers; Emons Railroad Group, Inc. controls YRK, PERL, and SL&A.

Bayh LLP, 1350 Eye Street, N.W., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 12, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30983 Filed 11–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 129X)]

Union Pacific Railroad Company—Abandonment Exemption—in Dallas and Guthrie Counties, IA (Perry Branch and Yale Spur)

On October 30, 1998, Union Pacific Railroad Company (UP) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon 11.4 miles of continuous lines of railroad known as the Perry Branch and the Yale Spur, extending: (1) from milepost 369.0 near Dawson to the end of the line at milepost 374.2 near Herndon (the Perry Branch); and (2) from milepost 54.3 at Herndon to the end of the line at milepost 48.1 at Yale (the Yale Spur) (collectively, the Line), in Dallas and Guthrie Counties, IA. The Line traverses U. S. Postal Service Zip Codes 50066 (Dawson), 50128 (Jamaica and Herndon), and 50277 (Yale), and includes the rail stations of Herndon at mileposts 374.2 and 54.3 and Yale at milepost 49.0.

The Line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 17, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 9, 1998. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 129X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001, and (2) Joseph D. Anthofer, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0830. Replies to the UP petition are due on or before December 9, 1998.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 10, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30653 Filed 11–18–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 13, 1998.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 21, 1998 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0004.
Form Number: FMS 285–A.
Type of Review: Extension.
Title: Schedule of Excess Risks.
Description: Listing of Excess Risks written or assumed by Treasury certified companies showing compliance with Treasury Regulations to assist Treasury in determining solvency of certified companies for the benefit of writing Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 357.
Estimated Burden Hours Per Respondent: 20 hours.
Frequency of Response: Quarterly, Annually (applications when filed by company).
Estimated Total Reporting Burden: 7,140 hours.

OMB Number: 1510–0047.
Form Number: TFS 2211.
Type of Review: Extension.
Title: List of Data.
Description: Information is collected from insurance companies to provide Treasury with a basis for determining acceptability of insurance companies applying for a Certificate of Authority to write or reinsure Federal surety bonds.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 25.
Estimated Burden Hours Per Respondent: 18 hours.
Frequency of Response: On occasion (applications when filed by company).
Estimated Total Reporting Burden: 450 hours.

OMB Number: 1510–0052.

Form Number: FMS 458 and FMS 459.

Type of Review: Extension.

Title: Financial Institution Agreement and Application Forms for Designation as a Treasury Tax and Loan Depositary (FMS 458); and Resolution Authorizing the Financial Institution Agreement and Application for Designation as a Treasury Tax and Loan Depositary (FMS 459).

Description: Financial institutions are required to complete an Agreement and Application to participate in the Federal Tax Deposit/Treasury Tax and Loan Programs. The approved application designates the depositary as an authorized recipient of taxpayers' deposits for Federal taxes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 450.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: Other (once for duration of the authorization).

Estimated Total Reporting Burden: 225 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–30885 Filed 11–18–98; 8:45 am]

BILLING CODE 4810–35–P

UNITED STATES INFORMATION AGENCY

Faculty Development and Administrative Training for the American University in Kyrgyzstan Program; Request for Proposals

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award program. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to assist the American University in Kyrgyzstan (AUK) with faculty development and administrative training.

Program Information

Overview

This program is part of a collaborative effort to support curriculum and faculty development at the American University in Kyrgyzstan (AUK). The program will award up to $1,950,000 for a three year period for faculty development and administrative training for the American University in Kyrgyzstan. Approximately $300,000 of the total program budget should be devoted to the administrative training component, and the rest should be devoted to the faculty development component and administrative costs. The grantee organization or organizations will be expected to assist AUK to develop its faculty and administrative capacity through a comprehensive program of exchange and support activities.

Objectives

The overall objective of this effort is to support the American University in Kyrgyzstan in adapting U.S. educational curricula and practices to meet educational needs in Kyrgyzstan, and in fostering respect for principles of academic integrity and excellence. This assistance program will be divided into two parts: a faculty development component and an administrative training component. The objective of the faculty development component is to carry out a comprehensive program of faculty and curriculum development for the American University in Kyrgyzstan, including collaboration on the general education program and support in the following targeted fields: Journalism/Communications, Economic, Psychology, Sociology, American Studies, International Relations/Political Sciences, and other fields as needed. Applicants should describe a program of support for the targeted disciplines as well as an overall view of support for AUK. Applicants are encouraged to undertake exchange activities within each discipline in cooperation with one U.S. college or university department in that discipline in order to ensure program continuity and to enhance the mutual understanding of the participants. The faculty development program may take the shape of a series of exchanges between a U.S. and an AUK department in each targeted field. The exchanges in the several targeted fields may all be concentrated in one U.S. college or university; they may be concentrated in institutions in the same U.S. region; or they may involve several individual departments in colleges and universities across the U.S. These exchanges should provide participating AUK junior faculty with the possibility of earning the master's degree at a U.S. institution. Faculty exchange in a given discipline with a college department which does not offer the master's degree is allowable as long as appropriate arrangements can be made with another U.S. institution for study towards the master's degree where required. One small to medium sized institution of higher education may be designated as a model institution for AUK participants to consider as they adapt to the educational needs of Kyrgyzstan what they are learning in the U.S The model institution should also participate in faculty development in one or more of the targeted disciplines and/or in administrative training for AUK. Site visits to the model institution by all AUK exchange participants in the U.S. are encouraged where feasible.

The objective of the administrative training component is to carry out a comprehensive program of administrative support and training for AUK. Proposals should plan for training and support in the following priority areas: admissions, registrar's office (including registration, records and scheduling), financial aid, finance, accounting and budgeting, and library collections. Proposals may also plan for support in the areas of academic advising, student services, public relations, institutional development, and other services as needed. The goal of the administrative training exchanges is to facilitate a mentoring program for AUK administrators with U.S. counterparts through a series of exchange visits that should include visits to Kyrgyzstan by U.S. administrators with practical experience in these activities. Proposals may coordinate the administrative training components with a program of research on international educational development.

USIA encourages applications from consortia of colleges and universities or from U.S. partnerships developed for the purposes of this grant, as well as from any single organization with the capacity to administer this program. If a lead U.S. institution in a consortium is responsible for submitting an application on behalf of a consortium, the application must document the lead school's stated authority to represent the consortium.

Guidelines

Participants

The project is designed for the following participants: faculty, administrators, staff and students at

AUK and at the U.S. colleges or universities identified as partners in the faculty development and administrative training for AUK; postdoctoral specialists or doctoral candidates from the U.S. who are qualified to teach courses at AUK and to train AUK faculty and students; and other qualified educational and administrative specialists as appropriate. Applicant organizations do not need to obtain a letter of commitment from AUK, which has indicated its interest and commitment directly to USIA.

Logistics

The recipient organization will be responsible for most arrangements associated with this program. These include providing international and domestic travel arrangements for all participants, making lodging and local transportation arrangements for visitors, orienting and debriefing participants, preparing any necessary support material, and working with AUK, U.S. host institutions and individual grantees to achieve maximum program effectiveness.

Visa/Insurance/Tax Requirements

Programs must comply with J–1 visa regulations, including those pertaining to insurance. Please refer to Solicitation Package for further information. Administration of the program must be in compliance with reporting and withholding regulations for federal, state and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Organizations with less than four years of experience in conducting international exchange programs are ineligible for this grant competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as a breakdown reflecting the administrative budget, the budget for the faculty development component, the budget for the administrative training component, and detailed budgets for each of the three years of the grant. The total administrative costs funded by USIA may not exceed 20% of the total request. Approximately $300,000 should be devoted to the administrative training component. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number E/ASU–99–07.

FOR FURTHER INFORMATION CONTACT: Office of Academic Programs; Advising, Teaching and Specialized Programs Division; Specialized Programs Branch, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547, telephone: (202) 619–4097, fax: (202) 401–1433, internet: seisen@usia.gov to request a Solicitation Package containing more detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Pleas specify USIA Program Officer Sam Eisen on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

Contact Information for AUK

Applicants are encouraged to consult with the American University in Kyrgyzstan while planning their proposals. The primary contact person at AUK in Martha Merrill, Dean of Faculty and Curriculum Development:

Martha C. Merrill, c/o USIS-Bishkek, Kyrgyz Republic, Department of State, Washington, DC 20521–7040, 996–3312–21–37–72 or 21–36–32 phones at USIS, 996–3312–21–09–48 fax at USIS, E-mail: mmerrill@hotmail.com

Applicants may also contact:

ED Kulakowski, Public Affairs Officer, USIS Bishkek, tel: (996)–3312–213–632, 213–772, fax: (996)–3312–210–948, e-mail: pao@usis.gov.kg.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA'S website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's "Grants Information Fax on Demand System," which is accessed by calling 202/401–7616. The "Table of Contents" listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, D.C. time on March 8, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Approximate program dates: Grants should begin on or about July 1, 1999.

Duration: July 1, 1999–June 30, 2002.

Submissions

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to:

U.S. Information Agency, Ref.: E/ASU–9–07, Office of Grants Management, E/XE, Room 32,6 301 4th Street, S.W., Washington, D.C. 20547

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5′ diskette, for matted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA wfll transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS affairs and USIS Bishkek. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: November 9, 1998.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–30648 Filed 11–18–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 223

Thursday, November 19, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Peer Review Meeting of the Draft Research Protocol of the Full Ensemble Fire Testing of Fire Fighers' Protective Clothing and Equipment

Correction

In notice document 98–29098 beginning on page 58396 in the issue of Friday, October 30, 1998, make the following correction:

On page 58397, in the first column, in the second full paragraph, in the seventh line remove the words "Page 2".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40448; International Series Release No. 1158; File No. SR–Amex–98–27]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Settlement of the Eurotop 100 Index

Correction

In notice document 98–25491 beginning on page 51107, in the issue of Thursday, September 24, 1998, make the following correction:

On page 51108, in the second column, above the FR Doc. line, the signature was omitted and should read as follows:

Jonathan G. Katz,

Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40521; File No. SR–NASD–98–63]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for Those Subscribers Who Are Not Members of the NASD

October 5, 1998.

Correction

In notice document 98–27512, beginning on page 55167, in the issue of Wednesday, October 14, 1998, the heading is corrected by adding the date "October 5, 1998".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40557; File No. SR–Phlx–97–55]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Establishing an Enhanced Parity Split Pilot Program for Specialists in Foreign Currency Options Effective Until October 1, 1999

Correction

In notice document 98–28193, beginning on page 56284, in the issue of Wednesday, October 21, 1998, make the following correction:

On page 56286, in the third column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40555; File No. SR–NASD–98–48]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3 and 4 to Proposed Rule Change by the National Association of Securites Dealers, Inc., Relating to the Selection of Arbitrators in Arbitrations Involving Public Customers

October 14, 1998.

Correction

In notice document 98–28321, beginning on page 56670, in the issue of Thursday, October 22, 1998, the heading is corrected by adding the date "October 14, 1998".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40570; File No. SR–NASD–98–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Standards for Individual Correspondence

Correction

In notice document 98–28596, appearing on page 57147, in the issue of Monday, October 26, 1998, make the following correction:

On page 57147, in the third column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40592; File No. SR–NASD–98–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Central Registration Depository Fees

Correction

In notice document 98–28849, beginning on page 57718, in the issue of Wednesday, October 28, 1998, make the following correction:

On page 57721, in the second column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40577, File No. SR–PSE–97–02]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments 1 and 2 to the Proposed Rule Change by the Pacific Exchange, Inc., Relating to the Proprietary Hand-Held Terminal Program for Floor Brokers

Correction

In notice document 98–28850, beginning on page 57721, in the issue of Wednesday, October 28, 1998, make the following correction:

On page 57726, in the third column, above the FR Doc. line, the signature was omitted and should read as follows:

Margaret H. McFarland,

Deputy Secretary.

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40588; File No. SR–DTC–98–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Establishing a Practice of Collecting the Difference Between a Participant's Required Fund Deposit and its Actual Fund Deposit More Frequently

October 22, 1998.

Correction

In notice document 98–28847, beginning on page 57716, in the issue of Wednesday, October 28, 1998, the heading is corrected by adding the date "October 22, 1998".

BILLING CODE 1505-01-D

VOL 63 ISS 223 NO 19 1998 UMI

federal register

Thursday
November 19, 1998

Part II

Department of Commerce

Bureau of Export Administration

15 CFR Parts 742 and 744
India and Pakistan Sanctions and Other Measures; Interim Rule

183-247-08-6

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 744

[Docket No. 98–1019261–8261–01]

RIN 0694–AB73

India and Pakistan Sanctions and Other Measures

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule.

SUMMARY: In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in section 102(b)(2) of that Act.

The Bureau of Export Administration (BXA) is taking a number of sanctions measures consistent with the President's directive. Consistent with the provisions of section 102(b)(2)(G) of the Arms Export Control Act, BXA is revising the Export Administration Regulations (EAR) to codify sanctions against India and Pakistan by setting forth a licensing policy of denial for exports and reexports of items controlled for nuclear nonproliferation and missile technology reasons to India and Pakistan, with limited exceptions. This licensing policy was adopted in practice in existing regulations in June 1998. This rule also contains certain discretionary measures that are being taken. BXA is adding to the Entities List set forth in the EAR certain Indian and Pakistani government, parastatal, and private entities determined to be involved in nuclear or missile activities. In addition, Indian and Pakistani military entities are added to the Entity List in order to supplement the sanctions. BXA is adopting a licensing policy of a presumption of denial with respect to items specifically listed on the Commerce Control List to listed Indian and Pakistani military entities, with limited exceptions.

This rule will increase the number of license applications submitted for India and Pakistan.

DATES: This rule is effective November 19, 1998. Comments on this rule must be received on or before January 19, 1999.

ADDRESSES: Written comments on this rule should be sent to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044. Express mail address: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, 14th and Pennsylvania Avenue, NW, Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Director, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed in the determination reported to the Congress that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in section 102(b)(2) of that Act.

Consistent with the President's directive, the Bureau of Export Administration (BXA) is imposing certain sanctions, as well as certain supplementary measures to enhance the sanctions. Consistent with the provisions of section 102(b)(2)(G) of the Arms Export Control Act, BXA is amending the Export Administration Regulations (EAR) by adding new § 742.16, India and Pakistan sanctions. This section codifies a license review policy of denial for the export and reexport of items controlled for nuclear proliferation (NP) reasons to all end-users in India and Pakistan, except for computers (see § 742.12(b)(3)(iii), High Performance Computers, for license review policy for computers). This licensing policy was adopted in practice in existing regulations in June 1998. This section also includes a new license policy of denial for the export and reexport of items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except that items listed in § 740.2(a)(5) of the EAR remain eligible for applicable License Exceptions when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft and licenses for items intended for the preservation of safety of civil aircraft will be reviewed on a case-by-case basis. Items controlled on the Commerce Control List for nuclear and missile technology reasons have been made subject to this sanction policy because of their significance for nuclear explosive purposes and for delivery of nuclear devices.

To supplement the sanctions of § 742.16, this rule adds certain Indian and Pakistani government, parastatal, and private entities determined to be involved in nuclear or missile activities to the Entity List in Supplement No. 4 to part 744. License requirements for these entities are set forth in the newly added § 744.11. Exports and reexports of all items subject to the EAR to listed government, parastatal, and private entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed government, parastatal, or private Indian or Pakistani entity, and the item is subject to the EAR. The only exception to this license requirement is for items listed in § 740.2(a)(5) of the EAR, which remain eligible for applicable License Exceptions when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft. With respect to subordinates of listed entities in India and Pakistan, only those specifically listed in Supplement No. 4 to part 744, Entity List, are subject to the restrictions and policies set forth in § 742.16, except that General Prohibition 5 (see 736.2(b)(5)) continues to apply to all exports and reexports to Indian and Pakistani entities, including unlisted subordinates of listed entities. All applications to export or reexport items subject to the EAR will be reviewed with a presumption of denial to these entities, except items for the preservation of safety of civil aircraft will be reviewed on a case-by-case basis. Except for items controlled for NP or MT reasons, exports or reexports to listed parastatals and private entities with whom you have a preexisting business arrangement will be considered on a case-by-case basis, with a presumption of approval in cases where neither the arrangement nor the specific transaction involves nuclear or missile activities and the exports or reexports are pursuant to that arrangement. The term "business arrangement" covers the full range of business agreements, including general contracts, general terms agreements (e.g., agreements whereby the seller delivers products under purchase orders to be issued by the buyer), general business agreements, offset agreements, letter agreements that are stand-alone contracts, and letter agreements that are amendments to existing contracts or other agreements. The terms of the

preexisting business arrangement policy may also apply to the longstanding continued supply of a particular item or items from the exporter to the entity even when there is no current agreement between the firms. BXA, in conjunction with other agencies, will determine eligibility under the preexisting business arrangement policy. In order to be eligible under the policy, you must provide documentation to establish such an arrangement. The documentation should be provided at the time you submit a license application to export or reexport items to any listed parastatal or private entity.

To further supplement the sanctions of § 742.16, this rule adds certain Indian and Pakistani military entities to the Entity List in Supplement No. 4 to part 744. License requirements for these entities are set forth in the newly added § 744.12. Exports and reexports of all items subject to the EAR having a classification other than EAR99 to listed military entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed military Indian or Pakistani entity, and the item is subject to the EAR having a classification other than EAR99. No License Exception overcomes this license requirement, except a License Exception for items listed in § 740.2(a)(5) of the EAR when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft. Applications to export or reexport items controlled for NP or MT reasons to listed military entities will be denied, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial.

The addition of entities to the Entity List does not relieve exporters or reexporters of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR, "You may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BXA's 'Know Your Customer' Guidance and Red Flags" when exporting or reexporting to India and Pakistan.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, to the extent permitted by law, the provisions of the EAA and the EAR in Executive Order 12924 of August 19, 1994, continued by Presidential notices of August 15, 1995, August 14, 1996, August 15, 1997, and August 13, 1998.

Saving Clause

Shipments of items removed from License Exception or NLR authorizations as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on November 19, 1998, pursuant to actual orders for export to that destination in India or Pakistan, may proceed to that destination under the previous License Exception or NLR authorization provisions so long as they have been exported from the United States before December 17, 1998. Any such items not actually exported before midnight December 17, 1998, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. This rule contains one new information collection requirement approved under control number 0694–0111, "India and Pakistan Sanctions," which carries a burden hour estimate of 10 minutes per submission for miscellaneous activities, such as attaching supporting documentation that substantiates a preexisting business relationship. An additional 2 minutes per submission is needed for recordkeeping.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do at the earliest possible time to permit the fullest consideration of views.

The period for submission of comments will close January 19, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Comments should be provided with 5 copies.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this

facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

The reporting burden for this collection is estimated to be approximately 57 minutes, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing the burdens, should be forwarded to Sharron Cook, Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044, and David Rostker, Office of Management and Budget, OMB/OIRA, 725 17th Street, NW, NEOB Rm. 10202, Washington, DC 20503.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 744 of the Export Administration Regulations (15 CFR parts 730–774) are amended, as follows:

1. The authority citation for 15 CFR part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; 3 CFR, 1997 Comp. p. 306; and Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 3 CFR, 1996 Comp., p. 228; 3 CFR, 1997 Comp. p. 306; and Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

PART 742—[AMENDED]

3. Part 742 is amended by:

a. Revising § 742.12, paragraph (b)(3)(iii); and

b. Adding a new section 742.16, to read as follows:

§ 742.12 High Performance Computers.

* * * * *

(b) *Licensing policy.* * * *

(3) *Computer Tier 3.* * * *

(iii) *Licensing policy for other end-users and end-uses.* License applications for exports and reexports to other end-uses and end-users located in Computer Tier 3 countries will generally be approved, except there is a presumption of denial for all applications for exports and reexports of computers having a CTP greater than 2,000 MTOPS destined to Indian and Pakistani entities determined to be involved in nuclear, missile, or military activities included in Supplement No. 4 to part 744 (Entity List). All license applications for exports and reexports to India and Pakistan not meeting these criteria for presumption of denial will be considered on a case-by-case basis under other licensing policies set forth in the EAR applicable to such computers.

* * * * *

§ 742.16 India and Pakistan Sanctions.

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13th with regard to India and May 30th with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed that the relevant agencies and instrumentalities of the United States take the necessary actions to impose the sanctions described in section 102 (b)(2) of that Act. Consistent with the provisions of section 102(b)(2)(G) of the Arms Export Control Act, the following sanctions measures are imposed against India and Pakistan.

(a) *License requirement.* A license is required for all exports and reexports of items controlled for nuclear nonproliferation (NP) reasons to all end-users in India and Pakistan. In addition, a license is required for all exports and reexports of items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except items listed in § 740.2(a)(5) of the EAR, which remain eligible for applicable License Exceptions when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

(b) *Licensing policy.*

(1) *Nuclear Nonproliferation.* There is a policy of denial for all applications to export and reexport items controlled for nuclear proliferation (NP) reasons to all end-users in India and Pakistan, except high performance computers (see § 742.12(b)(3)(iii) of this part for licensing policy regarding high performance computers).

(2) *Missile Technology.* There is a policy of denial for all applications to export and reexport items controlled for missile technology (MT) reasons to all end-users in India and Pakistan, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis.

PART 744—[AMENDED]

4. Part 744 is amended by revising the last sentence of § 744.1(c), and adding two new sections 744.11 and 744.12, to read as follows:

§ 744.1 General provisions.

* * * * *

(c) * * * No License Exceptions are available for exports or reexports to listed entities of specified items, except License Exceptions for items destined to listed Indian or Pakistani entities intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft (see § 744.11(b) and § 744.12(b) of this part).

* * * * *

§ 744.11 Restrictions on certain government, parastatal, and private entities in Pakistan and India.

To supplement sanctions measures against India and Pakistan, set forth in § 742.16 of the EAR, a prohibition is imposed on exports and reexports to certain government, parastatal, and private entities in India and Pakistan determined to be involved in nuclear or missile activities. With respect to subordinates of listed entities in India and Pakistan, only those specifically

listed in Supplement No. 4 to part 744, Entity List, are subject to the restrictions and policies set forth in this section. The addition of entities to Supplement No. 4 to part 744, Entity List, does not relieve you of your obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR: "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." You are urged to use the guidance in Supplement No. 3 to part 732 of the EAR, "BXA's 'Know Your Customer' Guidance and Red Flags" when exporting or reexporting to India and Pakistan.

(a) *General restriction.* Certain government, parastatal, and private entities in India and Pakistan determined to be involved in nuclear or missile activities are included in Supplement No. 4 to this part 744 (Entity List). (See also § 744.1(c) of the EAR.) These entities are ineligible to receive exports or reexports of items subject to the EAR without a license. Exports and reexports of all items subject to the EAR to listed government, parastatal, and private entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed government, parastatal, or private Indian or Pakistani entity, and the item is subject to the EAR.

(b) *Exceptions.* No License Exceptions are available to the entities described in paragraph (a) of this section, except those applicable to items listed in § 740.2(a)(5) of the EAR, which remain available to such entities when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

(c) *License review standards.* (1) *Government entities.* Applications to export or reexport items controlled for NP or MT reasons to listed government entities will be denied, except items intended for the preservation of safety of civil aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other items subject to the EAR to these listed entities will be reviewed with a presumption of denial.

(2) *Parastatal and Private entities.* Applications to export or reexport items controlled for NP or MT reasons to certain parastatal and private entities will be denied, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other items subject to the EAR to these listed entities will be reviewed with a presumption of denial. Except for items controlled for NP or MT reasons, exports or reexports to listed parastatals and private entities with whom you have a preexisting business arrangement will be considered on a case-by-case basis, with a presumption of approval in cases where neither the arrangement nor the specific transaction involves nuclear or missile activities and the exports or reexports are pursuant to that arrangement. The term "business arrangement" covers the full range of business agreements, including general contracts, general terms agreements (e.g., agreements whereby the seller delivers products under purchase orders to be issued by the buyer), general business agreements, offset agreements, letter agreements that are stand-alone contracts, and letter agreements that are amendments to existing contracts or other agreements. The terms of the preexisting business arrangement policy may also apply to the longstanding continued supply of a particular item or items from the exporter to the entity even when there is no current agreement between the firms. BXA, in conjunction with other agencies, will determine eligibility under the preexisting business arrangement policy. In order to be eligible under the policy, you must provide documentation to establish such an arrangement. The documentation should be provided at the time you submit a license application to export or reexport items to any listed parastatal or private entity.

§ 744.12 Restrictions on certain military entities in Pakistan and India.

(a) *General restriction.* Certain military entities in India and Pakistan are included in Supplement No. 4 to this part 744 (Entity List). (See also § 744.1(c) of the EAR.) These entities are ineligible to receive exports or reexports of all items subject to the EAR having a classification other than EAR99 without a license. Exports and reexports of all items subject to the EAR having a classification other than EAR99 to listed military entities require a license. A license is also required if you know that the ultimate consignee or end-user is a listed military Indian or Pakistani entity, and the item is subject to the EAR having a classification other than EAR99.

(b) *Exceptions.* No License Exceptions are available to the entities described in paragraph (a) of this section, except those applicable to items listed in § 740.2(a)(5) of the EAR, which remain available to such entities when intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft.

(c) *License review policy.* Applications to export or reexport items controlled for NP or MT reasons to listed military entities will be denied, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other license applications will be reviewed with a presumption of denial.

5. Supplement No. 4 to part 744 is revised to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
This Supplement lists certain entities subject to license requirements for specified items under this part 744 of the EAR. License requirements for these entities includes exports and reexports, unless otherwise stated. This list of entities is revised and updated on a periodic basis in this Supplement by adding new or amended notifications and deleting notifications no longer in effect.				

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
CHINA, PEOPLE'S REPUBLIC OF.	Chinese Academy of Engineering Physics (aka Ninth Academy, including the Southwest Institutes of: Applied Electronics, Chemical Materials, Electronic Engineering, Explosives and Chemical Engineering, Environmental Testing, Fluid Physics, General Designing and Assembly, Machining Technology, Materials, Nuclear Physics and Chemistry, Structural Mechanics; Research and Applications of Special Materials Factory; Southwest Computing Center (all of preceding located in or near Mianyang, Sichuan Province); Institute of Applied Physics and Computational Mathematics, Beijing; and High Power Laser Laboratory, Shanghai).	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
INDIA	Advanced Fuel Fabrication Facility, Department of Atomic Energy (DAE), Tarapur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aerial Delivery Research and Development Establishment (ADRDE), Defence Research and Development Organization (DRDO), Agra.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aeronautical Development Agency, Ministry of Defense, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aeronautical Development Establishment (ADE), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aerospace Division, Hindustan Aeronautics Limited (HAL), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Ambajhari Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ambarnath Machine Tool Prototype Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ambarnath Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ammonium Perchlorate Experimental Plant, Indian Space Research Organization (ISRO), Department of Space, Alwaye.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Armament Research and Development Establishment (ARDE), Defence Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aruvankadu Cordite Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Aspara Research Reactor, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Atomic Energy Commission (AEC) located in Mumbai (formerly Bombay) and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Atomic Energy Regulatory Board (AERB), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Atomic Minerals Division (AMD), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	AURO Engineering, Pondicherry	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Avadi Heavy Vehicle Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Avadi Ordnance Clothing Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Baroda Ammonia Plant, (collocated with the Baroda Heavy Water Production Facility), Gujarat Fertilizers, Baroda.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Baroda Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Baroda.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Beryllium Machining Facility, Indian Space Research Organization (ISRO), and Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Bhabha Atomic Research Center (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Bharat Dynamics Limited, Bhanur and Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bharat Earth Movers Limited (BEML), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bharat Electronics Limited (BEL), Bangalore, Ghaziabad, and Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 26922, 5/16/97, 62 FR 51369, 10/1/97. [Insert: Federal Register Cite and date of publication].
	Bharat Heavy Electrical Limited (BHEL), Trichy (Tiruchirapalli), Hyderabad, Hardwar, New Delhi, and Ranipet.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bhatin Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Bhatin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Bhusawal Ordnance Factory, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Board of Radiation and Isotope Technology (BRIT), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Boron Enrichment Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Central Manufacturing Technology Institute, a.k.a. Central Machine Tool Institute, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Central Workshops, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Centre for Advanced Technology (CAT), Department of Atomic Energy (DAE), Indore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Centre for Aeronautical Systems Studies and Analysis (CASSA), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Centre for the Compositional Characterization of Materials, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Centre for Development of Advanced Computing, Department of Electronics, Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ceramic Fuels Fabrication Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Chanda Ammunition Loading Plant, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chanda Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chandigarh Ordnance Cable Factory, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chandigarh Ordnance Parachute Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Cirus Reactor, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Combat Vehicle Research and Development Establishment (CVRDE), Defence Research and Development Organization (DRDO), Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Construction Services and Estate Management Group, Directorate of Purchase and Stores (DPS), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Cossipore Gun and Shell Factory, Avadi Combine Engine Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Bio-Engineering and Electro-Medical Laboratory (DEBEL), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Electronics Applications Laboratory (DEAL), Defence Research and Development Organization (DRDO), Dehra Dun.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Electronics Research Laboratory (DERL or DLRL), Defence Research and Development Organization (DRDO), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Food Research Laboratory (DFRL), Defence Research and Development Organization (DRDO), Mysore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Institute of Fire Research (DIFR), Defence Research and Development Organization (DRDO), Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Institute of Physiology and Allied Sciences (DIPAS), Defence Research and Development Organization (DRDO), Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Defence Institute of Psychological Research (DIPR), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Institute of Workstudy (DIWS), Defence Research and Development Organization (DRDO), Mussoorie.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Laboratory (DL), Defence Research and Development Organization (DRDO), Jodhpur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Materials and Store Research and Development Establishment (DMSRDE), Defence Research and Development Organization (DRDO), Kanpur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Metallurgical Research Laboratory (DMRL), Defence Research and Development Organization (DRDO), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Establishment (DRDE), Defence Research and Development Organization (DRDO), Gwalior.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Laboratory (DRDL), Defence Research and Development Organization (DRDO), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Organization (DRDO) located in New Delhi and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research and Development Unit (DRDU), Defence Research and Development Organization (DRDO), Calcutta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Research Laboratory (DRL), Defence Research and Development Organization (DRDO), Tezpur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Science Centre (DSC), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Terrain Research Laboratory (DTRL), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Dehra Dun Opto-Electronics Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Dehra Dun Ordnance Factory, Dehra Dun Opto-Electronics Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Dehu Road Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Department of Defense Production and Supplies and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Department of Space located in Bangalore and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Department of Atomic Energy (DAE) located in Mumbai (formerly Bombay) and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Dhruva Reactor, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Purchase and Stores (DPS), Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Electronics and Radar Development Establishment (ERDE or LRDE), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Electronics Corporation of India, Ltd. (ECIL), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Engine Division, Hindustan Aeronautics Limited (HAL), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Explosive Research and Development Laboratory (ERDL), Defence Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Fast Breeder Test Reactor (FBTR), Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Fast Reactor Fuel Reprocessing Plant (FRFRP), Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ferrodie Private Limited (FPL), Thane.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Gas Turbine Research Establishment (GTRE), Defence Research and Development Organization (DRDO), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	General Services Organization, Directorate of Purchase and Stores (DPS), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Godrej & Boyce Mfg., Co., Ltd., Precision Equipment Division (PED) and Tool Room Division, Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Hazira Ammonia Plant, (collocated at the Hazira Heavy Water Production Facility) Krishak Bharati Cooperative, Ltd., Hazira.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Hazira Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Hazira.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Hazratpur Ordnance Equipment Factory, Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Heavy Water Board, Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Heavy Water Upgrade Plant, Kakrapar Atomic Power Station (KAPS), Nuclear Power Corporation of India, Ltd. (NPCIL), Kakrapar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Indian Institute of Science (IIS), Departments of: Aerospace Engineering and Space Technology Cell, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Indian Institute of Technology (IIT), Departments of: Aerospace Engineering and Space Technology Cell, Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Indian Institute of Technology (IIT), Departments of: Physics, Aerospace Engineering, and Space Technology Cell, Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	India Minerals Separation Plants, Indian Rare Earths, Ltd., (IREL), Chhatrapur, Orissa, and Chavara.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 35335, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Indian Rare Earths, Ltd., (IREL), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 35335, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Indian Space Research Organization (ISRO), Department of Space, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Indira Gandhi Center for Atomic Research (IGCAR), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Institute of Armament Technology (IAT), Defense Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute of Mathematical Sciences, Department of Atomic Energy (DAE), Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute of Physics, Department of Atomic Energy (DAE), Bhubaneshwar.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute for Systems Studies and Analyses (ISSA), Defense Research and Development Organization (DRDO), Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Instruments Research and Development Establishment (IRDE), Defense Research and Development Organization (DRDO), Dehra Dun.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Interim Test Range (ITR), a.k.a. Meteorological Rocket Station, Indian Space Research Organization (ISRO), Department of Space, Balasore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Interuniversity Consortium of DAE Facilities, Department of Atomic Energy (DAE), Calcutta, Indore, and Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ishapore Metal and Steel Factory, Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ishapore Rifle Factory, Dum Dum Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	ISRO Inertial Systems Unit (IISU), Indian Space Research Organization (ISRO), Department of Space, Thiruvananthapuram.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Itarsi Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Jabalpur Gray Iron Foundry, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Jabalpur Gun Carriage Factory, Itarsi Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Jaduguda Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Jaduguda.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kaiga Atomic Power Project (KAPP), The Nuclear Power Corporation of India, Ltd. (NPCIL), Kaiga.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Kakrapar Atomic Power Station (KAPS), The Nuclear Power Corporation of India, Ltd. (NPCIL), Kakrapar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kalpakkam Reprocessing Plant (KARP), a.k.a. Kalpakkam Fuel Reprocessing Plant, Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Kakrapar Atomic Power Station (KAPS), Nuclear Power Corporation of India, Ltd. (NPCIL), Kakrapar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kamini Research Reactor, Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Field Gun Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Ordnance Equipment Factory, Kanpur Field Gun Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Ordnance Parachute Factory, Kanpur Field Gun Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kanpur Small Arms Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Katni Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Khamaira Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kirkee Ammunition Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Kirloskar Brothers, Ltd. (KB), Pune	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Kota Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Kota.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Kundankulam Atomic Power Project, The Nuclear Power Corporation of India, Ltd. (NPCIL), Kundankulam.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Larsen & Toubro, Ltd. (L&T), Hazira Works, Hazira.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Liquid Propulsion Systems Centre, Indian Space Research Organization (ISRO), Department of Space, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Liquid Propulsion Systems Centre, Indian Space Research Organization (ISRO), Department of Space, Thiruvananthapuram or Valiamala.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Liquid Propulsion Test Facility, Indian Space Research Organization (ISRO), Department of Space, Mahendragiri.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Machine Tool Aids & Reconditioning (MTAR), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Madras Atomic Power Station (MAPS), The Nuclear Power Corporation of India, Ltd. (NPCIL), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Manuguru Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Manuguru.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Medak Grey Iron Foundry, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Medak Ordnance Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Mehta Research Institute of Maths and Math Physics, Department of Atomic Energy (DAE), Allahabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Meteorological Rocket Station, a.k.a. Interim Test Range (ITR), Indian Space Research Organization (ISRO), Department of Space, Balasore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Mineral Sand Separation Complex, a.k.a. Orissa Sands Complex (OSCOM), India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Chhatrapur in the Gunjan District of Orissa.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Minerals Recovery Plant, India Rare Earths, Ltd. (IREL), Chavara.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Misrha Dhatu Nigam, Ltd. (MIDHANI), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	The Missile Research and Development Complex, Defence Research and Development Laboratory (DRDL), Defence Research and Development Organization (DRDO), Imarat, Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Muradnagar Ordnance Factory, Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Nangal Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Nangal.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Narora Atomic Power Station (NAPS), The Nuclear Power Corporation of India, Ltd. (NPCIL), Bullandshahr in Uttar Pradesh.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Narwapahar Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Narwapahar.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	National Aerospace Laboratory, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Test Range, Defence Research and Development Organization (DRDO), Baliabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Trisonic Aerodynamic Facility, National Aerospace Laboratory, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Naval Chemical and Metallurgical Laboratory (NCML), Defence Research and Development Organization (DRDO), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Naval Physical and Oceanographic Laboratory (NPOL), Defence Research and Development Organization (DRDO), Cochin.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Naval Science and Technological Laboratory (NSTL), Defence Research and Development Organization (DRDO), Vishakhapatnam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	New Zirconium Sponge Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	The Nuclear Power Corporation of India, Ltd. (NPCIL), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Nuclear Science Centre (NSC), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Ordnance Factories Staff College, Nagpur (Ambajhari).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ordnance Factories Training Institutes, Ishapore, Kanpur, Jabalpur (Kharmiar), Ambarnath, Ambajahari.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ordnance Factory Board and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Orissa Sands Complex (OSCOM), a.k.a. The Mineral Sand Separation Complex India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Chhatrapur in the Gunjan District of Orissa.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Physical Research Laboratory (PRL), Department of Space, Ahmadabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Plutonium Reprocessing Plant, a.k.a. Trombay Reprocessing Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Precision Controls, Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	PREFRE Reprocessing Plant, Department of Atomic Energy (DAE), Tarapur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Proof and Experimental Establishment, Defence Research and Development Organization (DRDO), Chandipore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Prototype Fast Breeder Reactor (PFBR), Indira Gandhi Centre for Atomic Research (IGCAR), Department of Atomic Energy (DAE), Kalpakkam.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Purinima Facility, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Rajasthan Atomic Power Station (RAPS), and Rajasthan Atomic Power Project, The Nuclear Power Corporation of India, Ltd. (NPCIL), Department of Atomic Energy (DAE), Rawatbhata.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Rama Krishna Engineering Works (REW), Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Rare Earth Development Laboratory, a.k.a. Thorium Plant, India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Rare Materials Plant, India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Mysore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Research and Development Establishment (Engineers) (R&DE (ENGRS)), Defence Research and Development Organization (DRDO), Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Saha Institute of Nuclear Physics, Department of Atomic Energy (DAE), Calcutta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Scientific Analysis Group (SAG), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Shahjahanpur Ordnance Clothing Factory, Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid Propellant Space Booster Plant (SPROB), Sriharikota Space Centre (SHAR), Indian Space Research Organization (ISRO), Department of Space.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid State Physics Laboratory (SSPL), Defence Research and Development Organization (DRDO), New Delhi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space Applications Centre (SAC), Indian Space Research Organization (ISRO), Department of Space, Ahmadabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space Physics Laboratory (SPL), Department of Space, Thiruvananthapuram.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Special Materials Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Sriharikota Space Centre (SHAR), Indian Space Research Organization (ISRO), Department of Space, Andhra Pradesh.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Talcher Ammonia Plant, (collocated at Talcher Heavy Water Production Facility) Fertilizer Corporation of India, Ltd., Talcher.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Talcher Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Talcher.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Tarapur Atomic Power Station (TAPS), and Tarapur Atomic Power Project, The Nuclear Power Corporation of India, Ltd. (NPCIL), Department of Atomic Energy (DAE), Tarapur.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Tata Institute of Fundamental Research, Department of Atomic Energy (DAE), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Terminal Ballistics Research Laboratory (TBRL), Defence Research and Development Organization (DRDO), Chandigarh.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Thal-Vaishet Ammonia Plant, (collocated at Thal-Vaishet Heavy Water Production Facility), Rashtriya Chemicals & Fertilizers, Thal-Vaishet in Maharashtra.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Thal-Vaishet Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Thal-Vaishet in Maharashtra.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Thorium Plant, India Rare Earths, Ltd. (IREL), Department of Atomic Energy (DAE), Chhatrapur.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Thumba Equatorial Rocket Launching Station, Indian Space Research Organization (ISRO), Department of Space.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Tiruchchirappalli Heavy Alloy Penetrator Project, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Tiruchchirappalli Ordnance Factory, Kirkee High Explosives Factory, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Titlagarh Ammunition Plant, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Trombay Reprocessing Plant, a.k.a. Plutonium Reprocessing Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Tuticorin Ammonia Plant, (collocated at Tuticorin Heavy Water Production Facility), Southern Petrochemical Industries Corporation, Tuticorin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Tuticorin Heavy Water Production Facility, Heavy Water Board, Department of Atomic Energy (DAE), Tuticorin.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Conversion Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Jaduguda.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Enrichment Plant, Bhabha Atomic Research Centre (BARC), Department of Atomic Energy (DAE), Trombay, suburban city of Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Fuel Assembly Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Mine and Mill, Uranium Corporation of India, Ltd. (UCIL), Narwapahar, Jaduguda, and Bhatin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Mine, Uranium Corporation of India, Ltd. (UCIL), Turamdih.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Fertilizers and Chemicals Travancore (FACT), Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Cochin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Mosabini (a.k.a. Masabeni).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Rakha.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Recovery Plant, Uranium Corporation of India, Ltd. (UCIL), Department of Atomic Energy (DAE), Surda (a.k.a. Surdat).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Varangaon Ordnance Factory, Tiruchchirappalli Heavy Alloy Penetrator Project, Ordnance Factory Board, Department of Defense Production and Supplies, Ministry of Defense.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	The Variable Energy Cyclotron Centre (VECC), Department of Atomic Energy (DAE), Calcutta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Vehicles Research and Development Establishment, Defence Research and Development Organization (DRDO), Ahmednagar.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Vikram Sarabhai Space Centre (VSSC), Indian Space Research Organization (ISRO), Department of Space, Thiruvananthapuram.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Walchandnagar Industries, Ltd. (WIL), Nadu Desarai and Mahad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Zirconium Fabrication Plant, Nuclear Fuel Complex (NFC), Department of Atomic Energy (DAE), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Zirconium Oxide Plant, India Rare Earths Ltd. (IREL), Department of Atomic Energy (DAE), Manavalakuruchi.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
ISRAEL	Ben Gurion University, Israel	For computers between 2,000 and 7,000 Mtops.	Case-by-case basis	62 FR 4910, 2/3/97.
	Nuclear Research Center at Negev Dimona, Israel.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
PAKISTAN	Abdul Qader Khan Research Laboratories, a.k.a. Khan Research Laboratories (KRL), a.k.a. Engineering Research Laboratories (ERL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Aerospace Institute, Space and Upper Atmospheric Research Commission (SUPARCO), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Al Technique Corporation of Pakistan, Ltd.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Allied Trading Co	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	ANZ Importers and Exporters, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Armed Forces Institute of Pathology—Rawalpindi Laboratory.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Atomic Energy Minerals Centre, Pakistan Atomic Energy Commission (PAEC), Lahore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Baghalchur Uranium Mine, Pakistan Atomic Energy Commission (PAEC), Baghalchur.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Center for Advanced Molecular Biology, Lahore.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Center for Nuclear Studies, Pakistan Atomic Energy Commission (PAEC), and Pakistan Institute of Nuclear Science and Technology (PINSTECH), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Chaklala Defense Science and Technology Organization (DESTO).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Chasma Fuel Fabrication Plant, Chasma Nuclear Power Plant (CHASNUPP), Pakistan Atomic Energy Commission (PAEC), Kundian.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Chasma Nuclear Power Plant (CHASNUPP), Pakistan Atomic Energy Commission (PAEC), Kundian.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Combat Development Directorate (CDD)	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Computer Center, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Computer and Development Division, KANUPP Institute of Nuclear Power Engineering (KINPOE), Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Computer Training Center, Pakistan Atomic Energy Commission (PAEC) and Pakistan Institute of Nuclear Science and Technology (PINSTECH), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Control System Laboratories, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Daud Khel Chemical Plant, Defense Science and Technology Organization (DESTO), Lahore.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Defence Science and Technology Organization (DESTO) located in Rawalpindi and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Dera Ghazi Khan Uranium Mine, Pakistan Atomic Energy Commission (PAEC), Dera Ghazi Khan.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Technical Development, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Technical Equipment, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Directorate of Technical Procurement, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Engineering and Technical Services, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Engineering Research Laboratories (ERL), a.k.a. Abdul Qader Khan Research Laboratories, a.k.a. Khan Research Laboratories (KRL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Flight Test Range, Space and Upper Atmospheric Research Commission (SUPARCO), Sonmiani Beach.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Gadwal Ammunition Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Gadwal Uranium Enrichment Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Ghulam Ishaq Khan Institute of Technology, Topai.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Golra Ultracentrifuge Plant, Golra	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Goth Macchi Nitrogen Fertilizer Plant, Sadiqabad.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Hard Rock Division, Pakistan Atomic Energy Commission (PAEC), Peshawar.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Haripur Nitrogen Fertilizer Plant, Hazara	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Havelian Explosives and Ammunition Plant.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Hawkes Bay Depot, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Heavy Water Production Plant, KANUPP, Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	High Technologies, Ltd., Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Institute of Nuclear Power, Pakistan Atomic Energy Commission (PAEC), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Instrumentation Laboratories, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Issa Khel/Kubul Kel Uranium Mines and Mills, Pakistan Atomic Energy Commission (PAEC), Miniawali District.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi CBW Research Institute, University of Karachi's Husein Ebrahim Jamal Research Institute of Chemistry (HEJRIC).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi CW & BW Warfare R&D Laboratory, Defense Science and Technology Organization (DESTO).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi Naval Base and Naval Hqs. And Dockyard.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi Nuclear Power Plant (KANUPP), Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Karachi Superphos Fertilizer Plant, Al Noor.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	KANUPP Institute of Nuclear Power Engineering (KINPOE), Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Khan Research Laboratories (KRL) a.k.a. Abdul Qader Khan Research Laboratories, a.k.a. Engineering Research Laboratories (ERL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97 [Insert: Federal Register Cite and date of publication].
	Khewra Soda Ash Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Khushab Reactor, Pakistan Atomic Energy Commission (PAEC), Khushab, Punjab.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Lahore Weapons Plant, PEC	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Lastech Associates, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Machinery Master Enterprises, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Maple Engineering Pvt. Ltd. Consultants, Importers and Exporters.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Material Research Division, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Mineral Sands Program, Pakistan Atomic Energy Commission (PAEC), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Mirpur Nitrogen Fertilizer Plant, Mathelo	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Modern Engineering Services, Ltd., Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Multan Chemical Fertilizer Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Multan Heavy Water Production Facility, Pakistan Atomic Energy Commission (PAEC), Multan Division, Punjab.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Development Centre	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35335, 6/30/97. [Insert: Federal Register Cite and date of publication].
	National Engineering Service of Pakistan, Chasma Nuclear Power Plant (CHASNUPP), Pakistan Atomic Energy Commission (PAEC), Kundian.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	National Institute of Biotechnology and Genetic Engineering, Faisalabad.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	New Laboratories, Pakistan Institute for Nuclear Science and Technology (PINSTECH), Rawalpindi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Nuclear Track Detection Center, a.k.a. Solid State Nuclear Track Detection Laboratory, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Orient Importers and Exporters, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Pakistan Atomic Energy Commission (PAEC) located in Islamabad and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Pakistan Institute for Nuclear Science and Technology (PINSTECH), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97. [Insert: Federal Register Cite and date of publication].
	Pakistan Ordnance Factories	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	PARR–1 Research Reactor, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	PARR–2 Research Reactor, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	People's Steel Mills, Karachi	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Pilot Reprocessing Plant, New Laboratories, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Prime International	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Quality Control and Assurance Unit, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Rocket Bodies Manufacturing Unit, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Saniwal Ammunition Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Science and Engineering Services Directorate, Pakistan Atomic Energy Commission (PAEC).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Scientific and Technical Tech., Ltd., Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Sihala Ultracentrifuge Plant, Sihala	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid Composite Propellant Unit, Space and Upper Atmospheric Research Commission (SUPARCO).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Solid State Nuclear Track Detection Laboratory, a.k.a. Nuclear Track Detection Center, Pakistan Institute for Nuclear Science and Technology (PINSTECH).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space and Atmospheric Research Center, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space and Upper Atmospheric Research Commission (SUPARCO) and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Space Research Council and subordinate entities specifically listed in this Supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Static Test Unit, Space and Upper Atmospheric Research Commission (SUPARCO), Karachi.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication]
	Technical Services, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	The Tempest Trading Company, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Unique Technical Promoters	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	[Insert: Federal Register Cite and date of publication].
	Uranium Conversion Facility, Pakistan Atomic Energy Commission (PAEC), Islamabad.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
	Wah Chemical Product Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	[Insert: Federal Register Cite and date of publication].
	Wah Munitions Plant, a.k.a. Explosives Factory, Pakistan Ordnance Factories (POF).	For all items subject to the EAR having a classification other than EAR99.	See § 744.11(c)(1) of this part.	[Insert: Federal Register Cite and date of publication].
RUSSIA	All-Russian Scientific Research Institute of Technical Physics, (aka VNIITF, Chelyabinsk-70, All-Russian Research Institute of Technical Physics, ARITP, Russian Federal Nuclear Center) located in either Snezhinsk or Kremlev.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
	All-Union Scientific Research Institute of Experimental Physics, (aka VNIIEF, Arzamas-16, Russian Federal Nuclear Center, All Russian Research Institute of Experimental Physics, ARIEP, Khariton Institute) located in either Snezhinsk or Kremlev.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
	Baltic State Technical University, 1/21, 1-ya Krasnoarmeiskaya Ul., 198005, St. Petersburg.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Europalace 2000, Moscow	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Glavkosmos, 9 Krasnoproletarskaya st., 103030 Moscow.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Grafit (aka State Scientific Research Institute of Graphite or NIIGRAFIT), 2 Ulitsa Elektrodnaya, 111524, Moscow.	For all items subject to the EAR (see § 744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	INOR Scientific Center, Moscow, Russia	For all items subject to the EAR (see §744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Ministry for Atomic Power of Russia (any entities, institutes, or centers associated with) located in either Snezhinsk or Kremlev.	For all items subject to the EAR.	Case-by-case basis	62 FR 35334, 6/30/97.
	MOSO Company, Moscow	For all items subject to the EAR (see §744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.
	Polyus Scientific Production Association, 3 Ulitsa Vvedenskogo, 117342, Moscow.	For all items subject to the EAR (see §744.10 of the EAR).	Presumption of denial.	63 FR 40363, 7/29/98.

Dated: November 13, 1998.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 98–30877 Filed 11–13–98; 4:10 pm]

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Part III

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Clothes Washers; Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–403]

RIN 1904–AA67

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Clothes Washers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental Advance Notice of Proposed Rulemaking.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA or Act), requires the Department of Energy (DOE or Department) to consider amending the energy conservation standards for certain major household appliances. This supplemental advance notice of proposed rulemaking (ANOPR) addresses the requirement of EPCA to consider amending the energy conservation standards for clothes washers no later than five years after the date of publication of the previous final rule (May 14, 1991).

The purpose of this supplemental ANOPR is to provide interested persons with an opportunity to comment on:

First, the product classes that the Department is planning to analyze;

Second, the analytical framework, models (e.g., the Government Regulatory Impact Model (GRIM)), and tools (e.g., a Monte Carlo sampling methodology, and life-cycle-cost (LCC) and national energy savings (NES) spreadsheets) that the Department expects to use in performing analyses of the impacts of standards; and

Third, the results of preliminary analyses for life-cycle-cost, payback and national energy savings contained in the Preliminary Technical Support Document: Energy Efficiency Standards for Consumer Products: Clothes Washers (TSD) and summarized in this supplemental ANOPR.

DATES: Written comments must be received by February 2, 1999. The Department requests 10 copies of the written comments and, if possible, a computer disk. The Office of Codes and Standards is currently using WordPerfect 6.1.

A public hearing will be held on December 14 (1:00–4:00 p.m.) and 15 (9:00 a.m.–4:00 p.m.), 1998. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: Written comments should be submitted to: U.S. Department of Energy, Attn: Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, "Energy Efficiency Standards for Consumer Products," (Docket No. EE–RM–94–403), EE–431, Forrestal Building, 1000 Independence Avenue, SW, Room 1J–018, Washington, D.C. 20585, (202) 586–9127.

The public hearing will be held at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, Room 1E–245, Washington, D.C. 20585.

Copies of the Preliminary Technical Support Document: Energy Efficiency Standards for Consumer Products: Clothes Washers (TSD) may also be obtained from: U.S. Department of Energy, Office of Codes and Standards, 1000 Independence Avenue, SW, Rm 1J–018, Washington, D.C. 20585–0121, (202) 586–9127.

Public Information: The public may access the Freedom of Information Reading Room, located at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Room 1E–190, Washington, D.C. 20585 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, (except Federal holidays). Call (202) 586–6020 for information.

For more information concerning public participation in this rulemaking proceeding, see section IV, "Public Comment Procedures," of this document.

FOR FURTHER INFORMATION CONTACT:
Bryan Berringer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–431, 1000 Independence Avenue, SW, Washington, D.C. 20585–0121, (202) 586–0371, E-mail: Bryan.Berringer@EE.DOE.GOV

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I. Introduction

A. Authority

Part B of Title III of the Energy Policy and Conservation Act, Public Law 94–163, as amended by the National Energy Conservation Policy Act, Public Law 95–619, the National Appliance Energy Conservation Act of 1987, Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988, Public Law 100–357, and the Energy Policy Act of 1992, Public Law 102–486 (the Act or EPCA), created the Energy Conservation Program for Various Consumer Products other than Automobiles. 42 U.S.C. 6291–6309.

The National Appliance Energy Conservation Act of 1987 amended the Act to impose prescriptive standards (design feature requirements) for clothes washers as part of the energy conservation program for consumer products. EPCA, Section 325(g), 42 U.S.C. 6295(g). The design feature requirement that clothes washers shall have an unheated rinse option was effective for appliances manufactured on or after January 1, 1988. The Act required the Department to conduct a rulemaking by January 1, 1990, to determine if the above mentioned standards should be amended. The Act provided that any amendment to the standards would apply to products manufactured three years after the rulemaking. The Final Rule was issued on May 14, 1991, and is effective for products manufactured on or after May 14, 1994 (hereinafter referred to as the May 1991 Final Rule). 56 FR 22279. The Act also requires the Department to conduct a subsequent rulemaking no later than five years after the date of publication of the previous final rule.

Before the Department determines whether or not an energy conservation standard is economically justified, it must first solicit comments on the proposed standard. EPCA, Section 325(p), 42 U.S.C. 6295(p). Any new or amended standard is required to be designed so as to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. EPCA, Section 325(o)(2), 42 U.S.C. 6295(o)(2). After reviewing comments on the proposal, the Department must then determine that the benefits of the standard exceed its burdens based to the greatest extent practicable, on a weighing of the following seven factors:

(1) The economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(2) The savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result directly from the imposition of the standard;

(3) The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

(4) Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

B. Background

1. History

The Department initiated a clothes washer rulemaking to determine if the standards (design feature requirements) imposed by the Act should be amended. The Department published an Advance Notice of Proposed Rulemaking (ANOPR) (53 FR 17712, May 18, 1988), a Notice of Proposed Rulemaking (NOPR) (54 FR 32744, August 9, 1989), and the May 1991 Final Rule. The May 1991 Final Rule mandated performance-based energy conservation standards for clothes washers. The standards specified a minimum energy factor (EF) for two of the five classes of clothes washers (top-loading standard and top-loading compact). The energy conservation standards in the May 1991 Final Rule are effective for products manufactured on or after May 14, 1994.

In the May 1991 Final Rule, the Department announced that it was accelerating the second review of energy efficiency standards for clothes washers because it became aware, after the rulemaking was closed, of a design option (horizontal-axis (H-axis) wash tub in a top-loading washer) in use in Europe that was not included in the proposed rule and upon which no comment was received. The Department did not consider establishing a standard based on the top-loading H-axis design option because this information came to the attention of the Department after the close of the comment period on the proposed rule and thus was not subject to public debate.

On September 28, 1990, the Department published an ANOPR for nine products which included the second review of energy efficiency standards for clothes washers. 55 FR 39624. In response to that notice, a number of energy efficiency advocates and appliance manufacturers requested that the Department delay the second review until a 1995–1996 time frame. The additional time was requested in order to allow manufacturers time to meet the standards in the May 1991 Final Rule which became effective on May 14, 1994, and to fully evaluate new, more energy efficient technologies such as top-loading H-axis clothes washers. This additional time, manufacturers contended, would enable them to provide more meaningful and relevant comments on the next, legislatively required, rulemaking. The Department considered the request, and by letter, dated February 26, 1992, notified the parties requesting the delay that the Department had determined that it would conduct the rulemaking on the later schedule, as requested.

On November 14, 1994, the Department issued an ANOPR to begin the second review of energy efficiency standards for clothes washers, dishwashers and clothes dryers. In this ANOPR, the Department presented the product classes that the Department planned to analyze, the analytical framework and models that the Department expected to use in performing analyses, and issues on which the Department was interested in gathering data. The Department received comments in response to this ANOPR and also collected data from the manufacturers which was compiled by the Association of Home Appliance Manufacturers (AHAM) on May 8, 1995, and July 6, 1995. (AHAM, No. 27 and 38.)

2. Test Procedure

Simultaneous with the rulemaking for clothes washer standards, the Department was also in the process of revising the clothes washer test procedure. The Department needed to address a number of innovative technologies for which there were no test procedures. A number of proposals were published, one on December 22, 1993 (58 FR 67710), and another on March 23, 1995. 60 FR 15330. In its comments to the March, 1995 proposed rule, AHAM requested that DOE adopt

an additional new test procedure, based on current consumer habits, which would be used in considering the revision of the clothes washer energy conservation standards, and would go into effect upon issuance of standards.

On April 22, 1996, the Department issued a supplemental NOPR proposing such a new test procedure, Appendix J1, as well as certain additional revisions to the currently applicable test procedure in Appendix J to Subpart B of 10 CFR Part 430. 61 FR 17589. The supplemental notice was published to seek comments on whether it should adopt the AHAM recommended test procedure with certain changes. The Final Rule, published on August 27, 1997, adopted this recommendation. 62 FR 45484. Appendix J1 of the revised test procedure would go into effect upon issuance of standards. Appendix J1 includes a modified energy factor (MEF) which replaces the EF. Contrasting with the previous EF (Energy Factor) descriptor, the MEF descriptor incorporates clothes dryer energy by consideration of the remaining moisture content (RMC) of clothes leaving the clothes washer. Other substantive differences between the test procedures include using different water temperatures for testing and using cloth loads in J1 and not in J. The issuance of the Final Rule was a major step in accelerating the development of clothes washer standards because it provided the basis upon which the energy and water consumption, as well as the manufacturing costs would be submitted.

3. Process Improvement

During consideration of the fiscal year 1996 appropriations, there was considerable debate about the efficacy of the standards program. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1996 included a moratorium on proposing or issuing energy conservation appliance standards for the remainder of Fiscal Year 1996. *See* Pub. L. 104–134. Congress advised DOE to correct the standards-setting process and to bring together stakeholders (such as manufacturers and environmentalists) for assistance. In September 1995, the Department announced a formal effort to consider further improvements to the process used to develop appliance efficiency standards, calling on energy efficiency groups, manufacturers, trade associations, state agencies, utilities and other interested parties to provide input to guide the Department. On July 15, 1996, the Department published a Final Rule: Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products (hereinafter referred to as the Process Rule). 61 FR 36974.

The Process Rule outlines the procedural improvements identified by the interested parties. The process improvement effort included a review of the: (1) economic models, such as the Manufacturer Analysis Model and Residential Energy Model; (2) analytical tools, such as the use of a Monte Carlo sampling methodology; and (3) prioritization of future rules. The Process Rule includes the accounting for uncertainty and variability by doing scenario or probability analysis (as detailed in the Process Rule, 10 CFR 430, Subpart C, Appendix A §§ 1(f), 4(d)(2), and 10(f)(1)). In addition, an Advisory Committee on Appliance Energy Efficiency Standards, consisting of a representative group of these interested parties, was established to make recommendations to the Secretary regarding the implementation of the Process Rule.

The clothes washer standards rulemaking is the first rule to be developed under the Process Rule. Although there were two previous ANOPRs, the Department made a commitment to use the Process Rule to the extent possible in the development of the new clothes washer standards. In this supplemental ANOPR, the Department is presenting the framework by which it will develop the standards. The framework reflects improvements and steps detailed in the Process Rule. The rulemaking process is dynamic. If timely new data, models or tools that enhance the development of standards become available, they will be incorporated into the rulemaking. For example the Advisory Committee has made several recommendations and the Department has proposed responses which are discussed in this supplemental ANOPR.

On November 15, 1996, the Department held a workshop to discuss proposed design options and a preliminary engineering analysis for clothes washers. Two reports were presented: "Draft Report on the Preliminary Engineering Analysis for Clothes Washers" and "Draft Report on Design Options for Clothes Washer" (Clothes Washer Public Workshop, No. 55 B and C). A number of concerns were raised relating to the application of the Process Rule to the clothes washer rulemaking, including the need for a review of the manufacturing impact analysis model and methodologies, and a review of non-regulatory approaches (Thiele, No. 55L, at 80), whether the manufacturing cost data collected needed to be updated (Topping, No. 55L, at 52), and whether the Department ought to continue relying on the old methods of doing the analysis. (Perlis, No. 55L at 167.)

Responding to comments from the November 1996 workshop concerning the application of the Process Rule to the clothes washer rulemaking, the Department developed an analytical framework for appliance standards rulemaking. It was presented during a clothes washer workshop held on July 23, 1997. The analytical framework describes the different analyses (e.g., the LCC, payback and national impact analyses) to be conducted (*See* Table 1), the method for conducting them, e.g., the use of a new LCC and NES spreadsheet and the relationship between the various analyses. The framework will be tailored to each rulemaking. Therefore, the same procedures will not necessarily be followed in all of the rulemakings. For example, although manufacturing cost data needs to be collected for each rulemaking, the method for collecting the data can be customized to the specific product.

TABLE 1.—CLOTHES WASHER ANALYSES UNDER PROCESS RULE

ANOPR	NOPR	Final rule
Screening Analysis	Revised Pre-ANOPR Analyses (LCC and National Impacts Analyses)	Revise Analyses (LCC and National Impacts Analyses).
Engineering Analysis	Consumer Sub-group Analysis.	
Life-Cycle-Cost Analysis	Industry Cash-flow Analysis (GRIM).	
Preliminary National Impacts Analysis	Manufacturer Impact Analysis.	
	Utility Impact Analysis.	

TABLE 1.—CLOTHES WASHER ANALYSES UNDER PROCESS RULE—Continued

ANOPR	NOPR	Final rule
	Environmental Analysis.	

The Department is in the process of developing two new spreadsheet tools in an effort to meet the objectives of the Process Rule. The first spreadsheet calculates LCC, and payback. The second one calculates national energy savings (NES). Both tools will be tailored for specific products. These spreadsheets and the results of the preliminary analysis were discussed at a clothes washer workshop held on March 11, 1998.

The Department has reviewed the recommendations made by the Advisory Committee on Appliance Energy Efficiency Standards on April 21, 1998. (Advisory Committee, No. 96). These recommendations relate to using the full range of consumer marginal energy rates (CMER) in the LCC analysis (replacing the use of national average energy prices), defining a range of energy price futures for each fuel used in the economic analyses and defining a range of primary energy conversion factors and associated emission reductions, based on the generation displaced by energy efficiency standards for each rulemaking. The Department plans to incorporate the recommendations, when appropriate, into the various rulemaking analyses.

Today's supplemental ANOPR pertains to clothes washers and utilizes the framework described in Section II. Although the November, 1994 ANOPR included clothes dryers and dishwashers, clothes washers are considered a high priority product and have been separated out to accelerate the rulemaking. Comments previously received for the September 28, 1990, ANOPR and the November 1994 ANOPR relative to clothes washers are being addressed in this document, where applicable.

II. Clothes Washers Analyses

This section includes a general introduction to each analysis section and provides a discussion of issues relative to the clothes washer rule.

A. Preliminary Market and Technology Assessment

The preliminary market and technology assessment characterizes the relevant product markets and existing technology options including prototype designs.

1. Market Assessment

a. General. When initiating a standards rulemaking, the Department develops information on the present and past industry structure and market characteristics of the product(s) concerned. This activity consists of both quantitative and qualitative efforts to assess the industry and products based on publicly available information. Issues to be addressed include: (1) manufacturer market share and characteristics; (2) trends in the number of firms; (3) the financial situation of manufacturers; (4) existing non-regulatory efficiency improvement initiatives; and (5) trends in product characteristics and retail markets. The information collected serves as resource material to be used throughout the rulemaking.

b. Product Specific. The Department reviewed existing literature and data sources to get an overall picture of the clothes washer market in the United States. Information was compiled primarily from industry publications (trade journals), government agencies, trade organizations (AHAM) and research reports. The Department gathered the following information: (1) manufacturer market share; (2) historical shipments; (3) washer sales by outlet type; (4) top retailers; (5) price distribution; (6) market saturation; (7) voluntary programs; (8) fuel distribution of water heaters; and (9) gas and electric sales of dryers (brand names). Information relating to consumer impact and voluntary programs also was obtained. The information described is discussed in the sections where it is used in the analysis. The Preliminary TSD provides additional information.

2. Technology Assessment

a. General. Information relative to existing technology options and prototype designs are used as inputs to the screening analysis. In consultation with interested parties, the Department develops a list of design options for consideration. All technologically feasible design options are candidates in this initial assessment.

b. Product Specific. This clothes washer rulemaking analysis was originally performed using the design option approach. In this approach, information is gathered on all possible energy saving design options. The Department gathered design option information from previous clothes washer analyses, trade publications, industry research organizations, product brochures from domestic and foreign manufacturers, and appliance conferences, including the International Appliance Technical Conference (IATC). Features such as high spin speed (allowing for lower remaining moisture content) and automatic fill control became important due to changes in the clothes washer test procedure. AHAM provided additional information on the energy savings potential and viability of these designs. The "Draft Report on Design Options for Clothes Washers" and "Draft Report on the Preliminary Engineering Analysis for Clothes Washers" provide details on the potential technologies. (Clothes Washer Public Workshop, No. 55B and 55C).

The technology assessment began with a study of the efficiencies of washers currently on the market. To gain greater insight and to begin creating an efficiency distribution of current product offerings, the Department used both Appendix J and J1 test procedures on nine different clothes washers; seven vertical-axis (V-axis) models and two H-axis models. Products from all five major American manufacturers were included. The complete results are given in the Preliminary TSD. The testing program results show a large variation in MEF values are possible for clothes washers with nearly identical EF ratings. The Federal Trade Commission (FTC) and manufacturers (through AHAM) also provided energy efficiency labeling information. Further descriptions of the most current data are provided in the engineering section of the Preliminary TSD.

3. Preliminary Base Case Shipments Forecast

a. General. The Department develops a base case forecast of product shipments in the absence of new standards. This forecast requires an assessment of the impacts of past and existing non-regulatory efforts by manufacturers, utilities and other interested parties. DOE considers information on the actual impacts of such initiatives to date, and also

considers information presented regarding the possible impacts that any existing initiatives might have in the future. Such information could include a demonstration of the steps manufacturers, distribution channels, utilities or others will take to realize such voluntary efficiency improvements.

The base case shipments forecast is used as input to the national impacts analysis, in which a forecast of annual shipments and their weighted average energy efficiency is needed to the year 2030.

b. Product Specific. In order to develop its base case forecast for clothes washer sales the Department reviewed: (1) Federal procurement guidelines; (2) voluntary programs (i.e., utility and consortium educational materials and/or rebates); (3) government and industry demonstration and information programs (e.g., Energy Star Program); and (4) documented discussions with organizations and individuals. Clothes washer sales will be forecasted by efficiency level for the time period of 2003 to 2030. This forecast will be more difficult for the clothes washer rulemaking, because the efficiency factor (EF) was changed to the modified energy factor (MEF). The Department has limited information concerning the energy performance of existing product offerings using the MEF descriptor. Given the vastly different nature of the variables and testing methods of the current J and future J1 test procedures, the EF values cannot be translated to MEF values. In addition, the analysis revealed a rapidly evolving market response to the introduction of new H-axis model clothes washers. In 1997, the WashWise consortium interviewed manufacturers and asked them to estimate the market share of H-axis washers in five years. WashWise is a public/private partnership between Pacific Northwest electric, gas, water and wastewater utilities, appliance manufacturers and local retailers. Their goal is to reduce the use of energy and water by encouraging consumers in Washington, Oregon, Idaho and western Montana to purchase resource-efficient washers. The results showed a large divergence of estimates ranging from a low of 5 percent to a high of 25 percent (*Coming Clean About Resource-Efficient Clothes Washers: An Initial WashWise Program and Market Progress Report-Final Report*, No. E98–003, January 28, 1998). (March 11, 1998 Workshop Material, No. 82 OO).

For the purpose of the base case forecast in the preliminary national impacts analysis, the effect of voluntary programs has been expressed as the percent of new clothes washers sold each year that will have efficiencies corresponding to those of H-axis washers. The H-axis washer is characterized using the data submitted by AHAM for a 35 percent energy reduction from the baseline MEF. The spreadsheet uses disaggregated values (i.e., water heater energy, dryer energy and mechanical energy) provided by AHAM. Disaggregated values provided by AHAM for the baseline washer are also used for the base case forecast. Calculations based on disaggregated values reflect the efficiencies of machines actually being sold which may differ from the minimum required efficiency. The preliminary base case assumes a 1.5 percent share of H-axis machines in 1995 with a 0.5 percent increase in H-axis sales every year thereafter, until 2030 (i.e., 19 percent).

The NES spreadsheet allows for changes in the distribution of efficiencies of clothes washers due to non-regulatory programs. The user specifies the percent of new clothes washer sales that will achieve the selected energy reduction (relative to the baseline washer design) in future years. In later analyses (i.e., the NOPR) the Department expects to use a distribution of current and forecasted efficiencies based on the best available information. Information is still being gathered for this task. The Department seeks comment on this forecast and welcomes any available information on current product efficiencies.

B. Screening Analysis

The screening analysis reviews various technologies with regard to whether they: (a) are impracticable to manufacture, install and service; (b) have an adverse impact on product utility or product availability; and (c) have adverse impacts on health and safety. The screening analysis establishes product classes, baseline units, and efficiency levels (or combinations of design options) for further analysis.

1. Product Classes

a. General. Product types are divided into classes using the following criteria: (a) the type of energy used; (b) capacity; and (c) performance-related features that affect consumer utility or efficiency. Different energy efficiency standards will apply to different product classes. In general, classes are defined using information obtained in discussions with appliance manufacturers, trade associations, and other interested parties.

b. Product Specific. The Department's three proposals regarding clothes washer product classes and a discussion of related comments follow:

- Eliminate the Semi-Automatic Top-Loading, Front-Loading and Suds Saving classes identified in the May 1991 Final Rule. The Department is proposing to eliminate certain previously defined classifications (Semi-Automatic Top-Loading, Front-Loading and Suds Saving) because they do not offer any added utility which is inherently less energy efficient and therefore would require protection from the energy conservation standards. EPCA, § 325(o)(2)(B)(I)(IV), 42 U.S.C. 6295 (o)(2)(B)(I)(IV). In the May 1991 Final Rule, these classes were not subject to minimum energy conservation standards because they represented a small portion of the market, and due to a lack of adequate information to analyze them. However, the 1988 standard requiring an unheated rinse option is still applicable to these classes. The Department has further reviewed this topic and believes that these products should be subject to the minimum energy conservation standards applicable to either compact or standard clothes washers.
- Divide all products into a Compact (less than 2.0 ft.^{3} capacity) Class and a Standard (2.0 ft.^{3} or greater capacity) Class. In its written comments, Whirlpool asked the Department to maintain the current efficiency requirement for the compact class due to the limited potential for energy-efficient improvements and the small market share for these products. Whirlpool also indicated that the V-axis compact clothes washer market and the manufacturing base for these products has changed since the current standards were developed. The previous stand-alone 1.6 ft.^{3} compact V-axis clothes washer products have been replaced by a product that maintains the small cabinet (22" width) utility and portability (via castors); however, its basket capacity is slightly larger. Because of the limited market size, Whirlpool is currently the only American manufacturer of these products. They also supply them to other appliance companies for sale under various brand names. For these reasons, the Department will revise the compact V-axis product class definition (1.6 ft.^{3} capacity) to include all V-axis clothes washers less than 2.0 ft.^{3} (Whirlpool, No. 69 at 3). The Department plans to increase the compact class to include all clothes washers (both V- and H-axis machines) less than 2.0 ft.^{3} and seeks comments on this change.
- Classify H- and V-Axis clothes washers as compact or standard rather

than establish a separate class for these products. Based on current information, the Department believes that there is no basis for separate classes for H- and V-axis clothes washers. Recent and near-term product offerings, and working prototypes of horizontal and vertical axis clothes washers demonstrate large energy savings while maintaining important product features. The Department received comments suggesting that it identify V- and H-axis machines as a single product class. Whirlpool stated that the DOE's analyses to date and the recent consumer acceptance in the market of H-axis products confirm the validity of a single product class, irrespective of the axis. Whirlpool further stated that the concerns over clothes washer performance, consumer utility and reliability are unfounded in either principal or fact. (Whirlpool, No. 93 at 1.) The Natural Resources Defense Council (NRDC) stated that the "H-axis" design option does not affect the utility of clothes washers and it is not the only design option that can comply with the standards. According to the NRDC, the evidence does not support the establishment of different standards even if separate classes were established. (NRDC, No. 60 at 1.)

However, other commenters feel that the Department should not reject separate product classes. General Electric Appliances (GEA) indicated that the Department is proceeding as if all relevant consumer utilities are met by H-axis products already on the market or by machines planned for production. GEA further stated that the port of access is not the only relevant consumer utility that must be addressed. Many other consumer utilities, including reliability, must be addressed. (GEA, No. 88 at 2.) The Department seeks additional comments on this issue and is currently working with stakeholders to formulate a process to gather additional consumer input on the issues surrounding clothes washer utility. This process is discussed further in Section II.F.2.b.

2. Baseline Units

a. General. In order to analyze design options for energy efficiency improvements, the Department defines a baseline unit. For each product class, the assumed baseline unit is a unit that minimally exceeds the existing standard. To determine the characteristics of the baseline unit in this screening analysis, the Department gathered information from trade organizations, manufacturers, and consultants with expertise in specific product types.

b. Product Specific. The Department issued two new test procedures during the course of this rulemaking: Appendices "J" and "J1." 62 FR 45484. (*See* Section I.B.2. on Test Procedure.) The engineering analysis for this supplemental ANOPR is based on the Appendix J1 test procedure. This test procedure calculates a MEF descriptor. Unlike its EF predecessor, the MEF uses remaining moisture content (RMC) to account for energy saved due to lower drying times and temperature use factors (TUFs). Using cloth loads and different water temperatures are among the many other substantive differences between the J and J1 test procedures. Given these different testing methods and variables, there is no computational relationship between the EF and MEF descriptors.

In order to determine the MEF value for the baseline unit, clothes washer manufacturers were asked to take a representative clothes washer with an EF as close as possible to 1.18 (current minimum EF) and perform the new J1 procedure. If no clothes washer was available with an EF value close to 1.18, they were asked to adjust the water volume, machine energy, and/or hot water volume to obtain an EF of 1.18. Five manufacturers (Amana, Frigidaire, GEA, Maytag and Whirlpool) submitted data to AHAM. AHAM mathematically averaged these values to derive an industry average MEF value of 0.817 for the baseline unit (based on an EF=1.18).

3. Design Options/Efficiency Levels

a. General. Following the development of an initial list of design options during the technology assessment and the screening analysis, the Department, in consultation with interested parties, will select appropriate efficiency levels (or combinations of design options) for manufacturing cost and energy use data collection.

b. Product Specific. This clothes washer rulemaking analysis was originally performed using the design option approach. The November 1994 ANOPR included a list of design options that could be considered in determining the potential energy savings from new clothes washers standards. Data on the cost and energy consumption of these design options were obtained from U.S. clothes washer manufacturers through AHAM on May 8, 1995 (AHAM, No. 27). At the July 13, 1995, Workshop, DOE presented a detailed design option analysis that also ranked the cost effectiveness of each option under consideration. On July 6, 1995, AHAM provided additional design option information and comments about the way the information should be interpreted. (AHAM, No. 38.)

A report using the updated design option information was presented during a screening workshop held on November 15, 1996. The report entitled, "Draft Report on Design Options for Clothes Washers," used criteria laid out in the Process Rule to screen out design options and preclude them from further analysis. After the workshop, AHAM commented that the manufacturers did not believe that disclosure of the design options used to achieve a given efficiency level was practical, had value or could be released without disclosure of proprietary information. (AHAM, No. 67 at 1,2.) Since the technical approach to achieve any particular efficiency level above the baseline likely involves multiple design options specific to each company, AHAM stated that its members believed that supplying cost and energy use data for several energy levels was sufficient. Several efficiency levels were selected which corresponded approximately to the efficiency levels calculated using the design-option approach. These efficiency levels were discussed at the March 11, 1998, workshop.

It was agreed that the efficiency level approach would be used. Levels were established and utilized in the engineering analysis (*See* Section II.c.1.b).

4. Proprietary Designs

a. General. In its analysis, the Department considers all design options that are commercially available or present in a working prototype, including proprietary designs. Proprietary designs are fully considered in the Department's engineering and economic analyses.

b. Product Specific. At the November 15, 1996, workshop, it was acknowledged that Whirlpool had four patented proprietary prototype designs that used V- and H-axis platforms. Whirlpool indicated that these were working prototypes. (Whirlpool, No. 55L at 77.) On November 29, 1996, the Department sent a letter to the stakeholders with the patent numbers for the Whirlpool designs as requested during the November workshop. (DOE, No. 57.)

In response to a Department request to obtain more information, AHAM stated that it was inappropriate for its members to comment on the cost/efficiencies of the Whirlpool designs. AHAM asked that prior to seeking cost/efficiency information on these designs, DOE should verify that these clothes washer designs were viable, were able to perform their intended function and had

usage patterns and lifetimes similar to existing clothes washers. (AHAM No. 67 at 2.) At the July 1997 workshop, GEA expressed concern that the Department had not verified that the Whirlpool designs met consumer utility performance requirements. (GEA, No. 72L at 210.)

In response to these concerns, the Department witnessed efficiency testing of the prototype design conducted according to the revised DOE clothes washer test procedure. The results of the testing demonstrated that the prototype could reach efficiency levels comparable to H-axis efficiency levels. The Department also witnessed other performance tests on the Whirlpool design. Tests performed include: (1) cleanliness testing, using several different stains; (2) gentleness of action testing; and (3) and rinsability. The test results were benchmarked by conducting identical tests on two other clothes washers: A top selling V-axis model and a top selling H-axis model. The tests were conducted twice for each machine using a seven pound test load. The American Standards Testing Material ASTM–D4265 standard was used for evaluating stain and soil removal. Nine different types of stained swatches were evaluated, six samples of each stain. The cloth used was specified in the AHAM test methods in addition to various other cloths. The gentleness testing was conducted using a material with a five hole pattern cut into the swatches and was evaluated based on the number of strands present after washing. The rinsability was determined by placing the washed cloths into a high speed exacter and analyzing the residual detergent in the water exacted. In all cases, the performance of the Whirlpool design fell within the range of results obtained for the other clothes washers tested.

The Department will consider the Whirlpool prototype design in this rulemaking in the engineering and economic analyses. However, since the manufacturing costs estimates for the prototype are derived using a different approach than for other efficiency levels cost estimates, the economic analysis will be conducted separately. Further discussion on the costing of the Whirlpool prototype can be found in Section II.C.1.b.i.

C. Engineering Analysis

The engineering analysis first determines the maximum technologically feasible energy efficiency level and then develops cost-efficiency relationships to show the manufacturer costs of achieving increased efficiency.

1. Energy Savings Potential and Manufacturing Costs

a. General. The engineering analysis estimates the energy savings potential of the individual or combinations of design options not eliminated in the previous screening analysis. The Department, in consultation with stakeholders, uses the most appropriate means available to determine energy consumption, including an overall system approach or engineering modeling. Ranges and uncertainties in performance are established. The energy savings measures developed in the engineering analysis are combined with end-user costs in the LCC analysis.

The engineering analysis involves adding individual or combinations of design options to the baseline unit. A cost-efficiency relationship is developed to show the manufacturer cost of achieving increased efficiency. The efficiency levels corresponding to various design option combinations are determined from manufacturer data submittals and from DOE engineering calculations.

The Act requires that, in considering any new or amended standards, the Department must consider those that "shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified." EPCA, § 325(l)(2)(A), 42 U.S.C. 6295(l)(2)(A). Therefore an essential role of the engineering analysis consists of identifying the maximum technologically feasible level. The maximum technologically feasible level is one that can be reached by the addition of efficiency improvements and/or design options, both commercially feasible and in prototypes, to the baseline units. The Department believes that the design options comprising the maximum technologically feasible level must have been physically demonstrated in at least a prototype form to be considered technologically feasible.

Three methodologies can be used to generate the manufacturing costs needed for the engineering analysis. These methods include: (1) The design-option approach, reporting the incremental costs of adding design options to a baseline model; (2) the efficiency-level approach, reporting relative costs of achieving energy efficiency improvements; and/or (3) the cost-assessment approach which requires a "bottoms-up" manufacturing cost assessment based on a detailed bill of materials. The Department considers public comments in determining the best approach for a rulemaking.

If the efficiency-level approach is used, the Department will select appropriate efficiency levels for data collection on the basis of: (1) Energy savings potential identified from engineering models; (2) observation of existing products on the market; and/or (3) information obtained for the technology assessment. Stakeholders will be consulted on the efficiency level selection.

The use of a design-option approach provides useful information such as the identification of potential technological paths manufacturers could use to achieve increased product energy efficiency. It also allows the use of engineering models to simulate the energy consumption of different design configurations under various user profiles and applications. However, the Department recognizes that the manufacturer cost information derived in the design-option approach does not reflect the variability in design strategies and cost structures that can exist between manufacturers. Therefore, the Department may derive additional manufacturing cost estimates from other approaches developed in consultation with interested parties.

The cost-assessment approach can be used to supplement the efficiency-level or design option approaches under special circumstances when data is not publicly available because of proprietary reasons, the product is a prototype and/or the data is not provided by the manufacturers.

b. Product Specific. At the workshop held on November 15, 1996, a report entitled, "Draft Report on the Preliminary Engineering Analysis for Clothes Washers," was presented. This report analyzed the engineering data submitted by AHAM concerning the manufacturing cost and energy savings potential for different design strategies that combined design options. Stakeholders and peer reviewers at the workshop provided guidance on how the engineering analysis could be improved. Some manufacturers requested that the Department accept new data in replacement of the data originally supplied. (AHAM, No. 6 at 1; Whirlpool, No. 65 at 2.) New cost and performance data was available owing to recent experience in manufacturing efficient designs. It was noted that the existing data did not, as the process rule describes, consider uncertainty and variability in manufacturing costs. (Perlis, No. 55L at 161–5.) Additionally, peer reviewers commented that cost effectiveness is manufacturer specific and suggested that the Department

consider soliciting from manufacturers cost-efficiency curves that leave them free to select optimal design strategies. (Topping, No. 55H at 6.) (Gordon, No. 55I at 5.)

Following the workshop, the Department received a comment from a manufacturer which recommended that further engineering analyses for the rulemaking be focused on energy efficiency (MEF) levels and not on design options. Whirlpool also stated that cost-efficiency curves should be developed for the industry. (Whirlpool, No. 65, at 5). Whirlpool remarked that a cost-efficiency approach, which shows manufacturer costs for increased efficiency, is the most suitable because it provides a high degree of design confidentiality. It recommended that this method be used in the engineering analysis, and that the Department should abandon the practice of adding design options or combinations of options to the baseline clothes washer. (Whirlpool, No. 69 at 3). Whirlpool recommended that the data base for the engineering analysis be updated where large variabilities and/or uncertainties existed. They noted that the market has continued to evolve as many new products had been introduced since the development of the current database. (Whirlpool, No. 92 at 3).

Responding to DOE's request for comments on an approach to gathering data for the engineering analysis, AHAM stated that its members believed that supplying cost and energy use data for several energy levels was sufficient. These levels would include baseline and efficiencies of 5, 10, 15, 20, 35, 40, 45 and 50 percent above baseline. The efficiencies of 5, 10, 15 and 20 percent would apply to a V-axis clothes washer and, the efficiencies of 35, 40, 45, and 50 percent would apply to a H-axis clothes washer. (AHAM, No. 67 at 1). These efficiency levels were selected to correspond approximately to the efficiency levels calculated using the design-option approach. The Department and the manufacturers later agreed to include data for V-axis clothes washers 25 percent above the baseline to adjust for a revision to the baseline MEF from .88 to .817. A complete description of the data collection methodology including a discussion of uncertainty and variability in manufacturing costs, as well as the guidelines used to calculate manufacturing costs is included in the Preliminary TSD.

ACEEE raised concerns relative to the manufacturer cost data provided by AHAM. ACEEE stated that, in general, the average incremental retail costs for high-efficiency washers (35 percent improvement and up) seemed a bit too high based on discussions that it had with a variety of manufacturers and clothes washer technical experts. More specifically, ACEEE expressed concerns that these data show a substantial price jump between the 40 percent and 45 percent improvement cases. ACEEE believes that the 45 percent improvement level can be met with standard H-axis machines with very small incremental costs relative to the 40 percent improvement H-axis machines. It recommends that DOE collect additional data on 40 percent and 45 percent improvement machines, including reverse engineering and revising the previous measure-based engineering analysis. (ACEEE, No. 94 at 1).

The Department notes that the costs reported by AHAM at efficiency levels 40 percent and 45 percent are a representation of industry cost submitals for these levels. Also, given the changes in the test procedure, previous data from the design option engineering analysis cannot be used without causing significant concerns about accuracy and relevance. The results of the cost assessment summarized in Section II.C.1.b.i. will however provide a secondary source of manufacturing costs for several efficiency levels.

At the March 11, 1998, workshop, the Department requested cost and consumption data for V-axis clothes washers at efficiencies of 30, 35, and 40 percent above the baseline. The Department decided to make this request after receiving the results of a third-party independent testing that was conducted on top selling clothes washer models manufactured and sold in the U.S. This testing was held in order to determine if there was a correlation between the EF and the MEF descriptors defined in the test procedure (Appendix J and J1) Final Rule for clothes washers. 62 FR 45484. Since the test procedure was recently finalized, there was no information available on the MEF values for clothes washers currently on the market. This information is needed to determine a distribution of shipments. The preliminary test results indicated that there were at least two currently available V-axis models on the market that could reach efficiency levels near a 30 percent improvement level.

AHAM responded to this request for additional information on April 3 and 8, 1998. AHAM commented that the testing performed for DOE reflects an incorrect assessment of energy efficiency on current models and indicated that manufacturers could not achieve these levels with traditional V-axis clothes washers. (AHAM, No. 84 and 86). Based on follow-up testing conducted for DOE, there appears to be a significant variation in the RMC values obtained in tests even for clothes washers of the same model. DOE plans to further review this issue. Since the two models approaching a 30 percent improvement in efficiency were "super capacity" models, the Department will try to determine if capacity or volume effects the maximum achievable efficiency improvement in V-axis designs. The Department seeks comment on this issue.

i. Manufacturing Cost—Reverse Engineering. At the November 1996 workshop, it was acknowledged that Whirlpool had four patented proprietary, working prototype designs which included both vertical and horizontal axis platforms. (Whirlpool, No. 55L at 77). During the workshop, Whirlpool asked that the designs be included in the rulemaking analysis. It also indicated that it would be appropriate to conduct an independent study to estimate the manufacturing costs of the new designs. (Whirlpool, No. 55L at 169). Whirlpool did not see the practicality of each manufacturer estimating the cost of the Whirlpool designs. Estimates by other manufacturers would only be based on patent information. Therefore it could not be expected to produce consistency in approach or a high degree of accuracy. (Whirlpool, No. 69 at 4).

Maytag commented that the Whirlpool designs needed to be subjected to a full and complete engineering and cost analysis by DOE. Maytag requested that all manufacturers be given the opportunity to participate in this process since the cost of applying these designs to a manufacturer's own basic washer design varies greatly from manufacturer to manufacturer. (Maytag, No. 64 at 1). GEA also stated that the analysis needed to be expanded to cover the designs disclosed by Whirlpool. It further stated that only a revised method focusing on the technical know-how, manufacturing capabilities and economic strengths of individual manufacturers would permit the proper evaluation of the impacts on "atypical manufacturers." (GEA, No. 63 at 7).

In response the Department conducted a "tear-down" manufacturing cost assessment of one of the V-axis Whirlpool prototypes. The main objective of the manufacturing cost assessment is to quantify the differential manufacturing costs of producing high efficiency clothes washers based on (1) the Whirlpool proprietary V-axis design, and (2) commercially available V- and

H-axis designs. The overall project consists of two phases:

Phase I provides detailed cost estimates for two state-of-art, high volume, V-axis washers as a baseline for further analysis. The major objective of this phase is to obtain stakeholder comment on the costing methodology and baseline costs. Preliminary results of Phase I were presented during the March 1998 workshop. The Phase I methodology and final results are presented in the Preliminary TSD.

Phase II will develop a differential cost estimate for the proprietary V-axis design and for two commercially-available H-axis clothes washers, relative to the baseline clothes washers evaluated in Phase I. This phase is currently in progress. Preliminary results will be made available for public review prior to publishing the NOPR.

Raytheon Appliances (now Alliance Laundry Systems LLC) had questions regarding a number of assumptions in the reverse engineering analysis. These assumptions concerned work shifts per day, equipment depreciation life, capacity utilization and production volume. After considering Raytheon's comments, the Department modified some of the assumptions used in the manufacturing cost assessment approach.

As suggested by Raytheon, the assumption of 2.5 shifts per day was reduced to 2.0 shifts per day. The Department agrees that 2.5 shifts per day is high based on additional visits to several clothes washer manufacturing plants and further discussions with manufacturing staff in the industry. Originally, 2.5 shifts per day was chosen based on an average of 2 shifts per day for assembly operations and 3.0 shifts per day for fabrication processes (pressing, machining, injection molding, etc.). The baseline manufacturing cost analysis has been revised to reflect an average of 2.0 shifts per day for the plant.

The assumption of a 15–17 year lifetime for baseline equipment depreciation life was not changed to 5–7 years as suggested. Based on the Department's industry structure analysis from publicly available sources, the Department believes a 5–7 year life would be considered too short for an average equipment depreciation life. Although some equipment does have a relatively short service life (hand tools ~ 1 year), an average of 15–17 years is more appropriate for the overall plant and equipment. In the analysis, various equipment depreciation lives are used depending on the specific type of equipment. When summarizing the total investment, the overall average is approximately 15 years.

As suggested by Raytheon, the 100 percent capacity utilization assumption was reduced. However it was reduced to 95 percent not 80–90 percent as proposed. Although 100 percent utilization might seem unrealistic, many operations run at or above capacity, depending on current market conditions. Since utilization is dependent on the market, the Department has reduced the utilization to 95 percent to reflect the less than ideal situation. The Department did not lower the utilization to 80 or 90 percent since current market conditions for most manufacturers would indicate higher production. Furthermore, the theoretical "greenfield" (entirely new) plant for the baseline unit assumed that construction and sizing were based on current sales and appropriate market forecasts.

The current assumption of a production rate of 1.5 million units per year remains unchanged even though it does not represent a smaller manufacturer such as Raytheon Appliances. The Department is aware that 1.5 million units is not representative of the smaller (or larger) manufacturers, but does represent a median volume. At this time, the Department is keeping the production volume for the "greenfield" plant at 1.5 million units per year; however, DOE will be investigating an alternative scenario for a low volume (<500,000 units per year) manufacturer such as Raytheon Appliances. It is important to note that the baseline value will be used to calculate a differential cost for production of a higher efficiency washer at the same production volume.

In summary, the Department has considered all the suggested corrections and made changes to the baseline analysis as deemed appropriate at this time (2.5 shifts reduced to 2.0 shifts, and 100 percent capacity utilization reduced to 95 percent). For a baseline unit, the Department's industry analysis is based on public available data (e.g., Census of Manufacturers by U.S. Department of Commerce) which indicates that equipment depreciation life should remain unchanged. The Department will be investigating the effects of lower production volumes in the NOPR analysis. A sensitivity analysis was used to evaluate each of the assumptions commented on by Raytheon. The impact of these changes on the estimate of baseline cost is approximately 3 to 4 percent.

D. Life-Cycle-Cost (LCC) and Payback Analysis

In determining economic justification, the Act directs the Department to consider a number of different factors, including the economic impact of potential standards on consumers. The Act also establishes a rebuttable presumption that a standard is economically justified if the additional product costs attributed to the standard are less than three times the value of the first year energy cost savings. EPCA, § 325(o)(2)(B)(iii), 42 U.S.C. 6295 (o)(2)(B)(iii).

To consider these requirements the Department calculates changes in LCCs to the consumers that are likely to result from the proposed standard and two different simple payback periods: distributions of payback periods and a payback period (which follows the test procedure without variation), calculated for purposes of the rebuttable presumption clause. The effect of standards on individual consumers includes a change in the operating expense (usually decreased) and a change in the purchase price (usually increased). The net effect is analyzed by calculating the change in LCC as compared to the base case (the current analysis compares the LCC of a new efficiency level to the AHAM baseline). Inputs to the LCC calculation include the installed consumer cost (purchase price plus installation cost), operating expenses (energy, water, sewer, and maintenance costs), lifetime of the appliance, and a discount rate.

The LCC and one of the payback periods (distribution payback) are calculated using the LCC spreadsheet model developed in Microsoft Excel for Windows 95, combined with Crystal Ball (a commercially available software program) based on actual distributions of input variables. The second payback, test procedure payback, is not calculated using Crystal Ball and input variable distributions, but is instead based on the spreadsheet option allowing single input values.

Based on the results of the LCC analysis, DOE selects candidate standard levels for a more detailed analysis. The range of candidate standard levels typically includes: (1) the most energy-efficient combination of design options or most energy-efficient level; (2) the combination of design options or efficiency level with the lowest LCC; and (3) the combination of design options or efficiency levels with a payback period of not more than three years. Additionally, candidate standard levels that incorporate noteworthy technologies or fill in large gaps

between efficiency levels of other candidate standards levels may be selected.

The payback, for purposes of the rebuttable presumption test, attempts to capture the payback to consumers affected if a new standard was promulgated. It compares the cost and energy use of clothes washers consumers would buy in the year the standard becomes effective with what they would buy without a new efficiency standard. In some cases this means comparing the baseline energy efficiency and cost with the trial standard level, in other cases the trial standard level would also be compared to a higher efficiency washer purchased without new standards (but at a lower efficiency than the trial standard level). A weighted average of these payback periods, in the year a new standard level would take effect, is considered the payback for purposes of the rebuttable presumption clause. In future analyses (for the NOPR), all of the consumer economic analysis discussed above will be based on a projected distribution of efficiencies sold at the time a new standard becomes effective (i.e., the base case).

In order to compare the LCCs to the distribution of washer efficiencies, the LCC spreadsheet will be modified to enable the user to input the market share of each washer efficiency level in 5 percent increments.

1. Life-Cycle-Cost Spreadsheet Model

a. General. This section describes the LCC spreadsheet model used for analyzing the economic impacts of possible standards on individual consumers. The LCC analysis is conducted using a spreadsheet model developed in Microsoft Excel for Windows 95, combined with Crystal Ball (a commercially available software program). The Model uses a Monte Carlo simulation to perform the analysis considering uncertainty and variability. The spreadsheet is organized so that ranges (distributions) can be entered for each input variable needed to perform the calculations.

In recognition that each household is unique, variability is explicitly accounted for in the model by performing the LCC calculation for a large number of individual households. A Monte Carlo simulation is used to sample individual households from the Energy Information Administration's (EIA) Residential Energy Consumption Survey (RECS) database. The results are expressed as the number of households having impacts of particular magnitudes.

The statistics provided by the 1993 RECS are based on a sample of 7,111 households from the population of all primary, occupied residential housing units in the United States. Each household is weighted so that the data properly represents the 96.6 million households in the 50 states and the District of Columbia.

The spreadsheet has the capability to sample only subsets of households for the analysis of particular sub-populations, for example, low income households. It also has the capability of isolating households in the RECS database that have a particular fuel combination of appliances (e.g., in the case of water heating and clothes drying the possible combinations of appliances include electric/electric, electric/gas, gas/electric, gas/gas, oil/electric, or oil/gas). Alternately a combination of fuel types, weighted to observed proportions can be specified, representing the entire population. The spreadsheet samples subsets of the U.S. population from the RECS to calculate the effect on sub-group populations. A description of the methodology and contents of the RECS database is contained in the Preliminary TSD.

Major inputs to the LCC analysis are: (1) consumer expense for purchasing an appliance; (2) the period of time the appliance will provide service (lifetime); (3) the value to a residential customer of saving electricity, expressed as cents per kilowatt-hour; (4) the value to a residential customer of saving gas, expressed as dollars per million British Thermal Unit (Btu); (5) the residential price of distillate; (6) energy and/or water consumption; (7) residential customer rate for water and wastewater (sewer)($/thousand gallons), excluding fixed charges; and (8) the rate at which expenditures (cash flows) are discounted to establish their present value. A more detailed discussion of the spreadsheet is contained in the Preliminary TSD.

For LCC analyses the Advisory Committee recommended that DOE use the full range of consumer marginal energy rates instead of national average energy prices. Absent consumer marginal energy rate information, the Committee recommended DOE use a range of net energy rates, calculated by removing all fixed charges. The Department agrees the use of marginal energy rates would improve the accuracy of the analysis (LCC and NES) and will attempt to determine marginal rates. The Department believes it is unknown at this point if removing fixed costs is more or less reflective of marginal rates and does not intend to take this intermediate step.

In order to develop consumer marginal energy rates, the Department proposes to collect data on current rate schedules and energy consumption. These rates will be assigned to a national sample of buildings, weighted to represent the total U.S. population of buildings. The result will be a weighted distribution of consumption by marginal rates. This approach will be applied for residential and commercial customers.

DOE proposes to obtain a sample of residential buildings from existing surveys, such as the RECS or from a commercially available database. The commercially available database is more expensive, but has significant added value in terms of assigning the buildings to states or to utilities, including a broader sample of the population, and permitting stratification of this larger sample to distinguish among some subpopulations. Each building will be assigned to a geographic region (e.g., state or utility service territory). Energy consumption by month will be included in the database for each building, in order to treat seasonal changes in consumption and rates. Peak demand will be included for commercial buildings.

Recent Federal surveys (RECS, Commercial Building Energy Consumption Survey (CBECS)) gather information by fuel on annual energy consumption and total expenditures. Total expenditures included customer and other fixed charges, energy rates, demand charges, taxes, etc. but these are not tabulated separately from each other. These surveys gathered customer bills but did not extract information on rate schedules, fixed charges or marginal rates. The Department proposes to explore the feasibility of extracting historical information on rate schedules, including the relationship between fixed charges and marginal rates to average prices. This effort, if successful, will provide information about the extent to which marginal rates differ from average prices, or from average prices less fixed charges.

Given restructuring of parts of the energy supply sector, customers may have more than one bill (e.g., one from the distribution company, and one or more from generators or suppliers). To capture complete information, future surveys are expected to gather energy pricing information directly from customers, rather than from utilities or local distribution companies. The most efficient means to collect energy pricing information in the future involves changing the current processing of the billing information so as to gather more detail from the bills, to include consumption by month and pricing

information. The pricing information would have for each customer the rate schedule including the marginal rates, fixed charges, demand charges for commercial and industrial customers, or time-of-use rates where applicable. The Department will express the need for these data in discussions with EIA concerning the design of future surveys.

Residential electricity rate schedules will be collected from Federal databases where available, or state regulatory agencies. The information obtained for each rate schedule will include any fixed charges (customer charges, etc.), block structure, and rate per kilowatt-hour (kWh) by block. Information from utilities or local distribution companies will be examined to determine: confirmation of the set of rate schedules, the number of customers by state using each rate schedule, the total electricity sales by state by rate schedule, and (if possible) monthly electricity sales by state by rate schedule.

Residential natural gas rate schedules will be collected from Federal databases where available, or state regulatory agencies. The information obtained for each rate schedule will include any fixed charges (customer charges, etc.), block structure, and rate per therm by block. Information from utilities or local distribution companies will be examined to determine: confirmation of the set of rate schedules, the number of customers by state using each rate schedule, the total gas sales by state by rate schedule, and (if possible) monthly gas sales by state by rate schedule.

Commercial and industrial electricity rate schedules will be examined in a similar process as for residential electricity rates, but with additional information to account for demand charges. The information obtained for each rate schedule will distinguish any fixed charges (customer charges, etc.), block structure, rate per kWh by block, and demand charges.

In the database of buildings, such characteristics as energy consumption and expenditures and number of customers by state or utility will be used to map a rate schedule onto each of the buildings in the national sample. The marginal rate for each building will be the block from the rate schedule corresponding to that building's monthly energy consumption.

For life cycle savings calculations, monthly energy savings will be estimated for each building. These savings will be evaluated for each building at the monthly marginal rate, using the rate schedule assigned to each building.

Until a time series of marginal rates is available, future trends in energy prices will be used to derive estimates of CMER to be used in the economic analysis of possible energy performance standards. The trend in average price (by fuel and sector) will be used to create an index relative to current prices and applied to the current range of marginal rates. In other words, it will be assumed that the marginal rates will change in proportion to the expected change in average price.

Given the uncertainty of projections of future energy prices, scenario analysis will be used to examine the robustness of possible energy efficiency standards under different energy price conditions. These scenarios will be used in the LCC and the NES calculations discussed in Section II.E.1. Each scenario will provide a self-consistent projection, integrating energy supply and demand. The scenarios will differ from each other in the energy prices that result. The Committee suggested the use of three scenarios. While many scenarios can be envisioned, specification of three scenarios should be sufficient to bound the range of energy prices.

The most recent DOE Annual Energy Outlook 1998 (AEO 1998) reference case provides a well-defined middle scenario. In addition, the range of scenarios used in the AEO will be examined to establish the scenarios with the highest and lowest energy prices in the sector and fuel of interest. As an example, for commercial products such as fluorescent lamp ballasts, commercial and industrial electricity prices will be examined. AEO scenarios will serve as the fall back high and low scenarios, and the focus of discussion with stakeholders on further refinements to the high and low bounds. The range of energy prices represented by these scenarios and the underlying assumptions will be made available to stakeholders for comment. Independent estimates of future energy prices will also be considered. Based upon stakeholder input, the underlying assumptions may be further revised. This process will result in defining a likely high and low bound on the energy price trends.

The economic analysis will be conducted using a spreadsheet for LCC, and one for NES. The future trend in energy prices assumed in each of the three scenarios will be clearly labeled and accessible in each spreadsheet. DOE and stakeholders will be able to easily substitute alternative assumptions in the spreadsheets to examine additional scenarios as needed.

Two approaches are proposed to estimate forecast marginal rates:

(1) For now, the trends from the three scenarios will be converted to indexes and applied to the current range of consumer marginal energy rates to estimate future consumer marginal energy rates. So if the trend in average residential electricity prices were to decline by 20 percent over some period of time, then the marginal rate for each household would be assumed to decline from its initial observed value by 20 percent over that same period of time.

(2) Restructuring is expected to simplify rates and to homogenize rates to some extent. That is, rates are expected to move toward the middle of the range. The index approach is subject to question if the change in the range of marginal rates varies depending upon the initial marginal rate. The current range of average residential prices is from about 2 to 14 cents per kWh. If in the future the highest current rates decline, but the lowest current rates fail to decline (or even increase) over time, then the index approach fails. A second approach can account for the differences in trends by using regional data. National Energy Modeling System (NEMS) provides regional information on average prices by sector over time. The rates for buildings, including residential households, in each region will be scaled to correspond to the future trend in average prices for that region.

b. Product Specific. This section discusses the approaches for analyzing the economic impacts on individual consumers from potential new clothes washer standards. A spreadsheet as described in Section II.D.1.a. is used to calculate these economic values. In future analyses, all three of the economic metrics will be compared to base case of washer efficiencies sold in the year the new standard would take effect. In this preliminary analysis, only the test procedure payback is compared to a distribution of efficiencies forecasted to the year 2003.

i. LCC Analysis. Table 2 summarizes some of the major assumptions used to calculate the consumer economic impacts of various energy-efficiency levels. In addition a number of assumptions are discussed in more detail.

TABLE 2.—ASSUMPTIONS USED IN THE LCC PRELIMINARY ANALYSIS

Start year (effective date of standard)	2003.
Retail Prices: Baseline Clothes Washer	Retail Price—$421 including tax; from retail price survey.
Lifetime	Distribution (12–17 years).
Cycles Per Year	Distribution from RECS database (207–645).
Energy Price Trend	AEO 1998 reference case to the year 2020 with extrapolations to the year 2030.
Water Price	Distribution from Ernst & Young, 1994 National Water and Wastewater Rate Survey ($0.00 to $7.84 per 1000 gallons).
Annual Real change in Water and Sewer Cost (Water Price Escalator)	0 percent.
Discount Rate	Distribution (0–15 percent).
Energy Consumption Per Cycle	AHAM data.
Variation in Household Energy Prices, Energy Use, and Water Heater Shares.	RECS data .

Retail Prices: The analysis accompanying this supplemental ANOPR uses a 2-step mark-up approach to estimate retail prices. First, the manufacturing costs (i.e., full production costs) are marked up to the manufacturer price using a manufacturer mark-up. Then the manufacturer price is marked up by a retail mark-up to arrive at the retail price. The price paid by the consumer includes the sales tax in addition to the retail price. This sales tax is accounted for by using a sales tax mark-up over the retail price of the clothes washers.

In the Preliminary TSD, the Department used a fixed retail mark-up of 1.40, and a fixed mark-up of 1.052 to cover the sales tax. The manufacturer mark-up over full production costs was bound by a maximum value of 1.35, which maintains industry (manufacturer) cost structure, and a minimum value of 1.00, which represents a pass-through of full production costs. The latter includes depreciation of new capital. Recuperation of non-production costs are not included. In order to characterize the uncertainty in manufacturer mark-ups, the Department used a triangular distribution characterized by a maximum manufacturer mark-up of 1.35, a minimum manufacturer mark-up of 1.00, and a most likely mark-up of 1.18 (the average). Using a fixed retail mark-up of 1.40 and a sales tax mark-up of 1.052, the total mark-up from full production costs to consumer price ranges from a minimum of 1.473 to a maximum of 1.990.

The Preliminary TSD presents a detailed discussion on retail mark-ups. The TSD also outlines the Department's methodology for estimating manufacturer mark-ups.

In the future NOPR analyses, the Department will use a consistent set of assumptions for prices across all analysis sections (manufacturer impact, national benefits, and consumer impacts). Manufacturer prices will be marked up by a fixed retail mark-up (currently estimated at 1.40), and a sales tax mark-up (1.052) to arrive at the consumer price. Whereas the development of price scenarios for the manufacturer impact analysis will be the subject of a future workshop, the Department is considering an approach used in the 1991 Arthur D. Little report [1] to AHAM. This approach entails creating manufacturer mark-up scenarios by conducting a financial analysis using the Government Regulatory Impact Model (GRIM). The GRIM is a standard annual cash flow analysis which uses price, quantity, and cost information to assess the impact of regulatory conditions on manufacturer income and cash flow. The model calculates the actual cash flows, by year, and then determines the present value of those cash flows, both without regulations and with regulations. The post-standard retail prices required in order to achieve several scenarios will be found by running the GRIM and treating manufacturer price as a variable. Additional price (mark-up) scenarios that might be considered include: (1) the price (mark-up) resulting in maintenance of current industry value; (2) the price (mark-up) reducing industry value to zero; and (3) the price (mark-up) resulting from pass-through of incremental material, labor, and burden costs only.

The Department received three comments on the subject of manufacturer mark-up. Raytheon commented that the low end of 1.00 for the range of manufacturer mark-up should not be used. It recommended that the economic justification involve not only full production costs but all anticipated costs. (Raytheon, No. 91, at 1). GEA commented that the Department's conclusion on the estimated manufacturer price was erroneous. GEA pointed out that the Department had inexplicably transformed an average manufacturer mark-up of 1.35 into an upper bound. (GEA, No. 88 at 3–4). Whirlpool submitted that an estimation of average manufacturer mark-up of 1.18 is acceptable at this point in the rulemaking. (Whirlpool, No. 93, at 4). In response to these comments, the Department notes that a simple pass through of incremental material costs coupled with declining volumes has been suggested in a previous industry submital as the "the most likely scenario." As described previously, the Department proposes to use the GRIM model to conduct scenario analysis on manufacturer mark-ups to keep the set of assumptions for all analysis sections consistent with one another. The GRIM will use price-volume interactions and manufacturers will be able to comment on the likely price scenario for different efficiency levels. Shipment data will be obtained from the NES spreadsheet model described in Section II.E.1. It may be reasonable to assume that the ability to pass through incremental costs will vary as costs increase and/or product attributes are changed.

The American Council for an Energy-Efficient Economy (ACEEE) commented that, at the March 1998 workshop, the Circuit City representative suggested that assuming an average 40 percent retail markup is probably too high. A 25 percent retail markup was more typical of the industry. The 40 percent estimate may have factored in higher markups on extended warranties and other services. (ACEEE, No. 94 at 3). In reviewing Circuit City's comment, the Department understands that the statement referred to a gross margin of 25 percent which represents a mark-up of 1.33. This is in close agreement with the Department analysis of retailer financial statements having an important component of

[1] Arthur D. Little, Inc., *Financial Impact of DOE Top Loading Horizontal Axis Standards on U.S. Washing Machine Manufacturers, Report to Association of Home Appliance Manufacturers Horizontal Axis Task Force*, August 1991. Page 19. (Speed Queen Company, No. 15, Appendix G)

appliances in their product mix (25.2 percent to 26.3 percent gross margin). Also, as referenced in the Preliminary TSD, this gross margin is the net of some buying and warehousing costs. At present the Department has no basis for changing the retail mark-up assumption. DOE will continue to research data sources and seeks comment on this issue.

Energy Prices: The LCC spreadsheet model samples the individual prices paid by households in RECS(93) (latest published version of RECS). These prices are updated (scaled up or down based on AEO 1998 national prices) and converted to 1997 dollars.

Energy Price Trend: Several possible fuel price scenarios are built into the LCC spreadsheet model, including: (1) constant; (2) AEO 1998 reference case; (3) Gas Research Institute 1998 (GRI 1998); (4) high growth; and (5) low growth. High growth and low growth currently refer to AEO 1998 fuel price scenarios for high and low economic growth. GEA indicated that the Department needs to take additional steps in revising the LCC analysis. Everything in recent experience shows that energy prices continue to decline faster than the forecasters' ability to discern, but the Department continues to build in high price assumptions.

ACEEE indicated that the EIA residential electricity price forecast used in the analysis is too low. It recommends that DOE focus on the EIA "high economic growth" case price projections. This case calls for an average residential electricity price decrease of 8.3 percent over the 1996–2010 period. (ACEEE, No. 94, at 3).

In the future, as discussed in the Department's response to the Advisory Committee, the Department will review the range of scenarios used in the AEO to establish the scenarios with the highest and lowest energy prices in the sector and fuel of interest. The most recent DOE AEO 1998 reference case provides a well-defined scenario. Sensitivities both above and below these values can also be modeled in the AEO low and high growth cases. For the above reasons AEO 1998 was used as the forecast used in the preliminary analysis. The range of energy prices represented by these scenarios and the underlying assumptions will be made available to stakeholders for comments. This process will result in defining a likely high and low bound on the energy price trend.

Water and Sewer Prices: Information on water prices is not as readily available as fuel prices information. Some utilities have large fixed charges, while others are subsidized or paid for through taxes. Furthermore, there are no standard approaches to calculating water and sewer costs. In some locations the price of water increases as consumption increases. In other areas, water price decreases with increasing consumption. Additional consideration must be given to consumers who are not connected to a municipality water supply or sewage system. In some cases, only one or the other is connected. As with other variables, the Department plans to use a range of water prices in the economic analysis to account for the variability among different households.

The main source of data on water and sewer prices is from a 1994 survey of water prices in major metropolitan areas by Ernst & Young. The Ernst and Young data was adjusted for service population, base utility charges and average household use by Al Dietemann of Seattle Water. These adjusted values are the basis for the water price used in the preliminary analysis. For the NOPR analysis DOE plans to update the 1994 prices.

Water Price Escalator: The Department has found no national level water price forecasts. Currently, DOE's analysis assumes that future water rates are constant. Whirlpool stated that recent studies (Ernst & Young, 1994 National Water and Wastewater Rate Survey; Raftelis Environmental Consulting Group, 1996 Water and Wastewater Rate Survey) show that water and wastewater charges have increased steadily each year during the period from 1986 to 1996. This trend should be expected to continue and should be reflected in the LCC calculations. (Whirlpool, No. 93 at 2).

ACEEE stated that the present analysis is much too conservative because it assumes that water prices will not increase in real terms. Submitted for the docket was a just-published study by Osann and Young which summarized typical water/sewer bills over the 1986–1996 period. ACEEE recommended that a water/sewer bill inflation rate in the 1.1—2.7 percent range (real) be incorporated into the economic analysis. (ACEEE, No. 94 at 2–3).

The study referred to in the ACEEE comment (Osann and Young) shows an average annual increase of 5.7 % for a residential water/sewer bill over the 1986–1996 time period. Since the underlying inflation rate given was 3.1% this provided an annual increase in water/sewer bills of approximately 2.6% real. In another analysis, using EPA data, in the (Osann and Young) report, infrastructure needs were estimated to be $280 billion. Accounting for the total gallons used and a discount rate, a rate increase of 1.1% (real) was estimated. The ACEEE comment refers to total cost increases and does not specify what portion of the increase can be assigned to an increase in marginal rate. The ACEEE comment recommends a water/wastewater escalation rate of 1.1 to 2.7% real but does not provide a single value or a distribution.

The Department agrees that future water prices should not be assumed to be constant and is therefore in the process of further analyzing both current prices and future escalation rates. The proposed analysis is on going and will be completed after the ANOPR is released. The proposed analysis consists of updating previous data from Ernst and Young report as adjusted by Al Dietemann, as well as the use of new data obtained from the American Water Works Association (AWWA). The Ernst and Young data is being updated by calling 125 utilities, getting their water rate schedules and their forecasts for the future, as well as any historical information available. The Department is working on combining these two data sources into one database. This data will be organized by utility and can be mapped onto either individual RECs households or onto regional areas. A distribution of water prices (as in the current analysis) will be used, as well as a distribution of escalation rates. In an attempt to be consistent with the methodology being developed for fuel rates, the Department will attempt to establish marginal water rates and water prices and escalation rates that vary with the water/wastewater utility. The Department is seeking comments concerning this approach.

Energy consumption per cycle: The energy use information used to calculate LCC is taken from the engineering analysis and adjusted to account for variability in field conditions. This adjustment is for the loads of laundry washed per week, which varies from house to house. It is expressed as a distribution of wash cycles per year that is obtained from the RECS.

Several comments were received on the subject of RECS data. The use of outdated RECS data, especially that related to family size and annual loads, must be discontinued if a truer picture of potential savings is to be drawn. (GEA, No. 88, at 3). Whirlpool noted that a concern was raised at the March, 1998 workshop about the use of 1993 RECS data for the distribution of gas vs. electric water heaters and dryers, family size and number of wash loads per year. Whirlpool agrees that the RECS data could be brought up to date, but this is not a high priority. Whirlpool argues that the use of the currently available

RECS data will not weaken any of the analyses for this rulemaking. (Whirlpool, No. 93 at 1). DOE intends to use updated RECS data when it becomes available.

Manufacturing cost: The LCC spreadsheet is organized so that a range (incorporating variability and uncertainty) can be entered to describe the manufacturing costs associated with increases in energy efficiency. Efficiency improvements over the baseline model can be selected in increments of 5 percent up to a 50 percent efficiency improvement. The cost data used was provided by manufacturers. It was then compiled and reported to the Department by AHAM.

Operating cost: ACEEE stated that the present analysis ignores the possibility that some consumers will use less detergent with new high-efficiency machines than with standard machines. It recommends that DOE construct two alternative scenarios (one in which no detergent will be saved and the other that assumes some consumers will use less detergent). ACEEE indicated that the Bern Kansas study provided some evidence for detergent savings. (ACEEE, No. 94 at 2). Procter and Gamble commented that the perception that detergent dosage will be reduced in horizontal axis or drum washers proportionally to water volume is invalid. While this appears to be a popular belief, the detergent dosage is not substantiated by the facts. Procter and Gamble further stated that the important impact is that users of new lower water use/energy efficient washers cannot expect to find detergent cost savings. (Procter & Gamble, No. 9 at 1). DOE seeks additional data on this issue.

ii. Payback Analysis (Distribution of Paybacks). Payback is calculated based on the same inputs used for the LCC analysis (with the difference that the values are based only on the first year the standard takes effect). The output is a distribution of payback periods. The mean payback period is also reported. Additional information is available in the LCC spreadsheet but is not reported in the Supplemental ANOPR or Preliminary TSD. This data includes charts of cash flow taking into account the changing annual fuel prices.

In order to compare the Payback Periods to the distribution of washer efficiencies, the LCC spreadsheet will be modified to enable the user to input the market share of each washer efficiency level in 5 percent increments.

iii. Rebuttable/Test Procedure Payback. The payback for purposes of the rebuttable presumption clause is calculated on the LCC spreadsheet but without using any distributions or Crystal Ball. Payback periods are first calculated between the new standard level and each washer efficiency being sold in the year 2003. The paybacks are then weighted and averaged according to the percentage of each washer efficiency sold before a new standard is enacted. Rather than distributions, single point values for the inputs are used. These values (including cycles per year, electric fuel source, etc.) will correspond to those outlined in the DOE test procedure, Appendix J1. The result is a single payback value and not a distribution. The payback is calculated for the expected effective year of the standard (e.g., 2003). Examples and further details are presented in the TSD.

With the presently available data, the baseline efficiency level is weighted with market shares of 94.5 percent for vertical axis washers (baseline) and 5.5 percent for horizontal axis washers (35 percent efficiency improvement). If available, data on a forecasted distribution of washer efficiencies in the year 2003 will be used to refine the above calculations for the NOPR analysis.

2. Preliminary Results

a. General. Calculation of LCC captures the tradeoff between the purchase price and operating expenses for appliances. In addition, two other measures of economic impact are calculated: distributions of payback periods and a payback period calculated for purposes of the rebuttable presumption clause. The outputs of the LCC spreadsheet include distributions of the impact for each energy efficiency level compared to the baseline. A variety of graphic displays illustrate the implications of the analysis results. These include: (1) A cumulative probability distribution showing the percentage of U.S. households which would have a net saving by owning a more energy efficient appliance, and (2) a chart depicting the variation in LCC for each efficiency level considered.

b. Product Specific. This section presents preliminary results for LCCs and payback periods for all efficiency levels in the engineering analysis. Since the value of most inputs are uncertain and must be represented by a distribution of values rather than a discrete value, the results presented in the Preliminary TSD are also described by a distribution of values. Tables 3 and 4 provide a brief overview by showing percentile LCCs and payback periods, respectively, for the efficiency level improvements. These tables are generated with the current LCC spreadsheet and have not yet taken into account a distribution of pre-new-standard washer efficiencies, but instead are based on the AHAM baseline value. Greater detail is provided in the Preliminary TSD.

The LCC spreadsheet calculates and reports changes in LCC (delta LCC). The output is a distribution best illustrated by the cumulative charts for LCC difference shown in the Preliminary TSD. The convention is used whereby all values in parentheses are negative. Negative delta LCCs mean that the LCC after standards is lower than that without standards (i.e., the base case).

Table 3 showing the percentiles of LCC change is best described by an example. The 0 percent value means that all delta LCCs are greater than the value shown. The value for the 50th percentile means half of the delta LCCs are higher and half are lower. The 100 percent value means that 100 percent of the calculated values of delta LCC are less than the shown value.

Taking the first row (5 percent efficiency level) as an example, the values are interpreted as follows. The value shown for 0 percent means that there is a 0 percent probability that a household will have a reduction in LCC larger than the $83 in absolute value. Toward the middle, there is a 50 percent probability that a household will have a reduction in LCC larger than $16. The 100 percent column indicates that there is a 100 percent probability that a household will have a reduction in LCC larger than $2.

The column labeled "mean" refers to the mean of the distribution. In other words, the average of all of the results of the Monte Carlo runs.

The column labeled "percent with LCC less than the baseline" establishes at what percentile there will not be any difference in LCC between the standards case and AHAM baseline (i.e., the delta LCC is 0). For example, for the first row of the table (5 percent energy efficiency increase level), there is a 100 percent probability that households will have a lower LCC if a standard were enacted. For the 50 percent efficiency level, there is a 74.2 percent probability that households will have a lower LCC (In other words, 74.2 percent of households will have a lower LCC if a 50 percent standard level is enacted).

TABLE 3.—PERCENTILE LCC

Percent efficiency level	Change in LCC from baseline [1] shown by percentiles of the distribution of results [2] (values in $)	Percent with LCC less than baseline							
		0	10	25	50	75	90	100	Mean
5	($83)	($33)	($24)	($16)	($11)	($8)	($2)	($19)	100.0
10	($232)	($82)	($55)	($36)	($23)	($15)	$13	($43)	99.5
15	($402)	($140)	($90)	($55)	($33)	($19)	$63	($68)	95.6
20	($504)	($161)	($98)	($55)	($26)	$10	$129	($67)	86.7
25	($1,486)	($465)	($303)	($164)	($67)	$4	$137	($205)	89.2
35	($1,997)	($639)	($408)	($211)	($59)	$79	$570	($252)	83.4
40	($2,039)	($649)	($412)	($207)	($64)	$75	$645	($253)	83.7
45	($2,068)	($606)	($365)	($155)	$9	$159	$666	($199)	73.6
50	($2,075)	($617)	($374)	($156)	$6	$153	$571	($204)	74.2

[1] The baseline LCC, based on SWA of the most likely costs, is $1,554.
[2] For sample size of 10,000 trials. Energy price trends are for AEO 1998. Operating costs include water prices. No escalator is assumed for water price.

TABLE 4.—PAYBACK PERIOD

Percent efficiency level	Payback period in years shown by percentiles of the distribution of results [1]							
	0	10	25	50	75	90	100	Mean
5	0.0	0.0	0.0	0.0	0.0	0.2	3.7	0.1
10	0.0	0.0	0.0	0.1	0.5	1.6	15.8	0.6
15	0.0	0.0	0.1	0.2	0.6	4.1	40.7	1.4
20	0.0	0.1	0.2	0.5	5.2	10.8	57.9	3.6
25	0.0	0.8	1.8	3.6	6.0	8.8	34.5	4.4
35	0.8	2.0	2.8	4.2	6.9	11.4	49.8	5.8
40	0.7	2.0	2.8	4.3	6.9	11.4	57.8	5.8
45	0.7	2.4	3.6	5.8	9.3	13.9	54.0	7.2
50	0.9	2.7	3.8	5.9	9.1	13.5	54.5	7.2

[1] For sample size of 10,000 trials. Energy price trends are for AEO 1998. Operating costs include water prices. No escalator is assumed for water price.

Table 5 below shows the simple payback for purposes of the rebuttable presumption clause. This means it follows test procedure assumptions for electric water heaters and dryers.

TABLE 5.—REBUTTABLE PRESUMPTION PAYBACK IN YEARS [1]

Percent efficiency level	0 percent to standard	35 percent to standard	Weighted payback
5	0.1	NA	0.1
10	0.2	NA	0.2
15	0.6	NA	0.6
20	1.8	NA	1.8
25	2.7	NA	2.7
35	3.7	NA	3.7
40	3.7	3.7	3.7
45	4.9	29.2	6.2
50	5.0	19.6	5.8

[1] Market shares of 94.5 percent V-axis and 5.5 percent H-axis are assumed for the year 2003.

E. Preliminary National Impacts Analysis

The national impacts analysis assesses the net present value (NPV) of total consumer LCC, energy (and water, if appropriate) savings and indirect employment impacts. A preliminary assessment of the aggregate impacts at the national level is conducted for the ANOPR. Analyzing impacts of Federal energy-efficiency standards requires a comparison of projected U.S. residential energy consumption with and without standards. The base case, which is the projected U.S. residential energy consumption without standards, includes the mix of efficiencies being sold at the time the standard becomes effective. Sales projections together with efficiency levels of the washers sold, are important inputs to determine the total energy consumption due to clothes washers under both base case and standards case scenarios. The differences between the base case and standards case provides the energy and cost savings. Depending on the analysis method used, the sales under a standards case projection may differ from those of a base case projection.

The Department estimates national energy and water, if applicable, consumption for each year beginning with the expected effective date of the standards. National annual energy and water savings are calculated as the difference between two projections: a base case and a standards case. Analysis includes estimated energy savings by fuel type for electricity, natural gas, and oil. Energy consumption and savings are estimated based on site energy (kWh of electricity, million Btu of natural gas or oil used in the home), then the electricity consumption and savings are converted to source energy.

DOE agrees with the Advisory Committee's recommendation that the assumption of a constant conversion factor should be dropped in favor of a conversion factor that changes from year

to year. The conversion factor would be calculated for each year of the analysis based on the generating capacity displaced and the amount of site energy saved (see detail procedure below). For future conversion factors, DOE proposes to use the following method:

(1) Start with an integrated projection of electricity supply and demand (e.g., the NEMS Annual Energy Outlook reference case), and extract the source energy consumption.

(2) Estimate projected energy savings due to possible standards for each year (e.g., using the NES spreadsheet).

(3) Feed these energy savings back to NEMS as a new scenario, specifically a deviation from the reference case, to obtain the corresponding source energy consumption.

(4) Obtain the difference in source energy consumption between this standard level scenario and the reference case.

(5) Divide the source energy savings in Btu, adjusted for class specific transmission and distribution losses, by the site energy savings in kilowatt-hours to provide the time series of conversion factors in Btu per kilowatt-hour.

The resulting conversion factors will change over time, and will account for the displacement of generating sources. Furthermore, the NES spreadsheet models will include a clearly defined column of conversion factors, one for each year of the projection. DOE and stakeholders can examine the effects of alternative assumptions by replacing this column of numbers.

Measures of impact reported include the NPV of total consumer LCC, NES and water savings, if appropriate, and indirect employment impacts. Each of the above are determined for selected trial standard levels. These calculations are done by the use of a spreadsheet tool called the NES Spreadsheet Model, which has been developed for all the standard rulemakings and tailored to each specific appliance rulemaking.

1. National Energy Savings (NES) Spreadsheet Model

a. General. In order to make the analysis more accessible and transparent to all stakeholders, a spreadsheet model was developed using Microsoft Excel in Windows 95 to calculate the national energy and water savings, and the national economic costs and savings from new standards. Input quantities can be changed within the spreadsheet. For example, the markup factor to determine retail price from the manufacturing cost can be easily changed in the spreadsheet. Unlike the LCC analysis, in the NES Spreadsheet, distributions are not used for inputs or outputs. Sensitivities can be demonstrated by running different scenarios.

One of the more important components of any estimate of future impact is shipments. Forecasts of shipments for the base case and the standard case need to be obtained as an input to the NES.

The most basic method for forecasting future shipments is a simple saturation-based method which assumes saturations remain unchanged and solves for a growth rate in shipments sufficient to keep saturations constant in light of population growth. There are several factors that can make this estimate inaccurate. These factors include possible changes in: the number of households, saturation levels, appliance lifetimes, prices (including operating costs), and consumer decisions about whether to repair rather than replace an appliance. Because of these complexities, and to improve on the forecasts, the following four different statistical models were studied.

Auto-Regressive Moving Average (ARIMA) Model

Under this model, a univariate time series data analysis approach is used to predict future values of a time series using only its current and past data. The advantage of the ARIMA univariate approach is that only time series data is needed to run the model. The disadvantages of this approach are that (1) historical trends may not be a good guide to the future, and (2) the model cannot explicitly account for changes in the number of households, percent of household owning washers, price, or operating expense.

AHAM has commented that it believes that the use of regression analysis is inappropriate to project shipments of washers to the year 2030. AHAM suggests that a time series (ARIMA) type model is better. AHAM commented that since the method presented at the July 23, 1997, workshop seems to be heavily based on assumptions regarding the saturation of certain housing types, the Department needs to provide these underlying assumptions prior to any calculation of NES. (AHAM, No. 76.) An ARIMA type model is among those being analyzed to obtain shipment forecasts by the Department.

Multi-Variate Time Series Fit

In addition to the ARIMA univariate process for projecting sales, a multi-variate time series data analysis was also reviewed. This analysis is based not only on sales but new housing starts as well. The advantage of the multi-variate time series method is that only two time series are needed to build the model (i.e., shipments from the previous year and the change in the number of households from the previous year). The disadvantages of this approach are that (1) again, historical trends may not be a good guide to the future, and (2) the model cannot explicitly account for replacement sales, changes in saturation, price, and operating cost.

Saturation/Lifetime Model

A saturation/lifetime (S/L) model was developed as yet another alternative for forecasting sales. The S/L model assumes that the saturation of an appliance varies with time. Appliance removals are based upon assumptions regarding the distribution of the appliance lifetimes, and the above functional form of the model allows for flexibility in that different assumptions regarding saturations and lifetimes can be used in an attempt to get the best fit to historical data. The advantages of the saturation/lifetime method are that (1) the method explicitly accounts for lifetimes, (2) housing and saturation stocks are based only on time-series data, so that different housing and saturation fits can be used to get "good" fits to historical sales. The disadvantages of this approach are that (1) removals must be based on assumptions about lifetimes, and (2) the model cannot explicitly account for the impact of price and operating cost on housing and saturation stocks.

Accounting Model

The accounting model seeks to forecast shipments by determining sales destined for new homes plus the additional sales meant to replace appliances being retired from service. For those sales meant for the replacement market, the model accounts for the impact of homes which are being retired from the existing housing stock. The advantages of the accounting model are that (1) it is a straightforward and simple model, (2) it explicitly accounts for new appliances separately in new houses and replacements, and (3) price and operating costs can be incorporated into saturation terms. The disadvantages of the accounting model are that (1) saturations of appliances in new and stock homes must be forecasted, (2) housing starts must be forecasted (e.g., based on AEO projections), and removals must be based on assumptions about lifetimes.

Table 6 shows the degree to which each approach accounts for different variables that impact actual shipments.

TABLE 6.—VARIABLES ACCOUNTED FOR BY DIFFERENT FORECAST APPROACHES

Model	Variable accounted for:				
	Washer sales	Number of households	Saturation	Washer life-time	Price and operating cost
ARIMA	X				
Multi-variate	X	X			
Saturation/Life	X	X	X	X	
Accounting	X	X	X	X	X

Among the important drivers of energy consumption are: voluntary programs promoting higher energy efficiency products and consumers response to changes in price and operating expense. The extent to which voluntary programs may increase the share of energy efficient products, prior to the implementation date of any new standards, is estimated in the base case. How consumers respond to changes in prices and operating expenses can be expressed by means of elasticities. An elasticity is the percent change in one quantity in response to a percent change in a driving variable. Elasticity will be taken into account if a method of quantifying the price elasticity can be developed or perhaps several scenarios can be modeled.

Other quantities in the NES spreadsheet are: energy price projections including an analysis of consumer marginal energy rates for each fuel (*See* Section II.D.1.a); effective date of the standard (start year); discount rate and the year of the NPV (1997); manufacturing cost; appliance purchase price; water cost and escalation rate; baseline energy use;, impacts of other appliances applicable to the rulemaking analysis; lifetime; fuel mix; and the conversion factor from site to source energy.

The energy savings and NPV are calculated from the expected date any standard level would take effect to the year 2030. Both individual year and cumulative data are generated. Output charts and tables provide: cumulative energy and water savings, (where applicable), the cost and savings per year (in a chart) and the cost and NPV due to standards.

b. Product Specific. The model to be used for the clothes washer rulemaking is the one described above in Section II.E.1.a. Following is a discussion of the application of this model for the clothes washer rulemaking analysis.

Table 7 shows the assumptions used in NES for the preliminary analysis which are summarized below and discussed in greater detail in the Preliminary TSD.

TABLE 7.—ASSUMPTIONS USED FOR GENERATING PRELIMINARY NATIONAL IMPACTS

Fuel Price	EIA Annual Energy Outlook 1998 to the year 2020 and extrapolated to the year 2030.
Water Price	Average—$3.18 per 1000 gallons.
Discount Rate and the Year of the NPV	7 percent discounted to the year 1997.
Start Year for New Standards	2003.
Annual Real Change in Water & Sewer Cost (water price escalator)	0 percent.
Manufacturing Cost	Shipment-weighted average of the most likely (from AHAM data).
Total Mark up on Manufacturer Costs.	1.731.
Energy Consumption Data	AHAM data.
Clothes Washer Shipments	Assumed same for standards and base case (inelastic to price and energy savings).
Percent Horizontal-Axis Washers	1.5 percent in 1995, increasing by 0.5 percent each year.
Primary Energy Conversion Factors	AEO 1998.

Fuel Price: The energy price scenarios to be considered for the clothes washer analysis include: AEO 1998 reference; GRI 1998; and high and low cases (which are currently AEO high and low economic cases.) Other boundary cases may be analyzed in response to the Advisory Committee on Appliance Energy Efficiency Standards recommendations relating to defining a range of energy price futures for each fuel used in the rulemaking economic analysis. (Advisory Committee, No. 96 at 2) (*See* Section II.D.1.a). See Preliminary TSD for more information on extrapolation of prices between 2020 and 2030. The Department is planning to revise the method contained in the current spreadsheet used for the preliminary ANOPR analysis. AEO 1998 forecasts only go out to the year 2020. Since the analysis needs projections to the year 2030, other methods must be used for this time period. The Department plans to use the EIA approach to forecast fuel prices for the Federal Energy Management Program (FEMP). For petroleum prices, EIA uses the average annual growth rate of the world oil price over the years 2010 to 2020 and then adds the implied refinery and distribution markups for each petroleum product to arrive at the regional prices for the 2021 to 2030 period. Natural gas prices are similarly derived using the average annual growth of wellhead natural gas over 2010 to 2020 and adding on regional markups. Electricity prices are assumed to be constant after 2020 on the assumption that the transition to a restructured industry will have been completed.

Annual Real Change in Water and Sewer Cost (water price escalator): For the preliminary analysis the cost of water and the escalation rate of water prices used in the analysis is specified in Table 7. For the NOPR analysis, DOE plans to update prices and estimate future prices and escalation rates. (*See* Section II.D.b.i.)

AHAM commented that the Department cannot use water savings in its economic justification of standards. Under the provisions of NAECA, this is not a specified consideration and is no more than a side-benefit of the energy savings. (AHAM, No. 76 at 1.) The

Department believes that water savings should be accounted for. EPCA states that in determining whether a standard is economically justified the Secretary shall determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable considering "the total project amount of energy or as applicable, water savings likely to result directly from the imposition of the standard," "the need for national energy and water conservation" and "other factors the Secretary considers relevant." EPCA, § 325(o)(2)(B)(I)(III)(VI)(VII), 42 U.S.C. 6295(o)(2)(B)(I)(III)(VI)(VII).

Clothes Washer Shipments: In the analysis presented in the Preliminary TSD the sales forecast for the base case and the standard case are assumed to be the same. While DOE is reviewing the different models to forecast shipments, shipment forecasts were created using the Residential Energy Model (REM). The purpose for using this data is to provide some data to demonstrate the NES methodology. This data does not reflect how shipments will be determined. These forecasts will be changed for the NOPR analysis.

The accounting model is still under development as price and operating cost effects have yet to be incorporated. Research is on-going to develop new estimates of price and operating expense elasticities to account for: (1) changing the definition of operating expense to include water and wastewater rates; (2) changing the definition of the value of energy savings from average prices to marginal rates; and (3) a longer time series to include more recent data. Inasmuch as the accounting model is the only approach that will take into account price and operating costs, the Department believes it should be the primary tool for forecasting clothes washer shipments. The Department seeks comments about the determination of price and operating cost elasticities.

The base case assumes that clothes washers efficiencies will increase due to non-regulatory reasons. Voluntary programs are expected to increase the share of higher energy efficiency clothes washers sold. The Department has reviewed existing literature relating to voluntary programs (e.g., the Energy Star and WashWise Programs). See the voluntary programs section of the Preliminary TSD for a summary of this review.

Based on this review, in the preliminary analysis the impact of voluntary programs is expressed as the percent of new clothes washers each year that have efficiencies corresponding to those of H-axis washers (35 percent energy reduction from the baseline MEF). The initial share of H-axis machines is estimated to be 1.5 percent of total washer sales in 1995. The impact of voluntary programs is estimated to cause a 0.5 percent increase in H-axis share every year thereafter. The current assumption is that in 2003 the percentage of horizontal axis washers will be 5.5 percent. The energy information used in the spreadsheet is taken from the disaggregated data provided by AHAM for the standard level with the lowest efficiency H-axis model (35 percent increase in energy efficiency). Additional work is underway to estimate future efficiencies under the base case scenario. Current estimates will be revised as additional data becomes available. The Department welcomes any additional data useful for forecasting future sales of high-efficiency washers due to non-regulatory reasons.

Primary Energy Conversion Factors: In the spreadsheet DOE is using the AEO 1998 projections.

Clothes Washer Lifetime: To account for the savings over the lifetime of new clothes washer sales, the analysis continues to the year 2030. Clothes washers are expected to have a lifetime of about 12–16 years. Some washers bought in 2002—prior to the new standards—are expected to be replaced as late as 2018. In those cases, one lifetime for washers meeting the new standards will end in 2030–2034.

2. Preliminary Results

a. General. National energy consumption is calculated for the base case and each candidate standards level by multiplying the number of clothes washers by vintage times unit energy consumption by vintage. The vintage is the age of the washer (one-year old up to sixteen-years old). National annual energy savings are calculated as the difference between two projections: a base case (without new standards) and a standards case. Cumulative energy and water savings, if appropriate, are the sum of the annual national energy or water savings, respectively, over several time periods (e.g., 2003–2010, 2003–2020, and 2003–2030).

Once the energy savings have been determined, economic impacts are calculated. The primary metric for measuring national economic impact is the NPV. NPV (of total life-cycle costs) is the difference between the present value of the energy savings over the life of the appliance and the present value of (usually increased) initial costs of a more efficient appliance. The NPV calculations also captures any differences in installation or maintenance costs. On a national level the efficiencies and number of appliances sold each year are also taken into account. Another way of describing NPV is to determine the LCCs (for all appliances sold) with and without standards and take the difference.

Costs are typically increases in the purchase price associated with the higher energy efficiency of appliances purchased in the standards case compared to the base case. Costs are calculated as the difference in the purchase price between the base case and standards case for new appliances purchased each year multiplied by the appliance sales in the standards case. Price increases appear as negative values in the NPV.

Savings are typically decreases in operating costs associated with the higher energy efficiency of appliances purchased in the standards case compared to the base case. Total operating cost savings is the product of savings per unit and the number of units of each vintage surviving in a particular year. Savings appear as positive values in the NPV.

Net savings each year are calculated as the difference between Total Operating Cost Savings and Total Equipment Costs. The savings are calculated over the life of the appliance, accounting for the differences in yearly energy rates.

Future annual costs and savings are discounted to the present time and summed. The NPV is the difference between the present value of increased costs of a more efficient appliance and the present value of energy savings, relative to the base case expenditures. In other words the NPV resembles the difference in total consumer LCC between the base case and standards case, after correcting for any change in sales of clothes washers. NPV greater than zero indicates net savings (i.e., that the standard reduces consumer expenditures in the standards case relative to the base case). NPV less than zero indicates that the standard incurs net costs.

The elements of the NPV can be expressed in another form, as the benefit/cost ratio. The benefit is the savings in decreased energy expenses, while the cost is the increase in the purchase price due to standards relative to the base case. When the NPV is greater than zero, the benefit/cost ratio is greater than one.

b. Product Specific. The results shown in Table 8 below, are based on a single shipment weighted average (SWA) cost instead of a cost distribution. Below is a description of the columns in the

Preliminary National Energy Savings Results, Table 8.

The first column shows the efficiency improvement over the base case. This is the value of energy efficiency improvement based on the baseline MEF provided by AHAM.

The second column shows the energy savings in quads. This represents the amount of primary energy savings accumulated from the years 2003 to 2030. The energy savings are a result of consumers buying more efficient washers than they would normally have bought had no new standard levels been enacted.

The third column shows the water savings in trillions of gallons at the corresponding efficiency level.

The fourth column, NPV, shows the dollar savings corresponding to the energy and water savings and accounting for increase in the purchase price. The energy prices change from year to year and AEO 1998 projections of future prices are used.

The Preliminary TSD explains the results variables in greater detail and has charts to accompany the tables.

TABLE 8.—PRELIMINARY NATIONAL ENERGY SAVINGS RESULTS (2003 TO 2030 CUMULATIVE)

Percent efficiency improvement over the base case	Energy savings (quads)	Water savings (trillion gallons)	Net present benefit (NPV) (billion 1997$)
5	0.36	0.46	1.02
10	1.18	0.46	2.41
15	2.18	0.45	3.80
20	2.66	0.59	3.67
25	5.09	10.13	11.07
35	7.85	14.62	13.47
40	7.90	14.62	13.53
45	9.49	12.47	8.81
50	10.06	12.47	9.07

3. Indirect Employment Impacts

a. General. The July 1996 Process Rule includes employment impacts among the factors to be considered in selecting a proposed standard. The Department estimates the impacts of standards on employment for appliance manufacturers, relevant service industries, energy suppliers, and the economy in general. Employment impacts are separated into indirect and direct impacts. Direct employment impacts would result if standards lead to a change in the number of employees at manufacturing plants and related supply and service firms. Direct impacts will be further discussed in the section on manufacturing analysis. Indirect impacts are impacts on the national economy other than in the manufacturing sector being regulated. Indirect impacts may result from both expenditures shifting among goods (substitution effect), and income changing, which will lead to a change in overall expenditure levels (income effect).

Indirect employment impacts from standards are defined as net jobs eliminated or created in the general economy as a consequence of increased spending on the purchase price of appliances and reduced household spending on energy. New appliance standards are expected to increase the purchase price of appliances (retail price plus sales tax, and installation). The same standards are also expected to decrease energy consumption, and therefore reduce household expenditures for energy. Over time, the increased purchase price is paid back through energy savings. The savings in energy expenditures may be spent on other items. Using an input/output model of the U.S. economy, this analysis seeks to estimate the effects on different sectors, and the net impact on jobs. National impacts will be estimated for major sectors of the U.S. economy. Public and commercially available data sources and software will be utilized to estimate employment impacts. At least three scenarios will be analyzed to bound the range of uncertainty in future energy prices. All methods and documentation will be made available for review.

b. Product Specific. For purposes of national impact analysis, possible indirect employment impacts for appliance manufacturers, relevant service industries, energy suppliers, and the economy in general (i.e., national employment) due to efficiency standards will be analyzed. The Department is proposing to use a model, which focuses on those sectors of the economy most relevant to buildings, developed by the Office of Building Technologies and State Programs. This software, IMBUILD, is a PC-based economic analysis system that characterizes the interconnections among 35 sectors as national input-output structural matrices. The model can be applied to future time periods. The IMBUILD output includes employment, industry output, and wage income. The impacts of new appliance standards are estimated in the NES spreadsheet as household energy savings (reduced energy expenditures), and increased appliance purchase price. These impacts are output from NES and input to IMBUILD. Additional detail is provided in the Preliminary TSD.

F. Consumer Analyses

The consumer analysis evaluates impacts to any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level.

The Department could evaluate variations in regional energy prices, water and sewer prices, variations in energy use and variations in installation costs that might affect the NPV of a standard to consumer sub-populations. To the extent possible, DOE obtains estimates of the variability in each input quantity and considers this variability in its calculation of consumer impacts. The analysis is structured to answer questions such as: How many households are better off with standards and by how much? How many households are not better off and by how much? The variability in each input quantity and likely sources of information are discussed with stakeholders.

Variations in energy use for a particular appliance can depend on factors such as: climate, type of household, people in household, etc. Annual energy use can be estimated by a calculation based on an accepted test procedure or it can be measured directly in the field. The Department could perform sensitivity analyses to consider how differences in energy use will affect sub-groups of consumers.

The impact on consumer sub-groups will be determined using the LCC spreadsheet model. Details of this model are explained in the LCC section of the Preliminary TSD. Of particular interest is the potential effect of standards on households with different income levels.

1. Purchase Price

a. General. The Department will be sensitive to increases in the purchase price to avoid negative impacts to identifiable population groups, such as consumers of different income levels. Additionally, the Department will assess the likely impacts of an increased purchase price on product sales and fuel switching.

b. Product Specific. In order to determine the effect of an increase in the purchase price, it would be useful to know what the elasticity of clothes washer prices is. The Department is still determining how these data could be obtained. While preliminary analyses indicate that factors, such as the current state of the economy have a greater correlation to sales of washers than do an increase in clothes washer prices, it is still important to estimate the impact

of changing prices on the sales of clothes washers. In making estimates of these price effects, the Department needs to gauge the difference in clothes washer sales from a change in the price of all clothes washers, as could result from revised energy efficiency standards. In addition, the Department will be estimating how price changes from revised energy efficiency standards for clothes washers will affect the behavior of consumers.

2. Consumer Participation

a. General. The Department seeks to inform and involve consumers and consumer representatives in the process of developing standards. This includes notification of consumer representatives during the rulemaking process and where appropriate, seeking direct consumer input.

b. Product Specific. The Act requires that "the Secretary consider, among other factors, if any lessening of the utility or the performance of the products is likely to result from the imposition of the standard. EPCA, § 325 (o)(2)(B)(I)(3), 42 U.S.C. 6295 (o)(2)(B)(I)(3). In this rulemaking because comments have been received specifically to the consumer utility and performance of V- and H-axis clothes washers, the Department reviewed existing literature pertaining to these issues.

The Department has made available a "Draft Report on Consumer Research for Clothes Washers." This document is included in the appendix of the Preliminary TSD. The report summarizes research relative to consumer satisfaction with H-axis washing machines. Sources and projects summarized in the report include:

- Major studies by consortia,
- Individual utility demand side management & market transformation studies,
- Consumer test publications,
- Trade organizations, and
- Government projects.

Based on the December 1997 Advisory Committee meeting, the Consumer Subcommittee made two key recommendations to obtain consumer input:

(1) Adopt a three-step process:

- Obtain background research
- Hold focus groups
- Conduct interviews/surveys.

(2) Initiate the consumer analysis process in the clothes washer rule.

In accordance with the Advisory Committee's recommendations, the Department reviewed background information regarding consumer issues related to clothes washers as discussed in the "Draft Report on Consumer Research for Clothes Washers." At the March 11, 1998, Clothes Washer Workshop, the background research findings were presented and a working group was formed to develop a method for obtaining additional consumer input pertinent to the rule. Two comments were received on the subject of additional consumer research. ACEEE found the body of existing studies to be fairly compelling, and did not see a need for extensive additional work. (ACEEE, No. 94 at 4). Raytheon recommended that consumer purchase studies should involve consumers at all income levels and be made using existing retail prices excluding rebate incentives, for both V-axis and H-axis clothes washers. (Raytheon, No. 91 at 2).

The working group held a conference call on April 30, 1998, to evaluate different techniques for obtaining consumer input. Focus groups, surveys, and a conjoint analysis were all considered. The working group recommended a three-step approach for obtaining additional consumer input:

(1) Develop a list of attributes. Based on the working groups' individual members' research and knowledge. Each member has submitted a list of clothes washer attributes valued by consumers,

(2) Conduct a consumer survey to refine the list of attributes that would be included in a quantitative consumer analysis study,

(3) Conduct a conjoint analysis to quantitatively estimate the value consumers place on the clothes washer attributes.

The Department must first announce the process to use for conducting any type of public survey in the **Federal Register** notice in accordance with the requirements of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This will be a separate notice which is in process of being published. The Department will then solicit bids for a marketing research firm to conduct the focus groups to refine the list of attributes and to conduct the conjoint analysis.

G. Manufacturer Impact Analysis

The manufacturer impact analysis estimates the financial impact of standards on manufacturers and calculates impacts on competition, employment, and manufacturing capacity.

Prior to initiating the detailed manufacturing impact analysis the Department will prepare an approach document and have it available for review. While the general framework will serve as a guide, the Department intends to tailor the methodology for each rule on the basis of stakeholder comments. The document will outline procedural steps and outline issues for consideration. Three important elements of the approach consist of the preparation of an industry cash-flow, the development of a process to consider sub-group cash-flow, and the design of an interview guide.

The policies outlined in the process rule required substantial revisions to the analytical framework to be used in performing manufacturer impact analysis for each rulemaking. In the approach document, the Department will describe and obtain comments on the methodology to be used in performing the manufacturer impact analyses. The manufacturer impact analyses will be conducted in three phases. Phase 1 consists of two activities, namely, preparation of an industry characterization and identification of issues. The second phase has as its focus the larger industry. In this phase, the GRIM will be used to perform an industry cash flow analysis. Phase 3 involves repeating the process described in Phase 2 (the industry cash-flow analysis) but on different sub-groups of manufacturers. Phase 3 also entails calculating additional impacts on competition, employment, and manufacturing capacity.

1. Industry Cash Flow

a. General. A change in standards affects the analysis in three distinct ways. Increased levels of standards will require additional investment, will raise production costs, and will affect revenue through higher prices and, possibly, lower quantities sold. To quantify these changes the Department performs an industry cashflow analysis using the GRIM. Usually this analysis will use manufacturing costs, shipments forecasts, and price forecasts developed for the other analyses. Financial information, also required as an input to GRIM, will be developed based on publicly available data and confidentially submitted manufacturer information.

The GRIM analysis uses a number of factors—annual expected revenues; manufacturer costs such as cost of sales, selling and general administration costs, taxes, and capital expenditures related to depreciation, new standards, and maintenance—to arrive at a series of annual cash flows beginning from before implementation of standards and continuing explicitly for several years after implementation. The measure of industry net present values are calculated by discounting the annual cash flows from the period before implementation of standards to some

future point in time. The Preliminary TSD describes the GRIM's operating principles and presents alternative approaches to developing the information necessary to perform the computations.

b. Product Specific. The Department has received manufacturing cost data from manufacturers which was compiled and reported by AHAM. This data will be used to conduct an industry cash flow analysis for the NOPR. A draft document "Financial Inputs to GRIM for the Clothes Washer Rulemaking Analysis" has been prepared for stakeholder review. This document outlines and documents the financial assumptions to be used in GRIM when performing the industry cash flow analyses. The Department intends to use the manufacturing costs, retail prices, and shipment values from the preliminary analysis in the GRIM model. This will be distributed to interested parties prior to the workshop to be held after publication of this Supplemental ANOPR.

2. Manufacturer Sub-Group Analysis

a. General. Using industry "average" cost values is not adequate for assessing the variation in impacts among sub-groups of manufacturers. Smaller manufacturers, niche players or manufacturers exhibiting a cost structure largely different from industry averages could be more negatively impacted. Ideally, the Department would consider the impact on every firm individually. In highly concentrated industries this may be possible. In industries having numerous participants, the Department will use the results of the industry characterization to group manufacturers exhibiting similar characteristics. The financial analysis of the "prototypical" firm performed in the Phase 2 industry analysis can serve as a benchmark against which manufacturer sub-groups can be analyzed.

The manufacturing cost data collected for the engineering analysis will be used to the extent practical in the sub-group impact analysis. To be useful, however, this data should be disaggregated to reflect the variability in costs between relevant sub-groups of firms.

The Department will conduct detailed interviews with as many manufacturers as is possible to gain insight into the potential impacts of standards. During these interviews, the Department will solicit the information necessary to evaluate cashflows and to assess competitive, employment and capacity impacts. Firm-specific cumulative burden will also be considered.

b. Product Specific. In order to conduct a manufacturer sub-group analysis, it will be necessary to define representative sub-groups and conduct separate cash flow analysis for each. For example, one option consists of conducting separate cash flows for all manufacturers. Another option, could entail conducting cash flow analysis only for those manufacturers which believe their impacts are more severe then industry average. The Department will outline and discuss these and other approaches at the post supplemental ANOPR analysis workshop.

Whirlpool proposed that the GRIM model be changed from input to output aggregation. Each industry member would develop its own inputs to the GRIM model over a range of MEF levels proposed by the DOE. The GRIM models would be run by industry members to generate a range of individual company outputs. The outputs of the individual companies could then be aggregated to determine industry impact. Individual companies would not be required to submit detailed input assumptions, but only changes in revenues, shipments, profit after tax, and cash flow, capital investment and design and marketing spending could also be provided. A third party could do the aggregation and then conduct a reality check by comparing the aggregated output to currently available industry data. (Whirlpool No. 66 at 3). The Department seeks further input as to how the data for the GRIM analysis should be collected from the manufacturers and how it should be utilized.

3. Interview Process

a. General. The revised rulemaking process provides for greater public input and for improved analytical approaches, with particular emphasis on earlier and more extensive information gathering from interested parties. The proposed three-phase manufacturer impact analysis process will draw on multiple information sources, including structured interviews with manufacturers and a broad cross-section of interested parties. Interviews may be conducted in any and all phases of the analyses as determined in Phase 1.

The interview process has a key role in the manufacturer impact analyses, since it provides an opportunity for interested parties to privately express their views on important issues. A key characteristic of the interview process is that it is designed to allow confidential information to be considered in the rulemaking decision.

The initial industry characterization will collect information from relevant industry and market publications, industry trade organizations, company financial reports, and product literature. This information will aid in the development of detailed and focused questionnaires, as needed, to perform all phases of the manufacturer impact analyses. It is the intention of the Department that the contents of questionnaires and the list of interview participants be publicly vetted prior to initiating the interview process.

The Phase 3 (sub-group analysis) questionnaire will solicit information on the possible impacts of potential efficiency levels on manufacturing costs, product prices, and sales. Evaluation of the possible impacts on direct employment, capital assets, and industry competitiveness will also draw heavily on the information gathered during the interviews. The questionnaires will solicit both qualitative and quantitative information. Supporting information will be requested whenever applicable.

Interviews will be conducted according to DOE procedures. Interviews will be scheduled well in advance in order to provide every opportunity for key individuals to be available for comment. Although a written response to the questionnaire is acceptable, an interactive interview process is preferred because it helps clarify responses and provides the opportunity for additional issues to be identified.

Interview participants will be requested to identify all confidential information provided in writing or orally. Approximately two weeks following the interview, an interview summary will be provided to give participants the opportunity to confirm the accuracy and protect the confidentiality of all collected information. All the information transmitted will be considered, when appropriate, in DOE's decision-making process. However, confidential information will not be made available in the public record.

DOE will collate the completed interview questionnaires and prepare a summary of the major issues and outcomes. The Department will seek comment on the outcome of the interview process.

b. Product Specific. The Department is developing an interview guide to supplement the sub-group GRIM cash-flow analysis. The interview will solicit information on the possible impacts of potential efficiency levels on manufacturing costs, product prices, and sales. As such it will contribute to the Department's understanding of how sub-groups may have different values for these quantities compared with the

overall industry. This will allow the Department to report and explain significant variances when publishing the analysis results.

Evaluation of the possible impacts on direct employment, capital assets, and industry competitiveness will also draw heavily on the information gathered during the interviews. The questionnaires will solicit both qualitative and quantitative information. Supporting information will be requested whenever applicable.

The Department plans to make a draft of the questionnaire available prior to the post-supplemental ANOPR analysis workshop.

H. Competitive Impact Assessment

a. General. Legislation directs the Department to consider any lessening of competition that is likely to result from standards. It further directs the Attorney General to gauge the impacts, if any, of any lessening of competition. DOE will make a determined effort to gather and report firm-specific financial information and impacts. The competitive analysis will focus on assessing the impacts to smaller, yet significant, manufacturers. The assessment will be based on manufacturing cost data and on information collected from interviews with manufacturers, consistent with Phase 3 of the manufacturer impact analyses. The Department of Justice (DOJ) has offered to help in drafting questions to be used in the manufacturer interviews. These questions will pertain to the assessment of the likelihood of increases in market concentration levels and other market conditions that could lead to anti-competitive pricing behavior. The manufacturer interviews will focus on gathering information that would help in assessing asymmetrical cost increases to some manufacturers, increased proportion of fixed costs potentially increasing business risks, and potential barriers to market entry (proprietary technologies, etc.).

b. Product Specific. The Department met with DOJ on June 11, 1998, for initial discussions pertaining to the manufacturer impacts of potential clothes washers standards. DOJ has agreed to review the manufacturer questionnaire prior to discussions with the manufacturers.

I. Utility Analysis

The utility analysis estimates the effects of proposed standards on electric and gas utilities.

1. Proposed Methodology

a. General. The Department proposes to use a version of EIA's widely recognized NEMS for the utility and environmental analyses. NEMS is a large multi-sectoral partial equilibrium model of the U.S. energy sector that has been developed over several years by the EIA primarily for the purpose of preparing the Annual Energy Outlook (AEO). NEMS produces a widely recognized baseline forecast for the U.S. through 2020 and is available in the public domain. The version of NEMS to be used for appliance standards analysis will be called NEMS–NAECA, and will be based on the AEO 1998 version with minor modifications.[2]

NEMS offers a sophisticated picture of the effect of appliance standards since its scale allows it to measure the interactions between the various energy supply and demand sectors and the economy as a whole. In addition, the scale of NEMS permits analysis of the effects of standards on both the electric and gas utility industries.

To analyze the effect of standards, NEMS–NAECA is first run exactly as it would be to produce an AEO forecast, then a second run is conducted with residential energy usage reduced by the amount of energy (gas, oil, and electricity) saved due to appliance standards for the appliance being analyzed. The energy savings input is obtained from the NES spreadsheet. Outputs available are the same as those in the original NEMS model including residential energy prices, generation and installed capacity (and in the case of electricity, which primary fuel is used for generation).

b. Product Specific. I. Assumptions. Other than the difference in energy consumption due to clothes washer standards, input assumptions into NEMS–NAECA will follow those used to produce AEO 1998. The entire utility analysis will be conducted as a policy deviation from the AEO 1998, and the assumptions will be the basic set of assumptions applied. For example, the operating characteristics (energy conversion efficiency, emissions rates, etc.) of future electricity generating plant will be exactly those used in AEO 1998, and the prospects for natural gas supply will be exactly those assumed in AEO 1998.

[2] EIA approves use of the name NEMS only to describe an AEO version of the model without any modification to code or data. Since, in this work, there will be some minor code modifications and the model will be run under various policy scenarios that deviate from AEO assumptions, DOE proposes use of the name NEMS–NAECA for the model as used here.

Since the AEO 1998 version of NEMS–NAECA forecasts only to the year 2020, a method for extrapolating price data to 2030 is required. The adopted method uses the EIA approach to forecast fuel prices for the Federal Energy Management Programs (FEMP). These are the prices used by FEMP to estimate life-cycle costs of Federal equipment procurements. For petroleum products, the average growth rate for the world oil price over the years 2010 to 2020 is used in combination with the refinery and distribution markups from the year 2020 to determine the regional price forecasts. Similarly, natural gas prices are derived from an average growth rate figure in combination with regional price margins from the year 2020. Electricity prices are held constant at 2020 levels on the assumption that the transition to a restructured utility industry will have been completed.

ii. Results. In principle, any of the forecasts that appear in AEO 1998 could be estimated by NEMS–NAECA to take into account the effects of a particular clothes washer standard level. The Department intends to report the major results on residential sales of fuels, prices of fuels, and generating sources displaced by energy savings. As might be expected, as the total energy use of America is much larger than that possible due to the savings from clothes washers, there is little expected difference in the forecasted price of energy.

J. Environmental Analysis

An Environmental Assessment is required pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), regulations of the Council on Environmental Quality (49 CFR parts 1500–1508), the Department regulations for compliance with NEPA (10 CFR part 1021), and the Secretarial Policy on the National Environmental Policy Act (June 1994). The Environmental Assessment will be presented as part of the NOPR and an opportunity will be provided for comments prior to the final rule.

The main environmental concern addressed is emissions from fossil fuel-fired electricity generation. Power plant emissions include oxides of nitrogen (NO_X) and sulfur (SO_2), as well as carbon dioxide (CO_2). The first two are major causes of acid precipitation, which can affect humans by reducing the productivity of farms, forests and fisheries, decreasing recreational opportunities and degrading susceptible buildings and monuments. NO_X is also a precursor gas to urban smog and is

particularly detrimental to air quality during hot, still weather. CO_2 emissions contribute to raising the global temperature via the "greenhouse effect." The long-term consequences of higher temperatures may include perturbed air and ocean currents, perturbed precipitation patterns, changes in the gaseous equilibrium between the atmosphere and the biosphere, and the melting of some of the ice now covering polar lands and oceans, causing a rise in sea level.

1. Proposed Methodology

a. General. The Department proposes to use the EIA widely recognized NEMS for the appliance environmental analyses (as well as the utility analyses). The version of NEMS to be used for appliance standards analysis will be called NEMS–NAECA, and will be based on the AEO 1998 version with minor modifications. NEMS–NAECA is run exactly the same as the original NEMS except that residential energy usage is reduced by the amount of energy (gas, oil, and electricity) saved due to appliance standards for the appliance being analyzed. The input of energy savings is obtained from the NES spreadsheet. For the environmental analysis, the output is the forecasted physical emissions. The net benefits of a standard will be the difference between emissions estimated by the AEO 1998 version of NEMS–NAECA and those it estimates with a standard in place.

b. Product Specific. The environmental analysis should be relatively straightforward using NEMS–NAECA. Carbon emissions are tracked in NEMS using quite a detailed carbon module that provides good results because of its broad coverage of all sectors and inclusion of interactive effects. The only form of carbon tracked by NEMS–NAECA is CO_2, so the carbon discussed in this report is only in the form of CO_2 but is reported as elemental carbon to remain consistent with the AEO 1998.[3]

The two airborne pollutant emissions that have been reported in past analyses, SO_2 and NO_X, are reported by NEMS–NAECA. In the case of SO_2, the Clean Air Act Amendments of 1990 set an SO_2 emissions cap on all power generation. The attainment of this target is flexible among generators through the use of emissions allowances and tradable permits. NEMS includes a module for SO_2 allowance trading and delivers a forecast of SO_2 allowance prices. Please note that accurate simulation of SO_2 trading tends to imply that physical emissions effects will be zero because emissions will always be at the ceiling. This fact has caused considerable confusion in the past. However, there is an SO_2 benefit from conservation in the form of a lower allowance price and, if big enough to be calculable by NEMS–NAECA, this value will be reported. Please see TSD for further discussion of this issue. One small effect that NEMS–NAECA must consider in addition to AEO 1998 calculations is the effect of standards on SO_2 emissions from in-house combustion of oil, since the emissions cap does not apply to households. This effect is calculated using simple emissions factors.

The NEMS algorithm for estimating NO_X emissions also does not estimate in-house emissions, nor are the emissions calculated for ozone non-attainment areas. In-house emissions account for the combustion of fossil fuels, primarily natural gas, within individual homes. Since households that use natural gas, fuel oil or coal do contribute to NO_X emissions, the effect on in-home NO_X emissions will be calculated externally to NEMS–NAECA, using simple emissions factors.

Energy use for selected appliance efficiency levels will be the same as those in the NES spreadsheet. Other input assumptions into NEMS–NAECA will follow those used to produce AEO 1998. In principle, any of the forecasts that appear in AEO 1998 could be estimated by NEMS–NAECA to take into account the effects of a particular clothes washer standard level, but in the standard reporting, the Department intends to report emissions of SO_2, NO_X and CO_2. The time horizon of NEMS–NAECA is 2020. Beyond this point, results will be extrapolated using a simple formula (for methodology, see preliminary TSD) to extend the forecast to 2030. Alternative price forecasts corresponding to the side cases found in AEO 1998 will also be generated for use by NES and will be explored in a similar fashion with NEMS–NAECA runs.

K. Regulatory Impact Analysis

DOE will be preparing a draft regulatory analysis pursuant to E.O. 12866, "Regulatory Planning and Review," which will be subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) 58 FR 51735 (October 4, 1993). Six major alternatives were identified by DOE as representing feasible policy options to achieve consumer product energy efficiency. Each alternative will be evaluated in terms of ability to achieve significant energy savings at a reasonable cost and will be compared to the effectiveness of the rule.

As part of the docket for the Refrigerator Products Energy Conservation Standards (Docket No. EE–RM93–801) AHAM stated that the Department needs to improve the evaluation of non-regulatory means of achieving energy savings. (AHAM, No. 207 at 7).

Under the Process Rule policies, the Department is committed to continually explore non-regulatory alternatives to standards. In the table below is a discussion of what was examined in 1994 and what is being proposed for this rulemaking. The Department is seeking comments on this approach. This approach is further discussed in the TSD.

Alternatives examined in 1994	Alternatives to examine in 1998
—No action	—No new regulatory action.
—Consumer tax credits.	—Consumer tax credits.
—Manufacturer tax credits.	—Manufacturer tax credits.
—Performance standards.	—Performance standards.
—Consumer rebates	—Rebates.
—Prescriptive standards	
—Voluntary standard	—Voluntary energy efficiency targets.
—Enhanced labeling and consumer education	
	—Early replacement.
	—Mass government purchases.

III. Standards Scenarios

Upon reviewing the preliminary LCC and NES results, the Department observes that the efficiency levels analyzed, 5 to 50 percent efficiency improvement over baseline efficiency, produced a range of impacts. For example, the NES impacts show a range from 0.36–10.06 quads of energy saved over the 2003 to 2030 period. As expected, the higher the efficiency level, the greater the savings. Similarly, the analysis shows an increase in water savings from 0.46 to 12.47 trillions of gallons saved. On the other hand, the NPV shows an increase from $1.02 billion at the 5 percent level, to a maximum of $13.53 billion at the 40 percent level, and then a reduction to $9.07 billion at the 50 percent level. The LCC and payback analyses show results similar to the NPV analysis where the greatest economic benefit is at the 40 percent level.

Based on the analyses performed, the 40 percent efficiency level standard would appear to result in the greatest

[3] The conversion factor from carbon to CO_2 is approximately 3.6667.

economic benefit to the Nation. (*See* Tables 3, 4 and 8.) The national net present benefit at the 40 percent efficiency level (which represents an equivalent to a moderate H-axis level) is $13.53 billion. This is approximately 22 percent higher than the NPV benefit at the 25 percent efficiency level (which represents the current highest V-axis level) and 49 percent higher than the 50 percent level, the maximum technologically feasible level. The LCC results in Table 3 indicate that a 40 percent efficiency level has the greatest consumer mean LCC savings. At 40 percent, the consumer mean LCC savings is $253, or $48 and $49 greater than the 25 and 50 percent levels, respectively. In addition, at the 40 percent level, the range in LCC impacts is a savings of $2,039 (0th percentile) to an increase of $645 (100th percentile). The LCC analysis further shows that at the 40 percent level approximately 83.7 percent of consumers will experience a LCC savings; and that only 16.3 percent of the Nation's population will experience an increase in LCC. Whereas, the LCC analysis indicates that at the 25 percent efficiency level, standards will negatively impact 10.8 percent of the Nation's population and at the 50 percent level, standards will adversely impact 25.8 percent of the population. (*See* Table 3.)

Also, the rebuttable presumption payback periods shown in Table 5 indicate that all efficiency levels from 5 percent up to 25 percent show a less than 3 year payback. The 40 percent efficiency level shows a 3.7 year payback which represents a reasonable payback period considering the increased energy savings at this level. There is a significant jump in the payback period at the 45 and 50 percent efficiency levels therefore making these efficiency levels look less attractive.

These observations are based on preliminary LCC and NES results which will be updated and revised in the NOPR and final rule analyses. These observations, however, do not include analyses results from the manufacturer impact or consumer subgroup and survey information.

The following are examples of possible alternative standards scenarios for consideration by the Department:

- A moderate standard at an early effective date. For example, a level at a 25 percent improvement, effective three years after the publication of the Final Rule.
- A stringent standard, at a later effective date. For example, a level at 45 percent improvement effective five years after the publication of the Final Rule.
- A two phase approach. For example, a level at 20 percent effective three years after the publication of the Final Rule (projected effective date—October, 2002) and a level at 40 percent effective eight years after publication of the Final Rule.

The Department seeks comments on the alternative standard scenarios for consideration in the analysis for the proposed rule.

IV. Public Comment Procedures

A. Participation in Rulemaking

The Department encourages the maximum level of public participation possible in this rulemaking. Individual consumers, representatives of consumer groups, manufacturers, associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposal.

The Department has established a period of 75 days following publication of this document for persons to comment on this proposal. All public comments received will be available for review in the Department's Freedom of Information Reading Room. In addition, the following data is available in the Department's Freedom of Information Reading Room:

- Copies of the Preliminary TSD
- Transcripts of the public hearings
- Copies of the public comments received by the Department
- Previous **Federal Register** notices relating to this clothes washer rulemaking

A public hearing will be held on December 14 (1:00–4:00 p.m.) and 15 (9:00 a.m.–4:00 p.m.), 1998, at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW, Room 1E–245, Washington, D.C. 20585. The December 14 session will be a training session for the Government Regulatory Impact Model (GRIM). More detailed information about this hearing will be on the Office of Codes and Standards web site beginning in November. The web site address is as follows: http://www.eren.doe.gov/buildings/codes_standards/index.htm.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views, or arguments with respect to the subjects set forth in this document. Comments will not be accepted by fax or e-mail. Instructions for submitting written comments are set forth at the beginning of this document and below.

Comments should be labeled both on the envelope and on the documents, "Clothes Washer Rulemaking (Docket No. EE–RM–94–403)," and must be received by the date specified at the beginning of this document. Ten copies are requested to be submitted. Additionally, the Department would appreciate an electronic copy of the comments to the extent possible. The Department is currently using WordPerfect™ 6.1. All comments and other relevant information received by the date specified at the beginning of this document will be considered by the Department in the proposed rule.

All written comments received on the supplemental Advance Notice of Proposed Rulemaking will be available for public inspection at the Freedom of Information Reading Room, as provided at the beginning of this document.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data that is believed to be confidential, and exempt by law from public disclosure, should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to the Department, when evaluating requests to treat information as confidential, include: (1) a description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential, and whether and why such items are customarily treated as confidential, and whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

C. Issues for Public Comment

The Department is interested in receiving comments and data to improve its preliminary analysis. In particular, the Department is interested in seeking response to the following questions and/or concerns that were addressed in this rulemaking.

Information on the energy efficiency and relative market shares of current products on the market as described by the Modified Energy Descriptor (MEF):

• The Department has limited information concerning the energy performance of existing product offerings using the MEF descriptor. Given the vastly different nature of the variables and testing methods of the current J and future J1 test procedures, the EF values cannot be translated to MEF values.

Proposed product classes for products in this rulemaking:

• In their written comments, Whirlpool asked the Department to maintain the current efficiency requirement for the compact class due to the limited potential for energy-efficient improvements and the small market share for these products. Whirlpool also indicated that the V-axis compact clothes washer market and the manufacturing base for these products has changed since the current standards were developed. The previous stand-alone 1.6 ft.^{3} compact V-axis clothes washer products have been replaced by a product that maintains the small cabinet (22″ width) utility and portability (via castors); however, its basket capacity is slightly larger. Because of the limited market size, Whirlpool is currently the only manufacturer of these products. They also supply them to other appliance companies for sale under various brand names. For these reasons, the Department will revise the compact V-axis product class definition (1.6 ft.^{3} capacity) to include all V-axis clothes washers less than 2.0 ft.^{3} (Whirlpool, No. 69 at 3). The Department plans to increase the compact class to include all clothes washers (both V- and H-axis machines) less than 2.0 ft.^{3} and seeks comments on this change.

• The Department received comments suggesting that it identify V- and H-axis machines as a single product class. Whirlpool stated that the DOE's analyses to date and the recent consumer acceptance in the market of H-axis products confirm the validity of a single product class, irrespective of the axis. Whirlpool further stated that the concerns over clothes washer performance, consumer utility and reliability are unfounded in either principle or fact. (Whirlpool, No. 93 at 1.) The Natural Resources Defense Council (NRDC) stated that the "H-axis" design option does not affect the utility of clothes washers and it is not the only design option that can comply with the standards. According to the NRDC, the evidence does not support the establishment of different standards even if separate classes were established. (NRDC, No. 60 at 1.)

However, other commenters feel that the Department should not reject separate product classes. General Electric Appliances (GEA) indicated that the Department is proceeding as if all relevant consumer utilities are met by H-axis products already on the market or by machines planned for production. GEA further stated that the port of access is not the only relevant consumer utility that must be addressed. Many other consumer utilities, including reliability, must be addressed. (GEA, No. 88 at 2.) The Department seeks additional comments on this issue and is currently working with stakeholders to formulate a process to gather additional consumer input on the issues surrounding clothes washer utility. This process is discussed further in Section II.F.2.b.

The relationship between clothes washer capacity and the maximum achievable efficiency using conventional V-axis designs:

• AHAM commented that the testing performed for DOE reflects an incorrect assessment of energy efficiency on current models and indicated that manufacturers could not achieve these levels with traditional V-axis clothes washers. (AHAM, No. 84 and 86). Based on follow-up testing conducted for DOE, there appears to be a significant variation in the RMC values obtained in tests even for clothes washers of the same model. DOE plans to further review this issue. Since the two models approaching a 30 percent improvement in efficiency were "super capacity" models, the Department will try to determine if capacity or volume effects the maximum achievable efficiency improvement in V-axis designs. The Department seeks comment on this issue.

Data as to whether detergent use is a factor in consumer operating cost and savings:

• ACEEE stated that the present analysis ignores the possibility that some consumers will use less detergent with new high-efficiency machines than with standard machines. They recommend that DOE construct two alternative scenarios (one that no detergent will be saved and the other that some consumers will use less detergent). ACEEE indicated that the Bern Kansas study provided some evidence for detergent savings. (ACEEE, No. 94 at 2). Proctor and Gamble commented that the perception that detergent dosage will reduce in horizontal axis or drum washers essentially proportionally to water volume is invalid. This appears to be a popular belief, but it is not substantiated by the facts. The important impact is that users of new lower water/energy efficient washers cannot expect to find detergent cost savings. (Proctor & Gamble, No. 9 at 1). DOE seeks additional data on this issue.

Data on retail mark-up assumption:

• The American Council for an Energy-Efficient Economy (ACEEE) commented that at the March 1998 workshop the Circuit City representative suggested that assuming an average 40 percent retail markup is probably too high. A 25 percent retail markup was more typical of the industry. The 40 percent estimate may have factored in higher markups on extended warranties and other services. (ACEEE, No. 94 at 3). In reviewing Circuit City's comment, the Department understands that the statement referred to a gross margin of 25 percent which represents a mark-up of 1.33. This is in close agreement with the Department analysis of retailer financial statements having an important component of appliances in their product mix (25.2 percent to 26.3 percent gross margin). Also, as referenced in the Preliminary TSD, this gross margin is the net of some buying and warehousing costs. At present the Department has no basis for changing the retail mark-up assumption. DOE will continue to research data sources and seeks comment on this issue.

Information on national level historical, current, and projections of water and sewer rates:

• Information on water prices is not as readily available as fuel prices information. Some utilities have large fixed charges, while others are subsidized or paid for through taxes. Furthermore, there are no standard approaches to calculating water and sewer costs. In some locations the price of water increases as consumption increases. In other areas, water price decreases with increasing consumption. Additional consideration must be given to consumers who are not connected to a municipality water supply or sewage system. In some cases, only one or the other is connected. As with other variables, the Department plans to use a range of water prices in the economic analysis to account for the variability among different households. DOE seeks information on national level historical, current, and projections of water and sewer rates.

• The Department agrees that future water prices should not be assumed to be constant and is therefore in the process of further analyzing both current prices and future escalation rates. The proposed analysis is on going and will be completed after the ANOPR

is released. The proposed analysis consists of updating previous data from Ernst and Young report as adjusted by Al Dietemann, as well as the use of new data obtained from the American Water Works Association (AWWA). The Ernst and Young data is being updated by calling 125 utilities, getting their water rate schedules and their forecasts for the future, as well as any historical information available. The Department is working on combining these two data sources into one database. This data will be organized by utility and can be mapped onto either individual RECs households or onto regional areas. A distribution of water prices (as in the current analysis) will be used, as well as a distribution of escalation rates. In an attempt to be consistent with the methodology being developed for fuel rates, the Department will attempt to establish marginal water rates and water prices and escalation rates that vary with the water/wastewater utility. The Department is seeking comments concerning this approach.

Information relating to the determination of price and operating cost elasticities:

• In order to determine the effect of an increase in the purchase price, it would be useful to know what the elasticity of clothes washer prices is. The Department is still determining how these data could be obtained. While preliminary analyses indicate that factors, such as the current state of the economy have a greater correlation to sales of washers than do an increase in clothes washer prices, it is still important to estimate the impact of changing prices on the sales of clothes washers. In making estimates of these price effects, the Department needs to gauge the difference in clothes washer sales from a change in the price of all clothes washers, as could result from revised energy efficiency standards. In addition, the Department will be estimating how price changes from revised energy efficiency standards for clothes washers will affect the behavior of consumers.

Information on how the data for the GRIM analysis should be collected from the manufacturers:

• Whirlpool proposed that the GRIM model be changed from input to output aggregation. Each industry member would develop their own inputs to the GRIM model over a range of MEF levels proposed by the DOE. The GRIM models would be run by industry members to generate a range of individual company outputs. The outputs of the individual companies could then be aggregated to determine industry impact. Individual companies would not be required to submit detailed input assumptions, but only changes in revenues, shipments, profit after tax, and cash flow, capital investment and design and marketing spending could also be provided. A third party could do the aggregation and then conduct a reality check by comparing the aggregated output to currently available industry data. (Whirlpool No. 66 at 3). The Department seeks further input as to how the data for the GRIM analysis should be collected from the manufacturers and how it should be utilized.

Comments on the proposed DOE approach for determining shipments:

• In as much as the accounting model is the only approach that will take into account price and operating costs, the Department believes it should be the primary tool for forecasting clothes washer shipments. The Department seeks comments about the determination of price and operating cost elasticities.

• For the purpose of the base case forecast in the preliminary analysis, the impact of voluntary programs has been expressed as the percent of new clothes washers sold each year that will have efficiencies corresponding to those of H-axis washers. The H-axis washer is characterized using the data submitted by AHAM for a 35 percent energy reduction from the baseline MEF. The spreadsheet uses disaggregated values (i.e., water heater energy, dryer energy and mechanical energy) provided by AHAM. Disaggregated values provided by AHAM for the baseline washer are also used for the base case forecast. Calculations based on disaggregated values reflect the efficiencies of machines actually being sold which may differ from the minimum required efficiency. The preliminary base case assumes a 1.5 percent share of H-axis machines in 1995 with a 0.5 percent increase in H-axis sales every year thereafter, until 2030 (i.e., 19 percent).

The NES spreadsheet allows for changes in the distribution of efficiencies of clothes washers due to non-regulatory programs. The user specifies the percent of new clothes washer sales that will achieve the selected energy reduction (relative to the baseline washer design) in future years. In later analyses (i.e., the NOPR) the Department expects to use a distribution of current and forecasted efficiencies based on the best available information. Information is still being gathered for this task. The Department seeks comment on this forecast and welcomes any available information on current product efficiencies.

Data on the possible adverse affects of standards on identifiable groups of consumers that experience below-average utility or usage rates:

• The consumer analysis evaluates impacts to any identifiable groups, such as consumers of different income levels, who may be disproportionately affected by any national energy efficiency standard level.

Information on what non-regulatory alternatives to standards need to be reviewed:

• Under the Process Rule policies, the Department is committed to continually explore non-regulatory alternatives to standards. In the table below is a discussion of what was examined in 1994 and what is being proposed for this rulemaking. The Department is seeking comments on this approach. This approach is further discussed in the TSD.

Alternatives examined in 1994	Alternatives to examined
—No action	—No new regulatory action.
—Consumer tax credits.	—Consumer tax credits.
—Manufacturer tax credits.	—Manufacturer tax credits.
—Performance standards.	—Performance standards.
—Consumer rebates	—Rebates.
—Prescriptive standards.	
—Voluntary standards	—Voluntary energy efficiency targets.
—Enhanced labeling and consumer education.	
	—Early replacement.
	—Mass government purchases.

Comments on the alternative standard scenarios:

• The following are examples of possible alternative standards scenarios for consideration by the Department:

• A moderate standard at an early effective date. For example, a level at a 25 percent improvement, effective three years after the publication of the Final Rule.

• A stringent standard, at a later effective date. For example, a level at 45 percent improvement effective five years after the publication of the Final Rule.

• A two phase approach. For example, a level at 20 percent effective three years after the publication of the Final Rule (projected effective date—October, 2002) and a level at 40 percent effective eight years after publication of the Final Rule.

V. Review Under Executive Order 12866

DOE provided to the Office of Information and Regulatory Affairs

(OIRA) in the Office of Management and Budget a copy of this document for comment. At the proposal stage for this rulemaking, DOE and OIRA will determine whether this rulemaking is a significant regulatory action under Executive Order 12866, Regulatory Planning and Review. 58 FR 51735 (October 4, 1993). Were DOE to propose amendments to the energy conservation standards for clothes washer, the rulemaking could constitute an economically significant regulatory action and DOE would prepare and submit to OIRA for review the assessment of costs and benefits required by Section 6(a)(3) of Executive Order 12866. Other procedural and analysis requirements in other Executive Orders and statutes also may apply to such future rulemaking action, including the requirements of the Regulatory Flexibility Act, 5 U.S. C. 601 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; and the Unfunded Mandates Act of 1995, Pub. L. 104–4; and the National Environmental Policy Act of 1969, 42 U.S. C. 4321 *et seq.*

The draft of today's action and any other documents submitted to OIRA for review have been made a part of the rulemaking record and are available for public review in the Department's Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585 between the hours of 9:00 and 4:00, Monday through Friday, telephone (202) 586–6020.

Issued in Washington, DC, on October 23, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–30555 Filed 11–18–98; 8:45 am]

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Part IV

Environmental Protection Agency

40 CFR Part 261

Hazardous Waste Management System: Identification and Listing of Hazardous Waste, Solvents; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–6185–3]

RIN 2050–AD84

Hazardous Waste Management System: Identification and Listing of Hazardous Waste Solvents

AGENCY: Environmental Protection Agency.

ACTION: Final decision.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing a final decision not to list wastes generated from the use of 14 chemicals as solvents as hazardous under the Resource Conservation and Recovery Act (RCRA). The determinations in this rule are limited to specific solvent wastes. This rule is a determination only that the solvent wastes considered will not be added to the list of hazardous wastes and is not a determination that the underlying chemicals are nontoxic in all circumstances in which they are used or discarded.

DATES: Today's final decision will become effective on December 21, 1998.

ADDRESSES: Supporting materials are available for public viewing and photocopying in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98–SLDF–FFFFF. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **FOR FURTHER INFORMATION CONTACT** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline, toll-free, at (800) 424–9346 or at (703) 920–9810. The TDD Hotline number is (800) 553–7672 (toll-free) or (703) 486–3323 in the Washington, DC metropolitan area.

For technical information on the RCRA hazardous waste listings, contact Ron Josephson or Robert Kayser, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The telephone number is (703) 308–8890.

SUPPLEMENTARY INFORMATION: There are no regulated entities as a result of this action.

The index and the supporting materials are available on the Internet: Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste.htm#id
FTP: *ftp.epa.gov*
Login: anonymous
Password: your Internet address
Files are located in /pub/oswer

The contents of the preamble to this final rule are listed in the following outline:

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II. Summary of Proposed Rule
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J. Congressional Review Act

I. Legal Authority and Background

A. Statutory and Regulatory Authorities

The Environmental Protection Agency (EPA) conducted this investigation and listing determination under the authority of sections 2002(a), 3001(a), (b) and (e)(2) of the Solid Waste Disposal Act (42 U.S.C. 6912(a), and 6921(b) and (e)(2)), as amended by various other laws, the most comprehensive of which was the Hazardous and Solid Waste Amendments (HSWA) of 1984. These statutes are commonly referred to as the Resource Conservation and Recovery Act (RCRA) and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k).

Section 3001(a) of RCRA, 42 U.S.C. 6921(a), requires EPA to promulgate criteria for identifying characteristics of hazardous wastes and for listing hazardous wastes. Section 3001(b) of RCRA requires EPA to promulgate regulations, based on these criteria, identifying and listing hazardous wastes which shall be subject to the requirements of the Act. Section 1004(5) of RCRA, 42 U.S.C. 6903(5), defines the term "hazardous waste." There are two types of hazardous waste. First, hazardous wastes are those solid wastes which may cause or significantly contribute to an increase in mortality, serious irreversible illness, or incapacitating reversible illness. Second, hazardous wastes are those solid wastes which may pose a substantial present or potential hazard to human health or the environment when improperly managed. Id.

EPA's regulations establishing criteria for listing hazardous wastes are codified at Title 40 of the Code of Federal Regulations (CFR) 261.11 (40 CFR 261.11). Section 261.11 presents three criteria by which EPA identifies wastes as hazardous.

First, solid wastes may be classified as "characteristic" wastes if they exhibit any of the characteristics of hazardous waste identified at 40 CFR 261.21–24 (i.e., ignitability, corrosivity, reactivity, or toxicity).

Second, solid wastes may be listed as acutely hazardous if they are fatal to humans at low doses, lethal in animal studies at particular doses designated in the regulation, or otherwise capable of causing or significantly contributing to an increase in serious illness.

Third, solid wastes may be listed as hazardous if they contain any of the toxic constituents identified in Appendix VIII of 40 CFR part 261 and the Agency concludes, after considering the eleven factors enumerated in 40 CFR 261.11(a)(3), that the waste is capable of

posing a substantial present or potential hazard to human health or the environment when improperly managed. A substance is listed in Appendix VIII if it has been shown in scientific studies to have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms. Today's listing determination has been made pursuant to this third set of criteria.

As part of its regulations implementing section 3001(b) of RCRA, EPA published a list of hazardous wastes that includes hazardous wastes generated from nonspecific sources (F-wastes) and a list of hazardous wastes from specific sources (K-wastes). These lists, published at 40 CFR 261.31 and 261.32, respectively, have been amended several times.

Persons who generate, transport, treat, store, or dispose of wastes listed as hazardous must do so subject to Federal requirements under RCRA. Facilities that must meet the hazardous waste management requirements, including the need to obtain permits to manage hazardous wastes, are commonly referred to as RCRA Subtitle C facilities. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 279.

Solid wastes that are not hazardous wastes may be disposed of at facilities that are overseen by State and local governments. These facilities are referred to as RCRA Subtitle D facilities. EPA regulations affecting Subtitle D facilities are found generally at 40 CFR parts 240 through 247, and parts 255 through 258.

Section 3001(e)(2) of RCRA requires EPA to determine whether to list as hazardous several specified wastes, including solvent wastes. The Environmental Defense Fund (EDF) and EPA entered into a consent decree to resolve issues raised in a civil action brought by EDF (*EDF* v. *Browner*, Civ. No. 89–0598 (D.D.C.)) in which the Agency agreed, among other things, to a schedule for making a listing determination on spent solvents. This listing determination is to consider spent solvents, still bottoms from the recovery of these solvents, and spent solvent mixtures when the following chemicals are used as solvents: cumene, phenol, isophorone, acetonitrile, furfural, epichlorohydrin, methyl chloride, ethylene dibromide, benzyl chloride, p-dichlorobenzene, 2-methoxyethanol, 2-methoxyethanol acetate, 2-ethoxyethanol acetate, and cyclohexanol.

For an additional set of seven solvents, EPA agreed to conduct a study and issue a final report by August 30, 1996. This study, which EPA completed on August 22, 1996, discusses the wastes associated with the use of the materials as solvents, the toxicity of the wastes, and a description of the management practices for the wastes.

Solvent uses are found throughout various industries and, thus, would fall under the category of wastes from nonspecific sources (F-wastes) if listed in 40 CFR 261.31. In fact, wastes designated F001 through F005 are various wastes from solvent uses of a number of chemicals. In today's action, EPA has decided not to amend 40 CFR 261.31 to add wastes generated during the use of the 14 chemicals of concern as solvents.

EPA emphasizes that the determination not to list these wastes only means that the Agency has found it is not appropriate to list as hazardous the wastes across broad industry categories that could result from solvent uses of the 14 chemicals. As will be more fully explained below, EPA did not find that solvent uses for these chemicals, in general, produce hazardous wastes that require listing. Many of the wastes examined are hazardous already because they are characteristic wastes under 40 CFR part 261, subpart C, or contain other solvent wastes currently listed as hazardous. In addition, some of the chemicals may produce wastes that are hazardous when used in ways other than as solvents, perhaps as catalysts, feedstocks or other uses in chemical manufacturing processes. Solvents use simply does not constitute an appropriate way to designate these chemicals as a hazardous waste category under RCRA for wastes from nonspecific sources. Particular industrial wastes from these chemicals might be hazardous, but such wastes were not examined in this determination.

B. Existing Solvent Listings and the Regulatory Definition of Solvent

Five hazardous waste listings for specific solvents have been promulgated to date: F001, F002, F003, F004, and F005. These are found at 40 CFR 261.31. Today's decision applies the same criteria for defining solvent wastes as are applied to these existing solvents listings. These criteria are explained in the **Federal Register** of December 31, 1985 (50 FR 53316) and are also consistent with the requirements of the EDF Consent Decree.

The December 1985 document amended the solvent listings to include spent solvent mixtures when the solvent, before it is used, contains 10 percent or more of total listed solvents. The original listing included only the technical grade, practical grade or pure form of the solvents when used. This threshold level was considered by the Agency to be well below the minimum solvent concentration typically used in solvent formulations and was designed to bring the majority of listed solvent mixtures used in commerce into the hazardous waste management system, while excluding dilute mixtures or *de minimis* concentrations.

In addition, the document issued several clarifications to the original listings. First, the listings apply to "spent" solvents—those that are no longer fit for use without being regenerated, reclaimed, or otherwise processed. (See 40 CFR 261.1(c) (1) and (4); 261.2(c) (3) and (e)). Second, the listings cover only those solvents used for their solvent properties—"to solubilize (dissolve) or mobilize other constituents." These include solvents used in degreasing, cleaning, fabric scouring, as diluents, extractants, reaction and synthesis media. The document stated that the listings do not cover wastes from the processing of products where a chemical that might be used as a solvent is, instead, used as a reactant or where a chemical is used as a solvent only as an ingredient in the formulation of a commercial chemical. This latter category would include chemicals used as a solvent in paint formulations to dissolve the paint itself. These uses do not generate "spent solvent" wastes. The wastes of concern for these products would be the production process wastes or wastes from the use of the product, not the solvent itself.

This approach is also consistent with the requirements of the EDF Consent Decree. This is because the consent decree identifies a subset of solvent wastes that are potential candidates for listing and specifies that the listing determination applies to "spent solvents," a term that tracks the language of the existing listings. Moreover, this approach had been the longstanding approach of the Agency to dealing with solvent listings at the time the Consent Decree was negotiated and should be interpreted as representing the understanding of the parties.

This approach, whereby EPA has limited the scope of this rulemaking through this focused definition of solvents subject to the listing, is a reasonable interpretation of RCRA and is consistent with EPA's historical treatment of solvent listing descriptions. Use of the definition has allowed the Agency to place reasonable limits on the scope of its listing investigation for this rulemaking. RCRA 3001(e)(2) directs

EPA to make a listing determination on "solvents," but provides no further direction on the meaning of that term. EPA, therefore, has the discretion to reasonably define the scope of the listing determination. Given the ubiquity of solvents, the great variety of uses and the huge differences in the composition of the waste streams, EPA could not gather the evidence to list "solvent wastes" as a general category. Under the Agency's regulations at 40 CFR 261.11(b), wastes may be listed as a category if they are "typically or frequently" hazardous. EPA could make no such findings for "solvent" wastes in general and, therefore, has reasonably focused its investigation and listing decision.

As noted above, the existing solvent listings are limited to spent solvent mixtures when the solvent, before it is used, contains 10 percent or more of total listed solvents. While wastes from this use threshold were the primary focus of today's listing determination, EPA also considered in its evaluations the few solvent uses that were reported to be below the 10 percent threshold.

In a previous proposed hazardous waste listing for wastes from the production of dyes and pigments (59 FR 66072, December 22, 1994) EPA presented the general approach the Agency uses for determining whether to list a waste as hazardous pursuant to 40 CFR 261.11(a)(3). The discussion focused on the selection of waste management scenarios used in assessing risk and the use of information on risk levels in making listing determinations. This approach was further developed in EPA's listing for petroleum refining process wastes (proposed rule published at 60 FR 57747, November 20, 1995; final rule published at 63 FR 42110, August 6, 1988). EPA is employing the same general approach in this final rulemaking. Readers are referred to these documents for a description of EPA's listing policy. Also, section II.C.2. of the proposed rule, "Risk Assessment," contains a discussion of how elements of EPA's listing policy were applied in today's listing determination.

The following section contains a summary of the methodology used to arrive at the no-list determinations in today's document. For more details on this methodology, see the proposed rule, background document, and the response to comments document in the docket.

II. Summary of Proposed Rule

A. Determinations Not To List Solvent Wastes as Hazardous Waste

EPA proposed the decision not to list the spent solvent wastes from the 14 chemicals noted above on August 14, 1996 (61 FR 42318). The Agency determined that these wastes did not meet the criteria for listing set out in 40 CFR 261.11. The proposed rule presented the waste characterization, waste management, mobility, persistence, and risk assessment data that were the bases for the Agency's proposed decision not to list these wastes as hazardous. Further details of EPA's approach are presented in the Hazardous Waste Listing Determination Background Document for Solvents (hereafter known as "Listing Background Document") in the docket for the proposal to today's rule.

As explained in section II.B of the proposed rule, spent solvents differ from other listed wastes among EPA's waste listings in that the solvents are used in manufacturing and allied processes rather than being the principal waste streams generated by manufacturing processes. In order to characterize industrial solvent use, the Agency sent out almost 1,500 preliminary questionnaires to cover the 21 total chemicals (14 from the listing determination and seven from the study). An additional 60 facilities were surveyed on their use of these chemicals as solvents through the chlorinated aliphatics industry survey. EPA then sent out a full RCRA section 3007 survey to facilities using greater than a combined total of 1,200 kilograms of all the chemicals of concern.

The Agency consulted various literature and reference sources, such as Chemical Abstracts, general reference books, the Agency's Toxic Release Inventory (TRI) compiled under section 313 of the Emergency Planning and the Right-to-Know Act (EPCRA), databases compiled for various EPA programs dealing with air and water pollution, and information available from trade associations. Of the 14 chemicals involved in the listing determination, 11 were on the TRI. Use of the literature, Chemical Abstracts, TRI, and other EPA databases allowed the Agency to focus on the industries that actually use these chemicals as solvents. In addition, many of these sources gave strong indications as to when major uses of a chemical were not as a solvent.

Once the Agency narrowed down the potential solvent-using industries, the Agency developed a list of facilities to survey about their solvent use. These facility names and addresses were obtained again from a variety of sources, including TRI, trade associations, and other Agency media program sources. The Agency sent a short ("preliminary") questionnaire to approximately 1,500 facilities inquiring about uses of any of the 14 listing determination chemicals as solvents and the quantities used.

The Agency used the preliminary questionnaire data to develop the large questionnaire mailing list and to organize site visits. The Agency also made several hundred confirmatory telephone calls to determine that reported information was correct. The data from the preliminary questionnaire showed the Agency several distinct patterns of solvent use: facilities that use large amounts of any of these chemicals as solvent, those that use small quantities as solvents, and those that use none of the chemicals as solvents. The Agency found that a solvent use quantity of 100 kg per month, or 1,200 kg per year, provided a mathematically convenient separation of those facilities who use large amounts of solvent and those who use very little and provided an indication as to which facilities were likely to be large quantity generators of hazardous waste based on use of these chemicals as solvents. Based on careful analysis of the data, the Agency identified likely large-scale users of these chemicals as solvents.

The Agency then developed the large questionnaire. This questionnaire reconfirmed data on solvent use and requested detailed information on a facility's solvent-using processes, waste generation, waste management, and waste minimization activities. The Agency sent this questionnaire to approximately 150 facilities that indicated to the Agency through the preliminary questionnaire that significant solvent uses of these chemicals exist. The data obtained from the questionnaire were applied to the risk assessment process described in today's document as well as the preparation of the background document.

To summarize the results, 4 of the 14 chemicals showed no use as a solvent. The remaining 10 chemicals were analyzed in the Agency's risk assessment based on solvent uses found by the Agency. For the 10 chemicals of the required listing determination for which there were solvent uses (acetonitrile, 2-ethoxyethanol acetate, 2-methoxyethanol, 2-methoxyethanol acetate, cyclohexanol, cumene, phenol, furfural, isophorone, and methyl chloride), EPA found that the management of residuals from the use of these chemicals as solvents did not pose a risk to human health or the

environment under the plausible management scenarios assessed. The data used as the bases for these determinations were presented in sections II.D through II.M of the proposed rule (61 FR 42327). Detailed information is also presented in the background documents supporting the proposed rule (RCRA Docket number F–96–SLDP–FFFFF).

Specifically, none of the solvents satisfy the criteria for listing in 40 CFR 261.11 (a)(3). For acetonitrile, 2-methoxyethanol, and methyl chloride, while risk analyses indicated some potential risk from air releases of these chemicals from onsite accumulation in open tanks, EPA believes this risk would not be significant because most, or in some cases all, of the nonwastewater residuals are already regulated as hazardous waste. For phenol, 2-ethoxyethanol acetate, furfural, cumene, cyclohexanol, isophorone, and 2-methoxyethanol acetate, the risk estimates indicated that spent solvent residuals from the use of these chemicals as solvents do not pose a substantial risk or potential hazard to human health or the environment through the plausible management scenarios and pathways assessed.

For the remaining four chemicals subject to the required listing determination in the EDF Consent Decree (1,4-dichlorobenzene, benzyl chloride, epichlorohydrin, and ethylene dibromide), EPA proposed not to list residuals from their use as solvents, because the data collected by EPA showed that these chemicals are extremely unlikely to be used as solvents. One of the chemicals (p-dichlorobenzene) is a solid at room temperature, and the other three (benzyl chloride, epichlorohydrin, and ethylene dibromide) are relatively reactive chemicals not well suited to solvent use. EPA's information showed that the very limited solvent use reported for these four chemicals is linked to bench-scale or experimental laboratory settings, and no significant solvent uses were found. For more detail see sections II.N through II.Q of the proposed rule (61 FR 42347) and background documents supporting the proposed rule (RCRA Docket number F–96-SLDP-FFFFF).

B. Summary of Risk Assessment Supporting the Proposed Rule

As described in detail in the proposed rule (see 61 FR 42322–42327), EPA carried out various analyses to determine the potential risk that might arise from the disposal of the spent solvent wastes under study. In carrying out the modeling for these assessments, EPA used available data it collected from industries using these solvents. The Agency used information gathered in the RCRA 3007 Questionnaires and site visits related to the waste characteristics, waste management practices, and potential pathways for release and exposure. EPA used other generic input parameters to fate and transport models to estimate the risk a waste might present under management scenarios known to occur. The data used in the modeling efforts included the concentrations and toxicity of the solvent constituents in the waste, the mobility and fate of such constituents in different disposal scenarios, likely exposure routes under these scenarios, and the location of receptors that might be exposed.

The levels of receptor exposure estimated from modeling were compared with toxicological benchmarks to evaluate the potential health impacts. For noncarcinogenic constituents, EPA used reference doses for ingestion exposure (RfDs) and reference concentrations for inhalation exposure (RfCs); these are measures of acceptable daily intakes for a specific chemical. To assess the hazard to a hypothetical individual, EPA used hazard quotients (HQs). An HQ is the ratio of the modeled exposure (or dose) received compared with the acceptable daily dose (the RfC or RfD). An HQ above one indicates that exposures may occur above acceptable levels. For carcinogenic constituents, EPA compared exposure levels to carcinogenic potency estimates (carcinogenic slope factors, or CSFs) to calculate specific risk levels. The carcinogenic risks results are expressed in terms of individual risk, reflecting the additional incidence of cancer that may occur in an exposed population. For example, a risk of 1×10^{-5} (which will be presented in this document as 1E–05) corresponds to a probability of one additional case of cancer for every 100,000 people exposed.

EPA used verified RfDs, RfCs, or CSFs when available in EPA's Integrated Risk Assessment Information System (IRIS). IRIS, which represents a consensus opinion of EPA health scientists, is a database of human health effects that may result from exposure to various substances found in the environment. For the chemicals that did not have complete verified IRIS data available (2-methoxyethanol acetate, cyclohexanol, phenol, and isophorone), EPA calculated provisional values when needed for use in the listing determinations.

EPA performed a number of different types of risk analyses. First the Agency completed a "bounding analysis" to screen out solvent wastes from further consideration. In this analysis, the key input parameters were set to their "high-end" values (typically the 90th percentile point on the distribution of values available for each parameter). For solvent wastes that did not "bound out," EPA then ran a high-end "deterministic" sensitivity analysis to determine which high-end input parameters result in the greatest risk. EPA calculated risks for all combinations when the most sensitive parameters were set at high-end values and then used the highest "high-end" risk. In this way, EPA attempted to estimate "high-end" risks that were somewhere above the 90th percentile, i.e., the risks would be below this level for at least 90% of the population at risk. EPA also calculated "central tendency" risks, which correspond to the risk when all input parameters were set at their median value.

Critical decisions for risk assessment include EPA's determination regarding which waste management scenarios to model and how to use the information on waste volumes and solvent concentrations disposed as modeling input. The Agency's modeling focused primarily on potential releases from wastes managed in aerated tanks, stored in open tanks, undergoing thermal treatment, and managed in surface impoundments. Modeling was based on the information EPA collected from facilities, including quantities of wastes managed. For each management scenario, EPA evaluated the full range of direct and indirect pathways through which the solvents could affect human health or the environment. Based on the physical and chemical properties of the constituents of concern and plausible management practices, certain routes of exposure for some scenarios were not considered to pose threats and were not further evaluated.

In general, solvent wastes fell in several major categories. Wastewaters were typically diluted aqueous wastes that are managed in a biological treatment system (usually in tanks). Nonwastewaters includes two subcategories. These include: (1) wastes with high levels of solvents or other organic chemicals, which were sent for thermal treatment in incinerators, industrial boilers, or fuel blenders, and (2) treatment residuals, such as wastewater treatment sludges or incinerator ash, which contained negligible levels of solvents.

EPA modeled storage in an open tank and thermal treatment for nonwastewater spent solvent residuals from use of all of the ten solvents. EPA modeled wastewater treatment in

aerated tanks for wastewater residuals resulting from the use of acetonitrile, 2-methoxyethanol, 2-ethoxyethanol acetate, phenol, furfural, and cumene as solvents.

The surface impoundment scenario was assessed for five of the solvents; acetonitrile, phenol, cumene, furfural, and methyl chloride. For acetonitrile and cumene, the headworks concentrations (i.e., the concentrations after the spent solvent was mixed with other wastewaters at the headworks of the wastewater treatment system) potentially discharged to surface impoundment were below the health-based levels for these constituents, and thus were not evaluated further. For phenol, three wastewaters with spent phenol were reported to be managed in surface impoundments that are part of a wastewater treatment train. In two of these cases, the phenol concentration was below the drinking water health-based level after mixing at the headworks, prior to reaching the surface impoundment. In the third case the stream had levels ranging above the health-based level; however this level is expected to be efficiently treated by the activated sludge, such that little phenol would be available for release to groundwater. For methyl chloride, EPA modeled air releases from treatment in a surface impoundment, but not the groundwater pathway because the impoundment was a permitted hazardous waste management unit. (As described below, the unit treating methyl chloride wastes was unique due to the highly specialized nature of this solvent use). EPA modeled treatment in a surface impoundment for furfural; however, bounding analyses showed no significant risks via air or groundwater pathways. The solvent use of the chemicals modeled in surface impoundments are very specialized. This means that they have properties that only allow very particular solvent uses in a very narrow set of circumstances and only for some industries, or even for only one. For example, methyl chloride is a gas at room temperature, which severely limits its utility as a solvent. The only significant solvent use for this chemical is as a solvent in the polymerization of butyl rubber, during which methyl chloride is passed through aluminum chloride to form and solubilize the catalyst used. The chemical's special ability to generate such a catalyst solution is why it is used. Similarly, by far the largest solvent uses of furfural and phenol are in the extraction of a high molecular weight oil (lubrication oil) during petroleum refining; these chemicals have very limited solvent uses outside the petroleum industry. Therefore, EPA has a high degree of confidence that the concentrations of chemicals in the streams flowing into surface impoundments studied in this listing determination are representative of the universe of such uses and possible exposure scenarios.

The landfill scenario was initially assessed for acetonitrile, methyl chloride, cumene, and cyclohexanol, but not modeled for spent solvent residuals from any of these solvents because the concentrations in the wastes were "trace" or "negligible." Further general background for the risk assessment is provided in the preamble to the proposed rule (see 61 FR 42318).

III. Peer Review of Calculated Toxicological Benchmarks

Standard inhalation toxicological benchmarks were not available to EPA for four of the solvents when the Agency was conducting the risk assessment for the proposed rule. The Agency therefore calculated values specifically for the rule. EPA has labeled these toxicological benchmarks "provisional RfCs" to clearly differentiate them from the Agency consensus values listed on IRIS. During the comment period, EPA solicited peer review of these calculated risk values. The peer review reports and the complete Agency response to the reports are in the docket for this rulemaking.

In response to comments received in the peer review reports, EPA adjusted three of the provisional toxicological benchmarks used for this risk assessment. The changes are shown in Table 1.

TABLE 1.—CHANGES IN TOXICOLOGICAL BENCHMARKS FOR AIR PATHWAY

Solvent	NOAEL [1] (mg/m³)	Previous provisional toxicological benchmark (mg/m³)	New provisional toxicological benchmark (mg/m³)
Cyclohexanol	0.06	0.00006	0.00002
Phenol	19	0.019	0.006
Isophorone	37 (LOAEL) [2]	0.0037	0.012

[1] No observed adverse effect level.
[2] Lowest observed adverse effect level.

The new benchmarks for cyclohexanol and phenol reflect additional uncertainty factors to account for insufficient toxicity databases. The benchmark for isophorone reflects a reduction in overall uncertainty factors to reflect Agency guidance limiting such factors to a total of 3,000. Full documentation of the methodology for developing these benchmarks is in the docket for this rulemaking.

In addition, the toxicological values for cumene were changed on IRIS during the comment period. The RfD (for noncancer ingestion risks) was changed from 0.04 mg/kg/day to 0.1 mg/kg/day. The RfC (for noncancer inhalation risks) was changed from 0.009 mg/m³ to 0.4 mg/m³. These changes both reflect greater tolerance for cumene than the previous benchmarks and thus have no impact on EPA's decision not to list wastes derived from the use of this chemical as a solvent.

The Agency has employed these revised "provisional RfCs" for all the updated risk assessments involving these solvents for the final rule. In addition, the Agency has re-estimated risks assessed for the proposed rule using these new benchmarks. Documentation of these re-estimations appears in the supplemental risk assessment background document to this final rule. The final risk estimates for all the solvents are shown in Table 3 of this preamble.

In all cases the changes to the toxicological values do not have any significant impact on EPA's risk results, nor do the changes affect any listing decisions. The solvent wastes for the chemicals examined still do not pose significant risks, and thus, these analyses confirm the proposed decisions not to list these wastes.

IV. Summary of Response to Comments and Rationale for Final Rule

The Agency is responding in this preamble to the most significant comments received in response to the document of August 14, 1996, 61 FR 42318. Other comments received by the Agency are addressed in the document entitled Hazardous Waste Listing Determination: Spent Solvents, Response to Comments (hereafter known as Response to Comments Document) that is available in the docket associated with this rulemaking.

The Agency is responding to a variety of comments concerning data collection, methodology, risk assessment scenarios, and issues specific to each chemical in this listing determination. The responses, while touching many specific aspects of the listing determination effort, involve three major themes:

- The Agency used a very thorough survey, which characterized the risks of the spent solvents. The Agency researched various potential applications of these chemicals as solvents and found that solvent uses are confined to a limited set of industrial applications. Data collected from the questionnaires confirmed the general lack of wide solvent use, and are consistent with EPA's search of the literature. These findings allowed the Agency to consider the applicable waste generation and management practices, and define plausible management scenarios for use in evaluating potential risks associated with these solvent wastes.
- Facilities use the solvents for specific purposes that vary by the desired process. Some of the solvents in this listing determination have different applications over certain industries (i.e., acetonitrile). Even within one industry, the primary commonality among the processes is the solvent constituent itself. Other solvents were used in very limited ways and their primary uses were highly specialized (e.g., furfural). However, even for solvents with specialized uses, other minor uses were typically reported for different industries and processes. The resulting potential variability in waste compositions led the Agency to focus its efforts on evaluating the solvent constituent itself. The Agency believes it has captured the risks that arise from the solvents themselves, and that this is a reasonable approach to fulfilling its listing determination obligations.
- Little to no benefit would accrue from regulating these wastes because many are already regulated and treated as hazardous wastes. These solvent wastes, particularly nonwastewaters with a high organic content, are characteristically hazardous or mixed with other listed wastes, and are generally thermally treated. Other nonwastewaters, such as wastewater treatment sludges or filter media, do not contain measurable levels of the solvent constituents, and thus present no significant risks.

A. Data Collection

1. Representativeness of Industry Characterization

One comment argues that EPA cannot fully characterize industry solvent management practices because the facilities that may be affected are too numerous to predict and specifically identify. Therefore, the Agency should project standard mismanagement scenarios in order to examine the full range of actual and potential waste management practices applicable to the wastes. This is the only way the Agency can discharge its mandate to protect human health and the environment.

In response, EPA disagrees that it is not possible to predict and identify, as a practical matter, the facilities that may be affected. It is possible and appropriate to do so and EPA has, in fact, accomplished that purpose, as summarized below and explained more fully in the Response to Comments Document. The Agency outlined the general approach to the data collection process in the proposal (61 FR 42321–42322). To summarize, the Agency began collecting data on all 14 chemicals involved in the listing determination (plus the seven in the Solvents Study) as a means of collecting background information on these chemicals. The Agency identified solvent uses through cross-referencing SIC codes in known and suspected process industries with data found in the TRI, Office of Water facility lists, and many other data sources. The Agency used many different facility address lists to create a list of potential solvent-using facilities.

The sources used by the Agency provide a comprehensive view of the types of uses of these chemicals as solvents and the quantities used. The Agency identified industries using the 14 chemicals as solvents by conducting literature searches including Chemical Abstracts, the Chemical Engineering Handbook, the Industrial Solvents Handbook, and the SRI Chemical Economics Handbook. As today's document and the associated background documents explain, the process was a logical, iterative, step-by-step process. The chemicals in question are not likely to be widely used as solvents (with the exception of acetonitrile and, to a more limited extent, 2-methoxyethanol, which have significant solvent uses in some industries), because they have properties that limit their use to specific situations, and are generally noncompetitive in price. In addition, the Agency's data collection methodology combined a comprehensive view not only of the chemical's solvent use, but also of nonsolvent uses to confirm use data. The specificity of applications for these solvents, while sometimes cutting across more than one industry, is still limited enough that the listing determination could stay focused on the actual management scenarios found through questionnaires and site visits. The Agency is confident that the waste management practice data found in this investigation are adequate for risk assessment modeling, and that using other modeling practices not found would only lead to using hypothetical waste data that do not represent any activities that resemble reality. To engage in this kind of hypothesis would be likely to result in forcing significant additional costs on the public with no incremental risk reduction from regulating the wastes in question. The Agency notes that no commenter identified any specific solvent users of these chemicals not already found by the Agency. Also, the commenter could not suggest any alternative to the Agency's methodology other than a listing based on hypothetical uncertainties—an approach not justified by the data.

The Agency sent almost 1,500 preliminary questionnaires asking facilities how much of each chemical was used as a solvent in 1991 and 1992. The data showed that the Agency was successful in identifying many solvent users, although more than 900 facilities were eliminated from further consideration because they did not use any of the chemicals as a solvent. The Agency was also able to eliminate another 400 facilities from consideration to receive the final questionnaires due to reporting errors, discontinued use, or reported use of small quantities of the solvents. The fact that the vast majority of facilities that received the preliminary questionnaire reported no solvent use supports EPA's view that many potential solvent users, in fact, do not use these chemicals this way. The Agency found that reported uses of very small quantities of the chemicals as solvents were often inaccurate, but facilities reported these quantities to err on the side of caution. The remaining

156 facilities received a large, detailed questionnaire requesting information on solvent uses and waste generation and management practices. The listing determination is based on these data.

The details of the data collection effort also brought another point to the Agency's attention. While other solvents are used in countless industries and facilities and would be difficult to characterize, the particular set of solvents in this listing determination has much more limited applicability. EPA's literature search found these chemicals to have many and varied "nonsolvent" uses. Data collected from the questionnaires confirmed the general lack of wide solvent use, as discussed below.

While reference sources (e.g., SRI Chemical Economics Handbook) indicated many of these chemicals are produced in fairly high quantities, these references reported significant quantities used as solvent for only four of the fourteen chemicals studied: acetonitrile, 2-methoxyethanol, furfural, and methyl chloride. This is consistent with what EPA found in its 3007 Survey for these four chemicals. Furthermore, as described in the Listing Background Document and the proposed rule, the solvent uses of furfural and methyl chloride were limited to a single specialized use in each case, and these users were fully surveyed. Solvent use quantities were not reported in reference sources for the other ten chemicals. Four of the ten were those for which EPA also found no solvent uses (benzyl chloride, epichlorohydrin, ethylene dibromide, and p-dichlorobenzene). For an additional four, EPA's Survey found that the amounts of the production quantities used as a solvent were small compared to total production (cumene-0.026%; cyclohexanol-<0.1%; 2-ethoxyethanol acetate-1.2%; isophorone-1.7%); this is also consistent with the lack of significant quantities of solvent use reported in reference sources.

The remaining two chemicals are special cases. The domestic production of 2-methoxyethanol acetate is reported to have ceased, and the small volume of total solvent use found by EPA in its Survey (1,673 kg/year) confirms the lack of significant solvent use. EPA did find significant solvent use of the final chemical, phenol, which was not reported in most other reference sources. However, nearly all (>99%) of the solvent use quantity found in the Survey was from one facility that produces phenol for its own captive use. This "native" phenol is produced as a byproduct of other processes, and would not be reported in production or use data in reference sources. Leaving out this volume from one facility, EPA's Survey shows that the fraction of phenol production that is used as a solvent is low (<0.2%), which is consistent with the lack of any significant solvent use quantities reported in reference sources. In any case, the vast majority of phenol solvent use reported in the 3007 Survey was a very specialized use; the petroleum industry uses phenol to extract lube oil from residual oil. EPA surveyed all petroleum refiners in its Survey; thus EPA is confident the Survey captured all major solvent users for this chemical.

The Agency disagrees that it should project standard mismanagement scenarios not indicated by the data, because the rationales for selection of a particular set of plausible management scenarios are specific to each solvent. Based on the general rationale just discussed and the data for each of the chemicals as given in detailed discussion in the Response to Comments Document for each of the chemicals, the Agency has confidence in the data set as the best available effort to assess the chemical use universe and actual waste generation and management scenarios. Merely developing hypothetical waste generation and management scenarios, as suggested by the comment, has no sound basis in fact. This would lead to the danger of over regulating risks that do not exist and siphoning off scarce resources to deal with those non-risks, rather than risks that may be more worthy of the public's attention.

For these solvents, the Agency has no reason to project management scenarios beyond what was found through questionnaires and site visits. The Agency found the vast majority of wastes managed in tanks and incinerators. Where a waste was managed in a surface impoundment, the Agency performed that modeling under high-end exposure assumptions. The Background Document to the proposal and the Response to Comments Document both present more detailed assessments of how each individual chemical is used, what wastes are generated, and what management scenarios were selected. For example, no management scenarios were selected for p-dichlorobenzene, epichlorohydrin, ethylene dibromide, and benzyl chloride because none of these chemicals are used as solvents. For most other chemicals, the uses are extremely limited and specific. See the sections devoted to the individual chemicals for specific rationales, and the discussion of management scenarios in section IV.B.4.

Below, EPA responds to the specific issues raised in comments that the Agency's survey was inadequate to characterize the solvent uses and mismanagement scenarios.

One commenter pointed out that EPA surveyed only a small percentage of facilities within very few SIC codes. The commenter stated that for several solvents, the quantity of sectors potentially affected outnumbers the quantity of facilities forming the basis for EPA's plausible mismanagement conclusions. As an example, the commenter stated that for 2-methoxyethanol acetate, EPA identified seven industrial sectors potentially affected by this chemical, but sent only the questionnaire to three facilities using the solvent.

The Agency disagrees with this comment. As previously mentioned, this listing determination covers 14 chemicals used as solvents. In order for the Agency to determine the universe of facilities potentially affected by this listing determination, it sent out preliminary information surveys to obtain basic solvent use information. The Agency sent this survey to nearly 1500 facilities based on an evaluation of chemical usage. Given this large universe of facilities and the potential to obtain useful information on solvent use in this mailing, the Agency also decided to include in this preliminary questionnaire questions concerning seven other chemicals (in addition to the 14 already included in this listing determination) which it was also investigating under a Solvent Study mandated by the court.

The prequestionnaires showed that about 600 facilities reported any possible use of one or more of the chemicals as solvents. The Agency conducted further evaluations and screening and identified 156 facilities to which it sent the more detailed "full" questionnaire concerning the use of the 21 chemicals as solvents (14 for this listing determination and 7 for a separate Solvents Study). Thus, only about 10% of the facilities that were sent preliminary questionnaires used significant amounts of these chemicals as solvents. As described in today's document in response to other comments, this screening removed facilities that did not use the chemical as a solvent (as defined by EPA), and small volume users. For a more detailed description of this screening and evaluation see, please refer to section III.A in the Response to Comment Document for this rulemaking.

The results of this final questionnaire showed that 4 out of the 14 chemicals in this listing determination were not

used as solvents and that 10 of the 14 chemicals were used a solvents to varying degrees. The industry sectors listed by SIC code by the commenter are ones which typically do not use any of the 14 chemicals as solvents and, thus, did not yield data to be considered in evaluating plausible management scenarios. Further, as discussed earlier in this section, all other indications from the Agency's survey show that the amounts of solvent use EPA found were generally comparable to the solvent use found in other references. The volume of solvent use found by the Agency is also consistent with what the Agency knows about the likely technical usefulness of these chemicals as solvents. A limited set of industries exists in which these chemicals are used as solvents, as discovered through standard reference sources.

The commenter presented a plethora of small companies on the SIC code list that operate on lower margins. The Agency believes that these companies are not likely to use these higher cost chemicals for generic solvent use processes. The Agency believes that if any of these chemicals had been used as solvents in other industries, as the commenter postulates, the Agency would have found this information during its data collection. The facilities surveyed by the Agency share many processes with the large number of smaller facilities in the lists presented by the commenters (equipment cleaning, electroplating, etc.). However, the chemicals at issue are rarely, if ever, used as solvents in those processes in the facilities found by the Agency.

Also, the Agency recognizes that the commenter cites a greater number of facilities within each SIC code than the number to which EPA has sent questionnaires. These facility numbers are obtained from a data base (Dun & Bradstreet) that is not linked to chemical use. Many of the addresses represent corporate headquarters, not facilities that use or generate hazardous waste, and a single facility may have more than one Dun & Bradstreet number. Therefore, EPA believes that the number of facilities reported within each SIC code based on this data is exaggerated.

The commenter cites 2-methoxyethanol acetate and methyl chloride as examples, stating that "EPA identified seven industrial sectors potentially using 2-MEA, but only three facilities using the solvent received the final questionnaire." As presented in the background document, 14 facilities received the full questionnaire based on their response to the preliminary questionnaire. However, based on their response to the full Survey, 11 of these 14 facilities discontinued use of 2-MEA or did not use it in a manner that met the regulatory definition of solvent use. Only two industries reported using 2-MEA in 1994 that met the definition of solvent use. The commenter further states "In the case of methyl chloride, EPA identified eight SIC codes potentially using the solvent, while only seven facilities received the final questionnaire." As presented in the background document, 32 facilities received the full questionnaire based on their response to the preliminary questionnaire. However, based on their response to the preliminary questionnaire, 24 facilities were TSDs, and as a result the chemical consumption reported could not be linked to solvent use. Other facilities did not use methyl chloride in a manner that met the definition of solvent use, or used extremely small volumes (less than 1 kg) that generated wastes with no methyl chloride. Thus, this left only four facilities that reported solvent use of methyl chloride in two industries, and essentially all of this use was in the synthetic rubber manufacturing.

One commenter stated that EPA chose to review chemical abstracts for only a four-year period, and for other solvents limited the search to a 10-year period. Therefore, older uses of the solvents would not have been identified through the literature search. The commenter also states that newer or less studied solvent uses would not appear in the public literature. The commenter disagrees with the Agency's assertion that few, if any, solvent uses were missed using this method.

In response, the Agency does not believe that searching Chemical Abstracts for an unlimited time period for all 14 solvents is justified. If a process was developed more than ten years ago and is still in use today, it would appear in more recent Chemical Abstracts or be reflected in alternative data sources, such as Effluent Limitations Guidelines or the SRI Chemical Engineering Handbook. Furthermore, the further back the search is conducted, the more unlikely that the use identified will still be employed today. Newer solvent uses, if confined to small scale laboratory use, would not change the solvent use universe significantly and would be reported as laboratory waste (and managed accordingly, most likely as a hazardous waste because spent solvents exhibit a Characteristic or contain listed wastes). Once such a process enters large-scale commercial use, reporting generally appears on some standard database or literature source that the Agency would find. The probability that a solvent use would, in one year, not exist and then appear in large scale is extremely low. Small volume solvent uses of these chemicals are not critical to EPA's evaluation, because any risks from larger volumes usage (and corresponding larger loadings in wastes) are likely to be of greater concern. Most of the companies that would conduct the types of research and development to find new uses are generally reporters to databases like the TRI, and as such, would report any significant uses of these solvents.

The commenter also stated that some chemicals, such as cyclohexanol, furfural, and isophorone, are not reported under TRI. For the remaining solvents, TRI reporting is not required when chemicals are "otherwise used" in quantities of 10,000 pounds or less (equivalent to 4,540 kg or less). The commenter argued that substantial quantities of the solvents can be used and not reported under TRI.

In response, in cases of the three chemicals for which the TRI data base was inadequate, the Agency relied on other sources more heavily. In fact, the TRI was only one source for all chemicals in the listing determination, even those covered by TRI. Because the Agency was aware that these chemicals were not required to be reported pursuant to TRI at the time of the solvent use industry characterization, the Agency relied on additional sources cited in the Listing Background Document. Through literature searches, potential solvent uses were identified in several SIC codes for cyclohexanol, furfural and isophorone.

Moreover, since the questionnaire data were collected, the Agency added cyclohexanol to the TRI. Analysis of TRI chemical use data on cyclohexanol confirms the Agency's literature search and determination of the universe of users of this chemical as a solvent. While 24 facilities reported cyclohexanol manufacturing processes in the TRI, only one facility reported the "otherwise use" category of cyclohexanol that could potentially be solvent use. Thus, the TRI data show that the Agency might have sent out only one additional preliminary questionnaire (EPA received 37 responses to preliminary questionnaires for cyclohexanol). Further investigation by EPA revealed that cyclohexanol was not used as a solvent at this one site. This new information substantiates EPA's original findings that there are no other large users of cyclohexanol as a solvent. See section III of the Response to Comments Document in the docket for details of the new TRI information.

The commenter argued that many of the solvent uses EPA did identify involve extremely high concentrations of the chemicals, up to and including pure solvent. These pure solvent uses can generate wastes in quantities 100 times larger with concentrations of 1%, still significantly in excess of concentrations that may pose a substantial risk to human health or the environment.

The Agency disagrees with the commenter that the risks of concern were not analyzed. In fact, the Agency's modeling considered environmental loadings of these chemicals resulting from solvent uses ranging from 100 percent to the part-per-million (ppm) level. The Agency evaluated potential releases of high percentage solvent uses that lead to greater loadings than would result from a one percent level in the waste. Modeling of these chemical releases under high end exposure conditions did not result in risks of concern.

In response to the commenter's concerns that small volume users might generate wastes of concern, perhaps due to different management practices, the Agency examined the data in hand from the Survey for such users. Facilities that received Surveys due to significant use of some solvents (>1,200 kg/yr), also used other solvents in lower volumes in some cases. Thus, the Agency has data on wastes from facilities that used small volumes of solvents, (see Listing Background Document, Appendix I). EPA reviewed the management practices for wastes generated by these smaller volume uses to see if any differences were evident. For all 10 solvents, EPA found a total of 73 wastes that were generated from solvent uses below 1,200 kg. The Survey data show that these were managed in ways that were very similar to practices reported for larger volume uses. Of these 73 wastes, 69 were incinerated or otherwise thermally treated (nearly all were classified as hazardous because they exhibited a hazardous Characteristic, or due to the presence of other listed hazardous waste), three wastewaters were treated in tanks, and one wastewater was treated in a surface impoundment (the chemical in the impoundment, acetonitrile, was evaluated through modeling). Furthermore, 67 of the 73 wastes reflected solvent use at concentrations of 50–100%, i.e., many of these wastes were generated from use of solvents at high concentration. None of these wastes from small volume users present any special risk, because risk analyses using larger loadings going to these management practices found no significant risks. Therefore, the existing data support EPA's belief that wastes from small volume users are not of any special concern. Furthermore, these wastes are nearly all handled as hazardous, which is also consistent with the general pattern found for other larger volume wastes.

Two commenters stated that they agreed with EPA's decision to limit the solvents listing investigation to facilities that use a combined total of 1,200 kilograms or more per year of all chemicals of concern used as solvents because the commenters feel that this level represents a reasonable characterization of the universe of solvent users. One of these commenters requested clarification to ensure this approach would not be misconstrued by hazardous waste generators when determining their generator category. In response, the Agency is confirming that the cutoff categories used by the Agency in this listing determination are not to be construed by any actual or potential hazardous waste generators to be ■ means of determining waste generator categories. Furthermore, EPA did consider solvent uses below the 1,200 kg threshold as noted above, however, the Agency found that such small quantity use is highly unlikely to present risks of concern when compared to the risks from larger users.

However, another commenter stated that EPA's rationale for deleting facilities using 1,200 kg or less of solvent in 1992 was that only large quantity solvent users could be expected to have treatment, storage, and disposal (TSD) units on-site, and that many of the solvent uses are peculiar to large companies. The commenter stated that this limitation in the data collection introduces bias against solvent generators relying upon commercial services, including offsite nonhazardous landfills, for their waste management needs. The commenter then argued that the Agency cannot assume offsite disposal in a nonhazardous waste landfill is rarely practiced when EPA intentionally excluded those facilities most likely to use such facilities by not surveying smaller volume users.

The reasoning cited by the commenter is taken out of context and does not reflect EPA's rationale. EPA did not decide to eliminate small volume users because they would not have on-site treatment capabilities. Rather, EPA determined that the burden of completing a complex, 100-plus page questionnaire would not be commensurate with the value of the information EPA would receive. EPA would not gain useful information from small users because many of these facilities, if they use these chemicals as solvents at all, would present low risks compared to larger solvent users. Furthermore, as noted above, EPA did, in fact, capture small users of solvents in the full Survey, and found no special management or risk concerns that were not reflected in it evaluation of larger solvent users.

Facilities are likely to use on-site as well as off-site waste management practices, and sometimes a combination of the two. This is evidenced in responses to the 3007 Survey, wherein respondents indicated that both on-site and off-site practices were employed. The 3007 Survey has captured numerous facilities that use commercial services. Based on the results of the Survey, 62 percent of the wastestreams are managed in commercial offsite treatment or disposal units. As such, the Agency does not believe there is any significant bias in its Survey.

In addition, EPA points out that the vast majority of small solvent users eliminated by EPA reported using amounts well below the 1,200 kg threshold. In fact more than 90% of those eliminated reported used less than 120 kg total for all of the solvents studied. EPA found that uses of such small volumes typically were reported for laboratory uses, are difficult to verify, and may be reported as solvent use if laboratory uses are not known. The 1,200 kg/yr cutoff is an appropriate surrogate for identifying facilities that may potentially generate large amounts of hazardous waste or waste with high solvent loadings. EPA believes the facilities with larger solvent uses would be most likely to provide useful data through the questionnaire, i.e., data based on verifiable solvent use that could then be used in developing risk assessments.

One commenter argued that solvent use fluctuates from year to year, thus uses below 1,200 kg could increase dramatically in the future due to process changes, increases in production, or solvent substitutions. The commenter went on to state that use volumes for some solvents reported in the final questionnaire for 1993 were higher than the rates reported for the same facilities in the preliminary questionnaire for the prior year. The commenter stated that EPA fails to appreciate the consequence of these fluctuations and substantial changes can be expected from year to year, e.g., a facility using less than 1,200 kg of solvent one year may use more than that amount the next year. The commenter concludes that EPA lacks an objective basis for simply assuming the data it collected is fully dispositive with

respect to future solvent uses and management practices.

EPA believes that the data collected provides a reasonable bases for decision-making. The purpose of the preliminary questionnaire was to capture what occurs at the facilities surveyed during a typical year. As was expected, some facilities' solvent use consumption decreased between the two years and other facilities' solvent consumption increased between the two years. The Agency does not expect solvent consumptions to be identical from year-to-year, but has no data to indicate that 1993 is an atypical year. Even if the specific facilities meeting the cutoff varied from year to year, EPA believes the data gathered from facilities studied provide a representative database. The Agency used the most recent data when determining the 1,200 kg cutoff for those facilities receiving the full questionnaire.

EPA considered whether or not solvent management practices were likely to change in the future from those reported in the 3007 Survey. The Agency determined that there was no reason to believe that they would, regardless of the volume fluctuation. In the case of wastewaters, EPA has no reason to believe that a facility would convert from a tank-based system to a surface impoundment given the capital investment and liability issues associated with land-based treatment, particularly when facilities do not have the physical space for a surface impoundment or have closed surface impoundments in favor of tank-based systems. For nonwastewaters, EPA has no reason to believe that a facility would switch from the thermal treatment of high organic wastes to disposal in a nonhazardous landfill due to the BTU value and the liability issues associated with land-based disposal.

The Agency cannot accurately predict with specificity future uses of the fourteen chemicals, nor is it reasonable for EPA to regulate solvent waste based on some purely hypothetical future use. While the solvent consumption may change over time for some facilities, such fluctuations are unlikely to significantly affect EPA's current risk conclusions for several reasons. First, in its risk analyses EPA used high-end or maximum solvent loadings to project potential risks. Thus, EPA's evaluation is not likely to change due to some volume use fluctuations. In addition, for most of these solvents (and specifically for three noted by the commenter, acetonitrile, 2-methoxyethanol acetate, and isophorone), the vast majority of wastes are regulated as hazardous due to the hazardous waste characteristics (see 40 CFR 261.20–261.24) or mixing with other listed wastes. Thus, any increase in volume use would result perhaps in somewhat higher solvent quantities reaching wastes that would be already regulated and thus unlikely to pose significant risk. Therefore, while EPA agrees that its Survey is more-or-less a "snapshot" of waste generation data, the Agency continues to believe that such an approach has yielded data that are representative, and is a reasonable way to assess potential risks.

The commenter also stated that EPA excluded any laboratory uses of the solvents from the universe of facilities receiving the preliminary questionnaire, notwithstanding the Agency's observation that "lab use" of chemicals was not restricted to small volumes.

The Agency did not exclude laboratory uses of solvent from the universe of facilities. The Agency was precluded from sending a 3007 Survey to all laboratories due to the sheer number of labs that exist in the United States, approximately 183,000 according to an estimate by EPA. (For details please refer to the Response to Comments Document). Many of these laboratories are small, comprising research labs (12,500), medical laboratories (22,700), and university labs (108,000), as well as small analytical labs (40,000). The resources necessary to complete a RCRA 3007 questionnaire would be beyond the means of many of these small businesses as organizations. Nonetheless, the Agency captured the solvent uses and management practices of numerous (32) captive on-site laboratories of facilities who received the 3007 Survey. In doing so, the Agency captured large research, QA/QC, and analytical laboratories that operate at the same or larger scale as the small labs not surveyed. Approximately 38% of the laboratories captured were small laboratories (i.e., using <1,200 kg of solvent use).

The Agency found that in industrial facilities, the proportion of laboratory use of a solvent compared with the chemical process use is about 1% or less. After consulting with the American Chemical Society, college and university hazardous waste managers, standard references, and OSHA guidelines, the Agency determined that laboratory wastes are managed as hazardous because they are usually mixed with other hazardous wastes, often with acutely hazardous wastes. In addition, with the exception of acetonitrile (which has specialized uses in laboratories as a solvent for high pressure liquid chromatography, or HPLC), the reported use of any of these chemicals is suspect, and is attributable to facilities reporting "solvent use" in the questionnaires as a precautionary measure. Few of the chemicals under examination are likely to find extensive use as solvents in the laboratory. For example, very few of the standard laboratory test methods specified by EPA call for use of these chemicals as solvents. For a complete summary of the laboratory use of solvents please refer to the Response to Comments Document.

2. Engineering Site Visit Reports

One commenter stated that the engineering site visits were superficial and did not encompass a thorough review of waste management, solvent waste characteristics, and potential environmental releases or damage from waste handling. The commenter acknowledged that EPA's objective for the site visits was simply to determine if a facility should be sent a full questionnaire, and to educate the facility on the solvent listing process, but stated that this seems like a waste of effort, given that more valuable information could have been obtained from the site visits regarding waste properties, handling and environmental damages.

The commenter also noted that none of the visits involved any sampling efforts. No analytical or characterization data are presented on the concentrations of solvent constituents in the waste streams observed at the industrial sites visited. The visits were typically two hours, with anywhere from 0–60 minutes spent actually touring the facility. One site visit was conducted from a tour van and was strictly a "windshield audit," and two were strictly conference room audits. The reports did not investigate, evaluate, or address any historical spills, releases to groundwater or surface water, or any other environmental damage from use of the solvent or handling of the wastes.

These comments misconstrue the reasons EPA conducted the site visits and the information that could practically be developed from them. The purpose of the site visits was to familiarize the Agency with the multitude of processes and industries potentially subject to the investigation through "first person" experience rather than "textbook" learning. The Agency disagrees that the Engineering Site Visits were superficial given their purpose of site familiarity, not data collection. The Agency points the commenter to the engineering site visits reports that each state EPA's objectives in undertaking the site visit—of which those cited by the commenter are but two. The site visits were performed to

obtain a first hand understanding of solvent utilization and also to develop a working relationship with the industries. Moreover, the site visits served as an outreach mechanism for EPA to interact with industry and inform potentially affected industries of the investigation. Site visits afforded EPA staff an opportunity to become familiar with processes used in specific industries, field test the questionnaire, and assess ongoing pollution prevention activities.

EPA obtained the "valuable information" cited by the commenter in a more comprehensive way through the questionnaires. EPA collected data on waste properties and management practices through the 3007 Survey, which contains detailed, site-specific information from 156 facilities. It would not be practical for EPA to visit all sites to gather detailed information on solvent use. Therefore, EPA's reliance on the 3007 Survey is eminently reasonable for collecting information on waste characterization data, release, and waste management practices. Visits conducted following the receipt of RCRA 3007 Questionnaires helped EPA to better understand the type of processes used in target industries and the data provided by respondents, and also provided confirmation of the data provided. The Agency was able to focus on larger scale users and specific processes up-close, based on the information reported in the 3007 Survey.

As discussed in detail in the Response to Comments Document, tours of the facilities lasted as little as 1.5 hours and as much as 3.5 hours, with a minimum of 30 minutes and a maximum of more than 2 hours spent on tour and/or on the plant floor. Information related to spills, releases and other environmental damage was requested in the 3007 questionnaire and collection of this type of information was not the focus of these visits. The Agency takes issue with the commenter's characterization of the visits as "windshield audits." None of the site visits were mere tours from a van. The Agency personnel witnessed many operations on a site and were able to walk around the facility. The commenter also mischaracterized several other details of individual site visit reports. The Agency has corrected these misconceptions in the Response to Comments document and provided clarification to clear up any confusion, as necessary. For more detail on the sampling issue, please refer to section IV.B.2 of today's document.

B. Methodology

1. Definition of "Solvent"

One commenter objected to the Agency's characterization of solvent use as too limiting, stating that solvents contained in paints, coatings, dyes, fuels, etc. are still mobilizing agents, and that they unleash the same environmental impact when these products are spilled or released. The commenter also points out that being able to solubilize or mobilize other constituents in a formulation still meets the Agency's definition of solvent use.

The Agency disagrees, and notes a long-standing policy of treating these cases differently. The discussion of the scope of the solvent listings and the applicable definitions appears in section I.B, above. As noted there, process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing. The products themselves also are not covered. The commercial formulations in which solvents are often ingredients are generally products that are not wastes under RCRA. Where these products are not in some way already regulated, the Agency could examine these materials if they become wastes and if deemed necessary. However, with a backlog of listing determinations to complete under court-ordered deadlines, the Agency has focused its current efforts on those determinations required by law. The Agency is under direction from Congress to consider listing wastes from "solvents" and that direction has been incorporated into the Consent Decree. Thus, the Agency has focused its resources on the rather narrow set of risks described in this **Federal Register** document and the rulemaking record for this decision.

2. Lack of Sampling and Analysis

Two commenters objected that EPA performed no sampling and analysis of these waste streams. One commenter stated it is impossible for EPA to come to any listing determination without some independent sampling and characterization of these wastes. Useful characterization data could have been obtained by sampling wastes from a subset of the 156 respondents representative of all the SIC codes using the wastes, according to this commenter.

EPA does not agree that it would obtain useful information from independent sampling of the solvent wastes. The solvents listing determination covers a number of industries using different solvents for different purposes and in different ways. The greatest challenge would be in collecting a sufficient number of samples to characterize each of these uses. Assuming that EPA were to sample all 10 solvents, obtain both a wastewater and a nonwastewater sample, and gather samples from the industries using the solvents (at an estimate of three industries on average per solvent), the baseline number of samples required would be 60. In addition to baseline samples, to conduct a valid sampling exercise the Agency also would need to sample for variability, that is, the Agency would take samples at several locations within a single facility and would take samples at several facilities within an industry group using the same solvent. Assuming that an additional two samples are taken within the same facility, and then an additional two facilities are visited, the total number of required samples reaches 540. This number still might not allow EPA to fully characterize solvent wastes. Thus, the Agency would be spending scarce resources on a massive sampling effort, when the data need could be more efficiently obtained by methods other than independent sampling. While EPA could attempt a more limited sampling approach, the result would not be likely to provide a sound basis for making listing decisions.

By definition, the concentration of the solvent must be relatively high before use, and this would allow use of mass loadings in calculating maximum waste levels, as needed. The Agency felt that it could rely on the questionnaire data, and no information has been submitted in comments to show that sampling and analysis was needed to confirm the concentrations in the solvent wastes reported. The facilities provided ranges of concentration where concentrations within a waste stream varied. When data were reported as ranges, the Agency used the high end of concentration ranges as a conservative approach in its risk assessment.

The Agency does not have reason to believe that the solvent concentrations reported are underestimated. In many instances copies of laboratory data showing the solvent concentration(s) in a sampled residual were provided with the respondents' 3007 survey. The reported data seem reasonable and correspond with observations of residual streams during Engineering Site Visits. The solvent concentrations and residual volumes were further substantiated through mass balances performed on the solvent use processes by reviewing the 3007 survey responses (see section III.B of the Response to Comments Document). EPA evaluated the data contained in the 3007 Survey

responses for any inconsistencies or missing residuals. If any inconsistencies or missing residuals were found, a follow up phone call was made to the appropriate facility for additional information. Where applicable, this additional information can be found in the docket along with the 3007 Survey Responses. Therefore, the Agency feels comfortable that it can rely on the reported data to adequately characterize risk.

EPA has used 3007 Survey data extensively in the past in making listing determinations. In this case, each survey was signed by the responsible party to indicate that the information reported is accurate. The Agency does not have reason to believe that the facilities would falsify or omit any of their data in light of the substantial penalties for submitting false information. In instances where concentrations were unclear or unreported, telephone contact was made with the facility.

Two commenters stated that EPA is required to consider the presence of any hazardous constituents, not just the solvent itself, because other hazardous constituents may be present in the waste due to impurities, other chemicals used in the same processes or managed in the same equipment as the solvents, and chemical reactions occurring in such processes or equipment.

EPA does not agree that the Agency is required to consider other constituents present in the wastes examined. Indeed, due to the extreme variability of these other constituents in the solvent wastes across industries, EPA would undoubtedly find it impossible to categorize these wastes under 40 CFR 261.11(b) if it considered the other constituents. The solvent uses found for acetonitrile illustrate this problem graphically. Acetonitrile is used as a solvent in various industries, including pharmaceuticals, petrochemicals, photographic chemicals, and other chemical manufacturers (see the Listing Background Document, section 4.0). The actual uses of acetonitrile also are variable, and include uses as a reaction medium for the synthesis of numerous different chemicals, and as chromatographic eluent for analytical or preparative separation of various chemicals from different impurities. Wastes resulting from such widely varying processes across different industries cannot be expected to have consistent waste constituents, except for the solvent itself.

As the commenter pointed out, other constituents could originate from various sources in the use of a solvent. Thus, other constituents are dependent on other solvents used, the specific solvent use, other processes carried out at a facility, other wastes that may be generated from other processes onsite, etc. Because of the wide variability in waste constituents that might arise in wastes from use of the solvents, the Agency focused on the solvent chemical itself. Other constituents may vary widely for different industries and solvent uses; thus, the Agency believes the only practical approach to evaluating such wastes for potential listing is to consider the risk posed by the solvent chemicals under examination.

The language in the existing F-listed solvents illustrates EPA's special concern with the solvents themselves in defining the scope of the listings; the listings are applicable only to wastes derived from the use of the solvents at levels of ten percent or more. In the case of the current solvents rulemaking, the Agency evaluated the common set of chemicals, i.e, the 14 solvents of concern. The Agency's assessment of these 14 solvents shows no risk to human health or the environment from these wastes, as discussed in detail elsewhere in this document.

3. Consistency of Methodology With Other Listing Determinations

One commenter asserted that, contrary to EPA's claim, the listing determinations in today's rule were based on scenarios that are different from those EPA used in both the proposed Dyes and Pigments listing determination (59 FR 66072, Dec. 22, 1994) and the proposed Petroleum Refining Process waste listing determination (60 FR 57747, Nov. 20, 1995). The commenter stated that in the Dyes and Pigments proposal, EPA used plausible mismanagement scenarios of disposal in unlined municipal landfills and on-site monofills, in addition to other plausible scenarios (wastewater treatment tanks, industrial boilers). The commenter stated that in the Petroleum Refining Waste determination EPA also considered plausible mismanagement scenarios, including disposal in on-site and off-site Subtitle D landfills. The commenter argued that EPA did not follow the policy used in the Dyes and Pigments and Petroleum Refining rules in the proposed solvent listing because EPA did not consider mismanagement scenarios that reasonably could be employed, particularly land disposal in unlined landfills. The commenter stated that there is nothing that prevents a solvent waste generator from land disposing the solvent waste, and substantial evidence of land disposal practices was found in the docket to the proposed solvent rule.

In response, EPA disagrees that the methods for determining plausible management scenarios in this rule is inconsistent with either the proposed Dyes and Pigments listing or the Petroleum listing. In both cases, EPA used appropriate evidence to evaluate current conditions and to project plausible future scenarios. The Agency does not presume unlikely worst cases or hypothesize scenarios that are not likely in the interests of avoiding listing decisions that would not result in incremental benefits to public health or the environment. *See Dithiocarbamate Task Force* v. *EPA*, 98 F.3d 1394, 1401 (D.C. Cir. 1996).

With respect to the Dyes and Pigments proposal, management in unlined municipal landfills and on-site monofills was reported in the 3007 Survey for certain wastes. EPA found that nearly all dye and pigment waste sludges/solids studied had, in fact, been disposed in unlined municipal landfills. Thus, the Agency determined that placement in an unlined landfill was plausible for most dye and pigment wastestreams.

However, EPA did not consider disposal in landfills plausible for all Dyes and Pigment wastes, and considered the specific facts for each waste. For example, EPA proposed not to list one category of waste, wastewater treatment sludges from the production of triarlymethane pigments using aniline as a feedstock, despite risks that might arise if the waste were send to a landfill. For this waste category, EPA determined a landfill was *not* plausible management (see 59 FR 66096). This was because the current management practice was blending with fuel for combustion, and EPA decided that the high organic content and fuel value of the waste made it implausible that landfill disposal would occur. This is entirely consistent with EPA's approach in today's rule for a similar waste derived from use of acetonitrile as a solvent. As described in the specific section on acetonitrile (section IV.D3), EPA does not view risks that might arise from landfill disposal as significant because such disposal is unlikely given the current practice of fuel blending and the confirmed fuel value of the material.

The commenter is also incorrect in asserting that the approach used in today's rule is inconsistent with that used in the Petroleum Refining proposal. In that proposal the Agency evaluated landfill disposal for many of the wastes examined, because, in fact, this practice was reported to occur for those wastes. Contrary to what the commenter implied, EPA did not project landfill disposal in the Petroleum

Refining proposal as plausible for wastes that had no evidence of such disposal.

The commenter also stated that the Agency violated its own risk assessment criteria as presented in the listing determination for the proposed Dyes and Pigments wastes (see 59 FR 66076). The commenter pointed out that EPA states in the preamble that it is the Agency policy that a high-end hazard quotient above 1 represents a risk level for presumptive listing, and a high-end hazard quotient above 2 is a definite basis to list. The commenter argued that, if EPA applies this policy to the solvent listing determination, at a minimum both acetonitrile and 2-methoxyethanol have hazard quotients exceeding this criteria (HQ of 200 and 16, respectively), and should have been listed.

EPA disagrees that its decisions in today's listing are inconsistent with its listing policy. As the Agency explained in the proposed rule, EPA's risk assessment for acetonitrile indicated HQs below one at the bounding level for incineration and at the high-end for wastewater treatment tanks and for open storage tanks. EPA's risk assessment for 2-methoxyethanol indicated HQs below one in bounding analyses for wastewater treatment tanks and incineration and no risk for the storage tank scenario. The HQs cited by the commenter were reported as part of an intermediate stage of the analysis, as reported in the background document for the proposed rule, specifically, § 5.7 of the Assessment of Risks from the Management of Used Solvents. This intermediate stage was used to decide if further evaluation was necessary. Because possible risks of concern were found, EPA proceeded to a third phase of assessment. After consideration of the fact that nearly all of the wastes evaluated in the intermediate analyses were already hazardous, EPA's assessments for these scenarios indicated risks below levels of concern for the remaining nonhazardous waste streams (see Supplemental Risk Assessment). These multi-phase assessments are discussed further in response to specific comments on acetonitrile in section IV.D.3 of today's document.

4. Plausible Mismanagement Scenarios

Two commenters stated that EPA relied on incomplete data provided in the RCRA 3007 Questionnaires to identify actual management, and disregarded standard potential mismanagement scenarios based on an incorrect assumption that solvent waste management will not change over time. According to these two commenters, a valid solvent listing determination must also consider improper disposal in unlined landfills, impoundments, waste piles, land treatment units, and long term accumulation, which EPA overlooked. One of the commenters went on to state that the Agency's listing policy requires the presumption of land disposal in unlined landfills and surface impoundments, particularly in the case of solvents, where EPA's questionnaire data present a partial and misleading snapshot of solvent use due to limitations in the data collection methodology. This commenter also argued that due to the limitations of the data collection, EPA cannot claim that the specialized or limited uses of the solvents lead to a complete characterization of solvent users or solvent waste management practices. The commenter concluded that EPA's decision not to list these solvents is invalid and contrary to the criteria enumerated in 40 CFR 261.11.

The Agency disagrees with the two commenters. The data collected show that the management practices of most concern to the commenters (landfills and surface impoundments) are not widely used. Where land-based disposal was reported in the 3007 Survey, the Agency considered whether the waste is capable of posing a substantial present or potential hazard to human health or the environment. For landfills, EPA found that modeling was not necessary because solvent loadings were very low. The few cases of surface impoundment use were fully evaluated via modeling and were found to present no significant risk.

EPA relied on management practices reported in response to the 3007 Surveys, and EPA evaluated the potential risks associated with those management practices that are used or likely to be used. As the Agency has explained in prior responses, EPA could and did target the facilities and industries actually using these chemicals as solvents. As a result, the Agency identified the largest users of these chemicals as solvents. EPA has responded in detail to comments regarding the adequacy of the characterization of solvent waste generators earlier in today's document (see section IV.A.1).

The solvent wastes reported from the Survey fell into several classes: high concentration organic liquids or solids, treatment residuals (wastewater treatment sludge, incinerator ash), and wastewaters. The high content organic nonwastewaters were sent to thermal treatment in incinerators, boilers, or fuel blenders, and in some cases recovered via distillation for reuse. The vast majority of these wastes were managed as hazardous waste, because they exhibit a characteristic (primarily ignitability), or they are generated as a waste mixture with solvents that are already listed as hazardous.

From the data available, EPA evaluated the potential for risks to arise from disposal of solids in landfills and the treatment of wastewaters in surface impoundment. Wastes reported to go to landfills were typically treatment residuals that contained negligible amounts of solvents. For the 10 solvents examined (the remaining 4 on the original list of 14 had essentially no solvent use), no landfill disposal was reported for six of these solvents. In fact, of the total 435 solvent wastes reported for the 10 chemicals, only 5 were reported to go to nonhazardous waste landfills. In the proposed rule and the Listing Background Document, EPA discussed why the few cases of landfill disposal reported for specific solvents (acetonitrile waste, methyl chloride, cumene, and cyclohexanol) were not of concern. This was principally because the solvent loadings in these wastes were very low. In response to comments, EPA further considered one waste that was reported to be disposed in a hazardous landfill. However as discussed in the specific section in today's rule on acetonitrile, the waste is no longer going to any type of landfill due to its thermal value.

The Survey data show that wastes sent to landfills contained negligible amounts of solvent; landfilling of wastes with high solvent concentration was not reported. Thus, given these results, and the fact that nonwastewaters with high solvent content are generally hazardous and could not be placed in even a Subtitle C landfill without further treatment, EPA had no reasonable basis to conclude that disposal of spent solvent wastes in landfills poses a risk of concern.

Similarly, treatment of wastewaters in surface impoundments was rare for the solvent wastes examined (the vast majority were treated in tanks). Of all the wastes reported (435), only 10 were reported to undergo treatment in surface impoundments. The solvent loadings for six of these (from solvent use of acetonitrile and cumene) were low and clearly present no risk after dilution/treatment in a wastewater treatment system. The others were larger volume wastewaters that arose from the specialized use of three different solvents: methyl chloride, phenol, and furfural. With the reported solvent loadings available, EPA examined these special cases closely, and completed further modeling in response to

comments (see section IV.C.1 on surface impoundment modeling).

Concerning storage in waste piles and land treatment, EPA found no cases where such management practices were reported for any of the wastes examined. The lack of waste pile storage is not surprising given the nature of most wastes that are accumulated, i.e., organic liquids and aqueous wastewaters, which are stored in tanks. Further, many of these wastes are already hazardous, and are therefore kept in storage containers that meet stringent RCRA regulations. Other solids were either relatively low volume wastes, for which a pile is not needed, or wastewater treatment residuals, which have no appreciable solvent content, as noted above. The practice of land treatment is a special practice that is relatively rare, and as EPA has noted in the past (see Dyes and Pigments rule, 59 FR 66074), such practices would be considered plausible only when information indicates that the practice is in use, or likely to be used in the future.

The Agency determined that the actual management practices represent the plausible management practices for the specific solvent wastes that are the subject of today's rule, because the Agency found no reason to believe that the current management practices would change significantly. In the case of wastewaters, EPA has no reason to believe that a facility would convert from a tank-based system to a surface impoundment given the capital investment and liability issues associated with constructing and operating land-based treatment units. The ongoing operating costs of managing wastewaters in an already installed tank are quite small relative to the costs of constructing a surface impoundment, or the costs of other alternatives such as sending the wastewaters offsite. Clearly, a large majority of facilities perceive a benefit from managing the waters in tanks, rather than impoundments, and EPA finds no reasons to project that those facilities would change their practices. For nonwastewaters, EPA has no reason to believe that a facility would switch from the thermal treatment of high organic wastes to disposal in a nonhazardous landfill due to the BTU value and the liability issues associated with land-based disposal. In fact, the data collected from the Survey clearly show that the use of impoundments and landfills is rare, and such practices are not common for these wastes. Also, as noted previously, the vast majority of nonwastewaters are already classified as hazardous waste, and cannot be land disposed without meeting treatment standards.

EPA believes the Survey did, in fact, collect sufficient data from the significant solvent users, to allow a reasonable assessment of plausible mismanagement scenarios. However, even assuming the data do not reflect all management practices for whatever reason, the Agency still maintains that the data available support EPA's decisions on what constitutes plausible mismanagement. The data collected show that the management practices of most concern to the commenters (landfills and surface impoundments) are rarely used for these solvent wastes. Furthermore, when these practices are used they are used for only very dilute concentration (and low risk) solvent wastes, except for a few special cases that were specifically considered by the Agency. The existing data do not support the commenters' argument that other practices must be assumed to be generally plausible for all the wastes evaluated. Creating hypothetical waste management scenarios would have no apparent benefit, and may lead to regulating wastes which do not present risks.

C. Risk Assessment

This section deals with comments on the hazard and exposure assessments conducted for the rulemaking. In response to comments, the Agency revised the risk assessment for some management scenarios. These updated results are presented in the following sections, along with responses to the comments. Full details of the updated analyses are presented in the background document for the risk assessment (Assessment of Risks from the Management of Used Solvents: Supplemental Risk Assessment Background Document, hereafter known as Supplemental Risk Assessment) provided in the docket to this rule. A summary of risk assessment results for all solvents are shown in Table 3. Comments dealing with the volumes and concentrations of wastes used as inputs for the risk assessment are dealt with in sections IV.A and IV.B.

1. Surface Impoundments

EPA received a variety of comments relating to the assessment of risks from management of solvent wastewaters in surface impoundments. One comment focused on the routes of exposure that were assessed from the groundwater pathway from surface impoundments. The commenter indicated that EPA's consideration of direct ingestion alone was insufficient for assessing the risk from this pathway, and suggested that the Agency evaluate other routes of exposure from groundwater. EPA agrees that these additional routes of exposure should be evaluated, and conducted additional analysis as described below.

In addition, two commenters suggested that the risk assessment should have assumed a higher concentration level for the solvents in these management units. The Agency used the headworks concentration (at the beginning of the wastewater treatment process), which represents a dilution of the solvent with other wastewaters. The high-end data on concentrations were taken from the section 3007 survey of all facilities, as noted in section IV.B.2, above.

EPA does not agree that higher concentrations of solvents should be used, but rather believes that its approach described below is more appropriate. To respond to these comments, the Agency conducted further modeling of surface impoundments to reevaluate the risks from solvents managed in these units. The risk reevaluation is summarized below; see the Supplemental Risk Assessment document for a full description of the methodology and results.

In the risk assessment for the proposed rule, EPA reviewed the high-end waste streams going to surface impoundments. The process of iterative risk screening rests on assessing high-end values, based on the premise that low-end values represent lower risk. Since the high-end waste streams did not show significant risk, EPA did not review the impoundments further. For the current effort, EPA ensured that all relevant factors were accounted for by modeling *all* the surface impoundments receiving wastewaters with these solvents. EPA used a standard Agency model (CHEMDAT8) to assess the steady state concentration of solvent in these units; EPA used the precursor (CHEMDAT7) in modeling for the proposed rule. To the extent possible, EPA attempted to use actual influent concentrations into the impoundments; this information was only available for one of the impoundments (at the Exxon Baytown facility). For the other surface impoundments, EPA used the headworks concentrations again. EPA believes that these concentrations represent a conservative estimate of the concentration of solvent entering the impoundment, since they do not account for the significant pretreatment occurring (in all cases) after the headworks, before entering the impoundment. Because of this pretreatment, the actual solvent concentration of influent to the

impoundment will be much lower than the headworks concentrations that were assumed for the modeling.

Using CHEMDAT8, EPA then modeled the resulting steady state concentrations of the solvents in each impoundment, as well as estimated quantities and concentrations of solvents that would be emitted to the air. EPA assessed direct inhalation risks using these airborne emissions from the solvent.

Risks from the groundwater pathway were assessed for all impoundments where the groundwater was considered at risk. To assess the risks from the groundwater pathway, EPA assumed no attenuation from the impoundment to the leachate. EPA estimated groundwater concentrations at a high-end receptor, and from that groundwater pathway assessed risks of direct ingestion of the groundwater, as well as inhalation and dermal contact risks from use of the groundwater. This assessment used the same methodology employed by the Agency in a recent listing (Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Petroleum Refining Process Wastes; 63 FR 42109, August 6, 1998) to estimate non-ingestion risks from the groundwater pathway.

The results of the assessment for the impoundments are summarized in Table 2. All hazard quotients represent cumulative figures for all pathways and routes of exposure. The assessment of cumulative risk from these routes of exposure is very conservative, in that it assumes that receptor locations were at the maximum exposure point for direct inhalation of airborne solvents, as well as for exposure to solvents in groundwater. EPA also added HQs from different chemicals in the same unit, making the highly conservative assumption that all of the noncarcinogens threatened similar health endpoints (i.e., cause the same type of damage to the same organs). This latter assumption is not likely to be true, but there was no need to refine the risk analysis to ascertain what the different endpoints might actually be, because the summed HQs were less than one. Because those multiple conservative assumptions were used in the analysis, the true high-end risk estimates would actually be lower than the numbers listed under the "High-End" column.

TABLE 2.—RISK ASSESSMENT RESULTS FOR MANAGEMENT OF SOLVENTS IN SURFACE IMPOUNDMENTS [1]

Facility	Solvents in unit	Bounding HQ [2]	"High-end" HQ [2]
Tennessee Eastman	Acetonitrile, Phenol	3.30e–02	N/A [3].
Exxon Baytown	Methyl Chloride [2]	[4.60e–06]	[3.50e–06].
Mobil Beaumont	Furfural, Phenol	1.20e+00	8.00e–01.
Lyondell	Cumene	4.10e–02	N/A.
Rhone-Poulenc	Acetonitrile	6.52e–02	N/A.
Citgo	Phenol, Furfural	7.40e–01	N/A.

[1] Risks presented represent the total risk from concurrent exposure to air and groundwater releases, and also the sum of risks from all solvents in the unit. The "high-end" risks are above a high-end due to these and other conservative assumptions.
[2] Risks for methyl chloride represent excess lifetime individual cancer risk .
[3] N/A indicates high-end analysis was not done because the bounding analysis showed no risk of concern.

2. Tank-Based Management of Wastes

In the process of responding to comments comparing EPA's evaluation of the solvent wastes in question with the results of a recent EPA study on potential air risks (see comment below related to the Air Characteristic Study), EPA reviewed the risk analyses conducted in the proposed rule for management of wastes in tanks. EPA discovered that an arithmetic error was made in the calculation of solvent emissions from tanks. This error resulted in an underestimation of emissions for all tank scenarios by a factor of 1,000.

EPA has therefore revised the risk estimates for tank-based management of wastes. The analytical approach was to update the analyses that were completed for the proposed rule, using corrected emissions, the latest version of the emissions model (CHEMDAT8), and current chemical and toxicological benchmark data available for some chemicals. The analysis also refined parameter values to more closely approach high-end analyses; nevertheless, because of multiple high-end assumptions, all of the revised analyses are still characterized as more conservative than true high-ends. In addition, EPA conducted a second analysis to verify these results. This second analysis used air dispersion data and receptor distances from EPA's Air Characteristic Study (May, 1998). Both analyses, using the corrected source term data, indicated that risks for all tank-based scenarios were below levels of significant concern (see section IV.C for further discussion of listing decisions). More details of the analyses are presented in the Supplemental Risk Assessment Background document. The results of these analyses are presented in Table 3.

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Table 3. Summary of Risk Assessment Results for All Solvents Examined

Solvent	Management Scenario	Exposure Route	HQ [1,2]		Verification Analysis (*Air Characteristic Study* methodology)
			Bounding	High-End	
Furfural	Surface impoundment	Inhalation	5.7E-01	1.1E-01	--
		Groundwater ingestion	3.3E-01	3.3E-01	--
		Groundwater non-ingestion	1.3E-01	1.3E-01	--
	Aerated WWT tank	Inhalation	--	9.0E-01	6.0E-01
	On-site accumul.	Inhalation	--	1.0E-05	5.0E-07
	Incineration	Inhalation	1.2E-14	--	--
2-Methoxy-ethanol acetate	On-site accumul.	Inhalation	--	9.0E-05	9.0E-05
	Incineration	Inhalation	7.3E-13	--	--
Cumene	Surface impoundment	Inhalation	3.1E-03	--	--
		Groundwater ingestion	1.3E-06	--	--
		Groundwater non-ingestion	1.4E-04	--	--
	Aerated WWT tank	Inhalation	--	2.4E-04	1.9E-04
	On-site accumul.	Inhalation	--	1.0E-02	6.0E-03
	Incineration	Inhalation	6.4E-09	--	--
Cyclohexanol	On-site accumul.	Inhalation	--	8.0E-01	9.0E-01
	Incineration	Inhalation	1.3E-08	--	--
2-Ethoxy-ethanol acetate	Aerated WWT tank	Inhalation	--	1.4E-04	6.1E-05
	On-site accumul.	Inhalation	--	2.0E-01	5.0E-01
	Incineration	Inhalation	2.2E-08	--	--
Isophorone	On-site accumul.	Inhalation	--	1.0E-02	2.0E-01
	Incineration	Inhalation	2.3E-08	--	--

Methyl chloride[2]	Surface impoundment	Inhalation	4.6E-06[2]	3.5E-06[2]	3.5E-06[2]
	Aerated WWT tank	Inhalation	--	[1.3E-06]	[4.8E-07]
	On-site accumul.	Inhalation	--	[4.0E-06]	[2.0E-06]
	Incineration	Inhalation	[3.3E-14]	--	--
2-Methoxyethanol	Aerated WWT tank	Inhalation	--	3.0E-02	1.3E-02
	On-site accumul.	Inhalation	N/A[3]	--	--
	Incineration	Inhalation	3.6E-08	--	--
Phenol	Surface impoundment	Inhalation	1.7E-01	--	--
		Groundwater ingestion	1.4E-03	--	--
		Groundwater non-ingestion	2.4E-02	--	--
	Aerated WWT tank	Inhalation	--	4.6E-03	1.9E-03
	On-site accumul.	Inhalation	--	4.0E-01	4.0E-02
	Incineration	Inhalation	7.4E-03	--	--
Acetonitrile	Surface impoundment	Inhalation	1.1E-02	--	--
		Groundwater ingestion	1.1E-02	--	--
		Groundwater non-ingestion	7.0E-02	--	--
	Aerated WWT tank	Inhalation	--	1.8E+0	7.3E-01
	On-site accumul.	Inhalation	--	4.0E-01	7.0E-01
	Incineration	Inhalation	6.1E-07	--	--

[1] The "high-end" risks are above true high-end values, because multiple high-end assumptions make the analyses more conservative than true high-ends. [2] Risk numbers for Methyl Chloride represent excess lifetime individual cancer risk [3] All wastestreams being accumulated are already regulated as hazardous wastes.

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3. Multiple Solvents

A commenter noted that EPA failed to consider the cumulative impacts of multiple solvents and other hazardous constituents released via the same exposure pathways in the risk assessment. In order to fully respond to this comment, EPA conducted an assessment of the cumulative risks posed by exposure to multiple solvents. Inasmuch as the listing determination is based on the solvent constituents of these wastes, other constituents of the wastestreams were not assessed. These risk assessment results, therefore, only apply to the solvents themselves. In this analysis (see the Supplemental Risk Assessment for details) EPA assessed all cumulative solvents risks where multiple solvents were managed in one unit or in different units at a facility.

This analysis used the same assumptions as EPA's prior assessments for the proposed rule. Wastestreams which were already classified and managed as hazardous were not assessed, since there is little likelihood of risk reduction through a listing determination. EPA focused its effort on currently unregulated wastes. The characterizations of waste management included the same conservative parameters as in the proposed rule, modified as described above, including the construction and operation of surface impoundments, meteorological conditions, and the proximity of hypothetical receptors. One particularly conservative assumption was storage of solvents in open-topped tanks permitting maximum volatilization. This assumption of extensive volatilization out of open-topped tanks is highly unlikely, because the wastes were being stored pending incineration or other thermal treatment. In addition to those factors, EPA included highly unrealistic assumptions in assessing cumulative risk from exposure to multiple solvents. Environmental receptors were considered to be located at maximum exposure points relative to all management units. EPA also added HQs from different chemicals, making the highly conservative assumption that all of the non-carcinogens threatened similar health endpoints (i.e., cause the same type of damage to the same organs). This latter assumption is not likely to be true, and overestimates risks, but there was no need to refine the risk analysis to ascertain what the different endpoints might actually be.

Despite these assumptions, which suggested unrealistic conditions to maximize the probability of showing risk to human health, none of the assessed scenarios showed combined hazard indices over one. In one facility (Exxon, Baytown), a surface impoundment showed an increased cancer risk of 4E–06 in the high-end analysis, however, this risk was entirely due to the single solvent methyl chloride, as shown in the preceding section. As discussed in section IV.D, EPA has concluded that this does not represent a significant risk, especially in light of existing air regulations that apply to this unit.

The scientific evidence represented by this risk analysis leads EPA to the clear conclusion that management of multiple solvents does not pose significant incremental risk to human health in any populations.

4. Comparison With HWIR Exit Levels

A commenter argued that EPA should reconsider the risks from acetonitrile, phenol, methyl chloride, and isophorone based on the risk analysis presented by EPA in the proposed Hazardous Waste Identification Rule (HWIR; 60 FR 66344, December 21, 1995). For each of these chemicals, the HWIR analysis produced an "exit level" concentration, suggesting that concentrations of waste higher than the exit level might pose unacceptable risks. The commenter notes that the § 3007 survey showed solvent wastes for each of these chemicals being generated at higher concentrations than the HWIR exit levels. The commenter noted that wastewaters of acetonitrile, phenol, methyl chloride, and isophorone are generated in concentrations higher than the HWIR exit levels for these chemicals.

The commenter's comparison between HWIR exit levels and the solvent waste concentrations does not indicate that the solvent risks are of concern. The purpose of the HWIR exit levels is not to assess risk from a particular set of chemicals or a specific set of wastes. Unlike listings, where the Agency makes a decision based on actual information about how specific wastes are generated and managed, the HWIR levels are intended as broad risk screens, covering a large number of possible waste streams and waste management methods. The listing decisions for the chemicals examined in today's rule are limited to consideration of potential risks that arise only from the wastes generated after the chemicals are used as solvents. Therefore, these decisions are limited to considerations of waste characteristics and waste management practices specific to these uses.

Because HWIR had a different purpose than this risk assessment, it used different methodologies. HWIR evaluated five management scenarios: aerated treatment tanks, quiescent surface impoundments, land application units, ash monofills, and wastepiles. Only two of these scenarios aerated treatment tanks and quiescent surface impoundments are similar to the management scenarios modeled for the used solvents risk assessment. Another obstacle to comparison is the waste volume modeled. HWIR modeled a range of waste volumes, bounded by the capacity of the waste management unit. From these volumes, HWIR calculated levels for specific chemicals on a nationwide basis, for any use in any industry, and made various assumptions for waste generations and management, as noted above. In contrast, the wastestream volumes (and constituent loadings) modeled for the solvents risk assessment were based on actual data from the industry survey.

The Agency has not issued the HWIR in final form and is continuing to refine the analysis; therefore, the HWIR exit levels are currently being reviewed and revised. However, even the revised numbers, as a screening tool, cannot be automatically used in assessing the validity of other regulatory actions by EPA. Together, the differences in management units and wastes modeled mean that a simple comparison of HWIR exit level concentrations to the concentrations in modeled solvent wastes is not meaningful.

5. Environmental Damage Incidents

Several commenters stated that the Agency screened out and ignored damage cases prior to 1980. EPA believes that the commenters have apparently misunderstood how the Agency evaluated the damage cases. The Agency did not screen out and ignore damage cases prior to 1980. All damage cases available were considered including those prior to 1980. However, most of the damage cases found for the 14 chemicals resulted from disposal well before 1980, before RCRA regulations were in place. Damage cases were reviewed to direct the analysis to industries and conditions that might show evidence of environmental damage from improper management of used solvents that might be occurring now or may occur in the future; the cases did not provide an exclusive or restrictive guide. EPA evaluated a variety of legal and financial factors that might affect plausible management, and technological factors affecting fate and transport of hazardous constituents.

These other factors are especially important when examining the solvent wastestreams, since almost 90% of the non-wastewaters are already required to

be managed as hazardous under Subtitle C. Although these constituents may have been found at Superfund sites, it is not reasonable to suggest that RCRA-regulated hazardous wastes could be managed today in the same way they were managed at industrial facilities in the past. The damage cases that were found reflect mismanagement in the past, not the Subtitle C management (or even the likely Subtitle D management) of these chemicals which is the norm today.

Furthermore, as described in the proposed rule, there were many other reasons why the damage cases were not useful (see 61 FR 42326). These reasons include: (1) EPA could not determine that any of the contaminants of concern were used as a solvent prior to disposal; (2) wastes at these sites were poorly defined, and the term "solvent wastes" likely referred to the more widely used solvents that are already listed; (3) many of the chemicals under study have other uses that are more likely to be the reason for contamination; and (4) EPA found no damage cases at sites within the industries that reported using the solvents under study.

6. Spills, Leaks, and Overflows

One commenter stated that EPA's risk assessment did not include an evaluation of human health and environmental risks posed by leaking tank systems. According to this commenter, EPA argues the concentration of solvents is "very low" in wastewaters, and thus assessing the risks posed by tank leaks is not warranted. However, the commenter argued the database identifies solvent wastewaters containing 9% 2-methoxyethanol, 8% phenol, 200 ppm 2–EEA, 169 ppm methyl chloride, and 5,000 ppm furfural. The commenter concluded, given that no time limit would be placed on storage if the wastes are not regulated as hazardous, defective leaking containers and tanks are highly possible.

EPA has examined the possibility of spills from management units such as tanks or surface impoundments. The Agency does not have the data or the means available to accurately assess the likelihood of such releases, the magnitude of releases, or other data that would be necessary to assess the risk of such spills. Based on the characteristics of these solvent waste streams, however, the Agency has concluded that to the extent that such releases would pose risks, a decision to list any of these wastes would not provide significant reduction in the potential hazards from such events. The Agency bases that conclusion on the following facts.

The vast majority (over 98%) of the volume of solvent wastes are wastewaters in wastewater treatment units. These wastewaters are diluted to very low concentrations of solvents, and are treated further to even lower levels. When necessary, EPA has modeled the effects of release of some of these solvents from impoundments and found no significant risk to human health or the environment (see section IV.C.1 for further discussion on potential risks from impoundments). For the specific wastewaters identified by the commenter, EPA notes that surface impoundment scenarios were modeled for phenol, methyl chloride, and furfural at the same or similar concentrations to those cited, and no significant risks were found. The wastewater mentioned that contains 2-methoxyethanol is managed as hazardous in an off-site biological treatment system, so that any releases or risks are unlikely. Similarly, the 2–EEA waste cited is scrubber water that is classified as hazardous, and furthermore corresponds to a total of only 0.58 kg of EEA. Therefore, EPA does not agree that these wastes are likely to present significant risk even under a spill scenario.

Of the nonwastewaters, almost 90% are already regulated under Subtitle C of RCRA. Spills from the RCRA units are already covered under contingency planning and corrective action requirements. Subpart CC includes additional requirements for spill protection during transfer of wastes (see 40 CFR 264.1084(j)). Therefore, EPA concludes that spills of these wastes from tanks, which would generally be episodic in any case and unlikely to produce long-term exposures comparable to those considered in listing determinations, are not of significant concern.

7. Non-Aqueous Phase Liquids (NAPLs)

In the proposed rule, even though EPA could not find scenarios that could lead to significant releases to ground water, the Agency also considered whether the spent solvent wastes had the potential to form non-aqueous phase liquids (NAPLs) that might move as a separate phase either above or below the ground water table. These NAPLs may present special problems, especially in assessing their transport and potential impact. However, EPA found that nearly all solvents under consideration are miscible or very soluble in water and are not likely to form NAPLs in groundwater. One commenter suggested that EPA re-examine the possibility of formation of NAPLs from these solvents.

To respond to this concern, EPA has conducted further analysis on the subject for this final rulemaking. Full details of this analysis are in the Supplemental Risk Assessment document for this rulemaking. Only four of the solvents are land disposed and pose a threat to the groundwater pathway: acetonitrile, phenol, furfural, and cumene. EPA assessed the possibility of formation of NAPLs from land disposal of these solvents.

The first three are all highly soluble, which indicates that NAPL formation is unlikely. EPA then assessed the likelihood of NAPL formation from cumene, using the methodology which has been developed for assessing NAPL probabilities at Superfund sites. Conservative estimations of the concentrations of cumene in groundwater still fell an order of magnitude below the threshold at which NAPL formation is a serious possibility. Therefore, EPA concludes that there is little likelihood of these solvents contributing to formation of NAPLs.

8. Risk Modeling Parameters

One commenter stated that the accumulation scenario modeled must assume long term storage, not a period of under 90 days. The commenter argued that extended on-site accumulation is a highly plausible mismanagement scenario, given that absent RCRA controls, a generator can accumulate such waste indefinitely. Thus, the commenter stated that EPA's risk model should not assume a finite storage time of 90 days, but should assume the more likely scenario of at least a two year period of storage.

This comment is based on an incorrect assumption. The accumulation scenario was not modeled for a period of 90 days as stated by the commenter. For each scenario, EPA used a storage duration designed to maximize the total risk. Modeling a longer storage time does not necessarily increase the risk, because it implies less frequent refilling of the tanks with new wastes. As described in the risk assessment documentation, this storage duration time was calculated by first generating a tank profile to yield the largest downwind concentration at the nearest residence based on data in Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Background Information for Proposed RCRA Air Emission Standards (referenced in the proposal risk documentation as U.S. EPA, 1991c; p. 29, July 1996). (This high-end tank also happened to be the most common. Therefore, this model tank was used for all three types of estimates: bounding, high-end, and

central tendency.) The throughput and other parameters of this model tank were used in combination with solvent throughputs and high-end and central tendency concentrations to obtain solvent-specific emissions rates. The storage duration times were then back-calculated to fit this maximum release profile. For the bounding analysis, the modeling was so conservative that it resulted in greater than 95 percent release of the solvent in seven out of ten cases. Thus, a longer accumulation time, as suggested by the commenter, would have led to lower emissions, lower concentrations at the receptor, and thus a less conservative analysis.

9. Comparison With Results of Air Characteristic Study

EPA received a late comment suggesting that the risk analysis in the Air Characteristic Study recently released by the Agency (May, 1998) indicated that air pathway releases from these solvents were riskier than EPA's initial analysis had indicated. The commenter compared concentration levels of potential concern developed for some chemicals in the Air Characteristic Study to concentrations of the solvents reported in the listing determination. The commenter argued that the study showed significant inhalation risks for some of the solvents when managed in tanks at concentrations significantly lower than those found in the solvents data collection.

In response, EPA first notes that the purpose of the Air Characteristic Study was to evaluate the possible need for an air characteristic to address potential risks due to emissions from certain waste management units. The concentrations of concern estimated in the Study are screening values for the purpose of determining whether new regulatory controls are needed to fill potential gaps in existing regulations, and should be viewed in this context. The concentrations developed in the Study cannot be automatically used in assessing the validity of other regulatory actions by EPA, because the study uses waste data and certain modeling assumptions in its methodology that are different in a number of ways from the modeling assumptions and data used in other regulatory programs, such as listing determinations. In addition, the Study methodology is currently undergoing outside peer review. Therefore, the screening concentrations themselves could change pending the results of the review.

In any event, a comparison of the results reached in the Air Characteristic Study with the results of this risk assessment confirms that the concentrations present in these solvent wastes do not pose a significant inhalation risk. As noted above, EPA found an error in the risk analyses for tanks, and revised these analyses accordingly. This was the principal reason for the apparent difference in risk estimates between the risk assessment for the proposed analysis and the Air Characteristic Study (see section IV.C.2). However, even with these revisions, some apparent differences in concentration levels of concern would remain.

These differences in concentration, however, do not necessarily mean differences in risk. In this case, the source terms being compared are different. The Air Characteristic Study back-calculated to determine what loading of constituent could be safely managed in a given management scenario. For every management scenario, the loadings of constituent that the Air Characteristic Study concluded could be managed safely are *larger* than the loadings used in this risk assessment. The solvent constituent loading that the Air Characteristic Study determined could be safely managed in tanks ranged from twice the amount to millions of times the amount modeled for the solvents risk assessment. The analyses for today's listing determination used the solvent waste generation data (and subsequent loadings in management units) from the § 3007 Survey. The purpose of this listing is to determine the risks that may be posed by current and plausible future management of these specific chemicals when used as solvents, therefore, the EPA feels that the solvents waste generation data submitted from the 3007 survey is appropriate to use in the analysis.

To better understand the differences in risk assessment methodology used in the Air Characteristic Study, the Agency conducted a re-analysis of the risk from the solvent wastestreams using a modified methodology from the Air Characteristic Study, but still using the waste generation data and solvent loadings from the listing Survey. The methodology was virtually the same as that used in the Air Characteristic Study, except for some inputs that the study derived through Monte Carlo analysis. The results of this verification analysis showed no significant risk for any of the solvent management scenarios, and confirm the previous results. These results appear in Table 3. More details on these comparisons appears in the response to comments document accompanying this rulemaking.

D. Listing Determinations

EPA received comments on various aspects of the proposed listing determinations. Many comments on the determinations were raised repeatedly for various wastes, and are discussed in preceding sections, or in sections IV.D.1 and IV.D.2 below. Comments that are more specific for individual solvent wastes are addressed in the section IV.D.3. For complete responses to comments on these and other issues, see the Response to Comments Document in the docket to today's rule.

1. General Comments

Six commenters support EPA's decision not to list as hazardous waste the solvents at issue. However, one commenter disagreed with the decision not to list these compounds because they are similar in toxicity to the other solvents already listed as hazardous. The commenter stated that the solvents considered in this rule may be used by themselves, and their wastes, therefore, would not be mixed with the wastes from the other F-listed wastes, or the manufacturer can modify their processes to avoid using other F-listed solvents, so that their wastes would no longer be hazardous. The commenter went on to wonder if EPA's decision not to list these wastes was due to its "anti-combustion" strategy, because the wastes would "then be readily excluded from combustion as a logical disposal option."

EPA does not agree with the commenter's assertions regarding the decisions not to list. While some of the chemicals examined in today's rule may have toxicity similar to the solvents already listed as F-wastes, the toxicity of a chemical alone is not a sufficient basis for listing. EPA considers a variety of factors, including waste management practices and all the other factors listed in 40 CFR 261.11(a)(3). After evaluation of all factors, EPA determined that listing for these solvent wastes was not warranted. When appropriate, EPA also evaluated wastes that resulted from use of the solvent by itself and found no significant risks.

Further, EPA disagrees that in the absence of a listing decision a manufacturer would change its processes to segregate out the solvents considered in this rule. They had that incentive from the time the other solvents were listed in 1980 and 1986 and have either been mixing the wastes ever since or made decisions to make new mixtures with listed solvents. If a waste is hazardous under current regulations, due to mixture with other listed wastes or a characteristic, the

manufacturer already has ample incentive to modify its process to avoid the cost of generating more hazardous waste. These manufacturers apparently weighed the risks and benefits of mixing, or not mixing the wastes and still pursued their mixing practices. As the Agency has stated in today's document and in the Response to Comments Document, many of these decisions are driven by specific process parameters, cost effectiveness, chemical compatibility, and regulations of other Agencies. EPA has no reason to believe they will change these practices in the event of a final no-listing decision, considering that this decision does not change the status quo. Thus, EPA does not agree that a non-list decision would alter this behavior. Finally, EPA points out that many of the wastes examined in today's rule are, in fact, treated by combustion, typically in hazardous waste incinerators. Therefore, the wastes are not "readily excluded" from combustion as result of the no-list decisions.

2. Sufficient Regulation of Solvents

One commenter stated that EPA assigned appropriate weight to the fact that many solvents already are hazardous, a determination that is relevant to the Agency's assessment of plausible mismanagement scenarios, its determination in the risk assessment that no further risk reduction could be achieved through listing the solvents of concern as hazardous, and its determinations regarding the relevance and applicability of damage incidents identified. This commenter further stated that EPA gave due consideration to the benefits accorded by other regulatory programs. Another commenter, however, stated that the Agency should carefully consider the benefits associated with listing the solvent wastes that may exhibit a hazardous waste characteristic or are sometimes co-managed with presently listed solvent wastes. This commenter stated that there are important legal and policy reasons for listing the solvent wastes at issue in this rulemaking. The commenter noted that in the case of characteristic solvent wastes, listing the respective wastes obviates the need for testing to determine whether the waste is hazardous and could facilitate enforcement because inspectors need only compare the waste to the listing description to verify the applicability of hazardous waste requirements.

In response, the Agency notes that it did carefully consider the impact listing might have for solvent wastes that are already hazardous due to the characteristics, or mixture with hazardous waste. For the wastes under consideration in this rulemaking, EPA believes that the characteristics provide adequate regulatory control. EPA initially evaluated potential risks from all wastes and found risks of possible concern due to air releases from some wastes (for acetonitrile and 2-methoxyethanol; see proposed rule 61 FR 42327–42332). However, the wastes with the apparent risks were already regulated as hazardous. After considering the regulatory controls required, the residual risks were found to be below levels of concern. Based on assessments of risks posed by these wastes, in conjunction with the existing regulatory controls afforded by the existing characteristics and listings, the Agency determined that the solvent wastes as they are generated and managed do not pose a threat to human health or the environment. Therefore, the Agency has decided that listing is not warranted. While listing would obviate the need for testing (for those wastes not already listed or mixed with a listed waste), this is not a compelling reason by itself to list. A listing may assist enforcement to some extent; however, EPA has no indication that there is any problem in the implementation of the characteristic regulations for these wastes. On the contrary, the data collected indicate that generators are, in fact, managing the wastes of concern as hazardous when they are subject to such regulations.

The commenter states that EPA never addresses the actual or potential reclamation of characteristic solvent sludges and byproducts (See 40 CFR 261.2, Table 1). The commenter also argued that the regulatory status of residuals from the recovery of spent solvent wastes are different for listed wastes; if listed, the residuals are hazardous, but if not listed the residuals would be unregulated, unless they exhibit a hazardous characteristic.

The Agency disagrees with the statement that EPA did not consider reclamation. The Agency examined all residuals generated, including those generated from on-site recycling operations. Through the Survey, the Agency collected data on actual or potential solvent recycling and reclamation possibilities. Among the residuals evaluated are heavy ends, filtrates/decantates/distillates, organic/aqueous treated residuals, and filter related media; these were, in part, generated from the recovery of spent solvents or the treatment on-site of spent solvent residuals. Some facilities have the means and the financial incentive to perform reclamation of used solvents (often in-process). Other facilities are prevented from performing any sort of reclamation due to process purity requirements and product quality needs (e.g., pharmaceutical drugs, semiconductors), which may include regulatory requirements (e.g., purity requirements for drugs under the Food, Drug and Cosmetic Act). Aside from value to fuel blenders and incinerators, very little market seems to exist for many spent solvents or their sludges. While it is true that the regulatory status of recovery residuals is different for listed, as opposed to characteristic hazardous waste, EPA does not believe that this would, by itself, provide a strong reason for listing, unless risks can be demonstrated for such wastes. EPA has no data on the characteristics of such off-site residuals, and in fact has no indication that many of the spent solvents at issue are sent for off-site reclamation, beyond thermal treatment. Furthermore, in making a listing determination, EPA's primary focus is the wastes generated on-site, and not treatment residuals that may be generated off-site. To fully consider these derivative wastes would expand the scope of a listing into a much larger effort. EPA has chosen to examine wastes for which it can reasonably expect to collect sufficient data to support a listing evaluation.

The commenter goes on to state that in the HWIR rulemaking, EPA has not set exit levels for most of the solvents covered by the instant rulemaking. Therefore, wastes may meet the HWIR exit levels but still contain substantial concentrations of non-listed solvents. The commenter stated that by listing as hazardous the solvents in this rulemaking, EPA would then develop exit levels for the solvents, thus ensuring the concentrations of these solvents in waste mixtures are reduced to protective levels prior to leaving the Subtitle C regulatory system.

The commenter is premature in assuming the content or effect of the HWIR rulemaking, and an assessment of the effect of that potential rule on residuals addressed in today's final rule is speculative. The Agency points out, however, that the concentrated waste mixtures reported for the solvents at issue are unlikely to be realistic candidates for exemption under HWIR. Due to the high levels of other constituents, these wastes most certainly have to be treated, such that the wastes that might ultimately exit the RCRA system would be treatment residuals. Concentrated organic wastes are invariably treated through incineration or other thermal treatment, and such treatment would likely destroy the solvents in question, as well as the

other hazardous constituents. Furthermore, wastes that are characteristic must be treated for underlying constituents under the Land disposal restrictions (LDR) regulations. Thus, residuals that are exempted under HWIR are not likely to have solvent levels of any concern.

The commenter also stated that by listing the wastes as hazardous, EPA can encourage pollution prevention activities associated with solvent uses and waste management, including but not limited to solvent substitution, process changes and less reliance on combustion. The commenter noted that, through the listing process, EPA could ensure that the wastes will always be managed as hazardous, recognizing that attempts to identify solvent uses and users in the proposal are at best, substantially incomplete and subject to change. The commenter stated that it is entirely plausible that pollution prevention programs emphasizing hazardous waste generation reductions, the increasing cost of disposal associated with the upcoming hazardous waste combustion rules, and other factors will encourage hazardous solvent waste generators to reduce or eliminate the use of listed hazardous waste solvents. Under these circumstances, current codisposal practices are not indicative of future mismanagement scenarios.

The Agency believes that the existing regulatory requirements for these wastes, many of which are hazardous already, provide ample incentives for pollution prevention, both because of liability concerns and disposal costs associated with hazardous wastes. In addition, as noted above, under the LDR regulations, characteristically hazardous wastes must be treated for underlying hazardous constituents. The Agency has reason to believe that industry voluntarily assesses opportunities for pollution prevention. As stated in the Listing Background Document (page 17), all but four of these chemicals are reportable in TRI Form R. Part of that reporting package includes pollution prevention and waste minimization. As an example, use of the three glycol ether chemicals under consideration in this rulemaking (2-methoxyethanol, 2-methoxyethanol acetate, and 2-ethoxyethanol acetate) has diminished significantly, and production of 2-methoxyethanol acetate has been eliminated. Further, the cost of these chemicals is high in comparison with other comparable chemicals. These chemicals are used in industry only when their application is considered so suitable as to overcome any price disadvantages. As a result, for the solvents under consideration in this rulemaking, both regulatory requirements (e.g., characteristics, TRI) and economic factors play a role in encouraging companies to undertake pollution prevention assessments and institute changes where possible. Thus, EPA finds no reasonable basis to project changes in management practices reported in the 3007 Survey, as suggested by the commenter.

The Agency has no reason to suspect that current management practices would be likely to change in the future to a practice that would pose a substantial risk to human health or the environment (e.g., from thermal treatment to land disposal or from a tank-based system to a surface impoundment) due to the regulatory prohibitions, heating value of the waste and/or requirements of the facility's wastewater treatment systems.

The commenter also stated that EPA's assumption that analogous waste streams generated by all industry sectors using any of the solvents always generate an ignitable hazardous waste (based on the fact that some of the wastes reported to the Agency in the questionnaires are ignitable hazardous wastes), and will continue to do so, is not sustainable given the limitations associated with the preliminary and final questionnaires.

EPA disagrees. Nowhere does the Agency assume that analogous wastestreams generated by all industry sectors using a particular solvent always generate an ignitable waste. The Agency has determined, based on reported management practices, that additional management practices for high solvent concentration/high organic containing wastes other than those considered in the risk assessment are not likely to exist. While some solvents may exist in mixtures at levels that do not exhibit the ignitability characteristic, EPA assessed risks from such mixtures as reported in the 3007 Survey. In fact, the initial risk analyses for all solvents did assess the risks from the wastes reported to be hazardous. Except for the cases of acetonitrile and 2-methoxyethanol, EPA did not pursue the impact of the hazardous waste designations, because the risk results for the other solvents were below levels of concern. In the next phase of risk analyses for acetonitrile and 2-methoxyethanol, the Agency did not find significant risks from any remaining nonhazardous wastes. (See Supplemental Risk Assessment document for more details.)

The Agency found that process and other limitations are a technical and regulatory bar to using the 14 chemicals alone or in combination with non-listed solvent wastes. For example, FDA regulations preclude solvent substitution in the pharmaceutical industry. Similarly, chemical purity concerns and final product quality requirements often specify the chemicals to be used.

Another commenter stated that EPA had wrongly assumed that the 10 solvent wastes are already captured as hazardous by the characteristics. The commenter states that four of the ten solvents of concern have flash points that do not meet the characteristic of ignitability: phenol, isophorone, furfural and cyclohexanol. Wastes from these four chemicals could never exhibit the characteristic of ignitability, unless generated in mixtures with some other component that has a low enough flash point. Two commenters provided calculations, using Raoult's Law and the lower flammability limit, of the potential concentration of solvents in a mixture that would result in an ignitable waste. These commenters contend that the solvent concentration in the mixtures must be very high to produce a mixture that is ignitable.

As noted above, EPA did not need to rely on the fact that all waste mixtures would be ignitable. Certainly for the four solvents mentioned by the commenter, EPA did not rely only on the hazardous waste designations, but rather presented risk results for all wastes reported. In addition, the amount of solvent in nonwastewaters for two of the chemicals cited were extremely small (cyclohexanol-16 kg; furfural-<1 kg). Thus it is highly unlikely that these wastes could present any significant risk, regardless of whether or not the wastes were designated as hazardous.

Furthermore, the commenters' calculations are based on the lowest solvent concentration waste being mixed with an organic chemical and the highest solvent concentration waste being mixed with water. However, most of the lower concentration solvent wastes reported are mixed with water (at concentrations of solvent much lower than those presented by the commenter), are managed in a tank-based wastewater treatment system, and undergo biological treatment. Most of the higher concentration solvent wastes reported are mixed with other organics and are managed by some type of thermal treatment due to the heating value of the waste.

3. Waste-Specific Rationales and Response to Specific Comments

Acetonitrile. Decision. EPA is not listing wastes from the solvent use of acetonitrile as hazardous waste under 40 CFR 261.31. As described in the

proposed rule and as modified by subsequent analysis in response to comments, EPA finds no significant risks from treatment in aerated tanks or combustion in a boiler. EPA concludes that potential risks from air releases of acetonitrile stored in open accumulation tanks (i.e., on-site storage tanks) are also not significant, because the vast majority of the nonwastewater residuals stored are already regulated as hazardous waste. In the latter case regulatory controls afforded by the existing solvent listings and the characteristics (primarily ignitability) are protective of human health and the environment.

EPA's final determination not to list this solvent is also based on the analysis in the proposed rule (see 61 FR 42328), as modified by subsequent analysis in response to comment, that potential risks from land-based management of acetonitrile wastes are not significant. All wastewaters found in EPA's 3007 Survey were treated in tanks, except for several wastes that were reported to enter impoundments as part of a wastewater treatment train in volumes that would not present significant risk. In response to comments, EPA conducted further analysis of the potential risks that might arise from treatment of acetonitrile wastewaters in a surface impoundment. This analysis included consideration of any additional risk resulting from noningestion exposure from groundwater (e.g., inhalation). As described in section IV.C, these analyses further confirmed this management practice presents no significant risks (see Table 3).

The proposal also found that the few wastes reported to go to landfills typically contained negligible levels of acetonitrile solvents, and were not of concern. In response to comments, EPA further examined the potential for risks that might arise if more concentrated wastes were placed in an unlined Subtitle D landfill, but continues to believe such risks are not of concern (see specific comments below).

As described in section IV.B, EPA updated its risk analysis for acetonitrile for some management scenarios. While the updated analyses confirmed the evaluation in the proposed rule, the updated analysis for aerated wastewater treatment tanks showed an HQ of two, which is slightly above the Agency's presumptive no-list HQ level of one. EPA does not believe this marginal risk is significant for the following reasons. First and foremost, as noted earlier in section IV.B, the analysis that resulted in the HQ of two is actually more conservative than a true double-high end analysis. The dispersion modeling used in calculating the HQ of two incorporates a high-end receptor distance, in addition to two other high-end parameters used (solvent loading and tank scenario). Furthermore, the solvent loading used for this analysis was the maximum reported for acetonitrile in wastewaters, rather than the 90th percentile value that EPA typically uses to estimate high-end risks (see for example the risk analyses in the recent Petroleum Listing, 63 FR at 42117). In the 3007 Survey for solvent use, facilities reported the treatment of 26 acetonitrile wastewaters in tanks (see the Listing Background Document, App. I), and the maximum was above the 90th% value for the mass loadings from this distribution. EPA used the second highest loading, which was an order of magnitude below the maximum, to see the impact of using this value in the updated analysis. When using the 2nd highest loading, EPA calculated an HQ of 0.02, or well below one. Thus, the HQ of two is an overestimate and does not reflect a significant risk. As further confirmation, EPA also estimated risks for acetonitrile wastes using the methodology from the Air Characteristic Study. This methodology allowed receptor distance to be varied and was thus closer to a true high-end analysis. Using either the maximum acetonitrile loading or the second highest loading, the estimated HQ's were below 1.0 (0.7 and 0.08 respectively). Finally, EPA has recently promulgated regulations under the Clean Air Act (CAA) to control air releases from the industry represented by the one facility with the maximum loading (September 11, 1998, 63 FR 50280). These standards control releases of hazardous air pollutants, such as acetonitrile, from wastewater treatment systems at pharmaceutical producers. Therefore, for these reasons the Agency does not believe that the risks from acetonitrile in wastewater treatment tanks are likely to be significant.

Given that nearly all of the nonwastewater acetonitrile residuals are either already being handled as hazardous, and those that are not handled that way contain negligible amounts of the solvent, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Furthermore, treatment of wastewaters in tanks, or in rare cases in impoundments, presents no significant risks. Therefore, the Agency continues to believe that a no-list decision is warranted.

Specific comments. Several commenters support EPA's no list decision on Acetonitrile. The commenters confirmed that the management practices and characterization of wastewater and nonwastewater residuals from the use of acetonitrile as a solvent have been properly identified. One commenter also noted that the risk assessment conducted by the Agency supports the determination not to list acetonitrile spent solvents. However, another commenter disagreed with the Agency's findings, stating that, despite shortcomings in EPA's risk assessment, the high-end analysis for tank storage resulted in an estimated HQ of 200, orders of magnitude higher than the HQ of 1 typically warranting a hazardous waste listing. This commenter noted that only by performing the Phase III assessment was the Agency able to rationalize a no-list decision.

In response, EPA wishes to clarify the meaning of the different phases of the risk assessment. The iterative process of risk assessment began with bounding analyses as the first phase. This type of analysis (by definition) involves conditions so unlikely as to be virtually impossible. Many scenarios did not show significant risk. Those scenarios which showed significant risk under bounding conditions were assessed under "high-end" conditions in Phase II. This was a more realistic assessment, but still reflected close to a "worst-case" set of conditions.

Of all scenarios evaluated for acetonitrile, only one showed significant risk when modeled under high-end conditions, an uncovered storage tank (also called on-site accumulation in the proposal). The commenter refers to the hazard quotient of 200 calculated for this scenario. However, this result was reported as an intermediate step in the risk assessment process. EPA had significant concerns about this result for two basic reasons. First, this scenario involved storage of solvent wastes pending incineration. Modeling limitations required the Agency to estimate risks based on solvent storage in tanks without covers of any kind. In fact, the scenario assumed that essentially all of the stored acetonitrile would volatilize from the tanks before incineration could take place. The Agency judged this scenario highly unlikely because the waste is being stored for thermal treatment, and it is irrational to assume valuable fuels would be allowed to escape in such a manner. Further, as explained in the proposed rule, the vast majority of the wastes are already classified as hazardous waste because they are either characteristically hazardous, or co-managed with listed hazardous wastes. As such, the storage units would have to comply with RCRA regulations

promulgated to control such air releases (see 40 CFR part 264, subpart CC). Thus, the HQ of 200 is clearly an overestimate, because it was based on modeling releases for wastes that are already hazardous.

In order to assess potential risks from the nonhazardous wastes that were not already subject to Subtitle C controls, the Agency refocused the assessment on the nonregulated waste streams in this scenario (acetonitrile in storage tanks). This third phase of the risk assessment, is a normal and logical step in the iterative risk assessment process. Phase III of the assessment showed that a bounding analysis of these wastes resulted in an HQ below one. Therefore, EPA concluded that the risks from the nonhazardous portion of the acetonitrile wastes are not significant, and that listing of solvent wastes from the use of acetonitrile is not warranted.

One commenter states that large quantities of acetonitrile wastes are generated in concentrations well in excess of levels capable of posing a substantial risk to human health or the environment, and are managed in ways inconsistent with the Congressional directive to minimize the toxicity of mobility of wastes destined for land disposal. The commenter stated that large quantities of solids containing 10,000 ppm solvent are disposed in hazardous waste landfills, while the Universal Treatment Standard (UTS) applicable to acetonitrile is 1.8 ppm.

EPA disagrees that large quantities are generated that present substantial risks. The Agency evaluated risks based on potential exposures arising from plausible management. The highest concentration of acetonitrile going into a surface impoundment is no higher than 0.04 mg/L (see Listing Background Document, Table 3–2). In fact, it would likely be much lower, since those wastewaters are pretreated before entering the impoundment. As described in section IV.C.1, further modeling done for surface impoundments confirmed that risks from such levels were not significant.

The commenter is incorrect in stating that large quantities of solids containing 10,000 ppm acetonitrile are disposed in hazardous waste landfills. First, as noted previously, very few acetonitrile wastes were sent to landfills, i.e., four out of the 254 wastes reported in the Survey. The commenter singled out the one waste with appreciable acetonitrile loading (454 kg/yr.). In EPA's view, this one waste is not reflective of "large quantities" going to landfills. Furthermore, as described further in the following response, the practice is no longer occurring, and the facility in question is currently sending this waste stream for fuel blending, in recognition of its fuel value.

The Agency disagrees with the commenter's conclusion that current management practices are inconsistent with the Congressional directive to minimize the toxicity and mobility of wastes destined for land disposal. The vast majority of the acetonitrile waste (nonwastewater), both by volume (99%) and by acetonitrile loading (99%), is not managed in land-based units. Furthermore, as noted above, the vast majority of acetonitrile wastes are already hazardous, and as such, must meet the Land Disposal Treatment standards prior to land disposal.

Finally, as described earlier in today's document, some commenters argued that EPA should examine more land disposal scenarios, such as landfills. In response, the Agency examined groundwater ingestion risks from the disposal of acetonitrile solids in an unlined landfill. The Agency still believes that landfill disposal of acetonitrile is not a plausible management scenario, and there is no evidence that such waste has ever been disposed in Subtitle D landfills. To the contrary, the only facility that had been sending a significant acetonitrile loading to a landfill (454 kg/yr) sent the waste to a Subtitle C landfill. Furthermore the facility indicated that it had ceased this practice during 1993 and started sending the waste for thermal treatment because of the waste's fuel value. (EPA has received confirmation from the generator of this waste that the material has fuel value on the order of 14,800 BTU per pound.[1]) Thus, EPA believes that such wastes will be sent for thermal treatment under the current regulatory structure. The Agency decided, however, to examine the resulting risks if such disposal were to occur in an unlined Subtitle D landfill. As described in more detail in the Supplemental Risk Assessment, the resulting analysis suggested hazard quotients in the range of 11–22 for a high-end scenario.

EPA does not view these risks as significant, however, for several reasons. First, as noted above, landfill disposal is unlikely given the fuel value of the material, thus EPA does not view disposal in a D landfill plausible. In any event, the elevated HQs were projected for only one waste out of the 254 acetonitrile wastes identified in the 3007 Survey. Even if EPA found that the elevated HQs reflected a plausible management scenario, the Agency might well decide that the potential risk posed by this one waste does not merit listing of all acetonitrile residuals generated. Given the widely varying nature of the industries and wastes involved, and the very small percentage of management activities that even arguably could present a risk of concern, the Agency believes that a broad listing for solvent use would result in over regulation. In any case, EPA concludes that wastes such as these are not likely to be disposed in landfills, and are therefore unlikely to pose significant risks.

Phenol. Decision. EPA is not listing wastes from the solvent use of phenol as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA finds no significant risks from treatment in aerated tanks, storage in tanks, or combustion in a boiler. Furthermore, EPA does not believe that potential risks from land-based management of phenol wastes are significant. None of the wastes containing phenol were reported to go to landfills. Wastes with high organic content that contain any appreciable levels of phenol were classified as hazardous waste, and were sent for fuel blending or incineration as hazardous. Wastewaters were generated from the specialized use of phenol as a solvent in the extraction of materials from crude oil, and the resulting spent phenol wastes were sent to wastewater treatment systems for treatment in tanks or surface impoundments. EPA found risks from impoundments would be low given the dilution and treatment that occurs in these wastewater treatment systems, and the specific facts associated with the impoundment of potential concern (see 61 FR 42337).

In response to comments, EPA conducted further analyses of the potential risks that might arise from treatment of phenol wastewaters in a surface impoundment. In these analyses EPA also included consideration of any additional risk resulting from noningestion exposure from groundwater (e.g., inhalation). as well as codisposal with other solvent wastes under evaluation. As described in section IV.C, these analyses further confirmed this management practice presents no significant risks. EPA used the updated toxicological benchmark discussed in section III of today's rule for all additional analyses. The Agency also used the updated toxicological benchmark to revise the risk assessment results for other practices, i.e., storage and treatment in tanks, and found this

[1] See contact report dated June 10, 1998 documenting a telephone conversation with Dave Giffen, B.F. Goodrich, which is located in the docket accompanying today's rule.

had no significant impact on the risks (see Table 3).

Based the results of the risk analyses in the proposal, as well as the updated evaluations, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

Specific comments. One commenter supported EPA's decision not to list wastes from solvent uses of phenol as hazardous wastes. The commenter agrees with EPA that phenol does not satisfy the criteria for listing in 40 CFR 261.11(a)(3). However, another commenter stated that there are cases where phenol is currently used by itself (without being mixed with other F-listed wastes) as an industrial solvent and with this decision "not to list" phenol as a hazardous waste, EPA would seem to provide disposal option "carte blanche" for current users. Manufacturers can modify their processes to use these solvents, which would no longer be considered hazardous wastes, according to this commenter.

In response, the Agency believes it unlikely that facilities would change their management practices based on the information collected in the Survey. The Survey indicated that all nonwastewater residuals containing phenol were managed as hazardous except one, which is managed by incineration. Thus, the solvent users managed their wastes as hazardous under the existing regulatory framework. There is no evidence that any facility that has not modified their process to use these solvents to date will do so after a no-list decision. Except for the facilities that use phenol for extracting lube oil, most facilities that use phenol as a solvent use it in laboratories or other specialty uses, and the waste solvents are sent for offsite treatment via incineration as hazardous waste. EPA has no indication that such generators could easily modify their use and accumulation practices in an attempt to generate nonhazardous material, nor is there any indication that facilities would do so.

A third commenter stated that EPA's decisions regarding plausible mismanagement scenarios are especially suspect in the case of phenol, because phenol is the 33rd highest volume chemical produced in the United States, is already widely used, and its use is projected to increase. The commenter stated that EPA did not adequately evaluate groundwater risks posed by phenol.

EPA disagrees with the commenter's inference that projected production increases in phenol are destined for solvent use. In fact, more than 96% of the phenol consumed in the U.S. is for nonsolvent uses (see SRI Chemical Economics Handbook, 1996). Increasing demand for products produced from phenol is due to increases for production of caprolactam, aniline, and bisphenol-A, (e.g., see http://www.chemicalweek.com/marketplace/prod__focus.html). Nearly all of the solvent use of this chemical (>99.9%) was attributed to the petroleum industry, of which the Agency conducted a complete survey. Given that the major uses of this solvent were very specialized (i.e., extraction of lube oil), the Agency is confident that no other significant uses are likely to exist. Contrary to the comment, damage from groundwater contamination was evaluated for the proposed rule, and a refined assessment was conducted for the final rule, and noted in section IV.B. These analyses did not find significant groundwater risks (see Table 2), and details are given in the Supplemental Risk Assessment document in the docket.

The commenter also noted that EPA's Hazardous Waste Characteristic Scoping Study (November 1996) showed that phenol releases originated from nonhazardous waste management units, principally landfills and surface impoundments. The Scoping Study, which expressly excluded product spills and accident releases, presents clear evidence of the potential risks posed by the improper management of phenol wastes, and the use of nonhazardous surface impoundments and landfills as plausible mismanagement scenarios for phenol and other solvent wastes. The commenter went on to state that EPA assumed tanks never leak, and landfills would never be used, because none were reported by the 31 facilities receiving the final questionnaire.

The Agency disagrees that this aspect of the Characteristic Scoping Study is relevant to the Solvents Listing Determination. As EPA noted in the proposed rule, damage cases reviewed did not show evidence linking the phenol contamination at damage sites, including nonhazardous landfills and surface impoundments, to phenol use as a solvent. Without evidence that the mismanagement of phenol wastes resulting in contamination is linked to solvent use, the damage incidents are not an adequate basis for listing phenol as a spent solvent. As noted above, the vast majority of phenol is used for nonsolvent uses. Therefore simply pointing to damage case analyses is not compelling evidence for listing phenol wastes that result only from its use as a solvent. If EPA were to determine that certain industries that use phenol for nonsolvent uses are mismanaging wastes and causing significant environmental problems, then the Agency would consider other regulatory approaches. However, EPA's examination of the limited solvent use of this chemical indicates that such uses are not likely to generate wastes of concern. Thus, a listing of spent solvent wastes for this chemical would not be a practical way to address the types of environmental concerns raised by the commenter.

EPA responded to the general issues of tanks and landfill disposal elsewhere in today's document. In the case of phenol, the Agency did not consider the disposal of phenol-containing wastestreams in a landfill to be a plausible management scenario for several reasons. None of the 38 wastestreams containing spent phenol reported in the 3007 Survey are managed in a landfill. One reason for this is that very few phenol wastes are solids (most are organic or aqueous liquids). Only one solid wastestream, spent carbon, contained significant levels of phenol. This was sent offsite for regeneration or incineration. EPA has no reason to conclude that the practice of landfilling will increase. Wastes with higher organic content are thermally treated, and 92% of the thermal treatment was conducted in hazardous waste units or through fuel blending for future burning. Therefore, EPA has no basis to project that wastes with significant phenol concentration are likely to be placed in a landfill.

Methyl Chloride. Decision. EPA is not listing wastes from the solvent use of methyl chloride as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA finds treatment in aerated tanks and surface impoundments, storage in tanks, or combustion in a boiler do not present significant risk. The vast majority of methyl chloride produced is used as an intermediate in chemical manufacturing, and very few uses as a solvent were identified. Essentially all of the wastes reported from the solvent uses of methyl chloride were limited to two facilities that produce butyl rubber. While some of the updated lifetime individual excess cancer risks in Table 3 for storage in tanks and wastewater treatment in tanks/surface impoundments were above 1E–06, the risks are below the 1E–05 level typically used by the Agency for identifying

candidate wastes for listing. Furthermore, as described below, the consideration of other factors indicate these risks are not significant.

The high-end risks for storage tanks (4E–06 from the updated analysis and 2E–06 from the Air Characteristic approach) are highly likely to be overestimates, because the analyses assumed that all of the methyl chloride in the stored solvent waste would be released. This assumption is unlikely for materials being stored expressly to send for thermal treatment. Furthermore, these wastes were reported to be already regulated as hazardous, and would be subject to RCRA regulations limiting air releases under 40 CFR part 264, subpart CC.

The risks found for wastewater treatment tanks (1E–06 from the updated analysis, and 1E–07 from the Air Characteristic approach) are at or below EPA's presumptive no-list level of 1E–06, and do not appear of concern. In addition, these are likely to be overestimates, because the concentration modeled for this scenario was 10 ppm, even though the value was actually reported as less than 10 ppm. EPA's updated assessment of the one wastewater reported to be treated in a surface impoundment showed a high-end risk of 4E–06. However the one impoundment that managed this waste is already a permitted Subtitle C hazardous waste unit, and is therefore subject to regulations limiting air releases (see 40 CFR part 264, subpart CC) and groundwater release (40 CFR part 264, subparts F and K,).

In addition, potential air releases from this industry are being addressed by other regulations promulgated under the Clean Air Act (see 61 FR 46906, September 5, 1996). These regulations control releases of hazardous air pollutants from process units, storage tanks and wastewater treatment systems. EPA believes that these air regulations provide a more integrated approach to controlling air risks than would be possible under the limited controls available for air releases under the RCRA listing program.

Based on the analysis in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the methyl chloride solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

Specific Comments. One commenter supported the Agency's decision not to list methyl chloride. However, another commenter stated that the Agency left potential risks posed by the groundwater exposure pathway unevaluated by assuming methyl chloride was managed only in a permitted surface impoundment, that tanks never leak, and that landfills would never be used.

As discussed more detail in the proposed rule (see 61 FR at 42334–42335), the Agency did evaluate the groundwater exposure pathway through management scenarios where groundwater exposure was plausible. Wastes with high organic content were regulated as hazardous and incinerated. Waste solids were rarely sent to landfills, and in these cases the concentrations of methyl chloride were negligible. The only wastes sent to landfills were a small volume of spent desiccant that contained <5 kg of methyl chloride, and a larger volume sludge/ash from a sludge treatment unit which was reported to have a "trace" amount of methyl chloride. Given that this chemical is readily treated by biodegradation and volatilization in an aerated biological treatment system, it is unlikely that any significant levels of methyl chloride remain in this residual. EPA believes that these very low concentration wastes reflect the types of waste solids that are likely to be sent to landfills. EPA also notes that other nonwastewaters containing any reported levels of methyl chloride (a total loading of 1.6 kg) were regulated as hazardous waste, making disposal in an unlined Subtitle D landfill illegal. Thus, significant groundwater risks from landfills are unlikely to occur.

The very limited solvent use of this chemical, and its unique characteristics (a gas at room temperature) lead EPA to conclude that it is unlikely that other solvent wastes would be generated that are managed in other surface impoundments beyond the example documented in the 3007 survey. As noted above, this impoundment is a hazardous waste unit, and is therefore subject to RCRA regulations limiting groundwater releases. Furthermore, as noted in the proposed rule, methyl chloride is readily treated by biodegradation and volatilization in waste water treatment systems, and thus is unlikely to migrate to the groundwater. Also, the tendency of methyl chloride to hydrolyze in water to methanol suggests that transport to receptors by groundwater is not likely to be significant.

One commenter argued that EPA failed to adequately consider the formation of products of incomplete combustion (PICs) for methyl chloride. The commenter stated that EPA claimed PIC emissions were not cause for concern because the reported waste in question happened to be managed in a hazardous waste combustor, and disagreed with EPA's presumption that this one waste management practice reported represents current and future combustion activities.

As noted above, the solvent uses of methyl chloride are very specialized, and the number of wastes sent for incineration are limited. The three wastes with reported concentrations that went to thermal treatment were all classified as hazardous waste and were treated as such under RCRA regulations. (Two wastes incinerated were treatment sludges that were reported to contain no significant levels of methyl chloride). Given these reported practices, and the very limited solvent uses for this chemical, EPA believes that combustion of solvent wastes with appreciable methyl chloride is likely to occur in RCRA regulated units. Therefore, the Agency believes its presumption for management is valid in this case. In addition, EPA is not aware of any precise way of predicting the kinds or levels of PICs that might be generated in a nonhazardous boiler, especially because the wastes in question would make up only a very small fraction of the wastes being treated.

Nevertheless, EPA did consider the possibility of PIC formation for incineration of methyl chloride wastes. As discussed in the preamble to the proposed rule (61 FR 42334), the amount of methyl chloride in the wastes that are incinerated is extremely small (i.e., 2 kg). The loading of methyl chloride sent to a boiler or industrial furnace (BIF), although larger (i.e., at 2,250 kg) than the amount sent to an incinerator, is in a waste that is hazardous due to ignitability and toxicity characteristics, and therefore must be treated as hazardous wastes. This latter waste is generated from the use of methyl chloride in butyl rubber manufacturing, and it is unlikely that such a complex process could (or would) be modified to avoid generating waste methyl chloride in association with high levels of ignitable hydrocarbons. Thus, combustion in a RCRA-regulated unit seems likely to occur for this waste due to the specialized nature of this solvent use. These combustion units are operated according to stringent air emission standards that limit PIC formation (e.g., see 40 CFR part 264, subpart O, for incinerators and part 266, subpart H, for Boilers and Industrial Furnaces). EPA has also proposed revisions to these standards (see 61FR1538, April 19, 1996 and 62FR24212, May 2, 1997). Given these facts, as well as the results of the risk assessment for these wastes, EPA

does not believe that combustion of these wastes poses a significant risk.

2-Methoxyethanol (2–ME). Decision EPA is not listing wastes from the solvent use of 2-methoxyethanol (2–ME) as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks or combustion in a boiler. EPA also concluded that potential risks from air releases of 2–ME stored in open accumulation tanks are also not significant, because all of the nonwastewater residuals stored under this scenario are already regulated as hazardous waste, either because the wastes exhibit a characteristic, or because the 2–ME waste is commingled with listed wastes. EPA believes that regulatory controls afforded by the existing solvent listings and the characteristics (primarily ignitability) are sufficiently protective of human health and the environment.

None of the wastes examined were sent to land disposal in a landfill or impoundment. Spent solvent solids are thermally treated, and wastewaters are all treated in tanks. In the face of the existing practices, EPA finds it implausible that high organic wastes currently sent to thermal treatment would be sent to landfills. Essentially all of the nonwastewater residuals that contain spent 2–ME are thermally treated or recovered, and nearly all (96%) are treated as hazardous waste. Because all wastewaters are treated in tanks, EPA also does not expect risks from surface impoundment management for these wastes.

Given that nearly all of the nonwastewater 2–ME residuals are already being handled as hazardous, or contain negligible amounts of the solvent, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Furthermore, treatment of wastewaters in tanks presents no significant risks. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to 2–ME are discussed elsewhere in today's document. The few comments specific to 2–ME are discussed below.

Specific comments. One commenter stated that EPA completely failed to evaluate potential risks from groundwater contamination, notwithstanding three groundwater contamination incidents involving this solvent identified by EPA from damage incidents.

EPA described in the proposed rule why the damage cases cited by the commenter were not useful (see 61 FR at 42332). Of the three problem site identified, two were old landfills that received a wide variety of industrial and municipal wastes, and the use of 2–ME prior to disposal was impossible to ascertain. The chemical is widely used as a fuel additive and as a chemical intermediate. Thus, the damage could not be tied to wastes generated from the use of this chemical as a solvent. Damage at the third site also could not be linked to a specific use of 2–ME. However, this site was a used oil recycling site, and the contamination found may be related to the use of 2–ME as a fuel additive. Furthermore, none of the reports examined by the Agency provided any concentration of 2–ME in the groundwater. Thus, the limited data from the damage incidents provide no reliable support for listing wastes from the use of 2–ME as a solvent. In addition, the industries EPA identified as solvent users of 2–ME are not represented in the damage incidents. Finally, the vast majority of nonwastewater solvent wastes identified in the Survey were reported to be hazardous waste, and could not be placed in nonhazardous landfills. Thus, the damage incidents did not provide useful information on current or likely future waste management practices.

One commenter argued that EPA's high-end risk analysis of onsite accumulation tank storage resulted in a HQ of 16, well above the HQ of 1 that typically warrants a hazardous waste listing. Only by performing the completely misguided Phase III assessment was EPA able to arguably rationalize a no-list decision.

EPA's response to this comment is similar to the response above to essentially the same comment raised for acetonitrile. The apparent risks cited by the commenter were from an intermediate stage of the risk assessment, and did not reflect the fact that all nonwastewaters were managed as hazardous waste. EPA concluded that the management scenario referred to in the comment (on-site accumulation of nonwastewaters in unregulated tanks) does not apply to any 2-methoxyethanol waste streams.

2-Ethoxyethanol Acetate (2–EEA). Decision. EPA is not listing wastes from the solvent use of 2-ethoxyethanol acetate (2–EEA) as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks, storage in tanks, or combustion in a boiler. Furthermore, essentially all (99.8%) of the nonwastewaters were reported to be hazardous and were managed as hazardous waste through some form of thermal treatment.

None of the wastes were reported to go to land disposal in landfills or impoundments, and these scenarios were not modeled. Given the existing waste management practices, EPA finds it implausible that high organic waste solids currently sent to thermal treatment would be sent to a landfill. The high percentage of wastes that are hazardous are precluded from disposal in an unlined Subtitle D landfill, and EPA has no evidence to indicate that spent 2–EEA wastes would be placed in a landfill. Due to the nature of the primary industries using 2–EEA as a solvent (e.g., the semiconductor and electronics industries), very few wastewaters are generated. Nearly all of the wastestreams generated are spent solvent wastes that undergo some type of thermal treatment. None of the wastestreams that were reported in the 3007 Survey go to a surface impoundment. Any change from the current treatment in tanks to treatment in impoundments seems unlikely given the capital investment associated with tanks and the liability issues associated with treatment in a surface impoundment. These facilities made an investment in tank-based systems in the absence of any listing, and EPA sees no reason why this would change if the status quo is not changed, i.e., if the wastes are not listed. In addition to cost considerations, some facilities may perceive other benefits from managing the waters in tanks, such as the current exemption from RCRA permitting requirement for such units (see 40 CFR 264.1(g)(6)). If hazardous waste were to be treated in a wastewater treatment system, impoundments in the system would require permitting as a Subtitle C unit. In addition, the use of 2–EEA has been decreasing in recent years, thus other new generators of this spent solvent are unlikely.

Given that nearly all of the nonwastewater 2–EEA residuals are already being handled as hazardous, or contain negligible amounts of the solvent, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Furthermore, treatment of wastewaters in tanks presents no significant risks. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to 2–EEA are discussed elsewhere in today's document. The few comments

related specifically to 2–EEA are discussed below.

Specific comments. Two commenters stated that EPA failed to consider in its risk assessment, that many of the generators manage 2–EEA with other solvents associated with this proposed rule. EPA calculated an HQ for 2–EEA for on-site accumulation of 0.7. Thus, additional risk from other solvents would cause the HQ level to exceed the threshold of one. One of the commenters went on to cite examples of facilities in several industries (e.g., printed circuit board manufacturers) at which multiple solvents were reported.

EPA disagrees with the commenters' concerns about multiple solvent risks. First, the comment cited examples where the hazard quotient would exceed one at facilities that use more than one solvent in combination. However, the use of the chemicals at the facilities cited by the commenter are not solvent use, within the Agency's definition. These facilities used 2-EEA and other chemicals as components in formulations. Thus, no spent solvent is generated and was not included in the risk assessment.

Furthermore, the HQ value of 0.7 cited by the commenter for on-site accumulation is likely to be unrealistically high for the reasons cited for the Phase II results for acetonitrile. The key reason is that essentially all residuals stored prior to thermal treatment were, in fact, already hazardous waste. Thus, air emissions from these wastes are already regulated under RCRA subpart CC to 40 CFR part 264, making the scenario of storage in an open tank unrealistic. EPA did not pursue a third phase of analysis for 2-EEA because the HQ was below one in the Phase II evaluation. Furthermore, the only wastes reported that were not hazardous consisted of one insignificant loading (<1 kg), and one waste characterized as "containers/rags" which contained very low levels of the solvent (<6 kg). Thus, EPA decided further analysis was not needed. As described in the Risk Assessment section, EPA addressed the general comment of the impact of multiple solvents in some wastes by conducting an assessment of the potential for cumulative risks.

One commenter stated that the concentrations of 2-EEA in solvent nonwastewaters range from 0.1% to 100%. These ranges are not consistent with the Agency's position that nonwastewaters would always be managed as a hazardous waste due to ignitability, particularly where the solvent is not co-managed with listed solvent wastes. The commenter was also concerned because the concentration of 2-EEA in wastewaters ranges from 200–20,000 ppm.

While the levels of 2-EEA in solvent nonwastewaters are variable, the reported data clearly indicate that essentially all 2-EEA solvent wastes generated were hazardous, and that these were all incinerated. Concerning the wastewaters, EPA believes the commenter's concern is unfounded. EPA's risk assessment included an analysis of potential risks from air releases from an aerated wastewater treatment tank, and found risks to be well below levels of concern.

Furfural. Decision. EPA is not listing wastes from the solvent use of furfural as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks or surface impoundments, storage in tanks, or combustion in boilers. Essentially all of the solvent use of this chemical (greater than 99.99%) is in the petroleum industry as an extractant for lube oil. Thus, solvent use of furfural is limited, and the Agency identified only a handful of wastes derived from this use.

The furfural solvent wastes are virtually all wastewaters (greater than 99.99%), which were managed in wastewater treatment systems. One of the three facility's wastewater treatment systems uses a surface impoundment, and EPA's bounding analysis for the proposed rule showed no risks of concern from ingestion of groundwater, or inhalation of possible air releases (HQ <1; see 61 FR at 42341).

In response to comments, EPA conducted further analyses of the potential risks that might arise from treatment of furfural wastewaters in a surface impoundment. In these analyses EPA also included consideration of any additional risk resulting from non-ingestion exposure from groundwater (e.g., inhalation). As shown in Table 3, the high-end risk analyses showed that these wastewaters do not present significant risks via either groundwater releases (HQ = 0.46), or air releases (HQ = 0.11).

Based the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the furfural solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

General comments on EPA's methodology and approach that relate to furfural are discussed elsewhere in today's document. EPA did not receive any other specific comments on EPA's decision not to list furfural solvent wastes.

Cumene. Decision. EPA is not listing wastes from the solvent use of cumene as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from treatment in aerated tanks, storage in tanks, or combustion in boilers. While cumene is used in large volumes in the production of other chemicals, such as phenol, its use as a solvent is limited. Essentially all of the wastes containing cumene are thermally treated as hazardous or recovered. Small amounts of wastewaters are sent to treatment systems, and one resulting sludge was reported to be landfilled. However, the amount of cumene in this sludge would be well below the maximum of 28 kg that was used in the original solvent mixture (which contained only 1.7 % of cumene to start with). Thus, after treatment, any risks from cumene would be negligible. Similarly, one wastewater was reported to undergo treatment in a surface impoundment, however, as EPA noted in the proposal, the amount of cumene in the wastewater was small (<47 kg), and would be further reduced by treatment.

In response to comments, EPA conducted further analyses of the potential risks that might arise from treatment of cumene wastewaters in a surface impoundment. In these analyses EPA also included consideration of any additional risk resulting from non-ingestion exposure from groundwater (e.g., inhalation during showering). As shown in Table 2, the revised bounding analyses showed that these wastewaters in impoundments do not present significant risks via either groundwater releases (HQ = 0.0001), or air releases (HQ = 0.003). As noted earlier in today's document, the toxicological values for cumene were updated during the comment period. The new benchmarks were used in the revised analyses, and were also used to recalculate risks derived in the proposed rule (see Table 1). The changes reflect greater tolerance for cumene than the previous benchmarks, and thus have no impact on EPA's decision not to list cumene solvent wastes.

EPA also considered the potential for cumene to form NAPLs, which might present special problems in assessing potential risks. EPA noted in the proposed rule that cumene's water solubility is relatively low, such that NAPLs are theoretically possible.

However, EPA considered the potential risks from NAPLs to be very low, because cumene loading in wastes sent to land-based disposal was minimal. In response to comments, EPA provided further analysis showing that NAPL formation for these wastes is unlikely (see section IV.B).

Based the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the cumene solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

General comments on EPA's methodology and approach that relate to cumene are discussed elsewhere in today's document.

Cyclohexanol. Decision. EPA is not listing wastes from the solvent use of cyclohexanol as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from accumulation in storage in tanks or combustion in boilers. The solvent uses of cyclohexanol are limited, and few wastes containing cyclohexanol were reported. All wastes but one are hazardous waste due to other waste constituents or properties of the waste material. The incinerated material contains low levels of cyclohexanol (16 kg total loading per year). The one other waste generated was reported to go to a nonhazardous landfill, however, this waste is a small volume (750 kg) of filter material that contains negligible level of cyclohexanol. Given the limited solvent uses of this chemical, and the management practices reported, EPA believes other wastes or management practices are not likely to be significant.

As noted earlier in today's document, the toxicological inhalation benchmark ("provisional RfC") for cyclohexanol was adjusted somewhat based on peer review comments. Thus, EPA used the new benchmark to recalculate risks derived in the proposed rule (see Table 3). The revised HQs remain below one, and thus the updated health-based number has no material effect on EPA's decision not to list cyclohexanol solvent wastes.

Based the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the cyclohexanol solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to cyclohexanol are discussed elsewhere in today's document.

Isophorone. Decision. EPA is not listing wastes from the solvent use of isophorone as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from accumulation in storage in tanks or combustion in boilers. The solvent uses of isophorone are limited, and few wastes containing isophorone were reported. All wastes but one were hazardous waste due to mixture with other listed wastes or the ignitability characteristic of the waste material. All wastes were reported to undergo some form of thermal treatment as a hazardous waste. Given the limited solvent uses of this chemical, and the management practices reported, EPA believes other wastes or management practices are likely to be significant.

As noted earlier in today's document, the toxicological value ("provisional RfC") for isophorone was adjusted somewhat based on peer review comments. Thus, EPA used the new benchmark to recalculate risks derived in the proposed rule (see Table 1). The revised HQs remain below one, and thus the updated health-based number has no material effect on EPA's decision not to list isophorone solvent wastes.

Based on the results of the risk analyses in the proposal, the updated evaluations, and the other factors discussed in this document and the proposal, the isophorone solvent wastes are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to isophorone are discussed elsewhere in today's document.

2-Methoxyethanol Acetate (2-MEA). Decision. EPA is not listing wastes from the solvent use of 2-methoxyethanol acetate (2-MEA) as hazardous waste under 40 CFR 261.31. As described in the proposed rule and as modified by subsequent analysis in response to comments, EPA found no significant risks from storage in tanks or combustion in a boiler. 2-MEA is reportedly no longer produced domestically, and solvent use of this chemical is limited. The few wastes generated were classified as hazardous and were all thermally treated as hazardous waste. Given the limited and decreasing use as a solvent, and the waste information reported, EPA believes that other wastes and management practices are unlikely. None of the wastes were reported to be disposed of in landfills or impoundments, and these scenarios were not modeled.

Given the existing practice, EPA finds it implausible that high organic waste solids currently sent to thermal treatment would be sent to a landfill. The wastes are hazardous and thus precluded from disposal in an unlined Subtitle D landfill. EPA has no evidence to indicate that spent 2-MEA wastes would be placed in a landfill. Due to the nature of the solvent uses reported for 2-MEA (diluent in coating and reaction media), no wastewaters are generated, nor were they expected.

Based on the results of the risk analyses in the proposal, the updated risk analysis, and other factors noted above and in the proposed rule, these spent solvent residuals are not likely to pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that a no-list decision is warranted.

More general comments on EPA's methodology and approach that relate to isophorone are discussed elsewhere in today's document. EPA did not receive any specific comments on EPA's decision not to list 2-MEA solvent wastes.

Chemicals with no significant solvent use. As described in the proposed rule and reaffirmed in this final decision, EPA did not find any significant solvent use for four chemicals: p-dichlorobenzene, benzyl chloride, epichlorohydrin, and ethylene dibromide. All but one are relatively reactive chemicals, which makes them unsuitable for most solvent applications. The other substance, p-dichlorobenzene, is a solid at room temperature, limiting its utility as a solvent. In all cases, the data collected by the Agency showed that any solvent use of these chemicals is extremely limited. Some may perhaps have specialty applications in laboratories, but no significant solvent uses were identified. Any residuals reported from the 3007 Survey were primarily from possible solvent use by laboratories and contain low levels of the chemicals under study. All were coded as hazardous, except one dilute wastewater, and were thermally treated as hazardous waste.

The Agency received no new information during the comment period indicating that these four chemicals, (benzyl chloride, epichlorohydrin, ethylene dibromide, and p-

dichlorobenzene) were used as solvents. Comments received by EPA on this issue concurred with the Agency's decision that these four chemicals are not used as solvents, and that they would not fit the description for such a listing. Based on the analyses and factors noted above and in the proposed rule, these spent solvent residuals do not pose a significant hazard to human health or the environment. Therefore, the Agency continues to believe that no-list decisions for these four chemicals are warranted.

V. Regulatory Requirements

A. Regulatory Impact Analysis Pursuant to Executive Order 12866

Executive Order No. 12866 requires agencies to determine whether a regulatory action is "significant." The Order defines a "significant" regulatory action as one that "is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

The Agency estimated the costs of today's final rule to determine if it is a significant regulation as defined by the Executive Order. Because the Agency has decided not to list as hazardous the wastes generated from the use of the solvents evaluated in this rulemaking, no specific action is required under this action. As a result, there are no costs associated with this final rule. This rule was deemed significant for novel policy reasons by the Office of Management and Budget (OMB) and was submitted to OMB for review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a document of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. This rule has no effect as the Agency is issuing this final decision not to list wastes generated from the use of 14 chemicals as solvents as hazardous under the Resource Conservation and Recovery Act (RCRA). The determinations in this rule are limited to specific solvent wastes. The rule does not impose new burdens on small entities. Therefore, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate. The rule would not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. States, tribes and local governments have no compliance costs under this rule. For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. By these findings, EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

D. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

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It issues a final decision not to list wastes generated from the use of 14 chemicals as solvents as hazardous under the Resource Conservation and Recovery Act (RCRA). Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The Agency performed a risk assessment to assist in its determination whether to list or not to list the solvent wastes in this final rule as hazardous waste. This risk assessment calculated the potential risk resulting from the current management of these wastes to individuals (including sensitive populations like children). The Agency has determined that management of these solvent wastes as hazardous is not required and that the environmental health risks or safety risks addressed by this action do not have a disproportionate effect on children.

F. Environmental Justice E.O. 12898

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). The Agency has determined that a hazardous waste listing is not justified for the wastes examined in this rule. As a result, no specific action is required under this rule. It is, therefore, not expected to result in any disproportionately negative impacts on minority or low income communities relative to affluent or non-minority communities.

G. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. As mentioned above, no specific action is required by this action. Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: October 30, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–30601 Filed 11–18–98; 8:45 am]

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Federal Register

Thursday
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Part V

The President

Proclamation 7147—National Farm-City Week, 1998

Proclamation 7148—Thanksgiving Day, 1998

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Title 3—

The President

Proclamation 7147 of November 17, 1998

National Farm-City Week, 1998

By the President of the United States of America

A Proclamation

Thanks in large part to our Nation's farmers, the quality of life the American people enjoy today is the envy of the world. Farmers and ranchers provide us with a safe, abundant, and affordable supply of food and fiber. American agriculture remains one of our country's most important and productive industries, generating more than 22 million jobs and contributing a trillion dollars to the American economy each year. Today's farmers and ranchers also serve as guardians of our precious environment. Using modern technology and environmentally responsible methods, they have improved our Nation's water supply, worked to reduce soil erosion, and restored thousands of acres of wetlands.

This remarkable record of achievement would not be possible, however, without the essential farm-city partnerships that contribute so much to the productivity of America's farms and ranches. From seed and fertilizer merchants to agricultural processors, from research scientists in the laboratory to extension agents in the field, from shippers and manufacturers to inspectors and grocers, urban and rural Americans work together to share the bounty of this land with their fellow citizens and with people around the world.

For more than 40 years, Americans have set aside this special week to recognize and reflect upon the importance of these partnerships in sustaining our Nation's strength and prosperity. As we celebrate Thanksgiving with family and friends, let us remember to count among our many blessings America's agricultural abundance and the collaboration between rural and urban communities that has contributed so much to the quality of our lives.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 20 through November 26, 1998, as National Farm-City Week. I call upon all Americans, in rural and urban communities alike, to join in recognizing the accomplishments of our farmers and all the hardworking individuals who cooperate to produce a wealth of affordable, quality agricultural goods that strengthen and enrich our country.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

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Proclamation 7148 of November 17, 1998

Thanksgiving Day, 1998

By the President of the United States of America

A Proclamation

Thanksgiving Day is one of America's most beloved and widely celebrated holidays. Whether descendants of the original colonists or new citizens, Americans join with family and friends to give thanks to a provident God for the blessings of freedom, peace, and plenty.

We are a Nation of people who have come from many countries, cultures, and creeds. The colonial Thanksgiving at Plymouth in 1621, when the Pilgrims of the Old World mingled in fellowship and celebration with the American Indians of the New World, foreshadowed the challenge and opportunity that such diversity has always offered us: to live together in peace with respect and appreciation for our differences and to draw on one another's strengths in the work of building a great and unified Nation.

And so at Thanksgiving we must also remember to be thankful for the many contributions each generation of Americans has made to preserve our blessings. We are thankful for the brave patriots who have fought and died to defend our freedom and uphold our belief in human dignity. We are thankful for the men and women who have worked this land throughout the decades, from the stony farms of New England to the broad wheat fields of the Great Plains to the fertile vineyards of California, sharing our country's bounty with their fellow Americans and people around the world. We are thankful for the leaders and visionaries who have challenged us through the years to fulfill America's promise for all our people, to make real in our society our fundamental ideals of freedom, equality, and justice. We are thankful for the countless quiet heroes and heroines who work hard each day, raise their families with love and care, and still find time and energy to make their communities better places in which to live. Each of us has reason to be proud of our part in building America, and each of us has reason to be grateful to our fellow Americans for the success of these efforts.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 26, 1998, as a National Day of Thanksgiving. I encourage all the people of the United States to assemble in their homes, places of worship, or community centers to share the spirit of goodwill and prayer; to express heartfelt thanks to God for the many blessings He has bestowed upon us; and to reach out in true gratitude and friendship to our brothers and sisters across this land who, together, comprise our great American family.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J Clinton

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The list will resume when bills are enacted into Public Law during the first session of the 106th Congress, which convenes on January 6, 1999. A cumulative list of Public Laws will be published in the **Federal Register** on November 30, 1998.

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Department of State Special Agents Retirement Act of 1998 (Nov. 13, 1998; 112 Stat. 3406)

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To approve a governing international fishery agreement between the United States and the Republic of Poland, and for other purposes. (Nov. 13, 1998; 112 Stat. 3451)

H.R. 4283/P.L. 105–385

Africa: Seeds of Hope Act of 1998 (Nov. 13, 1998; 112 Stat. 3460)

S. 191/P.L. 105–386

To throttle criminal use of guns. (Nov. 13, 1998; 112 Stat. 3469)

S. 391/P.L. 105–387

Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998 (Nov. 13, 1998; 112 Stat. 3471)

S. 417/P.L. 105–388

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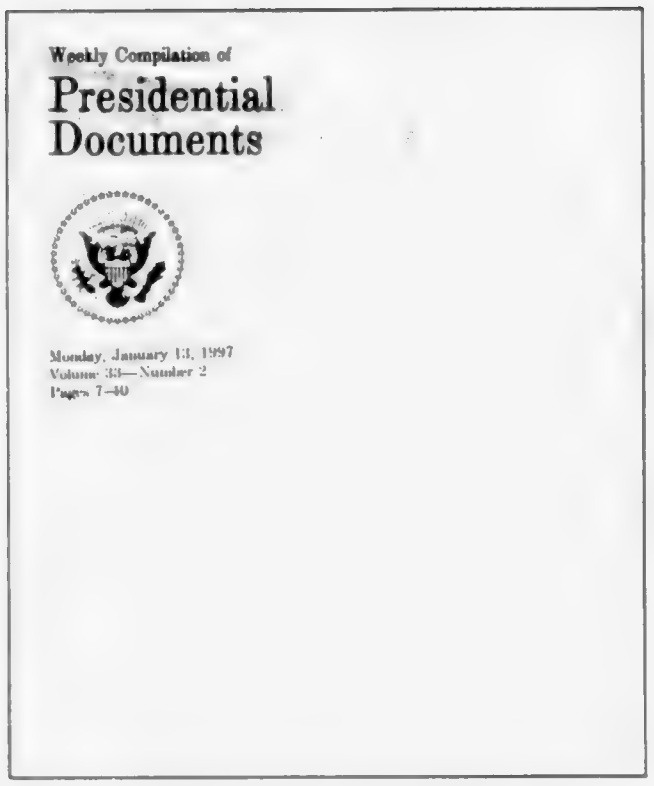

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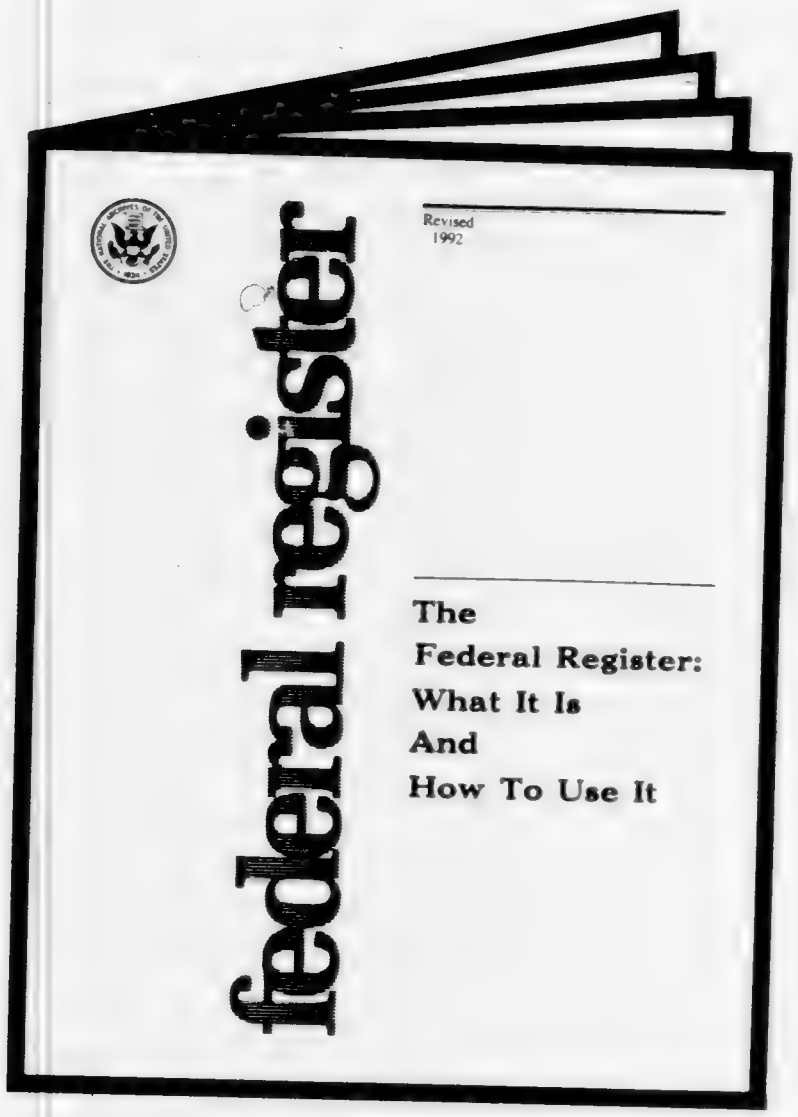

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Rules and Regulations

Federal Register
Vol. 63, No. 224
Friday, November 20, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–082–3]

Mexican Fruit Fly Regulations; Addition of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by expanding the regulated area in San Diego County, CA. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the newly regulated area in San Diego County, CA.

DATES: Interim rule effective November 16, 1998. Consideration will be given only to comments received on or before January 19, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–082–3, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–082–3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

Section 301.64–3 provides that the Deputy Administrator for Plant Protection and Quarantine (PPQ), Animal and Plant Health Inspection Service (APHIS), shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

In an interim rule effective August 10, 1998, and published in the **Federal Register** on August 14, 1998 (63 FR 43603–43604, Docket No. 98–082–1), we designated a portion of the El Cajon area in San Diego County, CA, as a regulated area. In another interim rule effective October 16, 1998, and published in the **Federal Register** on October 22, 1998 (63 FR 56537–56539, Docket No. 98–082–2), we designated a portion of the San Diego area in San Diego County, CA, as a regulated area.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that an additional portion of San Diego County, CA, is infested with the Mexican fruit fly. Specifically, since October 16, 1998, inspectors have detected Mexican fruit flies near the boundaries of the previously regulated San Diego area of San Diego County, CA.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3(c) by expanding the regulated area in the San Diego area of San Diego County, CA. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portions of the quarantined State of California as a regulated area. Officials of State agencies of California are conducting an intensive Mexican fruit fly eradication program in the regulated areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated areas that are substantially the same as those imposed with respect to the interstate movement of regulated articles.

The Mexican fruit fly is not known to occur anywhere else in the continental United States except in portions of Texas.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective upon signature. We will consider comments that are received with 60 days of publication of this rule in the **Federal**

Register. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule restricts the interstate movement of regulated articles from an additional area in San Diego County, CA. Within the regulated area there are approximately 109 small entities that may be affected by this rule. These include 86 fruit sellers, 6 nurseries, 16 wholesale distributors, and 1 grower. These 109 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate, movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.64–3, paragraph (c), the entry for California is revised to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

CALIFORNIA

San Diego County.

El Cajon area—That portion of San Diego County bounded by a line drawn as follows: Beginning at the intersection of State Highway 67 and Mapleview Street; then east along Mapleview Street to Lake Jennings Park Road; then southeast along Lake Jennings Park Road to El Monte Road; then east along an imaginary line to the intersection of Blossom Valley Road and Flinn Springs Road; then southeast along Flinn Springs Road to Olde Highway 80; then east along Olde Highway 80 to Dunbar Lane; then south along Dunbar Lane to Alpine Boulevard; then southeast along Alpine Boulevard to Arnold Way; then south along Arnold Way to Harbison Canyon Road; then southwest along Harbison Canyon Road to Dehesa Road; then southwest along Dehesa Road to Sloane Canyon Road; then west along an imaginary line to the intersection of Willow Glenn Drive and Hillsdale Road; then northwest and west along Hillsdale Road to State Highway 54; then north along State Highway 54 to Chase Avenue; then west along Chase Avenue to Rolling Hills Drive; then west along Rolling Hills Drive to Fuerte Drive; then southwest, west, and northwest along Fuerte Drive to Severin Drive; then north along Severin Drive to Interstate Highway 8; then northeast along Interstate Highway 8 to Russell Road; then west along Russell Road to Cuyamaca Street; then north along Cuyamaca Street to Mission Gorge Road; then east along Mission Gorge Road to Woodside Avenue; then northeast along Woodside Avenue to State Highway 67; then northeast along State Highway 67 to the point of beginning.

San Diego area—That portion of San Diego County bounded by a line drawn as follows: Beginning at the intersection of Mission Gorge Road and Jackson Drive; then southeast along Jackson Drive to Grossmont Boulevard; then east along Grossmont Boulevard to State Highway 125; then south along State Highway 125 to Spring Street; then southeast along Spring Street to Broadway; then southwest along Broadway to Sweetwater Road; then south along Sweetwater Road to South Bay Parkway; then southwest along South Bay Parkway to State Highway 54; then southwest along State Highway 54 to Interstate Highway 5; then southwest along an imaginary line to the intersection of the northern boundary of Silver Strand State Beach and the Pacific Ocean coastline, on the west side of the Coronado Peninsula; then northwest and northeast along the Pacific Ocean coastline to the Wright Avenue Pier; then northwest along an imaginary line to the intersection of Harbor Drive and Nimitz Boulevard; then northwest along Nimitz Boulevard to Rosecrans Street; then northeast along Rosecrans Street to Interstate Highway 5; then north along Interstate Highway 5 to Interstate Highway 8; then northeast along Interstate Highway 8 to Interstate Highway 15; then north along Interstate Highway 15 to Friars Road; then northeast along Friars Road

to Mission Gorge Road; then northeast along Mission Gorge Road to the point of beginning.

* * * * *

Done in Washington, DC, this 16th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31061 Filed 11–19–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–54]

Modification of Class E Airspace; Owatonna, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Owatonna, MN. A VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30, Amendment 4, has been developed for Owatonna Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of, and adds a southeast extension to, the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, September 9, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Owatonna, MN (63 FR 48143). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Owatonna, MN, to accommodate aircraft executing the proposed VOR/DME Rwy 30 SIAP, Amendment 4, at Owatonna Municipal Airport by increasing the radius of, and adding a southeast extension to, the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Owatonna, MN [Revised]

Owatonna Municipal Airport, MN
(lat. 44° 07′ 18″N., long. 93° 15′ 27″W.)
Halfway VOR/DME
(lat. 44° 12′ 16″N., long. 93° 22′ 14″W.)

That airspace extending upward from 700 feet above the surface within an 6.7-mile radius of the Owatonna Municipal Airport, and within 1.7 miles each side of the Halfway VOR/DME 135° radial extending from the 6.7-mile radius of the airport to 14.0 miles southeast of the halfway VOR/DME, excluding that airspace within the Waseca, MN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on November 6, 1998.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 98–31026 Filed 11–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 295

[Docket No. 980717184–8277–02]

RIN 0693–AB48

Advanced Technology Program

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology is today issuing a final rule which amends the implementing regulations for the Advanced Technology Program (ATP). Changes include modification of the ATP evaluation criteria and weights for project selection and clarification of other sections of the rule.

EFFECTIVE DATE: This rule is effective November 20, 1998.

FOR FURTHER INFORMATION CONTACT: To receive additional program information, contact Barbara Lambis at 301–975–4447.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology is today issuing a final rule which amends regulations found at Part 295 of Title 15 of the Code of Federal

Regulations, which implements the Advanced Technology Program (ATP). These changes strengthen the fundamental mission of the ATP; for government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation. Such a unique government-industry research partnership fosters dramatic gains in existing industries, accelerates the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets, and helps spawn new industries of the 21st century. Furthermore, the changes also ensure that the fundamental strengths of the ATP remain unchanged, especially the requirement that the ATP continue to be a wholly merit-driven program based on peer review. Changes to Part 295 include revisions on the following topics (please see the analysis of comments below for additional details):

- Section 295.2, Definitions, is modified to add a definition of "company" for clarity; revises the definition of "industry-led joint research and development venture" for clarity; and removes the definition of "joint research and development venture" or "joint venture" which is already included in the ATP statute.
- Section 295.4, The selection process, is modified to eliminate funding to assist proposers in overcoming any organizational deficiencies because the adequacy of the organizational structure is included in one of the ATP selection criteria.
- Section 295.6, Criteria for selection, is modified to place equal emphasis on the technical and economic merits of a proposal in accordance with the purpose of the Program.
- Sections 295.10 and 295.11 are removed because they are operational procedures unnecessary for inclusion in a regulation.
- Redesignated section 295.11, NIST technical and educational services for ATP recipients, is modified to add educational services to be provided to ATP recipients.
- Section 295.21, Qualifications of proposers, is modified to state that for joint ventures, costs will only be allowed after the execution of the joint venture agreement and approval by NIST.
- Also, a number of administrative and clerical changes are implemented to sections 295.5, 295.7, 295.8, and 295.24 for consistency and clarity.

Summary of Comments

On September 25, 1998, NIST published a notice of proposed rulemaking in the **Federal Register** (63 FR 51307). In response to this notice three comments were received; two from associations representing universities and one from a state entity. An analysis of the comments follows.

Section 295.2 Definitions—(2 Comments)

One commenter stated that the definition of "company" should include "limited liability company (LLC). Another commenter raised concern that the current and proposed definition of a joint venture imposes restrictions on the participation of universities and urged that it be conceptualized as broadly as possible so that universities can more fully participate in partnership with private industry.

NIST Response: ATP accepts the suggestion to include limited liability partnership in the definition and the change is reflected herein. No change is made with respect to the second comment since the definition of a joint venture already offers universities the opportunity to participate in partnership with the private industry and the ATP statute requires joint ventures to be industry-led.

Section 295.5 Use of Pre-proposals in the Selection Process—(1 Comment)

One commenter stated that it was uncertain from the proposed change whether or not proposers are "accepted" or "rejected" at the pre-proposal stage, or whether they are just given feedback as to how they can improve their full proposal.

NIST Response: To clarify any uncertainty, the section is modified to indicate that written feedback is provided to the proposers to determine whether the proposed projects appear sufficiently promising to warrant further development into full proposals and that proposals are neither "accepted" or "rejected" at the pre-proposal stage.

Section 295.6 Criteria for Selection—(1 Comment)

One commenter stated that the criteria may be too broad and suggested that ATP add some level of breakdown of each major category to better guide proposers in the proposal development process.

NIST Response: Some level of breakdown of each of the two major categories is included in this section. The ATP Proposal Preparation Kit will help guide proposers further in the proposal development process by providing detailed information about the types of documentation that will fulfill the evaluation criteria.

Section 295.7 Notice of Availability of Funds—(1 Comment)

One commenter suggested that information on pre-proposals be added to be consistent with section 295.5.

NIST Response: Since NIST may use mandatory or optional pre-proposals, the appropriate Commerce Business Daily notice and ATP Proposal Preparation Kit will provide the appropriate information.

Section 295.8 Intellectual Property Rights: Publication of Research Results—(3 Comments)

Two commenters raised opposition to the restriction that title to inventions arising from ATP funded projects must vest in a company or companies incorporated in the United States and requested that the proposed rulemaking be deferred until this is resolved or the restriction be lifted to include universities. Another commenter suggested that this section be modified to require companies to list their "background intellectual property rights" they bring to the program at the beginning of the project, so there is no confusion as to what is actually developed in the course of the technology development.

NIST Response: The proposed rule made no change to the ATP patent policy. Since NIST did not seek public comment on the ATP patent policy, no changes are made here. No change is made with respect to the second comment because requiring the companies to list their "background intellectual property rights" they bring to the program at the beginning of the project would cause a significant burden on the companies and is unnecessary.

Additional Information

Effective Date of Final Rule

Pursuant to authority at 5 U.S.C. 553(a)(2), this final rule relating to grants, benefits, and contracts is exempt from the delayed effective date requirement of 5 U.S.C. 553(d), and is therefore being made effective immediately without a 30 day delay in effective date.

Executive Order 12866

This rule has been determined to be significant under section 3(f) of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism

assessment under Executive Order 12612.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities. (5 U.S.C. 605(b)). This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. Specifically, based on past experience and currently foreseen budgets, the ATP would expect to receive only a few hundred proposals annually from small businesses, and from these, to make under 100 awards. Seeking ATP funding is entirely voluntary. No comments were received regarding this certification. As such, a final regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains collection of information requirements subject to review and approval by the OMB under the PRA. The collection of information requirement applies to persons seeking financial assistance under the ATP as well as reporting requirements if financial assistance is granted. The collection of information requirements have been approved under OMB Control Number 0693–0009 and 0651–0032. The public reporting burden per respondent for the collection of information contained in this rule is estimated to range between 20 and 30 hours per submission and 3 hours annually for recipients of financial assistance to provide monitoring reports. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments on the burden estimates, or any other aspect of the information requirements, should be addressed to Barbara Lambis, National Institutes of Standards and Technology; Advanced Technology Program; 100 Bureau Drive, Stop 4700; Administration Bldg. 101, Room A333; Gaithersburg, MD 20899–4700.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

Executive Order 12372

Executive Order 12372 "Intergovernmental Review of Federal Programs" does not apply to this Program.

List of Subjects in 15 CFR Part 295

Inventions and patents, Laboratories, Research and development, Science and technology.

Dated: November 16, 1998.

Robert E. Hebner,

Acting Deputy Director, National Institute of Standards and Technology.

For reasons set forth in the preamble, Title 15, Part 295 of the Code of Federal Regulations is amended as follows:

PART 295—ADVANCED TECHNOLOGY PROGRAM

1. The authority citation for Part 295 continues to read as follows:

Authority: 15 U.S.C. 278n.

2. Section 295.2 is amended by removing paragraph (j), redesignating paragraphs (b) through (i) as paragraphs(c) through (j), revising newly redesignated paragraph (i), and adding new paragraph (b) to read as follows:

§ 295.2 Definitions.

* * * * *

(b) The term "company" means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), or corporations.

* * * * *

(i) The term "industry-led joint research and development venture" or "joint venture" means a business arrangement that consists of two or more separately-owned, for-profit companies that perform research and development in the project; control the joint venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The joint venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. A for-profit company or an independent research organization may serve as an Administrator and perform administrative tasks on behalf of a joint venture, such as handling receipts and disbursements of funds and making antitrust filings. The following activities are not permissible for ATP funded joint ventures:

(1) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(2) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and

(3) Entering into any agreement or engaging in any other conduct:

(i) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(ii) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

* * * * *

4. Section 295.4 is revised to read as follows:

§ 295.4 The selection process.

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. Source evaluation boards (SEB) are established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals may be eliminated by the SEB that do not meet the requirements of this Part of the annual **Federal Register** Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage are that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high-risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to

§ 295.7; or does not meet the cost-sharing requirement. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal.

(b) In the second step, referred to as the "technical and business review," proposals are evaluated under the criteria found in § 295.6. Proposals judged by the SEB after considering the technical and business evaluations to have the highest merit based on the selection criteria receive further consideration and are referred to as "semifinalists."

(c) In the third step, referred to as "selection of finalists," the SEB prepares a final ranking of semifinalist proposals by a majority vote, based on the evaluation criteria in § 295.6. During this step, the semifinalist proposers will be invited to an oral review of their proposals with NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as "selection of recipients," the Selecting Official selects funding recipients from among the finalists, based upon: the SEB rank order of the proposals on the basis of all selection criteria (§ 295.6); assuring an appropriate distribution of funds among technologies and their applications; the availability of funds; and adherence to the Program selection criteria. The Program reserves the right to deny awards in any case where information is uncovered which raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. For example, NIST may request that the proposer delete from the scope of work a particular task that is deemed by NIST to be product development or otherwise inappropriate for ATP support.

5. Section 295.5 is revised to read as follows:

§ 295.5 Use of pre-proposals in the selection process.

To reduce proposal preparation costs incurred by proposers and to make the selection process more efficient, NIST may use mandatory or optional preliminary qualification processes based on pre-proposals. In such cases, announcements requesting pre-proposals will be published as indicated in § 295.7, and will seek abbreviated proposals (pre-proposals) that address both of the selection criteria, but in considerably less detail than full proposals. The Program will review the pre-proposals in accordance with the selection criteria and provide written feedback to the proposers to determine whether the proposed projects appear sufficiently promising to warrant further development into full proposals. Proposals are neither "accepted" or "rejected" at the pre-proposal stage. When the full proposals are received in response to the notice of availability of funds described in § 295.7, the review and selection process will occur as described in § 295.4.

6. Section 295.6 is revised to read as follows:

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines that it has scientific and technological merit and that the proposed technology has strong potential for broad-based economic benefits to the nation. Additionally, no proposal will be funded that does not require Federal support, that is product development rather than high risk R&D, that does not display an appropriate level of commitment from the proposer, or does not have an adequate technical and commercialization plan.

(a) *Scientific and Technological Merit (50%).* The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The technical leverage of the technology must be adequately explained.

The research must have a strong potential for advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The technical plan must be clear and concise, and must clearly identify the core innovation, the technical approach, major technical hurdles, the attendant risks, and clearly establish feasibility through adequately detailed plans linked to major technical barriers. The plan must address the questions of "what, how, where, when, why, and by whom" in substantial detail. The Program will assess the proposing team's relevant experience for pursuing the technical plan. The team carrying out the work must demonstrate a high level of scientific/technical expertise to conduct the R&D and have access to the necessary research facilities.

(b) *Potential for broad-based economic benefits (50%).* The proposed technology must have a strong potential to generate substantial benefits to the nation that extend significantly beyond the direct returns to the proposing organization(s). The proposal must explain why ATP support is needed and what difference ATP funding is expected to make in terms of what will be accomplished with the ATP funding versus without it. The pathways to economic benefit must be described, including the proposer's plan for getting the technology into commercial use, as well as additional routes that might be taken to achieve broader diffusion of the technology. The proposal should identify the expected returns that the proposer expects to gain, as well as returns that are expected to accrue to others, i.e., spillover effects. The Program will assess the proposer's relevant experience and level of commitment to the project and project's organizational structure and management plan, including the extent to which participation by small businesses is encouraged and is a key component in a joint venture proposal, and for large company single proposers, the extent to which subcontractor/subrecipient teaming arrangements are featured and are a key component of the proposal.

7. Section 295.7 is revised to read as follows:

§ 295.7 Notice of availability of funds.

The Program shall publish at least annually a **Federal Register** notice inviting interested parties to submit proposals, and may more frequently publish invitations for proposals in the Commerce Business Daily, based upon the annual notice. Proposals must be submitted in accordance with the guidelines in the ATP Proposal Preparation Kit as identified in the published notice. Proposals will only be considered for funding when submitted in response to an invitation published in the **Federal Register**, or a related announcement in the Commerce Business Daily.

8. Section 295.8(a)(1) and 295.8(a)(2) are revised to read as follows:

§ 295.8 Intellectual property rights; Publication of research results.

(a)(1) *Patent Rights.* Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. Joint ventures shall provide to NIST a copy of their written agreement which defines the disposition of ownership rights among the members of the joint venture, and their contractors and subcontractors as appropriate, that complies with the first

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sentence of this paragraph. The United States will reserve a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(2) *Patent Procedures.* Each award by the Program shall include provisions assuring the retention of a governmental use license in each disclosed invention, and the government's retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by the funding Recipient to the Program, including the subject inventions of members of the joint venture (if applicable) in which the funding Recipient is a participant, contractors and subcontractors of the funding Recipient. The funding Recipient shall disclose such subject inventions to the Program within two months after the inventor discloses it in writing to the Recipient's designated representative responsible for patent matters. The disclosure shall consist of a detailed, written report which provides the Program with the following: the title of the present invention; the names of all inventors; the name and address of the assignee (if any); an acknowledgment that the United States has rights in the subject invention; the filing date of the present invention, or, in the alternative, a statement identifying that the Recipient determined that filing was not feasible; an abstract of the disclosure; a description or summary of the present invention; the background of the present invention or the prior art; a description of the preferred embodiments; and what matter is claimed. Upon issuance of the patent, the funding Recipient or Recipients must notify the Program accordingly, providing it with the Serial Number of the patent as issued, the date of issuance, a copy of the disclosure as issued, and if appropriate, the name, address, and telephone number(s) of an assignee.

* * * * *

§§ 295.10 and 295.11 [Removed]

§§ 295.12 and 295.13 [Redesignated as sections 295.10 and 295.11]

9. Sections 295.10 and 295.11 are removed and §§ 295.12 and 295.13 are redesignated as §§ 295.10 and 295.11.

10. The newly redesignated § 295.11 is amended by revising the heading and by adding a new paragraph (c) to read as follows:

§ 295.11 Technical and educational services for ATP recipients.

* * * * *

(c) From time to time, ATP may conduct public workshops and undertake other educational activities to foster the collaboration of funding Recipients with other funding resources for purposes of further development and commercialization of ATP-related technologies. In no event will ATP provide recommendations, endorsements, or approvals of any ATP funding Recipients to any outside party.

11. Section 295.21 is revised to read as follows:

§ 295.21 Qualifications of proposers.

Subject to the limitations set out in § 295.3, assistance under this subpart is available only to industry-led joint research and development ventures. These ventures may include universities, independent research organizations, and governmental entities. Proposals for funding under this Subpart may be submitted on behalf of a joint venture by a for-profit company or an independent research organization that is a member of the joint venture. Proposals should include letters of commitment or excerpts of such letters from all proposed members of the joint venture, verifying the availability of cost-sharing funds, and authorizing the party submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal. No costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

12. Section 295.24 is revised to read as follows:

§ 295.24 Registration.

Joint ventures selected for funding under the Program must notify the Department of Justice and the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

[FR Doc. 98–30956 Filed 11–17–98; 2:55 pm]
BILLING CODE 3510–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ–001–BU; FRL–6183–7]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; Ozone; Extension of Plan Submittal Deadline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 6, 1997, EPA published a rule announcing our finding that the Phoenix, Arizona, metropolitan area had failed to attain the 1-hour national ambient air quality standard for ozone as required by the Federal Clean Air Act (CAA or the Act). This finding resulted in the area being reclassified by operation of law from a "moderate" to a "serious" ozone nonattainment area. In the rule, we also set a deadline of December 8, 1998 for Arizona to submit the revisions to its implementation plan that are needed to meet the Act's requirements for serious ozone nonattainment areas. In this action, we are extending the submittal deadline to March 22, 1999.

DATES: This rule is effective on January 4, 1999 without further notice, unless EPA receives adverse comments by December 7, 1998. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Please address comment to Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. We have also placed a copy of this document in the air programs section of our website at www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Frances Wicher at (415) 744–1248 or wicher.frances@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

What Action Is EPA Taking in This Rule?

EPA is extending by three and one-half months, until March 22, 1999, the

date by which the State of Arizona must submit the revisions to the Phoenix metropolitan area's state implementation plan (SIP) that are needed to meet the Clean Air Act's requirements for serious ozone nonattainment areas. These revisions include a demonstration that the area will meet the 1-hour ozone standard as expeditiously as practicable but no later than November 15, 1999; a demonstration that the plan provides for at least a 9 percent reduction in ozone precusors; a current, comprehensive, and accurate emissions inventory; an enhanced vehicle inspection and maintenance program; and contingency measures.[1]

The previous submittal deadline for the serious area plan was December 8, 1998. We set this date at the same time we found the Phoenix moderate ozone nonattainment area had failed to attain the ozone standard by its required deadline of November 15, 1996. See 62 FR 60001 (November 6, 1997).

What Is EPA's Authority To Set Submittal Dates?

When an area is reclassified, we have the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. If a State fails to submit a complete plan by the required deadline, the area is potentially subject to sanctions and a federally-imposed implementation plan under sections 179(a) and 110(c) of the Act.

Why Did EPA Originally Set the Submittal Deadline at December 8, 1998?

The Phoenix reclassification was proposed on September 2, 1997. See 62 FR 46229. At that time, we also proposed that the serious area plan be due twelve months from the effective date of the final reclassification. We selected the 12-month schedule instead of the more usual 18-month schedule for submittal of a revised plan in order to ensure that the revised air quality plan would be submitted before the beginning of the "ozone season" in 1999. The ozone season generally occurs during the summer months from mid-May to October when high temperatures and extended daylight hours create the conditions most conducive to ozone formation. Setting the submittal deadline before the beginning of the 1999 ozone season helps ensure that additional controls would be in place to reduce ozone concentrations during this season. The 1999 ozone season is the one that procedes the November 15, 1999 attainment deadline for serious ozone nonattainment areas.

For Phoenix, we received comments opposing the 12-month deadline as too short to develop the needed plan; however, none of the commenters proposed an alternative time frame. We, therefore, set a submittal deadline of 12 months from the effective date of the final reclassification. For Phoenix, this resulted in a December 8, 1998 submittal deadline.[2]

What Impact Will Extending the Deadline Have on the Area's Ability to Attain the 1-Hour Ozone Standard?

In Phoenix, high levels of ozone are most likely to occur during the ozone season from mid-May until late September. To reduce ozone concentrations in the upcoming 1999 ozone season, the State will need to implement additional controls prior to the beginning of this ozone season. The March 22 submittal deadline for the serious area plan is still well before the beginning of the Phoenix ozone season; therefore, extending that deadline should not affect the State's ability to implement needed controls by the beginning of the 1999 ozone season. However, the March 22 deadline still provides us with an approximately 60-day period prior to the start of the ozone season for determining that the State has submitted a complete plan. For this reason, we do not believe that the extension of the submittal deadline will adversely impact air quality in the Phoenix area.

II. What If I Want To Comment on This Action?

We are publishing this rule as a "direct" final action without first proposing the rule and providing an opportunity for public comment. We are finalizing this rule directly because we believe this is noncontroversial and do not expect to receive unfavorable comments on it. However, in the "proposed rules" section of this **Federal Register** publication, we are also publishing a separate document to serve as the proposal should adverse comments be received. This final rule will be effective January 4, 1999 without further notice from us unless we receive unfavorable comments by December 7, 1998.

If we do receive adverse comments, then we will publish a document in the **Federal Register** withdrawing this final rule and informing the public that the rule will not take effect. We will then address all public comments in a later final rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's action would simply extend the deadline for submittal of a plan required by the Clean Air Act; therefore, it will not create a new mandate on state, local or tribal governments. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an

[1] This extension of the submittal deadline does not affect the submittal dates for the enhanced ozone monitoring program elements that are required for serious ozone nonattainment areas by CAA section 182(c)(1). These dates are already required by regulations at 40 CFR part 58. The extension also does not affect the submittal date for the clean fuel vehicle program required by section 182(c)(4) which is established in section 246(a)(3) of the Act as 1 year from the effective date of the reclassification.

[2] The effective date was subsequently reset to February 13, 1998 because the original final action was not submitted to Congress prior to its original effective date as required by the Administrative Procedures Act. We issued a technical correction to the effective date on February 13, 1998; however, we retained the December 8, 1998 submittal deadline for submittal of the serious area plan.

environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is neither economically significant nor does it involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This action will not have a significant impact on a substantial number of small entities because it simply extends the deadline for the State of Arizona to submit an already-mandated requirement. Because the State of Arizona is not a "small entity" under RFA and this action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"). signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action extending the deadline for submittal of an already-required plan does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, ozone.

Date: October 24, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–29820 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 406

rain Mills Point Source Category

CFR Correction

In title 40 of the Code of Federal Regulations, part 400 to 424, revised as of July 1, 1998, on page 78, in the second column, § 406.22 is printed correctly as follows:

§ 406.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 kg of corn)	
BOD5	0.21	0.07
TSS	0.18	0.06
pH	(1)	(1)
	English units (pounds per 1,000 stdbu of corn)	
BOD5	12.0	4.0
TSS	10.5	3.5
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

[39 FR 10513, Mar. 20, 1974, as amended at 60 FR 33936, June 29, 1995]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
New York: Erie (FEMA Docket No. 7249).	Town of Orchard Park.	December 20, 1997, December 27, 1997, *The Southtowns Citizen.*	Mr. Dennis J. Mill, Supervisor of the Town of Orchard Park, 4295 South Buffalo Street, Orchard Park, New York 14127.	March 27, 1998	360255 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–31041 Filed 11–19–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7273]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Connecticut: Hartford.	City of Bristol	March 20, 1998, March 27, 1998, *Bristol Press.*	The Honorable Frank N. Nicastrov, Sr., Mayor of the City of Bristol, 111 North Main Street, Bristol, Connecticut 06010.	March 13, 1998	090023 B
Florida: Broward	City of Pompano Beach.	May 22, 1998, May 29, 1998, *Sun-Sentinel.*	The Honorable William F. Griffin, Mayor of the City of Pompano Beach, P.O. Drawer 1300, 100 West Atlantic Boulevard, Pompano Beach, Florida 33060.	April 24, 1998	120055 F

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Orange	Unincorporated Areas.	December 9, 1997, December 16, 1997, *The Orlando Sentinel.*	M. Krishnamurthy, Ph.D., P.E., Manager, Orange County Stormwater, Management Department, 4200 South John Young Parkway, Orlando, Florida 32839.	July 17, 1997	120179 D
Illinois: Cook and Lake.	Village of Barrington.	September 10, 1998, September 17, 1998, *Barrington Courier-Review.*	Mr. Ronald Hamelberg, Village of Barrington President, 206 South Hough Street, Barrington, Illinois 60010.	December 16, 1998.	170057 F
Maine: Knox	Town of South Thomaston.	May 21, 1998, May 28, 1998, *The Courier Gazette.*	Mr. John Spear, First Selectman, Town of South Thomaston, P.O. Box 147, South Thomaston, Maine 04858.	May 13, 1998	230078 B
Minnesota: Hennepin	City of Maple Grove.	March 25, 1998, April 1, 1998, *Osseo-Maple Grove Press.*	The Honorable Robert A. Burlingame, Mayor of the City of Maple Grove, P.O. Box 1180, 9401 Fernbrook Lane, Maple Grove, Minnesota 55311–6180.	March 18, 1998	270169 B
Olmsted	Unincorporated Areas.	March 6, 1998, March 13, 1998, *Post-Bulletin.*	Mr. Richard Devlin, Olmsted County Administrator, 151 4th Street, S.E., Rochester, Minnesota 55904.	February 27, 1998	270626 D
Olmsted	City of Rochester	March 6, 1998, March 13, 1998, *Post-Bulletin.*	The Honorable Chuck Caufield, Mayor of the City of Rochester, 201 4th Street, S.E., Rochester, Minnesota 55904–3782.	February 27, 1998	275246
New Jersey: Hunterdon.	Township of Tewksbury.	March 12, 1998, March 19, 1998, *Hunterdon County Democrat.*	Mr. Ralph E. Blakeslee, III, Township Administrator for the Township of Tewksbury, 169 Old Turnpike Road, Califon, New Jersey 07830.	June 17, 1998	340516 B
Ohio: Lorain	City of Avon	October 14, 1998, October 21, 1998, *The Morning Journal.*	The Honorable James A. Smith, Mayor of the City of Avon, 36080 Chester Road, Avon, Ohio 44011–1588.	October 6, 1998	390348 C
Franklin	City of Grove City	October 7, 1998, October 14, 1998, *Grove City Record.*	The Honorable Cheryl L. Grossman, Mayor of the City of Grove City, P.O. Box 427, Grove City, Ohio 43123–0427.	September 28, 1998.	390173 G
Lorain	City of North Ridgeville.	March 18, 1998, March 25, 1998, *The Press & Light.*	The Honorable Deanna C. Hill, Mayor of the City of North Ridgeville, 7307 Avon Belden Road, North Ridgeville, Ohio 44039.	March 9, 1998	390352 C
Tennessee: Shelby	City of Bartlett	October 2, 1998, October 9, 1998, *The Commercial Appeal.*	The Honorable Bobby K. Flaherty, Mayor of the City of Bartlett, 6400 Stage Road, Bartlett, Tennessee 38134.	September 25, 1998.	470175 E
Haywood	City of Brownsville	August 6, 1998, August 13, 1998, *Brownsville States-Graphic.*	The Honorable F. Webb Banks, Mayor of the City of Brownsville, 111 North Washington Street, Brownsville, Tennessee 38012.	July 30, 1998	470087 C
Shelby	Unincorporated Areas.	October 2, 1998, October 9, 1998, *The Commercial Appeal.*	Mr. Jim Kelley, Shelby County Chief Administrative Officer, 160 North Main Street, Suite 850, Memphis, Tennessee 38103.	September 25, 1998.	470214 E

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–31040 Filed 11–19–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the

National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
FLORIDA	
Leesburg (City), Lake County (FEMA Docket No. 7255)	
Lake Hollywood:	
Entire shoreline	*77
Ponding Area K1–1:	
Entire shoreline	*69
Ponding Area K1–2B:	
Entire shoreline	*74
Ponding Area K1–2C:	
Entire shoreline	*73
Ponding Area K1–2D:	
Entire shoreline	*73
Maps available for inspection at the City of Leesburg Engineering Department, 501 West Meadow Street, Leesburg, Florida.	
GEORGIA	
Augusta (City) (FEMA Docket No. 7255)	
Oates Creek:	
Approximately 50 feet upstream of Fort Gordon Highway	*125
Approximately 30 feet downstream of Olive Road	*146
Oates Creek Tributary No. 1:	
At confluence with Oates Creek	*144
At Olive Road	*154
Rocky Creek:	
Just downstream of New Savannah Road	*125
Approximately 800 feet downstream of Old Savannah Road	*130
Butler Creek:	
Just downstream of Windsor Spring Road	*188
Just upstream of Windsor Spring Road	*190
Rocky Creek Tributary No. 2:	
At confluence with Rocky Creek	*128
Approximately 0.3 mile upstream of confluence with Rocky Creek	*128
Maps available for inspection at the Augusta-Richmond County Planning Department, 525 Telfair Street, Augusta, Georgia.	
ILLINOIS	
Glenview (Village), Cook County (FEMA Docket No. 7231)	
South Navy Ditch:	
At confluence with Chicago River, North Branch, West Fork	*628
Approximately 100 feet downstream of Soo Line Railroad	*628
Des Plaines River:	
Upstream side of Central Road	*637
Approximately 0.7 mile upstream of Central Road	*637
Chicago River, North Branch, West Fork:	
At the downstream corporate limits	*621
At the upstream corporate limits	*631
Chicago River, North Branch:	
Approximately 300 feet upstream of corporate limits	*624
At Central Road	*621
Maps available for inspection at the Glenview Village Hall, 1225 Waukegan Road, Glenview, Illinois.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
NEW JERSEY	
Beach Haven (Borough), Ocean County (FEMA Docket No. 7243)	
Atlantic Ocean:	
At intersection of Beach Avenue and 6th Street	*8
Approximately 650 feet southeast of the intersection of Atlantic Avenue and Taylor Avenue	*13
Approximately 50 feet east of intersection of 6th Street and Atlantic Avenue	#1
Little Egg Harbor:	
Entire shoreline within community	*10
Maps available for inspection at the Borough Zoning Office, Beach Haven Municipal Building, 300 Engleside Avenue, Beach Haven, New Jersey.	
Barnegat Light (Borough), Ocean County (FEMA Docket No. 7243)	
Atlantic Ocean:	
Approximately 1,000 feet southeast of intersection of East 26th Street and Long Beach Boulevard	*13
East side of Long Beach Boulevard	#1
Barnegat Bay:	
At the intersection of Bayview Avenue and 10th Street	*5
Maps available for inspection at the Borough Hall, 10 West 10th Street, Barnegat Light, New Jersey.	
Harvey Cedars (Borough), Ocean County (FEMA Docket No. 7243)	
Atlantic Ocean:	
Approximately 650 feet southeast of intersection of Long Beach Boulevard and 68th Street	*13
Approximately 250 feet southeast of intersection of Long Beach Boulevard and 68th Street	#1
Manahawkin Bay:	
Approximately 500 feet northwest of intersection of Suffolk Place and Buckingham Avenue	*8
Maps available for inspection at the Borough Municipal Building, 7606 Long Beach Boulevard, Harvey Cedars, New Jersey.	
Long Beach (Town), Ocean County (FEMA Docket No. 7243)	
Atlantic Ocean:	
At intersection of Coast Avenue and Arts Lane	#1
At intersection of 127th and Ocean Avenue	#1
At intersection of Beach Avenue and Oceanview Drive	8
Approximately 400 feet east of intersection of Coast Avenue and Arts Lane	*13
Barnegat Bay:	
Approximately 150 feet west of intersection of Bayview and Panorama Drives	*5
At the intersection of Dusty Miller Drive and Tidal Drive	*5
Approximately 100 feet northwest of the intersection of Sandy Cove Lane and Long Beach Boulevard	*5
Manahawkin Bay:	
At intersection of Roxie Avenue and Long Beach Boulevard	*7
Little Egg Harbor:	
Entire shoreline of Shelter Island	*10
Maps available for inspection at the Long Beach Township Zoning Office, James J. Mancini Administration Building, 6805 Long Beach Boulevard, Long Beach, New Jersey.	
Ship Bottom (Borough), Ocean County (FEMA Docket No. 7243)	
Atlantic Ocean:	
Approximately 1,000 feet southeast of the intersection of Long Beach Boulevard and 7th Street	*13
Approximately 400 feet southeast of the intersection of Long Beach Boulevard and 7th Street	#1
Maps available for inspection at the Borough Clerk's Office, Borough Hall, 1621 Long Beach Boulevard, Ship Bottom, New Jersey.	
Surf City (Borough), Ocean County (FEMA Docket No. 7243)	
Atlantic Ocean:	
Approximately 400 feet southeast of intersection of Ocean Terrace and 17th Street	*13
West side of Ocean Terrace	#1
Maps available for inspection at the Borough Municipal Clerk's Office, Borough Hall, 813 Long Beach Boulevard, Surf City, New Jersey.	
NEW YORK	
Barneveld (Village), Oneida County (FEMA Docket No. 7259)	
Cincinnati Creek:	
Approximately 1,350 feet downstream of Park Avenue	*762
Approximately 1,650 feet upstream of Park Avenue	*780
Steuben Creek:	
At confluence with Cincinnati Creek	*772
Approximately 230 feet upstream of State Route 365	*778
Maps available for inspection at the Village of Barneveld Office, 8520 Old Poland Road, Barneveld, New York.	
NORTH CAROLINA	
Hickory (City), Burke and Catawba Counties (FEMA Docket Nos. 7231 and 7251)	
Lake Hickory:	
At downstream corporate limits	*935
At NC 127	*936
Snow Creek:	
Approximately 120 feet downstream of a private drive	*957
Approximately 30 feet upstream of a private drive	*959
Maps available for inspection at the City of Hickory Planning Office, 76 North Center Street, Hickory, North Carolina.	
OHIO	
Columbus (City), Delaware County (FEMA Docket No. 7251)	
Olentangy River:	
Approximately 0.6 mile upstream of confluence of Fisher Run	*764
Approximately 0.8 mile upstream of Henderson Road	*742
Maps available for inspection at the City of Columbus Development Regulation Division, 1250 Fairwood Avenue, Columbus, Ohio.	
Delaware County (Unincorporated Areas) (FEMA Docket No. 7251)	
Bartholomew Run:	
Approximately 750 feet upstream of State Route 315	*780
Approximately 75 feet upstream of CSX Transportation	*921
Big Run:	
At confluence with Weeping Rock Run	*809
Approximately 100 feet upstream of Hyatts Road	*909
Big Walnut Creek:	
At Sunbury Road	*902
Approximately 215 feet upstream of U.S. Highway 36	*996
Deep Run:	
At confluence with Olentangy River	*777
Approximately 60 feet upstream of U.S. Highway 23	*935
Fulton Creek:	
At a point just upstream of Fulton Creek Road	*891
At upstream county boundary	*923
Lewis Center Run:	
At confluence with Alum Creek	*826
Approximately 100 feet upstream of Big Walnut Road	*863

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Lick Run:	
At confluence with Olentangy River	*783
Approximately 50 feet upstream of CSX Transportation	*922
Little Walnut Creek:	
At downstream side of U.S. Highway 36	*915
At Carters Corner Road	*939
Olentangy River:	
At the downstream county boundary	*768
Approximately 4,000 feet downstream of U.S. Highway 23	*820
Reed Run:	
At confluence with Olentangy River	*790
At CSX Transportation	*918
Weeping Rock Run:	
At confluence with Olentangy River	*792
At North Road	*920
Wildcat Run:	
At confluence with Reed Run	*803
Approximately 40 feet upstream of CSX Transportation	*923
Tylers Run:	
At confluence with Bartholomew Run	*826
Approximately 100 feet downstream of Liberty Street	*884
Spring Run:	
Approximately 500 feet downstream of Maxtown Road	*892
At Maxtown Road	*893
Maps available for inspection at the Delaware County Floodplain Administrator's Office, 50 Channing Street, Delaware, Ohio.	
Franklin County (Unincorporated Areas) (FEMA Docket No. 7251)	
Olentangy River:	
At upstream county boundary	*768
Approximately 0.9 mile upstream of Henderson Road	*742
Maps available for inspection at the Franklin County Emergency Management Office, 756 Harmon Avenue, Columbus, Ohio.	
Galena (Village), Delaware County (FEMA Docket No. 7251)	
Big Walnut Creek:	
At Sunbury Road	*902
At a point approximately 1,000 feet downstream of Abandoned Railroad bridge	*908
Maps available for inspection at the Village of Galena Municipal Building, 9 West Columbus Street, Galena, Ohio.	
Ostrander (Village), Delaware County (FEMA Docket No. 7251)	
Blues Creek:	
Approximately 900 feet downstream of Penn Road (downstream corporate limits)	*908
Approximately 200 feet downstream of Ostrander Road	*914
Maps available for inspection at the Jacob C. Ostrander Community Center, South Main Street, Ostrander, Ohio.	
Powell (Village), Delaware County (FEMA Docket No. 7251)	
Olentangy River:	
At downstream corporate limit	*776
At upstream corporate limit	*777
Retreat Run:	
At confluence with Olentangy River	*776
Approximately 25 feet downstream of State Route 315	*776
Maps available for inspection at the Village of Powell Municipal Building, 260 Village Park Drive, Powell, Ohio.	
Riverlea (Village), Franklin County (FEMA Docket No. 7251)	
Olentangy River:	
Approximately 600 feet upstream of confluence of Rush Run	*748
Approximately 0.5 mile upstream of confluence of Rush Run	*750
Maps available for inspection at the Mayor's Office, 301 West Riverglen Drive, Worthington, Ohio.	
Sunbury (Village), Delaware County (FEMA Docket No. 7251)	
Big Walnut Creek:	
At confluence of Prairie Run	*926
At a point approximately 150 feet downstream of U.S. Route 36	*994
Maps available for inspection at the Village of Sunbury Building Department, 37 East Granville Street, Sunbury, Ohio.	
Worthington (City), Franklin County (FEMA Docket No. 7251)	
Olentangy River:	
Approximately 400 feet downstream of Interstate 270	*760
Approximately 700 feet downstream of confluence of Rush Run	*746
Maps available for inspection at the Worthington City Engineer's Office, 380 Highland Avenue, Worthington, Ohio.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–31043 Filed 11–19–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC89

Disaster Assistance; Redesign of Public Assistance Project Administration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: We have redesigned the Public Assistance Disaster Grant Program to provide money to applicants more quickly and to make the application process simpler than before. This rule reflects changes needed to put the new Public Assistance Program into effect.

DATES: Effective Date: This rule is effective on November 20, 1998.

Comments: We invite your comments on the changes to the rule and your recommendations for additional changes to it on or before January 4, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472, (telefax) (202) 646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa M. Howard, Ph.D., Federal Emergency Management Agency, room 713, 500 C Street SW., Washington DC 20472, (202) 646–4240, or (email) *melissa.howard@fema.gov.*

SUPPLEMENTARY INFORMATION:

What does the redesigned program do? The redesigned program emphasizes better, more personal customer service, improved communications, reallocated responsibilities, more efficient and consistent program delivery, and a faster, simpler system for obtaining funding than under our current regulations. As we announced in our February 4, 1998 **Federal Register** notice, 63 FR 5804, we field tested the new system from March 1, 1998 to August 31, 1998. While we are making most of our improvements through internal changes to our procedures, some of the improvements require

amendments to the governing regulations. This publication makes those amendments.

What are the basic components of the public assistance grant process? The grant process was redesigned around its four pillars: People, Process, Policy and Performance.

People—The most important component of the redesigned program is People. The success of the program depends on all the people involved in the process, both those who apply for grants and those who are responsible for awarding grants. People who understand the provisions of the program and are willing to work cooperatively in disaster recovery efforts speed the process and make the redesigned program possible. Therefore, to ensure the highest level of professionalism and skill among FEMA staff, we have committed ourselves to program-wide training, to a credentials program, and to a greatly expanded program for sharing information.

Process—We base the program on a partnership among FEMA, the States and local officials. FEMA's role is to provide guidance early in the recovery process, and in some cases, before the disaster occurs. This is a change from our previous focus on inspection and enforcement. In our new role we will provide more information about the program before the disaster strikes and will provide more technical assistance in the development of damage descriptions and cost estimates after the disaster.

The States' role is essentially unchanged from the existing program. As Grantee, the State remains responsible for administering the Federal grant.

The role of local governments and eligible private nonprofit organizations changes with their taking more control in meeting their own needs and speeding their own recovery. For example, those applicants who are able to do so may prepare damage descriptions and cost estimates for small projects. We will continue to help other applicants to prepare their damage descriptions and costs estimates.

Policy—The redesigned program does not change program eligibility, but it does require changes to regulatory, policy and procedural program documents. The changes streamline, simplify and clarify program operations. They also make source documents readily available to those applying for grants and to those who administer the grants.

Performance—The people, policies, and processes that form the foundation of the redesigned program will enhance program performance. Evaluation of that performance is an essential part of the redesigned program.

Where can you find additional information? You can find additional descriptive information on the redesigned program on our website (http://www.fema.gov.). At our home page click on Disaster Assistance, then click on Public Assistance, and choose from the menu under the Public Assistance Program.

What changes are we making to the rule? Specific changes to the regulations rename documents, define terms, adjust responsibilities, and edit the rule in a way that we hope makes it easier to read and to understand.

(1) Throughout the text, "Disaster Survey Report" or "DSR" is renamed "Project Worksheet."

(2) We edited § 206.200(b) to read more clearly than before.

(3) We redefined "project" in § 206.201(i) to reflect our new policy.

(4) In § 206.202(b) we removed "damage survey activities," because inspection teams will not exist as before. We also added language about the States' roles in supporting large project identification activities.

(5) In § 206.202(c) we changed "Notice of Interest" to "Request for Public Assistance."

(6) We removed the requirement for a FEMA/State/local inspection team in § 206.202(d)(1), and changed the starting date of the "60 day" period from the date of the initial visit to the date of the first substantive meeting.

(7) We state in § 206.202(d)(2) that we will not approve a Project Worksheet for less than $1,000 and we replace "site" with "project."

(8) In § 206.202(e) we keep our obligation to explain any delays, but remove the requirement for written explanation of any delay.

(9) Because the applicant will now prepare the Project Worksheet with possible help from the State, § 206.228(a)(2) changes the description of State's responsibility from "* * * preparation of damage survey reports * * *" to "* * * develop and validate Project Worksheets * * *."

(10) We anticipate that the form number assigned for the "Damage Survey Report" (FEMA Form 90–91) will be used for the "Project Worksheet" and that the form number assigned for the "Notice of Interest" (FEMA Form 90–49) will be used for "Request for Assistance." If we assign new form numbers, we will make the change when we publish the final rule.

Administrative Procedure Act Determination

We are publishing this interim final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553, having determined that a comment period would be unnecessary, impractical, and contrary to the public interest. This interim final rule does not contain any significant, substantive changes from previous regulations, but reflects changes to internal procedures under which we will process public assistance applications more quickly and simply than before.

Procedures affecting public assistance applications remain substantially unchanged. The procedural changes do not affect the rights of applicants, and primarily affect how we will administer the program. In order to implement the programs for assessments made for FY 1999 and beyond, we need to modify and publish its regulations. We invite public comments on the interim final rule. We will take into account any comments we receive when we publish the final rule.

As Director I determine that good cause exists and that it is in the public interest to issue this interim final rule without opportunity for prior public comment.

National Environmental Policy Act

Our regulations categorically exclude this rule from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. We have not prepared an environmental assessment or an environmental impact statement.

Regulatory Flexibility Act

We do not expect this rule (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities.

As Director I certify that this rule is not a major rule under Executive Order 12291 and that the rule will not have significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In publishing this rule, we considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures under 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. We have not prepared a Federalism assessment.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* The rule is not a "major rule" within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more. It will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L.104–4. The rule does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Revise § 206.200(b) to read as follows:

§ 206.200 General.

* * * * *

(b) *What policies apply to FEMA public assistance grants?* (1) The Stafford Act requires that we deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations. We expect you, as State Grantee, to adhere to Stafford Act requirements and to the regulations in this part when you administer our public assistance grants.

(2) The regulations entitled "Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 44 CFR part 13, place requirements on you and give you discretion to administer federal programs under your own procedures. We expect you, as State grantee, to:

(i) Inform subgrantees about the status of their applications, including notifications of our approvals of Project Worksheets and our estimates of when we will make payments;

(ii) Pay the full amounts due to subgrantees as soon as practicable after we approve payment, including your State contribution required in the FEMA-State Agreement; and

(iii) Pay your State contribution consistent with State laws.

3. Revise the definitions of *project* and *project approval* in § 206.201(i) and (j) to read as follows:

§ 206.201 Definitions.

* * * * *

(i) A *project* is a logical grouping of work required as a result of the declared major disaster or emergency.

(1) We must approve a scope of eligible work and an itemized cost estimate before funding a project.

(2) A project may include eligible work at several sites.

(j) *Project approval* means the process in which the Regional Director, or designee, reviews and signs an approval of work and costs on a Project Worksheet or on a batch of Project Worksheets. Such approval is also an obligation of funds to the Grantee.

* * * * *

4. Revise § 206.202 to read as follows:

§ 206.202 Application procedures.

(a) *General.* This section describes the policies and procedures we use to process public assistance grants to States. Under this section you, the State, are the Grantee. As Grantee you are responsible for processing subgrants to applicants under 44 CFR parts 13, 14, and 206, and under your own policies and procedures.

(b) *Grantee.* You are the grant administrator for all funds provided under the Public Assistance grant program. Your responsibilities under this section include:

(1) Providing technical advice and assistance to eligible subgrantees;

(2) Providing State support for project identification activities;

(3) Ensuring that all potential applicants are aware of available public assistance; and

(4) Submitting documents necessary for the award of grants.

(c) *Request for public assistance (Request).* You, the Grantee, must send a completed Request (FEMA Form 90–49) to the Regional Director for each applicant who requests public assistance. You must send Requests to the Regional Director within 30 days after designation of the area where the damage occurred.

(d) *Project Worksheets.* (1) An applicant's authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs for disaster-related damages for funding.

(i) We or the applicant will prepare a Project Worksheet (FEMA Form 90–91) for each project. The Project Worksheet must identify the eligible scope of work and must include a quantitative estimate for the eligible work.

(ii) The applicant will have 60 days following its first meeting with us to identify and to report damage to us.

(2) When the estimated cost of work on a project is less than $1,000, that work is not eligible and we will not approve a Project Worksheet for the project. Periodically we will review this minimum approval amount for a Project Worksheet and, if needed, will adjust the amount by regulation.

(e) *Grant approval.* (1) When the applicant submits the Project Worksheets, we will have 45 days to obligate Federal funds. If we have a delay beyond 45 days we will explain the delay to you.

(2) Before we obligate any funds you, the Grantee, must complete and send to the Regional Director a Standard Form (SF) 424, Application for Federal Assistance, and an SF 424D, Assurances

for Construction Programs. After we receive the SF 424 and SF 424D, the Regional Director will obligate funds to you based on the approved Project Worksheets. You will then approve subgrants based on the Project Worksheets approved for each applicant.

5. Revise § 206.228(a)(2)(i) to read as follows:

§ 206.228 Allowable costs.

* * * * *

(a) * * *

(1) * * *

(2) *Statutory Administrative Costs*—(i) *Grantee.* Under section 406(f)(2) of the Stafford Act, we will pay you, the State, an allowance to cover the extraordinary costs that you incur to develop and validate Project Worksheets, to prepare final inspection reports, project applications, final audits, and to make related field inspections by State employees. Eligible costs include overtime pay and per diem and travel expenses, but do not include regular time for your State employees. The allowance to you will be based on the following percentages of the total amount of Federal assistance that we provide for all subgrantees in the State under sections 403, 406, 407, 502, and 503 of the Act:

* * * * *

Dated: November 13, 1998.

James L. Witt,

Director.

[FR Doc. 98–31044 Filed 11–19–98; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF DEFENSE

48 CFR Parts 209, 213, 219, 225, 231, 235, 236, 252, and 253

Defense Federal Acquisition Regulation Supplement; Adoption of Interim Rules as Final Rules Without Change

AGENCY: Department of Defense (DoD).

ACTION: Final rules.

SUMMARY: The Director of Defense Procurement is adopting as final, without change, eight interim rules that amended the Defense Federal Acquisition Regulation Supplement (DFARS). The rules pertain to contractor responsibility, awards to small disadvantaged business concerns, small business subcontracting plans, domestic source restrictions, restructuring costs, research and development contracting, and construction in foreign countries.

EFFECTIVE DATE: November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Peterson, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

The following is a summary of the eight interim rules that are adopted as final without change. DoD published the interim rules in the **Federal Register** for public comment and considered all comments received.

List of Firms Not Eligible for Defense Contracts (DFARS Case 97–D325) (63 FR 14836, March 27, 1998)

This rule amends DFARS Parts 209 and 252 to implement Section 843 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 843 requires that the Secretary of Defense maintain a list of all firms that the Secretary has identified as being subject to a prohibition on contract award due to ownership or control of the firm by the government of a terrorist country; and that DoD contractors be prohibited from entering into subcontracts with firms on the list unless there is a compelling reason to do so.

Direct Award of 8(a) Contracts (DFARS Case 98–D011) (63 FR 33586, June 19, 1998)

This rule amends DFARS Parts 213, 219, 252, and 253 to implement a Memorandum of Understanding (MOU) dated May 6, 1998, between the Small Business Administration (SBA) and DoD. The MOU streamlines the processing procedures for contract awards under SBA's 8(a) Program by authorizing DoD to award contracts directly to 8(a) concerns.

Comprehensive Subcontracting Plans (DFARS Case 97–D323) (63 FR 14640, March 26, 1998)

This rule amends DFARS 219.702 to reflect revisions made to the DoD Test Program for Negotiation of Comprehensive Small Business Subcontracting Plans, as required by Section 822 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Section 822 extends, from September 30, 1998, to September 30, 2000, the expiration date for the test program; and provides for use of comprehensive subcontracting plans by participating contractors that are performing as subcontractors under DoD contracts.

Waiver of 10 U.S.C. 2534—United Kingdom (DFARS Case 98–D016) (63 FR 43887, August 17, 1998)

This rule amends DFARS Subpart 225.70 and the clauses at DFARS 252.225–7016 and 252.225–7029 to implement a waiver of the domestic source restrictions of 10 U.S.C. 2534(a) for certain items manufactured in the United Kingdom. The waiver was signed by the Under Secretary of Defense (Acquisition and Technology) on June 19, 1998, and became effective on August 4, 1998.

Allowability of Costs for Restructuring Bonuses (DFARS Case 97–D312) (62 FR 63035, November 26, 1997)

This rule amends DFARS 231.205–6 to implement Section 8083 of the National Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56). Section 8083 prohibits the use of fiscal year 1998 funds to reimburse a contractor for costs paid by the contractor to an employee for a bonus or other payment in excess of the normal salary paid by the contractor to the employee, when such payment is part of restructuring costs associated with a business combination.

Restructuring Costs (DFARS Case 97–D313) (63 FR 7308, February 13, 1998)

This rule amends DFARS 231.205–70 to implement Section 8092 of the National Defense Appropriations Act for Fiscal Year 1998 (Public Law 105–56) and Section 804 of the National Defense Authorization Act for Fiscal Year 1998 (Public Law 105–85). Sections 8092 and 804 restrict the reimbursement of restructuring costs associated with a business combination undertaken by a defense contractor unless certain conditions are met.

Streamlined Research and Development Contracting (DFARS Case 97–D002) (63 FR 34605, June 25, 1998)

This rule revises DFARS Subpart 235.70 to implement streamlined solicitation and contracting procedures for research and development acquisitions. The procedures use a standard solicitation and contract format, and use the World Wide Web to disseminate the standard format and publish the resulting solicitations.

Construction in Foreign Countries (DFARS Case 97–D307) (63 FR 11522, March 9, 1998)

This rule amends DFARS Part 236 and adds a new provision at 252.236–7012 to implement Section 112 of the Military Construction Appropriations Act for Fiscal Year 1998 (Public Law 105–45). Section 112 provides that no military construction appropriations may be used to award, to a foreign contractor, any contract estimated to exceed $1,000,000 for military construction in the United States territories and possessions in the Pacific

and on Kwajalein Atoll, or in countries bordering the Arabian Gulf, except for: (1) Contract awards for which the lowest responsive and responsible bid of a United States firm exceeds the lowest responsive and responsible bid of a foreign firm by more than 20 percent, and (2) contract awards for military construction on Kwajalein Atoll for which the lowest responsive and responsible bid is submitted by a Marshallese firm.

B. Regulatory Flexibility Act

DoD certifies that these final rules will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because:

List of Firms Not Eligible for Defense Contracts (DFARS Case 97–D325)—Few small entities are believed to subcontract with firms that are owned or controlled by the government of a terrorist country.

Direct Award of 8(a) Contracts (DFARS Case 98–D011)—The rule only affects the administrative procedures used to award 8(a) contracts.

Comprehensive Subcontracting Plans (DFARS Case 97–D323)—Small businesses are exempt from subcontracting plan requirements, and the rule does not change the obligation of large business concerns to maximize subcontracting opportunities for small business concerns.

Waiver of 10 U.S.C. 2534—United Kingdom (DFARS Case 98–D016)—There are no known small business manufacturers of the restricted air circuit breakers; defense appropriations acts presently impose domestic source restrictions on the acquisition of totally enclosed lifeboats and noncommercial ball and roller bearings; and the restrictions of 10 U.S.C. 2534(a) do not apply to acquisitions of commercial items incorporating ball or roller bearings.

Restructuring Costs (DFARS Case 97–D313) and Allowability of Costs for Restructuring Bonuses (DFARS Case 97–D312)—Most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-priced basis, and do not require application of the cost principles contained in these rules.

Streamlined Research and Development Contracting (DFARS Case 97–D002)—The rule merely provides an implementation of electronic contracting procedures already authorized by the FAR.

Construction in Foreign Countries (DFARS Case 97–D307)—The DFARS changes contained in this rule apply only to contracts for military construction on Kawjalein Atoll that are estimated to exceed $1,000,000; DoD awards approximately two such contracts annually.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements associated with DFARS Case 97–D307, Construction in Foreign Countries, for use through August 31, 2001, under OMB Control Number 0704–0255. The other rules do not contain any information collection requirements that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 213, 219, 225, 231, 235, 236, 252, and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rules Adopted as Final Without Change

PART 209—CONTRACTOR QUALIFICATIONS, AND PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Accordingly, the interim rule amending 48 CFR parts 209 and 252, which was published at 63 FR 14836 on March 27, 1998, is adopted as a final rule without change.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES, PART 219—SMALL BUSINESS PROGRAMS, PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES, AND PART 253—FORMS

Accordingly, the interim rule amending 48 CFR parts 213, 219, 252, and 253, which was published at 63 FR 33586 on June 19, 1998, is adopted as a final rule without change.

PART 219—SMALL BUSINESS PROGRAMS

Accordingly, the interim rule amending 48 CFR part 219, which was published at 63 FR 14640 on March 26, 1998, is adopted as a final rule without change.

PART 225—FOREIGN ACQUISITION, AND PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 63 FR 43887 on August 17, 1998, is adopted as a final rule without change.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Accordingly, the interim rule amending 48 CFR part 231, which was published at 62 FR 63035 on November 26, 1997, is adopted as a final rule without change.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

Accordingly, the interim rule amending 48 CFR part 231, which was published at 63 FR 7308 on February 13, 1998, is adopted as a final rule without change.

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

Accordingly, the interim rule amending 48 CFR part 235, which was published at 63 FR 34605 on June 25, 1998, is adopted as a final rule without change.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS, AND PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Accordingly, the interim rule amending 48 CFR parts 236 and 252 at sections 236.102, 236.274, 236.570, 252.236–7010, and 252.236–7012, which was published at 63 FR 11522 on March 9, 1998, is adopted as a final rule without change.

[FR Doc. 98–31038 Filed 11–19–98; 8:45 am]
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DEPARTMENT OF DEFENSE

48 CFR Parts 215, 217, 219, 226, 236, 252, and Appendix I to Chapter 2

[DFARS Case 98–D021]

Defense Federal Acquisition Regulation Supplement; Reform of Affirmative Action in Federal Procurement, Part II

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) guidance concerning programs for small disadvantaged business (SDB) concerns. These amendments conform to a Department of Justice (DoJ) proposal to reform affirmative action in Federal procurement, and are consistent with the changes made to the Federal Acquisition Regulation (FAR) in Federal

Acquisition Circular (FAC) 97–07. DoJ's proposal is designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995).

DATES: *Effective Date:* January 1, 1999.

Applicability Date: The policies, provisions, and clauses of this interim rule are effective for all solicitations issued on or after January 1, 1999, and all Mentor-Protégé agreements entered into on or after January 1, 1999.

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before January 19, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062, telefax (703) 602–0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 98–D021 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98–D021 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, PDUSD(A&T)DP(DAR), (703) 602–0131, or Mr. Mike Sipple, PDUSD(A&T)DP(CPA), (703) 695–8567. Please cite DFARS Case 98–D021.

SUPPLEMENTARY INFORMATION:

A. Background

In *Adarand*, the Supreme Court extended strict judicial scrutiny to Federal affirmative action programs that use racial or ethnic criteria as a basis for decisionmaking. In procurement, this means that any use of race in the decision to award a contract is subject to strict scrutiny. Under strict scrutiny, any Federal programs that make race a basis for contract decisionmaking must be narrowly tailored to serve a compelling Government interest.

DoJ developed a proposed structure to reform affirmative action in Federal procurement designed to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand*. the DoJ proposal was published for public notice and comment (61 FR 26042, May 23, 1996). DoJ issued a notice that provided a response to the public comments (62 FR 25648, May 9, 1997). To implement the DoJ concept, two interim FAR rules and an interim DFARS rule were issued: FAC 97–06, effective October 1, 1998, implements a price evaluation adjustment for SDB concerns (63 FR 35719, June 30, 1998); FAC 97–07, effective January 1, 1999, implements an SDB participation program (63 FR 36120, July 1, 1998); and the rule published on August 6, 1998 (63 FR 41972), effective October 1, 1998, conforms the DFARS to FAC 97–06. This interim rule contains the revisions necessary to conform the DFARS to the interim FAR rule in FAC 97–07, and to the DoJ proposal implemented by the FAR rule.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most of the changes merely conform the DFARS to the FAR rule in FAC 97–07. Two source selection considerations for SDB concerns currently in the DFARS, but not in the FAR, are amended by this rule to conform to the DoJ model: Leader company contracting (DFARS 217.401); and architect-engineer (A–E) services (DFARS 236.602). These two changes are not expected to have a significant economic impact on a substantial number of small entities since: (1) Leader company contracting is infrequently used by DoD; and (2) the primary factor in A–E selection is the determination of the most highly qualified firm; the SDB consideration is one of several secondary source selection factors. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98–D021 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule amends the DFARS to conform it to the requirements of FAC 97–07, dated July 1, 1998, effective January 1, 1999. FAC 97–07 contains an interim rule amending the FAR to implement a DoJ proposal for reform of affirmative action in Federal procurement to ensure compliance with the constitutional standards established by the Supreme Court in *Adarand Constructors, Inc.* v. *Pena*, 115, S. Ct. 2097 (1995). The FAR rule contains an SDB participation program. Publication of an interim DFARS rule is necessary to conform the DFARS to the interim FAR rule effective January 1, 1999, and to the DoJ proposal implemented by the FAR rule. Comments received in response to the publication of this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 215, 217, 219, 226, 236, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 215, 217, 219, 226, 236, 252, and Appendix I to Chapter 2 are amended as follows:

1. The authority citation for 48 CFR Parts 215, 217, 219, 226, 236, 252, and Appendix I to subchapter I continue to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.304 is revised to read as follows:

215.304 Evaluation factors and significant subfactors.

(c)(i) In acquisitions that require use of the clause at FAR 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan, other than those based on the lowest price technically acceptable source selection process (see FAR 15.101–2), the extent of participation of small businesses and historically black colleges or universities and minority institutions in performance of the contract shall be addressed in source selection. The contracting officer shall evaluate the extent to which offerors identify and commit to small business and historically black college or university and minority institution performance of the contract, whether as a joint venture, teaming arrangement, or subcontractor.

(A) Evaluation factors may include—

(1) The extent to which such firms are specifically identified in proposals;

(2) The extent of commitment to use such firms (for example, enforceable

commitments are to be weighted more heavily than non-enforceable ones);

(3) The complexity and variety of the work small firms are to perform;

(4) The realism of the proposal;

(5) Past performance of the offerors in complying with requirements of the clauses at FAR 52.219–8, Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns, and 52.219–9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan; and

(6) The extent of participation of such firms in terms of the value of the total acquisition.

(B) Proposals addressing the extent of small business and historically black college or university and minority institution performance may be separate from subcontracting plans submitted pursuant to the clause at FAR 52.219–9 and should be structured to allow for consideration of offers from small businesses.

(C) When an evaluation includes the factor in paragraph (c)(i)(B)*(1)* of this section, the small businesses, historically black colleges or universities and minority institutions, and women-owned small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219–9 to facilitate compliance with 252.219–7003(g).

(ii) The costs or savings related to contract administration and audit may be considered when the offeror's past performance or performance risk indicates the likelihood of significant costs or savings.

PART 217—SPECIAL CONTRACTING METHODS

3. Section 217.401 is revised to read as follows:

217.401 General.

(1) When leader company contracting is to be considered, take special effort to select a small disadvantaged business (SDB) concern as the follower company if—

(i) The follower company will be a subcontractor and the Standard Industrial Classification (SIC) Major Group of the acquisition is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)); or

(ii) The follower company will be a prime contractor and the SIC Major Group of the acquisition is one in which use of a price evaluation adjustment is currently authorized (see FAR 19.201(b)).

(2) If special effort is required by paragraph (1) of this section and an SDB is not selected as the follower company, the contracting officer shall document the contract file to reflect—

(i) The extent of actions taken to identify SDB concerns for participation in the acquisition; and

(ii) The rationale for selection of a non-SDB as the follower company.

PART 219—SMALL BUSINESS PROGRAMS

4. Section 219.001 is revised to read as follows:

219.001 Definitions.

Small disadvantaged business concern is defined:

(1) At FAR 52.219–23(a) (i.e., a firm is considered a small disadvantaged business (SDB) concern by receiving certification by the Small Business Administration and meeting the other listed criteria), except as specified in paragraph (2) of this definition.

(2) At FAR 52.219–23(a) or 52.219–1(b)(2) for the following purposes (i.e., a firm is considered an SDB concern by either receiving certification by the Small Business Administration and meeting the other listed criteria or self-representing its status for general statistical purposes):

(i) A higher customary progress payment rate for SDB concerns (see 232.501–1(a)(i) and 252.232–7004(c)).

(ii) A lower threshold for inclusion of customary progress payments in contracts with SDB concerns (see 232.502–1).

(iii) The prompt payment policy for SDB concerns in 232. 903 and 232.905(2).

(iv) Reporting contract actions with SDB concerns ("Type of Business" on the DD Form 350, Individual Contracting Action Report (see 253.204–70(d)(5)(i)(A)) or "Small Disadvantaged Business (SDB) Actions" on the DD Form 1057, Monthly Contracting Summary of Actions $25,000 or Less (see 253.204–71(g)(2)).

5. Section 219.708 is amended by revising paragraph (c)(1) and removing paragraph (c)(2). The revised text reads as follows:

219.708 Solicitation provisions and contract clauses.

* * * * * * *

(c)(1) Do not use the clause at FAR 52.219–10, Incentive Subcontracting Program, in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).

6. Subpart 219.12 is added to read as follows:

Subpart 219.12—Small Disadvantaged Business Participation Program

Sec.

219.1203 Incentive subcontracting with small disadvantaged business concerns.
219.1204 Solicitation provisions and contract clauses.

219.1203 Incentive subcontracting with small disadvantaged business concerns.

The contracting officer shall encourage increased subcontracting opportunities for SDB concerns in negotiated acquisitions by providing monetary incentives in the SIC Major Groups for which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.201(b)). Incentives for exceeding SDB subcontracting targets shall be paid only if an SDB subcontracting target was exceeded as a result of actual subcontract awards to SDBs, and not a result of developmental assistance credit under the Pilot Mentor-Protégé Program (see Subpart 219.71).

219.1204 Solicitation provisions and contract clauses.

(c) The contracting officer shall, when contracting by negotiation, insert in solicitations and contracts containing the clause at FAR 52.219–25, Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting, a clause substantially the same as the clause at FAR 52.219–26, Small Disadvantaged Business Participation Program-Incentive Subcontracting, when authorized (see FAR 19.1203). The contracting officer may include an award fee provision in lieu of the incentive; in such cases, however, the contracting officer shall not use the clause at FAR 52.219–26. Do not use award fee provisions in contracts with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702(a).

PART 226—OTHER SOCIOECONOMIC PROGRAMS

7. Section 226.7007 is amended by revising paragraph (b) to read as follows:

226.7007 Goals and incentives for subcontracting with HBCU/MIs.

* * * * *

(b) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause similar to the clause at FAR 52.219–10, Incentive Subcontracting Program, when a subcontracting plan is required, and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for

historically black colleges or universities and minority institutions. The clause should include a separate goal for historically black colleges or universities and minority institutions.

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

8. Section 236.602–1 is amended by revising paragraph (a)(i)(6)(C) to read as follows:

236.602–1 Selection criteria.

(a) * * *
(i) * * *
(6) * * *

(C) Consider the extent to which potential contractors identify and commit to small business, to small disadvantaged business (SDB) if the Standard Industrial Classification Major Group of the subcontracted effort is one in which use of an evaluation factor or subfactor for participation of SDB concerns is currently authorized (see FAR 19.210(b)), and to historically black college or university and minority institution performance as subcontractors.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

9. Section 252.212–7001 is amended by revising the clause date to read "(JAN 1999)", and by removing the entry at 252.219–7005.

252.219–7005 [Removed and Reserved]

10. Section 252.219–7005 is removed and reserved.

Appendix I to Chapter 2—[Amended]

11. Appendix I to Chapter 2 is amended by revising Section I–104 to read as follows:

Appendix I—Policy and Procedures for the DOD Pilot Mentor-Protégé Program

* * * * *

I–104 Eligibility requirements for a protégé firm.

(a) An entity may qualify as a protégé firm if it is—

(1) An SDB concern as defined at 219.001, paragraph (1) of the definition of "small disadvantaged business concern," which is—

(i) Eligible for the award of Federal contracts; and

(ii) A small business according to the SBA size standard for the Standard Industrial Classification (SIC) code that represents the contemplated supplies or services to be provided by the protégé firm to the mentor firm; or

(2) A qualified organization employing the severely disabled as defined in Pub. L. 102–172, section 8064A.

(b) A protégé firm may self-certify to a mentor firm that it meets the eligibility requirements in paragraph (a) (1) or (2) of this section. Mentor firms may rely in good faith on a written representation that the entity meets the requirements of paragraph (a) (1) or (2) of this section, except for a protégé's status as a small disadvantaged business concern (see FAR 19.703(b)).

(c) A protégé firm may have only one active mentor-protégé agreement.

[FR Doc. 98–31039 Filed 11–19–98; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980505118–8286–02; I.D. 110598B]

RIN 0648–AL14

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Extension of Effective Date and Amendment of Bycatch Reduction Device Certification

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; extension of expiration date; amendment; request for comments.

SUMMARY: An interim rule is in effect through November 16, 1998, that certifies the Jones-Davis and Gulf fisheye bycatch reduction devices (BRDs) for use in the Gulf of Mexico shrimp fishery. NMFS extends the interim rule through May 15, 1999, because conditions requiring the interim rule to reduce overfishing remain unchanged. NMFS also amends the interim rule regarding the specifications for the Jones-Davis, fisheye, and Gulf fisheye BRDs. The intended effects of this rule are to provide flexibility to Gulf shrimp trawlers for complying with the requirement to use a BRD and to maximize the effectiveness of BRDs. Providing a variety of certified BRDs will allow shrimpers to select a BRD based on how it matches the operating conditions their vessel encounters. This should enhance compliance, help minimize shrimp loss, and further increase bycatch reduction and, thus, further reduce overfishing of red snapper.

DATES: The expiration date for the interim rule published at 63 FR 27499, May 19, 1998, is extended to May 15, 1999. The amendment to Appendix D to part 622 that suspends paragraph E and adds paragraph F is effective November 17, 1998, through May 15, 1999. The amendment to Appendix D to part 622 that suspends paragraphs C.2. and D.2. and adds paragraphs C.3. and D.3. is effective November 27, 1998, through May 15, 1999.

ADDRESSES: Comments on this interim rule must be mailed to, and copies of documents supporting this rule may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St Petersburg, FL 33702. Requests for copies of construction and installation instructions for the Jones-Davis, fisheye, and Gulf fisheye BRDs should be addressed to the Chief, Harvesting Systems Division, Mississippi Laboratories, Southeast Fisheries Science Center, NMFS, P.O. Drawer 1207, Pascagoula, MS 39568–1207.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, phone: 727–570–5305 or fax: 727–570–5583.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) was prepared by the Gulf of Mexico Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Under section 305(c)(1) of the Magnuson-Stevens Act, NMFS published an interim rule (63 FR 27499, May 19, 1998) that certified the Jones-Davis and Gulf fisheye BRDs for use in the Gulf of Mexico shrimp fishery. Because conditions requiring the interim rule to reduce overfishing remain unchanged, NMFS extends the effective date of the interim rule through May 15, 1999, in accordance with section 305(c)(3)(B) of the Magnuson-Stevens Act.

In addition, NMFS amends Appendix D to Part 622—Specifications for Certified BRDs to revise the minimum construction and installation requirements for the Jones-Davis, fisheye, and Gulf fisheye BRDs. For the fisheye and Gulf fisheye BRDs, NMFS is prohibiting any part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) from overlapping, and thus obstructing, the fisheye escape opening. This will help to ensure effective bycatch reduction. For the Jones-Davis BRD, NMFS is adding alternative methods for constructing the 24–inch (61.0–cm) hoop and the funnel and

escape openings, thereby providing fishermen additional flexibility in complying with the BRD requirement.

Details concerning the basis for the certification of the Jones-Davis and Gulf fisheye BRDs are contained in the preamble to the initial interim rule and are not repeated here. No public comments on the initial interim rule were received. The fisheye BRD was certified in the final rule implementing Amendment 9 to the FMP (63 FR 18139, April 14, 1998).

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to enhance compliance with the BRD requirement for the Gulf shrimp fishery, improve effectiveness of bycatch reduction, and, thereby, reduce overfishing of red snapper in the Gulf of Mexico. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim rule has been determined to be not significant for purposes of E.O. 12866.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

NMFS prepared a regulatory impact review (RIR) that provides an estimate of the costs and benefits of the interim rule. The RIR notes that the only identifiable costs associated with the rule are administrative costs of rule preparation; this cost was estimated at $5,000. This rule is expected to have positive effects on shrimp harvests and effort patterns because shrimpers will have the ability to choose among three BRD options instead of having to use the one BRD (i.e., fisheye) that was certified in Amendment 9 to the FMP. Positive effects will accrue because different shrimpers employ different harvesting tactics, pursue different shrimp species, operate in different geographical areas, and operate at varying times during the year. These differences in shrimp harvesting operations and conditions make it more efficient overall if a variety of BRDs are available. Over time, it is fully expected that a mix of available BRDs will be used to meet the BRD requirement. While the resulting benefits cannot be quantified, they may be fairly large. It is also expected that given the expanded choice of BRDs, compliance will be enhanced and the reduction in bycatch mortality will be increased relative to the status quo of a single BRD choice; therefore, there should be increased benefits to the red snapper fishery. Copies of the RIR are available (see **ADDRESSES**). NMFS has concluded that the restriction on placement of the lazy line attachment system will have negligible compliance costs but will help ensure effective bycatch reduction. The revisions to the specifications for the Jones-Davis BRD provide alternative construction methods that give fishermen greater flexibility in complying with the BRD requirement.

This rule extends the certification of the Jones-Davis and Gulf fisheye BRDs for use in the Gulf shrimp fishery, thereby providing shrimp trawlers flexibility in complying with the BRD requirement. This should enhance the compliance rate and reduce the bycatch mortality rate and, thus, reduce the overfishing of Gulf red snapper. The amendments to the BRD specifications are necessary to prevent impairment of the effectiveness of the fisheye and Gulf fisheye BRDs and to provide fishermen additional flexibility in complying with construction requirements for the Jones-Davis BRD. Accordingly, pursuant to authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as the delay associated with such procedures would be contrary to the public interest.

Similarly, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule, except for the amendments of the specifications for the fisheye and Gulf fisheye BRDs, would be contrary to the public interest. Because the amendments of the specifications for the fisheye and Gulf fisheye BRDs will require a minor gear adjustment for a small percentage of Gulf shrimp trawlers, NMFS delays the effective date of those provisions until November 27, 1998, to allow reasonable time for owners and operators to comply. The remaining aspects of the rule relieve restrictions by providing Gulf shrimp trawlers a choice of certified BRDs that may be used to comply with the BRD requirement that became effective on May 14, 1998, and by providing alternative construction methods for the Jones-Davis BRD. To the extent that this rule relieves restrictions by providing a choice of certified BRDs and additional flexibility in construction of the Jones-Davis BRD, it is not subject to a delay in effective date under 5 U.S.C. 553(d)(1).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 16, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Effective November 27, 1998, through May 15, 1999, in Appendix D to part 622, paragraphs C.2. and D.2. are suspended and paragraphs C.3. and D.3. are added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

* * * * *

C. *Fisheye.*

* * * * *

3. *Minimum Construction and Installation Requirements.* The fisheye has a minimum opening dimension of 5 inches (12.7 cm) and a minimum total opening area of 36 square inches (91.4 square cm). The fisheye must be installed at the top center of the codend of the trawl to create an opening in the trawl facing in the direction of the mouth of the trawl no further forward than 11 ft (3.4 m) from the codend drawstring (tie-off rings) or 70 percent of the distance between the codend drawstring and the forward edge of the codend, excluding any extension, whichever is the shorter distance. In the Gulf EEZ only, when the fisheye BRD is installed in this position, no part of the lazy line attachment system (i.e., any mechanism , such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system.

D. *Gulf fisheye.*

* * * * *

3. *Minimum Construction and Installation Requirements.* The Gulf fisheye is a cone-shaped rigid frame constructed of aluminum or steel rods. The rods must be at least 1/4–inch (6.35–mm) diameter. Any dimension of the escape opening must be at least 5.0 inches (12.7 cm), and the total escape opening area must be at least 36.0 in^2 (232.3 cm^2). The Gulf fisheye must be installed in the codend of the trawl to

create an escape opening in the trawl, facing in the direction of the mouth of the trawl, no further forward than 12.5 ft (3.81 m) and no less than 8.5 ft (2.59 m) from the codend tie-off rings. When installed in this position, no part of the lazy line attachment system (i.e., any mechanism, such as elephant ears or choker straps, used to attach the lazy line to the codend) may overlap the fisheye escape opening when the fisheye is installed aft of the attachment point of the codend retrieval system. The Gulf fisheye may not be offset more than 15 meshes perpendicular to the top center of the codend.

3. Effective November 17, 1998, through May 15, 1999, in Appendix D to part 622, paragraph E. is suspended and paragraph F. is added to read as follows:

Appendix D to Part 622—Specifications for Certified BRDs

* * * * *

F. *Jones-Davis.*

1. *Description.* The Jones-Davis BRD is similar to the expanded mesh and the extended funnel BRDs except that the fish escape openings are windows cut around the funnel rather than large-mesh sections. In addition, a webbing cone fish deflector is installed behind the funnel.

2. *Minimum Construction and Installation Requirements.* The Jones-Davis BRD must contain all of the following.

(a) *Webbing extension.* The webbing extension must be constructed from a single piece of 1 5/8–inch (3.5–cm) stretch mesh number 30 nylon 42 meshes by 120 meshes. A tube is formed from the extension webbing by sewing the 42–mesh side together.

(b) *28–inch (71.1–cm) cable hoop.* A single hoop must be constructed of ½-inch (1.3–cm) steel cable 88 inches (223.5 cm) in length. The cable must be joined at its ends by a 3–inch (7.6–cm) piece of ½-inch (1.3–cm) aluminum pipe and pressed with a 3/8–inch (0.95–cm) die to form a hoop. The inside diameter of this hoop must be between 27 and 29 inches (68.6 and 73.7 cm). The hoop must be attached to the extension webbing 17 ½ meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with 3/8–inch (0.95–cm) polypropylene or polyethylene rope for chaffing.

(c) *24–inch (61.0–cm) hoop.* A single hoop must be constructed of either number 60 twine 80 inches (203.2 cm) in length or 3/8–inch (0.95–cm) steel cable 75 ½ inches (191.8 cm) in length. If twine is used, the twine must be laced in and out of the extension webbing 39 meshes behind the leading edge, and the ends must be tied together. If cable is used, the cable must be joined at its ends by a 3–inch (7.6–cm) piece of 3/8–inch (0.95–cm) aluminum pipe and pressed together with a 1/4–inch (0.64–cm) die to form a hoop. The inside diameter of this hoop must be between 23 and 25 inches (58.4 and 63.4 cm). The hoop must be attached to the extension webbing 39 meshes behind the leading edge. The extension webbing must be quartered and attached in four places around the hoop, and every other mesh must be attached all the way around the hoop using number 24 twine or larger. The hoop must be laced with 3/8–inch (0.95–cm) polypropylene or polyethylene rope for chaffing.

(d) *Funnel.* The funnel must be constructed from four sections of 1 ½-inch (3.8–cm) heat-set and depth-stretched polypropylene or polyethylene webbing. The two side sections must be rectangular in shape, 29 ½ meshes on the leading edge by 23 meshes deep. The top and bottom sections are 29 ½ meshes on the leading edge by 23 meshes deep and tapered 1 point 2 bars on both sides down to 8 meshes across the back. The four sections must be sewn together down the 23–mesh edge to form the funnel.

(e) *Attachment of the funnel in the webbing extension.* The funnel must be installed two meshes behind the leading edge of the extension starting at the center seam of the extension and the center mesh of the funnel's top section leading edge. On the same row of meshes, the funnel must be sewn evenly all the way around the inside of the extension. The funnel's top and bottom back edges must be attached one mesh behind the 28–inch (71.1–cm) cable hoop (front hoop). Starting at the top center seam, the back edge of the top funnel section must be attached four meshes each side of the center. Counting around 60 meshes from the top center, the back edge of the bottom section must be attached 4 meshes on each side of the bottom center. Clearance between the side of the funnel and the 28–inch (71.1–cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position.

(f) *Cutting the escape openings.* The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). Two escape openings 10 meshes wide by 13 meshes deep must be cut 6 meshes apart in the extension webbing, starting at the top center extension seam, 3 meshes back from the leading edge and 16 meshes to the left and to the right (total of four openings). The four escape openings must be double selvaged for strength.

(g) *Alternative Method for Constructing the Funnel and Escape Openings.* The following method for constructing the funnel and escape openings may be used instead of the method described in paragraphs F.2.d., F.2.e., and F.2.f. of this section. With this alternative method, the funnel and escape openings are formed by cutting a flap in each side of the extension webbing; pushing the flaps inward; and attaching the top and bottom edges along the bars of the extension webbing to form the v-shape of the funnel. Minimum requirements applicable to this method include: (1) The funnel's top and bottom back edges must be attached one mesh behind the 28–inch (71.1–cm) cable hoop (front hoop). (2) Clearance between the side of the funnel and the 28–inch (71.1–cm) cable hoop (front hoop) must be at least 6 inches (15.2 cm) when measured in the hanging position. (3) The leading edge of the escape opening must be located within 18 inches (45.7 cm) of the posterior edge of the turtle excluder device (TED) grid. (4) The area of the escape opening must total at least 864 in^2 (5,574.2 cm^2). To construct the funnel and escape openings using this method, begin 3 ½ meshes from the leading edge of the extension, at the top center seam, count over 18 meshes on each side, and cut 13 meshes toward the back of the extension. Turn parallel to the leading edge, and cut 26 meshes toward the bottom center of the extension. Next, turn parallel to the top center seam, and cut 13 meshes forward toward the leading edge, creating a flap of webbing 13 meshes by 26 meshes by 13 meshes. Lengthen the flap to 18 meshes by adding a 4 ½-mesh by 26–mesh rectangular section of webbing to the 26–mesh edge. Attach the 18–mesh edges to the top and bottom of the extension by sewing 2 bars of the extension to 1 mesh on the flap in toward the top center and bottom center of the extension, forming the exit opening and the funnel. Connect the two flaps together in the center with a 7–inch piece of number 42 twine to allow adequate clearance for fish escapement between the flaps and the side openings. On each side, sew a 6–mesh by 10 ½-mesh section of webbing to 6 meshes of the center of the 26–mesh

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cut on the extension and 6 meshes centered between the 13–mesh cuts 3 ½ meshes from the leading edge. This forms two 10–mesh by 13–mesh openings on each side.

(h) *Cone fish deflector.* The cone fish deflector is constructed of 2 pieces of 1 5/8–inch (4.13–cm) polypropylene or polyethylene webbing, 40 meshes wide by 20 meshes in length and cut on the bar on each side forming a triangle. Starting at the apex of the two triangles, the two pieces must be sewn together to form a cone of webbing. The apex of the cone fish deflector must be positioned within 10–14 inches (25.4–35.6 cm) of the posterior edge of the funnel.

(i) *11–inch (27.9–cm) cable hoop for cone deflector.* A single hoop must be constructed of 5/16–inch (0.79–cm) or 3/8–inch (0.95–cm) cable 34 ½ inches (87.6 cm) in length. The ends must be joined by a 3–inch (7.6–cm) piece of 3/8–inch (0.95–cm) aluminum pipe pressed together with a 1/4–inch (0.64–cm) die. The hoop must be inserted in the webbing cone, attached 10 meshes from the apex and laced all the way around with heavy twine.

(j) *Installation of the cone in the extension.* The cone must be installed in the extension 12 inches (30.5 cm) behind the back edge of the funnel and attached in four places. The midpoint of a piece of number 60 twine 4 ft (1.22 m) in length must be attached to the apex of the cone. This piece of twine must be attached to the 28–inch (71.1–cm) cable hoop at the center of each of its sides; the points of attachment for the two pieces of twine must be measured 20 inches (50.8 cm) from the midpoint attachment. Two 8–inch (20.3–cm) pieces of number 60 twine must be attached to the top and bottom of the 11–inch (27.9–cm) cone hoop. The opposite ends of these two pieces of twine must be attached to the top and bottom center of the 24–inch (61–cm) cable hoop; the points of attachment for the two pieces of twine must be measured 4 inches (10.2 cm) from the points where they are tied to the 11–inch (27.9–cm) cone hoop.

[FR Doc. 98–30993 Filed 11-16-98; 5:04 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 971015246–7293–02; I.D. 111698E]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for New Jersey

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota harvest.

SUMMARY: NMFS announces that the summer flounder commercial quota available to the State of New Jersey has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in New Jersey for the remainder of calendar year 1998 unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise the State of New Jersey that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in New Jersey.

DATES: Effective 0001 hours November 21, 1998, through December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The initial total commercial quota for summer flounder for the 1998 calendar year was set equal to 11,105,636 lb (5,037,432 kg) (62 FR 66304, December 18, 1997). The percent allocated to vessels landing summer flounder in New Jersey is 16.72499 percent, or 1,858,363 lb (842,954 kg).

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator), to monitor state commercial quotas and to determine when a state's commercial quota is harvested. The Regional Administrator is further required to publish notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that the State of New Jersey has attained its quota for 1998.

The regulations at § 648.4(b) provide that, as a condition of the permit, Federal permit holders agree not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours November 21, 1998, further landings of summer flounder in New Jersey by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1998 calendar year unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective November 21, 1998, federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in New Jersey for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 17, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31097 Filed 11–19–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 224
Friday, November 20, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Public Meeting on Part 70 Rulemaking Activities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland with representatives of the Nuclear Energy Institute (NEI) to discuss the NRC staff's proposed revisions to 10 CFR part 70, "Domestic Licensing of Special Nuclear Material."

NRC staff and NEI representatives briefed the Commission on August 25, 1998, regarding SECY–98–185, "Proposed Rulemaking—Revised Requirements for the Domestic Licensing of Special Nuclear Material," dated July 30, 1998. Although both NRC staff and NEI are in agreement that part 70 should be amended to require the performance of an integrated safety analysis (ISA), disagreements about the details of that proposed requirement were identified at the Commission meeting. At a subsequent public meeting on September 29, 1998, NRC staff and industry representatives discussed some of the issues, but agreed that an additional meeting was needed.

DATES: The meeting is scheduled for December 3–4, 1998, from 9 a.m. to 4 p.m. The meeting is open to the public. Persons with administrative questions concerning this meeting should contact James Hennigan at (301) 415–6850.

ADDRESSES: NRC's Auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Theodore S. Sherr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7218, e-mail: *tss@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of this meeting is for NRC to consider industry's suggestions for specific changes to the language in the SECY–98–185 draft amendment to 10 CFR part 70, and the associated draft standard review plan (SRP). Topics to be addressed are: (1) Next steps in the revision of 10 CFR part 70; (2) chemical safety requirements; (3) SRP issues; (4) criticality safety in relation to risk-informed regulations; (5) the content of the ISA summary; (6) the role of the preliminary ISA in the regulatory process; and (7) other issues identified.

Additional information is available on the NRC technical conferences website through the NRC home page (*http://www.nrc.gov*). This information includes: (1) The NRC staff recommendations sent to the Commission for consideration (SECY–98–185); (2) a transcript of the August 25, 1998, briefing to the Commission; and, (3) a transcript of a September 29, 1998, public meeting between NRC staff and NEI. On the NRC home page select "Rulemaking" from the tool bar. The Technical Conference Forum home page can then be accessed by selecting "Technical Conferences". Again select "Technical Conferences," and then "Revised Requirements for the Domestic Licensing of Special Nuclear Material (Part 70)." Alternatively, you may direct your browser to go directly to *http://techconf.LLNL.gov/cgi-bin/topics*. For information about the technical conferences website, contact Ms. Carol Gallagher, (301) 415–8149; e-mail cag@nrc.gov.

Dated at Rockville, Maryland this 16th day of November, 1998.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Director, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 98–31024 Filed 11–19–98; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–98–4326]

RIN 2125–AE43

Truck Size and Weight; Definitions; Nondivisible

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to modify its definition of nondivisible load or vehicle to include marked military vehicles. This will allow, but not require, States to issue overweight permits for such vehicles to operate on the Interstate System.

DATES: Comments on this docket must be received on or before January 19, 1999.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management and Analysis (202) 366–2212, or Mr. Charles Medalen, Office of the Chief Counsel (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

States must adopt and enforce Federal weight standards for the Interstate System or risk the loss of certain Federal-aid highway funds. These standards are 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, and the weights specified by the bridge formula, up to a maximum gross vehicle weight of 80,000 pounds. The bridge formula is designed to ensure that a vehicle is sufficiently long and has enough axles to protect bridges by spreading the weight over a large area of bridge decking and supports. Some States also have grandfathered weight limits which exceed Interstate System standards, usually because they were in effect in a State before the Interstate limits were adopted. In addition, all States may issue permits allowing nondivisible loads or vehicles, i.e., those that cannot be easily dismantled or divided, to use Interstate highways at weights above the normal Interstate limits. The FHWA has defined nondivisible load or vehicle in 23 CFR 658.5 as follows:

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed for the transport of spent nuclear materials as nondivisible vehicles or loads.

The Department of Defense's Military Traffic Management Command (MTMC) petitioned the FHWA for rulemaking to amend this definition to include marked military vehicles. The MTMC pointed out that since the end of the Cold War, the number of military units deployed overseas has declined, with the result that the bulk of our military forces are based in the continental United States. Current mobility strategy requires the capability to deploy military forces from the United States to any point where they may be needed. The nation's highways, particularly the Interstate System, play a significant role in such actions. Training exercises are essential to the performance of this mission since troops in actual deployments must be familiar with highway operations in order to assure safe and efficient transportation. The FHWA granted the MTMC petition for rulemaking on May 20, 1998. This notice sets forth the substance of the MTMC petition, proposes changes to the regulations at 23 CFR part 658 to accommodate MTMC's position, and solicits comments on the proposed revision of the nondivisible load or vehicle definition in the involved regulations.

Under the current FHWA definition, some overweight military vehicles, such as the M–1 Abrams main battle tank, readily qualify as nondivisible. Other vehicles and equipment, however, would be classified as divisible. If a State does not issue overweight permits for divisible loads—a practice governed by complicated "grandfather rights" which vary from State to State—these military cargoes must be disassembled into their constituent parts before they can be transported on the Interstate System. This requirement impedes military exercises intended to maintain or improve operational readiness.

One of the vehicles particularly affected by the current definition of nondivisibility is the Army's palletized load system (PLS). The PLS is a very large, rugged vehicle designed to operate off-road delivering munitions and other mission-critical supplies to front-line troops. The PLS is a 5-axle straight truck and 3-axle full trailer with an overall length of just under 60 feet, a wheelbase of just under 50 feet, and a maximum gross weight of 132,840 pounds. It weighs almost 66,500 pounds empty. If the straight truck is equipped with a material handling crane, the gross weight rises to 137,520 pounds and the empty weight to about 71,500 pounds. The loaded weights exceed the normal 80,000 pound Interstate weight limit, as well as the bridge formula limit for an 8-axle vehicle with a wheelbase of 50 feet (94,500 pounds). While the Army can operate these vehicles off-road at any time, PLS crews also need the opportunity to train for rapid deployment from bases in the United States to airfields or ports of embarkation. Such exercises often involve the use of Interstate highways.

An argument could be made that the PLS meets the current definition of a nondivisible load or vehicle because reducing its weight to normal Interstate limits would compromise its intended use or make it unusable for its intended purpose. Similar arguments, however, can be made for any commercial vehicle with a maximum designed gross weight in excess of the Federal limits. As the FHWA said in its February 25, 1993, preamble to a Supplemental Notice of Proposed Rulemaking (SNPRM), which included a proposed definition of ■ nondivisible load or vehicle,

> The intended use of a vehicle is not "compromised" simply because it is required to comply with applicable weight limits. For example, the fact that a combination with a GCWR (gross combination weight rating) of 90,000 or 100,000 pounds may not be allowed to operate on the Interstate at more than 80,000 pounds does not compromise its intended use since the vehicle's cargo-carrying function remains entirely unchanged. This (proposed) definition does not imply that vehicles must be allowed to operate at their design limits.
>
> (58 FR 11450, at 11456, February 25, 1993.)

If the existing definition of a nondivisible load or vehicle were interpreted as including the PLS or other large military vehicles, the same rationale could force the FHWA to treat commercial vehicles designed to carry heavy loads as nondivisible. The result would be the replacement of Federal weight limits with State permit limits.

Nevertheless, a regulation which makes it difficult for the States to allow the operation of large military vehicles on the Interstate System is indefensible. Amending the definition in 23 CFR. 658.5 will enable the States to make nondivisible load permits available to military equipment without risking the loss of Federal-aid highway funds. This will not compromise the ability of the FHWA to maintain reasonable limits on the use of such permits by commercial motor vehicles and carriers. Commercial trucking is essential to the U.S. economy, but military vehicles are designed and operated differently and serve fundamentally different purposes. This rulemaking does not establish a precedent applicable to civilian vehicles.

The FHWA proposes to amend paragraph (2) of the definition of a "nondivisible load or vehicle" by adding "marked military equipment or materiel" to the vehicles and equipment already listed there. This will enable, but not require, States to issue nondivisible load permits to vehicles qualifying as, or transporting, marked military equipment or materiel. The term "marked military equipment or

materiel" has two components: (1) There must be some kind of marking which openly identifies the equipment or materiel as belonging to U.S. military forces. This could take the form of individual service markings ("U.S. Army"), Federal license plates or even color (e.g., desert camouflage paint), and (2) the vehicle or load must be directly related to the military's combat or defense mission. In addition to more obvious items such as tanks or cannon, crates of ammunition, field medical supplies, or any other consumable that is directly used by troops would be covered by this definition. Conversely, crates of household furnishings owned by military personnel, or commercial concrete mixer trucks delivering to a construction site on a military base would not qualify under this definition.

We believe it is appropriate to allow States to issue nondivisible-load permits authorizing overweight movements of marked military equipment or materiel on the Interstate System. This is not to say that States should issue permits without consideration of the structural limits of their pavements or bridges. But withholding the discretion to accommodate the needs of U.S. military forces would be a disservice to the nation.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FHWA may, however, issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This rulemaking proposes to allow States to issue overweight permits for marked military vehicles to travel on the Interstate System. The effect on that System will be negligible and under full control by the States. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. This rulemaking affects only States and the Department of Defense.

Based on its evaluation of this proposal, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities do not apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Regulation Identification Number

A regulation identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highway and roads, Motor carrier—size and weight.

Issued on: November 13, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 23, Code of Federal Regulations, part 658, as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR Part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111—31114 ; 49 CFR 1.48.

2. The definition of "nondivisible load or vehicle" in 23 CFR 658.5 is amended to read as follows:

§ 658.5 Definitions.

* * * * *

Nondivisible load or vehicle.

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles, casks designed for the transport of spent nuclear materials, and marked military equipment or materiel as nondivisible vehicles or loads.

* * * * *

[FR Doc. 98–31034 Filed 11–19–98; 8:45 am]

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AZ–001–BU FRL–6183–8]

Clean Air Act Reclassification; Arizona-Phoenix Nonattainment Area; Ozone; Extension of Plan Submittal Deadline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 6, 1997, EPA published a rule announcing our finding that the Phoenix, Arizona, metropolitan area had failed to attain the 1-hour national ambient air qualify standard for ozone as required by the Federal Clean Air Act (CAA or the Act). This finding resulted in the area being reclassified by operation of law from a "moderate" to a "serious" ozone nonattainment area. In the rule, we also set a deadline of December 8, 1998 for Arizona to submit the revisions to its implementation plan that are needed to meet the Act's requirements for serious ozone nonattainment areas. Here, we are proposing a short extension of that deadline to March 22, 1999.

DATES: Comments may be submitted in writing until December 7, 1998.

ADDRESSES: Please address any comments you may have on this document to Frances Wicher at the address listed below. We have placed information related to this proposed action into a docket. You may look at the docket during normal business hours at the U.S. Environmental Protection Agency, Region 9, Office of Air Planning, 17th floor, 75 Hawthorne Street, San Francisco, California 94105.

We have also placed a copy of this document in the air programs section of our website at www.epa.gov/region09/air.

FOR FURTHER INFORMATION CONTACT: Frances Wicher, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. (415) 744–1248 or wicher.frances@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Background

What is Being Proposed in This Action?

EPA is proposing to extend by three and one-half months, until March 22, 1999, the date by which the State of Arizona must submit the revisions to the Phoenix metropolitan area's state implementation plan (SIP) that are needed to meet the Clean Air Act's requirements for serious ozone nonattainment areas. The current submittal date is December 8, 1998.

We have discussed the reasons for this submittal date extension in a direct final rule which you can find in the Rules Section of this **Federal Register**.

We are extending the submittal deadline for the Phoenix-area serious ozone plan in a direct final rule without first proposing the rule and providing an opportunity for public comment. We are finalizing this rule directly because we believe this is noncontroversial and do not expect to receive unfavorable comments on it. If we do not receive unfavorable comments, we will take no further action on this proposed rule. If we do receive unfavorable comments, then we will withdraw the final rule and inform the public that the rule will not take effect. We will then address all public comments in a later final rule. Since there will not be a second comment period on this action, any member of the public who wants to comment on it should do so at this time.

Authority: 42 U.S.C. 7401 *et seq.*

Date Signed: October 24, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–29821 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6191–5]

Protection of Stratospheric Ozone: Allocation of 1999 Essential-Use Allowances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this action, EPA is proposing the allocation of essential-use allowances for the 1999 control period. The United States nominated specific uses of controlled ozone-depleting substances (ODS) as essential for 1999 under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The Parties to the Protocol subsequently authorized specific quantities of ODS for 1999 for the uses nominated by the United States. Essential-use allowances permit a person to obtain controlled ozone-depleting substances as an exemption to the January 1, 1996 regulatory phaseout of production and import. Essential-use allowances are allocated to a person for exempted production or importation of a specific quantity of a controlled substance solely for the designated essential purpose.

DATES: Written comments on this proposed rule must be received on or before December 21, 1998, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the Stratospheric Ozone Protection Hotline listed below by 5 p.m. Eastern Standard Time on November 30, 1998. If a hearing is held, EPA will publish a document in the **Federal Register** announcing the hearing information.

ADDRESSES: Comments on this rulemaking should be submitted in duplicate (two copies) to: Air Docket No. A–92–13, U.S. Environmental Protection Agency, 401 M Street, SW, Room M–1500, Washington, DC, 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Hotline at 1–800–269–1996.

Materials relevant to this rulemaking are contained in Docket No. A–92–13. The Docket is located in room M–1500, First Floor, Waterside Mall at the address above. The materials may be inspected from 8 a.m. until 4 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Protection Hotline at 1–800–296–1996 or Tom Land, U.S. Environmental Protection Agency, Stratospheric Protection Division, Office of Atmospheric Programs, 6205J, 401 M Street, SW., Washington, DC, 20460, 202–564–9185.

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I. Background

The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol)

sets specific deadlines for the phaseout of production and importation of ozone depleting substances (ODS). At their Fourth Meeting in 1992, the signatories to the Protocol (the Parties) amended the Protocol to allow exemptions to the phaseout for uses agreed by the Parties to be essential. At the same Meeting, the Parties also adopted Decision IV/25, which established both criteria for determining whether a specific use should be approved as essential and a process for the Parties to use in making such a determination.

The criteria for an essential use as set forth in Decision IV/25 are the following: "(1) That a use of a controlled substance should qualify as 'essential' only if:

(i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and

(ii) There are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health;

(2) That production and consumption, if any, of a controlled substance for essential uses should be permitted only if:

(i) All economically feasible steps have been taken to minimize the essential-use and any associated emission of the controlled substance; and

(ii) The controlled substance is not available in sufficient quantity and quality from existing stocks of banked or recycled controlled substances, also bearing in mind the developing countries' need for controlled substances."

Decision IV/25 also sets out the procedural steps for implementing this process. It first calls for individual Parties to nominate essential-uses. These nominations are then to be evaluated by the Protocol's Technology and Economic Assessment Panel (TEAP or the Panel) which makes recommendations to representatives of all Protocol Parties. The final decision on which nominations to approve is to be taken by a meeting of the Parties.

II. Allocation of 1999 Essential-Use Allowances

In today's action, EPA is proposing allocation of essential-use allowances for the 1999 control period to entities listed in Table I for exempted production or import of the specific quantity of class I controlled substances solely for the specified essential-use.

TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 1999 AND ESSENTIAL-USE ALLOWANCES

Company/Entity	Class I controlled substance	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC)—Armstrong Laboratories, Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Rhone-Poulenc Rorer, Schering-Plough Corporation, 3M.	CFC–11	899.5
	CFC–12	2157.4
	CFC–114	183.6
Medisol Laboratories, Inc.	CFC–11	67.3
	CFC–12	115.3
	CFC–114	9.6
Aeropharm Technology, Inc.	CFC–11	80.1
	CFC–12	160.2
Sciarra Laboratories, Inc.	CFC–11	0.5
	CFC–12	1.5
	CFC–114	0.5
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply)	All Class I Controlled Substances (except Group VI).	No quantity specified

The International Pharmaceutical Aerosol Consortium (IPAC) consolidated requests for an essential-use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.

Applications submitted by the entities in Table I requested class I controlled substances for uses claimed to be essential during the 1999 control period. The applications provided information in accordance with the criteria set forth in Decision IV/25 of the Protocol and the procedures outlined in the "Handbook on Essential-Use Nominations." The applications request exemptions for the production and import of specific quantities of specific class I controlled substances after the phaseout as set forth in 40 CFR 82.4. The applications were reviewed by the U.S. government and nominated to the Protocol Secretariat for analysis by the Technical and Economic Assessment Panel (TEAP) and its Technical Option Committees (TOCs). The Parties to the Montreal Protocol approved the U.S. nominations for essential-use exemptions during the Ninth Meeting in 1997 (Decision IX/18). Today's action proposes the allocation of essential-use allowances to United States entities based on nominations decided upon by the Parties to the Protocol.

The 1999 global essential-use exemption for analytical and laboratory applications published in today's proposed rule does not alter the strict requirements both in 40 CFR 82.13 and in Appendix G to 40 CFR part 82, subpart A. The restrictions for the global laboratory and analytical essential-use exemption listed in Appendix G include requirements regarding purity of the class I controlled substances and the size of the containers. In addition, there are detailed reporting requirements in § 82.13 for persons that take advantage of the global laboratory and analytical essential-use exemption for class I controlled substances. The strict requirements are established because the Parties to the Protocol, and today's proposed rule, do not specify a quantity of essential-use allowances permitted for analytical and laboratory applications, but establish a global essential-use exemption, without a named recipient.

Any person obtaining class I controlled substances after the phaseout under the essential-use exemptions proposed in today's action would be subject to all the restrictions and requirements in other sections of 40 CFR part 82, subpart A. Holders of essential-use allowances or persons obtaining class I controlled substances under the essential-use exemptions must comply with the record keeping and reporting requirements in § 82.13 and the restrictions in Appendix G.

III. Summary of Supporting Analysis

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Because this proposed rule imposes no enforceable duty on any State, local or tribal government it is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

B. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

D. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060–0170 (EPA ICR No. 1432.16).

Burden means the total time, effort, or financial resources expended by persons

to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities since essential-use allocations are granted to large pharmaceutical manufacturing corporations and not small entities such as small businesses, not-for-profit enterprises or small governmental jurisdictions.

EPA concluded that this proposed rule would not have a significant impact on a substantial number of small entities, therefore, I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. This rule, therefore, does not require a regulatory flexibility analysis.

G. E.O. 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health and safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Ozone layer, Reporting and record keeping requirements.

Dated: November 16, 1998.

Carol M. Browner,

Administrator.

40 CFR Part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.4(r)(2) is amended by revising the table to read as follows:

§ 82.4 Prohibitions.

* * * * *

(r) * * *

(2) * * *

TABLE I.—ESSENTIAL USES AGREED TO BY THE PARTIES TO THE PROTOCOL FOR 1999 AND ESSENTIAL-USE ALLOWANCES

Company/Entity	Class I Controlled Substance	Quantity (metric tonnes)
(i) Metered Dose Inhalers for Treatment of Asthma and Chronic Obstructive Pulmonary Disease		
International Pharmaceutical Aerosol Consortium (IPAC)[1]–Armstrong Laboratories, Boehringer Ingelheim Pharmaceuticals, Glaxo Wellcome, Rhone-Poulenc Rorer, Schering-Plough Corporation, 3M.	CFC–11	899.5
	CFC–12	2157.4
	CFC–114	183.6
Medisol Laboratories, Inc.	CFC–11	67.3
	CFC–12	115.3
	CFC–114	9.6
Aeropharm Technology, Inc.	CFC–11	80.1
	CFC–12	160.2
Sciarra Laboratories, Inc.	CFC–11	0.5
	CFC–12	1.5
	CFC–114	0.5
(ii) Cleaning, Bonding and Surface Activation Applications for the Space Shuttle Rockets and Titan Rockets		
National Aeronautics and Space Administration (NASA)/Thiokol Rocket	Methyl Chloroform	56.7
United States Air Force/Titan Rocket	Methyl Chloroform	3.4
(iii) Laboratory and Analytical Applications		
Global Exemption (Restrictions in Appendix G Apply)	All Class I Controlled Substances (except Group VI).	[2]

[1] The International Pharmaceutical Aerosol Consortium (IPAC) consolidated requests for an essential-use exemption to be nominated to the Protocol as an agent of its member companies for administrative convenience. By means of a confidential letter to each of the companies listed above, EPA will allocate essential-use allowances separately to each company in the amount requested by it for the nomination.
[2] No quantity specified.

[FR Doc. 98–31078 Filed 11–19–98; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7271]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Florida	Blountstown (City), Calhoun County.	Apalachicola River	At South Mayhaw Drive	*53	*57
			At northern corporate limits	None	*61
		Sutton Creek	Upstream side of South Mayhaw Drive	*53	*57
			Upstream side of Sherry Avenue	*56	*57
Maps available for inspection at the Blountstown City Hall, 125 West Central Avenue, Blountstown, Florida. Send comments to Mr. Jimmy Hand, Blountstown City Manager, 125 West Central Avenue, Blountstown, Florida 32424.					
Florida	Calhoun County (Unincorporated Areas).	Apalachicola River	At southern county boundary	None	*36
			At northern county boundary	None	*72
		Chipola River	At mouth at Dead Lakes	None	*41
			At county boundary	None	*60
Maps available for inspection at the Calhoun County Building Inspector's Office, 425 East Central Avenue, Room G–35, Blountstown, Florida. Send comments to Mr. Duane Capps, Chairman of the Calhoun County Board, 425 East Central Avenue, Blountstown, Florida 32424.					
Illinois	Romeoville (Village), Will County.	Lily Cache Slough	At the upstream side of the Interstate Route 55 culvert.	None	*611
			Approximately 1,400 feet upstream of Weber Road.	None	*617
Maps available for inspection at the Romeoville Village Hall Annex, 17 Montrose Drive, Romeoville, Illinois. Send comments to Mr. Fred P. Dewald, Jr., Village of Romeoville President, 13 Montrose Drive, Romeoville, Illinois 60446.					
Illinois	Will County (Unincorporated Areas).	Lily Cache Slough	At the upstream side of the Interstate Route 55 culvert.	None	*611
			Approximately 1,400 feet upstream of Weber Road.	None	*617
Maps available for inspection at the Will County Land Use Department, 501 Ella Avenue, Joliet, Illinois. Send comments to Mr. Charles R. Adelman, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432–1059.					
Massachusetts	Bridgewater (Town), Plymouth County.	Town River	At the confluence with the Taunton River	*33	*30
			At the upstream corporate limits	*49	*48
		Taunton River	Approximately 300 feet downstream of Mill Street.	*31	*30
			At the confluence of the Town and Matfield Rivers.	*34	*30
		Tributary A to Sawmill Brook.	At the confluence with Sawmill Brook	None	*23
			Approximately 100 feet upstream of Colonial Drive.	None	*35
		Sawmill Brook	Approximately 40 feet downstream of SR 18 & 28 (Bedford Street).	*24	*23
			Approximately 4,800 feet upstream of SR 18 & 28 (Bedford Street).	None	*29
		Matfield River	At the confluence with the Taunton River	*33	30
			Approximately 300 feet upstream of Bridge Street.	*35	*34
		South Brook	At the confluence with Town River	*36	*31

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 30 feet downstream of Water Street.	*40	*39

Maps available for inspection at the Town of Bridgewater Department of Inspectional Services, Academy Building, 66 Central Square, Bridgewater, Massachusetts.

Send comments to Mr. Roger Provost, Chairman of the Town of Bridgewater Board of Selectmen, 64 Central Square, Bridgewater, Massachusetts 02324.

Mississippi	Lee County (Unincorporated Areas).	Little Coonewah Creek	Approximately 1,250 feet upstream of Natchez Trace Parkway.	None	*292
			Approximately 0.6 mile upstream of Endville Road.	None	*362
		Tributary to Little Coonewah Creek.	At confluence with Little Coonewah Creek.	None	*336
			Approximately 1,950 feet upstream of Dogwood Hills Circle.	None	*359
		Mud Creek	Approximately 0.8 mile upstream of U.S. Route 78.	*270	*271
			Approximately 0.6 mile upstream of Barnes Crossing Road.	None	*278
		Tributary No. 1 to Mud Creek.	Approximately 125 feet upstream of North Veteran's Boulevard.	None	*279
			Approximately 200 feet upstream of Fern Ridge Road upstream crossing.	None	*316
		Town Creek	Approximately 100 feet downstream of confluence of Tulip Creek.	None	*250
			Approximately 0.5 mile upstream of confluence of Tulip Creek.	None	*252
		Tulip Creek	At confluence with Town Creek	None	*250
			Approximately 100 feet upstream of U.S. Route 78.	None	*290
		West Tulip Creek	At confluence with Tulip Creek	None	*279
			Upstream of Elvis Presley Lake Dam	None	*346

Maps available for inspection at the Lee County Courthouse, 201 West Jefferson, Suite A, Tupelo, Mississippi.

Send comments to Mr. Billy Davis, President of the Lee County Board of Supervisors, P.O. Box 1785, Tupelo, Mississippi 38802.

Mississippi	Plantersville (Town), Lee County.	Tulip Creek	Approximately 400 feet upstream of railroad.	None	*257
			Just downstream of State Route 8	None	*266

Maps available for inspection at the Plantersville Town Hall, 2587 Main Street, Plantersville, Mississippi.

Send comments to The Honorable Viola Foster, Mayor of the Town of Plantersville, P.O. Box 507, Plantersville, Mississippi 38862.

Mississippi	Saltillo (Town), Lee County.	Sand Creek	At Lake Lamar Bruce Road	None	*307
			Approximately 250 feet upstream of Pea Ridge Road.	None	*313

Maps available for inspection at the Saltillo Town Hall, 205 Second Street, Saltillo, Mississippi.

Send comments to The Honorable W.K. Webb, Mayor of the Town of Saltillo, P.O. Box K, Saltillo, Mississippi 38866.

Mississippi	Tupelo (City), Lee County.	Tributary No. 2 to Coonewah Creek.	Approximately 1,400 feet downstream of Brooks Street.	None	*279
			At upstream side of Cliff Gookin Boulevard.	None	*307
		Kings Creek	At confluence with Town Creek	*262	*258
			Upstream of Walsh Road	None	*338
		Little Coonewah Creek	Just upstream of Natchez Trace Parkway	None	*292
			Approximately 1,500 feet downstream of Old Chesterville Road.	None	*336
		Mud Creek	At confluence with Town Creek	*262	*259
			Approximately 0.5 mile upstream of Barnes Crossing Road.	None	*278
		Tributary No. 1 to Mud Creek.	At confluence with Mud Creek	None	*268
			Approximately 1,300 feet upstream of North Veteran's Boulevard.	None	*289
		Tributary No. 2 to Mud Creek.	At confluence with Mud Creek	None	*270

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 110 feet upstream of U.S. Route 45 on-ramp.	None	*273
		Russell Creek	At confluence with Little Coonewah Creek.	None	*300
			Approximately 75 feet upstream of Butler Road.	*339	*341
		Town Creek	Approximately 0.5 mile upstream of confluence of Tulip Creek.	None	*252
			Approximately 100 feet upstream of Natchez Trace Parkway.	None	*275
		Tulip Creek	Approximately 0.6 mile upstream of confluence with Town Creek.	None	*253
			At State Route 178	*278	*279
		West Tulip Creek	Approximately 350 feet upstream of confluence with Tulip Creek.	None	*279
			Approximately 0.54 mile downstream of Elvis Presley Lake Road.	None	*300
Maps available for inspection at the Tupelo City Hall, Department of Planning and Community Development, 117 North Broadway, 2nd Floor, Tupelo, Mississippi.					
Send comments to The Honorable Glenn L. McCullough, Jr., Mayor of the City of Tupelo, P.O. Box 1485, Tupelo, Mississippi 38802–1485.					
Mississippi	Verona (Town), Lee County.	Town Creek	Approximately 600 feet upstream of the confluence of Tulip Creek.	None	*251
			Approximately 1,300 feet upstream of the confluence of Tulip Creek.	None	*251
Maps available for inspection at the Verona City Hall, 194 Main Street, Verona, Mississippi.					
Send comments to The Honorable Billy Fred Wheeler, Mayor of the Town of Verona, P.O. Box 416, Verona, Mississippi 38879.					
New York	Ilion (Village), Herkimer County.	Mohawk River	At downstream corporate limits	*395	*394
			Approximately 1.13 miles upstream of corporate limits.	*395	*394
Maps available for inspection at the Village of Ilion Fire Station, Otsego Street, Ilion, New York.					
Send comments to The Honorable Charles Haggerty, Mayor of the Village of Ilion, P.O. Box 270, Ilion, New York 13357.					
North Carolina	Trent Woods (Town), Craven County.	Trent River	At Country Club Road	None	*9
		Tributary	Approximately 100 feet upstream of Canterbury Road.	None	*16
		Jimmies Creek	Approximately 1,100 feet upstream of the confluence with Wilson Creek.	*9	*10
			At Trent Road	*18	*19
Maps available for inspection at the Trent Woods Town Hall, 912 Country Club Drive, Trent Woods, North Carolina.					
Send comments to The Honorable Michael A. Gorman, Mayor of the Town of Trent Woods, P.O. Box 12392, Trent Woods, North Carolina 28561–2392.					
North Carolina	Wilkes County (Unincorporated Areas).	Reddies River	Approximately 530 feet downstream of U.S. Highway 421–A.	*964	*965
			At confluence with Hoopers Branch	None	*997
Maps available for inspection at the Wilkes County Planning Office, 110 North Street, Wilkesboro, North Carolina.					
Send comments to Mr. Gary Page, Wilkes County Manager, 110 North Street, Wilkesboro, North Carolina 28697.					
South Carolina	Cayce (City), Lexington County.	Congaree Creek	At conflence with the Congaree River	*138	*139
			Approximately 2,200 feet upstream of Interstate 26.	*142	*143
		Congaree River	At confluence of Congaree Creek	*138	*139
			Approximately 1,230 feet upstream of Knox Abbott Drive.	*156	*154
Maps available for inspection at the Cayce City Hall, 1800 12th Street Extension, Cayce, South Carolina.					
Send comments to Mr. John Hicks, Cayce City Manager, P.O. Box 2004, Cayce, South Carolina 29171.					
South Carolina	Columbia (City), Lexington County.	Kinley Creek	At downstream corporate limits approximately 50 feet upstream of Harbison Boulevard.	*224	*228
			At upstream corporate limits approximately 1,100 feet downstream of Beaver Dam Road.	*229	*228

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City of Columbia Department of Utilities & Engineering, 1225 Laurel Street, Columbia, South Carolina. Send comments to The Honorable Robert D. Coble, Mayor of the City of Columbia, P.O. Box 147, Columbia, South Carolina 29217.					
South Carolina	Lexington (Town), Lexington County.	Fourteen Mile Creek	Approximately 1,150 feet downstream of Park Road.	*353	*352
			Approximately 1,150 feet upstream of Park Road.	None	*363
		Twelve Mile Creek	Approximately 0.64 mile downstream of the confluence of Tributary TM–1.	*244	*243
			Approximately 0.42 mile downstream of Wildlife Road.	None	*318
Maps available for inspection at the Lexington Town Hall, 11 Maiden Lane, Lexington, South Carolina. Send comments to Mr. L. C. Greene, Lexington Town Administrator, 111 Maiden Lane, Lexington, South Carolina 29072.					
South Carolina	Lexington County (Unincorporated Areas).	First Creek	Approximately 550 feet downstream of Dogwood Road.	*170	*168
			Approximately 300 feet upstream of Goodwin Pond Dam.	None	*306
		Kinley Creek	Approximately 25 feet downstream of Piney Grove Road.	*202	*201
			Approximately 150 feet downstream of Beaver Dam Road.	*232	*231
		Congaree Creek	At confluence with the Congaree River	*138	*139
			At upstream side of Platt Springs Road	None	*288
		Congaree River	At downstream county boundary	None	*135
			At confluence of Broad River and Saluda River.	*158	*156
		Fourteen Mile Creek	Approximately 1,700 feet upstream of Old Chapin Road.	*350	*349
			Approximately 50 feet upstream of Wise Ferry Road.	None	*458
		Lick Fork Branch	At confluence with Red Bank Creek	None	*185
			At downstream side of Kitti Wake Drive Dam.	None	*260
		Red Bank Creek	Approximately 50 feet upstream of confluence with Congaree Creek.	None	*164
			At upstream side of Calk's Ferry Road	None	*380
		Saluda River	At confluence with Congaree River	*158	*156
			Approximately 875 feet upstream of confluence of Double Branch.	*173	*172
		Savana Branch	At confluence with Congaree Creek	*142	*144
			Approximately 100 feet upstream of St. David's Church Road.	None	*288
		Second Creek	At confluence with First Creek	None	*179
			At confluence of Bear Creek	None	*222
		Bear Creek	At confluence with Second Branch	None	*222
			At confluence of Hunt Branch	None	*274
		Hunt Branch	At confluence with Bear Creek	None	*274
			Approximately 350 feet upstream of Darden Pond Dam.	None	*330
		Lake Murray	Entire shoreline within county	None	*363
		Twelve Mile Creek	Approximately 0.83 mile upstream of Corley Mill Road.	*192	*193
			Approximately 0.47 mile upstream of Taylor Mill Pond Dam.	None	*441
		Tributary to Fourteen Mile Creek.	Approximately 550 feet upstream of confluence with Fourteen Mile Creek.	*264	*265
			Approximately 1,880 feet upstream of confluence with Fourteen Mile Creek.	None	*277
Maps available for inspection at the Lexington County Planning Department, 212 South Lake Drive, 5th Floor, Administration Building, Lexington, South Carolina. Send comments to Mr. Bruce Rucker, Chairman of the Lexington County Council, 212 South Lake Drive, Lexington, South Carolina 29072.					
South Carolina	Pine Ridge (Town), Lexington County.	Congaree Creek	Approximately 1,750 feet downstream of confluence with Savana Bridge.	*142	*143
			Approximately 600 feet downstream of Southern Railway Bridge.	*147	*148

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		First Creek	Approximately 1,125 feet downstream of Dogwood Road.	*170	*168
			Approximately 320 feet upstream of Dogwood Road.	None	*173
		Savana Branch	At confluence with Congaree Creek	*142	*144
			Approximately 650 feet downstream of Old Dunbar Road.	*144	*147
Maps available for inspection at the Pine Ridge Town Hall, 1200 Fish Hatchery Road, West Columbia, South Carolina.					
Send comments to Ms. Sherry Brooks, Pine Ridge Town Administrator, 1200 Fish Hatchery Road, West Columbia, South Carolina 29172.					
South Carolina	South Congaree (Town), Lexington County.	Congaree Creek	Approximately 1,775 feet upstream of Southern Railway.	*150	*151
			Approximately 1,150 feet upstream of the confluence of Red Bank Creek.	None	*165
		First Creek	At confluence with Congaree Creek	*151	*152
			Approximately 400 feet downstream of Dogwood Road.	*173	*170
		Red Bank Creek	At confluence with Congaree Creek	None	*164
Maps available for inspection at the South Congaree Town Hall, 119 West Berry Road, West Columbia, South Carolina.					
Send comments to The Honorable Stokely Cox, Mayor of the Town of South Congaree, 119 West Berry Road, West Columbia, South Carolina 29172.					
South Carolina	West Columbia (City), Lexington County.	Saluda River	Approximately 4,800 feet upstream of confluence with Congaree River.	*158	*156
			Approximately 300 feet upstream of USGS Gage No. 2–1690.	*170	*169
		Congaree River	Approximately 1,250 feet upstream of Knox Abbot Drive.	*156	*154
			Approximately 1,200 feet upstream of Meeting Street.	*158	*156
Maps available for inspection at the West Columbia City Hall, Zoning Department, 1053 Center Street, West Columbia, South Carolina.					
Send comments to The Honorable Mark Rish, Mayor of the City of West Columbia, 1053 Center Street, West Columbia, South Carolina 29169.					
Tennessee	Murfreesboro (City), Rutherford County.	Bushman Creek	Approximately 1,100 feet upstream of Osborne Lane.	*561	*560
			Approximately 250 feet downstream of New Lascassas Road.	*585	*583
		Sinking Creek	Approximately 0.88 mile upstream of confluence with West Fork Stones River.	*549	*548
			At downstream side of Ewing Boulevard	*611	*610
		Unnamed Tributary of West.	At confluence with West Fork Stones River.	*592	*589
		Fork Stones River	Approximately 0.6 mile upstream of confluence.	*592	*589
		West Fork Stones River	Approximately 0.5 mile upstream of Mason Drive.	*577	*576
			Approximately 0.5 mile upstream of State Route 99.	*597	*596
		Lytle Creek	Approximately 1,200 feet downstream of Old Fort Parkway.	*580	*579
			Approximately 100 feet upstream of Old Fort Parkway.	*581	*580
Maps available for inspection at the Murfreesboro City Hall, Planning Department, 111 West Vine Street, Murfreesboro, Tennessee.					
Send comments to The Honorable Joe B. Jackson, Mayor of the City of Murfreesboro, P.O. Box 1139, Murfreesboro, Tennessee 37133–1139.					
Tennessee	Rutherford County (Unincorporated Areas).	Bushman Creek	Approximately 1,750 feet upstream of Compton Road.	*547	*546
			Approximately 1,400 feet upstream of New Lascassas Road.	*591	*589
		Unnamed Tributary of West.	Approximately 1,000 feet downstream of State Route 99.	*592	*589
		Fork Stones River	Approximately 370 feet downstream of Cason Lane.	*592	*591

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		West Fork Stones River ...	Approximately 0.5 mile upstream of Mason Drive.	*577	*576
			Approximately 0.5 mile upstream of State Route 99.	*597	*596

Maps available for inspection at the Rutherford County Engineering Department, 1 Public Square South, Room 204, Murfreesboro, Tennessee.

Send comments to Ms. Nancy R. Allen, Rutherford County Executive, County Courthouse, Public Square, Room 101, Murfreesboro, Tennessee 37130.

Wisconsin	Baraboo (City), Sauk County.	Baraboo River	Approximately 1,700 feet downstream of Manchester Street.	*818	*819
			Approximately 400 feet downstream of Shaw Street.	*846	*845

Maps available for inspection at the City of Baraboo Engineering Department, 135 4th Street, Baraboo, Wisconsin.

Send comments to The Honorable Dean D. Steinhorst, Mayor of the City of Baraboo, 135 Fourth Street, Baraboo, Wisconsin 53913.

Wisconsin	Ironton (Village), Sauk County.	Little Baraboo River	At downstream corporate limits	None	*903
			At upstream corporate limits	None	*904

Maps available for inspection at the Ironton Community Center, 290 Main Street, LaValle, Wisconsin.

Send comments to Mr. Dwight Denman, Ironton Village President, P.O. Box 57, LaValle, Wisconsin 53941.

Wisconsin	Lake Delton (Village), Sauk County.	Wisconsin River	At downstream corporate limits	None	*824
			At upstream corporate limits	None	*825

Maps available for inspection at the Lake Delton Village Office, 50 Wisconsin Dells Parkway South, Lake Delton, Wisconsin.

Send comments to Mr. Frank Kaminski, Lake Delton Village President, P.O. Box 87, Lake Delton, Wisconsin 53940.

Wisconsin	LaValle (Village), Sauk County.	Baraboo River	Approximately 2,700 feet upstream of State Route 33.	None	*892
			Approximately 2,075 feet upstream of State Route 58.	*899	*894

Maps available for inspection at the LaValle Village Office, 103 West Main Street, LaValle, Wisconsin.

Send comments to Mr. Duane Nobs, LaValle Village President, P.O. Box 13, LaValle, Wisconsin 53941.

Wisconsin	Merrimac (Village), Sauk County.	Wisconsin River	At downstream corporate limits	None	*775
			At upstream corporate limits	None	*776

Maps available for inspection at the Merrimac Village Hall, 100 Cook Street, Merrimac, Wisconsin.

Send comments to Mr. Alan Shanks, Merrimac Village President, 100 Cook Street, P.O. Box 26, Merrimac, Wisconsin 53561.

Wisconsin	Muscoda (Village), Grant and Iowa Counties.	Wisconsin River	Downstream corporate limits	None	*678
			Upstream corporate limits	None	*680

Maps available for inspection at the Muscoda Village Hall, 206 North Wisconsin Avenue, Muscoda, Wisconsin.

Send comments to Mr. Larry J. Miller, Muscoda Village President, 206 North Wisconsin Avenue, Muscoda, Wisconsin 53573.

Wisconsin	North Freedom (Village), Sauk County.	Baraboo River	Approximately 0.53 mile upstream of the downstream crossing of the North Western railroad.	*865	*864
			Approximately 1.08 miles upstream of Mid-Continent Railway.	*868	*867

Maps available for inspection at the North Freedom Village Office, 103 North Maple, North Freedom, Wisconsin.

Send comments to Mr. Oscar Baumgarten, North Freedom Village President, P.O. Box 300, North Freedom, Wisconsin 53951.

Wisconsin	Plain (Village)	Honey Creek	Approximately 1,000 feet northeast of the intersection of Main Street and Bridge Road.	None	*799

Maps available for inspection at the Plain Village Clerk's Office, 1015 Cedar Street, Plain, Wisconsin.

Send comments to Mr. William Gruber, Plain Village President, Village Hall, P.O. Box 15, Plain, Wisconsin 53777.

Wisconsin	Prairie du Sac (Village), Sauk County.	Wisconsin River	At downstream corporate limits	None	*748
			At upstream corporate limits	None	*749

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Prairie du Sac Village Hall, 280 Washington Street, Prairie du Sac, Wisconsin. Send comments to Ms. Cheryl Sherman, Prairie du Sac Village President, 280 Washington Street, Prairie du Sac, Wisconsin 53578.					
Wisconsin	Reedsburg (City), Sauk County.	Baraboo River	Approximately 400 feet upstream of Golf Course Road.	None	*876
			Approximately 1 mile upstream of State Route 23/33.	*881	*880
Maps available for inspection at the Reedsburg City Hall, 134 South Locust Street, Reedsburg, Wisconsin. Send comments to The Honorable Carl Steolte, Mayor of the City of Reedsburg, 134 South Locust Street, P.O. Box 490, Reedsburg, Wisconsin 53959.					
Wisconsin	Rock Springs (Village), Sauk County.	Baraboo River	Approximately 1,480 feet downstream of State Highway 136 (East Broadway).	*871	*870
			At downstream side of Chicago and Northwestern (approximately 3,400 feet upstream of confluence with Narrows Creek).	*872	*871
		Narrows Creek	At the confluence with the Baraboo River	*871	*870
			Approximately 1,400 feet downstream of State Route 154.	*872	*870
Maps available for inspection at the Rock Springs Village Hall, 110 East Broadway, Rock Springs, Wisconsin. Send comments to Mr. Harlan H. Behake, Rock Springs Village President, P.O. Box 26, Rock Springs, Wisconsin 53961.					
Wisconsin	Sauk City (Village), Sauk County.	Wisconsin River	At downstream corporate limits	None	*743
			At upstream corporate limits	None	*748
Maps available for inspection at the Sauk City Village Hall, 726 Water Street, Sauk City, Wisconsin. Send comments to Ms. Vicki Breunig, Sauk City Village Administrator, 726 Water Street, Sauk City, Wisconsin 53583.					
Wisconsin	Sauk County (Unincorporated Areas).	Seeley Creek	At confluence with Baraboo River	*865	*864
			Approximately 0.5 mile upstream of County Highway W.	*865	*864
		Little Baraboo River	At confluence with Baraboo River	*895	*892
			Approximately 160 feet downstream of State Route 58.	*895	*894
		Narrows Creek	At the confluence with Narrows Creek	*915	*914
		Split Flow	Approximately 6,400 feet upstream of the confluence with Narrows Creek.	None	*925
		Wisconsin River	Approximately 1,000 feet downstream of State Route 130.	None	*701
			Just downstream of Kilbourn Dam	*830	*827
		Narrows Creek	Approximately 0.60 mile upstream of the confluence with the Baraboo River.	*871	*870
			Just downstream of State Route 154	*925	*924
		Baraboo River	At county boundary (Sauk/Columbia county line) approximately 2.55 miles downstream of State Route 33.	*803	*806
			Approximately 0.56 mile upstream of County Road G.	None	*910
Maps available for inspection at the Sauk County Courthouse, 510 Broadway, Baraboo, Wisconsin. Send comments to Mr. Melvin Rose, Sauk County Board Chairman, 505 Broadway Street, Baraboo, Wisconsin 53913.					
Wisconsin	Spring Green (Village), Sauk County.	Wisconsin River	Approximately 1.3 miles downstream of State Highway 23 bridge.	None	*710
			Approximately 500 feet upstream of State Highway 23 bridge.	None	*712
Maps available for inspection at the Spring Green Village Hall, 112 West Monroe Street, Spring Green, Wisconsin. Send comments to Mr. James Krey, Spring Green Village President, 112 West Monroe Street, Box 158, Spring Green, Wisconsin 53588.					
Wisconsin	West Baraboo (Village), Sauk County.	Baraboo River	Approximately 1,350 feet downstream of Shaw Street.	*844	*843
			Approximately 0.4 mile upstream of U.S. Route 12.	*853	*854

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the West Baraboo Village Hall, 500 Cedar Street, Baraboo, Wisconsin. Send comments to Mr. Scott Alexander, West Baraboo Village President, 500 Cedar Street, P.O. Box 261, Baraboo, Wisconsin 53913.					
Wisconsin	Wisconsin Dells (City), Sauk and Columbia Counties.	Wisconsin River	At downstream corporate limits	*826	*824
			At downstream side if Kilbourn Dam	*830	*827
Maps available for inspection at the Wisconsin Dells City Hall, 300 La Crosse Street, Wisconsin Dells, Wisconsin. Send comments to The Honorable Craig Case, Mayor of the City of Wisconsin Dells, 300 La Crosse Street, Wisconsin Dells, Wisconsin 53965.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: November 10, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–31042 Filed 11–19–98; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Cactus Ferruginous Pygmy-owl Take Guidance and Survey Protocol; Extension of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of two public comment periods.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that it is extending the public comment periods to allow continued public input on the take guidance and survey protocols for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). The take guidance is for use in determining if take of the cactus ferruginous pygmy-owl may result from activities within areas occupied by the species in Arizona. Two survey protocols are proposed—one for determining presence of the species within known historic range in Arizona, and another for gathering information on the species' distribution, occurrence, and numbers. Notices of availability and comment periods were previously published on September 16, 1998 (63 FR 49539) and August 13, 1998 (63 FR 43362 and 43363). This species is listed as endangered in Arizona under the U.S. Endangered Species Act.

DATES: Written comments should be received by March 14, 1999.

ADDRESSES: Persons wishing to review either the cactus ferruginous pygmy-owl take guidance or survey protocol may access either at the world wide web site of the Southwest Region of the Service at http://ifw2es.fws.gov/arizona/, or obtain copies by contacting the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951 or by calling the Field Office at (602) 640–2720. Documents will also be available for public inspection by written request, by appointment only, during normal business hours (7:30 to 4:30), U.S. Fish and Wildlife Service, Phoenix, Arizona. Written data or comments concerning the cactus ferruginous pygmy-owl take guidance or survey protocol should be submitted to the Field Supervisor, Arizona Ecological Services Field Office, Phoenix, Arizona (see address above).

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Acting Field Supervisor, Arizona Ecological Services Field Office in Phoenix, Arizona at (602) 640–2720.

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl was listed by the Service as an endangered species in Arizona on March 10, 1997, based on extensive population declines within its historic range in the state. The pygmy-owl, a small reddish-brown owl, nests in a cavity in a tree or large columnar cactus. The species was once common to abundant in riparian forests, mesquite-cottonwood woodlands, and desertscrub habitats in central and southern portions of the state. It is still considered a potential inhabitant of riparian areas, where this extremely limited vegetative community still occurs, and is found in upper Sonoran Desert habitats usually consisting of dense ironwood, mesquite, acacia, bursage, and saguaro cacti, with understory vegetation of smaller trees and shrubs.

On August 13, 1998, the Service published two notices of availability and opening of public comment periods for cactus ferruginous pygmy-owl survey protocol (63 FR 43362) and taking guidance (63 FR 43363). The comment periods closed on September 14, 1998. The comment periods were extended until November 14, 1998, with a September 16, 1998, notice (63 FR 49539).

Take Guidance

Urban and suburban development within the remaining appropriate habitat of the pygmy-owl is ongoing. These and other actions may result in take of the species. The Endangered Species Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions that apply to all endangered and threatened wildlife, respectively. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect or to attempt any of these). Regulations at 50 CFR 17.3 define the terms "harm" and "harass" as used under the definition of "take." "Harm" is defined as an act which actually kills or injures wildlife. Such acts may include significant habitat modification that impairs essential behavioral patterns, including breeding, feeding, or sheltering. "Harass" is defined as an intentional or negligent act or omission which creates a likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns, including, but not limited to, breeding, feeding, or sheltering.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

At the time of listing the owl, the Service provided a partial listing of activities that could potentially harm, harass, or otherwise take the pygmy-owl. These included—

(1) Removal of nest trees;

(2) Removal of a nest box in use by the pygmy-owl;

(3) Clearing or significant modification of occupied habitat, whether or not the nest tree is included;

(4) Sustained noise disturbance during the breeding season;

(5) Pursuit or harassment of individual birds;

(6) Frequent or lengthy low-level flights over occupied habitat during the breeding season;

(7) Severe overgrazing that results in the removal of understory vegetation.

In furtherance of the Service's policy to provide information concerning what activities may be considered take of the pygmy-owl, the Service is making available information to aid both Federal and non-Federal entities in determining when a take situation may occur.

Survey Protocol

The Fish and Wildlife Service (Service) proposes a survey protocol for determining the presence of the endangered cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) within known historic range of the species in Arizona. The proposed survey protocol comes in two versions depending on its use: the first is for use in determining if cactus ferruginous pygmy-owls are present on specific project sites where an activity is proposed; the second is for use in gathering information on distribution, occurrence, and numbers of pygmy-owls over more extensive areas of its historic range in Arizona. This proposed protocol is founded on procedures established by the Arizona Game and Fish Department in 1993. The proposed protocol incorporates modifications found to be appropriate following 5 years of field application. Differences between the 1993 protocol and the current proposed protocol include a reduction in the survey period from 9 months (September through May) to 6 months (January through June); and an increase in surveys from one to three, with 30 days between each of the three surveys preferred, but a minimum of 15 days required. At least one survey must occur between February 15 and April 15. In reviewing determinations of pygmy owl presence or absence, the Service will require the implementation of the protocol for two consecutive years (rather than one year) prior to actions that may impact the owls or their habitats.

The existing protocol will remain in use and in effect until the public comment period is closed and the Service has evaluated the comments from the public.

The Service has submitted the protocol to recognized species and technical experts for peer review to ensure a scientifically sound basis for determination of the presence of the species within its known range.

The Service will regularly review and modify, as necessary, the survey protocol to ensure that the best available scientific information is incorporated into the prescribed methodology.

Overall Purpose

The Service extends the public comment period to ensure that adequate time is available for the public to provide additional information to more adequately understand the occurrence and biology of the cactus ferruginous pygmy-owl in central and southern Arizona. Until more complete scientific information is available, the Service believes that the use of the take guidance document and the proposed survey protocol document will protect the pygmy-owl while allowing carefully considered development to proceed and will provide the most biologically valid data upon which to determine habitat use and occupancy by the pygmy-owl.

Author: The primary author of this document is Leslie Dierauf, Conservation Biologist, Regional Office.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: November 9, 1998.

Geoffery L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 98–30533 Filed 11–19–98; 8:45 am]

BILLING CODE 4310–55–U

Notices

Federal Register
Vol. 63, No. 224
Friday, November 20, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–98–00–8]

Notice of a Teleconference Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming Teleconference meeting of the National Organic Standards Board (NOSB).

DATES: December 7, 1998, at 2:00 p.m. to 3:30 p.m. Eastern Standard Time (EST). You must register in advance if you want to be present on the teleconference call, no later than 12:00 p.m. EST November 30, 1998. Comments to be considered by the NOSB prior to the teleconference, should be received by November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2945 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–3235; Fax (202) 205–7808; or by e-mail: t_keith_jones@usda.gov.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), requires the establishment of the NOSB. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of the OFPA. The NOSB met for the first time in Washington, DC, in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging; Livestock Standards; Accreditation; Materials; and International Issues. In August 1994, the NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time has submitted 30 addenda to its recommendations, and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of the NOSB was held in July 1998, in Washington, DC. The Department of Agriculture (USDA) published its proposed rule in the **Federal Register** on December 16, 1997 (62 FR 65849). An extension of the comment period on the proposed rule was published in the **Federal Register** on February 9, 1998 (63 FR 6498). The comment period was extended until April 30, 1998. The USDA published for public comment three issue papers in the **Federal Register** (63 FR 57624) on October 28, 1998. The papers addressed certain issues raised during the National Organic Program's proposed rule comment period. The issue papers are: Issue paper 1. Livestock Confinement in Organic Production Systems; Issue Paper 2. The Use of Antibiotics and Parasiticides in Organic Livestock Production; and Paper 3. Termination of Certification by Private Certifiers. Comments received on these papers will be considered during the development of a revised National Organic Program proposed rule.

Purpose and Agenda

The NOSB will conduct a public meeting by teleconference on Friday, December 7, 1998, from 2:00 p.m. to 3:30 p.m. EST inclusive. After the teleconference, the NOSB will make its final recommendations to the Secretary of Agriculture on the above described issue papers.

Type of Meeting

The teleconference meeting will be open to the public. If you wish to be present on the teleconference call you must register in advance to receive the dial-in number (teleconference lines are limited and are available on a first come, first served basis). Please contact Karen Thomas at: (202) 720–3252 or fax: (202) 205–7808 with your name, company name, and telephone number, *no later than* 12:00 p.m. EST November 30, 1998, if you want to be present on the teleconference call. Opportunities for oral comment will be given at the beginning of the call and will be limited to no more than two minutes per speaker and no more than 20 minutes total for the public comment period. Public statements presented at the teleconference meeting should not repeat prior oral or written statements made to USDA by a commenter on the Issue Papers.

In its October 28, 1998 **Federal Register** Notice, USDA established December 14, 1998 as the last date for submission of comments on the Issue Papers. Persons, however, who want the NOSB to consider their comments prior to the teleconference, should submit them to USDA by November 30, 1998 (address above) and indicate that they are being submitted for the December 7, 1998 NOSB teleconference. All comments on the issue papers received by USDA by December 14, 1998, will be considered by it.

Copies of the meeting agenda can be obtained from Karen Y. Thomas at (202) 720–3252 or at the above fax number and copies of the issue papers that will be discussed can be obtained from Keith Jones using the contact information listed at the beginning of this notice. Minutes of the meeting will be available through Keith Jones. All of this information is also available through the NOP web page at: www.ams.usda.gov/nop.

Dated: November 16, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–31185 Filed 11–19–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pilgrim Project, Tahoe National Forest, Sierra County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of intent to prepare an environmental impact settlement.

SUMMARY: On May 22, 1997, a notice was published in the **Federal Register** (at 62 FR 28002–28003) stating that an

environmental impact statement (EIS) would be prepared for proposed timber harvest, plantation thinning, fuels reduction, and wildlife habitat improvement projects for areas in the Wolf/Kanaka/Indian Creek and Middle Yuba River watersheds. On March 20, 1998, a revised notice of intent to prepare an environmental impact statement was published in the **Federal Register** (at 63 FR 13620) that modified the scope of the EIS to just address vegetation management actions and directly connected activities such as fuels treatment and reduction, timber harvesting, and road construction and reconstruction. That notice is hereby cancelled.

After scoping and receiving public comments, we reevaluated and redesignated our proposal so that the proposed activities are now not considered major actions that would significantly affect the quality of the human environment. As a result, we are now preparing an environmental assessment instead of an environmental impact statement.

DATES: This action is effective November 20, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Fildes, Inderdisciplinary Team Leader, Downieville Ranger District, Tahoe National Forest, 15924 Highway 49, Camptonville, CA 95922, (530) 288–3231.

Dated: November 12, 1998.

Steven T. Eubanks,

Forest Supervisor.

[FR Doc. 98–31006 Filed 11–19–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra Nevada Forest Plan Amendment Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, Regions 4 and 5 will prepare an environmental impact statement (EIS) to amend eleven National Forest Land and Resource Management Plans and the Regional Guides for the Intermountain and Pacific Southwest Regions in response to changed circumstances and new information resulting from the report of the Sierra Nevada Ecosystem Project, the Sierra Nevada Science Review, and the Summary of Existing Management Direction. The Land and Resource Management Plans to be amended encompass the Humboldt-Toiyabe, Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Sequoia, and Inyo National Forests, and the Lake Tahoe Basin Management Unit.

DATES: The public is asked to provide any additional information they believe the Forest Service may still not have at this time, and to submit any issues (points of concern, debate, dispute or disagreement) regarding potential effects of the proposed action or alternatives by January 9, 1999.

ADDRESSES: Send written comments to Steve Clauson, EIS Team Leader, USDA Forest Service, Sierra Nevada Framework Project, Room 419, 801 "I" Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION: Contact Steve Clauson, EIS Team Leader, USDA Forest Service, Sierra Nevada Framework Project, Room 419, 801 "I" Street, Sacramento, CA 95814. Phone number—916–492–7554.

SUPPLEMENTARY INFORMATION:

Background

In the Pacific Southwest Region, Region 5 of the Forest Service, a Sierra Nevada-wide planning effort was initiated in 1992 to protect the California spotted owl (CASPO). This planning responded to Forest Service research on the status and viability of the California spotted owl (CASPO Technical Report, 1992). The CASPO report recommended interim management guidelines be adopted to protect California spotted owl populations while a more comprehensive management plan was developed. An environmental assessment to implement interim guidelines was prepared and a Decision Notice approving implementation of interim guidelines was signed on January 13, 1993. To develop a comprehensive management plan, the Forest Service prepared a draft environmental impact statement (EIS) for the comprehensive management of California spotted owl in 1995. A revised draft EIS was scheduled for release in 1996, however new scientific information came to light and work was suspended pending the report of a Federal Advisory Committee (FAC) that was chartered to review the revised draft EIS. The work of the FAC was influenced by the Sierra Nevada Ecosystem Project (SNEP), which produced four volumes of scientific assessments including several papers exploring possible management strategies, and made available large databases and maps for the Sierra Nevada.

The Federal Advisory Committee concluded that the revised draft EIS was inadequate in its current form as either an owl or ecosystem management EIS ("Final Report of the California Spotted Owl Federal Advisory Committee", USDA, December 1997). The FAC report identified specific critical shortcomings and offered recommendations to address inconsistencies with scientific information, flaws in some key elements of the analysis process, and the need for a more collaborative planning process. The Forest Service has redirected the EIS effort in response to the FAC report and other information.

On July 24, 1998, a team of scientists from the USDA Forest Service, Pacific Southwest Research Station, produced the Sierra Nevada Science Review (USDA Forest Service, Pacific Southwest Research Station, July 24, 1998), a review of current scientific information with attention to issues of urgent priority at Sierra Nevada Range-wide scale. A companion document, the Summary of Existing Management Direction, released on August 11, 1998, summarized existing management direction related to issues brought forward in the Science Review. This new scientific information has implications for existing forest plans, social values, and environmental trends in the Sierra Nevada.

The report of the Sierra Nevada Ecosystem Project concludes: "Most of the problems of the Sierra can be solved, although the timeframe and degree of solution will differ depending on the problem." ("Sierra Nevada Ecosystem Project, Final Report to Congress", Davis: University of California, Centers for Water and Wildland Resources, 1996.) For many of these problems, a range-wide or multi-forest planning approach is needed.

The Land and Resource Management Plans for the eleven national forests in the Sierra Nevada Range and Modoc Plateau were developed in the 1980's and early 1990's. These plans were independently prepared and adopted in response to concerns at the scale appropriate for each forest. Given the science that recently emerged concerning issues that go beyond the individual forest and ownership boundaries, there is an urgent need to amend the plans to reflect this new information and achieve range-wide consistency. In response to this need, on July 10, 1998 Regional Forester G. Lynn Sprague, in cooperation with Region 4, committed to developing new management direction, where necessary, to address concerns on the Sierra Nevada national forests (63 FR 37314). This EIS is part of the overall Sierra

Nevada Framework for Conservation and Collaboration, which will continue to develop solutions to interagency issues and encourage communication on management of wildlands in the Sierra Nevada Range.

Public Involvement

During 1998, nearly 1,000 people participated in 37 community based workshops to provide their perspectives on the Science Review, the Summary of Existing Management Direction, and other information relevant to the EIS. The majority of the workshops took place in Sierra Nevada communities. A Tribal Summit was held in Tahoe City and a state-wide workshop was held in Davis. Other meetings were held in San Francisco, Los Angeles, and Carson City, Nevada. Written comments were submitted at the workshops, on the Internet, and in letters.

People attending the September and October workshops were asked to respond to two questions: (1) Is there other new science relevant to Sierra Nevada national forest management that would cause us to add to or modify the findings in the Science Review, and (2) in light of the Science Review and other new information, what changes would you suggest for management direction in the Sierra Nevada national forests? Responses to these questions, together with the agency's analysis of the new science, information, and legal requirements, were used in framing the proposed action and possible alternatives presented in this Notice of Intent.

In addition to problems or concerns to be addressed in the EIS, many additional concerns surfaced in September and October that are not appropriate to address in the proposed action. Concurrent with this Notice of Intent, the Forest Service has produced a "Design Paper" that documents the agency's proposal for addressing concerns outside the scope of the proposed action. The Design Paper is available on the Internet at www.r5.fs.red.us or by request to the Sierra Nevada Framework Project at the address given in the **FOR FURTHER INFORMATION** section.

Public comments received during this period reflect a wide range of social perspectives. Participants largely agreed on broad conservation principles. There were, however, many different perspectives on how the principles might be implemented. The wide variation of community responses confirmed the need to include local residents, as well as regional and national interests, in the design and refinement of alternatives. Numerous suggestions were made encouraging the Forest Service to work with other federal agencies, Indian Tribes, state and local governments, and organizations to solve Sierra Nevada-wide problems. The recommendations and suggestions received during meeting will be reviewed again during the scoping period.

Each Sierra Nevada national forest will continue dialogues with interested members of the public and other agencies throughout the environmental analysis process. Each forest will host community discussions to explain and hear responses to this Notice of Intent. Workshops will be designed to receive suggestions and recommendations regarding the proposed actions as well as information that could help frame alternatives. Specific locations and dates of the meetings will be posted on the Internet at www.r5.fs.fed.us and in the newspapers of record for each Sierra Nevada national forest.

Scope

The selection of problems for inclusion in the EIS was based on the following criteria: (1) New scientific information is available about the extent, intensity, or duration of the problem, (2) geographic scale is broad, (3) public perception or environmental risk, as judged by the science community, indicates action should be taken now, and (4) the problem is not well addressed elsewhere.

A single EIS amending the eleven forest plans is proposed because: (1) Some problems may only be treatable at a range-wide scale, (2) the public, Indian Tribes, other governmental agencies, and the Forest Service need to consider ways to meet environmental goals common to the eleven forests economically and efficiently, and (3) implementation can be made more accountable and consistent.

Problems that did not meet these criteria will be addressed in the associated activities of the Sierra Nevada Framework. For example, concerns surrounding the Sierra Nevada bighorn sheep can be more immediately resolved within the scope of the existing forest plans by increased attention from the five affected national forests in the southern Sierra Nevada.

Problem identified for action in this EIS are:

1. *Old forest ecosystems and associated species.* Old forest ecosystems have declined in quality, amount and connectivity throughout the Sierra Nevada over the past hundred years. Habitats and/or populations of some animals associated with old-forests, including forest carnivores and the California spotted owl, have declined. No regionally consistent direction for old-forest conservation exists.

2. *Aquatic, riparian, and meadow ecosystems.* These ecosystems are the most degraded of all habitats in the Sierra Nevada. Many aquatic and riparian-dependent species (willow flycatcher and amphibians in particular) and communities are at risk. No regionally consistent direction exists to deal with this urgent problem.

3. *Fire and Fuels.* Wildland fire is both a major threat to life, property and natural resources and a critical natural process in the Sierra Nevada. Fire management planning is outdated and not integrated into forest plans.

4. *Noxious weeds.* There is a rapid spread of invasive, exotic plant species that threaten to crowd out native plants and compromise wildland values. Noxious weeds are spreading throughout California and gaining ground at higher elevations in the Sierra Nevada.

5. *Lower westside hardwood forest ecosystems.* Increasing urban development in lower elevations in the Sierra Nevada has fragmented and decreased the amount of hardwood forests. The public has expressed a desire to maintain the remaining extent of hardwood forests for their ecological roles, biodiversity, aesthetics, cultural resources, and for resource uses such as firewood and forage.

Purpose and Need for Action

The purpose of the proposed action is to improve national forest management direction for five broad problems: (1) Conservation of old-forest ecosystems, (2) conservation of aquatic, riparian, and meadow ecosystems, (3) increased risk of fire and fuels buildup, (4) introduction of noxious weeds, and (5) sustaining hardwood forests. Resolution of these problems will influence and be influenced by social, cultural and economic values. The need is to ensure that national forest management direction accounts for current scientific thinking and public expectations, and is consistent among the eleven national forests in practices, procedures, definitions, standards and guidelines.

Current forests plan direction does not reflect the shift in public values and expectations for goods and services from the Sierra Nevada national forests. As the five problem areas are addressed, there is a need to ensure that changes in the level of natural resource products, services, and values, e.g., forage, timber, wildlife, fish, recreation, wilderness, or water, are identified to respond to public concerns with the certainty of

future forest management products and services. In some cases, the lack of certainty has contributed to false expectations about the capability to provide products and services without diminishing long-term productive capability and without violating legal requirements for clean water, clean air, biological diversity, and endangered species.

Three processes are needed to address the problems identified above: adaptive management, landscape analysis, and collaborative interaction with the public.

Adaptive Management. The purpose is to adjust management direction based on results gained through experience. The need is for monitoring protocols that provide timely, accurate information on outcomes achieved by implementing current management direction. As stated in the report of the Sierra Nevada Ecosystem Project: "All strategies for improvements are in some ways experiments. Learning as we go and adjusting as necessary work best when we give as much care and planning to measuring the response to new management strategies as we do to implementing them."

Landscape Analysis. The purpose is to consider how management direction at the scale of the forest plan or higher can be applied given landscape conditions at the watershed or subwatershed scale. The need is to identify a suitable set of landscape analysis protocols so that treatment needs can be identified and project priorities set.

Public Interaction and Collaboration. The purpose is to ensure that citizens can meaningfully participate in the design, implementation and monitoring of management direction. Past planning efforts have followed a traditional model that has public input to the planning process only at prescribed intervals with little collaboration. As the report of the Sierra Nevada Ecosystem Project concludes: "Collaboration among various agencies, private interests, and public at large in the Sierra is the most significant principle that emerges from the SNEP strategies."

The following are the specific purposes, by problem area, for taking action.

Old Forest Ecosystems and Associated Species. The purpose of the proposed action is to protect, increase, and perpetuate old forest and hardwood ecosystem conditions including their structure, composition, function, and to ensure the maintenance of biological diversity of these ecosystems including the viability of associated species while meeting people's needs and concerns. This will include reversing the declining trends in abundance of old-forest ecosystems and habitats for species that use old-forests.

Aquatic, Riparian, and Meadow Ecosystems. The purpose of the proposed action is to protect and restore aquatic, riparian and meadow ecosystems of the Sierra Nevada national forests. This direction will ensure the proper functioning, such as stable streambanks and shorelines, of key ecosystem processes, such as nutrient cycling, and continued supplies of high quality water and will ensure the maintenance of biological diversity and the viability of species associated with these ecosystems. The purpose is to: (1) Improve consistency of existing conservation programs, strategies and practices, and (2) establish through landscape analysis, a consistent assessment of watershed condition to determine priorities for the allocation of limited personnel and funds.

Fire and Fuels. The purposes are to: (1) bring greater consistency in fire and fuels management across the national forests and coordinate management strategies with other ownerships and with objectives for Forest Service management of other resources, (2) adjust the goals and objectives in the national forest land management plan direction to reflect the role and consequence of wildland fire, and (3) set priorities for fire management actions to balance the need to restore fire regimes while minimizing the threat fire poses to structures, lives and resources.

Noxious Weeds. The purpose is to provide a strategy to control the rapid spread of invasive exotic plant species, to contain existing weed populations and, where possible, to eradicate them.

Lower Westside Hardwood Forest Ecosystems. The purpose of the proposed action is to provide a management strategy that will result in a sustainable hardwood forest ecosystem in the lower westside of the Sierra Nevada, including the structure, composition, and function to ensure maintenance of biological diversity.

Proposed Action

The proposed action responds to the needs identified above, the reports of the Sierra Nevada Ecosystem Project and the Sierra Nevada Science Review, and concerns raised during public workshops held earlier this year. It also responds to the USDA Forest Service Natural Resource Agenda (on the Internet at www.fs.fed.us/news/agenda), the Final Report of the California Spotted Owl Federal Advisory Committee and the Clean Water Action Plan (delivered to Vice President Gore by EPA and USDA on February 19, 1998).

The proposed action, while addressing the five problem areas, integrates multiple uses such as recreation, grazing, timber harvesting, and public access to the national forest into the actions. Sustainable levels of products and services, reflective of shifting public values and expectations, are an integral part of the proposed action. Employment, economic prosperity, community vitality, and the health of resource-based industries were concerns voiced during public comment. They are relevant to all aspects of the proposed action and will be evaluated as alternatives are prepared.

The proposed action calls for application of adaptive management principles to adjust management direction to future events, changing knowledge, or dynamic social views. Adaptive management involves: (1) Establishing desired outcomes and steps towards achieving them, (2) monitoring to generate new information, (3) adjusting management objectives, and (4) adjusting strategies in response to the new information. The proposed action will contain a monitoring strategy to provide the critical information needed to trigger management adaptations.

The proposed action also calls for analysis of environmental conditions and management possibilities at the watershed and sub-watershed scale to: (1) Link decisions at the project scale to larger scale decisions, (2) link forest plans to the efforts of other agencies, (3) prioritize treatments within the watershed or sub-watershed, and (4) facilitate local collaborative stewardship.

The proposed action will be implemented using a collaborative process to ensure coordination and consideration of the needs of other federal agencies, Indian Tribes, state and local governments and individuals. This involvement will help shape national forest land management direction so that ecosystems are restored and maintained while providing the management consistency that allows for a sustainable level of multiple uses, including recreation, grazing, timber, water, mining, and others.

This process will also assure redemption of the government's trust responsibilities with Indian Tribes and consideration of their expertise, cultural needs; and traditional and contemporary uses.

Section 401 of the 1999 Department of the Interior and Related Agencies

Appropriations Act (the Herger-Feinstein Quincy Library Group Forest Recovery Act), 112 Stat. 2681, directs the Secretary to implement a pilot project on certain federal lands within the Plumas, Lassen and Tahoe National forests. The Forest Service will be issuing a Notice of intent for an environmental impact statement to begin implementation of section 401. We will coordinate the Sierra Nevada Forest Plan Amendment Project Environmental Impact Statement with the environmental impact statement to implement section 401. We would like comments from the public and interested groups concerning the relationship between the two environmental impact statements.

The description of the proposed action for each problem area includes alternative strategies, where they have been identified, that could accomplish the purpose and need for action.

1. Old Forest Ecosystems and Associated Species (Including Forest Carnivores and California Spotted Owl)

The desired condition for Sierra Nevada national forests is to support old forests, which vary by vegetation type at a variety of scales, from individual old conifer or hardwood trees and snags to entire landscapes. Old forest habitat is present in sufficient locations, connectivity, quantities, and quality to sustain viable populations of old forest associated species and allow for seasonal migration of animals. Old forest ecosystems, including associated wildlife, fish, and plant populations, will be resilient to natural disturbance processes such as fire, which serve to sustain ecosystem composition, structure, and function. Management of old forest ecosystems integrates hardwoods and complements the aquatic conservation, fire and fuels, and noxious weeds strategies. Human uses of forests, e.g. recreation, resource uses, and Native American uses, are retained as important considerations for management of old forest ecosystems.

The proposed action is to develop both processes and management standards and guidelines for the California spotted owl and forest carnivores to be integrated with strategies for old forests, aquatic ecosystems, and fire and fuel. These processes, standards, and guidelines would address habitat conservation, modeling, mapping and assessment, and analysis of effects of management actions.

The proposed action is to: (1) Develop consistent old forest definitions by forest type, (2) set mapping standards, (3) adapt management to changing conditions, and (4) standardize large-scale monitoring of old forest ecosystems. The expected result of this action is to increase the acreage supporting old forests and habitat for species that occur there. Two contrasting approaches may be applied to achieve the desired condition.

Landscape Reserve Alternative. The landscape reserve alternative would allocate land as old forest emphasis areas. These reserves would occur over all forest types and include hardwoods as well as conifer-dominated communities. Little to no entry for commercial timber harvest or road building would be allowed in these areas. Prescribed fire would be the primary tool to attain protection and restoration goals. The old forest emphasis areas would be large enough to absorb large-scale natural disturbances, and geographically connected by riparian areas protected in the Aquatic Conservation Strategy to facilitate animal dispersal and contribute toward the continued existence of wide-ranging animals.

Old forest emphasis areas would be selected based upon the following criteria: existing concentrations of old trees; known locations of wildlife, fish and plant populations that require these habitats; low road denisty; habitat for riparian/aquatic species; representativeness of soils, geology, climatic and vegetation conditions; existing wilderness and wild and scenic rivers; likelihood of long-term sustainability given estimated fire conditions.

Outside the old forest emphasis areas, individual large old conifer and hardwood trees, large snags, and concentrations of old trees would be protected wherever they occur in the landscape, except where they pose a safety hazard. Lands would be available for commercial timber harvest and other uses.

Whole Forest Alternative. The whole forest alternative designates the entire hardwood and conifer-dominated forest landscape in the Sierra Nevada for succession towards old forests. Individual large old conifer and hardwood trees and large snags would be protected wherever they occur in the landscape, except where they pose a safety hazard. In roadless areas, concentrations of old trees would be protected by constructing no new roads, and conducting no commercial timber harvest. In roaded areas, concentrations of old trees would primarily be maintained using prescribed fire. Elsewhere in roaded areas, commercial timber harvest, other mechanical treatments, and prescribed fire would be used to accelerate succession toward old forest conditions.

The main differences between the landscape reserve and whole forest alternatives are that under the landscape reserve alternative the location of those reserves would not change over time and no commercial timber harvest would be permitted within the reserves, regardless of current condition. Under the Whole Forest Strategy, no timber harvest would be permitted in existing concentrations of old trees, regardless of location. Two points are common to both strategies: (1) The goal is to increase acreages supporting old forest, and (2) concentrations of old trees would move across the landscape over time in response to large-scale natural or human-generated disturbances.

2. Aquatic, Riparian, and Meadow Ecosystems

The desired condition of the Sierra Nevada national forests will be to provide sustainable aquatic, riparian and meadow ecosystem compositions, structures and functions. Structures include vegetation, flows and stream/lake bottoms. Fire and flooding, and processes such as nutrient cycling, water and sediment flows are within a desired range of variability. Land use activities, such as recreation, hydro-power, grazing, mining, timber harvest, transportation system maintenance and fuel treatments will be managed to enhance and restore the health of these ecosystems. Habitat to support populations of native and desired non-native plant, invertebrate, and vertebrate species will be well-distributed. Watersheds will be connected to each other, allowing fish and wildlife populations to move between them.

The proposed action is to implement an Aquatic Conservation Strategy. This includes a broad-scale assessment to identify the highest quality watersheds, and rare and imperiled wildlife and plant habitats for protection.

Important components of the Aquatic Conservation Strategy will be the integration of existing management practices (i.e., collaboration, restoration, existing watershed conservation practices, adaptive management, monitoring and research), landscape analysis to assess watershed conditions, and establishment of emphasis watersheds and habitats. Criteria for designation of emphasis watersheds and habitats include the presence of native aquatic species; a low level or lack of exotic species; watershed condition; and distribution of, rarity of, and risk to aquatic habitat.

The strategy will include specific standards and guidelines for at-risk frog

and amphibian species. This group includes both foothill (*Rana boylii*) and mountain yellow-legged frog (*Rana muscosa*), California red-legged frog (*Rana aurora draytoni*), Cascade frog (*Rana cascade*), northern leopard frog (*Rana pipiens*), and Yosemite toad (*Bufo canorus*). The standards and guidelines will address protecting both occupied and potential habitat from the adverse effects of grazing, mining, reservoir construction, urbanization and other activities.

The willow flycatcher is currently listed by the State of California as an endangered species. Three subspecies occur within California. Two of these subspecies occur in the Sierra Nevada (*Empidonax traillii brewsteri* and *E. t. adastus*) and are listed as Region 5 Sensitive Species. Standards and guidelines for these species will be a subject of the proposed action. A separate subspecies of willow flycatcher (*E. t. extimus*) is listed as federally endangered, occurs at the southern end of the Sierra Nevada and is not expected to be addressed or affected by this proposed action.

The proposed action is to protect known and potential willow flycatcher habitat from livestock grazing and other management activities through habitat management guidelines. Specific guidelines could include preventing cattle and sheep grazing in willow flycatcher habitat during the breeding season and managing grazing intensity to avoid adverse impacts to vegetation needed for nesting and foraging.

Also included in the guidelines will be measures to: (1) Promote the improvement and expansion of suitable habitat, (2) minimize the likelihood of nest parasitism by brownheaded cowbirds, and (3) require annual surveys to monitor breeding success and habitat conditions.

Two alternative approaches may be applied to implement the Aquatic Conservation Strategy, however both of these approaches will include the strategy for amphibian species and willow flycatcher as described above.

Range-wide Standards. Under this approach, Sierra Nevada-wide standards and guidelines will be developed to be consistent across the province, forest, watershed and project scales. These include delineation of riparian reserves; location, maintenance and engineering of roads; design of timber harvest units; and grazing, recreation, and fuels treatments.

Site Specific Standards. Under this approach, management activities will be determined only after a landscape analysis identifies actions that are most appropriate and effective. In the absence of site specific standards, range-wide standards and guidelines will apply.

3. Fire and Fuels

The desired condition is to have a cost-effective fire management program that protects natural resources, life, and property from the effects of unwanted wildland fire. Fuels are maintained at levels commensurate with minimizing resource loss from fire while meeting other requirements for overall ecosystem health. Fire, under prescribed conditions, is one of the most important tools for restoration and sustainability of ecosystem diversity and productivity. Fire management is coordinated with the National Park Service, Bureau of Land Management, Indian Tribes, Fish and Wildlife Service, California Department of Forestry and Fire Protection and other agencies and jurisdictions.

The proposal is to implement a fire management plan for each of the eleven national forests that demonstrates consistency with the Federal Wildland Fire Policy and coordinates with the California Fire Plan prepared by the California Department of Forestry and Fire Protection. A fire management plan is a strategic plan that defines a program to manage wildland and prescribed fires and documents implementation strategies for the fire management program in the approved forest plan.

All fire plans will be supplemented by a range-wide, interagency assessment of flammability and fire risk. This assessment will be based on existing interagency mapping of surface fuels and vegetation, on fire history (location and size of historical fires), and will be adjusted using other factors that affect fire behavior such as weather, climatology, slope and aspect. It displays the likelihood that fires will occur and suggests how large and intense they could be under existing conditions.

This assessment will help guide the setting of priorities for wildland fire management and fire hazard reduction. Priorities should include location of areas of high resource values, reintroduction of fire as an ecosystem process, effects on local economies and impacts on air quality.

Two alternative strategies for priority setting are proposed.

Prescribed Fire and Natural Wildland Fire Use With Focused Use of Mechanical Treatments. Treat fuel accumulations and restore ecosystems primarily through the use of prescribed and natural wildlife fire. Use mechanical treatments along the urban wildland interface and major transportation routes.

Prescribed Fire and Natural Wildland Fire With Extensive Use of Mechanical Treatments. Use prescribed and natural wildland fire to maintain treated areas and to reintroduce fire. Where fuel accumulations, smoke management restrictions, or other concerns preclude the use of prescribed fire as a means to deal with fuels management or the risk of high intensity wildfire, use mechanical methods to create a network of interspersed shaded fuelbreaks and area-wide treatments consistent with fire management priorities.

4. Noxious Weeds

The desired condition is for no new populations of noxious weeds. Existing populations are contained and, where possible, eradicated. Employees, users of National Forest System lands, adjacent landowners, and State agencies are aware and informed about noxious weed concerns.

The 1995 Forest Service Manual direction for noxious weed management will be incorporated into all alternatives developed in the EIS. Also, because noxious weed control and eradication is a Region-wide effort, management directions developed for the Sierra Nevada forests will be integrated at the Regional scale and coordinated with other land management agencies in California.

Alternatives will contain management direction to minimize the spread of noxious weed by roadbuilding, livestock use, vehicle use, equipment use and other carriers. California wildland fire fighting agencies would be encouraged to inventory and adopt use of weed-free fire camps. Direction will also be included to ensure weed-free administration sites and that materials brought onto the national forests (e.g., sand, gravel, and pack animal's feed) will be weed-free. All alternatives will include direction to use State certified "noxious weed-free" materials as soon as the State program is in place.

Monitoring and inventory programs for noxious weed populations will be tied to monitoring that triggers shifting the nature and intensity of actions. Monitoring results and inventories will be shared across agencies and national forests. The range-wide efficiency of the control program would be periodically evaluated.

5. Lower Westside Hardwood Forest Ecosystems

The desired condition is for the lower westside hardwood forests to be present in sufficient locations, connectivity, quantities, and quality to provide for public uses, resident wildlife fish and acquatic species, sensitive plant species

and seasonal migrants including deer. Fire will be employed to maintain both old tree dominated forests and a mosaic of hardwood stand ages across the landscape. Connectivity between lower elevation hardwood and upper elevation conifer forests will be sufficient to allow for wildlife migration and for natural processes, such as wildland fire, to occur. Collaboration with local land owners and governments, and consultation with tribes and permittees, will be an integral part of managing these areas.

The proposed action is a management strategy that will ensure lower westside hardwood forests are sustained. This strategy complements the old-forest, aquatic conservation, fire and fuels, and noxious weeds strategies. Individual large trees and snags, and concentrations of old trees will be protected consistent with the old-forest ecosystem strategy. A mosaic of hardwood stand ages will be provided through reintroduction of fire, where possible, or through other fuels reduction techniques in compliance with the fire and fuels strategy. Management practices for improving connectivity between hardwood and conifer forests and for reducing the impacts of urban development to hardwood ecosystems will also be included. Viable populations of plants and animals associated with hardwood forests would be sustained, to the extent feasible in light of the fragmentation of these forests. The monitoring strategy will be designed to ensure the management strategy is effective in sustaining lower westside hardwood forests.

Proposed Scoping Process

This Notice of Intent initiates the scoping process whereby the Forest Service will identify the scope of issues to be addressed in the EIS and identify the significant environmental issues related to the proposed action.

Public comment is invited on the proposal to prepare the EIS. Comment is also invited on the relationship between the EIS and section 401 of the 1999 Department of Interior and Related Agencies Appropriations Act (the Herger-Feintstein Quincy Library Group Forest Recovery Act), 112 Stat. 2681.

Community meetings with interested publics will be hosted by each Sierra Nevada national forest during scoping, after release of the Draft EIS, and after release of the Final EIS. Coordination with Federal and State agencies, Tribal governments, and local governments will occur throughout the scoping process.

During December 1998, the eleven national forests will each host workshops designed to explain the Notice of Intent. In January 1999, community workshops will be held to solicit suggestions, recommendations, and comments to help frame alternatives to the proposed action. Workshops will also be held in Los Angeles and San Francisco. Specific locations and dates of the meetings will be posted on the Internet at www.r5.fs.fed.us and in the newspaper of record for each Sierra Nevada national forest.

Decision To Be Made and Responsible Official

The Regional Foresters of Regions 4 and 5 will decide, for their respective Regions, whether or not, and in what manner, to amend the Land and Resource Management Plans for the eleven Sierra national forests; Humboldt-Toiyabe, Modoc, Lassen, Plumas, Tahoe, Eldorado, Stanislaus, Sierra, Sequioa, Inyo, and Lake Tahoe Basin Management Unit. Also, the decision could include a non-significant amendment to the Regional Guides for the Intermountain and Pacific Southwest Regions. The responsible officials are Regional Foresters Jack A. Blackwell, Region 4, USDA Forest Service, Federal Building 324, 25th Street, Ogden, UT 84401 and G. Lynn Sprague, Region 5, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111.

Coordination With Other Agencies

While the Forest Service is the lead agency with responsibility to prepare this EIS, requests have been made of the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Department of Forestry and Fire Protection, and California Department of Fish and Game to participate as cooperating agencies (40 CFR Part 1501.6). The Environmental Protection Agency and Fish and Wildlife Service have regulatory responsibilities that could not efficiently be considered without direct involvement; formal consultation responsibilities under the Endangered Species Act will be carried out by having a Fish and Wildlife Service specialist participate as a member of the interdisciplinary team. Cooperation by the National Marine Fisheries Service is being sought. Coordination with the California Department of Fish and Game and the California Department of Forestry and Fire Protection is necessary because some mission responsibilities overlap or are closely aligned with the conservation activities of the Forest Service. Negotiations with the California Department of Parks and Recreation to seek their cooperation is also underway. Each agency will continue to participate as resources and competing demands permit. Other agencies, local and county governments will be invited to comment, as appropriate.

Commenting

A draft environmental impact statement is expected to be available for public review and comment in February 1999; and a final environmental impact statement in July 1999. The comment period on the draft environmental impact statement will be 90 days from the date of availability published in the **Federal Register** by the Environmental Protection Agency.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334 (E.D. Wis. 1980). Because of these court rulings, it

is very important that those interested in this proposed action participate by the close of the 90 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 16, 1998.

Kent Connaughton,

Deputy Regional Forester.

[FR Doc. 98–31022 Filed 11–19–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 21, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Pad, Fingerprint,
7520–00–117–5627
NPA: Cattaraugus County Chapter, NYSARC, Olean, New York.

Services

Janitorial/Custodial, DLA Baton Rouge Depot, 2695 N. Sherwood Forest Drive, Baton Rouge, Louisiana, NPA: Louisiana Industries for the Disabled, Baton Rouge, Louisiana

Janitorial/Custodial, Portsmouth Naval Shipyard, Building 357, Kittery, Maine, NPA: Goodwill Industries of Northern New England, Portland, Maine.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31090 Filed 11–19–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: December 21, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On September 18 and October 9, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 49896 and 54436) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Strap, Webbing

5340–00–854–6736

Services

Food Service Attendant

Marine Corps Air Station, Beaufort, South Carolina

Grounds Maintenance

National Institute for Occupational Safety and Health, 1095 Willowdale Road, Morgantown, West Virginia

Janitorial/Custodial

Fort McPherson, Georgia

Janitorial/Custodial

Fort Campbell, Kentucky

Janitorial/Custodial

AMSA #106, Punxsutawney, Pennsylvania

Janitorial/Custodial

Major Charles D. Stoops USARC, Punxsutawney, Pennsylvania

Laundry Service

Department of Veterans Affairs Medical Center, 5600 West Dickman Road, Battle Creek, Michigan

Library Services

Davis-Monthan Air Force Base, Arizona

Microfiche/Microfilm Reproduction

Great Plains Area, Department of Housing and Urban Development (HUD), Chicago, Illinois

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Pillow, Bed

7210–00–753–6228

Handle, Mop

7920–00–550–9912
7920–00–550–9911
7920–00–550–9902

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31091 Filed 11–19–98; 8:45 am]

BILLING CODE 8353–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 981113285–8285–01]

RIN 0693–ZA28

Announcement of Availability of Funds for a Competition—Advanced Technology Program (ATP)

AGENCY: National Institute of Standards and Technology, Technology Administration, Commerce.

ACTION: Notice.

SUMMARY: The Technology Administration's National Institute of Standards and Technology (NIST) announces that it will hold a single fiscal year 1999 Advanced Technology Program (ATP) competition. This single competition will continue ATP's practice of being open to all technology areas, while also capturing the advantage and momentum of focused program planning. Through this single competition strategy, ATP encourages proposals from the many technical terms that have identified synergy between industry needs and ATP funding opportunities, accelerating the pursuit of critical elements of research which were identified in focused program plans. All fiscal year 1999 proposals received will be distributed to technology-specific source evaluation boards in areas such as advanced materials, biotechnology, electronics, information technology, etc. This notice provides general information regarding ATP competitions.

DATES: The proposal due date and other competition-specific instructions will be published in the Commerce Business Daily (CBD) at the time the competition is announced. Dates, times, and locations of Proposers' Conferences held for interested parties considering applying for funding will also be announced in the CBD.

ADDRESSES: Information on the ATP may be obtained from the following address: National Institute of Standards and Technology, Advanced Technology Program, 100 Bureau Drive, Stop 4701, Administration Building 101, Room A407, Gaithersburg, MD 20899–4701.

Additionally, information on the ATP is available on the Internet through the World Wide Web (WWW) at http://www.atp.nist.gov.

FOR FURTHER INFORMATION CONTACT: Requests for ATP information, application materials, and/or to have your name added to the ATP mailing list for future mailings may also be made by:

(a) Calling the ATP toll-free "hotline" number at 1–800–ATP–FUND or 1–800–287–3863. You will have the option of hearing recorded messages regarding the status of the ATP or speaking to one of our customer representatives who will take your name and address. If our representatives are all busy when you call, leave a message after the tone. To ensure that the information is entered correctly, please speak distinctly and slowly and spell the words that might cause confusion. Leave your phone number as well as your name and address;

(b) Sending a facsimile (fax) to 301–926–9524 or 301–590–3053; or

(c) Sending electronic mail to atp@nist.gov. Include your name, full mailing address, and phone number.

SUPPLEMENTARY INFORMATION:

Background

The statutory authority for the ATP is Section 5131 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 278n), as modified by Pub. L. 102–245. The ATP implementing regulations are published at 15 CFR Part 295, as amended. The Catalog of Federal Domestic Assistance (CFDA) number and program title for the ATP are 11.612, Advanced Technology Program (ATP).

The ATP is a rigorously competitive cost-sharing program designed for the Federal government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the

nation. Such a unique government-industry research partnership fosters the acceleration not only of dramatic gains in existing industries, but also acceleration of the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets and work to spawn industries of the 21st century. The ATP provides multi-year funding to single companies and to industry-led joint ventures. The ATP accelerates technologies that, because they are risky, are unlikely to be developed in time to compete in rapidly changing world markets without such a partnership between industry and the Federal government. The ATP challenges industry to take on higher risk (but commensurately higher potential payoff to the nation) projects than they would otherwise. Proposers must provide credible arguments as to the project feasibility.

The funding instrument used in ATP awards is a "cooperative agreement." Through the use of the cooperative agreement, the ATP is designed to foster a government-industry partnership to accomplish a public purpose of support or stimulation. NIST plays a substantial role in providing technical assistance and monitoring the technical work and business progress.

Funding Availability

A total estimated $66 million in first year funding expected to become available from Congressional appropriation, will be used for new awards for the fiscal year 1999 single ATP competition to be announced in the CBD. The actual number of proposals funded under this competition will depend on the quality of the proposals received and the amount of funding requested in the highest ranked proposals. Outyear funding beyond the first year is contingent on the approval of future Congressional appropriations and satisfactory project performance.

Eligibility Requirements, Selection Criteria, and Proposal Review Process

The eligibility requirements, selection criteria, and the proposal review process are discussed in detail in the ATP implementing regulations published at 15 CFR Part 295, as amended, and the ATP Proposal Preparation Kit dated November 1998.

Funding Amounts, Award Period and Cost Sharing (Matching) Requirements

(a) Single company recipients can receive up to $2 million for R&D activities for up to 3 years. ATP funds may only be used to pay for direct costs for single company recipients. Single company recipients are responsible for funding all of their overhead/indirect costs. Small and medium size companies applying as single company proposers are not required to provide cost-sharing of direct costs, however, they may pay a portion of the direct costs in addition to all indirect costs if they wish. Large companies applying as single company proposers, however, must cost-share at least 60 percent of the yearly total project costs (direct plus indirect costs). A large company is defined as any business, including any parent company plus related subsidiaries, having annual revenues in excess of $2.721 billion. (Note that this number will likely change for future competitions and, if so, will be noted in future annual announcements of availability of funds and ATP Proposal Preparation Kits.)

(b) Joint ventures can receive funds for R&D activities for up to 5 years with no funding limitation other than the announced availability of funds. However, ATP funding must be for a minority share of the yearly total project costs. Joint ventures must cost-share (matching funds) more than 50 percent of the yearly total project costs (direct plus indirect costs). Matching funds (cost-sharing) are defined in 15 CFR Part 295.2(l).

(c) Funds derived from Federal sources may not be used to meet the cost-share requirement. Additionally, subcontractors may not contribute towards the cost-share requirement.

Application Forms and Proposal Preparation Kit

A new November 1998 version of the ATP Proposal Preparation Kit is available upon request from the ATP at the address and phone numbers noted in this notice. The Kit is also available on the Internet through the World Wide Web under the heading Publications on the ATP home page http://www.atp.nist.gov. Note that the ATP is mailing the Kit to all those individuals whose names are currently on the ATP mailing list. Those individuals need not contact the ATP to request a copy. The Kit contains proposal cover sheets, other required forms, background material, and instructions for preparing ATP pre-proposals and full proposals. All proposals must be prepared in accordance with the instructions in the Kit.

Submission of Revised Proposals

A proposer may submit a full proposal that is a revised version of a full proposal submitted to a previous ATP competition. NIST will examine such proposals to determine whether substantial revisions have been made. Where the revisions are determined not to be substantial, NIST reserves the right to score and rank, or where appropriate, to reject, such proposals based on reviews of the previous submitted proposal.

Other Requirements

(a) Federal Policies and Procedures. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards as identified in the cooperative agreement award.

(b) Past Performance. Unsatisfactory performance under prior Federal awards may result in a proposal not being considered for funding.

(c) Pre-award Activities. Pre-award costs may not be incurred by any proposer and are not reimbursable under an ATP award.

(d) No Obligation for Future Funding. If a proposal is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

(e) Delinquent Federal Debts. No award of Federal funds shall be made to a proposer or recipient who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a negotiated repayment schedule is established and at least one payment is received, or other arrangements satisfactory to NIST are made.

(f) Name Check Review. All for-profit and non-profit proposers are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the proposer have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the proposer's management, honesty, or financial integrity.

(g) Primary Applicant Certification. All primary proposers (including all joint venture participants) must submit a completed form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanation is hereby provided:

(1) Nonprocurement Debarment and Suspension. Prospective participants, as defined at 15 CFR part 26, section 105

are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(2) Drug-Free Workplace, Grantees (as defined at 15 CFR part 605) are subject to 15 CFR 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(3) Anti-Lobbying. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and,

(4) Anti-Lobbying Disclosures. Any proposer that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(h) Lower Tier Certification. Recipients shall require proposers/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and Form SF–LLL, "Disclosure of Lobbying Activities." Although the CD–512 is intended for the use of primary recipients and should not be transmitted to NIST, the SF–LLL submitted by any tier recipient or subrecipient should be forwarded in accordance with the instructions contained in the award document.

(i) False Statements. A false statement on any application for funding under ATP may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(j) Intergovernmental Review. The ATP does not involve the mandatory payment of any matching funds from state or local government and does not affect directly any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372, "Intergovernmental Review of Federal Programs" is not applicable to this program.

(k) American-Made Equipment and Products. Proposers are hereby notified that they are encouraged, to the greatest extend practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent.

(l) Paperwork Reduction Act. This notice contains collection of information requirements subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB Control Nos. 0693–0009 and 0348–0046). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control No.

(m) If a proposer's proposal is judged to be of high enough quality to be invited in for an oral review, ATP reserves the right to submit a list of questions to the proposer that must be addressed at the oral review.

(n) There are certain types of projects that ATP will not fund because they are inconsistent with the ATP mission. These include:

(1) Straightforward improvements of existing products or product development.

(2) Projects that are predominately basic research.

(3) Pre-commercial scale demonstration projects where the emphasis is on demonstration that some technology works on a large scale or is economically sound rather than on R&D.

(4) Projects involving military weapons R&D or R&D that is of interest only to some mission agency rather than to the commercial marketplace.

(5) Projects that ATP believes would likely be completed without ATP funds in the same time frame or nearly the same time frame.

(o) Certain costs that may be allowed in Federal financial assistance programs are not eligible for funding under ATP awards. Section G of the Proposal Preparation Kit lists these costs.

(p) For joint ventures, no costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

(q) Research under an ATP project involving vertebrate animals must be in compliance with the National Research Council's "Guide for the Care and Use of Laboratory Animals" which can be obtained from National Academy Press, 2101 Constitution Ave., NW, Washington, DC 20055. The Institutional Animal Care and Use Committee (IACUC) associated with the proposing organization(s) must approve all research involving vertebrate animals before Grants Officer review and release of funds.

(r) Research under an ATP project involving human subjects or human tissue must be in compliance with Department of Commerce regulations entitled "Protection of Human Subjects", 15 CFR Part 27, which require that recipients whose research involves human subjects maintain appropriate policies and procedures for the protection of human subjects. Currently, NIST does not approve human subjects research that takes place in a foreign country as part of an ATP project. In addition, NIST does not accept foreign sources of human tissue or data, even if the tissue or data may qualify for an exemption under the rule.

Additional Presidential policies, statutes, regulations, and guidelines have been issued concerning types of research activities involving human subjects. NIST may not be directly named in these statutes and regulations; however, in order to assure that research funded by NIST involving human subjects is consistent with national policy, NIST hereby declares that it will fully adhere to these requirements. Therefore, research projects involving the protected classes of human subjects must adhere to the National Institutes of Health (NIH) regulations found at 45 CFR Part 46, Subparts B, C, and D. Protected classes include pregnant women, human in vitro fertilization, fetuses, prisoners, and children. Research projects involving the transplantation of fetal tissue into human subjects must adhere to Section 111 of the NIH Revitalization Act of 1993, 42 U.S.C. 289g–1. In addition, the NIH Revitalization Act of 1993, 42 U.S.C. 289g–2 contains a criminal statute prohibiting all purchases of fetal tissue for valuable consideration whether or not NIH or NIH funding is involved. Fetal research must adhere to Section 498(b) of the Public Health Service Act, 42 U.S.C. 289g. Embryo research must adhere to Section 513 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act of

1998, Public Law 105–78, 111 Stat. 1467. Research involving xenotransplantation into human subjects must adhere to the FDA guidelines published at 61 FR 49919 (September 23, 1996). All research projects will adhere to the Presidential Directive, 33 Weekly Comp. Pres. Doc. 281 (March 10, 1997), prohibiting the federal conduct and funding of research involving human cloning.

Special Requirements

Research projects involving protected classes of human subjects as defined in 45 CFR Part 46, Subparts B, C, and D (including pregnant women, human in vitro fertilization, fetuses, prisoners, and children) MUST be reviewed and approved by an Institutional Review Board (IRB) that possesses a current assurance which has been approved by the Office of Protection from Research Risk (OPRR), National Institutes of Health (NIH), for federal-wide use, and appropriate for the research in question. No award involving protected classes as defined under 45 CFR Part 46, Subpart B, will be issued until the proposer has certified that an appropriate IRB has made the determinations required under Subpart B, and all other NIST approvals have been completed.

(s) In any invention resulting from work performed under an ATP project in which an ATP recipient has acquired title, NIST has the right, in accordance with 15 CFR 295.8(a)(2) and any supplemental regulations of NIST, to require the recipient, an assignee, or an exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are resealable under the circumstances. If the recipient, assignee, or exclusive licensee refuses such a request, NIST has the right to grant such a license itself if NIST determines that:

(1) Such action is necessary because the recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the recipient, assignee, or licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the recipient, assignee, or licensees; or

(4) Such action is necessary because of the requirement that the recipient grant licenses to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible, is not adhered to, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of the aforementioned requirement.

The preceding information describes NIST's legal rights with regards to patents. However, potential proposers should not interpret these rights as indicating that NIST intends to manage an awardee's intellectual property. Quite the contrary. First of all, these rights only apply to patents resulting from the ATP project itself, and not from work done before or after the ATP project, or other R&D performed by the company in the same time frame that is not part of the ATP-funded tasks. More importantly, the provisions above would ONLY be invoked under very unique circumstances. For example, if an ATP project developed a cure for cancer, but for some strange reason the company chose not to commercialize the technology, the ATP might, only after verifying that the company had no intention of using the technology, invoke provision 2. above and try to find another company willing to take a license and bring the new development to market. In the over 300 projects funded to date, NIST has never had to exercise the rights noted above.

(t) Proposers shall provide sufficient funds in the project multi-year budget for a project audit, including each joint venture participant. Subcontractors/subawardees, including universities, who receive total funding under an ATP project totaling more than $300,000 each are also subject to the audit requirement. A subcontractor/subawardee is defined as an organization which receives a portion of the financial assistance from the recipient/awardee and assists the ATP recipient/awardee in meeting the project goals but does not include procurement of goods and services. It is the responsibility of the recipient to ensure that audits are performed in a timely fashion. Most routine audits can be performed by the recipient's external CPA. However, the Department of Commerce Office of Inspector General (DoC/OIG) and General Accounting Office (GAO) reserve the right to carry out audits as deemed necessary and appropriate. ATP recipients must be willing to submit to audits (e.g., audits of cost-accounting systems, direct-cost expenditures, indirect cost rates, or other periodic reviews) by the DoC/OIG or cognizant Federal agency Inspectors General or GAO. Periodic project audits shall be performed as follows:

(1) For awards less than 24 months, an audit is required at the end of the project.

(2) For 2-, 3-, or 4-year awards, an audit is required after the first year and at the end of the project.

(3) For 5-year awards, an audit is required after the first year, third year, and at the end of the project.

Budgeting for an audit shall be as follows:

(1) Proposers should allocate funds in their proposal budgets under the "Other" direct cost category for the project audit. For joint ventures, this must be included in each participant's budget as each participant is responsible for the performance of their own project audit.

(2) If an organization's indirect cost pool includes audit costs, this is acceptable. In these cases, an explanation must be provided in the budget narrative and no audit costs reflected under "Other" costs.

(3) If a cognizant Federal agency auditor is resident within the company, the cognizant Federal agency auditor may perform the audit. In these cases, an explanation must be provided in the budget narrative and no audit costs reflected under "Other" costs or "Indirect Costs."

Audits of all recipients shall be conducted in accordance with Government Auditing Standards (GAS), issued by the Comptroller General of the United States (the Yellow Book). If an ATP recipient is required to have an audit performed in accordance with OMB Circular A–133, Audits of States, Local Government, and Non-Profit Organizations, the annual Circular A–133 audit is deemed to meet the ATP audit requirement.

If an ATP recipient does not have an annual Circular A–133 audit performed, the recipient should follow the following project audit requirements:

(1) Audits for single company recipients shall be conducted using the NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Single Companies.

(2) Audits for joint venture recipients shall be conducted using the NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Joint Ventures.

(u) Indirect cost charged to ATP cooperative agreements or used as cost-sharing must be calculated in accordance with an approved indirect cost proposal. If a recipient has established an indirect cost rate with its

cognizant Federal agency (the Federal agency providing the greatest dollars), the recipient must submit a copy of the negotiated agreement to the DoC/OIG for verification. Acceptance of indirect cost rates in excess of 100 percent of direct costs is subject to approval by NIST and the DoC/OIG. If an indirect cost rate(s) has not been negotiated prior to receiving the award, then an indirect cost rate proposal must be submitted to the recipient's cognizant Federal agency within 90 days from the date of the award. Provisional rates provided by the joint venture participant in the indirect cost proposal may be used until approval is obtained or indirect cost rates are negotiated.

(v) All ATP recipients must agree to adhere to the U.S. Export Administration laws and regulations and shall not export or re-export, directly or indirectly, any technical data created with Government funding under an award to any country for which the United States Government or any agency thereof, at the time of such export or re-export requires an export license or other Governmental approval without first obtaining such licenses or approval and the written clearance of the NIST Grants Officer. The Bureau of Export Administration (BXA) shall conduct an annual review for any relevant information about a proposer and/or Recipient. NIST reserves the right to not issue any award or suspend or terminate an existing award in the event that significant adverse information about a proposer or Recipient is disclosed by BXA to the NIST Grants Officer.

Dated: November 16, 1998.

Robert E. Hebner,

Acting Deputy Director, National Institute of Standards and Technology.

[FR Doc. 98–30957 Filed 11–17–98; 2:55 pm]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.110298A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Essential Fish Habitat Amendment to the Fishery Management Plans of the U.S. Caribbean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to the fishery management plans of the U.S. Caribbean; request for comments.

SUMMARY: NMFS announces that the Caribbean Fishery Management Council (Council) has submitted its Essential Fish Habitat (EFH) Generic Amendment to the Fishery Management Plans of the U.S. Caribbean (FMPs) for its review, approval, and implementation. Written comments are requested from the public.

DATES: Written comments must be received on or before January 19, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the amendment, which includes an environmental assessment, should be sent to the Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 11108, San Juan, Puerto Rico 00918–2577, Phone: 787–766–5926; Fax: 787–766–6239.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires each regional fishery management council to submit any fishery management plan or amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, after receiving an amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment. This document constitutes such notice for the EFH amendment.

NMFS will consider the public comments received during the comment period in determining whether to approve, disapprove, or partially approve this amendment.

NMFS published guidelines to assist regional fishery management councils in the description and identification of EFH in FMPs, including identification of adverse impacts from both fishing and non-fishing activities on EFH and identification of actions required to conserve and enhance EFH (62 FR 66531, December 19, 1997). These guidelines encourage ecosystem approaches to protecting and conserving EFH. Identification of ecological roles (i.e., prey, competitors, trophic links within foodwebs, and nutrient transfer between ecosystems) should be incorporated into EFH recommendations. The guidelines also specify that sufficient EFH be protected and conserved to support sustainable fisheries and managed species' contribution to a healthy ecosystem.

The Council's EFH generic amendment includes information on important factors in the relationships between species in the fishery management units and their habitats during each of the species' life stages, including eggs, larvae, juveniles, adults, and spawning adults. Available information is not sufficient to provide for the identification of EFH for each species in all FMPs. There are more than 1,149 species of finfish and over 1,170 mollusks reported in Puerto Rico and the U.S. Virgin Islands. The Council has identified, to the extent possible, the environmental, trophic, and biological characteristics of species managed by each FMP prepared by the Council. The Council has emphasized selected species, and in the absence of habitat information, has used them as "indicators" of such habitats. Following is a summary of the EFH generic amendment:

1. EFH is identified and described based on areas where various life stages of the 17 selected, managed species and the coral complex commonly occur. The selected species are: Nassau grouper, *Epinephelus striatus*; red hind, *Epinephelus guttatus*; coney, *Epinephelus fulvus*; yellowtail snapper,*Ocyurus chrysurus*; mutton snapper, *Lutjanus analis*; schoolmaster,*Lutjanus apodus*; grey snapper, *Lutjanus griseus*; silk snapper, *Lutjanus vivanus*; butterfly fish, *Chaetodon striatus*; squirrel fish, *Holocentrus ascensionis*; white grunt, *Haemulon plumieri*; queen triggerfish, *Balistes vetula*; sandtilefish, *Malacanthus plumieri*; redtail parrotfish, *Sparisoma chrysopterum*; trunkfish, *Lactophrys quadricornis*; spiny lobster, *Panulirus argus*; and queen conch, *Strombus gigas*.

2. The selected species represent some of the key species under management by the Council. Collectively, these species commonly occur throughout all the marine and estuarine waters of the U.S. Caribbean. EFH for the remaining managed species will be addressed in future FMP amendments, as information becomes available.

3. EFH is defined as everywhere that the selected species commonly occur. Because these species collectively occur in all habitats of the U.S. Caribbean, the EFH of all species combined includes all waters and substrates (mud, sand, shell, rock, and associated biological communities), including coral habitats (coral reefs, coral hard bottoms, and octocoral reefs), sub-tidal vegetation (seagrasses and algae) and adjacent

intertidal vegetation (wetlands and mangroves). Therefore, collectively EFH includes virtually all marine waters and substrates from the shoreline to the seaward limit of the exclusive economic zone.

4. Threats to EFH from fishing and non-fishing activities are identified.

5. Whenever possible, options to conserve and enhance EFH are provided and research needs are identified.

6. No management measures and, therefore, no regulations are proposed at this time. Measures to minimize any identified impacts are deferred to future amendments when the Council has the information necessary to decide if the measures are practicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 16, 1998.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31085 Filed 11–19–98; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection: Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its proposed Learn and Serve America Project Description Form. This form will be used to collect information on program descriptions and participation levels in service-learning programs supported by funds from the Corporation. The information provided will be used by the Corporation to: (1) measure performance of service-learning programs as required by the Corporation's annual performance plans prepared in response to the Government Performance and Results Act of 1993; (2) improve management and administration of the Learn and Serve America program; (3) inform grantees through the National Service-Learning Clearinghouse about the plans and activities of programs funded by the Corporation.

Copies of the proposed information collection form can be obtained by contacting the office listed below in the address section of this notice.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section January 19, 1999.

ADDRESSES: Send comments to Corporation for National and Community Service, Office of Learn and Serve America, Attn. Brad Lewis, 8th Floor, 1201 New York Avenue, NW, Washington, DC 20525.

FOR FURTHER INFORMATION CONTACT: Brad Lewis (202) 606–5000, ext. 113.

SUPPLEMENTARY INFORMATION:

I. Background

The Government Performance and Results Act of 1993 requires all federal departments and agencies to prepare annual performance plans for all budget activities. These plans are to contain performance goals and indicators measuring the outcomes and impacts of federal programs. The Corporation's initial performance plan, covering fiscal 1999, contains performance goals for Learn and Serve America relating to the number of student participants and descriptions of service-learning programs. This new data collection effort will provide that information which will be reported to Congress and the public in an annual performance report beginning in March 2000.

In addition, the Corporation has a commitment to support the quality improvement efforts of its grantees through monitoring, training, and technical assistance. A major part of this effort is carried out through the Learn and Serve America National Service-Learning Clearinghouse. The Clearinghouse is charged with compiling and sharing information with the Corporation's grantees and the public concerning how to plan, implement, and manage service-learning programs and activities.

Furthermore, until this new information collection effort is in place, the national program office for Learn and Serve America will have no systematic means by which to compile quantitative information on grantee and sub-grantee performance for all recipients of its funding. Presently, grantees' progress reports are narrative texts with no means for storing, organizing, and aggregating the data across programs.

II. Current Action

The Corporation seeks approval of the Learn and Serve America Project Description Form. The form will ask Learn and Serve America grantees and their sub-grantees to : (1) Identify the frequency and types of student participants in service-learning programs; (2) identify the frequency and types of institutions and organizations sponsoring and collaborating with service-learning programs; (3) specify the types of services being provided to communities by students in service-learning; and (4) describe the local program operations and achievements. The information will be used to: (1) measure performance in terms set forth in the annual performance plan; (2) prepare descriptions of program activities and achievements with support from Learn and Serve America; (3) inform the Corporation, grantees, educational institutions, and the public concerning the nature, extent, and best practices in service-learning programs across the nation.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Learn and Serve America Project Description Form.

OMB Number: None.

Agency Number: None.

Affected Public: Educators and other institutional personnel whose organizations receive grant funds from Learn and Serve America.

Total Respondents: 5,600 supervisors of Learn and Serve programs (70 percent response rate).

Frequency: Annually.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: 5,600 hours.

Total Burden Cost (capital/startup): $123,200 (5,600 respondents @ $22 each: $2 for copying, assembly, and mailing plus 1 hour per response @ $20/hour).

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 16, 1998.

Kenneth L. Klothen,

General Counsel.

[FR Doc. 98–31014 Filed 11–19–98; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Globalization and Security

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Globalization and Security will meet in closed session on November 18–19, 1998 at Strategic Analysis Inc. (SAI), 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will develop advice to provide to the DepSecDef and USD(A&T) regarding transformations to the industrial base serving the DoD—assessing the significant benefits to the Department and the risks that our adversaries will be able to learn about our technology.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly this meeting will be closed to the public.

Dated: November 13, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–30997 Filed 11–19–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Deadline for Submission of Donation Applications for the Frigate Ex–KNOX (FF 1052)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the deadline of April 10, 1999 for submission of a donation application for the Frigate ex-KNOX (FF 1052), located at the Naval Inactive Ship Maintenance Facility, Bremerton, WA. A donation is anticipated pursuant to 10 U.S.C. Section 7306. Eligible recipients include: (1) Any State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof; (2) the District of Columbia; or (3) any not-for-profit or nonprofit entity. Transfer of a vessel under this law shall be made at no cost to the United States Government. The transferee will be required to maintain the vessel in a condition satisfactory to the Secretary of the Navy as a static museum/memorial. Prospective transferees must submit a comprehensive application addressing their plans for managing the significant financial, technical, environmental and curatorial responsibilities that accompany ships donated under this program.

DATES: Application deadline is April 10, 1999.

ADDRESSES: Applications should be sent to Program Executive Office for Expeditionary Warfare (PEO EXW), RMS334, Navy Donation Program Office, Naval Sea Systems Command, 2351 Jefferson Davis Highway, Arlington, VA 22242–5160.

FOR FURTHER INFORMATION CONTACT: Ms. Gloria Carvalho, Program Executive Office for Expeditionary Warfare (PEO EXW), PMS334, Navy Donation Program Office, Naval Sea Systems Command, 2531 Jefferson Davis Highway, Arlington, VA 22242–5160, telephone number (703) 602–5450.

Authority: 10 U.S.C. 7306.

Dated: November 12, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–31056 Filed 11–19–98; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Plastic Processor Installations on Navy Ships

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In accordance with the Act to Prevent Pollution from Ships, 33 U.S.C. 1902(e)(4)(B), the Secretary of Defense must report, beginning October 1, 1996, and each year until October 1, 1998, a list of the names of ships equipped with plastic processors. This notice is the third and final annual report.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Maiuri, Office of the Chief of Naval Operations Environmental Protection, Safety and Occupational Health Division, Crystal Plaza #5, Room 654, 2211 South Clark Place, Arlington, Virginia, 22244–5108; 703–602–2602.

SUPPLEMENTARY INFORMATION: The International Maritime Convention on the Prevention of Pollution from Ships (MARPOL), as amended by the MARPOL Protocol of 1978, protects the ocean environment by prohibiting some discharges altogether, restricting other discharges to particular distances from land, and establishing "special areas" within which additional discharge limitations apply. One of the discharges specified for restriction under MARPOL Annex V is plastics.

The Act to Prevent Pollution from Ships, 33 U.S.C. 1902(e)(2), requires Navy ships equipped with plastics processors to comply with MARPOL Annex V provisions for the disposal of plastics. The law also establishes an installation schedule for plastic processor equipment aboard Navy ships. The first production unit was required to be installed by July 1, 1996, onboard a ship owned or operated by the Navy. At least 25 percent of Navy ships requiring processors were to be equipped by March 1, 1997. At least 50 percent of ships requiring processors were to be equipped by July 1, 1997. No less than 75 percent of ships requiring processors were to be equipped by July 1, 1998, and all vessels requiring plastics processors shall be equipped by December 31, 1998. The statute further requires the Secretary of Defense to report in the **Federal Register** the list of

the names of Navy ships equipped with plastic processors.

This **Federal Register** notice is the third and final required annual report. On October 1, 1998, 177 ships had been equipped with plastic processors. Plastic processors have now been installed on 94 percent of those ships requiring this equipment. Completion of plastic processor installations on 100 percent of Navy ships requiring this equipment will be completed by December 31, 1998. The list of 177 Navy ships equipped with plastic processors as of October 1, 1998 follows.

AGF	0011	CORONADO
AO ...	0178	MONONGAHELA
AO ...	0180	WILLIAMETTE
AOE	0001	SACRAMENTO
AOE	0002	CAMDEN
AOE	0003	SEATTLE
AOE	0004	DETROIT
AOE	0006	SUPPLY
AOE	0007	RAINIER
AOE	0008	ARCTIC
ARS ..	0050	SAFEGUARD
ARS ..	0051	GRASP
ARS ..	0052	SALVOR
ARS ..	0053	GRAPPLE
AS	0039	EMORY S LAND
AS	0040	FRANK CABLE
CG	0047	TICONDEROGA
CG	0049	VINCENNES
CG	0050	VALLEY FORGE
CG	0051	THOMAS S GATES
CG	0052	BUNKER HILL
CG	0053	MOBILE BAY
CG	0054	ANTIETAM
CG	0055	LEYTE GULF
CG	0056	SAN JACINTO
CG	0057	LAKE CHAMPLAIN
CG	0058	PHILIPPINE SEA
CG	0059	PRINCETON
CG	0060	NORMANDY
CG	0061	MONTEREY
CG	0062	CHANCELLORSVILLE
CG	0063	COWPENS
CG	0064	GETTYSBURG
CG	0065	CHOSIN
CG	0067	SHILOH
CG	0068	ANZIO
CG	0070	LAKE ERIE
CG	0071	CAPE ST GEORGE
CG	0072	VELLA GULF
CG	0073	PORT ROYAL
CGN	0037	SOUTH CAROLINA
CV	0063	KITTY HAWK
CV	0064	CONSTELLATION
CV	0067	JOHN F KENNEDY
CVN	0065	ENTERPRISE
CVN	0069	DWIGHT D EISENHOWER
CVN	0070	CARL VINSON
CVN	0071	THEODORE ROOSEVELT
CVN	0072	ABRAHAM LINCOLN
CVN	0074	JOHN C STENNIS
CVN	0075	HARRY S TRUMAN
DD	0963	SPRUANCE
DD	0964	PAUL F FOSTER
DD	0965	KINKAID
DD	0966	HEWIT
DD	0967	ELLIOT
DD	0968	ARTHUR W RADFORD
DD	0960	PETERSON
DD	0970	CARON
DD	0971	DAVID R RAY
DD	0972	OLDENDORF
DD	0973	JOHN YOUNG
DD	0975	O'BRIEN
DD	0977	BRISCOE
DD	0978	STUMP
DD	0979	CONOLLY
DD	0980	MOOSEBRUGGER
DD	0981	JOHN HANCOCK
DD	0982	NICHOLSON
DD	0983	JOHN RODGERS
DD	0987	O'BANNON
DD	0988	THORN
DD	0989	DEYO
DD	0990	INGERSOLL
DD	0991	FIFE
DD	0992	FLETCHER
DD	0997	HAYLER
DDG	0051	ARLEIGH BURKE
DDG	0052	JOHN BARRY
DDG	0053	JOHN PAUL JONES
DDG	0054	CURTIS WILBUR
DDG	0055	STOUT
DDG	0056	JOHN S MCCAIN
DDG	0057	MITSCHER
DDG	0058	LABOON
DDG	0059	RUSSELL
DDG	0060	PAUL HAMILTON
DDG	0061	RAMAGE
DDG	0062	FITZGERALD
DDG	0063	STETHEM
DDG	0064	CARNEY
DDG	0065	BENFOLD
DDG	0066	GONZALEZ
DDG	0067	COLE
DDG	0068	THE SULLIVANS
DDG	0069	MILIUS
DDG	0070	HOPPER
DDG	0071	ROSS
DDG	0072	MAHAN
DDG	0073	DECATUR
DDG	0074	MCFAUL
DDG	0075	DONALD COOK
DDG	0994	CALLAGHAN
DDG	0995	SCOTT
DDG	0996	CHANDLER
FFG ..	0008	MCINERNEY
FFG ..	0009	WADSWORTH
FFG ..	0012	GEORGE PHILIP
FFG ..	0014	SIDES
FFG ..	0015	ESTOCIN
FFG ..	0029	STEPHEN W GROVES
FFG ..	0032	JOHN L HALL
FFG ..	0033	JARRETT
FFG ..	0036	UNDERWOOD
FFG ..	0037	CROMMELIN
FFG ..	0038	CURTS
FFG ..	0039	DOYLE
FFG ..	0040	HALYBURTON
FFG ..	0041	MCCLUSKY
FFG ..	0042	KLAKRING
FFG ..	0043	THACH
FFG ..	0045	DEWERT
FFG ..	0056	RENTZ
FFG ..	0047	NICHOLAS
FFG ..	0048	VANDEGRIFT
FFG ..	0049	ROBERT G BRADLEY
FFG ..	0050	TAYLOR
FFG ..	0051	GARY
FFG ..	0052	CARR
FFG ..	0053	HAWES
FFG ..	0054	FORD
FFG ..	0055	ELROD
FFG ..	0056	SIMPSON
FFG ..	0057	REUBEN JAMES
FFG ..	0058	SAMUEL B ROBERTS
FFG ..	0059	KAUFFMAN
FFG ..	0060	RODNEY M DAVIS
FFG ..	0061	INGRAHAM
LCC ..	0019	BLUE RIDGE
LCC ..	0020	MOUNT WHITNEY
LHA	0001	TARAWA
LHA	0002	SAIPAN
LHA	0003	BELLEAU WOOD
LHA	0004	NASSAU
LHA	0005	PELELIU
LHD	0001	WASP
LHD	0002	ESSEX
LHD	0003	KEARSARGE
LHD	0004	BOXER
LHD	0005	BATAAN
LHD	0006	BONHOMME RICHARD
LPD ..	0004	AUSTIN
LPD ..	0005	OGDEN
LPD ..	0006	DULUTH
LPD ..	0007	CLEVELAND
LPD ..	0008	DUBUQUE
LPD ..	0009	DENVER
LPD ..	0010	JUNEAU
LPD ..	0012	SHEVEPORT
LPD ..	0013	NASHVILLE
LPD ..	0014	TRENTON
LPD ..	0015	PONCE
LSD ..	0036	ANCHORAGE
LSD ..	0037	PORTLAND
LSD ..	0039	MOUNT VERNON
LSD ..	0041	WHIDBEY ISLAND
LSD ..	0042	GERMANTOWN
LSD ..	0043	FORT MCHENRY
LSD ..	0044	GUNSTON HALL
LSD ..	0045	COMSTOCK
LSD ..	0046	TORTUGA
LSD ..	0047	RUSHMORE
LSD ..	0048	ASHLAND
LSD ..	0049	HARPERS FERRY
LSD ..	0050	CARTER HALL
LSD ..	0051	OAK HILL
MCS	0012	INCHON

Dated: November 10, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–31054 Filed 11–19–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Garbage Discharges for Navy Ships Into the International Maritime Convention for the Prevention of Pollution From Ships (MARPOL) Annex V Special Areas

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Secretary of Defense must report annually on the amount and nature of garbage discharges from Navy ships operating in special areas, when such discharges are not otherwise authorized under the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. 1901, *et seq*. This notice is the fifth annual report.

FOR FURTHER INFORMATION CONTACT: Mr. Louis Maiuri, Office of the Chief of Naval Operations Environmental Protection, Safety and Occupational Health Division, Crystal Plaza #5, Room 654, 2211 South Clark Place, Arlington, Virginia, 22244–5108; 703–602–2602.

SUPPLEMENTARY INFORMATION: The International Maritime Convention on the Prevention of Pollution from ships (MARPOL) as amended by the MARPOL Protocol of 1978, protects the ocean environment by prohibiting some discharges altogether, restricting other discharges to particular distances from land, and establishing "special areas" within which additional discharge limitations apply. Special areas are particular bodies of water, which, because of their oceanographic characteristics and ecological significance, require protective measures more strict than other areas of the ocean. Within special areas that are in effect internationally, except under emergency circumstances, the only authorized garbage discharge from vessels is food waste. At present, three special areas are in effect: the North Sea, the Baltic Sea, and the Antarctic Region.

The Act to Prevent Pollution from Ships established deadlines for compliance by U.S. Navy ships with the Annex V special area requirements. Surface ships must comply with the special area requirements by December 31, 2000. Submarines must comply with the special area requirements by December 31, 2008. APPS further requires the Secretary of Defense to report in the **Federal Register** the amount and nature of Navy ship discharges in special areas, not otherwise authorized under MARPOL Annex V.

This **Federal Register** notice is the fifth of the required annual reports. This report covers the period between August 1, 1997, and September 30, 1998. During the period August 1, 1997, through September 30, 1998, there were no garbage discharges from Navy ships into MARPOL Annex V special areas that were not authorized under MARPOL Annex V.

Dated: November 9, 1998.

Ralph W. Corey,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–31055 Filed 11–19–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 19, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 16, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: National Study of Charter Schools.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 1,113; Burden Hours: 509.
Abstract: This four-year study of charter schools will examine the impact of charter schools on student achievement, on education reform, and on an array of other issues. The study includes an annual survey of the universe of charter schools and site visits at a sample of charter schools and comparison schools.

[FR Doc. 98–31015 Filed 11–19–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 21, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer,

Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel__d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 16, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program, Loan Discharge Applications.
Frequency: One time.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden: Responses: 70,000; Burden Hours: 30,500.
Abstract: These forms will serve as the means of collecting the information necessary to determine whether a FFEL or Direct Loan Borrower qualifies for a loan discharge based on total and permanent disability, school closure, false certification of student eligibility, or unauthorized signature.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Direct Consolidation Loan Program Application Documents.
Frequency: On occasion.
Affected Public: Individuals or households; Businesses or other for-profits.
Reporting and Recordkeeping Hour Burden: Responses: 707,000; Burden Hours: 528,250.
Abstract: These forms are the means by which a borrower applies for/promises to repay a Federal Direct Consolidation Loan and a lender verifies an eligible loan to be consolidated.

[FR Doc. 98–31016 Filed 11–19–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Hydrogen Technical Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting: Hydrogen Technical Advisory Panel.

Date: Tuesday, December 8, 1998, 9:00 A.M.–5:00 P.M., Wednesday, December 9, 1998, 9:00 A.M.–3:30 P.M.

Place: Florida Solar Energy Center, 1679 Clearlake Road, Cocoa, Florida 32922–5703; Telephone: 407–638–1000.

FOR FURTHER INFORMATION CONTACT: Russell Eaton, Designated Federal Officer, Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, CO 80401, Telephone: 303–275–4740.

SUPPLEMENTARY INFORMATION:

Purpose of the Panel: The Hydrogen Technical Advisory Panel (HTAP) will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law No. 101–566 and the Hydrogen Future Act of 1996, Public Law No. 104–271. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, and (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems.

Tentative Schedule

Tuesday, November 3, 1998

9:00 A.M. Opening Comments—D. Nahmias
9:15 Introduction of Panelists and Remarks—D. Nahmias/R. Eaton
9:45 DOE Hydrogen Program Report—S. Gronich/N. Rossmeissl
10:00 DOE Hydrogen Program Budget, FY 1999—S. Gronich
10:30 Break
10:45 DOE Report to Congress—S. Gronich
12:00 P.M. Lunch
1:30 HTAP Report to Congress (This will include a signing ceremony by the HTAP members)—D. Nahmias
2:45 IEA Report-International Coordination—N. Rossmeissl
3:00 Break
3:30 Public Comments—Audience
4:00 HTAP Panel Comments—Panel
5:00 Adjourn
6:00 Reception

Wednesday, November 4, 1998

9:00 AM Round Table Discussion on Coordination and Collaboration (DOE Offices of Fossil Energy, Energy Research, Transportation Technologies, Biofuels; DOT and NASA)— Panel/Agency Representatives
12:00 PM Lunch
1:45 Public Comments—Audience
3:15 HTAP Discussion, Comments and Roundup—Panel
3:30 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Russell Eaton's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is

empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 A.M. and 4 P.M., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Russell Eaton, Department of Energy, Golden Field Office, 1617 Cole Blvd.,Golden, CO 80401, or by calling (303) 275–4740.

Issued at Washington, DC, on November 17, 1998.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–31059 Filed 11–19–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Laboratory Operations Board.

Date and Time: Monday, December 7, 1998, 1:00 P.M.–4:30 P.M.

Place: Lawrence Livermore National Laboratory (LLNL), I–580 Exit Vasco Road, Building 170, Conference Room 1091, Livermore. California.

Note: Public attendees are requested to enter through the West Gate Badging Office.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda:

Monday, December 7, 1998

1:00–1:30 P.M. Co-Chairs' Opening Remarks
1:30–2:00 P.M. Status Reports on Outstanding Actions
2:00–3:00 P.M. Discussion of Laboratory Profile Report Submissions
3:00–4:15 P.M. Background Presentations on Departmental Organization and Governance
4:15–4:30 P.M. Public Comment Period
4:30 P.M. Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Laboratory Operations Board may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on November 17, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–31060 Filed 11–19–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Filed With the Commission

November 16, 1998.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Amendment of Exemption.

b. *Project No:* 2869–007.

c. *Date Filed:* 06/22/98.

d. *Applicant:* Village of Potsdam, New York.

e. *Name of Project:* Potsdam Water Power Project.

f. *Location:* On the Raquette River in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Frank O. Christie, Christie Engineering, 8 East Main St., Malone, NY 12953, (518) 483–1945.

i. *FERC Contact:* Mohamad Fayyad, (202) 219–2665.

j. *Comment Date:* December 21, 1998.

k. *Description of Amendment:* The exemptee is proposing to add a new powerhouse at the site. The existing project consists of the East Dam and West Dam separated by an island, a 300-acre reservoir, and an 800–kW powerhouse at the East Dam. The proposed powerhouse would consist of an intake and powerhouse at the West Dam with a capacity of 700 kW.

Initially, on February 27, 1997, the exemptee filed a new license application for the above proposal of the 700–kW powerhouse under docket No. P–11289. The proposal in the license application did not include the existing exempted project. We informed the exemptee that its proposal and its existing exempted project would constitute a complete unit of development; one project. On June 22, 1998, the exemptee decided to file this amendment application.

1. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR Sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those

who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST" OR "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing the original and 8 copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Motions to intervene must also be served upon each representative of the applicant specified in the particular application.

D2. Agency Comments—The Commission invites federal, state, and local agencies to file comments on the described application. (Agencies may obtain a copy of the application directly from the applicant. The application may be viewed on the web site at www.ferc.fed.us. Call (202) 208–2222 for assistance.) If an agency does not file comments within the time specified for filing comments, the Commission will presume that the agency has none. One copy of an agency's comments must also be sent to the applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–31029 Filed 11–19–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice

Novemeber 17, 1998.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: November 24, 1998, 10:00 a.m.

PLACE: Room 2C, 888 first Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 709th Meeting—November 24, 1998; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–618,080, ALABAMA POWER COMPANY

CAH–2.
DOCKET# P–1862,017, CITY OF TACOMA, WASHINGTON

CAH–3.
DOCKET# P–2458,028, GREAT NORTHERN PAPER, INC.
OTHER#S P–2572,012, GREAT NORTHERN PAPER, INC.

CAH–4.
DOCKET# P–2696,006, NIAGARA MOHAWK POWER CORPORATION

CAH–5.
DOCKET# P–2016,029, CITY OF TACOMA, WASHINGTON

CAH–6.
DOCKET# P–2916,004, EAST BAY MUNICIPAL UTILITY DISTRICT

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–28,000, SIERRA PACIFIC POWER COMPANY

CAE–2.
DOCKET# ER99–233,000, MONTAUP ELECTRIC COMPANY

CAE–3.
DOCKET# ER99–25,000, PECO ENERGY COMPANY

CAE–4.
DOCKET# ER98–4512,000, CONSOLIDATED WATER POWER COMPANY

CAE–5.
DOCKET# ER99–51,000, COMMONWEALTH EDISON COMPANY

CAE–6.
DOCKET# ER99–14,000, SELECT ENERGY, INC.

CAE–7.
DOCKET# EC96–19,028, CALIFORNIA POWER EXCHANGE CORPORATION
OTHER#S EC96–19,029, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
EL98–51,000, ERIC C. WOYCHIK, ET AL. V. CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION AND CALIFORNIA ELECTRICITY OVERSIGHT BOARD
ER96–1663,029, CALIFORNIA POWER EXCHANGE CORPORATION
ER96–1663,030, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–8.
DOCKET# ER95–854,000, KENTUCKY UTILITIES COMPANY

CAE–9.
DOCKET# EF98–5031,000, UNITED STATES DEPARTMENT OF ENERGY—WESTERN AREA POWER ADMINISTRATION

CAE–10.
DOCKET# EC98–45,000, CENTRAL MAINE POWER COMPANY, THE UNION WATER-POWER COMPANY, AND CUMBERLAND SECURITIES CORPORATION, ET AL.
OTHER#S ER98–3507,000, CENTRAL MAINE POWER COMPANY, THE UNION WATER-POWER COMPANY, AND CUMBERLAND SECURITIES CORPORATION, ET AL.

CAE–11.
DOCKET# OA97–573,000, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S EL98–27,000, DELMARVA POWER & LIGHT COMPANY
ER97–3189;010, ATLANTIC CITY ELECTRIC COMPANY
OA97–586,000, DELMARVA POWER & LIGHT COMPANY

CAE–12.
DOCKET# EC98–54,000, ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–13.
DOCKET# ER96–58,000, ALLEGHENY POWER SERVICE CORPORATION

CAE–14.
DOCKET# ER95–530,000, OCEAN STATE POWER II
OTHER#S ER95–533,000, OCEAN STATE POWER
ER97–1890,000, OCEAN STATE POWER II
ER97–1899,000, OCEAN STATE POWER
ER98–1717,000, OCEAN STATE POWER
ER98–1718,000, OCEAN STATE POWER II

CAE–15.
DOCKET# EL96–43,000, NEW HAMPSHIRE ELECTRIC COOPERATIVE V. PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
OTHER#S EL97–33,000, NEW HAMPSHIRE ELECTRIC COOPERATIVE V. PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE

CAE–16.
DOCKET# ER98–2537,000, LONG BEACH GENERATION LLC

CAE–17.
DOCKET# QF95–197,001, TWO ELK GENERATION PARTNERS, LIMITED PARTNERSHIP

CAE–18.
DOCKET# ER96–222,000, SOUTHERN CALIFORNIA EDISON COMPANY
OTHER#S OA96–76,000, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–602,000, SOUTHERN CALIFORNIA EDISON COMPANY
OA97–604,000, SOUTHERN CALIFORNIA EDISON COMPANY

CAE–19.
DOCKET# ER98–1438,001, MIDWEST INDEPENDENT TRANSMISSION SYSTEM OPERATOR, INC.
OTHER#S EC98–24,001, THE CINCINNATI GAS & ELECTRIC COMPANY, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, ET AL.

CAE–20.

DOCKET# ER98–3681,001, FIRSTENERGY TRADING & POWER MARKETING, INC.
CAE–21.
DOCKET# EL98–26,001, TRANSMISSION AGENCY OF NORTHERN CALIFORNIA V. PACIFIC GAS & ELECTRIC COMPANY
CAE–22.
DOCKET# RM93–24,001, REVISION OF FUEL COST ADJUSTMENT CLAUSE REGULATION RELATING TO FUEL PURCHASES FROM COMPANY-OWNED OR CONTROLLED SOURCE
CAE–23.
DOCKET# ER96–58,001, ALLEGHENY POWER SERVICE CORPORATION
CAE–24.
DOCKET# EL96–65,001, PENNSYLVANIA POWER & LIGHT COMPANY V. SCHUYLKILL ENERGY RESOURCES, INC.
OTHER#S QF85–720,006, PENNSYLVANIA POWER & LIGHT COMPANY V. SCHUYLKILL ENERGY RESOURCES, INC.
CAE–25.
DOCKET# EL98–72,000, CLARKSDALE PUBLIC UTILITIES COMMISSION V. ENTERGY SERVICES, INC.
OTHER#S EL98–73,000, CLARKSDALE PUBLIC UTILITIES COMMISSION V. ENTERGY SERVICES, INC.
ER99–218,000, ENTERGY SERVICES, INC.
CAE–26.
DOCKET# EL95–24,000, GOLDEN SPREAD ELECTRIC COOPERATIVE, INC. V. SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–27.
DOCKET# EL95–37,000, NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC. V. PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
OTHER#S EL98–35,000, NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC. V. PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
CAE–28.
OMITTED
CAE–29.
DOCKET# RM99–2,000, REGIONAL TRANSMISSION ORGANIZATIONS
CAE–30.
DOCKET# NJ97–9,003, COLORADO SPRINGS UTILITIES
OTHER#S NJ97–2,003, OMAHA PUBLIC POWER DISTRICT
NJ97–8,002, SOUTH CAROLINA PUBLIC SERVICE AUTHORITY
NJ97–10,001, NEW YORK POWER AUTHORITY
NJ97–13,002, ORLANDO UTILITIES COMMISSION
NJ97–14,001, EAST KENTUCKY POWER COOPERATIVE, INC.
CAE–31.
DOCKET# ER99–54,000, BOSTON EDISON COMPANY

CONSENT AGENDA—GAS AND OIL

CAG–1.
DOCKET# GT99–4,000, TENNESSEE GAS PIPELINE COMPANY
CAG–2.
DOCKET# RP99–92,000, TEXAS EASTERN TRANSMISSION CORPORATION
OTHER#S RP99–92,001, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–3.
DOCKET# RP99–93,000, TEXAS EASTERN TRANSMISSION CORPORATION
OTHER#S RP99–93,001, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–4.
DOCKET# RP99–108,000, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–5.
DOCKET# RP99–109,000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–6.
DOCKET# RP99–110,000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–7.
DOCKET# RP99–114,000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–8.
DOCKET# TM99–1–20,000, ALGONQUIN GAS TRANSMISSION COMPANY
CAG–9.
DOCKET# SA98–21,000, SALLY L. BONE
CAG–10.
DOCKET# SA98–18,000, RIVIERA DRILLING & EXPLORATION COMPANY
CAG–11.
DOCKET# SA98–62,000, NED E. AND DOROTHY J. LOWRY
CAG–12.
DOCKET# SA98–79,000, RUTH LAWHORN
CAG–13.
DOCKET# GP98–24,000, BILL C. ROMIG
CAG–14.
DOCKET# RP99–96,000, KERN RIVER GAS TRANSMISSION COMPANY
CAG–15.
DOCKET# RP99–98,000, WILLISTON BASIN INTERSTATE PIPELINE COMPANY
CAG–16.
DOCKET# RP99–99,000, NORTHERN NATURAL GAS COMPANY
CAG–17.
OMITTED
CAG–18.
DOCKET# RP99–107,000, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–19.
DOCKET# RP99–111,000, KOCH GATEWAY PIPELINE COMPANY
CAG–20.
DOCKET# TM98–2–59,003, NORTHERN NATURAL GAS COMPANY
CAG–21.
OMITTED
CAG–22.
OMITTED
CAG–23.
DOCKET# PR98–12,000, ENOGEX, INC.
OTHER#S PR98–12,001, ENOGEX, INC.
CAG–24.
DOCKET# RP97–406,018, CNG TRANSMISSION CORPORATION ET AL.
OTHER#S CP98–754,000, CNG TRANSMISSION CORPORATION
CAG–25.
DOCKET# RP98–99,005, TENNESSEE GAS PIPELINE COMPANY
CAG–26.
DOCKET# RP97–346,017, EQUITRANS, L.P.
OTHER#S RP98–123,004, EQUITRANS, L.P.
TM97–3–24,005, EQUITRANS, L.P.
CAG–27.
OMITTED
CAG–28.
DOCKET# RP97–469,005, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–29.
DOCKET# RP98–25,005, WEST TEXAS GAS, INC.
OTHER#S RP98–25,006, WEST TEXAS GAS, INC.
CAG–30.
OMITTED
CAG–31.
DOCKET# RP99–26,000, NORTHWEST PIPELINE CORPORATION
CAG–32.
DOCKET# RP95–136,000, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–33.
DOCKET# RP96–190,013, COLORADO INTERSTATE GAS COMPANY
CAG–34.
DOCKET# RP98–293,002, WILLIAMS GAS PIPELINES CENTRAL, INC
CAG–35.
DOCKET# RP97–373,015, KOCH GATEWAY PIPELINE COMPANY
CAG–36.
DOCKET# RP95–197,033, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–37.
DOCKET# GP97–6,001, PLAINS PETROLEUM COMPANY AND PLAINS PETROLEUM OPERATING COMPANY
OTHER#S GP98–25,001, PLAINS PETROLEUM COMPANY AND PLAINS PETROLEUM OPERATING COMPANY
CAG–38.
DOCKET# RP98–54,015, COLORADO INTERSTATE GAS COMPANY
OTHER#S GP98–1,002, UNION PACIFIC RESOURCES COMPANY
GP98–10,002, AMOCO PRODUCTION COMPANY
GP98–11,002, OXY USA, INC.
GP98–17,002, ANADARKO PETROLEUM CORPORATION
CAG–39.
DOCKET# RP98–362,001, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–40.
OMITTED
CAG–41.
OMITTED
CAG–42.
DOCKET# CP97–168,002, ALLIANCE PIPELINE L.P.
OTHER#S CP97–169,002, ALLIANCE PIPELINE L.P.
CP97–177,002, ALLIANCE PIPELINE L.P.
CP97–178,002, ALLIANCE PIPELINE L.P.
CAG–43.
DOCKET# CP97–667,001, EL PASO NATURAL GAS COMPANY
CAG–44.
DOCKET# CP97–691,001, SOUTHERN NATURAL GAS COMPANY
CAG–45.
OMITTED
CAG–46.

DOCKET# CP98–167,003, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–47.
DOCKET# CP98–266, 001, ENOGEX INTERSTATE TRANSMISSION, LLC AND OZARK GAS TRANSMISSION, L.L.C.
OTHER#S CP98–266, 002, OZARK GAS TRAMSMISSION, L.L.C.
CP98–266, 003, OZARK GAS TRANSMISSION, L.L.C.
CP98–266, 004, OZARK GAS TRANSMISSION, L.L.C.
CP98–267, 001, ENOGEX INTERSTATE TRANSMISSION, LLC AND OZARK GAS TRANSMISSION, L.L.C.
CP98–268, 001, ENOGEX INTERSTATE TRANSMISSION, LLC AND OZARK GAS TRANSMISSION, L.L.C.
CAG–48.
OMITTED
CAG–49.
OMITTED
CAG–50.
OMITTED
CAG–51.
DOCKET# CP97–237, 000, PANHANDLE EASTERN PIPE LINE COMPANY AND SOUTHWEST GAS STORAGE COMPANY
CAG–52.
DOCKET# CP98–590, 000, TEXAS EASTERN TRANSMISSION CORPORATION
CAG–53.
DOCKET# CP98–70, 000, THE UNION LIGHT, HEAT & POWER COMPANY
OTHER#S CP98–245, 000, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–54.
DOCKET# CP98–103, 000, K N INTERSTATE GAS TRANSMISSION COMPANY
CAG–55.
DOCKET# CP98–522, 000, TEXAS GAS TRANSMISSION CORPORATION AND COLUMBIA GULF TRANSMISSION COMPANY
CAG–56.
DOCKET# CP98–767, 000, GREAT LAKES GAS TRANSMISSION, LIMITED PARTNERSHIP
CAG–57.
OMITTED
CAG–58.
OMITTED
CAG–59.
DOCKET# RP98–365, 000, SEA ROBIN PIPELINE COMPANY
OTHER#S RP98–365, 002, SEA ROBIN PIPELINE COMPANY
CAG–60.
DOCKET# OR98–11, 000, SFPP, L.P.
CAG–61.
DOCKET# RP99–113, 000, TENNESSEE GAS PIPELINE COMPANY
CAG–62.
DOCKET# RP99–118, 000, ANR PIPELINE COMPANY
CAG–63.
DOCKET# RP99–119, 000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–64.
DOCKET# RP99–120, 000, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–65.
DOCKET# RP99–126, 000, SOUTHERN NATURAL GAS COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
RESERVED

II. Pipeline Certificate Matters

PC–1.
RESERVED

David P. Boergers,

Secretary.

[FR Doc. 98–31100 Filed 11–17–98; 4:03 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 2, 1998 through November 6, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–AFS–J61100–CO: Rating EO2, Arapahoe Basin Ski Area Master Development Plan, Construction and Operation, COE Section 404 Permit, White River National Forest, Dillon Ranger District, Summit County, CO.

Summary: EPA expressed environmental objections based on the projects potential adverse impacts to wetlands, water quality and quantity, as well as aquatic resources.

ERP No. D–AFS–J65287–SD: Rating EC2, Veteran/Boulder Area Project, Enhancement of Vegetative Diversity, Improve Forest Health and to Improve Wildlife Habitats, Implementation, Black Hills National Forest, Spearfish and Nemo Ranger District, Lawrence and Meade Counties, SD.

Summary: EPA expressed environmental concerns of the project on existing 303(d) listed waters.

ERP No. D–AFS–L65308–ID: Rating EC2, Eagle Bird Project Area, Timber Harvesting and Road Construction, Idaho Panhandle National Forests, St. Joe Ranger District, Shoshone County, ID.

Summary: EPA expressed environmental concerns about lack of cumulative impacts analysis and adverse impacts to vegetation.

ERP No. D–BLM–K65206–NV: Rating EC2, Caliente Management Framework Plan Amendment, Implementation, Management of Desert Tortoise Habitat (Gopherus agassizii), Northeastern Mojave Recovery Unit, Lincoln County, NV.

Summary: EPA expressed environmental concerns regarding the range of alternatives selected for analysis in the DEIS, and recommended that BLM consider an alternative which would place 100% of critical habitat designated by the Fish and Wildlife Service into protected status. EPA also expressed concerns that two of the action alternatives do not appear to meet project purpose and need.

ERP No. D–COE–G11035–00: Rating LO, Programmatic—Fort Bliss Mission and Real Property Master Plan, Revised Land Use and Enhance Management of the Land, Airspace and Infrastructure, El Pasco County, TX and Dona Ana and Otero Counties, NM.

Summary: EPA had no environmental objections, and recommended selection of Alternative 3.2.

ERP No. D–NPS–K65208–CA: Rating LO, Redwood National and State Parks General Management Plan, Implementation, Humboldt and Del Norte Counties, CA.

Summary: EPA expressed a lack of objections to the project plan, but recommended that the Final EIS/EIR include specific information on the Parks' role in the total maximum daily load (TMDL) development, timber harvest plan review, and Clean Water Action Plan implementation.

ERP No. DS–BLM–J65106–CO: Rating EC2, Glenwood Springs Resource Area, Updated Information, Oil & Gas Leasing and Development, Leasing Lands in the Naval Oil Shale Reserves, Resource Management Plan Amendment, Garfield County, CO.

Summary: EPA expressed environmental concerns about adverse impact to air quality in the Flat Tops Wilderness Class 1 area. EPA recommends that a cumulative air quality impact analysis be prepared and made available to the public prior to publishing the FEIS.

ERP No. DS–BLM–J70017–MT: Rating EC2, Judith-Valley-Phillips Comprehensive Resource Management Plan, Implementation, Lewistown District, Judith Basin, Fergus, Petroleum, Phillips and Valley Counties, MT.

Summary: EPA expressed environmental concerns regarding potential adverse impact to Fisheries, Wildlife, and air and water quality, and that more data and analyses of cumulative impacts is needed.

ERP No. RD–NOA–A64058–00: Rating EC2, Calico Scallop Fishery and Sargassum Habitat Fishery, Fishery Management Plans Establishment and Implementation, South Atlantic Region.

Summary: EPA expressed environmental concerns that the Calico Scallop Fishery Management Plan contained data that was too old to fully assess impact of the fishery and collateral impacts threatened and endangered species. EPA requested that these issues be fully discussed in the next environmental document.

Final EISs

ERP No. F–BLM–L08054–AK: Northern Intertie Project, Construction of 230 kV Transmission Line from Healy to Fairbanks, AK, Application for Right-of-Way Grant, Gold Valley Electric Association, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–E36013–MS: Mississippi River and Tributaries Flood Control Plan, Construction of the remaining portion of the Mississippi River Mainline Levees Enlargement and Seepage Control Project, Flood Protection and Damage Reduction, Lower Mississippi River Valley, Cape Girardeau, MO to Head of Passes, LA; MO, IL, KY, TN, AR, MS and LA.

Summary: EPA continued to have environmental concerns based on the scope/duration of these projects. On-going coordination will be necessary to resolve EPA's outstanding concerns.

Dated: November 17, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–31094 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–1]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed November 09, 1998 Through November 13, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980463, FINAL EIS, FHW, VA, Adoption—VA–168 Battlefield Boulevard South, Construction between Peaceful Road and the North Carolina State Line, Issuance of Permits, VA, Due: December 21, 1998, Contact: Edward S. Sundra (804) 281–5100.

The U.S. Department of Transportation's Federal Highway Administration has adopted the U.S. Corps of Engineers' FEIS #960421 filed on 09–06–96. FHW was not a Cooperating Agency for the above final EIS. Recirculation of the document is necessary under Section 1506.3(b) of the Council on Environmental Quality Regulations.

EIS No. 980464, DRAFT EIS, NOA, Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan, Due: January 25, 1999, Contact: Rebecca J. Lent (301) 713–2347.

EIS No. 980465, FINAL EIS, FHW, RI, Western Johnston and Cranston, Improved Highway Access to the Environmental Management District, Funding and COE Section 404 Permit, Providence County, RI, Due: December 21, 1998, Contact: Daniel J. Berman (401) 538–4541.

EIS No. 980466, FINAL EIS, AFS, AK, Crystal Creek Timber Harvest, Implementation the 1997 Tongass Land Management Plan, Stikine Area, Tongass National Forest, AK, Due: January 04, 1999, Contact: Bruce Sims (907) 772–3841.

EIS No. 980467, DRAFT EIS, FHW, MI, US 31 from I–196 in Allegan County North to I–96 in Muskegon County Improvements, NPDES Permit and COE Section 404 Permit, Allegan, Muskegon and Ottawa Counties, MI, Due: January 11, 1999, Contact: James A. Kirschensteiner, (517) 377–1880.

EIS No. 980468, DRAFT EIS, AFS, OR, Pelican Butte Ski Area Master Development Plan, Implementation, Winema National Forest, Klamath Ranger District, Klamath County, OR, Due: February 03, 1999, Contact: Don Hoffheins (541) 885–3601.

EIS No. 980469, FINAL EIS, NPS, OR, Oregon Caves National Monument, General Management Plan, Development Concept Plan, Josephine County, OR, Due: December 21, 1998, Contact: Rory D. Westberg (541) 592–2100.

EIS No. 980470, FINAL EIS, FTA, CA, Third Street Light Rail Project, Transportation Improvements, Funding, US Coast Guard Permit, and COE Section 404 Permit, San Francisco Municipal Railway, In the City and County San Francisco, CA, Due: December 21, 1998, Contact: Bob Hom (415) 744–3133.

EIS No. 980471, FINAL EIS, COE, IL, Chicagoland Underflow Plan, McCook Reservoir Construction and Operation for Temporary Retention of Floodwaters in Metropolitan Chicago, Implementation, Cook County, IL, Due: December 21, 1998, Contact: Keith Ryder (312) 353–6400.

EIS No. 980472, DRAFT EIS, FHW, NC, US 74 Shelby Bypass Transportation Improvements, Construction, Funding and COE Section 404 Permit, Cleveland County, NC, Due: January 22, 1998, Contact: Nicholas L. Graf (919) 856–4346.

Amended Notices

EIS No. 980447, FINAL EIS, CGD, CA, CA–92/San Mateo Hayward Bridge, Improvements to the East Approach and the Trestle Portion of the bridge, Coast Guard Bridge Permit and COE Section 404 Permit, Alameda and San Mateo Counties, CA, Due: December 07, 1998, Contact: Wayne Till (510) 437–3514.

Published FR–11–06–98—Correction to Title.

Dated: November 17, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–31095 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–7]

Investigator-Initiated Grants: Request for Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for applications.

SUMMARY: This document provides information on the availability of fiscal year 1999 investigator-initiated grants program announcements, in which the

areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research area within the solicitation and are listed below.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, National Center for Environmental Research and Quality Assurance (8703R), 401 M Street SW, Washington DC 20460, telephone (800) 490–9194. The complete announcements can be accessed on the Internet from the EPA home page: http://www.epa.gov/ncerqa under "announcements."

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency (EPA) invites research grant applications in the following areas of special interest to its mission: (1) Integrated Assessment of the Consequences of Climate Change, (2) Ecological Indicators, (3) Regional Scale Analysis and Assessment, (4) Urban Air Toxics, (5) Mercury: Transport and Fate through a Watershed; and (6) Decision-making and Valuation for Environmental Policy (in cooperation with the National Science Foundation). Applications must be received as follows: January 21, 1999, for topics (1) and (3); February 1, 1999, for topic (6); February 4, 1999, for topics (2) and (5); and February 18, 1999, for topic (4).

The RFAs provide relevant background information, summarize EPA's interest in the topic areas, and describe the application and review process.

Contact person for the (1) Integrated Assessment of the Consequences of Climate Change, (2) Ecological Indicators, (3) Regional Scale Analysis and Assessment, and (5) Mercury: Transport and Fate through a Watershed RFAs is Barbara Levinson (levinson.barbara@epamail.epa.gov), telephone 202–564–6911; contact person for the (4) Urban Air Toxics RFA is Deran Pashayan (pashayan.deran@epamail.epa.gov), telephone 202–564–6913; and contact persons for the (6) Decision-making and Valuation for Environmental Policy RFA is Alan Carlin (carlin.alan@epamail.epa.gov), telephone 202–260–5732, and Rachelle Hollander (rholland@nsf.gov), telephone 703–306–1743 (voice) or 703–306–0485 (FAX).

Dated: November 12, 1998.

Norine E. Noonan,

Assistant Administrator for Research and Development.

[FR Doc. 98–31072 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–4]

Common Sense Initiative Council (CSIC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory CSI Computers and Electronics Sector, Printing Sector, Petroleum Refining Sector, and Metal Finishing Sector Subcommittee Meetings: Open Meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that the Computers and Electronics Sector, the Printing Sector, Petroleum Sector and Metal Finishing Sector Subcommittees will meet on the dates and times described below. All meetings are open to the public. Seating at the meetings will be a first-come basis and limited time will be provided for public comment. For further information concerning specific meetings, please contact the individuals listed with the announcements below.

(1) Computers and Electronics Sector Subcommittee Meeting—December 2–3, 1998

Notice is hereby given that the final meeting of the Computers and Electronics Sector Subcommittee will be held in Austin, Texas, on December 2, 1998 from 8:30 a.m. to 5 p.m. CST and December 3 from 8:30 a.m. to 3 p.m. CST at the Embassy Suites Hotel-Downtown, 300 South Congress Avenue. The Subcommittee's workgroups (Reporting and Information Access; Overcoming Barriers to Pollution Prevention, Product Stewardship, and Recycling; and Alternative Strategies for Environmental Protection) will meet from approximately 9:15 a.m. until 11:45 a.m. on December 2. The full Subcommittee will convene for the remainder of the meeting. The agenda will include final reports by each of the workgroups and review of proposed recommendations to the Agency on (1) coordination of worker heath and environmental protection activities among NIOSH, EPA and OSHA, and (2) actions EPA should take to facilitate constructive engagement among stakeholders on environmental protection. The agenda will also include a discussion of the final report of the Subcommittee and a discussion of the October 15, 1998 meeting of the Common Sense Initiative Council. Opportunity for public comment on major issues will be provided at intervals throughout the meeting.

For further information concerning the meeting of the Computers and Electronics Sector Subcommittee meeting, please contact John J. Bowser, Acting DFO, U.S. EPA on (202) 260–1771, by fax on (202) 260–1096, by e-mail at bowser.john@epamail.epa.gov., or by mail at U.S. EPA (MC 7405), 401 M Street, SW, Washington, DC 20460; Mark Mahoney, U.S. EPA Region 1 on (617) 565–1155; or David Jones, U.S. EPA Region 9 on (415) 744–2266.

(2) Printing Sector Subcommittee Meeting—December 3–4, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Printing Sector Subcommittee on December 3—4, 1998. The meeting will be held on December 3 from 9 a.m. EST until 5:30 p.m. EST and on December 4 from 8:30 a.m. EST until 4 p.m. EST. The meeting will be held at the Governor's House Hotel located at 1615 Rhode Island Avenue, NW, in Washington, DC.

The purpose of the meeting will be to approve the final report on the New York City Education Project and to finalize and approve the design of the PrintSTEP project. A formal agenda will be available at the meeting.

For further information concerning meeting times and agenda of this Printing Sector Subcommittee meeting, please contact Gina Bushong, Designated Federal Officer (DFO), at EPA by telephone on (202) 564–2242 in Washington, DC, by fax on (202) 564–0009, or by E-mail at bushong.gina@epa.gov.

(3) Petroleum Refining Sector Subcommittee Meeting—December 10–11, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the Common Sense Initiative (CSI) Petroleum Refining Sector Subcommittee on December 10–11, 1998, at the Renaissance Houston Hotel, 6 Greenway Plaza East, Houston, TX 77046. The hotel telephone number is 713–629–1200. The Equipment Leaks Workgroup and Refinery Air Information Reporting System (RAIRS) Workgroup meetings will be held concurrently on Thursday, December 10 from 9 a.m. CST to 12

noon CST. After a break for lunch, the Accidental Release Information Workgroup will meet from 1:30 p.m. CST to 4:30 p.m. CST. The full Petroleum Refining Sector Subcommittee will meet from 9 a.m. CST to 4 p.m. CST on Friday, December 11, 1998.

The preliminary agenda for the Subcommittee meeting includes comments on the transition of CSI to National Advisory Council on Environmental Policy and Technology (NACEPT), and the Equipment Leaks Project Report. There will also be reports of the Accidental Release Information Project, the RAIRS Project, and the Equipment Leaks Project. A public comment period will also be provided.

For further information concerning this meeting of the Petroleum Refining Sector Subcommittee, please contact either Craig Weeks, Designated Federal Officer (DFO), at US EPA Region 6 (6EN), 1445 Ross Avenue, Dallas, TX 75202–2733, by telephone at 214–665–7505 or E-mail at weeks.craig@epamail.epa.gov or Steve Souders, Alternate DFO, at US EPA by mail (5306W), 401 M Street, SW, Washington, DC 20460, by telephone at 703–308–8431 or E-mail at souders.steve@epamail.epa.gov.

Metal Finishing Sector Subcommittee—December 15–16, 1998

Notice is hereby given that the Environmental Protection Agency will hold an open meeting of the CSI Metal Finishing Sector Subcommittee on December 15–16, 1998, at the Crowne Plaza Redondo Beach and Marina Hotel, 300 North Harbor Drive, Redondo Beach, CA 90277–2552. The telephone number to the hotel is 310–318–8888 or 1–800–368–9760. On Tuesday, December 15, 1998, the meeting will take place from 8:30 a.m. PST to 5 p.m. PST. The meeting will run from 8 a.m. to 2 p.m. on Wednesday, December 16, 1998. The Subcommittee meeting will focus on implementation of the Metal Finishing Sector's Strategic Goals Program. A formal agenda will be available at the meeting.

For further information concerning meeting times and agenda of the Metal Finishing Sector Subcommittee, please contact Bob Benson, DFO, at EPA by telephone on (202) 260–8668 in Washington, DC, by fax on (202) 260–8662, or by e-mail at benson.robert@epa.gov.

Inspection of Subcommittee Documents

Documents relating to the above topics will be publicly available at the meeting. Thereafter, these documents and the minutes of the meeting will be available for public inspection in room 3802M of EPA Headquarters, 401 M Street, SW, Washington, DC 20460, telephone number 202–260–7417. Common Sense Initiative information can be accessed electronically on our web site at http.//www.epa.gov/commonsense.

Kathleen Bailey,

Designated Federal Officer.

[FR Doc. 98–31071 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–6]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on December 10 and 11, 1998. The meeting will take place at the River Inn, 924 Twenty-Fifth Street, NW, Washington, DC from 9 a.m. to 5 p.m. on Thursday, December 10 and Friday, December 11. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or call (202) 260–4129.

Dated: November 9, 1998.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 98–31073 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30463; FRL–6043–5]

Dow AgroSciences, LLC.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide products Starane F Technical and Starane EC containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

EPA received applications from Dow AgroSciences, LLC, 9330 Zionsville Road, Indianapolis, IN 46268, to conditionally register the pesticide products Starane F Technical and Starane EC (EPA File Symbols 62719–EIL and 62719–EIA), containing the active ingredient fluroxypyr 1-methylheptyl (4-amino-3,5-dichloro-6-fluoro-2-pyridyloxyl)acetate at 98% and 26.2% respectively, an active ingredient not included in any previously registered pesticide products. However, since the notice of receipt of these applications to register the products as required by section 3(c)(4) of FIFRA, as amended did not publish in the **Federal Register**, interested parties may submit comments within 30 days from the date of publication of this notice for these products. Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. No Confidential Business Information (CBI) should be sent through e-mail.

The applications were approved on September 30, 1998, for the following products:

1. Starane F Technical for manufacturing use only (EPA Registration Number 62719–285).

2. Starane EC for postemergence control of annual and perennial broadleaf weeds and volunteer potatoes in small grains, fallow cropland, and on farm non-cropland (EPA File Registration Number 62719–286).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of fluroxypyr 1-methylheptyl (4-amino-3,5-dichloro-6-fluoro-2-pyridyloxyl)acetate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of fluroxypyr 1-methylheptyl (4-amino-3,5-dichloro-6-fluoro-2-pyridyloxyl)acetate during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on fluroxypyr 1-methylheptyl (4-amino-3,5-dichloro-6-fluoro-2-pyridyloxyl)acetate.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: November 12, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–31065 Filed 11–19–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30447A; FRL–6042–5]

FMC Corporation; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide products Carfentrazone-ethyl (F8426) Technical, Aim Herbicide, and Aim 50DF containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of February 25, 1998 (63 FR 9518)(FRL–5773–6), which announced that FMC Corp., Agricultural Chemical Group, 1735 Market St., Philadelphia, PA 19103, had submitted applications to conditionally register the herbicide products Carfentrazone-ethyl (F8426) Technical, Carfentrazone-ethyl (F8426) 50DF, and Carfentrazone-ethyl (F8426) 40DF (EPA File Symbols 279–GRIR, 279–GRIE, and 279–GROU) containing the active ingredient carfentrazone-ethyl alpha,2-dichloro-5-[4-(difluoromethyl)-4,5-dihydro-3-methyl-5-oxo-1*H*-1,2,4-triazol-1-yl]-4-fluorobenzenepropanoate at 90%, 50%, and 40% respectively, an active ingredient not included in any previously registered pesticide products.

The applications were approved on September 30, 1998, for the products listed below:

1. Carfentrazone-ethyl (F8426) Technical for formulation use only (EPA Registration Number 279–3181).

2. Aim 50DF (formerly Carfentrazone-ethyl (F8426) 50DF) for agricultural or commercial use only to control broadleaf weeds on cereal grain groups and soybeans (EPA Registration Number 279–3182).

3. Aim 40DF (formerly Carfentrazone-ethyl (F8426) 40DF) for agricultural or commercial use only to control broadleaf weeds on cereal grain groups and soybeans (EPA Registration Number 279–3194)

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of carfentrazone-ethyl, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based

on these reviews, the Agency was able to make basic health and safety determinations which show that use of carfentrazone-ethyl during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on carfentrazone-ethyl.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: November 9, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–31064 Filed 11–19–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30454A; FRL–6041–8]

Premium Compounded LCC.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Migratrol R001 and Cuprous Chloride Technical, containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 247, Crystal Mall #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of May 21, 1998 (63 FR 27960) (FRL–5789–1), which announced that Premium Compounded Products, LLC, Wilmington, DE 19802, had submitted applications to register the pesticide products Migratrol R001 a Manufacturing Use Product and Cuprous Chloride Technical (EPA File Symbols 71280–G and 71280–R), containing the new active ingredient cuprous chloride at 48.25% and 96.5% respectively, an active ingredient not included in any previously registered products.

The applications were approved on September 30, 1998, as Migratrol R001 and Cuprous Chloride Technical for formulating end-use plant growth regulator products only (EPA Registration Numbers 71280–3 and 71280–1), respectively.

The Agency has considered all required data on risks associated with the proposed use of cuprous chloride, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the pesticide and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of cuprous chloride when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in an EPA Pesticide Fact Sheet on cuprous chloride.

A paper copy of the fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 27, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–31062 Filed 11–19–98; 8:45 am]
BILLING CODE 6560–50–F

VOL 63 ISS 224 NO 20 1998 UMI

ENVIRONMENTAL PROTECTION AGENCY

[PF–843; FRL–6042–4]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–843, must be received on or before December 21, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION**. No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Edward Allen	Rm. 902W16, CM #2, 703–308–8699, e-mail:allen.edward@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Bipin Gandhi	Rm. 707A, CM #2, 703–308–8380, e-mail: gandhi.bipin@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–843] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in **ADDRESSES** at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 12, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Agrium US Inc.

PP 8F5035

EPA has received a pesticide petition (PP 8F5035) from Agrium US Inc., 4582 S. St., Suite 1400, Denver, CO 80237, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for *Pseudomonas chlororaphis Strain* 63-28 in or on the raw agricultural commodity greenhouse vegetable crops.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Agrium US Inc. has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Agrium US Inc. and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneuos material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Product Name and Proposed Use Practices

Pseudomonas chloroaphis Strain 63-28 will be incorporated into the end-use product, AtEze, as an active ingredient. AtEze is proposed for use on greenhouse vegetable crops for the suppression of two important soil-borne diseases *Rhizoctonia solani* and *Pythium spp.*

The product is applied as a soil drench treatment at a dilution rate of 1:500 using potable water. In addition,

the product may also be applied with drip irrigation systems in production greenhouses.

B. Product Identity/Chemistry

Identity of the pesticide and corresponding residues. *Pseudomonas chloroaphis Strain* 63-28 is a liquid suspension containing living cells at a concentration of 109 colony forming units (cfu)/mL of fermentation product. *Pseudomonas chloroaphis Strain* 63-28 is a plant-beneficial rhizobacterium that is a non-pathogenic, non-toxic, free-living organism which is naturally occuring in soils and water worldwide.

The association of *Pseudomonas chlororaphis Strain* 63-28 with plants is adequately understood for purposes of the tolerance exemption. This rhizosphere bacterium is one of the most commonly-occurring microorganisms in soils and on roots of many plants during growing seasons. Inocula of *P. chlororaphis Strain* 63-28 applied into natural soils do not persist for a long period of time, nor do they change soil microbial processes significantly, according to published literature. Several strains of *P. chlororaphis Strain* 63-28, when introduced at a concentration of approximately 106 cfu/g of root, fall below detection levels after 8-12 weeks. There is no indication that the bacterium can be translocated in great numbers within plants. An analytical method for residues is not applicable, since the petitioner has requested an exemption from the requirement of a tolerance.

C. Toxicological Profile

Acute toxicity. AtEze, the end-use formula containing 1.15% *Pseudomonas chlororaphis Strain* 63-28, has been studied for acute toxicity. The results of these studies indicate a Toxicity Category III or IV and poses no significant human health risks. The acute oral toxicity of *Pseudomonas chlororaphis Strain* 63-28 in rats is greater than 5,000 milligrams/kilogram (mg/k)g (6.50 x 10^{10} cfu- Toxicity Category IV). Acute dermal toxicity in rabbits is greater than 2,000 mg/kg (6.82 x 10^{10} cfu-Toxicity Category III). In an eye irritation study, each rabbit received a dose of 1.06 x 10^{9} cfu viable bacteria. The highest primary irritation score observed during the study was 0.8 (out of a maximum score of 110), which was observed in a 24-hour scoring interval.. No signs of ocular irritation were observed in any rabbit at the 48-hour scoring interval (Toxicity Category III). Agrium has not observed any incidents of hypersensitivity from personnel working with the product strain or the product in laboratory, fermentation facilities, greenhouses, or field studies. Their is no report in the literature to suggest that members of the species *Pseudomonas chlororaphis*, or closely related *Pseudomonads* cause any hypersensitive reaction in humans or animals.

Waivers have been requested for acute oral toxicity/pathogenicity, and acute pulmonary toxicity/pathogenicity toxicity, genotoxicity, reproductive and developmental toxicity, subchronic toxicity, chronic toxicity, and acute toxicity to nontarget species based on AtEze's ubiquity in nature, favorable toxicological profile in that *Pseudomonas chlororaphis Strain* 63-28 has never been reported as a pathogen of humans or any type of animals, other published research and toxicology studies, and inconsequential exposure resulting from label-directed uses.

D. Aggregate Exposure

1. *Dietary exposure—Food.* The estimate of aggregate exposure to *P. chlororaphis Strain* 63-28 contained in AtEze through food intake is based on potential dispersal of the bacterial to edible portions of greenhouse vegetables and on a theoretical maximum residue contribution (TMRC) to diet. The TMRC considers a maximum level of residue consumed daily if each greenhouse vegetable crop is treated with the product. According to the research data on greenhouse tomato, residual populations of the product bacterium on fruits will be less than 10 cfu /g. It is likely that residue levels on greenhouse cucumber or pepper will be similar with the same product use pattern. A very liberal estimation of daily consumption of all greenhouse vegetables is used for calculation of the TMRC. With 2 kg/day, the TMRC value would be no more than 400 cfu/kg body weight for a person weighing 50 kg. Suppose the person had the same daily intake for a life time (80 years), the accumulative amount would still be only 1.2 x 107 cfu/kg body weight, which is less than 1% of the amount used in the oral toxicity test. With the large overestimate of human dietary exposure through food, the total amount is still well below levels used, and demonstrated safe in the acute oral toxicity study. The chronic toxicity information has not been established. However, a potential residue level is so low on food crops that natural populations of the bacterium may surpass it. Therefore, a chronic toxic impact is not expected.

2. *Dietary exposure—Drinking water.* There is no maximum contaminant level established for *Pseudomonas chlororaphis Strain* 63-28 in drinking water, nor it is listed for drinking water monitoring under the Safe Drinking Water Act. The risk of contaminating well water by applied bacteria is very low because the product is used in greenhouses and the recommended amount of drench application severely limits leaching. It is expected that human exposure through drinking water is negligible. This bacterium exists in abundance in natural surface water such as ponds, lakes or streams.

3. *Non-dietary exposure.* AtEze is labeled for uses on commercial greenhouse crops only. Based on the study of persistence on several greenhouse crops, residue populations of the bacterium on the roots and in the growth medium will be negligibly low by the time of crop sales. Since the product is not found in or on fruits, and the general public has limited exposure to production greenhouses or plant growth media, the estimated non-occupational exposure to the general population is minuscule. Occupational exposure will be mitigated by the use of proper personal protective equipment and clothing.

E. Cumulative Exposure

The product strain belongs to the bacterial genus of *Pseudomonas*. Although other registered *pseudomonads* may have similar modes of action in suppressing plant diseases, there is no information available to suggest that these organisms exhibit a similar toxicity profile in the mammalian system that would be cumulative with *P. chlororaphis Strain* 63-28. Thus, consideration of a common mechanism of toxicity is not appropriate at this time. Agrium is considering only the potential risks of *P. chlororaphis* 63-28 in its aggregate exposure assessment.

F. Safety Determination

1. *U.S. population.* Based on the physical and chemical characteristics, low use rates, no evidence of any acute toxicity, lack of other toxicological concerns and a liberal estimation of exposure, Agrium believes that there is a reasonable certainty of no harm to the U.S. population in general from aggregate exposure to AtEze residue from all anticipated dietary and non-dietary exposures.

2. *Infants and children.* A developmental toxicity study was not conducted. Based on the observation that no adverse effect was found in acute toxicological studies, very low residue if any, limited exposure, and on the lack of reported concerns in the literature, Agrium believes that the product is of minimal risk.

G. Effects on the Immune and Endocrine Systems

Endocrine disruptors. Agruim has no information to suggest that *P. chlororaphis Strain* 63-28 will have an effect on the immune and endocrine systems. Furthermore, EPA is not requiring information on endocrine effects of this microbial pesticide at this time; Congress is allowing 3 years after August 3, 1996, to implement a screening program with respect to endocrine effects.

H. International Tolerances

There are no CODEX tolerances or international tolerance exemptions issued for *P. chlororaphis Strain* 63-28 at this time. (Edward Allen)

2. Rohm and Haas Company

PP 8E4952

EPA has received a pesticide petition (PP 8E4952) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for Alkyl (C12-C20) Methacrylate copolymer when used in accordance with good agricultural practices as inert ingredient in pesticide formulations applied to growing crops in or on the raw agricultural commodity after harvest or to animals at parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile (Low-Risk Criteria for Polymers)

In the case of certain chemical substances that are defined as "polymers", the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compounds compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Alkyl (C12-C20) Methacrylate copolymers conform to the definition of a polymer given in 40 CFR 723.250 (b) and meet the following criteria that are used to identify low risk polymers.

1. Alkyl (C12-C20) Methacrylate copolymer is not a cationic polymer, nor is it capable of becoming a cationic polymer in the natural aquatic environment.

2. Alkyl (C12-C20) Methacrylate copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, oxygen and less than 0.10% sulfur.

3. Alkyl (C12-C20) Methacrylate copolymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250 (d)(2)(iii).

4. Alkyl (C12-C20) Methacrylate copolymer is not designed, nor is it reasonably anticipated to substantially degrade, decompose or depolymerize.

5. Alkyl (C12-C20) Methacrylate copolymer is not manufactured or imported from monomers and/or other reactants that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. Alkyl (C12-C20) Methacrylate copolymer is not a water absorbing polymer with a number average molecular weight greater than or equal to 10,000 daltons.

7. The minimum number-average molecular weight of Alkyl (C12-C20) Methacrylate copolymer is 50,000 daltons. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

8. Alkyl (C12-C20) Methacrylate copolymer has a minimum number average molecular weight of 50,000 and contains less than 2% oligomeric material below molecular weight 500 and less than 5% oligomeric material below 1,000 molecular weight.

9. Alkyl (C12-C20) Methacrylate copolymer does contain aliphatic ester groups as reactive functional groups. However, these reactive groups are not intended or reasonably anticipated to undergo further reactions under usual environmental conditions.

10. There are no evidence that Alkyl (C12-C20) Methacrylate copolymer is an endocrine disrupter, where as substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

B. Aggregate Exposure

1. *Dietary.* Alkyl (C12-C20) Methacrylate copolymer is not absorbed through the intact gastrointestinal tract and is considered incapable of eliciting a toxic response.

2. *Water.* Based upon the aqueous insolubility of Alkyl (C12-C20) Methacrylate copolymer, there is no reason to expect human exposure to residues in drinking water.

3. *Non-dietary.* Typical use of Alkyl (C12-C20) Methacrylate copolymer is in the oil industry as a wax and viscosity modifier at very low use rates. In these uses the primary exposure rate would be dermal, however, Alkyl (C12-C20) Methacrylate copolymer with a molecular weight significantly greater that 400 is not absorbed through the intact skin.

C. Cumulative Risk

There is data to support cumulative risk from Alkyl (C12-C20) Methacrylate copolymer, since polymers with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response. Therefore, there is no reasonable expectations of increased risk due to cumulative exposure.

D. Safety Determination

1. *U.S. population.* Alkyl (C12-C20) Methacrylate copolymer causes no safety concerns because it conforms to the definition of a low risk polymer given in 40 CFR 723.250 (b) and as such is considered incapable of eliciting a toxic response. Also, there are no additional pathways of exposure (non-occupational, drinking water, etc.) where there would be additional risk.

2. *Infants and children.* Alkyl (C12-C20) Methacrylate copolymer causes no additional concern to infants and children because it conforms to the definition of a low risk polymer given in 40 CFR 723.250 (b) and as such is considered incapable of eliciting a toxic response. Also there are no additional pathways of exposure (non-occupational, drinking water, etc.)

where infants and children would be at additional risk.

E. International Tolerances

Rohm and Haas is petitioning that Alkyl (C12-C20) Methacrylate copolymer be exempt from the requirement of a tolerance based upon the low risk polymer as per 40 CFR 723.250. Therefore, an analytical method to determine residues of Alkyl (C12-C20) Methacrylate copolymer in raw agricultural commodities has not been proposed.

We are not aware of any country requiring a tolerance for Alkyl (C12-C20) Methacrylate copolymer. Nor have there been any CODEX Maximum Residue Levels (MRL's) established for any food crops at this time. (Bipin Gandhi)

[FR Doc. 98–31068 Filed 11–19–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–846; FRL–6043–8]

BASF Corporation; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–846, must be received on or before December 21, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Product Manager 23, Herbicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 237, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–846] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–846) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

BASF Corporation

PP 6F 4604 and 4F 3041/FAP 4H5428

EPA has received pesticide petitions (PP 6F 4604 and 4F 3041/FAP 4H5428) from BASF Corporation, 26 Davis Drive, Research Triangle Park, P.O. Box 13528, NC 27709, proposing pursuant to section 408 (d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.227 by establishing and revising tolerances for residues of the herbicide dicamba (3,6-dichloro-o-anisic acid) and its two metabolites; 3,6-dichloro-5-hydroxy-o-anisic acid and 3,6-dichloro-2-hydroxybenzoic acid. The tolerances requested for residues in or on the following raw agricultural commodities are described as follows:

1. Revise tolerances for residues of dicamba (3,6-dichloro-o-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-o-anisic acid in or on: barley grain to 6 ppm, barley straw to 15 ppm; cottonseed to 3 ppm; wheat grain to 2 ppm, wheat straw to 30 ppm.

2. Establish new tolerances for residues of dicamba (3,6-dichloro-o-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-o-anisic acid in or on: barley hay at 2 ppm, corn, field, forage at 3 ppm; corn, field, stover at 3 ppm, corn, pop, stover at 3 ppm;

cottonseed meal at 5 ppm; Crop Group 17 (grass forage, fodder, and hay) forage at 125 ppm and hay at 200 ppm; oats forage at 80 ppm, oats hay at 20 ppm; wheat forage at 80 ppm, wheat hay at 20 ppm.

3. Revise tolerances for residues of dicamba (3,6-dichloro-o-anisic acid) and its metabolite 3,6-dichloro-2-hydroxybenzoic acid in or on: asparagus to 4 ppm.

4. Revise tolerances for residues of dicamba (3,6-dichloro-o-anisic acid) and its metabolites; 3,6-dichloro-2-hydroxybenzoic acid and 3,6-dichloro-5-hydroxy-o-anisic acid in or on: soybean seed to 10 ppm.

5. Establish new tolerances for residues of dicamba (3,6-dichloro-o-anisic acid) and its metabolites; 3,6-dichloro-2-hydroxybenzoic acid and 3,6-dichloro-5-hydroxy-o-anisic acid in or on: aspirated grain fractions at 5,100 ppm, and soybean hulls at 13 ppm.

6. Delete the following tolerances: grasses, hay at 40 ppm; grasses, pasture at 40 ppm; and grasses, rangeland at 40 ppm as these tolerances are being replaced by Crop Group 17 in point 2.

The proposed analytical methods involve extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (gc/ecd). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Metabolism is adequately understood on the basis of soybean, asparagus, cotton, sugarcane and published data on grass. In the majority of registered crops, the major metabolite is the 3,6 dichloro-5-hydroxy-o-anisic acid. Tolerances are expressed as the dicamba parent and/or the respective 5-hydroxy and 2-hydroxy metabolites depending on the raw agricultural commodity of concern.

2. *Analytical method*. BASF Crop, has provided suitable independently validated analytical methods for detecting and measuring levels of dicamba and its metabolites in or on food with a limit of detection that allows monitoring of food with residues at or above the levels described in these and the existing tolerances. Adequate methods are available in PAM-II for enforcement purposes. The analytical method involves extraction, partition, clean-up and detection of residues by gas chromatography/electron capture detector (gc/ecd).

3. *Magnitude of residues*—i. *Plant*. Residue trials have been conducted with dicamba on the crops for expanded use requested in the subject petitions. Multiple salts of dicamba were studied in side-by-side testing to confirm that no effect on magnitude of the residues was caused by the salt formulation type of the dicamba. The tolerances listed in the first paragraph (section 1) are based on the maximum expected residue from geographically representative field trial data.

Only newly generated data, or data not implicated in the CRAVEN Laboratories indictment are used to support the subject petitions.

ii. *Animal*. The amended uses proposed do not yield secondary residues in meat and milk above the tolerances already published under 40 CFR 180.227. Data from metabolism and feeding studies in poultry have established that the maximum expected dietary burden from crops treated with dicamba will not result in quantifiable residues above the limits of the analytical method.

B. Toxicological Profile

Data are provided that are representative of the mammalian toxicity effects of dicamba and are part of the many studies conducted to support BASF Corp. assertion of safety of dicamba to humans.

1. *Acute toxicity*—i. Oral rat LD_{50}: 1879 mg/kg (m); 1581 mg/kg (f).

ii. Acute dermal rat LD_{50}: > 2,000 kg/kg (m/f).

iii. Acute inhalation rat LC_{50}: > 9.6 mg/L (m/f).

iv. *Primary eye irritation*: Extremely irritating and corrosive to the eye.

v. *Primary dermal irritation rabbits*. Not a primary skin irritant.

vi. *Dermal sensitization guinea pigs*. Moderate potential to cause dermal sensitization.

vii. *Acute neurotoxicity*. no observed adverse effect level (NOAEL) < 300 milligrams/kilogram (mg/kg) (low dose). No neuropathological effects were found.

2. *Genotoxicty— Ames- negative. In vitro* chromosome aberration in Chinese Hamster Ovary: Negative; Sex-linked recessive lethal in Drosophila: Negative; Aberrations in rat bone marrow: Negative; Mitotic recombination: Negative; UDH (UDS with WI-38 human lung fibroblasts: Negative; Differential toxicity with *E. coli* polA and B. subtillus: Positive; Differential toxicity with *S. typhimurium*: Negative; UDS in human lung lymphocytes with activation: Negative; slight increase of sister chromatid exchange in human cultured lymphocytes; positive in *in vivo* unwinding of liver DNA in ip injected rats insert text.

3. *Reproductive and developmental toxicity*—Rodent Developmental Toxicity Rat: Oral doses of 0, 64, 160, or 400 mg/kg were administered daily during gestation days 6 to 19. The numbers of implantations, resorptions, and fetuses for test animals were similar to those numbers for control animals. No abnormalities were attributed to exposure to dicamba. Technical dicamba was not found to be teratogenic with the test system/study design employed. Maternal toxicity was found only at the HDT and the NOAEL was 160 mg/kg/day.

4. *Rabbit developmental toxicity*. Dicamba was administered orally (undiluted) via capsule to groups of 20 artificially inseminated New Zealand White rabbits. Dose levels of 0, 30, 150, or, 300 mg/kg were administered once daily on days 6-18 of presumed-gestation (day 0 = day of insemination). Females were sacrificed on day 29 of presumed gestation. There were no deaths attributed to treatment. At the 150 mg/kg and 300 mg/kg levels, increased numbers of does with decreased motor activity and statistically significant numbers of does with ataxia were noted. At 300 mg/kg, a significant number of does had rales and an increased number of does showed labored breathing, perinasal substance, dried feces, impaired righting reflex, and red substance in the cage pan. These clinical observations were considered to be effects of treatment. Females in the 300 mg/kg group had statistically significant body weight loss for the entire dosage period. At 150 mg/kg, females lost weight on days 7-8 of presumed gestation. Although compensatory weight gains occurred during the post-treatment period (days 19-29-of gestation), body weight gains remained statistically significantly reduced on days 6-29 of gestation in the 300 mg/kg group. No significant differences were obtained in litter averages for corpora lutea, implants, litter sizes, resorption sites, percent male fetuses, fetal body weight, percent resorbed conceptuses or number of does with any resorptions. No gross external, soft tissue or skeletal alterations in fetuses were considered to be related to treatment. The maternal NOAEL for technical dicamba to pregnant rabbits was 30 mg/kg/day. Levels of 150 and 300 mg/kg caused abortions, but were at significant maternally toxic doses. The developmental NOAEL was the highest dose tested (HDT), 300 mg/kg/day.

There were no effects on embryo-fetal viability or development at any level.

5. *2-generation reproduction rat.* Potential effects on growth and reproductive performance were assessed over 2-generations of rats maintained on diets containing Technical Dicamba at concentrations of 0 (control), 500, 1,500, or 5,000 parts per million (ppm). Exposure at 5,000 ppm was associated with a slower growth rate of F1 pups prior to weaning and resulted in lower initial body weights in those selected as parental animals. The lower body weight was associated with a decrease in both food consumption and water intake. Sexual maturation was slightly delayed among males, but was likely associated with the initial reduced growth rate. Increased liver weights were noted consistently for adults of both generations and for weanlings. There were no effects on reproductive ability from treatment at any level. The low pregnancy rate among F, females in all groups was considered to be due to increased weights of those females. The NOAEL and lowest observed adverse effect level (LOAEL) for system toxicity were 1,500 and 5,000 ppm, respectively. The NOAEL and LOAEL for reproductive toxicity were 500 (45 mg/kg/day) and 1,500 ppm, respectively.

6. *Subchronic toxicity—21 day dermal.* There were no dicamba related changes in general behavior, appearance, body weight, or in blood and urine analysis. There were no compound-related gross pathology lesions, only skin lesions. There were no significant organ weight variations observed.

7. *Thirteen-week rodent feeding-rat.* Rats were offered technical dicamba at dietary concentrations of 0, 1,000, 5,000, or 10,000 ppm. The mean body weight and food consumption values for the high dietary level animals were decreased from the control values. No adverse treatment-related findings were noted in either the blood parameters investigated or necropsy evaluation. Microscopic examinations of the liver revealed an absence or reduction of cytoplasmic vacuolation in the hepatocytes of the high dietary level animals. The NOAEL was suggested to be 5,000 ppm.

8. *Eight-week non-rodent-dog.* Technical dicamba was offered orally at dietary concentrations of 0 (Control), 100, 500, or 2,500 ppm to dogs for 1-year. Initially, a decrease in food consumption was noted mainly among males at 500 and 2,500 ppm. This was most notable in a single 2,500 ppm male resulting in almost no food consumed for the 1st 3 weeks of feeding. Following administration of the 2,500 ppm diet in a water slurry during weeks 4-6, this male was placed back on feed and food consumption stabilized. There appears to be a limit to the amount of material that can be added to the feed before dogs will not consume the diet. The 2,500 ppm level was considered close to the maximum that could be employed, as one dog failed to consume the diet when offered in the usual form. Due mainly to the aforementioned male, mean body weight of 2,500 ppm males did not increase until week 5. The overall body weight gain for the 1-year period was comparable for all groups. It was concluded that aside from the lower food consumption, the NOAEL for toxicity was 50-60 mg dicamba/kg body weight (2,500 ppm) in both males and females.

Because of the lack of toxicity shown in this study the reference dose (RfD) Peer review Committee concurred that the NOAEL was 2,500 ppm HDT and a LOAEL was not established. OPP's HED Branch is to decide if a new dog feeding study is required.

9. *Sub-chronic neurotoxicity.* NOAEL was established at 401 (M) and 472 (F) mg/kg/day. No histopathological effects on the peripheral or central nervous system were noted.

10. *Chronic toxicity—Chronic feeding/oncogenicity in rat.* Groups of 60 rats/sex were maintained on diets containing technical dicamba at concentrations of either 0, 50, 250, or 2,500 ppm. An interim sacrifice of 10/sex/level was conducted at 12 months. Initially scheduled as a 27 month study, males were sacrificed at 115-weeks and females at 118-weeks due to survival rates.

In males, no statistically significant differences in data for all tumors combined, all benign tumors combined, and all malignant tumors combined were obtained. A slight increase in malignant lymphoma was not statistically significant (pairwise comparisons) and was not considered to be toxicologically significant. A slight increase in thyroid parafollicular cell carcinoma in the high treatment group was noted but was not statistically significant in pairwise comparisons.

In females, no statistically significant differences were noted in comparisons with all tumors combined, all benign tumors combined, and all malignant tumors combined or in any individual tumor type.

In summary, no signs of toxicity related to administration of dicamba were noted. Findings among animals in the three treatment groups were considered to be comparable to findings among the control animals. Dicamba was not oncogenic for animals of the species, strain, and age under the conditions of the study. Based on the results of the study, the no effect level was considered to be 2,500 ppm.

11. *Oncogenicity in mice.* Groups of 52 male and 52 female mice were fed diets containing dicamba at oncentrations of 0, 50, 150, 1,000, or 3,000 ppm. Males were killed following 89-weeks of feeding and females were killed following 104-weeks of feeding. Reduced body weight gain (not statistically different) was noted among 3,000 ppm females. Increased mortality noted among 3,000 ppm males was considered unlikely to be related to treatment but could not be completely excluded. An increased incidence in lymphoid tumors, showing a statistical significance at 150 and 1,000 ppm, occurred in females. However, the incidence at 3,000 ppm did not statistically differ from control. Additionally, there was no significant trend with dosage and the values for treated females were within historical control data. Finally, the incidence of benign and malignant tumors in any tissue were similar for treated and control animals.

Administration of dicamba in the diet at achieved intakes ranging from 5.5 to 364 mg/kg/day produced no evidence of tumorigenic potential. Generally, no findings among mice receiving 1,000 ppm or below were considered to be of toxicological significance. The dietary level of 1,000 ppm (108 mg/kg/day in males and 121 mg/kg/day in females) was defined as the no toxic effect level.

However, the RfD committee chose to establish the NOAEL at 3,000 ppm and stated that no LOAEL had been established.

12. *Estrogenic or other ndocrine effects.* No specific tests have been conducted with dicamba to determine whether the pesticide may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effect. However, available data have not implicated dicamba in such effects.

13. *Animal metabolism.* Dicamba has been tested in rats, dogs, cattle, goats and hens. In all cases, dicamba is excreted very rapidly, mainly as unchanged dicamba and to a lesser extent as 3,6-dichloro-2-hydroxybenzoic acid with trace amounts of 3,6-dichloro-5-hydroxy-o-anisic acid. The results of these studies demonstrate that dicamba is not persistent and does not accumulate in animals.

14. *Metabolite toxicology.* Toxicity of the metabolites of dicamba to humans is concurrently evaluated during toxicity testing because both plant and animal metabolites are formed during the

course of toxicity tests. Both plant and animal major metabolites are considered not of toxicological concern.

C. Aggregate Exposure

1. *Dietary exposure.* Exposure from the use of Dicamba in the culture of wheat, barley, oats, millet, sorghum, corn, soybeans, grasses, cotton, sugarcane and asparagus crops is discussed under the below topics of food and drinking water.

2. *Food.* The subject petition amends these uses but does not add new crops. The potential dietary exposure of the population to residues of dicamba or its metabolites is calculated based on the Theoretical Maximum Residue Contribution (TMRC) for all crops with dicamba use. The TMRC is a worst case estimate of dietary exposure since it assumes that 100% of all crops for which tolerances are established are treated with dicamba, and that pesticide residues are present at the tolerance levels. The resulting dietary exposure estimate therefore overestimates exposure and is considered conservative. The number is then determined to be a percentage of the EPA decided RfD. Dietary exposure may occur from crop commodities and meat and milk. Based on the EPA DRES model BASF Corp. has estimated that the average U.S. population dietary exposure to dicamba to be only 1.87% of the RfD. This number is very low and considered very safe as an active ingredient is allowed up to 100% before less conservative risk assessment measures are initiated.

Acute dietary analysis compared the daily dietary exposure to the lowest NOAEL for acute and subchronic studies. EPA's current policy for Tier I analysis uses the conservative assumption that all residues are at a high end estimate or maximum, typically taken as the tolerance value. Acute dietary assessment for dicamba is made by comparing the ratio of exposure and the NOAEL from acute neurotoxicity of 300 mg/kg/day to achieve a Margin of Exposure (MOE). A MOE of 300 is required because ■ NOAEL was not reached in the acute neurotoxicity test. The following MOE values are obtained for key population subgroups.

Population Subgroup	Margin of Exposure
US Population	16000
Infants <1 year	13000
Children 1 to 6	13000
Females 13+ years	117000
Males 13+ years	110000

3. *Drinking water.* Dicamba has been used commercially for in excess of 30 years. From available public data, detections in ground water from commercial uses have been very low and infrequent. The typical level found in ground water is less than 5 ppb. This should be compared to the current Health Advisory Level (HAL) of 200 ppb and the anticipated HAL of 3,000 ppb under the newly revised RfD of 0.45 mg/kg/day.

These infrequent and low levels of detection in groundwater demonstrate that significant movement of dicamba is not likely and is not a considerable factor in assessing human health risk.

4. *Non-dietary exposure.* Non-dietary exposure would mainly occur from the use of dicamba for broadleaf weed control on residential or recreational turf. BASF is currently collecting data on the potential exposure from non-dietary sources such as residential turf use. However, no reliable information are currently available for risk assessment at this time. This petition is only related to already approved crop uses and therefore non-dietary route of exposure is not considered to be a factor in assessing additional human risk.

D. Cumulative Effects

Dicamba belongs to the benzoic acid class of compounds. There are no other compounds of this class in significant use and none in food use. Therefore, cumulative effects from dietary or non-occupational exposure from pesticides of similar chemistry are considered unlikely. BASF Corp. does not have reliable data to indicate a common mechanism of toxicity to other compounds. Therefore cumulative effects from common mechanisms of action are also unlikely.

E. Safety Determination

The RfD for dicamba is 0.45 mg/kg/day. The RfD is a level at or below which daily aggregate exposure over a lifetime will not cause appreciable human health risk. The estimates of exposure are based on conservative assumptions that all crops with a tolerance for dicamba are treated and that all residues found are at the maximum or tolerance level.

1. *U.S. population.* Using the conservative assumptions described above, BASF Corp. has estimated that the U.S. population dietary exposure to dicamba is 1.87% of the RfD.

2. *Infants and children.* Dicamba is not a reproductive or developmental toxicant. Therefore no specific effects on infants and children are expected. Based on the weight of evidence of the toxicity studies an additional safety factor is not warranted.

Using the conservative assumptions described above, BASF Corp. has estimated the dietary exposure to infants and children as percent of the RfD. From the current and new proposed use of dicamba dietary exposure for the most sensitive subgroups are 6.65% for non-nursing infants (<1-year old) and 4.6% for children 1-6 years old.

Aggregate exposure due to the combined residues in food, drinking water and non-dietary exposure through direct contact with residues in a residential setting (lawn) should be pursued through the use of a reserve risk approach. The elements for consideration are therefore estimated as follows:

• Food: Total Population 1.87%
Non-nursing Infants <6yrs. 6.7%

• Water/Lawn: Low human risk.....expected to be inconsequential

BASF Corp. believes that the water and non-dietary exposure risk for the most sensitive subgroup is inconsequential due to demonstrated low findings in water relative to the HAL and low toxicity to humans with respect to oral, dermal and inhalation exposure.

Aggregate exposure is therefore estimated to be less than 10% of the RfD for the most sensitive population subgroup. Therefore, BASF Corp. concludes that there is reasonable certainty that no harm will result from aggregate exposure of residues of dicamba or its metabolites including all dietary and other non-occupational exposures.

F. International Tolerances

No international tolerances have been established under CODEX. Therefore there is no need to ensure consistency.

[FR Doc. 98–31070 Filed 11–19–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–836; FRL–6030–9]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–836, must be received on or before December 21, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2 A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Mark Dow PM-03	Rm. 214, CM #2, 703–305–5533, e-mail:dow.mark@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James Tompkins PM-25	Rm. 239, CM #2, 703–305–5697, e-mail:tompkins.james@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–836] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 27, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer Corporation

PP 8F5023

EPA has received a pesticide petition (PP 8F5023) from Bayer Corporation, 8400 Hawthorn Road, Kansas City, MO 64120, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of cyfluthrin: [cyano[4-fluoro-3-phenoxyphenyl]-methyl-3-[2,2-dichloroethenyl]-2,2-dimethyl-cyclopropanecarboxylate] in or on the raw agricultural commodity soybean, bean at 0.03 parts per million (ppm); soybean, forage at 8.0 ppm; soybean, hay at 4.0 ppm; field corn, forage at 3.0 ppm; and field corn, fodder at 6.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyfluthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled cyfluthrin in various crops all showing similar results. The residue of concern is cyfluthrin.

2. *Analytical method.* Adequate analytical methodology (gas/liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues.* Cyfluthrin is the active ingredient in the registered end-use product Baythroid 2 Emulsifiable Pyrethroid Insecticide, EPA Reg. No. 3125-351. Data to support the proposed tolerances have been submitted to the Agency.

B. Toxicological Profile

1. *Acute toxicity.* There is a battery of acute toxicity studies for cyfluthrin supporting an overall toxicity Category II for the active ingredient.

2. *Genotoxicty.* Mutagenicity tests were conducted, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary (CHO)/HGPRT assay); a structural chromosome aberration assay (CHO/sister chromatid exchange assay); and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study in rats with a maternal and fetal no observed adverse effect level (NOAEL) of 10 milligram/kilogram body weight/day (mg/kg/bwt/day) highest dose tested (HDT).

An oral developmental toxicity study in rabbits with a maternal NOAEL of 20 mg/kg/bwt/day and a maternal lowest effect level (LEL) of 60 mg/kg/bwt/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOAEL of 20 mg/kg/bwt/day and a fetal LEL of 60 mg/kg/ bwt/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss.

A 3-generation reproduction study in rats with systemic toxicity NOAELs of 7.5 and 2.5 mg/kg/bwt/day for parental animals and their offspring, respectively. At higher dose levels (HDLs), the body weights of parental animals and their offspring were reduced.

4. *Subchronic toxicity.* A subchronic toxicity feeding study using rats demonstrated a NOAEL of 22.5 mg/kg/ bwt/day, the HDT.

A 6 month toxicity feeding study in dogs established a NOAEL of 5 mg/kg/ bwt/day. The LEL was 15 mg/kg/bwt/ day based on clinical signs and reduced thymus weights.

5. *Chronic toxicity.* A 12 month chronic feeding study in dogs established a NOAEL of 4 mg/kg/bwt/ day. The LEL for this study is established at 16 mg/kg/bwt/day, based on slight ataxia, increased vomiting, diarrhea and decreased body weight.

A 24 month chronic feeding/ carcinogenicity study in rats demonstrated a NOAEL of 2.5 mg/kg/ bwt/day and LEL of 6.2 mg/kg/bwt/day, based on decreased body weights in males, decreased food consumption in males, and inflammatory foci in the kidneys in females.

A 24 month carcinogenicity study in mice was conducted. Under the conditions of the study there were no carcinogenic effects observed. A 24 month chronic feeding/carcinogenicity study in rats was conducted. There were no carcinogenic effects observed under the conditions of the study.

6. *Animal metabolism.* A metabolism study in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

7. *Metabolite toxicology.* No toxicology data have been required for cyfluthrin metabolites. The residue of concern is cyfluthrin.

8. *Endocrine disruption.* There is no evidence of endocrine effects in any of the studies conducted with cyfluthrin, thus, there is no indication at this time that cyfluthrin causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure— Food.* Dietary exposure was estimated using Novigen's Dietary Exposure Evaluation Model (DEEM) software; results from field trial and processing studies; consumption data from the USDA Continuing Surveys of Food Intake by Individuals (CSFIIs), conducted from 1989 through 1992; and information on the percentages of crops treated with cyfluthrin.

Cyfluthrin is currently registered for use in alfalfa, carrots, citrus, cotton, peppers, radishes, sorghum, sunflower, sugarcane, sweet corn, and tomatoes. In addition, it has an import tolerance for hops. Various formulations are registered for use in food handling establishments and in combination with another active ingredient, for use in field corn, pop corn and sweet corn. For potential cyfluthrin use on soybeans and field corn the impact on the exposure assessment was examined.

Chronic dietary exposure estimates with the current label uses for the overall U.S. population were 0.9% of the reference dose (RfD) (0.008 mg/kg/ bwt/day). When soybeans, field corn and potatoes were included the chronic dietary exposure estimates for the overall U.S. population were 0.8% of the RfD. For the most highly exposed population subgroups, non-nursing infants (<1 year) and children 1 to 6 years of age, the exposure was estimated to be 1.9% of the RfD and 1.8% of the RfD respectively for current label uses and 1.7% of the RfD and 1.7% of the RfD respectively for label uses plus potatoes, soybeans, field corn. The apparent drop in the percentage of the RfD when these uses are added may be explained by the lower limit of detection of the field trial data for these crops as opposed to the food handling data.

Acute dietary exposures were estimated for the overall U.S. population, females 13 years and older, children, ages 1-6, and 7-12 years, infants, non-nursing and nursing. The exposure was compared to the NOAEL of 20 mg/kg/ bwt/day to estimate the margin of exposures (MOEs).

For the all the population subgroups studies the 95th and 99.9th percentile of exposure the MOEs were calculated to be over 18,000 and 5,000 respectively for all current label uses and 9,900 and 3,800 respectively for all label uses plus potatoes, field corn and soybeans.

For women aged 13 years and older the 95th, and 99.9th percentile of acute exposure the MOEs were calculated as 66,746 and 18,390 respectively for all current label uses and 33,704 and 11,516 respectively for label uses plus potatoes, field corn, and soybeans.

Lastly, for the potentially highest exposed population subgroups, non-nursing infants (<1 year) and children ages 1-6 years, the 95th, and 99.9th percentile of acute exposure to the MOEs were calculated at 53,356; 18,346 and 5,179; 6,319 respectively for all current label uses and 19,624; 9,964 and 3802; 3943 respectively for label uses plus potatoes, field corn, and soybeans.

2. *Drinking water.* Cyfluthrin is immobile in soil, therefore, will not leach into groundwater. Additionally, due the insolubility and lipophilic nature of cyfluthrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at 2 meters are essentially zero <0.001 parts per billion (ppb). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 52 parts per trillion (ppt). Concentration in actual drinking water would be much lower. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

3. *Non-dietary exposure.* Non-occupational exposure to cyfluthrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses. Pursuant to the requirements of Federal Insecticide, Fungicide, and

Rodenticide Act (FIFRA) as amended by the Food Quality Protection Act (FQPA) of 1996 non-dietary and aggregate risk analyses for cyfluthrin were conducted. The analyses include evaluation of potential non-dietary acute application and post-application exposures. Non-occupational, non-dietary exposure was assessed based on the assumption that a flea infestation control scenario represents a "worst case" scenario. For the flea control infestation scenario indoor fogger, and professional residential turf same day treatments were included for cyfluthrin. Deterministic (point values) were used to present a worse case upper-bound estimate of non-dietary exposure. The non-dietary exposure estimates were expressed as systemic absorbed doses for a summation of inhalation, dermal, and incidental ingestion exposures. These worst-case non-dietary exposures were aggregated with chronic dietary exposures to evaluate potential health risks that might be associated with cyfluthrin products. The chronic dietary exposures were expressed as an oral absorbed dose to combine with the non-dietary systemic absorbed doses for comparison to a systemic absorbed dose NOAEL. Results for each potential exposed subpopulation (of adults, children 1-6 years, and infants <1 year) were compared to the systemic absorbed dose NOAEL for cyfluthrin to provide estimates of MOE.

The large MOEs for cyfluthrin clearly demonstrate a substantial degree of safety. The total non-dietary MOEs are 3,800, 2,700, and 2,500 for adults, children (1-6 years), and infants (<1 year), respectively. The aggregate MOE for adults is approximately 3,700 and the MOEs for infants and children exceed 2,400.

The non-dietary methods used in the analyses can be characterized as highly conservative. This is due to the conservatism inherent in the calculation procedures and input assumptions. An example of this is the conservatism inherent in the jassercise methodology's over-representation of residential post-application exposures. It is important to acknowledge that these MOEs are likely to significantly underestimate actual MOEs due to a variety of conservative assumptions and biases inherent in the derivatization of exposure by this method. Therefore, it can be concluded that large MOEs associated with potential non-dietary and aggregate exposures to cyfluthrin will result in little or no health risks to exposed persons. The aggregate risk analysis demonstrates compliance with the health-based requirements of the FQPA of 1996 for the current label uses. The additional use of cyfluthrin on field corn and soybean crops will have no impact on the analysis for non-dietary exposure.

D. Cumulative Effects

Bayer will submit information for EPA to consider concerning potential cumulative effects of cyfluthrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) and other EPA publications pursuant to the FQPA.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to cyfluthrin from all label uses plus soybeans and field corn will utilize less than 2% of the RfD for chronic dietary exposures and that MOE in excess of 1,000 exist for aggregate exposure to cyfluthrin for non-occupational exposure. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. MOE of 100 or more (300 for infants and children) also indicate an adequate degree of safety. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of cyfluthrin, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat can be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through 2-generations, as well as any observed systemic toxicity. The toxicology data which support these uses of cyfluthrin include:

i. A rat oral developmental toxicity study in which maternal and fetal NOAELs of 10 mg/kg/bwt/day HDT were observed.

ii. An oral developmental toxicity study in which rabbits had a maternal NOAEL of 20 mg/kg/bwt/day and a maternal LEL of 60 mg/kg/bwt/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOAEL of 20 mg/kg/bwt/day and a fetal LEL of 60 mg/kg/bwt/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss.

iii. An oral developmental toxicity study performed with beta-cyfluthrin, the resolved isomer mixture of cyfluthrin, has been submitted to the Agency and is currently under review.

iv. A developmental toxicity study in rats exposed via inhalation to liquid aerosols of cyfluthrin revealed developmental toxicity, but only in the presence of maternal toxicity. The developmental NOAEL was 0.46 mg/m3 on the basis of reduced placental and fetal weights, and delayed ossification. The NOAEL for overt maternal toxicity was <0.46 mg/m3, the lowest dose tested (LDT).

In a rat 3-generation reproduction study, systemic toxicity NOAELs of 7.5 and 2.5 mg/kg/bwt/day for parental animals and their offspring, respectively, were observed. At higher dose levels, the body weights of parental animals and their offspring were reduced. Another multiple-generation reproduction study in rats has been submitted to the Agency and is currently under review.

To assess acute dietary exposure and determine a MOE for the overall U.S. population and certain subgroups, the Agency has used the rabbit developmental toxicity study which had a maternal NOAEL of 20 mg/kg/bwt/day. Because the toxicological endpoint is one of developmental toxicity, the population group of concern for this analysis was women aged 13 and above. This subgroup most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOAEL to the exposure. The Agency calculated the MOE to be over 600. Generally, MOE's greater than 100 for data derived from animal studies are regarded as showing no appreciable risk.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children. The additional safety factor may be used when pre- and post-natal threshold effects were observed in studies or to account for incompleteness of the toxicity database.

The results of the 3-generation study in rats provided evidence suggesting that, with respect to effects of cyfluthrin on body weight, pups were more sensitive than adult rats. Thus, the Agency determined that an additional 3-fold uncertainty factor (UF) should be used in risk assessments to ensure adequate protection of infants and children.

Generally, the EPA considers MOE of at least 100 to indicate an adequate degree of safety. With an additional 3x UF, this would be 300 for infants and children. Using the exposure assessments described above and based on the described toxicity data aggregate exposure to infants and children indicate a margin of exposure in excess of 3,800. Thus, it can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyfluthrin residues.

F. Conclusions

The available data indicate that there is reasonable certainty of no harm from the aggregate exposure from all currently registered uses of cyfluthrin plus potatoes, field corn and soybeans.

G. International Tolerances

There are no Codex maximum residue levels (MRLs) currently established for residues of cyfluthrin on soybean commodities. There is a Codex MRLs for maize of 0.05 ppm.

2. Dow AgroSciences

PP 6F4784, PP 7F4856

EPA has received pesticide petitions (PP 6F4784 and PP 7F4856) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268-1054, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide diclosulam (N-(2,6-dichlorophenyl)-5-ethoxy-7-fluoro[1,2,4]triazolo[1,5-c]pyrimidine-2-sulfonamide) in or on the raw agricultural commodities soybean and peanut at 0.02 parts per million (ppm). EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* Nature of residue studies demonstrated that residues of diclosulam would not be expected to accumulate to significant levels in soybeans or peanuts grown on soil treated with diclosulam, and that it was appropriate to base the magnitude of total terminal residues and proposed tolerances only on residues of the parent compound, diclosulam.

2. *Analytical method.* Analytical method is available for the determination of diclosulam in soybeans and peanuts at a limit of quantitation (LOQ) of 0.01 ppm that is suitable for the enforcement of the proposed tolerance of 0.02 ppm.

3. *Magnitude of residues.* No detectable residues of diclosulam are expected to result from soil applications to fields intended for soybeans or peanuts under the proposed maximum label conditions. On the basis of the limit of detection (LOD) of 0.003 ppm for diclosulam in the analytical method, a tolerance of 0.02 ppm is proposed for soybeans and peanuts. Soybeans and peanuts treated with 3 times the maximum label rates also resulted in no detectable residues of diclosulam in the soybean and peanuts or processed meal and oils. Thus, no tolerances are being proposed for diclosulam in any processed products.

B. Toxicological Profile

1. *Acute toxicity—Diclosulam acute toxicity is low.* The acute oral LD_{50} in the rat is >5,000 milligrams/kilogram (mg/kg) in both males and females and the acute dermal LD_{50} in the rabbit is >2,000 mg/kg. The inhalation LC_{50} in the rat is >5.04 mg/l of air. Diclosulam produced no indications of dermal irritation in rabbits or sensitization in the guinea pig, and only very slight transient eye irritation in the rabbit following acute exposure. End use formulations of diclosulam have similar low acute toxicity profiles.

2. *Genotoxicty.* In a battery of short-term *in vitro* genotoxicity tests (Ames, CHO/HGPRT, chromosomal aberration) and an *in vivo* cytogenetic assay, diclosulam was negative.

3. *Reproductive and developmental toxicity.* Diclosulam exhibited no effects on reproduction or fetal development. No effects on reproduction or fetal development in a multigeneration reproduction study in rats and no effects on reproductive performance or neonatal survival were seen at the highest dose tested (HDT) (limit test at 1,000 milligrams/kilogram/day (mg/kg/day). In a developmental toxicity study in rabbits, the maternal no observed adverse effect level (NOAEL) was 65 mg/kg/day and the developmental NOAEL was at least 650 mg/kg/day.

4. *Subchronic toxicity.* Thirteen-week dietary toxicity studies in rats, mice and dogs were conducted. The primary target organs identified in these studies were the kidneys (rat), and the liver (rat, mouse and dog). In the rat 13-week study the NOAELs were 50 mg/kg/day in the male and 100 mg/kg/day in the female, based on liver histopathologic evaluation in males and decreased body weights in females. In the mouse, the NOAEL was 100 mg/kg/day based upon hepatocellular hypertrophy. An NOAEL of 5 mg/kg/day was established in the dog based upon centrilobular hepatocellular hypertrophy at 25 mg/kg/day. In a 21-day repeated dermal application study in rabbits, diclosulam when given at a dose of 1,000 mg/kg/day produced no signs of dermal irritation or systemic toxicity.

5. *Chronic toxicity.* In a 2-year combined chronic toxicity/oncogenicity study in the rat, the NOAEL for chronic toxicity was 5 mg/kg/day based upon kidney effects characterized as slight, subtle alteration in kidney tubular morphology, mostly within the corticomedullary junction which likely represented more a physiologic adaptation than a pathological change indicative of a toxic injury. There was no evidence of an oncogenic response. In a 2-year dietary feeding study in B6C3F1 mice conducted at 50, 100, 250 and 500 mg/kg/day, 50 mg/kg/day was considered the NOAEL in males and the NOAEL in females based upon histologic changes in the kidney. The lesion noted in male mice was a reduced vacuolation of the kidney tubular epithelium at all dose levels. Decreased absolute and relative kidney weights were seen at 100 mg/kg/day and above. In female mice, focal dilation with hyperplasia of the lining epithelium of the renal cortical tubules was seen at 100 mg/kg/day and above. There was no evidence of an oncogenic response. In a 1-year chronic toxicity study in dogs, the NOAEL was considered 25 mg/kg/day, the HDT. Measurable toxicity was anticipated based on the results of the 13-week study in dogs; however, the only treatment related effects were slight elevations in serum alkaline phosphatase and creatinine levels at 25 mg/kg/day, which were considered within the normal limits of variability in dogs.

6. *Animal metabolism.* Metabolism studies conducted on diclosulam indicated over 80% of a single or repeated dose of 5 mg/kg was absorbed, while at 500 mg/kg/day, there was incomplete absorption of diclosulam, with only 15-20% of the dose absorbed. Urinary elimination was rapid with half-lives of approximately 7-12 hours. Sex dependent differences in disposition of the 5 mg/kg dose were traced to more efficient elimination of unchanged diclosulam in the female versus male kidney but are of no known toxicologic significance. Due to its rapid elimination, diclosulam has little potential to accumulate upon repeated administration.

7. *Metabolite toxicology.* The residue of concern for tolerance setting purposes is the parent material (diclosulam). Thus, there is no need to address metabolite toxicity.

C. Aggregate Exposure

1. *Dietary exposure—Food.* For Purposes of assessing the potential dietary exposure from use of diclosulam on soybeans and peanuts, a conservative estimate of aggregate exposure is determined by Theoretical Maximum Residue Contribution (TMRC) assuming that 100% of the soybeans and peanuts have a residue of diclosulam at the proposed tolerance level of 0.02 ppm. This results in an extremely conservative estimate of exposure for diclosulam, because no residues are expected in these commodities at the proposed maximum label rate. The potential dietary exposure is obtained by multiplying the tolerance residue level on soybeans and peanuts (0.02 ppm) by the consumption data which estimates the amount of soybean and peanut products consumed by various population subgroups. The maximum potential average daily dose (ADD) of diclosulam values determined for various populations are clearly significant overestimates compared with actual exposure. When ADDs are compared to the Reference Dose (RfD), which uses the lowest NOAEL of 5 mg/kg/day from the 2-year rat chronic toxicity study and an uncertainty factor of 100, the ADD for all U.S. consumers including the highest exposed group, non-nursing infants under 1-year old, would theoretically be exposed to about 0.1% of the RfD.

2. *Drinking water.* Another potential source of dietary exposure are residues in drinking water. Based upon the available field dissipation and field run off studies conducted with diclosulam there is little potential for exposure to diclosulam in drinking water to cause any human health concern.

D. Cumulative Effects

There is no reliable information to indicate that diclosulam has a common mechanism of toxicity with any other chemical compound or that potential toxic effects of diclosulam would be cumulative with those of any other pesticide chemical. Thus Dow AgroSciences believes it is appropriate to consider only the potential risks of diclosulam in its exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above, and based on the completeness and reliability of the toxicity data, Dow AgroSciences has concluded that aggregate exposure to diclosulam potentially can utilize about 0.1% of the RfD for non-nursing infants under 1-year old, theoretically the most exposed population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Therefore, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diclosulam residues in on soybeans and peanuts and its processed products.

The complete toxicology profile for diclosulam shows no evidence of physiological effects characteristic of the disruption of the hormone estrogen. Based upon this observation, diclosulam does not meet the criteria for an estrogenic compound.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of diclosulam, data from developmental toxicity studies in rats and rabbits and a multigeneration reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of offspring.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for diclosulam relative to pre- and post-natal effects for children is complete. Further, for diclosulam, the NOAEL in the chronic feeding study which was used to calculate the RfD (5 mg/kg/day) is already lower than the NOAELs from the developmental studies in rats and rabbits by a factor of more than 200-fold.

Concerning the reproduction study in rats, there were no effects on reproduction or fetal development, even at a dose over 100 times the NOAEL used to establish the RfD. Therefore, Dow AgroSciences concludes that an additional uncertainty factor is not needed and that the RfD at 0.05 mg/kg/day is appropriate for assessing risk to infants and children.

Using the conservative exposure assumptions previously described, the percent RfD utilized by the aggregate (diet, and drinking water) exposure to residues of diclosulam on soybeans and peanuts is 0.000051 mg/kg/day for non-nursing infants under 1-year old, theoretically the most exposed population subgroup. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Dow AgroSciences concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diclosulam on soybeans and peanuts.

F. International Tolerances

There are no Codex maximum residue levels established for residues of diclosulam on soybeans, peanuts or any other food or feed crop.

[FR Doc. 98–31066 Filed 11–19–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–840; FRL–6039–6]

Dow AgroSciences LLC; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–840, must be received on or before December 21, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted

through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: James A. Tompkins, Herbicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5697; e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–840] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–840) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Dow AgroSciences LLC

PP 4F4412

On May 13, 1997 (62 FR 26305) EPA published a notice that EPA had received pesticide petition (PP 4F4412) from Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268-1054, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for inadvertent residues of the herbicide picloram in or on the raw agricultural commodity grain sorghum grain, forage, and stover at 0.3, 0.2, and 0.5 parts per milliom (ppm), respectively. No comments were received to the initial notice of filing. This notice announces that the petition was amended by also proposing to establish a tolerance for residues of the herbicide picloram in or on the raw agricultural commodity aspirated grain fractions at 4 ppm. The analytical method is Method A and III listed in the Pesticide Analytical Manual (PAM), Vol. II. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is understood based on a wheat metabolism study. The residue of concern in wheat forage, straw and grain is conjugated picloram, which is hydrolyzable by acid, base and B-glucosidase. The minor metabolites that were identified in grain and straw were 4-amino-6-hydroxy-3,5-dichloropicolinic acid and 4-amino-2,3,5-trichloropyridine.

2. *Analytical method.* The analytical portions of the magnitude of residue studies were performed at Dow AgroSciences in Midland, MI. The analytical method utilized for the determination of picloram residue levels in the submitted studies was ACR 73.3.S2. There is a practical analytical method for detecting and measuring levels of picloram in or on food with a limit of quantitation that allows monitoring of food with residues at or above the levels set in these tolerances. EPA has provided information on this method to FDA. The method is available to anyone who is interested in pesticide residue enforcement.

3. *Magnitude of residues.*

SUMMARY OF RESIDUES OF PICLORAM (PPM) FOUND IN GRAIN SORGHUM

Matrix	Range
Grain	ND*–0.23
Forage	ND-0.17
Fodder	ND-0.44

*ND = less than one-half of the validated lower limit of quantitation of 0.05 µg/g in grain and 0.1 µg/g in forage and fodder.

B. Toxicological Profile

1. *Acute toxicity.* Studies for acute toxicity indicate that picloram is classified as category III for acute oral toxicity, category III for acute dermal toxicity, category I/II (depending on whether acid or salts) for acute inhalation toxicity, category IV for skin irritation potential, and category III for eye irritation potential. The potassium salt is classified as a skin sensitizer. In addition, picloram has a low vapor pressure.

Picloram potassium salt has low acute toxicity. The rat oral LD_{50} is 3,536 milligrams/kilogram (mg/kg) or greater for males and females. The rabbit dermal LD_{50} is >2,000 mg/kg and the rat inhalation LC_{50} is >1.63 mg/L air (the highest attainable concentration).

Picloram potassium salt is a positive skin sensitizer in guinea pigs but is not a dermal irritant. Technical picloram potassium salt is a moderate ocular irritant but ocular exposure to the technical material would not normally be expected to occur to infants or children or the general public. End use formulations of picloram have similar low acute toxicity profiles plus low ocular toxicity as well. Therefore based on the available acute toxicity data, picloram does not pose any acute dietary risks.

2. *Genotoxicty.* Picloram acid was evaluated in the Ames test using *Salmonella typhimurium.* Doses ranged up to 5,000 µg/plate, with and without metabolic activation. The test substance did not produce a mutagenic response either in the presence or absence of activation.

Picloram acid was evaluated for gene mutation in mammalian cells (HGPRT/CHO). As evaluated up to toxic levels (1,750 µg/ml without metabolic activation; 4,500 µg/ml with metabolic activation), the compound was found to be negative for inducing forward mutation in Chinese hamster ovary (CHO) cells.

Picloram acid was evaluated for cytogenetic effects on bone marrow cells of rats via intra gastric administration at dosage levels of 0 (vehicle), 20, 200 or 2,000 mg/kg. The test material did not produce cytogenetic effects in the study.

Picloram acid was evaluated for genotoxic potential as administered to primary rat hepatocyte cultures at concentrations of 0 (vehicle), 10, 33.3, 100, 333.3 or 1,000 µg/ml. The test material was negative for unscheduled DNA synthesis (UDS, a measure of DNA damage/repair) treated up to cytotoxic levels of (1,000 µg/ml).

3. *Reproductive and developmental toxicity.* The HED reference dose (RfD) Peer Review Committee concluded that there was no evidence, based on the available data, that picloram and its salts were associated with significant reproductive or developmental toxicity under the testing conditions.

In the following developmental toxicity studies, the dose levels that appear in parenthesis are picloram acid equivalents where the conversion factor employed was 0.86 as applied to doses of potassium salt.

Picloram potassium salt was administered to New Zealand rabbits by oral gavage at dosage levels of 0, 40, 200 and 400 mg/kg/day (picloram acid equivalents) during days 6 to 18 of gestation. The maternal no observed adverse effect level (NOAEL) is 40 (34) mg/kg/day, where the lowest observed adverse effect level (LOAEL) is 200 (172) mg/kg/day based on reduced maternal weight gain during gestation. The developmental NOAEL is 400 (340) mg/kg/day and the LOAEL was not determined. The potassium salt of picloram was administered to CD rats by gastric intubation at dosage levels of 0, 35 (30), 174 (150) and 347 (298) mg/kg/day during day 6-15 of gestation: The test vehicle was distilled water. There was no evidence of developmental toxicity at doses up to and including the high dose of 347 (298) mg/kg/day. The maternal LOAEL is 347 (298) mg/kg/day based upon excessive salivation in the dams of the high dose group. Hence, the developmental toxicity NOAEL is greater than or equal to 347 (298) mg/kg/day. The maternal toxicity LOAEL is 347 (298) mg/kg/day and NOAEL is 174 (150) mg/kg/day.

Picloram acid was evaluated in a 2-generation reproduction study in the CD rat. Dosage levels employed were 0, 20, 200 or 1,000 mg/kg/day. The parental LOAEL is 1,000 mg/kg/day based on histopathological lesions in the kidney of males of both generations and some females. In males of both generations, blood in the urine, decreased urine specific gravity, increased absolute and relative kidney weight, and increased body weight gain was observed at the high dose. The parental LOAEL is 1,000 mg/kg/day and the NOAEL is 200 mg/kg/day. The reproductive LOAEL was not identified and the NOAEL is 1,000 mg/kg/day.

4. *Subchronic toxicity.* In a 90 day oral toxicity study, picloram acid was administered via the diet to groups of 15 F344 rats/sex/dose at dosage levels of 0, 15, 50, 150, 300 or 500 mg/kg/day. Based upon liver weight changes and minimal microscopic changes in the liver, the systemic LOAEL is 150 mg/kg/day. The NOAEL is 50 mg/kg/day.

In a 1982 6 month dog dietary study, picloram acid was evaluated at dosage levels of 0, 7, 35 or 175 mg/kg/day. The systemic NOAEL is 35 mg/kg/day and the LOAEL is 175 mg/kg/day based on decreases in body weight gain and food consumption and increases in liver weights (relative), alkaline phosphatase and alanine transaminase. Increased liver to body weight ratios and absolute liver weights were observed in only two males at the 35 mg/kg/day dosage level.

In a 21 day dermal toxicity study, the potassium salt of picloram was administered dermally to groups of five New Zealand white rabbits of each sex at doses of 0 (vehicle control), 75.3, 251 or 753 mg/kg/day (0, 65, 217 or 650 mg/kg/day picloram acid equivalents) for a total of 15 applications over the 21 day period. The NOAEL is greater than or equal to 753 mg/kg/day for both sexes: hence, a LOAEL was not established for either sex. Although the limit dose of 1,000 mg/kg/day was not achieved, practical difficulties precluded administering more test material. The study revealed the non-systemic effects of dermal irritation and very slight to well defined edema and/or erythema in both sexes at all dose levels.

5. *Chronic toxicity.* In a 1988 1 year chronic feeding study in the dog, picloram acid was administered orally via the diet at dosage levels of 0, 7, 35 or 175 mg/kg/day The LOAEL is 175 mg/kg/day based on increased liver weight (absolute and relative). The NOAEL is 35 mg/kg/day.

In a chronic toxicity/carcinogenicity feeding study conducted in the F344 rat, picloram acid (technical grade 93 % containing 197 ppm hexachlorobenzene as an impurity) was evaluated at 0, 20, 60 or 200 mg/kg/day for 2 years. The chronic toxicity LOAEL was 60 mg/kg/day as evidenced by altered size, tinctorial properties of centrilobular hepatocytes, and increased absolute and/or relative liver weights in both sexes. The NOAEL was 20 mg/kg/day. The study was negative for carcinogenicity, but due to concerns that a MTD may not have been achieved and the fact that the test material contained 197 ppm hexachlorobenzene impurity, the study was not considered to fulfill adequately the carcinogenicity testing requirement.

In response to the deficiencies cited in the study above, an additional 2 year dietary chronic/carcinogenicity study was conducted (in 1992) using F344 rats administered picloram acid at dosage levels of 0, 250 or 500 mg/kg/day for 104 weeks. Chronic toxicity was observed at 250 mg/kg/day among males only (increased incidence and severity of glomerulonephritis, blood in urine, decreased specific gravity of urine, increased size of hepatocytes that often had altered staining properties). Among females there were chronic effects only at 500 mg/kg/day (increased glomerulonephropathy, increased absolute and relative kidney weight). There was no evidence of carcinogenicity in this study. It should be noted that use of the Osborne-Mendel rat was waived due to lack of availability of the strain of rat. In addition, the level of hexachlorobenzene in the test material employed in this study was 12 ppm. These two studies fulfill the guidelines 83-1(a) and 83-2(a) for rats.

In a 1992 2 year dietary carcinogenicity study in B6C3F1 mice, picloram acid was evaluated at doses of 0, 100, 500 or 1,000 mg/kg/day. The systemic NOAEL in this study is 500

mg/kg/day based on a significant increase in absolute and relative kidney weights in males at the high dose level (HDT). No histopathological lesions were found to corroborate these changes. There was no evidence of carcinogenicity.

The dose levels tested in the 1992 carcinogenicity studies in rats and mice were considered adequate for carcinogenicity testing. The treatment did not alter the spontaneous tumor profile in mice or different strains of rats tested under the testing conditions. The chemical was classified as a "Group E - Evidence of Non-Carcinogenicity for humans". This classification applies to the picloram acid and potassium salt forms for which acceptable carcinogenicity studies were available for review by the HED Carcinogenicity Peer Review Committee (May 26, 1988).

Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), picloram is classified as Group "E" for carcinogenicity (no evidence of carcinogenicity) based on the results of the carcinogenicity studies. The dose levels tested in the 1992 carcinogenicity studies in rats and mice were considered adequate for carcinogenicity testing. The treatment did not alter the spontaneous tumor profile in mice or different strains of rats tested under the testing conditions. The chemical was classified as a "Group E - Evidence of Non-Carcinogenicity for humans". This classification applies to the picloram acid and potassium salt forms for which acceptable carcinogenicity studies were available for review by the HED Carcinogenicity Peer Review Committee (May 26, 1988). Thus, a cancer risk assessment would not be appropriate.

Hexachlorobenzene (HCB), a recognized impurity in picloram compounds, is considered to be an animal carcinogen and probable human carcinogen as discussed in the 1988 Registration Standard for picloram. The Q* is 1.02 (mg/kg/day)-1. The maximum level of HCB in picloram is considered to be 0.005%.

6. *Animal metabolism.* The absorption, distribution, metabolism and excretion of picloram acid was evaluated in female rats administered a single i.v. or oral gavage dose of 10 mg/kg, an oral gavage dose of 1,000 mg/kg ^{14}C-picloram, or 1 mg/kg/day unlabeled picloram by gavage for 14 days followed by a single oral gavage dose of 10 mg/kg ^{14}C-picloram on day 15. The study demonstrates that ^{14}C-picloram is rapidly absorbed, distributed and excreted following oral and i.v. administration. This study alone is not adequate; however, this study is acceptable when considered in conjunction with a male rat metabolism study which yielded similar results.

7. *Endocrine disruption.* An evaluation of the potential effects on the endocrine systems of mammals has not been determined; However, no evidence of such effects were reported in the chronic or reproductive toxicology studies described above. There was no observed pathology of the endocrine organs in these studies. There is no evidence at this time that picloram causes endocrine effects.

C. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure*—i. *Food.* For purposes of assessing the potential dietary exposure under these tolerances, aggregate exposure is estimated based on the theoretical maximum residue contribution (TMRC) from the existing and future potential tolerances for picloram on food crops. The TMRC is obtained by multiplying the tolerance level residues (existing and proposed) by the consumption data which estimates the amount of those food products eaten by various population subgroups. Exposure of humans to residues could also result if such residues are transferred to meat, milk, poultry or eggs. The following assumptions were used in conducting the HED exposure assessment 100% of the crops were treated, the RAC residues would be at the level of the tolerance, and some refinements were made based on marketing information previously supplied to HED by BEAD. This screening level analysis results in an overestimate of human exposure and a conservative assessment of risk. .

The chronic dietary exposure/risk estimates for picloram are extremely low. For the United States population as a whole, the TMRC is 0.0011 milligram kilogram body weight day (mg/kg/bwt/day), <1 of the RfD. The subgroup with the greatest routine chronic exposure is Non-nursing Infants (< 1 year old), which has a TMRC of 0.0042 mg/kg/bwt/day (2% of the RfD).

There is currently no form of sorghum observed in human consumption surveys utilized by EPA in their dietary risk evaluation system (DRES) assessments. Furthermore, residues of picloram in sorghum do not increase the dietary burden of picloram in animal feeds. Therefore, sorghum tolerances will have no effect on the human dietary consumption of picloram, and the proposed action, as well as existing tolerances, pose no concern with regards to chronic dietary exposure to food residues of picloram.

The estimated carcinogenic dietary risk for HCB as an impurity in picloram only for the U.S. population is 1.5×10^{-7} which is less than the 1.0×10^{-6} point below which risk is generally considered to be negligible.

ii. *Drinking water.* An additional potential source of dietary exposure to residues of pesticides are residues in drinking water. The Maximum Contaminant Level (MCL) for residues of picloram in drinking water has been established at 500 µg/L and a 1-10 day Health Advisory of 20,000 µg/L.

The Agency has published screening methods for estimating chemical residues in both ground water (SCI-GROW2) and surface water (GENEEC). Employing these methods yields the following 56 day Expected Environmental Concentrations (EEC) for a range of application rates:

Application rate (lb. acid equivalent/acre) and use	SCI-GROW2 EEC (µg/L)	GENEEC EEC (µg/L)
0.023 (wheat, barley, and oats use rate).	4.4	1.2
1 (maximum broadcast rate in label).	189	51.3
2 (maximum spot treatment rate in label).	379	103.1

The 56 day value is an appropriate endpoint to employ for the chronic exposure scenario. Default, conservative inputs were used for the models, as described in July 27, 1998 memorandum from EPA to Dow AgroSciences. Employing these values, a worst-case drinking water risk assessment can be performed as summarized below:

Population Subgroup[1]	RfD (mg/kg/day)	Food Exposure (mg/kg/day)	Maximum Water Exposure (mg/kg/day)[2]	DWLOC (µg/L)[3]	SCI-GROW2 EEC (µg/L)	GENEEC EEC (µg/L)
US Population	0.2	0.0011	0.2	7000	379	103.1
Females (13-19, not nursing or pregnant).	0.2	0.00090	0.2	6000	379	103.1
Non-Nursing infants (<< 1 yr. old).	0.2	0.0043	0.2	2000	379	103.1

[1] Population subgroups chosen in EPA memorandum of 7/27/98
[2] = RfD - ARC from DRES (cited above)
[3] Drinking water level of concern, based on default water body weights and water consumption of : 70 kg/2L (adult males), 60 kg/2L (adult female), 10 kg/1L (infant)

This tables shows that for even the most highly exposed population, exsure from water is below HED's DWLOC for chronic dietary exposure. Further refinement is also possible, based on monitoring data. Monitoring data available from the Pesticides in Ground Water Database indicate that picloram has been detected in ground water at concentrations ranging up to 30 µg/L. Results reported in this database typically were focused on highly vulnerable areas and in many cases, the database reports information from poorly constructed or damaged wells. These wells are at high risk because of the potential for surface residues to be carried directly down the casing into the ground water. Recognizing these high risk situations, an analysis of this database shows that less than 3% of the wells sampled were found to contain picloram. No distinction has been made between point and non point sources of material. Many of the detections are known to be related to point source contamination including spills at mixing/loading sites, near wells and back siphoning events. Of the detections which may have resulted from non-point sources, none are documented to occur on sites where application would be recommended based on current labeling. Nearly 99% of the ground water detections are at levels of less than 1% of the Maximum Contaminant Level (i.e., > 5 µg/L) established for human consumption by the EPA Office of Drinking Water. The STORET database maintained by the USEPA Office of Drinking Water indicates that picloram has been reported in surface water samples before 1988. Of these detections, 85% were at concentrations 0.13 µg/L or lower and the maximum was 4.6 µg/L. The maximum concentration reported was 4.6 µg/L. Comparing these values to the DWLOC shows an even greater degree of protection for all of the population subgroups.

HCB contamination of ground water resources is relatively unlikely due to its high binding potential.

Based on monitoring data and fate properties it is unlikely that long term HCB concentrations in surface water would exceed 10 parts per trillion (ppt). Therefore, exposure from water is below EPA's drinking water level of concern of 34 ppt for chronic dietary exposure to HCB for the U.S. population.

In summary, these data on potential water exposure indicate insignificant additional dietary intake and risk for picloram.

2. *Non-dietary exposure.* This is a restricted use chemical that has no residential uses at this time; therefore, there are no human risks associated with residential uses. Entry into a treated area soon after the application of picloram is expected to be rare given the cultural practices typically associated with the use-sites (rights-of-way, forestry, pastures, range lands, and small grains) defined by the picloram labels at this time. Furthermore, if entry should occur, the potential exposures are expected to be minimal due to the characteristics of those use-sites

D. Cumulative Effects

Picloram is a pyridine carboxylic acid herbicide. Other herbicides in this class include clopyralid, quinclorac and thiazopyr. Section 408(b)(2)(D)(v) of the Food Quality Protection Act (FQPA) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity". The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether picloram has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of these tolerance actions, therefore, EPA has not assumed that picloram has a

common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* In the meeting of September 30, 1993, the OPP RfD Peer Review Committee recommended that the RfD for this chemical be based on a NOAEL of 20 mg/kg/day for a dose-related increase in size and altered tinctorial properties of centrilobular hepatocytes in males and females at 60 and 200 mg/kg/day in a chronic toxicity study in rats. An uncertainty factor (UF) of 100 was used to account for the inter-species extrapolation and intra-species variability. On this basis, the RfD was calculated to be 0.20 mg/kg/day. The TMRC from existing tolerances is 0.001845 mg/kg/day. Existing tolerances utilize >1% of the RfD. It should be noted that no regulatory value has been established for this chemical by the World Health Organization (WHO) up to this date. The committee classified picloram as a "Group E" chemical, no evidence of carcinogenicity for humans.

Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, it is concluded that aggregate exposure to picloram will utilize approximately 1% of the RfD for the U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to picloram residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of picloram, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat were considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism during prenatal development resulting from pesticide exposure to one or both parents. Reproduction studies provide (1) information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and (2) data on systemic toxicity.

Developmental toxicity was studied using rats and rabbits. The developmental study in rats resulted in a developmental NOAEL of >298 mg/kg/day and a maternal toxicity NOAEL of 280 mg/kg/day. A study in rabbits resulted in a maternal NOAEL of 34 mg/kg/day and a developmental NOAEL of 344 mg/kg/day. Based on all of the data for picloram, there is no evidence of developmental toxicity at dose levels that do not result in maternal toxicity.

In a 2-generation reproduction study in rats, The NOAEL for parental systemic toxicity is 200 mg/kg/day. There was no effect on reproductive parameters at 1,000 mg/kg/day nor was there an adverse effect on the morphology, growth or viability of the offspring; thus, the reproductive NOAEL is 1,000 mg/kg/day.

FDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database relative to pre- and post-natal effects for children is complete. Therefore, it is concluded that an additional uncertainty factor is not warranted and that the RfD at 0.2 mg/kg/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumption previously described, it is concluded that the percent of the RfD that will be utilized by aggregate exposure to residues of picloram will be less than 4% of the RfD for all populations and subgroups. Since this estimate represents the 'worst case' exposure for a given population (Non-nursing infants, >1 year old), exposures will be less for all other sub-populations e.g. children, 1-6 years. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to picloram residues.

F. International Tolerances

There are no Codex maximum residue levels established for residues of picloram.

G. Other Considerations

Data Gaps. Residue data for sorghum aspirated grain fractions is currently being generated. Based on the toxicological data and the levels of exposure, EPA has determined that the proposed tolerances will be safe.

[FR Doc. 98–31067 Filed 11–19–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–832; FRL–6027–6]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–832, must be received on or before December 21, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Bipin Gandhi, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office Location, telephone number, and e-mail address: Rm. 707A, CM #2 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–8380, e-mail: gandhi.bipin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows

proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–832] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–832] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. EDM Corp

PP 8E4968

EPA has received a pesticide petition (8E4968) from EDM Corp 2278 So. Indiana Porterville, CA 93257 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for Yucca Extract in or on the raw agricultural commodity when used in accordance with good agriculture practice as an inert ingredient in pesticide formulations applied to growing crops, the EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fuily evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. No plant metabolism studies have been submitted in support of this tolerance exemption petition since yucca extract, a sarsasaponin is present in most plant life.

2. *Analytical method*. Since the petitioner has requested a tolerance exemption, a residue analytical method is not required.

3. *Magnitude of residues*. No yucca extract residue studies were conducted since yucca extract is naturally found at significant levels (> .68 ppm) in many different types of food. In addition, residue trials are not practical since it is very difficult to distinguish Sarsaponin residues naturally occurring versus sapsaponin residues from yucca extract.

B. Toxicological Profile

1. *Acute toxicity— Study #6176-P320 acute oral toxicity*. The acute oral LD^{50} for a 70% solution of yucca extract is > 5,000 milligrams/kilogram (mg/kg). Accordingly, yucca extract relatively non-toxic by the oral route.

The petitioner has requested that the Agency waive all sub-chronic, chronic/oncogenicity, mutagenicity, developmental and reproductive toxicity study requirements for yucca extract. There is an overwhelming lack of evidence for any chronic effects induced by dietary ingestion of yucca extract.

C. Aggregate Exposure

1. *Food*. The FDA title 21 under CFR 172.510, FEMA #3121, No Limitations. Food. Sarsasaponin is naturally found in several types of foods, such as fruits and vegetables,(asparagrus, legumes ect) at various levels.

2. *Drinking water*. Degradation of sarsasaponin in water.

D. Cumulative Effects.

No cumulative adverse effects are expected from long-term exposure to yucca extract.

E. Safety Determination

1. *U.S. population*. Yucca has been approved for uses in food and beverages by the FDA title 21 CFR 172.510, FEMA number 3121, with no limits. Approval of this petition will not increase dietary exposure to yucca extract. Accordingly, there is reasonable certainty that no harm will result from aggregate exposure of the U.S. population to yucca extract.

2. *Infants and children*. Since yucca extract is also an additive in soft drinks, root beer etc. the daily exposure to children is anticipated to be trivial, no adverse effects on infants or children are expected.

F. International Tolerances

There are no approved CODEX maximum residue levels (MRLS) established for residues of yucca extract.

Previously submitted Yucca extract data:

1. THERM-70 Study #6176-P320 Acute Oral Toxicity.

2. Regarding the use of the inert ingredient Yucca extract:

A-350 tons raw materials are used for all usese in the United States.

B- 300,000 lbs of raw material makes 4,630 gallons of THERMX-70 for pesticidal uses.

C- CELLU-CON, INC. Received raw material in 1997 from Mexico (85%) and U.S. 15%.

D- Yucca already approved for uses in food and beverages by the FDA title 21 CFR 172.510, FEMA number 3,121, no limits.

E- We would like to waive Yucca (Schidigera) to be approved under title 40 CFR in section 180.1001 as an Inert Ingredient.

3. This is to advise you regarding EDM's use of Yucca. We will not be using more than 6% THERMX-70 as a wetting in our product MIRAGE.

Enclosed is a packet of information to assist you in studying this material.

A- FDA 21 CFR 172.510
B- COMMERCIAL FEED LICENSE
C- THERMX-70 label
D- THERMX-70 MSDS sheet
E- Sarsaponin (Micro-Aid)

4. DESERT PRIDE label Yucca Herbal Food Tablets has been sold in stores since 1974.

2. Hercules, Incorporated

PP 6E4782

EPA has received a pesticide petition (PP 6E4782) from Hercules, Incorporated, 1313 North Market Street, Wilmington, Delaware, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for polymers of α-pinene and/or *B*-pinene in or on raw agricultural commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Toxicological Profile

1. *Acute toxicity.* An acute oral intubation test was conducted. Two male and two female rats were administered four dose levels of oligomeric copolymer ranging from 10.2 to 34.6 g/kg. No deaths resulted. The oral LD_{50} in rats is therefore >34.6 g/kg. An acute eye irritation study was conducted. Two rabbits were treated with 0.1 milliliter (ml) of undiluted oligomeric copolymer material instilled in each eye. One eye of each animal was rinsed with running water after one minute. The unwashed eye showed moderate irritation to the iris and conjunctiva which persisted for 4 days after treatment. Irritation in the washed eyes was mild and persisted for 3 days after treatment.

2. *Reproductive and developmental toxicity.* Petitioner has not identified a reproduction study in which the test substance was an α-pinene based polymer. In the interest of complete disclosure, Petitioner is aware of a limited reproduction study dated 1960 that was conducted at the LaWall & Harrisson Laboratories in connection with a larger 2-year feeding study. The test substance was Hercules Piccolyte S125 Polyterpene Resin, a *B*-pinene-based resin which is derived from the polymerization of a terpene feedstock containing a minimum *B*-pinene content of 80% and an α-pinene content of between 5% and 9%. Groups of six female Sprague-Dawley rats were fed the test substance at 0%, 3%, or 10% of the diet. After 4 months of exposure, the rats were mated with similarly treated males. All females bore litters except one from the untreated control group. All litters were normal in size and a few stillborn pups were noted in each group. There were some deaths among the pups, but survival to weaning was equal in all groups. Indices of reproductive and developmental performance were not calculated. The dietary level of 10% was considered the no-observed-adverse-effect level (NOAEL) in this limited reproduction study.

3. *Subchronic toxicity— i. Study No. 1.* In a study conducted in 1968, groups of 10 male and 10 female Charles River rats were fed diets containing 0%, 1%, 3%, or 5% of an α-pinene based resin for 3 months. Criteria of evaluation for possible toxic effects included general appearance and behavior, growth, food consumption, survival, clinical laboratory results, absolute and relative organ weights, and gross and microscopic pathology. Effects seen at the 5% dietary concentration include increases in relative liver weight in both sexes, and absolute liver weight in females only. Increased relative thyroid weight in males was noted at the 5% and 3% dosage levels. In the absence of histopathological alterations, these changes are regarded as adaptive and not of toxicological significance. The dietary level of 5%, equivalent to an overall average of 3,967 milligrams/kilogram/day (mg/kg/day) is considered the NOAEL in this study.

ii. *Study No. 2.* Groups of ten male and ten female Sprague-Dawley rats were fed diets containing 0%, 0% (i.e., two untreated controls), 0.01%, 0.05%, 0.2%, 1%, or 5% of Terpene AP for 90 days. Criteria of evaluation included appearance and behavior, growth, survival, hematology and urinalysis, organ weights and gross and microscopic pathological evaluation. A paired feeding study was conducted in conjunction with the main study to evaluate the significance of diet rejection vs. compound-related toxicity in weight gain reduction associated with high concentrations of Terpene AP. In the paired feeding study, each rat fed 5% Terpene AP (Test Group) was matched with a rat of the same sex and similar weight. Each of the Paired Feeding Control Group received the same amount of diet in each 24-hour period as the corresponding treated rat during the preceding reference 24-hour period, but without the test material. Two deaths occurred during the study. They were not dosage-related and were attributed to respiratory infection and not to compound-related toxicity. Decreased body weight gain and increased liver weight were consistent findings. Final body weights were reduced 16% in males and 11% in females at the highest dosage level. The paired-feeding study demonstrated that the effect was due to food rejection based on poor palatability and not due to systemic toxicity of the test material. Liver weight, as absolute weight and liver/brain weight ratios, increased in a dosage-related fashion. At the 5% dietary levels, 39% and 83% absolute weight increases were noted in males and females, respectively. Lesser increases were noted at the 1% and 0.2% dietary levels of the test material. Liver weight/body weight ratios were increased artifactually because of the growth depression. Since there were no adverse histological findings associated with the liver weight increases, the finding is attributed to generalized physiologic stress and not to organ-specific toxicity. Thyroid hyperplasia noted in some rats at the 5% and 1% levels is a secondary effect of the liver weight increase. The dietary concentration of 0.05% Polyterpene was a NOAEL in this 90-day study. Because food consumption was not evaluated, an equivalent mg/kg/day NOAEL could not be calculated in this study. Based on analyses of food consumption data from similar studies, an approximate dosage equivalent would be 37.5 mg/kg/day.

4. *Chronic toxicity*— i. *Study No. 3.* A terpene resin was fed to beagle dogs, three per sex per group, at dietary levels of 0%, 0.2%, 1% and 5% for 2 years. Criteria of effect included appearance and behavior, growth and survival, food consumption, hematology, clinical chemistry, urinalysis, absolute and relative organ weights and gross and microscopic pathology. Effects seen at the 5% dietary level included moderate reduction in growth and increased absolute and relative liver weight at 1 year and 2 years, and minimal hepatocellular fatty changes at 1 year but not 2 years. Similar liver effects were seen at the 1% dietary concentration. The dietary levels of 0.2% terpene resin equivalent to an overall average of 51 mg/kg/day, a NOAEL in this 2-year study.

ii. *Study No. 4.* Groups of 30 male and 30 female Sprague Dawley rats were fed diets containing 0%, 0.2%, 1%, or 5% terpene resin for 2 years. The terpene resin was a copolymer of α- and *B*-pinene. No differences from controls were noted in any test groups with respect to appearance and behavior,

food consumption, growth, survival, tumor incidence, hematology and urinalysis. All means were within the range of normal variation. Significant elevations of absolute and relative liver weight were noted in females after 12 months on the 1% and 5% diets. In males, absolute liver weight was elevated at the 5% level and relative liver weights were elevated at both the 1% and 5% levels. After 24 months of treatment, relative liver weights were elevated in males at 5% and in females at 1% and 5%. Histological examinations after 2 years showed only effects anticipated in untreated animals. Liver enlargement in the absence of histopathological changes results from compensatory effects. The highest dietary concentration of 5% terpene resin, equivalent to an overall average of 3,100 mg/kg body weight per day, is regarded as the NOAEL in this study.

5. *Endocrine disruption.* A comprehensive literature search has revealed no reports associating pinene monomers or polymers with endocrine effects. Petitioner has not undertaken any testing to explore further the possibility that pinene polymers or monomers could cause endocrine effects and understands that EPA will implement a screening program for endocrine effects in the future.

C. Aggregate Exposure

1. *Dietary exposure.* Synthetic terpene resin, consisting of polymers of α-pinene, *B*-pinene, and/or dipentene, is currently cleared by the Food and Drug Administration for use as an ingredient of chewing gum base and for use in a variety of food-contact or food packaging applications. The range of materials that are used in these applications under the name "synthetic terpene resin" will vary in composition and molecular weight. These existing food applications result in some small amount of dietary exposure to pinene monomers, oligomers, and polymers. This exposure can be expected to be quite small given that only a small amount, if any, of the synthetic terpene resin present in a food-contact article will migrate into food. Similarly, the insoluble gum base portion of chewing gum is ordinarily discarded after chewing, and like the other components of gum base, synthetic terpene resin is not extracted to any significant degree by saliva. Petitioner has presented calculations showing very roughly that even if the total annual U.S. production volume of terpene resins were incorporated directly into the diet, this would result in a per capita consumption of α-pinene and α-pinene repeating units of only 1.7 mg/kg body weight per day for a 60-kg adult. Actual intake will be significantly less than this number, given that not all synthetic terpene resin is used in food applications, and that very little migration and ingestion can be attributed to the existing food-contact and chewing gum applications.

2. *Food.* Petitioner does not manufacture sticker formulations and therefore has not conducted studies to show the actual quantity of pinene polymers that will remain on harvested food crops. Based on the conservative assumption that all pinene polymer will remain on food crops at the time of harvest, Petitioner has presented calculations showing that the resulting dietary exposure will not exceed 0.43 mg/kg body weight per day for a 60-kg adult. Actual intake will be less than his number. Petitioner notes that this intake is a subset of the worst-case aggregate exposure number, 1.7 mg/kg body weight per day.

3. *Drinking water.* Due to its relative insolubility, only trace amounts of pinene polymer, if any, will be found in drinking water. Some amount of pinene polymer will enter the soil in fields where it is applied as part of a pesticide formulation. Any pinene polymer present in the soil could potentially reach ground water, as is the case with agricultural chemicals generally. In the case of pinene polymers, Petitioner notes that they can be expected to adhere to the soil due to their adhesive properties and that they may biodegrade before reaching ground water. Petitioner further notes that any drinking water exposure will be within the worst-case aggregate exposure estimate, 1.7 mg/kg body weight per day.

4. *Non-dietary exposure.* Outside of food applications, pinene polymers are used in various adhesive applications including construction adhesives used, for example, to lay floor tile. Pinene polymers present in adhesives are not volatile and will therefore not be inhaled. The only human exposure will be that associated with accidental skin contact. It would be difficult to assign a numerical value to this non-occupational exposure for a typical person. Exposures from all sources cannot exceed 1.7 mg/kg body weight per day for a typical adult, given the total production volume of α-pinene polymers.

D. Cumulative Effects

No identified risks are associated with exposure to pinene polymers. The mechanism or mode of action associated with pinene polymers is simply that the substance is physically sticky.

E. Safety Determination

1. *U.S. population.* Petitioner estimates that exposure to α-pinene polymers and repeating units attributable to the requested action will be less than 0.43 mg/kg body weight per day in a 60-kg adult. This number is based on a set of conservative assumptions, and actual exposure is expected to be much less. In no event will aggregate exposure, by all routes and from all sources, exceed 1.7 mg/kg body weight, given the total production volume of α-pinene polymers. In several of the available animal feeding studies, the NOAEL was found to be 5% or more of the diet (greater than 3,000 mg/kg body weight per day). The lowest reported NOAEL of which the petitioner is aware is 37.5 mg/kg body weight, which is somewhat of an outlying value.

2. *Infants and children.* Infants and children will not experience higher levels of exposure to pinene polymers than the rest of the population as a result of the action requested in this petition. Furthermore, no chronic or acute effects are associated with pinene polymers, for which infants and children could be particularly sensitive. Petitioner expects pesticide sticker formulations containing pinene polymers to be used on a variety of food crops, which will lead to low levels of residues distributed evenly throughout the food supply. Considering this variety of uses, exposure should be spread evenly over the entire population and not concentrated in any particular sub-population. Dietary exposure in adults will not exceed 0.43 mg/kg body weight per day from the requested application, and aggregate exposure from all sources and routes cannot exceed 1.7 mg/kg body weight per day. These estimates correspond to an adult weighing 60 kg and consuming 1,500 grams of solid food per day. The numbers can be adjusted to account for the weight of a child. For example a child weighing 30 kg and consuming 1,000 g of solid food per day will be exposed to no more than 0.56 mg/kg body weight per day from the requested application and no more than an aggregate of 3.3 mg/kg body weight per day from all routes and all sources. Exposure estimates thus adjusted for children compare favorably with the NOAEL reported in the animal feeding studies.

[FR Doc. 98–31063 Filed 11–19–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[PF–842; FRL–6042–1]

Notice of Filing of Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–842, must be received on or before December 21, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 247, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–9354; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–842] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–842) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Novartis Crop Protection, Inc.

PP 8F3654 PP 8F3674

EPA has received two pesticide petitions (PP 8F3654 & PP 8F3674) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of propiconazole (1-[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]methyl-1H-1,2,4-triazole) in or on the raw agricultural commodities corn, fodder (12.0 parts per million (ppm)); corn, forage (12.0 ppm); corn, grain (0.1 ppm); corn, sweet (0.1 ppm); pineapples (0.1 ppm); pineapples, fodder (0.1 ppm) (PP 8F3674); peanuts (0.2 ppm); peanuts, hay (20 ppm); and peanuts, hulls (1.0 ppm) (PP 8F3654). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant/animal metabolism.* Novartis believes the studies supporting propiconazole adequately characterize metabolism in plants and animals. The metabolism profile supports the use of an analytical enforcement method that accounts for combined residues of propiconazole and its metabolites which contain the 2,4-dichlorobenzoic acid (DCBA) moiety.

2. *Analytical method.* Novartis has submitted a practical analytical method involving extraction, filtration, conversion, partition, derivitization, and solid phase cleanup with analysis by confirmatory gas chromatography using electron capture detection (ECD). The total residue method is used for determination of propiconazole and its metabolites. The limit of quantitation (LOQ) for the method is 0.05 ppm.

3. *Magnitude of residues.* Field residue trials have been conducted at various rates, timing intervals, and applications methods to represent the use patterns which would most likely

result in the highest residues. For all samples, the total residue method was used for determination of the combined residues of parent and its metabolites which contain the DCBA moiety.

B. Toxicological Profile

1. *Acute toxicity—Propiconazole exhibits low toxicity.* Data indicated the following: a rat acute oral LD_{50} of 1,517 milligrams/kilograms (mg/kg); a rabbit acute dermal LD_{50} > 6,000 mg/kg; a rat inhalation LC_{50} > 5.8 mg/liter air; minimal skin and slight eye irritation; and nonsensitization.

2. *Genotoxicty.* Propiconazole exhibits no mutagenic potential based on the following data: *In vitro* gene mutation test (Ames assay, rat hepatocyte DNA repair test, (human fibroblast DNA repair test), *In vitro* chromosome test, (human lymphocyte cytogenetic test), *In vivo* mutagenicity test, (Chinese hamster bone marrow cell nucleus anomaly test, Chinese hamster bone marrow cell micronucleus test, mouse dominant lethal test), and other mutagenicity test (BALB/3T3 cell transformation assay).

3. *Reproductive and developmental toxicity.* In an oral teratology study in the rabbit, a maternal no observed adverse effect level (NOAEL) of 30 mg/kg was based on reduced food intake but without any fetotoxicity even at the top dose of 180 mg/kg. In an oral teratology study in the rabbit, a maternal NOAEL of 100 mg/kg was based on reductions in body weight gain and food consumption and a fetal NOAEL of 250 mg/kg was based on increased skeletal variations at 400 mg/kg. In an oral teratology study in the rat, a maternal and fetal NOAEL of 100 mg/kg was based on decreased survival, body weight gain, and food consumption in the dams and delayed ossification in the fetuses at 300 mg/kg. In a second teratology study in the rat, a maternal and fetal NOAEL of 30 mg/kg was based on reductions in body weight gain and food consumption in the dams and delayed development in the fetuses at 90 and 360/300 mg/kg. A supplemental teratology study in the rat involving eight times as many animals per group as usually required showed no teratogenic potential for the compound. A 2-generation reproduction study in the rat showed excessive toxicity at 5,000 ppm without any teratogenic effects. A 2-generation reproduction study in the rat showed no effects on reproductive or fetal parameters at any dose level. Postnatal growth and survival were affected at the top dose of 2,500 ppm, and parental toxicity was also evident. The NOAEL for development toxicity is 500 ppm.

4. *Subchronic toxicity.* In a 21 day dermal study in the rabbit, a NOAEL of 200 mg/kg was based on clinical signs of systemic toxicity. In a 28 day oral toxicity study in the rat, a NOAEL of 50 mg/kg was based on increased liver weight. In a subchronic feeding study in the mouse, a NOAEL of 20 ppm (3 mg/kg) was based on liver pathologic changes. In a 13 week feeding study in the male mouse, a NOAEL of 20 ppm (3 mg/kg) was based on liver pathologic changes. In a 90 day feeding study in rats, the NOAEL was 240 ppm (24 mg/kg) based on a reduction in body weight gain. In a 90 day feeding study in dogs, the NOAEL was 250 ppm (6.25 mg/kg) based on reduced food intake and stomach histologic changes.

5. *Chronic toxicity.* In a 12 month feeding study in the dog, a NOAEL of 50 ppm (1.25 mg/kg) was based on stomach histologic changes. In a 24 month oncogenicity feeding study in the mouse, the NOAEL was 100 ppm (15 mg/kg). The MTD was exceeded at 2,500 ppm in males based on decreased survival and body weight. Increased incidence of liver tumor was seen in these males but no evidence of carcinogenicity was seen at the next lower dose of 500 ppm in either sex. In a 24 month chronic feeding/oncogenicity study in the rat, a NOAEL of 100 ppm (5 mg/kg) was based on body weight and blood chemistry. The MTD was 2,500 ppm based on reduction in body weight gain and no evidence of oncogenicity was seen. Based on the available chronic toxicity data, Novartis believes the Reference dose (RfD) for propiconazole is 0.0125 mg/kg/day. This RfD is based on a 1 year feeding study in dogs with a NOAEL of 1.25 mg/kg/day (50 ppm) and an uncertainly factor of 100. No additional modifying factor for the nature of effects was judged to be necessary as stomach mucosa hyperemia was the most sensitive indicator of toxicity in that study.

Using the Guidelines for Carcinogenic Risk Assessment published on September 24, 1986 (51 FR 33992), the USEPA has classified propiconazole in group C for carcinogenicity (evidence of possible carcinogenicity for humans). The compound was tested in 24 month studies with both rats and mice. The only evidence of carcinogenicity was an increase in liver tumor incidence in male mice at a dose level that exceeded the maximum tolerated dose (MTD). Dosage levels in the rat study were appropriate for identifying a cancer risk. The Cancer Peer Review Committee recommended the RfD approach for quantitation of human risk. Therefore, the RfD is deemed protective of all chronic human health effects, including cancer.

C. Aggregate Exposure

1. *Dietary exposure.* The RfD for propiconazole is 0.0125 mg/kg/day and is based on a 1 year feeding study in dogs with a NOAEL of 1.25 mg/kg/day (50 ppm) and an uncertainly factor of 100.

2. *Food*—i. *Acute risk.* The risk from acute dietary exposure to propiconazole is considered to be very low. The lowest NOAEL in a short term exposure scenario, identified as 30 mg/kg in the rat teratology study, is 24-fold higher than the chronic NOAEL. Based on worst-case assumptions, the chronic exposure assessment did not result in any margin of exposure (MOE) less than 150 for even the most impacted population subgroup. Novartis believes that the MOE for acute exposure would be more than 100 for any population groups; MOE of 100 or more are considered satisfactory.

ii. *Chronic risk.* For the purposes of assessing the potential dietary exposure under the existing, pending, and proposed tolerances for the residue of propiconazole and its metabolites determined as 2,4-dichlorobenzoic acid, Novartis has estimated aggregate exposure based upon the Theoretical Maximum Residue Concentration (TMRC). The TMRC is a "worst case" estimate of dietary exposure since it assumes 100% of all crops for which tolerances are established are treated and that pesticide residues are at the tolerance levels, resulting in an overestimate of human exposure.

Currently established tolerances range from 0.05 ppm in milk to 60 ppm in grass seed screenings and include: apricots (1.0 ppm); bananas (0.2 ppm); barley grain (0.1 ppm); barley straw (1.5 ppm); cattle kidney and liver (2.0 ppm); cattle meat, fat, and meat by products except kidney and liver (0.1 ppm); celery (5.0 ppm); corn forage and fodder (12.0 ppm); corn grain and sweet (0.1); eggs (0.1 ppm); goat kidney and liver (2.0 ppm); goat meat, fat, and meat by products except kidney and liver (0.1 ppm); grass forage (0.5 ppm); grass hay/straw (40.0 ppm); grass seed screenings (60.0 ppm); hogs kidney and liver (2.0 ppm); hog meat, fat, and meat by products except kidney and liver (0.1 ppm); horses kidney and liver (2.0 ppm); horse meat, fat, and meat by products except kidney and liver (0.1 ppm); milk (0.05 ppm); mint tops (0.3 ppm - regional tolerance west of Cascade Mountains); mushrooms (0.1 ppm); nectarines (1.0 ppm); oat forage (10.0 ppm); oat grain (0.1 ppm); oat hay (30.0 ppm); oat straw (1.0 ppm); peaches

(1.0 ppm); peanut hay (20.0 ppm); peanut hulls (1.0 ppm); peanuts (0.2 ppm);, pecans (0.1 ppm); pineapple (0.1 ppm); pineapple fodder (0.1 ppm); plums (1.0 ppm); poultry liver and kidney (0.2 ppm); poultry meat, fat, and meat by products except kidney and liver (0.1 ppm); prunes, fresh (1.0 ppm); rice grain (0.1 ppm); rice straw (3.0 ppm); wild rice (0.5 ppm regional tolerance Minnesota); rye grain (0.1 ppm); rye straw (1.5 ppm); sheep kidney and liver (2.0 ppm); sheep meat, fat, and meat by products except kidney and liver (0.1 ppm); stone fruit crop group 12 (1.0 ppm); wheat grain (0.1 ppm); and wheat straw (1.5 ppm). In addition, time-limited regional tolerances for sorghum grain and stover at 0.1 ppm and 1.5 ppm, respectively were established to support a Section 18 Crisis exemption in Texas (expiration date October 31, 1998).

Additional uses of propiconazole have been requested in several pending petitions. Proposed tolerances include: PP 5F4424 for use of propiconazole on drybean and soybean - dry bean forage (8.0 ppm); dry bean hay (8.0 ppm); dry bean vines (0.5 ppm); dry bean (0.5 ppm), soybeans (0.5 ppm); soybean fodder (8.0 ppm); soybean forage (8.0 ppm); soybean hay (25.0 ppm); and soybean straw (0.1 ppm). PP 5F4591 for use of propiconazole on berries, carrots and onions - berry crop grouping (1.0 ppm); dry bulb onion (0.3 ppm); green onion (8.0); PP 5F3740 - tree nut crop grouping (0.1 ppm); PP 5F4498 - inadvertent/rotational crop tolerances for alfalfa forage (0.1 ppm), alfalfa hay (0.1 ppm), grain sorghum fodder (0.3 ppm), grain sorghum forage (0.3 ppm) and grain sorghum grain (0.2 ppm).

3. *Drinking water.* Other potential sources of exposure of the general population to residues of propiconazole are residues in drinking water and exposure from non-occupational sources. Review of environmental fate data by the Environmental Fate and Effects Division of USEPA indicates that propiconazole is persistent and moderately mobile to relatively immobile in most soil and aqueous environments. No Maximum Concentration Level (MCL) currently exists for residues of propiconazole in drinking water and no drinking water health advisory levels have been established for propiconazole.

The degradation of propiconazole is microbially mediated with an aerobic soil metabolism half-life of 70 days. While propiconazole is hydrolytically and photochemically stable ($T_{1/2}$ >100 days), it binds very rapidly and tightly to soil particles following application. Adsorption/desorption and aged leaching data indicate that propiconazole and its degradates will primarily remain in the top 0-6 inches of the soil. It has been determined that under field conditions propiconazole will degrade with a half-life of approximately 100 days.

4. *Non-dietary exposure.* Propiconazole is registered for residential use as a preservative treatment for wood and for lawn and ornamental uses. At this time, no reliable data exist which would allow quantitative incorporation of risk from these uses into a human health risk assessment. The exposure to propiconazole from contacting treated wood products is anticipated to be very low since the surface of wood is usually coated with paint or sealant when used in or around the house. The non-occupational exposure from lawn and ornamental applications is also considered to be minor. It is estimated that less than 0.01% of all households nationally use propiconazole in a residential setting.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no reliable information to indicate that toxic effects produced by propiconazole would be cumulative with those of any other types of chemicals. While other triazoles are available on the commercial or consumer market, sufficient structural differences exist among these compounds to preclude any categorical grouping for cumulative toxicity. Consequently, Novartis is considering only the potential risks of propiconazole in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population—Reference dose.* Using the conservative exposure assumptions described above (100% stone fruit acres treated and tolerance level residues) and based on the completeness and reliability of the toxicity data base for propiconazole, Novartis has calculated aggregate exposure levels for this chemical. The calculation shows that only 16% of the RfD will be utilized for the U.S. population based on chronic toxicity endpoints. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to propiconazole residues.

2. *Infants and children.* Developmental toxicity (e.g., reduced pup weight and ossification) was observed in the rat teratology studies and 2-generation rat reproduction studies at maternally toxic doses. Some of these findings are judged to be nonspecific, secondary effects of maternal toxicity. The lowest NOAEL for developmental toxicity was established in the rat teratology study at 30 mg/kg, a level 24-fold higher than the NOAEL of 1.25 mg/kg on which the RfD is based.

3. *Reference dose.* Using the same conservative exposure assumptions as employed for the determination in the general population, Novartis has calculated that the percent of the RfD that will be utilized by aggregate exposure to residues of propiconazole is 26% for nursing infants less than 1 year old, 65% for non-nursing infants less than 1 year old, 35% for children 1-6 years old, and 23% for children 7-12 years old. Therefore, based on the completeness and reliability of the toxicity data base and the conservative exposure assessment, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to propiconazole residues.

F. International Tolerances

International CODEX values are established for almond, animal products, bananas, barley, coffee, eggs, grapes, mango, meat, milk, oat, peanut-whole, peanut grains, pecans, rape, rye, stone fruit, sugar cane, sugar beets, sugar beet tops, and wheat. The U.S. residue definition includes both propiconazole and metabolites determined as 2,4-dichlorobenzoic acid (DCBA), while the CODEX definition is for propiconazole, per se, i.e. parent only. This difference results in unique tolerance expressions with the U.S. definition resulting in the higher tolerance levels.

2. Tomen Agro, Inc. and Bayer Corporation, Agriculture Division

PP 7F4890

EPA has received a pesticide petition (PP 7F4890) from the TM-402 Fungicide Task Force comprised of Tomen Agro, Inc., 100 First Street, Suite 1610, San Francisco, CA 94105 and Bayer Corporation, Agriculture Division, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of N-(2,3-dichloro-4-hydroxyphenyl)-1-

methyl-cyclohexanecarboxamide (TM-402 or Fenhexamid) in or on the raw agricultural commodities grapes and strawberries at 3.0 parts per million (ppm) and in raisens at 6.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* An adequate method for purposes of enforcement of the proposed TM-402 tolerances in plant commodities is available. Bayer AG Analytical Method No. 00362 was used by Bayer AG to determine magnitude of TM-402 residues in fresh and processed grapes. This method has been independently validated. The limits of quantitation (LOQ) were determined to be 0.02 ppm for grapes, wine, and juice, and 0.05 ppm for strawberries, and raisins.

2. *Magnitude of residues.* The maximum TM-402 residues in fresh grapes, grape juice, raisins or wine permitted by the proposed label is 2.9 ppm. The maximum TM-402 calculated residue for grape juice is 1.7 ppm. For raisins the calculated residue value is 5.2 ppm, and for wine the value is 1.2 ppm. The maximum TM-402 residue for fresh strawberries permitted by the proposed label is 2.3 ppm. The average TM-402 residues for fresh grapes, grape juice, raisins and wine resulting from the treatment of grapes permitted by the proposed label are 1.3 ppm. The average TM-402 calculated residue for grape juice is 0.8 ppm. For raisins the average calculated residue value was 2.3 ppm, and for wine the values are 0.52 ppm. The average TM-402 residue for fresh strawberries permitted by the proposed label is 1.2 ppm. Since strawberries, grapes and processed grape commodities are not significant livestock feeds, a nature-of-the-residue discussion in livestock is not required. Additionally, since no aquatic uses are proposed, magnitude of the residue data in fish and irrigated crops are not required.

B. Toxicological Profile

1. *Acute toxicity.* Data from a complete battery of acute toxicity studies for TM-402 technical are available. The acute oral toxicity study resulted in an LD_{50} of >5,000 milligrams/kilogram (mg/kg) for both sexes. The acute dermal toxicity in rats resulted in an LD_{50} of > 5,000 mg/kg for both sexes. The acute inhalation was investigated in two studies in rats. Inhalation by aerosol at the maximum technically possible concentration of 0.322 mg/l resulted in no deaths or symptoms (LC_{50} >0.322 mg/l). A dust inhalation study resulted in an LC_{50} >5.057 mg/l. TM-402 was not irritating to the skin or eyes after a 4 hour exposure period. The Buehler dermal sensitization study in guinea pigs indicated that TM-402 is not a sensitizer. Based on these results TM-402 technical is placed in toxicity Category IV and does not pose any acute dietary risks.

2. *Genotoxicty.* The potential for genetic toxicity of TM-402 was evaluated in six assays including two Ames tests, an HGPRT forward mutation assay, a UDS assay, an *in vitro* chromosomal aberration assay in CHO cells, and a micronucleus test in mice. The compound was found to be devoid of any mutagenic activity in each of these assays including those tests that investigated the absence or presence of metabolic activating systems. The weight of evidence indicates that TM-402 technical does not pose a risk of mutagenicity or genotoxicity.

3. *Reproductive and developmental toxicity.* TM-402 has been tested for reproductive toxicity in rats and developmental toxicity in both rats and rabbits.

i. In a 2-generation reproduction study (one mating per generation), 30 Sprague-Dawley rats per sex per dose were administered 0, 100, 500, 5,000, or 20,000 ppm of TM-402 in the diet. The reproductive toxicity no observed adverse effect level (NOAEL) was 20,000 ppm. The neonatal NOAEL was 500 ppm, and the lowest observed effect level (LOAEL) was 5,000 ppm based on decreased pup body weight. The parental toxicity NOAEL was 500 ppm based on lower adult pre-mating body weights at 5,000 and 20,000 ppm, lower gestation body weights at 20,000 ppm, lower lactation body weights at 5,000 and 20,000 ppm, and statistically significant changes in clinical chemistry parameters, terminal body weights, and organ weights at 5,000 and 20,000 ppm. Based on this study, it is clear that the only toxic effects in the neonates occurred at parentally toxic doses.

ii. *In rats.* TM-402 was administered by gavage at doses of 0 or 1,000 mg/kg for gestation days 6-15. No maternal toxicity, embryotoxicity, fetotoxicity, or teratogenic effects were observed at the limit dose of 1,000 mg/kg/day. Therefore, the NOAEL for maternal and developmental toxicity was 1,000 mg/kg/day.

iii. *In rabbits.* TM-402 was administered by gavage at doses of 0, 100, 300, and 1,000 mg/kg for gestation days 6-18. Body weight gain and feed consumption of the dams were reduced at the two top doses. One abortion occurred in each of the top two dose groups and two total resorptions occurred in the top dose group. The placental weights were slightly decreased at 300 mg/kg/day and above. In the 1,000 mg/kg/day group slightly decreased fetal weights and a slightly retarded skeletal ossification were observed. All other parameters investigated in the study were unaffected. Therefore, the NOAELs for maternal and developmental toxicity were 100 mg/kg/day in this study.

Based on the 2-generation reproduction study in rats, TM-402 is not considered a reproductive toxicant and shows no evidence of endocrine effects. The data from the developmental toxicity studies on TM-402 show no evidence of a potential for developmental effects (malformations or variations) at doses that are not maternally toxic. The NOAEL for both maternal and developmental toxicity in rats was 1,000 mg/kg/day and for rabbits the NOAEL for both maternal and developmental toxicity was 100 mg/kg/day.

4. *Subchronic toxicity.* The subchronic toxicity of TM-402 has been evaluated in rats, mice, and dogs.

i. TM-402 was administered in the diet to rats for 13 weeks at doses of 0, 2,500, 5,000, 10,000 and 20,000 ppm. The NOAEL was 5,000 ppm (415 mg/kg/day in males and 549 mg/kg/day in females). Reversible liver effects were observed at 10,000 ppm.

ii. TM-402 was administered in the diet to mice for approximately 14 weeks at doses of 0, 100, 1,000 and 10,000 ppm. The NOAEL was 1,000 ppm (266.6 mg/kg/day in males and 453.9 mg/kg/day in females). Increased feed and water consumption and kidney and liver effects were observed at 10,000 ppm.

iii. TM-402 was administered in the diet to beagle dogs for 13 weeks at doses of 0, 1,000, 7,000 and 50,000 ppm. The NOAEL was 1,000 ppm (33.9 mg/kg/day in males and 37.0 mg/kg/day in females. Increased Heinz bodies were observed at 7,000 ppm.

5. *Chronic toxicity.* The chronic toxicity of TM-402 has been evaluated in a 1 year dog study and a 2 year chronic toxicity/oncogenicity study in rats.

i. TM-402 was administered in the feed at doses of 0, 500, 3,500, or 25,000 ppm to 4 male and 4 female beagle dogs per group for 52 weeks. A systemic

NOAEL of 500 ppm (an average dose of 17.4 mg/kg/day over the course of the study) was observed based on decreased food consumption and decreased body weight gain at 25,000 ppm, decreased erythrocyte, hemoglobin and hematocrit values at 25,000 ppm, increased Heinz bodies at 3,500 ppm and above, and a dose-dependent increase of alkaline phosphatase at 3,500 ppm and above. There were no treatment related effects on either macroscopic or histologic pathology.

ii. A combined chronic/oncogenicity study was performed in Wistar rats. Fifty animals/sex/dose were administered doses of 0, 500, 5,000, or 20,000 ppm for 24 months in the feed. A further 10 animals/sex/group received the same doses and were sacrificed after 52 weeks. The doses administered relative to body weight were 0, 28, 292, or 1,280 mg/kg/day for males and 0, 40, 415, or 2067 mg/kg/day for females. The NOAEL in the study was 500 ppm (28 mg/kg/day for males and 40 mg/kg/day for females) based on body weight decreases in females at 5,000 ppm and above, changes in biochemical liver parameters in the absence of morphological changes in both sexes at 5,000 ppm and above, and caecal mucosal hyperplasia evident at 5,000 ppm and above.

The NOAEL in the chronic dog study was 17.4 mg/kg/day based on body weight, hematology and clinical chemistry effects. The lowest NOAEL in the 2 year rat study was determined to be 28 mg/kg/day based on body weight, clinical chemistry parameters in the liver, and caecal mucosal hyperplasia.

6. *Oncogenicity.* The oncogenic potential of TM-402 has been in a 2 year oncogenicity study in mice and a 2 year chronic toxicity/oncogenicity study in rats.

i. *Mouse.* TM-402 was administered to 50 B6C3F1 mice/sex/group in their feed at concentrations of 0, 800 ,2,400 , or 7,000 ppm for 24 months. These concentrations resulted in a compound intake of 247.4,807.4 or 2354.8 mg,kg,day in males and 364.5, 1054.5 and 3178.2 mg/kg/day in females. A further 10 mice/sex/group received the same concentrations and were sacrificed after 12 months. There was no treatment effect on mortality, feed consumption,the hematological system or on the liver. Water consumption was increased in both sexes, and body weights were 8% lower in males at the highest dose of 7,000 ppm. At 7,000 ppm, elevated plasma creatinine concentrations, decreased kidney weights, and an increased occurrence of morphological lesions indicated a nephrotoxic effect of the compound. There was no shift in the tumor spectrum with treatment, and therefore, TM-402 was not oncogenic in this study.

ii. *Rat.* In the 2 year rat chronic/oncogenicity study described above, there was no indication of an oncogenic response. There was no indication of an oncogenic response in the 2 year rat and mouse studies on TM-402.

7. *Neurotoxicity.* The possibility for acute neurotoxicity of TM-402 was investigated. TM-402 was administered by gavage ina single dose to 12 Wistar rats/sex/group at doses of 0, 200, 630, 2,000 mg/kg. There was no evidence of neurotoxicity at any level tested.

8. *Endocrine disruption.* TM-402 has no endocrine-modulation characteristics as demonstrated by the lack of endocrine effects in developmental, reproductive, subchronic, and chronic studies.

C. Aggregate Exposure

1. *Dietary exposure.* Sources of dietary exposure to TM-402 are limited to the crops in the current submission. The following are the proposed tolerances: grapes - 3.0 ppm and strawberries - 3.0 ppm. A food additive tolerance of 6.0 ppm in raisins is also being proposed.

2. *Drinking water.* Review of the environmental fate data indicates the TM-402 is relatively immobile and rapidly degrades in the soil and water. TM-402 dissipates in the environment via several processes. Therefore, a significant contribution to aggregate risk from drinking water is unlikely.

3. *Non-dietary exposure.* There is no significant potential for non-occupational exposure to the general public. The proposed uses are limited to agricultural and horticultural use.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no significant toxicity observed for TM-402. Even at toxicology limit doses, only minimal toxicity is observed for TM-402. Therefore, only the potential risks of TM-402 are considered in the exposure assessment.

E. Safety Determination

1. *U.S. population.* Based on the most sensitive species, Tomen Agro has calculated an appropriate Reference Dose (RfD) for TM-402. Using the NOAEL of 17.4 mg/kg/day in the 1 year dog study and an uncertainty factor (UF) of 100 to account for inter- and intra-species variability, an RfD of 0.177 mg/kg/day is recommended.

A chronic dietary risk assessment which included all proposed tolerances was conducted on TM-402 using U.S. EPA's Dietary Risk Evaluation System (DRES). The theoretical maximum residue contribution (TMRC) for the U.S. population (48 States) is 0.00125 mg/kg/day and this represents 0.71% of the propoed RfD. The most highly exposed subgroup was children (1- 6 years old) where the TMRC was 0.00382 mg/kg/day, representing only 2.15% of the proposed RfD. For non-nursing infants (>1 year old) the TMRC was 0.00101 mg/kg/day (0.57% of the RfD) and for children 7-12 years old the TMRC is 0.00156 mg/kg/day (0.88% of the RfD). If these calculations consider the average of anticipated residue values instead of assuming "tolerance level" residues, the values are reduced to approximately one-third of those listed above. Even under the most conservative assumptions, the estimates of dietary exposure clearly demonstrate adequate safety margins of all segments of the population.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of TM-402, the available developmental toxicity and reproductive toxicity studies and the potential for endocrine modulation by TM-402 were considered. Developmental toxicity studies in two species indicate that TM-402 does not impose additional risks to developing fetuses and is not a teratogen. The 2-generation reproduction study in rats demonstrated that there were no adverse effects on reproductive performance, fertility, fecundity, pup survival, or pup development at non-maternally toxic levels. Maternal and developmental NOAELs and LOAELs were comparable, indicating no increase in susceptibility of developing organisms. No evidence of endocrine effects were noted in any study. It is therefore concluded that TM-402 poses no additional risk for infants and children and no additional uncertainty factor is warranted.

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FEDERAL COMMUNICATIONS COMMISSION

[DA 98–2266; Report No. AUC–99–23–A (Auction No. 23)]

Local Multipoint Distribution Service Spectrum Re-auction of 168 Licenses Scheduled for April 27, 1999; Application Filing Deadline Set for March 29, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice; seeking comment.

SUMMARY: This Public Notice announces the reauction of Local Multipoint Distribution Service ("LMDS") spectrum, consisting of 168 licenses, set to begin on April 27, 1998, and seeks comment on procedural issues relating to the LMDS reauction.

DATES: Comments are due on or before November 30, 1998. Reply comments are due on or before December 7, 1998.

ADDRESSES: To file formally, parties must submit an original and four copies to the Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20554. In addition, parties must submit one copy to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 5202, 2025 M Street NW, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 2025 M Street NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Christina Clearwater, Arthur Lechtman, Tim Salmon, or Kathy Garland, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This Public Notice was released on November 6, 1998, and is available in its entirety, including the Attachment, for inspection and copying during normal business hours in the Wireless Telecommunications Bureau Reference Center, Room 5608, 2025 M Street NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, NW, Washington, DC 20036. It is also available on the Commission's website at http://www.fcc.gov.

Synopsis of the Public Notice

1. By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces the reauction of 168 Local Multipoint Distribution Service ("LMDS") licenses set to begin on April 27, 1999. These licenses either received no bids in the original LMDS auction that closed on March 25, 1998 or are defaulted licenses which are available for reauction. Two blocks of spectrum are allocated for LMDS systems:

(1) Block A (1,150 MHz): 27,500–28,350 MHz and 29,100–29,250 MHz and 31,075–31,225 MHz
(2) Block B (150 MHz): 31,000–31,075 MHz and 31,225–31,300 MHz

2. One license will be awarded for each of these spectrum blocks in each of 122 Block A Basic Trading Areas (BTAs) and 46 Block B BTAs designated for LMDS. These licenses are listed in the Attachment to this Public Notice. The BTA licenses designated for the LMDS reauction comprise various portions of the following areas: (1) continental United States and (2) Puerto Rico. Thus, there are a total of 168 LMDS licenses to be reauctioned. Future public notices, will include further details regarding application filing and payment deadlines, a seminar, and other pertinent information. These future public notices will take the place of a bidder package for the LMDS reauction. In this Public Notice, the Bureau seeks comment on procedural issues relating to the LMDS reauction.

Key Dates

Short Form Application (FCC Form 175): March 29, 1999; 5:30 p.m. ET
Upfront Payments (via wire transfer): April 12, 1998; 6:00 p.m. ET
Auction Start: April 27, 1999; TBA

I. Reserve Price or Minimum Opening Bid

3. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (i.e., because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. The Bureau was directed to seek comment on the methodology to be employed in establishing each of these mechanisms. Among other factors the Bureau should consider are the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors that reasonably could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

4. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

5. In anticipation of this reauction and in light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for the LMDS reauction, and retain discretion to lower the minimum opening bids. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

6. Specifically, for Auction No. 23, the Commission proposes the following license-by-license formulas for calculating minimum opening bids, based on the population ("pops") of the BTA:

(1) Block A: $0.06 * Pops (rounded up to the next dollar)
(2) Block B: $0.03 * Pops (rounded up to the next dollar)

Comment is sought on this proposal. If commenters believe that the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, the Bureau particularly

seeks comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the LMDS spectrum. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

II. Other Auction Procedures

7. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *" Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the following issues.

a. Auction Sequence and License Groupings

8. Because it is most administratively appropriate, and allows bidders to take advantage of any synergies that exist among licenses, the Commission proposes to award the 168 LMDS licenses in a single, simultaneous multiple-round auction. The Bureau seeks comment on this proposal.

b. Upfront Payments and Initial Maximum Eligibility for Each Bidder

9. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. With these guidelines in mind, the Bureau proposes for the LMDS reauction the following upfront payments:

(1) Block A: $0.06 * Pops (rounded up to the next dollar)
(2) Block B: $0.03 * Pops (rounded up to the next dollar)

The Bureau seeks comment on this proposal. For the LMDS reauction, the Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal.

c. Structure of Bidding Rounds, Activity Requirements, and Criteria for Determining Reductions in Eligibility

10. The Bureau proposes to divide the auction into three stages: Stage One, Stage Two and Stage Three. The auction will start in Stage One. The Bureau proposes that the auction will generally advance to the next stage (i.e., from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below ten percent for three consecutive rounds of bidding in each Stage. However, the Bureau further proposes that it retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Bureau seeks comment on these proposals.

11. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

12. For the LMDS reauction, the Bureau proposes that, in each round of Stage One of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4). In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9). In each round of Stage Three, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty forty-ninths (50/49). The Bureau seeks comment on these proposals.

d. Minimum Accepted Bids

13. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For the LMDS reauction, the Bureau proposes to use a smoothing methodology to calculate bid increments. This methodology will be designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. A similar methodology was used in previous auctions, including the original LMDS auction and the 220 MHz auction. The Bureau proposes initial values for the maximum of 0.2 or 20% of the license value, and a minimum of 0.1 or 10% of the license value.

14. The Bureau retains the discretion to change these values if circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau further seeks comment on the advantages and disadvantages of using the discretion to adjust the minimum bid increment without prior notice. As an alternative approach, the Bureau seeks comment on the advantages and disadvantages of adjusting the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment. The Bureau also retains the discretion to use alternate methodologies for the LMDS reauction if circumstances warrant. The

Bureau seeks comment on these proposals.

e. Activity Rule Waivers and Reducing Eligibility

15. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

16. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless: (1) there are no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

17. A bidder with insufficient activity that wants to reduce its bidding eligibility, rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

18. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

19. The Bureau proposes that each bidder in the LMDS reauction be provided with five activity rule waivers that may be used in any round during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

f. Information Regarding Bid Withdrawal and Bid Removal

20. For the LMDS reauction, the Bureau proposes the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

21. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

22. In the Part 1 Third Report and Order, the Commission recently explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons, including to delay the close of the auction for strategic purposes. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent strategic delay of the close of the auction or other abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

23. Applying this reasoning, the Bureau proposes to limit each bidder in the LMDS reauction to withdrawals in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. The Bureau seeks comment on this proposal.

g. Stopping Rule

24. For the LMDS reauction, the Bureau proposes to employ a simultaneous stopping approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

25. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

26. The Commission proposes that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

27. Finally, the Commission proposes that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not

close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. The Bureau seeks comment on these proposals.

h. Information Relating to Auction Delay, Suspension or Cancellation

28. For the LMDS reauction, the Commission proposes that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

Federal Communications Commission.

Daniel B. Phythyon,

Chief, Wireless Telecommunications Bureau.

ATTACHMENT

LMDS REAUCTION—PROPOSED MOB'S AND UPFRONT PAYMENTS: A BLOCK LICENSES

MTA	BTA	Description	License No.	Population (1990 census)	Upfront payment ($.06*Pops)	MOB ($.06*Pops)
M024	B002	Aberdeen, WA	LDB002A	83,057	$4,984	$4,984
M011	B006	Albany-Tifton, GA	LDB006A	324,899	19,494	19,494
M006	B016	Anderson, SC	LDB016A	305,120	18,308	18,308
M029	B017	Anniston, AL	LDB017A	161,897	9,714	9,714
M006	B020	Asheville-Hendersonville, NC	LDB020A	510,055	30,604	30,604
M018	B035	Beckley, WV	LDB035A	167,112	10,027	10,027
M024	B036	Bellingham, WA	LDB036A	127,780	7,667	7,667
M018	B048	Bluefield, WV	LDB048A	184,020	11,042	11,042
M028	B049	Blytheville, AR	LDB049A	79,446	4,767	4,767
M026	B052	Bowling Green-Glasgow, KY	LDB052A	222,748	13,365	13,365
M012	B054	Brainerd, MN	LDB054A	78,465	4,708	4,708
M032	B061	Burlington, IA	LDB061A	137,543	8,253	8,253
M006	B062	Burlington, NC	LDB062A	108,213	6,493	6,493
M001	B063	Burlington, VT	LDB063A	369,128	22,148	22,148
M019	B066	Cape Girardeau-Sikeston, MO	LDB066A	181,795	10,908	10,908
M003	B071	Champaign-Urbana, IL	LDB071A	222,312	13,339	13,339
M021	B082	Clarksburg-Elkins, WV	LDB082A	190,498	11,430	11,430
M032	B086	Clinton, IA-Sterling, IL	LDB086A	147,981	8,879	8,879
M019	B090	Columbia, MO	LDB090A	190,536	11,433	11,433
M011	B092	Columbus, GA	LDB092A	342,333	20,540	20,540
M031	B093	Columbus, IN	LDB093A	139,128	8,348	8,348
M010	B100	Cumberland, MD	LDB100A	156,707	9,403	9,403
M003	B103	Danville, IL	LDB103A	114,241	6,855	6,855
M032	B105	Davenport, IA-Moline, IL	LDB105A	419,650	25,179	25,179
M029	B115	Dothan-Enterprise, AL	LDB115A	210,225	12,614	12,614
M021	B117	Du Bois-Clearfield, PA	LDB117A	124,180	7,451	7,451
M032	B118	Dubuque, IA	LDB118A	176,542	10,593	10,593
M012	B119	Duluth, MN	LDB119A	400,771	24,047	24,047
M028	B120	Dyersburg-Union City, TN	LDB120A	113,943	6,837	6,837
M033	B121	Eagle Pass-Del Rio, TX	LDB121A	100,813	6,049	6,049
M016	B122	East Liverpool-Salem, OH	LDB122A	108,276	6,497	6,497
M012	B123	Eau Claire, WI	LDB123A	180,559	10,834	10,834
M002	B124	El Centro-Calexico, CA	LDB124A	109,303	6,559	6,559
M016	B131	Erie, PA	LDB131A	275,572	16,535	16,535
M004	B134	Eureka, CA	LDB134A	142,578	8,555	8,555
M040	B140	Fayetteville-Springdale-Rogers, AR	LDB140A	222,526	13,352	13,352
M006	B141	Fayetteville-Lumberton, NC	LDB141A	571,328	34,280	34,280
M029	B146	Florence, AL	LDB146A	173,076	10,385	10,385
M006	B147	Florence, SC	LDB147A	239,208	14,353	14,353
M040	B153	Ft. Smith, AR	LDB153A	282,187	16,932	16,932
M010	B156	Fredericksburg, VA	LDB156A	124,654	7,480	7,480
M029	B158	Gadsden, AL	LDB158A	174,034	10,443	10,443
M011	B160	Gainesville, GA	LDB160A***	170,365	10,222	10,222
M003	B161	Galesburg, IL	LDB161A***	75,574	4,535	4,535
M039	B162	Gallup, NM	LDB162A	122,277	7,337	7,337
M001	B164	Glens Falls, NY	LDB164A	118,539	7,113	7,113
M006	B165	Goldsboro-Kinston, NC	LDB165A	217,319	13,040	13,040
M006	B176	Greenville-Washington, NC	LDB176A	218,937	13,137	13,137
M006	B178	Greenwood, SC	LDB178A***	68,435	4,107	4,107

LMDS REAUCTION—PROPOSED MOB'S AND UPFRONT PAYMENTS: A BLOCK LICENSES—Continued

MTA	BTA	Description	License No.	Population (1990 census)	Upfront payment ($.06*Pops)	MOB ($.06*Pops)
M040	B182	Harrison, AR	LDB182A	74,459	4,468	4,468
M040	B193	Hot Springs, AR	LDB193A	117,439	7,047	7,047
M017	B195	Houma-Thibodaux, LA	LDB195A	263,681	15,821	15,821
M008	B201	Hyannis, MA	LDB201A	204,256	12,256	12,256
M021	B203	Indiana, PA	LDB203A	89,994	5,400	5,400
M028	B211	Jackson, TN	LDB211A	255,379	15,323	15,323
M003	B213	Jacksonville, IL	LDB213A***	70,795	4,248	4,248
M006	B214	Jacksonville, NC	LDB214A	149,838	8,991	8,991
M035	B215	Jamestown-Dunkirk, NY-Warren, PA	LDB215A	186,945	11,217	11,217
M020	B216	Janesville-Beloit, WI	LDB216A	214,510	12,871	12,871
M019	B217	Jefferson City, MO	LDB217A	141,404	8,485	8,485
M021	B218	Johnstown, PA	LDB218A	241,247	14,475	14,475
M040	B219	Jonesboro-Paragould, AR	LDB219A	159,439	9,567	9,567
M003	B225	Kankakee, IL	LDB225A	127,042	7,623	7,623
M008	B227	Keene, NH	LDB227A	111,709	6,703	6,703
M031	B233	Kokomo-Logansport, IN	LDB233A	184,899	11,094	11,094
M020	B234	La Crosse, WI-Winona, MN	LDB234A	295,769	17,747	17,747
M031	B235	Lafayette, IN	LDB235A***	247,523	14,852	14,852
M003	B243	La Salle-Peru-Ottawa-Streator, IL	LDB243A	148,331	8,900	8,900
M008	B249	Lebanon-Claremont, NH	LDB249A	167,576	10,055	10,055
M045	B270	McCook, NE	LDB270A**	36,618	2,198	2,198
M011	B271	Macon-Warner Robins, GA	LDB271A	589,208	35,353	35,353
M032	B285	Mason City, IA	LDB285A	118,834	7,131	7,131
M016	B287	Meadville, PA	LDB287A	86,169	5,171	5,171
M004	B291	Merced, CA	LDB291A	192,705	11,563	11,563
M003	B294	Michigan City-La Porte, IN	LDB294A	107,066	6,424	6,424
M044	B295	Middlesboro-Harlan, KY	LDB295A	121,217	7,274	7,274
M031	B309	Muncie, IN	LDB309A	182,386	10,944	10,944
M006	B316	New Bern, NC	LDB316A	154,955	9,298	9,298
M021	B317	New Castle, PA	LDB317A	96,246	5,775	5,775
M001	B319	New London-Norwich, CT	LDB319A	357,482	21,449	21,449
M045	B323	Norfolk, NE	LDB323A	112,526	6,752	6,752
M013	B326	Ocala, FL	LDB326A	194,833	11,690	11,690
M021	B328	Oil City-Franklin, PA	LDB328A	105,882	6,353	6,353
M035	B330	Olean, NY-Bradford, PA	LDB330A	239,343	14,361	14,361
M024	B331	Olympia-Centralia, WA	LDB331A	258,937	15,537	15,537
M006	B335	Orangeburg, SC	LDB335A	114,458	6,868	6,868
M032	B337	Ottumwa, IA	LDB337A	122,988	7,380	7,380
M026	B339	Paducah-Murray-Mayfield, KY	LDB339A	217,082	13,025	13,025
M003	B344	Peoria, IL	LDB344A	455,643	27,339	27,339
M040	B348	Pine Bluff, AR	LDB348A	152,918	9,176	9,176
M008	B351	Pittsfield, MA	LDB351A	139,352	8,362	8,362
M001	B352	Plattsburgh, NY	LDB352A	123,121	7,388	7,388
M019	B355	Poplar Bluff, MO	LDB355A	148,240	8,895	8,895
M019	B367	Quincy, IL-Hannibal, MO	LDB367A	177,213	10,633	10,633
M031	B373	Richmond, IN	LDB373A***	104,942	6,297	6,297
M022	B375	Riverton, WY	LDB375A	46,859	2,812	2,812
M006	B377	Roanoke Rapids, NC	LDB377A	76,314	4,579	4,579
M003	B380	Rockford, IL	LDB380A	412,120	24,728	24,728
M006	B382	Rocky Mount-Wilson, NC	LDB382A	199,296	11,958	11,958
M019	B383	Rolla, MO	LDB383A	98,233	5,894	5,894
M011	B384	Rome, GA	LDB384A***	115,066	6,904	6,904
M040	B387	Russellville, AR	LDB387A	81,863	4,912	4,912
M001	B388	Rutland-Bennington, VT	LDB388A	97,987	5,880	5,880
M005	B390	Saginaw-Bay City, MI	LDB390A	615,364	36,922	36,922
M046	B396	Salina, KS	LDB396A	143,408	8,605	8,605
M034	B414	Sedalia, MO	LDB414A	79,705	4,783	4,783
M016	B416	Sharon, PA	LDB416A	121,003	7,261	7,261
M003	B426	Springfield, IL	LDB426A	254,696	15,282	15,282
M023	B430	Staunton-Waynesboro, VA	LDB430A	100,322	6,020	6,020
M031	B442	Terre Haute, IN	LDB442A	236,968	14,219	14,219
M005	B446	Traverse City, MI	LDB446A	204,600	12,276	12,276
M028	B449	Tupelo-Corinth, MS	LDB449A	291,701	17,503	17,503
M001	B453	Utica-Rome, NY	LDB453A	316,633	18,998	18,998
M037	B454	Valdosta, GA	LDB454A	139,226	8,354	8,354
M014	B456	Victoria, TX	LDB456A	149,963	8,998	8,998
M001	B463	Watertown, NY	LDB463A	296,253	17,776	17,776
M019	B470	West Plains, MO	LDB470A	67,165	4,030	4,030
M018	B474	Williamson, WV-Pikeville, KY	LDB474A	185,682	11,141	11,141
M006	B478	Wilmington, NC	LDB478A	249,711	14,983	14,983

LMDS REAUCTION—PROPOSED MOB'S AND UPFRONT PAYMENTS: A BLOCK LICENSES—Continued

MTA	BTA	Description	License No.	Population (1990 census)	Upfront payment ($.06*Pops)	MOB ($.06*Pops)
M027	B486	Yuma, AZ	LDB486A	106,895	6,414	6,414
M025	B488	San Juan, PR	LDB488A	2,170,246	130,215	130,215
M025	B489	Mayaguez-Aguadilla-Ponce, PR	LDB489A	1,351,600	81,096	81,096
		A Block Totals		26,057,363	1,563,497	1,563,497

*Subject to a pending waiver request filed by New Wave Networks, L.L.C.
**Subject to a pending petition for reconsideration filed by Pinpoint Communications, Inc.
***Baker Creek defaulted on this license.

LMDS REAUCTION—PROPOSED MOB'S AND UPFRONT PAYMENTS: B BLOCK LICENSES

MTA	BTA	Description	License No.	Population (1990)	Upfront payment ($.03*Pops)	MOB ($.03*Pops)
M005	B005	Adrian, MI	LDB005B***	91,476	$2,745	$2,745
M005	B011	Alpena, MI	LDB011B***	63,429	1,903	1,903
M005	B033	Battle Creek, MI	LDB033B***	227,541	6,827	6,827
M030	B038	Bend, OR	LDB038B*	102,745	3,083	3,083
M003	B039	Benton Harbor, MI	LDB039B***	161,378	4,842	4,842
M003	B046	Bloomington, IL	LDB046B***	215,795	6,474	6,474
M019	B066	Cape Girardeau-Sikeston, MO	LDB066B***	181,795	5,454	5,454
M019	B067	Carbondale-Marion, IL	LDB067B***	209,497	6,285	6,285
M032	B070	Cedar Rapids, IA	LDB070B***	260,686	7,821	7,821
M032	B086	Clinton, IA-Sterling, IL	LDB086B***	147,981	4,440	4,440
M019	B090	Columbia, MO	LDB090B***	190,536	5,717	5,717
M030	B097	Coos Bay-North Bend, OR	LDB097B	79,600	2,388	2,388
M003	B109	Decatur-Effingham, IL	LDB109B***	247,608	7,429	7,429
M004	B134	Eureka, CA	LDB134B	142,578	4,278	4,278
M012	B142	Fergus Falls, MN	LDB142B***	120,167	3,606	3,606
M027	B144	Flagstaff, AZ	LDB144B*	96,591	2,898	2,898
M005	B145	Flint, MI	LDB145B***	500,229	15,007	15,007
M039	B162	Gallup, NM	LDB162B	122,277	3,669	3,669
M046	B163	Garden City, KS	LDB163B	65,059	1,952	1,952
M005	B169	Grand Rapids, MI	LDB169B***	916,060	27,482	27,482
M045	B185	Hastings, NE	LDB185B**	72,833	2,185	2,185
M005	B209	Jackson, MI	LDB209B***	193,187	5,796	5,796
M019	B217	Jefferson City, MO	LDB217B***	141,404	4,243	4,243
M005	B223	Kalamazoo, MI	LDB223B***	352,384	10,572	10,572
M005	B241	Lansing, MI	LDB241B***	489,698	14,691	14,691
M039	B244	Las Cruces, NM	LDB244B	197,166	5,915	5,915
M047	B254	Lihue, HI	LDB254B*	51,177	1,536	1,536
M045	B270	McCook, NE	LDB270B**	36,618	1,099	1,099
M012	B277	Mankato-Fairmont, MN	LDB277B***	245,144	7,355	7,355
M004	B303	Modesto, CA	LDB303B	418,978	12,570	12,570
M005	B307	Mt. Pleasant, MI	LDB307B***	118,558	3,557	3,557
M019	B308	Mt. Vernon-Centralia, IL	LDB308B***	119,286	3,579	3,579
M005	B310	Muskegon,MI	LDB310B***	206,974	6,210	6,210
M003	B344	Peoria, IL	LDB344B***	455,643	13,670	13,670
M019	B355	Poplar Bluff, MO	LDB355B***	148,240	4,448	4,448
M024	B356	Port Angeles, WA	LDB356B	76,610	2,299	2,299
M008	B363	Presque Isle, ME	LDB363B	86,936	2,609	2,609
M004	B371	Redding, CA	LDB371B*	253,255	7,598	7,598
M004	B372	Reno, NV	LDB372B*	439,279	13,179	13,179
M012	B378	Rochester-Austin-Albert Lea, MN	LDB378B***	233,167	6,996	6,996
M019	B383	Rolla, MO	LDB383B***	98,233	2,947	2,947
M036	B392	St. George, UT	LDB392B*	83,263	2,498	2,498
M034	B414	Sedalia, MO	LDB414B***	79,705	2,392	2,392
M003	B426	Springfield, IL	LDB426B***	254,696	7,641	7,641
M032	B462	Waterloo-Cedar Falls, IA	LDB462B***	261,009	7,831	7,831
M019	B470	West Plains, MO	LDB470B***	67,165	2,015	2,015
		B Block Totals		9,323,636	279,731	279,731
		Totals		35,380,999	$1,843,228	$1,843,22

*Subject to a pending waiver request filed by New Wave Networks, LL.C.
**Subject to a pending petition for reconsideration filed by Pinpoint Communications, Inc.
***Baker Creek defaulted on this license.

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[FR Doc. 98–30979 Filed 11–19–98; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 98–1897]

Wireless Telecommunications Bureau Provides Guidance on Grace Period and Installment Payment Rules

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Public Notice, the Wireless Telecommunications Bureau (Bureau) provides guidance to licensees participating in installment payment programs regarding the revised rules governing grace periods and installment payments. This Notice is intended to assist licensees in the transition from the prior rules for late payments to the new rules and policies that are now effective.

FOR FURTHER INFORMATION CONTACT: Rachel Kazan or Rita Cookmeyer, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This public notice was released on September 18, 1998 and is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–C404, 445 Twelfth Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, fax (202) 857–3805, 1231 20th Street, NW, Washington, DC 20036.

Synopsis of the Public Notice

Background

A. Prior Rules for Late Payment

Installment payment rules, including late payment and grace period rules, are generally codified at 47 CFR 1.2110. Before this rule was amended, it permitted a licensee to make a payment up to 90 days late without being assessed a late payment charge and without being considered in default. If a licensee required additional time to pay beyond the 90 day period, it could submit a formal request for a "grace period" of up to 6 months. The licensee would not be considered in default during a grace period, nor would the licensee be declared in default during the pendency of such request.

B. New Rules Now Apply

The Commission recently amended 47 CFR 1.2110 to provide that licensees that do not make an installment payment on or before a due date are automatically granted a 90 day grace period ("non-delinquency period") and assessed a late fee equal to 5 percent of the missed installment payment ("late fee"). If remittance of the missed installment payment and the 5 percent late fee is not made on or before expiration of the non-delinquency period, a second 90 day period ("grace period") is automatically granted and an additional late fee equal to 10 percent of the missed installment payment is assessed. Licensees are not required to make an application to the Commission to receive the non-delinquency period or the grace period. Furthermore, licensees are not required to remit the 5 percent late fee prior to the expiration of the non-delinquency period to be eligible for the grace period. Late fees accrue on the first business day after a missed installment payment and upon the expiration of the non-delinquency period.

Specifically, under the revised rule, a licensee must pay the missed installment payment, the 5 percent late fee, the 10 percent late fee (if applicable) and any lender advances the licensee may be obligated to pay (including but not limited to Uniform Commercial Code filing fees and attorney fees for debt collection). This payment must be made in full, in one payment, before the expiration of the non-delinquency period or grace period. Payments made during a non-delinquency period or a grace period shall be applied in the following order of priorities: (i) Lender advances, (ii) late fees, (iii) interest payable, and (iv) principal owed.

Any licensee that becomes more than one-hundred eighty (180) days delinquent on an installment payment shall be in default, and the license shall automatically cancel without further action by the Commission. In that event, the debt shall be transferred to the Department of Treasury for collection subject to the Debt Collection Improvement Act of 1996.

Payment due dates for missed installment payments and accompanying late fee(s) are independent of the regular installment payment schedules. Licensees should be aware that the late payment provisions are calculated on a 90 calendar day basis, while installment payments are based on a quarterly payment schedule. Quarterly payments may cover up to 92 calendar days, depending upon the month in which the payment is due. In many instances, missed installment payments and accompanying late fee(s) may be due before the next quarterly installment payment. Payments of missed installment payments and accompanying late fee(s) must be made simultaneously and in a timely manner. Partial payments will not be sufficient to avoid default.

C. Pending Grace Period Requests

The amendments to 47 CFR 1.2110 became effective March 16, 1998, 60 days after publication of those amendments in the **Federal Register**. Installment payments which were due prior to March 16, 1998, will continue to be processed under the former § 1.2110 of the Commission's rules. Any properly filed requests for a grace period pending under the former Section 1.2110 will be addressed. Furthermore, the late payment and automatic cancellation provisions of amended § 1.2110 will not apply to licenses with properly filed grace period requests until such time as the Bureau addresses these grace period requests. After the resolution of grace period requests, licensees will be subject to the revised grace period rules for future installment payment obligations.

D. Example

The following illustrates how the late payment procedures will now operate. ABC Company has a $100,000 installment payment due on March 31. If ABC Company is able to make its installment payment on March 31, then it must remit $100,000 to the Commission. If ABC Company makes its installment payment anytime from April 1 until June 29 (the end of the 90 day non-delinquency period), then ABC Company must remit $105,000 to the Commission to be considered current on its March 31 installment payment. If ABC Company does not make its March 31 installment payment by June 29, then it must remit $115,000 on or before September 27, which is 180 calendar days after March 1. If ABC Company does not remit the required $115,000 by September 27 (the end of the 90 day grace period), then it will be considered in default and its license will automatically cancel on September 28 without further action by the Commission.

ABC Company's June 30 installment payment of $100,000 remains due on June 30 regardless of the payment status of the March 31 installment payment. The late payment terms apply to June 30 installment payment independently of the March installment payment. Thus, if ABC Company does not make its March 31 installment payment until June 30,

the total amount due to the Commission on June 30 is $215,000, which consists of the March installment payment, the March 5% non-delinquency late fee, the March 10% grace period late fee and the June 30 payment.

Federal Communications Commission.

Dan Phythyon,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 98–31033 Filed 11–19–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:15 a.m. on Tuesday, November 17, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Julie L. Williams (Acting Comptroller of the Currency) and Chairman Donna Tanoue, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c))6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: November 18, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–31274 Filed 11–18–98; 3:47 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

D.C. James & Co., Inc.
2507 Forest Haven Blvd.
Edison, NJ 08817
Officers:
Damian C. James-Mbadugha, President
Tobenna James, Director

Barsan International, Inc.
401 Broadway, Suite 2210
New York, NY 10013
Officers:
Meltem Marasli, President
Norman Isacoff, Vice President

World Shipping America Inc.
333 Sylvan Avenue, Suite 209
Englewood Cliffs, NJ 07632
Officers:
Kun Zhang, President
Joseph Chin Aleong, Vice President

Dated: November 17, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31057 Filed 11–19–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 9:00 A.M.—November 24, 1998.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, D.C.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTER(S) TO BE CONSIDERED

The Open Portion of the Meeting:

1. Proposed Rules (46 CFR) Implementing the Ocean Shipping Reform Act.

a. Rules of Practice and Procedure including special docket provisions (Part 502).

b. Rules relating to actions to address restrictive maritime practices of foreign governments (Parts 585, 587, 588).

c. Controlled carrier provisions. The Portion closed to the Public:

1. Docket No. 96–06—*River Parishes Company, Inc.* v. *Ormet Primary Aluminum Corp.*—Consideration of the Record.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31150 Filed 11–17–98; 4:45 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Campbell Family Limited Partnership II, Dunseith, North Dakota; to acquire voting shares of Security Bancshares, Inc., Dunseith, North Dakota, and thereby indirectly acquire voting shares of Security State Bank, Dunseith, North Dakota.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Grady Grissom, Syracuse, Kansas; to acquire voting shares of Valley Bancorp, Inc., Syracuse, Kansas, and thereby indirectly acquire voting shares of The Valley State Bank, Syracuse, Kansas.

Board of Governors of the Federal Reserve System, November 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31017 Filed 11–19–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Regions Financial Corporation, Birmingham, Alabama; to merge with Arkansas Banking Company, Jonesboro, Arkansas, and thereby indirectly acquire The Arkansas Bank, Jonesboro, Arkansas; The Arkansas Bank, Walnut Ridge, Arkansas; The Planters Bank, Osceola, Arkansas; and The Arkansas Bank, N.A., Batesville, Arkansas.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. New Century Bancorp, Southfield, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of New Century Bank, Southfield, Michigan (in organization).

2. Tower Financial Corporation, Fort Wayne, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Tower Bank & Trust Company, Fort Wayne, Indiana (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, Memphis, Tennessee, and its wholly owned subsidiary, Union Planters Holding Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Southeast Bancorp, Inc., Corbin, Kentucky, and thereby indirectly acquire The First National Bank and Trust Company of Corbin, Corbin, Kentucky, and First Bank of East Tennessee, N.A., LaFollette, Tennessee.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Heritage Financial Corporation, Olympia, Washington; to merge with Harbor Bancorp, Inc., Aberdeen, Washington, and thereby indirectly acquire Bank of Grays Harbor, Aberdeen, Washington.

2. Heritage Financial Corporation, Olympia, Washington; to merge with Washington Independent Bancshares, Inc., Toppenish, Washington, and thereby indirectly acquire Central Valley Bank, National Association, Toppenish, Washington.

Board of Governors of the Federal Reserve System, November 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31019 Filed 11-19-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 98-30096) published on page 63055 of the issue for Tuesday, November 10, 1998.

Under the Federal Reserve Bank of Minneapolis heading, the entry for U.S. Bancorp, Minneapolis, Minnesota, is revised to read as follows:

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. U.S. Bancorp, Minneapolis, Minnesota; to acquire Libra Investments, Inc., Los Angeles, California, through this acquisition, U.S. Bancorp will acquire an equity interest in Libra Investors, LLC, LFM, LLC, Libra Investors II, LLC, and LFC, LLC, all of Los Angeles, California, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt and equity securities other than open-end investment companies. *J.P. Morgan & Co., Incorporated*, 75 Fed. Res. Bull. 192 (1989). Engaging in financial advisory activities pursuant to § 225.28(b)(6) of Regulation Y; providing agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; acting directly or indirectly through subsidiaries or affiliates, as general partner for a series of limited partnerships and limited liability companies now existing or to be established in the future, that are excluded from the definition of "investment company" under the Investment Company Act of 1940 and are exempt from registration and the prospectus requirements of the Securities Act of 1933, which may invest in securities or other assets eligible for investment by U.S. Bancorp and may make, service and invest in discounted bank loans and other debt securities (other than discounted debt securities collateralized by shares of banks and bank holding companies), including secured and unsecured debt in the form of bank loans, privately placed and publicly-traded debt instruments, bonds, notes, debentures and discounted receivables. *Dresdner Bank AG*, 84 Fed. Res. Bull. 361 (1998); Letter to Swiss Bank Corporation from the Federal Reserve Bank of New York (March 28, 1995); *Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1991).

Comments on this application must be received by November 24, 1998.

Board of Governors of the Federal Reserve System, November 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31018 Filed 11-19-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or

other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. German American Bancorp, Jasper, Indiana; to acquire 1st Bancorp, Vincennes, Indiana, and thereby indirectly acquire First Federal Bank, a Federal Savings Bank, Vincennes, Indiana, and thereby engage in the operation of a thrift, pursuant to § 225.28(b)(4)(ii) of Regulation Y; and Financial Services of Southern indiana Corp;, Vincennes, Indiana, and thereby engage in community development activities through making equity and debt investments in corporations or projects designed to promote community welfare, pursuant to § 225.28(b)(12)(i) of Regulation Y.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* in a joint venture through their subsidiary, Service Mortgage Group, LLC, Louisville, Kentucky, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

2. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa; to engage *de novo* in a joint venture through their subsidiary, Academy Financial Services, LLC, Alpharetta, Georgia, in residential mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31020 Filed 11-19-98; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, November 25, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31188 Filed 11–18–98; 11:03 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for HIV, STD and TB Prevention (NCHSTP), of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: HIV Prevention for Gay Men of Color Consultation.

Times and Dates: 9 a.m.–5 p.m., December 2, 1998. 9 a.m.–5 p.m., December 3, 1998.

Place: The Sheraton Colony Square Hotel Midtown Atlanta, 188 14th Street, N. E., Atlanta, Georgia 30361.

Status: Open to the public for observation and comment, limited only by space available. The meeting room accommodates approximately 65 people.

Purpose: The purpose of this meeting is to provide a forum for consultation and discussion among Gay Men of Color (African Americans, Latinos, Asian and Pacific Islanders, and Native Americans). Participants will represent non-governmental organizations and the Division of HIV/AIDS Prevention (DHAP), NCHSTP. The discussion will address challenges faced by organizations in developing/implementing HIV/AIDS prevention interventions for gay men of color; and examine issues related to organizational capacity building for organizations serving gay men of color.

Matters To Be Discussed: HIV/AIDS surveillance activities related to gay men of color; and analyses and trend data for gay men of color, e.g., geographical trends, data regarding men having sex with other men vs. other populations at risk, etc.

Agenda items are subject to change as priorities dictate.

Contacts for More Information: Janet Cleveland or Yulonda Williams, Division of HIV/AIDS Prevention—Intervention Research and Support, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, m/s E–35, Atlanta, Georgia 30333, telephone 404/639–5200.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 16, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31021 Filed 11–19–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97C–0171]

Closure Medical Corp.; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to future filing, of a color additive petition (CAP 7C0250) proposing that the color additive regulations be amended to

provide for the safe use of D&C Violet No. 2 to color 2-octyl cyanoacrylate topical tissue adhesives.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 1, 1997 (62 FR 23781), FDA announced that a color additive petition (CAP 7C0250) had been filed by Closure Medical Corp., 5265 Capital Blvd., Raleigh, NC 27616 (currently 5250 Greens Dairy Rd., Raleigh, NC 27616). The petition proposed to amend the color additive regulations in § 74.3602 D&C Violet No. 2 (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 to color 2-octyl cyanoacrylate topical tissue adhesives.

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). Since the filing of this petition, the agency has determined that the proposed use of the subject topical tissue adhesives, and therefore, any color additive used in these adhesives, would not contact the body for a significant period of time (Ref. 1). Consequently, the petitioned use of D&C Violet No. 2 is exempt from the statutory listing requirement. Therefore, Closure Medical Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)) (Ref. 2).

The agency received two comments on the safety of D&C Violet No. 2 in response to the notice of filing for this petition. Arts, Crafts & Theater Safety, Inc. (ACTS) commented that D&C Violet No. 2 could possibly be a carcinogen, based on studies of other anthraquinone dyes and structurally related compounds that concluded those substances were reasonably anticipated to be human carcinogens. They stated that the petition should be denied unless D&C Violet No. 2 is studied for cancer effects and found to show no evidence of carcinogenicity. In response to ACTS" comment, Flamm Associates commented that in addition to ■ consideration of the general chemical class of a substance, other structural features need to be evaluated in determining the carcinogenic potential of a substance. They further stated that D&C Violet No. 2 has been tested for carcinogenicity and found to be noncarcinogenic.

The agency concludes that, although the subject petition is being withdrawn, the safety of the currently approved uses of D&C Violet No. 2 (21 CFR 74.1602, 74.2602 and 74.3602) is supported by an extensive body of toxicity testing data and that the comments provide no basis for a safety concern.

References

The following references have been placed on display in the Dockets Management Branch (HFA–305), 5630 Fishers Lane, Rockville, MD 20852 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Office of Device Evaluation, Program Operations Staff (Center for Devices and Radiological Health, FDA), to Division of Petition Control (Center for Food Safety and Applied Nutrition, FDA), concerning "CAP 7C0250", dated October 23, 1998.

2. Letter from Hyman, Phelps & McNamara, P.C., to Office of Premarket Approval (FDA), dated August 25, 1998.

Dated: November 3, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–31030 Filed 11–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0378]

Agency Information Collection Activities; Announcement of OMB Approval; Color Additive Certification Requests and Recordkeeping

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Color Additive Certification Requests and Recordkeeping" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 1998 (63 FR 46461), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0216. The approval expires on October 31, 2001.

Dated: November 12, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31031 Filed 11–19–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the teleconference meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in December 1998.

The meeting of the Advisory Committee for Women's Services will include a discussion of the role and responsibilities of the Advisory Committee in providing advice to SAMHSA, and policy and program issues relating to women's substance abuse and mental health service needs at SAMHSA, including the Fiscal Year 1999 budget and SAMHSA's FY 1999 Knowledge Development and Application Grants.

Public comments are welcome. Please communicate with the individual listed as Contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

A summary of the meeting and/or a roster of committee members may be obtained from: Pamela M. Perry, Executive Secretary, Advisory Committee for Women's Services, Women, Children and Families Team, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–7625, e-mail: pperry@samhsa.gov.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): December 18, 1998.

Place: Room 12–94, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: December 18, 1998; 2:00 p.m. to 4:30 p.m.

Contact: Pamela M. Perry, Room 13–99, Parklawn Building, Telephone (301) 443–7625.

Dated: November 16, 1998.

Jeri Lipov,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 98–31032 Filed 11–19–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–36]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *ARMY:* Mr. Jeff Holste, U.S. Army Corps of Engineers, Installation Support Center, Facilities Management, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; *ENERGY:* Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; (These are not toll-free numbers).

Dated: November 12, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/20/98

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 401
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 219840124
Status: Unutilized
Comment: 5161 sq. ft., needs rehab, most recent use—heating plant, off-site use only

Bldg. 172
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 219840125
Status: Unutilized
Comment: 5895 sq. ft., needs rehab, most recent use—demolition shop, off-site use only

Bldg. 88
Anniston Army Depot
Anniston AL 36201–
Landholding Agency: Army
Property Number: 219840126
Status: Unutilized
Comment: 5360 sq. ft., needs rehab, most recent use—renovation shop, off-site use only

Arizona

13 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15545, 22412, 22531, 30120, 30123, 70916, 71915, 71917, 71918, 71920, 72914, 72915, 72917
Landholding Agency: Army
Property Number: 219840127
Status: Excess

Comment: various sq. ft., presence of asbestos/lead paint, most recent use—storage/office/training, off-site use only

18 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 20015–20029, 22404, 30118, 57470
Landholding Agency: Army
Property Number: 219840128
Status: Excess
Comment: various sq. ft., presence of asbestos/lead paint, most recent use—guest housing/office/storage, off-site use only

8 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 46708, 46709, 46710, 44101, 44102, 44124, 44125, 44201,
Landholding Agency: Army
Property Number: 219840129
Status: Excess
Comment: various sq. ft. & bdrm units, presence of asbestos/lead paint, most recent use—family housing, off-site use only

Georgia

Bldg. T–288
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219840130
Status: Excess
Comment: 2500 sq. ft., poor condition, most recent use—MP station, off-site use only

Bldg. T–291
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219840131
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—MP station, off-site use only

Bldg. T–292
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219840132
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—MP station, off-site use only

Bldg. 294
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219840133
Status: Excess
Comment: 5220 sq. ft., poor condition, most recent use—admin., off-site use only

Bldg. T–922
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 219840134
Status: Excess
Comment: 2436 sq. ft., poor condition, most recent use—admin., off-site use only

Iowa

Bldg. 46
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Landholding Agency: Army
Property Number: 219840135
Status: Unutilized
Comment: 20,944 sq. ft., presence of asbestos/lead paint, most recent use—officer quarters/admin., historical/National Register

Bldg. 49
Des Moines Reserve Complex
Des Moines Co: Polk IA 50315–5899
Landholding Agency: Army
Property Number: 219840136
Status: Underutilized
Comment: 2100 sq. ft., most recent use—chapel, historical/National Register

Maryland

Bldg. 39
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219840137
Status: Unutilized
Comment: 2791 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 0459E
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219840138
Status: Unutilized
Comment: 320 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1102B
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219840139
Status: Unutilized
Comment: 1600 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E1455
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219840140
Status: Unutilized
Comment: 36 sq. ft., poor condition, presence of asbestos/lead paint, most recent use—guard shack, off-site use only

Bldg. E2328
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219840141
Status: Unutilized
Comment: 4171 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. E2380
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219840142
Status: Unutilized
Comment: 4171 sq. ft., concrete, presence of asbestos/lead paint, most recent use—storage, off-site use only

New York

Bldg. T–35
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840143
Status: Unutilized
Comment: 1296 sq. ft., most recent use—admin., off-site use only

Bldg. S–149
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840144
Status: Unutilized
Comment: 2488 sq. ft., most recent use—admin., off-site use only

Bldg. T–250
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840145
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only

Bldg. T–254
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840146
Status: Unutilized
Comment: 4720 sq. ft., most recent use—barracks, off-site use only

Bldg. T–260
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840147
Status: Unutilized
Comment: 2371 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–261
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840148
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–262
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840149
Status: Unutilized
Comment: 1144 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–340
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840150
Status: Unutilized
Comment: 2360 sq. ft., most recent use—storage, off-site use only

Bldg. T–392
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840151
Status: Unutilized
Comment: 2740 sq. ft., most recent use—storage, off-site use only

Bldg. T–413
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840152
Status: Unutilized
Comment: 3663 sq. ft., most recent use—admin., off-site use only

Bldg. T–415
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840153
Status: Unutilized
Comment: 1676 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–530
Fort Drum Co: Jefferson NY 13602–

Landholding Agency: Army
Property Number: 219840154
Status: Unutilized
Comment: 2588 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–840
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840155
Status: Unutilized
Comment: 2803 sq. ft., most recent use—dining, off-site use only

Bldg. T–892
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840156
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–991
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840157
Status: Unutilized
Comment: 2740 sq. ft., most recent use—HQ bldg., off-site use only

Bldg. T–996
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840158
Status: Unutilized
Comment: 9602 sq. ft., most recent use—storage, off-site use only

Bldg. S–998
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840159
Status: Unutilized
Comment: 1432 sq. ft., most recent use—storage, off-site use only

Bldg. T–2159
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840160
Status: Unutilized
Comment: 1948 sq. ft., off-site use only

Bldg. T–2339
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840163
Status: Unutilized
Comment: 2027 sq. ft., most recent use—museum, off-site use only

Bldg. P–2415
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840164
Status: Unutilized
Comment: 214 sq. ft., most recent use—incinerator, off-site use only

Bldg. T–2442
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840165
Status: Unutilized
Comment: 4340 sq. ft., most recent use—vet facility, off-site use only

Bldg. P–2443
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840166
Status: Unutilized
Comment: 793 sq. ft., most recent use—vet facility, off-site use only

Bldg. T–21572
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840167
Status: Unutilized
Comment: 240 sq. ft., most recent use—bunker, off-site use only

North Dakota

Bldg. 405
Stanley R. Mickelsen Safeguard Complex
Nekoma Co: Cavalier ND 58355–
Landholding Agency: Army
Property Number: 219840168
Status: Unutilized
Comment: 520 sq. ft., concrete block, most recent use—fuel oil pumping facility, off-site use only

Texas

Bldg. P–1374
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219840169
Status: Unutilized
Comment: 111,448 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—barracks, off-site use only

Bldg. P–1980
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219840170
Status: Unutilized
Comment: 2989 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—radio system station, off-site use only

Bldg. P–1981
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219840171
Status: Unutilized
Comment: 200 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—generator plant, off-site use only

Bldg. P–2396
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219840172
Status: Unutilized
Comment: 1080 sq. ft., presence of asbestos, hazard abatement responsibility, most recent use—generator plant, off-site use only

Bldg. P–4226
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219840173
Status: Unutilized
Comment: 1809 sq. ft., presence of lead paint, hazard abatement responsibility, most recent use—storage, off-site use only

Bldg. T–5123
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219840174
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, hazard abatement responsibility, most recent use—admin., off-site use only

Bldg. 2840
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 219840175
Status: Unutilized
Comment: 2250 sq. ft., most recent use—admin., off-site use only

Bldg. 2841
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 219840176
Status: Unutilized
Comment: 2220 sq. ft., most recent use—storage, off-site use only

Bldg. 2842
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 219840177
Status: Unutilized
Comment: 2650 sq. ft., most recent use—admin., off-site use only

Bldg. 2843
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 219840178
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only

Bldg. 2844
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 219840179
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only

Bldg. 2845
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 219840180
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only

Bldg. 2846
Fort Hood
Ft. Hood TX 76544–
Landholding Agency: Army
Property Number: 219840181
Status: Unutilized
Comment: 8043 sq. ft., most recent use—admin., off-site use only

Washington

Bldg. A0220
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840182
Status: Unutilized
Comment: 2284 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—recreation, off-site use only

Bldg. 4540
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840183
Status: Unutilized

Comment: 1200 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 4541
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840184
Status: Unutilized
Comment: 880 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 4542
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840185
Status: Unutilized
Comment: 112 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. 4549
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840186
Status: Unutilized
Comment: 26220 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—green house heat plant, off-site use only

Bldg. 6118
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840187
Status: Unutilized
Comment: 2263 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—classroom, off-site use only

Bldg. 6191
Fort Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 219840188
Status: Unutilized
Comment: 3663 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—post exchange, off-site use only

Land (by State)

Tennessee

Railroad Bed
Fort Campbell
Jack Miller Blvd.
Clarksville TN
Landholding Agency: Army
Property Number: 219840189
Status: Unutilized
Comment: approx. 6.06 acres

Suitable/Unavailable Properties

Buildings (by State)

New York

Bldg. T–2215
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840161
Status: Unutilized
Comment: 7670 sq. ft., most recent use—quarters, off-site use only

Bldg. T–2216
Fort Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 219840162
Status: Unutilized
Comment: 7670 sq. ft., most recent use—quarters, off-site use only

Unsuitable Properties

Buildings (by State)

Idaho

5 Bldgs.
Idaho Natl Engineering & Environmental Lab
CPP601, CPP603/648, CPP627, CPP633, CPP640
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 419840002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

North Carolina

Bldg. 908
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 779840021
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Tennessee

11 Bldgs.
Naval Surface Warfare Center
Carderock Division, Detachment Memphis
Memphis Co: Shelby TN 38113–
Landholding Agency: Navy
Property Number: 779840022
Status: Unutilized
Reason: Secured Area

[FR Doc. 98–30718 Filed 11–19–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Renewal of the Public Advisory Group Charter—EXXON VALDEZ Oil Spill

AGENCY: Department of the Interior, Office of the Secretary.

SUMMARY: This notice is published in accordance with 41 CFR Part 101–6, section 101–6.1015(a), Committee establishment, reestablishment, or renewal. Following the recommendation and approval of the EXXON VALDEZ Oil Spill Trustee Council, the Secretary of the Interior hereby renews the Exxon Valdez Oil Spill Public Advisory Group Charter to continue for two years.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: On March 24, 1989, the T/V EXXON VALDEZ ran aground on Bligh Reef in Prince William Sound in Alaska spilling approximately 11 million gallons of North Slope crude oil. Oil moved into the Gulf of Alaska, along the Kenai coast to Kodiak Island and the Alaska Peninsula—some 600 miles from Bligh Reef. Massive clean-up and containment efforts were initiated and continued to 1992. On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations.

Under the civil settlement, Exxon companies agreed to pay to the governments $900 million over a period of 10 years.

The EXXON VALDEZ Oil Spill Trustee Council was established to manage the funds obtained from the civil settlement of the EXXON VALDEZ Oil Spill. The Trustee Council is composed of three State of Alaska trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991 and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The Public Advisory Group was chartered by the Secretary of the Interior on October 23, 1992 and functions solely as an advisory body, and in compliance with the provisons of the Federal Advisory Committee Act (5 U.S.C. App. (1988)).

The Public Advisory Group was established to advise the Trustee Council, and began functioning in October 1992. The Public Advisory Group consists of 17 members representing the following principal interests: sport hunting and fishing, environmental, public-at-large (5), recreation users, local government, science/academic, conservation, subsistence, commercial fishing, aquaculture, commercial tourism, forest products, and Native landowners. Members were appointed to serve a two-year term.

To carry out its advisory role, the Public Advisory Group makes recommendations to, and advises, the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment; and

c. Planning, evaluation and conduct of restoration activities.

Trustee Council intentions regarding the importance of obtaining a diversity of viewpoints is stated in the *Public Advisory Group Background and Guidelines* (March 1993, updated June 1994 and August 1996): "The Trustee Council intends that the Public Advisory Group be established as an important component of the Council's public involvement process." The Council continues, stating their desire that "* * * a wide spectrum of views and interest are available for the Council to consider as it evaluates, develops, and implements restoration activities. It is the Council's intent that the diversity of interests and views held by the Public Advisory Group members contribute to wide ranging discussions that will be of benefit to the Trustee Council."

In order to ensure that a broad range of public viewpoints continues to be available to the Trustee Council, and in keeping with the settlement agreement, the continuation of the Public Advisory Group for another two-year period is recommended.

Dated: November 6, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–30994 Filed 11–19–98; 8:45 am]

BILLING CODE 4310–RG–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment, Finding of No Significant Impact, and Receipt of an Application for an Incidental Take Permit for a 48-Acre Mixed Residential/Commercial Development Project, in Volusia County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mortgage Management, L. P. of Chattanooga, Tennessee (Applicant), is seeking an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of one family of the threatened Florida scrub-jay, *Aphelocoma coerulescens* and the threatened Eastern indigo snake, *Drymarchon corais couperi*, in Volusia County, Florida, for a period of ten (10) years. The proposed taking is incidental to land clearing activities and mixed residential/commercial development on a 48-acre project site (Project). The Project contains about 8.2 acres of occupied Florida scrub-jay habitat, and the potential exists for the entire Project to provide habitat to the Eastern indigo snake. A description of the mitigation and minimization measures outlined the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is as described further in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, opinions from the public via this Notice, including the identification of any other aspects of the human environment not already identified in the Service's EA. Further, the Service is specifically soliciting information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR Parts 13 and 17.

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before December 21, 1998.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be processed. Please reference permit number PRT–TE004632–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. Rick G. Gooch, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7110, facsimile: 404/679–7081; or Mr. Jay B. Herrington, Fish and Wildlife Biologist, Jacksonville Field Office, (see **ADDRESSES** above), telephone: 904/232–2580, extension 120.

SUPPLEMENTARY INFORMATION: *Aphelocoma coerulescens* is geographically isolated from other subspecies of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that one family of Florida scrub-jays inhabit the Project site. Construction of the Project's infrastructure, commercial construction and construction of the individual home sites will likely result in death of, or injury to, *Aphelocoma coerulescens* incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The Eastern Indigo snake (*Drymarchon corais couperi*) is the longest north American snake, is reclusive, ranges up to 250 acres in the summer and down to less than 25 acres in the winter. Historical distribution is largely uncertain; however, records reflect distribution throughout the Florida peninsula as well as occurrence in the panhandle and Georgia. It is known to frequent dry, upland habitats with nearby wetlands. Destruction of suitable habitat for agriculture, livestock, forestry and development of commercial/residential properties as

well as commercial exploitation (collecting) and "gassing" are well documented as diminishing the population to a suggested viable presence only in the states of Florida and Georgia. The acquisition, preservation and management of large tracts of suitable habitat as opposed to small, isolated parcels is generally recommended.

Although not observed on site, the Applicant has requested authorization for incidental take of any Eastern Indigo snake occurring within the tract. In addition to the normal species specific precautionary and educational materials to be provided to on site personnel for the Eastern Indigo snake as outlined in the HCP, the mitigation strategy as identified above for the Florida scrub jay will be applied to offset unavoidable impacts to the Eastern Indigo snake.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for *Aphelocoma coerulescens* and exposure of the Applicant under Section 9 of the Act. The on-site preservation alternative would preserve 8.2 acres of occupied habitat. This option would not require an ITP, however, the portion of commercially developable property would be reduced from 11 acres to 2.8 acres. In addition, this option would not provide any management for the Florida scrub-jay family currently located on the property. The third alternative, the off-site mitigation alternative, would provide funds to the National Fish and Wildlife Foundation Fund for the Conservation of the Florida Scrub-jay to procure occupied Florida scrub-jay habitat in Volusia County, Florida to be managed into perpetuity. The proposed action alternative is issuance of the ITP with off-site mitigation. The affirmative conservation measures outlined in the HCP to be employed to offset the anticipated level of incidental take to the protected species are the following:

1. To mitigate for the up to 8.2 acres of occupied habitat that would be eliminated on site the applicant will provide funds to the National Fish and Wildlife Foundation in the amount of $103,320.00 to be spent for procurement of occupied Florida scrub-jay habitat and conservation in Volusia County at a later date. This amount is based on mitigation at a ratio of 2:1 (two acres purchased for every one acre impacted and land costs of $5,000 per acre), a $1,000 per acre management endowment, and an administrative fee of five percent of the total cost for management of the National Fish and Wildlife Foundation Fund for conservation of the Florida scrub-jay.

Upon procurement, the mitigation land would first be donated to and subsequently managed by a holding company. After initial habitat restoration, the property would then be conveyed to Volusia County or other acceptable land conservation program, along with a conservation easement, requiring preservation and management for Florida scrub-jays (and eastern indigo snakes) into perpetuity.

2. No clearing of scrub vegetation would occur during the nesting season of the Florida scrub jay.

3. The HCP provides a funding mechanism for these mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

An appropriate excerpt from the FONSI reflecting the Service's finding on the application is provided below:

Based on the analysis conducted by the Service, it has been determined that:

1. Issuance of an ITP would not have significant effects on the human environment in the project area.

2. The proposed take is incidental to an otherwise lawful activity.

3. The Applicant has ensured that adequate funding will be provided to implement the measures proposed in the submitted HCP.

4. Other than impacts to endangered and threatened species as outlined in the documentation of this decision, the indirect impacts which may result from issuance of the ITP are addressed by other regulations and statutes under the jurisdiction of other government entities. The validity of the Service's ITP is contingent upon the Applicant's compliance with the terms of the permit and all other laws and regulations under the control of State, local, and other Federal governmental entities.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: November 4, 1998.

Sam D. Hamilton,

Regional Director.

[FR Doc. 98–30346 Filed 11–19–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–951–99–1020–00]

Call for Nominations for Butte Resource Advisory Council

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for the Elected Official position on the Butte Resource Advisory Council (RAC). The term of the position will expire in September 1999. RACs provide advice and recommendations to the Bureau of Land Management (BLM) on land use planning and management of the public lands within their geographic areas. Public nominations will be considered for 45 days after the publication date of this notice.

The Federal Land Policy and Management Act directs the Secretary of the Interior to involve the public in the planning and management of the public lands administered by the BLM. Each Council has 15 members who serve staggered terms. RAC membership must reflect a balanced representation of the various interests and users of the public lands. These include persons who are representatives of the following categories:

Category One—Holders of federal grazing permits and representatives of energy and mining development, timber industry, off-road vehicle use, and developed recreation.

Category Two—Representatives of environmental and resource conservation organizations, archaeological and historic interests, and wild horse and burro groups;

Category Three—Representatives of State, county and local government, Native American tribes, academicians involved in natural sciences, and the public at large.

At least one member of the RAC must be an elected official of general purpose government serving the people within the geographic area the RAC represents.

Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the RAC. Nominees should have demonstrated a

commitment to collaborative resource decision-making.

Individuals may nominate themselves or others. Nominees must be residents of Montana. Nominees will be evaluated based on their education, training, and experience of the issues and knowledge of the geographical area of the RAC. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

DATES: All nominations should be received by the BLM Butte Field Office by January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Jeanne Sullivan, BLM Butte Field Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59701; telephone 406–494–5059.

Dated: November 12, 1998.

Gary Gerth,

Assistant Field Manager.

[FR Doc. 98–30968 Filed 11–19–98; 8:45 am]

BILLING CODE 4310–DN–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–330–4210–05, CACA 39081]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public land in Humboldt County, California, has been examined and found suitable for classification for transfer to the State of California under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The State of California proposes to incorporate the land into Richardson Grove State Park and manage them under plans approved for that park.

Humboldt Base & Meridian

T.5S., R.3E.,

Section 11, SWSW.

Containing 40 acres, more or less.

The land is not needed for Federal purposes. Transfer is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

4. Those rights for ingress/egress and timber hauling granted to Coombs Tree Farms under Right-of-Way CACA 39081.

Detailed information concerning this action is available for review at the Arcata Field Office, 1695 Heindon Road, Arcata, CA 95521. Upon publication of this notice in the **Federal Register**, the land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for transfer under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed transfer or classification of the land to Lynda J. Roush, Field Manager, 1695 Heindon Road, Arcata, CA 95521.

Classification Comments

Interested parties may submit comments involving the suitability of the land for inclusion into Richardson's Grove State Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific proposed action in the application, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for inclusion into Richardson's Grove State Park. Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the IBLA.

Lynda J. Roush,

Arcata Field Manager.

[FR Doc. 98–30914 Filed 11–19–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–09–1430–01: SAC 079371]

Realty Action, Recreation and Public Purposes (R&PP) Act Classification; Placer County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—Recreation and Public Purposes (R&PP) Act Classification; Placer County, California.

SUMMARY: The following public lands in Placer County, California have been examined and found suitable for classification for conveyance to the Placer County Board of Supervisors under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Placer County Board of Supervisors currently leases the following lands for a transfer station.

Mount Diablo Meridian, California

T. 13 N., R. 10 E.,

Sec. 3, lots 19 & 20. (Foresthill)

Containing 52.15 acres, more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with the current BLM land use planning and would be in the public interest.

The patent, when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove materials.

4. An easement for streets, roads, and utilities in accordance with the transportation plan for each County.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Folsom Field Office, 63 Natoma Street, Folsom, California.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit

comments regarding the proposed conveyance or classification of the lands to the Field Manager, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

Classification Comments

Interested parties may submit comments involving the suitability of the lands. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with the State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the applications and plan of developments, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Karen Montgomery, BLM Folsom Field Office, (916) 985–4474.

D.K. Swickard,

Field Manager.

[FR Doc. 98–31053 Filed 11–19–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *AlliedSignal Inc. and Amphenol Corporation*, Civil Action No. 97–CV–0436 (TJM/DNH) (N.D.N.Y.), was lodged on November 3, 1998 with the United States District Court for the Northern District of New York. The proposed consent decree resolves potential claims of the United States, on behalf of the U.S. Environmental Protection Agency, against third-party defendants the Village of Sidney, New York, and the Towns of Sidney, Masonville, and Tompkins, New York, under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601–9675. These claims are for recovery of response costs incurred and to be incurred by the United States in connection with the Sidney Landfill Superfund Site ("Site"), located in Delaware County, New York.

Under the terms of the proposed consent decree, the Village of Sidney will pay $46,597.60, the Town of Sidney will pay $10,812.00, the Town of Masonville will pay $3,696.75, and the Town of Tompkins will pay $1,762.25 to the United States in reimbursement of response costs incurred and to be incurred by the United States with respect to the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *AlliedSignal Inc. and Amphenol Corporation*, Civil Action No. 97–CV–0436 (TJM/DNH) (N.D.N.Y.), DOJ Ref. No. 90–11–2–1128C.

The proposed consent decree may be examined at the Office of the United States Attorney, 445 Broadway, Room 231, Albany, New York 12207; the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York 10007–1866; and the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, telephone (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $7.25 (25 cents per page reproduction costs) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–31002 Filed 11–19–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Ben Shemper & Sons, Inc., et al.*, Civil Action No. 94–50385/LAC was lodged on October 30, 1998 with the United States District Court for the Northern District of Florida. In December, 1994, the United States filed this action pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, to recover response costs incurred by EPA at the Sapp Battery Site near Cottondale, Florida. The site was contaminated with lead and other heavy metals as the result of battery cracking operations conducted at the site from approximately 1970 to 1980. The consent decree requires the settlors to pay the following amounts: Gulf Coast Recycling, Inc.—$612,000; Southern Scrap Company, Inc.—$205,000; Taracorp, Inc.—$309,000; and Dynamic Metals, Inc.—$75,000.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environmental and Natural Resources Division, Department of Justice, Washington, DC., 20530, and should refer to: *United States* v. *Ben Shemper & Sons, Inc., et al.*, DOJ Ref. #90–11–2–699E.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of Florida, 114 E. Gregory Street, Pensacola, Florida 32501; Office of the U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 98–31001 Filed 11–19–98; 8:45 am]

BILLING CODE 4410–15–M

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Chrysler Corporation, Allied Waste Systems, Inc., Allied Services, LLC, and Clarence J. and Evelyn K. Chott*, No. 4:98CV01809CAS (E.D. Missouri), was lodged on October 28, 1998, with the United States District Court for the Eastern District of Iowa. With regard to the Defendants, the Consent Decree resolves claims filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, *as amended*, 42 U.S.C. 9601, *et seq.*

The United States entered into the Consent Decree in connection with the Fenton Creek Dump Site located in Fenton, Missouri. The Consent Decree provides that the Settling Defendants will reimburse the United States a total of $2,550,000 for costs incurred and to be incurred by the United States at the Site. The Settling Defendants also will pay $52,126 for natural resource damages at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chrylser Corporation, Allied Waste Systems, Inc., Allied Services, LLC, and Clarence J. and Evelyn K. Chott*, DOJ Reg. #90–11–2–1288.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 1114 Market Street, Room 401, St. Louis, Missouri 63101; the Region 7 Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $7.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 98–31000 Filed 11–19–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act and the National Emissions Standards for Hazardous Air Pollutants for Asbestos

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States of America* v. *City of Rolla, et al.* Civil Action No. 2:98CV00061DJS, was lodged on October 19, 1998 with the United States District Court for the Eastern District of Missouri.

The Consent Decree settles civil penalty and injunctive claims asserted against the City of Rolla, Missouri ("the City") and Don Maggi, Inc. ("Don Maggi") under the Clean Air Act, 42 U.S.C. 7412 and the National Emission Standards for Hazardous Air Pollutants for asbestos, 40 CFR part 61, subpart M. The Complaint alleges that in the course of the March of 1995 demolition of a City-owned building known as the "Old Police Station," the City and its demolition contractor, Don Maggi, violated the notice and inspection requirements of the asbestos NESHAP, 40 CFR 61.145(a) and (b).

The Consent Decree settles all the claims asserted in the Complaint. It provides that the City and Don Maggi will pay civil penalties of $24,700 and $22,000 respectively and also requires them to undertake an asbestos training and monitoring program.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044. Comments should refer to *United States of America* v. *City of Rolla, et al.*, DOJ Ref. No. 90–5–21–2190.

The proposed consent decree may be examined at the office of the United States Attorney, Eastern District of Missouri, 1114 Market Street, St. Louis, MO 63101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library.

In requesting a copy, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–31005 Filed 11–19–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on November 6, 1998, a proposed consent decree in *United States* v. *Compaction Systems Corporation, et al.*, Civil Action No. 96–5349, was lodged with the United States District Court for the District of New Jersey.

In this action, the United States alleged, *inter alia*, that under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607, the defendants were liable for the federal government's costs in responding to the release or threatened release of hazardous substances at the Combe Fill North Landfill Superfund Site in Mount Olive, Morris Township, New Jersey (the Site). The proposed consent decree resolves the United States' claim for past response costs against the defendants and third-party defendants named in this action, including, among others, Occidental Chemical Corporation, Connecticut Resource Recovery Authority, Rayonier, Inc., Knoll Pharmaceuticals, Inc., and Browning-Ferris Industries of North Jersey, Inc. (A complete list of current settling parties is contained in the proposed decree; during the period of public comment, other parties may be added to that list.) Under the terms of the proposed consent decree, the settling parties will pay the United States the sum of $7.5 million in reimbursement of past response costs with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed partial consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice,

Washington, DC 20530, and should refer to *United States* v. *Compaction Systems Corporation, et al.*, Civil Action No. 99–5349, D.J. Ref. 90–11–2–1134.

The proposed consent decree may be examined at the Office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102, at U.S. Environmental Protection Agency Region II, 290 Broadway, New York, New York 10007–1866, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $17.25 (25 cent per page reproduction cost).

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–31003 Filed 11–19–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Joint Motion for Modification of Amended Consent Decree, Which Resolved Action Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, please be advised that a proposed Joint Motion for Modification of Amended Consent Decree was lodged on November 9, 1998, in *United States* v. *Ohio Power Company*, C.A. No. 5:94–CV–100 (N.D.WVa), with the United States District Court for the Northern District of West Virginia ("District Court"). The Joint Motion extends a deadline of November 1, 1998, contained in the Amended Consent Decree. That deadline sets forth the date by which defendant must come into compliance at its Kammer power plant in Marshall County, West Virginia, with the sulfur dioxide limitation presently contained in the West Virginia State Implementation Plan ("SIP"), in the event that the State does not submit a revised SIP by October 1, 1999. Should the State fail to submit the SIP by that date, defendant must comply with the current sulfur dioxide limitation by December 31, 1999. The Amended Consent Decree resolved an action which the United States brought in 1994 against Ohio Power under section 113 of the Clean Air Act, 42 U.S.C. 7413.

Any comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ohio Power Company*, DOJ Ref. #90–5–2–1–1958. The proposed Joint Motion may be examined at the Office of the United States Attorney, 1100 Main Street, Room 200, Wheeling, West Virginia 26003, and the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103. A copy of the proposed Joint Motion may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, (202) 624–0892. The proposed Joint Motion contains 74 pages, including attachments. To obtain the Joint Motion, with attachments, please enclose a check for $18.50. Please make the check payable to the Consent Decree Library, and refer to the case by its title and DOJ Ref. #90–5–2–1–1958.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30998 Filed 11–19–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act, ("CERCLA"), 42 U.S.C. 9601 et seq.

Under 28 CFR 50.7, notice is hereby given that on September 25, 1998, a proposed Consent Decree in *United States* v. *United Technologies Automotive Systems, Inc., et al.*, Civil Action No. 8–98–CV–90150, was lodged with the United States District Court for the Southern District of Iowa.

In this action against United Technologies Automotive Systems, Inc, ("UTAS"), F/K/A Sheller-Globe Corporation ("Sheller-Globe") and David B. and Miriam Grimes (the "Grimes"), pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, on behalf of the United States Environmental Protection Agency ("EPA"), the United States sought: (1) Reimbursement of costs incurred in performing response activities at the Sheller-Globe Superfund Site in Keokuk, Iowa ("Site") and (2) performance of response work by the defendants at the Site pursuant to the Record of Decision, dated September 20, 1995 ("ROD"). Under the Consent Decree, the defendants will reimburse the EPA Hazardous Substance Superfund approximately $35,000 for all response costs incurred between the date of the ROD and the effective date of the Consent Decree, and all future costs incurred by the Department of Justice ("DOJ") and EPA. The defendants also will provide access and institutional controls and perform the remedial work in accordance with the Consent Decree, ROD, and Statement of Work ("SOW"), valued at approximately $121,000. This settlement, together with a prior Administrative Order on Consent, ("AOC") entered into by EPA and UTAS predecessor Sheller-Globe on October 23, 1990, in which Sheller-Globe agreed to pay EPA's past costs at or in connection with the Site as well as the costs incurred by EPA associated with the oversight of the AOC, will result in a recovery of 100% of the United States' expected response costs. In exchange, UTAS and the Grimes will receive a covenant not to sue pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site, subject to all standard reservations and reopeners. In addition, UTAS and the Grimes will receive contribution protection under section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *United Technologies Automotive Systems, Inc. et al.*, D.J. Ref. 90–11–2–1266.

The Consent Decree may be examined at the Office of the United States Attorney, Southern District of Iowa, 110 East Court Street, Des Moines, Iowa 50309, at U.S. EPA—Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, D.C. 20005. In requesting a complete copy with all Attachments, please enclose a check in the amount of $69.75 (25 cents per page reproduction cost) payable to the Consent Decree Library. In requesting a copy of the Consent Decree without Attachments, please enclose a check in the amount of $23.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–31004 Filed 11–19–98; 8:45 am]

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DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy and section 122 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree in *United States* v. *USX Corp., et al.*, Civil No. 98 C 6389 (N.D. Ill.), was lodged with the United States District Court for the Northern District of Illinois on November 5, 1998, pertaining to the Yeoman Creek Landfill Superfund Site (the "Site"), located in Waukegan, Lake County, Illinois. The proposed consent decree would resolve the United States' civil claims against all twenty-one defendants named in the action as provided in the consent decree. The settling defendants are USX Corp.; Stone Container Corp.; Coral Chemical Co.; Victory Memorial Hospital Association; Franciscan Sisters Healthcare Corp.; The Copley Press, Inc.; North Chicago Refiners & Smelters, Inc. and R. Lavin & Sons, Inc.; North Shore Sanitary District; North Shore Printers, Inc.; Westvaco Corp.; Jensen Disposal, Inc.; Waukegan Park District; American National Bank & Trust Co. of Chicago, as successor Trustee to Bank of Ravenswood under Trust No. 25–9142, and the Terrace Nursing Home Limited Partnership and Beneficiary of Trust No. 25–9142; American National Bank & Trust Co. of Waukegan, as Trustee under Trust No. 2566, and John Zygokostas as Beneficiary of Trust No. 2566; Chicago Title and Trust Co., as Trustee under Trust Agreement Dated September 28, 1970, and Known as Trust No. 55858, and James E. Evoy, Paul E. Kamschulte, Jr., and Allan J. Jacobs as Beneficiaries; Sheldon Lovinger and Norman Kramer, jointly and as Beneficiaries of Grand National Bank Trust No. 1922; Grand Premier Trust and Investment, Inc., N.A. as successor Trustee to American National Bank & Trust Company of Waukegan under Trust Agreement dated December 28, 1977, and known as Trust No. 1455, and Chien-Huey Shih as Beneficiary of Trust No. 1455; Howard I. Bass, individually and d/b/a HIBCO Investments; Evoy, Kamschulte, Jacobs & Company, L.L.P.; The Terrace Nursing Home, Inc.; and Sunset House Restaurant, Inc. Under the proposed consent decree, the twenty-one settling defendants would pay a total of $1,585,990.00. Twenty of the settling defendants qualify as *de minimis* parties under CERCLA Section 122(g).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *USX Corp., et al.*, Civil No. 98 C 6389 (N.D. Ill.), and DOJ Reference No. 90–11–2–1315/1.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, IL 60604; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Stuart Hersh (312–886–6235)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $15.50 for the consent decree only (62 pages at 25 cents per page reproduction costs), or $17.25 for the consent decree and all appendices (69 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–30999 Filed 11–19–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Indian and Native American Employment and Training Programs; List of Grantees Receiving Waivers of Competition for Program Year 1999

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: List of current JTPA section 401 grantees given waivers of competition for the Program Year (PY) 1999 designation period.

SUMMARY: Pursuant to the instructions and procedures published in the **Federal Register** notice of September 28, 1998 (63 FR 51771–51776), the Department of Labor hereby publishes a list of those current JTPA section 401 grantees receiving waivers of competition for Program Year 1999, pursuant to section 401(l) of the Job Training Partnership Act, as amended.

DATES: Final Notices of Intent must be postmarked no later than January 1, 1999.

ADDRESSES: Send an original and two copies of the Final Notices of Intent to Mr. Leroy Bingham, Chief, Division of Indian and Native American Programs, ATTN: Designation Desk, U.S. Department of Labor, Room N–4641 FPB, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Grantees who receive waivers must still submit a Final Notice of Intent in accordance with the instructions as referenced above to be designated as a JTPA section 401 grantee for the PY 1999 Designation Period.

Indian and Native American Programs; JTPA, Section 401, Grantees; Waivers Granted for Program Year 1999

Alabama

Intertribal Council of Alabama
Poarch Band of Creek Indians

Alaska

Aleutian-Pribilof Islands Association
Association of Village Council Presidents
Bristol Bay Native Association
Central Council of Tlingit and Haida Indian Tribes of Alaska
Chugachmiut
Cook Inlet Tribal Council, Inc.
Kawerak, Incorporated
Kenaitze Indian Tribe
Kodiak Area Native Association
Maniilaq Manpower, Inc.
Metlakatla Indian Community
Native Village of Barrow
Orutsararmuit Native Council
Tanana Chiefs Conference, Inc.

Arizona

Affiliation of Arizona Indian Centers, Inc.
American Indian Association of Tucson
Colorado River Indian Tribes
Gila River Indian Community
Hopi Tribal Council
Inter-Tribal Council of Arizona, Inc.
Native Americans for Community Action, Inc.
The Navajo Nation
Pascua Yaqui Tribe
Phoenix Indian Center, Inc.
Quechan Indian Tribe
Salt River/Pima-Maricopa Indian Community
San Carlos Apache Tribe
Tohono O'Odham Nation
White Mountain Apache Tribe

Arkansas

American Indian Center of Arkansas, Inc.

California
California
Candelaria
Indian Hu
Northern C
Council,
Southern C
Tule River
United Ind
Ya-Ka-Am

Colorado
Denver Ind
Southern U
Ute Mount

Delaware
Nanticoke

Florida
Florida Go
Miccosuke
Seminole

Hawaii
Alu Like,
State of Ha
Relation

Idaho
Nez Perce
Shoshone-

Indiana
Indiana A

Kansas
Mid-Amer
United Tri
Nebrask

Louisiana
Inter-Tribe

Maine
Tribal Gov

Massachu
Mashpee-
Inc.
North Am

Michigan
Grand Tra
Chippew
Inter-Tribe
Michigan
Services
North Am
Detroit,
The Pokag
Sault Ste.
Southeast

Minesota
American
Industri
Bois Forte
Fond Du
Leech Lak
Mille Lacs
Minneapo
Red Lake
White Ear

Mississip
Mississip

California

California Indian Manpower Consortium
Candelaria American Indian Council
Indian Human Resources Center
Northern California Indian Development Council, Inc.
Southern California Indian Center, Inc.
Tule River Tribe
United Indian Nations, Inc.
Ya-Ka-Ama Indian Education & Development

Colorado

Denver Indian Center, Inc.
Southern Ute Indian Tribe
Ute Mountain Ute Tribe

Delaware

Nanticoke Indian Association, Inc.

Florida

Florida Governor's Council on Indian Affairs
Miccosukee Corporation
Seminole Tribe of Florida

Hawaii

Alu Like, Inc.
State of Hawaii Dept. of Labor & Industrial Relations

Idaho

Nez Perce Tribe
Shoshone-Bannock Tribes

Indiana

Indiana American Indian Manpower Council

Kansas

Mid-American All Indian Center, Inc.
United Tribes of Kansas and Southeast Nebraska, Inc.

Louisiana

Inter-Tribal Council of Louisiana, Inc.

Maine

Tribal Governors, Inc.

Massachusetts

Mashpee-Wampanoag Indian Tribe Council, Inc.
North American Indian Center of Boston, Inc.

Michigan

Grand Traverse Band of Ottawa and Chippewa
Inter-Tribal Council of Michigan, Inc.
Michigan Indian Employment and Training Services, Inc.
North American Indian Association of Detroit, Inc.
The Pokagon Band of Potawatomi Indians
Sault Ste. Marie Tribe of Chippewa Indians
Southeastern Michigan Indians, Inc.

Minesota

American Indian Opportunities Industrialization Center
Bois Forte Reservation Tribal Council
Fond Du Lac Reservation Business Council
Leech Lake Reservation Tribal Council
Mille Lacs Band of Chippewa Indians
Minneapolis American Indian Center
Red Lake Tribal Council
White Earth Reservation Business Council

Mississippi

Mississippi Band of Choctaw

Missouri

American Indian Council, Inc.

Montana

Assiniboine & Sioux Tribes
Blackfeet Tribal Business Council
B.C. of the Chippewa Cree Tribe
Confederated Salish & Kootenai Tribes
Crow Tribe of Indians
Fort Belknap Indian Community
Northern Cheyenne Tribe

Nebraska

Indian Center, Inc.
Winnebago Tribe

Nevada

Inter-Tribal Council of Nevada, Inc.
Las Vegas Indian Center, Inc.
Shoshone-Paiute Tribes

New Jersey

Powhatan Renape Nation

New Mexico

Alamo Navajo School Board, Inc.
All Indian Pueblo Council, Inc.
Eight Northern Indian Pueblos Council
Mescalero Apache Tribe
National Indian Youth Council
Pueblo of Laguna
Pueblo of Zuni
Ramah Navajo School Board, Inc.
Santa Clara Indian Pueblo
Santo Domingo Tribe

New York

American Indian Community House, Inc.
Native American Cultural Center, Inc.
Native American Community Services of Erie & Niagara Counties
St. Regis Mohawk Tribe
Seneca Nation of Indians

North Carolina

Cumberland County Association for Indian People
Eastern Band of Cherokee Indians
Guilford Native American Association
Haliwa-Saponi Tribe, Inc.
Lumbee Regional Development Association, Inc.
Metrolina Native American Association
North Carolina Commission of Indian Affairs

North Dakota

Spirit Lake Sioux Tribe
Standing Rock Sioux Tribe
Three Affiliated Tribes
Turtle Mountain Band of Chippewa Indians
United Tribes Technical College

Ohio

North American Indian Cultural Center, Inc.

Oklahoma

Caddo Indian Tribe of Oklahoma
Cherokee Nation of Oklahoma
Cheyenne-Arapaho Tribes of Oklahoma
Chickasaw Nation
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation
Comanche Indian Tribe
Creek Nation of Oklahoma
Four Tribes Consortium of Oklahoma
Inter-Tribal Council of N.E. Oklahoma
Kiowa Tribe of Oklahoma
Oklahoma Tribal Assistance Program, Inc.
Osage Nation
Pawnee Tribe of Oklahoma
Ponca Tribe of Oklahoma
Seminole Nation of Oklahoma
United Urban Indian Council, Inc.

Oregon

Confederated Tribes of Siletz Indians
Confederated Tribes of the Umatilla Indian Reservation
Confederated Tribes of Warm Springs
Organization of Forgotten Americans, Inc.

Pennsylvania

Council of Three Rivers

Rhode Island

Rhode Island Indian Council, Inc.

South Carolina

South Carolina Indian Development Council, Inc.

South Dakota

Cheyenne River Sioux Tribe
Lower Brule Sioux Tribe
Oglala Sioux Tribe
Rosebud Sioux Tribe
Sisseton-Wahpeton Sioux Tribe
United Sioux Tribes Development Corporation

Texas

Alabama-Coushatta Indian Tribal Council

Utah

Indian Center Employment Services, Inc.
Ute Indian Tribe

Vermont

Abenaki Self-Help Association/New Hampshire Indian Council

Virginia

Mattaponi-Pamunkey-Monacan Consortium

Washington

American Indian Community Center
Colville Confederated Tribes
Lummi Indian Business Council
Makah Tribal Council
Puyallup Tribe of Indians
Seattle Indian Center, Inc.
The Tulalip Tribes
Western Washington Indian Employment and Training Program

Wisconsin

Ho-Chunk Nation
Lac Courte Oreilles Tribal Governing Board
Lac Du Flambeau Band of Lake Superior Chippewas
Menominee Indian Tribe of Wisconsin
Milwaukee Area American Indian Manpower Council, Inc.
Oneida Tribe of Indians of Wisconsin
Wisconsin Indian Consortium

Wyoming

Shoshone & Arapahoe Tribes Joint Business Council

Note: Current JTPA section 401 grantees who do not appear on the above list were denied waivers either because their performance for Program Years 1996 and 1997 was not satisfactory or because they

have not been section 401 grantees for two full program years.

Signed at Washington, DC this 13th day of November, 1998.

Leroy Bingham,

Chief, Division of Indian and Native American Programs.

Anna W. Goddard,

Director, Office of National Programs.

E. Fred Tello,

Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.

[FR Doc. 98–31079 Filed 11–19–98; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volumn I

New York:
- NY980002 (FEB. 13, 1998)
- NY980003 (FEB. 13, 1998)
- NY980011 (FEB. 13, 1998)
- NY980013 (FEB. 13, 1998)
- NY980032 (FEB. 13, 1998)
- NY980034 (FEB. 13, 1998)
- NY980042 (FEB. 13, 1998)
- NY980044 (FEB. 13, 1998)
- NY980046 (FEB. 13, 1998)
- NY980047 (FEB. 13, 1998)

Volume II

Pennsylvania:
- PA980001 (FEB. 13, 1998)
- PA980004 (FEB. 13, 1998)
- PA980017 (FEB. 13, 1998)
- PA980033 (FEB. 13, 1998)
- PA980042 (FEB. 13, 1998)

Volume III

Florida:
- FL980009 (FEB. 13, 1998)
- FL980013 (FEB. 13, 1998)

Volume IV

Indiana:
- IN980001 (FEB. 13, 1998)
- IN980002 (FEB. 13, 1998)
- IN980003 (FEB. 13, 1998)
- IN980004 (FEB. 13, 1998)
- IN980005 (FEB. 13, 1998)
- IN980006 (FEB. 13, 1998)
- IN980016 (FEB. 13, 1998)
- IN980020 (FEB. 13, 1998)
- IN980059 (FEB. 13, 1998)

Michigan:
- MI980001 (FEB. 13, 1998)
- MI980002 (FEB. 13, 1998)
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- MI980012 (FEB. 13, 1998)
- MI980030 (FEB. 13, 1998)
- MI980031 (FEB. 13, 1998)
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- MI980060 (FEB. 13, 1998)
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- MI980070 (FEB. 13, 1998)
- MI980075 (FEB. 13, 1998)
- MI980080 (FEB. 13, 1998)
- MI980081 (FEB. 13, 1998)
- MI980082 (FEB. 13, 1998)
- MI980083 (FEB. 13, 1998)
- MI980084 (FEB. 13, 1998)

Volume V

Kansas:
- KS980004 (FEB. 13, 1998)
- KS980005 (FEB. 13, 1998)
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- KS980021 (FEB. 13, 1998)
- KS980023 (FEB. 13, 1998)
- KS980025 (FEB. 13, 1998)
- KS980026 (FEB. 13, 1998)
- KS980067 (FEB. 13, 1998)

Oklahoma:
- OK980014 (FEB. 13, 1998)
- OK980016 (FEB. 13, 1998)
- OK980017 (FEB. 13, 1998)
- OK980028 (FEB. 13, 1998)
- OK980034 (FEB. 13, 1998)
- OK980035 (FEB. 13, 1998)
- OK980036 (FEB. 13, 1998)
- OK980037 (FEB. 13, 1998)
- OK980038 (FEB. 13, 1998)
- OK980043 (FEB. 13, 1998)

Texas:
- TX980003 (FEB. 13, 1998)
- TX980007 (FEB. 13, 1998)
- TX980033 (FEB. 13, 1998)
- TX980034 (FEB. 13, 1998)

TX980035 (FEB. 13, 1998)
TX980037 (FEB. 13, 1998)
TX980069 (FEB. 13, 1998)

Volume VI

Colorado:
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CO980004 (FEB. 13, 1998)
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CO980007 (FEB. 13, 1998)
CO980008 (FEB. 13, 1998)
CO980009 (FEB. 13, 1998)
CO980010 (FEB. 13, 1998)
CO980014 (FEB. 13, 1998)
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CO980018 (FEB. 13, 1998)
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CO980021 (FEB. 13, 1998)
CO980023 (FEB. 13, 1998)
CO980025 (FEB. 13, 1998)
North Dakota:
ND980002 (FEB. 13, 1998)
Oregon:
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OR980017 (FEB. 13, 1998)
Washington:
WA980001 (FEB. 13, 1998)
WA980002 (FEB. 13, 1998)
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WA980009 (FEB. 13, 1998)
Wyoming:
WY980008 (FEB. 13, 1998)

Volume VII

California:
CA980004 (FEB. 13, 1998)
CA980009 (FEB. 13, 1998)
CA980027 (FEB. 13, 1998)
CA980029 (FEB. 13, 1998)
CA980030 (FEB. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800. When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C., this 12th day of November 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–30664 Filed 11–19–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on December 8, 9, 10 and 17, 1998. All of the meetings for December 8, 9, and 10 will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Ave., NE, Washington, DC. The December 17th meeting of the Committee on Occupational Safety and Health Statistics will be held in Conference Room 4328, in the Postal Square Building.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

Tuesday, December 8, 1998

1:30 p.m.—Committee on Compensation and Working Conditions—Meeting Room 9/10

1. Compensation inequality
2. Developing publication standards for the ECI
3. Davis Bacon benefits tests
4. Other business

Wednesday, December 9, 1998

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9/10

1. Update on Office of Employment and Unemployment Statistics management staffing
2. Update on National Longitudinal Survey program
3. Overview of efforts to measure employment of persons with disabilities
4. Occupational Employment Statistics State and Area estimates for the 1997 survey and current research proposals for Davis-Bacon data collection
5. Report on the Workforce Investment Act

1:30 p.m.—Committee on Foreign Labor Statistics Meeting Room 9/10

1. BLS international cooperation activities
2. Recent developments in international labor markets

Committee on Productivity, Technology and Growth—Meeting Room 9/10

1. Plans for development and publication of 1998–2008 projections and other scheduled analyses and publications of the Office of Employment Projections
2. Recent developments in the Office of Productivity and Technology
3. Results from the expanded industry productivity database

Thursday, December 10, 1998

1:30 p.m. Committee on Prices and Living Conditions Meeting Room 9/10

1. Experimental Consumer Price Index for the elderly
2. Healthcare costs in the Consumer Price Index
3. Review of policy on expenditure weight updates in the Consumer Price Index
4. Other business

Thursday, December 17, 1998

10:00 a.m.–1:00 p.m.—Committee on Occupational Safety and Health Statistics—Conference Room 4328

1. Report on the 1997 Survey of Occupational Injuries and Illnesses
2. Report on the number and incidence of days away from work cases and the number and incidence of cases involving restricted activity only
3. Participation of additional States in the Survey of Occupational Injuries and Illnesses
4. Followback epidemiology studies
5. Report on the status of the Census of Fatal Occupational Injuries
6. Discussion of the report on traumatic occupational injury research needs and priorities prepared by the National Occupational Research Agenda Traumatic Injury Team

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner at (Area Code 202) 606–5970.

Signed at Washington, DC this 13th day of November 1998.

Katharine G. Abraham,

Commissioner.

[FR Doc. 98–31082 Filed 11–19–98; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Division of Voluntary Programs, Directorate of Federal-State Operations, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20010, (202) 693–2213.

SUPPLEMENTARY INFORMATION: In 62 FR 52153 dated 10/6/1997, the Agency announced its intent to request approval from the OMB for certain information collection requirements contained in the Voluntary Protection Programs (VPP) application procedures. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved the collection of this information and assigned OMB control number 1218–0239. The approval expires 7/31/2001. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: November 16, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–31081 Filed 11–19–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

SUNSHINE ACT MEETING

The U.S. National Commission on Libraries and Information Science (NCLIS) Sunshine Act Meeting

TIME, DATE, AND PLACE: NGLIS Business Meeting, December 3 and 4, 1998, 9:00 a.m.–5:00 p.m. and 9:00 a.m.–3:00 p.m., respectively, Seattle Public Library, 100 Fourth Avenue, Seattle, WA.

DISCUSSION TOPICS:

Discussion and recommendations regarding NCLIS Open Hearing, "Kids and the Internet: the Promise and the Perils," held November 10, 1998
Briefing, Washington State Library Commission
Briefing, Gates Library Foundation
Update and reports on NCLIS committee, programs, and projects
Administrative matters

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

Dated: November 17, 1998.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 98–31189 Filed 11–18–98; 11:00 am]

BILLING CODE 7527–63–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Panel, Museum/Visual Arts/Design Section (Education & Access category) to the National Council on the Arts will be held on December 8–11, 1998. The panel will meet from 9:00 a.m. to 6:00 p.m. on December 8–10, and from 9:00 a.m. to 5:00 p.m. on December 11, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. A portion of this meeting, from 12:30 p.m. to 2:00 p.m. on December 11, will be open to the public for a policy discussion.

The remaining portions of this meeting, meet from 9:00 a.m. to 6:00 p.m. on December 8–10, and from 9:00 a.m. to 12:30 p.m. and 2:30 p.m. to 5:00 p.m. on December 11, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: November 16, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–31086 Filed 11–19–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of Partnership Panel, Regional Section A, (Regional Partnership Agreements category) to the National Council on the Arts will be held on December 11, 1998. The panel will meet in teleconference from 3:00 p.m. to 5:00 p.m. in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the

determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–31087 Filed 11–19–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Partnership Panel, Regional Section B, (Regional Partnership Agreements category) to the National Council on the Arts will be held on December 15, 1998. The panel will meet in teleconference from 3:00 p.m. to 5:00 p.m. in Room 726 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: November 16, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 98–31088 Filed 11–19–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by December 19, 1998. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Special Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

Permit Application No. 99–011

1. *Applicant:* Erland A. K. Fogelberg, Vice President, Orient Lines, 1510 S.E. 17th Street, Suite 400, Fort Lauderdale, Florida 33316.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Areas. The applicant proposes to conduct educational visits, for passengers and staff members of the R/V Marco Polo, to the following Ross Island areas: Hut and associated artifacts, Backdoor Bay, Cape Royds (ASPA #156), and Cape Evans Historic Site (ASPA #154), and Discovery Hut, Hut Point (ASPA #157). All visits will be conducted in accordance with the relevant Management Plans for each site.

Location: ASPA #154—Cape Evans, Ross Island, ASPA #156—Cape Royds, Ross Island, and ASPA #157—Hut Point, Ross Island.

Dates: February 1, 1999—February 28, 2004.

Permit Application No. 99–014

2. *Applicant:* Bruce Rheins, CBS News, 7800 Beverly Boulevard, Los Angeles, California 90036, Fort Lauderdale, Florida 33316.

Activity for Which Permits is Requested: Enter Antarctic Specially Protected Areas. The applicant proposes to enter Antarctic Specially Protected Areas to film scientific projects in the field for educational purposes. Access to these sites will be on an opportunistic basis and the film team will be under constant supervision and direction.

Location:

ASPA #105—Beaufort Island, Ross Sea
ASPA #106—Cape Hallett, Victoria Land
ASPA #116—"New College Valley", Caughley Beach, Cape Bird
ASPA #118—Cryptogram Ridge, Mount Melbourne
ASPA #119—Forlidas Pond & Davis Valley Ponds
ASPA #121—Cape Royds, Ross Island
ASPA #122—Arrival Heights, Hut Point Peninsula
ASPA #123—Barwick Valley, Victoria Land
ASPA #124—Cape Crozier, Ross Island
ASPA #130—Tramway Ridge, Mt. Erebus
ASPA #131—Canada Glacier, Lake Fryxell, Taylor Valley
ASPA #137—Northwest White Island, McMurdo Sound
ASPA #138—Linneaus Terrace, Asgard Range

Dates: January 5, 1999–January 24, 1999.

Permit Application No. 99–015

3. *Applicant:* Ronald G. Koger, Project Director, Antarctic Support Associates, 61 Inverness Drive East, Suite 300, Englewood, Colorado 80112.

Activity for Which Permit Requested: Enter Antarctic Specially Protected Area. The applicant proposes to enter the U.S. Research Station, "Copacabana", located within ASPA #128, Western Shore of Admiralty Bay, King George Island. Access to the sites

is for purposes of moving research personnel and supplies from the ship to shore via zodiac, tasks associated with station opening and closing, and maintenance and servicing of station facilities and equipment. Landings at the site will be conducted via zodiac, with personnel transiting from the shoreline to the hut on foot.

Location: ASPA #128—Western Shore of Admiralty Bay, King George Island.

Dates: January 1, 1999–April 1, 2000.

Permit Application No. 99–016

4. *Applicant:* Donal T. Manahan, Department of Biological Sciences, University of Southern California, Los Angeles, California 90089–0371.

Activity for Which Permit is Requested: Introduction of a Non-indigenous Species into Antarctica. The applicant proposes to introduce cultures of *E. coli* which are a component of several molecular biology DNA cloning kits that will be used in a course in Integrative Biology and Adaptation of Antarctic Marine Organisms. *E. coli* will be used to replicate DNA during gene cloning and the bacterial stocks will be transported, with other kit reagents, frozen on dry ice (−80°). All experiments will be conducted in the Crary laboratory facilities at McMurdo Station.

Immediately after an experiment, using *E. coli* cultures, all media and materials coming into contact with the bacteria will be sterilized by autoclaving. Standard P–2 containment guidelines will be followed for the subsequent disposal of all materials and supplies. All *E. coli* cultures will be sterilized and killed at the end of the project.

Location: Crary Science and Engineering Laboratory, McMurdo Station, Antarctica Island.

Dates: December 29, 1998–February 15, 1999.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 98–30995 Filed 11–19–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SKILL STANDARDS BOARD

Notice of Open Meeting

AGENCY: National Skill Standards Board.

ACTION: Notice of open meeting.

SUMMARY: The National Skill Standards Board was established by an Act of Congress, the National Skill Standards Act, Title V, Pub. L. 103–227. The 27-member National Skill Standards Board serves as a catalyst for the development and implementation of a national system of voluntary skill standards and certification through voluntary partnerships. These partnerships will have the full and balanced participation of business, industry, labor, education and other key groups.

TIME AND PLACE: The meeting will be held from 8:30 a.m to approximately 12:30 p.m. on Friday, December 11, in the Hotel Washington located at 515 15th Street, NW, Washington, DC.

AGENDA: The agenda for the Board Meeting will include: an update on the Board's Strategic Plan; reports from the Board's committees; presentations from the Voluntary Partnerships—Manufacturing, Installation and Repair (Manufacturing Skill Standards Council) and Retail Trade, Wholesale Trade, Real Estate & Personal Services (Sales and Services); and reports from Convening Groups representing the following industry clusters: Business & Administrative Services; Construction; Education and Training; Finance & Training; Restaurants, Lodging, Hospitality & Tourism, and Amusement & Recreation; and Telecommunications, Computers, Arts & Entertainment, and Information.

PUBLIC PARTICIPATION: The meeting is open to the public. Seating is limited and will be available on a first-come, first-served basis. (Seats will be reserved for the media.) If special accommodations are needed contact Michele Russo at (202) 254–8628 extension 10.

FOR FURTHER INFORMATION CONTACT: Tracy Marshall, Director of Operations at (202) 254–8628 extension 13.

Signed in Washington, DC, this 13th day of November 1998.

Edie West,

Executive Director, National Skill Standards Board.

[FR Doc. 98–31080 Filed 11–19–98; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, that authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, § 50.46(a)(1)(i), requires that each pressurized light-water nuclear power reactor must be provided with an emergency core cooling system (ECCS) that is designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph 50.46(b). ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents (LOCAs) of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated small and large break LOCAs are calculated that will ensure adequate long-term cooling.

By letter dated September 17, 1998, the licensee described a modification that would add voltage and frequency protection for the Oconee loads when they are supplied from a Keowee hydro unit. The protection would separate Oconee loads from a Keowee unit if that unit's voltage or frequency becomes greater than 110 percent or less than 90 percent of rated value at any time after loading. The planned design would also delay energizing the Oconee loads on the underground power path until the Keowee unit reaches greater than 90 percent voltage and frequency. The existing design allows early loading of the underground path Keowee unit at approximately 60 percent voltage. During the design phase of this modification, while considering the frequency overshoot that the Keowee units normally experience during an emergency start, questions arose concerning whether the emergency power system should be loaded at 60 percent or 90 percent. To provide needed data to resolve this question, the Keowee Emergency Power and Engineered Safeguards Functional (KEP/ESF) Test is planned.

The test is scheduled during the Unit 3 outage, will be performed on the Keowee underground path, and will consist of two parts. One part will load the Keowee unit at its present design of approximately 60 percent rated voltage

and frequency. The second part will use the same loads, but the Keowee unit will be loaded at approximately 90 percent rated voltage and frequency. Test data will be collected throughout the Oconee emergency power system (EPS) during the test. The licensee will then review this data to determine which delayed loading modifications should be implemented.

In the September 17, 1998, letter, Duke explained it has determined that this test involves an unreviewed safety question, which, therefore, requires NRC approval prior to performing the test. This request is being processed separately. The licensee also indicated that in the extremely unlikely (probability, according to the licensee, of 2 E–9) event that a real LOCA with loss of offsite power (LOOP) were to occur on either of the Oconee operating units (Unit 1 or 2) simultaneously when the test is initiated on Unit 3, the Oconee EPS would be placed in a condition outside the design basis. The EPS may not be capable of handling the electrical loading of two instantaneous LOCA/LOOP events without some safety related equipment being adversely affected. However, the EPS would be able to handle the electrical loading if the two events are offset in time by approximately 10 seconds to allow the first unit's load to reach a steady-state condition prior to starting of the second unit's emergency loads. Therefore, this 10-second window of vulnerability causes an infinitesimally small, but non-zero, increase in the probability of a malfunction of equipment important to safety and increases the potential consequences of a LOCA/LOOP event during the performance of the test.

The ECCS is designed to assure that the consequences of the spectrum of LOCA accidents, coincident with a LOOP, are within the performance criteria specified in 10 CFR 50.46(b). As explained in the licensee's letter dated October 21, 1998, the planned test on Unit 3 could challenge this criteria in the extremely unlikely event that a LOCA and LOOP on Units 1 or 2 occurred coincident with the start of the test on Unit 3. Therefore, in the October 21 letter and pursuant to 10 CFR 50.12, the licensee applied for an exemption from 10 CFR 50.46.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. The requested exemption meets the special circumstances of 10 CFR 50.12(a)(2)(iv) in that the exemption would result in benefit to the public health and safety that compensates for the small decrease in safety that may result from granting the exemption. The benefit is that this test will produce data to support a decision on implementation of proposed modifications to the loading methodology of the Keowee hydro unit to improve the overall reliability of the Oconee EPS, which supports the ECCS. The test is being conducted under a comprehensive test plan that includes special management oversight, "just in time training" for the operators, including power system failures, and detailed contingency plans. Other precautions to protect the power systems will be in place, which are described in more detail in the licensee's September 17, 1998, submittal. No other work will be allowed on the EPS of any unit during this test. A Lee gas turbine will be powering CT–5 to provide additional defense in depth for the EPS during the test. This minimizes the likelihood of a plant-centered LOOP occurring during the test period. Additionally, precautions have been taken so that the planned LOOP tests on Unit 3 will not propagate to the operating units. Therefore, the likelihood of two LOCA/LOOP events occurring within approximately 10 seconds of each other (one event being the LOCA/LOOP test on Unit 3 and the second event being an actual LOCA/LOOP on Unit 1 or 2) is low during the postulated period of 24-hour duration of the KEP/ESF Test.

IV

For the foregoing reasons, the NRC staff has concluded that the licensee's proposed exemption request from the requirements of 10 CFR 50.46(b) for the KEP/ESF Test is justified. The probability of a coincident LOCA/LOOP on one of the operating units (approximately 2E–9, as estimated by the licensee) was calculated for the entire duration (24 hours) of the KEP/ESF Test. If a separation in time of greater than 10 seconds exists between initiation of the test and a coincident event, the ECCS on the affected unit will be capable of performing its intended safety function. The benefit to the Oconee Emergency Power System from performing this test, along with the low probability of a concurrent LOCA/LOOP on one of the two operating Oconee units, provides justification for granting this exemption request. In addition, granting of the exemption to allow performance of the test will not present an undue risk to public health and safety and is consistent with the common defense and security. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12(a)(2)(iv), in that the exemption will result in a benefit to the public health and safety that compensates for the decrease in safety that may result from the granting the exemption because the exemption will allow the test to be performed that will produce data to support an implementation decision for a proposed modification that will improve the overall reliability of the Oconee emergency power system.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Duke an exemption from the requirements of 10 CFR 50.46(b) for Units 1, 2, and 3 during the 24-hour period when the tests are being conducted on Unit 3 as requested in the submittal.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (63 FR 63754).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of November 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31025 Filed 11–19–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–32443–SP; ASLBP No. 99–755–01–SP]

Atomic Safety and Licensing Board; Michel A. Philippon, (Denial of Senior Operator License Application); Notice of Hearing and of Opportunity To Petition for Leave To Intervene or To Participate as an Interested Governmental Entity

November 16, 1998.

Before Administrative Judges: Thomas S. Moore, Presiding Officer, Dr. Charles N. Kelber, Special Assistant.

On October 4, 1998, the NRC staff issued a notice of denial of application for a senior reactor operator's (SRO) license to Michel A. Philippon. In that letter, the staff advised Mr. Philippon that although he had passed the written portion of the SRO examination administered to him on April 6, 1998, his application was being denied because he failed to pass the operating test portion of the examination.

On October 16, 1998, Mr. Philippon filed a timely hearing request challenging the staff's denial of his SRO license application. On October 26, 1998, the Commission referred Mr. Philippon's hearing request to the Atomic Safety and Licensing Board Panel for the appointment of a presiding officer to conduct any necessary proceedings. On October 28, 1998, the Chief Administrative Judge of the Panel appointed Administrative Judge Thomas S. Moore, to act as the Presiding Officer, and Administrative Judge Charles N. Kelber, to serve as Special Assistant to the Presiding Officer.

After receiving the staff's November 6, 1998 answer to Mr. Philippon hearing request, on November 13, 1998, the Presiding Officer issued an order granting Mr. Philippon's hearing request.

Please take notice that a hearing will be conducted in this proceeding. This hearing will be governed by the informal hearing procedures set forth in 10 CFR Part 2, Subpart L (10 CFR 2.1201–.1263).

Further, in accordance with 10 CFR 2.1205(j), please take notice that within thirty (30) days from the date of publication of this notice of hearing in the **Federal Register** (1) any person whose interest may be affected by this proceeding may file a petition for leave to intervene; and (2) any interested governmental entity may file a request to participate in this proceeding in accordance with 10 CFR 2.1211(b). Any petition for leave to intervene must set forth the information required by 10 CFR 2.1205(e), including a detailed description of (1) the interest of the petitioner in the proceeding; (2) how that interest may be affected by the results of the proceeding, including the reasons why the petitioner should be permitted to intervene with respect to the factors set forth in 10 CFR 2.1205(h); (3) the petitioner's areas of concern regarding the staff's October 4, 1998 denial of Mr. Philippon's SRO license application; and (4) the circumstances establishing that the petition to intervene is timely in accordance with 10 CFR 2.1205(d). In accordance with 10 CFR 2.1211(b), any request to participate by an interested governmental entity must state with reasonable specificity the requestor's areas of concern regarding the staff's October 4, 1998 denial of Mr. Philippon's SRO license application.

In addition, pursuant to 10 CFR 2.1211(a), any person not a party to the proceeding may submit a written limited appearance statement setting forth his or her position on the issues in this proceeding. These statements do not constitute evidence, but may assist the Presiding Officer and/or parties in defining the issues being considered. Persons wishing to submit a written limited appearance statement should send it to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. A copy of the statement also should be served on the Presiding Officer and the Special Assistant.

In the November 13, 1998 order, the Presiding Officer directed that on or before December 14, 1998, the staff shall file the hearing file for this proceeding. Once the hearing file is received, pursuant to 10 CFR 2.1233 the Presiding Officer will establish a schedule for the filing of written presentations by Mr. Philippon and the staff, which may be subject to supplementation to accommodate the grant of any intervention petition or request to participate by an interested governmental entity. After receiving the parties' written presentations, pursuant to 10 CFR 2.1233(a) and 2.1235, the Presiding Officer may submit written questions to the parties or any interested governmental entity or provide an opportunity for oral presentations by any party or interested governmental entity, which may include oral questioning of witnesses by the Presiding Officer.

Documents relating to this proceeding are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

Dated: November 16, 1998.

Thomas S. Moore,

Administrative Judge.

[FR Doc. 98–31023 Filed 11–19–98; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Supplemental Information on Accident and Insurance.

(2) *Form(s) submitted:* SI–1c, SI–5, ID–3s, ID–3s–1, ID–3u, ID–30k, ID–30k–1.

(3) *OMB Number:* 3220–0036.

(4) *Expiration date of current OMB clearance:* 12/31/1998.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for profit.

(7) *Estimated annual number of respondents:* 30,700.

(8) *Total annual responses:* 30,700.

(9) *Total annual reporting hours:* 1,875.

(10) *Collection description:* The Railroad Unemployment Insurance Act provides for the recovery of sickness benefits paid if an employee receives a settlement for the same injury for which benefits were paid. The collection obtains information about the person or company responsible for such payments that is needed to determine the amount of the RRB's entitlement.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–31084 Filed 11–19–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26941]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

November 13, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for

complete statements of the proposed transactions(s) and any amendment is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 8, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarants(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 8, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

UtiliCorp United Inc. (70–9363)

UtiliCorp United Inc. ("UtiliCorp"), 20 West Ninth Street, Kansas City, Missouri 64105, a public utility holding company claiming exemption from registration under rule 10 of the Act, has filed an application under section 3(b) and rules 10 and 11 under the Act.

UtiliCorp is a publicly traded corporation which engages, through divisions, primarily in the sale and distribution of gas and electricity to retail and wholesale customers in several states, Canada, New Zealand and Australia. One of UtiliCorp's subsidiaries is Power New Zealand Limited ("PNZ"), which is also a foreign utility company exempt under section 33 of the Act.

UtiliCorp now requests an order under section 3(b) of the Act, exempting PNZ from all provisions of the Act, except section 9(a)(2). UtiliCorp states that PNZ will not derive any material part of its income, directly or indirectly, from sources within the United States. In addition, UtiliCorp states that PNZ is not, and does not own any securities of any company which is, a public utility or holding company operating in the United States.

UtiliCorp states that its investment in PNZ will not in any way diminish the ability of various state commissions that regulate the retail electric and gas operations of UtiliCorp to protect the interests of consumers in their respective states. UtiliCorp states that its domestic operations are, and will continue to be, fully separated from its foreign operations. UtiliCorp represents that it will maintain separate books of account for any of its subsidiaries that may control any foreign company. UtiliCorp further represents that it will provide access to these books and records to each state commission with rate jurisdiction to the extent not already required by law.

UtiliCorp states that, if an unqualified exemption under section 3(b) is granted, it intends to rely on rule 10 to provide it and intermediated parent to PNZ an exemption from the Act as holding companies due to their interests in PNZ. In addition, UtiliCorp asserts that it will rely on rule 11(b)(1) to provide an exemption from the approval requirements of sections 9(a)(2) and 10 to which UtiliCorp would otherwise be subject.

The Peoples Natural Gas Company, et al. (70–9379)

The Peoples Natural Gas Company ("PNG"), a gas public utility subsidiary company of Consolidated Natural Gas Company ("CNG"), a registered holding company, and CNG Producing Company ("CNGP"), a gas and oil exploration and production subsidiary company of CNG, both located at 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3197 have filed an application-declaration under sections 9(a), 10 and 12(f) of the Act and rules 43 and 54 under the Act.

PNG has signed a binding letter of intent, contingent upon Commission approval, to sell all of its gas production properties ("Properties") to CNGP. The Properties consist of PNG's interest in wells having reserves of approximately 41.9 billion cubic feet, together with associated oil and gas leases covering approximately 175,000 acres, related agreements and equipment, and certain portions of gathering lines.

The sale price for the Properties is approximately $14.5 million. This price represents the net book value of all the production properties as shown on PNG's books of account as of November 30, 1997, and will be adjusted for further depreciation at the time of closing.

Conectiv, et al. (70–9069)

Conectiv, a registered holding company, and its marketing subsidiary, Conectiv Energy Supply, Inc. ("CES"), both located at 800 King Street, Wilmington, DE 19899, Delmarva Capital Investments, Inc. ("DCI"), a nonutility subsidiary of Conectiv, Conectiv Services, Inc. ("CSI"), an energy-related company, both located at 252 Chapman Road, P.O. Box 6066, Newark, DE 19714, ATE Investment, Inc. ("ATE"), Atlantic Generation, Inc. ("AGI"), and Atlantic Southern Properties, Inc. ("ASP"), all nonutility subsidiaries of Conectiv, located at 5100 Harding Highway, Mays Landing, NJ 08330 have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 12(f) of the Act and rules 45, 46 and 54 under the Act.

By order dated February 25, 1998 (HCAR No. 26832) ("Merger Order"), the Commission authorized Conectiv to consummate certain transactions ("Merger") resulting in the acquisition by Conectiv of all of the outstanding voting securities of Delmarva Power & Light Company, an electric public utility company ("Delmarva"), and Atlantic City Electric Company, an electric public utility company ("ACE").[1] Also as a result of the Merger and certain restructuring that was implemented contemporaneously with the Merger, Conectiv became the direct or indirect owner of various nonutility businesses.

Conectiv now proposes, through December 31, 2001, to simplify and consolidate its nonutility subsidiaries. The restructuring will be accomplished in two phases ("Phase One" and "Phase Two"). During Phase One, which will be implemented as soon as practicable following the issuance of an order by the Commission in this filing, the number of active direct nonutility subsidiaries of Conectiv will be reduced to six: (1) CSI, which will focus on energy-related services and the marketing of energy to retail customers; (2) CES, which will focus on energy supply and marketing to wholesale and industrial customers, including associates; (3) DCI, which will be renamed Conectiv Properties and Investments, Inc. ("CPI") and will own the nonutility investments which are more passive in nature; (4) ASP, which will be merged into CPI in Phase Two; (5) AGI, which will be merged into CES in Phase Two; and (6) ATE, which will also be merged into CPI in Phase Two.

Phase One

To implement Phase One and reduce the number of direct non-utility subsidiaries, numerous actions must be effected, including the following proposed actions. Atlantic Energy Enterprises, Inc. ("AEE"), a direct nonutility subsidiary of Conectiv, that was formed as a holding company for Conectiv's nonutility investments, will

[1] Conectiv's two public utility subsidiaries (Delmarva and ACE) and their subsidiaries are unaffected by the proposed restructuring. Similarly, the system's service company, Conectiv Resource Partners, Inc., is unaffected.

be merged with and into Conectiv.[2] This action will make all seven wholly owned direct subsidiaries of AEE [3] direct holdings of Conectiv, for an interim period.

The applicants state that the factors that warranted the formation of special purpose subsidiaries for investment in various cogeneration projects no longer exist. Therefore, during Phase One, Pedrick General, Inc., Vineland General, Inc. and Binghamton General, Inc. ("collectively, "General Partners"), all special purpose subsidiaries formed to act as general partners in Pedrick Cogeneration Limited, Inc., Vineland Cogneration Limited, Inc. and Binghamton Cogeneration Limited, (collectively, "Cogen LLCs"), respectively. During Phase One, the General Partners, through a Short-form Merger, will be merged into their parent company, AGI, and the interest in the Cogen LLCs will be acquired by ATE.

During Phase One, CSI will be the surviving corporation following Short-form Mergers with Conectiv Solutions LLC, Altemp Energy Systems, Inc. and Power Consulting Group, Inc. Each of these companies has been authorized to provide energy-related services to retail consumers.[4] CSI will succeed to each of the authorities previously granted by the Commission to the predecessor companies in the Merger Order. CSI will also own four additional wholly owned subsidiaries: Conectiv Plumbing LLC, a company required under New Jersey law in connection with the heating, ventilation and air conditioning services provided by CSI; CTS; Conectiv Communications, Inc., an exempt telecommunications company; and Enerval.

During Phase One, CPI will become the holder of certain nonregulated investments that are passive in nature. However, for maximum flexibility, Conectiv requests authorization to retain certain passive investments if retention by Conectiv is deemed more appropriate for tax or other reasons. CPI will be the surviving corporation following Short-form Mergers with Delmarva Services Company, a corporation formed to own and finance an office building that is leased to Delmarva and its associates, Christiana Capital Management, Inc., a corporation that owns an office building leased to Delmarva, Atlantic Energy International, Inc., a corporation formed to broker used utility equipment to foreign countries and AET, a corporation formed to research and develop energy technology.

During Phase One, CES will be the surviving corporation following the Short-form Merger with Petron Oil Corporation, an energy marketing company. CES will also acquire the capital stock of Delmarva Operating Services Company ("DOSC"), a company providing management services to independent production companies or exempt wholesale generators. The capital stock in DOSC will be transferred up to Conectiv by capital dividend and then contributed by Conectiv to CES in an exempt capital contribution. Depending on the results of a pending tax analysis, the transfer may be accomplished by (1) an asset for stock merger in which Delmarva Capital Investments, Inc. ("DCI"), owner of the DOSC securities would receive CES securities in exchange for the assets or securities of DOSC, or (2) a dividend by DCI to Conectiv of the shares of DOSC followed by a capital contribution of the shares to CES.

Phase Two

Phase Two will be completed as appropriate giving consideration to: (1) Electric deregulation at the state and federal level; (2) tax implications; and (3) other related issues. Upon completion of Phase Two, the number of active direct nonutility subsidiaries of Conectiv ("Direct Nonutilities") will be reduced from six to three (CSI, CES and CPI).

During Phase Two: (1) CSI will continue to focus on energy-related services and the marketing of energy to retail customers; (2) CES will continue to focus on energy supply and marketing to wholesale and industrial customers, and acquire AGI by Short-form Merger; and (3) CPI will continue to own certain nonutility investments which are more passive in nature, and acquire ASP and ATE by Short-form Mergers.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31037 Filed 11–19–98; 8:45 am]

BILLING CODE 8010–01–M

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[2] This merger will be a statutory short form merger ("Short-form Merger"). A Short-form Merger occurs when a parent corporation acquires all of the capital stock of a first tier subsidiary.

[3] AEE's direct subsidiaries are: ATE; AGI; Conectiv Thermal Systems, Inc. ("CTS") (formerly Atlantic Thermal Systems, Inc.), a company that provides thermal energy management services; CoastalComm, Inc. ("Coastal"); Atlantic Southern Properties, Inc. ("ASP"); Atlantic Energy Technology, Inc. ("AET") and Enerval, LLC ("Enerval"), a limited liability company that provides energy management services. CSI will acquire Enerval and CTS during Phase One.

Four of the six subsidiaries of CTS (Atlantic Jersey Thermal Systems, Inc., Atlantic Pacific Las Vegas LLC, Atlantic-Pacific Glendale LLC and Thermal Energy L.P.I) will be unaffected by the restructuring. Atlantic Paxton Cogeneration, Inc. has been dissolved and ATS Operating Services, Inc. may be merged with Thermal Energy L.P.I in Phase Two.

[4] *See Conectiv*, Holding Company Act Release No. 26832 (Feb. 25, 1998).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Redwood Empire Bancorp, Common Stock, No Par Value) File No. 1–10868

November 16, 1998.

Redwood Empire Bancorp ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company's Board of Directors approved a plan to switch from listing the Security on Amex to listing the Security on Nasdaq in order to provide the Company with greater visibility and the Company's stockholders with greater liquidity. The Company notified Amex of its intent to withdraw its Security from listing and registration on the Exchange and to apply to Nasdaq.

The Security has begun trading on the Nasdaq and the Company believes it is no longer necessary to continue trading on the Amex.

The Company has complied with Rule 18 of Amex by filing with the Exchange a certified copy of the resolution adopted by the Board of Directors authorizing the withdrawal of the Security and by providing Amex with the reasons for the proposed withdrawal.

The Exchange has informed the Company that Amex will not object to the Company's application to withdrawal its Security from listing and registration on the Exchange. This application relates solely to the withdrawal from listing of the Company's Security from the Amex.

By reason of Section 12 of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file

reports under the Act with the Commission.

Any interested person may, on or before December 8, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–31036 Filed 11–19–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Zevex International, Inc., Common Stock, $.001 Par Value) File No. 1–12965

November 16, 1998.

Zevex International, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Board of Directors of the Company unanimously approved a resolution on August 17, 1998, to withdraw the Company's Security from listing and registration on the Amex, because an application was being made to have the Security listed on Nasdaq. The Company began trading on Nasdaq on November 2, 1998.

The Company has complied with the rules of the Exchange by notifying the Amex of its intent to withdraw its Security from listing on the Exchange by letter dated September 22, 1998, and by providing the Exchange a copy of the certified Board of Director's resolution.

On September 23, 1998, the Exchange informed the Company that Amex would not interpose any objection to the action nor require the Company to send common stockholders any statement with respect thereto.

Any interested person may, on or before December 8, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–31035 Filed 11–19–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–98–3680]

Application of Redemption, Inc. d/b/a Island Air Service for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 98–11–16).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Redemption, Inc. d/b/a Island Air Service fit, willing, and able and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail.

RESPONSES: Objections and answers to objections should be filed in Docket OST–98–3680 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order. Persons wishing to file objections should do so no later than November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: November 16, 1998.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 98–31028 Filed 11–19–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on December 15, 1998, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Department of Transportation Building (Nassif Bldg.), Room 7332, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on December 15, 1998. The agenda for this meeting will include status reports on Fatigue Countermeasures Working Group, the Airplane Performance Working Group, and, possibly, a recommendation from the Reserve Duty/Rest Requirements Working Group. Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the

heading FOR FURTHER INFORMATION CONTACT.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on November 16, 1998.

Quentin J. Smith, Jr.,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–31027 Filed 11–19–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Amtrak Reform Council; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Amtrak Reform Council meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Federal Railroad Administration (FRA) gives notice of a meeting of the Amtrak Reform Council ("ARC"). The purpose of the meeting is to receive a briefing from the Department of Transportation's Inspector General regarding the independent assessment of Amtrak's financial needs and to take up such other matters as the Council or its members deem appropriate.

DATES: The ARC meeting is scheduled for 9:00 a.m. to 12:00 p.m. EST on Tuesday, November 24, 1998.

ADDRESSES: The meeting will be held in Krieble Center, Free Congress Foundation, 717 Second Street, NE, Washington, DC. The meeting is open to the public on a first-come, first-served basis. Portions of the meeting may be closed to the public at the discretion of the Council if proprietary information is to be discussed. Persons in need of special arrangements should contact the person whose name is listed below.

FOR FURTHER INFORMATION CONTACT: Alexander Chavrid, Passengers Programs Division, Office of Railroad Development, FRA, RDV–13, Mail Stop 20, 1120 Vermont Avenue, NW, Washington, DC 20590 (mailing address only) or by telephone at (202) 493–6380.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA) as an independent commission to evaluate Amtrak's performance and make recommendations to Amtrak for achieving further cost containment and productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC begin to make findings on whether Amtrak can meet certain financial goals and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a 5 year term.

Issued in Washington, DC on November 17, 1998.

Mark E. Yachmetz,

Chief, Passenger Programs Division.

[FR Doc. 98–31058 Filed 11–19–98; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. S. MC–F–20937 and MC–F–20939] [1]

Coach USA, Inc., and Coach USA Northeast, Inc.—Control—Bonanza Bus Lines, Inc. and Coach USA North Central, Inc.—Control—Central Cab Company and Mountaineer Coach, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transactions.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, and its wholly owned noncarrier subsidiaries, Coach USA Northeast, Inc. (Northeast), and Coach USA North Central, Inc. (North Central) (collectively, applicants), filed an application [2] under 49 U.S.C. 14303 for Northeast to acquire control of Bonanza Bus Lines, Inc. (Bonanza), a motor passenger carrier, and for North Central to acquire control of Central Cab Company (Central Cab) and Mountaineer Coach, Inc. (Mountaineer), both motor passenger carriers. Persons wishing to oppose the applications must follow the rules under 49 CFR 1182.5 and 1182.8.[3] The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by January 4, 1999. Applicants may file a reply by January 19, 1999. If no comments are filed by January 4, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20937, *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695).]

SUPPLEMENTARY INFORMATION: In *Coach USA, Inc., and Coach USA North Central, Inc.—Control—Nine Motor Passenger Carriers*, STB Docket No. MC–F–20931, *et al.* (STB served Nov. 19, 1998), we approved, subject to comments, Coach's transfer of direct control of Coach-controlled motor passenger carriers to six noncarrier subsidiaries: North Central, Northeast, Coach USA South Central, Inc., Coach USA Southeast, Inc., Coach USA West, Inc., and Yellow Cab Service Corporation. While Coach will remain the sole owner of all of the stock of the subsidiaries, and will indirectly control the operating carriers, the subsidiaries will directly control the existing and future operating carriers of Coach.

Coach currently controls 73 motor passenger carriers. In STB Docket No. MC-F-20937, Coach and Northeast seek control of Bonanza.[4] In STB Docket No.

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] Applicants filed a single pleading. Although the proposed control transactions are unrelated, applicants sought approval in a single application which embraced both transactions. Each transaction has been separately docketed.

[3] Revised procedures governing finance applications filed under 49 U.S.C. 14303 were adopted in *Revisions to Regulations Governing Finance Applications Involving Motor Passenger Carriers*, STB Ex Parte No. 559 (STB served Sept. 1, 1998).

[4] Bonanza is a Rhode Island corporation. It holds federally issued operating authority in Docket No. MC–13028, which authorizes it to provide regular-route operations between various points in New England and between points in New England to points in New York, and charter and special operations between points in the United States. It also holds authority issued by the Rhode Island Division of Public Utitilies and Carriers, the Connecticut Department of Transportation, and the Massachusetts Department of Public Utilities to conduct intrastate operations. It operates 54 buses; employs approximately 150 persons; and earned gross annual revenues in fiscal year 1997 of approximately $19 million. Prior to the transfer of its stock into a voting trust, it was owned by George M. Sage.

MC-F-20939, Coach and North Central seek control of Central Cab[5] and Mountaineer.[6] The acquisitions of control will be accomplished through the acquisition of all of the stock of each carrier. According to applicants, the stock is currently held in independent voting trusts to avoid any unlawful control pending disposition of this proceeding.

Coach submits that there will be no transfer of any federal or state operating authorities held by any of the carriers to be acquired. Following the consummation of the control transactions, each of these carriers will continue operating in the same manner as before and, according to Coach, granting the applications will not reduce competitive options available to the traveling public. Coach asserts that the carriers to be acquired do not compete to any meaningful degree with one another, are relatively small, and each faces substantial competition from other bus companies and transportation modes.

Coach also submits that granting the application will produce substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, Coach claims that each carrier to be acquired will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Applicants indicate that Coach or the relevant subsidiary will provide each of the carriers to be acquired with centralized legal and accounting functions and coordinated purchasing services. In addition, applicants state that vehicle sharing arrangements will be facilitated to ensure maximum use and efficient operation of equipment and that coordinated driver training services will be provided. Applicants also state that the proposed transactions will benefit the employees of each of the carriers to be acquired and that all collective bargaining agreements will be honored by Coach and the subsidiaries.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby enhancing the benefits resulting from these control transactions.

Applicants certify that: (1) the jurisdictional threshold has been met with respect to the transactions that are the subject of the applications;[7] (2) none of the carriers to be acquired holds an unsatisfactory safety rating from the U.S. Department of Transportation;[8] (3) each of the carriers to be acquired has sufficient liability insurance; (4) none of the carriers to be acquired is domiciled in Mexico or owned or controlled by persons of that country; and (5) approval of the transactions will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from the applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the applications, we find that the proposed acquisitions of control are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the applications.[9] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It Is Ordered

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on January 4, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, SW, Suite 600, Washington, DC 20024; and (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW, Washington, DC 20530.

Decided: November 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98-31093 Filed 11-19-98; 8:45 am]

BILLING CODE 4915-00-P

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[5] Central Cab is a Pennsylvania corporation. It holds federally issued operating authority in Docket No. MC-133058, which authorizes it to provide regular-route common carrier charter and special operations between points in the United States (except Hawaii). It also holds authority issued by the Pennsylvania Public Utility Commission, the Public Service Commission of West Virginia, and the Public Utilities Commission of Ohio to conduct intrastate operations. It operates approximately 34 motorcoaches, 11 school buses, and 9 vans; employs 96 persons; and earned gross annual revenues in fiscal year 1997 of approximately $4.7 million. Prior to the transfer of its stock into a voting trust, it was owned by John L. McNelly.

[6] Mountaineer is a Pennsylvania corporation. It holds federally issued operating authority in Docket No. MC-229627, which authorizes it to provide charter and special operations between points in the United States (except Alaska and Hawaii). It also holds authority issued by the Public Utilities Commission of West Virginia to conduct intrastate operations. It operates 6 motorcoaches and 2 vans; employs 28 persons; and earned gross annual revenues in fiscal year 1997 of approximately $1.1 million. Prior to the transfer of its stock into a voting trust, it was owned by John L. McNelly.

[7] *See* 49 CFR 1182.2(a)(5).

[8] Bonanza and Central Cab each hold a satisfactory rating; Mountaineer has not been rated.

[9] Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33678]

Emons Transportation Group, Inc., and Emons Railroad Group, Inc.—Continuance in Control Exemption—St. Lawrence & Atlantic Railroad (Quebec) Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the prior approval requirements of 49 U.S.C. 11323-25 the continuance in control by Emons Transportation Group, Inc., and Emons Railroad Group, Inc., of St. Lawrence & Atlantic Railroad (Quebec) Inc. upon that entity's becoming a Class III rail common carrier.

DATES: The exemption will be effective November 30, 1998. Petitions for stay must be filed by November 25, 1998, and petitions for reconsideration must be filed by December 21, 1998.

ADDRESSES: Send an original and 10 copies of all pleadings referring to STB Finance Docket No. 33678 to: Surface Transportation Board, Office of the

Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of pleadings to petitioners' representative: Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street, NW, Suite 200, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, NW, Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] Board decisions and notices are available on our website at WWW.STB.DOT.GOV.

Decided: November 13, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31092 Filed 11–19–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33610]

Norfolk Southern Railway Company—Lease and Operation Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board exempts from the requirements of 49 U.S.C. 11323–25 the lease and operation by Norfolk Southern Railway Company, successor by merger to Norfolk and Western Railway Company, of approximately 4.7 miles of Union Pacific Railroad Company's line between Monterey Lead Milepost 4.4 at Monterey Mine No. 1, near Carlinville, IL, and Monterey Lead Milepost 0.0 at Monterey Junction, IL, and a leg of the wye track and related trackage between mileposts 104.5 and 104.8 at Monterey Junction,[1] subject to standard labor protective conditions.

DATES: The exemption will be effective on December 16, 1998. Petitions to stay must be filed by December 2, 1998. Petitions to reopen must be filed by December 7, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33610 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; in addition, a copy of all pleadings must be served on petitioner's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call or pick up in person from: DC NEWS & DATA, INC., 1925 K Street, NW, Suite 210, Washington DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 12, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–30984 Filed 11–19–98; 8:45 am]

BILLING CODE 4915–00–P

[1] On September 9, 1998, NSR simultaneously filed a petition for exemption wherein it proposed to purchase from Union Pacific Railroad Company and to operate approximately 15.3 miles of rail line between milepost 104.8 at Monterey Junction (including the southwest leg of the wye track at Monterey Junction, which is approximately between milepost 104.5 and milepost 104.8) and milepost 119.8 at DeCamp, IL, plus certain yard tracks at Madison, IL. That petition was granted in *Norfolk Southern Railway Company, Successor by Merger to Norfolk and Western Railway Company—Purchase—Union Pacific Railroad Company*, STB Finance Docket No. 33609 (STB served Oct. 29, 1998).

Corrections

Federal Register

Vol. 63, No. 224

Friday, November 20, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981104276–8276–01; I.D. 100898A]

Fisheries of the Northeastern United States; Proposed 1999 Fishing Quotas for Atlantic Surf Clams and Ocean Quahogs

Correction

In proposed rule document 98–30288, beginning on page 63434, in the issue of Friday, November 13, 1998, make the following correction:

On page 63434, in the second column, in the **DATES:** section, on the second line, "December 17, 1998" should read "December 7, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4369-N-11]

Notice of Proposed Information Collection for Public Comment Consolidated Planning

Correction

In notice document 98–30482, beginning on page 63741, in the issue of Monday, November 16, 1998, make the following correction:

On page 63741, in the third column, under the heading **DATES:**, "1998" should read "1999".

BILLING CODE 1505-01-D

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

U.S. Agency for International Development

48 CFR Part 742

[AIDAR Notice 98-2]

Miscellaneous Amendments to Acquisition Regulations

Correction

In proposed rule document 98–28804 beginning on page 59501 in the issue of November 4, 1998, make the following corrections:

1. On page 59501, in the third column, in the fifth line from the bottom "reduce" should read "induce".

2. On the same page in the same column, in the last line, "provision" should be added after "withholding".

3. On page 59502, in the first column, in the second full paragraph, in the 20th line "gown" should read "grown".

742.1170-1 [Corrected]

742.1170-1 General.

4. On page 59503, in the second column, the section heading should read as set forth above.

742.1170-3 [Corrected]

5. On page 59504, in the first column, in 742.1170-3(c), in the fifth line from the bottom "the claims" should read "the scope or terms of the contract or may result in claims".

BILLING CODE 1505-01-D

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Federal Register

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Part II

Department of Labor

Employment Standards Administration

Wage and Hour Division

Guidance to All Government Contracting Agencies of the Federal Government and the District of Columbia Concerning Application of Davis-Bacon Wage Determinations to Contracts With Option Clauses; Notice

VOL 63 ISS 224 NO 20 1998 UMI

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Guidance to All Government Contracting Agencies of the Federal Government and the District of Columbia Concerning Application of Davis-Bacon Wage Determinations to Contracts With Option Clauses

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice.

SUMMARY: The Wage and Hour Division is publishing its guidelines concerning the circumstances in which the exercise of a contract option requires a new wage determination under the Davis-Bacon and related Acts.

FOR FURTHER INFORMATION CONTACT: Timothy Helm, Office of Enforcement Policy, Government Contracts Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3018, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone (202) 693–0064. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: In order to provide consistent enforcement and administration with respect to the Davis-Bacon and related Acts, Reorganization Plan No. 14 of 1950, 5 U.S.C. appendix, gives the Secretary of Labor the authority to prescribe regulations, standards, and procedures which are required to be observed by the contracting agencies. The Secretary has delegated such authority to the Wage and Hour Division. This includes the authority to interpret the Davis-Bacon and related Acts and the inherent authority to issue interpretive guidelines embodied in All Agency Memoranda informing the public of the standards the Wage and Hour Division intends to apply in the administration of the Davis-Bacon and related Acts.

Pursuant to this authority, the Wage and Hour Division issued on November 9, 1992, All Agency Memorandum No. 157 (AAM 157), which clarifies the application of Davis-Bacon wage determinations to federally-funded and assisted construction contracts that contain option clauses. The Wage and Hour Division, pursuant to its normal, customary practice, endeavored to send AAM 157 to all known government contracting agencies of the federal government and the District of Columbia.

By decision in ARB Case No. 96–133, dated July 17, 1997, the Administrative Review Board (ARB), which speaks finally on behalf of the Secretary concerning matters arising under the Davis-Bacon and related Acts, directed the Wage and Hour Division to publish AAM 157 in the **Federal Register**. AAM 157 is hereby published in the **Federal Register** in order to inform the public of the circumstances in which the exercise of an option provided in a contract governed by the Davis-Bacon and related Acts requires a new wage determination.

In addition, the ARB directed the Wage and Hour Division to provide clarification to AAM 157 in accordance with the discussion that was contained in the Administrator's ruling of May 2, 1996, that was the basis for the ARB decision.

In issuing AAM 157, the Department of Labor does not assert that the exercise of an option constitutes a new contract in all cases, without consideration of the specific contract requirements. For example, the Department does not consider that a new contract has been created in situations where a contractor is simply given additional time to complete its original contractual obligations. This situation is distinguishable, however, from a situation where an option is exercised obligating a contractor to perform work for a period of time for which it was not obligated under the terms of the original contract. In such an event, the Department considers that a new contract has been created for purposes of issuing a new wage determination.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, DC, this 13th day of November 1998.

John R. Fraser,

Acting Administrator, Wage and Hour Division.

U.S. Department of Labor

Employment Standards Administration, Wage and Hour Division, Washington, DC 20210

DEC. 9, 1992

MEMORANDUM NO. 157

TO: All Government Contracting Agencies of the Federal Government and the District of Columbia

FROM: Karen R. Keesling, Acting Administrator

SUBJECT: Application of Davis-Bacon Wage Determinations to Contracts with Option Clauses

This memorandum clarifies the application of Davis-Bacon wage determination to federally-funded and assisted construction contracts that contain option clauses, and to federal service contracts which have a substantial and segregable amount of construction work that require the application of the Davis-Bacon Act and which also contain option clauses. Some contracting agencies have not been incorporating a new or current Davis-Bacon wage determination in these contracts at the time an option is exercised. To ensure consistency, we are providing the following guidance on this subject.

The Davis-Bacon Act applies to "every *contract* in excess of $2,000, to which the United States or the District of Columbia is a party, for the construction, alteration, and/or repair, including painting and decorating, of public buildings or public works." (Emphasis added.)

Multi-year construction contracts that contain option provisions by which a contracting agency may unilaterally extend the term of the contract require inclusion of a current wage determination at the time the option is exercised. This requirement is consistent with the purpose of the Davis-Bacon Act to ensure that employees be paid prevailing wages, and the McNamara-O'Hara Service Contract Act (SCA) regulations governing option periods under that statute. As explained in section 4.145(a) of Regulations, 29 CFR Part 4, the exercise of such an option requires a contractor to perform work for a period of time for which it would not have been obligated—and for which the government would not have been required to pay—under the terms of the original contract if the option had not been exercised. Thus, once the option on a contract is exercised, the additional period of performance becomes a new contract.

Accordingly, every federally-funded or assisted multi-year construction contract in excess of $2,000 that contains a provision to extend an existing contract—pursuant to an option clause or otherwise—so that the construction is performed over an extended period of time (as opposed to situations where a contractor is given additional time to complete its original contract commitment), must include a current Davis-Bacon wage determination. Similarly, just as a current SCA wage determination must be incorporated at the exercise of an option in an SCA contract, if an option in the SCA contract calls for substantial and segregable construction work, then a current Davis-Bacon wage determination must also be incorporated at the exercise of the option.

[FR Doc. 98–31083 Filed 11–19–98; 8:45 am]

BILLING CODE 4510–27–P

federal register

Friday
November 20, 1998

Part III

Department of the Treasury

Fiscal Service

31 CFR Parts 317, 351, 353, and 370
Regulations Governing Agencies for the Issue and Offering of United States Savings Bonds, Including Sales by Electronic Means; Final Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 317, 351, 353, and 370

Regulations Governing Agencies for the Issue and Offering of United States Savings Bonds, Including Sales by Electronic Means

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury hereby publishes a final rule governing the issue and offering of United States Savings Bonds. The final rule creates new categories of savings bond issuing agents and clarifies and expands the means by which savings bonds may be sold, including electronic means.

DATES: Effective November 20, 1998.

ADDRESSES: This final rule can be downloaded from the Bureau of the Public Debt at the following World Wide Web address: <http://www.savingsbonds.gov>. It also is available for public inspection and copying at the Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 5030, Main Treasury Building, 1500 Pennsylvania Ave. NW, Washington, D.C. 20220. Individuals wishing to visit the library should call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Wallace L. Earnest, Director, Division of Staff Services, Savings Bond Operations Office, Bureau of the Public Debt, at (304) 480–6319 or <wearnest@bpd.treas.gov>; Troy D. Martin, Senior Program Analyst, Savings Bond Operations Office, Bureau of the Public Debt, Division of Staff Services, at (304) 480–6545 or <tmartin@bpd.treas.gov>; Edward C. Gronseth, Deputy Chief Counsel, Bureau of the Public Debt, at (304) 480–5192 or <egronseth@bpd.treas.gov>; or Gregory J. Till, Attorney-Adviser, Office of the Chief Counsel, Bureau of the Public Debt, at (202) 219–3320 or <gtill@bpd.treas.gov>.

SUPPLEMENTARY INFORMATION:

I. Background

The growth of electronic commerce and the World Wide Web have led to a flourishing of financial service providers and new payment methods. However, the Bureau of the Public Debt has been unable to take full advantage of these developments in the sale of United States Savings Bonds because of apparent restrictions in existing regulations.

On April 30, 1998, the Department of the Treasury published a proposed rule addressing the issue and offering of United States Savings Bonds. The publication proposed to create new categories of savings bond issuing agents and clarify and expand the means by which savings bonds may be sold, including electronic means. Three written comment letters were received in response to the proposed rule. The proposed rule and comments can be downloaded from the Bureau of the Public Debt at the following World Wide Web address: <http://www.savingsbonds.gov>. Treasury found the comments extremely useful in making revisions. Although some minor comments are not addressed, all comments have been considered in the formulation of this final rule. The comments are addressed below on a section-by-section basis.

The most important aspects of the final rule are directed at four areas in title 31 of the Code of Federal Regulations. First, changes in §§ 317.2 and 317.3 amend the regulations used to determine which organizations may serve as issuing agents and the procedures used to qualify these organizations as issuing agents. Second, changes to § 351.5 expand the means by which issuing agents may sell savings bonds. Third, a new subpart in part 370 addresses the use of Automated Clearing House debit entries for the sale of savings bonds issued through the Bureau of the Public Debt. Fourth, another new subpart in part 370 addresses the electronic submission of transaction requests through the Bureau of the Public Debt.

II. Summary of Amendments

A. Regulations Governing Agencies for Issue of Savings Bonds (31 CFR Part 317)

(1) Definitions (§ 317.1)

The revised definition of "issuing agent" notes the authority of the Commissioner of the Public Debt to qualify issuing agents, as explained in § 317.2. The definition also clarifies that an issuing agent acts as an agent of the purchaser in handling the remittance. The language addressing the handling of the remittance is consistent with current practice. The Secretary of the Treasury collects purchase funds from issuing agents, not the public. If an issuing agent discovers that the remittance is uncollectible or must be returned after the issuance of a savings bond, the Secretary is nonetheless entitled to payment from the issuing agent. The issuing agent bears the risk of loss for non-collection or return of the remittance.

(2) Organizations Eligible To Serve as Issuing Agents (§ 317.2)

In the past, issuing agent eligibility has been limited to financial institutions (such as banks and credit unions), agencies of the United States and state and local governments, and employers operating payroll savings plans. This final rule expands the types of organizations that are eligible to serve as issuing agents.

One change, in § 317.2(c), allows organizations that operate payroll savings plans on behalf of employers to issue bonds and serve as issuing agents. The change is designed to bolster payroll savings plan sales from small businesses, which often do not have the resources to maintain such plans themselves. As is the case with employer organizations, an organization operating a payroll savings plan on behalf of an employer organization will be eligible for issuing agent fees only if it inscribes savings bonds.

Another addition, set out in § 317.2(d), gives the Commissioner of the Bureau of the Public Debt the authority to qualify issuing agents when doing so is in the public interest. The Commissioner can use such process as deemed to be appropriate in selecting the issuing agent. The selected issuing agent also will be subject to such conditions as deemed to be appropriate.

The new § 317.2(d) will be used for the selection of entities to sell savings bonds in unique ways as new methods of sales emerge. In particular, this provision will facilitate the qualification of issuing agents to sell savings bonds through electronic methods, such as those offered by financial services providers through World Wide Web access. In qualifying issuing agents under this provision, the Commissioner will balance the convenience and cost-effectiveness of using new purchase methods against the need to insure the security and reliability of those methods.

In its comment letter, the American Bankers Association indicated its general support for most of the changes being proposed but expressed concern over Section 317.2(d), stating, "There is no demonstrable need to add this text given the capabilities and interest of currently eligible organizations." Treasury recognizes the long-standing service of financial institutions as issuing agents of savings bonds and the significant contribution that financial institutions have made toward the success of the savings bond program.

Treasury also looks forward to cooperating with financial institutions in selling savings bonds in new ways. In particular, Treasury is interested in selling savings bonds through home banking packages offered by financial institutions and exploring other new methods which may evolve over time. However, changes are taking place rapidly in other sectors of the savings bonds market place, and in particular, in portions of the market place not exclusively the domain of financial institutions which makes necessary the flexibility afforded by section 317.2(d). Therefore, Treasury respectfully disagrees with the position that the flexibility to be gained through section 317.2(d) would not benefit the savings bond program, and has decided to retain the provision in the final rule.

(3) Procedures for Qualifying and Serving as an Issuing Agent (§ 317.3)

In the past, designated Federal Reserve Banks have processed applications from prospective issuing agents. The section has been amended to state that an organization that seeks qualification because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c) or under the general "public interest" provision of § 317.2(d) will apply directly to the Commissioner of the Bureau of the Public Debt. The application shall be supplemented by such other information as the Bureau of the Public Debt may request.

(4) Issuance of Bonds (§ 317.6)

The issuing agent fee provision has been simplified by removing unnecessary detail. The section continues to emphasize that fee schedules are set out not in the regulations, but through a separate publication in the **Federal Register**. The changes have no effect on the current fee structure, though the Bureau of the Public Debt reserves the right to create new categories of fees as new ways of selling savings bonds develop.

(5) Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4–67 (Third Revision), Fiscal Service, Bureau of the Public Debt

The appendix has been revised, primarily for changes in terminology. For instance, the definition of "issuing agent" has been redefined to reflect the changes to that term in § 317.2. The term "over-the-counter" has been redefined to reflect the expanded meaning given to that term in § 351.5 of this chapter. Among other minor changes, paragraph (3) of subpart B has been removed because that provision no longer has application.

B. Offering of United States Savings Bonds, Series EE (31 CFR Part 351)

(1) Governing Regulations for Series EE Bonds (§ 351.1)

This section has been amended to note that the regulations governing the transfer of funds by electronic means on account of United States securities in part 370 of this chapter apply to transactions for the purchase of savings bonds issued through the Bureau of the Public Debt. The regulations in part 370 have no application to transactions for the purchase of savings bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt. Furthermore, because these regulations are intended to be the source of the terms and conditions of Series EE bonds, Treasury does not warrant the correctness of representations that in any way conflict with these regulations.

(2) Purchase of Bonds (§ 351.5)

The categories of savings bond sales provided for in this section have been revised. The section previously provided for four categories of sales: (1) "payroll plans"; (2) "over-the-counter/mail"; (3) "bond-a-month plan"; and (4) "employee thrift, savings, vacation, and similar plans." Because some of these categories are limited and outdated, they may actually have inhibited rather than facilitated sales.

Furthermore, a comparison of this section to the appendix to § 317.8 of this chapter (discussing the remittance of sales proceeds and registration records by issuing agents) showed a lack of consistency in the categories and terminology used to define savings bond sales. In discussing savings bond sales, the appendix did not mirror § 351.5 but rather combined the four categories of sales described in § 351.5 into two categories: (1) "payroll sale"; and (2) "over-the-counter sale." The term "payroll sale" was not used in § 351.5. Also, the term "over-the-counter" had an expanded meaning in the appendix to § 317.8 as compared to its use in § 351.5, making the regulations more difficult to understand.

The final rule revises § 351.5 (as well as the appendix to § 317.8), essentially using the two categories in the appendix to § 317.8: (1) "payroll sales"; and (2) "over-the-counter sales." The payroll sales category includes sales through "payroll savings plans" and "employee thrift, savings, vacation, and similar plans," the provisions of which are largely unchanged. The final rule also states that employers and the organizations operating payroll savings plans on behalf of employers are allowed to sell savings bonds only pursuant to payroll savings plans. These types of issuing agents are not allowed to sell savings bonds over-the-counter.

Over-the-counter sales are all sales that are not payroll sales. For over-the-counter sales, the section provides that "the purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent." This broad provision ensures that issuing agents have the flexibility to sell savings bonds through new channels. For instance, the final rule authorizes issuing agents to sell savings bonds through electronic means such as the World Wide Web. Both the application and remittance can be submitted and signed through electronic methods agreed upon by the parties.

The final rule does not impose limitations on the types of remittances that an issuing agent may accept. As always, however, the issuing agent bears the burden of collection and risk of non-collection for remittances it accepts. The Secretary of the Treasury takes payment from the issuing agent, not the purchaser. The Secretary of the Treasury has no obligation to return funds received from an issuing agent after issuance of a savings bond if the issuing agent cannot collect or must return the remittance. However, as Treasury qualifies new types of issuing agents under the revised section 317.2 of this chapter, Treasury will examine carefully the types of remittances each new issuing agent will accept and the protections that will be necessary to insure that a purchaser's funds reach Treasury in proper fashion.

Finally, although the changes have no effect on the current issuing agent fee structure, the Bureau of the Public Debt reserves the right to make changes to the fee structure as new ways of selling savings bonds develop.

C. Regulations Governing United States Savings Bonds, Series EE and HH (31 CFR Part 353)

(1) Payment to Judgment Creditors (§ 353.21)

This section is amended to state that savings bonds registered in coownership form may be subject to levy by the Internal Revenue Service.

(2) Application for Relief—Non-receipt of Bond (§ 353.27)

The regulations have provided little guidance as to the status of savings bond purchases if the Secretary of the Treasury does not receive payment. While not likely, an issuing agent may fail after receiving the remittance from a purchaser but before the Secretary collects the sales proceeds from the issuing agent.

If an issuing agent has inscribed a savings bond, the Secretary will honor the savings bond even if the Secretary cannot collect the sales proceeds from the issuing agent. This policy is consistent with existing regulations, which note that the registration of an issued savings bond generally is conclusive of ownership. If a savings bond has not been inscribed, the final rule states that the Secretary is authorized to issue savings bonds to preserve the public's confidence in dealing with issuing agents, even if the Secretary cannot collect the sales proceeds from the issuing agent.

D. Regulations Governing Electronic Transactions and the Transfer of Funds by Electronic Means on Account of United States Securities (31 CFR Part 370)

(1) Applicability (§ 370.0)

This section is amended to clarify that to the extent the regulations in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the regulations in this part 370 apply in the event of any inconsistencies. Furthermore, to the extent that Regulations E (12 CFR part 205) and Z (12 CFR part 226) of the Board of Governors of the Federal Reserve System ("Federal Reserve Board" or "Board") apply to transactions accomplished pursuant to this part, those Federal laws are unaffected by this part. Regulations E and Z govern consumer rights for electronic funds transfers and credit card transactions, among other things. This part 370 is designed to compliment, not preempt, the rights a person has by recourse to the person's financial institution under Regulation E, to the extent that Regulation E applies.

A determination of whether Regulation E applies to a transaction for the purchase of a United States security frequently depends upon whether the security is held in book-entry or definitive form. Regulation E excludes from its coverage "[a]ny transfer of funds the primary purpose of which is the purchase or sale of a security * * * [h]eld in book-entry form by a Federal Reserve Bank or federal agency," at 12 CFR 205.3(c)(4)(iii). This exclusion was added by the Federal Reserve Board in a final rule published in the **Federal Register** on May 2, 1996, beginning at page 19661. In discussing this exclusion, the Board listed as an example transactions involving book-entry securities held in TREASURY DIRECT. Because savings bonds currently available for purchase primarily are held in definitive rather than book-entry form, the strict language of this exclusion does not extend to most transactions involving savings bonds available for purchase.

(2) Definitions (§ 370.1)

Several definitions have been added or changed in this section. The definition of "Automated Clearing House (ACH) entry" refers to transactions accomplished in accordance with the Operating Rules and Guidelines of the National Automated Clearing House Association ("NACHA Rules"), as modified by these and other regulations and law. The definition of "deposit account" principally is taken from Regulation E. The definition of "financial institution" is the same as that included in a proposed rule to amend part 208 of this title, "Management of Federal Agency Disbursements," published in the **Federal Register** on September 16, 1997, beginning at page 48714. The definitions of "originator" and "person" are derived from the NACHA Rules. Also, the definition of "payment" has been amended to state that it applies only to subpart B of this part, which addresses credit entries. The limited definition of a payment as a deposit from the Treasury to the account of the owner only has application in subpart B and may have caused confusion by its application throughout part 370.

The section also lists five definitions that have application primarily to subpart E of this part, addressing the electronic submission of transaction requests through the Bureau of the Public Debt. As noted in the discussion to § 370.50, Treasury has looked to a number of sources in drafting these provisions. The most fundamental of these definitions is that of a "signature." A signature is "any symbol or method executed or adopted by a party with present intention to be bound," which is a traditional legal definition of a signature. The definition encompasses a signature manifested through electronic or similar means, which separately is referred to as an "electronic signature." Case law on signatures indicates that almost anything can constitute a signature, from printed and typewritten names to account numbers, if executed with an intent to be bound. Electronic signatures are no different from other forms of signatures in this regard.

In addition, the section includes a definition of "digital signature," which is a type of electronic signature. Treasury will use digital signatures in its sales of savings bonds over the Internet. A digital signature uses "public-key encryption" and a "message digest function" in transforming an electronic "record." The definitions of these terms largely are taken from model, proposed, or existing authorities.

Public-key encryption is a process that relies upon an algorithm to produce two mathematically related but different keys. If public-key encryption is implemented securely, it is computationally infeasible to derive one key from the other. The keys can be used for several purposes, including the creation and verification of digital signatures. One key (the private key) is kept private and can be used to create a digital signature, while the other key (the public key) may be distributed to anyone and can be used by a relying party to verify a digital signature. The association of a public key (and by implication, its corresponding private key) to the identity of a particular person is accomplished through the use of digital certificates, issued by certification authorities.

The use of a message digest function (also known as a hash function) is an essential element in the creation and verification of a digital signature. A message digest function is an algorithm that typically provides a shortened, mathematical version of a longer electronic record. Even a small change to an electronic record can result in a dramatic change to a message digest, aiding in the verification of a digital signature and any electronic record to which the signature is attached. The signer uses the signer's private key to encrypt the short message digest, rather than the entire electronic record. This digital signature (the message digest, encrypted by the signer's private key) is sent to the recipient, along with a copy of the electronic record.

Upon receipt of the digital signature and electronic record, the recipient uses the signer's public key to decrypt the digital signature and recover the message digest. The recipient then runs the received copy of the electronic record through the same message digest function used to create the received message digest. If the two results are identical, the recipient knows that the electronic record was encrypted by the signer's private key and that the electronic record was not tampered with

from the time the signer created the digital signature.

(3) Scope (§ 370.30)

This section states that subpart D establishes regulations for debit entries to a purchaser's account to buy savings bonds issued by the Bureau of the Public Debt. The subpart also establishes the exclusive liability of the Bureau of the Public Debt for such entries. This subpart applies only to transactions for the purchase of savings bonds issued through the Bureau of the Public Debt. These regulations do not apply to transactions for the purchase of savings bonds accomplished through issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt deems otherwise.

It is anticipated that purchasers will authorize an entity named on an approved paper-based authorization form to be an originator for the debit entries. This entity will forward collected funds to Treasury (unless the Bureau of the Public Debt chooses to name itself as the originator). The Bureau of the Public Debt will then issue the savings bonds through a Federal Reserve Bank acting as a fiscal agent for the United States.

(4) Authorization (§ 370.31)

This section states that all debit authorizations must be accomplished through an authorization form approved by the Bureau of the Public Debt. The purchaser must name a deposit account from which the purchaser is entitled to withdraw funds, and the purchaser (as well as any other necessary persons named on the deposit account) must sign the authorization form. Except to the extent required by the Bureau of the Public Debt, the originator will not be required to verify the identity of the purchaser or the authenticity of any signatures. Recurring debits may or must be authorized if the form so provides. Also, a purchaser's subsequent authorization will cancel a previous authorization.

The Bureau of the Public Debt retains the right to name a successor to the originator without additional notice to the purchaser, though it may ask the successor to provide such notice as a customer service. This provision is drawn from the official staff interpretation of the Federal Reserve Board to 12 CFR 205.10(b) (Regulation E), which states that "successor institutions" may assume an originator's role without notice or a new authorization.

In their comment letters, the Federal Reserve Board and NACHA speculated that Treasury may eventually allow the submission of debit authorizations through electronic means. Part 370 could allow for the submission of debit authorizations through electronic means.

The Board and NACHA referenced provisions in Regulation E and the NACHA Rules addressing the electronic submission of debit authorizations. Neither Regulation E nor the NACHA Rules appear to allow for the electronic signature of debit authorizations. Regulation E requires that debit ACH authorizations be in a "writing signed or similarly authenticated by the consumer," at 12 CFR 205.10(b). Section 2.1.2 of the NACHA Rules uses identical language. Under Regulation E and the NACHA Rules, an electronic debit ACH authorization is not "signed," but rather is "similarly authenticated."

Treasury is not inclined to add the words "similarly authenticated" to this final rule. Treasury believes that its definition of "signature" would encompass electronic means which also would qualify under the "similarly authenticated" category of Regulation E and the NACHA Rules. Treasury recognizes that the Federal Reserve Board may interpret the definition of "similarly authenticated" more strictly than Treasury in its definition of "signature." To address this concern, § 370.0 of this part has been amended to note that transactions accomplished under this part are subject to Regulation E, when applicable. Thus, even if a debit authorization for the purchase of a definitive savings bond could be electronically signed under this part, the electronic signature would have to meet the "similarly authenticated" requirements of Regulation E.

(5) Prenotification (§ 370.32)

The section leaves the requirement of a prenotification message to the discretion of the Bureau of the Public Debt. A financial institution that fails to respond to a prenotification warrants that the deposit account number and the type of account contained in the message is accurate as of the time of receipt of the prenotification. The proposed rule also would have left the time period in which a financial institution must respond to a prenotification up the Bureau of the Public Debt. In its comment letter, NACHA expressed the view that Treasury should not deviate from the NACHA Rules in setting its own time frame for a response. Treasury agrees with this suggestion and has changed this provision in the final rule to state that the time period for a response shall be that which is set out by NACHA.

(6) Warranties of Financial Institution (§ 370.33)

This section states that a financial institution's acceptance and handling of a debit entry or failure to reject a prenotification made with respect to a security covered by this subpart shall constitute its agreement to the provisions of this subpart. Also, a financial institution that agrees to this subpart warrants that it has the authority to receive entries and to comply with any requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law.

(7) Responsibilities of Financial Institution (§ 370.34)

This section states that a financial institution that receives a debit entry on behalf of its customer must debit the customer's account on the settlement date. If the financial institution is unable to debit the designated account, it shall return the entry by no later than the next business day after receipt, with an electronic message or other response explaining the reason for the return.

(8) Termination or Suspension by the Bureau of the Public Debt (§ 370.35)

This section states that the Bureau of the Public Debt can terminate or suspend the availability of debit entries at any time, and its decision to do so will be final.

(9) Termination or Suspension by Purchaser or Deposit Account Owner by Notice to the Originator (§ 370.36)

Under this section, a purchaser or deposit account owner will be able to cancel or suspend debit entries for the purchase of savings bonds by providing written or oral notice to the originator, which must be received by the originator within three days of the debit. The originator may require the person to give written confirmation within 14 days of an oral notice. An oral notice ceases to be effective if the written confirmation is not received by the end of the 14-day period. A suspension will remain in effect for the duration specified by the purchaser, but for no more than six months. As noted in § 370.53 of this part, a written notice can be accomplished through electronic means.

The proposed rule was similar, but would have required written notice in all cases. In its comment letter, the Federal Reserve Board suggested that Treasury follow the stop-payment provisions in Regulation E, at 12 CFR

§ 205.10(c). The provision noted by the Federal Reserve Board allows for the option of oral notice. Treasury finds this approach to be more flexible and agrees with the Federal Reserve Board recommendation. The substance of 12 CFR § 205.10(c), including provisions for oral notice, has been incorporated into the final rule.

(10) Changes and Error Resolution (§ 370.37)

This section provides that while responding to an oral or written notice from a person relating to the propriety of issuance information or a debit entry involving the person's deposit account, the originator may suspend further debit entries. In response to an oral notice, the originator may require the person to give written notice, to be received by the originator within 10 business days of an oral notice. The originator promptly will investigate and correct any error, but is not bound to complete the investigation or correct the error within 10 business days if the person fails to provide the requested written confirmation. As noted in § 370.53 of this part, a written notice can be accomplished through electronic means.

In its comment letter, the Federal Reserve Board focused on a provision of the proposed rule that would have allowed the originator to ignore an oral notice that was not received within 30 days of a written notice. The Board expressed the view that this provision varied from the error resolution procedures in Regulation E, at 12 CFR § 205.11. Treasury has decided to drop this questioned provision. Treasury also has changed the time frame for a written confirmation to 10 business days, consistent with Regulation E.

(11) Liability (§ 370.38)

This section states that the Bureau of the Public Debt is not liable in disputes arising out of debit entries, unless the Bureau of the Public Debt names itself or a fiscal or financial agent as the originator. Disputes arising out of debit entries are the responsibility of the originator. Also, unless the Bureau of the Public Debt designates itself or a fiscal or financial agent as the originator, the originator serves as the agent of the purchaser in handling the remittance. At most, liability of the Bureau of the Public Debt is limited to the amount of the improper debit, less any losses caused by the failure of a claimant to exercise due diligence.

(12) Scope (§ 370.50)

This section states that subpart E establishes provisions for the electronic submission of transaction requests through the Bureau of the Public Debt. The subpart also sets out the exclusive liability of the Bureau of the Public Debt for transactions completed pursuant to this subpart. These regulations do not apply to transactions requests accomplished through savings bond issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt deems otherwise.

It is important to note the limited scope and extent of this subpart E. This subpart only sets out Federal contract law provisions for electronic dealings with the Bureau of the Public Debt. For instance, a person who purchases a security from or opens a securities account with the Bureau of the Public Debt agrees to these provisions. The subpart does not apply to savings bond sales accomplished through issuing agents such as banks and employers offering payroll savings plans. The regulations leave unchanged the right of states to determine their own rules for electronic and digital signatures and does not address any issues related to certification authorities. Furthermore, the regulations are relatively brief, at least in comparison to work done by the American Bar Association, the National Conference of Commissioners on Uniform State Laws, the American Law Institute, the United Nations Commission on International Trade Law, and many states, among others.

(13) Requirements (§ 370.51)

An electronically signed transaction request cannot be accepted by the Bureau of the Public Debt unless the signature has been accomplished through a method that has been approved for specific purposes by the Bureau of the Public Debt.

(14) Time of Acceptance (§ 370.52)

Acceptance of a transaction request by the Bureau of the Public Debt will be effective no earlier than upon receipt of the message by the Bureau of the Public Debt, and no later than upon the transmittal of a message of acceptance by the Bureau of the Public Debt.

(15) Point of Transaction (§ 370.53)

The point of transaction for a transaction request submitted electronically under this subpart will be Parkersburg, West Virginia.

(16) Effect of Electronic Signature (§ 370.54)

This section states that an electronic signature and any electronic record to which it is affixed shall not be denied legal effect, including legal effect as a signature, a writing, or an original, solely because the signature or record is in electronic form. Some provisions of law, such as the Statute of Frauds, require evidence of an agreement to be in writing. Other provisions of law require that an original record be produced in court, rather than a copy, or require that a record be signed. However, there seems little reason to use these doctrines to preclude the admissibility of electronically signed records. These records are equivalent to signed writings, each copy of which is identical to the original.

(17) Admissibility of Digital Signature (§ 370.55)

This section addresses the legal requirement that an item be authenticated before being introduced into evidence. "Authentication" is a term that has a technical meaning specifically linked to the security of electronic signatures, but also has a separate meaning in the law of evidence, at which this section is directed.

Under Rule 901 of the Federal Rules of Evidence, "The requirement of authentication * * * as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." For instance, under Rule 901(b)(2), this evidentiary requirement may be met in regard to a handwritten record by nonexpert testimony as to the genuineness of handwriting. Although there have not as yet been any cases on the matter, the requirement of authentication for digital signatures likely can be met under Rule 901(b)(9), which allows for the sufficiency of "[e]vidence describing a process or system used to produce a result and showing that the process or system produces such a result."

However, in some situations authentication evidence is not required as a condition precedent to admissibility. As noted under Rule 902 of the Federal Rules of Evidence, extrinsic evidence of authenticity is not necessary for certified birth and death certificates, newspapers and periodicals, trade inscriptions, commercial paper, and notarized records, among other things. Because these items are likely to be authentic, a strict adherence to preliminary authentication procedures unnecessarily would expend a court's time and resources. Accordingly, the items are considered to be self-authenticating and—barring other objections to the evidence—may be admitted into evidence without additional preliminary review.

The section states a limited self-authentication provision for digital

signatures. This section begins by noting that authentication of a purported digital signature may be accomplished by evidence sufficient to support a finding that a digital signature exists. However, extrinsic evidence of authenticity is unnecessary to establish that a digital signature corresponds to a public key pair, as well as that an electronic record to which a digital signature is affixed has not been altered from its original form.

There are several reasons that support the insertion of a limited self-authentication clause into this final rule. If public-key encryption has been properly implemented, the risk of a successful forgery or alteration of a digital signature is extremely remote, and is significantly less than the risk of forgery or alteration for paper records. Furthermore, although a legal showing of authenticity in the absence of a self-authentication provision almost certainly could be accomplished, such a showing would require considerable time and resources. Among other things, it would entail extensive scientific testimony on encryption, leading to an expensive and unproductive "battle of the experts." Use of a self-authentication provision avoids this wasteful problem.

In almost all cases, the existence of a digital signature should be beyond reasonable dispute. The most likely challenges to a digital signature and an electronic record to which it is affixed will turn not on whether a digital signature exists, but on whether the digital signature should be attributed to a particular person. These challenges frequently will focus on the issuance, protection, or revocation of the digital certificates used to link a digital signature and accompanying record to a particular person. This section does nothing to prevent such challenges, for the self-authentication provision does not tie a digital signature to a particular person. Extrinsic evidence tying the public key pair used in the creation of a digital signature to a particular person still will have to be provided before a digital signature and a record to which it has been affixed could be admissible. Furthermore, this section would have no application at all in criminal cases.

Finally, even to the extent that a self-authenticated digital signature and accompanying record could be introduced into evidence under this section, this section in no way prevents a party against whom a digital signature is asserted from contesting the existence or authenticity of the signature. However, any arguments would go to the weight of the evidence, not to its admissibility.

(18) Negligence Contributing to Forged Signature (§ 370.56)

This section states that a person whose failure to exercise ordinary care substantially contributes to the creation or submission of a forged signature is precluded from disavowing the forged signature. Furthermore, the burdens are on the person against whom a signature is asserted to produce evidence that ordinary care was exercised and to persuade a trier of fact that it is more likely than not that the person exercised ordinary care. However, in asserting a signature under this section the Bureau of the Public Debt first will have to establish that it exercised ordinary care in relying upon the signature.

This section is drawn in part from section 3–406 of the Uniform Commercial Code (UCC) ("Negligence Contributing to Forged Signature or Alteration of Instrument."). The responsibilities imposed upon persons in regard to the technology used to create and submit electronic signatures and accompanying electronic records are similar to those imposed under the UCC in regard to rubber signature stamps used to sign checks. Official Comment 3 to UCC section 3–406 is enlightening in this regard. If a person's rubber signature stamp and checks, kept in an unlocked drawer, are stolen and used by a party to forge a check, a bank may successfully be able to argue that the person is precluded from disavowing the forged signature because the person's lack of ordinary care substantially contributed to the forgery. Similarly, under the final rule if a person fails to take adequate security precautions to protect access to electronic signature technology (such as by not safekeeping a computer password, for instance) and this failure substantially contributes to the creation or submission of a forged signature, the person is precluded from disavowing the signature.

By looking to the UCC provision, this section attempts to find middle ground between varying approaches in current law as to how liability should be distributed between the parties for unauthorized transactions. For instance, a person can be held accountable for all unauthorized calls from that person's telephone number, without regard to whether ordinary care was exercised by the person. At the other end of the spectrum, a person cannot be held accountable beyond $50 in unauthorized transactions on that person's credit card, regardless of whether the consumer exercised ordinary care in protecting the card or in promptly reporting a loss or theft of the card.

Treasury believes that if pursued in these regulations, a provision that allows the assertion of a forged signature against a person even if the person exercised ordinary care would unfairly punish consumers and discourage electronic commerce. At the same time, if a person's fault has led to the creation of a forged signature, a provision that limits or precludes the assertion of the signature against the person does little to encourage the exercise of ordinary care. This section allows the assertion of a forged signature only if the person's failure to exercise ordinary care substantially contributed to the creation of the signature.

This section places the burdens of production and persuasion upon the person against whom the signature would be asserted to show that the person exercised ordinary care. Because an electronic signature is not created in the presence of the person accepting the signature, the person accepting the signature typically does not have best access to the evidence needed to establish the forgery and the exercise of ordinary care. It is appropriate to require the person against whom the signature would be asserted to make this showing. Also, in asserting a signature under this section the Bureau of the Public Debt will have to establish that it exercised ordinary care in relying upon the signature. The evidence needed to establish that it used ordinary care will be within the control of the Bureau of the Public Debt and so it is fair to require the Bureau of the Public Debt to make this showing.

In its comment letter, the Federal Reserve Board expressed concern that this section might be used to avoid the limitations of Regulation Z. As alluded to above, Regulation Z caps cardholder liability for unauthorized credit card use at $50. This section does not seek to encroach upon Regulation Z. To the extent this section might apply to unauthorized savings bond purchases involving credit cards, Treasury would be seeking to recover on a savings bond contract, not a credit card debt. In any event, Treasury has amended section 370.0 of this part to emphasize that to the extent Regulation Z applies to transactions accomplished pursuant to this part, the consumer protections extended by Regulation Z are unaffected.

(19) Liability (§ 370.57)

This section limits the Bureau of the Public Debt's liability for claims involving this subpart E to the amount

of the transaction, less any losses caused by the failure of a claimant to exercise due diligence. For instance, this section could have application to claims involving errors in the handling of otherwise properly authorized transactions.

III. Procedural Requirements

This final rule does not meet the criteria for a "significant regulatory action," as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

This final rule relates to matters of public contract and procedures for United States securities. The notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) does not apply.

There are no new collections of information contained in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3507) does not apply.

List of Subjects in 31 CFR Parts 317, 351, 353, and 370

Bonds, Electronic Funds Transfers, Government Securities.

For the reasons set forth in the preamble, 31 CFR parts 317, 351, 353, and 370 are amended as follows:

PART 317—REGULATIONS GOVERNING AGENCIES FOR ISSUE OF UNITED STATES SAVINGS BONDS

1. The authority citation for part 317 is revised to read as follows:

Authority: 2 U.S.C. 901; 5 U.S.C. 301; 12 U.S.C. 391; 12 U.S.C. 1767; 31 U.S.C. 3105.

2. Revise § 317.1 to read as follows:

§ 317.1 Definitions.

(a) *Bond(s)* means Series EE United States Savings Bonds and Series I United States Savings Bonds.

(b) *Federal Reserve Bank* refers to the Federal Reserve Bank or Branch providing savings bond services to the district in which the issuing agent or the applicant organization is located. See § 317.9(a).

(c) *Issuing agent* refers to an organization that has been qualified by a designated Federal Reserve Bank or the Commissioner of the Bureau of the Public Debt to sell savings bonds. An issuing agent acts as an agent of the purchaser in handling the remittance. The definition encompasses:

(1) Each organization that accepts and processes purchase orders for bonds sold over-the-counter, but does not inscribe bonds, and

(2) Each organization that is authorized to inscribe bonds sold over-the-counter or through payroll savings plans.

(d) *Offering circular* refers to Department of the Treasury Circular, Public Debt Series No. 1–80, current revision, for Series EE savings bonds, and to Department of the Treasury Circular, Public Debt Series No. 1–98 for Series I savings bonds.

(e) *Organization* means an entity, as described in § 317.2, that may qualify as an issuing agent of bonds.

3. Revise § 317.2 to read as follows:

§ 317.2 Organizations authorized to act.

Organizations eligible to apply for qualification and serve as issuing agents are the following:

(a) Banks, Federal credit unions in good standing, trust companies, and savings institutions chartered by or incorporated under the laws of the United States, or those of any State or Territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) Agencies of the United States and State and local governments.

(c) Employers operating payroll savings plans for the purchase of United States Savings Bonds, as well as organizations operating payroll savings plans on behalf of employers.

(d) Other organizations specifically and individually qualified by the Commissioner of the Bureau of the Public Debt whenever the Commissioner deems such a qualification to be in the public interest. In selecting an issuing agent, the Commissioner may use such process that the Commissioner deems to be appropriate. The selected issuing agent will be subject to such conditions that the Commissioner deems to be appropriate.

§ 317.3 [Amended]

4. Amend § 317.3 as follows:

A. Revise the introductory text to paragraph (a) to read as follows:

§ 317.3 Procedure for qualifying and serving as issuing agent.

(a) *Execution of application agreement.* An organization seeking issuing agent qualification generally shall obtain from and file with a designated Federal Reserve Bank an application-agreement form. However, if an organization seeks qualification under § 317.2(d) or because of its status as an organization operating a payroll savings plan on behalf of an employer under § 317.2(c), it shall make application directly to the Bureau of the Public Debt for approval by the Commissioner of the Bureau of the Public Debt. An application-agreement sent directly to the Bureau of the Public Debt shall be supplemented by such other information as the Bureau of the Public Debt may request.

* * * * *

B. Add the words "or the Bureau of the Public Debt" after the words "Federal Reserve Bank" in paragraphs (b) and (c).

5. Revise § 317.6(b) to read as follows:

§ 317.6 Issuance of bonds.

* * * * *

(b) *Fees.* Each issuing agent, other than a Federal agency, will be paid fees. Only issuing agents are eligible to collect fees. With prior approval, agents that are authorized to inscribe bonds and receive fee payments will also be paid a bonus for presorting savings bond mailings. Schedules reflecting the amount of the fees and presort bonuses, and the basis on which they are computed and paid, will be published separately in the **Federal Register**.

* * * * *

6. Amend the appendix to § 317.8 as follows:

A. Revise the section heading to the appendix to read as set out below;

B. Remove paragraph 3 of subpart B;

C. Revise paragraphs 2(c) and 2(e) of subpart A, all of subpart C, and paragraphs 2(a)(i) and 2(b) of subpart D to read as follows:

§ 317.8 Remittance of sales proceeds and registration records.

* * * * *

Appendix to § 317.8—Remittance of Sales Proceeds and Registration Records, Department of the Treasury Circular, Public Debt Series No. 4–67, Third Revision (31 CFR Part 317), Fiscal Service, Bureau of the Public Debt

Subpart A—General Information

* * * * *

2. *Definition of terms.* As used in this appendix:

* * * * *

(c) *Over-the-counter sale* means any sale of savings bonds other than payroll sales.

* * * * *

(e) *Issuing agent,* as provided in § 317.1(c) of the Circular, refers to an organization that has been qualified by a designated Federal Reserve Bank or the Commissioner of the Bureau of the Public Debt to sell savings bonds.

* * * * *

Subpart C—Remittance of Payroll Sales Proceeds

1. *Application of requirements.* The remittance requirements for payroll sales apply only to issuing agents. An employer that maintains a payroll savings plan but does not issue bonds shall be notified by the servicing issuing agent that it must remit sales proceeds to the issuing agent in sufficient time to permit compliance with the requirements.

2. *Remittance of payroll sales deductions.* Issuing agents shall remit sales proceeds throughout the month shown in the issue date as soon as the full amount of the purchase price of the bonds has been received or accumulated. In no case should such proceeds be remitted later than the second business day of the month following the month shown in the issue date. The issuing agent shall ensure that its system properly accounts for and recognizes when the full purchase price has been received, or has been accumulated, so that timely remittance can be made. The issuing agent shall transmit registration records in an electronically processible format within thirty (30) days following the month shown on the issue date.

Subpart D—Interest on Late Remittances

* * * * *

2. * * *

(a) *Bonds inscribed by issuing agent—*(i) *Payroll sales.* If, during any three (3) month period, the interest assessed on an issuing agent's late remittance of proceeds from payroll savings plan sales or thrift, savings, vacation, or similar plan sales accumulates to less than $50 for each type of sales, the interest assessed for the first month will be waived. The interest assessed for each type of sales for the remaining two (2) months will then be carried forward to the next period of three (3) consecutive months.

* * * * *

(b) *Bonds inscribed by the designated Federal Reserve Bank.* The interest assessed on late remittance of all sales proceeds transmitted during a given month will be waived if it is less than $25.

* * * * *

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

2. Revise § 351.1 to read as follows:

§ 351.1 Governing regulations.

Series EE bonds are subject to the regulations of the Department of the Treasury, now or hereafter prescribed, governing United States Savings Bonds of Series EE and HH, contained in Department of the Treasury Circular, Public Debt Series No. 3–80 (part 353 of this chapter). Treasury expressly disclaims the effect of, and does not warranty the correctness of, any representations or warranties regarding Series EE bonds, wherever made, that in any way conflict with the terms and conditions of Series EE bonds, as set out in these and other regulations and other applicable law. The regulations in part 370 of this chapter apply to transactions for the purchase of United States Savings Bonds issued through the Bureau of the Public Debt. The regulations in part 370 do not apply to transactions for the purchase of bonds accomplished through issuing agents generally, unless and to the extent otherwise directed by the Commissioner of the Bureau of the Public Debt.

3. Revise § 351 5 to read as follows:

§ 351.5 Purchase of bonds.

(a) *Payroll sales—*(1) *Payroll savings plans.* Bonds in $100 and higher denominations may be purchased through deductions from the pay of employees of organizations that maintain payroll savings plans. The bonds must be issued by an authorized issuing agent.

(2) *Employee thrift, savings, vacation, and similar plans.* Bonds registered in the names of trustees of employee plans may be purchased in book-entry form in $100 multiples through a designated Federal Reserve Bank after Bureau of the Public Debt approval of the plan as eligible for the special limitation under § 353.13 of this chapter, also published as § 353.13 of Department of the Treasury Circular, Public Debt Series No. 3–80.

(b) *Over-the-counter sales—*(1) *Eligible issuing agents.* Bonds may be purchased through any issuing agent, except that an organization serving as an issuing agent because of its status as an employer or an organization operating an employer's payroll savings plan under § 317.2(c) of this chapter may sell bonds only through payroll savings plans.

(2) *Manner of sale.* An application for the purchase of a bond must be accompanied by a remittance to cover the issue price. The purchase application and remittance may be submitted to an issuing agent by any means acceptable to the issuing agent. An application may authorize purchases on a recurring basis. The issuing agent bears the burden of collection and the risk of loss for non-collection or return of the remittance.

PART 353—REGULATIONS GOVERNING UNITED STATES SAVINGS BONDS, SERIES EE AND HH

1. The authority citation for part 353 is revised to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105, 3125.

§ 353.6 [Amended]

2. Remove the word "deduction" in § 353.6(b)(4), and add, in its place, the word "savings."

§ 353.13 [Amended]

3. Add the phrase ", as amended" after the word "1954" in § 353.13(c)(3).

4. Revise paragraph (a) of § 353.21 to read as follows:

§ 353.21 Payment to judgment creditors.

(a) *Purchaser or officer under levy.* The Department of the Treasury will pay (but not reissue) a savings bond to the purchaser at a sale under a levy or to the officer authorized under appropriate process to levy upon property of the registered owner or coowner to satisfy a money judgment. Payment will be made only to the extent necessary to satisfy the money judgment. The amount paid is limited to the redemption value 60 days after the termination of the judicial proceedings. Except in a case of a levy by the Internal Revenue Service, payment of a bond registered in coownership form pursuant to a judgment or a levy against only one coowner is limited to the extent of that coowner's interest in the bond. That interest must be established by an agreement between the coowners by judgment, decree, or order of a court in a proceeding to which both coowners are parties. Payment of a bond registered in coownership form pursuant to levy by the Internal Revenue Service will be made if the levy is against either coowner on the bond.

5. Revise § 353.27 to read as follows:

§ 353.27 Application for relief—Non-receipt of bond.

If a bond issued on any transaction is not received, the issuing agent must be notified as promptly as possible and given all information about the non-receipt. An appropriate form and instructions will be provided. If the application is approved, relief will be granted by the issuance of a bond bearing the same issue date as the bond that was not received. Also, relief is authorized for the issuance of bonds for

which the Secretary has not received payment, in order to preserve public confidence in dealing with issuing agents.

PART 370—REGULATIONS GOVERNING ELECTRONIC TRANSACTIONS AND THE TRANSFER OF FUNDS BY ELECTRONIC MEANS ON ACCOUNT OF UNITED STATES SECURITIES

1. The authority citation for part 370 is revised to read as follows:

Authority: 12 U.S.C. 391; 31 U.S.C. chapter 31.

2. The heading of part 370 is revised to read as set forth above.

3. Revise subpart A to read as follows:

Subpart A—General Information

Sec.
370.0 Applicability.
370.1 Definitions.

Subpart A—General Information

§ 370.0 Applicability.

The regulations in this part apply to electronic transactions and the transfer of funds by electronic means as employed by the Bureau of the Public Debt in connection with United States securities, except as varied by agreement or as otherwise provided. To the extent that the regulations in part 210 of this title apply to the purchase or payment of interest and principal on United States securities, the regulations in this part 370 apply in the event of any inconsistencies. Among other things, the written authorization of the Financial Management Service is not necessary for the issuance of routing numbers by a Federal Reserve Bank or for the receipt, origination, or reversal of any credit or debit entry accomplished pursuant to this part. Finally, to the extent that Regulation E (12 CFR part 205) and Regulation Z (12 CFR part 226) of the Board of Governors of the Federal Reserve System may apply to transactions authorized by this part, those Federal laws are unaffected by this part.

§ 370.1 Definitions.

Automated Clearing House (ACH) entry means a transaction in accordance with applicable Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law. The regulations in this part control in the event of any inconsistencies with the applicable Operating Rules and Operating Guidelines.

Credit entry means an ACH entry for the deposit of money to a deposit account.

Debit entry means an ACH entry for the payment of money from a deposit account.

Deposit account means a demand deposit (checking), savings, or asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution.

Digital signature means a type of electronic signature. A digital signature uses public-key encryption and a message digest function to transform an electronic record. A person who has the initial electronic record and the signer's public key can verify:

(1) Whether the transformation was accomplished by the private key that corresponds to the signer's public key; and

(2) Whether the initial record has been altered since the transformation was made.

Electronic signature means a signature manifested through electronic or similar means, including digital and biometric methods.

Financial institution means:

(1) An entity described in section 19(b)(1)(A), excluding subparagraphs (v) and (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)). Under section 19(b)(1)(A) of the Federal Reserve Act and for purposes of this part only, the term "depository institution" means:

(i) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(ii) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iii) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank that is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(iv) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union that is eligible to make application to become an insured credit union pursuant to section 201 of such Act (12 U.S.C. 1781);

(v) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) that is an insured depository institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depository institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(2) Any agency or branch of a foreign bank as defined in section 1(b) of the International Banking Act, as amended (12 U.S.C. 3101).

Message digest function means an algorithm mapping or translating one sequence of bits into another, generally smaller, set such that:

(1) An electronic record yields the same message digest result every time the algorithm is executed using the same electronic record as input;

(2) It is computationally infeasible that an electronic record can be derived or reconstituted from the message digest result produced by the algorithm; and

(3) It is computationally infeasible that two electronic records can be found that produce the same message digest using the algorithm.

Originator means an entity authorized by a person to initiate debit or credit entries to the person's deposit account and that also has an agreement with a financial institution to transmit the debit or credit entries to the person's deposit account.

Owner means the person(s) in whose name(s) a security is registered.

Payment means, for the purpose of subpart B of this chapter, the deposit of money from the Department of the Treasury to the deposit account of the owner.

Person means any natural person or organization.

Public-key encryption means a process which generates and employs a key pair consisting of a private key and its mathematically related public key, in which one use of the public key is to verify a digital signature created by the private key.

Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Security means any obligation issued by the United States that, by the terms of the applicable offering circular, is made subject to this part.

Settlement date means the date an exchange of funds with respect to an entry is reflected on the books of the Federal Reserve Bank(s). For a security held in the TREASURY DIRECT system, the issue date will in most cases be the same as the settlement date. For United States Savings Bonds, the issue date will in most cases be the first day of the month in which settlement takes place.

Signature means any symbol or method executed or adopted by a party with present intention to be bound.

4. Revise the heading of subpart C to read as follows:

Subpart C—Debit ACH Entries for the Sale of Securities in TREASURY DIRECT

* * * * *

Subpart D—Redesignated

5. Redesignate subpart D as subpart F and §§ 370.30 and 370.31 as §§ 370.60 and 370.61.

6. Add subparts D and E to read as follows:

Subpart D—Debit ACH Entries for the Sale of United States Savings Bonds Issued Through the Bureau of the Public Debt

Sec.
370.30 Scope.
370.31 Authorization.
370.32 Prenotification.
370.33 Warranties of financial institution.
370.34 Responsibilities of financial institution.
370.35 Termination or suspension by the Bureau of the Public Debt.
370.36 Termination or suspension by purchaser or deposit account owner by notice to the originator.
370.37 Changes and error resolution.
370.38 Liability.

Subpart D—Debit ACH Entries for the Sale of United States Savings Bonds Issued Through the Bureau of the Public Debt

§ 370.30 Scope.

This subpart provides regulations for Automated Clearing House debit entries used for the sale of United States Savings Bonds issued through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for such entries. This subpart does not apply to transactions for the sale of United States Savings Bonds accomplished through savings bond issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt directs otherwise.

§ 370.31 Authorization.

(a) *General.* The purchaser of a security shall authorize an originator to initiate Automated Clearing House debit entries and shall designate a deposit account at a financial institution to receive such entries. An authorization shall be accomplished only through a form approved by the Bureau of the Public Debt.

(b) *Persons to sign.* The signatures of the purchaser and any other persons whose signatures ordinarily are required to withdraw funds from the designated deposit account are necessary for the authorization to be effective. Except to the extent required by the Bureau of the Public Debt, the originator will not be required to verify the identity of the purchaser or the authenticity of the signatures.

(c) *Recurring debit entries.* A single authorization may allow or require debit entries to be made to a deposit account on a recurring basis, if the approved authorization form so provides.

(d) *Subsequent authorizations.* A purchaser's subsequent authorization cancels a previous authorization.

(e) *Successor originator.* The Bureau of the Public Debt reserves the right to name a successor to the originator named on the debit authorization form. The designation of a successor shall be effective without additional notice to the purchaser.

§ 370.32 Prenotification.

The requirement of a prenotification prior to the initiation of any debit entry is left to the discretion of the Bureau of the Public Debt. If sent, the receiving financial institution must respond within the time frame for such responses established by the National Automated Clearing House Association. If a prenotification is sent and the receiving financial institution does not reject or otherwise respond to the prenotification message within the specified time period, the financial institution shall be deemed to have warranted to Treasury and the originator that the information as to the deposit account number and the type of account contained in the message is accurate as of the time of receipt of the prenotification.

§ 370.33 Warranties of financial institution.

A financial institution's acceptance and handling of a debit entry or failure to timely reject a prenotification made with respect to a security covered by this subpart shall constitute its agreement to the provisions of this subpart. In addition to warranties referred to in § 370.32, a financial institution that agrees to this part also warrants that it has the authority to receive entries and to comply with any requirements imposed upon Receiving Depository Financial Institutions under the Operating Rules and Operating Guidelines of the National Automated Clearing House Association, as modified by these and other regulations and law.

§ 370.34 Responsibilities of financial institution.

A financial institution that receives a debit entry on behalf of its customer must debit the customer's account on the settlement date. If the financial institution is unable to debit the designated account, it shall return the entry by no later than the next business day after receipt, with an electronic message or other response explaining the reason for the return.

§ 370.35 Termination or suspension by the Bureau of the Public Debt.

The Bureau of the Public Debt may terminate or suspend the availability of debit entries as a means of purchase for savings bonds at any time. A decision to terminate or suspend the availability of debit entries as a means of purchase is in the sole discretion of the Bureau of the Public Debt and shall be final.

§ 370.36 Termination or suspension by purchaser or deposit account owner by notice to the originator.

A purchaser of a security or a deposit account owner may terminate or suspend debits by notifying the originator orally or in writing at least three business days before the scheduled date of the transfer. In response to an oral notice, the originator may require the consumer to give written notice, to be received by the originator within 14 days of an oral notice. An oral notice ceases to be binding after 14 days if the purchaser fails to provide the required written confirmation. A suspension will remain in effect for the duration specified by the purchaser, but for no more than six months. The termination and revocation methods need not be recited in the authorization.

§ 370.37 Changes and error resolution.

While responding to an oral or written notice from a person relating to the propriety of security issuance information or a debit entry involving the person's deposit account, the originator may suspend further debit entries. In response to an oral notice, the originator may require the person to give written notice, to be received by the originator within 10 business days of an oral notice. The originator promptly will investigate the allegation and provide relief for any error, but is not bound to complete the investigation or correct the error within 10 business days if the requested written confirmation is not provided.

§ 370.38 Liability.

(a) *Scope of liability.* Unless the Bureau of the Public Debt has designated itself or a fiscal or financial agent as an originator, the Bureau of the Public Debt shall not be liable for any unauthorized, erroneous, duplicative, or otherwise improper debit entries, and shall not be liable for a failure to debit a deposit account. Unless the Bureau of the Public Debt has designated itself or

a fiscal or financial agent as the originator, the originator serves as the agent of the purchaser in handling the remittance. Any claims must be pursued against the originator. The Bureau of the Public Debt shall not be liable for its choice of an originator. The Bureau of the Public Debt shall not be liable to any Automated Clearing House association.

(b) *Extent of liability.* For any claim involving this subpart that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the improper debit and does not extend to other damages or costs, including consequential damages, punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt also shall be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Subpart E—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

Sec.

370.50 Scope.
370.51 Requirements.
370.52 Time of acceptance.
370.53 Point of transaction.
370.54 Effect of electronic signature.
370.55 Admissibility of digital signature.
370.56 Negligence contributing to forged signature.
370.57 Liability.

Subpart E—Electronic Submission of Transaction Requests Through the Bureau of the Public Debt

§ 370.50 Scope.

This subpart provides general regulations for the electronic submission of transaction requests through the Bureau of the Public Debt. This subpart also establishes the exclusive liability of the Bureau of the Public Debt for transactions accomplished under this subpart. This subpart does not apply to transactions for the sale of United States Savings Bonds accomplished through savings bond issuing agents generally, unless and to the extent the Commissioner of the Bureau of the Public Debt directs otherwise.

§ 370.51 Requirements.

An electronically signed transaction request cannot be accepted by the Bureau of the Public Debt unless the signature has been accomplished through a method that has been approved for specific purposes by the Bureau of the Public Debt.

§ 370.52 Time of acceptance.

A transaction request submitted electronically, including an offer to purchase a security, is accepted no earlier than at the moment the request is received by the Bureau of the Public Debt and no later than at the moment a message of acceptance is sent by the Bureau of the Public Debt, regardless of the method used to transmit the message of acceptance.

§ 370.53 Point of transaction.

For jurisdiction and venue purposes, the point of transaction for a transaction request handled pursuant to this subpart is Parkersburg, West Virginia, regardless of from where the transaction request is transmitted or where the transaction request is actually processed.

§ 370.54 Effect of electronic signature.

An electronic signature and any electronic record to which it is affixed or attached may not be denied legal effect, including legal effect as a signature, a writing, or an original, solely because the signature or record is in electronic form.

§ 370.55 Admissibility of digital signature.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that a digital signature exists. However, in asserting a digital signature against a particular person in any civil litigation or dispute, extrinsic evidence of authenticity as a condition precedent of admissibility shall not be necessary to establish that a digital signature corresponds to a specific public key pair and that an electronic record to which the digital signature is affixed has not been altered from its original form.

§ 370.56 Negligence contributing to forged signature.

A person whose failure to exercise ordinary care substantially contributes to the creation or submission of a forged signature is precluded from disavowing the forged signature. The burden of production and the burden of persuasion is on the person against whom the signature is asserted to establish the exercise of ordinary care. However, in asserting a signature under this section, the Bureau of the Public Debt bears the burden of production and the burden of persuasion in establishing that it exercised ordinary care in relying upon the signature.

§ 370.57 Liability.

For any claim involving this subpart that may proceed against the Bureau of the Public Debt, the Bureau of the Public Debt's liability is limited to the amount of the transaction and does not extend to other damages or costs, including consequential damages, punitive damages, the costs of litigation, or payment of attorney fees. The liability of the Bureau of the Public Debt shall also be reduced by the amount of the loss resulting from a failure of the claimant to exercise due diligence, including a failure to follow standard commercial practices.

Dated: November 10, 1998.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 98–31089 Filed 11–19–98; 8:45 am]

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Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 16 and 99
Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices; Final Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 99

[Docket No. 98N–0222]

RIN 0910–AB23

Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations pertaining to the dissemination of information on unapproved uses (also referred to as "new uses" and "off-label uses") for marketed drugs, including biologics, and devices. The final rule describes the new use information that a manufacturer may disseminate and describes the content of and establishes procedures for a manufacturer's submission to FDA before it may begin disseminating information on the new use. The final rule also describes how manufacturers seeking to disseminate information on a new use must agree to submit a supplemental application for that use within a specified period of time, unless a supplemental application already has been submitted or FDA has exempted the manufacturer from the requirement to submit a supplement. The final rule provides for requests to extend the time period for submitting a supplemental application for a new use and describes how a manufacturer can seek an exemption from the requirement to submit a supplemental application for the new use. Additionally, the final rule discusses FDA actions in response to manufacturers' submissions, corrective actions that FDA may take or require, and recordkeeping and reporting requirements. The final rule implements sections 551 through 557 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aaa through 360aaa-6) as amended by section 401 of the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: The final rule is effective November 20, 1998. Written comments on the information collection requirements should be submitted by January 19, 1999.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding biological products and devices regulated by the Center for Biologics Evaluation and Research: Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3028;

Regarding human drug products: Laurie B. Burke, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2828;

Regarding medical devices: Byron L. Tart, Center for Devices and Radiological Health (HFZ–302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4639.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of June 8, 1998 (63 FR 31143), FDA published a proposed rule that would add to title 21 of the Code of Federal Regulations (CFR) a new part 99 entitled, "Dissemination of Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices."

The proposed rule was intended to implement section 401 of FDAMA. In brief, section 401 of FDAMA amended the act to permit drug, biologic, and device manufacturers to disseminate certain written information concerning the safety, effectiveness, or benefits of a use that is not described in the product's approved labeling to health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, and Federal and State Government agencies, provided that the manufacturer complies with certain statutory requirements. For example, the information that is to be disseminated must be about a drug or device that is being legally marketed; it must be in the form of an unabridged reprint or copy of a peer-reviewed journal article or reference publication; and it must not be derived from another manufacturer's clinical research, unless that other manufacturer has given its permission for the dissemination. The information must be accompanied by certain information, including a prominently displayed statement that the information discusses a use or uses that have not been approved or cleared by FDA. Additionally, 60 days prior to the dissemination, the manufacturer must submit to FDA a copy of the information to be disseminated and any other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience that pertain to the safety of the new use, and a summary of such information.

A detailed description of section 401 of FDAMA appeared in the preamble to the proposed rule (see 63 FR 31143 at 31144 and 31145).

II. Highlights of the Final Rule

Although the statute is very detailed, and the final rule closely tracks its provisions, there are some places where the regulation fills in the details of the statutory requirements. For example, the final rule defines terms that were not defined in the legislation (e.g., "supplemental application" and "clinical investigation," and it explains concepts that required additional explanation (e.g., what is meant by the term "unabridged"). The final rule also sets forth the more detailed procedures for how to submit the required information to FDA before disseminating any new use information (e.g., where the information should be submitted and how many copies are required). Finally, the final rule defines what is meant by the basic criteria that the statute sets forth for granting an exemption from the requirement to submit a supplement application on the basis that it would be unethical or economically prohibitive to conduct the studies needed to submit a supplemental application.

The final rule has been revised in response to comments received on the proposal. For example, § 99.3 was revised to add a definition for pharmacy benefit manger, which is not included in the statute. The definition of "clinical investigation" in § 99.3 also was revised. Section 99.101 was revised to reflect FDA's position that most journal articles and reference texts (as those terms are defined in the regulation) would be considered to be scientifically sound and to describe specific instances (e.g., letters to the editor, Phase 1 trials in healthy individuals) when that would not be the case.

Section 99.103 revised the mandatory statement that the disseminated information has not been approved or cleared by FDA. That section also was revised to ensure that the financial disclosures required under this part would be consistent with FDA's final rule on financial disclosures by clinical investigators.

Sections 99.201(a)(4)(i)(B) and (a)(4)(ii)(B), 99.203(b), and 99.401(b) were revised to clarify that for purposes of computing time periods that begin on the date of initial dissemination, FDA will look to the date that dissemination can begin. This clarification was

necessary because FDA will not know when a manufacturer actually begins to disseminate materials.

Sections 99.203 and 99.303 were revised to clarify that there are two different ways that FDA can extend the time period for completing the studies needed to submit a supplemental application for a new use: One before any studies have begun and one after the studies have begun. FDA also revised the standard for granting an exemption from the requirement to submit a supplemental application on the basis that it would be economically prohibitive. The focus is now on the revenue from the new use rather than the revenue from the product.

In § 99.301, FDA clarified when it would require a manufacturer to keep records identifying the individual recipients of new use information as opposed to just the categories of such recipients. Finally, the final rule was revised to ensure that a decision on a new use submission would be made within 60 days.

III. Responses to Comments on the Proposed Rule

FDA received over 50 written comments on the proposed rule. In addition, on July 8, 1998, FDA held a public meeting on the proposed rule. Thirteen speakers commented on the proposal. In general, the comments expressed a diverse range of opinions, both favoring and opposing the proposed rule, and were submitted by health professionals, medical organizations, consumer groups, patient groups, a medical journal, members of Congress, trade associations, and manufacturers.

A. General Comments

Several comments addressed the concept of disseminating information on unapproved or new uses rather than the proposed rule itself. Other comments sought further restrictions on the dissemination of information on unapproved or new uses, while still other comments sought to expand the rule to cover more products.

1. A number of comments expressed concern that the proposed rule could result in harm to patients. One comment expressed concern over the self-policing aspects of the rule. Another comment cited several examples where drugs were administered for unapproved uses and proved to be harmful. The comment stated that dissemination of information on unapproved uses for approved drugs would further encourage the use of "untested" drugs and discourage clinical trials that would show whether the drugs are safe and effective for their intended uses. The comment asked FDA to "revise or abandon these regulations so as to continue to protect consumers from untested and potentially dangerous drugs." One comment argued that the new rule was not "warranted" because the disseminated information may be inappropriate and would pose a significant risk to public health. The comment further argued that current practices in this area are the best way to handle information on unapproved uses. Finally, a number of comments expressed concern that FDA does not have sufficient resources to implement the regulation in a manner that can adequately protect the public health. Such comments urged FDA to direct adequate resources to implementation.

Section 401(c) of FDAMA required FDA to issue regulations to implement sections 551 through 557 of the act by November 21, 1998. The final rule, which closely tracks the statutory language, represents FDA's effort to comply with that requirement. FDA is committed to implementing this new statutory authority consistent with its obligation to protect the public health.

2. Several comments claimed that dissemination of information on unapproved or new uses of drugs for which pediatric labeling is not available would be contrary to section 505A of the act (21 U.S.C. 355A) as it pertains to pediatric studies of drugs because it would impede the development of pediatric data. Several comments said that dissemination of information on unapproved uses for pediatric therapy should be limited to drugs that have "sufficient labeling in the ages of the children addressed by the information disseminated." Another comment noted that dissemination of information for an unapproved use of a drug in children when the drug's approved use has not been tested for safety in pediatric patients may pose even more risk than unapproved uses generally. Others said that for drugs without labeling for pediatric populations or specific age populations, drug manufacturers should not be able to disseminate unapproved use information about pediatric populations or about specific age populations not specified in the label, unless such information is specifically requested by the physician.

FDA declines to amend the rule as suggested by the comments. It is FDA's hope that the statutory scheme set forth in section 401 of FDAMA and implemented by this part will actually stimulate research and the development of data on new uses, including pediatric uses. Moreover, nothing in section 401 of FDAMA or its legislative history suggests that Congress intended to exclude pediatric uses from section 551 of the act or to further limit how information on such uses can be disseminated. Finally, the act does not require that the disseminated information be specifically requested by a physician in order to be disseminated.

Although FDA is not amending the codified language in any way, it does recognize that the potential dangers of unapproved uses in children may be greater than for adults because few drugs have been tested in children. The agency will take this into account in making a determination as to whether a proposed dissemination of information on a new use poses a significant risk to public health such that the dissemination under this part should not be permitted.

3. One comment would revise the rule to exclude drugs that may be covered by orphan drug exclusivity. The comment explained that a manufacturer may obtain orphan drug exclusivity for a particular use of a drug, but that other manufacturers could be marketing the same drug for non-orphan indications. The comment stated that such other manufacturers could disseminate information on the orphan indication, thereby undermining the value of orphan drug exclusivity.

There is no indication in section 401 of FDAMA or its legislative history that Congress intended the dissemination of information on unapproved uses of drugs and devices to undermine patent protection or exclusivity granted to a product under the Orphan Drug Act, the Waxman-Hatch Amendments, or the pediatric exclusivity provisions in section 111 of FDAMA. Therefore, an indication that is not included in a particular sponsor's approved product labeling because the indication is protected by patent or exclusivity is not eligible for dissemination under part 99.

4. Several comments urged FDA to broaden the proposal to include over-the-counter (OTC) drug products being marketed under an OTC monograph.

Section 401 of FDAMA requires that in the case of a drug, there be in effect for the drug an application filed under section 505(b) or (j) of the act. OTC drugs being marketed under an OTC monograph do not have an application filed under section 505(b) or (j) of the act in effect. Therefore, FDA declines to revise the rule as suggested in these comments.

5. One comment stated that companies sometimes assist physicians and patients in obtaining reimbursement from Medicare, Medicaid, and private insurers by furnishing copies of journal articles and reference publications on unapproved

uses to the insurer or government agency when reimbursement is denied on the ground that use of the product is experimental. The comment concluded that this practice appeared to be legal prior to the passage of section 401 of FDAMA and asked FDA to clarify that it did not become illegal as a result of FDAMA.

Prior to passage of FDAMA, the practice described in this comment was not permissible unless the unapproved use information was provided in response to an unsolicited request for such information. FDA's policy, which allows manufacturers to provide unapproved use information in response to an unsolicited request, was not affected by FDAMA (see section 557(a) of the act). Accordingly, manufacturers who wish to furnish unapproved use information as described in the comment may do so if it is in response to an unsolicited request. Otherwise, they must comply with the requirements set forth in section 401 of FDAMA and this part.

6. One comment asserted that the proposal should recognize the specific legal authorization for manufacturers to provide off-label information to health care practitioners in response to an unsolicited request.

Section 401 of FDAMA added a new section 557(a) of the act, which provides that nothing in section 551 of the act shall be construed as prohibiting a manufacturer from disseminating information in response to an unsolicited request from a health care practitioner. Although FDA does not construe section 557(a) of the act as a specific legal authorization for manufacturers to provide off-label use information to health care practitioners in response to an unsolicited request, § 99.1(b) of the final rule recognizes this statutory provision.

7. One comment stated that FDA should exempt manufacturers from the "pre-approval and reporting requirements" when the primary focus of a publication is on the approved uses of the product.

Section 401 of FDAMA and this part do not cover publications regarding approved uses. FDA intends to permit manufacturers to disseminate certain information that focuses primarily on approved uses and that report the results of studies that have been relied on by FDA in its approval or clearance of a drug or device without meeting all of the requirements set forth in this part. (Cf. Guidance to Industry on Dissemination of Reprints of Certain Published Original Data (61 FR 52800, October 8, 1996). The agency was enjoined from applying this guidance document in *Washington Legal Foundation* v. *Friedman*, CA No. 1:94CV1306 (D.D.C. July 30, 1998) (hereinafter referred to as *WLF* v. *Friedman*). FDA sought clarification on the scope of the order through a motion to amend the judgment in that case.) FDA plans to issue guidance on this issue at some time in the future pending clarification by the court.

8. One comment suggested that FDA exempt manufacturers from the requirements set forth in this part if the new use that is the subject of the information being disseminated has been accepted as standard medical practice (i.e., indications listed in the United States Pharmacopoeia Drug Information for the Health Care Professional (USP DI) or American Hospital Formulary Service, etc.).

FDA declines to create an exemption from the entire rule as suggested by the comment. Regardless of whether the unapproved use is listed in the USP DI or American Hospital Formulary Service, the statutory requirements in sections 551 through 557 of the act apply to a manufacturer who intends to disseminate information on the unapproved use for an approved product to health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, or Federal or State governmental agencies. Evidence that the unapproved use represents standard medical care may, however, enable the manufacturer to seek an exemption from the requirement to submit a supplemental application for the unapproved use if the manufacturer can demonstrate that it would be unethical to conduct the studies necessary for a supplemental application for the new use. A discussion of the "unethical" exemption appears later in section III of this document.

9. Some comments stated that the proposal properly reflects the intent of Congress and achieves the important goals of assuring the public health and encouraging the dissemination of information. Others argued that the proposal is contrary to congressional intent, paternalistic and cumbersome, and would restrict, rather than facilitate, access to information about new uses.

Although FDA drafted the proposed rule to reflect congressional intent, the agency has revised the rule in response to specific comments. These revisions are meant to ensure that the final rule more accurately reflects congressional intent.

B. Comments on Specific Provisions

1. Subpart A—General Information

a. Scope (§ 99.1). Proposed § 99.1 described the scope of part 99, explaining that the part applies to the dissemination of information on human drugs, including biologics, and devices where the information to be disseminated pertains to the safety, effectiveness, or benefit of a use that is not included in the approved labeling for an approved drug or device or in the statement of intended use for a cleared device and the information is to be disseminated to a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State Government agency.

10. Several comments urged FDA to add pharmacists to the list of recipients of information under this part.

Section 401 of FDAMA specifically lists who can receive the new use information under this provision and proposed § 99.1 tracked that statutory provision. Therefore, FDA declines to amend the regulation as requested. However, to the extent that pharmacists fall within the definitions of "health care practitioner," "pharmacy benefit manager," health insurance issuer," or "group health plan" (see § 99.3) they will be included as recipients of this information.

b. Definitions (§ 99.3). Proposed § 99.3 defined various terms, such as "clinical investigation" (proposed § 99.3(b)), "health care practitioner" (proposed § 99.3(d)), "new use" (proposed § 99.3(g)), "scientific or medical journal" (proposed § 99.3(i)), and supplemental application (proposed § 99.3(j)).

11. One comment urged FDA to include a definition for "pharmacy benefit manager" and to include pharmacists in that definition.

Although the statute defines the other recipients of information under this provision (i.e., health care practitioner, health insurance issuer, and group health plan), it does not define pharmacy benefit manager. FDA has revised the rule to define a "pharmacy benefit manager" (PBM) as "a person or entity that has, as its principal focus, the implementation of one or more device and/or prescription drug benefit programs." PBM's, which generally include pharmacists, typically provide claims processing services for devices and/or prescription drugs; negotiate device and/or prescription drug prices; negotiate volume purchase agreements with medical device and/or pharmaceutical manufacturers, develop formularies, and institute formulary

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compliance programs (e.g., mandatory generic substitution programs). The new definition is in § 99.3(h) and the agency has redesignated the remaining definitions accordingly.

12. Proposed § 99.3(b) defined a "clinical investigation" as an "investigation in humans that is prospectively planned to test a specific clinical hypothesis." Several comments argued that FDA should delete the proposed definition of "clinical investigation." They argued that restricting clinical investigations to those that are prospectively planned is not part of the statute, that it would preclude the use of retrospective studies, modeling studies, open label studies, metanalysis, reference articles, and consensus standards, which these comments assert may be useful, and that Congress never intended for the definition to be limited in this manner. One comment argued that the prospective planning criteria should not have to meet the criteria for investigational new drug applications (IND's).

FDA believes that many of these comments misconstrued what the agency meant by the phrase "prospectively planned." FDA does not consider modeling studies, which are not actual studies, but rather extrapolations of information or data that are used to predict how a study might come out, to be clinical investigations. Moreover, FDA does not consider consensus standards and reference articles to contain adequate detail about "clinical investigations" as defined by this rule. However, it was the agency's intent that the definition could include historically controlled studies, retrospective analyses, open label studies, and metanalyses if they are testing a specific clinical hypothesis. To avoid any confusion, FDA is eliminating the phrase "prospectively planned" from the definition of "clinical investigation." In the final rule, FDA has defined a clinical investigation to mean "an investigation in humans that tests a specific clinical hypothesis."

13. Several comments urged FDA to revise the definition of "health care practitioner" in § 99.3(d) to include pharmacists.

Section 556(1) of the act (21 U.S.C. 360aaa-5(1)) defines the term "health care practitioner" to mean a physician, or other individual who is a provider of health care, who is licensed under the law of a State to prescribe drugs or devices." FDA's proposed regulation tracked this statutory definition. FDA declines to revise the definition. To the extent that pharmacists fall within this definition, they will be eligible to receive information disseminated under this part.

14. Proposed § 99.3(g) defined "new use" to mean a use that is not included in the approved labeling of an approved drug or device, or a use that is not included in the statement of intended use for a cleared device. The preamble to the proposed rule explained that a new use is one that would require approval or clearance of a supplemental application in order for it to be included in the product labeling.

The preamble to the proposed rule explained that "new uses," include, but are not limited to: A completely different indication; modification of an existing indication to include a new dose, a new dosing schedule, a new route of administration, a different duration of usage, a new age group (e.g., unique safety or effectiveness in the elderly), another patient subgroup not explicitly identified in the current labeling, a different stage of the disease, a different intended outcome (e.g., long-term survival benefit, improved quality of life, disease amelioration), effectiveness for a sign or symptom of the disease not in the current labeling; and comparative claims to other agents for treatment of the same condition (see 63 FR 31143 at 31145).

A number of comments supported FDA's definition of new use. However, others disagreed with the specific examples set forth in the preamble as too broad. Most of the latter comments objected to the inclusion of patient subgroups and comparative claims for approved indications. They argued that their inclusion in the definition is inconsistent with the agency's prescription drug advertising regulations, which permit companies to promote patient subgroups and comparative claims if certain conditions are met. Several comments disagreed with the inclusion of a new age group—specifically children—in the definition of new use. One comment argued that children should not be considered a "use," but a "user." One comment stated that the definition should focus only on information that differs from the current labeling; it should not include information that is consistent with, but more detailed than what is described in the approved labeling. Finally, one comment disagreed with the agency's characterization of a different intended outcome as an off-label use.

FDA agrees with the comments discussed previously, which note that FDA's prescription drug advertising regulations permit companies to make comparative claims about two approved uses, without getting the claims on the approved label if the companies have on file, substantial evidence or substantial clinical experience to support such claims. (See § 202.1(e) (21 CFR 202.1(e)).) FDA did not intend to change the provision found in its prescription drug advertising regulations. In addition, FDA agrees that as long as the comparison is between two approved claims, there technically is not a new "use" involved. Therefore, FDA is deleting comparative claims about approved uses from its interpretation of "new use." Manufacturers who want to make such claims for a drug, must submit a labeling supplement or must meet the requirements set forth in FDA's drug advertising regulations. (See § 202.1(e).) Manufacturers who want to make such claims for a medical device must meet the requirements set forth in §§ 807.81(a)(3)(ii) or 814.39 (21 CFR 807.81(a)(3)(ii) or 814.39).

With respect to claims of efficacy in a new patient subgroup, including a new age group, claims that are more detailed than the approved labeling, and claims that relate to different intended outcomes (as well as with respect to some of the other types of new use claims listed in the preamble to the proposed rule), FDA's prescription drug advertising regulations may permit companies to make such claims about prescription drugs in certain circumstances, without submitting a supplement, provided they have on file the required evidence to support the claim. (See § 202.1(e).) However, FDA does consider such claims, including claims regarding children, to be new uses in some cases. In cases where such claims constitute new uses, manufacturers also can use the procedures set forth in this part to disseminate journal articles and reference publications about those claims. For medical devices, manufacturers can use the procedures set forth in this part to disseminate journal articles and reference publications about these types of claims. Otherwise, they must comply with the requirements set forth in §§ 807.81(a)(3)(ii) or 814.39.

15. Proposed § 99.3(i) (now redesignated as § 99.3(j)) defined "scientific or medical journal," in part, as a journal that is indexed in Index Medicus. It excluded scientific and medical publications that are in the form of special supplements that have been funded in whole or in part by one or more manufacturers. One comment agreed that special supplements are not appropriate for dissemination under this part. One comment, however, stated that the definition was too narrow by requiring that the publication be listed

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in Index Medicus and by excluding special supplements.

The definition in FDA's rule, which excludes journals not indexed in Index Medicus and scientific and medical publications that are in the form of special supplements that have been funded in whole or in part by one or more manufacturers, tracks the statutory definition. (See section 556(5) of the act.) Accordingly, no changes to the final rule have been made.

16. Proposed § 99.3(j) (now redesignated as § 99.3(k)) defined "supplemental application" as a supplement to support a new use to an approved new drug application (NDA) for human drugs or a supplement to an approved license application for biologics. Several comments argued that the definition of a supplemental application for a drug should be expanded to include the possibility that a "new use" could require a new NDA rather than just a supplemental NDA. One comment claimed that there are certain review divisions in the Center for Drug Evaluation and Research (CDER) that require NDA's for all new uses.

There may be times when a manufacturer would be required to submit an NDA rather than a supplemental NDA to support a new use. In these instances, the unapproved use would not be covered by this part. However, it would not be appropriate to exclude new uses from this part merely because a review division assigns a new NDA number to the supplement for administrative convenience. In the latter instance, the difference would be in name only. Therefore, although FDA is declining to revise the regulation as suggested by the comments, FDA will treat applications that have been assigned a new NDA number for administrative convenience as a supplemental NDA for purposes of this part.

17. One comment recommended expanding the definition of supplemental application to cover OTC drugs that are subject to a monograph.

As set forth previously, OTC drugs that are subject to a monograph are not covered by this provision. Therefore, FDA declines to expand the definition as requested.

18. For devices, proposed § 99.3(j) (now redesignated as § 99.3(k)) defined "supplemental application" as a new 510(k) submission, if the device that is cleared for marketing is the subject of a 510(k) submission, or a supplement to an approved premarket approval application (PMA), if the device that is marketed is the subject of an approved PMA. One comment recommended expanding the definition of supplemental application for devices to include a 510(k) to a 510(k) exempt device.

FDA agrees that the statutory provision covers 510(k) exempt devices and so has amended the definition of supplemental application accordingly.

19. Several comments disagreed with FDA's definition of supplemental application for devices because it did not include a PMA for a new use for a device on the market under section 510(k) of the act (21 U.S.C. 360(k)).

Because there are no supplemental applications for 510(k) devices, FDA could have interpreted the statute to exclude all 510(k) devices from the scope of the rule. FDA drew a distinction between those that require a new 510(k) and those that require a PMA because the agency determined that this was similar to the distinction between a supplemental NDA and an NDA (i.e., a supplemental NDA and a 510(k) are filed on products about which the agency has some accumulated knowledge and experience such that it is not required to start its review from scratch; an NDA and a PMA are filed for products about which the agency has no such accumulated knowledge or experience upon which to base a decision).

FDA disagrees with the comment that an original PMA submission should be included in the definition of "supplemental application" for a device that entered the marketplace through the 510(k) process. The 510(k) process and the PMA process are designed to provide different ways to market regulated products, are supported by a different extent and kind of data, and are predicated on different concepts of how to assure consumer protection.

A product entering the market via the 510(k) process does so because the agency agrees with the sponsor that the new device is substantially equivalent to a device commercially distributed before May 28, 1976, or to a newer predicate device for the same intended use. For a 510(k) product, the consumer protection objective of the act is met in part by the accumulated experience with the predicate devices and the review and establishment of the device category in the appropriate class and a modicum of device specific information. Information on manufacturing and premarket assurance of conformance to good manufacturing practices (GMP's) are not addressed. The agency does not, in the case of a 510(k), make an individual product determination of safety or effectiveness.

The act requires a PMA for a device for which there is a new intended use with no predicate, or which raises new issues of safety and effectiveness. Evidence required under a PMA is substantial and the sponsor must show, through the use of well-controlled clinical trials or, at the discretion of the agency, other valid scientific evidence, that there is a reasonable assurance the product is safe and effective for its intended use. As part of its review of a PMA, FDA reviews and audits clinical trial information and the GMP's employed by the manufacturer.

Allowing an original PMA submission to be regarded in this context as a supplement for a device already marketed under a 510(k) would undermine the statutory and regulatory requirements established to ensure the safety and effectiveness of products subject to PMA's. It would be analogous to applying the dissemination provision to new devices that were never legally marketed. For a PMA product, a new intended use supplement is intended to provide the agency with additional data supporting a new use for an approved device. It relies, in large part, on information previously reviewed regarding product materials, biocompatibility, design, performance, and basic safety data. For a 510(k) product, a PMA would not be providing additional information; it would be providing all of the information.

To illustrate, a product not currently marketed, but that was marketed as a general use tool without any known labeling or identified product specific intended use in the 1960's preamendment period may be re-introduced through a 510(k) for that same (implied) intended general tool use (e.g., it ablates or thermally destroys tissue). The product will be regarded as an unclassified preamendment product. If a manufacturer wished to market it for a specific intended purpose where that new purpose creates a new use with attendant questions of safety and effectiveness of the new use, it must do so through a PMA. In a recent instance, a company sought to market its unclassified preamendment product, an interuterine probe for a cryosurgery machine (using freezing to thermally destroy tissue), for ablation of the uterine endometrium with ultrasound control of the location and extent of tissue being frozen to control excessive menstrual bleeding. By moving to a tissue and anatomic specific intended use and indication, as well as by incorporation of a new (external) control procedure, the manufacturer has created a new intended use. The product's underlying safety and manufacture have never been evaluated. Even the presumption that ultrasound

measurement of the extent of tissue being frozen accurately predicts the extent of tissue necrosis and allows proper positioning of the probe remains unevaluated. Nevertheless, the comments would argue that this product could be the subject of an article or text disseminated under section 401 of FDAMA.

In passing section 401 of FDAMA, Congress intended to provide health care practitioners important scientific information about unapproved uses of approved products. The risks to the public of disseminating information in a case such as that described previously are closer to the risks from instances where there has never been an approved product than those for a new use of a previously approved product. FDA believes that these risks are far greater than those authorized by section 401 of FDAMA.

2. Subpart B—Information To Be Disseminated

a. Information that may be disseminated (§ 99.101). Proposed § 99.101 discussed the types of information concerning the safety, effectiveness, or benefit of a new use that a manufacturer may disseminate. For example, the proposal required (among other things) that the written information to be disseminated concern a drug or device that has been approved, licensed, or cleared for marketing by FDA and be in the form of an unabridged reprint or copy of a peer-reviewed scientific or medical journal article or an unabridged reference publication that pertains to a clinical investigation involving the drug or device and that is considered scientifically sound by experts who are qualified to evaluate the product's safety or effectiveness. Proposed § 99.101 also described criteria for determining whether the information to be disseminated is false or misleading, whether a clinical investigation is "scientifically sound," and whether a reprint or copy of an article or reference publication is "unabridged."

20. One comment urged FDA to include a 60-day window in advance of a drug's Prescription Drug User Fee Act date during which time a manufacturer could submit proposed material for review. In other words, the comment urged FDA to accept dissemination materials for review before a drug has been approved.

FDA declines to adopt this approach. The statute does not direct FDA to accept submissions on products that have not yet been approved or cleared. If FDA accepts submissions on products that have not yet been approved or cleared, it may be wasting resources reviewing submissions on products that never get approved or cleared.

21. One comment urged FDA to make clear that this part does not permit the verbal dissemination of unapproved use information. Another comment suggested that companies that disseminate information on a new use should be permitted to discuss the clinical investigation that is the subject of the disseminated materials with the recipient.

FDA agrees with the first comment that neither this part nor section 401 of FDAMA, would permit the verbal dissemination of information about unapproved uses. Section 551(a) of the act and § 99.101 refer clearly and specifically to "written" information. Therefore, a manufacturer (or its representatives or agents) is not permitted to discuss with a recipient the clinical investigation that is the subject of the written materials disseminated under this part.

22. Several comments asked whether Internet or electronic dissemination would be permitted under this part.

Although, as set forth previously, FDA agrees that the provision was not meant to cover verbal dissemination, it could cover electronic dissemination. However, a manufacturer seeking to disseminate information electronically would have to ensure that all of the requirements under this part could be met for electronic dissemination. For example, the manufacturer would have to ensure that the recipients of the information are appropriately limited and that all of the required information and disclosures can be attached in accordance with this part. FDA may, in the future, issue guidance on this subject.

23. One comment noted the importance of requiring manufacturers to disseminate unabridged journal articles so that information from a clinical study is not pulled out of context or released without all relevant data.

FDA agrees with this comment. Both the statute and the regulation require that a journal article or reference publication disseminated under this part be unabridged.

24. Several comments objected to the requirement that a reprint or copy of an article be published prior to submission for FDA for review. These comments argued that manufacturers should be allowed to send FDA final manuscripts. Another comment opposed allowing submissions to include manuscripts or preprints of articles that have been accepted for publication. This comment stated that it could take months for these manuscripts to be published and that they might be submitted before the peer-review process is complete.

FDA understands manufacturers' desire to disseminate new use information as quickly as possible. However, section 552 of the act (21 U.S.C. 360aaa-1) requires that the peer-reviewed journal articles disseminated under this part be published. If FDA were to accept manuscripts before publication, it could not be sure that what gets published, and then disseminated, is exactly what it was given to review. The agency might not even be sure that the peer-review process has been completed. FDA does not have the resources to verify this information or to conduct duplicative reviews. Therefore, FDA is not revising the rule to permit submission of unpublished manuscripts.

25. Several comments took issue with the statement in the proposal that information can be false or misleading if it includes only favorable publications. These comments argued that dissemination should not be prohibited if the only information that has been published is favorable and the research is scientifically rigorous. These comments noted that FDA should make clear that a single favorable publication can be disseminated if it is objective, balanced, and discusses appropriate safety information. One comment noted that a more appropriate manner in which to state the issue would be to cite the exclusion of an unfavorable publication as the example.

FDA agrees that new use information is not necessarily without balance or misleading just because there is no unfavorable information disseminated with it and FDA did not intend to suggest the contrary. FDA agrees that it would be inappropriate to find a favorable article misleading just because it is disseminated without an unfavorable publication when no unfavorable publication exists. What FDA will be looking for is whether the manufacturer has failed to include unfavorable information that exists and that is necessary to provide balance. FDA has revised the rule to clarify this point.

26. One comment said that proposed § 99.101(a)(4) was unclear on what "other information concerning risks and adverse effects that are or may be associated with the new use" a company would have to include to ensure that the disseminated information is not false or misleading.

The other information refers to the additional information that FDA can require under § 99.103(a)(4). FDA has revised the rule to clarify this point.

27. Proposed § 99.101(a)(5) required that the disseminated information not be derived from clinical research conducted by another manufacturer unless the manufacturer disseminating the information has the permission of such other manufacturer to make the dissemination.

One comment noted that the rule should clarify that contracts or agreements between sponsors may specify how the data are to be used by the sponsoring companies. In other words, cosponsoring companies should be responsible for maintaining their own agreements without FDA input. Several other comments opined that once a peer-reviewed article is published, it is in the public domain and a sponsor should be able to pursue use of the data published by the original sponsor (i.e., without first obtaining permission) as long as proper credit is given. One comment asked FDA to clarify the rule to show that research conducted by an independent academic or similar organization can be disseminated if the information meets the standards for dissemination and is legally available for such use.

Section 551(b)(3) of the act prohibits the dissemination of information derived from research conducted by another manufacturer without that other manufacturer's permission. The fact that an article has been published does not eliminate the need to get permission from the researching company. If it did, this requirement in the statute would be meaningless because all information disseminated under this part must be published. Therefore, FDA declines to revise the rule to permit the dissemination of all published articles reporting on research conducted by another manufacturer without that manufacturer's permission. However, FDA agrees that cosponsoring companies can make agreements without FDA's input and that research conducted by independent parties does not, by the terms of the statute, require that party's permission.

28. One comment noted that reference publications will include many unapproved use discussions that reflect research conducted by other manufacturers and that proposed § 99.101(a)(5) would appear to make the disseminating company get permission from every one of those manufacturers.

As set forth in the proposal, FDA expects that manufacturers that disseminate reference publications under this part will flag the section of the text that describes the clinical investigation of a specific unapproved use (otherwise, they would have to commit to study all of the unapproved uses discussed in the reference publication). Therefore, FDA would expect that a manufacturer would be required only to seek the permission of another manufacturer if that other manufacturer conducted the study for that specific discussion of an unapproved use.

29. Proposed § 99.101(b)(1) provided that the determination of whether a clinical investigation is considered to be "scientifically sound" will rest on whether the design, conduct, data, and analysis of the investigation described or discussed in a reprint or copy of an article or in a reference publication reasonably support the conclusions reached by the authors. It further provided that a clinical investigation described or discussed in an article or reference publication must include a description of the study design and conduct, data presentation and analysis, summary of results, and conclusions pertaining to the new use. The proposal also stated that a clinical investigation presented in a format that does not represent a reasonably comprehensive presentation of the study design, conduct, data, analyses, and conclusions (e.g., letters to the editor, review abstracts, abstracts of a publication) would not qualify for dissemination under this provision.

The preamble to the proposal provided that in order to provide a basis for determining whether the conclusions are reasonably supported and the findings represent evidence of safety and effectiveness of the new use, the article or reference publication should provide, where applicable, evidence that the investigation: (1) Was prospectively planned; (2) enrolled an appropriately defined and diagnosed patient population for the specific clinical condition of interest; (3) accounted for all patients enrolled, including all patients who discontinued therapy prematurely; (4) utilized clinically meaningful endpoints or utilized surrogate endpoints that are reasonably likely to predict safety and effectiveness; (5) used a well described treatment regimen with a clear description of dose, schedule, duration, and route of administration; (6) used an appropriate control group or made reference to an appropriate historical control; (7) collected and reported adequate information on adverse experiences, and the need for dose reductions and treatment interruptions due to toxicity; and (8) was analyzed in a scientifically appropriate manner. (See 63 FR 31143 at 31146 and 31147.)

Some comments supported FDA's interpretation and applauded the agency's efforts to ensure that journal articles and reference publications are scientifically sound. These comments noted that FDA's interpretation reflected what is required by most peer-reviewed journals.

In contrast, a number of comments objected to FDA's approach. Some of these comments objected to FDA making any determination that an article or reference publication is scientifically sound. They stated that it was not Congress' intent to have FDA "do its own peer review." Others criticized the criteria set forth in the proposed codified language and/or the eight criteria in the preamble to the proposal. They argued that FDA would be requiring more detail than is ever found in articles or reference publications and/or that FDA's standard is akin to that for a supplemental application. One comment said that FDA should require only enough detail to determine if the article or publication is scientifically sound. One comment urged FDA to adopt a broader definition of scientifically sound by removing the specific requirements, i.e., prospectively planned, and recognizing the value of scientifically sound studies as long as any limitations (e.g., epidemiological data) are fully disclosed. One comment said that FDA should require the journal article to include the "typical level of detail" and, if it does not, then the company should be able to attach it to the article. Several comments opposed the specific exclusion of abstracts. Finally, a number of comments specifically criticized the requirement that the clinical investigation be prospectively planned.

FDA has a role to play with respect to whether an article or reference publication is scientifically sound. The statute includes a requirement that the disseminated article or reference publication pertain to a clinical investigation that would be considered to be scientifically sound by experts qualified by scientific training or experience to evaluate the safety or effectiveness of the drug or device involved. FDA believes that this provision indicates that Congress meant for FDA to look at whether experts would find that the article or publication is about an investigation that experts would consider to be scientifically sound. However, FDA also believes that its role in determining whether an article or publication is scientifically sound is limited. This approach is consistent with the proposed rule and FDA fully expected that most journal articles about a clinical investigation from reputable peer-reviewed journals would meet the definition of scientifically sound set

forth in its proposal. Nevertheless, to ensure that the provision will be implemented consistent with congressional intent, FDA is revising § 99.101(b)(1) to provide that FDA will find that all journal articles and reference publications (as those terms are defined in § 99.3) are scientifically sound except: (1) Letters to the editor; (2) abstracts of a publication; (3) those regarding Phase 1 trials in healthy people; (4) flagged reference publications that contain little or no substantive discussion of the relevant clinical investigation; and (5) those regarding observations in four or fewer people that do not reflect any systematic attempt to collect data, unless the manufacturer demonstrates to FDA that such reports could help guide a physician in his/her medical practice.

Section 552(a)(2) of the act prohibits the dissemination of information that is false or misleading. That provision prohibits the dissemination of journal articles and reference publications that contain conclusions that are not supported by the study results. FDA has revised § 99.101(a)(4) accordingly.

30. One comment asked what FDA would do if an article discussed multiple unapproved uses, but the manufacturer wanted to focus on just one unapproved use.

FDA expects that there may be articles that discuss multiple unapproved uses and that such articles may be disseminated only if the requirements are met for each of those uses. There also may be instances when an article discusses multiple unapproved use(s), but there is one (or more) predominant unapproved use(s) discussed in the article. Under certain circumstances, it may make sense for the manufacturer to have to meet the requirements set forth in this part only for the predominant use(s). However, FDA will have to make this determination on a case-by-case basis.

31. One comment argued that dissemination of reference publications is not consistent with the purpose of section 401 of FDAMA because, by their very nature, reference publications are considerably out of date at the time of their publication. The comment further opined that because the authors do not report the methods used to assess the current scientific literature, reference publications should be considered the authors' opinion and thus, not scientifically sound.

FDA agrees that many reference publications may not be up to date. However, Congress did include reference publications within the scope of section 401 of FDAMA. There is no basis to presume that all reference publications are not scientifically sound.

32. Several comments opposed the requirement that disseminated information in the form of a reference publication "pertain to a clinical investigation regarding the drug or device." Instead, they argued, the reference publication should "include information about" such a study. Some comments interpreted this to mean that the study should meet all of the criteria to establish scientific soundness, but the information about such a study should not be required. One comment said that the language means that the information needs to be based on a scientifically sound clinical investigation, it need not be about or describe such clinical investigation.

Both the act and this part provide that reference publications must "include information about a clinical investigation." However, this does not mean that the information about that clinical investigation should be any less complete than the information included in a journal article. It means only that the text may have a lot of additional information that is not about the clinical investigation. The idea behind the dissemination provision is that physicians and other recipients be in a position to make treatment decisions based on published reports of clinical trials. If the information that is disseminated gives them little or no information about the actual trial, then it would be difficult to argue that they have a reasonable basis upon which to make such treatment decisions.

33. A number of comments argued that the proposal has written reference publications out of the statute by requiring the same level of detail as would appear in journal articles. One comment said that FDA should accept the dissemination of peer-reviewed reference publications. Some comments argued that the proposal would make text book dissemination more difficult than it was prior to passage of FDAMA and that FDA should adopt a final rule that is consistent with its existing reference text guidance or it should leave that guidance in place. One comment argued that the statute makes it clear that FDA must allow the dissemination of reference publications that meet the requirements of the statute and that the agency's decision to issue a guidance document on this issue is not an option.

As set forth previously, FDA does not believe that Congress meant that reference publications disseminated under this part could have less detail about clinical investigations than journal articles. In addition, reference publications are not subject to classic peer-review. Therefore, FDA rejects the comment that FDA accept all peer-reviewed reference publications. As discussed in the preamble to the proposal, however, FDA recognizes that it will be difficult for many reference publications to meet the statutory criteria. Moreover, as set forth in many of the comments, the new statutory scheme in most respects makes it more difficult to disseminate reference publications than was possible before FDAMA. Thus, FDA plans to permit companies to distribute unabridged reference publications (as defined in the statute and § 99.3(i)) without meeting all of the requirements set forth in this part if the company does not focus on or point to a specific unapproved use in the publication and it includes a disclaimer that the publication includes information about unapproved uses. (Cf. Guidance for Industry Funded Dissemination of Reference Texts (61 FR 52900, October 8, 1996). The agency was enjoined from applying this guidance document in *WLF* v. *Friedman*. FDA sought clarification on the scope of the order in that case through a motion to amend the judgment.) FDA plans to issue guidance on this issue at some time in the future following clarification by the court. Of course, manufacturers that want to focus or point to a specific unapproved use will have the option of doing so by meeting the requirements set forth in this part.

34. One comment argued that Congress intended for manufacturers to be able to disseminate reference publication chapters.

Section 552(a)(1) of the act clearly requires that the reference publication be unabridged. A chapter from a textbook does not meet this requirement.

35. Proposed § 99.101(b)(2) provided that journal articles and reference publications disseminated under part 99 cannot be disseminated with any information that is promotional in nature. One comment strongly agreed with the concept of prohibiting promotional material to be distributed with scientific information on a new use. One comment opposed the concept, stating that there is no policy or legal rationale for prohibiting companies from distributing information on approved uses with these reprints. A number of comments requested clarification of this statement. These comments were concerned that it could preclude a sponsor from delivering a promotional piece on a labeled use during the same office visit or detail. These comments suggested that FDA

clarify that so long as the promotional material concerns an approved use and is kept physically distinct from the unapproved use information, FDA would not consider the two to be distributed together.

FDA did not intend to prohibit a sponsor from delivering promotional pieces on an approved or cleared use during an office visit or detail in which it has delivered information on an unapproved use. Any unapproved use information, however, must be kept physically distinct from the promotional materials, and the sponsor may not verbally promote the unapproved use or include materials about the unapproved use, beyond those permitted or required under this part.

b. Mandatory statements and information (§ 99.103). Proposed § 99.103 described the information that must accompany the journal article or reference publication. For example, it required a prominently displayed statement disclosing (among other things) that the information being disseminated is about a use that has not been approved or cleared by FDA and is being disseminated under section 551 *et seq.* of the act and, if applicable, a statement that there are products or treatments that have been approved or cleared for the use that is the subject of the dissemination. It also required the official labeling and a bibliography of other articles to accompany the disseminated information. In addition, the proposal described what is meant by a "prominently displayed" statement by setting forth criteria that are consistent with the agency's regulations on prescription drug advertising (§ 202.1(e)(7)(viii)) and labeling (21 CFR 201.10(g)(2)). Proposed § 99.103 required the statement that the use has not been approved and the additional information required by FDA to be attached to the front of the disseminated materials and that all other mandatory information be attached to the disseminated information.

36. Although some comments supported FDA's position on mandatory statements, there were others that thought the proposal was unduly restrictive. For example, although some comments supported the requirement for a uniform statement disclosing that the new use has not been approved by FDA, there were a number of comments that thought manufacturers should be allowed to use alternative language to convey this message. One comment specifically objected to the phrase "and is being disseminated under section 551 of the Federal Food, Drug, and Cosmetic Act." This comment said that the phrase was unnecessary and could be confusing.

FDA continues to believe that it is important to have a uniform disclosure stating that the new use has not been approved by FDA. Different statements can be confusing and recipients of the information may believe that they have different meanings. FDA agrees, however, that the phrase: "and is being disseminated under section 551 *et seq.* of the Federal Food, Drug, and Cosmetic Act" is unnecessary and has therefore dropped it from the final rule.

37. One comment stated that clarification is needed regarding articles that discuss more than one use because, as written, § 99.103(a)(1)(i) uses singular and plural forms in a way that is confusing.

FDA agrees that clarification was needed and has revised the final rule accordingly.

38. Proposed § 99.103(a)(1)(iii) required a statement disclosing any authors who have a significant financial interest in the manufacturer. One comment noted that, although the disclosure is appropriate, the final rule should make clear that such disclosure be in line with the level required by the rule on financial disclosure and should apply only to the financial interests at the time the study was conducted and not the author's current interest.

In the preamble to the proposed rule, FDA stated that an author would have a significant financial interest in a manufacturer when there is a relationship that may give rise to actual or perceived conflicts of interest and that when there is a question as to whether a relationship is significant, it should be disclosed (see 63 FR 31143 at 31147). Manufacturers may consult the final rule on financial disclosure by clinical investigators (codified at 21 CFR part 54) to learn the types of financial interests of greatest concern to the agency. However, because the purposes and terminology of this final rule and the final rule on financial disclosure by clinical investigators are different, manufacturers should consult the provisions of this final rule for the requirements that apply to disclosures regarding authors. FDA agrees that the financial disclosure should not necessarily apply to the author's current financial interest. FDA believes, however, that it should apply to the author's financial interests during the time the study was conducted up through 1 year after the time the journal article or reference publication was written and published. FDA has revised the final rule to reflect this time limitation. FDA's revision is consistent with part 54.

39. One comment urged FDA to require that the statement that there are products or treatments that have been approved or cleared for the use that is the subject of the dissemination list the names of other drugs that have been approved by FDA. Another comment asked whether such statement should address adjuvant or supporting therapies.

FDA's regulation tracks the statute, which does not require a manufacturer to identify the specific products that have been approved or cleared for the new use or the adjuvant or supporting therapy for the new use. (See section 551(b)(6)(A)(v) of the act.) Although FDA can see the benefit of having those specific product names listed, it would be difficult to develop a complete and accurate list. Moreover, the information could be misleading if the manufacturer merely provided a list of names. FDA also does not believe that the statement should address adjuvant or supporting therapies. The idea behind the disclosure is to let health care practitioners and other recipients know that approved/cleared alternatives exist. Therefore, FDA is retaining the requirement that the manufacturer only disclose that such approved/cleared products exist.

40. Proposed § 99.103(a)(2) provided that the manufacturer must attach the official labeling of the product to the unapproved use information. In the preamble to the proposed rule (63 FR 31143 at 31147), FDA noted that devices, unlike drugs, do not always include a package insert in the same form and manner as drugs. Therefore, the agency would expect device manufacturers to provide the same information that is generally found in package inserts, namely: (1) The name of the device, including its trade or proprietary name; (2) the manufacturer's name, address, and telephone number; (3) a statement of intended use, including a general description of the diseases or conditions that the device is intended to diagnose, treat, cure, or mitigate; (4) a description of the patient population for which the device is intended; (5) a description of indications that have been approved or cleared by FDA; (6) a description of any limitations or conditions that have been placed on the sale, distribution, or use of the device; and (7) all warnings, contraindications, side effects, and precautions associated with the use of the device.

One comment suggested that a device's official labeling be interpreted as: (1) The package insert for the device; (2) the accompanying documents that a manufacturer distributes with its legally

marketed device to comply with the requirements of 21 CFR 801 or 809.10 for in vitro diagnostic products; or (3) the new labeling vehicle created by a manufacturer that contains the listed items from the preamble.

FDA agrees that this interpretation of official labeling for devices is appropriate provided the third option is used only when the first two options are not available or not feasible and provided the third option includes only the information listed in the preamble (i.e., no promotional statements or representations are included).

41. Proposed § 99.103(a)(3) required the manufacturer to attach a bibliography of other articles (that concern reports of clinical investigations both supporting and not supporting the new use). One comment noted that a bibliography is not required every time—only when one is not present in the disseminated information. Another comment stated that the bibliography requirement is vague regarding what needs to be included and under what circumstances a bibliography included in the publication is sufficient.

FDA's proposal provided that the manufacturer need not include a separate bibliography if the disseminated information already includes a bibliography that meets the requirements set forth in § 99.103(a)(3). The bibliography requirement would be met by a list of all other published articles from scientific reference publications or scientific or medical journals that discuss clinical investigations and are specific to the new use discussed in the disseminated information. The bibliography must include articles about clinical investigations that both support and do not support the new use and it must identify which articles relate to the new use. A bibliography already included with the disseminated information would meet this requirement only if it includes all other such published articles. The manufacturer would still have to include its search strategy to show that it took reasonable steps to ensure that the bibliography includes all relevant published articles as described in § 99.103(a)(3).

42. Proposed § 99.103(a)(4) required a manufacturer to include any additional information required by FDA, including objective and scientifically sound information pertaining to the safety or effectiveness of the new use that FDA determines is necessary to provide objectivity and balance, including information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information, and any other information that can be made publicly available; and an objective statement prepared by FDA, based on data or other scientifically sound information, bearing on the safety or effectiveness of the new use of the product.

Several comments noted that this provision should specify that FDA must provide the manufacturer notice and an opportunity to meet before requiring such information.

FDA agrees that a manufacturer must be provided notice and an opportunity to meet before being required to include this additional information. Redesignated § 99.301(a)(2) provides this opportunity and FDA has revised the final rule at § 99.103(a)(4) to include a reference to § 99.301(a)(2).

43. Several comments opposed the requirement that the statement that the use has not been approved and the additional information required by FDA be attached to the front of the disseminated materials and that all other mandatory information be attached to the disseminated information. One comment suggested that the FDA-required information be attached to the back, and that FDA permit the use of a sticker on the front of the disseminated material stating that the FDA-required information is attached to the back.

FDA believes that it is important to permanently affix the statement indicating that the disseminated information is about an unapproved use to the front of the materials. The recipients of such materials should know, in advance, that they are reading information about an unapproved use. However, FDA agrees that it could be appropriate to attach the additional information required by FDA to the back of the materials, provided there is a sticker or notation on the front referring the recipient to that information. The agency has amended § 99.103(a)(4) accordingly.

FDA also believes it is important to attach the remaining information to the disseminated materials. Congress included this mandatory information because it determined that it was important for the recipient to receive it. If such information is not attached, it can easily be separated from the disseminated material and never seen by the recipient. This is the information that helps to ensure that the disseminated materials are objective, balanced, and not misleading.

44. Although some comments stated that the criteria in proposed § 99.103(c) for determining whether the mandatory information is prominently displayed are appropriate, others opposed the factors that FDA will consider in determining whether the mandatory information is prominently displayed. The latter comments argued that manufacturers should retain some flexibility and discretion in this area.

FDA's approach is flexible. Section 99.103(c) sets forth the factors that FDA will consider and provides that the required statements shall be outlined, boxed, highlighted, *or otherwise graphically designed and presented in a matter that achieves emphasis or notice and is distinct from the other information being disseminated* (emphasis added). Such an approach is not as proscriptive as the comments imply. FDA has retained this approach in the final rule.

45. One comment suggested that FDA permit manufacturers to post information, such as balancing articles required by FDA, on the Internet so long as the Internet address is prominently displayed on the information that was disseminated. The comment said that this would reduce paperwork burdens and provide a continuous source of current information.

FDA does not think that it would be appropriate for manufacturers to use the Internet to balance a published reprint disseminated in hard copy format or to provide recipients of unapproved use information with only part of the information required by the statute and regulations. The idea behind the provision was that physicians would receive, at one time, a balanced package. Such balance would not be achieved if a manufacturer could hand a physician an article and then advise the physician that he/she has to take steps on his/her own to retrieve the balancing information.

46. Several comments urged FDA to require manufacturers to provide patient labeling for drugs that are the subject of the disseminated information. The comments noted that such labeling should identify the drug by name, notify consumers that the drug has been promoted for an unapproved use, and indicate FDA-approved uses for the drug. They further argued that the patient labeling must include information about the potential risks of the drug and meet the quality and content standards of FDA's 1995 proposed Medication Guide rule. This comment said that FDA-approved patient labeling must be in commercial distribution at the level of the pharmacy before dissemination under this part can begin. One comment stated that the labeling should state that these products are not tested in certain populations and should say "use at your own risk."

FDA recognizes the importance of providing consumers access to information about the products they use. Since 1968, FDA has occasionally required and often encouraged manufacturers to produce patient labeling for certain prescription drugs. However, the comments' request for additional patient labeling on drugs that are the subject of information disseminated under part 99 is outside the scope of section 401 of FDAMA.

47. Several comments argued that the lack of availability of pediatric studies on a particular use should be clearly and prominently stated in the information being disseminated to health professionals. These comments also urged FDA to require an additional statement for drugs that have not undergone pediatric testing: "Safety and effectiveness in pediatric populations have not been established for this product for the use that has been approved by FDA or for the use suggested by this information."

The suggestion that for drugs and devices that have not undergone pediatric testing, the disseminated information should include a statement to that effect is beyond the scope of this rule. However, for unapproved pediatric uses that are the subject of the information being disseminated, there will be a statement that the use has not been approved or cleared by FDA.

c. Recipients of information (§ 99.105). Proposed § 99.105 identified who may receive information disseminated under this part. Specifically, a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State Government agency could receive information disseminated under part 99.

48. Several comments urged FDA to add pharmacists to the list of recipients of information under this part.

As previously discussed, section 401 of FDAMA specifically lists who can receive the unapproved use information under this provision. To the extent that pharmacists are included in the definitions of "health care practitioner," "pharmacy benefit manager," "health insurance issuer," or "group health plan" (see § 99.3), they will be included as recipients of this information.

3. Subpart C—Manufacturer's Submissions, Requests, and Applications

a. Manufacturer's submission to the agency (§ 99.201). Proposed § 99.201 described the contents of a manufacturer's submission to FDA. This submission would be made 60 days before disseminating information on an unapproved or new use and would include items such as a copy of all of the information to be disseminated, all other clinical trial information that the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience pertinent to the safety of the new use, and, if a supplement for the new use has not been submitted, a certification that the manufacturer will submit a supplement or an application for an exemption from the requirement to submit a supplement. The proposal also discussed what types of information must be submitted when the certification provides that the studies have been completed or that studies will be conducted as well as the contents of the certification. Proposed § 99.201 also provided that the 60-day period begins to run when FDA receives a complete submission.

49. One comment agreed that manufacturers should have to submit any clinical trial information that they have relating to the safety and effectiveness of the new use. However, another comment argued that the requirement for any clinical trial information is far more exhaustive than that required by the statute.

Section 551(b)(4)(B) of the act requires manufacturers to submit "any clinical trial information the manufacturer has relating to the safety or effectiveness of the new use, any reports of clinical experience pertinent to the safety of the new use, and a summary of such information." Proposed § 99.201(a)(2) tracked this requirement and described what it included. In the final rule, FDA is making clear that, for effectiveness information, the requirements are limited to information on clinical investigations of the new use; safety information is broader and must include all relevant new data from human experience.

50. One comment urged FDA to require manufacturers to report only those adverse experiences that they have received directly because companies do not have access to the details of cases submitted to other manufacturers and thus, are unable to evaluate the reports. That same comment stated that FDA should permit adverse experience reports to be submitted in summary or tabular form rather than as individual case reports. Several other comments requested the ability to reference files that FDA already has about adverse experiences. Finally, one comment noted that the search requirements for adverse reports should be more clearly delineated.

Under the statute and these regulations, manufacturers would have to submit only those adverse experience reports that they have. This would include reports originally made to other manufacturers. If the reports were originally submitted to other manufacturers and the disseminating manufacturer does not know whether to attribute the adverse experience to the new use, it should submit the information to FDA. Manufacturers can submit adverse experience reports in summary or tabular form if FDA already has the individual case reports. With respect to search requirements for postmarket adverse event reports, FDA does not think that it is necessary to be any more specific. Manufacturers gather this information on a regular basis.

51. One comment said that the literature search requirements in § 99.201(a)(3) should be more clearly delineated. Several comments stated that the requirement for the submission of a search strategy is not required by statute and should be eliminated because it is unnecessary and burdensome and could delay the process.

FDA believes that it is necessary to include the search strategy. This is how FDA will be able to determine whether the bibliography meets the statutory criteria. FDA has revised § 99.201(a)(3), however, to clarify the bibliography search strategy requirements.

52. FDA, on its own initiative, revised § 99.201(a)(4)(i)(B) and (a)(4)(ii)(B) to clarify that, for purposes of computing time periods that begin on the date of initial dissemination, FDA will look to the date on which dissemination can begin. This clarification was necessary because FDA will not know when a manufacturer actually begins to disseminate materials. The same revision was made to §§ 99.203(b) and 99.401(b).

53. Proposed § 99.201(a)(4)(ii) required a manufacturer that has planned studies that will be needed for a supplement to submit the proposed protocols and schedule for conducting such studies. The protocols must comply with FDA's IND or investigational device exemption (IDE) regulations. One comment asked FDA to clarify whether a manufacturer who has planned studies and wishes to disseminate information must submit a complete IND or IDE in addition to the information required in a submission under this rule. One comment stated that if the protocols are to be treated as IND's, IDE's, or amendments thereto, the manufacturer should be able to commence the studies within 30 days unless the agency places the study on clinical hold. The same comment said that if the agency does not place a

clinical hold on the protocol within 30 days, the agency should not be able to determine that the protocols are inadequate on day 60 and if the protocol is put on clinical hold within 30 days, it should not be dispositive of the decision. The comment further stated that if the agency decides that the protocols are adequate, it should be bound by this decision and the final rule should reflect this. Finally, several comments urged FDA to permit manufacturers to cross reference IND's and IDE's rather than resubmitting such information.

FDA intends that the protocols for planned studies under this provision be submitted in compliance with the IND or IDE regulations. However, a manufacturer will not be required to submit these materials twice. If a protocol has already been submitted to an IND or IDE, the IND or IDE can be cross referenced in the dissemination submission.

Moreover, FDA does not intend to change, in any way, the IND or IDE regulations, including the timeframes. If an IND or IDE is submitted and a clinical hold is not issued within 30 days, the manufacturer can commence the study or studies. However, the fact that FDA does not issue a clinical hold within 30 days, does not prevent FDA from determining, within 60 days, that a protocol is inadequate. FDA can issue a clinical hold at any time after the 30-day period if the requirements for issuing a clinical hold are met. If the protocol is put on clinical hold within 30 days, it may not be dispositive of the issue because the sponsor may remedy the reason for the clinical hold within the 60-day period. However, if the reason for issuing the clinical hold is not resolved, it will be dispositive of the issue. Finally, FDA is declining to revise the rule to provide that if the agency finds that the protocols are adequate, it will be bound by this decision. FDAMA addressed the issue of agreements regarding the parameters of the design and size of clinical trials. (See, e.g., section 505(b)(4)(C) or section 520(g)(7)(A) through (g)(7)(C) of the act (21 U.S.C. 360j(g)(7)(A) through (g)(7)(C)).) FDA will abide by these statutory directives.

54. Proposed § 99.201(a)(4)(ii) required a manufacturer that has planned studies that will be needed for the submission of a supplemental application for the new use to certify that it will exercise due diligence to complete such studies and submit a supplement within 36 months of dissemination. FDA has revised this section to reflect the possibility that FDA may determine, before the certification is submitted, that the studies needed to submit a supplemental application cannot be completed and submitted within 36 months. This change is further reflected in § 99.203.

55. One comment requested that the 36-month timeframe for submitting a supplement not override the time limits created under separate regulatory or statutory authority. This comment was concerned that if FDA finalizes its proposed 1997 regulation on pediatric research and it includes compliance dates for completing the pediatric studies that are less than 36 months, the 36-month period in this part not override that shorter timeframe.

As FDA has stated elsewhere in this document, nothing in this regulation is meant to change or supersede other regulatory requirements.

56. One comment asked FDA to clarify the submission requirements and FDA action requirements with respect to nonsignificant risk devices.

Protocols submitted for studies for devices considered to be nonsignificant will be reviewed by FDA only to ensure that the protocol for the study is consistent with the new use information to be disseminated. Manufacturers must present the protocol for the nonsignificant risk device study to an institutional review board (IRB) for approval before starting the study. (See 21 CFR 812.1(b)(1).) However, all reporting requirements under this part will apply to nonsignificant risk device studies.

57. One comment requested that the agency provide the sponsor an opportunity to meet with FDA promptly to review what changes can be made to the protocol to ensure that it meets requisite standards.

Sections 505(b)(4)(B) and 520(g)(7)(A) and (g)(7)(C) of the act provide sponsors with an opportunity to meet regarding their proposed protocols. Therefore, no changes to this rule are necessary.

58. One comment recommended that all statements submitted under this part be certified by an officer from the manufacturer's executive committee. Another comment recommended that the language in the certification should include "to the best of my knowledge" to reduce the risk that a certifying official could be penalized for an inadvertent mistake not within his/her knowledge.

The final rule requires that the manufacturer's attorney, agent, or other authorized official sign the submission. Although an officer from the manufacturer's executive committee may be an authorized official, FDA does not think it is necessary for the submission to be signed by such an officer. FDA also does not agree that it would be appropriate to include the words "to the best of my knowledge" in the certification. The attorney, agent, or other authorized official who signs the submission and certification on behalf of the manufacturer, and ultimately the manufacturer itself, is responsible for what is submitted to the agency under this part.

59. Proposed § 99.201(c) described the component in each FDA center that will receive a submission under this part. Several comments noted that it would be appropriate for the review divisions in the centers to also receive copies of the information submitted under this part.

In the final rule, FDA is retaining the requirement that the submissions go to a single office within each center. Those offices will forward the information to the appropriate review divisions within the agency. The regulation need not spell out all of FDA's internal procedures for processing these submissions.

60. One comment stated that FDA needs to clarify the required physical organization of the documents submitted under this part.

FDA does not think it is appropriate to include that kind of detail in this regulation. Nevertheless, FDA expects that materials in a submission will be organized and labeled in accordance with the submission requirements described in this part. If FDA subsequently determines that manufacturers need more guidance in this area, it will issue a guidance document.

61. A number of comments objected to proposed § 99.201(d), which provided that the 60-day (post submission) period shall begin to run when FDA receives a complete submission and that a submission shall be considered complete if FDA determines that it is sufficiently complete to permit a substantive review. These comments argued that FDA would use this provision to extend the 60-day time period. The concern was that FDA would, on day 59, advise a manufacturer that their submission was not complete and therefore the 60-day time period had not begun. The comments said that Congress meant for FDA to give a final answer within the 60-day time period.

As further described below, FDA is committing to give manufacturers a final decision within 60 days. FDA has revised § 99.201(d) to provide that the 60-day period shall begin when FDA receives a manufacturer's submission, including, where applicable, a

certification statement or an application for an exemption.

62. A number of comments were made regarding the appropriateness of public disclosure of information submitted under this part. Some comments argued that both the fact of the submission and all information in the submission is confidential and should not be released. Other comments argued that all of the previous information should be public because the public, including the patient community, wants to be involved and has a right to know about a submission, the data in such submission, FDA action on the submission, what studies are being conducted, and the status of those studies. Several comments argued that upon receiving a submission, FDA should publish in the **Federal Register**, the citation for the article and the bibliography, and solicit additional published information that might be appropriate for dissemination. One comment argued that the public should have an opportunity to comment prior to FDA's granting approval for dissemination of information and that FDA should hold an advisory committee meeting and let the public participate in its decision on whether an exemption from the requirement to submit a supplement should be granted.

FDA declines to amend the rule to require a notice and comment process before permitting dissemination to proceed or before granting an exemption. However, the Freedom of Information Act (FOIA) and FDA's regulations will dictate what information submitted under this provision can be disclosed. Because the agency was required to issue this regulation within such a short period of time, it has been unable to fully examine all issues of disclosability. However, the agency will continue to examine these issues separately.

b. Request to extend the time for completing planned studies (§ 99.203).

Section 554(c)(3) of the act (21 U.S.C. 360aaa-3) describes two types of extensions of time regarding planned studies. Section 554(c)(3)(A) of the act provides that the 36 month period for completing planned studies and submitting a supplemental application may be extended by the Secretary of Health and Human Services (the Secretary) if the Secretary determines that the studies needed to submit such application cannot be completed and submitted within 36 months. This type of extension would be granted before such studies are begun. Section 554(c)(3)(B) of the act provides that the period for completing planned studies and submitting a supplemental application may be extended by the Secretary if the manufacturer submits a written request for the extension and the Secretary determines that the manufacturer has acted with due diligence to conduct the studies in a timely manner. The latter extension cannot exceed 24 months. Proposed § 99.203 set forth the procedures that a manufacturer must follow to request an extension of time for submitting a supplemental application and the content of a request for an extension. The provision covered only the extension in section 554(c)(3)(B) of the act.

63. The comments to this provision indicated that there was some confusion regarding the two different statutory procedures. Several comments asked FDA to more clearly set out the two procedures contemplated by the statute.

Although the statute specifically refers to a manufacturer request in connection only with the procedure described in section 554(c)(3)(B) of the act and FDA agrees that the agency can, under section 554(c)(3)(A), on its own initiative determine before the studies have begun that more than 36 months is needed, FDA believes that manufacturers will come to FDA and ask FDA to make a determination under section 554(c)(3)(A) of the act. Therefore, FDA has revised § 99.203 to establish procedures for the two different types of extensions. The first extension, set forth in § 99.203(a), relates to a request for an extension by the manufacturer at or before the time it submits its dissemination package to FDA because the 36-month period is not enough time to complete a study or studies of the new use and submit a supplemental application. Revised § 99.203(b) sets forth the procedures that a manufacturer must follow to request an extension of time for submitting a supplemental application after a study has begun and the content of a request for an extension.

c. Application for exemption from the requirement to file a supplemental application (§ 99.205). Proposed § 99.205 set forth what a manufacturer must submit when seeking an exemption from the requirement to file a supplemental application for a new use for purposes of disseminating information on that new use. It required the manufacturer to include an explanation as to why an exemption is sought and to include materials demonstrating that it would be economically prohibitive or unethical to conduct the studies needed to submit a supplemental application for the new use.

64. A number of comments supported the standards that FDA proposed to determine whether it would be economically prohibitive or unethical to conduct the studies needed to submit a supplemental application. Some noted that FDA's standards are consistent with congressional intent that exemptions be limited in scope and infrequent or rare. One comment argued that pediatric exemptions should be extremely rare. One comment stated that exemptions should never be granted.

FDA agrees that Congress intended that exemptions from the requirement to file a supplemental application for a new use be granted in limited circumstances (see H. Conf. Rept. No. 399, 105th Cong., 1st sess. at 100 (1997); 143 Congressional Record S9,837 (daily ed. Sept. 24, 1997) (Statement of the Managers)). There is nothing in the statute or legislative history that gives FDA authority to apply a different standard in the case of pediatric exemptions. Moreover, the act provides for exemptions, so FDA does not agree that such exemptions should never be granted. In light of the comments received to the standards set forth in its proposal (discussed in more detail below), FDA is adopting a different standard for the economically prohibitive exemption. Although, FDA is not changing the standard for the unethical exemption, it has, as discussed in the following paragraphs, clarified how it will apply that exemption.

Economically Prohibitive Exemption

Under proposed § 99.205(b)(1), a manufacturer seeking an exemption from the requirement to file a supplemental application on the basis that it would be economically prohibitive to conduct the needed studies would have to: (1) Explain why existing data, including data from the scientifically sound study described in the information to be disseminated, are not adequate to support approval of the new use; and (2) show, at a minimum, that the estimated cost of the necessary studies would exceed the estimated total revenue from the product minus the cost of goods sold and marketing and administrative expenses attributable to the product and that there are not less expensive ways to obtain the needed information.

Proposed § 99.205(b)(1) set forth the type of evidence that the manufacturer would have to include to meet the requirements for an economically prohibitive exemption. These included:

(1) A description of the current and projected U.S. patient population for the product and an estimate of the current and projected economic benefit to the

manufacturer from the use of the drug or device in this population. The estimate would assume that the total potential market for the drug or device is equal to the prevalence of all of the diseases or conditions that the drug or device will be used to treat and involve the following considerations: (a) The estimated market share for the drug or device during any exclusive market period, a summary of the exclusive market period for the product, and an explanation of the basis for the estimate; (b) a projection of and justification for the price at which the drug or device will be sold; and (c) comparisons with sales of similarly situated drugs or devices, where available.

(2) A description of the additional studies that the manufacturer believes are necessary to support the submission of a supplemental application for the new use and an estimate of the projected costs for such studies; and

(3) An attestation by a responsible individual of the manufacturer verifying that the estimates included with the submission are accurate and were prepared in accordance with generally accepted accounting procedures. The data underlying and supporting the estimates shall be made available to FDA upon request.

65. As set forth previously, some of the comments agreed with FDA's construction of "economically prohibitive" These comments argued that such exemptions should be granted rarely and that the criteria for such an exemption should be rigorous. One comment argued that the cost for the studies should substantially exceed revenues to qualify for the exemption. Several comments opposed such an equation.

FDA agrees that exemptions should be granted only in limited circumstances. As set forth below, however, FDA was convinced by the comments that the standard set forth in its proposal was inappropriate and has revised the standard.

66. A number of comments objected to how the agency proposed to determine what is economically prohibitive. First, they objected to the agency's use of the term "rare" in describing when such exemptions would be granted. One comment opined that Congress meant for the exemption to arise in a "fair number of circumstances." Second, they objected to the absence of the criteria listed in the statute and report language from the standard set forth in the codified regulation. Third, they claimed that the proposed rule's standard for determining what is economically prohibitive is too high.

One comment argued that the exemption should be granted if it does not make economic sense to pursue a supplement. Others argued that it should be based on the revenue from the new use, not all uses of the product. Some argued that the standard should be whether the cost of the studies would exceed the revenues from the new use; others argued that it should be whether the cost of the studies exceeds the new use revenues that resulted from approval of the supplement (i.e., the increase in revenues from the new use that result from submission of the supplement). Several comments argued that FDA should automatically grant an exemption if the new use is for a rare disease or condition because for such use there is no reasonable expectation that the cost of developing and making available a drug for such disease will be recovered from sales in the United States of such drug. Several comments argued that the economically prohibitive exemption should automatically be granted if: (1) There is no market exclusivity for the product (from patent, orphan drug status, or Waxman-Hatch); or (2) the patient population likely to be served by the new indication will not exceed an established number (e.g., 1,000). One comment opined that interpreting "prohibitive" to mean anything other than the point at which an economically rational company will not pursue research ignores the needs of patients with rare disorders.

FDA agrees that Congress did not use the term "rare" in the legislative history. Nevertheless, Congress did state that exemptions to the requirement to submit a supplement would be appropriate only in "limited circumstances," which in FDA's view implies fewer than in a "fair number of circumstances." Moreover, Congress strongly emphasized the critical importance of getting information about new uses onto the label. Although FDA did not include the criteria listed in the statute and the legislative history in the standard for economically prohibitive, they were included as types of evidence that would be required to support the exemption.

FDA's proposed criterion did not focus solely on sales from the new use because the agency believed that there might be many circumstances where the cost of the study requirements would exceed the sales from just the new use. The agency explained that in some of these situations, even if it were not economically "wise" to conduct the studies, the cost would not rise to the level of being "prohibitive." This view was judged consistent with the legislative history, which foresaw the granting of economic exemptions only in limited circumstances. The agency noted, however, that defining a practical "economically prohibitive" exemption was particularly troublesome, because it would be so difficult for the agency to assess cost and income projections. In view of these difficulties, FDA acknowledged that it was not certain that the proposed approach was optimal and sought comment on other possible ways to define economically prohibitive.

Unfortunately, the agency has received widely conflicting public comment on this issue and remains uncertain about the elements of a standard that would be most appropriate and effective in achieving the statutory goals. An approach that would grant automatic exemptions if: (1) The new use were for a rare disease or condition; (2) there was no market exclusivity for the product (from patent, orphan drug status, or Waxman-Hatch); or (3) the patient population likely to be served by the new indication would not exceed an established number (e.g., 1,000) would be inappropriate. Neither the statute nor the legislative history provide for automatic exemptions in these circumstances. Rather, they direct FDA to take both market exclusivity and population size into account. The legislative history made clear that the size of the patient population would not necessarily justify an exemption. In fact, the legislative history stated that an exemption based on the size of the patient population was intended to be the exception rather than the rule in cases of populations suffering from orphan or rare diseases or conditions. The legislative history made clear that FDA should consider the importance of getting products for these diseases or conditions approved. It noted that for many years, Congress has sought to encourage research into orphan diseases and support the approval of innovative drugs for their treatment. Congress, therefore, has directed FDA to recognize the vital importance of encouraging applications for new products intended to treat rare diseases and to examine very carefully whether an exemption from filing a supplemental application might hinder such research (see H. Conf. Rept. No. 399, 105th Cong., 1st sess. at 100 (1997); H. Rept. No. 310, 105th Cong. 1st. sess. at 62 (1997)).

Because the agency remains uncertain about the elements of a standard that would be most appropriate and effective, FDA plans to continue its search for a policy that would satisfy the congressional expectation of approving exemptions in only limited

circumstances, without foreclosing the dissemination of useful information by firms that could not otherwise conduct the needed studies. In the meantime, FDA will implement the statute by basing its evaluation of each exemption on a case-by-case determination of whether the cost of the study for the new use reasonably exceeds the total expected revenue from the new use minus the cost of goods sold and marketing and administrative expenses attributable to the new use of the product. This standard may not always meet a strict profitability criterion because it considers all new use revenues, rather than just the new use revenues that would result from approval of the supplement. Nevertheless, it is consistent with most of the comments submitted by the affected industry on this issue, it is consistent with the statutory directive, and it attempts to strike a fair balance between assuring the widest possible information dissemination while granting economic exemptions only in "limited circumstances."

The final rule sets forth the statutory standard and the information that FDA would need to make this case-by-case determination. This will include information about: (1) The cost of the study for the new use; (2) the expected patient population for the new use; (3) the expected total revenue for the new use minus the cost of goods sold and marketing and administrative expenses attributable to the new use of the product; (4) the amount of exclusivity for the drug or new use; and (5) other information that the manufacturer believes demonstrates that conducting the studies on the new use would be economically prohibitive.

As this revised criterion may significantly expand the number of exemption applications beyond that anticipated by the Congress, the agency is determined to review its experience with these requests as they are submitted and, if necessary, to contract with outside economic experts to help develop an approach that most appropriate and effective and workable for the agency.

67. A number of comments objected to the requirement to submit detailed financial data. These comments argued that manufacturers should be not required to submit highly sensitive and proprietary information. Others felt that FDA is not qualified to review and evaluate this data.

Congress directed FDA to grant an economic exemption only upon making a determination that conducting the studies and submitting a supplement would be economically prohibitive. FDA cannot make this determination without examining the relevant company data. Therefore, the final rule retains these requirements.

68. Several comments regarding FDA's approach to economic exemptions recommended that FDA require a manufacturer to submit a certified public accountant's (CPA's) opinion on the economic feasibility of filing a supplemental NDA. FDA could contest the claim by providing a CPA's statement to the contrary.

FDA declines to adopt this approach because it removes the agency from the statutorily-specified role of determining whether it would be economically prohibitive to conduct the studies.

69. One comment recommended that manufacturers be given the flexibility to present whatever information they determine is relevant to the "economically prohibitive" factor, that the manufacturer be able to use its own assumptions, and that each situation be evaluated on a case-by-case basis.

As set forth previously, FDA is adopting a case-by-case determination and has specified the information that is essential for this determination. Nevertheless, manufacturers are free to provide whatever additional information they think is relevant to the determination. This could include information that would explain why a study is so expensive to conduct. For example, one factor might be the difficulty of enrolling patients in a clinical investigation if the new use has become the standard of care.

70. Proposed § 99.205(b)(1)(ii)(A) stated that the estimated economic benefit for a drug or device shall assume that the total potential market is equal to the prevalence of the disease(s) or condition(s) that such product will be used to treat. Several comments argued that this assumption should be deleted because the potential market for the drug or device may be less than the prevalence of the disease in question if other therapies are likely to be used in some portion of the total patient population.

FDA agrees that this assumption should be deleted and has done so in the final rule.

71. One comment argued that the manufacturer should not be required to provide a "justification" of the price at which the drug will be sold. According to this manufacturer, only a projection is relevant.

FDA has to be able to determine whether the manufacturer's proposed price is reasonable. It may be that "justification" for the price is not appropriate. Therefore, in § 99.205(b)(ii)(C) of the final rule, FDA will seek an explanation of the price at which the drug or device will be sold.

72. One comment opined that permitting an exemption because of cost is an ethical decision because it is placing a monetary value on people's lives and safety.

FDA does not agree that an economically prohibitive exemption is placing a monetary value on people's lives and safety. The standard in FDA's regulation is intended to best effectuate the goals of the statute.

73. Proposed § 99.205(b)(1)(ii)(C) required a manufacturer to provide an attestation by a responsible individual of the manufacturer verifying that the estimates included with a submission are accurate and were prepared in accordance with generally accepted accounting procedures. In addition, the data underlying and supporting the estimates would have to be made available to FDA upon request. In the preamble to the proposed rule, FDA noted that it had considered requiring a report of an independent CPA with respect to the estimates and FDA solicited comment on whether such a report should be required in lieu of, or as an alternative to, the attestation that would be required by the proposal.

Some comments supported the submission of the CPA report discussed previously, others felt that such a report should not be required. Still other comments stated that the CPA report should be submitted in lieu of the underlying data or that the CPA should make the determination of economic feasibility instead of FDA.

As stated previously, FDA refuses to adopt a procedure by which it surrenders decision making to a CPA. However, FDA is not convinced that it is necessary to require a report of an independent CPA with respect to the estimates. Under § 99.205(b)(1)(iii), therefore, FDA will accept either an attestation by a responsible individual of the manufacturer or by a CPA verifying that the estimates included with a submission are accurate and were prepared in accordance with generally accepted accounting procedures.

Unethical Exemption

Proposed § 99.205(b)(2) required a manufacturer seeking an exemption on the basis that it would be unethical to conduct the studies needed to submit a supplement, to: (1) Explain why existing data, including data from the scientifically sound study described in the information to be disseminated, are not adequate to support approval of the new use; and (2) show that, notwithstanding the insufficiency of existing data to support the submission of a supplemental application for the

new use, the data are persuasive to the extent that withholding the drug or device in the course of conducting a controlled study would pose an unreasonable risk of harm to human subjects.

The proposed codified language provided that an unreasonable risk of harm would ordinarily arise only in situations in which the new use of the drug or device appears to affect mortality or irreversible morbidity. Evidence suggesting that the drug or device is the standard of care for the new use can add weight to an argument that conduct of a needed study or studies would be unethical.

To support its argument that the conduct of a needed study or studies would be unethical, the proposal provided that a manufacturer would need to address the possibility of conducting studies in different populations or of modified design (e.g., adding the new therapy to existing treatments or using an alternative dose if monotherapy studies could not be conducted).

The proposal further provided that in assessing the appropriateness of conducting studies to support the new use, the manufacturer may provide evidence that the new use represents standard medical treatment or therapy. Evidence that the new use represents standard medical therapy can be one element of an argument that studies cannot ethically be conducted, but the persuasiveness of available data is equally important. Evidence that the new use represents standard medical therapy might be obtained from a number of different sources. The preamble to the proposal set forth the following possible considerations: (1) Whether the new use meets the requirements of section 1861(t)(2)(B) of the Social Security Act, which defines "medically accepted indications" with respect to the use of a drug; (2) Whether a medical specialty society that is represented in or recognized by the Council of Medical Specialty Societies (or is a subspecialty of such society) or is recognized by the American Osteopathic Association has found that the new use is consistent with sound medical practice; (3) Whether the new use is described in a recommendation or medical practice guideline of a Federal health agency, including the National Institutes of Health, the Agency for Health Care Policy and Research, and the Centers for Disease Control and Prevention of the Department of Health and Human Services; and (4) Whether the new use is described in a current compendia such as the United States Pharmacopoeia Drug Information for the Health Care Professional, the American Medical Association Drug Evaluations, or the American Hospital Formulary Service (see 63 FR 31143 at 31150).

74. A number of comments objected to FDA's proposed criteria for the unethical exemption—particularly the emphasis on the requirement that it ordinarily would arise only in situations in which the new use appears to affect mortality or irreversible morbidity. Some comments believed that the criteria set forth in the legislative history (that are discussed in the preamble) should be in the codified language. Finally, a number of comments argued that if the new use is the standard of medical care, FDA must automatically grant an exemption.

The act clearly does not require FDA to automatically grant an exemption if a new use is the standard of medical care. The act says that FDA must *consider (among other considerations that the Secretary finds appropriate)* whether the new use is the standard of medical care, and that is what FDA proposed to do. Moreover, an automatic exemption would not be reasonable from a scientific standpoint because there are many instances in which the results of a controlled clinical trial have demonstrated that a drug or device is unsafe or ineffective for a new use for which it is considered to be the standard of care.

The standard set forth in § 99.205 is consistent with how FDA determines what studies are unethical in other contexts (i.e., when a manufacturer argues that it would be unethical to conduct a study). Moreover, the standard is consistent with the legislative history, which provides that such exemptions should be granted in limited circumstances. Therefore, FDA is retaining the proposed basic standard for the unethical exemption in the final rule (i.e., the data are persuasive to the extent that withholding the drug or device in the course of conducting a controlled study would pose an unreasonable risk of harm to human subjects). FDA continues to believe an effect on irreversible morbidity or mortality is what ordinarily would be required to show an unreasonable risk of harm. Nevertheless, there could be other circumstances in which the agency would find that it would be unethical to do the study, i.e., because there would be an unreasonable risk of harm even though the new use does not affect irreversible morbidity or mortality. In making a determination that it would be unethical to conduct a study, the agency must consider whether informed consent and proper IRB review would address the concerns raised by questions about whether it is appropriate to conduct a study.

FDA rejects the suggestion that the factors set forth in the legislative history that FDA may consider in deciding whether to grant an exemption be included as requirements in the codified language. FDA has included the statutory factors in the codified language. The legislative history provides that FDA may consider those factors among other factors, and thus, consideration of these factors is neither mandatory nor is it exclusive.

75. One comment argued that the standard needs to take into account the difficulty of enrolling patients in a study in which some subjects will receive a placebo when a patient can go to a doctor and receive a prescription for the drug. The comment further noted that physicians refuse to participate in placebo controlled studies of therapies they already believe to be effective.

FDA agrees that it can be difficult to enroll patients in placebo controlled trials and that this could be a relevant consideration. Moreover, not all controlled studies are placebo controlled. Companies may be able to conduct studies of a different design, depending on the situation. For example, a company may be able to compare the new use to another therapy that is known to work or may be able to rely on historical controls. In some cases, the new use could be added to existing therapy and compared with placebo added to existing therapy. If these alternate study designs mean that the study or studies will take longer, FDA can consider whether to extend the time to conduct the studies and submit a supplemental application.

76. One comment suggested that FDA should grant an exemption if the new use is listed in the USP DI or Hospital Formulary. Another comment suggested that an unethical exemption should be granted if the unapproved use: (1) Is accepted in a monograph of the USP; (2) is approved by another "first world" country; or (3) is approved by a state FDA. Finally, one comment suggested that FDA should automatically grant an unethical exemption if the new use: (1) Represents the standard of care, as represented by inclusion in specified compendia or practice guidelines, or (2) involves a combination of products or more than one sponsor and should grant other exemptions on a case-by-case basis.

FDA does not agree that any of these individual factors is enough to show that studying a new use would be unethical. Moreover, there is nothing in the statute or legislative history to

suggest that any of the single factors should be sufficient to meet the unethical exemption. FDA will, however, consider these factors in making its determination of when it would be unethical to conduct a study.

77. One comment noted that, although it supported the list of sources to be used to provide evidence that a new use represents standard medical therapy, after 1998, the American Medical Association's (AMA's) Drug Evaluation and the USP DI may no longer be available.

If the AMA's Drug Evaluation and/or the USP DI become unavailable, FDA will stop using them as evidence that a new use is the standard of care.

78. One comment noted that there are diverse opinions in the medical community about what standard of care means. Another noted that "consistent with sound medical practice" is not the same as "standard of care" and that an unapproved treatment may be considered to be sound medical practice but should still be studied. Several comments noted that FDA should take care in how it interprets "standard medical treatment or therapy." These comments noted that manufacturers should not be allowed to take advantage of a situation of their own creation. In other words, standard medical treatment should not be interpreted as meaning treatment that is regularly used because physicians have no other choice because to do so would eliminate the requirements for completing any pediatric research.

FDA agrees that just because a certain treatment is consistent with sound medical practice does not mean that it is the standard of care. FDA has stated that whether a medical specialty society that is represented in or recognized by the Council of Medical Specialty Societies (or is a subspecialty of such society) or is recognized by the American Osteopathic Association has found that a new use is consistent with sound medical practice will be considered as evidence that it is the standard of care. Moreover, just because an unapproved use of a drug or device is the standard of care, does not mean that it is automatically exempt from the requirement to conduct the study needed to submit a supplemental application.

79. Several comments noted that it is almost inconceivable that the study of a new use for children could be viewed as unethical.

FDA will make this determination on a case-by-case basis.

80. Several comments argued for making the exemption process public. One comment said that all information should be made public as soon as a manufacturer requests an exemption and that if an exemption is granted all information should remain in the public domain so that interested parties will be able to play a role in keeping FDA informed as to when it should be revoked. Another suggested that prior to granting any exemption, FDA should hold a meeting of the appropriate advisory committee so that the public has the opportunity to review and comment upon the request.

As set forth previously, FDA declines to adopt a notice and comment process for considering exemption requests. The information will be made available to the public consistent with FOIA and FDA's regulations. FDA has the option of consulting advisory committees about exemption requests, when appropriate.

4. Subpart D—FDA Action on Submissions, Requests, and Applications

a. Agency action on a submission (§ 99.301). Proposed § 99.301 described the range of FDA's actions when it receives a submission. For example, under the proposal, FDA could determine that a manufacturer's submission does not comply with the regulatory requirements, request additional information or documents to assist the agency in determining whether the information to be disseminated complies with applicable requirements, or determine that the information fails to provide data, analyses, or other written matter that is objective and balanced. The proposal also described FDA actions in response to a manufacturer's submission when the manufacturer is committing to submit a supplement on completed studies or is agreeing to conduct the necessary studies and then submit a supplement.

81. Proposed § 99.301(a) provided that, within 60 days, FDA may determine that a submission does not comply with the requirements of the proposal or that it needs more information. A number of comments objected to the proposal because they believed that FDA would use it to extend the 60-day time period. The concern was that FDA would, on day 59, advise a manufacturer that their submission was not complete and therefore the 60-day time period had not begun. The comments said that Congress meant for FDA to give a final answer within the 60-day time period. Some comments argued that FDA should let manufacturers know if their submission is complete within a short period of time, e.g., within 15 days of receiving the submission.

In response to these comments, FDA has eliminated proposed § 99.301(a)(2) so that manufacturers will have a final decision within 60 days. Within the 60-day period, FDA will either notify a manufacturer that it has not met the requirements set forth in the law or allow the dissemination to go forward. FDA is not adopting the comment's suggestion that it advise sponsors as to whether their submissions are complete within a certain number of days (e.g., 15). The 60-day statutory timeframe is too short for the agency to make a commitment to provide such advice.

82. One comment stated that FDA should be required to notify the manufacturer promptly if it approves a submission in less than 60 days.

There is no requirement in the statute that FDA notify a manufacturer unless it intends to stop the dissemination of information under this part. Therefore, FDA is not revising the regulation as suggested. The agency will, however, make an effort to notify manufacturers promptly if it approves a submission in less than 60 days.

83. One comment requested that FDA change the "may" in proposed § 99.301(a) to "shall" and to clarify that a sponsor may begin to disseminate material if it has not heard from FDA within 60 days. Another comment suggested that FDA clarify § 99.301 to indicate that FDA will review an IND or IDE and will notify the manufacturer of the IND or IDE approval and that, until such notification, the manufacturer cannot disseminate the information.

FDA declines to change the "may" to "shall" in § 99.301(a). FDA is not required to do any of the things listed in § 99.301(a), and so use of the word "shall" would be inappropriate. Moreover, it is not true that a manufacturer may, in every circumstance, begin dissemination if it has not heard from FDA within 60 days. Under section 554(c) of the act, a manufacturer that has certified that it will conduct the studies needed to submit a supplement and that has submitted a proposed protocol and schedule for conducting such studies cannot disseminate unless the Secretary has determined that the proposed protocol is adequate and that the schedule for completing the studies is reasonable. Nevertheless, FDA has revised § 99.301(b) to state clearly that the agency will make a positive or negative determination on the manufacturer's protocols (and, where appropriate, its schedules) within 60 days after receiving a submission under part 99.

84. Proposed § 99.301(a)(3) (now redesignated as § 99.301(a)(2)) provided

that FDA shall provide a manufacturer notice and an opportunity for a meeting regarding the agency's determination that the information submitted is not objective and balanced, and requires additional information. One comment suggested that there should be a specific timeline for when such a meeting would occur.

The statute does not require that FDA set a timeline for such a meeting. Nevertheless, FDA will provide for such an opportunity as soon as is mutually convenient for FDA and the manufacturer. In any event, the meeting will take place within the 60-day period. Furthermore, should FDA determine that additional articles are necessary to provide objectivity and balance, the agency will apply the same standards for scientific soundness to those additional articles.

85. Proposed § 99.301(a)(4) (now redesignated as § 99.301(a)(3)) provided that within 60 days of receiving a manufacturer's submission, FDA may require the manufacturer to maintain records that will identify individual recipients of the information that is to be disseminated.

Some comments supported FDA's not requiring individualized recordkeeping in all situations. Others, however, thought it should be invoked in all situations and still others thought that ever requiring it was too burdensome. One comment argued that the proposed standard for individual recordkeeping was too vague and suggested that FDA make such a request "only in rare circumstances, when warranted because of special safety considerations associated with a new use." One comment argued that FDA should provide notice and an opportunity to meet in the event that it requires a company to maintain records identifying individual recipients.

Section 553(b) of the act (21 U.S.C. 360aaa-2(b)) expressly requires a manufacturer to keep records that the manufacturer may use if it is required to take corrective action. Section 553(b) of the act also states that, "Such records, at the Secretary's discretion, may identify the recipient of information provided * * * or the categories of such recipients." FDA does not believe that it would be appropriate to require individual recordkeeping in all circumstances. Similarly, FDA does not believe that it would be appropriate to require recordkeeping of categories of recipients in all circumstances. FDA agrees, however, that it should better define the standard for individual recordkeeping and will adopt, with slight modifications, the standard suggested by the comments. Section 99.301(a)(3) provides for individual recordkeeping when warranted because of special safety considerations associated with the new use. FDA did not adopt the "only in rare circumstances" language because although it expects to require this in limited circumstances, it does not yet have experience implementing this provision and nothing in the statute or legislative history indicates that Congress intended it to be rare.

86. One comment was concerned that because the agency has to review all submissions within 60 days, sometimes the timeframe will expire and allow information dissemination or exemptions to happen without agency review and thus patients could be harmed before FDA has time to terminate a deemed approval. This comment encouraged the agency to provide information to health care providers on the process by which the review will occur.

FDA recognizes that the act would allow information to be disseminated without agency review. The agency is committed to reviewing all of this information so that inappropriate information does not get disseminated.

87. Proposed § 99.301(b) required FDA to notify the manufacturer if the agency determines that its protocol and schedule for conducting studies are adequate and reasonable. Until FDA provides such notification, dissemination cannot begin. One comment noted that it was not the intent of Congress that the 60-day timeframe be delayed as a result of ongoing IND/IDE negotiations.

The statute provides that a manufacturer who submits a protocol and proposed schedule for conducting the studies needed to submit a supplement, cannot begin to disseminate until FDA determines that they are adequate. (See section 554(c)(1) of the act.) However, as stated earlier, FDA has revised § 99.301(b) to state that the agency will make a positive or negative determination on the manufacturer's protocols (and, where appropriate, its schedules) within 60 days after receiving a submission under 21 CFR part 99.

88. Proposed § 99.301(b) described FDA action on a manufacturer's proposed protocols and schedules for completing studies. One comment said that the rule should clarify which functional groups within FDA will be responsible for the review of protocols and studies and provide for a timeline for such review.

FDA has stated previously that clinical information, including protocols, that is submitted under this part will be reviewed by the appropriate review divisions. It is not necessary for the rule to detail FDA's internal procedure. FDA will review such protocols and schedules within 60 days. Section 99.301(b) includes that timeframe.

89. Under proposed § 99.301(b)(2), if a manufacturer has completed studies that it believes would be an adequate basis for the submission of a supplemental application for the new use and has certified that it will submit such supplement within 6 months, FDA would conduct a preliminary review of the study reports to determine whether the studies are potentially adequate to support the filing of a supplemental application for the new use. If FDA determines that the study reports are inadequate to support the filing of a supplemental application for the new use or are not complete, FDA will notify the manufacturer and the manufacturer shall not disseminate the new use information under this subpart. One comment argued that FDA should not be allowed to take a "sneak peek" at preliminary clinical trial data prior to its submission in a supplemental application.

Section 99.201(a)(4)(i) requires manufacturers that have completed studies that they believe would be an adequate basis for the submission of a supplemental application for the new use and have certified that it will submit such supplement within 6 months to submit the protocols for those studies. FDA, will, as in the case of the 36-month certification, review those protocols to determine whether they are adequate. The final rule has been revised to indicate that FDA will review the protocols submitted and not the study reports. However, this does not in any way affect the agency's ability to determine, based on information it has, including information about clinical trials, that the information a manufacturer seeks to disseminate is false or misleading or would pose a significant risk to public health.

b. Extension of time for completing planned studies (§ 99.303). Proposed § 99.303 described FDA's ability to: (1) On its own initiative, allow a manufacturer more than 36 months to submit a supplemental application, based on the review of the protocols(s) and planned schedule; or (2) grant a manufacturer's request to extend the 36-month period (for up to 24 months). Proposed § 99.303(a) described FDA's ability to determine, on its own initiative and before any studies have begun, that a manufacturer needs more than 36 months to complete the studies needed for submission of a

supplemental application and to submit such application. Proposed § 99.303(b) and (c) described FDA's ability, after such studies have begun and the sponsor has submitted a request, to grant an extension of the time to submit a supplement by up to 24 months. FDA would grant such an extension if the manufacturer makes a request for an extension in writing and FDA determines that the manufacturer has acted with due diligence to conduct the studies needed for the submission of a supplemental application for a new use and to submit such a supplemental application, but still needs more time.

90. The comments to this provision indicated that there was some confusion regarding these two different procedures. Several comments asked FDA to more clearly set out the two procedures contemplated by the statute. Several comments asked FDA to make clear that the 24-month limitation applies only to an extension request made after a study has begun. One comment suggested that there could be more than one 24-month extension.

FDA has revised this section to make clear that there are two different types of extensions. The first extension (in § 99.303 (a)) relates to FDA's ability to determine, with or without a request from the manufacturer, that 36 months is not enough time to complete a study of the new use and submit a supplemental application. This would occur before any studies are begun, either before the submission is made or at the time of the submission. There is no limit on how much time FDA may give a manufacturer under this subsection.

The second type of extension (described in revised § 99.303(b)) relates to FDA's ability to grant a manufacturer's request for an extension after a study has begun because, even though it appeared that 36 months would be sufficient and the manufacturer has acted with due diligence, the manufacturer has run into problems and needs more time. This type of extension is limited to 24 months and the statute does not provide that FDA can give more than one 24-month extension.

c. Exemption from the requirement to file a supplemental application (§ 99.305). Proposed § 99.305 described FDA action on a request for an exemption from the requirement to submit a supplemental application and the criteria to be considered in deciding whether to grant a request for an exemption, either because it would be economically prohibitive to conduct the studies needed for a supplemental application or it would be unethical to conduct the clinical studies needed to approve the new use.

91. Proposed § 99.305(a)(1) states that FDA must act on an application for an exemption within 60 days of receipt or it will be deemed approved. However, under proposed § 99.305(a)(2), FDA could, at any time, terminate such deemed approval if it determines that the requirements for granting an exemption have not been met. One comment noted that FDA can terminate such deemed approval only if a manufacturer is disseminating information under section 551 of the act.

Section 554(d)(3)(B) of the act provides that if a manufacturer disseminates information under section 551 of the act under a deemed approval of a request for an exemption, FDA may, at any time, terminate a deemed approval and order the manufacturer to cease disseminating the information under section 553(b)(3) of the act. FDA does not believe that it has to wait for a manufacturer to actually disseminate information in order to terminate the deemed approval.

92. A number of comments suggested that FDA provide a manufacturer an opportunity to meet concerning: (1) FDA's determination that the manufacturer cannot disseminate information under this part; (2) FDA's determination that the manufacturer should maintain records of individual recipients; (3) FDA's determination of a company's request for an extension of time to complete the necessary studies and submit a supplement; (4) FDA's denial of an exemption.

Section 401 of FDAMA directed FDA to provide manufacturers an opportunity to meet regarding a determination that the information to be disseminated is not balanced and objective and regarding the cessation of information dissemination in certain circumstances. The statute does not direct FDA to meet in the circumstances described previously. Nevertheless, as always, FDA will honor requests for meetings to the fullest extent feasible. Given the short timeframes set forth in section 401 of FDAMA, FDA's resource constraints, and the fact that FDA does not know how many submissions it will receive under this part, FDA is not imposing on itself any additional requirements for meetings by making those meetings a part of the regulation.

5. Subpart E—Corrective Actions and Cessation of Dissemination

Subpart E, as proposed, contained provisions describing the corrective actions that FDA could take or order the manufacturer to take, termination of approvals of applications for exemption, and the applicability of labeling, adulteration, and misbranding authority in the event that dissemination failed to comply with section 551 of the act.

93. One comment claimed that proposed subpart E was "hollow and meaningless" because Congress did not give FDA the authority to seek civil money penalties against noncomplying manufacturers.

FDA disagrees with the comment's characterization of subpart E and notes that the agency does, indeed, have the authority to seek civil money penalties from any person who violates most requirements of the act pertaining to devices (see section 303(f) of the act (21 U.S.C. 333(f)). Additionally, arguments regarding other civil money penalty authority for violations of these regulations are beyond the scope of this rulemaking.

a. Corrective actions and cessation of dissemination of information (§ 99.401). Proposed § 99.401 authorized FDA to take corrective actions and to order a manufacturer to cease dissemination of information and take corrective action. In general, the proposal would provide for corrective action or an order to cease dissemination of information based on post dissemination data, information disseminated by the manufacturer, or the manufacturer's supplemental application for the new use (or its failure to submit or to complete the studies necessary for the supplemental application). Proposed § 99.401 also described the procedures to be observed, such as consultation with the manufacturer, notice regarding FDA's intent to issue an order to cease dissemination, and opportunities for a meeting, and described when a manufacturer shall cease disseminating information in the event of its noncompliance with the regulations.

94. Several comments would revise proposed § 99.401 to give manufacturers a mechanism for appealing the agency's decision to require corrective action. The comments would either amend the rule to refer to the dispute resolution provision at section 562 of the act (21 U.S.C. 360bbb-1), the regulations for internal agency review of decisions (§ 10.75 (21 CFR 10.75)), or other appeals processes.

FDA declines to revise the rule to refer to statutory or regulatory appeals mechanisms. Such appeals mechanisms are available regardless of whether § 99.401 refers to them or not, and it would be both impractical and unnecessary to list all possible statutory and regulatory appeals mechanisms in § 99.401. Moreover, such a list would either become obsolete or useless if any

statutory or regulatory citations for the appeals mechanisms changed or would require FDA to monitor constantly all cross-references without any appreciable benefit.

95. Several comments would amend § 99.401 to permit manufacturers to continue disseminating information pending the outcome of any appeal except where a significant safety issue or public health concern exists. In contrast, one comment said that a manufacturer should cease disseminating information while it and FDA are resolving any outstanding issues. FDA declines to revise the rule to allow manufacturers to continue disseminating information pending the outcome of any appeal. In general, section 555 of the act (21 U.S.C. 360aaa-4) authorizes the agency to order a manufacturer to cease dissemination of information on the unapproved/new use; it does not require the agency to stay or defer the effectiveness of such an order pending any appeal by the manufacturer. This outcome is consistent with the appeals or dispute resolution provisions cited by the comments (section 562 of the act and § 10.75), as well as other regulatory mechanisms for requesting reconsideration (see, e.g., 21 CFR 10.33 (administrative reconsideration of action) and 21 CFR 10.35 (administrative stay of action)); none of these mechanisms results in an automatic stay of agency action while the agency reconsiders its decision or considers an appeal.

96. One comment suggested that FDA define "appropriate corrective action." The comment would amend the rule to give examples of corrective action and to describe the circumstances under which specific corrective actions might apply.

By using the term "appropriate corrective action," FDA meant to give itself the flexibility to fashion the corrective action to remedy the underlying problem or deficiency. As stated in the preamble to the proposed rule, these actions include, but are not limited to, ordering the manufacturer to send "Dear Doctor" letters, to publish corrective advertising, to include warning labels on the product, or to include warnings or otherwise revise the product labeling (63 FR 31143 at 31151). FDA declines to define "appropriate corrective action" or to give examples and to specify when it might order a manufacturer to take a particular corrective action. The agency's regulatory experience indicates that regulations containing lists or examples often are misconstrued as providing an exclusive list (thereby resulting in unnecessary disputes as to whether a particular corrective action is within the regulation or whether the manufacturer's action is even capable of being addressed by the agency) and that regulations that describe specific responses to specific situations can deprive the agency of the flexibility to tailor a corrective action to fit a particular situation. Nevertheless, FDA would note that it expects that "Dear Doctor" letters and/or corrective advertising would be used much more often than the addition of warning statements or product labeling, which are likely to be used in the more extreme cases.

97. Proposed § 99.401(a) permitted FDA to take appropriate action to protect the public health, including ordering a manufacturer to cease dissemination and take corrective action, if FDA determines, based on data received after the dissemination has begun, that the new use that is the subject of the disseminated information may not be effective or may pose a significant risk to public health. The provision required FDA to consult with the manufacturer before taking any such action.

One comment disagreed that FDA should have any obligation to consult a manufacturer before ordering the manufacturer to cease disseminating information on an unapproved/new use.

Section 555(a)(1) of the act, regarding corrective actions following the receipt of data after a manufacturer has begun disseminating information, expressly states that the agency, "after consultation with the manufacturer," shall take "such action regarding the dissemination of the information as [the agency] determines to be appropriate for the protection of the public health, which may include ordering that the manufacturer to cease dissemination of the information." Thus, with respect to corrective actions based on post-dissemination data, the act requires FDA to consult the manufacturer before taking any action, and § 99.401(a) correctly reflects this statutory requirement.

98. FDA revised § 99.401(c)(3) and (c)(4), by changing the references to § 99.303 from paragraphs (a) or (c) to paragraphs (a) or (b). This change was needed to correct an error and to reflect the changes made to § 99.303, which were previously discussed.

99. Proposed § 99.401(b) discussed FDA's ability to order cessation of dissemination or corrective action because the information being disseminated by a manufacturer does not comply with part 99. Proposed § 99.401(b)(1) directed FDA to give a manufacturer the opportunity to bring itself into compliance if the manufacturer's noncompliance constituted a minor violation. Proposed § 99.401(b)(2) permitted FDA to order the manufacturer to cease dissemination of information after providing notice to the manufacturer and an opportunity for a meeting.

One comment would revise § 99.401(b)(2) to specify a timeframe for a meeting, but did not explain why such specificity would be beneficial.

FDA declines to revise the rule as suggested by the comment. Because FDA cannot require a manufacturer to cease dissemination until it has provided an opportunity for a meeting, it has an incentive to schedule such meetings at the earliest possible time, particularly when the new use at issue raises significant safety concerns. By not specifying a timeframe for a meeting, the regulation provides the appropriate flexibility to schedule meetings.

100. One comment said that FDA should afford manufacturers an opportunity to resolve outstanding issues before taking any corrective action to avoid burdensome and erroneous corrective action.

Section 555(b)(1) of the act requires FDA to delay issuing an order to provide a manufacturer an opportunity to correct a minor violation before ordering such manufacturer to cease dissemination. Section 99.401(b) provides that opportunity. Moreover, FDA will always consider whether and when corrective action is appropriate.

101. Proposed § 99.401(c) described FDA actions based on a manufacturer's supplemental application. For example, under proposed § 99.401(c)(1), FDA could order a manufacturer to cease dissemination and to take corrective action if the agency determined that the supplemental application does not contain adequate information for approval of the new use.

One comment said that FDA should not automatically require a manufacturer to cease dissemination if FDA does not approve a supplemental application for the unapproved/new use because it fails to establish effectiveness. The comment said corrective action should be reserved for situations in which "some significant public health concern is identified that would be materially addressed by such corrective action."

FDA declines to revise § 99.401(c) to limit corrective actions as suggested by the comment. If FDA, based on the supplemental application submitted by the manufacturer, determines that the drug or device is not effective for that use, it could be contrary to the interests

of public health to allow the manufacturer to continue disseminating information on that use. Section 555(b)(2) of the act contemplates such a result by stating that the agency may order a manufacturer to cease dissemination if the agency determines that the supplemental application does not contain adequate information for approval of the new use.

Furthermore, one should note that both section 555(b)(2) of the act and § 99.401(c) give FDA discretion in issuing an order to cease dissemination of information on the unapproved/new use if FDA does not approve the supplemental application. Thus, contrary to the comment's assertion, an order to cease dissemination under such circumstances is not "automatic."

102. One comment said that if FDA does not approve a supplemental application because the studies failed to demonstrate efficacy, the manufacturer should advise health care practitioners who previously received information on the unapproved/new use.

Requiring a manufacturer to notify recipients or categories of recipients that a drug or device is not effective for the unapproved/new use would be within the range of corrective actions that FDA may take. Section 553(b) of the act contemplates such a result by requiring manufacturers to keep records of categories of recipients or individual recipients of the disseminated information and to use such records if the manufacturer is required to take corrective action. Thus, corrective actions, in § 99.401, are not confined to orders to cease dissemination of information on an unapproved/new use.

103. One comment sought clarification as to when FDA may determine that a supplemental application does not contain adequate information for approval of the new use. The comment suggested that proposed § 99.401(c)(1) could be interpreted as applying even if FDA requested additional information or clarification of a supplemental application. The comment stated that dissemination of information on an unapproved/new use should cease only when FDA determines that the supplemental application is not approvable.

Section 555(b)(2) of the act permits FDA to order a manufacturer to cease dissemination if FDA determines that a supplemental application submitted by such manufacturer (for the new use) does not contain adequate information for approval of the new use. Section 99.401(c)(1) tracks this language. FDA agrees that a decision to seek additional data or clarification regarding a supplemental application would generally not constitute a determination that the supplement does not contain adequate information for approval of the new use. However, there may be circumstances in which it is appropriate for the agency to order a manufacturer to cease dissemination of information when additional data is required. Accordingly, FDA will make these determinations on a case-by-case basis.

104. Proposed § 99.401(c)(2) permitted FDA to order a manufacturer to cease dissemination if the manufacturer had certified that it would submit a supplemental application within 6 months, and the manufacturer failed to submit a supplemental application within 6 months.

One comment said FDA should not seek corrective action for a manufacturer's failure to submit a supplemental application within 6 months if there is "good cause" for the delay. The comment said that FDA should meet with a manufacturer to determine if there is good cause for the delay before automatically requiring corrective action and that manufacturers should notify FDA as soon as possible if they will not meet any deadline.

FDA declines to revise the rule as requested by the comment. Section 99.401(c)(2) does not require any specific corrective action in the event that the manufacturer fails to submit a supplemental application on time. Instead, it gives FDA the discretion to order the manufacturer to cease dissemination of information and to take corrective action. FDA will consider, among other things, the reasons for a manufacturer's inability to submit a supplemental application on time when deciding what type of corrective action to take or whether any corrective action is needed.

Thus, while FDA would appreciate any advance notice from manufacturers who believe that they will be unable to submit a supplemental application on time and will meet with manufacturers as time and resources permit, given the agency's discretion regarding corrective actions in § 99.401(c)(2), revising the rule to require such meetings is unnecessary.

105. Proposed § 99.401(d) considered an order to cease dissemination of information to be effective upon the date of issuance unless otherwise stated by FDA.

One comment said it would be more efficient if an order to cease dissemination of information were effective upon date of receipt by the manufacturer. The comment explained that a manufacturer may be unaware when FDA issues an order to cease dissemination of information, so the order should be effective when the manufacturer receives it. The comment also stated that it would be unlikely that a manufacturer could stop dissemination of information throughout the United States on the same day it receives an order to cease dissemination. Consequently, the comment would revise the rule to give manufacturers some time (the comment suggested 60 days) in which to comply with the order.

FDA agrees, in part, with the comment and has revised § 99.401(d) to make an order to cease dissemination of information effective upon receipt by the manufacturer, unless otherwise indicated in the order. The agency does not agree that manufacturers should have a specified amount of time after receipt to comply with an order. A manufacturer is expected to comply immediately. If the manufacturer is unable to comply immediately, it should notify FDA, and FDA will evaluate the situation on a case-by-case basis.

106. Proposed § 99.401(e) required a manufacturer to cease dissemination if it fails to comply with the regulations pertaining to dissemination of information on unapproved/new uses. This would include discontinuation, termination, and a failure to conduct with due diligence clinical studies. The proposal also required the manufacturer to notify FDA if it ceases dissemination under § 99.401(e).

One comment would revise the rule to require a manufacturer to notify FDA of any failure to comply as soon as the manufacturer realizes the failure and ceases dissemination. The comment also would require the manufacturer to notify FDA immediately if the manufacturer ceases dissemination. Section 99.401(e) already requires a manufacturer to notify FDA if it ceases dissemination.

FDA agrees that the agency should be notified immediately and has revised § 99.401(e) accordingly.

b. Termination of approvals of applications for exemption (§ 99.403). Under the act, if FDA fails to act within 60 days on an application for an exemption from the requirement to file a supplemental application, the application is deemed approved. Proposed § 99.403 allowed FDA to terminate the deemed approval of an application for an exemption if FDA determines that the manufacturer has failed to meet the requirements for granting an exemption. In addition, the agency may order the manufacturer to cease disseminating information about the new use and, if appropriate, to take corrective action.

107. One comment would revise § 99.403(a)(3) to apply if FDA determines that it would be economically *and* ethically possible to conduct the studies needed for a supplement rather than economically *or* ethically possible to conduct such studies.

FDA agrees and has revised the rule accordingly.

108. One comment requested that FDA provide notice and an opportunity to meet when FDA terminates approval of an application for an exemption.

Section 99.403(c), (d), and (e) provide for notice to the manufacturer, and § 99.403(d) also mentions consultation between FDA and the manufacturer if FDA determines that the manufacturer no longer meets the requirements for an exemption on the basis that it is economically prohibitive or unethical to conduct the studies needed to support a supplemental application for the new use. Thus, no further change to the rule is necessary.

c. Applicability of labeling, adulteration, and misbranding authority (§ 99.405). Proposed § 99.405 provided that the dissemination of information about a new use could constitute labeling, evidence of a new intended use, adulteration or misbranding of the product if it fails to comply with the requirements in section 551 of the act and the requirements of this part.

109. One comment claimed that proposed § 99.405 was too broad and exceeded the statute by considering a failure to comply with part 99 to constitute labeling, evidence of a new intended use, adulteration, or misbranding of a drug or device. The comment acknowledged that labeling that is false or misleading renders a drug misbranded and that each introduction of the drug into interstate commerce constitutes a separate prohibited act under section 301 of the act (21 U.S.C. 331). The comment further acknowledged that FDA can pursue various enforcement actions, such as seizures, injunctions, and criminal penalties, for each prohibited act. However, the comment argued that a failure to comply with part 99 should be a single violation rather than a violation for each product sold and that if a manufacturer tries to follow part 99, the act prescribes specific enforcement consequences, such as corrective action, before FDA resorts to other sanctions.

FDA disagrees with this comment. Although section 401 of FDAMA provided FDA additional enforcement tools for violative dissemination of off-label information, it did not in any way eliminate or limit FDA's ability to use its already existing enforcement mechanisms.

6. Subpart F—Recordkeeping and Reports

Recordkeeping and reports (§ 99.501). Proposed § 99.501 required a manufacturer that disseminates information under part 99 to maintain records sufficient to allow it to take corrective action that is required by FDA and described some of the records to be kept. The proposal gave manufacturers the option of maintaining records that identify recipients of the disseminated information by name or by category, but would require manufacturers who choose to identify recipients by category to ensure that any corrective action FDA requires will be sufficiently conspicuous so as to reach the individuals who have received the information about the new use. The proposal also permitted FDA to require manufacturers to keep records identifying recipients by name and required a manufacturer to keep records for 3 years after it has ceased disseminating the information on an unapproved or new use and to make the records available to FDA for inspection and copying.

110. One comment suggested that FDA permit manufacturers to submit reports via the Internet. The comment said that this would reduce paperwork burdens and provide a continuous source of current information.

FDA currently receives certain submissions from industry in electronic form and encourages increased utilization of this means. Initiatives are underway to formalize a process for electronic submission.

111. Several comments focused on proposed § 99.501(a)(1)(i), which required records to identify, by name, the persons receiving the disseminated information. This provision would apply if the manufacturer did not keep records identifying recipients by category or if FDA required the manufacturer to keep records identifying recipients by name. One comment supported the provision as written. Several comments would amend the rule to require manufacturers to keep records identifying recipients by name in all cases. These comments explained that requiring manufacturers to maintain records of specific recipients would help ensure timely action or notification if the new use is ineffective or presents a significant risk to the public health. The comments said such records also would help ensure that the manufacturer disseminated the information to the appropriate recipients. Two comments suggested requiring manufacturers to keep records of health professionals by name, health plans, and pharmacies that receive information in cases of a recall.

In contrast, several comments objected to ever requiring manufacturers to identify recipients by name. Some comments acknowledged that section 553(b) of the act "technically" gives FDA the discretion to require such records, but nevertheless said the provision was "unnecessary" or "unduly burdensome." These comments would delete the requirement and only require manufacturers to maintain records identifying recipients by category.

FDA declines to revise the rule as suggested by the comments. Section 553(b) of the act expressly requires a manufacturer to keep records that the manufacturer may use if it is required to take corrective action. Section 553(b) of the act also states that, "Such records, at the Secretary's discretion, may identify the recipient of the information provided * * * or the categories of such recipients." To require manufacturers to keep records identifying the recipients in all cases, or in no cases, as suggested by the comments, would be contrary to the express terms in section 553(b) of the act. As previously discussed, however, FDA has better defined the standard for individual recordkeeping. Section 99.301(a)(3) of the final rule provides for individual recordkeeping when warranted because of special safety considerations associated with the new use.

112. One comment claimed that proposed § 99.501(a)(1)(i) exceeded the statutory requirement. The comment said that if FDA requires a manufacturer to maintain records identifying recipients by category, then if corrective action is later required, FDA should not expect manufacturers to generate lists of individual recipients that are to receive such corrective action.

The comment misinterprets the rule. Under § 99.301(a)(3), when FDA reviews a manufacturer's submission, the agency would determine whether records identifying individual recipients must be kept. FDA would impose such a requirement in limited circumstances before the manufacturer disseminates any information on the unapproved/new use. Section 99.501(a)(1)(i) does not provide a new mechanism for requiring manufacturers to keep records identifying individual recipients nor does it contemplate requiring manufacturers not previously required to identify individual recipients to generate such records if corrective action becomes necessary.

113. Several comments discussed the semiannual submissions to FDA under proposed § 99.501(b). Several comments objected to proposed § 99.501(b)(3) and (b)(4), which required a notice and summary of any additional clinical research or other data relating to the safety or effectiveness of the new use and periodic progress reports on the manufacturer's studies. The comments stated that such reporting requirements would duplicate information that FDA already receives under existing reporting requirements for IND's and NDA's. One comment objected to the semiannual frequency of the reports. Another argued that FDA failed to set forth "limits on the responsibilities" of manufacturers "as the Secretary deems appropriate" regarding additional information that must be submitted. Finally, one comment asked FDA to acknowledge that these reports are exempt from disclosure under FOIA.

Section 99.501(b)(3) and (b)(4) reflect the statutory requirement at sections 555(a)(2) and 554(c)(2) of the act respectively. Section 555(a)(2) of the act states that, after a manufacturer disseminates information, the manufacturer shall submit "a notification of any additional knowledge of the manufacturer on clinical research or other data that relate to the safety or effectiveness of the new use involved." Section 554(c)(2) of the act requires a manufacturer to submit periodic progress reports on its clinical studies. FDA drafted the proposed rule to have these periodic progress reports submitted on a semiannual basis in order to coincide with the reporting frequency for the lists of articles and categories of providers required by section 553(a) of the act. This would be more convenient for both manufacturers and the agency to have the reports and lists submitted at the same time. Thus, FDA did not intend to require duplicate reporting of information that is already submitted to the agency under other FDA regulations nor did FDA intend to make the submission of such reports burdensome.

To the extent that the information described in § 99.501(b)(3) and (b)(4) is already submitted to FDA as part of the routine reporting for an application for investigational use or for a marketing application, manufacturers may comply with § 99.501(b)(3) and (b)(4) by making a cross-reference to the relevant application for investigational use or for a marketing application. Thus, a manufacturer does not have to duplicate information that it has already submitted to FDA. Moreover, FDA did set limits on the manufacturers' responsibilities by requiring that the information be reported on a semiannual basis. Finally, as stated earlier, public disclosure of information submitted under this rule is dictated by the FOIA and FDA's regulations.

114. One comment sought clarification that a manufacturer must submit any additional article or publication to FDA before it can be disseminated. The concern was that manufacturers would interpret the semiannual filing requirement as sufficient once a manufacturer has received approval to disseminate information about a particular use.

The statute and regulation make clear that the manufacturer has to come to FDA before beginning to disseminate a journal article or reference publication that has not previously been submitted to FDA. In other words, once FDA has approved or passed on a specific journal article or reference text, the manufacturer can disseminate it to as many qualified recipients as it chooses, as long as the manufacturer continues to meet the requirements of this part. However, even if FDA has approved or passed on one journal article or reference publication for a new use, the manufacturer may not disseminate additional/different journal articles or reference publications for that same use without making a separate submission.

115. If a manufacturer received an exemption from the requirement to submit a supplemental application, proposed § 99.501(b)(5) would require the manufacturer to submit any new or additional information that relates to whether the manufacturer continues to meet the requirements for the exemption. One comment objected to this requirement, saying that it would need extensive market data to continue justifying the need for an exemption on economic grounds and that the cost of generating such information would itself be economically prohibitive.

FDA disagrees that it would be economically prohibitive to comply with this requirement. The regulation requires manufacturers only to provide new or additional information.

116. Proposed § 99.501(c) required a manufacturer to maintain a copy of all information, lists, records, and reports required or disseminated under part 99 for 3 years after it has ceased dissemination of such information and to make such documents available to FDA for inspection and copying. One comment requested clarification of this provision. The comment explained that if FDA approves the manufacturer's supplemental application, then the manufacturer would no longer be disseminating information on an unapproved/new use and would not be subject to part 99. Instead, any postapproval dissemination of information would be on an approved use and, therefore, would not be subject to the recordkeeping requirement in § 99.501(c).

The comment's interpretation of § 99.501(c) is correct. If FDA approves the manufacturer's supplemental application, the use is then "approved" and dissemination of information on the approved use would be outside the scope of part 99. However, documents relating to the dissemination of information before approval would remain subject to § 99.501.

7. Conforming Amendment to 21 CFR Part 16

The proposed rule would amend 21 CFR 16.1(b)(2) to add the due diligence determination under proposed § 99.401(c) to the list of regulatory actions that may be the subject of a part 16 hearing.

FDA received no comments on this provision and has finalized it without change.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize the impact of the rule on small entities. Title II of the Unfunded Mandates Reform Act (Pub. L. 104–4) (in section 202) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation).

The agency has reviewed this rule and has determined that it is consistent with the regulatory philosophy and principles identified in Executive Order 12866, and in these two statutes. Although this rule is not an economically significant regulatory action, it is still a significant regulatory action as defined by the Executive Order due to the novel policy issues it raises.

With respect to the Regulatory Flexibility Act, the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the final rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in a 1-year expenditure of $100 million or more, FDA is not required to perform a cost-benefit analysis under the Unfunded Mandates Reform Act.

The rule implements section 401 of FDAMA by describing the new use information that a manufacturer may disseminate and by setting forth procedures that manufacturers must follow before disseminating information on the new use. The benefits of the rule will derive from the public health gains associated with the earlier dissemination of objective, balanced, and accurate information on important unapproved uses of approved products. In addition, the rule may encourage new studies or the collection of evidence about these new uses.

The costs of the rule are modest. A firm would typically conduct clinical studies in support of a supplemental application for a new use only if the firm believed that the added revenues associated with the new indication would exceed the costs of the supporting studies. Because this rule will accelerate the receipt of these revenues, it is possible that some new use supplemental applications that would not have been economically justified in the absence of this rule, will now be submitted. No comments on the proposed rule attempted to project the magnitude of this incentive and FDA similarly could not estimate the number or cost of the additional clinical studies that might accompany these applications. The agency notes, however, that they would be undertaken voluntarily by the affected firms in the expectation that they would increase company profitability.

Manufacturers choosing not to disseminate new use information will incur no costs. Firms voluntarily choosing to disseminate new use information will experience added paperwork costs for each submission to the agency, but gain sales revenues from the information dissemination. FDA cannot make a precise estimate of the number of submissions that will be filed, but as explained in section V of this document, the agency tentatively forecasts that it will receive approximately 300 submissions each year from manufacturers for the purpose of disseminating new use information. FDA also estimates that the statutory and regulatory paperwork burdens associated with these submissions might total almost 52,000 hours, at an average labor cost of $35 per hour.[1] Thus, the total cost of the added paperwork is estimated to cost industry approximately $1.8 million per year. FDA received no public comments that specifically addressed its paperwork estimates.

The final rule should not have an adverse impact on any manufacturer. One comment asserted that the agency's definition of economically prohibitive implies that some manufacturers will disseminate information despite a resulting reduction in net income. The comment further indicated that this reduction in net income requires FDA to undertake additional analysis under the Regulatory Flexibility Act. The agency disagrees with this comment, because the final rule simply makes the dissemination of unapproved use information an option for those firms that find it beneficial to do so. Firms will compare the expected sales revenue from the new dissemination activity to the associated paperwork cost and disseminate the new information only if it increases their profitability. As noted previously, firms choosing not to disseminate new use information will face no increased costs. Because no firm is likely to experience a reduced net income, the rule will not have a significant adverse economic effect on a substantial number of small entities and no further analysis is required under the Regulatory Flexibility Act.

V. Paperwork Reduction Act of 1995

This rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). A description of these provisions is given below in this section of the document with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA had submitted the information collection requirements for the proposed rule to OMB for its review. In its Notice of Office of Management and Budget Action, dated July 30, 1998, OMB stated that it had concerns regarding the burden and utility of the information collection that were to be "assessed in light of public comments received." The terms of OMB clearance further stated that OMB:

> is particularly interested in determining whether the public has comments on the burden and utility of the information required to be included in a submission to FDA, including information submitted to meet the economically prohibitive' exception, and the three year recordkeeping requirement proposed in the rule. FDA shall specifically address any comments received on these and other issues related to the information collection requirements * * *.

The proposed rule provided an opportunity for public comment on the information collection requirements, but FDA received no comments that provided any contrary or different estimates. The agency did receive one comment declaring that the estimated information collection burden for the proposed rule "may not be an accurate reflection of the actual burden," but the comment provided no data or further information that would enable FDA to revise the estimated information collection burden for the final rule.

The agency received several comments that questioned the utility of the information collection requirements. For example, several comments requested changes to the information that would be required to obtain an exemption when a manufacturer felt it would be "economically prohibitive" or "unethical" to conduct studies necessary to support a supplemental application. These comments generally stated that the proposed rule's criteria were too restrictive. The agency revised the "economically prohibitive" criteria in response to the comments and modified the language in the "unethical" exemption. These issues are discussed in more detail in the preamble to the final rule.

The agency received several comments that questioned the utility of the information collection requirements. For example, several comments requested changes to the information that would be required to obtain an exemption when a manufacturer felt it would be "economically prohibitive" or "unethical" to conduct studies necessary to support a supplemental application. These comments generally stated that the proposed rule's criteria were too restrictive. The agency revised the "economically prohibitive" criteria in response to the comments and modified the language in the "unethical" exemption. These issues are

[1] Updated from Eastern Research Group, Inc., "Final Report—Economic Threshold and Regulatory Flexibility Assessment of Proposed Changes to the Current Good Manufacturing Practice Regulations for Manufacturing, Processing, Packaging, or Holding Drugs (21 CFR 210 and 211)," March 13, 1995. Calculation allocates 50 percent of hours to middle management, 25 percent to upper management, and 25 percent to support staff.

discussed in more detail in the preamble to the final rule.

The agency did not receive any comments that questioned the utility of the 3-year recordkeeping requirement. One comment sought clarification as to whether the recordkeeping requirement would still apply if FDA approved the supplemental application for the new use, and FDA has addressed that comment in its discussion of the recordkeeping provision.

FDA did, however, simplify the provision concerning the "economically prohibitive" exception in response to comments it received. FDA discusses the impact of this revision on the estimated annual reporting burden later in this section.

FDA requested emergency processing of the information collection requirements for this final rule. OMB granted approval to the collection of information and assigned a control number (OMB 0910–0390). The final rule's information collection requirements, therefore, are effective upon November 20, 1998. However, the agency is also submitting the information collection requirements for the final rule to OMB for routine processing. Consequently, FDA is providing an opportunity for public comment on the final rule's information collection requirements.

FDA invites comments on: (1) Whether the collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Dissemination of Treatment Information on Unapproved/New Uses for Marketed Drugs, Biologics, and Devices.

Description: The rule implements sections 551 through 557 of the act (21 U.S.C. 360aaa-360aaa-6) as amended by FDAMA, which requires a manufacturer that intends to disseminate certain treatment information on unapproved uses for a marketed drug, biologic, or device to submit that information to FDA. The rule sets forth the criteria and procedures for making such submissions. Under the rule, a submission would include a certification that the manufacturer has completed clinical studies necessary to submit a supplemental application to FDA for the new use and will submit the supplemental application within 6 months after dissemination of information can begin. If the manufacturer has planned, but not completed, such studies, the submission would include proposed protocols and a schedule for conducting the studies, as well as a certification that the manufacturer will complete the clinical studies and submit a supplemental application no later than 36 months after dissemination of information can begin. The rule also permits manufacturers to request extensions of the time period for completing a study and submitting a supplemental application and to request an exemption from the requirement to submit a supplemental application. The rule prescribes the timeframe within which the manufacturer shall maintain records that would enable it to take corrective action. The rule requires the manufacturer to submit lists pertaining to the disseminated articles and reference publications and the categories of persons (or individuals) receiving the information and to submit a notice and summary of any additional research or data (and a copy of the data) relating to the product's safety or effectiveness for the new use. The rule requires the manufacturer to maintain a copy of the information, lists, records, and reports for 3 years after it has ceased dissemination of the information and to make the documents available to FDA for inspection and copying.

Description of Respondents: All manufacturers (persons and businesses, including small businesses) of drugs, biologics, and device products.

The estimated burden associated with the information collection requirements for this rule is 52,208 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
99.201(a)(1)	172	1.7	297	40	11,880
99.201(a)(2)	172	1.7	297	24	7,128
99.201(a)(3)	172	1.7	297	1	297
99.201(a)(4)(i)(A)	52	1.7	89	30	2,670
99.201(a)(4)(ii)(A)	52	1.7	89	60	5,340
99.201(a)(5)	52	1.7	89	1	89
99.201(b)	172	1.7	297	0.5	148.5
99.201(c)	172	1.7	297	0.5	148.5
99.203(a)	1	1.7	1	10	10
99.203(b)	1	1.7	1	10	10
99.203(c)	2	1	2	0.5	1
99.205(b)	17	1.8	30	82	2,460
99.501(b)(1)	172	3.4	594	8	4,752
99.501(b)(2)	172	3.4	594	1	594
99.501(b)(3)	172	3.4	594	20	11,880
99.501(b)(4)	2	1.7	3	2	6
99.501(b)(5)	17	1.8	30	41	1,230
Total Hours					48,644

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
99.501(a)(1)	172	1.7	297	10	2,970
99.501(a)(2)	172	1.7	297	1	297
99.501(c)	172	1.7	297	1	297
Total Hours					3,564

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA derived these estimates primarily from existing data on submissions made under supplemental applications and other submissions to the agency, as well as information from industry sources regarding similar or related reporting and recordkeeping burdens.

However, because the final rule revises the "economically prohibitive" exception requirement, FDA has decreased the estimated burden associated with an exemption request under § 99.205(b) and has increased the number of annual responses seeking an exemption. In the preamble to the proposed rule, FDA estimated that 1 percent or approximately 2 of the 172 manufacturers would submit an exemption request. The estimated reporting burden for § 99.205(b), as originally proposed, was 125 hours per response. This was based on a similar reporting burden for certain submissions under (§ 316.20 (21 CFR 316.20)) even though FDA stated that the actual reporting burden would probably be less because proposed § 99.205(b) was not as extensive as § 316.20. For the final rule, FDA has reduced the estimated reporting burden per response to 82 hours because the revised requirements are not as extensive as those in the proposal and has increased the total number of respondents and annual responses to 17 and 30 respectively (or approximately 10 percent of all respondents and submissions). This results in a total hour burden of 2,460 hours for § 99.205(b). Additionally, FDA has revised § 99.203 to permit manufacturers to request an extension of the 36-month time period for conducting studies and submitting a supplemental application before it makes a submission to FDA. FDA, therefore, has adjusted the information collection tables to reflect this revision.

The estimated increase in the number of exemption requests results in a corresponding decrease in the remaining number of submissions under § 99.201(a)(4)(i)(A), (a)(4)(ii)(A), and (a)(5). FDA assumes that the remaining 267 submissions will be divided equally among § 99.201(a)(4)(i)(A), (a)(4)(ii)(A), and (a)(5) resulting in 89 responses in each provision and approximately 52 respondents per provision. Although FDA has not altered the estimated burden hours per response for § 99.201(a)(4)(i)(A), (a)(4)(ii)(A), and (a)(5), the total burden hours for each of these provisions is reduced due to the smaller number of annual responses.

Additionally, the final rule accounts for the estimated annual reporting and recordkeeping burdens for several provisions (§§ 99.201(a)(1), 99.201(a)(2), 99.203(a), 99.501(a)(1), 99.501(b)(1), 99.501(b)(3), 99.501(b)(5), and 99.501(c)). These provisions were omitted from the Paperwork Reduction Act discussion in the preamble to the proposed rule. The final rule also accounts for the statutory reporting burden associated with § 99.201(a)(4).

The agency has submitted the information collection requirements of this rule to OMB for review. Interested persons are requested to send comments regarding information collection by January 19, 1999, to the Dockets Management Branch (address above).

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 99

Administrative practice and procedure, Biologics, Devices, Drugs, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Acting Commissioner of Food and Drugs, 21 CFR chapter I is amended to read as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.1 is amended in paragraph (b)(2) by numerically adding an entry for § 99.401(c) to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) Regulatory provisions:

* * * * *

§ 99.401(c), relating to a due diligence determination concerning the conduct of studies necessary for a supplemental application for a new use of a drug or device.

* * * * *

3. Part 99 is added to read as follows:

PART 99—DISSEMINATION OF INFORMATION ON UNAPPROVED/NEW USES FOR MARKETED DRUGS, BIOLOGICS, AND DEVICES

Subpart A—General Information

Sec.

99.1 Scope.
99.3 Definitions.

Subpart B—Information to be Disseminated

99.101 Information that may be disseminated.
99.103 Mandatory statements and information.
99.105 Recipients of information.

Subpart C—Manufacturer's Submissions, Requests, and Applications

99.201 Manufacturer's submission to the agency.
99.203 Request to extend the time for completing planned studies.
99.205 Application for exemption from the requirement to file a supplemental application.

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Subpart D—FDA Action on Submissions, Requests, and Applications

99.301 Agency action on a submission.
99.303 Extension of time for completing planned studies.
99.305 Exemption from the requirement to file a supplemental application.

Subpart E—Corrective Actions and Cessation of Dissemination

99.401 Corrective actions and cessation of dissemination of information.
99.403 Termination of approvals of applications for exemption.
99.405 Applicability of labeling, adulteration, and misbranding authority.

Subpart F—Recordkeeping and Reports

99.501 Recordkeeping and reports.

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360c, 360e, 360aa–360aaa–6, 371, and 374; 42 U.S.C. 262.

Subpart A—General Information

§ 99.1 Scope.

(a) This part applies to the dissemination of information on human drugs, including biologics, and devices where the information to be disseminated:

(1) Concerns the safety, effectiveness, or benefit of a use that is not included in the approved labeling for a drug or device approved by the Food and Drug Administration for marketing or in the statement of intended use for a device cleared by the Food and Drug Administration for marketing; and

(2) Will be disseminated to a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State Government agency.

(b) This part does not apply to a manufacturer's dissemination of information that responds to a health care practitioner's unsolicited request.

§ 99.3 Definitions.

(a) *Agency* or *FDA* means the Food and Drug Administration.

(b) For purposes of this part, a *clinical investigation* is an investigation in humans that tests a specific clinical hypothesis.

(c) *Group health plan* means an employee welfare benefit plan (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1))) to the extent that the plan provides medical care (as defined in paragraphs (c)(1) through (c)(3) of this section and including items and services paid for as medical care) to employees or their dependents (as defined under the terms of the plan) directly or through insurance, reimbursement, or otherwise. For purposes of this part, the term *medical care* means:

(1) Amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(2) Amounts paid for transportation primarily for and essential to medical care referred to in paragraph (c)(1) of this section; and

(3) Amounts paid for insurance covering medical care referred to in paragraphs (c)(1) and (c)(2) of this section.

(d) *Health care practitioner* means a physician or other individual who is a health care provider and licensed under State law to prescribe drugs or devices.

(e) *Health insurance issuer* means an insurance company, insurance service, or insurance organization (including a health maintenance organization, as defined in paragraph (e)(2) of this section) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1144(b)(2))).

(1) Such term does not include a group health plan.

(2) For purposes of this part, the term *health maintenance organization* means:

(i) A Federally qualified health maintenance organization (as defined in section 1301(a) of the Public Health Service Act (42 U.S.C. 300e(a)));

(ii) An organization recognized under State law as a health maintenance organization; or

(iii) A similar organization regulated under State law for solvency in the same manner and to the same extent as such a health maintenance organization.

(f) *Manufacturer* means a person who manufactures a drug or device or who is licensed by such person to distribute or market the drug or device. For purposes of this part, the term may also include the sponsor of the approved, licensed, or cleared drug or device.

(g) *New use* means a use that is not included in the approved labeling of an approved drug or device, or a use that is not included in the statement of intended use for a cleared device.

(h) *Pharmacy benefit manager* means a person or entity that has, as its principal focus, the implementation of one or more device and/or prescription drug benefit programs.

(i) A *reference publication* is a publication that:

(1) Has not been written, edited, excerpted, or published specifically for, or at the request of, a drug or device manufacturer;

(2) Has not been edited or significantly influenced by such a manufacturer;

(3) Is not solely distributed through such a manufacturer, but is generally available in bookstores or other distribution channels where medical textbooks are sold;

(4) Does not focus on any particular drug or device of a manufacturer that disseminates information under this part and does not have a primary focus on new uses of drugs or devices that are marketed or are under investigation by a manufacturer supporting the dissemination of information; and

(5) Does not present materials that are false or misleading.

(j) *Scientific or medical journal* means a scientific or medical publication:

(1) That is published by an organization that has an editorial board, that uses experts who have demonstrated expertise in the subject of an article under review by the organization and who are independent of the organization, to review and objectively select, reject, or provide comments about proposed articles, and that has a publicly stated policy, to which the organization adheres, of full disclosure of any conflict of interest or biases for all authors or contributors involved with the journal or organization;

(2) Whose articles are peer-reviewed and published in accordance with the regular peer-review procedures of the organization;

(3) That is generally recognized to be of national scope and reputation;

(4) That is indexed in the Index Medicus of the National Library of Medicine of the National Institutes of Health; and

(5) That is not in the form of a special supplement that has been funded in whole or in part by one or more manufacturers.

(k) *Supplemental application* means:

(1) For drugs, a supplement to support a new use to an approved new drug application;

(2) For biologics, a supplement to an approved license application;

(3) For devices that are the subject of a cleared 510(k) submission and devices that are exempt from the 510(k) process, a new 510(k) submission to support a new use or, for devices that are the subject of an approved premarket approval application, a supplement to support a new use to an approved premarket approval application.

Subpart B—Information to be Disseminated

§ 99.101 Information that may be disseminated.

(a) A manufacturer may disseminate written information concerning the safety, effectiveness, or benefit of a use not described in the approved labeling for an approved drug or device or in the statement of intended use for a cleared device, provided that the manufacturer complies with all other relevant requirements under this part. Such information shall:

(1) Be about a drug or device that has been approved, licensed, or cleared for marketing by FDA;

(2) Be in the form of:

(i) An unabridged reprint or copy of an article, peer-reviewed by experts qualified by scientific training or experience to evaluate the safety or effectiveness of the drug or device involved, which was published in a scientific or medical journal. In addition, the article must be about a clinical investigation with respect to the drug or device and must be considered to be scientifically sound by the experts described in this paragraph; or

(ii) An unabridged reference publication that includes information about a clinical investigation with respect to the drug or device, which experts qualified by scientific training or experience to evaluate the safety or effectiveness of the drug or device that is the subject of the clinical investigation would consider to be scientifically sound;

(3) Not pose a significant risk to the public health;

(4) Not be false or misleading. FDA may consider information disseminated under this part to be false or misleading if, among other things, the information includes only favorable publications when unfavorable publications exist or excludes articles, reference publications, or other information required under § 99.103(a)(4) or the information presents conclusions that clearly cannot be supported by the results of the study; and

(5) Not be derived from clinical research conducted by another manufacturer unless the manufacturer disseminating the information has the permission of such other manufacturer to make the dissemination.

(b) For purposes of this part:

(1) FDA will find that all journal articles and reference publications (as those terms are defined in § 99.3) are scientifically sound except:

(i) Letters to the editor;

(ii) Abstracts of a publication;

(iii) Those regarding Phase 1 trials in healthy people;

(iv) Flagged reference publications that contain little or no substantive discussion of the relevant clinical investigation; and

(v) Those regarding observations in four or fewer people that do not reflect any systematic attempt to collect data, unless the manufacturer demonstrates to FDA that such reports could help guide a physician in his/her medical practice.

(2) A reprint or copy of an article or reference publication is "unabridged" only if it retains the same appearance, form, format, content, or configuration as the original article or publication. Such reprint, copy of an article, or reference publication shall not be disseminated with any information that is promotional in nature. A manufacturer may cite a particular discussion about a new use in a reference publication in the explanatory or other information attached to or otherwise accompanying the reference publication under § 99.103.

§ 99.103 Mandatory statements and information.

(a) Any information disseminated under this part shall include:

(1) A prominently displayed statement disclosing:

(i) For a drug, "This information concerns a use that has not been approved by the Food and Drug Administration." For devices, the statement shall read, "This information concerns a use that has not been approved or cleared by the Food and Drug Administration." If the information to be disseminated includes both an approved and unapproved use or uses or a cleared and uncleared use or uses, the manufacturer shall modify the statement to identify the unapproved or uncleared new use or uses. The manufacturer shall permanently affix the statement to the front of each reprint or copy of an article from a scientific or medical journal and to the front of each reference publication disseminated under this part;

(ii) If applicable, the information is being disseminated at the expense of the manufacturer;

(iii) If applicable, the names of any authors of the information who were employees of, or consultants to, or received compensation from the manufacturer, or who had a significant financial interest in the manufacturer during the time that the study that is the subject of the dissemination was conducted up through 1 year after the time the article/reference publication was written and published;

(iv) If applicable, a statement that there are products or treatments that have been approved or cleared for the use that is the subject of the information being disseminated; and

(v) The identification of any person that has provided funding for the conduct of a study relating to the new use of a drug or device for which such information is being disseminated; and

(2) The official labeling for the drug or device;

(3) A bibliography of other articles (that concern reports of clinical investigations both supporting and not supporting the new use) from a scientific reference publication or scientific or medical journal that have been previously published about the new use of the drug or device covered by the information that is being disseminated, unless the disseminated information already includes such a bibliography; and

(4) Any additional information required by FDA under § 99.301(a)(2). Such information shall be attached to the front of the disseminated information or, if attached to the back of the disseminated information, its presence shall be made known to the reader by a sticker or notation on the front of the disseminated information and may consist of:

(i) Objective and scientifically sound information pertaining to the safety or effectiveness of the new use of the drug or device and which FDA determines is necessary to provide objectivity and balance. This may include information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information and any other information that can be made publicly available; and

(ii) An objective statement prepared by FDA, based on data or other scientifically sound information, bearing on the safety or effectiveness of the new use of the drug or device.

(b) Except as provided in paragraphs (a)(1)(i) and (a)(4) of this section, the statements, bibliography, and other information required by this section shall be attached to such disseminated information.

(c) For purposes of this section, factors to be considered in determining whether a statement is "prominently displayed" may include, but are not limited to, type size, font, layout, contrast, graphic design, headlines, spacing, and any other technique to achieve emphasis or notice. The required statements shall be outlined, boxed, highlighted, or otherwise graphically designed and presented in a manner that achieves emphasis or notice and is distinct from the other information being disseminated.

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§ 99.105 Recipients of information.

A manufacturer disseminating information on a new use under this part may only disseminate that information to a health care practitioner, a pharmacy benefit manager, a health insurance issuer, a group health plan, or a Federal or State Government agency.

Subpart C—Manufacturer's Submissions, Requests, and Applications

§ 99.201 Manufacturer's submission to the agency.

(a) Sixty days before disseminating any written information concerning the safety, effectiveness, or benefit of a new use for a drug or device, a manufacturer shall submit to the agency:

(1) An identical copy of the information to be disseminated, including any information (e.g., the bibliography) and statements required under § 99.103;

(2) Any other clinical trial information which the manufacturer has relating to the effectiveness of the new use, any other clinical trial information that the manufacturer has relating to the safety of the new use, any reports of clinical experience pertinent to the safety of the new use, and a summary of such information. For purposes of this part, clinical trial information includes, but is not limited to, published papers and abstracts, even if not intended for dissemination, and unpublished manuscripts, abstracts, and data analyses from completed or ongoing investigations. The reports of clinical experience required under this paragraph shall include case studies, retrospective reviews, epidemiological studies, adverse event reports, and any other material concerning adverse effects or risks reported for or associated with the new use. If the manufacturer has no knowledge of clinical trial information relating to the safety or effectiveness of the new use or reports of clinical experience pertaining to the safety of the new use, the manufacturer shall provide a statement to that effect;

(3) An explanation of the manufacturer's method of selecting the articles for the bibliography (e.g., the databases or sources and criteria (i.e., subject headings/keywords) used to generate the bibliography and the time period covered by the bibliography); and

(4) If the manufacturer has not submitted a supplemental application for the new use, one of the following:

(i) If the manufacturer has completed studies needed for the submission of a supplemental application for the new use:

(A) A copy of the protocol for each completed study or, if such protocol was submitted to an investigational new drug application or an investigational device exemption, the number(s) for the investigational new drug application or investigational device exemption covering the new use, the date of submission of the protocol(s), the protocol number(s), and the date of any amendments to the protocol(s); and

(B) A certification stating that, "On behalf of [insert manufacturer's name], I certify that [insert manufacturer's name] has completed the studies needed for the submission of a supplemental application for [insert new use] and will submit a supplemental application for such new use to the Food and Drug Administration no later than [insert date no later than 6 months from date that dissemination of information under this part can begin]"; or

(ii) If the manufacturer has planned studies that will be needed for the submission of a supplemental application for the new use:

(A) The proposed protocols and schedule for conducting the studies needed for the submission of a supplemental application for the new use. The protocols shall comply with all applicable requirements in parts 312 of this chapter (investigational new drug applications) and 812 of this chapter (investigational device exemptions). The schedule shall include the projected dates on which the manufacturer expects the principal study events to occur (e.g., initiation and completion of patient enrollment, completion of data collection, completion of data analysis, and submission of the supplemental application); and

(B) A certification stating that, "On behalf of [insert manufacturer's name], I certify that [insert manufacturer's name] will exercise due diligence to complete the clinical studies necessary to submit a supplemental application for [insert new use] and will submit a supplemental application for such new use to the Food and Drug Administration no later than [insert date no later than 36 months from date that dissemination of information under this part can begin or no later than such time period as FDA may specify pursuant to an extension granted under § 99.303(a)];" or

(iii) An application for exemption from the requirement of a supplemental application; or

(5) If the manufacturer has submitted a supplemental application for the new use, a cross-reference to that supplemental application.

(b) The manufacturer's attorney, agent, or other authorized official shall sign the submission and certification statement or application for exemption. If the manufacturer does not have a place of business in the United States, the submission and certification statement or application for exemption shall contain the signature, name, and address of the manufacturer's attorney, agent, or other authorized official who resides or maintains a place of business in the United States.

(c) The manufacturer shall send three copies of the submission and certification statement or application for exemption to FDA. The outside of the shipping container shall be marked as "Submission for the Dissemination of Information on an Unapproved/New Use." The manufacturer shall send the submission and certification statement or application for exemption to the appropriate FDA component listed in paragraphs (c)(1) through (c)(3) of this section.

(1) For biological products and devices regulated by the Center for Biologics Evaluation and Research, the Advertising and Promotional Labeling Staff (HFM–602), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852;

(2) For human drug products, the Division of Drug Marketing, Advertising, and Communications (HFD–40), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or

(3) For medical devices, the Promotion and Advertising Policy Staff (HFZ–302), Office of Compliance, Center for Devices and Radiological Health, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850.

(d) The 60-day period shall begin when FDA receives a manufacturer's submission, including, where applicable, a certification statement or an application for an exemption.

§ 99.203 Request to extend the time for completing planned studies.

(a) A manufacturer may request, prior to or at the time of making a submission to FDA under § 99.201, that FDA extend the 36-month time period for completing the studies and submitting a supplemental application for the new use that is the subject of the information to be disseminated. Such request must set forth the reasons that such studies cannot be completed and submitted in a supplemental application within 36 months.

(b) A manufacturer who has certified that it will complete the studies necessary to submit a supplemental application for a new use within a

specified period of time from the date that dissemination of information under this part can begin under § 99.201(a)(4)(ii), but later finds that it will be unable to complete such studies and submit a supplemental application within that time period may request an extension of time from FDA. The manufacturer, in its request for extension, shall identify the product, the new use, and shall:

(1) Describe the study or studies that cannot be completed on time and explain why the study or studies cannot be completed on time;

(2) Describe the current status of the incomplete study or studies and summarize the work conducted, including the dates on which principal events concerning the study or studies occurred; and

(3) Estimate the additional time needed to complete the studies and submit a supplemental application. The requested extension shall not exceed an additional 24 months.

(c) The manufacturer shall send three copies of the request for extension to the same FDA office that received the manufacturer's initial submission and certification statement. The outside of the envelope shall be marked as "Request for Time Extension—Dissemination of Information on an Unapproved Use."

§ 99.205 Application for exemption from the requirement to file a supplemental application.

(a) In certain circumstances, described in paragraph (b) of this section, a manufacturer may submit an application for an exemption from the requirement to submit a supplemental application for a new use for purposes of disseminating information on that use.

(b) The manufacturer's application for an exemption shall identify the basis for the proposed exemption and shall include materials demonstrating that it would be economically prohibitive or that it would be unethical to conduct the studies necessary to submit a supplemental application for the new use.

(1) If the basis for the manufacturer's application for exemption is that it would be economically prohibitive to incur the costs necessary to submit a supplemental application for a new use, the manufacturer shall, at a minimum, provide:

(i) Evidence explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and

(ii) Evidence demonstrating that the cost of the study or studies for the new use reasonably exceeds the expected revenue from the new use minus the costs of goods sold and marketing and administrative expenses attributable to the new use of the product. Such evidence shall include:

(A) A description of the additional studies that the manufacturer believes are necessary to support the submission of a supplemental application for the new use, including documentation from prior discussions, if any, with the agency concerning the studies that would be needed, and an estimate of the projected costs for such studies;

(B) The expected patient population for the new use;

(C) The expected revenue for the new use, including an explanation of the price at which the drug or device will be sold;

(D) Any exclusivity for the drug or device for the new use; and

(E) Any other information that the manufacturer has showing that conducting the studies on the new use would be economically prohibitive; and

(iii) An attestation by a responsible individual of the manufacturer or an individual acting on the manufacturer's behalf verifying that the estimates included with the submission are accurate and were prepared in accordance with generally accepted accounting procedures. The data underlying and supporting the estimates shall be made available to FDA upon request. Alternatively, a manufacturer may submit a report of an independent certified public accountant in accordance with the Statement of Standards for Attestation established by the American Institute of Certified Public Accountants and agreed upon procedures performed with respect to the estimates submitted under this section.

(2) If the basis for the manufacturer's application for exemption is that it would be unethical to conduct the studies necessary for the supplemental application for a new use, the manufacturer shall provide evidence:

(i) Explaining why existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated, are not adequate to support the submission of a supplemental application for the new use. Such evidence shall include an analysis of all data relevant to the safety and effectiveness of the new use, a summary of those data, and any documentation resulting from prior discussions with the agency concerning the adequacy of the existing data; and

(ii) Explaining why it would be unethical to conduct the further studies that would be necessary for the approval of the new use. Such evidence shall establish that, notwithstanding the insufficiency of available data to support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug or device in a controlled study (e.g., by providing no therapy, a placebo, an alternative therapy, or an alternative dose) would pose an unreasonable risk of harm to human subjects. In assessing the appropriateness of conducting studies to support the new use, the manufacturer may provide evidence showing that the new use is broadly accepted as current standard medical treatment or therapy. The manufacturer shall also address the possibility of conducting studies in different populations or of modified design (e.g., adding the new therapy to existing treatments or using an alternative dose if monotherapy studies could not be conducted).

Subpart D—FDA Action on Submissions, Requests, and Applications

§ 99.301 Agency action on a submission.

(a) *Submissions.* Within 60 days after receiving a submission under this part, FDA may:

(1) Determine that the manufacturer does not comply with the requirements under this part and that, as a result, the manufacturer shall not disseminate any information under this part;

(2) After providing the manufacturer notice and an opportunity for a meeting, determine that the information submitted regarding a new use fails to provide data, analyses, or other written matter that is objective and balanced and:

(i) Require the manufacturer to disseminate additional information, including information that the manufacturer has submitted to FDA or, where appropriate, a summary of such information or any other information that can be made publicly available, which, in the agency's opinion:

(A) Is objective and scientifically sound;

(B) Pertains to the safety or effectiveness of the new use; and

(C) Is necessary to provide objectivity and balance; and

(ii) Require the manufacturer to disseminate an objective statement prepared by FDA that is based on data or other scientifically sound information available to the agency and bears on the safety or effectiveness of the drug or device for the new use; and

(3) Require the manufacturer to maintain records that will identify individual recipients of the information that is to be disseminated when such individual records are warranted due to special safety considerations associated with the new use.

(b) *Protocols/Studies.* Within 60 days after receiving a submission under this part, FDA shall:

(1) If the manufacturer has planned studies that will be needed for the submission of a supplemental application for the new use, review the manufacturer's proposed protocols and schedule for completing such studies and determine whether the proposed protocols are adequate and whether the proposed schedule for completing the studies is reasonable. FDA shall notify the manufacturer of its determination; or

(2) If the manufacturer has completed studies that the manufacturer believes would be an adequate basis for the submission of a supplemental application for the new use, conduct a review of the protocols submitted for such studies to determine whether they are adequate. FDA shall notify the manufacturer of its determination.

§ 99.303 Extension of time for completing planned studies.

(a) Upon review of a drug or device manufacturer's proposed protocols and schedules for conducting studies needed for the submission of a supplemental application for a new use, FDA may, with or without a request for an extension from the manufacturer, determine that such studies cannot be completed and submitted within 36 months. The agency may exercise its discretion in extending the time period for completing the studies and submitting a supplemental application. Extensions under this paragraph are not subject to any time limit, but shall be made before the manufacturer begins the studies needed for the submission of a supplemental application for the new use.

(b) The manufacturer may, after beginning the studies needed for the submission of a supplemental application for a new use, request in writing that FDA extend the time period for conducting studies needed for the submission of a supplemental application for a new use and submitting a supplemental application to FDA. FDA may grant or deny the request or, after consulting the manufacturer, grant an extension different from that requested by the manufacturer. FDA may grant a manufacturer's request for an extension if FDA determines that the manufacturer has acted with due diligence to conduct the studies needed for the submission of a supplemental application for a new use and to submit such a supplemental application to FDA in a timely manner and that, despite such actions, the manufacturer needs additional time to complete the studies and submit the supplemental application. Extensions under this paragraph shall not exceed 24 months.

(c) If FDA extends the time period for completing the studies and submitting a supplemental application under paragraph (a) of this section after the manufacturer has submitted a certification under § 99.201(a)(4)(ii)(B), or if FDA grants a manufacturer's request for an extension under paragraph (b) of this section, the manufacturer shall submit a new certification under § 99.201(a)(4)(ii)(B) that sets forth the timeframe within which clinical studies will be completed and a supplemental application will be submitted to FDA.

§ 99.305 Exemption from the requirement to file a supplemental application.

(a) Within 60 days after receipt of an application for an exemption from the requirement of a supplemental application, FDA shall approve or deny the application.

(1) If FDA does not act on the application for an exemption within the 60-day period, the application for an exemption shall be deemed to be approved.

(2) If an application for an exemption is deemed to be approved, FDA may, at any time, terminate such approval if it determines that the requirements for granting an exemption have not been met. FDA shall notify the manufacturer if the approval is terminated.

(b) In reviewing an application for an exemption, FDA shall consider the materials submitted by the manufacturer and may consider any other appropriate information, including, but not limited to, any pending or previously approved applications for exemption submitted by the manufacturer.

(c) FDA may grant an application for an exemption if FDA determines that:

(1) It would be economically prohibitive for the manufacturer to incur the costs necessary to submit a supplemental application for a new use, which at a minimum requires:

(i) That existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated are not adequate to support the submission of a supplemental application for the new use; and

(ii) That the cost of the study or studies for the new use reasonably exceeds the expected revenue from the new use minus the cost of goods sold and marketing and administrative expenses attributable to the new use of the product, and there are not less expensive ways to obtain the needed information; or

(2) It would be unethical to conduct clinical studies needed to support the submission of a supplemental application for the new use because:

(i) Existing data characterizing the safety and effectiveness of the drug or device, including data from the study described in the information to be disseminated are not adequate to support the submission of a supplemental application for the new use; and

(ii) Although available evidence would not support the submission of a supplemental application for the new use, the data are persuasive to the extent that withholding the drug or device in a controlled study would pose an unreasonable risk of harm to human subjects and no studies in different populations or of modified design can be utilized. In determining whether it would be unethical to conduct clinical studies, the agency shall consider, in addition to the persuasiveness of available evidence of effectiveness, whether the new use of the drug or device is broadly accepted as current standard medical treatment or therapy.

Subpart E—Corrective Actions and Cessation of Dissemination

§ 99.401 Corrective actions and cessation of dissemination of information.

(a) *FDA actions based on post dissemination data.* If FDA receives data after a manufacturer has begun disseminating information on a new use and, based on that data, determines that the new use that is the subject of information disseminated under this part may not be effective or may present a significant risk to public health, FDA shall consult the manufacturer and, after such consultation, take appropriate action to protect the public health. Such action may include ordering the manufacturer to cease disseminating

information on the new use and to take appropriate corrective action.

(b) *FDA actions based on information disseminated by a manufacturer.* If FDA determines that a manufacturer is disseminating information that does not comply with the requirements under this part, FDA may:

(1) Provide to the manufacturer an opportunity to bring itself into compliance with the requirements under this part if the manufacturer's noncompliance constitutes a minor violation of these requirements; or

(2) Order the manufacturer to cease dissemination of information and to take corrective action. FDA shall issue such an order only after it has:

(i) Provided notice to the manufacturer regarding FDA's intent to issue an order to cease dissemination; and

(ii) Provided to the manufacturer an opportunity for a meeting. FDA need not provide an opportunity for a meeting if the manufacturer certified that it will submit a supplemental application for the new use within 6 months of the date that dissemination can begin and the noncompliance involves a failure to submit such supplemental application.

(c) *FDA actions based on a manufacturer's supplemental application.* FDA may order a manufacturer to cease disseminating information under this part and to take corrective action if:

(1) In the case of a manufacturer that has submitted a supplemental application for the new use, FDA determines that the supplemental application does not contain adequate information for approval of the new use;

(2) In the case of a manufacturer that has certified that it will submit a supplemental application for the new use within 6 months, the manufacturer has not, within the 6-month period, submitted a supplemental application for the new use;

(3) In the case of a manufacturer that has certified that it will submit a supplemental application for the new use within 36 months or within such time as FDA has determined to be appropriate under § 99.303(a) or (b), such manufacturer has not submitted the supplemental application within the certified time, or FDA, after an informal hearing, has determined that the manufacturer is not acting with due diligence to initiate or complete the studies necessary to support a supplemental application for the new use; or

(4) In the case of a manufacturer that has certified that it will submit a supplemental application for the new use within 36 months or within such time as FDA has determined to be appropriate under § 99.303(a) or (b), the manufacturer has discontinued or terminated the clinical studies that would be necessary to support a supplemental application for a new use.

(d) *Effective date of orders to cease dissemination.* An order to cease dissemination of information shall be effective upon date of receipt by the manufacturer, unless otherwise stated in such order.

(e) *Cessation of dissemination by a noncomplying manufacturer.* A manufacturer that begins to disseminate information in compliance with this part, but subsequently fails to comply with this part, shall immediately cease disseminating information under this part. A manufacturer that discontinues, terminates, or fails to conduct with due diligence clinical studies that it certified it would complete under § 99.201(a)(4)(ii) shall be deemed not in compliance with this part. A manufacturer shall notify FDA immediately if it ceases dissemination under this paragraph.

§ 99.403 Termination of approvals of applications for exemption.

(a) FDA may, at any time, terminate the approval of an application for an exemption from the requirement to file a supplemental application if:

(1) The application for an exemption had been deemed to be approved because the agency had not acted on the application within 60 days after its receipt by FDA;

(2) The manufacturer is disseminating written information on the new use; and

(3) FDA determines that it would be economically and ethically possible for the manufacturer to conduct the clinical studies needed to submit a supplemental application for the new use.

(b) If FDA terminates a deemed approval of an application for an exemption under paragraph (a) of this section, FDA also may:

(1) Order the manufacturer to cease disseminating information; and

(2) Order the manufacturer to take action to correct the information that has been disseminated if FDA determines that the new use described in the disseminated information would pose a significant risk to public health.

(c) FDA shall notify the manufacturer if it terminates the deemed approval of an application for an exemption under paragraph (a) of this section. If FDA also issues an order to cease dissemination of information, the manufacturer shall comply with the order no later than 30 days after its receipt.

(d) FDA may, at any time, terminate the approval of an application for an exemption from the requirement to file a supplemental application for a new use if, after consulting with the manufacturer that was granted such exemption, FDA determines that the manufacturer no longer meets the requirements for an exemption on the basis that it is economically prohibitive or unethical to conduct the studies needed to submit a supplemental application for the new use.

(e) If FDA terminates an approval of an application for an exemption under paragraph (d) of this section, the manufacturer must, within 60 days of being notified by FDA that its exemption approval has been terminated, file a supplemental application for the new use that is the subject of the information being disseminated under the exemption, certify, under § 99.201(a)(4)(i) or (a)(4)(ii) that it will file a supplemental application for the new use, or cease disseminating the information on the new use. FDA may require a manufacturer that ceases dissemination of information on the new use to undertake corrective action.

§ 99.405 Applicability of labeling, adulteration, and misbranding authority.

The dissemination of information relating to a new use for a drug or device may constitute labeling, evidence of a new intended use, adulteration, or misbranding of the drug or device if such dissemination fails to comply with section 551 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360aaa) and the requirements of this part. A manufacturer's failure to exercise due diligence in submitting the clinical studies that are necessary for the approval of a new use that is the subject of information disseminated under this part or in beginning or completing such clinical studies shall be deemed a failure to comply with section 551 of the act and the requirements of this part.

Subpart F—Recordkeeping and Reports

§ 99.501 Recordkeeping and reports.

(a) A manufacturer disseminating information under this part shall:

(1) Maintain records sufficient to allow the manufacturer to take corrective action as required by FDA. The manufacturer shall make such records available to FDA, upon request, for inspection and copying. Such records shall either:

(i) Identify, by name, those persons receiving the disseminated information; or

(ii) Identify, by category, the recipients of the disseminated information, unless FDA requires the manufacturer to retain records identifying individual recipients of the disseminated information. Manufacturers whose records identify recipients by category only shall:

(A) Identify subcategories of recipients where appropriate (e.g., oncologists, pediatricians, obstetricians, etc.); and

(B) Ensure that any corrective action to be taken will be sufficiently conspicuous to individuals within that category of recipients;

(2) Maintain an identical copy of the information disseminated under this part; and

(3) Upon the submission of a supplemental application to FDA, notify the appropriate office identified in § 99.201(c) of this part.

(b) A manufacturer disseminating information on a new use for a drug or device shall, on a semiannual basis, submit to the FDA office identified in § 99.201(c) of this part:

(1) A list containing the titles of articles and reference publications relating to the new use of drugs or devices that the manufacturer disseminated to a health care practitioner, pharmacy benefit manager, health insurance issuer, group health plan, or Federal or State Government agency. The list shall cover articles and reference publications disseminated in the 6-month period preceding the date on which the manufacturer provides the list to FDA;

(2) A list identifying the categories of health care practitioners, pharmacy benefit managers, health insurance issuers, group health plans, or Federal or State Government agencies that received the articles and reference publications in the 6-month period described in paragraph (b)(1) of this section. The list shall also identify which category of recipients received a particular article or reference publication;

(3) A notice and summary of any additional clinical research or other data relating to the safety or effectiveness of the new use, and, if the manufacturer possesses such clinical research or other data, a copy of the research or data. Such other data may include, but is not limited to, new articles published in scientific or medical journals, reference publications, and summaries of adverse effects that are or may be associated with the new use;

(4) If the manufacturer is conducting studies necessary for the submission of a supplemental application, the manufacturer shall submit periodic progress reports on these studies to FDA. Such reports shall describe the studies' current status (i.e., progress on patient enrollment, any significant problems that could affect the manufacturer's ability to complete the studies, and expected completion dates). If the manufacturer discontinues or terminates a study before completing it, the manufacturer shall, as part of the next periodic progress report, state the reasons for such discontinuation or termination; and

(5) If the manufacturer was granted an exemption from the requirements to submit a supplemental application for the new use, any new or additional information that relates to whether the manufacturer continues to meet the requirements for such exemption. This information may include, but is not limited to, new or additional information regarding revenues from the product that is the subject of the dissemination and new or additional information regarding the persuasiveness of the data on the new use, including information regarding whether the new use is broadly accepted as current standard medical treatment or therapy.

(c) A manufacturer shall maintain a copy of all information, lists, records, and reports required or disseminated under this part for 3 years after it has ceased dissemination of such information and make such documents available to FDA for inspection and copying.

Dated: November 17, 1998.

Michael A. Friedman,

Acting Commissioner for Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 98–31242 Filed 11–19–98; 8:45 am]

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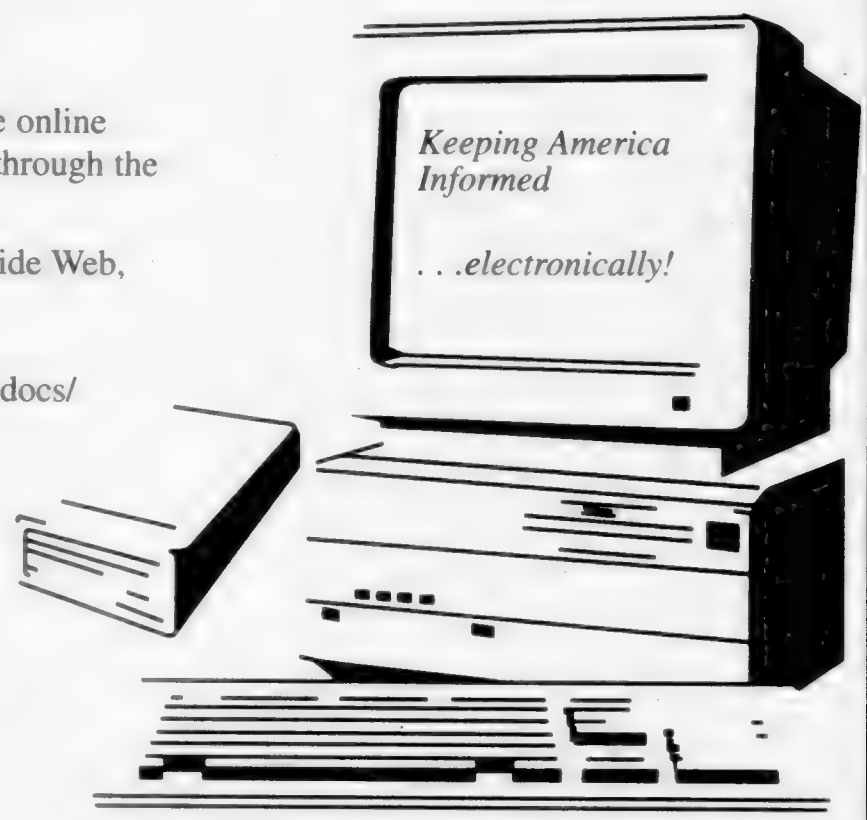

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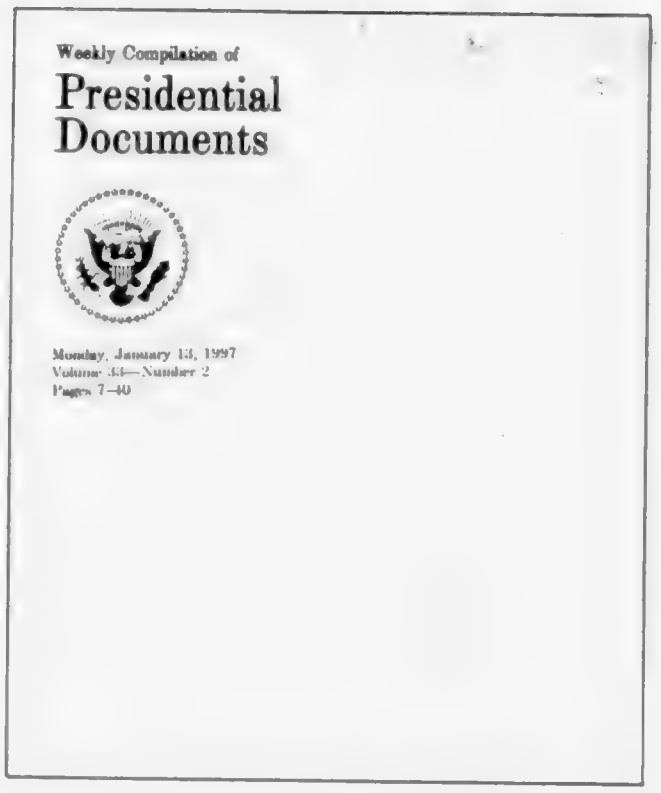

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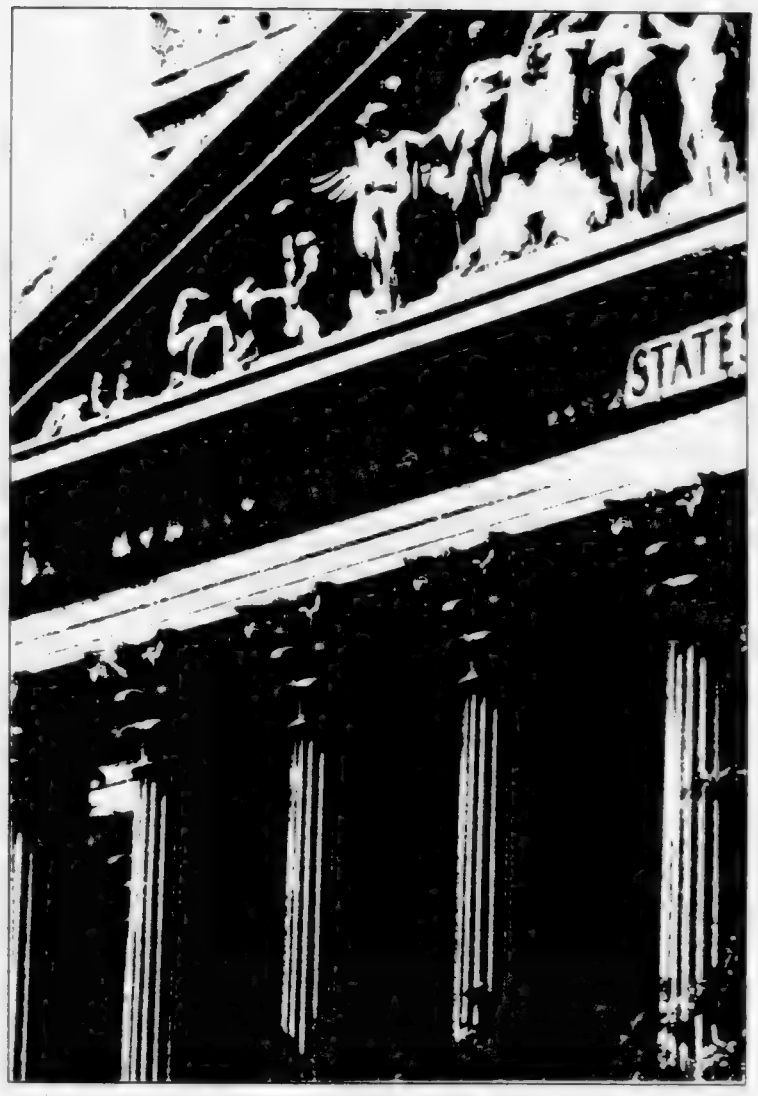

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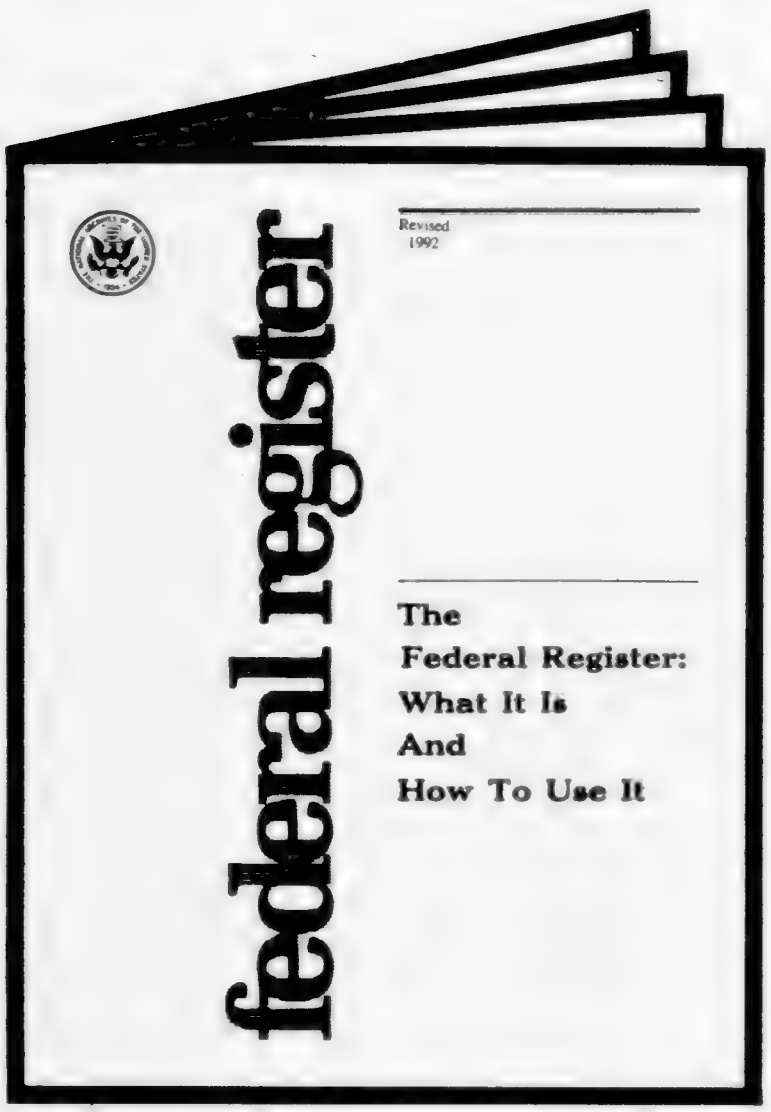

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Rules and Regulations

Federal Register
Vol. 63, No. 225
Monday, November 23, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 410, 550, 551, 591, 630, and 870

RIN 3206–AI50

Firefighter Pay

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations to change the method of computing pay for Federal firefighters. These regulations implement a recent law that established a new approach for calculating basic pay, overtime pay, and other entitlements for Federal employees whose positions are classified in the GS–081 classification series (Fire Protection and Prevention) and who have regular tours of duty averaging at least 53 hours per week.

DATES: *Effective Date:* The regulations are effective on October 4, 1998.

Applicability Dates: The regulations apply on the first day of the first pay period beginning on or after October 1, 1998.

Comments Date: Comments must be received on or before January 22, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email: payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing interim regulations to implement the new firefighter pay provisions established by section 628 of the Treasury and General Government Appropriations Act, 1999, as incorporated in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, which was approved on October 21, 1998. The law provides that these provisions are effective on the first day of the first pay period beginning on or after October 1, 1998. This legislation is intended to address concerns about the complexity of firefighter pay computations by establishing a more rational and equitable method of compensation. The law adds a new section 5545b to subchapter V (Premium Pay) of chapter 55 of title 5 of the United States Code. OPM has general authority to issue regulations necessary to administer the premium pay provisions in subchapter V and was also given certain specific regulatory responsibilities in section 5545b.

Federal Firefighters

There are over 9,000 Federal employees covered by the General Schedule (GS) pay system who are classified in the GS–081 Fire Protection and Prevention job classification series, which includes line firefighters, supervisory firefighters, and fire inspectors. Approximately 94 percent of these firefighters are employed by the Department of Defense. Most of these firefighters have extended tours of duty—most commonly, a 72-hour workweek consisting of three 24-hour shifts. These 24-hour shifts include periods of actual work time and substantial periods of time during which firefighters are in "standby status." While in standby status, firefighters are free to eat, sleep, and engage in other personal activities, but are confined to the worksite and must remain in a state of readiness to perform actual work as required. Some firefighters (most commonly supervisors) have a regular 40-hour workweek consisting of five 8-hour days plus regularly scheduled standby duty (e.g., an extra 16-hour standby shift).

Former Pay Computation Method

Under the law and regulations formerly in effect, firefighters were entitled to the same rate of basic pay that applied to General Schedule employees with a 40-hour workweek. In addition, they generally received standby duty pay under 5 U.S.C. 5545(c)(1) to compensate them for their extended tours of duty. Standby duty pay is a special form of premium pay designed to compensate employees who have regularly scheduled workweeks that are much longer than the normal 40-hour workweek and include substantial time during which employees are in a standby status. Standby duty pay is paid as a percentage of basic pay not to exceed 25 percent of the employee's rate of basic pay (but not more than the rate of basic pay for GS–10, step 1). The percentage rate depends on the number of hours in the employee's regularly scheduled tour, hours of Sunday work, type of shift, and various other factors. (See 5 CFR 550.141–550.144.) Standby duty pay is basic pay for retirement purposes (5 U.S.C. 8331(3)(C)).

Firefighters covered by the Fair Labor Standards Act (FLSA) overtime provisions also received additional pay under that Act. Under the FLSA, the overtime standard for firefighters is 53 hours per week (or 106 hours biweekly), instead of 40 hours. For overtime hours within their regularly scheduled workweek, firefighters received a supplemental half-rate premium (in addition to the basic pay and standby pay received for regularly scheduled hours). For irregular overtime hours, firefighters received time-and-one-half overtime pay. FLSA computations used the firefighter's "hourly regular rate" (consistent with FLSA rules), which was less than the firefighter's rate of basic pay because the hourly regular rate was derived by dividing the firefighter's total remuneration (including standby duty pay) by the total number of hours worked.

Summary of New Law

The new law makes significant changes in how firefighter pay is computed. These changes apply to GS–081 firefighters whose regularly established workweeks average 53 hours or more. In summary, the new law—

1. Eliminates standby duty pay and pays firefighters on an hourly rate basis. Paying firefighters on an hourly rate basis simplifies the pay computation. It also corrects disproportionality problems in the former pay computation method. (Under the former pay

computation method, employees at the same grade and step and with the same type of shifts received different effective hourly rates—taking standby duty pay into account—depending on the number of hours in the regular tour. In fact, the more hours worked, the smaller the effective hourly rate.)

2. Requires that the applicable GS annual rate of basic pay be divided by a 2756-hour factor to derive the "firefighter hourly rate" instead of using the 2087-hour factor applicable to other Federal employees. (The 2756-hour factor is derived by multiplying the number of weeks in a year (52) by the FLSA weekly overtime standard (53 hours), which yields the number of nonovertime hours in a year for the typical full-time firefighter.)

3. Provides time-and-one-half overtime pay for both FLSA-covered (nonexempt) and FLSA-exempt firefighters for all overtime hours. (For FLSA-exempt firefighters, the overtime rate is capped at 1½ times the GS–10, step 1, rate (2087-hour basis), but cannot be less than the individual's firefighter rate of basic pay.)

4. Provides special pay computations for firefighters whose regular tour of duty includes a basic 40-hour workweek.

5. Bars payment of any other premium pay, including night pay, Sunday pay, holiday pay, and hazardous duty pay.

6. Guarantees no loss in regular pay during employer-sanctioned training. (Previously, the move to a training schedule with fewer hours (e.g., 40) could result in a reduction in a firefighter's normal paycheck.)

7. Treats the straight-rate portion of overtime pay for overtime hours in the firefighter's regular tour of duty as basic pay for retirement and certain other purposes. (The extra half-rate premium for those overtime hours is not basic pay for these purposes.)

For the typical FLSA-covered firefighter with a 72-hour workweek, the new law results in a total pay increase of about 9 percent. For example, under the former pay computation rules, a GS–6, step 5, firefighter in the Washington, DC, area in 1998 with 144 hours in a biweekly pay period would receive a regular biweekly paycheck of $1,468.38 ($38,177.88 annually), consisting of the following:

- Basic pay of $1,037.60 (GS–6, step 5, annual locality rate of $27,060 divided by 2087 = $12.97, and $12.97 times 80 hours = $1,037.60);
- Standby duty pay of $259.40 ($1,037.60 times 25 percent); and
- Supplemental FLSA overtime pay of $171.38 (38 overtime hours times $4.51, which is one-half of the hourly regular rate of $9.01).

Under the new law, the same firefighter would receive a regular biweekly paycheck of $1,600.66 ($41,617.16 annually), consisting of the following:

- Basic pay of $1,040.92 (106 nonovertime hours times the firefighter rate of $9.82, which is equal to $27,060 divided by 2756 hours); and
- Overtime pay of $559.74 (1½ times $9.82 = $14.73, and $14.73 times 38 overtime hours = $559.74).

Retirement-creditable basic pay is also 9 percent higher—$1,414.08 biweekly (144 hours times the firefighter rate of $9.82 equals $1,414.08), compared to the old amount of $1,297.00 (basic pay of $1,037.60 plus standby duty pay of $259.40).

The change in pay for other categories of firefighters varies depending on the number of hours in the workweek, whether the firefighter is covered by the FLSA, the former standby duty pay rate, and the type of schedule (24-hour shift or not). In a small number of cases, the new compensation formula would result in a reduction in pay; however, the law provides special pay protection provisions that either increase affected firefighters' pay or at least prevent any reduction upon conversion to the new system.

Description of Regulatory Provisions

We are adding a new subpart M—Firefighter Pay—to part 550 of title 5, Code of Federal Regulations, that implements 5 U.S.C. 5545b and related statutory provisions. In addition, we are making conforming changes in part 410; subparts A, B, and G of part 550; part 551; part 591; part 630; and part 870. A summary description of each new or revised section follows:

Section 410.402—We are adding a new paragraph in OPM's training regulations that provides that firefighters compensated under subpart M of part 550 (as added by these regulations) continue to receive their regular pay during agency-sanctioned training, consistent with 5 U.S.C. 4109(d). This provision is triggered only when the hours in a firefighter's regular tour of duty for any week are reduced due to a temporary training assignment. It does not affect firefighters who voluntarily participate in education or training during non-duty hours, leave hours, or periods of excused absence.

Sections 550.103 and 550.111—We are adding a new paragraph (g) in § 550.111 to provide a special definition of "overtime work" performed by firefighters compensated under subpart M. The definition of "overtime work" in § 550.103 is revised accordingly.

Section 550.113—We are adding a new paragraph (e) that describes how the firefighter overtime hourly rate is computed using a 2756-hour factor. For FLSA-exempt firefighters whose firefighter hourly rate of basic pay exceeds the minimum hourly rate of basic pay for GS–10 (computed using a 2087-hour factor), the overtime hourly rate is capped at 1½ times that GS–10 minimum rate, but may not fall below the firefighter's own firefighter hourly rate of basic pay. (See 5 U.S.C. 5542(f).)

Section 550.202—We are including firefighter straight-time pay for regular overtime hours in the definition of "basic pay" for purposes of advances in pay, consistent with § 550.1305(b).

Sections 550.703 and 550.707(b)—We are including firefighter straight-time pay for regular overtime hours in the definition of "basic pay" for severance pay purposes, consistent with § 550.1305(b). We are also providing that an average weekly rate of basic pay be used in computing severance pay for firefighters whose regular tour of duty consists of a cycle of variable workweeks.

Section 550.1301—This section describes the purpose, applicability, and administration of the new subpart M in part 550. Applicability is linked to the definition of "firefighter" in § 550.1302.

Section 550.1302—This section defines various terms used in subpart M. The term "basic 40-hour workweek" is defined to distinguish between firefighters who generally work on a 24-hour shift basis and those who have a regular workweek of 40 actual work hours (consisting of five 8-hour days or an equivalent schedule such as a flexible schedule containing 80 actual work hours in a biweekly pay period). Consistent with 5 U.S.C. 5545b(a), the term "firefighter" is defined to cover General Schedule employees classified in the GS–081 Fire Protection and Prevention classification series whose regular tour of duty averages at least 106 hours per biweekly pay period.

The term "regular tour of duty" is defined as a firefighter's officially established work schedule, including any overtime hours in that schedule. Generally, a tour of duty must be established on a regular (nontemporary) and recurring basis to be considered a regular tour of duty; however, a regular tour of duty also includes a temporary tour that, when assigned, results in a reduction in the firefighter's regular work hours or a change in the pay computation method used under § 550.1303. The regular tour of duty concept is used in determining—

• The appropriate pay computation method for a firefighter (see definition of "firefighter" and § 550.1303);

• A firefighter's basic pay for retirement and other purposes (see § 550.1305);

• The hours in an uncommon tour of duty established for leave purposes, including lump-sum payments for annual leave (see §§ 550.1306(c), 630.201, and 630.210); and

• The applicability of certain transitional provisions (see § 550.1308).

The term "regular tour of duty" is not equivalent to the term "regularly scheduled administrative workweek" (as defined in § 550.103) because "regularly scheduled" encompasses overtime hours that are scheduled in advance of the workweek, regardless of whether or not those overtime hours are part of a fixed, regularly recurring schedule. Since the "regular tour of duty" concept is used to determine what pay is used in computing retirement and other benefits, it is appropriate that the overtime hours included in the regular tour of duty are generally only those that are part of a firefighter's regular fixed schedule. In addition, we note that it is possible to have irregular nonovertime hours that are not part of the firefighter's regular tour of duty in the case of firefighters with variable workweeks (e.g., a 48–48–72-hour workweek cycle).

Section 550.1303—This section describes how to compute basic pay for (1) 24-hour shift firefighters and (2) firefighters whose regular tour of duty includes a basic 40-hour workweek. The firefighter hourly rate of basic pay (computed by dividing the annual rate of basic pay by 2756 hours) is used for all nonovertime hours for 24-hour shift firefighters. For firefighters with a basic 40-hour workweek, the normal General Schedule hourly rate (using a 2087-hour factor), is used to compute pay for hours in the basic 40-hour workweek, and then the firefighter (2756-basis) hourly rate of basic pay is used to compute pay for nonovertime hours beyond the basic 40-hour workweek (or 80-hour biweekly pay period). This section also addresses the substitution of irregular hours for leave-without-pay hours in a firefighter's regular tour of duty. Such substituted hours are deemed to be part of the firefighter's regular tour of duty. (See the definition of "regular tour of duty" in § 550.1302.)

Section 550.1304—This section provides that the overtime hourly rate of pay for FLSA-covered firefighters is 1½ times the firefighter (2756-basis) hourly rate of basic pay, regardless of the type of work schedule. (See 5 U.S.C. 5545b(d)(2).)

Section 550.1305—This section addresses what pay is considered basic pay for various purposes. The sum of pay for regular nonovertime hours and the straight-rate portion of regular overtime pay (excluding the half-rate overtime premium) is treated as basic pay for purposes of retirement, life insurance, severance pay, nonforeign area cost-of-living allowances and post differentials, and advances in pay. (See 5 U.S.C. 5545b(b)(2) and (c)(2).) Also, the section makes clear that, while locality pay is considered part of basic pay in applying the provisions of this subpart (except § 550.1308), locality pay for firefighters is basic pay for other purposes only to the extent expressly provided in § 531.606(b) or other law.

For firefighters with a basic 40-hour workweek, basic pay consists of three components: (1) 40 hours of basic pay computed using the regular GS rate (2087 factor); (2) 13 hours of basic pay computed using the firefighter rate (2756 factor); and (3) the straight-rate portion of pay for overtime hours in the firefighter's regular tour computed using the firefighter rate. However, for these firefighters, any basic pay for nonovertime hours outside the basic 40-hour workweek is basic pay only for purposes of subpart M and the listed benefits. It is not basic pay for other purposes, such as pay retention.

Section 550.1306—This section addresses the relationship of various other entitlements to firefighter pay under subpart M. Firefighters compensated under subpart M are not entitled to any other premium pay, including night pay, Sunday pay, holiday pay, and hazardous duty pay. (See 5 U.S.C. 5545b(d)(1).) All FLSA overtime pay requirements are satisfied by compliance with subpart M. (See 5 U.S.C. 5545b(d)(2).) Overtime pay for overtime hours in a firefighter's regular tour of duty (including the half-rate overtime premium) is used in computing a lump-sum payment for annual leave when a firefighter separates from Federal service if the firefighter's regular tour of duty is established as an uncommon tour of duty for purposes of leave accrual and usage at the time of separation. (OPM's regulations require agencies to establish such an uncommon tour of duty for 24-hour shift firefighters. See § 630.210.)

Section 550.1307—This section provides a procedure for agencies to establish methods of reducing or eliminating variation in the amounts of firefighter paychecks for firefighters whose regular tour of duty includes variable workweeks.

Section 550.1308—This section establishes certain transitional provisions designed to protect the pay of a relatively small number of firefighters who have shorter workweeks, some of whom would otherwise suffer a reduction in regular pay due to the change in the pay computation method. This implements subsections (f) and (g) of section 628 of section 101(h) of Public Law 105–277. Affected firefighters are employed primarily by the Department of Veterans Affairs (VA). A number of VA firefighters have 24-hour shifts, but generally work only 56 or 60 hours per week, on average. These firefighters would receive a one-time pay increase equal to two GS step increments of their grade at the time of conversion to the new pay computation method. (See paragraph (a).) Using the new boosted rate in the new pay computation method will result in small pay increases for almost all of these firefighters.

For any firefighter who might still face a small reduction in his or her regular pay, that regular pay will be protected under the special rules in paragraph (b). The employing agency will be required to calculate a "protected rate of basic pay" that, when used in the new pay computation method, produces approximately the same amount of "annualized regular pay" the firefighter would have received under the old computation method. (The term "annualized regular pay" is defined to mean total pay for hours in a firefighter's regular tour of duty. Since some firefighters have a cycle of variable workweeks within their regular tour of duty, it is necessary to make comparisons on an annualized basis.) This comparison is made as of the effective date of the new pay computation method, based on the firefighter's regular tour of duty in effect at that time. For comparison purposes, the annualized regular pay under the old method is based on the rates of pay that would otherwise be in effect at that time, including any changes in rates of pay (e.g., due to within-grade increases or promotions) taking effect on the effective date of the new method, but excluding the two-step adjustment made under § 550.1308(a).

The protected rate is not aligned to a step on the pay schedule, but is a special saved rate. Once established, the protected rate of basic of pay is a frozen dollar rate that is not subject to adjustment. Locality pay, as applicable, is paid on top of the protected rate. The protected rate will be terminated when the firefighter's actual rate is increased (e.g., due to a promotion or annual pay adjustment) to the point where it equals or exceeds the protected rate, or when

the employee ceases to be covered by subpart M.

Sections 551.501 and 551.541—We are making conforming changes in part 551, which deals with FLSA overtime pay entitlements.

Section 591.201—We are including firefighter straight-time pay for regular overtime hours in the definition of "basic pay" for the purpose of nonforeign area cost-of-living allowances and post differentials, consistent with § 550.1305(b).

Sections 630.201 and 630.210—In OPM's leave regulations, we are revising the definition of "uncommon tour of duty" in § 630.201 to incorporate a reference to firefighters compensated under subpart M of part 550 and to make other clarifying changes. We are adding a requirement in § 630.210 that agencies must establish uncommon tours of duty for firefighters compensated under § 550.1303(a)—that is, firefighters with regular tours of duty that generally consist of 24-hour shifts.

Section 870.204—We are including firefighter straight-time pay for regular overtime hours in the definition of "annual pay" for life insurance purposes, consistent with § 550.1305(b).

Waiver of Notice of Proposed Rule Making and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. Section 628 of the Treasury and General Government Appropriations Act, 1999 (which is incorporated in section 101(h) of Public Law 105–277), which changed the method for computing firefighter pay, was approved on October 21, 1998, and applies on the first day of the first pay period beginning on or after October 1, 1998. These regulations are being made effective retroactively to ensure that the new firefighter pay provisions are uniformly implemented in a timely manner.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Parts 410, 550, 551, 591, 630, and 870

Administrative practice and procedure, Claims, Education, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management,
Janice R. Lachance,
Director.

Accordingly, OPM is amending parts 410, 550, 551, 591, 630, and 870 of title 5 of the Code of Federal Regulations as follows:

PART 410—TRAINING

1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1967 Comp., p. 275.

Subpart D—Paying for Training

2. In § 410.402, paragraph (b)(6) is redesignated as paragraph (b)(7), and a new paragraph (b)(6) is added to read as follows:

§ 410.402 Paying premium pay.

* * * * *

(b) * * *

(6) *Firefighter overtime pay.* A firefighter compensated under part 550, subpart M, of this chapter must be paid basic pay and overtime pay for the firefighter's regular tour of duty (as defined in § 550.1302 of this chapter) in any week in which attendance at agency-sanctioned training reduces the hours in the firefighter's regular tour of duty. This special pay protection does not apply to firefighters who voluntarily participate in training during non-duty hours, leave hours, or periods of excused absence.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

3. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5545b, 5548, 5553, and 6101(c); E.O. 12748, 3 CFR, 1992 Comp., p. 316.

4. In § 550.103, the definition of *overtime work* is revised to read as follows:

§ 550.103 Definitions.

* * * * *

Overtime work has the meaning given that term in § 550.111 and includes irregular or occasional overtime work and regular overtime work.

* * * * *

5. In § 550.111, the introductory text of paragraph (a) is amended by removing the words "paragraphs (d) and (f)" and adding in their place "paragraphs (d), (f), and (g)", and a new paragraph (g) is added to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(g) For firefighters compensated under subpart M of this part, overtime work means officially ordered or approved work in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computations, in excess of 53 hours in an administrative workweek.

6. In § 550.113, a new paragraph (e) is added to read as follows:

§ 550.113 Computation of overtime pay.

* * * * *

(e)(1) For firefighters compensated under subpart M of this part, the overtime hourly rate for all overtime hours is 1½ times the firefighter's hourly rate of basic pay under § 550.1303(a) or (b)(2), as applicable, except as provided in paragraph (e)(2) of this section.

(2) For firefighters compensated under subpart M of this part who areexempt from the overtime provisions of the Fair Labor Standards Act and whose hourly rate of basic pay under § 550.1303(a) or (b)(2), as applicable, exceeds the applicable minimum hourly rate of basic pay for GS–10 (as computed under paragraph (a) of this section by dividing the annual rate of basic pay by 2087 hours), the overtime hourly rate is equal to the greater of—

(i) One and one-half times the applicable minimum hourly rate of basic pay for GS–10 (as computed under paragraph (a) of this section by dividing the annual rate of basic pay by 2087 hours); or

(ii) The individual's own firefighter hourly rate of basic pay under § 550.1303(a) and (b)(2), as applicable.

Subpart B—Advances in Pay

7. The authority citation for part 550, subpart B, continues to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

§ 550.202 [Amended]

8. In § 550.202, the definition of *rate of basic pay* is amended by adding

"straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b))," immediately before the words "night differential".

Subpart G—Severance Pay

9. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

§ 550.703 [Amended]

10. The definition of *rate of basic pay* in 550.703 is amended by adding "straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b))," before the words "night differential".

11. Section 550.707 is amended by removing "or" at the end of paragraph (b)(2), by removing the period at the end of paragraph (b)(3) and adding a semicolon and the word "and" in its place, and by adding a new paragraph (b)(4) to read as follows:

§ 550.707 Computation of severance pay.

* * * * *

(b) * * *

(4) In which the employee's pay is computed under subpart M of this part (dealing with firefighter pay) when the employee has a recurring cycle of variable workweeks within his or her regular tour of duty (as defined in § 550.1302).

* * * * *

Subpart L—[Added and Reserved]

12. Subpart L is added and reserved, and a subpart M is added to read as follows:

Subpart M—Firefighter Pay

Sec.

550.1301 Purpose, applicability, and administration.
550.1302 Definitions.
550.1303 Hourly rates of basic pay.
550.1304 Overtime hourly rates of pay.
550.1305 Treatment as basic pay.
550.1306 Relationship to other entitlements.
550.1307 Authority to regularize paychecks.
550.1308 Transitional provisions.

Authority: 5 U.S.C. 5545b, 5548, 5553, and subsections (f) and (g) of section 628 as included in section 101(h) of Public Law 105–277.

Subpart M—Firefighter Pay

§ 550.1301 Purpose, applicability, and administration.

(a) *Purpose.* This subpart provides regulations governing the pay of covered Federal firefighters. It implements sections 5542(f) and 5545b of title 5, United States Code, as added by section 628 of section 101(h) of Pub. L. 105–277, and must be read together with those sections of law.

(b) *Applicability.* This subpart applies to any firefighter as defined in § 550.1302.

(c) *Administration.* The head of an agency having employees subject to this subpart is responsible for the proper administration of this subpart.

§ 550.1302 Definitions.

In this subpart:

Annual rate of basic pay (except as otherwise provided in §§ 550.1305 and 550.1308) means the annual rate fixed under the rate schedule applicable to the position held by the firefighter, including a locality rate schedule established under 5 U.S.C. 5304 or a special rate schedule established under 5 U.S.C. 5305, before any deductions and exclusive of additional pay of any other kind.

Basic 40-hour workweek means—

(1) A standard 40-hour workweek consisting of five 8-hour workdays that is part of the firefighter's regular tour of duty; or

(2) A designated block of hours within a firefighter's regular tour of duty that, on a fixed and recurring basis, consists of 40 hours of actual work during each administrative week (or 80 hours of actual work in each biweekly pay period), excluding sleep and standby duty hours, provided the regular tour of duty does not consist primarily of 24-hour shifts.

Firefighter means an employee—

(1) Who is in a position covered by the General Schedule and classified in the GS–081 Fire Protection and Prevention classification series, consistent with standards published by the Office of Personnel Management; and

(2) Whose regular tour of duty, as in effect throughout the year, averages at least 106 hours per biweekly pay period.

Firefighter hourly rate of basic pay means an hourly rate computed by dividing the applicable annual rate of basic pay by 2756 hours, as described in § 550.1303.

Irregular hours means hours of work that are outside a firefighter's regular tour of duty.

Overtime hours means hours of work in excess of 106 hours in a biweekly pay period, or, if the agency establishes a weekly basis for overtime pay computations, hours of work in excess of 53 hours in an administrative workweek.

Overtime pay means pay for overtime hours.

Regular tour of duty means a firefighter's official work schedule, as established by the employing agency on a regular and recurring basis (or on a temporary basis in cases where a temporary change in schedules results in a reduction in regular work hours or a change in the pay computation method used under § 550.1303). The tour of duty may consist of a fixed number of hours each week or a fixed recurring cycle of work schedules in which the number of hours per week varies in a repeating pattern. The regular tour of duty includes only those overtime hours that are part of the fixed recurring work schedule. However, irregular hours are deemed to be included in a firefighter's regular tour of duty if those hours are substituted for hours in the regular tour of duty for which leave without pay is taken, as provided in § 550.1303(d).

§ 550.1303 Hourly rates of basic pay.

(a) For firefighters with a regular tour of duty that does not include a basic 40-hour workweek (e.g., firefighters whose schedules generally consist of 24-hour shifts with a significant amount of designated standby and sleep time), the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by 2756 hours. The resulting firefighter hourly rate of basic pay is multiplied by all nonovertime hours to determine the pay for those hours.

(b) For firefighters with a regular tour of duty that includes a basic 40-hour workweek, the hourly rate of basic pay is computed by dividing the applicable annual rate of basic pay by—

(1) 2087 hours, for hours within the basic 40-hour workweek (or 80-hour biweekly pay period); and

(2) 2756 hours, for any additional nonovertime hours.

(c) A firefighter's daily, weekly, or biweekly rate of basic pay must be computed using the applicable rates, as derived under paragraphs (a) and (b) of this section.

(d) If a firefighter takes leave without pay during his or her regular tour of duty, the agency must substitute any irregular hours worked in the same biweekly pay period for those hours of leave without pay. (If the firefighter's overtime pay is computed on a weekly basis, the irregular hours must be worked in the same administrative workweek.) For firefighters whose regular tour of duty includes a basic 40-hour workweek, irregular hours must be substituted first for hours of leave without pay in the basic 40-hour workweek. Each substituted hour will be paid at the rate applicable to the hour in the regular tour for which substitution is made, consistent with this section and § 550.1304.

§ 550.1304 Overtime hourly rates of pay.

(a) For a firefighter who is covered by (i.e., nonexempt from) the overtime provisions of the Fair Labor Standards Act (FLSA), the overtime hourly rate of pay equals 1½ times the firefighter hourly rate of basic pay for that firefighter, as established under § 550.1303(a) and (b)(2).

(b) For a firefighter who is exempt from the FLSA, the overtime hourly rate is computed as provided in § 550.113(e).

(c) For any firefighter, overtime pay for any pay period is derived by multiplying the applicable overtime hourly rate by all overtime hours within that period.

§ 550.1305 Treatment as basic pay.

(a) The sum of pay for nonovertime hours that are part of a firefighter's regular tour of duty (as computed under § 550.1303) and the straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is treated as basic pay for the following purposes:

(1) Retirement deductions and benefits under chapters 83 and 84 of title 5, United States Code;

(2) Life insurance premiums and benefits under chapter 87 of title 5, United States Code;

(3) Severance pay under section 5595 of title 5, United States Code;

(4) Cost-of-living allowances and post differentials under section 5941 of title 5, United States Code; and

(5) Advances in pay under section 5524a of title 5, United States Code.

(b) The straight-time portion of overtime pay for hours in a firefighter's regular tour of duty is derived by multiplying the applicable firefighter hourly rate of basic pay computed under § 550.1303(a) and (b)(2) by the number of overtime hours in the firefighter's regular tour of duty.

(c) Pay for any nonovertime hours outside a firefighter's regular tour of duty is computed using the firefighter hourly rate of basic pay as provided in § 550.1303(a) and (b)(2), but that pay is not considered basic pay for any purpose.

(d) For firefighters compensated under § 550.1303(b), pay for nonovertime hours within the regular tour of duty, but outside the basic 40-hour workweek, is basic pay only for the purposes listed in paragraph (a) of this section.

(e) Locality pay under 5 U.S.C. 5304 is basic pay for firefighters only to the extent provided in this subpart, § 531.606(b) of this chapter, or other specific provision of law.

§ 550.1306 Relationship to other entitlements.

(a) A firefighter who is compensated under this subpart is entitled to overtime pay as provided under this subpart, but may not receive additional premium pay under any other provision of subchapter V of chapter 55 of title 5, United States Code, including night pay, Sunday pay, holiday pay, and hazardous duty pay.

(b) A firefighter who is subject to section 7(k) of the Fair Labor Standards Act (FLSA) and who is subject to this subpart is deemed to be appropriately compensated under section 7(k) of the FLSA if the requirements of § 550.1304(a) are satisfied.

(c) In computing a lump-sum payment for accumulated annual leave under 5 U.S.C. 5551 and 5552 for firefighters with an uncommon tour of duty established under § 631.210 of this chapter for leave purposes, an agency must use the rates of pay for the position held by the firefighter that apply to hours in that uncommon tour of duty, including regular overtime pay for such hours.

§ 550.1307 Authority to regularize paychecks.

Upon a written request from the head of an agency (or designee), the Office of Personnel Management may approve an agency's plan to reduce or eliminate variation in the amount of firefighters' biweekly paychecks caused by work scheduling cycles that result in varying hours in the firefighters' tours of duty from pay period to pay period. Such a plan must provide that the total pay any firefighter would otherwise receive for regular tours of duty over the firefighter's entire work scheduling cycle must, to the extent practicable, remain the same.

§ 550.1308 Transitional provisions.

(a)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, a firefighter subject to this subpart who has a regular tour of duty that averages 60 hours or less per week during a year, and that does not include a basic 40-hour workweek, must be granted an increase in basic pay equal to two within-grade increases for the General Schedule grade applicable to the firefighter.

(2) An increase granted under paragraph (a)(1) of this section is not considered an equivalent increase in pay for within-grade increase purposes under 5 U.S.C. 5335 and subpart D of part 531 of this chapter.

(3) If an increase granted under paragraph (a)(1) of this section results in a longer waiting period for the firefighter's next within-grade increase, the firefighter must be credited with 52 weeks of service for the purpose of that waiting period.

(4) If an increase granted under paragraph (a)(1) of this section results in a rate of basic pay that is above the maximum rate of basic pay for the applicable grade, that resulting pay rate must be treated as a retained rate of basic pay consistent with 5 U.S.C. 5363 and part 536 of this chapter.

(b)(1) Effective on the first day of the first pay period beginning on or after October 1, 1998, an employing agency must temporarily establish a protected annual rate of basic pay that exceeds a firefighter's actual annual rate of basic pay (including any adjustment under paragraph (a) of this section), if necessary to ensure that the firefighter's annualized regular pay is not reduced on that date. For this purpose, *annualized regular pay* means total pay for hours in the firefighter's regular tour of duty, expressed as an annual rate based on the cycle of schedules under the firefighter's regular tour of duty. The annualized regular pay resulting from using the protected rate in applying the pay computation rules under this subpart must approximately equal (but be no less than) the annualized regular pay to which the firefighter would have been entitled on the effective date of this paragraph under the former pay computation method.

(2) The protected rate of basic pay is fixed and not subject to further adjustments. The protected rate is a scheduled rate of basic pay for purposes of computing locality payments under 5 U.S.C. 5304 and part 531, subpart F of this chapter.

(3) The protected rate of basic pay is terminated when it is equal to or less than the firefighter's actual rate of basic pay or when the employee is no longer covered by this subpart.

(c) For purposes of this section, the term basic pay excludes locality pay under 5 U.S.C. 5304 and part 531, subpart F, of this chapter.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

13. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 240f).

Subpart E—Overtime Pay Provisions

14. In § 551.501, paragraphs (a)(1) and (a)(5) are revised to read as follows:

§ 551.501 Overtime pay.

(a) * * *

(1) On the basis of periods of duty in excess of 8 hours in a day when the employee receives compensation for that duty under 5 U.S.C. 5545(c)(1) or (2) or 5545b;

* * * * *

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives compensation for those hours of work under 5 U.S.C. 5545(c)(1) or (2) or 5545b;

* * * * *

15. In § 551.541, paragraph (a) is amended by adding "or 5545b" immediately before the period at the end of the paragraph, and a new paragraph (d) is added to read as follows:

§ 551.541 Employees engaged in fire protection activities or law enforcement activities.

* * * * *

(d) A firefighter subject to section 7(k) of the Act who is compensated under part 550, subpart M, of this chapter is deemed to be appropriately compensated under section 7(k) of the Act and this part if the requirements of § 550.1304(a) of this chapter are satisfied. (See 5 U.S.C. 5545b(d)(2).)

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

16. The authority citation for part 591, subpart B, continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., p. 338.

17. In § 591.201, the definition of *rate of basic pay* is revised to read as follows:

§ 591.201 Definitions.

* * * * *

Rate of basic pay means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differential, except that straight-time pay for regular overtime hours for firefighters under 5 U.S.C. 5545b (as provided in § 550.1305(b) of this chapter) is included as basic pay.

* * * * *

PART 630—ABSENCE AND LEAVE

18. The authority citation for part 630 continues to read as follows:

Authority: 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 102–25, 105 Stat. 92; and subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23.

Subpart B—Definitions and General Provisions for Annual and Sick Leave

19. In § 630.201, paragraph (b), the definition of *uncommon tour of duty* is revised to read as follows:

§ 630.201 Definitions.

* * * * *

(b) * * *

Uncommon tour of duty means an established tour of duty that exceeds 80 hours of work in a biweekly pay period, provided the tour—

(1) Includes hours for which the employee is compensated by standby duty pay under 5 U.S.C. 5545(c)(1) and § 550.141 of this chapter;

(2) Is a regular tour of duty (as defined in § 550.1302 of this chapter) established for firefighters compensated under 5 U.S.C. 5545b and part 550, subpart M, of this chapter; or

(3) Is authorized for a category of employees by the Office of Personnel Management.

20. In § 630.210, a new paragraph (c) is added to read as follows:

§ 630.210 Uncommon tours of duty.

* * * * *

(c) An agency must require that firefighters compensated under § 550.1303(a) of this chapter accrue and use leave on the basis of the applicable uncommon tour of duty.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

21. The authority citation for part 870 continues to read as follows:

Authority: 5 U.S.C. 8716; subpart J also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; § 870.302 also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251.

Subpart B—Types and Amount of Insurance

22. Section 870.204 is amended by revising paragraph (a)(2)(ii), by removing the word "and" at the end of paragraph (a)(2)(ix), by removing the period at the end of paragraph (a)(2)(x) and adding "; and" in its place, and by adding a new paragraph (a)(2)(xi) to read as follows:

§ 870.204 Annual rates of pay.

(a) * * *

(2) * * *

(ii) Premium pay for standby duty under 5 U.S.C. 5545(c)(1);

* * * * *

(xi) Straight-time pay for regular overtime hours for firefighters, as provided in 5 U.S.C. 5545b and part 550, subpart M, of this chapter.

* * * * *

[FR Doc. 98–31258 Filed 11–20–98; 8:45 am]
BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 97–062–2]

Tuberculosis Testing of Livestock Other than Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with one change, an interim rule that amended the tuberculosis regulations to include species of livestock other than cattle and bison in the requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. The interim rule was necessary because such livestock could become infected with tuberculosis and, without testing, could spread tuberculosis to the cattle or bison in the herd before the disease was detected in the herd. The testing of species of livestock other than cattle and bison in newly assembled herds on premises where a tuberculous herd has been depopulated will help ensure continued progress toward eradicating tuberculosis in the U.S. livestock population.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road

Unit 36, Riverdale, MD 20737–1231, (301) 734–7727; or e-mail: James.P.Davis@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The regulations in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis may be moved interstate without restriction if those cattle or bison are moved from a State designated as an accredited-free, accredited-free (suspended), or modified accredited State. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from a nonmodified accredited State.

The status of a State is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document titled "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (referred to below as the UM&R), which, as explained in the definition of *Uniform Methods and Rules—Bovine Tuberculosis Eradication* in § 77.1, has been incorporated by reference into the regulations.

In an interim rule published in the **Federal Register** and effective on February 23, 1998 (63 FR 8837–8840, Docket No. 97–062–1), we amended the tuberculosis regulations to include species of livestock other than cattle and bison in the UM&R's requirement for two annual herd tests for newly assembled herds on premises where a tuberculous herd has been depopulated. As part of that interim rule, we revised the definitions of *Accredited-free (suspended) State*, *herd*, and *Modified accredited State*, and added a definition of *livestock*.

Comments on the interim rule were required to be received on or before April 24, 1998. We received three comments by that date. The comments were from a State veterinarian, an association of zoo veterinarians, and an association of zoo and aquarium operators. All three commenters supported the testing requirements of the interim rule, but two of the commenters had concerns related to two of the definitions added or revised by the interim rule. Those comments are discussed below.

In the interim rule, we defined *livestock* as "cattle, bison, cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production of meat and other products, for sport, or for exhibition." We also defined *herd* as "any group of livestock maintained on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator." As noted in the interim rule, these two definitions are the same as the definitions for those terms in § 50.1 of the tuberculosis indemnity regulations in 9 CFR part 50.

Two of the commenters were concerned about the potential impact that the interim rule's definitions of *livestock* and *herd* could have on animals maintained in zoos. First, the commenters were concerned that the inclusion of "other hoofed animals" in the definition of *livestock* might lead to a requirement that intradermal tuberculin skin testing be performed on animals like rhinoceroses and giraffes for which such testing has not been validated. The commenters recommended that the definition of *livestock* be modified to include only those animals for which there is clinical evidence that the intradermal tuberculin skin test is valid. With regard to the definition of *herd*, the commenters stated that it may be difficult to define precisely what constitutes a herd in a zoo environment, as hoofed animals of different species, housed in different areas, and under the care of different zoo professionals may or may not constitute a "herd" from an epidemiological perspective. In this case, the commenters suggested that the definition of *herd* be modified to take into account the unique character of the zoological environment.

The interim rule extended the testing requirements of the UM&R to livestock other than cattle or bison only under very limited circumstances, i.e., when those other animals are part of a newly assembled herd on a premises where a tuberculous herd has been depopulated. While it is true that certain zoo animals could fall within the categories of animals included in the interim rule's definition of *livestock*, and thus be included in the definition of *herd*, no new testing requirements have been extended to hoofed animals maintained in zoos by virtue of that inclusion. We fully appreciate the differences between the zoological environment and commercial livestock operations, and did not intend for the interim rule to alter the way animal health issues at zoos are currently addressed by the Animal and Plant Health Inspection Service, the States, and the zoos themselves. Because the interim rule's definitions of *livestock* and *herd* do not place any new requirements on hoofed animals maintained in zoos, we do not believe that it is necessary to make any changes to those definitions based on the comments.

However, the points raised by the commenters led us to review the provisions of part 77 to ensure that the interim rule's definitions of *livestock* and *herd* did not have any unintended effects. In that review, we noted that the definition of *Accredited-free state* in § 77.1 contains the sentence "Detection of tuberculosis in two or more herds in the state within 48 months will result in revocation of accredited-free state status." Because the definition of *herd* is no longer limited to cattle and bison, that sentence could be misleading. To make it clear that it is the detection of tuberculosis in cattle and bison, and not in other livestock, that affects a State's tuberculosis status, we have amended that sentence so that it now reads: "Detection of tuberculosis in cattle or bison in two or more herds in the state within 48 months will result in revocation of accredited-free state status."

Therefore, for the reasons set forth in the interim rule and in this document, we are adopting the interim rule as a final rule with the change discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, this final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are adopting as a final rule, with the change set forth below, the interim rule that amended 9 CFR part 77 and that was published at 63 FR 8837–8840 on February 23, 1998.

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, in the definition of *Accredited-free state*, paragraph (1)(i), the second-to-last sentence is amended by adding the words "cattle or bison in" immediately before the words "two or more".

Done in Washington, DC, this 17th day of November 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31215 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–71–AD; Amendment 39–10895; AD 98–24–09]

RIN 2120–AA64

Airworthiness Directives; Burkhart GROB Luft-und Raumfahrt GmbH Model G 109B Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Burkhart GROB Luft-und Raumfahrt GmbH (Grob) Model G 109B gliders. This AD requires inspecting the elevator and trim tab for water, and assuring that the necessary drain holes are installed and existing drain holes are open. This AD also requires drilling any necessary drain holes and opening any existing drain holes that are closed; and, if a significant amount of water (more than ½ liter) is found in the elevator, assuring that the elevator's weight and residual momentum and the glider's center of gravity (C.G.) are within the limits specified in the flight manual, and adjusting the elevator's weight and residual momentum and the glider's C.G., as needed. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent water from penetrating the elevator and trim tab because of inadequate drainage, which could result in a delaminated elevator and trim tab structure with consequent elevator imbalance and flutter.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–71–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Grob Model G 109B gliders was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 17, 1998 (63 FR 49673). The NPRM proposed to require inspecting the elevator and trim tab for water, and assuring that the necessary drain holes are installed and existing drain holes are open. The NPRM also proposed to require drilling any necessary drain holes and opening any existing drain holes that are closed; and, if a significant amount of water (more than ½ liter) is found in the elevator, assuring that the elevator's weight and residual momentum and the glider's center of gravity (C.G.) are within the limits specified in the flight manual, and adjusting the elevator's weight and residual momentum and the glider's C.G., as needed. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Grob Service Bulletin TM 817–35, dated July 20, 1992.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 20 gliders in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per glider to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $1,200, or $60 per glider.

If drain holes need to be added, the FAA estimates that it will take approximately 1 workhour per glider to accomplish the modification, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the modification on U.S. operators is estimated to be $60 per glider that will need drain holes installed.

Compliance Time of This AD

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The unsafe condition is not a result of the number of times the glider is operated. If the elevator and trim tab of the affected gliders have inadequate drainage, then water could penetrate the elevator and trim tab on the first flight, as well as subsequent flights. The delamination and imbalance that could then occur can happen in a very short period of time or happen over a long period of time. For these reasons, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all gliders in a reasonable time period.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–09 Burkhart Grob Luft-Und Raumfahrt GMBH: Amendment 39–10895; Docket No. 98–CE–71–AD.

Applicability: Model G 109B gliders, all serial numbers beginning with 6200, certificated in any category.

Note 1: This AD applies to each glider identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For gliders that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent water from penetrating the elevator and trim tab because of inadequate drainage, which could result in a delaminated elevator and trim tab structure with consequent elevator imbalance and flutter, accomplish the following:

(a) Within the next 6 calendar months after the effective date of this AD, inspect the elevator and trim tab for water and to assure that the necessary drain holes are installed and that the existing drain holes are open. Accomplish these actions in accordance with the Actions section of Grob Service Bulletin TM 817–35, dated July 20, 1992. Prior to further flight after the inspection, accomplish the following as specified in the service bulletin:

(1) Drill any necessary drain holes and open any existing drain holes that are closed; and,

(2) If a significant amount of water (more than ½ liter) is found in the elevator, after removal of the water, assure that the elevator's weight and residual moment and the glider's center of gravity (C.G.) are within the limits specified in the flight manual, and adjust the elevator's weight and residual momentum and the glider's C.G., as needed.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the glider to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Grob Service Bulletin TM 817–35, dated July 20, 1992, should be directed to Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The inspections and modifications required by this AD shall be done in accordance with Grob Service Bulletin TM 817–35, dated July 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 92–350 Grob, dated October 26, 1992.

(f) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30897 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–68–AD; Amendment 39–10894; AD 98–24–08]

RIN 2120–AA64

Airworthiness Directives; Burkhart Grob Luft-und Raumfahrt Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Burkhart Grob Luft-und Raumfahrt (Grob) Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 airplanes. This AD requires inspecting the area of the elevator trim tab hinges for cracks and a secure fit, and repairing any elevator trim tab hinges with cracks or where a proper secure fit is not found. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent structural damage of the trim tab hinges caused by cracks, which could result in trim tab failure with consequent loss of control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Federal Republic of Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–68–AD, Room 1558, 601 E. 12th Street,

Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Grob Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 11, 1998 (63 FR 48653). The NPRM proposed to require inspecting the area of the elevator trim tab hinges for cracks and a secure fit, and repairing any elevator trim tab hinges with cracks or where a proper secure fit is not found. Accomplishment of the proposed inspection would be required in accordance with Grob Service Bulletin 1078–75, dated May 15, 1998. Accomplishment of the proposed repairs, if necessary, would be required in accordance with Grob Installation Instructions No. 1078–75, dated May 15, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 26 airplanes in the U.S. registry will be affected by the inspection, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the inspection on U.S. operators is estimated to be $1,560, or $60 per airplane.

If any of the affected airplanes have trim tab hinges that are found cracked or where a proper secure fit was not found, the repair will take approximately 5 workhours per airplane at an average labor rate of $60 per hour. Parts will cost approximately $25 per airplane. Based on these figures, the cost to repair any trim tab hinges found cracked, or where a proper secure fit was not found, will be approximately $325 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–08 Burkhart Grob Luft-und Raumfahrt: Amendment 39–10894; Docket No. 98–CE–68–AD.

Applicability: Models G115, G115A, G115B, G115C, G115C2, G115D, and G115D2 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent structural damage of the trim tab hinges caused by cracks, which could result in trim tab failure with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect the area of the elevator trim tab hinges for cracks and a secure fit. Accomplish this inspection in accordance with the Action section of Grob Service Bulletin No. 1078–75, dated May 15, 1998.

(b) Prior to further flight, repair any elevator trim tab hinges with cracks or where a proper secure fit is not found. Accomplish these repairs in accordance with the Procedure section of Grob Installation Instructions No. 1078–75, dated May 15, 1998.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Grob Service Bulletin 1078–75, dated May 15, 1998, should be directed to

Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Federal Republic of Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection required by this AD shall be done in accordance with Grob Service Bulletin 1078–75, dated May 15, 1998. The repair required by this AD shall be done in accordance with Grob Installation Instructions No. 1078–75, dated May 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Burkhart Grob Luft-und Raumfahrt, D–8939 Mattsies, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–299, dated June 4, 1998.

(g) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30896 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–103–AD; Amendment 39–10896; AD 98–24–10]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Model S10 Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Model S10 sailplanes. This AD requires replacing the flap drive rocker, part number (P/N) 10SW–RMW, with a modified flap drive rocker. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the flap drive rocker caused by the design of the original part, which could result in loss of lateral control and wing flap control with consequent reduced and/or loss of sailplane control.

DATES: Effective December 9, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 16, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–103–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Stemme Model S10 sailplanes. The LBA reports that the flap drive rocker, P/N 10SW–RMW, is likely to fail due to fatigue. This was revealed following failure of a different part in the flight control system. The manufacturer then performed an analysis on other critical points, which revealed the flap drive rocker condition.

This condition, if not corrected, could result in failure of the flap drive rocker and loss of lateral control and wing flap control with consequent reduced and/or loss of sailplane control.

Relevant Service Information

Stemme has issued Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998, which specifies procedures for replacing the flap drive rocker, P/N 10SW–RMW, with a modified P/N 10SW–RMW flap drive rocker. This service bulletin also specifies obtaining this modified part from the manufacturer.

The LBA classified this service bulletin as mandatory and issued German AD 1998–324, dated July 30, 1998, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

This sailplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Model S10 sailplanes of the same type design, the FAA is issuing an AD. This AD requires replacing the flap drive rocker, P/N 10SW–RMW, with a modified P/N 10SW–RMW flap drive rocker. The actions are to be done in accordance with Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998.

Cost Impact

None of the Stemme Model S10 sailplanes affected by this action are on the U.S. Register. All sailplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers this rule necessary to ensure that the unsafe condition is addressed in the event that any of these subject sailplanes are imported and placed on the U.S. Register.

Should an affected sailplane be imported and placed on the U.S. Register, accomplishment of the required action would take approximately 5 workhours at an average labor rate of $60 per workhour. Parts cost approximately $200 per sailplane. Based on these figures, the total cost impact of this AD would be

$500 per sailplane that would become registered in the United States.

The Effective Date of This AD

Since this AD action does not affect any sailplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–103–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–10 STEMME GMBH & CO. KG: Amendment 39–10896; Docket No. 98–CE–103–AD.

Applicability: Model S10 sailplanes, serial numbers 10–03 through 10–26, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the flap drive rocker caused by the design of the original part, which could result in loss of lateral control and wing flap control with consequent reduced and/or loss of sailplane control, accomplish the following:

(a) Prior to further flight after the effective date of this AD, replace the flap drive rocker, part number (P/N) 10SW–RMW, with a modified flap drive rocker, in accordance with Stemme Installation Instruction No. A34–10–017–E, Amendment-Index 01.a, dated August 10, 1998, as referenced in Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998, should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacement required by this AD shall be done in accordance with Stemme Installation Instruction No. A34–10–017–E, Amendment-Index 01.a, dated August 10, 1998, as referenced in Stemme Service Bulletin No. A31–10–017, Amendment-Index 02.a, dated May 20, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–324, dated July 30, 1998.

(f) This amendment becomes effective on December 9, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30895 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–83–AD; Amendment 39–10891; AD 98–24–05]

RIN 2120–AA64

Airworthiness Directives; HOAC-Austria Model DV–20 Katana Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain HOAC-Austria (HOAC) Model DV–20 airplanes equipped with ROTAX 912 A3 engines. This AD requires replacing the engine electronic modules. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria. The actions specified by this AD are intended to prevent electromagnetic interference (EMI) on the engine electronic module, which could cause the airplane engine to stop due to the interruption of the airplane's ignition system and result in loss of control of the airplane.

DATES: Effective January 4, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 4, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from HOAC-Austria, N.A. Otto-StraBe 5, A–2700 Wiener, Neustadt, Austria. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–83–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Chudy, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain HOAC Model DV–20 airplanes equipped with ROTAX 912 A3 engines was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 25, 1998 (63 FR 45189). The NPRM proposed to require replacing the electronic ignition module with one of improved design. Accomplishment of the proposed action as specified in the NPRM would be in accordance with Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Austria.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 20 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $5,600 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $113,200 or $5,660 per airplane.

The manufacturer has informed the FAA that all of the affected airplanes registered in the U.S. have accomplished this action, therefore, the estimated cost impact of this AD on U.S. operators is eliminated.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–05 HOAC-Austria: Amendment 39–10891; Docket No. 97–CE–83–AD.

Applicability: Model DV–20 Katana airplanes, certificated in any category, equipped with ROTAX 912–A3 series engines having serial numbers 4,076.064 through 4,380.753.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by

this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent electromagnetic interference (EMI) on the engine electronic module, which could cause the airplane engine to stop due to the interruption of the airplane's ignition system and result in loss of control of the airplane, accomplish the following:

(a) Replace the engine electronic module, part number (P/N) 965 356 or an FAA-approved equivalent part number, with a new engine electronic module, P/N 965 358, in accordance with the Instructions section of the Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995, should be directed to HOAC-Austria, N.A. Otto-StraBe 5, A–2700 Wiener. Neustadt, Austria. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(e) The replacement required by this AD shall be done in accordance with Bombardier-ROTAX Technical Bulletin No. 912–08, dated August 16, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from HOAC-Austria, N.A. Otto-StraBe 5, A–2700 Wiener. Neustadt, Austria. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Austrian AD No. 84, dated October 4, 1995.

(f) This amendment becomes effective on January 4, 1999.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–30894 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–53–AD; Amendment 39–10893; AD 98–24–07]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Models EA–300, EA–300S, and EA–300L Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300, EA–300S, and EA–300L airplanes. This AD requires repetitively inspecting the rudder pedal for proper alignment, the safety control stop for wear and proper clearance, the rudder cables for elongation, and the rudder pedal footrest for cracks. This AD also requires correcting or replacing any discrepant part, as applicable. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent failure of the rudder pedal footrest caused by overloading the rudder pedal safety control stop, which could result in loss of directional control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (01 49 28 58) 91 37–13; facsimile: (01 49 28 58) 91 37–30. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–53–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain EXTRA Models EA–300, EA–300S, and EA–300L airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 17, 1998 (63 FR 49675). The NPRM proposed to require repetitively inspecting the rudder pedal for proper alignment, the safety control stop for wear and proper clearance, the rudder cable for proper alignment, and the rudder pedal footrest for cracks. The NPRM also proposed to require correcting or replacing any discrepant part, as applicable. Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 15 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the inspections, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $3,600, or $240 per airplane. These figures do not take into

account any corrective action that will be necessary after accomplishing the inspections.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration, amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–07 Extra Flugzeugbau GMBH: Amendment 39–10893; Docket No. 98–CE–53–AD.

Applicability: The following models and serial numbers, certificated in any category:

Model and Serial Number

EA–300 All serial numbers, if factory equipped or retrofitted with the electric actuated rudder pedal adjustment that was produced prior to November 1995.

EA–300S 001 through 028
EA–300L 001 through 015

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as follows:

1. Inspections specified in this AD are required within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 50 hours TIS.

2. Replacements or other follow-on corrective actions specified in this AD are required prior to further flight after the inspection when the discrepancy was found.

To prevent failure of the rudder pedal footrest caused by overloading the rudder pedal safety control stop, which could result in loss of directional control of the airplane, accomplish the following:

(a) Inspect the rudder pedal alignment in accordance with Figure 1 and Figure 2 and the Instructions Part I.1 section of EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. If not aligned, prior to further flight, accomplish one of the following, as applicable, in accordance with the service bulletin:

(1) Re-rig the rudder cables to attain proper alignment; or

(2) Replace the rudder cables if alignment cannot be attained.

(b) For all airplanes equipped at manufacture with a safety control stop (See **Note 2** of this AD), inspect the safety control stop for wear (rubbing, scrapes, etc.) in accordance with the Instructions Part I.2 section of EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. If the safety control stop is worn, prior to further flight, replace the safety control stop and accomplish one of the following, as applicable, in accordance with the service bulletin:

(1) Re-rig the rudder cable if elongation of the cable is not evident; or

(2) Replace the rudder cable if elongation of the cable is evident.

Note 2: The Model EA–300/S airplanes, serial numbers 001 through 011, were not factory equipped with a safety control stop.

(c) Inspect the footrest flange in the area of the safety wire hole for cracks in accordance with the Instructions Part I.3 section of EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. If cracks are found, prior to further flight, replace the rudder pedal in accordance with the applicable maintenance manual or instructions obtained from the Small Airplane Directorate at the address specified in paragraph (f) of this AD.

(d) For all airplanes equipped at manufacture with a safety control stop (See **Note 2** of this AD), inspect the safety control stop clearance in accordance with the Instructions Part I.4 and Instructions Part II section of EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. If the clearance does not meet the minimum specified clearance, prior to further flight, accomplish one of the following, as applicable, in accordance with the service bulletin:

(1) Adjust the foot rest to meet the required clearance if elongation of the cable is not evident; or

(2) Replace the rudder cable if elongation of the cable is evident.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998, should be directed to EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The inspections, modifications, or replacements required by this AD shall be done in accordance with EXTRA Service Bulletin No. 300–3–95, Issue: B, dated May 12, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German AD No. 95–443 EXTRA, dated November 29, 1995.

(i) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31013 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–35–AD; Amendment 39–10898; AD 98–24–12]

RIN 2120–AA64

Airworthiness Directives; Ursula Hanle Model H101 "Salto" Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Ursula Hanle (Hanle) Model H101 "Salto" sailplanes. This AD requires replacing the airbrake lever with one of improved design. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the airbrake from deploying during high g maneuvers, which could result in an overstressing effect on the airframe with consequent reduced sailplane control.

DATES: Effective December 24, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 24, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Ursula Hanle, Haus Schwalbenwerder, D–14728 Strodehne, Federal Republic of Germany; telephone and facsimile: +49 (0) 33875–30389. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-CE–35-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Hanle Model H101 "Salto" sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 25, 1998 (63 FR 49307). The NPRM proposed to require replacing the airbrake lever made of sheet metal with one made of steel. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Ursula Hanle Technical Bulletin 101-25/2, dated January 21, 1998.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

Although the airbrake lever will only come out during flight in high g maneuvers, the unsafe condition specified in this AD is not a result of the number of times the sailplane is operated. The chance of this situation occurring is the same for a sailplane with 10 hours time-in-service (TIS) as it would be for a sailplane with 500 hours TIS. For this reason, the FAA has determined that a compliance based on calendar time should be utilized in this AD in order to assure that the unsafe condition is addressed on all sailplanes in a reasonable time period.

Cost Impact

The FAA estimates that 8 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 6 workhours per sailplane to accomplish this action, and that the average labor rate is approximately $60 an hour. Parts cost approximately $295 per sailplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $5,240, or $655 per sailplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–12 Ursula Hanle: Amendment 39–10898; Docket No. 98–CE–35–AD.

Applicability: Model H101 "Salto" sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 3 calendar months after the effective date of this AD, unless already accomplished.

To prevent the airbrake from inadvertently deploying during high g maneuvers, which could result in an overstressing effect on the airframe with consequent reduced sailplane control, accomplish the following:

(a) Replace the airbrake lever in accordance with Ursula Technical Bulletin 101–25/2, dated January 21, 1998, and drawing No. 101–44–3(2), as referenced in the technical bulletin.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) Questions or technical information related to Ursula Hanle Technical Bulletin 101–25/2, dated January 21, 1998, should be directed to Ursula Hanle, Haus Schwalbenwerder, D–14728 Strodehne, Federal Republic of Germany; telephone and facsimile: +49 (0) 33875–30389. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) The replacement required by this AD shall be done in accordance with Ursula Technical Bulletin 101-25/2, dated January 21, 1998, and drawing No. 101–44-3(2), as referenced in the technical bulletin. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Ursula Hanle, Haus Schwalbenwerder, D–14728 Strodehne, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 1998–108, dated February 26, 1998.

(f) This amendment becomes effective on December 24, 1998.

Issued in Kansas City, Missouri, on November 12, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31012 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–20–AD; Amendment 39–10897; AD 98–24–11]

RIN 2120–AA64

Airworthiness Directives; Mooney Aircraft Corporation Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Mooney Aircraft Corporation (Mooney) Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R airplanes. This AD requires inspecting the aileron control links for the installation of a reinforcing gusset; and, if no gusset is installed, repetitively inspecting the aileron control links (left-hand and right-hand) for cracks. If cracks are found, this AD requires replacing the aileron control links with parts of improved design. This AD is the result of service difficulty reports (SDR's) on the aileron control links and reported failures of the aileron control links. The actions specified by this AD are intended to detect and correct cracked aileron control links, which could result in loss of aileron control with consequent loss of control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–20–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Mooney Models M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, and M20R airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 22, 1998 (63 FR 39254). The NPRM proposed to require inspecting the aileron control links for the installation of a reinforcing gusset; and, if a gusset is not installed, repetitively inspecting the aileron control links (left-hand and right-hand) for cracks using a magnetic particle method. If a crack is found, the NPRM proposed to require replacing the aileron control links with parts of improved design. Replacing the aileron control links would be considered a terminating action for the repetitive inspections. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Mooney Engineering Design Service Bulletin No. M20–264, dated February 1, 1998.

The NPRM was the result of service difficulty reports (SDR's) on the aileron control links and reported failures of the aileron control links.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

Comment Disposition

The commenter requests that the FAA reference Lake Aero Styling & Repair aileron control links. Lake Aero Styling & Repair holds a parts manufacturer approval (PMA) for parts that are equivalent to the improved design Mooney aileron control links.

The FAA does not concur. FAA policy is to not reference PMA parts in AD's, unless the FAA determines that the unsafe condition applies to the PMA parts. However, the FAA generally includes a statement of "or FAA-approved equivalent part number(s)"

after the referenced part number to account for PMA equivalent parts. The FAA inadvertently left this phrase out of the NPRM, and will add it to the final rule accordingly. If these Lake Aero Styling & Repair PMA parts are installed, then the actions of this AD would not apply because the parts are an FAA-approved equivalent to the improved design Mooney aileron control links.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 7,500 airplanes in the U.S. registry will be affected by the initial inspections, that it will take approximately 2 workhours per airplane to accomplish the initial inspections, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspections specified in this AD on U.S. operators is estimated to be $900,000, or $120 per airplane.

The above figures do not take into account the cost of repetitive inspections or aileron control link replacements. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected airplanes will incur or the number of aileron control links that will be found cracked during the required inspections and need replacement.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–11 Mooney Aircraft Corporation: Amendment 39–10897; Docket No. 98–CE–20–AD.

Applicability: The following airplane models and serial numbers, certificated in any category.

Models and Serial Numbers

M20B	all serial numbers
M20C	all serial numbers
M20D	all serial numbers
M20E	all serial numbers
M20F	all serial numbers
M20G	all serial numbers
M20L	all serial numbers
M20J	24–0001 through 24–3359
M20K	25–0001 through 25–1999
20M	27–0001 through 27–0197
M20R	29–0001 through 29–0042

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracked aileron control links, which could result in loss of aileron control and loss of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, visually inspect the aileron control links (left-hand and right-hand) at the second 90-degree angle joint from the Heim bearing for the installation of a reinforcement gusset. Accomplish this inspection in accordance with the Instructions section of Mooney Engineering Design Service Bulletin (SB) No. M20–264, Issue Date: February 1, 1998.

(b) If a reinforcement gusset is installed, this AD requires no further action.

(c) If a reinforcement gusset is not installed, prior to further flight after the inspection required in paragraph (a) of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect, using magnetic particle methods, the aileron control links for cracks. Accomplish this inspection in accordance with the Instructions section of Mooney Engineering Design SB No. M20–264, Issue Date: February 1, 1998.

(1) If cracks are found, prior to further flight, replace the cracked aileron control link with an aileron control link of improved design (part numbers as specified in the referenced service information or FAA-approved equivalent numbers). Accomplish this replacement in accordance with the Instructions section of Mooney Engineering Design SB No. M20–264, Issue Date: February 1, 1998.

(2) Replacing both aileron control links with aileron control links of improved design (part numbers as specified in the referenced service information or FAA-approved equivalent numbers) may be accomplished at any time as terminating action for the repetitive inspection requirement of this AD, but must be accomplished prior to further flight on any aileron control link found cracked.

(3) If one aileron control link is replaced prior to further flight when a crack is found, the other aileron control link must still be repetitively inspected every 100 hours TIS until replacement with an improved design part.

(d) Replacing the aileron control links in accordance with Mooney Engineering Design SB No. M20–264, Issue Date: February 1, 1998, is considered terminating action for the repetitive inspection requirement of this AD.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(g) The inspections and replacements required by this AD shall be done in accordance with Mooney Engineering Design Service Bulletin No. M20–264, Issue Date: February 1, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Mooney Aircraft Corporation, Louis Schreiner Field, Kerrville, Texas 78028. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 12, 1998.

Marvin R. Nuss,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31011 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–137–AD; Amendment 39–10892; AD 98–24–06]

RIN 2120–AA64

Airworthiness Directives; Dornier-Werke G.m.b.H. Model Do 27 Q–6 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Dornier-Werke G.m.b.H. (Dornier) Model Do 27 Q–6 airplanes. This AD requires repetitively inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to prevent the stabilizer from detaching at the forward stabilizer attach flanges because of loose rivets, which could result in reduced or loss of control of the airplane.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–137–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Dornier Model Do 27 Q–6 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 14, 1998 (63 FR 49048). The NPRM proposed to require repetitively inspecting the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness, and replacing any loose rivets. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The initial compliance time of this AD is presented in calendar time in order to assure that any rivets that are already loose are detected and corrected in a timely manner. The FAA has determined that 3 calendar months is a reasonable time for all owners/operators of the affected airplanes to comply with the initial inspection and possible replacement specified in this AD.

The repetitive inspection interval is at 100 hours time-in-service (TIS). After examining the information related to this subject, the FAA has determined that the rivets should not become loose within 100 hours TIS if they were not found loose or replaced during the last inspection. This will not put an undue burden on low usage airplanes of having to repetitively inspect every 3 calendar months if the airplanes had been rarely or never utilized.

Cost Impact

The FAA estimates that 13 airplanes in the U.S. registry will be affected by the initial inspection, that it will take approximately 1 workhour per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $780, or $60 per airplane. These figures only take into account the costs of the initial inspection and do not take into account the costs of any repetitive inspections. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur over the life of the affected airplanes.

If loose rivets are found and replacement is necessary, the FAA estimates that it will take approximately 8 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. Replacement rivets will be supplied by Dornier at no cost to the owners/operators of the affected airplanes. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $480 per airplane where loose rivets are found.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–06 Dornier-Werke G.M.B.H.: Amendment 39–10892; Docket No. 97–CE–137–AD.

Applicability: Model Do 27 Q–6 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent the stabilizer from detaching at the forward stabilizer attach flanges because of loose rivets, which could result in reduced or loss of control of the airplane, accomplish the following:

(a) Within the next 3 calendar months after the effective date of this AD, and thereafter at intervals not to exceed 100 hours time-in-service (TIS), inspect the rivets that attach the forward stabilizer attach fitting to the airplane fuselage for looseness. Accomplish these inspections in accordance with the PROCEDURE section of Dornier Service Bulletin (SB) No. 1140–0000, Date of Issue: September 29, 1995.

(b) If loose rivets are found during any inspection required in paragraph (a) of this AD, prior to further flight, replace any loose rivets in accordance with the PROCEDURE section of Dornier SB No. 1140–0000, Date of Issue: September 29, 1995.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995, should be directed to Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D-82230 Wessling, Federal Republic of Germany; telephone: (08153) 300; facsimile: (08153) 302985. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection and replacement required by this AD shall be done in accordance with Dornier Service Bulletin No. 1140–0000, Date of Issue: September 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Daimler-Benz Aerospace, Dornier, Product Support, P.O. Box 1103, D–82230 Wessling, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German AD 96–271 Daimler-Benz Aerospace/Dornier, Effective Date: October 10, 1996.

(g) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31009 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–299–AD; Amendment 39–10903; AD 98–24–18]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102 and –103 series airplanes, that currently requires a one-time inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, and repair, if necessary. This amendment establishes repetitive intervals for the inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer. This amendment also revises the applicability of the existing AD to include certain additional airplanes, and to exclude certain other airplanes. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced strength capability and consequent failure of the horizontal stabilizer, which could result in loss of controllability of the airplane.

DATES: Effective December 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–299–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 5, 1998, the FAA issued AD 98–05–03, amendment 39–10389 (63 FR 11987, March 12, 1998), applicable to certain Bombardier (formerly de Havilland) Model DHC–8–102 and –103 series airplanes, to require a one-time inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, and repair, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions required by that AD are intended to prevent reduced strength capability and consequent failure of the horizontal stabilizer, which can result in loss of controllability of the airplane.

Actions Since Issuance of Previous Rule

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that, during the one-time inspection performed in accordance with AD 98–05–03 and the parallel Canadian airworthiness directive CF–98–01, disbonding of doublers and stringers from the upper and lower skin of the horizontal stabilizer was detected on several Model DHC–8–102 and –103 series airplanes. Because these airplanes were close together in serial number, the problem of disbonding was attributed to discrepancies in the bonding process on a single batch of skin panels installed on certain Bombardier Model DHC–8–102 and –103 series airplanes.

As a result of these findings, TCA issued Canadian airworthiness directive CF–98–24, dated August 19, 1998, to require repetitive ultrasonic inspections to detect disbonding of the upper and lower skin panels of the horizontal stabilizer. During repeat inspections performed in accordance with that airworthiness directive, disbonding was detected on several airplanes on which no disbonding was detected during the initial inspection.

Based on the information provided by TCA, the FAA has determined that the one-time inspection required by AD 98–05–03 may not be adequate to detect disbonding of the upper and lower skin panels of the horizontal stabilizer and, therefore, may not be providing an adequate level of safety for the transport airplane fleet.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 98–05–03 to require repetitive ultrasonic inspections to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, and repair, if necessary. In addition, this AD also revises the applicability of the existing AD to include certain additional airplanes, and to exclude certain other airplanes. This AD also requires that operators report inspection results, both positive and negative findings, to Bombardier.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between This Rule and the Foreign Airworthiness Directive

Operators should note that the parallel Canadian airworthiness directive CF–98–24 specifies that any disbonding that is detected that is beyond the local disbonding limits specified in de Havilland Product Support Manual (PSM) 1–8–7A, part 5, section 55–00–01, dated July 15, 1996, shall be repaired prior to further flight. However, this AD requires that all disbonding, whether it is within or beyond the limits, be repaired prior to further flight. This AD also specifies that disbonding that exceeds the limits specified in the PSM must be repaired in accordance with a method approved by the FAA.

Explanation of Applicability

Operators should note that AD 98–05–03 and parallel Canadian airworthiness directive CF–98–01, dated February 19, 1998, are applicable to Model DHC–8–102 and –103 series airplanes having serial numbers 003 through 050 inclusive. Since the issuance of AD 98–05–03, TCA has advised the FAA that the serial numbers of the airplanes may differ from the Canadian Aviation Products (CAP) serial number of the horizontal stabilizer. Therefore, it may be necessary for operators to check the data plate located on the left side of the horizontal stabilizer to determine the serial number of the horizontal stabilizer. Also, the applicability of Canadian airworthiness directive CF–98–24 includes additional airplanes. For these reasons, this AD (and parallel Canadian airworthiness directive CF–98–24) is applicable to Model DHC–8–100 and –300 series airplanes equipped with a CAP horizontal stabilizer having serial numbers CAP 003 through CAP 214 inclusive.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether

additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–299–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10389 (63 FR 11987, March 12, 1998), and by adding a new airworthiness directive (AD), amendment 39–10903, to read as follows:

98–24–18 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–10903. Docket 98–NM–299–AD. Supersedes AD 98–05–03, Amendment 39–10389.

Applicability: Model DHC–8–100 and –300 series airplanes, equipped with Canadian Aviation Products (CAP) horizontal stabilizers having Serial Numbers CAP 003 through CAP 214 inclusive, certificated in any category.

Note 1: It may be necessary to check the data plate on the left side of the horizontal stabilizer to determine the serial number of the horizontal stabilizer, because the serial number of the horizontal stabilizer may not be the same as the airplane serial number.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced strength capability and consequent failure of the horizontal stabilizer, which could result in loss of controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–05–03

Note 3: Accomplishment of the actions required by paragraph (a) of this AD is not intended to supersede the ongoing requirements of the Airworthiness Limitation identified in the Maintenance Review Board (MRB) report as Task 5500/01.

(a) For Model DHC–8–102 and –103 series airplanes having Serial Numbers 003 through 050 inclusive: Perform a one-time ultrasonic bond inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable; in accordance with de Havilland Product Support Manual (PSM) 1–8–7A, part 5, section 55–00–01, dated July 15, 1996.

(1) For airplanes having Serial Numbers 010 through 040 inclusive: Inspect within 20 flight cycles or 7 days after March 17, 1998 (the effective date of AD 98–05–03, amendment 39–10389), whichever occurs first.

(2) For airplanes having Serial Numbers 003 through 009 inclusive and 041 through 050 inclusive: Inspect within 60 flight cycles or 7 days after March 17, 1998, whichever occurs first.

(b) If any disbonding is found during the inspection required by paragraph (a) of this AD: Prior to further flight, accomplish the actions specified by paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable.

(1) If the disbonding is below (smaller than) the limits specified in the PSM, no further action is required by this paragraph.

(2) If the disbonding is within the limits specified in the PSM, repair the disbonded area in accordance with the DHC–8 Structural Repair Manual PSM 1–8–3.

(3) If the disbonding exceeds the limits specified in the PSM or if a repair is not provided by the PSM, repair the disbonded area in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate.

Note 4: Where differences between this AD and the parallel Canadian airworthiness directive exist, this AD prevails.

(c) Within 2 days after performing the inspection required by paragraph (a) of this AD: Submit a report of inspection findings, regardless of the results, to the Manager, New York ACO, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; fax (516) 568–2716. The report must include the airplane serial number, the stringer number, and the extent (length or surface area) of disbonding. For inspections performed after the effective date of this AD, reports also must include the horizontal stabilizer CAP number. (Operators may follow the guidelines provided in Figure 2 of de Havilland PSM 1–8–7A for reporting requirements.) Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

New Requirements of This AD

(d) For Model DHC–8–100 and -300 series airplanes equipped with CAP horizontal stabilizers having serial numbers CAP 003 through CAP 214 inclusive: Perform an ultrasonic bond inspection to detect disbonding of the upper and lower skin panels of the horizontal stabilizer, in accordance with de Havilland Product Support Manual (PSM) 1–8–7A, part 5, section 55–00–01, dated July 15, 1996; at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For Model DHC–8–100 and -300 series airplanes equipped with CAP horizontal stabilizers having serial numbers CAP 003 through CAP 050 inclusive: Inspect within 1 month after the effective date of this AD, unless accomplished within 1 month prior to the effective date of this AD.

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(i) If no disbonding is detected, repeat the inspection one time within 14 months after the most recent inspection, but no earlier than 12 months after the most recent inspection. Thereafter, repeat the inspection at intervals not to exceed 2 years after the most recent inspection.

(ii) If any disbonding is detected, prior to further flight, accomplish the actions specified by paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Repair of the disbonded area in accordance with the DHC–8 Structural Repair Manual PSM 1–8–3 constitutes terminating action for the repetitive inspection requirements specified in paragraph (d)(1)(i) of this AD.

(2) For Model DHC–8–100 and -300 series airplanes equipped with CAP horizontal stabilizers having serial numbers CAP 051 through CAP 214 inclusive: Inspect at the next regularly scheduled maintenance period, but no later than 90 days after the effective date of this AD, unless the inspection was accomplished within 10 months prior to the effective date of this AD.

(i) If no disbonding is detected, repeat the inspection thereafter at intervals not to exceed 2 years. For airplanes that were inspected within 10 months prior to the effective date of this AD, repeat the inspection at an interval not to exceed 2 years after the most recent inspection, and thereafter at intervals not to exceed 2 years.

(ii) If any disbonding is detected, prior to further flight, accomplish the actions specified by paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Repair of the disbonded area in accordance with the DHC–8 Structural Repair Manual PSM 1–8–3 constitutes terminating action for the repetitive inspection requirements specified in paragraphs (d)(2)(i) of this AD for the repaired area.

(e) For any inspection performed in accordance with paragraph (d) of this AD, submit a report of inspection findings, regardless of the results, to Bombardier Aerospace Regional Aircraft Technical Services, phone (416) 375–4000, fax (416) 375–4539. Submit the report at the time specified in paragraph (e)(1), (e)(2), or (e)(3) of this AD, as applicable. The report must include the airplane serial number, horizontal stabilizer CAP number, and the extent (length or surface area) of disbonding. (Operators may follow the guidelines provided in Figure 2 of de Havilland PSM 1–8–7A for reporting requirements.) Information collection requirements contained in this regulation have been approved by the OMB under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For any inspection performed after the effective date of this AD: Submit a report within 7 days after the inspection.

(2) For inspections performed within 1 month prior to the effective date of this AD, as specified in paragraph (d)(1) of this AD: Submit a report within 7 days after the effective date of this AD.

(3) For inspections performed within 10 months prior to the effective date of this AD, as specified in paragraph (d)(2) of this AD: Submit a report within 7 days after the effective date of this AD.

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

(f)(2) Alternative methods of compliance, approved previously in accordance with AD 98–05–03, amendment 39–10389, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in Canadian airworthiness directive CF–98–24, dated August 19, 1998.

(h) This amendment becomes effective on December 8, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31178 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–20–AD; Amendment 39–10900; AD 98–24–15]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Model 204B, 205A, 205A–1, 205B, and 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Bell Helicopter Textron Model 204B, 205A, 205A–1, and 212 helicopters, that currently establishes a retirement life for the main rotor masts (masts) and main rotor trunnions (trunnions) based on time-in-service (TIS) and types of operations. This amendment adds Model 205B helicopters to the applicability; requires creation of component history cards or equivalent records using a Retirement Index Number (RIN) system; establishes a system for tracking increases to the accumulated RIN; and establishes a maximum accumulated RIN for certain masts and trunnions. This amendment is prompted by an accident involving a Model 205A–1 helicopter, in which a mast failure caused a separation of the main rotor from the helicopter. The actions specified by this AD are intended to prevent fatigue failure of the mast or trunnion and subsequent loss of control of the helicopter.

DATES: Effective December 8, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 8, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 22, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–20–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles C. Harrison, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5447, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION: On December 28, 1988, the FAA issued AD 89–02–07, Amendment 39–6112 (54 FR 1338, January 13, 1989) and on September 19, 1989, issued revised AD 89–02–07 R1, Amendment 39–6339 (54 FR 40381, October 2, 1989), to establish a retirement life for certain masts and trunnions based on TIS and types of operations. Those actions were prompted by results of fatigue stress tests and fatigue analysis of the mast and trunnion under ground-air-ground (GAG) and repeated heavy lift (RHL) loading conditions. On June 27, 1997, the FAA issued priority letter AD 97–14–12 to supersede AD 89–02–07 as revised by AD 89–02–07 R1 to establish retirement lives for certain masts and trunnions that utilize a Retirement Index Number (RIN) system. Exceeding the retirement life of the mast or

trunnion could result in fatigue failure of the mast or trunnion and subsequent loss of control of the helicopter.

Since the issuance of AD 89–02–07 and AD 89–02–07 R1, the manufacturer has issued the following service bulletins to establish retirement lives for certain masts and trunnions:

- Bell Helicopter Textron Alert Service Bulletin No. 205–90–40, Revision A, dated March 21, 1991, which is applicable to Model 205A–1 helicopters;
- Bell Helicopter Textron Alert Service Bulletin No. 205B–90–1, Revision A, dated March 21, 1991, which is applicable to Model 205B helicopters; and
- Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, which is applicable to Model 212 helicopters.

Also, since the issuance of the earlier AD's, there has been one accident involving a Model 205A–1 helicopter, in which a mast failure caused a separation of the main rotor from the helicopter. The helicopter, which had been utilized in external load lift operations, was performing an external load lift operation at the time of the accident. A subsequent metallurgical examination revealed that the mast had fractured as a result of fatigue. Analyses and fatigue testing has confirmed that the retirement lives of the mast and trunnion are more accurately assessed by monitoring the number of torque events and time-in-service (TIS) incurred by the helicopter rather than by monitoring only TIS. Exceeding the retirement life of the mast or trunnion could result in fatigue failure of the mast or trunnion and subsequent loss of control of the helicopter. Additionally, the FAA has determined that Model 205B helicopters should be added to the applicability.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 204B, 205A, 205A–1, 205B, and 212 helicopters of the same type design, this AD supersedes AD 89–02–07 as revised by AD 89–02–07 R1 and AD 97–14–12 to require, before further flight, creation of component history cards or equivalent records using a RIN system for certain masts and trunnions; to establish a system for tracking increases to the accumulated RIN; and to establish retirement lives for the mast and trunnion for each of the affected model helicopters. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the aircraft. Therefore, the actions are required before further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97–SW–20–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6112 (54 FR 1338, January 13, 1989), Amendment 39–6339 (54 FR 40381, October 2, 1989) and by adding a new airworthiness directive (AD), Amendment 39–10900, to read as follows:

AD 98–24–15 Bell Helicopter Textron: Amendment 39–10900. Docket No. 97–SW–20–AD. Supersedes AD 89–02–07, Amendment 39–6112, Docket No. 87–ASW–63; AD 89–02–07 R1, Amendment 39–6339, Docket No. 87–ASW–63; and priority letter AD 97–14–12, Docket No. 97–SW–20–AD.

Applicability: Model 204B, 205A, 205A–1, 205B, and 212 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority

provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

To prevent fatigue failure of the main rotor mast (mast) or main rotor trunnion (trunnion), and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 204B helicopters:

(1) Create component history cards or equivalent records for the mast, part number (P/N) 204–011–450–001, –007, or –105 and trunnion, P/N 204–011–105–001.

(2) Determine and record on the component history cards or equivalent records the accumulated RIN to-date on the mast and trunnion as follows:

(i) For mast, P/N 204–011–450–001, multiply the total time-in-service (TIS) on the mast to-date by 50 (if result contains a decimal point, round-off to the next higher whole number).

(ii) For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the total TIS on the part to-date by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (a)(1) and (a)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs that were performed. At the end of each day's operations, increase the accumulated RIN on the component history cards or equivalent records as follows:

(i) Increase the RIN by 1 for each takeoff.

(ii) Increase the RIN by 1 for each external load lift, or increase the RIN by 2 for each external load lift operation in which the load is picked up at one elevation and released at another elevation, and the difference in elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–001, on or before attaining 6,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(5) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(b) For Model 205A and 205A–1 helicopters:

(1) Create component history cards or equivalent records for the mast, part numbers (P/N) 204–011–450–007, or –105 and trunnion, P/N 204–011–105–001.

(2) Determine and record on the component history cards or equivalent records the accumulated RIN to-date on the mast and trunnion. For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the factored flight hour total to-date, determined in accordance with paragraphs 1, 2, or 3 of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 205–90–40, Revision A, dated March 21, 1991, by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (b)(1) and (b)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs that were performed. At the end of each day's operations, increase the accumulated RIN on the component history cards or equivalent records as follows:

(i) Increase the RIN by 2 for each takeoff performed.

(ii) Increase the RIN by 2 for each external load lift, or increase the RIN by 4 for each external load lift operation in which the load is picked up at one elevation and released at another elevation, and the difference in the elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(c) For Model 205B helicopters:

(1) Create component history cards or equivalent records for the mast, P/N 204–011–450–007, or –105 and trunnion, P/N 204–011–105–001.

(2) Determine and record on the component history cards or equivalent records the accumulated RIN to-date on the mast and trunnion. For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the factored flight hour total to-date, determined in accordance with paragraph 1, 2, or 3 of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 205B–90–1, Revision A, dated March 21, 1991, by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (c)(1) and (c)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs performed, and at the end of each day's operations, increase the accumulated RIN on the component history card as follows:

(i) Increase the RIN by 5 for each takeoff performed.

(ii) Increase the RIN by 5 for each external load lift, or increase the RIN by 10 for each external load lift in which the load is picked up at one elevation and released at another elevation, and the difference in the elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(d) For Model 212 helicopters:

(1) Create component history cards or equivalent records for the mast, P/N 204–011–450–007, –105, –113, or –119 and trunnion, P/N 204–011–105–001 or –103.

(2) Determine and record on the component history card or an equivalent record the accumulated RIN to-date on the mast and trunnion as follows:

(i) For mast, P/N 204–011–450–007 or –105, and trunnion, P/N 204–011–105–001, multiply the factored flight hour total to-date, determined in accordance with paragraphs 1, 2, and 3 of the Accomplishment Instructions of Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, by 20 (if the result contains a decimal point, round-off to the next higher whole number).

(ii) For mast, P/N 204–011–450–113 or –119, and trunnion, P/N 204–011–105–103, multiply the factored flight hour total to-date, determined in accordance with paragraphs 1, 2, or 3 of the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, by 21.2 (if the result contains a decimal point, round-off to the next higher whole number).

(3) After complying with paragraphs (d)(1) and (d)(2) of this AD, during each operation thereafter, maintain a count of the number and type of external load lifts and the number of takeoffs performed. At the end of each day's operations, increase the accumulated RIN on the component history cards or equivalent records as follows:

(i) Increase the RIN by 5 for each takeoff performed.

(ii) Increase the RIN by 5 for each external load lift, or increase the RIN by 10 for each external load lift in which the load is picked up at one elevation and released at another elevation, and the difference in the elevation between the pickup point and the release point is 200 feet or greater.

(4) Remove the mast, P/N 204–011–450–007 or –105, or trunnion, P/N 204–011–105–001, on or before attaining 15,000 hours TIS, or an accumulated RIN of 300,000, whichever occurs first.

(5) Remove the mast, P/N 204–011–450–113 or –119, or trunnion, P/N 204–011–105–103, on or before attaining 13,000 hours TIS or an accumulated RIN of 275,000, whichever occurs first.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This AD revises the Airworthiness Limitations sections of the maintenance manuals by establishing a new retirement life for the affected masts and trunnions as follows:

Masts: P/N 204–011–450–001—6,000 hours TIS or 300,000 RIN whichever occurs first.

P/N 204–011–450–007 or P/N 204–011–450–105—15,000 hours TIS or 300,000 RIN, whichever occurs first.

P/N 204–011–450–113 or P/N 204–011–450–119—13,000 hours TIS or 275,000 RIN, whichever occurs first.

Trunnions: P/N 204–011–105–001—15,000 hours TIS or 300,000 RIN, whichever occurs first.

P/N 204–011–105–103—13,000 hours TIS or 275,000 RIN, whichever occurs first.

(h) The actions shall be done in accordance with:

• Bell Helicopter Textron Alert Service Bulletin No. 205–90–40, Revision A, dated March 21, 1991, which is applicable to Model 205A and 205A–1 helicopters;

• Bell Helicopter Textron Alert Service Bulletin No. 205B–90–1, Revision A, dated March 21, 1991, which is applicable to Model 205B helicopters; and

• Bell Helicopter Textron Alert Service Bulletin No. 212–90–64, Revision B, dated March 11, 1992, which is applicable to Model 212 helicopters.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 8, 1998.

Issued in Fort Worth, Texas, on November 13, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31195 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–17]

Amendment of Class E Airspace; Grand Junction, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Grand Junction, CO, Class E airspace by providing additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at Walker Field Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–17, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On September 14, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Grand Junction, CO, Class E airspace area (63 FR 49052). This revision provides the additional airspace necessary to encompass the new GPS Runway 11 and the GPS Runway 29 SIAPs to the Walker Field Airport, Grand Junction, CO. This amendment adds a small Class E area extension to the present airspace in order to accommodate a slightly larger flying area for the SIAPs. In the notice of proposed rulemaking action, the coordinates for the Grand Junction Localizer were inadvertently left out of the legal description for Grand Junction. This error is corrected herein. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Grand Junction, CO, by providing the additional airspace necessary to fully contain new flight procedures at Walker Field Airport. This modification of airspace adds a small Class E area extension to the present airspace in order to accommodate a slightly larger flying area for the SIAPs. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Walker Field Airport and between the terminal and en route transition stages.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM CO E5 Grand Junction, CO [Revised]

Grand Junction, Walker Field, CO
(Lat. 39°07′21″N, long. 108°31′36″W)
Grand Junction VORTAC
(Lat. 39°03′34″N, long. 108°47′33″W)
Grand Junction Localizer
(Lat. 39°07′04″N, long. 108°30′48″W)

That airspace extending upward from 700 feet above the surface within 7 miles northwest and 4.3 miles southeast of the Grand Junction VORTAC 247° and 067° radials extending from 11.4 miles southwest to 12.3 miles northeast of the VORTAC, and within 1.8 miles south and 9.2 miles north of the Grand Junction VORTAC 110° radial extending from the VORTAC to 19.2 miles southeast; that airspace extending upward from 1,200 feet above the surface within a 30.5 mile radius of the Grand Junction VORTAC, within 4.3 miles each side of the Grand Junction VORTAC 166° radial

extending from the 30.5-mile radius to 33.1 miles south of the VORTAC, and within 4.3 miles northeast and 4.9 miles southwest of the Grand Junction ILS localizer northwest course extending from the 30.5-mile radius to the intersection of the localizer northwest course and the Grand Junction VORTAC 318° radial.

* * * * *

Issued in Seattle, Washington, on November 12, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–31214 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Grant of petition for exemption.

SUMMARY: On April 16, 1998, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Navistar International Transportation Corporation. The Commission now grants the petition and determines that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of truck dealerships by Navistar International Transportation Corporation.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Myra Howard, Attorney, PC–H–238, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2047.

SUPPLEMENTARY INFORMATION:

Before the Federal Trade Commission

Order Granting Exemption In the Matter of a Petition for Exemption from the Trade Regulation. Rule Entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" Filed by Navistar International Transportation Corporation.

On April 16, 1998, the Commission published a notice in the **Federal Register** soliciting comments on a petition filed by Navistar International Transportation Corporation ("Navistar"). Navistar manufactures heavy-duty and medium-duty trucks, truck parts, and military tractors, and enters into distributorship agreements with businesspeople throughout the United States to sell and service Navistar's trucks and parts. The petition sought an exemption, pursuant to Section 18(g) of the Federal Trade Commission Act, from coverage under the Commission's Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" ("Franchise Rule").

In accordance with Section 18(g), the Commission conducted an exemption proceeding under Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553, and invited public comment during a 60-day period ending June 15, 1998. No comments were received. After reviewing the petition, the Commission has concluded that the Petitioner's request should be granted.

The statutory standard for exemption requires the Commission to determine whether application of the Trade Regulation Rule to the person or class of persons seeking exemption is "necessary to prevent the unfair or deceptive act or practice to which the rule relates." If not, an exemption is warranted.

The abuses that the disclosure remedy of the Franchise Rule is designed to prevent are most likely to occur, as the Statement of Basis and Purpose of the Rule notes, in sales where three factors are present:

(1) A potential investor has a relative lack of business experience and sophistication;

(2) The investor has inadequate time to review and comprehend the unique and often complex terms of the franchise agreement before making a major financial commitment; and

(3) A significant information imbalance exists in which the prospective franchisee is unable to obtain essential and relevant facts known to the franchisor about the investment.

The pre-sale disclosures required by the Franchise Rule are designed to negate the effect of any deceptive acts or practices where these conditions are present. The Rule requires franchisors to provide investors with the material information they need to make an informed investment decision in circumstances where they might otherwise lack the resources, knowledge, or ability to obtain the information, and thus protect themselves from deception.

Where the conditions that create a potential for deception in the sale of franchises are not present, however, a regulatory remedy designed to prevent deception is unnecessary. Our review of the record in this proceeding persuades us that an exemption is warranted for that reason. The Petitioner has convincingly shown that the conditions that create a potential for a pattern or practice of abuse are absent; thus, there is no likelihood of unfair or deceptive acts or practices in the appointment of its truck dealership franchises.

The petition demonstrates that potential Navistar dealers are and will continue to be a select group of highly sophisticated and experienced businesspeople; that they make very significant investments; and that they have more than adequate time to consider the dealership offer and obtain information about it before investing. We not in particular that Navistar has only about 450 dealers; that prospective Navistar dealers usually have years of experience in truck or other heavy duty equipment sales; that investment costs for Navistar dealerships are approximately $1 million; and that prospective dealers participate in an extensive application and approval process, lasting anywhere from four months to a year, during which time a good deal of information is exchanged between the parties.

As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits. The Commission has reviewed the potential for unfair or deceptive acts or practices in connection with the licensing of motor vehicle dealership franchises on eight prior occasions since 1980, and found no evidence or likelihood of a significant pattern or practice of abuse by any of the Petitioners. If any such evidence exists, it has not yet been brought to the Commission's attention in this or any of the prior proceedings.

Thus, both the record in this proceeding and all prior experience to date with other Franchise Rule exemptions for automobile dealerships support the conclusion that Petitioner's licensing of new truck dealers accomplishes what the Rule was intended to ensure. The conditions most likely to lead to abuses are not present in the licensing of Navistar dealerships, and the process generates sufficient information to ensure that applicants will be able to make an informed investment decision. For these reasons, the Commission finds that the application of the Franchise Rule to Petitioner's licensing of truck dealer

franchises is not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates.

Accordingly, the Commission has determined that the provisions of 16 CFR Part 436 shall not apply to the advertising, offering, licensing, contracting, sale or other promotion of truck dealerships by Navistar International Transportation Corporation.

It is so ordered.

By the Commission.

Issued: November 10, 1998.

List of Subjects in 16 CFR Part 436

Trade practices and franchising.

Donald S. Clark,

Secretary.

[FR Doc. 98–31203 Filed 11–20–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 812

[Docket No. 98N–0394]

RIN 0910–ZA14

Medical Devices; Investigational Device Exemptions

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the Investigational Device Exemptions (IDE) regulation. The regulatory changes are intended to reflect amendments to the Federal Food, Drug, and Cosmetic Act (the act) by the FDA Modernization Act of 1997 (FDAMA). These amendments provide that the sponsor of an IDE may modify the device and/or clinical protocol, without approval of a new application or supplemental application, if the modifications meet certain criteria and if notice is provided to FDA within 5 days of making the change. The rule also defines the credible information to be used by sponsors to determine if the criteria are met.

EFFECTIVE DATE: February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Joanne R. Less, Center for Devices and Radiological Health (HFZ–403), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1190.

SUPPLEMENTARY INFORMATION:

I. Background

Experience has shown that during the course of a clinical investigation, the sponsor of the study will often want or need to make modifications to the investigational plan, including changes to the device and/or the clinical protocol. These changes may be simple modifications, such as clarifying the instructions for use, or they may be significant changes, such as modifications to the study design or device design.

The IDE supplement regulation that has been effect since 1985 (hereinafter referred to as the "existing regulation"), § 812.35(a) (21 CFR 812.35(a)), states in part:

A sponsor shall: (1) Submit to FDA a supplemental application if the sponsor or an investigator proposes a change in the investigational plan that may affect its scientific soundness or the rights, safety, or welfare of subjects and (2) obtain FDA approval under § 812.30(a) of any such change, and IRB approval when the change involves the rights, safety, or welfare of subjects (see §§ 56.110 and 56.111), before implementation. * * *

Under § 812.25 *Investigational plan* (21 CFR 812.25), the investigational plan includes: (1) The purpose of the study, (2) the clinical protocol, (3) a risk analysis, (4) a description of the investigational device, (5) monitoring procedures, (6) labeling, (7) informed consent materials, and (8) institutional review board (IRB) information. Although written guidance on the types of modifications that can be made without prior FDA approval has not previously been developed, the agency has permitted changes to all parts of the investigational plan, without new or supplemental IDE application approvals, if the changes did not affect the scientific soundness of the plan or the rights, safety, or welfare of the subjects, and if such changes were reported to FDA in the upcoming annual report under § 812.150(b)(5) (21 CFR 812.150(b)(5)).

On November 21, 1997, the President signed into law FDAMA. Section 201 of FDAMA (Pub. L. 105–115) amended the act by adding new section 520(g)(6) to the act (21 U.S.C. 360j(g)(6)). Section 520(g)(6) of the act permits, upon issuance of a regulation, certain changes to be made to either the investigational device or the clinical protocol without prior FDA approval of an IDE supplement. Specifically, this section of the statute permits:

(i) developmental changes in the device (including manufacturing changes) that do not constitute a significant change in design or in the basic principles of operation and that are made in response to information gathered during the course of an investigation; and

(ii) changes or modifications to clinical protocols that do not affect—

(I) the validity of the data or information resulting from the completion of an approved protocol, or the relationship of likely patient risk to benefit relied upon to approve a protocol;

(II) the scientific soundness of an investigational plan submitted [to obtain an IDE]; or

(III) the rights, safety, or welfare of the human subjects involved in the investigation.

The existing IDE regulation and the new statute both permit certain changes to be made to the investigational plan without prior agency approval. FDA views the changes and modifications allowed under section 520(g)(6) of the act as consistent with the way the agency has previously interpreted existing § 812.35(a).

Section 520(g)(6) of the act, as added by FDAMA, also specifies that the implementing rule provide that such changes or modifications may be made without prior FDA approval if the IDE sponsor determines, on the basis of credible information (as defined by the Secretary of Health and Human Services (the Secretary)) that the previous conditions are met and if the sponsor submits, not later than 5 days after making the change or modification, a notice of the change or modification. Lastly, section 520(g)(6) of the act requires that FDA issue a final regulation implementing this section no later than 1 year after the date of enactment of FDAMA.

On July 15, 1998 (63 FR 38131), FDA issued a proposal to implement section 520(g)(6) of the act. FDA provided interested persons an opportunity to comment on the proposed rule by September 28, 1998. FDA received comments from five entities; one medical device manufacturer's association, two medical device manufacturers, one law firm, and one consumer. Most of the comments stated that the proposed regulation increased the economic and regulatory burden and lacked flexibility compared to the existing regulation. FDA has revised the proposed regulation in several significant respects to address these concerns. The following is a summary of the comments and FDA's response to them.

II. Summary and Analysis of Comments and FDA's Responses

A. General Comments

1. Several comments objected to FDA's proposal because it would require that notices be submitted within 5 days of implementing protocol and device changes that had previously been

submitted in annual reports under the existing § 812.35(a)(1). Comments stated that the regulation should instead have required 5-day notices for changes that were formerly submitted as IDE supplements. These comments asserted that the proposed rule was not consistent with the intent of the statute which was to reduce the burden on industry by decreasing the number of submissions requiring prior agency approval. Another comment contended that submitting a notice within 5 days of implementation of a change rather than in an annual report would pose a regulatory and economic burden for industry.

FDA recognizes that some of the protocol and device changes that were previously submitted in IDE annual reports will now need to be submitted in a 5-day notice under the new regulation. For the reasons described in the following paragraphs, however, FDA believes that the language in new section 520(g)(6) of the act clearly requires this, but does not believe that the new regulation will impose any appreciable additional burden.

Prior to the enactment of section 520(g)(6) of the act, the criteria that had been used to determine whether a change to an investigational plan required approval of an IDE supplement were described in existing § 812.35(a)(1). This section of the IDE regulation required a supplement if the change to the investigational plan "may affect its scientific soundness or the rights, safety, or welfare of such subjects." All changes that were deemed not to affect scientific soundness or the rights, safety, or welfare of the subjects could be implemented without FDA approval of an IDE supplement, and instead were reported to the agency in an annual report under § 812.150(b)(5).

As stated in the preamble to the proposed rule, the agency has permitted changes to all parts of the investigational plan, including the device, manufacturing process, and clinical protocol, without new or supplemental IDE application approvals if the changes were made in compliance with existing § 812.35(a)(1) and if the changes were reported to FDA in the upcoming annual report. Because written guidance specifying the types of modifications that could be made without prior approval has never been issued, there was some inconsistency in the determination of which types of changes could be permitted without the submission of a supplement. Therefore, some changes which may have met the criteria for submission in an annual report were submitted for prior approval in an IDE supplement.

Section 520(g)(6) of the act, in describing the types of protocol changes that were to be subject to 5-day notices, incorporated verbatim the "scientific soundness" and "rights, safety, or welfare" criteria in existing § 812.35(a)(1) that distinguished those changes that required prior approval from those that could have been submitted in an annual report. This section of the act also sets forth additional criteria for changes that would qualify for implementation with a 5-day notice. These additional criteria are consistent with the criteria in the existing regulation that have been used to determine the effect of a change on the scientific soundness of the investigational plan and the rights, safety, and welfare of subjects. Thus, the language in section 520(g)(6) of the act requires that some changes that had previously been submitted in annual reports will now need to be submitted within 5 days of implementation.

FDA disagrees that the new regulation will be more burdensome for industry. Section 520(g)(6) of the act and the new implementing regulation reduce the burden on industry in two important ways. First, section 520(g)(6) of the act makes mandatory FDA's previous practice of permitting certain changes to be made to the investigational plan without prior agency approval. Secondly, this regulation provides clarification of the types of changes that could be implemented without prior agency approval, thus eliminating the submission of IDE supplements that are not needed. For example, prior to this implementing regulation, an IDE supplement may have been submitted for any materials change to an investigational device. The new regulation, however, clarifies that approval of a supplement would only be needed if the materials change represents a significant change in design (e.g., new risks) or basic principles of operation.

Finally, FDA disagrees that notifying the agency of a change within 5 days of implementation, rather than in an annual report, will pose a regulatory and economic burden on industry. FDA is aware that submitting a notice within 5 days, as required by section 520(g)(6)(B)(ii) of the act, represents a much shorter response time compared to submission in an annual report. FDA does not believe, however, that this reduced timeframe will impose any appreciable additional burden to industry as the evidence used to determine whether a change may be made under an annual report or the 5-day notice provision is the same, and in both cases, would need to be generated and evaluated before the change is implemented.

2. One comment stated that section 520(g)(6) of the act should be interpreted to allow a sponsor to make device changes that significantly improve safety or effectiveness, yet do not constitute significant changes in design or in the basic principles of operation under the 5-day notice provision.

FDA agrees that section 520(g)(6) of the act allows a sponsor to make device changes intended to enhance significantly safety or effectiveness without submitting an IDE supplement, if the developmental changes in a device do not constitute significant changes in design or in the basic principles of operation. Although the comment was not entirely clear, it also seems to suggest that any change intended to enhance safety or effectiveness should not require an IDE supplement. If this were the suggestion, FDA does not agree. Consistent with all other device statutory and regulatory product approval provisions, section 520(g)(5) of the act does not condition the submission of an IDE supplement on whether a change will enhance safety or effectiveness. Section 520(g)(6) of the act conditions the use of the 5-day notice provision only on whether the change is a significant change in the design or basic principles of operation. An interpretation that 5-day notices are allowed any time a sponsor intends a change to enhance safety or effectiveness would not only be contrary to the language in section 520(g)(6) of the act, it would constitute a drastic change in FDA's longstanding position that the statute and regulations require either a new premarket notification, new premarket approval application, or new IDE for certain types of device modifications regardless of whether the sponsor believes the changes enhance safety or effectiveness. Manufacturers make most modifications with the intention and belief that the change will make a safer and/or more effective product. This factor does not obviate the need for FDA to review changes to ensure that there is scientific support to show that safety and effectiveness have not been compromised.

3. One comment asked that an open public meeting be convened to discuss the proposed rule with knowledgeable representatives of all affected entities.

FDA disagrees that such a meeting is necessary. Detailed comments were received on virtually every aspect of the proposed regulation, and the agency has significantly revised the rule in accordance with the concerns that were expressed in the comments. As

discussed in detail in the following paragraphs, the final rule provides for more flexibility than the proposed rule and addresses the concerns regarding the economic and regulatory burden posed by the proposed regulation.

B. Proposed § 812.35(a)(1) Changes Requiring Prior Approval

4. One comment stated that the first sentence of this proposed section is awkward and suggested that it be revised to read:

> Except as described in paragraphs (a)(2) through (a)(4) of this section, a sponsor must receive approval of a supplemental application under § 812.30(a), and IRB approval when appropriate under 21 CFR Part 56, prior to implementing a change to an investigational plan for a device which is subject to an approved IDE.

FDA agrees that the proposed sentence could be simplified and more clearly stated. Therefore, the agency has revised the sentence to read:

> Except as described in paragraphs (a)(2) through (a)(4) of this section, a sponsor must obtain approval of a supplemental application under § 812.30(a), and IRB approval when appropriate (see §§ 56.110 and 56.111 of this chapter), prior to implementing a change to an investigational plan.

5. One comment objected that proposed § 812.35(a)(1) would require IDE supplements for changes where only annual reports had been required under the existing regulation. Specifically, the comment objected to the language in proposed § 812.35(a)(1) which states that a supplement is required when "the sponsor or an investigator proposes a change in the investigational plan." The comment stated that the language in the existing regulation only required supplements for changes in an investigational plan that "may affect its scientific soundness or the rights, safety, or welfare of subjects."

FDA does not intend new § 812.35(a)(1) to require the submission of an IDE supplement for changes that would have been submitted in an annual report under the existing regulation. Proposed and final § 812.35(a)(1) states "Except as described in paragraphs (a)(2) through (a)(4) of this section, * * *." Section 812.35(a)(3) and (a)(4) provide that sponsors do not have to submit an IDE supplement for changes to an investigational plan that do not affect the scientific soundness, rights, safety, or welfare of subjects, risk to benefit relationship relied upon to approve the protocol, or validity of the data. As stated in the preamble to the proposed rule, FDA considers the two additional criteria, i.e., risk to benefit relationship and validity of the data, to be consistent with the agency's general criteria under the existing regulation that permits changes to the investigational plan as long as the changes do not compromise patient rights, safety, or welfare or the integrity of the clinical trial.

C. Proposed § 812.35(a)(3)(i) Developmental Changes

6. In the proposed rule, the first sentence of § 812.35(a)(3)(i) stated "The requirements in paragraph (a)(1) of this section regarding FDA and IRB approval of a supplement do not apply to developmental changes in the device (including manufacturing changes) * * *." FDA has modified this sentence to remove the phrase "and IRB." Therefore, the sentence now reads "The requirements in paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply to developmental changes in the device (including manufacturing changes) * * *."

The agency has modified the regulation in this manner as the proposed language indicated that IRB approval and/or notification to the IRB of device/manufacturing changes in an annual report was not required. This language not only conflicted with the language in proposed § 812.35(a)(3)(iv), but also conflicted with 21 CFR 56.108(a)(4) which indicates that IRB's may require review of changes to approved research. FDA would like to clarify that while developmental changes that are made in accordance with section 520(g)(6) of the act do not need FDA approval, they must still be reported to the IRB in the sponsor's annual report. Moreover, the changes may be subject to IRB review under § 56.110 (21 CFR 56.110).

D. Proposed § 812.35(a)(3)(iii)(A) Definition of Credible Information (Device/Manufacturing Changes)

7. In this section of the proposed regulation, FDA defined "credible information," upon which sponsors are to rely in assessing device/manufacturing changes, as the information generated under the design control provisions § 820.30 (21 CFR 820.30) of the Quality System (QS) Regulation. (The QS regulation implements FDA's good manufacturing practice (GMP) authority of section 520(f) of the act.) One comment contended that the agency does not have the authority to require IDE sponsors to comply with design controls. Specifically, the comment said that while § 812.1(a) (21 CFR 812.1(a)) states that "investigational devices are exempt from section 520(f) of the Act, except for the requirements under 21 CFR 820.30, most device counsels advise their clients that this regulation does not take precedence over the explicit exemption from section 520(f) found in section 520(g)(2)(A) of the statute."

FDA does not agree. It interprets the act as authorizing it to require IDE sponsors to comply with the design control procedures, as stated in § 812.1(a). Contrary to the comment's assertion, section 520(g)(2)(A) of the act does not categorically exempt investigational devices from all GMP requirements. Section 520(g)(2)(A) of the act states that FDA shall issue regulations that "prescribe procedures and conditions under which devices intended for human use *may* upon application be granted an exemption from the requirements of * * * subsection (f) of this section * * *" (Emphasis added). Section 520(g)(2)(A) of the act does not mandate that FDA issue regulations that exempt investigational devices from the act's other requirements, but rather it allows FDA discretion in issuing IDE's from other statutory requirements. Under this discretionary authority, FDA has chosen to retain design control requirements for investigational devices as stated in § 812.1(a). The agency believes that it would be illogical to exclude investigational devices used in clinical trials from the design control provision of the QS regulation because clinical trials are an integral part of the device development process.

8. Other comments generally supported the use of design controls but stated that, while design controls may be one acceptable method of supporting developmental changes in a device, sponsors should not be limited to or required to use design controls to support this type of change. Two comments suggested that FDA should follow more closely the definition of "credible information" in the legislative history, namely: "'credible information' shall mean information upon which a reasonable person in a manufacturer's position would rely upon in making a decision to change or modify an investigational device" (Food and Drug Administration Modernization and Accountability Act of 1997, S. Rept. No. 105–43, at 32 (July 1, 1997)). One comment suggested that the definition be revised to include "any other reasonable and reliable means," while a second comment recommended "literature, design controls, validation studies, or other appropriate means."

FDA agrees that limiting the definition of credible information for developmental changes for a device to the information generated under design

controls procedures is overly restrictive and recognizes that other information may serve as the credible information. Therefore, rather than limit the definition of credible information for device/manufacturing changes to design controls, the agency has revised the definition to also include information such as preclinical/animal testing, peer reviewed published literature, or other reliable information such as clinical information gathered during the trial or from marketing experience gained in other countries. FDA believes this new definition is consistent with the legislative history discussing the term "credible information," but provides more specific guidance to IDE sponsors.

9. Several other comments questioned specific aspects of the design control process, such as the need for the completion of all verification and validation testing prior to implementation of the change, the apparent requirement that a device's original design input requirements cannot be modified, and FDA's definition of "new types of risks."

FDA agrees, in part, with the comments. With regard to the assertion that FDA is requiring that all verification and validation testing be completed before a device/manufacturing change is implemented, the agency recognizes that verification and validation testing depends upon the type of change that is made, and that for some minor changes, no such testing may be needed. In addition, the agency acknowledges that the clinical trial itself may be part of the validation testing. Thus, it would be impractical to require that this testing, or other verification or validation testing that would reasonably occur after the clinical trial, be completed before a device/manufacturing change is implemented. In response to the comments, the regulation has been modified to state "verification and validation testing, as appropriate."

FDA believes that the comment that asserted that the proposed regulation requires that a device's original design input requirements remain unchanged, reflects a misunderstanding of the proposed regulation. FDA recognizes that if a sponsor is modifying the device design and/or the manufacturing process, the design input requirements would need to be modified until the design is finalized. Thus, the sponsor should conduct the appropriate verification and validation testing and this testing should indicate that the design outputs meet the modified design input requirements. The agency believes that this explanation will serve to clarify the issue and no change to the regulation is necessary.

With respect to the agency's interpretation of the term "new types of risks," FDA is providing the following clarification. In the preamble to the proposed rule, FDA stated that if a sponsor determined that no new types of risks were introduced by the device/manufacturing change and the subsequent verification and validation testing demonstrated that the design outputs met the design input requirements, then the change could be made without prior agency approval. An example of two materials changes in a catheter was provided to illustrate this. One change, from polyvinylchloride (PVC) to silicone, would be permitted under a 5-day notice because no new types of risks resulted from the change; and one, from PVC to latex, would require prior approval because a new type of risk, i.e., possible latex sensitivity, would result from the change. A comment stated that the example was unclear because changing from PVC to silicone and from PVC to latex presented the same two types of risks (biocompatibility and materials sensitivity). The comment requested that a definition of "new types of risks" be provided since, in the example, the agency failed to recognize materials sensitivity in the PVC to silicone change as a new type of risk.

FDA acknowledges that this example was not clear and that for both materials changes, materials sensitivity should have been identified as a new type of risk. The agency agrees with the comment's assessment of "new types of risks" in the previous example. Because the evaluation of whether new types of risks are presented will vary depending on the type of device and the type of change, FDA does not believe that this term should be defined in the regulation.

10. One comment objected to a statement in the preamble that indicated that manufacturers should also conduct other testing that addresses concerns that may have been identified to the IDE sponsor in a "recognized standard." The comment stated standards are strictly voluntary and FDA should not require manufacturers to conform with them.

FDA agrees that standards are voluntary and thus, FDA cannot require IDE sponsors to conform to them. FDA did not state, however, that the sponsor is required to conform to a voluntary standard, instead FDA stated only that a sponsor "*should* conduct any other performance testing that addresses a safety or performance concern that may have been identified to the IDE sponsor in a recognized standard or other agency correspondence." (Emphasis added). Although FDA recognizes that compliance with a voluntary standard is not required to address safety or performance concerns, compliance with standards may be one way, among others, of addressing those concerns. It should be noted, however, that if a manufacturer chooses a recognized standard as a device input requirement, the device output should meet that standard.

11. Comments were received both in support of and in opposition to the agency's reference to the guidance document entitled "Deciding When to Submit a 510(k) for a Change to an Existing Device." Two comments agreed that this guidance would be helpful to sponsors when deciding what types of changes could be made under the 5-day notice provision. One comment questioned the relevance of the guidance to the proposed rule as changes that can be made to marketed devices without affecting their safety and effectiveness may not be appropriate types of changes for investigational devices. Lastly, one comment appears to have misunderstood the agency's intent in referring to the guidance. It was asserted that the document would be helpful in determining the significance of a change, but would be overly restrictive in the types of changes that would be permitted under the 5-day notice provision.

In response to the comments which opposed the agency's reference to the guidance document, FDA is offering the following clarification. As stated in section 520(g)(6)(A)(i) of the act, only those changes to the investigational device that do not constitute a significant change in design or basic principles of operation are eligible for implementation under this provision. In an effort to describe the types of device and manufacturing changes that may be eligible for implementation without FDA approval, reference was made to the 510(k) guidance document. This guidance was referenced only for its list of generic types of device and manufacturing changes that the agency believes apply to all devices, marketed or investigational. The list includes the control mechanism, principle of operation, energy type, environmental specifications, performance specifications, ergonomics of patient-user interface, dimensional specifications, software or firmware, packaging or expiration dating, sterilization, and the manufacturing process (including the manufacturing site). In referencing these types of changes, the agency was not indicating

that any specific change within a particular type would or would not be appropriate under the 5-day notice provision because changes in each of these categories could range from minor to significant depending upon the particular device, the type of modification, and the extent of the modification. FDA maintains that IDE sponsors should refer to the list as a starting point for the types of changes which may qualify for implementation under this provision. The impact of the change, however, would still need to be determined by information generated by design controls or other appropriate means to assess the significance of the change to the device design or manufacturing process and the appropriateness of a 5-day notice submission.

FDA notes, however, that it believes one type of change should be submitted in an IDE supplement. In the preamble to the proposed rule, the agency stated that it would consider any change to the basic principles of operation of a device to be highly likely to constitute a significant change requiring prior approval and solicited comments on this premise. FDA received no comments on this issue. The agency advises that it considers all changes to the basic principles of operation of a device to be significant changes that should be submitted in an IDE supplement.

E. Proposed § 812.35(a)(3)(iii)(B) Definition of Credible Information (Protocol Changes)

12. Several comments questioned the agency's definition of credible information for protocol changes as defined in proposed § 812.35(a)(3)(iii)(B). In general, the comments stated that the requirement to obtain the approval of an IRB chairperson (or designee) or of a data safety monitoring board (DSMB) will result in considerable expense, is unduly burdensome and time consuming, and is less flexible than the current regulation. The comments asserted that FDA did not adequately consider the cost of imposing such a requirement. In addition, the comments contended that section 520(g)(6)(B)(i) of the act identifies the sponsor as the party responsible for determining whether a protocol change needs FDA approval, not a third party. In addition to the general concerns, specific concerns were raised regarding the use of DSMB's. It was asserted that since DSMB's are neither required nor recognized in the IDE regulation and FDA has no regulatory authority over them, DSMB's should not be included in the agency's definition of credible information for protocol changes.

Upon further consideration of this statutory provision, the agency agrees that requiring approval of the IRB chairperson (or designee) and/or concurrence of a DSMB in the definition of credible information for protocol changes could prove more burdensome than Congress intended. FDA also agrees that the act indicates that the sponsor is responsible for initially determining if the change meets the statutory criteria. Therefore, FDA has modified the regulation to state that credible information to support changes to the clinical protocol is defined as the sponsor's documentation supporting its conclusion that the change does not have a significant impact on the study design or planned statistical analysis, and that the change does not affect the rights, safety, or welfare of the subjects. Such a determination should be made by the person in the company responsible for such decisions and should be based upon information such as peer reviewed published literature, the recommendation of the clinical investigator(s), and or data collected during the clinical trial or marketing in other countries.

As an example of this, consider a case in which preliminary information gathered during the clinical trial indicates that the inclusion/exclusion criteria should be modified to better define the target patient population. This change could be made after the sponsor concludes and documents that the change would not have a significant impact on the study design or planned statistical analysis and that the change does not affect the rights, safety, or welfare of the study subjects. Similarly, if the clinical investigators recommended that the protocol be modified to lengthen the subject followup, this change could be implemented after the previous assessments are performed that support a determination that the change is not significant.

As discussed in the preamble to the proposed rule, other examples of protocol modifications that could be made under the 5-day notice provision include: Increasing the frequency at which data or information is gathered, modifying the protocol to include additional patient observations/measurements, and modifying the secondary endpoints. Alternatively, FDA believes that the following types of protocol changes would not generally be appropriate for implementation without prior agency approval because they are likely to have a significant effect on the scientific soundness of the trial design and/or validity of the data resulting from the trial: Change in indication, change in type or nature of study control, change in primary endpoint, change in method of statistical evaluation, and early termination of the study (except for reasons related to patient safety).

FDA notes that, contrary to statements in the proposed rule (63 FR 38131 and 38134), protocol changes involving study expansions should not be made without prior agency approval. In the proposed rule, FDA stated that sponsors could increase either the number of investigational sites or study subjects participating in a clinical investigation without approval of an IDE supplement. Upon reconsideration, the agency believes that expanding the study in either manner affects the rights, safety, and welfare of the subjects. Thus, FDA believes that this type of protocol change does not meet the statutory criteria and may not be implemented without submission and approval of an IDE supplement.

Finally, it should be noted that while FDA is not requiring IRB approval or DSMB concurrence to be used as the credible information to support protocol changes, sponsors may use this information if they so wish. In addition, depending upon the type of protocol change being considered, approval by the IRB may be required under § 56.110.

F. Proposed § 812.35(a)(3)(iv) Notice of IDE Change

13. Several comments suggested that FDA should make it clear that the 5-day timeframe consists of 5-working days and not 5-calendar days, because 5-calendar days is unreasonably short and could consist of as few as 2-working days. Another comment suggested that the rule should state that the notice need only be mailed within 5 days and not necessarily received by FDA within that time.

The agency agrees with the comments regarding working rather than calendar days and has modified the regulation to indicate that the notices shall be submitted within 5-working days. FDA also agrees that sponsors have 5 days from the time a change is implemented to mail the notice. The agency disagrees, however, that the regulation should be modified because unless otherwise specified, agency timeframes already generally indicate the time to mailing rather than the time to receipt.

14. One comment suggested that the requirements for the contents of a notice of IDE change were unduly burdensome in that the statute required a notice and not a detailed description of the changes. The comment further

suggested that FDA should require only a notice of the change, while the detailed description would be reported in the annual report.

FDA disagrees with the comment. As modified in the final rule, the information to be submitted to the agency in the notice is the same information that the sponsor would have submitted in the annual report and therefore, should not represent an increased burden. The recommendation that sponsors should be permitted to submit a simple notice of the change in 5 days, followed by a full description in the annual report, would not allow the agency to review the notices in a timely fashion, as other comments asserted was critical to this provision (see section II.G of this document).

G. Proposed § 812.35(a)(3)(v) Review of the Notices

15. Several comments objected that the proposed rule did not contain any procedures or timeframes within which FDA would review and respond to the notices. The comments stated that this omission was unfair to manufacturers and would result in uncertainty that could lead to the submission of more supplements by manufacturers who wanted certainty that the data could be used in support of a premarket application. It was also asserted that the proposed approach does not serve the public health and recommended that the provision be revised to include an appropriate timeframe within which the agency would respond to the IDE sponsor if additional information to support the change is needed. Comments suggested various time periods in which FDA should respond to the notices, ranging from 5 days to 30 days.

FDA agrees, in part, with the comments. Upon reconsideration, the agency agrees that procedures should be identified for the review of the IDE notices. FDA intends to review the notices in the same timeframe and manner in which it has customarily reviewed other IDE submissions of this type, i.e, progress/annual reports. In keeping with its practice for other submissions of this type, the agency will only notify the sponsor if questions arise or additional information is needed.

FDA disagrees that a specific timeframe for review, such as a 5 or 10-day period, should be established in the final rule. The statute does not require that FDA conduct its review of the notices within a specific period of time. As stated previously, the agency will make every effort to review the notices in the same timeframe and manner as it does other IDE submissions. FDA believes that with the majority of the notices, it will be readily apparent whether the notice meets the applicable criteria. In those instances in which questions arise, the agency will address the issue as expeditiously as possible, thereby ensuring the protection of public health.

It should be noted that FDA reserves the right to request additional information if, during the course of the investigation, information becomes available (e.g., adverse events) that would cause the agency to question whether the change(s) made in accordance with § 812.35(a)(3)(i) or (a)(3)(ii) met the applicable criteria. FDA would normally only take such action if the agency believes that the modification to the device, manufacturing process, or protocol could jeopardize patient safety, the scientific soundness of the investigation, or the validity of the data resulting from the trial.

H. Proposed § 812.35(a)(4) Changes Submitted in an Annual Report

16. One comment stated that proposed § 812.35(a)(4) was difficult to understand and suggested that it be rewritten to express in the regulation the preamble's discussion of annual report requirements.

FDA agrees, in part, with the comment. The agency agrees that this section of the regulation could be simplified and has revised § 812.35(a)(4) in the final rule to more clearly indicate the types of changes to the investigational plan that are suitable for submission in an annual report. The agency disagrees, however, that the regulation should include all of the text from the preamble of the proposed rule. The discussion from the preamble of the types of changes that would be appropriate for submission in an annual report is too detailed to be included in a regulation. Furthermore, this list was intended to be illustrative rather than all inclusive; including it in the regulation would be overly restrictive.

17. One comment noted that the proposed rule failed to include a provision that would assure manufacturers that their data could be used in support of a premarket application as suggested in the legislative history. Specifically, the comment noted that the proposed rule did not reference section 515(d)(B)(iii) of the act (21 U.S.C. 360e(d)(B)(iii)), and stated that the agency should modify the regulation to state: "FDA will accept and review all data and information that are derived in accordance with this section in determining whether to clear or approve a device for commercial distribution." The comment maintains that this addition to the regulation would clarify that FDA will accept and review the data if the IDE sponsor determines that no new original or supplemental IDE application was necessary prior to implementing the change.

FDA agrees that it will accept and review statistically valid and reliable data and any other information from an investigation that is conducted under section 520(g) of the act, provided that the data or information meets the conditions prescribed in section 515(d)(B)(iii). The comment suggests, however, that the decision about whether the change meets the criteria of sections 515(d)(B)(iii) and 520(g)(6) of the act rests solely with the IDE sponsor. FDA does not agree with this premise. Although section 520(g)(6) of the act states that the sponsor shall determine whether the device/manufacturing or protocol change meets the criteria for submitting a notice for FDA review and acceptance under this provision, the statute does not state that the sponsor determines whether the data resulting from the clinical trial meets the criteria for acceptance or review under section 515(d)(B)(iii) of the act. Consistent with FDA's decisions on all other clearance and approval submissions, the final determination regarding whether the application contains statistically valid and reliable information, in accordance with these sections, rests with FDA.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impact of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Executive Order 12866 directs agencies to assess all costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the head of the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act

requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires that agencies prepare a written assessment of anticipated costs and benefits before proposing any rule that results in an expenditure of $100 million or more by State, local, or tribal governments in the aggregate or by the private sector, in any 1 year. The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order, and these two statutes.

FDAMA added new section 520(g)(6) of the act to permit certain changes to a device, manufacturing processes, or clinical protocols during the course of a clinical investigation without having to obtain prior FDA approval of a new IDE or an IDE supplement. In addition to specifying the types of changes to clinical studies allowed without prior approval, section 520(g)(6) of the act provides that the sponsor must provide notice within 5 days of making the change, and that the agency define, by regulation, the term "credible information" that the sponsor must use as a basis to decide that the types of changes meet the criteria for implementation without prior FDA approval. This final rule amends existing regulations to implement section 520(g)(6) of the act.

Several comments objected that FDA underestimated the economic effects of the proposed rule and that the proposed requirements were unduly burdensome. These comments generally stated: (1) FDA misinterpreted the statute by requiring 5-day reports for changes that previously were reported in annual reports, thereby making the reporting requirements more burdensome than those under the existing regulation; (2) FDA created an unnecessary burden by requiring IRB approval or DSMB concurrence as "credible information" for protocol changes, and did not take into account in its analysis the costs of requiring IRB approval or DSMB concurrence; (3) FDA created an unnecessary burden by requiring solely design control information as "credible information" for design and manufacturing modifications to a device; (4) FDA should allow 5-working days to mail the notice, instead of 5-calendar days, and (5) the requirements for the contents of a 5-day notice were unduly burdensome by requiring too much detail in the description of the changes.

FDA has adopted most of the comments' suggestions on ways to reduce regulatory burden and provide flexibility and believes that the resulting final rule is significantly less burdensome and more flexible than the proposed rule. The responses to the comments related to burden are discussed in detail in both sections II and V of this document, but are also described briefly in the following paragraphs.

FDA disagrees with the comment stating the 5-day notice provision should only be used for changes that were previously filed as IDE supplements. FDA believes that the statute clearly requires 5-day notices for some changes that were filed previously as annual reports, but does not believe that this presents any appreciable additional burden on manufacturers. The evidence used to determine whether a change may be made under an annual report or the 5-day notice provision is the same, and in both cases, would need to be generated and evaluated before the change is implemented. Moreover, the regulation should reduce burden by clarifying to sponsors what types of changes require prior approval, thereby eliminating the submission of unnecessary IDE supplements.

FDA agrees with comments that stated there were less burdensome ways of providing credible information for protocol changes than IRB approval or DSMB concurrence. In response to these comments, the final rule has removed IRB approval or DSMB concurrence as a basis for credible information, and instead requires documentation such as peer reviewed published literature, the recommendation of clinical investigator(s), and/or a summary of the data gathered during the clinical trial that supports the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects. These types of information are already generated and evaluated at the time a sponsor changes a device protocol. Therefore, FDA's definition in the final rule of credible information provides flexibility and negligible additional burden in that it requires the submission of already existing evidence.

FDA also agrees with comments that suggested allowing more flexibility in the credible information required for design changes. In response to comments, the final rule allows information, other than information generated by design controls, to be used as a basis for credible information to support a design change.

FDA also agrees with the suggestion to allow 5-working days to mail the notice, instead of 5-calendar days. This will reduce burden by allowing sponsors more time to submit the notice.

FDA does not agree with the comment that the contents of the notice were unduly burdensome, and that most of the information should be submitted subsequently in an annual report. The information that is in the notice will have already been generated and evaluated at the time of the change. There is no appreciable burden in submitting information that is already on hand within a 5-day timeframe. Moreover, many comments stated that it was important that FDA advise them, within a short time of the change, if FDA did not believe that the data could be used to support a premarket application. The comment that suggested providing FDA with limited information in the notice would preclude FDA from giving such timely advice.

FDA believes that the revisions in the final rule substantially reduced the regulatory burden. The information that is now required by the final rule as a basis for credible information is the type of information that sponsors should have already generated and evaluated to fulfill their previous reporting requirements under the existing IDE and QS regulations. The only additional burden is the shortened reporting timeframe. As discussed previously, this reporting timeframe should present no appreciable burden because the contents of the submission should have been generated and evaluated before a change is made.

FDA estimates that it will receive 300 5-day reports annually, and that 200 to 300 manufacturers will submit these notices annually. FDA believes that this rule will affect a substantial number of small entities. For the reasons stated previously, however, FDA does not believe that this rule will have a significant impact on a substantial number of small entities. FDA believes that there will be some small additional cost associated with mailing, and training the persons responsible for submissions about the requirements of this rule. FDA believes that training the responsible employees will only take a few hours, and that additional mailing costs are minimal.

Accordingly, the agency certifies that this rule will not have a significant economic impact on a substantial number of small entities. Additionally, this rule does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million or more by State, local, or tribal governments in the

aggregate or by the private sector, in any 1 year.

V. Paperwork Reduction Act of 1995

This rule contains information collection provisions which are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The title, description and respondent description of the information collection provisions are shown below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Medical Devices; Investigational Device Exemptions; Supplemental Applications.

Description: Section 201 of FDAMA amended the act by adding new section 520(g)(6) to the act, which permits a sponsor, based on "credible information," as defined by the Secretary, to implement certain changes to an investigational device or to a clinical protocol without prior approval of an IDE supplement if the modifications meet certain criteria and if notice is provided to FDA within 5-working days of making the change. In order to implement this provision, FDA is amending § 812.35(a) to describe which types of changes may be made without prior approval and to describe the credible information to be included in a notice to FDA under this provision.

For developmental or manufacturing changes, sponsors would be required to submit credible information that consists of a summary of the information generated from the design control procedures under § 820.30, preclinical/animal testing, peer reviewed published literature, or other reliable information such as clinical information gathered during the trial or from marketing. For a protocol change, the sponsor must submit credible information that consists of documentation such as peer reviewed published literature, the recommendation of the clinical investigator(s), and/or a summary of the data gathered during the clinical trial which supports the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects. FDA will review the notices to determine whether they meet the criteria of section 520(g)(6) of the act or whether additional action is necessary to assure the protection of the public health.

Description of Respondents: Businesses or other for profit organizations.

FDA notes that it receives approximately 3,000 supplements annually for changes to IDE's. As discussed in the Analysis of Impacts in section IV of this document, FDA anticipates that it will receive approximately 300 5-day reports annually. In accordance with the statute, which requires that this rule's procedures be established 1 year from the date of enactment of FDAMA, FDA is requiring that all changes in investigational studies, including ongoing studies, that meet the criteria described in this rule, be reported in 5-day notices if those changes are implemented on or after the effective date of this rule.

FDA published the proposed rule (63 FR 38131), submitted the information collection requirements in the proposed rule to the Office of Management and Budget (OMB) for review, and invited interested persons to submit comments on the information collection requirements to OMB. Most comments discussed have an impact, directly or indirectly, on the information collection requirements. FDA has responded to these comments in detail in section II of this document.

Several comments stated that 5-day notices should be submitted only for changes that had been submitted previously in IDE supplements. These comments stated that the requirement of 5-day notices was more burdensome if it was required for changes that had been submitted previously as annual reports.

For the reasons described more fully earlier in this preamble, FDA believes that the language in section 520(g)(6) of the act clearly requires that certain changes that previously were submitted as annual reports now be submitted as 5-day notices. Nonetheless, FDA believes that the final regulation will reduce burden on industry in two ways. First, section 520(g) of the act makes mandatory, FDA's previous practice of allowing certain changes to be implemented by notification to FDA in an annual report. Second, this regulation provides clarification on the types of changes that could be implemented without prior agency approval, thus eliminating the submission of IDE supplements that are not needed.

Finally, FDA believes that the submission of a 5-day report for certain changes that previously were submitted in annual reports will not impose any appreciable additional burden on industry because both the evidence used to determine whether a change may be made under an annual report and a 5-day notice provision is the same, and would need to be generated and evaluated before the change is implemented. Accordingly, a requirement to send information that is available before the change is made within 5 days of the change, as opposed to a later time after the change, is not an appreciable additional burden.

Several comments stated that the proposed definitions of credible information necessary to support a 5-day notice were unduly burdensome. For design changes, the proposed rule stated that credible information would consist of information generated by design controls. For protocol changes, the proposed rule stated that credible information would consist of approval of an IRB, concurrence of a DSMB, or peer reviewed literature.

Many comments objected to the concurrence of IRB's and DSMB's as credible information because they stated that third party review for changes that previously had not required such review was burdensome. Some of the reasons specifically stated that FDA had not adequately considered the costs to sponsors to obtain this type of review.

In response to these comments, the final rule has eliminated the requirement for IRB approval or DSMB concurrence as evidence of credible information, and instead requires documentation such as peer reviewed published literature, the recommendation of clinical investigator(s), and/or a summary of the data gathered during the clinical trial that supports the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects. At the time a sponsor changes a device protocol, this type of evidence is already generated and evaluated. Therefore, FDA's definition of credible information in the final rule provides flexibility and negligible additional burden in that it requires the submission of already existing evidence.

Other comments objected to the lack of flexibility in the requirement for credible evidence for design changes. These comments supported the proposal to use information generated by design controls, but stated that FDA should also allow other information. FDA has addressed these concerns in the final rule by allowing other information to be used as a basis for credible information to support a design change.

Some comments requested that FDA allow more time for the submission of reports by allowing reports to be made within 5-working days of the change instead of 5-calendar days. FDA has

stated in the preamble to this final rule that 5-working days from the change is the appropriate timeframe for submissions. This policy should allow sponsors to reduce costs by allowing them additional time to prepare notices.

One comment suggested that the requirements for the contents of a 5-day notice were unduly burdensome in that the statute required a notice and not a detailed description of the changes. The comment further suggested that FDA should require only a notice of the change while the detailed description would be reported in the annual report.

As discussed more fully earlier in the preamble of this document, FDA does not agree with this comment. As modified in the final rule, the information submitted to the agency in the 5-day notice is the same information that the sponsor would have submitted in the annual report, and therefore, should not represent an increased burden. Moreover, the submission of less information would not allow FDA to notify sponsors that changes require a full supplement until the time of the annual report, and therefore may result in sponsors wasting resources gathering data that ultimately may not be used to support a premarket application.

One comment stated that FDA's estimate of IDE changes that would be submitted each year was underestimated. This comment stated that there were 297 original IDE's filed in 1997 and it was conceivable that as many as 10 changes for each of these original IDE's could occur per year. Based on these figures, the comment stated the estimate should be 2,900 responses, instead of 300 responses stated in the proposed rule. FDA does not agree with these estimates. FDA receives approximately three supplemental filings per original submission per year. One of these submissions should always be an annual progress report. Only a small subset of the two remaining submissions, which FDA estimates as 300 for reasons described herein, would be types of changes reported in 5-day notices.

One comment stated that the annual reporting burden in the proposed rule did not take into consideration ongoing studies. FDA did take such ongoing studies into account in arriving at the estimates reported.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
812.35(a)(3)	300	1	300	10	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon a review of IDE's submitted in recent years, FDA estimates that approximately 300 notices of IDE changes will be submitted each year. Of these IDE changes, FDA estimates that 100 of these changes were previously submitted as supplements and 200 of these changes would have been submitted in annual reports. Based upon discussions with sponsors of IDE's and FDA's own experience in reviewing these types of documents, FDA estimates that it will take approximately 10 hours for a sponsor to prepare a notice of IDE change. Although this was the estimate offered in the proposed rule, FDA received comments indicating that the burden hours in the proposal were underestimated. As a result of the changes made in this final rule, the burden has decreased significantly. Thus, FDA believes that the estimate of 10 hours per submission is now accurate. FDA therefore estimates that the total annual burden for preparation of these notices will be 3,000 hours.

The information collection provisions of this final rule have been submitted to OMB for review.

Prior to the effective date of this final rule, FDA will publish a document in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and, under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 812 is amended as follows:

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

1. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 357, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

2. Section 812.35 is amended by revising paragraph (a) to read as follows:

§ 812.35 Supplemental applications.

(a) *Changes in investigational plan—*(1) *Changes requiring prior approval.* Except as described in paragraphs (a)(2) through (a)(4) of this section, a sponsor must obtain approval of a supplemental application under § 812.30(a), and IRB approval when appropriate (see §§ 56.110 and 56.111 of this chapter), prior to implementing a change to an investigational plan. If a sponsor intends to conduct an investigation that involves an exception to informed consent under § 50.24 of this chapter, the sponsor shall submit a separate investigational device exemption (IDE) application in accordance with § 812.20(a).

(2) *Changes effected for emergency use.* The requirements of paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply in the case of a deviation from the investigational plan to protect the life or physical well-being of a subject in an emergency. Such deviation shall be reported to FDA within 5-working days after the sponsor learns of it (see § 812.150(a)(4)).

(3) *Changes effected with notice to FDA within 5 days.* A sponsor may make certain changes without prior approval of a supplemental application under paragraph (a)(1) of this section if the sponsor determines that these changes meet the criteria described in paragraphs (a)(3)(i) and (a)(3)(ii) of this section, on the basis of credible information defined in paragraph (a)(3)(iii) of this section, and the sponsor provides notice to FDA within 5-working days of making these changes.

(i) *Developmental changes.* The requirements in paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply to developmental changes in the device (including manufacturing changes) that do not constitute a significant change in

design or basic principles of operation and that are made in response to information gathered during the course of an investigation.

(ii) *Changes to clinical protocol.* The requirements in paragraph (a)(1) of this section regarding FDA approval of a supplement do not apply to changes to clinical protocols that do not affect:

(A) The validity of the data or information resulting from the completion of the approved protocol, or the relationship of likely patient risk to benefit relied upon to approve the protocol;

(B) The scientific soundness of the investigational plan; or

(C) The rights, safety, or welfare of the human subjects involved in the investigation.

(iii) *Definition of credible information.* (A) Credible information to support developmental changes in the device (including manufacturing changes) includes data generated under the design control procedures of § 820.30, preclinical/animal testing, peer reviewed published literature, or other reliable information such as clinical information gathered during a trial or marketing.

(B) Credible information to support changes to clinical protocols is defined as the sponsor's documentation supporting the conclusion that a change does not have a significant impact on the study design or planned statistical analysis, and that the change does not affect the rights, safety, or welfare of the subjects. Documentation shall include information such as peer reviewed published literature, the recommendation of the clinical investigator(s), and/or the data gathered during the clinical trial or marketing.

(iv) *Notice of IDE change.* Changes meeting the criteria in paragraphs (a)(3)(i) and (a)(3)(ii) of this section that are supported by credible information as defined in paragraph (a)(3)(iii) of this section may be made without prior FDA approval if the sponsor submits a notice of the change to the IDE not later than 5-working days after making the change. Changes to devices are deemed to occur on the date the device, manufactured incorporating the design or manufacturing change, is distributed to the investigator(s). Changes to a clinical protocol are deemed to occur when a clinical investigator is notified by the sponsor that the change should be implemented in the protocol or, for sponsor-investigator studies, when a sponsor-investigator incorporates the change in the protocol. Such notices shall be identified as a "notice of IDE change."

(A) For a developmental or manufacturing change to the device, the notice shall include a summary of the relevant information gathered during the course of the investigation upon which the change was based; a description of the change to the device or manufacturing process (cross-referenced to the appropriate sections of the original device description or manufacturing process); and, if design controls were used to assess the change, a statement that no new risks were identified by appropriate risk analysis and that the verification and validation testing, as appropriate, demonstrated that the design outputs met the design input requirements. If another method of assessment was used, the notice shall include a summary of the information which served as the credible information supporting the change.

(B) For a protocol change, the notice shall include a description of the change (cross-referenced to the appropriate sections of the original protocol); an assessment supporting the conclusion that the change does not have a significant impact on the study design or planned statistical analysis; and a summary of the information that served as the credible information supporting the sponsor's determination that the change does not affect the rights, safety, or welfare of the subjects.

(4) *Changes submitted in annual report.* The requirements of paragraph (a)(1) of this section do not apply to minor changes to the purpose of the study, risk analysis, monitoring procedures, labeling, informed consent materials, and IRB information that do not affect:

(i) The validity of the data or information resulting from the completion of the approved protocol, or the relationship of likely patient risk to benefit relied upon to approve the protocol;

(ii) The scientific soundness of the investigational plan; or

(iii) The rights, safety, or welfare of the human subjects involved in the investigation. Such changes shall be reported in the annual progress report for the IDE, under § 812.150(b)(5).

* * * * *

Dated: October 27, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–31245 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice 2910]

Visas: Grounds of Ineligibility

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim rule published December 29 1997 (62 FR 67564) and implements sections of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA added new grounds of inadmissibility for: certain aliens who have not been inoculated against infectious diseases designated by statute or by the Advisory Committee for Immunization Practices (ACIP); aliens who have been subject to certain civil penalties; alien student visa abusers; aliens present in the United States without admission or parole; aliens who fail to attend removal proceedings; unlawful alien voters; and former citizens who renounced United States citizenship in order to avoid paying taxes. Some of these sections also provide for waivers of grounds of inadmissibility. The rule also incorporates in the Department's regulations a delegation of authority from the Immigration and Naturalization Service pertaining to waivers of inadmissibility under the Immigration and Nationality Act. Finally, the rule makes a technical correction. Generally, these rules are necessary to ensure that consular officers properly enforce the above-mentioned grounds of ineligibility when adjudicating visa applications.

EFFECTIVE DATES: The effective dates are as follows: for §§ 40.11, 40.52, 40.66, 40.104, and 40.105 the effective date is September 30, 1996; for § 40.67 the effective date is November 30, 1996; for §§ 40.61, 40.62, 40.91, 40.92, 40.93, the effective date is April 1, 1997; and for § 40.22, the effective date is September 30, 1997.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Washington, DC 20520–0106 (odomhe@sa1wpoa.us-state.gov).

SUPPLEMENTARY INFORMATION: The Department published an interim rule, Public Notice 2666 at 62 FR 67564, December 29, 1997, with a request for comments, for numerous sections of Title 22, Part 40 of the Code of the Federal Regulations. The rules were primarily proposed to implement provisions of the Illegal Immigration

Reform and Immigrant Responsibility Act of 1996, Pub. L. 104–208 (IIRIRA), though they also make a technical correction. The rules were discussed in detail in Public Notice 2666, as were the Department's reasons for the regulations. The rules incorporate changes to those sections of Part 40 shown in the table below. A minor wording change now will be made to § 40.91(a).

22 CFR part affected	Heading	IIRIRA section No.
§ 40.11	Medical Grounds of Ineligibility	§ 341
§ 40.22	Suspended Sentences	§ 322
§ 40.52	Unqualified Physicians	N/A (typographic correction)
§ 40.61	Aliens Present Without Admission or Parole	§ 301
§ 40.62	Failure to Attend Removal Proceedings	§ 301
§ 40.66	Aliens Subject of Civil Penalty	§ 345
§ 40.67	Student Visa Abusers	§ 346
§ 40.91	Certain Aliens Previously Removed	§ 301
§ 40.92	Aliens Unlawfully Present	§ 301
§ 40.93	Aliens Unlawfully Present After Previous Immigration Violations	§ 301
§ 40.104	Unlawful voters	§ 347
§ 40.105	Former Citizens Who Renounced Citizenship to Avoid Taxation	§ 352

Analysis of Comments

The interim rules were published for comment at 62 FR 67564. The commenting period was closed on February 27, 1998. The Department received three timely comments in response to the interim rule. As the interim rule contained numerous regulations, each commentator made a variety of comments. Many of the comments received proposed clarifications of terminology used in the published rules. Others asked for specific changes in the regulations to meet perceived inadequacies.

The Department received two comments regarding the waiver clause of 22 CFR 40.92(c). The commentators were concerned that the waiver standards, as provided for in INA section 212(a)(9)(B)(v) lack specificity and are therefore inadequate to assure proper visa application adjudication. The Attorney General is responsible for the approval of such waivers, and the INS has issued guidance as to situations where visa applicants may qualify for a waiver (see 8 CFR 207.3(b)). The Department, and Consular Officers more specifically, are not participants in the Attorney General's decision to consent to an alien's application for a waiver. Clarification of the waiver standards in the Department's regulations, therefore, while ostensibly desirable, would not be appropriate. The Department must defer to the Attorney General for such standards.

Similarly, two commentators remarked that the term 'unlawfully present' as used in 22 CFR 40.92 was inadequately defined. As above, the Department must defer to the Attorney General, and more specifically to the INS, to promulgate the regulations surrounding that term. While awaiting such regulations, however, the Department, with INS approval, issued interim guidance on April 4, 1998, to aid posts in making determinations of unlawful presence. At such time as regulations are put forward by INS, the Department will provide further guidance as appropriate.

Regarding 22 CFR 40.104, Unlawful Voters, one comment suggested that a "good faith error exception" for an alien who votes illegally should be added. This comment stemmed from the sometimes confusing circumstances surrounding who is eligible to vote in certain elections. For example, noncitizens may be eligible to vote in some local school board elections. As the laws of the several states address this problem differently, however, it would be impractical to attempt to cover all situations in the Department's regulations. Instead, the Department's guidance on the subject will reflect that, to the extent that the constitutional provision, statute, regulation, or ordinance in question provides that violations occur only as the result of knowing acts, an alien will not be held ineligible if the alien establishes to the satisfaction of the Consular Officer that the alien did not knowingly violate the provision, statute, regulation or ordinance.

With respect to 22 CFR 40.62, Failure to Attend Removal Proceedings, one commentator expressed a concern with the lack of specificity surrounding the term "reasonable cause." Owing to the gravity of the sanctions for a failure to attend removal proceedings, the commentator argued, a more illuminating definition of "reasonable cause" should be put forward. While the commentator's concern is well founded, the term "reasonable cause" is not without interpretation. The Board of Immigration Appeals (BIA) has decided many cases giving guidance to the meaning of this term (*see, e.g., Matter of Rivera*, 19 I&N Dec. 688, *Matter of Patel*, 19 I&N Dec. 260N (*aff'd Patel* v. *I.N.S.*, 803 F.2d 804 (5th Cir. 1986)); *Matter of Marallag*, 13 I&N Dec. 775; *Matter of Haim* 19 I&N Dec. 641N; *Matter of Ruiz* 20 I&N Dec. 91). With such a foundation, in those instances where a Consular Officer will have to make a "reasonable cause" determination, his/her decision will be informed to the extent possible by BIA decisions. Further, the Consular Officer will rely on interpretive material provided to him or her both in the Foreign Affairs Manual and other sources. With this guidance, therefore, the Consular Officer will be well informed and will be in the best position to exercise discretion to make such a determination. Any further explication of the term in the CFR may interfere with and confuse those efforts.

Several comments focused on the interim regulations' effect on the Violence Against Women's Act of 1994 (VAWA). Particularly, the commentators noted that the regulation and the preamble thereto were unclear as to the interpretation of IIRIRA 301(c)(2), which exempts any battered spouse or child who otherwise qualifies as a self-petitioner and who first arrived in the United States before April 1, 1997 from having to demonstrate a "substantial connection" between the battering or extreme cruelty and the applicant's unlawful entry into the United States. According to IIRIRA, these applicants need only show that they qualify under the VAWA provisions, which is accomplished if the applicant has an approved petition from INS. This is an important distinction that will be brought to consular officers' attention through the interpretive materials of the

Foreign Affairs Manual associated with aliens unlawfully present and also through future changes to the regulations associated with the immediate relative visa categories.

Finally, one commentator expressed a concern that a battered spouse who has to leave the country may face protracted delays in his or her visa processing if the Consular Officer "readjudicates" the INS approved petition that is part of the application. While the concern of the commentator is appreciated, such petitions for battered spouses must be treated in accord with other petitions used by applicants. To that end, 22 CFR 42.41 states that a Consular Officer is authorized to grant the status requested upon receipt of an approved petition, but that the applicant still has "the burden of establishing to the satisfaction of the Consular Officer that the [applicant] is eligible in all respects to receive a visa." The Consular Officer will not readjudicate the petition, therefore, but still must consider and report to INS any information which leads the Consular Officer to believe that the petition was approved in error.

Final Rule

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This rule imposes no reporting or recordkeeping action from the public requiring the approval of the Office and Management and Budget under the Paperwork Reduction Act requirements. This rule has been reviewed as required by E.O. 12778 and certified to be in compliance therewith. This rule is exempted from E.O. 12866 but has been coordinated with INS and reviewed to ensure consistency therewith.

List of Subjects in 22 CFR Part 40

Aliens, Immigrants, Immigration, Nonimmigrants, Passports and visas.

In view of the foregoing, the interim rule amending 22 CFR 40 which was published at 62 FR 67564 on December 29, 1997, is adopted as a final rule with the following change:

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

1. The authority citation for Part 40 continues to read as follows:

Authority: 8 U.S.C. 1104, Pub. L. 104–208, 110 Stat. 3009, 22 U.S.C. 26512.

2. Section 4091(a) is revised as follows:

§ 40.91 Certain aliens previously removed.

(a) *5-year bar.* An alien who has been found inadmissible, whether as a result of a summary determination of inadmissibility at the port of entry under INA 235(b)(1) or of a finding of inadmissibility resulting from proceedings under INA 240 initiated upon the alien's arrival in the United States, shall be ineligible for a visa under INA 212(a)(9)(A)(i) for 5 years following such alien's first removal from the United States.

* * * * *

Dated: October 5, 1998.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 98–30858 Filed 11–20–98; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–98–071]

Drawbridge Operation Regulation; St. Croix River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation in 33 CFR Part 117.667 governing the operation of the Burlington Northern Railroad Drawbridge across the St. Croix River at Mile 0.2, at Prescott, Wisconsin. This deviation allows the bridge to open upon receipt of 24 hours advance notice from 12:01 a.m. on November 15, 1998, to 11:59 p.m. on December 15, 1998. This action will facilitate maintenance work on the bridge.

DATES: The deviation is effective from 12:01 a.m. on November 15, 1998, to 11:59 p.m. on December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Wiebusch at Director, Western Rivers Operations (ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, telephone number (314) 539–3900, ext. 378.

SUPPLEMENTARY INFORMATION: The Burlington Northern Railroad Drawbridge across the St. Croix River at Mile 0.2, at Prescott, Wisconsin provides a vertical clearance of 20.4 feet above normal pool in the closed to navigation position. Navigation on the waterway is a mixture of recreational boats and commercial tows. A temporary deviation has been requested from the normal operation of the bridge in order to accommodate maintenance work. The work is essential for the continued safe operation of the drawbridge. The deviation was coordinated with waterway users and no objections to the deviation have been made.

This deviation allows the Burlington Northern Railroad Drawbridge across the St. Croix River at Mile 0.2, at Prescott, Wisconsin to remain closed to navigation from 12:01 a.m. on November 15, 1998 to 11:59 p.m. on December 15, 1998, with openings provided upon receipt of 24 hours advance notice.

The deviation will be effective from 12:01 a.m. on November 15, 1998 until 11:59 p.m. on December 15, 1998. Presently, the draw is required to open on signal when drawbridge operation regulations are not amended by a deviation.

Dated: November 2, 1998.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard District.

[FR Doc. 98–31212 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL173–1a; FRL–6191–1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Illinois; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is approving the Illinois State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State's plan was submitted to USEPA on July 21, 1998, in accordance with the requirements for adoption and submittal of State plans for designated facilities in 40 CFR part 60, subpart B. The state plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. The USEPA finds that Illinois' Plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of, and soliciting

comments on, this approval. If adverse written comments are received on this action, the USEPA will withdraw this final rule and address the comments received in response to this action in a final rule based on the related proposed rule. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's rule federally enforceable.

DATES: This "direct final" rule is effective on January 22, 1999, unless USEPA receives adverse written comments by December 23, 1998. If an adverse written comment is received, USEPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the plan and USEPA's analysis are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 111(d) of the Clean Air Act (CAA), USEPA established procedures whereby States submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not "criteria pollutants" (i.e., pollutants for which National Ambient Air Quality Standards (NAAQS) are set pursuant to sections 108 and 109 of the CAA) or hazardous air pollutants (HAPs) regulated under section 112 of the CAA.

As required by section 111(d) of the CAA, USEPA established a process, at 40 CFR part 60, subpart B (similar to the process required by section 110 of the CAA regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever USEPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, USEPA establishes emissions guidelines in accordance with title 40 of the Code of Federal Regulations, part 60.22 (40 CFR 60.22) which contain information pertinent to the control of the designated pollutant from that NSPS source category (i.e., the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan applying to the type of designated facility must comply with the emission guideline for that source category as well as 40 CFR part 60, subpart B.

On March 12, 1996, USEPA published emissions guidelines for existing MSW landfills (EG) at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c) and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759) (See 61 FR 9905–9929.). The NSPS and EG regulate MSW landfill emissions, which contain a mixture of volatile organic compounds (VOCs), other organic compounds, methane, and HAPs.

To determine if emissions control is required, nonmethane organic compounds (NMOCs) are measured as a surrogate for MSW landfill emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

Pursuant to 40 CFR 60.23(a), States were required to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG (i.e. by December 12, 1996). If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

On July 21, 1998, the State of Illinois submitted its "Section 111(d) Plan for MSW Landfills" for implementing USEPA's MSW Landfill EG. The following provides a brief discussion of the requirements for an approvable State plan for existing MSW landfills and USEPA's review of Illinois' submittal with respect to those requirements. More detailed information on the requirements for an approvable plan and Illinois' submittal can be found in the Technical Support Document (TSD) accompanying this action, which is available from USEPA upon request.

II. Review of Illinois' MSW Landfill Plan

USEPA has reviewed Illinois' section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of Enforceable State Mechanism for Implementing the EG

The regulation at 40 CFR 60.24(a) requires that the section 111(d) plan include emissions standards, defined in 40 CFR 60.21(f) as "a legally enforceable regulation setting forth an allowable rate of emissions into the atmosphere, or prescribing equipment specifications for control of air pollution emissions."

The State of Illinois, through the Illinois Pollution Control Board (IPCB), has adopted State rules to control air emissions from existing landfills in the State. The Illinois rules for Municipal Solid Waste Landfills are primarily found in Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter C: Emission Standards and Limitations for Stationary Sources; Part 220: Nonmethane Organic Compounds of the Illinois Administrative Code (35 IAC). Part 220 was adopted by the IPCB on June 17, 1998 and filed in the principal office on that day. Part 220 was published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11790 and became effective on July 31, 1998. As part of the same rulemaking action, the IPCB amended 35 IAC Part 201: Permits and General Provisions; Subpart A: Definitions; Section 201.103 a) by adding the following abbreviations: Mg = megagrams, M(3) = cubic meters, NMOC = nonmethane organic compounds, and yr = year. In Section 201.103 b) the conversion factor for 1000 gal was changed from 3.785 cubic meters to 3.785 M(3). In Subpart C: Prohibitions, Section 201.146 was amended by adding paragraph ggg) which states that municipal solid waste landfills with a maximum total design capacity of less than 2.5 million Mg or 2.5 million M(3) are not required to install a gas collection and control system pursuant to 35 Ill. Adm. Code 220 or 800 through 849 or Section 9.1 of the [Illinois Environmental Protection] Act. These amendments were published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11824 and became effective on July 31, 1998. Thus, Illinois has met the requirement of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires the section 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules.

The State has demonstrated that the IPCB has sufficient authority to adopt rules governing MSW landfills and that the Illinois Environmental Protection Agency (IEPA) has sufficient legal authority to enforce these rules and to develop and administer this MSW landfill plan. The State statutes providing such authority are sections 4, 9.1, and 10 of the Environmental Protection Act.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

The regulation at 40 CFR 60.25(a) requires the section 111(d) plan to include a complete source inventory of all existing MSW landfills (i.e., those MSW landfills that constructed, reconstructed, or modified prior to May 30, 1991) in the State that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987, or that have additional capacity for future waste deposition.

A list of the existing MSW landfills in Illinois and an estimate of NMOC emissions from each landfill have been submitted as part of the State's landfill 111(d) plan.

D. Inventory of Emissions from Existing MSW Landfills in the State

The regulation at 40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG, which in the case of MSW landfills is NMOC. Illinois included as attachment 2 of its section 111(d) plan an estimation of NMOC emissions for all of the landfills in the State using testing performed by the company or Landfill Air Emissions Estimation Model and AP–42 default emission factors.

E. Emission Limitations for MSW Landfills

The regulation at 40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than the EG (except as specified in 40 CFR 60.24(f) which allows for less stringent emission limitations on a case-by-case basis if certain conditions are met). 40 CFR 60.33c contains the emissions standards applicable to existing MSW landfills.

The state regulation at 35 IAC 220.220 requires existing MSW landfills to comply with the same equipment design criteria and level of control as prescribed in the NSPS. The controls required by the NSPS are the same as those required by the EG. Thus, the emission limitations/standards are "no less stringent than" subpart Cc, which meets the requirements of 40 CFR 60.24(c).

The regulation at part 60.24(f) allows States, in certain case-by-case situations, to provide for a less stringent standard. To account for this provision, in order to seek a less stringent standard, or longer compliance schedule, the Illinois Rule requires an owner/operator to submit a written request to the IPCB.

Thus, Illinois' plan meets the emission limitation requirements by requiring emission limitations that are no less stringent than the EG.

F. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans

The provision of the EG at 40 CFR 60.33c(b) requires State plans to include a process for State review and approval of site-specific design plans for required gas collection and control systems.

Illinois rules regulating landfill gas emissions from MSW landfills essentially make the Federal NSPS applicable to existing MSW landfills. The design criteria and the design specifications for active collection systems specified in the NSPS also apply to existing landfills, unless a request pursuant to 40 CFR 60.24(f) has been approved by the State. The process for State review and approval of site specific gas collection and control systems are specified in the State's preconstruction permit review process at 35 IAC 201 and 35 IAC 220.280 entitled Reporting Requirements.

Thus, Illinois' section 111(d) plan adequately addresses this requirement.

G. Compliance Schedules

The State's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. The regulation at 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills. Under 40 CFR 60.24(e)(1) any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance.

Sources are required to submit applications for a construction permit by 35 IAC 220.280. Completion of installation and performance are required within 30 months. Thus, the State's rule satisfies the requirement of 40 CFR 60.36c.

H. Testing, Monitoring, Recordkeeping and Reporting Requirements

The regulation at 40 CFR 60.34c specifies the testing and monitoring provisions that State plans must include (60.34c specifically refers to the requirements found in 40 CFR 60.754 to 60.756), and 40 CFR 60.35c specifies the reporting and recordkeeping requirements (60.35c refers to the requirements found in 40 CFR 60.757 and 60.758). The following sections of the Illinois rule satisfy these requirements: Section 220.280 Reporting Requirements and Section 220.290 Recordkeeping Requirements. Thus, the State's rule satisfies the requirements of 40 CFR 60.34c.

I. A Record of Public Hearings on the State Plan

The regulation at 40 CFR 60.23 contains the requirements for public hearings that must be met by the State in adopting a section 111(d) plan. Additional guidance is found in USEPA's "Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfill Emission Guidelines (EPA–456R/96–005, October 1996)." Illinois included documents in its plan submittal demonstrating that these procedures, as well as the State's administrative procedures, were complied with in adopting the State's plan. Therefore, USEPA finds that Illinois has adequately met this requirement.

J. Submittal of Annual State Progress Reports to USEPA

The regulation at 40 CFR 60.25(e) and (f) requires States to submit to USEPA annual reports on the progress of plan enforcement. Illinois committed in its section 111(d) plan to submit annual progress reports to USEPA. The first progress report will be submitted by the State one year after USEPA approval of the State plan. Therefore, USEPA finds that Illinois has adequately met this requirement.

III. Final Action

Based on the rationale set forth above, and discussed in further detail in the associated TSD, USEPA is approving Illinois' July 21, 1998 section 111(d) plan for the control of landfill gas from existing MSW landfills. As provided by 40 CFR 60.28c, any revisions to Illinois' section 111(d) plan or associated regulations will not be considered part of the applicable plan until properly submitted by the State in accordance with 40 CFR 60.28(a) or (b), and approved by USEPA in accordance with 40 CFR part 60, subpart B.

USEPA is publishing this action without prior proposal because USEPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, USEPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective without further notice unless USEPA receives relevant adverse written comment by December 23, 1998. Should USEPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1999.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, USEPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, USEPA must provide to the OMB a description of the extent of USEPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires USEPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, USEPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, USEPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of USEPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires USEPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that USEPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids USEPA to base its actions such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, USEPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, USEPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no

additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The USEPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Nonmethane organic compounds, Reporting and recordkeeping requirements.

Dated: October 28, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart O—Illinois

2. A new center heading and sections 62.3330, 62.3331, and 62.3332 are added to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.3330 Identification of plan.

The Illinois Plan for implementing the Federal Municipal Solid Waste Landfill Emission Guidelines to control air emissions from existing landfills in the State was submitted on July 21, 1998. The Illinois rules for Municipal Solid Waste Landfills are primarily found in Title 35: Environmental Protection; Subtitle B: Air Pollution; Chapter I: Pollution Control Board; Subchapter C: Emission Standards and Limitations for Stationary Sources; Part 220: Nonmethane Organic Compounds of the Illinois Administrative Code (35 IAC). Part 220 was adopted by the IPCB on June 17, 1998 and filed in the principal office on that day. Part 220 was published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11790 and became effective on July 31, 1998. As part of the same rulemaking action, the IPCB amended 35 IAC Part 201: Permits and General Provisions; Subpart A: Definitions; Section 201.103 (a) by adding the following abbreviations: Mg = megagrams, M(3) = cubic meters, NMOC = nonmethane organic compounds, and yr = year. In Section 201.103 (b) the conversion factor for 1000 gal was changed from 3.785 cubic meters to 3.785 M(3). In Subpart C: Prohibitions, Section 201.146 was amended by adding paragraph (ggg) which states that municipal solid waste landfills with a maximum total design capacity of less than 2.5 million Mg or 2.5 million M(3) are not required to install a gas collection and control system pursuant to 35 Ill. Adm. Code 220 or 800 through 849 or Section 9.1 of the [Illinois Environmental Protection] Act. These amendments were published in the *Illinois Register* on July 10, 1998 at 22 *Ill. Reg.* 11824 and became effective on July 31, 1998.

§ 62.3331 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as consistent with 40 CFR part 60.

§ 62.3332 Effective date.

The effective date of the plan for municipal solid waste landfills is January 22, 1999.

[FR Doc. 98–31074 Filed 11–20–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MI49–01(a); FRL–6189–8]

Approval of Section 112(l) Program of Delegation; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, through a "direct final" procedure, a request for a program for delegation of the Federal air toxics program contained within 40 CFR Parts 61 and 63 pursuant to Section 112(l) of the Clean Air Act (Act) of 1990. The State's mechanism of delegation involves the straight delegation of all existing and future Section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards, except for standards addressed specifically in this action, will be in the form of a letter from EPA to the Michigan Department of Environmental Quality (MDEQ). This request for approval of a mechanism of delegation encompasses all sources not covered by the Part 70 program. In the proposed rules section of this **Federal Register**, the EPA is proposing approval of, and soliciting comments on, this approval. If adverse comments are received on this action, the EPA will withdraw this final rule. It will then address the comments received in response to this action in a final rule based on the related proposed rule being published in the "Proposed Rules" section of this **Federal Register**. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time. This approval makes the State's rule federally enforceable.

DATES: The "direct final" is effective on January 22, 1999, unless EPA receives adverse or critical written comments by December 23, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: Robert B. Miller, Chief, Permits and Grants Section, Air

Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following locations:

EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604

Air Quality Division, Michigan Department of Environmental Quality, 106 West Allegan Street, Lansing, Michigan 48909

Please contact Laura Gerleman at (312) 353–5703 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Laura Gerleman, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5703.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Section 112(l) of the Act enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program. The Federal air toxics program implements the requirements found in Section 112 of the Act pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) is "no less stringent" than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA. Implementation by local agencies is dependent upon appropriate subdelegation.

On October 12, 1995, Michigan submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under Section 112 of the CAA. On January 8, 1996, EPA found the State's submittal complete. In this notice EPA is taking final action to approve the program of delegation for Michigan.

II. Review of State Submittal

A. Program Summary

Requirements for approval, specified in section 112(l)(5), require that a State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule. These requirements are also requirements for an adequate operating permits program under Part 70 (40 CFR 70.4). On January 10, 1997, EPA promulgated a final interim approval under Part 70 of the State of Michigan's Operating Permit Program. The **Federal Register** rulemaking included the approval of a mechanism for delegation of all Section 112 standards for sources subject to the Part 70 program. Sources subject to the Part 70 program are those sources that are required to operate pursuant to a Part 70 permit issued by the State, local agency or EPA. Sources not subject to the Part 70 program are those sources that are not required to obtain a Part 70 permit from either the State, local agency or EPA (see 40 CFR 70.3). This action supplements the Part 70 rulemaking in that Michigan will have the authority to implement and enforce the Section 112 air toxics program as provided by the approved mechanism of delegation regardless of a source's Part 70 applicability.

The Michigan program of delegation for sources not subject to Part 70 will not include delegation of Section 112(r) authority or radionuclide emissions standards. The program will, however, include the delegation of the 40 CFR Part 63 general provisions to the extent that they are not reserved to the EPA and are delegable to the State.

As stated above, this document constitutes EPA's approval of Michigan's program of straight delegation of all existing and future air toxics standards as they pertain to non-Part 70 sources, except for Section 112(r) standards or radionuclide emissions standards. Straight delegation means that the State will not promulgate individual State rules for each Section 112 standard promulgated by EPA, but will implement and enforce without changes the Section 112 standards promulgated by EPA. The Michigan program of straight delegation will operate as follows: For a future Section 112 standard for which MDEQ intends to accept delegation, EPA will automatically delegate the authority to implement a Section 112 standard to the State by letter unless MDEQ notifies EPA differently within 45 days of EPA final promulgation of the standard. MDEQ will incorporate non-part 70 standards by reference into the State code of regulations as expeditiously as practicable, and if possible, within 12 months of promulgation by EPA. Upon completion of regulatory action, MDEQ will submit to EPA proof of incorporation by reference for that standard. EPA will respond with a letter delegating enforcement authority to the State.

Michigan will assume responsibility for the timely implementation and enforcement required by the standard, as well as any further activities agreed to by MDEQ and EPA. Some activities necessary for effective implementation of the standard include receipt of initial notifications, recordkeeping, reporting and generally assuring that sources subject to the standard are aware of its existence. When deemed appropriate, MDEQ will utilize the resources of its Small Business Assistance Program to assist in general program implementation. The details of this delegation mechanism are set forth in a memorandum of agreement between EPA and MDEQ, copies of which are located in the docket associated with this rulemaking.

B. Criteria for Approval

On November 26, 1993, EPA promulgated regulations to provide guidance relating to the approval of State programs under Section 112(l) of the Act. 40 FR 62262. That rulemaking outlined the requirements of approval with respect to various delegation options. The requirements for approval, pursuant to Section 112(l)(5) of the Act, of a program to implement and enforce Federal Section 112 rules as promulgated without changes are found at 40 CFR 63.91. Any request for approval must meet all section 112(l) approval criteria, as well as all approval criteria of Section 63.91. A more detailed analysis of the State's submittal pursuant to Section 63.91 is contained in the Technical Support Document included in the official file of this rulemaking.

Under Section 112(l) of the Act, approval of a State program is granted by the EPA if the Agency finds that it: (1) is "no less stringent" than the corresponding Federal program, (2) that the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance.

C. Analysis

EPA is approving Michigan's mechanism of delegation for non-part 70 sources because the State's submittal meets all requirements necessary for approval under Section 112(l). The first requirement is that the program be no less stringent than the Federal program. The Michigan program is no less stringent than the corresponding Federal program or rule because the State has requested straight delegation of all standards unchanged from the Federal standards. Second, the State has

shown that it has adequate authority and resources to implement the program. Michigan's Natural Resources and Environmental Protection Act authorizes MDEQ to issue construction and operating permits to Part 70 and non-Part 70 sources of regulated pollutants to assure compliance with all applicable requirements of the Act. 55 MCL 324.5503(b). The authority to issue permits includes the authority to incorporate permit conditions that implement Federal Section 112 standards. Furthermore, Michigan has the authority to implement each Section 112 regulation, emission standard or requirement (regardless of Part 70 applicability), perform inspections, request compliance information, incorporate requirements into permits and to bring civil and criminal enforcement actions to recover penalties and fines. As for non-part 70 sources, Michigan will have the authority to enforce each Section 112 regulation, emission standard or requirement applicable to non-part 70 sources upon its incorporation into the State code of regulations. Adequate resources will be obtained through both State funding and Section 105 grant monies awarded to States by EPA to implement the program for non-Part 70 sources and through monies from the State's Title V program to fund acceptable Title V activities with respect to Part 70 sources.

Third, upon promulgation of a standard, Michigan will immediately begin activities necessary for timely implementation of the standard. These activities will involve identifying sources subject to the applicable requirements and notifying these sources of the applicable requirements. Also, upon promulgation of a standard, Michigan will expeditiously incorporate by reference the standard into the State code of regulations. Such schedule is sufficiently expeditious for approval.

Fourth, nothing in the Michigan program for straight delegation is contrary to Federal guidance.

D. Michigan's Audit Privilege and Immunity Law

On March 18, 1996, Michigan Governor John Engler signed the State's Environmental Audit Privilege and Immunity Law (Michigan's Privilege and Immunity Law of 1996), Part 148 of Michigan's Natural Resources and Environmental Protection Act. This law provides that sources can hold confidential broad categories of information contained in a voluntary environmental audit report. The law also provides sources immunity from certain State civil and criminal penalties for violations discovered through an environmental self audit, provided the violations are promptly reported and corrected. EPA believes that Michigan's Privilege and Immunity Law of 1996 affected the State's authority to assure compliance with and enforce Section 112 standards. In a letter dated July 1, 1997, to Russell Harding, Director of MDEQ, EPA stated what changes would need to be made to Michigan's Privilege and Immunity Law of 1996 in order to have sufficient enforcement authorities to meet, inter alia, the approval criteria in Part 63. On November 13, 1997, Michigan Governor John Engler signed into law Public Acts 133 and 134 of 1997 (Michigan's Privilege and Immunity Law of 1997), which is Part 148 of Michigan's Natural Resources and Environmental Protection Act, amending Michigan's Privilege and Immunity Law of 1996. Michigan's Privilege and Immunity Law of 1997 was submitted to EPA on November 21, 1997, in order to address EPA's concerns. In a letter dated December 12, 1997, EPA stated that with the newly enacted Michigan's Privilege and Immunity Law of 1997, along with MDEQ's commitment in a July 1, 1997 letter on the use of confidentiality agreements and the interpretations by the Attorney General, EPA's concerns have been addressed and the audit privilege issues have been resolved. With Michigan's Privilege and Immunity Law of 1997, Michigan now has adequate authority to assure compliance by all sources with each applicable standard.

E. Determinations

In approving this mechanism of delegation, EPA expects that the State will obtain concurrence from EPA on any matter involving the interpretation of Section 112 of the Clean Air Act or 40 CFR part 63 to the extent that implementation, administration, or enforcement of these sections have not been covered by EPA determinations or guidance.

III. Final Action

The EPA is promulgating final approval of the October 12, 1995, request by the State of Michigan of a mechanism for straight delegation of Section 112 standards unchanged from Federal standards because the request meets all requirements of 40 CFR 63.91 and Section 112(l) of the Act. Upon the effective date of this action, the implementation and enforcement authority of all existing Section 112 standards pertaining to non-part 70 sources, excluding Section 112(r) and radionuclide emissions standards, which have been incorporated by reference into the State code of regulations are delegated to the State of Michigan (specifically 40 CFR Part 63 Subpart M, Dry Cleaning, and 40 CFR Part 63 Subpart T, Halogenated Solvent Cleaning). As for the existing Section 112 standards which have not yet been incorporated by reference into the State code of regulations, the implementation authority of these standards are delegated to the State of Michigan upon the effective date of this action, and the enforcement authority will be delegated according to the procedures in the MOA. Future delegation of the Section 112 standards to the State will occur according to the procedures outlined in the MOA upon EPA's promulgation of the standard.

Effective immediately, all notifications, reports and other correspondence required under Section 112 standards should be sent to the State of Michigan rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to the supervisor of the appropriate District office. For sources located in Wayne County, send this information also to the Director of Compliance and Enforcement of the Wayne County Department of the Environment. For information on the District offices or Wayne County office, contact: Michigan Department of Environmental Quality, Air Quality Division, 106 West Allegan Street, P.O. Box 30260, Lansing, Michigan 48909–7760, 517–373–7023.

EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse or critical written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by December 23, 1998. Should EPA receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 22, 1999.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Plan. Each request for revision to a State Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

This final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875 (E.O. 12875), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule delegates the Federal air toxics program to the MDEQ at MDEQ's request. Accordingly the requirements of section 1(a)of E.O. 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084 (E.O. 13084), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule delegates the Federal air toxics program to the MDEQ at MDEQ's request. It imposes no new requirements. Accordingly the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because Straight delegation of the Section 112 standards unchanged from the Federal standards does not create any new requirements, but simply allows the State to administer requirements that have been or will be separately promulgated. Therefore, because this delegation approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The CAA forbids EPA to base its actions concerning State plans on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. This Federal action merely approves delegation to a State of pre-existing requirements under Federal law, and imposes no new requirements on the private sector. The cost to the state, local, or tribal government, of implementing this program will be less than $100 million. The State also voluntarily requested this delegation under Section 112(l) for the purpose of implementing and enforcing the air toxics program with respect to sources not covered by Part 70. Since the State was not required by law to seek delegation, this Federal action does not impose a mandate on the State.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 22, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure,

Air pollution control, Hazardous substances, Intergovernmental relations.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: August 26, 1998.

Gail Ginsberg,

Acting Regional Administrator, Region V.

[FR Doc. 98–31076 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606 and 1625

Termination and Debarment Procedures; Recompetition; Denial of Refunding

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule rescinds the Corporation's rule on denial of refunding and removes it from the Code of Federal Regulations. It also substantially revises the Corporation's rule governing the termination of financial assistance. These revisions are intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. The termination rule now includes new provisions authorizing the Corporation to recompete service areas and to debar recipients for good cause from receiving additional awards of financial assistance.

DATES: This rule is effective on December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne B. Glasow, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC or Corporation) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rules governing procedures for the termination of funding, 45 CFR Part 1606, and denial of refunding, 45 CFR Part 1625. The Committee made several changes to the draft rule and adopted a proposed rule that was published in the **Federal Register** for public comment at 63 FR 30440 (June 4, 1998). On September 11, 1998, during public hearings in Chicago, Illinois, the Committee considered public comments on the proposed rule. After making additional revisions to the rule, the Committee recommended that the Board adopt the rule as final, which the Board did on September 12, 1998.

This final rule is intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with Sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For terminations and denials of refunding, the Corporation was required to provide the opportunity for a "timely, full and fair hearing" before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant.[1] Accordingly, this rule rescinds 45 CFR part 1625, the Corporation's regulation on the denial of refunding, and removes it from the Code of Federal Regulations as no longer consistent with applicable law.

Comments expressed concern about the effect of the removal of this rule in the new competitive environment. The concern was that, rather than providing a new grant to an applicant, the Corporation might use month-to-month or short term grants within the competitive process to avoid providing hearing rights to recipients. One comment urged the Corporation to refrain from using repeated short term grants to troubled programs about which it has questions about future funding as a means to obviate the need for a due process hearing. According to the comment, short term funding should be used only in those situations where the Corporation fully intends to make a grant for the remainder of the grant term once a specific identified issue is resolved.

The Board requested that the preamble clarify that short term funding is not intended by the Corporation as a means to avoid hearing rights. It is a means to ensure continued legal representation in a service area when the Corporation determines no applicants in a competitive process warrant a long term grant. This could occur for a variety of reasons. For example, in a particular competition, one applicant may not be viable and the other, a current recipient, may be under investigation by the Corporation. Short term funding until the investigation is final is warranted in such a situation. The Corporation would not want to foreclose giving a long term grant to the program if the investigation reveals no substantive noncompliance issues. On the other hand, if the investigation reveals substantive noncompliance by the recipient, the Corporation would have been derelict in its duty if it had made a long term grant to a recipient it had reason to believe could not provide quality legal assistance or comply with grant terms and conditions.

Congress clearly intended the competition process to be a means for the Corporation to ensure that the most qualified programs receive LSC grants. Accordingly, the Corporation's competition rule provides discretion to the Corporation to take all practical steps to ensure continued legal assistance in a service area when the Corporation determines no applicants are qualified for a long term grant. See § 1634.8(c). Short term grants provide one means to that end. Nevertheless, it is not the intent of the Corporation that short term grants be used to avoid applicable hearing rights. They should only be used when they are warranted and appropriate, as discussed above.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. See Pub. L. 105–119, 111 Stat. 2440 (1997). Section 504 provides authority for the Corporation to debar a recipient from receiving future grant awards upon a showing of good cause. Section 501(c) authorizes the Corporation to recompete a service area when a recipient's financial assistance has been terminated. Finally, Section 501(b) of the appropriations act provides that the hearing rights prescribed by Sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This rule implements Section 501(b) as it applies to terminations and denials of refunding. Also in this publication of the **Federal Register** is a related final rule, 45 CFR Part 1623, which implements Sec. 501(b) as it applies to the suspension of financial assistance to recipients.

The change in the law on hearing rights does not mean that grant recipients have no rights to a hearing before the Corporation may terminate funding or debar a recipient. Sections 501(b) and 501(c) of the FY 1998

[1] It is well established that absent express statutory language to the contrary or a showing that the applicant's statutory or constitutional rights have been violated, pre-award applicants for discretionary grants have no protected property interests in receiving a grant and thus have no standing to appeal the funding decision by the grantor. See Cappalli, Federal Grants and Cooperative Agreements, § 3.28; Stein, J., Administrative Law, § 53.02[3][a] (1998); and *Legal Services Corporation of Prince Georges County* v. *Ehrlich*, 457 F. Supp. 1058, 1062–64 (D. Md. 1978).

appropriations act require the Corporation to provide a recipient with "notice and an opportunity for the recipient to be heard" before it can terminate a grant or debar a recipient from future grants. In addition, constitutional due process generally requires that a discretionary grant recipient is entitled to "some type of notice" and "some type of hearing" before its grant funding can be suspended or terminated during the term of the grant period. Stein, Administrative Law at § 53.05[4]. However, the new law in the appropriations act emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations and other applicable law. See H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this rule, the hearing procedures in part 1606 have been streamlined. The changes are intended to emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance. At the same time, the Corporation intends that recipients be provided notice and a fair opportunity to be heard before any termination or debarment action is taken.

The Corporation received three comments on the proposed rule. The commenters generally agreed that the proposed rule represented an appropriate implementation of statutory requirements. However, they also raised several due process concerns and made suggestions for clarification of the terms of certain provisions in the rule. An analysis of the comments and the Corporation's response is set out in the section-by-section analysis below.

Section-by-Section Analysis of Part 1606

Section 1606.1 Purpose

One purpose of this rule is to ensure that the Corporation is able to terminate grants or debar recipients from receipt of future grants in a timely and efficient manner when necessary to meet its obligation to ensure compliance by recipients with the terms of their LSC grants or contracts. Another purpose of the rule is to ensure that scarce LSC funds are provided to recipients who can provide the most effective and economical legal assistance to the poor. Finally, the rule is also intended to ensure that a recipient is provided notice and an opportunity to be heard before it may be debarred or before its grant may be terminated by the Corporation.

Section 1606.2 Definitions

Paragraph (a) of this section defines "debarment" as an action to prohibit a recipient from receiving another grant award from the Corporation or from entering into a future agreement with another recipient for LSC funds. Thus, for the period of time stated in the debarment decision, a recipient would not be permitted to participate in future competitions for LSC grants or contracts. Nor could the debarred recipient enter into any future subgrant, subcontract or similar agreement for LSC funds with another recipient for the time set out in the debarment decision. The definition is similar to those used in various Federal agency debarment regulations.

A definition of *knowing and willful* has been added to clarify one of the criteria included to determine whether there has been a substantial violation for the purposes of § 1606.3(b)(5). See discussion of § 1606.3(b)(5) for the Corporation's interpretation and the effect of using the term.

Paragraph (c) defines "recipient" as any grantee or contractor receiving funds from the Corporation under Section 1006(a)(1)(A) of the LSC Act, which generally refers to recipients who provide direct legal assistance to eligible clients.

Termination. Paragraph (d) defines "termination." The proposed rule defined a termination as a permanent reduction of funding to distinguish it from a temporary withholding of funds under a suspension. The definitions of termination and suspension were intended to clarify that when funds are suspended, they are returned to the recipient at the end of the suspension period, either because the issue has been or is in the process of being cured, or the Corporation initiates a termination process; whereas, in a termination, it was intended that the funds taken or withheld by the Corporation would not be returned to the recipient at a later date.

One comment pointed out that the use of "permanently" in the definition caused confusion in that the term, as applied to a partial termination, could be interpreted as meaning that the termination should be applied to every year of a multi-year grant period. The proposed rule attempted to preclude such an erroneous interpretation by including in the definition a statement that a partial termination will affect only the recipient's current year's funding unless provided otherwise in the termination decision. However, the commenter suggested that the word "permanently" be deleted from the definition and instead, a direct statement be added to the definition that clarifies that funds withheld in a termination will not be restored to the recipient. The Board agreed to include language on this point but placed it in § 1606.13(b) rather than the definition of "termination." In addition, the Board deleted the word "permanently" from the definition of "termination."

A termination may be "in whole or in part." A termination "in whole" means that the recipient's grant with the Corporation is completely terminated and the recipient no longer receives LSC funds under the grant. A partial termination or a termination "in part" means that only a percentage of the recipient's grant with the Corporation is terminated. The recipient is still a grantee of the Corporation but receives less funding under the grant. The definition of termination also includes language that clarifies that partial terminations will reduce only the amount of the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

Reprogramming. A partial termination does not affect the amount of funding required by statute to be allocated in competition to the affected recipient's service area. The Corporation's appropriations act currently requires that such funding be provided to service areas based on the census count in the area.

This statutory requirement, however, does not mean that the Corporation cannot recover funds awarded under a grant when it sanctions a recipient for cause. The legislative history of the funding provision makes it clear that the Corporation may withhold or recover grant funds for good cause. According to relevant law and Corporation policy, when funds are recovered, they may be reprogrammed and used for similar purposes. The preamble to the proposed rule requested comments on the use of funds recovered by the Corporation. Two comments stated the view that recovered funds should generally stay in the same service area following a recovery. One comment stated that the Corporation should be required to seek another grantee or provide interim contracts in the same service area with the recovered funds.

Applicable law allows the Corporation to reprogram appropriated funds under certain circumstances. See Pub. L. 105–119; See Principles of Federal Appropriations Law, United States General Accounting Office (GAO Redbook) at 2–25. According to the

GAO, the authority to reprogram is implicit in an agency's fiscal responsibilities and exists even absent express statutory authority. Section 605 of the Corporation's FY 1998 appropriations act, permits reprogramming but requires notice to the Corporation's congressional oversight committees for certain types of reprogrammings.

Reprogramming is the utilization of funds within an appropriation for purposes other than those contemplated at the time of the appropriation; it is the shifting of funds from one object to another within an appropriation. GAO Redbook at 6–26. However, reprogrammed funds must be used for activities or uses within the general purposes of the appropriation and may not be used for any purposes in violation of any other specific limitation or prohibition. *Id.* at 2–25; 31 U.S.C. § 1301(a). Basic field funds are appropriated under strict limitations and are thus generally not available for reprogramming before they are used for grant awards. They must be used for basic field grants, allotted to service areas according to a statutory formula and must be awarded pursuant to the Corporation's competition regulations. Once such grants are made, however, it is clear in the legislative history of the Corporation's appropriations acts that the Corporation may recover basic field funds for good cause, see, e.g., 129 Cong. Rec. S14448 (Oct. 21, 1983), and reprogram the recovered funds.

Because it is not feasible or practical to use the recovered funds in exact accordance with all of the strict limitations governing their original allocation, the Corporation may reprogram such funds for other uses as long as the funds are used within the general purposes of the original appropriation. For example, a recovery of basic field funds from a recipient pursuant to a termination certainly cannot be returned to the same grantee and there may not be another grantee in the same service area.

The Board determined that the Corporation should have discretion to determine the best use of recovered funds and not be required to use them for activities it determines are fiscally or programmatically unsound, as long as the Corporation's actions are consistent with the law on reprogramming. The Corporation's current policies provide for reprogramming discretion and are consistent with applicable law as discussed above. The LSC Board's Consolidated Operating Budget Guidelines provide authority variously to the Board and the LSC President to reprogram or reallocate recovered funds for basic field purposes, such as when, pursuant to the competition process, a new recipient replaces another recipient as the recipient of the LSC grant for a particular service area, or when there is a need for emergency relief to particular grantees due to flood or fire damage. To implement this policy, the Board added a provision in § 1606.13 stating that funds recovered by the Corporation pursuant to a termination shall be used in the same service area from which they were recovered or will be reprogrammed by the Corporation for basic field purposes.

Actions that do not constitute a "termination." Paragraph (d)(2)(i) through (d)(2)(v) clarify what is not intended to be included within the definition of termination. Paragraph (d)(2)(i) provides that a reduction or rescission of a recipient's funding required by law is not a termination for the purposes of this part. For example, in 1995, the Corporation was required to reduce its recipients' funding pursuant to Congressional legislation that rescinded the amount of appropriations for Corporation grants and required the termination of a category of recipients.

Paragraphs (d)(2)(ii) and (d)(2)(iii) provide that a recovery of funds pursuant to § 1628.3(c) of the Corporation's rule on fund balances or § 1630.9(b) of the Corporations's regulations on costs standards and procedures do not constitute a termination. The Board added another provision to the list that was not included in the proposed rule to clarify that a withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR Part 1614 is not a termination. See § 1606.2(d)(2)(iv).

Lesser Sanctions. Finally, paragraph (d)(2)(v) provides that a reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance does not constitute a termination. The preamble to the proposed rule explained that administrative hearings are costly and time-consuming for all parties involved and, for certain compliance issues, the Corporation may wish to utilize sanctions less drastic than suspensions or termination, such as less than 5% funding reductions, hereinafter referred to as "lesser sanctions." A policy to utilize lesser sanctions has been implicit in the Corporation's regulations since the early days of the Corporation as indicated in 45 CFR Parts 1618 (in addition to defunding actions, the Corporation may take other actions) and Part 1625 (a denial of refunding does not include a reduction of less than 10% of annualized funding).

The preamble to the proposed rule stated the policy preferred by the Committee that the Corporation should promulgate regulations setting out standards and procedures for applying lesser sanctions before such actions could be taken by the Corporation. One comment expressed agreement with this policy. No change has been made to the policy in the final rule; however, the Board decided to state the policy in the text of the rule by including a provision that states that no lesser sanction shall be imposed except in accordance with regulations promulgated by the Corporation. See § 1606.2(c)(2)(v).

One comment also recommended including a statement in the rule that a lesser reduction of funding should be treated as a dissallowed cost under Part 1630. The Board did not agree. Part 1630 is already available to the Corporation when an action falls within its terms but a questioned cost action is limited to recovering costs identified as specific disallowed expenditures and does not provide authority to impose a fine, for example.

The preamble to the proposed rule asked for comments on whether 5% was the appropriate cutoff to distinguish between a termination and a lesser sanction or whether a dollar amount was appropriate. Two comments stated that a 5% reduction for a large grantee would constitute a substantial reduction of funding and urged the Corporation to adopt a cutoff of 5% or $25,000, whichever is less. Part of the concern of the commenters was that large amounts of funds would be taken from grantees without any due process hearings.

The Board did not agree that 5% is too high a cutoff for large grantees or that the rule should include a dollar amount as a cutoff. It is difficult to state a dollar amount that would be equitable to all recipients, because of the varying sizes of the services areas and the grant amounts provided to recipients. In addition, the 5% was determined to be a level that would not cripple a program but would be sufficient to get the program's attention.

Section 1606.3 Grounds for a Termination

This section sets out the grounds for a termination. Paragraph (a)(1) permits termination for a substantial violation by a recipient of applicable law or the terms or conditions of its grant with the Corporation.

Criteria for substantial violation. Paragraph (b) of this section includes the criteria the Corporation will consider to determine whether there has been a *substantial violation* under paragraph (a)(2). The prior rules on

termination and denial of refunding included two different undefined standards. Terminations were undertaken for *substantial violations* and a denial of refunding for *significant violations*. There has been some confusion over the years about the scope of the meaning of the two standards.

The proposed rule set forth five criteria. One comment criticized certain of the criteria as too vague to be consistent with the fundamental precepts of due process and another comment indicated that the rule attempted to define unclear terms with other unclear terms. One criterion in the proposed rule was "the importance and number of restrictions or requirements violated." One comment suggested deleting this criterion.

In response to the comment the Board revised the criterion in part. Reference to the "importance" of the restriction or requirement was taken out as too vague to be useful but the reference to the number of restrictions or requirements violated was retained. How many violations occurred is important to determine the scope of noncompliance and the scope of noncompliance would help determine whether a partial or full termination would be appropriate.

Although not always the case, the number of violations may be distinguished from a pattern of noncompliance in § 1606.3(b)(3), in that a pattern of noncompliance refers to a habit of noncompliance over a period of time while a number of violations may occur as the result of an action taken in one particular case or during a short period of time.

Another criterion in the proposed rule was "the seriousness of the violation." Two comments challenged this standard as too vague. The Board agreed and replaced it with a consideration of "whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement." Recipients should refer to the list of statutory restrictions and requirements listed in § 1610.2(a) and (b) which generally constitute substantive restrictions and requirements while a failure to meet a deadline to submit a report would be a non-substantive requirement.

Another criterion addressed by the comments was "whether the violation was intentional." The proposed rule specifically asked for comments on whether this was the appropriate standard and, based on comments, the Board changed the standard to "knowing and willful" and included a definition of the term in the rule. It was felt that a definition was necessary because research indicated that there are many variances to the definitions of "willful and knowing." *Knowing and willful* is defined in the rule to mean that the recipient had actual knowledge of the fact that its action or failure to take a required action would constitute a violation and, despite such knowledge, undertook or failed to undertake the action. An example of an application of this standard would be the following. If a recipient has been provided a copy of the Corporation's eligibility regulation which requires that the recipient execute a retainer agreement with each client who receives legal assistance from the recipient and the recipient consistently fails to execute retainer agreements for its clients, then the failure to comply would be knowing and willful. A recipient cannot claim lack of knowledge because its management failed to read the LSC grant requirements and restrictions or properly train recipient staff. Recipients are presumed to have read and agreed to the requirements and restrictions when they sign the terms of the grant awards. On the other hand, if the recipient takes an action where there is arguably insufficient guidance in a rule and the recipient took action based on a good faith interpretation of the rule, and the Corporation subsequently determines the recipient's action to be a violation, it would be reasonable to find that the action was not knowing and willful. When in doubt whether an action may be a violation, recipients should seek guidance from the Corporation prior to taking such an action.

The Corporation will also consider whether the instance of noncompliance is part of a pattern of practice by the recipient and whether the recipient took appropriate action to correct the problem when it became aware of the violation.

Finally, the application of the criteria in this final rule to a particular set of circumstances would permit the Corporation to take action for a single violation or a number of violations.

Retroactive application. The prior rule expressly stated that action would be taken against a recipient only for a substantial violation that occurred at a time when the law violated by the recipient was in effect. This final rule deletes such language as unnecessary. Retroactive application of law is strongly disfavored in the law, and the Corporation may not sanction recipients for violations of a law that was not in effect at the time of the violation.

Violations by staff. Finally, one comment urged that language should be added distinguishing between a violation committed by a member of the recipient's management or board and a violation by a staff member without the knowledge of the board or management. The Board did not agree. The distinction is already implicated in both the fourth and fifth criteria which consider the knowledge of the recipient of the action and the extent to which the recipient took action to cure a problem upon its discovery. However, the recipient has a responsibility to ensure that its staff are fully informed of and act in accordance with the LSC grant requirements and restrictions.

Criteria for a Substantial Failure. Paragraph (a)(2) includes as a ground for termination the substantial failure of the recipient to provide high quality, economical, and effective legal assistance. This provision was in the prior rule. Although the Corporation's competition process provides another method for making quality judgments about and eliminating recipients that perform poorly, this provision has been retained so that the Corporation may act when necessary during the term of a grant or contract to terminate a recipient that has substantially failed to provide high quality, economical, and effective legal assistance.

The preamble to the proposed rule asked for comments on what criteria should be considered for determining "a substantial failure." One comment suggested that, at a minimum, the Corporation should clarify the meaning of "generally accepted professional standards" by including references to specific standards, such as the ABA Standards for Providers of Civil Legal Assistance (ABA Standards"), LSC's Performance Measures or other appropriate indicators of quality legal services. Another comment, on the other hand, not only opposed using "generally accepted professional standards," because the term is too vague, it also stated that it would be inappropriate to rely on the ABA Standards because they are somewhat outdated and are aspirational and not intended to state the minimum expectations of a quality program. Thus, it would be inappropriate to rely on the standards as a basis to deny funding to a provider.

After extensive discussion, the Board revised § 1606.3(a)(2) to include reference to § 1634(a)(2) which lists a criterion used by the Corporation to select a grantee under its competition process. This criterion includes consideration of the quality, feasibility and cost-effectiveness of a recipient's

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legal services delivery and delivery approach in relation to the Corporation's Performance Criteria and the American Bar Association's Standards for Providers of Civil Legal Services to the Poor. This ground for terminating funding complements the competition process by providing another method for acting on judgments regarding recipients that perform badly. Unlike its use in the competition process where the Corporation would choose the best among competitors, its use in this rule requires a showing that the recipient has *substantially failed* to meet the standards. The Board did not agree that the reference to "generally accepted professional standards" is too vague to meet due process requirements. The term has a well understood meaning that can be determined by reference to the various audit, accounting or other performance guidelines to which LSC recipients are subject.

Opportunity to cure. The prior rule required that a recipient be given notice of a violation by the Corporation and an opportunity to take effective corrective action before the Corporation initiated a termination action. The proposed rule eliminated a recipient's right to take corrective action, but left it within the discretion of the Corporation to permit the recipient an opportunity to cure the problem. The comments urged the Corporation to provide some opportunity or a recipient to take corrective action before terminating a grant. One comment urged that, absent unusual circumstances, a decision to terminate a grant should only be made after a recipient has been made aware of problems through such actions as investigations or questioned cost proceedings, has been given ample time to correct the problem and has failed to take the necessary corrective action.

The Board decided to retain the language of the proposed rule which leaves it within the discretion of the Corporation whether to give a recipient an opportunity to cure. The legislative intent underlying Sections 501(b) and (c) of the Corporation's FY 1998 appropriations act was to enable the Corporation to streamline its due process procedures in order to ensure that recipients are in full compliance with LSC grant requirements and restrictions. To provide an opportunity to cure in all instances would slow down the process and tie the Corporation's hands when there is a need to act more quickly. A recipient that has substantially violated the terms of its grant is not entitled to a second chance as a matter of right. Nevertheless, nothing in this rule prohibits the Corporation from giving a recipient an opportunity to cure before acting to terminate. If the Corporation identifies a problem where there is potential for easy correction pursuant to a corrective action plan, the Corporation has discretion to work with the recipient to resolve the matter. In addition, one of the factors considered by the Corporation when determining whether there is a substantial violation is whether the recipient, upon learning of the violation, took prompt corrective action.

Section 1606.4 Grounds for Debarment

Section 504 of the Corporation's FY 1998 appropriations act provides authority for the Corporation to debar a recipient from receiving future grant awards upon a showing of good cause. Debarments are common in the Federal government for both procurement contracts and assistance grants. Causes for debarment range from fraud, embezzlement, and false claims, to a Federal grantee's longstanding unsatisfactory performance or the failure to pay a substantial debt owed to the Federal government. *Principles of Federal Appropriations Law* at 10–28, United States Government Accounting Office (GAO); Grants Management Advisory Service at § 558 (1995).

This section implements Section 501(c) of the Corporation's appropriations act and sets out the grounds for debarment in paragraph (b). The grounds include a prior termination of a recipient for violations of Federal law related to the use of Federal funds, such as Federal law on fraud, bribery, or false claims against the government; or substantial violations by a recipient of the terms of its grant with the Corporation. Also, similar to Federal practice, recipients may also be debarred for knowingly entering into any subgrant or similar agreement with an entity debarred by the Corporation. Clarifying revisions were made to this provision.

Section 1606.4(a)(5), which implements Section 504(c)(5) of the Corporation's appropriations act, permits the Corporation to debar a recipient if the recipient seeks judicial review of an agency action taken under any Federally-funded program for which the recipient receives Federal funds, regardless of the source of funding used by the recipient for the litigation. This provision applies when the recipient files a lawsuit on behalf of the recipient and the lawsuit is related to a program for which the recipient receives Federal funds. It does not apply when the recipient files a lawsuit on behalf of a client of the recipient which seeks judicial review of an agency action that affected the client.

Comments on this ground for debarment expressed serious concerns about the constitutionality of the rule's interpretation of the provision. In response to comments and the legal analysis set out below, the Board revised this ground for debarment to be consistent with constitutional and other applicable law.

It is well-settled in law that Congress has authority to immunize agency decision-making from judicial review, as long as the intent is clear in the law. Where judicial review is precluded, a court has no jurisdiction to hear a dispute over an agency action. Nevertheless, courts are not thereby precluded from conducting a limited review to consider whether the agency acted *ultra vires*, that is, outside of its statutory limits, or violated the Constitution. *Schneider* v. *United States*, 27 F. 3d 1327, 1332 (8th Cir. 1994); *Carlin* v. *McKean*, 823 F.2d 620, 622 (DC Cir. 1987); *Morazsan* v. *United States*, 852 F. 2d 1469, 1477 (7th Cir. 1988). See also *Magana-Pizano* v. *INS*, 1998 WL 550111, 152 F.3d 1213 (9th Cir. 1998).

This law is reflected in the final rule which now provides that recipients will be subject to debarment for seeking judicial review of any agency action under any of their Federally-funded programs, except for limited constitutional or *ultra vires* claims.

Comments also suggested that the language setting out this ground for a debarment be revised for clarity. The Board agreed and the language has been revised.

Section 1606.5 Termination and Debarment Procedures

This section states the due process requirement that, before a recipient's grant or contract may be terminated or a recipient may be debarred, the recipient will be provided notice and an opportunity to be heard according to the procedures in this part.

Section 1606.6 Preliminary Determination

This section sets out the requirements for providing notice to the recipient of the Corporation's preliminary determination to terminate a recipient's funding or to debar a recipient. Under this section the Corporation may simultaneously take action to terminate and debar a recipient in the same proceeding.

The term proposed decision used in this section in the proposed rule has been changed to *preliminary*

determination to be consistent with changes made to the burden of proof provisions, as discussed below.

Paragraph (a) of this section requires that the notice of the preliminary determination be in writing and that it provide the grounds for termination or debarment in a manner sufficiently detailed to inform the recipient of the charges against it, the legal and factual bases of the charges, and the proposed sanctions. Paragraph (b) requires that the recipient be told of its right to request an informal conference and a hearing. Paragraph (c) sets out the circumstances in which a preliminary determination becomes final.

Section 1606.7 Informal Conference

This section is generally the same as § 1606.5 in the prior rule, but has been renumbered and restructured for clarity. It allows the Corporation and recipient to have an informal conference either to resolve the matter at issue through compromise or settlement or to narrow the issues and share information so that any subsequent hearing might be rendered shorter or less complicated.

Language in the proposed rule dropped language from the prior rule stating that the preliminary conference may be adjourned for deliberation or consultation. One comment urged the Corporation to return the adjournment language to the rule stating that adjournments can be of great importance to a recipient that has learned of allegations during the conference that require further investigation before a response can be formulated.

The deletion of the adjournment language was not intended to preclude an adjournment if one is deemed appropriate by the Corporation. It was deleted as unnecessary. Nothing in this section requires that the conference must be completed under any particular time frame and, indeed, the language in this section emphasizes the informality of the conference, thus providing the Corporation a large measure of discretion in determining how the conference will be conducted. Accordingly, the Board did not revise the proposed rule to include adjournment as a matter of right.

This proposed rule has also eliminated the provisions providing a right for the recipient or the Corporation to request a pre-hearing conference. The intent is to simplify and shorten the hearing procedures available for terminations. The informal conference section already provides an opportunity for the parties in the dispute to narrow and define issues and to determine whether compromise or settlement is possible.

Section 1606.8 Hearing

This section delineates the procedures for the due process hearing that will be provided to a recipient before it may be debarred or before its grant may be terminated. The prior process has been simplified by deleting provisions permitting third party participation in the hearing and other unnecessary provisions. The deletion is not intended to mean that third parties may never participate in a hearing. However, the proposed rule would no longer provide a recipient with the right to demand such participation.

Impartial hearing officer. Paragraph (c) provides for an impartial hearing officer who will be appointed by the President or designee. Reference to a designee is included because, occasionally, the President may be disqualified from choosing a hearing officer. Delegation would be appropriate, for example, if the President has had prior involvement in the matter under consideration.

Under the prior rule, which was promulgated to implement Section 1011 of the LSC Act, an independent hearing examiner was required to preside over the hearing. The independent hearing examiner was required to be someone who was not employed by the Corporation or who did not perform duties within the Corporation. Because Section 1011 no longer applies to hearing procedures under this part, recipients no longer have a right to an independent hearing examiner. [2]

Constitutional due process, however, requires that, before funding for a recipient of Federal grants may be terminated during the grant term, the recipient must be provided a hearing before an impartial decision maker. Stein, Administrative Law at § 53.05[4]. An impartial decision maker may be an employee of the Corporation as long as that employee has not prejudged the adjudicative facts and has no pecuniary interest or personal bias in the decision. *Id.; Spokane County Legal Services* v. *Legal Services Corporation*, 614 F. 2d 662, 667–668 (9th Cir. 1980). In order to ensure against such prejudgment, this rule requires that a hearing officer be a person who has not been involved in the pending action.

Comments expressed concern about the elimination of the recipient's right to have an independent hearing examiner, who was required to be a person not employed by the Corporation. Noting that LSC staff is substantially smaller than it has been in previous years, comments stated that there may often be no staff available that would qualify as an impartial hearing officer. One comment suggested that the rule should explicitly state that, in such a case, a person outside of the Corporation could be appointed to preside over the hearing. Two comments urged the Corporation to go beyond what is required by law to provide recipients with a right to an independent hearing examiner.

The Board did not agree that the Corporation should provide a right to an independent hearing examiner in the rule. The rule already permits the Corporation to use an outside hearing officer because it states that the hearing officer "may" be an employee of the Corporation. There is also nothing in the rule that requires that the President must first determine if any employee of the Corporation is available before designating an outside person. To require an outside hearing examiner would suggest that the Corporation has ignored the statutory changes adopted by Congress. It is the view of the Corporation that the hearing procedures in the final rule comply with the requirements of due process, in part because it permits the Corporation to appoint a person not employed by the Corporation when necessary to ensure that the hearing officer is impartial.

Open hearings. Comments on paragraph (f) of this section urged that the hearing proceedings should not be closed to the public except for extraordinary circumstances. The standard for closing a meeting in the prior and proposed rules was "for good cause and the interests of justice." In addition, the proposed rule provided that a decision to close a hearing would be made by an impartial hearing officer. One comment viewed this standard as too broad and subject to abuse, but provided no practical or factual reasons why the standard should be higher. The Board made no revisions to this paragraph since experience has not indicated any problems with the current standard.

Burden of proof. The Corporation had the burden of proof under the prior rule. Section 1606.8(l) of the proposed rule placed the entire burden of proof on the recipient. Comments urged the Corporation to place the burden on the Corporation. Comments also pointed out that various statements on the burden in

[2] Section 501(b) of the Corporation's FY 1998 appropriations act provides that Section 1011 of the LSC Act is no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. Section 1011 has provided recipients with a right to an independent hearing examiner since 1977.

the preamble and the text appeared to be inconsistent with other provisions of the text of the proposed rule. While § 1606.8(l) put the burden on the recipient, the grounds for debarment required the Corporation to show "good cause" before it could debar a recipient, suggesting that the Corporation at least has the initial burden of proof.

The Board decided to revise the rule to place the initial burden on the Corporation to show it has grounds for initiating a termination or debarment action in order to ensure that an action by the Corporation would be based on sufficient evidence to establish grounds for the action. The burden would then shift and the recipient would have to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be debarred based on the alleged grounds. Shifting the burden in this manner is consistent with the emphasis in current law on strengthening the Corporation's ability to sanction recipients and recompete service areas, see H. Rep. No. 207, 105th Cong., 1st Sess. 140 (1997) and the statutory language that authorizes the Corporation to debar a recipient upon a showing of "good cause."

The Board made other revisions to the rule to be consistent with the change to the burden of proof. As noted above, the term "proposed decision" was changed to "preliminary determination." The change in this term means that, based on the evidence before it, the Corporation has made an initial determination that it has grounds to take action against the recipient. It does not mean that the recipient could not have a fair hearing because the Corporation has already made up its mind. It simply means that the Corporation employee designated to bring such actions has made a preliminary decision that grounds exist for taking the action. The recipient will have the opportunity to rebut the evidence before an impartial hearing officer who was not involved in making the preliminary decision and to present any legal, factual or equitable arguments it wishes to state its case. The recipient could also appeal the hearing officer's decision to the President of the Corporation.

Section 1606.9 Recommended Decision

Only minor changes have been made to this section, which sets out the requirements for the recommended decision issued by the hearing officer. A reference to the informal conference in paragraph (b) was deleted when an objection was raised to including discussions or documents of the informal conference in the hearing record. Including such discussions and documents would mean that offers of settlement, conditional admissions and other information could then be included in the findings of fact. This is not consistent with standard procedures for settlement conferences and would risk undercutting the ability of parties to negotiate and discuss matters informally in order to avoid a full hearing.

Section 1606.10 Final Decision

Mostly technical revisions are made to this section, which delineates the process by which a party to the termination proceeding may request a review of the recommended decision by the President. Language has been added, however, requiring that the President's review be based solely on the record of the hearing below and any additional submissions requested by the President. A decision by the President is a final decision.

Additional submissions and administrative record. The rule requires that the recommended decision contain findings of significant and relevant facts and state the reasons for the decision. It also requires that all findings of fact be based solely on the record of the hearing or on matters of which official notice was taken. When the recommended decision is appealed to the President, or in a separate debarment proceeding, the rule permits additional submissions to supplement the record.

Comments pointed out that recipients should be able to respond to any additional submissions, especially if such submissions become part of the administrative record. The Board agreed and added additional language to do so in Paragraph (c) in this section. A similar revision was also made to Paragraph (c)(2) in § 1606.11 which includes qualifications to the hearing procedures.

Section 1606.11 Qualifications on Hearing Procedures

The primary intent of this section is to clarify that, if a recipient has already been provided a termination hearing on the underlying grounds for the debarment, the recipient is not due a second full termination hearing under this part. Rather, the recipient will be given a brief review process set out in paragraph (c) of this section. In many cases, the Corporation may utilize the procedure delineated in paragraph (b) of this section, which permits the Corporation to take action simultaneously to terminate and debar a recipient within the same hearing procedure.

One comment noted that provision was not made in this section for circumstances where a debarment action is not based on a prior termination and suggests that the Corporation clarify in the rule that, where debarment is not based on a prior termination hearing, the recipient will receive the full hearing procedures provided for termination actions. Because this was the intent of the proposed rule, the Board revised the rule by adding a new paragraph (a) which provides that the full hearing rights set out in this rule apply to any debarment or termination actions unless the action is based on a prior termination. Thus, in any debarment action where the recipient has not already been provided a termination hearing, the recipient will be provided the same hearing procedures set out in this rule for terminations.

Paragraph (d) permits the Corporation to reverse a debarment decision if there has been a reversal of the conviction or civil judgment upon which the debarment was based, new material evidence has been discovered, there has been a bona fide change in the ownership or management of the recipient, the causes for the debarment have been eliminated, or for other reasons the Corporation finds appropriate. This paragraph is patterned after Federal debarment regulations. See, e.g., 29 CFR § 1471.320.

One comment suggested that a similar reversal provision should also be included in the rule for terminations. The Board did not agree. If a debarment decision is reversed, it permits the recipient to take part in the next competition. However, if a termination is reversed, the funds may no longer be available to return to the recipient. Either the funds may have been reprogrammed or a new recipient may have been awarded the grant for the applicable service area. The Corporation should not bind itself by regulation to a commitment it might not have the means to keep.

Section 1606.12 Time and Waiver

With two exceptions, paragraph (a) is essentially the same as in the prior rule. Paragraph (b) in the prior rule has been deleted in this rule because it implemented a time limit to the proceedings required under law that no longer has effect. Also, paragraph (c) in the prior rule is not included because it provides for the waiver or modification of any provision in this part. Such a sweeping waiver provision has the potential to undo the due process rights of recipients that are required under the

Constitution. The rule already provides sufficient discretion and flexibility.

The only change made to this section from the proposed rule is the addition of paragraph (b) which is moved from § 1606.13 in the proposed rule. Paragraph (b) provides that a failure of the Corporation to meet a time requirement does not preclude the Corporation from terminating funding or debarring a recipient from receiving additional funding. *See Brock* v. *Pierce County*, 476 U.S. 253 (1986).

Section 1606.13 Interim and Termination Funding; Preprogramming

Paragraph (a) of this section requires the Corporation to continue funding the recipient at its current level until the termination proceeding set out in this part is completed. This is consistent with the prior rule and the due process requirement that funding not be terminated until a fair hearing has been provided. It also assures the continuance of service to clients in the affected service area.

Paragraph (b) clarifies that when a recipient's funds are terminated, the recipient loses all rights to the terminated funds. See discussion on definition of termination.

Paragraph (c) was not in the proposed rule and has been added in response to a comment that recommended that the rule explicitly provide for termination funding when the Corporation terminates financial assistance to a recipient in whole. Termination funding is contemplated for some circumstances in § 1606.14 which provides that after a termination, until a new recipient is awarded a grant, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area. This could include termination funding so that the outgoing recipient could finish or transfer pending cases. Transitional funding is also contemplated in the competition rule in § 1634.10 and in the rule on cost standards and procedures in § 1630.5(b)(1).

Paragraph (d) is also new and has been added in response to comments. It provides that funds recovered pursuant to a termination will be used in the same service area from which they are recovered or will be reprogrammed by the Corporation for basic field purposes. See discussion of reprogramming in discussion of § 1606.2.

Section 1606.14 Recompetition

Section 501(c) of Public Law 105–119 authorizes the Corporation to recompete a service area when a recipient's financial assistance has been terminated after notice and an opportunity to be heard. Accordingly, this section authorizes the Corporation to recompete any service area where a final decision has been made under this part to terminate in whole a recipient's grant for any service area. It also provides that until a new recipient has been awarded a grant for the service area pursuant to the competition process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11 of the Corporation's rule on competition procedures.

List of Subjects in 45 CFR Parts 1606 and 1625

Administrative practice and procedures, Legal services.

For reasons set out in the preamble, LSC revises 45 CFR part 1606 to read as follows:

PART 1606—TERMINATION AND DEBARMENT PROCEDURES; RECOMPETITION

Sec.

1606.1 Purpose.
1606.2 Definitions.
1606.3 Grounds for a termination.
1606.4 Grounds for debarment.
1606.5 Termination and debarment procedures.
1606.6 Preliminary determination.
1606.7 Informal conference.
1606.8 Hearing.
1606.9 Recommended decision.
1606.10 Final decision.
1606.11 Qualifications on hearing procedures.
1606.12 Time and waiver.
1606.13 Interim and termination funding; reprogramming.
1606.14 Recompetition.

Authority: 42 U.S.C. 2996e (b)(1) and 2996f(a)(3); Pub. L. 105–119, 111 Stat. 2440, Secs. 501(b) and (c) and 504; Pub. L. 104–134, 110 Stat. 1321.

§ 1606.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take timely action to deal with incidents of substantial noncompliance by recipients with a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation;

(b) Provide timely and fair due process procedures when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, or to debar a recipient from receiving future LSC awards of financial assistance; and

(c) Ensure that scarce funds are provided to recipients who can provide the most effective and economical legal assistance to eligible clients.

§ 1606.2 Definitions.

For the purposes of this part:

(a) *Debarment* means an action taken by the Corporation to exclude a recipient from receiving an additional award of financial assistance from the Corporation or from receiving additional LSC funds from another recipient of the Corporation pursuant to a subgrant, subcontract or similar agreement, for the period of time stated in the final debarment decision.

(b) *Knowing and willful* means that the recipient had actual knowledge of the fact that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action.

(c) *Recipient* means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(d)(1) *Termination* means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR Part 1614; or

(v) A reduction of funding of less than 5 percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with regulations promulgated by the Corporation. No such reduction shall be imposed except in accordance with regulations promulgated by the Corporation.

§ 1606.3 Grounds for a termination.

(a) A grant or contract may be terminated when:

(1) There has been a substantial violation by the recipient of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract, and the violation occurred less than 5 years prior to the date the recipient receives notice of the violation pursuant to § 1606.6(a); or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidance issued by the Corporation.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a)(1) of this section will be based on consideration of the following criteria:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

§ 1606.4 Grounds for debarment.

(a) The Corporation may debar a recipient, on a showing of good cause, from receiving an additional award of financial assistance from the Corporation.

(b) As used in paragraph (a) of this section, "good cause" means:

(1) A termination of financial assistance to the recipient pursuant to part 1640 of this chapter;

(2) A termination of financial assistance in whole of the most recent grant of financial assistance;

(3) The substantial violation by the recipient of the restrictions delineated in § 1610.2 (a) and (b) of this chapter, provided that the violation occurred within 5 years prior to the receipt of the debarment notice by the recipient;

(4) Knowing entry by the recipient into:

(i) A subgrant, subcontract, or other similar agreement with an entity debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(ii) An agreement for professional services with an IPA debarred by the Corporation during the period of debarment if so precluded by the terms of the debarment; or

(5) The filing of a lawsuit by a recipient, provided that the lawsuit:

(i) Was filed on behalf of the recipient as plaintiff, rather than on behalf of a client of the recipient;

(ii) Named the Corporation, or any agency or employee of a Federal, State, or local government as a defendant;

(iii) Seeks judicial review of an action by the Corporation or such government agency that affects the recipient's status as a recipient of Federal funding, except for a lawsuit that seeks review of whether the Corporation or agency acted outside of its statutory authority or violated the recipient's constitutional rights; and

(iv) Was initiated after the effective date of this rule.

§ 1606.5 Termination and debarment procedures.

Before a recipient's grant or contract may be terminated or a recipient may be debarred, the recipient will be provided notice and an opportunity to be heard as set out in this part.

§ 1606.6 Preliminary determination.

(a) When the Corporation has made a preliminary determination that a recipient's grant or contract should be terminated and/or that a recipient should be debarred, the Corporation employee who has been designated by the President as the person to bring such actions (hereinafter referred to as the "designated employee") shall issue a written notice to the recipient and the Chairperson of the recipient's governing body. The notice shall:

(1) State the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed sanctions;

(4) Advise the recipient of its right to request:

(i) An informal conference under § 1606.7; and

(ii) a hearing under § 1606.8; and

(5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13.

(b) If the recipient does not request an informal conference or a hearing within the time prescribed in § 1606.7(a) or § 1606.8(a), the preliminary determination shall become final.

§ 1606.7 Informal conference.

(a) A recipient may submit a request for an informal conference within 30 days of its receipt of the proposed decision.

(b) Within 5 days of receipt of the request, the designated employee shall notify the recipient of the time and place the conference will be held.

(c) The designated employee shall conduct the informal conference.

(d) At the informal conference, the designated employee and the recipient shall both have an opportunity to state their case, seek to narrow the issues, and explore the possibilities of settlement or compromise.

(e) The designated employee may modify, withdraw, or affirm the preliminary determination in writing, a copy of which shall be provided to the recipient within 10 days of the conclusion of the informal conference.

§ 1606.8 Hearing.

(a) The recipient may make written request for a hearing within 30 days of its receipt of the preliminary determination or within 15 days of receipt of the written determination issued by the designated employee after the conclusion of the informal conference.

(b) Within 10 days after receipt of a request for a hearing, the Corporation shall notify the recipient in writing of the date, time and place of the hearing and the names of the hearing officer and of the attorney who will represent the Corporation. The time, date and location of the hearing may be changed upon agreement of the Corporation and the recipient.

(c) A hearing officer shall be appointed by the President or designee and may be an employee of the Corporation. The hearing officer shall not have been involved in the current termination or debarment action and the President or designee shall determine that the person is qualified to preside over the hearing as an impartial decision maker. An impartial decision maker is a person who has not formed a prejudgment on the case and does not have a pecuniary interest or personal bias in the outcome of the proceeding.

(d) The hearing shall be scheduled to commence at the earliest appropriate date, ordinarily not later than 30 days after the notice required by paragraph (b) of this section.

(e) The hearing officer shall preside over and conduct a full and fair hearing, avoid delay, maintain order, and insure

that a record sufficient for full disclosure of the facts and issues is maintained.

(f) The hearing shall be open to the public unless, for good cause and the interests of justice, the hearing officer determines otherwise.

(g) The Corporation and the recipient shall be entitled to be represented by counsel or by another person.

(h) At the hearing, the Corporation and the recipient each may present its case by oral or documentary evidence, conduct examination and cross-examination of witnesses, examine any documents submitted, and submit rebuttal evidence.

(i) The hearing officer shall not be bound by the technical rules of evidence and may make any procedural or evidentiary ruling that may help to insure full disclosure of the facts, to maintain order, or to avoid delay. Irrelevant, immaterial, repetitious or unduly prejudicial matter may be excluded.

(j) Official notice may be taken of published policies, rules, regulations, guidelines, and instructions of the Corporation, of any matter of which judicial notice may be taken in a Federal court, or of any other matter whose existence, authenticity, or accuracy is not open to serious question.

(k) A stenographic or electronic record shall be made in a manner determined by the hearing officer, and a copy shall be made available to the recipient at no cost.

(l) The Corporation shall have the initial burden to show grounds for a termination or debarment. The burden of persuasion shall then shift to the recipient to show by a preponderance of evidence on the record that its funds should not be terminated or that it should not be disbarred.

§ 1606.9 Recommended decision.

(a) Within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may:

(1) Terminate financial assistance to the recipient as of a specific date; or

(2) Continue the recipient's current grant or contract, subject to any modification or condition that may be deemed necessary on the basis of information adduced at the hearing; and/or

(3) Debar the recipient from receiving an additional award of financial assistance from the Corporation.

(b) The recommended decision shall contain findings of the significant and relevant facts and shall state the reasons for the decision. Findings of fact shall be based solely on the record of, and the evidence adduced at the hearing or on matters of which official notice was taken.

§ 1606.10 Final decision.

(a) If neither the Corporation nor the recipient requests review by the President, a recommended decision shall become final 10 calendar days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a recommended decision. A request shall be made in writing within 10 days after receipt of the recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the information in the administrative record of the termination or debarment proceedings and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of and an opportunity to respond to any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record.

(d) As soon as practicable after receipt of the request for review of a recommended decision, but not later than 30 days after the request for review, the President may adopt, modify, or reverse the recommended decision, or direct further consideration of the matter. In the event of modification or reversal, the President's decision shall conform to the requirements of § 1606.9(b).

(e) The President's decision shall become final upon receipt by the recipient.

§ 1606.11 Qualifications on hearing procedures.

(a) Except as modified by paragraph (c) of this section, the hearing rights set out in §§ 1606.6 through 1606.10 shall apply to any action to debar a recipient or to terminate a recipient's funding.

(b) The Corporation may simultaneously take action to debar and terminate a recipient within the same hearing procedure that is set out in §§ 1606.6 through 1606.10 of this part. In such a case, the same hearing officer shall oversee both the termination and debarment actions.

(c) If the Corporation does not simultaneously take action to debar and terminate a recipient under paragraph (b) of this section and initiates a debarment action based on a prior termination under § 1606.4(b)(1) or (2), the hearing procedures set out in § 1606.6 through 1606.10 shall not apply. Instead:

(1) The President shall appoint a hearing officer, as described in § 1606.8(c), to review the matter and make a written recommended decision on debarment.

(2) The hearing officer's recommendation shall be based solely on the information in the administrative record of the termination proceedings providing grounds for the debarment and any additional submissions, either oral or in writing, that the hearing officer may request. The recipient shall be given a copy of and an opportunity to respond to any additional submissions made to the hearing officer. All submissions and responses made to the hearing officer shall become part of the administrative record.

(3) If neither party appeals the hearing officer's recommendation within 10 days of receipt of the recommended decision, the decision shall become final.

(4) Either party may appeal the recommended decision to the President who shall review the matter and issue a final written decision pursuant to § 1606.9(b).

(d) All final debarment decisions shall state the effective date of the debarment and the period of debarment, which shall be commensurate with the seriousness of the cause for debarment but shall not be for longer than 6 years.

(e) The Corporation may reverse a debarment decision upon request for the following reasons:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the debarment was based;

(3) Bona fide change in ownership or management of a recipient;

(4) Elimination of other causes for which the debarment was imposed; or

(5) Other reasons the Corporation deems appropriate.

§ 1606.12 Time and waiver.

(a) Except for the 6-year time limit for debarments in § 1606.11(c), any period of time provided in these rules may, upon good cause shown and determined, be extended:

(1) By the designated employee who issued the preliminary decision until a hearing officer has been appointed;

(2) By the hearing officer, until the recommended decision has been issued;

(3) By the President at any time.

(b) Failure by the Corporation to meet a time requirement of this part does not preclude the Corporation from terminating a recipient's grant or contract with the Corporation.

§ 1606.13 Interim and termination funding; reprogramming.

(a) Pending the completion of termination proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract, the recipient loses all rights to the terminated funds.

(c) After a final decision has been made to terminate a recipient's grant or contract, the Corporation may authorize termination funding if necessary to enable the recipient to close or transfer current matters in a manner consistent with the recipient's professional responsibilities to its present clients.

(d) Funds recovered by the Corporation pursuant to a termination shall be used in the same service area from which they were recovered or will be reallocated by the Corporation for basic field purposes.

§ 1606.14 Recompetition.

After a final decision has been issued by the Corporation terminating financial assistance to a recipient in whole for any service area, the Corporation shall implement a new competitive bidding process for the affected service area. Until a new recipient has been awarded a grant pursuant to such process, the Corporation shall take all practical steps to ensure the continued provision of legal assistance in the service area pursuant to § 1634.11.

PART 1625—[REMOVED AND RESERVED]

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 2996g(e), 45 CFR part 1625 is removed and reserved.

Dated: November 18, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–31251 Filed 11–20–98; 8:45 am]

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LEGAL SERVICES CORPORATION

45 CFR Part 1623

Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This final rule substantially revises the Legal Services Corporation's rule on procedures for the suspension of financial assistance to recipients to implement changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes.

DATES: This rule is effective on December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Glasow, Office of the General Counsel, 202–336–8817.

SUPPLEMENTARY INFORMATION: The Operations and Regulations Committee (Committee) of the Legal Services Corporation's (LSC) Board of Directors (Board) met on April 5, 1998, in Phoenix, Arizona, to consider proposed revisions to the Corporation's rule on procedures for suspending funding to LSC recipients. The Committee made several changes to the draft rule and adopted a proposed rule that was published in the **Federal Register** for public comment at 63 FR 30446 (June 4, 1998). On September 11, 1998, during public hearings in Chicago, Illinois, the Committee considered public comments on the proposed rule. After making additional revisions to the rule, the Committee recommended that the Board adopt the rule as final, which the Board did on September 12, 1998.

This final rule is intended to implement major changes in the law governing certain actions used by the Corporation to deal with post-award grant disputes. Prior to 1996, LSC recipients could not be denied refunding, nor could their funding be suspended or their grants terminated, unless the Corporation complied with Sections 1007(a)(9) and 1011 of the LSC Act, 42 U.S.C. 2996 et seq., as amended. For suspensions, the Corporation could not suspend financial assistance unless the recipient had been provided reasonable notice and an opportunity to show cause why the action should not be taken. For terminations and denials of refunding, the Corporation was required to provide the opportunity for a "timely, full and fair hearing" before an independent hearing examiner.

In 1996, the Corporation implemented a system of competition for grants that ended a recipient's right to yearly refunding. Under the competition system, grants are now awarded for specific terms, and, at the end of a grant term, a recipient has no right to refunding and must reapply as a competitive applicant for a new grant.

The FY 1998 appropriations act made additional changes to the law affecting LSC recipients' rights to continued funding. See Pub. L. 105–119, 111 Stat. 2440 (1997). Section 501(b) of the appropriations act provides that a recipient's hearing rights under Sections 1007(a)(9) and 1011 are no longer applicable to the provision, denial, suspension, or termination of financial assistance to recipients. This rule implements this new law as it applies to suspensions. Another final rule, also in this publication of the **Federal Register**, deals with the new law as it applies to terminations and denials of refunding. See final rule 45 CFR part 1606, which would revise the Corporation's policies and procedures for terminations and adds provisions dealing with debarments and recompetition.

The change in the law regarding suspensions does not mean that grant recipients have no hearing rights before their funds are suspended. Constitutional due process generally requires that a discretionary grant recipient is entitled to "some type of notice" and "some type of hearing" before its grant funding can be suspended or terminated during the grant period. Stein, Administrative Law at § 53.05[4]. However, the new law emphasizes a congressional intent to strengthen the ability of the Corporation to ensure that recipients are in full compliance with the LSC Act and regulations. See H. Rep. No. 207, 105th. Cong., 1st Sess. 140 (1997). Accordingly, under this rule, the hearing procedures for suspensions have been streamlined. The changes emphasize the seriousness with which the Corporation takes its obligation to ensure that recipients comply with the terms of their grants and provide quality legal assistance but, at the same time, to provide recipients with notice and a fair opportunity to be heard before any suspension action is taken.

The Corporation received three comments on the proposed rule. The commenters generally agreed that the proposed rule represented an appropriate implementation of statutory requirements, but made recommendations for clarifications or revisions for policy changes. An analysis of comments and recommendations for changes to the proposed rule is provided below.

Section-by-Section Analysis

Section 1623.1 Purpose

This section is revised from the prior rule to clarify the purpose of a suspension, as opposed to other sanctions the Corporation might choose to apply to a recipient. A suspension is one of several actions that may be taken by the Corporation to ensure the compliance of LSC recipients with the terms of their LSC grants. A suspension is generally used by Federal agencies as a temporary withdrawal of a grantee's authority to obligate or receive grant funds, pending corrective action by the

grantee or a decision by the agency to terminate the grant. Stein J., Administrative Law at § 53.02[3]. Suspensions are intended to be used in emergency situations which require prompt action and thus are normally not subject to full administrative appeals. Id. For example, the Corporation might choose to suspend when quick action is necessary to safeguard against a loss of LSC funds or the Corporation believes that prompt action will bring about corrective action and prevent the likely recurrence of violations. No changes have been made from the proposed version of this section.

Section 1623.2 Definition

The definition of suspension is revised from the prior rule to clarify the nature of a suspension and the differences between a suspension and a termination. The proposed definition stated that a suspension withholds funding to a recipient until the end of the suspension period. This was intended to clarify that when the Corporation suspends funding after a hearing under this part, it may only withhold the funds until the end of the suspension period as provided in § 1623.4(e) and (f). After the suspension period, the Corporation must return the funds to the recipient, and either begin termination proceedings or determine that the recipient is taking adequate steps to cure the problem.

One comment suggested that the temporary nature of a withholding under a suspension should be expressly stated in the rule. The Board agreed and added a provision in § 1623.6 stating that funds withheld under a suspension must be returned to the recipient at the end of the suspension period.

A definition of knowing and willful has been added to clarify one of the criteria included to determine whether there has been a substantial violation for the purposes of § 1623.3(b)(5). Knowing and willful means that the recipient had actual knowledge of the fact that its action or failure to take a required action constituted a violation and despite such knowledge, undertook or failed to undertake the action. For an in-depth discussion of the meaning of knowing and willful, see the discussion of the term in the final rule, 45 CFR part 1606, also published in this volume of the **Federal Register**.

Section 1623.3 Grounds for Suspension

Paragraph (a) of this section sets out the grounds for most suspensions. The underlying reason for a suspension is a substantial violation by the recipient of the terms of its LSC grant. A decision to suspend, rather than terminate, funding will usually be made when the Corporation has reason to believe that prompt action is necessary to safeguard LSC funds or effect an immediate cure of the violation at issue.

A provision setting out the criteria for determining whether there has been a substantial violation is included in this section in paragraph (b). The prior rules on suspension, termination and denial of refunding included two different undefined standards. Terminations or suspensions were undertaken for substantial violations and denial of refunding for significant violations. Because there has been some confusion over the years about the scope of the meaning of the two standards, this rule includes criteria intended to provide guidance to recipients on what constitutes a substantial violation. § 1623.3(b).

Comments on the criteria in the proposed rule mirrored those for the same standard in proposed rule, Part 1606, and the Board made the same revisions to the criteria for this rule as those made for Part 1606. Part 1606 is also published as a final rule in this volume of the **Federal Register** and recipients should refer to the preamble to Part 1606 for interpretive guidance on the criteria.

Paragraph (c) implements Section 509 of the Corporation's 1996 appropriations act, which has been incorporated by the Corporation's FY 1998 appropriations act. Section 509 requires recipients to complete audits which are consistent with the guidance promulgated by the Office of Inspector General. In addition, it authorizes the Corporation, after receiving a recommendation from the OIG, to suspend funding to a recipient who fails to have an acceptable audit, and allows the Corporation to continue the suspension until the recipient has completed an audit acceptable to the OIG. This generally means that the audit is prepared according to OIG audit guidances, which consist of the LSC Audit Guide for Recipients and Auditors and any relevant bulletins issued by the OIG.

One comment noted that the Corporation has discretion whether to suspend funding when it receives a recommendation from the OIG and urged the Corporation to clarify in the final rule that the Corporation would suspend funding only under extraordinary circumstances. The Board did not agree. Whether or not a recipient's audit meets the requirements of the OIG audit guidance is a determination made by the OIG. Whether to suspend based on the OIG recommendation is a determination made by LSC management. Although management has discretion in taking action, it should exercise this discretion on a case-by-case basis and generally give deference to the OIG decision. Requiring the Corporation to use an "extraordinary circumstances" standard in all cases would be inconsistent with the scheme set out in Section 509 of the Corporation's appropriations act which provides the OIG with specific authority to determine whether an audit is acceptable and which envisions management following up on a finding made by the OIG. The Corporation always has enforcement discretion to determine whether it is financially or administratively advisable to take action against a recipient. The Corporation should not limit its ability to take action when it is advisable to suspend funding.

The comment also encouraged revising the rule to indicate the criteria that would be used by the OIG to determine whether an audit meets OIG guidances. Based on comments from the OIG, the Board did not revise the rule. According to the OIG, the criteria by which an audit is judged are contained in the audit guidance issued by the OIG, which are the Audit Guide for Recipients and Auditors (which includes the requirements of government auditing standards and OMB Circular A–133) and audit bulletins. Both recipients and their auditors should be well aware of these documents, which set out the requirements for an audit and the responsibilities of recipients and auditors with respect to the audit.

One comment suggested that the preamble to the rule should indicate that the Corporation would consider only a suspension in part when a suspension in whole would leave the recipient with insufficient funds to remain in operation, thereby interrupting client services and interfering with the professional obligations of attorneys employed by the recipient. The Board decided not to obligate the Corporation to such an exact policy. It is clearly a responsibility long recognized by the Corporation to ensure continued legal assistance in each service area. Both the competition rule and the termination rule include provisions providing the Corporation funding discretion to address this need and the Corporation's decisions regarding suspension will be guided by this concern.

Section 1623.4 Suspension Procedures

The suspension procedures in this section are substantially the same as in the prior rule, but are set out in a new structure for clarity, and with two

substantive changes. First, references to the employee who orders a suspension are replaced by a reference to the Corporation. Second, the section deletes the provision in § 1623.3(c) of the prior rule that required the Corporation, except for unusual circumstances, to give the recipient an opportunity to take effective corrective action before suspending funding. Instead, paragraph (a)(3) provides the Corporation the flexibility needed in extraordinary circumstances addressed by suspensions to suspend funding before corrective action has taken place. However, the Corporation must identify any corrective action the recipient can undertake to avoid or end the suspension in the proposed determination.

Paragraph (a) of this section authorizes the Corporation to issue a written preliminary determination to suspend funding to the recipient. The recipient then has the burden to show cause why the suspension should not take place.

The preliminary determination is required to state the grounds for the action, identify the relevant facts and documents underlying the determination, specify any corrective action the recipient may take, and advise the recipient of its right to submit written materials in response to the preliminary determination and to request an informal hearing with the Corporation. Paragraph (c) requires the Corporation to consider all materials and oral evidence presented under this section and, if the Corporation thereafter determines that grounds for a suspension exist, the Corporation may issue a final written determination to suspend and shall provide that determination to the recipient.

Paragraph (e) permits the Corporation to rescind or modify the terms of the final determination to suspend and, after providing written notice to the recipient, reinstate the suspension without any additional proceedings under this part. Paragraph (e) also states that, except for suspensions for the failure of a recipient to complete an audit consistent with the guidance promulgated by the Office of Inspector General, a suspension shall not exceed 30 days, unless there is agreement between the recipient and the Corporation to extend the suspension for up to 60 days. This reflects the presumption that a suspension of too long a duration would likely endanger a recipient's ability to continue service to its clients. A suspension is intended to be used for extraordinary circumstances when prompt intervention is likely to bring about immediate corrective action. The Corporation, therefore, should act quickly to determine that the problem is solved and is unlikely to reoccur, the appropriate corrective action has been taken, or initiate a termination process under part 1606.

Paragraph (f) implements Section 509 of Public Law 104–134, which requires that suspensions for failure to have an acceptable audit should last until the recipient has completed an acceptable audit.

Section 1623.5 Time Extension and Waiver

This section provides that extensions of time may be provided for good cause, except for the time limits in § 1623.4(e). It also permits any other provision of this part to be waived or modified by agreement of the recipient and the Corporation for good cause.

Paragraph (b) from § 1606.6 in the proposed rule has been moved to this section and is designated as paragraph (c). This paragraph provides that a failure of the Corporation to meet a time requirement does not preclude the Corporation from suspending a recipient's grant or contract with the Corporation. See *Brock* v. *Pierce County*, 476 U.S. 253 (1986).

Section 1623.6 Interim Funding

Generally, this section is the same as in the prior rule. It requires the Corporation to continue funding the recipient at the current level during suspension proceedings. This is necessary to prevent an injustice if the proceedings reveal that a suspension is not in order and to ensure the continued availability of legal services to the poor in the recipient's service area.

List of Subjects in 45 CFR Part 1623

Administrative practice and procedures, Legal services.

For reasons set forth in the preamble, LSC revises 45 CFR part 1623 to read as follows:

PART 1623—SUSPENSION PROCEDURES

Sec.
1623.1 Purpose.
1623.2 Definitions.
1623.3 Grounds for suspension.
1623.4 Suspension procedures.
1623.5 Time extensions and waiver.
1623.6 Interim funding.

Authority: 42 U.S.C. 2996e(b)(1); Pub. L. 104–134, 110 Stat. 1321, Sec. 509; Pub. L. 105–119, 111 Stat. 2440, Sec. 501(b).

§ 1623.1 Purpose.

The purpose of this rule is to:

(a) Ensure that the Corporation is able to take prompt action when necessary to safeguard LSC funds or to ensure the compliance of a recipient with applicable provisions of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of a recipient's grant or contract with the Corporation; and

(b) Provide procedures for prompt review that will ensure informed deliberation by the Corporation when it has made a proposed determination that financial assistance to a recipient should be suspended.

§ 1623.2 Definitions.

For the purposes of this part:

(a) *Knowing and willful* means that the recipient had actual knowledge of the fact that its action or lack thereof constituted a violation and despite such knowledge, undertook or failed to undertake the action.

(b) *Recipient* means any grantee or contractor receiving legal assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(c) *Suspension* means an action taken during the term of the recipient's current grant or contract with the Corporation that withholds financial assistance to a recipient, in whole or in part, until the end of the suspension period pending corrective action by the recipient or a decision by the Corporation to initiate termination proceedings.

§ 1623.3 Grounds for suspension.

(a) Financial assistance provided to a recipient may be suspended when the Corporation determines that there has been a substantial violation by the recipient of an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or a term or condition of the recipient's current grant or contract with the Corporation; and the Corporation has reason to believe that prompt action is necessary to:

(1) Safeguard LSC funds; or

(2) Ensure immediate corrective action necessary to bring a recipient into compliance with an applicable provision of law, or a rule, regulation, guideline or instruction issued by the Corporation, or the terms and conditions of the recipient's grant or contract with the Corporation.

(b) A determination of whether there has been a substantial violation for the purposes of paragraph (a) of this section will be based on consideration of the following criteria:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory

restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and wilfull.

(c) Financial assistance provided to a recipient may also be suspended by the Corporation pursuant to a recommendation by the Office of Inspector General when the recipient has failed to have an acceptable audit in accordance with the guidance promulgated by the Corporation's Office of Inspector General.

§ 1623.4 Suspension procedures.

(a) When the Corporation has made a proposed determination, based on the grounds set out in § 1623.3, that financial assistance to a recipient should be suspended, the Corporation shall serve a written proposed determination on the recipient. The proposed determination shall:

(1) State the grounds and effective date for the proposed suspension;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the suspension;

(3) Specify what, if any, corrective action the recipient can take to avoid or end the suspension;

(4) Advise the recipient that it may request, within 5 days of receipt of the proposed determination, an informal meeting with the Corporation at which it may attempt to show that the proposed suspension should not be imposed; and

(5) Advise the recipient that, within 10 days of its receipt of the proposed determination and without regard to whether it requests an informal meeting, it may submit written materials in opposition to the proposed suspension.

(b) If the recipient requests an informal meeting with the Corporation, the Corporation shall designate the time and place for the meeting. The meeting shall occur within 5 days after the recipient's request is received.

(c) The Corporation shall consider any written materials submitted by the recipient in opposition to the proposed suspension and any oral presentation or written materials submitted by the recipient at an informal meeting. If, after considering such materials, the Corporation determines that the recipient has failed to show that the suspension should not become effective, the Corporation may issue a written final determination to suspend financial assistance to the recipient in whole or in part and under such terms and conditions the Corporation deems appropriate and necessary.

(d) The final determination shall be promptly transmitted to the recipient in a manner that verifies receipt of the determination by the recipient, and the suspension shall become effective when the final determination is received by the recipient or on such later date as is specified therein.

(e) The Corporation may at any time rescind or modify the terms of the final determination to suspend and, on written notice to the recipient, may reinstate the suspension without further proceedings under this part. Except as provided in paragraph (f) of this section, the total time of a suspension shall not exceed 30 days, unless the Corporation and the recipient agree to a continuation of the suspension for up to a total of 60 days without further proceedings under this part.

(f) When the suspension is based on the grounds in § 1623.3(c), a recipient's funds may be suspended until an acceptable audit is completed.

§ 1623.5 Time extensions and waiver.

(a) Except for the time limits in § 1623.4(e), any period of time provided in this part may be extended by the Corporation for good cause. Requests for extensions of time shall be considered in light of the overall objective that the procedures prescribed by this part ordinarily shall be concluded within 30 days of the service of the proposed determination.

(b) Any other provision of this part may be waived or modified by agreement of the recipient and the Corporation for good cause.

(c) Failure by the Corporation to meet a time requirement of this part shall not preclude the Corporation from suspending a recipient's grant or contract with the Corporation.

§ 1623.6 Interim funding.

(a) Pending the completion of suspension proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) Funds withheld pursuant to a suspension shall be returned to the recipient at the end of the suspension period.

Dated November 18, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–31252 Filed 11–20–98; 8:45 am]

BILLING CODE 7050–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 36

[CC Docket No. 96–45; FCC 98–160]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission refers to the Joint Board the issues on which referral was sought, and requests that the Joint Board issue a Recommended Decision on the issues by November 23, 1998. The Commission will then issue an order on the issues addressed in the Joint Board recommended decision in time to implement the revised mechanism for non-rural carriers by July 1, 1999.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Keller, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document released on July 17, 1998. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW, Washington, DC, 20554. This document is also available from the Commission's copy contractor, International Transcription Service, 1231 20th Street, NW, Washington, DC 20036.

I. Introduction

1. Section 254 of the Communications Act codified the Commission's long-standing commitment to ensuring the preservation and advancement of universal service in rural, high cost, and insular areas. As section 254 required, the Commission convened a Federal-State Joint Board on Universal Service and, in light of the Joint Board's recommendations, the Commission on May 8, 1997, released the *Universal Service Order*, 62 FR 32862 (June 17, 1997), which, among other things, identified the services included within the definition of universal service and

established a specific timetable for implementation of revised universal service support programs. The Commission determined that carriers should receive support for serving rural and high cost areas based on the forward-looking cost of providing the supported services. Non-rural carriers would begin to receive high cost support based on forward-looking costs on January 1, 1999, while rural carriers would continue to receive high cost support based on existing support levels pending further review by the Commission, the Joint Board, and a Joint Board-appointed Rural Task Force, but at least until January 1, 2001.

2. The Commission determined that non-rural carriers' high cost support should be determined by computing the forward-looking cost of providing the supported services and subtracting from it a revenue benchmark amount, and that the share of support provided by federal mechanisms initially should be set at 25 percent. The Commission acknowledged that this share of support was based on the need to avoid double-recovery by carriers pending reform of state rates and support mechanisms, and stated that the federal share of support would be subject to review in light of state proceedings, the development of competition, and other relevant factors. The Commission's determination relating to the federal share of support generated several petitions for reconsideration and significant comment. Recently, the Commission committed to completing a proceeding reconsidering the federal share of support before revised support mechanisms are implemented for non-rural carriers.

3. On March 11, 1998, the state members of the Joint Board filed a request that certain issues related to the determination of high cost support, including issues regarding the share of federal high cost support, be referred to the Joint Board. Shortly after an en banc hearing on these issues convened by the Commission with the participation of the state Joint Board commissioners, the state members filed a letter requesting referral of two additional issues.

4. In this Order, the Commission refers to the Joint Board the issues on which referral was sought, and requests that the Joint Board issue a Recommended Decision on these issues by November 23, 1998. The Commission will then issue an order on the issues addressed in the Joint Board recommended decision in time to implement the revised mechanism for non-rural carriers by July 1, 1999.

II. Discussion

5. The state Joint Board members' referral request, as supplemented by their June 18 letter, requested referral of six issues: (1) Whether the FCC should take responsibility only for 25% of the high cost subsidy calculated by the new soon-to-be-adopted federal funding model and leave the remaining 75% for States to support; (2) Whether to apply federal universal service funds to reduce the cost of interstate access charges; (3) An appropriate method for formulating and distributing high cost funds among the States; (4) Whether and to what extent the FCC should have a role in making intrastate support systems explicit, and, as part and parcel of any such examination, a referral of the section 254(k) issue concerning recovery of joint and common costs; (5) The revenue base upon which the FCC should assess and recover providers' contributions for universal service; and (6) Whether, to what extent, and in what manner providers should recover contributions to universal service through their rates.

6. Although we recognize that the Joint Board has considered and given recommendations on many of these issues previously and has been consulted on an ongoing basis regarding matters in this docket, we find that further Joint Board input will be beneficial as we move forward on implementing universal service and high cost support. We find that further coordination between state and federal regulators on these issues will enhance the development of universal service and competition policy. We also find that a recommendation from the Joint Board on these issues will assist us in our review of the pending petitions for reconsideration on these issues. In consultation with the state members of the Joint Board, we have clarified, expanded, and reorganized the issues to be referred. Accordingly, we refer to the Joint Board the following issues:

(1) An appropriate methodology for determining support amounts, including a method for distributing support among the states and, if applicable, the share of total support to be provided by federal mechanisms. If the Commission were to maintain the current 25/75 division as a baseline, the Commission also requests the Joint Board's recommendation on the circumstances under which a state or carrier would qualify to receive more than 25 percent from federal support mechanisms.

(2) The extent to which federal universal service support should be applied to the intrastate jurisdiction. In its recommendation on this issue, the Commission requests the Joint Board's recommendation on the following topics:

(a) To the extent that federal universal service reform removes subsidies that are currently implicit in interstate access charges, whether interstate access charges should be reduced concomitantly to reflect this transition from implicit to explicit support, and whether other approaches would be consistent with the statutory goal of making federal universal service support explicit. The Commission also requests a recommendation on how it can avoid "windfalls" to carriers if federal funds are applied to the intrastate jurisdiction before states reform intrastate rate structures and support mechanisms.

(b) Whether and to what extent federal universal service policy should support state efforts to make intrastate support mechanisms explicit. The Commission recognizes that section 254(k) envisions separate state and federal measures related to the recovery of joint and common costs, but nevertheless welcomes the Joint Board's input on how section 254(k) may relate to the Commission's role in making intrastate support systems explicit.

(c) The relationship between the jurisdiction to which funds are applied and the appropriate revenue base upon which the Commission should assess and recover providers' universal service contributions and, if support for federal mechanisms continues to be collected solely in the interstate jurisdiction, whether the application of federal support to costs incurred in the intrastate jurisdiction would create or further implicit subsidies, barriers to entry, a lack of competitive neutrality, or other undesirable economic consequences.

(3) To what extent, and in what manner, is it reasonable for providers to recover universal service contributions through rates, surcharges, or other means.

7. We request that the Joint Board provide a recommended decision on these issues by November 23, 1998. We will then consider the Joint Board's recommendations and issue an order specifying the methodology for determining high cost support for non-rural carriers so that the new mechanism can be implemented by July 1, 1999.

8. In order to allow sufficient time for the Joint Board's deliberations and for the Commission to receive public comment on the Joint Board's recommendations, we hereby extend the implementation date for the revised high cost support mechanism for non-

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rural carriers specified in the *Universal Service Order* by six months from January 1, 1999, to July 1, 1999. We find that the potential benefits of a referral justify this limited extension of the implementation timeline specified in the *Universal Service Order*. During the extension period, non-rural carriers (as well as rural carriers) will continue to receive support flows based on historical support levels, which have been sufficient to produce rates that the Joint Board has previously characterized as generally affordable. No convincing evidence has been presented to the Commission to show that circumstances, such as the development of local exchange competition, will significantly affect support flows before the revised implementation date.

9. In order to ensure that existing support flows continue until the revised implementation date, the Commission hereby amends § 36.601(c) of the Commission's rules to specify that non-rural carriers (as well as rural carriers) may continue to receive the expense adjustment for high cost loops specified in Subpart F of Part 36 of the Commission's Rules (the existing high cost loop fund) until July 1, 1999.

10. In light of this change to the implementation timeline for high cost support for non-rural carriers, we believe that additional time may be necessary to complete our review of support mechanisms for rural carriers described in the *Universal Service Order*. In the *Universal Service Order*, the Commission stated that it intended to release a further notice of proposed rulemaking on forward-looking cost methodologies for rural carriers in October 1998. This projected date was premised on the assumption that the Commission's proceedings related to non-rural carriers would have been essentially completed by that time. Given the amended date for implementing revised support mechanisms for non-rural carriers, we hereby clarify that we do not expect to issue a further notice of proposed rulemaking related to high cost support for rural carriers until a later date, to be determined by the Commission once further proceedings have been conducted by the Joint Board and its Rural Task Force. Rural carriers will continue to receive support based on historical support flows until the Commission adopts a forward-looking cost mechanism for rural carriers, which would become effective no earlier than January 1, 2001.

III. Procedural Matters and Ordering Clauses

A. Supplemental Final Regulatory Flexibility Analysis

11. This Supplemental Final Regulatory Flexibility Analysis (SFRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *Universal Service Order*, only to the extent that changes to that Order adopted here on reconsideration require changes in the conclusions reached in the FRFA. As required by section 603 RFA, 5 USC section 603, the FRFA was preceded by an Initial Regulatory Flexibility Analysis (IRFA) incorporated in the Notice of Proposed Rulemaking and Order Establishing the Joint Board (NPRM), 61 FR 63778 (December 2, 1996), and an IRFA, prepared in connection with the Recommended Decision, which sought written public comment on the proposals in the NPRM and the Recommended Decision. The actions taken in this Order and Order on Reconsideration do not change the analysis included in the FRFA in the *Universal Service Order* because neither the referral of issues to the Joint Board nor the extension of the timetable for implementing a revised high cost support mechanism for non-rural carriers will affect reporting, recordkeeping, or other compliance requirements. Further, the actions taken in this Order and Order on Reconsideration only affect telecommunications carriers that are so large as not to meet the definition of a rural telephone company by extending the date when they will begin to receive high cost support based on the forward-looking cost of providing the supported services.

B. Ordering Clauses

12. Accordingly, it is ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that this Order and Order on Reconsideration is adopted.

13. It is further ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that the issues specified herein are referred to the Federal-State Joint Board on Universal Service for a recommendation to be received by the Commission no later than November 23, 1998.

14. It is further ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that section 36.601(c) of the Commission's rules, 47 CFR § 36.601(c), is hereby amended as noted in Appendix A. This rule change shall be effective December 23, 1998.

15. It is furthered ordered, pursuant to sections 1, 4(i) and (j), and 254 of the Communications Act of 1934, as amended, 47 USC sections 151, 154(i), 154(j), and 254, that the timetable established in the *Universal Service Order* for implementation of revised high cost support mechanisms for non-rural carriers is extended such that revised mechanisms for non-rural carriers will take effect July 1, 1999.

16. It is further ordered, that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this Order and Order on Reconsideration, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 36

Reporting and recordkeeping requirements and Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 36 of the Title 47 of the Code of Federal Regulations is amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES.

1. The authority citation for part 36 continues to read as follows:

Authority: 47 USC Secs. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

§ 36.601 General.

2. In § 36.601 remove "January 1, 1999" where ever it occurs and replace it with "July 1, 1999".

[FR Doc. 98–31208 Filed 11–20–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971208298–8055–02; I.D. 111698B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands.

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel for 24 hours in the Eastern Aleutian District and Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1998 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), November 18, 1998, until 1200 hours, November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 1998 TAC of Atka mackerel for the Eastern Aleutian Islands District and Bering Sea subarea was established by Final 1998 Harvest Specifications of Groundfish for the BSAI (63 FR 12689, March 16, 1998) as 13,782 metric tons (mt). See § 679.20(c)(3)(iii).

The fishery for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea was closed to directed fishing under § 679.20(d)(1)(iii) on February 2, 1998, under the 1998 interim specifications (63 FR 6110, February 6, 1998). On March 16, 1998, NMFS published 1998 final specifications and set aside the remaining Atka mackerel TAC in order to reserve amounts anticipated to be needed for incidental catch in other fisheries (63 FR 12689, March 16, 1998; 63 FR 12698, March 16, 1998).

The Acting Administrator, Alaska Region, NMFS (Acting Regional Administrator) established a directed fishing allowance of 13,682 mt, and set aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries (63 FR 12689, March 16, 1998).

NMFS has determined that as of October 31, 1998, 2,400 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea.

In accordance with § 679.20(d)(1)(iii), the Acting Regional Administrator finds that this directed fishing allowance will soon be reached. Therefore, NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea at 12 noon, A.l.t., November 19, 1998.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the Atka mackerel TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. Further delay would only disrupt the FMP objective of providing the Atka mackerel TAC for harvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), the delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated November 18, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31273 Filed 11–18–98; 4:27 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 225
Monday, November 23, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99–916–1]

Nectarines, Pears, and Peaches Grown in California; Continuance Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referenda order.

SUMMARY: This document directs that referenda be conducted among eligible growers of California nectarines, pears, and peaches to determine whether they favor continuance of the marketing orders regulating the handling of nectarines, pears, and peaches grown in the production area.

DATES: The referenda will be conducted from January 5 through January 29, 1999. To vote in these referenda, growers must have been producing California nectarines, pears, and peaches during the period April 1 through November 30, 1998.

ADDRESSES: Copies of the marketing orders may be obtained from the office of the referenda agents at 2202 Monterey Street, suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209) 487–5901; fax (209) 487–5906; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 916 (7 CFR part 916) and Marketing Order No. 917 (7 CFR part 917), hereinafter referred to as the "orders," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by the growers. The referenda shall be conducted during the period January 5–29, 1999, among California nectarine, pear, and peach growers in the production area. Only growers that were engaged in the production of California nectarines, pears, and peaches during the period of April 1 through November 30, 1998, may participate in the continuance referenda.

Although pears are included under the provisions of M.O. 917, those provisions have been suspended since April 1994. The Pear Commodity Committee unanimously recommended suspension of the pear provisions because such provisions were no longer needed. The California Bartlett pear industry is now functioning under a California Pear Marketing Program (State pear program) and is no longer using the pear order provisions. The State pear program, developed by the California Bartlett pear industry of the California Department of Food and Agriculture, is similar to the Federal pear program.

The Secretary of Agriculture has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the orders if less than two-thirds of the growers voting in the referenda and growers of less than two-thirds of the volume of California nectarines, pears, and peaches represented in the referenda favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referenda. The Secretary will also consider all other relevant information concerning the operation of the orders and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referenda herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0072 for nectarines and OMB No. 0581–0080 for pears and peaches. It has been estimated that it will take an average of 30 minutes for each of the approximately 2,130 growers of California nectarines, pears, and peaches to cast a ballot. Participation is voluntary. Ballots postmarked after January 29, 1999, will not be included in the vote tabulation.

Kurt J. Kimmel and Terry Vawter of the California Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referenda agents of the Secretary of Agriculture to conduct such referenda. The procedure applicable to the referenda shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR Part 900.400 *et. seq*).

Ballots will be mailed to all growers of record and may also be obtained from the referenda agents and from their appointees.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: November 16, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–31184 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–284–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes. This proposal would require a one-time inspection of the forward engine mount assembly of the left and right engines to verify that the part number on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent structural failure of the secondary load path of the forward engine mount, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

DATES: Comments must be received by December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–M–284–D, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–284–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–284–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, during modification of the forward engine mount assembly of the left and right engines to meet increased thrust load specifications, certain engine mount assemblies may not have been modified properly. Improper modification of these assemblies could cause the secondary load path of the forward engine mount to be unable to sustain required loads, resulting in structural failure, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 1998, which describes procedures for a one-time visual inspection of the forward engine mount assembly of the left and right engines to verify that the part number (P/N) on each assembly is correct; re-identification of the forward engine mount assembly; and follow-on actions, if necessary. If the P/N of the forward engine mount is incorrect, the follow-on actions involve removal of the engine, visual inspection to detect any crack or failure of the thrust links on the forward engine mount assembly, modification of the engine mount if no crack or failure is detected, or replacement of the existing thrust link with a new thrust link and modification of the engine mount if any crack or failure is detected.

Accomplishment of the actions specified in the Airbus service bulletin is intended to adequately address the identified unsafe condition. The Airbus service bulletin references V2500 International Aero Engines Service Bulletin V2500–NAC–71–0135, Revision 1, dated March 5, 1998, as an additional source of service information.

The DGAC classified the Airbus service bulletin as mandatory and issued French airworthiness directive 98–293–118(B) dated July 29, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Airbus service bulletin described previously.

Cost Impact

The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 70 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $306,600, or $4,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 98–NM–284–AD.

Applicability: Model A319–131 and –132, A320–232 and –233, and A321–131 series airplanes; except those on which Airbus Modification 27020 has been accomplished (reference Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 1998); certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the forward engine mount secondary load path, which, if combined with failure of the primary load path, could result in separation of the engine from the airplane, accomplish the following:

(a) Within 500 flight hours after the effective date of this AD: Perform a one-time visual inspection of the forward engine mount assembly of the left and right engines to verify that the part number (P/N) on each assembly is correct, in accordance with Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 1998.

(1) If the P/N on the forward engine mount assembly of the left and right engines is 740–2010–513N or 740–2010–513 with a revision of 'N' or higher, prior to further flight, re-identify each assembly in accordance with the service bulletin. No further action is required by this AD.

(2) If the P/N on the forward engine mount assembly of the left and right engines is different from the P/N's specified in paragraph (a)(1) of this AD, or if the P/N cannot be determined: Prior to further flight, perform a detailed visual inspection to detect any crack or failure of the thrust links on each forward engine mount assembly, in accordance with the service bulletin.

(i) If no crack or failure of any thrust link on the left or right engine is detected: Within 2,250 landings following accomplishment of the inspection specified in paragraph (a)(2) of this AD, or at the next engine removal, whichever occurs first, modify each engine mount and its installation, and re-identify each forward engine mount assembly; in accordance with the service bulletin.

(ii) If any crack or failure of any thrust link on the left or right engine is detected, prior to further flight, replace the existing thrust link with a new thrust link, modify each engine mount, and re-identify each forward engine mount assembly; in accordance with the service bulletin.

Note 2: Inspection and modification of the engine mount assembly accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A320–71–1021, dated February 6, 1998, is considered acceptable for compliance with the applicable actions specified in this AD.

(b) As of the effective date of this AD, no person shall install a forward engine mount assembly on any airplane equipped with International Aero Engines (IAE) V2500–A5 engines, unless the actions described in Airbus Service Bulletin A320–71–1021, dated February 6, 1998, or Revision 01, dated June 10, 1998, have been accomplished for that assembly.

Note 3: Airbus Service Bulletin A320–71–1021, Revision 01, dated June 10, 1998, references V2500 IAE Service Bulletin V2500–NAC–71–0135, Revision 1, dated March 5, 1998, as an additional source of service information for accomplishment of the actions specified in this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 98–293–118(B), dated July 29, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31177 Filed 11–20–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–279–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F.28 Mark 0070 series airplanes. This proposal would require modification of the power supply system of the horizontal stabilizer control unit. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the loss of primary hydraulic stabilizer control during use of certain emergency procedures, which could result in the inability of the flight crew to control the airplane.

DATES: Comments must be received by December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–279–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–279–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 series airplanes. The RLD advises that the existing design of certain horizontal stabilizer control units (HSCU) will result in the HSCU being inoperative if both the No. 1 and No. 2 direct current (DC) buses are de-energized, either as a result of malfunction or if certain emergency procedures are used by the flight crew. If the HSCU is inoperative, only alternate stabilizer control is available, and the flight crew must operate the "ALT STAB" switch for pitch trim control. A recent assessment has resulted in a determination that use of alternate stabilizer control alone may not be sufficient for pitch control during certain emergency procedures. Such loss of the primary hydraulic stabilizer control during use of certain emergency procedures, if not corrected, could result in the inability of the flight crew to control the airplane.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF100–27–071, dated December 21, 1996, which describes procedures for modification of the power supply system of the HSCU. The modification involves removal of the circuit breaker, placard, and associated wiring; and installation of a new circuit breaker, placard, and associated wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive BLA 1996–158 (A), dated December 31, 1996, in order to assure the continued airworthiness of these airplanes in The Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately $350 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $1,180, or $590 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 98–NM–279–AD.

Applicability: Model F.28 Mark 0070 series airplanes, as listed in Fokker Service Bulletin SBF100–27–071, dated December 21, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of primary hydraulic stabilizer control during use of certain emergency procedures, which could result in the inability of the flight crew to control the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the power supply system of the horizontal stabilizer control unit in accordance with Fokker Service Bulletin SBF100–27–071, dated December 21, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA 1996–158 (A), dated December 31, 1996.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31176 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–278–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require repetitive inspections of certain H–11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged, broken, or improperly sealed bolts; and follow-on actions, if necessary. This proposal also would require eventual replacement of the existing bolts with new, improved bolts, which constitutes terminating action for the repetitive inspections. This proposal is prompted by a report that an operator found two broken H–11 tension bolts on the side-of-body kick-load fitting on one airplane. The actions specified by the proposed AD are intended to prevent cracking of the bolts due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure.

DATES: Comments must be received by January 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington

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98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–278–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator found two broken H–11 tension bolts on a Boeing Model 767 series airplane. The broken bolts were on the side-of-body kick-load fitting, which is located on the wing rear spar. The broken bolts were attributed to stress corrosion cracking that resulted from a combination of factors, such as deterioration of the bolt finish, an existing pre-load, and the presence of moisture. Such stress corrosion cracking, if not detected, could result in reduced structural integrity of the wing-to-body joint structure.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. That service bulletin describes procedures for repetitive detailed visual inspections of certain H–11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged, broken, or improperly sealed bolts; and follow-on actions, if necessary. The service bulletin specifies two inspection options for the operator to choose from when performing the inspections: Option 1 allows the operator to defer the inspection of the four H–11 tension bolts on the lower splice plate, provided that the detailed visual inspections of the H–11 tension bolts on the kick-load fitting are repeated at 90-day intervals. Option 2 allows the operator to repeat the detailed visual inspections of the H–11 tension bolts on the kick-load fitting at 18-month intervals, provided the operator also inspects the H–11 tension bolts on the lower splice plate at the same time.

The service bulletin also describes procedures for replacement of any damaged or broken bolts with new, improved bolts, which would eliminate the need for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this AD proposes to mandate, within 6,000 flight cycles or 48 months after the effective date of this AD, whichever occurs first, the replacement of all four H–11 tension bolts at each side-of-body kick-load fitting with new, improved bolts as described in Boeing Service Bulletin 767–57A0064, Revision 1, as terminating action for the repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these conditions.

Cost Impact

There are approximately 177 airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection of the kick-load fitting, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the kick-load fitting proposed by this AD on U.S. operators is estimated to be $8,400, or $120 per airplane, per inspection cycle.

It would take approximately 23 work hours per airplane to accomplish the proposed inspection of the splice plate, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the splice plate proposed by this AD on U.S. operators is estimated to be $96,600, or $1,380 per airplane, per inspection cycle.

It would take approximately 140 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $588,000, or $8,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–278–AD.

Applicability: Model 767 series airplanes, line positions 1 through 177 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the H–11 tension bolts on the side-of-body kick-load fitting due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a detailed visual inspection of the four H–11 tension bolts at each side-of-body kick-load fitting located on the wing rear spar to detect damaged, broken, or improperly sealed bolts; and accomplish the requirements in either paragraph (a)(1) or (a)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998.

(1) *Option 1:* Repeat the detailed visual inspection at each side-of-body kick-load fitting thereafter at intervals not to exceed 90 days, until accomplishment of the actions specified in paragraph (c) of this AD. Or

(2) *Option 2:* Perform a detailed visual inspection of the four H–11 tension bolts on the lower splice plate located on the wing rear spar to detect damaged, broken, or improperly sealed bolts. Repeat the detailed visual inspection of each side-of-body kick-load fitting and the lower splice plate thereafter at intervals not to exceed 18 months, until accomplishment of the actions specified in paragraph (c) of this AD.

(b) If evidence of any damaged, broken, or improperly sealed bolt is detected, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. Thereafter, repeat the detailed visual inspection in either paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of the actions specified in paragraph (c) of this AD.

(c) Within 6,000 flight cycles or 48 months after the effective date of this AD, whichever occurs first, replace all four H–11 tension bolts at each side-of-body kick-load fitting with new, improved bolts, and perform a detailed visual inspection to detect any damaged, broken, or improperly sealed bolt of the lower splice plate located on the wing rear spar, in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. If any damaged, broken, or improperly sealed bolt is detected during the inspection, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31175 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes. This proposal would require repetitive inspections of the safety spring wear plate doublers attached to the auxiliary power unit (APU) firewall, measurement of wear of the doublers, and follow-on actions, if necessary. This proposed AD also would provide for optional terminating action for the repetitive inspections. This proposal is prompted by reports indicating that excessive wear was found on the safety spring wear plate doublers on the APU firewall of Boeing Model 777 series airplanes. The actions specified by the proposed AD are intended to detect and correct wear of the safety spring wear plate doublers on the APU firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability.

DATES: Comments must be received by January 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2681; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–275–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that excessive wear was found on the titanium safety spring wear plate doublers on the auxiliary power unit (APU) firewall of Boeing Model 777 series airplanes. Several of the airplanes on which the excessive wear condition was found had at least 40 percent wear of one or both of the doublers. In one case, the wear penetrated 0.060 inch into the 0.063-inch-thick doubler. Such excessive wear has been attributed to fretting between the tip of the APU door spring and the doubler. Excessive wear of the safety spring wear plate doublers, if not corrected, could result in a hole in the APU firewall, and consequent decreased fire protection capability.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, which describes procedures for repetitive inspections of the safety spring wear plate doublers on the APU firewall, measurement of wear of the doublers, and follow-on actions, if necessary. Those follow-on actions include repair, or replacement of the existing titanium doublers with new stainless steel doublers. Replacement of the existing doublers with new stainless steel doublers would eliminate the need for the repetitive inspections. If wear is detected that is through the wear plate doubler and into or through the APU firewall, the alert service bulletin specifies to contact Boeing for repair instructions. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections of the safety spring wear plate doublers attached to the APU firewall, measurement of wear of the doublers, and follow-on actions, if necessary. The actions would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed in the paragraph entitled "Differences Between Proposed Rule and Alert Service Bulletin."

The FAA has determined that, if wear is detected that is through the wear plate doubler and into or through the APU firewall, flight with such damage (i.e., a hole in the doubler or APU firewall) is permitted, provided that a temporary repair is accomplished within 20 days after the damage is discovered. The FAA finds that 20 days is adequate to permit the repair to be accomplished at an authorized repair station. The FAA finds that allowing flight to continue for 20 days following detection of such damage is acceptable because there have been no reports indicating wear through the doubler or into the firewall on any in-service airplane, and no reports of any fire in the APU compartment of any Model 777 series airplane. This determination also is based upon the fact that the hole is caused by the tip of the APU door spring. When the APU doors are in the closed position, the tip of the door spring blocks the hole. The blockage of the hole by the spring is sufficient to prevent hazardous quantities of air, flammable fluids, or flames from passing through the hole. If extended operation (i.e., more than 20 days) is permitted with such a hole in the firewall, the size of the hole would continue to increase to a point at which the door spring no longer would prevent hazardous quantities of air, flammable fluids, or flames from passing through the hole.

The FAA also has determined that permanent replacement of any repaired wear plate doubler must be accomplished within 4,000 flight cycles after installation of the temporary repair. This determination is based on the fact that such a hole would not affect the structural integrity of the airplane. The FAA considers that a compliance time of 4,000 flight cycles is conservative (relative to the resistance to wear of the temporary repair) and sufficient to ensure the safety of the transport airplane fleet.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 156 airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $4,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the temporary repair, it would take approximately 2 work hours per airplane to accomplish the repair, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the temporary repair action is estimated to be $120 per airplane.

Should an operator be required or elect to accomplish the replacement of the wear plate doublers, it would take approximately 3 work hours per airplane to accomplish the replacement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of replacement of the wear plate doublers is estimated to be $180 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–275–AD.

Applicability: Model 777 series airplanes, line numbers 001 through 156 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct wear of the safety spring wear plate doublers on the auxiliary power unit (APU) firewall, which could result in a hole in the APU firewall, and consequent decreased fire protection capability, accomplish the following:

(a) Perform a visual inspection of the two safety spring wear plate doublers on the APU firewall, and measure any wear of the doublers, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For airplanes that have accumulated 6,000 total flight hours or less as of the effective date of this AD: Inspect and measure prior to the accumulation of 6,300 total flight hours.

(2) For airplanes that have accumulated between 6,001 and 10,000 total flight hours as of the effective date of this AD: Inspect and measure within 30 days after the effective date of this AD.

(3) For airplanes that have accumulated 10,001 total flight hours or more as of the effective date of this AD: Inspect and measure within 10 days after the effective date of this AD.

(b) If, during the inspection required by paragraph (a) of this AD, the wear on each doubler measures less than 0.045 inch, repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 60 days, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998.

(c) If, during the inspection required by paragraph (a) of this AD, the wear on either doubler measures greater than or equal to 0.045 inch: Except as provided by paragraph (d) of this AD, repeat the inspection and measurement required by paragraph (a) of this AD thereafter at intervals not to exceed 30 days, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998.

(d) If, during the inspection required by paragraph (a) of this AD, any wear penetrates either doubler: Within 20 days after detection of the wear, accomplish the requirements of either paragraph (d)(1) or (d)(2) of this AD, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998.

(1) Install a temporary stainless steel patch on both doublers, and within 4,000 flight cycles after installation of the temporary patch, accomplish the requirements of paragraph (d)(2) of this AD.

(2) Replace both existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers in accordance with the alert service bulletin. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

(e) If wear penetrates into or through the APU firewall: Within 20 days after detection of the wear, repair any damage to the APU firewall in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(f) Replacement of the existing wear plate doublers of the APU firewall with new stainless steel wear plate doublers, in accordance with Boeing Alert Service Bulletin 777–53A0018, dated June 29, 1998, constitutes terminating action for the repetitive inspection requirements of paragraphs (b) and (c) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31174 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–249–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that currently requires inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. This action would establish repetitive inspection intervals for certain inspections required by the existing AD. This action also would add a requirement to modify Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by December 23, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–249–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–249–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–249–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 23, 1998, the FAA issued AD 98–03–06, amendment 39–10298 (63 FR 5224, February 2, 1998), applicable to certain Airbus Model A300 and A300–600 series airplanes, to require inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect and correct fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Since the issuance of AD 98–03–06, the manufacturer has issued Airbus Service Bulletins A300–57–0234, Revision 01 (for Model A300 series airplanes), and A300–57–6087, Revision 01 (for Model A300–600 series airplanes), both dated March 11, 1998. Airbus Service Bulletin A300–57–0234, Revision 01, limits the effectivity of the existing AD, however, these service bulletins add no additional airplanes to the effectivity. These service bulletins recommend repetitive intervals for accomplishing detailed visual and high frequency eddy current inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 98–151–247(B), dated April 8, 1998, in order to assure the continued airworthiness of these airplanes in France.

The manufacturer also has issued Airbus Service Bulletins A300–57–0235 (for Model A300 series airplanes), and A300–57–6088 (for Model A300–600 series airplanes), both dated August 5, 1998. These service bulletins describe procedures for modification of Gear Rib 5 of the MLG attachment fittings at the lower flange by increasing the depth, diameter, and corner radius of the spotface of specified fastener holes. Accomplishment of this modification would eliminate the need for the repetitive inspections described previously. The DGAC approved these service bulletins.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–03–06 to continue to require inspections to detect cracks in Gear Rib 5 of MLG attachment fittings at the lower flange, and repair, if necessary. The proposed AD also would establish repetitive inspection intervals for certain inspections. In addition, the proposal would require modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the

service bulletins described previously, except as discussed below.

Differences Between the Proposed AD and the Related Service Bulletins

Operators should note that, although the service bulletins described previously specify that appropriate corrective action may be obtained by contacting the manufacturer for disposition of certain repair conditions, this proposal would require that any such repairs be accomplished in accordance with a method approved by either the FAA or the Direction Générale de l'Aviation Civile (or its delegated agent).

Operators also should note that this AD proposes to mandate, prior to the accumulation of 21,000 total flight cycles or within 2 years after the effective date of the AD, whichever occurs later, the modification of Gear Rib 5 of the MLG attachment fittings as described in Airbus Service Bulletins A300–57–6088 and A300–57–0235. Accomplishment of this modification would constitute terminating action for the repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with these considerations.

Cost Impact

There are approximately 164 airplanes of U.S. registry that would be affected by this proposed AD.

The inspection currently required by AD 98–03–06, and retained in this proposed AD, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $59,040, or $360 per airplane, per inspection cycle.

The modification that is proposed in this AD action would take approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $10,270 per airplane. Based on these figures, the cost impact of the new actions proposed by this AD on U.S. operators is estimated to be $2,294,360, or $13,990 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10298 (63 FR 5224, February 2, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–249–AD. Supersedes AD 98–03–06, Amendment 39–10298.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) For Model A300 series airplanes that have accumulated more than 27,000 flight cycles as of March 9, 1998 (the effective date of AD 98–03–06, amendment 39–10298): Except as provided by paragraph (b) of this AD, within 40 flight cycles after March 9, 1998, perform a detailed visual inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998. Thereafter, repeat the inspection at intervals not to exceed 40 flight cycles, until the initial inspections required by paragraph (b) are accomplished.

(b) For all airplanes: Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998 (for Model A300–600 series airplanes); or A300–57–0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the

accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 2: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6057, both dated August 5, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) or (b) of this AD.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

(d) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300–57–6088 (for Model A300–600 series airplanes), or A300–57–0235 (for Model A300 series airplanes), both dated August 5, 1998, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–151–247 (B), dated April 8, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31173 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–228–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, and –40 Series Airplanes, and KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, that currently requires repetitive inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That AD also requires a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. This action would add a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. This proposal is prompted by reports of failure of certain fasteners installed in the banjo No. 4 fitting of the vertical stabilizer. The actions specified by the proposed AD are intended to prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane.

DATES: Comments must be received by January 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–228–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–228–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On March 18, 1996, the FAA issued AD 96–07–01, amendment 39–9549 (61 FR 12015, March 25, 1996), applicable

to certain McDonnell Douglas Model DC–10 series airplanes and KC–10A (military) airplanes, to require repetitive visual inspections to detect failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer. That AD also requires a one-time eddy current inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners. That action was prompted by reports indicating that attachment fasteners of the vertical stabilizer failed due to fatigue. The requirements of that AD are intended to prevent loss of fail-safe capability of the vertical stabilizer due to cracking of its attachment fasteners.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports indicating that, on two airplanes, certain second oversize fasteners that were approved for use as replacement fasteners in the banjo No. 4 fitting of the vertical stabilizer have failed due to fatigue cracking.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, and Revision 03, dated March 25, 1998. These revised service bulletins are essentially similar to McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993, which was referenced as the appropriate source of service information in AD 96–07–01. However, among other things, Revision 02 of the service bulletin provides instructions for gaining access to perform the eddy current inspection of the aft flange, instructions for repair of cracks in the banjo No. 4 fitting, and an additional preventive modification for uncracked banjo fittings; and Revision 03 revises the part number of second oversize fasteners to be used as replacements for the attachment fasteners in the banjo No. 4 fitting. Revision 03 also describes procedures for an external visual inspection to detect failure of the attachment fasteners of the banjo No. 4 fitting, and follow-on actions. Those follow-on actions include performing the external visual inspections on a repetitive basis; inspecting using an eddy current technique to detect cracking of the forward and aft flanges and bolt holes of the banjo No. 4 fitting, and repair, if necessary; and replacing the attachment fasteners of the banjo No. 4 fitting with new, improved attachment fasteners made from a higher strength and more corrosion-resistant material. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 96–07–01 to continue to require repetitive inspections to detect any failure of the attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer, a one-time inspection to detect cracking of the flanges and bolt holes of the banjo No. 4 fitting, and repair or replacement of the attachment fasteners with new, improved fasteners. This proposed AD also would add a new one-time inspection to determine whether certain fasteners are installed in the banjo No. 4 fitting of the vertical stabilizer, and follow-on actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 420 airplanes of the affected design in the worldwide fleet. The FAA estimates that 242 airplanes of U.S. registry would be affected by this proposed AD.

Since the issuance of AD 96–07–01, the manufacturer has revised its estimate of the work hours necessary to perform the actions that are currently required by that AD. McDonnell Douglas Service Bulletin DC10–55–023, Revision 03, reflects the manufacturer's revised estimates; and the cost information, below, also has been revised to refer to the new estimates.

The visual inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection currently required by that AD on U.S. operators is estimated to be $14,520, or $60 per airplane, per inspection cycle.

The eddy current inspection that is currently required by AD 96–07–01, and retained in this AD, takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the eddy current inspection currently required by this AD on U.S. operators is estimated to be $58,080, or $240 per airplane.

The replacement of the 12 attachment fasteners of the banjo No. 4 fitting that is currently required by AD 96–07–01, and retained in this AD, takes approximately 14 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $250 per airplane. Based on these figures, the cost impact of the replacement currently required by this AD on U.S. operators is estimated to be $263,780, or $1,090 per airplane.

The new inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $14,520, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator that has already completed the replacement of the attachment fasteners of the banjo No. 4 fitting in accordance with AD 96–07–01 be required to repeat the replacement, it would take approximately 14 additional work hours, at an average labor rate of $60 per work hour. Additional parts would cost $150 per airplane. Based on these figures, the cost impact of any necessary repetition of the replacement is estimated to be $990 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not

a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9549 (61 FR 12015, March 25, 1996), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 98–NM–228–AD. Supersedes AD 96–07–01, Amendment 39–9549.

Applicability: Model DC–10–10, –15, –30, and –40 series airplanes; and KC–10A (military) airplanes; as listed in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the attachment fasteners of the vertical stabilizer, which could result in loss of fail-safe capability of the vertical stabilizer and reduced controllability of the airplane, accomplish the following:

(a) Except as required by paragraph (c)(3) of this AD, within 1,500 landings after April 24, 1996 (the effective date of AD 96–07–01, amendment 39–9549): Perform an external visual inspection, using a minimum 5X power magnifying glass, to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer (as specified in McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998). Perform this inspection in accordance with procedures specified in McDonnell Douglas Nondestructive Testing Manual, Chapter 20–10–00, or McDonnell Douglas Nondestructive Testing Standard Practice Manual, Part 09.

(1) If no failure is detected, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(2) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(b) Except as required by paragraphs (a)(2) and (c)(3)(ii) of this AD, within 5 years after April 24, 1996: Perform an eddy current surface inspection to detect cracking of the forward and aft flanges; and an eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting; in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

Note 2: Paragraph (b) of this AD does not require that eddy current bolt hole inspections be accomplished for the bolt holes of the banjo No. 4 fitting if the attachment fasteners were replaced prior to April 24, 1996, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992.

(1) If no cracking is detected, prior to further flight, replace the 12 attachment fasteners located on the banjo No. 4 fitting with new, improved attachment fasteners, in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, dated December 17, 1992, or Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998. After the effective date of this AD, only Revision 03 of the service bulletin shall be used.

(i) Accomplishment of the replacement in accordance with the original issue of the service bulletin constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges is accomplished in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998.

(ii) Accomplishment of the replacement in accordance with McDonnell Douglas DC–10 Service Bulletin 55–23, Revision 1, dated December 17, 1993; or McDonnell Douglas Service Bulletin DC10–55–023, Revision 02, dated October 30, 1996, or Revision 03, dated March 25, 1998; constitutes terminating action for the requirements of paragraph (a) of this AD, provided that the eddy current surface inspection of the forward and aft flanges, and the eddy current bolt hole inspection of the bolt holes of the banjo No. 4 fitting, are accomplished in accordance with Revision 1, Revision 02, or Revision 03 of the service bulletin.

(2) If any cracking is detected, prior to further flight, repair either in accordance with Figure 6 or Figure 7, as applicable, of Chapter 55–20–00, Volume 1, of the DC–10 Structural Repair Manual; or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(c) Within 1,500 landings after the effective date of this AD, perform a one-time visual inspection to determine whether second oversize fasteners having part number (P/N) S4931917–8Y are installed in the banjo No. 4 fitting of the vertical stabilizer.

(1) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have been accomplished, no further action is required by this AD.

(2) If second oversize fasteners having P/N S4931917–8Y are *not* installed, and the actions required by paragraph (b) of this AD have *not* been accomplished: Within 1,500 landings after the last inspection performed in accordance with paragraph (a) of this AD, repeat that inspection, and perform the follow-on actions specified by paragraph (a) of this AD.

(3) If second oversize fasteners having P/N S4931917–8Y *are* installed, prior to further flight, perform an external visual inspection to detect any failure of the 12 attachment fasteners located in the banjo No. 4 fitting of the vertical stabilizer in accordance with paragraph (a) of this AD.

(i) If no failure is detected, repeat the external visual inspection thereafter at intervals not to exceed 1,500 landings until the requirements of paragraph (b) of this AD are accomplished.

(ii) If any failure is detected, prior to further flight, accomplish the requirements of paragraph (b) of this AD.

(d) As of the effective date of this AD, no person shall install a second oversize fastener having part number (P/N) S4931917–8Y in the banjo No. 4 fitting of the vertical stabilizer on any airplane.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199

of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31172 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (ERISA). The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are "multiple employer welfare arrangements" (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state regulations, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 am to approximately 5:00 pm on each day on Wednesday, December 16 and Thursday, December 17, 1998.

ADDRESSES: This Committee meeting will be held at the offices of the Federal Mediation and Conciliation Service (FMCS), 2100 K Street, NW, Room 200, Washington, DC 20427. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346), if special accommodations are needed. The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments on these minutes should be directed to the ERISA 3(40) Negotiated Rulemaking Advisory Committee, and sent to the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC, Telephone (202) 219–8771. This is not a toll-free number.

Agenda

The Committee will first adopt the minutes of the previous meeting. The Committee will then discuss the key issues that the Committee members believe should be addressed by any guidance that the Committee may develop to implement section 3(40) of ERISA. The issues addressed in these negotiations pertain to how the Department should develop a proposed rule that would facilitate determinations by the Department, employee benefit plans, and state insurance regulatory agencies as to whether a particular agreement is a collective bargaining agreement, and whether a plan is established or maintained under or pursuant to one or more collective bargaining agreements. Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before December 11, 1998 to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Arzuaga or telephone (202) 219–4600, x153. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Arzuaga at the address below. Papers will be accepted and included in the record of the meeting if received on or before December 11, 1998.

Signed at Washington, DC, this 17th day of November, 1998.

Meredith Miller,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 98–31191 Filed 11–20–98; 8:45 am]

BILLING CODE 4510–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IL173–1b; FRL–6190–9]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Illinois; Control of Landfill Gas Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: USEPA is proposing to approve the Illinois State Plan submittal

for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State's plan was submitted to USEPA on July 21, 1998 in accordance with the requirements for adoption and submittal of State plans for designated facilities in title 40 of the Code of Federal Regulations part 60 (40 CFR part 60), subpart B. In the final rules section of this **Federal Register**, the USEPA is approving the State's request as a direct final rule without prior proposal because USEPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless USEPA receives relevant adverse written comment. Should USEPA receive such comment, it will publish a timely withdrawal informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document, and no further action will be taken. USEPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 23, 1998.

ADDRESSES: Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Illinois Environmental Protection Agency may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano at (312) 886–6036.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: October 28, 1998.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 98–31075 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[MI49–01(b); FRL–6189–7]

Approval of Section 112(l) Program of Delegation; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve Michigan's request for a mechanism of delegation of the Federal air toxic program pursuant to Section 112(l) of the Clean Air Act of 1990. In the "Final Rules" section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless EPA receives relevant adverse written comment. Should EPA receive such comment, it will publish a timely withdrawal informing the public that the direct final rule will not take effect, and such public comment received will be addressed in a subsequent final rule based on the proposed rule. If no adverse written comments are received, the direct final rule will take effect on January 22, 1999, and no further action will be taken. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before December 23, 1999.

ADDRESSES: Written comments may be mailed to Robert B. Miller, Chief, Permits and Grants Section, Air Programs Branch (AR–18J), Region 5 at the address listed below.

Copies of the materials submitted by the Michigan Department of Environmental Quality (MDEQ) may be examined during normal business hours at the following locations:

Permits and Grants Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604

Air Quality Division, Michigan Department of Environmental Quality, 106 West Allegan Street, Lansing, Michigan 48909

FOR FURTHER INFORMATION CONTACT: Laura Gerleman at (312)353–5703.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 63

Environmental Protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations.

Authority: 42 U.S.C. 7401, *et seq.*

Dated: August 26, 1998.

Gail Ginsberg,

Acting Regional Administrator, Region V.

[FR Doc. 98–31077 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6190–6]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete Cedartown Municipal Landfill Superfund site from the National Priorities List (NPL); request for comments.

SUMMARY: EPA, Region 4 (EPA) announces its intent to delete the Cedartown Municipal Landfill Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). EPA and the State of Georgia (State) have determined that all appropriate CERCLA actions have been implemented and that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and the state have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of this Site will be accepted until December 23, 1998.

ADDRESSES: *Comments may be mailed to:* Annie M. Godfrey, Remedial Project Manager, South Site Management Branch, Waste Management Division, U.S. Environmental Protection Agency,

Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303.

Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at EPA's Region 4 office and is available for viewing by appointment only from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 Docket Office.

The address for the Regional Docket Office is: Ms. Debbie Jourdan, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Telephone No. (404) 562–8862.

Background information from the regional public docket is also available for viewing at the Site information repository located at the following address: Cedartown Public Library, 245 East Avenue, Cedartown, Georgia, 30125–3001, Telephone No. (770) 748–5644.

FOR FURTHER INFORMATION CONTACT: Annie M. Godfrey, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, (404) 562–8919.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletions

I. Introduction

EPA announces its intent to delete the Cedartown Municipal Landfill Superfund Site (the Site), in Polk County, Georgia from the National Priorities List (NPL) which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this proposed deletion. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action. EPA will accept comments concerning this Site for thirty (30) calendar days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for the deletion of sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), releases may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; or (ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or (iii) The remedial investigation has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate; or (iv) The site is a regulated treatment, storage, or disposal facility (TSD) regulated under the authority of the Resource Conservation and Recovery Act (RCRA).

Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed Remedial Actions in the event that conditions at the site warrant such action.

III. Deletion Procedures

EPA will accept and evaluate public comments before making a final decision to delete. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

(1) EPA Region 4 issued a Record of Decision (ROD) in November 1993. The selected remedy included landfill cover maintenance, controls to restrict land use and prevent groundwater use, and groundwater monitoring to ensure that the contaminants were reduced naturally and did not move away from the site. Groundwater monitoring was to be continued after groundwater performance standards are achieved. The ROD contained a contingency for pumping and treating groundwater if the performance standards could not be attained.

(2) EPA Region 4 issued a ROD amendment in May 1998, following two and one-half years of groundwater monitoring. Monitoring data indicated that only manganese remained above the performance standard and did not appear to be migrating offsite. The amendment changed the remedy to utilize institutional controls to restrict groundwater use in the areas beneath the site where performance standards are exceeded and to eliminate monitoring and the pump and treat contingency.

(3) The Georgia EPD concurred with the proposed deletion decision.

(4) A notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete.

(5) All relevant documents have been made available for public review in the local Site information repository.

Deletion of a site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designated primarily for information purposes and to assist EPA management. As mentioned in section II of this document, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

Any comments received during the notice and comment period will be evaluated before the final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address any comments received during the public comment period.

A deletion occurs after the EPA Region 4 Regional Administrator places a document in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA Region 4.

IV. Basis for Intended Site Deletion

The following site summary provides the Agency's rationale for the proposal to delete this Site from the NPL.

A. Site Background

The Cedartown Municipal Landfill site is located in Polk County on the outskirts of the City of Cedartown, Georgia, approximately 62 miles northwest of Atlanta, Georgia. The Site is situated on the western edge of Cedartown and is bordered on the east by Tenth Street, the south by Route 100 (Prior Station Road), and the north and west by undeveloped and/or agricultural land. Property to the east of the Site consists of an industrial complex. Land to the north, west and south of the Site is a mixture of residential, agricultural, and

undeveloped land. The Site lies within the limits of the City of Cedartown.

The Site occupies approximately 94 acres and has wooded areas along the north, south and west. A seasonal stream and pond, which appear during periods of high precipitation, exist approximately 700 feet west of the Site perimeter. The eastern half of the Site is covered by thick grasses. Approximately 10 acres of land, situated between the eastern and western halves of the Site, were not used for landfill operations. One leachate seep was observed on-site.

B. History

The Site encompasses a former iron ore mine which subsequently was used as a municipal landfill. While the landfill received primarily municipal solid sanitary waste during its operation, quantities of industrial waste were also reportedly disposed at the Site. The industrial wastes disposed at the Site may have included the following:

- Sludge from an industrial waste water treatment system,
- Animal fat and vegetable oil skimmings from a separation unit,
- Liquid dye wastes,
- Latex paint and paint sludges, and
- Plant trash.

In 1979, in accordance with then applicable State regulations pertaining to the closure of landfills, the landfill was covered with a layer of clay soil varying in thickness from one to 12 feet. A vegetative cover was then planted over the soil layer to prevent erosion.

From 1985 to 1987, EPA evaluated conditions at the Site and identified areas of potential investigation. EPA then proposed the Site for inclusion on the National Priorities List (NPL) in June 1988 and finalized the listing in March 1989. In November 1993, EPA issued a Record of Decision (ROD) for the Site. The ROD selected a remedy consisting of the following:

- Cover maintenance and seep controls,
- Institutional controls to minimize land use and prevent groundwater use,
- Surface water monitoring to assess whether contaminants were leaching from the seep,
- Groundwater monitoring to assess the migration and/or natural attenuation of contaminants,
- Implementation of a contingency pump and treat system if groundwater performance standards were not met, and
- Continued groundwater monitoring after groundwater performance standards were achieved.

EPA Region 4 issued a ROD amendment in May 1998 which amended the remedy to utilize institutional controls to restrict groundwater use in the areas beneath the site where performance standards are exceeded and to eliminate monitoring and the pump and treat contingency. The City of Cedartown (the City) has implemented the required institutional controls to restrict groundwater use at the Site. The City has annexed all property which lies above the landfill area. A city ordinance is in place to restrict the installation of wells on these properties. Additional ordinances restrict the placement of groundwater wells on adjacent property.

C. Characterization of Risk

Groundwater monitoring for two and one-half years has demonstrated that levels of all constituents of concern, except manganese, are below performance standards. Groundwater concentrations of manganese have remained stable in the wells which exceed the standard. Elevated levels of manganese have not been detected in more distant wells. In addition, EPA analysis of groundwater data demonstrates that elevated manganese may be caused by mining activities which occurred before the Site was used as a municipal landfill. Risk to human health has been reduced to acceptable levels by controlling access to contaminated groundwater. Institutional controls implemented by the City will restrict the use of groundwater in areas where performance standards are not met. The results of the ecological risk assessment indicated that the Site provides a habitat for a variety of wildlife, but that chemical exposures on the Site do not represent a threat to wildlife which may inhabit the area. No endangered or sensitive resident species or critical habitats were identified in the study area.

EPA believes that conditions at the Site pose no unacceptable risks to human health or the environment. One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "the responsible parties or other parties have implemented all appropriate response actions required." EPA, with concurrence from the Georgia Environmental Protection Division (EPD), believes that this criterion for deletion has been met. Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the regional public docket. Since waste will remain on the site, a five year review will be required in the future.

EPA, with concurrence of the Georgia EPD, has determined that all appropriate response under the CERCLA have been completed, and that no further action by responsible parties is necessary. Therefore, EPA proposes to delete the Site from the NPL and requests public comments on the proposed deletion.

Dated: September 30, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 98–30964 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–00256; FRL–6047–6]

RIN 2070–AC83

Round Table Discussion of the Upcoming Lead Renovation and Remodeling Rulemaking; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meeting

SUMMARY: EPA will hold a round table discussion meeting on the forthcoming rulemaking under section 402(c)(3) of the Toxic Substances Control Act (TSCA). Section 402(c)(3) directs the Agency to revise the regulations on lead-based paint activities to apply to renovation or remodeling activities that create lead-based paint hazards in target housing. The purpose of this discussion is to provide a forum where interested parties can contribute information and give individual perspectives on specific policy questions related to this forthcoming rulemaking. Agency staff may also ask participants to give their individual reactions to specific proposals and questions.

DATES: The meeting will be from 9 a.m. to 4:30 p.m. on December 7, 1998. Written comments must be submitted on or before January 15, 1999.

ADDRESSES: The meeting will be held at the Holiday Inn Rossyln Westpark, 1900 North Fort Meyer Dr., Arlington, VA.

Each comment must bear the docket control number OPPTS–00256. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions in Unit III. of this notice.

No Confidential Business Information (CBI) should be submitted through e-mail.

All comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Mike Wilson, National Program Chemicals Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: (202) 260–4664, e-mail address: wilson.mike@epa.gov.

Meeting Registration: National Lead Information Center at 1–800–424–LEAD.

SUPPLEMENTARY INFORMATION:

I. Background

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X direct EPA to promulgate regulations to fulfill the purposes of Title X. These include TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and to establish standards for conducting lead-based paint activities. Section 404 of TSCA requires that EPA establish procedures for States seeking to establish their own lead-based paint activities programs. On August 29, 1996, EPA promulgated final rules that implemented sections 402 and 404 of TSCA entitled "Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities." These rules are codified at 40 CFR part 745, subpart L. Section 402(c)(3) of TSCA directs the Agency to revise these regulations so they apply to renovation or remodeling activities which create lead-based paint hazards in target housing.

II. Round Table Discussion

The purpose of this meeting is to obtain individual input and comment on the regulatory options for modification of existing lead-based paint activities regulations. The existing regulations are codified at 40 CFR part 745, Subpart L—Lead-Based Paint Activities.

The round table discussion will examine the following issues: which contractors are engaged in renovation and remodeling activities that create a lead based paint hazard; which activities present the greatest potential hazard; how to promote lead safe renovation in a non-regulatory fashion; and implementation issues. Although there will be some discussion of the technical studies, EPA would like to focus on policy questions (e.g, establishing a deminimis area of deteriorated lead-based paint). EPA is currently planning to hold two meetings, completing the discussion in early 1999. All meetings will be held in Washington, DC and will be open to the public.

Individuals wishing to provide comments to EPA, but who cannot attend the round table discussion may submit written comments to EPA at the address listed under "ADDRESSES" in this notice. In order to be included in the synopsis of comments, written comments must be received by close of business on January 15, 1999.

III. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–00256 (including comments and data submitted electronically as described in this unit). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–00256. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: November 18, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–31400 Filed 11–19–98; 2:42 pm]

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Federal Register
Vol. 63, No. 225
Monday, November 23, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[S&T–98–001]

Presiding Officer Designated for Administrative Cases Involving Violations of the Pesticide Recordkeeping Requirements of the Food, Agriculture, Conservation and Trade Act of 1990

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of designation.

SUMMARY: The Administrator of the Agricultural Marketing Service has designated the administrative law judges of the Office of the Administrative Law Judges, USDA, as the Presiding Officer for administrative civil penalty cases involving certified applicators of restricted use pesticides who violate the recordkeeping requirements of the Food, Agriculture, Conservation and Trade Act of 1990.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie Poli, Chief, Pesticide Records Branch, AMS, USDA, 8700 Centreville Road, Suite 202, Manassas, VA 20110, Telephone (703) 330–7826.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by Section 1491 of the Food, Agriculture, Conservation and Trade Act of 1990 (FACT Act) to require certified applicators of restricted use pesticides (RUPs) to maintain records of all RUP applications. The FACT Act also authorizes the Secretary to promulgate regulations implementing the recordkeeping requirements and to enforce those requirements by the imposition of civil penalties for violations. A violator's first offense is subject to a civil penalty of up to $550 and each subsequent offense is subject to a penalty of not less than $1,100.

The Agricultural Marketing Service (AMS) promulgated regulations implementing the recordkeeping requirements on April 9, 1993 (7 CFR part 110). The regulations include rules of practice for administrative civil penalty proceedings (7 CFR part 110.8), which provide that AMS may initiate an administrative civil penalty proceeding by filing a notice of violation with the Presiding Officer. The Presiding Officer is defined in the regulations as "any individual designated in writing by the Administrator" to preside at the proceedings (7 CFR part 110.2).

Accordingly, the Administrator of AMS hereby designates the administrative law judges of the Office of the Administrative Law Judges, USDA, to preside over administrative civil penalty cases involving violations of the pesticide recordkeeping requirements of the FACT Act and the regulations promulgated thereunder.

Dated: November 16, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–31183 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office Management and Budget (OMB) regulations at 5 CFR Part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from charitable organizations that provide emergency food assistance; from food banks; from food pantries; and from emergency kitchens.

DATES: Comments on this notice must be received by January 27, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW, Room N–2130, Washington, DC 20036–5831, 202–694–5466.

SUPPLEMENTARY INFORMATION:

Title: Application for ERS collection of information on charitable organizations that provide emergency food assistance; food banks; food pantries, and emergency kitchens.

Type of Request: Approval to collect information on charitable organizations that provide emergency food assistance, food banks, food pantries, and emergency kitchens.

Abstract: USDA's Economic Research Service (ERS) has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including food consumption determinations and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; food security status of the poor; domestic food assistance programs; low-income assistance programs; and food safety regulation. In carrying out this overall mission, ERS seeks approval of information gathering activities that would provide key information about the capacity of the Emergency Food Assistance System (EFAS) to provide food assistance to low-income households.

USDA, through the Food and Nutrition Service, administers several food assistance programs that help low-income households obtain adequate and nutritious diets. The largest USDA food assistance program, the Food Stamp Program, is designed to provide food assistance through normal channels of trade, by providing low-income consumers with purchasing power to buy food at market prices from food retailers authorized to participate in the program. Other programs, such as the National School Lunch Program (NSLP), the School Breakfast Program (SBP), and The Emergency Food Assistance Program (TEFAP) provide food assistance outside regular marketing channels. The NSLP and SBP provide cash subsidies and commodity assistance to schools to help provide low-cost or free lunches and breakfasts to schoolchildren. The Emergency Food Assistance Program (TEFAP), distributes commodity foods to State and local agencies for distribution to low-income households for home consumption, or to

charitable organizations that prepare and provide meals for needy people.

The EFAS interacts closely with USDA food assistance programs by serving as a distribution outlet for TEFAP commodities and by providing temporary or supplemental food assistance to many of the same needy populations served by USDA programs. Through its Food Recovery and Gleaning Initiative, USDA is coordinating public and private efforts to increase the amount of surplus food channeled through EFAS providers by 33 percent by the year 2000.

EFAS providers are largely private, nonprofit organizations that distribute groceries (nonprepared foods) and meals (prepared foods) on a short-term or emergency basis, to needy individuals and households who lack the resources to meet their own food needs. Recipients include the elderly, the homeless, the unemployed, and the working poor, as well as victims of natural disasters. Food banks, food pantries, and emergency kitchens are important components of the system. Food banks are primarily collection and distribution centers near the "top" of the system, providing food to a large set of diverse and geographically dispersed agencies/providers. Food pantries are distribution centers that provide groceries and other basic supplies for use by recipients in their homes or at other locations away from the distribution sites. Emergency kitchens supply food for on-site consumption to people who do not live at the site. Both kitchens and pantries focus on providing emergency food to needy families in their neighborhoods.

In order to fully assess the interactions of these organizations with USDA food assistance programs and their implications for public policy, ERS must have information on providers' operating characteristics, service areas, and resource base, the quantity and type of food flowing into the system, the number of people served, and providers' capacity to manage current and future changes in food demand and resources. Information about the availability and demand for EFAS services in prior years is also needed.

Previous research has examined interactions between EFAS providers and the homeless [1] and has examined operating data from limited numbers of EFAS providers.[2] However, important information gaps remain, due to such factors as (1) lack of national representativeness; (2) a focus on the homeless population rather than on the full set of clients served by the EFAS; and (3) lack of comparability across studies, each of which had limited scope.

To fill these information gaps, ERS, working with Mathematica Policy Research, Inc., will survey food banks, food pantries, and emergency kitchens. The sampling process for this study uses a multi-stage design. In the first stage, the United States will be divided into 2,000 mutually exclusive and collectively exhaustive Primary Sampling Units (PSUs) covering the 48 continental United States and the District of Columbia, stratified by region, urbanicity, and size. A random sample of 360 PSUs will be drawn. A listing of all food banks in the country will be constructed, along with a frame of pantries and kitchens in the 360 sampled areas. Obtaining lists of food providers will require contacts with state TEFAP directors and national religious, social service, and volunteer organizations, as well as intensive telephone canvassing of public and private organizations and government agencies at the local or county level.

When selecting the sample of PSUs, the measure of size will be the square root of the estimated poverty population in each PSU. The ideal measure would be the number of EFA providers, but this number is not known. The number of providers is expected to be less than proportional to the number of people in poverty. In previous work, the square root factor has been found usually to reflect this relationship well.

After the sampling stage has been completed, a census of food banks will be conducted, and data will be collected from all food banks in the 48 continental United States and the District of Columbia. Stratified random samples of food pantries and emergency kitchens will be surveyed. To collect survey data, computer-assisted telephone interviews (CATI) will be conducted with representatives of food banks, food pantries, and emergency kitchens.

Respondent burden will be minimized by using CATI methods to streamline the interviewing process, and by carefully training interviewing staff on survey procedures. The objective of minimizing burden will also be accomplished through careful attention to instrument development, aimed at limiting content to only those domains that are important to the agency's objectives, and by ensuring clear question flow.

Responses will be voluntary and confidential. To ensure confidentiality, data will be reported only in tabular form, with analysis cells large enough to prevent identification of individual providers. In addition, identifying information will be kept only by the contractor and will be released only to the contractor's internal staff who need it directly for the survey and analysis operations.

Estimate of Burden: To develop the sample frame, telephone contact with representatives of national organizations will average 30 minutes, and telephone contacts with state TEFAP officials and local or county informants will average 15 minutes. CATI interviews with respondents at food banks, food pantries, and emergency kitchens will average 45 minutes.

Respondents: Respondents are state and local governments, local and national charitable organizations, food banks, food pantries, and emergency kitchens. To develop the sample frame, 15 national-level informants, 1 TEFAP official from each of the 48 continental States and the District of Columbia, and 15 local-or county-level informants in each of the 360 sampled areas will be asked for contact names, addresses, and telephone numbers of food providers. For the CATI survey, data will be collected from 1,657 food pantries and 1,470 emergency kitchens. All of the estimated 500 to 600 food banks in the United States will be included in the food bank survey, and after taking nonresponse into account, the number of completions is estimated to be 440.

Estimated Total Annual Burden on Respondents: Estimated burden of the development of the sample frame will be 7.5 hours for the national organizations, 12 hours for the TEFAP officials, and 1,350 hours for contacts in the 360 sampled areas, totaling 1,370 hours for all informants. The estimated burden of the CATI interviews will be 330 hours for the food banks, 1,243 hours for the food pantries, and 1,103 hours for the emergency kitchens, totaling 2,676 hours for all respondents.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including

[1] Cohen, Barbara E., Nancy Chapman, and Martha R. Burt. "Food Sources and Intake of Homeless Persons." *Journal of Nutrition Education*, vol. 24, no. 1 supp. January 1, 1990.

[2] Second Harvest. *Hunger 1997: The Faces & Faces.* Chicago: The Amburg Group, 1997

the use of appropriate automated, electronic, mechanical, or other technology. Comments may be sent to: David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW, Room N–2130, Washington, DC 20036–5831.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: November 16, 1998.

Betsey Kuhn,

Director, Food and Rural Economics Division.

[FR Doc. 98–31260 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent to Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection on supplemental food security questions for the April 1999 Current Population Survey. These data will be used to develop a scale of household level food security in the United States, to assess changes in food security for population subgroups, to assess performance of domestic food assistance programs, and to provide information to aid in public policy decision making.

DATES: Comments on this notice must be received by January 22, 1999 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room S–2130, Washington, D.C. 20036–5831, 202–694–5466.

SUPPLEMENTARY INFORMATION:

Title: Application for April Food Security Supplement to the Current Population Survey, 1999.

Type of Request: Approval to collect information on household food insecurity.

Abstract: The U.S. Bureau of the Census will supplement the April 1999 Current Population Survey with questions regarding household food shopping, food sufficiency, coping mechanisms and food scarcity, and concern about food sufficiency. A similar supplement was also appended to the CPS in April 1995, September 1996, April 1997, and August 1998.

ERS is responsible for conducting studies and evaluations of the Nation's food assistance programs that are administered by the Food and Nutrition Service (FNS), U.S. Department of Agriculture. The Department spends about $37 billion each year to ensure access to nutritious, healthful diets for all Americans. The Food and Nutrition Service administers the 15 food assistance programs of the USDA including Food Stamps, Child Nutrition, and WIC programs. These programs, which serve 1 in 6 Americans, represent our nation's commitment to the principle that no one in our country should fear hunger or experience want. They provide a safety net to people in need. The programs' goals are to provide needy persons with access to a more nutritious diet, to improve the eating habits of the nation's children, and to help America's farmers by providing an outlet for the distribution of food purchased under farmer assistance authorities.

These data will be used to develop a scale of food security reflecting a range from food secure households through households experiencing severe food insecurity. Ultimately, this scale will be used to identify the prevalence of poverty-linked food insecurity and hunger experienced in the United States. The purpose of this project is to provide a consistent measure of the extent and severity of food insecurity that will aid in policy decision making. The supplemental survey instrument has been developed in conjunction with food security experts nationwide as well as survey method experts within the Census Bureau. This supplemental information will be collected by both personal visit and telephone interviews in conjunction with the regular monthly CPS interviewing. All interviews, whether by personal visit or by telephone, are conducted using computers.

Estimates of Burden: Public reporting burden for this data collection is estimated to average 10 minutes.

Respondents: Individuals or households.

Estimated number of Respondents: 50,000.

Estimated Total Annual Burden on respondents: 8,330 hours.

Copies of the information to be collected can be obtained from David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room 2130, Washington, DC 20036–5831, 202–694–5466.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to David M. Smallwood, Deputy Director for Food Assistance Research, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street NW Room 2130, Washington, D.C. 20036–5831, 202–694–5466. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 5, 1998.

Betsey Kuhn,

Director, Food and Rural Economy Division.

[FR Doc. 98–31261 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on December 14 and 15, 1998 at the Wallowa Mountains Office of the Wallowa-Whitman National Forest, 88401 Highway 82 in Enterprise, Oregon. The meeting will begin at 9:00

a.m. and continue until 5:00 p.m. the first day and will begin at 7:30 a.m. and continue until 12:00 p.m. on the second day. Agenda items to be covered include: (1) Consensus process and conflict of interest discussion; (2) Program of work; (3) Information about the Hells Canyon National Recreation Area; (4) Baseline information on the associated plans of the Hells Canyon National Recreation Area; (5) Open public forum. All meetings are open to the public. Public comments will be received at 1:00 p.m. on December 14.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–426–5501.

Dated: November 16, 1998.

Kendall Clark,

Area Ranger.

[FR Doc. 98–31200 Filed 11–20–98; 8:45 am]

BILLING CODE 3410–11–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Electronic and Information Technology Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. This document gives notice of the dates, times, and location of the next meeting of the Electronic and Information Technology Access Advisory Committee (Committee).

DATES: The next meeting of the Committee is scheduled for December 1 and 2, 1998, beginning at 9:30 a.m. and ending at 5:00 p.m. each day.

ADDRESSES: The meetings will be held at 1331 F Street, NW., Washington, DC, in the third floor training room.

FOR FURTHER INFORMATION CONTACT: Doug Wakefield, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 39 (Voice); (202) 272–5449 (TTY). E-mail address: wakefield@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/notices/eitaacmtg.htm.

SUPPLEMENTARY INFORMATION: On September 28, 1998, the Access Board published a notice appointing 23 members to its Electronic and Information Technology Access Advisory Committee (Committee). 63 FR 51891 (September 28, 1998). The Committee will make recommendations to the Access Board on accessibility standards for electronic and information technology covered by the Rehabilitation Act Amendments of 1998. The Committee is composed of Federal agencies and Federal contractors; the electronic and information technology industry; organizations representing the access needs of individuals with disabilities; and other persons affected by accessibility standards for electronic and information technology. At its first meeting on October 15 and 16, 1998, the Committee took the following actions:

- Added Compaq Computers, Pitney Bowes, Sun Microsystems, and the Information Technology Industry Council to the Committee;
- Formed three subcommittees. One subcommittee will examine the definitions needed for the recommended standards. Another subcommittee will examine the various functions that are performed by electronic and information technology. These functions include creating, processing, transmitting, and interacting with information and the technology involved. A third subcommittee will begin the process of classifying the variety of products covered by the standards into product families;
- Created a listserv to facilitate communications between meetings. To subscribe to the listserv send an e-mail message to: listproc@trace.wisc.edu.; and
- Established a schedule of meeting dates. The Committee will meet again on January 5–6, 1999; February 8–9, 1999; March 29–30, 1999; and, May 11–12, 1999.

The meetings are open to the public. There will be a public comment period each day for persons interested in presenting their views to the Committee. The facility is accessible to individuals with disabilities. Sign language interpreters, assistive listening systems and real-time transcription will be available.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 98–31253 Filed 11–20–98; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Bureau: International Trade Administration.

Title: Advocacy Questionnaire.

Agency Form Number: ITA–4133P.

OMB Number: 0625–0220.

Type of Request: Revision-Regular submission.

Number of Respondents: 200.

Avg. Hours per Response: 30 minutes.

Needs and Uses: The Department of Commerce, invites the general public and other Federal agencies to comment on proposed revisions to the Advocacy Questionnaire used by the Trade Promotion Coordination Committee (TPCC) Advocacy Network to evaluate requests for U.S. Government (USG) advocacy in connection with overseas bids and proposals. The International Trade Administration's Advocacy Center marshals federal resources to assist U.S. firms competing for foreign government procurements worldwide. The mission of the Advocacy Center is to promote U.S. exports and create U.S. jobs and coordinate USG advocacy among the TPCC. The Advocacy Center is under the umbrella of the TPCC, which is chaired by the Secretary of Commerce and includes 19 federal agencies involved in export promotion. The TPCC is tasked with assessing USG advocacy in order to achieve increased exports and jobs for American workers. The purpose of the Advocacy Questionnaire is to collect the information necessary to make an evaluation as to whether a U.S. firm qualifies for USG advocacy assistance. The Advocacy Center, appropriate ITA officials, our U.S. Embassies worldwide, and other federal government agencies (the Advocacy Network) that provide advocacy support to U.S. firms, will require U.S. firm(s) seeking USG advocacy support to complete the Questionnaire.

Affected Public: Companies that desire USG advocacy.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Englemeier, Departmental Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Ave., NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice.

Dated: November 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–31235 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 52–98]

Foreign-Trade Zone 15—Kansas City, MO, Expansion of Facilities and Manufacturing Authority—Subzone 15D, Bayer Corporation Plant (Pharmaceuticals), Kansas City, Missouri

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Kansas City Foreign-Trade Zone, Inc., grantee of FTZ 15, requesting on behalf of the Bayer Corporation (Bayer), to expand the scope of manufacturing authority under zone procedures and to add two sites within Subzone 15D, at the Bayer plant in Kansas City, Missouri. It was formally filed on November 16, 1998.

Subzone 15D was approved by the Board in 1988 at a single site (59 bldgs./750,000 sq. ft. on 112 acres) located at 8400 Hawthorn Road in Kansas City, Missouri, with authority granted for the manufacture of agricultural and specialty chemicals for the control of insects, weeds and plant diseases (Board Order 440, 54 FR 38413, September 18, 1989).

Bayer is now proposing to add two sites (300 employees) and expand the scope of authority for manufacturing activity conducted under FTZ procedures at Subzone 15D to include animal and human pharmaceutical products. Proposed *Site 2* (10 bldgs./720,000 sq. ft. on 55 acres after completion of current expansion) is the main production site of Bayer's Animal Health Division, located at 12707 Shawnee Mission Parkway, Shawnee, Kansas, some 15 miles southwest of existing *Site 1*. (Approximately, one-third of the land is leased from the City of Shawnee.) The company may also produce human health pharmaceutical products at the Shawnee plant in the future. Proposed *Site 3* (1 bldg./164,000 sq. ft. on 3.76 acres) is a leased warehouse located at 5101 Speaker Road, Kansas City, Kansas, some 10 miles west of *Site 1*.

At the outset, the company is expecting to manufacture Co-Ral®, Lysoff®, Spotton® and Tiguvon® animal health products (all HTSUS 3808.10.2500, duty rate .4¢/kg. + 7.1%) under zone procedures. Foreign-sourced materials, including coumafos (HTSUS 2932.29.10, duty rate 10.1%) and fenthion (HTSUS 2920.10.4000, duty rate 10.1%), will account for, on average, 30 percent of material value. The company may also purchase from abroad other ingredients and materials related to pharmaceutical manufacturing activity in the following general categories: Gums, starches, waxes, vegetable extracts, mineral oils, sugars, empty capsules, protein concentrates, prepared animal feed, mineral products, inorganic acids, chlorides, clorates, sulfites, sulfates, phosphates, cyanides, silicates, radioactive chemicals, rare-earth metal compounds, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, insecticides, rodenticides, fungicides and herbicides, fertilizers, vitamins, hormones, antibiotics, gelatins, enzymes, pharmaceutical glaze, essential oils, albumins, gelatins, activated carbon, residual lyes, acrylic polymers, silicones, color lakes, soaps and detergents, various packaging and printing materials, medicaments, pharmaceutical products, and instruments and appliances used in medical sciences.

FTZ procedures would exempt Bayer from Customs duty payments on the foreign components used in export activity (about 5% of shipments). On its domestic sales, the company would be able to elect the duty rate that applies to finished products (duty-free to 1.4¢/kg. + 13.9%) for the foreign components noted above (duty rates ranging from duty-free to 16.3%). The application indicates that the savings from FTZ procedures will help improve Bayer's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 22, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 2, 1999).

A copy of the application will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 601 East 12th St., Room 635, Kansas City, Missouri 64106

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: November 16, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–31271 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

October 1998 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of Sunset Reviews and revocation of antidumping orders and finding and termination of suspended investigation: Television Receivers from Japan (A–588–015); Color Television Receivers from Korea (South) (A–580–088); Color Television Receivers from Taiwan (A–583–099); Small Electric Motors from Japan (A–588–090); High Power Microwave Amplifiers from Japan (A–588–005); Barium Carbonate from Germany (A–428–061).

SUMMARY: On October 1, 1998, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on color television receivers from South Korea and Taiwan, high power microwave amplifiers from Japan, and barium carbonate from Germany as well as the antidumping finding on television receivers from Japan. The Department also initiated a sunset review of the

suspended investigation on small electric motors from Japan. Because no domestic interested party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders and finding and terminating the suspended investigation.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Scott E. Smith, or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–3207, (202) 482–6397, or (202) 482–1560 respectively.

SUPPLEMENTARY INFORMATION:

Background

The Treasury Department issued an antidumping finding on television receivers from Japan (36 FR 4597, March 10, 1971). In addition, the Department issued antidumping duty orders on color television receivers from South Korea and Taiwan (49 FR 7620, March 1, 1984), high power microwave amplifiers from Japan (47 FR 31413, July 20, 1982) and barium carbonate from Germany (46 FR 32864, June 25, 1981). The Department also suspended an investigation of small electric motors from Japan (45 FR 73723, July 20, 1980). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of these orders, finding and suspended investigation by publishing notice of the initiation in the **Federal Register** (63 FR 52683, October 1, 1998). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these orders and finding as well as the suspended investigation.

No domestic interested parties in any of the sunset reviews of these orders, finding and suspended investigation responded to the notice of initiation by the October 16, 1998, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998)("*Sunset Regulations*")).

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, October 16, 1998 (*see* section 351.218(d)(1)(i) of the *Sunset Regulations*), we are revoking these antidumping orders and finding and terminating the suspended investigation.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders and finding entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and duty deposit requirements. The suspension agreement on small electric motors from Japan will remain in effect until January 1, 2000. The Department will complete any pending administrative reviews of these orders, finding and suspended investigation and will conduct administrative reviews of all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: November 17, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31102 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee (MTC)

ACTION: Notice of public meeting.

Time and Date: December 9, 1998, beginning at 4:30 p.m. until approximately 9 p.m. and December 10, 1998, beginning at 7 a.m. until approximately 10 a.m.

Place: This meeting will take place at the Huntsville Marriott, Five Tranquility Base, Huntsville, Alabama 35805.

Status: The meeting will be open to the public. The time between 6 p.m. and 9 p.m. on December 9, 1998, will be set aside for public comments. Approximately 100 seats will be available to the pubiic on a first-come first-served basis.

Matters to be Considered: This meeting will include MTC consultation on the proposed Consolidation, Automation, and Closure Certifications for the Huntsville, Alabama, Weather Service Office and a report on the NWS Modernization status.

Contact Person for More Information: Nicholas Scheller, National Weather Service, Modernization Staff, 1325 East-West Highway, SSMC2, Silver Spring, Maryland 20910. Telephone: (301) 713–0454.

Dated: November 17, 1998.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 98–31225 Filed 11–20–98; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents cover a wide variety of technical arts including: A device to eliminate the "dead-zone" in digital phase detectors, and a method and system for forming images by back projection.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive, or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Method and System for Forming Image by Backprojection.

Inventor: John W. McCorkle.
Patent Number: 5,805,098.
Issued Date: Sep. 8, 1998.

Title: Fast-Locking Low-Noise Phase-Locked Loop.
Inventor: John W. McCorkle.
Patent Number: 5,821,817.
Issued Date: Oct. 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Norma Cammarata, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, 2800 Powder Mill Road, Adelphi, Maryland 20783–1197, tel: (301) 394–2952; fax: (301) 394–5818.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–31197 Filed 11–20–98; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patents for Non-Exclusive, Exclusive, or Partially-Exclusive Licensing

AGENCY: U.S. Army Research Laboratory, Adelphi, Maryland.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of the following U.S. patents for non-exclusive, partially exclusive or exclusive licensing. All of the listed patents have been assigned to the United States of America as represented by the Secretary of the Army, Washington, D.C.

These patents covers a wide variety of technical arts including: A range correction module for spin stabilized projectiles, a response compensation circuit, a method and apparatus for fabricating high density monolithic metal and alloy, billets, and a hand-held probe for real-time analysis of trace pollutants in the atmosphere and on surfaces.

Under the authority of Section 11(a)(2) of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502) and Section 207 of Title 35, United States Code, the Department of the Army as represented by the U.S. Army Research Laboratory wish to license the U.S. patents listed below in a non-exclusive, exclusive or partially exclusive manner to any party interested in manufacturing, using, and/or selling devices or processes covered by these patents.

Title: Range Correction Module for a Spin Stabilized Projectile.
Inventors: Michael S.L. Hollis and Fred J. Brandon.
Patent Number: 5,816,531.
Issued Date: Oct 6, 1998.

Title: Transduce Response Compensator.
Inventors: Richard B. Loucks and Larry G. Ferguson.
Patent Number: 5,823,043.
Issued Date: Oct 20, 1998.

Title: Hot Explosive Consolidation of Refractor Metal and Alloys.
Inventor: Laszlo J. Kecskes.
Patent Number: 5,826,160.
Issued Date: Oct 20, 1998.

Title: Hand-Held Probe for Real-Time Analysis of Trace Pollutants in Atmosphere and on Surfaces.
Inventors: Robert J. Lieb, Richard B. Murray, Robert L. Pastel and Rosario C. Sausa.
Patent Number: 5,826,214.
Issued Date: Oct 20, 1998.

Title: Drag Control Module for Range Correction of a Spin Stabil.
Inventors: Fred J. Brandon and Michael S.L. Hollis.
Patent Number: 5,826,821.
Issued Date: Oct 27, 1998.

FOR FURTHER INFORMATION CONTACT: Michael Rausa, Technology Transfer Office, AMSRL–CS–TT, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5069, tel: (410) 278–5028; fax: (410) 278–5820.

SUPPLEMENTARY INFORMATION: None.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 98–31196 Filed 11–20–98; 8:45 am]

BILLING CODE 3710–08–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 22, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 17, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals or households.

Reporting and Recordkeeping Burden: Responses: 9,848,645; Burden Hours: 6,589,649.

Abstract: Collects identifying and financial information from students applying for Federal student aid for postsecondary education. Used to calculate Expected Family Contribution and determine eligibility for grants and loans, under Title IV of the Higher Education Act (HEA).

[FR Doc. 98–31186 Filed 11–20–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 98–83–NG]

Rumford Power Associates Limited Partnership; Order Granting Long-Term Authorization To Export Natural Gas to Canada for Subsequent Re-Import

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it issued DOE/FE Order No. 1434 on November 9, 1998, granting Rumford Power Associates Limited Partnership (RPA) authorization to export to Canada for re-import to the United States up to 46,000 Mcf of natural gas per day. RPA intends to purchase this gas from Aquila Energy Marketing Corporation. The exported and imported gas would be used as fuel to operate RPA's new 265 megawatt cogeneration facility in Rumford, Maine. The project is expected to begin construction in November 1998. Gas for testing purposes will be required in March 2000 with commercial operation targeted for July 2000. Volumes of gas not used at the cogeneration facility would be sold by RPA to customers in the United States.

The authorized quantity would be exported and imported on an interruptible basis for a testing period of five months, and thereafter on a firm basis for eight years commencing on commercial operation of the cogeneration plant. This gas would be exported from the United States at St. Clair, Michigan/St. Clair, Ontario, and equivalent volumes would be re-imported into the United States at Pittsburg, New Hampshire/East Hereford, Quebec. RPA will take delivery of the gas in Canada at Dawn, Ontario. The source of this gas would be Canada and the United States. Gas not needed for the electric generating facility that would be sold by RPA to third parties may be imported at alternative border points.

This order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0334, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., November 12, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–31256 Filed 11–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents).

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–411, 412, 417R, 759, 826, 860A, 861, 860B (formerly 867), and 900, "Electric Power Surveys"
2. Energy Information Administration, Office of Coal, Nuclear, Electric and Alternate Fuels, OMB No. 1905–0129, Revision of a Currently Approved Collection; Mandatory

A **Federal Register** notice, 63 FR 35582 dated June 30, 1998, described proposed modifications to specific forms required by the rapidly changing electric power industry. Based on comments received and EIA's further analysis of the information that should be collected on electric power, EIA has made some further modifications that are included in the materials sent to OMB for approval. The modifications are summarized below.

TABLE 1.—CHANGES TO SURVEYS

Form No.	Proposed change(s) in FEDERAL REGISTER notice (63 FR 35582 dated June 30, 1998)	Proposed changes to surveys in package submitted to OMB
Form EIA–411, "Coordinated Bulk Power Supply Program".	Propose changing planning projections period (Items 1, 2, and 4) from 10 years to 5 years. The form and instructions will be modified to show these changes.	Change projected period (Items 1, 2, 3.4, 4, 5 and 6) from 10 years to 5 years. See subsequent table regarding changes to confidentiality provisions.
Form EIA–412, "Annual Report of Public Electric Utilities".	Propose changing the reporting threshold from 120,000 Mwh to 150,000 Mwh.	Same changes as in 6/30 *FR* notice. See subsequent table regarding changes to confidentiality provisions.
Form EIA–417R "Electric Power System Emergency Report".	None	No changes are being proposed at this time.
Form EIA–759, "Monthly Power Plant Report".	None	(1) Change the monthly reporting threshold from operating utilities with at least one plant with a nameplate capacity of 25 megawatts or more to 50 megawatts or more. (This will eliminate nearly 50 utilities from reporting monthly data and make it consistent with the reporting requirements on the Form EIA–900.) (b) Change the threshold for utilities reporting on the annual survey to utilities operating plants with less than 50 megawatts nameplate capacity instead of 25 megawatts. (c) See subsequent table below regarding changes to confidentiality provisions.
Form EIA–826, "Monthly Electric Utility Sales and Revenue Report, with State Distributions".	Propose adding two new data tables: (1) the distribution company will be asked to provide data about the monthly bill if they are billing the consumer for another energy service provider; and (2) the energy service provider will report data if billing is done by them or a third party other than the distribution company.	No additional changes are being proposed. See subsequent table regarding changes to confidentiality provisions.
Form EIA–860, "Annual Electric Generator Report".	Two changes are proposed: (1) The survey form designation and name will be altered to Form EIA–860A, "Annual Electric Generator Report—Utility," and (2) the planning projection period (Schedule II and Schedule III) will be changed from 10 years to 5 years.	No additional changes are proposed. See subsequent table regarding changes to confidentiality provisions.
Form EIA–861, "Annual Electric Utility Report".	Three changes are proposed: (1) Item 5 on schedule II indicating new plant intention(s) will be deleted; (2) Schedule IV will require energy service providers to report the total dollars paid by the consumer(s) whether or not the energy service provider issues the bill; and (3) the Demand Side Management (Schedule V) threshold will be raised from 120,000 Mwh to 150,000 Mwh.	Changes included in package submitted to OMB—Items (1) and (3) from the 6/30 *FR* notice are included; Item 2 was not included. Also, Schedule V, Part C, Demand Side Management, activities eliminated tbe projected annual cost.
Form EIA–867, "Annual Nonutility Power Producer Report".	(1) The form name and number will be changed to, Form EIA–860–B, "Annual Electric Generator Report—Nonutility."; (2) Item 3(a) estimated useful thermal output and 3(b) thermal output used will be added to Schedule IVB. The form and instructions will be modified to show these changes.	No additional changes are proposed. See subsequent table regarding changes to confidentiality provisions.
Form EIA–900, "Monthly Nonutility Sales for Resale Report".	Six changes are proposed: (1) The survey name will be changed to "Monthly Nonutility Power Report;" three new data elements on (2) fuel type, (3) gross generation (kWh), and (4) fossil fuel consumption will be added; and (5) sales for resale and (6) sales to other end users will be deleted.	The six changes proposed in the 6/30 *FR* notice are included. In addition, (1) end-of-month stocks of coal and petroleum for each facility will be added, and (2) the respondent will have a choice of reporting gross generation or net generation and will specify which is reported. See subsequent table regarding changes to confidentiality provisions.

Another **Federal Register** notice (63 FR 38620 dated July 17, 1998) was issued regarding EIA procedures of confidentiality treatment given to electric power data collected and disseminated by the EIA through the above-mentioned data surveys. Form EIA–767 is included in this table because it is used by EIA to collect electric power data. Form EIA–767 is jointly sponsored by EIA and the Environmental Protection Agency and will be submitted to OMB separately.

TABLE 2.—CONFIDENTIAL DATA ELEMENTS

Data elements	Forms affected—FR Notice (63 FR 38620 dated July 17, 1998)	Clearance package submitted to OMB
Future—generating capacity:		
1—retirement dates	*EIA–411* generator(s) planning data for: (a) existing (changes to); (b) retirement date(s); (c) new generators (all information).	Same proposed confidential elements as the 7/17/ *FR* notice except added projected fuel consumption for Form EIA–767.

TABLE 2.—CONFIDENTIAL DATA ELEMENTS—Continued

Data elements	Forms affected—FR Notice (63 FR 38620 dated July 17, 1998)	Clearance package submitted to OMB
2—changes to existing units.	*EIA–767* planning data for: (a) new plants/equip.; (b) equipment updates; (c) retirement date(s); (d) projected fuel consumption.	
3—planned generating unit data.	*EIA–860* planning data for: (a) generator updates; (b) retirement date(s); (c) new generator(s).	
4—projected fuel consumption.	*EIA–867* planning data for equipment.	
Heat rates	*EIA–411* (a) heat rate data	Same changes as in *FR* notice
	EIA–767 (a) boiler efficiency	
	EIA–860 (a) heat rate data	
1—Sales for resale/Contracts with purchasers.	*EIA–412* name(s), quantities, demand charges, energy/other charges, revenue/settlements.	The elements listed in the 7/17 *FR* notice will not be treated as confidential.
	EIA–867 names, maximum contract amount, amount delivered.	
Wholesale purchases/contracts with sellers.	*EIA–412* name(s), quantities, demand charges, purchased/exchanged, energy/other charges, total costs.	The elements listed in the 7/17 *FR* notice will not be treated as confidential.
Fuel inventory—stocks	*EIA–759*	An element on fuel inventory—stocks has been added to Form EIA–900 and that element will be confidential.
	EIA–900	
Financial data—environmental equipment.	EIA–767	These data elements will not be treated as confidential by EIA.
Sales to other end user(s) name(s) and amount.	*EIA–867* name(s), maximum contract, amount delivered	Same as in 7/17 *FR* notice.

3. The Electric Power Surveys collect information on electric power capacity, generation, fuel consumption, fuel receipts, fuel stocks, prices, electric rates, construction costs, and operating income and revenue. Form EIA–417R collects data on electric power disturbances. Respondents include electric utilities, nonutility electric power producers, electric reliability council members, and independent electric power system operators. Electric power data collected are used by the Department of Energy for analysis and forecasting. Data are published in various EIA reports.

4. Business or other for-profit; Federal Government; State, Local or Tribal Government

5. 81,505 hours (8,573 respondents x 2.21 responses per year x 4.3 hours).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., November 17, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–31255 Filed 11–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 426–1103, FAX (202) 426–1081, or e-mail at hmiller@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–767, "Steam-Electric Plant Operation and Design Report"
2. Energy Information Administration and Environmental Protection Agency (jointly sponsored); OMB No. 1905–0197 and 2080–0018, respectively; Revision of a Currently Approved Collection; Mandatory

A **Federal Register** notice was published on July 17, 1998, stating that planning data for: (a) new plants/equipment; (b) equipment updates; and (c) retirement date(s); along with heat rates (boiler efficiency) would be given confidentiality treatment according to EIA's procedures. The clearance package submitted to OMB has the same proposed confidential elements with the addition of projected fuel consumption. The July 17, 1998, proposal to treat financial data on environmental equipment as confidential has been changed and that data will be treated as non-confidential.

3. Form EIA–767 is a consolidation of data requirements of EPA and DOE. Data are collected annually from steam-electric power plants of 10 (MW) or more. Data concern air emission and water quality and are used for economic, regulatory, and environmental analysis. Power plants between 10 MW and 100 MW and nuclear plants complete only certain pages of the form.

4. Business or other for-profit; Federal Government; State, Local or Tribal Government.

5. 51,952 hours (848 respondents x 1 response per year x 61.26 hours per response).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., November 17, 1998.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 98–31257 Filed 11–20–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–23–001]

ANR Storage Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, ANR Storage Company (ANRS) tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 2, 1998.

ANRS states the attached sheets are being filed in compliance with the Commission's Order issued on October 29, 1998, in the above captioned.

ANRS states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31132 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–15–001]

Black Marlin Pipeline Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Black Marlin Pipeline company (Black Marlin) tendered for filing as part of its FERC Gas Tqariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 2, 1998:

Substitute Fourth Revised Sheet No. 201A
Substitute Original Sheet No. 211B
Substitute Original Sheet No. 211C

Black Marlin states that on October 1, 1998 revised tariff sheets were submitted to implement the provisions of Order Nos. 587–G and 587–H regarding the intraday nomination and scheduling provisions promulgated by the Gas Industry Standards Board, including the bumping of scheduled interruptible service by firm shippers. On October 30, 1998 the Commission issued a Letter Order (October 30 Order) accepting the tariff sheets effective November 2, 1998 subject to Black Marlin filing, with 15 days of the date of the order, revisions consistent with certain conditions discussed in the October 30 Order. Black marling states it is making the instant filing in compliance with the October 30, Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31128 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–27–001]

Blue Lake Gas Storage Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on the attached Appendix A to the filing, to be effective November 2, 1998.

Blue Lake states the attached tariff sheets are being filed in compliance with the Commission's Order issued on October 29, 1998, in the above captioned docket.

Blue Lake states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31133 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4582–000]

CU Power Canada Limited; Notice of Issuance of Order

November 17, 1998.

CU Power Canada Limited (CU Power), an affiliate of Alberta Power Limited, filed an application for Commission authorization to engage in wholesale power sales in the United States at market-based rates, and for certain waivers and authorizations. In particular, CU Power requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CU Power. On November 12, 1998, the Commission issues an Order Accepting For Filing Market-Based Rate Schedule (Order), in the above-docketed proceeding.

The Commission's November 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CU Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, CU Power is hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CU Power, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CU Power's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 14, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–31116 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–45–001]

Discovery Gas Transmission LLC; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Discovery Gas Transmission LLC (Discovery) tendered for filing Sheet Nos. 107, 196, and 224A to its FERC Gas Tariff, Original Volume No. 1. Discovery states that the purpose of this filing is to comply with the Commission's order issued October 29, 1998 in Docket No. RP99–45–000. Discovery requests waiver of any Commission regulations necessary to allow these tariff revisions to become effective November 2, 1998.

Discovery states that the instant filing reflects changes to (1) state procedures for notification of shippers that are bumped as a result of intra-day nominations, (2) provide for a waiver of penalties for bumped parties resulting from intra-day nominations, (3) eliminate Gas Industry Standards Board (GISB) standard 1.2.7 from Discovery's tariff, and (4) incorporate by reference GISB Standard 1.3.2.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31136 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–59–001]

East Tennessee Natural Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised, Volume 1, the revised tariff sheets identified in Appendix A to the filing, to become effective November 2, 1998.

East Tennessee states that the revised sheets are being filed in compliance with the Commission's Letter Order issued October 30, 1998 in the above-referenced docket. East Tennessee further states that the tariff sheets revise Midwestern's tariff provisions regarding intra-day nomination rights to provide (1) incorporation of Version 1.3 of GISB Standard 1.3.2. (i) through (iv) verbatim; (2) removal of the optional bumping notice by electronic mail; and (3) reference to the GISB Standards adopted by Order No. 587–H as Version 1.3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31140 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–146–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective January 1, 1999:

Fourth Revised Sheet No. 261
Original Sheet No. 261A

Equitrans states that the purpose of this filing is to comply with the January 21, 1998, Stipulation and Agreement Concerning Gas Research Institute (GRI) Funding which the Commission approved on April 29, 1998 in Docket No. RP97–149–003, et at. (83 FERC ¶ 61,093). Specifically, a voluntary contribution mechanism provision has been added to the Equitrans' Section 28 of its General Terms and Conditions to allow customers to make voluntary contributions to GRI in such amounts and for such GRI projects as specify by the customers. Equitrans proposal is consistent with the Stipulation and Agreement, that the voluntary contribution mechanism is not ■ pipeline rate, rate provision, or term or condition of service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31146 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

United States of America Federal Energy Regulatory Commission

[Docket No. TM99–1–24–000]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to become effective January 1, 1999:

Eleventh Revised Sheet No. 5
Twelfth Revised Sheet No. 6
Tenth Revised Sheet No. ■

Equitrans states that the purpose of this filing is to comply with the "Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five Year Plan" issued on September 29, 1998 in Docket NO., RP98–235–000. The Commission authorized pipeline companies to collect the Gas Research institute (GRI) funding unit from their customers. The 1999 GRI unit surcharge approved by the Commission is (1) $0.2300 per dekatherm (Dth) per month demand surcharge for high load factor customers, (2) $0.1420 per Dth month demand surcharge for low load factor customers and (3) $0.0075 per Dth commodity/usage surcharge.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31148 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–14–001]

Florida Gas Transmission Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of February 1, 1999:

Substitute Seventh Revised Sheet No. 102B
Second Revised Sheet No. 102C
Substitute Sixth Revised Sheet No. 117A

FGT states that on October 1, 1998 revised tariff sheets ere submitted to implement the provisions of Order Nos. 587–G and 587–H regarding the intraday nomination and scheduling provisions promulgated by the Gas Industry Standards Board, including the bumping of scheduled interruptible service by firm shippers. FGT further states that on October 1, 1998, FGT filed concurrently, in Docket No. RP99–29–000, a Request for Waiver proposing that these changes become effective February 1, 1999 rather than November 2, 1998, the effective date established in Order No. 587–H.

On October 30, 1998 the Commission issued a Letter Order (October 30 Order) granting FGT's request to implement the changes effective February 1, 1999 and accepting the tariff sheets subject to FGT filing, within15 days of the date of the order, revisions consistent with certain conditions discussed in the October 30 Order. Errata to the October 30 Order correcting the listing of accepted tariff sheets was issued November 3, 1998. FGT states it is making the instant filing in compliance with the October 30 Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31127 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–3511–000, ER98–3562–000, ER98–3563–000, ER98–3564–000, ER98–3565–000, and ER98–3566–000]

FPL Energy Maine Hydro, Inc.; FPL Energy Mason, LLC; FPL Energy Wyman, LLC; FPL Energy Wyman IV, LLC; FPL Energy AVEC, LLC; FPL Energy Power Marketing, Inc; Notice of Issuance of Order

November 17, 1998.

FPL Energy Maine Hydro, Inc., FPL Energy Mason, LLC, FPL Energy Wyman, LLC, FPL Energy Wyman IV, LLC, FPL Energy AVEC, LLC, (collectively Affiliates), and FPL Energy Power Marketing, Inc. (collectively with Affiliates, Applicants) [1] filed proposed rate schedules seeking approval to make sales of power at market-based rates, and for certain waivers and authorizations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Applicants. On November 12, 1998, the Commission issued an Order Accepting For Filing Proposed Market-Based Rates (Order), in the above-docketed proceedings.

The Commission's November 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (E), (F), and (H):

(E) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 AND 385.214.

(F) Absent a request to be heard within the period set forth in Ordering Paragraph (E) above, Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Applicants's issuances of securities or assumptions of liabilities. * * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 14, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–31115 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–148–000]

Garden Banks Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Garden Banks Gas Pipeline, L.L.C. (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 10, 1998.

GBGP states that the purpose of this filing is to update GBGP's Original Volume No. 1, FERC Gas Tariff to reflect the substitution of an Internet Web Site and Internet Web Shipper for the electronic bulletin board previously used. GBGP also proposed other minor changes to update these sheets by (1) changing date references (2) clarifying whom the signing party is and the associated title and (3) correcting or deleting prior company names that are no longer in use.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31147 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–5–001]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 12, 1998, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 12, 1998.

GBGP states that the purpose of this filing is to comply with the Letter Order dated October 29, 1998 in Docket No. RP99–5–000. Specifically, GBGP was directed to file revised tariff sheets that incorporate (1) bumping notices and (2) waiving of daily non-critical penalties for interruptible shippers that have been bumped. GBGP does not have any daily non-critical penalties, therefore a waiver is not necessary. The tariff sheets filed herein reflect the bumping notice as required by the Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

[1] Applicants are wholly-owned subsidiaries of FPL Energy Maine, Inc. and are affiliated with Florida Power & Light Company. FPL Energy Maine was formed on January 5, 1998 to acquire certain of the generating assets being sold by Central Maine Power Company, the Union Water-Power Company, Cumberland Securities Corporation, and Central Securities Corporation as part of a divestiture plan.

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protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31124 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–431–001]

Great Lakes Transmission Limited Partnership; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective November 2, 1998:

Substitute Fourth Revised Sheet No. 10A
Substitute Fourth Revised Sheet No. 27
Substitute Fifth Revised Sheet No. 50C

Great Lakes states that the tariff sheets are being filed to comply with the Letter Order issued by the Commission on October 29, 1998, in the above-named docket (Order). In the Order Great Lakes was directed to revise its tariff to: (1) provide bumping notification by telephone or facsimile, and to permit shippers to elect the method by which they wish to receive such notice; (2) include the deadlines by which nominations must leave the control of shippers; and (3) include sections (v) and (vi) of GISB standard 1.3.2, either verbatim or by reference. Great Lakes states that the above named tariff sheets comply with all three directives.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31121 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–66–001]

High Island Offshore System; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Second Revised Sheet No. 57A
Original Sheet No. 57B
Original Sheet No. 57C
Fourth Revised Sheet No. 58
Seven Revised Sheet No. 110
Sub Third Revised Sheet No. 110A

HIOS asserts that the purpose of this filing is to comply with the Commission's July 15, 1998, letter order in the captioned proceeding regarding Order No. 587–H. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31142 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–421–001]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 13, 1998, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets proposed to become effective November 14, 1998.

First Revised Sheet No. 60D
Second Revised Sheet No. 64B
Sixth Revised Sheet No. 120

Iroquois states that these sheets were submitted in compliance with the Commission's letter order issued on October 29, 1998 in Docket No. RP98–421–000. The tariff sheets included herewith reflect changes required by the Commission.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31119 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–62–001]

Midcoast Interstate Transmission, Inc.; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Midcoast Interstate Transmission,

Inc. (Midcoast) tendered for filing as part of its FERC Gas Tariff, Second Revised volume No. 1, the following tariff sheets, to become effective November 2, 1998:

Sub. Fourth Revised Sheet No. 79
Sub. Second Revised Sheet No. 79A
Sub. Second Revised Sheet No. 79B
Original Sheet No. 79C
Sub. Fourth Revised Sheet No. 80
Third Revised Sheet No. 84
Third Revised Sheet No. 154

Midcoast states that the purpose of this filing is to comply with the Commission's October 29, 1998 Order in this docket. Midcoast further states that the above referenced tariff sheets comply fully with that Order.

Midcoast requested that the Commission grant such waivers as it deems necessary to accept this filing and make it effective on November 2, 1998.

Midcoast states that copies of the filing were served on each of its firm customers, interruptible customers and all interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31141 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–53–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets identified in Appendix A to the filing, to become effective November 2, 1998.

Midwestern states that the revised sheets are being filed in compliance with the Commission's Letter Order issued October 29, 1998 in the above-referenced docket. Midwestern further states that the tariff sheets revise Midwestern's tariff provisions regarding intra-day nomination rights to provide (1) allowance for waiver of daily penalties for bumped shippers; (2) incorporation of Version 1.3 of GISB Standard 1.3.2 (i) through (iv) verbatim; (3) removal of the optional bumping notice by electronic mail; and (4) reference to the GISB Standards adopted by Order No. 587–H as Version 1.3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31137 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–3–001]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 12, 1998, Mississippi Canyon Gas Pipeline, LLC (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 12, 1998.

Mississippi Canyon states that the purpose of this filing is to comply with the Letter Order dated October 29, 1998 in Docket No. RP99–3–000. Specifically, Mississippi Canyon was directed to file revised tariff sheets that incorporate (1) bumping notices and (2) waiving of daily non-critical penalties for interruptible shippers that have been bumped. Mississippi Canyon does not have any daily non-critical penalties, therefore a waiver is not necessary. The tariff sheets filed herein reflect the bumping notice as required by the Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31122 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–145–000]

Mississippi Canyon Gas Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 10, 1998, Mississippi Canyon Gas Pipeline, L.L.C. (Mississippi Canyon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective December 10, 1998.

Mississippi Canyon states that the purposes of this filing is to update Mississippi Canyon's Original Volume No. 1, FERC Gas Tariff to reflect the substitution of an Internet Web Site and Internet Web Shipper for the electronic bulletin board previously used. Mississippi Canyon also proposed other minor changes to update these sheets by (1) changing date references (2) clarifying whom the signing party is and the associated title and (3) correcting or deleting prior company names that are no longer in use.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31145 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–69–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with a proposed effective date of November 1, 1998:

National Fuel states that this filing is being made in compliance with the Commission's Letter Order issued on October 28, 1998, in the above-referenced docket [85 FERC 61,126 (1998)]. National Fuel further states that the revised tariff language provides that National Fuel's ability to discount is limited to rates between the applicable maximum and minimum rates for the service being provided.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31143 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–26–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 13, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Thirteenth Revised Sheet No. 25, to be effective January 1, 1999.

Natural states that the purpose of this filing is to implement the Gas Research Institute (GRI) Surcharge in accordance with Section 39 of the General Terms and Conditions of Natural's Tariff. The GRI surcharges were approved by the Federal Energy Regulatory Commission's (Commission) Order issued September 29, 1998, at Docket No. RP98–235–000, to be effective January 1, 1999.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheet submitted to become effective January 1, 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31149 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–4–001]

Nautilus Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 13, 1998, Nautilus Pipeline Company, LLC (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective November 2, 1998.

Nautilus states that the purpose of this filing is to comply with the Letter Order dated October 29, 1998 in Docket No. RP99–4–000. Specifically, Nautilus was directed to file revised tariff sheets that incorporate (1) bumping notices and (2) the waiving of daily non-critical penalties for interruptible shippers that have been bumped. The tariff sheets filed herein reflect the bumping notice as required by the Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31123 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–143–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 17, 1998.

Take notice that on November 12, 1998, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in

Appendix A to the filing, proposed to become effective December 12, 1998.

Nautilus states that the purpose of this filing is to update Nautilus' Original Volume No. 1, FERC Gas Tariff to reflect the substitution of an Internet Web Site and Internet Web Shipper for the electronic bulletin board previously used. Nautilus also proposed other minor changes to update these sheets by (1) changing date references; and (2) clarifying whom the signing party is and the associated title.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31144 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–36–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Northern Natural Gas Company (Northern), tendered for filing tariff sheets restoring reference to the $0.0400 per MMBtu Carlton surcharge in compliance with FERC Order dated October 30, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31135 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–37–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Northern Natural Gas Company (Northern), filed tariff sheets to eliminate the Exit Fee language in Section 25 in compliance with FERC Order dated October 29, 1998.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.2121 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31134 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–406–001]

Overthrust Pipeline Company; Notice of Motion To Withdraw Tariff Filing

November 17, 1998.

Take notice that on November 6, 1998, Overthrust Pipeline Company filed a motion to withdraw its September 17, 1998 FERC Gas Tariff filing in the captioned docket.

Overthrust had filed to revise tariff language applicable to the sale of firm transportation capacity to be consistent with that approved by the Commission for Questar Pipeline Company, the operating partner of Overthrust. On October 16, 1998, the Commission accepted the filed tariff sheets and suspended them for five months and ordered a technical conference.

Overthrust, in its motion, states that any efficiencies Overthrust expected to obtain would be lost by the five month suspension, and therefore has moved to withdraw its September 17, 1998 filing.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31118 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–19–002]

Panhandle Eastern PipeLine Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for

filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Sub Fourth Revised Sheet No. 239
Sub Second Revised Sheet No. 239A
Sub Original Sheet No. 239B
Sub Original Sheet No. 239C
Sub Fourth Revised Sheet No. 265
Sub Fifth Revised Sheet No. 339

Panhandle states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in Docket No. RP99–19–000 & 001. The revised tariff sheets included herewith (1) revise Sections 8.2(a), 8.2(b) and 12. 11(h) of the General Terms and Conditions to clarify that the Evening Nomination Cycle is one of three intra-day nominations and (2) incorporate by reference the Gas Industry Standards Board (GISB) Standard 1.3.2(v) and (vi), Version 1.3 in Section 27.6 of the General Terms and Conditions.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31130 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–4448–000 and ER98–4608–000]

PP&L, Inc. PP&L EnergyPlus Company; Notice of Amendment of Filing

November 6, 1998.

Take notice that on November 2, 1998, PP&L, Inc. (PP&L) and PP&L EnergyPlus Company (EnergyPlus) filed an amended code of conduct in the above-referenced dockets.

PP&L and EnergyPlus state that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in these proceedings.

Any person desiring to be heard or to protest such filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before November 23, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31111 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–8–001]

Sabine Pipe Line Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Sabine Pipe Line Company (Sabine) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1998:

Second Revised Sheet No. 204,
Substitute Original Sheet No. 226C
Original Sheet No. 226D

Sabine states that the purpose of this filing is to comply with the Commission's order issued October 29, 1998, in Docket No. RP99–8–000. Sabine requests waiver of any Commission regulations necessary to allow these tariff revisions to become effective November 2, 1998.

Sabine states that the instant filing reflects changes to (1) state procedures for notification of shippers that are bumped as a result of intra-day nominations, (2) provide for a waiver of penalties for bumped parties resulting from intra-day nominations, and (3) eliminate Gas Industry Standards Board (GISB) standard 1.2.7 from Sabine's tariff.

Sabine states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31125 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER98–4115–000; ER98–4116–000; and ER98–4118–000]

Southern Energy Canal, L.L.C.; Southern Energy Kendall, L.L.C.; Southern Energy New England, L.L.C.; Notice of Issuance of Order

November 17, 1998.

Southern Energy Canal, L.L.C., Southern Energy Kendall, L.L.C., and Southern Energy New England, L.L.C. (jointly, Southern Generators) filed applications to engage in wholesale power sales at market-based rates, and for certain waivers and authorizations. In particular, Southern Generators requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by Southern Generators. On November 12, 1998, the Commission issued an Order Approving Sales of Jurisdictional Facilities Conditionally Accepting For Filing Market-Based Rates And Supplemental Filings As Modified (Order), in the above-docketed proceedings.

The Commission's November 12, 1998 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (L), (M), and (O):

(L) Within 30 days of the date of this order, any person desiring to be heard

or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Southern Generators should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(M) Absent a request to be heard within the period set forth in Ordering Paragraph (L) above, Southern Generators are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Southern Generators, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(O) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Southern Generators' issuances of securities or assumptions of liabilities.

* * *

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is December 14, 1998.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C.

David P. Boergers,

Secretary.

[FR Doc 98–31114 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–13–001]

Steuben Gas Storage Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Steuben Gas Storage Company (Steuben) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 2, 1998.

Steuben states that attached tariff sheets are being filed in compliance with the Commission's Order issued on October 29, 1998, in the above captioned docket.

Steuben states that copies of the filing were served upon the company's Jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31126 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–67–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 17, 1998.

Take notice that on November 10, 1998, Tennessee Gas Pipeline Company (Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP99–67–000, a request pursuant to Section 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new delivery point for Chevron U.S.A., Inc. (Chevron), under Tennessee's blanket certificate issued in docket No. CP82–413–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that Chevron requested that Tennessee install a delivery point located in Federal waters at South Timbalier Area, Block 37, Platform A to provide service to Chevron's platform for emergency fuel use. Tennessee further states that the estimated proposed volumes delivered through the new delivery point would be approximately 1,000 dekatherms per day. Tennessee also states that Chevron proposes to obtain service pursuant to either an interruptible service agreement under Tennessee's Rate Schedule IT or through capacity release from existing shippers. Tennessee states that the estimated cost of the facility is $41,300 for which Chevron would reimburse to Tennessee.

Specifically, Tennessee proposes to fabricate, install, own, operate and maintain a 2-inch hot tap assembly and would install, own, operate and maintain electronic gas measurement equipment. Tennessee states that it would utilize existing communication and solar equipment in connection with the project. It is further stated that Chevron would install, own, operate and maintain approximately 50 feet of 2-inch diameter interconnecting piping and would install, own and maintain the measurement facilities. Tennessee further states that it would operate the measurement facilities. It is also stated that the installation or the interconnect piping and measurement facilities would be inspected by Tennessee to ensure its compliance with Tennessee's specifications.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31113 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–58–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 12, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for as part of its filing FERC Gas Tariff, Fifth Revised

Volume 1, the revised tariff sheets identified in Appendix A to the filing, to become effective November 2, 1998.

Tennessee states that the revised sheets are being filed in compliance with the Commission's Order issued October 28, 1998 in the above-referenced docket. Tennessee Gas Pipeline Company, 85 FERC ¶ 61,112 (1998). Tennessee further states that the tariff sheets revise Tennessee's tariff provisions regarding intra-day nomination rights to provide: (1) incorporation of Version 1.3 of GISB Standard 1.3.2 (i) through (iv) verbatim; (2) addition of clarifying language regarding adjustment in gas flow; (3) allowance for an Intra-day 1 Nomination Change from a firm storage to have priority over scheduled and flowing volumes with a priority below firm primary; (4) removal of the optional bumping notice by electronic mail; and (5) reference to the GISB Standards adopted by Order No. 587–H (including GISB Standard 1.3.22) as Version 1.3.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31139 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–20–002]

Trunkline Gas Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective November 2, 1998:

Sub Eighth Revised Sheet No. 167
2nd Sub Second Revised Sheet No. 167A
Sub First Revised Sheet No. 167B
2nd Sub Original Revised Sheet No. 167C
Sub Second Revised Sheet No. 177
Sub Fourth Revised Sheet No. 242A

Trunkline states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in Docket No. RP99–20–000 & 001. The revised tariff sheets included herewith (1) revised Sections 3.1(B), 3.1(C) and 5.1(A) of the General Terms and Conditions to clarify that the Evening Nomination Cycle is one of three intra-day nominations and (2) incorporate by reference the Gas Industry Standards Board (GISB) Standard 1.3.2(v) and (vi), Version 1.3 in Section 28.6 of the General Terms and Conditions.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31131 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–18–001]

Trunkline LNG Company; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheets to be effective November 2, 1998:

Sub First Revised Sheet No. 64A
Sub First Revised Sheet No. 64B
Sub Original Sheet No. 64C
Sub Second Revised Sheet No. 115

TLNG states that the purpose of this filing is to comply with the Commission's Letter Order issued on October 29, 1998 in Docket No. RP99–18–000. The revised tariff sheets included herewith modify Sections 3.3(B) and 3.3(C) of the General Terms and Conditions to clarify that the Evening Nomination Cycle is one of three intra-day nominations and that bumped interruptible shippers will be notified of such bump through the electronic bulletin board, the Web Site and by telephone and facsimile transmission 1.3.2 (v) and (vi), Version 1.3 has been incorporated by reference in Section 21.7 of the General Terms and Conditions. TLNG'S tariff has no provision for daily penalties; therefore, there are no daily penalties to be waived for interruptible shippers whose scheduled volumes are bumped by a firm intra-day nomination.

TLNG states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31129 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–428–002]

Tuscarora Gas Transmission Company; Notice of Tariff Filing

November 17, 1998.

Take notice that on November 13, 1998, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets effective November 2, 1998:

Sub First Revised Sheet No. 42B
Sub Original Sheet No. 42C
Sub Original Sheet No. 42D

Original Sheet No. 42E
Original Sheet No. 42F

Tuscarora states that the purpose of this filing is to comply with Letter Order Pursuant to § 375.307(b)(1) and (b)(3) issued on October 30, 1998. Specifically, Tuscarora has revised Section 4 of the General Terms and Conditions of its tariff to include the verbatim text of GISB Standard 1.3.2(i) through (vi) and to provide notice of bumping in the same manner as currently provided for OFO notices. In addition, Section 4 was revised to provide advance notice of bumping to interruptible shippers, to notify the interruptible shippers whether penalties will apply on the day volumes are reduced, and to waive non-critical penalties for bumped shippers on the day of the bump.

Tuscarora states that copies of this filing were mailed to customers of Tuscarora, interested state regulatory agencies and all parties on the service list in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98–31120 Filed 11–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–57–001]

U–T Offshore System; Notice of Compliance Filing

November 17, 1998.

Take notice that on November 13, 1998, U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 2, 1998:

Second Revised Sheet No. 46A
Original Sheet No. 46B
Original Sheet No. 46C
Sub Ninth Revised Sheet No. 73
Sub Fourth Revised Sheet No. 73A
Sub Third Revised Sheet No. 73B

U–TOS asserts that the purpose of this filing is to compiy with the Commission's July 15, 1998, letter order in the captioned proceeding regarding Order No. 587–G. Pipelines must comply with the adoption of Version 1.2 of the GISB standards (284.10(b)) and the standards regarding the posting of information on websites and retention of electronic information (284.10(c)(3)(ii) through (v)).

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 98–31138 Filed 11–20–98; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–3–999, et al.]

MidAmerican Energy Company, et al.; Electric Rate and Corporate Regulation Filings

November 10, 1998.

Take notice that the following filings have been made with the Commission:

1. MidAmerican Energy Company

[Docket No. EL99–3–000]

Take notice that on November 3, 1998, MidAmerican Energy Company filed an Amendment to Petition for Enforcement and Declaratory Order in the above-captioned proceeding.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Storm Lake Power Partners I LLC, Storm Lake Power Partners II LLC, and Lake Benton Power Partners II LLC

[Docket No. EC99–8–000]

Take notice that on November 4, 1998, Storm Lake Power Partners I, LLC, Storm Lake Power Partners II LLC, and Lake Benton Power Partners II (Applicants), each of 13000 Jameson Road, Tehachapi, California 93561, submitted for filing an application for approval under Section 203 of the Federal Power Act of a corporate reorganization in which the Applicants' indirect parent Enron Development Corp. will transfer its interests in the Applicants to a new entity, Midwest Power Funding LLC and will then transfer its interest in Midwest Power Funding LLC to another new entity, Enron Wind Midwest LLC, which will be unduly owned by Enron Wind Development Corp. No determination has been made that the submittal constitutes a complete filing.

The Applicants are constructing wind power generation facilities in Iowa and Minnesota. The purpose of the reorganization is to permit the issuance of a consolidated debt offering for construction and term debt financing for the facilities. The reorganization will not change the ultimate ownership or control of the facilities.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.

[Docket No. EL99–9–000]

Take notice that on November 4, 1998, Old Dominion Electric Cooperative (Old Dominion) tendered for filing a complaint against PJM Interconnection, L.L.C., for modification of the PJM Open Access Tariff and Attendant PJM Market Structure Agreement and request for investigation of the cause of a persistent run-up in energy market prices within PJM since Locational Marginal Pricing (LMP) was implemented by it. Old Dominion requests that the Commission direct a modification of the PJM Open Access Tariff and the necessary associated agreement to grant the PJM Office of the Interconnection the authority that it has previously requested to recall Capacity Resources planned for bilateral sales outside the PJM control area—in order to serve PJM internal loads prior to scheduling external generation bid at market prices. In addition, Old Dominion requests that the Commission initiate an investigation pursuant to Section 206 of the Federal Power Act to determine the cause of a dramatic and persistent increase in Energy Market prices to consumers within the PJM control area since the LMP proposal of the PJM Companies, excluding PECO Energy, was implemented on April 1, 1998. Old Dominion maintains that such an investigation is necessary in the

absence of operation of a market power policing Market Monitoring Plan and implementing Market Monitoring Unit by PJM.

Copies of Old Dominion's complaint filing were served upon PJM Interconnection, L.L.C., and state regulatory authorities in Virginia, Delaware, Maryland, Pennsylvania and New Jersey.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint are also due on or before December 4, 1998.

4. Tenaska Power Services Company, Entergy Power marketing Corp., CoAgra Energy Services, Inc., e prime, inc., Energy Services, Inc., Colonial Energy, Inc., and Niagara Mohawk Energy Marketing, Inc.

[Docket Nos. ER94–389–017, ER95–1615–013, ER95–1751–012, ER95–1269–012, ER95–1021–013, ER97–1968–006, and ER96–2525–009]

Take notice that the following informational filings have been made with the Commission and are available for public inspection in the Commission's Office of Public Information:

On October 30, 1998, Tenaska Power Services Company filed certain information as required by a Commission order issued in Docket No. ER94–389–000.

On October 30, 1998, Entergy Power Marketing Corporation filed certain information as required by a Commission order issued in Docket No. ER95–1615–000.

On October 30, 1998, ConAgra Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER95–1751–000.

On October 30, 1998, e prime, inc. filed certain information as required by a Commission order issued in Docket No. ER95–1269–000.

On October 30, 1998, Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER95–1021–000.

On October 30, 1998, Colonial Energy, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–1968–000.

On October 30, 1998, Niagara Mohawk Energy Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER96–2525–000.

5. Southwest Power Pool Inc.

[Docket No. ER98–1163–003]

Take notice that on November 4, 1998, Southwest Power Pool Inc., tendered for filing its compliance filing in response to the Federal Energy Regulatory Commission's October 5, 1998, order in the captioned proceeding.

Copy of this filing is being served on all parties on the Commission's service list.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. CinCap V, LLC, Southern Energy Retail Trading and Marketing, Inc., Southern Energy Trading and Marketing Inc., Enron Energy Services, Inc., Constellation Power Source, Enron Power Marketing, Inc., Equitable Power Services Company, Tosco Power, Inc., Competitive Utility Services Corporation, Sithe Power Marketing Inc., North American Energy, Inc., Kamps Propane, Inc., Medical Area Total Energy Plant, Inc., Energy International Power Marketing Corporation, Automated Power Exchange, Inc., and CL Power Sales Six. L.L.C.

[Docket Nos. ER98–4055–001, ER98–1149–001, ER95–976–015, ER98–13–007, ER97–2261–007, ER94–24–027, ER94–1539–018, ER96–2635–007, ER97–1932–007, ER98–107–004, ER98–242–002, ER98–1148–001, ER98–1992–002, ER98–2059–002, ER98–1033–000, and ER96–2652–016]

Take notice that the following informational filings have been filed with the Commission and are available for public inspection and copying in the Commission's Office of Public Information:

On October 30, 1998, CinCap V, LLC filed certain information as required by a Commission order issued in Docket No. ER98–4055–000.

On October 30, 1998, Southern Energy Retail Trading and Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1149–000.

On October 30, 1998, Southern Energy Trading and Marketing Inc. filed certain information as required by a Commission order issued in Docket No. ER95–976–000.

On October 30, 1998, Enron Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–13–000.

On October 30, 1998, Constellation Power Source, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–2261–000.

On October 30, 1998, Enron Power Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER94–24–000.

On October 30, 1998, Equitable Power Services Company filed certain information as required by a Commission order issued in Docket No. ER94–1539–000.

On October 30, 1998, Tosco Power Inc. filed certain information as required by a Commission order issued in Docket No. ER96–2635–000.

On October 30, 1998, Competitive Utility Services Corporation filed certain information as required by a Commission order issued in Docket No. ER97–1932–000.

On October 30, 1998, Sithe Power Marketing Inc. filed certain information as required by a Commission order issued in Docket No. ER98–107–000.

On October 30, 1998, North American Energy, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–242–000.

On October 30, 1998, Kamps Propane, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1148–000.

On October 30, 1998, Medical Area Total Energy, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1992–000.

On October 30, 1998, Automated Power Exchange, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1033–000.

On October 30, 1998, CL Power Sales Six, L.L.C. filed certain information as required by a Commission order issued in Docket No. ER96–2652–000.

7. Boston Edison Company

[Docket Nos. ER99–35–000, EL99–7–000, and EL99–8–000]

Take notice that on October 22, 1998, Boston Edison Company (Boston Edison), tendered for filing Standstill Agreements with Braintree Electric Light Department and Reading Municipal Light Department in the above-captioned proceeding.

Boston Edison states that copies of this filing have been posted and served upon the customers involved in Docket No. ER98–35–000 and the Massachusetts Department of Telecommunications and Energy.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER99–275–000]

Take notice that on November 5, 1998, Commonwealth Electric company (Commonwealth) and Cambridge Electric Light Company (Cambridge), tendered for filing a corrected Service Agreement between Southern Company Energy Marketing, L.P., replacing the Service Agreement inadvertently filed

on October 22, 1998, in the above-referenced docket.

Comment date: November 25, 1998, in accordance with standard Paragraph E at the end of this notice.

9. NorAm Energy Services, Inc., CNG Power Services Corporation, El Paso Energy Marketing, CMS Marketing, Services and Company, Koch Energy Trading Company, CL Power Sales Two, L.L.C.

[Docket Nos. ER99–472–000, ER94–1554–018, ER95–428–016, ER96–2350–015, ER95–218–015, and ER95–892–029]

Take notice that the following informational filings have been filed with the Commission and are available for public inspection and coping in the Commission's Office of Public Information:

On October 30, 1998, NorAm Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–928–000.

On October 30, 1998, CNG Power Services Corporation filed certain information as required by a Commission order issued in Docket No. ER94–1554–000.

On October 30, 1998, El Paso Energy Marketing filed certain information as required by a Commission order issued in Docket No. ER95–428–000.

On October 30, 1998, CMS Marketing, Services and Trading Company filed certain information as required by a Commission order issued in Docket No. ER96–2350–000.

On October 30, 1998, Koch Energy Trading Company filed certain information as required by a Commission order issued in Docket No. ER95–218–000.

On October 30, 1998, CL Power Sales Two, L.L.C. filed certain information as required by a Commission order issued in Docket No. ER95–892–000.

10. Duke Power, Williams Generation Company-Hazelton, CNG Retail Services Corp., CL Power Sales One, L.L.C., CL Power Sales Three, L.L.C., CL Power Sales Four, L.L.C., CL Power Sales Five, L.L.C., Citizens Power Sales, and Sempra Energy Trading Corp.

[Docket Nos. ER99–514–000, ER99–515–000, ER97–1845–005, ER95–892–028, ER95–892–030, ER95–892–031, ER95–892–032, ER94–1685–022, and ER94–1691–020]

Taken notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's public reference room:

On October 30, 1998, Duke Power filed certain information as required by a Commission order issued in Docket No. ER96–110–000.

On October 30, 1998, Williams Generation Company-Hazelton filed certain information as required by a Commission order issued in Docket No. ER97–4587–000.

On October 30, 1998, CNG Retail Services Corporation filed certain information as required by a Commission order issued in Docket No. ER97–1845–000.

On October 30, 1998, CL Power Sales One, L.L.C., Cl Power Sales Three, L.L.C., CL Power Sales Four, L.L.C. and CL Power Sales Five, L.L.C. filed certain information as required by a Commission order issued in Docket No. ER95–892–000.

On October 30, 1998, Citizens Power Sales filed certain information as required by a Commission order issued in Docket No. ER94–1685–000.

On October 30, 1998, Sempra Energy Trading Company filed certain information as required by a Commission order issued in Docket No. ER94–1691–000.

11. Entergy Services, Inc.

[Docket No. ER99–519–000]

Take notice that on November 4, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an Amendment (dated August 19, 1998), to the Capacity and Energy Letter Agreement between Entergy Services, Inc., and Sam Rayburn G&T Electric Cooperative, Inc.

Entergy Services requests that the Letter Amendment be made effective as of August 1, 1998. Entergy Services also seeks waiver of the Commission's notice requirements.

Comment date: November 24, 1998, in acordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–520–000]

Take notice that on November 4, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing the First Amendment to the Agreement for Special Requirements Wholesale Electric Service between Entergy Gulf States, Inc., and East Texas Electric Cooperative, Sam Rayburn G&T Electric Cooperative, Inc., and Tex-La Electric executed on August 21, 1988.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Western Resources, Inc.

[Docket No. ER99–522–000]

Take notice that on November 4, 1998, Western Resources, Inc., (Western Resources), tendered for filing notice that effective the January 4, 1999, Service Agreement No. 44 to FERC Electric Tariff, Original Volume No. 5, the Non-Firm Point-to-Point Transmission Service Agreement between Western Resources, Inc., and Vastar Power Marketing, Inc., effective April 22, 1997 and filed with the Federal Energy Regulatory Commission by Western Resources, Inc., in docket No. ER97–2990–000, is to be canceled.

Notice of the proposed cancellation has been served upon southern Company Energy Marketing L.P., and the Kansas Corporation Commission.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. New York State Electric & Gas Corporation

[Docket No. ER99–523–000]

Take notice that on November 4, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing an executed Network Service and Network Operating Agreements between NYSEG and Empire Natural Gas Corporation. These Agreements specify that the Transmission Customer has agreed to the rates, terms and conditions of NYSEG's currently effective open access transmission tariff and other revisions to the OATT applicable to all customers who take service under its retail access program.

NYSEG requests waiver of the Commission's 60-day notice requirements and an effective date of October 23, 1998 for the Agreement.

NYSEG has served copies of the filing on the New York State Public Service Commission and the Transmission Customer.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Carolina Power & Light Company

[Docket No. ER99–524–000]

Take notice that on November 5, 1998, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Wabash Valley Power Association, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed

in Docket No. ER 98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Pacific Gas and Electric Company

[Docket No. ER99–525–000]

Take notice that on November 5, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing an amendment (First Amendment) to the Control Area and Transmission Service Agreement (Agreement) between PG&E and Power Exchange Corporation (PXC) which was accepted by the Commission on May 5, 1995 in FERC Docket No. ER95–769–000 as PG&E Rate Schedule FERC No. 186. The purpose of the First Amendment is to adopt new contract language resulting from the settlement of a dispute between the Parties.

Copies of this filing were served upon PXC and California Public Utilities Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Commonwealth Edison Company

[Docket No. ER99–526–000]

Take notice that on November 5, 1998, Commonwealth Edison Company (ComEd), tendered for filing one Service Agreement, establishing MBLP, as a customer under the terms of ComEd's Power Sales and Reassignment of Transmission Rights Tariff PSRT–1 (PSRT–1 Tariff). The Commission has previously designated the PSRT–1 Tariff as FERC Electric Tariff, First Revised Volume No. 2.

ComEd requests an effective date of October 27, 1998, and accordingly seeks waiver of the Commission's notice requirements.

Copies of this filing were served on MBLP and the Illinois Commerce Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Cinergy Services, Inc.

[Docket No. ER99–527–000]

Take notice that on November 5, 1998, Cinergy Services, Inc. (Cinergy) and Duke Energy Trading and Marketing, L.L.C. (DETM), tendered for filing Notice of Assignment that DETM will replace Duke/Louis Dreyfus, L.L.C. (d/LD) as a customer under the Interchange Agreement designated as Rate Schedule FERC No. 17.

Cinergy is requesting an effective date of October 1, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER99–528–000]

Take notice that on November 5, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing Notice of Cancellation effective December 2, 1998, Rate Schedule FERC No. 216, effective date March 24, 1995, and any supplements thereto, and filed with the Federal Energy Regulatory Commission by Niagara Mohawk Power Corporation is to be canceled.

Notice of the proposed cancellation has been served upon North American Energy Conservation, Inc.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc.

[Docket No. ER99–529–000]

Take notice that on November 5, 1998, Cinergy Services, Inc. (Cinergy) and Duke Energy Trading and Marketing, L.L.C. (DETM) tendered for filing Consent of Assignment entered into between Cinergy and Duke Energy Trading and Marketing L.L.C. (DETM). Cinergy and DETM are requesting that DETM will replace Duke/Louis Dreyfus, L.L.C. (D/LD) of D/LD's rights and obligations under the Western Systems Power Pool Agreement designated as Rate Schedule FERC No. 1.

Cinergy is requesting an effective date of October 1, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER99–530–000]

Take notice that on November 5, 1998, Cinergy Services, Inc. (Cinergy) and Duke Energy Trading and Marketing, L.L.C. (DETM) tendered for filing a Notice of Assignment that DETM will replace Duke/Louis Dreyfus, L.L.C. (D/LD) as a customer under the Cinergy Power Sales Standard Tariff, Volume No. 4.

Cinergy is requesting an effective date of October 1, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Ameren Services Company

[Docket No. ER99–535–000]

Take notice that on November 6, 1998, Ameren services Company (ASC), tendered for filing a Service agreement for Firm Point-to-Point Transmission Service between ASC and Constellation Power Source, Inc., (CPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to CPS pursuant to Amerens's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective October 8, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Ameren Services Company

[Docket No. ER99–536–000]

Take notice that on November 6, 1998, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and Constellation power Source, Inc., (CPS). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to CPS pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective on October 8, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–537–000]

Take notice that on November 6, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 8 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power officers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of November 5, 1998, to new Energy Ventures, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public

Service Commission, and all parties of record.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Peco Energy Company

[Docket No. ER99–538–000]

Take notice that on November 6, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated June 2, 1997 with Kennebunk Light and Power District (KLPD) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds KLPD as a customer under the Tariff.

PECO requests an effective date of October 8, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to KLPD and to the Pennsylvania Public Utility Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Montaup Electric Company

[Docket No. ER99–539–000]

Take notice that on November 6, 1998, Montaup Electric Company (Montaup), tendered for filing Notice of Cancellation of its Rate Schedule FERC No. 123.

Comment date: November 25, 1998, in accordance with Standard paragraph E at the of this notice.

27. Pacific Gas and Electric Company

[Docket No. ER99–540–000]

Take notice that on November 6, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing an agreement between PG&E, the United States of America, Department of Energy, Oakland Operations Office (DOE) (collectively Parties), entitled "Settlement Agreement for Power Delivery to the United States Department of Energy Laboratories".

The Agreement is intended to, among other things, settle issues and implement procedures for PG&E's existing obligation to deliver power to DOE's Northern California Laboratories known as Lawrence Livermore National Laboratory (LLNL), Lawrence Livermore National Laboratory Site 300 (Site 300), Stanford Linear Accelerator Center (SLAC), and Lawrence Berkeley National Laboratory (LBNL) under PG&E Rate Schedule FERC No. 147.

Copies of this filing have been served upon DOE, Western and the California Public Utilities Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Western Systems Power Pool

[Docket No. ER99–541–000]

Take notice that on November 6, 1998, the Western Systems Power Pool (WSPP), tendered for filing revisions to the WSPP Agreement, and for authorization to allow certain members of the WSPP to sell power under the WSPP Agreement at market-based rates.

The WSPP states the revisions to the WSPP Agreement are necessary to update the terms of the WSPP Agreement and better ensure commercial enforceability of the agreements terms. In addition, the WSPP seeks authorization for WSPP members who have already received authorization from the Federal Energy Regulatory Commission (FERC) to sell power at market-based rates, and for WSPP members who are not subject to the FERC's jurisdiction under Section 201 of the Federal Power Act, to sell power under the WSPP Agreement at market-based rates.

Comment date: November 26, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31110 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License

November 17, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendments to License.

b. *Project Name:* Catawaba-Wateree Project.

c. *Project No.:* FERC Project No. 2232–373, –377, and –380.

d. *Date Filed:* October 1, 1998 (for –373 and –377); November 5, 1998 (for –380).

e. *Applicant:* Duke Energy Corporation.

f. *Location:* Counties and Lakes affected in North Carolina: Counties: Alexander, Burke, Caldwell, Catawba, Gaston, Iredell, Lincoln, McDowell, and Mecklenburg; Lakes: On Lakes James, Rhodiss, Hickory, Lookout Shoals, Norman, and Mountain Island. *Counties and Lakes affected in South Carolina:* Counties: Chester, Fairfield, Kershaw, Lancaster, and York; Lakes: Wylie, Fishing Creek, Great Falls, Rocky Creek, and Wateree.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y) Charlotte, NC 28201–1006, (704) 382–5778.

i. *FERC Contact:* Brian Romanek, (202) 219–3076.

j. *Comment Date:* December 26, 1998.

k. *Description of the filing:* Pursuant to Commission order issued February 2, 1996, Approving and Modifying Shoreline Management Plan for the Catawba-Wateree Hydroelectric Project, there are three filings before the Commission at this time: (1) The Shallow Water Fish Habitat Survey Mapping Project (Shallow Water Survey); (2) The Revision of the Shoreline Management Plan (SMP) Maps and; (3) The Proposed Methodology and Survey Instruments for the Recreation Needs Survey (Needs Survey). These filings represent efforts being undertaken by the licensee to fulfill the requirements of paragraphs (B), (C), (D), (E) and (F) of the above-mentioned order. In summary, the Shallow Water Survey was conducted as a part of the licensees efforts to identify areas of importance for fish spawning and to classify the shoreline for appropriate uses to protect the identified areas. The SMP maps are purposed to be revised in accordance with the Shallow Water Survey findings. The proposed Needs Survey (and methodology) is intended to, in part, evaluate: (1) recreational needs at the project; (2) boating use activities and; (3) the need for possible shoreline reclassification based on the survey results.

1. This notice also consists of the following standard paragraphs: B, C1, D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments with the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31117 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Outreach Meeting

November 17, 1998.

Between the years 2000 and 2010, a number of hydropower project licenses in California will expire. We have scheduled a public outreach meeting in Sacramento, California for the purpose of discussing concerns and experiences stakeholders may have in using an alternative process in licensing hydropower projects. The agenda is as follows:

Place: Sterling Hotel, 1300 H Street, Sacramento, California 95814.

Date: Wednesday, December 9, 1998.

Time: 9:00 a.m. to 5:00 p.m.

The Sterling Hotel is located in downtown Sacramento at the junction of 13th Street and "H" Street. From the Sacramento Airport, it is about a 15 minute drive. From the Airport take Interstate 5 South to the "Old Sacramento J Street" off-ramp. Go on J Street and make a left onto 13th. Take 13th to H Street. There is a parking garage between "J" and "I" Streets on 13th.

For further information, please contact Theresa Gibson at (202) 219–2793.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31112 Filed 11–20–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6191–8]

Agency Information Collection Activities: Proposed Collection; Comment Request: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals

AGENCY: U. S. Institute for Environmental Conflict Resolution, and Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Roster of Environmental Dispute Resolution and Consensus Building Professionals, EPA ICR #1888.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection (see the section A below entitled "Questions to Consider in Making Comments"). This document provides information on the need for the roster and the information to be recorded in the roster and a discussion of qualification requirements for applicants wishing to be listed on the roster. Copies of the qualifications requirements and draft application form have been distributed widely for review through professional societies such as the Society of Professionals in Dispute Resolution and the International Association of Public Participation. The Roster will not be open to receive applications until all Paperwork Reduction Act requirements are met.

DATES: Comments must be received on or before January 22, 1999.

ADDRESSES: Send comments to the Consensus and Dispute Resolution Program, Mail Code 2136, Environmental Protection Agency, Washington, DC 20460, fax: (202) 260–5478.

FOR FURTHER INFORMATION CONTACT: Deborah Dalton, Deputy Director, Consensus and Dispute Resolution Program, Mail Code 2136, Environmental Protection Agency, Washington, DC 20460, fax: (202) 260–5478; email:dalton.deborah@epa.gov.

SUPPLEMENTARY INFORMATION:

Potentially Affected Persons

You are potentially affected by this action if you are a dispute resolution or consensus building professional in the environmental or natural resources field who wishes to be listed on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals. This Roster will be one of several sources of information which federal environmental and natural resource agencies will use to identify appropriately experienced conflict resolution professionals for use in resolving environmental and natural resource disputes or issues in controversy under the Administrative Dispute Resolution Act of 1996 and the Negotiated Rulemaking Act of 1996.

Title: Application for the National Roster of Environmental Dispute Resolution and Consensus Building Professionals—EPA ICR #1888.01.

Background

A. Questions to Consider in Making Comments

The U.S. Institute for Environmental Conflict Resolution and EPA request your comments to any of the following questions related to establishing a National Roster of Environmental Dispute Resolution and Consensus Building Professionals:

(1) Is the proposed roster ("collection of information") necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility?;

(2) Is the agencies' estimate of the time spent completing the application form ("burden of the proposed

collection of information") accurate, including the validity of the methodology and assumptions used?;

(3) Can you suggest ways to enhance the quality, utility, and clarity of the information to be collected?; and

(4) Can you suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses?

B. What Are the Statutory Bases for Use of Dispute Resolution and Consensus Building Professionals in Agency Disputes?

The Administrative Dispute Resolution Act (ADRA), Public Law 101–552, authorizes and encourages agencies to use mediation and other consensual methods of dispute resolution as alternatives to traditional dispute resolution processes. The Negotiated Rulemaking Act (NRA), Public Law 101–648, authorizes and encourages agencies to use consensus building methods as a means of developing regulations. Both Acts anticipate the use of a "neutral," an individual who, with respect to an issue in controversy, functions specifically to help the parties in resolving the controversy. Neutrals may be facilitators, mediators, conciliators, arbitrators or early neutral evaluators. The 1990 ADRA called for the Administrative Conference of the U.S. to establish standards for neutrals and to maintain a roster of individuals who met the standards. The Administrative Conference of the U.S. was abolished in 1995 and its roster subsequently lapsed.

The U.S. Institute for Environmental Conflict Resolution was established by Congress in 1997 (Public Law 105–156) to assist in the resolution of environmental conflicts in which the federal government is a stakeholder. The Institute is housed at the Morris K. Udall Foundation, a federal commission located in Tucson, Arizona. The Institute is authorized to direct its resources to resolve costly environmental conflicts outside the courtroom and to foster collaborative agreements among affected parties concerning the implementation of federal environmental, public lands and natural resources policy. Federal agencies are authorized by the new law to employ the Institute to assist in alternative conflict resolution in matters involving environmental, natural resources and land-related disputes. The Institute will operate primarily as a facilitator and broker for public and private stakeholders. The Institute's small professional staff will accomplish most of its work through partnering and subcontracting with existing qualified professionals with longstanding experience in environmental conflict resolution and consensus building. The legislation requires the Institute, to the maximum extent possible, to use service providers in the geographic area of the conflict.

C. Why Is a New Roster Needed?

Identification of an appropriate, experienced neutral is an essential step in initiating and conducting a credible dispute resolution or consensus building process. There are a number of ways that parties to a conflict identify neutrals—past experience with a neutral, recommendations from colleagues, professional directories, yellow pages of phone books, responses to Requests for Proposal, etc. None of these processes is particularly rigorous or efficient in terms of timing, particularly when the parties are seeking persons with specialized expertise.

The U.S. Institute for Environmental Conflict Resolution is charged with assisting in the resolution of environmental, public lands and natural resources conflicts that involve federal agencies as stakeholders. Consistent with its mandate, the Institute must be able to identify appropriate experienced dispute resolution and consensus building professionals in an expedited manner. This national roster will serve as a primary source for the Institute to access qualified professionals who have specific background and expertise sought by stakeholders to environmental conflicts.

EPA has long had a nationwide contract listing numerous dispute resolution consultants and firms. This contract provides excellent service for national level issues, but it can be cumbersome and time consuming in seeking out neutrals for local site or facility-based disputes or consensus building efforts.

In 1997, EPA conducted a study to examine whether a specialized roster was necessary and whether any existing rosters (public or private) could fulfill the need. The study concluded that EPA (especially regional offices of EPA) needed a specialized roster or database which would list neutrals experienced in helping parties in environmental cases, and that there was no existing database that would meet EPA's needs. The study identified a number of federal, state and private rosters of neutrals. The other existing Federal roster, the FDIC Roster of Neutrals (OMB #3064–0107), does not contain significant numbers of neutrals experienced in environmental or natural resource matters. A number of states have rosters of environmental neutrals, but the entry qualifications vary significantly and even taken together, they do not provide adequate nationwide coverage.

The Roster developed as a result of this ICR will provide the U.S. Institute for Environmental Conflict Resolution, EPA and other federal agencies with the ability to identify an additional number, range and variety of dispute resolution and consensus building service providers throughout the U.S. The ICR will provide two kinds of information: (1) Information to determine if the individual applying has met the basic entry qualifications; (2) information to be used in conducting database searches to match cases or issues with potential neutrals experienced in particular kinds of disputes or issues.

D. How Were the Roster Entry Qualifications and Information Developed?

EPA has entered into an Interagency Agreement with the U.S. Institute for Environmental Conflict Resolution to develop a roster specifically designed to identify dispute resolution and consensus building professionals (neutrals) with environmental and/or natural resource public policy experience. The U.S. Institute convened a workgroup to give individual opinions and advice to the Institute and EPA regarding whether or not the roster should have entry qualifications and how the roster should be constructed and managed. The workgroup consists of EPA dispute resolution specialists and contracting officers, state dispute resolution officials, private dispute resolution practitioners and academics. As a result of the individual advice of the workgroup and others who have responded to requests for opinions, the U.S. Institute and the EPA are proposing the entry criteria and information collection items included in this Information Collection Request.

In addition to the public comment being solicited in this notice, the U.S. Institute and EPA are conducting extensive outreach to professional associations of dispute resolution and consensus building professionals, state offices of dispute resolution, individual dispute resolution practitioners, professional associations of attorneys, and environmental and citizens groups though presentations at professional meetings and conventions and through individual contacts with people and

organizations who have participated in previous dispute resolution efforts.

E. What Are the Roster Entry Qualifications?

As a result of consultations with the workgroup, the U.S. Institute for Environmental Conflict Resolution and EPA are proposing the following basic entry criteria for an individual seeking to be listed on the Roster database.

Draft Roster Entry Criteria

In order to be listed on the National Roster of Environmental Dispute Resolution and Consensus Building Professionals, a person must: (1) Have served as the principal or co-principal professional on two to five environmental cases. Each case must have involved at least 40 direct case hours of contact and in the aggregate must total at least 200 case hours; and (2) accumulate a total of at least 50 points across three scoring categories, including process experience, interactive training experience, and substantive background. The scoring categories and scoring system are presented in the chart below:

Scoring categories and subcategories (50 points required for entry)	Range of points for each sub-category	Maximum points for the category
1. Process Experience		90
a. Number of environmental or public policy cases in the last 10 years as principal or co-principal professional—5 points per case up to 10 cases.	0–50	
b. Additional credit if any of those cases were complex environmental or public policy cases—5 additional points per case up to 5 cases.	0–25	
c. Number of environmental or public policy cases in the last 10 years as apprentice or junior professional—3 points per case up to 5 cases.	0–15	
2. Interactive Process Training		20
a. Training experience—At least 24 hours of basic interactive training and 16 hours of advanced interactive training in dispute resolution and consensus building.	0 or 10	
b. Trainer—Directed at least 40 hours of basic interactive training in dispute resolution and consensus building.	0 or 10	
c. Senior Trainer/teacher experience—Directed interactive training in dispute resolution and consensus building totaling 150 contact hours.	0 or 20	
3. Substantive Experience		25
a. Graduate degrees or graduate program certificates in substantively relevant fields, such as law, environmental sciences or policy, engineering, public administration or management, communication theory, planning, conflict resolution—10 points for up to one degree/certificate.	0 or 10	
b. Years of employment or volunteer experience in the above fields—1 point for every year up to 15 years	0–15	

Definitions

1. Case—A case is an actual or potential dispute or lack of agreement on one or more issues. A case may also be described as a process of building agreement, recommendations or advice on actual or potential issues in controversy as well as facilitating collaborative processes among multiple parties on actual or potential issues in controversy. Systems design and evaluation work would also be included. For purposes of entry, a case must have engaged the applicant for more than 40 case hours.

a. Environmental Case—Cases or processes involving environmental pollution prevention or cleanup, land use, natural resource use or distribution, environmental permitting, facility siting disputes, environmental justice, negotiated rulemaking, enforcement or compliance.

b. Public Policy Case—Cases or processes involving the setting of governmental policy at the national, regional, state or local level, such as environmental or natural resource policy, health policy, or education policy.

c. Complex Environmental or Public Policy Case—An environmental or public policy case where there are multiple issues at stake involving at least four parties representing distinct interests at the table, at least one of whom is a governmental entity.

2. Case Hours—Actual contact time with the parties as individuals or a group, plus time spent in dispute or conflict assessment, dispute resolution process design, conduct of all phases of the process, or evaluating or reporting on the process. This does not include hours spent prior to professional engagement in the project.

3. Environmental Dispute Resolution and Consensus Building Professional—Any third party neutral engaged to help all parties in the prevention or resolution of disputes or controversy. In order to gain entry to this roster, the environmental dispute resolution and consensus building professional must have expertise in one or more of the following processes: conciliation, facilitation, mediation, neutral evaluation or assessment, fact finding, mini-trials, arbitration, dispute systems design.

4. Principal or Co-principal Professional—An environmental dispute resolution and consensus building professional who has been engaged to serve as or share the lead in conduct of a case. If serving as a co-principal professional, one must be acting as a co-lead with equal role in the conduct of the case.

5. Apprentice or Junior Professional—An assistant to the principal or co-principal professionals in the conduct of a case.

6. Interactive Process Training—Training in alternative dispute resolution processes and techniques, such as mediation, facilitation, and conflict management, which is interactive in nature incorporating a substantial number of role plays, simulations, and interactive group demonstrations.

F. What Kinds of Additional Information Are Sought for Roster Database Searches?

As a result of the 1997 EPA study and the individual recommendations from the Roster Workgroup, there are data elements in the ICR that we will use for conducting database searches on behalf of parties to an issue or dispute. Such elements include: geographic location of previous cases, languages spoken, minority group identification, experience with certain types of common environmental disputes, special skills or background. The U.S. Institute and EPA have developed a

draft application form to obtain information both to make decisions on whether an applicant qualifies for the roster and to record other relevant information.

G. Draft Application Form

Please note that the format of this form may change when the U.S. Institute and EPA select the database software for the Roster. We will also be making every effort to allow for methods to obtain and possibly submit the application electronically.

BILLING CODE 6560–50–P

VOL 63 ISS 225 NO 23 1998 UMI

Draft OMB Number: October 6, 1998

U. S. Environmental Protection Agency
Application for the National Roster of
Environmental Dispute Resolution and Consensus Building Professionals

DISCLOSURE OF ESTIMATED REPORTING BURDEN: Public reporting burden for this form is estimated to average 90 minutes, including the time for reviewing instructions, searching existing data sources, gathering the data requested, and completing and reviewing the form. Send comments regarding this burden estimate or any other aspect of this form, including suggestions for reducing this burden, to ...

GENERAL INSTRUCTIONS: Complete all information requested on this form. Please type or print legibly. DO NOT send a resume or other material in lieu of this form. Information from these submissions will be made available to the disputants and public agencies. Successful applicants will be responsible for updating information included on the roster.

I. General Information

Last name
First name
Middle initial
Bus. phone
Fax
Home phone

Address
City
State
Zip code
email

II. Organizational Affiliation (☐ full time; ☐ part time; ☐ none (if none, go to Section 3)

Name of organization
Telephone
Fax
No. of neutrals
No. of other staff

Address
City
State
Zip code
email
web address

☐ Non-profit
☐ Business firm
☐ Government agency

DRAFT DO NOT SUBMIT

III. Services Provided

A. Dispute Resolution and Consensus Building Services

Check each service that you have experience in providing and are willing to provide in the future.

☐ Mediation of environmental disputes
☐ Mediation of "complex" environmental disputes
☐ Facilitation of consensus building processes
☐ Regulatory negotiations
☐ Policy dialogues
☐ Superfund allocation disputes
☐ Neutral evaluations
☐ Arbitration
☐ Mini-trials
☐ Convening processes
☐ Process/systems design
☐ Evaluation of ADR processes
☐ Dispute resolution training

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B. In what locations have you previously worked?

Any state in the following regions:

- ☐ New England: CT, MA, ME, NH, RI, VT
- ☐ Mid-Atlantic: DE, MD, NY, NJ, PA, VA, WV
- ☐ Southeast: AL, FL, GA, KY, MS, NC, SC, TN
- ☐ Great Lakes: IL, IN, MI, MN, OH, WI
- ☐ North Central: IA, KS, MO, ND, NE, SD
- ☐ South Central: AR, LA, OK, TX
- ☐ Mountain: CO, ID, MT, WY
- ☐ Southwest: AZ, NM, NV, UT
- ☐ Pacific Southwest: CA
- ☐ Pacific Northwest: AK, OR, WA
- ☐ Pacific Islands: HI, Guam and Amer. Samoa
- ☐ Atlantic Islands: PR, VI
- ☐ Foreign Countries (please list): _____

C. What are your capacities to handle special requirements (either internal to your organizational, or through subcontracting)?

- ☐ Logistical support for complex cases
- ☐ Meeting summaries and reports
- ☐ Translations and other language support
- ☐ Database management
- ☐ Web page and computer support
- ☐ Access to technical experts

D. Fee Structure

Hourly Rate	Other fees and expenses (specify).
	Conditions or exceptions (specify).

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IV. Process Experience (Please review the definitions for all italicized terms before answering the following questions.)

A. Number of *environmental or public policy* cases in the last 10 years for which you served as *principal* or *co-principal*	☐ 0-3 ☐ 4-7 ☐ 8-15 ☐ > 15
B. Number of *complex environmental or public policy* cases in the last 5 years for which you served as *principal* or *co-principal*	☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ >3

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C. Environmental Dispute Resolution and Consensus Building Case Descriptions

Please list your most relevant cases and provide the information requested. You should provide as many cases (up to 10) as you indicate under "number of environmental or public policy cases" in IV.A. above. Only list cases completed during the last 10 years. Do not include cases where you were acting as common counsel, judge or hearing officer.

	Case 1	Case 2	Case 3	Case 4	Case 5
Descriptive name of case (Please use up to 50 characters)					
Case descriptor (use codes shown at end of form)					
No. of parties	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10
ADR role	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____
Level of your involvement	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior
No. of *case hours* you spent on case	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100
Scale of case	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international
case end date or current year if ongoing					
Is case more fully described below?	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐

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C (continued). Environmental Dispute Resolution and Consensus Building Case Descriptions

	Case 6	Case 7	Case 8	Case 9	Case 10
Descriptive name of case (Please use up to 50 characters)					
Case descriptor (use codes shown below)					
No. of parties	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10	☐ 0 - 3 ☐ 4 -10 ☐ > 10
ADR role	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____	☐ mediator ☐ facilitator ☐ arbitrator ☐ process/system designer or evaluator ☐ neutral fact finder ☐ other:_____
Level of your involvement	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior	☐ principal or co-principal ☐ apprentice/junior
No. of *case hours* you spent on case	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100	☐ 1-39 ☐ 40-100 ☐ > 100
Scale of case (check the one or two most applicable)	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international	☐ local/community ☐ state/regional ☐ national ☐ international
case end date, or current year if ongoing					
Is case more fully described below?	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐	check if more fully described below ☐

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D. In order to meet the entry criteria for this roster, you must have served as *principal* or *co-principal* dispute resolution or consensus building professional on at least two *environmental cases* which in the aggregate total at least 200 *case hours*. List the *environmental cases* listed in IV-C above which together add up to 200 *case hours*.

1. _____
2. _____
3. _____
4. _____
5. _____

E. In order to receive additional credit for work on *complex environmental or public policy cases*, please list up to five cases described in IV-C above which meet the following definition: an environmental or public policy case where there are multiple issues at stake involving at least four parties representing distinct interests at the table, at least one of whom is a governmental entity.

1. _____
2. _____
3. _____
4. _____
5. _____

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F. Provide two references (with address and phone numbers) for each of two cases listed above.

Case name: _____

Reference 1: _____
Reference 2: _____

Case name: _____

Reference 1: _____
Reference 2: _____

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G. Detailed Case Descriptions

Select up to five of the cases presented in IV-C above. Choose cases that represent the types and range of cases with which you work. These descriptions will be made available to prospective roster clients, so be as clear and descriptive as possible.

Descriptive name of case (use same name as used in table above)	*For each case, provide up to 40 words describing the case (types of parties, location, issues, outcomes) and your role in it.*

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V. Interactive Process Training

Please check any of the following that apply to you:

☐ I have taken 24 hours of general training in mediation or facilitation *and* an additional 16 hours of advanced training in complex or multiparty disputes, environmental disputes or systems design.

☐ I have taught as a lead trainer and teacher at least 40 hours of interactive seminar or skills building courses in mediation, facilitation, or consensus building for complex or multiparty disputes, environmental disputes or systems design.

☐ I have taught as a lead trainer and teacher at least 150 hours of interactive seminar or skills building courses in mediation, facilitation, or consensus building for complex or multiparty disputes, environmental disputes or systems design.

For each box checked above, please substantiate by listing the names of courses, with dates, locations, and your involvement.

Course Name	Course Dates	Course Location	Your Involvement

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VI. Other Relevant Education and Experience

A. Graduate Education and Program Certifications

Name of school	*City and state of school*	*Degree or graduate program certification achieved*	*Substantive focus of degree (use codes shown below)*	*Year of degree*

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B. Work and Voluntary Professional Experience

Organization	*Full time or part time?*	*Occupation, Position or Title*	*Professional Field Code (listed at end of questionnaire)*	*Dates Worked*		*Number of FTE years worked*
				From	*To*	
	☐ full time ☐ part time					
	☐ full time ☐ part time					
	☐ full time ☐ part time					
	☐ full time ☐ part time					
	☐ full time ☐ part time					
					Total number of years:	

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C. Narrative Description of Experience (Optional)

In the space below (200 words or less), summarize your experience in providing mediation, facilitation and other dispute resolution services. Provide information that you believe would be useful to stakeholders in determining whether you would be an appropriate neutral for their dispute.

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D. Language Skills

Spoken Languages	*Level of Fluency (Fair, Good, Excellent)*

6. Minority and Women Status (Check all that apply.)

- ☐ Caucasian
- ☐ Native American
- ☐ African American
- ☐ Hispanic American
- ☐ Asian-Pacific American
- ☐ Woman
- ☐ You are affiliated with an organization which is 51% or more owned by one or more of the above listed minority groups

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7. Certification

Are you currently debarred, suspended, proposed for debarment or suspension, or have you been declared ineligible for the award of contracts by any Federal agency or Government corporation?

☐ Yes ☐ No

I certify that the above information and all information I am submitting in connection with this questionnaire is true and correct to the best of my knowledge and that I will be removed from consideration or placement on the EPA Roster for falsifying any information provided. False certification may also subject me to civil or criminal penalties as prescribed in 18 U.S.C. § 1001. In understand that all information provided is a public record. If I am listed on the EPA Roster, I agree to abide by the Ethical Standards of Professional Responsibility developed by the Society for Professionals in Dispute Resolution (SPIDR) and such other professional standards as are applicable to me.

Signed: _____

Codes for Use in Filling Out This Questionnaire

Case Descriptor Codes	*Code*	*Professional Field Codes*	*Code*
Air quality - general		Mediator, facilitator	
Air quality – stationary source		Arbitrator	
Air quality - mobile sources			
Water quality - drinking water		Arts, design	
Water quality - general		Architecture	
Wetlands		Area and cultural studies	
Watershed, estuary		Business, management	
Water management		Communications	
Coastal zone		Criminal justice	
Birds, fish, game management		Building construction, development, real estate	

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Case Descriptor Codes	*Code*	*Professional Field Codes*	*Code*
Endangered species		Economics	
Ecosystem management and sustainable development		Education	
Resource management		Engineering: chemical	
Public lands management		Engineering: civil	
Forestry		Engineering: environmental	
Land use, growth management		Finance	
Energy		Geography, history, sociology, anthropology, archeology	
Radiation, nuclear power, nuclear waste		International affairs, political science	
Hazardous or solid waste disposal		Humanities, philosophy	
Hazardous waste remediation, Superfund		Law	
Allocation of liability for damages		Languages, literature, linguistics	
NEPA, CEQA		Planning	
Facility, dam, road siting		Psychology, mental health	
Mining and minerals		Public interest work	
Transportation		Public policy, government, elected official	
Public health		Science: environmental	
Oceans		Science: biology, ecology	
Pollution Prevention		Science: chemistry, biochemistry	
Archeological, historic preservation		Science: earth, geology, atmospheric	
Native American sovereignty		Social work, social services	
Treaties - international		Other Engineering	
Permits		Other Professional	
Pesticides, toxic substances		Other Science	
Right to Know		Other	
Environmental technology or futures			
Recycling, conservation			
Public health			
Other health or medical issues			
Other Environmental			
Other Public Policy			
Other Neighborhood or Community			

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H. Will This Roster Be the Only Source of Conflict Resolution and Consensus Building Professionals for Environmental Disputes?

No. This Roster will be one of several sources of information with federal environmental and natural resource agencies will use to identify appropriately experienced dispute resolution and consensus building professionals for use in resolving environmental and natural resource disputes or issues in controversy under the Administrative Dispute Resolution Act of 1996 and the Negotiated Rulemaking Act of 1996. However, an individual who wishes to be considered as a neutral in environmental or natural resources public policy matters is not required to be listed on this roster. Federal government personnel and parties to environmental or natural resources issues will not be limited to this Roster in identifying and contracting for the services of neutrals. We hope that this Roster will expedite the identification of individuals who are appropriate to act as neutrals in a dispute and that the information in the Roster will shorten the time needed to complete contract documents.

The U.S. Institute will review all applications submitted against the entry criteria. Those who are qualified will be listed on the database; those who do not qualify may reapply as their professional experience develops. Professionals who are not included in this database are in no way barred from work on disputes involving federal agencies and the U.S. Institute will explicitly inform parties of other known rosters they may wish to consult when selecting a neutral.

I. Does Being on This Roster Guarantee Conflict Resolution Work for the Government?

No. Being listed on the database does not guarantee that you will be offered work as a neutral in U.S. government cases. The decision as to whom to retain as a neutral lies with the parties to an issue or dispute. Being listed on this database may increase the chances of parties finding out that you offer conflict resolution or consensus building services.

J. Burden Statement and Estimate

Burden Statement: This ICR compiles data available from the resumes of most conflict resolution and consensus building professionals into a format that is standardized for database searches and retrievals. A professional will need to complete the entire form only once. Professionals will be allowed to update their information on a voluntary basis periodically so that the database reflects their most current experience, and may be required to update their experience every five years. The database system is being designed to allow for some electronic information submittal. The burden includes time spent to access the professional's most recent detailed resume and to insert that information into the ICR form.

Estimated Number of Respondents (first year): 400.

Estimated Time per Response: 90 minutes.

Estimated Total First Year Burden: 600 hours.

Estimated Number of New Respondents (per year for succeeding years): 20.

Estimate Time per Response: 90 minutes.

Estimated Number of Updates (per year for succeeding years): 50.

Estimated Time per Update: 15 minutes.

Estimated Subsequent Year Annual Burden: 42.5 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information and transmit information.

Dated: October 28, 1998.

Paul Lapsley,

Director, Regulation Management Division, Office of Regulation Management and Information, Office of Policy, U.S. Environmental Protection Agency.

Kirk Emerson,

Director, U.S. Institute for Environmental Conflict Resolution, Morris K. Udall Foundation.

[FR Doc. 98–31243 Filed 11–20–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6192–2]

Technical Workshop on Issues Associated With Dermal Exposure and Uptake

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a meeting, organized and convened by Eastern Research Group, Inc., a contractor to EPA's Risk Assessment Forum, for external scientific peer consultation on issues related to the assessment of dermal exposure and uptake. The meeting is being held to discuss methods under development or currently in use by EPA to assess dermal exposure to environmental contaminants with subsequent absorption across the skin.

DATES: The meeting will begin on Thursday, December 10, 1998, at 8:30 a.m. and end on Friday, December 11, 1998, at 5:00 p.m.

ADDRESSES: The meeting will be held at the Bethesda Ramada, 8400 Wisconsin Ave., Bethesda, Maryland 20814. Eastern Research Group, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, contact Eastern Research Group, Inc., Tel: (781) 674–7374, or visit their HomePage at *http://www.erg.com/erg/confer.htm* by December 1, 1998. You may also obtain additional information and register by visiting the National Center for Environmental Assessment HomePage at *http://www.epa.gov/ncea/new.htm*. Space is limited so please register early.

FOR FURTHER INFORMATION CONTACT: For further information concerning the workshop on dermal exposure and uptake issues please contact Steven Knott, U.S. EPA Office of Research and Development (8601–D), 401 M St., SW., Washington, D.C. 20460, Telephone (202) 564–3359.

SUPPLEMENTARY INFORMATION: During the development of EPA guidance on assessing dermal exposure to and uptake of environmental contaminants, several generic, cross-cutting issues have been identified. These issues were referred to the EPA Risk Assessment Forum (RAF) for discussions within the broader scientific community. The present Workshop is being held to provide a peer consultation for invited participants to discuss these issues. The information obtained through these discussions will be considered by EPA as work continues on dermal exposure and risk initiatives.

In January 1992, the EPA Office of Health and Environmental Assessment (now the National Center for Environmental Assessment, NCEA) completed an interim report entitled Dermal Exposure Assessment: Principles and Applications. This report provides guidance for conducting dermal exposure and risk assessments. Using this as a foundation, a workgroup convened under the Superfund program has been developing an expanded and updated guidance on dermal exposure

and uptake. A draft of this guidance was peer reviewed in February 1998. During this review, several broad issues related to dermal exposure and risk assessment were identified. These issues transcend the program specific approaches of Superfund and are important to dermal exposure and risk assessment practices Agency-wide. The generic issues, that will be the focal point for discussions during the present workshop, can be organized into four categories: issues associated with dermal exposure to contaminants in water, issues associated with dermal exposure to contaminants in soil, issues associated with the adjustment of toxicity factors to reflect absorbed dose, and issues related to risk characterization and uncertainty analysis for dermal assessments.

Dated: November 13, 1998.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 98–31246 Filed 11–20–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6192–3]

Science Advisory Board/Scientific Advisory Panel; Notification of Public Advisory Committee Meeting; Open Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a Joint Subcommittee of the Science Advisory Board (SAB) and the Scientific Advisory Panel (SAP) will meet on the dates and times described below. All times noted are Eastern Standard Time. The meeting is open to the public; however, due to limited space, seating will be on a first-come basis.

The Joint SAB/SAP Data from Testing on Human Subjects (DTHS) Subcommittee will meet on Thursday and Friday, December 10/11, 1998 at the Sheraton Crystal Hotel, 1800 Jefferson Davis Highway, Arlington VA 22202. The hotel telephone number is 703–486–1111. The meeting will begin at 8:30 am and end no later than 5:00 pm. This is the first meeting of this Subcommittee.

Purpose of the Meeting: This Joint Subcommittee was established to provide advice and comment to EPA on issues related to data derived from testing on human subjects and its use in pesticides decision making. In the midst of this effort, some specific issues have arisen regarding the testing of human subjects in support of pesticide registrations. Both scientific and (primarily) ethical questions have been raised about the data, the manner in which they were developed, and the purpose to which they can or should be put. The Agency thus seeks advice from the SAB/SAP Joint Committee on a range of issues, especially focusing on the practical questions confronting the Pesticide Program as it seeks to implement the Food Quality Protection Act. During this public meeting, the Subcommittee will address these scientific and ethical issues, including: (a) the value of human studies; (b) how to determine what constitutes an appropriate (scientifically and ethically) human study; (c) the risks and benefits to subjects and society; (d) applying principles to specific situations; (e) identifying clearly out-of-bounds studies; and (f) assessing and assuring compliance with appropriate standards. A copy of the formal Charge to the Subcommittee will be posted on the SAB Website (http://www.epa.gov/sab) on or about November 16.

At the public meeting, Agency staff will brief the Subcommittee on current activities involving human studies, as well as on issues/problems raised by these activities. In concert with these presentations, EPA will present background materials for the Subcommittee's information and consideration.

Availability of Review Materials: Hard copies of EPA primary background documents for the meeting may be obtained by contacting: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; telephone: (703) 305–5805.

FOR FURTHER INFORMATION: Members of the public desiring additional information about the conduct of the public meeting itself should contact Mr. Samuel Rondberg, Co-Designated Federal Officer, DTHS Subcommittee, Science Advisory Board (1400), Room M3706, U.S. EPA, 401 M Street, SW, Washington, DC 20460; telephone/voice mail at (301) 812–2560; fax at (202) 260–7118; or via E-mail at: samuelr717@aol.com. A copy of the draft agenda will be available on the SAB Website (http://www.epa.gov/sab) or the SAP Website (http://www.epa.gov/pesticides/SAP/), or upon request from Ms. Wanda Fields, Management Assistant, Science Advisory Board at (202) 260–5510 or by FAX at (202) 260–7118 or via E-Mail at: fields.wanda@epa.gov. Anyone desiring additional information on the substantive issues to be addressed at this meeting should contact Mr. Larry C. Dorsey, Co-Designated Federal Officer for the Subcommittee, Environmental Protection Agency (7509C), 401 M St., SW, Washington, DC 20460. Mr. Dorsey may be contacted via telephone/voice mail at (703) 305–5369, or by E-Mail at: dorsey.larry@epa.gov.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Mr. Rondberg in writing (by letter, fax, or by E-Mail—see previously stated information) no later than 12 noon Eastern Time, Friday, November 27, 1998 in order to be included on the Agenda. These oral comments will be limited to five minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc), and include at least 35 copies of an outline of the issues to be addressed or of the presentation itself. By mail, submit written comments to: The Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

Comments and data also may be submitted electronically by sending electronic mail (E-Mail) to: opt-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect 8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number "OPP- ". No Confidential Business Information (CBI) should be submitted through E-Mail. Electronic comments may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION: The Agency encourages that written statements be submitted before the meeting to provide Panel Members time to consider and review the comments.

Information submitted as a comment in response to this notice may be

claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

A public record has been established for this notice (including comments and data submitted electronically) under docket number "OPP- ". A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, will be available for inspection from 8:30 am to 4:00 pm, Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, Virginia 22202.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in *Availability of Review Materials* earlier in this Notice.

Dated: November 13, 1998.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 98–31247 Filed 11–20–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 12, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 23, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 234, 1919 M St., NW, Washington, DC 20554 or via Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0623.

Title: Application for Mobile Radio Service Authorization or Rural Radiotelephone Service Authorization.

Form Number: FCC 600.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 54,143.

Estimated Time Per Response: 0.5 to 7.0 hours.

Total Annual Burden: 121,846 hours.

Total Annual Cost: $25,769,685 (Legal/engineering consultants, filing fees, and postage).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Needs and Uses: This form is used by various applicants in accordance with 47 CFR Part 22 (Public Mobile Services), Part 24 (Personal Communications Services), Part 74 (Remote Pickup and Low Power Broadcast Auxiliary), Part 90 (Land Mobile) and Part 95 (IVDS). Statutory authority for this collection of information is contained in 47 U.S.C. 154(i) and 309(j), as amended.

FCC Form 600 was previously filed by winners of FCC auctions (long form application filed by Broadband and Narrowband PCS, IVDS, Cellular Unserved, 900 MHz SMR), and it is anticipated that it would be used for several upcoming auctions. However, with the development of the Universal Licensing System (ULS), auction winners are now filing FCC Form 601 in lieu of FCC Form 600. Therefore, the number of respondents and burden hours have been adjusted for several of the auctions where estimates were previously provided for using the Form 600, as well as an adjustment in receipts for other services.

We estimate a decrease in the number of annual respondents from 194,769 to 54,153 and a total annual burden decrease from 779,076 hours to 216,612 hours as the result of a program change. We have re-evaluated the respondent costs and adjusted the total to reflect correctly the contracting expenses. This form will eventually be replaced by FCC Form 601 upon conversion of all radio services to ULS which currently use FCC Form 600.

The information will be used by the Commission to determine whether the applicant is legally, technically, and financially qualified to be licensed. It will also be used to update the database and to provide for proper use of the frequency spectrum.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31207 Filed 11–20–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–009648A–101.
Title: Inter-American Freight Conference.
Parties:
A.P. Moller-Maersk Line
CSAV/Braztrans Joint Service
Crowley American Transport, Inc.
Ivaran Lines Limited d/b/a/ Ivaran Lines
Libra Navegacao SA
Companhia de Navegacao Lloyd Brasileiro
Empresa Lineas Maritimas Argentinas
Empresa de Navegacao Alianca S.A.
Columbus Line
Mexican Line Limited
Sea-Land Service, Inc.
APL Co. Pte. Ltd.
Transroll Navieras Express
Comagnie Generale Maritime S.A.
TNX Transportes Ltda.
Euroatlantic Container Line S.A.
P&O Nedlloyd B.V.

Synopsis: The proposed modification removes the port of Manos, Brazil from the geographic scope of the agreement.

Agreement No.: 218–011530–002.
Title: Samson/Sea-Land Cooperative Working Agreement.
Parities:
Samson Tug and Barge
Sea-Land Service, Inc.

Synopsis: The proposed amendment extends the term of the parties' transshipment agreement to January 1, 2001.

Dated: November 17, 1998.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 98–31205 Filed 11–20–98; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Cullen/Frost Bankers, Inc., San Antonio, Texas; New Galveston Company, Wilmington, Delaware; and Frost National Bank, San Antonio, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Keller State Bank, Keller, Texas.

Board of Governors of the Federal Reserve System, November 17, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–31180 Filed 11–20–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-29895) published on page 60346 of the issue for Monday, November 9, 1998.

Under the Federal Reserve Bank of Philadelphia heading, the entry for Sun Bancorp, Vineland, New Jersey, is revised to read as follows:

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Sun Bancorp, Vineland, New Jersey; to acquire 100 percent of the voting shares of Sun National Bank, Delaware, Wilmington, Delaware.

Comments on this application must be received by November 25, 1998.

Board of Governors of the Federal Reserve System, November 17, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–31182 Filed 11–20–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Marquette Bancshares, Inc., Minneapolis, Minnesota; to acquire Northland Financial Company, Minneapolis, Minnesota, and thereby engage in commercial real estate mortgage brokerage and servicing, arranging commercial real estate equity financing, and performing real estate appraisals, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1998.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 98–31181 Filed 11–20–98; 8:45 am]
BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Request for Comment on Exposure Draft.

SUMMARY: The Federal Accounting Standards Advisory Board (FASAB) has published for comment an exposure draft of a proposed statement of recommended federal accounting standards that would amend Statement of Federal Financial Accounting Standards No. 7, Accounting for Revenue and Other Financing Sources. The exposure draft is titled Deletion of Paragraph 65.2—Material Revenue-Related Transactions Disclosures. The exposure draft explains why the Board believes that this subparagraph should be deleted and presents the alternative view of one Board member. Comments are requested by December 12, 1998. Comments should be directed to Wendy Comes, Executive Director, at the address shown in the exposure draft. Copies of the exposure draft may be obtained by calling FASAB at (202) 512–7350, by faxing a request to (202) 512–7366, or at http://www.financenet.gov/financenet/fed/fasab/deletion.pdf.

FOR FURTHER INFORMATION CONTACT: Robert Bramlett, Assistant Director, 441 G St., NW, Room 3B18, Washington, DC 20548, or call (202) 512–7355.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, sec. 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 18, 1998.

Robert W. Bramlett,

Assistant Director.

[FR Doc. 98–31262 Filed 11–20–98; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0235]

Submission for OMB Review; Comment Request Entitled Price Reductions Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0235).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Price Reductions clause. The information collection was previously published in the **Federal Register** on June 19, 1998 at 63 FR 33667, allowing for a 60-day public comment period. Public comments were received from the Coalition for Government Procurement and the Information Technology Services Council.

Following is a summary of the comments GSA received and GSA's response.

1. The Price Reduction clause is an administrative and financial burden.

The clause was significantly streamlined when modified in 1994. Other administrative requirements were also relaxed or deleted. The clause requires submission of information in only very limited circumstances. The only monitoring required by the clause is for sales to the designated customer or class of customer. No special format or periodic reporting is required. GSA contacted a sampling of potential respondents (small and large business MAS contractors), from various schedules to determine the estimated annual burden. It found the average number of times the information is reported each year is 2 times with an estimated time of 15 hours. Several of the small businesses consulted said the clause was not a burden. The Price Reduction clause is a key safeguard that has been built into the MAS procurement process to protect against loss of taxpayer dollars.

2. The Price Reduction clause is not necessary to ensure price reasonableness on MAS contracts.

The clause simply assures that the government maintains throughout the life of the contract the relative price/discount advantage negotiated in relation to the contractor's commercial customer upon which the contract award is predicated.

The clause provides that if a contractor sells any item covered by a comparable type contract at a price below the negotiated MAS contract price to the identified comparable customer, then the contractor must give the government an equivalent price reduction on all subsequent government orders for the balance of the contract period or until the price is furthered reduced.

Without a mechanism such as the Price Reduction clause to ensure that a balance between government prices and commercial prices is maintained there are no assurances of continued price reasonableness under the contract. The only reasonable alternative would be to have shorter contracts and negotiate more frequently, imposing a greater burden on the contractor. To eliminate such a clause would be to eliminate an important means by which the government insures that it receives the best pricing. Most MAS contracts are often three to five years in length; price reductions insure that the government is receiving current market prices in response to changes in market demand and technology. The existence of the price reduction clause helps allow MAS contracts to be of longer duration than the more typical one-year supply contract. Absent such a clause, the government would be forced to enter into contracts of shorter duration in order to maintain current pricing. The administrative costs and other burdens associated with more frequent negotiations would be increased for contractors and government alike.

3. The Price Reduction clause is not consistent with commercial practice.

GSA acknowledges that there are differences of opinion with industry with regard to the Price Reductions clause being consistent with commercial practice, however, there are similar type arrangements in private industry. GSA's Office of Inspector General (OIG) has found that price reduction requirements, in fact, are standard commercial practice for many large volume purchasers. The OIG has found commercial agreements that contained provisions by which a seller would commit to giving the buyer the benefit of any decreases in prices for the subject products during the term of the agreement.

DATES: Comment Due Date: December 23, 1998.

ADDRESSES: Additional comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Al Matera, Office of GSA Acquisition Policy (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0235, concerning the Price Reductions clause. The Price

Reductions clause used in multiple award schedule contracts ensures that the Government maintains its relationship with the contractor's customer or category of customers, upon which the contract is predicated.

B. Annual Reporting Burden

Respondents: 6,862; annual responses: 13,724; average hours per response: 7.5; burden hours: 102,930.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: November 17, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–31264 Filed 11–20–98; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service, Region 10; Notice of Intent To Prepare an Environmental Assessment/ Environmental Impact Statement

ACTION: The US General Services Administration (GSA) hereby gives notice that it intends to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR parts 1500–1508), for the construction of a new Federal Courthouse in Eugene, Lane County, Oregon.

Procedures: The EA will be prepared at the completion of, and based upon, a scoping report. The EA will evaluate the proposed project, including all reasonable alternatives identified through the scoping process and a no-action alternative. Scoping will be accomplished through direct mailing correspondence to interested persons, agencies, and organizations and through two Public Scoping Meetings. The public scoping meetings will be held on December 14th and 15th, 1998 at the Hilton Hotel, 66 East 6th Ave., Eugene, OR, in the Joplin/Seeger Conference Room at 6:00 pm following an open house beginning at 5:30 pm. GSA will publish a public notice of these meetings in Eugene newspapers approximately two weeks prior to the events.

After the EA is prepared, it will be made available for public review. If significant impacts are not identified in the EA, GSA will issue a Finding of No Significant Impact (FONSI).

If, upon completion of the EA, significant impacts to the environment are identified, GSA will prepare an Environmental Impact Statement. Public meetings will be held after the release of the Draft Environmental Impact Statement and GSA will respond to all relevant comments received during the 45-day public comment period in the Final Environmental Impact Statement. After a minimum 30-day period following publication of the Final Environmental Impact Statement GSA will issue a Record of Decision that will identify the site selected.

SUPPLEMENTARY INFORMATION: GSA, assisted by Herrera Environmental Consultants, is anticipating the preparation of an Environmental Assessment or Environmental Impact Statement to acquire a site, design, and construct a new US Courthouse in Eugene, Oregon. GSA will serve as the lead agency and scoping will be conducted consistent with NEPA regulations and guidelines. GSA invites interested individuals, organizations, and federal, state, and local agencies to participate in defining and identifying any significant impacts and issues to be studied in the EA, including social, economic, or environmental concerns. Scoping should be limited to identifying significant issues to be analyzed in the environmental document and commenting on alternatives and the merit of the proposal.

Project Purpose, Historical Background, and Description

The District Judges, Magistrates, and US Marshals are currently located in the existing US Courthouse. Bankruptcy and other Court related Agencies are located in leased space in downtown Eugene. The existing Courthouse does not currently meet the requirements of the US Court's Design guide. The existing Courthouse/Federal Building complex cannot be adapted to accommodate the required space needs of both the Court and Agency tenants.

Congress has authorized GSA to acquire a site for construction of a new US Courthouse in Eugene. The approximate gross overall square feet planned for the project is 265-290 for all US District Court and Bankruptcy Court activities in Eugene, Oregon.

Alternatives: The EA/EIS will examine the short- and long-term impacts on the natural and physical environment. The impact assessment will include but not be limited to impacts such as social environment, changes in land use, aesthetics, changes in traffic and parking patterns, economic impacts, and consideration of City planning and zoning requirements.

The EA/EIS will examine measures to mitigate significant adverse impacts resulting from the proposed action. Concurrent with NEPA implementation, GSA will also implement its consultation responsibilities under Section 106 of the National Historical Preservation Act to identify potential impacts to existing historic or cultural resources.

The EA/EIS will consider a no-action alternative and action alternatives. The no-action alternative would continue the occupancy in the existing Courthouse and continue to lease Court space in Eugene. The action alternatives will consist of different sites and configurations for construction of a new building in the delineated area in downtown Eugene. The delineated area includes a portion of the centralized business area. The delineated area includes property that is adjacent to the boundaries of the delineated area. The delineated area is as follows:

Bounded on the north by 5th Avenue, on the east by High Street, on the south by Broadway, and by Olive Street on the west.

ADDRESSES: In addition to the public scoping process, please send your written comments on the scope of alternatives and potential impacts to the following address: Michael D. Levine, Regional Environmental Program Manager, 10PCB, General Services Administration, 400 15th Street SW, Auburn, WA, 98001, or fax: Michael D. Levine at 253–931–7308, or e-mail at *Michael.Levine@GSA.GOV*. Written comments should be received no later than January 7, 1999.

FOR FURTHER INFORMATION CONTACT:

Nona Diediker at Herrera Environmental Consultants, 2200 Sixth Ave, Suite 601, Seattle, Washington, 98121 or call 206–441–9080; or Michael D. Levine, GSA (253) 931–7263.

Mailing List: If you wished to be placed on the project mailing list to receive further information as the EA process develops, contact Nona Diediker at the address noted above.

Dated: November 13, 1998.

L. Jay Pearson,

Regional Administrator (10A).

[FR Doc. 98–31265 Filed 11–20–98; 8:45 am]

BILLING CODE 6820–BR–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security.

Times and Dates: 9 a.m.–5 p.m., December 8, 1998. 9 a.m.–5 p.m., December 9, 1998.

Place: Conference Room 800, Hubert H. Humphrey Building, 200 Independence Ave. SW, Washington, DC 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of Pub.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the National Committee on Vital and Health Statistics (NCVHS) is required to study the issues related to the adoption of uniform data standards for patient medical record information and the electronic interchange of such information, and report to the Secretary of Health and Human Services not later than August 2000 on recommendations and legislative proposals for such standards and electronic interchange. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

To assist in developing the NCVHS recommendations to HHS relating to clinical data standards, the NCVHS Subcommittee on Standards and Security, Working Group on Computer-based Patient Records, has scheduled a public meeting on December 8–9, 1998 in Washington, DC. At the meeting, the Subcommittee will seek advice on how best to address the report and recommendations to HHS relating to clinical data standards. For the meeting, the Subcommittee is inviting specific individuals with knowledge and experience in these areas to (1) provide their perspectives and advice, (2) address specific questions relating to clinical data standards, and (3) answer further questions from the Subcommittee. Other individuals and organizations that would also like to submit written statements to the Subcommittee on these issues are invited to do so at the meeting. The tentative agenda for the meeting, as well as a description of the panels of speakers, will be posted on the NCVHS website: http://aspe.os.dhhs.gov/ncvhs, when available.

CONTACT PERSON FOR MORE INFORMATION: Substantive program information about the meeting may be obtained from Michael Fitzmaurice (AHCPR, 301–594–3938) or Bob Mayes (HCFA, 410 786–6872), lead staff for the Computer-based Patient Record Working Group. Information about the NCVHS is available on the NCVHS home page of the HHS website, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: November 16, 1998.

James Scanlon,

Director, Division of Data Policy, Office of Program Systems, Office of the Assistant Secretary for Planning and Evaluation, and HHS Executive Staff Director, NCVHS.

[FR Doc. 98–31108 Filed 11–20–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Protection & Advocacy Program Statement of Objectives and Priorities.

OMB No.: 0980–0270.

Description: This information collection is a reporting by Protection & Advocacy (P&A) Systems in each State. Using this reporting format, the P&A systems describe their Statement of Objectives and Priorities for the coming fiscal year in the pursuit of their effort under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6000 *et seq.*) to protect the civil and human rights of persons with developmental disabilities. This Statement of Objectives and Priorities (SOP) is required by Section 142(a)(2) (paragraphs C and D) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*). Each P&A System is required to develop an SOP and to submit it to public comment.

The final version of the SOP is submitted by each P&A System to the Department of Health and Human Services, which will use the data in the SOP to monitor compliance of P&As with the Developmental Disabilities Assistance and Bill of Rights Act, and will also provide a management tool for necessary program stewardship and grasp of prospective program direction.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Statement of Objectives and Priorities	56	1	44	2,464

Estimated Total Annual Burden Hours: 2,464.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Attn: Ms. Wendy Taylor.

Dated: November 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31109 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Protection & Advocacy Program Performance Report.

OMB No.: 0980–0160.

Description: This information collection is a reporting by Protection & Advocacy (P&A) systems in each State. Using this reporting format, the P&A systems describe their program performance during the previous fiscal year in the pursuit of their effort under Part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*) to protect the civil and human rights of persons with developmental disabilities. This program performance report (PPR) is required by Section 107(b) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*).

The PPR is submitted by each P&A system to the Department of Health and Human Services, which will use the data in the PPR to develop an annual report to the President, the Congress, and the National Council on Disability, as required by Section 107(c) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*). Additionally, the data in the reports will provide the Department with an overview for good management of the program, and will enable the Department to respond to Congressional requests.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Annual Program Performance Report	56	1	44	2,464

Estimated Total Annual Burden Hours: 2,464.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: November 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31233 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Developmental Disabilities Council Program Performance Report.

OMB No.: 0980–0172.

Description: This information collection is a reporting by Developmental Disabilities Council (DD Council) programs in each State. Using this reporting format, the DD Councils describe their program performance against a backdrop of State trends during the previous fiscal year in the pursuit of their effort under Part B of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*) to promote systems change in service systems for persons with developmental disabilities. This program performance report (PPR) is required by Section 107(a) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*).

The PPR is submitted by each DD Council to the Department of Health and Human Services, which use the data in the PPR to develop an annual report to the President, the Congress, and the National Council on Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*). Additionally, the data in the reports will provide the Department with an overview for good management of the program, and will enable the Department to respond to Congressional requests.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DD Council Program Performance Report	55	1	44	2,420

Estimated Total Annual Burden Hours: 2,420.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should

be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 17, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31234 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to States for Social Services Expenditures, Pursuant to Title XX, Block Grants to States for Social Services; Promulgation for Fiscal Year 2000

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of correction.

SUMMARY: This notice corrects the most recent population statistics and revises the allotment amounts contained in the notice published on Tuesday, November 10, 1998 (63 FR 63062). The allotments to the States published herein are based upon the authorization set forth in section 2003(c) of the Act and are contingent upon Congressional appropriations for the fiscal year. If Congress enacts and the President approves an amount different from the authorization, the allotments will be adjusted proportionately.

FOR FURTHER INFORMATION CONTACT: John K. Jolley, (202) 401–5284.

SUPPLEMENTARY INFORMATION: Section 2003(c) of the Act authorizes $2.380 billion for Fiscal Year 2000 and provides that it be allocated as follows:

(1) Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands each receives an amount which bears the same ratio to $2.380 billion as its allocation for Fiscal Year 1981 bore to $2.9 billion.

(2) American Samoa receives an amount which bears the same ratio to the amount allotted to the Northern Mariana Islands as the population of American Samoa bears to the population of the Northern Mariana Islands determined on the basis of the most recent data available at the time such allotment is determined.

(3) The remainder of the $2.380 billion is allotted to each State in the same proportion as that State's population is to the population of all States, based upon the most recent data available from the Department of Commerce.

For Fiscal Year 2000, the allotments are based upon the Bureau of Census population statistics contained in its report "Estimates of the Population of States: Annual Time Series, July 1, 1990 to July 1, 1997 (Press Release CB97–213 December 31, 1997), and "1990 Census of Population and Housing" (CPH–6–AS and CPH–6–CNMI) published April 1992, which are the most recent data available from the Department of Commerce at this time as to the population of each State and each Territory.

EFFECTIVE DATE: The allotments shall be effective October 1, 1999.

FISCAL YEAR 2000 FEDERAL ALLOTMENTS TO STATES FOR SOCIAL SERVICES—TITLE XX BLOCK GRANTS

Total	$2,380,000,000
Alabama	38,192,807
Alaska	5,385,371
American Samoa	88,560
Arizona	40,279,749
Arkansas	22,310,825
California	285,345,103
Colorado	34,425,700
Connecticut	28,916,527
Delaware	6,473,057
Dist. of Col.	4,677,934
Florida	129,584,949
Georgia	66,198,507
Guam	410,345
Hawaii	10,496,611
Idaho	10,699,999
Illinois	105,196,025
Indiana	51,855,203
Iowa	25,220,163
Kansas	22,947,519
Kentucky	34,558,345
Louisiana	38,484,625
Maine	10,982,974
Maryland	45,046,112
Massachusetts	54,101,318
Michigan	86,431,233
Minnesota	41,438,179
Mississippi	24,141,321
Missouri	47,769,749
Montana	7,772,975
Nebraska	14,652,809
Nevada	14,829,668
New Hampshire	10,372,809
New Jersey	71,212,474
New Mexico	15,298,346
New York	160,385,029
North Carolina	65,659,086
North Dakota	5,668,347
No. Mariana Islands	82,069
Ohio	98,917,513
Oklahoma	29,332,147
Oregon	28,677,766
Pennsylvania	106,292,554
Puerto Rico	12,310,345
Rhode Island	8,728,016
South Carolina	33,249,584
South Dakota	6,526,115
Tennessee	47,469,087
Texas	171,898,582
Utah	18,207,685
Vermont	5,208,512
Virgin Islands	410,345
Virginia	59,548,591
Washington	49,609,087
West Virginia	16,058,842
Wisconsin	45,718,178
Wyoming	4,244,629

Dated: November 17, 1998.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 98–31232 Filed 11–20–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0758]

Determination of Regulatory Review Period for Purposes of Patent Extension; Seroquel®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Seroquel® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's

regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Seroquel® (quetiapine fumarate). Seroquel® is indicated for the management of the manifestations of psychotic disorders. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Seroquel® (U.S. Patent No. 4,879,288) from Zeneca Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 7, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Seroquel® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Seroquel® is 3,264 days. Of this time, 2,839 days occurred during the testing phase of the regulatory review period, while 425 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: October 21, 1988. The applicant claims September 20, 1988, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 21, 1988, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: July 29, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Seroquel® (NDA 20–639) was initially submitted on July 29, 1996.

3. *The date the application was approved*: September 26, 1997. FDA has verified the applicant's claim that NDA 20–639 was approved on September 26, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,651 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 22, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 24, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–31101 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 1, 1998, 8 a.m. to 5 p.m., and December 2, 1998, 8 a.m. to 4 p.m.

Location: Town Center Hotel, The Maryland Ballroom, 8727 Colesville Rd., Silver Spring, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 20–998 Celebrex™ (celecoxib, Searle) for the treatment of acute or chronic signs and symptoms of osteoarthritis and rheumatoid arthritis and the management of pain.

Procedure: On December 1, 1998, from 8 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 25, 1998. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 25, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On December 2, 1998, from 8 a.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). The committee will be briefed on issues that may come before the committee in the near future.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

FDA regrets that it was unable to publish this notice 15 days prior to the Arthritis Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Arthritis Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Dated: November 17, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–31270 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting is open to the public.

Name of Committee: Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on December 2 and 3, 1998, 8:30 a.m. to 5 p.m.

Location: Advisory Committee Conference Room 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Robert L. Sherman or Stephanie A. Mason, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5191, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On December 2, 1998, the subcommittee will: (1) Review the ingredients triclosan and the combination of triclosan and zinc citrate; (2) review and vote on the combination of zinc chloride, sodium citrate, hydrogen peroxide, and sodium lauryl sulfate; and (3) discuss comments on the draft subcommittee report. On December 3, 1998, the subcommittee will discuss comments on the draft report and adopt the report.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 25, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 12 m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 25, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Dental Plaque Subcommittee of the Nonprescription Drugs Advisory Committee were available at this time, the Commissioner concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: November 16, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–31269 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1008]

Guidance for Industry on Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Enforcement Policy During Implementation of Section 503A of the Federal Food, Drug, and Cosmetic Act." This guidance document provides an overview of FDA's policy on enforcement of the pharmacy compounding provisions of section 503A of the Federal Food, Drug, and Cosmetic Act (the act) during the transition to full implementation of that section, which was added by the Food and Drug Administration Modernization Act of 1997 (the Modernization Act).

DATES: Written comments on the guidance document may be submitted by February 22, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments to the Dockets Management Branch (HFD–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Lee D. Korb, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Enforcement Policy During Implementation of Section 503A of the

Federal Food, Drug, and Cosmetic Act." On November 21, 1997, the President signed the Modernization Act (Pub. L. 105–115). Section 127 of the Modernization Act, which adds section 503A to the act (21 U.S.C. 353a), clarifies the status of pharmacy compounding under Federal law. Under section 503A of the act, drug products that are compounded by a pharmacist or physician on a customized basis for an individual patient may be entitled to exemptions from three key provisions of the act: (1) The adulteration provision of section 501(a)(2)(B) (21 U.S.C. 351(a)(2)(B)) (concerning the good manufacturing practice requirements), (2) the misbranding provision of section 502(f)(1) (21 U.S.C. 352(f)(1)) (concerning the labeling of drugs with adequate directions for use), and (3) the new drug provision of section 505 (21 U.S.C. 355) (concerning the approval of drugs under new drug or abbreviated new drug applications).

To qualify for these statutory exemptions, a compounded drug product must satisfy several requirements, some of which are to be the subject of FDA's rulemaking or other actions. FDA is currently working on several rules and other documents necessary to implement section 503A of the act. However, section 503A of the act takes effect on November 21, 1998, and FDA will not have completed its implementation efforts by this date. This guidance document describes FDA's policy on enforcement of section 503A of the act during the transition to full implementation of that provision.

This guidance document is being issued as a Level 1 guidance consistent with FDA's "Good Guidance Practices" (62 FR 8961, February 27, 1997). It is being implemented immediately without prior public comment because the guidance document is needed to explain to industry the agency's current policy on enforcement of section 503A of the act, which will take effect November 21, 1998. However, the agency wishes to solicit comment from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

This guidance document represents the agency's current thinking on enforcement of section 503A of the act during the transition to full implementation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

II. Comments

Interested persons may, on or before February 22, 1999, submit to the Dockets Management Branch (address above) written comments on the guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CDER at "http://www.fda.gov/cder/guidance.htm".

Dated: November 17, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–31221 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–P–15A & HCFA–37]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* New Collection.

Title of Information Collection: Medicare Information Needs: Supplement to the Medicare Current Beneficiary Survey (MCBS).

Form No.: HCFA–P–15A (OMB# 0938–NEW).

Use: This supplement to the MCBS builds upon the previously fielded Round 18 Supplement, which provided useful information to HCFA's Center for Beneficiary Services on beneficiary information needs and preferences for how to receive information. Results from this data collection will be used by HCFA to guide continued development of communication and education programs for Medicare beneficiaries.

Affected Public: Individuals or Households.

Number of Respondents: 12,000.

Total Annual Responses: 12,000.

Total Annual Hours: 3,000.

(2) *Type of Information Collection Request:* Revision of a currently approved collection.

Title of Information Collection: Medicaid Program Budget Reports and Supporting Regulations in 42 CFR Section 430.30.

Form No.: HCFA–37 (OMB# 0938–0101).

Use: The Medicaid Program Budget report is prepared by the State Medicaid Agencies and is used by HCFA for (1) developing National Medicaid Budget estimates, (2) quantifying Budget Assumptions, (3) issuing quarterly Medicaid Grant Awards, and (4) collecting projected State receipts of donations and taxes.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 57.

Total Annual Responses: 224.

Total Annual Hours: 7,840.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Dawn Willinghan, Room N2–14–26 7500 Security Boulevard Baltimore, Maryland 21244–1850

Dated: November 13, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–31236 Filed 11–20–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of December 1998:

Name: Council on Graduate Medical Education.

Date and Time: December 16, 1998, 8:30 a.m.–5 p.m.; December 17, 1998, 8:30 a.m.–1 p.m.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC.

This meeting is open to the Public.

Agenda: The agenda will include: Welcome and opening comments from the Administrator, Health Resources and Services Administration, the Associate Administrator for Health Professions and the Acting Executive Secretary of COGME; ■ panel on GME Financing Issues; a panel on GME Program Issues; and a panel on Medical Education in Integrated Settings. The Council will hear an update on Progress in Minority Entry into Medicine. It will discuss the COGME 15th Report outline, and its future direction.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Dated: November 17, 1998.

Jane M. Harrison,

Director, Division of Policy and Review Coordination.

[FR Doc. 98–31222 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Research and Demonstration Projects for Indian Health

AGENCY: Indian Health Service, HHS.

ACTION: Notice of Single Source Cooperative Agreement with the National Council of Urban Indian Health.

SUMMARY: The Indian Health Service (HHS) announces the award of a cooperative agreement to the National Council of Urban Indian Health (NCUIH) for a demonstration project for urban Indian health care advocacy, consultation, health data dissemination, training, and technical assistance. The project is for a three-year project period effective September 30, 1998, to August 31, 2001. Funding for the project is $412,170.

The award is issued under the authority of the Public Health Service Act, section 301, and is listed under Catalog of Federal Domestic Assistance number 93.933.

The specific objectives of the project are:

1. To provide various forms of technical assistance to member organizations, with subject matter varying according to member need and NUCIH initiatives.
2. To advocate on behalf of Title V programs and their consumers.
3. To disseminate information in a timely and accurate manner by means of a quarterly newsletter and establishment of a web page.
4. To coordinate two meetings for the general membership to conduct business and develop policy strategies.

Justification for Single Source

This project has been awarded on a non-competitive single source basis. NCUIH is the only nationwide Indian organization that is specifically established to address the health needs of American Indians living in urban areas with membership consisting of Title V urban Indian organizations. Furthermore, it is the only nationwide organization of urban Indians supporting the growth of the urban Indian health care delivery system.

Use of Cooperative Agreement

A cooperative agreement has been awarded because of anticipated substantial programmatic involvement by IHS staff in the project. Substantial programmatic involvement is as follows:

1. IHS staff will participate in at least one Board meeting annually. Purposes will be to present the IHS prospectus on current health care and legislative issues affecting the urban Indian people.
2. IHS staff will approve articles to be included in newsletters.
3. IHS staff may, at the request of NCUIH, participate on study groups and may recommend topics for consideration.
4. IHS will be involved in the selection and approval process for hiring key personnel. Key personnel include the Chief Executive Officer, Administrative Assistant, and consultants. NCUIH must submit the Chief Executive Officer selection criteria to IHS for approval.
5. IHS will be involved in the agenda for the Roundtable meeting in November 1998 and the annual Leadership meeting in March 1999.

CONTACTS: For program information, contact Mr. James F. Cussen, Director, Urban Programs, Office of the Director, Indian Health Service, Room 6–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20852 (301) 443–4680. For grants management information, contact Mrs. M. Kay Carpentier, Grants Management Officer, Division of Acquisition and Grants Management, Suite 100, Twinbrook Metro Plaza, 12300 Twinbrook Parkway, Rockville, Maryland 20852 (301) 443–5204.

Dated: November 13, 1998.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 98–31223 Filed 11–20–98; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, December 3, 1998, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion include (1) Review of the Human Genome Project; (2) Issues Regarding the Intramural Program; (3) Priority Setting; and (4) Issues Related to Clinical Trials and the Clinical Trials Database. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Special Assistant to the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and available substantive program information upon request. Any individual who requires special assistance, such as sign language

interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than November 27, 1998.

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31158 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Novel Immunotherapeutic Strategies for the Prevention and Treatment of Cancer.

Date: December 9–11, 1998.

Time: 7:00 PM to 11:00 AM.

Agenda: To review and evaluate grant applications.

Place: Hotel La Jolla, 7955 La Jolla Shores Drive, La Jolla, CA 92037.

Contact Person: Florence E. Farber, PhD., Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN 609, Rockville, MD 20892, 301/496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31160 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Request for proposal—Development and Manufacture of Oral Dosage Forms.

Date: December 9, 1998.

Time: 8:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: C.M. Kerwin, Ph.D., Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard/EPN–609, Rockville, MD 20892–7405, 301/496–7421.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31168 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group Research Centers In Minority Institutions Review Committee.

Date: February 8–9, 1999.

Open: February 8, 1999, 8:00 am to 10:00 am.

Agenda: To discuss program planning and program accomplishments.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Closed: February 8, 1999, 10:00 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Grace S. Ault, Ph.D., Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0822.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31159 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Clinical Research.

Date: December 1, 1998.

Time: 11:00 AM to Ajournment.

Agenda: To review and evaluate grant applications.

Place: 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bela J. Gulyas, PhD., Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892, 301–435–0811.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31164 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Cardiviovascular Complications from Cocaine Abuse in HIV Infection.

Date: December 2, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Crystal City, 1489 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: S. Charles Selden, PhD, Scientific Review Administrator, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Gene Delivery and Vectors for Cardiovascular Diseases.

Date: December 2, 1998.

Time: 8:30 am to 1:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Valerie L. Prenger, PhD, Scientific Review Administrator, Review Branch, DEA, NHLBI, NIH, Two Rockledge Centre, Room 7198, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0297.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Sarcoidosis Genetic Linkage Consortium.

Date: December 4, 1998.

Time: 8:00 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Diane M. Reid, MD, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Coronary Artery Disease Risk Development in Young Adults (CARDIA) Study.

Date: December 9, 1998.

Time: 9:00 am to 12:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: C. James Scheirer, PhD, Chief, Review Branch, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892–7924, 301/435–0266.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Minority Research Training Award.

Date: December 15, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, One Metro Center, Bethesda, MD 20814.

Contact Person: S. Charles Selden, PhD, Scientific Review Administrator, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31157 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 18–20, 1998.

Time: 1:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Capitol, 550 C Street, SW, Washington, DC 20024.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 20, 1998.

Time: 12:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: November 23, 1998.

Time: 4:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Mary Sue Krause, BA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 1998.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 10, 1998.

Time: 9:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31153 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: November 19, 1998.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, 301–496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31154 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Behavioral Strategies to Prevent Osteoporosis.

Date: December 13–14, 1998.

Time: 7:30 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31156 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Imaging in Medical Rehabilitation.

Date: December 7–8, 1998.

Time: 9:30 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31161 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel First and Second Trimester Evaluation of Risks of Aneuploidy.

Date: December 4, 1998.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31162 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Molecular Basis of Male Infertility.

Date: November 30–December 1, 1998.

Time: 7:30 p.m. to 5:00 p.m..

Agenda: To review and evaluate grant applications.

Place: Bethesda Holiday Inn, Versailles III, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD., Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31163 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel RFP–DMID–99–03 Non-Human Primate Animal Models for Experimental Research on Chronic Lyme Neuroborrelliosis.

Date: November 23, 1998.

Time: 2:00 PM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: 6003 Executive Blvd., Solar Bldg.—Room 3B05, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Madelon C. Halula, Ph.D., Chief, Special Review Branch, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C16, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–2636.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31165 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: December 2, 1998.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: 7550 Wisconsin Avenue, Room 9C10, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Sheehy, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS, Fed Bldg., RM. 9C10, 7550 Wisconsin Avenue, MSC 9175, National Institutes of Health, Rockville, MD 20892–9175, 301–496–9223, ps32h@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31166 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1–GRB 6 (J2).

Date: December 3, 1998.

Time: 2:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

(Catalog of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31167 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 20, 1998.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Priscilla B. Chen, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BM–2 4 M.

Date: November 23, 1998.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William C. Branche, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 23, 1998.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 12, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31155 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 17, 1998.

Time: 1:00 PM to 2:30 PM

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gopal C. Sharma, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7816, Bethesda, MD 20892, (301) 435–1783.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 18, 1998.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 19, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jerrold Fried, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BM–2 3 S.

Date: November 19, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, P.h.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 25, 1998.

Time: 11:15 AM to 1:15 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Hyperaccelerated Award/Mechanisms in Immune Disease Trials.

Date: November 30, 1998.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anita Corman Weinblatt, P.h.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7778, Bethesda, MD 20892, (301) 435–1124.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30–December 2, 1998.

Time: 6:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Penn Tower Hotel, on the University of Penn Campus, Philadelphia, PA 19104–4385.

Contact Person: Nancy Lamontagne, P.h.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435–1726.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: November 30, 1998.

Time: 12:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol A. Campbell, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7848, Bethesda, MD 20892, (301) 435–1257.

(Catalog of Federal Domestic Assistance Program Nos. 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, 93.306, Comparative Medicine, 93.306, National Institutes of Health, HHS)

Dated: November 16, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31169 Filed 11–20–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Delegations of Authority; Public Law 80–566, 62 Stat. 281; Correction

AGENCY: Department of Health and Human Services, National Institutes of Health.

ACTION: Notice; correction.

SUMMARY: On February 19, 1997 (62 FR 7459), the Department of Health and Human Services (HHS) published notice of a January 28, 1997 delegation of authority from the Secretary of HHS to the Director of the National Institutes of Health (NIH), which delegated the authorities in 40 U.S.C. 318, 318a and 318b to provide for the protection of the property and persons at the NIH's National Cancer Institute, Frederick Cancer Research and Development

Center. However, that notice omitted reference to the authority in 40 U.S.C. 318, also related to the protection of property and persons. The purpose of this correction is to correct the paragraph of that February 19, 1997, notice by adding to it the authority in 40 U.S.C. 318, which should have been included in the notice.

FOR FURTHER INFORMATION CONTACT: William G. Ketterer, Senior Attorney, NIH (301) 496–6043.

Correction: Accordingly, in the **Federal Register** of February 19, 1997, in FR Doc. 97–4037, on page 7459, in the first column, correct the paragraph entitled "Authorities Delegated" to read:

Authorities Delegated: Authorities relating to the protection of Federal property vested in the Administrator of General Services by the Act of June 1, 1948, Public Law 80–566, 62 Stat. 281, 40 U.S.C. 486(d), 40 U.S.C. 318, 318a, and 318b, and the Federal Property and Administrative Services Act of 1949, as amended, 63 Stat. 377, are hereby delegated to the Director, National Institutes of Health (NIH), for the protection of the property and persons at NIH, National Cancer Institute's (NCI) facilities in the Frederick Cancer Research and Development Center ("NCI parcel") located in Frederick, MD.

DATES: Upon date of signature this correction is retroactive to January 28, 1997.

Dated: November 12, 1998.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 98–31107 Filed 11–28–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Validity of Self-Reported Drug Use in Population Surveys—New—During the period July 1999 through June 2000, SAMHSA and the National Institute on Drug Abuse (NIDA) will conduct a field Study to test the validity of obtaining drug use data through a combination of computer assisted personal interviewing and audio computer-assisted self interviewing. A random sample of approximately 22,000 households (from households listed, but not used, in the National Household Survey on Drug Abuse (NHSDA) sample segments) will be selected for screening.

Approximately 3,333 persons form the civilian, non-institutionalized population of the United States ages 12–25 will be selected to be interviewed. First, a questionnaire (using a subset of the 1999 NHSDA questions, with a special set of questions for the validity study) will be administered to determine: (1) The reported prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs, and (2) recent environmental exposures to tobacco and marijuana smoke. Then, permission will be sought to obtain hair and urine samples from respondents. Under a NIDA grant, these samples will be chemically analyzed to validate respondents' self-reports of drug use (about 2,000 respondents are expected to provide biological specimens). Respondents will be paid an incentive upon receipt of the hair/urine samples. The results will be used by SAMHSA, the Office of National Drug Control Policy, other Federal government agencies, and other organizations and researchers to estimate the extent of under-reporting on drug use surveys such as the NHSDA conducted by SAMHSA.

The estimated annualized burden for a one-year data collection period is summarized below.

	Number of respondents	Number of responses/ respondent	Average burden/ response (hours)	Total burden hours
Household screener	22,000	1	0.05	1,100
Questionnaire:				
No specimen	1,333	1	1.00	1,333
With specimens	2,000	1	1.50	3,000
Total				5,433

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 16, 1998.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 98–31201 Filed 11–20–98; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4351–N–10]

Notice of Proposed Information Collection for Public Comment

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due: December 23, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph Riley, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW, Room 8222, Washington, DC 20410, telephone 202–708–9426, extension 5861. This is not a toll-free number. Copies of the proposed forms and other available documents may be obtained from Joseph Riley.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology that will reduce respondent burden (e.g., permitting electronic submission of responses).

This Notice also provides the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations.

Description of the Need for Information and Proposed Use: The Department is conducting under contract a study to update its estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.5 million households covered by Public Housing and Section 8 housing subsidies. The QC process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, and third-party income verifications are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD program offices are then responsible for designing and implementing corrective actions. Error rates will be compared with error rates from the first QC study, which was completed in 1995, to measure whether corrective actions initiated after the first study have had impacts and if changes in priorities are needed.

The first QC study found that about one-half of the errors measured using on-site tenant interviews and file reviews could not be detected with the 50058/50059 form data collected by the Department, which is why HUD and other agencies with means-tested program have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. This study will provide information on the quality of tenant interviewing (e.g., whether they are being asked about all sources of income) and the reliability of eligibility determinations and income verification. It is anticipated successive studies will be done on a two year cycle to provide updates on the nature and extent of errors and the effectiveness of error reduction strategies.

Members of the Affected Public: Recipients of Public Housing and Section 8 housing assistance subsidies.

Estimation of the Total Number of Hours Needed With Those Surveyed to Conduct the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response: The researchers will survey approximately 388 PHA/program sponsor staff about (re)certification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the interviews are expected to take less than 35 minutes. Researchers will survey, 2,800 program participants to obtain information on household composition, expenses, and income. The time required for these interviews will vary, but it estimated to require less than 50 minutes per interview.

The time estimates provided are based on the first QC survey. This survey will make use of Computer Assisted Interviewing (CAI) questionnaires and equipment, which are being used in part because they are known to reduce interview times. The above interview time estimates are therefore higher than likely actual interview times, but until questionnaire software development is completed we are unable to provide a good estimate of the extent to which interview times will be reduced.

Status of the Proposed Information Collection: To be submitted to OMB for approval subsequent to receiving comments from this notice.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 9, 1998.

Lawrence L. Thompson,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 98–31105 Filed 11–20–98; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4349–N–41]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: December 23, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

This Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 16, 1998.

David S. Cristy,

Director, IRM Policy and Management Division.

Title of proposal: Assessment of resident satisfaction with their living conditions.

Office: Real Estate Assessment Center.

OMB approval number: 2535–xxxx.

Description of the need for the information and its proposed use: HUD is conducting this survey to assess the living conditions of residents. The survey will assess the overall satisfaction of residents with their housing conditions.

Form number: 2535–xxxx.

Respondents: Individuals or Households.

Frequency of submission: Annually.

Reporting Burden

Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
75,000		1		.25		18,750

Total estimated burden hours: 18,750.

Status: New Collection.

Contact: Christine Jenkins, HUD, (202) 755–2082 x134; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 16, 1998.

[FR Doc. 98–31104 Filed 11–20–98; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Extension of Comment Period for Final Programmatic Environmental Assessment and Draft Comprehensive Conservation Plan for Cabeza Prieta National Wildlife Refuge and Wilderness

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) is extending the comment period through close of business Monday, November 30, 1998, for the Final Programmatic Environmental Assessment and associated Draft Comprehensive Conservation Plan (CCP) for the Cabeza Prieta National Wildlife Refuge and Wilderness, Ajo, Arizona. A Finding of No Significant Impact (FONSI) was issued consequent to the issuance of the Final Programmatic Environmental Assessment (EA). A notice was published in the **Federal Register** notifying release of the document on September 28, 1998. The Service is furnishing this notice to ensure that interested parties have every opportunity to offer input, comments, and suggestions with respect to the Service's proposed management objectives and strategies detailed in the draft CCP document attached to the Final Programmatic EA.

DATES: The Service will be open to written advice and comment on the draft CCP Objectives and Strategies through November 30, 1998.

ADDRESSES: Comments may be sent to: Mr. Tom Baca, Natural Resource Planner, U.S. Fish and Wildlife Service, Southwest Region, Division of Refuges and Wildlife, P. O. Box 1306, Albuquerque, NM 87103.

SUPPLEMENTARY INFORMATION: It is the U.S. Fish and Wildlife Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process has considered and will continue to consider many elements, including habitat and wildlife management, habitat protection and acquisition, public and recreational uses, and cultural resources. Continued public input into this planning process is essential. The CCP document when finalized will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies.

Review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, including the National Wildlife Refuge System Improvement Act of 1997, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

The Service anticipates that a Final CCP will be available by December 30, 1998.

Dated: November 17, 1998.

Geoffrey L. Haskett,

Acting Regional Director.

[FR Doc. 98–31187 Filed 11–20–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; F–020174, F–35871, F–35872]

Notice of Proposed Extension of Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army has filed applications to extend the withdrawal of approximately 869,862 acres of public lands for the Fort Wainwright Yukon Training Area, the Fort Greely West Training Area, and the Fort Greely East Training Area. The lands were originally withdrawn by Public Law 99–606 of November 6, 1986. The withdrawal will expire on November 5, 2001, unless extended. This withdrawal extension requires legislative action by Congress pursuant to the Act of February 28, 1958, 43 U.S.C. 155–158, commonly known as the Engle Act. The lands are currently withdrawn from all forms of appropriation under the public land laws, the mining laws, the mineral leasing laws, and the geothermal leasing laws pursuant to Public Law 99–606.

DATES: Comments should be received on or before February 22, 1999.

ADDRESSES: Comments should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 907–271–5049.

SUPPLEMENTARY INFORMATION: On November 5, 1998, the Department of the Army filed applications to extend the withdrawal for the Fort Wainwright Yukon Training Area (formerly known as the Fort Wainwright Maneuver Area), the Fort Greely West Training Area (formerly known as the Fort Greely Maneuver Area), and the Fort Greely East Training Area (formerly known as the Fort Greely Air Drop Zone). The Army has determined there is a continuing military need for the lands and filed the applications for extension in accordance with Section 8 (a)(1) and (2) of Public Law 99–606. The legal descriptions for the lands are as published in the 52 FR 5506–5507, February 23, 1987; 52 FR 8405, March 17, 1987; 52 FR 17485, May 8, 1987; and the 54 FR 48782, November 7, 1989. The areas described aggregate approximately 869,862 acres.

A copy of the legal descriptions are available by contacting Robbie J. Havens at the address or phone number listed above.

The Fort Wainwright Yukon Training Area, the Fort Greely West Training Area, and the Fort Greely East Training Area, are used by the Army for military maneuvering, training, artillery firing, aerial gunnery, infantry tactics, equipment development and testing, as well as other defense related purposes. The sites are used to train in an extremely cold environment and to test the effect of this environment on military equipment, and are used by the Army, the Air Force, and other military units.

This withdrawal extension requires legislative action by Congress pursuant to the Act of February 28, 1958, 43 U.S.C. 155–158.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the Alaska State Director of the Bureau of Land Management.

There will be three public meetings. The purpose of these meetings is for interested persons to comment on the proposed extension of the withdrawal and the associated draft legislative environmental impact statement. Each meeting for the public hearings will be conducted as open houses that will begin at 2:00 p.m. and continue until 8:00 p.m. People interested in the proposed extension of the land withdrawal and the associated draft legislative environmental impact statement will have the opportunity to make formal remarks.

The three meetings will be conducted at the following locations on the dates indicated:

January 5, 1999, Diamond Willow Club, Delta Ave. & First Street, Building 701, Fort Greely, Alaska.

January 6, 1999, Carlson Center, Pioneer Room, 2010 Second Avenue, Fairbanks, Alaska.

January 7, 1999, William A. Egan Civic and Convention Center, Board Room, 555 West Fifth Avenue, Anchorage, Alaska.

Michael W. Haskins,

Acting Supervisor, Lands and Minerals Group, Division of Lands, Minerals, and Resources.

[FR Doc. 98–31259 Filed 11–20–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Oregon Caves National Monument Final General Management Plan/ Environmental Impact Statement, Oregon

AGENCY: National Park Service, DOI.

ACTION: Notice of Availability of Final Environmental Impact Statement.

SUMMARY: This notice announces the availability of the final general management plan/environmental impact statement (FEIS) for Oregon Caves National Monument, Oregon. The FEIS presents the proposed action and alternatives for management of the Monument for the next 15 years. The proposed action best satisfies the Monument and NPS mission, as well as the Monument's long-term management objectives.

The draft environmental impact statement (DEIS) for this action was released for public review on January 16, 1998 (**Federal Register**, Vol. 63, No. 11) and the public comment period closed on March 13, 1998. The FEIS includes the four alternative strategies for the protection, public use and management of Monument resources that were in the DEIS, with modifications based on public comment received, additional issues raised, and further impact analysis.

The FEIS is contained in two volumes. The four alternatives and environmental consequences are in Volume I; letters and summaries of oral comments received from agencies, elected officials, and organizations are reprinted in Volume II. Letters from individuals and responses to substantive comments also are included in Volume II.

SUPPLEMENTARY INFORMATION: The no-action period on this FEIS will expire 30 days after the Environmental Protection Agency has published a notice of availability of the FEIS in the **Federal Register**. All who submitted substantive comments on the DEIS will receive a copy of the FEIS. In addition, public reading copies of the FEIS will be available for review at the following locations: Office of Public Affairs, National Park Service, Department of the Interior, 1849 C St., NW., Washington, DC 20240, phone: 202–208–6843; Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523, phone (541) 592–2100; Josephine County Public Library, 200 NW "C" St., Grants Pass, OR 97526, phone (541) 474–5480; Illinois Valley Branch Library, P.O. Box 190, Cave Junction, OR 97523, phone (541) 592–3581; Multnomah County Central Library, 801 SW 10th Ave., Portland, OR 97205, phone (503) 248–5123; Columbia Cascades Support Office, National Park Service, 909 First Ave., Seattle, WA 98104–1060, phone: 206–220–4154. For further information contact Superintendent, Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523, phone (541) 592–2100.

Dated: November 10, 1998.

Rory D. Westberg,

Superintendent, Columbia Cascades Support Office, Pacific West Region.

[FR Doc. 98–31204 Filed 11–20–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 14, 1998.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by December 8, 1998.

Carol D. Shull,

Keeper of the National Register.

Arkansas

Benton County

Rogers Commercial Historic District (Boundary Increase), (Benton County MRA), 120 S. Second St., Rogers, 98001482

Florida

Palm Beach County
Guaranty Building, 120 S. Olive Ave., West Palm Beach, 98001483

Georgia

Turner County
Wesleyan Methodist Campground and Tabernacle, 321 Gordon St., Ashburn, 98001485
Wayne County
Ritch—Carter—Martin House, Jct. of US 341, GA 27, and Tillman St., Odum, 98001484

Kentucky

Bell County
P–38–F (Lockheed Lightning # 17630), Bell County Airport, Middlesboro, 98001494
Bourbon County
Cooper's Run Rural Historic District, Roughly along and included within Clay Kiser Rd., Paris-Cynthiana Rd., and US 460, Paris vicinity, 98001493
Hardin County
State Theatre, 205 W. Dixie Ave., Elizabethtown, 98001492
Henderson County
Audobon School, 1400 Clay St., Henderson, 98001497
Geibel House, 327 N. Main St., Henderson, 98001491
Henderson Cotton Mill Workers Housing District, Roughly bounded by Washington, Letcher, and Powell Sts., and Rankin Ave., Henderson, 98001495
Prichett House, 311 N. Main St., Henderson, 98001490
Stewart House, 827 S. Green St., Henderson, 98001496
Jefferson County
Brown, J.T.S., and Son's Complex, 105, 107–109 W. Main St., Louisville, 98001489
Eitel, Otto F., House (Jefferson County MRA) 12004 LaGrange Rd., Anchorage vicinity, 98001488
Kenton County
Northern Bank of Kentucky, 241–45 Scott Blvd., Covington, 98001487
Mason County
Peers, Henry Perviance, House, 325 W. Third St., Maysville, 98001486

Maryland

Queen Anne's County
Mattapax, 106 Shipping Creek Rd., Stevensville, 98001498

Missouri

Boone County
Hackman, Samuel E., Building, 30 S. Second St., Hartsburg, 98001501
Cedar County
Stockton Community Building, Jct. of Spring and North Sts., Stockton, 98001502
Dade County
Greenfield Opera House Building, Jct. of Water and Allison Sts., Greenfield, 98001504
Dunklin County
Little River Lake Discontiguous Archeological District, Address Restricted, Kennett vicinity, 98001499
Jackson County
President Gardens Apartments Historic District, Roughly along President Ave., 83rd St., and 82nd Terrace bet. Lydia and Troost Aves., Kansas City, 98001503
Ralls County
Saverton School, Jct. of Cty. Rtes. N and E, Saverton, 98001505
Texas County
Cole, Arthur W., and Chloe B., House, 5803 Rocky Branch Rd., Houston vicinity, 98001500

North Carolina

Franklin County
Andrews—Moore House, 95 Simon Collie Rd., Bunn vicinity, 98001506

Tennessee

Montgomery County
Johnson—Hach House (Clarksville, Tennessee MPS), 403 Greenwood Ave., Clarksville, 98001507

A Request for a Waiver of the Comment Period has been Received for the following resource:

Arkansas

Pulaski County
Trinity Hospital, Jct. of Main and 20th Sts., Little Rock, 98001481

[FR Doc. 98–31198 Filed 11–20–98; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: December 15, 1998 (8:45 a.m. to 5:00 p.m.).

Location: Pan American Health Organization (PAHO), Auditorium A, 525 23rd Street, N.W., Washington, D.C.

This meeting will feature an interactive discussion, in the format of a moderated dialogue between speakers and the audience, on the role of civil society organizations in sustainable development. The afternoon will consist of break-out groups engaging U.S. PVOs and NGOs in discussing USAID's policy toward civil society organizations and ways of working together to strengthen the civil society sector.

The meeting is free and open to the public. *However, Notification by December 11, 1998 Through the Advisory Committee Headquarters is Requested.* Persons wishing to attend the meeting should fax their name, organization and phone number to Lisa J. Harrison on (703) 741–0567.

Dated: November 10, 1998.

Noreen O'Meara,

Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 98–31170 Filed 11–20–98; 8:45 am]
BILLING CODE 6116–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

November 18, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ({202} 219–5096, ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, ETA, ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: OSHA Data Collection Systems.

OMB Number: 1218–0209 (extension).

Agency Number: OSHA Form 196A; OSHA Form 196B.

Frequency: Annually.
Affected Public: Business or other for-profit; State, Local or Tribal Government.
Number of Respondents: 82,250.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 36,425.
Total Annualized Capital/Startup Costs: $0.
Total Annual (operating/maintaining): $0.
Description: The 1999 OSHA Data Collection will request 1998 injury and illness data from 82,250 establishments throughout the Nation. The data are needed by OSHA to carry out intervention and enforcement activities to guarantee workers a safe and healthful workplace. The data will also be used for measurement purposes in compliance with the Government Performance and Results Act of 1995 and multiple research purposes. The data collected are already maintained by employers as required by 29 CFR Part 1904.

Agency: Employment and Training Administration.
Title: Attestations by Employers Using Alien Crewmembers for Longshore Activities at Locations in the State of Alaska.
OMB Number: 1205–0352 (extension).
Agency Number: ETA 9033–A.
Frequency: Annually.
Affected Public: Business or other for-profit.
Estimated Time Per Respondent: 3 hours.
Number of Respondents: 350.
Total Burden Hours: 1,050 hours.
Total Annualized Capital/Startup Costs: $0.
Total Annual (operating/maintaining): $0.
Description: The information provided on this form by employers seeking to use alien crewmembers to perform longshore activities at locations in the State of Alaska will permit the Department to meet federal responsibilities for program administration, management and oversight.

Agency: Employment Standards Administration.
Title: Application for Continuation of Death Benefit for Student.
OMB Number: 1215–0073 (extension).
Frequency: On Occasion.
Agency Number: LS–266.
Affected Public: Individuals or households; Business or other for-profit.
Number of Respondents: 43.
Estimated Time Per Respondent: 30 minutes.
Total Burden Hours: 22 hours.
Total Annualized Capital/Startup Costs: $0.
Total Annual (operating/maintaining): $0.
Description: The Form LS–266 is submitted by the parent or guardian of the dependent for whom the benefit is sought and is used by the Department of Labor to determine if the continuation of benefits is justified.

Todd R. Owen,
Departmental Clearance Officer.

[FR Doc. 98–31193 Filed 11–20–98; 8:45 am]
BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension of seven information collections. Four of the information collections are conducted by the Office of Workers' Compensation Programs, and three are conducted by the Wage and Hour Division. The collections are: (1) Claim for Continuance of Compensation, CA–12; (2) Pre-Hearing Statement, LS–18; (3) Miner's Claim for Benefits Under the Black Lung Benefits Act, CM–911, Employment History, CM–911A, Miner Reimbursement Form, CM–915; (4) Overpayment Recovery Questionnaire, OWCP–20; (5) Housing Occupancy Certificate Under the Migrant and Seasonal Worker Protection Act, WH–520; (6) Application for Special Industrial Homeworker's Certificate, WH–2, Application for Authority to Employ Workers with Disabilities at Special Minimum Wages, WH–226–MIS, Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages, WH–226A–MIS; and (7) Worker Information-Terms and Conditions of Employment, WH–516 English and Spanish Versions. A copy of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before January 25, 1999. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Contact Ms. Patricia Forkel at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339. The Fax number is (202) 219–6592. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Claim for Continuance of Compensation, CA–12

I. Background

Under the provisions of the Federal Employees' Compensation Act, eligible dependents of deceased Federal employees receive compensation on account of the employee's death. The Office of Worker's Compensation Programs monitors death benefits for criteria which qualify the beneficiary as the employee's dependent under the law. The CA–12 is designated for this purpose.

II. Current Actions

The Department of Labor (DOL) seeks approval of the extension of this information collection in order to carry out its responsibility to ensure that

death benefits are being paid correctly, and that no payments are being made to ineligible survivors.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Claim for Continuance of Compensation.

OMB Number: 1215–0154.

Agency Number(s): CA–12.

Affected Public: Individuals or households.

Total Respondents: 6,054.

Frequency: Annually.

Average Time per Response: 5 minutes.

Total Burden Hours: 505.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $2,118.90.

Pre-Hearing Statement, LS–18

I. Background

The Longshore and Harbor Workers' Compensation Act provides benefits to certain workers injured in maritime employment. Title 20, CFR 702.317 provides for the referral of claims under the Longshore Act for formal hearings. Before a case is transferred to the Administrative Law Judge, each of the parties or their representatives must be provided with a copy of a pre-hearing statement form, which they must complete and return to Longshore. Longshore then transmits them to the Office of the Chief Administrative Law Judge with all available evidence which the parties intend to submit at the hearing. The LS–18 is the form used to refer cases for formal hearing.

II. Current Actions

The Department of Labor (DOL) seeks approval of the extension of this information collection in order to carry out its responsibility to prepare cases for hearing and to establish and clarify the issues involved.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Pre-Hearing Statement.

OMB Number: 1215–0085.

Agency Number(s): LS–18.

Affected Public: Individuals or households, Business or other for-profit.

Total Respondents: 6,800.

Frequency: On occasion.

Average time per Response: 10 minutes.

Estimated Total Burden Hours: 1,088.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $2,456.50

Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), Employment History CM–911a), Miner Medical Reimbursement Form (CM–915)

I. Background

Title IV of the Federal Mine Safety and Health Act of 1977, and its subsequent amendments, provide for the payment of benefits to a coal miner who is totally disabled by black lung disease, and to certain eligible survivors of the miner. The CM–911 is the application form. The CM–911a, which is completed along with the CM–911, renders a complete history of employment and is used to establish employment criteria for benefit eligibility. Under the program, miner payees are eligible for reimbursement of out-of-pocket medical expenses for treatment and for medical expenses incurred in the development of a claim. The CM–915 is used to request such reimbursement.

II. Current Actions

The Office of Workers' Compensation Programs seeks the extension of this currently approved information collection in order to carry out its responsibility to pay benefits to eligible claimants.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Miner's Claim for Benefits Under the Black Lung Benefits Act (CM–911), Employment History (CM–911a), Miner Medical Reimbursement Form (CM–915).

OMB Number: 1215–0052.

Agency Numbers: CM–911, CM–911a, CM–915.

Affected Public: Individuals or households; Business or other for-profit.

Frequency: On occasion.

Form	No. of respond-ents	Average Min. per response	Burden hours
CM–911	4,800	45	3,600
CM–911a	5,900	40	3,933
CM–915	9,500	10	1,583

Total Respondents: 20,200.

Estimated Total Burden Hours: 9,116.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $3.841.30

Overpayment Recovery Questionnaire, OWCP–20

I. Background

Both the Federal Coal Mine Health and Safety Act and the Federal Employees' Compensation Act provide for the recovery, waiver, compromise, or termination of overpayment of benefits to beneficiaries. The OWCP–20 collects information used to ascertain the financial condition of the beneficiary who has been overpaid to determine if the overpayment or any part can be recovered, to identify possible concealment or improper transfer of assets, and to identify and consider present and potential income and current assets for enforced collection proceedings. The form also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment.

II. Current Actions

The Department of Labor seeks the extension of this currently approved information collection in order to carry out its responsibility under law to resolve overpayments made under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number(s): OWCP–20.

Affected Public: Individuals or households.

Total Respondents: 4,500.

Frequency: On occasion.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 4,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $1,575.

Housing Occupancy Certificate Under the Migrant and Seasonal Agricultural Worker Protection Act, WH–520

I. Background

The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that owner or controller of a facility used for housing migrant agricultural workers must obtain and post on site, a certificate of occupancy. The WH–520 is a form used to gather information to determine whether or not the facility meets the applicable safety and health standards, and also serves as the certificate of occupancy.

II. Current Actions

The Department of Labor seeks the extension of this information collection in order to inspect and certify a migrant housing facility as meeting applicable safety and health standards under the law.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Housing Occupancy Certificate Under the Migrant and Seasonal Agricultural Worker Protection Act.

OMB Number: 1215–0158.

Agency Number(s): WH–520.

Affected Public: Farms; Individuals or households, Businesses or other for-profit.

Total Respondents: 60.

Frequency: On occasion.

Average Time per Response (Reporting): 3 minutes.

Average Time per Response (Recordkeeping): 1 minute.

Estimated Total Burden Hours: 4.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $0.

Application for Special Industrial Homeworker's Certificate (WH–2), Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226–MIS), Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226a–MIS)

I. Background

The Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent evasion of the minimum wage requirement of the Act. The FLSA also provides that the Secretary of Labor, to the extent necessary in order to prevent curtailment of opportunities for employment, shall provide for the employment of learners at subminimum wage rates. The FLSA also provides for the employment of workers with disabilities at subminimum wages in order to prevent curtailment of employment opportunities for such individuals. The WH–2 is used by employers to obtain certificates to employ individual homeworkers in one of the restricted homework industries: knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries. The WH–226 and WH–226a–MIS are used by employers to obtain authorization to employ workers with disabilities in competitive employment, in sheltered workshops, and in hospitals and institutions, at subminimum wages.

II. Current Actions

The Department of Labor seeks an extension of this information collection in order to carry out its responsibility to make a determination whether to grant or to deny an employer's request for subminimum wage and/or homeworker employment authorization.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Application for Special Industrial Homeworker's Certificate (WH–2), Application for Authority to Employ Workers with Disabilites at Special Minimum Wages (WH–226–MIS), Supplemental Data Sheet for Application for Authority to Employ Workers with Disabilities at Special Minimum Wages (WH–226a–MIS).

OMB Number: 1215–0005.

Agency Numbers: WH–2, WH–226–MIS, WH–226a–MIS.

Affected Public: Businesses or other for-profit; Individuals or households; Not-for-profit institutions; Farms; State, local or Tribal government.

Frequency: On occasion.

Form	No. of respondents	Average min. per response	Burden hours
WH–2	100	30	50
WH–226–MIS	8,500	45	6,375
WH–226a–MIS	8,500	45	15,000

Total Respondents: 8,600.

Estimated Total Burden Hours: 21,425.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $3,010.

Worker Information-Terms and Conditions of Employment (WH–516, English and Spanish Versions)

I. Background

Various sections of the Migrant and Seasonal Agricultural Worker ProtectionAct (MSPA), requires each farm labor contractor, agricultural employer, and agricultural association to disclose in writing the terms and conditions of employment, to migrant and seasonal agricultural workers. Public Law 104–49 provides for the disclosure of certain information regarding State workers' compensation insurance to the employee. The information must be disclosed to workers in writing, but there is no particular format required. The WH–516 is provided as an optional form which a farm labor contractor, agricultural employer, or agricultural association may use to disclose the required information.

II. Current Actions

The Department of Labor seeks the extension of this information collection to carry out its statutory responsibility to ensure that farm labor contractors, agricultural employers and agricultural associations have disclosed to their migrant and seasonal agricultural workers the terms and conditions of employment as required by MSPA and its regulations.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Worker Information-Terms and Conditions of Employment.

OMB Number: 1215–0187.

Agency Number(s): WH–516.

Affected Public: Farms; Individuals or households, Businesses or other for-profit.

Total Respondents: 160,000.

Frequency: Third Party Disclosure.

Average Time per Response: 32 minutes.

Estimated Total Burden Hours: 85,333.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating and maintenance): $23,625.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: November 17, 1998.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 98–31192 Filed 11–20–98; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. H–372]

RIN: 1218–AB58

Metalworking Fluids Standards Advisory Committee: Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Metalworking Fluids Standards Advisory Committee: Notice of meeting.

SUMMARY: The Metalworking Fluids Standards Advisory Committee (MWFSAC), established under Section 7 of the Occupational Safety and Health Act of 1970 to advise the Secretary of

Labor on appropriate actions to protect workers from the hazards associated with occupational exposure to metalworking fluids, will meet in Washington, D.C., on Monday through Wednesday, December 7 through December 9, 1998.

DATES: The meeting will be held December 7, from 10 a.m. to approximately 6 p.m; on December 8, from 8 a.m. to approximately 5 p.m; and on December 9, from 9 a.m. to approximately 4 p.m.

ADDRESSES: The Committee will meet at the Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036. Telephone: (202) 296–2100.

Mail comments, views, or statements in response to this notice to Dr. Peter Infante, U. S. Department of Labor, OSHA, Directorate of Health Standards Programs, Metalworking Fluids Standards Advisory Committee, Room N–3718, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Information and Consumer Affairs, OSHA, (202) 693–1999.

SUPPLEMENTARY INFORMATION: All interested persons are invited to attend the public meetings of the Metalworking Fluids Standards Advisory Committee, at the times and location indicated above. Individuals with disabilities wishing to attend should contact Theresa Berry at (202) 693–1999 (Fax: 202–693–1634) no later than November 30, 1998, to obtain appropriate accommodations.

Meeting Agenda

The Committee will discuss the NIOSH small business exposure study, industry profile data, air sampling methods, and cancer studies related to metalworking fluids. In addition, work group reports will include medical surveillance issues.

Public Participation

Written data, views, or comments for consideration by the MWFSAC on the various agenda items listed above may be submitted, preferably with 25 copies, to Dr. Peter Infante at the address provided above. Submissions received by November 27, 1998, will be provided to the members of the Committee. Anyone wishing to make an oral presentation to the Committee on any of the agenda items noted above should notify Dr. Peter Infante at the address listed above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Requests to make oral presentations to the Committee may be granted if time permits.

Authority: This notice is issued under the authority of sections 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–31272 Filed 11–20–98; 8:45 am]

BILLING CODE 4510–26–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–6622]

Pathfinder Mines Corporation

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final Finding of No Significant Impact Notice of Opportunity for Hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA–442 to authorize Pathfinder Mines Corporation (PMC) to reclaim the Shirley Basin uranium mill site located in Carbon County, Wyoming. This license currently authorizes PMC to possess byproduct material in the form of uranium waste tailings generated by the licensee's milling operations at the site. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of PMC's license amendment request, in accordance with the requirements of 10 CFR Part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action of approval of a reclamation plan.

SUPPLEMENTARY INFORMATION:

Background

The PMC's Shirley Basin facility is licensed by the NRC under Source Material License SUA–442 to possess byproduct material in the form of uranium waste tailings generated by the licensee's milling operations. Uranium milling started at the Shirley Basin site in 1971, and continued until 1992. A total of 8,564,130 tons of ore was milled using a conventional acid leaching process. The mill has been dismantled, windblown tailings have been retrieved and placed on the tailings pile, and placement of the interim cover to decrease the potential for tailings dispersal and erosion has been completed. Based on its review of PMC's mill decommissioning plan and its supplemental environmental report, the NRC staff had prepared a supplemental environmental assessment in accordance with the requirements of 10 CFR Part 51, and published in the **Federal Register** on April 3, 1996, the conclusion of the assessment. The conclusion was a FONSI. The current site activities include surface reclamation and continuation of the ground water corrective action program.

PMC submitted a reclamation plan by its letter dated May 22, 1996, and provided additional information by subsequent submittals. The reclamation of the site consists of stabilizing the tailings for at least 1,000 yrs and ensuring that the radon emanation from the tailings pile will not exceed 20 pCi/m ^{2}/s. The tailings pile will incorporate excavated materials from other areas that are contaminated above the release limit. The reclamation plan requires consolidation and movement of all the contaminated materials from the processing area to the tailing piles.

Summary of the Environmental Assessment

The NRC staff performed an appraisal of the environmental impacts associated with the reclamation plan for the Shirley Basin site, in accordance with 10 CFR Part 51, Licensing and Regulatory Policy Procedures for Environmental Protection. The license amendment would authorize PMC to stabilize and cover the tailings as proposed. In conducting its appraisal, the NRC staff considered the following information: (1) PMC's 1996 license amendment request, and PMC's subsequent submittals providing additional information; (2) previous environmental evaluations of the facility; (3) data contained in the required environmental monitoring reports; (4) existing license conditions; (5) results of NRC staff site visits and inspections of the facility; and (6) consultations with the U.S. Fish and Wildlife Service, and the Wyoming State Historic Preservation Officer. The technical aspects of the reclamation plan will be discussed separately in a Technical Evaluation Report (TER) that will accompany the final agency licensing action.

The results of the staff's appraisal are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

Conclusions

The NRC staff has examined actual and potential impacts associated with

the reclamation of the Shirley Basin site, and has determined that the requested amendment of Source Material License SUA–442, authorizing implementation of the reclamation plan, will not have long-term detrimental impacts on the environment. The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

(1) An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to remain below the regulatory limits;

(2) Present and potential risks of environmental damage from the proposed reclamation were assessed. Given the remote location, limited activities requested, small area of impact, and past activities on the site, the staff determined that the risk factors for environmental hazards are insignificant.

Because the staff has determined that there will be no significant impacts associated with approval of the license amendment, there can be no disproportionally high and adverse effects or impacts on minority and low-income populations. Consequently, further evaluation of Environmental Justice concerns, as outlined in Executive Order 12898 and NRC's Office of Nuclear Material Safety and Safeguards Policy and Procedures Letter 1–50, Revision 1, is not warranted.

Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA–442, for reclamation of the Shirley Basin site, as requested by PMC. Therefore, the principal alternatives available to NRC are to:

(1) Approve the license amendment request as submitted; or

(2) Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or

(3) Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of PMC's future operations or the denial of the license amendment. Additionally, in the TER for this action, the staff will document its evaluation of the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR Part 40, Appendix A. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed amendment of Source Material License SUA–442. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington, DC 20555.

Notice of Opportunity for Hearing

The NRC hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR Part 2 (54 FR 8269). Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Pathfinder Mines Corporation, 935 Pendell Boulevard, P.O. Box 730, Mills, Wyoming 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

FOR FURTHER INFORMATION CONTACT: Mohammad Haque, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J9, Washington, D.C. 20555. Telephone 301/415–6640.

Dated at Rockville, Maryland, this 16th day of November 1998.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31217 Filed 11–20–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23538; File No. 812–11310]

DG Investor Series, et al.; Notice of Application

November 16, 1998.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for an order under Section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from Section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, DG Investor Series ("DG Series") and The Infinity Mutual Funds, Inc. ("Infinity Funds"), request an order to permit certain series of Infinity Funds to acquire all of the assets and liabilities of certain series of DG Series. Because of certain affiliations, applicants may not rely on Rule 17a–8 under the Act.

FILING DATES: The application was filed on September 18, 1998. Applicants have agreed to file an amendment during the

notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certification of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: DG Series, 5800 Corporate Drive, Pittsburgh, PA 15237–7071; Infinity Funds, 3435 Stelzer Road, Columbus, OH 43219–3035.

FOR FURTHER INFORMATION CONTACT: Deepak Pai, Senior Counsel, at (202) 942–0574, or Edward Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. no. 202–942–9080).

Applicants' Representations

1. DG Series is a Massachusetts business trust registered under the Act as an open-end management investment company and composed of nine separate series, two of which are seeking the requested relief: the DG Limited Term Government Income Fund and the DG Treasury Money Market Fund (the "Acquired Funds").

2. Infinity Funds is a Maryland corporation registered under the Act as an open-end management investment company and composed of twenty separate series, two of which are seeking the requested relief: the ISG Limited Duration U.S. Government Portfolio and the ISG U.S. Treasury Money Market Portfolio (the "Acquiring Funds"). The Acquired Funds and Acquiring Funds are collectively referred to as "Funds".

3. First American National Bank ("FANB"), a national banking association and a subsidiary of First American Corporation, serves as the investment adviser to the Acquiring Funds. FANB is not required to register under the Investment Advisers Act of 1940 (the "Advisers Act"). ParkSouth Corporation ("ParkSouth"), an indirect subsidiary of First American Corporation, serves as the investment adviser to the Acquired Funds. ParkSouth is registered under the Advisers Act. FANB, as a fiduciary for its customers, owns of record more than 25% of the outstanding voting securities of each of the Funds.

4. On May 14, 1998, and September 18, 1998, the boards of directors or trustees of the Funds (the "Boards"), including a majority of the directors or trustees who are not "interested persons" under section 2(a)(19) of the Act ("Independent Board Members"), approved for each Fund a plan of reorganization (the "Plans"). Under the Plans, ISG Limited Duration U.S. Government Portfolio and ISG U.S. Treasury Money Market Portfolio will acquire the assets, and assume the liabilities, of DG Limited Term Government Income Fund and DG Treasury Money Market Fund, respectively, in exchange for shares of the Acquiring Funds (the "Reorganization"). As a result of the Reorganization, each Acquired Fund will receive Acquiring Fund shares having an aggregate net asset value ("NAV") equal to the aggregate NAV of the corresponding Acquired Fund's shares held by that shareholder calculated as of the close of business immediately prior to the date on which the Reorganization will occur. Applicants expect that the Reorganization will occur on or about December 11, 1998 (the "Closing Date").

5. Each Acquired Fund has one class of shares. ISG Limited Duration U.S. Government Portfolio has three classes of shares: Classes A, B, and Trust Shares. ISG U.S. Treasury Money Market Portfolio has two classes of shares: Classes A and Trust Shares. Acquired Funds' shareholders generally will receive Class A shares of the Acquiring Funds. Trust Shares will be issued to Acquired Funds' shareholders who are eligible to purchase Trust Shares. Class B shares will not be exchanged in the Reorganization.

6. Class A shares of ISG Limited Duration U.S. Government Portolio are subject to a front-end sales charge, a contingent deferred sales charge ("CDSC"), and an asset-based distribution fee. Shares of DG Limited Term Government Income Fund are subject to a front-end sales load. Trust Shares are not subject to any front-end sales charge or CDSC. Each Acquired Fund has adopted an asset-based distribution plan. Class A shares of the ISG U.S. Treasury Money Market Portfolio and Trust Shares of the Acquiring Funds are not subject to an asset-based distribution fee. Shares of the Acquired Funds and Class A shares and Trust Shares of the Acquiring Funds are subject to a service fee.

7. The Board of each Fund, including a majority of the Independent Board Members, approved the Reorganization as in the best interests of the shareholders and determined that the interests of existing shareholders will not be diluted as a result of the Reorganization. The Boards considered, among other things, (1) the compatibility of the Funds' investment objectives and policies; (2) the shareholder services offered by the Funds; (3) the terms and conditions of the Reorganization; (4) expense ratios, fees and expenses of the Funds; and (5) the tax-free nature of the Reorganization. No sales charge will be imposed in connection with the Reorganization. FANB will pay the expenses of the Reorganization.

8. The Plans may be terminated by the Board of DG Series or Infinity Funds if circumstances should develop that in the opinion of the Board makes proceeding with the Reorganization inadvisable or if any condition precedent to the terminating party's obligations has not been met and it appears that such condition precedent will not or cannot be met.

9. A registration statement on Form N–14 containing the preliminary combined prospectus/proxy statement for the Reorganization was filed with the SEC on September 18, 1998. A final prospectus/proxy was mailed to shareholders of the Acquired Funds on October 28, 1998. A special meeting of the Acquired Funds' shareholders will be held on or about December 11, 1998, to approve the Reorganization.

10. The consummation of the Reorganization under the Plans is subject to a number of conditions precedent, including: (1) The Plans have been approved by the Acquired Funds' shareholders in the manner required by applicable law; (2) on the Closing Date, no action, suit or other proceeding is pending before any court or governmental agency in connection with the Reorganization; (3) the Funds have received an opinion of counsel stating, among other thing, that the Reorganization will not result in federal income taxes for the Funds or their shareholders; (4) the Funds have received from the SEC an order exempting the Reorganization from the provisions of section 17(a) of the Act; and (5) the registration statement on Form N–14 has been declared effective.

Applicants agree not to make any material changes to the Plans that affect the application without prior SEC approval.

Applicants' Legal Analysis

1. Section 17(a) of the Act provides that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, knowingly to sell any security to, or purchase any security from the company. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include: (a) any person directly or indirectly owning, controlling, or holding with the power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person; and (d) if the other person is an investment company, any investment adviser of the person.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) of the Act mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that they cannot rely on rule 17a–8 under the Act because the Funds may be affiliated for reasons other than those set forth in the rule. The Funds may be affiliated persons of each other because FANB, as fiduciary for its customers, owns of record 25% or more of the outstanding securities of each Fund.

4. Section 17(b) of the Act provides that the SEC may exempt a transaction from section 17(a) of the Act if evidence establishes that (a) the terms of the proposed transaction including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transactions is consistent with the policy of each registered investment company concerned, and (c) the proposed transaction is consistent with the general purposes of Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) of the Act to the extent necessary to consummate the Reorganization. Applicants submit that the Reorganization satisfies the provisions in section 17(b) of the Act. Applicants state that the Boards have determined that the Reorganization is in the best interests of each Fund's shareholders and that the interests of the existing shareholders will not be diluted as a result of the Reorganization. In addition, applicants state that the exchange of the Acquired Funds' shares for the Acquiring Funds' shares will be based on the relative NAVs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31229 Filed 11–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23537; 812–11320]

Kemper Global/International Series, Inc., et al.; Notice of Application

November 17, 1998.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Kemper Global/International Series, Inc. (the "Company") and Scudder Kemper Investments, Inc. (the "Adviser") seek an order to permit in-kind redemptions of shares of The Growth Fund of Spain (the "Fund"), a portfolio of the Company, by certain affiliated shareholders of the Fund.

APPLICANTS: Company and Adviser.

FILING DATES: The application was filed on September 23, 1998 and amended on November 12, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 10, 1998, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o William J. Kotapish, Esq., Dechert Price & Rhoads, 1775 Eye Street, N.W., Washington, D.C. 20006–2401.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Sr., Senior Counsel, at (202) 942–0714, or George J. Zornada, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Company, a Maryland corporation, is registered under the Act as an open-end management investment company and operates as a series company. The Fund will be established as a new series of the Company and will be a successor to The Growth Fund of Spain, Inc., a closed-end management investment company that will convert to an open-end management investment company and reorganize as the Fund. The reorganization is expected to occur on December 11, 1998. The Fund will invest primarily in equity securities of Spanish issuers. The Adviser is registered under the Investment Advisers Act of 1940 and serves as investment adviser to the Fund.

2. Applicants state that four shareholders are expected to own 5% or more of the outstanding shares of the Fund.[1] Applicants request relief to permit the Fund to satisfy redemption requests made by any shareholders of the Fund who, at the time of such redemption requests, are "affiliated persons" of the Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares ("Affiliated Shareholders") by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are "affiliated persons" of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

3. The Fund's prospectus and statement of additional information provide that, in limited circumstances, the Fund may satisfy all or part of a redemption request by distribution in-

[1] These shareholders are: Bankgesellshaft Berlin AG (11.30%), Cargill Financial Markets PLC (9.34%), FMR Corporation (5.31%), and Stichting Azko Pensioenfonds (5.5%).

kind of portfolio securities. The board of directors of the Fund ("Board"), including all of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act, has determined that it would be in the best interests of the Fund and its shareholders to pay to an Affiliated Shareholder the redemption price for its shares in-kind.[2]

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines an "affiliated person" to include any person owning 5% or more of the outstanding voting securities of the other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolios securities (of which the Fund is not the issuer) by an Affiliated Shareholder, the proposed redemption in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purpose of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act to permit Affiliated Shareholders to redeem their shares in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

[2] The Fund has elected to be governed by the provisions of rule 18f–1 under the Act.

5. Applicants submit that the terms of the proposed in-kind redemptions by Affiliated Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that neither the Fund nor the Affiliated Shareholders will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed in the proposed in-kind redemptions will be valued according to an objective, verifiable standard and the in-kind redemptions are consistent with the investment policies of the Fund. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Affiliated Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The securities distributed pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

2. The In-Kind Securities will be distributed to Affiliated Shareholders on a *pro rata* basis after excluding: (a) Securities which, if distributed, would be required to be registered under the Securities Act of 1933; (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles, such as the Fund; and (c) certain portfolio assets (such as forward foreign currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposits, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares, and accruals on such securities.

3. The In-Kind Securities will be valued in the same manner as they would be valued for the purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market, or, if there is no such reported price, the average of the most recent bid and asked price (or, if no such price is available, the last quoted bid price).

4. The Board, including a majority of the directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) of the Fund, will determine no less frequently than annually: (a) Whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of the Fund as reflected in the prospectus. In addition, the Board shall make and approve such changes as the Board deems necessary in its procedures for monitoring applicants' compliance with the terms and conditions of this application.

5. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs, the first two years in an easily accessible place, a written record of each redemption that includes the identity of the Affiliated Shareholder, a description of each security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31228 Filed 11–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23536; No. 812–10694]

Variable Insurance Funds, et al.; Notice of Application

November 16, 1998.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act").

SUMMARY OF APPLICATION: Applicants seek an amended order [1] to permit shares of each existing and future series of the Variable Insurance Funds Trust and any other investment company that is designed to fund variable insurance products and for which BISYS Fund Services, or any of its affiliates, may serve as principal underwriter or administrator to be sold to and held by: (a) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (b) qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans"); (c) the manager of a Fund or certain related corporations ("Adviser"); and (d) the general account of any life insurance company, or certain related corporations, whose separate account holds, or will hold, shares of the Funds ("General Accounts").

Applicants: Variable Insurance Funds ("Trust"), BISYS Fund Services ("BISYS"), Branch Banking and Trust Company ("BB&T"), and AmSouth Bank ("AmSouth").

FILING DATE: The application was filed on June 5, 1997, and amended on June 2, 1998. Applicants have agreed to file another agreement, the substance of which is incorporated in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the Commission and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on December 9, 1998, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o BISYS, 3435 Stelzer Road, Columbus, Ohio 43219–3035.

FOR FURTHER INFORMATION CONTACT: Laura A. Novack, Senior Attorney, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 (202–942–8090).

Applicants' Representations

1. The Trust is a business trust organized under the laws of Massachusetts on July 20, 1994. It is registered under the 1940 Act as an open-end management investment company and currently consists of four separate series, each with their own investment objectives and policies. The Trust may in the future establish additional series.

2. BISYS, a division of BISYS Group, Inc., is a registered broker-dealer and a member of the National Association of Securities Dealers, Inc. BISYS serves as the administrator and the principal underwriter for each series of the Trust. When the Commission granted the Original Order, BISYS operated under its former name, The Winsbury Company.

3. BB&T, a bank in North Carolina, is the principal bank affiliate of BB&T Corporation, a bank holding company whose headquarters are in North Carolina. BB&T serves as Adviser to two series of the Trust.

4. AmSouth is the principal bank affiliate of AmSouth Bancorporation, whose headquarters are in the mid-south region. AmSouth serves as Adviser to two series of the Trust.

5. The Funds currently are offered to one or more separate accounts of Hartford Life Insurance Company ("Hartford"), to serve as the investment medium for variable annuity contracts issued by Hartford. The Trust intends, however, to offer shares of its existing and future series to separate accounts of other insurance companies, including companies that are not affiliated with Hartford, to serve as the investment vehicle for various types of insurance products, which may include variable annuity contracts, scheduled premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, "variable contracts"). Insurance companies whose separate account or accounts may in the future own shares of the Trust or any other Fund are referred to herein as "participating insurance companies."

6. Each participating insurance company will have the legal obligation of satisfying all requirements applicable to it under the federal securities laws in connection with any variable contract issued by such company.

7. Fund shares also may be offered directly to Qualified Plans described in Treasury Regulation § 1.817–(f)(3)(iii).

8. The Qualified Plans may choose any of the Funds as the sole investment under the Plan or as one of several investments. Qualified Plan participants may or may not be given the right to select among the Funds, depending on the Qualified Plan itself. Fund shares sold to Qualified Plans will be held by the trustees of such Qualified Plans as required by Section 403(a) of the Employee Retirement Income Security Act ("ERISA"). No Adviser will act as investment adviser to any of the Qualified Plans that will purchase shares of a Fund advised by that Adviser.

9. Fund shares also may be offered to General Accounts whose separate account holds, or will hold shares of the Fund and to certain related corporations, pursuant to Treasury Regulation § 1.817–5(f)(3)(i).

10. Fund shares may also be offered to Advisers and to certain related corporations, pursuant to Treasury Regulation § 1.817–(f)(3)(ii).

11. Applicants anticipate that sales made pursuant to Treasury Regulation § 1.817(f)(3) (i) and (ii) generally will be made to Advisers, and generally for the purpose of providing the capital required under Section 14(a) of the 1940 Act.

Applicants' Legal Analysis

1. Applicants request that the Commission issue an order under Section 6(c) of the 1940 Act granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) thereof and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to: (a) permit "mixed" and "shared" funding as defined below; and (b) allow shares of the Funds to be sold to Qualified Plans, Advisers and General Accounts. Applicants state that the

[1] Applicants seek an amendment of a prior order issued by the Commission in connection with File No. 812–9236 ("Original Order"), which granted exemptive relief to certain of the Applicants from the same provisions of the 1940 Act and rules thereunder from which Applicants now seek exemptive relief.

Commission previously granted the first element of the requested relief in the Original Order.

2. Section 6(c) authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the 1940 Act, or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust (the "Trust Account"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where the management investment company underlying the Trust Account offers its shares "*exclusively* to variable life insurance separate accounts of the life insurer or any affiliated life insurance company * * *" (emphasis added).

4. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single life insurance company (or of two or more affiliated life insurance companies) is referred to as "mixed funding." The use of a common management company as the underlying investment medium for variable life insurance separate accounts of one insurance company and separate accounts funding variable contracts of one or more unaffiliated life insurance companies is referred to as "shared funding." The relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated company. Therefore, Rule 6e–2(b)(15) precludes mixed and shared funding.

5. Moreover, because the relief granted by Rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans, General Accounts or Advisers.

6. In connection with the funding of flexible premium variable life insurance contracts issued through a Trust Account, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where the underlying fund offers its shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company, or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account * * *" (emphasis added). Thus while Rule 6e–3(T)(b)(15) permits mixed funding with respect to a flexible premium variable life insurance separate account, it does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts of unaffiliated life insurance companies. Moreover, because the relief under Rule 6e–3(T) is available only where shares are offered exclusively to separate accounts, or to life insurers in connection with the operation of a separate account, additional exemptive relief may be necessary if the shares of the Funds are also to be sold to Plans or Advisers or General Accounts.

7. Applicants state that the current tax law permits the Funds to increase their asset base through the sale of shares to Qualified Plans. Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the underlying assets of the variable contracts. The Code provides that such contracts shall not be treated as an annuity contract or life insurance contract for any period during which the investments are not adequately diversified in accordance with regulations prescribed by the Treasury Department. Treasury regulations provide that, to meet the diversification requirements, all of the beneficial interests in an investment company must be held by the segregated asset accounts of one or more insurance companies. The regulations do contain certain exceptions to this requirement, however, one of which permits shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company also to be held by the separate accounts of insurance companies in connection with their variable contracts (Treas. Reg. § 1.817–5(f)(3)(iii)).

8. Applicants also state that the current tax law permits the Funds to sell shares to Advisers and General Accounts. Treasury regulations permit such sales as long as the return on shares held by a General Account or Adviser is computed in the same manner as for shares held by a separate account, and the General Account or Adviser does not intend to sell Fund shares held by it to the public. As to Advisers, Treasury regulations also require that the Advisers may only hold the shares in connection with the creation or management of the Fund.

9. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of these Treasury regulations which made it possible for shares of a Fund to be held by the trustee of a Qualified Plan, an Adviser, or General Account without adversely affecting the ability of shares of the Fund to also be held by the separate accounts of insurance companies in connection with their variable life insurance contracts. Thus, Applicants assert that the sale of shares of a Fund to separate accounts through which variable life insurance contracts are issued and Qualified Plans, its Adviser or General Accounts could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15), given the then-current tax law.

10. Applicants assert that if the Funds were to sell shares only to Qualified Plans, Advisers and General Accounts, or to separate accounts funding variable annuity contracts, no exemptive relief would be necessary. Applicants state that none of the relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, Advisers or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers. Exemptive relief is required in the application only because some of the separate accounts that will invest in the Funds may themselves be investment companies that rely on Rules 6e–2 and 6e–3(T) and that desire to have the relief continue in place.

11. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to act as investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a) (1) or (2). Rules 6e–2(b)(15) (i) and (ii), and 6e–3(T)(b)(15) (i) and (ii) provide partial

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exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying management investment company.

12. Applicants state that the relief provided by Rules 6e–2(b)(15) and 6e-3(T)(b)(15) permits the life insurer to serve as the underlying fund's investment adviser or principal underwriter, provided that none of the insurer's personnel who are ineligible pursuant to Section 9(a) are participating in the management or administration of the fund. Applicants state that the partial relief from Section 9(a) provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15), in effect, limits the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of Section 9. Applicants assert that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals in an insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies in that organization. Applicants assert that it also is unnecessary to apply the restrictions of Section 9(a) to the many individuals in various unaffiliated insurance companies (or affiliated companies of participating insurance companies) that may utilize the Funds as a funding medium for variable contracts.

13. Applicants further state that there is no regulatory purpose in extending the monitoring requirements to embrace a full application of Section 9(a)'s eligibility restrictions because of mixed or shared funding. Applicants maintain that the relief previously granted in the Original Order and requested herein will in no way be affected by the proposed sale of shares of the Funds to Qualified Plans, Advisers or General Accounts. Applicants state that the insulation of the Funds from those individuals who are disqualified under the 1940 Act remains in place, and that since Qualified Plans, Advisers, and General Accounts are not investment companies and will not be deemed to be affiliates solely by virtue of their shareholdings, no additional relief is necessary.

14. Applicants submit that Sections 13(a), 15(a) and 15(b) of the 1940 Act require "pass-through" voting with respect to management investment company shares held by a separate account to permit the insurance company to disregard the voting instructions of its contract holders in certain limited circumstances. For example, Applicants state that subparagraph (b)(15)(iii)(B) of Rules 6e–2 and 6e–3(T) under the 1940 Act provide that the insurance company may disregard contract owners' voting instructions if the contract owners initiate any changes in the investment company's investment policies, principal underwriter or investment adviser, provided that disregarding such voting instructions is reasonable and complies with the other provisions of Rules 6e–2 and 6e–3(T).

15. Applicants state that Rule 6e–2 recognizes that a variable life insurance contract has important elements unique to insurance contracts and is subject to extensive state regulation of insurance. Applicants assert that in adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that state insurance regulators have authority to disapprove or require changes in investment policies, investment advisers, or principal underwriters. Applicants also maintain that the Commission has expressly recognized that state insurance regulators have authority to require an insurer to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurer's objection. Applicants state that the Commission deemed such exemptions necessary to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants further state that in this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts, and that therefore corresponding provisions of Rule 6e–3(T) were adopted in recognition of the same considerations as the Commission applied in adopting Rule 6e–2.

16. Applicants further represent that the sale of Fund shares to Qualified Plans, Advisers, or General Accounts does not affect the relief previously granted by the Commission in the Original Order and requested herein in this regard. Shares of the Funds sold to Plans would be held by the trustees of such Plans as mandated by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, the Plan trustees have exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. In any event, there is no pass-through voting to the participants in such Plans. Similarly, Advisers and General Accounts are not subject to any pass-through voting requirements. Accordingly, Applicants assert that, unlike the case with the insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, Advisers or General Accounts.

17. Applicants note that Section 817(h) of the Code in effect requires that the investments made by variable annuity and variable life insurance separate accounts be "adequately diversified." Applicants state that if a separate account is organized as a unit investment trust that invests in a single fund or series, the separate account will not be diversified. In this situation, however, Applicants state that Section 817(h) provides, in effect, that the diversification test will be applied at the underlying fund level rather than the separate account level, but only if "all of the beneficial interests" in the underlying fund "are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts * * *." Applicants state that Treasury Regulation 1.817–5, which established diversification requirements for such funds, specifically permits, among other things, investment company managers, insurance company general accounts, "qualified pension or retirement plans" and separate accounts to share the same underlying investment company. Therefore, Applicants have concluded that neither the Code, the Treasury regulations nor revenue rulings thereunder present any inherent conflicts of interest if Advisers, General

Accounts, Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

18. Applicants state that while there are differences in the manner in which distributions are taxed for variable annuity contracts, variable life insurance contracts and Qualified Plans, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and the separate account or the Qualified Plan cannot net purchase payments to make the distributions, the separate account or the Plan will redeem shares of the Funds at their net asset value. The Plan will then make distributions in accordance with the terms of the Plan and the insurance company will make distributions in accordance with the terms of the variable contract.

19. Applicants state that there are no conflicts of interest between the contract owners of the separate accounts and the participants under the Qualified Plans with respect to the state insurance commissioners' veto powers over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies cannot simply redeem their separate accounts out of one Fund and invest in another. To accomplish such redemptions and transfers, complex and time consuming transactions must be undertaken. Conversely, trustees of Qualified Plans can make the decision quickly and implement redemption of shares from a Fund and reinvest the moneys in another funding vehicle without the same regulatory impediments or, as is the case with most Plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even should the interests of contract owners and the interests of Qualified Plans conflict, the conflicts can be almost immediately resolved because the trustees of the Qualified Plans can, independently, redeem shares out of the Funds.

20. Applicants submit that shared funding by unaffiliated insurance companies does not present any conflict of interest issues that do not already exist where a single insurance company is licensed to do business in several or all states. Applicants note that a particular state insurance regulatory body could require action that is inconsistent with the requirements of other states in which the insurance company offers its policies. Applicants state that if a particular state insurance regulator's decision conflicts with a majority of other insurance regulators, the affected insurer may be required to withdraw its separate account's investment in a Fund. Applicants submit that the fact that different insurers may be domiciled in different states does not create a significantly different or enlarged problem.

21. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below are designed to safeguard against, and provide procedures for resolving, any adverse effects that these differences may produce.

22. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when an insurance company can disregard contract owners' voting instructions. Potential disagreement is limited by the requirements that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if a particular insurance company's decision to disregard voting instructions represents a minority position or would preclude a majority vote, the insurance company may be required, at a Fund's election, to withdraw its separate account's investment in that Fund. No charge or penalty will be imposed as a result of such a withdrawal.

23. Applicants submit that there is no reason why the investment policies of a Fund, or a series thereof, would or should be materially different from what they would or should be if such Fund or series funded only variable annuity contracts or variable life insurance policies, whether flexible premium or scheduled premium policies. Applicants state that each type of insurance product is designed as a long-term investment program, and Applicants represent that each Fund, or series thereof, will be managed to attempt to achieve its investment objective, and not to favor or disfavor any particular participating insurer or type of insurance product.

24. Applicants argue that the ability of the Funds to sell their respective shares directly to Qualified Plans, Advisers, and General Accounts does not create a "senior security" as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant under a Qualified Plan, an Adviser, or an insurer. Regardless of the rights and benefits of participants under the Qualified Plans or contract owners, the Qualified Plans, Advisers, General Accounts and the separate accounts have rights only with respect to their respective shares of the Funds. They only can redeem such shares at their net asset value. No shareholder of any of the Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

25. Applicants assert that with respect to voting rights, it is possible to provide an equitable means of giving such voting rights to contract owners and to Qualified Plans, Advisers, and General Accounts. The transfer agent will inform each participating insurance company of its share ownership in each separate account, as well as inform the trustees of Qualified Plans, Advisers and insurers of their holdings. The participating insurance company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T).

26. Applicants assert that permitting a Fund to sell its shares to its Adviser(s) or to the general account of a participating insurance company in compliance with Treasury Regulation § 1.817–5 will enhance Fund management without raising significant concerns regarding material irreconcilable conflicts. Applicants state that unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Trust may be deemed to lack an insurance company "promoter" for purposes of Rule 14a–2 under the 1940 Act. Applicants state that they anticipate that many other Funds may lack an insurance company promoter. Accordingly, Applicants state that such Funds will be subject to the requirements of Section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares.

27. Applicants assert that given the conditions of Treas. Reg. § 1.817–5(f)(3) and the "harmony of interest" between a Fund and its Adviser or a participating insurance company, little incentive for overreaching exists. Applicants also argue that such investments should not implicate the concerns discussed above regarding the creation of material irreconcilable conflicts. Instead, Applicants represent that permitting investment by Advisers or General Accounts will permit the orderly and efficient creation and operation of Funds, or series thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Fund operations.

28. Applicants state that various factors have limited the number of insurance companies that offer variable contracts. These factors include the cost

of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public of certain insurers as investment experts. In particular, a number of smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants state that use of the Funds as a common investment medium for variable contracts and Qualified Plans would help alleviate these concerns for smaller life insurance companies because participating insurance companies and Qualified Plans will benefit not only from the investment and administrative expertise of BB&T, AmSouth, any other Adviser and BISYS, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding and permitting the purchase of fund shares by Qualified Plans may encourage more life insurance companies to offer variable contracts. Applicants submit that this should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants assert that mixed and shared funding also should benefit variable contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Funds. Applicants assert that this also may benefit variable contract owners by promoting economies of scale, by permitting increased safety through greater diversification, or by making the addition of new portfolios more feasible.

30. Applicants believe that mixed and shared funding and sales of Fund shares to Qualified Plans, Advisers, and General Accounts will have no adverse federal income tax consequences.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees or Directors ("Board") of each Fund shall consist of persons who are not "interested persons" of the Fund, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of death, disqualification, or bona fide resignation of any trustee or director, then the operator of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Fund's Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all separate accounts investing in the Fund and of Plan participants investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretative letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Fund or series are being managed; (e) a difference in voting instructions given by owners of variable annuity contract owners and variable life insurance contract owners; (f) a decision by an insurer to disregard the voting instructions of contract owners; or (g) if applicable, a decision by ■ Qualified Plan to disregard the voting instructions of Plan participants.

3. In the event that a Qualified Plan shareholder should become an owner of 10% or more of the assets of a Fund selling its shares in reliance on the requested exemptive relief, such Qualified Plan shareholder will execute a fund participation agreement providing for the conditions of this Application (to the extent applicable) with such Fund. A Qualified Plan shareholder will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

4. Participating insurance companies (on their own behalf as well as by virtue of any investment of general account assets in a Fund), BISYS, the Adviser, and any Qualified Plan that executes a fund participation agreement (collectively "Participants") will report any potential or existing conflicts to the Board. Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each participating insurance company to inform the Board whenever contract owner voting instructions are disregarded. The responsibility to report such information and conflicts and to assist the Board will be a contractual obligation of all insurers investing in a Fund under their agreements governing participation in the Fund, as well as a contractual obligation of any Qualified Plan that executes such a participation agreement, and such agreements shall provide that such responsibilities will be carried out with a view only to the interests of the contract owners or, as appropriate, Qualified Plan participants.

5. If a majority of the Board, or a majority of its disinterested trustees or directors, determine that a material irreconcilable conflict exists, the relevant participating insurance companies and Qualified Plans, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), shall take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps could include: (a) withdrawing the assets allocable to some or all of the separate accounts from the Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of the Fund; (b) submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity or life insurance contract owners or variable contract owners of one or more participating insurance companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a charge; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurer's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the Fund, to withdraw its separate account's investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal.

The reponsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action shall be a contractual obligation of all participating insurance companies and Plans that have executed participation agreements under their agreements

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governing participation in the Fund. These responsibilities shall be carried out with a view only to the interests of contract owners and Plan participants, as appropriate.

6. For purposes of Condition 5, a majority of the disinterested members of the Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict. In no event will the Fund be required to establish a new funding medium for any variable contract. No participating insurance company shall be required by Condition 5 to establish a new funding medium for any variable contract if a majority of variable contract owners materially and adversely affected by the material irreconcilable conflict, vote to decline such offer.

7. Participants will be informed promptly in writing of a Board's determination of the existence of a material irreconcilable conflict and its implications.

8. Participating insurance companies will provide pass-through voting privileges to all variable contract owners whose contracts are funded through a registered separate account so long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners. Accordingly, such participating insurance companies will vote shares of each Fund or series thereof held in its registered separate accounts in a manner consistent with voting instructions timely received from contract owners. In addition, each participating insurance company will vote shares of each Fund, or series thereof, held in its registered separate accounts for which it has not received timely voting instructions, as well as shares it owns, in the same proportion as those shares for which it has received voting instructions. Participating insurance companies will be responsible for assuring that each of their registered separate accounts participating in a Fund calculates voting privileges in a manner consistent with other participating insurance companies. The obligation to calculate voting privileges in a manner consistent with all other registered separate accounts investing in a Fund shall be a contractual obligation of all participating insurance companies under the agreements governing their participation in the Fund. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

9. Each Fund will notify all participating insurance companies that prospectus disclosure regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) its shares are offered to insurance company separate accounts that fund both annuity and life insurance contracts; (b) differences in tax treatment or other considerations may cause the interests of various contract owners participating in the Fund to conflict; and (c) the Board will monitor for any material conflicts and determine what action, if any, should be taken.

10. All reports of potential or existing conflicts of interest received by a Board, and all Board action with regard to: (a) determining the existence of a conflict; (b) notifying Participants of a conflict; and (c) determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the relevant Board or other appropriate records. Such minutes or other records shall be made available to the Commission upon request.

11. If and to the extent Rule 6e–2 and Rule 6e–3(T) are amended, or Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then each Fund and/or participating insurance companies, as appropriate, shall take such steps as may be necessary to comply with Rule 6e–2 and Rule 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent such rules are applicable.

12. Each Fund will comply with all the provisions of the 1940 Act requiring voting by shareholders (for these purposes, the persons having a voting interest in the shares of the Fund). In particular, each Fund either will provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in Section 16(c) of the 1940 Act) as well as with Section 16(a) and, if and when applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

13. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, each Adviser and insurance company general account will vote its shares in the same proportion as all contract owners having voting rights with respect to that Fund, provided, however, that the Adviser or insurance company general account shall vote its shares in such other manner as many be required by the Commission or its staff.

14. No less than annually, the Participants shall submit to a Board such reports, materials or data as the Board may reasonably request so that such Board may carry out fully the obligations imposed upon it by the conditions contained in this application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the participating insurance companies and Plans to provide these reports, materials and data upon reasonable request of a Board shall be a contractual obligation of ail participating insurance companies and any Qualified Plan that has executed a participation agreement under the agreements governing their participation in each Fund.

15. A participating insurance company, or any affiliate, will maintain at its home office, available to the Commission, (a) a list of its officers, directors and employees who participate directly in the management or administration of the Funds or any variable annuity or variable life insurance separate account, organized as a unit investment trust, that invests in the Funds and/or (b) a list of its agents who, as registered representatives, offer and sell the variable annuity and variable life contracts funded through such a separate account. These individuals will continue to be subject to the automatic disqualification provisions of Section 9(a).

Conclusion

For the reasons summarized above, Applicants represent that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31227 Filed 11–20–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40681; File No. SR–Phlx–98–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Amend Exchange Rule 1080 To Permit Automatic Execution of U.S. Top 100 Index Options Orders for the Accounts of Broker Dealers

November 16, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 20, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1080 to permit orders for U.S. Top 100 Index ("TPX") options for the accounts of broker-dealers to be made eligible for execution on the Automatic Execution System ("AUTO–X"), a feature of the Phlx Automated Options Market ("AUTOM").[3]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is an electronic order routing system for options orders. *See* Phlx Rule 1080.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The U.S. Top 100 Index is a capitalization-weighted, broad-based stock index composed of 100 of the most highly capitalized, widely held U.S. common stocks representing a variety of industries including, but not limited to, technology, manufacturing, and service industries, of which ninety-six are listed on the New York Stock Exchange and four are Nasdaq National Market securities.[4] Currently, with respect to TPX options, broker-dealer orders may be entered into AUTOM, but are not eligible for AUTO–X.[5] AUTO–X is a feature of AUTOM that automatically executes agency market and marketable limit orders up to the number of contracts permitted by the Exchange in equity and index options.[6] As stated above, only agency orders are eligible for AUTO–X.[7] Agency orders for up to 500 TPX option contracts are eligible for AUTOM.[8] For purposes of AUTOM and AUTO–X eligibility, an agency order is an order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.[9]

The Phlx is proposing to provide AUTO–X eligibility for broker-dealer orders for TPX options for up to 50 contracts. Presently, the maximum AUTO–X agency order size is currently 50 contracts.[10] Thus, the 50-contract aspect of the proposal is consistent with the current order size provisions of Rule 1080. The Phlx believes that providing AUTO–X eligibility for TPX option orders entered by broker-dealers should expand to liquidity of, and add depth to, the Phlx marketplace by attracting additional institutional investors to TPX.

The Phlx believes that the TPX, typically a high-priced options index, appeals to institutional investors more so than to individual investors. Therefore, automatic execution at higher contract levels is particularly important to institutional investors. The Phlx believes that permitting broker-dealer TPX options orders to be executed via AUTO–X will allow broker-dealers to benefit from prompt and efficient automatic execution and reporting.[11] This, in turn, should add depth and liquidity to the Phlx's marketplace for TPX options by attracting orders from broker-dealers who seek immediate, automatic executions through AUTO–X. The Exchange is only proposing to permit broker-dealer orders to be AUTO–X eligible in TPX options, recognizing that broker-dealer access to a small order execution system is new.[12] The Exchange believes that TPX is particularly well-suited for this endeavor because of the composition of the index and the investor participants and trading patterns it generates.

2. Statutory Basis

For these reasons, the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to add depth and liquidity to the marketplace for TPX options, and to facilitate execution and reporting of broker-dealer orders for TPX options.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[4] *See* Securities Exchange Act Release No. 35591 (April 11, 1995), 60 FR 19423 (April 18, 1995) (order approving File No. SR–Phlx–95–07). Telephone conversation between Richard Rudolph, Counsel, Phlx, and David Sieradzki, Attorney, Division of Market Regulation, Commission on November 3, 1998 ("Telephone Conversation").

[5] *See* Securities Exchange Act Release No. 36429 (October 27, 1995), 60 FR 55874 (November 3, 1995) (order approving File No. SR–Phlx–95–35). Other than broker-dealer orders in TPX options, only agency options orders are eligible for AUTOM. *Id.*

[6] *See* Securities Exchange Act Release No. 38792 (June 30, 1997), 62 FR 36602 (July 8, 1997) (order approving SR–Phlx–97–24).

[7] Telephone Conversation, *supra* note 4.

[8] *See* Securities Exchange Act Release No. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving SR–Phlx–95–30).

[9] *See supra* note 6.

[10] *See* Exchange Rule 1080(c).

[11] Telephone Conversation, *supra* note 4.

[12] *Id.*

organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–44 and should be submitted by December 14, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 98–31226 Filed 11–20–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3147]

State of Florida

As a result of the President's major disaster declaration on November 6, 1998, I find that Monroe County in the State of Florida constitutes a disaster area due to damages caused by Tropical Storm Mitch beginning on November 4, 1998 and continuing through November 5, 1998. Applications for loans for physical damage may be filed until the close of business on January 5, 1999 and for economic injury until the close of business on August 6, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Florida may be filed until the specified date at the above location: Dade and Collier.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 314711 for physical damage and 9A5300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–31230 Filed 11–20–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3146]

State of Kansas; Amendment #1

In accordance with a notice from the Federal Emergency Management Agency dated November 10, 1998, the above-numbered Declaration is hereby amended to include Douglas County, Kansas as a disaster area due to damages caused by severe storms and flooding beginning October 30, 1998 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Jefferson, Leavenworth, and Shawnee in the State of Kansas may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 4, 1999 and for economic injury the termination date is August 5, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 13, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–31231 Filed 11–20–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4770]

Implementation Focus and Coordination Team for the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as Amended

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is holding a public meeting to hear information concerning implementation requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 (STCW). The Coast Guard recently established an STCW Implementation Focus and Coordination Team to monitor and coordinate nationwide implementation of STCW. The Coast Guard encourages you to provide ideas, comments, and questions on implementing the provisions of the

[13] 17 CFR 200.30–3(a)(12).

STCW Convention. Your input will help the team develop an STCW implementation focus and coordination plan to ensure that affected parties meet the STCW implementation deadlines.

DATES: The meeting will be held on December 16, 1998, from 9 a.m. to 3 p.m. We will begin the meeting at the scheduled time; however, it may end early if all issues have been addressed. Comments must reach the Docket Management Facility on or before January 15, 1999.

ADDRESSES: The meeting will be held in room 6200, Nassif Building, 400 Seventh Street SW., Washington, DC 20593–0001. You may mail comments to the Docket Management Facility, [USCG–1998–4770], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the address in this section between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice or to make an oral presentation at the meeting, please contact Lieutenant Commander George H. Burns III, Maritime Personnel Qualifications Division (G–MSO–1), telephone 202–267–0550, fax 202–267–4570, or e-mail *gburns@comdt.uscg.mil*. Questions concerning the STCW Implementation Focus and Coordination Team should be directed to the Team Leader, Captain Robert L. Skewes (G–MSO), telephone 202–267–0212, fax 202–267–4570, or e-mail *rskewes@comdt.uscg.mil*. Questions concerning STCW requirements and enforcement should continue to be directed to the Coast Guard National Maritime Center at (703) 235–0018. Captain William C. Bennett, e-mail *wbennett@ballston.comdt.mil*, retains responsibility for administering the Mariner Licensing and Documentation Program, including STCW. For questions on viewing or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this request by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice [USCG–1998–4770] and the specific section of this document to which each comment or question applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to the Docket Management. Facility at the address under **ADDRESSES.** Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact LCDR Burns at the phone numbers listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background Information

In 1991, the United States became a party to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. The primary intent of STCW is to set minimum international qualifications for masters, officers, and watchkeeping personnel on seagoing merchant ships. The Convention does not apply to mariners on inland merchant vessels, but does apply to mariners on domestic voyages if the vessel operates beyond the boundary line.

In 1993, the International Maritime Organization (IMO) began a comprehensive revision of STCW to establish more detailed standards of competence for mariners, and to address the increased awareness of human error as a major cause of maritime casualties. Before the IMO conference, the Coast Guard held seven public meetings. The information from these meetings helped us to determine the position of the U.S. delegation and to exchange views about the STCW amendments that were under discussion. We received input from advisory committee meetings to discuss developments relating to the STCW amendments and the domestic implementation of these amendments. The advisory committees included the Merchant Personnel Advisory Committee (MERPAC), the Towing Safety Advisory Committee (TSAC), and the Navigation Safety Advisory Council (NAVSAC).

On July 7, 1995, a Conference of Parties adopted a package of amendments to STCW. These amendments went into force on February 1, 1997. Currently, there are 132 parties to STCW representing almost 96 percent of the world's merchant-ship tonnage.

On March 26, 1996, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (61 FR 13284) on the implementation of the 1995 STCW amendments. We received over 500 comment letters in response to the NPRM and held four more public meetings.

We published an interim rule with request for comments in the **Federal Register** on June 26, 1997 (62 FR 34506). The interim rule incorporated the 1995 STCW amendments into U.S. regulation.

The STCW amendments adopted in July 1995—

- Concern port-state control, communication of information to IMO to allow for mutual oversight, company responsibilities, watchkeeping arrangements, and responsibilities of all parties to ensure that seafarers meet objective standards of competence;
- Require candidates for certificates (licenses and merchant mariner document endorsements) to establish competence through both subject-area examinations and practical demonstrations of skills; and
- Require all training assessment and certification activities to be monitored by a Quality Standards System (QSS).

The Coast Guard finds that many practical demonstrations of competency already occur in existing formal training programs and in on-the-job training aboard ships. However, we will need a focus and coordination plan to monitor the adequacy of these training programs to meet STCW minimum requirements.

Comment Issues

We are seeking comments on issues related to implementing the STCW provisions to help in the development of an STCW implementation focus and coordination plan. Please include your recommendations on how to address or resolve the issues. Specifically, we would like your input on the following questions:

1. Should the U.S. maritime industry have a standard record of training and assessment for ratings (unlicensed personnel) forming part of the watch?

2. How do we establish all the training program outlines that must meet STCW requirements?

3. How do we establish and document performance standards and measures to assess a mariner's practical proficiency in areas required under STCW?

4. How should we keep a record of the mariner's current training and assessment in the four elements of basic safety—basic firefighting, elementary first aid, personal survival, and personal safety and social responsibility?

5. How can we revise the merchant mariner license exams to make them a useful method of assessing competence?

6. How should we establish national medical fitness standards for U.S. merchant mariners?

7. Besides Coast Guard course approval, what other alternatives should be available meeting the STCW quality standards systems (QSS) that apply to maritime training and assessment of competence?

8. How can we monitor the entire U.S. training, assessment, and certification system under a quality standards system (QSS)? Also, how can we ensure that the U.S. training, assessment, and certification system is evaluated under the QSS every five years?

9. How do we establish simulator performance standards for maritime training and assessment of proficiency?

10. How do we ensure that all active U.S. merchant mariners who are required to hold a 1995 STCW endorsement for service do so on or after February 1, 2002?

11. How do we provide STCW-related information to all mariners?

12. How can we encourage designated personnel to actively participate in training junior personnel on the ship and sign off on training record book entries?

13. Which skills should not be verified by shipboard personnel? Also, which entries in the training record books should be made only at a shore side training facility?

14. How can we account for all the requirements for the various segments of the marine industry in the focus and coordination plan?

Public Meeting

Members of the public can make oral presentations with advance notice, and as time permits. If you wish to make an oral presentation, you should contact LCDR Burns at the numbers listed under **FOR FURTHER INFORMATION CONTACT** no later than December 1, 1998. Please provide your name, you affiliation, and the issue(s) you would like to discuss. We may limit the length of your presentation to ensure that there is enough time to hear everyone who wishes to present comments.

Dated: November 16, 1998.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 98–31213 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Assessment and Finding of No Significant Impact for Sarasota-Bradenton International Airport, Florida, and Invitation to Public Meeting and to Comment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and Invitation to Public Meeting and to Comment.

SUMMARY: In March 1996, a Noise Compatibility Program (NCP) was published for the Sarasota-Brandenton International Airport (SRQ). The NCP was prepared by and on behalf of the Sarasota-Manatee Airport Authority (SMAA), owner and operator of SRQ. Included in the NCP was a recommendation for the FAA to implement a revised air traffic procedure for departures utilizing Runway 32 (RWY 32).

In compliance with FAA Order 1050.1D, "Policies and Procedures for considering Environmental Impacts", the EA was prepared to address the potential impacts of implementing the revised procedures for RWY 32 departures from SRQ. Although no other alternative than the proposed departure procedure was examined as part of this EA, numerous other alternatives were evaluated as part of the NCP. Those alternatives, along with a no action alternative were dismissed, as they did not meet the purpose and need identified in the NCP.

Based on the evaluation in the EA, no significant impacts associated with the revised procedure were identified. Therefore, no environmental impact statement will be prepared and a FONSI is being issued.

DATES: Public meeting will be held on December 18, 1998. Comments will be received until January 17, 1999.

ADDRESSES: Comments on the EA/FONSI may be delivered or mailed to; Federal Aviation Administration, Attention: Nancy Shelton, Manager, Airspace Branch, ASO–520, Air Traffic Division, Southern Region Headquarters, 1701 Columbia Ave., College Park, GA. 30337.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Shelton at the address listed above or telephone (404) 305–5490.

SUPPLEMENTARY INFORMATION: Environmental regulations allow for implementation of the revised procedures without further public involvement. However, due to concerns expressed by residents of Long Boat Key, Florida, the FAA will host a public meeting to explain the findings of the EA. The purpose of this meeting is to assist the public in understanding the revised procedures and eliminate any potential controversy.

Additionally, the EA contains explanations and graphics depicting the no action alternative and the proposed alternative for years 1995 and 2000, and the no action alternative for 2013. To assist in the public's understanding of the potential impacts from implementation of the proposed alternative, at the public meeting the FAA will also have handouts and graphics displaying the potential impacts for out-years 2000 and 2005.

The public meeting will be held on Friday, December 18, from 4:00 PM until 7:00 PM. The meeting location and time are as follows: The Sudakoff Center, University of South Florida at Sarasota/Manatee and New College of USF, 5700 North Tamiami Trail, Sarasota, FL 34243.

Any person may obtain a copy of the EA/FONSI and the information relating to the out-year forecasts by submitting a request to Ms. Shelton.

The EA/FONSI and out-year forecasts will also be available for review at the following public libraries:

Sarasota County Selby Public Library, 1001 Boulevard of The Arts, Sarasota, FL 34236.

Manatee County Public Library, 1301 Barcarrota Blvd. West, Bradenton, FL 34205.

Longboat Key Library, 555 Bay Isles Rd., Longboat Key, FL 34228.

History

The current procedure for northbound aircraft departing RWY 32 is to turn left at 0.9 distance measuring equipment (DME) to intercept the SRQ very-high frequency omni-directional range (VOR) 295 degree radial. Aircraft continue on this radial until reaching an altitude of 3,000 feet. At that point they are released to turn north by air traffic control (ATC).

The current procedure for southbound aircraft is to turn left at 0.9 DME to a heading of 270 degrees for radar vectors

by ATC to on course. Aircraft typically make the turn to the south either within Sarasota Bay (commuter aircraft) or west of the beaches of LongBoat Key to over the Gulf of Mexico (air carrier aircraft).

The NCP recommended the existing procedures be modified so that all aircraft weighing over 25,000 pounds and all jet aircraft departing RWY 32 be instructed to turn left at 0.9 DME to join the SRQ VOR 270 degree radial outbound. Aircraft would then continue on the SRQ VOR 270 degree radial until they are at least 7 DME, then proceed on course or as instructed by ATC. This would ensure that all jet aircraft are beyond the barrier island and over the Gulf of Mexico prior to turning either north or south.

The EA evaluates the proposed implementation of the revised departure procedures for RWY 32 at SRQ. These proposed procedures are designed to reduce aircraft noise impacts in two ways: first, by directing aircraft over the least populated area, and, secondly, by maximizing the aircraft flyovers above the residential buyout area identified in the NCP.

The FAA had previously approved the NCP. With issuance of the EA/FONSI, the FAA is approving the revised departure procedure for RWY 32 for implementation. However, implementation of the revised procedure will be delayed until training of ATC personnel and until publication of the appropriate documentation can be accomplished.

Issued in Washington, DC on November 17, 1998.

William J. Marx,

Manager, Office of Air Traffic Airspace Management, Environmental Programs Division.

[FR Doc. 98–31209 Filed 11–18–98; 4:08 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for December 10 and 11, 1998, beginning at 8:30 a.m. on December 10. Arrange for oral presentations by December 3, 1998.

ADDRESSES: Aerospace Industries Association, 1250 Eye Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW, Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App II), notice is given of an ARAC meeting to be held December 10–11, 1998 at Aerospace Industries Association, 1250 Eye Street, NW., Washington, DC.

The agenda will include:

Thursday, December 10, 1998

- Opening Remarks.
- FAA Report.
- Joint Aviation Authorities (JAA) Report.
- Transport Canada Report.
- Executive Committee (EXCOM) Meeting Report.
- Harmonization Management Team Report.
- Harmonization Program Plan Update.
- Seat Test HWG Report.
- Proposed Human Factors Terms of Reference (TOR) Update.
- Flight Test Harmonization Working Group (HWG) Report.
- Ice Protection HWG Report and Approval of Concept Plan.
- Engine HWG Report and Vote.
- Airworthiness Assurance HWG Report and Vote.
- System Design and Analysis HWG.
- Flight Guidance System HWG Report.

Friday, December 11, 1998

- Avionics Systems HWG Report.
- General Structures HWG Report.
- Electromagnetic Effects HWG Report and Vote.
- Loads and Dynamics HWG Report.
- Flight Control HWG Report.
- Electrical Systems HWG Report.
- Mechanical Systems HWG Report.
- Review Action Items.

The Ice Protection HWG will present a concept plan that addresses installation of ice detectors, aerodynamic performance monitors, or other acceptable means to warn flightcrews of ice accumulation on critical surfaces. The Engine HWG is requesting a vote for formal FAA legal review for a draft advisory circular that addresses compliance with the overspeed requirements of turbine, compressor, fan, and turbosupercharger rotors. The Airworthiness Assurance HWG is requesting a vote to forward a recommendation to the FAA to develop regulations and advisory material to ensure that no large transport category airplane operate beyond a specified flight cycle limit unless an aging aircraft program has been incorporated in the operator's maintenance program. The Electromagnetic Effects HWG is requesting a vote for formal economic and legal review of a proposed notice and advisory circular on lightning protection.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by December 3, 1998, to present oral statements at the meeting. Written statements may be presented to the Committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on November 17, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–31268 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–98–4771]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request approval for three years of a new information collection entitled Subsidy Voucher—Operating Differential Subsidy (Bulk & Liner Cargo Vessels).

DATES: Comments should be submitted on or before January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Michael P. Ferris, Director, Office of

Cost and Rates, 400 Seventh Street, SW, Room 8117, Washington, D.C. 20590. Telephone 202–366–2324 or fax 202–366–7901. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Subsidy Voucher—Operating Differential Subsidy (Bulk & Liner Cargo Vessels).

Type of Request: Approval of an existing information collection.

OMB Control Number: 2133–0024.

Form Number: MA–790, SF–1034 and Supporting Schedules.

Expiration Date of Approval: Three years from the date of approval.

Summary of Collection of Information: In accordance with the Merchant Marine Act, 1936, the Secretary of Transportation is authorized to provide financial aid in the operation of contract vessels for bulk or liner cargo carrying services that help promote, develop, expand and maintain the foreign commerce of the United States and for national defense and other national requirements.

Need and Use of the Information: The information data will be prepared by subsidized bulk and liner operators and submitted to the Maritime Administration (MARAD). MARAD will utilize the information to determine subsidy payable to operators for voyages performed in accordance with their Operating-Differential Subsidy (ODS) Agreements.

Description of Respondents: Bulk and Liner Vessel Operators.

Annual Responses: 120 responses.

Annual Burden: 240 hours.

Comments: Signed written comments should refer to the dock number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., et. Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By order of the Maritime Administrator.

Dated: November 18, 1998.

Edmund T. Sommer, Jr.,

Acting Secretary.

[FR Doc. 98–31263 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9:00 a.m., on Tuesday, December 2, 1998, at The Worthington Hotel, 200 Main Street, Fort Worth, Texas. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than November 30, 1998, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on November 17, 1998.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 98–31206 Filed 11–20–98; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 16–59]

Determination of Eligible Types of Collateral Acceptable to Secure Deposits of Public Moneys and Other Financial Interests of the Government; Valuation of Such Collateral

November 12, 1998.

1. *Delegation.* By virtue of the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, the Commissioner, Bureau of the Public Debt, is delegated the authority to determine the eligible types of collateral, and methods of valuation thereof, that are acceptable to be pledged to secure deposits of public moneys and other financial interests of the government pursuant to 12 U.S.C. 90, 12 U.S.C. 265–266, 12 U.S.C. 391, 12 U.S.C. 1452(d), 12 U.S.C. 1464(k), 12 U.S.C. 1789a, 12 U.S.C. 2013, 12 U.S.C. 2122, 31 U.S.C. 323, 31 U.S.C. 3303, 31 U.S.C. 9301, and 31 U.S.C. 9303, and other similar law under the jurisdiction of the Secretary of the Treasury, and to perform any functions necessary to effect such determination. The Commissioner, Bureau of the Public Debt, shall be responsible for referring to the Fiscal Assistant Secretary any matters on which action should be appropriately taken by the Fiscal Assistant Secretary.

2. *Redelegation.* The Commissioner, Bureau of the Public Debt, may redelegate this authority in writing to officials of the Bureau of the Public Debt, and it may be exercised in the individual capacity and under the individual title of each official receiving such authority.

3. *Regulations.* The issuance of any regulations pursuant to this Directive shall be by the Commissioner of the Public Debt in accordance with Treasury Directive 28–01, "Preparation and Review of Regulations."

4. *Authorities.* a. TO 101–05, "Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury."

b. 12 U.S.C. 90; 12 U.S.C. 265–266; 12 U.S.C. 391; 12 U.S.C. 1452(d); 12 U.S.C. 1464(k); 12 U.S.C. 1789a; 12 U.S.C. 2013; 12 U.S.C. 2122; 31 U.S.C. 323; 31 U.S.C. 3303; 31 U.S.C. 9301; and 31 U.S.C. 9303.

5. *Expiration Date.* This Directive expires three years from the date of issuance unless cancelled or superseded by that date.

6. *Office of Primary Interest.* Government Securities Regulations Staff, Office of the Commissioner, Bureau of the Public Debt.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 98–31267 Filed 11–20–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 98–17]

FEDERAL RESERVE SYSTEM

[Docket No. R–1022]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket No. 98–93]

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Notice of interagency policy statement.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are adopting a uniform interagency policy statement regarding intercompany tax allocation agreements for banking organizations and savings associations (institutions) that file an income tax return as members of a consolidated group. The intent of this interagency policy statement is to provide guidance to institutions regarding the allocation and payment of taxes among a holding company and its depository institution subsidiaries. In general, intercorporate tax settlements between an institution and its parent company should be conducted in a manner that is no less favorable to the institution than if it were a separate taxpayer. This policy statement is the result of the Agencies' ongoing effort to implement section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act), which requires the Agencies to work jointly to make uniform their regulations and guidelines implementing common statutory or supervisory policies.

DATES: This interagency policy statement is effective November 23, 1998.

FOR FURTHER INFORMATION CONTACT:
OCC: Gene Green, Deputy Chief Accountant, (202/874–4933), or Tom Rees, Senior Accountant, (202/874–5411), Office of the Chief Accountant, Core Policy Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

Board: Charles Holm, Manager, (202/452–3502), or Arthur Lindo, Supervisory Financial Analyst, (202/452–2695), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

FDIC: For supervisory issues, Robert F. Storch, Chief, (202/898–8906), or Carol L. Liquori, Examination Specialist, (202/898–7289), Accounting Section, Division of Supervision; for legal issues, Jamey Basham, Counsel, (202/898–7265), Legal Division, FDIC, 550 17th Street, NW, Washington, DC 20429.

OTS: Timothy J. Stier, Chief Accountant, (202/906–5699), or Christine Smith, Capital and Accounting Policy Analyst, (202/906–5740), Accounting Policy Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(3) of the of the CDRI Act directs the Agencies, consistent with the principles of safety and soundness, statutory law and policy, and the public interest, to work jointly to make uniform regulations and guidelines implementing common statutory or supervisory policies. Section 303(a)(1) of the CDRI Act also requires the Agencies to review their regulations and written policies and to streamline those regulations where possible.

In 1978, the FDIC, the OCC, and the Board each published a separate policy statement regarding the allocation and payment of income taxes by depository institutions which are members of a group filing a consolidated income tax return. The OTS provides supervisory guidance on this subject in its Holding Company Handbook. As part of the ongoing effort to fulfill the section 303 mandate, the Agencies have reviewed, both internally and on an interagency basis, the present policy statements and the supervisory guidance that has developed over the years. As a result of this review, the Agencies identified minor inconsistencies in the policy statements and supervisory guidance. Although largely limited to differences in language and not to the substance of the policies and guidelines themselves, the Agencies determined that it would be beneficial to adopt a uniform interagency policy statement regarding intercorporate tax allocation in a holding company structure.

II. Policy Statement

This interagency policy statement reiterates and clarifies the position the Agencies will take as they carry out their supervisory responsibilities for institutions regarding the allocation and payment of income taxes by institutions that are members of a group filing a consolidated return. The interagency policy statement reaffirms that intercorporate tax settlements between an institution and the consolidated group should result in no less favorable treatment to the institution than if it had filed its income tax return as a separate entity. Accordingly, tax remittances from a subsidiary institution to its parent for its current tax expense should not exceed the amount the institution would have paid had it filed separately. The payments by the subsidiary to the parent generally should not be made before the subsidiary would have been obligated to pay the taxing authority had it filed as a separate entity. Similarly, an institution incurring a tax loss should receive a refund from its parent. The refund should be in an amount no less than the amount the institution would have received as a separate entity, regardless of whether the consolidated group is receiving a refund. However, adjustments for statutory tax considerations which may arise in a consolidated return are permitted as long as the adjustments are made on a basis that is equitable and consistently applied among the holding company affiliates. Regardless of the method used to settle intercorporate income tax obligations, when depository institution members prepare regulatory reports, they must provide for current and deferred income taxes in amounts that would be reflected as if the institution had filed on a separate entity basis.

An institution should not pay its deferred tax liabilities or the deferred portion of its applicable income taxes to its parent since these are not liabilities required to be paid in the current reporting period. Similarly, transactions in which a parent "forgives" any portion of a subsidiary institution's deferred tax liability should not be reflected in the institution's regulatory reports. This is because a parent cannot relieve its subsidiary of this potential future obligation to the taxing authorities, since these authorities can collect some or all of a group liability

from any of the group members if tax payments are not made when due.

Finally, the Agencies recommend that financial institution members of a consolidated group have a written, comprehensive tax allocation agreement to address intercorporate tax policies and procedures.

This interagency policy statement revises and replaces the Board's "Policy Statement on Intercorporate Income Tax Accounting Transactions of Bank Holding Companies and State Member Banks," (43 FR 22782, May 26, 1978); the OCC's "Statement of Policy on Income Tax Remittance to Holding Company Affiliates," (Banking Circular No. 105, May 22, 1978); the FDIC's Statement of Policy on "Income Tax Remittance by Banks to Holding Company Affiliates" (43 FR 22241, May 24, 1978); and the OTS's "OTS Tax-Sharing Policy," (Section 500, "Funds Distribution," OTS Holding Companies Handbook). This interagency policy statement does not materially change any of the guidance previously issued by any of the Agencies.

The text of the interagency policy statement follows:

Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure

The Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision ("the Agencies") are issuing this policy statement to provide guidance to banking organizations and savings associations regarding the allocation and payment of taxes among a holding company and its subsidiaries. A holding company and its depository institution subsidiaries will often file a consolidated group income tax return. However, each depository institution is viewed as, and reports as, a separate legal and accounting entity for regulatory purposes. Accordingly, each depository institution's applicable income taxes, reflecting either an expense or benefit, should be recorded as if the institution had filed on a separate entity basis.[1] Furthermore, the amount and timing of payments or refunds should be no less favorable to the subsidiary than if it were a separate taxpayer. Any practice that is not consistent with this policy statement may be viewed as an unsafe and unsound practice prompting either informal or formal corrective action.

Tax Sharing Agreements

A holding company and its subsidiary institutions are encouraged to enter into a written, comprehensive tax allocation agreement tailored to their specific circumstances. The agreement should be approved by the respective boards of directors. Although each agreement will be different, tax allocation agreements usually address certain issues common to consolidated groups. Therefore, such an agreement should:

- Require a subsidiary depository institution to compute its income taxes (both current and deferred) on a separate entity basis;
- Discuss the amount and timing of the institution's payments for current tax expense, including estimated tax payments;
- Discuss reimbursements to an institution when it has a loss for tax purposes; and
- Prohibit the payment or other transfer of deferred taxes by the institution to another member of the consolidated group.

Measurement of Current and Deferred Income Taxes

Generally accepted accounting principles, instructions for the preparation of both the Thrift Financial Report and the Reports of Condition and Income, and other guidance issued by the Agencies require depository institutions to provide for their current tax liability or benefit. Institutions also must provide for deferred income taxes resulting from any temporary differences and tax carryforwards.

When the depository institution members of a consolidated group prepare separate regulatory reports, each subsidiary institution should record current and deferred taxes as if it files its tax returns on a separate entity basis, regardless of the consolidated group's tax paying or refund status. Certain adjustments for statutory tax considerations that arise in a consolidated return, e.g., application of graduated tax rates, may be made to the separate entity calculation as long as they are made on a consistent and equitable basis among the holding company affiliates.

In addition, when an organization's consolidated income tax obligation arising from the alternative minimum tax (AMT) exceeds its regular tax on a consolidated basis, the excess should be consistently and equitably allocated among the members of the consolidated group. The allocation method should be based upon the portion of tax preferences, adjustments, and other items generated by each group member which causes the AMT to be applicable at the consolidated level.

Tax Payments to the Parent Company

Tax payments from a subsidiary institution to the parent company should not exceed the amount the institution has properly recorded as its current tax expense on a separate entity basis. Furthermore, such payments, including estimated tax payments, generally should not be made before the institution would have been obligated to pay the taxing authority had it filed as a separate entity. Payments made in advance may be considered extensions of credit from the subsidiary to the parent and may be subject to affiliate transaction rules, i.e., Sections 23A and 23B of the Federal Reserve Act.

A subsidiary institution should not pay its deferred tax liabilities or the deferred portion of its applicable income taxes to the parent. The deferred tax account is not a tax liability required to be paid in the current reporting period. As a result, the payment of deferred income taxes by an institution to its holding company is considered a dividend subject to dividend restrictions,[2] not the extinguishment of a liability. Furthermore, such payments may constitute an unsafe and unsound banking practice.

Tax Refunds From the Parent Company

An institution incurring a loss for tax purposes should record a current income tax benefit and receive a refund from its parent in an amount no less than the amount the institution would have been entitled to receive as a separate entity. The refund should be made to the institution within a reasonable period following the date the institution would have filed its own return, regardless of whether the consolidated group is receiving a refund. If a refund is not made to the institution within this period, the institution's primary federal regulator may consider the receivable as either an extension of credit or a dividend from the subsidiary to the parent. A parent company may reimburse an institution more than the refund amount it is due on a separate entity basis. Provided the

[1] Throughout this policy statement, the terms "separate entity" and "separate taxpayer" are used synonymously. When a depository institution has subsidiaries of its own, the institution's applicable income taxes on a separate entity basis include the taxes of the subsidiaries *of the institution* that are included with the institution in the consolidated group return.

[2] These restrictions include the Prompt Corrective Action provisions of section 38(d)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831o(d)(1)) and its implementing regulations: for insured state nonmember banks, 12 CFR part 325, subpart B; for national banks, 12 CFR 6.6; for savings associations, 12 CFR part 565; and for state member banks, 12 CFR 208.45.

institution will not later be required to repay this excess amount to the parent, the additional funds received should be reported as a capital contribution.

If the institution, as a separate entity, would not be entitled to a current refund because it has no carryback benefits available on a separate entity basis, its holding company may still be able to utilize the institution's tax loss to reduce the consolidated group's current tax liability. In this situation, the holding company may reimburse the institution for the use of the tax loss. If the reimbursement will be made on a timely basis, the institution should reflect the tax benefit of the loss in the current portion of its applicable income taxes in the period the loss is incurred. Otherwise, the institution should not recognize the tax benefit in the current portion of its applicable income taxes in the loss year. Rather, the tax loss represents a loss carryforward, the benefit of which is recognized as a deferred tax asset, net of any valuation allowance.

Regardless of the treatment of an institution's tax loss for regulatory reporting and supervisory purposes, a parent company that receives a tax refund from a taxing authority obtains these funds as agent for the consolidated group on behalf of the group members.[3] Accordingly, an organization's tax allocation agreement or other corporate policies should not purport to characterize refunds attributable to a subsidiary depository institution that the parent receives from a taxing authority as the property of the parent.

Income Tax Forgiveness Transactions

A parent company may require a subsidiary institution to pay it less than the full amount of the current income tax liability that the institution calculated on a separate entity basis. Provided the parent will not later require the institution to pay the remainder of the current tax liability, the amount of this unremitted liability should be accounted for as having been paid with a simultaneous capital contribution by the parent to the subsidiary.

In contrast, a parent cannot make a capital contribution to a subsidiary institution by "forgiving" some or all of the subsidiary's deferred tax liability. Transactions in which a parent "forgives" any portion of a subsidiary institution's deferred tax liability should not be reflected in the institution's regulatory reports. These transactions lack economic substance because the parent cannot legally relieve the subsidiary of a potential future obligation to the taxing authorities. Although the subsidiaries have no direct obligation to remit tax payments to the taxing authorities, these authorities can collect some or all of a group liability from any of the group members if tax payments are not made when due.

[3] See 26 CFR 1.1502–77(a).

Dated: October 14, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 29, 1998.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Dated at Washington, DC, this 5th day of November, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: October 14, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31179 Filed 11–20–98; 8:45 am]

BILLING CODE 4810–13–P, 6210–01–P, 6714–01–P, 6720–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Lay Order Period—General Order Merchandise

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning Lay Order Period—General Order Merchandise. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 22, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Lay Order Period—General Order Merchandise Cost Submissions.

OMB Number: 1515–0220.

Form Number: N/A.

Abstract: This collection is required to ensure that the operator of an arriving carrier, or transfer agent shall notify a bonded warehouse proprietor of the presence of merchandise that has remained at the place of arrival or unlading without entry beyond the time period provided for by regulation.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annualized Cost to the Public: N/A.

Dated: November 16, 1998.

J. Edgar Nichols,

Team Leader, Information Services Group.

[FR Doc. 98–31237 Filed 11–20–98; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the object to be included in the exhibit "A Cylinder Recounting Sennacherib's Third Campaign Against Judah, .c. 700 B.C.E.", imported from abroad for temporary exhibition without profit within the United States, is of cultural significance. This object is imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit object at The Museum of Jewish Heritage, New York, New York, from on or about November 23, 1998, to on or about October 15, 2003, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jacqueline H. Caldwell, Assistant General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, S.W., Washington, D.C. 20547–0001.

Dated: November 17, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–31194 Filed 11–20–98; 8:45 am]

BILLING CODE 8230–01–M

VOL 63 ISS 225 NO 23 1998 UMI

Corrections

Federal Register

Vol. 63, No. 225

Monday, November 23, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 59

[AD-FRL-6149-5]

RIN 2060-AE35

National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

Correction

In rule document 98–22657, beginning on page 48806, in the issue of Friday, September 11, 1998, make the following correction:

§ 59.104 [Corrected]

On page 48817, in the second column, § 59.104 (a)(2), the equation is corrected to read as set forth below:

$$VOC_{multi} = \frac{VOC_{bc} + \sum_{i=0}^{M} VOC_{mci} + 2\,(VOC_{cc})}{M + 3}$$

BILLING CODE 1505-01-D

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

RIN 3206-AH61

Federal Employees Health Benefits Program: Disenrollment

Correction

In rule document 98–29330, beginning on page 59457, in the issue of Wednesday, November 4, 1998, make the following corrections:

1. On page 59458, in the second column, in the fourth full paragraph, in the third line from the bottom, "expect" should read "ask".

2. On page 59458, in the third column, in the first full paragraph, in the 11th line from the bottom, after "rolls" add "as their student status changes.".

3. On page 59459, in the first column, in the 11th line, "they" should read "OPM".

§ 890.110 [Corrected]

4. On page 59459, in the second column, in § 890.10 (b), in the fourth line, "aggregate" should read "total".

BILLING CODE 1505-01-D

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federal register

Monday
November 23, 1998

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 129
Security Programs of Foreign Air Carriers; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. FAA–1998–4758; Notice No. 98–17]

RIN 2120–AG13

Security Programs of Foreign Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); notice of public meeting.

SUMMARY: The FAA proposes to amend the existing airplane operator security rules for foreign air carriers and foreign operators of U.S. registered aircraft. The proposed rule would implement provisions of the Antiterrorism and Effective Death Penalty Act of 1996. The proposed rule would condition the Administrator's acceptance of a foreign air carrier's security program on a finding that the security program requires adherence to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to. The proposed rule is intended to increase the safety and security of passengers aboard foreign air carriers on flights to and from the United States. In addition, the FAA is announcing a public meeting on the NPRM to provide an additional opportunity for the public to comment.

DATES: Comments must be submitted on or before March 23, 1999.

A public meeting will be held on February 24, 1999.

ADDRESSES: The public meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW, Washington, D.C., in the main auditorium on the 3rd Floor. *Registration:* 8:30 a.m.; *Meeting:* 9:00 a.m.–5:00 p.m.

Comments on this proposed rulemaking should be mailed or delivered in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–1998–4758, 400 Seventh Street, SW, Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.gov. Comments may be filed and/or examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays. Written comments to the docket will receive the same consideration as statements made at the public meeting.

Comments that include or reference national security information or sensitive security information should not be submitted to the public docket. These comments should be sent to the following address in a manner consistent with applicable requirements and procedures for safeguarding sensitive security information: Federal Aviation Administration, Office of Civil Aviation Security Operations, Attention: FAA Security Control Point, Docket No. FAA–1998–4758, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Moira A. Lozada, Office of Civil Aviation Security Policy and Planning, Civil Aviation Security Division (ACP–100), Federal Aviation Administration, 800 Independence Ave., SW., Washington, D.C. 20591; telephone (202) 267–5961.

Requests to present a statement at the public meeting on the Security Programs of Foreign Air Carriers NPRM and questions regarding the logistics of the meeting should be directed to Elizabeth I. Allen, Federal Aviation Administration, Office of Rulemaking (ARM–105), 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–8199; fax (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates.

Comments should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket (see **ADDRESSES**). All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this document may be changed in response to comments received. Comments received on this proposal will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. However, the Assistant Administrator has determined that air carrier security programs required by parts 108 and 129 contain sensitive security information. As such, the availability of information pertaining to airport security programs is governed by 14 CFR Part 191 (Withholding Security Information from Disclosure Under the Air Transportation Security Act of 1974).

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–1998–4758." The postcard will be date-stamped and mailed to the commenter.

In order to give the public an additional opportunity to comment on the NPRM, the FAA is planning a public meeting.

Requests from persons who wish to present oral statements at the public meeting on the Security Programs of Foreign Air Carriers NPRM should be received by the FAA no later than February 17, 1999. Such requests should be submitted to Elizabeth I. Allen as listed in the section titled **FOR FURTHER INFORMATION CONTACT.** Requests received after February 17, will be scheduled if time is available during the meeting; however the name of those individuals may not appear on the written agenda. The FAA will prepare an agenda of speakers that will be available at the meeting. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Those persons desiring to have available audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The public meeting will be held on February 24, 1999, at the Federal Aviation Administration, 800 Independence Ave., SW, Washington, DC, in the main auditorium on the 3rd Floor. *Registration:* 8:30 a.m.; *meeting:* 9:00 a.m.–5:00 p.m..

The following procedures are established to facilitate the public meeting on the NPRM.

1. There will be no admission fee or other charge to attend or to participate in the public meeting. The meeting will be open to all persons who have requested in advance to present statements or who register on the day of the meeting (between 8:30 and 9:00 a.m.) subject to availability of space in the meeting room.

2. The public meeting may adjourn early if scheduled speakers complete their statements in less time than currently is scheduled for the meeting.

3. The FAA will try to accommodate all speakers; therefore, it may be

necessary to limit the time available for an individual or group.

4. Participants should address their comments to the panel. No individual will be subject to cross-examination by any other participant.

5. Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

6. Representatives of the FAA will conduct the public meeting. A panel of FAA personnel involved in this issue will be present.

7. The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the panel during the meeting will be included in the public docket (Docket No. FAA–1998–4758). Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. This information will be available at the meeting.

8. The FAA will review and consider all material presented by participants at the public meeting. Position papers or material presenting views or information related to the interim final rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meeting provide 10 copies of all materials to be presented for distribution to the panel members; other copies may be provided to the audience at the discretion of the participant.

9. Statements made by members of the public meeting panel are intended to facilitate discussion of the issues or to clarify issues. Because the meeting concerning the Security Programs of Foreign Air Carriers is being held during the comment period, final decisions concerning issues that the public may raise cannot be made at the meeting. The FAA may, however, ask questions to clarify statements made by the public and to ensure a complete and accurate record. Comments made at this public meeting will be considered by the FAA.

10. The meeting is designed to solicit public views on the NPRM. Therefore, the meeting will be conducted in an informal and nonadversarial manner.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Government Printing Office's webpage at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW., Washington, D.C. 20591, or by calling (202) 267–9680. Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Current FAA Security Program for Foreign Air Carriers

The FAA's present Civil Aviation Security Program was initiated in 1973. Part 129 of Title 14 of the Code of Federal Regulations governs the operations of foreign air carriers that hold a permit issued by the Department of Transportation (DOT) under 49 U.S.C. Subtitle VII, section 41301 or that hold another appropriate economic or exemption authority issued by DOT.

The foreign air carrier security regulations were promulgated in 1976 (41 FR 30106; July 22, 1976). In 1989, the FAA issued an amendment to § 129.25(e) (41 FR 11116; March 16, 1989) that requires foreign air carriers flying to or from the U.S. to submit their security programs to the FAA for acceptance by the Administrator. The submitted programs must describe the procedures, facilities, and equipment that foreign air carriers will use to ensure the security of persons and property traveling in air transportation. The rule applies to foreign air carrier operations at U.S. airports and at foreign airports that are a last point of departure before landing in the United States.

For airports that are last points of departure to the United States and for which a government authority on the carrier's behalf performs certain security procedures, the FAA's policies allow the foreign air carrier to refer the FAA to the appropriate foreign government authority that performs those security procedures (54 FR 25551; June 15, 1989).

Currently, 171 foreign air carriers are required to have a security program that is acceptable to the Administrator. The programs contain sensitive security procedures and are not available to the public, in accordance with 14 CFR Part 191 (41 FR 53777; December 9, 1976), which establishes the requirements for withholding security information from disclosure under the Air Transportation Security Act of 1974 (Public Law 93–366).

Recent Changes To Tighten Security

The Aviation Security Improvement Act of 1990 (Pub. L. 101–604), enacted on November 16, 1990, after the bombing of Pan Am Flight 103 (December 1988), mandated many changes to air carrier security programs. It was the intent of Congress to ensure that all Americans would be guaranteed adequate protection from terrorist attacks on international flights arriving in or departing from the United States, regardless of the nationality of the air carrier providing the service. The 1990 Act required the FAA to ensure that foreign air carriers operating under security programs provide a similar level of security to that of programs required of U.S. carriers. Accordingly, current § 129.25(e), as amended in 1991 (56 FR 30122; July 1, 1991), requires that a foreign air carrier's security program must provide passengers with a level of protection similar to the level provided by U.S. air carriers serving the same airports.

Since 1990, the meaning of the term "similar" has been considered by some to be ambiguous. On April 24, 1996, the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104–132) (the Antiterrorism Act) was enacted. Subtitle B, section 322 of that Act, amends 49 U.S.C. section 44906, to clarify the ambiguous term by requiring the following:

> The Administrator of the Federal Aviation Administration shall continue in effect the requirement of section 129.25 of title 14, Code of Federal Regulations, that a foreign air carrier must adopt and use a security program approved by the Administrator. The Administrator shall not approve a security program of a foreign air carrier under section 129.25, or any successor regulation, unless the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires air carriers serving the same airports to adhere to. The foregoing requirement shall not be interpreted to limit the ability of the Administrator to impose additional security measures on a foreign air carrier or an air carrier when the Administrator determines that a specific threat warrants such additional measures. The Administrator shall prescribe regulations to carry out this section.

In accordance with the Antiterrorism Act, Congress intends that the FAA will establish a level of necessary security measures for international flights from each airport that both foreign and U.S. carriers will be required to employ.

Moreover, Congress does not in any way intend the Antiterrorism Act to restrict the ability of the FAA to impose additional measures on any airline at any time that a particular threat warrants additional measures. (Conference Report 104–518, Terrorism Prevention Act, pg. 113–114, Government Printing Office, Washington, D.C., April 1996.)

This notice proposes to amend § 129.25(e) to reflect the recent legislation by stating that a security program of a foreign air carrier is acceptable only if the Administrator finds that the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to.

Role of the European Civil Aviation Conference

The European Civil Aviation Conference (ECAC) requested, and was granted, an opportunity to present to the Associate Administrator for Civil Aviation Security its observations on the underlying issues and potential solutions associated with FAA implementation of section 322 of the Antiterrorism Act.

In October 1996, the ECAC expressed disagreement with several underlying issues associated with the proposed revision to part 129. First, according to ECAC, the implementation of the proposed revision to part 129 is the "unequivocal imposition of extraterritorial legislation." Instead of using domestic legislation to adjust implementation of aviation security, the ECAC believes enhanced security cooperation can be best achieved through consultation. The ECAC voiced its concern that the implementation of revisions of part 129 as required by the domestic legislation will lead to divisiveness among countries.

Second, the ECAC believes that amendments to rulemaking and security program requirements associated with part 129 have historically been tied to changes in the nature and scope of the threat posed to the security of the aircraft. This proposal does not appear to be consistent with a threat-based standard, according to the ECAC.

Third, ECAC analysis shows that practical and physical implementation of the security measures associated with the proposed revision to part 129 is "impossible" at many European airports. The ECAC estimates that the costs associated with the implementation of the proposed revisions to part 129 at a single airport in the Netherlands would be prohibitive.

Fourth, the ECAC is attempting to implement comprehensive security measures at all airports. In the estimation of the ECAC, the implementation of "identical measures" would inhibit such a comprehensive approach by introducing requirements generating distinctive security requirements to a selected portion of air carriers.

Finally, the ECAC expressed concern that the implementation of security measures "identical" to those required of U.S. air carriers at last points of departure to the U.S., may have the unintended effect of lowering the current security measures of some foreign air carriers. For example, a non-European air carrier operating an originating flight from a region with political instability or strife would need to implement extraordinary security measures. These security measures reflect the higher associated threat to its aircraft than the threat associated with a U.S. air carrier not originating operations from the same region, but departing the same airport for the United States.

The FAA values the opportunity to have heard the preliminary observations of the ECAC regarding the legislative mandate for "identical security measures." Through such frank discussions, as well as from comments received from this Notice, the FAA anticipates the assistance of the affected parties to implement the Congressional mandate. The concerns of the ECAC are addressed in the following section.

Discussion of the Proposal in Response to ECAC Concerns

Questions have been raised about the implementation of this proposed rule. Specifically, certain foreign governments have expressed concern about the FAA seeking security programs from foreign air carriers which would include the procedures at foreign airports where government authorities implement security measures. These governments believe that the more appropriate source of security programs for these operations is the responsible foreign government, not the foreign air carriers.

The proposed rule would be consistent with U.S. international obligations. As the FAA has stated in the past, the applicability of this rule to foreign air carrier operations at foreign airports that are a last point of departure to the United States is necessary for the FAA to assure that foreign air carrier operations into the U.S. territory are secure. This rule is an exercise of authority recognized in the Convention on International Civil Aviation (Chicago Convention) and U.S. air transport agreements and is not intended to undermine the sovereignty of other nations. Under the Chicago Convention and U.S. bilateral air transport agreements, foreign air carriers are required to comply with the laws and regulations governing admission to or departure from the United States and the operation and navigation of those aircraft while within U.S. territory. The provisions of the proposed rule are within the scope of those laws and regulations. Moreover, the implementation of this proposed rule will be done in accordance with these international obligations.

Historically, the aviation community implemented security measures based upon the assumption that the threat to an aircraft was directly related to the specific nationality of the air carrier. The implication of the Act is that the terrorist threat to U.S. interests relates not only to U.S. air carriers but also to air carriers of any nationality engaged in commerce with the United States. Therefore, security measures for U.S. and foreign air carriers operating at last points of departure to the U.S. or from airports in the United States should be identical.

In accordance with the Conference Report on the Act, the FAA intends to identify Annex 17 to the Chicago Convention as the baseline of necessary security measures required of foreign air carrier operations to and from the United States. Currently, the majority of foreign air carrier flights to and from the United States operate under this standard.

Under existing authority, the FAA will review and update the security requirements that need to be levied on U.S. carriers. This will be done on a country-by-country basis, and in some cases an airport-by-airport basis within a country. To implement this proposed rule, the FAA would then impose identical security measures on all foreign carriers flying from those airports as last points of departure to the United States.

The FAA has found that similar levels of protection, for practically all foreign carriers' flights from the United States, and most flights from overseas, have been provided by meeting the standards of Annex 17. However, the FAA's assessments in the past of terrorist threats have indicated the necessity for some foreign flag carriers to implement additional measures to afford a level of protection similar to that of U.S. carriers.

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The foreign flag carriers may initiate implementation of the additional measures based on their own national threat assessments, or the foreign air carriers and their respective national authorities may agree to the implementation of additional security measures following consultations with the FAA.

If, however, specific temporary threats affect a particular foreign air carrier or U.S. air carrier, the FAA may require it to implement additional appropriate security measures. In such instances, the FAA intends that any additional security measures will not apply to airlines that are not threatened.

The FAA does not intend to diminish the security measures of any foreign air carrier that may currently exceed the security measures required of U.S. air carriers serving the same airport and the proposed rule language so states.

The FAA will consult the foreign government authority whenever changes to security measures are deemed necessary at a foreign airport.

Proposed Implementation of the Proposal

The FAA would initiate implementation of the "identical measures" provisions of the Antiterrorism and Effective Death Penalty Act of 1996 by amending § 129.25(e) and by amending the foreign air carriers' security programs. The FAA anticipates publication of the final rule in the **Federal Register** by the end of June 2000. The effective date of the regulation would be at least a month from publication.

The final stage of implementation of a final rule would occur with amendment to the security programs of the regulated foreign air carriers. Toward that end, the FAA anticipates development of specific security amendments in a parallel process to the public rulemaking. The process will be predicated on a revalidation of the currently required security measures for air carriers. The FAA will retain all of the security measures for which there is a continuing security justification. The FAA will evaluate how identical measures may be implemented by foreign air carriers in the most effective manner from a security standpoint. Special attention will be paid to the more complex measures, such as profiling.

The FAA has devoted considerable resources toward developing security standards and regulations as well as the type of equipment that helps to keep international civil aviation secure for not only the citizens of the United States, but for all persons using the international civil aviation system. The FAA believes that it is through such continued international cooperation that all flights can be more secure in an increasingly dangerous world.

Regulatory Evaluation Summary

The FAA has determined that this proposed rule is a "not significant rulemaking action," as defined by Executive Order 12866 (Regulatory Planning and Review). The anticipated costs and benefits associated with this proposed rule are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this proposed rule.)

Because the Antiterrorism Act prohibits the Administrator from approving any security program of a foreign air carrier "unless the security program requires the foreign air carrier * * * to adhere to identical security measures" that apply to U.S. carriers serving the same airports, the FAA has determined that there are not any potentially effective and reasonably feasible alternatives to the proposed regulation that need to be assessed. However, the FAA has drafted the proposed rule to permit flexibility in two respects. It would allow a foreign air carrier to exceed the security measures required of U.S. carriers. The proposal also would permit a foreign air carrier to refer the FAA to appropriate foreign government authorities that perform security functions on the carrier's behalf in lieu of specifying the procedures.

Cost of Compliance

The FAA has performed an analysis of the expected costs and benefits of this regulatory proposal. In this analysis, the FAA estimated costs for a 10-year period, from 1998 through 2007. As required by the Office of Management and Budget (OMB), the present value of this stream was calculated using a discount factor of 7 percent. All costs in this analysis are in 1995 dollars.

To calculate the costs, the FAA examined the differences between the Air Carrier Standard Security Program (ACSSP), which sets the security standards and procedures that all certificated U.S. air carriers use, and the Model Security Program (MSP), which sets the security standards and procedures that all certificated part 129 (foreign) air carriers use. These differences were examined at both domestic airports and foreign airports that serve as the last point of departure (LPD) to the U.S. Due to the sensitive nature of these documents, most of these specific differences cannot be discussed in this economic summary or the regulatory analysis (both of which are public documents). The Associate Administrator for Civil Aviation Security (ACS–1) has determined that this information is sensitive to Civil Aviation Security operations; the disclosure or dissemination of this information is prohibited in accordance with 14 CFR Part 191. Sensitive security details related to the cost section of this Regulatory Evaluation are available to regulated foreign air carriers and their national regulatory authorities upon request. A request made by the foreign air carrier should be directed to its Principal Security Inspector (PSI); requests by the appropriate national regulatory authority should be made to the FAA's Civil Aviation Security Liaison Officer (CASLO) for that country.

Total ten year costs sum to $1.19 billion (net present value, $826 million). Given that in 1997, 42.3% of passengers on foreign flag air carriers were U.S. citizens, the impact on the U.S. economy would average $50.7 million a year.[1] Hence, because this proposed rule would not impose costs exceeding $100 million annually on the U.S. economy, this proposed rule is not a "significant regulatory action" as defined by Executive Order 12866 (Regulatory Planning and Review).

Because security requirements at each location are subject to change, it is impossible to know, at any given time, which aviation security procedures foreign air carriers are performing and on which flights. Accordingly, all differences were calculated assuming that no foreign air carrier is currently performing any security functions in excess of the minimum required under the MSP. This may lead to an overstatement of costs, as some carriers may already perform some functions not currently required.

The FAA consulted the Official Airline Guide (OAG) to determine the number of scheduled part 129 flights, with more than 60 seats, from U.S. gateway airports and from foreign last point of departure airports where U.S. air carriers also operate. An annual growth rate of 5.2% was applied to these flights over the ten year period of time. The number of passengers affected was calculated by multiplying the average number of passengers per U.S. international flight by the number of international flights. The analysis also assumed an average of 2 checked bags and 2 carry-on bags per international passenger.

[1] This is calculated by multiplying 42.3% times $1.19 billion and dividing by ten.

Foreign air carriers would need additional equipment and personnel for these new requirements. Equipment needs were based, in part, on peak hour requirements at U.S. airports. In the absence of information about wages, employment growth rates, and annual employee turnover rates in each individual country, this analysis used the equivalent rates of U.S. employees; this may overstate costs, assuming that U.S. wages exceed those in most other countries. All hourly wage rates were increased by 26% to account for all fringe benefits. Since additional training would be needed for some of the new proposed requirements, the number of additional classes was calculated assuming 20 people per class. The FAA also assumed, in most cases, an average of one supervisor for every nine employees and that the supervisor salary was, on average, 20 percent higher than the employee salary.

The FAA is requesting information on one of the new measures that could result from the proposal. This measure would limit air carriers to accepting baggage only inside the terminal building for flights to the U.S. from foreign LPD's where U.S. air carriers also operate. Currently, the FAA does not have adequate data on which air carriers would be affected by such a measure and no data on the additional terminal capacity (facilities, labor, etc.) that would be necessary to accommodate the checked baggage that is currently handled outside the airport terminal. Additional information needed also includes the percent of passengers who currently check their baggage outside the terminal building.

The FAA also requests cost information on any other airport or terminal space issues that could result from this proposed rule.

Analysis of Benefits

The primary benefit of the proposed rule would be to strengthen air carrier security and the safety of all passengers on foreign air carriers. Aviation security is achieved through an intricate set of interdependent requirements. It would be difficult to separate out any current existing requirement or any proposed change, and identify to what extent any requirement or any change, alone, would have on preventing a criminal or terrorist act in the future.

Since 1987, the FAA has initiated rulemaking and promulgated security-related amendments that have amended parts 107 (airport operator security), 108 (air carrier security), and 129 (foreign air carriers). These amendments have added to the effectiveness of all these parts by addressing certain aspects of the total security system directed at preventing criminal and terrorist activities.

Some benefits can be quantified—prevention of fatalities and injuries and the loss of aircraft and other property. Other benefits, no less important, are probably impossible to quantify. Since the mid-1980's, the major goals of aviation security have been to prevent bombing and sabotage incidents. Preventing an explosive or incendiary device from getting on board an airplane is one of the major lines of defense against an aviation-related criminal or terrorist act. In the ten year period from 1986 through 1995, eleven separate explosions occurred on commercial airlines. These eleven incidents of sabotage (of which nine occurred on foreign airlines) caused a total of 722 fatalities and at least 112 injuries. In addition, in December 1993, a hijacking incident occurred on a U.S.-bound foreign airline.

An example of the type of explosion that aviation security is trying to prevent is the Pan Am 103 tragedy that occurred over Lockerbie, Scotland in 1988. A conservative estimate of the costs associated with this accident is $1.4 billion.

Comparison of Costs and Benefits

This proposed rule would cost approximately $1.19 billion (net present value, $826 million) over ten years. This cost needs to be compared to the possible tragedy that could occur if an explosive or incendiary device were to get onto an airplane and cause a catastrophe. Recent history not only points to Pan Am 103's explosion over Lockerbie, Scotland, but also the potential of up to twelve American airplanes being destroyed by explosive devices in Asia in early 1995.

Congress has mandated that the FAA take action to require security measures identical to those required of U.S. air carriers for all foreign air carrier operations to and from any U.S. airport where U.S. air carriers operate. Congress, which reflects the will of the American public, has determined that this proposed regulation is in the best interest of the nation.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended May 1996, requires regulatory agencies to review rules that may have a "significant economic impact on a substantial number of small entities." The Small Business Administration suggests that "small" represent the impacted entities with 1,500 or fewer employees.

The proposed amendments to the regulations would not apply to any small domestic air carriers and, therefore, the FAA has initially determined that they would not have a significant impact on a substantial number of small entities.

International Trade Impact Statement

These proposed regulations would make the security requirements between U.S. and foreign air carriers identical. Foreign air carriers would incur costs. However, mandating identical security measures for both foreign and domestic operators would give neither U.S. nor foreign carriers a competitive advantage; both U.S. and foreign carriers would have to follow identical security measures to accomplish passenger and aircraft safety and security.

The international trade implications of this rulemaking are difficult to predict at this time. A number of foreign governments expressed strong opposition to the legislation, on both legal and policy grounds, during and after its passage by the Congress. Officials of the European Civil Aviation Conference (ECAC) have informed the FAA that its members strongly oppose any regulatory action to implement the statute. This rulemaking could be a factor in future bilateral negotiations, but any attempt to quantify possible impacts on U.S. carriers would be premature and speculative.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for

inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental mandates or private sector mandates.

Federalism Implications

The rule proposed herein would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

In this proposed amendment to part 129—Operations: Foreign Air Carriers and Foreign Operators of U.S. Registered Aircraft Engaged In Common Carriage, § 129.25 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of this proposed section to the Office of Management and Budget (OMB) for its review.

The information to be collected is needed to estimate the costs to foreign air carriers with accepted security programs: (1) to check radiation leakage on x-ray equipment used for property security screening at part 107 airports at least annually; (2) to report aircraft piracy as part of the required security program; and (3) to maintain training records for personnel involved in security activities.

It is estimated that this proposal will affect 171 part 129 aircraft operators annually. The estimated annual reporting and recordkeeping burden hours is estimated to be 5,193 hours and is broken down as follows:

(1) Reporting and recordkeeping requirements for foreign air carriers' security programs requiring:

(i) Preparation of new security program documentation—6 hours for each new part 129 air carrier operator; and,

(ii) Necessary security amended program documentation—1.5 hours for each part 129 air carrier operator.

(2) Maintaining copies and availability of the security programs for use by civil aviation security inspectors of the FAA upon request—1 hour for each part 129 air carrier operator.

(3) Reporting and record keeping requirements for the training records for crew members, air carrier security representatives, and individuals performing security-related functions—24 hours for each part 129 air carrier operator. (This includes preparation and record keeping of training records for personnel applying extraordinary security requirements for flights departing from designated overseas locations.)

(4) Record keeping by the air carrier of each x-ray survey conducted for use by FAA officials upon request—.5 hours for each part 129 air carrier operator.

(5) Reporting of acts or suspected acts of aircraft piracy to the FAA. This report is not normally in written form and it is determined to be a request for assistance—.2 hours for each part 129 air carrier operator.

Individuals and organizations may submit comments on the information collection requirements by January 22, 1999, to the address for comments listed in the **ADDRESSES** section of this document. These comments should reflect whether the proposed collection is necessary; whether the agency's estimate of the burden is accurate; how the equality, utility, and clarity of the information to be collected can be enhanced; and, how the burden of the collection can be minimized.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not significant under Executive Order 12866. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 129

Air carriers, Aircraft, Airports, Aviation safety, Weapons.

The Proposed Amendment

In consideration of the foregoing the Federal Aviation Administration proposes to amend part 129 of title 14 of the Code of Federal Regulations (14 CFR part 129) as follows:

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

1. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40104–40105, 40113, 40119, 44701–44702, 44712, 44716–44717, 44722, 44901–44904, 44906.

2. Section 129.25 is amended by revising the introductory text of paragraph (e) to read as follows:

§ 129.25 Airplane security.

* * * * *

(e) Each foreign air carrier required to adopt and use a security program pursuant to paragraph (b) of this section shall have a security program acceptable to the Administrator. A foreign air carrier's security program is acceptable only if the Administrator finds that the security program requires the foreign air carrier in its operations to and from airports in the United States to adhere to the identical security measures that the Administrator requires U.S. air carriers serving the same airports to adhere to. A foreign air carrier is not considered to be in violation of this requirement if its security program exceeds the security measures required of U.S. air carriers serving the same airport. The following procedures apply for acceptance of a security program by the Administrator:

* * * * *

Issued in Washington, D.C., on November 13, 1998.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 98–30934 Filed 11–19–98; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule to List the Arkansas River Basin Population of the Arkansas River Shiner (Notropis girardi) as Threatened; Final Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC62

Endangered and Threatened Wildlife and Plants; Final Rule to List the Arkansas River Basin Population of the Arkansas River Shiner (*Notropis girardi*) as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine the Arkansas River basin population of the Arkansas River shiner (ARS) (*Notropis girardi*) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act).

The ARS is a small fish found in the Canadian River in New Mexico, Oklahoma, and Texas and the Cimarron River in Kansas and Oklahoma, both rivers in the Arkansas River basin. A non-native, introduced population occurs in the Pecos River in New Mexico; however, we did not propose listing of this population and are not including it in this final rule. The Arkansas River basin population is threatened by habitat destruction and modification from stream dewatering or depletion due to diversion of surface water and groundwater pumping, construction of impoundments, and water quality degradation. Competition with the non-indigenous Red River shiner (*Notropis bairdi*) contributed to diminished distribution and abundance in the Cimarron River. Incidental capture of the ARS during pursuit of commercial bait fish species may also contribute to reduced population sizes. Drought and other natural factors also threaten the existence of the ARS.

We originally proposed to list the ARS as endangered. However, since publication of the proposed rule for this species, we decided to list this species as threatened due to lesser immediacy and magnitude of threats to its existence. New information received during the public comment period revealed that modifications to the Lake Meredith Salinity Control Project resulted in streamflow reductions that were less severe than originally projected in 1994. In addition, new information shows that the influence of the High Plains Aquifer on streamflows in the Canadian River upstream of Lake Meredith are less than originally believed and that the aggregations of Arkansas River shiners in the reach between Ute Reservoir and Lake Meredith are stable and not declining, as presented in the proposed rule. This action will implement Federal protection provided by the Act for the ARS. We have determined that designation of critical habitat for the ARS is not prudent.

EFFECTIVE DATE: December 23, 1998.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Oklahoma Ecological Services Field Office, 222 South Houston, Suite A, Tulsa, Oklahoma 74127–8909.

FOR FURTHER INFORMATION CONTACT: Ken Collins at the above address, telephone 918/581–7458, or facsimile 918/581–7467).

SUPPLEMENTARY INFORMATION:

Background

A. I. Ortenburger discovered the Arkansas River shiner (ARS) in 1926 in the Cimarron River northwest of Kenton, Cimarron County, Oklahoma (Hubbs and Ortenburger 1929). The ARS is a small, robust shiner with a small, dorsally flattened head, rounded snout, and small subterminal mouth (Miller and Robison 1973, Robison and Buchanan 1988). Adults attain a maximum length of 51 millimeters (mm) (2 inches (in)). Dorsal, anal, and pelvic fins all have eight rays, and there is usually a small, black chevron present at the base of the caudal fin. Dorsal coloration tends to be light tan, with silvery sides gradually grading to white on the belly.

The ARS historically inhabited the main channels of wide, shallow, sandy-bottomed rivers and larger streams of the Arkansas River basin (Gilbert 1980). Adults are uncommon in quiet pools or backwaters, and almost never occur in tributaries having deep water and bottoms of mud or stone (Cross 1967). Specifically, Polivka and Matthews (1997) found that the ARS in the South Canadian River of central Oklahoma, like most fishes occurring in the highly variable environments of plains streams, used a broad range of microhabitat features. They also found only a weak relationship between selected environmental variables and occurrence of the species within the stream channel. Water depth, sand ridge and midchannel habitats, dissolved oxygen, and current were the environmental variables most strongly associated with the distribution of ARS within the channel. Juvenile ARS associated most strongly with current, conductivity (total dissolved solids), and backwater and island habitat types (Polivka and Matthews 1997).

Cross (1967) believed that adults preferred to orient into the current on the "lee" sides of transverse sand ridges and feed upon organisms washed downstream. Researchers have only recently described the feeding preferences and diets of the ARS. In studies on the South Canadian River near Norman, Oklahoma, Polivka and Matthews (1997) found that gut contents were dominated by sand/sediment and detritus (organic matter). Invertebrate prey were only an incidental component of the diet. Polivka and Matthews (1997) concluded that the ARS is a generalist feeder in which no particular invertebrate dominated the diet. In the Canadian River of Texas, the diet of ARS was dominated by detritus, aquatic invertebrates, and sand and silt (Bonner *et al.* 1997). With the exception of the winter season when larval flies were consumed much more frequently than other aquatic invertebrates, no particular invertebrate taxa dominated the diet. This led Bonner *et al.* (1997) to similarly conclude that the ARS is a generalized forager, feeding on both items suspended in the water column and items lying on the substrate. In the Pecos River, fly larvae, copepods, immature mayflies, insect eggs, and seeds were the dominant items in the diet of ARS (Keith Gido, University of Oklahoma, *in litt.* 1997).

The ARS spawns in July, usually coinciding with flood flows following heavy rains (Moore 1944). However, recent studies by Polivka and Matthews (1997) and Texas Tech University (Gene Wilde, Assistant Professor, pers. comm. 1998) neither confirmed nor rejected the hypothesis that ARS spawn during rises in the river stage. The ARS appears to be in peak reproductive condition throughout the months of May, June and July (Polivka and Matthews 1997) and may actually spawn several times during this period (Gene Wilde, pers. comm. 1998). Arkansas River shiner eggs are non-adhesive and drift with the swift current during high flows.

The mean number of mature ova for ARS in Texas varied between 120.8 and 274.4, with some large females containing over 400 (Bonner *et al.* 1997). Hatching occurs within 24–48 hours after spawning. The larvae are capable of swimming within 3–4 days; they then seek out backwater pools and quiet water at the mouth of tributaries where food is more abundant (Moore 1944). Both Moore (1944) and Cross (1967) inferred that this species will not spawn unless conditions are favorable to the survival of the larvae.

Maximum longevity is unknown, but Moore (1944) speculated that the species' life span is likely less than 3 years in the wild. The age structure of ARS collected from the Pecos River in New Mexico included three, and possibly four, age classes (Bestgen *et al.* 1989). The majority of the fish captured were juveniles (Age-0) and first-time spawners (Age-I). Most of the fish in spawning condition were Age-I. Bestgen *et al.* (1989) thought mortality of post-spawning fish was extremely high based on the absence of Age-I and older fish from collections made after the spawning period (late July and August).

Historically, the ARS was widespread and abundant throughout the western portion of the Arkansas River basin in Kansas, New Mexico, Oklahoma, and Texas. In New Mexico, surveys and collection records establish that the ARS historically inhabited the Canadian River from the Texas-New Mexico State line as far upstream as the Sabinoso area in central San Miguel County, New Mexico (Sublette *et al.* 1990), a distance of over 193 river-kilometers (river-km) (120 river-miles (river-mi)). The ARS also occurred in Ute and Revuelto creeks and the Conchas River.

In Texas, the Arkansas River shiner occurred throughout the Canadian River from State line to State line, a distance of about 370 river-km (230 river-mi). The first reported captures of ARS from Texas were in 1954 (Cross *et al.* 1955, Lewis and Dalquest 1955). The species was captured at several sites extending from near the Texas-New Mexico State line at the Matador Ranch in Oldham County downstream to the Texas-Oklahoma State line (Lewis and Dalquest 1955).

Arkansas River shiners (9 specimens) were first reported from Kansas in 1926 from near Kinsley (Hubbs and Ortenburger 1929), although fish collection records from as early as 1884 exist. More extensive collections from the mainstem Arkansas River first occurred in 1952 at Holcomb in Finney County, Great Bend in Barton County, and Wichita in Sedgwick County (Cross *et al.* 1985). Arkansas River shiners were present but scarce at all 3 sites—41 specimens at Holcomb, 11 specimens at Great Bend, and 4 specimens at Wichita. Cross *et al.* (1985) believed ARS inhabited the full length of the Arkansas River mainstem in Kansas at that time, a distance of over 640 river-km (400 river-mi); although the species was already suspected to be in decline. In the Cimarron River basin of Kansas, ARS were first reported from Crooked Creek, Meade County in 1941. Earliest records from the mainstem Cimarron were from 1955 near Ulysses, Grant County, and in 1956 from near Kismet, Seward County (William H. Busby, Kansas Biological Survey, University of Kansas, *in litt.* 1990). In all, ARS specimens exist from 17 counties and eight rivers or streams, including several tributaries of the Arkansas and Cimarron rivers (Larson *et al.* 1991, Cross *et al.* 1985, William H. Busby, *in litt.* 1990).

Records of occurrence for the ARS are most extensive from Oklahoma where the majority of the historical range occurs. Collections from as early as 1926 exist for 43 counties (Luttrell *et al.* 1993, Larson *et al.* 1991, Pigg 1991, Hubbs and Ortenburger 1929). Records exist for the major rivers in the Arkansas River basin and many of the smaller tributaries. A record (one individual) also exists for the Red River basin in Oklahoma (Cross 1970), possibly originating from a release of bait fish by anglers. Historically, the ARS inhabited over 2,700 km (1,700 mi) of habitat in the larger rivers (e.g., Arkansas, Cimarron, North Canadian, and Canadian rivers) plus an unknown amount in the smaller tributaries.

Records from Arkansas are scarce. There is one record of several specimens from the Arkansas River at the mouth of Piney Creek in Logan County, Arkansas (Black 1940, as cited in Robison and Buchanan 1988). The ARS is presumed to have been extirpated from (become extinct in) Arkansas.

Researchers conducted comprehensive surveys for the ARS at 155 localities within the Arkansas River basin from 1989 to 1991 (Larson *et al.* 1991). They collected fish at 128 of 155 localities; the remaining 27 sites were dry. The researchers captured 1,455 ARS from 23 localities—14 in Oklahoma, 5 in Texas, and 4 in New Mexico. No ARS were captured in Kansas. These data, plus related surveys from 1976 to 1997 (Kevin R. Bestgen, Larval Fish Laboratory, Colorado State University, *in litt.* 1998; Polivka and Matthews 1997; Bonner *et al.* 1997; Eric Berg, Wildlife Biologist, L.W. Reed Consultants, Inc., *in litt.* 1995; Luttrell *et al.* 1993; Eric Altena, Fisheries Biologist, Texas Parks and Wildlife Department (TPWD), *in litt.* 1993; Pigg 1991; and Eugene Hinds, Regional Director, Bureau of Reclamation (Bureau), *in litt.* 1984), confirm that the ARS has disappeared from over 80 percent of its historical range within the last 35 years.

The ARS is now almost entirely restricted to about 820 km (508 mi) of the Canadian River in Oklahoma, Texas, and New Mexico. An extremely small population may still persist in the Cimarron River in Oklahoma and Kansas, based on the collection of only nine individuals since 1985. A non-native population of the ARS has become established in the Pecos River of New Mexico within the last 20 years (Bestgen *et al.* 1989). The decline of this species throughout its historical range may primarily be attributed to inundation and modification of stream discharge by impoundments, channel desiccation (drying out) by water diversion and excessive groundwater pumping, stream channelization, and introduction of non-native species.

The ARS began to decline in the Arkansas River in western Kansas prior to 1950 due to increasing water diversions for irrigation and completion of John Martin Reservoir in 1942 (Cross *et al.* 1985). The Arkansas River between Coolidge to near Great Bend, Kansas, is frequently dewatered (Cross *et al.* 1985). Habitat alteration following construction of Kaw and Keystone reservoirs on the Arkansas River in Oklahoma, in conjunction with completion of the McClellan-Kerr Navigation System in 1970, greatly reduced ARS habitat in Oklahoma and Arkansas. The ARS is no longer believed to occur in the Arkansas River in Arkansas, Kansas, and Oklahoma, a loss of over 1,240 km (770 mi) of previously occupied habitat.

The ARS was once common throughout the Cimarron River and its tributaries (Pigg 1991). The abundance of the ARS in the Cimarron River declined markedly after 1964 (Felley and Cothran 1981). The Red River shiner, a small minnow endemic to the Red River, was first recorded from the Cimarron River in Kansas in 1972 (Cross *et al.* 1985) and from the Cimarron in Oklahoma in 1976 (Marshall 1978). Cross *et al.* (1985) believed the Red River shiner was first introduced into the Cimarron River sometime between 1964 and 1972. Since that time, the Red River shiner has essentially replaced the ARS. Habitat alteration and resulting flow modification also have contributed to the decline of the species from the Cimarron River. A small, remnant population may still persist in the Cimarron River.

The ARS was first reported from the North Canadian River drainage in 1926 (Hubbs and Ortenburger 1929). Collections between 1947 and 1976 indicated that the ARS occurred in large numbers in the river and some larger tributaries despite the construction of Optima and Canton reservoirs (Pigg 1991). This fish was still sporadically collected from the North Canadian River until 1987. Several collection attempts at 15 localities over the next 2 years failed to result in the capture of any

ARS (Pigg 1991). In 1990, four specimens were collected from the river south of Turpin, Beaver County, Oklahoma (Larson *et al.* 1991; Jimmie Pigg, Oklahoma Department of Environmental Quality, pers. comm., 1993). Commercial bait dealers were observed flushing their holding tanks in the vicinity of the site where the ARS specimens were captured and may have been responsible for the unintentional release of this species back into the North Canadian River. The species has not been captured from the North Canadian River since 1990 (J. Pigg, pers. comm., 1997), indicating a probable loss of over 1,046 km (650 mi) of previously occupied habitat.

Historically, the species occurred in the Canadian River from its confluence with the Arkansas River near Sallisaw, Sequoyah County, Oklahoma as far upstream as the Sabinoso area in central San Miguel County, New Mexico (Pigg 1991, Sublette *et al.* 1990). Construction and operation of Ute and Conchas reservoirs in New Mexico, Lake Meredith in Texas, and Eufaula Reservoir in Oklahoma altered or eliminated sections of riverine habitat and diminished the range of ARS within the Canadian River. Eufaula Reservoir isolated Canadian River populations from the Arkansas River and, in combination with Lake Meredith and Ute Reservoir, confined ARS to two restricted segments of the Canadian River—a 218-km (135-mi) section from Ute Dam to the upper reaches of Lake Meredith; and 601 river-km (373 river-mi) downstream of Lake Meredith (near Canadian, Texas) to the upper reaches of Eufaula Reservoir in Oklahoma. The reservoirs function as barriers, significantly inhibiting dispersal and interchange between the two segments.

Consideration as a "Species" Under the Act

Section 3(15) of the Act defines "species" to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife . . ." On February 7, 1996, the Fish and Wildlife Service and the National Marine Fisheries Service published a joint policy (DPS policy) (61 FR 4722) to clarify our interpretation of the phrase "distinct population segment of any species of vertebrate fish or wildlife" for the purposes of listing, delisting, and reclassifying species under the Act. The policy identifies the following three elements to be considered in deciding whether to list a possible DPS as endangered or threatened under the Act: The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; the significance of the population segment to the species or subspecies to which it belongs; and the conservation status of the population segment in relation to the Act's standards for listing.

Discreteness of the Population Segment: According to our DPS policy, a population segment may be considered discrete if it satisfies either one of the following conditions: it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or it is delimited by international governmental boundaries across which there is a significant difference in control of exploitation, management of habitat, or conservation status. The Arkansas River basin population is discrete based on natural, geographic isolation from the non-native, introduced population in the Pecos River.

Significance of the Population Segment: Our DPS policy states that the consideration of the significance of the population segment to the taxon to which it belongs may include, but is not limited to, the following: persistence of the discrete population in an ecological setting unusual or unique for the taxon; evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere; or evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics. The Arkansas River basin population is significant because it represents the only surviving natural occurrence of the taxon.

Because it is both discrete and significant, the Arkansas River basin population of the ARS qualifies as a distinct population segment under the Act. Although it is discrete, the Pecos River population of the ARS is not significant because it is an introduced population located outside of the species' historic range and, at this time, is not essential for recovery of the species within its historic range. Therefore, the Arkansas River basin population of the ARS is a listable entity under the Act, and the non-native, introduced Pecos River population is not a listable entity under the Act.

Furthermore, protection of the non-native Pecos River population of the ARS would conflict with the preservation of the Pecos bluntnose shiner (*Notropis simus pecosensis*) and possibly the Rio Grande silvery minnow (*Hybognathus amarus*). Management of native Pecos River fishes will focus on the preservation and restoration of habitat conditions favored by these species. Restoration of historic flow conditions in the Pecos River and control of competitive, non-indigenous fishes, including the ARS, may be necessary in recovery efforts for the Pecos bluntnose shiner. While the non-native, introduced Pecos River population of the ARS could be important in efforts to supplement native populations of the ARS within the species' historical range, protection of the Pecos River population would not improve the status of the ARS within the species' historical range.

Previous Federal Action

We included the ARS in our September 18, 1985, Review of Vertebrate Wildlife (50 FR 37958) as a category 2 candidate for listing. At that time, category 2 comprised those taxa for which information indicated that a proposal to list as endangered or threatened was possibly appropriate, but for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. Our January 6, 1989, revised Animal Notice of Review (54 FR 554) retained this status for the ARS.

We first received detailed information on the status of the species in 1989 (Pigg 1989). A partial status survey by Larson *et al.* (1990) was a source of additional information. We subsequently prepared a status report on this species (U.S. Fish and Wildlife Service 1990). Following this report, Larson *et al.* (1991) and Pigg (1991) provided comprehensive status survey information. In our November 21, 1991, Animal Candidate Review for Listing as Endangered or Threatened Species (56 FR 58804), we reclassified the ARS as a category 1 candidate. At that time, category 1 comprised taxa for which we had substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened.

In the August 3, 1994, **Federal Register**, we published a proposed rule to list the Arkansas River basin population of the ARS as endangered and invited public comment (59 FR 39532). We based the proposal primarily on status information from reports to the Oklahoma Department of Wildlife Conservation (ODWC). We also used collections and observations made by Dr. Frank Cross, Mr. Jimmie Pigg, the TPWD, and the Bureau and our own collections and observations in preparing the proposed rule.

The enactment of Public Law 104–6 in April, 1995, and subsequent series of continuing resolutions from October 1, 1995, through April 26, 1996, established a moratorium on issuing final listings or critical habitat designations. During that time, we were prohibited from making final determinations on listing proposals. Following this delay, we reopened the comment period on the proposal to list the ARS on December 5, 1997 (62 FR 64337), to solicit any new relevant data and to allow the public to review and comment on data we had obtained since publication of the proposed rule.

Since publication of the proposed rule for the ARS, we have determined that the Arkansas River basin population of the Arkansas River shiner, which we proposed to list as endangered, should be listed as threatened due to a lesser immediacy and magnitude of threats to its existence. New information received during the comment period revealed that modifications to the Lake Meredith Salinity Control Project resulted in streamflow reductions that were less severe than originally projected in 1994. Also, the influence of the High Plains Aquifer on streamflows in the Canadian River upstream of Lake Meredith is less than originally believed. In addition, we discovered that the aggregations of ARS in the reach between Ute Reservoir and Lake Meredith are stable and not declining, as presented in the proposed rule. The most recent information on the status of the ARS is discussed in the "Summary of Factors Affecting the Species" section.

The processing of this final rule conforms with our listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25503). This guidance further clarifies the order in which we will process the remaining backlog of rulemakings resulting from the 1995–1996 moratorium. The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing petitions, and delisting or reclassifications (Tier 2). The guidance assigns the lowest priority (Tier 3) to processing of proposed or final designations of critical habitat. Processing of this final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the August 3, 1994, proposed rule (59 FR 39532), associated notifications, and in subsequent notices to extend or reopen the public comment period, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. The original public comment period closed on October 3, 1994, but we reopened it from January 6, 1995, to February 3, 1995 (60 FR 2070) to accommodate three public hearings. We reopened the comment period a second time from December 5, 1997 to January 5, 1998 (62 FR 64337). We contacted numerous Federal and state agencies, county governments, municipalities, scientific organizations, knowledgeable individuals, and other interested parties and requested them to comment during the comment periods. We published newspaper notices during all comment periods in the *Dodge City Globe* (KS), the *Hutchinson News Herald* (KS), the *Quay County Sun* (Tucumcari, NM), the *Daily Oklahoman* (Oklahoma City, OK), the *Tulsa World* (OK), *Woodward News* (OK), and the *Amarillo Globe* (TX), inviting general public comment and attendance at public hearings. In addition, we published a notice in the *Lubbock Avalanche-Journal* (TX) announcing the reopening of the comment period on December 5, 1997.

We received 114 requests for public hearings—46 from interested parties in Kansas, 40 from Oklahoma, and 28 from Texas. We received 16 other requests for public hearings after the 45-day period for requesting hearings had expired. We held public hearings on January 23, 1995, in Meade, Kansas; January 24, 1995, in Woodward, Oklahoma; and January 25, 1995, in Amarillo, Texas.

In Meade, 154 people attended and 25 commented; in Woodward at least 45 attended and 29 commented; and in Amarillo 381 attended and 27 commented. Thirty-seven individuals at the Amarillo hearing did not have an opportunity to make oral comments because of time limitations. However, many of these individuals did submit written comments at the conclusion of the hearing. In addition, the High Plains Underground Water Conservation District Number One sponsored a public meeting in which an unknown number of individuals attended. The District provided a video tape and transcript of this meeting containing the comments of 25 individuals.

We received a total of 734 comments (letters and oral testimony) from Federal (12) and State (45) agencies/elected officials, local governments (62), and private organizations, companies, and individuals (615) during the comment periods. The total number of entities providing comments was 671, with several individuals submitting more than one comment. We also received three letters containing numerous signatures opposing listing of the ARS.

We address written and oral comments received during the comment periods in the following summary. Comments from all respondents, including the invited peer reviewers, are combined. These comments addressed a diversity of economic, social, and political issues. Because multiple respondents offered similar comments in some cases, comments of a similar nature are grouped. Most comments opposed listing or favored delaying the listing. Of those actually stating a position, 380 specifically opposed listing and 8 supported listing. The remainder, while not specifically stating a position on the rule, often expressed concerns over what impact the listing would have on various activities. Some comments were non-substantive or dealt with matters of opinion or legal history, which are not relevant to the listing decision. The substantive comments and our responses, grouped by issue category, are as follows:

Issue 1: Procedural Concerns

Comment: Thirty commenters noted that the Act expired in 1992 and has not yet been reauthorized, leaving us without authority from Congress to implement it. These commenters believed that, therefore, we should either postpone listing or take no action until the Act has been reauthorized.

Service Response: The Act remains in place unless unfunded in the annual Congressional appropriations process. With the exception of the recision of listing funds described earlier, Congress has continued to fund the Act. We prepared this final rule using funds specifically appropriated by Congress for conducting the Act's listing activities.

Comment: Seven commenters believed that we fail to use common sense in implementing the Act, relying on regulation instead of innovation, leaving landowners with no incentive to protect listed species and their habitat.

Service Response: By **Federal Register** notice on July 1, 1994 (59 FR 34272), the Secretaries of the Interior and Commerce set forth an interagency policy to minimize social and economic impacts of the Act consistent with timely recovery of listed species. Therefore, we will work closely with stakeholders throughout the Arkansas River basin to accommodate economic and recreational activities to the extent possible while ensuring the continued survival and recovery of the ARS.

Comment: One commenter stated that we do not have the authority to list the ARS in only a portion of the species'

known range. Another individual stated that if we can exclude listing of the Pecos River population, we could exclude listing of the ARS population upstream of Lake Meredith.

Service Response: As described previously, our policy published in the **Federal Register** on February 7, 1996 (61 FR 4721), established that to qualify as a distinct population segment, the population must be both discrete in relation to the remainder of the species to which it belongs, and significant to the species to which it belongs. In the case of the ARS, the Arkansas River basin population is clearly separate from the Pecos River population and represents the only surviving natural occurrence of the species. Thus the Arkansas River basin population segment is both discrete and significant.

With respect to the Canadian River segment upstream of Lake Meredith, we do not believe it would be prudent to consider these aggregations of ARS as a distinct population segment. Although Lake Meredith is a human-made barrier to dispersal, the ARS aggregations upstream of Lake Meredith are not markedly separated from those in the remainder of the Arkansas River basin.

Comment: Eighteen commenters requested a longer comment period or stated that we did not give adequate time for public comment. Five commenters thought we were unwilling to disclose pertinent information or denied access to materials which the rule was based on. One commenter requested that all data, information, and results of investigations, including information on occurrence of Red River shiners in the Canadian River, be available for review by interested parties. Another felt we provided "Fact Sheets" only to select individuals.

Service Response: Regulations at 50 CFR 424.16(c)(2) require us to allow a minimum of 60 days for public comment on proposed rules. The first comment period on the ARS proposed rule was open for 60 days. We also provided two additional comment periods, encompassing a total of 59 days. We believe that the comment periods provided were adequate and fulfilled the requirements of the Act.

The proposed rule contained a complete summary of the information available to us regarding the status of the ARS and sources of that information. The cited material was available to the pubic through a variety of sources. We have incorporated new information on the occurrence of the Red River shiner in the Arkansas River basin into this rule and the administrative record. All documents, records, and correspondence relating to this listing, including data, survey results, analyses, supporting information, and public comments, are included in the administrative record and are available for review by the public by appointment, during normal business hours, at the Oklahoma Field Office. Appointments can be made by contacting the Field Supervisor (see **ADDRESSES** section).

In several instances, we provided copies of referenced material, including information on Red River shiners, in response to requests from the public. Also, in accordance with the Act and its implementing regulations, the Administrative Procedure Act, and the Freedom of Information Act (5 U.S.C. § 552), we provided copies of documents to members of the public who requested such information.

We prepared Fact Sheets and distributed them to the public in conjunction with notification letters for the public hearings. We also distributed copies of the Fact Sheets to the public at the three public hearings. Any individual who was not on our mailing list at the time of the hearings or did not attend the public hearings did not receive copies of the Fact Sheets. We would have provided this material to anyone requesting it; however, we have no record of any specific requests for the Fact Sheets following conclusion of the public hearing process.

Comment: Three commenters felt that we had already reached a decision prior to receiving public comment and did not value public participation in the decision-making process. Ten commenters stated that we had not adequately notified the public regarding the hearings or the proposed rule. Commenters specifically stated that we did not contact the TPWD, Texas State elected officials, and affected municipal governments and that newspaper notices were inadequate.

Service Response: We reviewed and evaluated all written and oral comments, as recorded in the public hearing transcripts, before making a final determination on the proposed rule. We have addressed all substantive comments in this section. Based on the comments we received, we revised the status of the shiner and incorporated new information into this final rule.

We conducted an extensive notification process to make the public aware of the proposal. In addition to newspaper and **Federal Register** notices (see discussion at beginning of this section), we mailed 153 separate notifications of the proposed rule to Federal, State, county and city governments, species experts, and other individuals to solicit their input. Subsequently, we mailed 355 separate notifications of the public hearing to species experts, other interested individuals, and Federal, State, county and city government entities. We directly notified all interested parties known to us. We continually updated the mailing list to include all parties who had expressed interest in the rulemaking or had requested to be added to the mailing list. Our mailing list currently contains 1,153 separate entities. We believe our notification process fully satisfied the requirements of the Act.

We first contacted the TPWD concerning the status of the ARS by letter dated May 7, 1993. We sent copies of this letter to Andrew Sansom, the Executive Director; Larry McKinney, then Director of the Resource Protection Division, and David Diamond, Coordinator of the Natural Heritage Program. We received a response from David Bowles, Endangered Species Biologist with TPWD. We also contacted the Federal Congressional delegation and the commissioners and judges within the counties encompassing the ARS historic range during the notification process. Subsequent to this initial mailing, we received over 200 requests for additions to the mailing list. Included in these additions were Texas Senator Teel Bivins, Texas Representatives Warren Chisum and David Counts, and the cities of Brownfield, Canadian, Hereford, Plainview, and Slaton, Texas.

Comment: Some respondents were disappointed with the quality of the hearings, and thought we deliberately misled the public. Others believed the hearings were inadequate to obtain full public input on the proposal or that we had deliberately tried to limit the number of individuals who were allowed to comment.

Service Response: We are obligated to hold at least one public hearing on a listing proposal if requested to do so within 45 days of publication of the proposal (16 U.S.C. 1533(b)(5)(E)). Considering the number of requests received and the geographic distribution of the species, we decided that holding a single public hearing in each State, excluding New Mexico, would be adequate and would not cause undue inconvenience to those wishing to attend. We selected the locations and times of the public hearings to be convenient to most citizens living within the affected area. We reviewed and considered all oral comments presented at the public hearings. In one instance, we had to limit oral comments; however, all persons were allowed to submit written comments,

which receive equal consideration to oral comments.

Comment: Two respondents wanted to know if information in the proposed rule had been peer reviewed.

Service Response: The information used in determining to propose listing the ARS has been peer reviewed (see "Peer Review" section).

Comment: One commenter stated that we must prepare an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA), on this rule.

Service Response: For the reasons set out in the NEPA section of this document, we have determined that the rules issued pursuant to section 4(a) of the Act do not require the preparation of an EIS. The Federal courts have held in *Pacific Legal Foundation* v. *Andrus,* 657 F2d. 829 (6th Circuit 1981) that an EIS is not required for listing under the Act. The Sixth Circuit decision noted that preparing an EIS on listing actions does not further the goals of NEPA or the Act.

Comment: One respondent believed we were being pressured to list the ARS in response to pending litigation.

Service Response: We classified the ARS as a category 1 candidate species independent of any litigation, meaning that we had substantial information on biological vulnerability and threats to support a proposal to list the taxon as endangered or threatened. Our decision to propose the ARS for listing was based on the mandates of the Act and not any "pressures" from litigants.

Issue 2: Recovery Planning and Implementation

Comment: Many comments were received regarding our recovery planning process. Twenty-four commenters felt that we should not list the species because recovery of the species is too costly and recovery is not guaranteed by listing or through the recovery process or that we should provide details, costs, and recovery goals of the recovery program before proceeding with the listing. Seventeen commenters requested that we involve stakeholders in meetings and in the development of recovery actions. Sixty-six respondents suggested potential recovery actions or focus areas for recovery, or expressed concern regarding implementation of unfavorable recovery actions.

Service Response: Regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make listing decisions based on "the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination." Neither the Act nor implementing regulations allows us to consider the recovery potential or recovery cost for a species in determining whether a species should be listed.

We solicit active participation by the scientific community, local, State, and Federal agencies, Tribal governments, and other interested parties in the development and implementation of recovery plans (59 FR 34270). We agree that local community support and the cooperation of private landowners is essential to fully protect and recover listed species, and we will work closely with stakeholders in the management and recovery of the ARS to ensure that the concerns of local governments, citizens, and others are considered.

Section 4(f) of the Act authorizes us to develop and implement recovery plans for listed species. A recovery plan delineates reasonable actions which are believed to be required to recover and/or protect listed species and may address measures specifically mentioned during the comment period. Recovery plans do not, of themselves, commit personnel or funds nor obligate an agency, entity, or person to implement the various tasks listed in the plan. Once we develop a recovery plan for the ARS, the plan will be available for public review and comment prior to adoption.

Issue 3: Critical Habitat

Comment: We received many comments regarding the designation of critical habitat. Numerous (110) commenters expressed concern regarding the economic implications of critical habitat designation and often stated that such designation would severely limit a number of land and water uses or affect residents' quality of life and economic growth potential. Seventeen commenters requested we involve stakeholders in any economic analysis conducted during identification of critical habitat. Eleven others urged us to designate critical habitat at the same time the species is proposed for listing. A few (3) suggested locations that should or should not be included as critical habitat.

Service Response: We have determined that designation of critical habitat is not prudent (see "Critical Habitat" section).

Issue 4: Pecos River Population

Comment: We received a variety of comments relating to the Pecos River population of the ARS. Fifteen commenters questioned the need to eradicate the Pecos River population stating that it is not in direct adverse competition with native fish fauna, it is valuable in restoration efforts, habitat in the Pecos River is optimal for maintaining a thriving population, and the Act requires protection of the ARS and does not authorize eradication of this population. One individual questioned whether the ARS population in the Pecos River was truly an anomaly or if it was actually a natural event. Another respondent stated that the historic range should be expanded to include the Pecos River. Conversely two commenters stated that our description of the Pecos River population was accurate. Twenty respondents believed the Arkansas River Basin population of the ARS should not be listed because the species is abundant, robust, and thriving in the Pecos River of New Mexico and its habitat is stable and optimal for spawning. Two other commenters stated that the Arkansas River basin population should not be listed if recovery of the Pecos bluntnose shiner is more important than conservation of the ARS.

Service Response: In the "Background" section of this rule we included a discussion of the Pecos River population of the ARS that addresses most of these comments. As we explained in that section, the Act clearly authorizes us to list distinct population segments of vertebrate species.

The occurrence of the ARS in the Pecos River is not a natural event. Researchers examined fish collections housed at Eastern New Mexico University in Portales and at the University of New Mexico for evidence of any historical occurrence of ARS in the Pecos River. Two collections from near Ft. Sumner in 1977 and 20 collections from the reach extending from near Santa Rosa to the vicinity of McMillan Reservoir between the years 1974 to 1977 did not contain ARS. A collection taken in September of 1978 downstream of Sumner Dam contained 16 specimens. This led Bestgen *et al.* (1989) to conclude that the initial release of ARS into the Pecos River occurred in 1978 and that the Pecos River population is artificial and not within the historic range of the ARS. We concur with this assessment.

The purpose of the Act is to conserve threatened and endangered species and the ecosystems on which they depend. Non-native, introduced populations, while possibly useful in recovery/restoration efforts, are not a viable substitute for species conservation in native ecosystems. We do not believe listing or active conservation of the introduced Pecos River population is appropriate nor is such conservation required by the Act.

We agree that the Pecos River population could serve as a source of individuals for transplantation into suitable, unoccupied, historic habitat. Consequently, we do not currently intend to aggressively pursue eradication of the ARS from the Pecos River. However, we do not intend to manage the Pecos River as a refugium for the ARS. The feasibility of using ARS from the Pecos River in restoration efforts in the Arkansas River basin will be fully evaluated during the recovery process.

Issue 5: Ecological and Economic Value of the ARS

Comment: Several (21) commenters questioned the economic or ecological value of the ARS, including its use as an indicator of the health of ecosystems, its benefit to society, its value for medicinal purposes, its importance in comparison with other species, and its importance in comparison to the economic benefits of agriculture. Another eight individuals believed the shiner was here to be used as humans deemed necessary.

Service Response: In section 2 of the Act (Findings, Purposes, and Policy), Congress found that numerous species of fish, wildlife, and plants had become extinct, and that other species had become so depleted in numbers that these species were in danger of, or, threatened with, extinction due to a lack of concern for their conservation. Furthermore, Congress found that these species of fish, wildlife and plants are intrinsically valuable to the Nation and its people for reasons of aesthetic, ecological, educational, historical, recreational, and scientific value (section 2(a)(3)). These findings are the basis of the Endangered Species Act, the purpose of which is to conserve threatened and endangered species and the ecosystems on which they depend. To that end, the Act requires the Department of Interior to maintain a list of endangered and threatened species.

The Act requires that listing decisions be based on the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determination. Although a variety of opinions likely exist as to a particular species' contribution to society, this issue is not among the five factors upon which a listing determination is based. While we cannot consider the intrinsic value of species when making a listing determination under the Act, we believe that protecting these species has a positive effect on society. Society, like the ARS, depends upon reliable supplies of clean water. Conserving water resources will help to provide a necessary resource for future generations of people and maintain a healthy aquatic ecosystem for fish and wildlife.

Comment: Eighteen commenters stated that extinction of the ARS is a natural, evolutionary process and we should not interfere with the process of natural selection.

Service Response: We concur that extinction and the dynamic processes of natural selection, fitness, and evolution are natural, ecological phenomena. Numerous natural, including catastrophic, events over geologic time have resulted in the extinction of many species. However, evolutionary changes rarely occur at rates comparable to those induced by human environmental alteration. Congress clearly recognized human-caused increases in the rate of species extinctions and passed the Act in an attempt to decrease the rate at which human-caused extinction occurs.

Issue 6: Threats

Comment: Forty-six commenters were concerned that corporate swine farms pose a threat to the ARS due to their high usage of surface and ground water which could reduce streamflows in the affected rivers. These same commenters were concerned that waste application from confined swine, poultry, and dairy operations has the potential to contaminate surface and groundwater, constituting a threat to the ARS. Conversely, one commenter stated that we have no information to indicate that commercial livestock operations have impacted the ARS.

Service Response: We concur that water use and waste application or ■ spill from waste holding facilities represents a potential threat to ARS. Since 1990, the number of swine in Oklahoma has increased from 200,000 to 1.7 million animals, making Oklahoma the eighth largest pork producer in the Nation ("State Legislators Expecting Vote on Hog Farm Bill," Mick Hinton, *The Daily Oklahoman*, Oklahoma City, February 11, 1998). The Oklahoma panhandle contains almost one-half of these animals. However, we have no data documenting the effects of concentrated livestock operations on water quality or quality specifically relating to the ARS.

Comment: Four respondents suggested that salt cedar (*Tamarix* sp.), Russian olive (*Eleagnus angustifolia*), mesquite (*Prosopis* sp.), and other phreatophytes (i.e., deep rooted plants that obtain water from the water table or the zone just above it) have invaded river basins and use water, causing streamflows to decline.

Service Response: We agree that various species of phreatophytes have invaded stream channels within the western regions of the Arkansas River basin and that they have the potential to use large quantities of water when growth is extensive. Stinnett *et al.* (1988) documented the effects of vegetation encroachment within the Canadian River (see factor A in "Summary of Factors Affecting the Species" section).

Comment: One respondent stated that when the Eastern New Mexico Water Supply Project is completed in the year 2000 (or later), diversions from Ute Reservoir would occur, reducing the frequency and amount of water released from Ute Reservoir.

Service Response: The Bureau has preliminarily evaluated the feasibility of minimum streamflow releases (2 cubic feet per second (cfs)) downstream of Ute Reservoir as a component of the Eastern New Mexico Water Supply Project. Such releases would likely preclude dewatering of the Canadian River below Ute Reservoir, provided the State of New Mexico does not appropriate all of the remaining unappropriated water in the Canadian River downstream of Ute Dam. We will work with the Bureau pursuant to section 7 to ensure that the needs of the ARS are adequately addressed by this project.

Comment: Twenty-five commenters were concerned that we considered agricultural conservation practices a threat to the ARS and would discourage practices such as planting of shelterbelts, conservation farming (e.g., no-till planting and conservation reserve program grass plantings), and construction of terraces, waterways, stockwater ponds, and watershed dams. Many included specific information relating to these practices. Another 13 specifically were concerned about the effect of listing on flood control reservoirs.

Service Response: All of the conservation practices mentioned in this comment, although very effective at reducing run-off, are specifically designed to minimize soil erosion and control sedimentation. Without these practices in place, increased siltation would likely occur in rivers and streams of the Arkansas River basin. Construction of terraces, shelterbelts, grassed waterways, and other vegetative planting for conservation are not likely to significantly impact streamflows and habitat or threaten the survival of the ARS.

The effects of construction of stock ponds and flood water retention structures and other small dams on tributary streams are likely to have a

much different effect on streamflows. The primary goal of most small watershed projects is to provide drainage and relief from flooding in rural areas. Channelization (e.g. channel modification or "improvement") is often used to provide drainage and flood relief, while watershed dams and levees primarily provide flood relief. The effects of these activities are discussed in the "Summary of Factors Affecting the Species" section.

The Natural Resource Conservation Service (NRCS) Small Watershed Project program is subject to the provisions of section 7 of the Act and any planned projects must first be examined for impacts to listed species before construction may proceed. Private actions, such as construction of a farm pond, would generally be exempt from the regulatory provisions of the Act unless the actions involve Federal funds or Federal authorization, or if the action would result in take of ARS. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. A private party could seek a section 10(a)(1)(B) incidental take permit to legally take ARS incidental to otherwise lawful activities.

Comment: Two commenters expressed concern that we considered open-range grazing a threat to the ARS due to water quality concerns. Two other commenters implied that white-tailed deer have access to streamside zones, have abundant populations, and would cause similar impacts on riparian zones as do domestic livestock.

Service Response: We believe well-managed livestock grazing is compatible with viable ARS populations and that certain types of grazing in riparian zones likely have minimal impacts on the ARS. In fact, low to moderate grazing and seasonal or rotational grazing practices are compatible with many natural resource objectives. However, negative effects of overgrazing remain a concern (see "Summary of Factors Affecting the Species" section).

Although white-tailed deer typically inhabit lowland and riparian areas in the Central and Southern Plains (Menzel 1984), the overall impacts of deer and other native ungulates on riparian zones are less than that of livestock. Livestock do not forage, herd, or move in the same manner as native ungulates. Deer do not tend to concentrate in large numbers and do not remain in riparian areas for long periods of time as do cattle. Deer typically do not trample vegetation and streambanks to the same extent as cattle. Where cattle have access to streamside zones, they generally reduce the suitability of the riparian zone for deer, either by consumption of forage or by trampling vegetation (Menzel 1984). Restriction of livestock grazing is one of the principal management tools used for white-tailed deer on public lands. Additionally, the dietary preferences of deer and livestock generally do not overlap to a significant extent. Deer are opportunistic feeders, consuming a wide variety of plant species (Jackson (1961) as cited in Menzel (1984)), and cattle forage almost exclusively on grasses and forbs. Consequently, we do not believe that deer exert the same influence on the riparian zone as do cattle and do not consider use of riparian zones by deer to be a threat to ARS.

Comment: Two individuals were concerned that the Federal government, through construction of reservoirs and support of soil and water conservation practices, was responsible for the decline of the ARS. Three other respondents stated that agriculture was singled out as a threat, even though Federal reservoirs were known to have an impact on ARS.

Service Response: We acknowledge that some Federal actions are, in part, responsible for the threats facing the Arkansas River basin population of the ARS. As a result of listing, those ongoing Federal actions will be subject to consultation under section 7 of the Act.

We did not intentionally single out agriculture as the primary threat to survival of the ARS. We believe a number of threats collectively imperil the ARS, and no single threat likely poses a sufficient threat to the ARS to justify listing. When making a listing determination, we assess the potential impact of all threats, including agriculture, to the species. Although agricultural activities can impact the ARS in various ways, we do not believe agriculture is the primary threat to the ARS.

Comment: Two commenters stated that overcollection for scientific purposes, particularly during spawning periods, is a threat.

Service Response: We have no information indicating that collecting for scientific or educational purposes poses a significant threat to the ARS. However, take by private and institutional collectors could pose a threat, if left unregulated. With the exception of the States of Texas and Arkansas, the ARS is listed as an endangered or threatened species by States within its historical range and take is prohibited without a valid State collecting permit. Such provisions should minimize the threat of overcollecting for scientific or educational purposes. Federal protection of the ARS also will help to reduce illegal and inappropriate take.

Arkansas River shiners are thought to spawn communally (Cross *et al.* 1985) but are not known to make basin-wide migrations to a few traditional spawning areas where large numbers of individuals would be susceptible to a single collection event. Additionally, ARS may spawn several times during the course of the spawning season and even widespread scientific collecting during this period would not likely eliminate the entire reproductive effort for the year.

Comment: Numerous (115) commenters stated that irrigation and groundwater pumping are not a threat to the ARS because water levels have stabilized, primarily due to conservation and more efficient irrigation systems, and the effect on streamflow, where it occurs, is limited. Similarly, 58 commenters stated that we have no evidence to support the assumption that irrigation and pumping from the High Plains (Ogallala) aquifer has diminished flow in the Canadian River or has affected habitat conditions for the ARS. Two commenters stated that we have new information regarding the influence of groundwater on flows in the Canadian River basin. Six others stated that springflow is not reliable or has not been affected by groundwater pumping.

Service Response: We agree that water conservation efforts have had a significant effect on reducing the amount of water used. These efforts have reduced the rate of depletion of the High Plains aquifer in Texas. However, groundwater depletion continues within the Central Regional Subdivision of the High Plains aquifer. Although certain underground water conservation districts have recently shown stabilized groundwater levels within their districts or have shown that average depletions over the past several years have been reduced to less than 10 centimeters (cm) (4 in), these statistics are not indicative of the entire western region of the Arkansas River basin. Dugan and Sharpe (1996) state that water level declines in the Central High Plains subregion from 1980 to 1994 were the largest, both in area and magnitude of decline, of any in the entire High Plains. A nearly continuous area including much of southwestern Kansas, portions of the Oklahoma Panhandle, and much of the northern Panhandle of Texas has shown a decline of more than 3 meters (m) (10 feet (ft))(see factor A in "Summary of Factors Affecting the Species" section).

Regarding the influence of water level declines on streamflow, specific, regionwide data are lacking. We concur

that groundwater pumping has likely had a minimal effect on streamflow in the Canadian River upstream of Lake Meredith. We evaluated new information provided during the public comment period and concluded that pumping has reduced spring flow but the overall effect on flow in the Canadian River between Ute Reservoir and Lake Meredith has been relatively minor. This new information has been incorporated into this rule (see factor A in "Summary of Factors Affecting the Species" section).

Information on the contribution of springs to flow in the Canadian River below Lake Meredith and the effects of groundwater pumping on this springflow is generally unavailable. However, we believe that, based on the predevelopment discharge from the aquifer within the Arkansas River basin (Luckey and Becker 1998), continuing groundwater depletion will affect streamflow in the Arkansas River basin.

Comment: Seven commenters stated that, based on the rate at which water moves through the High Plains aquifer, the aquifer would not contribute to streamflow. Similarly, one respondent stated that water level contour maps of the aquifer show that water only moves toward the river within the area described as the "breaks."

Service Response: The rate at which water moves through the aquifer has no bearing on the contribution of the aquifer to streamflow. The aquifer is an underground body of water that resembles a "reservoir;" the water bearing strata are a mixture of gravel and sands. A withdrawal from one end of the "reservoir" affects water levels in the entire reservoir. Water within the aquifer exists in balance with the rate of recharge, that is, natural discharge to streams equals recharge, at least under predevelopment conditions. Pumping from the aquifer essentially represents an artificial discharge from the aquifer. When this artificial discharge exceeds recharge, natural discharges must decline accordingly.

Comment: Five commenters stated that the Canadian River was below the elevation of the High Plains aquifer and thus not connected.

Service Response: We partly agree with this comment. The Canadian River has cut below the elevation of the Ogallala formation upstream of the Hutchinson-Roberts County line in Texas (Dugan and Sharpe 1996). Downstream of this point the Canadian River is confined within the sediments of the Ogallala formation (see factor A in "Summary of factors Affecting the Species" section).

Comment: One respondent stated that the threat analysis is incorrect because very little surface water is diverted from the Canadian River in Texas.

Service Response: We agree that very little diversion of stream surface water occurs in the Canadian River of Texas. However, surface water is diverted from Lake Meredith via the Canadian River Project. Diversion of surface water also occurs within other Arkansas River tributaries. Our threat analysis includes threats occurring in other portions of the Arkansas River basin, not just those in Texas.

Comment: Seven commenters expressed opposing views concerning the influence of predation on the ARS. Four individuals stated that predation is a threat and three commenters did not believe that existing information suggested that predation was a threat.

Service Response: Studies on the impact of disease or predation upon the ARS have not been conducted and the significance of these threats is unknown. While neither disease nor predation are thought to be a significant threat to a healthy ARS population, they could, in certain localized areas, occur more frequently or have a more significant impact and hinder recovery of the ARS. This threat is addressed in more detail under factor C in the "Summary of Factors Affecting the Species" section.

Comment: One commenter stated that illegal dumping of oil field brines in the 1960s caused fish kills, and fish populations never recovered. Two commenters stated that a major threat to the ARS and other aquatic species was water quality degradation. Two others stated that we have no information that any chemical has been introduced into ARS habitat. One commenter stated that changes in turbidity and salinity were not threats to the ARS.

Service Response: Dumping of oil field brines was suspected to have partially accounted for the decline of the ARS from the North Canadian River in the vicinity of Oklahoma City, Oklahoma (Pigg *et al.* 1997a). Nutrient enrichment from municipal waste water effluent, particularly in the North Canadian River, also may have contributed to degradation of water quality. Pigg *et al.* (1992) stated that 64 municipal sewage treatment plants, 34 industries, and 2 electric power plants discharge into the North Canadian River. Matthews and Gelwick (1990) examined fish communities within a highly urbanized reach of the North Canadian River in Oklahoma City that received concentrated feedlot runoff and secondary treated sewage effluent. Dumping of construction materials and a smaller secondary sewage source occurred at a site approximately 30 river-km (18 river-mi) downstream of that site. Although ARS were not collected during that study, fish communities in these reaches did not appear to be significantly depressed by urbanization (Matthews and Gelwick 1990).

Advancements in waste water treatment facilities and reductions in other sources of pollution have occurred since passage of the Clean Water Act in 1972. Species which are less tolerant of degraded conditions would generally not occur in stream reaches affected by urbanization. Where water quality degradation has dramatically altered ARS habitat, we would agree that such events have played a role in the decline of this species. However, we have very little specific information documenting the effects of poor water quality on ARS and cannot conclude that these types of pollution are a significant factor contributing to the decline of the ARS. The effects of changes in turbidity or salinity on the ARS are unknown.

Comment: Three commenters stated that drought is the main threat to the ARS and is responsible for its decline; twelve others stated that minnows inhabiting plains streams are adapted to withstand a variety of harsh conditions, such as dewatered and drought conditions, and lack of streamflow is not a threat.

Service Response: Arkansas River shiners evolved under natural cycles of flooding and drought, and are adapted to a wide variety of physical and chemical conditions. Fish populations in such systems tend to be cyclic in nature, responding to such natural factors as weather events, disease, and predation. Natural events, however, including long-term drought or extreme rainfall, have less of a negative effect overall on a species when that species is widely and continuously distributed. Where populations are small, fragmented, or isolated by various human-related factors, they are more vulnerable to extirpation by naturally occurring or random events and cumulative effects.

Construction of mainstream dams hinder natural expansion and contraction of populations, preventing fish from recolonizing dewatered reaches when flows return. This may have contributed to the extirpation of aggregations of the ARS. Drought also accentuates the effect of human-caused events (Matthews 1998), such as overallocation of streamflows and overdraft of groundwater resources. Stream dewatering combined with long-term drought could result in permanent

elimination of ARS from a large part of the Arkansas River drainage. Although the species as a whole has persisted to date, we do not believe remaining populations are secure. Considering the species' ability to withstand harsh conditions within prairie streams, the fact that this species has disappeared from over 80 percent of its historical range suggests that the effects of natural events are exacerbated by human influences.

Comment: Two commenters thought introductions of non-native species was a primary reason for the disappearance of the ARS. Five individuals stated that introductions of Red River shiner did not affect aggregations of ARS because the species had already declined and the Red River shiner simply replaced the ARS. Two others stated that reduced flows or drought, not introductions of non-native fishes, was the primary threat. Six commenters stated that introductions of Red River shiners only affected a small portion of the historical range and thus are not a primary threat to remaining populations.

Service Response: The introduction of the Red River shiner represents a potentially serious threat to the ARS; however, we do not believe introductions of the Red River shiner have had a detrimental effect on any ARS aggregations other than those in the Cimarron River. The primary threat to ARS aggregations is streamflow alterations due to reservoir construction and water withdrawals (see "Summary of Factors Affecting the Species" section).

Comment: Seven respondents stated that the ARS is not likely to be affected by commercial bait harvest. One commenter stated that using ARS as fish bait should be illegal.

Service Response: We agree that abundance of the ARS is not likely to be seriously impacted by commercial harvest of bait fish. The ARS is not a highly prized bait fish, and it is not selectively harvested as bait. Arkansas River shiners may occasionally be captured incidental to capture of other commercial bait fishes (see factor B in "Summary of Factors Affecting the Species" section). The ARS is already listed as threatened or endangered in the States of Kansas, New Mexico, and Oklahoma, and collection is prohibited without a valid permit. The greatest potential threat to the ARS from commercial bait operations is the possible accidental release of non-indigenous fishes into the Arkansas River basin.

Comment: Twenty-two commenters requested clarification or documentation that reservoirs and impoundments were a threat to the ARS. Four of these individuals stated that construction and operation of John Martin Reservoir in Colorado had affected streamflow within the Arkansas River in Kansas. Conversely, one individual stated that the threat from John Martin Reservoir is speculative and inconclusive. One individual stated that construction of Medford Dam was a threat. Another stated that construction of Forgan Reservoir on the Cimarron River was no longer a threat. Four individuals stated that reservoirs were beneficial and that we should consider these benefits in the analysis. Two others stated that our assessment of the impacts of dams was inconsistent. One individual asked if we had considered the effects of releases from Keystone Reservoir on ARS spawning requirements. Conversely, one individual stated that flood pulses still occur below dams and reproduction should still occur. Five individuals stated that damming has diminished habitat but the effects are short-term and the river will stabilize allowing populations to persist. Another individual stated that streamflows following impoundment have stabilized and are not going to decline. One individual stated that Lake Meredith was the primary threat.

Service Response: Cross *et al.* (1985) stated that irrigation diversions and flow regulation by John Martin Reservoir led to declines in several species of fish in western Kansas, including ARS. They found that the initial effect of impoundment by John Martin Reservoir was a moderation of flow extremes (e.g., reduction peak flows and increase in minimum flows) between 1943 and 1965. After 1965, streamflow generally ceased after July and did not resume until January or February. Although these declining streamflow conditions cannot be entirely attributed to John Martin Reservoir, this reservoir definitely contributed to flow alterations in the western portion of the Arkansas River.

We could not verify the existence of a Medford Dam and cannot address this comment.

In its Northwest Oklahoma Water Supply Study (Bureau 1991), the Bureau proposed the construction of Forgan Reservoir, to be located near the Kansas-Oklahoma State line on the Cimarron River. This reservoir would impound about 8 km (5 mi) of the Cimarron River. Although this reservoir has not been authorized, and planning has been deferred, we consider this reservoir ■ potential threat to the ARS.

We disagree that reservoirs have had a beneficial effect on the ARS. Reservoirs function as barriers, significantly inhibiting dispersal and interchange between populations. Reservoirs also have inundated, dewatered, or otherwise directly altered considerable sections of riverine habitat once inhabited by ARS (see factor A in "Summary of Factors Affecting the Species" section). It is possible that, under certain conditions, fragmentation of ARS habitat by reservoirs could help reduce the probability that a release of Red River shiners would impact all ARS aggregations within a river basin. However, such protection is minimal considering the popularity of recreational fishing in the basin and the lack of specific regulations prohibiting bait-bucket releases of non-native fishes. We believe that the known adverse effects of reservoirs far outweigh any such potential small benefit.

We have not evaluated the implications of releases from Keystone Dam on ARS reproduction. The specific spawning requirements of ARS are not yet known. However, we suspect that these releases are not compatible with ARS spawning requirements and that these flow modifications are largely responsible for the decline of ARS below the reservoir. We anticipate that once reproductive requirements are known, we will initiate discussions with the Tulsa District of the Army Corps of Engineers (Corps) to evaluate whether releases from the reservoir could be modified to benefit ARS.

We agree that flood pulses necessary to support reproduction by ARS still occur below some impoundments. Reproducing populations of ARS persist downstream of Lake Meredith and Ute Reservoir; however, neither of these impoundments provide regular downstream releases. Runoff and tributary inflow during precipitation events within these river segments provide stage rises sufficient to induce spawning in these populations. In the eastern regions of the Arkansas River basin, reservoir releases often cause streamflows to fluctuate on a daily basis which is not conducive to spawning by ARS.

Flow fluctuations caused by releases from reservoirs tend to attenuate or dampen with distance downstream of the dam. Thus, at some point, the effects of such releases on the aquatic community would be minor and reproduction could occur. However, in the absence of sufficient river length or without modification of existing releases, regulated flows rarely mimic those which occurred prior to impoundment. Under these conditions, reproduction will not occur, and populations will not likely persist.

We agree that Lake Meredith has exerted the greatest influence over ARS aggregations in Texas. However, Lake Meredith is not the primary threat to ARS. The decline of the ARS is due to a variety of factors, many of which act synergistically. The cumulative and synergistic effects of all of the identified threats are responsible for the present and threatened destruction of ARS habitat and its diminished range.

Comment: One respondent stated that minimal alterations of the flow regime did not directly cause the ARS to diminish in range and abundance, and thus are of little consequence.

Service Response: We agree that very minor alterations in streamflow are not likely to be a significant threat to the ARS. However, the commenter did not state what constitutes minimal streamflow alterations. As discussed under factor A of the "Summary of Factors Affecting the Species" section, certain alterations of the natural flow regime are detrimental to the ARS.

Comment: One commenter stated that a present threat must be demonstrated and asked to what extent reservoirs now impact or threaten the ARS.

Service Response: The Act requires us to consider "the present or threatened destruction" of a species' habitat or range. The lack of streamflow downstream of a reservoir would qualify as a present, ongoing threat because if streamflows were restored, downstream populations could recolonize those areas that are presently unsuitable. For example, if releases were made from Lake Meredith, these flows, under certain conditions, could be beneficial and allow shiner aggregations which exist downstream to recolonize the entire reach of the river. Withholding these releases prevents this from occurring and is a present, ongoing threat to ARS habitat downstream of the reservoir, particularly in Texas. Similarly, where reservoir releases have modified ARS habitat such that these reaches can no longer be inhabited, the present, ongoing operation of these reservoirs prevents ARS from recolonizing these stream reaches.

Comment: One individual commented that the decline of the ARS is due to channelization of the Cimarron River below Tulsa for navigation.

Service Response: We suspect this commenter mistakenly referred to the Cimarron River instead of the Arkansas River. The Cimarron River has not been modified to support navigation. We agree that modification of the Arkansas River for navigation eliminated habitat for the ARS (see "Summary of Factors Affecting the Species" section).

Issue 7: Sufficiency of Information

Comment: Eighty commenters questioned why we were listing the ARS, either rangewide or within the State of Texas. Few of these commenters provided substantive new information relevant to making risk assessments or assessing the status of the species. Forty-six commenters stated that the proposed rule contained inadequate, incomplete, inaccurate, or unclear information concerning the need to list the ARS. Three commenters stated that the listing is premature and that the need for listing has not been fully researched. Two others believed that the listing should be postponed until more information outlining why the species continues to survive in the Canadian River has been obtained. One individual felt that the listing should be delayed until more studies have been completed on habitat requirements. Eighteen individuals requested that we provide life history information on the species or conduct additional studies.

Service Response: Section 4(b)(1)(A) of the Act requires us to make listing determinations on the basis of the best scientific and commercial data available. Although we consider historical habitat loss and rates of decline, we also consider many other factors, including current rates of decline, potential and imminent threats, number and status of populations, and amount and quality of remaining habitat. We use historical habitat loss and rates of decline to ascertain whether a species is undergoing a precipitous or gradual decline. Reduced abundance, loss of habitat, and extirpation of ARS aggregations from a variety of causes have been documented. This information shows that the range of the ARS in the Arkansas River basin has been reduced by over 80 percent.

In preparing both the proposed and final rules on this listing, we have used information received from a variety of sources including museum collections, knowledgeable biologists, groundwater hydrologists, and studies specifically directed at gathering information on the distribution and threats to the ARS. This rule summarizes all of the available information on the status of and threats to the ARS.

We have incorporated in this rule all substantive new data, including an investigation of ARS habitat requirements, obtained since the species was first proposed for listing in 1994. This new information caused us to reassess our analysis of the nature and immediacy of threats affecting the species. Specific justification for listing the species is summarized in factors A through E in the "Summary of Factors Affecting the Species" section.

We have summarized all of the available life history information in this rule. We agree that many aspects of the biology of this species are unknown and need further study. This is true for most species of fishes, including common species that have been studied extensively. However, we are not required to address all of the biological and ecological requirements of the species in order to list it. In fact, delaying listing in order to complete a large, long-term biological or ecological research effort could seriously compromise the survival of the Arkansas River basin population of the ARS.

Comment: Four commenters were concerned that we had not used all of the available information in preparing the proposed rule; specifically status information from the TPWD and the Bureau, collections of commercial bait dealers, and groundwater depletion records from underground water conservation districts in Texas.

Service Response: We examined data from the TPWD (Lewis and Dalquist 1955 and Eric Altena, *in litt.* 1993) and the Bureau (Eugene Hinds, *in litt.* 1984) but did not specifically cite them in the proposed rule. We used harvest data from the commercial minnow dealers, to the extent possible. However, this information is not always reliable (see factor B in "Summary of Factors Affecting the Species" section). We used information available from the U.S. Geological Survey (USGS) to document groundwater depletion in the High Plains aquifer. During the comment period, we received additional information on groundwater depletion from several underground water conservation districts. We also obtained additional information from the USGS. We have incorporated all of the information from these sources into this final rule.

Comment: One individual stated that there is currently more water in the Canadian River than there was before the reservoir was constructed.

Service Response: This commenter did not specify which portion of the Canadian River, above or below Lake Meredith, now has more water. An analysis of streamflow records for the period of record up to 1963 (USGS 1963) above Lake Meredith, shows that average annual discharge was 12.4 cubic meters per second (cubic m/s) (439 cfs) as measured at the gage north of Amarillo. This measurement included some regulation by Conchas Reservoir, but was prior to construction of Ute Reservoir. Analysis of flows in the

Canadian River, as measured at Logan, New Mexico in 1961 (USGS 1961) shows that flows averaged 11.1 cubic m/s (392 cfs) prior to construction of Conchas Reservoir and 7.6 cubic m/s (270 cfs) after construction. The average annual discharge at Amarillo for the period of record up to 1996 has been reduced to 8.1 cubic m/s (286 cfs).

Streamflow records up to 1996, as measured at Canadian, Texas, approximately 121 river-km (75 river-mi) downstream of Lake Meredith, show that the average annual discharge was 15.5 cubic m/s (549 cfs) before Lake Meredith was built and 2.4 cubic m/s (83.7 cfs) after the reservoir was built. Flow in both reaches of the river may now be perennial, due to seepage from Ute and Sanford dams, but there is not more water in the river now compared to years prior to construction of Lake Meredith.

Comment: One individual stated that the proposed rule was incorrect because water quality improves rather than declines as the river flows from Ute Reservoir to Lake Meredith.

Service Response: We recognize that water quality for human consumptive purposes improves as the river flows into Lake Meredith because salinity concentrations are diluted by tributary inflows. The existing salinity levels in this section of the Canadian River do not appear to have an adverse effect on ARS populations. However, the proposed rule actually referred to water quality within the entire Canadian River in Texas, not just the segment upstream of Lake Meredith (see factor A in "Summary of factors Affecting the Species" section).

Comment: Five commenters stated that additional surveys should be conducted because one survey was not sufficient. Similarly, three individuals stated that a complete census of the ARS should be conducted.

Service Response: We did not rely on one survey to document the status of the ARS in the Arkansas River basin. We used data from the TPWD, Bureau, University of New Mexico, Oklahoma State University, University of Kansas, University of Oklahoma, University of Michigan, Westark Community College, and the Oklahoma Department of Environmental Quality in assessing the current status of the ARS.

Complete census data for fishes are extremely difficult, if not impossible, to obtain with non-lethal survey techniques. Use of lethal techniques are not appropriate for surveys of rare species. Additionally, even lethal techniques, such as fish toxicants, are not 100 percent accurate. We often must rely on data collected from numerous sites, often by several individuals, over several years. The protocols used in these surveys and in analyzing the data are generally accepted by the scientific community as appropriate for sampling fish populations (Nielsen and Johnson 1983, Schreck and Moyle 1990).

Comment: Seventeen commenters stated that a one-time introduction of Red River shiners would not constitute a catastrophic event sufficient to cause extirpation of the entire Arkansas River basin population of the ARS. One other individual stated that the rangewide loss of an annual reproductive cycle is remote.

Service Response: Lake Meredith is an effective artificial barrier to movement of stream fishes and potentially could provide a small degree of protection to ARS aggregations upstream of Lake Meredith from introductions of non-native fishes which might occur downstream of the reservoir. However, aggregations of ARS upstream of Lake Meredith are much less numerous than those in the remainder of the Canadian River and the risk of extinction for the entire Arkansas River basin population would increase if Red River shiners became established downstream of Lake Meredith. We have reassessed the vulnerability of the Arkansas River basin population of the ARS to a single, catastrophic event and no longer consider the entire population susceptible to extinction from a single, catastrophic event at this time. However, as the range and abundance of ARS continue to decline, the vulnerability of the ARS to catastrophic events and the likelihood that a catastrophic event would lead to extinction of the species increases.

Comment: Thirteen individuals stated that existing Federal and State laws and regulatory mechanisms are adequate to protect the ARS.

Service Response: Although certain laws and regulations provide some water quality and quantity benefits, they do not alleviate all of the identified threats to the ARS. Flow modification below Federal dams is ongoing and prevents ARS from recovering. Irrigation withdrawals have dewatered the Beaver River in the Oklahoma Panhandle, as well as considerable sections of the Arkansas River in Kansas. Existing regulations did not prevent these events from occurring. Existing regulations also were ineffective in preventing the introduction of non-native fishes into the Cimarron River. With the exception of the State of Kansas, none of the States protect ARS habitat. The State of Texas does not list the ARS as threatened or endangered and provides no special protection. We believe that existing regulatory mechanisms do not currently provide adequate protection for the ARS. Additional discussion of existing regulations can be found under factor D of the "Summary of Factors Affecting The Species" section.

Comment: Nineteen commenters believed we did not adequately demonstrate that the threats identified in the proposed rule were actually affecting ARS aggregations in the Arkansas River basin. One commenter stated that ongoing activities within the river basin were not likely to change in the foreseeable future.

Service Response: For the reasons explained in this rule, sufficient, ongoing threats exist for us to justify listing the Arkansas River basin population of the ARS. Although specific studies documenting the influence of a particular threat on the ARS may not have been conducted, sufficient information exists to demonstrate that ARS are vulnerable to the identified threats. We have presented ample evidence for a reasonable person to conclude that a definite cause and effect relationship exists. Under section 4 (b)(1) of the Act, we must make listing decisions based on the best scientific and commercial data available. We have met these requirements in this listing decision.

Comment: Nine respondents questioned the influence of the reproductive characteristics of the ARS during the threat assessment. One individual stated that southernmost populations of the ARS may spawn repeatedly, giving them an advantage over those populations in the northern portion of the range. Two individuals wanted to know how much water was necessary to ensure spawning by ARS. Another individual stated that the ARS should persist because the species is very fecund. One individual requested we explain how stream channelization affects spawning of the ARS. Two individuals stated that data do not demonstrate that flood pulses are needed to induce spawning. Two individuals stated that reproduction is not restricted to only Age-I fish.

Service Response: There is no information in the scientific literature which even speculates that reproductive potential varies among those ARS aggregations in the Arkansas River and those from the Canadian River.

We do not know what specific flow regimes are necessary to trigger spawning in the ARS. As previously discussed, the Act does not require us to address all of the biological and ecological requirements of the species in order to list it.

Cross *et al.* (1985) stated that female ARS develop 1,500 to 3,500 eggs of uniform size. Carlander (1969) reported the number of ova for several species of minnows in the genus *Cyprinella* and *Notropis*. The number of eggs varied from 98–2,600 per individual. Although several of these species have reproductive strategies which differ from ARS, the values presented do not indicate that the ARS is significantly more fecund than other species of minnows. Regardless of their fecundity, ARS were unable to maintain populations in several Arkansas River basin rivers and streams. Fecundity of ARS is not sufficient to maintain robust populations where adequate water to support populations no longer exists.

Stream channelization affects fish populations indirectly by altering the structural, physical, and chemical characteristics of the stream (Simpson *et al.* 1982). Direct impacts include injury or mortality during the actual construction of the channel. The specific spawning requirements of ARS are unknown, and we cannot specifically describe the influence of channelization on reproduction of ARS. Based on known impacts of channelization, we can predict, with a fairly high degree of accuracy, how ARS reproduction could be affected. The preferred habitat, including presumed microhabitat for spawning, of the ARS is found in wide, relatively shallow, sandy bottomed rivers and larger streams. Channelization would eliminate this preferred habitat. Shallow water habitat would then exist in minute quantities and would be restricted to nearshore areas. Production of microscopic plant material by photosynthesis would be limited to the shallow near shore zones. Consequently, productivity of the stream would decline. Channelization also would reduce or eliminate invertebrates and other food resources needed to ensure successful reproduction and survival of the larvae.

Channelization also alters the morphology of the channel by creating fairly uniform steep sided channels, eliminating habitat diversity. Alteration of the channel morphology also would alter water velocities, which would in turn affect hatching of the fertilized eggs, assuming any would be produced. If ARS prefer to spawn in shallow waters, channelization would reduce the amount of habitat available for spawning. All of these alterations that occur as a result of channelization would likely seriously reduce the number of young fish that would be produced, leading to overall declines in the number of adult fish in the affected stream reach.

All of the information published prior to 1997 concluded that flood pulses were the primary environmental cue that triggered the onset of spawning by ARS. None of these studies, however, documented how much of a rise in river stage was necessary to induce spawning. We still lack specific data to determine how much of a flood pulse is needed to induce spawning. Recent studies (Polivka and Matthews 1997, Bonner et al. 1997), have failed to show that reproduction in ARS is entirely dependent upon these flood pulses. Flows, however, are important to maintaining habitat conditions within the stream channel and for hatching of the eggs once a spawn occurs. We believe streamflow is a crucial component of suitable ARS habitat even though large flood pulses may not be required to induce spawning.

The proposed rule did not state that reproduction was entirely restricted to Age-I individuals. Age-I individuals, however, do provide most of the annual reproductive effort. The loss of a single year class would significantly reduce the chances of survival of the ARS because the Age-I year class is so important to the success of each year's reproductive effort (see factor E in "Summary of Factors Affecting the Species" section).

Issue 8: Conservation Agreement

Comment: Eight respondents urged us to consummate a conservation agreement or seek local attempts to conserve the species without the need to list. Seven commenters encouraged us to follow a voluntary approach to conservation as fostered in the draft Memorandum of Understanding submitted to us by the TPWD and the ODWC.

Service Response: Candidate conservation agreements are formal agreements between us and one or more parties (i.e., land owners, land managers, or State fish and wildlife agencies) to address the conservation needs of proposed or candidate species. The participants take on the responsibility of developing the agreement, and voluntarily commit to implementing specific actions that will remove or reduce threats. This can contribute to stabilizing or restoring the species, thereby precluding or removing the need to list.

In order to remove the need for listing the ARS, a significant number of candidate conservation agreements would have to be developed and implemented throughout the four-State range of the Arkansas River Basin population. We met with representatives of the Arkansas Game and Fish Commission, Kansas Department of Wildlife and Parks (KDWP), New Mexico Department of Game and Fish (NMDGF), ODWC, and TPWD in March of 1997 to discuss the merits and feasibility of developing a conservation agreement. Unfortunately, not all States could commit to such an agreement due to fiscal and personnel constraints. However, listing of the species does not preclude the future development of habitat conservation plans or other conservation agreements with private individuals or agencies.

Because the ARS occurs primarily on private property, we fully realize that recovery of this species will depend upon local support and the voluntary cooperation of private landowners, and we welcome them as cooperators in the recovery effort. We will work to provide technical assistance to those property owners and land managers who wish to implement conservation measures for this species.

Issue 9: Abundance and Range

Comment: Numerous (249) commenters stated that the ARS is abundant in Texas and populations are stable and that, therefore, listing is not warranted. In addition, the TPWD does not believe that the ARS should be listed in Texas and is opposed to the listing.

Service Response: A considerable amount of variation can occur in samples of fish community structure between sites, years, and sampling effort, that makes trends difficult to determine. However, data collected by various researchers (e.g., TPWD, Oklahoma State University, Bureau, and Texas Tech University) between 1953 and 1998 from identical, readily identified locations (e.g., major highway crossings) document trends in ARS abundance in Texas. In Hemphill County, the numbers of ARS collected between 1954 and 1990 declined by 67 percent. In Hutchinson County, the number of ARS collected declined by 99 percent over this same time period. Upstream of Lake Meredith, in Potter and Oldham counties, collection records document similar declines at one of two sites. At the U.S. Highway 87/287 crossing north of Amarillo, Texas, the numbers of ARS collected have declined by 46 percent. However, in Oldham County, at the U.S. Highway 385 crossing near Tascosa, Texas, the numbers of ARS collected have increased by about 38 percent.

An analysis of the amount of occupied habitat demonstrates that the range of the ARS also has been reduced

in Texas. Historically, the Arkansas River shiner occupied 370 km (230.0 mi) of the Canadian River in Texas. At present, the ARS occupies 265 river-km (164.5 river-mi). This represents a loss of 28.5 percent of the historically occupied habitat in Texas.

As discussed previously, our policy on delineating distinct vertebrate population segments requires that those segments be both discrete and significant. We do not believe that the ARS in Texas is discrete from the remainder of the Arkansas River basin population. Thus, although the ARS in Texas may have declined less precipitously than in other areas of the species' range (see factor A in "Summary of Factors Affecting the Species" section), we cannot consider the ARS in Texas separately from the entire Arkansas River basin population.

Comment: Three commenters stated that the historical range of the ARS did not include Morton, Stevens, or Grant counties, Kansas. Two individuals stated that, based on the journals from travelers using the Sante Fe Trail, water sufficient to support shiners was not available in the Cimarron River of western Kansas.

Service Response: Morton, Grant, and Stevens counties, Kansas are within the historical range of the species. The ARS was first collected from the Cimarron River, near Kenton, Oklahoma. This section of the Cimarron River is upstream of the section that flows through Morton, Stevens, and Grant counties. Hubbs and Ortenburger (1929) state that "hundreds of paratypes" were collected from several sites in Oklahoma and at Kinsley, Kansas. The species likely occurred throughout the Cimarron River in 1926. In 1955, the species was collected from the Cimarron River south of Ulysses, Grant County, Kansas (William H. Busby, *in litt.* 1990). There are also two records from the Cimarron National Grassland (Morton County), one in 1962 and one in 1987 (William H. Busby, *in litt.* 1990). Records from the Cimarron River in Kansas also exist for Clark, Meade, and Seward counties.

We suspect that the Santa Fe Trail crossed the Cimarron River where crossing was most convenient and easiest. People using the trail likely did not choose to cross at sites supporting "abundant" water.

Comment: Two commenters stated that we have inadequate evidence to show that any populations of the ARS occur in Kansas.

Service Response: We believe that ARS may indeed have been extirpated from Kansas (see "Background" section). However, habitat within the Cimarron River in Meade County, Kansas appears suitable. This segment of the Cimarron River is not separated from that portion of the Cimarron River in Oklahoma where other individuals have been collected since 1989. The extreme rarity of this species in the Cimarron River makes it highly unlikely that infrequent collection efforts from one or two sites would locate this species. Consequently, we believe the ARS could still exist in very reduced numbers in the Cimarron River near the Kansas-Oklahoma State line.

Comment: Several commenters disagreed with our assessment of the historical and current range of the ARS. Three individuals stated that the ARS had not disappeared from 80 percent of its historical range. Another individual stated that the occurrence of the ARS in Arkansas was an anomaly due either to a flood or a misidentification. Similarly, one individual thought we had exaggerated the historical range in western Kansas and eastern Oklahoma. Another three individuals stated that we reported the ARS to be historically abundant and widespread without providing sufficient data to support this position. Two other individuals stated that we provided no data to document the change in abundance alluded to in the proposed rule. Six commenters stated that the Arkansas River has been permanently modified by the navigation system and should not be included as historical range for the species. Three commenters stated that the Beaver/North Canadian River should be excluded from the current range of the shiner. One commenter stated that many small tributaries of the Arkansas River and its larger tributaries incorrectly appear to be included as historical range of the ARS.

Service Response: The distribution and abundance of ARS were determined from collections of fish throughout the Arkansas River basin since the late 1880s. The collection record establishes that this fish occurred abundantly throughout most of the Arkansas River basin with the exception of Colorado. A compilation of the museum records for the ARS is contained in Larson *et al.* (1991). These records, however, generally only contain a percentage of the number of individuals collected because ichthyologists do not always retain and catalog every individual captured. Where possible, individuals captured in excess of those needed for vouchers are released unharmed at the site of capture. Some of the larger vouchers include 533 specimens from the Canadian River below Conchas Reservoir in New Mexico; 827 specimens from the Canadian River near Norman, Oklahoma; 1,182 specimens from the Salt Fork of the Arkansas River in Oklahoma; 1,068 from the Cimarron River near Cleo Springs, Oklahoma; and 2,122 specimens from the North Canadian River near Woodward Oklahoma. At least 21 other voucher collections containing in excess of 200 individuals from over 15 different sites also exist in several museums.

It is important to note that the ARS no longer occurs in the Canadian River below Conchas Reservoir, the entire Salt Fork of the Arkansas River, and the entire North Canadian River and is almost extirpated from the Cimarron River. We believe that these data accurately document that the species was historically widespread and abundant throughout most of the Arkansas River basin and adequately document the decline in range and abundance of the ARS. Based on the amount of currently occupied habitat compared with the amount of historically occupied habitat, either in number of stream miles inhabited or percent of the drainage basin occupied, we believe the 80 percent figure is accurate.

The records from the eastern and western fringes of the species' range are both documented by voucher specimens deposited in natural history museums. We have no information indicating that the identification or capture locations of any of these fish are in doubt.

Arkansas was likely the eastern periphery of the range for the ARS. The individuals collected from the mouth of Piney Creek were deposited as voucher specimens in the University of Michigan, Museum of Zoology (catalog number 128394) and are available for inspection. In addition, Robison and Buchanan (1988) consider the ARS a valid member of the fish community of Arkansas.

The range of the ARS in western Kansas extended at least as far west as Holcomb, Finney County, Kansas based on collection of 41 individuals in 1952. At that time, Cross *et al.* (1985) believed the species inhabited the full length of the Arkansas River in Kansas. There are no records from Colorado, thus the Arkansas River west of Garden City to the Kansas State line was likely the western periphery of the range of ARS.

Although the Arkansas River in extreme eastern Oklahoma and western Arkansas was not likely optimal habitat for the ARS, this reach is established historic range of the ARS. Records for the ARS exist for this section of the Arkansas River prior to construction of the McClellan-Kerr Arkansas River Navigation System and impoundment by Keystone and Kaw reservoirs (Larson *et al.* 1991). We agree that the ARS

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likely no longer occurs in the Beaver/North Canadian River.

Some smaller tributaries supported populations of the ARS, at least temporarily, based on verified collection records (Larson *et al.* 1991). These tributaries, while not likely essential habitat for the ARS, are a vital component of the entire watershed and are indirectly important to the survival of the ARS. These tributaries contribute streamflow, sediments and other important habitat constituents; influence water quality; and supply nutrients to the larger tributaries and river mainstems. These inputs are necessary to sustain the ecological integrity of the entire Arkansas River basin.

Comment: One respondent stated that journals of the early explorers reported the western region of the Arkansas River basin to be devoid of water long before the arrival of irrigation on the plains, thus irrigation could not have affected habitat for the ARS.

Service Response: Historically, the western region of the Arkansas river basin did not have an abundant supply of surface water. Average annual precipitation in this region varies from 40–61 cm (16–24 in) and pan evaporation during the growing season varies from 25–38 cm (10–15 in) (Johnson and Duchon 1995). Various periods of drought, generally lasting from 3–5 years each, also have occurred (Johnson and Duchon 1995). Despite these harsh conditions, ARS occurred at a number of sites in the western basin as early as 1926, which is prior to extensive irrigation development (see "Background" section). The general lack of water reported by these explorers does not disagree with information in this rule and does not indicate that ARS or their habitat were non-existent in this region prior to extensive irrigation development.

Comment: Thirteen respondents stated that the ARS is abundant in the Canadian River, Revuelto Creek, Palo Duro Creek, and throughout its range.

Service Response: Data available to us, as presented in this rule, document that the ARS has decreased in abundance and has been completely eliminated from over 80 percent of its historical range. The number of fish collected, an indication of the abundance of the species, has declined at numerous sites within the Canadian River (Larson *et al.* 1991).

In the Canadian River, habitat upstream of Ute Reservoir and downstream of Lake Meredith and Eufaula Reservoir has been eliminated or degraded to the point that this habitat no longer supports the ARS. Habitat throughout the entire length of the Arkansas River in Kansas, Oklahoma, and western Arkansas has been destroyed or degraded to the point that the ARS no longer occurs. Likewise habitat in the North Canadian River, Salt Fork of the Arkansas River, and many of the smaller tributaries, including Palo Duro Creek, no longer supports ARS. The introduction of the Red River shiner, in combination with habitat loss and degradation has severely depleted the ARS in the Cimarron River.

Comment: Two commenters stated that records on the periphery of the ARS historical range could be due to bait bucket introductions.

Service Response: These records could be due to bait bucket introduction. However, we believe this is very unlikely. Considering the size of the human population in western Oklahoma and Kansas, the wide-spread distribution of the species, and the general lack of access to the technology necessary for transporting minnows over long distances, we do not believe populations in the Arkansas River were established by bait bucket introductions.

Comment: Two individuals stated that the ARS is thriving in ponds and lakes (e.g., Optima Reservoir) in Oklahoma.

Service Response: All of the existing life history information indicates that the ARS is an obligate riverine species. Flowing water is necessary to keep the eggs suspended in the water column until hatching and the larvae become free-swimming. The few collection records from reservoirs were obtained following a flood event, immediately post-impoundment, or under similar circumstances. A persistent, self-perpetuating reservoir population has never been documented.

Issue 10: Socioeconomic Impacts

Comment: Numerous (325) commenters stated that listing and the regulations which follow will have a devastating effect on the economy of the region. Conversely, two commenters stated that society will benefit when habitat for threatened and endangered species is protected. One other commenter stated that Federal listing of the interior least tern (*Sterna antillarum*) has not affected landowners economically. Fifty commenters requested that we prepare an in-depth regional economic impact study describing how listing will affect present and future economic growth and metropolitan development. Forty-eight others believed that listing places the needs of animals over the needs of the people.

Service Response: Under section 4(b)(1)(A) of the Act, we must base listing decisions solely on the basis of biological information using the best scientific and commercial data available without considering possible economic or other impacts. Because we are specifically precluded from considering economic effects, either positive or negative, in a final decision on a proposed listing, we did not evaluate or consider the economic effects of listing this species.

While economic effects, private property rights, and related concerns cannot be considered in listing decisions, we intend to work closely with affected parties throughout the Arkansas River basin to accommodate economic and recreational activities to the extent possible while ensuring the continued survival and recovery of the ARS. By **Federal Register** notice on July 1, 1994 (59 FR 34272), the Secretaries of the Interior and Commerce set forth an interagency policy to minimize social and economic impacts consistent with timely recovery of listed species. We will strive to balance any recovery actions for the ARS with social and economic concerns.

Comment: Three commenters stated that the High Plains aquifer exists to be exploited for man's benefit. Another respondent stated that once water supplies in the Texas Panhandle are gone, they cannot be easily replaced. Similarly, one respondent stated that one of the Texas underground water conservation districts is involved in developing and implementing an aquifer management plan.

Service Response: Listing will not preclude a landowner's ability to utilize water which exists on or under his property, unless such use would result in take of ARS pursuant to section 9 of the Act. A description of activities we believe would and would not likely violate section 9 is presented in the "Available Conservation Measures" section.

If a landowner proposes to withdraw groundwater to an extent that taking of ARS would likely occur, the landowner could seek a section 10(a)(1)(B) incidental take permit to legally take ARS incidental to otherwise lawful activities. We recognize the importance of the aquifer to the citizens of the region but also realize the importance of the aquifer to streamflow within the basin. We believe that a region-wide focus on conservation will ensure that the aquifer can meet the needs of people and the ARS simultaneously. Even at reduced pumping rates, the supply of water within the aquifer is not unlimited. Many citizens realize this

and are diligently striving to conserve this resource. We support such efforts.

Comment: Eleven commenters wanted to know how listing and section 7 of the Act would affect Federal agencies. One commenter was concerned that the section 7 process would increase the costs of and delay affected projects. Seventeen commenters stated that listing the shiner would impact several existing or proposed water development projects in the Arkansas River Basin either by requiring downstream releases or eliminating the ability to control floodwaters. Similarly, seven commenters stated that any change in operation of the upstream Federal reservoirs, which are operated to maximize benefits to the McClellan-Kerr Arkansas River Navigation System, would have a negative impact on navigation either by altering the uses, benefits, and reliability of the navigation system or impacting operation and maintenance of the system. Three commenters stated that listing will extend the regulations of the Act to private land and impact all Federal funds spent in the region.

Service Response: Any action funded, carried out, or authorized by a Federal agency that may affect a listed species would be subject to the section 7 consultation process. The implications of the consultation process on the various agencies would vary according to the nature of the project. If a project was determined to adversely affect a listed species, the action agency would initiate formal consultation with us. We would then prepare a biological opinion, pursuant to 50 CFR 402.14 (h) and (i). If incidental take of a listed species was involved, we would provide mandatory terms and conditions and recommended reasonable and prudent measures in an incidental take statement to minimize take and its effects. Under sections 7(b)(4) and 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered taking within the bounds of the Act, provided that such taking is in compliance with an incidental take statement in a biological opinion.

If we determined that a project would jeopardize the continued existence of a listed species, we would seek to develop reasonable and prudent alternatives to avoid jeopardy. Such reasonable and prudent alternatives might require project modifications. Implementation of reasonable and prudent alternatives and terms and conditions are not discretionary. Discretionary measures to minimize or avoid adverse effects of a proposed action on listed species or critical habitat would be provided as conservation recommendations in the biological opinion.

We are required to deliver a biological opinion, which concludes consultation, to the action agency within 135 days of receipt of a request for formal consultation (50 CFR 402.14(e)). If the action agency incorporates consultation into their planning process and consultation is initiated early, project delays are unlikely. Meetings with us, preparation of documents, and implementation of any reasonable and prudent alternatives or measures identified in the biological opinion may result in some additional project costs.

Large water development projects virtually always involve a Federal agency through funding, permitting, or other action. Therefore, future construction and ongoing operation of reservoirs will be evaluated for impacts to the ARS, and, where impacts occur, these actions would undergo consultation under section 7 of the Act. If feasible, modifications to these projects will be sought to ensure that the ecosystems upon which this species depends are conserved. However, if no adverse impacts would occur, or if the affected habitat is unoccupied and unsuitable, such as in the McClellan-Kerr Navigation System, further consultation under section 7 would be unlikely.

Private actions, such as construction of a private residence, would be exempt from the regulatory provisions of section 7, unless Federal funds were expended or Federal authorization was required. However, private actions that would result in the taking of an ARS are not exempt. In the latter case, a private party could seek a section 10(a)(1)(B) incidental take permit to legally take ARS incidental to an otherwise lawful activity.

Comment: Seven commenters stated that listing would affect recreational activities (fishing and trail rides) on the Canadian River, at the Lake Meredith National Recreation Area, and at Conchas and Ute reservoirs.

Service Response: We believe that normal, lawfully authorized recreational activities such as hiking, trail rides, camping, boating, hunting, and fishing, do not result in take of the ARS and would not be prohibited under section 9 of the Act (see "Available Conservation Measures" section). These activities do not generally impact or destroy the physical habitat for the ARS. However, recreational vehicle use within the river bed to the extent that habitat for the ARS is adversely impacted could be a violation of section 9.

The Lake Meredith National Recreation Area is managed by the National Park Service. Consequently, the National Park Service has an obligation under section 7 of the Act to evaluate its activities for possible effects on listed species. Similarly, if a Federal agency funds, authorizes, or carries out a recreation program at Ute or Conchas Reservoir, that agency has an obligation to evaluate its activities for possible effects on listed species. We do not anticipate that recreational activities at the Lake Meredith National Recreation Area, Ute Reservoir, or Conchas Reservoir will be altered as a result of these evaluations.

Comment: Eighty-four commenters contended that the listing of the ARS will result in control of, or "taking" of private property (e.g., grazing and water rights), in clear violation of their rights within the Fifth, Tenth, and Fourteenth Amendments to the U.S. Constitution. Similarly, 25 others concluded that property would be taken without compensation or that listing would impact ability to generate income. Conversely, one individual stated that Federal listing of a fish, the leopard darter (*Percina pantherina*), in southeastern Oklahoma did not result in the loss of private land rights.

Service Response: Listing under the Act does not imply that private land would be confiscated or taken without just compensation, and the Act itself does not authorize "takings" of private lands. Many of the provisions of the Act apply only to Federal agencies and Federal lands. However, section 9 of the Act prohibits taking of a listed species, including the ARS, regardless of land ownership. Recovery planning for the species may include recommendations for land acquisition or easements involving private landowners. These efforts would only be undertaken with the cooperation of the landowner. In the vast majority of cases, listing of a species does not preclude private landowners from using their land as they always have.

We do not anticipate significant land use restrictions, impacts to local economies, or to the well-being of citizens. The listing of the Arkansas River Basin population of the ARS does not, in itself, restrict groundwater pumping or water diversions, does not in any way limit or usurp water rights, and does not violate State or Federal water law. Through section 7 consultations, extraction or use of water that is funded, carried out, or authorized by Federal agencies that might adversely affect the ARS could be modified through reasonable and prudent measures or alternatives in a biological

opinion, as discussed previously. However, compliance with section 7 or other provisions of the Act has never resulted in the wrongful taking of property.

Comment: Numerous (105) respondents expressed concern that listing would either reduce land and property values or diminish or eliminate a property owner's equity. Two other commenters specifically stated that listing will depress property values as shown in the Texas A&M University Real Estate Center's study on the Edwards Aquifer.

Service Response: The Act and regulations at 50 CFR 424.11(b) require the Secretary of the Interior to make listing decisions based on the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts of such determinations. However, we do not anticipate that listing would result in reduced land and property values or other significant impacts to the economy. The results of one study, conducted by the Massachusetts Institute of Technology (Meyer 1995), show that endangered species listings have not depressed State economic development activity as measured by growth in construction employment and gross State product. Continuing depletion of the High Plains Aquifer and related reduction in the region's water supply is likely to be an equally important factor determining future land and property values in the Region.

Comment: Twelve individuals expressed concern regarding the implications of section 9 of the Act and either urged us to follow the interpretation of the "Sweet Home" decision or expressed concern that actions causing habitat alterations would constitute take under section 9.

Service Response: The Sweet Home decision (*Sweet Home Chapter of Communities for a Great Oregon* v. *Babbitt*, 17 F.3d 1463) found the harm regulation at 50 CFR 17.3 invalid because our definition of harm exceeded our statutory authority and was not a reasonable interpretation of the statute. The definition of harm at 50 CFR 17.3 includes ". . . significant habitat modification or degradation. . . ." In this decision, the court found that harm does not include habitat modification. However, on June 29, 1995, the Supreme Court upheld our definition of harm to include habitat modification. The prohibition against take of listed species applies to Federal and non-Federal lands without respect to whether critical habitat has been designated. In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34272), we have identified those activities that would or would not constitute a violation of section 9 of the Act (see "Available Conservation Measures" section).

Comment: Twenty-two commenters believed we intend to restrict grazing in riparian zones to reduce damage by livestock.

Service Response: We consider livestock grazing to be one of many contributing factors affecting water quality within the Arkansas River basin. However, we do not envision recommending widespread fencing of riparian zones as a means of reducing water quality degradation within the basin. Excluding livestock from riparian zones is just one means of preserving water quality. Best grazing management practices, such as low to moderate grazing and seasonal or rotational grazing, are compatible with many natural resource objectives and likely do not adversely modify the riparian zone.

Comment: Two respondents stated that we would hamper activities of the commercial minnow industry in order to protect the ARS.

Service Response: We anticipate that listing of the ARS would only have minimal effects on the activities of the commercial minnow industry. At present, take of ARS in Kansas, New Mexico, and Oklahoma without a valid permit is already prohibited by State law. Federal listing will only increase the penalties for unauthorized take. Considering the ARS is not sought by the commercial minnow industry, any take that occurs is incidental to capture of other bait species and will likely be minor. Collectors could minimize take of ARS by using nets having a larger mesh size. We will work with the States and the commercial minnow industry to reduce the threat to ARS from recreational use of bait fish. We expect that any required changes in bait fish collection practices would be minor.

Comment: Eight commenters were concerned that, in order to increase streamflows, we would mandate which soil and water conservation practices could be applied on local farms and ranches.

Service Response: The U.S. Department of Agriculture (USDA) has already developed a list of approved soil and water conservation practices. Under section 7 of the Act, we would consult with the USDA to determine which practices are likely to result in impacts to the ARS. Considering the number of practices that are available, we do not believe that listing of the ARS would significantly affect the soil and water conservation options for local farms and ranches. We have already determined that certain conservation practices, such as terracing, would not likely result in take of ARS (see "Available Conservation Measures" section).

Comment: Ten commenters believed that listing would impact the Bureau's Lake Meredith Salinity Control Project. Seven commenters stated that this project is not a threat and would not impact the ARS.

Service Response: We expect the effects of the Lake Meredith Salinity Control Project on the ARS will be minimal. Consequently, conservation of the ARS will have little influence over the anticipated construction and operation of this project (see factor a in "Summary of Factors Affecting the Species" section).

Comment: Five commenters were concerned about the effect of the listing on operation of Lake Meredith.

Service Response: In 1968, the Bureau turned operation and maintenance of the reservoir over to the Canadian River Municipal Water Authority (CRMWA). However, until the cost of the reservoir has been repayed to the Federal government, operation of the reservoir is still considered a Federal action. Arkansas River shiners are not known to inhabit Lake Meredith. Arkansas River shiners prefer riverine environments; if they occur in the reservoir, they would only occur in the upper reaches of the reservoir on a temporary basis. Existing literature on spawning requirements of the ARS do not indicate that the species could complete its entire life cycle within the confines of the reservoir. Consequently, we do not anticipate any impacts to reservoir operation.

Scheduled, downstream releases from Lake Meredith have not occurred since the reservoir was constructed. Water releases could occur at three points, the spillway, control gates, and river outlet works. Water levels in the reservoir have never reached the elevation of the spillway. Releases could still occur from one of the other two points as long as the water surface elevation was above 868.6 m (2850 ft). Although lack of releases from Lake Meredith has had a significant effect on ARS habitat below the reservoir, we do not believe releases from Lake Meredith would provide any significant, long-term benefit to the ARS. The Canadian River floodplain below Lake Meredith has been invaded by salt cedar, mesquite, and other perennial woody vegetation such that a single, one-time release would not likely result in significant improvements in habitat for the ARS. This vegetation would likely consume a considerable portion of the released water and prevent restoration tc a wider,

unvegetated floodplain unless the density of the vegetation was reduced or vegetation was removed prior to release. Likewise, we do not believe sufficient precipitation occurs in this area to support sufficient releases, either in duration or frequency, to improve downstream aquatic habitat permanently.

During the recovery process, we intend to investigate the potential for improving habitat below Lake Meredith with the Bureau, CRMWA, and TPWD. If releases from Lake Meredith ever occur, we will work with responsible entities to ensure that ARS benefit to the extent possible.

Comment: Thirty-seven commenters stated that listing would affect municipal water systems. Two others were concerned about the consequences of listing on municipal storm water drainage systems and waste water treatment facilities.

Service Response: Unless a city's water supply system, storm water drainage system, or waste water treatment facility is funded, carried out, or authorized by a Federal agency, these projects would not be subject to the requirements of section 7 (see other comment response under this issue for further discussion of the section 7 consultation process). If these projects result in take of ARS, the provisions of section 9 would apply. As stated in the "Available Conservation Measures" section, existing discharges into waters supporting the species that are carried out in accordance with existing regulations and permit requirements generally would not constitute a taking of ARS.

The States, with assistance from and oversight by the U.S. Environmental Protection Agency (EPA), set water quality standards that are presumably protective of aquatic life, including the ARS. If new information indicates that current water quality criteria are insufficient to prevent the likelihood of jeopardy to the ARS, new standards may be needed. In this instance, the EPA would consult with us under section 7 of the Act to determine appropriate standards. However, we believe that no significant increase in regulatory burden regarding waste water discharge permits would result from listing of the ARS.

Comment: Nineteen respondents wanted to know what impact this listing would have on the use of agricultural chemicals. Another was concerned that listing would hinder ability to obtain section 18 exemptions under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

Service Response: The EPA, during its pesticide registration process, consults with us to determine if a pesticide will likely jeopardize the continued existence of any federally listed species. If we determine that the application of the chemical is likely to jeopardize a species, we provide reasonable and prudent chemical application alternatives, if any, that would avoid the likelihood of jeopardy. These alternatives generally consist of some type of application restriction to protect the species (e.g., prohibit pesticide application within a prescribed distance from an inhabited stream reach). Thus, it is possible that we could require restrictions on the use of a pesticide to avoid jeopardizing the ARS.

Although there may be some added restrictions to pesticide use as a result of this listing, we believe that the resulting impacts to pesticide users will be minimal. We have already assessed the stream reaches inhabited by the ARS that are populated with previously listed species (interior least tern and bald eagle (*Haliaeetus leucocephalus*)). Additionally, some pesticides reviewed for registration are not believed to be harmful to fishes and no restrictions are applied. If we find a pesticide to be harmful to a species, pesticide users can sometimes use other unrestricted, alternative chemicals to control the same pest.

Comment: Fifteen commenters stated that listing the ARS would have the same implications for the High Plains aquifer as listing did for the Edwards Aquifer.

Service Response: We do not expect the implications to be the same because the two situations differ. The High Plains aquifer is not a porous limestone, karst aquifer, as is the Edwards Aquifer. Recharge in the southern portions of the High Plains Aquifer is no more than 2.5 cm (1 in) annually (Opie 1993). Although discharge from the High Plains Aquifer is important to streamflow in the western portions of the Arkansas River basin (Luckey and Becker 1998), the ARS is not an obligate spring inhabitant. Several of the listed species occurring in the Edwards Aquifer Region are entirely dependent on spring discharge for habitat maintenance or actually reside underground within the aquifer.

Comment: Numerous (280) commenters stated that listing or designation of critical habitat would result in the Federal government regulating or restricting the use of surface/stream water and groundwater within the Arkansas River basin. Similarly, one respondent stated that although pumping from the aquifer may one day cease to be economically feasible, the free enterprise system must determine when this occurs, not a fish or the Federal government.

Service Response: The listing of the ARS does not, in itself, restrict groundwater pumping or stream water diversions, does not in any way limit or usurp water rights, and does not violate State or Federal water law. Likewise, we have no authority to regulate surface water or groundwater. However, groundwater pumping or a surface water withdrawal that would dewater a stream or reduce base flows to the point that a take of ARS occurred would be a violation of section 9 of the Act.

We believe that groundwater pumping at existing rates does not pose an immediate threat to remaining ARS aggregations in the Canadian River in Texas and Oklahoma, but that withdrawals at existing rates will eventually deplete the aquifer to the point that streamflows will be reduced and ARS will be affected. Because withdrawals of groundwater and surface water at current rates have already reduced streamflows in other areas of the ARS historic range in western Oklahoma and Kansas, northern Texas, and eastern New Mexico, continued withdrawals at current rates will further diminish streamflow and make habitat more unsuitable for ARS. In the currently occupied range of the ARS, withdrawals will likely cause adverse effects in the foreseeable future unless mitigating actions are implemented. In the long term, groundwater withdrawals must be reduced to the point that they do not exceed recharge, or ARS habitat in the western reaches of the Arkansas River basin will ultimately be lost. A recent report by the USGS (Luckey and Becker 1998) demonstrates the predevelopment influence of the High Plains aquifer on streamflows in the western reaches of the Arkansas River basin. However, we recognize that groundwater pumping is not entirely responsible for reduced streamflows and the demise of the ARS in the Arkansas River basin.

We intend to fully address the implications of groundwater withdrawals and diversions of surface water during the recovery process. Generally, we will support and encourage the States in their efforts to increase irrigation efficiency and improve conservation of groundwater sources in the High Plains. Groundwater management districts in the Texas High Plains have aggressively encouraged implementation of water-saving technologies that have minimized annual depletion. For example, low head, low pressure sprinkler (LEPA) systems have largely replaced high

pressure sprinkler systems in the Texas High Plains.

Some other States do not have underground water conservation districts or similar groups that encourage water conservation to the same extent. Unfortunately, conversion to LEPA systems in other States has not been as widespread. Flood irrigation and high pressure center pivot and side roll systems are still often used in western Oklahoma and Kansas. Conservation of the High Plains aquifer, and the resulting benefits to streamflow within the Arkansas River basin, will not occur without the participation of other States. We believe voluntary conservation of the groundwater resource will be more effective in recovery efforts for the ARS than restricting or otherwise regulating withdrawals.

Comment: Two commenters stated that groundwater withdrawals in the extreme southern portion of the High Plains aquifer do not influence groundwater levels or streamflows in the Canadian River basin and that we mislead the public with these statements.

Service Response: We agree that this portion of the High Plains aquifer appears to have little influence, if any, over groundwater levels or streamflows within the Canadian River basin in Texas.

Comment: Four commenters stated that listing might impose additional cuts on oil and gas development, causing imports of foreign oil to rise.

Service Response: The listing of the ARS will not, in itself, restrict oil and gas development. However, if such development is funded, authorized, or carried out by a Federal agency, that agency has an obligation to evaluate it's activities for possible effects on listed species. If such activities may adversely affect the ARS, then some conservation actions may be necessary. Use of water from the High Plains aquifer for secondary oil recovery is not likely to be restricted as a result of this listing. We believe voluntary conservation of the groundwater resource will be more effective in recovery efforts for the ARS than restricting or otherwise regulating withdrawals.

Peer Review

We routinely solicit comments from parties interested in, and knowledgeable of, taxa which have been proposed for listing as threatened or endangered species. On May 7, 1993, we mailed a summary of the available status information on the ARS to 72 Federal and State agencies, organizations, and knowledgeable individuals, including 10 university scientists familiar with the status of fishes in the Arkansas River basin. We solicited their comments on life history, threats, and the need to propose this species under the Act. We received 13 responses.

Of the 13 respondents, the National Park Service, the Corps' Tulsa District, Kansas Water Office, and a fishery scientist from Texas Tech University provided no new information. The Bureau submitted information on the Lake Meredith Salinity Control Project. The TPWD submitted known collection records and stated that the last recorded observation in Texas was from 1954. Two acknowledged scientific authorities and one research assistant from Oklahoma State University responded that the status and threats we presented were accurate and supported listing. A highly respected fisheries ecologist from the University of Oklahoma commented that periodic scientific collecting would not harm the species and stated that modification of streamflow was the primary threat. A biologist employed by the State of Oklahoma, who has annually surveyed fish communities throughout the State since 1976, submitted information relative to the status of the species. Two of our offices, one in Kansas and one in New Mexico, also provided status information. Our New Mexico Ecological Services Field Office concurred that listing of the Pecos River population of the ARS was not appropriate. The most extensive comments were submitted by the New Mexico Interstate Stream Commission. They did not express an opinion on the need to list but did provide considerable information on threats to the species. We considered all of the information provided in preparing this rule.

A July 1, 1994, policy on peer review (59 FR 34270) requires us to solicit peer review on our listing proposals from a minimum of three independent peer reviewers. We sent copies of the proposed rule to 20 appropriate and independent specialists who have extensive knowledge or expertise in the life history, taxonomy, and ecology of the ARS. All of these specialists were employed at universities within the States affected by the proposed rule. We received one response which expressed support for the proposed listing and provided additional insight into threats affecting the species. The remaining reviewers did not respond to our request. We also met with USGS staff in Oklahoma to discuss threats affecting this species.

We also requested and/or received comments on the proposed rule from a variety of Federal, State, county, and private individuals, including all parties known to us having expertise regarding the ARS. Additionally, the State fish and game agencies as well as the State water management agencies were requested to comment. The game and fish agencies in the States of Kansas, New Mexico, and Oklahoma supported listing. The TPWD opposed listing the species in Texas. Various State water management agencies and the USGS provided information on threats to the species. We considered all of these comments in preparing this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Arkansas River basin population of the ARS is not in imminent danger of extinction. However, we have determined that this population is likely to become in danger of extinction within the foreseeable future and, therefore, should be listed as a threatened species.

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a). These factors and their application to the Arkansas River basin population of the ARS (*Notropis girardi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The primary threat facing the ARS and its associated habitat is the destruction and modification of habitat by one or more of the following: stream channelization, reservoir construction, streamflow alteration and depletion, and, to a lesser extent, water quality degradation.

Navigation improvements on the Arkansas River by the Corps began in Arkansas in 1832, 4 years before Arkansas adopted statehood (Corps 1989). Initially, constructed projects generally consisted of small improvements, such as clearing and snagging operations, until passage of the River and Harbor Act in 1946 authorized construction of the McClellan-Kerr Arkansas River Navigation System from the Mississippi River upstream to Catoosa, Oklahoma. Project construction began in the 1950s and intensified during the 1960s. Project segments from the Mississippi confluence upstream to Fort Smith, Arkansas were completed by 1969. By 1970, the channel had been extended up

the Arkansas River as far as Muskogee, Oklahoma and was essentially complete. The project included numerous bank stabilization and channel rectification projects, 17 locks and dams (12 in Arkansas), annual channel maintenance, and port facilities. Several of the locks and dams are multipurpose facilities, providing hydropower generation. The Corps maintains a minimum channel depth of 3 m (9 ft) and minimum width of 76 m (250 ft).

Channelization causes a variety of changes in natural stream channels, including altering the channel shape, form, and width, water depth, substrate type, stream gradient, streamflow, water velocity, and the hydroperiod (Simpson *et al.* 1982). Channelization of the Arkansas River has permanently altered and eliminated suitable habitat for the ARS and is largely responsible for the extirpation of the ARS within the State of Arkansas. This channelization has also contributed to the decline of the species in Oklahoma. In the Arkansas River downstream of Muskogee, Oklahoma, ARS were last observed in 1985 (Pigg 1991). Buchanan (1976) failed to collect any ARS specimens from the Arkansas River Navigation System in Arkansas, and fish collections between 1972 and 1988 from the Arkansas River near Fort Smith, Arkansas also failed to produce any ARS specimens (Robison and Buchanan 1988).

Reservoir construction is the most widespread cause of habitat loss for the ARS. Numerous multipurpose impoundments, including three mainstem reservoirs on the Arkansas River (John Martin, Kaw, and Keystone) and four mainstem reservoirs on the Canadian River (Conchas, Ute, Meredith, and Eufaula) have been constructed within the Arkansas River basin. Other large mainstem impoundments also have been constructed within the historical range of the ARS—Optima and Canton reservoirs on the North Canadian River, and Great Salt Plains Reservoir on the Salt Fork of the Arkansas River. All of these impoundments have inundated, dewatered, fragmented, or otherwise directly altered considerable sections of riverine habitat once inhabited by ARS. Arkansas River shiner populations persist only below Ute Reservoir in New Mexico and Lake Meredith in Texas (Bonner *et al.* 1997; Eric Altena, *in litt.* 1993; Larson *et al.* 1991; Pigg 1991).

Inundation following impoundment eliminated ARS spawning habitat, isolated populations, and favored increased abundance of predators both upstream and downstream of these reservoirs. Water releases from impoundments may be infrequent or non-existent in the western portions of the Arkansas River basin causing streams to be dewatered for considerable distances downstream of the reservoir.

In the eastern region of the basin, sufficient water is released to maintain downstream flows. However, these releases generally alter the natural flow regime for considerable distances downstream of the impoundment, establishing a stream environment unlike that which existed under pre-impoundment conditions. Regulation of streamflows has severely modified or eliminated natural cycles of flooding, drought, and sediment transport. Physical changes from these altered flows may include modifications to water velocity, wetted perimeter (amount of streambed exposed to water at any given flow), water depth, streambed and bank erosion, and suspension and re-distribution of bed and bank sediments.

Impoundments also function as barriers, fragmenting populations and habitat into smaller, more isolated units. These fragmented sections are then more likely to be affected by influences from external factors (e.g., localized drought, water withdrawals, permitted and unpermitted wastewater discharges). Once the habitats are isolated, other aggregations of ARS can no longer disperse into them and help maintain or restore populations of ARS there.

In 1952, the ARS was believed to inhabit the entire Arkansas River mainstem in Kansas, but was already suspected to be declining due to the construction of John Martin Reservoir 10 years earlier on the Arkansas River in Bent County, Colorado (Cross *et al.* 1985). By 1960, the species had disappeared from the Arkansas River mainstem west of Wichita, Kansas and was absent from the entire Kansas portion of the Arkansas mainstem by 1983 (Cross *et al.* 1985).

Arkansas River shiners were apparently abundant in the Arkansas River near Tulsa, Oklahoma prior to construction of Keystone Reservoir in 1964 (Pigg 1991). Following addition of hydropower at Keystone Dam in 1968, the resultant flow alterations severely depleted ARS populations. The ARS was last observed from the section of the Arkansas River between Keystone Reservoir and Muskogee, Oklahoma, in 1982. Kaw Reservoir, another Arkansas River mainstem impoundment, located upstream of Keystone Reservoir, became operational in 1976. Arkansas River shiners were last observed downstream of Kaw Reservoir in 1986 (Larson *et al.* 1991, Pigg 1991).

On the Canadian River, Eufaula Reservoir, Lake Meredith, Conchas Reservoir, and Ute Reservoir have impacted the ARS. Construction of Conchas Reservoir in 1938 ultimately led to the extirpation of upstream populations. Flows in the Canadian River prior to construction of Conchas Reservoir, as measured at Logan, New Mexico (before Ute Reservoir was completed in 1963), averaged 11.1 cubic m/s (392 cfs). Flows declined to 7.6 cubic m/s (270 cfs) after Conchas Reservoir was built. Flows at Logan declined to 1.1 cubic m/s (38 cfs) after construction of Ute Reservoir.

Prior to completion of Eufaula Reservoir, ARS were abundant in the Canadian River between the proposed dam site and the Arkansas River (Pigg 1991). Arkansas River shiners have not been collected from this reach of the Canadian River since the reservoir became operational in 1964. The disappearance of ARS from the 43-km (27-mi) section of the Canadian River below Eufaula Reservoir has been attributed to rapid water level fluctuations occurring during hydropower generation and altered conditions favoring an abundant predatory fish population (Pigg 1991).

Lake Meredith was constructed by the Bureau in 1965 and conservation storage is presently managed by the CRMWA. Prior to construction of the reservoir, historical streamflow measured at Canadian, Texas, 121 river-km (75 river-mi) below Lake Meredith, averaged 15.5 cubic m/s (549 cfs). Releases from Lake Meredith are now infrequent to non-existent (Williams and Wolman 1984) and have considerably altered flows in the Canadian River downstream of the reservoir. Annual discharge at Canadian, Texas now averages only 2.4 cubic m/s (83.7 cfs). Principal sources of water to the Canadian River below Lake Meredith are wastewater discharges, tributary inflows, and groundwater discharges (Buckner *et al.* 1985). Although ARS persist in the Texas portion of the Canadian River some 121 river-km (75 river-mi) downstream of Lake Meredith, remaining populations are small.

Reduced flows downstream of Lake Meredith, and to a lesser extent below Ute Reservoir, have considerably altered the morphology of the Canadian River and have reduced the extent of suitable habitat for ARS. Stinnett *et al.* (1988) examined a 370-km stretch of the Canadian River and associated 72,843 hectares (ha) (179,495 acres (ac)) of floodplain between the western Oklahoma border and the western

Pottawatomie County line near Norman, Oklahoma. Between 1955 and 1984, the amount of riverine wetlands (shoreline and open water) had decreased by about 50 percent. Sandbar acreage alone had been reduced by 54 percent. Wetland and associated floodplain changes were principally the result of hydrological modifications due to the influence of Lake Meredith (Stinnett *et al.* 1988). The lack of significant scouring flows permitted the encroachment of vegetation into the channel, reducing channel width by almost 50 percent since 1955. Although ARS persist in the Canadian River downstream of Ute Reservoir and Lake Meredith, the reduction in available habitat has likely suppressed shiner populations in affected reaches. Habitat alterations associated with reduced flows downstream of Lake Meredith are considered to be a significant, ongoing threat to the continued existence of the ARS within the Canadian River.

Surface water withdrawals constitute a small percentage of the total water used within the western sections of the historical range of the ARS, primarily because of the limited number of impoundments and elevated levels of chlorides. However, surface flows in the Cimarron River upstream of Waynoka, Oklahoma are affected by several diversions for irrigation. Within the western portion of the Arkansas River basin, groundwater is an extremely important water source due to limited surface supplies and lack of precipitation during the summer months (Oklahoma Water Resources Board 1997, 1990, 1980; Kansas Water Office and Kansas Division of Water Resources 1992; Texas Water Resources Board 1990; Stoner 1985; Texas Department of Water Resources 1984). For example, withdrawals from western Oklahoma aquifers account for about 80 percent of the State's total groundwater usage (Oklahoma Water Resources Board 1990). Irrigation of croplands in the basin is the dominant use of this water. Withdrawal from the High Plains aquifer and from alluvial and terrace deposits associated with the major river systems in conjunction with diversion of surface water has affected streamflow in several of the major tributaries. Kromm and White (1992) state that streamflow has been dramatically reduced by groundwater withdrawals in western Kansas and has eliminated aquatic ecosystems in many areas of the High Plains.

During the period from 1950 to 1975, water tables receded from 3 m (10 ft) to more than 30 m (100 ft) over much of southwestern Kansas (Cross *et al.* 1985). Between 1955 and 1980, declines in water levels by as much as 31 m (102 ft) have been recorded from the High Plains Aquifer in Oklahoma (Oklahoma Water Resources Board 1980). In 1960, there were about 400 groundwater wells in the Oklahoma panhandle; by 1974, the number of wells had risen to 2,067 (Oklahoma Water Resources Board 1980). By 1988, there were an estimated 3,200 high capacity wells overlying the Ogallala Aquifer in western Oklahoma alone (Oklahoma Water Resources Board 1990).

In Texas, withdrawals of groundwater in the Canadian River Basin were as much as 33 times higher than the annual natural recharge in 1980 and irrigation return flows in the Basin are negligible (Texas Department of Water Resources 1984). From 1980 to 1994, Dugan and Sharpe (1996) documented a nearly continuous area of decline exceeding 3 m (10 ft) in the Central High Plains subregion of the aquifer, including much of southwestern Kansas, portions of the Oklahoma Panhandle, and much of the northern Panhandle of Texas. The water level declines in the Central High Plains subregion were the largest, both in area and magnitude of decline, of any in the entire High Plains aquifer. Even precipitation that averaged about 5 cm (2 in) above normal from 1981–93 in the Central High Plains appeared to have a minimal effect on the large rate of water level decline (Dugan and Sharpe 1996). Portions of this subregion also showed evidence of a long-term decline in the amount of irrigated cropland acreage during this same period.

Streamflow is the largest natural discharge from the aquifer and pumping from the aquifer has caused water level declines and streamflow reductions (Luckey and Becker 1998). The relationships between groundwater pumping and river flow are complicated. Generally, when groundwater is pumped faster than it is restored, water tables drop, channel seepage ceases, and streams dry up. Under these conditions, suitable habitat to support ARS populations is non-existent.

The Canadian River appears to have been affected the least by water withdrawals from the High Plains aquifer primarily because much of the Canadian River in Texas and New Mexico has cut below the water bearing strata and the alluvium has not been significantly tapped as a source of water. Much of the land immediately adjacent to the Canadian River in Texas is rangeland and relatively little groundwater use occurs. Upstream of the Hutchinson-Roberts county line, including Lake Meredith, the Canadian River stream bed is below the elevation of the High Plains aquifer. Induced recharge of the High Plains aquifer by the Canadian River within this segment, caused by a lowering of the water table, is not likely to occur. The primary influence of the High Plains aquifer on streamflow within this reach would be predominantly through spring flow and similar emissions (e.g., natural discharge) where the water table intersects the land surface.

Springs and seeps in the Canadian River basin of Texas issue largely from Ogallala sand, gravel, and caliche, and from Triassic sandstone (e.g. Dockum and Santa Rosa formations), with a few flowing from Permian dolomite (Brune 1981, Peckham and Ashworth 1993). Upstream of Lake Meredith, Brune (1981) identified 57 springs or seeps from Oldham and Potter counties and another 25 from Hutchinson County. In his discussion of the importance of these water bearing formations and the effects of groundwater withdrawal on spring flow, Brune (1981) stated that the water tables in the Ogallala and Dockum aquifers were rapidly being depleted and flow within the associated springs had declined or ceased to flow. However, the contribution of these springs and seeps to flow in the Canadian River upstream of Lake Meredith is relatively minor.

In 1937–38, prior to large scale development of the High Plains aquifer for irrigation, flow contributions from 56 known springs in Oldham and Potter counties were measured (Texas State Board of Water Engineers 1938a, 1938b). Measured flows from these springs totaled between 2 and 4 cfs. Prior to construction of Conchas Reservoir, New Mexico in 1938, 2–4 cfs represented only about 0.5–1 percent of the average annual discharge in the Canadian River, as measured at Logan, New Mexico, and less than one percent at Amarillo (USGS 1961, 1963). Based on this information, the influence of irrigation withdrawals from the High Plains aquifer on streamflows upstream of Lake Meredith appears to be insignificant, particularly compared to flow reductions caused by impoundment of the Canadian River in New Mexico.

Downstream of Lake Meredith, the Canadian River is below the elevation of the High Plains aquifer in Hutchinson County, but is confined within the sediments of the aquifer in Roberts and Hemphill counties (John Ashworth, Texas Water Development Board, *in litt.* 1995). Within Hutchinson County, as within the segment above Lake Meredith, contributions from springflow are the primary influence of the aquifer on streamflow. Unfortunately, we have

been unable to locate comparable historic spring flow information for the reach downstream of Lake Meredith. Brune (1981) provides information on flow from some 62 springs in Hutchinson, Hemphill, and Roberts counties. These springs generally have relatively low flows, with only Spring Lake Springs in Hutchinson County, Texas having a measured flow exceeding 1 cfs (Brune 1981). However, these measurements were taken in 1977 and 1978 after widespread irrigation development had already had its greatest effect on water levels in the High Plain aquifer. Consequently, we cannot determine the influence of groundwater pumping on the observed springflows with the available information. Considering the small contribution of springflow within this segment, we believe a reduction in spring flow is not likely to have had a profound impact on streamflows or habitat for the ARS. Certainly, any impact from a reduction or cessation of flows from these springs and seeps is considerably less significant than the influence of Lake Meredith on existing streamflows.

Downstream of the Hutchinson County segment, however, groundwater moves toward the river where it eventually either discharges as spring flow into the river or seeps into the alluvial deposits (John Ashworth, *in litt.* 1995). The potential for groundwater depletion to affect streamflows is much greater in this segment of the Canadian River. For example, a proposed project adjacent to the Canadian River in Roberts and Hutchinson counties, Texas has the potential to reduce median streamflows over the 50-year life of the project by as much as 25 percent, as measured at Canadian, Texas (Kathy Peters, USGS, *in litt.* 1998). The proposed project would also dewater White Deer Creek, a Canadian River tributary, over much of its length. This project ultimately would involve the pumping of some 1,200 cubic meters (40,000 acre-feet) of groundwater annually (Bureau 1997). Currently, no reliable means of augmenting streamflows in White Deer Creek or the Canadian River have been identified. Occurrences of the ARS in the Canadian River within the project are extremely rare. No ARS were reported from fish collections made by Texas Tech University, Bureau, and us from White Deer Creek or the Canadian River in 1998 (Shirley Shadix, Bureau, *in litt.* 1998). Only three ARS were reported captured by Texas Tech University at Canadian, Texas in 1995 (Gene Wilde, in *lit.* 1997). However, we are currently working with the Bureau and the CRMWA to identify feasible measures which would reduce the impacts of the proposed project.

Continued unmitigated groundwater withdrawal threatens to further reduce or eliminate baseflows in western sections of the Arkansas River basin. Fortunately, improved conservation, more efficient irrigation practices, and improved technology have resulted in less water demand over the last 5 years. However, precipitation and runoff contribute little recharge to the underlying aquifers. In the Canadian River basin in Texas, water demand is projected to decrease only slightly over the next 50 years primarily due to improvements in irrigation efficiency (Texas Water Development Board 1990). In Oklahoma, water use is projected to increase statewide over the next 50 years (Oklahoma Water Resources Board 1997). Municipal and industrial demands are expected to increase by about 30 percent and agricultural demands by 29 percent. Streamflows will continue to diminish despite declining agricultural demand in Texas and basinwide decreases in the amount of water used per irrigated acre.

Depletion of the High Plains aquifer is expected to continue to occur in Kansas, New Mexico, Oklahoma and Texas. When two below-average flow years occur consecutively, a short lived species such as the ARS can be severely affected, if not completely eliminated from portions of the river. Dewatering and reduced base flows, due to groundwater and surface water withdrawals, is considered a significant, ongoing threat to the ARS in southwestern Kansas, northwestern Oklahoma and the Texas panhandle (Larson *et al.* 1991, Cross *et al.* 1985).

The Bureau's Lake Meredith Salinity Control Project is designed to control brine water seeping into the Canadian River downstream of Ute Reservoir from a brine aquifer in New Mexico. The Bureau completed a Final Supplemental Environmental Assessment (EA) for the salinity control project in September 1995 (Bureau 1995). At that time, we were concerned with projected streamflow reductions as a result of the project. However, the Bureau has changed the scope of the salinity control project since they completed the EA and expects these changes to reduce the impacts of the project.

As originally proposed, the salinity control project would have reduced streamflow by 1.4 cfs, with a maximum project potential streamflow reduction of 3.2 cfs. A reduction of 1.4 cfs represents about a 35 percent reduction in the average baseflow of the Canadian River as measured at the downstream end of the project and a 12–14 percent reduction in average base flow as measured at the confluence of Revuelto Creek in New Mexico. The reduced project is now anticipated to reduce flows by only 0.7 cfs, with a maximum potential of 1.4 cfs. This represents an estimated flow reduction of 8–15 percent, with only minimal expectations of ever operating the project above the anticipated pumping rate of 0.7 cfs. Downstream of Revuelto Creek, the effects on streamflow from revised project operation are expected to be no more than 5 percent of average base flow.

In addition, the CRMWA anticipates no additional surface water withdrawals upstream of Lake Meredith, at least in Texas, once the project is operational (J.C. Williams, CRMWA, *in lit.* 1997). The State of New Mexico has expressed an intent to use Canadian River water below Ute Reservoir in conjunction with the Eastern New Mexico Water Supply Project (Bureau 1995). These withdrawals would affect Canadian River streamflows, particularly between Ute Dam and the confluence of Revuelto Creek. However, the future of this project is unclear. A Special Environmental Report prepared by the Bureau (1993) on this project recommends that base flows of the Canadian River below Ute Reservoir be maintained at a minimum of 2 cfs. Such mitigation would preclude dewatering of the Canadian River below Ute Reservoir but would still result in streamflow reductions. Arkansas River shiner populations in this 219-km (136-mi) reach of the Canadian River are isolated from other populations by Ute and Meredith reservoirs. Any additional flow reductions in this reach could severely deplete these populations.

We believe that water quality degradation within the Arkansas River basin can cause localized impacts to ARS populations, particularly in areas with rapidly expanding urban populations. Water quality in the Canadian River in Texas generally declines as the river flows eastward. The Canadian River traverses oil and gas producing areas and receives municipal sewage effluent and manufacturing return flows, all of which degrade existing water quality (Texas Department of Water Resources 1984). Water quality within the Canadian River begins to improve as the river flows through the sparsely populated counties in western Oklahoma. However, several discharges influence water quality in the remainder of the Canadian River. The wastewater treatment facility for the City of Norman is the largest single

discharge into the Canadian River in Oklahoma.

Poor water quality in the North Canadian River near Oklahoma City and in the Arkansas River at Tulsa are also believed to have contributed to localized declines in ARS populations. The North Canadian River from western Oklahoma City downstream to Eufaula Reservoir is considered to be the most nutrient enriched stream in Oklahoma (Pigg *et al.* 1992). The ARS has not been found in this section of the North Canadian River since 1975 (Jimmie Pigg, pers. comm. 1997). In 1997, there were 623 active National Pollution Discharge Elimination System (NPDES) permits in Oklahoma. The majority of these are in the Arkansas River basin.

Some agricultural practices have contributed to water quality degradation in the Arkansas River basin, likely resulting in impacts to ARS aggregations. Agriculture can be a key contributer of nutrients, sediments, chemicals, and other types of non-point source pollutants, primarily due to runoff from range and pastureland and tilled fields. The EPA (1994, 1998) found that agricultural practices were the primary source of water quality impairment in both rivers and lakes and were responsible for the impairment of 72 percent of the stream miles assessed nationwide in 1992 and 25 percent in 1996. The decline in 1996 was largely due to an expansion of the national estimate of total river miles to include nonperennial streams, canals, and ditches, which essentially doubled the total river miles surveyed since 1992 (EPA 1998). Siltation and nutrient pollution were the leading causes of water quality impairment in both studies. Increased nutrients promote eutrophication of aquatic ecosystems, including the growth of bacteria, algae, and nuisance aquatic plants, and lower oxygen levels.

Overgrazing of riparian areas also can affect ARS habitat. Overgrazing in riparian zones is likely to be locally detrimental and is one of the most common causes of riparian and water quality degradation (Kauffman and Krueger 1984). High livestock densities may result in excessive physical disturbances, such as trampling, and changes in water quality. Trampling of pool margins and thinning of vegetation from overgrazing induce changes in the plant community structure, species composition, relative species abundance, and plant density which are often linked to more widespread changes in watershed hydrology. For example, soil compaction may increase pasture runoff, leading to erosion and increased siltation in streams.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We have no evidence that the ARS is being overutilized for commercial, recreational, scientific, or educational purposes. We speculate that the ARS may occasionally be collected for personal use as bait by individual anglers. The States of Kansas, New Mexico, Oklahoma, and Texas allow the harvest of fish for personal use as bait. The introduction of the ARS into the Pecos River, presumably by anglers, provides some evidence that ARS are at least occasionally collected and used as bait. A record also exists for the Red River system in Oklahoma that was presumed to have been a bait bucket release (Cross 1970). However, the rarity of the ARS outside of the Canadian River would indicate that this fish is not likely to occur in the retail trade or to be collected for personal use very frequently.

Larson *et al.* (1991) reported that there is no evidence that the species has been adversely affected by the commercial harvest of bait fish. The reported capture of predominantly large species (plains minnows (*Hybognathus placidus*)) and the continued existence of the ARS in portions of the South Canadian River was the primary evidence used in arriving at this conclusion. Larson *et al.* (1991) suggested that slender-bodied fishes such as ARS would constitute only a small percentage of the commercial harvest, assuming the commercial bait industry used large-mesh seines as the major mode of capture. However, other evidence described below indicates that ARS, while perhaps not a highly sought commercial species, is being affected by the commercial bait industry or is being harvested for personal use as bait.

The greatest potential threat to ARS from incidental collection occurs in the State of Oklahoma. In 1985, the Cimarron and South Canadian rivers produced over 55 percent of the bait fish harvested in Oklahoma, providing over 20,846 kilograms (kg) (45,958 pounds (lbs)) of fish (Peterson 1986). Plains minnow, which may reach total lengths of 127 cm (5 in), was the primary species reported harvested by the commercial minnow dealers. In 1996, the Cimarron and South Canadian rivers produced slightly less than 34 percent of the bait fish harvested in Oklahoma, providing over 17,663 kg (38,941 lbs) of fish (Wallace 1997). River shiners (species unreported) and plains minnows were reported to be the primary species harvested. From 1980–81 to 1996, the percent of the total harvest taken from the South Canadian and Cimarron rivers varied from 67 percent in 1982 (Peterson and Weeks 1983) to 34 percent in 1996 (Wallace 1997). The amount of fish taken varied from over 37,762 kg (83,252 lbs) in 1982 to 17,663 kg (38,941 lbs) in 1996. The lists of species harvested did not include ARS.

The rapid establishment of the ARS in the Pecos River, presumably from the release of bait fish, indicates that a sufficient number of fish were released in a single event to establish a reproducing population. If ARS occur only occasionally in the commercial harvest or are rarely used as bait, several releases over a short period of time would be required to ensure that a large enough population existed to facilitate natural reproduction. In either instance, the evidence indicates that ARS may occasionally occur in commercial catches in fairly large numbers or are occasionally being harvested for bait. The capture of four individuals from the North Canadian River in 1990 also suggests that ARS are occasionally being used as bait fish.

Lists of fish species reported captured by commercial bait dealers are not always accurate and likely fail to report the capture of ARS. Based on the large percentage of golden shiners (*Notemigonus crysoleucas*) reported captured by commercial bait dealers in 1989, Larson *et al.* (1991) believed the lists to be suspect. River shiners are often one of the primary "species" reported harvested by commercial bait dealers. However, the river shiner (*Notropis blennius*) has not been recorded from several of the rivers where commercial minnows are harvested (Miller and Robison 1973). Larson *et al.* (1991), in their survey for ARS, also did not report capturing a single river shiner from 128 sampling localities within the Arkansas River basin. We suspect that the term "river shiner" is used to represent all minnows captured, except for the plains minnow.

The large numbers of fish collected from the South Canadian River would imply that ARS could constitute a measurable percentage of the by-catch taken during commercial harvest. While there is no conclusive evidence to suggest that commercial harvest has contributed to the decline of the ARS, take of this species during commercial bait harvest may be significant which suggests that the effect of this factor warrants further investigation.

The most significant threat to the ARS from the commercial bait industry or bait collection for personal use is the potential for introduction of non-indigenous fishes into occupied ARS habitat (see factor E of this section).

C. *Disease or predation.* No studies have been conducted on the impact of disease or predation upon the ARS; therefore, the significance of these threats upon existing populations is unknown. There is no direct evidence to suggest that disease threatens the continued existence of the species. Disease is not likely to be a significant threat except in isolated instances or under certain habitat conditions, such as crowding during periods of reduced flows, or episodes of poor water quality (e.g., low dissolved oxygen or elevated nutrient levels). During these events, stress reduces resistance to pathogens and disease outbreaks may occur. Parasites and bacterial and viral agents are generally the most common causes of mortality. Lesions caused by injuries, bacterial infections, and parasites often become the sites of secondary fungal infections.

Some predation of ARS by largemouth bass (*Micropterus salmoides*), green sunfish (*Lepomis cyanellus*), channel catfish (*Ictalurus punctatus*), and other fish species undoubtedly occurs, but the extent is unknown. Predation by aquatic birds (e.g., terns, herons, and egrets) and aquatic reptiles (e.g., snakes and turtles) also may occur. Plains fishes have evolved under adverse conditions of widely fluctuating, often intermittent flows, high summer temperatures, high rates of evaporation, and high concentrations of dissolved solids. These conditions are not favored by most large predaceous fish and tend to preclude existence of significant populations of these species. However, alteration of historic flow regimes and construction of reservoirs have created favorable conditions for some predatory species such as white bass (*Morone chrysops*) and striped bass (*M. saxatilis*). State and Federal fish and wildlife management agencies, through cooperative efforts to develop sport fisheries in these reservoirs, have facilitated expansion of the distributions of some predatory species. The impact of predation to the species is likely to be localized and insignificant, particularly where habitat conditions upstream of mainstem reservoirs are not favorable to the long-term establishment of abundant predatory fish populations.

D. *The inadequacy of existing regulatory mechanisms.* Federal and state laws and regulations can protect the ARS and its habitat to some extent. The State of Kansas lists the ARS as a State endangered species. The KDWP has designated portions of the mainstem Cimarron, Arkansas, South Fork Ninnescah, and Ninnescah rivers as critical habitat for the shiner (Kansas Administrative Regulation 23–17–2). A permit is also required by the State of Kansas for public actions that have the potential to destroy listed individuals or their critical habitat. Subject activities include any publicly funded or State or federally assisted action, or any action requiring a permit from any other State or Federal agency. Violation of the permit constitutes an unlawful taking, a Class A misdemeanor, and is punishable by a maximum fine of $2,500 and confinement for a period not to exceed 1 year. Kansas does not permit the commercial harvest of bait fish from rivers and streams.

The State of New Mexico lists the ARS as a State endangered species. This listing prohibits the taking of the ARS without a valid scientific collecting permit but does not provide habitat protection. The State of Oklahoma lists the ARS as a State threatened species, but like New Mexico, this listing does not provide habitat protection. The States of Arkansas and Texas provide no special protection for the species or its habitat.

While Kansas, New Mexico, and Oklahoma protect the ARS from take and/or possession, only Kansas addresses the problem of habitat destruction or modification. Only New Mexico provides significant protection from the potential introduction of non-native, competitive species. Licensed commercial bait dealers in New Mexico may sell bait minnows only within the drainage where they have been collected and cannot sell any State-listed fish species.

The Kansas legislature can identify a minimum desirable streamflow for a stream as part of the Kansas Water Plan. The Chief Engineer is then required to withhold from appropriation the amount of water necessary to establish and maintain the minimum streamflow. New Mexico and Oklahoma water law does not include provisions for acquisition of instream water rights for protection of fish and wildlife and their habitats. However, Oklahoma indirectly provides some protection of instream uses, primarily by withholding appropriations for flows available less than 35 percent of the time.

Section 404 of the Clean Water Act (33 U.S.C. 1251–1376) is the primary Federal law that could provide some protection for aquatic habitats of the ARS, if the habitats are determined by the Corps to be Federal jurisdictional areas (i.e., waters of the United States). Listing of the ARS will require the Corps to consult and obtain our concurrence prior to issuing any section 404 permit affecting ARS habitat.

The NEPA requires Federal agencies to consider the environmental impacts of their actions. The NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision making process. It does not require Federal agencies to select the alternative having the least significant environmental impacts. A Federal action agency may decide to choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

The status and threats to the ARS reflect, in part, the inability of these laws and regulations to adequately protect and provide for the conservation of the ARS. Even listing as threatened or endangered by the States of Kansas, New Mexico, and Oklahoma has not reversed the decline of this species.

E. *Other natural or manmade factors affecting its continued existence.* The overall trend in the status of this species is characterized by dramatic declines in numbers and distribution despite the fact that this species evolved in rapidly fluctuating, harsh environments. The occurrence of a single, catastrophic event, such as the introduction of competitive species, or a prolonged period of low or no flow, would increase the likelihood of extinction. Arkansas River shiners are undoubtedly capable of recovering from drought, provided other factors have not irreparably degraded their habitat. The fragmentation and apparent isolation of self-sustaining populations of ARS renders the remaining populations vulnerable to any natural or manmade factors that might further reduce population size. Recolonization of some reaches following a significant drought or period of no flow will be considerably reduced by habitat fragmentation, and may require human intervention.

The introduction and establishment of the Red River shiner, a species endemic to the Red River drainage, into the Cimarron River in Oklahoma and Kansas has had a detrimental effect on the ARS (Cross *et al.* 1983, Felley and Cothran 1981). The Red River shiner was first recorded from the Cimarron River in Kansas in 1972 (Cross *et al.* 1983) and Oklahoma in 1976 (Marshall 1978). The Red River shiner has since colonized the Cimarron River and frequently may be a dominant component of the fish community (Cross *et al.* 1983, Felley and Cothran 1981). The morphological characteristics, population size, and ecological preferences exhibited by the Red River shiner suggest that it

competes with the ARS for food and other essential life requisites (Cross *et al.* 1983, Felley and Cothran 1981). The unintentional release of Red River shiners, or other potential competitors, into the Canadian River by anglers or the commercial bait industry is a potentially serious threat and could lead to decimation or extirpation of the remaining ARS populations.

Accidental or intentional releases of the Red River shiner within stream segments occupied by the Arkansas River shiner have occurred on several instances but no populations have become established outside of that in the Cimarron River (Luttrell *et al.* 1995). A recent record of another Red River endemic, the Red River pupfish (*Cyprinodon rubrofluviatilis*), from the Salt Fork of the Arkansas River (Pigg *et al.* 1997b) indicates that releases of fish from the Red River continue.

The Red River, native habitat for the Red River shiner and Red River pupfish, exhibits high concentrations of chlorides due to contributions from brine seeps and springs. Concentrations in some tributaries often exceed that of sea water. Within the Arkansas River basin, the Cimarron River and the Salt Fork of the Arkansas River also exhibit elevated levels of chlorides due to the influence of brine seeps and springs. Although studies have not been conducted, we suspect that the elevated chloride loads in the Cimarron River may be at least partially responsible for the success of the Red River shiner in this stream system. The ability of the Red River shiner to cope with elevated chloride concentrations may have provided a competitive advantage over the native ARS aggregations. Lower chloride concentrations in other stream systems may partially explain why Red River shiners have not yet become established in other Arkansas River tributaries after accidental introductions.

While the introduction of non-indigenous fishes do not fully account for the disappearance of ARS within the Arkansas River basin, particularly outside of the Cimarron River, competition with introduced species can have a significant adverse impact on ARS populations under certain conditions. The consequences of non-indigenous species on native organisms have been widely documented and are summarized by U. S. Congress, Office of Technology Assessment (1993).

The reproductive characteristics and specialized spawning and early life history requirements of this species makes it especially vulnerable to certain natural or manmade factors, such as drought. Successful reproduction of the ARS appears to require precise flow conditions conducive to breeding and embryonic development. Spawning is triggered, in part, by abrupt increases in streamflow during the late spring or summer (Cross *et al.* 1983, Moore 1944). Streamflows favorable to spawning must be sustained over at least a 24-hour period to ensure complete embryonic and larval development. As discussed under factor A of this section, suitable habitat conditions are becoming scarce and where conditions are not favorable, populations have rapidly declined.

Declining populations of the ARS may also be due to poor survival of juveniles. Bestgen *et al.* (1989) observed that spawning in ARS appeared to be primarily limited to Age-I individuals, based on an absence of Age-I and older fish from collections made after the spawning period. The apparent extremely high post-spawning mortality observed in Pecos River ARS populations suggests that the reproductive contribution of Age-II or older individuals is very limited. Thus, the continued existence of ARS populations may be almost entirely dependent upon successful annual reproduction and subsequent recruitment of juvenile individuals into the population. The loss of a single reproductive event or cycle would seriously reduce recruitment, and possibly lead to localized extirpations. The fragmentation of ARS habitat by impoundments intensifies the effects of failed reproduction by hindering repopulation following rapid declines or localized extirpations.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to issue this final rule. Based on this evaluation, the preferred action is to list the Arkansas River basin population of the Arkansas River shiner (*Notropis girardi*) as threatened due to its significantly reduced range, including the apparent extirpation of the shiner in Arkansas and throughout much of its historical range in Kansas and Oklahoma. Threatened status, which means that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, more accurately reflects the threats facing this species than does endangered status, the designation we proposed on August 3, 1994 (59 FR 39532). New information recieved during the comment period revealed that modifications to the Lake Meredith Salinity Control Project resulted in streamflow reductions that were less severe than originally projected in 1994. Also, the influence of the High Plains Aquifer on streamflows in the Canadian River upstream of Lake Meredith is less than originally believed, and the threat from groundwater withdrawals on the Texas High Plains does not appear to be as severe or as imminent as first suspected. In addition, new information shows that the aggregations of Arkansas River shiners in the reach between Ute Reservoir and Lake Meredith are stable and not declining, as presented in the proposed rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

We find that the designation of critical habitat for the Arkansas River basin population of the ARS is not prudent due to lack of benefit. The prohibition of destruction or adverse modification of critical habitat is provided under section 7 of the Act and only applies to Federal agency actions (see "Available Conservation Measures" section). Under section 7, actions funded, authorized, and carried out by Federal agencies may not jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat. To "jeopardize the continued existence" of a species is defined as an action that

appreciably reduces the likelihood of its survival and recovery. "Destruction or adverse modification of critical habitat" is defined as an appreciable reduction in the value of critical habitat for the survival and recovery of a species.

Future conservation and recovery of the ARS will emphasize remaining aggregations and habitats in the Canadian River. All suitable ARS habitat in the Canadian River is believed to be occupied by the species. Therefore, Federal actions involving the Canadian River that would cause habitat alteration of a severity that would result in destruction or adverse modification of critical habitat would also jeopardize the continued existence of the Arkansas River shiner. Furthermore, reasonable and prudent alternatives that would remove the likelihood of jeopardy would also remove the likelihood of destruction or adverse modification of critical habitat. Due to the considerable overlap in the jeopardy and adverse modification standards associated with the ARS in the Canadian River, designation of critical habitat would provide no additional benefit to the species when dealing with the Federal actions under section 7 of the Act.

The major threat to the ARS is the depletion of surface and ground waters by non-Federal entities (e.g., State water agencies, ground water and irrigation districts, private individuals). In most cases, the management of water is under the jurisdiction of the States and is not under the purview of section 7 of the Act. Therefore, the designation of critical habitat would provide no benefit in addressing this important threat to the ARS.

The benefits of listing, specifically the jeopardy standard under section 7 and the provisions of sections 9 and 10 of the Act, will provide the principal mechanisms to protect ARS populations and habitats. For these reasons, the designation of critical habitat for the ARS would provide no benefit to the species beyond that conferred by listing alone and is, therefore, not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection and consultation under section 7, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed to be listed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

A number of Federal agencies have jurisdiction and responsibilities potentially affecting the ARS, and section 7 consultation may be required in a number of instances. Federal involvement is expected to include the Bureau's Canadian River Project and operation of the Corps' multi-purpose reservoirs throughout the Arkansas River Basin. The Corps will also consider the ARS in administration of Section 404 of the Clean Water Act. The EPA will consider the ARS in the registration of pesticides, adoption of water quality criteria, and other pollution control programs. The U.S. Department of Transportation, Federal Highway Administration will consider the effects of bridge and road construction at locations where known habitat may be impacted. The USDA NRCS will consider the effects of structures installed under the Watershed Protection and Floodwater Prevention program (Public Law 566). Also, the U.S. Forest Service will consider the effects of their management actions on the Cimarron and Kiowa National Grasslands.

The intent of the section 7 consultation process is to ensure that agency actions are implemented in a manner that will not jeopardize the continued existence of a listed species. We have conducted numerous section 7 consultations, and very rarely has the consultation process stopped a Federal action. In fact, in the vast majority of consultations the actions are implemented with little or no modification.

The USGS has recently initiated a water quality assessment of the High Plains aquifer under the National Water Quality Assessment program (NAWQA). Through this project the USGS will evaluate existing water quality problems in the aquifer and provide information that will help protect water quality in the aquifer.

The CRMWA, the non-Federal sponsor of the Lake Meredith Salinity Control Project, has agreed to implement certain conservation actions for the ARS. The CRMWA has agreed to—(1) conduct routine evaluations of flow conditions within the immediate project area, (2) adjust operation of the salinity control project to minimize any potential effect upon the ARS, and (3) monitor water quality within the affected stream segment (J.C. Williams, *in litt.* 1997). In response to provisions under the Supreme Court ruling in Oklahoma and Texas v. New Mexico, No. 109, the CRMWA also has agreed to cooperate with us and the State of New Mexico in scheduling releases from Ute Reservoir to benefit the ARS. The CRMWA has already sought our input in scheduling releases of excess waters from Ute Reservoir. Most recently, the CRMWA initiated releases on June 9, 1997, and concluded them in July 1997. Researchers at Texas Tech University are currently evaluating the effect of these releases on reproductive ecology of the ARS and will provide us and CRMWA with recommendations for scheduling any future releases. We anticipate that such releases will result in conservation benefits for the ARS.

The CRMWA also speculates that the reduction in salinity anticipated from operation of the salinity control project may hinder the establishment of Red River shiners within the affected reach of the Canadian River, should this non-native species be introduced upstream of Lake Meredith (J.C. Williams, *in litt.* 1997). While we have no conclusive evidence to support this premise, reduced salinities could indeed influence establishment of Red River shiners. The ARS exhibit preferences for certain water quality conditions (Polivka and Matthews 1997) which may differ from those preferred by the Red River shiner.

Reducing or eliminating incidental take of ARS during personal collections or commercial bait operations can be achieved through gear restrictions. State regulations requiring the use of seines with mesh sizes of 1.3 cm (0.5 in) or greater could minimize the capture of ARS during collections for bait. We intend to work with the States to ensure that collection of bait fish for personal or commercial uses does not reduce the abundance or distribution of the ARS.

Eliminating opportunities for introductions of non-indigenous fishes is more difficult. Commercial bait

operators should take steps to ensure that holding tanks have been thoroughly emptied and flushed before moving from one river basin to another. This is particularly important if collections are obtained from the Red River basin or the Cimarron River. Informing anglers of the potential harm from releases of unused live bait is also important.

Other general conservation measures that could be implemented to help conserve the species are listed below. This list does not constitute our interpretation of the entire scope of a recovery plan as discussed in the provisions of section 4(f) of the Act.

(1) Ensure that water extractions, diversions, and groundwater use for agriculture and municipal purposes do not adversely affect habitat of the ARS. Increase efforts to improve irrigation efficiency and implement appropriate water conservation measures.

(2) Closely monitor introductions of non-indigenous species. Develop and implement measures to minimize the accidental or intentional release of non-indigenous species. Initiate studies to determine the feasibility of and techniques for eradicating or controlling Red River shiners in the Cimarron River. If feasible, implement a control program.

(3) Monitor and maintain existing aggregations of ARS throughout the Arkansas River basin.

(4) Conduct studies to further define biological and life history requirements of the ARS.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. You should send requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103 (telephone 505/248–2914; facsimile 505/248–8063).

It is our policy (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not likely constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range.

The Service believes that, based on the best available information, the following actions will not likely result in a violation of section 9:

(1) Authorized taking of ARS in accordance with a permit issued by us pursuant to section 10 of the Act or with the terms of an incidental take statement pursuant to section 7 of the Act, or possessing specimens of this species that were collected prior to the date of publication in the **Federal Register** of this final regulation adding this species to the list of endangered and threatened species;

(2) Normal, lawful recreational activities such as hiking, trail rides, camping, boating, hunting, and fishing, provided unused bait fish are not released back into the water;

(3) Normal livestock grazing and other standard ranching activities within riparian zones that do not destroy or significantly degrade ARS habitat;

(4) Routine implementation and maintenance of agricultural conservation practices specifically designed to minimize erosion of cropland (e.g., terraces, dikes, grassed waterways, and conservation tillage);

(5) Existing discharges into waters supporting the ARS, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act); and

(6) Improvements to existing irrigation, livestock, and domestic well structures, such as renovations, repairs, or replacement.

Activities we believe could potentially harm the ARS and result in a violation of section 9 include, but are not limited to:

(1) Take, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, of ARS without a valid permit;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken ARS;

(3) Introduction of non-native fish species that compete or hybridize with, displace, or prey upon ARS;

(4) Unauthorized destruction or alteration of ARS habitat by dredging, channelization, impoundment, diversion, recreational vehicle operation within the stream channel, sand removal, or other activities that result in the destruction or significant degradation of channel stability, streamflow/water quantity, substrate composition, and water quality used by the species for foraging, cover, and spawning;

(5) Unauthorized discharges (including violation of discharge permits), spills, or dumping of toxic chemicals, silt, household waste, or other pollutants (e.g., sewage, oil and gasoline, heavy metals) into surface or ground waters or their adjoining riparian areas that support/sustain ARS;

(6) Applications of pesticides, herbicides, fungicides and other chemicals, including fertilizers, in violation of label restrictions;

(7) Withdrawal of surface or ground waters to the point at which baseflows in water courses (e.g., creeks, streams, rivers) occupied by the ARS diminish and habitat becomes unsuitable for the species.

Not all of the activities mentioned above will result in a violation of section 9; only those activities that result in "take" of ARS would constitute a violation of section 9.

The above lists only provide some examples of the types of activities that we would consider as likely or not likely to take ARS. You should direct questions regarding whether specific activities may constitute a violation of section 9 of the Act to the Field Supervisor, Oklahoma Ecological Services Office (see **ADDRESSES** section). You should mail requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits to the U.S. Fish and Wildlife Service, Endangered Species Permits, P.O. Box 1306, Albuquerque, New Mexico 87103–1306 (telephone 505/248–6649; facsimile 505/248–6922).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the

National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of references cited in this final rule, as well as others, is available upon request from the Oklahoma Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Ken Collins, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h) the following is added to the List of Endangered and Threatened Wildlife in alphabetical order under "FISHES":

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES:							
*	*	*	*	*	*	*	*
Shiner, Arkansas River.	*Notropis girardi*	U.S.A. (AR, KS, NM, OK, TX).	Arkansas River basin (AR, KS, NM, OK, TX).	T	653	NA	NA
*	*	*	*	*	*	*	*

Dated: November 13, 1998.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 98–31096 Filed 11–20–98; 8:45 am]

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Part IV

Department of Housing and Urban Development

24 CFR Parts 246 and 891

Rent Control Preemption for Supportive Housing for the Elderly and Persons With Disabilities; Final Rule

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 246 and 891

[Docket No. FR–4346–F–01]

RIN 2502–AH21

Rent Control Preemption for Supportive Housing for the Elderly and Persons With Disabilities

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD's rules regarding preemption of local rent control for assisted housing projects have not been updated to reflect the statutory replacement of the section 202 direct loan program with the section 202 and section 811 programs for capital advances and project rental assistance for projects for the elderly and persons with disabilities. This final rule accomplishes the necessary updating through revision of 24 CFR part 246 concerning rent control and 24 CFR part 891 concerning the current section 202 and section 811 programs. There is no change in HUD's policy of preempting local rent control for assisted housing programs.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Business Products, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, Washington, DC 20410–0500. Telephone (202) 708–2866. For hearing- and speech-impaired persons, this number may be accessed via TTY by calling the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: HUD's regulations at 24 CFR part 246 set forth the circumstances under which local rent control laws are preempted by HUD regulations from applying to housing projects which are owned by HUD or which are involved in HUD mortgage insurance or subsidy programs. In § 246.20, HUD identifies the projects that are subject to subpart C of the rule regarding subsidized projects, including "all projects with mortgages held by HUD that receive a subsidy in the form of * * * direct loans at below-market interest rates under section 202 of the Housing Act of 1959 * * *" In § 246.21, HUD states: "* * * it is in the national interest to preempt, and it (HUD) does hereby preempt, the entire field of rent regulation by local rent control boards (hereinafter referred to as board), or other authority acting pursuant to state or local law as it affects projects covered by this subpart." Section 246.22 sets forth procedures for project owners to seek HUD approval of increases in HUD-approved rental levels.

Section 246.20 is outdated because it does not reflect subsequent legislation affecting the section 202 program. At the time § 246.20 was issued, and until October 1, 1991, the section 202 program involved direct below-market interest mortgage loans from HUD to owners of projects for the elderly or persons with disabilities. After that date, section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended section 202 to provide a new Supportive Housing for the Elderly Program with capital advances and project rental assistance instead of direct loans. Existing section 202 projects continued to be subject to the "old" section 202 program. Section 811 of NAHA established a new program of Supportive Housing for Persons with Disabilities with capital advances and project rental assistance instead of direct loans. This program replaces the section 202 program for direct loans for projects for persons with disabilities. The regulations for the amended section 202 program and the section 811 program are in 24 CFR part 891.

The Department regards the section 202/811 programs as successors to the old section 202 direct loan program for purposes of rent control preemption. HUD controls the rents in section 202/811 projects through the Regulatory Agreement without regard to local rent control that would otherwise apply. However, HUD did not previously make a technical correction to § 246.20 to reflect the statutory development. In this final rule, HUD therefore amends § 246.20 to refer to section 202 as it existed prior to October 1, 1991. Rather than amend § 246.20 to also specifically refer to the successor section 202/811 programs, HUD instead has chosen to keep intact in part 891 all of the rules applicable to those programs, and therefore has provided a parallel rent control preemption in new § 891.185.

HUD is also updating the heading of Chapter VIII of 24 CFR to recognize that the chapter includes the regulations for the section 202 and section 811 Supportive Housing Programs.

Other Matters

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest". (24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is unnecessary and contrary to the public interest. Public procedure is unnecessary because no change in policy is involved. HUD is simply making a technical correction to its rent control regulations applicable to subsidized projects on which HUD holds a mortgage to reflect the legislative division of former section 202 into two sections of law, which collectively continue to provide for subsidy to the same classes of projects as the previous section 202, through a modified subsidy mechanism under which HUD will continue to hold a mortgage on the project. The public policy reasons for the rent control preemption stated in § 246.20 apply equally to the current section 202/811 programs. HUD considers that a change in policy necessitating public comment would be involved if HUD abandoned rent control preemption, rather than retaining it.

HUD also considers that prior public procedure would be contrary to the public interest because it could raise doubts as to whether HUD's preemption of rental control currently applies to section 202/811 projects with capital advances.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this interim rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely clarifies the application of existing regulations to the section 202/811 programs. The rule will have no disproportionate economic impact on small businesses.

Environmental Impact

This final rulemaking is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rulemaking simply continues without substantial change the existing HUD policy of preempting local rent

control in connection with subsidized projects for the elderly or persons with disabilities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments. Although the rule involves preemption of local rent control laws, it continues rather than initiates preemption in the area involved.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.157 (section 202) and 14.181 (section 811).

List of Subjects

24 CFR Part 246

Grant programs—housing and community development, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 891

Aged, Capital advance programs, Grant programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, title 24 of the Code of Federal Regulations is amended as follows:

PART 246—[AMENDED]

1. The authority citation for part 246 continues to read as follows:

Authority: 12 U.S.C. 1715b; 42 U.S.C. 3535(d).

2. Section 246.20 is revised to read as follows:

§ 246.20 Applicability.

This subpart applies to all projects with mortgages insured or held by HUD that receive a subsidy in the form of:

(a) Interest reduction payments under section 236 of the National Housing Act;

(b) Below-market interest rates under section 221(d)(3) and (5) of the National Housing Act;

(c) Direct loans at below-market interest rates under section 202 of the Housing Act of 1959 (as in effect immediately before October 1, 1991);

(d) Rent supplement payments under section 101 of the Housing and Urban Development Act of 1965;

(e) Housing assistance payments under 24 CFR part 886, subpart A (Section 8 Loan Management Set Aside), for projects that converted their rent supplement contracts under section 101 of the Housing and Urban Development Act of 1965 to such assistance for the term of the HAP contract; or

(f) Housing assistance payments pursuant to a contract under section 8 of the United States Housing Act of 1937 or section 23 of that Act (as in effect immediately before January 1, 1975), except that this subpart will only apply with respect to units occupied by tenants receiving housing assistance thereunder if the contract covers fewer than all units in the project.

CHAPTER VIII—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (SECTION 8 HOUSING ASSISTANCE PROGRAMS, SECTION 202 DIRECT LOAN PROGRAM, SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM AND SECTION 811 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES PROGRAM)

3. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1436f, 3535(d), and 8013.

4. The heading of Chapter VIII is revised to read as set forth above.

5. Part 891 is amended by adding a new § 891.185 to read as follows:

§ 891.185 Preemption of rent control laws.

The Department finds that it is necessary and desirable to assist project owners to preserve the continued viability of each project assisted under this part (except subpart E) as a housing resource for very low-income elderly persons or persons with disabilities. The Department also finds that it is necessary to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards or other authority acting pursuant to state or local law as it affects those projects. Part 246 of this title applies to projects covered by subpart E of this part.

Dated: October 22, 1998.

Ira Peppercorn,

General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–31106 Filed 11–20–98; 8:45 am]

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Part V

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

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ENVIRONMENTAL PROTECTION AGENCY

[FRL 6183–3]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of eleventh update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information about Federal facilities that manage hazardous waste or from which hazardous substances have been or may be released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in this eleventh update of the docket and includes facilities not previously listed on the docket and reported to EPA since the last update of the docket, published in the **Federal Register** (FR) on June 27, 1997 at 62 FR 34779, which was current as of October 1, 1996. EPA policy specifies that, for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI) within 18 months of publication of the notice. Such site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section that comprises revisions (that is, corrections and deletions) of the previous docket list. This update contains 89 additions and 11 deletions since the previous update, as well as numerous other corrections to the docket list. At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 2,182.

DATES: This list is current as of February 1, 1998.

FOR FURTHER INFORMATION CONTACT: Toll-Free Telephone Line for the Docket, Telephone: (800) 548–1016, or locally (703) 287–8868. Electronic versions of the docket may be obtained at http://www.epa.gov/oeca/fedfac/oversight/oversight.html.

SUPPLEMENTARY INFORMATION:

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1.0 Introduction

Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 United States Code (U.S.C.) § 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), required the establishment of the Federal Agency Hazardous Waste Compliance Docket. The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency (EPA) under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6925, § 6930, and § 6937, and under section 103 of CERCLA, 42 U.S.C. § 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators and transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires that the National Response Center (NRC) be notified of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates of the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); and June 27, 1997 (62 FR 34779). This notice constitutes the eleventh update of the docket.

Today's notice is divided into three sections: (1) Additions, (2) deletions, and (3) corrections. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The deletions section lists facilities that EPA is deleting from the docket. The corrections section lists changes in information about facilities already listed on the docket.

The information submitted to EPA on each Federal facility is maintained in the docket repository located in the EPA Regional office of the Region in which the facility is located (see 53 FR 4280 [February 12, 1988] for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. Contact the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 287–8868, for information on locations of Regional docket repositories.

2.0 Revisions of the Previous Docket

Following is a discussion of the revisions of the previous docket, including additions, deletions, and corrections.

2.1 Additions

Today, 89 facilities are being added to the docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). For all facilities being added to the docket, it is EPA's policy that the responsible Federal agency must complete the required preliminary assessment (PA) and, if warranted, a site inspection (SI) within 18 months of the date of this publication.

Of the 89 facilities being added to the docket, 3 are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Reports of releases received by the NRC, the U.S. Coast Guard (USCG), and EPA are transmitted electronically to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) database. ERNS is a national computer database and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation "103(a)" in the "Reporting mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are small-quantity generators (SQG) and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs, but that have reported releases under CERCLA section 103 or hazardous waste activities pursuant to RCRA section 3016 will be listed on the docket and will undergo site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding to the docket today are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted PA reports, SI reports, Department of Defense (DoD) Installation Restoration Program (IRP) reports, or reports under another Federal agency environmental restoration program, but had not submitted a notification form under CERCLA section 103. Section 120(c)(3) of CERCLA requires that EPA include on the docket information submitted under section 103. In general, section 103 requires persons in charge of a facility to provide notice of certain releases of hazardous substances. The reports under Federal agency environmental restoration programs mentioned above contain information similar to that provided pursuant to CERCLA section 103 and are considered equivalent forms of notification for the docket. Thus, EPA believes that a facility that has provided information equivalent to a CERCLA section 103 notification, such as a report under a Federal agency environmental restoration program, should be included on the docket, regardless of the absence of formal notification under CERCLA section 103. Therefore, some of the facilities that EPA is adding today are being placed on the docket because they have submitted the reports described above.

EPA also includes privately owned, government-operated (POGO) facilities on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016 and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an agency or other instrumentality of the Federal government. That terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the Federal agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns that responsibility to the Federal agency having "jurisdiction, custody, or control" over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

2.2 Deletions

Today, 11 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as an SQG under RCRA (40 Code of Federal Regulations [CFR] Part 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

2.3 Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple changes in addresses or spelling to corrections of the recorded name and ownership of a facility. In addition, some changes in the names of facilities were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an "O"), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a "C") for easy comparison.

3.0 Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the databases identified above to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, state-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are caused by procedures historically used to report and track data on Federal facilities; EPA is working to resolve them. Representatives of Federal agencies are asked to write to EPA's docket coordinator at the following address if revisions of this update information are necessary: Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Enforcement Office (Mail Code 2261A), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

4.0 Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

- Facilities formerly owned by a Federal agency and now privately owned will not be listed on the docket. However, facilities that are now owned by another Federal agency will remain

on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.

- SQGs that have never produced more than 1,000 kg of hazardous waste in any single month and that have not reported releases under CERCLA section 103 or hazardous waste activities under RCRA section 3016 will not be listed on the docket.
- Facilities that are solely transporters, as reported under RCRA section 3010, will not be listed on the docket.

5.0 Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of information included on the docket. Each facility listed for the update has been assigned a code(s) that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this eleventh docket update must submit a PA and, if warranted, an SI to EPA within 18 months of the date of this publication. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a follow-up SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identify of the responsible Federal agency. The reports should be submitted to the Federal facilities coordindator in the appropriate EPA Regional office.

The facilities listed in each section are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and the correction code(s).

The statutory provisions under which a facility reported are listed in a column titled "Reporting mechanism." Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103(c).

The complete list of Federal facilities that now make up the docket and the list of facilities classified as no further remedial action planned (NFRAP) are not being published today. However, the lists are available to interested parties and can be obtained by calling the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 287–8868. As of today, the total number of Federal facilities that appear on the docket is 2,182.

Dated: October 2, 1998.

Craig E. Hooks,

Director, Federal Facilities Enforcement Office.

Docket Revisions

Categories of Revisions for Docket Update by Correction Code.

Categories for Deletion of Facilities

(1) Small-Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This corection code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/ Entries Combined
(8) Does Not Fit Facility Definition
(9) (This correction code is no longer used.)
(10) (This correction code is no longer used.)
(11) (This correction code is no longer used.)
(12) (This correction code is no longer used.)
(13) (This correction code is no longer used.)
(14) (This correction code is no longer used.)

Categories for Addition of Facilities

(15) Small-Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/ Federal Agency Responsibility Being Split
(17) New Information Obtained Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/ Address Change
(21) Chaning Responsible Federal Agency (New Responsible Federal Agency Has 18 Months to Submit PA)
(22) Changing Responsible Federal Agency and Facility Name (New Responsible Federal Agency Has 18 Months to Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined to Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling the toll-free telephone line for the docket at (800) 548–1016, or locally (703) 287–8868.

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
BLM–BOSTIK INC HOOSIER CREEK.	65D26M54SN, 150D04M31SW	RAMPART	AK	99767	INTERIOR	3010	19A
FWS–ARCTIC NWR: PORCUPINE RVR DEWLINE STAGING AREA.	T14S R48E S33 NE¼ NE¼	ARCTIC VILLAGE	AK	99722	INTERIOR	103c	19A
UNICOR FEDERAL PRISON INDUSTRIES.	565 E RENFROE RD	TALLADEGA	AL	35160	JUSTICE	3010	19A
FLORENCE RANGE		FLORENCE	AZ		ARMY	103c	19A
PHOENIX NATIONAL GUARD—PAPAGO PARK.	5636 E MCDOWELL RD	PHOENIX	AZ	85008	ARMY	3010	19A
BR-GOLDEN FALCON INT SITE	23RD ST AT AVE C	SAN LUIS	AZ	85349	INTERIOR	3010	19A
LAKE TAHOE BASIN MU: MEYERS LANDFILL.	870 EMERALD BAY RD	SOUTH LAKE TAHOE	CA	96150	AGRICULTURE	103a	19A
MENDOCINO NF: EEL RIVER WORK CENTER WASTE SUMP.	T23N R11W S28 NE¼	COVELO	CA		AGRICULTURE	103a	19A
PLUMAS NF: WHITEHORSE LANDFILL.	T23N R8E S6, T24N R8E S7	QUINCY	CA	95971	AGRICULTURE	103c	19A

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
CAMP ROBERTS TRAINING SITE	HWY 101	CAMP ROBERTS	CA	93451	AIR FORCE	3010	19A
LOS ALAMITOS AIR FORCE RESERVE CENTER.	LEXINGTON AVE	LOS ALAMITOS	CA	90720	AIR FORCE	3010	19A
BOEING NORTH AMERICAN INC	12214 LAKEWOOD BLVD	DOWNEY	CA	90241	NASA	3010	19A
PALO ALTO MEDICAL CENTER	3801 MIRANDA AVE	PALO ALTO	CA	94304	VETERANS AFFAIRS	3010	19A
BUCKLEY ANG FORMER WAREHOUSE AREA.	660 S ASPEN DR, STOP 26	AURORA	CO	80011	DEFENSE	103c	19A
DENVER ARMY MEDICAL DEPOT	3800 YORK ST	DENVER	CO	80205	GENERAL SERVICES ADMINISTRATION.	103c	19A
BLM-SAGUACHE MILL SITE	2 MI NW OF SAGUACHE	SAGUACHE	CO	81149	INTERIOR	103c	19A
CONNECTICUT AIR NATIONAL GUARD ORANGE BASE.	RTE 1	ORANGE	CT	06477	AIR FORCE	103c	19A
CONNECTICUT ARMY NATIONAL GUARD BRADLEY BASE.	RTE 20	WINDSOR LOCKS	CT	06096	ARMY	103c	19
CONNECTICUT ARMY NATIONAL GUARD GROTON BASE.	SOUTH RD	GROTON	CT	06340	ARMY	103c	19A
DANBURY FEDERAL CORRECTIONAL INSTITUTION.	PEMBROKE STATION—RTE 37	DANBURY	CT	06811	JUSTICE	103c	19A
NATIONAL PHOTOGRAPHIC INTERPRETATION CENTER.	1ST ST & M ST SE	WASHINGTON	DC	20374	EPA	3010	19A
FPSD PISTOL RANGE	4TH ST & M ST SW	WASHINGTON	DC	20407	GENERAL SERVICES ADMINISTRATION.	3010	19A
NPS-BARNEY CIRCLE FACILITY	19TH ST & H ST	WASHINGTON	DC	20032	INTERIOR	103c	19A
U.S. CAPITOL COMPLEX	U.S. CAPITOL BUILDING	WASHINGTON	DC	20515	INTERIOR	3010	19A
HARRY S. TRUMAN ANIMAL IMPORT CENTER.	FLEMING KEY	KEY WEST	FL	33041	AGRICULTURE	103c	19A
AUGUSTA NATIONAL GUARD ARMORY.	88 MILLEDGE RD	AUGUSTA	GA	30904	ARMY	3010	19A
CEDARTOWN NATIONAL GUARD ARMORY.	HWY 27 S	CEDARTOWN	GA	30125	ARMY	3010	19A
ATLANTA FEDERAL CENTER PROJECT.	45 BROAD ST	ATLANTA	GA	30303	GENERAL SERVICES. ADMINISTRATION	3010	19A
PALMETTO SITE	8400 TATUM RD	PALMETTO	GA	30268	GENERAL SERVICES ADMINISTRATION.	3010	19A
SAC CITY ARMY RESERVE CENTER.	1801 GISHWILLER RD	SAC CITY	IA	50583	ARMY	3010	19A
CARIBOU NF: S MABEY CANYON CROSS VALLEY FILL SITE.	T8S R44E S10, 11, 14 & 15 BM	CONDA	ID	83230	AGRICULTURE	103c	19A
CHICAGO DISTRICT	RTE 100	GRAFTON	IL	62037	ARMY	3010	19A
DIRKSEN FEDERAL OFFICE BUILDING.	219 S DEARBORN	CHICAGO	IL	60604	GENERAL SERVICES ADMINISTRATION.	3010	19A
KLUCZYNSKI FEDERAL OFFICE BUILDING.	230 S DEARBORN	CHICAGO	IL	60604	GENERAL SERVICES ADMINISTRATION.	3010	19A
HAMMOND COMBAT COMMUNICATION AIR NATIONAL GUARD.	901 N AIRPORT RD	HAMMOND	LA	70401	AIR FORCE	3010	19A
MASSACHUSETTS AIR NATIONAL GUARD WORCESTER.	SKYLINE DR	WORCESTER	MA	01605	AIR FORCE	103c	19A
DANVERS ARMY RESERVE CENTER.	NORTH ST	DANVERS	MA	01923	ARMY	103c	19A
WAYLAND ARMY NATIONAL GUARD ARMORY.	OXBOW RD	WAYLAND	MA	01778	ARMY	103c	19A
NYANZA SUPERFUND SITE	MEGUNKO RD	ASHLAND	MA	01721	EPA	3010	19A
BOSTON VETERANS AFFAIRS HOSPITAL.	150 S HUNTINGTON ST	BOSTON	MA	02130	VETERANS AFFAIRS	103a	19A
FALLON BUILDING	31 HOPKINS PLAZA	BALTIMORE	MD	21201	GENERAL SERVICES ADMINISTRATION.	3010	19A
CHESAPEAKE BEACH DETACHMENT-NAVAL RESEARCH LAB.	5813 BAYSIDE RD	CHESAPEAKE BEACH.	MD	20732	NAVY	3010	19A
MAINE ARMY NATIONAL GUARD BANGOR BASE.	RTE 222—BANGOR INTERNATIONAL AIRPORT.	BANGOR	ME	04401	ARMY	103c, 3016	19
DETROIT MARINE CORPS RESERVE CENTER.	7600 E JEFFERSON AVE	DETROIT	MI	48214	NAVY	3010	19A
HIGHLAND PARK POST OFFICE	13215 WOODWARD	HIGHLAND PARK	MI	48203	POSTAL SERVICE	3010	19A
MONROE POST OFFICE	210 W FRONT ST	MONROE	MI	48161	POSTAL SERVICE	3010	19A
ROSEVILLE POST OFFICE	30550 GRATIOT AVE	ROSEVILLE	MI	48066	POSTAL SERVICE	3010	19A
FDA-KANSAS CITY SITE	1009 CHERRY ST	KANSAS CITY	MO	64106	AGRICULTURE	3010	19A
ST LOUIS (EX) ORDNANCE PLANT.	4300 GOODFELLOW BLVD, HANLEY AREA.	ST LOUIS	MO	63120	ARMY	103c, 3016	19
BM-ROLLA RESEARCH CENTER	900 W 14TH ST	ROLLA	MO	65401	INTERIOR	3010	19A
NPS-NOLAND HOUSE	216 N DELAWARE	INDEPENDENCE	MO	64052	INTERIOR	3010	19A
KANSAS CITY HOSPITAL	4801 LINWOOD BLVD	KANSAS CITY	MO	64128	VETERANS AFFAIRS	3010	19A
SALMON SITE	OFF HWY 13	BAXTERVILLE	MS	11111	ENERGY	3010	19A
FWS-RED ROCK LAKES NATIONAL WILDLIFE REFUGE.	MONIDA STAR RT, 28 MI E	LAKEVIEW	MT	59739	INTERIOR	3010	19A
NPS-NAGS HEAD SITE	S OLD NAGS HEAD RD	NAGS HEAD	NC	27959	INTERIOR	3010	19A
STANLEY R. MICKELSON SAFEGUARD COMPLEX.		NEKOMA	ND		AIR FORCE	103c	19A
PARKER RAILCAR SERVICE CO	300 S FULTON AVE	FALLS CITY	NE	68355	SMALL BUSINESS ADMINISTRATION.	3010	19A
NEW HAMPSHIRE AIR NATIONAL GUARD NEWINGTON BASE.	NEWINGTON ST	NEWINGTON	NH	03801	AIR FORCE	3010	19A
OTTER BROOK LAKE PROPERTY.	OLD CONCORD RD	KEENE	NH	03431	CORPS OF ENGINEERS, CIVIL	103c	19A
SURRY MOUNTAIN SHOOTING RANGE.	EAST SURRY RD	SURRY	NH	03431	CORPS OF ENGINEERS, CIVIL	103c	19A

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
CLARKSON FISHER FEDERAL BUILDING & COURTHOUSE.	402 E STATE ST	TRENTON	NJ	08608	GENERAL SERVICES ADMINISTRATION.	3010	19A
BELLMAWR VEHICLE MAINTENANCE FACILITY.	421 BENIGNO BLVD & HAAG AVE.	BELLMAWR	NJ	08099	POSTAL SERVICE	3010	19A
CLIFFSIDE PARK POST OFFICE	289 GORGE RD	CLIFFSIDE PARK	NJ	07010	POSTAL SERVICE	3010	19A
PALMER SQUARE STATION	20 PALMER SQUARE E	PRINCETON	NJ	08542	POSTAL SERVICE	3010	19A
NORTH LAS VEGAS FACILITY	2621 LOSEE RD	NORTH LAS VEGAS	NV	89030	ENERGY	3010	19A
SHOAL SITE	ST RTE 839	FALLON	NV	89406	ENERGY	3010	19A
NEWARK POST OFFICE	300 S MAIN ST	NEWARK	NY	14513	POSTAL SERVICE	3010	19A
FREMONT NF: ANGEL PEAK MINE SITE.	T37S R17E S32, 30 MI W OF LAKEVIEW.	LAKEVIEW	OR	97630	AGRICULTURE	103c	19A
FREMONT NF: ANGEL PEAK ROADS.	42D22M30SN, 120D45M00SW	LAKEVIEW	OR	97630	AGRICULTURE	103c	19A
FWS–KLAMATH FOREST NWR: TOXAPHENE COW DIP PIT.	T30S R10E S19 WILLAMETTE MERIDIAN.	CHILOQUIN	OR	97624	INTERIOR	103c	19A
PITTSBURGH SITE	3500 GRAND AVE	PITTSBURGH	PA	15225	CORPS OF ENGINEERS, CIVIL.	3010	19A
PHILADELPHIA FEDERAL - DETENTION CENTER.	7TH ST & ARCH ST	PHILADELPHIA	PA	19106	JUSTICE	3010	19A
SAN JUAN POST OFFICE & COURTHOUSE.	COMERCIO ST & TANCA ST	SAN JUAN	PR	00906	GENERAL SERVICES ADMINISTRATION.	3010	19A
CHARLESTON COAST GUARD GROUP.	196 TRADD ST	CHARLESTON	SC	29401	TRANSPORTATION	3010	19A
CHARLESTON MEDICAL CENTER.	109 BEE ST	CHARLESTON	SC	29401	VETERANS AFFAIRS	3005, 3010	19A
CHEROKEE NF: BATTERY DUMP	RTE 1, HYW 64	BENTON	TN	37307	AGRICULTURE	3010	19A
164TH AIRLIFT WING		MEMPHIS	TN	37000	AIR FORCE	3010	19A
101ST AIRBORNE DIVISION (AIR ASSAULT).	W OF US HWY 41 AT BORDER		TN	37000	ARMY	3005, 3010	19A
MEMPHIS NAVAL SURFACE WARFARE CENTER-CARDEROCK LCC.	2700 CHANNEL AVE	MEMPHIS	TN	38113	NAVY	3005, 3010	19A
NORRIS HYDRO PLANT	2 MI N OF NORRIS	JEFFERSON CITY	TN	37760	TENNESSEE VALLEY AUTHORITY.	3010	19A
MOORE AIR BASE	RTE 3, BOX 1004, RM 55	MCALLEN	TX	78539	AGRICULTURE	103c	19A
ANTHONY FEDERAL CORRECTIONAL INSTITUTION.	15 MI W OF EL PASO	ANTHONY	TX	88021	JUSTICE	3010	19A
ADMIRAL OLIN E TEAGUE CENTER.	1901 S 1ST ST	TEMPLE	TX	76504	VETERANS AFFAIRS	3010	19A
NANSEMOND ORDNANCE DEPOT.	RTE 135	SUFFOLK	VA	23434	AGRICULTURE	103c	19A
OFFICE OF INSULAR AFFAIRS	WATER ISLAND CATCHMENT BAY.	ST THOMAS	VI	00802	INTERIOR	3010	19A
NIOSH—FORMER ATLAS E MISSILE FACILITY S–9 SITE.	T27N R39E S36, 9 MI N OF REARDAN.	REARDAN	WA	99029	HEALTH AND HUMAN SERVICES.	103c	19A
BLM—CLEVEAND MINE & MILL SITE.	T30N R38E S9, 9MI E OF HUNTERS.	HUNTERS, STEVENS COUNTY.	WA	99137	INTERIOR	103c	19A
MADISON POST OFFICE	3902 MILWAUKEE ST	MADISON	WI	53714	POSTAL SERVICE	3010	19A
PORT WASHINGTON POST OFFICE.	104 E MAIN	PORT WASHINGTON	WI	53094	POSTAL SERVICE	3010	19A

FEDERAL FACILITIES DOCKET, DOCKET DELETIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
PRESCOTT NF: GOLDEN BELT MINE.		PRESCOTT	AZ	86303	AGRICULTURE	103c, 3016, 103a	2
WINDSOR LOCKS AREA MAINT. SUPPORT ACTIVITY 72G.	536 SPRING STREET	WINDSOR LOCKS	CT		ARMY	103c	7
BLM-KINNIKINNIC CREEK	ADJACENT TO TOWN AND OLD SMELTER.	CLAYTON	ID	83227	INTERIOR	103c	2
BLM-PULLMAN MINE	T29N R4W S14	COTTONWOOD	ID	83522	INTERIOR	103c	2
BLM-SPRINGFIELD DUMPSITE	T3SR32ESEC12	SPRINGFIELD	ID	83277	INTERIOR	103c	2
BANGOR ORGANIZATIONAL MAINTENANCE SHOP #3.	28 HAYES ST	BANGOR	ME	04401	ARMY	3016	7
TOGUS MEDICAL CENTER	ROUTE 17	TOGUS	ME	04330	VETERANS AFFAIRS	3016, 3010	4
DEA-ST. LOUIS	120 SOUTH CENTRAL	ST. LOUIS	MO	63105	JUSTICE	3010, 103c	8
CIBOLA NF: UNC SAN MATEO MINE.	T13N, R8E, SEC30, NE3/4	SAN MATEO	NM	87050	AGRICULTURE	103c, 3016	2
SARATOGA SPRINGS NAVY HOUSING MANAGEMENT OFFICE.	26 QUIET HARBOR DR—2000 FT E.	SARATOGA SPRINGS	NY	12866	NAVY	3010	4
PHILADELPHIA SITE	COLLINS AND ONTARIO STREETS.	PHILADELPHIA	PA		EPA	103a	8

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C CHUGACH NF: GRANITE MINE.	T10 R7 S9 SEWARD MERIDIAN	PORT WELLS	AK	99664	AGRICULTURE	103c	20A
O CHUGACH NF: GRANITE MINE.	T10 R7 S9 SEWARD MERIDIAN	PORT WELLS	AK		AGRICULTURE	103c.	
C TONGASS NF: THORNE BAY DUMP.	FS RD #30	THORNE BAY	AK	99919	AGRICULTURE	103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O	TONGASS NF: THORNE BAY DUMP.		THORNE BAY	AK	99919	AGRICULTURE	103c.	
C	CAPE NEWENHAM AIR FORCE STATION.	KUSKOKWIM BAY	CAPE NEWENHAM	AK	99651	AIR FORCE	3010, 3016, 103c	20A
O	CAPE NEWENHAM AIR FORCE STATION.	11 ACW/CC	ELMENDORF AFB	AK	99506	AIR FORCE	3010, 3016, 103c.	
C	DEWLINE SITE BAR—MAIN: BARTER ISLAND.	BARTER ISLAND, ARCTIC NWR	KAKTOVIK	AK	99747	AIR FORCE	103c, 3016, 3010	20A
O	DEWLINE SITE BAR—MAIN	BARTER ISLAND, ARCTIC NWR	KAKTOVIK	AK	99747	AIR FORCE	103c, 3016, 3010.	
C	DEWLINE SITE LIZ-2: POINT LAY RADAR INSTALLATION.	KASEGALUK LAGOON & KOKOLIK RIVER.	POINT LAY	AK	99759	AIR FORCE	3010, 103c, 3016	20A
O	DEWLINE SITE LIZ-2	KASEGALIK LAGOON—CHUKCHI SEA.	POINT LAY	AK	99766	AIR FORCE	3010, 103c, 3016.	
C	DEWLINE SITE LIZ-3: WAINWRIGHT.	KUK RIVER & CHUKSI SEA	WAINWRIGHT	AK	99782	AIR FORCE	3010, 103c, 3016	20A
O	DEWLINE SITE LIZ-3	KUK RIVER & CHUKCHI SEA	WAINWRIGHT	AK	99782	AIR FORCE	3010, 103c, 3016.	
C	ARECKSON AIR FORCE STATION.	SHEMYA ISLAND S SHORE	SHEMYA	AK	99546	AIR FORCE	3010, 3016, 103c, 3005.	20A
O	ARECKSON AIR FORCE STATION.	SHEMYA ISLAND S SHORE	SHEMYA	AK	99736	AIR FORCE	3010, 3016, 103c, 3005.	
C	KING SALMON AIRPORT	15 MI E OF BRISTOL BAY	KING SALMON	AK	99613	AIR FORCE	3010, 3016, 103c	20A
O	KING SALMON AIRPORT	5071 CSS/CC DEMR 15 MI E OF BRISTOL BAY.	KING SALMON AIRPORT.	AK	99613	AIR FORCE	3010, 3016, 103c.	
C	PORT MOLLER AIR FORCE STATION.	55D58M41SN, 160D29M45SW	PORT MOLLER	AK	99571	AIR FORCE	3010, 103c, 3016	20A
O	PORT MOLLER AIR FORCE STATION.	55 59'22" N 160 34' 29.374" W ALASKA PENINSULA.	PORT MOLLER	AK	99999	AIR FORCE	3010, 103c, 3016.	
C	FORT RICHARDSON	GLEN HWY & ARCTIC VALLEY RD.	FORT RICHARDSON	AK	99505	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O	FORT RICHARDSON	ARMY GUARD RD & DAVIS HWY	FORT RICHARDSON	AK	99505	ARMY	3005, 3010, 3016, 103c, 103a.	
C	FORT WAINWRIGHT	RICHARDSON HWY SE OF CITY	FORT WAINWRIGHT	AK	99703	ARMY	3005, 3010, 3016, 103c.	20A
O	FORT WAINWRIGHT	ASZR-FW-DC	FORT WAINWRIGHT	AK	99703-5500	ARMY	3005, 3010, 3016, 103c.	
C	NOAA—NATIONAL MARINE FISHERIES SERVICE.	PRIBILOF ISLAND	SAINT PAUL ISLANDS	AK	99660	COMMERCE	103c, 3010	20A
O	NOAA—NATIONAL MARINE FISHERIES SERVICE.	PRIBILOF ISLAND	ST PAUL ISLANDS	AK	99660	COMMERCE	103c, 3010.	
C	FAIRBANKS DEFENSE FUEL SUPPORT POINT.	CANOL SERVICE RD	FORT WAINWRIGHT	AK	99703	DEFENSE	3016, 103c	20A
O	FAIRBANKS DEFENSE FUEL SUPPORT POINT.	CANOL SERVICE ROAD	FT WAINWRIGHT	AK	99703	DEFENSE	3016, 103c.	
C	BLM—ICY CAPE DEWLINE SITE.	50 MI NE OF WAINWRIGHT	WAINWRIGHT	AK	99782	INTERIOR	103c, 3010	20A, 23
O	BLM—ICY CAPE DEWLINE SITE.	WAINWRIGHT, 50 MI NE	WAINWRIGHT	AK	99782	INTERIOR	103c.	
C	BLM—MACLAREN GLACIER MINE.	T19S R6E S14NE S11 FAIRBANKS MERIDIAN.	PAXSON	AK	99737	INTERIOR	103c	20A
O	BLM—MACLAREN GLACIER MINE.	FAIRBANKS MER T19S R6E SEC14NE SEC11.	PAXSON	AK	99737	INTERIOR	103c.	
C	BLM—OLD MAN CAMP SITE	T19N R14W S19 AND T19N R15W S24.	ALLAKAKET	AK	99720	INTERIOR	103c	20A
O	BLM—OLD MAN CAMP SITE	T19N, R14W, SEC19 AND T19N, R15W, SEC24.	FAIRBANKS MERIDIAN.	AK	99720	INTERIOR	103c.	
C	BLM—PAXSON DUMP	T22S R12E S5 SW¼ SW¼ COPPER RIVER MERIDIAN.	PAXSON	AK	99737	INTERIOR	103c	20A
O	BLM—PAXSON DUMP	T22S, R12E, SEC31	FAIRBANKS MERIDIAN.	AK	99737	INTERIOR	103c.	
C	BLM—PEARD BAY DEWLINE SITE.	50 MI SW OF BARROW	BARROW	AK	99723	INTERIOR	103c, 3010	20A, 23
O	BLM—PEARD BAY DEWLINE SITE.	BARROW, 50 MI SW	BARROW	AK	99723	INTERIOR	103c.	
C	BLM—PUMP STATION 12 DUMP SITE.	T4S R1E S26 NWSW	COPPER CENTER	AK	99573	INTERIOR	103c	20A
O	BLM—PUMP STATION 12 DUMP SITE NWSW.	T4S, R1E, SEC26	COPPER CENTER	AK	99573	INTERIOR	103c.	
C	BLM—RED DEVIL MINE WASTE PONDS.	T19N R44W S6 SE, 61D10M12SN, 149D56M40SW.	BETHEL	AK	99565	INTERIOR	3016, 103c	20A
O	BLM—RED DEVIL MINE WASTE PONDS.	L61-10-12 L149-56-48	BETHEL	AK	99656	INTERIOR	3016, 103c.	
C	BLM—SAG RIVER DUMP	T8S R14E S8	DEADHORSE	AK	99734	INTERIOR	103c	20A
O	BLM—SAG RIVER DUMP	T8S, R14E, SEC8	UMIAT MERIDIAN	AK	99740	INTERIOR	103c.	
C	BLM—SAGWON AIRSTRIP DUMP.	T15N R14E S10&11	SAGWON	AK	99734	INTERIOR	3016, 103c	20A
O	BLM—SAGWON AIRSTRIP DUMP.	T5R4ESEC10-11	SAGWON	AK	99513	INTERIOR	3016, 103c.	
C	BLM—SLANA DUMP SITE	MILE 67 OF DENALI HWY	CANTWELL	AK	99729	INTERIOR	103c	20A
O	BLM—SLANA DUMP SITE	MILE 67 OF DENALI HWY		AK	99729	INTERIOR	103c.	
C	BLM—TANACROSS AIRFIELD	63D22M00SN, 143D20M00SW	TANACROSS	AK	99776	INTERIOR	103c	20A
O	BLM—TANACROSS AIRFIELD	LAT 63 DEGREES 22' N, LONG 143 DEGREES 20' W.	TANACROSS	AK	99776	INTERIOR	103c.	
C	FWS—ALASKA MARITIME NWR: AGATTU ISLAND AWR/NAV AID.	20 MI SW OF ARECKSON AFB	SHEMYA	AK	99546	INTERIOR	103c	20A
O	FWS—ALASKA MARITIME NWR: AGATTU ISLAND AWR/NAV AID.	20 MI SW OF ARICKSON AFB	SHEMYA	AK	99500	INTERIOR	103c.	
C	FWS—ALASKA MARITIME NWR: AMCHITKA ISLAND.	51D32M00SN, 179D00M00SE	AMCHITKA	AK	99546	INTERIOR	3010, 3016, 103c	20A
O	FWS—ALASKA MARITIME NWR: AMCHITKA ISLAND.	51D32M00SN, 179D00M00SE	AMCHITKA	AK	99502	INTERIOR	3010, 3016, 103c	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C FWS—ALASKA MARITIME NWR: ATTU ISLAND.	30 MI NW OF EARECKSON AFB	SHEMYA	AK	99546	INTERIOR	103c	20A
O FWS—ALASKA MARITIME NWR: ATTU ISLAND.	30 MI NW OF EARICKSON AFB ..	SHEMYA	AK	99500	INTERIOR	103c.	
C FWS—ALASKA MARITIME NWR: GREAT SITKIN ISLAND.	25 MI NE OF ADAK	ADAK	AK	99546	INTERIOR	103c	20A
O FWS—ALASKA MARITIME NWR: GREAT SITKIN ISLAND.	25 MI NE OF ADAK	ADAK	AK	99500	INTERIOR	103c.	
C FWS—ALASKA MARITIME NWR: TANAGA ISLAND.	65 MI W OF ADAK NAVAL FACILITY.	ADAK	AK	99546	INTERIOR	103c	20A
O FWS—ALASKA MARITIME NWR: TANAGA ISLAND.	65 MI W OF ADAK NAVAL STATION.	ADAK	AK	99500	INTERIOR	103c.	
C FWS—ARCTIC NWR: BROWNLOW POINT DEWLINE SITE.	70 MI E OF DEADHORSE/ PRUDHOE BAY.	DEADHORSE	AK	99734	INTERIOR	103c, 3016	20A
O FWS—ARCTIC NWR: BROWNLOW POINT DEWLINE SITE.	70 MI E OF DEADHORSE/ PRUDHOE BAY.	DEADHORSE	AK	99740	INTERIOR	103c, 3016.	
C FWS—ARCTIC NWR: LAKE PETERS & MARSH FORK NARL SITE.	70 MI SW OF KAKTOVIK	KAKTOVIK	AK	99747	INTERIOR	103c	20A
O FWS—ARCTIC NWR: LAKE PETERS & MARSH FORK NARL SITE.	60 MI E OF CITY	DEADHORSE	AK	99740	INTERIOR	103c.	
C NPS—BERING LAND BRIDGE NP: LAVA LAKE.	45 MI SW OF DEERING	DEERING	AK	99736	INTERIOR	103c, 3016, 3010	20A
O NPS—BERING LAND BRIDGE NP: LAVA LAKE.	45 MI SW OF DEERING	DEERING	AK	99762	INTERIOR	103c, 3016, 3010.	
C NPS—DENALI NP&P: STAMPEDE CREEK MINE.	63D43M05SN, 150D24M00SW	DENALI NATIONAL PARK & PRESERVE.	AK	99755	INTERIOR	103c	20A
O NPS—DENALI NATIONAL PARK: STAMPEDE MINE.	LAT 63 43.5N, LONG 150 24.0E ..	DENALI NATIONAL PARK.	AK	99755	INTERIOR	103c.	
C NPS—KATMAI NP&P: NAKNEK RECREATION SITE #2.	T17S R44W S25 & T18S R44W S4.	KING SALMON	AK	99613	INTERIOR	103c	20A
O NPS—KATMAI NP&P: NAKNEK RECREATION SITE #2.	KATMAI NATIONAL PARK & PRESERVE.	KING SALMON	AK	99613	INTERIOR	103c.	
C NPS—WRANGELL ST. ELIAS NP&P: MALASPINA DR MUD SITE.	T24S R32E S31	GLENNALLEN	AK	99588	INTERIOR	3016, 103c	20A
O NPS—WRANGELL—ST. ELIAS NATIONAL PARK.	WRANGELL–ST ELIAS NATIONAL PARK.	GLENNALLEN	AK	99588	INTERIOR	3016, 103c.	
C NPS—WRANGELL ST. ELIAS NP&P: NABESNA MINE.	T7N R13E S21	GLENNALLEN	AK	99588	INTERIOR	103c	20A
O NPS—WRANGELL ST. ELIAS NP&P: NABESNA MINE.	WRANGELL ST. ELIAS NAT. PARK & PRESERVE.	GLENALLEN	AK	99588	INTERIOR	103c.	
C NPS—YUKON—CHARLEY RIVERS NP: COAL CREEK.	T5N R21E S3&4	EAGLE	AK	99738	INTERIOR	103c, 3016	20A
O NPS—YUKON—CHARLEY RIVERS NATIONAL PARK.	T5N, R21E, SEC 3 & 4	EAGLE	AK	99738	INTERIOR	103c, 3016.	
C ADAK NAVAL FACILITY	51D54M00SN, 176D45M00SW N END OF ADAK ISLAND.	ADAK	AK	99546	NAVY	3005, 3010, 3016, 103c, 103a.	20A
O ADAK NAVAL AIR STATION	51–54N, 176–45W	ADAK ISLAND	AK	99599	NAVY	3005, 3010, 3016, 103c, 103a.	
C POINT MCINTYRE DEWLINE SITE.	15 MI NW OF CITY	DEADHORSE	AK	99734	NAVY	103c	20A
O POINT MCINTYRE DEW STATION.	12M NW OF CY	DEADHORSE	AK	99740	NAVY	103c.	
C CG—KETCHIKAN BASE	TONGASS HWY 1 MI S OF KETCHIKAN.	KETCHIKAN	AK	99901	TRANSPORTATION	3010, 103c, 3005	20A, 23
O CG—KETCHIKAN COAST GUARD BASE.	S TONGASS HWY-S CY LIMITS ..	KETCHIKAN	AK	99901	TRANSPORTATION	3010, 103c.	
C CG—LORAN STATION ON SITKINAK.	SITKINAK ISLAND	OLD HARBOR	AK	99643	TRANSPORTATION	103c	20A
O CG—LORAN STATION ON SITKINAK.	SITKINAK ISLAND	SITKINAK ISLAND	AK	99615	TRANSPORTATION	103c.	
C CG—SAINT PAUL ISLAND LORAN STATION.	SAINT PAUL AIRPORT, 1.5 MI FROM RUNWAY #2.	SAINT PAUL ISLAND	AK	99660	TRANSPORTATION	3010, 103c	20A
O CG—ST PAUL ISLAND LORAN STATION.	ST PAUL ISLAND LORAN STATION.	ST PAUL ISLAND	AK	99660	TRANSPORTATION	3010, 103c.	
C FAA—BIG DELTA STATION	FORT GREELY AIRPORT	DELTA JUNCTION	AK	99737	TRANSPORTATION	103c, 3016	20A
O FAA—BIG DELTA STATION	FORT GREELY AIRPORT	DELTA JUNCTION	AK	99732	TRANSPORTATION	103c, 3016.	
C FAA—BIG LAKE VORTAC SITE.	61D33M00SN, 149D52M00SW	BIG LAKE	AK	99652	TRANSPORTATION	103c	20A
O FAA—BIG LAKE VORTAC SITE.	BIG LAKE	BIG LAKE	AK	99687	TRANSPORTATION	103c.	
C FAA—CAPE YAKATAGA STATION.	60D04M57SN, 142D29M30SW	CORDOVA	AK	99574	TRANSPORTATION	3010, 3016, 103c	20A
O FAA—CAPE YAKATAGA STATION.	CAPE YAKATAGA	CAPE YAKATAGA	AK	99574	TRANSPORTATION	3010, 3016, 103c.	
C FAA—DEADHORSE STATION	DEADHORSE AIRPORT NAV AIDS.	DEADHORSE	AK	99734	TRANSPORTATION	103c	20A
O FAA—DEADHORSE STATION	DEADHORSE AIRPORT NAV AIDS.	DEADHORSE	AK	99740	TRANSPORTATION	103c	
C FAA—DUTCH HARBOR STATION.	DUTCH HARBOR AIRPORT	DUTCH HARBOR	AK	99692	TRANSPORTATION	103c, 3010	20A
O FAA—DUTCH HARBOR STATION.		DUTCH HARBOR	AK		TRANSPORTATION	103c, 3010.	
C FAA—FAIRBANKS STATION	5640 AIRPORT WAY	FAIRBANKS	AK	99790	TRANSPORTATION	103c	20A
O FAA—FAIRBANKS STATION	5640 AIRPORT WAY	FAIRBANKS	AK		TRANSPORTATION	103c.	
C FAA—FAREWELL STATION	62D30M24SN, 153D53M37SW	MCGRATH	AK	99627	TRANSPORTATION	3010, 103c, 3016	20A
O FAA—FAREWELL FACILITIES	FAREWELL AIRPORT AREA	FAREWELL	AK	99695	TRANSPORTATION	3010, 103c, 3016	
C FAA—FORT YUKON AIR NAVIGATION STATION.	FORT YUKON AIRPORT	FORT YUKON	AK	99740	TRANSPORTATION	3016, 103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O	FAA—FORT YUKON AIRPORT.	FORT YUKON AIRPORT	FORT YUKON	AK	99740	TRANSPORTATION	3016, 103c.	
C	FAA—GALENA STATION	64D44M10SN, 156D56M04SW, GALENA AIRPORT NAV AIDS.	GALENA	AK	99741	TRANSPORTATION	103c	20A
O	FAA—GALENA STATION	64D44M10SN, 156D56M04SW, GALENA AIRPORT.	GALENA	AK	99741	TRANSPORTATION	103c.	
C	FAA—HAINES AIR NAVIGATION STATION.	2 MI S ON FAA/HAINES RD, 59D14M42SN, 135D31M19SW.	HAINES	AK	99827	TRANSPORTATION	103c, 3010	20A, 23
O	FAA—HAINES AIR NAVIGATION SITE.	HAINES-FAA ROAD	HAINES	AK	99827	TRANSPORTATION	103c.	
C	FAA—JOHNSTONE POINT AIR NAVIGATION STATION.	NW HINCHINBROOK ISLAND, 60D28M00SN, 146D34M00SW.	CORDOVA	AK	99574	TRANSPORTATION	3016, 103c	20A
O	FAA—JOHNSTONE POINT AIR NAVAL STATION.	JOHNSTONE POINT NAV AIDS	CORDOVA	AK	99574	TRANSPORTATION	3016, 103c	
C	FAA—LAKE MINCHUMINA STATION.	RAMP AT LAKE MINCHUMINA AIRPORT.	LAKE MINCHUMINA	AK	99757	TRANSPORTATION	3010, 3016, 103c, 3005.	20A
O	FAA—LAKE MINCHUMINA AIRPORT.	RAMP AT LK MINCHUMINA ARPT.	LAKE MINCHUMINA	AK	99757	TRANSPORTATION	3010, 3016, 103c, 3005.	
C	FAA—MCGRATH STATION	AIRPORT N OF CITY, NAV AIDS	MCGRATH	AK	99627	TRANSPORTATION	103c	20A
O	FAA—MCGRATH STATION	AIRPORT N OF CITY, NAV AIDS	MCGRATH	AK	99627	TRANSPORTATION	103c.	
C	FAA—MOSES POINT AIR NAVIGATION STATION.	MOSES POINT AIRFIELD, 64D41M53SN, 162D03M26SW.	ELIM	AK	99739	TRANSPORTATION	3010, 3016, 103c	20A
O	FAA—MOSES POINT AIR NAVIGATION STATION.	MOSES POINT AIRFIELD	MOSES POINT	AK	99762	TRANSPORTATION	3010, 3016, 103c.	
C	FAA—NENANA/NORTH NENANA STATION.	NENANA AIRPORT, 64D32M56SN, 149D04M24SW.	NENANA	AK	99760	TRANSPORTATION	3016, 103c	20A
O	FAA—NORTH NENANA VORTAC SITE.	NENANA	NENANA	AK	99760	TRANSPORTATION	3016, 103c.	
C	FAA—NOME AIR NAVIGATION STATION.	NOME MUNICIPAL AIRPORT, 64D30M47SN, 165D26M34SW.	NOME	AK	99762	TRANSPORTATION	103c, 3010	20A
O	FAA—NOME AIRPORT STATION.	NOME AIRPORT MUNICIPAL AIRPORT.	NOME	AK	99762	TRANSPORTATION	103c, 3010.	
C	FAA—PUNTILLA AIR NAVIGATION STATION.	PUNTILLA LAKE, 62D04M24SN, 152D43M59SW.	SKWENTNA	AK	99667	TRANSPORTATION	3016, 103c	20A
O	FAA—PUNTILLA AIR NAVIGATION SITE.	PUNTILLA LAKE	PUNTILLA LAKE	AK	99999	TRANSPORTATION	3016, 103c.	
C	FAA—SAINT MARY'S AIR NAVIGATION STATION.	YUKON DELTA NATIONAL WILDLIFE REFUGE.	SAINT MARY'S	AK	99658	TRANSPORTATION	103c	20A
O	FAA—ST. MARY'S AIR NAVIGATION.	YUKON DELTA NATIONAL WILDLIFE REFUGE.	ST. MARY'S	AK		TRANSPORTATION	103c.	
C	FAA—SAND POINT STATION	2 MI W OF SANDPOINT, 55D18M54SN, 160D31M03SW.	SANDPOINT	AK	99661	TRANSPORTATION	103c	20A
O	FAA—SAND POINT STATION	ON PENINSULA TOWARDS ALEUTIAN ISLAND CHAIN.	SANDPOINT	AK	99661	TRANSPORTATION	103c.	
C	FAA—SISTERS ISLAND	58D10M40SN, 135D15M24SW	JUNEAU	AK	99803	TRANSPORTATION	103c	20A
O	FAA—SISTERS ISLAND	SISTERS ISLAND NAV AIDS	JUNEAU	AK	99803	TRANSPORTATION	103c.	
C	FAA—SITKA STATION	57D03M07SN, 135D21M45SW, JAPONSKI ISLAND AIRPORT.	SITKA	AK	99835	TRANSPORTATION	103c, 3010	20A
O	FAA—SITKA STATION	57D03M07SW, 135D21M45SW, JAPONSKI ISLAND AIRPORT.	SITKA	AK	99835	TRANSPORTATION	103c, 3010.	
C	FAA—SUMMIT AIR NAVIGATION STATION.	CANTWELL PKS HWY 5 MI S	SUMMIT	AK	99729	TRANSPORTATION	3016, 3010, 103c	20A
O	FAA—SUMMIT AIR NAVIGATION STATION.	CANTWELL PKS HWY 5 MI S NAV AIDS.	SUMMIT	AK	99729	TRANSPORTATION	3016, 3010, 103c.	
C	FAIRVIEW SUBSTATION	FAIRVIEW SUBSTATION	FAIRVIEW	AL		TENNESSEE VALLEY AUTHORITY.	103a, 3010	23
O	FAIRVIEW SUBSTATION	FAIRVIEW SUBSTATION	FAIRVIEW	AL		TENNESSEE VALLEY AUTHORITY.	103a.	
C	DOUGLAS RANGE	1401 EIGHTH ST	DOUGLAS	AZ	85607	ARMY	3016, 103c	23
O	DOUGLAS RANGE	1401 EIGHTH ST	DOUGLAS	AZ	85607	ARMY	3016.	
C	FORT HUACHUCA	RCRA UNITS	FORT HUACHUCA	AZ	85613	ARMY	3010, 3016, 103c, 103a, 3005.	23
O	FORT HUACHUCA	RCRA UNITS	FORT HUACHUCA	AZ	85613	ARMY	3010, 3016, 103c, 103a.	
C	SAFFORD RANGE	4001 FIRST AVE	SAFFORD	AZ	85546	ARMY	3016, 103c	23
O	SAFFORD RANGE	4001 FIRST AVE	SAFFORD	AZ	85546	ARMY	3016.	
C	SIERRA NF: BIG CREEK PESTICIDE BUILDING.	T8S R25E S28 SW1/4	BIG CREEK	CA	93605	AGRICULTURE	103c	20A
O	BIG CREEK PESTICIDE BUILDING.	T8S R25E S28 SW14	BIG CREEK	CA	93605	AGRICULTURE	103c.	
C	BELL ORGANIZATIONAL MAINTENANCE SHOP #6.	5300 BANDINI AVENUE	BELL	CA	90201	ARMY	3016, 103c	23
O	BELL ORGANIZATIONAL MAINTENANCE SHOP #6.	5300 BANDINI AVENUE	BELL	CA	90201	ARMY	3016.	
C	ENERGY TECHNOLOGY ENGINEERING CENTER.	SANTA SUSANA MOUNTAIN	SIMI HILLS	CA	93063	ENERGY	3005, 3016, 103c, 3010.	23
O	ENERGY TECHNOLOGY ENGINEERING CENTER.	SANTA SUSANA MOUNTAIN	SIMI HILLS	CA	93063	ENERGY	3005, 3016, 103c.	
C	BLM—STATELINE DUMP (LANDFILL).	N/A		CA		INTERIOR	3016, 103c	23
O	BLM—STATELINE DUMP (LANDFILL).	N/A		CA		INTERIOR	3016.	
C	CONCORD NAVAL WEAPONS STATION.	10 DELTA ST	CONCORD	CA	94520	NAVY	3005, 3016, 103c, 3010.	20A, 23
O	CONCORD NAVAL WEAPONS STATION.	PORT CHICAGO HWY.	CONCORD	CA	94520	NAVY	3005, 3016, 103c.	
C	LEMOORE NAVAL AIR STATION.	700 AVENGER AVE	LEMOORE	CA	93246	NAVY	3010, 3016, 103c, 103a, 3005.	23
O	LEMOORE NAVAL AIR STATION.	700 AVENGER AVE	LEMOORE	CA	93246	NAVY	3010, 3016, 103c, 103a.	
C	OAKLAND NAVAL SUPPLY CENTER-ALAMEDA FACILITY.	2155 MARINER SQUARE LOOP	ALAMEDA	CA	94501	NAVY	3005, 3010, 103c	23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O OAKLAND NAVAL SUPPLY CENTER-ALAMEDA FACILITY.	2155 MARINER SQUARE LOOP ..	ALAMEDA	CA	94501	NAVY	3005, 3010.	
C SALTON SEA TEST BASE	HYW 86	SALTON CITY	CA	92275	NAVY	103c, 3005, 3010	23
O SALTON SEA TEST BASE	HWY 86	SALTON CITY	CA	92275	NAVY	103c.	
C SAN DIEGO NAVAL MEDICAL CENTER.	34800 BOB WILSON DR, SUITE 1800.	SAN DIEGO	CA	92134	NAVY	103c, 103a, 3010	23
O SAN DIEGO NAVAL MEDICAL CENTER.	34800 BOB WILSON DR, SUITE 1800.	SAN DIEGO	CA	92134	NAVY	103c, 103a.	
C SHRIEVER AFS TRANSFORMER STORAGE AREA.	500 NAVSTAR ST	COLORADO SPRINGS.	CO		AIR FORCE	103a	20A
O FALCONERS TRANSFORMER STORAGE AREA.	500 STAR STREET	COLORADO SPRINGS.	CO		AIR FORCE	103a.	
C GRAND JUNCTION PROJECTS OFFICE.	3597 B-¾ RD P02567	GRAND JUNCTION	CO	81502-5504	ENERGY	3016, 103c, 3005, 3010.	23
O GRAND JUNCTION PROJECTS OFFICE.	3597 B-¾ RD P02567	GRAND JUNCTION	CO	81502-5504	ENERGY	3016, 103c.	
C IRS—WASHINGTON	1111 CONSTITUTION AVE, NW ..	WASHINGTON	DC	20032	TREASURY	103a	20A
O IRS—WASHINGTON	1111 CONSTITUTION AVENUE, N.W..	WASHINGTON	DC		TREASURY	103a.	
C MACDILL AIR FORCE BASE ..	56 COMBAT SUPPORT GROUP/DE.	MACDILL AFB	FL	33608	AIR FORCE	3005, 3010, 3016, 103c, 103a.	23
O MACDILL AIR FORCE BASE ..	56 COMBAT SUPPORT GROUP/DE.	MACDILL AFB	FL	33608	AIR FORCE	3005, 3010, 3016, 103c.	
C MAYPORT COAST GUARD BASE.	PO BOX 385	MAYPORT	FL	32267	TRANSPORTATION	3010, 103c, 103a	23
O MAYPORT COAST GUARD BASE.	PO BOX 385	MAYPORT	FL	32267	TRANSPORTATION	3010, 103c.	
C SANTA RITA NAVAL MAGAZINE.	RTE 5	SANTA RITA	GU	96915	NAVY	3010, 3016, 103c, 3005.	23
O SANTA RITA NAVAL MAGAZINE.	RTE 5	SANTA RITA	GU	96915	NAVY	3010, 3016, 103c.	
C BELLOWS AIR FORCE STATION.	10 MS E OF CY RTE. 72	HONOLULU	HI	96898	AIR FORCE	3016, 3010, 103c	23
O BELLOWS AIR FORCE STATION.	10 MS E OF CY RTE. 72	HONOLULU	HI	96898	AIR FORCE	3016.	
C SCHOFIELD BARRACKS	LYMAN RD	WAHIAWA	HI	96786	ARMY	3010, 3016, 103c, 103a, 3005.	23
O SCHOFIELD BARRACKS	LYMAN RD	WAHIAWA	HI	96786	ARMY	3010, 3016, 103c, 103a.	
C SANDIA NATIONAL LABORATORIES—KAUAI TEST FACILITY.	U.S. NAVY PACIFIC MISSILE RANGE.	KEKAHA	HI	96796	ENERGY	3016, 103c	23
O SANDIA NATIONAL LABORATORIES—KAUAI TEST FACILITY.	U.S. NAVY PACIFIC MISSILE RANGE.	KEKAHA	HI	96796	ENERGY	3016.	
C FWS—BAKER ISLAND NATIONAL WILDLIFE REFUGE.	0D11M30SN, 176D29M0SW	HONOLULU	HI	96850	INTERIOR	3016, 103c	20A
O FWS—BAKER ISLAND NATIONAL WILDLIFE REFUGE.	300 ALA MOANA BLVD	HONOLULU	HI	96813	INTERIOR	3016, 103c.	
C PAYETTE NF: CINNABAR MINE.	T18N R9&10E S1, 2, 6&7	YELLOW PINE	ID	83677	AGRICULTURE	3016, 103c	20A
O PAYETTE NF: CINNABAR MINE.	KRASSEL DISTRICT	YELLOWPINE	ID		AGRICULTURE	3016, 103c.	
C PAYETTE NF: STIBNITE MINE	T18N R9E S2, 3, 10, 11, 14, 15, 16, 21&22.	YELLOW PINE	ID	83677	AGRICULTURE	103c, 3016	20A
O PAYETTE NF: STIBNITE MINE	P.O. BOX 1026	MCCALL	ID	83638	AGRICULTURE	103c, 3016.	
C SALMON NF: BLACKBIRD MINE.	HWY 93 NW OF COBALT, T45 R5E S20, 21 & 22.	COBALT	ID	83229	AGRICULTURE	103c, 3016, 3010	20A
O SALMON NF: BLACKBIRD MINE.	P.O. BOX 729	SALMON	ID	83467	AGRICULTURE	103c, 3016, 3010.	
C SHEEP EXPERIMENT STATION.	I15 N	DUBOIS	ID	83423	AGRICULTURE	3016, 103c	20A
O SHEEP EXPERIMENT STATION.	HC 62, BOX 2010	DUBOIS	ID	83423	AGRICULTURE	3016, 103c.	
C MOUNTAIN HOME AIR FORCE BASE.	HWY 67, 10 MI W OF CITY	MOUNTAIN HOME AFB.	ID	83648	AIR FORCE	3005, 3010, 3016, 103c, 103a.	20A
O MOUNTAIN HOME AIR FORCE BASE.	366 CSG/DE	MOUNTAIN HOME AFB.	ID	83648	AIR FORCE	3005, 3010, 3016, 103c, 103a.	
C BLM—CEDAR BUTTE S END DUMPSITE.	T23S R32E S15	ROCKFORD	ID	83221	INTERIOR	103c	20A
O BLM—CEDAR BUTTE S END DUMPSITE.	T22 SR32E SEC15	ROCKFORD	ID	83221	INTERIOR	103c.	
C BLM—CHAMPAGNE CREEK MINE.	T3N R24E S15	GROUSE	ID	83242	INTERIOR	3016, 103c	20A
O BLM—CHAMPAIGNE CREEK MINE.	T3N R24E SEC15	GROUSE	ID	83242	INTERIOR	3016, 103c.	
C BLM—COW HOLLOW HAZARDOUS WASTE DUMP.	T14S R31E S34	JUNIPER	ID	83342	INTERIOR	103c	20A
O BLM—COW HOLLOW HAZARDOUS WASTE DUMP.	T.14.S.R.31.E. SEC.34	JUNIPER	ID	83706	INTERIOR	103c.	
C BLM—CREAM CAN JUNCTION.	T5S R26E S35 SW¼ SW¼ BM	MINIDOKA	ID	83343	INTERIOR	3010	20A
O BLM—CREAM CAN JUNCTION.	T5S R26E S35 SW¼ SW¼ BM	CAREY	ID	83320	INTERIOR	3010.	
C BLM—DELAMAR SILVER MINE.	T15S R35E S4-9, 8 MI W OF CITY.	SILVER CITY	ID	83650	INTERIOR	103c	20A
O BLM—DELAMAR SILVER MINE.	T15S, R35E	OWYHEE	ID	83650	INTERIOR	103c.	
C BLM—DRY LAKES AIR SERVICE.	T1N R3W S26	MELBA	ID	83641	INTERIOR	103c	20A
O BLM—DRY LAKES AIR SERVICE AIRSTRIP-CASCADE RA.	T1N, R3W, SEC26	CANYON	ID	83650	INTERIOR	103c.	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C	BLM—HULET DUMP	T3S R1E S15 NE NE	MURPHY	ID	83650	INTERIOR	103c, 3016	20A
O	BLM—HULET DUMP	T.35.R.IW.SEC.15	MUPRHY	ID	83650	INTERIOR	103c, 3016.	
C	BLM—JEROME COUNTY LANDFILL.	T8S R17E S14, 4 MI W OF CITY	JEROME	ID	83338	INTERIOR	103c	20A
O	BLM—JEROME COUNTY LANDFILL.		JEROME COUNTY	ID	83338	INTERIOR	103c.	
C	BLM—LESLIE DUMP SITE-1	T7N R25E S34, 1.5 MI N OF CITY	LESLIE	ID	83249	INTERIOR	103c	20A
O	BLM—LESLIE DUMP SITE-1	T 7N, R25E, SEC34	LESLIE	ID	83249	INTERIOR	103c.	
C	BLM—LESLIE DUMP SITE-4	T6N R24E S18, 4 MI SW OF CITY	LESLIE	ID	83429	INTERIOR	103c	20A
O	BLM—LESLIE DUMP SITE-4 SW.	T 6N, R24E, SEC18	LESLIE	ID	83249	INTERIOR	103c.	
C	BLM—LIBERTY DUMP	T3S R33E S19, 20, 21 & 30, 5 MI SW OF CITY.	LIBERTY	ID	83221	INTERIOR	103c	20A
O	BLM—LIBERTY DUMP	T3S, R33E, SEC 19E, 20N, 21SWNW NWNW 30N.	LIBERTY	ID	83221	INTERIOR	103c.	
C	BLM—MENAN UNAUTHORIZED DUMP.	T6N R38E S27 SE¼	MADISON	ID	83440	INTERIOR	103c	20A
O	BLM—MENAN UNAUTHORIZED DUMP.	T6N, R38E, SEC26 AND 27	MADISON	ID	83440	INTERIOR	103c.	
C	BLM—PESTICIDE DUMP REYNOLDS.	T2S R3W S31	REYNOLDS	ID	83650	INTERIOR	103c	20A
O	BLM—PESTICIDE DUMP SITE, REYNOLDS.	T2SR3W SEC31	REYNOLDS	ID	83650	INTERIOR	103c.	
C	BLM—PINE CREEK	T47,48&49N R2E, NEAR PINEHURST.	PINEHURST	ID	83850	INTERIOR	103c	20A
O	BLM—PINE CREEK	T47 48 49 N R2E NEAR PINEHURST.	PINHURST	ID	83850	INTERIOR	103c.	
C	BLM—SPRINGFIELD UNAUTHORIZED DUMPSITE.	T3S R32E S15, 6 MI N OF CITY	SPRINGFIELD	ID	83277	INTERIOR	103c	20A
O	BLM—SPRINGFIELD UNAUTHORIZED DUMPSITE.	T35NR32ESEC15	SPRINGFIELD	ID	83277	INTERIOR	103c.	
C	BLM—TWIN FALLS CO #4	T12S R19E S11	MURTAUGH	ID	83344	INTERIOR	103c	20A
O	BLM—TWIN FALLS CO #4	T12S, R 19E, SEC 12	MURTAUGH	ID	83344	INTERIOR	103c.	
C	BLM—TWIN FALLS CO #5	T12S R19E S12	MURTAUGH	ID	83344	INTERIOR	103c	20A
O	BLM—TWIN FALLS CO #5	T12S, R 19E, SEC 11	MURTAUGH	ID	83344	INTERIOR	103c.	
C	BLM—TWIN FALLS CO MURTAUGH (EAST) LANDFILL	T11S R19E S10	MURTAUGH	ID	83344	INTERIOR	103c, 3016	20A
O	BLM—TWIN FALLS CO MURTAUGH (EAST) LANDFILL	T11SR19ESEC10	TWIN FALLS	ID	83301	INTERIOR	103c, 3016.	
C	BLM—UPPER LITTLE LOST UNAUTHORIZED DUMP.	T11N R26E S10, 12 MI NW OF CITY.	CLYDE	ID	83244	INTERIOR	103c	20A
O	BLM—UPPER LITTLE LOST UNAUTHORIZED DUMP.	T11NR26ESEC10 12 MI NW OF CY/T11N,R26E,SEC10.	CLYDE	ID	82349	INTERIOR	103c.	
C	BLM—WARRIOR ROAD	T35N R1W S11, NEAREST CITY KUNA.	KUNA	ID	83634	INTERIOR	103c	20A
O	BLM—WARRIOR ROAD	T35N, R1W, SEC11 NEAREST CITY KONA.	KONA	ID	83634	INTERIOR	103c.	
C	BR—MINIDOKA LANDFILL	T9S R23E S3, 4.5 MI NW OF CITY.	MINIDOKA	ID	83343	INTERIOR	103c	20A
O	BR—MINIDOKA LANDFILL		RUPERT	ID	83350	INTERIOR	103c.	
C	TALLEY DEFENSE SYSTEMS JAAPGP64.	6 MILES S OF ELWOOD OFF RT 53.	ELWOOD	IL	60421	DEFENSE	3010, 3005	23
O	TALLEY DEFENSE SYSTEMS JAAPGP64.	6 MILES S OF ELWOOD OFF RT 53.	ELWOOD	IL	60421	DEFENSE	3010.	
C	BAINBRIDGE NAVAL TRAINING CENTER.	US HIGHWAY 222	BAINBRIDGE	MD	21904		103c, 3010	23
O	BAINBRIDGE NAVAL TRAINING CENTER.	US HIGHWAY 222	BAINBRIDGE	MD	21904		103c.	
C	FORT RITCHIE	603 LAKESIDE DR	FORT RITCHIE	MD	21719	ARMY	3016, 3010, 103c	23
O	FORT RITCHIE	603 LAKESIDE DR	FORT RITCHIE	MD	21719	ARMY	3016, 3010.	
C	HURON—MANISTEE NF: WHITE CLOUD.	12 N CHARLES AVE	WHITE CLOUD	MI	49349	AGRICULTURE	103c, 3010, 3016	20A
O	HURON—MANISTEE NF: RANGER STATION.	12 N CHARLES AVE	WHITE CLOUD	MI	49349	AGRICULTURE	103c, 3010, 3016.	
C	OTTOWA NF: ROBINS DISPOSAL AREA.	FS RD 5238–B	WATERSMEET	MI	49969	AGRICULTURE	103a, 3010	20A, 23
O	FS—ROBINS DISPOSAL AREA.		WATERSMEET	MI		AGRICULTURE	103a.	
C	SCHUSTER FARM	T55N R33W S58 S17	GOWER	MO	64454	AGRICULTURE	103c	20A
O	SCHUSTER FARM	SEC58 S17 T55N R33W	GOWER	MO		AGRICULTURE	103c.	
C	MISSOURI AIR NATIONAL GUARD.	ROSECRANS MEMORIAL AIRPORT.	ST JOSEPH	MO	64050	AIR FORCE	103c, 3010	20A
O	MISSOURI AIR NATIONAL GUARD.	ROSECRANS MEMORIAL AIRPORT.	ST JOSEPH	MO	64503	AIR FORCE	103c, 3010.	
C	RICHARDS GEBAUR AIR FORCE BASE.	HYW 150 & US HWY 71	BELTON	MO	64012	AIR FORCE	3016, 103c, 3010	20A
O	RICHARDS GEBAUR AIR FORCE BASE.	442 CSG	BELTON	MO	64030	AIR FORCE	3016, 103c, 3010.	
C	WHITEMAN AIR FORCE BASE	T46N R24W S33	WHITEMAN AFB	MO	65305	AIR FORCE	3005, 3010, 3016, 103c.	20A
O	WHITEMAN AIR FORCE BASE.	351 CSG/DEEV	WHITEMAN AFB	MO	65305–5000	AIR FORCE	3005, 3010, 3016, 103c.	
C	AIR TRAINING COMMAND-ENGINEER & FORT LEONARD WOOD.	I44, PULASKI COUNTY	FORT LEONARD WOOD.	MO	65473	ARMY	3005, 3010, 3016, 103c.	20A
O	AIR TRAINING COMMAND ENGINEER & FT. LEONARDWOOD.	FORT LEONARDWOOD I44	PULASKI	MO	65473–5000	ARMY	3005, 3010, 3016, 103c.	
C	LAKE CITY ARMY AMMUNITION PLANT.	JCT OF MO HWY 7 & HWY 78	INDEPENDENCE	MO	64050	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O	LAKE CITY ARMY AMMUNITION PLANT.	JCT MO HWY 7 & HWY 78	INDEPENDENCE	MO	64051–0330	ARMY	3005, 3010, 3016, 103c, 103a.	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C ST. LOUIS ARMY AMMUNITION PLANT.	4800 GOODFELLOW BLVD	ST. LOUIS	MO	63120	ARMY	103c	20A, 24
O ST. LOUIS ARMY AMMUNITION PLANT.	4300 GOODFELLOW BLVD. HANLEY AREA.	ST. LOUIS	MO	63120	ARMY	3016, 103c.	
C NIKE BATTERY KANSAS CITY—30 INACTIVE.	2.5 MI S OF LONE JACK	PLEASANT HILL	MO	64080	DEFENSE	103c	20A
O NIKE BATTERY KANSAS CITY—30 INACTIVE.	2.5 MI S OF LONE JACK	PLEASANT HILL	MO		DEFENSE	103c.	
C KANSAS CITY PLANT	200 E 95TH ST	KANSAS CITY	MO	64131	ENERGY	3005, 3010, 3016, 103c, 103a.	20A
O KANSAS CITY PLANT	2000 EAST 95TH ST.—(TROOST)	KANSAS CITY	MO	64131–3095	ENERGY	3005, 3010, 3016, 103c, 103a.	
C MOBILE INCINERATOR—DEMMRY FARM.	SE¼ NW¼ NW¼ SEC 20	MCDOWELL	MO	65769	EPA	3010, 103c, 3016, 3005.	23
O MOBILE INCINERATOR—DEMMRY FARM.	SE¼ NW¼ NW¼ SEC 20	MCDOWELL	MO	65769	EPA	3010, 103c, 3016.	
C JOB CORPS CENTER—ST LOUIS.	E NATURAL BRIDGE AVE & GOODFELLOW BLVD.	ST LOUIS	MO	63120	LABOR	103c	20A, 22
O HANLEY AREA	E NATURAL BRIDGE GOODFELLOW RD.	ST LOUIS	MO	63120	ARMY	103.	
C COLUMBUS AIR FORCE BASE.	14 ABG/DE	COLUMBUS AFB	MS	39701	AIR FORCE	3005, 3010, 3016, 103c, 103a.	23
O COLUMBUS AIR FORCE BASE.	14 ABG/DE	COLUMBUS AFB	MS	39701	AIR FORCE	3005, 3010, 3016, 103c.	
C YELLOW CREEK PRODUCTION FACILITY.	1 NASA DRIVE	IUKA	MS	38852	NASA	3010, 103c, 3005	23
O YELLOW CREEK PRODUCTION FACILITY.	1 NASA DRIVE	IUKA	MS	38852	NASA	3010, 103c.	
C BLM—JET FUEL REFINERY SITE.	T14N R31E, 4 MI E OF MOSBY	MOSBY	MT	59058	INTERIOR	103c, 3010	20A, 23
O BLM—JET FUEL REFINERY SITE.	T14NR31E 4 MI E OF MOSBY	MOSBY	MT		INTERIOR	103c.	
C SUNNY POINT MILITARY OCEAN TERMINAL.	ATTN: MTE SU–FE	SOUTHPORT	NC	28461	ARMY	103c, 103a, 3016, 3010.	23
O SUNNY POINT MILITARY OCEAN TERMINAL.	ATTN: MTE SU–FE	SOUTHPORT	NC	28461	ARMY	103c, 103a, 3016.	
C CHERRY POINT MARINE CORPS AIR STATION.	NC HWY 101	CHERRY POINT	NC	28533	NAVY	3005, 3010, 3016, 103c, 103a.	23
O CHERRY POINT MARINE CORPS AIR STATION.	NC HWY 101	CHERRY POINT	NC	28533	NAVY	3005, 3010, 3016, 103c.	
C HARVEY POINT DEFENSE TESTING ACTIVITY.	RT 5	HERTFORD	NC	27944	NAVY	103c, 3010	23
O HARVEY POINT DEFENSE TESTING ACTIVITY.	RT 5	HERTFORD	NC	27944	NAVY	103c.	
C PEDRICKTOWN SUPPORT FACILITY.	ROUTE 130 & ARTILLERY AVE	PEDRICKTOWN	NJ	08067	ARMY	3010, 103c	20A
O PEDRICKTOWN SUPPORT FACILITY.	ROUTE 130 SIEVER SANDBERG USARC.	PEDRICKTOWN	NJ	08067	ARMY	3010, 103c.	
C FWS—GREAT SWAMP NATIONAL WILDLIFE REFUGE.	RD 1, BOX 152	BASKING RIDGE	NJ	07920	INTERIOR	3016, 103c, 3010	23
O FWS—GREAT SWAMP NATIONAL WILDLIFE REFUGE.	RD 1, BOX 152	BASKING RIDGE	NJ	07920	INTERIOR	3016, 103c.	
C FAA—TECHNICAL CENTER	ROUTES 563 AND 575	POMONA	NJ	08405	TRANSPORTATION	3016, 103c, 103a, 3010.	23
O FAA–TECHNICAL CENTER	ROUTES 563 AND 575	POMONA	NJ	08405	TRANSPORTATION	3016, 103c, 103a	
C LOVELACE INHALATION TOXICOLOGY RESEARCH INSTITUTE.	BLDG. 9200, KIRTLAND AFB EAST.	ALBUQUERQUE	NM	87185	ENERGY	103c, 3016, 3010	23
O LOVELACE INHALATION TOXICOLOGY RESEARCH INSTITUTE.	BLDG. 9200, KIRTLAND AFB EAST.	ALBUQUERQUE	NM	87185	ENERGY	103c, 3016.	
C TONOPAH TEST RANGE	140 MI NW OF LAS VEGAS	TONOPAH	NV	89049	ENERGY	3005, 3010, 103c, 103a, 3016.	20A
O TONOPAH TEST RANGE	PO BOX 10359	TONOPAH	NV	89049	ENERGY	3005, 3010, 103c, 103a, 3016.	
C BLM-MONITE DYNAMITE SITE.	T20N R20E S28 SW¼ MDW	SPARKS	NV	89436	INTERIOR	103c, 3010	23
O BLM—MONITE DYNAMITE SITE.	T20N R20E S28 SW1/4 MDW	SPARKS	NV	89436	INTERIOR	103c.	
C PLUM ISLAND ANIMAL DISEASE CENTER.	PLUM ISLAND	ORIENT POINT	NY	11957	AGRICULTURE	3016, 103c, 3010	23
O PLUM ISLAND ANIMAL DISEASE CENTER.	PLUM ISLAND	ORIENT POINT	NY	11957	AGRICULTURE	3016, 103c..	
C HANCOCK FIELD	TAFT AND THOMPSON ROADS	NORTH SYRACUSE	NY	13212	AIR FORCE	3010, 3016, 103c, 3005.	23
O HANCOCK FIELD	TAFT AND THOMPSON ROADS	NORTH SYRACUSE	NY	13212	AIR FORCE	3010, 3016, 103c.	
C STEWART ANNEX/SUBPOST	USMA NEWBURG LANDFILL, STEWART AIRPORT, RT 17.	NEWBURG	NY	12550	ARMY	3016, 3010, 103c	23
O STEWART ANNEX/SUBPOST	USMA NEWBURG LANDFILL, STEWART AIRPORT, RT 17.	NEWBURG	NY	12550	ARMY	3016.	
C NPS—GATEWAY NATIONAL RECREATIONAL AREA.	FLOYD BENNETT FIELD	BROOKLYN	NY	11234	INTERIOR	103c, 3010	23
O NPS—GATEWAY NATIONAL RECREATIONAL AREA.	FLOYD BENNETT FIELD	BROOKLYN	NY	11234	INTERIOR	103c.	
C FREMONT NF: SILVER LAKE R.D. PENTA SITE.	HWY 31, 55 MI NW OF PAISLEY	SILVER LAKE	OR	97638	AGRICULTURE	103c, 3010	23
O FREMONT NF: SILVER LAKE R.D. PENTA SITE.	HWY 31, 55 MI NW OF PAISLEY	SILVER LAKE	OR	97638	AGRICULTURE	103c.	
C MT. HOOD NF: SITE B	T1N R6E S7, FS RD 1509, 3 MI SE OF CITY.	BRIDAL VEIL	OR	97010	AGRICULTURE	103c	20A
O MT. HOOD NF: SITE B	3 MI SE OF CITY, T1S R6E S07	BRIDAL VEIL	OR	97010	AGRICULTURE	103c.	
C WILLAMETTE NF: LOWELL RANGER STATION.	FS RD 1806–433, SPUR 477, 44D02M01SN, 122D35M06SW.	LOWELL	OR	97452	AGRICULTURE	3010, 103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

	Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
O	FS—LOWELL RANGER STATION.	RD 1806–433 ON SPUR 447	LOWELL	OR	97452	AGRICULTURE	3010, 103c.	
C	PORTLAND AIR NATIONAL GUARD BASE.	6801 NE CORN FOOT RD	PORTLAND	OR	97208	AIR FORCE	103c, 3016, 3010	23
O	PORTLAND AIR NATIONAL GUARD BASE.	6801 NE CORN FOOT RD	PORTLAND	OR	97208	AIR FORCE	103c, 3016.	
C	ASTORIA FIELD OFFICE	HWY 30 & MARITIME RD	ASTORIA	OR	97103	CORPS OF ENGINEERS, CIVIL	3010, 3016, 103c	22
O	COE—ASTORIA FIELD OFFICE.	HWY 30 & MARITIME RD	ASTORIA	OR	97103	ARMY	3010, 3016, 103c.	
C	BONNEVILLE DAM	I84 N OF EXIT 40	BONNEVILLE	OR	97014	CORPS OF ENGINEERS, CIVIL	3010, 103a, 3016, 103c.	22
O	COE—BONNEVILLE DAM	I84 N OF EXIT 40	BONNEVILLE	OR	97014	ARMY	3010, 103a, 3016, 103c.	
C	ELK CREEK DAM PROJECT	27 MI N OF CITY	MEDFORD	OR	97503	CORPS OF ENGINEERS, CIVIL	103c	22
O	COE—ELK CREEK DAM PROJECT.	27 MI N OF CITY	MEDFORD	OR	97503	ARMY	103c.	
C	JOHN DAY DAM	RUFUS EXIT	RUFUS	OR	97050	CORPS OF ENGINEERS, CIVIL	3010, 103c	22
O	COE—JOHN DAY DAM AIR ENFORCEMENT DIVISION.	RUFUS EXIT	RUFUS	OR	97050	ARMY	3010, 103c.	
C	NORTH PACIFIC DIVISION MATERIALS LABORATORY.	1491 NW GRAHAM AVE	TROUTDALE	OR	97060	CORPS OF ENGINEERS, CIVIL	3010, 103c	22
O	COE—NORTH PACIFIC DIVISION–MATERIALS LABORATORY.	1491 NW GRAHAM AVE	TROUTDALE	OR	97050	ARMY	3010, 103c.	
C	PORTLAND 3 MILE CANYON SITE.	I84 1.2 MI W OF EXIT 147	ARLINGTON	OR	97812	CORPS OF ENGINEERS, CIVIL	3010, 103c	22
O	COE—PORTLAND 3 MILE CANYON SITE.	I84 1.2 MI W OF EXIT 147	ARLINGTON	OR	97812	ARMY	3010, 103c.	
C	PORTLAND MOORINGS	8010 NW ST HELENS RD	PORTLAND	OR	97210	CORPS OF ENGINEERS, CIVIL	3010, 103c	22
O	COE—PORTLAND MOORINGS USAED.	8010 NW ST HELENS RD	PORTLAND	OR	97210	ARMY	3010, 103c.	
C	THE DALLES DAM	EXIT 88	THE DALLES	OR	97058	CORPS OF ENGINEERS, CIVIL	3010, 103c	22
O	COE—THE DALLES DAM AIR ENFORCEMENT DIVISION.	EXIT 88	THE DALLES	OR	97058	ARMY	3010, 103c.	
C	BLM—LYTLE BOULEVARD DUMP.	T19S R46E S31 & T20S R46E S31.	VALE	OR	97918	INTERIOR	3016, 103c	20A
O	BLM—LYTLE BOULEVARD DUMP.	T19SR46ESEC31T20R46	VALE	OR	97918	INTERIOR	3016, 103c.	
C	BM—ALBANY RESEARCH CENTER.	1450 SW QUEEN AVE	ALBANY	OR	97321	INTERIOR	3010, 3016, 103c	20A
O	BM—ALBANY LABORATORY	1450 SW QUEEN AVE	ALBANY	OR	97321	INTERIOR	3010, 3016, 103c.	
C	NPS—CRATER LAKE NATIONAL PARK.	HWY 62 NW OF FORT KLAMATH	CRATER LAKE	OR	97604	INTERIOR	3010, 103c	20A
O	NPS—CRATER LAKE NATIONAL PARK.	HWY 62	CRATER LAKE	OR	97604	INTERIOR	3010, 103c.	
C	STATE COLLEGE AIR NATIONAL GUARD.	131 W NITTANY AVE	STATE COLLEGE	PA		AIR FORCE	103c	20A
O	STATE COLLEGE AIR NATIONAL GUARD.		STATE COLLEGE	PA		AIR FORCE	103c.	
C	SAN JUAN NAS HANGER 21	PORT OF SAN JUAN HARBOR	SAN JUAN	PR	00906	NAVY	3016, 103c	20A, 22, 23
O	SAN JUAN ARMY AIR SUPPORT FACILITY.	BOX 3786	SAN JUAN	PR	00904	ARMY	3016.	
C	DAVISVILLE NAVAL CONSTRUCTION BATTALION CENTER.	OFF SANFORD ROAD	NORTH KINGSTOWN	RI	02871	NAVY	3016, 103c, 103a, 3010, 3005.	23
O	DAVISVILLE NAVAL CONSTRUCTION BATTALION CENTER.	OFF SANFORD ROAD	NORTH KINGSTOWN	RI	02871	NAVY	3016, 103c, 103a, 3010.	
C	MCENTIRE AIR NATIONAL GUARD BASE.	MAILSTOP 8	EASTOVER	SC	29044	AIR FORCE	103c, 3016, 3010	23
O	MCENTIRE AIR NATIONAL GUARD BASE.	MAILSTOP 8	EASTOVER	SC	29044	AIR FORCE	103c, 3016.	
C	SAVANNAH RIVER SITE	BETWEEN SC HWY 125 & US HWY 278.	AIKEN	SC	29802	ENERGY	3005, 3010, 3016, 103c, 103a.	20A
O	SAVANNAH RIVER SITE	PO BOX A	AIKEN	SC	29802	ENERGY	3005, 3010, 3016, 103c, 103a.	
C	CHARLESTON NAVAL WEAPONS STATION—SOUTH ANNEX.	1050 REMOUNT ROAD	NORTH CHARLESTON.	SC	29408	NAVY	103c, 3010	20A, 23
O	CHARLESTON NAVAL WEAPONS STATION SOUTH ANNEX.	REMOUNT ROAD	NORTH CHARLESTON.	SC	29406	NAVY	103c.	
C	NASHVILLE AIR NATIONAL GUARD.	240 KNAPP BLVD	NASHVILLE	TN	37217	AIR FORCE	3016, 3010	23
O	NASHVILLE AIR NATIONAL GUARD.	240 KNAPP BLVD	NASHVILLE	TN	37217	AIR FORCE	3016.	
C	BRISTOL NAVAL WEAPONS INDUSTRIAL RESERVE PLANT.	100 VANCE TANK ROAD RAYTHEON COMPANY.	BRISTOL	TN	36720–5698	NAVY	3016, 103c, 3010	23
O	BRISTOL NAVAL WEAPONS INDUSTRIAL RESERVE PLANT.	100 VANCE TANK ROAD RAYTHEON COMPANY.	BRISTOL	TN	36720–5698	NAVY	3016, 103c.	
C	MEMPHIS NAVAL AIR STATION.	MILLINGTON–ARLINGTON ROAD	MILLINGTON	TN	38054	NAVY	3005, 3010, 3016, 103c, 103a.	23
O	MEMPHIS NAVAL AIR STATION.	MILLINGTON–ARLINGTON ROAD	MILLINGTON	TN	38054	NAVY	3005, 3010, 3016, 103c.	
C	BOONE HYDRO PLANT	TN HWY 75/ 8 MI SE OF	KINGSPORT	TN	3766?	TENNESSEE VALLEY AUTHORITY.	103a, 3010	23
O	BOONE HYDRO PLANT	TN HWY 75/8 MI SE OF	KINGSPORT	TN	37662	TENNESSEE VALLEY AUTHORITY.	103a.	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	Zip code	Agency	Reporting mechanism	Correction code
C WAKE ISLAND AIRFIELD	DET 1 15 LG/CC	WAKE ISLAND APO AP.	TT	96518	AIR FORCE	3010, 3016, 103c	23
O WAKE ISLAND AIRFIELD	DET 1 15 LG/CC	WAKE ISLAND APO AP.	TT	96518	AIR FORCE	3010, 3016.	
C FORT WORTH FEDERAL SUPPLY CENTER.	501 FELIX ST	FORT WORTH	TX	76101	GENERAL SERVICES ADMINISTRATION.	3010, 103c	20A
O FORT WORTH FEDERAL CENTER 7FS.	501 FELIX STREET	FORT WORTH	TX	78753	GENERAL SERVICES ADMINISTRATION.	3010, 103c.	
C KINGSVILLE NAVAL AIR STATION.	554 MCCAIN ST	KINGSVILLE	TX	78363	NAVY	3010, 103c, 103a, 3005.	20A, 23
O KINGSVILLE NAVAL AIR STATION.	MILITARY HIGHWAY	KINGSVILLE	TX	78363	NAVY	3010, 103c, 103a.	
C HERNDON SITE	925 SPRINGVALE ROAD	HERNDON	VA	22070	ARMY	103c	22
O HERNDON	925 SPRINGVALE ROAD	HERNDON	VA	22070	DEFENSE MAPPING AGENCY.	103c.	
C VINT HILL FARMS STATION	BLDG 2470, VINT HILL FARMS STATION.	WARRENTON	VA	22186	ARMY	3010, 3016, 103c, 3005.	23
O VINT HILL FARMS STATION	BLDG 2470, VINT HILL FARMS STATION.	WARRENTON	VA	22186	ARMY	3010, 3016, 103c.	
C RICHMOND DEFENSE SUPPLY CENTER.	JEFFERSON DAVIS HIGHWAY	RICHMOND	VA	23297	DEFENSE	3005, 3010, 3016, 103c.	20A
O RICHMOND DEFENSE GENERAL SUPPLY CENTER.	JEFFERSON DAVIS HIGHWAY	RICHMOND	VA	23297	DEFENSE	3005, 3010, 3016, 103a.	
C BLAIR HANGAR ARMY AIR SUPPORT FACILITY.	ALEX HAMILTON AIRPORT	ST. CROIX	VI	00850	ARMY	3016, 103c	23
O BLAIR HANGAR ARMY AIR SUPPORT FACILITY.	ALEX HAMILTON AIRPORT	ST. CROIX	VI	00850	ARMY	3016.	
C OKANOGAN NF: ALDER CREEK.	T33N R21E S24 NE¼ SW¼ WM	TWISP	WA	98856	AGRICULTURE	103c	20A
O OKANOGAN NF: ALDER CREEK.	T33N R21E S24 QS SE WM	TWISP	WA	98856	AGRICULTURE	103c.	
C OKANOGAN NF: LOST LAKE	T39N R30E S28&29 QSNE WM	OROVILLE	WA	98844	AGRICULTURE	103c	20A
O OKANOGAN NF: LOST LAKE	T39N R30E S28&29 QSNE WM	ORVILLE	WA	98844	AGRICULTURE	103c.	
C FAIRCHILD AIR FORCE BASE	US HWY 2 W OF SPOKANE	FAIRCHILD AFB	WA	99011	AIR FORCE	3005, 3010, 3016, 103c.	20A
O FAIRCHILD AIR FORCE BASE	92 CSG/CC	FAIRCHILD AFB	WA	99011	AIR FORCE	3005, 3010, 3016, 103c.	
C MCCHORD AIR FORCE BASE	MERIDIAN STREET	MCCHORD AFB	WA	98438	AIR FORCE	3010, 3016, 103c	20A
O MCCHORD AIR FORCE BASE	62 ABG/CC	MCCHORD AFB	WA	98438	AIR FORCE	3010, 3016, 103c	
C FORT LEWIS	T19N R2E S21, 22, 26&27, 11 MI E OF OLYMPIA.	FORT LEWIS	WA	98433	ARMY	3005, 3010, 3016, 103c, 103a.	20A
O FORT LEWIS	9TH INF DIV ATTN AFZH–DEQ	FORT LEWIS	WA	98433	ARMY	3005, 3010, 3016, 103c, 103a.	
C WATERCRAFT SUPPORT NATIONAL GUARD MAINTENANCE CTR.	321 E. ALEXANDER	TACOMA	WA	98421	ARMY	3016, 103c	20A
O WATERCRAFT SUPPORT MAINTENANCE CENTER.	321 E. ALEXANDER	TACOMA	WA	98421	ARMY	3016, 103c.	
C YAKIMA FIRING CENTER	I82 4 MI N OF CITY	YAKIMA	WA	98901	ARMY	3005, 3010, 3016, 103c.	20A
O YAKIMA FIRING CENTER	YAKIMA FIRING CENTER	YAKIMA	WA	98901	ARMY	3005, 3010, 3016, 103c.	
C EDA—COLUMBIA GARDENS	COLUMBIA GARDENS	PASCO	WA	99301	COMMERCE	103c, 3016	20A
O ECONOMIC DEVELOPMENT—COLUMBIA GARDENS.	COLUMBIA GARDENS	PASCO	WA		COMMERCE	103c, 3016.	
C CHIEF JOSEPH DAM PROJECT.	HWY 17 & HWY 173	BRIDGEPORT	WA	98813	CORPS OF ENGINEERS, CIVIL	103c	22
O COE—CHIEF JOSEPH DAM PROJECT.	HWY 17 & HWY 173	BRIDGEPORT	WA	98813	ARMY	103c.	
C WALLA WALLA DISTRICT HEADQUARTERS.	CHERRY ST & SUMAC ST, 3RD AVE & 4TH AVE.	WALLA WALLA	WA	99362	CORPS OF ENGINEERS, CIVIL	103C	22
O COE—WALLA WALLA DISTRICT HEADQUARTERS.	CHERRY ST & SUMAC ST, 3RD AVE & 4TH AVE.	WALLA WALLA	WA	99362	ARMY	103c.	
C DLA—MUKILTEO DEFENSE FUEL SUPPORT POINT.	FRONT ST & LOVELAND AVE	MUKILTEO	WA	98275	DEFENSE	3010, 3016, 103c	22
O MUKILTEO DEFENSE FUEL SUPPORT POINT.	FRONT ST & LOVELAND AVE	MUKILTEO	WA	98275	DEFENSE LOGISTICS AGENCY.	3010, 3016, 103c.	
C BPA—OLYMPIA SUBSTATION	5240 TROSPER ST SW	OLYMPIA	WA	98502	ENERGY	3010, 3016, 103c, 103a.	20A
O BPA—OLYMPIA SUBSTATION	5240 TROSPER ST SW	OLYMPIA	WA	98512	ENERGY	3010, 3016, 103c, 103a.	
C BLM—KABBA—TEXAS MINE	T40N R25E S23 MID NE¼, 4 MI NW OF CITY.	OROVILLE	WA	98844	INTERIOR	3016, 103c	20A
O BLM—KABBA—TEXAS MINE	T40NR27ESEC13	OROVILLE	WA	98844	INTERIOR	3016, 103c.	
C BR—SMITH WASTEWAY	5 MI E OF PASCO	PASCO	WA	99301	INTERIOR	3016, 103c	20A
O BR—SMITH WASTEWAY	5 MI E OF PASCO	PASCO	WA		INTERIOR	3016, 103c.	
C KEYPORT NAVAL UNDERSEA WARFARE ENG STATION.	HWY 306, E END	KEYPORT	WA	98345	NAVY	3005, 3010, 3016, 103c, 103a.	20A
O KEYPORT NAVAL UNDERSEA WARFARE ENG STATION.	CODE 073 HWY 306, E END	KEYPORT	WA	98345	NAVY	3005, 3010, 3016, 103c, 103a.	
C PUGET SOUND FISC FUEL DEPARTMENT.	ORCHARD POINT/LITTLE CLAM BAY.	MANCHESTER	WA	98353	NAVY	3005, 3010, 3016, 103c.	20A
O PUGET SOUND NAVAL SUPPLY CENTER.	ORCHARD PT/LITTLE CLAM BAY	BREMERTON	WA	98353	NAVY	3005, 3010, 3016, 103c.	
C BLM—NORTHWEST PIPELINE-BARREL SPRINGS.	T16N R92W S18 SE¼ NW¼	CARBON	WY	82324	INTERIOR	3010, 103c	20A
O BLM—N.W. PIPELINE BARREL SP.	SE¼ NW¼ SEC 18 T16N R92W	CARBON	WY	82324	INTERIOR	3010, 103c.	

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Federal Register

Monday
November 23, 1998

Part VI

Department of the Treasury

Fiscal Service

Electronic Transfer Account; Notice

VOL 63 ISS 225 NO 23 1998 UMI

DEPARTMENT OF THE TREASURY

Fiscal Service

RIN 1510–AA56

Electronic Transfer Account

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed Electronic Transfer Account features; request for comment.

SUMMARY: The Debt Collection Improvement Act of 1996 (Act) amends 31 U.S.C. 3332 to provide that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by electronic funds transfer (EFT) beginning January 2, 1999. The Department of the Treasury (Treasury) published a final rule implementing this mandate, 31 CFR part 208 (Part 208), on September 25, 1998. 63 FR 51490. Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment is eligible to open an Electronic Transfer Account, or "ETA℠," at any Federally-insured financial institution that elects to offer ETAs℠". The preamble to the final rulemaking indicated that Treasury would separately publish for comment a notice of the proposed features of the ETA℠. This notice describes proposed features of the ETA℠ and provides further opportunity for public comment. In addition, it requests comment on three other features that are not part of the basic ETA℠ to determine whether they should be added to the ETA℠ at the option of the financial institution and at additional cost, if any, to the account holder. After evaluating the comments received, Treasury will publish a notice in the **Federal Register** setting forth the required features for ETAs℠.

DATES: Written comments on the proposed account features must be received no later than January 7, 1999.

ADDRESSES: Comments should be sent to Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, Room 420, 401 14th Street, S.W., Washington, D.C., 20227. Comments also may be submitted electronically via e-mail to eta.comments@fms.sprint.com or by filling out the ETA℠ comment form available on the EFT website at http://www.fms.treas.gov/eft/eta/. The final rule for Part 208, the proposed rule for Part 208 (208 NPRM), and comment letters received in response to the 208 NPRM, including comments on the ETA℠ and a summary of comments received in response to the specific ETA℠-related questions raised in the 208 NPRM, are available on the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/. Comments received on this ETA℠ notice will be available for public inspection and downloading at the website address shown above and for public inspection and copying at the Department of the Treasury Library, Room 5030, 1500 Pennsylvania Avenue, N.W., Washington, D.C. To make an appointment to inspect comments, please call (202) 622–0990.

FOR FURTHER INFORMATION CONTACT: Sally Phillips, Senior Financial Program Specialist, at (202) 874–7106; Matthew Friend, Financial Program Specialist, at (202) 874–6754; Natalie H. Diana at (202) 874–6950; Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, at (202) 874–6590; or Margaret Marquette, Attorney-Advisor, at (202) 874–6681.

SUPPLEMENTARY INFORMATION:

A. Background

Section 31001(x) of the Act provides that, subject to the authority of the Secretary of the Treasury to grant waivers, all Federal payments, other than payments under the Internal Revenue Code, must be made by EFT beginning January 2, 1999.

The Act authorizes the Secretary of the Treasury to waive the requirement to make Federal payments by EFT for individuals or classes of individuals for whom compliance imposes a hardship; for classifications or types of checks; or in other circumstances as may be necessary. In addition, the Act requires Treasury to ensure access to an account at a financial institution for individuals who are required to have an account because of the EFT mandate. Treasury must ensure that access is provided at reasonable cost and with the same consumer protections that are provided to other account holders at the same financial institution.

On September 25, 1998, Treasury issued as a final rule Part 208, which implements the mandatory EFT requirement of the Act. 63 FR 51490. Part 208 provides, in part, that payment by EFT is not required where an individual determines, in his or her sole discretion, that payment by EFT would impose a hardship due to a physical or mental disability or a geographic, language, or literacy barrier, or would impose a financial hardship. An automatic waiver is granted for all individuals who do not have an account at a financial institution and who are eligible to open an ETA℠ until the ETA℠ becomes available.

In addition, Part 208 provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an account called an ETA℠ at any Federally-insured financial institution that chooses to offer ETAs℠. The ETA℠ will be made available to maximize opportunities for individuals receiving Federal payments electronically to have access to an account at reasonable cost and with the same consumer protections as other account holders at the same financial institution.

In the 208 NPRM published on September 16, 1997, under Section E of the Section-by-Section Analysis, "208.5—Access to Account Provided by Treasury," Treasury invited comment on several questions related to the ETA℠ and stated that it would publish proposed terms, conditions, and attributes of the account for further comment. 62 FR 48714, 48721. Based on the comments received, Treasury has developed a listing of ETA℠ attributes, which are the subject of this notice. This notice is limited in scope to a discussion of the ETA℠; it does not address other provisions of the 208 NPRM. Those provisions are discussed in the final rulemaking for Part 208, which was published in the **Federal Register** on September 25, 1998.

Final Part 208 reflected a significant change in Treasury's approach to the ETA℠ from what was proposed in the 208 NPRM. The 208 NPRM indicated that it was Treasury's intention to solicit bids from organizations interested in providing an account that would include certain specific attributes determined by Treasury. At the time the 208 NPRM was published, Treasury proposed to obtain account services through a competitive process that would select one or more entities to act as Treasury's financial agent within predefined geographic areas. After evaluating the comments received and conducting further research,[1] however, Treasury considered two alternative approaches for offering the account. These two approaches were the subject of public meetings held on May 21, 1998, for the purpose of obtaining comments from consumer and

[1] Treasury contracted for a study related to account features and distribution network options for the ETA℠. A copy of the study is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

community-based organizations and from financial institutions.[2]

The first approach involved selecting a small number of financial institutions to act as Treasury's financial agents in providing ETAs℠. These financial agents would then sign up local financial institutions to market and originate ETAs℠. The second approach involved publishing standards for providing the ETA℠, including account attributes, and allowing any Federally-insured financial institution that chooses to offer ETAs' to act as Treasury's financial agent to provide the ETA℠ in accordance with these standards and subject to terms set forth in an ETA℠ Financial Agency Agreement between Treasury and the financial institution. The agreement would provide that ETAs℠ offered by the financial institution must meet the criteria described in the **Federal Register** notice listing the required ETA℠ features and would set forth the circumstances in which a financial institution may close an account for fraud or other reasons.

As indicated in final Part 208, based on the comments received on the 208 NPRM and at public meetings and on geographic and economic data and analysis, Treasury decided to pursue the second approach to make the ETA℠ available to payment recipients. Representatives from both consumer organizations and financial institutions indicated that, while this approach does not ensure complete geographic coverage because no financial institution will be required to offer the ETA℠, it encourages participation by financial institutions of all sizes. In addition, of the two approaches, it provides the greater opportunity for market competition. As a result, this approach will likely encourage competing financial institutions to offer lower cost accounts than might otherwise be offered. This approach also may minimize the impact of automated teller machine (ATM) surcharging by allowing recipients greater choice in selecting an ETA℠ at a conveniently located financial institution that offers the account. Moreover, research data indicate that the majority of check recipients are located in a relatively small number of geographic locations. Under the second approach, it is more likely that more than one financial institution will provide ETAs℠ in those areas where check recipients are geographically concentrated, thereby further increasing competition among financial institutions and increasing choice among recipients living in those areas.

In order to maximize the number of financial institutions that choose to offer ETAs℠, Treasury proposes to offer financial institutions financial compensation to establish and market the account. Treasury proposes to reimburse each financial institution that offers the ETA℠ a one-time fee per account established to offset the costs of setting up the account. Recent studies show that these set-up costs, which typically include costs to enroll and work with customers and the cost of issuing an on-line debit card, average approximately $12.60 per account.[3] As an added incentive to financial institutions and to offset imputed marketing, training, and education costs, Treasury is considering compensating participating financial institutions an additional amount for each ETA℠ opened above designated minimum threshold numbers of accounts.

Treasury seeks comment on whether, for purposes of compensating financial institutions, a distinction should be made between ETAs℠ opened by individuals who already have an account at a financial institution and those who do not have an existing account, i.e., should Treasury compensate financial institutions for opening an ETA℠ for an individual who already has an existing account? If a distinction is made, how should the basis for that distinction be determined? In addition, Treasury seeks comment from financial institutions on the extent to which the proposed compensation arrangements will increase the number of financial institutions providing ETAs℠ and on the most appropriate way to establish the minimum thresholds.

Treasury will maintain and make publicly available to recipients and program agencies a list of participating ETA℠ providers. In addition, financial institutions offering ETAs℠ will be permitted to display prominently a logo to be supplied by Treasury indicating that the ETA℠ is available at that financial institution.

B. Summary of ETA℠ Attributes

After considering the comments received, Treasury proposes that the ETA℠ account have the following attributes, which would be set forth in an ETA℠ Financial Agency Agreement between Treasury and the financial institution offering the account. Specific attributes are explained in more detail below. As proposed, the ETA℠ would:

- Be an individually owned account at a Federally-insured financial institution;
- Be available to any individual who receives a Federal benefit, wage, salary, or retirement payment;
- Accept only electronic Federal benefit, wage, salary, and retirement payments;
- Be subject to a maximum price of $3.00 per month;
- Have a minimum of four cash withdrawals per month, to be included in the monthly fee, through a) the financial institution's proprietary (on-us) ATMs, b) over-the-counter transactions at the main office or a branch of the financial institution, or c) any combination of on-us ATM access and over-the-counter access at the option of the financial institution;[4]
- Provide the same consumer protections that are available to other account holders at the financial institution, including, for accounts that provide electronic access, Regulation E protections regarding disclosure, limitations on liability, procedures for reporting lost or stolen cards, and procedures for error resolution;
- For financial institutions that are members of point-of-sale (POS) networks, allow POS purchases at no additional charge by the financial institution offering the ETA℠, as well as cash withdrawals and cash back with purchases, consistent with current commercial practice;
- Require no minimum balance, except as required by Federal or State law; and
- Provide a monthly statement.

Treasury welcomes comments on the above attributes. Treasury also seeks comments on three other features that are not part of the basic ETA℠ to determine whether any or all of the features should be added to the ETA℠ at the option of the financial institution and at additional cost, if any, to the account holder. These features—payment of interest on balances; allowing deposits of other electronic funds; and providing pre-authorized Automated Clearing House (ACH) debit capability—are discussed in Section D of this notice.

[2] A summary of comments provided at the meetings held on May 21, 1998, is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

[3] Cost estimates taken from Economic Waterfall Analyses, Dove Associates, Inc., June 1998. A copy of the analyses is available at the Financial Management Service's EFT website at http://www.fms.treas.gov/eft/eta/.

[4] Financial institutions may provide additional withdrawals at no charge or for a fee.

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C. Discussion of Proposed ETA℠ Attributes

Individual Account/Availability

The ETA℠, as proposed, would be an individually owned account established at a Federally-insured financial institution. A financial institution that chooses to offer ETAs℠ would be required to make an ETA℠ available to any recipient of a Federal benefit, wage, salary, or retirement payment who requests an ETA℠, unless the institution is prohibited by law from maintaining an account for the recipient (for example, where a recipient does not meet a credit union's field of membership requirements). As mentioned above, financial institutions that choose to offer ETAs℠ would be permitted to close an ETA℠ in certain circumstances to be delineated by Treasury. However, financial institutions would not be permitted to deny an ETA℠ to any eligible recipient.

By requiring that these accounts be held at Federally-insured financial institutions, Treasury can ensure that ETA℠ holders' funds are being deposited into accounts that have Federal deposit insurance. Federally-insured financial institutions are subject to comprehensive Federal regulation and oversight through examinations for safety-and-soundness and compliance with consumer protection laws.

Deposits

Treasury is proposing to limit the types of funds that may be deposited to an ETA℠ to electronic Federal benefit, wage, salary, and retirement payments. Permitting financial institutions to accept electronic deposits of other types of payments in addition to Federal benefit, wage, salary, and retirement payments to the ETA℠ would have implications with respect to the potential attachment of funds in the account. As discussed more fully below, a number of consumer and community-based organizations that commented on the proposed rule pointed out that many individuals do not utilize accounts at financial institutions because they fear that funds deposited to such accounts will become subject to attachment by creditors.

Most Federal benefit payments, including Social Security benefits, Supplemental Security Income benefits, Veteran's benefits, and Federal Railroad Retirement benefits, are protected from attachment and the claims of judgment creditors by Federal law, subject to certain limited exceptions.[5] The U.S. Supreme Court has held that Federal benefit payments remain exempt from attachment after they are deposited in a bank account.[6] Where all of the funds deposited into an account are exempt Federal benefits, most courts have held that the account itself is wholly exempt from attachment. If exempt funds are commingled with funds from other sources in a bank account, the exempt funds generally continue to be protected from attachment. However, courts have held that the burden of proving that particular funds in an account are not subject to attachment is on the depositor. Courts in different jurisdictions have used different accounting methods to determine whether funds in an account are considered to be exempt or nonexempt.

Limiting the types of funds that can be deposited to an ETA℠ would facilitate a recipient's ability to defend against impermissible attachments. Treasury expects that, although Federal wage, salary, and retirement payments, in addition to Federal benefit payments, could be deposited to an ETA℠, the majority of ETAs℠ would be utilized for the receipt of Federal benefit payments only. In those cases, ETAs℠ would not be subject to attachment, with limited exceptions (e.g., for child support obligations). If other types of payments were allowed to be deposited to an ETA℠, however, those payments would be subject to attachment, and the burden would be on the account holder to defend against the attachment.

Some consumer and community-based organizations pointed out that statutes protecting Federal benefit payments from attachment are not necessarily construed to prohibit a financial institution that maintains an account from setting off obligations of the depositor against the account. Specifically, several courts have held that statutes prohibiting attachment do not affect a bank's right to set off a depositor's obligations to the bank[7] against an account into which benefit payments have been deposited, on the grounds that a bank's exercise of its right of set off does not constitute "execution, levy, attachment or other legal process."[8] For this reason, some commenters urged Treasury to prohibit financial institutions that establish ETAs℠ from exercising any right of set off against an ETA℠.

Treasury recognizes that it is not clear under existing case law that Federal statutes prohibiting the attachment of Federal benefit payments would prohibit a financial institution that offers ETAs℠ from debiting an ETA℠, without the account holder's consent, for fees, loan payments, or other obligations owed by the account holder to the financial institution. Treasury expects that financial institutions offering ETAs℠ will market other products and services to recipients. While Treasury encourages financial institutions to offer recipients banking products and services to further Treasury's goal of bringing persons without accounts into the financial mainstream, Treasury is concerned that financial institutions might offset fees and obligations related to such products against ETAs℠. Many recipients depend on their benefit payments to meet day-to-day living expenses. In light of the special nature of payments deposited to ETAs℠ and the vulnerability of benefit recipients to any unexpected reduction in the funds available in their account, Treasury intends, through the ETA℠ Financial Agency Agreement, to prohibit institutions that elect to offer ETAs℠ from exercising any right of set off against an ETA℠, with the exception of the monthly account fee or charges for additional withdrawals from the ETA℠.

Cost to Recipient

Treasury proposes that financial institutions that choose to offer ETAs℠ would be permitted to charge a monthly fee not to exceed $3.00 per month. Treasury will evaluate the appropriateness of this pricing from time to time, and will make adjustments periodically as warranted. All attributes listed in the "Summary" section of this notice must be included within the monthly fee to the recipient.

In general, consumer and community-based organizations favored the establishment of a maximum monthly fee for the ETA℠. In their comments on the 208 NPRM, these organizations expressed a concern that the price, if left to financial institutions, might be out of reach for those recipients for whom traditional account fees are too high. These organizations indicated that cost is one of the main reasons some

[5] *See* 42 U.S.C. § 407(a); 42 U.S.C. § 1383; 38 U.S.C. § 530; and 45 U.S.C. § 231m(a). The prohibition against attaching such funds is subject to certain exceptions, including to satisfy child support and alimony obligations. *See, e.g.*, 42 U.S.C. § 659.

[6] *Philpott* v. *Essex County Welfare Board*, 409 U.S. 413, 416 (1973).

[7] A bank may exercise a right of set off against an account only for obligations owed by the depositor to the bank itself, and not for obligations of the depositor to third parties, such as child support or general creditor claims.

[8] *See Frazier* v. *Marine Midland Bank*, 702 F. Supp. 1000 (W.D.N.Y. 1988)(citing *In re Gillespie*, 41 Bankr. 810 (Bankr. D. Colo. 1984)).

recipients choose not to open an account at a financial institution.

In their comments, financial institutions expressed support for an approach in which the institutions themselves would determine the monthly account fee. They stated that only by allowing the institutions offering the ETA℠ to determine fees would they be able to develop accounts at the lowest possible cost. They also indicated that more financial institutions would participate if fees were unregulated.

Treasury research indicates that the average monthly cost of providing an account with the attributes listed in this notice, including a reasonable profit, falls within the $3.00 maximum price. Research data also indicate that, while some recipients cash their checks for free, recipients who pay to cash checks pay anywhere from one percent to six percent of the amount of the check for this service.[9] Based on the average Federal benefit payment, recipients could pay anywhere from $6.50 to $39.30 to cash a check.

Based on this information, Treasury believes that the $3.00 maximum monthly fee should provide incentives both to financial institutions to offer the account and to recipients to sign up for the account. Treasury recognizes, however, that not all financial institutions may elect to offer the ETA℠ account and not all recipients may find the account attractive. Accordingly, recipients may elect to continue to receive a check if the ETA℠ is unaffordable or the financial institutions offering the account are not conveniently located, or for another reason, by relying on a financial, geographical, or other hardship waiver provided in Part 208.

Access to Funds and Balance Information

As proposed, access to funds and balance information may be provided by ETA℠ providers through one of three methods: (1) Electronically through ATMs or other electronic means, (2) over-the-counter at ETA℠ provider main office or branch locations, or (3) through a combination of electronic and over-the-counter transactions. Any method may be used at the option of the financial institution as long as a minimum of four cash withdrawals are provided within the $3.00 monthly fee. A financial institution may offer additional withdrawals at no cost or at an additional fee to the account owner.

[9] Percentages taken from the Survey of Commercial Check Cashing Rates, Chaddsford Planning Associates, June 12, 1997.

It is expected that over-the-counter cash withdrawals either automatically include an account balance or will include an account balance if requested by the recipient. Treasury further assumes that on-us ATM cash withdrawals generally will produce a transaction receipt that includes the balance of the account. Balance information will be available on the required monthly statement, discussed below. Balance information also may be included as part of a financial institution's customer service program, to be offered to the ETA℠ account holder at the ETA℠ provider's discretion.

In their comments on the 208 NPRM, consumer and community-based organizations stated that some recipients may not be able to use ATMs because of mental, language, literacy, or other barriers and may be forced to rely on hardship waivers. These organizations explained that these recipients, who may otherwise have been interested in a basic low-cost ETA℠, effectively will be denied an opportunity to transition into the financial services mainstream because of this inability to use ATMs. As an alternative to ATMs, these organizations suggested that ETA℠ providers offer over-the-counter access to funds, such as through a teller. A large association representing older Americans commented that its constituency, in some cases, will have difficulty using an ATM. This commenter also called for an option for over-the-counter transactions.

A credit union association commented that many smaller credit unions do not have ATMs and if ETAs℠ were to be accessed solely by electronic means these credit unions would be precluded from offering ETAs℠. The association argued that these credit unions are otherwise in a good position to provide the accounts because of their locations in smaller communities and because they already offer low-cost accounts. A consumer organization commented that many smaller community banks also do not have ATMs.

It is Treasury's objective to provide recipients with as many options for accessing funds as can be provided within the constraints of a low monthly fee. Allowing over-the-counter transactions would give financial institutions added flexibility in designing an account based on their capabilities and their customers' needs. Treasury expects that allowing over-the-counter transactions will increase the number of financial institutions that elect to offer ETAs℠ and the number of recipients who sign up for an ETA℠ and thereby bring more recipients into the financial services mainstream.

In determining the number of cash withdrawals to include in the monthly account fee, Treasury weighed the advantages of providing multiple cash withdrawals against their cost, recognizing that the more transactions provided, the higher the monthly cost. Treasury used cost data developed for it by an outside contractor (see footnote 1) in reaching its determination.

The reference in the list of attributes to a "minimum" number of cash withdrawals is intended to permit a financial institution, within the ETA℠ structure, to offer additional cash withdrawals as long as the first four withdrawals are included within the $3.00 maximum price. Additional withdrawals may be subject to fees that are the responsibility of the recipient. Additionally, if the account is accessed through a network ATM owned by another institution, the account holder will be responsible for any charges assessed by the ATM owner.

For accounts that offer electronic access, such electronic access is proposed to be on-line electronic access only. Providing off-line electronic access almost certainly would raise the cost of an account to a payment recipient. Furthermore, as pointed out by some consumer organizations, limiting access to on-line electronic access only will reduce the possibility of overdrafts and associated fees.

In addition, financial institutions offering ETAs℠ would be prohibited under the ETA℠ Financial Agency Agreement from entering into arrangements with non-financial institutions to provide access to ETAs℠, other than access through a national or regional ATM/POS network. Treasury is concerned that such arrangements may be confusing or misleading to recipients and, therefore, will not permit financial institutions to enter into such arrangements with respect to the offering of the ETA℠.

Treasury continues to explore ways to expand access to the ETA℠ in areas underserved by financial institutions. These efforts include working with other public entities to expand ATM access.

Consumer Protections

ETAs℠ will be subject to those consumer protections available to other account holders at the same financial institution. This requirement is in accordance with the Act's statutory mandate to ensure that recipients "are given the same consumer protections with respect to the [ETA℠] as other account holders at the same financial

institution." This means, for example, that an ETA℠ will be subject to the Truth in Savings Act disclosures found in Regulation DD (12 CFR Part 230). Also, an ETA℠ that provides electronic access will be subject to Regulation E (12 CFR Part 205), i.e., the ETA℠ holder will be provided with disclosure of terms and conditions of the account, limitations on the holder's liability for unauthorized transfers, and procedures for reporting lost or stolen cards and for error resolution.

POS

For those accounts that provide electronic access, the proposed ETA℠ would allow for POS withdrawals and purchases that are consistent with current commercial practice. Studies show that more and more merchants are offering on-line POS purchases with cash back. This means a recipient can withdraw funds at the same time he or she is making a purchase using a debit card at a POS terminal. Some merchants offer cash withdrawals with no purchase required. However, ETA℠ holders should be aware that POS withdrawals, in some cases, may be subject to fees by merchants offering POS transactions. The recipient is responsible for any fees imposed by the merchant; however, under the proposed ETA℠, there would be no additional fees for these transactions imposed by the financial institution providing the ETA℠.

Minimum Balance

Except in limited circumstances discussed below, the ETA℠ would have no minimum balance requirement. The average monthly dollar amount for Federal benefit payments is approximately $650, and a majority of recipients withdraw most of their funds within the first five days of deposit. Requiring a minimum balance would effectively reduce the amount of the benefits available to the recipient to pay bills and make other subsistence purchases. The only exception to this required attribute is where a minimum balance is mandated by Federal or State law. For example, in the case of credit unions, under 12 U.S.C. 1759, a Federal credit union member must subscribe to at least one share of stock.

Monthly Statement

The ETA℠, as proposed, would have a monthly statement. Treasury is aware that under Regulation E, when government benefits are delivered electronically to a recipient, a periodic account statement may not be required if the recipient has access to account information through other specified means. *See* 12 CFR 205.15. Treasury also is aware that the cost of providing a monthly statement necessarily will be included in the monthly account charge to recipients. Treasury believes, however, that it is important to provide recipients with a monthly statement, particularly since the ETA℠ allows for POS withdrawals and purchases, and account balances are often not provided in connection with such transactions. In addition, providing a monthly statement would provide account balances that may not be available to a recipient if the ETA℠ provider does not offer daily 24-hour telephone customer service for account balance inquiries.

D. Discussion of Other Features

Treasury is requesting specific comment on three additional features that are not included in the list of basic ETA℠ attributes. Treasury is interested in obtaining feedback to determine whether any or all of these other features should be added at the option of the financial institution and at additional cost, if any, to the recipient. These features are (1) paying interest on account balances, (2) allowing for additional electronic deposits, and (3) providing for third-party ACH payments.

Each of the additional features offers potential benefits to some portion of eligible Federal payment recipients. Therefore, permitting these features may encourage more recipients to sign up for an ETA℠, potentially resulting in increased long-term savings to the Government. These additional features also may help to create a useful intermediate step for those without accounts at financial institutions in their transition to the financial services mainstream. For these reasons, if these features are permitted to be offered by financial institutions as part of the ETA℠, Treasury would consider whether to reimburse a financial institution an additional set fee per ETA℠ providing for such features.

There may be, however, potential disadvantages and costs associated with these additional features. Many financial institutions commented that the ETA℠ should be designed as a basic account that could be easily offered by any financial institution and easily understood by recipients. Variation in ETA℠ features may be confusing to recipients and more difficult to market as a standard product. Additionally, variation in the features of the ETA℠ may make it harder to protect the ETA℠ mark and ensure that the mark is used only by those financial institutions that have entered into an ETA℠ Financial Agency Agreement. Adding features, even as options, poses the risk that financial institutions will not be willing to participate, or that recipients who already have an account at a financial institution may switch to a low-cost ETA℠.

Treasury seeks specific comment as to whether the potential advantages of each of the three features outweigh the potential disadvantages. Treasury will consider carefully the comments received, but may decide not to add any of the features if it determines that the potential disadvantages make the features unsuitable for the ETA℠ or the associated cost is determined to be too high. Further, if a decision is made to allow additional features, any financial institution that offers an ETA℠ with the additional features must also make available to recipients an ETA℠ without the additional features.

Regardless of whether any of these other features is added to the ETA℠, financial institutions are encouraged to offer recipients other non-ETA℠ accounts that meet recipients' needs, including accounts that offer features beyond those contained in the ETA℠, such as checking accounts. However, while such accounts may be used for the receipt of Federal payments by EFT, these accounts are not considered to be ETAs℠ and may not be advertised as such.

Interest on Account Balance

Treasury believes that the payment of interest on ETAs℠ could encourage more individuals to sign up for ETAs℠ and could encourage and facilitate savings by low income recipients. In addition, financial institutions could potentially benefit from the higher daily balances that could result from permitting this feature.

However, Treasury research indicates that account balances will likely be drawn down very quickly after deposit and, therefore, interest earnings by recipients could be very small. Additionally, interest accumulated in such accounts may be attachable. Finally, including a savings feature may modestly increase the costs to the financial institution of providing the account. These costs could include interest payments and costs for Truth in Savings Act disclosures and 1099 tax reporting.

Additional Deposits

Permitting financial institutions to accept electronic deposits of other types of payments in addition to Federal benefit, wage, salary, and retirement payments to the ETA℠ would enable broader use of the ETA℠ for deposits and payments from other sources,

including matching funds under individual development account programs. This would help to meet Treasury's overall goal of bringing recipients into the financial mainstream. In addition, this could assist financial institutions that might find it difficult to refuse customer requests to deposit other funds into their accounts.

However, as discussed previously in Section C of this notice under the subheading "Deposits," permitting other types of payments to be deposited to the ETA℠ would have implications with respect to the potential attachment of funds in the account, and could add complexity and expense to the account. If financial institutions were permitted to allow additional payments into the ETA℠, Treasury would want to assure that recipients were given appropriate disclosures regarding the possible attachment of funds and would encourage Federal payment agencies to issue clear resolution rules to help recipients and financial institutions determine which funds cannot be attached.

Third-Party ACH Debit

Treasury recognizes that the ability for recipients to initiate preauthorized third-party debit transactions would be a convenient and cost-saving means for recipients to pay recurring bills such as rent, utilities, and cable television. Such a feature could reduce recipients' reliance on money orders and cash, thereby enabling recipients to avoid the cost of money orders, save time expended in traveling to pay bills in cash, and reduce the potential losses and thefts associated with carrying cash to pay bills. Thus, because of the convenience of this feature, more recipients might sign up for ETAs℠ and more individuals might be brought into the financial services mainstream.

However, because of differences in clearance mechanisms between ACH debits and ATM withdrawals, permitting ACH debits might result in overdrafts to ETAs℠ or rejected transactions, which would result in higher costs both to financial institutions and recipients. Moreover, Treasury is concerned that recipients inadvertently could authorize ACH debit entries to pay for goods and services that are not delivered or are not as represented, thereby incurring unexpected losses. Treasury is aware of some incidents of ACH debit fraud, as well as the difficulties that consumers sometimes encounter in dealing with legitimate merchants, including difficulties in revoking preauthorized debit authorizations. In addition, Treasury believes that the costs of administering the ETA℠ could increase as a result of the additional customer service burden that would be imposed on financial institutions in dealing with recipient inquiries related to such transactions.

Dated: November 18, 1998.

Richard L. Gregg,

Commissioner.

[FR Doc. 98–31244 Filed 11–19–98; 8:45 am]

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Part VII

Nuclear Regulatory Commission

10 CFR Chapter I

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Use of Byproduct Material, Reopening of Public Comment Period; Notice

Medical Use of Byproduct Material: Proposed Revision and Draft Policy Statement, Reopening of Public Comment Periods; Proposed Rules

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NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medial Use of Byproduct Material, Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Reopening of public comment period.

SUMMARY: On August 25, 1998, the Nuclear Regulatory Commission (NRC) announced the availability of and requested comment on draft NUREG–1556, Volume 9, "Consolidated Guidance about Materials Licenses: Program-Specific Guidance about the Medical Use of Byproduct Material," dated July 1998, (63 FR 45270). This draft guide was developed in parallel with the proposed revision of 10 CFR Part 35, "Medical Use of Byproduct Material," (63 FR 43516). The comment period for the proposed rule and NUREG 1556, Volume 9, expired on November 12, 1998. A number of comments on the rule noted that the original comment period was too short to review, thoroughly understand, and comment on the proposed changes in the regulations that govern the use of byproduct material. In response to those comments and to ensure that all of the parties affected by the proposed changes have an opportunity to provide comments, the Commission has decided to reopen the comment period for the rule and NUREG 1556, Volume 9.

DATES: The comment period has been reopened and will now expire on December 16, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:15 a.m. and 4:30 p.m. on Federal workdays. Comments may also be submitted through the Internet by addressing electronic mail to DLM1@NRC.GOV.

Those considering public comment may request a free single copy of draft NUREG–1556, Volume 9, by writing to the U.S. Nuclear Regulatory Commission, ATTN: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Washington, DC 20555–0001. Alternatively, submit requests through the Internet by addressing electronic mail to slm2@nrc.gov. A copy of draft NUREG–1556, Volume 9, is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Mrs. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7874; electronic mail address: slm2@nrc.gov.

Electronic Access. Draft NUREG–1556, Vol. 9 is available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html).

Dated at Rockville, Maryland, this 16th day of November, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31220 Filed 11–20–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20, 32 and 35

RIN 3150–AF74

Medical Use of Byproduct Material; Proposed Revision, Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: On August 13, 1998, the Nuclear Regulatory Commission (NRC) published for public comment a proposed rule to revise its regulations governing the medical use of byproduct material (63 FR 43516). The comment period for the proposed rule expired on November 12, 1998. A number of comments noted that the original 90-day comment period was too short to review, thoroughly understand, and comment on the proposed changes in the regulations that govern the use of byproduct material. In response to those comments and to ensure that all of the parties affected by the proposed changes have an opportunity to provide comments, the Commission has decided to reopen the comment period.

DATES: The comment period has been reopened and will now expire on December 16, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: *Comments may be sent to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays.

Copies of comments received may be examined at: NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the home page, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum" and then "News, Information, and Contacts for Current Rulemakings." This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Catherine Haney, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–6825, e-mail CXH@nrc.gov or Diane Flack, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 02555–0001, (301) 415–5681, e-mail DSFI@nrc.gov.

Dated at Rockville, Maryland, this 17th day of November 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–31218 Filed 11–20–98; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

Medical Use of Byproduct Material; Draft Policy Statement, Reopening of Public Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement; reopening of public comment period.

SUMMARY: On August 13, 1998, the Nuclear Regulatory Commission (NRC) published for public comment a proposed revision of its 1979 policy statement on the medical use of byproduct material (63 FR 43580). The comment period for the proposed revision of the policy statement expired on November 13, 1998. A number of comments noted that the original 90-day comment period was too short to review, thoroughly understand, and comment on the proposed changes in the policy statement. In response to those comments and to ensure that all of the parties affected by the proposed changes have an opportunity to provide comments, the Commission has decided to reopen the comment period.

DATES: The comment period has been reopened and will now expire on December 16, 1998. Comments received after this date will be considered if it is practical to do so, but the Commission is only able to ensure consideration of comments received on or before this date.

ADDRESSES: *Comments may be sent to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm on Federal workdays.

Copies of comments received may be examined at: NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). From the home page, select "Rulemaking" from the tool bar. The interactive rulemaking website can then be accessed by selecting "Rulemaking Forum" and then "News, Information, and Contacts for Current Rulemakings." This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Catherine Haney, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–6825, e-mail CXH@nrc.gov or Diane Flack, Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, Washington, DC 02555–0001, (301) 415–5681, e-mail DSFI@nrc.gov.

Dated at Rockville, Maryland, this 17th day of November, 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–31219 Filed 11–20–98; 8:45 am]

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Part VIII

Department of Labor

Employment and Training Administration

Welfare-to-Work Grants; Performance Bonus Criteria; Notice

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DEPARTMENT OF LABOR

Employment and Training Administration

Welfare-to-Work Grants; Performance Bonus Criteria

AGENCY: Employment and Training Administration (ETA), DOL.

ACTION: Notice of Welfare-to-Work performance bonus criteria.

SUMMARY: The Department of Labor (DOL) is responsible for administering Welfare-to-Work Grants as authorized by the Balanced Budget Act of 1997. This includes developing a formula and accompanying guidelines for awarding bonuses to successfully performing States. The Act stipulates that bonuses are to be awarded in FY 2000 and based on the performance of each State that is a Welfare-to-Work State in 1998 and 1999. DOL has consulted with the U.S. Department of Health and Human Services (DHHS), the National Governors' Association (NGA), the American Public Human Services Association (APHSA)—formerly American Public Welfare Association (APWA), and State and local welfare and workforce officials in drafting these guidelines.

FOR FURTHER INFORMATION CONTACT: Karen Greene, Chief, Division of Performance Management and Evaluation, Office of Policy and Research, United States Department of Labor, Employment and Training Administration, (202) 219–8680—not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Balanced Budget Act of 1997 amends the Social Security Act to authorize the U.S. Department of Labor to provide Welfare-to-Work Grants to States and local communities. The purpose of these grants is to create additional job opportunities for the hardest-to-serve recipients of Temporary Assistance for Needy Families (TANF) funds. Section 5001(a)(5)(E) of the Social Security Act enables successfully performing States in the Welfare-to-Work program to qualify for a bonus. The bonus shall be awarded by a formula which includes the following measures: placement in employment, employment retention, increase in earnings of such individuals, and such other factors as the Secretary deems appropriate. The formula may take into account general economic conditions on a State-by-State basis. The Secretary of Labor shall prescribe a performance threshold in a manner that ensures that the performance bonus grants to states equal the $100,000,000 set aside for this purpose.

As DOL approaches the development of the Welfare-to-Work performance bonus formula and guidelines, certain factors make the process unique. The Welfare-to-Work program operates within the broader TANF and welfare reform effort. A set of "High Performance Bonus" guidelines for TANF performance in FY 1998 was issued by DHHS in March of 1998 with additional clarification issues August 13, 1998. While recognizing the unique nature of Welfare-to-Work grants, it is important that these two bonus systems are compatible. As currently authorized, the Welfare-to-Work performance bonus is a one-time process, unlike the TANF high performance bonus that will be ongoing over a period of five years. Thus, the Welfare-to-Work bonus criteria may differ from the TANF bonus criteria in certain respects and should also remain as straightforward as possible.

DOL has undertaken broad-based consultation with a workgroup of DHHS, NGA, and APHSA and State and local welfare and workforce officials to develop a bonus formula and guidelines for awarding the performance grants. The workgroup has achieved consensus on a set of proposed measures, explored the need and potential for economic adjustments, identified procedures for determining the amount of bonus awards, and examined the potential data sources for scoring States' performance in the context of the anticipated reporting burden.

II. Formula and Guidelines

This section presents the set of performance measures, the anticipated data sources, and the manner in which the bonus system will be applied and grant amounts determined.

A. Performance Measures

The performance measures reflect the three specified in the statute and the measures included in the TANF high performance bonus. They will include two job entry measures (basic rate and 30+ hour rate) and two post-placement measures (job retention and earnings gain).

1. Job Entry Rate: (a) Basic Rate = the number of participants entering employment for the first time divided by the total number of participants (i.e. the number of participants entering employment for the first time + the number of participants who are not employed + the number of participants entering employment not for the first time).

(b) 30+ Hour Rate = the number of participants entering employment of at least 30 hours per week, or increasing hours of subsidized and unsubsidized employment to 30 hours per week or greater for the first time, divided by the total number of participants (i.e. the number of participants entering or increasing to at least 30 hours of employment per week + the number who are not employed or who work fewer than 30 hours per week).

Explanation: Job entry is a fundamental feature of the Welfare-to-Work program. Providing two measures recognizes the importance of moving the hard-to-employ Welfare-to-Work participants into employment. At the same time, additional credit also should be given for promoting self-sufficiency by helping participants secure full-time employment, or jobs of at least 30 hours per week.

The time period for the measurement of both job entry measures will be from October 1, 1998 through September 30, 1999. This allows for the bonus criteria to apply when most States have reached a fully operational stage.

Credit for basic job entry will include both subsidized and unsubsidized employment and only the initial job entry for each participant in light of the importance of securing an initial attachment to the workforce. Basic job entry only counts for those jobs obtained while receiving services from a Welfare-to-Work entity. Credit for 30+ hour job entry will also include entry into both subsidized and unsubsidized employment, but includes an initial placement into a 30+ hour job and an increase in hours of weekly employment from less than 30 to 30 or more hours per week. Credit for 30 + hour job entry will include employment under 30 hours not obtained while receiving services from a Welfare-to-Work entity if the employment is increased to 30 or more hours while receiving services from the Welfare-to-Work entity. Unsubsidized employment will be defined as any type of employment that does not include a wage subsidy (e.g. a TANF wage subsidy or OJT). Subsidized employment counts as long as it is not fully subsidized employment or workfare, i.e. the amount paid to the individual exceeds the amount of the subsidy.

2. Job Retention rate = the number of participants employed in unsubsidized employment in the base quarter (Quarter 3: April 1 through June 30, 1999) who are retained in unsubsidized employment in the second subsequent quarter (Quarter 5: October 1 through December 31, 1999), divided by the number of participants employed in

unsubsidized employment in the base quarter (Q3).

3. Earnings Gain rate = the sum of the earnings of participants retained in unsubsidized employment in the second subsequent quarter (Q5) minus the sum of the earnings of that same group in the base quarter (Q3), divided by the sum of the earnings of that same group in the base quarter (Q3).

Explanation: The measures are based on a six-month time frame between the base quarter and the measurement quarter because at least six months are needed to see any significant earnings gains. The Act also suggests that job retention of at least 6 months is an appropriate outcome measure to use in evaluating the Welfare-to-Work program. Both retention and earnings are based solely on employment in unsubsidized jobs in light of the long-term goal of moving participants into unsubsidized employment. The third quarter was selected as the base period because it allows sufficient time for States to reach a steady state of program operations and have substantial numbers of participants in an employment retention phase. Measurement is limited to a single quarter because of the overall time limits on applying the bonus (measuring the FY 99 performance of FY 98 and 99 grantees for bonuses to be awarded in FY 2000).

B. Data Sources

The primary source of data to measure performance for bonus purposes will be the participant summary information included on the Welfare-to-Work Cumulative Quarterly Financial Status Report. States will automatically be considered for the Welfare-to-Work performance bonus by submitting the proper information on the Quarterly Financial Status Report. The primary source of data for filling out the participant information on these quarterly reports is anticipated to be Unemployment Insurance (UI) wage records. The recommended and preferable data source for earnings and retention measurement is UI wage records, with the measures and general approach having been set anticipating their use. DOL understands that there will be States that cannot or choose not to use UI wage records. States using other data sources for retention and earnings gain must justify the sufficiency of the other data collection methods to be used.

C. Bonus Allocation

Weighting the measures. The importance and influence of each of the measures can be reflected through the weighting of the measure. During the consultation on designing the bonus system, various views were expressed and considered. DOL has developed a weighting scheme as follows:

Job Entry Rate 60%
(a) Basic Rate 40%
(b) 30+ Hour Rate 20%
Retention and Earnings Rate 40%
(a) Retention Rate 25%
(b) Earnings Gain Rate 15%

Applying the formula. Statistical methods based on the distribution of States' performance levels for each performance measure will be used, both to determine which States can receive a bonus and to calculate the bonus amounts.

Determining eligibility. Each State's eligibility for receiving a bonus will be determined by a point system based on the extent to which the State performs above or below the national average for each measure. Assuming a normal distribution, a State will receive zero points for each measure on which it performs average or below average; one point for each measure on which it performs above average; and two points for each measure on which it performs significantly above average. If a State scores significantly below average on a specific measure, it will receive a score of negative one on that measure. In order to qualify for the bonus, a State must receive at least one point on one of the two job entry measures, plus at least one point on either the job retention or earnings gain measure. The extent of the standard deviation from the mean for each measure will be the basis for what determines above average (mean to one standard deviation above the mean), significantly above average (one or more standard deviations above the mean), and significantly below average (one or more standard deviations below the mean) performance.

Determining bonus amounts. Each State that qualifies for a bonus will be assigned a score according to the formula:

(W1)(X1) + (W2)(X2) + (W3)(X3) + (W4)(X4) = total score

(Where W represents the weight of the measure and X represents the score for each measure)

For example, if a State scores a 1 on basic job entry, 0 on 30+ hour job entry, a 2 on retention and a 1 on earnings gain, their score would be: (40)(1) + (20)(0) + (25)(2) + (15)(1) = 105

States will then be grouped according to their scores. Top performers (135–200 points) will receive a set percentage of their original Welfare-to-Work grant amount. Second-level performers (100–134 points) and third-level performers (35–99 points) will receive proportionately lower percentages. Applying the percentages to the State's formula grant amount will scale the award to the size of the State. Percentages will be set based on final performance data in a manner that provides for the full distribution of the $100,000,000 set aside for the bonus as required by the Act.

In order to avoid a single State receiving a disproportionately large bonus grant, caps are set at no more than 25% of a State's formula allotment, and no state may receive more than $20,000,000 (20% of the bonus money available).

Equity adjustments. DOL, based on the consultation process and past experience with providing adjustment approaches for performance standards, acknowledges the need to take into account the different economic circumstances in States and localities. The two most important factors expected to influence performance are the unemployment rate statewide and the unemployment rate in areas of the State with a high concentration of Welfare-to-Work participants. There is no comparable program able to provide a database that would allow the development of a statistical model to confirm that assumption. Once performance data are received, they will be analyzed to determine the extent to which these or other economic factors influence program performance, and appropriate adjustments will be taken under consideration in the assessment of a State's performance. A supplemental notice outlining more specific unemployment adjustment procedures will be published as soon as it is available.

Signed at Washington, DC this 18th day of November 1998.

Dennis Lieberman,

Director, Office of Welfare to Work.

[FR Doc. 98–31224 Filed 11–20–98; 8:45 am]

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Part IX

Department of Justice

Architectural and Transportation Barriers Compliance Board

Department of Transportation

28 CFR Part 36
36 CFR Part 1191
49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings; Joint Final Rule

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

[A.G. Order No. 2191–98]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

RIN 3014—AA24

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

Americans With Disabilities Act Accessibility Guidelines; Detectable Warnings

AGENCIES: Architectural and Transportation Barriers Compliance Board, Department of Justice, and Department of Transportation.

ACTION: Joint final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board), the Department of Justice, and the Department of Transportation are continuing the suspension of the requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pool edges in the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the Standards for Accessible Design. The Access Board plans to issue a separate notice of proposed rulemaking to revise and update ADAAG and will address detectable warnings in that rulemaking. The Department of Justice and the Department of Transportation will issue separate notices of proposed rulemaking to revise and update the Standards for Accessible Design, which must be consistent with ADAAG. The agencies are continuing the suspension of the detectable warning requirements to July 26, 2001, when it is expected that the rulemakings to revise and update ADAAG and the Standards for Accessible Design will be completed.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: *Access Board:* James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone (202) 272–5434 extension 16 or (800) 872–2253 extension 16 (voice), and (202) 272–5449 (TTY) or (800) 993–2822 (TTY).

Department of Justice: John L. Wodatch, The ADA Information Line, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, Washington DC 20530. Telephone (800) 514–0301 (voice) or (800) 514–0383 (TTY).

Department of Transportation: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. Telephone (202) 366–9306 (voice) or (202) 755–7687 (TTY).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies of this final rule are available in the following formats: standard print, large print, Braille, audio cassette tape, and computer disk. Single copies may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434 or (800) 872–2253, pressing 1 on the telephone keypad, then 1 again, and requesting publication S40 (Detectable Warnings Final Rule). Persons using a TTY should call (202) 272–5449 or (800) 993–2822. Please provide your name, address, and telephone number when ordering publications. Persons who want a copy in large print, Braille, audio cassette tape, or computer disk should specify the type of format they want.

The final rule is available on the Access Board's web site (http://www.access-board.gov/rules/dw.htm), the Department of Justice's web site (http://www.usdoj.gov/crt/ada/adahom1.htm), and the Department of Transportation's web site (http://dms.dot.gov). The final rule is also available on electronic bulletin board at (202) 514–6193 (Department of Justice). This telephone number is not toll-free.

Background

On June 1, 1998, the Access Board, the Department of Justice, and the Department of Transportation published a joint notice of proposed rulemaking (NPRM) to continue the suspension of the requirements for detectable warnings at certain locations within sites in ADAAG and the Standards for Accessible Design from July 26, 1998 to July 26, 2000.[1] 63 FR 29924. The suspension applies to detectable warning requirements at curb ramps (4.7.7), hazardous vehicular areas (4.29.5), and reflecting pool edges (4.29.6). The suspension does not affect detectable warning requirements at platform edges in transportation facilities (10.3.1(8)).

As explained in the NPRM, the detectable warning requirements were suspended initially in 1994, pending review of a research project on the need for detectable warnings at vehicular-pedestrian intersections in the public right-of-way. 59 FR 17442 (April 12, 1994). The research project showed that vehicular-pedestrian intersections are very complex environments and that pedestrians who are blind or visually impaired use a combination of cues to detect intersections. The research project found that detectable warnings helped some pedestrians who are blind or visually impaired locate and identify curb ramps. However, the detectable warnings had only a modest impact on overall performance because, in their absence, pedestrians who are blind or visually impaired used other cues that might be available to detect the intersection. The research project indicated that there may be a need for additional cues at some types of intersections. The research project did not identify the specific conditions where such cues should be provided. The research project suggested that other technologies, which may be less costly and equally or more effective than detectable warnings, be explored for providing information about intersections.

The Access Board subsequently established an advisory committee to conduct a comprehensive review of ADAAG and make recommendations for revising and updating the guidelines. The suspension of the detectable warning requirements was continued in 1996, pending review of the advisory committee's recommendations. 61 FR 39323 (July 29, 1996). The advisory committee recommended that the detectable warning requirements at platform edges in transportation facilities be retained and that equivalent tactile surfaces or other means be permitted to provide equivalent detectability of platform edges. The advisory committee did not make any recommendations regarding detectable warnings at other locations within a site. The advisory committee suggested that the appropriateness of providing

[1] The Access Board is responsible for issuing guidelines to assist the Department of Justice and the Department of Transportation in establishing accessibility standards for newly constructed and altered facilities under the Americans with Disabilities Act. In 1991, the Access Board issued the Americans with Disabilities Act Accessibility Guidelines, which is commonly referred to as ADAAG. 36 CFR part 1191, appendix A. The Department of Justice and the Department of Transportation have adopted sections 1 through 10 of ADAAG as the Standards for Accessible Design for the Americans with Disabilities Act. 28 CFR part 36, appendix A; 49 CFR part 37, appendix A.

detectable warnings at vehicular-pedestrian intersections in the public right-of-way should be established first, and the application to other locations within a site should be considered afterwards.

The Access Board is preparing an NPRM to revise and update ADAAG based on the advisory committee's recommendations, as well as research and other available information, and will address provisions for detectable warnings within sites in that NPRM. The Department of Justice and the Department of Transportation will issue separate NPRMs to revise and update the Standards for Accessible Design, which must be consistent with ADAAG. In the NPRM announcing the continuation of the suspension of the detectable warning requirements, the agencies noted that the rulemakings to revise and update ADAAG and the Standards for Accessible Design were expected to be completed by July 26, 2000, and the agencies proposed to continue the suspension through that date. The Access Board is also preparing an NPRM to revise and update the guidelines for the Architectural Barriers Act, which requires certain federally financed facilities to be accessible. The Access Board has recently decided to combine the rulemakings to update and revise ADAAG and the guidelines for the Architectural Barriers Act and to include provisions for housing in the rulemakings. This action is expected to extend the rulemakings for six to twelve months.

Three comments were received in response to the NPRM. One commenter expressed concern about the amount of time it is taking to revise and update ADAAG and the Standards for Accessible Design, and the resulting delay in addressing detectable warnings. The rulemaking process can be lengthy, especially when revising and updating major rules like ADAAG and the Standards for Accessible Design. There are many important issues that will be addressed in these rulemakings. It would not be efficient to address each issue through separate rulemakings. Another commenter identified himself as an individual who is blind and recommended that detectable warnings should be required at the locations covered by the suspension. When detectable warning provisions were initially proposed in ADAAG, a large number of individuals who are blind commented on the proposal. There was no consensus among the group regarding detectable warnings. The agencies expect to receive many comments on detectable warnings when the NPRMs to revise and update ADAAG and the Standards for Accessible Design are issued and will consider all the comments before issuing final rules.

The other commenter recommended that the Access Board issue guidelines addressing public sidewalks and street crossings. The Access Board issued proposed and interim guidelines addressing public rights-of-way in 1992 and 1994. 57 FR 60612 (December 21, 1992); 59 FR 31676 (June 20, 1994). The Access Board received a large number of comments on the guidelines from public works agencies, transportation departments, and traffic consultants. The comments showed a disparate understanding of pedestrian accessibility criteria generally and the application of the guidelines in particular. Based on the comments, the Access Board decided to reserve the guidelines in favor of working with other governmental and private sector organizations in the transportation industry to promote the incorporation of pedestrian accessibility criteria into industry guidelines, standards, and recommended practices. 63 FR 2000 (January 13, 1998). The Access Board periodically reviews its rulemaking agenda and will evaluate the impact of its efforts in this area and whether further rulemaking is warranted.

As explained earlier, the Access Board, the Department of Justice, and the Department of Transportation will address the provisions for detectable warnings within sites in the rulemakings to update and revise ADAAG and the Standards for Accessible Design. Continuing the suspension of the requirements for detectable warnings at certain locations within sites to July 26, 2001 will maintain the status-quo until the planned rulemakings are completed.

Regulatory Process Matters

The Access Board, the Department of Justice, and the Department of Transportation have independently determined that this final rule is not a significant regulatory action under Executive Order 12866. It is not a significant rule under the Department of Transportation's regulatory policies and procedures. The Department of Transportation expects the economic impacts to be minimal and has not prepared a full regulatory evaluation.

The Access Board, the Department of Justice, and the Department of Transportation also independently certify under section 605(b) of the Regulatory Flexibility Act that this final rule is not expected to have a significant economic impact on a substantial number of small entities because it continues the suspension of an existing regulatory requirement and does not impose any new requirement.

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or establish or enforce any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability. Since the final rule is issued under the authority of the Americans with Disabilities Act, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

Text of Final Common Rule

The text of the common rule is revised to read as follows:

§ _____. _____ Temporary suspension of certain detectable warning requirements.

The detectable warning requirements contained in sections 4.7.7, 4.29.5, and 4.29.6 of appendix A to this part are suspended temporarily until July 26, 2001.

Adoption of Final Common Rule

The agency specific proposals to adopt the final common rule, which appears at the end of the common preamble, are set forth below.

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 36

List of Subjects in 28 CFR Part 36

Administrative practice and procedure, Alcoholism, Buildings and facilities, Business and industry, Civil rights, Consumer protection, Drug abuse, Historic preservation, HIV/AIDS, Individuals with disabilities, Penalties, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

By the authority vested in me as Attorney General by 28 U.S.C. 509, 510; 5 U.S.C. 301; and 42 U.S.C. 12186, and for the reasons set forth in the common preamble, part 36 of chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

1. The authority citation for 28 CFR part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12186(b).

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§ 36.407 [Revised]

2. Section 36.407 is revised to read as set forth at the end of the common preamble.

Dated: November 2, 1998.

Janet Reno,

Attorney General.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

List of Subjects in 36 CFR Part 1191

Buildings and facilities, Civil rights, Individuals with disabilities, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 1191 of title 36 of the Code of Federal Regulations is amended as follows:

PART 1191—AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

1. The authority citation for 36 CFR part 1191 continues to read as follows:

Authority: 42 U.S.C. 12204.

§ 1191.2 [Revised]

2. Section 1191.2 is revised to read as set forth at the end of the common preamble.

Authorized by vote of the Access Board on July 15, 1998.

Thurman M. Davis,

Chair, Architectural and Transportation Barriers Compliance Board.

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

List of Subjects in 49 CFR Part 37

Buildings and facilities, Buses, Civil rights, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements, Transportation.

Authority and Issuance

For the reasons set forth in the common preamble, part 37 of title 49 of the Code of Federal Regulations is amended as follows:

PART 37—TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: 42 U.S.C. 12101–12213; 49 U.S.C. 322.

§ 37.15 [Revised]

2. Section 37.15 is revised to read as set forth at the end of the common preamble.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 98–31254 Filed 11–20–98; 8:45 am]

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A cumulative list of Public Laws for the second session of the 105th Congress will be published in the **Federal Register** on November 30, 1998.

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CFR CHECKLIST

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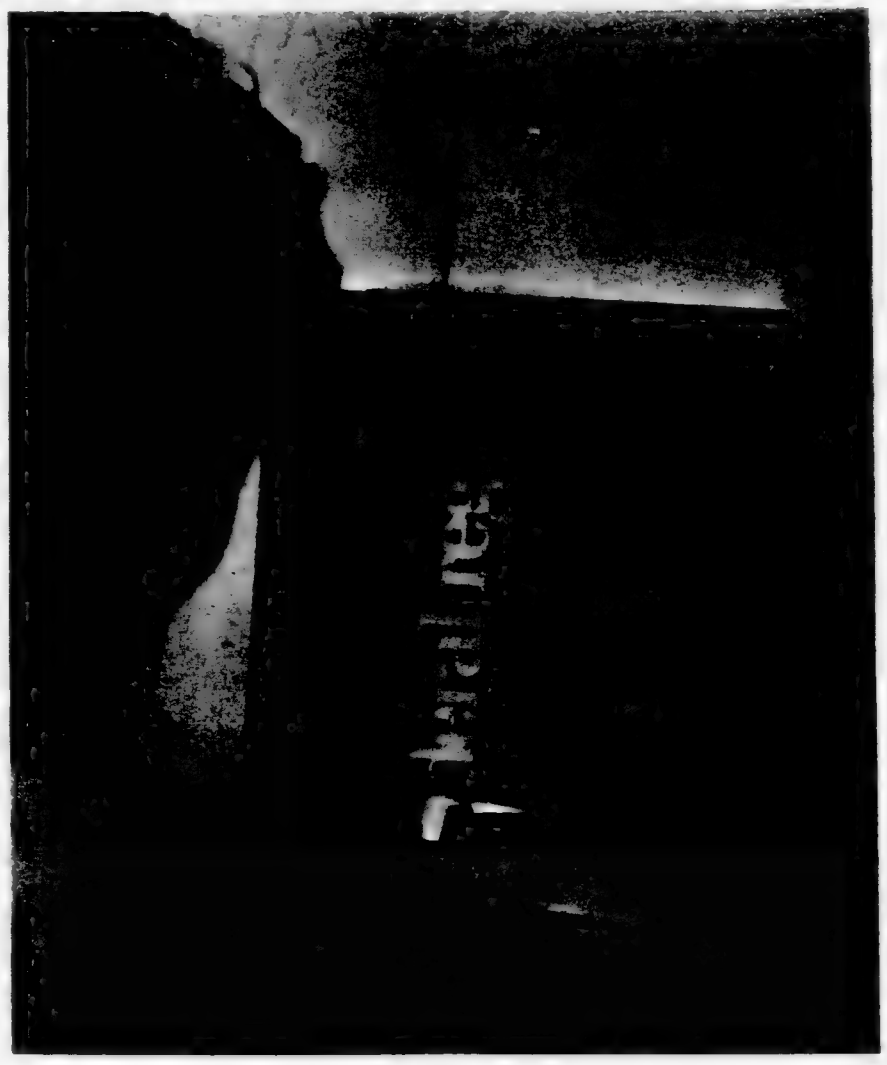

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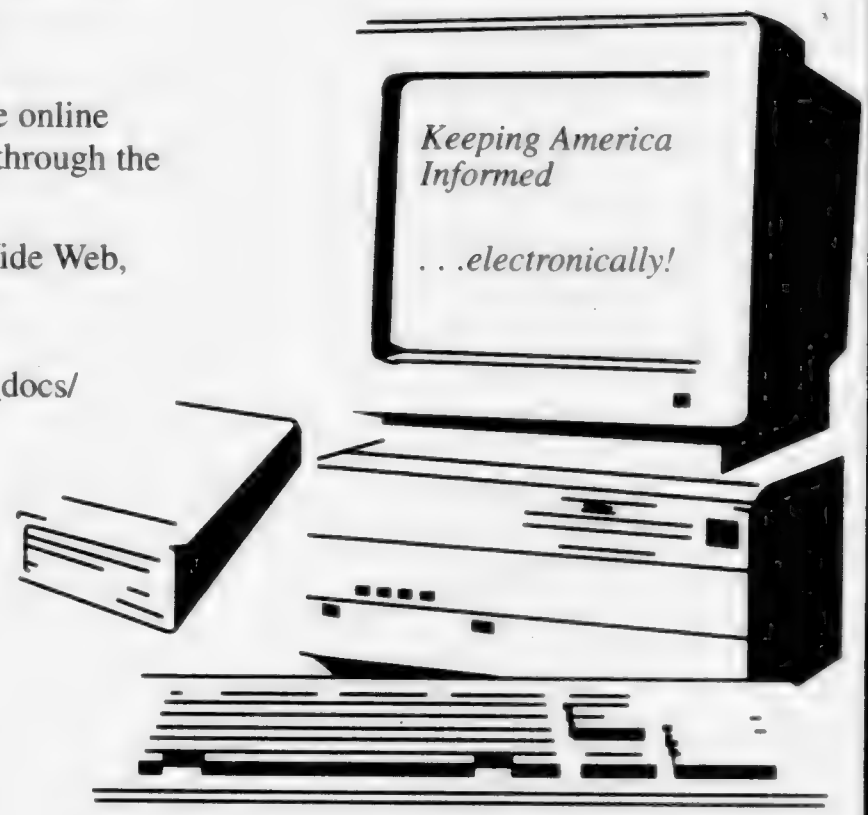

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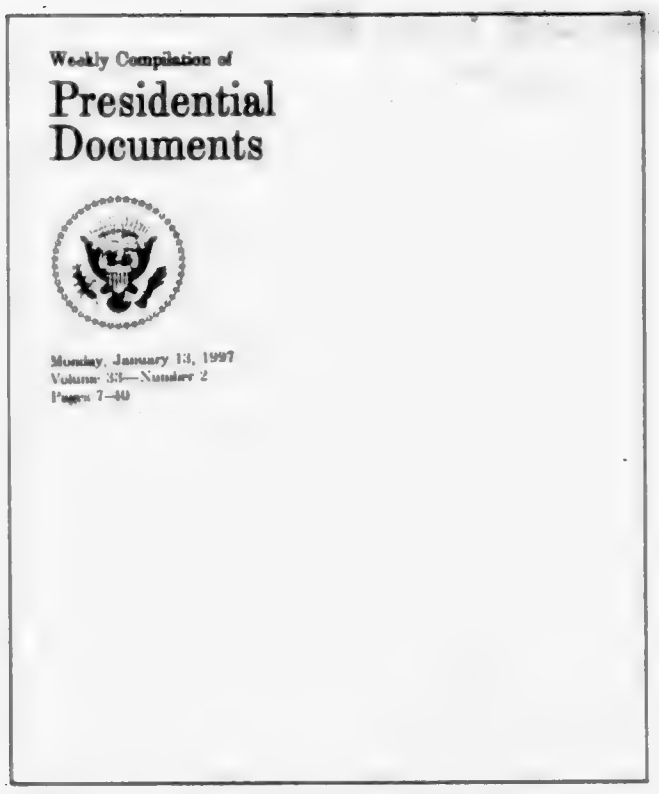

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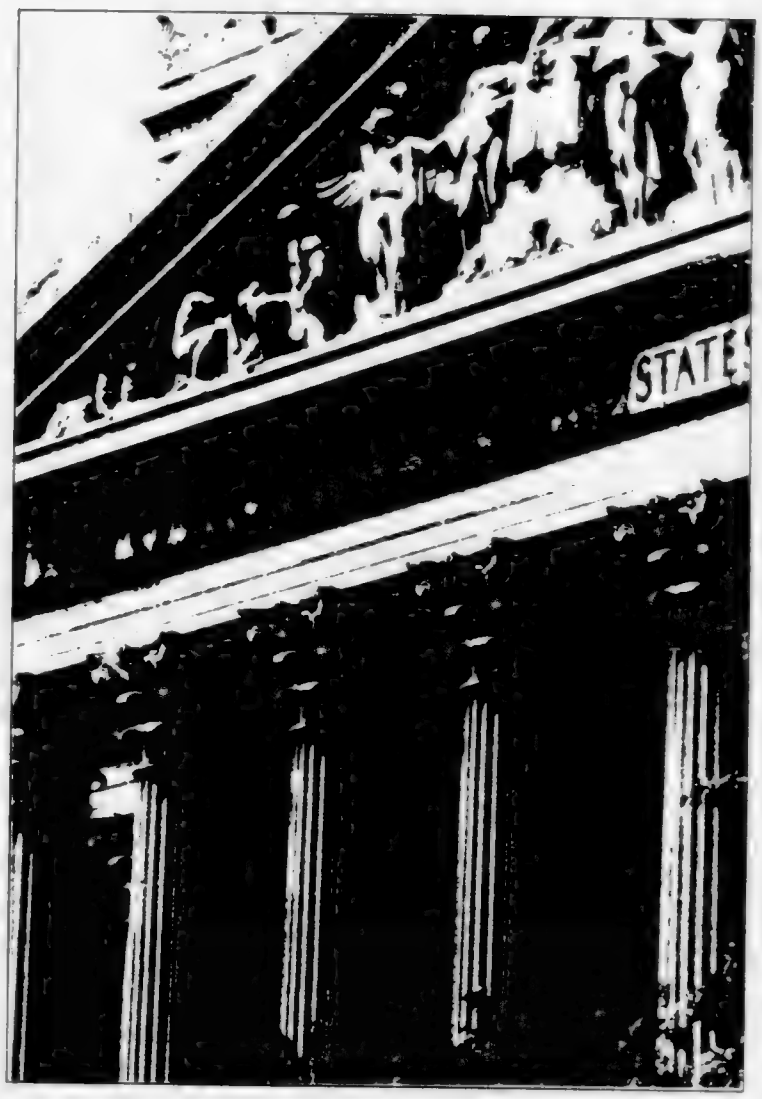

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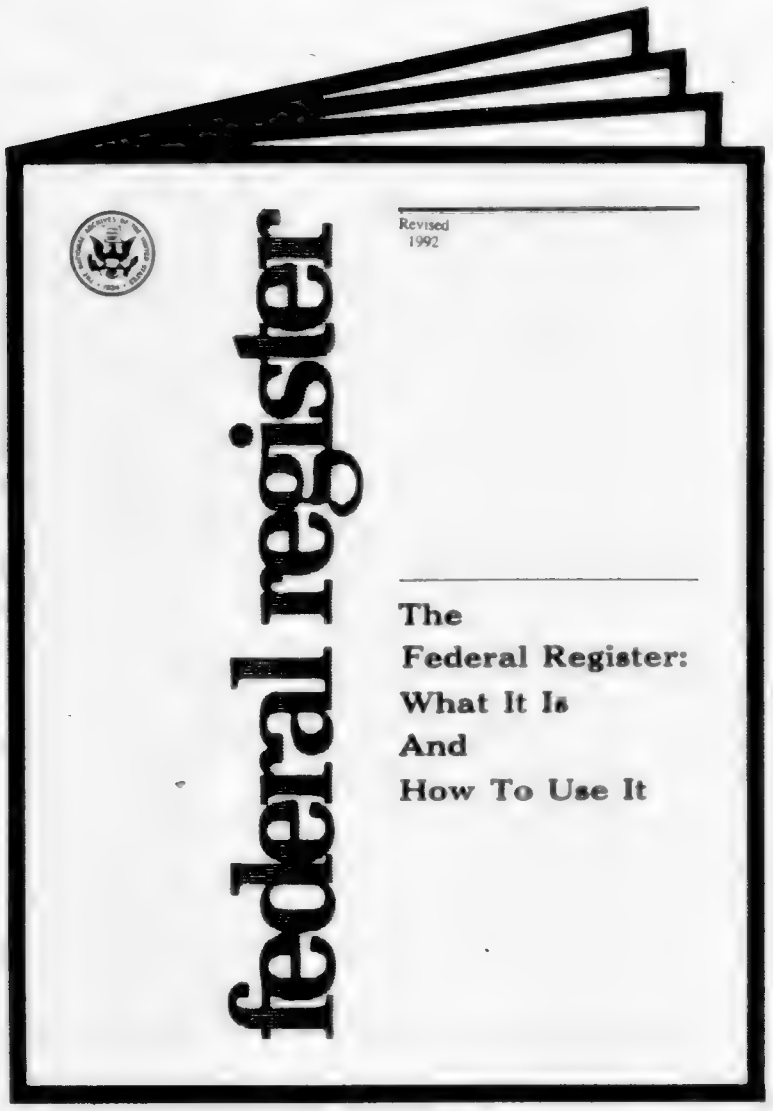

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Washington, DC
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RESERVATIONS: 202–523–4538

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Presidential Documents

Title 3—

The President

Proclamation 7149 of November 19, 1998

National Great American Smokeout Day, 1998

By the President of the United States of America

A Proclamation

One of the greatest public health threats facing Americans today is tobacco addiction and all the related health disorders that come with it. More Americans die every year from tobacco-related diseases than from AIDS, illegal drugs, alcohol, fires, car accidents, murders, and suicides combined. Although we have heard for decades the Surgeon General's warning that smoking kills, each day more than 3,000 young Americans become regular smokers—and more than 1,000 of them will die prematurely as a result.

This past April, the Surgeon General issued a new report on tobacco that underscores the urgent need for comprehensive legislation to reduce youth smoking. Over the past 6 years, youth smoking has grown by one-third, increasing by an alarming 80 percent among African American youth. Currently, more than 36 percent of high school students smoke, and recent statistics released by the Centers for Disease Control also reaffirm what we already know: nicotine creates an addiction that is extremely difficult to overcome. Unfortunately, 86 percent of our young people who smoke daily and try to quit are unsuccessful, and casual teenage smokers—even those who smoke as few as three cigarettes a month—often go on to become regular smokers.

My Administration has worked hard for comprehensive and effective tobacco legislation that will cut teen smoking. We will continue our efforts until the Congress has acted to pass such legislation. Our 1999 budget also includes an unprecedented increase in funding for research at the National Institutes of Health, and the National Cancer Institute plans to allocate millions of those dollars for research into prevention and cessation programs to reduce tobacco use.

Each year, the Great American Smokeout gives us the opportunity to do what we should do every day: raise awareness among all Americans—but especially among children and teens—of the dangers of smoking. Through such youth-related promotions as the Great American SmokeScream and the Great American Smokeout Pledge, we can encourage young people who smoke to stop, and we can convince those who don't smoke that they should never start. Adult smokers should also remember the power of personal example and make a sincere effort to stop smoking on this special day, taking an important step toward a better, healthier future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 19, 1998, as National Great American Smokeout Day. I call upon all Americans to join together in an effort to educate our children about the dangers of tobacco use, and I urge both smokers and nonsmokers to take this opportunity to begin healthier lifestyles that set a positive example for young people.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

[FR Doc. 98–31531
Filed 11–23–98; 8:45 am]
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1024]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule; technical amendment.

SUMMARY: The Board is amending Regulation D (Reserve Requirements of Depository Institutions) to remove the definition of *De novo depository institution*. The definition is not used in the Regulation.

EFFECTIVE DATES: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Senior Attorney, Legal Division (202/452–3688). For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

Section 204.2(p) of the Board's Regulation D (12 CFR part 204) defines *De novo depository institution* to mean a depository institution that was not in business on July 1, 1979, and was not the successor by merger or consolidation to a depository institution that was in business before the merger or consolidation. The definition is not used in the Regulation. Accordingly, the Board is removing it.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending part 204 in chapter II of title 12 of the Code of Federal Regulations as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1.The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.2, paragraph (p) is removed and reserved.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, November 18, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–31354 Filed 11–23–98; 8:45 am]
BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052–AB71

Organization; Balloting and Stockholder Reconsideration Issues

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: This final rule will amend Farm Credit Administration (FCA or Agency) regulations concerning Farm Credit System (System or FCS) ballots and the effective dates for mergers, consolidations, or transfers of direct lending authority from a Farm Credit Bank (FCB) or agricultural credit bank (ACB) to a Federal land bank association (FLBA). The amendments allow the use of identity codes on ballots, as long as the votes are tabulated by an independent third party; limit the scope of the regulation to System banks and associations; and remove descriptions of specific balloting procedures from the regulations. The amendments also reduce the earliest effective date of a merger, consolidation, or transfer of lending authority from 50 days to 35 days after stockholder notification, or 15 days after submission of documents to the FCA for final approval, whichever occurs later. The effects of the amendments are to provide more flexibility to institutions and stockholders when stockholder votes occur, to extend security and confidentiality requirements to all stockholder votes of banks and associations, to apply such requirements only to banks and associations, and to accelerate the effective date of the above-described corporate actions.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The FCA proposed amendments to its balloting and reconsideration period regulations on March 20, 1998 (63 FR 13564) as a part of its continuing efforts to reduce regulatory burdens on the System. This rule was proposed in response to requests by several System institutions to revise the secret ballot procedures and to accelerate the effective date of certain corporate actions.

As explained more fully below, we have made revisions to the proposed amendments to §§ 611.330 and 611.340 and adopted substantially as proposed the amendments to §§ 611.505(e) and 611.1122(k).

We received comment letters on the proposed regulations from the Farm Credit Council (Council) on behalf of its member banks and associations; AgriBank, FCB (AgriBank); Farm Credit Leasing Services Corporation (Leasing Corporation); and one individual via electronic mail. In addition, we received comments via telephone from the Farm Credit Banks Funding Corporation (Funding Corporation) and from two FLBAs. AgriBank made general comments supporting the proposed changes. Other comments addressed specific issues, as described below. All of the comments were carefully considered in the formulation of the final rule.

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II. Maintaining Secrecy of Ballots

We amend § 611.330 to (1) apply the regulation only to banks and associations, (2) give affected institutions more flexibility than in the existing or the proposed regulation to choose how to comply with confidentiality requirements, (3) clarify that institutions may allow a stockholder to give voting discretion to the proxy of the stockholder's choice, and (4) apply the provisions to all bank and association stockholder votes, not just director elections. The form of § 611.330 has been significantly revised, as described more fully below. We also adopt amendments to § 611.340 to (1) limit its scope to banks and associations, (2) apply its provisions to all bank and association stockholder votes, and (3) add a 3-year retention period for records in votes other than director elections. The remainder of § 611.340 is adopted substantially as proposed.

The application of the final regulations to only banks and associations is a change from both the existing and the proposed regulations and is made in response to comments from the Leasing Corporation, the Funding Corporation, and the Council. Those commenters observed that the confidentiality requirements of section 4.20 of the Act expressly apply only to "lending institutions" of the System; therefore, they suggested amendments to conform the scope of the regulation to the statute. System institutions made similar comments when these regulations were originally promulgated in 1988, but we opted at that time for a broader application. *See* 53 FR 50384 (December 15, 1988). We have now reconsidered our position and determined that the purpose of section 4.20 of the Act is met if the regulation applies only to banks and associations. We believe that the Act's secret ballot requirement is intended to assure borrowers that their voting decisions on institutional matters will not adversely affect their loan relationships. This principle is equally applicable to borrowers of FLBAs, even though these institutions are agents for the lending banks and are not direct lenders. Therefore, in the final rule, §§ 611.330 and 611.340 apply only to System banks and associations.

Section 611.330(a) of the final rule continues to require each bank and association to adopt policies and procedures ensuring confidentiality. It also continues to prohibit signed ballots in any bank or association stockholder vote, even when an independent third party tabulates the votes. The only persons that may have access to information regarding how or whether a stockholder has voted are an independent third party and the FCA.

Paragraph (b) of § 611.330 allows banks and associations to use identity codes on ballots or other types of identification procedures in all stockholder votes, provided that individual stockholder votes can be identified only by an independent third party that tabulates the votes. In weighted voting, an independent third party is still required to tabulate the votes. Unlike the existing regulation, the final rule does not contain descriptions of permissible procedures, because we believe that some institutions may have incorrectly viewed the specific descriptions as limiting the range of permissible procedures.

Paragraph (c) of § 611.330 has no substantive changes from the existing regulation. It has been restated to clarify that, in proxy voting, a stockholder's vote is not considered to be final until balloting begins. Until balloting begins, a stockholder may withdraw the proxy and vote the ballot himself or herself. This means that an institution must retain all proxy ballots unopened until the stockholders who attend the stockholders' meeting have had an opportunity to withdraw any proxy ballots that have been mailed.

Subsequent to the publication of the proposed rule, an FLBA informed us that it had discarded approximately 40 percent of the proxy ballots cast in a recent stockholder vote because some stockholders had failed to mail back a proxy authorization form along with their ballot. The FLBA asked us to amend the regulations to allow proxy authorizations either to be a part of the proxy ballot, which is a format typically used by corporations, or to be printed on the back of the return envelope.

The inclusion of a signed proxy authorization form on the ballot itself would violate the Act's prohibition against signed ballots. However, printing the proxy authorization form on the back of the return envelope would not violate either the existing or the final rule, as long as the ballot is in a separate sealed envelope inside of the return envelope.[1] We believe that the broader language of the final rule will help associations, especially those that previously had stockholder votes with significant numbers of spoiled ballots, to craft more user-friendly secret ballot procedures.

[1] Only one envelope would be needed if an independent third party opens the envelope and tabulates the votes.

We reviewed the proxy voting practices used by the System and observed that some practices differ from those used by publicly held corporations. Although some FCS institutions permit stockholders to choose a proxy other than the one designated by the institution, stockholders do not usually receive the right to give voting discretion to their proxy. In order to provide stockholders greater voting flexibility, we add a new paragraph (d) to § 611.330 clarifying that institutions are permitted to give stockholders the opportunity to give voting discretion to their proxies. An institution granting this discretion to its stockholders does not violate the secret ballot requirements in the Act.

The Council asked us to confirm the System's understanding that, notwithstanding the provision that an independent third party that tabulates the votes may not make disclosures about how or whether an individual stockholder voted, the third party could disclose the total numerical results of a stockholder vote. The Council stated that such disclosure helps "to preserve confidence in the integrity" of the stockholder vote. The final rule does not prohibit the disclosure of total numerical results, but we encourage institutions with weighted voting to consult with their stockholders on this issue. In weighted voting, as the Council pointed out, it is theoretically possible to determine from the total results how individual stockholders have voted, particularly when the institution has a relatively small number of stockholders.

We received two additional comments regarding the proposed amendments to § 611.330. AgriBank stated that the provisions regarding confidentiality in a stockholder vote appeared to "fairly balance a stockholder's right to a confidential ballot with the rather minimal burden imposed on System institutions." An individual commenter expressed concern regarding the proposal to allow the use of identity codes on ballots. This commenter stated that the codes would defeat the secrecy of voting and provide an opportunity for misuse by those who had access to the marked ballots. We understand the commenter's concern but believe that the final rule's requirement of an independent third party to open the ballots and tabulate votes is an adequate means of preventing misuse of ballot information. We will, of course, continue to evaluate compliance as a part of our corporate approvals and examinations.

An FLBA commented on the proposed addition to § 611.340(c) that provided a 5-year minimum retention

period for records in votes other than director elections. The FLBA requested that, in any case where an independent third party tabulates votes and maintains the voting records, the independent third party be required to hold the voting materials for only 3 years. With respect to votes other than director elections, we agree with the FLBA that a 3-year retention period is adequate and have reduced the retention period in the final rule for all voting records that do not pertain to director elections. The minimum retention period applies to such records held by either the institution or an independent third party. However, for director elections, the existing retention period of the term of the director is unchanged. In most cases, director terms are for 3 years or less, and there is no compelling reason to retain the voting records for a period longer than the term of the director.

III. Change of Effective Date for Merger, Consolidation, or Transfer of Lending Authority

We amend §§ 611.505(e) and 611.1122(k) to provide that, in the case of a transfer of direct lending authority or an association merger, the effective date of the transfer or merger may be as early as 35 days after stockholder notification of the results of the stockholder vote on the transaction, or 15 days after submission of final documents to the FCA, whichever occurs later. The effect of these changes is to accelerate by 15 days the earliest possible date when the merger or transfer of lending authority may occur. In addition, language is added to the same paragraphs to restate the requirement in section 7.9(b)(3)(A) of the Act that, if a valid petition for reconsideration is filed in a timely manner with the FCA, the merger or transfer of lending authority cannot take effect until the expiration of 60 days after the date on which stockholders were notified of the final result of the first vote. These provisions are adopted substantially as proposed.

We received two comments on the proposed effective date amendments. AgriBank stated that it fully supported the proposal, especially in merger transactions where the merging institutions will be able to implement the wishes of their stockholders more quickly. An individual commenter was opposed to the proposed amendment, maintaining that stockholders should have the full amount of time required by statute to reconsider the merger or transfer of lending authority, because of the importance of the matters involved. We agree with the commenter that the decision is an important one and point out that the amendments we have adopted do not shorten the statutory time period during which stockholders may petition the FCA for a reconsideration vote. Stockholders will still be able to petition the Agency up to 35 days after results of the original vote are mailed: the 30-day period required by section 7.9(b)(3)(A) of the Act, and 5 days for delivery of the notice to the stockholders. The amendment merely shortens the time for the FCA to process final approval documents.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 611—ORGANIZATION

1. The authority citation for part 611 is revised to read as follows:

Authority: Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Subpart C is amended by revising the heading to read as follows:

Subpart C—Election of Directors and Other Voting Procedures

3. Section 611.330 is revised to read as follows:

§ 611.330 Confidentiality in voting.

(a) No bank or association may use signed ballots in stockholder votes. Each bank and association must adopt policies and procedures to ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including with respect to the institution, its directors, stockholders, or employees, or any other person except:

(1) An independent third party tabulating the vote; or

(2) The Farm Credit Administration.

(b) A bank or association may use balloting procedures, such as an identity code on the ballot, that can be used to identify how or whether an individual stockholder has voted only if the votes are tabulated by an independent third party. In weighted voting, the votes must be tabulated by an independent third party. An independent third party that tabulates the votes must certify in writing that such party will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted, except that the information must be disclosed to the Farm Credit Administration if requested.

(c) Once a bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting.

(d) A bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

4. Section 611.340 is amended by removing the words "the election of directors" and adding in their place, the word "voting" in the heading; by removing the words "System institution" and adding in their place, the words "bank and association" and by removing the words "the election of board members" and adding in their place, the words "a stockholder vote" in paragraph (a); by removing the word "shall" and adding in its place, the word "must" each place it appears in paragraphs (a) and (b); and by revising paragraphs (c) and (d) to read as follows:

§ 611.340 Security in voting.

* * * * *

(c) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. In an election of directors, ballots, proxy ballots and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(d) The voting procedures of each institution must provide for the establishment of a tellers committee or other designated group of persons which must be responsible for validating ballots and proxies and tabulating voting results. An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or other designated persons have validated the results of the vote.

Subpart E—Transfer of Authorities

5. Section 611.505 is amended by revising paragraph (e) to read as follows:

§ 611.505 Farm Credit Administration review.

* * * * *

(e) The effective date of a transfer may not be less than 35 days after mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after the date of mailing of the notification of stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the transfer is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

6. Section 611.1122 is amended by revising paragraph (k) to read as follows:

§ 611.1122 Requirements for mergers or consolidations.

* * * * *

(k) The effective date of a merger or consolidation may not be less than 35 days after the date of mailing of the notification to stockholders of the results of the stockholder vote, or 15 days after the date of submission to the Farm Credit Administration of all required documents for the Agency's consideration of final approval, whichever occurs later. If a petition for reconsideration is filed within 35 days after mailing of the notification to stockholders of the results of the stockholder vote, the constituent institutions must agree on a second effective date to be used in the event the merger or consolidation is approved on reconsideration. The second effective date may not be less than 60 days after stockholder notification of the results of the first vote, or 15 days after the date of the reconsideration vote, whichever occurs later.

Dated: November 16, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–31340 Filed 11–23–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–65–AD; Amendment 39–10890; AD 98–24–04]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe Aerospatiale Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes. This AD requires repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect and correct cracks in a flap carriage, which could result in loss of the flap function with consequent reduced and/or loss of airplane control.

DATES: Effective December 28, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 28, 1998.

ADDRESSES: Service information that applies to this AD may be obtained from SOCATA Groupe Aerospatiale, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; telephone: (33) 5.62.41.76.52; facsimile: (33) 5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–65–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut Street, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain SOCATA Model TBM 700 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 18, 1998 (63 FR 49881). The NPRM proposed to require repetitively inspecting (using visual methods) the web of the left and right flap carriage for cracks, and replacing any cracked flap carriage with one of improved design. The proposed repetitive inspections would no longer be required on those flap carriages replaced with improved design parts.

Accomplishment of the proposed inspections as specified in the NPRM would be required in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995. The replacements, if necessary, would be accomplished in accordance with Chapter 57–50–03 of the applicable maintenance manual. The parts necessary are referenced in the service bulletin and are available from the manufacturer.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 44 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspections

specified in this AD on U.S. operators is estimated to be $7,920, or $180 per airplane.

These figures only take into account the costs of the initial inspection and do not take into account the costs of any repetitive inspections or the costs of replacing any flap carriage found cracked. The FAA has no way of determining the number of repetitive inspections each owner/operator will incur over the life of the affected airplanes; or the number of flap carriages that will be found cracked during the inspections and need to be replaced.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–04 SOCATA—GROUPE AEROSPATIALE: Amendment 39–10890; Docket No. 95–CE–65–AD.

Applicability: Model TBM 700 airplanes, serial numbers 1 through 92, 97, and 98, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracks in a flap carriage, which could result in loss of the flap function with consequent reduced and/or loss of airplane control, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS, inspect (using visual methods) the web of the left and right flap carriages (both the inboard and outboard carriages) for cracks. Accomplish these inspections in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995.

(b) If any cracked flap carriage is found during any inspection required by this AD, prior to further flight, replace it with a carriage of improved design. Accomplish this replacement in accordance with Chapter 57–50–03 of the applicable maintenance manual. The parts necessary are referenced in SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995, and are available from Socata at the address referenced in paragraph (e) of this AD.

(1) Repetitive inspections will no longer be required on those flap carriages replaced with improved design parts.

(2) Flap carriages may be replaced with improved design parts at any time (but must immediately be replaced if found cracked), as terminating action for the repetitive inspections of this AD.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January, 1995, should be directed to SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: (33) 5.62.41.76.52; facsimile: (33) 5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4141. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections required by this AD shall be done in accordance with SOCATA Service Bulletin SB 70–048 57, Amendment 1, dated January 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 94–110(B)R1, dated March 15, 1995.

(g) This amendment becomes effective on December 28, 1998.

Issued in Kansas City, Missouri, on November 10, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31010 Filed 11–23–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–14–AD; Amendment 39–10902; AD 98–24–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, –30, and –40 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –30, and –40 series airplanes, that requires replacement of certain taper-lok attachments and forward trunnion bolts with new components that attach the left and right main landing gear (MLG) to each wing. This amendment is prompted by a report indicating that, due to overstrength of the forward trunnion bolt, an MLG broke away and ruptured a wing fuel tank while an airplane was being operated off the runway. The actions specified by this AD are intended to ensure that the MLG separates from the wing when it is subjected to unpredictable overloads during abnormal operations, and to prevent consequent primary structural damage to the airplane.

DATES: Effective December 29, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from the Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ronald Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –30, and –40 series airplanes was published in the **Federal Register** on January 22, 1998 (63 FR 3267). That action proposed to require replacement of certain taper-lok attachments and forward trunnion bolts with new components that attach the left and right main landing gear (MLG) to each wing.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Several commenters support the proposed rule.

Request to Extend Compliance Time

One commenter requests that the compliance time for accomplishing the proposed replacement of certain taper-lok attachments and forward trunnion bolts be extended from the proposed 5 years to 6 years. The commenter states that such an extension will allow the replacement to be accomplished during a regularly scheduled heavy maintenance visit, and thereby eliminate any additional expenses that would be associated with special scheduling. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the unsafe condition, the availability of required parts, normal maintenance schedules, and the significant amount of time that is necessary to perform the replacement. In consideration of all of these factors, the FAA has determined that further delay of this replacement is not appropriate. However, under the provision of paragraph (g) of the final rule, the FAA may approve requests for adjustments to the compliance time if sufficient data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request That Credit Be Given for Previous Replacements

One commenter recommends that the FAA revise the proposed rule to specify that operators will be given "credit" for having previously accomplished the actions specified in the proposed rule. The FAA does not consider that a change to the final rule is necessary. Operators are given credit for work previously performed by means of the phrase in the "Compliance" section of the AD that states, "Required as indicated, unless accomplished previously." Therefore, in the case of this AD, if the required replacement has been accomplished prior to the effective date of this AD, this AD does not require that it be repeated.

Request That the Forward Trunnion Bolt Be Inspected

One commenter requests that the FAA ensure that the "forward" trunnion bolt is replaced, not the "aft" trunnion bolt. The FAA finds that the forward trunnion bolt was addressed correctly in the proposed rule. No change to the final rule is necessary.

Request To Ensure That Other AD's Do Not Conflict With This AD

One commenter requests that the FAA ensure that requirements of AD 96–16–01, amendment 39–9701 (61 FR 39312, July 29, 1996), and AD 96–03–05, amendment 39–9502 (61 FR 5281, February 12, 1996), do not conflict with the requirements of the proposed AD. The commenter states that these two AD's already require installation and modification of the trunnion bolts in accordance with McDonnell Douglas Service Bulletins DC10–57–78 and DC10–57–82. The commenter also states that these AD's have introduced a new trunnion bolt part number for Model DC–10–30 series airplanes (reference McDonnell Douglas Service Bulletin DC10–32–239, Revision 1) that is not included in Service Bulletin DC10–57–82.

The FAA finds that clarification is necessary. Both AD 96–16–01 and AD 96–03–05 require either removing the chrome plating on the trunnion bolt, replacing the plating, and reinstalling the reworked bolt; or replacing the trunnion bolt with a serviceable bolt. Replacement of the subject trunnion bolts in accordance with either of these AD's constitutes terminating action for the requirement to replace the trunnion bolts, as required by paragraphs (a)(2), (c)(1), and (c)(2) of this AD. The FAA has revised the final rule by including new paragraphs (e) and (f) to clarify this point. Paragraph (d) of this AD also addresses a similar point for Model DC–10–30 and DC–10–40 series airplanes.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

• *For McDonnell Douglas Model DC–10–10 Series Airplanes*

There are approximately 119 Model DC–10–10 series airplanes of the affected design in the worldwide fleet, and 108 airplanes of U.S. registry that will be affected by the requirements for replacement of taper-lok attachments and forward trunnion bolts. The FAA estimates that it will take approximately 462 work hours per airplane to accomplish these required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $47,000 per airplane. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $8,069,760, or $74,720 per airplane.

There are approximately 111 Model DC–10–10 series airplanes of the affected design in the worldwide fleet, and 82 airplanes of U.S. registry that will be affected by the requirements for replacement of larger attach bolts and installation of bolt retainers. The FAA estimates that it will take approximately 500 work hours per airplane to accomplish these required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $11,734 per airplane. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $3,422,188, or $41,734 per airplane.

• *For McDonnell Douglas Model DC–10–30 and DC–10–40 Series Airplanes*

There are approximately 168 Model DC–10–30 and DC–10–40 series airplanes of the affected design in the worldwide fleet, and 82 airplanes of U.S. registry that are identified as Groups I and II airplanes in the relevant service bulletins and that will be affected by the requirements for replacement of larger attach bolts, installation of bolt retainers, and replacement of forward trunnion bolts. The FAA estimates that it will take approximately 576 work hours per airplane to accomplish these required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20,000 per airplane. Based on these figures, the cost impact of these required actions on U.S. operators is estimated to be $4,473,920, or $54,560 per airplane.

There are approximately 20 Model DC–10–30 and DC–10–40 series airplanes of the affected design in the worldwide fleet, and 6 airplanes of U.S. registry that are identified as Group III airplanes in the relevant service bulletins and that will be affected by the requirements for replacement of forward trunnion bolts. The FAA estimates that it will take approximately 76 work hours per airplane to accomplish this required action, and that the average labor rate is $60 per work hour. Required parts will cost approximately $15,800 per airplane. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $122,160, or $20,360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

However, the FAA has been advised that the following actions have been accomplished on Model DC–10–10 series airplanes in accordance with the requirements of this AD:

• Taper-lok attachments and forward trunnion bolts have been replaced on 77 U.S.-registered airplanes. Therefore, the future economic cost impact of those actions on U.S. operators is now only $2,316,320.

• Larger attach bolts have been replaced and bolt retainers have been installed on 77 U.S.-registered airplanes. Therefore, the future economic cost impact of those actions on U.S. operators is now only $208,670.

The FAA also has been advised that the following actions have been accomplished on Model DC–10–30 and DC–10–40 series airplanes in accordance with the requirements of this AD:

• Forward trunnion bolts and larger attach bolts have been replaced and bolt retainers have been installed on 40 U.S.-registered airplanes identified as Groups I and II airplanes in the relevant service bulletins. Therefore, the future economic cost impact of those actions on U.S. operators is now only $2,291,520.

• Forward trunnion bolts have been replaced on 3 U.S.-registered airplanes identified as Group III airplanes in the relevant service bulletins. Therefore, the future economic cost impact of this action on U.S. operators is now only $61,080.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–17 McDonnell Douglas: Amendment 39–10902. Docket 97–NM–14–AD.

Applicability: Model DC–10–10, DC–10–30, and DC–10–40 series airplanes, certificated in any category; as listed in the following McDonnell Douglas service bulletins:

• McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986;

• McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980; and

• McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the main landing gear (MLG) separates from the wing when it is subjected to unpredictable overloads during abnormal operations, and to prevent consequent primary structural damage to the airplane, accomplish the following:

(a) For Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986: Within 5 years after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD, in accordance with the service bulletin.

(1) Replace 24 TL taper-lok attachments that attach the left and right MLG attach fitting assemblies on each wing with heat-treat TLH taper-lok attachments in accordance with the service bulletin. And

(2) Replace each forward trunnion bolt on the left and right MLG of each wing with a "zero margin" trunnion bolt in accordance with the service bulletin.

Note 2: Replacement of taper-lok attachments and forward trunnion bolts accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–78, dated February 19, 1980, is considered acceptable for compliance with the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(b) For Model DC–10–10 series airplanes, as listed in McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980: Within 5 years after the effective date of this AD, replace each 1½-inch-diameter bolt and bushing that attach the left and right MLG attach fitting and rear spar of each wing with a 1¼-inch-diameter bolt, and install bolt retainers, in accordance with the service bulletin and service bulletin change notification.

Note 3: Replacement of 1½-inch-diameter bolts and installation of bolt retainers prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–79, dated June 5, 1979, are considered acceptable for compliance with the requirements of paragraph (b) of this AD.

(c) For Model DC–10–30 and DC–10–40 series airplanes: Except as provided by paragraph (d) of this AD, within 5 years after the effective date of this AD, accomplish the requirements of paragraph (c)(1) or (c)(2) of this AD, as applicable, in accordance with McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980.

(1) For airplanes identified as Groups I and II in the service bulletin: Replace each forward trunnion bolt on the left and right MLG of each wing with a "zero margin" forward trunnion bolt; replace each 1½-inch-diameter bolt and bushing that attach the left and right MLG attach fitting and rear spar of each wing with a 1¼-inch-diameter bolt, and install bolt retainers, in accordance with the service bulletin.

(2) For airplanes identified as Group III in the service bulletin: Replace each forward trunnion bolt on the left and right MLG of each wing with a "zero margin" trunnion bolt in accordance with the service bulletin.

(d) For Model DC–10–30 and DC–10–40 series airplanes: Installation of a trunnion bolt having part number (P/N) ARG7558–501 or P/N ARG7558–507 on the MLG, in accordance with AD 96–03–05, amendment 39–9502, constitutes terminating action for the requirement to replace the trunnion bolts for that landing gear, as required in paragraphs (c)(1) and (c)(2) of this AD.

(e) For Model DC–10–30 and DC–10–40 series airplanes: Replacement of the trunnion bolts with a serviceable part in accordance with paragraph (c)(1)(ii)(B) of AD 96–03–05, amendment 39–9502, constitutes terminating action for the requirement to replace the trunnion bolts, as required in paragraphs (c)(1) and (c)(2) of this AD.

(f) For Model DC–10–10 series airplanes: Replacement of the trunnion bolts with a serviceable part in accordance with paragraph (a)(1)(ii)(B) of AD 96–16–01, amendment 39–9701, constitutes terminating action for the requirement to replace the trunnion bolts, as required in paragraph (a)(2) of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The actions shall be done in accordance with McDonnell Douglas DC–10 Service Bulletin 57–78, Revision 1, dated August 26, 1986; McDonnell Douglas DC–10 Service Bulletin 57–79, Revision 1, dated September 21, 1979, as revised by McDonnell Douglas DC–10 Service Bulletin Change Notification 57–79, dated January 23, 1980; and McDonnell Douglas DC–10 Service Bulletin 57–82, dated February 19, 1980. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 29, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31171 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–70–AD; Amendment 39–10825; AD 98–21–16]

RIN 2120–AA64

Airworthiness Directives; British Aerospace HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; withdrawal.

SUMMARY: This action withdraws direct final rule Airworthiness Directive (AD) 98–21–16, which would have applied to all British Aerospace (BAe) HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes; and would have superseded AD 98–12–23 (this AD will remain in effect, unless the Federal Aviation Administration (FAA) initiates additional rulemaking action). AD 98–21–16 would have required repetitively replacing the windshield wiper arm, attachment bolts, and assembly; measuring the material thickness of the upper and lower toggle attachment brackets on the nose landing gear of the affected airplanes, and replacing the toggle attachment bracket lugs. Since the issuance of the direct final rule, the FAA has received a written adverse comment. Accordingly, the direct final rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri

64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published AD 98–21–16 as a direct final rule with request for comments in the **Federal Register** on October 8, 1998 (63 FR 54039). That direct final rule amended part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all BAe HP137 Mk1, Jetstream Series 200, and Jetstream Models 3101 and 3201 airplanes. That AD would have superseded AD 98–12–23 with a new AD to require repetitively replacing the windshield wiper arm, attachment bolts, and assembly; measuring the material thickness of the upper and lower toggle attachment brackets on the nose landing gear of the affected airplanes, and replacing the toggle attachment bracket lugs.

AD 98–21–16 was the result of additional mandatory continuing airworthiness information (MCAI) pertaining to this subject received from the airworthiness authority for the United Kingdom. The actions specified in that AD were intended to prevent the windshield wiper arm from corroding, detaching from the airplane during flight, and penetrating the fuselage, which could result in possible injury to the pilot and passengers; and to prevent collapse of the nose landing gear caused by the current design, which could result in loss of control of the airplane during landing operations.

The Direct Final Rule Procedure

The FAA anticipated that AD 98–21–16 would not result in adverse or negative comment and therefore issued it as a direct final rule. The requirements of AD 98–21–16 addressed an unsafe condition identified by a foreign civil airworthiness authority and do not impose a significant burden on affected operators. In accordance with Section 11.17 of the Federal Aviation Regulations (14 CFR 11.17), unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment was received within the comment period, AD 98–21–16 would have become effective on January 6, 1999. If any written comment(s) was received within the comment period that was adverse or negative comment or written notice was received of the intent to submit such a comment, the FAA would publish in the **Federal Register** a document withdrawing the direct final rule (AD 98–21–16). The FAA could then issue a notice of proposed rulemaking with a new comment period.

Actions Since the Issuance of the Direct Final Rule

During the comment period for the 98–21–16, the FAA received a written adverse comment. The commenter objects to the 90-day repetitive replacement requirement of the windshield wiper arm attachment bolt and windshield arm assembly. The commenter suggests that these replacements occur at 8 year intervals as specified in the service information.

Accordingly, the direct final rule is hereby withdrawn.

Withdrawal of this direct final rule constitutes only such action, and does not preclude the agency from issuing a notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a direct final rule, it has no adverse economic impact and imposes no additional burden on any person. It will have no substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, direct final rule AD 98–21–16, Amendment 39–10825, Docket No. 98–CE–70–AD, published in the **Federal Register** on October 8, 1998 (63 FR 54039), is withdrawn.

Issued in Kansas City, Missouri, on November 16, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31315 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–45–AD; Amendment 39–10908; AD 98–21–09]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 98–21–09, which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (RHC) Model R22 helicopters by individual letters. This AD requires installing fuel tank vent tube(s), with modified attachment to the mast tube, if not previously accomplished; installing a spring into the flexible tube leading to the main fuel tank; and installing a spring into the flexible tube leading to the auxiliary fuel tank, if an auxiliary fuel tank is installed. This amendment is prompted by an incident in which the flexible vent connecting the rigid vent tube to the main fuel tank kinked, resulting in fuel starvation and a hard landing after uncommanded engine shutdown. The actions specified by this AD are intended to prevent fuel starvation, loss of engine power, and a subsequent forced landing.

DATES: Effective December 9, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–21–09, issued on September 28, 1998, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–45–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Bumann, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5265, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On September 28, 1998, the FAA issued Priority Letter AD 98–21–09, applicable

to RHC Model R22 helicopters, which requires installing fuel tank vent tube(s), with modified attachment to the mast tube, if not previously accomplished; installing a spring into the flexible tube leading to the main fuel tank; and installing a spring into the flexible tube leading to the auxiliary fuel tank, if an auxiliary fuel tank is installed. That action was prompted by an incident in which a hard landing resulted from an uncommanded engine shutdown. The pilot reported that the fuel quantity gauges indicated fuel consumption from the auxiliary fuel tank only, with the main fuel tank indication remaining at or near full. When the auxiliary fuel tank quantity gauge reached empty, the engine misfired and then stopped. An inspection revealed a kink in the flexible vent tube connecting the rigid vent tube to the main fuel tank. Two similar incidents have occurred with this single vent design. This condition, if not corrected, could result in fuel starvation, loss of engine power, and a subsequent forced landing.

The FAA has reviewed RHC R22 Service Bulletin SB–83 dated March 4, 1997 (SB–83), which describes procedures for modifying attachment of the fuel tank vent(s); and RHC R22 Service Bulletin SB–84 dated September 8, 1998 (SB–84), which describes procedures for installing springs in the vent tubes to prevent kinks. RHC kit instructions KI–118–1 R22 Fuel Tank Vent Upgrade For Ships Without Auxiliary Tank, dated March 4, 1997, and RHC KI–118–2 R22 Fuel Tank Vent Upgrade For Ships With Auxiliary Tank, dated April 29, 1997, which describe procedures for installing fuel tank vent tube(s), part number (P/N) A731–3, are attached to SB–83. RHC kit instructions KI–140 R22 Fuel Tank Vent Upgrade For Fuel Tanks With Single Vent, dated September 3, 1998, which describe procedures for installing springs into the flexible tube leading to the main fuel tank, and, if an auxiliary fuel tank is installed, into the flexible tube leading to the auxiliary fuel tank, are attached to SB–84.

Since the unsafe condition described is likely to exist or develop on other RHC Model R22 helicopters of the same type design, the FAA issued priority letter AD 98–21–09 to prevent fuel starvation, loss of engine power, and a subsequent forced landing. The AD requires, within 25 hours time-in-service (TIS) or 30 calendar days after the effective date of this AD, whichever occurs first, installing fuel tank vent tube(s), P/N A731–3, with modified attachment to the mast tube, if not previously accomplished; installing a spring, P/N B408–2, into the flexible tube leading to the main fuel tank; and installing a spring, P/N B408–1, into the flexible tube leading to the auxiliary fuel tank, if an auxiliary fuel tank is installed. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the installations are required prior to further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 28, 1998, to all known U.S. owners and operators of RHC Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

The only change to the priority letter in this published version of this AD is that the reference in Note 1 to the alternative methods of compliance is corrected from paragraph "(d)" to paragraph "(c)".

The FAA estimates that 700 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per helicopter to accomplish the required actions, and the average labor rate is $60 per work hour. Required parts will cost approximately $65 for each helicopter without an auxiliary fuel tank installed or $105 for each helicopter with an auxiliary fuel tank installed. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $225 per helicopter for helicopters with an auxiliary fuel tank installed, or $185 per helicopter for helicopters without an auxiliary fuel tank installed.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–45–AD". The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the

Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

98–21–09 Robinson Helicopter Company: Amendment 39–10908. Docket No. 98–WW–45–AD.

Applicability: Model R22 helicopters, serial numbers 0002 through 1451, inclusive, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required within 25 hours time-in-service or 30 calendar days after the effective date of this AD, whichever occurs first, unless accomplished previously.

To prevent fuel starvation, loss of engine power, and a subsequent forced landing, for helicopters overhauled by Robinson Helicopter Company (RHC) prior to January 1, 1991, which do not have a main fuel tank (only) with dual vent tubes, or, if the auxiliary fuel tank is installed, do not have a crossover vent tube between the fuel tanks, accomplish the following:

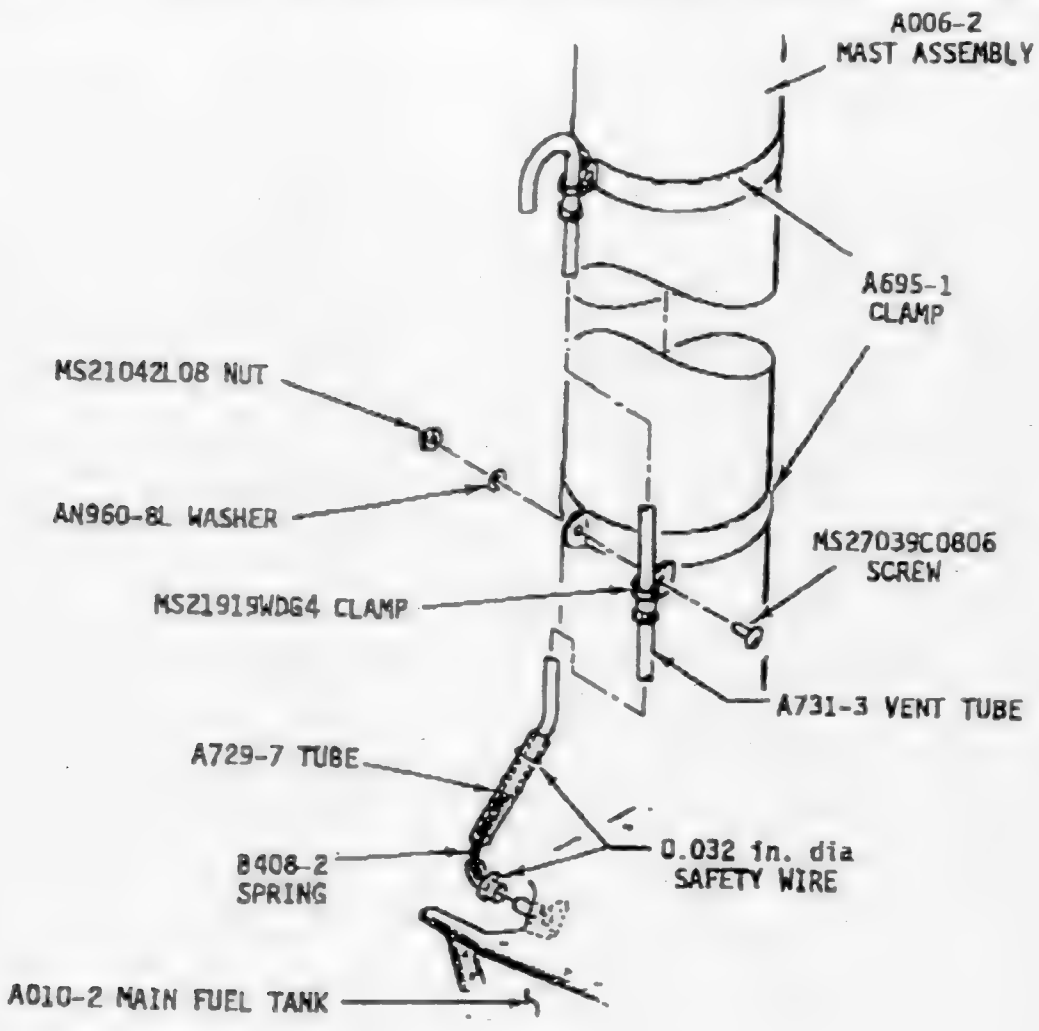
(a) Visually inspect the fuel tank vent tube(s) in the mast fairing. If each fuel tank vent tube is attached only to the mast tube at two locations, the helicopter complies with the requirements of paragraph (a) of this AD. If each fuel tank vent tube is attached to the mast tube at one location, and to the rain scupper (channel), part number (P/N) A032–16, on the fuel tank cowling at another location:

(1) For helicopters without an auxiliary fuel tank installed, remove the existing vent tube, P/N A731–1, and install an airworthy vent tube, P/N A731–3, with flexible tube, P/N A729–7, using an MS27039C0806 screw and AN960–8L washer (alternate P/N NAS1149FN816P) at the lower clamp, P/N A695–1 (see Figure 1).

(2) For helicopters with an auxiliary fuel tank installed, remove the existing main fuel tank vent tube, P/N A731–1, and auxiliary fuel tank vent tube, P/N A731–2, and install airworthy vent tubes, P/N A731–3, with flexible tube, P/N A729–7, for main tank and flexible tube, P/N A729–17, for auxiliary tank using MS27039C0807 screw and AN960–8L washer (alternate P/N NAS1149FN816P) at lower clamp, P/N A695–1 (see Figure 2).

(b) Install spring, P/N B408–2, into the flexible vent tube, P/N A729–7, leading to the main fuel tank; and install spring, P/N B408–1, into the flexible vent tube, P/N A729–17, leading to the auxiliary fuel tank (if an auxiliary fuel tank is installed), in accordance with RHC kit instructions KI–140 R22 Fuel Tank Vent Upgrade For Fuel Tanks With Single Vent, dated September 3, 1998.

BILLING CODE 4910–13–U



HELICOPTER WITHOUT AUXILIARY FUEL TANK

FIGURE 1

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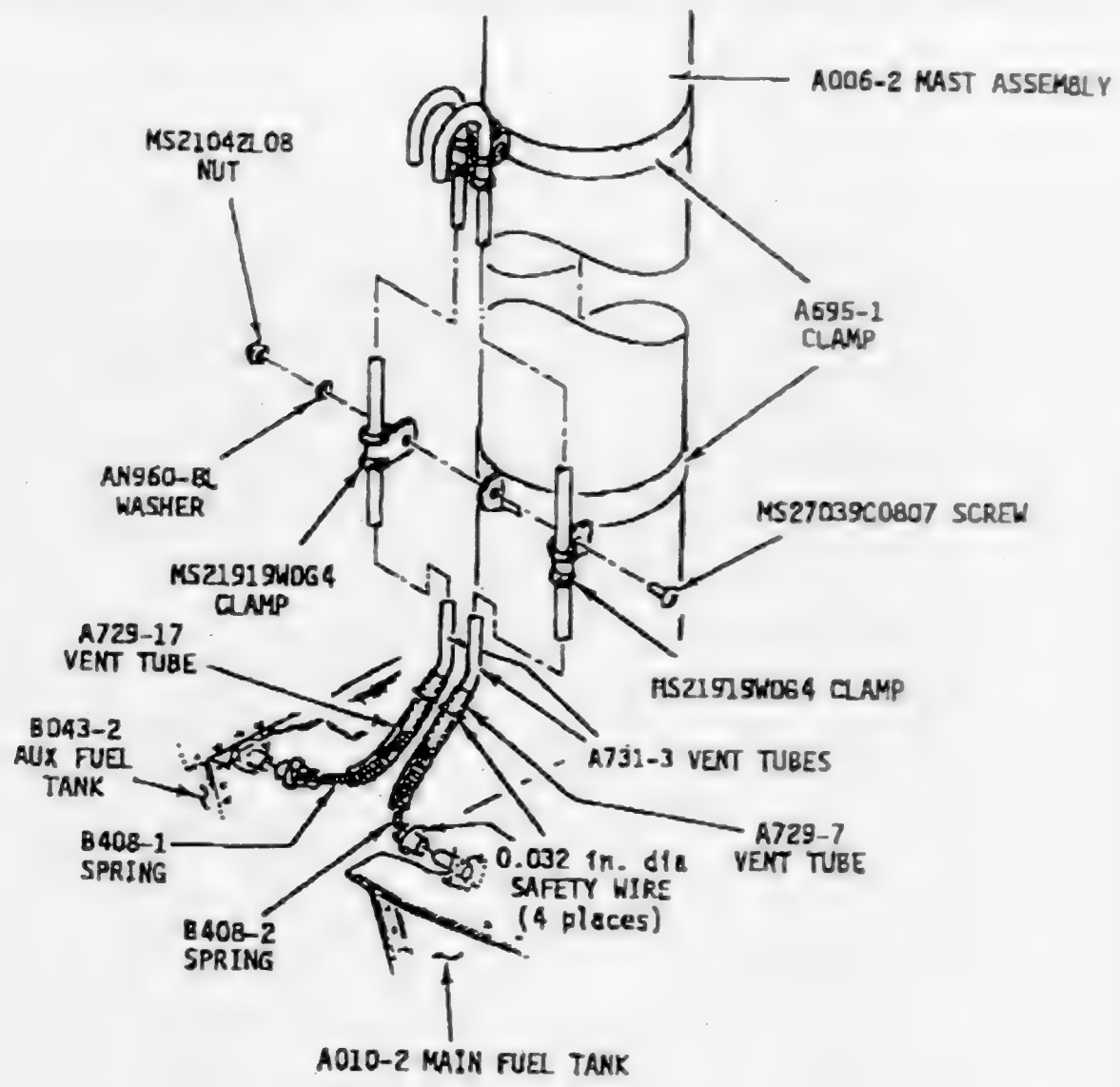

HELICOPTER WITH AUXILIARY FUEL TANK

FIGURE 2

BILLING CODE 4910–13–C

Note 2: RHC R22 Service Bulletin SB–83, dated March 4, 1997, and RHC R22 Service Bulletin SB–84, dated September 8,1998, pertain to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 9, 1998, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 98–21–09, issued September 28, 1998, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on November 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31328 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–19–AD; Amendment 39–10906; AD 98–24–21]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 332C, AS 332L, AS 332L1, and AS 332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France (ECF) Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters. This action requires inserting instructions into the Model AS 332C, AS 332L, AS 332L1, and AS 332L2 Rotorcraft Flight Manuals (RFMs) regarding actions to take if either the "OVSP 1" or "OVSP 2" amber warning light illuminates. This action also requires, for the Model AS 332C, AS 332L, and AS 332L1 helicopters, measuring the vibration levels of the engine-to-main gearbox (MGB) shaft, inspecting the torque on the MGB coupling bolts, and conducting an engine-to-MGB coupling 23,000 revolutions per minute (RPM) input check. This amendment is prompted by an accident involving a Model AS 332L1 helicopter in which the helicopter experienced an engine overspeed resulting in failure of both engines. The actions specified in this AD are intended to prevent failure of the rotor drive engine-to-MGB coupling, which, if undetected, could result in an engine overspeed leading to an uncontained engine turbine wheel burst and subsequent loss of control of the helicopter.

DATES: Effective December 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–19–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on ECF Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters. The DGAC advises that failure of the MGB coupling could cause loss of load on the engine, and result in engine overspeed. The DGAC warning stems from an accident involving a Model AS 332L1 helicopter in which the helicopter experienced an engine overspeed resulting in failure of both engines.

ECF has issued Eurocopter Service Telex (Telex) No. 00047/0275/97, dated October 2, 1997. That service telex specifies checking the tightening torque loads on the MGB coupling tie-bolts; checking the condition of the splined flanges; confirming the presence of the O-ring on the splined sleeve; and checking the vibration level of the engine-to-MGB 23,000 RPM input shaft every 25 flying hours. ECF has also issued Eurocopter Service Bulletin No. 63.00.21 Ed. 1., dated June 26, 1998, which specifies the same inspections as the previously mentioned Telex, but also specifies a recurring 50 hour time-in-service (TIS) check of the tightening torque loads on the MGB coupling tie-bolts for couplings that have not been modified in accordance with certain ECF modifications. That service bulletin also specifies a recurring 550 hour TIS engine-to-MGB coupling 23,000 RPM input check. The DGAC classified this service telex and service bulletin as mandatory and issued AD 97–303–066(AB), dated October 22, 1997, and AD 86–012–023(A) R4, dated July 29, 1998, in order to assure the continued airworthiness of these helicopters in France. The DGAC also issued AD 97–288–065(AB) for Model AS 332C, AS 332C1, AS 332L, and AS 332L1 helicopters, and AD 97–289–008(AB) for Model AS 332L2 helicopters, both dated October 22, 1998, which require inserting emergency instructions into the RFM regarding actions to take if either the "OVSP 1" or "OVSP 2" amber warning lights illuminate.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other ECF Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the rotor drive engine-to-MGB coupling, which, if undetected, could result in an engine overspeed leading to an uncontained engine turbine wheel burst and subsequent loss of control of the helicopter. This AD requires inserting an emergency procedure into the RFM regarding actions to take if either the "OVSP 1" or "OVSP 2" amber warning light illuminates; measuring the vibration levels of the engine-to-MGB shaft; inspecting the torque on the MGB coupling bolts; performing an engine-to-MGB coupling RPM input check; inspecting the spline and splined flanges; and inspecting the vibration level after the reassembly of the coupling. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the

controllability of the helicopter. Therefore, the actions stated in this AD are required prior to further flight and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 4 helicopters will be affected by this proposed AD, that it will take approximately 13.5 work hours to measure the vibration levels; inspect the torque of the MGB coupling bolts; and conduct the other inspections. The average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,240.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–19–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–21 Eurocopter France: Amendment 39–10906. Docket No. 98–SW–19–AD.

Applicability: Model AS 332C, AS 332L, AS 332L1, and AS 332L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rotor drive engine-to-main gearbox (MGB) coupling, which, if undetected, could result in an engine overspeed leading to an uncontained engine turbine wheel burst and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model AS 332C AS 332L, AS 332L1, and AS 332L2 helicopters, before further flight, insert the following statement into the Emergency Procedures section, Chapter 3, of the Rotorcraft Flight Manual:

"If at any time during flight, either the "OVSP 1" or "OVSP 2" amber warning light illuminates, even intermittently, reduce the affected engine to ground idle as soon as possible, then shut it down once all of the parameters on the remaining engine have been checked and found to be satisfactory."

(b) For Model AS 332C, AS 332L, and AS 332L1 helicopters, within 8 hours time-in-service (TIS) and at intervals not to exceed 25 hours TIS thereafter, measure the vibration level of the left and right 23,000 RPM input shaft (engine-to-MGB shaft). Record the mean value of the measured vibration level in the helicopter maintenance records.

(1) If the vibration level exceeds 0.65 inches per second (IPS), perform the inspections described in paragraphs (c) and (d) of this AD before further flight.

(2) If the vibration level is less than or equal to 0.65 IPS, perform the inspections described in paragraphs (c) and (d) of this AD within the next 25 hours TIS.

(c) For Model AS 332C AS 332L, and AS 332L1 helicopters, measure and record the tightening torque on the three engine-to-MGB coupling bolts for the left and right 23,000 RPM input shafts. Accomplish this measurement every 50 hours TIS after the initial inspection if Eurocopter France MODs 0752316 and 0752317 have not been accomplished.

(1) If Eurocopter France MOD 0752316 (tie bolt replacement) has not been accomplished, the tightening torque should be 1.5 to 1.9 m.daN (133 to 168 in.-lbs.) (lubricated with NATO 0.156 oil or equivalent).

(2) If Eurocopter France MOD 0752316 (tie bolt replacement) has been accomplished, the tightening torque should be 1.2 to 1.4 m.daN (106 to 124 in.-lbs.) (lubricated with NATO 0.156 oil or equivalent).

(d) Perform the engine-to-MGB coupling 23,000 RPM input check in accordance with the applicable maintenance manual.

Note 2: Section 63.10.00.602 of the applicable maintenance manual contains

procedures for accomplishing the engine-to-MGB coupling 23,000 RPM input check. Paragraph 5 or the Work Card date code 97–04 is not applicable to the subject of this AD.

(1) While inspecting the splined flanges, inspect the splines for wear. Also inspect the MGB end of the splined flange for impact marks on the end of the splines. If wear exceeds the allowable limits, or if impact marks are found on the end of the splines, replace the splined flange with an airworthy splined flange.

(2) Inspect for the presence of the O-ring on the splined flange.

(3) After accomplishing the engine-to-MGB coupling 23,000 RPM input check and reassembly, measure the vibration level and record the results. If the vibration level remains above 0.65 IPS, conduct the vibration level correction procedure.

Note 3: Maintenance Manual (MET) Work Card 63.20.00.501 provides correction procedures if the vibration level exceeds 0.65 IPS.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on December 9, 1998.

Note 5: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–288–065(AB), AD 97–303–066(AB), AD 97–289–008(AB), all dated October 22, 1997, and AD 86–012–023(A) R4, dated July 29, 1998.

Issued in Fort Worth, Texas, on November 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31329 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–14–AD; Amendment 39–10907; AD 98–24–22]

RIN 2120–AA64

Airworthiness Directives; Agusta A109C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta A109C helicopters. This action requires, within the next 5 hours time-in-service (TIS), replacing the tail rotor blade grip assemblies (grip assemblies) with modified airworthy grip assemblies. This amendment is prompted by cracks that were found on the grip assemblies during maintenance inspections. This condition, if not corrected, could result in separation of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective December 9, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–14–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Agusta A109C helicopters. The RAI advises that cracks on the grip assemblies could result in separation of a tail rotor blade and subsequent loss of control of the helicopter.

Agusta has issued Agusta Bollettino Tecnico No. 109–100, Revision A, dated March 21, 1997 (technical bulletin), which specifies replacement of the grip assemblies. The RAI classified this technical bulletin as mandatory and issued RAI AD 97–084, dated March 28, 1997, in order to assure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta A109C helicopters of the same type design registered in the United States, this AD is being issued to prevent separation of a tail rotor blade and subsequent loss of control of the helicopter. This AD requires replacing the grip assemblies. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, replacing the grip assemblies is required within the next 5 hours TIS, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 17 helicopters will be affected by this proposed AD, that it will take approximately 10 work hours to replace the grip assemblies, and that the average labor rate is $60 per work hour. Required parts will cost approximately $18,286 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $321,062 to replace the grip assemblies on all helicopters.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments,

in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–14–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–22 Agusta S.p.A.: Amendment 39–10907. Docket No. 98–SW–14–AD.

Applicability: Agusta A109C helicopters, all serial numbers (S/N) through 7670, excluding S/Ns 7630, 7633, 7645, 7651, 7653, 7657, 7661, 7663, 7665, 7667, and 7669, with tail rotor grip assembly (grip assembly), part number (P/N) 109–8131–05–109 or –113, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Within the next 5 hours time in service, unless accomplished previously.

To prevent cracks from developing on the grip assemblies that could result in separation of a tail rotor blade and subsequent loss of control of the helicopter, accomplish the following:

(a) Install airworthy grip assemblies, P/N 109–8131–29–101, or airworthy rotor grip and bushing assemblies, P/N 109–8131–02–129; and airworthy tail rotor blades, P/N 109–8132–01–107.

Note 2: Agusta Bollettino Tecnico No. 109–100, dated March 21, 1997, pertains to the subject of this AD.

(b) This AD revises the Limitations Section of the maintenance manual by establishing new retirement times for the tail rotor hub and blade assembly components as follows:

Part number	Nomenclature	Retirement life (hours)
109–8132–01–1	Blade	3000
109–8131–07–1	Retention Strap Assembly	2000
109–8131–08–1	Strap Pin	5000
109–8131–06–1	Strap Plug	5000
109–0131–06–7	Hub Assembly	3600
109–8131–09–1	Bolt, Retention Strap	5000
109–8131–29–101	Grip Assembly	3000

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 9, 1998.

Note 4: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–084, dated March 28, 1997.

Issued in Fort Worth, Texas, on November 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31331 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–157–AD; Amendment 39–10912; AD 97–09–15 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder power control unit, and replacement of the valve with a valve having a different part number, if necessary. That AD was prompted by a review of the design of the flight control systems on Model 737 series airplanes. The actions specified by that AD are intended to prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers. This amendment makes certain editorial changes to clarify the requirements of the existing AD.

EFFECTIVE DATE: December 29, 1998.

ADDRESSES: Information pertaining to this AD may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tin Truong, Aerospace Engineer, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2764; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 97–09–15, amendment 39–10011 (62 FR 24325, May 5, 1997), which is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, was published in the **Federal Register** on November 13, 1997 (62 FR 60808). The action proposed to continue to require a one-time inspection to determine the part number of the engage solenoid valve of the yaw damper on the rudder power control unit (PCU), and replacement of the valve with a valve having a different part number, if necessary. The action also proposed to make certain editorial changes to clarify the requirements of the existing AD.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposal.

Request To Withdraw the Proposed AD

One commenter states that the proposed AD is unwarranted because it is purely editorial rather than technical in nature and requests that it be withdrawn. The commenter states that there is only one solenoid valve of the part number identified in AD 97–09–15 that is used in the yaw damper system, so it should be evident that the valve in question is that of the PCU. In addition, the commenter states that, although the vendor part numbers are not contained in AD 97–09–15, they are easy to convert to the appropriate vendor numbers from cross references located in the Illustrated Parts Catalog (IPC) and the Component Maintenance Manual (CMM). The commenter also states that, although the aircraft maintenance manual chapter referenced in AD 97–09–15 is technically incorrect for certain Model 737–100 and –200 series airplanes, the obvious intent of AD 97–09–15 is to ensure that the specified solenoid valve is installed, and the procedures for replacement should obviously be those applicable for routine valve replacement. The commenter also notes that AD 97–14–04, amendment 39–10061 (62 FR 35068, June 30, 1997), which requires modification of the rudder PCU, will drive the inspection to be done in a shop environment, which would then require the use of the rudder PCU CMM, rather than the aircraft maintenance manual, for this inspection. Further, the commenter states that although the vendor name labeled on the affected parts may vary, the part number, function, and location do not.

The FAA does not concur that the revision is unwarranted. The FAA agrees that there is only one solenoid valve of the part number identified in AD 97–09–15 that is used in the yaw damper system; however, this final rule is clearer and will prevent confusion. In addition, it is not appropriate to determine the vendor part number using the IPC because the IPC is not an FAA-approved document and its use does not ensure correlation of the appropriate part number. Therefore, it is necessary to identify all Boeing and vendor part numbers in the AD to ensure appropriate installation. Also, the FAA does not agree with the commenter that maintenance manual references in AD 97–09–15 are sufficient to ensure the use of proper maintenance procedures for valve installation. The FAA also does not agree with the comment that compliance with AD 97–14–04 will ensure that the required inspection will be done only in a shop environment. This final rule allows operators the flexibility to perform this inspection on the airplane or in the shop. The FAA agrees that, although the vendor name labeled on the affected parts may vary, the part number, function, and location do not; however, this final rule is clearer and will prevent confusion.

Request To Revise Corrective Action

One commenter requests that the requirement to replace a suspect engage solenoid valve prior to further flight be deleted. The commenter states that this requirement is too restrictive and could lead to unnecessary airplane grounding if a valve having the appropriate part number is unavailable. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the specified compliance period. No change to the rule is necessary.

Request To Include All Applicable Maintenance Manual Chapters

One commenter states that Boeing Maintenance Manual Chapter 22–12–21 is applicable for some operators of Model 737–100 and –200 series airplanes and that use of the procedures contained in Chapter 22–12–21 should be allowed to accomplish the actions in this AD. The FAA concurs and has revised paragraph (a) of the final rule accordingly.

Request for Credit of Previously Accomplished Work

One commenter requests that, because the proposed revisions to the AD are editorial in nature, a statement be added to the AD to state that work already accomplished on any airplanes affected by AD 97–09–15 should not require additional action. The commenter also requests that all previously approved alternative methods of compliance should remain valid and in effect.

The FAA agrees with the commenter that this AD does not change the required actions of AD 97–09–15 and that any airplanes inspected and modified in accordance with AD 97–09–15 would not require additional action. However, operators are always given credit for work previously performed in accordance with the existing AD by means of the phrase in the compliance

section of the AD that states, "Required * * * unless accomplished previously." Further, no alternative methods of compliance have been approved for the AD 97–09–15. Therefore, no change to the rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,675 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,091 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $65,460, or $60 per airplane. The requirements of this AD will add no new costs to affected operators.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10011 (62 FR 24325, May 5, 1997), and by adding a new airworthiness directive (AD), amendment 39–10912, to read as follows:

97–09–15 R1 Boeing: Amendment 39–10912. Docket 97–NM–157–AD. Revises AD 97–09–15, Amendment 39–10011.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent sudden uncommanded yawing of the airplane due to potential failures within the yaw damper system, and consequent injury to passengers and crewmembers, accomplish the following:

(a) Perform a one-time inspection of the engage solenoid valve of the yaw damper on the rudder power control unit (PCU) to determine the part number (P/N) of the valve. If any valve having Parker P/N 59600–5011 (Boeing P/N 10–60811–9), Parker P/N 59600–5007 (Boeing P/N 10–60811–3), or Parker P/N 59600–5003 (Boeing P/N 10–60811–1) is installed, prior to further flight, replace it with a valve having Parker P/N 881600–1001 (Boeing P/N 10–60811–13), Sterer P/N 45080–1 (Boeing P/N 10–60811–8), or Sterer P/N 45080 (Boeing P/N 10–60811–3). Accomplish the actions in accordance with procedures specified in Chapters 22–11–61 or 22–12–21 (for Model 737–100 and –200 series airplanes), as applicable; or Chapter 22–12–21 (for Model 737–300, –400, and –500 series airplanes) of the Boeing Maintenance Manual, as applicable. Accomplish the inspection at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Within 5 years or 15,000 flight hours after June 9, 1997 (the effective date of AD 97–09–15, amendment 39–10011), whichever occurs first.

(2) At the next time the PCU is sent to a repair facility.

Note 2: Boeing In-Service Activities Report 95–03–2725–10, dated February 16, 1995 (for Model 737–100 and –200 series airplanes), or 95–04–2725–10, dated February 24, 1995 (for Model 737–300, –400, and –500 series airplanes), provides additional information concerning interchangeability of solenoid valve part numbers.

Note 3: Operators should note that, as specified in paragraph (a) of this AD, both the Parker and Sterer P/N's have the same Boeing P/N (10–60811–3). If, upon inspection, Boeing P/N 10–60811–3 is found to be installed, operators must ascertain the vendor P/N. Parts having Boeing P/N 10–60811–3 and Parker P/N 59600–5007 must be replaced and are not considered to be acceptable replacement parts. In addition, some engage solenoid valves may be labeled with only the name "Bertea," rather than "Parker" or "Parker-Bertea."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle, ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on December 29, 1998.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31325 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. AEA–23]

Amendment to Class E Airspace; Altoona, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Altoona, PA. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Altoona-Blair County Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 2 SIAP to Altoona-Blair County Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialists, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Altoona, PA, was published in the **Federal Register** (63 FR 53000). The development of the GPS RWY 2 SIAP for Altoona-Blair County Airport requires the amendment of the Class E airspace at Altoona, PA. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Altoona, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 2 SIAP to Altoona-Blair County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Altoona, PA [Revised]

Altoona-Blair County Airport, Altoona, PA
(Lat. 40°17′47″N., long. 78°19′12″W.)
Altoona, VOR
(Lat. 40°19′32″N., long. 78°18′13″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Altoona-Blair County Airport and within 8 miles northwest and 4 miles southeast of the Altoona VOR 026° radial, extending from the VOR to 16 miles northeast of the VOR and within 4 miles each side of the 211° bearing from the airport extending from the 6.5-mile radius to 12 miles southwest of the airport.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31382 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–22]

Amendment to Class E Airspace; Woodbine, NJ

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Woodbine, NJ. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Woodbine Municipal Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 1 SIAP and GPS RWY 19 SIAP to Woodbine Municipal Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace

at Woodbine, NJ, was published in the **Federal Register** (63 FR 52997). The development of the GPS RWY 1 SIAP and GPS RWY 19 SIAP for Woodbine Municipal Airport requires the amendment of the Class E airspace at Woodbine, NJ. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Woodbine, NJ, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 1 SIAP and GPS RWY 19 SIAP to Woodbine Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NJ E5 Woodbine, NJ [Revised]

Woodbine Municipal Airport, NJ
(Lat. 39°13′09″N., long 74°47′41″W.)

That airspace extending upward from 700 feet above the surface within a 9.5-mile radius of the Woodbine Municipal Airport, excluding the portion that coincides with the Ocean City, NJ, and Wildwood, NJ, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31383 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–33]

Establishment of Class E Airspace; Waynesburg, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Waynesburg, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the Greene County Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) helicopter operations to the airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Waynesburg, PA, was published in the **Federal Register** (63 FR 53320). The development of a Copter GPS 090 SIAP for the Greene County Airport, Waynesburg, PA, requires the establishment of the Class E airspace for the helicopter approach.

The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to be proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) established Class E airspace at Waynesburg, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 090 SIAP to the Greene County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1)

is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Waynesburg, PA [New]

Greene County Airport, PA
Point In Space Coordinates
(Lat 39°53′57″N., long. 80°08′51″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Greene County Airport, excluding that portion that coincides with the Morgantown, WV, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31384 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–32]

Establishment of Class E Airspace; Brookville, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Brookville, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the Brookville Hospital Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) helicopter operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Brookville, PA, was published in the **Federal Register** (63 FR 53323). The development of a Copter GPS 286 SIAP for the Brookville Hospital Heliport, Brookville, PA, requires the establishment of the Class E airspace to accommodate the approach. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL, are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Brookville, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 286 SIAP to the Brookville Hospital Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designation and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Brookville, PA [New]

Brookville Hospital Heliport, PA
Point In Space Coordinates
(Lat. 41°09'21"N., long. 79°04'46"W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Brookville Hospital Heliport, excluding that portion that coincides with the DuBois, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31385 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–35]

Establishment of Class E Airspace; Logan, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Logan, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the Altoona Hospital Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) helicopter operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Logan, PA, was published in the **Federal Register** (63 FR 53324). The development of a copter GPS 215 SIAP for the Altoona Hospital Heliport requires the establishment of the Class E airspace to accommodate the approach. The notice proposed to establish controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace at Logan, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 215 SIAP to the Altoona Hospital Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—AMENDED

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 comp., p. 389.

§ 71 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 600 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Logan, PA [New]

Altoona Hospital Heliport, PA
Point In Space Coordinates
(Lat. 40°31'52"N., long. 78°22'58"W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Point In Space serving Altoona Hospital Heliport, excluding that portion that coincides with the Altoona, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31386 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–34]

Amendment of Class E Airspace; Beaver Falls, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Beaver Falls, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the University of Pittsburgh Medical Center (UPMC) Beaver Valley Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Beaver Falls, PA, was published in the **Federal Register** (63 FR 53321). The development of a Copter GPS 099 SIAP for the UPMC Beaver Valley Heliport requires the amendment of the Class E airspace to accommodate the approach. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Beaver Falls, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 099 SIAP to the UPMC Beaver Valley Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Beaver Falls, PA [Revised]

Beaver County Airport, Beaver Falls, PA
(Lat. 40°46′21″N., long. 80°23′29″W.)
Ellwood City VORTAC
(Lat. 40°49′31″N., long. 80°12′42″W.)
University of Pittsburgh Medical Center
Beaver Valley Heliport, PA
Point In Space Coordinates
(Lat. 41°36′47″N., long. 80°18′11″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Beaver County Airport and within 1.8 miles each side of the ellwood City VORTAC 248° radial extending from the 6.4-mile radius to the VORTAC and within a 6-mile radius of the Point In Space serving the University of Pittsburgh Medical Center Beaver Valley Heliport, excluding that portion that coincides with the Pittsburgh, PA, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31374 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–21]

Amendment to Class E Airspace; Malone, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Malone, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Malone-DuFort Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 5 SIAP and GPS RWY 23 SIAP to Malone-DuFort Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR 71) to amend the Class E airspace at Malone, NY, was published in the **Federal Register** (63 FR 53002). The development of the GPS RWY 5 SIAP and GPS RWY 23 SIAP for Malone-DuFort Airport requires the amendment of the Class E airspace at Malone, NY. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending

upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Malone, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 5 SIAP and GPS RWY 23 SIAP to Malone-DuFort Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Malone, NY [Revised]

Malone-DuFort Airport, NY
(Lat. 44°51'13"N., long. 74°19'43"W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Malone-DuFort Airport, excluding the airspace within Canada.

* * * * *

Issued in Jamaica, New York on November 13, 1998

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31378 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–18]

Amendment to Class E Airspace; Poughkeepsie, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Poughkeepsie, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the Global Positioning System (GPS) at Sky Acres Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS RWY 17 SIAP and GPS RWY 35 SIAP to Sky Acres Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Poughkeepsie, NY, was published in the **Federal Register** (63 FR 52998). The development of the GPS RWY 17 SIAP and GPS RWY 35 SIAP for Sky Acres Airport requires the amendment of the Class E airspace at Poughkeepsie, NY. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace area designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Poughkeepsie, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS RWY 17 SIAP and GPS RWY 35 SIAP to Sky Acres Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

VOL
63
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1998
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Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 Poughkeepsie, NY [Revised]

Dutchess County Airport, Poughkeepsie, NY
(Lat. 41°37′36″N., long. 73°53′02″W.)
Sky Acres Airport, NY
(Lat. 41°42′27″N., long. 73°44′17″W.)
Stormville Airport, NY
(Lat. 41°34′37″N., long. 73°43′56″W.)

That airspace extending upward from 700 feet above the surface within a 8.7-mile radius of Dutchess County Airport and within a 13.5-mile radius of Dutchess County Airport extending clockwise from a 040° to a 215° bearing from the airport and within a 12-mile radius of Sky Acres Airport and within a 9.2-mile radius of Stormville Airport, excluding the portions that coincide with the Newburgh, NY, Red Hook, NY, Class E airspace areas.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31379 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–31]

Amendment of Class E Airspace; Grove City, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Grove City, PA. The development of a Helicopter Point In Space Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS), and serving the United Community Hospital Heliport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations to the heliport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Grove City, PA, was published in the **Federal Register** (63 FR 53322). The development of a Copter GPS 244 SIAP for the United Community Hospital Heliport, requires the amendment of the Class E airspace to accommodate the approach. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Grove City, PA, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the Copter GPS 244 SIAP to the United Community Hospital Heliport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p: 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Grove City, PA [Revised]

Grove City, Airport, PA
(Lat. 41°08′46″N., long. 80°09′58″W.)
United Community Hospital Heliport, PA
Point In Space Coordinates
(Lat. 41°10′39″N., long, 80°04′23″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Grove City Airport and within a 6-mile radius of the Point In Space serving the United Community Hospital Valley Heliport.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division Eastern Region.

[FR Doc. 98–31380 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 98–AEA–30]

Amendment to Class E Airspace; East Hampton, NY

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at East Hampton, NY. The development of Standard Instrument Approach Procedures (SIAP) based on the VHF Omnidirectional Radio Range (VOR), Distance Measuring Equipment (DME), Area Navigation (RNAV) and Global Positioning System (GPS) at East Hampton Airport, NY, has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the VOR/DME RNAV or GPS RWY 28 SIAP, VOR/DME RNAV or GPS RWY 10 SIAP and VOR or GPS–A SIAP to East Hampton Airport.

EFFECTIVE DATE: 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On October 2, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at East Hampton, NY, was published in the **Federal Register** (63 FR 53001). The development of the VOR/DME RNAV or GPS RWY 28 SIAP, VOR/DME RNAV or GPS RWY 10 SIAP and VOR or GPS–A SIAP for East Hampton Airport requires that amendment of the Class E airspace at East Hampton, NY. The notice proposed to amend controlled airspace extending upward from 700 feet AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at East Hampton, NY, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the VOR/DME RNAV or GPS RWY 28 SIAP, VOR/DME RNAV or GPS RWY 10 and VOR or GPS–A SIAP to East Hampton Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Polices and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NY E5 East Hampton, NY [Revised]

East Hampton Airport, NY
(Lat. 40°57′35″N., Long 72°15′07″W.)
Hampton VORTAC
(Lat. 40°55′08″N., Long 72°19′00″W.)

That airspace extending upward from 700 feed above the surface within a 6.5-mile radius of East Hampton Airport and within 3.5 miles north and 5.3 miles south of the 089° bearing from the airport extending from the 6.5-mile radius to 15 miles east of the airport and within 3.5 miles northwest and 5.3 miles southeast of the Hampton VORTAC 230° radial extending from the 6.5-mile radius to 10 miles southwest of the VORTAC, excluding the portion of that coincides with the Westhampton Beach, NY, Class E airspace area.

* * * * *

Issued in Jamaica, New York on November 13, 1998.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 98–31381 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107 and 108

[Docket Nos. 28859; Amendment No. 107–12, 108–17]

RIN 2120–AG32

Employment History, Verification and Criminal History Records Check

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction.

SUMMARY: The FAA is correcting the preamble of a previously published final rule regarding the regulations that require an access investigation for unescorted access privileges to security areas at airports. The corrections are, in most cases, typographical; however by this correction the FAA is also updating the information on the cost of the fingerprint processing. No changes to the previously published amendatory language are included.

EFFECTIVE DATE: November 23, 1998.

FOR FURTHER INFORMATION CONTACT: Linda Valencia, Telephone (202) 267–3413.

Correction

In rule FR Doc. 98–25210 published on Thursday, September 24, 1998 (63 FR 51204), make the following corrections:

1. On page 51206, in the third column, second line from the bottom, "parties" should read "party's".

2. On page 51209, in the first column, in the ninth line from the top, "of" should read "for".

3. On page 51210, in the first column, sixth line from the bottom, insert the words "of the" between the words "Part 2" and "investigative files."

4. On page 51216, in the first column, the fourth paragraph, second line, "$28" should read "$29"; in the same paragraph, in the third line from the end of the paragraph, "$4" should read "$5".

Issued in Washington, D.C. on November 10, 1998.

Anthony Fainberg,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 98–31377 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8785]

RIN 1545–AU70

Classification of Certain Transactions Involving Computer Programs; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8785, which was published in the **Federal Register** on Friday, October 2, 1998 (63 FR 52971) relating to the tax treatment of certain transactions involving the transfer of computer programs.

DATES: This correction is effective October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Anne Shelburne, (202) 874–1305 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 861 of the Internal Revenue Code.

Need for Correction

As published, TD 8785 contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8785), which were the subject of FR Doc. 98–26475, is corrected as follows:

1. On page 52971, column 1, in the preamble under the caption heading **FOR FURTHER INFORMATION CONTACT**, line 1, the language "Anne Shelburne, (202) 622–3880 (not a" is corrected to read "Anne Shelburne, (202) 874–1305 (not a".

2. On page 52975, column 3, in the preamble under the paragraph heading "*8. Services and Know-How*", second paragraph, lines 21 through 25, the language "secret protection. Know-how is considered a property interest under applicable law, and only if the know-how is specifically contracted for between the parties. These additional" is corrected to read "secret protection. These additional".

§ 1.861–18 [Corrected]

3. On page 52982, column 1, § 1.861–18(i)(4) *Example 1*, line three from the bottom of the paragraph, the language "A is not required to change from its accrual" is corrected to read "A is not required to change from its".

4. On page 52982, column 2, § 1.861–18(i)(4) *Example 2*, line five from the bottom of the paragraph, the language "A is not required to change from its accrual" is corrected to read "A is not required to change from its".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–31285 Filed 11–23–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–097]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway; Grassy Sound Channel

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Route 47 (George A. Reading) Bridge across the Intracoastal Waterway (ICW), mile 108.9, in Wildwood, New Jersey. Beginning at 7 a.m. on December 4, through 7 a.m. on December 6, 1998, the bridge will be maintained in the closed position. This closure is necessary to facilitate demolition and reconstruction of the bridge's bascule span.

DATES: This deviation is effective from 7 a.m. on December 4, 1998 until 7 a.m. on December 6, 1998.

FOR FURTHER INFORMATION CONTACT:

Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: On October 9, 1998, the Coast Guard published a Temporary Final Rule entitled "Drawbridge Operation Regulations; New Jersey Intracoastal Waterway; Grassy Sound Channel" in the **Federal Register** (63 FR 54353). That regulation, effective from October 19, 1998 to 5 p.m. on May 14, 1999, requires two-hours advance notice for bridge openings 24 hours a day to allow the contractor to facilitate sandblasting and painting operations.

On November 4, 1998, a letter was forwarded to the Coast Guard by the contractor requesting a temporary deviation from the current operation of the bridge. The proposed bridge work will involve the demolition and reconstruction of the bridge deck and superstructure, thereby immobilizing the operation of the bascule span entirely. Additionally, tugboats, cranes, and barges positioned at the site may impede vessel traffic that could pass under the bridge.

The Coast Guard has informed the known commercial users of the waterway of the bridge closure so that these vessels can arrange their transits to avoid being negatively impacted by the temporary deviation.

From 7 a.m. on December 4, until 7 a.m. on December 6, 1998, this deviation allows the Route 47 (George A. Reading) Bridge across Grassy Sound Channel, ICW mile 108.9 at Wildwood, to remain closed.

Dated: November 13, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 98–31373 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 64–71

Title 40 CFR Parts 64–71; Republication

CFR Correction

Title 40 CFR parts 64 to 71, revised as of July 1, 1998, is being republished in its entirety. The earlier issuance inadvertently omitted the last two lines of text from § 70.5 (c)(1) through the first five lines of (c)(8)(iii)(B). The omitted text should replace the text on page 98.

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6192–9]

RIN 2060–AG30

Standards of Performance for New Stationary Sources: Residential Wood Heaters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On September 11, 1996, EPA proposed amendments to the Standards of Performance for New Residential Wood Heaters, 40 CFR part 60, subpart AAA, as part of a larger proposal to reduce recordkeeping and reporting burden of numerous EPA regulations. The proposed wood heater amendments were intended to make needed corrections and clarifications to the wood heater rule. Some of the proposed clarifications are being promulgated under the final action for the recordkeeping and reporting burden reduction. This action announces the EPA's final decisions on one aspect of those proposed amendments.

The wood heater rule is being revised to expand the conditions under which EPA can initiate a "recall" of wood heaters from distributors and retailers by prohibiting sales other than sales back to the manufacturer. The rule as originally promulgated specifically authorized EPA to initiate such a "recall" due to the knowing submission of false or inaccurate information or other fraudulent acts. This action amends the rule to allow EPA to initiate a recall, not only in cases of fraud, but also if it is found that the original certification test was invalid, irrespective of fraud. This action is being taken to ensure that further sales to consumers of wood heaters that should not have been originally certified are prohibited. This action does not affect wood heaters already sold to consumers.

EFFECTIVE DATE: November 24, 1998. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–95–50, containing information considered by the EPA in development of the promulgated amendment, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday at the following address in room M–1500, Waterside Mall (ground floor): U. S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7549. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Marshall; Wood Heater Program; Manufacturing, Energy and Transportation Division (2223A); U.S. EPA, 401 M Street, S.W.; Washington, D.C. 20460; telephone number (202) 564–7021.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

The regulated category and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Residential wood heater manufacturers and commerical dealers

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in § 60.530 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Federal Register Proposal

On September 11, 1996 (61 FR 47840), EPA proposed amendments to the Standards of Performance for New Residential Wood Heaters, 40 CFR part 60, subpart AAA (variously referred to as the "wood heater" or "woodstove" rule or NSPS), as part of a larger proposal to reduce recordkeeping and reporting burden of numerous EPA regulations. Some of the proposed provisions pertaining to residential wood heaters dealt with clarifications to definitions and labeling of wood heaters. These changes will be addresed in the recordkeeping and reporting burden reduction final action.

Today's final rule addresses another proposed change to the wood heater rule, deletion of the "Prohibitions" section, § 60.538. This proposed change prompted significant comments that the Agency felt should be dealt with separately from the clarifications to the definitions and labeling provisions.

B. Public Participation

One comment letter, from the Hearth Products Association, was received on the wood heaters proposal. The EPA's responses to the comments received on the proposed deletion of the "Prohibitions" section can be found in this preamble under IV, "Summary of Comments and Responses on the Proposal."

III. Summary of Rule Amendments

The final amendments revise the "recall" provision of § 60.538(e). The original provision prohibited the sale of wood heaters to anyone except back to the manufacturer (hence the use of the word "recall") in the situation where the certificate was revoked for the knowing submission of false or inaccurate information or for other fraudulent acts. The amended rule prohibits sales except back to the manufacturer in the case where the certificate was revoked because the original certification test was determined to be invalid, as well as in the case of fraud, as previously described. In each case, the sales prohibition takes effect on the date that the "commercial owner" (e.g., the distributor or dealer) receives notice of the revocation.

IV. Summary of Comments and Responses on the Proposal

A. Was There Sufficient Notice and Comment Regarding the Proposed Changes?

Comment: The proposal did not provide sufficient notice and time for comment. The woodstove amendments were proposed within a package published in the **Federal Register** to "reduce unnecessary recordkeeping and reporting burdens," entitled "Recordkeeping and Reporting Burden Reduction". The public was not alerted

to the fact that this rule contained substantive revisions to the woodstoves NSPS. The industry only became aware of these proposed revisions near the end of the comment period.

Response: The amendments were proposed September 11, 1996 in the **Federal Register** (61 FR 47840). There are no additional notification requirements under the Administrative Procedures Act. Table 1, which appeared on the second page of the preamble, listed the NSPS for New Residential Wood Heaters as one of the rules to be amended. The deletion of § 60.538 was discussed in the preamble and was included in the portion of the notice that set forth the proposed changes to the regulations. To ensure that the industry was aware of the proposed amendments, EPA contacted the Hearth Products Association (HPA) (formerly known as the Wood Heating Alliance, a major trade group for wood heater manufacturers which represented many manufacturers during the regulatory negotiation of the original rule) before the end of the comment period and gave the HPA additional time to comment on the proposal. EPA also contacted representatives of environmental organizations that had previously expressed interest in the wood heater NSPS rule to ensure that they were aware of the proposed changes. Sufficient opportunity to comment was extended to all interested parties. In addition, several meetings were held with HPA representatives to discuss and clarify their comments prior to EPA developing the final rule.

B. Can EPA Unilaterally Revise a Rule Developed Through Formal Regulatory Negotiation?

Comment: A rule developed through a consensus process by way of regulatory negotiation should not be unilaterally changed by EPA. Not consulting with the original stakeholders is an indefensible breach of the negotiated understanding.

Response: Developing a rule through a formal negotiation process does not forever tie EPA's hands when changes to the rule are warranted. The Clean Air Act (CAA) requires EPA to review and, if appropriate, revise NSPS every 8 years (CAA section 111(b)(1)(B)). Indeed, the Agency has chosen not to revise the woodstoves emissions limits since the rule was promulgated in 1988. The Agency still believes that the current limits remain appropriate and anticipates no revisions to these limits in the foreseeable future.

However, EPA believes it is appropriate to revise the rule when it identifies problems that may interfere with proper enforcement and compliance. On June 29, 1995 (60 FR 33915), EPA removed numerous provisions from the rule that were obsolete; thus, eliminating potentially confusing provisions for manufacturers in meeting the requirements. Likewise, EPA believes that today's revisions are necessary improvements that will enhance compliance and correct deficiencies in the rule that inhibit the Agency's ability to properly enforce the rule. From time to time, necessary rule changes become apparent and the EPA has the authority to make such changes through the normal rulemaking process, regardless of how the rule was originally developed. By the same token, EPA recognizes that a rule developed through a regulatory negotiation balances the diverse needs of the negotiators, and consultation with all the various stakeholders affected by the changes is important. As mentioned previously, EPA notified the commenter, as well as various environmental groups, to seek their input on the proposed changes. In addition, EPA has met several times with the commenter.

C. Is a Regulatory Flexibility Analysis Required in Accordance With the Small Business Regulatory Enforcement Fairness Act (SBREFA)?

Comment: Because of the impact on small businesses (manufacturers, wholesalers, and retailers), EPA must assess the impacts in accordance with the SBREFA requirements.

Response: Many, if not most, wood heater manufacturers, distributors, and dealers are considered to be "small entities" under SBREFA. EPA has determined that the amendment will not have a significant economic impact on a substantial number of small entities (wood heater manufacturers, distributors, and dealers). Accordingly, it is not necessary to prepare a regulatory flexibility analysis in connection with these amendments.

In analyzing the costs and potential impacts of the amendments on small entities, EPA presumes that the small entities comply with all existing statutory or regulatory requirements that are applicable to them. Furthermore, if a rule is being amended, EPA assesses only the incremental cost of the amendment. The wood heaters NSPS requires manufacturers to submit "documentation pertaining to a valid certification test" as part of the application for a certificate of compliance (40 CFR 60.533(b)(4)). Thus, assuming that woodstove manufacturers are complying with this requirement, there is no cost as a result of the amendment, which establishes enforcement consequences of a subsequently discovered invalid certification test. Therefore, there is no significant adverse economic impact on any small entity.

Even if one were to regard the consequences of the discovery of an invalid certification test as an impact resulting from today's amendments, there would still be no significant adverse economic impact on a substantial number of small entities. "Recalls" of model lines have been rare in the 10 years since the woodstoves rule was first issued. Over the past 10 years, EPA has certified over 460 model lines. Currently, there are over 200 certified model lines produced by 67 manufacturers. In 10 years, only 2 model lines (each from a different company) have ever been recalled from commercial owners (e.g., dealers or distributors) by the manufacturers.

As originally promulgated, § 60.538(e) prohibits the sale (other than to the manufacturer) by commercial owners (e.g., distributors or dealers) of woodstoves for which EPA has revoked the certificate of compliance due to fraud, once the Agency has given notice of the revocation. The proposed deletion of § 60.538(e) would have meant that commercial owners selling model lines for which the certification had been revoked could not have continued to sell with the assurance that their inventory was in compliance with the standard, regardless of the reason for the revocation. In this final rule, rather than deleting § 60.538(e), EPA is choosing instead to amend the existing language to focus more directly on sale of model lines for which the original certification test is discovered to be invalid. The Agency believes that this will provide greater clarity than the proposed deletion.

Under the amendments, the sales prohibition in § 60.538(e) is being expanded to include model lines for which the certificate is revoked based on a finding that the original certification test was invalid, regardless of fraud. The Agency believes that if the original certification test was invalid, continued sale of the model lines would be inconsistent with the intent of the standard. Based on our previous experience, it is expected that such sales prohibitions at the commercial owner level will remain relatively rare, if any at all occur. The only suspension or revocations that have occurred to date are those associated with fraudulent acts. There have been no certification suspensions or revocations either as a result of random compliance audits or selective enforcement audits conducted

under § 60.533(p)(1), or as the result of invalid original certification tests that have not involved fraud.

Potential economic impacts of any recall that might occur due to today's amendment were considered for both manufacturers and commercial owners. No significant impacts were identified. In assessing the potential economic impact of a recall, EPA considered the impact on the manufacturers of the 2 model lines recalled due to fraud. One of the manufacturers had revenues in excess of $15 million per year. Only 34 wood heaters were recalled, representing far less than 1 percent of sales. The other manufacturer had sales significantly more than the first manufacturer, and the recall involved 107 wood heaters, still less than 1 percent of sales. The EPA does not consider an economic impact of less than 1 percent of sales as significant, and consequently, EPA does not expect a recall to have a significant adverse economic impact on such manufacturers. In addition, most manufacturers produce more than one model line, and most commercial owners carry no more inventory than a heating season's worth (about 3 months) of woodstoves, further minimizing the impact on the manufacturer of a recall of a single model line. Furthermore, many manufacturers sell other products besides woodstoves; EPA's Regulatory Flexibility Analysis in 1986 (Docket No. A–84–49, item No. II–A–14) for the original regulation indicated that less than half of the total revenues for most manufacturers were from woodstoves sales.

The impact on commercial owners, too, is also expected to be minimal, affecting only about 3 months inventory of a single model line. Most commercial owners carry more than one model line and sell other products. Also, many manufacturers have "swap out" arrangements with their customers to substitute the recalled stoves with certified stoves.

Even if EPA assumed the impact on small entities was economically significant (not borne out by past experience), a substantial number of small businesses would not be affected, if any. As stated above, only 2 out of 67 manufacturers have been affected in the last 10 years by the original recall provision. The Agency does not consider 2 out of 67 manufacturers to be a substantial number. There is no reason to expect a sudden increase in the number of invalid certification tests discovered subsequent to certification that do not involve fraud, where none have been discovered before. Consequently, the EPA can determine that there will be no significant adverse economic impact on a substantial number of small entities as a result of this amendment.

Moreover, in exercising its recall authority, EPA will consider the potential economic harm resulting from a recall, as well as the potential environmental problem the recall would address. The Agency would consider, for example, the number of wood heaters in the channels of trade, and the extent to which the model line in question exceeds applicable emission limits.

D. What Changes Are Being Made to the Rule?

Comment: The commenter objected to the deletion of § 60.538 ("Prohibitions") from the rule for several reasons. The commenter's primary concern was that manufacturers, distributors, and retailers would be affected by "recalls" where fraud was not the reason for revocation of the compliance certification. Another concern was that the deletion of paragraphs (f), (g), (h), and (i) of § 60.538 would expand the liability exposure to homeowners owning a stove that did not meet emissions limits; the existing rule's prohibitions limited homeowners' liability to improper installation or operation, catalyst deactivation or removal, physical alteration of the woodstove, and altering or removing the permanent label.

The commenter did not agree with the reasons provided by the Agency for deleting the "Prohibitions" section. In response to the statement in the proposal preamble that the prohibitions section would not allow a claim of violation of the removable label requirement unless the wood heater in question also had a permanent label, the commenter stated that if the wood heater had no permanent label, EPA could bring a claim of violation of the requirement to have a permanent label. In response to the statement that the prohibitions section does not make complying with the quality assurance provisions unlawful, the commenter stated that shipping stoves while out of compliance with the quality assurance provisions runs afoul of the labeling requirements and is grounds for certificate revocation. Finally, the commenter disagreed that eliminating other paragraphs would clarify and simplify the rule, and that these other paragraphs were duplicative or otherwise unnecessary.

Response: The Agency agrees with the commenter on some of these points and accordingly has decided to retain most of § 60.538 in its original form. Although the Agency disagrees that homeowners would be exposed to greater liability if paragraphs (f), (g), (h), and (i) of § 60.538 were removed, retaining these paragraphs is helpful in clarifying homeowners' compliance obligations.

The Agency also agrees with the commenter that every wood heater that has a removable label must also have a permanent label (§ 60.536(a), (i), (j)). Sale of wood heaters not bearing a permanent label is prohibited in § 60.538 (b) and (c). Accordingly, if a wood heater has neither a removable label nor a permanent label, a claim of violation can be based on sale of the heater without a permanent label. Therefore, the dependence of § 60.538(d) on the existence of a permanent label does not preclude enforcement actions where stoves are sold with neither a temporary nor a permanent label. Accordingly, the provisions of § 60.538 regarding labeling are being retained.

The Agency agrees that the lack of a specific provision regarding the quality assurance requirements in the "Prohibitions" section does not affect the enforceability of the quality assurance procedures. Section 60.533(o) clearly lays out the requirements and procedures for conducting a quality assurance program. These requirements and procedures are enforceable and failure to comply with them would be a violation. Failure to meet the tolerances or emission limits during the quality assurance program would not be a violation of the rule, but failure to take remedial measures would be (§ 60.533(o)(4)). No amendment to the rule is necessary to enforce these provisions. Furthermore, as the commenter points out, compliance with the quality assurance requirements is required by other aspects of the regulation. For example, a labeling statement under § 60.536 (b) or (c) constitutes a representation by the manufacturer that the manufacturer was, at the time the label was affixed, conducting a conforming quality assurance program. In addition, EPA may use a manufacturer's failure to conduct a conforming quality assurance program as a ground to revoke certification under § 60.533(l). Furthermore, in applying to EPA for a certificate of compliance, a manufacturer must include a statement that it will conduct a conforming quality assurance program for the model line in question (§ 60.533(b)(6)). Because the lack of a specific provision regarding the quality assurance requirements in the "Prohibitions" section does not affect the enforceability of the quality

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assurance requirements, the Agency has decided not to alter the "Prohibitions" section in this regard.

Although some simplification and removal of duplication could be achieved in § 60.538, EPA has decided not to amend the provisions of this section, except as discussed below with regard to § 60.538(e), in order to avoid any confusion that might arise from their deletion.

Section 60.538(e), as originally promulgated, provides that the Agency may prohibit "commercial owners" (e.g., dealers and distributors) from selling, other than to the manufacturer, wood heaters in a model line whose certificate has been revoked "* * * for the knowing submission of false or inaccurate information or other fraudulent acts." The prohibition takes effect on the date that the commercial owner receives notice of the revocation. By prohibiting sales of such appliances other than to the manufacturer, the provision in effect authorizes EPA to require a recall of wood heaters that are still in the distribution chain. It has no impact on wood heaters that have already been sold to consumers.

During 1996, a serious incident involving fraudulent conduct by an accredited testing laboratory had to be addressed by the Agency. The laboratory in question was found to have falsified 11 certification test reports that were submitted to the Agency, upon which certificates were granted. The laboratory director was prosecuted criminally, plead guilty, was sentenced to a lengthy period of probation, and was ordered to perform substantial community service. The manufacturers in question cooperated with the Agency in attempting to rectify this situation, ultimately conducting a number of new certification tests and, in the case of 2 model lines, voluntarily agreeing to recall appliances in the channels of trade.

The Agency conducted a review of its response to this situation, and decided that it needed to expand its recall authority, so that it was clear that it covered situations where a certification had been issued based on an invalid certification test, irrespective of the presence of fraud. The Hearth Products Association (HPA) has acknowledged in meetings with the Agency that the hearth industry (which includes wood heater manufacturers) has an important interest in assuring the integrity of its products, and that clarifying EPA's recall authority could play an important role in this regard.

The rule has always required a finding that a valid certification test has shown that a wood heater representative of the model line complies with the emission limits before a certification can be issued (§ 60.533(e)(1)(i)). Section 60.533(f)(4) of the rule defines a valid certification test as one conducted according to the prescribed test methods and procedures, among other requirements. Under today's promulgated amendments, the Agency is establishing its authority to prohibit sales to consumers if a certification was revoked based on a finding that the original certification test was not valid.

The basis for such a finding would be problems or irregularities with the certification test or its documentation. Other information could be used to supplement the finding. The finding could be based on incorrect calculations or typographical errors, for example, that if corrected would not have enabled a model line to be certified. Other examples include anomalies with the methods and procedures, such as incorrect emission sample gathering or improper wood load. However, the Agency would not consider minor infractions of the original certification test that would have little or no influence on emissions as the basis for a finding that the certification test was not valid. Historically, the Agency has used its judgment on insignificant problems or resolved them through discussions with the accredited laboratory or the manufacturer, recognizing the expense of retesting and the fact that many manufacturers are small businesses with limited resources.

V. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final amendment is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of information considered by the EPA in the development of a rulemaking. The docket is a dynamic file because information is added throughout the rulemaking development process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket (except for interagency review materials) will serve as the record in case of judicial review. [See section 307(d)(7)(A) of the Act.] The official rulemaking record, including all public comments received on the proposed amendments, is located at the address in the **ADDRESSES** section at the beginning of this document. The docket number for this rulemaking is A–95–50.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that today's action is not a "significant regulatory action" within the meaning of the Executive Order.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments,

and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for the proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Finally, section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

The EPA has determined that these amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate or the private sector in any one year. Thus, today's amendments are not subject to the requirements of sections 202, 204, and 205 of the UMRA.

The EPA has determined that these amendments contain no regulatory requirements that might significantly or uniquely affect small governments. No small government entities have been identified that are affected by these amendments. Therefore, today's amendments are not subject to the requirements of section 203 of the UMRA.

E. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. As explained previously in the response to comments section, the Agency looks only at the incremental impact of the amendments and assumes that regulated entities are in compliance with previously promulgated requirements. Assuming that manufacturers are in compliance with the requirement to submit "documentation pertaining to a valid certification test" as part of their application for a certificate of compliance (40 CFR 60.533(b)(4)), there will be no impact on any small manufacturer. Even if one were to regard the consequences of the discovery of an invalid certification test as an impact resulting from today's amendments, there would still be no significant adverse economic impact on a substantial number of small entities. Only 2 out of 67 manufacturers have had to recall model lines due to inappropriate certification in the past 10 years. EPA has not identified any inappropriate certifications that have not involved fraud and hence does not expect these amendments to lead to an increase in the number of recalls. In addition, the economic impact of the recalls has been minimal, affecting less than one percent of sales for each of the manufacturers that has recalled a model line.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Paperwork Reduction Act

Today's action does not impose any new information collection burden. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0161 (ICR no. 1176.05).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary

consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final amendment does not involve any technical standards; therefore, EPA did not consider the use of any voluntary consensus standards.

I. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that (1) is "economically significant" as defined under Executive Order 12866, and (2) EPA determines addresses an environmental health or safety risk that has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's amendment does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Heaters.

Dated: November 18, 1998.

Carol M. Browner,

Administrator.

For reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601 and 7602.

2. Amend § 60.533 to revise paragraph (l)(1)(ii) to read as follows:

§ 60.533 Compliance and certification.

* * * * *

(l) * * *

(1) * * *

(ii) A finding that the certification test was not valid. The finding must be based on problems or irregularities with the certification test or its documentation, but may be supplemented by other information.

* * * * *

3. Amend § 60.538 to revise paragraph (e) to read as follows:

§ 60.538 Prohibitions.

* * * * *

(e)(1) In any case in which the Administrator revokes a certificate of compliance either for the knowing submission of false or inaccurate information or other fraudulent acts, or based on a finding under § 60.533(l)(1)(ii) that the certification test was not valid, he may give notice of that revocation and the grounds for it to all commercial owners.

(2) From and after the date of receipt of the notice given under paragraph (e)(1) of this section, no commercial owner may sell any wood heater covered by the revoked certificate (other than to the manufacturer) unless

(i) The wood heater has been tested as required by § 60.533(n) and labeled as required by § 60.536(g) or

(ii) The model line has been recertified in accordance with this subpart.

* * * * *

[FR Doc. 98–31397 Filed 11–23–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50633A; FRL–6044–6]

RIN 2070–AB27

Revocation of Significant New Use Rules for Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking significant new use rules (SNURs) for 6 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for certain chemical substances based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or the premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

DATES: This rule is effective December 24, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

In the **Federal Register** referenced for each substance, OPPTS–50569A, September 18, 1989 (54 FR 38381); OPPTS–50582, August 15, 1990 (55 FR 33296); OPPTS–50613, October 4, 1993 (58 FR 51694); OPPTS–50623, December 2, 1996 (61 FR 63726) (FRL–4964–3); and OPPTS–50628, January 22, 1998 (63 FR 3393) (FRL–5720–3), EPA issued a SNUR establishing significant new uses for the substances. Because of additional

data EPA has received for these substances, EPA is revoking these SNURs.

I. Background

The Agency proposed the revocation of these SNURs in the **Federal Register** of September 16, 1998 (63 FR 49518) (FRL–6024–9). The background and reasons for the revocation of each individual SNUR are set forth in the preamble to the proposed revocation. The comment period closed on October 16, 1998. The Agency received no comments concerning the proposed revocations. Therefore, EPA is revoking these rules.

II. Rationale for Revocation of the Rule

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent orders or the PMNs might result in significant changes in human or environmental exposure. Based on these findings, SNURs were promulgated.

EPA has revoked those TSCA section 5(e) consent orders that are the bases for these SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent orders or the PMNs may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is revoking the SNUR provisions for these chemical substances. When this revocation becomes final, EPA will no longer require notice of intent to manufacture, import, or process these substances, except in the case where the PMN submitter has formally withdrawn the PMN. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50633A (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must

submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 9, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§§ 721.723, 721.1525, 721.1737, 721.1740, 721.7360 [Removed]

2. By removing §§ 721.723, 721.1525, 721.1737, 721.1740, and 721.7360.

[FR Doc. 98–31390 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

46 CFR Parts 510, 514, and 582

Anti-Rebate Certification Filing Requirements

AGENCY: Federal Maritime Commission.

ACTION: Waiver of filing requirement.

SUMMARY: The Commission is waiving the requirement for chief executive officers of common carriers and other entities to file by December 31, 1998, a written certification that the firm has a policy against rebating that was recently promulgated to each owner, officer and employee of the firm, with details of the firm's efforts to prevent illegal rebating and that the firm will cooperate with Commission efforts to end illegal rebating. This action is being taken to alleviate the filing burden on the public and the collection burden on the Commission, in light of changes made by the Ocean Shipping Reform Act of 1998 ("OSRA") which removes the filing requirement on May 1, 1999, when OSRA becomes effective.

EFFECTIVE DATE: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5796, E-mail: bryant@fmc.gov.

SUPPLEMENTARY INFORMATION: Section 15(b) of the Shipping Act of 1984, 46 U.S.C. 1714(b) ("1984 Act") requires the chief executive officer of each common carrier and other entities designated by the Federal Maritime Commission to file with the Commission a periodic written certification made under oath. The chief executive officer must certify: that the firm has a policy prohibiting rebating; that the policy was recently promulgated to each owner, officer and employee of the firm; that it has provided details of the efforts made by the firm to prevent illegal rebating; and that the firm will cooperate with the Commission in its efforts to end these illegal practices.

The section 15(b) requirement is implemented by the Commission's regulations at 46 CFR Part 582, 46 CFR 514.1(c)(1)(iii), 46 CFR 510.16(a)(6), and 46 CFR 510.25, which require the chief executive officer of every common carrier and ocean freight forwarder to file an Anti-Rebate Certification ("ARC") as prescribed by the form in Appendix A of Part 582. ARCs are required when a carrier files its initial tariff and when a freight forwarder applicant submits its initial application for a freight forwarder license. Thereafter, ARCs are required to be filed by December 31 of each even-numbered calendar year. Failure to file an ARC may result in the cancellation of a carrier's tariffs, the striking of a carrier's name as a participant to any conference rate tariffs in which it participates or suspension of a freight forwarder's license and possibly the assessment of civil penalties.

The 1984 Act, as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), removes the ARC requirements from section 15 effective May 1, 1999, four months after they are due from the approximately 5000 subject firms on December 31, 1998. The ARC program consumes a large amount of the Commission's resources. In addition, it generally takes several months to process receipts, follow-up on deficient filings and to complete the tariff cancellation/freight forwarder license suspension process. In short, it is unlikely that the 1999/2000 program could be completed by May 1, 1999. Moreover, continuation of this requirement would place a great strain on agency resources at a time when they will be needed to work on program changes required by OSRA. The Commission, therefore, has determined to waive this requirement for the ARC filing due December 31, 1998.

This waiver is strictly for administrative convenience. The Commission makes clear that the 1984 Act, both currently and as will be amended by OSRA, prohibits the payment, receipt or solicitation of illegal rebates. This waiver of certification requirements does not modify, in any manner, the Commission's enforcement obligations or efforts with respect to past or future rebate activity.

Now therefore, it is ordered that pursuant to 5 U.S.C. 553 and sections 15 and 17 of the Shipping Act of 1984 (46 U.S.C. app 1714 and 1716), the requirements of 46 CFR Part 582, 46 CFR 514.1(c)(1)(iii), 46 CFR 510.16(a)(6), and 46 CFR 510.25 for the filing due December 31, 1998, are waived effective November 24, 1998.

Pursuant to 5 U.S.C. 553(b) and (d) we find that prior public notice, opportunity for comment, and delayed effective date are neither necessary nor practical inasmuch as this waiver merely relieves restrictions otherwise applicable.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31341 Filed 11–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–66, RM–8729, RM–8821]

Radio Broadcasting Services; Sibley, IA, and Brandon, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 261A to Brandon, South Dakota. *See* 61 FR 15442, April 8, 1996; The reference coordinates for Channel 261A at Brandon, South Dakota, are 43–36–02 and 96–31–15. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 23, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 96–66,

adopted October 28, 1998, and released November 6, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended by adding Brandon, Channel 261A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31276 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–233; RM–9162]

Radio Broadcasting Services; East Brewton, AL and Navarre, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to the *Notice of Proposed Rule Making* in this proceeding, 62 FR 63690 (December 2, 1997), this document denies the request of 550–AM, the permittee of Station WGCX(FM), Channel 239A at East Brewton, Alabama, to substitute Channel 239C3 for Channel 239A at East Brewton, and reallot Channel 239C3 to Navarre, Florida. The present allotment to East Brewton is viewed as being superior to the reallotment proposal for Navarre. The population of East Brewton is larger than that of Navarre. The East Brewton allotment would provide a fifth reception service to over 7,000 persons, whereas Navarre is already adequately served with seven reception services. This document terminates the proceeding.

EFFECTIVE DATE: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–233 adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31275 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–126; RM–9293]

Radio Broadcasting Services; Bunker, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 292A to Bunker, Missouri, in response to a petition filed by Bunker Radio Project. *See* 63 FR 39804, July 24, 1998. The coordinates for Channel 292A at Bunker are 37–27–18 and 91–12–48. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–126, adopted November 9, 1998, and released November 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Bunker, Channel 292A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31343 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–129; RM–9307]

Radio Broadcasting Services; Powers, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a proposal to allot Channel 262A at Powers, Michigan. A Notice of Proposed Rule Making was issued in response to a petition filed by Results Broadcasting of Iron Mountain, Inc. *See* 63 FR 39804, July 24, 1998. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 24, 1998.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 98–129, adopted November 9, 1998, and released November 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31342 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970703166–8209–04; I.D. 060997A3]

RIN 0648–AH65

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final rule pertaining to the license limitation program published in the **Federal Register** on October 1, 1998.

DATES: This action becomes effective November 24, 1998.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

A final rule was published in the **Federal Register** on October 1, 1998 (63 FR 52642), implementing part of Amendment 39 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI), Amendment 41 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA), and Amendment 5 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the BSAI.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified. NMFS is correcting these errors and is making no substantive change to the document in this action.

Dated: November 18, 1998.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Accordingly, 50 CFR part 679 is corrected by making the following correcting amendments:

1. In the **Federal Register** of October 1, 1998, in FR Doc. 98–26186, on page 52642, in the first column, correct the "Dates" caption to read:

DATES: Effective January 1, 2000, except for definitions added to § 679.2 and paragraphs (k)(3), (k)(4), (k)(5), (k)(6), (k)(8)(iii), and (k)(8)(iv) added to § 679.4, which are effective January 1, 1999.

PART 679–FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

2. The authority citiation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

§ 679.2 [Corrected]

3. In § 679.2, in the definition, "Eligible applicant", paragraph (1), remove "§ 679.4(i)(4) and (i)(5)", and add in its place, "§ 679.4(k)(4) and (k)(5)".

4. In § 679.2, in the definition, "Eligible applicant", paragraph (2), remove "§ 649.4(i)(4) and (i)(5)" and add in its place, "§ 679.4(k)(4) and (k)(5)".

5. In § 679.2, in the definition, "Eligible applicant", paragraph (3), remove "§ 679.4(i)(5)(ii)(G)" each time it appears and add in its place, "§ 679.4(k)(5)(ii)(G)" each time it appears.

§ 679.4 [Corrected]

6. In § 679.4, in paragraph (k)(1)(i), in the first sentence, remove "paragraph (i)(2)" and add in its place, "paragraph (k)(2)".

7. In § 679.4, in paragraph (k)(1)(ii), in the first sentence, remove "paragraph (i)(2)" and add in its place, "paragraph (k)(2)".

8. In § 679.4, in paragraph (k)(2) introductory text, remove "paragraph (i)(1)" and add in its place, "paragraph (k)(1)".

9. In § 679.4, in paragraph (k)(3)(ii)(A)(*1*), remove "paragraph (i)(4)" and add in its place, "paragraph (k)(4)" and remove "paragraph (i)(4)(ii)" and add in its place, "paragraph (k)(4)(ii)".

10. In § 679.4, in paragraph (k)(3)(ii)(A)(*2*), remove "paragraph (i)(5)" and add in its place, "paragraph (k)(5)" and remove "paragraph (i)(5)(ii)" and add in its place, "paragraph (k)(5)(ii)".

11. In § 679.4, in paragraph (k)(3)(ii)(A)(*3*), remove "paragraphs (i)(3)(ii)(A)(*1*) and (i)(3)(ii)(A)(*2*)" and add in its place, "paragraphs (k)(3)(ii)(A)(*1*) and (k)(3)(ii)(A)(*2*)".

12. In § 679.4, in paragraph (k)(3)(ii)(B), remove "paragraph (i)(3)(ii)(A)(*1*) or (i)(3)(ii)(A)(*2*)" and add in its place, "paragraph (k)(3)(ii)(A)(*1*) or (k)(3)(ii)(A)(*2*)".

13. In § 679.4, in paragraph (k)(4) introductory text, in the first sentence, remove "paragraphs (i)(4)(i) and (i)(4)(ii)" and add in its place, "paragraphs (k)(4)(i) and (k)(4)(ii)".

14. In § 679.4, in paragraph (k)(4)(i)(A) introductory text, in the first sentence, remove "paragraphs (i)(4)(ii)(A) and (i)(4)(ii)(B)" and add in its place, "paragraphs (k)(4)(ii)(A) and (k)(4)(ii)(B)".

15. In § 679.4, in paragraph (k)(4)(i)(B) introductory text, in the first sentence, remove "paragraphs (i)(4)(ii)(C) through (i)(4)(ii)(E)" and add in its place, "paragraphs (k)(4)(ii)(C) through (k)(4)(ii)(E)".

16. In § 679.4, in paragraph (k)(4)(ii) introductory text, remove "paragraphs (i)(4)(ii)(A) through (i)(4)(ii)(E)" and add in its place, "paragraphs (k)(4)(ii)(A) through (k)(4)(ii)(E)".

17. In § 679.4, in paragraph (k)(4)(iii), remove "paragraph (i)(4)(i)(A)(*2*) or (i)(4)(i)(B)(*2*)" and add in its place, "paragraph (k)(4)(i)(A)(*2*) or (k)(4)(i)(B)(*2*)".

18. In § 679.4, in paragraph (k)(4)(iv) introductory text, remove "paragraph (i)(4)" and add in its place, "paragraph (k)(4)" and remove "paragraph (i)(4)(i)(A)" and "paragraph (i)(4)(ii)(C), (i)(4)(ii)(D), or (i)(4)(ii)(E)" and add in their place, "paragraph (k)(4)(i)(A)" and "paragraph (k)(4)(ii)(C), (k)(4)(ii)(D), or (k)(4)(ii)(E)" respectively.

19. In § 679.4, in paragraph (k)(4)(v) introductory text, remove "paragraph (i)(4)" and add in its place, "paragraph (k)(4)" and remove "paragraph (i)(4)(i)(B)" and "paragraph (i)(4)(ii)(A) or (i)(4)(ii)(B)" and add in their place, "paragraph (k)(4)(i)(B)" and "(k)(4)(ii)(A) or (k)(4)(ii)(B)" respectively.

20. In § 679.4, in paragraph (k)(5) introductory text, in the first sentence, remove "paragraphs (i)(5)(i) and (i)(5)(ii)", "paragraph (i)(5)(i)", and "paragraph (i)(5)(ii)(A) and (i)(5)(ii)(G)" and add in their place, "paragraphs (k)(5)(i) and (k)(5)(ii)", "paragraph (k)(5)(i)", and "paragraph (k)(5)(ii)(A) and (k)(5)(ii)(G)" respectively.

21. In § 679.4, in paragraph (k)(5)(i) introductory text, remove "paragraph (i)(5)(ii)" and add in its place, "paragraph (k)(5)(ii)".

22. In § 679.4, in paragraph (k)(5)(ii) introductory text, remove "paragraphs (i)(5)(ii)(A)" and add in its place, "paragraphs (k)(5)(ii)(A)".

23. In § 679.4, in paragraph (k)(8)(iv) introductory text, remove "paragraph (i)(4)" and add in its place, "paragraph (k)(4)" and remove "paragraph (i)(5)" and add in its place, "paragraph (k)(5)".

§ 679.7 [Corrected]

24. In § 679.7, in paragraph (i)(1)(i), remove "paragraph (j)(1)(iii)" and add in its place, "paragraph (i)(1)(iii)".

25. In § 679.7, in paragraph (i)(1)(ii), remove "paragraph (j)(1)(iii)" and add in its place, "paragraph (i)(1)(iii)".

26. In § 679.7, in paragraph (i)(1)(iii), remove "paragraphs (j)(1)(i) and (j)(1)(ii)" and add in its place, "paragraphs (i)(1)(i) and (i)(1)(ii)", and in the second sentence, remove "paragraphs (j)(1)(i) and (j)(1)(ii)" and add in its place each time it appears, "paragraphs (i)(1)(i) and (i)(1)(ii)" each time it appears.

27. In § 679.7, in paragraph (i)(2), remove "§ 679.4(i)(2)" and add in its place, "§ 679.4(k)(2)".

§ 679.43 [Corrected]

28. In § 679.43, in paragraph (p), in the first sentence, remove "§ 679.4(i)" and add in its place, "§ 679.4(k)".

[FR Doc. 98–31409 Filed 11–19–98; 4:18 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 226
Tuesday, November 24, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 530, 531, 536, 550, 551, 575, 591, and 610

RIN 3206–AH11

Miscellaneous Changes in Compensation Regulations

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to correct or clarify various regulatory provisions dealing with the compensation of Federal employees. Many of the proposed changes were prompted by questions and comments from users of the regulations. The proposed regulations are intended to assist agencies in administering compensation programs and to provide clearer information to employees covered by those programs.

DATES: Comments must be received on or before January 25, 1999.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415 (FAX: (202) 606–0824 or e-mail: payleave@opm.gov).

FOR FURTHER INFORMATION CONTACT: Bryce Baker, (202) 606–2858, FAX: (202) 606–0824, or e-mail: payleave @ opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) proposes to revise a number of miscellaneous pay administration regulations to correct various typographical or technical errors or omissions and to codify or clarify OPM policies. The proposed changes were identified through a general review of compensation regulations by OPM staff—a review that took into account many questions and comments from users of the regulations. The following table lists the specific regulatory sections that are being proposed for revision and briefly describes the purpose and/or effect of each change.

Proposed rule	Description of proposed change
§ 530.202	*Aggregate Limitation on Pay: Definitions.* Amends the definition of "discretionary payment" to make clear that retention allowances are the only fixed-rate payments made on a continuing basis that are considered to be discretionary after they have been initially authorized. (Also, see 58 FR 50248, Supplementary Information accompanying the final rule on the aggregate pay limitation, dated September 27, 1993.) Amends the definition of "estimated aggregate compensation" to make clear that this term includes the value of all nondiscretionary payments to which the employee is currently entitled as well as projected to be entitled during the course of the calendar year. For example, the amount of the entitlement may be expected to change based on known facts (such as the scheduled date of reassignment to a new locality pay area). The projection would include nondiscretionary payments for which authorization will lapse during the calendar year, but which are expected to be reauthorized (e.g., physicians comparability allowance payments under part 595).
§ 530.203(c)	Corrects a typographical error.
§ 530.203(f)	*Aggregate Limitation on Pay: Erroneous Excess.* Adds new language to clarify how to correct cases where the aggregate compensation actually received by an employee exceeds the Executive Level I limitation because of an earlier error in computing the employee's estimated aggregate compensation (i.e., the error is discovered too late in the year to prevent the erroneous excess). The correction requires that any erroneous excess be deemed to have been paid on the first day of the next calendar year and counted toward the next year's aggregate compensation in applying the Level I limitation.
§ 530.303(d)	*Special Salary Rates.* Provides that certifications made in conjunction with requests to establish or adjust special salary rate schedules may be made by an agency official other than the head of the agency in all cases (not just those involving fewer than 1,000 employees or costs of less than $4 million), as long as that official is officially designated to act in the agency head's behalf in making such a certification and is the sole designee for the agency with respect to any given schedule. Also, eliminates the requirement that the certification address the availability of funds to cover the increased costs associated with the special salary rate request. The funding availability requirement is unnecessary, since an agency would not be making the request for new or higher special salary rates unless it had the necessary funds or was prepared to make adjustments in its budget. Since these requests are made under the authorization of the agency head and transmitted by an agency's headquarters, the agency is in a position to ensure that the budget implications of any request are fully considered.
§ 530.303(i)	*Official Duty Station.* Revises a paragraph defining "official duty station" for use in connection with special salary rates, consistent with the proposed revision in § 531.602. (Note: Paragraph (i) was originally added to § 530.303 in an interim rule on official duty station determinations published on May 9, 1997 (62 FR 25423).)
§ 531.203(c)(1)	*Maximum Payable Rate.* Clarifies that the highest rate that can be derived in applying the maximum payable rate rule is the maximum rate (step 10) of the employee's grade.
§ 531.203(d)(2)	*Highest Previous Rate.* Provides that law enforcement officer special rates under section 403 of the Federal Employees Pay Comparability Act of 1990 are to be used in determining an employee's highest previous rate because these rates are basic pay for all purposes. Also corrects reference to special rate authorities in 5 U.S.C. 5305 and in part 532.
§ 531.203(d)(3)	Corrects reference to special rate authorities in 5 U.S.C. 5305 and in part 532.
§ 531.203(f)	*Pay Adjustments.* Modifies the simultaneous action rule to clarify the longstanding policy that general pay adjustments must be processed before individual pay actions that take effect at the same time.
§ 531.204(a)(2)	Corrects reference to special rate authority in 5 U.S.C. 5305.

Proposed rule	Description of proposed change
§ 531.301	*Official Duty Station.* Revises the definition of "official duty station" used in connection with law enforcement officer geographic adjustments, consistent with the proposed revision in § 531.602.
§ 531.304(b)	*SES Pay Elections.* Clarifies that a career Senior Executive Service (SES) member also retains a law enforcement geographic adjustment when electing to retain SES basic pay during certain Presidential appointments, consistent with 5 U.S.C. 3392(c)(1) and § 317.801.
§ 531.407(d)	*Within-Grade Increases.* Clarifies that the statutory authority to pay merit increases has been repealed. (The regulatory reference to merit increases is maintained because a past merit increase is considered in making equivalent increase determinations.)
§ 531.602	*Locality Pay.* Revises the definition of "employee" to remove an obsolete reference to the separate pay authority for employees under the former Stay-in-School Program. Also, revises the definition of "official duty station" so that an employee's duty station is considered unchanged for locality pay purposes when the duty station change is a "paper move" connected to a mass transfer of jobs to another location to facilitate a reduction in force that results in the employee's separation within 3 workdays after the transfer. Any severance pay or lump-sum payment for annual leave owed to such an employee would be based on rates of pay applicable in the area to which assigned *before* the transfer, thus avoiding either an unfair reduction in benefits or an unwarranted windfall.
§ 531.606(b)	*SES Pay Elections.* Clarifies that a career SES member also retains locality pay when electing to retain SES basic pay during certain Presidential appointments, consistent with 5 U.S.C. 3392(c)(1) and § 317.801.
§ 536.102	*Grade and Pay Retention.* Amends the definition of "demotion at an employee's request" to clarify that the term includes a voluntary demotion that is caused or influenced by a management action related to possible demotion for personal cause. Also, corrects typographical error in definition of "rate of basic pay."
§ 536.203(b)	Corrects a typographical error.
§ 536.205(a)(2)	Corrects an erroneous reference.
§ 536.205(b)(4)	*Pay Retention.* Adds a new rule to ensure that, upon change (with no break in service) to a position where a higher rate schedule applies, a retained rate employee's pay would be set no lower than the rate for step 10 on the newly applicable schedule.
§ 550.101(a)(2)	*Premium Pay.* Deletes an obsolete reference to the District of Columbia (DC) government. (DC government employees were excluded from coverage under various title 5 provisions by DC Law 2–139, as amended by DC Law 3–109, as authorized by the DC Self Government and Governmental Reorganization Act, Public Law 93–198, December 24, 1973.)
§ 550.101(d)	*Premium Pay.* Revises an exclusion of certain Customs employees consistent with the Customs Officer Pay Reform Act of 1993 (Public Law 103–66, August 10, 1993) and implementing regulations issued in 1994 by the Department of the Treasury (58 FR 68520 and 19 CFR 24.16). The exclusion now applies only to "customs officers"—i.e., customs inspectors and canine enforcement officers. Clarifies that the paragraph (d) exclusion also applies to any Sunday pay under the listed authorities. Removes unnecessary references in paragraphs (d) (3) and (7).
§ 550.102	*Premium Pay.* Deletes an obsolete reference to the DC government. (See above description for § 550.101(a)(2).)
§ 550.103	*Premium Pay.* Revises definition of "administrative workweek" to clarify that it may consist of any 7 consecutive 24-hour periods. (See parallel change in § 610.102.) Revises the definition of "agency" to delete an obsolete reference to the DC government and to delete erroneous reference to a nonexistent paragraph. Adds a new definition of "day" for purposes of overtime pay calculations, consistent with current policy. Provides or corrects relevant legal references in the definition of "law enforcement officer." Delegates to agency heads the authority to determine that certain employees under retirement systems other than the Civil Service Retirement System or the Federal Employees Retirement System are law enforcement officers for pay purposes, consistent with the existing delegation of authority to determine retirement coverage. Revises the definition of "premium pay" to clarify that it includes compensatory time off and that the dollar value of earned compensatory time off is the overtime pay the employee would have received if the employee had been paid overtime pay instead. This reflects the longstanding policy of the Comptroller General. (See 37 Comp. Gen. 362 (1957).) The same dollar value is used when accumulated and unused compensatory time off is paid off when an employee transfers, separates, or otherwise is entitled to cash payment for compensatory time off. The same dollar value is also used to determine when an employee has reached the biweekly and annual limitations on premium pay under 5 CFR 550.105 and 550.107.
§ 550.107	Corrects language by changing "period" to "pay period."
§ 550.111(g)	*Overtime Pay.* Adds a cross reference concerning the general prohibition on payment of overtime pay to an employee engaged in training, as provided in § 410.402.
§ 550.112 (k)	*Overtime Work: Standby Duty.* Adds a paragraph to clarify that an employee is in a standby status with creditable hours of work if, for work-related reasons, the employee (1) is restricted to an agency's premises, or so close to it that the employee's time may not be used effectively for his or her own purposes or (2) is restricted to another location, may not pursue non-work activities, and is required to remain in a state of readiness to perform work. This is consistent with longstanding OPM policy, OPM's regulations on standby duty premium pay, and OPM's regulations on overtime pay under the Fair Labor Standards Act of 1938, as amended (FLSA). (See §§ 550.143(b) and 551.431(a).) (Note: An employee who is compensated for standby duty by payment of standby duty premium pay may not also be compensated by payment of overtime pay on an hour-for-hour basis for the same hours of work.)
§ 550.112(l)	*Overtime Work: On-Call Status.* Adds a new paragraph to clarify that time in an on-call status does not constitute hours of work under title 5 overtime provisions. This is consistent with OPM's longstanding policy and parallels OPM's regulations on FLSA overtime pay. (See § 551.431(b).) On-call status includes periods when an employee is required to be reachable by telephone or electronic device and ready to report for duty upon request, but is free to pursue personal activities within a reasonable call-back radius. (Note: An agency may determine that certain hours during which a criminal investigator is placed in a duty agent or on-call status may be credited as availability hours under § 550.182(c), subject to the policies and procedures established by the agency.)

Proposed rule	Description of proposed change
§ 550.112(m)	*Overtime Work: Meal and Sleep Time.* Adds a new paragraph to clarify that bona fide meal periods and sleep time are generally not hours of work under title 5 premium pay provisions, consistent with longstanding OPM policy. However, consistent with 5 CFR 610.111(c), meal and sleep periods during regularly scheduled tours of duty for which an employee receives annual premium pay for regularly scheduled standby duty are included in hours of work. Also, this new paragraph incorporates the "two-thirds rule" for FLSA-exempt employees, as established by Comptroller General opinions, into OPM regulations for the first time. For employees who have substantial time in a standby status as part of tours of duty of 24 hours or more, for which they do not receive annual premium pay for regularly scheduled standby duty, the two-thirds rule permits agencies to exclude up to 8 hours for bona fide meal and sleep periods from hours of work. (See similar rule in OPM's regulations on FLSA overtime pay in § 551.432.)
§ 550.121(c)	*Night Pay.* Adds a cross reference concerning the general prohibition on payment of night pay to an employee engaged in training, as provided in § 410.402.
§ 550.131(d)	*Holiday Premium Pay.* Adds a cross reference concerning the general prohibition on payment of holiday premium pay to an employee engaged in training, as provided in § 410.402.
§ 550.153(d)	Corrects an erroneous reference.
§ 550.162(f)	*Annual Premium Pay.* Adds a paragraph that provides that an agency's existing approval of annual premium pay for administratively uncontrollable overtime (AUO) work or regularly scheduled standby duty may not be discontinued during a period after a job-related injury while an employee is not working and is in receipt of benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. chapter 81, or in a paid leave status in lieu of receiving FECA benefits, unless such premium pay is discontinued for all similar positions. This generally prevents the loss of AUO or standby duty pay after a job-related injury. (Note: Section 550.162(e) provides for the continuation of AUO or standby duty pay during paid leave generally, but only if the premium pay remains payable. Thus, various Comptroller General opinions have provided that an agency may discontinue AUO pay for an employee on extended sick leave if there is no reasonable expectation that the employee will return to duty. For example, see Comptroller General opinion B–152061, May 4, 1982. The proposed paragraph would provide a limiting exception barring an agency from so discontinuing AUO or standby duty pay in workers' compensation cases.) The proposed paragraph would also ensure that, if the employee is eligible for retirement, his or her high-3 average salary is not adversely affected. (In determining an employee's high-3 average salary, the position's established rate of "basic pay"—including AUO pay for law enforcement officers and standby duty pay—is used during periods of leave without pay. Thus, even though AUO pay and standby pay are not actually payable during leave without pay, the established AUO/standby duty rates may be used in calculating the high-3 average salary.)
§ 550.171(b)	*Sunday Premium Pay.* Adds a cross reference concerning the general prohibition on payment of Sunday premium pay to an employee engaged in training, as provided in § 410.402.
§ 550.202	*Advances in Pay.* Revises the definition of "newly appointed" by replacing an obsolete reference to the former cooperative work-study program with a reference to the Student Educational Employment Program and by making other changes to improve the clarity of the definition.
§ 550.205(b)	Corrects a typographical error.
§ 550.311(b)	Corrects an erroneous reference.
§ 550.312	*Allotments.* Clarifies that an employee's written signature is not required to effect an allotment from pay. Automated computer programs that allow employees to process allotments themselves using a personal identification code are permitted. Also simplifies existing language on general limitations.
§ 550.341 § 550.342	*Allotments.* Deletes redundant provisions that are more fully covered in OPM's regulations for the Combined Federal Campaign program in part 950. Provides appropriate cross reference.
§ 550.703	*Severance Pay: Definitions.* Revises the definition of "commuting area," which is used in determining whether an employee is involuntarily separated or has been given a reasonable offer. A proposed new work site is in the employee's commuting area if (1) the employee's residence is in the standard commuting area surrounding that work site or (2) the employee's residence is outside the standard commuting area but within the employee's established commuting range based on his or her existing commuting trip so that the employee would not be compelled to move due to the change to the new work site. The compelled-to-move criterion represents longstanding policy as reflected in Comptroller General opinions (e.g., see B–182300, January 16, 1975, and B–210524, June 6, 1983) and in parallel determinations made for purposes of establishing an employee's entitlement to discontinued service retirement (e.g., see 5 U.S.C. 8336(d) and section 44A2.1–3 of the CSRS and FERS Handbook for Personnel and Payroll Offices). Revises the definition of "employee" to make clear that this definition (tied to 5 U.S.C. 5595(a)(2)) is used only in establishing an individual's initial eligibility for severance pay upon separation. (Note: A broader definition of "employee" (as defined in 5 U.S.C. 2105) is used in determining creditable service (§ 550.708).) Also clarifies the definition of the term "individual employed" in 5 U.S.C. 5595(a)(2)(A). Defines the term "employed by the Government of the United States" consistent with longstanding policy. The Government of the United States encompasses all Federal entities employing civilian personnel, including the legislative branch, the judicial branch, the Postal Service, etc. The term is not limited to employment as an "employee" as defined in 5 U.S.C. 2105.
§ 550.703	*Severance Pay: Definitions.* (continued) Revises the definition of "immediate annuity" to clarify current policy that, for purposes of determining eligibility for severance pay, Social Security benefits have no effect, but an immediate annuity from a non-Federal retirement system providing benefits for Federal civilian service is disqualifying. (See 54 Comp. Gen. 905 (1975).) Also clarifies that voluntary postponement of annuity commencing dates under any retirement system does not serve to exclude an otherwise covered annuity from being considered an immediate annuity. The key is whether the employee is eligible for ("fulfilled the requirements for") an immediate annuity. Revises the definition of "involuntary separation" to make clear that there may be a personal element to defining an individual employee's commuting area. As provided in the revised definition of the term "commuting area" (described above), an employee's residence may be outside the standard commuting area for the new work site, but the new work site may still be within the employee's commuting area.

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Proposed rule	Description of proposed change
	Revises the definition of "nonqualifying appointment" to clarify that this term includes appointments that do not convey coverage under the severance pay provision—e.g., an appointment at a Federal agency not included under the definition of "agency" in 5 U.S.C. 5595(a)(1). Thus, a time-limited appointment at a noncovered agency is a "nonqualifying time-limited appointment" resulting in suspension of severance pay under § 550.710, regardless of the length of the employee's break in service. The definition is also revised to clarify that Veterans Readjustment Appointments (5 CFR part 307) and Presidential Management Intern appointments (5 CFR part 362) are nonqualifying time-limited appointments.
	Corrects an erroneous reference in the definition of "qualifying appointment" that inadvertently resulted from removal of an obsolete paragraph as part of regulatory changes made in 1993 (58 FR 58257). Clarifies that a qualifying time-limited appointment must be for full-time employment (as required by 5 U.S.C. 5595(a)(2)(ii)) and must be otherwise qualifying. Also clarifies that a series of time-limited appointments at an agency following an initial qualifying time-limited appointment is treated as one qualifying time-limited appointment in applying the severance pay provisions, as long as there is no break in service between the time-limited appointments.
	Modifies the definition of "reasonable offer" so that an offered position would not be considered unreasonable simply because the position carries greater tenure. (The current regulation requires that the offered position's tenure be exactly the same. The proposed change parallels the tenure rule in the definition of "reasonable offer" in § 536.206(3) for grade and pay.)
§ 550.706	*Severance Pay: Resignations.* Clarifies what constitutes a specific or general written notice that allows a resignation to be treated as an involuntary separation for severance pay purposes. The specific notice must state the effective date of the involuntary separation. The general notice must state the latest date (not more than 1 year after the notice) by which affected employees will be separated, based on current agency plans. In addition, the general notice must be issued by an official with proper authority to issue such a notice and must state that a subsequent resignation will be considered an involuntary separation for severance pay purposes. (A general notice has no standing under the reduction-in-force regulations in 5 CFR part 351, subpart H, and may not be used to effect an employee's separation.) The effect of canceling a notice—specific or general—is addressed separately in a new paragraph.
§ 550.707(b)	*Severance Pay: Computation.* Clarifies how to determine the weekly rate of basic pay used in computing the severance pay fund for employees in positions with regularly varying work schedules or rates of basic pay. In these cases, to ensure equitable treatment, it is necessary to compute an appropriate weekly average for the last position held during the 26 biweekly pay periods immediately preceding separation. The revised language also clarifies that the averaging method applies to employees with pure part-time schedules and seasonal schedules.
§ 550.707(d)	*Severance Pay: Fund.* Adds a provision clarifying that the severance pay fund is capped so that there may not be more than 52 weeks of severance pay over an individual's lifetime, consistent with 5 U.S.C. 5595(c).
§ 550.708(a)	*Severance Pay: Creditable Service.* Clarifies that any service as an employee under 5 U.S.C. 2105 is creditable for purposes of computing service used in the computation of the severance pay fund, excluding only time in nonpay status (e.g., leave without pay) that is not creditable for leave or retirement purposes. This would codify current OPM policy.
§ 550.708(e)	*Severance Pay: Creditability of DC Government Service.* Adds a new paragraph to clarify that employment with the government of the District of Columbia (DC) is creditable service if the individual was first employed by the DC government before October 1, 1987. (See former Federal Personnel Manual letter 630–32, September 7, 1989. Credit for this DC government service was formerly provided via a linkage to the service credit rules for annual leave accrual purposes. Under Public Law 99–335, June 6, 1986, only DC government employees first employed before October 1, 1987, are considered to be employees for purposes of administering the leave system, excluding teachers or librarians of the DC public schools. See 5 U.S.C. 6301(2)(B) and (i).)
§ 550.709	*Severance Pay: Accrual and Payment.* Clarifies that severance pay accrues on a day-to-day basis as a recipient remains unemployed by the Federal Government. Thus, an individual's first and/or last severance payment may be a partial payment when the employee was not eligible for severance pay for the entire pay period. Also, clarifies when an average rate of basic pay is used in determining the amount of the severance payment. Adds a reference to the special payment provisions under 5 U.S.C. 5595(h) for certain individuals employed by the Department of Defense (DOD) or Coast Guard nonappropriated fund instrumentalities. Adds reference to law providing that DOD employees may be paid severance pay in one lump-sum payment. (See section 1035 of Public Law 104–106, February 10, 1996.)
§ 550.710	*Severance Pay: Suspension.* Clarifies a provision dealing with suspension of severance pay during a nonqualifying time-limited appointment. (Under 5 U.S.C. 5595(d), employment by the government of the District of Columbia triggers discontinuation of severance pay. This provision was not affected by laws excluding DC government employees from entitlement to severance pay under 5 U.S.C. 5595, since those laws do not apply to the entitlements of Federal employees based on Federal service.)
§ 550.711	*Severance Pay: Termination.* Clarifies a provision dealing with termination of severance pay upon reemployment. Reemployment by the Federal Government or DC government terminates severance pay in all instances unless severance pay is suspended under § 550.710. (See note regarding DC government in description for § 550.710.) With addition of proposed § 550.707(d), the reference to termination due to application of 1-year limit is unnecessary. The amount of the severance pay fund reflects the 1-year (52-week) limitation.
§ 550.713	*Severance Pay: Recordkeeping.* Deletes a nonessential recordkeeping requirement related to separated employees hired within 90 days by contractors assuming a Federal function. The recordkeeping requirement was intended as a temporary measure to allow evaluation of a regulatory change. (See 54 FR 23215, May 31, 1989.)
§ 550.803	*Back Pay: Definitions.* Revises the definitions of "employee" and "pay, allowances, and differentials" to clarify that, under the law, back pay refers to monetary benefits payable during periods of Federal employment, not to post-separation benefits such as retirement benefits and severance payments. Also, clarifies that agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered by the back pay law and regulations. (Note: Correction of agency errors affecting an employee's Thrift Savings Plan account are subject to applicable law and regulations. See 5 U.S.C. 8432a and 5 CFR parts 1605 and 1606.)

Proposed rule	Description of proposed change
§ 550.805(e)	*Back Pay: Deductions.* Clarifies the rules for making offsets and deductions from gross back pay awards. Addresses the withholding of normal pay deductions in a separate paragraph, specifying that such deductions are to be made in accordance with the regular order of precedence established by the agency, subject to applicable law and regulations. (For example, mandatory retirement deductions should be made first, consistent with 5 U.S.C. 8334 (a)–(c) and 8422 (a)–(c).) Clarifies when health and life insurance premiums are to be deducted. Also, adds a paragraph to clarify that agencies may make an administrative offset to recover a debt owed the Government.
§ 550.805(h)	*Back Pay: Thrift Savings Plan.* Provides cross reference to Federal Retirement Thrift Investment Board regulations on correction of agency errors affecting an employee's Thrift Savings Plan account.
§ 550.806(a)	*Back Pay: Interest.* Clarifies that interest accrual ends at the time selected by the agency not more than 30 days before the date of the back pay payment, as provided by 5 U.S.C. 5596(b)(2)(B). Also clarifies that no interest will be payable if an agency makes the back pay payment within 30 days after the erroneous denial, withdrawal, or reduction of a payment and sets the interest accrual ending point to coincide with the interest accrual starting point. (This matter was addressed in the Supplementary Information section accompanying the final regulations on back pay interest issued on November 15, 1988. See 53 FR 45886.)
§ 550.806(h)	*Back Pay: Interest.* Removes paragraph (h), since the reference to the December 1987 effective date of the back pay interest provision is no longer necessary.
Appendix A to subpart H of part 550.	*Back Pay: Deductions.* This new appendix includes information on how to compute certain common deductions in back pay cases. It includes information on making Federal tax deductions, including new Internal Revenue Service (IRS) guidance clarifying that agencies may adjust Federal tax withholdings to reflect the withholding of corresponding taxes from erroneous payments made in the same calendar year. For additional information on Federal tax withholdings and wage repayments, agencies should review Circular E, Employer's Tax Guide (Publication 15) or other appropriate IRS publications, or contact IRS directly.
§ 550.902	*Hazard Pay Differential: Definition of "Employee."* Clarifies definition of term "employee," consistent with 5 U.S.C. 5545(d).
§ 550.903(b)	*Hazard Pay Differential: Requests.* Clarifies that requests for new categories and rates for hazard pay differentials must be submitted by the head of an agency (or authorized designee).
§ 550.905	*Hazard Pay Differential: Payment.* Clarifies that the differential may not be paid for hours for which employees receive annual premium pay for regularly scheduled standby duty, annual premium pay for administratively uncontrollable overtime work, or law enforcement availability pay. This reflects requirements in law that provide that annual premium pay and availability pay are paid instead of premium pay provided by other provisions of subchapter V of title 5, United States Code. While each of the applicable provisions of law provide for exceptions (other types of premium pay that may be paid for the same hours of work), in all three cases, hazard pay differential is not one of the exceptions. (See 5 U.S.C. 5545(c)(1), 5 U.S.C. 5545(c)(2), and 5 U.S.C. 5545a(c).)
§ 551.401 (f)–(g) and § 551.501(a).	*FLSA Overtime: Hours of Work.* Corrects regulatory references to reflect recent renumbering of sections in OPM's training regulations. (See interim training regulations published at 61 FR 21947, May 13, 1996.)
§ 551.423(a)	*FLSA Overtime: Training Hours.* Clarifies that training hours compensable under § 410.402(b) are always hours of work for purposes of determining an employee's FLSA overtime pay entitlements, even if those training hours are related to entry-level and similar types of training and do not involve the performance of productive work. For example, if an employee is required to participate in night training as part of a basic training course because the situations he or she must learn to handle occur only at night, those night training hours would be compensable under § 410.402(b)(2) and would be hours of work under § 551.423(a)(3). This result is consistent with §§ 551.401(f) and (g). In addition, a cross reference to § 410.402(d) is added in § 551.423(a)(2).
§ 551.432	*FLSA Overtime: Sleep Hours.* Clarifies that a special rule on excludability of bona fide sleep time from hours of work applies to law enforcement and fire protection employees receiving annual premium pay under 5 U.S.C. 5545(c)(1) or (2). (See similar language with respect to meal periods in 5 CFR 551.411(c).) Makes clear that the 8-hour limit on the amount of sleep and meal time that can be excluded in any 24-hour period applies in all situations—regardless of the length of the tour of duty or the applicability of the special rules for law enforcement and fire protection employees. (This parallels the "two-thirds rule" that applies to exempt employees under title 5. See proposed rule in § 550.112(m)(3). Compare also to FLSA regulations in 29 CFR 553.222–223 and 785.19–23.) Also, revises regulations to clearly provide that on-duty sleep hours during regularly scheduled tours that are compensated by standby duty premium pay must be considered hours of work for FLSA purposes. (On-duty sleep hours may be excluded from FLSA hours of work under certain conditions. However, such an exclusion is not appropriate for hours for which the employee receives standby duty premium pay. Since standby duty premium pay is used in the FLSA overtime pay computation, the corresponding hours associated with that premium pay must be fully reflected in the computation.)
§ 551.501(a)(5)	*FLSA Overtime: Law Enforcement Officers.* Clarifies that OPM never intended to restrict the application of the special overtime standards established under section 7(k) of the Fair Labor Standards Act of 1938 (FLSA), as amended, in the case of Federal employees who are covered by the FLSA but not by the overtime pay provisions of title 5, United States Code. This clarification is necessary because 5 CFR 551.501(a)(5) can be interpreted to authorize an increase in overtime pay for employees of the United States Secret Service Uniformed Division and members of the United States Park Police. These employees are not covered by the overtime pay provisions of title 5, United States Code, but are covered by overtime pay provisions in title 4, United States Code, as well as by the overtime pay provisions of the FLSA. OPM regulations authorized by section 4(f) of the FLSA and 5 U.S.C. 5542(c) are intended to permit one computation of overtime pay instead of two (under title 5 and the FLSA) for employees who are covered by the overtime pay provisions of title 5 and are not intended to result in any significant change in overtime pay entitlement.
§ 551.512(b)	*FLSA Overtime: Straight Time Rate.* Revises to state expressly that bonuses and awards (including gainsharing) are not included in computing the FLSA straight time rate. This is consistent with the longstanding application of this regulation and with similar Department of Labor regulations. (See 29 CFR 778.110.)

Proposed rule	Description of proposed change
§ 551.512(d)	*FLSA Overtime Pay: Nondiscretionary Awards.* Amends OPM's regulations in part 551 on earning overtime pay under the Fair Labor Standards Act (FLSA) to provide two new options for meeting the FLSA requirement to include *nondiscretionary* individual or group awards (e.g., gainsharing) in overtime pay computations. Currently, this requirement is met using a "recomputation method'—i.e., a retroactive recomputation of the employee's FLSA overtime pay in past periods that involves retroactively allocating the bonus money and deriving a revised FLSA overtime pay entitlement. Under the two new options—referred to as the "percentage awards method" and the "boosted hour method," FLSA overtime requirements may be met by following certain procedures in computing the amount of an employee's nondiscretionary award. These new methods are consistent with the Department of Labor's FLSA regulations and policies.
§ 551.541(b)	Corrects an erroneous reference.
§ 575.102(a)(3)	*Recruitment Bonuses.* Adds positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) Senior Executive Service to the list of positions for which agencies have delegated authority to approve recruitment bonuses. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.103	*Recruitment Bonuses.* Removes obsolete language referencing a minimum 12-month service agreement for recruitment bonus recipients. Section 575.106 was previously revised to require only a 6-month minimum period. (See 60 FR 33326, June 28, 1995.) Also, provides a revised definition of "commuting area" by referring to the revised definition used in § 575.203.
§ 575.202(a)(3)	*Relocation Bonuses.* Adds position in the FBI and DEA Senior Executive Service to the list of positions for which agencies have delegated authority to approve relocation bonuses. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.203	*Relocation Bonuses.* Provides a revised definition of "commuting area", consistent with the proposed definition in § 550.703. Also, provides a revised definition of "employee" to cover all individuals employed in the civil service (including those in the legislative or judicial branches) who are relocated to a different commuting area upon appointment to a covered position. (The current regulation can be interpreted to limit coverage to individuals who, before relocation, are in a position in an agency covered by the General Schedule system, which is more restrictive than the law.)
§ 575.205(b)(5)	Corrects a typographical error.
§ 575.302(a)(3)	*Retention Allowances.* Adds positions in the FBI and DEA Senior Executive Service to the list of positions for which agencies have delegated authority to approve retention allowances. Other SES positions are already covered. This corrects an inadvertent omission.
§ 575.307(a)	*Retention Allowances.* Simplifies language of provision requiring reduction or termination of authorized retention allowances to the extent necessary to prevent authorization of retention allowances that would cause estimated aggregate compensation to exceed the rate for Executive Level I. Clarifies that reduction or termination of retention allowances may be necessitated by an event other than an increase in a nondiscretionary payment—e.g., discovery of an error in computing estimated aggregate compensation.
§ 591.201	*Official Duty Station.* Revises the definition of "official duty station" used in connection with nonforeign area cost-of-living allowances and post differentials, consistent with the proposed revision in § 531.602. (Note: A definition of "official duty station" was originally added to § 591.201 in an interim rule on official duty station determinations published on May 9, 1997 (62 FR 25423).)
§ 610.102	*Administrative Workweek.* Clarifies that an administrative workweek established by an agency may consist of any 7 consecutive 24-hour periods. This recognizes that certain Federal employees (e.g., firefighters) work 24-hour shifts that may not be aligned to the calendar day.
§ 610.111	*Workweeks.* Clarifies that agency policies concerning the scheduling of work need not be established by promulgation of a formal regulation published in the FEDERAL REGISTER. However, agency work scheduling policies must be established in writing, such as in an agency policy manual or directive. In addition, all employees must be informed of agency work scheduling policies and be permitted to review the written policy statements upon request.
§ 610.407	*Holiday Premium Pay.* Adds a cross reference concerning the general prohibition on receiving holiday premium pay while engaged in training, as provided in § 410.402.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 530, 531, 536, 550, 551, 575, 591, and 610

Administrative practice and procedure, Claims, Freedom of information, Government employees, Holidays, Law enforcement officers, Reporting and Recordkeeping requirements, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend parts 530, 531, 536, 550, 551, 575, 591, and 610 of title 5 of the Code of Federal Regulations as follows:

PART 530—PAY RATES AND SYSTEMS (GENERAL)

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 5305 and 5307; E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under secs. 302(c) and 404(c) of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) 104 Stat. 1462 and 1466, respectively;

Subpart C also issued under sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981.

Subpart B—Aggregate Limitation on Pay

2. In § 530.202, the definition of *estimated aggregate compensation* is amended by removing the words "is entitled" and adding in their place the words "is or is expected to be entitled", and the definition of *discretionary payment* is revised to read as follows:

§ 530.202 Definitions.

* * * * *

Discretionary payment means a payment that an agency has discretion to pay or not to pay to an employee, including a retention allowance but

excluding any other payment that is preauthorized to be paid to an employee at a regular fixed rate each pay period.

* * * * *

3. In § 530.203, paragraph (c) is amended by removing the word "proved" and adding in its place the word "provided", and a new paragraph (f) is added at the end of the section to read as follows:

§ 530.203 Administration of aggregate limitation on pay.

* * * * *

(f) If an agency makes an incorrect estimate of aggregate compensation at an earlier date in the calendar year, the sum of an employee's remaining payments of basic pay (which may not be deferred) may exceed the difference between the aggregate compensation the employee has actually received to date in that calendar year and the rate for level I of the Executive Schedule. In this case, the employee will become indebted to the Federal Government for any amount that is paid in excess of the level I aggregate limitation. To the extent that the erroneous excess is attributable to amounts that should have been deferred and would have been payable at the beginning of the next calendar year, the debt will be extinguished on January 1 of the next calendar year. As part of the correction of the error, the amount of the erroneous excess must be deemed to have been paid on January 1 of the next calendar year (when the debt was extinguished) as if it were a deferred excess payment as described in § 530.204 and must be considered part of the employee's aggregate compensation for the new calendar year.

Subpart C—Special Salary Rate Schedules for Recruitment and Retention

4. In § 530.303, paragraphs (d) and (i) are revised to read as follows:

§ 530.303 Establishing and adjusting special salary rate schedules.

* * * * *

(d) All requests to establish or adjust special salary rate schedules must be transmitted directly to OPM's central office by the agency's headquarters. Each request must include ■ certification by the head of the agency (or other official designated to act on behalf of the head of the agency with respect to the given schedule) that the requested special salary rates are considered necessary to ensure staffing adequate to the accomplishment of the agency's mission.

* * * * *

(i) The determination regarding whether an employee is covered by ■ special salary rate schedule is based on the employee's position of record and the official duty station for that position. For purposes of this subpart, the employee's position of record and corresponding official duty station are the position and station documented on the employee's most recent notification of personnel action, excluding a notification associated with a new assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the position and duty station associated with that assignment are the employee's position of record and official duty station.

PART 531—PAY UNDER THE GENERAL SCHEDULE

5. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart B—Determining Rate of Basic Pay

6. In § 531.203, paragraph (d)(3) is amended by removing "5303" and adding in its place "5305" and removing "§ 532.231" and adding in its place "part 532"; paragraph (c)(1)(ii) is amended by adding a new sentence at the end of the paragraph; the introductory text of paragraph (d)(2)(vii) is revised; and paragraph (f) is revised to read as follows:

§ 531.203 General provisions.

* * * * *

(c) * * *

(1) * * *

(ii) * * * If the employee's highest previous rate was greater than the maximum rate for the grade in which pay is being fixed, the maximum rate of basic pay that may be paid to the employee is the maximum rate for that grade.

* * * * *

(d) * * *

(2) * * *

(vii) A special rate established under 5 U.S.C. 5305 and part 530 of this chapter, part 532 of this chapter, or other legal authority (other than section 403 of the Federal Employees Comparability Act (FEPCA) (Pub. L. 101–509, 104 Stat. 1465), unless, in ■ reassignment to another position in the same agency—

* * * * *

(f) *Simultaneous actions.* (1) General pay adjustments must be processed before any individual pay action that takes effect at the same time. General pay adjustments include annual adjustments under 5 U.S.C. 5303, adjustments in locality rates of pay under subpart F of this part, adjustments in special law enforcement adjusted rates of pay under subpart C of this part, adjustments in special salary rates under 5 U.S.C. 5305 or similar provision of law (including section 403 of FEPCA), increases in retained rates under part 536 of this chapter, and increases in continued rates under subparts C and G of this part.

(2) Pay adjustments (other than general pay adjustments) that take effect at the same time must be processed in the order that gives the employee the maximum benefit. When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed to be an employee's existing rate of basic pay.

* * * * *

§ 531.204 [Amended]

7. In § 531.204, paragraph (a)(2) is amended by removing "5303" and adding in its place "5305".

Subpart C—Special Pay Adjustments for Law Enforcement Officers

8. In § 531.301, the definition of *official duty station* is revised to read as follows:

§ 531.301 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately

(i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

9. In § 531.304, paragraph (b)(4) is amended by removing the word "and"; paragraph (b)(5) is amended by removing the period at the end of the paragraph and adding a semicolon and the word "and" in its place; and a new paragraph (b)(6) is added to read as follows:

§ 531.304 Administration of special law enforcement adjusted rates of pay.

* * * * *

(b) * * *

(6) Basic pay that a career appointee in the Senior Executive Service elects to continue while serving under certain Presidential appointments, as provided by 5 U.S.C. 3392(c)(1) and § 317.801 of this chapter.

* * * * *

Subpart D—Within-Grade Increases

10. In § 531.407, paragraph (d) is revised to read as follows:

§ 531.407 Equivalent increase determinations.

* * * * *

(d) *Merit increases.* For the purpose of applying section 5335 of title 5, United States Code, and this subpart, all or a portion of a merit increase, or a zero merit increase, authorized under former section 5404 of title 5, United States Code (which was repealed as of November 1, 1993, by Public Law 103–89), is an equivalent increase.

Subpart F—Locality-Based Comparability Payments

11. In § 531.602, paragraph (1) of the definition of *employee* and the definition of *official duty station* are revised to read as follows:

§ 531.602 Definitions.

* * * * *

Employee means—

(1) An employee in a position to which subchapter III of chapter 53 of title 5, United States Code, applies and whose official duty station is located in a locality pay area within the continental United States, including a GM employee (as defined in § 531.202); and

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

12. In § 531.606, paragraph (b)(4) is amended by removing the word "and"; paragraph (b)(5) is amended by removing the period at the end of the paragraph and adding a semicolon and the word "and" in its place; and a new paragraph (b)(6) is added to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(b) * * *

(6) Basic pay that a career appointee in the Senior Executive Service elects to continue while serving under certain Presidential appointments, as provided by 5 U.S.C. 3392(c)(1) and § 317.801 of this chapter.

* * * * *

PART 536—GRADE AND PAY RETENTION

13. The authority citation for part 536 continues to read as follows:

Authority: 5 U.S.C. 5361–5366; sec. 7202(f) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), 104 Stat. 1338–336; sec. 4 of the Performance Management and Recognition System Termination Act of 1993 (Pub. L. 103–89), 107 Stat. 981; § 536.307 also issued under 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92–502.

Subpart A—Definitions; Coverage and Applicability

14. In § 536.102, the definition of *rate of basic pay* is amended by removing the words "or any kind" and adding in their place the words "of any kind", and the definition of *demotion at an employee's request* is revised to read as follows:

§ 536.102 Definitions.

* * * * *

Demotion at an employee's request means a reduction in grade that is initiated by the employee for his or her benefit, convenience, or personal advantage. A demotion that is caused or influenced by a management action is not considered to be at an employee's request, except that a voluntary demotion in response to a management action related to personal cause is considered to be at the employee's request.

* * * * *

Subpart B—Determination of Retained Grade and Rate of Basic Pay; Loss of, or Termination of Eligibility

§ 536.203 [Amended]

15. In § 536.203, paragraph (b) is amended by removing the misspelled word "immediatley" and adding in its place "immediately".

16. In § 536.205, paragraph (a)(2) is amended by removing the reference to "531.204(d)(4)" and adding in its place "531.204(e)(4)", and a new paragraph (b)(4) is added to read as follows:

§ 536.205 Determination of rate of basic pay.

* * * * *

(b) * * *

(4) If an employee moves to another position at the same grade while entitled to pay retention, the employee's rate of basic pay after movement may not be less than the maximum rate of basic pay for the newly applicable rate range.

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

17. The authority citation for subpart A of part 550 continues to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548 and 6101(c); E.O. 12748, 3 CFR, 1991 Comp., p. 316.

18. In § 550.101, paragraph (a)(2) is revised; the introductory text of paragraph (d) is amended by adding "Sunday," after "night,"; paragraphs (d)(3) and (d)(7) are removed; paragraphs (d)(4) through (d)(6) are redesignated as (d)(3) through (d)(5); paragraphs (d)(8) and (d)(9) are redesignated as (d)(6) and (d)(7); and paragraph (d)(1) is revised to read as follows:

§ 550.101 Coverage and exemptions.

(a) * * *

(2) The sections in this subpart incorporating special provisions for certain types of work (§§ 550.141 through 550.164, inclusive) apply also

to each employee of the judicial branch or the legislative branch who is subject to subchapter V of chapter 55 of title 5, United States Code.

* * * * *

(d) * * *

(1) February 13, 1911, as amended (36 Stat. 899, as amended; 19 U.S.C. 261, 267), involving customs inspectors and canine enforcement officers;

* * * * *

19. Section 550.102 is revised to read as follows:

§ 550.102 Entitlement.

A department (and for the purpose of §§ 550.141 through 550.164, inclusive, a legislative or judicial branch agency) must determine an employee's entitlement to premium pay consistent with subchapter V of chapter 55 of title 5, United States Code.

20. In § 550.103, the definition of *day* is added in alphabetical order, and the definitions of *administrative workweek, agency, law enforcement officer,* and *premium pay* are revised to read as follows:

§ 550.103 Definitions.

* * * * *

Administrative workweek means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of title 5, United States Code.

Agency means—

(1) A *department* as defined in this section; and

(2) A legislative or judicial branch agency which has positions that are subject to subchapter V of chapter 55 of title 5, United States Code.

* * * * *

Day (for overtime pay purposes) means any 24-hour period designated by an agency within the administrative workweek applicable to the employee. A day need not correspond to the 24-hour period of a calendar day. If the agency has not designated another period of time, a day is a calendar day.

* * * * *

Law enforcement officer means an employee who—

(1) Is a law enforcement officer within the meaning of 5 U.S.C. 8331(20) (as further defined in § 831.902 of this chapter) or 5 U.S.C. 8401(17) (as further defined in § 842.802 of this chapter), as applicable;

(2) In the case of an employee who holds a secondary position, as defined in § 831.902 of this chapter, and is subject to the Civil Service Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8331(20), would so qualify if such employee had transferred directly to such position after serving as a law enforcement officer within the meaning of such section;

(3) In the case of an employee who holds a secondary position, as defined in § 842.802 of this chapter, and is subject to the Federal Employees Retirement System, but who does not qualify to be considered a law enforcement officer within the meaning of 5 U.S.C. 8401(17), would so qualify if such employee had transferred directly to such position after performing duties described in 5 U.S.C. 8401(17)(A) and (B) for at least 3 years; and

(4) In the case of an employee who is not subject to either the Civil Service Retirement System or the Federal Employees Retirement System—

(i) Holds a position that the agency head (as defined in §§ 831.902 and 842.802 of this chapter) determines would satisfy paragraph (1), (2), or (3) of this definition if the employee were subject to the Civil Service Retirement System or the Federal Employees Retirement System (subject to OPM oversight as described in §§ 831.911 and 842.808 of this chapter); or

(ii) Is a special agent in the Diplomatic Security Service.

* * * * *

Premium pay means additional pay authorized by subchapter V of chapter 55 of title 5, United States Code, and this subpart for overtime, night, Sunday, or holiday work; for compensatory time off; or for standby duty, administratively uncontrollable overtime work, or availability duty. The dollar value of compensatory time off is the amount of overtime pay the employee otherwise would have received for the hours during which compensatory time off was earned.

* * * * *

§ 550.107 [Amended]

21. In § 550.107, the introductory text is amended by removing "any period" and adding in its place "any pay period".

22. In § 550.111, a new paragraph (g) is added to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(g) An employee is not entitled to overtime pay under this subpart for time spent in training, except as provided in § 410.402 of this chapter.

23. In § 550.112, paragraphs (k), (l), and (m) are added to read as follows:

§ 550.112 Computation of overtime work.

* * * * *

(k) *Standby duty.* An employee is on duty, and time spent on standby duty is hours of work if—

(1) For work-related reasons, the employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or

(2) For work-related reasons, the employee, although not restricted to the agency's premises, is restricted to his or her living quarters or designated post of duty, has his or her activities substantially limited, and is required to remain in a state of readiness to perform work.

(l) *On-call status.* An employee is off duty, and time spent in an on-call status is not hours of work if—

(1) The employee is allowed to leave a telephone number or carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back status; or

(2) The employee is allowed to make arrangements for another person to perform any work that may arise during the on-call period.

(m) *Sleep and meal time.* (1) Bona fide sleep and meal periods may not be considered hours of work, except as provided by paragraphs (m)(2) and (m)(3) of this section. If a sleep or meal period is interrupted by a call to duty, the time spent on duty is hours of work.

(2) Sleep and meal periods during regularly scheduled tours of duty are hours of work for employees who receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1).

(3) When employees have tours of duty of 24 hours or more during which they must remain within the confines of their duty station in a standby status, and for which they do not receive annual premium pay for regularly scheduled standby duty under 5 U.S.C. 5545(c)(1), the amount of bona fide sleep and meal time excluded from hours of work may not exceed 8 hours in any 24-hour period. No sleep time may be excluded unless the employee had the opportunity to have an uninterrupted period of at least 5 hours of sleep during the applicable sleep period. For tours of duty of less than 24 hours, agencies may not exclude on-duty sleep periods from hours of work, but must exclude bona fide meal periods during which the employee is completely relieved from duty.

24. In § 550.121, a new paragraph (c) is added to read as follows:

§ 550.121 Authorization of night pay differential.

* * * * *

(c) An employee is not entitled to night pay differential while engaged in training, except as provided in § 410.402 of this chapter.

25. In § 550.131, a new paragraph (d) is added to read as follows:

§ 550.131 Authorization of pay for holiday work.

* * * * *

(d) An employee is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

§ 550.153 [Amended]

26. In § 550.153, paragraph (d)(1) is amended by removing "§ 550.112(f)" and adding in its place "§ 550.112(h)'.

27. In § 550.162, a new paragraph (f) is added to read as follows:

§ 550.162 Payment provisions.

* * * * *

(f) Unless an agency discontinues authorization of premium pay under § 550.141 or § 550.151 for all similar positions, it may not discontinue authorization of such premium pay for an individual employee's position—

(1) During a period of paid leave elected by the employee and approved by the agency in lieu of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*), following a job-related injury;

(2) During a period of continuation of pay under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*);

(3) During a period of leave without pay, if the employee is in receipt of benefits under the Federal Employees' Compensation Act, as amended (5 U.S.C. 8101 *et seq.*).

28. In § 550.171, the current paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 550.171 Authorization of pay for Sunday work.

* * * * *

(b) An employee is not entitled to Sunday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

Subpart B—Advances in Pay

29. The authority citation for subpart B of part 550 continues to read as follows:

Authority: 5 U.S.C. 5524a, 5545a(h)(2)(B); sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Public Law 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

30. In § 550.202, paragraph (c) of the definition of *newly appointed* is revised to read as follows:

§ 550.202 Definitions.

* * * * *

Newly appointed * * *

(c) A permanent appointment in the competitive service following termination of employment under the Student Educational Employment Program (as described in § 213.3202 of this chapter), provided such employee—

(1) Was separated from the service, in a nonpay status, or a combination of both during the entire 90-day period immediately before the permanent appointment; and

(2) Has fully repaid any former advance in pay under § 550.205.

* * * * *

§ 550.205 [Amended]

31. In § 550.205, paragraph (b) is amended by removing the word "recover" and adding in its place the word "recovery".

Subpart C—Allotments and Assignments From Federal Employees

32. The authority citation for subpart C of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527, E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

§ 550.311 [Amended]

33. In § 550.311, paragraph (b) is amended by removing "paragraph (b)" and adding in its place "paragraph (a)".

34. In § 550.312, paragraphs (a), (c), (d), and (e) are revised to read as follows:

§ 550.312 General limitations.

(a) The allotter must specifically designate the allottee and the amount of the allotment.

* * * * *

(c) The allotter must personally authorize a change or cancellation of an allotment.

(d) The agency has no liability in connection with any authorized allotment disbursed by the agency in accordance with the allotter's request.

(e) Any disputes regarding any authorized allotment are a matter between the allotter and the allottee.

35. Section 550.341 is revised to read as follows:

§ 550.341 Scope.

An agency must permit an employee to make an allotment for charitable contributions to a Combined Federal Campaign in accordance with § 950.901 of this chapter.

§ 550.342 [Amended]

36. Section 550.342 is removed.

Subpart G—Severance Pay

37. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

38. In § 550.703, the definitions of *commuting area* and *employee* are revised; a new definition of *employed by the Government of the United States* is added in alphabetical order; the definition of *involuntary separation* is amended by removing the words "the commuting area" in both places and adding in each place the words "his or her commuting area"; the definition of *immediate annuity* is revised; the definition of *nonqualifying appointment* is revised; paragraph (g) of the definition of *qualifying appointment* is revised; and paragraph (c)(3) of the definition of *reasonable offer* is revised to read as follows:

§ 550.703 Definitions.

* * * * *

Commuting area means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency. In the case of an employee whose place of residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's place of residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

Employee (for purposes of establishing initial entitlement to severance pay upon separation) means an employee as defined in 5 U.S.C. 5595(a)(2), excluding an individual employed by the government of the District of Columbia. (Note: The term "individual employed" in 5 U.S.C.

5595(a)(2)(A) refers to an "employee" as defined in 5 U.S.C. 2105.)

Employed by the Government of the United States refers to employment by any part of the Government of the United States, including the United States Postal Service and similar independent entities, but excluding enlistment or activation in the armed forces (as defined in 5 U.S.C. 2101).

Immediate annuity means—

(a) A recurring benefit payable under a retirement system applicable to Federal civilian employees or members of the uniformed services that the individual is eligible to receive (disregarding any offset described in § 550.704(b)(5)) at the time of the involuntary separation from civilian service or that begins to accrue within 1 month after such separation, excluding any Social Security retirement benefit; or

* * * * *

(b) A benefit that meets the conditions in paragraph (a) of this definition, except that the benefit begins to accrue more than 1 month after separation solely because the employee elected a later commencing date (such as allowed under § 842.204 of this chapter).

Nonqualifying appointment means an appointment that does not convey eligibility for severance pay under this subpart, including—

(a) An appointment at a noncovered agency;

(b) An appointment in which the employee has an intermittent work schedule;

(c) A Presidential appointment;

(d) An emergency appointment;

(e) An excepted appointment under Schedule C; a noncareer appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a); or an equivalent appointment made for similar purposes; and

(f) A time-limited appointment (except for a time-limited appointment that is qualifying because it is made effective within 3 calendar days after separation from a qualifying appointment), including—

(1) A term appointment;

(2) A temporary appointment pending establishment of a register (TAPER);

(3) An overseas limited appointment with a time limitation;

(4) A limited term or limited emergency appointment in the Senior Executive Service, as defined in 5 U.S.C. 3132(a), or an equivalent appointment made for similar purposes;

(5) A limited executive assignment under part 305 of this chapter or an equivalent appointment made for similar purposes;

(6) A Veterans Readjustment Appointment under part 307 of this chapter; and

(7) A Presidential Management Intern appointment under part 362 of this chapter.

Qualifying appointment * * *

(g) A time-limited appointment (including a series of time-limited appointments by the same agency without any intervening break in service) for full-time employment that takes effect within 3 calendar days after the end of one of the qualifying appointments listed in paragraphs (a) through (f) of this definition, provided the time-limited appointment is not nonqualifying on grounds other than the time-limited nature of the appointment.

* * * * *

Reasonable offer means * * *

(c) * * *

(3) Of equal or greater tenure and with the same work schedule (part-time or full-time); and

* * * * *

39. In section 550.706, paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 550.706 Criteria for meeting the requirement for involuntary separation.

(a) Employees who resign because they expect to be involuntarily separated are considered to have been involuntarily separated if they resign after receiving—

(1) Specific written notice that they will be involuntarily separated by a particular action effective on a particular date; or

(2) A general written notice of reduction in force or transfer of functions which—

(i) Is issued by a properly authorized agency official;

(ii) Announces that the agency has decided to abolish, or transfer to another commuting area, all positions in the competitive area (as defined in § 351.402 of this chapter) by a particular date (no more than 1 year after the date of the notice); and

(iii) States that, for all employees in that competitive area, a resignation following receipt of the notice constitutes an involuntary separation for severance pay purposes.

* * * * *

(c) A resignation is not considered an involuntary separation if the specific or general written notice is canceled before the separation (based on that resignation) takes effect.

40. In § 550.707, the section heading is revised; paragraph (b) is revised; and a new paragraph (d) is added to read as follows:

§ 550.707 Computation of severance pay fund.

* * * * *

(b) *Basic severance pay allowance for employees with variable work schedules or rates of basic pay.* In the following circumstances, the weekly rate of basic pay used in computing the basic severance pay allowance is determined based on the weekly average for the last position held by the employee during the 26 biweekly pay periods immediately preceding separation, as follows:

(1) For positions in which the number of hours in the employee's basic work schedule (excluding overtime hours) varies during the year due to part-time work requirements, compute the weekly average of those hours and multiply that average by the hourly rate of basic pay in effect at separation.

(2) For positions in which the rate of annual premium pay for standby duty regularly varies throughout the year, compute the average standby duty premium pay percentage and multiply that percentage by the weekly rate of basic pay (as defined in § 550.103) in effect at separation.

(3) For prevailing rate schedule positions in which the amount of night shift differential pay under 5 U.S.C. 5343(f) varies from week to week under a regularly recurring cycle of work schedules, determine for each week in the averaging period the value of night shift differential pay expressed as a percentage of each week's scheduled rate of pay (as defined in § 532.401 of this chapter), compute the weekly average percentage, and multiply that percentage by the weekly scheduled rate of pay in effect at separation.

(4) For positions with seasonal work requirements, compute the weekly average of hours in a pay status (excluding overtime hours) and multiply that average by the hourly rate of basic pay in effect at separation.

* * * * *

(d) *Lifetime limitation.* The severance pay fund is limited to that amount which would provide 52 weeks of severance pay (taking into account weeks of severance pay previously received, as provided in § 550.712).

41. In § 550.708, paragraph (a) is revised; paragraph (c) is amended by removing the word "and" at the end of the paragraph; paragraph (d) is amended by removing the period at the end of the paragraph and adding a semicolon and the word "and" in its place; and a new paragraph (e) is added to read as follows:

§ 550.708 Creditable service.

* * * * *

(a) Civilian service as an employee (as defined in 5 U.S.C. 2105), excluding time during a period of nonpay status that is not creditable for annual leave accrual purposes under 5 U.S.C. 6303(a);

* * * * *

(e) Service performed with the government of the District of Columbia by an individual first employed by that government before October 1, 1987, excluding service as a teacher or librarian of the public schools of the District of Columbia.

* * * * *

42. Section 550.709 is revised to read as follows:

§ 550.709 Accrual and payment of severance pay.

(a) Severance pay accrues on a day-to-day basis following the recipient's separation from Federal employment. If severance pay begins in the middle of a pay period, 1 day of severance pay accrues for each workday or applicable holiday left in the pay period at the same rate at which basic pay would have accrued if the recipient were still employed. Thereafter, accrual is based on days from Monday through Friday, with each day worth one-fifth of 1 week's severance pay. Accrual ceases when the severance pay entitlement is suspended or terminated, as provided in §§ 550.711 and 550.712. If severance pay is suspended during a nonqualifying time-limited appointment as provided in § 550.711, accrual will resume following separation from that appointment.

(b) Severance payments must be made at the same pay period intervals that salary payments would be made if the recipient were still employed. The amount of the severance payment is computed using the recipient's rate of basic pay in effect immediately before separation, with credit for each day of severance pay accrual during the pay period corresponding to the payment date. A severance payment is subject to appropriate deductions for income and Social Security taxes.

(c) When an individual receives severance pay as the result of separation from a qualifying time-limited appointment, the severance payment is based on the rate of basic pay received at the time of separation from the qualifying time-limited appointment.

(d) When an individual is in a nonpay status immediately before separation, the amount of the severance payment is determined using the basic pay that he or she would have received if he or she had been in a pay status at the time of separation.

(e) When an individual's severance pay fund is computed under § 550.707(b) using an average rate of basic pay, that average rate is used to determine the amount of the severance payment. Exception: In the case of a seasonal employee, the agency may choose instead to use the employee's rate of basic pay at separation (as computed based on the employee's work schedule during the established seasonal work period) and then authorize severance payments only during that seasonal work period.

(f) In the case of individuals who become employed by a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard under the conditions described in 5 U.S.C. 5595(h)(4), payment of severance pay may be suspended consistent with the rules in 5 U.S.C. 5595(h) and any supplemental regulations issued by the Department of Defense.

(g) Notwithstanding paragraph (b) of this section, the Department of Defense may, upon application by an eligible separated employee, pay the total amount of severance pay in one lump sum, subject to section 1035 of Public Law 104–106 and any other requirements established by the Department of Defense. This authority applies to severance payments based on separations taking effect on or after February 10, 1996, and before October 1, 1999.

43. Section 550.710 is revised to read as follows:

§ 550.710 Suspension of severance pay.

When an individual entitled to severance pay is employed by the Government of the United States or the government of the District of Columbia under a nonqualifying time-limited appointment, severance pay must be suspended during the life of the appointment. Severance pay resumes, without any recomputation, when the employee separates from the nonqualifying time-limited appointment.

44. Section 550.711 is revised to read as follows:

§ 550.711 Termination of severance pay entitlement.

Entitlement to severance pay ends when—

(a) The individual entitled to severance pay is employed by the Government of the United States or the government of the District of Columbia, unless employed under a nonqualifying time-limited appointment as described in § 550.710; or

(b) The severance pay fund is exhausted.

§ 550.713 [Amended]

45. Section 550.713 is amended by removing the second sentence.

Subpart H—Back Pay

46. The authority citation for subpart H of part 550 continues to read as follows:

Authority: 5 U.S.C. 5596(c); Pub. L. 100–202, 101 Stat. 1329.

47. In § 550.803, the definitions of *employee* and *pay, allowances, and differentials* are revised to read as follows:

§ 550.803 Definitions.

* * * * *

Employee means an employee of an agency. When the term *employee* is used to describe an individual who is making a back pay claim, it also may mean a former employee.

* * * * *

Pay, allowances, and differentials means pay, leave, and other monetary employment benefits to which an employee is entitled by statute or regulation and which are payable by the employing agency to an employee during periods of Federal employment. Agency and employee contributions to a retirement investment fund, such as the Thrift Savings Plan, are not covered. Monetary benefits payable to separated or retired employees based upon a separation from service, such as retirement benefits, severance payments, and lump-sum payments for annual leave, are not covered.

* * * * *

48. In § 550.805, paragraph (e) is revised and a new paragraph (h) is added to read as follows:

§ 550.805 Back pay computations.

* * * * *

(e) In computing the net amount of back pay payable under section 5596 of title 5, United States Code, and this subpart, an agency must make the following offsets and deductions (in the order shown) from the gross back pay award:

(1) Any outside earnings (gross earnings less any associated business losses and ordinary and necessary business expenses) received by an employee for other employment (including a business enterprise) undertaken to replace the employment from which the employee was separated by the unjustified or unwarranted personnel action during the interim period covered by the corrective action. Do not count earnings from additional or "moonlight" employment the employee may have engaged in both while Federally employed and erroneously separated.

(2) Any erroneous payments received from the Government as a result of the

unjustified or unwarranted personnel action, which, in the case of erroneous payments received from a Federal employee retirement system, must be returned to the appropriate system. Such payments must be recovered from the back pay award in the following order:

(i) Retirement annuity payments (i.e., gross annuity less deductions for life insurance and health benefits premiums, if those premiums can be recovered by the affected retirement system from the insurance carrier);

(ii) Refunds of retirement contributions (i.e., gross refund before any deductions);

(iii) Severance pay (i.e., gross payments before any deductions); and

(iv) Lump-sum payment for annual leave (i.e., gross payment before any deductions).

(3) Authorized deductions of the type that would have been made from the employee's pay (if paid when properly due) in accordance with the normal order of precedence for deductions from pay established by the agency, subject to any applicable law and regulation, including, but not limited to, the following types of deductions, as applicable:

(i) Mandatory employee retirement contributions toward a defined benefit plan, such as the Civil Service Retirement System or the defined benefit component of the Federal Employees Retirement System;

(ii) Social Security taxes and Medicare taxes;

(iii) Health benefits premiums, if coverage continued during a period of erroneous retirement (with paid premiums recoverable by the retirement system) or is retroactively reinstated at the employee's election under 5 U.S.C. 8908(a);

(iv) Life insurance premiums if—

(A) Coverage continued during a period of erroneous retirement;

(B) Coverage was stopped during an erroneous suspension or separation and the employee suffered death or accidental dismemberment during that period (consistent with 5 U.S.C. 8706(d)); or

(C) Additional premiums are owed due to a retroactive increase in basic pay; and

(v) Federal income tax withholdings.

(Note to paragraph (e)(3): See appendix A to this subpart for additional information on computing certain deductions.)

(4) Administrative offsets under 31 U.S.C. 3716 to recover any other outstanding debt(s) owed to the Federal Government by the employee, as appropriate.

* * * * *

(h) Agencies must correct errors that affect an employee's Thrift Savings Plan account consistent with regulations prescribed by the Federal Retirement Thrift Investment Board. (See parts 1605 and 1606 of this title.)

49. In § 550.806, paragraph (h) is removed, and paragraph (a) is amended by redesignating paragraph (a) as paragraph (a)(1) and adding a new paragraph (a)(2) to read as follows:

§ 550.806 Interest computations.

(a) * * *

(2) Interest accrual ends at a time selected by the agency that is no more than 30 days before the date of the back pay interest payment. No interest is payable if a complete back pay payment is made within 30 days after any erroneous withdrawal, reduction, or denial of a payment, and the interest accrual ending date is set to coincide with the interest accrual starting date.

* * * * *

50. A new appendix A is added to subpart H of part 550 to read as follows:

Appendix A to Subpart H of Part 550—Information on Computing Certain Common Deductions From Back Pay Awards

To determine the net back payment owed an employee, an agency must make certain required deductions. (See § 550.805(e)(3).) To compute these deductions, an agency must determine the appropriate base or follow other rules. Some deductions, such as tax deductions, are not subject to OPM regulation. To assist agencies, this appendix summarizes the rules for certain common deductions. For further information on Federal tax deductions from back pay awards, please contact the Internal Revenue Service directly or review relevant IRS publications.

Type of deduction	How to compute the deduction
Mandatory employee retirement contributions.	Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction.
Life insurance premiums	Compute the deduction based on the basic pay portion of gross back pay before adding interest or applying any offset or deduction.
Social Security (OASDI) and Medicare taxes.	Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest). The deduction may be reduced dollar-for-dollar by the amount of any Social Security or Medicare taxes that were withheld from erroneous payments made in the same calendar year as the back pay award, but only if— (1) those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and (2) those withheld taxes have not already been repaid to the employee. Note: Social Security taxes are subject to the applicable Social Security tax wage base limit. In addition, see IRS guidance regarding possible correction and refunding of Social Security and Medicare taxes withheld from erroneous payments in a prior calendar year.
Federal income tax withholdings	Compute the deduction based on adjusted gross back pay (gross back pay less the offset for outside earnings under § 550.805(e)(1), but before adding interest) less any part of back pay not subject to income tax deductions, such as employee contributions to the Thrift Savings Plan and nonforeign area cost-of-living allowances. The deduction may be reduced dollar-for-dollar by the amount of any Federal income taxes withheld from erroneous payments made in the same calendar year as the back pay award, but only if— (1) those erroneous payments were actually recovered by the Government by offsetting the back pay award as provided in § 550.805(e)(2); and (2) those withheld taxes have not already been repaid to the employee. Note: Additional Federal income tax withholdings from the interest portion of the back pay award may be required by the Internal Revenue Service in certain specific circumstances.

Subpart I—Pay for Duty Involving Physical Hardship or Hazard

51. The authority citation for subpart I of part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

52. In § 550.902, the definition of *employee* is revised to read as follows:

§ 550.902 Definitions.

* * * * *

Employee means an employee covered by the General Schedule (i.e., covered by chapter 51 and subchapter III of chapter 53 of title 5, United States Code).

53. In § 550.903, the introductory text of paragraph (b) is revised to read as follows:

§ 550.903 Establishment of hazard pay differentials.

* * * * *

(b) Amendments to appendix A of this subpart may be made by OPM on its own motion or at the request of the head of an agency (or authorized designee). The head of an agency (or authorized designee) may recommend the rate of hazard pay differential to be established and must submit, with its request for an amendment, information about the hazardous duty or duty involving physical hardship showing—

* * * * *

54. Section 550.905 is revised to read as follows:

§ 550.905 Payment of hazard pay differential.

(a) When an employee performs duty for which a hazard pay differential is authorized, the agency must pay the hazard pay differential for the hours in a pay status on the day (a calendar day or a 24-hour period, when designated by the agency) on which the duty is performed, except as provided in paragraph (b) of this section. Hours in a pay status for work performed during a continuous period extending over 2 days must be considered to have been performed on the day on which the work began, and the allowable differential must be charged to that day.

(b) Employees may not be paid a hazardous duty differential for hours for which they receive annual premium pay for regularly scheduled standby duty under § 550.141, annual premium pay for administratively uncontrollable overtime work under § 550.151, or law enforcement availability pay under § 550.181.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

55. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

Subpart D—Hours of Work

§ 551.401 [Amended]

56. In § 551.401, paragraphs (f) and (g) are amended by removing "§ 410.602" and adding in its place "§ 410.402".

§ 551.423 [Amended]

57. In § 551.423, paragraph (a)(2)(ii) is amended by adding at the end of the paragraph "(See also § 410.402(d) of this chapter.)", and paragraph (a)(3) is amended by removing the period at the end of the paragraph and adding in its place ", except as provided by § 410.402(b) of this chapter and paragraphs (f) and (g) of § 551.401."

58. In section § 551.432, paragraphs (b) and (c) are revised and a new paragraph (e) is added to read as follows:

§ 551.432 Sleep time.

* * * * *

(b) For employees engaged in law enforcement or fire protection activities who receive annual premium pay under 5 U.S.C. 5545(c) (1) or (2), the requirements of paragraph (a) of this section apply, except that on-duty sleep time may be excluded from hours of work only if the tour of duty is more than 24 hours.

(c) The total amount of bona fide sleep and meal time that may be excluded from hours of work may not exceed 8 hours in a 24-hour period.

* * * * *

(e) On-duty sleep and meal time during regularly scheduled hours for which standby duty premium pay under 5 U.S.C. 5545(c)(1) is payable may not be excluded from hours of work.

Subpart E—Overtime Pay Provisions

59. In § 551.501, paragraph (a)(2) is amended by removing "§ 410.602" and adding in its place "§ 410.402", and paragraph (a)(5) is revised to read as follows:

§ 551.501 Overtime pay.

(a) * * *

(5) On the basis of hours of work in excess of 40 hours in a workweek for an employee engaged in fire protection or law enforcement activities when the employee receives annual premium pay under 5 U.S.C. 5545(c) (1) or (2) or is not an employee, as defined in 5 U.S.C. 5541(2), for the purposes of 5 U.S.C. 5542, 5543, and 5544;

* * * * *

60. In § 551.512, paragraph (b) is amended by removing "(exclusive of any premiums or differentials)" and adding in its place "(exclusive of any premiums, differentials, bonuses, or awards)", and a new paragraph (d) is added to read as follows:

§ 551.512 Overtime pay entitlement.

* * * * *

(d) When an employee is granted a nondiscretionary individual or group (e.g., gainsharing) award, the award must be included in determining overtime pay for the period of time during which the award was earned. An agency may meet the overtime pay requirements for the period of time during which the award was earned by employing any one of the following procedures—

(1) *Recomputation method.* (i) Allocate the award payable to each individual employee under the award plan to the weeks or hours when it was earned;

(ii) Include any allocated award payment in total remuneration in computing the employee's hourly regular rate of pay for each applicable workweek in the award period;

(iii) Recompute the employee's overtime pay for each applicable workweek in the bonus period; and

(iv) Determine the total additional overtime pay owed.

(2) *Percentage awards method.* Identify the amount of the award as a fixed percentage of total pay (straight time pay plus overtime pay) earned by the employee during the award period. The product of total earnings times the award percentage satisfies in full the overtime pay requirements.

(3) *Boosted hour method.* (i) Identify the amount of the individual award or the group award under the bonus plan and the period of time during which it was earned;

(ii) Determine the number of boosted hours for the individual employee or for all employees under the group award plan by summing the total hours of work (straight time hours plus overtime hours) plus one-half of the total number of overtime hours;

(iii) Divide the amount of the individual award or the group award fund by the number of boosted hours for the individual employee or for all employees under the group award plan, as applicable, to determine the amount of the award allocable to each hour; and

(iv) Multiply this hourly award amount by the number of boosted hours credited to the individual employee or to each employee under the group award plan during the award period, as applicable, to determine the amount of the award for the individual employee or for each employee under the group award plan.

§ 551.541 [Amended]

61. In § 551.541, paragraph (b) is amended by removing "511.411(c)" and adding in its place "551.411(c)".

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

62. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

Subpart A—Recruitment Bonuses

63. In § 575.102, paragraph (a)(3) is revised to read as follows:

§ 575.102 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

64. In § 575.103, the definition of *involuntary separation* is amended by removing the words "the commuting area" wherever it appears and adding in its place the words "his or her commuting area"; the definition of *service agreement* is amended by removing the words "of a minimum of 12 months" and the definition of *commuting area* is revised to read as follows:

§ 575.103 Definitions.

* * * * *

Commuting area has the meaning given that term in § 575.203.

* * * * *

Subpart B—Relocation Bonuses

65. In § 575.202, paragraph (a)(3) is revised to read as follows:

§ 575.202 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

66. In § 575.203, the definition of *involuntary separation* is amended by removing the words "the commuting area" wherever it appears and adding in its place the words "his or her commuting area'; and the definitions of *commuting area* and *employee* are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Commuting area means the geographic area surrounding a work site that encompasses the localities where people live and reasonably can be expected to travel back and forth daily to work, as established by the employing agency. In the case of an employee whose place of residence is outside the standard commuting area for a proposed new work site, the employee's commuting area is deemed to include the expanded area surrounding the employee's place of residence and including all destinations that can be reached via a commuting trip that is not significantly more burdensome than the current commuting trip. For this purpose, a commuting trip to a new work site is considered significantly more burdensome if it would compel the employee to change his or her place of residence in order to continue employment, taking into account commuting time and distance, availability of public transportation, cost, and any other relevant factors.

Employee means—

(a) An individual in the civil service (as defined in 5 U.S.C. 2101) who is relocated without a break in service upon appointment to a position in or under an agency in a different commuting area; or

(b) An employee in or under an agency whose duty station is changed permanently or temporarily to a different commuting area.

* * * * *

§ 575.205 [Amended]

67. In § 575.205, paragraph (b)(5) is amended by adding a parenthesis after the word "Code".

Subpart C—Retention Allowances

68. In § 575.302, paragraph (a)(3) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) * * *

(3) A Senior Executive Service position paid under 5 U.S.C. 5383 or a Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service position paid under 5 U.S.C. 3151.

* * * * *

69. In § 575.307, paragraph (a) is revised to read as follows:

§ 575.307 Reduction or termination of retention allowances.

(a) The agency must reduce or terminate the authorized amount of a retention allowance to the extent necessary to ensure that the employee's estimated aggregate compensation, as defined in § 530.202 of this chapter, does not exceed the rate for level I of the Executive Schedule at the end of the calendar year.

* * * * *

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

70. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; and E.O. 12510, 3 CFR, 1985 Comp., 338.

71. In § 591.201, the definition of *official duty station* is revised to read as follows:

§ 591.201 Definitions.

* * * * *

Official duty station means the duty station for an employee's position of record as indicated on his or her most recent notification of personnel action, excluding a new duty station for an assignment that is followed immediately (i.e., within 3 workdays) by a reduction in force resulting in the employee's separation before he or she is required to report for duty at the new location. For an employee who is authorized to receive relocation allowances under 5 U.S.C. 5737 in connection with an extended assignment, the temporary duty station associated with that assignment is the employee's official duty station.

* * * * *

PART 610—HOURS OF DUTY

Subpart A—Weekly and Daily Scheduling of Work

72. The authority citation for subpart A of part 610 continues to read as follows:

Authority: 5 U.S.C. 6101; sec. 1(1) of E.O. 11228, 3 CFR, 1964–1965 Comp., p. 317.

73. In § 610.102, the definition of *administrative workweek* is revised to read as follows:

§ 610.102 Definitions.

* * * * *

Administrative workweek means any period of 7 consecutive 24-hour periods designated in advance by the head of the agency under section 6101 of title 5, United States Code.

* * * * *

§ 610.111 [Amended]

74. Section 610.111 is amended by removing the word "regulation" in the introductory text of paragraph (a) and adding the words "a written agency policy statement" in its place; by removing the word "regulation" in paragraphs (a)(1) and (a)(2) and adding in each place the words "written agency policy statement"; and by removing the words "regulation of the agency" in paragraph (c)(2) and adding the words "a written agency policy statement".

Subpart D—Flexible and Compressed Work Schedules

75. The authority citation for subpart D of part 610 continues to read as follows:

Authority: 5 U.S.C. 6133(a).

76. In § 610.407, the current paragraph is designated as paragraph (a), and a new paragraph (b) is added to read as follows:

§ 610.407 Premium pay for holiday work for employees on compressed work schedules.

* * * * *

(b) An employee on a compressed work schedule is not entitled to holiday premium pay while engaged in training, except as provided in § 410.402 of this chapter.

[FR Doc. 98–31284 Filed 11–23–98; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 240, 274a, and 299

[INS No. 1915–98; AG Order No. 2192–98]

RIN 1115–AF14

Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries

AGENCY: Immigration and Naturalization Service and Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department of Justice (Department) regulations by offering certain beneficiaries of the Nicaraguan Adjustment and Central American Relief Act (NACARA) who currently have asylum applications pending with the Immigration and Naturalization Service (Service), and their qualified dependents, the option of applying to the Service for suspension of deportation or cancellation of removal under the statutory requirements set forth in NACARA ("special rule cancellation of removal").

Described in very general terms, both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States. Integrating the processing of certain applications under NACARA into the Service's Asylum Program will provide an efficient mechanism for considering the suspension of deportation and special rule cancellation of removal applications of most of the approximately 240,000 registered class members of the *American Baptist Churches* v. *Thornburgh (ABC)* litigation and certain other beneficiaries of NACARA who have asylum applications pending with the Service, as well as their qualified family members. The Immigration Court will retain exclusive jurisdiction over most suspension of deportation and special rule cancellation of removal applications submitted by NACARA beneficiaries who have been placed in deportation or removal proceedings.

In addition, this rule proposes to compile and codify the relevant factors and standards for extreme hardship identified within existing case law in order to provide a more uniform and focused mechanism for evaluating this aspect of a person's eligibility for suspension of deportation or special rule cancellation of removal.

DATES: Written comments must be submitted on or before January 25, 1999.

ADDRESSES: Please submit written comments in triplicate to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1915–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service:* John Lafferty or Wenona Paul, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW., ULLICO Bldg., third floor, Washington, DC 20536, telephone number (202) 305–2663. *For matters relating to the Executive Office for Immigration Review:* Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

What is the Nicaraguan Adjustment and Central American Relief Act? On November 19, 1997, President Clinton signed the Nicaraguan Adjustment and Central American Relief Act, enacted as title II of Pub. L. No. 105–100 (111 Stat. 2160, 2193) (as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105–139 (111 Stat. 2644)). This new law amended the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Immigration and Nationality Act (Act) by providing several distinct forms of relief to certain aliens who are presently residing unlawfully in the United States. Section 202 of NACARA permits certain Nicaraguan and Cuban nationals who meet the standards set forth in that section to apply for adjustment of status to that of lawful permanent resident. The interim rule governing applications for adjustment under section 202 was published in the **Federal Register** on May 21, 1998, at 63 FR 27823.

This proposed rule implements section 203 of NACARA, which permits certain Guatemalans, Salvadorans, and nationals of the former Soviet bloc to apply for suspension of deportation or

cancellation of removal under special provisions set forth in that section. Unlike those applying under section 202, NACARA beneficiaries under section 203 may not become lawful permanent residents unless they meet the statutory requirements for suspension of deportation or cancellation of removal and are found to merit such relief as a matter of discretion.

Throughout the discussion of this proposed rule, the term "NACARA beneficiaries" refers to those persons listed in section 309(c)(5)(C)(i) of IIRIRA, as amended by NACARA, who may be eligible to apply for suspension of deportation or cancellation of removal pursuant to the NACARA amendments to IIRIRA.

How does NACARA affect applications for suspension of deportation and cancellation of removal? The Illegal Immigration Reform and Immigrant Responsibility Act, enacted by Congress on September 30, 1996, consolidated the dual system of exclusion and deportation proceedings into removal proceedings for persons placed in proceedings on or after April 1, 1997. Individuals placed in deportation proceedings prior to April 1, 1997, can apply for suspension of deportation under former section 244 of the Act, as in effect prior to April 1, 1997. Suspension of deportation is a discretionary form of relief available to individuals who can establish continuous physical presence in the United States for 7 years prior to the date of application, good moral character during that period, and that deportation would result in extreme hardship to the applicant or to the applicant's parent, spouse, or child who is a lawful permanent resident or United States citizen. Different standards apply to individuals who are deportable on certain criminal, document fraud, or security grounds. Other special exceptions apply to battered spouses and children and to individuals who have served in the United States military.

Under the new framework created by IIRIRA, the discretionary relief of suspension of deportation was replaced by section 240A, cancellation of removal. Congress limited the availability of this type of relief in three fundamental ways. First, Congress amended the rules relating to time counted toward physical presence in the United States. For persons seeking cancellation of removal, section 240A(d)(1) of the Act provides that time counted towards continuous physical presence ceases when a person is served with a charging document and placed in removal proceedings or when a person commits an offense referred to in section 212(a)(2) of the Act that renders the person inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4) of the Act, whichever is earlier (the "stop-time" rule). The Board of Immigration Appeals (Board) held that, under the transitional rules at section 309(c)(5) of IIRIRA governing persons in deportation proceedings, this "stop-time" rule applied equally to individuals placed in proceedings prior to April 1, 1997, who had applied for or who may apply for suspension of deportation. *Matter of N–J–B–*, Int. Dec. #3309 (BIA 1997). In addition, section 240A(d)(2) addresses certain breaks in presence in the United States, for purposes of cancellation of removal eligibility, by providing that an alien shall be considered to have failed to maintain continuous physical presence in the United States if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

Second, IIRIRA heightened the eligibility standards for both the required period of continuous physical presence in the United States and the degree and type of hardship that must result from removal. Generally, to be eligible for cancellation of removal under the Act as amended by IIRIRA, the applicant must establish 10 years of continuous physical presence in the United States, good moral character during that period, and that removal would result in exceptional and extremely unusual hardship to the applicant's spouse, parent, or child who is a lawful permanent resident or United States citizen.

Third, Congress provided that no more than 4,000 aliens may have their deportation suspended or removal canceled, and their status adjusted pursuant thereto, in any fiscal year.

With certain exceptions, section 203 of NACARA permits certain Guatemalans, Salvadorans, and nationals of former Soviet bloc countries to apply for suspension of deportation or cancellation of removal under the standards that existed prior to enactment of IIRIRA. Specifically, NACARA exempts qualified Guatemalans, Salvadorans, and nationals of former Soviet bloc countries from the "stop-time" rule. In addition, section 203(b) of NACARA created a special rule for cancellation of removal for NACARA beneficiaries who have not been placed in deportation proceedings. Special rule cancellation of removal permits these individuals to apply for cancellation of removal under standards that are generally the same as those for suspension of deportation.

Section 204 of NACARA also amended the Act to exempt qualified NACARA beneficiaries from the limit on the number of individuals who may be granted suspension of deportation and cancellation of removal, and adjustments of status pursuant thereto, each year.

What is suspension of deportation and special rule cancellation of removal? Both suspension of deportation and special rule cancellation of removal are forms of discretionary relief that, if granted, permit an individual subject to deportation or removal to remain in the United States. The criteria for granting such relief, in the exercise of discretion, are described in Part IV of this Supplementary Information.

If an individual is granted suspension of deportation or special rule cancellation of removal, his or her immigration status will then be adjusted to that of lawful permanent resident. Suspension of deportation is only available to eligible persons who were placed in deportation proceedings prior to April 1, 1997. Special rule cancellation of removal is available to eligible aliens who are placed in removal proceedings on or after April 1, 1997, or who have not been placed in deportation proceedings and are eligible to apply with the Service under the standards set forth in this proposed rule.

Is there a limit on the number of individuals who may be granted suspension of deportation or special rule cancellation of removal under NACARA? No. NACARA exempts individuals eligible for relief under section 203 of NACARA from the limit on the number of individuals who may be granted suspension of deportation and cancellation of removal each year. Because persons who qualify for relief under Section 203 are not subject to this annual limitation, the interim rule at 8 CFR 240.21, published on September 30, 1998, in the **Federal Register** at 63 FR 52134, does not affect their eligibility for a grant of suspension of deportation or special rule cancellation of removal.

Who can apply under this new law? Unless convicted of an aggravated felony, the following individuals may be eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA:

(1) any registered class member of *American Baptist Churches* v. *Thornburgh (ABC)*, 760 F. Supp. 796 (N.D. Cal. 1991), who has not been

apprehended at the time of entry after December 19, 1990;

(2) any Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990; and

(3) any alien who entered the Untied States on or before December 31, 1990, filed an application for asylum on or before December 31, 1991, and at the time of filing was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia.

In addition and regardless of nationality, the spouse, child (unmarried and under 21 years of age), unmarried son, and unmarried daughter of an individual described in any of the above three categories who is granted cancellation of removal or suspension of deportation may apply for suspension of deportation or special rule cancellation of removal under the provisions of NACARA, unless he or she has been convicted of an aggravated felony. The relationship between the spouse, child, unmarried son, or unmarried daughter and the spouse or parent granted suspension of deportation or cancellation of removal must exist at the time that the parent or spouse is granted suspension of deportation or cancellation of removal. If the alien is an unmarried son or unmarried daughter 21 years of age or older at the time the parent is granted suspension of deportation or cancellation of removal, he or she must have entered the United States on or before October 1, 1990, in order to be eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA. Although a spouse, child, unmarried son, or unmarried daughter is not statutorily eligible to apply for such relief unless the "principal" spouse or parent has been granted suspension of deportation or cancellation of removal, applications for relief may be submitted at the same time as the "principal" spouse or parent submits an application, or while the "principal" spouse or parent's application is pending. The spouse, child, unmarried son, or unmarried daughter will be required to independently establish each of the applicable statutory criteria for suspension of deportation or special rule cancellation of removal and that he or she merits discretionary relief.

Would withdrawal of an asylum application make someone ineligible to apply under section 203 of NACARA? No, Although certain individuals are eligible to apply for relief under section 203 of NACARA based on nationality, entry date to the United States, and the filing of an asylum application by a requisite date, the statute does not require that the asylum application still be pending in order to apply for relief under NACARA.

Will there be a new procedure to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA? Yes. To implement section 203 of NACARA efficiently and expeditiously, the Attorney General has decided to integrate the adjudication of suspension of deportation and special rule cancellation of removal applications into the affirmative asylum process. Under this proposed rule, the Attorney General will delegate to asylum officers the authority to grant suspension of deportation or special rule cancellation of removal to certain beneficiaries of NACARA who have asylum applications pending with the Service and to their qualified dependents. Under present regulations, only immigration judges, subject to review by the Board and the Attorney General, are permitted to adjudicate suspension of deportation or cancellation of removal applications within the context of deportation or removal proceedings. Given the large number of NACARA beneficiaries who presently have asylum applications pending before the Service, the Attorney General has determined that delegation of authority to the Service in this limited circumstances is the most efficient method for implementing section 203 of NACARA.

Streamlining the process by permitting eligible applicants to raise their suspensions of deportation or special rule cancellation of removal claims simultaneously with their asylum claims offers an efficient method for resolving many of these claims at an earlier stage in the administrative process. The great majority of section 203 beneficiaries are class members of the *ABC* settlement agreement who currently have asylum applications pending with the Service and are awaiting a *de novo* adjudication of their applications pursuant to the terms of the settlement agreement. Although the *ABC* class members previously placed in deportation proceedings could seek to recalendar their cases in order to apply for suspension of deportation before the Immigration Court, most class members were never placed in proceedings. Absent the proposed rule, these individuals, as well as other NACARA beneficiaries who have asylum applications pending before the Service, would be required to wait until their asylum claims had been adjudicated and, if ineligible for asylum, placed in removal proceedings before they would have an opportunity to file their applications for relief under section 203 of NACARA before the Immigration Court.

Under the proposed rule, an asylum officer will have the authority to consider and grant suspension of deportation or special rule cancellation of removal to an applicant who is clearly eligible for relief from deportation or removal, thus reducing both the time and expense incurred by the Government and the applicant in resolving the claim. Consequently, the proposed rule will implement NACARA in a manner consistent with the humanitarian concerns expressed by Congress in passing this legislation.

II. Process for Applying With the Service

Who will be able to apply with the Service for suspension of deportation or special rule cancellation of removal? The great majority of individuals who are eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA will be eligible to apply for such discretionary relief with the Service. However, not all aliens covered by NACARA will be able to apply with the Service. Asylum officers' jurisdiction to consider applications for suspension of deportation or special rule cancellation of removal will be limited to certain eligible NACARA beneficiaries who have an asylum application pending with the Asylum Program and to their eligible spouses, children, unmarried sons, and unmarried daughters.

The following individuals will be permitted to apply for suspension of deportation or special rule cancellation of removal with the Service:

(1) a Guatemalan or Salvadoran national who applied for asylum with the Service on or before April 1, 1990, and whose asylum application is pending with the Service;

(2) an *ABC* class member who is eligible for benefits of the *ABC* settlement agreement and who has not yet had a *de novo* asylum adjudication with the Service, under the terms of the settlement agreement;

(3) a national of a former Soviet bloc country who meets the application eligibility criteria in section 203 of NACARA and who has an asylum application pending with the Service; and

(4) the spouse, child, unmarried son, and unmarried daughter of an

individual described in any of the preceding three categories, as long as the qualified spouse or parent has pending with the Service an application for suspension of deportation or special rule cancellation of removal or has been granted suspension of deportation or special rule cancellation of removal by the Service and, with certain exceptions, the spouse, child, unmarried son, or unmarried daughter has not been placed in immigration proceedings. To be eligible to apply for suspension of deportation or special rule cancellation of removal under NACARA, an unmarried son or unmarried daughter 21 years of age or older must have first entered the United States on or before October 1, 1990, or have been less than 21 years of age when his or her parent was granted suspension of deportation or cancellation of removal.

With respect to aliens who have been placed in deportation or removal proceedings, this proposed rule gives authority to asylum officers to consider applications for suspension of deportation or special rule cancellation of removal submitted by qualified applicants only if an immigration judge has administratively closed those proceedings or the Board has continued those proceedings because:

(1) the applicant is entitled to a *de novo* asylum adjudication pursuant to the *ABC* settlement agreement (see next section for discussion of class membership and *ABC* eligibility requirements);

(2) the applicant is an *ABC* class member with a final order of deportation who is entitled to a *de novo* asylum adjudication pursuant to the *ABC* settlement agreement, has filed and been granted a motion to reopen under section 203(c) of NACARA, pursuant to the notice published in the **Federal Register** by the Attorney General on January 21, 1998, at 63 FR 3154, or under 8 CFR 3.43 (published in the **Federal Register** on June 11, 1998, at 63 FR 31890), and has requested that the reopened proceedings be closed in order to file for suspension of deportation before the Service; or

(3) the applicant is the spouse, child, unmarried, or unmarried daughter of a NACARA beneficiary who is eligible to apply for, and has applied for, suspension of deportation or special rule cancellation of removal with the Service, and the Immigration Court or the Board has administratively closed or continued the proceedings to permit the applicant to submit an application for suspension of deportation or special rule cancellation of removal with the Service.

All other persons in deportation or removal proceedings who are eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA must apply for this relief before the Immigration Court.

To illustrate the jurisdictional divisions between the Service and EOIR over applications for relief under section 203 of NACARA, the Department is considering creating a jurisdictional chart, in table format, to be published with the interim or final rule implementing section 203 of NACARA. The Department solicits comments on whether the public believes such a jurisdictional chart would be useful, and if so, how such a chart would be organized.

Who is eligible for benefits of the ABC settlement agreement? A class member of the *ABC* settlement agreement is eligible for benefits of the agreement only if he or she registered for *ABC* benefits, applied for asylum by a specified cutoff date, has not been convicted of an aggravated felony, and has not been apprehended at the time of entry after December 19, 1990. All Guatemalan nationals who first entered the United States on or before October 1, 1990, and all Salvadoran nationals who first entered the United States on or before September 19, 1990, are class members under the *ABC* settlement agreement. Guatemalan class members were required to register for *ABC* benefits on or before December 31, 1991, and to apply for asylum on or before January 3, 1995. Salvadoran class members were required to register for *ABC* benefits on or before October 31, 1991, and to apply for asylum on or before January 31, 1996. (The Service permitted a two-week administrative grace period, extending to February 16, 1996.) A class member was not required to file a new asylum application under the settlement agreement if the applicant had already filed an asylum application with the Service or the Immigration Court prior to the applicable filing deadline.

Can an ABC class member who registered for ABC benefits, but failed to apply for asylum by the applicable filing deadline, apply for suspension of deportation or special rule cancellation of removal with the Service? No. Although NACARA allows a registered *ABC* class member to apply for suspension of deportation or special rule cancellation of removal, even if he or she failed to apply for asylum by the applicable date necessary to retain *ABC* benefits, the proposed rule requires that such an individual apply for relief under section 203 of NACARA in deportation or removal proceedings before the Immigration Court. If a registered *ABC* class member applied for asylum after the applicable *ABC* filing deadline, the Service will process the asylum application pursuant to current asylum regulations, but will not accept from the class member an application for special rule cancellation of removal. If such a class member is not granted asylum and appears to be deportable or inadmissible, the Service will initiate removal proceedings. The class member may then be eligible to apply for special rule cancellation of removal before the Immigration Court. The Service does not have jurisdiction over an asylum application filed by an *ABC* class member who was in proceedings that were previously administratively closed or continued by the Executive Office for Immigration Review (EOIR) and who missed the applicable asylum filing deadline for *ABC* benefits. In such cases, the Service will move to recalendar proceedings before EOIR, and the class member may apply for suspension of deportation in the context of the recalendared proceedings.

This restriction permits the Service to focus its resources on the adjudication of the applications filed by the registered *ABC* class members who met the filing deadlines; other Guatemalans, Salvadorans, and nationals of former Soviet bloc countries who are qualified to apply under section 203 of NACARA and whose asylum applications are pending with the Service; and the dependents of these groups. Limiting the program to registered *ABC* class members who met the requisite filing deadlines will also serve to protect the integrity of the program by reducing the possibility of fraudulent claims of *ABC* class membership and registration. Because an applicant for suspension of deportation or special rule cancellation of removal will be entitled to immediately apply for and be granted employment authorization, the Service is concerned that there would be an influx of fraudulent applications submitted solely for the purpose of obtaining employment authorization, if no restrictions are placed on the submission of applications. Consequently, to avoid creating such a problem and to avoid diverting resources from the adjudication process in order to verify the status of each new applicant claiming to be a registered *ABC* class member, the Service has chosen to limit the group of persons eligible to apply with the Service for relief from deportation or removal under section 203 of NACARA to those persons who can more readily be

identified by the their previously filed asylum applications.

Must a spouse, child, unmarried son, or unmarried daughter of a beneficiary of section 203 of NACARA have applied for asylum with the Service in order to be eligible to apply for suspension of deportation or special rule cancellation of removal with the Service? No. In the interest of preserving family unity and fostering administrative efficiency, this rule proposes to give the Service jurisdiction to grant or refer an application for suspension of deportation or special rule cancellation of removal filed by a spouse, child, unmarried son, or unmarried daughter of certain NACARA beneficiaries. The spouse, child, unmarried son, or unmarried daughter will not be required to apply for asylum with the Service in order to submit an application for discretionary relief under section 203 of NACARA, so long as the applicant's spouse or parent either has an application for relief under section 203 of NACARA pending with the Service or has been granted suspension of deportation or special rule cancellation of removal by the Service.

If the spouse, child, unmarried son, or unmarried daughter ("dependent") is in deportation or removal proceedings, he or she appears otherwise eligible for discretionary relief under section 203 of NACARA, and the qualified parent or spouse has submitted an application for such relief with the Service, the Immigration Court may administratively close the dependent's case to permit the dependent to submit an application for suspension of deportation or special rule cancellation of removal with the Service. Similarly, the board may administratively close or continue the dependent's appeal to permit the dependent to submit an application for suspension of deportation or special rule cancellation of removal. A dependent's case that has been administratively closed or continued to allow the dependent to apply with the Service for relief under section 203 of NACARA may be recalendared by the Service if the dependent fails to file his or her application within a required period of time or if the dependent becomes clearly ineligible for relief under section 203 of NACARA prior to submitting his or her application with the Service. A dependent whose case has been administratively closed or continued by EOIR for purposes of filing an application for relief under NACARA with the Service will not be permitted to file an asylum application with the Service. Jurisdiction will remain with EOIR for all matters other than the initial adjudication of the NACARA application.

Although the Service will attempt to interview the dependent and make an eligibility determination at the same time the Service considers the applications of other family members, the application will generally be considered as a separate application for purposes of the filing fee, because it will not have been filed at the same time as the parent's or spouse's application.

When can an application be filed? Anyone who is eligible to apply for suspension of deportation or special rule cancellation of removal and who is in deportation or removal proceedings may apply for such discretionary relief before the Immigration Court in the course of those proceedings. Those who are eligible to apply with the Service will be able to apply when interim or final regulations delegating authority to the Service become effective. The Department expects to publish interim or final regulations after the notice and comment period for this proposed rule has been completed. There is no deadline for filing the application with the Service, as long as the applicant still meets the criteria for eligibility to apply with the Service.

How does one submit an application to the Service? To apply with the Service for suspension of deportation or special rule cancellation of removal under section 203 of NACARA, the applicant must submit a Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100), with all attachments and supporting documents, in accordance with the instructions on that form. The Service is currently in the process of preparing the final version of proposed Form I–881. The Service will not accept applications submitted on a Form EOIR–40 or EOIR–42.

Each applicant, including all qualified dependents, must submit a separate application.

Will there be a fee? Yes. The proposed rule establishes a $215 fee for a single applicant, with a maximum family cap of $430 for a family of two or more qualified relatives who submit applications to the Service at the same time. Qualified relatives are limited to the spouse, children, unmarried sons and unmarried daughters of an applicant. A qualified relative who does not submit an application at the same time as the relative's parent or spouse will be required to pay the $215 fee. As with other applications for immigration benefits, applicants may request a fee waiver pursuant to 8 CFR 103.7(c).

The fee for applying directly with the Immigration Court in the course of deportation or removal proceedings will continue to be $100, with a single fee of $100 whenever applications are filed by two or more individuals in the same proceedings. If the application filed with the Service is referred to the Immigration Court, the applicant will not be required to pay an additional fee.

In addition to the fee required to submit an application for suspension of deportation or special rule cancellation of removal, each applicant who is required to be fingerprinted will also be required to include a fingerprinting fee (now $25), or request for fee waiver, when submitting the application to the Service, pursuant to current regulations.

Why is the fee for individuals applying with the Service higher than the fee for individuals applying with the Immigration Court? The proposed fee for individuals applying with the Service is higher, because the cost to the Service to adjudicate applications must be funded from the Immigration Examinations Fee Account (IEFA). The IEFA was established by Congress in 1989, and the revenue deposited in the account is the sole source of funding for the processing of immigration and naturalization applications and petitions, and for other purposes designated by Congress, such as the processing of asylum applications for which no fee is required. No appropriations are provided by Congress from tax dollars. In contrast, the Immigration Court receives funds appropriated by Congress to cover the costs of court functions. The $100 fee to apply for suspension of deportation or cancellation of removal in the Immigration Court partially covers the Service's costs associated with litigating such applications in deportation or removal proceedings.

How was the fee determined? The Service is authorized to charge fees for the adjudication and processing of applications and petitions for a wide variety of immigration and naturalization benefits. The fees are required to recover the cost to the Service of providing a specific immigration service. All fees must be reviewed regularly and adjusted as costs change, as more precise cost determination processes become available, or as directed by legislation. This rule proposes to establish a fee that recovers the costs to the Service associated with processing applications for suspension of deportation and special rule cancellation of removal under section 203 of NACARA.

Revenues generated from the fee proposed in this rule will be deposited

in the IEFA, which provides the sole source of funding available to the Service to process the applications. The Service conducted a cost review of its existing immigration and naturalization application and petition fees in accordance with statutory mandates and Federal cost accounting standards, using activity-based costing (ABC) methodology. ABC methodology provides an accurate and precise cost calculation. This methodology has been used successfully in the private sector and has been used increasingly by Federal agencies to determine the costs of programs, processes, products, and services. (A summary of the approach and methodology used in the review is explained in the proposed rule to adjust the fee schedule of the IEFA for 30 of the immigration adjudication and naturalization applications and petitions. The proposed rule was published in the **Federal Register** on January 12, 1998, at 63 FR 1775. The final rule was published in the **Federal Register** on August 14, 1998, at 63 FR 43604.)

Because Service adjudication of suspension of deportation and special rule cancellation of removal under section 203 of NACARA is a new process, actual historical cost data is not available for establishing a fee based upon actual experience. However, combining the information developed in the IEFA cost review with expert knowledge, it was determined that the application process activities for the Form I–485, Application to Register Permanent Residence or Adjust Status, and the Form I–589, Application for Asylum and for Withholding of Removal, closely resemble the processing and adjudication of a suspension of deportation or special rule cancellation of removal application. Using data from the IEFA cost review, an activity and associated cost model was constructed to anticipate the actual costs of the new process. Integrating the applicable activity costs from the IEFA fee study, the Service calculated a fee of $215 for a single applicant. The maximum amount being proposed for families (as a family cap) is $430.

Must the applicant be fingerprinted? Yes. Each applicant 14 years or older must be fingerprinted. Under current regulations, a fingerprinting fee (now $25), or request for fee waiver, must be submitted to the Service for each person who requires fingerprinting in order to apply for a benefit. An applicant who has previously submitted fingerprints for an asylum application must be fingerprinted again to fulfill current requirements for suspension of deportation or special rule cancellation of removal. The fingerprints will ordinarily be taken at an Application Support Center or a designated Law Enforcement Agency. For cases before the Service, after an application has been submitted, the applicant will be notified in writing of the appointment date and the location of the Application Support Center or designated Law Enforcement Agency where the applicant must go to be fingerprinted. The Service may not conduct an interview until the applicant has been fingerprinted and the Service has received a definitive response from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed. An applicant's unexcused failure to appear for fingerprinting may result in dismissal of the application for suspension of deportation or special rule cancellation of removal or referral of the application to the Immigration Court. For applications submitted to the Immigration Court, the applicant should proceed as directed by the immigration judge.

How will the interview process before the Service work and what should the applicant bring to the interview? Each applicant will be notified by the Asylum Office of the date, time, and place (address) of a scheduled interview. The Service recommends that each applicant bring a copy of the application and originals of any supporting documents to the interview. Any documents submitted that are written in a foreign language must be accompanied by a certified translation pursuant to 8 CFR 103.2(b)(3). The applicant should also bring some form of identification, if available, including any passport(s), other travel or identification documents, or Form I–94, Arrival-Departure Record.

An asylum officer shall conduct a nonadversarial interview to elicit information relating to eligibility for both asylum and for suspension of deportation or special rule cancellation of removal, if the applicant has applied for both forms of relief.

The applicant has the right to legal representation at the interview, at no cost to the United States Government. Any attorney or representative of record who is representing an applicant must file a G–28, Notice of Entry of Appearance as Attorney or Representative, signed by the applicant.

If the applicant is unable to proceed with the interview in fluent English, he or she must provide, at no expense to the Service, a competent interpreter fluent in both English and a language that the applicant speaks fluently. The interpreter must be at least 18 years of age. The following persons cannot serve as interpreter: the attorney or representative of record or a witness testifying on the applicant's behalf at the interview. If the applicant also has an asylum application pending with the Service, a representative or employee of the applicant's country of nationality, or, if stateless, country of last habitual residence, may not serve as an interpreter. Failure without good cause to bring a competent interpreter to the interview may be considered an unexcused failure to appear for the interview, which may result in dismissal of the application or referral of the application to the Immigration Court.

In most cases, the applicant will be given a notice to return to the Asylum Office for service of the decision and, where appropriate, charging documents placing the person in removal proceedings (the "pick-up"). Each applicant will also be advised of the requirement to bring an interpreter to the pick-up if the applicant is not fluent in English. An applicant who is not fluent in English must bring an interpreter to the "pick-up," because the applicant may be asked at that time to admit inadmissibility or deportability, and may also be asked whether he or she intends to continue to pursue a pending application for asylum before the Service, if suspension of deportation or special rule cancellation of removal is granted. Although a grant of suspension of deportation or cancellation of removal will confer lawful permanent resident status, section 208 of the Act provides that an alien who is physically present in the United States, or who arrives in the United States, may apply for asylum irrespective of the alien's status.

Must the applicant concede inadmissibility or deportability in order to be granted suspension of deportation or special rule cancellation of removal by the Service? Yes. NACARA provides that the Attorney General may grant suspension of deportation to a qualified individual who is deportable from the United States or special rule cancellation of removal to a qualified alien who is inadmissible or deportable from the United States. The Department has determined that, before suspension of deportation or cancellation of removal may be granted, there must be a finding of inadmissibility or deportability. Because asylum officers are not authorized to make determinations regarding inadmissibility or deportability in most contexts, applicants for suspension of deportation or special rule cancellation of removal before the Service will be required to concede inadmissibility or

deportability before the Service may grant the relief from deportation or removal to the applicant. The instructions for the application will advise the applicant of this requirement. If an asylum officer determines that the applicant is eligible for suspension of deportation or special rule cancellation of removal, the applicant will be informed of the preliminary decision and asked to sign a written concession of inadmissibility or deportability before the final decision is issued. If the applicant declines to admit inadmissibility or deportability and is not granted asylum, the applicant will be placed in immigration proceedings and the application for suspension of deportation or special rule cancellation of removal will be referred to the Immigration Court.

What if an applicant does not appear for the scheduled interview with an asylum officer? An applicant who cannot appear for the scheduled interview should submit prior to the interview a written request to reschedule the interview, explaining the reasons the applicant cannot attend the interview. An unexcused failure to appear for the interview may result in dismissal of the application for suspension of deportation or special rule cancellation of removal or referral of the application to the Immigration Court.

III. Process for applying with EOIR

How does one apply for suspension of deportation or special rule cancellation of removal before the Immigration Court? A person eligible to apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA who is presently in deportation or removal proceedings should follow the procedures for submitting an application under the regulations and as directed by the immigration judge. The Immigration Court is already adjudicating applications under section 203 of NACARA; there is no need for those who are in proceedings to wait for publication of an interim or final version of this proposed rule to submit an application to the Immigration Court. However, persons who apply for suspension of deportation or special rule cancellation of removal under section 203 of NACARA after this proposed rule is issued as an interim or final rule, will be required to submit their applications on Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100), with all attachments and supporting documents, in accordance with the instructions for that form. Each applicant must submit a separate application.

What if a person who is eligible to apply for special rule cancellation of removal is not in proceedings and either does not have an asylum application pending or filed for asylum after the applicable filing deadline? Under this proposed rule, a person who is not in proceedings and who is ineligible to apply with the Service for discretionary relief under section 203 of NACARA will not be permitted to submit an application unless and until he or she is placed in removal proceedings. Under section 203 of NACARA, there is no deadline for filing an application for special rule cancellation of removal. The decision to place an alien in proceedings lies solely with the discretion of the Service.

IV. Eligibility for Suspension of Deportation and Special Rule Cancellation of Removal

What are the applicable statutory provisions? Statutory eligibility for suspension of deportation will be determined based on the criteria governing continuous physical presence, good moral character, and extreme hardship set forth in paragraph, (a) and (b) of former section 244 of the Act, as in effect prior to April 1, 1997, and, as discussed below, subject to applicable bars to discretionary relief as provided in the Act, as in effect prior to April 1, 1997. However, persons eligible to apply for suspension of deportation under section 203 of the NACARA are exempted from the transitional rule governing continuous physical presence contained in section 309(c)(5) of IIRIRA. This means that such applicants are exempt from 240A(d)(1) of the Act, as amended by IIRIRA, which affects the determination of when time counted toward continuous physical presence in the United States stops accruing (the "stop-time" rule). Specifically, section 240A(d)(1) of the Act, as amended by IIRIRA, provides that time counted toward physical presence in the United States stops accruing when a person is served a notice to appear under section 239(c) of the Act or commits an offense referred to in section 212(a)(2) of the Act that renders the person inadmissible to the United States under section 212(a)(2) or removable from the United States under section 237(a)(2) or 237(a)(4) of the Act, whichever is earlier. Such persons are also exempt from section 240A(d)(2), which addresses breaks in presence in the United States.

Applications for special rule cancellation of removal under section 203 of NACARA are governed by statutory eligibility requirements contained in section 309(f)(1) of IIRIRA, as amended by NACARA. These requirements correspond, with certain exceptions, to the requirements contained in former section 244(a)(1) and (a)(2) of the Act, as in effect prior to April 1, 1997. Applications under section 203 of NACARA are otherwise subject to the provisions of section 240A of the Act, with the exception of sections 240A(b)(1) (the heightened standards relating to eligibility), (d)(1) (the "stop-time rule"), and (e) (limitations on the annual number of individuals granted relief).

Additionally, to be eligible for suspension of deportation or special rule cancellation of removal, the alien must not be subject to any of the statutory bars to seeking such relief. Section 244(f) of the Act, as it existed prior to April 1, 1997, and section 240A(c) of the Act provide that certain categories of aliens (crewmen and certain non-immigrant exchange aliens) are ineligible for suspension of deportation or cancellation of removal. Pursuant to former section 242B(e)(2) of the Act, as in effect prior to April 1, 1997, and section 240B(d) of the Act, an alien who was previously granted voluntary departure and received notice of the consequences of failing to depart, but did not depart the United States within the time specified, is barred for a specific period of time from various forms of discretionary relief, including suspension of deportation and cancellation of removal. Similarly, former sections 242B(e)(1), (3) and (4) of the Act, as in effect prior to April 1, 1997, preclude the Attorney General from granting suspension of deportation to aliens who, under certain circumstances, fail at appear to a deportation or asylum hearing, or as ordered for deportation. Applicants for special rule cancellation of removal are subject, where applicable, to the bar to discretionary relief contained in section 240(b)(7) of the Act, relating to failure to appear at removal proceedings. The Attorney General has no authority to waive such bars in the cases in which they apply.

What are the requirements for establishing eligibility? The burden is on the applicant to establish that he or she meets each of the statutory requirements for the relief sought and that he or she is entitled to relief from deportation or removal as a matter of discretion. As explained further below, the general requirements for eligibility relate to the amount of time the applicant has been

continuously physically present in the United States, whether the applicant is and has been of good moral character during the requisite period of continuous physical presence, and the degree of hardship to the applicant or qualified relative resulting from removal. There are two basic standards both for eligibility for suspension of deportation and for special rule cancellation of removal, and the applicable standard is determined by the grounds of deportability or inadmissibility that apply. Aliens who are inadmissible or deportable on certain criminal or other grounds are subject to a higher standard that requires the applicant to establish a longer period of continuous physical presence and a higher degree of hardship resulting from removal. In addition, special eligibility provisions may apply to certain individuals who have been battered or subject to extreme cruelty, or whose children have been subject to such abuse, and to certain individuals who have served in the United States Armed Forces.

To be eligible for suspension of deportation under the general standard set forth in former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, an applicant must not have been convicted of an aggravated felony, must not be deportable for having participated in Nazi persecution or in genocide, and must be deportable under any law of the United States other than paragraph (a)(2) (criminal grounds), paragraph (3) (failure to register and falsification of documents), or paragraph (4) (security and related grounds) of the former section 241(a) of the Act, as in effect prior to April 1, 1997. To be eligible for special rule cancellation of removal under the general standard set forth in section 309(f)(1)(A) of IIRIRA, as amended by NACARA, an applicant must not be inadmissible to the United States under paragraph (2) (criminal and related grounds) or paragraph (3) (security and related grounds) of section 212(a) of the Act, or deportable under paragraph (2) (criminal grounds), paragraph (3) (failure to register and falsification of documents), or paragraph (4) (security and related grounds) of section 237(a) of Act, and may not be an alien who has been convicted of an aggravated felony or has been to be a persecutor.

An applicant for either form of relief who meets the foregoing eligibility requirements must also establish that:

(1) the applicant has been physically present in the United States continuously for at least 7 years before applying for the relief;

(2) the applicant is and has been a person of good moral character during those 7 years of physical presence; and

(3) removal from the United States would result in extreme hardship to the applicant, or to the applicant's spouse, parent, or child, who is a United States citizen or alien lawfully admitted for permanent residence.

The applicant must also establish that the applicant merits relief as a matter of discretion.

Generally, persons who are inadmissible or deportable on the basis of the grounds previously described (other than those who have been convicted of an aggravated felony or involved in the persecution of others) may still be eligible for suspension of deportation under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, or for special rule cancellation of removal under section 309(f)(1)(B) of IIRIRA, as amended by NACARA, under a higher standard. To be eligible under the higher standard, the applicant must establish that:

(1) the applicant has been physically present in the United States continuously for not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation or removal;

(2) the applicant is and has been a person of good moral character during that period; and

(3) deportation or removal would result in exceptional and extremely unusual hardship to the applicant or to the applicant's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. The applicant must also establish that the applicant merits relief as a matter of discretion.

What factors are considered in evaluating continuous physical presence? For persons covered by section 203 of NACARA who are presently in deportation proceedings, the primary impact of NACARA is the elimination of the transitional rules contained in section 309(c)(5) of IIRIRA relating to the "stop-time" rule and certain breaks in presence. A person eligible to apply for suspension of deportation under NACARA must establish the required period of continuous physical presence by the date on which the application is filed. A person who is already subject to a final order of deportation and must reopen his or her proceedings under 8 CFR 3.43 must establish the required period of physical presence by no later than September 11, 1998, regardless of the date on which service of the charging document was completed.

The proposed rule repeats the statutory requirement that an applicant for suspension of deportation must establish that any break in continuous physical presence was brief, casual, and innocent, and did not meaningfully interrupt the applicant's period of continuous physical presence in the United States. The proposed rule also reflects conclusions set forth in case law that departures under an order of deportation, departures under an order of voluntary departure, or departures during which the applicant formed the intent to commit a crime meaningfully interrupt continuous physical presence.

Although applicants for special rule cancellation of removal are exempt from the "stop-time" provision of section 240A(d)(1) of the Act, they are not exempt from section 240A(d)(2) of the Act, relating to breaks in continuous physical presence. Under section 309(f)(2) of IIRIRA, as amended by section 203(b) of NACARA, an applicant for special rule cancellation of removal will be considered to have failed to maintain continuous physical presence in the United States if he or she is absent from the United States for any period in excess of 90 days or for any periods that in the aggregate exceed 180 days. The proposed rule specifies that periods of shorter duration may be found to terminate continuous physical presence if the absence is a meaningful interruption.

What factors are considered in evaluating good moral character? To be eligible for suspension of deportation or special rule cancellation of removal, the person will have to establish good moral character during the requisite period of continuous physical presence in the United States. Good moral character is decided on a case-by-case basis, taking into account the provisions of section 101(f) of the Act, which identify reasons a person cannot be found to be of good moral character, and precedent decisions by the Board and Federal courts.

What factors are considered in evaluating extreme hardship? An applicant for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, or special rule cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, must establish that his or her deportation or removal would result in extreme hardship to the applicant, or to a parent, child or spouse who is a United States citizen or lawful permanent resident alien. In adopting the same standards for special rule cancellation of removal as were required for suspension of deportation under

former section 244(a)(1) of the Act, prior to amendments by IIRIRA, Congress appears to have intended the same standard for extreme hardship to apply to both forms of relief. The phrase "extreme hardship" is not defined in the Act, and NACARA provides no additional guidelines for interpretation of this requirement. Instead, "extreme hardship" has acquired specific legal meaning through interpretation by the Board and Federal courts.

The Board has not set forth a bright line test for determining "extreme hardship," finding that "extreme hardship" within the meaning of section 244(a)(1) of the Act "is not a definable term of fixed and inflexible content or meaning. It necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I & N Dec. 448, 451 (BIA 1964). Over time, however, precedent decisions issued by the Board and federal courts have created a body of case law that has provided a framework for analyzing claims of extreme hardship. *See Matter of Anderson*, 16 I & N Dec. 596 (BIA 1978); *Matter of Ige*, 20 I & N Dec. 880 (BIA 1994); *Matter of O–J–O*, Int. Dec. #3280 (BIA 1996); *Matter of L–O–G, Int Dec.* #3281 (BIA 1996); *Matter of Pilch*, Int. Dec. #3298 (BIA 1996). In these decisions and others, the Board has enumerated a series of factors that are relevant to a determination of extreme hardship. These precedent decisions are binding on the Service and EOIR.

Under this proposed rule, asylum officers will be required to consider suspension of deportation and special rule cancellation of removal applications under the same legal standards that govern adjudication by the Immigration Court. Because of the breadth of the case law governing the "extreme hardship" standard, the Department has concluded that a regulatory compilation of the relevant factors and standards identified within this body of law would provide a more uniform and focused source for evaluating extreme hardship claims. This proposed rule is not intended, however, to overturn or modify existing case law. Nor does it intend to limit the development through case law of other relevant factors. Instead, codification is intended to assist adjudicators, attorneys, and applicants to identify factors that may be relevant to an extreme hardship determination in the context of an application for suspension of deportation or special rule cancellation of removal. This regulation, however, does not codify the higher standard of "exceptional and extremely unusual hardship" required under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, section 240A(b)(1) of the Act for persons seeking cancellation of removal, or section 309(f)(1)(B) of IIRIRA, as amended by NACARA, for persons seeking special rule cancellation of removal.

This proposed rule maintains the flexibility of the existing standard by identifying broad factors that have been cited in existing precedent decisions as relevant to the evaluation of whether deportation would result in extreme hardship to the alien or to his or her qualified relative. These factors are (1) the age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation; (2) the age, number, and immigration status of the alien's children and their ability to speak the native language and adjust to life in another country; (3) the health condition of the alien or the alien's child, spouse, or parent and the availability of any required medical treatment in the country to which the alien would be returned; (4) the alien's ability to obtain employment in the country to which the alien would be returned; (5) the length of residence in the United States; (6) the existence of other family members who will be legally residing in the United States; (7) the financial impact of the alien's departure; (8) the impact of a disruption of educational opportunities; (9) the psychological impact of the alien's deportation or removal; (10) the current political and economic conditions in the country to which the alien would be returned; (11) family and other ties to the country to which the alien would be returned; (12) contributions to and ties to a community in the United States, including the degree of integration into society; (13) immigration history, including authorized residence in the United States; and (14) the availability of other means of adjusting to permanent resident status.

Ultimately, "extreme hardship" must be evaluated on a case-by-case basis after a review of all the circumstances in the case, and none of the listed factors alone, or taken together, automatically establishes a claim of extreme hardship. Nor is the list exhaustive, as there may be other factors relevant to the issue of extreme hardship in a particular case. The listed factors should not preclude consideration of other factors raised by an applicant, nor is an applicant required to show that each of the listed factors applies in the applicant's case, in order to establish extreme hardship. Conversely, an adjudicator is not required to consider factors that have not been raised in making an extreme hardship determination.

Generally, no single factor will be dispositive in making an extreme hardship determination. *Matter of Anderson*, 16 I & N Dec. 596. To establish extreme hardship, an applicant must demonstrate that deportation or removal would result in a degree of hardship beyond that typically associated with deportation or removal. For example, extreme hardship requires more than the mere economic deprivation that might result from an alien's deportation from the United States. *Davidson* v. *INS*, 558 F.2d 1361, 1363 (9th Cir. 1977), and *Matter of Sipus*, 14 I & N Dec. 229, 231 (BIA 1972). Loss of a job and the concomitant financial loss is not synonymous with extreme hardship. *Matter of Pilch*, Int. Dec. #3298. Similarly, readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. *Matter of Chumpitazi*, 16 I & N 629 (BIA 1978). The birth of a United States citizen child does not in itself provide a basis for a finding of extreme hardship. *Davidson* v. *INS*, 558 F.2d at 1363; *Matter of Kim*, 15 I & N Dec. 88 (BIA 1974). Nor does a significant reduction in one's standard of living or inability to pursue one's profession, in itself, compel a finding of extreme hardship. *Matter of Pilch*, Int. Dec. #3298.

The Board has also found that "a claim of persecution may not generally be presented as a means of demonstrating extreme hardship, for purposes of suspension of deportation." *Matter of L–O–G*, Int. Dec. #3281. In those cases in which a claim of persecution is raised, however, it must be examined from the perspective of extreme hardship, rather than on the basis of the criteria used to identify a refugee under asylum law. *Ordonez* v. *INS*, 137 F.3d 1120, 1123 (9th Cir. 1998). Consequently, issues such as the circumstances under which an individual left his or her country or the political consequences of such a return may be relevant to the discussion of listed factors such as the psychological impact of deportation or removal, current country conditions, immigration history, or remaining ties to the country of deportation or removal. *See Matter of O–J–O*, Int. Dec. #3280 (family's history of conflict with Sandinistas factored into evaluation of effect of current country conditions).

Thus, a factor that may not in itself be determinative may become significant, or even critical, when weighed with all

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the other circumstances and factors presented. *Matter of L–O–G*, Int. Dec. #328. Relevant factors that may not be considered extreme in themselves must be considered in the aggregate to determine whether extreme hardship exists. *Matter of Ige*, 20 I & N Dec. at 882. "In all cases, the particular degree of personal hardship resulting from each of the factors must be taken into account." *Matter of L–O–G*, Int. Dec. #328. Similarly, an adjudicator should not discount the effect of a factor simply because it is not unique to the individual. The Board has noted that the "word 'extreme' should not be equated with 'unique' and hardship for suspension purposes need not be unique to be extreme." *Id.*

V. Adjudication by the Service

How will a decision be made if a person has applied for both asylum and suspension of deportation or special rule cancellation of removal? An asylum officer will determine eligibility for suspension of deportation or special rule cancellation of removal concurrently with the determination of eligibility for asylum if an applicant who is eligible to apply with the Service under NACARA has applied for both forms of relief. After considering the information and documents submitted by the applicant, the testimony of the applicant and any witnesses presented at the interview, relevant country conditions information, and other information available to the asylum officer, the asylum officer will determine whether the applicant is eligible for suspension of deportation or special rule cancellation of removal or asylum. The Service will grant suspension of deportation or special rule cancellation of removal if the applicant is clearly eligible for the relief sought. If the Service finds that the applicant is not clearly eligible for suspension of deportation or special rule cancellation of removal and is ineligible for asylum, the asylum officer will refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court (or dismiss the application without prejudice, if the applicant is in valid non-immigrant or immigrant status). The Service will also process the asylum application under the terms of the settlement agreement for eligible *ABC* class members or under 8 CFR 208.14 for all other NACARA beneficiaries.

When will the Service refer an application to the Immigration Court? Under the proposed rule, asylum officers will not have the authority to deny an application for suspension of deportation or special rule cancellation of removal. Instead, an asylum officer will refer an application to the Immigration Court, if the applicant appears to be inadmissible or deportable and any of the following circumstances apply:

(1) The applicant appears to be statutorily ineligible for the relief sought;

(2) It appears that relief should be denied as a matter of discretion;

(3) The applicant appears to be eligible for relief only under the higher standards set forth in former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, or section 309(f)(1)(B) of IIRIRA, as amended by NACARA (requiring, among other things, 10 years continuous physical presence and showing of exceptional and extremely unusual hardship resulting from removal);

(4) The applicant appears eligible for relief only under the provisions that apply to battered spouses and children in former section 244(a)(3) of the Act, as in effect prior to April 1, 1997, or section 240A(b)(2) of the Act;

(5) The applicant declines to concede inadmissibility or deportability; or

(6) The applicant fails to appear for an interview or for a fingerprint appointment, and such failure to appear is unexcused. In the case of an unexcused failure to appear for an interview or for fingerprinting, the Service may refer the application to the Immigration Court without conducting an interview, or the Service may dismiss the application.

Generally, referrals to the Immigration Court will occur after the Service has evaluated the application and determined that the applicant is not clearly eligible for suspension of deportation or special rule cancellation of removal. In the case of applicants who are only eligible under the higher standard for either form of relief, referral is necessary to avoid complex determinations regarding admissibility or deportability that are more appropriately made by an immigration judge. Other grounds for referral are related to administrative efficiency and parallel provisions in 8 CFR part 208 with respect to the referral of asylum applications.

What happens if the Service finds that the applicant is eligible for suspension of deportation or special rule cancellation of removal, but is not eligible for asylum? If the Service determines that the applicant is eligible for a grant of suspension of deportation or special rule cancellation of removal by the Service and makes a preliminary determination that the applicant is not eligible for asylum, The Service will grant the applicant suspension of deportation or special rule cancellation of removal and adjust the applicant's status to that of lawful permanent resident. When the Services notifies the applicant of the decision to grant suspension of deportation or special rule cancellation of removal, the Service will notify the applicant that the Service has made a preliminary determination that the applicant is not eligible for asylum, but that the applicant has the right to continue to pursue the request for asylum. At the same time, the Service will give the applicant the opportunity to request to pursue the asylum application or to request in writing to withdraw the asylum application. If the applicant requests in writing to withdraw the asylum application, the application will be dismissed without prejudice. If the applicant wishes to pursue the asylum application and the applicant is eligible for *ABC* benefits, the Service will send the applicant a Notice of Intent to Deny the asylum application and provide an opportunity to rebut the Notice of Intent to Deny pursuant to the terms of the settlement agreement. If the applicant is not eligible for *ABC* benefits and wishes to pursue the asylum application, the Service will send the applicant a Notice of Intent to Deny in accordance with current asylum procedures for applicants who are in valid immigration status.

What happens if the Service determines that the applicant is eligible for both suspension of deportation or special rule cancellation of removal and for asylum? If the asylum officer determines that the applicant is eligible for both asylum and a grant of suspension of deportation or special rule cancellation of removal by the Service, the Service will grant the applicant suspension of deportation or special rule cancellation of removal and adjust his or her status to that of lawful permanent resident. After the Service has adjusted the applicant's status to that of lawful permanent resident, the applicant will still be eligible for asylum. Section 208 of the Act provides that an alien who is physically present in the United States, or who arrives in the United States, may apply for asylum irrespective of the alien's status. Therefore, if an asylum officer has found that the applicant is eligible for asylum, the Service will grant the applicant's asylum application.

What happens if the Service finds that the applicant is eligible for asylum, but not suspension of deportation or special rule cancellation of removal? If the Service determines that the applicant is

eligible for asylum, but appears ineligible for suspension of deportation or special rule cancellation of removal, the Service will grant the application for asylum and dismiss the application for suspension of deportation or special rule cancellation of removal without prejudice.

What happens if the Service finds that the applicant is ineligible for asylum, suspension of deportation, or special rule cancellation of removal? If the Service determines that the applicant is not eligible for a grant of asylum, suspension of deportation, or special rule cancellation of removal by the Service, and the applicant is not in valid immigrant or non-immigrant status, the Service will place the applicant in removal proceedings or move to recalendar or resume proceedings before EOIR if such proceedings were administratively closed or continued. The Service will refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court or, if proceedings before the Board and been administratively closed or continued, to the Board. The asylum application filed with the Service will also be referred to the Immigration Court, if the application is governed by current asylum regulations. The application for asylum will be denied, if the application is governed by the *ABC* settlement agreement.

What happens to a pending asylum application if the Service adjusts the applicant's status to that of lawful permanent resident? Some asylum applicants may be eligible to adjust their status to lawful permanent resident through means other than section 203 of NACARA. For example, Nicaraguans and Cubans who have adjusted status under section 202 of NACARA may no longer wish to seek asylum in the United States. To avoid unnecessary scheduling of such persons for asylum interviews and unnecessary adjudications, the Service may notify the applicant that it intends to dismiss without prejudice the asylum application unless the applicant notifies the Service in writing within 30 days of the date of the notice that the applicant would like to pursue the asylum request.

The process for adjudicating eligible *ABC* class members' asylum applications is governed by the *ABC* settlement agreement and the 1990 asylum regulations. Accordingly, this provision does not apply to them, and the Service will not presume their applications abandoned. However, if the Service grants an eligible *ABC* class member suspension of deportation or special rule cancellation of removal and makes a preliminary determination that the class member is not eligible for asylum, the Service may notify the class member of the negative preliminary assessment regarding asylum eligibility and give the class member the opportunity to withdraw the asylum request.

How will an application be processed if the applicant was in proceedings in Immigration Court that were administratively closed under the ABC settlement agreement? Pursuant to the *ABC* settlement agreement, EOIR already has administratively closed proceedings for *ABC* class members who were in proceedings before the Immigration Court. This action was taken to afford the class members the opportunity to pursue a *de novo* asylum adjudication with the Service. Because these class members were in deportation proceedings prior to April 1, 1997, they may be eligible to apply for suspension of deportation. If the Service grants either asylum or suspension of deportation to a registered *ABC* class member whose proceedings with the Immigration Court were administratively closed, such grant of asylum or suspension of deportation will terminate those proceedings under this regulation. (The Department currently is engaged in efforts to clarify language in the *ABC* settlement agreement in accordance with this proposal for automatic termination of proceedings before EOIR upon a grant of asylum). If the Service denies asylum to a registered *ABC* class member whose previous proceedings were administratively closed and the asylum officer determines that the applicant is not clearly eligible for suspension of deportation, the Service will move to recalendar proceedings before the Immigration Court, pursuant to the settlement agreement. At the same time, the Service will refer to the Immigration Court the application for suspension of deportation.

How will applications be processed for applicants who have an appeal pending with the Board of Immigration Appeals, which was continued under the ABC settlement? Pursuant to the *ABC* settlement agreement, the Board stayed or continued indefinitely appeals that had been filed by *ABC* class members in order to give them the opportunity to pursue the benefits of the settlement agreement. If the Service grants either asylum or suspension of deportation to a registered *ABC* class member whose proceedings with the Board were administratively closed or continued, such grant of asylum or suspension of deportation will terminate those proceedings under this regulation. (As noted above, the Department currently is engaged in efforts to clarify language in the *ABC* settlement agreement in accordance with this proposal for automatic termination of proceedings before EOIR upon a grant of asylum.) If the Service denies asylum to an eligible *ABC* class member and does not grant suspension of deportation, the Board shall resume proceedings upon notice from the Service, under the terms of the *ABC* settlement agreement. The Service will refer the application for suspension of deportation to the Board. The Board will remand proceedings to the immigration judge solely for adjudication of the application for suspension of deportation unless the eligible *ABC* class member also moves for, and is granted, a remand of the asylum application pursuant to the terms of the *ABC* settlement agreement.

How will applications be processed for class members eligible for ABC benefits who have been issued a final order of deportation? Section 203(c) of NACARA permits eligible NACARA beneficiaries with final orders to file a motion to reopen in order to pursue suspension of deportation or special rule cancellation of removal under NACARA. Section 203(c) requires that all NACARA beneficiaries who are under final orders of deportation, including *ABC* class members, must have filed a motion to reopen no later than September 11, 1998, in order to obtain relief under section 203 of NACARA. (The applicable rule, 8 CFR 3.43, was published in the **Federal Register** on June 11, 1998, at 63 FR 31890.)

An *ABC* class member who has been issued a final order, but currently has an asylum application pending before the Service, may file an application for suspension of deportation with the Service only if he or she has filed a motion to reopen with EOIR, and the motion has been granted. Unless the case is reopened, the alien will remain subject to the order of deportation, which will be enforceable if the alien is denied asylum under the terms of the *ABC* settlement agreement. If the motion is granted, the *ABC* class member may move to have his or her deportation proceedings administratively closed in order to apply for suspension of deportation with the Service. As is the case for all NACARA beneficiaries with final orders, eligible *ABC* class members who have challenged their immigration proceedings in Federal court must file and be granted a motion to reopen by EOIR in order to seek relief under section 203 of NACARA. If the applicant

has pending in Federal court a case that was stayed so that the applicant could pursue *ABC* benefits, the Government will wait until the application for suspension of deportation is adjudicated before requesting that court proceedings be resumed or dismissed.

All motions to reopen under section 203(c) of NACARA must have been filed on or before September 11, 1998. Therefore, any alien who did not file a motion to reopen by that date is no longer eligible to file a motion to reopen proceedings under section 203(c) of NACARA.

Employment Authorization

Are applicants for suspension of deportation or special rule cancellation of removal eligible for employment authorization? Yes. Under current regulations, applicants for suspension of deportation or cancellation of removal are eligible to apply for and be granted employment authorization. 8 CFR 274a.12(c)(10). Applicants for suspension of deportation or special rule cancellation of removal under section 203 of NACARA will also be eligible to apply for and be granted employment authorization under this provision at the time of filing an application with the Service or EOIR.

Travel Outside the United States

Is an applicant permitted to travel outside the United States while an application for suspension of deportation or special rule cancellation of removal is pending? Applicants for suspension of deportation or special rule cancellation of removal under NACARA are subject to present rules and procedures governing advance parole. Nothing in NACARA authorizes travel outside the United States for beneficiaries. Those NACARA beneficiaries who leave the country without first obtaining advance parole and who are inadmissible under section 212(a)(C) or 212(a)(7) may be subject on their return to expedited removal under section 235(b) of the Act.

NACARA beneficiaries who leave the country and are paroled back in will no longer be eligible for suspension of deportation since they would be inadmissible to the United States, rather than deportable from the United States.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant impact on a substantial number of small entities because of the following reason: This rule would provide new administrative procedures for the Service to consider applications from certain Guatemalans, Salvadorans, nationals of former Soviet Bloc countries, and their qualified relatives who are applying for suspension of deportation or special rule cancellation of removal and, if granted, to adjust their status to that of lawful permanent resident. It will have no effect on small entities, as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. § 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibility among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and (3)(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule requires applicants to provide biographical data and information regarding eligibility for relief under section 203 of NACARA on an application form (Form I–881). This requirement is considered an information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995. The Service issued a 60-day notice in the **Federal Register** on May 8, 1998, at 63 FR 25523, requesting comments on this new information collection. No comments were received during that initial 60-day comment period. On July 23, 1998, the Service issued a notice in the **Federal Register**, at 63 FR 39596, extending the comment period by 30 days. Comments were received and considered, and certain changes made to the proposed Form I–881 in light of those comments.

The Service solicits additional public comments on the information collection requirements in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In calculating the overall burden this requirement will place upon the public, the Service estimates that no more than 100,000 individuals will apply for relief under section 203 of NACARA in any single year. The Service also estimates that it will take each applicant approximately 12 hours to comply with the information collection requirement. This amounts to 1,200,000 total burden hours, which equates to an annual cost to the public of $33.5 million a year.

The following is the formula for determining the cost to the public: (100,000 respondents × $215 application fee = $21,500,000)+(100,000 respondents × 12 hours per response × $10+$12,000,000)=$33,500,000.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Stuart Shapiro, Desk Officer for the Immigration and Naturalization Service.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

As required by section 3507(d) of the Paperwork Reduction Act of 1995, the Service has submitted a copy of the Form I–881 and this proposed rule to OMB for its review of the information collection requirements. OMB is required to make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Service on the proposed regulation.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Immigration.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.1, the last sentence in paragraph (g)(3)(ii) is revised to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(g) * * *

(3) * * *

(ii) *Asylum officers.* * * * Asylum officers are delegated the authority to hear and adjudicate credible fear of persecution determinations under section 235(b)(1)(B) of the Act, applications for asylum and for withholding of removal, as provided under 8 CFR part 208, and applications for suspension of deportation and special rule cancellation of removal, as provided under 8 CFR part 240, subpart H.

* * * * *

3. In § 103.7, paragraph (b)(1) is amended by adding the entry for "Form I–881" to the listing of fees, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–881. For filing an application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Public Law 105–100):

—$215 for adjudication by the Service, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications of the same time shall be $430.

—$100 for adjudication by the Immigration Court (a single fee of $100 will be charged whenever applications are filed by two or more aliens in the same proceedings). The $100 fee is not required if the Form 1–881 is referred to the Immigration Court by the Service.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

4. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282, 8 CFR part 2.

5. Section 208.14 is amended by revising the section heading and by adding a new paragraph (f), to read as follows:

§ 208.14 Approval, denial, referral or dismissal of application.

* * * * *

(f) If an asylum applicant is granted adjustment of status to lawful permanent resident, the Service may notify the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice, unless the applicant requests in writing within 30 days of the notice that the asylum application be adjudicated. If an applicant does not respond within 30 days of the date of the notice, the Service may presume the asylum application abandoned and dismiss it without prejudice.

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202, 203, and 204 of Pub. L. 105–100 (111 Stat. 2160, 2193); 8 CFR part 2.

7. In subpart F, a new § 240.58 is added to read as follows:

§ 240.58 Extreme hardship.

(a) To be eligible for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, the alien must meet the requirements set forth in the Act, which include a showing that deportation would result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence. Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. Applicants are encouraged to cite in their applications and to document all applicable factors, as the presence or absence of any one factor is not determinative in evaluating extreme hardship. Adjudicators should weigh all relevant factors presented and consider them in light of the totality of the circumstances, but are not required to

offer an independent analysis of each listed factor when rendering a decision.

(b) To establish extreme hardship, an applicant shall demonstrate that deportation would result in a degree of hardship beyond that typically associated with deportation. Factors that may be considered in evaluating whether deportation would result in extreme hardship to the alien or to the alien's qualified relative include, but are not limited to, the following:

(1) The age of the alien, both at the time of entry to the United States and at the time of application for suspension of deportation;

(2) The age, number, and immigration status of the alien's children and their ability to speak the native language and to adjust to life in another country;

(3) The health condition of the alien or the alien's children, spouse, or parents and the availability of any required medical treatment in the country to which the alien would be returned;

(4) The alien's ability to obtain employment in the country to which the alien would be returned;

(5) The length of residence in the United States;

(6) The existence of other family members who will be legally residing in the United States;

(7) The financial impact of the alien's departure;

(8) The impact of a disruption of educational opportunities;

(9) The psychological impact of the alien's deportation;

(10) The current political and economic conditions in the country to which the alien would be returned;

(11) Family and other ties to the country to which the alien would be returned;

(12) Contributions to and ties to a community in the United States, including the degree of integration into society;

(13) Immigration history, including authorized residence in the United States; and

(14) The availability of other means of adjusting to permanent resident status.

(c) Nothing in paragraph (a) of this section shall be construed as creating any right, interest, or entitlement that is legally enforceable by or on behalf of any party against the United States or its agencies, officers, or any other person.

8. Part 240 is amended by adding Subpart H to read as follows:

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Public Law 105–100

Sec.

240.60 Definitions.
240.61 Applicability.
240.62 Jurisdiction.
240.63 Application process.
240.64 Eligibility—general.
240.65 Eligibility for suspension of deportation.
240.66 Eligibility for special rule cancellation of removal.
240.67 Procedure for interview before an asylum officer.
240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.
240.69 Reliance on information compiled by other sources.
240.70 Decision by the Service.

Subpart H—Applications for Suspension of Deportation or Special Rule Cancellation of Removal Under Section 203 of Public Law 105–100

§ 240.60 Definitions.

As used in this subpart the term:

ABC refers to *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).

ABC class member refers to:

(1) Any Guatemalan national who first entered the United States on or before October 1, 1990; and

(2) Any Salvadoran national who first entered the United States on or before September 19, 1990.

IIRIRA refers to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Public Law 104–208 (110 Stat. 3009–625).

NACARA refers to the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Public Law 105–100 (111 Stat. 2160, 2193), as amended by the Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act, Public Law 105–139 (111 Stat. 2644).

Registered ABC class member refers to an *ABC* class member who:

(1) In the case of an *ABC* class member who is a national of Guatemala, properly submitted an *ABC* registration form to the Service on or before December 31, 1991; or

(2) In the case of an *ABC* class member who is a national of El Salvador, properly submitted an *ABC* registration form to the Service on or before October 31, 1991, or applied for temporary protected status on or before October 31, 1991.

§ 240.61 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart H applies to the following aliens:

(1) A registered *ABC* class member who has not been apprehended at the time of entry after December 19, 1990;

(2) A Guatemalan or Salvadoran national who filed an application for asylum with the Service on or before April 1, 1990;

(3) An alien who entered the United States on or before December 31, 1990, filed an asylum application on or before December 31, 1991, and, at the time of filing the application was a national of the Soviet Union, Russia, any republic of the former Soviet Union, Latvia, Estonia, Lithuania, Poland, Czechoslovakia, Romania, Hungary, Bulgaria, Albania, East Germany, Yugoslavia, or any state of the former Yugoslavia;

(4) An alien who is the spouse or child of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section, at the time a decision is made to suspend the deportation, or cancel the removal, of the individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section;

(5) An alien who is:

(i) The unmarried son or unmarried daughter of an individual described in paragraph (a)(1), (a)(2), or (a)(3) of this section and is 21 years of age or older at the time a decision is made to suspend the deportation, or cancel the removal, of the parent described in paragraph (a)(1), (a)(2), or (a)(3) of this section; and

(ii) Entered the United States on or before October 1, 1990.

(b) This subpart H does not apply to any alien who has been convicted at any time of an aggravated felony, as defined in section 101(a)(43) of the Act.

§ 240.62 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction to grant or refer to the Immigration Court or Board an application for suspension of deportation or special rule cancellation of removal filed by an alien described in § 240.61, provided:

(1) In the case of a national of El Salvador described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 31, 1996 (with an administrative grace period extending to February 16, 1996), or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(2) In the case of a national of Guatemala described in § 240.61(a)(1), the alien filed a complete asylum application on or before January 3, 1995, or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the appli[redacted]n is still pending adjudication by t[redacted]ce;

(3) In the case of an individual described in § 240.61(a) (2) or (3), the individual's asylum application is pending adjudication by the Service;

(4) In the case of an individual described in § 240.61(a) (4) or (5), the individual's parent or spouse has an application pending with the Service under this subpart H or has been granted relief by the Service under this subpart.

(b) *Immigration Court.* The Immigration court shall have exclusive jurisdiction over an application for suspension of deportation or special rule cancellation of removal filed pursuant to section 309(f)(1) (A) or (B) of IIRIRA, as amended by NACARA, by an alien who has been served Form I–221, Order to Show Cause, or Form I–862, Notice to Appear, after a copy of the charging document has been filed with the Immigration court, unless the alien is covered by one of the following exceptions:

(1) *Certain ABC class members.* (i) The alien is a registered *ABC* class member for whom proceedings before the immigration judge or the Board were administratively closed or continued (including those aliens who had final orders of deportation or removal who have filed and been granted a Motion to Reopen as required under 8 CFR 3.43);

(ii) The alien is eligible for benefits of the *ABC* settlement agreement and has not had the *de novo* asylum adjudication under the settlement agreement; and

(iii) The alien has not moved for and been granted a motion to recalendar proceedings before the Immigration Court or the Board to request suspension of deportation.

(2) *Spouses, children, unmarried sons, and unmarried daughters.* (i) The alien is described in § 240.61(a)(4) or (5);

(ii) The alien's spouse or parent is described in § 240.61(a)(1), (a)(2), or (a)(3) and has Form I–881 pending with the Service; and

(iii) The alien's proceedings before the Immigration Court have been administratively closed, or the alien's proceedings before the Board have been continued, to permit the alien to file an application for suspension of deportation or special rule cancellation of removal with the Service.

§ 240.63 Application process.

(a) Except as provided in paragraph (b) of this section, the application must be made on a Form I–881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100 (NACARA)), and filed in accordance with the instructions for that form. Each application must be filed with the filing and fingerprint fees as provided in § 103.7(b) of this subchapter, or request for fee waiver, as provided in § 103.7(c) of this subchapter. The fact that an applicant has also applied for asylum does not exempt the applicant from the fingerprinting fees associated with the Form I–881.

(b) *Applications filed with EOIR.* If jurisdiction rests with the Immigration Court under § 260.62(b), the application must be made on the Form I–881, if filed subsequent to the effective date of the interim or final rule. The application form, along with any supporting documents, must be filed with the Immigration Court and served on the Service's district counsel in accordance with the instructions for the form. Applications for suspension of deportation or special rule cancellation of removal filed prior to the effective date of the interim or final rule shall be filed on Form EOIR–40, Application for Suspension of Deportation.

(c) *Applications filed with the Service.* If jurisdiction rests with the Service under § 240.62(a), the Form I–881 and supporting documents must be filed at the appropriate Service Center in accordance with the instructions for the form.

§ 240.64 Eligibility—general.

(a) *Burden and standard of proof.* The burden of proof is on the applicant to establish by a preponderance of the evidence that he or she is eligible for suspension of deportation or special rule cancellation of removal and that discretion should be exercised to grant relief.

(b) *Calculation of continuous physical presence and certain breaks in presence.* For purposes of calculating continuous physical presence under this section, section 309(c)(5)(A) of IIRIRA and section 240A(d)(1) of the Act shall not apply to persons described in § 240.61.

(1) For applications for suspension of deportation made under former section 244 of the Act, as in effect prior to April 1, 1997, the burden of proof is on the applicant to establish that any breaks in continuous physical presence were brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

(2) For applications for special rule cancellation of removal made under section 309(f)(1) of IIRIRA, as amended by NACARA, the applicant shall be considered to have failed to maintain continuous physical presence in the United States if he or she has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days. The burden is on the applicant to establish that any period of absence less than 90 days was brief, casual, and innocent and did not meaningfully interrupt the period of continuous physical presence in the United States.

(3) For all applications made under this subpart, a period of continuous physical presence is terminated whenever an alien is removed from the United States under an order issued pursuant to any provision of the Act or the alien has voluntarily departed under the threat of deportation or when the departure is made for purposes of committing an unlawful act.

(4) The requirements of continuous physical presence in the United States under this subpart shall not apply to an alien who:

(i) Has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(ii) At the time of the alien's enlistment or induction was in the United States.

(c) *Factors relevant to extreme hardship.* Extreme hardship is decided on a case-by-case basis, taking into account the particular facts and circumstances of the claim and considering the factors enumerated in § 240.58. For purposes of evaluating eligibility for special rule cancellation of removal under this subpart, the factors enumerated in § 240.58 pertaining to extreme hardship resulting from deportation shall apply equally to extreme hardship resulting from removal.

§ 240.65 Eligibility for suspension of deportation.

(a) To establish eligibility for suspension of deportation under this section, the applicant must be described in § 240.61, must establish that he or she is eligible under former section 244 of the Act, as in effect prior to April 1, 1997, must not be subject to any bars to eligibility in former section 242B(e) of the Act, as in effect prior to April 1, 1997, or any other provisions of law, and must not have been convicted of an aggravated felony or be an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997 (relating to Nazi persecution and genocide).

(b) *General rule.* To establish eligibility for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any

law of the United States, except the provisions specified in paragraph (c) of this section, and must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 7 years immediately preceding the date the application was filed;

(2) During all of such period the alien was and is a person of good moral character; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Aliens deportable on criminal or certain other grounds.* To establish eligibility for suspension of deportation under former section 244(a)(2) of the Act, as in effect prior to April 1, 1997, an alien who is deportable under paragraph (2), (3), or (4) of former section 241(a) of the Act, as in effect prior to April 1, 1997 (relating to criminal activity, document fraud, failure to register, and security threats), must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for deportation;

(2) During all of such period the alien has been and is a person of good moral character; and

(3) The alien's deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien, or to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(d) *Battered spouses and children.* To establish eligibility for suspension of deportation under former section 244(a)(3) of the Act, as in effect prior to April 1, 1997, an alien must be deportable under any law of the United States, except former section 241(a)(1)(G) of the Act, as in effect prior to April 1, 1997) (relating to marriage fraud), and except the provisions specified in paragraph (c) of this section, and must establish:

(1) The alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date the application was filed;

(2) The alien has been battered or subjected to extreme cruelty in the United States by a spouse or parent who is a United States citizen or lawful permanent resident (or is the parent of a child of a United States citizen or lawful permanent resident and the child has been battered or subjected to extreme cruelty in the United States by such citizen or permanent resident parent); and

(3) During all of such time in the United States the alien was and is a person of good moral character; and

(4) The alien's deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's parent or child.

§ 240.66 Eligibility for special rule cancellation of removal.

(a) To establish eligibility for special rule cancellation of removal, the applicant must show he or she is eligible under section 309(f)(1) of IIRIRA, as amended by section 203 of NACARA. The applicant must be described in § 240.61, must be inadmissible or deportable, must not be subject to any bars to eligibility in sections 240(b)(7), 240B(d), or 240A(c) of the Act, or any other provisions of law, and must not have been convicted of an aggravated felony or be an alien described in section 241(b)(3)(B)(i) of the Act (relating to persecution of others).

(b) *General rule.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, the alien must establish:

(1) The alien is not inadmissible under paragraph (2) or (3) of section 212(a) or deportable under paragraph (2), (3) or (4) of section 237(a) of the Act (relating to criminal activity, document fraud, failure to register, and security threats);

(2) The alien has been physically present in the United States for a continuous period of 7 years immediately preceding the date the application was filed;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in extreme hardship to the alien, or to the alien's spouse, parent or child who is a United States citizen or an alien lawfully admitted for permanent residence.

(c) *Aliens inadmissible or deportable on criminal or certain other grounds.* To establish eligibility for special rule cancellation of removal under section 309(f)(1)(B) of IIRIRA, as amended by section 203 of NACARA, the alien must be described in § 240.61 and establish:

(1) The alien is inadmissible under section 212(a)(2) of the Act (relating to criminal activity), or deportable under section 237(a)(2) (other than section 237(a)(2)(A)(iii), relating to aggravated felony convictions), or 237(a)(3) of the Act (relating to criminal activity, document fraud, and failure to register);

(2) The alien has been physically present in the United States for a continuous period of not less than 10 years immediately following the commission of an act, or the assumption of a status, constituting a ground for removal;

(3) The alien has been a person of good moral character during the required period of continuous physical presence; and

(4) The alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child, who is a United States citizen or an alien lawfully admitted for permanent residence.

§ 240.67 Procedure for interview before an asylum officer.

(a) *Fingerprinting requirements.* The Service will notify each applicant 14 years of age or older to appear for an interview only after the applicant has complied with fingerprinting requirements pursuant to § 103.2(e) of this subchapter, and the Service has received a definitive response from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed. A definitive response that a full criminal background check on an applicant has been completed includes:

(1) Confirmation from the FBI that an applicant does not have an administrative or criminal record;

(2) Confirmation from the FBI that an applicant has an administrative or a criminal record; or

(3) Confirmation from the FBI that two properly prepared fingerprint cards (Form FD–258) have been determined unclassifiable for the purpose of conducting a criminal background check and have been rejected.

(b) *Interview.* (1) The asylum officer shall conduct the interview in a non-adversarial manner and, except at the request of the applicant, separate and apart from the general public. The purpose of the interview shall be to elicit all relevant and useful information bearing on the applicant's eligibility for suspension of deportation or special rule cancellation of removal. If the applicant has an asylum application pending with the Service, the asylum officer shall also elicit information relating to the application for asylum in accordance with § 208.9 of this subchapter. At the time of the interview,

the applicant must provide complete information regarding the applicant's identity, including name, date and place of birth, and nationality, and may be required to register this identity electronically or through any other means designated by the Attorney General.

(2) The applicant may have counsel or a representative present, may present witnesses, and may submit affidavits of witnesses and other evidence.

(3) An applicant unable to proceed with the interview in English must provide, at no expense to the Service, a competent interpreter fluent in both English and a language in which the applicant is fluent. The interpreter must be at least 18 years of age. The following individuals may not serve as the applicant's interpreter: the applicant's attorney or representative of record; a witness testifying on the applicant's behalf; or, if the applicant also has an asylum application pending with the Service, a representative or employee of the applicant's country of nationality, or, if stateless, country of last habitual residence. Failure without good cause to comply with this paragraph may be considered a failure to appear for the interview for purposes of § 240.68.

(4) The asylum officer shall have authority to administer oaths, verify the identify of the applicant (including through the use of electronic means), verify the identify of any interpreter, present and receive evidence, and question the applicant and any witnesses.

(5) Upon completion of the interview, the applicant or the applicant's representative shall have an opportunity to make a statement or comment on the evidence presented. The asylum officer may, in the officer's discretion, limit the length of such statement or comment and may require its submission in writing. Upon completion of the interview, the applicant shall be informed that the applicant must appear in person to receive and to acknowledge receipt of the decision and any other accompanying material at a time and place designated by the asylum officer, except as otherwise provided by the asylum officer.

(6) The asylum officer shall consider evidence submitted by the applicant with the application, as well as any evidence submitted by the applicant before or at the interview. As a matter of discretion, the asylum officer may grant the applicant a brief extension of time following an interview during which the applicant may submit additional evidence.

§ 240.68 Failure to appear at an interview before an asylum officer or failure to follow requirements for fingerprinting.

Failure to appear for a scheduled interview without prior authorization may result in dismissal of the application or waiver of the right to an interview. Failure to comply with fingerprint processing requirements without good cause may result in dismissal of the application or waiver of the right to an adjudication by an asylum officer. Failure to appear shall be excused if the notice of the interview or fingerprint appointment was not mailed to the applicant's current address and such address had been provided to the Office of International Affairs by the applicant prior to the date of mailing in accordance with section 265 of the Act and regulations promulgated thereunder, unless the asylum officer determines that the applicant received reasonable notice of the interview or fingerprinting appointment. Failure to appear at the interview or fingerprint appointment shall be excused if the applicant demonstrates that such failure was the result of exceptional circumstances.

§ 240.69 Reliance on information compiled by other sources.

In determining whether an applicant is eligible for suspension of deportation or special rule cancellation of removal, the asylum officer may rely on material described in § 208.12 of this chapter. Nothing in this subpart shall be construed to entitle the applicant to conduct discovery directed towards records, officers, agents, or employees of the Service, the Department of Justice, or the Department of State.

§ 240.70 Decision by the Service.

(a) *Service of decision.* Unless otherwise provided by an Asylum Office, the applicant will be required to return to the Asylum Office to receive service of the decision on the applicant's application. If the applicant does not speak English fluently, the applicant shall bring an interpreter when returning to the office to receive service of the decision.

(b) *Grant of suspension of deportation.* An asylum officer may grant suspension of deportation to an applicant eligible to apply for this relief with the Service who qualifies for suspension of deportation under former section 244(a)(1) of the Act, as in effect prior to April 1, 1997, who is not an alien described in former section 241(a)(4)(D) of the Act, as in effect prior to April 1, 1997, and who admits deportability under any law of the United States, excluding paragraph (2), (3), or (4) of former section 241(a) of the Act, as in effect prior to April 1, 1997. If the Service has made a preliminary decision to grant the applicant suspension of deportation under this subpart, the applicant shall be notified of that decision and asked to sign an admission of deportability or inadmissibility. The applicant must sign the concession before the Service may grant the relief sought. If suspension of deportation is granted, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that suspension of deportation is granted.

(c) *Grant of cancellation of removal.* An asylum officer may grant cancellation of removal to an applicant who is eligible to apply for this relief with the Service, and who qualifies for cancellation of removal under section 309(f)(1)(A) of IIRIRA, as amended by section 203 of NACARA, and who admits deportability under section 237(a), excluding paragraphs (2), (3), and (4), of the Act, or inadmissibility under section 212(a), excluding paragraphs (2) or (3), of the Act. If the Service has made a preliminary decision to grant the applicant cancellation of removal under this subpart, the applicant shall be notified of that decision and asked to sign an admission of deportability or inadmissibility. The applicant must sign the concession before the Service may grant the relief sought. If the Service grants cancellation of removal, the Service shall adjust the status of the alien to lawful permanent resident, effective as of the date that cancellation of removal is granted.

(d) *Referral of the application.* Except as provided in paragraphs (e) and (f) of this section, and unless the applicant is granted asylum or is in lawful immigrant or non-immigrant status, an asylum officer shall refer the application for suspension of deportation or special rule cancellation of removal to the Immigration Court for adjudication in deportation or removal proceedings, if:

(1) The applicant is not clearly eligible for suspension of deportation under former section 244(a)(1) of the Act as in effect prior to April 1, 1997, or for cancellation of removal under section 309(f)(1)(A of IIRIRA, as amended by NACARA;

(2) The applicant does not appear to merit relief as a matter of discretion;

(3) The applicant appears to be eligible for suspension of deportation or special rule cancellation of removal under this subpart, but does not admit deportability or inadmissibility; or

(4) The applicant failed to appear for a scheduled interview with an asylum officer or failed to comply with

fingerprinting processing requirements and such failure(s) was not excused by the Service, unless the application is dismissed.

(e) *Dismissal of the application.* An asylum officer shall dismiss without prejudice an application for suspension of deportation or special rule cancellation of removal submitted by an applicant who has been granted asylum, or who is in lawful immigrant or non-immigrant status. An asylum officer may also dismiss an application for failure to appear, pursuant to § 240.68.

(f) *Special provisions for certain ABC class members whose proceedings before EOIR were administratively closed or continued.* The following provisions shall apply with respect to an *ABC* class member who was in proceedings before the Immigration Court or the Board, and those proceedings were closed or continued pursuant to the *ABC* settlement agreement:

(1) *Suspension of deportation or asylum granted.* If an asylum officer grants asylum or suspension of deportation, the previous proceedings before the Immigration Court or Board shall be terminated as a matter of law on the date relief is granted.

(2) *Asylum denied and application for suspension of deportation not approved.* If an asylum officer denies asylum and does not grant the applicant suspension of deportation, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation. In the case where jurisdiction rests with the Board, an application for suspension of deportation that is referred to the Board will be remanded to the immigration judge for adjudication.

(g) *Special provisions for dependents whose proceedings before EOIR were administratively closed or continued.* If an asylum officer grants suspension of deportation or special rule cancellation of removal to an applicant described in § 240.61(a)(4) or (a)(5), whose proceedings before EOIR were administratively closed or continued, those proceedings shall terminate as of the date the relief is granted. If suspension of deportation or special rule cancellation of removal is not granted, the Service shall move to recalendar proceedings before the Immigration Court or resume proceedings before the Board, whichever is appropriate. The Service shall refer to the Immigration Court or the Board the application for suspension of deportation or special rule cancellation of removal. In the case where jurisdiction rests with the Board, an application for suspension of deportation or special rule cancellation of removal that is referred to the Board will be remanded to the immigration judge for adjudication.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

9. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

10. Section 274a.12 is amended by revising the first sentence in paragraph (c)(10), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(10) An alien who has filed an application for suspension of deportation under section 244 of the Act (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the Act, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, enacted as Public Law 104–208 (110 Stat. 3009–625) (as amended by the Nicaraguan Adjustment and Central American Relief Act (NACARA), title II of Public Law 105–100 (111 Stat. 2160, 2193) and whose application has been accepted by the Service or EOIR.

* * *

* * * * *

PART 299—IMMIGRATION FORMS

11. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

12. Section 299.1 is amended in the table by adding the entry for Form "I–881" in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
.	.	.
I–881	10–01–98	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100).
.	.	.

13. Section 299.5 is amended in the table by adding the entry for Form "I–881" in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
.	.	.
I–881	Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105–100).	1115–xxxx.
.	.	.

Dated: November 17, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–31348 Filed 11–23–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–144–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections of the outboard nacelle struts to detect fatigue cracking of the strut skin and spring beam support fittings, and to detect cracked or loose fasteners of the support fittings; and corrective actions, if necessary. This proposal also provides for optional terminating action for the repetitive inspection requirements. This proposal is prompted by reports indicating that several cracked or broken spring beam support fittings were found on the outboard nacelle struts. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking and loose fasteners, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

DATES: Comments must be received by January 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–144–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports from three operators indicating findings of six cracked or broken spring beam support fittings on the outboard struts of Model 747 series airplanes. Four of the cracked or broken support fittings were found on strut number 1 (left outboard strut), and two others were found on strut number 4 (right outboard strut).

An operator of a Model 747–200 combi airplane that had accumulated 76,372 total flight hours and 14,501 total flight cycles reported finding a 5-inch crack in the inboard skin panel during a preflight check on the number 1 strut, and further investigation revealed a fractured support fitting on the inboard side of that strut. An operator of a Model 747–200F airplane equipped with General Electric CF6–50 series engines, which had accumulated 71,609 total flight hours and 14,808 total flight cycles, reported findings of a severed support fitting on the number 1 strut.

Another operator of a Model 747–200F airplane equipped with Pratt & Whitney JT9D–70 series engines reported findings of two broken support fittings, one on the number 1 strut and one on the number 4 strut. A report indicated that, during a heavy maintenance preliminary check, a misaligned stripe on the outboard nacelle strut was found. Further investigation revealed a broken spring beam on the outboard side of the number 4 strut and a broken support fitting. This airplane had accumulated 72,426 total flight hours and 18,142 total flight cycles. An inspection of the remaining fleet of similar airplanes revealed findings of two fractured support fittings on an airplane that had accumulated 66,035 total flight hours and 16,709 total flight cycles.

All of these operators reported findings of cracked or severed spring beam support fittings located on the inboard side of the strut and attached to the strut skin. These conditions, if not corrected, could cause fatigue cracking of the strut skin and spring beam support fittings on the outboard nacelle struts, which could result in failure of the outboard nacelle struts and consequent separation of the engine.

Other Relevant Rulemaking

The FAA has previously issued AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), which currently requires modification of the nacelle strut and wing structure, inspections and checks to detect discrepancies, and correction of discrepancies. The corrective action specified by that AD included a modification to improve the damage tolerance capability and durability of the strut-to-wing attachments, reduce reliance on non-routine inspections of those attachments, and prevent failure of the strut and consequent separation of the engine. Although the accomplishment of the modification required by that AD constitutes terminating action for the requirements of that AD, this proposed AD specifies that same modification as an optional terminating action.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–

54A2172, dated February 23, 1995, and Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996, which describe similar procedures for detecting cracks of the strut skin and spring beam support fittings, or detecting cracked or loose fasteners of the support fittings; and corrective actions, if necessary.

The initial inspections differ from the repetitive inspections. The initial inspections include a visual inspection of the four spring beam support fittings, a detailed visual inspection of the support fitting at the fasteners using a borescope, a visual inspection of the fasteners, and a detailed visual inspection of the strut skin. The repetitive inspections include an inspection of the support fitting at fasteners through the horizontal flange, an inspection of the fasteners through the vertical flange for loose collars, an external visual inspection for loose fastener heads, and a detailed visual inspection of the strut skin.

The terminating action in both service bulletins specifies an open-hole high frequency eddy current (HFEC) inspection and, if no cracks are found, rework of the fastener holes and installation of new fasteners. For airplanes on which any cracks are found during the HFEC inspection, Part III of the Accomplishment Instructions of the Boeing alert service bulletin specifies contacting the manufacturer for repair instructions. However, for those same airplanes, Revision 1 of the Boeing service bulletin adds a new section to the Accomplishment Instructions ("Part IV. Replacement"), which specifies procedures for replacing any cracked spring beam support fitting with a new support fitting. Accomplishment of this replacement action would eliminate the need for the repetitive inspections of that new support fitting.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747 series airplanes of this same type design, the proposed AD would require accomplishment of the actions specified by the service bulletins described previously, except as discussed below. The proposed AD also provides for several optional terminating actions. If no cracks are found, rework of the fastener holes and installation of new fasteners would constitute terminating action for the repetitive inspection requirements of this AD. If cracks are found during an open-hole HFEC inspection, replacement of the spring beam support fittings with new fittings constitutes optional terminating action for the repetitive inspection requirements of this AD.

Differences Between Proposed Rule and Service Information

Operators should note the following differences between the proposed rule and the service information:

Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, and Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996, provide procedures for terminating actions for the repetitive inspections. However, this proposed AD specifies those actions as optional terminating actions since the FAA has previously issued AD 95–13–07, which requires a terminating modification that is considered acceptable for compliance with the optional terminating action specified by this AD.

Although the Boeing alert service bulletin specifies that the manufacturer may be contacted for the disposition of certain repair conditions, this proposal would require that the repair of those conditions be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 145 airplanes of the affected design in the worldwide fleet. The FAA estimates that 9 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $8,640, or $960 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the fastener hole inspection and modification, it would take approximately 20 work hours (excluding removal of the strut and spring beam) to accomplish it, at an average labor rate of $60 per hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $1,200 per strut.

Should an operator elect to accomplish the replacement of the spring beam support fittings with new support fittings, it would take approximately 108 work hours (excluding removal of the strut and spring beam) to accomplish it, at an average labor rate of $60 per hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,480 per support fitting.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BOEING: Docket 98–NM–144–AD.

Applicability: Model 747 series airplanes, line numbers 202 through 886 inclusive, equipped with General Electric Model CF6–45/50 and Pratt & Whitney Model JT9D–70 series engines; on which the strut/wing modification has not been accomplished in accordance with AD 95–13–07, amendment 39–9287; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the strut skin and spring beam support fittings on the outboard nacelle struts, and cracked or loose fasteners of the support fittings, which could result in failure of the outboard nacelle struts and consequent separation of the engine, accomplish the following:

(a) Prior to the accumulation of 13,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the outboard nacelle struts, as specified by paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(1) Inspect the spring beam support fittings to detect cracks of the support fittings.

(2) Inspect the spring beam support fittings at the fasteners, using a borescope to detect cracks of the support fittings.

(3) Inspect the fasteners of the outer spring beam support fittings to detect cracked or loose fasteners.

(4) Inspect the strut skin to detect cracks.

(b) If no discrepancy is found during any inspection required by paragraph (a) of this AD, perform detailed visual inspections of the outboard nacelle struts to detect any discrepancies specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995; or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996. Perform the inspection at the times specified in paragraph (c) or (d) of this AD, as applicable.

(1) Perform a detailed visual inspection, using a borescope, of only the outer spring beam support fittings at the fasteners through the horizontal flange to detect cracks of the support fittings.

(2) Perform a detailed visual inspection, using a borescope, of the fasteners through the vertical flange of only the outer spring beam support fittings to detect loose collars.

(3) Perform an external detailed visual inspection of only the outer spring beam support fittings to detect cracked or loose fastener heads.

(4) Perform a detailed visual inspection of the strut skin to detect cracks.

(c) For Model 747–SR series airplanes equipped with General Electric Model CF6–45 series engines, on which no discrepancy is found during any inspection required by paragraph (a) of this AD: Perform the inspection required by paragraph (b) of this AD within 1,600 flight cycles following the accomplishment of the inspection required by paragraph (a) of this AD; and thereafter at intervals not to exceed 1,600 flight cycles until accomplishment of the optional terminating action specified in paragraph (g) of this AD.

(d) For Model 747 series airplanes other than those identified in paragraph (c) of this AD, on which no discrepancy is found during any inspection required by paragraph (a) of this AD: Perform the inspection required by paragraph (b) of this AD within 1,000 flight cycles following the accomplishment of the inspection required by paragraph (a) of this AD; and thereafter at intervals not to exceed 1,000 flight cycles until accomplishment of the optional terminating action specified in paragraph (g) of this AD.

(e) If any cracking is found in the spring beam support fittings during any inspection required by this AD, prior to further flight, replace the support fitting with a new support fitting, in accordance with the Accomplishment Instructions in Part IV. of Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996. Accomplishment of this replacement constitutes terminating action for the repetitive inspection requirements of this AD for only the new support fitting. Continue the repetitive inspections required by paragraph (b) of this AD for the other support fitting locations until accomplishment of the terminating action specified by paragraph (g)(1) or (g)(2) of this AD, as applicable.

(f) If any crack is found on the strut skin, or if any cracked or loose fastener or collar is found during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

(g) Accomplishment of an open-hole high frequency eddy current (HFEC) inspection, in accordance with Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996; and either paragraph (g)(1) or (g)(2) of this AD, as applicable; constitutes terminating action for the requirements of this AD.

(1) If no discrepancy is found during the HFEC inspection, prior to further flight, rework the fastener holes and install new fasteners, in accordance with Figures 6 and 7 of Boeing Alert Service Bulletin 747–54A2172, dated February 23, 1995, or Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(2) If any cracking is found during the HFEC inspection, prior to further flight, replace any cracked spring beam support fitting with a new support fitting, in accordance with Part IV. of the Accomplishment Instructions specified by Boeing Service Bulletin 747–54A2172, Revision 1, dated January 4, 1996.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31327 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–76–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing 747 series airplanes, that currently requires a one-time inspection to detect cracking and corrosion of various areas at all four nacelle struts; and repair, if necessary. This action would require new repetitive inspections to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. In addition, this action would expand the applicability of the existing AD to include additional airplanes. This proposal is prompted by the availability of new service instructions for detecting fatigue cracking that would not have been detected by the required actions of the existing AD. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking

and loose or missing fasteners, which could result in failure of an outboard nacelle strut, and consequent separation of the nacelle from the wing.

DATES: Comments must be received by January 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–76–AD." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–76–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 31, 1996, the FAA issued AD 96–26–51, amendment 39–9876 (62 FR 1038, January 8, 1997), applicable to certain Boeing 747 series airplanes, to require a one-time detailed visual inspection to detect cracking and corrosion of various areas at all four nacelle struts; and repair, if necessary. That action was prompted by reports of cracking of the aft torque bulkhead at the inboard and outboard nacelle struts. That action was applicable only to Model 747 series airplanes that were equipped with Rolls-Royce-type engines. The requirements of that AD were intended to detect and correct cracking of an inboard or outboard nacelle strut, which could result in failure of the nacelle strut and consequent separation of the nacelle from the wing.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has learned that the original report of fatigue cracking on the inboard strut was made in error. In fact, what was at first thought to be a fatigue crack on the inboard strut was later determined to be merely a surface scratch in the finish of the structure. Furthermore, the FAA has determined from the service history of the Model 747 airplane that only the outboard strut has proved to be susceptible to fatigue cracking of the aft torque bulkhead. Investigation has revealed that this is because the applied loading spectrum and design configuration of the outboard strut are significantly different from those of the inboard strut.

In addition, since the issuance of AD 96–26–51, the FAA has received an additional report of fatigue cracking found on another Model 747 airplane, which also was equipped with Rolls-Royce-type engines. The affected airplane had accumulated 18,663 total flight cycles. That airplane was found to have cracking on both the inboard and outboard vertical chords of the aft torque bulkhead on the number 4 nacelle strut. Specifically, two cracks of 0.53 inch and 0.34 inch in length were found on the inboard vertical chord of the aft torque bulkhead; and a single 0.12-inch crack was found on the outboard vertical chord of the aft torque bulkhead.

In addition, whereas the strut design configurations and applied loading spectra are significantly different for the inboard and outboard struts, analysis shows that this is not the case for many of the different engine types that can be installed on the outboard strut. Therefore, outboard struts equipped with Rolls-Royce Model RB211, General Electric Model CF6–45/50, or Pratt & Whitney Model JT9D–70 series engines also may be susceptible to fatigue cracking.

Also, the FAA has received reports of nine other nacelle struts that were found to have loose fasteners at the attachment between the vertical flange of the lower spar fitting and the aft torque bulkhead; there have been no reports of missing fasteners at this location. The cause of the fasteners becoming loose is not yet known.

These conditions (namely, fatigue cracking of the outboard nacelle strut aft torque bulkhead web, vertical chords, and side skin; or loose fasteners where the lower spar fitting attaches to the aft torque bulkhead), if not corrected, could result in failure of an outboard nacelle strut, and consequent separation of the nacelle from the wing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997. The alert service bulletin describes procedures for repetitive detailed visual inspections to detect fatigue cracking of the web, vertical chords, and nacelle strut side skin of the aft torque bulkheads of the number 1 and 4 nacelle struts; and repair, if necessary. The repetitive inspections will also detect loose or missing fasteners on the lower spar fitting of the aft torque bulkhead. In addition, the alert service bulletin describes procedures for various repetitive non-destructive test (NDT) inspections to detect fatigue cracking of the aft torque bulkhead of the numbers 1 and 4 nacelle struts; and repair, if necessary. The NDT inspections consist of ultrasonic inspections, surface eddy current inspections, and open-hole eddy current inspections. The type of NDT inspection to be done depends upon the type of nacelle strut on the affected airplane. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede all requirements of AD 96–26–51. This proposed AD would require repetitive detailed visual inspections and, for certain engine types, NDT inspections, to detect fatigue cracking or loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts; and repair, if necessary. This proposed AD also would revise the applicability of the existing AD to include additional airplanes having engine types in addition to those specified in the existing AD.

This proposed AD also provides for an optional terminating action for the repetitive inspections proposed for airplanes equipped with General Electric CF6–45/50 or Pratt & Whitney JT9D–70 nacelle struts. [This same terminating action, although optional for this proposed AD, is required by another AD, namely, AD 95–13–07, amendment 39–9287 (60 FR 33336, June 28, 1995), as discussed below]. The FAA notes that there is, as yet, no terminating action for those airplanes equipped with Rolls-Royce RB–211 nacelle struts.

The actions above would be required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin provides for certain repair actions and specifies that the manufacturer may be contacted for disposition of other repair conditions, this proposal would require the repair of all conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative who has been authorized by the FAA to make such findings.

In addition, operators should note that there is a typographical error on Sheet 3 of Figure 1 of the alert service bulletin. The logic block that contains a reference to "Group 1 airplanes" should have read "Groups 1 and 2 airplanes."

Other Relevant Rulemaking

The FAA has previously issued AD 95–13–07, which requires modification of airplanes equipped with General Electric CF6–45/50 or Pratt & Whitney JT9D–70 nacelle struts. Accomplishment of the modification required by that AD constitutes terminating action for the requirements of this proposed AD. However, this proposed AD would not affect the current requirements of AD 95–13–07.

Cost Impact

There are approximately 273 airplanes of the affected design in the worldwide fleet. The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD.

The new inspections that are proposed in this AD action for airplane Groups 3 and 4 would take approximately 24 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators of airplanes in Groups 3 and 4 is estimated to be $34,560, or $1,440 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

There currently are no affected airplanes on the U.S. Register identified as Group 1 or 2 in the referenced alert service bulletin. The airplanes included in Groups 1 and 2 of the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected Group 1 or 2 airplane be imported and placed on the U.S. Register in the future, it would require approximately 78 work hours to accomplish the new inspections proposed in this AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed AD on airplane Groups 1 and 2 would be $4,680 per airplane, per inspection cycle.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9876 (62 FR 1038, January 8, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 98-NM–76-AD. Supersedes AD 96–26–51, Amendment 39–9876.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997, certificated in any category:

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking and loose or missing fasteners of the aft torque bulkheads of the outboard nacelle struts, which could result in failure of an outboard nacelle strut, and consequent separation of the nacelle from the wing, accomplish the following:

(a) For airplanes identified as Groups 1 and 2 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 12,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking and loose or missing fasteners. The inspection shall be accomplished in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997.

Note 2: There is a typographical error on Sheet 3 of Figure 1 of the alert service bulletin. The words "Group 1 airplanes" should read "Groups 1 and 2 airplanes."

(1) If no cracking, and if no loose or missing fastener is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking, or if any loose or missing fastener is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company designated engineering representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings.

(b) For airplanes identified as Groups 1 and 2 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 12,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a non-destructive test (NDT) inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking. The NDT inspection shall be accomplished in accordance with Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997.

Note 3: The alert service bulletin refers to a variety of NDT inspections, consisting of ultrasonic inspections, surface eddy current inspections, and open-hole eddy current inspections. The logic diagram in Figure 1 of the alert service bulletin states the conditions under which each of these inspections is to be performed.

(1) If no cracking is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin.

(2) If any cracking is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin. Where the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(c) For airplanes identified as Groups 3 and 4 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Prior to the accumulation of 12,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of the aft torque bulkheads of the number 1 and number 4 nacelle struts to detect fatigue cracking and loose or missing fasteners. The inspection shall be accomplished in accordance with Part I of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997.

(1) If no cracking, and if no loose or missing fastener is found, repeat the inspection thereafter at the intervals specified in Figure 1 of the alert service bulletin, until the applicable requirements of paragraph (d) are accomplished.

(2) If any cracking, or if any loose or missing fastener is found, prior to further flight, repair in accordance with Part III of the alert service bulletin. Where the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

(d) For airplanes identified as Groups 3 and 4 airplanes in Boeing Alert Service Bulletin 747–54A2184, dated July 3, 1997: Accomplishment of the nacelle strut modifications required in AD 95–13–07, amendment 39–9287 (applicable to airplanes equipped with either General Electric CF6–45/50 or Pratt & Whitney JT9D–70 nacelle struts), constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31326 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, that would have required repetitive eddy current inspections to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. That proposal was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. This new action revises the proposed rule by requiring ultrasonic inspections, in lieu of the eddy current inspection proposed previously. This action also reduces the compliance time to perform the initial inspection, increases the repetitive inspection intervals, and adds flight hours as a compliance option. The actions specified by this new proposed AD are intended to detect and correct fatigue cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings.

DATES: Comments must be received by December 21, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No 95–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 95–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Airbus Model A300–600 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 6, 1996 (61 FR 8897). That NPRM would have required repetitive eddy current inspections to detect cracks on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. That NPRM was prompted by reports of cracking due to fatigue-related stress in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. That condition, if not corrected, could result in reduced structural integrity of the wings.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has given due consideration to the comments received in response to the NPRM. The comments that have prompted a change in the proposal are explained below.

Request To Reference New Revision of the Service Bulletin

Two commenters [the Air Transport Association (ATA) of America and the manufacturer] request that the FAA revise the proposed AD to reference a new revision of the service bulletin referenced in the proposed AD.

The FAA concurs with the commenters' request to revise the proposed AD to reference a new version of the service bulletin. Since issuance of the NPRM, Airbus has issued Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997. That service bulletin describes procedures for an ultrasonic inspection, in lieu of the eddy current inspection described in the original issue of the service bulletin (which was referenced in the original NPRM as the appropriate source of service information), to detect cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, and various follow-on actions. If no cracking is detected, those follow-on actions consist of repetitive ultrasonic inspections. If any cracking is detected, the follow-on actions include installation of an access door or doors, repetitive eddy current inspections to confirm the presence of a crack, and blending of the crack or cracks, if necessary. If the blended area is 50 millimeters (mm) long or more, or exceeds 2 mm in depth, the service bulletin provides for repair in accordance with procedures to be provided by Airbus.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified Airbus Service Bulletin A300–57–6062, Revision 02, as mandatory and issued a new French airworthiness directive, 95–063–177(B)R3, dated July 2, 1997, in order to assure the continued airworthiness of these airplanes in France.

The FAA finds that accomplishment of the actions specified in Airbus Service Bulletin A300–57–6062, Revision 02, would adequately address the identified unsafe condition, while also providing an inspection method that limits the number of work hours necessary to gain access to the areas to be inspected, thereby minimizing the economic impact of the inspection. Therefore, the FAA has revised the proposed AD to specify Revision 02 of the service bulletin as the appropriate source of service information. The cost impact information of the proposed AD also has been revised to reflect a reduction in the number of work hours necessary to complete the inspection procedure.

Request To Adjust Inspection Thresholds and Intervals

One commenter, the manufacturer, requests that the FAA revise the proposed AD to require inspection thresholds and repetitive intervals to be calculated based on average flight time using the "adjustment for range" formula referenced in both the original and revised service bulletins. Such adjustment is designed to account for variations in the amount of fatigue damage due to loading and flight length and may result in reductions in the inspection threshold and intervals.

The FAA does not concur that operators should be required to calculate inspection thresholds and repetitive intervals using the "adjustment for range" formula. Use of such a formula would introduce a planning burden for the operator, make enforcement difficult for the FAA, and potentially introduce differences between FAA inspectors and operators concerning when the inspection thresholds and intervals should be recalculated.

However, under the provisions of paragraph (d)(2) of this supplemental NPRM, the FAA may approve requests for adjustment of the inspection thresholds and intervals. The request for extension should be based on the "adjustment for range" formula referenced in Airbus Service Bulletin A300–57–6062, Revision 02, and the average flight time per flight cycle used in the formula should be for an individual airplane. Average flight times for a group of airplanes may be used if flight times for all airplanes included in the group do not vary by more than 10

percent, and the flight times for individual airplanes within the group must be included with the request, for review by the FAA.

The FAA acknowledges, however, that the inspection thresholds and intervals specified in the original proposal may not be conservative, based on the utilization of certain airplanes. Also, French airworthiness directive 95–063–177(B)R3 reduces the inspection threshold specified in the original issue of French airworthiness directive 95–063–177(B), dated April 12, 1995. In consideration of the commenter's request, and in concert with the French airworthiness directive, the FAA has determined that the inspection threshold for this proposal should be reduced from 10,500 total landings, as specified in the original proposal, to 7,250 total landings. The FAA also has determined that the inspection thresholds and intervals may be calculated using flight hours; thus the inspection threshold has been revised to provide for the inspection to be performed prior to the accumulation of 17,700 total flight hours.

The repetitive inspection intervals for this proposal also have been increased from 4,500 landings to 6,500 landings or 16,000 flight hours, for airplanes on which no cracking is detected; and from 950 landings to 2,800 landings or 7,000 flight hours, for certain airplanes on which cracking is detected. Paragraphs (a), (b), and (c)(1) of this supplemental NPRM have been revised to reduce the inspection thresholds, increase the repetitive inspection intervals, and add flight hours as a compliance option.

Differences Between the Supplemental NPRM and Foreign AD

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this supplemental NPRM, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this supplemental NPRM.

Operators also should note that the inspection thresholds and intervals for this supplemental NPRM differ from those specified in the French airworthiness directive. In developing the appropriate inspection thresholds and intervals for this supplemental NPRM, the FAA considered not only the manufacturer's recommendation and the average utilization rate of the affected U.S. registered airplanes, but the safety implications involved with cracking in the radius of frame 40 adjacent to the tension bolts at the center/outer wing junction. In light of these factors, the FAA finds the proposed compliance time (7,250 total landings or 17,700 total flight hours) specified in the supplemental NPRM for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for the affected airplanes to continue to operate without compromising safety.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry would be affected by this proposed AD.

The new inspection method proposed by this supplemental NPRM would not add any new additional economic burden on affected operators, other than, for certain airplanes, the costs that are associated with the initial inspection being required earlier than specified in the original NPRM.

It would take approximately 2 work hours per airplane (1 work hour per side) to accomplish the proposed ultrasonic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this proposed inspection on U.S. operators is estimated to be $4,200, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 95–NM–150–AD.

Applicability: All Model A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To detect and correct fatigue cracking on the forward fittings in the radius of frame 40 adjacent to the tension bolts in the center section of the wings, which could result in reduced structural integrity of the wings, accomplish the following:

(a) Perform an ultrasonic inspection to detect cracking on the forward fittings in the

radius of frame 40 adjacent to the tension bolts in the center section of the wings, in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997, at the applicable time specified in either paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes that have accumulated fewer than 9,100 total landings or 22,300 total flight hours as of the effective date of this AD: Inspect at the later of the times specified in either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 7,250 total landings or 17,700 total flight hours, whichever occurs first.

(ii) Within 1,500 landings after the effective date of this AD.

(2) For airplanes that have accumulated 9,100 total landings or more and 22,300 total flight hours or more as of the effective date of this AD: Inspect within 750 landings after the effective date of this AD.

Note 2: Inspections that were accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6062, Revision 1, dated July 23, 1995, are considered acceptable for compliance with paragraph (a) of this AD.

(b) If no crack is detected during the inspection required by paragraph (a) of this AD, repeat the ultrasonic inspection required by that paragraph thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first; in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997.

(c) If any crack is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, install an access door, and perform an eddy current inspection to confirm the presence of a crack; in accordance with Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997. Accomplishment of this eddy current inspection terminates the repetitive inspection requirement of paragraph (b) of this AD.

(1) If no crack is detected during the eddy current inspection, repeat the eddy current inspection, in accordance with the service bulletin, thereafter at intervals not to exceed 6,500 landings or 16,000 flight hours, whichever occurs first.

(2) If any crack is detected during any eddy current inspection performed in accordance with paragraph (c) or (c)(1) of this AD, prior to further flight, blend out the crack and repeat the eddy current inspection in accordance with the service bulletin.

(i) If the eddy current inspection performed after the blend-out shows that the crack has been removed, and if the blend-out is equal to or less than 50 millimeters (mm) long and equal to or less than 2 mm deep, thereafter repeat the eddy current inspection at intervals not to exceed 2,800 landings or 7,000 flight hours, whichever occurs first.

(ii) If the eddy current inspection performed after the blend-out shows that the crack has not been removed, or if the blend-out is more than 50 mm long or more than 2 mm deep, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent).

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(d)(2) Operators may request an extension to the compliance times of this AD in accordance with the "adjustment-for-range" formula found in Paragraph 1.B.(5) of Airbus Service Bulletin A300–57–6062, Revision 02, dated January 29, 1997; and provided in A300–600 Maintenance Review Board, Section 5, Paragraph 5.4. The average flight time per flight cycle (landing) in hours used in this formula should be for an individual airplane. Average flight time for a group of airplanes may be used if all airplanes of the group have flight times differing by no more than 10 percent. If compliance times are based on the average flight time for a group of airplanes, the flight times for individual airplanes of the group must be included for FAA review.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 95–063–177(B)R3, dated July 2, 1997.

Issued in Renton, Washington, on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31323 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Request for public comments on proposed conditional exemption.

SUMMARY: The Federal Trade Commission ("the Commission") proposes granting manufacturers of residential appliances covered by its Appliance Labeling Rule ("the Rule") a conditional exemption from the Rule's prohibition against the inclusion of non-required information on the EnergyGuide labels required by the Rule. The exemption would permit appliance manufacturers to place the logo of the Department of Energy's ("DOE") and Environmental Protection Agency's ("EPA") joint "ENERGY STAR" Program on required EnergyGuides on certain appliances under specific conditions. The Commission seeks comment on its proposal to grant this conditional exemption. The Commission also proposes a non-substantive amendment to the Rule to include "Federal Trade Commission" on all EnergyGuide labels so consumers and others will be clear as to the identity of the agency with the authority to enforce the Rule.

DATES: Written comments will be accepted until January 8, 1999.

ADDRESSES: Written comments should be directed to: Secretary, Federal Trade Commission, Room H–159, Sixth St. and Pennsylvania Ave., NW, Washington, D.C. 20580. Comments about this conditional exemption to the Appliance Labeling Rule should be identified as: "Conditional exemption for ENERGY STAR, 16 CFR Part 305—Comment."

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Rm 4616, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Commission's Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule, 44 FR 66466 (Nov. 19, 1979), pursuant to a directive in section 324 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6294 ("EPCA")). The Rule requires manufacturers to disclose energy information about certain major household appliances ("covered appliances") to enable consumers purchasing appliances to compare the energy use or efficiency of competing models. The Rule initially applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule's coverage five times: in 1987 (central air conditioners, heat pumps, and certain new types of furnaces); 1989 (fluorescent lamp ballasts); 1993 (certain plumbing products); and twice in 1994 (certain lighting products, and pool heaters and certain other types of water heaters).

Manufacturers of all covered appliances must disclose specific energy consumption or efficiency information at the point of sale in the form of an EnergyGuide label that is affixed to the covered product.[1] Manufacturers must derive this information from standardized tests that EPCA directs DOE to develop.[2] Required labels for appliances and required fact sheets for heating and cooling equipment must include an energy consumption or efficiency disclosure and a "range of comparability" that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. Labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners also must contain a secondary disclosure of estimated annual operating cost based on a specified national average cost for the fuel the appliances use. The Rule prescribes specifications for the size and colors of the EnergyGuides and for the size and style of the type to be used in the required disclosures. Sample labels appear as appendices to the Rule. The Rule also prohibits the inclusion of non-required information on the EnergyGuide to ensure that such information does not detract from the required information:

No marks or information other than that specified in this part shall appear on or directly adjoining this label, except a part or publication number identification may be included on this label, as desired by the manufacturer, and the energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer. * * *[3]

16 CFR 305.11(a)(5)(i)(K).

DOE and EPA staff (informally) and an appliance manufacturer (the Maytag Company) have requested that the Commission grant a conditional exemption from this prohibition against non-required information that would allow the placement of the DOE/EPA ENERGY STAR logo on the EnergyGuides on qualifying appliances.

B. The ENERGY STAR Program

1. Description of the Program

Section 127 of the Energy Policy Act of 1992[4] directed DOE, in conjunction with EPA, utilities, and appliance manufacturers, to submit a report to the Congress assessing the potential for the development and commercialization of appliances that are substantially more efficient than required by state or federal law,[5] and that are likely to be cost-effective for consumers. The appliances contemplated in the directive include those covered by the Commission's Appliance Labeling Rule. The report, which DOE submitted to Congress in April, 1995, concluded in part that the involvement of the federal government in "market transformation" programs could have a positive effect on consumer purchasing decisions regarding higher efficiency products.

Following the report, DOE began to develop a program—originally called the ENERGY SAVER Program—to promote high efficiency household appliances and water heaters in the U.S. marketplace. Concurrently, EPA was developing a similar program—the ENERGY STAR Program—in response to a directive in section 103(g) of the Clean Air Act, 42 U.S.C. 7403(g), that encompassed home heating and cooling equipment ("HVAC equipment"). EPA also has developed ENERGY STAR Programs for lighting products, consumer electronics, office equipment, and home insulation products. Ultimately, the two programs for appliances and HVAC equipment were merged into a single program under the ENERGY STAR name. An ENERGY STAR logo can be used by Program participants in connection with qualifying products directly on the product itself or on an ENERGY STAR label or fact sheet associated with or attached to the product or used in promotional materials or advertising. The logo indicates significantly better energy performance than some specified norm (DOE's minimum efficiency standards, in the case of appliances and HVAC equipment), or indicates the incorporation of a specific energy saving feature on the product.

The Program is a partnership among DOE, EPA, product manufacturers, major national, regional, and local retailers, utilities, state energy offices, industry trade associations and the financial community. The Program's intent is to increase consumer interest in purchasing highly efficient appliances and heating and cooling equipment (as well as other building products) through promotional programs (including national and regional advertising), lower interest financing, product labeling, sales training, and consumer education.

The appliance products that are (or will be) included in DOE's component of the Program are: refrigerator-freezers, dishwashers, clothes washers, room air conditioners, and water heaters. HVAC equipment has been included since 1995 in EPA's earlier version of the ENERGY STAR Program, and there is already a mechanism in place for designating qualifying HVAC products by means of separate labels, as well as in advertising and promotional materials. EPA staff is joining in the instant request for Commission permission for the HVAC equipment manufacturers participating in the Program to include the ENERGY STAR logo on the EnergyGuides on their qualifying products.

DOE and EPA have established qualifying energy consumption criteria that specific appliance and HVAC equipment categories must meet to be included in the ENERGY STAR Program.[6] To establish its criteria, DOE held public workshops in several cities, and solicited comments from all segments of the public. DOE received comments from appliance manufacturers and retailers, utilities, state energy agencies, public interest groups, and representatives of the Canadian government.

EPA held approximately 30 public meetings, primarily at EPA Headquarters in Washington, DC, mostly in late 1995 and early 1996.

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[1] The information on the EnergyGuide also must appear in catalogs from which covered products can be ordered. Manufacturers of furnaces, central air conditioners, and heat pumps also must either provide fact sheets showing additional cost information or be listed in an industry directory that shows the cost information for their products.

[2] Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures to be used by appliance manufactures to determine their products' compliance with DOE's standards. Section 324(c)(1)(A) of EPCA (42 U.S.C. 6294(c)(1)(A)) states that the Commission's Rule must require disclosure on labels of energy use information derived from the DOE test procedures.

[3] The language in this section pertains to labels for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, and room air conditioners. Identical language appears in two other sections relating to labels for furnaces and pool heaters, 16 CFR 305.11(a)(5)(ii)(I), and central air conditioners and heat pumps, 16 CFR 305.11(a)(5)(iii)(H)(1). The statute itself (EPCA) does not prohibit the inclusion of non-Rule-required information on the Energy Guide.

[4] Pub. L. No. 102–486, 106 Stat. 2776, 2835 (Oct. 24, 1992).

[5] In this context, "federal law" includes DOE's minimum efficiency standards for appliances, which Congress directed DOE to issue in section 325 of EPCA (42 U.S.C. 6295). As amended, the statute itself set the initial national energy efficiency standards for appliances and established a schedule for regular DOE review of the standards for each product category. The statute directed DOE to design these standards to achieve the maximum improvement in energy efficiency for residential appliances that is technologically feasible and economically justified. 42 U.S.C. 6265(o)(2). In accordance with the statutory directive, DOE regularly reviews the established standards and publishes new standards where appropriate. DOE's rules relating to standards, like its test procedure rules, are codified at 10 CFR Part 430 (1997).

[6] A discussion of DOE's criteria, together with lists of qualifying products, can be found on DOE's ENERGY STAR website, at <WWW.ENERGYSTAR.GOV>. EPA maintains a similar website at <WWW.EPA.GOV/ENERGYSTAR.HTML>, which is hyperlinked to DOE's site.

Attending stakeholders included manufacturers, public interest groups, industry trade associations, and utility groups.

The results of these processes as they apply to specific appliance categories are summarized below:

To be included in the Program:

A refrigerator-freezer must have an annual electrical consumption (as determined by the DOE test for that category of products) that is at least 20 percent less than the maximum energy consumption permitted by DOE's standard for refrigerator-freezers;

A dishwasher must have an Energy Factor ("EF") of 0.52 or greater.[7] An EF of 0.52 represents a 13% improvement in efficiency over DOE's minimum EF of 0.46;

A standard clothes washer (top or front loading) must have an EF of 2.5 or greater.[8] An EF of 2.5 is an approximately 112% efficiency improvement over DOE's minimum EF of 1.18. The relatively high percentage of improvement over the standard is due to the existence of a new technology in the clothes washer industry;

A room air conditioner must be rated with an Energy Efficiency Ratio ("EER") that is 15% greater than the DOE minimum EER for the type and size of that unit.[9]

A gas- or oil-fueled furnace must be rated with an Annual Fuel Utilization Efficiency ("AFUE") that is 90 or better; a gas- or oil-fueled boiler must be rated with an AFUE that is 85 or better.[10]

A central air conditioner or the cooling function of an air-source heat pump must be rated with a Seasonal Energy Efficiency Ratio ("SEER") of 12 or better; the heating function of an air-source heat pump must be rated with a Heating Seasonal Performance Factor ("HSPF") of 7 or higher.[11]

To date, DOE has not finished developing the water heater component of the Program.

As discussed in section II., below, the conditional exemption from the Rule's non-required information prohibition would be granted to Program participants for those appliances that meet DOE's and EPA's criteria.

2. The ENERGY STAR Logo

EPA owns the ENERGY STAR logo and name and has licensed them to DOE. As a result of this joint partnership, the initials of both agencies appear on the logo. DOE and EPA allow the use of the ENERGY STAR logo by retailers, utilities, manufacturers and other organizations participating in their respective programs under clearly established guidelines that are set out in a memorandum of understanding ("MOU") that each participant must sign. Participants that have signed an MOU are then "partners." Under these MOUs, partners may associate the ENERGY STAR logo and name with specific products that DOE and EPA have determined meet the Program's requirements.[12]

Program partners may use the logo as a product label and in catalogs and advertising to designate specific products that are ENERGY STAR qualifying products. A sample EnergyGuide with an ENERGY STAR logo placed in accordance with the conditions the Commission is proposing appears at the end of Section II., below. Partners also may display the logo when describing one or more of the ENERGY STAR labeling programs, such as in special educational brochures, newsletters, or annual reports. Retailer and utility partners are allowed to include the logo in general educational or promotional materials, such as utility bill stuffers, newsletters, or annual reports.

3. The Request for a Conditional Exemption

DOE staff has conducted an inquiry into the appliance manufacturing and marketing industry's receptivity to the use of the ENERGY STAR logo on the EnergyGuides required on appliances. According to DOE staff, the conditional exemption they and Maytag have requested would result in a single, combined label (an "augmented" EnergyGuide) that would be preferable to separate EnergyGuide and ENERGY STAR labels for several reasons.

Currently, retailers apply separate ENERGY STAR labels on qualifying appliances at each store site. The extent and accuracy of label placement is then monitored by participating utilities and DOE contractors. From its public workshops and the comments they generated, DOE has learned that many manufacturers, retailers and consumers would prefer a single, augmented label. Some manufacturers favor an augmented label because it would reduce their costs. In addition, Maytag stated that the augmented EnergyGuide would allow manufacturers "to assure proper identification of qualifying models, [which] is not as easily controlled at the retailer level." According to DOE, retailers believe that the augmented label would be less confusing to consumers than multiple labels relating to energy use, that an augmented EnergyGuide label could build upon the broad "brand recognition" achieved by the Commission's label, and that an augmented label would make it easier for consumers to distinguish efficient products. DOE staff believe that the efforts of the Commission, EPA, and DOE to provide consumer educational materials explaining a new augmented label, coupled with training for appliance salespeople, would lead to broader overall consumer awareness of the differences in energy consumption among competing appliances, and thus would result in more informed consumer decision-making. DOE staff also has suggested that the augmented label could be used by utilities in connection with their efforts to support demand-side load reduction objectives through the use of incentives to consumers.

II. Discussion

A. The Commission's Basis for Proposing a Conditional Exemption

The Commission believes that a conditional exemption to allow manufacturers to place the ENERGY STAR logo on EnergyGuides affixed to qualified products is appropriate for the reasons advanced in favor of the augmented EnergyGuide in the discussion at I.B.3., above. Although the ENERGY STAR logo can be affixed to appliances as a separate label without the conditional exemption to the Rule, and is in fact already appearing on some qualifying appliances and most

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[7] Under the DOE tests, an appliance's EF is a measure of the useful output of its services divided by the energy input.

[8] To date, DOE has included only "standard" clothes washers in the Program because most of the models sold fall within that subcategory. For purposes of its minimum efficiency standards program, DOE's clothes washer category also includes a "compact" subcategory. The criterion for the distinction is tub capacity.

[9] The EER is the efficiency measurement for room air conditioners specified in the DOE test procedure for these products. Only units without reverse cycle (heating function) and with louvered sides can currently qualify for the Program.

[10] The AFUE is the efficiency measurement for forced air furnaces and for boilers that is specified in the DOE test procedure for these products.

[11] The SEER is the efficiency measurements for central air conditioners and the cooling function of air-source heat pumps specified in the DOE test procedure for these products; the HSPF is the DOE test efficiency measurement for the heating function of air-source heat pumps.

[12] The MOUs provide that each partner is responsible for using the logo in accordance with the terms of the MOU. Partners must make the logo use guidelines available to other entities, such as advertising agencies, that prepare materials on the partner's behalf. Non-partners must seek specific approval from either EPA or DOE for each specific use of the logo. Under no circumstances may the logo or name be used in a manner that would imply EPA or DOE endorsement. DOE and EPA are responsible for overseeing proper use of the logo and name.

qualifying HVAC equipment covered by the Rule, the Commission agrees with DOE staff and Maytag that an augmented label is likely to reduce manufacturers' labeling and monitoring costs. Use of an augmented label may also reduce the likelihood of mislabeling. The logo's highlighting of efficient appliances would complement the Rule's objective of providing consumers with energy efficiency and consumption information to enable them to consider these factors when purchasing appliances. To the extent that consumers are unfamiliar with the meaning of the ENERGY STAR logo, its placement in close conjunction with the descriptive information already on the EnergyGuide label may provide ■ context that better ensures consumer understanding of the logo than if it were physically separated from that information. In addition, the ENERGY STAR logo, and the brief explanatory message that the Commission proposes accompany it (see discussion in II.B., below), also may enhance consumer understanding of the energy efficiency information that already appears on the EnergyGuide. Finally, the augmented label may contribute to the overall aim of conserving energy that underlies EPCA, the statutory basis for both the EnergyGuide and DOE's component of the ENERGY STAR Program.

B. The Terms of the Proposed Conditional Exemption

The Commission is proposing to grant those manufacturers participating in the ENERGY STAR Program a conditional exemption from the Rule's prohibition against placing "information other than that specified" by the Rule on the EnergyGuides they attach to qualifying products.[13] The Commission would base this exemption on several conditions. First, the ENERGY STAR logo would be permitted on the EnergyGuides of only those covered appliances and HVAC equipment that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled. Second, only manufacturers that have signed a MOU with DOE or EPA would be permitted to affix the augmented labels to qualifying appliances. Third, to ensure that the ENERGY STAR logo is permanently placed in the proper position on the augmented EnergyGuide label, manufacturers that choose to avail themselves of the conditional exemption would be required to print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process; that is, manufacturers (or distributors or retailers) would not be permitted to apply a separate logo onto already finished labels subsequent to the time a product is labeled. Fourth, manufacturers would have to draft the logo in conformance with certain technical specifications relating to its appearance, placement on the EnergyGuide, and size. Specifically, the logo would have to appear above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo would vary depending on where the caret indicating the position of the labeled model on the scale appears (see the sample label). The required dimensions of the logo would be no more than one and one-eighth inches (3 cm.) in width and no more than three-quarters of an inch (2 cm.) in height. Manufacturers would be prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any element of the label, which in all other respects would have to conform to the requirements of the Commission's Rule. The ENERGY STAR logo would be in process black ink to match the print specifications for the EnergyGuide. The background would remain in process yellow to match the rest of the label.

Finally, the Commission also proposes requiring that manufacturers availing themselves of the conditional exemption add a sentence that explains the significance of the ENERGY STAR logo. Although DOE and EPA have made, and continue to make, ■ significant effort to disseminate information concerning the Program in general and the meaning of the logo specifically, the Commission is concerned that the addition of the logo to the EnergyGuide without some explanation of its meaning on the face of the label itself may not be meaningful to consumers. Because space is at a premium on the EnergyGuide, the Commission proposes that manufacturers include a brief explanatory sentence below the comparability bar between the "least" and "most" numbers in eight-point Helvetica Cond. Black typeface: "ENERGY STAR [product type(s)] use at least ____% less energy annually than the Federal Maximum." or: "ENERGY STAR [product type(s)] are at least ____% more efficient than the Federal Minimum." or: "ENERGY STAR [product type(s)] must be rated with a [type of efficiency rating] of [rating] or higher." The specific wording of this statement would depend on the product category.

Thus, the text on a label for a qualifying refrigerator-freezer would read:

ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.

Or, the text on a label for a qualifying dishwasher would read:

ENERGY STAR dishwashers are at least 13% more efficient than the Federal Minimum.

Or, the text on a label for a qualifying central air conditioner would read:

ENERGY STAR central air conditioners must be rated with a SEER of 12 or higher.[14]

In addition to proposing the conditional exemption, the Commission proposes amending the Rule so the Federal Trade Commission is clearly identified as the government entity that requires manufacturers to affix the label to their appliances. This amendment would eliminate confusion if the Commission grants the proposed conditional exemption and the identifying initials of DOE and EPA appear on the labels of appliances that qualify for the ENERGY STAR Program. The proposal would be to change the sentence at the bottom of the EnergyGuide to read:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).[15]

Because of the non-substantive nature of this proposal, manufacturers would not have to make the change until their supply of current labels is exhausted or they draft new labels for other reasons, such as a change in the ranges of comparability. The proposed language is included on the sample EnergyGuide.

Sample EnergyGuide with ENERGY STAR Logo:

BILLING CODE 6750-01-P

[13] For the information and convenience of those covered by the Rule who may wish to avail themselves of the exemption, the Commission also proposes adding a new section to the Rule—305.19 Exemptions. This section would codify the conditional exemption proposed today and provide a section for codification of any future exemptions.

[14] The "SEER" descriptor ("seasonal energy efficiency ratio") is defined on the EnergyGuide as "* * * the measure of energy efficiency for central air conditioners." The label also states: "Central air conditioners with higher SEERs are more energy efficient."

[15] Currently, this disclosure reads, "Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302)."

BILLING CODE 6

Based on standard U.S. Government tests

ENERGYGUIDE

Refrigerator-Freezer
With Automatic Defrost
With Side-Mounted Freezer
With Through-the-Door-Ice Service

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

Compare the Energy Use of this Refrigerator with Others Before You Buy.

This Model Uses 800 kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy 750

ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.

Uses Most Energy 1008

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 22.5 to 24.4 cubic feet and the above features are used in this scale.

Refrigerators using more energy cost more to operate. This model's estimated yearly operating cost is:

$69

Based on a 1995 U.S. Government national average cost of 8.67¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

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III. Request for Comment

A. General Information for Commenters

The Commission requests interested persons to submit written comments on any issue of fact, law or policy that may bear upon the proposed conditional exemption. Although the Commission welcomes comments on any aspect of the proposed conditional exemption, the Commission is particularly interested in comments on the questions listed below. All written comments should state clearly the question or issue, or the specific condition, that the commenter wishes to address.

The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed conditional exemption or any individual condition should, if possible, suggest specific alternatives. Proposals for alternative conditions should include reasons and data that indicate why the alternatives would better serve the requirements of the Appliance Labeling Rule. Comments should be supported by a full discussion of all the relevant facts and/or be based on firsthand knowledge, personal experience, or general understanding of the particular issues addressed.

The request from Maytag and written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations on normal business days from 8:30 a.m. to 5:00 p.m. at the Federal Trade Commission, 6th St. and Pennsylvania Ave., N.W., Room 130, Washington, D.C. 20580.

B. Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed exemption from the Rule's prohibition against the inclusion of non-required information on EnergyGuides for those manufacturers in DOE/EPA's ENERGY STAR Program that wish to identify products that qualify for inclusion in the Program. The exemption would be conditioned on placement, by such manufacturers, of the DOE/EPA ENERGY STAR logo and explanatory statement on the EnergyGuides affixed to the qualifying products in the manner and form detailed in the discussion in Section II.B., above.

The Commission is particularly interested in comments addressing the following questions and issues:

1. Are the conditions under which the Commission proposes the exemption, including the size and placement of the logo on the EnergyGuide, appropriate? Are there additional, or different, conditions that also would be appropriate?

2. Should the exemption be limited to manufacturers who are "partners" in the ENERGY STAR program, or should it include non-partners who have obtained specific approval from either DOE or EPA for a particular use of the ENERGY STAR logo?

3. What is the most cost-effective method (e.g., requiring that manufacturers print the ENERGY STAR logo on EnergyGuides) of assuring that the ENERGY STAR logo will appear on EnergyGuides?

4. a. Do consumers need the proposed explanatory statement to understand why the ENERGY STAR logo is on the EnergyGuide?

b. Are there ways to word the statement, or ways to place the statement on the EnergyGuide, that would better explain the meaning of the ENERGY STAR logo?

c. Would it be clearer to consumers that the proposed explanatory statement on the EnergyGuide label refers to the ENERGY STAR logo if the statement and the logo were both in a color of ink (for example, blue or green) that is different from the black ink on the rest of the EnergyGuide?

d. How would the proposed explanatory statement affect consumer understanding of the other information on the EnergyGuide?

5. What would be the economic impact on manufacturers of the proposed exemption and each of the proposed conditions for use of the exemption?

6. What would be the benefits of the proposed conditional exemption? Who would receive those benefits?

7. What would be the benefits and economic impact of the proposed exemption and each of the proposed conditions on small businesses?

8. Do the ENERGY STAR logo and its promotional materials convey accurate information to consumers, especially with regard to the overall cost over time of purchasing and operating appliances that qualify for the ENERGY STAR logo versus those that do not?

The Commission notes that the ENERGY STAR Program itself was developed by EPA and DOE and that the Commission does not have the authority to modify the terms of that Program. Thus, this proceeding is not an appropriate forum for comments concerning the ENERGY STAR Program, with the exception of comments responding specifically to question 8, above. This proceeding is limited to exploring the Commission's proposal to permit the inclusion of the ENERGY STAR logo on the EnergyGuides required by the Commission's Rule.

IV. Regulatory Flexibility Act

This notice does not contain a regulatory analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603–604, because the Commission believes that the conditional exemption, if adopted, would not have "a significant economic impact on a substantial number of small entities," 5 U.S.C. 605. The Rule prohibits the inclusion of non-required information on the EnergyGuide in order to ensure that such information does not detract from the required information. The conditional exemption would not impose any new requirements on manufacturers of appliances and HVAC equipment. Instead, it would allow them the option, under certain conditions, of voluntarily including the DOE/EPA ENERGY STAR logo on EnergyGuides affixed to products that qualify for inclusion in the ENERGY STAR Program. The Commission, therefore, believes that the impact of the conditional exemption on all entities within the affected industry, if any, would be de minimis.

Similarly, manufacturers would not have to comply with the proposed amendment to require different language on the EnergyGuide that identifies the Commission as the agency with enforcement authority for the Rule until they were required to print new labels for other reasons, so the Commission believes that the impact of the proposed amendment on all entities within the affected industry, if any, would be de minimis.

In light of the above, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the proposed conditional exemption would not, if granted, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, however, the Commission solicits comments concerning the effects of the proposed conditional exemption, including any benefits and burdens on manufacturers or consumers and the extent of those benefits and burdens, beyond those imposed or conferred by the current Rule, that the conditional exemption would have on manufacturers, retailers, or other sellers. The Commission is particularly interested in comments

regarding the effects of the conditional exemption on small businesses. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis if it determines to grant the conditional exemption.

V. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069). The conditional exemption would not impose any new information collection requirements. To ensure that no additional burden has been overlooked, however, the Commission seeks public comment on what, if any, additional information collection burden the proposed conditional exemption may impose.

VI. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c) (1997), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6294.

In consideration of the foregoing, the Commission proposes to amend part 305 of title 16, chapter I, subchapter C of the Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCE AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. The authority for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Section 305.11(a)(5)(i)(I) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *
(5) * * *
(i) * * *

(I) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

3. Section 305.11(a)(5)(ii)(H) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *
(5) * * *
(ii) * * *

(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

4. Section 305.11(a)(5)(iii)(H) is revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *
(5) * * *
(iii) * * *

(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

5. Section 305.19 is added to read as follows:

§ 305.19 Exemptions.

The Commission has exempted manufacturers, private labelers, distributors, and/or retailers in some instances from specific requirements of the Rule in this part. These exemptions are listed in this section. In some circumstances, use of the exemptions is conditioned on alternative performance by manufacturers, private labelers, distributors, and/or retailers.

(a) Limited conditional exemption for manufacturers from the prohibition against the inclusion of non-required information on the label of covered products that qualify for inclusion in the ENERGY STAR Program maintained by the Department of Energy ("DOE") and the Environmental Protection Agency ("EPA"). Those manufacturers participating in the DOE/EPA ENERGY STAR Program are granted a conditional exemption from the prohibition against placing "information other than that specified" by the Rule on the EnergyGuides they attach to their qualifying products. This exemption is based on several conditions:

(1) The ENERGY STAR logo is permitted on the EnergyGuides of only those covered products that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled.

(2) Only manufacturers that have signed a Memorandum of Understanding with DOE or EPA may add the ENERGY STAR logo to labels on qualifying covered products.

(3) Manufacturers that choose to avail themselves of the conditional exemption must print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process; that is, manufacturers (or distributors or retailers) are not permitted to apply a separate logo onto already finished labels subsequent to the time a product is labeled.

(4) Manufacturers must place the logo on the EnergyGuide above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo will vary depending on where the caret indicating the position of the labeled model on the scale appears (see sample label 10 in appendix L to this part). The required dimensions of the logo must be one and one-eighth inches (3 cm.) in width and three-quarters of an inch (2 cm.) in height. Manufacturers are prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any

element of the EnergyGuide, which in all other respects must conform to the requirements of this part. The ENERGY STAR logo must be in process black ink to match the print specifications for the EnergyGuide. The background must remain in process yellow to match the rest of the label.

(5) Manufacturers must add a sentence that explains the significance of the ENERGY STAR logo below the comparability bar between the "least" and "most" numbers in eight-point Helvetica Cond. Black typeface. The sentence must read: "ENERGY STAR [product type(s)] use at least ____% less energy annually than the Federal Maximum." or: "ENERGY STAR [product type(s)] are at least ____% more efficient than the Federal Minimum." or: "ENERGY STAR [product type(s)] must be rated with a [type of efficiency rating] of [rating] or higher." The specific wording of this statement will depend on the product category and the ENERGY STAR Program criteria in effect at the time of the labeled product's manufacture and labeling.

(b) *Examples.* (1) The text on a label for a qualifying refrigerator-freezer must read:

ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.

(2) The text on a label for a qualifying clothes washer must read:

ENERGY STAR clothes washers are at least 112% more efficient than the Federal Minimum.

(3) The text on a label for a qualifying dishwasher must read:

ENERGY STAR dishwashers are at least 13% more efficient than the Federal Minimum.

(4) The text on a label for a qualifying room air conditioner must read:

ENERGY STAR room air conditioners are at least 15% more efficient than the Federal Minimum.

(5) The text on a label for a qualifying central air conditioner must read:

ENERGY STAR central air conditioners must be rated with a SEER of 12 or higher.

(6) The text on a label for a qualifying heat pump must read:

ENERGY STAR heat pumps must be rated with a HSPF of 7 or higher (for heating) and a SEER of 12 or higher (for cooling).

(7) The text on a label for a qualifying gas-fired furnace must read:

ENERGY STAR gas furnaces must be rated with an AFUE of 90 or higher.

6. Appendix L is amended by the addition of a new Sample Label 10 (which is an EnergyGuide with the ENERGY STAR logo) as follows:

Appendix L to Part 305—Sample Labels

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BILLING CODE 6750–01–P

BILLING CODE

Based on standard U.S. Government tests

ENERGYGUIDE

Refrigerator-Freezer
With Automatic Defrost
With Side-Mounted Freezer
With Through-the-Door-Ice Service

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

Compare the Energy Use of this Refrigerator with Others Before You Buy.

This Model Uses 800 kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy		Uses Most Energy
750	ENERGY STAR refrigerators use at least 20% less energy annually than the Federal Maximum.	1008

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 22.5 to 24.4 cubic feet and the above features are used in this scale.

Refrigerators using more energy cost more to operate.
This model's estimated yearly operating cost is:

$69

Based on a 1995 U.S. Government national average cost of 8.67¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

BILLING CODE 6750–01–C

Sample Label 10

* * * * *

7. Prototype Labels 1–5 and Sample Labels 1–9 of APPENDIX L are amended by the deletion of the words "Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302)." at the bottom of each label and the addition, in their place and in the same typeface and size, of the following words: Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–31202 Filed 11–23–98; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0496]

RIN 0910–AB24

Import for Export; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Subsequent Export

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing reporting and recordkeeping regulations to implement certain sections of the Federal Food, Drug, and Cosmetic Act (the act) as amended by the FDA Export Reform and Enhancement Act of 1996. The proposed rule would require an importer to report to FDA each time it imports an unapproved or otherwise violative article that is to be exported after further processing or incorporation into another product in the United States and to keep records to ensure that the article is so processed or incorporated and then exported, and that any portion of the import that is not exported is destroyed.

DATES: Submit written comments by February 8, 1999. Written comments on the information collection requirements should be submitted by December 24, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503. Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT:

For general information: Marvin A. Blumberg, Division of Import Operations and Policy (HFC–171), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6553.

For information concerning blood products: Kimberly A. Cressotti, Division of Case Management (HFM–610), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6201.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Export Reform and Enhancement Act of 1996 (Pub. L. 104–134, amended by Pub. L. 104–180, August 6, 1996) became law on April 26, 1996. One provision of the new law, now codified at section 801(d)(3) of the act (21 U.S.C 381 (d)(3)), allows importation of any component of a drug, component part or accessory of a device, or other article of device requiring further processing, and any food or color additive, or dietary supplement, if it is to be further processed or incorporated into a product that is to be exported from the United States by the initial owner or consignee in accordance with section 801(e) or 802 of the act (21 U.S.C 382), or section 351(h) of the PHS Act (42 U.S.C. 262 (h)). (For purposes of section 801(d) of the act, FDA interprets the term "component" broadly to include anything used in, or in the manufacture of, a drug, biologic, or device, as well as a finished final product that will be further processed in the United States. Thus, for example, the term includes bulk drugs, unapproved foreign versions of drugs approved for use in the United States, active and inactive ingredients of a drug or biologic, pieces of a device, and completed devices.) Under section 801(d)(3) of the act, the initial owner or consignee must submit a statement regarding the imported article to FDA at the time of initial importation. Any component of a drug; any component, part, article, or accessory of a device; any food additive, color additive; or any dietary supplement imported under section 801(d) of the act that is not incorporated or further processed by the initial owner or consignee must be destroyed or exported (see section 801(d)(3)(C) of the act). Section 801(d)(3)(B) of the act further requires the initial owner or consignee to maintain records identifying the use and exportation or disposition of the imported article, including portions that were destroyed, and, upon request from FDA, to submit a report that accounts for the exportation or disposition of the imported article and the manner in which the initial owner or consignee complied with the requirements in section 801(d) of the act.

This provision of the act is generally known as the "import-for-export" provision.

Another new provision, now codified at section 801(d)(4) of the act, places additional requirements on the import-for-export of blood, blood components, source plasma, source leukocytes, or a component, accessory, or part (hereinafter referred to as "blood products"), and of tissue and components or parts of tissue. Section 801(d)(4) of the act prohibits the importation of blood products unless they comply with section 351(a) of the PHS Act or FDA permits the importation under FDA-determined appropriate circumstances and conditions. (Section 351(a) of the PHS Act pertains to the licensing of biological products.)

Section 801(d)(4) of the act also prohibits the importation of tissues and their components, under section 801(d)(3) of the act, unless the importation complies with section 361 of the PHS Act (42 U.S.C. 264). Section 361 of the PHS Act authorizes FDA to issue regulations to control communicable disease, and, for human tissues intended for transplantation, these regulations are found at part 1270 (21 CFR part 1270). FDA, therefore, interprets section 801(d)(4) of the act as meaning that a person importing human tissue for transplantation for further processing or incorporation into a product destined for export must comply with part 1270. Under § 1270.42 published in the **Federal Register** of July 29, 1997 (62 FR 40429), the importer of record must notify the director of the FDA district having jurisdiction over the port of entry or notify his or her designee, and the human tissue must be quarantined until released by FDA.

Human tissue intended for transplantation may be imported and further processed or incorporated into other products without meeting the screening and testing requirements of part 1270 if the human tissue is kept in quarantine at all times (see § 1270.3

(definition of "quarantine")). However, as indicated in § 1270.31 (62 FR 40429, July 29, 1997), the owner or consignee in the United States must prepare and follow written procedures for designating and identifying quarantined human tissue and preventing infectious disease contamination or cross-contamination during processing.

FDA considers live animal cells, tissues, and organs intended to be transplanted, implanted, or used for ex-vivo perfusion in humans (xenogeneic products) to be biological products. Nonliving animal cells, tissues, and organs intended for transplantation or implantation into humans may be either biological products or devices. Animal cells, tissues, and organs imported into the United States under section 801(d) of the act which FDA considers to be biological products or devices would be expected to comply with proposed § 1.84(b).

All veterinary biologics (e.g., vaccines, bacterins, allergens, antibodies, antitoxins, toxoids, etc.) and animal–origin materials that could represent a disease risk to U.S. livestock, including animal products, by–products, and biological materials that contain or have been in contact with certain organisms or animal materials) are regulated by the U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service. An importer must obtain a USDA permit before importing any of these materials.

The proposed rule would establish the requirements for requesting a determination from FDA to allow importation of blood products, and would establish reporting, labeling, and recordkeeping requirements for all imported articles under the import-for-export provision. These would be the minimum requirements necessary to comply with the import-for-export provision in the act and are intended to enable the importer to ensure, and the agency to monitor, that imported substances are further processed or incorporated into one of the specified FDA-regulated products while in the United States, and are then exported or destroyed without entering domestic commerce. Although the act does not define the term "further processed," given the legislative intent to allow manufacturing and processing activities not previously permitted under the act, FDA interprets the term "further processed" to cover a wide range of activities, including packaging or labeling of finished products and specialized processing (such as sterilization) of a product. However, the agency does not consider a product to be "further processed" if it is merely stored in the United States before being exported elsewhere.

II. Description of the Proposed Rule

A. Request for Determination Regarding the Importation of Blood, Blood Components, Source Plasma, Source Leukocytes, or Their Components, Accessories, or Parts

As stated earlier, section 801(d)(4) of the act prohibits the importation of blood, blood components, source plasma, or source leukocytes, or "a component, accessory, or part thereof," unless they comply with section 351(a) of the PHS Act or meet "appropriate circumstances and conditions" as determined by FDA. The agency interprets the phrase concerning compliance with section 351(a) of the PHS Act as requiring products to be licensed, and also interprets section 801(d)(4) of the act to include blood or plasma derivatives or intermediates. With respect to the determination of "appropriate circumstances and conditions," FDA interprets the phrase as applying to unlicensed blood products and will decide on a case-by-case basis whether blood products that do not comply with section 351(a) of the PHS Act should be allowed into the United States under section 801(d)(4) of the act. This decision will be based, in part, on the agency's assessment of the adequacy of the safeguards to prevent diversion into U.S. commerce, contamination of, or commingling with products licensed or approved by FDA for use in the United States.

Consequently, proposed § 1.84(a) would describe the process for requesting a determination that an unlicensed blood product meets the appropriate circumstances and conditions to allow its importation into the United States. Proposed § 1.84(a)(1) would require a person who intends to import an unlicensed blood product into the United States for further processing or incorporation into a product destined for export to request a determination from FDA before importing the blood product. The request, under proposed § 1.84(a)(2), would contain the following:

1. The names and addresses of the foreign manufacturer of the article to be imported and the initial owner or consignee in the United States that would be responsible for the further processing or incorporation of the article into another product;

2. The specific identity of the article to be imported and details as to how it will be further processed or incorporated into a product for export;

3. A description of the standard operating procedures and safeguards that will be used to ensure that the imported articles or products incorporating the imported articles are not diverted to domestic use in the United States and are segregated from, and not comingled with, products or components intended for use in the United States. For example, this may consist of quarantine procedures used for segregating imported blood, blood components, or final products from products intended for use in the United States and validation data for procedures to clean equipment and facilities used for manufacturing both products for use in the United States and for manufacturing products for export;

4. General donor screening documentation or criteria, in English. The request for determination should not include individual donor screening questionnaires;

5. A copy of the product label translated (if necessary) into English (described in greater detail below); and

6. A certification that all blood and blood products will be tested for infectious disease agents such as HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema pallidum*. Proposed § 1.84(a) would permit the infectious agent tests to be performed using test kits other than those licensed or approved by FDA; in such cases, a copy of the labeling, including manufacturer's test kit instructions, for the test kit used, translated into English, would be included in the request for determination.

Requests for determination, under proposed § 1.84(a)(3), would be submitted to the Division of Case Management (HFM–610), Center for Biologics Evaluation and Research (CBER). CBER will develop procedures and timeframes for reviewing these requests.

A request for determination would be submitted to and approved by CBER before importation of the first shipment of the unlicensed biological product. Once CBER has approved a request for determination, future shipments of the same product may be imported for export without an additional request for determination so long as the importer, consignee, and all other conditions upon which the determination was based remain unchanged.

Proposed § 1.84(a)(4) would require the initial owner or consignee to maintain records regarding the request for determination and to make those records available to FDA upon request.

Under proposed § 1.84(a)(5), FDA would notify, in writing, the person requesting the determination if the agency grants permission to import the blood product.

These proposed regulations for blood, blood components, source plasma, source leukocytes, or their components, accessories, or parts are intended to help prevent any recurrence of situations in which blood products not approved for use in the United States are used in products that are then distributed into U.S. commerce. In one such case, a manufacturer imported unlicensed source plasma for use in the manufacture of hepatitis test kits, and these kits were later distributed in the United States. Consistent with section 801(d)(4) of the act, the agency is proposing rules to ensure that blood products that are not licensed or approved for use in the United States are not used in products distributed in the United States.

B. Reporting Requirements

As stated earlier, section 801(d)(3)(A) of the act requires the importer to submit, "at the time of initial importation," a statement to the agency indicating that the imported article is intended to be further processed or incorporated by the initial owner or consignee into a drug, biological product, device, food, food additive, color additive, or dietary supplement that will be exported by such owner or consignee from the United States in compliance with section 801(e) or 802 of the act or section 351(h) of the PHS Act.

Accordingly, proposed § 1.84(b)(1) would require an importer to submit a statement to FDA each time the importer imports an article under the import-for-export provisions of the act. The statement would be required each time the product enters the United States, even if the imported article has been previously imported. The statement, under proposed § 1.84(b)(2), would include, but not be limited to, the following:

1. A formal declaration of the purpose for which the article is being imported prior to export (how it will be further processed, or the name or description of the product into which it will be incorporated in the United States), and that it will not be sold or offered for sale in the United States;

2. The name or description of the article (including any scientific or technical name);

3. Any product coding, batch, lot, or other identifying numbers;

4. The name and address of the foreign manufacturer of the imported article; and

5. The name and address of the initial owner or consignee in the United States responsible for the further processing or incorporation of the article into another product.

For blood products, proposed § 1.84(b)(2) would also require the importer to include a copy of the determination from FDA granting permission to import the product.

The statements would be sent to the FDA district having jurisdiction over the port of entry at which the article will be offered for import. Proposed § 1.84(b)(3) would require the importer to retain a copy of the statement as part of its records for the imported article.

C. Shipping Package Label Requirements

To facilitate identification of articles imported into the United States under the import–for–export provisions in section 801(d)(3) and (d)(4) of the act, FDA is proposing certain label requirements for shipping containers. Under proposed § 1.84(c), the importer, initial owner, or consignee would be responsible for permanently affixing to the shipping container, package or crate a label, in English, indicating that the shipping container, package, or crate contains article(s) that are intended for export from the United States after further processing or incorporation into another product, and may not be sold or offered for sale in the United States. The label would also name or describe the imported article(s); provide any product coding, batch, lot, or other identifying numbers; provide the foreign manufacturer's name and address; identify the imported article's country of origin (if different from that of manufacturer); and contain any appropriate warning or special handling label. For example, if an imported blood product tested positive for an infectious agent, proposed § 1.84(c)(6) would require the shipping package label to indicate the agent for which the product tested positive and prominently display the term "BIOHAZARD."

D. Label Requirements for Imported Blood Products

Proposed § 1.84(d) would require a foreign supplier of blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, to label the products, in English, with the following information:

1. A properly descriptive name;

2. Name(s) and address(es) of establishments collecting, preparing, labeling, or pooling the source material;

3. Donor, lot, or pool numbers relating the unit to the donor;

4. The recommended storage temperature (in degrees Celsius);

5. The quantity of the product;

6. The statement, "Import for Export;"

7. The statement, "Not for Use in Products Subject to Licensure Under Section 351 of the Public Health Service Act;"

8. The statement, "For Manufacturing Use Only" or "For Manufacturing into Noninjectable Products Only;"

9. A statement indicating that the product has been tested for infectious disease agents, including, but not limited to, HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema pallidum*. The infectious agent tests may be performed using test kits other than those licensed or approved by FDA and should be the same tests described in the request for determination under proposed § 1.84(a).

10. If the product tested positive for any infectious agent listed in proposed § 1.84(d)(9), the product's label would indicate the agent(s) for which the product tested positive and display the term "BIOHAZARD" prominently and in bold letters; and

11. Any other appropriate warnings or special handling instructions as determined by the importer.

A copy of the label, under proposed § 1.84(a), would be included in the initial request for determination that the blood product meets the "appropriate circumstances and conditions" for importation under section 801(d)(4) of the act.

The requirements in proposed § 1.84(d) would be in addition to the shipping package label requirements in proposed § 1.84(c).

FDA also notes that regulations issued by other Federal agencies and departments may apply to the imported products (see, e.g., 9 CFR parts 92 et al.; 19 CFR part 12; 42 CFR part 72; 49 CFR part 173, U.S. Postal Service regulations, 39 CFR parts 124 and 125).

E. Recordkeeping Requirements

Section 801(d)(3)(B) of the act requires that "the initial owner or consignee responsible for such imported article maintain records that identify the use of such imported article." Proposed § 1.84(e) would require the initial owner or consignee responsible for the article imported into the United States under the import-for-export provision to have

a place of business in the United States, to maintain identifying records for 5 years after the date on which the imported article was exported (after further processing or incorporation into another product) or destroyed, and to make the identifying records available for inspection by the agency. The identifying records would include the following information:

1. The name or description of the article (including any scientific or technical name);
2. Any product coding, batch, lot, or other identifying numbers;
3. The name and address of the foreign manufacturer of the imported article;
4. How the article will be or was further processed, and the name or description of any product into which it will be or was incorporated in the United States;
5. The signature of the responsible individual at the importing firm;
6. The name and address of the firm in the United States where the article will be further processed or incorporated into another product;
7. The disposition of the imported article, including quantity and methods of disposition (i.e., manufacturing records showing how specific articles were used or destroyed and the dates of receipt, use, destruction, or re-exportation, as that information becomes available);
8. Any product coding, lot, batch, or other identification number for the further-processed article or product incorporating the imported article;
9. A copy of the label to be applied to the shipping package, container, or crate used to export the further-processed article or product incorporating the imported article (indicating that it contains articles that may not to be sold or offered for sale in the United States and are intended for export only);
10. The name and address of the foreign purchaser of the further-processed article or product incorporating the imported article; and
11. For blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, documentation of the agreement between the foreign material supplier and the U.S. manufacturer. Proposed § 1.84(e)(2)(xi) would require this documentation to outline the specific contractual relationship, the foreign manufacturing specifications, and the U.S. manufacturer's plan for auditing the foreign supplier to ensure compliance with the terms of the contract.

Additionally, proposed § 1.84(e)(2)(xi) would require the initial owner or consignee of imported blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) to have written standard operating procedures to ensure that such products or articles incorporating such products are not diverted to domestic use in the United States and are kept segregated from and are not comingled with products or components intended for use in the United States. These procedures could, for example, include quarantine procedures for segregating imported blood, blood components, or final products from products intended for use in the United States and validation data for procedures used to clean equipment and manufacturing facilities that produce both products for distribution in the United States and products for export only.

FDA emphasizes that companies must also comply with the applicable requirements of section 801(e) or 802 of the act or section 351(h) of the PHS Act. (Persons who seek to import tissues or their parts or components must also comply with section 361 of the PHS Act.) Those statutory provisions may impose additional requirements on the exported product as well as requirements on notification to FDA, labeling, and records.

F. Registration and Listing Requirements for Persons Who Import and Further Process or Incorporate Blood Products That Are Not Licensed Under With Section 351(a) of the PHS Act

As an additional condition for importing blood products that are not licensed under section 351(a) of the PHS Act, proposed § 1.84(f) would require that the person in the United States who will be further processing or incorporating the imported article register with the FDA and list the blood product(s) that it will be processing or incorporating into other products or update its registration and listing. The listing would include a description of the imported article as well as the final product for export. The proposal would require that the registration and listing information be sent to the appropriate registration office listed in 21 CFR part 207 or part 607. This registration and listing will enable FDA to track all blood products imported under section 801(d)(4) of the act that are not licensed under section 351(a) of the PHS Act and to monitor the products so that they do not enter domestic commerce. Additionally, for blood products to be exported after further manufacture into final dosage form under section 351(h) of the PHS Act, such registration and listing will enable FDA to evaluate, if appropriate, the person who will be further processing or incorporating the imported article to ensure that compliance with current good manufacturing practices, or, consistent with section 802(f)(1) of the act, conformance with international manufacturing standards as certified by an international standards organization recognized by FDA, as specified by section 351(h)(3) of the PHS Act. Section 802(f)(1) of the act requires all products exported under section 802 of the act to be in substantial conformity with current good manufacturing practices or to meet international standards as certified by an international standards organization recognized by FDA. At this time, FDA has not formally recognized any international standards or international standards organizations for purposes of section 802(f)(1) of the act.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

According to Executive Order 12866, a regulatory action is economically significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs. A regulation is considered significant under Executive Order 12866 if it raises novel legal or policy issues.

The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In

addition the proposed rule is not a significant regulatory action as defined by the Executive Order. The agency also believes that the recordkeeping and reporting requirements encompassed in the proposed rule will not have a significant effect on the economy. FDA estimates the industry's total recordkeeping and reporting costs to be $40,000 and $61,500, respectively. These estimates are based on an estimated cost of $100 per record and an average wage or $30 per hour for each report (with a total of 2,050 reports). Thus, the proposed rule's cost to industry would be $101,500.

The Regulatory Flexibility Act requires the agency to analyze options that would minimize any significant impact of a rule on small businesses. This proposed rule would entail only minimal reporting and recordkeeping as necessary to identify substances and their use that have been imported under the "import for export" provisions of the act. The required reporting and recordkeeping is necessary to enable the importer to ensure, and the agency to monitor, that such imported substances are further processed or incorporated into another product while in the United States, and are then exported or destroyed, as required by the act. Indeed, the "import-for-export" provisions of the act that these proposed regulations would implement might create new economic opportunities for U.S. businesses, including small businesses. Thus, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small businesses. Therefore, under the Regulatory Flexibility Act, the agency is not required to conduct further analysis.

V. Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description for the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Import for Export; FDA Export Reform and Enhancement Act of 1996; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Subsequent Export.

Description: The proposed rule would require an importer to report to FDA each time that it is importing an article that is to be exported after further processing or incorporation into another product in the United States, and to keep records enabling him to ensure, and FDA to monitor, that the article is so processed or incorporated and then exported, and that any portion of the import that is not exported is destroyed. This proposed rule is to implement section 801(d)(3) and (d)(4) of the act as amended by the FDA Export Reform and Enhancement Act of 1996.

Description of Respondents: Persons and businesses, including small businesses.

The estimated burden associated with the information collection requirements for this proposed rule is 10,050 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.— ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
1.84(e)	75	5	375	20	7,500
1.84(e)(xi)	25	1	25	20	500
					8,000

[1]There are no operating and maintenance costs or capital costs associated with this collection of information.

TABLE 2.— ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. Of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
1.84(a)	25	1	25	46	1,150
1.84(b)	75	5	375	1	375
1.84(c)	75	5	375	1	375
1.84(d)	25	1	25	5	125
1.84(f)	25	1	25	1	25
					2,050

[1]There are no operating and maintenance costs or capital costs associated with this collection of information.

The above estimates were based on normal operating burdens for the preparation and submission of information to FDA for imported products, the actual number of firms and import for export entries in fiscal year (FY) 1997, and projections of the future number of firms and import for export entries. In FY 1997, 41 firms, on 175 different occasions, brought products into the United States under the import for export authority at an average rate of 4.27 entries per firm (although most firms only used the import for export authority once in FY

1997). The agency anticipates more firms (particularly firms involved with blood and blood products) to use the import for export authority in the future and, therefore, estimates the maximum number of respondents or recordkeepers to be 75 (an increase of 29 over FY 1997).

FDA's estimates for the hours per record or report are based on estimates from persons familiar with export operations. The records or reports would, in many situations, be derived from normal business records for imported products, so the burden should be very minimal and should also be consistent with current recordkeeping practices.

The agency has submitted the information collection requirements of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by December 24, 1998, to OMB (address above).

VI. Request for Comments

Interested persons may on or before February 8, 1999, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments will be on file with the Dockets Management Branch (address above) and may be seen in that office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1 be amended as follows:

PART 1—GENERAL ENFORCEMENT REGULATIONS

1. The authority citation for 21 CFR part 1 is revised to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 343, 352, 355, 360b, 362, 371, 374, 381, 382, 393; 42 U.S.C. 216, 262, 264.

2. Section 1.84 is added to subpart E to read as follows:

§ 1.84 Import for export: Request for determination and reporting and recordkeeping requirements for unapproved or violative products imported for further processing or incorporation into specified products and subsequent export.

(a) *Request for determination regarding the importation of blood, blood components, source plasma, source leukocytes, or their components, accessories, or parts.* (1) A person who intends to import blood, blood components, source plasma, source leukocytes, or their components, accessories, or parts (including blood or plasma derivatives or intermediates) that are not licensed under section 351(a) of the Public Health Service Act (the PHS Act) shall, before importing the product into the United States under section 801(d)(4) of the Federal Food, Drug, and Cosmetic act (the act), request a determination that such importation is permitted.

(2) The request shall contain the following information:

(i) The names and addresses of the foreign manufacturer of the article to be imported and the initial owner or consignee in the United States that would be responsible for the further processing or incorporation of the article into another product;

(ii) The specific identity of the article to be imported and details as to how the imported article will be further processed or incorporated into a product for export;

(iii) A description of the standard operating procedures and safeguards that the initial owner or consignee in the United States will use or implement to ensure that the imported articles or products incorporating such articles are segregated from and not comingled with products, components, accessories, or parts intended for use in the United States (e.g., quarantine procedures used for segregating imported blood, blood components, or final products from products intended for use in the United States, including validation data for procedures to clean equipment and facilities used in manufacturing products for use in the United States and products for export);

(iv) General donor screening questionnaire or criteria, translated into English, that will be used to screen donors;

(v) A certification that tests for infectious disease will be performed by the foreign supplier on the blood, blood components, source plasma, or source leukocytes, or their components, accessories, or parts (including blood or plasma derivatives or intermediates) at the time of donation and before importation to the United States, and the expected results of such tests. The infectious disease agents that shall be tested for include, but are not limited to: HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema palladum*. A request under paragraph (a) of this section may be based upon infectious agent tests performed using test kits other than those licensed or approved by the Food and Drug Administration (FDA). In such cases, a copy of the labeling for the test kit used, translated into English, shall be included in the submission; and

(vi) A copy of the label described in paragraph (d) of this section.

(3) The request for determination shall be submitted to Office of Compliance, Division of Case Management (HFM–610), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448.

(4) Records pertaining to the request for determination shall be maintained and made available for FDA review upon request.

(5) If FDA determines that the blood, blood component, source plasma, or source leukocyte, or component, accessory, or part meets the appropriate circumstances and conditions to permit its importation into the United States, FDA shall, in writing, notify the person requesting the determination that it has granted permission to import the article.

(b) *Reporting requirements.* (1) A person wishing to import articles specified in paragraphs (b)(l)(i) through (b)(l)(iv) of this section that may not be sold or offered for sale in the United States, but which the initial owner or consignee intends to have further processed or incorporated into a drug, biological product, device, food, food additive, color additive, or dietary supplement in the United States, and which the initial owner or consignee will export from the United States in accordance with sections 801(e) or 802 of the act or section 351(h) of the PHS Act, shall submit to the FDA district with jurisdiction over the port of entry, with each import entry, a statement containing information described in paragraph (b)(2) of this section. The articles for which this reporting requirement apply are:

(i) A component of a drug (including a drug, veterinary drug, and biological for use in humans);

(ii) A component part or accessory of a device, or other article of device requiring further processing, which is ready or suitable for use for health-related purposes;

(iii) A food or color additive; and

(iv) A dietary supplement.

(2) The statement that shall be supplied to FDA with each import entry shall include, but is not limited to, the following information:

(i) A formal declaration of the purpose for which the article is being imported before export (how it will be further processed, or the name or description of the product into which it will be incorporated in the United States) and that it will not be sold or offered for sale in the United States;

(ii) The name or description of the article (including any scientific or technical name);

(iii) Any product coding, batch, lot, or other identifying numbers;

(iv) The name and address of the foreign manufacturer of the imported article (if different from the name of the foreign shipper identified in the import records at the U.S. Customs Service);

(v) The name and address of the initial owner or consignee in the United States and, if different, the address in the United States where the article will be further processed or incorporated into any product listed in paragraph (b)(1) of this section; and

(vi) In addition to the information described in paragraphs (b)(l)(i) through (b)(l)(iv) of this section, for blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that are not licensed under section 351(a) of the PHS Act and are to be imported under section 801(d)(4) of the act, the statement shall include a copy of the determination by the agency granting permission to import the product.

(3) The initial owner or consignee also shall keep a copy of the statement as part of its records for the article.

(c) *Shipping-package label requirements.* The importer, initial owner, or consignee of articles to be imported into the United States for further processing or incorporation into a product for export shall permanently affix, to the articles' shipping container, package or crate, a label that provides the following information in English:

(1) Contains article(s) that are intended for export from the United States after further processing or incorporation into articles intended for export, and may not be sold or offered for sale in the United States;

(2) The name or description of the article(s) (including any scientific or technical name);

(3) The product coding, batch, lot, or other identifying numbers;

(4) The name and address of the responsible foreign manufacturer of the imported article(s);

(5) The country of origin (if different from that of responsible manufacturer); and

(6) Any appropriate warning or special-handling label, such as "BIOHAZARD" for products potentially contaminated with an infectious agent.

(d) *Label requirements for blood products.* The foreign supplier of blood, blood component, source plasma, source leukocyte, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, shall label the product in English with the following information:

(1) A properly descriptive name;

(2) Name(s) and address(es) of establishments collecting, preparing, labeling, or pooling the source material;

(3) Donor, lot, or pool numbers relating the unit to the donor;

(4) The recommended storage temperature (in degrees Celsius);

(5) The quantity of the product;

(6) The statement, "Import for Export;"

(7) The statement, "Not for Use in Products Subject to Licensure Under Section 351 of the Public Health Service Act;"

(8) The statement, "For Manufacturing Use Only" or "For Manufacturing into Noninjectable Products Only;"

(9) A statement indicating that the product has been tested for infectious disease agents, including, but not limited to: HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, HTLV–I, HTLV–II, and *Treponema palladum*. A request under paragraph (a) of this section may be based upon infectious agent tests performed using test kits other than those licensed or approved by FDA. In such cases, a copy of the label for the test kit used, translated into English, shall accompany the request;

(10) If the product has tested positive for any infectious agent as required in paragraph (d)(9) of this section, the product's label shall indicate the agent(s) for which the product has tested positive, and the term "BIOHAZARD" shall be prominently displayed in bold letters; and

(11) Any other appropriate warnings or special handling instructions as determined by the importer.

(e) *Recordkeeping requirements.* (1) The initial owner or consignee who is responsible for the article offered for import shall have a place of business in the United States.

(2) The initial owner or consignee responsible for the article offered for import shall maintain identifying records for 5 years after exportation or destruction of the imported article, and shall make those identifying records available for inspection by the agency. The identifying records shall include the following information:

(i) The name or description of the article (including any scientific or technical name);

(ii) Any product coding, batch, lot, or other identifying numbers;

(iii) The name and address of the foreign manufacturer of the imported article;

(iv) How the article will be or was further processed, and the name or description of any product into which it will be or was incorporated in the United States;

(v) The signature of the responsible individual at the importing firm;

(vi) The name and address of the firm in the United States where the article will be or was further processed or incorporated into another product;

(vii) The disposition of the imported article (i.e., manufacturing records showing how specific articles were used or destroyed and the dates of receipt, use, destruction, or re-exportation, as that information becomes available);

(viii) Any product coding, lot, batch, or other identification number for the further-processed article or product incorporating the imported article;

(ix) A copy of the label to be applied to the shipping package, container, or crate used to export the further–processed article or product incorporating the imported article (indicating that it contains articles that may not be sold or offered for sale in the United States and are intended for export only);

(x) The name and address of the foreign purchaser of the further-processed article or product incorporating the imported article; and

(xi) Additionally, for blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, the records shall include documentation of the agreement between the foreign material supplier and the U.S. manufacturer. The documentation shall outline the specific contractual relationship, the foreign manufacturing specifications, and the U.S. manufacturer's plan for auditing the foreign supplier to ensure compliance with the terms of the contract. The initial owner or consignee shall have written standard operating procedures to ensure that such products are not

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diverted to domestic use in the United States and are kept segregated from and not comingled with products or components intended for use in the United States (e.g., quarantine procedures used for segregating imported blood, blood components, or final products from products intended for use in the United States, including validation data for procedures to clean equipment and facilities used for manufacturing products for use in the United States and exported products).

(f) *Registration and listing requirements.* Each person who intends to further process or incorporate blood, blood components, source plasma, source leukocytes, or a component, accessory, or part thereof (including blood or plasma derivatives or intermediates) that is not licensed under section 351(a) of the PHS Act and is to be imported under section 801(d)(4) of the act, shall register with FDA and list the blood product to be further processed or incorporated into other products, or update its registration and listing, and include in the listing a description of the imported material as well as the final product for export. The information shall be sent to the appropriate registration office listed in parts 207 or 607 of this chapter.

Dated: November 14, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31351 Filed 11–23–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Chapter I

[USCG–1998–4501]

RIN 2115–AF68

Improvements to Marine Safety in Puget Sound-Area Waters

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks public comment on potential rules that would improve marine safety in Puget Sound-Area waters including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the Olympic Coast National Marine Sanctuary. Based on a recent determination by the Secretary of Transportation regarding the status of marine safety in the Puget Sound-area, the Coast Guard will soon begin a comprehensive cost-benefit analysis to study the feasibility of implementing new safety measures, including extended tug escort requirements for certain vessels and a dedicated pre-positioned rescue vessel. Public input will help focus the cost-benefit analysis and help us develop any future proposed rules that may be necessary.

DATES: Comments must reach the Docket Management Facility on or before May 24, 1999. Please submit comments relating to the cost-benefit analysis as soon as possible, preferably by December 24, 1998.

ADDRESSES: You may mail comments to the Docket Management Facility [USCG–1998–4501], U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

A copy of the International Private Sector Tug-of-Opportunity System (ITOS) Report to Congress is available in the public docket at the above addresses or on the Internet at http://www.uscg.mil/hq/g-m/nmc/genpub.htm. You may also obtain a copy by calling the project manager at the Coast Guard number in **FOR FURTHER INFORMATION CONTACT**.

A copy of the Puget Sound Additional Hazards Study, formally titled "Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State," is available in the public docket at the above addresses and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 800–553–6847, fax 703–321–8547. The report may be ordered as document PB97–205488 and the technical appendices to the report as document PB97–205470.

FOR FURTHER INFORMATION CONTACT: For information concerning this document, call Commander T.M. Close, Human Element and Ship Design Division, U.S. Coast Guard, telephone 202–267–2997. For questions on viewing, or submitting material to, the docket, call Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this potential rulemaking by submitting written data, views, or arguments. If you submit comments, you should include your name and address, identify this document [USCG–1998–4501] and the specific section or question in this document to which your comments apply, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you want acknowledgment of receipt of your comments, you should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period.

No public meeting is planned. You may request a public meeting by submitting a comment requesting one to the address under **ADDRESSES**. The request should include the reasons why a meeting would be beneficial and recommended locations for the meeting. If it is determined that a meeting should be held, we will announce the time and place in a later notice in the **Federal Register**.

Background and Purpose

During the last two and a half years, the Coast Guard and the Office of the Secretary of Transportation (OST), in cooperation with the State of Washington, the maritime industry, and other local stakeholders, have assessed marine safety in Puget Sound-area waters. The goal of all involved parties is to ensure a high degree of safety and environmental protection for the area's waterways.

On April 26, 1996, the White House issued the "Department of Transportation Action Plan to Address Vessel and Environmental Safety on Puget Sound-Area Waters." This Action Plan consists of three elements. The first element is to establish criteria for and facilitate the development of a private-sector system to provide timely emergency response to vessels in distress in the Strait of Juan de Fuca and near the Olympic Coast National Marine Sanctuary. The second element is to determine the adequacy of all vessel safety and environmental protection

measures in Puget Sound-area waters. The third and final element is to determine whether any hazard scenarios warrant consideration of additional casualty prevention or response measures.

International Tug of Opportunity System

Section 401 of the Alaska Power Administration Asset Sale and Termination Act (November, 1995) directed the Coast Guard to submit a plan to Congress outlining the most cost-effective means of implementing an international, private-sector, tug-of-opportunity system (ITOS). The Coast Guard, after working in cooperation with a cross section of the maritime industry, submitted reports to Congress in January and December of 1997.

A voluntary ITOS is now in effect in the Puget Sound area, with over 80 tugs participating in the system. The ITOS provides a means to identify tugs that may be in the vicinity of a vessel in distress. Participating tugs are equipped with Automatic Identification System (AIS) transponders that automatically report their positions to the Marine Exchange of Puget Sound.

Puget Sound Additional Hazards Study

In 1997, the Department of Transportation conducted a broad assessment of the probabilities and consequences of marine accidents in Puget Sound-area waters, including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the offshore waters of the Olympic Coast National Marine Sanctuary. This assessment, formally titled "Scoping Risk Assessment: Protection Against Oil Spills in the Marine Waters of Northwest Washington State" but commonly called the "Puget Sound Additional Hazards Study," was conducted by the Volpe National Transportation Systems Center with significant stakeholder participation. A key element of this Study was a panel of recognized safety and environmental protection experts who provided information, opinions, and recommendations regarding the current safety system. The Study was completed in July 1997. Since that time, the Coast Guard and the Office of the Secretary of Transportation have continued outreach efforts and solicited input from State officials and the public on how to proceed based on the recommendations of the Additional Hazards Study.

Secretary's Determination

The Secretary of Transportation has determined that while the many existing elements of the region's marine transportation system comprise a system that is safe, there is always room for improvement. The Secretary's Determination and the Department's Announcement regarding additional risk mitigation measures appear in the "Notices" section of this issue of the **Federal Register**. The Secretary found that consideration of additional safety measures is warranted to address the risks of collisions, powered groundings, and drift groundings.

Announcement on Additional Measures

Accompanying the Secretary's Determination, the Department released an announcement regarding additional risk mitigation measures. Some additional measures can be implemented immediately, while others require more thorough evaluation before any future implementation.

A promising measure to reduce the risk of collisions and powered groundings is improved waterway management, such as modifications to the Traffic Separation Schemes (TSS) at the western approach to the Strait of Juan de Fuca. The Thirteenth Coast Guard District is starting a Port Access Study in consultation with the Canadian Government, as well as State and local stakeholders. This study will provide recommendations for TSS modifications.

The Department also announced ongoing enhancements to the Coast Guard's existing Port State Control Program to increase attention to English language proficiency and increase information-sharing with Canadian authorities. The Port State Control Program keeps substandard foreign-flag vessels out of U.S. waters. Further, the Department announced several other human element measures that help reduce risk by improving crew effectiveness and performance. These measures address fatigue prevention and improved communications. The Captain of the Port of Puget Sound is implementing these measures with Canadian and Washington State counterparts through the enforcement of recent International treaties and through ongoing Coast Guard programs.

The Announcement also described efforts to fully evaluate potential additional measures to prevent a drift grounding in the event of a loss of steering or propulsion. While ITOS provides risk reduction for drift groundings, there are concerns that a sufficient number of tugs may not be present in the western Strait of Juan de Fuca and in offshore areas in the course of routine commercial service.

To address this concern, the Department announced an effort to study the effectiveness of ITOS. In addition, the Coast Guard and the State of Washington will fund and manage an analysis of the costs and additional risk reduction benefits that would be afforded by extended tug escorts for commercial vessels or by a pre-positioned rescue vessel. These analyses will begin immediately and should be completed by the end of next summer.

Regulatory History

Section 4116(c) of the Oil Pollution Act of 1990 (OPA 90) requires two tug escorts for single-hull tankers over 5,000 gross tons transporting oil in Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to United States jurisdiction). The single-hull tankers to which that requirement applies will be incrementally phased out. By 2015, all single-hull tankers entering U.S. waters will be replaced by double hull tankers. The Coast Guard published a final rule (CGD 91–202) on August 19, 1994, implementing the OPA 90 escort requirements. Those regulations are codified in 33 CFR part 168. Costs and benefits were not a central issue for that rulemaking because the escort requirements were specifically required by statute. In addition, industry was incurring significant escort-related costs under existing state escort regulations in both Alaska and Washington. Since 1975, the State of Washington has required escorts for certain loaded single and double hull tankers transiting east of Port Angeles.

OPA 90 also gives the Secretary authority to extend the two-tug escort requirement to other U.S. waters, as appropriate. In an Advance Notice of Proposed Rulemaking (ANPRM) published on April 27, 1993 (CGD 91–202a), the Coast Guard sought public comment on: (1) What U.S. waters, other than in the Puget Sound area east of Port Angeles, should have an escort vessel requirement, (2) what vessels should be required to comply with an escort rule, and (3) what the escort vessels should be expected to do. In the ANPRM, the Coast Guard suggested that the Ports and Waterways Safety Act (PWSA) might provide authority for more flexible escort requirements than OPA 90, such as the use of single, high-performance escort vessels (instead of the two-tug escort required under OPA 90). Several public meetings were held on the ANPRM. In the Notice of Public Meeting and Request for Comments

published on December 21, 1994, the Coast Guard expanded its discussion of its PWSA authority.

Hundreds of comments were received in response to both the 1993 ANPRM and the 1994 Request for Comments and during the several public meetings. Several comments supported extending tug-escort requirements for Puget Sound-area waters beyond the OPA 90-mandated area; these comments are included in this new docket. In general, there was no consensus among the comments. Most were subjective and without supporting data. For example, arguments against escorts frequently cited substantial adverse economic impact but did not include cost analyses. Similarly, recommendations for escorts frequently cited environmental sensitivity to oil spills but did not include analyses of the navigational hazards to vessels. Therefore, it was difficult to proceed with a rulemaking without the needed cost-benefit information.

Extending escort requirements beyond the OPA 90 mandated areas is discretionary and subject to much greater economic scrutiny, particularly in light of Congressional and Administration concerns for the cost-effectiveness of Federal regulations (Executive Order 12866, for example). Further complicating the issue was the broad geographic application of the previous ANPRM which could include any waters of the U.S. For these reasons, the Coast Guard elected to defer work on that rulemaking project (CGD 91–202a) until ITOS and the Additional Hazards Study are addressed and more cost-benefit information is gathered.

Under authority of the PWSA (33 U.S.C. 1223–1224), the Coast Guard has initiated this new potential rulemaking to address additional safety measures, including extended tug escorts and a dedicated pre-positioned rescue vessel, focusing specifically on Puget Sound-area waters.

Discussion of Measures for Further Evaluation

Extended Tug Escorts

In the upcoming cost-benefit analysis announced by the Department, the Coast Guard and the State of Washington will evaluate the potential of extending the current tug-escort requirement (applicable to single-hull tankers over 5,000 gross tons) west of the line connecting New Dungeness Light with Discovery Island light to include a wider range of commercial vessels transiting the entire Strait of Juan de Fuca.

The Additional Hazards Study raised several issues regarding extended tug escorts. Increasing the vessel escort area would benefit escorted vessels in the event of propulsion or steering loss by preventing some powered and drift groundings. An escort might also reduce the risk of collisions for the escorted vessel. In addition, extending tug-escort requirements could potentially increase the number of vessels available for ITOS, which is a concern for the area west of Port Angeles.

Extending tug escort requirements only for single-hull tankers could lead to the collapse of ITOS, as the voluntary tank-vessel participants would no longer have a reason to pay for a redundant safety system. Should ITOS collapse, the risk for non-tank vessels would potentially increase due to the loss of this safety system. Similarly, the risk of drift groundings for all vessels off the coast would increase. The potential increase in risk for non-tank vessels could be addressed by requiring escorts for all single-hull vessels carrying a significant amount of petroleum as cargo or as bunkers (ship fuel). Extending the escort requirements for single-hull tankers or requiring escorts for all single-hull vessels carrying a significant amount of petroleum would impose significant costs on those industries.

By extending the tug escort area, the time it would take for an escorted vessel to transit the Strait of Juan de Fuca would be lengthened (due to slower speeds while under escort), thus increasing its vulnerability. Further, the Additional Hazards Study classified the location near Port Angeles where tank vessels rendezvous with escort vessels as a significant risk. Shifting the rendezvous location to the entrance of the Strait of Juan de Fuca, closer to the Sanctuary and in less hospitable conditions, could increase the likelihood and consequences of spills.

Dedicated Pre-Positioned Rescue Vessel

The other measure to be addressed in the cost-benefit analysis is the concept of stationing a pre-positioned rescue vessel at the approaches to the Strait of Juan de Fuca. Such a vessel could help prevent drift groundings and could be outfitted to provide some initial salvage, spill response, and fire-fighting capabilities.

While a pre-positioned rescue vessel may be a valuable safety addition to Puget Sound-area waters, such a vessel would not significantly reduce the likelihood of collisions, powered groundings, or allisions. Its ability to reduce risk would be limited, because ITOS already addresses many of the same risks. Additionally, a requirement for such a vessel might require additional legislation. Finally, there are concerns regarding who would pay for such a vessel.

International Considerations

We must consider the international nature of the Puget Sound-area waterway when addressing potential new safety measures, such as extended tug escorts and a dedicated rescue vessel. While the Coast Guard has the authority to regulate all vessels within U.S. waters of the Strait, our enforcement authority does not extend to vessels in the outbound channel, which is predominately in Canadian waters. Any future extended tug escort requirement could not apply to Canadian waters without bilateral enactment.

Cost-benefit Analysis and Related Questions

As announced by the Department, the Coast Guard and the State of Washington will evaluate the degree of effectiveness of ITOS and jointly manage and fund a cost-benefit analysis of extended tug escorts and a dedicated rescue vessel. These analyses will assist the Coast Guard in developing a regulatory assessment for a future regulatory proposal, if deemed necessary. To help focus these analyses, the Coast Guard requests comments on the following questions, although comments on other issues addressed in this document are also welcome. In responding to a question, please explain your reasons for each answer, and follow the instructions under **REQUEST FOR COMMENTS** above.

1. Given the results of the Additional Hazards Study and existing safety measures currently in place, including existing Federal and state tug escort requirements for certain tank ships east of the New Dungeness-Discovery Island line; Vessel Traffic Services; Traffic Separation Schemes; the Coast Guard's Port State Control Program; and Coast Guard inspection of U.S. tank ships, cargo ships and passenger vessels, what improvements to marine safety in Puget Sound area-waters are most cost-effective?

2. Should tug escorts be required for all in-bound laden single-hull tank ships west of the line connecting New Dungeness Light with Discovery Island Light? If so, how far west should the escort begin? What costs would be associated with such an escort requirement? Should a bilateral agreement with Canada be pursued to require escorts for laden outbound

tankers? What costs would be associated with such a requirement?

3. Should tug escorts be required for all single-hull ships over a certain size? If so, what size would be appropriate? What costs would be associated with such an escort requirement? Are there criteria other than vessel size that should be considered (cargo carried, fuel capacity, vessel's flag, vessel's history of regulatory compliance, etc.)?

4. Is a single tug adequate as an escort? Why or why not? If so, what characteristics should a single escort tug have?

5. Should escorts be required throughout the year or only during certain seasons? How would a seasonal requirement affect costs?

6. Are there additional hazards created by establishing escort requirements? If so, what are they and what are the risks?

7. Should there be a dedicated rescue vessel pre-positioned in the Strait of Juan de Fuca? If so, where should it be located? Who should operate it? What costs are associated with such a vessel? Can it be in a Canadian port? Should such a vessel be in addition to or in place of extended escort requirements?

8. What characteristics should a dedicated rescue vessel have? Should it be a tug, a salvage vessel, an oil spill response vessel, or some other type of vessel? How would costs vary according to the type of vessel used?

9. Should a dedicated rescue vessel be pre-positioned throughout the year or only during certain seasons? How would a seasonal requirement affect costs?

10. Should the dedicated rescue vessel serve as an oil spill response vessel or a platform for oil spill mitigation equipment? If so, what type of and how much equipment should be on board? How much would this equipment cost?

11. Who should fund any vessel pre-positioned in the Strait of Juan de Fuca? How should the funds be collected?

12. Are there additional hazards created by establishing a dedicated rescue vessel in the Strait of Juan de Fuca? If so, what are they and what are the risks?

13. If tugs were hired specifically to be available to respond to potential ship emergencies in the Strait of Juan de Fuca when no other tugs happen to be in the region, would this arrangement adequately address risks, considering existing safety programs? What ships should such a requirement apply to? Who should pay for these tugs? What costs would be associated with such a requirement?

14. Since the Oil Pollution Act of 1990, what oil spills have occurred from shipboard sources in Puget Sound-area waters including the Strait of Juan de Fuca and approaches to the Strait? What controls would have helped to prevent these spills? What controls or countermeasures would have helped mitigate these spills once they occurred?

15. What types of oil spills would be prevented by escorting laden tankers through the Strait of Juan de Fuca and its approaches?

16. What types of oil spills would be prevented by pre-positioning a dedicated rescue vessel in the Strait of Juan de Fuca?

17. How do the consequences of an oil spill in Puget Sound-area waters compare with the consequences of an oil spill in other State of Washington waters? In other waters around the U.S.?

18. Are the response time estimates developed in the ITOS Report to Congress and ITOS Addendum Report accurate? If not, why not and what is a more accurate estimate?

Preliminary Regulatory Assessment

At this time, this rulemaking is not considered significant under section 3(f) of E.O. 12866; however, it is significant under the regulatory policies and procedures of the Department of Transportation [44 FR 11030 (February 26, 1979)] due to substantial public interest. The Coast Guard will prepare an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866 for any future rulemaking deemed necessary.

The primary purpose of this advance notice is to solicit public comments to help the Coast Guard identify the costs and benefits of potential new safety measures to the extent that they exceed current statutory and regulatory requirements or current industry practices. We expect that public response to the questions and issues addressed in this document will help us prepare a regulatory assessment for any future rules that may be necessary. We seek your feedback on what costs you may incur should any of the proposed additional measures be required, as well as associated benefits.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether any potential rulemaking would have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because we have not yet proposed specific requirements and because the number of affected small entities has not been identified, we cannot accurately estimate the potential impact on small entities at this time. The Coast Guard will address small entity issues as part of the planned cost-benefit analysis discussed in this document. The Coast Guard expects that comments received on this document will help it determine the number of potentially affected small entities, and weigh the impacts of various regulatory alternatives.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–21], the Coast Guard wants to assist small entities to understand this document so they can better evaluate the potential effects of any future rulemaking on them and participate in the rulemaking process. If you believe that your small business, organization, or agency may be affected by this potential rulemaking, please explain how you could be affected, and tell us what flexibility or compliance alternatives the Coast Guard should consider to minimize the burden on you.

If you have questions concerning this document, you may call the Coast Guard point of contact designated in **FOR FURTHER INFORMATION CONTACT.** We also maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.html which has current information on small entity issues and proposed Coast Guard regulations. To help small entities become more involved in this rulemaking, the Coast Guard will mail copies of this advance notice to Small Business Development Center (SBDC) State Offices in the Northwest for distribution to local SBDC offices and interested small businesses.

Collection-of-Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, record-keeping, notification, and other similar actions.

The Coast Guard cannot yet estimate the paperwork burden associated with this potential rulemaking because it has not yet proposed any new requirements. If and when a specific regulatory

proposal is developed, the Coast Guard will prepare a request for OMB approval of any collection-of-information requirements.

Federalism

The Coast Guard has analyzed this advance notice under the principles and criteria contained in E.O. 12612. From the information available at this time, the Coast Guard cannot determine whether this potential rulemaking would have sufficient federalism implications to warrant the preparation of a Federalism Assessment. If and when a specific regulatory proposal is developed, the Coast Guard will address any federalism issues.

Unfunded Mandates

Under the Unfunded Mandates Reform Act [Pub. L. 104–4], the Coast Guard must consider whether this potential rulemaking would result in an annual expenditure by State, local, and tribal governments, or by the private sector, in the aggregate of $100 million (adjusted annually for inflation). The Act also requires (in Section 205) that the Coast Guard identify and consider a reasonable number of regulatory alternatives and, from those alternatives, select the least costly, most cost-effective, or least burdensome alternative that achieves the objective.

The Coast Guard will address unfunded mandate issues as part of the cost-benefit analysis. Any information you can provide regarding unfunded mandate issues related to this proposal would be useful.

Environment

The Coast Guard has concluded that it is premature to make an assessment of environmental impact of any rules that might be adopted because no specific action is proposed at this time. The Coast Guard will conduct any required environmental assessment and appropriate documentation in accordance with Commandant Instruction M16475.1B before publication of any notice of proposed rulemaking. The Coast Guard invites comments addressing possible effects that this potential rulemaking may have on the environment or addressing possible inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment.

Dated: November 20, 1998.

James M. Loy,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 98–31512 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–194, RM–9360]

Radio Broadcasting Services; Jewett and Windham, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Ridgefield Broadcasting Corporation seeking the reallotment of Channel 250A from Jewett to Windham, NY, as the community's first local aural service, and the modification of Station WAXK's construction permit to specify Windham as its community of license. Channel 250A can be allotted to Windham in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.3 miles) northwest, at coordinates 42–20–12 North Latitude and 74–16–19 West Longitude, to accommodate petitioner's desired transmitter site. Canadian concurrence in the allotment at Windham is required since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before January 4, 1999, and reply comments on or before January 19, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis Jackson, President, Ridgefield Broadcasting Corporation, 19 Boas Lane, Wilton, CT 06897–1301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–194, adopted November 4, 1998, and released November 13, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31344 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 63, No. 226
Tuesday, November 24, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 11 a.m. and adjourn at 5 p.m. on December 15, 1998, at the Brandywine Suites Hotel, 707 King Street, Wilmington, DE 19801. The purpose of the meeting is to review plans and make assignments for development of a citizens' reference guide to civil rights, and to discuss new project concepts and future activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 17, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–31401 Filed 11–23–98; 8:45 am]
BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111898A]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings of the North Pacific Fishery Management Council and its advisory bodies.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, Alaska the week of December 6, 1998.

DATES: 1. The Scientific and Statistical Committee (SSC) will meet beginning at 8:00 a.m. on Sunday, December 6, continuing through at least Wednesday, December 9, 1998.

2. The Advisory Panel (AP) will begin meeting at 8:00 a.m. on Monday, December 7, and continue through Friday, December 11, 1998.

3. The Council will meet beginning at 8:00 a.m. on Wednesday, December 9, continuing through Monday, December 14, 1998.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the hotel. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 503 W. Third Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports from NMFS and Alaska Department of Fish and Game (ADF&G) on the current status of the fisheries off Alaska, enforcement reports from the United States Coast Guard and NMFS Enforcement, and report from NMFS on seabird bycatch in groundfish fisheries.

2. Receive an update on Section 7 findings for Steller sea lions and provide input or take action as necessary. Discuss necessary follow-up amendments to fishery management plans for 2000.

3. Review progress on 1999 implementation of the American Fisheries Act and provide guidance to staff for follow-up amendments.

4. Receive a status report from the Council's Socioeconomic Data Committee.

5. Approve appointments to the Council's AP and SSC for 1999.

6. Review an initial performance report for the Improved Retention/Improved Utilization Program in the groundfish fisheries and take final action on a regulatory amendment to the program.

7. Groundfish amendments issues scheduled for discussion or action are as follows:

a. Take final action on an amendment for demersal shelf rockfish retention in the Gulf of Alaska individual fishing quotas fisheries.

b. Receive report on an experimental fishery conducted by the Groundfish Forum.

8. The Council will receive the final Stock Assessment and Evaluation (SAFE) reports for the 1999 Gulf of Alaska and Bering Sea and Aleutian Islands groundfish fisheries and approve final 1999 harvest and bycatch allocations.

9. The Council will review current staff tasking and provide guidance to staff.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during the meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–

271–2809, at least 7 working days prior to the meeting date.

Dated: November 18, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31370 Filed 11–23–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110998C]

Marine Mammals; File No. 738–1454

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 738–1454 issued to Ms. Carole Conway, Genomic Variation Laboratory, Department of Animal Science, Meyer Hall, University of California, Davis, CA 95616–3322, was amended to allow export of blue whale samples.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro (301/713–2289).

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 19, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–31371 Filed 11–23–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits and Increase of a Guaranteed Access Level for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 19, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits and increasing a guaranteed access level.

EFFECTIVE DATE: November 19, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 339/639 is being increased for special shift, reducing the limit for Categories 338/638 to account for the special shift being applied.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current guaranteed access level for textile products in Category 444.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67622, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 19, 1998, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	950,766 dozen.
339/639	1,195,452 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

Also effective on November 19, 1998, you are directed to increase the guaranteed access level (GAL) for Category 444 to 40,000 numbers. The GALs for Categories 338/638 and 339/639 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–31404 Filed 11–23–98; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 8 December 1998.

Time of Meeting: 0900–1600.

Place: 1801 N. Beauregard St., Room 117W, Alexandria, VA 22311.

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Agenda: The Army Science Board (ASB) Summer Study Panel will meet for discussions on "Enabling Rapid and Decisive Strategic Maneuver for the Army After 2010." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. For further information, please contact Wayne Joyner at (703) 604–7490.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 98–31314 Filed 11–23–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 25, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *PatSherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use ■ telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 18, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: National Survey to Determine the Need for Special Education Services.

Frequency: One time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 689; Burden Hours: 668.

Abstract: The Office of Correctional Education is conducting a study to determine the number of incarcerated juvenile and youthful offenders with disabilities. This study is being undertaken by the American Institutes for Research. Three surveys and methodology are being presented for review.

[FR Doc. 98–31321 Filed 11–23–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 99–04: Human Genome Program—Technological Advances

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications in support of the DOE Human Genome Program (HGP). This program is a coordinated, multidisciplinary, goal-oriented research effort to obtain a detailed understanding of the human genome at the molecular level. High throughput sequencing is now a major focus of the program, but needs for supporting resources and technologies remain in several areas.

DATES: Potential applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–04, should be received by DOE by 4:30 p.m., E.S.T., December 3, 1998. A response to the preapplications discussing the potential program relevance and encouraging or discouraging a formal application generally will be communicated within several days of receipt.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.S.T., February 23, 1999, in order to be accepted for merit review and to permit timely consideration for award in FY 1999.

ADDRESSES: Preapplications, referencing Program Notice 99–04, should be sent preferable by E-mail to joanne.corcoran@oer.doe.gov, however, preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, or transmitted by facsimile to (301) 903–8521.

After receiving notification from DOE concerning successful preapplications, applicants may prepare formal applications and send them to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–04. The above address for formal applications also must be used for transmission by U.S. Postal Service Express Mail, any commercial mail

delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Marvin Stodolsky if referencing topics (1–4) and Dr. Daniel Drell if referencing topic (5) and Ms. Joanne Corcoran for general program information. Their email addresses are marvin.stodolsky@oer.doe.gov, daniel.drell@oer.doe.gov and joanne.corcoran@oer.doe.gov with telephone exchange (301) 903 and respective extensions 4475, 4742 and 6488. E-mail communications are preferred. General HGP information can also be obtained with Internet browsers at: http://www.er.doe.gov/production/ober/hug_top.html, http://www.ornl.gov/TechResources/Human_Genome/home.html, and sites linked to these WWW pages. The solicitation topics are in accordance with the 1998 revision of the 5-year goals of the U.S. HGP. It is published in the October 21, 1998 issue of the journal, Science, volume 282 and is available on the Internet at: http://www.ornl.gov/hg5yp. The full text of Program Notice 99–04 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: Under this solicitation near term resource development or improvements are sought in: (1) Large insert DNA clone libraries and their characterization; (2) chemistries and biochemistries for DNA sequencing; (3) protocols and reagents for full length messenger RNA to cDNA production and sequencing; (4) characterizing exceptional chromosomal regions including those near telomeres and centromers by sequencing and/or other relevant methodologies; and (5) computational processing of sequence information including viewing, curating, and integrating. Instrumentation development complementary to these topics was sought under a separate solicitation and is specifically excluded from this call.

Topic Details

The goal of (1), large insert DNA clone libraries and their characterization, is to provide additional resources in support of human and mouse genomics, and perform characterizations supportive of genomic sequencing. The vectors for the libraries should be of the generic BAC (bacterial artificial chromosomes) type, supporting stable maintenance of their inserts in bacterial hosts. For a mouse library, the C57Bl/6J strain should be the source of the DNA, with a 10–15 fold genome coverage sought. There should be two sub-libraries, with DNA fragments generated by different restriction nucleases to diminish representation biases. Also to diminish representation biases, DNA breakage by shearing only is a desired substitute to breakage by restriction. If this improvement can be implemented quickly, both mouse and human libraries produced from sheared DNAs are sought. Companion quality control analyses must be specified. Separate applications are sought for more extensive characterization of the BACs by restriction fingerprinting, end sequencing of inserts, cDNA mapping onto BACs and/or other high throughput methodologies supportive of genomics projects.

The goal of (2), chemistries and biochemistries for DNA sequencing, is to further bring speed and economies to DNA sequencing through improvements in reagents such as enzymes, their substrates, reporting labels and related protocols.

The goal of (3), protocols and reagents for full length messenger RNA to cDNA production and sequencing, is to address outstanding needs in characterizing messenger RNA populations of tissues, as represented by more stable derivative libraries of cDNAs. Particularly for human sources, obtaining mRNAs with minimal degradation remains troublesome. For longer mRNAs, faithful conversion to cDNAs is problematic. Within completed libraries, identifying optimal representatives for complete sequencing is still time consuming and expensive. For cDNAs in the few kilobase size range, full length sequencing does not yet have the economies of sequencing longer DNAs. Applications which address these problem areas are sought. Reports on recent workshops on cDNAs can be accessed on the Internet through the WWW site http://www.ornl.gov/meetings/wccs/index.html.

The goal of (4), characterizing exceptional chromosomal regions including those near telomeres and centromers by sequencing and/or other relevant methodologies, recognizes that current sequencing strategies may prove inadequate for chromosomal regions which are troubled by abundant repeat structures, or are the boundaries of heterochromatin and euchromatin regions. Applications addressing these problem areas specifically as they apply to chromosomes 5, 16 and 19 are sought.

The goal of (5) computational processing of sequence information including viewing, curating, and integrating, seeks ways to more efficiently and more accurately assemble partial DNA sequences, to identify regions of biological significance, and to more efficiently utilize previously determined DNA sequence to identify polymorphisms and to characterize related but not yet sequenced DNA. An additional interest is identification of useful standards, which may include (but is not limited to) controlled vocabularies, data types, and annotation types. Standards development must proceed with user community input. A report on a May, 1998 workshop on informatics needs can be accessed on the Internet at: http://www.ornl.gov/TechResources/Human_Genome/publicat/hgn/v9n3/02doenih.html

Program Funding

It is anticipated that a total of $7,000,000 will be available for grant awards in this area during FY 1999 and FY 2000, contingent upon availability of appropriated funds. Multiple year funding of grant awards is expected, and is also contingent upon availability of funds, progress of the research, and continuing program need. Projected awards will be in the range of $50,000 per year up to $1,000,000 per year with terms of 2 to 3 years.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to

the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 25 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97-1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, D.C. on November 9, 1998.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 98–31367 Filed 11–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–51–002]

Algonquin Gas Transmission; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets to become effective November 2, 1998:

Second Sub Third Revised Sheet No. 662 Sub Second Revised Sheet No. 715

Algonquin asserts that the above listed tariff sheets are being filed to comply with the Commission's Letter Order issued on October 29, 1998, in Docket Nos. RP99–51–000 and RP99–51–001 (October 29 Order).

Algonquin states that Sub Second Revised Sheet No. 715 filed herewith incorporates by reference sections (v) and (vi) of the Gas Industry Standards Board (GISB) standard 1.3.2 in compliance with the October 29 Order. Algonquin also states that Second Sub Third Revised Sheet No. 662 revises the No Bump Policy in Section 23.3 of the General Terms and Conditions to provide notice consistent with the Imposition of Flow Orders in Section 29.3 of the General Terms and Conditions in compliance with the October 29 Order.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31287 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–54–001]

Carnegie Interstate Pipeline Company; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective November 2, 1998:

Substitute Second Revised Sheet No. 102
Substitute First Revised Sheet No. 102A
Original Sheet No. 102B
Substitute Second Revised Sheet No. 103
Substitute Sixth Revised Sheet No. 146

CIPCO states that this filing is being made in compliance with Commission Order No. 587–H, issued by the Commission on July 15, 1998 and the Office of Pipeline Regulation's October 29, 1998 Letter Order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31289 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–22–002]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 9, 1998, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1998:

Substitute Seventeenth Revised Sheet No. 31
Second Substitute forty-first Revised Sheet No. 32
Second Substitute forty-first Revised Sheet No. 33
Substitute Fifteenth Revised Sheet No. 34

CNG states that the purpose of this filing is to comply with the Commission's October 29, 1998 Order on CNG's October 1, 1998 Transportation Cost Rate Adjustment (TCRA) filing. Specifically, CNG has modified rates on its enclosed tariff sheets to reflect the Commission's denial of requested waivers, to (1) include a projected amount for undercollected products extraction fuel costs, and (2) recover accumulated under-recovery of products extraction fuel costs in the reservation component of rates, rather than the usage component.

CNG states that copies of its letter of transmittal and enclosures are being mailed to the parties to the captioned proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31293 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–49–001]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 2, 1998:

Sub. Third Revised Sheet No. 282
Sub. Fourth Revised Sheet No. 284
Sub. Second Revised Sheet No. 386A

CNG states that the purpose of this filing is to comply with the Commission's October 28, 1998 Letter Order in the referenced proceeding, regarding CNG's implementation of the business practice standards adopted by the Gas Industry Standards Board (GISB), as incorporated by reference in the Commission's regulations under Order Nos. 587–G and 587–H. To that end, CNG provides substitute tariff sheets and a corrected chart detailing CNG's compliance with each of the GISB business practice standards that have been adopted by the Commission.

CNG states that copies of this letter of transmittal and enclosures are being mailed to the parties to the captioned proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31297 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–66–000]

Columbia Gas Transmission; Notice of Request Under Blanket Authorization

November 18, 1998.

Take notice that on November 10, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030 filed in Docket No. CP99–66–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) is seeking NGA Section 7 certification for an existing point of delivery in Morgan County, Kentucky under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Columbia requests certification for the existing NGPA Section 311 point of delivery so it can provide both part 284, Subpart B, and Subpart G transportation. The existing point of delivery for which Columbia requests NGA certification under Sections 157.205 and 157.212 is for Jefferson Gas Transmission Company, Inc. (Jefferson Gas), the maximum daily quantity is 600 Dth, the annual quantity is 219,000 Dth and the end use of gas will be commercial. The transportation service to be provided through the existing point of delivery will be interruptible service provided under Columbia's Rate Schedule, Interruptible Transportation Service (ITS). Columbia states that the services to be provided through the interconnection will be provided on an interruptible basis and will not impact Columbia's existing design day and annual obligations to its customers as a result of the establishment of the new point of delivery.

Columbia constructed the existing point of delivery to Jefferson Gas in Morgan County, Kentucky, which was placed in service on January 17, 1997. The cost of constructing the existing point of delivery was $2,078. Facilities installed by Columbia included a 2-inch meter setting and a short length of interconnecting 2-inch pipeline.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31302 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–50–001]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff and Request For Waiver

November 18, 1998.

Take notice that on November 13, 1998, Dauphin Island Gathering Partners (DIGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the tariff sheets listed below to become effective November 2, 1998. The modifications to the listed tariff sheets are proposed to comply with the Commission's letter order issued October 29, 1998.

Substitute Original Sheet No. 146A
Substitute Second Revised Sheet No. 226

DIGP also requests waiver of one aspect of Order No. 587–H.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section

385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31298 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–147–000]

Equitrans, L.P.; Notice of Section 4 Filing

November 18, 1998.

Take notice that on November 10, 1998, Equitrans, L.P. (Equitrans) tendered for filing pursuant to Section 4 of the Natural Gas Act, a notice of termination of facilities designated as the "North Littleton gathering system" in Monogalia and Wetzell Counties, West Virginia. Equitrans indicates that the Commission approved these facilities for abandonment in Docket No. CP98–650–000 (85 FERC ¶62,064). Equitrans states that these lines are being sold to Tri-County Oil & Gas Company. Equitrans requests that the proposed termination of service of the facilities be effective December 31, 1998. Equitrans maintains that no contract for transportation service with Equitrans will be canceled or terminated as a result of this abandonment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. Under section 154.210 of the Commission's Regulation, all such motions or protests should be filed on or before November 23, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31291 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–9–001]

Gulf States Transmission Corporation; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 16, 1998, Gulf States Transmission Corporation (Gulf States), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, with an effective date of November 2, 1998:

First Revised Sheet No. 26
First Revised Sheet No. 50
Original Sheet No. 50A
Original Sheet No. 50B
Sub Second Revised Sheet No. 52
First Revised Sheet No. 53C
Sub Third Revised Sheet No. 58G

Gulf States states that the tendered sheets are filed in compliance with the Letter Order issued in this docket by the Commission on October 30, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31311 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–150–000]

High Island Offshore System; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, High Island Offshore System (HIOS), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective January 1, 1999.

Fourth Revised Sheet No. 1
Fifth Revised Sheet No. 64
First Revised Sheet No. 64A
Original Sheet No. 64B
Original Sheet No. 64C
Original Sheet No. 64D

HIOS asserts that it is filing the tariff sheets to implement a Cashout Procedure into it's tariff. This procedure will replace the current volumetric balancing which was requested by our customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31292 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–56–000]

LBU Joint Venture; Notice of Application

November 18, 1998.

Take notice that on November 6, 1998, LBU Joint Venture (LBU) P.O. Box 4423, Oak Ridge, Tennessee 37831, filed

in Docket No. CP99–56–000 an application pursuant to Section 7 of the Natural Gas Act and Section 284.224 of the Commission's Regulation for issuance of a blanket certificate of public convenience and necessity authorizing LBU as a Hinshaw natural gas company to provide natural gas storage service in interstate commerce and approval of market based rates, all as more fully set forth in the application on file with the Commission and open to public inspection.

LBU states that it is a joint venture comprised of Cambridge Resources, Inc. and P.D.C. Resources, Inc. and it provides storage services in Tennessee and is regulated by the Tennessee Regulatory Authority (TRA), with its rates and services subject to the jurisdiction of the TRA. LBU asserts that in 1994, it began development of the underground gas storage facility located in the Lick Branch Field, Scott County, Tennessee. LBU claims that the only pipeline connection that was then, and is now, available to the Lick Branch storage facility is an interconnection with the eight-inch diameter pipeline of Citizens Gas Utility District (Citizens), a municipality serving customers in North-Central Tennessee.

LBU also states that it commenced operations in December 1994, providing gas storage service to Tenneco Gas Marketing Company (Tenneco) under an August 31, 1994 agreement (Agreement) which provided that Tenneco had rights to all of the capacity of the storage facility. LBU indicates that Tenneco's interest in the Agreement was subsequently purchased by El Paso Energy Marketing (El Paso Marketing) and thereafter El Paso Marketing transferred its interest to Duke Energy and Trading Company (Duke Trading). LBU claims that Duke Trading currently provides capacity from the storage facility to three customers, each of which is located in Tennessee.

LBU explains that while it currently operates as a Hinshaw pipeline, certain issues which implicate Commission jurisdiction may arise in the future as a result of the open nature of the nation's gas industry and integration of intrastate and interstate markets. LBU states that it seeks, by this application, to be able to provide interstate storage service while retaining its status as a Hinshaw pipeline pursuant to Section 284.224.

Additionally, LBU requests, pursuant to Sections 284.122 and 284.123 of the Commission's regulations, approval of market-based rates. LBU asserts that its application includes a Market Power Analysis which demonstrates that market-based rates for LBU's Part 284 service are fair and equitable.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 8, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulation Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment, are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for LBU to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31301 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR94–9–003]

Michigan Consolidated Gas Company; Notice of Compliance Filing and Request for Extension of Time

November 18, 1998.

Take notice that on November 9, 1998, Michigan Consolidated Gas Company (MichCon), in compliance with the Commission's Order on Remand issued on October 19, 1998, filed rates for firm transportation service under its Section 284.224 blanket certificate. MichCon further requests that the effective date of such rates for existing contracts be postponed from the effective date directed by the Commission's Order on Remand, December 1, 1998, until March 1, 1999.

MichCon states this additional time would enable MichCon to address shipper concerns regarding existing contracts for Section 284.224 service, and to pursue settlement as suggested in the Commission's Order on Remand.

Any person desiring to be heard or protest said filing must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed with the Secretary of the Commission on or before December 2, 1998. Copies of MichCon's submittal are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31304 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–70–002]

Michigan Gas Storage Company; Notice of Refiled FERC Gas Tariff Sheet

November 18, 1998.

Take notice that on November 16, 1998, Michigan Gas Storage Company (MGSCo) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Sub Fourth Revised Tariff Sheet No. 54A.

MGSCo states that the filing is being made in compliance with Order No. 587–H, regarding Gas Industry Standards Board (GISB) standards, and a letter order issued in above-referenced docket on November 3, 1998. The letter order accepted the sheet effective November 2, 1998.

MGSCo states that copies of its filing has been mailed upon all customers and applicable state regulatory agencies and on all those on the official service lists in Docket Nos. RP97–152–000 and RP99–70–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31290 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–48–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 18, 1998.

Take notice on November 13, 1998, National Fuel Gas Supply Corporation (National Fuel) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Fourth Revised Volume No. 1, which tariff sheets are enumerated in the filing. The proposed effective date for the tariff sheets is November 2, 1998.

National Fuel states that the purpose of the instant filing is to comply with the Commission's letter order issued on October 29, 1998, (the October 29 Order) in the above-referenced proceeding. The October 29 Order directed National Fuel to file revised tariff sheets to rectify certain matters with respect to National Fuel's October 2, 1998 filing made to comply with the Commission's Order No. 587–H issued July 15, 1998. Specifically, the revised tariff sheets address bumping notice procedures, incorporation of GISB standard 1.3.2 (i), (ii), (iii) and (iv), version 1.3 verbatim, incorporation of GISB standard 1.3.2(v) by reference in GT&C Section 30, and the reinstatement of GISB standards 1.3.3, 1.3.5 and 1.3.9 by reference in GT&C Section 30.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31286 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–415–001]

Overthrust Pipeline Company; Notice of Tariff Filing

November 18, 1998.

Take notice that on November 13, 1998, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, to be effective November 2, 1998.

Substitute Fourth Revised Sheet No. 67
Substitute Third Revised Sheet Nos. 67A and 67B
Substitute Second Revised Sheet No. 67C
Substitute Original Sheet Nos. 67D and 67E

Overthrust states that the filing is being made in compliance with the Commission's letter order issued October 30, 1998, (October 30 order) in Docket No. RP98–415–000.

On October 30, 1998, in Docket No. RP98–415–000, Overthrust was directed to make clarifications regarding intra-day nomination requirements to its September 24, 1998, filing in compliance with the Commission's Order No. 587–H issued July 15, 1998. This filing incorporated clarification of the requirements set forth in 18 CFR 284.10(c)(1)(i) into Overthrust's FERC Gas Tariff, First Revised Volume No. 1–A.

Overthrust stated that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31308 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–7–001]

Paiute Pipeline Company; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 16, 1998, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 2, 1998:

Substitute Second Revised Sheet No. 56C
Substitute First Revised Sheet No. 61A
Second Revised Sheet No. 89

Paiute asserts that the purpose of its filing is to effectuate changes to the General Terms and Conditions of Paiute's tariff to comply with Order No. 587–H and a letter order issued October 30, 1998 in Docket No. RP99–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 98–31310 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–44–002]

Petal Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, Petal Gas Storage Company (Petal) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 113, Sub. Second Revised Sheet No. 116, Sub. Third Revised Sheet No. 129, Second Revised Sheet No. 115, First Revised Sheet No. 115A, Third Revised Sheet No. 116, and Alternative Sub. Third Revised Sheet No. 129, with a proposed effective date of November 2, 1998.

Petal asked that Second Revised Sheet No. 115, First Revised Sheet No. 115A, Third Revised Sheet No. 116, and Alternative Sub. Third Revised Sheet No. 129 become effective if, and only if, certain waivers Petal requests are denied.

Petal states that its filing is made in compliance with the directives of an October 29, 1998, Letter Order, as well as with Order No. 587–H, issued on July 15, 1998, in Docket No. RM96–1–008, requiring interstate pipelines to incorporate the most recent standards dealing with intra-day nominations and nomination and scheduling procedures promulgated by the Gas Industry Standards Board.

Second Revised Sheet No. 113 provides that Petal will provide bumped interruptible customers with notice of the bump by telephone and/or facsimile. Petal seeks waiver of the requirement that it adopt GISB standards 1.3.2(i) through (vi), containing intra-day nomination cycles, into its tariff because they would provide less flexibility than Petal's current practice of allowing nominations on four hours notice at any time during the day. Petal also states that the nomination timelines contained in those GISB standards do not conform to the manner in which an independent storage company, such as Petal, must do business.

However, if the Commission denies Petal's request for waiver, Petal asks that Second Revised Sheet No. 115, First Revised Sheet No. 115A, Third Revised Sheet No. 116, and Alternative Sub. Third Revised Sheet No. 129 be accepted with an effective date November 2, 1998.

To the extent that Petal's request for waiver from adopting the GISB 1.3.2 standards is denied, Petal requests waiver of the requirement, contained, in GISB standard 1.3.2(iv), that interruptible customers not be bumped by a 5:00 p.m. intra-day nomination.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31296 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–413–001]

Questar Pipeline Company; Notice of Tariff Filing

November 18, 1998.

Take notice that on November 13, 1998, Questar Pipeline Company (Questar) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of November 2, 1998:

Substitute Fourth Revised Sheet No. 75
Substitute Second Revised Sheet No. 75A
Substitute Third Revised Sheet Nos. 75B and 75C
Substitute Original Sheet Nos. 75D and 75E

Questar states that the filing is being made in compliance with the Commission's letter order issued October 30, 1998, (October 30 order) in Docket No. RP98–413–000.

On October 30, 1998, in Docket No. RP98–413–000, Questar was directed to make clarifications regarding intra-day nomination requirements to its September 23, 1998, filing in compliance with the Commission's Order No. 587–H issued July 15, 1998. This filing incorporated clarification of the requirements set forth in 18 CFR 284.10(c)(1)(i) into Questar's FERC Gas Tariff, First Revised Volume No. 1.

Questar stated that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31307 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–52–002]

Texas Eastern Transmission Corporation; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following revised tariff sheet to become effective November 2, 1998:

Sub Fifth Revised Sheet No. 681

Texas Eastern asserts that the above listed tariff sheet is being filed to comply with the Commission's Letter Order issued on October 29, 1998, in Docket Nos. RP99–52–000 and RP99–52–001 (October 29 Order).

Texas Eastern states that the above listed tariff sheet incorporates by reference sections (v) and (vi) of the Gas Industry Standards Board (GISB) standard 1.3.2 in compliance with the October 29 Order.

Texas Eastern states that copies of the filing were mailed to all affected customers of Texas Eastern and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31288 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–425–001]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

November 18, 1998.

Take notice that on November 10, 1998 Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Second Revised Sheet No. 206C
Substitute Ninth Revised Sheet No. 207

Texas Gas states that the instant filing revises specific tariff sheets to comply with the Commission's directives in the October 29, 1998, Order. Texas Gas has inserted language to incorporate the notification procedures for bumping, as granted by the Commission, which establishes Texas Gas to phone or facsimile, as elected by customer-elects, the notice of mid-day bumping of interruptible service. Furthermore, in compliance with the Order, Texas Gas, has filed a substitute sheet that separately identifies those standards and definitions promulgated by GISB on March 12, 1998, as Version 1.3, which have been incorporated by reference.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, and all parties on the official service list in Docket No. RP98–425.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31339 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–1–000]

Transok, LLC; Notice of Petition for Rate Approval

November 18, 1998.

Take notice that on October 29, 1998, Transok, LLC (Transok) filed a petition for rate approval to continue its present rates in effect on and after November 1, 1998 for interruptible Section 311 transportation services on Transok's Traditional System in Oklahoma. The present rate is $0.2403 per MMBtu delivered.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31305 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–2–000]

Transok, LLC; Notice of Petition for Rate Approval

November 18, 1998.

Take notice that on October 29, 1998, Transok, LLC (Transok) filed a petition for rate approval to establish rates for interruptible Section 311 transportation services on Transok's Oklahoma Transmission System (formerly Transok's Traditional and Anadarko Systems). Transok asks that the rates become effective the first day of the month following the month in which the Commission issues an order approving the Oklahoma Transmission System rates.

Transok presently offers transportation services to interstate and intrastate customers on its Traditional and Anadarko Systems. In this filing, Transok proposes to offer one combined interruptible transportation rate of $0.7533 per MMBtu.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31306 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–424–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 13, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Effective November 2, 1998
Substitute Original Sheet No. 230B
Effective November 3, 1998
Substitute First Revised Sheet No. 230B

Williams states that on September 30, 1998, it made a filing in compliance with Order No. 587–H. By letter order (order) issued October 30, 1998, the Commission directed Williams to file revised tariff sheets stating that (1) it will provide advance notice of bumping to interruptible shippers and notify the interruptible shippers whether penalties will apply on the day their volumes are reduced, (2) it will waive non-critical penalties for bumped shippers on the day of the bump, and (3) it will provide notice of bumping in the same manner as it currently provides notice of OFO's. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the docket referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31294 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–11–001]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 18, 1998.

Take notice that on November 12, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, with the proposed effective date of November 1, 1998:

Substitute First Revised Sheet No. 271C

Williams states that it made a filing on October 1, 1998, in the above referenced docket, to establish procedures to be used in conducting a second reverse auction. By order issued October 28, 1998, the Commission directed Williams to clarify its proposed tariff to provide that a non-affiliated party will win in the event of a tie between an affiliated and non-affiliated bidder. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31295 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–5–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

November 18, 1998.

Take notice that on November 9, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective November 9, 1998:

Fourteenth Revised Sheet No. 776
Eighteenth Revised Sheet No. 777
Fourteenth Revised Sheet No. 825
Nineteenth Revised Sheet No. 827
Twenty-eighth Revised Sheet No. 831

Williston Basin states that the revised tariff sheets are being filed simply to update its Master Receipt/Delivery Point List.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commssion, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–31303 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–2–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

November 18, 1998.

Take notice that on November 13, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the

following revised tariff sheets to become effective November 2, 1998:

Substitute Fifth Revised Sheet No. 227
Sub Fourth Revised Sheet No. 227A
Sub First Revised Sheet No. 227A.1
Original Sheet No. 227A.1a
Substitute Original Sheet No. 227A.2
Fifth Revised Sheet No. 248A
Sixth Revised Sheet No. 248C
Fifth Revised Sheet No. 252
Third Revised Sheet No. 252B
Substitute Fifth Revised Sheet No. 371

Williston Basin states that the revised tariff sheets reflect modifications to Williston Basin's FERC Gas Tariff in compliance with the Commission's Order No. 587–H issued July 15, 1998, in Docket No. RM96–1–008, and the Commission's Letter Order issued October 30, 1998 in Docket No. RP99–2–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31309 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DR99–1–000, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Regulation Filings

November 16, 1998.

Take notice that the following filings have been made with the Commission:

1. South Carolina Electric & Gas Co.

[Docket No. DR99–1–000]

Take notice that on November 2, 1998, South Carolina Electric & Gas Company (SCE&G), tendered for filing a request for approval of depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act and Rule 204 of the Commission's Rules of Practice and Procedure. SCE&G states that the proposed rates were approved by the Public Service Commission of South Carolina, retroactive to January 15, 1996.[1] SCE&G requests that the Commission allow the proposed depreciation rates to become effective as of January 15, 1996.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Cabazon Power Partners LLC

[Docket No. EG99–21–000]

Take notice that on November 10, 1998, Cabazon Power Partners LLC, 13000 Jameson Road, Tehachapi, California 93561, tendered for filing with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Cabazon Power Partners LLC, an indirect wholly-owned subsidiary of Enron Wind Corp., is developing a wind turbine generation facility in the San Gorgonion Pass near Cabazon, California, with a name plate capacity of approximately 40 MW. Cabazon Power Partners LLC plans to sell power to Southern California Edison Company.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Zond Cabazon Development Corp.

[Docket No. EG99–22–000]

Take notice that on November 10, 1998, Zond Cabazon Development Corporation, 13000 Jameson Road, Tehachapi, California 93561, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Zond Cabazon Development Corporation, an indirect wholly-owned subsidiary of Enron Wind Corp., is developing a wind turbine generation facility in the San Gorgonion Pass near Cabazon, California, with a name plate capacity of approximately 40 MW. Zond Cabazon Development Corporation plans to sell power from the Facility to Southern California Edison Company.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Sierra Pacific Power Co.

[Docket No. ER98–12–000]

Take notice that on November 10, 1998, Sierra Pacific Power Company (Sierra), in accordance with the Commission's November 2, 1998, order in the above-referenced docket, submitted its compliance refund report for approval.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31312 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–P

[1] On December 23, 1997, SCE&G submitted a request for approval of changes in depreciation rates for accounting purposes (Docket No. DR98–18–000 (unnoticed)). The request indicated that SCE&G was seeking an extension of the filing deadline pending resolution of an appeal of an order in its last Public Service Commission (PSC) of South Carolina retail rate filing proceeding (Docket No. 95–1000–E, Order No. 96–15). In the Order, the PSC granted the Company a change in depreciation rates that contemplated the effects of a transfer of depreciation reserves from transmission and distribution to nuclear production assets. The Consumer Advocate for the State of South Carolina and another intervenor appealed the reserve transfer issue. In March 1998 the PSC and the appellants reached a settlement wherein the reserve transfer would be reversed. Also, the Order approved revised depreciation rates for nuclear production, transmission, and distribution assets that exclude the effect of the reserve transfer, retroactive to January 15, 1996, the effective date of the original PSC Order. This request reflects the PSC approved action.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2651–000]

Indiana Michigan Power Company; Notice of Intent to Prepare an Environmental Assessment and Notice of Solicitation of Written Scoping Comments

November 18, 1998.

The Federal Energy Regulatory Commission (Commission) has received an application from Indiana Michigan Power Company (IMPC) to relicense the Elkhart Hydroelectric Project No. 2651. The 3.44-megawatt (MW) project is located on the St. Joseph River near Elkhart, in Elkhart County, Indiana.

The application is available at the Commission's Internet Website at www.ferc.fed.us.

The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by IMPC, and analyze both site-specific and cumulative environmental impacts of the project as well as economic and engineering impacts.

A draft EA will be issued and circulated to those on the mailing list for this project. The staff will analyze all comments filed on the draft EA and consider them in the final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Native American tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed below.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Elkhart Hydroelectric Project, FERC No. 2651.

Intervenors are reminded of the Commission's Rules of Practice and Procedure that require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, it must also serve a copy of the document on that resource agency.

Questions regarding this notice may be directed to E.R. Meyer, Project Coordinator, at (202) 208–7998.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–31300 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 597–003]

PacifiCorp; Notice of Intent To Prepare an Environmental Assessment and Notice of Solicitation of Written Scoping Comments

November 18, 1998.

The Federal Energy Regulatory Commission (Commission) has received an application from PacifiCorp to relicense the Stairs Hydroelectric Project No. 597–003. The 1,200-kilowatt project is located on the Big Cottonwood Creek in Big Cottonwood Canyon, Salt Lake County, near the town of Sandy, about 15 miles southeast of downtown Salt Lake City, Utah. The project occupies about 8.7 acres of land within the Wasatch—Cache National Forest, administered by the U.S. Forest Service (FS).

The Commission intends to prepare an Environmental Assessment (EA) for the project in accordance with the National Environmental Policy Act.

In the EA, we will consider reasonable alternatives to the project as proposed by PacifiCorp, and analyze both site-specific and cumulative environmental impacts of the project, as well as, economic and engineering impacts.

The draft EA will be issued and circulated to those on the mailing list for this project. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations presented in the final EA will then be presented to the Commission to assist in making a licensing decision.

Scoping

We are asking agencies, Indian tribes, non-governmental organizations, and individuals to help us identify the scope of environmental issues that should be analyzed in the EA, and to provide us with information that may be useful in preparing the EA.

To help focus comments on the environmental issues, a scoping document outlining subject areas to be addressed in the EA will soon be mailed to those on the mailing list for the project. Those not on the mailing list may request a copy of the scoping document from the project coordinator, whose telephone number is listed below. A copy of the scoping document may also be viewed or printed by accessing the Commission's WebSite on the Internet at www.ferc.fed.us. For assistance, users can call (202) 208–2222.

Those with comments or information pertaining to this project should file it with the Commission at the following address: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The comments and information are due to the Commission within 60 days from the issuance date of the scoping document. All filings should clearly show the following on the first page: Stairs Hydroelectric Project, FERC No. 597–003.

Intervenors are reminded of the Commission' Rules of Practice and Procedure which require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Gaylord W.

Hoisington, project coordinator, at (202) 219–2756.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31299 Filed 11–23–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of October 5 Through October 9, 1998

During the Week of October 5 through October 9, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

SUBMISSION OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

Date	Name and location of applicant	Case No.	Type of submission
10/5/98	Personnel Security Hearing	VSO–0239	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
10/6/98	Personnel Security Hearing	VSO–0240	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
10/6/98	Personnel Security Hearing	VSO–0241	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 98–31357 Filed 11–23–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Cases Filed; Office of Hearings and Appeals Week of September 28 Through October 2, 1998

During the Week of September 28 through October 2, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals

Submission of Cases Received by the Office of Hearings and Appeals Department of Energy

Week of September 28 through October 2, 1998

Date	Name and location of applicant	Case No.	Type of submission
9/28/98	Cliff Sieling, Richland, Washington	VFA–0446	Appeal of an Information Request Denial. If Granted: The August 25, 1998 Freedom of Information Request Denial issued by the Richland Operations Office would be rescinded, and Cliff Sieling would receive access to certain DOE information.
9/29/98	Tod N. Rockefeller, Deerfield Beach, Florida	VFA–0447	Appeal of an Information Request Denial. If Granted: The September 24, 1998; Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Tod N. Rockefeller would receive access to certain DOE information.
9/30/98	Personnel Security Hearing	VSO–0236	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
9/30/98	Personnel Security Hearing	VSO–0237	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
9/30/98	Personnel Security Review	VSA–0207	Request for Review under 10 CFR Part 710. If Granted: The August 24, 1998 Opinion of the Office of Hearings and Appeals, Case No. VSO–0207, would be reviewed at the request of an individual employed by the Department of Energy or by a contractor of the Department of Energy.

Date	Name and location of applicant	Case No.	Type of submission
10/1/98	Hans M. Kristensen, Richmond, California ..	VFA–0448	Appeal of an Information Request Denial. If Granted: The September 10, 1998 Freedom of Information Request Denial issued by the Office of the Secretariat would be rescinded, and Hans M. Kristensen would receive access to certain DOE information.
10/1/98	Personnel Security Hearing	VSO–0238	Request for Review under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.

[FR Doc. 98–31358 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Cases Filed

Office of Hearings and Appeals During the Week of August 17 Through August 21, 1998

During the Week of August 17 through August 21, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Submission of Cases Received by the Office of Hearings and Appeals Department of Energy

Week of August 17 through August 21, 1998

Date	Name and Location of Applicant	Case No.	Type of Submission
8/18/98	Personnel Security Hearing	VSO–0229	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
8/18/98	Personnel Security Hearing	VSO–0230	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
8/19/98	Star Foundation, East Hampton, NY	VFA–0440	Appeal of an Information Request Denial. If Granted: The June 23, 1998 Freedom of Information Request Denial issued by the Brookhaven Graphite Research Reactor would be rescinded and Star Foundation would receive access to certain DOE information.
8/21/98	Personnel Security Hearing	VSO–0231	Request for Hearing under 10 C.F.R. Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.

[FR Doc. 98–31359 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed; Week of July 13 Through July 17, 1998

During the Week of July 13 through July 17, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Submission of Cases Received by the Office of Hearings and Appeals Department of Energy

Week of July 13 Through July 17, 1998

Date	Name and location of applicant	Case No.	Type of submission
7/13/98	Bernice McCulloh, Winston-Salem, NC	VFA–0427	Appeal of an Information Request Denial. If Granted: The June 23, 1998 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Bernice McCulloh would receive access to certain DOE information.

Date	Name and location of applicant	Case No.	Type of submission
7/13/98	Personnel Security Hearing	VSO–0222	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 CFR Part 710.
7/14/98	Personnel Security Review	VSA–0186	Request for Review of Opinion under 10 CFR Part 710. If Granted: The June 2, 1998 Opinion of the Office of Hearings and Appeals, Case No. VSO–0186, would be reviewed at the request of an individual employed by the Department of Energy or by a contractor of the Department of Energy.
7/16/98	Mark Donham, Brookport, Illinois	VFA–0428	Appeal of an Information Request Denial. If Granted: The Department of Energy would issue a determination regarding Mark Donham's Freedom of Information requests, and he would receive access to certain DOE information.

[FR Doc. 98–31360 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Cases Filed During the Week of July 6 Through July 10, 1998

During the Week of July 6 through July 10, 1998, the appeals, applications, petitions or other requests listed in this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who will be aggrieved by the DOE action sought in any of these cases may file written comments on the application within ten days of publication of this Notice or the date of receipt of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585–0107.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Submission of Cases Received by the Office of Hearings and Appeals, Department of Energy

Week of July 6 Through July 10, 1998

Date	Name and location of applicant	Case No.	Type of submission
7/6/98	John Gilmore, Berkeley, California	VFA–0425	Appeal of an Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and John Gilmore would receive access to certain DOE information.
7/6/98	Personnel Security Hearing	VSO–0219	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
7/6/98	Personnel Security Hearing	VSO–0220	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
7/7/98	Personnel Security Hearing	VSO–0221	Request for Hearing under 10 CFR Part 710. If Granted: An individual employed by the Department of Energy or by a contractor of the Department of Energy would receive a hearing under 10 C.F.R. Part 710.
7/10/98	Arnold Kramish, Reston, Virginia	VFA–0426	Appeal of Information Request Denial. If Granted: The Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Arnold Kramish would receive access to certain DOE information.

[FR Doc. 98–31366 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of October 12 Through October 16, 1998

During the week of October 12 through October 16, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW., Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 107—Week of October 12 Through October 16, 1998

Refund Applications

Apex Oil/Clark Oil Co./Kickapoo Oil Co., Inc., 10/13/98, RF342–284

The DOE denied a refund application filed in the Apex/Clark special refund proceeding. The OHA found that applicant is precluded by the doctrine of *res judicata* from relitigating its claims in Apex/Clark proceeding.

Atlantic Richfield Company/Saturn Petroleum Company, 10/13/98, RF304–15516

A refund that was granted to Saturn Petroleum Company in the ARCO refund proceeding was rescinded. The original refund had been based upon the firm's claim to have purchased about 300,000 gallons of ARCO products per month at each of four retail outlets between 1973 and 1976. However, a review of information that the firm had submitted in the Texaco refund proceeding indicated that these outlets had not purchased ARCO products for most of the time period the firm had claimed and the monthly volume of ARCO purchases had been much lower. The firm failed to respond to an Order to Show Cause why the refund should not be rescinded in full. Accordingly, the firm was ordered to repay the refund together with interest.

State Escrow Distribution, 10/14/98, RF302–21

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $24,150,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Co./Mike's Fuel Oil Co., et al	RF304–14663	10/15/98
Bureau Valley Comm. Dist. #340	RK272–01819	10/14/98
Crude Oil Supplemental Refunds	RB272–00145	10/14/98
Harrison County Road Dept., et al	RF272–94137	10/14/98
Lincoln County	RK272–03576	10/14/98
Santa Cruz County Off. Eductn	RF272–96310	10/14/98
Larry R. or Debra F. Garner	RF272–96328	.....
St. Mary of Mt. Carmel Church, et al	RF272–98909	10/15/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Personnel Security Hearing	VSO–0234
Redway Carriers, Inc	RK272–04832

[FR Doc. 98–31361 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Issuance of Decisions and Orders During the Week of August 10 Through August 14, 1998

Office of Hearings and Appeals

During the week of August 10 through August 14, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 98

Week of August 10 Through August 14, 1998

Appeals

Arnold Kramish, 8/11/98, VFA–0426

Arnold Kramish appealed a determination of FOIA/Privacy Act Division of the Office of the Executive Secretariat. He had requested copies of all personnel records the DOE possesses

concerning Robert and Charlotte Serber. The DOE confirmed that no DOE offices possess responsive information beyond the information the DOE already provided to Mr. Kramish. Accordingly, the DOE denied Mr. Kramish's appeal.

Gary A. Davis, 8/14/98, VFA–0429

The DOE granted a Freedom of Information Act Appeal filed by Gary A. Davis. Davis sought a further search for responsive documents by the Oak Ridge Operations Office. DOE found that Oak Ridge failed to adequately explain why it did not find or release a document DOE and had not appropriately justified the adequacy of its search. Accordingly, the matter was remanded to Oak Ridge.

International Brotherhood of Electrical Workers, 8/11/98 VFA–0421

International Brotherhood of Electrical Workers appealed a Determination issued to it by the Savannah River Operations Office (SR), in response to a request under the Freedom of Information Act (FOIA). The Appellant sought information concerning SR's and Wackenhut Services, Inc.'s activities concerning a union election that the Appellant participated in. The Appellant argued that SR's refusal to release certain withheld information was improper, SR's search was inadequate, and that SR should have granted the Appellant a fee waiver or reduced its fees. The Appellant also appealed an earlier FOIA determination by SR of a different request. DOE found with regard to the earlier request that SR had correctly determined that the responsive records were contractor, not agency, records. DOE upheld SR's denial of a fee waiver, and found with the exception of some improper photocopying charges, most of the fees charged to be reasonable. DOE further found that SR had (1) made an inadequate determination regarding some requested videos and that it must conduct a further search, (2) improperly withheld a contractor-prepared document under Exemption 5 because it was neither intra-agency nor inter-agency, (3) some portions of attorney billing records were incorrectly withheld under Exemption 4, and (4) had made an inadequate determination regarding its Exemption 4 withholding of a labor consultant's normal rates. Accordingly, the Appeal of SR's determination was granted in part.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

American Colloid Co	RK272–4531	8/14/98
Amertex Service Group	RK272–04833	8/14/98
Englewood City Board of Educ et al	RF272–96301	8/14/98
Enron Corp./Liquid Petroleum Corp	RR340–00006	8/11/98
Randolph Township Brd of Educ. et al	RK272–04834	8/14/98

[FR Doc. 98–31362 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of August 3 Through August 7, 1998

During the week of August 3 through August 7, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 97

Week of August 3 Through August 7, 1998

Refund Application

ENRON CORP./MAPCO, INC., 8/3/98, RF340–149

DOE granted a refund to MAPCO, Inc. (MAPCO) in the Enron Corporation (Enron) special refund proceeding. DOE concluded that MAPCO's NGL purchases were not discretionary in nature, and were dictated by the firm's need to supply its regular customers and maintain the flow of product in its pipeline system. However, DOE excluded purchases of ethane because they were insufficiently documented. DOE also excluded certain quantities of natural gasoline that appear to have been purchased pursuant to a fixed price contract. DOE then found that MAPCO had shown that it was injured by its purchases of propane from Enron to some extent, but limited the firm's refund to approximately 85.5% of its full volumetric refund for that product.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Army & Air Force Exch Svc	RF272–16333	8/3/98
Crude Oil Supplemental	RB272–00139	8/5/98
Crude Oil Supple Ref Dist	RB272–00141	8/6/98
Great Western Onshore Inc.	RF272–75456	8/3/98
Grooms Oil Co. Inc.	RF272–99087	
Valley Farmers Co-Op, Inc. et al	RF272–98907	8/5/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Ellzey & Brooks, LLC	VFA–0433
Michael Ares	VWA–0022
Personnel Security Hearing	VSO–0210

[FR Doc. 98–31363 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of July 20 Through July 24, 1998

During the week of July 20 through July 24, 1998, the decision and order summarized below was issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy.

Copies of the full text of this decision and order is available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, DC 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 95

Week of July 20 Through July 24, 1998

Refund Application

ENRON CORP./APEX OIL CO., 7/22/98 RF340–136

The DOE denied a refund application filed by Apex Oil Company in the Enron Corporation refund proceeding. The DOE determined that Apex was a spot purchaser of Enron product and that Apex had not rebutted the spot purchaser presumption of non-injury.

[FR Doc. 98–31364 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of July 27 Through July 31, 1998

During the week of July 27 through July 31, 1998, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, SW, Washington, D.C. 20585–0107, Monday through Friday, except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: November 12, 1998.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision List No. 96—Week of July 27 Through July 31, 1998

Appeals

Charles W. Hemingway, 7/31/98, *VFA–0424*

DOE denied a Freedom of Information Act (FOIA) Appeal filed by Charles W. Hemingway. Hemingway contended that the redacted information was wrongfully withheld under Exemption 6 of the FOIA because he filed his request under the Ethics in Government Act (EGA), to which FOIA exemptions are inapplicable. OHA dismissed this portion of the Appeal because it lacks jurisdiction to consider matters arising under the EGA. DOE denied Hemingway's claim that it had waived the right to withhold a social security number under Exemption 6 by previously releasing it in a proceeding before the Merit Systems Protection Board. DOE held that the submission to the MSPB did not dissolve the employee's privacy right.

Edwin S. Rothschild, 7/28/98, *VFA–0423*

The DOE denied a Freedom of Information Act (FOIA) Appeal filed by the Edwin S. Rothschild. Rothschild sought documents used to prepare a report to Congress pertaining to consideration of a regional petroleum product reserve. Responsive documents were located by the Office of the Deputy Assistant Secretary for Strategic Petroleum Reserves (SPR), but were withheld under Exemption 5. Rothschild argued that release of the report mandated release of the preparatory material. DOE found that the status of the documents as predecisional was not altered by the release of the final report, DOE and that SPR had articulated the foreseeable harm that would result from release of the requested documents.

Personnel Security

Personnel Security Review, 7/29/98, *VSA–0186*

The Director of OHA issued an Opinion regarding the eligibility of an individual to maintain access authorization. The Director agreed with the Hearing Officer that the individual had failed to mitigate security concerns regarding his alcohol abuse, because while the individual had agreed not to use alcohol while participating in the Employee Assistance Program (EAPRO), he did so on ten occasions, and then lied about that use to his EAPRO counsel on eight occasions. Accordingly, the Director recommended that the individual's access authorization not be restored.

Refund Application

Good Hope Refineriers/Apex Oil Company 7/31/98, *RF339–12*

DOE considered an Application for Refund filed by Apex Oil Company in the Good Hope Refineries Special Refund Proceeding. DOE denied that portion of the application based on Apex's purchases of middle distillates during the period, August 19, 1973 through July 31, 1976, because Apex was a spot purchaser during this period and had failed to rebut the spot purchaser presumption of non-injury. DOE granted Apex a refund based on Apex's purchases of 500,241,901 gallons of motor gasoline during the period, August 1976 through July 31, 1979. DOE found that Apex had demonstrated injury by showing it had positive banks of unrecovered increased product costs in excess of the refund sought, and had suffered a competitive disadvantage as a result of its purchases from Good Hope.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple	RB272–00140	7/31/98
Donald Claunch	RR272–308	7/28/98
Donald Claunch	RR272–309	
Philippine Government	RG272–754	7/31/98

Dismissals

The following submissions were dismissed.

Name	Case No.
Mark Donham	VFA–0428
Personnel Security Hearing	VSO–0213

[FR Doc. 98–31365 Filed 11–23–98; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

OPPTS–140276; FRL–6045–5

Access to Confidential Business Information by ABT Associates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, ABT Associates (ABT), of 55 Wheeler Street, Cambridge, Massachusetts and ABT's subcontractor Eastern Research Group (ERG), of 110 Hartwell Avenue, Lexington, Massachusetts, for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data will occur no sooner than December 4, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under contract number 68–W98–005, contractor ABT Associates of 55 Wheeler Street, Cambridge, MA and its subcontractor ERG of Lexington, MA, will assist the Office of Pollution Prevention and Toxics (OPPT) in conducting economic and regulatory impact analysis to support all aspects of EPA decision-making.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W98–005, ABT and ERG will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. ABT and ERG personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide ABT and ERG access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters; ABT Associates of 4800 Montgomery Lane, Suite 400, Room 413B, Bethesda, MD and ABT Associates of 55 Wheeler St., Cambridge, MA facilities; and at Eastern Research Group of 110 Hartwell Avenue, Lexington, MA, and Eastern Research Group of Avion Lakeside D, 14555 Avion Parkway, Chantilly, VA facilities.

ABT and ERG will be authorized access to TSCA CBI at their facilities, provided they comply with the provisions of the EPA *TSCA Confidential Business Information Security Manual.*

Before access to TSCA CBI is authorized at ABT and ERG's sites, EPA will perform the required inspection of its facilities, and ensure that these facilities are in compliance with the Manual. Upon completing review of the CBI materials, ABT and ERG will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 2002.

ABT and ERG personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 12, 1998.

Deborah A. Williams,

Acting Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 98–31391 Filed 11–23–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00253; FRL–6045–8]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on December 7–9, 1998, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Cyclohexylamine, ethylene oxide, HFC–134a, HCFC–141b, hydrogen sulfide,

piperidine, propionitrile, propylene oxide, and sulfur dioxide.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5 p.m. on Monday, December 7; from 8 a.m. to 4:45 p.m. on Tuesday, December 8; and from 8 a.m. to 12:30 p.m. on Wednesday, December 9, 1998.

ADDRESSES: The meeting will be held in the Governor's House Hotel, 1615 Rhode Island Ave., NW., Washington, DC (near the Farragut North Metro stop).

FOR FURTHER INFORMATION CONTACT: Paul S. Tobin, Designated Federal Officer (DFO), Office of Prevention, Pesticides, and Toxic Substances (7406), 401 M St., SW., Washington, DC 20460, telephone: (202) 260–1736, e-mail address: tobin.paul@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO under "FOR FURTHER INFORMATION CONTACT."

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical specific information should be directed to the DFO.

List of Subjects

Environmental protection, Hazardous substances, Health.

Dated: November 16, 1998.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 98–31394 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6192–5]

Operating Industries, Inc. Landfill Superfund Site; Notice of Proposed CERCLA Administrative De Minimis Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), the Environmental Protection Agency ("EPA") is hereby providing notice of proposed administrative *de minimis* settlement concerning the Operating Industries, Inc. Landfill Superfund site in Monterey Park, California (the "OII Site"). Section 122(g) of CERCLA, 42 U.S.C. 9622(g), provides EPA with the authority to enter into administrative *de minimis* settlements. This settlement is intended to resolve the liabilities of 324 settling parties for the OII Site under CERCLA and section 7003 of the Resource Consevation and Recovery Act ("RCRA"), 42 U.S.C. 6973. The settlement will also resolve OII Site-related claims by California Department of Toxic Substances Control against the settling parties. The settling parties will pay a total of $24,886,191 toward OII Site response costs.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. In accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d), commenters may request an opportunity for a public meeting in the affected area. EPA will consider all comments it receives during this period, and may modify or withdraw its consent to the settlement if any comments disclose facts or considerations indicating that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before December 24, 1998.

ADDRESSES: Comments and requests for a public meeting should be addressed to the Regional Hearing Clerk, U.S. EPA Region IX (ORC–1), 75 Hawthorne Street, San Francisco, CA 94105, and should refer to: Operating Industries, Inc. Landfill Superfund Site, Monterey Park, CA, U.S. EPA Docket No. 98–13. The proposed settlement and additional background information relating to the settlement are available for inspection, and EPA's response to any comments received will be available for inspection, at the U.S. EPA Region IX Superfund Records Center, 95 Hawthorne Street, Suite 403 S, San Francisco, CA 94105; at the Bruggemeyer Memorial Library, 318 South Ramona Avenue, Monterey Park, CA 91754; the Montebello Regional Library, 1550 West Beverly Boulevard, Montelbello, CA 90640; and the Chet Holifield Library, 1060 South Greenwood Avenue, Montebello, CA 90640. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above.

FOR FURTHER INFORMATION CONTACT: Arthur Haubenstock, Assistant Regional Counsel, U.S. EPA Region IX (ORC–3), 75 Hawthorne Street, San Francisco, CA 94105; E-Mail: haubenstock.arthur@epa.gov; Tel: (415) 744–1355.

Dated: November 9, 1998.

Michael Feeley,

Acting Director, Superfund Division, Region IX.

[FR Doc. 98–31398 Filed 11–23–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 10, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 24, 1998. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0774.

Title: Federal-State Joint Board on Universal Service, CC Doc. No. 96–45 (47 C.F.R. §§ 36.611–36.612 and 47 C.F.R. Part 54).

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Individuals or households; Not-for-profit institutions; and State, Local or Tribal Government.

Number of Respondents: 5,565,451.

Estimated Time per Response: 5 mins. up to 100 hours (0.3 hours on avg.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 1,785,570 hours.

Total Annual Cost: None.

Needs and Uses: Congress directed the Commission to implement a new set of universal service support mechanisms that are explicit and sufficient to advance the universal service principles enumerated in Section 254 of the Telecommunications Act of 1996 and such other principles as the Commission believes are necessary and appropriate for the protection of the public interest, convenience and necessity, and are consistent with the Act. In the Report and Order issued in CC Docket No. 96–45, the Commission adopts rules that are designed to implement the universal service provisions of Section 254. Specifically, the Order addresses: (1) Universal service principles; (2) services eligible for support; (3) affordability; (4) carriers eligible for universal service support; (5) support mechanisms for rural, insular, and high cost areas; (6) support for low-income consumers; (7) support for schools, libraries, and health care providers; (8) interstate subscriber line charge and common line cost recovery; and (9) administration of support mechanisms. The reporting and recordkeeping requirements contained in CC Docket No. 96–45 are designed to implement Section 254. The reporting and recordkeeping are necessary to ensure the integrity of the program. All the collections are necessary to implement the Congressional mandate for universal service. The reporting and recordkeeping requirements are necessary to verify that the carriers and other respondents are eligible to receive universal service support.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31277 Filed 11–23–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Correction

In the **Federal Register** Notice published November 10, 1998 (63 FR 63054) the reference to Fola S. Jinaou, President is corrected to read:

"Fola S. Jinadu, President"

Dated: November 18, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31320 Filed 11–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 98–20]

Refrigerated Container Carriers Pty. Limited; Possible Violations of Section 10(a)(1) of the Shipping Act of 1984

Order of Investigation and Hearing

Refrigerated Container Carriers Pty. Limited ("RCC") is a tariffed and bonded non-vessel-operating common carrier ("NVOCC") located at Ste. 77, 89–97 Jones Street, Ultimo, NSW 2007, Sydney, Australia. Since 1991, RCC has filed a NVOCC tariff with the Federal Maritime Commission ("Commission"). RCC's current tariff in the Commission's Automated Tariff Filing and Information System ("ATFI") has been effective since May 27, 1994. (ATFI Tariff No. 010847–002) RCC also has a NVOCC bond of $50,000 issued by Washington International Insurance Company (Bond No. 894–0093) which has been effective since April 15, 1991. RCC's current resident agent for service of process in the United States is The Roanoke Agency, Inc.[1]

Between February 14, 1994 and September 11, 1996, RCC is believed to have entered into and participated in an arrangement which allowed RCC to obtain ocean transportation for property at less than the rates or charges that would be otherwise applicable for shipments between Australia/New Zealand and the United States. On February 14, 1994, RCC entered into an agreement with a common carrier, Ocean Management, Inc. ("OMI"), in which RCC obtained certain ocean transportation rates and other special transportation considerations from OMI for the transportation of RCC's cargo between the United States and Australia. The terms of this arrangement were not filed with the Commission. The agreement between OMI and RCC appears to have continued until the arrangement apparently was terminated by OMI on September 11, 1996. This arrangement appears to have given the NVOCC, RCC, ocean transportation rates which were less than the applicable tariff rates and may have provided RCC with various untariffed services and benefits for more than two years and involving hundreds of shipments.

Section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), 46 USC app. 1709(a)(1), prohibits any person from knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. RCC may have violated section 10(a)(1) of the 1984 Act by entering into and utilizing an off-tariff arrangement to obtain ocean transportation for RCC's property at less than the rates or charges that would otherwise be applicable.

Under section 13 of the 1984 Act, 46 USC app. 1712, a person is subject to a civil penalty of not more than $25,000 for each knowing and willful violation of the 1984 Act, and not more than $5,000 for each other type of violation.[2]

[1] Washington International Insurance Company with its apparent affiliate, The Roanoke Agency, Inc., is located at Suite 500, 300 Park Blvd., Itasca, IL 60143–2625.

[2] The $25,000 and $5,000 penalties, originally established in the 1984 Act, have been increased to $27,500 and $5,500, respectively, effective November 7, 1996. See *Inflation Adjustment of Civil Monetary Penalties*, 27 SRR 809 (1996), and 46 CFR Part 506. However, in accordance with 46 CFR 506.5, these increases apply only to violations which occur after November 6, 1996. Since the alleged violations appear to have occurred prior to November 6, 1996, these increases do not apply.

In addition, section 23 of the 1984 Act, 46 USC app. 1721, provides that a common carrier's tariff may be suspended for violations of section 10(a)(1) of the 1984 Act.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13, 14 and 23 of the 1984 Act, 46 USC app. 1709, 1710, 1712, 1713 and 1721, an investigation is instituted to determine:

(1) whether Refrigerated Container Carriers Pty. Limited violated section 10(a)(1) of the 1984 Act between February 14, 1994 and September 11, 1996, by knowingly and willfully, directly or indirectly obtaining or attempting to obtain ocean transportation at less than the rates and charges otherwise applicable by means of an agreement whose terms were not filed in the applicable tariff(s) or essential terms publication(s) with the Commission;

(2) whether, in the event violations of section 10(a)(1) of the 1984 Act are found, civil penalties should be assessed against Refrigerated Container Carriers Pty. Limited, and if so, the amount of penalties to be assessed;

(3) whether, in the event violations of section 10(a)(1) of the 1984 Act are found, the tariff of Refrigerated Container Carriers Pty. Limited should be suspended or canceled; and

(4) whether, in the event violations are found, an appropriate cease and desist order should be issued against Refrigerated Container Carriers Pty. Limited.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Refrigerated Container Carriers Pty. Limited is designated as Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by November 18, 1999 and the final decision of the Commission shall be issued by March 17, 2000.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31281 Filed 11–23–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 64510.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m.—November 24, 1998.

CHANGE IN THE MEETING:

Addition to the CLOSED portion of the meeting.

Item 2—Report on Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31561 Filed 11–20–98; 3:58 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to acquire 100 percent of the voting shares of Guaranty Bank and Trust Company, Venice, Florida, and thereby indirectly acquire Southwest Interim Bank No. 5, National Association, Sarasota, Florida.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer

Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Hancock Park Acquisition, L.P., and Hancock Park Acquisition, L.L.P., both of Inverness, Illinois; to become a bank holding company by acquiring at least 16.83 percent of the voting shares of Bank of Coronado, Coronado, California.

Board of Governors of the Federal Reserve System, November 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31355 Filed 11–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. VIB Corporation, El Centro, California; to acquire Bank of Stockdale, F.S.B., Bakersfield, California, and thereby engage in the operation of a savings association pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Comments on this application must be received by December 18, 1998.

2. Wells Fargo & Company, San Francisco, California; and Norwest Mortgage, Inc., and Norwest Ventures, LLC, both of Des Moines, Iowa; to engage, as a joint venture, through its subsidiary Mortgage Professionals of Tampa Bay, LLC, Tampa, Florida in Residential mortgage lending pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31356 Filed 11–23–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, November 30, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposals relating to the organizational governing structure for Federal Reserve employee benefit plans.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31562 Filed 11–20–98; 3:59 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Ms. Eileen Glennon, Harvard Medical School and Brigham and Women's Hospital: Based on a report submitted to the Office of Research Integrity (ORI) by the Harvard Medical School (HMS) on June 30, 1998, as well as additional information obtained by ORI during its oversight review, ORI found that Ms. Glennon, former research technician, Endocrine-Hypertension Division, Brigham and Women's Hospital (BWH), engaged in scientific misconduct arising out of certain biomedical research supported by a grant from the National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), and a grant from the National Center for Research Resources (NCRR), NIH.

Specifically, Ms. Glennon fabricated data to plot standard curves while conducting radioimmunoassays to determine angiotensin II concentrations. When the assays appeared not to be working, which occurred in approximately half of the assays over a one year period, she used numbers from previous standard curves and then used the fabricated standard curve to determine the concentration of angiotensin II, thus producing false experimental results. Ms. Glennon cooperated fully with the institutional inquiry panel and admitted her acts.

Ms. Glennon has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning November 13, 1998:

(1) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which her participation is proposed or which uses her in any capacity on PHS supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the

funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Glennon's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 98–31352 Filed 11–23–98; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation of Public Comment on Proposed Collection of Fees at United States Ports Designated To Conduct Rodent Infestation Inspections and Issue Deratting and Deratting Exemption Certificates

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice for public comment.

SUMMARY: The CDC is soliciting comments on a process to begin charging fees for conducting rodent infestation inspection of ships, and issuing Deratting and Deratting Exemption Certificates. While the United States does not require these certificates for ships to enter its seaports, Article 17 of the International Health Regulations requires that the U.S. provide these services and 42 CFR 71.46 authorizes their performance by CDC through the Public Health Service (PHS).

DATES: Written comments must be received on or before December 24, 1998.

FOR FURTHER INFORMATION CONTACT: James E. Barrow, Chief, Program Operations Branch, Division of Quarantine, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), Mailstop E03, Atlanta, Georgia 30333, telephone (404) 639–8107, FAX (404) 639–2599, E-mail jeb1@cdc.gov.

Authority: 42 U.S.C. 264–271, 42 CFR 71.46, IHR Articles 17 and 53.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The purpose of this announcement is to solicit comments on charging fees for rodent infestation inspections of ships, and issuance of Deratting and Deratting Exemption Certificates, where these services are provided directly by employees or vendors of the CDC.

CDC provides rodent infestation inspections for ships at eleven major ports upon request, and issues Deratting and Deratting Exemption Certificates. These ports include: Baltimore, MD; Honolulu, HI; Houston, TX; Jacksonville, FL; Los Angeles, CA; Miami, FL; New Orleans, LA; New York, NY; San Francisco, CA; Savannah, GA; and Seattle, WA. Article 17 of the International Health Regulations, published by the World Health Organization, Geneva, requires that each Health Administration provide these services, and Article 82 outlines the criteria for charging fees. 42 CFR 71.46 authorizes the performance of these services by PHS as carried out by CDC. While CDC has for many years provided these services at no cost to the owners or agents of ships requesting them, foreign countries generally pass these costs on to those who directly benefit from them. While the United States does not require these certificates for ships to enter its seaports, and in view of the ongoing fiscal constraints and efforts to contain the national deficit, the cost of providing these services will be passed along as a charge to those receiving the inspections and certificates.

Applicability

The fees will be applicable to all rodent infestation inspections conducted, and Deratting and Deratting Exemption Certificates issued by CDC or its vendors.

Proposed Fees

For ships receiving rodent infestation inspections and issued Deratting and Deratting Exemption Certificates, the costs are determined by taking into consideration salaries, benefits, vendor services, printing, supplies, and agency overhead. The charge for the first full year during which fees for rodent infestation inspections and issuance of Deratting and Deratting Exemption Certificates are assessed is expected to be $150.

Shipping companies will be provided by mail the fee amount and instructions for submitting fees. The fees will be due at the address specified in the bill, not later than 30 days following the inspection.

Dated: November 18, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31332 Filed 11–23–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Survey of Child and Adolescent Well-Being (NSCAW).

OMB No.: New.

Description: Title V, Section 429A, in the amendments to Title IV–B of the Social Security Act authorizes the Secretary of Health and Human Services to conduct a national random sample study of child welfare. The NSCAW fulfills the intent of that legislation, and responds to a growing need for better understanding of the child welfare system and the children and families who come into contact with it. The survey will collect data through interviews and assessments with a national sample of 6700 children along with their parents, caregivers (such as foster parents), teachers, and caseworkers and other agency personnel to assess the characteristics of children and families who come into contact with the child welfare system, the services they need and receive, and the outcomes for those children and families. Information will be collected from all respondents at the time the child enters the child welfare system, with three subsequent annual follow-ups. In addition, some information will be collected from parents or caregivers and caseworkers midway between the annual collections. The information will provide national estimates on characteristics of children and families in the child welfare system, and will be used to guide child welfare policy and practice, as well as to provide new insights into the antecedents and consequences of child maltreatment.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NSCAW	19,339	2	.914	35,350

Estimated Total Annual Burden Hours: 35,350.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, *Attn:* ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 18, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31280 Filed 11–23–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Little River Band of Ottawa Indians of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination to take land into trust under 25 CFR Part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 152.8 acres, more or less, of land into trust for the Little River Band of Ottawa Indians of Michigan on November 12, 1998. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Indian Gaming Management Staff Office, Bureau of Indian Affairs, MS 2070–MIB, 1849 C Street, NW, Washington, D.C. 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR § 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR § 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On November 12, 1998, the Assistant Secretary—Indian Affairs decided to accept approximately 152.8 acres, more or less, of land into trust for the Little River Band of Ottawa Indians of Michigan pursuant to Section 1300k-4(b) and (d) of the Little Traverse Bay Bands of Odawa Indians and Little River Band of Ottawa Indians Act, Public Law 103–324, 25 U.S.C. §§ 1300k—1300k-7(1994). The Secretary shall acquire title in the name of the United States in trust for the Little River Band of Ottawa Indians of Michigan for the following parcel of land described below no sooner than 30 days after the date of this notice. A parcel of land containing 152.8 acres, more or less, situated near the City of Manistee, in Manistee County, Michigan, and is more particularly described as follows:

The NE¼, Section 28, Township 22 North, Range 16 West; excepting that part commencing at the Northeast corner of the SE¼ of the NE¼, West 264 feet, South 1 degree 40′ East 165 feet, East 264 feet, North 165 feet to the place of beginning. Also excepting the highway right-of-way for U.S. 31 in Liber 18, Page 180, and the highway right-of-way for M–22 in Liber 248, Page 18.

Subject to all easements, restrictions, covenants, reservations, responsibilities and requirements of record.

Subject to prior reservations of oil, gas, minerals, and related hydrocarbon interests, including the right to explore for, develop, and market the same; as recorded at Liber 310, Page 210; Liber 404, Page 46; Liber 404, Page 67, Liber 414, Page 796; Liber 414, Page 801; Liber 416, Page 460; Liber 425, Page 531; Liber 441, Page 923; Liber 473, Page 502; Liber 501, Page 94; all Manistee County Records.

Property I.D. #51–07–128–001–00

Dated: November 12, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–31406 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment II to the Tribal-State Compact for Regulation of Class III Gaming Between The Burns-Paiute Tribe and the State of Oregon, which was executed on September 4, 1998.

DATES: This action is effective November 24, 1998.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: November 10, 1998.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 98–31405 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–034–08–1220–00: GPS–0027]

Temporary Closure of Public Lands: Oregon

AGENCY: Vale District, Bureau of Land Management, Interior Department.

ACTION: Notice of emergency closure of certain activities within Snively Hot Springs Recreation Site.

EFFECTIVE DATE: November 24, 1998.

SUMMARY: Effective November 24, 1998 all camping activities and the use of all open fire is prohibited at Snively Hot Springs Recreation Site. The site will remain open for day use activities, only. The closure is the minimum action determined needed to provide visitor safety, protection of the site's resource values, and to enhance recreational enjoyment. The site has been subject to an increased level and frequency of unlawful and inappropriate activities, including but not limited to disorderly conduct, assault, and the illegal use of alcohol and illicit drugs, unattended camp fires that have escaped resulting in destruction of riparian vegetation and scorched top soils; the destruction and vandalism of developed facilities and improvements; and extensive littering.

This closure order is authorized under Title 43 of the Code of Federal Regulations, subpart 8364.1. The following acts are prohibited throughout the year on all public lands within the Snively Hot Springs Recreation Site, located in Township 21 S., Range 45 E., section 22, Willamette Principal Meridian, Malheur County, Oregon.

1. The starting or maintaining of any open fire;

2. The use or occupancy of the recreation site daily from sunset to sunrise.

This closure order remains in affect until superseded by the Record of Decision for the Southeastern Oregon Resource Management Plan (SEORMP), which, in part, affects BLM management of the recreation site, or until other approved planning provides for defined public uses and restrictions within the recreation site.

PENALTY: Any person failing to comply with this closure order may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

FOR FURTHER INFORMATION CONTACT: Roy L. Masinton, Malheur Resource Area Manager, Bureau of Land Management, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

Roy L. Masinton,

Malheur Resource Area Manager.

[FR Doc. 98–31372 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–7123–00–6068]

Notice of Record of Decision: For Motor Vehicle Use and Road and Trail Designation for the Fort Sage Off-Highway Vehicle Area, Eagle Lake Field Office, Susanville, CA, and Lassen County

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, record of decision for Off-Highway Motor Vehicle Designation of Roads and Trails within the Fort Sage Off-Highway Vehicle Area.

SUMMARY: Notice is hereby given that on November 18, 1998, John Bosworth, Acting Field Manager, Eagle Lake Field Office, issued a decision to designate all motorized vehicle routes within the Fort Sage Off Highway Vehicle (OHV) Area on public lands managed by the BLM in Lassen County, California. A motor vehicle designation of "limited to designated roads and trails" is established for this area. The affected public land includes all BLM managed lands within:

Mount Diablo Meridian

T. 26 N., R. 17 E.
T. 25 N., R. 17 E.
T. 25 N., R. 18 E.
T. 24 N., R. 18 E.

These route designations provide for the improved management and protection of public land resources, and people using the public lands, and will minimize conflicts among the various users of those lands.

In accordance with 43 CFR 8340, notice is hereby given that motorized off-highway vehicle use in the Fort Sage OHV Area administered by the Bureau of Land Management, is limited to designated roads and trails within the areas marked "limited use area" as shown on the map in Environmental Assessment CA–350–98–19.

In accordance with 43 CFR 8340, notice is hereby given that all roads that are not designated for use by official BLM signs will be closed unless otherwise marked. Exceptions to this rule will be emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, and other motorized vehicles on official business specifically approved by an authorized officer of the Bureau of Land Management.

SUPPLEMENTARY INFORMATION: These vehicle route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S. 1701 et seq.), Executive Order (EO) 11644 (Use of Off-Road Vehicles on Public Lands), and 3 CFR 74.332 as amended by EA 11989 (vol. 42, **Federal Register**, page 26959, May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR part 8341 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 and/or imprisonment not to exceed more than 12 months. Maps showing the exact location of designated roads and trails are available at the Eagle Lake Field Office, 2950 Riverside Drive, Susanville, CA 96130.

FOR FURTHER INFORMATION CONTACT: John Bosworth, Acting Field Manager, Eagle Lake Field Office, Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130 (916) 257–0456. For a period of 45 days from the date of publication of this notice, interested parties may submit written comments or objections to the Field Manager, Eagle Lake Field Office at the above address.

Dated: November 18, 1998.

John Bosworth,

Acting Area Manager.

[FR Doc. 98–31333 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–1430–01; WYW–0317557, WYW–42404]

Notice of Realty Action; Sale Under the Recreation & Public Purposes (R&PP) Act; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public lands located adjacent to Curt Gowdy State Park, near Cheyenne, Wyoming, were classified as suitable for lease and sale under the provisions of the Recreation and Public Purposes Act as amended, 43 U.S.C. 869 *et seq.*, on April 26, 1962, for recreational purposes:

Sixth Principal Meridian

T. 14 N., R. 70 W.,
Sec. 8, SW¼, S½SE¼.

The land described above contains 240.00 acres.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kotter, Field Manager, Rawlins Field Office, Bureau of Land Management, P.O. Box 2407, Rawlins, Wyoming 82301, (307) 328–4200.

SUPPLEMENTARY INFORMATION: Wyoming State Parks & Historic Sites (WSPHS), currently holds Recreation and Public Purpose leases on the above described lands. The Bureau of Land Management (BLM), proposes to convey these lands which are adjacent to Curt Gowdy State Park to WHPHS. Conveyance of these lands is consistent with the Great Divide Resource Management Plan and would serve important public objectives for outdoor education and recreation. The lands are not needed for Federal purposes.

The conveyance will contain reservations to the United States for:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way for ditches and canals constructed by the authority of the United States.

Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of forty-five (45) days from the date of issuance of this notice, interested parties may submit comments to the Field Manager, Bureau of Land Management, Rawlins Field Office, P.O. Box 2407, Rawlins, Wyoming 82301. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify the realty action. In the absence of any objections, this proposed realty action will become final.

Dated: November 18, 1998.

Dennis J. Carpenter,

Acting Field Manager.

[FR Doc. 98–31388 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control and Possession of the Tulsa District, United States Army Corps of Engineers, Tulsa, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Tulsa District, United States Army Corps of Engineers, Tulsa, OK.

A detailed assessment of the human remains was made by Tulsa District Corps professional staff in consultation with representatives of the Caddo Indian Tribe of Oklahoma.

In 1967, human remains representing one individual were excavated at site 41LR12, Pat Mayse Reservoir, Lamar County, TX during legally authorized excavations conducted by Southern Methodist University personel. These human remains are curated at Southern Methodist University. No known individual was identified. The 67 associated funerary objects include clay pipestem fragments, one pipe bowl, projectile points, stone tools, whetstones, hammer stones, ceramics, and ocher.

Based on cultural material present at site 41LR12, this individual has been determined to be Native American. Based on the associated funerary objects and other cultural material, site 41LR12 has been identified as a Late Prehistoric period occupation dating between 800—1500 A.D. Based on the cultural material, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 41LR12 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1962, human remains representing a minimum of seven individuals were excavated at site 34CH40, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 716 associated funerary objects include projectile points, other stone tools, ceramics, polished bone, pieces of baked clay, stone flakes, and hematite.

Based on the cultural material of site 34CH40 and manner of interments as described in site reports, these individuals have been determined to be Native American. The cultural material also indicates that site 34CH40 dates to 1500 B.C. to 800 A.D. Based on the cultural material, associated funerary objects, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH40 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1970, human remains representing a minimum of two individuals were excavated at site 34CH43, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 251 associated funerary objects include projectile points, stone tools, ceramics, and ground stone.

Based on the cultural material of site 34CH43, these individuals have been determined to be Native American. The cultural material also indicates that site 34CH43 dates to between 1500 B.C. and 800 A.D. Based on ceramics, stone tools, bone tools, archeological site type, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH43 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1971, human remains representing a minimum of seven individuals were excavated at site 34CH53, Hugo Lake, Choctaw County, OK during legal excavations performed by University of Oklahoma personnel. No known individuals were identified. The 1,988 associated funerary objects include projectile points, stone tools, stone flakes, animal bone, shell, pottery sherds, baded clay, molded clay, clay beads, and clay pipe fragments.

Based on the cultural material of site 34CH53, these individuals have been identified as Native American. The cultural material also indicates that site 34CH53 dates to between 800 and 1000 A.D. Based on the associated funerary objects, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH53 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1971, human remains representing a minimum of one individual were excavated at site 34CH89, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 972 associated funerary objects include projectile points, stone tools, ground stone, and pottery sherds.

Based on the cultural material of site 34CH89, this individual has been determined to be Native American. The cultural material of site 34CH89 dates the site to between 1500 B.C. and 300 A.D. Based on the ceramics, stone tools, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH53 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1969, human remains representing a minimum of 14 individuals were excavated at site 34CH112, Hugo Lake, Choctaw County, OK during excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 357 associated funerary objects include whole ceramic vessels, sherds, projectile points, stone tools, stone flakes, stone cores, and celts.

Based on the cultural material of site 34CH112, these individuals have been determined to be Native American. The cultural material of site 34CH112 dates the site to between 1000 A.D. and 1300 A.D. Based on the ceramics, stone tools, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH112 has been affiliated with the Caddo Indian Tribe of Oklahoma.

In 1971, human remains representing a minimum of one individual were excavated at site 34CH113, Hugo Lake, Choctaw County, OK during legally authorized excavations conducted by University of Oklahoma personnel. No known individuals were identified. The 174 associated funerary objects include whole ceramic vessels, sherds, baked clay, stone tools, stone flakes, animal bone, and a piece of ground stone.

Based on the cultural material of site 34CH113, this individual has been determined to be Native American. The cultural material of site 34CH113 dates the site to between 1000 A.D. to 1300 A.D. Based on the ceramics, stone tools, type of archeological site, geographic location, dates of occupation, 18th and 19th century accounts of the aboriginal occupants of the area, and consultation with representative of the Caddo Indian Tribe, site 34CH113 has been affiliated with the Caddo Indian Tribe of Oklahoma.

Based on the above mentioned information, officials of the U.S. Army Corps of Engineers, Tulsa District have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least 33 individuals of Native American ancestry. Officials of the U.S. Army Corps of Engineers, Tulsa District have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 4,795 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Army Corps of Engineers, Tulsa District have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Caddo Indian Tribe of Oklahoma.

This notice has been sent to officials of the Wichita and Affiliated Tribes, the Tonkawa Tribe of Indians of Oklahoma, the Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Kiowa Indian Tribe of Oklahoama, the Quapaw Tribe of Oklahoma, the Osage Nation of Oklahoma, and the Caddo Indian Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Mr. Robert W. Jobson, NAGPRA Coordinator, Planning Division, U.S. Army Corps of Engineers, Tulsa District, P.O. Box 61, Tulsa, OK 74121–0061, telephone (918) 669–7193, before December 24, 1998. Repatriation of the human remains and associated funerary objects to the Caddo Indian Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: November 17, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31350 Filed 11–23–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Open Meeting of the Presidential Task Force on Employment of Adults with Disabilities

Background and Authority

The President Task Force on Employment of Adults with Disabilities (PTFEAD) was established under Executive Order No. 13078, signed March 13, 1998. Its primary purpose is to create a "coordinated and aggressive national policy" in order to increase the employment of adults with disabilities to a rate and level that mirror, as close as possible, that of the general adult population.

Task Force membership is also set forth in the Executive Order and includes the Secretary of Labor, Chair of the President's Committee on Employment of Adults with Disabilities, Secretary of Education, Secretary of Veterans Affairs, Secretary of Health and Human Services, Commissioner of Social Security, Secretary of the Treasury, Secretary of Commerce, Secretary of Transportation, Director of the Office of Personnel Management, Administrator of the Small Business Administration, the Chair of the Equal Employment Opportunities Commission, and the Chairperson of the National Council on Disability.

The Task Force will terminate 30 days after submitting its final report, which is due July 26, 2002.

Notice of Meeting Including Specifications As To Time/Place

An open meeting of the Task Force will take place on Monday, December 14, 1998 from 9:00 a.m. to 2:00 p.m. in the Grand Ballroom of the International Trade Center, 1300 Pennsylvania Avenue, N.W., Washington, DC.

Agenda Items

The agenda will include the public presentation and full Task Force discussion of the *First Report to the President,* a report mandated by Executive Order 13078. Vice President Gore will also meet with and address the Task Force.

Discussion of the *First Report to the President* will begin with brief oral presentations of several panels of federal government officials. The panels will be comprised of the Chairs of six inter-agency work groups formed to address the first six specific mandates of Section 2 of the Executive Order. Their presentations will include the initial fact-finding and impact assessment of Task Force member departments and

agencies, in terms of their respective efforts to eliminate or significantly reduce employment-related barriers for working-age adults with disabilities.

The work group Chairs will also identify both short-term recommendations for improving federal disability employment policy, and longer-term policy recommendations and issues that will need to be addressed by the PTFEAD during the next three and half years.

Special Accommodations

Any individuals wishing to attend the Task Force meeting who need special accommodations should contact Ms. Lori Peterson at telephone number 202–219–6081, ext. 154 (or TTY number 202–219–0012) by Tuesday, December 8.

For further information, you may also contact Ms. Peterson, or Ms. Barbara Fried, Director of Operations, at 202–219–6081.

Signed at Washington, DC this 17th day of November, 1998.

Rebecca L. Ogle,

Executive Director, Presidential Task Force on Employment of Adults with Disabilities.

[FR Doc. 98–31402 Filed 11–23–98; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–35]

Construction Roofing Industry Partnership Pilot Program

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice; information collection requirements; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the collection of information (paperwork requirements) associated with the Agency's Construction Roofing Industry Partnership Pilot Program.

The Agency is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of OSHA's responsibilities, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses)

DATES: Written Comments must be submitted on or before January 25, 1999.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–35, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–2073. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 693–2073 or Barbara Bielaski at (202) 693–1954. For electronic copies of the information collection request, contact OSHA's Web Page on the Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

OSHA requires that most construction workers be protected from falls of 6 feet (1.8 m) or more through the use of various fall protection systems. The U.S. roofing industry has a relatively high rate of employee fatalities and injuries, notably involving falls. About 80 percent of roofing contractors perform only residential work, which often involves smaller jobs of short duration, making it difficult for OSHA and state agencies to inspect many of the jobs. Thus, it is important to foster compliance with the fall protection standards through outreach efforts, and reward voluntary compliance.

The pilot program began in 1996 in OSHA's Region V as a partnership with the National Roofing Contractors Association (NRCA), set up for roofing contractors with exemplary safety and health programs performing work in Ohio, Illinois, or Wisconsin (the states in that region under Federal OSHA jurisdiction). This program is an outreach effort, administered by NRCA, intended to foster protection for construction workers from hazards such as falls from roofs and burns from hot asphalt through increased awareness and prevention of hazards. The program provides incentives for roofing contractors recognized by the program, and helps them build on their collective experience.

The program has two information collection burdens:

(1) To be accepted in the program, contractors must submit an application to a program steering committee, which reviews the submission and evaluates the contractor through an office and jobsite visit. Participating contractors receive penalty reductions and focused inspections.

(2) The program's Stakeholder Steering Committee is required to write an annual report to OSHA evaluating the program.

Action

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements involved in the pilot program.

Type of Review: New.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Construction Roofing Industry Partnership Pilot Program.

Agency Number: Docket No. ICR–98–35.

Frequency: Once for applications process and then annually for Committee report.

Affected Public: Business or other For-profit.

Number of Respondents: 26 contractor; 2 committee members.

Estimated Time Per Respondent: contractor; 2 committee members.

Estimated Time Per Respondent: contractors: 24 hours to prepare and submit applications, including 8 hours for office and job-site visits; committee members: 8 hours for 2 members.

Total Burden Hours: 404 hours.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed this 17th day of November, 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–31403 Filed 11–23–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The U.S. National Commission on Libraries and Information Science (NCLIS) Sunshine Act Meeting

Correction Notice

"**Federal Register**" Citation of Previous Announcement: FR, 11/20/98, Volume 63, Number 224, Page 64528.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: December 3, 1998, Seattle Public Library.

CHANGE IN LOCATION: December 3, 1998, Washington Athletic Club, Heritage Room, 3rd floor, 1325 Sixth Avenue, Seattle, WA.

CONTACT PERSON FOR MORE INFORMATION: Barbara Whiteleather, NCLIS (202) 606–9200.

Dated: November 20, 1998.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 98–31559 Filed 11–20–98; 3:57 pm]

BILLING CODE 7527–63–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, December 1, 1998.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

7093 Brief of Accident-BK–117–B2 helicopter crash, N909CP, New York City, April 15, 1997; and Safety Recommendation to the Federal Aviation Administration about Blind Rivets.

7092 Hazardous Materials Accident Summary Report-Failure of Tank Car TEAX 3417 and Subsequent release of Liquefied Petroleum Gas, Pasadena, Texas, November 22, 1997.

7091 Railroad Regional Briefs.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 98–31560 Filed 11–20–98; 3:56 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. DRP–63 issued to Niagara Mohawk Power Corporation (NMPC or the licensee) for operation of Nine Mile Point Nuclear Station, Unit 1 (NMP1), located in the town of Scriba, Oswego County, New York.

The proposed amendment would change Technical Specification (TS) 5.5, "Storage of Unirradiated and Spent Fuel," for NMP1. The changes would reflect a planned modification to increase the number of fuel assemblies that can be stored in the spent fuel pool from 2776 to 4086. The changes would also delete an erroneous reference within TS 5.5 to 10 CFR 70.55 for calculational methods approved by the Commission involving special arrays.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of NMP1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Analysis of issues concerning the expanded spent fuel pool storage capacity modification has considered the following potential scenarios:

1. A spent fuel assembly drop in the spent fuel pool.
2. Loss of spent fuel pool cooling flow.
3. A seismic event.
4. A cask drop in the spent fuel pool.
5. An accidental drop of a rack module during construction activity in the pool.

The probability that any of the first four scenarios in the above list can occur is not significantly increased by the proposed Technical Specification changes and the associated modification activities. Spent fuel pool activities such as fuel assembly movement as well as Spent Fuel Pool Cooling System operation will continue to be performed in accordance with approved plant procedures. A cask drop into the pool is considered an unlikely event based on the design/maintenance of the main hoist, the controlled cask movement path and the cask drop protection system (hydraulic guide cylinder). None of these features are affected by the proposed change. Concerning installation activities, whether conducted during power operation or shutdown, the reactor building crane will be utilized for handling all heavy loads (i.e., old and new racks) during the reracking operation. The main hoist is equipped with a redundant hoisting system which will prevent the dropping of heavy loads in the event that a cable or other critical part of the main hoist equipment should fail. Operability of the cranes will be checked and verified before the re-racking operation. All lift rigging and the refueling crane/hoist system will be inspected and all heavy load lifts will comply with NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants," per plant procedures. Accordingly, the probability of a heavy load drop will not significantly increase.

Therefore, the proposed modification and associated Technical Specification changes do not involve a significant increase in the probability of an accident previously evaluated.

UFSAR [Updated Final Safety Analysis Report] Section 15.c.3, "Refueling Accident," discusses the accident in which a fuel bundle is accidently dropped onto the top of the core during refueling operations and the subsequent radiological effects. Fuel assembly density in the core is essentially equivalent to that of the assemblies stored in the replacement spent fuel racks. Accordingly, the consequence of a fuel assembly dropped on the core (as analyzed in UFSAR Section 15.c.3), is not significantly

increased. Also, analysis shows that such an accident will not distort the racks sufficiently to impair their functionality and the minimum subcriticality margin, k_{eff} [neutron multiplication factor] [less than or equal to] 0.95, will be maintained. Thus, the consequences of such an accident remain acceptable and are not greater than those of previously evaluated accidents.

The consequences of a loss of spent fuel pool cooling have been evaluated and found acceptable. In the unlikely event that all pooling cooling is lost, sufficient time is available for the operators to re-establish cooling before the onset of pool boiling. Also, the consequences of a design basis seismic event have been evaluated and found acceptable. The new and the existing racks have been analyzed in their new configuration and found safe and impact-free during seismic motion. The structural capability of the pool will not be exceeded under dead weight, thermal, and seismic loads and the reactor building and the crane structure will retain the necessary safety margins during a seismic event. Thus, the consequences of a seismic event are not significantly increased.

Movements of heavy loads over the pool will continue to comply with applicable guidelines (e.g., NUREG–0612) and procedures. As previously mentioned, no heavy loads (e.g., racks, casks) will be transported over any region of the spent fuel pool containing fuel. The consequences of an accidental drop of a rack module into the pool during reracking activities have been evaluated indicating that very limited damage to the liner could occur. Therefore, the consequences of a heavy load drop are not increased.

During rack removal and installation activities, interim configurations will exist (i.e., various combinations of old and new racks). These combinations have been evaluated and indicate that no thermal-hydraulic, criticality and structural concerns exist.

The last paragraph in Section 5.5 states that calculations for k_{eff} values have been based on methods approved by the NRC covering special arrays (10 CFR 70.55). 10 CFR 70.55, "Inspections," discusses inspections of special nuclear material and the premises and facilities where special nuclear material is used; not methods used to determine k_{eff}. Therefore, this is an inaccurate reference. Also, although the NRC does review and approve our methods to determine k_{eff} (as part [of] the Technical Specification Amendment approval process) this information is not considered critical design feature information. Accordingly, it does not belong in Section 5.0, "Design Features," of the Technical Specifications. Based on the above, deletion of this paragraph will not have any adverse affect on safety and will eliminate any potential confusion involving the reference to 10 CFR 70.55.

Therefore, the proposed changes do not significantly increase the consequences of any accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed modification activities and associated Technical Specification amendment does not introduce any new modes of plant operation or accident precursors which could initiate a new or different kind of accident, affect the operation or function of any equipment necessary for the safe operation or shutdown of the plant, or involve any changes to plant operating parameters. The only physical alterations of plant configuration will involve the removal of currently installed non-poison and Boraflex spent fuel racks and the installation of new high density Boral racks. Heavy load movements (i.e., the old and new racks, casks) will continue to be performed in accordance with NUREG–0612. Accordingly, a drop of heavy loads onto spent fuel during and following installation activities need not be considered. As previously discussed, installation of the new racks does not constitute a thermal-hydraulic, criticality or structural concern. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of NMP1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed modification activities and associated Technical Specification Amendment involves replacing the currently install non-poison flux trap and Boraflex storage racks with new high density Boral racks. The proposed Technical Specification changes will not reduce the equipment required by Technical Specifications, affect any Technical Specification system setpoints, or adversely affect the ability of plant equipment to respond to an accident.

The design and technical considerations applied to the reracking modification included addressing the following areas:

1. Nuclear criticality considerations.
2. Thermal-hydraulic considerations.
3. Mechanical, material and structural considerations.

Concerning criticality considerations, the replacement high density spent fuel storage racks are designed to assure that the neutron multiplication factor (k_{eff}) is equal to or less than 0.95 with the racks fully loaded with fuel of the highest anticipated reactivity and the pool flooded with unborated water at a temperature corresponding to the highest reactivity. The maximum calculated reactivity includes a margin for uncertainty in reactivity calculations and in mechanical tolerances, statistically combined, such that the true k_{eff} will be equal to or less than 0.95 with a 95% probability at a 95% confidence level. Reactivity effects of abnormal and accident conditions have also been evaluated to assure that under credible abnormal conditions, the reactivity will be less than the limiting design basis value. Accordingly, the proposed change does not involve a significant reduction in a margin of safety in that the existing racks maintain a k_{eff} of less than 0.95.

Amendment No. 54 to the NMP1 [Operating License which changed the] Technical Specifications, dated February 1, 1984, increased the spent fuel storage capacity to the current maximum of 2776 assemblies. In [its] Safety Evaluation, Section 2.4, "Spent Fuel Pool Cooling Considerations," the NRC indicated acceptance of NMPC's thermal-hydraulic analysis based on: (1) with the maximum normal heat load assumed and one cooling train in operation, pool water is calculated to 125 degrees F which is below the 140 degrees F limit recommended in Standard Review Plan (SRP) Section 9.1.3; and (2) with the maximum abnormal heat load assumed and two cooling trains operating, the maximum pool temperature is calculated to be below 124 degrees which is below the boiling temperature limit set forth in SRP Section 9.1.3.

The SRP requires that with a maximum normal heat load and a single failure, pool temperatures should be kept below 140 degrees F and that with an abnormal heat load, pool temperatures should be kept below boiling. For the abnormal heat load case, consideration of a single failure is not required. The analysis provided in Section 5, Attachment C of this submittal [the licensee's May 15, 1998] indicates how the proposed change meets the requirements of the SRP and, accordingly, that no significant decrease in a margin of safety occurs.

In SRP 9.1.3, a normal spent fuel pool heat load is considered to be a core shuffle. NMPC has evaluated the core shuffle using the SRP guidance as Case 1, in previously referenced Section 5 of Attachment C. This evaluation indicates that a maximum pool temperature of 119 degrees F will be reached, thereby meeting the SRP maximum temperature requirement of 140 degrees F. Because a "normal heat load" now potentially involves a full core offload, NMPC has also reviewed this discharge scenario (Case 3, Section 5) as a normal case and therefore assumed a single failure. As delineated in Case 3, calculations will be performed to determine the days after reactor shutdown when all assemblies can be transferred to the pool, as a function of reactor building cooling water temperatures, such that a 140 degrees F bulk pool temperature will not be exceeded. Therefore, the SRP bulk pool temperature limit of 140 degrees F for a maximum normal heat load (both shuffle and full core offload) will not be exceeded.

The SRP also requires that for an abnormal maximum heat load (emergency condition), without a single failure, that pool temperatures should be maintained below boiling. Using the guidelines provided in the SRP, calculations were performed that found the maximum pool temperature to be 135 degrees F which is well below the SRP criteria (Case 2).

The mechanical, material, and structural design of the spent fuel racks is in accordance with applicable portions of NRC's position in "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications," dated April 14, 1978 (as modified January 18, 1979), as well as other applicable NRC guidance and industry codes. The primary safety function of the spent fuel racks is to maintain the fuel assemblies in a safe configuration through

normal and abnormal loading conditions. Abnormal loadings that have been evaluated with acceptable results include the effect of an earthquake and the impact due to the drop of a fuel assembly. The rack materials used are compatible with the fuel assemblies and the environment in the spent fuel pool. The structural design for the new racks provides tilting, deflection, and movement margins such that the racks do not impact each other or the spent fuel pool walls in the active fuel region during the postulated seismic events. Also, the spent fuel assemblies themselves remain intact and no criticality concerns exist. In addition, the structural adequacy of the spent fuel pool was demonstrated.

During rack removal and installation activities, interim configurations will exist (i.e., various combinations of old and new racks). These combinations have been evaluated and indicate that no thermal-hydraulic, criticality and structural concerns exist.

Therefore, the proposed change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based upon this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

By December 24, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in such proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126. If a request for a hearing and petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing and a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Mark J. Wetterhahn, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Untimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

Pursuant to the Commission's regulations, 10 CFR 2.1107, the Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated May 15, 1998, as supplemented September 25 and October 13, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Senior Project Manager, Project Directorate I–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31336 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–8948]

Consideration of Amendment Request for Shieldalloy Metallurgical Corp.

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for Shieldalloy Metallurgical Corporation's Cambridge, Ohio Site and an opportunity for a hearing.

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Source Material License No. SMB–1507 to allow for the receipt and placement of off-site slag/soil from the temporary staging area onsite to an area abutting the West Slag Pile as described in the July 24, 1998, "Environmental Report for the Proposed Action to Relocate Off-site Slag/Soil at the Shieldalloy Metallurgical Corporation Plant in Cambridge, Ohio," prepared for Cyprus Foote Mineral Company by Auxier & Associates, Inc. This license was issued to the Shieldalloy Metallurgical Corporation (Shieldalloy) for possession of radioactive slag from previous alloy production processes conducted at the Cambridge plant. NRC licenses the facility under 10 CFR part 40. The license authorizes Shieldalloy to possess source material generally contained in slag that is a byproduct of processing of ores into metal alloys. Based on production process information, some of the slag produced at the Cambridge plant contained low levels of naturally occurring radioactivity from the alloy feed materials.

Shieldalloy has been preparing to decommission the Cambridge plant and terminate its NRC license. To complete the decommissioning of the site, Shieldalloy has proposed to stabilize, cap, and grade the slag in preparation for onsite disposal. NRC is currently awaiting Shieldalloy's filing of its decommissioning plan before NRC can complete its evaluation of final disposal options for the onsite slag piles and the off-site slag/soil. Until this overall review process is completed, the proposed offsite slag/soil addition would be placed in a manner that ensures a separable and retrievable condition. The NRC issued a Draft Environmental Impact Statement in 1996 and will prepare a Final Environmental Impact Statement (FEIS) after the decommissioning plan has been submitted.

Prior to the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will relate to both safety and environmental aspects of this discrete amendment request. If the amendment is granted, the NRC will assure that it will not prejudice any of the alternatives to be considered regarding final disposal. When the NRC makes its final determination of the disposition of the on-site slag pile and the slag/soil from off-site areas, these findings will be documented in the FEIS.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One

White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Shieldalloy Metallurgical Corporation, West Boulevard P.O. Box 768, Newfield, NJ 08344, Attention: Mr. James P. Valenti, and;

2. NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For further details with respect to this action, the application for amendment is available for inspection at NRC's Public Document Room, 2120 L Street NW., Washington, DC 20003–1527.

FOR FURTHER INFORMATION CONTACT: James E. Kennedy, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6668. Fax: (301) 415–5398.

Dated at Rockville, MD, this 17th day of November, 1998.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31335 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of November 23, 30, December 7, and 14, 1998.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 23

Tuesday, November 24

10:30 a.m. Affirmation Session (Public Meeting) *

a: Final rule, Part 2, Subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository"

b: International Uranium (USA) Corporation Commission Review of Presiding Officer's Memorandum and Order (Aug. 19, 1998) Dismissing Envirocare

c: Final Rule, Part 2, Subpart M; Public Notification, Availablity Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications

d: North Atlantic Energy Corporation (Seabrook Station Unit No. 1); Motion to Withdraw Applications and to terminate Proceedings

Week of November 30—Tentative

Monday, November 30

2:00 p.m. Meeting on DC Cook (Public Meeting) (Contact: John Stang, 301–415–1345)

3:30 p.m. Affirmation Session (Public Meeting) (if needed)

Week of December 7—Tentative

Tuesday, December 8

9:00 a.m. Briefing on EDO Program (Public Meeting) (Contact: Irene Little, 303–415–7380)

11:00 a.m. Affirmation Session (Public Meeting) (if needed)

Week of December 14—Tentative

Tuesday, December 15

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:
http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: November 20, 1998.

William M. Hill, Jr.,

Secretary, Tracking Officer, Office of the Secretary.

[FR Doc. 98–31530 Filed 11–20–98; 2:14 pm]

BILLING CODE 7590–01–M

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMAITON: Bill Hill, (301) 415–1661.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213 (10 CFR 2.206); DD–98–12]

Connecticut Yankee Atomic Power Company (Haddam Neck); Director's Decision Under 10 CFR 2.206

I. Introduction

On March 13, 1998, Mr. Jonathan M. Block submitted a petition pursuant to Title 10 of the *Code of Federal Regulations* Section 2.206 (10 CFR 2.206) on behalf of the Citizens Awareness Network (Petitioner) requesting that NRC (1) take immediate action to suspend Connecticut Yankee Atomic Power Company's (CYAPCO's) license to operate the Haddam Neck reactor and (2) investigate CYAPCO's intention to use an air cooling method as a backup cooling method for spent fuel.

In support of his request, the Petitioner offers the following five bases: (1) CYAPCO has not resolved longstanding failures to exercise adequate radiological controls, (2) the nitrogen intrusion event of August 1996 demonstrates that CYAPCO is unable to

maintain operations in a shutdown condition, (3) CYAPCO's plan to use air cooling of the spent fuel pool (SFP) as a backup cooling method would constitute an unmonitored, unplanned release into the environment, (4) the proposal to use the air cooling method is a violation of CYAPCO's license, and (5) the proposal to use the air cooling method reveals CYAPCO's lack of comprehension of the defense-in-depth approach to safety systems.

II. Background

Connecticut Yankee Atomic Power Company is the holder of Facility Operating License No. DPR–61, which authorizes the licensee to possess the Haddam Neck Plant (HNP). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located at the licensee's site in Middlesex County, Connecticut. On December 5, 1996, CYAPCO submitted written certifications of permanent cessation of operation and that all nuclear fuel had been permanently removed from the reactor vessel. The certifications were docketed on December 11, 1996, and therefore, in accordance with § 50.82(a)(2), the facility is permanently shut down and defueled and is no longer authorized to operate or place fuel in the reactor.

Additional background relevant to the five bases offered by the Petitioner to support its requests is outlined below.

The Petitioner's first basis regarding the adequacy of the Haddam Neck Plant's (HNP's) radiological controls program has been evaluated by the NRC. The Petitioner notes that (1) in November 1996, the licensee allowed two workers to become contaminated during an entry into the fuel transfer canal, (2) in February 1997, the licensee released contaminated equipment to an unlicensed facility, and (3) on numerous occasions during the operating phase of the HNP, the licensee released contaminated materials to unrestricted areas. The first two items noted were included in the basis for issuing a confirmatory action letter (CAL) to the licensee on March 4, 1997, which documented the licensee's commitments to improve its radiation controls program. Subsequently, on May 5, 1998, the NRC issued the results of an inspection of the changes to the licensee's radiation controls program and concluded that the licensee had met the commitments listed in the CAL. The third item noted was addressed by the NRC in the Haddam Neck Historical Review Team Report, dated March 1998. The report concluded, that based on dose assessments completed thus far, radiation exposure to members of the public from the release of contaminated materials to offsite locations did not exceed the regulatory limits of 10 CFR Part 20.

The Petitioner's second basis, that CYAPCO is unable to maintain operations in the shutdown condition, is based on an August 1996 event. At that time, the reactor was shut down with the head in place and contained a full core of fuel. However, operators allowed nitrogen to collect in the reactor vessel, displacing water contained in the top of the reactor vessel head. The NRC conducted an augmented inspection team (AIT) review of the event and concluded that the event, in combination with other events that took place at the same time, was safety significant. However, there were no actual public health and safety consequences. The AIT issued its report on October 30, 1996. A "Notice of Violation and Proposed Imposition of Civil Penalties—$650,000" was issued to the licensee by NRC on May 5, 1997, due, in part, to the nitrogen intrusion event.

The Petitioner's third, fourth, and fifth bases pertain to modifications to the HNP spent fuel cooling system. CYAPCO submitted its Post Shutdown Decommissioning Activities Report (PSDAR) on August 22, 1997. The licensee plans to keep its spent fuel in wet storage in the spent fuel pool (SFP) until it can be transferred to the Department of Energy (DOE). In the interim period, the spent fuel building and systems necessary to accomplish fuel cooling will remain on site, separate from the rest of the site's mechanical and electrical systems. This arrangement is referred to as the "spent fuel pool island." On March 11, 1998, at a public meeting at the Haddam Neck site, the licensee reported on the status of establishing the SFP island, among other items. The licensee stated that two trains of water cooling will be installed to cool the SFP. Heat rejection will be changed from the existing service water system to two new spray coolers to be mounted on the roof of the spent fuel building. During the discussion, the licensee stated that a backup cooling method, created by opening the building's doors and roof hatch to establish natural circulation air flow through the building, could be used to cool the spent fuel in the event that all other cooling systems became unavailable. The licensee did not present an evaluation of the dose consequences of radiological releases through the roof hatch, if the air cooling method was actually used. However, the licensee had not used the air cooling method and considered it highly unlikely that conditions would arise that would require its use.

In order to respond to the petition, the NRC requested information from the licensee with respect to its plans to air cool the SFP if other cooling methods were unavailable. The licensee responded by letters dated June 29 and October 14, 1998.

III. Discussion of Petitioners' Requests

Each of the Petitioner's requests is discussed below. The five bases presented by the Petitioner are considered for each request, and determinations are made as to whether the bases support the request.

The Petitioner's first request is to immediately suspend CYAPCO's operating license.

The first basis presented by the Petitioner, that the licensee has not resolved failures to exercise adequate radiological controls, no longer pertains to the first request, since the licensee has implemented improvements, and the NRC has found them acceptable.

The second basis presented was the nitrogen intrusion event of August 1996. Although the NRC took enforcement action in response to the event, the basis no longer pertains to the first request since the reactor vessel has been permanently defueled and no reactor accident is, or ever will be, possible at HNP.

The third basis presented to support the request to suspend HNP's operating license is that air cooling the spent fuel through the spent fuel building roof hatch would constitute an unplanned, unmonitored release of radioactivity to the environment. The Commission's regulations require a licensee to monitor and control radioactive releases. The Commission places a licensee under the authority of the regulations by issuing a license with appropriate conditions. For example, the HNP operating license imposes the requirements of 10 CFR Part 20, "Standards for Protection Against Radiation," and 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities," among others, on the licensee. 10 CFR Part 20 limits the radiation exposure a licensee may allow a person to receive and requires the licensee to demonstrate that it has controlled exposures to levels less than the limits. 10 CFR Part 50 governs the operation and decommissioning of a reactor facility, and, perhaps most significantly in view of the third basis presented, requires a licensee to limit

the release of radioactive materials in effluents to "as low as reasonably achievable" (ALARA). Suspending the HNP license would not relieve the licensee of its responsibility to adequately control the use of radioactive materials in its possession, but could impede the NRC's ability to enforce regulatory requirements. Since the license is a mechanism through which the NRC holds the licensee to its responsibility, the third basis presented does not support suspension of the license.

The fourth basis presented to support the request to suspend the license is that the licensee's proposal to air cool the SFP using a flow path through the spent fuel building doors and roof hatch constitutes a violation of the license conditions. However, the license does not prohibit making proposals for alternate methods of operation of a reactor facility. Since making a proposal to air cool the SFP does not violate the license, the fourth basis does not support suspension of the license.

The fifth basis presented to support the request to suspend the license is that the air cooling proposal reveals that CYAPCO does not understand the defense-in-depth approach to backing up safety systems. Defense-in-depth, as applied at the system level, can be achieved by providing redundant and diverse methods to accomplish a function. The licensee described the normal and alternate SFP cooling systems. The normal system consists of redundant components for the SFP cooling system, the intermediate cooling loop, and the roof-mounted spray coolers. These are closed loops and do not require outside water to remain in operation, except for makeup water to the sprayers in hot weather. The redundancy provided in the normal cooling system allows several configurations to remove SFP heat. In addition, the SFP cooling pumps are backed up by alternate pumps that can be used to circulate river water through the normal system heat exchangers, which provides a diverse heat sink for the normal system. The pumps may be powered from offsite or onsite electrical power sources, and there is an engine-powered pump available that does not require electrical power. Thus, there are redundant and diverse sources of power for pumping. In the event no heat exchange systems are available, makeup water could be added to the SFP, and the cooling could be accomplished through evaporation. The heat would then be removed by the building exhaust fan, which is the normal release path. As evidenced by the components and alternates listed above, redundant and diverse methods are available to provide defense-in-depth for the SFP cooling function. The air cooling method is not required. Thus, the fifth basis does not support the request to suspend the license.

For the reasons stated above, the Petitioner's request to suspend the licensee's operating license is denied.

The Petitioner's second request is to investigate CYAPCO's proposal to air cool the SFP by opening the spent fuel building's doors and roof hatch.

The first basis presented by the Petitioner, that the licensee has not resolved failures to exercise adequate radiological controls, no longer pertains to the second request, since the licensee has implemented improvements, and the NRC has found them acceptable.

The second basis presented was the nitrogen intrusion event of August 1996. Although the NRC took enforcement action in response to the event, the basis does not pertain to the second request since the reactor vessel has been permanently defueled and no reactor accident is, or ever will be, possible at HNP.

The third basis presented by the Petitioner to support the request to investigate the licensee's air cooling proposal is that the licensee's plan to air cool the SFP by opening the spent fuel building's doors and roof hatch would constitute an unplanned, unmonitored release into the environment. The third basis concerns actions that have not occurred, and that the licensee does not expect to take. However, because the licensee plans to use the air cooling method under certain circumstances, the NRC considers the Petitioner's basis to be sufficient to grant the second request. A review of the licensee's regulatory responsibilities is presented in Section IV below.

The fourth basis presented to support the request for an investigation is that the licensee's proposal to air cool the SFP using a flow path through the spent fuel building doors and roof hatch constitutes a violation of the license conditions. However, the license does not prohibit making proposals for alternate methods of operation of a reactor facility. Since making a proposal to air cool the SFP does not violate the license, the fourth basis does not support the request.

The fifth basis presented to support the request to investigate the licensee's proposal is that the air cooling proposal reveals that CYAPCO does not understand the defense-in-depth approach to backing up safety systems. As noted above, the system proposed by the licensee achieves defense-in-depth by installing redundant and diverse components, power supplies, and heat sinks. The air cooling method is not required for defense-in-depth. Thus, the fifth basis does not support the request.

The NRC has determined that the third basis presented by the Petitioner is sufficient to grant the Petitioner's request to investigate the licensee's proposal to air cool the SFP. The staff's evaluation of the licensee's proposal is presented in Section IV below.

IV. Review of the Licensee's Proposal

The NRC requested information from the licensee with respect to its plans to air cool the SFP if other cooling methods become unavailable. The licensee responded by letters dated June 29 and October 14, 1998. The NRC also reviewed the licensee's operating license, Updated Final Safety Analysis Report (UFSAR), and Offsite Dose Calculation Manual (ODCM).

By letter dated October 14, 1998, the licensee stated that the dose consequence to an offsite member of the public from an airborne release from the SFP if the doors and roof hatch were opened to cool the spent fuel would be 0.254 mrem. The dose was calculated assuming that the air cooling method would be in use for 2 weeks before returning to a water cooling method and closing the doors and roof hatch. The dose is within regulatory limits. The licensee stated that procedures are in place to monitor a radioactive release from the roof hatch.

The licensee's October 14 letter contained a commitment to develop procedural guidance regarding when to open and subsequently close the spent fuel building (SFB) doors and roof hatch, in the event air cooling becomes necessary. The procedure will also direct operators to request airborne radioactivity surveys when the SFB doors and roof hatch are opened.

The Facility Operating License limits gaseous effluents in accordance with Technical Specification (TS) 3/4.11.2. That TS also requires that if a dose rate exceeds the limit, the licensee must decrease the release rate within 15 minutes to comply with the limits.

The UFSAR, Section 9.1.3, describes the SFP cooling system. Under the provisions of 10 CFR 50.59, a change to a system described in the UFSAR requires the licensee to perform a safety evaluation and, if necessary, obtain NRC approval before implementing the change. Using the air cooling method would fall within the scope of 10 CFR 50.59. Therefore, when the licensee revises its procedure to permit use of the air cooling method, it must perform a safety evaluation.

The ODCM provides the parameters and methodology to be used to calculate offsite doses and effluent monitor setpoints. Each effluent pathway used by the licensee must be accounted for in the ODCM. The licensee has procedures to monitor and quantify airborne releases, although, at the time of this review, the ODCM did not contain parameters or a methodology for a release path from the SFB roof hatch. However, there is no requirement to develop that information until the release path is used.

In summary, a release from the SFB doors and roof hatch from air cooling the SFP is required to be within regulatory limits. Before the air cooling method could be used, the licensee would have to perform a safety evaluation in accordance with 10 CFR 50.59 and revise its ODCM. In the event that the SFB doors and roof hatch are actually used for cooling the SFP, the release path must be monitored and actions taken to meet regulatory limits. However, there is no requirement to revise the ODCM unless the licensee, in fact, uses the air cooling method.

V. Decision

For the reasons stated above, the petition is denied in part and granted in part. The request to suspend the operating license is denied. The request to investigate the licensee's proposal to air cool the SFP is granted. The investigation is presented as the review in Section IV above. The decision and the documents cited in the decision are available for public inspection in the Commission's Public Document Room, the Gelman Building, 2210 L Street NW., Washington, D.C., and at the Local Public Document Room for the Haddam Neck Plant at the Russell Library, 123 Broad Street, Middletown, Connecticut.

In accordance with 10 CFR 2.206(c), a copy of this decision will be filed with the Secretary of the Commission for the Commission's review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the Decision within that time.

Dated at Rockville, Maryland, this 16th day of November 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31337 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a petition dated March 13, 1998, filed by Mr. Jonathan M. Block, Esq., pursuant to Title 10 of the Code of Federal Regulations, § 2.206 (10 CFR 2.206) on behalf of the Citizens Awareness Network (Petitioner). The petition requests that NRC (1) take immediate action to suspend Connecticut Yankee Atomic Power Company's (CYAPCO's) license to operate the Haddam Neck reactor and (2) investigate CYAPCO's intention to use an air cooling method as a backup cooling method for spent fuel.

The Director, Office of Nuclear Reactor Regulation, has determined that the Petition should be denied in part and granted in part for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–98–12); the complete text that follows this notice is available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street NW., Washington, DC, and at the Local Public Document Room for the Haddam Neck Plant at the Russell Library, 123 Broad Street, Middletown, Connecticut.

A copy of this decision has been filed with the Secretary of the Commission for the Commission's review. As provided for by 10 CFR 2.206(c), the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, MD, this 16th day of November, 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director Office of Nuclear Reactor Regulation.

[FR Doc. 98–31338 Filed 11–23–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40680; File No. SR–ODD–98–1]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval to Proposed Supplement to Options Disclosure Document Regarding Options on Exchange-Traded Fund Shares

November 13, 1998.

On November 13, 1998, The Options Clearing Corporation ("OCC") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 9b–1 under the Securities Exchange Act of 1934 ("Act"),[1] five definitive copies of a Supplement to its options disclosure document ("ODD"), which describes, among other things, the risks and characteristics of trading in options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity securities.[2]

The ODD currently contains general disclosures on the characteristics and risks of trading options on equity securities. The Commission has approved proposals by two options exchanges to list and trade options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity securities.[3] The proposed Supplement to the ODD provides for disclosures to accommodate the introduction of these options. Pursuant to Rule 9b–1, the Supplement will have to be provided to investors in options on Exchange-Traded Fund Shares before their accounts are approved for trading options on these products.

The Commission has reviewed the ODD Supplement and finds that it complies with Rule 9b–1 under the Act.[4] The Supplement is intended to be read in conjunction with the ODD, which discusses the characteristics and risks of options generally. The Supplement provides additional information regarding options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity

[1] 17 CFR 240.9b–1.

[2] *See* Letter from James C. Yong, First Vice President and General Counsel, OCC, to Sharon Lawson, Division of Market Regulation, Commission, dated November 12, 1998.

[3] *See* Securities Exchange Act Release Nos. 40157 (July 1, 1998) 63 FR 37426 (July 10, 1998) (order approving File No. SR–Amex–96–44); and 40166 (July 2, 1998) 63 FR 37430 (July 10, 1998) (order approving File No. SR–CBOE–97–03).

[4] 17 CFR 240.9b–1.

securities sufficient to further describe the special characteristics of these products.

Rule 9b–1 provides that an options market must file five preliminary copies of an amended ODD with the Commission at least 30 days prior to the date definitive copies of the ODD are furnished to customers, unless the Commission determines otherwise, having due regard for the adequacy of information disclosed and the protection of investors.[5] The Commission has reviewed the Supplement, and finds that it is consistent with the protection of investors and in the public interest to allow the distribution of the Supplement as of the date of this order.

It is therefore ordered, pursuant to Rule 9b–1 under the Act,[6] that the proposed Supplement regarding options on interests in unit investment trusts, investment companies, and similar entities holding portfolios of equity securities (SR–ODD–98–1) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31353 Filed 11–23–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Computer Matching Program (SSA/Department of the Treasury, Bureau of the Public Debt (BPD))—Match Number 1038

AGENCY: Social Security Administration.

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with BPD.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–0869 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Pub. L. (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal Agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that this computer matching program complies with the requirements of the Privacy Act, as amended.

Dated: November 12, 1998.

Kenneth S. Apfel,

Commissioner of Social Security

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of the Treasury, Bureau of Public Debt (BPD)

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions and procedures for BPD's disclosure of certain savings bond information useful to SSA in verifying eligibility and payment amounts of individuals under the supplemental security income (SSI) program. The SSI program was created under title XVI of the Social Security Act (the Act) to provide benefits under the rules of that title to individuals with income and resources below levels established by law and regulations.

C. Authority for Conducting the Matching Program

Sections 1631(e)(1)(B) and (f) of the Act (42 U.S.C. 1383(e)(1)(B) and (f)).

D. Categories of Records and Individuals Covered by the Match

SSA will provide BPD with a finder file, extracted from SSA's Supplemental Security Income Record System, containing Social Security numbers of individuals who have applied for or receive SSI payments. This information will be matched with BPD files in BPD's savings bond registration system of records (United States savings-type securities) and a reply file of matched records will be furnished to SSA. Upon receipt of BPD's reply file, SSA will match identifying information from the BPD file with SSA's records to determine preliminarily whether the data pertain to the relevant SSI applicant or recipient before beginning the process of verifying bond ownership and taking any necessary benefit actions.

E. Inclusive Dates of the Match

The matching program shall become effective upon signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later.

The matching program will continue for 18 months from the effective date

[5] This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

[6] 17 CFR 240.9b–1.

[7] 17 CFR 200.30–3(a)(39).

and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 98–31279 Filed 11–23–98; 8:45 am]
BILLING CODE 4190–29–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–117]

Section 304 Determination: Intellectual Property Laws and Practices of the Government of Paraguay; Termination of Intellectual Property Review of Paraguay Under the Generalized System of Preferences (GSP)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of determination, termination and monitoring.

SUMMARY: Having concluded the investigation undertaken pursuant to section 302 of the Trade Act of 1974, as amended ("Trade Act"), the United States Trade Representative (USTR) has determined pursuant to section 304(a)(1)(A)(ii) that certain acts, policies and practices of the Government of Paraguay concerning the protection and enforcement of intellectual property rights are unreasonable and discriminatory and constitute a burden or restriction on United States commerce. On November 17, 1998, the United States and Paraguay signed a Memorandum of Understanding (MOU) in which the Government of Paraguay committed to take a number of near-term and longer-term actions to address the practices that were the subject of this investigation. In light of the foregoing, the USTR has determined: not to take further action at this time; to terminate the investigation; and to monitor Paraguay's implementation of the MOU. The GSP review of Paraguay's intellectual property practices has also been terminated.

EFFECTIVE DATE: November 17, 1998.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864; Kellie Meiman, Director for Mercosur and the Southern Cone, (202) 395–5190; or Geralyn S. Ritter, Assistant General Counsel, (202) 395–6800.

SUPPLEMENTARY INFORMATION: On January 16, 1998, the USTR identified Paraguay as a "priority foreign country" under the "Special 301" provisions of the Trade Act (19 U.S.C. 2242). In identifying Paraguay as a "priority foreign country," the USTR noted deficiencies in Paraguay's acts, policies, and practices regarding intellectual property, including a lack of effective action to enforce intellectual property rights. The USTR also observed that the Government of Paraguay had failed to enact adequate and effective intellectual property legislation covering patents, copyrights and trademarks. As required under Section 302(b)(2)(A) of the Trade Act, (19 U.S.C. 2412(b)(2)(A)), the USTR initiated an investigation of these acts, policies and practices on February 17, 1998. On August 4, 1998, the USTR extended the investigation until November 17, 1998, in light of the complex and complicated issues involved, pursuant to section 304(a)(3)(B) of the Trade Act. On October 16, 1998, the USTR proposed to determine under section 304(a)(1)(A)(ii) that the Government of Paraguay's acts, policies and practices regarding intellectual property are unreasonable, discriminatory and burden or restrict U.S. commerce, and requested public comment on what action, if any, to take in response.

During bilateral negotiations held to resolve these issues, the Government of Paraguay indicated that it has undertaken and will undertake a number of actions to improve the protection of intellectual property rights in Paraguay. For example, since this investigation was initiated, Paraguay has passed new copyright and trademark laws, and has undertaken efforts to legalize government use of software. The Government of Paraguay also has made efforts to improve enforcement of intellectual property rights, including conducting a number of notable recent seizures of counterfeit and pirated products. Despite these efforts, however, piracy and counterfeiting of U.S. products continue to be serious problems in Paraguay.

On November 17, 1998, the United States and Paraguay signed an MOU that includes an Enforcement Action Plan to address the issues that were the subject of this investigation. The MOU contains specific near-term and longer-term obligations that, when fully implemented, will greatly strengthen Paraguayan intellectual property law and enforcement procedures. For example, Paraguay has committed to implement institutional reforms to strengthen enforcement at its borders and to pursue amendments that will facilitate effective prosecution of copyright piracy. Paraguay also has committed to take immediate action against known centers of piracy and counterfeiting, and to coordinate the anti-piracy efforts of its customs, police, prosecutorial and tax authorities. In addition, Paraguay has agreed to pursue reform of its patent law, and to ensure that its government ministries use only authorized software.

Section 304 Determination

The USTR determines pursuant to section 304(a)(1)(A)(ii) of the Trade Act that acts, policies, and practices of the Government of Paraguay with respect to the protection and enforcement of intellectual property rights are unreasonable and discriminatory and constitute a burden or restriction on U.S. commerce. In light of the MOU signed by the Government of Paraguay on November 17, 1998, the USTR has determined not to take further action at this time under section 301(b)(2) of the Trade Act and has terminated this investigation. Pursuant to section 306 of the Trade Act, the USTR will monitor Paraguay's implementation of the MOU and will determine what further action to take under section 301(a) of the Trade Act if Paraguay does not satisfactorily implement the MOU.

Termination of GSP Review

In 1996, a review of Paraguay's protection of intellectual property rights was initiated in response to a petition filed by Nintendo. In light of the above-referenced MOU and Paraguay's recent steps to improve intellectual property protection, the GSP review is terminated.

Joanna K. McIntosh,
Chairman, Section 301 Committee.

[FR Doc. 98–31313 Filed 11–23–98; 8:45 am]
BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending November 13, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4726
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Passenger/Cargo Mail Vote 972
Zimbabwe Currency Conversion
r1–010x r2–010mm
Intended effective date: January 1, 1999.

Docket Number: OST–98–4727
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association

Subject:
PTC23 EUR–JK 0033 dated October 16, 1998
Europe-Japan/Korea Resolutions r1–46
PTC23 EUR–JK 0034 dated November 6, 1998—Minutes
PTC23 EUR–JK Fares 0013 dated October 20, 1998—Tables
Intended effective date: April 1, 1999.

Docket Number: OST–98–4728
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC123/PTC31 Mail Vote 971—Reso 010w
Withdraw Proposed Increase in Fares from Pakistan
Pending in Dockets OST–98–4649, 98–4638, 98–4712 & 98–4713
(IATA Memoranda PTC123 0049–0051 & PTC31 N/C 0072 0074)
Intended effective date: November 15, 1998.

Docket Number: OST–98–4729
Date Filed: November 9, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC23 AFR–TC3 0055 dated October 15, 1998
Mail Vote 967 (Africa-South Asian Subc.) r1–9
PTC 23 AFR–TC3 0056 dated October 15, 1998
Mail Vote 968 (Africa-Southeast Asia) r10–22
Intended effective date: April 1, 1999.

Docket Number: OST–98–4744
Date Filed: November 12, 1998
Parties: Members of the International Air Transport Association
Subject:
PSC/Reso/095 dated October 30, 1998 r1–9
Expedited Resos/RPs from the 20th PSC/19th Joint PSC
(Summary attached to cover pleading.)
Intended effective date: as early as January 1, 1999.

Docket Number: OST–98–4746
Date Filed: November 12, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC1 Telex Mail Vote 974
Brazil-Caribbean/Central America Excursion Fares
(Reso 072qq—involves San Juan)
Intended effective date: December 1, 1998.

Docket Number: OST–98–4747
Date Filed: November 12, 1998
Parties: Members of the International Air Transport Association
Subject:
CAC/Reso/191 dated October 30, 1998
Finally Adopted Cargo Agency Resolutions r1–6
CAC/Meet/130 dated October 30, 1998—Minutes
Intended effective date: as early as January 1, 1999.

Docket Number: OST–98–4754
Date Filed: November 13, 1998
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR 0222 dated November 10, 1998
Expedited Within Europe Reso 002m
Intended effective date: December 1, 1998.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 98–31345 Filed 11–23–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending November 13, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4757.
Date Filed: November 13, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 11, 1998.

Description: Application of Delta Air Lines, Inc. pursuant to 49 U.S.C. Sections 41102, 41108 and subpart Q, applies for a Certificate of Public Convenience and Necessity and allocation of seven (7) frequencies to engage in scheduled foreign air transportation of persons, property and mail between Atlanta, Georgia and Rome, Italy beginning April 1, 1999. Delta requests that this authority be granted for a term of at least five years. Delta further request route integration authority to permit Delta to combine services that will be operated pursuant to the grant of this application with all other Delta services authorized by existing certificates and exemptions granted by the Department, to the extent permitted by applicable international agreements.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 98–31346 Filed 11–23–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST–1997–3286]

Notice of the Secretary of Transportation's Determination and the Department's Next Steps on Marine Transportation Safety in Puget Sound-Area Waters

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: On April 28, 1996, the White House issued the Department of Transportation (DOT) Action Plan to Address Vessel and Environmental Safety on Puget Sound-Area Waters. One element of this Action Plan committed DOT to assess the marine safety system in Puget Sound-area waters to determine whether any hazard scenarios warrant consideration of additional casualty prevention or response measures. Secretary Rodney E. Slater signed this determination on November 17, 1998. The determination and DOT's related announcement of next steps regarding additional measures are printed in an appendix to this notice. Several of the measures discussed in the announcement on additional measures will be pursued in partnership with the State of Washington. A Memorandum of Understanding formalizing this partnership is under development. Pursuant to the announcement on additional measures, an Advance Notice of Proposed Rulemaking on "Improvements to Marine Safety in Puget Sound-Area Waters" appears in the "Proposed Rules" section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen M. Shaprio, Office of the Assistant Secretary for Transportation Policy, U.S. Department of Transportation (P–130), 400 7th Street S.W., Room 10309, Washington, DC 20590, telephone (202) 366–4866.

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Issued in Washington, D.C., on November 17, 1998.

Eugene A. Conti, Jr.,

Assistant Secretary for Transportation Policy.

Appendix—Determination of the Safety of the Marine Transportation System for Puget Sound-Area Waters

On April 28, 1996, the White House issued the Department of Transportation (DOT) Action Plan to Address Vessel and Environmental Safety on Puget Sound-Area Waters. This Action Plan consists of three elements. The first element is to establish criteria for and facilitate the development of a private sector system to provide timely emergency response to vessels in distress in the Strait of Juan de Fuca and the waters near the Olympic Coast National Marine Sanctuary. The Coast Guard submitted reports to Congress in January and December of 1997 on the development of the voluntary International Tug of Opportunity System (ITOS) as required under the 1995 Alaska Power Administration Asset Sale and Termination Act (Public Law 104–58). As of October 1998, eighty-six U.S. and Canadian tugs operating in the region have been fitted with location transponders and are actively participating in ITOS.

The second element—the subject of this statement—is to determine the adequacy of all vessel safety and environmental protection measures in Puget Sound-area waters. In November 1996 letters to Senator Murray, Congressman Dicks, and Governor Lowry—and in a December 1997 **Federal Register** notice (62 FR 68348)—we interpreted this provision as requiring our review of the overall marine safety regime in Puget Sound-area waters to determine whether any hazard scenarios warrant consideration of additional casualty prevention or response measures. The third element of the Action Plan—additonal measures to address any such hazard scenarios cited—is addressed in an accompanying announcement.

During the last two and one half years, the Department of Transportation has worked to maintain a high degree of marine safety in Puget Sound-area waters. This effort has addressed concerns expressed by Senator Murray, other members of the Washington Congressional delegation, Governors Lowry and Locke, and many local interests. These concerns have focused on increasing the level of safety and environmental protection for the State's waterways.

During 1996, we worked closely with industry in its development of ITOS, which serves a valuable function in providing a means to identify tugs that may be available to assist a vessel in distress. During 1997, DOT's Volpe National Transportation Systems Center conducted a broad assessment of the relative probabilities and consequences of marine accidents in the region. A critical element of the Volpe Center's review was a panel of recognized safety and environmental protection experts who provided information and opinions on the current system.

In addition to ITOS, prevention elements of the current system that were identified in the course of the Volpe Center's review include the Vessel Traffic Service operated by the U.S. and Canadian Coast Guards, the Traffic Separation Scheme to facilitate movement of inbound and outbound vessels serving U.S. and Canadian ports, the "Area To Be Avoided" adjacent to the Olympic Coast National Marine Sanctuary, and escort requirements for certain tankers east of Port Angeles. Response elements of the current system that were identified include oil spill response plans for each vessel, area contingency plans, and response equipment provided by industry, the Coast Guard, and the State.

Based on the findings in the Volpe Center's report, I hereby determine that the many existing elements of the region's marine transportation system comprise a safe system. While there are always areas for improvement—and we should always be looking into means for improving safety—the Volpe report shows that the Puget Sound area has an excellent system now.

Many different types of casualty scenarios were evaluated in the course of the Volpe Center's review. Based on the findings in the Volpe Center's report—and upon consideration of input received through public workshops and a public meeting we held subsequent to the release of the Volpe Center's report—I hereby find that the potential for collisions, powered groundings, and drift groundings warrant consideration of specific additional measures to further mitigate their risks. Our next steps regarding such measures are addressed in an accompanying announcement.

Dated: November 17, 1998.

Rodney E. Slater,

Secretary of Transportation.

Announcement Regarding Additional Risk Mitigation Measures for Puget Sound-Area Waters

This document outlines the Department of Transportation's (DOT's) next steps in light of the Secretary's determination on the safety of the marine transportation system for Puget Sound-area waters.

While the Secretary determined that the elements of the system—which encompasses many missions performed by the United States Coast Guard—comprise a safe system, he also found that consideration of specific additional measures is warranted to further mitigate the risks of collisions, powered groundings, and drift groundings. Some additional measures can be implemented immediately, while others require more thorough evaluation prior to implementation.

The 1997 risk assessment of the area's marine transportation system—performed by DOT's Volpe National Transportation Systems Center in support of the Secretary's determination—found that the most promising area for risk reduction is to address the risk of collision in southwestern areas of Puget Sound from Admiralty Head to Tacoma, followed by the offshore area near the "J" buoy, and by the eastern end of the Strait of Juan de Fuca.

A promising measure to reduce the risk of collisions and powered groundings is improved waterway management—such as potential modifications to the Traffic Separation Scheme at the western approach to the Strait of Juan de Fuca. Such modifications could move traffic—and the point where traffic merges to enter the Strait—farther offshore from sensitive areas, such as the Olympic Coast National Marine Sanctuary. This might facilitate safer merge patterns and increase the distance a disabled vessel could drift from offshore traffic lanes before grounding. The Thirteenth Coast Guard District is starting a Port Access Study to pursue this measure in consultation with its Canadian counterparts as well as State and local stakeholders.

The Coast Guard's Port State Control program, which identifies and targets substandard foreign vessels, has provided a significant reduction of risk. The Coast Guard is pursuing further upgrades to the program, such as increased attention to English language proficiency and increased information sharing with Canada.

In addition to the Port State Control elements to ensure crew competency, there are several other human element measures that will be taken to reduce the risk of collisions and powered groundings by improving crew effectiveness and performance. These include fatigue prevention and improved communications. The Coast Guard Captain of the Port of Puget Sound is implementing these measures

with Canadian and Washington State counterparts through the enforcement of recent international treaties and through ongoing Coast Guard programs.

In addition to these activities addressing collisions and powered groundings, we are proceeding to more fully evaluate prospective measures to prevent a drift grounding in the event of a loss of steering or propulsion. The recently implemented International Tug of Opportunity System (ITOS) is an outstanding example of a voluntary private-sector initiative to ensure safe operations.

The Coast Guard's Report to Congress on ITOS has noted that a sufficient number of tugs may not be present in the western Strait of Juan de Fuca and in the offshore areas in the course of routine commercial service. In order to assess this potential deficiency, DOT and the State of Washington have agreed to evaluate the effectiveness of ITOS. In addition, we will jointly fund and manage an analysis of the costs and additional risk reduction benefits that would be afforded by tug escorts for commercial vessels or by stationing a rescue tug in the region. These evaluations will start this winter. We expect that they will be completed by the end of next summer. If the evaluations indicate that pursuit of these measures is warranted, we will proceed with regulatory action at that time.

Since any new tug escort or prepositioned rescue tug requirements would require regulatory action, the Coast Guard is issuing an Advance Notice of Proposed Rulemaking. It provides a more complete picture of implementation options that may be considered in a subsequent rulemaking, and solicits specific comments on and additions to these options.

In addition to incident prevention, the Volpe report also addressed means to better mitigate and respond to incidents should they occur. Three such measures will be further pursued. The first is to review boom prepositioning and boom deployment capabilities to protect shallow shoreline habitats. The second is to review the allocation of response assets and area contingency plans in light of information gained through development of the Volpe report. The third measure is to evaluate the need to preposition a response vessel at the western entrance to the Strait.

The first two measures will be pursued by the Captain of the Port of Puget Sound in consultation with the Area Committee established to coordinate response preparations under the Oil Pollution Act of 1990. Consideration of the last measure, a prepositioned oil spill response vessel, will be incorporated in the evaluation of a prepositioned rescue tug.

These next steps provide meaningful and reasonable actions to further improve the already high level of marine safety in this region. We look forward to building on the progress and partnerships that have developed to this point as our efforts proceed.

[FR Doc. 98–31513 Filed 11–23–98; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum percentage rate for drug testing for the period January 1, 1999, through December 31, 1999, will remain at 25 percent of covered aviation employees for random drug testing and will remain at 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Ms. Patrice M. Kelly, Office of Aviation Medicine, Drug Abatement Division, Implementation, Regulations and Policy Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8976.

SUPPLEMENTARY INFORMATION:

Administrator's Determination of 1999 Random Drug and Alcohol Testing Rates

In final rules published in the **Federal Register** on February 15, and December 2, 1994 (59 FR 7380 and 62218, respectively), the FAA announced that it will set future minimum annual percentage rates for random alcohol and drug testing for aviation industry employers according to the results which the employers experience conducting random alcohol and drug testing during each calendar year. The rules set forth the formula for calculating an annual aviation industry "violation rate" for random alcohol testing and an annual aviation industry "positive rate" for random drug testing. The "violation rate" for random alcohol tests means the number of covered employees found during random tests given under 14 CFR part 121, appendix J to have an alcohol concentration of 0.04 or greater plus the number of employees who refused a random alcohol test, divided by the total reported number of employees given random alcohol tests plus the total reported number of employees who refused a random test. The "positive rate" means the number of positive results for random drug tests conducted under 14 CFR part 121, appendix I plus the number of refusals to take random drug tests, divided by the total number of random drug tests plus the number of refusals to take random drug tests. The violation rate and the positive rate are calculated using information required to be submitted to the FAA by specified aviation industry employers as part of an FAA Management Information System (MIS) and form the basis for maintaining or adjusting the minimum annual percentage rates for random alcohol and drug testing as indicated in the following paragraphs.

When the annual percentage rate for random alcohol testing is 25 percent or more, the FAA Administrator may lower the rate to 10 percent of data received under the MIS reporting requirements for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 25 percent.

When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the MIS reporting requirements for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the FAA Administrator must increase the minimum annual percentage rate for random alcohol testing to 50 percent.

When the minimum annual percentage rate for random drug testing is 50 percent, the FAA Administrator may lower the rate to 25 percent if data received under the MIS reporting requirements for two consecutive

calendar years indicate that the positive rate is less than 1.0 percent.

When the minimum annual percentage rate for random drug testing is 25 percent, and the data received under the MIS reporting requirements for any calendar year indicate that the reported positive rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random drug testing to 50 percent.

There is a one-year lag in the adjustment in the minimum annual percentage rates for random drug and alcohol testing because MIS data for a given calendar year is not reported to the FAA until the following calendar year. For example, MIS data for 1997 is not reported to the FAA until March 15, 1998, and any rate adjustments resulting from the 1997 data are not effective until January 1, 1999, following publication by the FAA of a notice in the **Federal Register**.

The minimum annual percentage rate for random alcohol testing was 10 percent for calendar year 1998. In this notice, the FAA announces that it has determined that the violation rate for calendar year 1997 is less than one-half of one percent positive, at approximately 0.10 percent, and the minimum annual percentage rate for random alcohol testing for aviation industry employers for calendar year 1999 will remain at 10 percent.

The minimum annual percentage rate for random drug testing was 25 percent in calendar year 1998. The FAA is also announcing that it has determined that the positive rate for calendar year 1997 is less than one percent, at approximately 0.70 percent, and that the minimum annual percentage rate for random drug testing for aviation industry employers for calendar year 1999 will remain at 25 percent.

Dated: November 17, 1998.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 98–31376 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 1998, there were 10 applications approved. This notice also includes information on one application, approved in September 1998, inadvertently left off the September 1998 notice. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

PUBLIC AGENCY: Lafayette Airport Commission, Lafayette, Louisiana.

APPLICATION NUMBER: 98–02–U–00–LFT.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE TO BE USED IN THIS DECISION: $150,000.

CHARGE EFFECTIVE DATE: September 1, 1995.

ESTIMATED CHARGE EXPIRATION DATE: September 1, 1998.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: No change from previous decision.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR USE: Rehabilitate runway 11/29.

DECISION DATE: September 22, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

PUBLIC AGENCY: Savannah Airport Commission, Savannah, Georgia.

APPLICATION NUMBER: 98–03–C–00–SAV.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,111,931.

EARLIEST CHARGE EFFECTIVE DATE: June 1, 2016.

ESTIMATED CHARGE EXPIRATION DATE: November 1, 2016.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators.

DETERMINATION: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Savannah International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Extend taxiway E; Construct fire station; Reconstruct east end taxiway C; Runway 18/36 replace keel section; Extend taxiway A to runway 36; General aviation taxiway; PFC development, implementation, and administration.

DECISION DATE: October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Daniel Gaetan, Atlanta Airports District Office, (404) 305–7146.

PUBLIC AGENCY: County of Victoria, Victoria, Texas.

APPLICATION NUMBER: 98–02–C–00–VCT.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $188,872.

EARLIEST CHARGE EFFECTIVE DATE: January 1, 1999.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2002.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Airfield drainage improvements (phase 1) and upgrade airfield guidance sign system; Airport master plan; Drainage improvements (phase 2); Airport entrance road and terminal access road; Joint seal/pavement repair/mark runways 12L/30R and 17/35 and taxiways A, B, C, and F; Rehabilitate runway lighting runway 12L/35R and apron pavement repair.

DECISION DATE: October 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

PUBLIC AGENCY: City of Chicago Department of Aviation, Chicago, Illinois.

APPLICATION NUMBER: 98–09–C–00–ORD.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,540,000.

EARLIEST CHARGE EFFECTIVE DATE: September 1, 2017.

ESTIMATED CHARGE EXPIRATION DATE: October 1, 2017.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi operators.

DETERMINATION: Approved. Based on information in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Phase II airport master plan; Terminal apron expansion; Snow removal equipment.

DECISION DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports District Office, (847) 294–7335.

PUBLIC AGENCY: Monterey Peninsula Airport District, Monterey, California.

APPLICATION NUMBER: 96–03–U–00–MRY.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE TO BE USED IN THIS DECISION: $459,905.

CHARGE EFFECTIVE DATE: January 1, 1994.

ESTIMATED CHARGE EXPIRATION DATE: July 1, 2002.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: No change from previous decision.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR USE: Environmental assessment/environmental impact report for airport road extension; Airport road extension; Airport road realignment; Sky Park Way connection to Garden Road.

DECISION DATE: October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, San Francisco Airports District Office, (650) 876–2806.

PUBLIC AGENCY: City of Colorado Springs, Colorado.

APPLICATION NUMBER: 98–05–C–00–COS.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $9,029,906.

EARLIEST CHARGE EFFECTIVE DATE: August 1, 2003.

ESTIMATED CHARGE EXPIRATION DATE: April 1, 2005.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Glycol pretreatment, outfall system, and new glycol pond; Airport storm drainage improvements; Runway 17L/35R centerline and touchdown zone lighting; Install runway end identifier lights on runway 12/30; Snow removal equipment; Terminal canopy improvements; Construct taxiway B extension from taxiway B5 to taxiway E; Construct taxiway C north to taxiway D.

BRIEF DESCRIPTION OF PROJECT DISAPPROVED: Apron roadway, glycol tank, and ground equipment storage area.

DETERMINATION: Disapproved. This project does not meet Airport Improvement Program (AIP) eligibility requirements as identified in paragraphs 524 and 553(b)(2) of FAA Order 5100.38A, AIP Handbook (October 24, 1989). The FAA has determined that the proposed apron is not a public use apron and that the service road is not required for the operation and maintenance of the airport. Therefore, this project does not meet the requirements of § 158.15(b).

DECISION DATE: October 14, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

PUBLIC AGENCY: Port of Walla Walla, Walla Walla, Washington.

APPLICATION NUMBER: 97–02–U–00–ALW.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE TO BE USED IN THIS DECISION: $1,187,280.

CHARGE EFFECTIVE DATE: November 1, 1993.

ESTIMATED CHARGE EXPIRATION DATE: November 1, 2014.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: None.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR USE: Terminal facilities development.

DECISION DATE: October 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mary Vargas, Seattle Airports District Office, (425) 227–2660.

PUBLIC AGENCY: Huntsville-Madison County Airport Authority, Huntsville, Alabama.

APPLICATION NUMBER: 98–08–C–00–HSV.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $588,935.

EARLIEST CHARGE EFFECTIVE DATE: May 1, 2008.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2009.

CLASSES OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: (1) Air taxi/commercial operator, (2) certificated air carrier, and (3) certified route air carriers operating at Huntsville International Airport (HSV) and having fewer than 500 annual enplanements at HSV.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at HSV.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Security/access control system upgrade; Expand air cargo apron; Rotating beacon refurbishment; Airfield sweeper/vacuum; Aircraft rescue and firefighting (ARFF) building renovations; Rehabilitate and expand general aviation apron; Security vehicle; Pick-up for snow plow usage; Communications center relocation and upgrade study; Lanier property.

BRIEF DESCRIPTION OF PROJECT APPROVED IN PART FOR COLLECTION AND USE: Snow removal equipment.

DETERMINATION: Approved in part. The public agency has elected to acquire one tractor snow broom sweeper and one vacuum sweeper in lieu of two tractor snow broom sweepers to meet its snow removal and foreign object and debris removal requirements under part 139. Therefore, the second tractor snow broom sweeper is not eligible for AIP or PFC funding until the public agency can demonstrate that the airport qualifies for additional power broom sweeper equipment under Advisory Circular 150/5220–20.

BRIEF DESCRIPTION OF PROJECT DISAPPROVED: Western land acquisition.

DETERMINATION: Disapproved. On the basis of information contained in the PFC application, the FAA has determined that this land acquisition (requested as five separate projects) does not meet the objectives of § 158.15(a); namely that the proposed land acquisition does not preserve or enhance safety, security, or capacity of the national air transportation system, reduce noise or mitigate noise impacts resulting from aircraft operations at HSV, or furnish opportunities for enhanced competition between or among air carriers. In addition, the FAA has determined that the proposed land acquisition is not eligible under AIP criteria in accordance with paragraph 603(b) of FAA Order 5100.38A, AIP Handbook (October 24, 1989).

DECISION DATE: October 19, 1998.

FOR FURTHER INFORMATION CONTACT: Roderick T. Nicholson, Jackson Airports District Office, (601) 965–4628.

PUBLIC AGENCY: City of Des Moines, Iowa.

APPLICATION NUMBER: 98–03–C–00–DSM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $7,399,744.

EARLIEST CHARGE EFFECTIVE DATE: December 1, 2001.

ESTIMATED CHARGE EXPIRATION DATE: January 1, 2005.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Part 135 air taxi/commercial operators.

DETERMINATION: Approved. Based on information contained in the public

agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: Terminal restroom renovation; Terminal passenger skywalk; Terminal passenger skywalk lobby; Terminal capacity enhancement—phase II (terminal passenger holdroom expansion); Terminal ticket counter reconfiguration and replacement.

DECISION DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

PUBLIC AGENCY: Metropolitan Nashville Airport Authority, Nashville, Tennessee.

APPLICATION NUMBER: 98–05–C–00–BNA.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,655,000.

EARLIEST CHARGE EFFECTIVE DATE: May 1, 2001.

ESTIMATED CHARGE EXPIRATION DATE: July 1, 2001.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Part 135 air taxi operators

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplancements at Nashville International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE: ARFF facility expansion; Outbound baggage conveyor system; Moving sidewalk, Concourse A.

BRIEF DESCRIPTION OF PROJECT DISAPPROVED: Perimeter fence—phase II.

DETERMINATION: Disapproved. On the basis of the information contained in the public agency's application, the FAA has determined that this project does not meet the objectives of § 158.15(a). Furthermore, the FAA has concluded that this project is not adequately justified since there is currently no aeronautical use of the land to be fenced.

DECISION DATE: October 28, 1998.

FOR FURTHER INFORMATION CONTACT: Michael L. Thompson, Memphis Airports District Office, (901) 544–3495.

PUBLIC AGENCY: City of Philadelphia, Pennsylvania.

APPLICATION NUMBER: 98–07–I–00–PHL.

APPLICATION TYPE: Impose of PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $666,098,000.

EARLIEST CHARGE EFFECTIVE DATE: January 1, 1999.

ESTIMATED CHARGE EXPIRATION DATE: July 1, 2011.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

DETERMINATION: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Philadelphia International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION ONLY: Terminal One building (new international terminal), including associated renovations; Terminal F building (new commuter terminal); Aircraft parking apron for Terminal One; Aircraft parking apron for Terminal F; Airport roadway modifications—phase II (revised); Acquisition of property—west side of Terminal One; Planning and design of new highway access ramps from I–95.

DECISION DATE: October 30, 1998.

FOR FURTHER INFORMATION CONTACT: Patrick Sullivan, Harrisburg Airports District Office, (717) 730–2832.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amendment estimated charge exp. date
93–01–C–02–GUC, Gunnison, CO	09/24/98	$807,453	$909,962	04/01/99	12/01/99
92–01–C–04–MSO, Missoula, MT	09/25/98	2,905,937	3,125,404	01/01/99	05/01/99
97–06–I–01–BDL, Windsor Locks, CT	10/01/98	12,602,000	14,360,000	04/01/99	01/01/99
97–04–C–01–LAX, Los Angeles, CA	10/02/98	150,000,000	440,000,000	05/01/00	02/01/04
92–01–C–02–MGW, Morgantown, WV	10/07/98	59,509	63,034	01/01/94	01/01/94
94–02–C–04–MGW, Morgantown, WV	10/07/98	200,194	180,394	11/01/00	07/01/01
96–03–C–01–MGW, Morgantown, WV	10/07/98	18,450	18,450	07/01/01	07/01/01
94–02–C–05–MGW, Morgantown, WV	10/15/98	180,394	130,894	07/01/01	10/01/99
92–01–C–02–HLN, Helena, MT	10/29/98	962,829	1,877,003	09/01/99	09/01/04

Issued in Washington, DC. on November 18, 1998.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 98–31375 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 24, 1998.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 19, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
12164–N	RSPA–1998–4680	Rhodia Inc., Shelton, CT	49 CFR 174.67 (i) & (j) ...	To authorize rail cars to remain connected during unloading of Class 8 material without the physical presence of an unloader. (mode 2)
12166–N	RSPA–1998–4679	Dow Corning Corp., Midland, MI.	49 CFR 173.304(a), 178.337–11(a)(1)(i), 178.337–11(a)(2)(i), 178.337–8(a)(2) (ii) & (iii), 178.65.	To authorize the transportation in commerce of MC–331 cargo tanks equipped with alternative valves for use in transporting hydrogen chloride, Division 2.3. (mode 1).
12173–N	RSPA–1998–4718	ARCO Alaska, Inc., Anchorage, AK.	49 CFR 172.101(9A)	To authorize the transportation in commerce of nitrogen, refrigerated liquid, Division 2.2, in insulated bulk crogenic liquid tanks in quantities which exceed those authorized. (mode 4).
12177–N	RSPA–1998–4778	Just In Time Certified Packaging Inc., St. Louis, MO.	49 CFR Part 172, Subpart E&F.	To authorize the manufacture, marking and sale of a specially designed packaging for use in transporting various classes of hazardous materials without required labels and placards. (modes 1, 2, 3, 4)

[FR Doc. 98–31368 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 9, 1998.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC.

Application	Docket	Applicant	Modification of exemption
10677–M	.....	Suunto USA, Carlsbad, CA (See Footnote 1)	10677
11769–M	.....	HCI USA Distribution Co., Inc., Irvine, CA (See Footnote 2)	11769
11859–M	RSPA–1997–2310	Carleton Technologies, Inc., Orchard Park, NY (See Footnote 3)	11859
12013–M	RSPA–1997–3249	HCI USA Distribution Companies Incorporated, Irvine, CA (See Footnote 4)	12013

(1) To modify the exemption to authorize the addition of a butane/propane "puncture" type cartridge for the transportation of Division 2.1 material.

(2) To modify the exemption to reduce the concentration level of potassium hydroxide solution and bisulfites aqueous solution n.o.s.; the addition of UN31HI of capacities not to exceed 550 gallons and UN31HA1 of capacities not to exceed 610 gallons.

(3) To modify the exemption to authorize changes to the testing procedures and an additional configuration of the glass bottle system consisting of two cylindrical/spherical halves fabricated from stainless steel for use in transporting Division 1.4S material.

(4) To modify the exemption to allow UN31HA1 of capacities not to exceed 610 gallons, UN31H1 of capacities not to exceed 500 gallons and UN31HH1 of capacities not to exceed 500 gallons.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 18, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

[FR Doc. 98–31369 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–3638; Notice 2]

Pipeline Safety: Liquefied Natural Gas Facilities Petition for Waiver; Exxon Company, USA

On April 22, 1998, the Research and Special Programs Administration (RSPA) published a notice (63 FR 19999) of intention to grant a waiver from compliance with certain provisions of 49 CFR part 193 to Exxon Corporation for its proposed Liquefied Natural Gas (LNG) storage tanks at its existing LaBarge, Wyoming, gas processing operation. This document announces RSPA's withdrawal of the earlier notice on the ground that waiver is unnecessary because the facility is not under 49 CFR Part 193.

The La Barge, Wyoming operation includes two parallel nitrogen rejection units and a small liquefied natural gas (LNG) truck loading facility. Exxon proposes to install two 55,000 gallon LNG storage tanks. These tanks were designed, built, tested, and registered in accordance with the requirements of American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, section VIII, Division 1. Exxon requested a waiver from compliance with specific sections of part 193 pertaining to nondestructive test requirements for ASME built vessels and indicated that it would provide equivalent safety through compliance with the National Fire Protection Association (NFPA) Standard 59A.

RSPA previously told Exxon that if the LNG is produced at the gas processing operation "in the course of natural gas treatment or hydrocarbon extraction" but not placed in a storage tank prior to putting it into trucks, then 49 CFR 193.2001(b)(2) says the facility is not regulated under 49 CFR part 193. However, the addition of LNG storage tanks brings the facility under 49 CFR part 193.

After revisiting this issue, RSPA has reversed its earlier position. If an LNG production facility does not receive gas from a pipeline subject to 49 CFR part 192 and does not supply gas to such a pipeline, then 49 CFR part 193 is not applicable to that LNG facility. Thus, Exxon's proposed LNG storage/truck loading facility at LaBarge, Wyoming, will not be subject to 49 CFR Part 193. A waiver is not necessary.

Issued in Washington, D.C., on November 18, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–31347 Filed 11–23–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33671]

Dubois County Railroad Corporation—Lease and Operation Exemption—Indiana Railway Museum, Inc.

Dubois County Railroad Corporation (Dubois), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to lease and operate approximately 13.4 miles of rail line owned by the Indiana Railway Museum, Inc., as indicated by Dubois in its notice, from milepost 67.3 at Crystal Lake in Dubois County, IN, to milepost 79.0 at French Lick and to the end of the line at approximately milepost 1.7 at West Baden Springs in Orange County, IN. The parties have treated the track as a "spur, industrial, team, switching or side track." However, the prospect for future operations is such that Dubois believes its operations over the entire line in the future should be properly characterized as common carrier operations over a rail line. *See Chicago Rail Link, L.L.C.—Lease and Operation Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 33323 (STB served Dec. 31, 1997).

The earliest the transaction could be consummated was November 6, 1998, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33671, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Carl M. Miller, 618 Professional Park Drive, P.O. Box 332, New Haven, IN 46774.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31238 Filed 11–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33682]

Union Pacific Railroad Company—Trackage Rights Exemption—Alameda Belt Line

Alameda Belt Line (ABL) has agreed to grant local trackage rights to Union Pacific Railroad Company (UP) over 1.80 miles of ABL's rail line between milepost 0.00 near Clement Avenue and milepost 1.80 near Sherman Street in the city of Alameda, Alameda County, CA. ABL is jointly owned by UP and The Burlington Northern and Santa Fe Railway Company (BNSF), and, after the trackage rights are effective, UP will handle rail cars as the operating agent for BNSF.

The transaction was scheduled to be consummated on or after November 13, 1998.

The purpose of the local trackage rights is to permit UP to directly serve customers on the line, which UP expects to result in an efficient and economical route for the shippers in the area.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or

misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33682, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Joseph D. Anthofer, General Attorney, 1416 Dodge Street #830, Omaha, NE 68179.

Board decisions and notices are available on our website at WWW.STB.DOT.GOV."

Decided: November 17, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31239 Filed 11–23–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–33: OTS No. 5458]

Security Savings Association of Hazleton, Hazleton, Pennsylvania; Approval of Conversion Application

Notice is hereby given that on November 12, 1998, the Director, Corporate Activities, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Security Savings Association of Hazleton, Hazleton, Pennsylvania, to convert to the stock form of organization. Copies of the application are available for inspection at the Dissemination Branch, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 19, 1998.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 98–31408 Filed 11–23–98; 8:45 am]

BILLING CODE 6720–01–P

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Part II

Department of Transportation

Federal Transit Administration
Federal Highway Administration

Request for Letters of Interest to Participate in an Operational Test of an Electronic Payment System for Transit Fare Collection and Other Applications; Notice

VOL 63 ISS 226 NO 24 1998 UMI

DEPARTMENT OF TRANSPORTATION

Request for Letters of Interest to Participate in an Operational Test of an Electronic Payment System for Transit Fare Collection and Other Applications

AGENCY(S): Federal Transit Administration (FTA) and Federal Highway Administration (FHWA).

ACTION: Notice.

SUMMARY: The U.S. Department of Transportation (USDOT) announces a Request for Letters of Interest from eligible applicants for an operational test of an electronic payment system for transit fare collection and other applications. The USDOT is interested in identifying and evaluating issues associated with the establishment of partnerships between public transit service providers and other entities in the development and use of multiple-application electronic payment systems. The Department is specifically interested in an operational test of a payment system that includes a variety of applications, with preferred emphasis on multiple transportation applications, government benefits applications, and retail applications. This Request for Letters of Interest will be followed by a Request for Proposals (RFP) at a later date. To assist potential respondents this notice contains proposed draft text of the RFP.

DATES: Letters of Interest shall be submitted by 4:00 P.M. EST on or before 60 days after the date of the **Federal Register** Notice.

RESPONSE FORMAT: Letters of Interest shall not exceed five (5) pages in length. A page is defined as one (1) side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font any smaller than 12 pt. The first page of the Letter of Interest shall include the name, address, and telephone number of the individual to whom correspondence and questions may be directed. Within the Letter of Interest, the respondent is asked to provide a summary of a potential proposed operational test with goals and objectives consistent with proposed draft text of the RFP presented below. Respondents are also invited to include comments on the proposed draft text of the RFP below. These comments shall not exceed ten (10) pages in length and shall be submitted as an Appendix to the Letter of Interest.

ADDRESSES: Letters shall be submitted to Walter Kulyk, Director, Office of Mobility Innovation (TRI–10), Federal Transit Administration, 400 7th Street SW., Room 9402, Washington DC 20590 and shall reference Electronic Payment System Demonstration.

ELIGIBILITY: *It is important to note that only those agencies that submit Letters of Interest will be eligible to respond to the Request for Proposals.* The Request for Letters of Interest is extended to public agencies and organizations in the United States including public transportation agencies and operators, transportation authorities and commissions, metropolitan planning organizations, local Councils of Government, and State and local Departments of Transportation.

FOR FURTHER INFORMATION CONTACT: Sean Ricketson, Office of Mobility Innovation, (TRI–11), at (202) 366–6678.

SUPPLEMENTARY INFORMATION:

Proposed Draft Text of a Request for Proposals (RFP)

The remainder of this notice contains proposed draft text of the RFP to be made at a later date. Please note that though the text is draft, Section II, Vision, Goals and Objectives, is final and will not change. The remaining text is subject to change and revision. Respondents should use the draft text to guide their summary proposals to be included in their Letters of Interest. Respondents are also invited to comment on the text.

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I. Background

Recent developments in card systems and card technology present a unique opportunity for public and private institutions to establish mutually beneficial partnerships in the development and management of electronic payment systems for transportation. Recent developments include stored-value card systems created by financial institutions, contactless smart card systems for public transportation, electronic toll collection systems on highways and card systems for human service agencies' program management and benefits delivery. Private industry and public agencies foresee substantial benefits in establishing partnerships to develop further capabilities in electronic fee collection, delivery of benefits payments, funds transfer and financial clearinghouse functions. However, a number of institutional issues continue to restrict the formation of these partnerships. Through the development of an operational test this project intends to be a step toward identifying and addressing the complex institutional issues surrounding electronic fare payment systems in transportation.

II. Vision, Goals, and Objective(s)

The vision this operational test supports is one of improved public transit customer service and improved operational efficiency for transit providers. While the goals and objectives described below are focused on technical and institutional outcomes, the success of the test will be dependent upon whether it makes a positive contribution to the enhancement of public transit customer service and operational efficiency. This focus must be maintained throughout the planning, development and execution of the project by the grantee.

The goal of the operational test is to provide solutions to transit operators and other transportation and government service providers exploring the potential of integrating transportation payment systems with other payment systems and other applications. Additionally the operational test is intended to offer insight to those in the card industry, financial services industry, and other industries interested in becoming involved or integrating their services with a transportation payment system.

The objective of the operational test is to evaluate one or more transportation payment applications, one of which must be transit fare collection, within a card system of more than one card issuer and more than one service provider, with a financial institution functioning as a clearinghouse.

Additional objectives, if feasible, are to evaluate the viability and benefits of integrating a transportation payment system with a government benefits program and/or commercial stored-value card system (e.g., retail, telephone, etc.).

III. Definitions

Card issuer—the entity (e.g. transit agency, bank or financial institution, university, human service agency) that provides the card media (and may be identified on the media) and reconciles with participating service providers based on the stored value they have received from users.

Service provider—an entity (e.g., transit agency, retail store, university, human service agency, telephone company) which provides a service or product in exchange for payment via the card system.

Financial institution—bank or financial service company.

Application—a use or purpose for the card and card system, such as fare collection, telephone, welfare benefits, or electronic cash.

Government benefits program—disbursement of benefits by local, State, or Federal government to eligible customers. Examples include food stamps, welfare programs, and Social Security.

Clearinghouse—an entity or organization responsible for collection, reconciliation and settlement of customers' transactions among the participants of the card system. Additional tasks may include managing support functions of the system. These functions can include card management, issuance, distribution, revenue management, customer service and marketing.

Stored value card—a card application where monetary value is stored on a card in an electronically readable form. Card reader devices deduct the appropriate amount from the card. Stored value cards can be implemented with a variety of technologies including chip cards and conventional magnetic stripe cards.

IV. Project Development

A. General

The operational test will need to achieve an optimal balance of meeting local needs while also providing a worthwhile national model of payment system coordination and partnerships for implementation in other locations.

B. Management Oversight

The operational test will be managed by the grantee and local partners in the project. Additional guidance will be provided by the FTA advisory committee composed of transit industry representatives that provides guidance on electronic fare payment activities. Any changes in project scope or direction will be made in consultation with this advisory committee. For this project, the committee may be augmented by experts from other industries as needed, such as financial institutions and human service agencies. Concurrently, this committee will direct a separately funded effort being conducted by USDOT to develop and document a set of guidelines for the integration of electronic fare payment with other payment systems. These guidelines will assist individuals and agencies with the integration of a transit multi-use card with electronic payment systems for other uses, such as benefits transfer, toll collection, security, parking, retail, financial services, telephones, identification and access control. The results of the operational test are intended to contribute to the advancement of the guidelines document. In turn, the development of the guidelines document is intended to assist the advisory committee, the grantee, and local partners with the implementation of the operational test.

V. Partnerships

The USDOT will generally work with the lead public agency (grantee) participating in the partnership (State, City, Regional Agency, depending on site) to ensure the needed support to achieve the objectives of the field operational test. The USDOT will verify that the needed institutional, partnership and funding arrangements are in place. All necessary partnership arrangements and institutional agreements to support the project need to be specifically documented.

VI. National ITS System Architecture

The National ITS System Architecture provides a common structure for the design of Intelligent Transportation Systems (ITS). The architecture defines the function that must be performed to implement a given user service, the physical entities or subsystems where these functions reside, the interfaces/information flows between the physical subsystems, and the communication requirements for the information flows. In addition, the architecture identifies and specifies the requirements for standards needed to support national and regional interoperability, as well as product standards needed to support economy of scale considerations in deployment.

Proposals shall provide a "Statement of Intent" to design a system that is consistent with SAE J1708T Bus Vehicle Area Network, the National ITS Architecture, including the Transit Communications Interface Profiles (TCIP) and national ITS standards, protocols, or standards requirements as these emerge from the National ITS Architecture Development Program. Information about SAE J1708T may be obtained from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania, USA, 15096–0001; phone: 412–776–4841, fax: 412–776–5760, or through the Internet at *http://www.sae.org*. Information about TCIP can be obtained on the TCIP homepage at *http://www.tcip.org* or by contacting the Institute of Transportation Engineers 525 School St., S.W., Suite 410 Washington, DC 20024; phone: 202–554–8050. Copies of the Architecture Definition Documents, the draft Standards Requirements Document, and the Standards Development Program from the Architecture Development Program are available from ITS America, 400 Virginia Avenue, S.W., Suite 800, Washington, D.C. 20024, telephone 202–484–4847. Electronic copies are available on the ITS America Internet Homepage, *http://www.itsa.org*. These documents provide insight into the definition of the National ITS Architecture, and the emerging approaches being taken toward standardizing interfaces that would support the integration of transportation management components.

In developing plans for standards and architectural consistency, proposals should recognize the practical benefits of this requirement. The ability to integrate systems and exchange data among applications offers some of the strongest benefits of ITS. As an illustration of understanding of this point, plans should identify potential opportunities for integration and data sharing among fare payment and other systems and applications. Information about key indicators of the electronic payment component of the ITS metropolitan infrastructure and integration of it with other components can be found in, "Measuring ITS Deployment and Integration: August 1998" available through the Internet at URL Http://www.its.fhwa.dot.gov/cyberdocs/welcome.htm the report is document number 4372 in the Electronic Document Library maintained at this website.

VII. Project Evaluation Activities

A major goal of the FTA is to promote development of innovative applications of advanced technologies. In order for the FTA to be able to encourage the widespread adoption of technological innovations, the technologies tested, and the results obtained must be analyzed, documented and reported. Accordingly, evaluations are an integral part of each field operational test and are critical to the success of the National ITS Program.

This electronic payment system operational test will be evaluated by the Volpe National Transportation Systems Center (Volpe Center) and its contractors. They will develop an Evaluation Plan which will specify the data collection requirements which will enable an assessment of the

achievement of the goals and objectives of the National ITS Program applicable to this project as well as the goals and objectives of the implementing organizations. They will assemble all the data collected in accordance with the Evaluation Plan, analyze these data, and prepare the Evaluation Report.

Although the Evaluation Plan will detail the specifics of the evaluation, it is anticipated that it will include an assessment of the technological issues, operational issues, customer acceptance, system reliability, attitudes of implementing organizations, implementation and continuing operational costs, integration issues, and a variety of institutional issues including partnership arrangements, legal issues, clearinghouse operation, the reason for selecting the type of system (closed or open), and the success in obtaining multiple agency participants.

The operational test partners (all participating agencies and institutions) will be involved in all phases of the evaluation. They will be expected to provide the local goals and objectives, review and comment on the Evaluation Plan, collect the data specified in the Evaluation Plan (including any surveys that may be necessary), provide information on external factors that may affect the project's results, and review and comment on the Evaluation Report prepared by the Volpe Center.

VIII. Funding

Federal funds available for this operational test will initially be $1.3 million with an anticipated additional $1.0 million available within one year of the grant award. Federal funding shall not exceed 50% of total project costs.

Implementing organizations will be required to furnish the specified evaluation data and perform reviews of evaluation documents. No additional Federal funding will be provided for this effort. The evaluation activities conducted by the Volpe National Transportation Systems Center (Volpe Center) will be funded separately by the FTA.

The USDOT, the Comptroller General of the United States, and, if appropriate, individual States have the right to access all documents pertaining to the use of Federal ITS funds and non-Federal contributions. Non-Federal partners must submit sufficient documentation during final negotiations and on a regular basis during the life of the project to substantiate these costs. Such items as direct labor, fringe benefits, material costs, consultant costs, and subcontractor costs, and travel costs should be included in that documentation.

IX. Schedule

The project must remain operational for a period long enough to obtain valid evaluation data. The data collection period will be for a minimum of twelve (12) months from the time that the project is fully operational (i.e., all elements are working as intended). Upon the completion of data collection there shall be a six (6) month period of analysis and report coordination before a final evaluation report is submitted. The system shall remain operational throughout the evaluation process until the final report is received and accepted by the Department.

X. Proposals

The USDOT will select one (1) or multiple sites to evaluate the issues associated with the establishment of partnerships between public transit service providers and developers of stored value card systems, electronic payment systems and financial clearinghouses.

Applications should, where possible, focus on utilizing currently available card technology. The Department is specifically interested in an operational test that includes a variety of applications with the primary emphasis on multiple transportation applications, government benefit applications and retail applications.

Applications that offer the greatest potential for demonstrating and evaluating the benefits of using electronic fare payment in a multi-application transportation environment with a private partnership will be considered the most desirable.

Proposal Criteria

A proposal shall not exceed thirty (30) pages in length including title, index, tables, maps, appendices, abstracts, resumes and other supporting materials. A page is defined as one (1) side of an 8½ by 11-inch paper, line spacing no smaller than 1.5 with a type font any smaller than 12 pt. A proposals exceeding than thirty (30) pages is strongly discouraged. Ten (10) copies plus an unbound reproducible copy of the proposal shall be submitted. The cover sheet or front page of the proposal shall include the name, address and phone number of an individual to whom correspondence and questions about the application may be directed. Each proposal shall include a Technical Plan, Financial Plan, and a Management and Staffing Plan that describes how the proposed objectives will be met within the specified time frame and budget. These plans should be structured so that they contain the following information.

A. Technical Plan

General Requirements

1. General Description of the local transit market and other proposed card system markets. Information shall include transit ridership statistics, outline of current fare collection process and payment media as well as any multi-modal aspects of the transportation system. Additionally, potential public/private agency(s) involvement such as partnerships, merchants, retailers, etc. must be outlined.

2. Interagency, public/private cooperative arrangements currently in place or planned, which will participate in the operational test and evaluation effort.

Concept Overview

1. Define existing infrastructure and support systems in place, e.g., current fare collection system and cash handling procedures, as well as current systems of those additional applications being considered for integration.

2. Describe how the existing infrastructure will be expanded and used to support the proposed system.

3. Describe the proposed system and how it will be integrated with other applications and participating institutions.

4. Summarize the expectations of the proposed system (e.g. costs, benefits, risks, operations, maintenance issues, plans, and system support).

Technical Approach

The technical approach will be judged on its ability to incorporate the requirements of a multi-application card system within a transit fare system. Proposals will be evaluated on demonstrated capability to integrate the requested scope of services with the necessary public and private sector partners in the transit environment.

Within the technical approach the following areas need to be clearly addressed:

1. Describe the goals and objectives of the system. These should include descriptions of both improved customer service and improved operating efficiency.

2. Describe the system design concept outlining extent of system integration, type of proposed media, settlement processes, and partners.

3. Describe implementation of the system in probable phases with funding for each phase clearly specified.

4. Describe the technical approach by which the system design concept will be

refined, developed, and operationally tested.

5. Document the schedule of work, assumptions and technical uncertainties, and proposed specific approaches to resolve any uncertainties.

6. Show evidence that the project team has thought through the service delivery part of the project design addressing such issues as: who will use the new payment media; and what problems will it solve for the participating transportation providers? What will the benefits of the new system be and how will the project team market the system to the rider?

7. Describe the plan for concluding the operational test (Closure Plan), indicating whether hardware, software, and infrastructure will remain in revenue service, be sold, or returned to participating vendors, if applicable. Closure Plans may be contingent upon the results of the operational test, in which case more than one Closure Plan may be developed.

B. Management and Staffing Plan

Provide names and positions of all personnel related to managing the project. Identify key management/control responsibilities for system database and the overall system. Provide a timeline and define key milestones and deliverables for the project for each funding year. Provide estimated professional and technical staffing in staff-months and staff-hours. Demonstrate that the project manager is capable, available and able to commit to a level of involvement that ensures project success. Include biographical data on key management personnel.

C. Financial Plan

Provide a description of total project costs and sources of matching funds, if applicable.

Provide a system budget identifying costs for system design, development, implementation, project management, operations, maintenance and evaluation support.

The applicant's evaluation support costs shall include the following information:

Breakdown costs identifying them by one of the following: (1) Local; (2) State; (3) Private; (4) Federal ITS; (5) Other Federal-aid; (6) Other (describe). Note: Costs attributed to Federal dollars proposed to be received through award of this operational test are Federal ITS.

Provide cost estimates by phase by funding year as defined in the technical plan.

All financial commitments to the project from both public and private sectors shall be documented in signed MOU's and included in the proposal.

The proposal shall provide an in-depth description and assessment of the total cost of achieving the objectives of the Electronic Fare Payment System field operational test. The Financial Plan should describe a phased approach that delineates what will be accomplished with the project funding.

The proposal should provide a comprehensive, concise plan that ensures systems integration of the functions necessary to support an electronic payment system for fare collection. The plan shall include a discussion of the ways in which design, acquisition, construction, and other procurement activities will affect systems integration.

XI. Proposal Evaluation Criteria

The primary evaluation criterion for the proposal will be the degree to which the proposal demonstrates common use of a multi-use card payment system with a multi-modal approach. It is important to note that the proposal needs to demonstrate not only regional applicability but provides the baseline for a national model. The proposal should emphasize in detail the nature and arrangement of the proposed public-private partnerships. The proposal will also need to illustrate the potential benefits as well as the associated risks and costs to the transit agency(s). The demonstration test will provide an opportunity to document and collect data that will be shared with the industry. Additionally, the grantee will need to specify how the demonstration test can contribute to the continued development of the design guidelines document.

Significant consideration will be given to those projects with greater levels of private and local funding contributions.

Significant consideration will be given to those projects involving public agencies with previous work or experience developing and integrating electronic payment systems.

All applicants must submit an acceptable "Technical Plan," "Financial Plan," and "Management and Staffing Plan," that provide sound evidence that the proposed partnership can successfully meet the above stated objectives.

Issued: November 18, 1998.

Edward L. Thomas,

Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration.

Dennis C. Judycki,

Associate Administrator for Safety and System Applications, Federal Highway Administration.

[FR Doc. 98–31266 Filed 11–23–98; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

FDA Plan for Statutory Compliance; Notice

VOL 63 ISS 226 NO 24 1998 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0339]

FDA Plan for Statutory Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "FDA Plan for Statutory Compliance" (the plan). This document is the agency's response to section 406(b) of the Food and Drug Administration Modernization Act of 1997 (FDAMA), which requires the Secretary of the Department of Health and Human Services (the Secretary) to develop a plan bringing the agency into compliance with the requirements of the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments on the plan to Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit e-mail comments to "FDADockets@bangate.fda.gov". E-mail comments should be labeled as comments and identified with the docket number found in brackets in the heading of this document.

Submit written requests for single copies of the "FDA Plan for Statutory Compliance" to the Dockets Management Branch (address above). Enclose one self-addressed adhesive label to assist that office in processing your requests. Copies of this plan are available on the Internet at "http://www.fda.gov/opacom/7modact".

FOR FURTHER INFORMATION CONTACT: Steven H. Chasin, Office of Planning and Evaluation (HFP–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5207.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed FDAMA into law. Section 406(b) of FDAMA requires the Secretary, after consultation with appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry, to develop and publish a plan bringing the Secretary into compliance with each of the obligations of the Secretary under the act. The plan is to be reviewed biannually and revised as necessary, in consultation with the groups listed in the previous sentence. The plan must address the following six objectives: (1) Maximizing the availability and clarity of information about the process for review of applications and submissions made under the act; (2) maximizing the availability and clarity of information for consumers and patients concerning new products; (3) implementing inspection and postmarket monitoring provisions of the act; (4) ensuring access to the scientific and technical expertise needed by the Secretary to meet the obligations of the Secretary under the act; (5) establishing mechanisms, by July 1, 1999, for meeting the time periods specified in the act for the review of applications and submissions made under the act and submitted after November 21, 1997; and (6) eliminating backlogs in the review of applications and submissions described previously by January 1, 2000.

Over the past several months, the agency held a series of meetings with its stakeholders. The process of consulting with agency stakeholders began with a careful examination of FDA's stakeholders vis-a-vis the products regulated by the agency and the perceived interest of these groups in FDA's processes. A total of eight open public meetings were held where agency stakeholders had an opportunity to provide their perspectives on a variety of issues/questions. Six of the eight meetings were focused specifically on FDA's product centers; one briefing for health professionals provided an opportunity for health professionals to offer input to FDA under the broad guidance of section 406(b) of FDAMA; and an agency-wide meeting was held to capture the perspectives of those who could not attend previous meetings and to provide an opportunity to explore recurring themes from previously held meetings.

In addition to the open public meetings focused specifically on section 406(b) of FDAMA, agency staff used a variety of ongoing interactions with stakeholders as opportunities to talk about the stakeholder consultation process and to invite comments to the docket.

II. The Plan

The agency plan for statutory compliance has been developed in response to the requirements outlined in section 406(b) of FDAMA. The plan presents a blueprint for carrying out all of the agency's statutory obligations, including provisions of the act, as well as its other mandates.

The plan outlines FDA's strategic directions for the next 5 years and presents an operational plan for fiscal year 1999 and 2000. The plan is a dynamic document which will be modified as ongoing consultations with FDA stakeholders render new and more effective strategies.

The act itself builds upon a long history of recommendations from advisory committee members, industry representatives, and consumers to help the agency respond to new challenges while still fulfilling its mission and mandates. It was Congress' belief that FDA could address these challenges by re-engineering several of its regulatory processes to achieve greater efficiencies and by buttressing its considerable risk assessment and risk management expertise through productive, collaborative relationships with key external stakeholders.

III. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this plan. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document.

Submit e-mail comments to "FDADockets@bangate.fda.gov". E-mail comments should be labeled as comments and identified with the docket number found in brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The text of the plan follows:

BILLING CODE 4160–01–F

Food and Drug Modernization Act of 1997—FDA Plan for Statutory Compliance

November 1998

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Executive Summary: FDA Plan for Statutory Compliance

Purpose

The FDA Plan for Statutory compliance addresses requirements set forth in Section 406 of the Food and Drug Administration Modernization Act of 1997 (FDAMA). The Plan identifies those actions necessary to bridge the gap between what FDA is required to do by statute and what it is able to accomplish with current resources. FDAMA has presented FDA with an opportunity to close that gap by working in concert with its community of stakeholders to protect the health and well-being of the American public. This Plan is a positive first step. It outlines bold and innovative approaches to meet the increasingly complex public health challenges of the 21st century.

FDA, however, is unable to meet all of these challenges with its current level of resources. Innovation and creative collaboration with stakeholders will enhance this effort, but significant additional resources, as well as prioritization of FDA activities, are essential if FDA is to meet its statutory requirements on a sustained basis and to meet public expectations. The successful implementation of this Plan depends on commitment of resources by both FDA and its stakeholders.

Scope

The Plan specifically addresses each of the objectives stipulated by Congress in FDAMA Section 406(b). These objectives, when achieved, will result in the following outcomes: stakeholders who are well informed about and involved in the Agency's new products and regulatory processes; comprehensive monitoring of industry practices and product use; regulatory decisions that are supported by a sound science base; and on-time reviews of new products prior to market entry.

To accomplish these objectives the Plan outlines FDA's strategic directions over the next 5 years and specific performance goals for Fiscal Year (FY) 1999. The Plan was developed in close consultation with a wide range of stakeholders, including consumers and patients, industry, health professionals, and other public sector regulators. The end product represents the collective views of FDA's senior leaders and its community of stakeholders.

The Plan

FDA Challenges in Fulfilling Its Mission: FDA must address several key challenges now and in the future for the Agency to successfully meet its statutory requirements and to fulfill its health promotion and protection mission. These include: research and development-fueled pressures on regulatory responsibilities; greater product complexity driven by breakthroughs in technology; growth in recognized adverse effects associated with product use; unpredictable new health and safety threats; awareness of citizen-stakeholders and their more targeted needs; emerging regulatory challenges in the international arena; and increased volume and diversity of imports. The ability to formulate successful solutions to these challenges depends on innovative approaches used by FDA, creative collaboration with stakeholders, prioritization of FDA activities, and an adequate investment of resources to implement these approaches.

Stakeholder Views: FDA's senior leadership listened carefully to the viewpoints of its many stakeholders prior to the development of this Plan. These opinions were expressed during a series of public meetings held during the summer of 1998. Several productive suggestions surfaced from these discussions. Two general themes emerged:

(1) *Greater stakeholder involvement:* Stakeholders want to be ongoing contributors to FDA's future strategies. Effective collaboration can raise the likelihood that these strategies will be successful. Stakeholders also want to be well-informed about FDA's regulatory processes. Consumers and patients want clear information about new products, and they want to receive the information in a timely manner.

(2) *Balanced, risk-based FDA decisions:* Stakeholders agreed that FDA priorities should be risk-based, and also believe that the Agency should balance timely premarket review programs with the need for effective postmarket inspection and surveillance. They urged the Agency to continue to develop a strong scientific and analytical basis for regulatory decisions. Some urged FDA to rely more on third parties and others want more direct FDA regulation.

Current Innovations/Reinventions: While stakeholders have made useful suggestions for enhancing Agency programs, FDA had already begun steps to improve its approach to public health protection and is continuing this effort. This has been accomplished both through redesign of internal programs and via collaborative efforts with outside parties. New, critically important medicines are now reaching the market more rapidly as a result of more efficient Agency review processes and the automation of these processes. Since 1993, the medium approval time for new drugs has been substantially reduced, from 20 months to around 12 months in 1997. FDA is collaborating with its regulatory colleagues as well as the regulated industry to develop national systems of consumer protection. Two examples are cited: FDA is working closely with the U.S. Department of Agriculture, the Center for Disease Control and Prevention, and the states to develop a comprehensive network for ensuring safety of the American food supply. FDA is also coordinating with the international regulatory community and the U.S. Customs service to increase assurance that imports entering the country are safe.

Strategic Directions for the Future: FDA's senior leadership identified the following strategic directions in order to focus the Agency's energies on meeting the objectives set forth in the Plan:

- *Establish risk-based priorities*—Focus resources on those health and safety risks that most directly threaten the well-being of U.S. consumers.
- *Strengthen the scientific and analytical basis for regulatory decisions*—A strong science base must underpin each of the Agency's regulatory decisions.
- *Work more closely with external stakeholders*—Collaboration with stakeholders will result in more effective solutions to public health problems.
- *Continue to re-engineer FDA processes*—Re-engineering will result in regulatory simplification and more cost-effective ways to run FDA's internal processes.
- *Adopt a systems approach to Agency regulation*—Regulatory approaches in the future will look for total problem solutions, rather than piecemeal review and enforcement decisions.
- *Capitalize on information technology*—Information technology will help to improve both internal efficiency and communication with stakeholders.

The six strategic directions outlined above will guide FDA's efforts to meet the FDAMA objectives. Many factors over the next several years will have an impact on FDA's ability to meet these

objectives including the outcome of a risk-based priority system, the success of third parties in the regulatory process, improvements in technology and systems engineering, and the synergies created by greater collaboration with other federal agencies, as well as FDA's external stakeholders, new statutory mandates, and emerging public health responsibilities. Reinvention will enable FDA to make up some of the difference between current performance and FDAMA objectives. Additional resources will also be necessary over the next 5 years in order for the Agency to satisfy its statutory requirements and to meet public expectations.

The body of this Plan identifies the major areas where FDAMA calls for FDA to meet statutory requirements, such as premarket reviews, injury reporting, and product safety assurance. It also discusses areas where there are not statutory requirements, but where there is general agreement on what time frames for reviews and inspections are appropriate and what other work needs to be accomplished to meet FDAMA objectives. FDA would be hard pressed to meet all of the FDAMA objectives with current resources and operating procedures. For example, in FY 1999 the Agency estimates it can accomplish roughly one-half to three-quarters of its statutory inspectional workload with current funding (See FIGURE 3).

Plan Organization

Part One of the Plan, the strategic framework, provides the broad Agency-wide context of the Plan. This includes:

(1) development of a clear mission statement;
(2) assessment of challenges that FDA faces in fulfilling its mission;
(3) analysis to the gap between what is expected of FDA and its actual performance;
(4) consulting FDA's stakeholders on future directions; and
(5) a statement of Agency-wide objectives (Section 406(b)) and strategic directions to achieve the objectives.

Part Two of the Plan maps the specific plan for achieving each 406(b) objective, including strategies and performance goals that can be used to manage toward the objectives. In Part Two, the specific performance targets for FY 1999 are established based on the Agency's existing resources, reinventions, and collaborative arrangements. FY 2000 performance targets currently are being developed as part of the FY 2000 Budget process and are not included in the Plan.

Part One—Strategic Framework

Purpose

The FDA Plan for Statutory Compliance addresses requirements set forth in Section 406 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (see Appendix A). The Plan identifies those actions necessary to bridge the gap between what FDA is required to do by statute* and expected to do by the public—and what the Agency currently is able to accomplish with existing resources. A high-performing FDA working in concert with its stakeholders is absolutely crucial to promote and to protect the health and well-being of the American public. Given the myriad escalating technological, economic, and health risk challenges, this will not be an easy task for FDA. The passage of FDAMA presents FDA with an opportunity to demonstrate innovative and bold approaches in meeting these challenges for the 21st century. This Plan is one positive step toward moving FDA into conformance with the views of Congress and the Agency's stakeholders.

This document demonstrates that FDA already is making great progress in managing health risks—a job that is becoming more complex and often fraught with uncertainty and unpredictability. The Plan also highlights the fact that the Agency clearly is unable to meet all of the challenges it is expected to address with its curent level of resources. Innovation and creative collaboration with external stakeholders will certainly enhance the Agency's abilities to reduce health risks in the long run; but additional resources are essential to help FDA fulfill its statutory mandates.

[*Statutory requirements encompass all provisions of the Federal Food Drug and Cosmetic Act (FD&C Act) and its amendments, including FDAMA.]

Scope

The Plan specifically addresses the six objectives stipulated by Congress in FDAMA Section 406(b):

- Maximize the availability and clarity of information about the process for review of applications and submissions.
- Maximize the availability and clarity of information for consumers and patients concerning new products.
- Implement inspection and postmarket monitoring provisions of this Act.
- Ensure access to needed scientific and technical expertise.
- Establish mechanisms, by July 1, 1999, for meeting time periods for the review of all applications and submissions.
- Eliminate backlogs in the review of applications and submissions by January 1, 2000.

To achieve these objectives, the Plan identifies Agency-wide strategic directions for the next 5 years, and specific performance goals for Fiscal Year (FY) 1999. Thus, the total plan presents a picture of the Agency's long- and short-term future that will be reviewed and modified as part of ongoing discussions with FDA's stakeholders, with future Department of Health and Human Services (DHHS) leadership and other parts of the Administration, and with Congress.

The Mandated Strategic Framework

This Plan is one element of a total strategic framework mandated by FDAMA that enables FDA to address increasingly complex public health challenges. This framework, outlined in Section 903 of the Federal Food, Drug, and Cosmetic Act as amended by FDAMA (see Appendix A), contains the following key elements:

1. An augmented mission statement for FDA, which places new emphasis on more resource-intensive consultation and cooperation with stakeholders as a crucial ingredient in public health protection and promotion [Sec. 903(b)(4)].

2. A charge to the Secretary of Health and Human Services to foster collaboration among science-based agencies throughout the federal government. Such coordination is necessary to strengthen the science capabilities that underpin federal responsibilities to ensure a safe food supply and related to development, evaluation, and monitoring of new medical therapies [Sec. 903(c)].

3. Stipulation of general powers that are necessary for carrying out Agency responsibilities, including research and education [Sec. 903(d)].

4. A requirement that FDA develop, after consulting with stakeholders, a plan for bringing the Agency into compliance with each of the obligations under the Act (The FD&C Act), and revise that plan as appropriate with stakeholder input [Sec. 903(f)].

5. A provision for FDA to prepare and publish an annual report that compares planned versus actual performance [Sec. 903(g)].

These elements reflect certain broad themes. First, the Agency should devise and implement strategies in a more open, multi-organizational environment. Congress emphasized throughout FDAMA that consultation, collaboration, and synergy-building

with external organizations are paramount to FDA achieving its mission of protecting and promoting public health. Simply put, FDA cannot do the job alone.

Second, Section 903 provides FDA with a more systematic approach to strategic management. The essential elements are clearly articulated: a clear mission, consultation with stakeholders, a plan based on stakeholder input to carry out the intent of the mission, and provision for ongoing feedback, accountability, and adjustment to the plan. The Agency recognizes the importance of this plan for action accountability, as outlined in Section 406(b) of FDAMA, and in establishing an ongoing dialogue with stakeholders to continually improve strategies.

Third, Congress has recognized that an array of capabilities including public education and research [Section 903(d)(2)] are essential elements required to carry out its responsibilities under the Act. The six objectives outlined in FDAMA 406(b) also explicitly stipulate education and scientific expertise as being central to the Agency's modernization plan. Successful public health promotion and protection decisions depend upon a well-developed science infrastructure and an informed public. Without these two elements, desired health outcomes are not possible.

FDA's Strategic Management Approach

Figure 1 illustrates how FDA is integrating the mandates in Section 903 to form the components of an effective strategic management process. As the figure illustrates, effective implementation of the FDAMA plan depends upon several elements:

(1) development of a clear mission statement;
(2) assessment of challenges that FDA faces in fulfilling its mission;
(3) analysis of the gap between what is expected of FDA and its actual performance;
(4) consulting FDA's stakeholders on future directions;
(5) a statement of Agency-wide objectives [406(b)] and strategic directions to achieve the objectives;
(6) a specific plan for achieving each 406(b) objective, including strategies and performance goals that can be used to manage toward the objectives; and
(7) a budget that adequately funds the plan.

Part One of the Plan provides the broad Agency-wide context—steps 1 through 5 above. Part Two of the Plan maps the specific plan for achieving objectives. In Part Two, the specific performance targets for FY 1999 are established based on the Agency's existing resources, reinventions, and collaborative arrangements. FY 2000 performance targets currently are being developed as part of the FY 2000 Budget process and are not included in the Plan. Many factors influence FDA's choice of performance levels, including: extrapolations of past performance, anticipated workload, creative re-engineering to improve internal efficiencies, successful collaboration with FDA's outside stakeholders, and strategic priorities.

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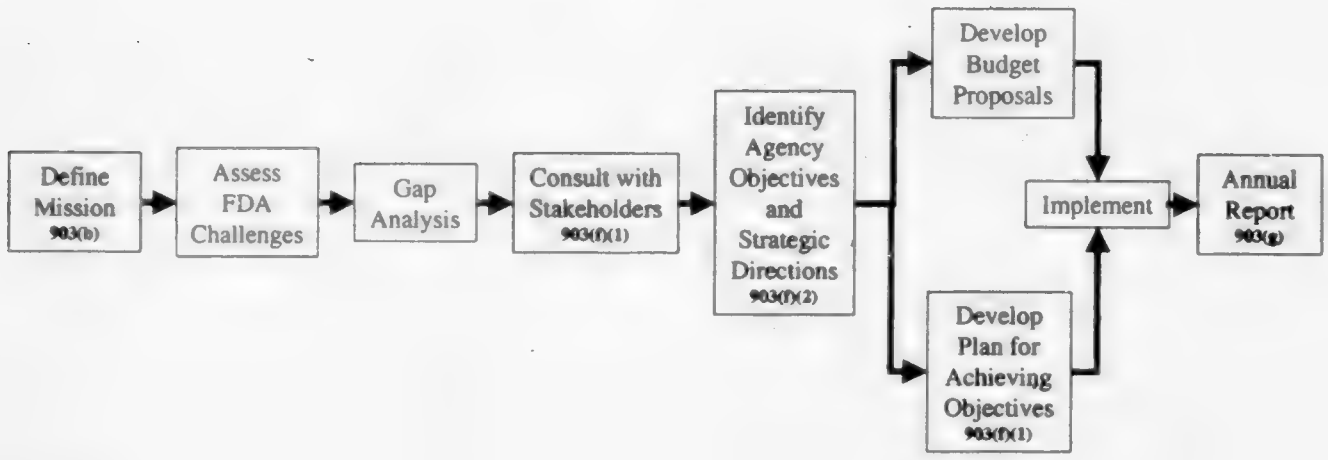
Figure 1: FDAMA's Refocus of FDA's Strategic Management Process

(Shaded areas are FDAMA changes to Section 903 of FFD&C Act)



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Mission Development

Over the years, Congress has dramatically expanded the responsibilities of the FDA. The Federal Food and Drugs Act of 1906, the first national statute enacted by Congress to regulate the American food and drug supply, gave FDA's predecessor agency the authority to remove adulterated or misbranded foods and drugs. In ensuing years, Congress enacted a series of statutes that expanded FDA's responsibilities in a number of directions, including: new product areas (cosmetics, biologicals, and medical devices.); additional product characteristics (e.g., efficacy as well as safety); and additional perspectives from which to monitor products (e.g., monitoring prior to market introduction as well postmarket monitoring).

Beginning in 1996 with the passage of the Animal Drug Availability Act (ADAA) and continuing in 1997 with the passage of FDAMA, Congress enhanced FDA's mission in ways that recognized the Agency would be operating in a 21st century characterized by increasing technological, trade, and public health complexities. To meet these challenges, Congress added explicit phrasing to the Agency's mission statement to ensure that FDA would coordinate its own efforts with regulatory counterparts worldwide. In addition, Congress recognized that external scientists, medical experts, and public health experts must play an increasing role in Agency responsibilities. It defined a new emphasis to be placed on regulatory processes and required more interaction with stakeholders. Through FDAMA, Congress intends to ensure timely availability of safe and effective new products that benefit the public, and to ensure that our nation continues to lead the world in new product innovation and development.

DAMA defines FDA's new mission as follows:

> The Administration shall—
> (1) promote the public health by promptly and efficiently reviewing clinical research and taking appropriate action on the marketing of regulated products in a timely manner;
> (2) with respect to such products, protect the public health by ensuring that—
> (A) foods are safe, wholesome, sanitary, and properly labeled;
> (B) human and veterinary drugs are safe and effective;
> (C) there is reasonable assurance of the safety and effectiveness of devices intended for human use;
> (D) cosmetics are safe and properly labeled; and
> (E) public health and safety are protected from electronic product radiation;
> (3) participate through appropriate processes with representatives of other countries to reduce the burden of regulation, harmonize regulatory requirements, and achieve appropriate reciprocal arrangements; and
> (4) as determined to be appropriate by the Secretary, carry out paragraphs (1) through (3) in consultation with experts in science, medicine, and public health, and in cooperation with consumers, users, manufacturers, importers, packers, distributors, and retailers of regulated products.

Emerging FDA Challenges

FDA must address a wide range of challenges that serve as potential obstacles to successfully carrying out its health protection mission in the 21st century. To the extent that these challenges remain unaddressed, a gap between expectation and performance will persist. This Plan represents a blueprint for addressing these challenges, thereby narrowing the gap.

Key challenges that FDA faces now and in the near future include:

1. Research and development-fueled pressures on regulatory responsibilities;
2. Greater product complexity driven by breakthroughs in technology;
3. Growth in recognized adverse effects associated with product use;
4. Unpredictable, new health and safety threats;
5. More targeted needs and awareness of citizen-stakeholders;
6. Emerging regulatory challenges in the international arena;
7. Increased volume and diversity of imports; and
8. Federal budget constraints.

Each of these challenges is discussed briefly below.

• Research and Development-fueled Pressures on Regulatory Responsibilities

Each year, FDA-regulated firms add more than $2 billion to domestic research and development efforts. For pharmaceuticals alone, this effort currently exceeds $20 billion total, which is triple the effort of only 10 years ago. The growth in research budgets at public agencies such as NIH surely will result in a greater number and wider variety of products that FDA must, by statute, regulate. More importantly, the speed of product development also is accelerating. By streamlining the commercial review process, FDA has helped to reduce the time between discovery and Agency evaluation. But this streamlining also gives the Agency very little time to develop a regulatory framework to handle new technologies. Thus, it is imperative for FDA to continue to engage in close interaction with industry in the early stages of product research and development.

The volume, variety, and speed of new product development presents FDA with the twofold goals of: (1) ensuring that consumers enjoy timely public health benefits from these products; and (2) minimizing the health risks associated with consumers' use of these products. FDA resources devoted to premarket review of these products must be carefully allocated so that *both* goals are addressed. The Agency's current level of resources, however, cannot adequately address both goals in all of the product areas for which the Agency has responsibility.

• Greater Product Complexity Driven by Breakthroughs in Technology

Product complexity continues to increase. FDA-regulated products will be characterized by unprecedented technological sophistication, while also providing unparalleled health benefits for the U.S. public. The continued benefits of genetic engineering warrant particular attention. New products generated by the biotechnology revolution cover a broad spectrum, including: genetic probes that serve as powerful diagnostics; genetically engineered drug and gene therapies; and biotechnology-based food modifications such as protein-enhanced vegetables. Increased understanding of the human genome, as well as of the genetic make-up of other organisms (genomes of other animals and plants), will yield many new and different products and applications.

The number of sources that produce these new genetically engineered products continues to escalate. The number of biotechnology firms grew dramatically from the early 1980s through 1993, so that by 1993 there were 1,272 firms, more than a threefold increase over the pre-1981 number. By April 1997, nearly 300 biotechnology drugs were in development, tripling the number that were in development in 1989. FDA must have access to the necessary scientific expertise to be able to address the complexity of these new products, and to provide sound regulatory decisions.

Microprocessor and miniaturization technologies are rapidly expanding and enabling significant improvements in implantable medical devices such as pacemakers, cochlear implants, and closed-loop medicine delivery systems that monitor conditions within the body and administer treatments as required. Progress in artificial intelligence has increased companies' ability to apply pattern recognition techniques in such

products as Pap smear readers and neural net classifiers.

New combination products, such as food-drug and drug-device combinations, will continue to be generated through the application of biotechnology techniques. Such developments foster improved versions of products already developed and approved, as well as entirely new products. New biological-based products will require the development of new data profiles, because the data used to determine the safety of chemical-based products of the past are neither sufficient nor appropriate for predicting the safety of these new products.

Biotechnology also is being used to develop new assessment tools. More emphasis is being placed on new approaches to assess the product safety of food, dietary supplements, and health care products. These tools include bioassays to improve safety assessments of carcinogencity and to address emerging concerns of neurotoxicity, immunotoxicity, and developmental toxicity.

• Growth in Recognized Adverse Effects Associated With Product Use

New technologies have provided an explosion of innovative diagnostic and therapeutic health products. The consequences of this explosion, however, include a parallel expansion of adverse effects associated with product use. Although the benefits realized from these products still greatly outweigh the problems associated with consumption, these problems must be addressed. To illustrate, FDA received more than one-quarter million reports of suspected drug-related adverse effects in 1997, and this number of adverse reports continues to increase annually. FDA estimates that nearly one million patient injuries and deaths each year are associated with the improper use of FDA-regulated products. Additional injuries and deaths occur under conditions of proper use and accidental injury. For example, of the more than 70,000 injury reports related to medical devices received annually, approximately 25 to 40 percent of the injury or death reports may be attributed to device misuse or operator error. Injury reports received by FDA only represent between 1 and 10 percent of all injuries associated with the use of medical devices. Using these figures, as many as 400,000 incidents per year resulting in patient injury or death may, at least in some way, be attributed to the user-device interaction.

Currently, the FDA Center for Food Safety and Applied Nutrition (CFSAN) receives reporting on food additives, cosmetics, and special nutritionals from the field offices and other sources. To achieve efficiency in monitoring and responding to adverse events, the Center is proposing the establishment of an integrated adverse event reporting system for food and cosmetic products. As the Agency develops more comprehensive adverse event reporting systems, particularly in collaboration with other institutions, the number of reported adverse events likely will increase. If surveillance capability does not expand, the magnitude and severity of product use problems will, to a large extent, remain unknown, and the health risks will be unaddressed.

• Unpredictable, New Health and Safety Threats

FDA continues to face a range of threats to public health that appear in a random and discontinuous pattern. For example, crippling infectious diseases such as tuberculosis are reemerging, bovine spongiform encephalopathy (BSE) became epidemic in the United Kingdom and was unexpectedly linked to the human disease, Creutzfeld-Jakob disease (nvCJD), and more virulent and antibiotic-resistant bacteria have been discovered in food products around the world. These unpredictable threats, coupled with the growing incidence of disease-causing organisms' resistance to existing drug therapies, challenge both industry and FDA to bring innovative, safe, and effective treatments to the market rapidly. The Agency also must address crises that require emergency responses, whether they are the discovery of pesticides in selected imported products, *Escherichia coli* outbreaks, or intentional product tampering. These events are byproducts of several factors, including continually expanding global trade; new entrants into domestic industries—particularly where emerging technologies are present; and economic pressures on regulated firms to reduce costs in order to ensure short-term survival.

The unpredictable nature of a significant portion of FDA's compliance activity also acts as a severe limitation to fulfilling statutory mandates of inspectional coverage. FDA is attempting to augment its inspection capability with strategies that call for collaboration with states, use of third parties to verify industry compliance, and augmenting industry quality control mechanisms. But even these augmentation strategies require front-end investments to develop systemic capabilities such as data validation, data sharing, and auditing to determine whether protocols are in place. In addition, some stakeholders oppose other third-party involvement. Consequently, in the short run FDA—even in conjunction with collaborators—will not be able simultaneously to satisfy statutory inspection requirements and address all current health and safety threats.

• More Targeted Needs and Awareness of U.S. Citizens-stakeholders

A more knowledgeable and diverse consumer population is escalating expectations for more information, as well as information that is more tailored to their particular needs, concerning the safety of FDA-regulated products. American consumers have become more health-conscious during the 1990s and are seeking more information on the impact of medical products and food on their health. FDA must distinguish between the risks perceived by consumers and their actual risks, and respond accordingly. Based on the additional information that FDA provides, consumers are playing a larger role in protecting their own health.

The elderly population provides a good illustration of why FDA must target its information and regulatory policies to fit the needs of particular market segments. Although the elderly are by no means the only segment with special needs, their numbers have become much more prominent in the general population. By the year 2000, Americans aged 75 and older will be the fastest growing group. The elderly (those over 65) have disproportionately high health care demands. Challenges associated with this patient subpopulation, such as multiple drug interactions, different physiological characterizations and reactions to drug regimens, and the need for better medical device design for home self-diagnostics and therapies, will become more acute. These challenges will require greater inclusion of the elderly in clinical testing for drugs, medical devices, and other FDA-regulated products. Further, the increasing educational needs of the elderly will require more focused education programs, including specific dietary information and foods targeted to their nutritional requirements. The elderly population and food service workers who prepare food for the elderly also will require special education initiatives concerning proper food handling, because as the population ages it becomes more susceptible to foodborne diseases.

• Emerging Regulatory Challenges in the International Arena

FDA participates in the world community of developed, underdeveloped, and developing economies and regulatory authorities. Radical changes in the dynamics of the world structure are underway, driven by several forces: (1) an increasing number of global and multinational firms that produce FDA-regulated products; (2) increasing sophistication of unified economic, political, and regional entities (e.g., the European Union [EU] and Pacific Rim countries); and (3) the response to these conditions on the part of regulatory/standard-setting entities.

The larger drug, biological, device and food firms now operate as multinational companies. New products will be developed, produced, and marketed through a highly networked and global commercial system. The system will have great power to satisfy consumer needs, but will be much more complex to monitor for potential risk than has been the case in the past. This situation will require sophisticated international regulatory responses. Further, the regulatory response by U.S. interests must preserve the delicate balance at the international level between preventing unnecessarily high-risk products from entry into the country, while providing access to novel, important therapies or foods to the American public.

The multinational and global firms are sharing center stage with an increasingly organized set of regional economic and political entities such as the EU, Pacific Rim organizations, North America Free Trade Act (NAFTA) participants, etc. These entities are amassing the economic and political power to attract world trade. The pace of their development is often uneven, but the longer term direction is clear. Raw materials and joint ventures that stretch across national borders are all becoming international elements for FDA to regulate where previously these were purely domestic phenomena. The Agency must now make new decisions on how (or if) to manage each of these new elements. Increasingly, FDA must take into account the global trade implications of its decisions.

Organizations such as the International Committee on Harmonization (ICH), the International Standards Organization (ISO), the Global Harmonization Task Force, the International Cooperation on Harmonization of Technical Requirements of Registration for Veterinary Medicinal Products (VICH), and Codex are becoming increasingly important in the determination of the level of acceptable product safety, quality, and efficacy for products trading in the international arena. FDA must maintain a viable voice as standards are prepared and speak with a voice that represents the interests of all of its stakeholders, whether they are consumers, patients, health practitioners, or the regulated industry.

• Increased Volume and Diversity of Imports

Imported products regulated by FDA represent a significant component of total U.S. consumption. In some sectors, such as seafood, the percentage of total consumption represented by imports is approximately 50 percent. FDA's responsibilities in the import arena continue to expand, without a corresponding increase in resources to do the job. To illustrate: The volume of imports has grown steadily over the past few decades. By 1998 an estimated 4 million FDA-regulated import line items arrived in the U.S. The number of food items, representing the majority of those imports, increased by 21 percent over the last year alone! During that same period, FDA resources to address imports remained essentially level.

And the complexity is increasing—the reality of a truly global economy is adding significant regulatory challenges for FDA. These products are originating in countries that often have less developed health/safety regulatory structures. The increase in volume, variety, and sources of imports may be accompanied by increases in novel pathogens, microbial contamination, and other public health concerns and regulatory challenges for FDA. Developing countries, which once provided raw materials for U.S. manufacturers, and assemblers are increasingly providing finished products to the U.S. market. This conversion could increase the risks associated with such products.

• Federal Budget Constraints

Recent budget proposals and appropriations acts have addressed emerging public health issues (such as AIDS) and long-standing public health problems that received insufficient attention in the past (including reducing youth tobacco use, improving food safety, and accelerating prescription drug approvals). While those problems continue to need attention, inflation has reduced real resources available for FDA's other public health responsibilities, which are necessary to meet the obligations delineated in FDAMA. These include inspections to ensure product safety; review of devices, food additives, blood products, animal drugs, and generic drugs; and adverse event reporting and followup.

Analysis of the Gap Between What is Expected of FDA and Its Actual Performance

FDA faces a critical issue today. Because of a convergence of challenges outlined in previous sections, the Agency has been unable to fully meet its explicit statutory obligations; nor has it been able to completely guarantee the more implicit health and safety responsibilities the statute requires and the public demands. Figure 2 illustrates that a sizable gap still exists between statutory requirements of "on-time review" for several product areas, and what FDA currently is able to deliver. Figure 3 shows a similar gap between mandated and actual inspectional coverage for FDA-regulated industries.

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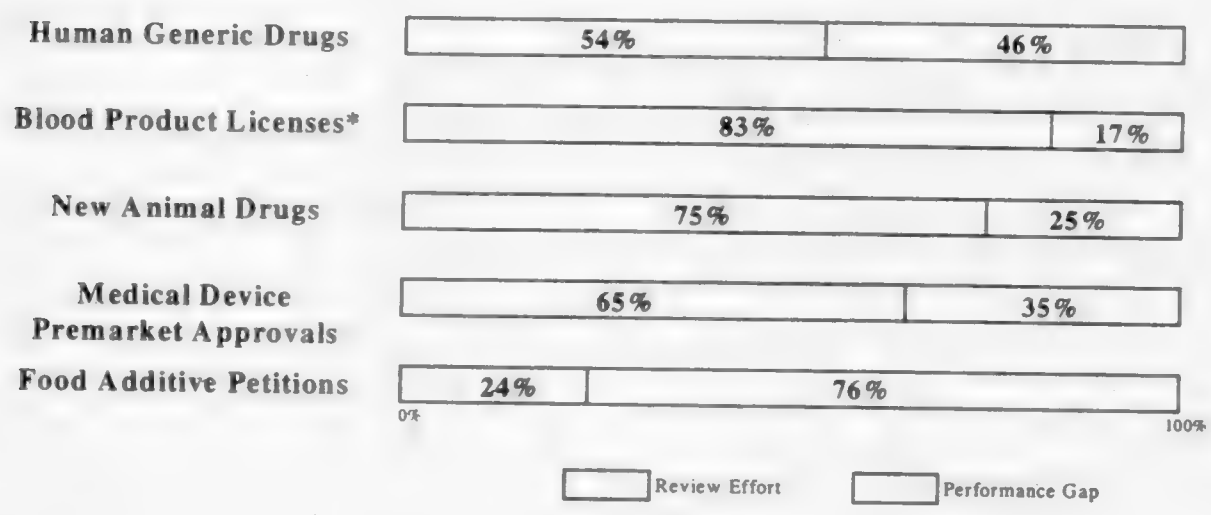
Figure 2: New Product Review Performance Gaps

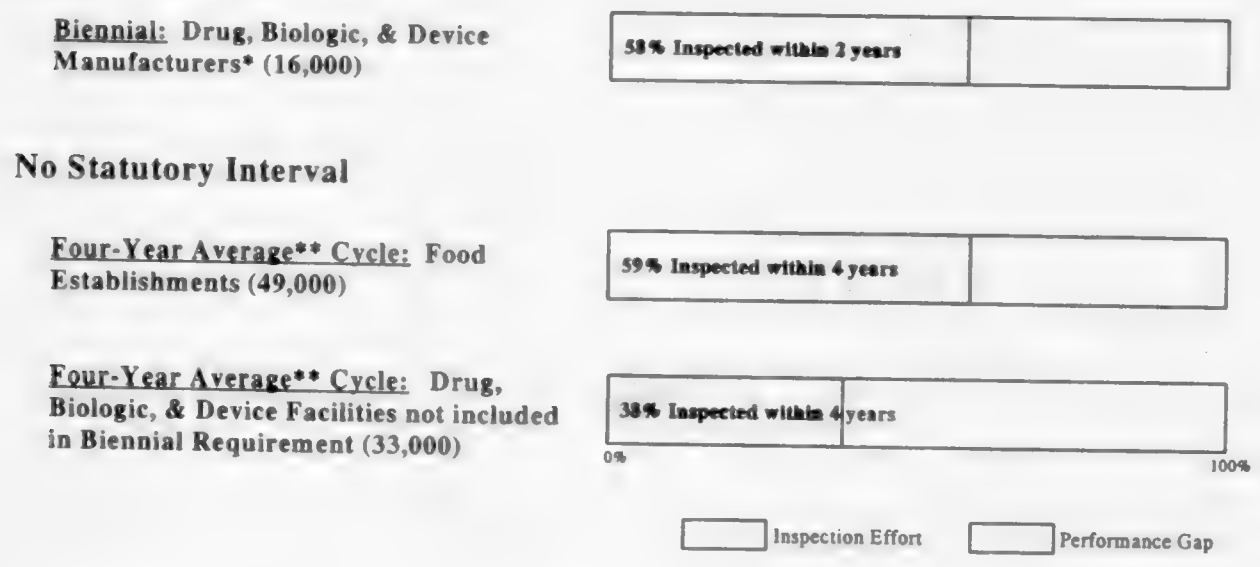
(Percentage of FY 1997 Reviews within Statutory Time Frames)



* There is no statutory requirement. FDA has adopted an internal 12-month time frame.

Figure 3: Inspection Performance Gaps

(FY 1999 Projected Inspection Effort and Remaining Performance Gap)



* Statutory requirement includes manufacturers, processors, repackers, and relabelers.

** Selected high-risk categories inspected more frequently.

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The agency has listened carefully to its stakeholders over the past several months and has combined their views with its own emerging strategies to develop a plan for narrowing the gap. The following section provides a summary of stakeholder views.

Stakeholder Consultation

FDA's assessment of the challenges it faces in fulfilling its mission and the identification of the disparity between expectations and what is achievable given the current climate set the stage for consultations with its external stakeholders. This consultation is necessary to determine the most effective ways of narrowing the gap. FDA depends on the views of its stakeholders for two crucial reasons:

(1) stakeholders are affected by the outcomes of FDA's strategies and should therefore play a role in formulating them; and
(2) stakeholders are also the collaborators that are necessary for successful implementation of the Plan.

In the sections that follow, the process of stakeholder consultation is discussed, and a summary of their views is provided.

The Process

Section 406(b) of FDAMA prescribes that the plan for statutory compliance be developed:

> after consultation with appropriate scientific and academic experts, health care professionals, representatives of patient and advocacy groups, and the regulated industry.

The experts and representatives referenced in Section 406(b) comprise the constituency of the FDA. The Agency informally consults with these constituents on a regular basis. Section 406(b) codifies this process and provides a mechanism for formal input from and feedback to its constituency.

In response to this requirement, the Agency designed a process that provided multiple avenues for input, including the following:

- Public meetings were held and tailored to address concerns associated with each of FDA's product centers: foods, human drugs, animal drugs, biologics, and medical devices. In addition, there was a meeting focusing on health professionals and an Agency-wide meeting addressing cross-cutting issues.
- Dockets were provided for stakeholders to make additional comments subsequent to the public meetings. These dockets will remain open indefinitely.
- Electronic communication vehicles were established that allow stakeholders to communicate with FDA via Internet responses to the Agency's home page as well as through e-mail.
- District Consumer Forums were held to solicit comments from stakeholders.
- On going communication vehicles were used to actively solicit stakeholder views on current and future directions for the Agency. These vehicles include speeches made by the Agency's senior leadership, ongoing exchanges in smaller forums such as workshops, and one-on-one conversations.

FDA adopted a uniform approach in framing the stakeholder discussions and comments. Agency officials first outlined the stakeholder consultation process. The leadership then provided a framework outlining the emerging technological and public health challenges faced by FDA. Finally, to focus stakeholder comments and discussion, questions (Appendix B) were developed that related to each of the six objectives addressed by the 406(b) plan and were available to stakeholders prior to the meetings.

The process of engaging the Agency's stakeholders and receiving useful feedback is an ongoing one. This initial round of stakeholder views will continue to be analyzed and interpreted during Fall 1998. Results of the analysis will be shared with FDA's external as well as internal audiences. The next round of formal stakeholder meetings is being scheduled for Spring 1999, and regular contacts will continue to be maintained. Although longer term assessment is forthcoming, a preliminary evaluation of stakeholder views has been conducted. An overview of these views is provided in the next section. Stakeholder comments are assessed in greater detail in Part Two of the Plan and are related to Agency strategies.

Summary of Stakeholder Viewpoints

FDA's stakeholders commented on many aspects of the Agency's operations. The recommendations made by stakeholders regarding the Agency's priorities and the strategies FDA should use in carrying out its responsibilities reflect a wide range of concerns and perspectives. The full context of stakeholder views expressed at public meetings and in written comments are captured in transcripts and dockets that are available on FDA's Internet Web page *http://www.fda.gov/oc/fdama/comm*. Appendix B–4 also provides a compendium of stakeholder recommendations, classified both by 406(b) objectives and by the strategic directions that are identified in the next section of the Plan. Major themes that emerged from the stakeholder comments are summarized below.

Areas of Consensus

Most stakeholders agree on several broad issues. Many agreed that FDA priorities should be risk-based, scientifically rational, and focused on protecting public health. In addition, the Agency should view meeting its statutory obligations as a high priority. A number of organizations cautioned that the Agency should limit its participation in new activities, especially those that go beyond the scope of its core statutory requirements. Although stakeholders varied in their interpretations of core responsibilities, some stakeholders highlighted the importance of preserving FDA's regulatory role and encouraged the Agency to develop more creative strategies to exercise its regulatory responsibilities. Many stakeholders acknowledged the difficulties inherent in making trade-offs among program activities when resources are constrained.

Making new safe and effective treatments available to patients in a timely manner is also a high priority for FDA. To optimize the performance of the premarket review and approval system, stakeholders recommended that FDA continue to re-engineer its systems and strive for internal efficiencies; communicate earlier in the premarket review process, more frequently, and more openly with industry and other stakeholders; and make FDA policies and procedures more consistent and more transparent to industry and the public. Several groups would like FDA to adopt a more uniform and consistent approach to addressing risks of public health significance. Consistency of FDA policies and procedures seemed to be a greater concern than their transparency.

Requests for improved communication emphasized two-way communication—not only from the FDA to its stakeholders but also from stakeholders to FDA beyond adverse event reporting. Stakeholders value FDA developing a strong scientific and analytic base for its regulatory decisions. They believe that FDA should use the expertise of other organizations to help meet its goals. For example, delegating or collaborating on certain functions (such as research, standard-setting, and some aspects of product review) to third parties were offered as a means of leveraging limited resources.

Several stakeholder groups want to be more involved in FDA advisory committees. These views are consistent with FDA's transition to a more open and collaborative relationship with its

regulatory counterparts and industry. Continued FDA leadership and participation in the international arena was encouraged to ensure that international standards and guidelines are consistent with U.S. requirements. Even through it was recognized that FDA had limited resources to meet all of its statutory obligations and to meet public expectations, industry representatives opposed the collection of user fees for medical devices and the blood banking industry, as well as for veterinary products, as a means of funding premarket review activities. Similarly the concept of an "FDA seal", viewed as a form of user fees, was not supported.

• Areas of divergence

Although the first order of concern of all stakeholders is consumer health protection and availability of medical products, there is no consensus on the role FDA should play nor what approach should be taken in this daunting task. Key differences among stakeholders include the following:

FDA's Role in Education

Stakeholders differed sharply in their opinions on the legitimacy and primacy of FDA's role in consumer education. While some stakeholder groups believe that industry and health professionals should be responsible for consumer education, others assert that FDA should play an essential role in providing objective information about regulated products to consumers and in facilitating patient participation in ongoing clinical trials of promising new therapies. One consumer advocacy group, the National Council on Patient Information and Education, requested FDA's support in developing a collaborative, national consumer

FDA's Enforcement Activities

Some stakeholders called for expanded FDA authority and additional resource appropriations to allow the Agency to carry out its responsibilities, for example, in the areas of drug safety monitoring and monitoring the sale of unapproved veterinary products. Other stakeholders acknowledged that FDA would need to share enforcement responsibilities with others. For example, one group supported a division of tasks in the inspection arena, with FDA covering the imports, and states being responsible for domestic inspections.

Use of Third Parties

There were mixed views in this area as well. Many consumers preferred that FDA regulate the industry more directly, while several industry representatives advocated for greater use of third parties, as long as the arrangement was carefully monitored by the Agency.

Advisory Committees

Views regarding the composition of FDA advisory committees diverged greatly. Some pressed for broader presentation of interested persons while others advocated that FDA place greater emphasis on the depth of knowledge of advisory committee members. The Agency was urged to recruit renowned experts to serve on advisory committees. Some advisory committees were criticized for favoring nonscientific issues over sciences when they make recommendations.

• Unresolved Issues

Perhaps the issue that remains most problematic is the overall question of balance among FDA's functions. The appropriate mix of premarket review, post-market inspection, and surveillance activity is an ongoing topic of debate among the Agency's stakeholders. One stakeholder summed up the issue:

"How should FDA balance the need for strong and timely premarket review programs with the need for effective postmarket inspection, surveillance, and enforcement programs? That is like asking the American people to find a balance between building safe aircraft and providing adequate maintenance over the course of a plane's life." (Patient Group)

Although stakeholders expressed their views regarding the emphasis FDA should place on various issues, these comments frequently focused on a single FDA Center or two Competing issues. FDA does not have sufficient information at this time about the priority Agency stakeholders wish to assign to a particular issue relative to other issues competing for resources within an FDA Center or within the Agency as a whole. In some instances the proposed strategies appear to be contradictory. For example, how should the Agency balance setting risk-based priorities or meeting public expectations when doing so directly competes with meeting its statutory obligations?

Identification of Agency-Wide Objectives and Strategic Directions

The six objectives specified in FDAMA Section 406(b) and outlined on page 1 of this Plan, provide FDA with a broad framework for meeting its statutory requirements and public expectations. The Agency's senior leadership believes the following strategic directions are necessary to focus its efforts in achieving the objectives set forth by Congress. These directions represent an amalgam of approaches that have been emerging for several years, and which have been modified both by new FDA challenges and by the productive suggestions made by external stakeholders. Figure 4 identifies the link between key stakeholder themes and the strategic directions outlined in this section of the plan.

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Figure 4: FDA's Strategic Directions

• *Themes from Stakeholders*

Establish Risk-Based Priorities
- *Setting priorities*

Adopt a Systems Rather than Piecemeal Approach to Agency Regulation
- *Importance of an international strategy*
- *Adverse Event Reporting*
- *Focus inspections on systems deficiencies*

Work more Closely with External Stakeholders
- *Need for transparent FDA policies and procedures*
- *More open and communicative FDA*

Re-engineer FDA Processes
- *Need for some management reform*
- *FDA should be more creative—while maintaining control*

Strengthen the Scientific and Analytical Basis for Regulatory Decisions
- *The value of strong scientific base*
- *Strengthen the science base within FDA advisory committees and keep science base current*
- *Need for adequately trained/qualified FDA Staff*

Capitalize on Information Technology

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The strategic directions are *broad* in scope and cross-cut components of the organization. As such, they provide a context to guide all of the Agency's more specific goals and programs. They also serve as a way to galvanize diverse activities into a set of unified directions for the long-term.

(1) Establish risk-Based Priorities

Although the importance of setting risk-based priorities was a concept repeatedly endorsed by many stakeholder groups, there was not consensus regarding what constituted the highest risk areas. FDA must listen to its stakeholder community, but then it must decide, based on continuing consultation with its stakeholders, which health and safety risks most directly threaten the well-being of U.S. consumers, and allocate its resources accordingly. In the harsh light of limited resources, FDA simply cannot meet everyone's demands and cannot address all risks with the same degree of urgency or intensity. For example, the Agency is unable to respond to its highest priority health risks and at the same time fully meet its biennial statutory inspection requirements for drugs, biologics, and medical devices. it may be appropriate to reassess the practicality of mandates that emphasize industry coverage, regardless of risk, when those mandates may divert limited resources away from addressing serious health and safety concerns. The Agency has and will continue to increase the efficiency of "fast track" processes to address the most urgent needs for therapies so that these therapies can enter the marketplace rapidly. Resources will continue to be redirected toward the review of these products. Surveillance and compliance efforts also will continue to be directed toward identifying and taking action to correct the most serious health and safety problems associated with products that are in the marketplace or about to enter the market. The Presidential Food Safety Initiative will continue to focus attention and devote resources to those areas of the food supply that pose the greatest risk of illness and/or death to consumers.

(2) Strengthen the Scientific and Analytical Basis for Regulatory Decisions

A strong science base continues to underpin each of the Agency's regulatory decisions. Such decisions must be made throughout the lifespan of FDA-regulated products from initial research, development and testing, through production, marketing and consumption. A strong science base consists of the expertise, the risk assessment protocols, the test methods, product guidance and performance standards, and the facilities and equipment necessary for conducting excellent science. The emerging emphasis in this strategic area is to seek means for achieving synergies in science capability through access to and collaborative efforts with sources of scientific expertise beyond FDA. A recent example that the Agency hopes will achieve research synergies through collaboration is the pharmaceutical quality and drug development science initiative that the Agency has begun to pursue under a cooperative research agreement among FDA, professional societies, and industry. The initiative will provide a venue to conduct research on pressing questions about pharmaceutical manufacturing that can inform regulatory decisions regarding needs in such areas as supplement submission requirements or bioequivalence studies after there are manufacturing changes. Such collaborative efforts are reinforced in the objectives identified in FDAMA Section 406(b). The key lies in "ensuring access to the expertise," wherever it is most cost-effective.

(3) Work More Closely With External Stakeholders

FDA will need to multiply the Agency's capability to address complex public health problems by working with stakeholders in planning, implementing, and evaluating solutions to these problems. The solutions don't lie solely in expanding the mass of the Agency. Consumers, the regulated industry, health professionals, and FDA's regulatory counterparts in the U.S. and abroad each represent components of a total network that can potentially improve health outcomes. To help "activate" that network, FDA is engaged in several strategies some just emerging and others in a more mature phase. These "activation strategies" include: collaboration with stakeholders to create synergies in protecting the public health; ensuring that stakeholders are well informed about the Agency's regulatory processes [the processes should be as transparent as possible] and the products that are affected by these processes; involving stakeholders early in the Agency's processes; and ensuring that all affected stakeholder groups' interests are well represented in product testing and approval decisions.

FDA is striving to create synergies through collaboration with appropriate outside colleagues in product research and testing, development, production, marketing, and consumption/use to ensure safety, quality, and efficacy. The Agency's Joint Institute for Food Safety and Applied Nutrition [JIFSAN] (with the University of Maryland) and the Moffett Center in Illinois are illustrative of such synergies working at the level of applied research and development to ensure safe foods.

Industry representatives and health professionals made it clear to FDA during the stakeholder consultation process that they can be more effective colleagues in improving health outcomes in their role as product developers and users if they are (1) well informed about the Agency's regulatory review, surveillance, and compliance processes; and (2) consulted prior to regulatory decisions on both the pre- and post-market side of product commercialization. FDA will continue implementing strategies to engage in preventive problem solving, as well as initiatives that will make the Agency's processes as clear and understandable as possible to participants.

Consumers and patients expressed a need to have prompt, complete, understandable, and unbiased information about products that FDA regulates, particularly new therapies. Well-informed consumers are more effective contributors to the management of their own health risks. FDA has launched several initiatives that are intended to keep the consumer well-informed through such vehicles as publishing the availability of important new drugs on the Internet. FDA is also attempting to ensure that the interests of all affected patients are well represented in such areas as clinical trial designs for new therapies. In addition, FDA will ensure that the interests of the consumer are represented in such deliberative bodies as advisory committees when recommendations on new products are being considered.

(4) Re-Engineer FDA Processes

FDA has used both an internal and an external focus in redesigning many of its regulatory review processes. From the external perspective, FDA is implementing several protocols that will result in simplified regulatory approaches and, as a result, a reduced burden for the regulated industry. Many of these regulatory reinventions are embodied in provisions in FDAMA. For example, the Agency may start review of a "fast-track" drug application before the application is complete if preliminary clinical data demonstrate that the product may be effective. Fast-track status also is being established for humanitarian medical devices, and new product development protocols will allow medical device sponsors to use

recognized study results that have been generated by other sources as part of their own application submission. Other regulatory simplification strategies have been instituted independent of FDAMA. For example, a phased review process for animal drugs has been designed that enables the Agency to provide periodic feedback to product sponsors throughout the drug review process to foster "continuous improvement" in the application.

FDA is also focusing internally to achieve greater efficiencies and effectiveness in its review and tracking processes. For example, implementation of project management techniques allows an opportunity for convergent thinking and action to occur so that multiple disciplines can coordinate their efforts in providing thorough but timely reviews of product sponsors' applications.

(5) Adopt a Systems Rather Than a Piecemeal Approach to Agency Regulation

Several stakeholders during the public meetings noted that they could be more efficient and effective participants in promoting and protecting public health if they could understand the total context of what the Agency was trying to do and what its future directions were. The establishment of a systems approach within FDA is closely related to the establishment of risk-based priorities. Use of a systems orientation is an effective way to identify what is truly high-priority risk and then to address that risk in a systemic manner. Systems solutions, such as the Food Safety Initiative, the integrated adverse event reporting initiative, and the important monitoring system, are examples of FDA acting in concert with other collaborators to address the highest priority, most pervasive risks facing consumers.

The Agency also has adopted a systems orientation in many of its individual programs. To illustrate, medical device inspectors have embarked on a new approach to determine industry compliance with Good Manufacturing Practices (GMPs). They are pilot-testing a systems-oriented inspectional strategy whereby medical device plants are given guidance on the establishment of a total Device Quality System, so that the control of product safety and quality is owned by the firm, rather than their having to respond to a series of external compliance requirements that must be responded to one at a time. The seafood Hazard Analysis and Critical Control Points (HACCP) initiative provides another example where FDA worked with the seafood industry to implement a systems approach to ensure the safety of seafood consumed by the American public.

(6) Capitalize on Information Technology

FDA has been on a long course of improvement in taking advantage of the opportunities offered by a rapidly evolving information technology environment. Information technology has been used for quite some time by the Agency in order to improve internal efficiencies. For example, a key element in accelerating the review of new drug therapies has been automating major portions of the drug review process. When both product sponsor and Agency reviewer can use electronic communication to establish a common ground of understanding, then all parties benefit. It is a critical element that has become pervasive in all mission-oriented as well as support activities.

More recently, the Agency has turned its attention to using information technology as a way of improving communication with external stakeholders. One of the most powerful examples of how stakeholders are assisted is in the rapid provision of information on new drug therapies via the Internet to consumers and patients. FDA's home page provides an opportunity for all of FDA stakeholders to be aware of recent Agency regulatory decisions, and, just as important, to receive input in the form of suggestions and other opinions from Agency officials. The Agency will expand use of information technology to bring relevant information to bear in the area of produce surveillance and adverse event reporting. Well-designed and integrated information systems will dramatically reduce the gap between adverse effects associated with consumption and problem correction.

Making the Transition From Strategic Context to Targeted Planning

The strategic directions outlined above provide the context for understanding Part Two of the 406(b) Plan. In Part Two, specific performance targets and associated strategies re outlined for FY 1999. Part Two is organized into sections that correspond to the six objectives outlined in Section 406(b) of FDAMA (Section 903(f) of the FD&C Act as amended). Thus, specific performance targets can be directly related to achieving the objectives of the Act.

Within each objective, strategies for FY 1999 relfect the Agency- wide strategic directions identified in Part One. Thus, the Agency's targeted planning for FY 1999 is strategically aligned with its intended directions over the next several years.

Part Two—FDAMA Plan For FY 1999

This Plan outlines key performance goals and strategies designed to achieve these goals during FY 1999. The Plan serves several purposes:

(1) It provides a blueprint for narrowing the gap between what FDA is expected to do by law and by the stakeholder community and what FDA currently can accomplish given its existing Agency resources.

(2) It responds to Section 406(b) of FDAMA, which requires the Agency to develop such a plan:

> "The Secretary, after consultation with appropriate scientific and academic experts, health care professionals, representatives of patient and consumer advocacy groups, and the regulated industry, shall develop and publish in the Federal Register a plan bringing the Secretary into compliance with each of the obligations of the Secretary under this Act."

(3) It moves FDA closer to fulfilling its strategic goals, and thus, its mission of consumer health protection and promotion.

(4) Finally, the Plan provides a specific set of performance commitments that will serve as a basis for managing towards results and for reporting progress.

The Plan is organized according to the six objectives outlined in Section 406(b) of FDAMA.

These objectives address critical components of FDA's responsibilities. The Agency, working in collaboration with key players in both the public and private sector, will pursue each objective as part of a total consumer health protection and enhancement system. The process begins with the research and development of new products with great health- and life-sustaining potential, and ends with the safe and effective consumption of these products. Figure 5 illustrates how FDAMA objectives are crucial elements of FDAs total contribution to beneficial public health outcomes.

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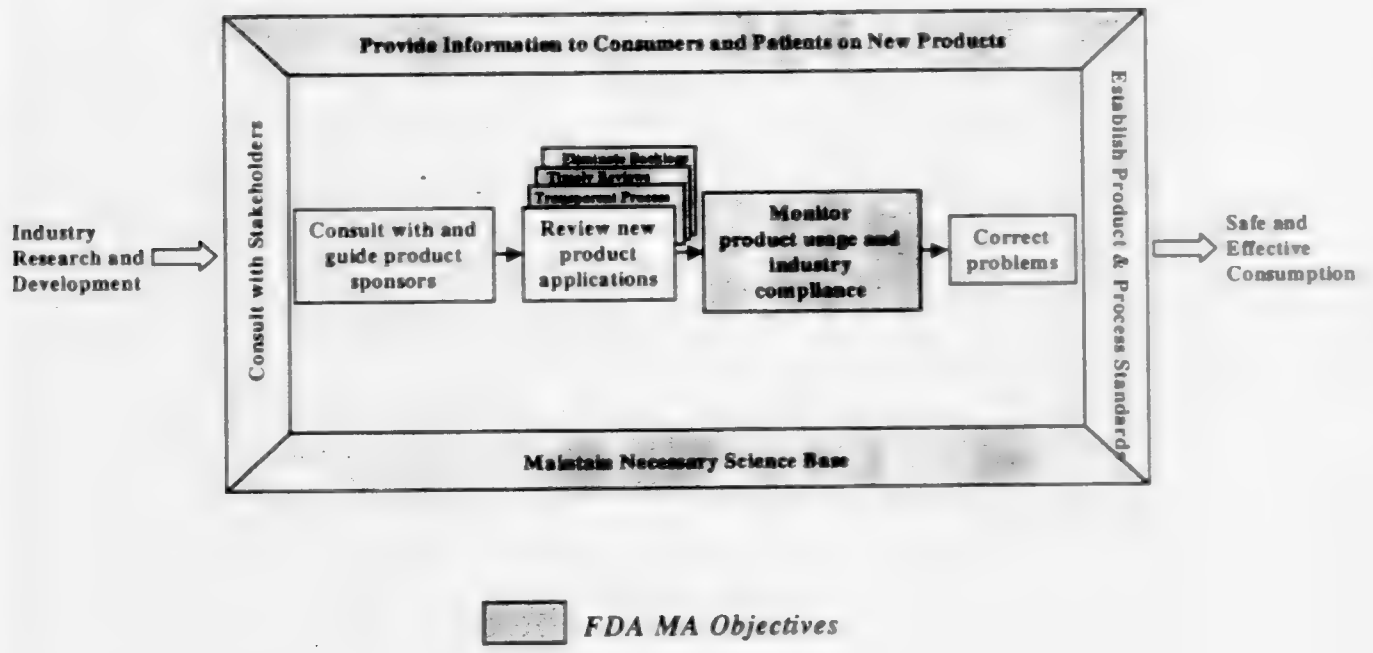
Figure 5: How FDAMA Objectives Support FDA's Responsibilities



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The six 406(b) objectives are addressed in five sections below. The five sections examine the FDAMA objectives in order by objective (A, B, C, D, and E&F). Each section provides:

- Identification of Needs—Outlines the unmet demands stated by law and expressed by the Agency's stakeholders, which FDA must address to achieve the FDAMA objective and to fulfill its mission.
- Stakeholder Views—Selected Stakeholder opinions on the importance of the need being addressed.
- Current Innovations and Reinventions—Creative improvements FDA has underway that will help achieve objectives.
- Plan for Meeting Statutory Requirements and Public Expectations—Key strategies that are planned for the future that will narrow the gap between expectations and current capabilities.
- Performance Goals for FY 1999—FY 1999 goals are based on final Congressional appropriations and may be subject to adjustment pending Agency resource allocation decisions.

Objective A—Maximizing the Availability and Clarity of Information About the Process for Review of Applications and Submissions (Including Petitions, Notifications, and any Other Similar Forms of Requests) Made Under This Act

1. Identification of Needs

FDA's ability to provide clear, adequate, and timely information on its application review processes must be improved by making FDA processes transparent to stakeholders and involving stakeholders early in the review process.

Make FDA Processes Transparent

While the Agency has developed written information (i.e., regulations, guidance documents, or internal procedures) on its review processes and requirements, more needs to be done to ensure that stakeholders understand FDA requirements. This lack of understanding is reflected in the quality of regulatory submissions received by FDA. Transparent processes also include openness on how FDA develops its requirements and how those requirements are applied within the agency during the review process.

Collaborate with Stakeholders Early in the Regulatory Decisionmaking Processes

In passing FDAMA, the Congress expected major improvements on how products are reviewed and approved by FDA. To meet this expectation, FDA must change how it responds to the product applicants during the review process—from being reactive to proactive through early applicant consultations. By consultation with product sponsors, the Agency will be able to help define the critical issues that must be addressed in a product application, to define the types of clinical trials that appear necessary, and to avoid unnecessary effort. This shifting of resources is not, however, without cost, and additional resources will be needed to meet the increasing number of product submissions generated by the doubling of biomedical research funding at the National Institutes of Health and by the regulated industry.

2. Stakeholder Views

Stakeholders endorsed the concept of a more open and collaborative relationship between FDA and its regulatory colleagues and industry. Many stakeholders commended FDA for the efforts the Agency has already made to address this objective. Requests for improved communication about application review processes emphasized not only communication from FDA to industry, but also greater stakeholder participation in regulatory decisionmaking. The examples below illustrate some of the further improvements stakeholders requested:

- Make FDA policies and procedures more transparent, particularly those related to Good Review Practices [trade association].
- Provide requested clear, concise, and up-to-date guidance to product sponsors. Where the existing guidance is deemed inadequate or scientifically outdated, FDA should issue guidance about the specific product applications [trade association].
- Work closely with product sponsors to ensure submissions are properly formatted [trade association].
- Provide a sample submission guide to applicants and make available more templates, prototypes, and examples of submissions to clarify FDA's expectations of the regulated industry and to expedite the review process [trade association].
- Provide as much feedback to industry as possible in the earliest time frame because many of the questions that are generated will result in long-term experiments or clinical trials [industry representative].
- Industry input in developing guidance documents, such as the one on inclusion of women in clinical trials, and regulations is key in maintaining the integrity of the clinical trials process and of the application review process [consumer advocacy group].
- Collaborate and interact more with the regulated industries to avoid issuing guidance documents that do not adequately take into account useful perspectives that can be provided by industry to the FDA [trade association].
- Use the formal binding presubmission consultations to reduce backlogs and to speed the approval process. [trade association].
- "Expedite the approval of appropriate nutrient content claim and health claim petitions and citizen petitions related to food labeling." [trade association].

3. Current Innovations/Reinventions

FDA is improving its review processes and specific product applications through collaborative agreements, process re-engineering, and information technology.

Agreements Among FDA, Industry, and Others Enhance Review Processes

FDA, academia, and industry are working to establish a program to provide research to inform and assist FDA in developing regulations and guidance regarding the types of product quality information that should be submitted in a product application (e.g., Collaboration for Drug Development Improvement and Product Quality Research Initiative).

FDA collaborates with regulatory authorities of Europe and Japan on drug development requirements (e.g., International Harmonization).

FDA Continues to Improve Review Processes Through Process Re-engineering

FDA's medical device program improved by providing manufacturers with regulatory options to reduce regulatory burden for lower risk products and by improving communication with manufacturers. As part of the Reinventing Government Initiative (REGO), FDA has simplified the filing process by consolidating review application forms for biotechnology-based drugs, blood, vaccines, and other drugs into just one form. This enables companies to provide higher quality submissions to the FDA and reduces their application preparation time.

During FY 1997 and early FY 1998, the Foods Program conducted under contract a review of deficiencies in over 600 industry-submitted food and color additive petitions. CFSAN currently is reviewing the contractor's report and expects to use the information to improve guidance to petitions and to

implement a stronger refusal to file policy.

FDA Uses Information Technology To Improve Access of Review Processes

The FDA website (*www.fda.gov*) provides specific information to particular stakeholder groups: consumer, industry, state and local officials, patients, health professionals, women, and children.

FDA has published information on its review processes to assist applicants. For example, the FDA Center for Drug Evaluation and Research (CDER) Handbook is available on the Internet.

The Foods Program is completing testing on a document management and workflow system that will replace the current tracking system for petition reviews and will make petition data available on demand in electronic format on reviewer's and administrator's desktops. The new workflow tracking system will permit realtime access to detailed information on petition status and tasks.

4. Plan for Meeting Statutory Requirements and Public Expectations

Section 903 of the FD&C Act, as amended by FDAMA, authorizes the Commissioner to conduct educational and public information programs relating to the responsibilities of FDA. Under FDAMA (Section 406), FDA's mission is expanded to include the prompt review of clinical research and regulatory submissions, harmonization of regulatory requirements with other countries, and consultation of various experts in fulfilling the mission.

FDA's plan for meeting these statutory requirements will encompass a variety of actions intended to make Agency processes transparent and to improve collaboration between product sponsors and the agency. These include:

- Continuation of developing appropriate regulations, guidance documents, and internal operating policies and procedures.
- Expansion of the use of communication media and information technology (e.g., the FDA website) to provide written materials and information on FDA regulatory review processes.
- Improvement of the efficiency and effectiveness of Agency review processes through process re-engineering, project management, performance management, and electronic technology.
- Development of innovative approaches to facilitate sponsor and Agency consultations.

5. Performance Goals for FY 1999

The table provided in this section links the performance goals and measures with statutory requirements addressing information about the review processes. Under the FD&C Act, the Commissioner is authorized to conduct educational and public information programs relating to FDA's responsibilities. These performance goals illustrate two types of efforts. The first type identifies the development of a method that can be applied to a review process. An example would be to recognize a standard used for a medical device review. The second type identifies an improvement to enhance the Agency's ability to provide updated information or to achieve greater capability and capacity for accepting electronic regulatory submissions.

Highlighted below are key performance goals for FY 1999 in the area of electronic regulatory submissions. These goals are critical to the Agency's ability to provide timely review of clinical research and regulatory submissions, which is the intent of FDAMA. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Complete the development of industry guidance required for electronic submission by the end of FY 2002.

Achieve electronic submission capability for certificates to foreign governments.

Achieve capability and capacity for electronic submission and archiving of information required to submit New Drug Applications (NDAs) without paper copy by the end of FY 2002.

Achieve capability and capacity for electronic submission and archiving of Abbreviated New Drug Applications (ANDAs) by the end of FY 2002.

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline
Applicants are invited to meet with FDA before submitting an application to discuss the presentation and format of supporting information. If the applicant and FDA agree, the applicant may submit tabulations of patient data and case report forms in a form other than hard copy, for example, on microfiche or computer tapes.	FD&C Act, Section 505 and 21 Code of Federal Regulations (CFR) 314.50(f)(4).	By the end of FY 2002, CDER will complete development of industry guidance required for electronic submission.	In FY 1997, electronic signature guidance was published.
Before 30 days after the date of submission of an application to export a drug, the FDA must review the application to determine if it meets all applicable requirements.	FD&C Act, Section 801(e) and 802, 21 *CFR* 210, Drug Export Amendments Act of 1986 (PL. 99–660), FDA Export Reform & Enhancement Act of 1996.	By the end of FY 1999, CDER will achieve electronic submission capability for certificates to foreign governments.	In FY 1998, develop and pilot Export Certificate Program.
For records submitted to the Agency, persons may use electronic records in lieu of paper records or electronic signatures in lieu of traditional signatures, in whole or in part, provided that certain requirements are met.	FD&C Act, Sections 201–903; PHS Act Section 3512, 21 *CFR* 11.	By the end of FY 2002, CDER will achieve capability and capacity for electronic submission and archiving of information required to submit NDAs without paper copy.	By FY 1997, establish the structure of the Electronic Document Room (EDR).
		By the end of FY 2002, CDER will achieve capability and capacity for electronic submission and archiving of ANDAs.	By FY 1997, establish the structure of EDR.

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline
Any record of the FDA that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public, except that data and information subject to the exemptions established in 21 CFR 20.61 for trade secrets and confidential commercial or financial information, and in Section 20.63 for person privacy, shall be disclosed only to the persons for the protection of whom these exemptions exist.	FD&C Act, Sections 201–903, 5 United States Code 552, 21 *CFR 20.*	By the end of FY 2002, CDER will make publicly releasable information available via Internet.	By FY 1998, the Electronic Document Room, as required by the Electronic Freedom of Information Act, will be initiated.
Publish regulations for adequate and well-controlled clinical trials by 4/9/98 and substantial evidence by 10/9/98.	Animal Drug Availability Act (ADAA), (P.L. 104–250) Section 2(e).	FDA Center for Veterinary Medicine (CVM) will revise Investigational New Animal Drug Application procedural regulations and implement provisions of the ADAA and CVM's REGO initiatives.	ADAA enacted by 10/9/96
Recognize and approve list of standards suitable for use in application review.	FD&C Act, Sections 514 (b) and (c).	FDA Center for Devices and Radiologic Health (CDRH) will recognize over 415 standards for use in application review and update the list of recognized standards.	0 recognized

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Objective B—Maximize the Availability and Clarity of Information for Consumers and Patients Concerning New Products

1. Identification of Needs

FDA is reviewing applications for new drugs, biologics, medical devices and food additives more quickly. Dissemination of information that will enhance consumption decisions about these new products must keep pace with the products' earlier availability. The Agency would like to provide timely information to consumers and patients, however, in some instances products are reaching the market faster than FDA can inform its stakeholders. The Agency's ability to disseminate information must be enhanced by upgrading its technology, its computers, and the training of its employees to keep abreast with the latest developments in technology. FDA is under pressure from Congress, the medical community, patients, and industry to provide timely unbiased information to its stakeholder.

- Dissemination of information to consumers and patients concerning new products must keep pace with the earlier availability of products.
- The Agency is aware of the growing diversity of consumer health needs and interests. To respond to this diversity, FDA is attempting to target product information that it is tailored, as much as possible, to appropriate patient and professional audiences.
- The growth in health benefits made possible by scientific advances and new product technology is a tremendous benefit to U.S. consumers. The speed of technology development, combined with increasing product complexity, requires creative approaches in keeping everyone rapidly and accurately informed.
- FDA recognizes that consumers and patients want and deserve active input and participation in the Agency's policy and product decisions. The Agency is receiving rapid input from consumers.
- FDA considers collaborations with others in the public and private sector critical to achieving synergies in information technology. FDA has accepted the challenge of dissemination of accurate and timely information, although at times it can be daunting, particularly because of the widespread audiences the Agency serves.
- Use of the Internet has become increasingly central in FDA communication with its stakeholders. FDA must upgrade its capabilities in this area.

2. Stakeholder Views

Stakeholders strongly agree that maximizing the availability and clarity of information to consumers and patients about new FDA-regulated products is a priority. A selection of stakeholder comments is provided below:

- "We have consistently argued that efforts to reform the Agency must build on, not dismantle, the ability of the FDA to safeguard drug products . . . As the FDA's authority has been relaxed, we feel that safety has been relaxed as well." [consumer advocacy group]
- "We see the FDA . . . as a data warehouse, as an information source." [professional association]
- ". . . FDA should aggressively educate patients' advocacy groups, disease-specific organizations, disease experts, and new biotech companies about FDA's function, process, and scope." [consumer advocacy group]
- Ensure the validity and integrity of drug information provided on the Internet. [State, local, or federal government]
- Re-evaluate [FDA's] policy on direct-to-consumer advertising. [professional association and consumer advocacy group]
- "Do not depend upon scientists to review the direct-to-consumer advertising." [State, local, or federal government]
- "Although Congress imposed this requirement, or at least asked FDA to come up with ways to maximize information about new products, our feeling on this was that this is really not

a function for FDA to promote new products. Rather, FDA's obligation would be to refer inquiries about new products, new drugs, etc. to the appropriate parties, and that might be professional societies, physicians, medical device companies, and drug companies. [trade association]

• Use plain language on product labels. [consumer]

• Make risk and safety data and statistics available to the public via the toll-free Consumer Information Line. [consumer advocacy group]

• Inform the public when companies have been asked to revise or pull ads, and explain why. [consumer advocacy group]

3. Current Innovations/Reinventions

FDA is currently expanding its information for consumers and patients. The following are illustrations of the information exchange:

Collaboration

The Agency is collaborating with industry to inform patients and consumers of the availability of new drugs (prescription and over-the-counter [OTC] drugs). FDA engages in cooperative research with industry for new food items as well as collaborates with industry to bring better food labels and information to its stakeholders.

The Agency is collaborating with industry to provide technical, non-financial assistance to manufacturers to enable them to bring their products that meet FDA standards to the market more quickly.

Outreach

FDA has an outreach program to keep physicians informed of new drugs available to their patients. The Agency is working cooperatively with the drug industry, consumers, and patients to inform them of new drugs and emerging new drugs. Patients are able to receive information on new therapies approved by foreign countries before they are approved by the Agency. Additionally, the Agency's Public Affairs Specialists in the field offices furnish information to interested consumers and patients concerning new drugs, devices, etc.

FDA delivers educational and technical assistance in the area of food safety messages and uses. The FDA Consumer/Fact Sheets and National Food Safety Hotlines are part of the Agency's outreach. The Internet is used to bring new information to consumers and patients. Each Center has its own web page. Many of these pages are interactive and allow the user to communicate with the Agency directly. Printed materials are provided to those that are without Internet capabilities, and many of the materials are in several languages. These materials help to inform consumers and patients about new drugs. The Veterinary Newsletter, exhibits, and Public Affairs Specialists programs keep the veterinary community abreast of the newest drugs and technology being developed.

During the 20th century, the nation has witnessed a more dramatic extension of longevity than humankind has ever seen. The Agency is making a concerted effort to ensure that older persons, their families, and their communities are aware of FDA's responsibilities and how the Agency can be a resource for them in improving the quality of their lives.

FDA's consumer protection and public health mission plays a particularly important role in building a sound health foundation for ensuring quality of a long life for older persons. The needs of the U.S. aging population are stimulating innovative research and technological advancements for both preventing and treating disease. The Agency makes a meaningful contribution to this research by facilitating the timely availability of safe and effective products, keeping unsafe or ineffective products off the market, and providing easily understandable and meaningful information about the availability of new products, as well as how to use products safely and effectively. In October 1998, the United Nations launched the International Year of the Older Person 1999 to bring global attention to the phenomenon of an aging world and the need to begin to establish the policies, programs, and services needed to meet the needs of an aging world. The Agency is an active participant in this initiative.

4. Plan for Meeting Statutory Requirements and Public Expectations

Section 406(b) requires the Agency to maximize the availability and clarity of information for consumers and patients concerning new products. FDA is engaged in a variety of activities to fulfill this requirement that revolve around four themes. First are Agency efforts to ensure that product information is tailored to meet the special needs of diverse populations. One example is the implementation of public awareness campaigns for consumers, i.e., *Take Time to Care, Office of Women's Health; Mammography Awareness Seminars; Food Safety Programs (Fight BAC!™); Over the Counter Labeling Changes (OTC) Campaign;* and the *Partnership for Food Safety Education.* As the population becomes more culturally diverse, FDA must reach out to consumers in ways they will understand. For instance, Public Affairs Specialists give seminars on new drug therapies, health fraud, labeling, etc. in different languages to fulfill the needs of diverse populations.

The Agency is entering into an increasing number of stakeholder "collaborations" to achieve a multiplier effect (e.g., with print media, radio, television, industry, other federal agencies, consumers, health professionals, and associations). Another example is implementation of the Pharmacist Education Outreach Program to assist pharmacists in explaining the drug approval process to consumers.

Another approach is focusing FDA resources so that patients are an integral part of the health care decisionmaking process. FDA has established programs to make promising investigational drugs, therapies, and devices available to patients with serious and life-threatening conditions. For example, FDA has also included patient representatives on advisory committees considering products for HIV/AIDS, cancer, and other serious diseases.

The technological revolution provides the Agency the tools to offer quick access to a wide range of information to consumers through various methods. The Internet is being used as a means for two-way communication—both to disseminate information about new products and to quickly answer questions about new and existing products. Additionally, the Agency will participate with NIH in the establishment of (under Section 402 of the Public Health Service Act) a registry of publicly and privately funded clinical trials for experimental drugs and biologics being tested for serious or life-threatening medical conditions. This registry will simplify the process of obtaining information.

5. Performance Goals for FY 1999

The table provided in this section links the performance goals and the measures with statutory requirements to regulate information provided to consumers and to ensure that consumers understand OTC drug information. The FY 1999 performance goals focus on both OTC and prescription drugs. FDA wants consumers and patients to receive and to be able to refer to the highest quality information when taking either OTC or prescription medications.

Highlighted below are key performance goals for FY 1999. These goals seek to provide drug information, in easily understood language, to consumers and patients faster through various outreach efforts. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Evaluate drug information provided to 75 percent of individuals receiving new prescriptions.

Improve OTC information and consumers' ability to understand it by 2001.

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Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline	FY 1998 Performance Baseline
FDA regulates prescription drug advertising and labeling by monitoring all prescription drug promotions, enforcing the laws and regulations, developing new guidance, and conducting research to support the program.	FD&C Act Sections 502(n) and 505 and 21 *CFR* 200-202	FDA will a) evaluate the availability, quality, and usefulness of prescription drug information provided to 75 percent of individuals receiving new prescriptions; and b) complete two studies that will aid in development of comprehensive drug information.	In 1996, 65 percent of patients received written information about prescription drugs. Assessments are underway to determine the degree to which this information meets the criteria for "useful" information.	Initiate partnerships with three major organizations
				Target 25 percent of review documents processed using Electronic Data Management System (EDMS)
FDA is responsible for assuring that OTC drugs are safe and effective for use—this includes improving the legibility and clarity of all OTC drug labels as well as consumer's ability to comprehend important warnings and usage directions.	FD&C Act Section 502 and 21 *CFR* 201, 21 *CFR* 211.132	By the end of FY 2001, CDER will improve the legibility and clarity of OTC drug labels, improve the consumer's ability to read and understand important warnings and usage directions; and complete two studies that will aid in development of comprehensive drug information.	*Federal Register* publication on February 27, 1997 (62 FR 9024) published a proposal providing for standardized format for labeling. Study topics have been identified and studies are being designated.	

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Objective C—Implementing Inspection and Postmarket Monitoring Provisions of this Act

A central part of FDA's responsibilities to protect the public health includes: (1) ensuring that manufacturing establishments and the products being produced by these establishments—both domestic and imported—are meeting safety and quality standards that are acceptable to the U.S. and (2) monitoring these products to identify and correct any problems associated with their consumption and use. Through inspection and monitoring activities, potential hazards are identified and corrected in time to prevent or minimize public exposure.

The discussion that follows is divided into these two areas of postmarket responsibility.

Subobjective C1.—Assuring Product Safety

A. Domestic Inspections

1. Identification of Needs

FDA is responsible for ensuring the safety of products produced and distributed by more than 100,000 domestic establishments. The Agency uses its inspection authority, as directed by the statute, to provide this assurance. Approximately 45,000 of these establishments manufacture or process regulated product. FDA inspected 30 percent of these facilities in FY 1997. A sizable number of the remaining establishments (23,000) are distribution facilities, of which FDA inspected 10 percent in FY 1997. The remainder includes 10,000 mammography facilities, which FDA inspects at a nearly annual rate, and a varied assortment of other establishment types, e.g. control laboratories, importer/brokers, clinical investigators, and conveyances, of which FDA inspected about 14 percent in FY 1997. Overall, approximately 40 percent of FDA's current inspectional coverage is provided through contracts with states.

As these varying inspectional coverage statistics indicate, FDA exercises considerable discretion regarding the frequency and comprehensiveness of inspections. For approximately 25 percent of this inventory, however, the law requires FDA to conduct inspections at specified maximum time intervals. Certain manufacturing facilities must be inspected at least once every 2 years, and mammography facilities must be inspected at least once each year. In recent years, inspection coverage has fallen short of meeting these statutory requirements. The table below summarizes the Agency's recent coverage of the domestic inventory including the segment subject to statutory minimum inspection coverage as well as the segment over which the Agency has discretion regarding inspection frequency. To meet the statutory requirements, 100 percent of the mammography facilities and at least 50 percent of the other statutory establishments should have been inspected in FY 1997. As the data show, with the exception of mammography facilities, neither goal was reached.

Program area	Inventory	Statutory coverage		Non-statutory coverage	
		Establishments *	Coverage in FY 1997 (percent)	Establishments *	Coverage in FY 1997 (percent)
Biologics	5,685	2,787	46	2,898	13
Human Drugs	19,749	6,408	23	13,341	12
Devices (excluding mammography)	27,638	4,870	28	22,768	9
Mammography	10,000	10,000	96	.....	.....
Foods	49,000	NA	NA	49,000	23
Animal Drugs and Feeds	6,414	1,688	27	4,726	13

* Status as of May 1998.

2. Stakeholder Views

Agency stakeholders expressed strong support for more regulatory enforcement in general, and the continued focus on risk-based inspections in particular.

- "Stratify the inspections based upon past history of compliance of companies, the degree of risk of the product, and various other elements." [trade association].
- FDA should increase its efforts to monitor the marketplace to remove unapproved products and also those that provide unfair competition. [trade association]
- Inspections should take a comprehensive approach and "focus on the health impact of the regulations, not just the 'black-and-white' of the regulations. [state, local or Federal government]
- There should be more enforcement efforts to prevent distribution of illegally marketed and compounded drugs, unapproved drugs not manufactured in accordance with current GMPs, illegal extralabel use practices, illegal distribution of veterinary prescription drugs, marketing of unapproved feed ingredients, and extraordinary claims on animal feed labels. [trade and professional associations]
- Stakeholders endorsed HACCP systems for seafood and retail settings and the possible expansion of HACCP into other food-related areas, but only when supported by science and a high consumer safety priority. [trade association]
- "Move towards a voluntary HACCP-based system for dairy products and away from checklist inspections and prescriptive plant processing regulations." [trade association]
- HACCP would be applicable in general for "foods with a demonstrated high risk (e.g., unpasteurized juice)." In contrast, stakeholders urged the Agency not to "promote the HACCP process for device conformance," but to consider ISO certifications [standard setting organization].
- Stakeholders encouraged FDA to work closely with the states and to "be a leader (i.e., leadership in science, setting standards, evaluating state programs, certifying inspectors)." [state, local or federal government].
- The Agency should provide more guidance and training to state investigators to minimize inconsistency between investigations in different states and districts, thereby contributing to a level playing field for regulated firms. The Agency should involve states in the development of enforcement strategies related to animal drugs and feeds. [state, local or federal government]

Stakeholders tended to support the idea of third-party inspections, especially noncritical inspections.

- The Agency should identify more functions that could be performed by third parties. [trade association]
- In some cases, particularly the manufacture of animal feeds, voluntary self-inspection with third-party oversight might be appropriate. [state, local or federal government]
- At the same time, however, the Agency needs to be careful to avoid duplication of effort and to ensure consistency between FDA inspectors and third parties. [trade association]

3. Current Innovations/Reinventions

The Agency's domestic inspection program is an integral part of the strategy for monitoring the compliance status of the regulated industry. The goals of an inspection may be many and varied, i.e., to verify data submitted to the FDA in a new drug or biologic application, and to ensure continued compliance with application commitments. Inspections monitor the regulatory control over manufacturing operations including compliance with current GMP regulations. The results of inspections form the basis for many of the Agency's administrative and regulatory decisions, including new drug, device, or biologic approvals, as well as detecting industry problems or objectionable conditions and practices.

Establish Risk-Based Priorities

Given the large inventory of establishments it must inspect with limited resources, FDA targets the highest risk products and those facilities whose violations of standards would most likely expose the public to unnecessary risk. The cornerstone of the Agency's drug (human and animal), medicated feed, biological, and medical device inspection strategy is the biennial inspection requirement, which mandates the inspection of critical establishments in the Agency's inventory, primarily manufacturers, at least once every 2 years. While FDA has no such legal mandate for food inspections, it is moving toward establishing a vertically integrated food safety system that is risk-based and which would allow it to inspect high-risk establishments every 1 to 2 years and moderate-to-low risk establishments every 4 years.

Adopt a System Rather Than a Piecemeal Approach to Agency Regulation

Manufacturing processes are becoming more complex due to the rapid advancement of science and technology. This trend continues to accelerate. This increasing complexity is mirrored in FDA's approach to ensuring comprehensive, consistent, and fair inspections.Where, in the past, the Agency often perceived its role as providing quality control for the industries it regulated, today, it recognizes the essential role that establishments themselves must play to ensure product quality assurance.The Agency is focusing more on ensuring that the systems the industry has in place to monitor the quality of its products are adequate. This approach stresses the importance of HACCP-type inspections and frequently requires that the Agency take a multidisciplined, team approach to inspections.

- the FDA Center for Biologics Evaluation and Research (CBER), which used to conduct many inspections on its own, joined with the FDA Office of Regulatory Affairs (ORA) to form 'Team Biologics' whereby teams of CBER product specialists and specially trained investigators from ORA's field force work together to conduct surveillance inspections. Follow-up compliance actions are handled under a streamlined system that provides concurrent review by CBER and ORA.
- CDER, to ensure inspection consistency, is developing standards for investigator training and certification for performance of pharmaceutical inspections.
- CFSAN has developed and implemented HACCP controls for seafood and has proposed HACCP controls for the juice industry. All seafood processors had been inspected by the end of FY 1998 to verify proper use of HACCP, and 6,681 industry officials and federal and state inspectors have been trained in seafood HACCP through the Seafood Alliance.
- CDRH, whose quality systems regulations ask manufacturers to take more responsibility for assuring the quality of devices, is moving toward systems-oriented inspections and developing HACCP-type programs for firms with a good compliance history.

Work More Closely With External Stakeholders

The Agency increasingly has emphasized communication and education as alternatives that are at times preferable to and more effective in achieving and maintaining compliance than the more traditional enforcement approaches used in isolation. It accomplishes this by providing training and workshops for industry groups, seeking the views of stakeholders, and sharing information with stakeholders and colleagues. Some examples of the Agency working closely with external stakeholders include:

- CBER produced a satellite broadcast on blood establishment inspections to educate the industry and held a workshop for manufacturers of licensed *in vitro* diagnostics.
- CDRH undertook education efforts on quality systems requirements.
- CFSAN issued guidance on GMPs and Good Agricultural Practices (GAPs), worked with the U.S. Department of Agriculture (USDA) to achieve adoption of the Food code by an increasing number of states, collaborated with JIFSAN/World Health Organization (WHO) for risk assessment, and cooperated with USDA and the Centers for Disease Control and Prevention (CDC) to implement a national education program on retail food preparation practices.
- CDER, ORA, and a major industry scientific trade organization in conjunction with a university developed a new approach for training field investigators in pharmaceutical manufacturing operations and the application of GMP and other FDA regulations to new drug development.
- CVM, in cooperation with stakeholder groups, sponsored satellite teleconferences concerning compliance with the BSE feed regulation and the Animal Medicinal Drug Use Clarification Act, which concerns extralabel drug use.
- District offices conduct "grass roots" meetings and industry exchange meetings on a variety of regulatory matters as a means of facilitating an ongoing dialogue with various constituencies.

4. Plan for Meeting Statutory Requirements and Public Expectations

Under provisions of the Food, Drug and Cosmetic Act and the Public Health Service Act, FDA is required to conduct biennial inspections of approximately 16,000 registered drug, biologic and device production facilities. Although there is no statutory requirement that mandates a particular frequency for the inspection of any food establishment, or those drug, biologic and device facilities excluded from the biennial requirement, the statute obliges the Agency to ensure the safety of regulated products within these establishments. Accordingly, goals have been set within these establishment categories to achieve an average inspection cycle of once every 4 years, with appropriate risk-based variations in this cycle where warranted.

FDA fell short of meeting its statutory biennial and annual inspection obligations by approximately 4,000

inspections in FY 1997. In an effort to improve its performance in these critical areas, FDA plans to rely increasingly on states and other third parties, both for direct help with some statutory inspections and for other important inspectional obligations, thus freeing some of FDA's own resources to cover additional statutory obligations. Because all public and private sector organizations in the future will be subject to the same resource-constrained environment, FDA may have to consider that even a highly collaborative inspectional network may not be adequate to completely meet existing statutory inspectional requirements. A strategic reassessment may be in order to determine the kinds of statutory flexibility that would be desirable to preserve the comprehensive consumer protection intent of the FD&C Act, and at the same time, allow FDA to address the most critical health and safety priorities. Some examples of Agency initiatives either planned or already underway include the following:

- Developing contracts with states and public health agencies to inspect unlicensed blood banks.
- Reinstating state contracts for medical gas inspections, oxygen bars, and emergency medical services. FDA is considering a pilot First Party Audit Program (FPAP).
- Concentrating its own resources on the highest risk devices such as cardiac implantables and relying on third parties for inspection of lower risk products.
- Continuing to develop contracts and collaborations with states for both statutory and non-statutory animal drug and feed inspections.
- Conducting joint surveillance work with CDC and USDA and working with the Association of American Feed Control Officials (AAFCO) to develop a model program for medicated feed manufacturers that includes self inspection.

Special Emphasis on Food Safety: The Agency recognizes its obligation to ensure the safety of the food supply, and the public expects food to be safe. To met this expectation, FDA needs to inspect high-risk establishments every 1 to 2 year and moderate-to-low risk establishments every 4 years. This level of inspection coverage will require an additional 4,000 to 6,000 annual inspections. FDA's own food safety assurance efforts is being integrated with a national risk-based food safety system. This will require close collaboration with USDA, CDC, the states, food manufacturers and food retailers. Key elements of the initiative are:

- Surveillance activities that enhance electronic communication with states and other agencies to permit rapid identification of and response to foodborne hazard outbreaks;
- A cooperative inspection and monitoring effort with states that focuses on high-risk firms, and emphasizes enforcement of initiatives such as FDA's BSE Feed regulation.
- Education emphasizing safe handling practices for consumers and retailers through FDA's Model Food Code; and
- Research to develop improved methods of detecting and identifying pathogens and formulating preventive interventions.

5. Performance Goals for FY 1999

This section contains two tables. The first table summarizes the Agency's domestic inspection performance goals for FY 1999. The second table links these performance goals to the statutory requirements.

FY 1999 Performance Goals

Inspect 46 percent of registered biologic firms
Inspect 23 percent of registered drug manufacturers, propagators, compounders, or processors
Inspect 28 percent of registered class II and III medical device manufacturers, propagators, compounders, or processors
Conduct 8,898 inspections of mammography facilities
Ensure that 50 percent of seafood industry operating under HACCP
Develop HACCP final rule for fruit and vegetable juices
Inspect 50 percent of registered animal drug and feed establishments

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline
Biennial GMP inspections of biologic firms (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 46 percent	Coverage: 46 percent.
Biennial inspections of registered drug manufacturers, propagators, compounders, or processors (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 23 percent	Coverage: 23 percent.
Biennial inspections of registered class II and III medical device manufacturers, propagators, compounders, or processors (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 28 percent	Coverage: 28 percent.
Annual inspections of mammography facilities	PHS Act—Sec. 354	Conduct 8,898 inspections	Conduct 8,280 inspections.
General authority to inspect food, drugs, devices, or cosmetic establishments.	FD&C Act—Sec. 704	Ensure that 50 percent of seafood industry operating under HACCP. Develop the HACCP final rule for fruit and vegetable juices.	
Biennial inspections of registered animal drug and feed establishments (50 percent annually).	FD&C Act—Sec. 510(h)	Coverage: 20 percent	Coverage: 27 percent.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Subobjective C1—Assuring Product Safety (Continued)

B. Imports

1. Identification of Needs

Imported products pose multiple challenges to FDA. These include the sheer volume and diversity of products, the difficulty of ascertaining exactly which establishments are shipping products to the United States, and the difficulty of verifying conformity with GMPs quality systems. Each of these challenges, is described in the following paragraphs.

The Volume and Diversity of Products

FDA is responsible for ensuring the safety of nearly 4 million line entries that cross our borders annually, or over 12,000 entries per day. Imports of all products that FDA regulates have been increasing; pharmaceuticals, both finished and bulk, are increasing very

rapidly. Approximately $57 billion of FDA-regulated product was imported in 1997. The sources are diversifying and including more products from countries that are typically categorized as emerging economies, with emerging regulatory infrastructures. The products include, among others, food products that have been implicated in serious disease outbreaks in the United States, food products that could pose health threats if not processed and handled properly, over-the-counter drugs that do not require a new drug application with the Agency, as well as approved drugs, biologics, and medical devices.

Difficulty in Ascertaining Establishments Shipping to the United States

Section 417 of FDAMA [510(i) of the Act] now requires all foreign manufacturing establishments whose drug and device products are imported into the United States to register. There is, however, no universal registration requirement for producers of imported food products. Manufacturers/packers of low-acid canned food, acidified foods, and infant formula (all of which products are considered at high risk) register or list with the FDA; other food producers and processors are not required to register or list with FDA, making identification of sources of product difficult.

Difficulty of Verifying Conformity with GMPs/Quality Systems

There are two ways that typically are used to confirm that product has been produced properly—end point product testing (which for imports could be analysis of border samples) and on-site inspections. There are difficulties with both of these approaches. To date, no effective, scientifically based method has been established for general screening of foreign drug product for adherence to GMPs. Analysis of product samples is reasonably effective in assuring conformity, but the volume of trade and resource limitations preclude high rates of analysis. On-site inspections, the way of affirming conformity with good manufacturing practices/quality systems, are expensive and pose a host of logistical and practical difficulties. All foreign firms are aware that an FDA inspection is planned well in advance of the inspection, unlike the inspection of domestic establishments. Regardless of these challenges, there is consistent expectation from the Congress that FDA assure foreign product safety, and there is recurring congressional focus on FDA inspections of foreign manufacturing facilities.

2. Stakeholder Views

Stakeholders want assurances that foreign products meet the high standards expected of domestic products, and encourage FDA to conduct foreign inspections and periodic testing of product to confirm quality. Stakeholders strongly support FDA's activities in Codex and international harmonization, reflecting a desire to minimize regulatory burden while assuring that foreign produced food products are safe and therapeutic products are safe and effective. Stakeholders especially stress the importance of effective participation in Codex, because of the special place Codex holds in resolving international trade issues: the international standards that are adopted must reflect the standards and the high level of safety required in the United States. Support for pharmaceutical GMP mutual recognition agreements (MRAs) was predicated on the likelihood of there being equivalent standards as well as truly effective regulatory programs in MRA countries. The need for expanded funding support for Codex activities and for monitoring of imports was noted. A few typical comments are as follows:

Assurance that Foreign Product Meets High Standards Expected of Domestic Product

- "Realizing this would require improved resources and budgets, it would still seem appropriate to perform periodic [foreign] quality assurance inspections and [border] laboratory analyses for identity, potency, and purity to ensure the quality of the drugs manufactured in foreign countries, do, in fact, equal ours." [state, local, or federal government]
- "We do think more emphasis needs to be placed on inspections of imports for safety and purity, with the important caveat that such inspections should not constitute non-tariff trade barriers." [trade association]
- "We have concerns regarding imported foods. In many cases, the hygienic requirements for production and processing of a food in the United States are more stringent than in countries with competing foods that are exported into the United States. More effort needs to be focused by CFSCAN in reducing the risk to the consuming public from the imported foods.". [trade association]

Support for Codex Activities

- "* * * the Codex has grown in significance as more and more of our nation's food supply is either imported or exported. Food regulatory bodies around the world, including the FDA, have begun to recognize that harmonized international standards are not just a good idea. They are essential if the country is going to compete in today's global marketplace." [trade association]
- "Codex quality and safety standards are being utilized increasingly to resolve food safety disputes between nations in the World Trade Organization. Therefore, FDA must play an active role in Codex to ensure international standards and guidelines are consisent with US requirements." [trade association]

Support for Mutual Recongition Agreements (MRAs)

- "CVM needs to determine whether foreign countries' requirements and systems for animal drug approvals ae equivalent to those in the United States." [trade association]
- "While the MRA is attempting an honorable and desirable result, we would like to stress that the foreign countries should not only have equivalent standards but effective regulatory programs as well." [state, local, or federal government]

* * * but a Cautionary Note

- "FDA needs to be a spokesperson for public health. The whole drive behind international harmonization is trade concerns * * * That may be fine from an economic standpoint, but it has nothing to do with FDA's public health mission. FDA needs to be there * * * to put public health * * * if not first, at least equal to trade concerns." [consumer advocacy group]
- "* * * there is no question that we are bound by international agreements to harmonize regulatory standards in the area of food regulation * * * [T]his presents not only a threat but an opportunity because if we are going to go about harmonizing regulatory requirements, we can go up or down * * * When our current requirements may not be that high, we should raise our requirements and advocate the stronger requirements to become the international standard and a model for the U.S.". [consumer advocacy group]

3. Current Innovations/Reinventions

FDA must ensure that the structure in place at the point of origin results in product being shipped to the United States meeting FDA requirements for safety, quality and/or therapeutic efficacy. This is a prevention-based strategy. A secondary strategy is detection based: conduct inspections of establishments shipping product to the United States, and screen product at the border for more intensive review.

Electronic screening allows conforming product to more quickly into commerce, while identifying product that may need more review at the border.

To deal with an explosively expanding workload and flat resources, FDA has directed its non-Prescription Drug User Fee Act of 1992 (non-PDUFA) foreign inspection activities toward higher risk products and is expanding PDUFA inspections to include more comprehensive inspections of facilities. More screening of product at the border is being accomplished through electronic means. And finally, analysis of product at the border is increasingly targeted toward product that is expected to pose high risk, as identified in the electronic screening. This risk-based prioritization means that many medium-risk product manufacturing facilities are not inspected, and most lower risk product facilities are not inspected.

4. Plan for Meeting Statutory Requirements and Public Expectations

With additional resources, FDA expects to strengthen the safety net that extends from the point of production in source countries through their entry into the U.S. These strategies encompass: (1) Reducing the probability that violative products will be exported to the United States; (2) Making rapid and reliable decisions on product entry at the border; and (3) Targeting violative products at the border and preventing their entry.

To reduce the probability that violative products will be exported to the United States, FDA will continue to participate in international negotiations and establishment of mutual recognition agreements with other nations. These activities will assure that products from those nations are meeting FDA standards, and will also increase the number of foreign inspections. As international regulatory agreements are negotiated among trading nations, the Agency will explore new and innovative institutional arrangements, such as a third-party certification of both imports and exports. These arrangements will have to be cost-effective, with statutory mandates, and enforce health and safety standards. To allow rapid entry of safe products, FDA continues to enhance its electronic screening process. To target violative products at the border, the Agency will maintain its ability to conduct laboratory analysis on a small percentage of products with potential problems, by increasing its sample analysis. The Agency will also enhance the electronic import entry system to provide for a broad-scope collection and analysis of information on product-country intersects that will allow development of national profiles. These profiles will provide the basis for establishing systematic risk-based priorities in examining import entries. Many of these efforts are obviously resource intensive, and linked closely with the steadily rising volume of imports.

5. Performance Goals for FY 1999

Consistent with the strategic directions noted above, FDA has established performance goals that support moving toward higher assurance of imported product safety in a time of increasing imports, as noted in the table below. The FD&C Act provides for sampling of product at import, and FDAMA modifications require the Agency to engage in activity designated to harmonize regulatory requirements with the objective of reducing the burden of regulations. Goals to support these activities address the short-term screening of imports at the border as well as longer term infrastructure development internationally, and these are noted in the table below. A more comprehensive table, illustrating legislative provisions, follows.

Associated with the immediate need at the border, the performance goals relate broadly to assuring the integrity of the screening system, such as by confirmation of the accuracy of entries and continual updating of the screening criteria and by improving the overall sampling and the targeted sampling rates at the border. Goals relating to international infrastructure development reflect ongoing commitment and heavy investment in international standard setting forums and negotiating equivalence agreements and mutual recognition agreements. Success in these realms would allow FDA to rely more on the regulatory structures in place at the point of origin of products being shipped to the United States. And finally, there are times when direct FDA inspections of foreign manufacturing sites are necessary to ensure the quality of product being shipped to the United States, and several performance goals reflect this need.

FY 1999 Performance Goals

Enhance the safety of imported products through increased surveillance of imported food products at the border, increased foreign inspections (from a target level of 40 to 75–100), through providing education, outreach, and technical assistance to foreign countries on the use of GAP/GMP guidance for produce, and through the evaluation of food production systems in foreign countries.

Enhance import screening capabilities for public health while ensuring that 55 percent of entries are released within 15 minutes.

Assess potentially violative imports through direct examination of 3 percent of entries.

Accept at least 20 percent of imports into the U.S. market through evidence that source country quality systems/standards/ audits meet the requirements of the FD&C Act.

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Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline
		Enhance the safety of imported products through increased surveillance of imported food products at the border, increased foreign inspections (from a target level of 40 to 75-100), through providing education, outreach, and technical assistance to foreign countries on the use of GAP/GMP guidance for produce, and through the evaluation of food production systems in foreign countries.	FY 1998: Participate in all meetings of Codex Alimentarius Committees that elaborate food safety standards including limits for contaminants in foods, codes of practice (e.g., GMPs) and guidelines (e.g., HACCP and decisions on equivalence); all World Trade Organization and NAFTA SPS matters involving food safety, discussion of all trade disputes involving legal interpretations of provisions of trade agreements that have implications in upholding U.S. food safety requirements.

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Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline
The Secretary of the Treasury shall deliver to the Secretary of Health and Human Services, upon his request, samples of foods, drugs, devices and cosmetics which are being imported or offered for import into the United States, giving notice thereof to the owner or consignee, who may appear before the Secretary of Health and Human Services and have the right to introduce testimony...If it appears from the examination of such samples or otherwise that (1) such article has been manufactured, processed, or packed under unsanitary conditions, or in the case of a device, the methods used in, or the facilities or controls used for, the manufacture, packing, storage or installation of the device do not conform to the requirements of section 520(f) [GMPs] or (2) such article is forbidden or restricted in sale in the country in which it was produced or from which it was exported, or (3) such article is adulterated, misbranded, or in violation of section 505 [NDA provision], then such article shall be refused admission, except as provided in subsection (b) of this section [relabeling, reconditioning]...	FD&C Act 801 (a)	Enhance import screening capabilities for public health while ensuring that 55 percent of entries are released within 15 minutes	FY 1997: 50 percent
		Assess potentially violative imports through direct examination of 3 percent of entries.	FY 1996: approximately 3.3 percent FY 1997: approximately 2 percent

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BILLING CODE 4160-01-C

Statutory Authority	Relevant Statute and/or Regulation	Relevant FY 1999 Performance Goals	FY 1997 Performance Baseline
The Secretary shall support the Office of the United States Trade Representative, in consultation with the Secretary of Commerce, in meetings with representatives of other countries to discuss methods and approaches to reduce the burden of regulation and harmonize regulatory requirements if the Secretary determines that such harmonization continues consumer protections consistent with the purposes of this Act. The Secretary shall support the Office of the United States Trade Representative, in consultation with the Secretary of Commerce, in efforts to move toward the acceptance of MRAs relating to the regulation of drugs, biological products, devices, foods, food additives, and color additives, and the regulation of GMPs, between the European Union and the United States. The Secretary shall regularly participate in meetings with representatives of other foreign governments to discuss and reach agreement on methods and approaches to harmonize regulatory requirements. The Secretary shall, not later than 180 days after the date of enactment of the Food and Drug Administration Modernization Act of 1997, make public a plan that establishes a framework for achieving mutual recognition of good manufacturing practices inspections	FD&C Act 803		
		Accept at least 20 percent of imports into the U.S. market through evidence that source country quality systems/standards/audits conform to the requirements of the FD&C Act.	The international trade data used to evaluate the status of this goal are affected by the nature and timing of evolving international agreements and standards. These data will be used to determine the volume of imports that conform with FDA requirements under these agreements and standards.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Subobjective C2—Adverse Event Reporting

1. Identification of Needs

FDA needs to work with its community of stakeholders and develop a systematic approach to address the problem of over 2 million injuries and deaths a year occurring as a result of consuming/using FDA-regulated products. The ideal approach should be comprehensive, involving the participation of regulatory agencies, health care givers, the regulated industry, and the consumers/patients themselves. Components of this system include:

- *A full understanding of the causes of product-related deaths and injuries:* FDA needs to ensure that causes attributable to product labeling, design, or composition are addressed in the premarket review programs, where required. FDA currently receives yearly thousands of reports of injuries and deaths associated with the misuse or failure of FDA-regulated products. FDA should improve the quality of information on adverse events and product failure and develop methods to enhance understanding of causes of product-related injuries. Currently, for example, the FDA's ability to identify and track the causes of food-borne illness is very limited.
- *New postmarket information-gathering programs:* FDA often has little date with which to make fundamental decisions about some products. This is especially true for products like foods and cosmetics for which no premarket approval is required. New programs must be initiated, in collaboration with other agencies, to provide such data. The Agency also needs to implement new ways of gathering data. The National Sentinel Reporting System, a nationally representative sample of medical device user-facilities, is expected to be a less expensive way of providing better and quicker data on medical device-related problems than the 100 percent mandatory reporting system now used. This system cannot be implemented without the necessary funds.
- *Rapid dissemination of findings:* FDA needs to be an active participant in a multi-institutional network that can detect adverse effects quickly and can disseminate information to health professionals industry, and consumers quickly.
- *Outreach and education:* A significant component of improving the current situation is to improve the feedback to health care personnel and consumers. Requested resources will be devoted to developing strategies , such as consumer publications and public service announcements, to reduce the number of injuries from food and cosmetic products.

2. Stakeholder Views

There is strong stakeholder support for improving the data collection, analysis, and dissemination of information from the existing Adverse Event Reporting System and for some of the news data collection initiatives. A few indications of these views follow:

- "The process for adverse event/injury reporting is perhaps the most urgent task facing FDA today. The process by which adverse injury report data is captured and converted to agency and consumer use must be addressed." [consumer advocacy group]
- "Perform analysis and trend reporting on error and accident reports and make this available to the industry." [trade association]
- "Improve the handling of adverse event reports for dietary supplements to involve the industry earlier." [trade association]
- "Consumer safety is being threatened by funding cuts in 1996 that eliminated the adverse-reaction report part of the voluntary reporting program for cosmetics. [trade association]
- "Accurate food safety statistics are vital to developing an effective strategy for enhancing the safety of our nation's food supply." [trade association]

3. Current Innovations/Reinventions

FDA has initiated several programs for gathering information on adverse events/injuries associated with the misuse or failure of FDA-regulated medical products and foods. These include the following:

MedWatch

MedWatch covers drugs, biologics, medical and radiation-emitting devices, and special nutritional products, such as medical foods, dietary supplements, and infant formulas. The MedWatch form is used for voluntary and mandatory reporting of adverse events and product problems by health professionals; the reports are sent on to the appropriate FDA component for analysis and follow-up action. Over 140 health professional and industry organizatios have joined the MedWatch effort as MedWatch Partners and actively support the program by promoting the importance of reporting serious adverse events or product problems to their members.

Adverse Events Reporting System (AERS)

With its new computer system, the *Adverse Events Reporting System (AERS)* is expected to form the basis for a revitalized pharmacovigilance program for the United States. AERS continues to be developed and will be relied upon by both CDER and CBER over ensuring years to provide accurate, accountable data for the performance goals identified for injury reporting.

FDA is responsible for monitoring the market for adverse effects of medical devices. FDA expects to receive over 63,000 postmarket reports in FY 1998, including mandated reports from medical device manufactures; voluntary reports from medical device professionals received through the problem reporting program (MedWatch); and results of field inspections. FDA currently is managing the huge numbers of reports in three phases. During the first phase, the reports are screened for completeness and entered into the data management system. During the second phase, the reports are analyzed for similar events, judged for severity, and searched for trends. The final phase focuses on action, such as issuing safety alerts and notifications to users (i.e., health professionals and patients) warning them of concerns and advising them how to prevent future occurrences.

Some manufacturers have been granted approvals to submit summary reports quarterly for adverse events involving specific devices. This summary erporting system is bieng expanded and will produce usable information at a small cost to both FDA and the industry.

FoodNet

FoodNet is the product of a cooperative venture among USDA, CDC, and FDA; it attempts to estimate the incidence of foodborne illness that is not revealed in obvious outbreaks. Most foodborne illness occurs in ways that appear sporadic and unrelated to each other. FoodNet, which has the ability to provide more comprehensive information through sources such as case-control studies and surveys of laboratories and physicians, can help FDA and its federal colleagues link illnesses that have a common cause, no matter where they occur.

National Antimicrobial Resistance Monitoring System (NARMS)

The National Antimicrobial Resistance Monitoring System (NARMS) was established in January 1996 as a collaborative effort among the FDA, USDA, and CDC. The system was

initiated in response to public health issues associated with the approval of fluoroquinolone products for use in poultry. The NARMS program monitors changes in susceptibilities to 17 antimicrobial drugs of zoonotic enteric pathogens from human and animal clinical specimens, from healthy farm animals, and from carcasses of food-producing animals at slaughter. The objectives of the system include: to provide descriptive data on the extent and temporal trends of antimicrobial susceptibility in *Salmonella* and other enteric organisms, to facilitate the identification of resistance in humans and animals as it arises, and to provide timely information to veterinarians and physicians. The ultimate goal of these activities is to prolong the lifespan of approved drugs by promoting prudent and judicious use of antimicrobials and taking appropriate public health action.

Vaccine Adverse Events Reporting System (VAERS)

CBER and CDC jointly overseas the *Vaccine Adverse Events Reporting System (VAERS)*, which receives mandatory reports as required by the National Vaccine Injury Act about adverse effects from vaccines. CBER and its colleagues are discussing electronic submission of reports, which would provide more rapid access of the VAERs data to manufacturers.

4. Plan for Meeting Statutory Requirements and Public Expectations

Prompt identification of new, previously unrecognized problems with FDA-regulated products has the potential to decrease morbidity and mortality associated with those products and maximize the safety of approved products. Thousands of deaths and injuries could possibly be avoided, or their consequences reduced, through a comprehensive strategy aimed at finding out why incidents occur and implementing strategies to prevent them from occurring again.

One of the Agency's primary objectives is the development and implementation of a system for improving the quality of information on adverse events and product defects associated with FDA-regulated products. This system needs to address issues of injury reporting by focusing on three areas: surveillance and epidemiology; research; and education and outreach. FDA believes that such a system would maximize the safety of FDA-regulated products through increased reporting of potentially dangerous adverse events or product problems to FDA or the manufacturer. Increased reporting provides greater assurance that a potential problem with a marketed product will be discovered and appropriate corrective action will be taken, and it ensures systematic feedback to the health care community and the public. None of these systemic improvements are possible without adequate funding.

Surveillance and Epidemiology

- With sufficient resources, FDA continues to develop and revitalize its system for reporting, monitoring, and evaluating adverse events associated with FDA-regulated products. AERS is the basis for this revitalized program.
- FDA is also developing active reporting systems for foods and for medical devices. These active systems use statistical selection of sites to provide better estimates of adverse events from the events that are reported.
- FDA will implement a National Sentinel Reporting System to provide an alternative to 100 percent mandatory reporting by medical device user-facilities. The system will use a nationally representative sample of user-facilities to track postmarket adverse events and is intended to save the industry millions of dollars in reporting costs. The system also will provide FDA clinicians and analysts with more timely, and better quality, postmarket data, thus improving FDA's ability to detect and to analyze medical device-related problems. In addition, this system is intended to provide FDA with ready access to a network of clinical facilities that could offer clinical insight into problem investigation and participate in specific research and educational efforts on product problems. However, this cannot be implemented without the necessary funds.

Research

Methodologic and surveillance research efforts designed to understand the causes of, and the factors contributing to, product-related injuries are critical to reducing the number of FDA-regulated product injuries. Research will be initiated in "human factors sciences" to identify labeling and product interface design features that may cause or contribute to use error, a leading cause of avoidable deaths and injuries.

Education and Outreach

Improving feedback to health care professionals and consumers is critical to the improvement of adverse event reporting. Rapid dissemination of findings on injuries to the relevant stakeholders and the education of the medical community require additional resources. The Agency has begun to collaborate with other agencies and professional groups to produce teleconferences that convey general information or product-specific information, nationwide.

An integrated science-based system for reporting, monitoring, and evaluating food and cosmetics-based adverse events is necessary to make fundamental regulatory decisions and policies. This system will depend on a research program aimed at understanding how health care professionals, as well as the public, can better recognize product-problems, and on a related research program on methods of analyzing the data. The clinical evaluation of adverse events and the determination of risk assessment requires medical officers and other trained personnel to take follow-up actions, make clinically-based decisions, and report activities to FDA's existing staff.

5. Performance Goals for FY 1999

The table provided in this section links FDA's statutory requirements with performance goals in the FY 1999 Performance Plan, illustrating the Agency's efforts to consolidate several systematic approaches into one performance system.

Highlighted below are key performance goals for FY 1999 in the area of adverse event reporting. These performance goals deal with creating new, active surveillance systems, or with improving passive reporting programs to make them more useful and available. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Implement AERS for the electronic receipt and review of Adverse Drug Report (ADR) reports

Evaluate pilot efforts for new postmarket surveillance system

Increase the number of reports on device events that are received and processed in summary form by using electronic reporting

Develop baseline surveillance data on foodborne illness under the FootNet program

Improve public access to information on adverse events with Special Nutritionals

Increase the number of human and animal isolates in National Antimicrobial Resistance Monitoring System (NARMS)

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1997 performance baseline	FY 1998 performance baseline
Applicants must report to FDA adverse drug experience information.	FD&C Act, Section 505; Public Health Service Act, Section 2101–2134; 21 *CFR* 314.50, 314.80–81, 314.98, 314.540, and 600.80.	By the end of FY 1999, implement the AERS for the electronic receipt and review of voluntary and mandatory ADR reports.	Implementing the core system is currently under way and will be completed by FY 1998.	FY 1998: Pilot, five firms electronic entry uncoded only. Periodic reports only.
Plan and implement a sentinel user reporting system.	FD&C Act Section 519(b)(5).	Evaluate pilot efforts for new sentinel device reporting system as alternative to universal user facility reporting.	Not applicable	Recruit 24 pilot facilities.
CDRH Device user-facilities are required to report adverse events.	FD&C Act Section 519(b)(1).	Increase the number of low-risk postmarket reports received and processed in summary form. The total number of summary reports will be increased from 20,000 in FY 98 to over 25,000 in FY 99. This will be done by using innovative surveillance methods and improving quality and analysis needed for Safety Alerts and other actions..	Not applicable	FY 1998: 20,000 reports received in summary form.
CDRH CFSAN	.....	Work with CDC and other federal agencies to develop baseline surveillance data on foodborne illnesses required to evaluate the effectiveness of, set better priorities for, and determine appropriate outcomes for the Food Safety Initiative.	Sentinel Sites expanded to provide better coverage of the representative areas of the United States.	Expand the demographic diversity and size of the population covered by FoodNet by increasing the number active surveillance sites from 7 to 8. Begin implementation of PulseNet, which provides data required to do more rapid and accurate tracebacks to determine the causes of foodborne outbreaks.
CFSAN	.....	By the end of FY 1999, improve public access to timely information on adverse events related to dietary supplements, infant formulas, and medical foods by increasing the frequency of public releases of information in the Special Nutritionals Adverse Events Monitoring System from two per year to four per year.	Two releases in FY 1997.	The requisite hardware and software systems need to be purchased for integration of current Center-based limited capability systems.
CVM	.....	Assure that food derived from animals and animal products is safe for human consumption by increasing the number of human and animal isolates in the NARMS database.	*Salmonella* isolates: 1,287 human, 2,391 veterinary.	*Salmonella* isolates: 2,000 human, 3,000 veterinary.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget Submission to Congress.

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Objected D—Ensuring access to the scientific and technical expertise needed by the Secretary—

1. Identification of Needs

FDA's ability to access the scientific and technical expertise necessary to carry out its mission must be enhanced, i.e., improving the science infrastructure, by upgrading the status of its facilities and equipment; augmenting and targeting its science expertise toward important new health enhancing technologies; and linking its science information to external sources.

Upgrade Facilities and Equipment

FDA's current science capability, both internally generated and externally coordinated, supports a wide range of risk management activities, covering the life cycle of Agency-regulated products. The integrity of the science base should be sustained by state-of-art equipment and facilities, but at a minimum they must be in good repair. The present status of this infrastructure, in many cases, is considerably less than adequate. For instance, replacing the FDA's Los Angeles laboratory and expanding the Arkansas regional facility will provide the physical tools necessary to meet FDA's obligations.

Augment and Target Science Expertise

Although FDA's science efforts are supporting current efforts in premarket review, postmarket safety assurance, and product use monitoring, these programs are falling short of meeting the Agency's statutory mandates and public expectations. As the programs are enhanced to meet expectations, the Agency's access top state-of-the-art science must be expanded. This will be accomplished both through strategic recruitment of needed expertise *and* through creative collaboration with outside institutions. Because FDA must regulate increasingly complex products, the Agency's science capabilities must be able to keep pace with new scientific developments. Further, the science expertise must be positioned so that appropriate risk assessments can be targeted toward emerging technologies that are significant in protecting public health and which must reach the market place quickly.

Link Science Information to External Sources

FDA must make strides in linking its science information bases to external sources so that synergies can be realized and appropriate information can be brought to bear on risk assessment and risk management decisions promptly. If FDA does not enhance its ability to link its science information with other outside sources, it will lose comparability and communicability with these sources. Further, it will not be as able to capitalize on cost-effective use of science information to support regulatory decisions.

2. Stakeholder Views

Stakeholders strongly support the need for FDA maintaining a strong and well-linked science base to support increasingly complex regulatory judgments. A few illustrations of these views are indicated below:

- "These needs to be a continuing strong commitment within the Food and Drug Administration towards maintaining an appropriate scientific base. It has been the experience of our member companies, with numerous examples relating to both clinical development and complex manufacturing issues, that these are speedily resolved because of the scientific expertise within [FDA]. [trade association]
- "Our company's long history in biotechnology has repeatedly shown the value of active research scientists at [FDA]. [FDA's] personnel that are involved in research related to safety, efficacy, basic biology, mechanism of action, and other associated areas provide an important component for in-depth understanding of issues and bring an understanding and response to issues in a scientifically and regulatory responsible and appropriate manner." [industry representative]
- "[FDA] Staff need to understand modern science . . . there is just not going to be any way that proper regulation can occur without people being able to communicate at the same level about this science. There needs to be maintenance and renewal of the state-of-the-art scientific leadership." [professional association]
- "I express the public's strong interest in the Agency's ability to retain highly qualified scientists within the FDA. I ask, and adverse reporting statistics demand, that products be reviewed on the merit of scientic evidence, safety and effectiveness." [consumer advocacy group]
- Implement programs whereby Agency scientists participate in staff exchange programs with academia, other government agencies and industry. [health organization]

3. Current Innovations/Reinventions

FDA is expanding its access to scientific expertise through creative collaboration with the broader scientific community. This is being accomplished through several approaches:

Industry-Government-Academic Collaboration

Industry-government-academic collaboration enhances the Agency's scientific expertise, thereby using added resources that would otherwise be unavailable to the government. Examples of these collaborations are below.

- The FDA Science Board, a high-level committee of representatives from industry and academia advise the Commissioner and Chief Scientist on FDA scientific issues and activities.
- FDA has two significant collaborations with industry, the Collaboration for Drug Development Improvement (CDDI) and the Product Quality Research Initiative (PQRI), intended to leverage resources and to work with industry to improve the drug development process.
- FDA currently has approximately 25 collaborative research and development programs (CRADAs), which are designed to foster scientific collaboration between the federal government and sectors outside the government; a list of these programs can be found on the FDA Internet site. FDA is actively soliciting new collaborative agreements with industry in addition to advertising opportunities on the Internet.
- FDA has joint programs with the University of Maryland and the Illinois Institute of Technology to enhance safety of the food supply. This is particularly important in light of the government's Food Safety Initiative, which is designed to assure the American public that they can consuming the safest food possible.
- FDA annually sponsors a Science Forum and workshops to bring together scientists of like disciplines from across and outside the Agency to address cross-cutting topics. Examples of recent workshops include the deoxyribonucleic acid (DNA) microarray workshop, alternative toxicology testing methods, and mechanisms of carcinogenesis.

Intergency Collaboration

Encourage interagency cooperation allows the substantial expertise of other government scientists to focus their efforts on similar problems. For example, working with other agencies allows the FDA to prevent illness and epidemics. The Agency collaborates with the NIH to speed drug and vaccine development so these products can reach consumers more quickly. This interagency cooperation also allows the Agency to determine modes of infection and thereby educating scientists, which could lead to new testing methods.

Exchanging Scientific Expertise

Industry and FDA collaboration provides an atmosphere to encourage the exchange of scientific expertise. The FDA sponsors workshops on cutting-edge topics such as gene therapy and Simian Virus and DNA vaccines. The FDA/National Institute of Dental and Craniofacial Research (NIDCR) model MOU allows for use of scientific expertise on panels and as consultants to the CDRH's device group. Added to these face-to-face contacts, Agency scientists are encouraged to publish in professional journals so their non-government peers can learn from their work.

Information Technology

Information technology is a tool that allows FDA scientists to learn about new discoveries and to increase their abilities to review applications. For the Agency to produce excellent scientific work, FDA scientists must be aware of the latest developments and theories quickly and in a timely fashion so they can incorporate them into their work. Facing these scientists is the daunting task of accessing a voluminous amount of new information, which is generated too quickly for one person to follow. To assure this knowledge is incorporated into Agency decisions, FDA scientists use information technology to access databses of latest discoveries located in-house and in external scientific databases.

Information technology (IT) tools go beyond finding articles with new theories and approaches. The Agency uses IT tools to validate computer models to speed reviews. For instance, FDA scientists can review a comprehensive database on carcinogenicity of over 700 drugs. IT tools also are used to validate computer models in a timely manner so application decisions can meet statutory requirements.

4. Plan for Meeting Statutory Requirements and Public Expectations

Section 903 of the FD&C Act, as amended by FDAMA, requires FDA to carry out research relating to foods, drugs, cosmetics, and devices in realizing the intent of the Act. Section 903 also requires FDA to consult with experts in science, medicine, and public health and other stakeholders in carrying out its mission. In addition, FDAMA law (Section 414) mandates policies that foster collaboration between federal agencies and other science-based agencies.

FDA's plan for meeting these statutory requirements will encompass a variety of actions intended to enhance its science capabilities. One approach is for the Agency to conduct research projects that identify the causes of and factors contributing to product-related injuries. For instance, Agency scientists are examining labeling and product features that can be altered to prevent product-related accidents. To conduct these research efforts, the Agency will maintain and strengthen its in-house scientific expertise by expanding innovative and successful programs (e.g. in-house Fellows programs).

The Agency will continue to enhance its scientific collaborations with the larger scientific community by initiatives with the University of Maryland, Georgetown University, and other institutions of higher learning. Similarly FDA will strengthen the Agency's science base linkage to external sources to provide comprehensive science underpinning for important national health initiatives, such as working closely with CDC and USDA in the establishment of NARMS.

In addition to these steps, the Agency is developing improved methods to detect food pathogens and to assess health risks more rapidly so that consumers can implement preventive measures.

5. Performance Goals for FY 1999

The table below links the performance goals and measures with the science-related statutory requirements. FDA's main statute, the FD&C Act, provides broad authority to the Secretary to authorize research efforts. Performance Goals illustrate two types of efforts. The first identifies development of methods or products that can be applied to a specific health risk problem. For instance, one goal calls for studies on antibiotic resistance of foodborne pathogens.

The second type of goal identifies a long-range systemtic solution to a range of problems. Illustrative of this type is a multi-year research plan to improve methods for detection, control, and prevention of microbial contamination. A measure for this type of goal is more difficult to establish. Because scientific progress often results from diverse efforts, measuring this goal is an incremental process of small steps. In this goal, establishing relationships with stakeholders is a major step.

Highlighted below are key performance goals for FY 1999 in the area of science. Several goals enable the Agency to put science behind methods for quickly detecting potentially high-risk products. Other goals focus on collaborating with key stakeholders to increase science's role in regulatory policy. For more complete identification of performance goals and statutory requirements see the table at the end of this section.

FY 1999 Performance Goals

Implement a multi-year research plan to develop and improve methods for the detection, control, and prevention of microbial contamination on fresh produce.

Develop model to assess human exposure to a variety of foodborne pathogens.

Work with industry and academia to develop new techniques for eliminating pathogens on fresh prodcue.

Support product review by developing faster, more accurate tests on mechanisms of toxic actions.

Demonstrate a model toxicity knowledge base to support and expedite product review.

Develop better models to predict risk for cancer, reproductive, developmental, neurological, genetic, and acute toxicological outcomes.

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1998 performance baseline
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Develop and begin implementing an interagency research plan that more effectively coordinates the food safety research activities in FDA and USDA.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	

Statutory authority	Relevant statute and/or regulation	Relevant FY 1999 performance goals	FY 1998 performance baseline
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Formalize PQRI collaboration.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Identify specific issues and areas of research focus and develop research protocols.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Identify priority material for standard development.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Use model animal and cell culture transgenic systems to evaluate risk to the human genome.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Conduct case-control molecular epidemiology studies to assess breast and prostate cancer in African-American women/men.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Computer-based predictive system is being used as model for rodent and human hormone-binding proteins.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Present at a scientific forum a unifying approach to safety assessment for both carcinogenic and non-carcinogenic effects.
The Secretary is empowered through the Commissioner of FDA to conduct "research relating to foods, drugs, cosmetics and devices".	FD&C Act, Section 903(d)(2)(C).	.....	Screen animal products and environments for a microorganism harboring antibiotic resistance.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

Objective E—Establishing Mechanisms, by July 1, 1999, for Meeting the Time Periods Specified in This Act for the Review of all Applications and Submissions Described in Subparagraph A (Objective A) and Submitted After the Date of Enactment of the FDAMA

In the spring of 1999 FDA plans to reevaluate where it stands in relation to this objective. The Agency plans to make information on this objective easily available to Congress, the public, regulated industry, and other stakeholders. FDA is exploring making this information available on the Internet.

Objective F—Eliminating Backlogs in the Review of Applications and Submissions Described in Subparagraph A (Objective A), by January 1, 2000

Objectives E and F are directly related. The strategies followed to achieve Objective E will also achieve Objective F. By making improvements and changes to the review process to meet the time frames for reviewing applications and submissions, any backlogs for them will be eliminated. Therefore, this section will address both objectives.

1. Identification of Needs

While, the Prescription Drug User Fee Act of 1992 (PDUFA) has been a great success, there is a gap in performance for applications not covered by PDUFA that needs to be filled for FDA to meet its statutory review requirements. In addition, public expectations, internal time frames, and PDUFA goals provide important benchmarks for FDA performance.

FDA needs to reduce total product development time, meet statutory review requirements, expedite and add value to new technologies, maintain high-quality interactive reviews, and target laboratory work to support and expedite science-based reviews. FDA has successfully adopted a number of innovations and re-engineering approaches to improve review performance. FDA has now reached the point, however, where additional improvements toward meeting statutory requirements cannot occur without additional resources.

FDA ultimately needs to speed safe and effective products to the American public by reducing the overall development and review time for new products without compromising product quality and safety.

2. Stakeholder Views

Making new products available to the public more quickly and streamlining the product development and review process while ensuring safety are important goals.

- Some consumer advocacy groups want the Agency to assign the highest

priority to expediting the development and review of drugs, while others expressed fear that meeting review deadlines could result in safety risks.

• "Replace the resource-intensive [Generally Recognized as Safe] GRAS petition process with a streamlined notification system. Finalize the GRAS notification regulation." [trade association]

Using a risk-based strategy for reassigning resources is a major Agency strategy. A number of stakeholder comments seemed to support this strategy.

• A major health organization stated that many blood products have been in the public arena for a long time, and placing such products on the lowest review requirement tier would allow the transfer of resources to new products.

• A health professional society said that FDA should reassess the risk-benefit of analysis of lifestyle-modifying drugs and subject them to a different type of scrutiny than that which is used to treat or to prevent disease or other medical conditions. Also, they said it is hard to argue that it is worth taking a lot of work with a new drug product which in no way adds therapeutic benefit.

A number of stakeholders said that proper implementation of fast-track provisions will expedite entry into the marketplace for drugs for serious and life-threatening illnesses.

• A biotechnology industry council suggested that the PDUFA II goals be applied first to fast-track products. They also said that definitions need further clarification and a broad, flexible definition is needed for "serious and life-threatening illnesses." The council also suggested that quarterly conferences be held to discuss surrogate end points and that fast-track designation should be done by directors of review divisions.

There was both support for the Agency's strategy for implementing third-party reviews and also concern about the strategy.

• A major trade association said that more medical devices should be added to the list for using third-party reviews.

• A regulatory organization said that FDA should continue to offer its reviews as an alternative to third-party reviews and that FDA should carefully review the third-party evaluations just as it would the work of its own staff.

A major concern of industry stakeholders was that FDA communicate what is expected of them in developing and testing new products and in providing evidence for approval.

• A major trade association said that FDA should make its procedures transparent, particularly in terms of Good Review Practices (GRPs). Various documents such as GRPs and reviewer handbooks should be provided to industry and other stakeholders to provide a better understanding of the workings of FDA and to allow industry to bring its procedures into conformity.

Improving the efficiency of the review process by implementing an electronic submission and review process was also an industry priority.

• A biotechnology industry representative suggested that information flow and documentation needs to be handled more efficiently and suggested that this could be done through the establishment of a standard electronic information exchange environment that would set the standards for industry.

Animal drug industry stakeholders placed a high priority on FDA implementing the recently enacted Animal Drug Availability Act (ADAA).

• Full implementation of the ADAA was an issue brought up by many of the stakeholder groups, including drug manufacturers, livestock producers, and feed producers. All of the speaker who mentioned it strongly urged FDA to devote whatever resources were necessary to fully implement ADAA.

3. Current Innovations/Reinventions

FDA has been pursuing a number of strategies for many years to improve on-time performance in reviewing applications and submissions, especially for new products. Many of these strategies were developed in conjunction with the Agency's stakeholders. Many strategies focus on speeding up the review process and encompass risk-based priorities, re-engineering FDA processes, information technology, communications with industry and other stakeholders, and scientific support for reviews.

Strategies also focus on the drug development stage (i.e. pre-Investigations New Drug [pre-IND] and IND), and on assisting industry during the testing and pre-application process. A day saved in developing a new therapy is just as valuable as a day saved in reviewing it. FDA is working with product sponsors to ensure that they know what is expected of them so that product testing and preparation of the application are more effectively and efficiently done. As PDUFA has shown, these pre-application efforts have resulted in higher quality applications, faster reviews, and an increasing approval rate. Non-PDUFA applications have benefited from PDUFA improvements and innovations. However, FDA performance on non-PDUFA applications still needs improvement.

FDAMA start-up and additional workload may reduce review performance in the near term, especially for medical devices and other non-PDUFA products. The growing complexity of medical devices requires that more time be spent interacting with sponsors and keeping guidelines up to date. Increased guidance and interactions with industry are resource-intensive activities. These factors will challenge FDA's ability to meet time frames.

Establish Risk-Based Priorities

FDA is focusing more on actual and potential risks in establishing priorities. FDA will identify and concentrate resources on high-risk, high-impact products or work areas, those where its direct intervention helps consumers and health care professionals the most. Despite current and anticipated budget constraints, resources will be redirected; and while some key areas will be increased, some low-risk product areas will be decreased. Several examples of these effects include:

• Exempting low-risk medical devices from the premarket notification requirement;

• Using a threshold of regulation approach for very low risk noncarcinogenic indirect food additives.

• Giving priority to high-risk, food safety-related, food additive petitions.

Conducting risk versus benefit communications research to assess the public's ability to understand risks versus benefits in drug information and to develop useful and meaningful ways of presenting important information about a drug's known risks and benefits.

FDA's research agenda includes development of more predictive animal and non-animal models for safety and efficacy evaluation. FDA scientists are developing new approaches for use in predicting risk associated with human toxicity; developing computer-based systems to aid in the assessment of human toxicity; and conducting research on specific agents, concepts, or methods that can be applied to questions of human health and safety.

In addition to the risk-based priorities, FDA has identified high-impact areas such as pregnancy labeling, antibiotic resistance, medication errors, consumer information and direct-to-the consumer advertising policies that require the expenditure of further resources. In conjunction with stakeholders, FDA already is devising innovative strategies and methods to address the public health impact of these emerging issues.

Re-Engineer FDA Processes

The Agency has been working to change its culture to fulfill its dual mission of promoting and protecting public health. As a result, FDA has been re-engineering many of its product review processes for the last several years. In fact, many e provisions of FDAMA codified results of re-engineering efforts initiated by the Agency. The following provides highlights of a variety of re-engineering efforts, resulting from FDAMA, other laws, stakeholder input, and the Agency's own initiative.

The introduction and expansion of the Project Management System (PMS) to expedite review processes for both CDER and CBER established team-based project management programs designed to improve the quality and efficiency of the drug review process. These programs have demonstrated their effectiveness and continue to be refined and enhanced. Team-Based Project Management is a powerful technique combining the use of multidisciplinary teams led by project managers and scientific leaders who use the tools and techniques of project and resource tracking. Review disciplines are organized into multidisciplinary teams early in the review process to develop a review plan and commit to target interim and milestone completion dates. Teams meet periodically to exchange information, discuss significant aspects of the applications, review progress toward meeting target completion dates, and make resource adjustments. Project management is being used throughout the Agency.

FDA is committed to the implementation of the third-party provision of FDAMA and is already pursuing that program. A key factor will be to apply lessons earned from the earlier third-party pilot program for medical devices. The fact that the earlier pilot worked well for the limited number of manufacturers who participated in the program, combined with the expanded list of eligible devices under FDAMA, should go a long way toward attracting additional submissions from industry.

FDA plans to issue guidance that describes its fast-track policies and procedures. To ensure compliance with the legislatively managed time frame of 60 days for designation, FDA is using management tools similar to those which have contributed to FDA's success in meting PDUFA goals. The guidance will include the Agency's definition of "a serious or life-threatening condition." In accordance with the statutory mandate, FDA currently is working with NIH, sponsors, and its advisory committees in the timely evaluation of proposed surrogate end points. For many years FDA has been working with sponsors to develop surrogate end points that are reasonably likely to predict clinical benefit for serious and life-threatening conditions.

Streamlining efforts will be focused on reducing the overall time required for product development. More guidance and meetings will be provided during the development process to assist firms in conducting appropriate clinical trials and in developing the scientific evidence needed to gain approval of new products.

During FY 1998 CFSAN implemented a proposed notification procedure for independent GRAS determinations. The Agency's current plan is to codify this process during FY 1999. Once codified, this procedure will largely replace the resource-intensive GRAS affirmation petition process with a less resource-intensive notification process.

Other efforts to simplify regulatory approaches and to reduce the burden on stakeholders include:

- Implementation of a phased review process as in CVM where CVM works with the sponsor throughout the research and development process and reviews technical sections of a New Animal Drug Application (NADA) as they are completed;
- Implementation of additional premarket notification programs in lieu of requiring preapproval before marketing (For example, CFSAN has worked to prepare for implementation of a premarket notification program for food contact substances established by FDAMA.);
- Development of GRPs for Agency reviewers (CBER and CDER conducted a series of workshops to develop an action plan that will evolve into guidelines that describe and develop GRPs guidance. A reviewer's handbook is also being developed.);
- Development of a list of approved drugs for which additional pediatric information may produce health benefits;
- Elimination of certain labeling requirements;
- Amendment of regulations to provide additional flexibility for health claims on foods and to clarify nutrient content claims; and
- Allowing use of abbreviated study reports in an NDA.

Capitalize on Information Technology

FDA is aggressively moving towards an electronic regulatory submissions environment. The benefits of electronic submissions include:

- lower paper handling costs for FDA (e.g. document room contract, offsite storage, onsite storage);
- quicker access to information by reviewers (e.g. no waiting for a paper copy and no rekeying of data for analysis; and
- time and cost savings during product development (most firms have their data in electronic format and won't have to waste time creating/delivering a paper submission to FDA).

Work More Closely With External Stakeholders

A common theme in all of the improvements to the review process has been an intensive effort to improve communication with sponsors and manufacturers. This dialogue, which occurs by telephone, by videoconference, and in person, helps manufacturers understand what FDA is looking for in product submissions. Explanations include what information will be needed and why. Unresolved questions are resolved on the spot. Communication with industry continues to improve, with more companies taking advantage of opportunities to consult with FDA.

These efforts have already contributed to improved review performance. For example, CDRH has zero backlogs of 510(k)s, Pre-Marketing Approvals (PMAs), and PMA supplements. In addition, CDRH has begun implementing additional meetings as required by FDAMA, such as determination meetings, where a prospective PMA applicant may request a meeting to determine the type of scientific evidence necessary for PMA approval; agreement meetings, where prior to submitting an Investigational Device Exemption (IDE) application, a sponsor may request a meeting with FDA to discuss the specific investigational plan for a class III or implantable device; and 100-day PMA meetings, where within 100 days after the submission of a PMA, the sponsor may request a meeting to discuss the application.

FDA is working to make Agency processes transparent by providing a variety of information in a variety of ways including:

- Increased sponsors/applicants meetings;
- Presubmission conferences;
- Presentations to industry about a variety of topics on the most common GMP deficiencies that prevent approval;
- Providing potential applicants with assistance during the development process;

• Comprehensive guidance for preparation of submissions to FDA; and
• Initiating industry education programs/services regarding studies and safety data needed to support petitions and notifications.

FDA continues to rely on outside advisory committees for advice in reviewing product applications. Outside experts add a wide spectrum of judgement, outlook, and state-of-the-art experience to FDA's decisionmaking process. These expert advisors add to FDA's understanding, so that final Agency decisions reflect a balanced evaluation. FDA is working to improve the advisory committee process and make-up of committees to address stakeholder concerns.

FDA participates in international harmonization activities that can result in reduced regulatory burden for the regulated industry, much of which markets products throughout the world. By harmonizing requirements to the maximum extent possible, the industry hopes to reduce the costs involved in bringing products to market. Activities are underway in the Codex Alimentarius forum to develop and adopt a standard for food additives. Activities to date have also included work toward major parts of common technical documents that could be used for premarket filings in the three major industrialized markets. Efforts are underway with medical devices to identify areas of divergence in the various regulatory requirements, with an eye toward ultimate harmonization of requirements. With drugs and biologics, these activities should result in both higher quality products regardless of production site, and their getting on the market quicker due to reduced conflict in regulatory requirements in major markets. By relying both on manufacturer self certification of conformity with international harmonized standards as part of the accepted premarket application and on third-party reviewers for preliminary 501(k) determinations, FDA has reduced the demand on staff to review original documentation.

Strengthen the Scientific and Analytical Basis for Regulatory Decisions

Addressing the adequacy of the research and scientific infrastructure is one of FDA's highest priorities, especially as it supports the review of pre-market applications. Laboratory work is targeted to develop in-house scientific expertise, scientific guidance, and science-based standards. In-house scientific expertise is used to consult on product reviews, especially in areas of emerging technologies. Guidance can benefit both applicants and review staff in developing and reviewing applications. FDAMA requires FDA to recognize and use appropriate standards in the application review process for medical devices. Evidence that a product meets established standards will expedite the review process.

FDA still faces shortages of certain expertise, especially through attrition. Some positions are very difficult to recruit. FDA needs to use a number of pay incentives (higher initial pay, bonuses, comparability allowances, etc.) to attract and retain medical officers, especially for certain specialties. Other positions include pharmacokinetics specialists, statisticians, and computer specialists. As a result, FDA sometimes is lacking critical skills in the review area such as having an orthopedic surgeon to review surgical devices.

4. Plan for Meeting Statutory Requirements and Public Expectations

Because of the success of PDUFA, FDA will continue to use PDUFA submission and review mechanisms to improve the review performance of non-PDUFA applications and reduce product development time. Ultimately matching PDUFA's success without additional resources comparable to those provided by user fees is problematic.

PDUFA is different from some European review systems in that it provides the certainty of a result within a definite time. Examples of the submission and review mechanisms used to accomplish this are: (1) presubmission consultations; (2) refuse-to-file authority and increased application quality; (3) project management; and (4) complete first actions.

Several interlocking strategies will be used to meet FDA's review goals. To ensure wise use of reviewers' time, FDA will continue to re-engineer its product review processes in many areas and will continue to look for more effective means of shortening processes without sacrificing quality and safety concerns. Second, several initiatives are underway to reduce the direct review burden on the Agency by reducing the requirement for pre-approval in some areas and replacing it with an industry notification process. Third, consultation with product sponsors early in their research and development process will raise the likihood that high-quality commercial applications will follow and make their way through the FDA system in the shortest time possible. Finally, all of FDA's product review centers will continue to automate their application submission and review tracking systems. This should result in not only faster review times, but also increases in Agency productivity. Without an infusion of resources, however, it is unlikely that FDA will be able to meet its statutory obligations in all product areas.

Additional Steps

Make available and reassign more resources by using a risk-based priority system and seek additional resources as needed. FDA will redirect resources to high-risk and high-impact product areas and decrease resources in areas that pose a lower risk or benefit.

Expand collaboration with product sponsors to expedite product development.

Provide more productive interactions with industry through up-to-date guidance review, industry education, and reviewer training.

Increase efforts with other industrialized countries to harmonize product protocols.

Expand electronic submission and review systems.

Target laboratory support for emerging technologies.

Expand use of third-party reviews.

5. Performance Goals for FY 1999

The table provided in this section highlights some key PDUFA and non-PDUFA applications and summarizes the time frames, performance goals, baseline performance, and the number of applications overdue. A more comprehensive table and listing of applications and submissions covered by this Plan are in Appendix D.

The PDUFA time frames and performance goals are the result of in-depth negotiations between the drug industry and FDA. Industry and FDA determined that both the time frames and the percentage goals were realistic, achievable with the additional user fee resources, and desirable. The PDUFA time frames for drug applications differ in some cases from the FD&C Act statutory requirements. Biologics applications are covered by the Public Health Service Act, which does not have any statutory time frames. Also, the PDUFA goals do not stipulate that 100 percent of applications be completed on time. In many cases, however, a 100 percent performance level was achieved. Industry is pleased with the certainty of a timely action and response from the review process and the net result of a higher percentage of applications being approved faster. Patients have benefitted by having more therapies available more quickly. Performance goals for PDUFA

applications are based on the PDUFA time frames.

Performance goals for non-PDUFA applications are based primarily on the statutory time frames with two exceptions. Non-PDUFA biologics applications have no time frames. FDA has voluntarily adopted the original PDUFA time frames for these applications. Also performance goals for food and color additive petitions are based on 360 days, twice the statutory time frame of 180 days. This is being done to provide realistic targets as the petition review process is being re-engineered.

FDA has developed clear performance goals that will enhance and further expedite reviews for product applications. Setting these goals has provided a valuable management tool for identifying performance expectations and assessing achievements. Using the PDUFA model, performance is measured based on the percentage of applications acted on within the appropriate review time frame. The on-time performance measure is important because it represents definitive decisions both to approve and not to approve. An accurate portrayal of the timeliness of the Agency's decision making should focus on the length of time to all decisions, both positive and negative.

Overdue applications are those whose review period exceeded the time frames and were under active review at the end of the fiscal year.

Highlighted below are key performance goals for FY 1999 in the area of application review. These goals represent applications for new and priority products and for new medical uses of approved products. For more complete information see the table at the end of this section and Appendix D.

FY 1999 Performance Goals

Review 90 percent of priority NDAs/PLAs/BLAs within 6 months.
Review 90 percent of priority efficacy supplements within 6 months.
Review 70 percent of blood PLAs/BLAs within 12 months.
Review 50 percent of PMAs within 180 days.
Review 30 percent of food and color additive petitions within 360 days.

Time frame	Relevant statute	Percentage of first actions within review time period		Overdue*
		FY 1999 performance plan goal (percent)	FY 1997 baseline (estimate) (percent)	
PDUFA:				
Review Priority NDAs within 6 months (CDER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months.	90	100	0
Review Standard NDAs within 12 months (CDER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months.	90	99	0
Review Priority NDAs/PLAs/BLAs within 6 months (CBER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months. None for PLAs/BLAs.	90	100	0
Review Standard NDAs/PLAs/BLAs within 12 months (CBER) (PDUFA II commitment letter).	FD&C Act Sec. 505(b) requirement is 6 months. None for PLAs/BLAs.	90	100	0
Review priority efficacy supplements within 6 months (CDER & CBER) (PDUFA II commitment letter).	FD&C Act Sec. 505 requirement is 6 months for NDAs. None for PLAs/BLAs.	90	100	0 (CBER)
Non-PDUFA:				
Review ANDAs within 180 days (CDER)	FD&C Act Sec. 505(j)	60	54	
Review and act on blood and source plasma PLAs/BLAs and PLA/BLA major supplements within 12 months (internal time frame) (CBER).	No statutory requirement	70	83	4
Review PMAs within 180 days (CDRH)	FD&C Act Sec. 515(d)(1)(A)	50	65	0
Review 510(k)s within 90 days of receipt	FD&C Act Sec. 510(k) and (n)	90	98	0
Review food and color additive petitions within 360 days. (CFSAN) Goals are based on 360 days. FY 1997 baseline based on 180 days**.	FD&C Act Sec. 409 and Sec. 721 requirement is 6 months.	30	**24	
Review NADAs and ANADAs within 180 days (CVM)	FD&C Act Sec. 512(c)(1)		75	

*The number of applications overdue at the end of FY 1998.

**(Within 180 days) For petitions received in FY 1996, using the previous petition review procedure, 24 percent of petitions received "first action" within 180 days. CFSAN re-engineered the petition review process in FY 1998 and redefined "first action." FY 1997 figures and FY 1999 are not directly comparable.

FY 2000 Performance Goals are not identified in this Plan. Specification of these goals is dependent upon final determination of the President's FY 2000 Budget submission to Congress.

FDAMA Plan Appendices

Introduction

These appendices and corresponding Internet resources provide direct access to information being used within FDA to implement the FDA Modernization Act. The actual text of the law passed by Congress, verbatim comments from stakeholders related to improving the way FDA conducts business and the current implementation plan are available for review and comment.

Considerable space is devoted to stakeholder participation. Even so, only a fraction of the information is attached—the balance of information has been organized on FDA's website (*http://www.fda.gov*). By clicking on "FDA Modernization Act" anyone can navigate through the wealth of FDAMA-related materials currently available.

The text of the FDA Plan for Statutory Compliance is located on the Internet at *<http://www.fda.gov/oc/fdama/fdamapln/default.htm>*. Additional questions or comments or requests for printed copies of these Appendices may be directed to the Planning and Management Communications Staff by telephone at 301–827–5207, by e-mail to *schasin@oc.fda.gov*, and by FAX to 301–827–5225.

Appendix A: Statutory Authority

http://www.fda.gov/oc/fdama/fdamapln/appenda

(1) Section 903 of Federal Food, Drug, and Cosmetic Act

(2) Section 406 of FDA Modernization Act of 1997

Note: Section 406 of the FDA Modernization Act amends, and has been incorporated into, Section 903 of the Federal Food, Drug, and Cosmetic Act. Copies of both sections have been included here. They include FDA's current mission and annual reporting requirements.

Appendix B: Stakeholder Involvement in 1998

http://www.fda.gov/oc/fdama/fdamapln/appendb

(1) A message to FDA Stakeholders (includes 7 key questions)
(2) Supplemental questions asked of stakeholders
(3) Written summaries of each stakeholder meeting
(4) Stakeholder comments organized by FDAMA objectives

Note: Involving stakeholders in modernizing the way FDA meets its statutory and public health responsibilities is perhaps the most significant advancement addressed in FDAMA. In 1998 FDA made dramatic progress in gathering ideas for improving the Agency's effectiveness. Stakeholders include experts in science, medicine, and public health, as well as consumers, product manufacturers, importers, and retailers. Most of the information contained in this section is also available on FDA's website.

Appendix C: FDAMA Implementation Chart

http://www.fda.gov/oc/fdama/fdamapln/appendc

Note: This chart shows FDA's current status on implementing FDAMA. It provides a section-by-section overview including a brief description of each task, statutory deadlines, and key contacts within the Agency. This is the actual implementation framework used by the Agency.

Appendix D: Application and Submission Review

http://www.fda.gov/oc/fdama/fdamapln/appendd

Note: This report includes a summary of 32 of FDA's most important functions as they relate to applications from manufacturers. Examples of these requirements are, "Review priority New Drug Applications within 6 months," and "Review infant formula notifications within 90 days." Also included are statistics that show current performance levels, future targets, and overdue applications. Other applications and submissions are also identified.

Other Information Resources Available via Internet

FDA's web site at *http://www.fda.gov/oc/fdama/comm* includes a special section on the FDA Modernization Act of 1997. Various reports, meeting summaries, stakeholder comments, and implementation updates are available continuously for persons with Internet access. Visitors can learn more about FDA as well as view first-hand the Agency's progress in achieving its mission.

Full text of FDAMA, Public Law 105–115:
http://thomas.loc.gov/bass/d105/d105laws.htm1

Transcripts of public meetings:
http://www.fda.gov/ohrms/dockets/dockets/98N0339/calendar.htm

Federal Register Notice of 9/14/98 public meeting
http://www.fda.gov/ohrms/dockets/98fr/082098b.pdf

FY 1999 Performance Plan
http://www.fda.gov/ope/FY99pplan/pplan.htm

Department of Health and Human Services (DHHS) main web site:
http://www.dhhs.gov.

Dated: November 16, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31387 Filed 11–20–98; 8:45 am]

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federal register

Tuesday
November 24, 1998

Part IV

Department of Education

Office of Special Education and Rehabilitative Services, Office of Special Education Programs; Inviting Applications for New Awards for Fiscal Year 1999; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.326R]

Office of Special Education and Rehabilitative Services, Office of Special Education Programs; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

AGENCY: Department of Education.

ACTION: Extension notice.

SUMMARY: On October 9, 1998, a notice inviting applications for a new Regional Resource Center (Region I) awards under the Technical Assistance to Improve Services and Results for Children with Disabilities program was published in the **Federal Register** (63 FR 54546). The notice stated that the deadline for the transmittal of applications was November 23, 1998. This notice extends the deadline for the transmittal of applications to December 15, 1998.

Note to Applicants: The notice contained other information regarding the transmittal of applications for the FY 1999 competition under the Technical Assistance to Improve Services and Results for Children with Disabilities program authorized by IDEA, as amended. This notice extends only the closing date for the transmittal of applications from November 23, 1998 to December 15, 1998. Potential applicants should consult the statement of the final priority published on October 9, 1998 (63 FR 54546) to ascertain the substantive requirements for their applications.

FOR FURTHER INFORMATION CONTACT: For further information on this notice contact Debra Sturdivant, U.S. Department of Education, 600 Independence Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra—Sturdivant@ed.gov Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) by calling (202) 205–8113.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

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To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office at (202) 512–1530 or, toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: November 17, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–31349 Filed 11–23–98; 8:45 am]

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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress will be published in the **Federal Register** on November 30, 1998.

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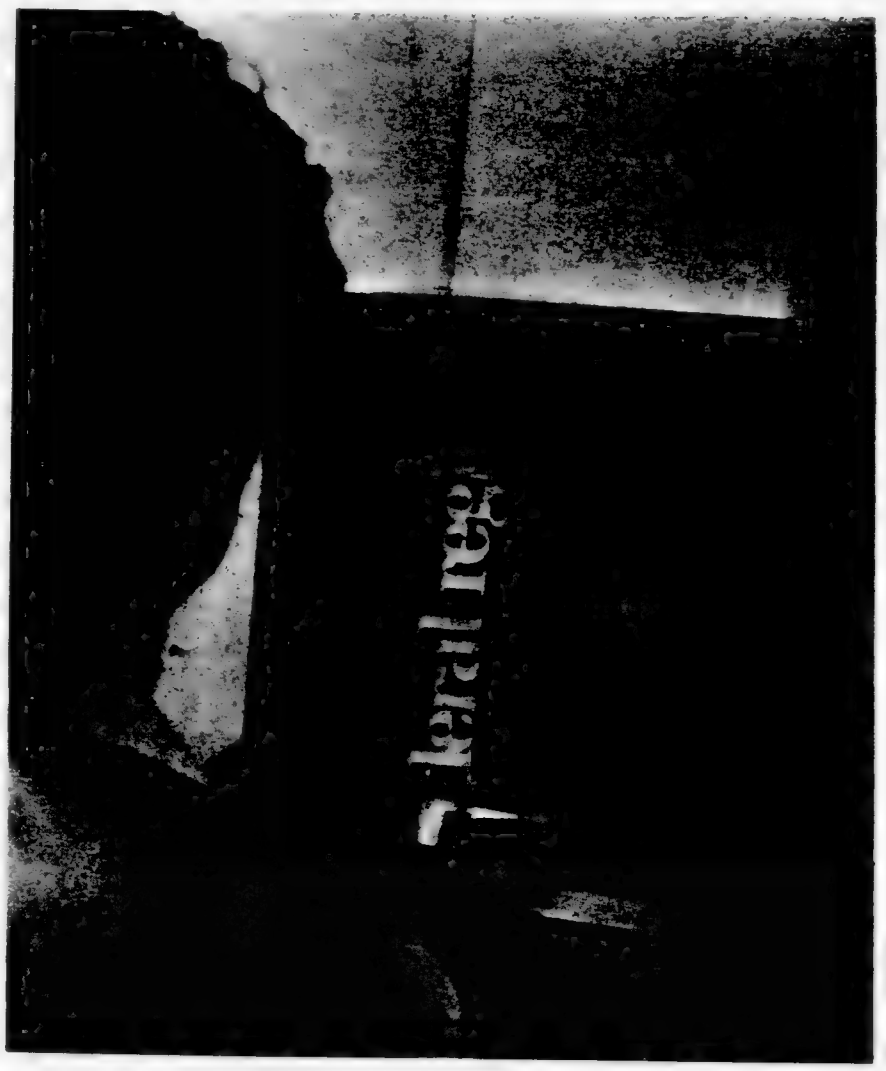

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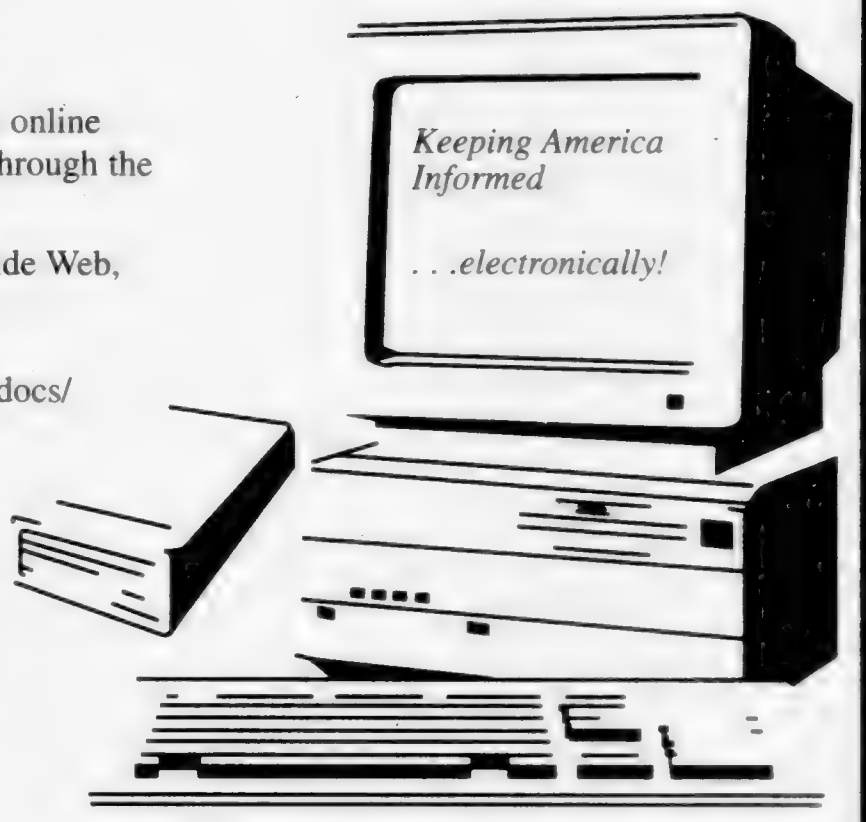

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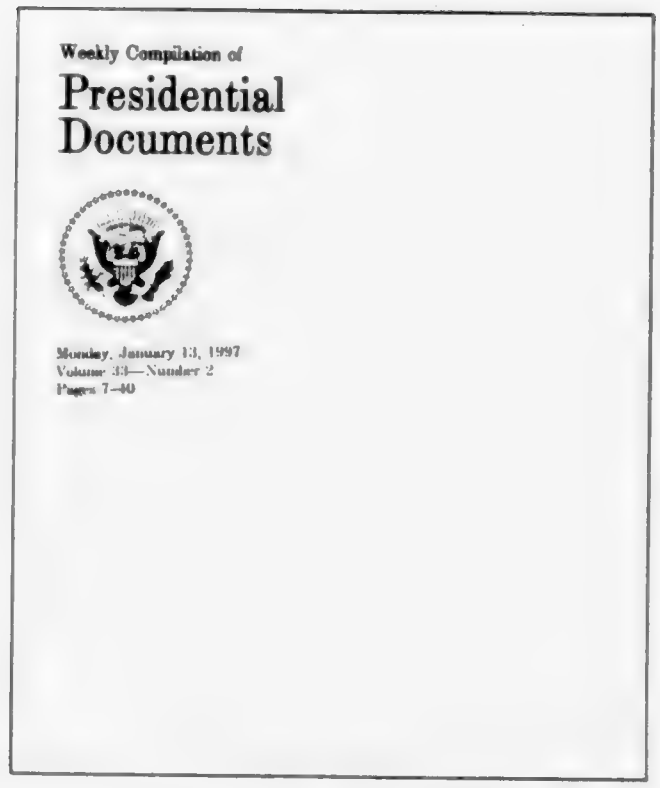

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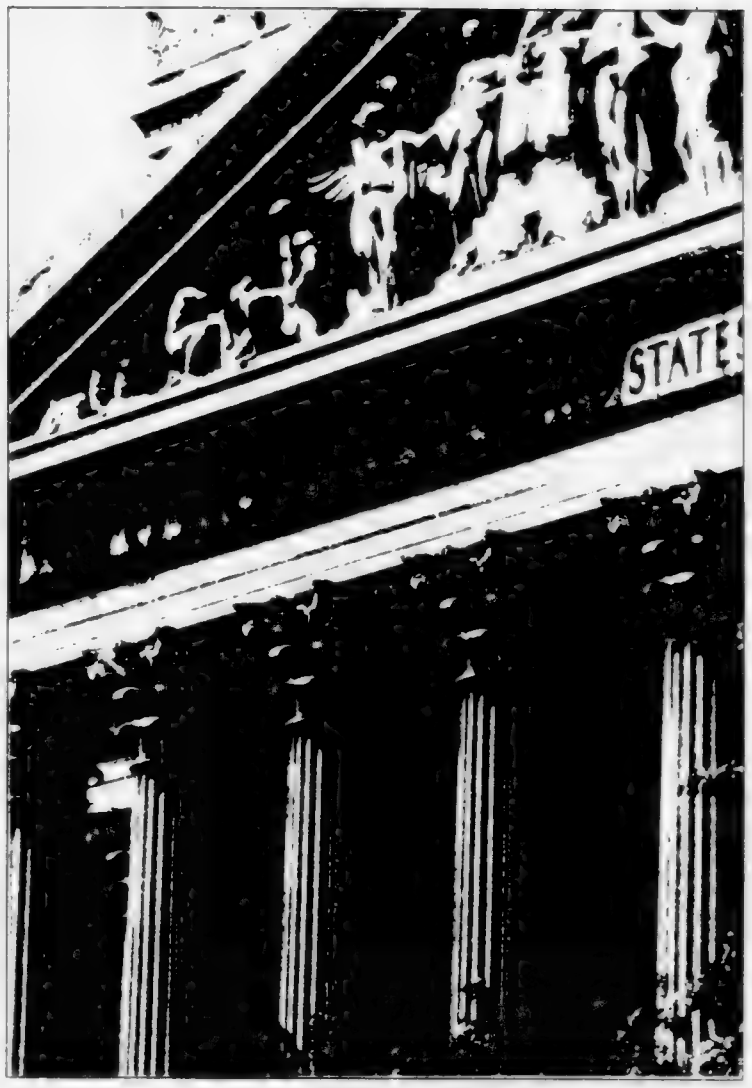

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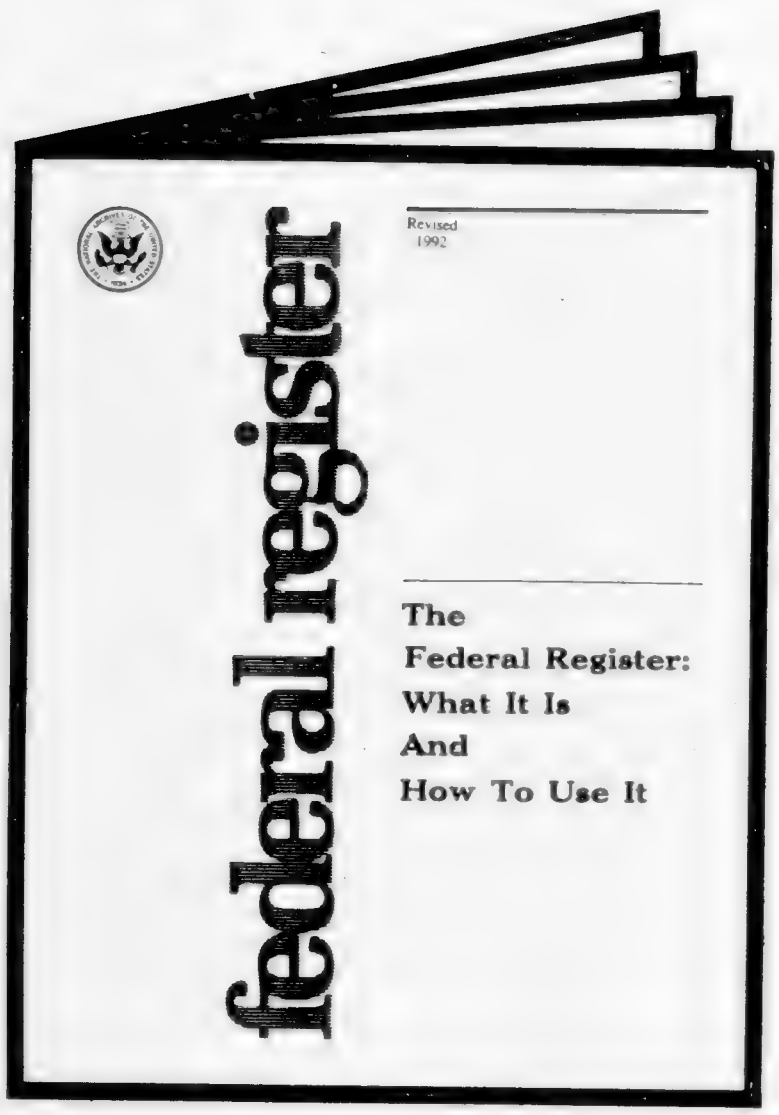

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Rules and Regulations

Federal Register
Vol. 63, No. 227
Wednesday, November 25, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–1025]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority (12 CFR Part 265) pursuant to sections 11(i) and (k) of the Federal Reserve Act (12 U.S.C. 248(i) and (k)). Specifically, the Board is revising and expanding the delegation of authority to the Director of Division of Consumer and Community Affairs to include: issuing interpretations under the Fair Credit Reporting Act, adjusting the dollar amount to determine coverage under the Home Ownership and Equity Protection Act, adjusting the depository institution exemption threshold under the Home Mortgage Disclosure Act, making certain determinations under the Community Reinvestment Act regulations, and holding public hearings on financial service issues in keeping with congressional mandates.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Pamela Morris Blumenthal, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–3667; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

Section 11(k) of the Federal Reserve Act (12 U.S.C. 248(k)) provides that the Board may delegate any of its functions, other than those relating to rulemaking or pertaining principally to monetary and credit policies, to members or employees of the Board. Section 11(i) authorizes the Board to make rules and regulations necessary to enable the Board to perform its duties effectively.

Several consumer protection statutes impose a number of duties on the Board. These include issuing interpretations and applying formulas for determining exemption from or application of a statutory provision. The Board is delegating authority for the tasks described below to the Director of Division of Consumer and Community Affairs (DCCA) to enable the Board to fulfill its responsibilities more efficiently by eliminating the need for Board review of certain technical matters and administrative duties.

Delegation of the responsibilities described below does not relate to rulemaking or monetary and credit policies and is consistent with previous Board practices with respect to interpretations and actions required under consumer protection statutes.

II. Analysis of Revisions

Clarifications to Authority to Issue Examination Manuals, Forms, and Other Materials

The following clarifying revisions are being made to the authority delegated to the DCCA Director: (1) in § 265.9(a), the text has been clarified and the Truth in Savings Act has been added to the list of statutes for which the Director may issue manuals, forms, and other materials; (2) in § 265.9(a)(1), the titles of acts encompassed in the statutory citations have been added; (3) a new paragraph 265.9(a)(8) has been added to reference the provisions of the Truth in Savings Act; and (4) in § 265.9(c)(1), (c)(4) and (c)(5), the text has been clarified by adding a reference to the particular section of the controlling regulations.

Interpretations under the Fair Credit Reporting Act

Section 621(e) of the Fair Credit Reporting Act (FCRA; 15 U.S.C. 1681s(e)) authorizes the Board to issue interpretations of the FCRA as it applies to depository institutions and their holding companies and affiliates. The Board is directed to consult with the other federal financial supervisory agencies in connection with such interpretations.

The FCRA is part of the Consumer Credit Protection Act that encompasses statutes such as the Truth in Lending Act (15 U.S.C. 1601–1667e) and the Equal Credit Opportunity Act (15 U.S.C. 1691–1691f). This delegation parallels authority delegated to DCCA officials to issue official staff interpretations of the regulations. (See 12 CFR part 226, App. C; 12 CFR part 202, App. D, respectively.) (Unlike TILA, the ECOA, and several other statutes, the FCRA does not assign the Board or any other agency the authority to issue implementing regulations.) Delegating interpretive authority enables the Board to provide guidance more efficiently by eliminating the need for Board review of minor matters and technical issues.

Annual adjustments under TILA and HMDA

TILA requires creditors to disclose credit terms. TILA is implemented by the Board's Regulation Z (12 CFR Part 226). The Home Ownership and Equity Protection Act of 1994 (Pub. L. 103–325, 108 Stat. 2160) amended TILA to include additional disclosure requirements and restrictions for home-secured loans with total points and fees exceeding the greater of $400 or 8 percent of the total loan amount. Congress directed the Board to adjust the $400 amount annually effective January 1 based on the annual percentage change in the Consumer Price Index (CPI) as reported on June 1 of the year preceding the adjustment. 15 U.S.C. 1602(aa)(3). Section 226.32(a)(1)(ii) of Regulation Z implements the statutory requirement.

The Home Mortgage Disclosure Act (HMDA; 12 U.S.C. 2801–2810) requires most mortgage lenders located in metropolitan statistical areas to collect data about their housing-related lending activity. The Board's Regulation C (12 CFR Part 203) implements HMDA. Provisions of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Pub. L. 104–208, 110 Stat. 3009) amended HMDA to modify the exemption threshold for small depository institutions. The amendments direct the Board to adjust the depository institution exemption threshold annually based on the annual percentage change in the CPI for Urban Wage Earners and Clerical Workers. Section 203.3(a)(1)(ii) of Regulation C sets forth the formula for determining the annual adjustment.

The Board is delegating implementation of these annual adjustments, which require application of a mathematical formula, to the Director of DCCA.

Community Reinvestment Act determinations

The Community Reinvestment Act (12 U.S.C. 2901–2907) requires the federal financial supervisory agencies to assess how depository institutions are meeting the credit needs of their communities in connection with the examination of each institution by its regulator. Each agency is authorized to issue regulations implementing the act. Regulation BB (12 CFR part 228) sets forth the standards the Board will apply in evaluating a bank's performance in meeting its community's credit needs.

Section 228.25 of Regulation BB permits the Board to approve or disapprove a bank's request to be designated as a wholesale or limited-purpose bank, and to revoke such designation as appropriate. In addition, the Board may approve or disapprove a bank's strategic plan submitted pursuant to section 228.27. These tasks require application of criteria established in the regulation. The Board is delegating authority to make these determinations to the Director of DCCA to implement review of proposed strategic plans and to respond to designation requests without the need for Board review.

Public hearings on consumer law issues

The Congress on occasion directs the Board to conduct public hearings or other proceedings regarding consumer law issues. For example, the Riegle Community Development and Regulatory Improvement Act of 1994 required the Board to hold hearings on home-equity lending within two years and periodically thereafter. The Board is delegating to the Director of DCCA the authority to arrange and conduct these proceedings in keeping with congressional mandates.

III. Public Comment Not Required

The Administrative Procedures Act provides that notice and opportunity for public comment are not required for rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(3)(A). Since the regulatory changes described above are procedural and do not constitute a substantive rule subject to the requirements of section 553(b) of the Administrative Procedures Act, the Board, for good cause, finds that notice and public comment in connection with this amendment are unnecessary.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth above, the Board amends part 265 in chapter II of title 12 of the Code of Federal Regulations as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

2. Section 265.9 is amended by revising paragraphs (a) introductory text, (a)(1), (c)(1), (c)(4), and (c)(5), and adding new paragraphs (a)(8) and (d) through (g). The revisions and additions read as follows:

§ 265.9 Functions delegated to the Director of Division of Consumer and Community Affairs.

* * * * *

(a) *Issuing examination manuals, forms, and other materials.* To issue examination or inspection manuals; report, agreement, and examination forms; examination procedures, guidelines, instructions, and other similar materials pursuant to: section 11(a) of the Federal Reserve Act (12 U.S.C. 248(a)); sections 108(b), 621(c), 704(b), 814(c), and 917(b) of the Consumer Credit Protection Act (15 U.S.C. 1607(b), 1681s(b), 1691c(b), 1692*l*(c) and 1693o(b)); section 305(c) of the Home Mortgage Disclosure Act (12 U.S.C. 2804(c)); section 18(f)(3) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(3)); section 808(c) of the Civil Rights Act of 1968 (42 U.S.C. 3608(c)); section 270(b) of the Truth in Savings Act (12 U.S.C. 4309); and section 5 of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)). The foregoing manuals, forms, and other materials are for use within the Federal Reserve System in the administration of enforcement responsibilities in connection with:

(1) Sections 1–200 and 501–921 of the Consumer Credit Protection Act (15 U.S.C. 1601–1693r), in regard to the Truth in Lending Act, the Consumer Leasing Act, the Equal Credit Opportunity Act, the Electronic Fund Transfer Act, the Fair Credit Reporting Act and the Fair Debt Collection Practices Act;

* * * * *

(8) Sections 261–274 of the Truth in Savings Act (12 U.S.C. 4301–4313).

* * * * *

(c) *Determining inconsistencies between state and federal laws.* * * *

(1) Sections 111, 171(a) and 186(a) of the Truth in Lending Act (15 U.S.C. 1610(a), 1666j(a), 1667e(a)) and § 226.28 of Regulation Z (12 CFR part 226) and § 213.7 of Regulation M (12 CFR part 213);

* * * * *

(4) Section 306(a) of the Home Mortgage Disclosure Act (12 U.S.C. 2805(a)) and § 203.3 of Regulation C (12 CFR part 203); and

(5) Section 273 of the Truth in Savings Act (12 U.S.C. 4312) and § 230.1 of Regulation DD (12 CFR part 230).

(d) *Interpreting the Fair Credit Reporting Act.* To issue interpretations pursuant to section 621(e) of the Fair Credit Reporting Act (15 U.S.C. 1681s(e));

(e) *Annual adjustments.* To adjust as required by law:

(1) The amount specified in section 103(aa)(1)(B)(ii) of the Truth in Lending Act and § 226.32(a)(1)(ii) of Regulation Z (12 CFR part 226), relating to mortgages bearing fees above a certain amount in accord with section 103(aa)(3) of that act (15 U.S.C. 1602(aa)); and

(2) The amount specified in section 309(b)(1) of the Home Mortgage Disclosure Act (12 U.S.C. 2808(b)(1)) and § 203.3(a)(1)(ii) of Regulation C (12 CFR part 203) relating to the asset threshold above which a depository institution must collect and report data.

(f) *Community Reinvestment Act determinations.* To make determinations, pursuant to section 804 of the Community Reinvestment Act (12 U.S.C. 2903), approving or disapproving:

(1) Strategic plans and any amendments thereto pursuant to § 228.27(g) and (h) of Regulation BB (12 CFR part 228); and

(2) Requests for designation as a wholesale or limited purpose bank or the revocation of such designation, pursuant to § 228.25(b) of Regulation BB (12 CFR part 228).

(g) *Public hearings.* To conduct hearings or other proceedings required by law, concerning consumer law or other matters within the responsibilities of the Division of Consumer and Community Affairs, in consultation with other interested divisions of the Board where appropriate.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31508 Filed 11–24–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–84–AD; Amendment 39–10911; AD 98–24–25]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model L–188A and L–188C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Lockheed Model L–188A and L–188C series airplanes, that requires revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in icing conditions. This amendment is prompted by incidents and accidents involving airplanes equipped with turboprop engines that experienced tailplane stall due to ice accretion on the horizontal stabilizer of the airplane. The actions specified by this AD are intended to prevent undetected accretion of ice on the horizontal stabilizer, which could result in ice contaminated tailplane stall and consequent loss of pitch control.

DATES: Effective December 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30337–2748; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Lockheed Model L–188A and L–188C series airplanes was published in the **Federal Register** on August 13, 1998 (63 FR 43340). That action proposed to require revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in icing conditions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 75 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required incorporation of the AFM revisions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,920, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–25 Lockheed: Amendment 39–10911. Docket 98–NM–84–AD.

Applicability: All Model L–188A and L–188C series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected accretion of ice on the horizontal stabilizer, which could result in ice contaminated tailplane stall and consequent loss of pitch control, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations, Normal Procedures, and Performance Sections and Appendix III of the FAA-approved Electra 188A or 188C Airplane Flight Manual (AFM), as applicable, to include the pages specified in Table 1 (for Model L–188A series airplanes), Table 2 (for Model L–188C series airplanes not equipped with Hamilton Standard propellers), or Table 3 (for Model L–188C series airplanes equipped with Hamilton Standard propellers) of this AD, as applicable.

TABLE 1.—REVISIONS TO THE ELECTRA 188A AFM FOR ALL MODEL L–188A SERIES AIRPLANES

Section number	Section	Page number	Date shown on page
Preface	Log of Pages	i	March 10, 1998.
Preface	Log of Pages	ii	March 10, 1998.
1	Limitations	6	December 1, 1997.
3	Normal Procedures	10.1	December 1, 1997.
3	Normal Procedures	11	March 10, 1998.
3	Normal Procedures	12	December 1, 1997.
4	Performance	A	December 1, 1997.
4	Performance	6	December 1, 1997.
4	Performance	8	December 1, 1997.
4	Performance	12	December 1, 1997.
4	Performance	12.1	December 1, 1997.
4	Performance	12.2	December 1, 1997.
Appendix III	Alt. Flap Data	B	December 1, 1997.

TABLE 2.—REVISIONS TO THE ELECTRA 188C AFM FOR MODEL L–188C SERIES AIRPLANES NOT EQUIPPED WITH HAMILTON STANDARD PROPELLERS

Section number	Section	Page number	Date shown on page
Preface	Log of Pages	i	March 10, 1998.
Preface	Log of Pages	ii	March 10, 1998.
1	Limitations	6	December 1, 1997.
3	Normal Procedures	12.1	December 1, 1997.
3	Normal Procedures	13	March 10, 1998
3	Normal Procedures	14	December 1, 1997.
4	Performance	A	December 1, 1997.
4	Performance	5	December 1, 1997.
4	Performance	8	December 1, 1997.
4	Performance	12	December 1, 1997.
4	Performance	12.1	December 1, 1997.
4	Performance	12.2	December 1, 1997.
Appendix III	Alt. Flap Data	B	December 1, 1997.

TABLE 3.—REVISIONS TO THE ELECTRA 188C AFM FOR MODEL L–188C SERIES AIRPLANES NOT EQUIPPED WITH HAMILTON STANDARD PROPELLERS

Section number	Section	Page number	Date shown on page
Preface	Log of Pages	i	March 10, 1998.
Preface	Log of Pages	ii	March 10, 1998.
1	Limitations	6	December 1, 1997.
3	Normal Procedures	12.1	December 1, 1997.
3	Normal Procedures	13	March 10, 1998.
3	Normal Procedures	14	December 1, 1997.
A4	Performance	A	December 1, 1997.
A4	Performance	5	December 1, 1997.
A4	Performance	8	December 1, 1997.
A4	Performance	12	December 1, 1997.
A4	Performance	12.1	December 1, 1997.
A4	Performance	12.2	December 1, 1997.
Appendix AIII	Alt. Flap Data	B	December 1, 1997.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revisions shall be done in accordance with the following Lockheed Airplane Flight Manuals, which contain the specified list of effective pages:

Airplane flight manuals	Page number	Date shown on page
Electra Model 188A ..... March 10, 1998	Log of Pages ..... Pages i through Jii	March 10, 1998.
Electra Model 188C ..... March 10, 1998	Log of Pages ..... Pages i through Lii	March 10, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Aeronautical Systems Support Company (LASSC), Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 30, 1998.

Issued in Renton, Washington, on November 17, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31319 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–71–AD; Amendment 39–10910; AD 98–24–24]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain MD–11 series airplanes, that requires a one-time visual inspection to detect discrepancies of the seat tracks and adjacent structure underneath lavatories, and repair, if necessary. This amendment also requires installation of a non-metallic barrier on the bottom of each lavatory foot fitting, and replacement of existing seat track fittings with new seat track fittings. This amendment is prompted by reports of galvanic corrosion found on the seat tracks at attachment points under certain lavatories. The actions specified by this AD are intended to prevent corrosion of seat tracks and adjacent structure. Corrosion of the seat tracks and adjacent structure could result in shifting of lavatories, which could lead to injury of passengers and crew, as well as damage to aircraft structure and systems.

DATES: Effective December 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Hsu, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5323; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain MD–11 series airplanes was published in the **Federal Register** on September 3, 1998 (63 FR 46934). That action proposed to require a one-time visual inspection to detect discrepancies of the seat tracks and adjacent structure underneath lavatories, and repair, if necessary. The action also proposed to require installation of a non-metallic barrier on the bottom of each lavatory foot fitting, and replacement of existing seat track fittings with new seat track fittings.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 143 airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 40 work hours per airplane to accomplish the required inspection, installation, and replacement, and that the average labor rate is $60 per work hour. Required parts will cost less than $1,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $156,400, or $3,400 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–24 McDonnell Douglas: Amendment 39–10910. Docket 98–NM–71–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Service Bulletin MD11–53–043, Revision 02, dated May 28, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion of seat tracks and adjacent structure, which could result in shifting of lavatories causing injury to passengers and crew, as well as damage to aircraft structure and systems, accomplish the following:

(a) Within 15 months after the effective date of this AD, conduct a visual inspection to detect discrepancies (i.e., corrosion and breakage) of the seat tracks and adjacent structure at the lavatory locations defined in JAMCO Service Bulletin MD11–25–1010, dated July 12, 1994.

(1) If no discrepancy is detected, prior to further flight, install a non-metallic barrier on the bottom of each lavatory foot fitting and replace existing seat track fittings with new fittings, in accordance with McDonnell Douglas Service Bulletin MD–11–53–043, Revision 02, dated May 28, 1996.

(2) If any discrepancy is detected, prior to further flight, repair in accordance with the McDonnell Douglas MD–11 Structural Repair Manual, or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Prior to further flight following accomplishment of the repair, install a non-metallic barrier on the bottom of each lavatory foot fitting and replace existing seat track fittings with new fittings, in accordance with McDonnell Douglas Service Bulletin MD–11–53–043, Revision 02, dated May 28, 1996.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation and replacement shall be done in accordance with McDonnell Douglas Service Bulletin MD11–53–043, Revision 02, dated May 28, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 30, 1998.

Issued in Renton, Washington, on November 17, 1998.

Darrell M. Pederson,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31318 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–40–AD; Amendment 39–10905; AD 98–24–20]

RIN 2120–AA64

Airworthiness Directives; Grob Luft- und Raumfahrt, GmbH Models G 109 and G 109B Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Grob Luft-und Raumfahrt (Grob) Models G 109 and G 109B sailplanes. This AD requires inspecting the radius of the landing gear retaining bars, installing additional supportive parts, and replacing the retaining bars if the retaining bars' chamfer radius is less than 3.0 millimeters (mm). This AD also requires inspecting the landing gear legs for cracks and proper thickness, and either polishing out the cracks or replacing the landing gear legs with parts of improved design depending on the crack length. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct fatigue cracking of the landing gear legs, which could result in landing gear failure with consequent loss of control of the sailplane during landing operations.

DATES: Effective January 9, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 9, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the

Regional Counsel, Attention: Rules Docket No. 96–CE–40–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Grob G 109 and G 109B sailplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 19, 1997 (62 FR 7373). The NPRM proposed to require inspecting the radius of the landing gear retaining bars, installing additional supportive parts, and replacing the retaining bars if the retaining bars' chamfer radius is less than 3.0 mm. The NPRM also proposed to require inspecting the landing gear legs for cracks and proper thickness, and either polishing out the cracks or replacing the landing gear legs with parts of improved design depending on the crack length.

Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Grob Service Bulletin TM 817–39, dated January 4, 1994.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 63 sailplanes in the U.S. registry will be affected by this AD.

The required inspection and modification of the retaining bars will take approximately 4 workhours per sailplane (2 workhours per landing gear leg) to accomplish, at an average labor rate of approximately $60 an hour. Parts to accomplish the required modifications cost $90. Based on these figures, the total cost impact of this inspection and modification on U.S. operators is estimated to be $20,790, or $330 per sailplane.

The initial inspection will take approximately 18 workhours per sailplane (9 workhours per landing gear leg) to accomplish, at an average labor rate of $60 per hour. Based on these figures, the total cost impact of the initial inspection on U.S. operators is estimated to be $68,040, or $1,080 per sailplane.

The above figures only take into account the costs of the initial inspection of the landing gear leg and do not take into account costs associated with repetitive inspections or any required crack polishing or landing gear leg replacement. The FAA has no way of determining the number of repetitive inspections each owner/operator of the affected sailplanes would incur, or the number of landing gear legs that will be found cracked and either need polishing or replacement.

Compliance Time

The compliance time of this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time compliance is the most desirable method because the unsafe condition of the landing gear legs described by this AD is caused by corrosion. Corrosion initiates as a result of sailplane operation, but can continue to develop regardless of whether the sailplane is in service. In order to assure that the above-referenced condition is detected and corrected on all sailplanes within a reasonable period of time without inadvertently grounding any sailplanes, the FAA is requiring a compliance schedule based upon calendar time instead of hours TIS.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–20 Grob Luft-und Raumfahrt, GMBH: Amendment 39–10905, Docket No. 96–CE–40–AD.

Applicability: Models G 109 and G 109B sailplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct fatigue cracking of the landing gear legs, which could result in landing gear failure with consequent loss of control of the sailplane during landing operations, accomplish the following:

(a) *For all of the affected sailplanes:* Within the next 120 calendar days after the effective date of this AD, inspect the retaining bars chamfer on both landing gear legs for a minimum of 3.0 millimeters (mm) radius in accordance with the "Actions" section, paragraph A3, of Grob Service Bulletin (SB) 817–39, dated January 4, 1994.

(1) If the chamfer radius is 3.0 mm or greater, prior to further flight, glue a reinforcing plastic strip (part number (P/N) 109–5000.07) to the retaining bar in accordance with the "Actions" section, paragraph A4, of Grob SB 817–39, dated January 4, 1994.

(2) If the chamfer radius is less than 3.0 mm, prior to further flight, replace the retaining bar with a new improved design retaining bar, P/N 109–5000.02; and install the plastic strip, P/N 109–5000.07. Accomplish these actions in accordance with the "Actions" section, paragraph A5, of Grob SB 817–39, dated January 1994.

(b) *For sailplanes that are not equipped with landing gear legs, P/N 109B–5001.01/1:* Upon the accumulation of 1,000 hours TIS on the landing gear leg or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 500 hours TIS, inspect the landing gear legs for cracks (using the magnetic particle or X-ray analysis method) in accordance with the "Actions" section, paragraph B9, of Grob SB 817–39, dated January 4, 1994.

(1) If any crack(s) is found that does not exceed a maximum depth of 0.5 millimeters (mm) on each side, prior to further flight, polish out the crack(s) in accordance with the "Actions" section, paragraph B10, of Grob SB 817–39, dated January 4, 1994.

(2) If after polishing out any crack, as specified in paragraph (b)(1) of this AD, the undercarriage thickness is not at least 13 mm, prior to further flight, replace the cracked landing gear leg with a P/N 109B–5001.01/1 landing gear leg, in accordance with the "Actions" section, paragraph B10, of Grob SB 817–39, dated January 4, 1994.

(3) If any crack(s) is found that is equal to or exceeds a maximum depth of 0.5 mm on either side, prior to further flight, replace the cracked landing gear leg with a P/N 109B–5001.01/1 landing gear leg, in accordance with the "Actions" section, paragraph B10, of Grob SB 817–39, dated January 4, 1994.

(4) Replacing both landing gear legs with P/N 109B–5001.01/1 may be accomplished at any time as terminating action for the repetitive inspection requirement of this AD, but must be accomplished prior to further flight on any landing gear found cracked as specified in paragraph (b)(2) or (b)(3) of this AD.

(5) If one landing gear leg is replaced prior to further flight when a crack is found, the other landing gear leg must still be repetitively inspected every 500 hours TIS until replacement with the improved design part.

Note 2: Landing gear legs (P/N 109B–5001.01/1) have a "0" stamped on the front side of the leg for easy identification.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to Grob Service Bulletin TM 817–39, dated January 4, 1994, should be directed to Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspections, installation, polishing, and replacements required by this AD shall be done in accordance to Grob Service Bulletin TM 817–39, dated January 4, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grob-Werke GmbH & Co. KG, Unternehmensbereich, Burkhart Grob Flugzeugbau, Flugplatz Mattsies, 86874 Tussenhausen, Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on January 9, 1999.

Issued in Kansas City, Missouri, on November 16, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31317 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–317–AD; Amendment 39–10904; AD 98–24–19]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 series airplanes. This action requires revising the Performance Section of the Airplane Flight Manual (AFM) to provide the flightcrew with procedures to adjust landing distances for landings performed with the anti-icing system active. This action also requires revising the Limitations Sections of the AFM to prohibit certain types of approaches with the anti-icing system active. This amendment is prompted by a report that increased (i.e., higher than normal) flight idle thrust may occur when the anti-icing system is active. The actions specified in this AD are intended to ensure that the flightcrew is advised of appropriate landing field lengths when operating with the anti-icing system active, and that instrument approaches at certain flap settings are prohibited with the anti-icing system active. Increased flight idle thrust when the anti-icing system is active, if not corrected, could result in landing overrun.

DATES: Effective December 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 10, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–317–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225,

Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, ACE–118A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6063; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that a fault was discovered during a review of Version II.2 of the Full Authority Digital Engine Control, which is installed on Model EMB–145 series airplanes equipped with Allison Model AE3007A1/2 engines. That fault affects operations when the anti-icing system is active, and causes increased (i.e., higher than normal) flight idle thrust during landing. Such increased flight idle thrust increases landing distances over those shown in the existing Performance Section of the FAA-approved Airplane Flight Manual (AFM), which could result in landing overrun if the landing distance is greater than the available runway. Also, such increased flight idle thrust during instrument approaches using the Flaps 22 setting could result in reduced controllability of the airplane due to inadequate drag to slow the airplane or to descend. This condition, if not corrected, also could result in landing overrun.

Explanation of Relevant Service Information

The FAA has reviewed EMBRAER EMB–145 Airplane Flight Manual 145/1153, Revision 19, dated October 23, 1998, which describes procedures for revising the Performance Section of the FAA-approved AFM to provide the flightcrew with procedures to adjust landing distances for landings performed with the anti-icing system active.

FAA's Determination

The FAA has determined that it is necessary to revise the Limitations Section of the FAA-approved AFM to prohibit instrument approaches using the Flaps 22 setting when the anti-icing system is active. This determination is based on the fact that, in conditions of increased flight idle thrust, such a setting may not provide adequate drag, which could reduce the ability of the flightcrew to slow the airplane or to descend, and could result in increased landing distances.

U.S. Type Certification of the Airplane

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to ensure that the flightcrew is advised of appropriate landing field lengths when operating with the anti-icing system active. This AD also is being issued to ensure that the flightcrew is advised that instrument approaches at certain flap settings are prohibited with the anti-icing system active. Increased flight idle thrust when the anti-icing system is active, if not corrected, could result in landing overrun. This AD requires revising the Performance Section of the FAA-approved AFM to advise the flightcrew of adjustments to landing distances for landings performed with the anti-icing system active. This AD also requires revising the Limitations Section of the FAA-approved AFM to prohibit certain types of approaches with the anti-icing system active. Accomplishment of the AFM revisions is intended to adequately address the identified unsafe condition.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–317–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared

and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–19 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–10904. Docket 98–NM–317–AD.

Applicability: Model EMB–145 series airplanes, equipped with Allison Model AE3007A1/2 engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flightcrew is advised of appropriate landing field lengths when operating with the anti-icing system active, and that instrument approaches at certain flap settings are prohibited with the anti-icing system active, accomplish the following:

(a) Within 10 days after the effective date of this AD, accomplish the actions specified by paragraphs (a)(1) and (a)(2) of this AD.

(1) Revise the Performance Section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of EMBRAER EMB–145 AFM 145/1153, Revision 19, dated October 23, 1998, into the AFM.

Note 1: When landing in abnormal configurations per the emergency and abnormal procedures of Section 3 of the AFM and operating with the anti-icing system active, the landing field length multiples specified in Section 3 should be applied to the landing field lengths specified in Supplement 6 of Revision 19 of the AFM.

(2) Revise the Limitations Section of Supplement 12 of the FAA-approved AFM to include the following statement. This action may be accomplished by inserting a copy of this AD into the AFM.

"Flaps 22 instrument approaches with anti-ice on are not approved."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The AFM revision specified in paragraph (a)(1) of this AD shall be done in accordance with EMBRAER EMB–145 Airplane Flight Manual 145/1153, Revision 19, dated October 23, 1998, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
List of Effective Pages, Pages A, S6–i, S6–ii	19	October 23, 1998.
List of Effective Pages, Page B	18	August 6, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 10, 1998.

Issued in Renton, Washington, on November 16, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31316 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–17–AD; Amendment 39–10909; AD 98–24–23]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SE.3160, SA.316B, SA.316C, and SA.319B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model SE.3160, SA.316B, SA.316C, and SA.319B helicopters. This action requires inspecting certain horizontal stabilizer spar tubes and replacing them if cracks are found or repairing them if crazing, corrosion, fretting marks, or scratches are found and are repairable. This amendment is prompted by several service reports of spar tube corrosion and fatigue cracks discovered during normal maintenance inspections, which could cause loss of the horizontal stabilizer and subsequent loss of control of the helicopter.

DATES: Effective December 10, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 10, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972)

641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SE.3160, SA.316B, SA.316C, and SA.319B helicopters. The DGAC advises that fatigue cracks in certain horizontal spar tubes have been reported originating at or near the airframe attaching fitting.

Eurocopter France has issued Eurocopter France Service Bulletin 05.84, Revision 2, dated December 19, 1997 (SB). The SB specifies inspections of horizontal stabilizer spar tubes, part numbers (P/N) 3160.35.30.031.1 or .2, for fatigue cracks caused by corrosion or fretting and specifies a procedure to repair them if no cracks are present. The DGAC classified this SB as mandatory and issued AD 91–020–049(A)R2, dated March 11, 1998, to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Model SE.3160, SA.316B, SA.316C, and SA.319B helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the horizontal stabilizer due to fatigue cracks in the horizontal stabilizer spar tubes, P/N's 3160.35.30.031.1 and .2, which could cause loss of the horizontal stabilizer and subsequent loss of control of the helicopter. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspections of the horizontal stabilizer spar tubes for cracks are required within 50 hours time-in-service (TIS), and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 66 helicopters of U.S. registry will be affected by this AD, that it will take 6 work hours per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1987 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $154,902.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–17–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–23 Eurocopter France: Amendment 39–10909. Docket No. 98–SW–17–AD.

Applicability: Model SE.3160, SA.316B, SA.316C, and SA.319B helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (b) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the horizontal stabilizer due to a fatigue crack in a spar tube, Part Number (P/N) 3160.35.30.031.1 or .2, which could cause loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) and thereafter at intervals not to exceed 200 hours TIS or 12 calendar months, whichever comes first, using a 10-power or higher magnifying glass, visually inspect the horizontal stabilizer spar tubes, particularly the embedded areas adjacent to the left and right attach fittings in accordance with paragraph 1.C.1) through 5) of the Planning Information of Eurocopter France Service Bulletin 05.84, Revision 2, dated December 19, 1997 (SB).

(1) If the inspection reveals a crack, before further flight, replace the spar tube with an airworthy spar tube in accordance with paragraph 1.C.7) of the SB.

(2) If the inspection reveals any crazing (fine cracking in the paint), before further flight, remove the paint by rubbing with 200 grit abrasive paper down to bare metal and inspect the spar tube in accordance with paragraphs 1.C.5) and 1.C.6) a) of the SB.

(3) If corrosion pitting, fretting marks, or scratches are found, before further flight, inspect in accordance with paragraphs 1.C.4), 1.C.5., and 1.C.6)a) and c).

(4) If any corrosion pit equals or exceeds 0.5 mm in diameter or if a crack is found as a result of the dye penetrant inspection specified in paragraph 1.C.6)(a) of the SB, before further flight, replace the spar tube with an airworthy spar tube in accordance with paragraph 1.C.7) of the SB.

(5) If pits are less than 0.5mm in diameter or corrosion, fretting, or scratches are repairable, before further flight, repair the spar tube in accordance with paragraph 1.C.6) and reinstall the spar tube in accordance with paragraph 1.C.7) of the SB.

(6) If no corrosion pitting, fretting marks, scratches or crazing are found, reinstall the spar tube in accordance with paragraph 1.C.7) of the SB.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The inspection, replacement and repair shall be done in accordance with Eurocopter France Service Bulletin 05.84, Revision 2, dated December 19, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 10, 1998.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 91–020–049(A)R2 dated March 11, 1998.

Issued in Fort Worth, Texas, on November 17, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31330 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–13–AD; Amendment 39–10913; AD 98–24–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires replacing the cam assembly, cam bellcrank assembly, and thrust reverser control switch actuator on all four thrust levers with new components. This amendment is prompted by a report of an uncommanded automatic retraction of the leading edge flaps during takeoff. The actions specified by this AD are intended to prevent such uncommanded automatic retraction, which would seriously degrade liftoff and climb capabilities, and could result in near-stall conditions at a critical phase of the flight.

DATES: Effective December 30, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 30, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank van Leynseele, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (206) 227–2671; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on April 14, 1997 (62 FR 18063). That action proposed to require replacing the cam assembly, cam bellcrank assembly, and thrust reverser control switch actuator on all four thrust levers with new components.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Cite the Latest Service Information

Three commenters request that the proposed rule be revised to reflect the latest revision of Boeing Alert Service Bulletin 747–27A2356; the original issue of that service bulletin was referenced in the proposal as the appropriate source of service information.

The FAA concurs with the commenters' request to reference the latest revision of the service bulletin. The FAA has reviewed and approved Boeing Service Bulletin 747–27A2356, Revision 1, dated August 13, 1998. That

revision of the service bulletin provides a correction to certain part numbers of the cam bellcrank assemblies and clarifies certain part-marking instructions. In addition, Revision 1 of the service bulletin describes a revision of the operating position of the reverse thrust isolation valve switches in the thrust levers. The FAA has revised the final rule to reference Boeing Service Bulletin 747–27A2356, Revision 1, dated August 13, 1998, as the appropriate source of service information. The FAA has determined that requiring the replacements to be performed in accordance with Revision 1 of the service bulletin will not pose an additional burden on any operator.

Request To Revise the Cost Impact Information

One commenter, the manufacturer, requests that the cost impact information be corrected to reflect that 46 airplanes of U.S. registry will be affected by this AD, rather than the 35 airplanes estimated in the proposal. The FAA concurs and has revised the cost impact information accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 394 Boeing Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts would cost between $3,412 and $4,740 per airplane. Based on these figures, the cost impact of the AD is estimated to be between $179,032 and $240,120, or between $3,892 and $5,220 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–24–26 Boeing: Amendment 39–10913. Docket 97–NM–13–AD.

Applicability: Model 747–400 series airplanes, line positions 696 through 1090 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded automatic retraction of the leading edge flaps during takeoff, which would seriously degrade liftoff and climb capabilities, and could result in near-stall conditions, accomplish the following:

(a) Within 18 months after the effective date of this AD, accomplish the requirements of paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–27A2356, Revision 1, dated August 13, 1998.

(1) For Groups 1 and 2 airplanes, as listed in the service bulletin: Replace the cam assembly, cam bellcrank assembly, and thrust reverser control switch actuator on all four thrust levers with new components.

(2) For Groups 3 and 4 airplanes, as listed in the service bulletin: Replace the cam bellcrank assembly and thrust reverser control switch actuator on all four thrust levers with new components.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Boeing Service Bulletin 747–27A2356, Revision 1, dated August 13, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O.-Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 30, 1998.

Issued in Renton, Washington on November 18, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31324 Filed 11–24–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–139–AD; Amendment 39–10916; AD 98–24–29]

RIN 2120–AA64

Airworthiness Directives; Aerostar Aircraft Corporation PA–60–600 and PA–60–700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Aerostar Aircraft Corporation (Aerostar) PA–60–600 and PA–60–700 series airplanes. This AD requires repetitively inspecting the forward face of each wing's 55-percent upper spar cap for cracks above the main landing gear fitting in the top of the wheel well, and replacing or repairing any cracked upper spar cap. Reports of spanwise cracks in the area above the main landing gear attachment on two of the affected airplanes prompted this action. The actions specified by this AD are intended to detect and correct fatigue cracking of the wing upper spar cap, which could result in structural failure of the wing spar to the point of failure with consequent loss of control of the airplane.

DATES: Effective January 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 8, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from the Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–9742; telephone: (208) 762–0338. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–139–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Richard N. Simonson, Aerospace Engineer, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone: (425) 227–2597; facsimile: (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Aerostar PA–60–600 and PA–60–700 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 21, 1998 (63 FR 44818). The NPRM proposed to require repetitively inspecting the forward face of each wing's 55-percent upper spar cap for cracks above the main landing gear fitting in the top of the wheel well, and replacing or repairing any cracked upper spar cap.

Accomplishment of the proposed inspections as specified in the NPRM would be required in accordance with Aerostar Service Bulletin SB600–132, dated September 3, 1997. Accomplishment of the proposed repair (if necessary) would be required in accordance with an FAA-approved repair scheme. Accomplishment of the proposed replacement (if necessary) would be required in accordance with the applicable maintenance manual.

The NPRM was the result of reports of spanwise cracks in the area above the main landing gear attachment on two of the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 600 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the initial inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the initial inspection specified in this AD on U.S. operators is estimated to be $72,000, or $120 per airplane.

These figures only take into account the costs of the initial inspection and do not take into account the costs of repetitive inspections and the costs associated with any repair that will be necessary if cracks are found. The FAA has no way of determining the number of repetitive inspections an owner/operator will incur over the life of the airplane, or the number of airplanes that will need replacement or repair.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–29 Aerostar Aircraft Corporation: Amendment 39–10916; Docket No. 97–CE–139–AD.

Applicability: All serial numbers of the following airplane models, certificated in any category:

PA–60–600 (Aerostar 600)
PA–60–601 (Aerostar 601)
PA–60–601P (Aerostar 601P)
PA–60–602P (Aerostar 602P)
PA–60–700P (Aerostar 700P)

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct fatigue cracking of the wing upper spar cap, which could result in structural failure of the wing spar to the point of failure with consequent loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter at intervals not to exceed 100 hours TIS, inspect the forward face of each wing's 55-percent upper spar cap for cracks above the main landing gear fitting in the top of the wheel well. Accomplish this inspection in accordance with the INSTRUCTIONS section of Aerostar Service Bulletin SB600–132, dated September 3, 1997. The initial inspection must be accomplished using dye penetrant methods and all subsequent inspections must be, at the very least, visual inspections.

(b) If any crack(s) is/are found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD (below):

(1) Replace the upper spar cap in accordance with the applicable maintenance manual, and continue to repetitively inspect as required by paragraph (a) of this AD; or

(2) Obtain a repair scheme from the manufacturer through the FAA, Small Airplane Directorate, at the address specified in paragraph (d) of this AD; incorporate this scheme; and continue to repetitively inspect as required by paragraph (a) of this AD, unless specified differently in the instructions to the repair scheme.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW, Renton, Washington 98055–4056. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

NOTE 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) The inspections required by this AD shall be done in accordance with Aerostar Service Bulletin SB600–132, dated September 3, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Aerostar Aircraft Corporation, 10555 Airport Drive, Coeur d'Alene Airport, Hayden Lake, Idaho 83835–9742. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on January 8, 1999.

Issued in Kansas City, Missouri, on November 17, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31435 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–106–AD; Amendment 39–10917; AD 98–24–30]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Models S10, S10–V, and S10–VT Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Stemme GmbH & Co. KG (Stemme) Models S10, S10–V, and S10–VT sailplanes. This AD requires inspecting certain areas in the flight control system for cracks; immediately replacing any cracked parts; and eventually replacing all longitudinal coupling with modified coupling regardless if found cracked. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct cracks in certain areas of the flight control system, which could result in flight control system failure with consequent reduced or loss of control of the sailplane.

DATES: Effective December 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 18, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 28, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–106–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket 98–CE–106–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain Stemme Models S10, S10–V, and S10–VT sailplanes. The LBA reports that cracks were found on the flight control longitudinal coupling during a static load test on the elevator control system.

The cracks were such that the flight control system would have most likely failed in a short period of operating time with reduced or loss of control of the sailplane.

Other parts in the flight control system have the same type of force intersection design and cracks could exist or develop in these areas also. These areas are the wing flap coupling, part number (P/N) 10SW–RVW; the airbrake control coupling, P/N 10SB–RVW; the flap drive rocker, P/N 10SW–RMW; and the flap/aileron interference shaft, P/N 10SQ–RMW.

Cracks in any of these areas, if not detected and corrected in a timely manner, could result in flight control system failure with consequent reduced or loss of control of the sailplane.

Relevant Service Information

Stemme has issued Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998, which specifies procedures for inspecting the following parts for cracks:

- The flight control longitudinal coupling, part number (P/N) 10SH–RVH;
- The wing flap coupling, P/N 10SW–RVW;
- The airbrake control coupling, P/N 10SB–RVW;
- The flap drive rocker, P/N 10SW–RMW; and
- The flap/aileron interference shaft, P/N 10SQ–RMW.

This service bulletin also references Stemme Installation Instructions A34–10–032–E, Amendment-Index 01.a, dated August 10, 1998, which includes procedures for replacing the flight control longitudinal coupling, with modified P/N 10SH–RVH coupling.

The LBA classified this service information as mandatory and issued German AD 1998–323, dated July 1, 1998, in order to assure the continued airworthiness of these sailplanes in Germany.

The FAA's Determination

These sailplane models are manufactured in Germany and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Stemme Models S10, S10–V, and S10–VT sailplanes of the same type design registered for operation in the United States, the FAA is taking AD action. This AD requires inspecting the areas of the flight control system previously referenced for cracks; immediately replacing any cracked parts; and eventually replacing all longitudinal coupling with modified coupling regardless if found cracked.

Accomplishment of the inspection will be required in accordance with Stemme Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998.

Accomplishment of the longitudinal coupling replacement will be required in accordance with Stemme Installation Instructions A34–10–032–E, Amendment-Index 01.a, dated August 10, 1998.

Accomplishment of the replacement of any other cracked part in the flight control system will be required in accordance with procedures obtained from the manufacturer through the FAA, Small Airplane Directorate.

Possible Follow-up Action

Stemme has modified the longitudinal coupling, but has not modified the wing flap coupling, the airbrake control coupling, the flap drive rocker, and the flap/aileron interference shaft. If cracks are found on parts other than the longitudinal coupling, then Stemme will develop modified parts upon demand as quickly as possible. Operation of the sailplane while the parts are being developed will not be allowed. The FAA has determined that this alternative is better than operating the sailplane with cracked parts in the flight control system.

The FAA will continue to monitor this situation, and may issue additional AD action to require mandatory replacement of modified flight control system parts other than the longitudinal coupling, as these parts become available.

Compliance Time of This AD

The replacement compliance of this AD is presented in calendar time and hours time-in-service (TIS). Cracks in the flight control system occur because of sailplane operation; however, there is a potential for corrosion in this area, which could enhance crack growth. For this reason, the FAA has determined that requiring the replacement at 5 calendar months will assure the safety of the low-usage sailplanes; and requiring the replacement at 100 hours TIS will assure the safety of the high-usage sailplanes. The prevalent compliance time will be that which occurs first.

Differences Between This AD, the Service Information, and the German AD

Stemme Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998, specifies inspecting certain areas of the flight control system coupling prior to further flight on sailplanes with over 100 hours TIS. The German AD requires this on all sailplanes registered for operation in Germany.

The FAA does not have the justification to require the initial inspection prior to further flight on all sailplanes with over 100 hours TIS. The FAA is giving a grace period of 5 hours TIS for those sailplanes that have more than 100 hours TIS on the flight control system.

Determination of the Effective Date of the AD

Since a situation exists (possible flight control system failure) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–CE–106–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

98–24–30 STEMME GMBH & Co. KG: Amendment 39–10917; Docket No. 98–CE–106–AD.

Applicability: The following models and serial number sailplanes, certificated in any category:

Model	Serial numbers
S10	10–03 through 10–63.
S10–V ..	14–002 through 14–030 and transformed S10–V sailplanes with serial numbers of 14–012M through 14–063M.
S10–VT	11–001, 11–004 through 11–013, and 11–015.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct cracks in certain areas of the flight control system, which could result in flight control system failure with consequent reduced or loss of control of the sailplane, accomplish the following:

(a) Upon accumulating 100 hours time-in-service (TIS) on the flight control system or within the next 5 hours TIS after the effective date of this AD, whichever occurs later, inspect the following areas in the flight control system, in accordance with the Instructions section of Stemme Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998:

(1) The longitudinal coupling, part number (P/N) 10SH–RVH;

(2) The wing flap coupling, P/N 10SW–RVW;

(3) The airbrake control coupling, P/N 10SB–RVW;

(4) The flap drive rocker, P/N 10SW–RMW; and

(5) The flap/aileron interference shaft, P/N 10SQ–RMW.

(b) Prior to further flight after the inspection required by paragraph (a) of this AD, replace any cracked part with a modified part.

(1) Obtain modified parts (including installation instructions), except for the longitudinal coupling, from the manufacturer through the FAA, Small Airplane Directorate, at the address specified in paragraph (e) of this AD.

(2) Obtain modified longitudinal coupling from the manufacturer as specified in Stemme Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998; and install this modified longitudinal coupling in accordance with Stemme Installation Instructions A34–10–032–E, Amendment-Index 01.a, dated August 10, 1998.

Note 2: Stemme Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998, includes a return form for reporting the findings of the crack inspection required by paragraph (a) of this AD. The FAA encourages all owners/operators of the affected sailplanes to have this form filled out and send it to the manufacturer at the address specified in paragraph (g) of this AD.

(c) Within the next 6 calendar months after the effective date of this AD or within the next 100 hours TIS after the effective date of this AD, whichever occurs first, unless already accomplished (compliance with the applicable part of paragraph (b) of this AD), obtain modified longitudinal coupling from the manufacturer as specified in Stemme Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998; and install this modified longitudinal coupling in accordance with Stemme Installation Instructions A34–10–032–E, Amendment-Index 01.a, dated August 10, 1998.

(d) As of the effective date of this AD, no person may install on any affected sailplane, longitudinal coupling that has not been modified as specified in Stemme Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998; and installed in accordance with Stemme Installation Instructions A34–10–032–E, Amendment-Index 01.a, dated August 10, 1998.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(g) Questions or technical information related to the service information referenced in this AD should be directed to Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany; telephone: 49.33.41.31.11.70; facsimile: 49.33.41.31.11.73. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(h) The inspection required by this AD shall be done in accordance with Stemme

Service Bulletin A31–10–032, Amendment-Index 02.a, dated July 10, 1998. The longitudinal coupling replacement required by this AD shall be done in accordance with Stemme Installation Instructions A34–10–032–E, Amendment-Index 01.a, dated August 10, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Stemme GmbH & Co. KG, Gustav-Meyer-Allee 25, D–13355 Berlin, Federal Republic of Germany. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in German AD 1998–323, dated July 1, 1998.

(i) This amendment becomes effective on December 18, 1998.

Issued in Kansas City, Missouri, on November 17, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31434 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 191

[T.D. 98–16]

RIN 1515–AB95

Drawback; Correction

AGENCY: Customs Service, Department of the Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects an error appearing in an appendix to the final regulations relating to drawback (T.D. 98–16) that were published in the **Federal Register** (63 FR 10970) on March 5, 1998.

EFFECTIVE DATE: April 6, 1998.

FOR FURTHER INFORMATION CONTACT: Margaret R. McKenna, Duty and Refund Determination Branch, 202–927–2077.

SUPPLEMENTARY INFORMATION:

Background

The final regulations (T.D. 98–16) that were published in the **Federal Register** on March 5, 1998 (63 FR 10970) revised part 191 of the Customs Regulations relating to drawback (19 CFR part 191). These final regulations contained an error in one of the general manufacturing drawback rulings in Appendix A to part 191, that could prove misleading. This document corrects the error.

Need for Correction

In Appendix A to part 191, the introductory text for general manufacturing drawback ruling "IV." incorrectly describes the exported articles that are manufactured under the ruling as burlap or other textile material. As made clear in the body of the general ruling, however, the exported articles in fact consist of bags or meat wrappers. The bags or meat wrappers are manufactured from imported burlap or other textile material.

The general ruling is largely a republication of a general drawback contract that formerly appeared in the Customs Bulletin in T.D. 83–53, 17 Cust. Bull. 96 (1983). As published, the introductory text in T.D. 83–53 misdescribed the exported articles. This error was repeated in the corresponding introductory text of general manufacturing drawback ruling "IV." in Appendix A to part 191.

Accordingly, this document corrects the introductory text of general manufacturing drawback ruling "IV." to properly reflect the exported articles that are manufactured under the ruling.

List of Subjects in 19 CFR Part 191

Drawback, Reporting and recordkeeping requirements.

Amendment to the Regulations

Accordingly, Appendix A to part 191, Customs Regulations (19 CFR part 191, Appendix A), is corrected by making the following correcting amendment.

PART 191—DRAWBACK

1. The general authority citation for part 191 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

Appendix A—[Amended]

2. In Appendix A to part 191, following the heading of general manufacturing drawback ruling "IV.", the introductory text immediately preceding paragraph "A." of the general ruling is revised to read as follows: "Drawback may be allowed under 19 U.S.C. 1313(a) upon the exportation of bags or meat wrappers manufactured with the use of imported burlap or other textile material, subject to the following special requirements:"

Dated: November 19, 1998.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 98–31488 Filed 11–24–98; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 155–98]

Exemption of System of Records Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, is exempting the National Instant Criminal Background Check System (NICS) from 5 U.S.C. 552a (c) (3) and (4); (d); (e) (1), (2), and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g). The purposes of the exemptions are to maintain the confidentiality and security of information compiled for purposes of criminal or other law enforcement investigation, or of reports compiled at any stage of the law enforcement process. The exemptions are necessary because some information in NICS is from law enforcement records, and may (in the case of NICS denials, for example) relate to additional law enforcement interest. Therefore, to the extent that they may be subject to exemption under subsections (j)(2), (k)(2), and (k)(3), these records are not available under the Privacy Act and not subject to certain of its procedures such as obtaining an accounting of disclosures, notification, access, or amendment/correction.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, Program Analyst (202) 616–0178.

SUPPLEMENTARY INFORMATION: This rule finalizes a proposed rule published in the **Federal Register** with an invitation to comment on June 4, 1998 (63 FR 30429). The FBI accepted comments on the proposed rule from interested parties dated on or before July 6, 1998.

Significant Comments

A number of comments raised matters that were more pertinent to other notices of proposed rulemaking relating to the NICS: The National Instant Criminal Background Check System Regulation published in the **Federal Register** on June 4, 1998 (63 FR 30430), and the National Instant Criminal Background Check System User Fee Regulation, published in the **Federal Register** on August 17, 1998 (63 FR 43893). Such comments are addressed in the final NICS rule, the National Instant Criminal Background Check System Regulation, published in the **Federal Register** on October 30, 1998 (63 FR 58303). Other comments raised

matters that were more pertinent to the notice of the establishment of the NICS as a new system of records, the National Instant Criminal Background Check System (NICS) JUSTICE/FBI–018, published in the **Federal Register** on June 4, 1998 (63 FR 30514). Such comments are addressed in a revised NICS records system notice, the National Instant Criminal Background Check System (NICS) JUSTICE/FBI–018, published in the notices section of today's **Federal Register**.

Several comments questioned the authority for exempting records in the NICS. One comment pointed out that certain records in the NICS might not meet the Privacy Act's requirements for exemptions and should therefore not be subject to exemptions. As in the proposed rule, the final rule specifically states that exemptions will apply only to the extent that information in the system is subject to exemption. The comment questioned whether even records relating to criminal matters would be exempt. Case law has established that criminal records do not lose their exempt status even if replicated in a non-criminal law system. (Likewise, other law enforcement records would retain any exempt status even if replicated in a non-law enforcement system.) In addition, however, to the extent it bears on possible violations of the Brady Act, the Gun Control Act (19 U.S.C. Chapter 44), or the National Firearms Act (26 U.S.C. Chapter 53), information in the NICS may comprise law enforcement material in its own right. For instance, NICS denials presumptively relate to an illegal attempt to acquire a firearm in violation of federal law. Even information on approved transactions (which the NICS destroys after a limited time) may implicate law enforcement interests, for example, where audits identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, or where potential handgun transferees or transferors have submitted false identification information to thwart the name check system. One comment suggested that the rule more clearly delineate which NICS records would be subject to exemptions. The Privacy Act itself delineates exemption requirements, and based on the FBI's long experience with similar provisions of other FBI records systems, the proposed language is fully sufficient to guide government officials and preclude adverse impact on individual rights.

Other comments addressed specific exemptions. Several comments objected to the NICS being exempted from 5 U.S.C. 552a(c)(3), which permits an individual to request access to an accounting of certain disclosures of records about the individual. Release of an accounting of disclosures would place an individual on notice of the existence of an outside interest in his or her activities. This would be of particular concern for situations involving NICS denials, which may presumptively indicate an attempted violation of federal criminal law. Even information on approved transactions (which the NICS destroys after a limited time) may implicate law enforcement interests, for example, where audits identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, or where potential handgun transferees or transferors have submitted false identification information to thwart the name check system. Releases of accountings could result in destruction of evidence, intimidation or endangerment of witnesses and victims, flight of the subject from the area, or other activities that would seriously impede law enforcement investigations.

Several comments in essence objected to the NICS' being exempted from 5 U.S.C. 552a(d) and (e)(4) (G) and (H), which permit an individual to request access to (and amendment of) records about the individual. Access to system records subject to exemption would compromise ongoing investigations, reveal investigatory techniques and confidential informants, invade the privacy of persons who provide information in connection with a particular investigation, or constitute a potential danger to the health or safety of law enforcement personnel. In addition, requiring the FBI to amend information thought to be not accurate, timely, relevant, and complete, because of the nature of the information collected and the length of time it is maintained, would create an impossible administrative burden by forcing the agency to continuously update its investigations attempting to resolve these issues. Individuals concerned with the accuracy of records maintained about them remain free to avail themselves of any means for access or amendment applicable to the record sources, and record contributors have a continuing responsibility to delete or update contributions determined to be invalid or incorrect (see 28 CFR 25.5(b)). Moreover, the NICS itself provides an alternate procedure for amending erroneous records resulting in transfer denials (28 CFR 25.10).

One comment objected to the NICS being exempted from 5 U.S.C. 552a(e)(1) and (5), which require that an agency maintain only relevant records necessary to accomplish the system's purpose and with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual. Without this exemption, the NICS might be prevented from acquiring data not shown to be accurate, relevant, timely, and complete at the moment of its acquisition by the NICS. This exemption is necessary because it is impossible to predict when and for whom it will be necessary to use the information in the NICS, and, accordingly, it is not possible to determine in advance when the records will be timely or relevant. Relevance and necessity are questions of circumstance and timing, and it is only after the information is evaluated that the relevance and necessity of the information can be established. In addition, since most of the records are from state, local, and other federal agency record systems, it would be impossible to review all of the records as they are submitted to verify their accuracy. However, as previously discussed, affected persons remain free to avail themselves of any means for addressing accuracy, timeliness, or completeness applicable to the record sources, and record contributors have a continuing responsibility to delete or update contributions determined to be invalid or incorrect (see 28 CFR 25.5(b)). In addition, the Department and the FBI have made efforts to enhance the quality of NICS records. Using funding authorized by the Brady Act, section 106(b), the Department has provided substantial assistance to the states for the purpose of improving their criminal history record systems. The FBI will be responsible for maintaining data integrity during NICS operations managed and carried out by the FBI, including the conduct of periodic quality control checks to verify that the information provided to the NICS Index remains valid and correct (28 CFR 25.5(a)). Finally, the NICS itself provides an alternate procedure for amending erroneous records resulting transfer denials (28 CFR 25.10).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that this order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of

Information Act, Government in the Sunshine Act, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 793–78, 28 CFR part 16 is amended as set forth below.

Dated: November 19, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5. U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203 (a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.96 is amended by adding paragraphs (p) and (q) to read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation (FBI) Systems—limited access.

* * * * *

(p) The National Instant Criminal Background Check System (NICS), (JUSTICE/FBI–018), a Privacy Act system of records, is exempt:

(1) Pursuant to 5 U.S.C. 552a(j)(2), from subsections (c) (3) and (4); (d); (e) (1), (2) and (3); (e)(4) (G) and (H); (e) (5) and (8); and (g); and

(2) Pursuant to 5 U.S.C. 552a(k) (2) and (3), from subsections (c)(3), (d), (e)(1), and (e)(4) (G) and (H).

(q) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2), and (k)(3). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the accounting of disclosures would place the subject on notice that the subject is or has been the subject of investigation and result in a serious impediment to law enforcement.

(2) From subsection (c)(4) to the extent that it is not applicable since an exemption is claimed from subsection (d).

(3)(i) From subsections (d) and (e)(4) (G) and (H) because these provisions concern an individual's access to records which concern the individual and such access to records in the system would compromise ongoing investigations, reveal investigatory techniques and confidential informants, invade the privacy of persons who provide information in connection with a particular investigation, or constitute a potential danger to the health or safety of law enforcement personnel.

(ii) In addition, from subsection (d)(2) because, to require the FBI to amend information thought to be not accurate, timely, relevant, and complete, because of the nature of the information collected and the essential length of time it is maintained, would create an impossible administrative burden by forcing the agency to continuously update its investigations attempting to resolve these issues.

(iii) Although the Attorney General is exempting this system from subsections (d) and (e)(4) (G) and (H), an alternate method of access and correction has been provided in 28 CFR, part 25, subpart A.

(4) From subsection (e)(1) because it is impossible to state with any degree of certainty that all information in these records is relevant to accomplish a purpose of the FBI, even though acquisition of the records from state and local law enforcement agencies is based on a statutory requirement. In view of the number of records in the system, it is impossible to review them for relevancy.

(5) From subsections (e) (2) and (3) because the purpose of the system is to verify information about an individual. It would not be realistic to rely on information provided by the individual. In addition, much of the information contained in or checked by this system is from Federal, State, and local criminal history records.

(6) From subsection (e)(5) because it is impossible to predict when it will be necessary to use the information in the system, and, accordingly, it is not possible to determine in advance when the records will be timely. Since most of the records are from State and local or other Federal agency records, it would be impossible to review all of them to verify that they are accurate. In addition, an alternate procedure is being established in 28 CFR, part 25, subpart A, so the records can be amended if found to be incorrect.

(7) From subsection (e)(8) because the notice requirement could present a serious impediment to law enforcement by revealing investigative techniques and confidential investigations.

(8) From subsection (g) to the extent that, pursuant to subsections (j)(2), (k)(2), and (k)(3), the system is exempted from the other subsections listed in paragraph (p) of this section.

[FR Doc. 98–31502 Filed 11–24–98; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

[SPATS No. AR–032–FOR]

Arkansas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Arkansas regulatory program (Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Arkansas proposed to revise the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) concerning revegetation success standards. Arkansas also proposed to add policy guidelines for determining Phase III revegetation success for pasture and previously mined areas, cropland, forest products, recreation and wildlife habitat, and industrial/commercial and residential areas. Arkansas intends to revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Arkansas Program

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. You can find background information on the Arkansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the November 21, 1980, **Federal Register** (45 FR 77003). You can find information on later actions concerning the Arkansas program at 30 CFR 904.12, 904.15, and 904.16.

II. Submission of the Proposed Amendment

By letter dated August 27, 1998 (Administrative Record No. AR–562), Arkansas sent us an amendment to its program under SMCRA. Arkansas proposed to amend its program in response to the November 26, 1985, and October 14, 1997, letters (Administrative Record Nos. AR–332 and AR–559.02, respectively) that we sent to Arkansas under 30 CFR 732.17(c).

We announced receipt of the amendment in the September 11, 1998, **Federal Register** (63 FR 48661). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on October 13, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to Arkansas' proposal to remove the definition of "grazingland" and associated references from its regulations. We discussed our concerns with Arkansas during a telephone conversation on October 6, 1998 (Administrative Record No. AR–562.06).

By letter dated October 8, 1998 (Administrative Record No. AR–562.05), Arkansas withdrew its proposal to remove the definition of "grazingland" from its regulations at ASCMRC 701.5. Arkansas also withdrew its proposals to remove references to the land use category of "grazingland" from the definition of "renewal resource lands" at ASCMRC 701.5 and ASCMRC 816.116(b)(1). We find that Arkansas' withdrawal of these proposed revisions is an adequate response to our concerns. Therefore, we are proceeding with this final rule **Federal Register** document.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

Any revisions that we do not discuss below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. ASCMRC 701.5 Definition of "Renewable Resource Lands"

Arkansas corrected a typographical error by changing the words "these charge" to the words "the recharge." With the correction of this error, Arkansas' definition is the same as the Federal definition of "Renewal resource lands" at 30 CFR 701.5.

2. ASCMRC 816.116(b)(1) Revegetation Success Standards for Areas Developed for Use as Pasture Land

Arkansas amended ASCMRC 816.116(b)(1) by replacing the general phrase "such other success standards approved by the Department" with a reference to its revegetation guidelines. ASCMRC 816.116(b)(1) now requires ground cover and production of living plants on areas developed for use as grazing and pasture land to be at least equal to that of a reference area or to comply with the criteria contained in Arkansas' "Phase III Revegetation Success Standards for Pasture and Previously Mined Areas."

The counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1) require ground cover and production of living plants on revegetated grazing land and pasture land areas to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. As discussed later in this document, Arkansas' revegetation success guidelines for pasture are consistent with the Federal regulations for revegetation of disturbed areas. Therefore, the revisions to ASCMRC 816.116(b)(1) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 816.116(b)(1) and 817.116(b)(1).

3. ASCMRC 816.116(b)(2) Revegetation Success Standards for Areas Developed for Use as Cropland

Arkansas revised ASCMRC 816.116(b)(2) by replacing the reference to "such other success standards approved by the Department" with a reference to its revegetation guidelines. ASCMRC 816.116(b)(2) now requires crop production on areas developed for use as cropland to be at least equal to that of a reference area or to comply with the criteria contained in Arkansas' "Phase III Revegetation Success Standards for Cropland."

The Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2) require crop production on revegetated cropland areas to be at least equal to that of a reference area or such other success standards approved by the regulatory authority. As discussed later in this document, Arkansas' revegetation success guidelines for cropland are no less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we find that the revisions to ASCMRC 816.116(b)(2) are consistent with and no less effective than the counterpart Federal regulations at 30 CFR 816.116(b)(2) and 817.116(b)(2).

4. ASCMRC 816.116(b)(3)(iv) Revegetation Success Standards for Areas to be Developed for Fish and Wildlife Habitat, Recreation, Shelter Belts, or Forest Products

Arkansas added a new paragraph (b)(3)(iv) that requires vegetation success for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products to comply with the criteria contained in its "Phase III Revegetation Success Standards for Forest Products" or its "Phase III Revegetation Success Standards for Recreation and Wildlife Habitat."

There is no direct Federal counterpart to this provision at 30 CFR 816.116(b)(3). However, the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in an approved program. As discussed later in this document, Arkansas' guidelines for revegetation success standards and sampling techniques for measuring success of forest products and of recreation and wildlife habitat are no less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we are approving the addition of ASCMRC 816.116(b)(3)(iv), which references these guidelines.

5. ASCMRC 816.116(b)(4) Revegetation Success Standards for Areas to be Developed for Industrial, Commercial, or Residential Use

Arkansas revised ASCMRC 316.116(b)(4) by requiring that vegetative ground cover comply with the criteria contained in its revegetation guidelines. ASCMRC 816.116(b)(4) now requires vegetative ground cover for areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed to not be less than that required to control erosion and to comply with the criteria contained in Arkansas' "Phase III Revegetation Success Standards for Industrial, Commercial, and Residential Revegetation."

The counterpart Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) require vegetative ground cover for areas to be developed for industrial, commercial, or residential use less than two years after regrading is completed to not be less than that required to control erosion. As discussed later in this document, Arkansas' revegetation success guidelines for industrial, commercial, and residential areas are no

less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we find that the revisions to ASCMRC 816.116(b)(4) are no less effective than the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4).

6. ASCMRC 816.116(b)(5) Revegetation Success for Areas Previously Disturbed by Mining

Arkansas added a new provision at ASCMRC 816.116(b)(5) which requires vegetative ground cover for areas previously disturbed by mining that were not reclaimed to the requirements of Subchapter K and that are remined or otherwise redisturbed by surface coal mining operations to comply with the criteria contained in its Phase III Revegetation Success Standards for Pasture and Previously Mined Areas. This provision is in addition to the existing requirement that the vegetative ground cover must be no less than the ground cover existing before redisturbance and must be adequate to control erosion.

There are no direct Federal counterparts to this additional provision at 30 CFR 816.116(b)(5) and 817.116(b)(5), which also concern areas previously disturbed by mining. However, the Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in an approved program. As discussed later in this document, Arkansas' guidelines for revegetation success standards and sampling techniques for measuring success of previously mined areas are no less effective than the Federal regulations for revegetation of disturbed areas. Therefore, we are approving the addition of Arkansas' new provision at ASCMRC 816.116(b)(5).

7. Phase III Revegetation Success Standards for Pasture and Previously Mined Areas

Arkansas added policy guidelines in a guidance document entitled "Phase III Revegetation Success Standards for Pasture and Previously Mined Areas." This guidance document describes the criteria and procedures for determining Phase III ground cover and production success for areas being restored to pasture under ASCMRC 816.116(b)(1) and for areas that were previously mined under ASCMRC 816.116(b)(5). It provides general revegetation requirements and success standards and measurement frequency for ground cover and forage production. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires revegetation success on pasture and previously mined land to be determined on the basis of the general revegetation requirements of the approved permit, ground cover, and production. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. Any previously mined land that was remined or redisturbed and reclaimed to a land use of pasture must achieve the same success standard for cover as land that was not previously disturbed by mining. However if the area is not reclaimed to the requirements of ASCMRC 816.111(b)(4), the vegetative cover must not be less than the ground cover existing before redisturbance and must be adequate to control erosion. The permittee must determine the ground cover standard and incorporate it into the permit prior to disturbance. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The permittee must measure the vegetation in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and production based on the regulatory requirements. The permittee must determine the forage production standard with a reference area or a current United States Department of Agriculture, Natural Resources Conservation Service (USDA/NRCS) high management target yield. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Forage production is to be measured utilizing sampling frames or whole area harvest. The guidance document also provides a method for establishing representative test plots. The permittee is to use a prescribed formula to determine sample adequacy. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps are to indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fourth year after completion of the last augmented seeding, the permittee must submit a mitigation plan to Arkansas. The mitigation plan must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line point transects; summary data forms for sampling frames; a T-table; data forms for forage crop production data harvested as baled hay; an example use of sample adequacy formula for ground cover measurements and hay production measurements; statistical analysis on sampling frame data and whole release area harvesting; yield adjustments for release areas due to differing soil series; and grasses of acceptable plant species for permanent ground cover on agricultural areas.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for pasture and previously mined areas. We find that Arkansas' policy guidelines for pasture land use areas and previously mined areas are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

8. Phase III Revegetation Success Standards for Cropland

Arkansas added policy guidelines in a guidance document entitled "Phase III Revegetation Success Standards for Cropland." This guidance document describes the criteria and procedures for determining Phase III production success standards for areas being restored to cropland under ASCMRC 816.116 (b)(2). It provides success standards and measurement frequency for ground cover and crop production. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success on cropland be determined on the basis of ground cover and crop production. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. Measurements of the

vegetation must be made in accordance with the procedures outlined in the guidance document. The guidance document sets out specific success standards and measurement frequencies for ground cover and crop production based on the regulatory requirements of ASCMRC 816.111. The permittee is to determine the crop production standard in accordance with a reference area or a technical standard. Approved technical standards include the county average or target yield established by the USDA/NRCS. Target yields must be adjusted annually and be representative of yields expected when using high management practices common to the area. The permittee is to use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Crop production is to be measured utilizing sampling frames for forage production or whole area harvest for forage or row crop production. Arkansas must approve any manual sampling of row crops. It is only allowed when weather or other factors prevent mechanical harvest. The guidance document also provides a method for establishing representative test plots for use with row crop production. The permittee is to use a prescribed formula to determine sample adequacy. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, the permittee must submit a mitigation plan to Arkansas. The permittee must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; summary data forms for sampling frames; data forms for crop production data; a T-table; an example of sample adequacy determination for hay production measurements; statistical analysis for sampling frame data; a data form for forage crop production data harvested as baled hay; statistical analysis of whole release area harvesting; yield adjustments for release areas due to differing soil series and for moisture; crop surveyor's affidavit of qualifications and crop production yields; grasses of acceptable plant species for permanent ground cover on agricultural areas; and procedures for manually sampling row crops.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for cropland. We find that Arkansas' policy guidelines for cropland are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

9. Phase III Revegetation Success Standards for Forest Products

Arkansas added policy guidelines in a guidance document entitled "Phase III Revegetation Success Standards for Forest Products." This guidance document describes the criteria and procedures for determining Phase III ground cover and tree and shrub stocking success for areas being restored to forest products under ASCMRC 816.116(b)(3). It provides general revegetation requirements and success standards and measurement frequency for ground cover and tree and shrub stocking rates. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success for forest products be determined on the basis of the general revegetation requirements of the approved permit, ground cover, and tree and shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. The permittee must measure the vegetation in accordance with the procedures outlined in the guidance document. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rates based on the regulatory requirements and consultation and approval of the Arkansas Forestry Commission on a permit specific basis. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method, and tree and shrub stocking is to be measured with sampling circles. The permittee must use a prescribed formula to determine sample adequacy. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, the permittee must submit a mitigation plan to Arkansas. The permittee must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line-point transect; data forms for sample circles; a T-table; examples of sample adequacy determinations for ground cover and tree and shrub stocking; statistical analysis for ground cover and tree and shrub stocking; and accepted plant species.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for forest products. We find that Arkansas' policy guidelines for forest products are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

10. Phase III Revegetation Success Standards for Recreation and Wildlife Habitat

Arkansas added policy guidelines in a guidance document entitled "Phase III Revegetation Success Standards for Recreation and Wildlife Habitat." This guidance document describes the criteria and procedures for determining

Phase III success for areas being restored to recreation and wildlife habitat under ASCMRC 816.116(b)(3). It provides success standards and measurement frequency for ground cover and tree and shrub stocking. It also includes sampling procedures and techniques, data analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success on recreation areas and wildlife habitat be determined on the basis of the general revegetation requirements of the approved permit, ground cover, and tree and shrub stocking and survival. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. Measurements of the vegetation must be made in accordance with the procedures outlined in the guidance document. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The guidance document sets out specific success standards and measurement frequencies for ground cover and tree and shrub stocking rates based on the regulatory requirements and consultation and approval of the Arkansas Game and Fish Commission on a permit specific basis. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method, and tree and shrub stocking is to be measured with sampling circles. Sample adequacy is to be determined using a prescribed formula. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success in the fifth year after completion of initial seeding, the permittee must submit a mitigation plan to Arkansas. The mitigation plan must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities then the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line-point transects; data forms for sample circles; a T-table; examples of sample adequacy determinations for ground cover and for tree and shrub stocking; statistical analysis for ground cover and tree and shrub stocking; and accepted plant species.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for recreation areas and wildlife habitat. We find that Arkansas' policy guidelines for recreation areas and wildlife habitat are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

11. Phase III Success Standards for Industrial/Commercial and Residential Revegetation

Arkansas added policy guidelines in a guidance document entitled "Phase III Success Standards for Industrial/Commercial and Residential Revegetation." This guidance document describes the criteria and procedures for determining Phase III ground cover success for areas being restored to an industrial/commercial or residential land use under ASCMRC 816.116(b)(4). It provides general revegetation requirements and success standards and measurement frequency for ground cover. It also includes sampling procedures and techniques, data submission and analysis criteria, and mitigation plan requirements.

Arkansas requires that revegetation success on industrial/commercial and residential land use areas be determined on the basis of the general revegetation requirements of the approved permit and ground cover density. The permittee is responsible for measuring the vegetation and for submitting the data to Arkansas for analysis. The permittee must measure the vegetation in accordance with the procedures outlined in the guidance document. Arkansas must determine that the general requirements for revegetation success are satisfied as stated in ASCMRC 816.111. The guidance document sets out specific success standards and measurement frequencies for ground cover based on the regulatory requirements. The permittee must use statistically valid random sampling methods. Ground cover is to be measured by the line-point transect method. Sample adequacy is to be determined using a prescribed formula. If the data indicate that the vegetation is close to but less than the standard, the permittee must submit the data to Arkansas for statistical analysis. Arkansas must determine if the differences are statistically significant within the limits allowed by regulation. The permittee must provide maps for each Phase III plan. The maps must indicate the location of each sampling transect and sample frame point, the area covered by the sampling, and all permit boundaries. If the permittee can not demonstrate revegetation success, a mitigation plan must be submitted to Arkansas. The permittee must include a statement of the problem, a discussion of methods to correct the problem, and a new Phase III liability release plan. If the plan involves augmented activities, the five year responsibility period will begin again. The appendices that are included with the guidance document illustrate the selection of random sampling sites; data forms for line-point transects; a T-table; an example of sample adequacy determination for ground cover; statistical analysis for ground cover; and accepted plant species.

The Federal regulations at 30 CFR 816.116(a)(1) and 817.116(a)(1) require a regulatory authority to include standards for success and statistically valid sampling techniques for measuring success in its approved program. Arkansas accomplished this by adoption of a detailed guidance document illustrating the methods to be used by the permittee to measure revegetation success for industrial/commercial and residential land uses. We find that Arkansas' policy guidelines for industrial/commercial and residential land uses are consistent with the requirements of 30 CFR 816.116(a)(1) and 817.116(a)(1) and are no less effective than the Federal regulations for revegetation of disturbed areas.

12. Prime Farmland and Grazing Land Revegetation Success Guidelines

Prime farmland and grazing land are also potential pre- and post-mining land uses in the State. In its letters dated August 27, 1998, and October 8, 1998, Arkansas indicated that prime farmland and grazing land guidelines will be submitted at a later date.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but we did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Arkansas program (Administrative Record No AR–562.01).

By letter dated September 28, 1998 (Administrative Record No. AR–562.07), the U.S. Army Corps of Engineers responded that its review found the amendment satisfactory.

Environmental Protection Agency (EPA)

The Federal regulation at 30 CFR 732.17(h)(11)(ii) requires us to get written consent from the EPA for those provisions of a program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Arkansas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not request the EPA's consent.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. AR–562.03). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on proposed amendments which may have an effect on historic properties. We requested the SHPO and ACHP to comment on Arkansas' amendment (Administrative Record No. AR–562.02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as submitted by Arkansas on August 27, 1998, and as revised on October 8, 1998.

We approve the revegetation guidelines that Arkansas proposed with the provision that they be fully placed in force in identical form to the guidelines submitted to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 904, which codifies decisions concerning the Arkansas program. This final rule is effective immediately to expedite the State program amendment process and to encourage Arkansas to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 904 is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for Part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 904.15 Approval of Arkansas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
.	.	.
August 27, 1998	November 25, 1998	ASCMRC 701.5; 816.116(b)(1), (2), (3)(iv), (4), (5); Policy Guidelines for Phase III Revegetation Success Standards for Pasture and Previously Mined Areas, Cropland, Forest Products, Recreation and Wildlife Habitat, Industrial/Commercial and Residential Revegetation.

[FR Doc. 98–31490 Filed 11–24–98; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–039–FOR]

Texas Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Texas abandoned mine land reclamation plan (from now on referred to as the "Texas plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed additions, deletions, and revisions to its plan pertaining to Responsibilities; Definitions; Abandoned mine land reclamation fund; Eligible coal lands and water; Reclamation objectives and priorities; Reclamation project evaluations; Utilities and other facilities; Limited liability; Entry for studies or exploration; Contractor responsibility; Eligible noncoal lands and water; Reclamation priorities for noncoal program; Exclusion of certain noncoal reclamation sites; Land acquisition authority—noncoal; Lien requirements; Written consent for entry; Operations on private land; Entry and consent to reclaim; Appraisals; Liens; Satisfaction of liens; Entry for emergency reclamation; Land eligible for acquisition; Procedures for acquisition; Acceptance of gifts of land; Management of acquired land; and Disposition of reclaimed lands. Texas intended to revise its plan to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, E-mail: mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Plan
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Texas Plan

On June 23, 1980, the Secretary of the Interior approved the Texas plan. You can find background information on the Texas plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 23, 1980, **Federal Register** (45 FR 41937). You can also find later actions concerning the Texas plan and amendments at 30 CFR 943.25.

II. Submission of the Proposed Amendment

By letter dated December 1, 1997 (Administrative Record No. TAML–61), Texas submitted a proposed amendment to its plan under the provisions of SMCRA. Texas submitted the amendment at its own initiative. We announced receipt of the amendment in the December 29, 1997, **Federal Register** (62 FR 67592). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the adequacy of the amendment. The public comment period closed on January 28, 1998.

During our review of the amendment, we identified concerns relating to the following sections: Eligible coal lands and water; Reclamation priorities for noncoal program; Land acquisition authority-noncoal; Lien requirements; Satisfaction of liens; Entry and consent to reclaim; Appraisals; Entry for emergency reclamation; Land eligible for acquisition; Disposition of reclaimed lands; Liens. We also identified editorial corrections in the two sections, Responsibilities and Definitions. We notified Texas of the concerns by facsimiles dated March 9, and August 25, 1998 (Administrative Record Nos. TAML–61.08 and TAML–61.10, respectively). Texas responded in letters dated July 20, and September 3, 1998, by submitting additional explanatory information and a revised amendment (Administrative Record Nos. TAML–61.09 and TAML–61.12, respectively).

Texas proposed additional revisions to the following sections: 12.803 Eligible coal lands and water; 12.809 Reclamation priorities for noncoal program; 12.811 Land acquisition authority-noncoal; 12.812 Lien requirements; 12.814 Entry and consent to reclaim; 12.815 Appraisals; 12.816 Liens; 12.817 Satisfaction of liens; 12.818 Entry for emergency reclamation; 12.819 Land eligible for acquisition; 12.820 Procedures for acquisition; 12.821 Acceptance of gifts of lands; 12.822 Management of acquired land; and 12.823 Disposition of reclaimed lands.

Based upon the additional explanatory information and revisions to the proposed plan amendment submitted by Texas, we reopened the public comment period in the October 2, 1998, **Federal Register** (63 FR 53003). The public comment period closed on October 19, 1998.

III. Director's Findings

Set forth below, under the provisions of SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are our findings concerning the proposed amendment. Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Sections That Texas Deleted From Its Regulations

1. Section 12.805, Reclamation Project Evaluation

Texas proposed to delete this section. We are approving this deletion because we have no counterpart Federal regulation and the deletion will not make the Texas regulations inconsistent with the Federal regulations.

2. Section 12.814, Operations on Private Lands

Texas proposed to delete this section. We are approving this deletion because the provisions in this section are contained in new Sections 12.814, Entry and Consent to Reclaim and 12.815, Entry for Emergency Reclamation. Also, the deletion will not make the Texas regulations inconsistent with the Federal regulations.

B. Revisions to Texas' Plan That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

The proposed State regulations listed in the table contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the proposed State provisions and the Federal provisions are nonsubstantive.

Topic	State regulation	Federal counterpart regulation
Definitions for abandoned mine reclamation fund or fund, eligible lands and water, emergency, extreme danger, left or abandoned in either an unreclaimed or inadequately reclaimed condition, mineral owner, OSM, permanent facility, project, reclamation activity, State reclamation program, Texas abandoned mine reclamation fund or State fund.	Section 12.801	30 CFR 870.5.
Texas Abandoned Mine Reclamation Fund	Section 12.802	30 CFR 872.12.
Eligible Coal Lands and Water	Section 12.803	30 CFR 874.12.
Reclamation Objectives and Priorities	Section 12.804	30 CFR 874.13.
Utilities and other Facilities	Section 12.805	30 CFR 874.14 (b) and (d).
Limited Liability	Section 12.806	30 CFR 874.15.
Contractor Responsibility	Section 12.807	30 CFR 874.16 and 875.20.
Eligible Noncoal Lands and Water	Section 12.808	30 CFR 875.14.
Reclamation Priorities for Noncoal Program	Section 12.809	30 CFR 875.15.
Exclusion of Certain Noncoal Reclamation Sites	Section 12.810	30 CFR 875.16.
Land Acquisition Authority—Noncoal	Section 12.811	30 CFR 875.17.
Lien Requirements	Section 12.812	30 CFR 875.18.
Written Consent for Entry	Section 12.813	30 CFR 877.11
Procedures for Acquisition	Section 12.820	30 CFR 879.12.
Management of Acquired Land	Section 12.822	30 CFR 879.14.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, we find that Texas' revised plan is in compliance with the Federal regulations.

C. Revisions to Texas' Plan That Are Not Substantively Identical to the Corresponding Provisions of the Federal Regulations

1. Section 12.814, Entry and Consent to Reclaim

Texas proposed to repeal section 12.814, Operations on Private lands, and adopt new section 12.814, Entry and Consent to Reclaim. This new section authorizes the Commission to enter land to perform reclamation activities or conduct studies or exploratory work to determine the existence of the adverse effects of past coal mining with or without the landowner's permission. The Commission must give a minimum of 30 days written notice to the landowner before entering property where the landowner's permission to enter has not been obtained or where the landowner is not known or is readily available. If the landowner is known, the Commission will send the written notice by mail, return receipt requested, along with a copy of the written findings required under paragraph (c)(1) of this section. If the landowner is not known, or if the current mailing address of the landowner is not known, the Commission will post a notice in one or more places on the property to be entered where it is readily visible to the public. The Commission will also advertise once in a newspaper of general circulation in the locality in which the land is located. The advertisement must include a statement of where the findings required under paragraph (c)(1) of this section may be inspected or obtained.

We are approving this revision because it is consistent with the counterpart Federal regulations at 30 CFR 877.13.

2. 12.816. Liens

In paragraph (a)(2), Texas proposed to add a provision that allows it to notify landowners of the amount of the proposed lien and to give the landowners a reasonable amount of time to pay the lien before the lien is placed against the property.

Also, in paragraph (d), Texas proposed to conduct hearings and any appeals by landowners concerning the amounts of the liens under Chapter 2001, Government Code.

The State removed language that *required* it to place a lien against reclaimed land if the reclamation results in an increase in the fair market value with one exception. This exception is that the State may waive the lien if the cost of filing it exceeds the increase in fair market value as a result of the reclamation activities. The State proposed to allow itself the discretion to place a lien against the reclaimed land and to also retain the exception for waiving liens.

We are approving these revisions because they are in compliance with the counterpart Federal regulations at 30 CFR 882.13.

3. 12.818, Entry for Emergency Reclamation

Texas proposed to adopt this new section to conform with the Texas Natural Resources Code, Section 134.152 (b) and (c). This new section allows the Commission to enter land where an emergency exists and other land necessary to have access to that land. It also allows the Commission to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices, and to do whatever is necessary and suitable to protect the public health, safety, or general welfare.

We are approving this new section because it is consistent with the counterpart Federal regulations at 30 CFR 877.14(a). However, because Texas has not formally assumed responsibility for its abandoned mine land emergency program, we are under no obligation to reimburse it for expenses it acquires in handling any emergencies under this section.

4. Section 12.819, Land Eligible for Acquisition

This section sets forth the criteria that any land must meet before the State can purchase the land with abandoned mine land reclamation funds. We are approving this section because it is in compliance with the Federal regulations at 30 CFR 879.11.

5. Section 12.821, Acceptance of Gifts of Land

Texas proposed to renumber this section from Section 12.812 to 12.821. Texas revised paragraphs (a) and (c) to read as follows:

(a) The Commission under an approved reclamation plan may accept donations of title to land or interests in land if the land proposed for donation meets the requirements set out in § 12.819 of this title (relating to Land Eligible for Acquisition).

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged and recorded. The deed shall state that it is made "as a gift under the Texas Surface Coal Mining and Reclamation Act." Title to donated land shall be in the name of the state of Texas.

We are approving these revisions because they are consistent with the Federal regulations at 30 CFR 879.13.

6. Section 12.823, Disposition of Reclaimed Land

Texas proposed to renumber this section from Section 12.813 to 12.823, and to reformat this section. This section sets forth the criteria under which the State may dispose of land acquired under Section 12.819, Land Eligible for Acquisition. We are approving this revision because it is in compliance with the Federal regulations at 30 CFR 879.15.

D. Revisions to Texas' Plan That Do Not Have Corresponding Provisions in the Federal Regulations

Texas proposed section 12.800 Responsibilities as an addition to its regulations. This section sets forth the responsibilities that the Commission will have regarding the Texas Abandoned Mine Land Reclamation Program. We previously approved this section in the April 22, 1998, **Federal Register** notice (63 FR 19821).

IV. Summary and Disposition of Comments

Public Comments

We asked the public for comments and provided an opportunity for a public hearing on the proposed amendment. We did not receive any public comments, and because no one requested an opportunity to speak at a public hearing, we did not hold one.

Federal Agency Comments

Under the provisions of 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Texas plan. We received comments from the U.S. Army Corps of Engineers in letters dated January 27, and October 5, 1998 (Administrative Record Nos. TAML–61.06 and TAML–61.16, respectively). The letters stated that the changes Texas proposed in its amendment were satisfactory.

V. Director's Decision

Based on the above findings, we approve the proposed plan amendment as submitted by Texas on December 1, 1997, and as revised on September 3, 1998. We approve the regulations as proposed by Texas with the provision that Texas fully issue, in identical form, the regulations they submitted and we and the public reviewed.

We are amending the Federal regulations at 30 CFR Part 943, that codify decisions concerning the Texas plan. We are also making this final rule effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and issued by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

This rule does not require an environmental impact statement since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that the regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously issued by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the provisions of the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 6, 1998.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.25 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.25 Approval of Texas abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
.	.	.
December 1, 1997	November 25, 1998	12.800 through .814; .815(d); .816; .818 through .823.

[FR Doc. 98–31491 Filed 11–24–98; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300752; FRL–6040–9]
RIN 2070–AB78

Hydramethylnon; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide hydramethylnon in or on pineapples at 0.05 part per million (ppm) for an additional one and one-half-year period, to May 30, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on pineapples. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective November 25, 1998. Objections and requests for hearings must be received by EPA, on or before January 25, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300752], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300752], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308–9364; e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 4, 1998 (63 FR 10537–10543) (FRL–5767–1), which announced that on its own initiative under section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of hydramethylnon in or on pineapples at 0.05 ppm, with an expiration date of January 31, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of hydramethylnon on pineapples for this year growing season due to continued need to control big-headed and Argentine ants. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of hydramethylnon on pineapples for control of big-headed and Argentine ants in pineapples.

EPA assessed the potential risks presented by residues of hydramethylnon in or on pineapples. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 4, 1998 (63 FR 10537). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional one and one-half-year period. Although this tolerance will expire and is revoked on May 30, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on pineapples after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 25, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following:

There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300752]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by theSmall Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 22, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.395 [Amended]

2. Section 180.395, by amending paragraph (b) in the table, by changing the date "1/31/99" to read "5/30/01."

[FR Doc. 98–31389 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300751; FRL 6040–7]

RIN 2070–AB78

Carfentrazone-ethyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of carfentrazone-ethyl and its chloropropionic acid metabolite in or on rice, grain and rice, straw. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on rice. This regulation establishes maximum permissible levels for residues of carfentrazone-ethyl in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on October 31, 1999.

DATES: This regulation is effective November 25, 1998. Objections and requests for hearings must be received by EPA on or before January 25, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, (OPP–300751), must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300751, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number (OPP–300751). No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9362; e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for combined residues of the herbicide carfentrazone-ethyl and its chloropropionic acid metabolite, in or on rice, grain at 0.1 part per million (ppm) and rice, straw at 1.0 ppm. These tolerances will expire and are revoked on October 31, 1999. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. "

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by

FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Carfentrazone-ethyl on Rice and FFDCA Tolerances

According to the Applicant, California arrowhead *Sagittaria montevidensis spp. Calcycina* and ricefield bulrush *Scirpus mucronatus* cause economic damage by competing with rice plants for soil, nutrients and sunlight, and by interfering with harvesting equipment to reduce yields. Resistance to the registered alternative herbicide of choice, bensulfuron methyl, has been observed in populations of these weeds. Resistance was first reported in 1992, and a survey conducted in 1995 estimated that 60% of rice fields in California have resistant California arrowhead and 15% have resistant ricefield bulrush. Phenoxy herbicides such as MCPA or 2,4-D may be used on bensulfuron methyl resistant weeds, but are phytotoxic to rice plants. Additionally, manufacturers have announced that they will not supply these products in the Sacramento Valley, due to persistent concerns about off-target applications, drift and damage symptoms on non-target crops, especially cotton. Propanil and triclopyr may offer partial control of these weeds, but neither is labeled for this use. EPA has authorized under FIFRA section 18 the use of carfentrazone-ethyl on rice for control of California arrowhead and ricefield bulrush in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this state.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of carfentrazone-ethyl in or on rice, grain and rice, straw. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on October 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on rice, grain and rice, straw after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed the levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions EPA has not made any decisions about whether carfentrazone-ethyl meets EPA's registration requirements for use on rice or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of carfentrazone-ethyl by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for carfentrazone-ethyl, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of carfentrazone-ethyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for combined residues of carfentrazone-ethyl and its chloropropionic acid metabolite on rice, grain and rice, straw at 0.1 ppm and 1.0 ppm, respectively. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by carfentrazone-ethyl are discussed below.

1. *Acute toxicity.* For the acute dietary exposure and risk assessment, the acute RfD was established at 5 milligrams/kilogram/day (mg/kg/day). The no observed adverse effect level (NOAEL) of 500 mg/kg/day, taken from the acute neurotoxicity study in rats, was based on clinical observations (i.e., excessive salivation) and motor activity testing at the lowest adverse effect level (LOAEL) of 1,000 mg/kg/day. The acute RfD reflects an uncertainty factor of 100, based on interspecies extrapolation 10x, intraspecies variability 10x, and the Agency determination that the FQPA 10x factor was not required.

2. *Short - and intermediate - term toxicity.* The Agency determined that short- and intermediate-term dermal risk assessments are not required because no systemic toxicity was seen at the limit-dose (1,000 mg/kg/day) in a 21–day dermal toxicity study in rats. In addition, based on the use pattern, long-term dermal exposure is not anticipated, therefore the chronic dermal risk assessment is not required.

Based on the low toxicity and the use pattern (one application at 0.008–0.031 lbs. a.i./acre/season), the Agency also concluded that a risk assessment for inhalation exposure (any time period) is not required.

3. *Chronic toxicity.* EPA has established the RfD for carfentrazone-ethyl at 0.03 (mg/kg/day). This RfD is based on a NOAEL of 3 mg/kg/day taken from the 2–year chronic toxicity study in rats. Effects observed at the LOAEL

of 12 mg/kg/day include histopathology (increases in microscopic red fluorescence of the liver, liver pigment) and total mean urinary porphyrin.

4. *Carcinogenicity.* Carfentrazone-ethyl has been classified by the Agency as a "not likely" human carcinogen; there is no evidence of carcinogenicity in reviewed studies.

B. Exposures and Risks

1. *From food and feed uses.* Permanent tolerances for field corn, soybean and wheat commodities were published in the **Federal Register** on September 30, 1998. An amendment to add the remaining commodities in the cereal grain crop group is pending with the Agency. Secondary residues in animal commodities resulting from this section 18 use are expected to be negligible. Risk assessments were conducted by EPA to assess dietary exposures and risks from carfentrazone-ethyl as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Tolerance level residues and 100% crop treated were assumed to derive TMRC exposure values; these values should be viewed as conservative risk estimates; further refinement using anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis would result in a lower acute dietary exposure estimate.

The existing and proposed food uses of carfentrazone-ethyl result in an acute dietary exposure of 0.002 mg/kg/day for the U.S. population (0.04% of the acute RfD), 0.003 mg/kg/day for non-nursing infants (< 1 year) (0.06% of the acute RfD), and 0.001 mg/kg/day for females 13+ years (0.02% of the acute RfD).

ii. *Chronic exposure and risk.* In estimating chronic dietary exposure from food uses of carfentrazone-ethyl, it was assumed that 100% of rice and all other commodities having carfentrazone-ethyl tolerances will contain residues and those residues would be at the level of the tolerance; these assumptions lead to overestimation of human dietary exposure. Thus, in making a safety determination for this tolerance, the Agency is taking into account this conservative exposure assessment.

Existing and proposed carfentrazone-ethyl food uses result in a TMRC of 0.0003 mg/kg/day (1% of the RfD) for the U.S. population, and 0.0007 mg/kg/day (2% of the RfD) for both non-nursing infants (< 1 year old) and children (1–6 years old), the two subgroups having the highest exposure.

2. *From drinking water.* The Agency has calculated drinking water levels of concern (DWLOCs) for acute and chronic exposure to carfentrazone-ethyl in surface and groundwater. The DWLOCs are calculated by subtracting from the RfD (acute or chronic) the respective acute or chronic dietary exposure attributable to food to obtain the acceptable exposure to carfentrazone in drinking water; as there are no residential uses of carfentrazone-ethyl at this time, this component is not reflected in the calculation. Default body weights (70 kg for males, 60 kg for females, and 10 kg for non-nursing infants < 1 year old) and default drinking water consumption estimates (2 L/day for adults, 1 L/day for non-nursing infants) are then used to calculate the actual DWLOCs. The DWLOC represents the concentration level in surface water or groundwater at which aggregate exposure to the chemical is not of concern.

Using generic expected environmental concentration (GENEEC) (surface water) and SCI-GROW (groundwater) models, the Agency has calculated acute and chronic Tier I estimated environmental concentrations (EECs) for carfentrazone-ethyl for use in human health risk assessments. These values represent the upper bound estimates of the concentrations of carfentrazone-ethyl that might be found in surface and ground water assuming the maximum application rate allowed on the label. The EECs from these models are compared to the DWLOCs to make the safety determination.

i. *Acute exposure and risk.* Acute DWLOCs were calculated to be 175 ppm for the U.S. population, 150 ppm for females 13+ years, and 50 ppm for non-nursing infants less than 1 year old. Using the GENEEC model, the calculated acute EECs in surface water for carfentrazone-ethyl and its chloropropionic acid degradate were 1.2 parts per billion (ppb) and 2.88 ppb, respectively. Using the SCI-GROW model, the acute EECs in groundwater were calculated to be 0.000181 ppb for carfentrazone-ethyl and 0.016065 ppb for chloropropionic acid.

ii. *Chronic exposure and risk.* Chronic DWLOCs were calculated by the Agency to be 1040 ppb for the U.S. population, 891 ppb for females 13+ years, and 293 ppb for non-nursing infants less than 1 year old. Using the GENEEC model, the calculated chronic EECs in surface water for carfentrazone-ethyl and its chloropropionic acid degradate were 0.02 ppb and 2.46 ppb, respectively. Using the SCI-GROW model, the chronic EECs in groundwater were calculated to be 0.000181 ppb for carfentrazone-ethyl and 0.016065 for chloropropionic acid.

3. *From non-dietary exposure.* Carfentrazone-ethyl is a new chemical with no registered residential uses. There is no concern for non-dietary exposure via the dermal or inhalation routes.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether carfentrazone-ethyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, carfentrazone-ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that carfentrazone-ethyl has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7).

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Using the TMRC assumptions described above, acute dietary exposure from existing and proposed uses of carfentrazone-ethyl was calculated to represent 0.4% of the acute RfD for the U.S. population and 0.02% of the RfD for females 13+ years. Estimated acute or peak EECs in surface water and groundwater of both carfentrazone-ethyl and its chloropropionic acid degradate are well below the acute DWLOCs calculated by the Agency for all population subgroups of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to carfentrazone-ethyl from food will utilize 1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate

exposure is non-nursing infants less than 1 year old (discussed below). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic EECs in surface water and groundwater of both carfentrazone-ethyl and its chloropropionic acid degradate are well below the chronic DWLOCs calculated by the Agency for all population subgroups of concern.

3. *Aggregate cancer risk for U.S. population.* Carfentrazone-ethyl has been classified by the Agency as a "not likely" human carcinogen; there is no evidence of carcinogenicity in reviewed studies. This risk assessment was not required.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to carfentrazone-ethyl residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of carfentrazone-ethyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rat study, the maternal (systemic) NOAEL was 100 mg/kg/day based on abdominogenital and cage liner staining at the LOAEL of 600 mg/kg/day. The developmental (fetal) NOAEL was 600 mg/kg/day based on wavy or thickened ribs at the LOAEL of 1,250 mg/kg/day. In the rabbit developmental toxicity study, the maternal (systemic) NOAEL was ≥150 mg/kg/day based on unthriftiness and emaciation in two doses in the current study at the LOAEL of 300 mg/kg/day, as well as, dyspnea, decreased locomotion, lacrimation, abdominogenital staining, loss of righting reflex, nasal discharge, unthriftiness, and dehydration reported in pilot studies at 350 and 700 mg/kg/day. The developmental (fetal) NOAEL was ≥300 mg/kg/day, the highest dose tested.

iii. *Reproductive toxicity study.* In the 2-generation rat reproduction study, the maternal (systemic) NOAEL was 127 mg/kg/day in males and 142 mg/kg/day in females based on decreased body weight gains, increased liver weights, liver and bile duct histopathology, and reductions in the mean cell volume, hematocrit, and hemoglobin at the LOAEL of 343 mg/kg/day in males and 387 mg/kg/day in females.

iv. *Pre- and post-natal sensitivity.* Based on the developmental and reproductive toxicity studies for carfentrazone-ethyl there does not appear to be an extra sensitivity for pre- or post-natal effects. Therefore, the Agency has concluded that the 10x safety factor to account for potential sensitivity by infants and children to carfentrazone-ethyl should be removed.

v. *Conclusion.* There is a complete toxicity database for carfentrazone-ethyl and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* Using the TMRC assumptions described above, acute dietary exposure from existing and proposed uses of carfentrazone-ethyl was calculated to represent 0.06% of the RfD for non-nursing infants less than 1 year old, the infant and children subgroup most highly exposed. Estimated acute or peak EECs in surface water and groundwater of both carfentrazone-ethyl and its chloropropionic acid degradate are well below the acute DWLOCs calculated by the Agency for all population subgroups of concern.

3. *Chronic risk.* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to carfentrazone-ethyl from food will utilize 2% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Estimated chronic EECs in surface water and groundwater of both carfentrazone-ethyl and its chloropropionic acid degradate are well below the chronic DWLOCs calculated by the Agency for all population subgroups of concern.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to carfentrazone-ethyl residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in plants and animals is adequately understood. The residue of concern is the parent compound carfentrazone-ethyl and its chloropropionic acid metabolite.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available from the Agency, (associated with PP#7F4795) to enforce the proposed tolerance on rice. This enforcement method is a GC method that uses ECD (electron capture detection), MSD (mass selective detection), ELCD (electrolytic conductivity detection), or MS/NCI (negative ion chemical ionization mass spectrometry). The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

Data on multi-residue methods has been submitted pertaining multi-residue methods testing for carfentrazone-ethyl. Carfentrazone-ethyl was detected under Protocol C using either an ECD or NPD detector. Better sensitivity was achieved with ECD detection. Carfentrazone-ethyl metabolites were tested using Protocols B and C with ECD detection. These data have been forwarded to FDA to be included in PAM I, Appendix I.

C. Magnitude of Residues

Residues of carfentrazone-ethyl and its chloropropionic acid metabolite are not expected to exceed 0.10 ppm in/on

rice, grain and 1.0 ppm in/on rice, straw as a result of this section 18 use.

D. International Residue Limits

No Codex, Canadian, and Mexican tolerances are established for carfentrazone-ethyl. Therefore, no compatibility problems exist between the proposed U.S. and Codex tolerances.

E. Rotational Crop Restrictions

A 30–day plant-back interval is to be required on the label. The recommended time-limited tolerances reflect this restriction.

V. Conclusion

Therefore, the tolerance is established for combined residues of carfentrazone-ethyl and its chloropropionic acid metabolite in rice, grain at 0.1 ppm and rice, straw at 1.0 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 25, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number (OPP–300751) (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is

unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 21, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.515 is amended by revising paragraph (b) to read as follows:

§ 180.515 Carfentrazone-ethyl; tolerances for residues

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for combined residues of the herbicide carfentrazone-ethyl and its chloropropionic acid metabolite in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/Revocation Date
Rice, grain	0.1	10/31/99
Rice, straw	1.0	10/31/99

* * * * *

[FR Doc. 98–31546 Filed 11–24–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300759; FRL 6045–4]

RIN 2070–AB78

Azoxystrobin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of azoxystrobin or methyl (*E*)-2-(2-[6-(2-cyanophenoxy)pyrimidin-4-yloxy]phenyl)-3-methoxyacrylate) and its *Z isomer* in or on sugar beets and soybeans. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sugar beets and soybeans. This regulation establishes maximum permissible levels for residues of azoxystrobin in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and will be revoked on June 30, 2000.

DATES: This regulation is effective November 25, 1998. Objections and requests for hearings must be received by EPA on or before January 25, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300759], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing

requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300759], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300759]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6792; e-mail: gwaltney.jackie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of fungicide azoxystrobin and its *Z isomer*, in or on sugar beets, and soybeans at 0.05 and 1.0 part per million (ppm), respectively. These tolerances will expire and will be revoked on June 30, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq* . The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerance to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Azoxystrobin on Sugar Beets and Soybeans, and FFDCA Tolerances

The Minnesota Department of Agriculture requested an emergency exemption in April of 1998 for the control of cercospora leafspots on sugar beets. The registered alternative fungicides benomyl, thiabendazole thiophanate methyl, triphenyl tin hydroxide (TPTH), EBDCs (Mancozeb and Maneb), and copper hydroxide for controlling cercospora leaf spots do not control the disease effectively because of resistance and/or tolerance in the pathogen. Moderately resistant cultivars of sugar beet are available, but their yield potentials are lower than the susceptible. Cultural practices are not very effective in managing the disease. During 1998, the disease severity is expected to be higher and yield losses significant due to mild winter temperature (El Nino effects).

Minnesota also claims that TPTH is still used in controlling the disease, but it is significantly less effective than in the past.

In August 1998, the Arkansas Department of Agriculture also requested an emergency exemption for the control of aerial blight on soybeans. The disease is particularly aggressive in years of above-normal night temperatures, high humidity, and frequent rainfall. Conditions in 1998 have been near perfect for development of sheath blight of rice, with night temperatures in the 78–82 degree range and oppressively high relative humidity within crop canopies. Rainfall in northeast Arkansas has also contributed to the problem. Soybean has just entered the most susceptible flowering and early pod formation stages and aerial blight has become exceptionally aggressive as weather conditions continue to favor its development. Damage to soybean yield is through destruction of foliage, and to a greater extent-flowers, pods and seeds. Yield losses in some Arkansas fields in the past have been estimated as high as 50%, however, this is a very rare occurrence most years.

For these reasons, EPA has authorized under FIFRA section 18 the use of azoxystrobin on sugar beets for control of cercospora leafspots in Minnesota, and the use of azoxystrobin on soybeans for control of aerial blight in Arkansas.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of azoxystrobin in or on sugar beets and

soybeans. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and will be revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sugar beets and soybeans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether azoxystrobin meets EPA's registration requirements for use on sugar beets and soybeans or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of azoxystrobin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Minnesota or Arkansas to use this pesticide on these crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for azoxystrobin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects and The Agency's selection of toxicological endpoints upon which to assess risk caused by azoxystrobin are discussed below.

1. *Acute toxicity.* The Agency evaluated the existing toxicology database for azoxystrobin and did not identify an acute dietary endpoint. Therefore, a risk assessment is not required.

2. *Short - and intermediate - term toxicity.* The Agency evaluated the existing toxicology database for short- and intermediate-term dermal and inhalation exposure and determined that this risk assessment is not required.

3. *Chronic toxicity.* EPA has established the reference dose (RfD) for azoxystrobin at 0.18 milligrams/kilogram/day (mg/kg/day). This RfD is based on a chronic toxicity study in rats with a no observed adverse effect level (NOAEL) of 18.2 mg/kg/day. Reduced body weights and bile duct lesions were observed at the lowest effect level (LEL) of 34 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability.

4. *Carcinogenicity.* The Agency determined that azoxystrobin should be classified as "Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines. This classification is based on the lack of evidence of carcinogenicity in long-term rat and mouse feeding studies.

B. Exposures and Risks

1. *From food and feed uses.* Permanent tolerances have been established (40 CFR 180.507(a)) for the combined residues of azoxystrobin and its *Z isomer*, in or on a variety of raw agricultural commodities at levels ranging from 0.01 ppm in pecans to 1.0 ppm in grapes. In addition, time-limited tolerances have been established (40 CFR 180.507(b) at levels ranging from 0.006 ppm in milk to 20 ppm in rice hulls) in conjunction with previous section 18 requests. Risk assessments were conducted by EPA to assess dietary exposures and risks from azoxystrobin as follows:

2. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Agency did not conduct an acute risk assessment because no toxicological endpoint of concern was identified during review of available data.

3. *Chronic exposure and risk.* In conducting this chronic dietary risk assessment, EPA has made very conservative assumptions -- 100% of all commodities having azoxystrobin tolerances will contain azoxystrobin residues and those residues would be at the level of the tolerance with the exception of raisins and grape juice -- which result in an over estimation of human dietary exposure. Thus, in making a safety determination for this tolerance, The Agency is taking into account this conservative exposure assessment.

The existing azoxystrobin tolerances published, pending, and including the necessary section 18 tolerance(s) result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Population Sub-Group	TMRC (mg/kg/day)	% RFD
U.S. Population (48 States).	0.0026	1.5%
All Infants (<1 year old).	0.0079	4.4%
Nursing Infants (<1 year old).	0.0026	1.5%
Non-Nursing Infants (<1 year old).	0.010	5.6%
Children (1–6 years old).	0.0065	3.6%
Children (7–12 years old).	0.0035	1.9%
U.S. Population (Summer Season).	0.0030	1.7%
Northeast Region ...	0.0029	1.6%
Western Region	0.0029	1.6%
Hispanics	0.0036	2.0%
Non-Hispanics Blacks.	0.0029	1.6%
Non-Hispanics (Other Than Black or White).	0.0045	2.5%

The subgroups listed above are:
i. The U.S. population (48 states).

ii. Those for infants and children.

iii. The other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

4. *From drinking water.* There is no established maximum contaminant level for residues of azoxystrobin in drinking water. No health advisory levels for azoxystrobin in drinking water have been established.

5. *Acute exposure and risk.* An assessment was not appropriate since no toxicological endpoint of concern was identified during review of the available data.

6. *Chronic exposure and risk.* Based on the chronic dietary (food) exposure estimates, chronic drinking water levels of concern (DWLOC) for azoxystrobin were calculated and are summarized in the following table. The highest EEC for azoxystrobin in surface water is from the application of azoxystrobin on grapes (39 µg/L) and is substantially lower than the DWLOCs calculated. Therefore, chronic exposure to azoxystrobin residues in drinking water do not exceed EPA level of concern.

	Chronic RfD (mg/kg/day)	TMRC Food Exposure (mg/kg/day)	Max Water Exposure[1] (mg/kg/day)	DWLOC [2,3,4] (µg/L)
US Population (48 States)	0.18	0.0026	0.18	6200
Females (13 + years old, not pregnant or nursing)	0.18	0.0029	0.18	5300
Non-nursing Infants (< 1 year old)	0.18	0.010	0.17	1700

[1] Maximum Water Exposure (mg/kg/day) = Chronic RfD (mg/kg/day) - TMRC from DRES (mg/kg/day)
[2] DWLOC(µg/L) = Max water exposure (mg/kg/day) * body wt (kg) /[(10–3 mg/µg)*water consumed daily (L/day)]
[3] HED Default body wts for males, females, and children are 70 kg, 60 kg, and 10 kg respectively.
[4] HED Default Daily Drinking Rates are 2 L/Day for Adults and 1 L/Day for children

7. *From non-dietary exposure.* Azoxystrobin is not currently registered for any residential uses.

8. *Cumulative exposure to substances with common mechanism of toxicity.* Azoxystrobin is related to the naturally occurring strobilurins. There are no other members of this class of fungicides registered with the Agency. Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether azoxystrobin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, azoxystrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that azoxystrobin has a common mechanism of toxicity with other substances.

C. Aggregate Risks and Determination of Safety for U.S. Population

1. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has estimated the exposure to azoxystrobin from food will utilize 1.5% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. Under current EPA guidelines, the registered non-dietary uses of azoxystrobin do not constitute a chronic exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to azoxystrobin residues. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to azoxystrobin residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. This risk assessment is not applicable since no indoor and outdoor residential exposure uses are currently registered for azoxystrobin.

D. Aggregate Cancer Risk for U.S. Population

The Agency determined that azoxystrobin should be classified as

"Not Likely" to be a human carcinogen according to the proposed revised Cancer Guidelines. The Agency has therefore not conducted a cancer risk assessment.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* — i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of azoxystrobin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies* — a. *Rabbit.* In the developmental toxicity study in rabbits, developmental NOAEL was 500 mg/kg/day, at the highest dose tested (HDT). Because there were no treatment-related effects, the developmental LEL was ≧500 mg/kg/day. The maternal NOAEL was 150 mg/kg/day. The maternal LEL of 500 mg/kg/day was based on decreased body weight gain during dosing.

b. *Rat.* In the developmental toxicity study in rats, the maternal (systemic) NOAEL was not established. The maternal LEL of 25 mg/kg/day at the lowest dose tested (LDT) was based on increased salivation. The developmental (fetal) NOAEL was 100 mg/kg/day (HDT).

iii. *Reproductive toxicity study — Rat.* In the reproductive toxicity study in rats, the parental (systemic) NOAEL was 32.3 mg/kg/day. The parental LEL of 165.4 mg/kg/day was based on decreased body weights in males and females, decreased food consumption and increased adjusted liver weights in females, and cholangitis. The reproductive NOAEL was 32.3 mg/kg/day. The reproductive LEL of 165.4 mg/kg/day was based on increased weanling liver weights and decreased body weights for pups of both generations.

iv. *Pre- and post-natal sensitivity.* The pre- and post-natal toxicology data base for azoxystrobin is complete with respect to current toxicological data requirements.

v. *Conclusion.* The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproductive toxicity study in rats. The additional 10x safety factor to account for sensitivity of infants and children was removed by the Agency.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to azoxystrobin from food will utilize 1.9% to 5.6% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to azoxystrobin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to azoxystrobin residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in grapes is adequately understood. These data are being translated for sugar beets for this section 18 temporary tolerance.

The qualitative nature of the residue in animals is adequately understood for the purposes of this section 18 request. A ruminant metabolism study has been submitted, however the animal metabolism data have not been reviewed by the Office of Pesticide Program's Metabolism Assessment Review Committee. The residues of concern in ruminants appears to be different from that of plants. Unidentified metabolite compounds, designated metabolites 2, 20, and 28, appear to be the major components of the residue in ruminant tissues. For the purposes of these time-limited tolerances for emergency exemptions only, the residues of concern in animal tissues are azoxystrobin and its *Z-isomer.*

As sugar beet commodities are not considered to be major poultry feed items, the nature and the magnitude of residues in poultry and eggs are not of concern for the this section 18.

B. Analytical Enforcement Methodology

A method (SOP RAM 243/03, GLC/NPD) to determine residues of azoxystrobin and its *Z isomer* in banana, peach, peanut, tomato, and wheat commodities has been submitted. This method has been independently validated as per PR Notice 88–5. An Agency validation of this method is pending. The Agency concludes this method is adequate for enforcement of the requested section 18 tolerances on plant commodities.

GLC/NPD method RAM 255/01 is adequate for collection of residue data for azoxystrobin in animal commodities. Adequate independent method validation and concurrent method recovery data have been submitted. Method SOP RAM 255/01 has been submitted for Agency method validation. RAB2 concludes this method is adequate for enforcement of the necessary section 18 tolerances on livestock commodities.

C. Magnitude of Residues

Residue data for azoxystrobin and its *Z-isomer* in banana pulp and in watercress were translated to sugar beet roots and tops, respectively. Residues are not expected to exceed 0.05 ppm in sugar beet roots and 0.2 ppm in sugar beet tops as a result of this section 18 use.

According to the OPPTS Test Guidelines (860.1520), a maximum theoretical concentration factor of 12.5 is noted for the processing of sugar beet roots to refined sugar. The Agency has applied this factor to the tolerance level of sugar beet roots to determine the tolerance level for refined sugar and molasses. Thus, the tolerance level for azoxystrobin and its *Z-isomer* in beet, sugar, refined sugar and molasses will be set at 0.7 ppm. The Agency applied a factor of 20 to the tolerance level of sugar beet roots to determine the tolerance level for the dried pulp. Therefore, the tolerance level for

azoxystrobin and its *Z-isomer* in beet, sugar, pulp, dried will be set at 1.0 ppm.

The existing ruminant tolerances established in conjunction with a previous section 18 request are adequate to cover the proposed uses. The addition of sugar beet commodities to the diet of ruminants will not significantly increase the dietary burden for azoxystrobin residues. The expiration date of livestock commodity tolerances will be extended to the expiration date of the sugar beet tolerances established with this section 18 request. In addition, EPA will establish tolerances for residues of azoxystrobin and its *Z-isomer* in/on kidney of goats, hogs, horses, and sheep at 0.06 ppm.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Limits (MRL) for azoxystrobin on sugar beet commodities. Thus, harmonization is not an issue for these section 18 requests.

E. Rotational Crop Restrictions

Rotational crop data were previously submitted. Based on this information, a 45 day plantback interval is appropriate for all crops.

VI. Conclusion

Therefore, tolerances are established for combined residues of azoxystrobin and its *Z isomer* in sugar beets and soybeans at 0.05 ppm, and 1.0 ppm respectively .

VII. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 25, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300759] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's

generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submitted a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In §180.507, by alphabetically adding the following commodities to the table in paragraph (b) to read as follows:

§180.507 Azoxystrobin; tolerances for residues.

* * * * *

(b)* * *

Commodity	Parts per million	Expiration/Revocation Date
Aspirated soybean grain fractions	10.	6/30/00
. . .	. . . .	
Kidney of goats, hogs, and sheep grazed on sugar beets	0.06	6/30/00
. . .	. . . .	
Sugar beet roots	0.05	6/30/00
Sugar beet tops	0.20	6/30/00
Sugar beet, molasses	0.70	6/30/00
Sugar beet, pulp, dried	1.0	6/30/00
Sugar beet, refined sugar	0.70	6/30/00
Soybean hay	1.0	6/30/00
Soybean forage	0.2	6/30/00
Soybean hulls	2.0	6/30/00
Soybean meal	0.3	6/30/00
Soybean oil	2.0	6/30/00

Commodity	Parts per million	Expiration/Revocation Date
Soybean seed	0.1	6/30/00
Soybean silage	2.0	6/30/00
. . .	. . . .	

* * * * *

[FR Doc. 98–31545 Filed 11–24–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300754; FRL 6041–4]

RIN 2070–AB78

Tebufenozide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide tebufenozide and its metabolites in or on leafy vegetables (Crop Group 4) and brassica leafy vegetables (Crop Group 5) at 5.0 parts per million (ppm) for an additional 18–month period, to August 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on leafy vegetables (Crop Group 4) and brassica leafy vegetables (Crop Group 5). Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement of a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA.

DATES: This regulation becomes effective November 25, 1998. Objections and requests for hearings must be received by EPA, on or before January 25, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300754], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300754], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of March 18, 1998; (63 FR 13126) (FRL 5773–1), which announced that on its own initiative under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on leafy vegetables (except brassica leafy vegetables; Crop Group 4) and brassica leafy vegetables (Crop Group 5) at 5.0 ppm, with an expiration date of February 28, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement of a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on leafy vegetables and brassica leafy vegetables for this year growing season due to the continuing emergencies in both California and Arizona. The beet armyworm (BAW) has been causing crop damage due to infestations all season long because the pest will attack crops at emergence, often causing severe loss. Infestations later in the crop cycle will stunt growth, damage and contaminate the harvestable portion of the crop.

Because of the BAW's ability to feed on such a wide array of plants, it has demonstrated an enormous capacity for detoxifying plant defense chemicals and insecticides. In the leafy vegetable and cole crop groups, there are few efficacious products for BAW control. The last 5 years have seen a marked increase in the amounts of active ingredient necessary to achieve control of the beet armyworm in vegetables with failures being reported with all products and combinations. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of tebufenozide on leafy vegetables (except brassica leafy vegetables; Crop Group 4) and brassica leafy vegetables (Crop Group 5) for control of the beet armyworm in Arizona and California.

EPA assessed the potential risks presented by residues of tebufenozide in or on leafy vegetables (except brassica leafy vegetables; Crop Group 4) and brassica leafy vegetables (Crop Group 5). In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of March 18, 1998. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet

the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. Although this tolerance will expire and is revoked on August 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on leafy vegetables (except brassica leafy vegetables; Crop Group 4) and brassica leafy vegetables (Crop Group 5) after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by January 25, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document

Electronic comments may be sent directly to EPA at:
opp-docket@epamail.epa.gov.

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300754]. No CBI should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

Since this extension of an existing time-limited tolerance does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to

issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 2, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§180.482 [Amended]

2. In §180.482, by amending the table in paragraph (b) for the following commodities "Leafy Vegetable (Cole-brassica)" and "Leafy Vegetables (non-brassica)" by revising the date "2/28/99" to read "8/31/00."

[FR Doc. 98–31544 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21 and 74

[MM Docket No. 97–217; FCC 98–231]

MDS and ITFS Two-Way Transmissions

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Report and Order ("*Order*"), the Commission adopts amendments to its rules to enable Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees to engage in fixed two-way transmissions. These rule changes enhance the flexibility of MDS and ITFS operations through facilitated use of response stations, use of cellular configurations use of signal booster stations with program origination capability, and use of variable bandwidth ("subchanneling" or "superchanneling"). As a result of these rule changes, any MDS and ITFS frequencies in the 2 GHz band may be used by licensees, or leased to wireless cable operators, for broadband data, video or voice transmissions to and/or from subscribers' premises, promoting the competitive position of the wireless cable industry, augmenting the educational uses of these frequencies by ITFS entities, and increasing services to consumers.

DATES: Effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Jacobs, (202) 418–7066 or Dave Roberts, (202) 418–1600, Video Services Division, Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 97–217, adopted September 17, 1998, and released September 25, 1998. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of Report and Order on MDS and ITFS Two-Way Transmissions.

I. Introduction

1. This *Order* is adopted by the Commission after receiving and evaluating comments and reply comments, including "permit-but-disclose" *ex parte* comments, filed in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") in this docket. *MDS and ITFS Two-Way Transmissions*, 62 FR 60025, Nov. 6, 1997, *as corrected*, 62 FR 60750, Nov. 12, 1997. The *NPRM* was issued after the Commission initially sought comment on a petition for rulemaking filed by a group of 111 educators and participants in the wireless cable industry (collectively, "Petitioners"), comprised of MDS and ITFS licensees, wireless cable operators, equipment manufacturers, and industry consultants and associations. Currently, MDS and ITFS licensees are authorized to use digital technology in order to increase the number of usable one-way channels available to them, leased ITFS frequencies and MDS channels may be used for asymmetrical high speed digital data applications so long as such usage complies with the Commission's technical rules and its declaratory ruling on the use of digital modulation by MDS and ITFS stations ("*Digital Declaratory*

Ruling," 11 FCC Rcd 18839 (1996)), and MDS licensees have been permitted to provide two-way service on a limited basis. Response channels, which currently are allocated in 125 kHz blocks for use in association with most MDS and ITFS stations, must be individually licensed under the Commission's existing rules. Prompted by the petition for rulemaking, the *NPRM* anticipated that many MDS and ITFS licensees and wireless cable operators engaging in two-way transmissions will require more capacity for return paths than is available through such 125 kHz channels, and recognized that the individual licensing of such channels is too cumbersome and imposes too great a financial burden on licensees seeking to implement two-way wireless services. Instead, the *NPRM* proposed to implement a system under which MDS and ITFS licensees would be permitted to utilize all or part of a 6 MHz channel for return path transmissions from subscriber premises, to cellularize their transmission systems to take advantage of spectrally efficient frequency reuse techniques, and to employ modulation schemes consistent with bandwidths either larger or smaller than 6 MHz, all while providing incumbent MDS and ITFS licensees interference protection equivalent to what they currently receive.

2. The comments and reply comments from wireless cable industry participants generally support the *NPRM*'s proposals, and include a *Joint Statement of Position* ("*Joint Statement*") supported by several industry participants in an attempt to reach agreement primarily on issues related to leasing of excess spectrum capacity by ITFS licensees. While several commenters express concern over the details of the proposals advanced in the *NPRM* and of the *Joint Statement*, the comments and reply comments reflect unanimous support in the MDS and ITFS communities for rules which would enable MDS and ITFS licensees and wireless cable operators to offer a wide array of new, enhanced services, including new digital and two-way communications services. As a result, in this *Order* we: (1) permit both MDS and ITFS licensees to provide two-way services on a regular basis; (2) permit increased flexibility on permissible modulation types; (3) permit increased flexibility in spectrum use and channelization, including combining multiple channels to accommodate wider bandwidths, dividing 6 MHz channels into smaller bandwidths, and channel swapping; (4) adopt a number of technical parameters to mitigate the potential for interference among service providers and to ensure interference protection to existing MDS and ITFS services; (5) simplify and streamline the licensing process for stations used in cellularized systems; and (6) modify the ITFS programming requirements in a digital environment. We believe that the rules that we adopt in this *Order* will facilitate the most efficient use of the affected spectrum, enhance the competitiveness of the wireless cable industry, and provide benefits to the educational community through the use of two-way services, while still permitting traditional use of the spectrum, thus giving both MDS and ITFS licensees the flexibility they need to serve best the public interest.

II. Technical Changes to Rules

A. Revised Definitions of Service

3. The ITFS/MDS spectrum is used primarily for the provision of either one-way video service to students, in the ITFS context, or, in the MDS context, wireless cable service to subscribers, which likewise historically has constituted primarily the provision of one-way video services. While our Rules already permit MDS licensees to provide non-video services, under our current regulatory scheme, MDS operators typically only provide two-way service to subscribers using telephone return links or individually licensed subscriber premises stations. This is an outgrowth of the basic one-way approach to MDS transmission from which our current rules originated.

4. Changes that we adopt in the *Order* to MDS and ITFS service definitions fully incorporate the concept of two-way transmission and reflect the reorientation of the regulatory approach to a flexible service, from that of an essentially one-way service. A regulatory system is created authorizing the use of response station hubs and the more flexible use of response stations, enabling the two-way operation of wireless cable systems. Specifically, the definition of a "response station" is amended to indicate that licensees may use all or part of any of their 6 MHz channels as a response channel. Response stations will be the means of transmission from a subscriber's premises, and can use either separate transmitting antennas for return paths or combined transmitting/receiving antennas. The concept of a response station hub is added, and these hubs will serve as the collection points for signals from the response stations in a multipoint-to-point configuration for upstream signal flow. Thus, response stations would not need to be licensed individually, and they could operate at lower power because the response station hubs would be located closer to subscriber premises than are current transmitter sites. Moreover, the hubs are expected to improve service reliability and permit greater frequency reuse than if each subscriber were required to communicate directly with their associated main transmitter site.

5. We further amend the definition for "signal booster stations" to allow such stations to originate transmissions, as well as to relay transmissions from other stations. Booster stations now may be used to cellularize wireless cable operations in areas too large to be served by a single station. High-power boosters are those which operate above −9 dBW EIRP, while low-power boosters may operate at or below the −9 dBW threshold. Permitting boosters to originate as well as relay programming will facilitate frequency reuse, cellular configurations, two-way high speed Internet access and other services. Booster station signals will receive interference protection within the booster's service area, but not at receive sites beyond the booster's service area, and booster stations may not have overlapping service areas. We also agree with the *Joint Statement* and with the comments of several parties that all booster stations should be licensed to the licensee of the channels used by the booster station.

6. After receiving broad support in the comments and reply comments to the *NPRM*, flexible subchannelization (*i.e.*, the division of a channel of a particular bandwidth into multiple, but not necessarily equal, channels of smaller bandwidth) will be permitted to allow more efficient channel reuse within a given service area, and superchannelization (*i.e.*, the combining of more than one channel into a single, wider channel) will be allowed and may be used for the transmission of high data rates and/or the use of spread spectrum emissions. Superchannels also will be licensed to multiple entities in many instances, due to the fact that the interleaved, non-contiguous channels in this band generally are licensed to different entities. Subchannels and superchannels will be limited to digital transmissions with fixed uniform power spectral density across the bandwidth, in order to make possible the use of spectral density analysis as part of the interference analysis process. However, we are permitting the maximum possible flexibility for digital subchannelization and superchannelization. Such flexibility includes: subchannelization and

superchannelization of 6 MHz and 125 kHz channels; permitting such techniques both for point-to-multipoint (downstream) and response channel use; subchannelization of superchannels, *e.g.*, an 18 MHz superchannel could be redivided into two 9 MHz channels or any other combination which sums to 18 MHz; division of superchannels into partially overlapping subchannels which sum to greater than the width of the superchannel, *e.g.*, an 18 MHz channel subdivided into three channels each 8 MHz wide, thus producing two overlapping areas of 3 MHz each; and permitting licensees to use either static (fixed and unchanging) or dynamic (not fixed and changing) bandwidths at their stations, so as to optimize the efficiency and speed of information flow. We will continue to issue individual authorizations to individual licensees for 6 MHz and 125 kHz channels, and we will not issue specific authorizations for superchannels or subchannels.

7. Finally, after receiving support from most commenters, we adopt rules in accordance with the most flexible framework proposed in the *NPRM* for use of the 125 kHz channels. Such flexibility includes: permitting the 125 kHz channels to be used as response channels and/or for point-to-multipoint transmissions, which promotes greater options for two-way system design and more efficient use of the spectrum; allowing licensees to swap 125 kHz channels and removing requirements that each 125 kHz channel be used solely in conjunction with a specifically associated 6 MHz channel, which together present opportunities for licensees to create channels with bandwidths exceeding 125 kHz; and, as suggested by the Instructional Telecommunications Foundation, Inc. (Foundation), allowing the content of those channels to be independent of that transmitted on related 6 MHz channels. For the sake of simplicity and consistency with the MDS/ITFS database, we also redesignate the 125 kHz channels as the I channels. In adopting this flexible approach towards the 125 kHz channels, we deny the request of the Catholic Television Network (CTN) that we reallocate all of the 125 kHz channels to ITFS and use them solely for response transmissions, and we also deny the University of Maryland's request that we mandate that any non-ITFS use of I channels licensed to an ITFS entity be secondary to ITFS use. Where the I channels are used for downstream transmissions, they will be afforded interference protection in the same manner as other point-to-multipoint MDS and ITFS facilities. An MDS or ITFS licensee or applicant wishing to use its I channels for downstream transmissions shall apply for such authority using FCC Form 331, and shall prepare interference showings and serve them on potentially affected parties.

B. Interference Considerations

8. *Spectral Mask.* In the *Digital Declaratory Ruling*, the Commission waived its rules with respect to out-of-band emissions and permitted the use of a somewhat relaxed spectral mask for digital transmission modes. This action was taken because the Commission concluded that the application of the current analog emission mask to digital emissions would be unnecessarily restrictive and could increase the cost of digital equipment while providing no benefit. In addition, the results of laboratory tests submitted in connection with the Commission's consideration of this issue demonstrated that a digital station using the relaxed mask is less likely to cause interference than an analog station using the existing, more restrictive, mask.

9. As proposed in the *NPRM*, and subject to slight modifications based on comments of the General Instrument Corporation (formerly NextLevel Systems, Inc.) which we believe will have no impact on the interference environment, we permanently incorporate into the Rules the digital spectral mask waiver provisions of the *Digital Declaratory Ruling*, specifically for main station, high-power booster and response station transmitters which operate on a single 6 MHz channel; masks also are specified, albeit with certain further modifications, for sub- and superchannels, 125 kHz channel stations, and high-power booster stations transmitting using analog or digital modulation on multiple non-contiguous channels simultaneously carrying separate signals ("broadband boosters"). Furthermore, as in the *Digital Declaratory Ruling*, all spectral mask calculations involving digital emissions will use the average power of the emission across its bandwidth, and steps must be taken to ensure substantially uniform power spectral density across the bandwidth in use, including constant power per unit of bandwidth for sub-and superchannels, with 6 MHz as the reference bandwidth, and continuous energy dispersal during times of no modulation. We also incorporate into the Rules formulas provided by Petitioners for consistent spectral mask measurement and interpretation, and based on comments by CTN and as a result of technological advances over the past year, we eliminate the exception proposed in the *NPRM* to the mask for response stations, which would have allowed for discrete spurious emissions. No spectral mask whatsoever will be applicable to low-power booster stations using analog or digital modulation, but such transmitters will be shut down if it is established that they are causing harmful interference.

10. *Power.* As requested by Petitioners, we will permit response stations to use up to 33 dBW EIRP. While the Commission had proposed in the *NPRM* to place a limit of 18 dBW EIRP on response station transmitters in cellularized systems, and although we continue to be concerned about interference, we concur with the conclusions of Petitioners' propagation analysis that the proposed 18 dBW power limit would adversely impact system range and reliability, thereby increasing the number of stations needed and increasing system costs. As a practical matter, however, we do not expect that all, or even most, response stations will utilize the maximum power permitted. In addition, while current MDS and ITFS rules limit booster power to 18 dBW EIRP, henceforth we allow boosters to operate up to 33 dBW EIRP, the maximum power level for MDS and ITFS. The 33 dBW power limit is predicated on a bandwidth of 6 MHz, and the power limit for stations using lesser bandwidth must be reduced proportional to that bandwidth. We also retain frequency tolerance requirements for digital and analog main station and high-power booster station transmitters, while declining to impose such requirements for low-power booster and response station transmitters; retain rules requiring type certification of main and booster transmitters, and adopt rules requiring type certification of response station transmitters, subject to exceptions set forth in the *Digital Declaratory Ruling* regarding the use of existing analog equipment for digital emissions; and adopt rules protecting against excessive radio frequency ("RF") emissions exposure from MDS/ITFS return path transmissions, in a manner similar to the approach that we adopted for LMDS.

11. *Interference Protection Criteria.* The Commission's current regulations in ITFS and MDS for interference protection were designed to minimize the potential for destructive cochannel and adjacent channel interference between systems located in proximity to each other. The specific criteria for protection are of two forms, namely, (1) cochannel and adjacent channel

desired-to-undesired signal (D/U) ratios and (2) limits on the magnitude of a station's free space field as measured at the edge of the station's protected service area. For cochannel interference protection, an applicant must configure its system so that the signals from each of its transmitters are at least 45 dB weaker than the signals of the existing licensee's transmitters within the licensee's protected service area and/or, in the case of ITFS licensees, at the licensee's protected receiver sites. For adjacent channel protection, the ratio must be at least 0 dB. In order to meet the second form of protection, an applicant generally must be able to demonstrate that the magnitude of the free space radiated field from each transmitter does not exceed a particular limit (*i.e.*, a power flux density −73 dBW/m²) at the boundary of the applicant's service area.

12. As proposed in the *NPRM*, and as supported by all parties commenting on this issue, we will apply the existing interference criteria in essentially unchanged form, and supplement them with similar new criteria to be applied to hub, booster, and response stations. Furthermore, because two-way systems will involve large numbers of transmitters with heavy frequency reuse and simultaneous operation, a calculation of the combined field produced by the main station transmitter, all cochannel boosters, and the aggregated power from cochannel response stations within a system will be utilized to determine compliance with the interference criteria where these stations partially or completely share spectrum. These criteria shall be adjusted to account for the particular bandwidths involved in the calculations. We also emphasize that where an interfered-with receive antenna meets the antenna characteristics set forth in our MDS and ITFS rules, the station causing the harmful interference is responsible for curing it.

13. *Interference Prediction Methodology*. In order to predict the interference potential of response stations in cellularized systems, we will implement a modified version of the three-step process proposed in the *NPRM*, which uses statistical analysis and worst-case assumptions in deriving theoretical estimations of the locations and characteristics of individual response stations, because these response stations will be licensed under blanket authorizations which specify only the locations of the associated hubs to which the response stations transmit. This methodology is found in Appendix D to the *Order*, and is captioned "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems." This sequence of system design, development and authorization necessitates a radical departure from the customary process whereby interference calculations are made based on specific information concerning specific stations at specific locations with specific operating parameters.

14. In step one, the hub station response service area ("RSA") is defined and a grid of points is located within this area representative of the expected actual distribution of response station transmitters within the area. Regions within the area are defined so that an adequate population uniformity exists for purposes of predicting interference from a distribution of response station transmitters. While the methodology originally proposed in the *NPRM* would have determined population uniformity using a complex formula involving evaluation of the population density within each ZIP Code within the planned boundaries of a region, in response to comments filed by Spike Technologies, Inc. (Spike) and others that this procedure would not produce results representative of the actual distribution of response stations, the methodology has been corrected so that interference analyses will be conducted from the grid points which have the greatest interference potential, taking into account, both for TDMA and CDMA systems, all potential victim sites both inside and outside the RSA. In step two, the technical characteristics of response stations which will be associated with each point in the RSA grid are identified. One or more classes of response stations are identified within the RSA and its regions, with each class being a function of several variables, such as transmitted power (EIRP), antenna height, frequency, bandwidth, and maximum number of assumed simultaneously operated response stations in the regional class; these characteristics and others will be specified in the response hub application. In response to comments of EDX Engineering, Inc. (EDX) and others that the originally-proposed methodology ignored terrain data, each grid point now will be assigned the highest elevation AMSL of all the geographic area surrounding that grid point, thus making the theoretical stations assigned to each grid point much more likely to be representative of the actual interference potential.

15. The final step in calculating response station interference would require combining the radiated fields of all response stations of all classes, regions and RSAs within the primary station's protected service area. In order to simplify this calculation, the statistical population uniformity within each region will be used as a basis for grouping response stations of all classes in proximity at the grid points laid out within each RSA; multiple classes could share the same grid points. For each class of response stations assigned to a grid point, a set of worst-case assumptions will be made concerning the transmitting antenna radiation pattern, transmitter power (EIRP) and antenna height. Several complex calculations, including procedures for checking the initial calculations, combining the radiated field for all of the transmitters for each class of response station at each grid point from all RSAs will then be used to evaluate compliance with the interference criteria. Subsequently, licensees are free, upon notification to the Commission, to continue adding response station transmitters within their systems until calculations indicate that permissible interference values would be exceeded.

16. We also have considered other proposed modifications to the proposals in the *NPRM* for predicting interference from response stations and to hubs, which we believe render the methodology sufficiently comprehensive and conservative without being overly protective or stifling of growth. For instance, we agree with CTN and others who argue that the "minimum receivable signal" hub protection standard proposed in the *NPRM* would have, in some instances, overprotected the hub and thus potentially precluded construction of other stations. Instead, we adopt Petitioners' amended proposal to protect the hub's noise floor, and to take into account the actual antenna(s) in use at the hub. However, in adopting the methodology as modified, we decline to adopt several other proposed modifications, including: EDX's proposed alternate methodology, in which all response station transmitters within a defined area would be represented by a single hypothetical aggregate response station located at the hub site, and which likely would give erroneous interference calculations for many two-way system configurations; Spike's suggestion that applicants should be free to choose any methodology they wish for making interference calculations, which would have promoted uncertainty and slowed the evaluation of applications; and Spike's recommendation that hubs be

redefined to include transmitting capability, which would add unnecessary complexity to the interference protection rules and which is further unnecessary in light of the ability of licensees to collocate hubs with boosters and main stations.

17. We also decline to adopt the guardband proposal for interference protection advanced by CTN. CTN contends that interference could be caused to ITFS receive sites by nearby response stations which are neither cochannel nor adjacent channel to the channels in use at the ITFS receive sites, as a result of brute force overload ("BFO") to broadband downconverters used at these sites. As a solution to the potential problem of interference from response stations, including BFO, CTN proposes that a guardband be used as a buffer between downstream ITFS operations and upstream operations, with downstream MDS operations occupying the guardband. CTN argues that a guardband would have several benefits, such as mooting the need for calculating response station interference into ITFS receive sites, and confining the risk of BFO, as well as cochannel and adjacent channel interference, solely to MDS licensees. While we find CTN's guardband proposal unduly limiting of system design flexibility, and we also at this time reject as unduly restrictive CTN's proposal of on-air testing of response stations within a certain proximity of ITFS receive sites prior to activation of those response stations, we adopt a slightly modified version of CTN's proposal that no response station may be installed until a notification is sent to each ITFS licensee with any registered receive site within a distance of 1960 feet of the location of the proposed response station. Moreover, because we agree with CTN that BFO is a possibility in certain limited circumstances, we will require that licensees of stations causing interference immediately commence a full cooperative effort with licensees receiving interference, to solve the problem as quickly as possible at the expense of the offending licensee. We emphasize that we will order the immediate deactivation of part or all of a system if that system is causing any interference—whether cochannel, adjacent channel or BFO—and the licensee has not cooperated fully and in a timely manner to eliminate the interference.

C. Modulation Methods

18. In the *Digital Declaratory Ruling*, the Commission authorized the use of QAM and VSB modulation. While the Commission declined to consider the use of other digital modulation methods in the context of that proceeding, it stated that it would consider future requests for declaratory rulings where the requesters submit appropriate data to demonstrate that other modulation techniques could be used in a manner that would not interfere with MDS and ITFS analog and digital operations.

19. As in the *Digital Declaratory Ruling*, and as supported by the commenters on this issue, we decline to adopt one or more "standard" digital technologies. We retain and add provisions for accommodating the use of different modulation types. In the *NPRM*, the Commission solicited comment on whether there is a basis for concluding that use of particular digital modulation types by MDS and ITFS stations other than VSB and QAM would not be prone to interference, based on the current 45 dB/0 dB protection ratios for cochannel and adjacent channel interference respectively, *i.e.* that such modulation formats should be permitted without requiring test data. For example, one modulation type may be a subset of VSB and QAM and, therefore, is covered under the industry tests used to support the *Digital Declaratory Ruling*. In response, four parties filed a joint request for declaratory ruling asking that the Commission permit the use of two additional forms of digital modulation, CDMA and QPSK, and we are persuaded to permit use of those modulations on a regular basis at all MDS and ITFS stations. In addition, because we wish to encourage parties to continue to identify different digital modulation schemes that could be useful in MDS and ITFS, we emphasize that we remain open to considering future requests for declaratory rulings in accordance with the *Digital Declaratory Ruling*, upon submission of appropriate data. Finally, in order to facilitate testing and use of different digital modulations where possible, we will permit licensees and system operators to use any digital emission in limited circumstances which we set forth where interference is unlikely or where all parties potentially affected by interference have consented to such use, and so long as such emissions meet spectral mask and uniform power spectral density requirements.

III. Application Processing Issues

20. We set forth a scheme governing the filing and processing of applications for new or modified response station hubs, boosters or downstream I Channel operations, that will substantially shift review of such applications from Commission staff and leave much of the interference environment to be worked out among licensees. As proposed in the *NPRM*, we adopt a rolling, one-day filing window system. While each applicant will be required to demonstrate protection of existing or previously proposed facilities, applications filed on the same day will be granted and the filers left to resolve incompatibilities amongst themselves with little or no intervention by Commission staff. Because parties will be unable to offer reliable service without resolving such conflicts, we believe that the incentive to reach a resolution will be so great that Commission involvement will be unnecessary to resolve disputes.

21. Specifically, applications first will be placed on public notice without prior staff review of interference studies. While the Commission tentatively rejected in the *NPRM* Petitioners' proposal that the applications then would be granted automatically on the 61st day after that notice, unless a petition to deny was filed or the Commission notified the applicant prior to that date that a grant would not be made, the majority of commenters on the subject supported some type of streamlined process, especially when coupled with a complete guarantee of protection against interference. Upon review of these comments, we have been persuaded that failure to adopt an expedited processing system would be seriously detrimental to the provision of two-way service, despite the increased burden that such a system places on licensees to track and monitor applications. Thus, we adopt a modification of the automatic grant proposal, a certification procedure, whereby an applicant must certify in its application that it has completed, served upon potentially affected parties, and submitted to the Commission's copy contractor all required interference studies (or consent letters) and engineering showings demonstrating no interference. Before placing an application on public notice, Commission staff will review it to ensure that all required certifications are included, and any application that does not contain the proper certifications will be dismissed. The application will be granted in reliance on the certifications on the 61st day after public notice, unless a petition to deny is filed against it or the Commission finds in a random audit that the applicant certified falsely. A false certification also could be grounds for revocation of a license. Though consistent with similar certification procedures that have been adopted for other communications

services, this approach is particularly appropriate for MDS and ITFS, because the interdependence of those two services in most cases relies on the parties working together. And, as a safeguard, systems causing interference must cure it immediately or face shut-down, even if the station applications had been unopposed.

22. A large number of applications are likely to be filed once the new rules become effective, and many of the applications submitted at that time may conflict with others filed simultaneously. Therefore, as proposed in the *NPRM*, in order to smooth the transition to the rolling one-day filing window application processing system, we adopt a special one-week initial filing window, the opening of which will be announced by public notice, where all applications filed during this window will be deemed to have been filed as of the same day. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants will have a period of 60 days to amend their applications to resolve conflicts. During this 60-day period, no additional applications may be filed, affording those who filed during the one-week window an opportunity to resolve any conflicts without fear that, during the pendency of settlement discussions, third parties will propose facilities that will have to be protected if the original applicants amend their applications. After this initial 60 day period, public notice and application grant procedures akin to those that we adopt for the rolling one-day filing windows will be implemented. On the 61st day after the publication of the second public notice, the rolling one-day filing window will go into effect. We believe that our adoption of the one-week initial filing window will lessen the burden on all affected parties, including the Commission's staff, during the first round of application filing. We also believe that providing parties with an initial 60-day period during which they can resolve any apparent conflicts and then amend their applications without prejudice will serve to expedite service to the public by allowing parties to resolve their differences without the need to seek Commission review through the petition to deny process.

23. In the *NPRM*, the Commission solicited comment on whether to adopt a system whereby an applicant, once authorization for service has been granted, may switch from common carrier to non-common carrier service and back without seeking subsequent authorization. The Commission also sought comment on whether operators should be required to give the Commission notice when they are switching back and forth between common carrier and non-common carrier service, even if prior approval is not required. What little comment we received on this subject was supportive of providing the requested flexibility, and we adopt rules implementing it, subject to a requirement that licensees provide the Commission with 30-days advance notice of such changes.

IV. Proposals and Issues Primarily Involving ITFS

24. Under § 74.931 of the Commission's Rules, ITFS stations are operated by educational organizations and are "intended primarily to provide a formal educational and cultural development in aural and visual form," to students enrolled for credit in accredited secondary schools, colleges and universities. Currently, § 74.931(e)(9) specifies that an ITFS licensee who leases excess channel capacity to a wireless cable operator must provide a total average of at least 20 hours per channel per week of ITFS programming on its authorized channels. ITFS licensees in such lease arrangements also retain the right to recapture "an average of an additional 20 hours per channel per week for simultaneous programming on the number of channels for which it is authorized." In addition, an ITFS licensee may shift its required educational programming onto fewer than its authorized number of channels via channel loading or channel mapping. The licensee may further agree to transmission of recapture time on channels not authorized to it but which are included in the wireless cable system of which it is a part.

A. ITFS Programming Requirements

25. In the *NPRM*, the Commission sought comment on several issues related to the question of whether to change our ITFS programming requirements in light of the use of digital technology by ITFS licensees. It asked whether there should be different rules depending on whether the wireless cable system employs digital or analog transmissions, or some combination of both. It further asked whether our existing program content requirements should be retained or whether they should be modified. Specifically, the Commission sought comment on whether data transmission and voice transmission should count toward the fulfillment of minimum programming requirements, and if they were to count, how they would be measured. The Commission also welcomed suggestions on whether education-related upstream transmissions should be applied towards satisfaction of minimum ITFS programming requirements, and, if so, how they should be measured for that purpose. The *Joint Statement* takes positions on many of these issues. To the extent that it and its supporters represent an agreement by most of the parties in the wireless cable industry and MDS and ITFS services, we have accorded it deference in formulating our policies. Nonetheless, while we find some its approaches sound, we find some if its provisions unworthy of adoption.

26. *Redefinition of Eligible Content.* Commenters unanimously support the proposal that spectrum usage beyond video programming be eligible to satisfy ITFS educational usage requirements. We agree that availability of advanced technologies dictates that it is now time to accord ITFS licensees increased flexibility in determining which transmissions qualify as satisfying educational usage requirements, so long as such transmissions are in furtherance of the educational mission of an accredited public or private school, college or university, or other eligible institution (such as certain uses by health care facilities), offering courses to enrolled students. Such uses may include downstream or upstream video, data and voice transmissions. In addition, while heretofore not qualifying to satisfy educational usage requirements, qualifying uses now may include, but are not limited to, teacher conferencing, remote test administration, distribution of reports and assignments, research towards and sharing works of progress in projects for courses, professional training, continuing education, and other similar uses. Furthermore, in light of the myriad of possible uses of the spectrum for courses by accredited schools, we no longer need a separate rule pertaining to where transmissions are not to on-campus receive sites.

27. We also will subject ITFS signal booster stations to educational usage requirements, in conjunction with those to which main ITFS stations are subject, and unless otherwise specified in the Rules, a "channel" henceforth shall refer to any of the 6 MHz frequency blocks assigned pursuant to §§ 21.901(b) and 74.902(a) of the Commission's Rules. We amend § 74.931 and other pertinent rules to reflect all of these changes. However, while Hispanic Information and Telecommunications Network contends that qualifying educational service should not be

limited to that offered by accredited institutions, we disagree, because requiring that a qualified licensee be an accredited institution provides greater certainty of the integrity of the licensee's educational function. Thus, we will keep intact our eligibility requirements of § 74.932(a).

28. *Analog Programming Requirements.* Commenters who address this subject unanimously believe that the current programming requirements should be retained for ITFS licensees solely engaged in transmission of downstream analog programming. We agree, and we will impose no changes to programming requirements where licensees solely use analog transmissions. However, for some commenters there is still discord over what the extent is of the recapture time requirement. In the *NPRM*, the Commission rejected Petitioners' proposed changes to § 74.931(e) that sought to revise the absolute 20 hours per channel per week recapture time requirement to provide that the ITFS programming requirements constitute a total of 40 hours per channel per week, including both actual programming and recapture time. While Petitioners and some other commenters argue that the Commission's stance in the *NPRM* will deter investment, we believe that the Commission's rejection in the *NPRM* of Petitioners' proposed changes to our recapture time requirements was correct. However, in response to concerns expressed by BellSouth, we clarify that the Rules do not require that 20 hours always be reserved without accounting for the amount of recapture already exercised.

29. *Digital Educational Usage Requirements.* While CTN insists that educational usage requirements must be modified to reflect increased capacity arising from use of digital technology, and argues that a proportionate increase in instructional usage is needed to prevent the dilution of the instructional nature of ITFS channels, the overwhelming majority of commenters on these issues favors retaining the current minimum educational usage requirements in a digital environment. Some of these commenters, such as BellSouth, argue that "there is no direct correlation between technological advancements and the need for ITFS programming"; others, such as Wireless One of North Carolina, L.L.C., observe that many ITFS licensees are finding it difficult even to satisfy the existing ITFS minimum educational usage requirements; several others assume the posture reflected in the *Joint Statement*, that while the educational usage requirements should not be changed, 25% of an ITFS licensee's capacity should be immediately available to the ITFS licensee or subject to recapture (with a minimum of 5% of the licensee's capacity immediately available); and some others, such as the San Francisco-San Jose Educator/Operator Consortium, contend that recapture requirements are inefficient and urge that the Commission abolish them.

30. Because we seek to maximize the flexibility of educators and wireless cable operators to design systems which best meet their varied needs, we will adopt ITFS excess capacity leasing rules which best promote this flexibility while at the same time safeguarding the primary educational purpose of the ITFS spectrum allocation. After a careful review of the comments in this proceeding, we decide that these goals are best harmonized where digital transmissions are used by retaining the current 20 hours per channel per week educational usage requirements, adopting the *Joint Statement*'s proposed absolute reservation of a minimum of 5% of an ITFS station's licensed capacity for instructional purposes only, and eliminating requirements setting aside capacity for ready recapture by ITFS licensees. We emphasize that the 20 hours per channel per week minimum educational usage requirement is independent from, but concurrent with, the minimum 5% capacity reservation; further, the reserved capacity can be devoted to satisfying minimum educational usage requirements. These complementary standards are in the public interest because they insure the immediate devotion of ITFS spectrum to formal educational usage, and the provision by ITFS licensees of at least as much educational usage as they provide under the current rules, while providing for expansion of ITFS service offerings and maximization of spectrum available for leasing to wireless cable operators. Thus, these standards also serve the same purposes as the recapture provisions that they supplant.

31. Whether a reservation of 5% of the licensee's capacity is sufficient to meet the minimum educational usage requirements, let alone provide for future expansion of service, will depend both on the digital compression ratio employed by the licensee, and on the particular form of transmissions utilized by the licensee to meet its usage requirements; in some cases, an ITFS licensee may need to reserve more than 5% of its capacity in order to satisfy its educational usage requirements or to provide room for future expansion of services. We also emphasize that an ITFS licensee may reserve for itself in excess capacity lease negotiations more than the minimum required reservation of capacity, and is free not to lease its excess capacity at all if it does not wish to do so.

32. *Measurement of Educational Usage.* In recognition of the difficulty of measuring compliance with the requirements of 20 hours per channel per week of educational usage and the 5% minimum capacity reservation, and in light of the varied forms that ITFS spectral usage can take, we agree with those parties commenting on this issue that at least for now, the best course is to rely on the good faith efforts of ITFS licensees to meet these requirements, subject to potential Commission audits with the licensee bearing the burden of proof of compliance. We decline to adopt time-of-day requirements for measuring educational usage, and in light of changed content requirements and available service options as a result of this proceeding, we grant relevant portions of pending petitions for reconsideration of a 1994 Commission decision that only programming transmitted for "real time" viewing by students counts towards minimum educational usage requirements.

B. Channel Loading, Shifting and Swapping

33. It is anticipated that system developers will attempt to utilize contiguous 6 MHz channels for two-way services in order to minimize the amount of spectrum that would be lost to the spectral mask whenever a return path is adjacent to a downlink channel. Furthermore, entire ITFS channel groups may need to be devoted for return paths. Thus, in the *NPRM*, the Commission advanced Petitioners' proposal that we allow ITFS licensees to satisfy their educational usage requirements on other channels within the wireless cable system ("channel loading"), and not mandate that licensees meet these requirements using at least one of their own channels ("channel shifting"). The Commission also proposed to allow the trading of channels between licensees ("channel swapping"), and solicited comment on whether ITFS licensees should be required to retain one or more channels for downstream transmissions. The general concepts of channel loading, shifting and swapping are endorsed by the *Joint Statement* and supported by almost all of the commenting parties. With the exception of our channel loading rules and intra-ITFS channel swaps between licensees using analog transmissions only, the concepts which we permanently adopt in the *Order* apply only to licensees using digital

transmissions, leasing excess capacity to an operator which uses digital transmissions, or swapping channels with a licensee which uses digital transmissions.

34. *Channel Loading.* The parties commenting on our channel loading rules unanimously support their retention, and we shall do so. In response to comments of Petitioners and of BellSouth, we also modify these rules to eliminate the requirement that each ITFS licensee engaged in channel mapping or channel loading preserve the ability to transmit all of its ready recapture time simultaneously on the number of channels for which it is licensed.

35. *Channel Shifting.* The overwhelming majority of commenters on this proposal wholeheartedly support it. While the *Joint Statement* supports the proposal so long as the usage is shifted onto channels licensed to other ITFS entities, we are amending our Rules to permit maximum flexibility in voluntary channel shifting for an ITFS licensee which itself uses, or leases excess capacity to a wireless cable operator which uses, digital transmissions. Such flexibility encompasses the right of an eligible ITFS licensee to shift its required educational usage onto any other channel(s) within the same wireless cable system, regardless of whether licensed to an MDS or ITFS entity. We hope that the flexibility we accord to ITFS licensees to lease their channel capacity, along with the maintenance of minimum ITFS educational usage requirements, also encourages educators to apply for new ITFS stations and leads to more educational usage.

36. *Downstream Channel Reservation.* Of the few comments that we received on this issue, the majority favors a mandatory preservation of one downstream channel. We are adopting the *Joint Statement's* proposal, as modified by comments of Alliance for Higher Education, *et al.* (Higher Education Alliance): that each ITFS licensee leasing channels to be used for return paths shall be required to maintain at least 25% of its capacity to be used for downstream transmissions both during the term of the lease and following termination of its leasing arrangement; and that this preservation need not be over the licensee's own licensed channels. In order to provide additional safeguards of the ITFS spectrum allocation, we stipulate further that in the event the leasing arrangement ends, the wireless cable operator must return to the ITFS licensee unfettered use of as many 6 MHz channels as are authorized to the licensee; only 25% of these channels, however, must be devoted to downstream transmissions.

37. *Channel Swapping.* The comments that we received unanimously are in favor of the concept, and most commenters on these issues indicate full support both for swaps between ITFS channels, as well as between ITFS and MDS channels. The rules that we adopt allow nearly maximum flexibility in the types of swaps that may take place. We decline to adopt proposals limiting the location of response channels, such as a proposal which the Commission tentatively rejected in the *NPRM* as unduly restrictive, which sought to convert MDS channels 1, 2 and 2A to upstream use only, leaving the rest of the MDS and ITFS spectrum solely for downstream use. Moreover, because channel swapping is voluntary and its terms negotiable, we see no need to adopt the proposal of Schwartz, Woods & Miller (SWM) to require that the wireless cable operator cover all of the costs of channel swaps. We implement simple procedures for channel swap applications: Each licensee seeking to swap channels shall file a *pro forma* assignment application with the Commission, attaching an exhibit which clearly specifies that the application is filed pursuant to a channel swap agreement.

38. *Effects on ITFS License Renewal.* Several commenters urge that it is important that we clarify that channel shifting, in particular, will not constitute a basis for, or be a factor in, a license renewal proceeding; the *Joint Statement* also contains a provision to this effect. This concern arises over possible effects of an ITFS licensee not providing any educational usage over its own licensed channels, even if it satisfies its educational usage requirements on other channels in the same wireless cable system. Because we recognize that two-way system design may be based largely on the implementation of channel shifting, and that wireless cable operators and their ITFS lessors may be deterred from utilizing these efficiencies without assurances that doing so will not have an adverse effect at the time the ITFS licensee seeks renewal, we amend § 74.931 to reflect that the fact that an ITFS licensee utilizes channel shifting, channel loading or channel mapping will not itself be considered adversely to the licensee in seeking a license renewal.

C. Autonomy of ITFS Licensees and Agency Role

39. When the Commission solicited comments in preparation for the *NPRM*, several of the ITFS parties who commented at that time expressed concern that the proposed two-way scheme presents threats to the independence of ITFS licensees and their future ability to use spectrum capacity for instructional purposes. Some of those concerned commenters focused on the effect that the proposed rules may have on the engineering autonomy of ITFS licensees. Concerned commenters also identified issues relating to possible encroachment upon the financial autonomy of ITFS licensees by implementation of the proposed two-way framework. While the Commission, in the *NPRM*, sought comment on the effects that cellularization would have on the engineering and financial autonomy of ITFS licensees, it also acknowledged that any proposed solutions inherently would implicate the fundamental question of what degree of oversight the Commission should maintain in regulating the wireless cable industry and ITFS. The Commission solicited views on this fundamental question, and on one of its principal offshoots, the question of what impact the proposed two-way rules should have on the Commission's requirements regarding excess capacity lease agreements.

40. The comments that we received in response to the *NPRM* evince many of the same concerns expressed by some of the ITFS commenting parties in earlier rounds of comment, and likewise are met with opposing comments conveying responses comparable to those previously conveyed. Some of our decisions in the *Order*, such as generally prohibiting involuntary modifications to ITFS stations in a two-way environment, should help address some of the concerns of ITFS licensees regarding their autonomy and ability to continue providing service should they no longer be in a relationship with a wireless cable operator. However, while we will continue to require certain provisions in excess capacity leases between ITFS licensees and wireless cable operators, and likewise will continue to prohibit certain provisions, we believe generally that ITFS licensees can—and should—in their negotiations with wireless cable operators arrange for lease terms that best protect their own individual interests and needs.

41. As a starting point, we reemphasize the Commission's declaration in the *NPRM* that cellularization by ITFS licensees is

permissive only, and not mandatory. In addition, we have decided to grant all ITFS licensees protected service area (psa) protection, in response to concerns over coercion such as those expressed by the Foundation, that otherwise there would be a disparity in interference protection between ITFS licensees that offer high-speed Internet service pursuant to a lease with a wireless cable operator, and ITFS licensees that provide exactly the same service on their own. We also reaffirm the ability of stand-alone ITFS licensees to provide communications services that are not specifically educational over their frequencies, so long as they meet the educational usage requirements set forth in our Rules.

42. *Engineering Autonomy.* We agree with the commenters who recognize that our requirement that each ITFS licensee retain 25% of its capacity for downstream transmissions will present significant assistance to ITFS licensees in continuing to provide downstream educational services. Nevertheless, we believe generally that post-relationship configuration issues should be arranged by the ITFS licensee in the course of negotiating the terms of its excess capacity lease with the wireless cable operator. We further conclude that, particularly in light of the primary educational function of ITFS licensees, where an ITFS licensee is not the source of transmissions over its licensed bandwidth, we will not regard the ITFS licensee as having legal control over the content of such transmissions. At most, an ITFS licensee's legal control over content transmitted over its authorized bandwidth is a contractual matter between the leasing parties.

43. *Financial Autonomy.* In the *NPRM,* the Commission sought comment on the concerns of several commenters at that stage of the proceeding that ITFS licensees will be unable to sever their relationship with the wireless cable operator and acquire the equipment to either continue cellular operations or return to non-two-way transmissions. While some commenters such as CTN, the Foundation, and SWM propose various regulatory solutions to these concerns, we agree with the commenters who argue that the ITFS licensee should address these concerns itself in its lease negotiations. Thus, we decline to adopt proposals to require that two-way wireless cable operators establish a performance bond or escrow account, with sufficient funds to ensure the uninterrupted operation of participating ITFS stations for a given period; or to have transmission systems transfer automatically to the ownership and control of the ITFS licensee upon termination of the lease, or upon commencement of a lease term. However, consistent with current policy, we will require that each excess capacity lease contain a provision assuring the ITFS licensee's right to purchase the actual equipment, or equipment comparable to that, used by the ITFS licensee during the lease for educational purposes. This means, for example, that if the ITFS licensee was providing educational services during the lease period utilizing digital transmissions, the wireless cable operator is not obligated to retain analog transmission equipment for ITFS licensees seeking to return to traditional downstream analog transmissions. In addition, as requested by CTN, this required lease provision applies to dedicated or common equipment used for educational purposes. Nonetheless, as further indicated by CTN, negotiations between the parties to the lease still will be required to spell out the appropriate specific equipment that must be made available.

44. *Commission Role.* In the *NPRM,* the Commission described how in the past, it has adopted rules and procedures to accommodate and protect what has been viewed as the special needs of educational institutions and organizations, believing that educational institutions should be treated differently from commercial entities in many situations due to limited financial and staff resources. One of these protections has been required review by the staff of ITFS excess capacity lease agreements, for overly restrictive provisions affecting the licensee's rights and obligations and for compliance with the Commission's leasing policies. The Commission requested comment on whether parties should continue to be required to file written agreements governing the ITFS licensee's lease of excess capacity on its channels.

45. The comments that we received on this issue generally are split between those who believe that many ITFS licensees are well-funded, and those who believe that many still have very limited resources. Because we believe that many examples supporting both viewpoints exist, we find it still appropriate for us to maintain some degree of oversight regarding the relations between the wireless cable industry and ITFS, albeit a limited role which allows for maximum possible flexibility of the parties in establishing excess capacity lease provisions, while at the same time ensuring educational use of ITFS and a licensee's ability to continue uninterrupted in that use should its relationship with the wireless cable operator terminate. In this regard, we will heed the prescriptions of the numerous commenters who request that we continue to review excess capacity leases for provisions overly restrictive of ITFS licensees and in order to police established safeguards, and require amendment of noncompliant leases. However, consistent with many of our decisions in the *Order* regarding the substance of such leases, we intend this review to be on a lesser scale than previously, and to be more deferential to the burdens and benefits which constitute the agreement between the parties to the leases, and to allowing flexibility in implementation of two-way services.

46. In the *NPRM,* the Commission tentatively rejected, but nonetheless sought comment on, a proposal, advanced by the Foundation, that the Commission require that two-way digital applications and interference consents be reviewed by legal and engineering counsel that do not represent commercial interests, and that these independent advisors certify that in their professional opinion the submission will not harm future instructional service. The Commission noted that past attempts to require all leasing parties to hire separate counsel have been declined by the Commission, having found this safeguard unnecessary and relying instead on the staff's review and monitoring of leases. After reviewing the comments on this issue, we continue to see no reason to change our position on this issue, and we decline to adopt the Foundation's proposal.

47. *Grandfathering of Excess Capacity Lease Provisions.* The *Joint Statement* recommends that excess capacity lease agreements that provide for digital usage and were entered into prior to release of the *Order* be "grandfathered for their duration." We seek to ensure a transition as smooth as possible to two-way operations, and we are persuaded by commenters such as Higher Education Alliance who describe how effectively requiring amendment of numerous existing leases could prove unduly burdensome to ITFS licensees and wireless cable operators who did not anticipate such changes. However, since the March 31, 1997 release of our Public Notice announcing the filing of the petition for rulemaking which initiated this proceeding, no party can be heard to argue that it did not have notice that ITFS/MDS two-operations were anticipated in the not-too-distant future. Thus, any excess capacity lease entered into, renewed, or extended after March 31, 1997 is expected to be brought into compliance immediately

with all of the rule changes and policies that are adopted here, as is each new such lease, renewal, or term extension from here onward. Finally, we emphasize that we will not adjudicate whether the provisions of any specific lease contemplated digital operations as a general matter. In the absence of resolution between the parties to the lease, we believe this issue to be a matter of contract law properly heard before a state tribunal. In framing our policies towards grandfathering of certain excess capacity leases, we have considered, and rejected, SWM's proposal that in order to protect the rights of incumbent ITFS licenses, the Commission require that leases approved or submitted under the previous rules "be amended to make clear that the wireless cable lessee and the ITFS licensee have together considered the rule changes adopted and made any appropriate changes to lease terms, prior to the commencement of commercial operations on the frequencies using cellularization, sectorization or differing channelization plans."

48. *Length of Leases.* The *Joint Statement* urges that the Commission allow excess capacity leases of up to 15 years duration, provided that any lease extending beyond the term of a licensee's authorization provides for termination of the lease in the event the Commission denies the subject station's application for renewal. Virtually all of the commenters who address this proposal support it, and we are adopting it. In doing so, we decline to adopt the Foundation's suggestion of maintaining the 10 year lease limit for downstream-only digital and analog systems, while allowing a 15 year limit for two-way systems.

49. *Other Lease Requirements.* Petitioners urge that the Commission reverse two policies which, Petitioners assert, were not formed in rulemaking proceedings: (1) Barring lease provisions that require an ITFS licensee to assign its remaining obligations under an excess capacity lease if it chooses to assign its underlying license; and (2) Rejecting lease provisions which require that an ITFS licensee, seeking to cease operating its facility during the excess capacity lease term, provide the wireless cable operator a reasonable opportunity to secure an eligible ITFS assignee before the license is returned to the Commission for cancellation. We believe that it is appropriate to continue our ban of provisions that would require an ITFS licensee to assign its remaining obligations under an excess capacity lease. However, henceforth we will allow provisions that would permit a wireless cable operator to find a qualified ITFS assignee to assume the license prior to its cancellation, and we set forth guidelines to govern what constitutes acceptable such provisions.

50. The *Joint Statement* contains provisions which call for all excess capacity leases to state that the ITFS licensee "shall have the right to use any Internet services offered over the system at no greater than the lowest prevailing commercial rate and shall have reasonable access, at rates to be negotiated between the parties, to other services offered over the system (such as addressability and two-way capability)." Because we believe that these are best private contractual matters between the parties, we decline to implement these provisions of the *Joint Statement*.

D. ITFS Call Sign Transmission

51. In the *NPRM*, the Commission presented Petitioners' arguments that the burdens of continued enforcement of the ITFS call sign transmission requirement in a two-way environment will far outweigh the benefits. The Commission sought comment on the proposed elimination of § 74.982, and solicited alternative solutions for maintaining the accountability of ITFS licensees. The few commenters which addressed this proposal unanimously favored eliminating the call sign transmission requirement where digital transmissions are utilized. In a two-way environment, alleviation of interference problems primarily will be left to the wireless cable operator, because of all the coordination it must do to make a two-way system function properly. In recognition of this and the greater efficiency of digital transmissions, we believe that the burdens embedded in § 74.982, such as costs, outweigh the benefits of applying the rule to any ITFS station using any digital transmissions. Thus, any ITFS station using digital modulation, whether or not in a lease agreement with a wireless cable operator and whether or not in a two-way system, will be exempt from the requirements of § 74.982. However, because these costs would not be prohibitive to ITFS stations using only analog transmissions, and because the benefits of interference identification can still be realized economically where transmissions are in analog, we will retain § 74.982 and apply it to ITFS stations which transmit only in analog.

V. Final Regulatory Flexibility Analysis (FRFA)

52. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM*, including on the IRFA. The Commission's Final Regulatory Flexibility Analysis (FRFA) in this *Order* conforms to the RFA, as amended by the Contract With America Advancement Act of 1996.[1]

A. Need for and Objectives of Action

53. In the *Order*, we amend parts 1, 21 and 74 of our Rules to enable MDS and ITFS licensees to provide two-way communication services. These services will be enhanced through the use of two-way audio, video and data communications from "response" stations, the use of booster stations with program origination capability in a cellular configuration designed to create spectrum flexibility through frequency reuse, and the use of variable bandwidth ("subchanneling" and "superchanneling") to create additional flexibility. We believe the final rule amendments will facilitate two-way transmission and other improvements to the MDS and ITFS services.

B. Significant Issues Raised by the Public in Response to the Initial Analysis

54. No comments were received specifically in response to the IRFA contained in the *NPRM*. However, some commenters did raise arguments concerning the effect that certain of our proposals may have on small entities.

55. As to whether we should increase educational usage requirements when ITFS licensees employ digital transmissions, Region IV argued that greater educational usage requirements would particularly burden small ITFS entities, by indirectly imposing financial and administrative burdens before these licensees are in a posture to assume such responsibilities.

56. With respect to whether we should adopt a rolling one-day filing window for the submission of two-way MDS and ITFS applications, the Alliance of MDS Licensees argued that such a system would place an unbearable burden on the limited resources of incumbents, resulting in large operators having an advantage over small operators.

C. Description and Number of Small Entities Involved

57. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small business

[1] Public Law 104–121, 110 Stat. 847 (1996) (CWAAA); *see generally* 5 U.S.C. §§ 601 *et seq.* Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

concern." 5 U.S.C. § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[2] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Small Business Act, 15 U.S.C. § 632.

58. *MDS*: The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1). This definition of a small entity in the context of MDS auctions has been approved by the SBA. *See Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 10 FCC Rcd 9589 (1995), 60 FR 36524, Jul. 17, 1995. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.[3]

59. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators which did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this FRFA, we find that there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, and some of these providers may take advantage of our amended rules to provide two-way MDS.

60. *ITFS*: There are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions (these 100 fall in the MDS category, above). Educational institutions may be included in the definition of a small entity. *See* 5 U.S.C. §§ 601 (3)–(5). ITFS is a non-pay, non-commercial broadcast service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. *See* 13 CFR 121.210 (SIC 4833, 4841, and 4899). However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we find that up to 1932 of these educational institutions are small entities that may take advantage of our amended rules to provide two-way ITFS.

D. Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements

61. The *Order* adopts the following proposals that include reporting, recordkeeping, and compliance requirements:

62. We required MDS and ITFS licensees employing two-way technology to attach labels to every subscriber transceiver in a conspicuous fashion. In addition, MDS and ITFS licensees employing two-way technology will be required to include a full explanation of the labels that appear on their transceivers, as well as reference to the applicable Commission guidelines, in the instruction manuals and other information accompanying their subscriber transceivers.

63. We required a hub station licensee to formally notify an ITFS licensee when a response station is being located in the vicinity of any of the ITFS licensee's receive sites. Specifically, we created a notification zone with a radius of 1960 feet around each registered ITFS receive site and we required that, at least 20 days prior to the activation of any response station within such a zone, the hub station licensee notify, by certified mail, the appropriate ITFS licensee.

64. In addition to required information contained on new FCC Form 331, we required applicants to submit additional data in specified formats and on diskettes accompanying the application forms.

65. While we do not ordinarily require applicants for minor changes to ITFS facilities to prepare interference showings or serve them on potentially affected parties, we required the preparation and service of interference analyses by ITFS licensees who seek to use their associated I channels for downstream transmissions.

66. We will accept applications for MDS and ITFS response stations hubs or boosters via a rolling, one-day filing window. Each applicant will have to provide interference protection to all facilities existing or proposed prior to the filing of its application, but its application will take precedence over all subsequently filed applications. Applicants will be required to file their applications with all of their interference analyses, in both hard copy and on disk.

67. Applicants for two-way facilities will be required to certify that they have met all requirements regarding interference protection to existing and prior proposed facilities. The applicant will also be required to certify that it has served all potentially affected parties with copies of its application, and with its engineering analysis supporting its interference compliance claim.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

68. The following steps were taken in the *Order* to minimize the significant economic impact on small entities:

69. The rule changes adopted in the *Order* to allow two-way operations for MDS and ITFS will simplify our licensing system and provide greater flexibility in the use of the allotted spectrum to licensees. It is expected that such changes will further eliminate market entry barriers for small entities.

70. By allowing for subchannelization, small entity licensees will be able to respond to the demands of the market and create an unlimited number of channels to carry their current and future communications needs. Allowing superchannelization will permit small entity licensees to combine their spectrum with other small entity licensees and create larger systems to meet their particular operations and to operate at greater speeds.

71. To permit small entity ITFS licensees with limited resources adequate time to evaluate a two-way applicant's proposed service plan, we adopted a certification procedure whereby applicants are required to certify that they have met all requirements regarding interference protection to existing and prior proposed facilities. The applicant will also be required to certify that it has served all potentially affected parties

[2] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of small business applies unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after an opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes definitions in the **Federal Register**.

[3] One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

with copies of its application and with its engineering analysis supporting its interference compliance claim.

72. In an effort to minimize the impact of our new rules on educational ITFS licensees, many of whom are small entities, we determined that restricting ITFS eligible use to the downstream video/audio paradigm would preclude flexibility in service offerings for an ITFS licensee which leases excess channel capacity. We provided educational entities with additional flexibility to define what ITFS usage they regard as educational, in an effort to permit such entities to further their educational mission. We did not expand our minimum educational usage requirement for digital ITFS transmissions, and we added a requirement that 5 percent of an ITFS station's capacity be set aside for instructional purposes only.

73. The following significant alternatives were considered in the *Order*:

74. We declined to adopt CTN's suggestion that greater suppression of spurious emissions is needed on the order of −60 dB for response stations operating at +48 dBm, up to −75 dB for response stations operating at +63 dBm. We found that modifications made to the spectral mask for response stations would completely eliminate the requirements that were proposed for such emissions.

75. We did not adopt NextLevel's suggestion that a maximum suppression limit be placed on digital emitters, which would effectively remove the out-of-band attenuation requirements for power levels below a certain minimum. We found that such a relaxation of out-of-band limits, in the context of a cellularized CDMA system, could result in an adverse impact on the interference environment because, unlike other services, hundreds or thousands of low power emitters may be transmitting simultaneously and the combined effects of their out-of-band emissions could be significant.

76. In the *Order*, we adopted a Methodology for calculating the interference potential of response stations. We rejected CTN's request to protect hub receivers only to a distance of 35 miles and make them secondary beyond that distance. We concluded that such a step would render hubs extremely susceptible to interference and seriously degrade the communications capabilities and reliabilities within the hub's RSA. We did not adopt EDX Engineering's alternative to Petitioners' response station interference Methodology because, for many two-way system configurations, EDX's interference calculations will inevitably give erroneous results, a shortcoming that was conceded by EDX itself. We also did not permit applicants to choose any methodology they wish for making interference calculations, as we found that this would drastically slow the evaluation of applications and almost certainly result in many Petitions to Deny, as licensees and applicants struggled to understand the differing and potentially incompatible assumptions and calculations incorporated into the various methodologies.

77. We also declined to adopt Spike's recommendation that hub stations be redefined to include transmitting capability. We found that this was not necessary because booster and primary stations may be co-located with hub stations to provide transmission capability, and permitting hubs to also transmit would simply add redundancy and unnecessary complexity to the interference protection requirements of the rules.

78. We denied CTN's request that guardbands be established separating upstream (response station) transmissions from downstream ITFS transmissions. We determined that CTN's first proposal, involving the creation of 24 MHz-wide guardbands, could result in partially or completely eliminating many MHz of potentially useful upstream spectrum on the speculative assumption that such action was necessary to protect ITFS receive sites from interference. We also declined to adopt CTN's subsequent proposals, involving 6 MHz guardbands, believing that it was not the case that the proposed response station interference Methodology is "unduly complex" and will be ineffective in determining interference when the potential victim ITFS receive site is within a hub station's RSA.

79. We did not adopt CTN's request for mandatory response station testing, as we found that it would impose an unnecessary burden on two-way licensees.

80. We denied CTN's request to reallocate all of the 125 kHz channels to ITFS and to use them solely for response transmissions. We found that reallocation and the complications associated with that is not necessary, and that allowing the I channels to be used for point-to-multipoint transmissions promotes greater options for two-way system design and more efficient use of the spectrum. For the same reasons, we declined to adopt CTN's suggestion that we render low power boosters secondary, and we also declined to adopt Maryland's request that we mandate that any non-ITFS use of I channels licensed to an ITFS entity be secondary to ITFS use.

81. We rejected the automatic grant proposal made by the Petitioners for granting without review any unopposed two-way license application after a 60-day comment period. We also did not adopt the proposal specified in the *NPRM* to set up a system whereby the staff would fully review the filed applications and issue a grant or denial. Instead, we adopted a certification procedure whereby applicants certify that they have met the requirements regarding interference protection to existing and prior proposed facilities and have served copies of their applications on all affected parties. We determined that this approach was needed to facilitate two-way service to the public, and that without it, two-way service by MDS operators and/or ITFS licensees may not become a reality. The certification requirement would also protect the interests of ITFS licensees, many of whom do not have the time or resources to evaluate a two-way applicant's proposed service plan.

82. In the *Order*, we determined that parties will have 60 days from the date of the public notice to file petitions to deny against two-way applications. We decided that, due to the complex nature of the engineering to be filed, a 60 day petition to deny period is more reasonable that the usual 30 day period.

83. We did not adopt HITN's suggestion that we eliminate our rule that limits eligible ITFS educational service providers to accredited institutions. We found that the primary purpose of ITFS is, and always has been, to meet the needs of students enrolled in courses of formal instruction. Furthermore, we found that accredited schools have been the intended users of ITFS since the origin of the service.

84. We decided to subject ITFS high power booster stations to educational usage requirements, separate from those to which main ITFS stations are subject. We determined, however, not to subject ITFS response stations or response station hubs to educational usage requirements, because the ITFS licensee has no control over which upstream transmissions would qualify to satisfy the requirements.

85. We declined to adopt time-of-day requirements for measuring educational usage, in order to provide ITFS licensees with the maximum flexibility to determine which uses of their spectrum enhance their formal educational mission.

86. In the *Order*, we retained two different but complementary requirements of ITFS spectral usage: a minimum of 20 hours per channel per week for educational usage, and a minimum reservation of 5% of a licensee's capacity that it may not lease. We determined that both would be difficult to measure in light of the varied forms that such usage can take. We decided that the best course would be to rely on the good faith efforts of ITFS licensees to meet these requirements, and we did not institute any new, formal proof of compliance reporting submissions in this area.

F. Report to Congress

87. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 USC § 801(a)(1)(A). In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 USC § 604(b).

VI. Procedural Matters

88. Accordingly, *it is ordered* that, pursuant to the authority contained in Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), and 308(b) of the Communications Act of 1934, as amended, 47 USC §§ 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), and 308(b), this *Order is adopted*, and parts 1, 21, and 74 of the Commission's Rules, 47 CFR 1, 21, and 74, *are amended* as set forth below.

89. *It is further ordered* that the Petition of Wireless Cable Ass'n Int'l for Reconsideration and Clarification, MM Docket No. 93–106 (filed August 12, 1994), and Petition of Alliance for Higher Education, *et al.*, MM Docket No. 93–106 (filed August 5, 1994), are granted to the extent described in the *Order* at note 230.

90. The action contained in the *Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. The new or modified paperwork requirements contained in this *Order* (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

List of Subjects

47 CFR Part 1

Environmental impact statements.

47 CFR Part 21

Communications common carriers, Communications equipment, Reporting and recordkeeping requirements, Television.

47 CFR Part 74

Communications equipment, Education, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Magalie Román Salas,

Secretary.

Rule Changes

Parts 1, 21 and 74 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, and 303(r).

2. In § 1.1307, paragraph (b)(1), Table 1, right column is amended by adding the entry regarding MDS licensees directly following the existing reference to Multipoint Distribution Service building-mounted antennas, and by adding the entry regarding ITFS licensees directly following the existing reference to part 74, subpart I stations, to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if—
. . . . .	
Multipoint Distribution Service (subpart K of part 21).	• • •
	MDS licensees are required to attach a label to subscriber transceiver or transverter antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.
. . . . .	
Experimental, auxiliary, and special broadcast and other program distributional services (part 74).	• • •
	ITFS licensees are required to attach a label to subscriber transceiver or transverter antennas that: (1) provides adequate notice regarding potential radiofrequency safety hazards, e.g., information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.
. . . . .	

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PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The authority for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

4. In § 21.2, the following definitions are added in alphabetical order, to read as follows:

§ 21.2 Definitions.

* * * * *

Booster service area. A geographic area to be designated by an applicant for a booster station, within which the booster station shall be entitled to protection against interference as set forth in this part. The booster service area must be specified by the applicant so as to not overlap the booster service area of any other booster authorized to or proposed by the applicant. However, a booster station may provide service to receive sites outside of its booster service area, at the licensee's risk of interference.

* * * * *

Channel. Unless otherwise specified, a channel under this part shall refer to a 6 MHz frequency block assigned pursuant to §§ 21.901(b) or 74.902(a) of this chapter.

* * * * *

Response station hub. A fixed facility licensed to an MDS licensee, and operated by an MDS licensee or the lessee of an MDS facility, for the reception of information transmitted by one or more MDS response stations that utilize digital modulation with uniform power spectral density. A response station hub licensed under this part may share facilities with other MDS response station hubs, ITFS response station hubs authorized pursuant to § 74.939 of this chapter, MDS signal booster stations, ITFS signal booster stations, MDS stations, and/or ITFS stations.

Response station hub license. A blanket license authorizing the operation of a single response station hub at a specific location and the operation of a specified number of associated digital response stations of one or more classes at unspecified locations within one or more regions of the response service area.

Sectorization. The use of an antenna system at an MDS station, booster station and/or response station hub that is capable of simultaneously transmitting multiple signals over the same frequencies to different portions of the service area and/or simultaneously receiving multiple signals over the same frequencies from different portions of the service area.

* * * * *

4a. In § 21.2, the following definitions, in alphabetical order, are revised to read as follows:

Multichannel Multipoint Distribution Service (MMDS). Those Multipoint Distribution Service Channels that use the frequency band 2596 MHz to 2644 MHz and associated 125 kHz channels.

Multipoint Distribution Service (MDS). A domestic public radio service rendered on microwave frequencies from one or more fixed stations transmitting to multiple receiving facilities located at fixed points. MDS also may encompass transmissions from response stations to response station hubs or associated fixed stations.

Multipoint Distribution Service response station. A fixed station operated by an MDS licensee, the lessee of MDS channel capacity or a subscriber of either to communicate with a response station hub or associated MDS station. A response station under this part may share facilities with other MDS response stations and/or one or more Instructional Television Fixed Service (ITFS) response stations authorized pursuant to § 74.939 of this chapter or § 74.940 of this chapter.

* * * * *

Signal Booster Station. An MDS station licensed for use in accordance with § 21.913 that operates on one or more MDS channels. Signal booster stations are intended to augment service as part of a distributed transmission system where signal booster stations retransmit the signals of one or more MDS stations and/or originate transmissions on MDS channels. A signal booster station licensed under this part may share facilities with other MDS signal booster stations, ITFS signal booster stations authorized pursuant to § 74.985 of this chapter, MDS response station hubs and/or ITFS response station hubs.

* * * * *

5. In § 21.11, paragraphs (f) and (g) are redesignated as paragraphs (e) and (f), respectively, and the section heading, paragraphs (a) and (d), and newly redesignated paragraph (e) are revised, to read as follows:

§ 21.11 Miscellaneous forms.

(a) *Licensee qualifications.* FCC Form 430 ("Licensee Qualification Report") must be filed annually, no later than March 31 for the end of the preceding calendar year, unless the licensee operates solely on a common carrier basis and service was not offered at any time during the preceding year. Each annual filing must include all changes of information required by FCC Form 430 that occurred during the preceding year. In those cases in which there has been no change in any of the required information, the applicant or licensee, in lieu of submitting a new form, may so notify the Commission by letter.

* * * * *

(d) *Assignment of license.* FCC Form 702 ("Application for Consent to Assignment of Radio Station Construction Authorization or License (for Stations in Services Other than Broadcast)") must be submitted to assign voluntarily (as by, for example, contract or other agreement) or involuntarily (as by, for example, death, bankruptcy, or legal disability) the station license or conditional license. In the case of involuntary assignment, the application must be filed within 30 days of the event causing the assignment. FCC Form 702 also must be used for nonsubstantial (*pro forma*) assignments. In addition, FCC Form 430 must be submitted by the proposed assignee unless such assignee has a current and substantially accurate report on file with the Commission. Whenever a group of station licenses or conditional licenses in the same radio service is to be assigned to a single assignee, a single "blanket" application may be filed to cover the entire group, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. The assignment must be completed within 45 days from the date of authorization. Upon consummation of an approved assignment, the Commission must be notified by letter of the date of consummation within 10 days of its occurrence.

(e) *Transfer of control of corporation holding a conditional license or license.* FCC Form 704 ("Application for Consent to Transfer of Control") must be submitted in order to voluntarily or involuntarily transfer control (de jure or de facto) of a corporation holding any conditional licenses or licenses. In the case of involuntary transfer of control, the application must be filed within 30 days of the event causing the transfer of control. FCC Form 704 also must be used for nonsubstantial (*pro forma*) transfers of control. In addition, FCC Form 430 must be submitted by the proposed transferee unless such transferee has a current and substantially accurate report on file with the Commission. Whenever control of a corporation holding a group of station licenses or conditional licenses in the

same radio service is to be transferred to a single transferee, a single "blanket" application may be filed to cover the entire transfer, if the application identifies each station by call sign and station location and if two copies are provided for each station affected. The transfer must be completed within 45 days from the date of authorization. Upon consummation of an approved transfer, the Commission must be notified by letter of the date of consummation within 10 days of its occurrence.

* * * * *

6. In § 21.27, paragraph (d) is added, to read as follows:

§ 21.27 Public notice period.

* * * * *

(d) Notwithstanding any other provisions of this part, effective as of September 17, 1998, there shall be one one-week window, at such time as the Commission shall announce by public notice, for the filing of applications for high-power signal booster station, response station hub and I channels point-to-multipoint transmissions licenses, during which all applications shall be deemed to have been filed as of the same day for purposes of §§ 21.909, 21.913 and 74.939(l) of this chapter. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or conditiona! licensee or licensee of the station that would receive such interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for new or modified response station hub, booster station and I channels point-to-multipoint transmissions licenses may be filed and will be processed in accordance with the provisions of §§ 21.909, 21.913 and 74.939(l) of this chapter. Notwithstanding § 21.31, each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

7. In § 21.30, paragraph (a)(4) is revised to read as follows:

§ 21.30 Opposition to applications.

(a) * * *

(4) Except as provided in § 21.902(i)(6) regarding Instructional Television Fixed Service licensees and conditional licensees, in § 21.909 regarding MDS response station hubs and in § 21.913 regarding MDS booster stations, be filed within thirty (30) days after the date of public notice announcing the acceptance for filing of any such application or major amendment thereto, or identifying the tentative selectee of a random selection proceeding in the Multichannel Multipoint Distribution Service or for Multipoint Distribution Service H-channel stations (unless the Commission otherwise extends the filing deadline); and

* * * * *

8. In § 21.31, paragraph (e)(6)(iv) is revised to read as follows:

§ 21.31 Mutually exclusive applications.

* * * * *

(e) * * *

(6) * * *

(iv) The change of status by an MDS applicant from common carrier to non-common carrier, from non-common carrier to common carrier, or from common carrier or non-common carrier to flexibility to alternate between common carrier and non-common carrier service.

9. In § 21.42, paragraph (b)(3) is revised, and paragraph (c)(8) is added, to read as follows:

§ 21.42 Certain modifications not requiring prior authorization.

* * * * *

(b) * * *

(3) The Commission is notified of changes made to facilities by the submission of a completed FCC Form 304 within thirty (30) days after the changes are made.

* * * * *

(c) * * *

(8) A change to a sectorized antenna system comprising an array of directional antennas, provided that such system does not change polarization or result in an increase in radiated power by more than one dB in any direction; provided, however, that notice of such change is provided to the Commission on FCC Form 331 within ten (10) days of installation.

* * * * *

10. In § 21.101, paragraph (a), footnote 2 is revised to read as follows:

§ 21.101 Frequency tolerance.

(a) * * *

---

[2] Beginning November 1, 1991, equipment authorized to be operated in the frequency bands 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, and 2674–2680 MHz for use in the Multipoint Distribution Service shall maintain a frequency tolerance within ±1 kHz of the assigned frequency. MDS booster stations authorized pursuant to § 21.913(b) shall maintain a frequency tolerance within ±1 kHz of the assigned frequencies. MDS booster stations authorized pursuant to § 21.913(e) and MDS response stations authorized pursuant to § 21.909 shall employ transmitters with sufficient frequency stability to ensure that the emission stays within the authorized bandwidth.

* * * * *

11. In § 21.118, paragraph (c) is revised to read as follows:

§ 21.118 Transmitter construction and installation.

* * * * *

(c) Each transmitter employed in these services shall be equipped with an appropriately labeled pilot lamp or meter which will provide continuous visual indication at the transmitter when its control circuits have been placed in a condition to activate the transmitter. Such requirement will not be applicable to MDS response stations or MDS booster stations authorized pursuant to § 21.913(e). In addition, facilities shall be provided at each transmitter to permit the transmitter to be turned on and off independently of any remote control circuits associated therewith.

* * * * *

12. Section 21.201 is revised to read as follows:

§ 21.201 Posting of station license.

Each licensee shall post at the station, the booster station authorized pursuant to § 21.913(b) or the MDS response station hub the name, address and telephone number of the custodian of the station license or other instrument of authorization if such license or instrument of authorization, or a clearly legible photocopy thereof, is not maintained at the station, booster

station or response station hub. Each operator of an MDS booster station authorized pursuant to § 21.913(e) shall post at the booster station the name, address and telephone number of the custodian of the notification filed pursuant to § 21.913(e) if such notification is not maintained at the station.

13. Section 21.304 is revised to read as follows:

§ 21.304 Tariffs, reports, and other material required to be submitted to the Commission.

Sections 1.771 through 1.815 of this chapter contain summaries of certain materials and reports, including schedule of charges and accounting and financial reports, which, when applicable, must be filed with the Commission. These requirements likewise shall apply to licensees which alternate between rendering service on a common carrier and non-common carrier basis.

14. Section 21.900 is revised to read as follows:

§ 21.900 Eligibility.

(a) Authorizations for stations in this service will be granted to existing and proposed communications common carriers and non-common carriers. An application will be granted only in cases where it can be shown that:

(1) The applicant is legally, financially, technically, and otherwise qualified to render the proposed service; and

(2) There are frequencies available to enable the applicant to render a satisfactory service; and

(3) The public interest, convenience and necessity would be served by a grant thereof.

(b) The applicant shall state whether service will be provided on a common carrier basis, a non-common carrier basis, or alternating between a common carrier and non-common carrier basis. In addition, an applicant proposing to provide any common carrier service whatsoever shall state whether there is any affiliation or relationship to any intended or likely subscriber or program originator.

15. In § 21.901, paragraphs (a), (b), and (d) and note 1 are revised, and new paragraph (g) is added, to read as follows:

§ 21.901 Frequencies.

(a) Frequencies in the bands 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz, 2674–2680 MHz and 2686–2690 MHz are available for assignment to fixed stations in this service. Frequencies in the band 2150–2160 MHz are shared with nonbroadcast omnidirectional radio systems licensed under other parts of the Commission's Rules, and frequencies in the band 2160–2162 MHz are shared with directional radio systems authorized in other common carrier services. Frequencies in the 2596–2644 MHz band are shared with Instructional Television Fixed Service stations licensed under part 74 of the Commission's Rules. Channels I5, I13, I6 and I14, listed in § 74.939(j) of this chapter, are assigned to fixed stations in the 2596–2620 band, and are shared with Instructional Television Fixed Service Stations licensed under part 74 of the Commission's Rules to operate in this band; grandfathered channels I21, I29, I22 and I30, listed in § 74.939(j) of this chapter, are licensed under part 21 or part 74 of the Commission's Rules, as applicable.

(b) Applicants may be assigned a channel(s) according to one of the following frequency plans:

(1) At 2150–2156 MHz (designated as Channel 1), or

(2) At 2156–2162 MHz (designated as Channel 2), or

(3) At 2156–2160 MHz (designated as Channel 2A), or

(4) At 2596–2602 MHz, 2608–2614 MHz, 2620–2626 MHz, and 2632–2638 MHz (designated as Channels E1, E2, E3 and E4, respectively, with the four channels to be designated the E-group channels), and Channels I5 and I13 listed in § 74.939(j) of this chapter,[1] or

(5) At 2602–2608 MHz, 2614–2620 MHz, 2626–2632 MHz and 2638–2644 MHz (designated as Channels F1, F2, F3 and F4, respectively, with the four channels to be designated the F-group channels), and Channels I6 and I14, listed in § 74.939(j) of this chapter,[1] or

(6) At 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz (designated as Channels H1, H2 and H3, respectively, with the three channels to be designated the H-group channels).[1]

* * * * *

(d) An MDS licensee or conditional licensee may apply to exchange evenly one or more of its assigned channels with another MDS licensee or conditional licensee in the same system, or with an ITFS licensee or conditional licensee in the same system where one or both parties utilizes digital transmissions or leases capacity to an operator which utilizes digital transmissions. The licensees or conditional licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. The exchanged channel(s) shall be regulated according to the requirements applicable to the assignee.

* * * * *

(g) Frequencies in the bands 2150–2162 MHz, 2596–2644 MHz, 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz are available for point-to-multipoint use and/or for communications between MDS response stations and response station hubs when authorized in accordance with the provisions of § 21.909, provided that such frequencies may be employed for MDS response stations only when transmitting using digital modulation.

---

[1] No 125 kHz channels are provided for Channels E3, E4, F3, F4, H1, H2 and H3, except for those grandfathered for Channels E3, E4, F3 and F4. The 125 kHz channels associated with Channels E3, E4, F3, F4, H1, H2 and H3 are allocated to the Private Operational Fixed Point-to-Point Microwave Service, pursuant to § 101.147(g) of this chapter.

16. In § 21.902, the section heading, paragraphs (b)(3), (b)(4) (b)(5)(i), (f)(1) and (f)(2) are revised, and new paragraphs (b)(7) and (l) are added, to read as follows:

§ 21.902 Interference.

* * * * *

(b) * * *

(3) Engineer the system to provide at least 45 dB of cochannel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously-proposed ITFS or incumbent MDS station, and at each previously-registered ITFS receive site (both stations utilizing 6 MHz bandwidths).

(4) Engineer the station to provide at least 0 dB of adjacent channel interference protection within the 56.33 km (35 mile) protected service area of any authorized or previously-proposed ITFS or incumbent MDS station, and at each previously-registered ITFS receive site (both stations utilizing 6 MHz bandwidths).

(5) (i) Engineer the station to limit the calculated free space power flux density to -73 dBW/m^2 (or the appropriate value for bandwidth other than 6 MHz) at the boundary of a 56.33 km (35 mile) protected service area, where there is an unobstructed signal path from the transmitting antenna to the boundary; or alternatively, obtain the written consent of the entity authorized for the adjoining area to exceed the -73 dBW/m^2 limiting signal strength at the common boundary.

* * * * *

(7) Notwithstanding the above, main, booster and response stations shall use the following formulas, as applicable, for determining compliance with: (1) Radiated field contour limits where bandwidths other than 6 MHz are employed at stations utilizing digital modulation with uniform power spectral density; and (2) Cochannel and adjacent channel D/U ratios where the bandwidths in use at the interfering and protected stations are unequal and both stations are utilizing digital modulation with uniform power spectral density or one station is utilizing such modulation and the other station is utilizing either 6 MHz NTSC analog modulation or 125 kHz analog modulation (I channels only).

(i) Contour limit: −73 dBW + 10 log (X/6), where X is the bandwidth in MHz of the digital channel.

(ii) Cochannel D/U: 45 dB + 10 log (X1/X2), where X1 is the bandwidth in MHz of the protected channel and X2 is the bandwidth in MHz of the interfering channel.

(iii) Adjacent channel D/U: 0 dB + 10 log (X1/X2), where X1 is the bandwidth in MHz of the protected channel and X2 is the bandwidth in MHz of the interfering channel.

* * * * *

(f) * * *

(1) Cochannel interference is defined as the ratio of the desired signal to the undesired signal present in the desired channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal. Harmful interference will be considered present when a free space calculation for an unobstructed signal path determines that this ratio is less than 45 dB (both stations utilizing 6 MHz bandwidths).

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal level.

(i) Harmful interference will be considered present when a free space calculation for an unobstructed signal path determines that this ratio is less than 0 dB (both stations utilizing 6 MHz bandwidths).

(ii) In the alternative, harmful interference will be considered present for an ITFS station constructed before May 26, 1983, when a free space calculation determines that this ratio is less than 10 dB (both stations utilizing 6 MHz bandwidths), unless:

(A) The individual receive site under consideration has been subsequently upgraded with up-to-date reception equipment, in which case the ratio shall be less than 0 dB. Absent information presented to the contrary, however, the Commission will assume that reception equipment installation occurred simultaneously with original station equipment; or

(B) The license for an MDS station is conditioned on the proffer to the affected ITFS station licensee of equipment capable of providing a ratio of 0 dB or more at no expense to the ITFS station licensee, and also conditioned, if necessary, on the proffer of installation of such equipment; and there has been no showing by the affected ITFS station licensee demonstrating good cause and that the proposed equipment will not provide a ratio of 0 dB or more, or that installation of such equipment, at no expense to the ITFS station licensee, is not possible or has not been proffered.

* * * * *

(l) Specific rules relating to response station hubs, booster stations, and 125 kHz channels are set forth in §§ 21.909, 21.913, 21.940, 74.939 of this chapter, 74.940 of this chapter and 74.985 of this chapter. To the extent those specific rules are inconsistent with any rules set forth above, those specific rules shall control.

17. In § 21.903, paragraphs (a) and (b)(1) are revised, and new paragraph (d) is added, to read as follows:

§ 21.903 Purpose and permissible service.

(a) Multipoint Distribution Service channels are available for transmissions from MDS stations and associated MDS signal booster stations to receive locations, and from MDS response stations to response station hubs. When service is provided on a common carrier basis, subscriber supplied information is transmitted to points designated by the subscriber. When service is provided on a non-common carrier basis, transmissions may include information originated by persons other than the licensee, licensee-manipulated information supplied by other persons, or information originated by the licensee. Point-to-point radio return links from a subscriber's location to a MDS operator's facilities may also be authorized in the 18,580 through 18,820 MHz and 18,920 through 19,160 MHz bands. Rules governing such operation are contained in subpart I of part 101 of this chapter, the Point-to-Point Microwave Radio Service.

(b) * * *

(1) Unless service is rendered on a non-common carrier basis, the common carrier controls the operation of all receiving facilities (e.g., including any equipment necessary to convert the signal to a standard television channel, but excluding the television receiver); and

* * * * *

(d) An MDS licensee also may apply for authorization by the Commission to alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notify the Commission of any service status changes at least 30 days in advance of such changes.

18. Section 21.904 is revised to read as follows:

§ 21.904 Transmitter power.

(a) The maximum EIRP of an MDS main or booster station shall not exceed 33 dBW (or, when digital modulation with uniform power spectral density and subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth), except as provided in paragraph (b) of this section.

(b) If a main or booster station sectorizes or otherwise uses one or more transmitting antennas with a non-omnidirectional horizontal plane radiation pattern, the maximum EIRP over a 6 MHz channel in dBW in a given direction shall be determined by the following formula:

EIRP = 33 dBW + 10 log (360/beamwidth) [where 10 log (360/beamwidth) ≤ 6 dB]. Beamwidth is the total horizontal plane beamwidth of the individual transmitting antenna for the station or any sector measured at the half-power points. The first term of the equation above, 33 dBW, must be adjusted appropriately based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth.

(c) An increase in station transmitter power, above currently authorized or previously-proposed values, to the maximum values provided in paragraphs (a) and (b) of this section, may be authorized, if the requested power increase would not cause harmful interference to any authorized or previously-proposed, cochannel or adjacent channel station entitled to interference protection under the Commission's rules, or if an applicant demonstrates that:

(1) A station that must be protected from interference could eliminate that interference by increasing its power; and

(2) The interfered-with station may increase its own power consistent with

the rules and without causing interference to any MDS booster station or response station hub which operates as part of the same coordinated system as the interfered-with station; and

(3) The applicant requesting authorization of a power increase agrees to pay all expenses associated with the increase in power by the interfered-with station.

19. In § 21.905, paragraph (b) is revised, and new paragraph (d) is added, to read as follows:

§ 21.905 Emissions and bandwidth.

* * * * *

(b) Quadrature amplitude modulation, digital vestigial sideband modulation, quadrature phase shift key modulation and code division multiple access emissions may be employed, subject to compliance with the policies set forth in the *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996). Different types of emissions may be authorized if the applicant describes fully the modulation and bandwidth desired and demonstrates that operation of the station will not cause impermissible interference. The licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel, and may utilize all or a portion of its authorized bandwidth for MDS response stations authorized pursuant to § 21.909. The licensee may also, jointly with affected adjacent channel licensees, transmit utilizing bandwidth in excess of its authorized frequencies, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in § 21.908 are met at and beyond the edges of the channels employed. The wider channels thus created may be redivided to create narrower channels.

* * * * *

(d) Notwithstanding the above, any digital emission which meets the uniform power spectral density requirements of the *Declaratory Ruling and Order* may be used in the following circumstances:

(1) At any MDS main or booster station transmitter which is located more than 160.94 km (100 miles) from the nearest boundary of all cochannel and adjacent channel ITFS and MDS protected service areas, including Basic Trading Areas and Partitioned Service Areas; and

(2) At all MDS response station transmitters within a response service area if all points along the response service area boundary line are more than 160.94 km (100 miles) from the nearest boundary of all cochannel and adjacent channel ITFS and MDS protected service areas, including Basic Trading Areas and Partitioned Service Areas; and

(3) At any MDS transmitter where all parties entitled by this part to interference protection from that transmitter have mutually consented to the use at that transmitter of such emissions.

20. In § 21.906, paragraphs (a) and (d) are revised to read as follows:

§ 21.906 Antennas.

(a) Transmitting antennas shall be omnidirectional, except that a directional antenna with a main beam sufficiently broad to provide adequate service may be used either to avoid possible interference with other users in the frequency band, or to provide coverage more consistent with distribution of potential receiving points. In lieu of an omnidirectional antenna, a station may employ an array of directional antennas in order to reuse spectrum efficiently. When an applicant proposes to employ a directional antenna, or a licensee notifies the Commission pursuant to § 21.42 of the installation of a sectorized antenna system, the applicant shall provide the Commission with information regarding the orientation of the directional antenna(s), expressed in degree of azimuth, with respect to true north, and the make and model of such antenna(s).

* * * * *

(d) Directive receiving antennas shall be used at all points other than response station hubs and shall be elevated no higher than necessary to assure adequate service. Receiving antenna height shall not exceed the height criteria of part 17 of this chapter, unless authorization for use of a specific maximum antenna height (above ground and above mean sea level) for each location has been obtained from the Commission prior to the erection of the antenna. Requests for such authorization shall show the inclusive dates of the proposed operation. (See part 17 of this chapter concerning the construction, marking and lighting of antenna structures.)

§ 21.907 [Removed]

21. Section 21.907 is removed.

22. In § 21.908, paragraph (b) is redesignated as paragraph (a), the section heading and newly redesignated paragraph (a) are revised, paragraphs (c) through (e) are removed, and new paragraphs (b) through (e) are added, to read as follows:

§ 21.908 Transmitting equipment.

(a) The maximum out-of-band power of an MDS station transmitter or booster transmitting on a single 6 MHz channel with an EIRP in excess of −9 dBW employing analog modulation shall be attenuated at the channel edges by at least 38 dB relative to the peak visual carrier, then linearly sloping from that level to at least 60 dB of attenuation at 1 MHz below the lower band edge and 0.5 MHz above the upper band edge, and attenuated at least 60 dB at all other frequencies. The maximum out-of-band power of an MDS station transmitter or booster transmitting on a single 6 MHz channel or a portion thereof with an EIRP in excess of −9 dBW (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths) employing digital modulation shall be attenuated at the 6 MHz channel edges at least 25 dB relative to the licensed average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. Notwithstanding the foregoing, in situations where an MDS station or booster station transmits, or where adjacent channel licensees jointly transmit, a single signal over more than one contiguous 6 MHz channel utilizing digital modulation with an EIRP in excess of −9 dBW (or, when subchannels or superchannels are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel bandwidth), the maximum out-of-band power shall be attenuated at the channel edges of those combined channels at least 25 dB relative to the power level of each channel, then attenuated along a linear slope from that level to at least 40 dB at 250 kHz above or below the channel edges of those combined channels, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower edges of those combined channels, and attenuated at least 60 dB at all other frequencies. However, should harmful interference occur as a result of emissions outside the assigned channel, additional attenuation may be required. A transmitter licensed prior to November 1, 1991, that remains at the station site initially licensed, and does not comply with this paragraph, may continue to be used for its life if it does not cause harmful interference to the operation of any other licensee. Any

non-conforming transmitter replaced after November 1, 1991, must be replaced by a transmitter meeting the requirements of this paragraph.

(b) A booster transmitting on multiple contiguous or non-contiguous channels carrying separate signals (a "broadband" booster) with an EIRP in excess of −9 dBW per 6 MHz channel and employing analog, digital or a combination of these modulations shall have the following characteristics:

(1) For broadband boosters operating in the frequency range of 2.150–2.160/2 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges forming the band edges by at least 25 dB relative to the licensed analog peak visual carrier or digital average power level (or, when subchannels are used, the appropriately adjusted value based on upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the band edges, then linearly sloping from that level to at least 60 dB of attenuation at 3.0 MHz above and below the band edges, and attenuated at least 60 dB at all other frequencies.

(2) For broadband boosters operating in the frequency range of 2.500–2.690 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges forming the band edges by at least 25 dB relative to the licensed analog peak visual carrier or digital average power level (or, when subchannels are used, the appropriately adjusted value based on upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the band edges, then linearly sloping from that level to at least 50 dB of attenuation at 3.0 MHz above and below the band edges, then linearly sloping from that level to at least 60 dB of attenuation at 20 MHz above and below the band edges, and attenuated at least 60 dB at all other frequencies.

(3) Within unoccupied channels in the frequency range of 2.500–2.690 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges of an unoccupied channel by at least 25 dB relative to the licensed analog peak visual carrier power level or digital average power level of the occupied channels (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the occupied channel edges, then linearly sloping from that level to at least 50 dB of attenuation at 3.0 MHz above and below the occupied channel edges, and attenuated at least 50 dB at all other unoccupied frequencies.

(c) Boosters operating with an EIRP less than -9 dBW per 6 MHz channel shall have no particular out-of-band power attenuation requirement, except that if they cause harmful interference, their operation shall be terminated within 2 hours of notification by the Commission until the interference can be cured.

(d) The maximum out-of-band power of an MDS response station using all or part of a 6 MHz channel and employing digital modulation shall be attenuated at the 6 MHz channel edges at least 25 dB relative to the licensed average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. Where MDS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (*e.g.*, a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

(e) In measuring compliance with the out-of-band emissions limitations, the licensee shall employ one of two methods in each instance: (1) absolute power measurement of the average signal power with one instrument, with measurement of the spectral attenuation on a separate instrument; or (2) relative measurement of both the average power and the spectral attenuation on a single instrument. The formula for absolute power measurements is to be used when the average signal power is found using a separate instrument, such as a power meter; the formula gives the amount by which the measured power value is to be attenuated to find the absolute power value to be used on the spectrum analyzer or equivalent instrument at the spectral point of concern. The formula for relative power measurements is to be used when the average signal power is found using the same instrument as used to measure the attenuation at the specified spectral points, and allows different resolution bandwidths to be applied to the two parts of the measurement; the formula gives the required amplitude separation (in dB) between the flat top of the (digital) signal and the point of concern.

For absolute power measurements:

Attenuation in dB (below channel power) = $A + 10_{log} (C_{BW} / R_{BW})$

For relative power measurements:

Attenuation in dB (below flat top) = $A + 10_{log} (R_{BW1} / R_{BW2})$

Where:

A= Attenuation specified for spectral point (e.g., 25, 35, 40, 60 dB)

C_{BW} *= Channel bandwidth (for absolute power measurements)*

R_{BW} *= Resolution bandwidth (for absolute power measurements)*

R_{BW1} *= Resolution bandwidth for flat top measurement (relative)*

R_{BW2} *= Resolution bandwidth for spectral point measurement (relative)*

23. Section 21.909 is revised to read as follows:

§ 21.909 MDS response stations.

(a) An MDS response station is authorized to provide communication by voice, video and/or data signals with its associated MDS response station hub or MDS station. An MDS response station may be operated only by the licensee of an MDS station, by any lessee of the MDS station or response station hub, or by a subscriber of either. The authorized channel may be divided to provide distinct subchannels for each of more than one response station, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel. An MDS response station may also, jointly with other licensees, transmit utilizing bandwidth in excess of that authorized to the station, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met, and the out-of-band emissions restrictions set forth in § 21.908(b) or paragraph (j) of this section are complied with. When a 125 kHz channel is employed for response communications, the specific channel which may be used by the response station is determined in accordance with §§ 21.901 and 74.939(j) of this chapter.

(b) MDS response stations that utilize the 2150–2162 MHz band, the 2500–2686 MHz band, and/or the 125 kHz channels may be installed and operated without an individual license, to communicate with a response station hub authorized under a response station hub license, provided that the conditions set forth in paragraph (g) of this section are complied with and that MDS response stations operating in the

2150–2162 MHz and/or 2500–2686 MHz band(s) employ only digital modulation with uniform power spectral density in accordance with the Commission's *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996).

(c) An applicant for a response station hub license shall:

(1) File FCC Form 331 with Mellon Bank, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub license, and may result in imposition of a monetary forfeiture; and

(2) Submit to International Transcription Services, Inc. ("ITS"), 1231 20th Street, N.W., Washington, DC 20036, both in hard copy, and on a 3.5" computer diskette in ASCII, the following:

(i) Duplicates of the Form 331 filed with Mellon Bank; and

(ii) The data required by Appendix D to the *Report and Order* in MM Docket No. 97–217, FCC 98–231, "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems"; and

(iii) The information, showings and certifications required by paragraph (d) of this section; and

(3) Submit to the Commission, only upon Commission staff request, duplicates of the submissions required by paragraph (c)(2) of this section.

(d) An applicant for a response station hub license shall, pursuant to paragraph (c)(2)(iii) of this section, submit to ITS the following:

(1) The geographic coordinates, street address, and the height of the center line of the reception antenna(s) above mean sea level for the proposed response station hub; and

(2) A specification of:

(i) the response service area in which the applicant or its lessee proposes to install MDS response stations to communicate with the response station hub, any regions into which the response service area will be subdivided for purposes of interference analysis, and any regional classes of response station characteristics which will be used to define the operating parameters of groups of response stations within each region for purposes of interference analysis, including:

(A) the maximum height above ground level of the transmission antenna that will be employed by any response station in the regional class and that will be used in interference analyses; and

(B) the maximum equivalent isotropic radiated power (EIRP) that will be employed by any response station in the regional class and that will be used in interference analyses; and

(C) any sectorization that will be employed, including the polarization to be employed by response stations in each sector and the geographic orientation of the sector boundaries, and that will be used in interference analyses; and

(D) the combined worst-case outer envelope plot of the patterns of all models of response station transmission antennas that will be employed by any response station in the regional class to be used in interference analyses; and

(E) the maximum number of response stations that will be operated simultaneously in each region using the characteristics of each regional class applicable to each region.

(ii) the channel plan (including any guardbands at the edges of the channel) to be used by MDS response stations in communicating with each response station hub, including a statement as to whether the applicant will employ the same frequencies on which response stations will transmit to also transmit on a point-to-multipoint basis from an MDS station or MDS booster station; and

(3) A demonstration that:

(i) The proposed response station hub is within a protected service area, as defined in § 21.902(d) or § 21.933, to which the applicant is entitled either

(A) by virtue of its being the licensee of an incumbent MDS station whose channels are being converted for MDS response station use; or

(B) by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization. In the case of an application for response stations to utilize one or more of the 125 kHz response channels, such demonstration shall establish that the response station hub is within the protected service area of the station authorized to utilize the associated E-Group or F-Group channel(s); and

(ii) The entire proposed response service area is within a protected service area to which the applicant is entitled either (A) by virtue of its being the licensee of an incumbent MDS station whose channels are being converted for MDS response station use; or (B) by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization. In the alternative, the applicant may demonstrate that the licensee entitled to any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap. In the case of an application for response stations to utilize one or more of the 125 kHz response channels, such demonstration shall establish that the response service area is entirely within the protected service area of the station authorized to utilize the associated E-Group or F-Group channel(s), or, in the alternative, that the licensee entitled to any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap; and

(iii) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant will not generate a power flux density in excess of –73 dBW/m² (or the pro rata power spectral density equivalent based on the bandwidth actually employed in those cases where less than a 6 MHz channel is to be employed) outside the boundaries of the applicant's protected service area, as measured at locations for which there is an unobstructed signal path, except to the extent that consent of affected licensees has been obtained or consents have been granted pursuant to paragraph (d)(3)(ii) of this section to an extension of the response service area beyond the boundaries of the protected service area; and

(iv) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 45 dB (or the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths):

(A) within the protected service area of any authorized or previously-proposed cochannel incumbent MDS or ITFS station with a 56.33 km (35 miles) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any cochannel booster station entitled to such protection pursuant to §§ 21.913(f) or 74.985(f) of this chapter and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed cochannel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station

hub, or, in the alternative, that the licensee of or applicant for such cochannel station or hub consents to the application; and

(v) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs, and all cochannel MDS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 0 dB (or the appropriately adjusted value based upon the ratio of the channel to subchannel bandwidths):

(A) within the protected service area of any authorized or previously-proposed adjacent channel incumbent MDS or ITFS station with a 56.33 km (35 miles) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any adjacent channel booster station entitled to such protection pursuant to §§ 21.913(f) or 74.985(f) of this chapter and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed adjacent channel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee of or applicant for such adjacent channel station or hub consents to the application; and

(vi) The combined signals of all simultaneously operating MDS response stations within all response service areas and oriented to transmit towards their respective response station hubs and all cochannel MDS stations and booster stations licensed to or applied for by the applicant will comply with the requirements of paragraph (i) of this section and § 74.939(i) of this chapter.

(4) A certification that the application has been served upon.

(i) The holder of any cochannel or adjacent channel authorization with a protected service area which is overlapped by the proposed response service area;

(ii) The holder of any cochannel or adjacent channel authorization with a protected service area that adjoins the applicant's protected service area;

(iii) The holder of a cochannel or adjacent channel authorization for any BTA or PSA inside whose boundaries are locations for which there is an unobstructed signal path for combined signals from within the response station hub applicant's protected service area; and

(iv) Every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed, incumbent MDS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(v) Every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed ITFS station (including any booster station or response station hub) located within 160.94 km (100 miles) of the proposed response station hub.

(e) Except as set forth in § 21.27(d), applications for response station hub licenses may be filed at any time. Notwithstanding any other provision of part 21 (including § 21.31), applications for response station hub licenses meeting the requirements of paragraph (c) of this section shall cut-off applications that are filed on ■ subsequent day for facilities that would cause harmful electromagnetic interference to the proposed response station hubs. A response station hub shall not be entitled to protection from interference caused by facilities proposed on or prior to the day the application for the response station hub license is filed. Response stations shall not be required to protect from interference facilities proposed on or after the day the application for the response station hub license is filed.

(f) Notwithstanding the provisions of § 21.30(b)(4) and except as set forth in § 21.27(d), any petition to deny an application for a response station hub license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding § 21.31 and except as provided in § 21.27(d), an application for a response station hub license that meets the requirements of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the response station hub until such time as the Commission issues a response station hub license.

(g) An MDS response station hub license shall be conditioned upon compliance with the following:

(1) No MDS response station shall be located beyond the response service area of the response station hub with which it communicates; and

(2) No MDS response station shall operate with a transmitter output power in excess of 2 watts; and

(3) No MDS response station shall operate with an EIRP in excess of that specified in the application for the response station hub pursuant to paragraph (d)(2)(i)(B) of this section for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate at an excess of 33 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth); and

(4) Each MDS response station shall employ a transmission antenna oriented towards the response station hub with which the MDS response station communicates, and such antenna shall be no less directional than the worst case outer envelope pattern specified in the application for the response station hub pursuant to paragraph (d)(2)(i)(D) of this section for the regional class of characteristics with which the response station is associated; and

(5) The combined out-of-band emissions of all response stations using all or part of one or multiple contiguous 6 MHz channels and employing digital modulation shall comply with § 21.908(d). The combined out-of-band emissions of all response stations using all or part of one or multiple contiguous 125 kHz channels shall comply with paragraph (j) of this section. However, should harmful interference occur as a result of emissions outside the assigned channel, additional attenuation may be required; and

(6) The response stations transmitting simultaneously at any time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, the licensee of a response station hub license may alter the number of response stations of any class operated simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) First notifies the Commission of the altered number of response stations of such class(es) to be operated simultaneously in such region, and certifies in that notification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section; and

(ii) Provides ITS with a copy of such notification and with an analysis establishing that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.940 or § 74.940 of this chapter; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such notification and analysis upon each party entitled to be served pursuant to paragraph (d)(4) of this section; and

(iv) Submits to the Commission, only upon Commission staff request, duplicates of the submissions required by paragraph (g)(6)(ii) of this section; and

(7) Where an application is granted under this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a facility operated under this section is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party; and

(8) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each response station hub with a response service area within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a response station hub with an associated response station contributing to such interference shall bear the joint and several obligation to promptly remedy all interference resulting from block downconverter overload at any ITFS receive site registered prior to the submission of the application for the response station hub license or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application for the response station hub license, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the response station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the response station hub licensee to prevent interference before constructing response stations and/or to remedy interference that may occur. In the event that more than one response station hub licensee contributes to block downconverter interference at a MDS or ITFS receive site, the licensees of the contributing response station hubs shall cooperate in good faith to remedy promptly the interference.

(h) Applicants must comply with part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration.

(i) Response station hubs shall be protected from cochannel and adjacent channel interference in accordance with the following criteria:

(1) An applicant for any new or modified MDS or ITFS station (including any high-power booster station or response station hub) shall be required to demonstrate interference protection to a response station hub within 160.94 km (100 miles) of the proposed facilities. In lieu of the interference protection requirements set forth in §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter, such demonstration shall establish that the proposed facility will not increase the effective power flux density of the undesired signals generated by the proposed facility and any associated main stations, booster stations or response stations at the response station hub antenna for any sector. In lieu of the foregoing, an applicant for a new MDS or ITFS main station license or for a new or modified response station hub or booster license may demonstrate that the facility will not increase the noise floor at a reception antenna of the response station hub by more than 1 dB for cochannel signals and 45 dB for adjacent channel signals, provided that:

(i) The entity submitting the application may only invoke this alternative once per response station hub reception sector; or

(ii) The licensee of the affected response station hub may consent to receive a certain amount of interference at its hub.

(2) Commencing upon the filing of an application for an MDS response station hub license and until such time as the application is dismissed or denied or, if the application is granted, a certification of completion of construction is filed, the MDS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter, and to protection of the response station hub pursuant to the preceding paragraph. Unless the application for the response station hub license specifies that the same frequencies also will be employed for digital and/or analog point-to-multipoint transmissions by MDS stations and/or MDS booster stations, upon the filing of a certification of completion of construction of an MDS response station hub where the channels of an MDS station are being utilized as response station transmit frequencies, the MDS station whose channels are being utilized for response station transmissions shall no longer be entitled to interference protection pursuant to §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter within the response service area with regard to any portion of any 6 MHz channel employed solely for response station communications. Upon the certification of completion of construction of an MDS response station hub where the channels of an MDS station are being utilized for response station transmissions and the application for the response station hub license specifies that the same frequencies will be employed for point-to-multipoint transmissions, the MDS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(b)(3) through (b)(5), 21.938(b)(1) and (2) and (c), and 74.903 of this chapter, and to protection of the response station hub pursuant to the preceding provisions of this paragraph.

(j) 125 kHz wide response channels shall be subject to the following requirements: The 125 kHz wide channel shall be centered at the assigned frequency. If amplitude modulation is used, the carrier shall not be modulated in excess of 100%. If frequency modulation is used, the deviation shall not exceed ±25 kHz. Any emissions outside the channel shall be

attenuated at the channel edges at least 35 dB below peak output power when analog modulation is employed or 35 dB below licensed average output power when digital modulation is employed (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths). Any emissions more than 125 kHz from either channel edge, including harmonics, shall be attenuated at least 60 dB below peak output power when analog modulation is employed, or at least 60 dB below licensed average output power when digital modulation is employed (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths). Notwithstanding the foregoing, in situations where adjacent channel licensees jointly transmit over more than one contiguous channel utilizing digital modulation, the maximum out-of-band power shall be attenuated at the edges of those combined channels at least 35 dB relative to the licensed average power level of each channel. Emissions more than 125 kHz from either edge of the combined channels, including harmonics, shall be attenuated at least 60 dB below peak analog power or average digital power of each channel, as appropriate.

(k) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the hub licensee as often as necessary to ensure that it is functioning in accordance with the requirements of the Commission's rules. The licensee of a response station hub is responsible for the proper operation of all associated response stations and must have reasonable and timely access to all associated response station transmitters. Response stations shall be installed and maintained by the licensee of the associated hub station, or the licensee's employees or agents, and protected in such manner as to prevent tampering or operation by unauthorized persons. No response hub may lawfully communicate with any response station which has not been installed by an authorized person, and each response station hub licensee is responsible for maintaining, and making available to the Commission upon request, a list containing the customer name and site location (street address and latitude/longitude to the nearest second) of each associated response station, plus the technical parameters (e.g., EIRP, emission, bandwidth, and antenna pattern, height, orientation and polarization) pertinent to each specific response station.

(l) The transmitting apparatus employed at MDS response stations shall have received type certification.

(m) An MDS response station shall be operated only when engaged in communication with its associated MDS response station hub or MDS station, or for necessary equipment or system tests and adjustments. Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden.

(n) At least 20 days prior to the activation of a response station transmitter located within a radius of 1960 feet of a registered or previously-applied-for ITFS receive site, the response station hub licensee must notify, by certified mail, the licensee of the ITFS site of the intention to activate the response station. The notification must contain the street address and geographic coordinates (to the nearest second) of the response station, a specification of the station's EIRP, antenna pattern/orientation/height AMSL, channel(s) to be used, as well as the name and telephone number of a contact person who will be responsible for coordinating the resolution of any interference problems.

(o) Interference calculations shall be performed in accordance with Appendix D to the *Report and Order* in MM Docket No. 97–217, FCC 98–231, "Methods for Predicting Interference From Response Station Transmitters and To Response Station Hubs and for Supplying Data on Response Station Systems." Compliance with the out-of-band emissions limitations shall be established in accordance with § 21.908(e).

24. In § 21.910, the section heading and introductory text, paragraph (a), and the introductory text of paragraph (b) are revised, and new paragraph (d) is added, to read as follows:

§ 21.910 Special procedures for discontinuance, reduction or impairment of service by common carrier licensees.

Any licensee who has elected common carrier status and who seeks to discontinue service on a common carrier basis and instead provide service on a non-common carrier basis, or who otherwise intends to reduce or impair service, shall be subject to the following procedures:

(a) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. Notice shall include the following:

(1) Name and address of carrier; and

(2) Date of planned service discontinuance, reduction or impairment; and

(3) Points or geographic areas of service affected; and

(4) How many and which channels are affected; and

(5) The following statement:

The FCC normally will authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that end-users will be affected adversely thereby. Affected customers wishing to object should file objections within 45 days after receipt of this notification, and address them to the Video Services Division, Federal Communications Commission, Washington, DC 20554, referencing the § 21.910 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon end-users, including any inability by the customer to acquire reasonable substitute service from another provider. The affected customer must state that it has provided a copy of the objection to the carrier seeking discontinuance.

(b) The carrier shall file with this Commission, on or after the date on which notice has been given to all affected customers, an application which shall contain the following:

* * * * *

(d) The provisions of this section shall not apply to licensees authorized by the Commission to alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis.

25. Section 21.913 is revised to read as follows:

§ 21.913 Signal booster stations.

(a) An MDS booster station may reuse channels to repeat the signals of MDS stations or to originate signals on MDS channels. The aggregate power flux density generated by an MDS station and all associated signal booster stations and all simultaneously operating cochannel response stations may not exceed -73 dBW/m^2 (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel or 125 kHz bandwidths) at or beyond the boundary of the protected service area, as defined in §§ 21.902(d) and 21.933, of the main MDS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the affected cochannel licensee is obtained.

(b) An MDS licensee or conditional licensee who is a response station hub

licensee, conditional licensee or applicant may secure a license for an MDS signal booster station that has a maximum power level in excess of −9 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth) and that employs only digital modulation with uniform power spectral density in accordance with the Commission's *Declaratory Ruling and Order*, 11 FCC Rcd 18839 (1996) (a "high-power MDS signal booster station"). The applicant for a high-power MDS signal booster station shall file FCC Form 331 with Mellon Bank, and certify on that form that the applicant has complied with the additional requirements of paragraph (b) of this section. Failure to certify compliance and to comply completely with the following requirements of paragraph (b) of this section shall result in dismissal of the application or revocation of the high-power MDS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant for a high-power MDS signal booster station additionally is required to submit to International Transcription Services, Inc., 1231 20th Street, N.W., Washington, DC 20036, both in hard copy, and on a 3.5″ computer diskette in ASCII, and likewise to submit to the Commission, only upon Commission staff request, duplicates of the Form 331 filed with Mellon Bank, and the following information:

(1) A demonstration that the proposed signal booster station site is within the protected service area, as defined in §§ 21.902(d) and 21.933, of the MDS station whose channels are to be reused; and

(2) A study which demonstrates that the aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service area of the MDS station whose channels are to be reused, does not exceed −73 dBW/m² (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel or 125 kHz bandwidths) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

(3) In lieu of the requirements of § 21.902(c) and (i), a study which demonstrates that the proposed booster station will cause no harmful interference (as defined in § 21.902(f)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in § 21.902(d), to any authorized or previously-proposed response station hubs, booster stations or I channel stations associated with such ITFS and MDS stations, or to any previously-registered ITFS receive sites, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee or conditional licensee stating that it does not object to operation of the high-power MDS signal booster station may be submitted; and

(4) A description of the booster service area; and

(5) A demonstration either

(i) That the booster service area is entirely within the protected service area to which the licensee of a station whose channels are being reused is entitled by virtue of its being the licensee of an incumbent MDS station, or by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization; or

(ii) That the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(6) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee or conditional licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(3) of this section, and upon any affected holder of a Basic Trading Area or Partitioned Service Area authorization pursuant to paragraph (b)(2) of this section.

(c) Except as provided in § 21.27(d), applications for high-power MDS signal booster station licenses may be filed at any time. Notwithstanding any other provision of part 21 (including § 21.31), applications for high-power MDS signal booster station licenses meeting the requirements of paragraph (b) of this section shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the proposed booster stations.

(d) Notwithstanding the provisions of § 21.30(a)(4) and except as provided in § 21.27(d), any petition to deny an application for a high-power MDS signal booster station license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding § 21.31 and except as provided in § 21.27(d), an application for a high-power MDS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 21.30(a), or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the MDS booster station until such time as the Commission issues a high-power MDS signal booster station license.

(e) Eligibility for a license for an MDS signal booster station that has a maximum power level of −9 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth) (a "low-power MDS signal booster station") shall be restricted to an MDS licensee or conditional licensee. A low-power MDS signal booster station may operate only on one or more MDS channels that are licensed to the licensee of the MDS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the MDS conditional licensee or licensee. An MDS licensee or conditional licensee may install and commence operation of a low-power MDS signal booster station for the purpose of retransmitting the signals of the MDS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by an authorized cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the

coordinates of the low-power MDS signal booster station. An MDS licensee or conditional licensee seeking to install a low-power MDS signal booster station under this rule must, within 48 hours after installation, submit FCC Form 331 to the Commission in Washington, DC, and submit to International Transcription Services, Inc., 1231 20th Street, N.W., Washington, DC 20036, both in hard copy, and on a 3.5″ computer diskette in ASCII, duplicates of the Form 331 filed with the Commission, and the following (which also shall be submitted to the Commission only upon Commission staff request at any time):

(1) A description of the signal booster technical specifications (including an antenna envelope plot or, if the envelope plot is on file with the Commission, the make and model of the antenna, antenna gain and azimuth), the coordinates of the booster, the height of the center of radiation above mean sea level, the street address of the signal booster and a description of the booster service area; and

(2) A demonstration either

(i) That the booster service area is entirely within the protected service area to which each licensee of a station whose channels are being reused is entitled by virtue of its being the licensee of an incumbent MDS station, or by virtue of its holding a Basic Trading Area or Partitioned Service Area authorization; or

(ii) That the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(3) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(4) A certification that no Federal Aviation Administration determination of No Hazard to Air Navigation is required under part 17 of this chapter or, if such determination is required, either:

(i) A statement of the FCC Antenna Structure Registration Number; or

(ii) If an FCC Antenna Structure Registration Number has not been assigned for the antenna structure, the filer must indicate the date the application by the antenna structure owner to register the antenna structure was filed with the FCC in accordance with part 17 of this chapter; and

(5) A certification that:

(i) The maximum power level of the signal booster transmitter does not exceed −9 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth); and

(ii) Where the booster is operating on channel D4, E1, F1, E2, F2, E3, F3, E4, F4 and/or G1, no registered receiver of an ITFS E or F channel station, constructed prior to May 26, 1983, is located within a 1.61 km (1 mile) radius of the coordinates of the booster, or in the alternative, that a consent statement has been obtained from the affected ITFS licensee; and

(iii) The applicant has complied with § 1.1307 of this chapter; and

(iv) Each MDS and/or ITFS station licensee (including the licensees of booster stations and response station hubs) with protected service areas and/or registered receivers within a 8 km (5 mile) radius of the coordinates of the booster has been given notice of its installation; and

(v) The signal booster site is within the protected service area of the MDS station whose channels are to be reused; and

(vi) The aggregate power flux density of the MDS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant, measured at or beyond the boundary of the protected service areas of the MDS stations whose channels are to be reused, does not exceed −73 dBW/m² (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel or 125 kHz bandwidths) at locations for which there is an unobstructed signal path, unless the consent of the affected licensees has been obtained; and

(vii) The antenna structure will extend less than 6.10 meters (20 feet) above the ground or natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(viii) The MDS conditional licensee or licensee understands and agrees that, in the event harmful interference is claimed by the filing of an objection or petition to deny, the conditional licensee or licensee must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission.

(f) Commencing upon the filing of an application for a high-power MDS signal booster station license and until such time as the application is dismissed or denied or, if the application is granted, a certification of completion of construction is filed, an applicant for any new or modified MDS or ITFS station (including a response station hub, high-power booster station, or I Channels station) shall demonstrate compliance with the interference protection requirements set forth in §§ 21.902 (b)(3) through (b)(5), 21.938 (b) (1) and (2) and (c), or 74.903 of this chapter with respect to any previously-proposed or authorized booster service area both using the transmission parameters of the high-power MDS signal booster station (e.g., EIRP, polarization(s) and antenna height) and the transmission parameters of the MDS station whose channels are to be reused by the high-power MDS signal booster station. Upon the filing of a certification of completion of construction of an MDS booster station applied for pursuant to paragraph (b) of this section, or upon the submission of an MDS booster station notification pursuant to paragraph (e) of this section, the MDS station whose channels are being reused by the MDS signal booster shall no longer be entitled to interference protection pursuant to §§ 21.902 (b)(3) through (b)(5), 21.938 (b) (1) and (2) and (c), and 74.903 of this chapter within the booster service area based on the transmission parameters of the MDS station whose channels are being reused. A booster station shall not be entitled to protection from interference caused by facilities proposed on or prior to the day the application or notification for the booster station is filed. A booster station shall not be required to protect from interference facilities proposed on or after the day the application or notification for the booster station is filed.

(g) Where an application is granted under paragraph (d) of this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a high-power MDS signal booster station is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party.

(h) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each signal booster station within five miles of such receive site shall cooperate in good faith to

expeditiously identify the source of the interference. Each licensee of a signal booster station contributing to such interference shall bear the joint and several obligation to promptly remedy all interference resulting from block downconverter overload at any ITFS receive site registered prior to the submission of the application or notification for the signal booster station or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the signal booster station licensee to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one signal booster station licensee contributes to block downconverter interference at a MDS or ITFS receive site, the licensees of the contributing signal booster stations shall cooperate in good faith to remedy promptly the interference.

26. In § 21.925, paragraph (b) is revised to read as follows:

§ 21.925 Applications for BTA authorizations and MDS station licenses.

* * * * *

(b) Separate long-form applications must be filed for each individual MDS station license sought within the protected service area of a BTA or PSA, including:

(1) An application for each E-channel group, F-channel group, and single H, 1, and 2A channel station license sought;

(2) An application for each site where one or more MDS response station hub license(s) is/are sought, provided that the technical parameters of each MDS response station hub are the same;

(3) An application for each site where one or more MDS booster station(s) will operate with an EIRP in excess of −9 dBW (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth);

(4) An application for authority to operate at an MDS station in the area vacated by an MDS station incumbent that has forfeited its station license; and

(5) An application for each ITFS-channel group station license sought in accordance with §§ 74.990 and 74.991 of this chapter.

* * * * *

27. In § 21.938, paragraph (b) introductory text, and paragraphs (c)(4), (e) and (f), are revised to read as follows:

§ 21.938 BTA and PSA technical and interference provisions.

* * * * *

(b) Unless the affected parties have executed a written interference agreement in accordance with § 21.937, and subject to the provisions of §§ 21.909, 21.913, 21.940, 74.939 of this chapter, 74.940 of this chapter and 74.985 of this chapter regarding the protection of response station hubs, booster service areas and 125 kHz channels from harmful electromagnetic interference, stations licensed to a BTA or PSA authorization holder must not cause harmful electromagnetic interference to the following:

* * *

(c) * * *

(4) An ITFS station authorized before September 15, 1995 may be modified, provided the power flux density of that station does not exceed −73 dBW/m² (or the appropriate value for bandwidth other than 6 MHz) at locations along the 56.33 km (35 mile) circle centered on the then-existing transmitting antenna site or service area of a collocated incumbent MDS station, as applicable.

* * * * *

(e) Unless specifically excepted, BTA or PSA authorization holders are governed by the interference protection and other technical provisions applicable to MDS.

(f) The calculated free space power flux density from an MDS station, other than an incumbent MDS station, may not exceed −73 dBW/m² (or the appropriate value for bandwidth other than 6 MHz) at locations on BTA or PSA boundaries for which there is an unobstructed signal path from the transmitting antenna to the boundary, unless the applicant has obtained the written consent of the authorization holder for the affected BTA or PSA.

* * * * *

28. New § 21.940 is added, to read as follows:

§ 21.940 Individually licensed 125 kHz channel MDS response stations.

(a) The provisions of § 21.909(a), (e), (h), (j), (l) and (m), and § 74.939(j) of this chapter, also shall apply with respect to authorization of a 125 kHz channel(s) MDS response station not under a response station hub license. The applicant shall comply with the requirements of § 21.902, and § 21.938 where appropriate, including the provisions of §§ 21.909, 21.913, 74.939 of this chapter and 74.985 of this chapter regarding the protection of response station hubs and booster service areas from harmful electromagnetic interference, using the appropriately adjusted interference protection values based upon the ratio of the bandwidths in use, where the authorized or previously-proposed cochannel or adjacent channel station is operated or to be operated in a system with one or more response station hub(s).

(b) An application for a license to operate a new or modified 125 kHz channel(s) MDS response station not under a response station hub license shall be filed with Mellon Bank on FCC Form 304. The applicant shall supply the following information on that form for each response station:

(1) The geographic coordinates and street address of the MDS response station transmitting antenna; and

(2) The manufacturer's name, type number, operating frequency, and power output of the proposed MDS response station transmitter; and

(3) The type of transmitting antenna, power gain, azimuthal orientation and polarization of the major lobe of radiation in degrees measured clockwise from True North; and

(4) A sketch giving pertinent details of the MDS response station transmitting antenna installation including ground elevation of the transmitter site above mean sea level; overall height above ground, including appurtenances, of any ground-mounted tower or mast on which the transmitting antenna will be mounted or, if the tower or mast is or will be located on an existing building or other manmade structure, the separate heights above ground of the building and the tower or mast including appurtenances; the location of the tower or mast on the building; the location of the transmitting antenna on the tower or mast; and the overall height of the transmitting antenna above ground.

(c) Each MDS response station licensed under this section shall comply with the following:

(1) No MDS response station shall be located beyond the protected service area of the MDS station with which it communicates; and

(2) No MDS response station shall operate with a transmitter output power in excess of 2 watts; and

(3) No MDS response station shall operate at an excess of 16 dBW EIRP.

(d) During breaks in communications, the unmodulated carrier frequency shall

be maintained within 35 kHz of the assigned frequency at all times. Adequate means shall be provided to insure compliance with this rule.

(e) Each MDS response station shall employ a directive transmitting antenna oriented towards the transmitter site of the associated MDS station or towards the response station hub with which the MDS response station communicates. The beamwidth between half power points shall not exceed 15° and radiation in any minor lobe of the antenna radiation pattern shall be at least 20 dB below the power in the main lobe of radiation.

(f) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the licensee of the station or hub receiving the response signal, or by the licensee's employees or agents, as often as necessary to ensure that the transmitter is functioning in accordance with the requirements of the Commission's rules. The licensee of the station or hub receiving the response signal is responsible for the proper operation of the response station and must have reasonable and timely access to the response station transmitter. The response station shall be installed and maintained by the licensee of the associated station or hub, or the licensee's employees or agents, and protected in such manner as to prevent tampering or operation by unauthorized persons. No response station which has not been installed by an authorized person may lawfully communicate with any station or hub.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

29. The authority for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

30. In § 74.901, the following definitions are added in alphabetical order, to read as follows:

§ 74.901 Definitions.

* * * * *

Booster service area. A geographic area to be designated by an applicant for a booster station, within which the booster station shall be entitled to protection against interference as set forth in this part. The booster service area must be specified by the applicant so as to not overlap the booster service area of any other booster authorized to or proposed by the applicant. However, a booster station may provide service to receive sites outside of its booster service area, at the licensee's risk of interference. The booster station must be capable of providing substantial service within the designated booster service area.

Channel. Unless otherwise specified, a channel under this part shall refer to a 6 MHz frequency block assigned pursuant to §§ 21.901(b) of this chapter or 74.902(a).

* * * * *

Response station hub. A fixed facility licensed to an ITFS licensee, and operated by an ITFS licensee or the lessee of an ITFS channel, for the reception of information transmitted by one or more ITFS response stations that utilize digital modulation with uniform power spectral density. A response station hub licensed under this part may share facilities with other ITFS response station hubs, MDS response station hubs authorized pursuant to § 21.909 of this chapter, MDS signal booster stations, ITFS signal booster stations, MDS stations, and/or ITFS stations.

Response station hub license. A blanket license authorizing the operation of a single response station hub at a specific location and the operation of a specified number of associated digital response stations of one or more classes at unspecified locations within one or more regions of the response service area.

Sectorization. The use of an antenna system at an ITFS station, booster station and/or response station hub that is capable of simultaneously transmitting multiple signals over the same frequencies to different portions of the service area and/or simultaneously receiving multiple signals over the same frequencies from different portions of the service area.

Signal booster station. An ITFS station licensed for use in accordance with § 74.985 that operates on one or more ITFS channels. Signal booster stations are intended to augment service as part of a distributed transmission system where signal booster stations retransmit the signal of an ITFS station and/or originate information. A signal booster station licensed under this part may share facilities with other ITFS signal booster stations, MDS signal booster stations authorized pursuant to § 21.913 of this chapter, MDS response stations and/or ITFS response stations.

* * * * *

30a. In § 74.901, the following definitions, in alphabetical order, are revised to read as follows:

Instructional television fixed station. A fixed station licensed to an educational organization and intended primarily for video, data, or voice transmissions of instructional, cultural, and other types of educational material to one or more fixed receiving locations.

ITFS response station. A fixed station operated by an ITFS licensee, the lessee of ITFS channel capacity or a subscriber of either to communicate with a response station hub or associated ITFS station. A response station under this part may share facilities with other ITFS response stations and/or one or more Multipoint Distribution Service (MDS) response stations authorized pursuant to § 21.909 of this chapter or § 21.940 of this chapter.

* * * * *

31. In § 74.902, paragraphs (f) through (j) are redesignated as paragraphs (g) through (k), respectively, paragraphs (c) through (e) are revised, and new paragraph (f) and a new note to paragraph (c) are added, to read as follows:

§ 74.902 Frequency assignments.

* * * * *

(c) Channels 2596–2602, 2602–2608, 2608–2614, 2614–2620, 2620–2626, 2626–2632, 2632–2638, and 2638–2644 MHz and the corresponding 125 kHz channels listed in § 74.939(j) are shared with the Multipoint Distribution Service. No new Instructional Television Fixed Service applications for these channels filed after May 25, 1983 will be accepted, except in accordance with paragraph (f) of this section. In those areas where Multipoint Distribution Service use of these channels is allowed, Instructional Television Fixed Service users of these channels will continue to be afforded protection from harmful cochannel and adjacent channel interference from Multipoint Distribution Service stations, pursuant to § 21.902 of this chapter.

Note to Paragraph (C):

No 125 kHz channels are provided for Channels E3, E4, F3 and F4, except for those grandfathered. The 125 kHz channels associated with Channels E3, E4, F3 and F4 are allocated to the Private Operational Fixed Point-to-Point Microwave Service, pursuant to § 101.147(g) of this chapter.

(d) Frequencies will be assigned as follows:

(1) A licensee is limited to the assignment of no more than four 6 MHz and four 125 kHz channels for use in a single area of operation, all of which 6 MHz channels initially should be selected from the same Group listed in paragraph (a) of this section, but which later may come from different Groups as a result of authorized channel swaps pursuant to paragraph (f) of this section. An area of operation is defined as the area 35 miles or less from the ITFS main

station transmitter. Applicants shall not apply for more channels than they intend to construct within a reasonable time, simply for the purpose of reserving additional channels. The number of channels authorized to an applicant will be based on the demonstration of need for the number of channels requested. The Commission will take into consideration such factors as the amount of use of any currently assigned channels and the amount of proposed use of each channel requested, the amount of, and justification for, any repetition in the schedules, and the overall demand and availability of ITFS channels in the community. For those applicant organizations formed for the purpose of serving accredited institutional or governmental organizations, evaluation of the need will only consider service to those specified receive sites which submitted supporting documentation pursuant to § 74.932(a)(4).

(2) An applicant leasing excess capacity and proposing a schedule which complies in all respects with the requirements of § 74.931 (c) or (d) will have presumptively demonstrated need, in accordance with paragraph (d)(1) of this section, for no more than four channels. This presumption is rebuttable by demonstrating that the application does not propose to comport with our educational usage requirements, that is, to transmit some formal educational usage, as defined in § 74.931(a), and to transmit the requisite minimum educational usage of § 74.931 (c) or (d) for genuinely educational purposes.

(e) Frequencies in the bands 2500–2650 MHz, 2656–2662 MHz, 2668–2674 MHz, and 2680–2686 MHz are available for point-to-multipoint use and/or for communications between ITFS response stations and response station hubs when authorized in accordance with the provisions of § 74.939, provided that such frequencies may be employed for ITFS response stations only when transmitting using digital modulation.

(f) An ITFS licensee or conditional licensee may apply to exchange evenly one or more of its assigned channels with another ITFS licensee or conditional licensee in the same system, or with an MDS licensee or conditional licensee in the same system where one or both parties utilizes digital transmissions or leases capacity to an operator which utilizes digital transmissions, except that an ITFS licensee or conditional licensee may not exchange one of its assigned channels for MDS channel 2A. The licensees or conditional licensees seeking to exchange channels shall file in tandem with the Commission separate pro forma assignment of license applications, each attaching an exhibit which clearly specifies that the application is filed pursuant to a channel exchange agreement. The exchanged channel(s) shall be regulated according to the requirements applicable to the assignee; provided, however, that an ITFS licensee or conditional licensee which receives one or more E or F Group channels through a channel exchange with an MDS licensee or conditional licensee shall not be subject to the restrictions on ITFS licensees who were authorized to operate on the E or F Group channels prior to May 26, 1983.

* * * * *

32. In § 74.903, paragraphs (a)(1) through (a)(3), paragraph (b) introductory text, paragraphs (b) (1), (2), (4) and (5), paragraph (c) and paragraph (d) are revised, paragraphs (e) and (f) are removed, and new paragraph (a)(6) is added, to read as follows:

§ 74.903 Interference.

(a) * * *

(1) Cochannel interference is defined as the ratio of the desired signal to the undesired signal, at the output of a reference receiving antenna oriented to receive the maximum desired signal level. Harmful interference will be considered present when a free space calculation determines that this ratio is less than 45 dB (both stations utilizing 6 MHz bandwidths).

(2) Adjacent channel interference is defined as the ratio of the desired signal to undesired signal present in an adjacent channel, at the output of a reference receiving antenna oriented to receive the maximum desired signal level.

(i) Harmful interference will be considered present when a free space calculation determines that this ratio is less than 0 dB (both stations utilizing 6 MHz bandwidths).

(ii) In the alternative, harmful interference will be considered present for an ITFS station constructed before May 26, 1983, when a free space calculation determines that this ratio is less than 10 dB (both stations utilizing 6 MHz bandwidths), unless:

(A) The individual receive site under consideration has been subsequently upgraded with up-to-date reception equipment, in which case the ratio shall be less than 0 dB. Absent information presented to the contrary, however, the Commission will assume that reception equipment installation occurred simultaneously with original station equipment; or

(B) The license for an ITFS station is conditioned on the proffer to the affected ITFS station licensee of equipment capable of providing a ratio of 0 dB or more at no expense to the ITFS station licensee, and also conditioned, if necessary, on the proffer of installation of such equipment; and there has been no showing by the affected ITFS station licensee demonstrating good cause and that the proposed equipment will not provide a ratio of 0 dB or more, or that installation of such equipment, at no expense to the ITFS station licensee, is not possible or has not been proffered.

(3) For purposes of this section and except as set forth in § 74.939 regarding the protection of response station hubs, all interference calculations involving receive antenna performance shall use the reference antenna characteristics shown in Figure I, § 74.937(a) or, in the alternative, utilize the actual pattern characteristics of the antenna in use at the receive site under study. If the actual receive antenna pattern is utilized, the applicant must submit complete details including manufacturer, model number(s), co-polar and cross-polar gain patterns, and other pertinent data.

* * * * *

(6) Notwithstanding the above, main, booster and response stations shall use the following formulas, as applicable, for determining compliance with: (1) Radiated field contour limits where bandwidths other than 6 MHz are employed at stations utilizing digital modulation with uniform power spectral density; and (2) Cochannel and adjacent channel D/U ratios where the bandwidths in use at the interfering and protected stations are unequal and both stations are utilizing digital modulation with uniform power spectral density or one station is utilizing such modulation and the other station is utilizing either 6 MHz NTSC analog modulation or 125 kHz analog modulation (I channels only).

(i) Contour limit: -73 dBW + 10 log (X/6), where X is the bandwidth in MHz of the digital channel.

(ii) Cochannel D/U: 45 dB + 10 log (X1/X2), where X1 is the bandwidth in MHz of the protected channel and X2 is the bandwidth in MHz of the interfering channel.

(iii) Adjacent channel D/U: 0 dB + 10 log (X1/X2), where X1 is the bandwidth in MHz of the protected channel and X2 is the bandwidth in MHz of the interfering channel.

(b) All applicants for instructional television fixed stations are expected to take full advantage of such directive antenna techniques to prevent interference to the reception of any

existing or previously-proposed operational fixed, multipoint distribution, international control or instructional television fixed station at authorized receiving locations. Therefore, all applications for new or major changes must include an analysis of potential interference to all existing and previously-proposed stations in accordance with paragraph (a) of this section. An applicant for a new instructional television fixed station or for changes in an existing ITFS facility or conditional license must include the following technical information with the application:

(1) An analysis of the potential for harmful interference with the receive sites registered as of September 17, 1998, and with the protected service area, of any authorized or previously-proposed cochannel station if:

(i) The proposed transmitting antenna has an unobstructed electrical path to receive site(s) and/or the protected service area of any other station that utilizes, or would utilize, the same frequency; or

(ii) The proposed transmitter is within 80.5 km (50 miles) of the coordinates of any such station.

(2) An analysis of the potential for harmful adjacent channel interference with the receive sites registered as of September 17, 1998, and with the protected service area, of any authorized or previously-proposed station if the proposed transmitter is within 80.5 km (50 miles) of the coordinates of any station that utilizes, or would utilize, an adjacent channel frequency.

* * * * *

(4) In lieu of the interference analyses required by paragraphs (b)(1) and (2) of this section, an applicant may submit (a) statement(s) from the affected cochannel or adjacent channel licensee(s) or conditional licensee(s) that any resulting interference is acceptable.

(5) Specific rules relating to response station hubs, booster stations, and 125 kHz channels are set forth in §§ 21.909 of this chapter, 21.913 of this chapter, 21.940 of this chapter, 74.939, 74.940 and 74.985. To the extent those specific rules are inconsistent with any rules set forth above, those specific rules shall control.

(c) Existing licensees, conditional licensees and prospective applicants, including those who lease or propose to lease excess capacity pursuant to § 74.931(c) or (d), are expected to cooperate fully and in good faith in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(d) Each authorized or previously-proposed applicant, conditional licensee, or licensee must be protected from harmful electrical interference at each of its receive sites registered previously as of September 17, 1998, and within a protected service area as defined at § 21.902(d)(1) of this chapter and in accordance with the reference receive antenna characteristics specified at § 21.902(f) of this chapter. An ITFS entity which did not receive protected service area protection prior to September 17, 1998 shall be accorded such protection by a cochannel or adjacent channel applicant for a new station or station modification, including a booster station, response station or response station hub, where the applicant is required to prepare an analysis, study or demonstration of the potential for harmful interference.

33. In § 74.911, paragraph (a)(1) is revised, and new paragraph (d) is added, to read as follows:

§ 74.911 Processing of ITFS station applications.

(a) * * *

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. These applications are subject to the provisions of paragraph (c) of this section. A major change for an ITFS station will be any proposal to add new channels, change from one channel (or channel group) to another except as provided for in § 74.902(f), change polarization, increase the EIRP in any direction by more than 1.5 dB, increase the transmitting antenna height by 25 feet or more, or relocate a facility's transmitter site by 10 miles or more. Applications submitted pursuant to §§ 74.939 and 74.985 shall not be considered major change applications. However, the Commission may, within 15 days after the acceptance of an application, or 15 days after the acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change, and subject to the provisions of paragraph (c) of this section.

* * * * *

(d) Notwithstanding any other provisions of this part, effective as of September 17, 1998, there shall be one one-week window, at such time as the Commission shall announce by public notice, for the filing of applications for high-power signal booster station, response station hub, and I channels point-to-multipoint transmissions licenses, during which all applications shall be deemed to have been filed as of the same day for purposes of §§ 74.939 and 74.985. Following the publication of a public notice announcing the tendering for filing of applications submitted during that window, applicants shall have a period of sixty (60) days to amend their applications, provided such amendments do not result in any increase in interference to any previously-proposed or authorized station, or to facilities proposed during the window, absent consent of the applicant for or conditional licensee or licensee of the station that would receive such additional interference. At the conclusion of that sixty (60) day period, the Commission shall publish a public notice announcing the acceptance for filing of all applications submitted during the initial window, as amended during the sixty (60) day period. All petitions to deny such applications must be filed within sixty (60) days of such second public notice. On the sixty-first (61st) day after the publication of such second public notice, applications for new or modified response station hub and booster station licenses may be filed and will be processed in accordance with the provisions of §§ 74.939 and 74.985. Notwithstanding paragraph (d) of this section, each application submitted during the initial window shall be granted on the sixty-first (61st) day after the Commission shall have given such public notice of its acceptance for filing, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the transmitter site or response station hub until such time as the Commission issues a license.

34. New § 74.912 is added to read as follows:

§ 74.912 Petitions to deny.

(a) Any party in interest may file with the Commission a petition to deny any application for new facilities or major changes in the facilities of authorized stations, provided such petitions are filed by the date established pursuant to the cut-off provisions of § 74.911(c). In the case of all other applications, except those excluded under Section 309(c) of the Communications Act of 1934, as amended, and except as provided in §§ 74.939 and 74.985, petitions to deny must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the applications. In the case of applications for renewal of license, petitions to deny may be filed

after the issuance of a public notice of acceptance for filing of the applications and up until the first day of the last full calendar month of the expiring license term. Any party in interest may file with the Commission a petition to deny any notification regarding ITFS booster stations within the 60 day period provided for in § 74.985(e).

(b) The applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. The times for filing such oppositions and replies shall be those provided in § 1.45 of this chapter.

35. In § 74.931, paragraphs (d) and (e) are redesignated as paragraphs (b) and (c), respectively, and paragraphs (f) through (k) are redesignated as paragraphs (e) through (j), respectively, paragraph (a) and newly redesignated paragraphs (b) and (c) are revised, and new paragraph (d) is added, to read as follows:

§ 74.931 Purpose and permissible service.

(a) (1) Instructional television fixed stations are intended primarily through video, data, or voice transmissions to further the educational mission of accredited public and private schools, colleges and universities providing a formal educational and cultural development to enrolled students. Authorized instructional television fixed station channels must be used to further the educational mission of accredited schools offering formal educational courses to enrolled students, with limited exceptions as set forth in paragraphs (c)(3) and (d)(2) of this section and §§ 74.990 through 74.992.

(2) In furtherance of the educational mission of accredited schools, instructional television fixed station channels may be used for:

(i) In-service training and instruction in special skills and safety programs, extension of professional training, informing persons and groups engaged in professional and technical activities of current developments in their particular fields, and other similar endeavors.

(ii) Transmission of material directly related to the administrative activities of the licensee, such as the holding of conferences with personnel, distribution of reports and assignments, exchange of data and statistics, and other similar uses.

(iii) Response channels transmitting information associated with formal educational courses offered to enrolled students, including uses described in paragraphs (a)(2) (i) and (ii) of this section, from ITFS response stations to response station hubs.

(b) Stations, including high-power ITFS signal booster stations, may be licensed in this service as originating or relay stations to interconnect instructional television fixed stations in adjacent areas, to deliver instructional and cultural material to, and obtain such material from, commercial and noncommercial educational television broadcast stations for use on the instructional television fixed system, and to deliver instructional and cultural material to, and obtain such material from, nearby terminals or connection points of closed circuit educational television systems employing wired distribution systems or radio facilities authorized under other parts of this Chapter, or to deliver instructional and cultural material to any CATV system serving a receiving site or sites which would be eligible for direct reception of ITFS signals under the provisions of paragraph (a) of this section.

(c) A licensee solely utilizing analog transmissions may use excess capacity on each channel to transmit material other than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) Before leasing excess capacity on any one channel, the licensee must provide at least 20 hours per week of ITFS educational usage on that channel, except as provided in paragraph (c)(2) of this section. An additional 20 hours per week per channel must be strictly reserved for ITFS use and not used for non-ITFS purposes, or reserved for recapture by the ITFS licensee for its ITFS educational usage, subject to one year's advance, written notification by the ITFS licensee to its lessee and accounting for all recapture already exercised, with no economic or operational detriment to the licensee. These hours of recapture are not restricted as to time of day or day of the week, but may be established by negotiations between the ITFS licensee and the lessee. This 20 hours per channel per week ITFS educational usage requirement and this recapture and/or reservation requirement of an additional 20 hours per channel per week shall apply spectrally over the licensee's whole protected service area.

(2) For the first two years of operation, an ITFS entity may lease excess capacity if it provides ITFS educational usage for at least 12 hours per channel per week, provided that the entity does not employ channel loading technology.

(3) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, so that it can lease full-time channel capacity on its ITFS station, associated ITFS booster stations, and/or ITFS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per channel per week of ITFS educational usage on its authorized channels. The use of channel mapping or channel loading consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal. The licensee also retains the unabridgeable right to recapture, subject to six months' advance written notification by the ITFS licensee to its lessee, an average of an additional 20 hours per channel per week, accounting for all recapture already exercised. The licensee may agree to the transmission of this recapture time on channels not authorized to it, but which are included in the wireless system of which it is a part.

(4) An ITFS applicant, conditional licensee, or licensee may specify an omnidirectional antenna for point-to-multipoint transmissions to facilitate the leasing of excess capacity.

(5) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to apply for the appropriate authorization and to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may apply for authorization by the Commission to alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notify the Commission of any service status changes at least 30 days in advance of such changes.

(iii) Licensees under paragraph (c)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2), and 21.910 of this chapter.

(d) A licensee utilizing digital transmissions on any of its licensed channels may use excess capacity on each channel to transmit material other

than the ITFS subject matter specified in paragraphs (a) and (b) of this section, subject to the following conditions:

(1) The licensee must reserve a minimum of 5% of the capacity of its channels for instructional purposes only, and may not lease this reserved capacity. In addition, before leasing excess capacity, the licensee must provide at least 20 hours per licensed channel per week of ITFS educational usage. This 5% reservation and this 20 hours per licensed channel per week ITFS educational usage requirement shall apply spectrally over the licensee's whole protected service area.

(2) The licensee may shift its requisite ITFS educational usage onto fewer than its authorized number of channels, via channel mapping or channel loading technology, and may shift its requisite ITFS educational usage onto channels not authorized to it, but which are included in the wireless system of which it is a part ("channel shifting"), so that it can lease full-time channel capacity on its ITFS station, associated ITFS booster stations, and/or ITFS response stations and associated response station hubs, subject to the condition that it provide a total average of at least 20 hours per licensed channel per week of ITFS educational usage. The use of channel mapping, channel loading, and/or channel shifting consistent with the Rules shall not be considered adversely to the ITFS licensee in seeking a license renewal.

(3) An ITFS applicant, conditional licensee, or licensee may specify an omnidirectional antenna for point-to-multipoint transmissions to facilitate the leasing of excess capacity.

(4) Leasing activity may not cause unacceptable interference to cochannel or adjacent channel operations.

(5) A licensee leasing any of its licensed channels to be used as response channels shall be required to maintain at least 25% of the capacity of its channels for point-to-multipoint transmissions during the term of the lease and following termination of the leasing arrangement. This 25% preservation may be over the licensee's own authorized channels or over channels not authorized to it, but which are included in the wireless system of which it is a part.

(6) When an ITFS licensee makes capacity available on a common carrier basis, it will be subject to common carrier regulation.

(i) A licensee operating as a common carrier is required to apply for the appropriate authorization and to comply with all policies and rules applicable to that service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial determinations by the licensees are subject to Commission examination and may be reviewed at the Commission's discretion.

(ii) An ITFS licensee also may apply for authorization by the Commission to alternate, without further authorization required, between rendering service on a common carrier and non-common carrier basis, provided that the licensee notify the Commission of any service status changes at least 30 days in advance of such changes.

(iii) Licensees under paragraph (d)(6) of this section additionally shall comply with the provisions of §§ 21.304, 21.900(b), 21.903(b)(1) and (2), and 21.910 of this chapter.

* * * * *

36. In Section 74.935, paragraphs (a) and (b) are revised to read as follows:

§ 74.935 Power limitations.

(a) The maximum EIRP of an ITFS main or booster station shall not exceed 33 dBW (or, when digital modulation with uniform power spectral density and subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth), except as provided in paragraph (b) of this section.

(b) If a main or booster station sectorizes or otherwise uses one or more transmitting antennas with a non-omnidirectional horizontal plane radiation pattern, the maximum EIRP over a 6 MHz channel in dBW in a given direction shall be determined by the following formula:

EIRP = 33 dBW + 10 log (360/beamwidth) [where 10 log (360/beamwidth) ≤ 6 dB]

Beamwidth is the total horizontal plane beamwidth of the individual transmitting antenna for the station or any sector measured at the half-power points. The first term of the equation above, 33 dBW, must be adjusted appropriately based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth.

* * * * *

37. Section 74.936 is revised in its entirety, to read as follows:

§ 74.936 Emissions and bandwidth.

(a) An ITFS station may employ amplitude modulation (C3F) for the transmission of the visual signal and frequency modulation (F3E) or (G3E) for the transmission of the aural signal when transmitting a standard analog television signal. Quadrature amplitude modulation, digital vestigial modulation, quadrature phase shift key modulation and code division multiple access emissions may be employed, subject to compliance with the policies set forth in the Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996). The licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel, and may utilize all or a portion of its authorized bandwidth for ITFS response stations authorized pursuant to § 74.939. The licensee may also, jointly with affected adjacent channel licensees, transmit utilizing bandwidth in excess of its authorized frequencies, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in 74.936 are met at the edges of the channels employed. The wider channels thus created may be redivided to create narrower channels.

(b) Notwithstanding the above, any digital emission which meets the uniform power spectral density requirements of the Declaratory Ruling and Order may be used in the following circumstances:

(1) At any ITFS main or booster station transmitter which is located more than 160.94 km (100 miles) from the nearest boundary of all cochannel and adjacent channel ITFS and MDS protected service areas, including Basic Trading Areas and Partitioned Service Areas; and

(2) At all ITFS response station transmitters within a response service area if all points along the response service area boundary line are more than 160.94 km (100 miles) from the nearest boundary of all cochannel and adjacent channel ITFS and MDS protected service areas, including Basic Trading Areas and Partitioned Service Areas; and

(3) At any ITFS transmitter where all parties entitled by this part to interference protection from that transmitter have mutually consented to the use at that transmitter of such emissions.

(c) The maximum out-of-band power of an ITFS station transmitter or booster transmitting on a single 6 MHz channel with an EIRP in excess of −9 dBW employing analog modulation shall be attenuated at the channel edges by at least 38 dB relative to the peak visual carrier, then linearly sloping from that level to at least 60 dB of attenuation at 1 MHz below the lower band edge and 0.5 MHz above the upper band edge, and attenuated at least 60 dB at all other

frequencies. The maximum out-of-band power of an ITFS station transmitter or booster transmitting on a single 6 MHz channel or a portion thereof with an EIRP in excess of −9 dBW (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths) employing digital modulation shall be attenuated at the 6 MHz channel edges at least 25 dB relative to the licensed average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. Notwithstanding the foregoing, in situations where an ITFS station or booster station transmits, or where adjacent channel licensees jointly transmit, a single signal over more than one contiguous 6 MHz channel utilizing digital modulation with an EIRP in excess of −9 dBW (or, when subchannels or superchannels are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel bandwidth), the maximum out-of-band power shall be attenuated at the channel edges of those combined channels at least 25 dB relative to the power level of each channel, then attenuated along a linear slope from that level to at least 40 dB at 250 kHz above or below the channel edges of those combined channels, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower edges of those combined channels, and attenuated at least 60 dB at all other frequencies. However, should harmful interference occur as a result of emissions outside the assigned channel, additional attenuation may be required. A transmitter licensed prior to November 1, 1991, that remains at the station site initially licensed, and does not comply with this paragraph, may continue to be used for its life if it does not cause harmful interference to the operation of any other licensee. Any non-conforming transmitter replaced after November 1, 1991, must be replaced by a transmitter meeting the requirements of this paragraph.

(d) A booster transmitting on multiple contiguous or non-contiguous channels carrying separate signals (a "broadband" booster) with an EIRP in excess of −9 dBW per 6 MHz channel and employing analog, digital or a combination of these modulations shall have the following characteristics:

(1) For broadband boosters operating in the frequency range of 2.150–2.160/2 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges forming the band edges by at least 25 dB relative to the licensed analog peak visual carrier or digital average power level (or, when subchannels are used, the appropriately adjusted value based on upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the band edges, then linearly sloping from that level to at least 60 dB of attenuation at 3.0 MHz above and below the band edges, and attenuated at least 60 dB at all other frequencies.

(2) For broadband boosters operating in the frequency range of 2.500–2.690 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges forming the band edges by at least 25 dB relative to the licensed analog peak visual carrier or digital average power level (or, when subchannels are used, the appropriately adjusted value based on upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the band edges, then linearly sloping from that level to at least 50 dB of attenuation at 3.0 MHz above and below the band edges, then linearly sloping from that level to at least 60 dB of attenuation at 20 MHz above and below the band edges, and attenuated at least 60 dB at all other frequencies.

(3) Within unoccupied channels in the frequency range of 2.500–2.690 GHz, the maximum out-of-band power shall be attenuated at the upper and lower channel edges of an unoccupied channel by at least 25 dB relative to the licensed analog peak visual carrier power level or digital average power level of the occupied channels (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths), then linearly sloping from that level to at least 40 dB of attenuation at 0.25 MHz above and below the occupied channel edges, then linearly sloping from that level to at least 50 dB of attenuation at 3.0 MHz above and below the occupied channel edges, and attenuated at least 50 dB at all other unoccupied frequencies.

(e) Boosters operating with an EIRP less than −9 dBW per 6 MHz channel shall have no particular out-of-band power attenuation requirement, except that if they cause harmful interference, their operation shall be terminated within 2 hours of notification by the Commission until the interference can be cured.

(f) The maximum out-of-band power of an ITFS response station using all or part of a 6 MHz channel and employing digital modulation shall be attenuated at the 6 MHz channel edges at least 25 dB relative to the licensed average 6 MHz channel power level, then attenuated along a linear slope to at least 40 dB at 250 kHz beyond the nearest channel edge, then attenuated along a linear slope from that level to at least 60 dB at 3 MHz above the upper and below the lower licensed channel edges, and attenuated at least 60 dB at all other frequencies. Where ITFS response stations with digital modulation utilize all or part of more than one contiguous 6 MHz channel to form a larger channel (e.g., a channel of width 12 MHz), the above-specified attenuations shall be applied only at the upper and lower edges of the overall combined channel. Notwithstanding these provisions, should harmful interference occur as a result of emissions outside the assigned channel(s), additional attenuation may be required by the Commission.

(g) The requirements of § 73.687(c)(2) will be considered to be satisfied insofar as measurements of operating power are concerned if the transmitter is equipped with instruments for determining the combined visual and aural operating power. However, licensees are expected to maintain the operating powers within the limits specified in § 74.935. Measurements of the separate visual and aural operating powers must be made at sufficiently frequent intervals to insure compliance with the rules, and in no event less than once a month. However, the provisions of § 73.687(c)(2) and of this paragraph shall not be applicable to ITFS response stations or to low power ITFS booster stations authorized pursuant to § 74.985(e).

(h) Compliance with the out-of-band emissions limitations shall be established in accordance with § 21.908(e) of this chapter.

38. In § 74.937, paragraph (a) is revised by amending the text preceding figure 1, and paragraph (b) is revised, to read as follows:

§ 74.937 Antennas.

(a) In order to minimize the hazard of harmful cochannel and adjacent channel interference from other stations, directive receiving antennas should be used at all receiving locations other than response station hubs. The choice of receiving antennas is left to the discretion of the licensee. However, for the purpose of interference calculations, except as set forth in § 74.939, the general characteristics of the reference receiving antenna shown in Figure I of this section (i.e., a 0.6 meter (2 foot)

parabolic reflector antenna) are assumed to be used in accordance with the provisions of § 74.903(a)(3) unless pertinent data is submitted of the actual antenna in use at the receive site. Licensees may install receiving antennas with general characteristics superior to those of the reference receive antenna. Nevertheless, should interference occur and it can be demonstrated by an applicant that the existing antenna at the receive site is inappropriate, a more suitable yet practical receiving antenna should be installed. In such cases, the modification of the receive site will be in the discretion, and will be the responsibility, of the licensee serving the site.

* * * * *

(b) Except as set forth in § 74.931 (c)(4) and (d)(3), directive transmitting antennas shall be used whenever feasible so as to minimize interference to other licensees. The radiation pattern shall be designed to minimize radiation in directions where no reception is intended. When an ITFS station is used for point-to-point service, an appropriate directional antenna must be used.

* * * * *

39. Section 74.938 is revised to read as follows:

§ 74.938 Transmission standards.

The width of an ITFS channel is 6 MHz. However, the licensee may subchannelize its authorized bandwidth, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel, and may utilize all or a portion of its authorized bandwidth for ITFS response stations authorized pursuant to § 74.939. The licensee may also, jointly with other licensees, transmit utilizing bandwidth in excess of its authorized bandwidth, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met and the out-of-band emissions restrictions set forth in § 74.936 are met at the edges of the channels employed.

40. Section 74.939 is revised to read as follows:

§ 74.939 ITFS response stations.

(a) An ITFS response station is authorized to provide communication by voice, video and/or data signals with its associated ITFS response station hub or associated ITFS station. An ITFS response station may be operated only by the licensee of the ITFS station, by any person or entity authorized by the ITFS licensee to receive point-to-multipoint transmissions over its channels, by any lessee of excess capacity, or by a subscriber of any lessee of excess capacity. The authorized channel may be divided to provide distinct subchannels for each of more than one response station, provided that digital modulation is employed and the aggregate power does not exceed the authorized power for the channel. An ITFS response station may also, jointly with other licensees, transmit utilizing bandwidth in excess of that authorized to the station, provided that digital modulation is employed, all power spectral density requirements set forth in this part are met, and the out-of-band emission restrictions set forth in § 74.936 or paragraph (k) of this section are complied with.

(b) ITFS response stations that utilize the 2150–2162 MHz band pursuant to § 74.902(f), the 2500–2686 MHz band, and/or the 125 kHz channels identified in paragraph (j) of this section may be installed and operated without an individual license, to communicate with a response station hub authorized under a response station hub license, provided that the conditions set forth in paragraph (g) of this section are complied with and that ITFS response stations operating in the 2150–2162 MHz and/or 2500–2686 MHz band(s) employ only digital modulation with uniform power spectral density in accordance with the Commission's Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996).

(c) An applicant for a response station hub license shall:

(1) File FCC Form 331 with the Commission in Washington, DC, and certify on that form that it has complied with the requirements of paragraphs (c)(2) and (d) of this section. Failure to certify compliance and to comply completely with the requirements of paragraphs (c)(2) and (d) of this section shall result in dismissal of the application or revocation of the response station hub license, and may result in imposition of a monetary forfeiture; and

(2) Submit to International Transcription Services, Inc. ("ITS"), 1231 20th Street, NW, Washington, DC 20036, both in hard copy, and on a 3.5" computer diskette in ASCII, the following:

(i) Duplicates of the Form 331 filed with the Commission; and

(ii) The data required by Appendix D to the Report and Order in MM Docket No. 97–217, FCC 98–231, "Methods for Predicting Interference from Response Station Transmitters and to Response Station Hubs and for Supplying Data on Response Station Systems"; and

(iii) The information, showings and certifications required by paragraph (d) of this section; and

(3) Submit to the Commission, only upon Commission staff request, duplicates of the submissions required by paragraph (c)(2) of this section.

(d) An applicant for a response station hub license shall, pursuant to paragraph (c)(2)(iii) of this section, submit to ITS the following:

(1) The geographic coordinates, street address, and the height of the center line of the reception antenna(s) above mean sea level for the response station hub; and (2) A specification of:

(i) The response service area in which the applicant or its lessee proposes to install ITFS response stations to communicate with the response station hub, any regions into which the response service area will be subdivided for purposes of interference analysis, and any regional classes of response station characteristics which will be used to define the operating parameters of groups of response stations within each region for purposes of interference analysis, including:

(A) the maximum height above ground level of the transmission antenna that will be employed by any response station in the regional class and that will be used in interference analyses; and

(B) the maximum equivalent isotropic radiated power (EIRP) that will be employed by any response station in the regional class and that will be used in interference analyses; and

(C) any sectorization that will be employed, including the polarization to be employed by response stations in each sector and the geographic orientation of the sector boundaries, and that will be used in interference analyses; and

(D) the combined worst-case outer envelope plot of the patterns of all models of response station transmission antennas that will be employed by any response station in the regional class to be used in interference analyses; and

(E) the maximum number of response stations that will be operated simultaneously in each region using the characteristics of each regional class applicable to each region.

(ii) The channel plan (including any guardbands at the edges of the channel) to be used by ITFS response stations in communicating with the response station hub, including a statement as to whether the applicant will employ the same frequencies on which response stations will transmit to also transmit on a point-to-multipoint basis from an MDS station or MDS booster station; and

(3) A demonstration that:

(i) The proposed response station hub is within the protected service area, as defined in § 21.902(d)(1) of this chapter, of the ITFS station(s) whose channels will be used for communications to the response station hub or, in the case of an application for response stations to utilize one or more of the 125 kHz response channels, the response station hub is within the protected service area of the station authorized to utilize the associated channel(s); and

(ii) The entire proposed response service area is within the protected service area of the ITFS station(s) whose channels will be used for communications to the response station hub or, in the alternative, the applicant may demonstrate that the licensee of any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap. In the case of an application for response stations to utilize one or more of the 125 kHz response channels, such demonstration shall establish that the response service area is entirely within the protected service area of the station authorized to utilize the associated channel(s), or, in the alternative, that the licensee entitled to any cochannel protected service area which is overlapped by the proposed response service area has consented to such overlap; and

(iii) The combined signals of all simultaneously operating ITFS response stations within all response service areas and oriented to transmit toward their respective response station hubs and all cochannel ITFS stations and booster stations licensed to or applied for by the applicant will not generate a power flux density in excess of −73 dBW/m² (or the pro rata power spectral density equivalent based on the bandwidth actually employed in those cases where less than a 6 MHz channel is to be employed) outside the boundaries of the applicant's protected service area, as measured at locations for which there is an unobstructed signal path, except to the extent that consent of affected licensees has been obtained or consents have been granted pursuant to paragraph (d)(3)(ii) of this section to an extension of the response service area beyond the boundaries of the protected service area; and

(iv) The combined signals of all simultaneously operating ITFS response stations within all response service areas and oriented to transmit toward their respective response station hubs, and all cochannel ITFS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 45 dB (or the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths):

(A) within the protected service area of any authorized or previously-proposed cochannel MDS or ITFS station with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any cochannel booster station entitled to such protection pursuant to § 21.913(f) of this chapter or 74.985(f) and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed cochannel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee or applicant for such cochannel station or hub consents to the application; and

(v) The combined signals of all simultaneously operating ITFS response stations within all response service areas and oriented to transmit toward their respective response station hubs, and all cochannel ITFS stations and booster stations licensed to or applied for by the applicant, will result in a desired to undesired signal ratio of at least 0 dB (or the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths):

(A) within the protected service area of any authorized or previously-proposed adjacent channel MDS or ITFS station with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(B) within the booster service area of any adjacent channel booster station entitled to such protection pursuant to §§ 21.913(f) of this chapter or 74.985(f) and located within 160.94 km (100 miles) of the proposed response station hub; and

(C) at any registered receive site of any authorized or previously-proposed adjacent channel ITFS station or booster station located within 160.94 km (100 miles) of the proposed response station hub, or, in the alternative, that the licensee of or applicant for such adjacent channel station or hub consents to such application; and

(vi) The combined signals of all simultaneously operating ITFS response stations within all response service areas and oriented to transmit toward their respective response station hub and all cochannel ITFS stations and booster stations licensed to or applied for by the applicant will comply with the requirements of §§ 21.909(i) of this chapter and paragraph (i) of this section.

(4) A certification that the application has been served upon

(i) the holder of any cochannel or adjacent channel authorization with a protected service area which is overlapped by the proposed response service area;

(ii) the holder of any cochannel or adjacent channel authorization with a protected service area that adjoins the applicant's protected service area;

(iii) the holder of a cochannel or adjacent channel authorization for any BTA or PSA inside whose boundaries are locations for which there is an unobstructed signal path for combined signals from within the response station hub applicant's protected service area; and

(iv) every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed, incumbent MDS station with a 56.33 km (35 mile) protected service area with center coordinates located within 160.94 km (100 miles) of the proposed response station hub; and

(v) every licensee of, or applicant for, any cochannel or adjacent channel, authorized or previously-proposed ITFS station (including any booster station or response station hub) located within 160.94 km (100 miles) of the proposed response station hub.

(e) Applications for response station hub licenses shall be deemed minor change applications and, except as provided in § 74.911(e), may be filed at any time. Notwithstanding any other provision of part 74, applications for response station hub licenses meeting the requirements of paragraph (c) of this section shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the proposed response station hubs. A response station hub shall not be entitled to protection from interference caused by facilities proposed on or prior to the day the application for the response station hub license is filed. Response stations shall not be required to protect from interference facilities proposed on or after the day the application for the response station hub license is filed.

(f) Notwithstanding the provisions of § 74.912 and except as provided by § 74.911(e), any petition to deny an application for a response station hub license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding § 74.911(d) and except as provided in § 74.911(e), an application for a response station hub license that meets the requirements of this section shall be granted on the sixty-first (61st) day after the

Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the response station hub until such time as the Commission issues a response station hub license.

(g) An ITFS response station hub license establishing a response service area shall be conditioned upon compliance with the following:

(1) No ITFS response station shall be located beyond the response service area of the response station hub with which it communicates; and

(2) No ITFS response station shall operate with a transmitter output power in excess of 2 watts; and

(3) No ITFS response station shall operate with an EIRP in excess of that specified in the application for the response station hub pursuant to paragraph (d)(2)(i)(B) of this section for the particular regional class of characteristics with which the response station is associated, and such response station shall not operate at an excess of 33 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth); and

(4) Each ITFS response station shall employ a transmission antenna oriented toward the response station hub with which the ITFS response station communicates, and such antenna shall be no less directional than the worst case outer envelope pattern specified in the application for the response station hub pursuant to paragraph (d)(2)(i)(D) of this section for the regional class of characteristics with which the response station is associated; and

(5) The combined out-of-band emissions of all response stations using all or part of one or multiple contiguous 6 MHz channels and employing digital modulation shall comply with § 74.936(e). The combined out-of-band emissions of all response stations using all or part of one or multiple contiguous 125 kHz channels shall comply with paragraph (k) of this section. However, should harmful interference occur as a result of emissions outside the assigned channel, additional attenuation may be required; and

(6) The response stations transmitting simultaneously at any time within any given region of the response service area utilized for purposes of analyzing the potential for interference by response stations shall conform to the numerical limits for each class of response station proposed in the application for the response station hub license. Notwithstanding the foregoing, the licensee of a response station hub license may alter the number of response stations of any class operating simultaneously in a given region, without prior Commission authorization, provided that the licensee:

(i) First notifies the Commission of the altered number of response stations of such class(es) to be operated simultaneously in such region, and certifies in that notification that it has complied with the requirements of paragraphs (g)(6)(ii) and (iii) of this section; and

(ii) Provides ITS with a copy of such notification and with an analysis establishing that such alteration will not result in any increase in interference to the protected service area or protected receive sites of any existing or previously-proposed, cochannel or adjacent channel MDS or ITFS station or booster station, to the protected service area of any MDS Basic Trading Area or Partitioned Service Area licensee entitled to protection pursuant to paragraph (d)(3) of this section, or to any existing or previously-proposed, cochannel or adjacent channel response station hub, or response station under § 21.940 of this chapter or § 74.940; or that the applicant for or licensee of such facility has consented to such interference; and

(iii) Serves a copy of such notification and analysis upon each party entitled to be served pursuant to paragraph (d)(4) of this section; and

(iv) Submits to the Commission, only upon Commission staff request, duplicates of the submissions required by paragraph (g)(6)(ii) of this section; and

(7) Where an application is granted under this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a facility operated under this section is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party; and

(8) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each response station hub with a response service area within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a response station hub with an associated response station contributing to such interference shall bear the joint and several obligation to promptly remedy all interference resulting from block downconverter overload at any ITFS receive site registered prior to the submission of the application for the response station hub license or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application for the response station hub license, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the response station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the response station hub licensee to prevent interference before constructing response stations and/or to remedy interference that may occur. In the event that more than one response station hub licensee contributes to block downconverter interference at a MDS or ITFS receive site, the licensees of the contributing response station hubs shall cooperate in good faith to remedy promptly the interference.

(h) Applicants must comply with part 17 of this chapter concerning notification to the Federal Aviation Administration of proposed antenna construction or alteration. The provisions of §§ 74.967 and 74.981(a)(5), concerning antenna painting and lighting requirements, apply to ITFS response stations and response station hubs, as well as to main and booster stations.

(i) Response station hubs shall be protected from cochannel and adjacent channel interference in accordance with the following criteria:

(1) An applicant for any new or modified MDS or ITFS station (including any high-power booster station or response station hub) shall be required to demonstrate interference protection to a response station hub within 160.94 km (100 miles) of the proposed facilities. In lieu of the interference protection requirements set

forth in §§ 21.902(i) of this chapter, 21.938(b)(3) of this chapter and 74.903, such demonstration shall establish that the proposed facility will not increase the effective power flux density of the undesired signals generated by the proposed facility and any associated main stations, booster stations or response stations at the response station hub antenna for any sector. In lieu of the foregoing, an applicant for a new MDS or ITFS main station license or for a new or modified response station hub or booster license may demonstrate that the facility will not increase the noise floor at a reception antenna of the response station hub by more than 1 dB for cochannel signals and 45 dB for adjacent channel signals, provided that:

(i) The entity submitting the application may only invoke this alternative once per response station hub reception sector; or

(ii) The licensee of the affected response station hub may consent to receive a certain amount of interference at its hub.

(2) Commencing upon the filing of an application for an ITFS response station hub license and until such time as the application is dismissed or denied or, if the application is granted, a letter informing the Commission of completion of construction is submitted, the ITFS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(i) of this chapter, 21.938(b)(3) of this chapter and 74.903, and to protection of the response station hub pursuant to the preceding paragraph. Unless the application for the response station hub license specifies that the same frequencies also will be employed for digital and/or analog point-to-multipoint transmissions by ITFS stations and/or ITFS booster stations, upon the submission of a letter informing the Commission of completion of construction of an ITFS response station hub where the channels of an ITFS station are being utilized as response station transmit frequencies, the ITFS station whose channels are being utilized for response station transmissions shall no longer be entitled to interference protection pursuant to §§ 21.902(i) of this chapter, 21.938(b)(3) of this chapter and 74.903 within the response service area with regard to any portion of any 6 MHz channel employed solely for response station communications. Upon the submission of a letter informing the Commission of completion of construction of an ITFS response station hub where the channels of an ITFS station are being utilized for response station transmissions and the application for the response station hub license specifies that the same frequencies will be employed for point-to-multipoint transmissions, the ITFS station whose channels are being utilized shall be entitled both to interference protection pursuant to §§ 21.902(i) of this chapter, 21.938(b)(3) of this chapter and 74.903, and to protection of the response station hub pursuant to the preceding provisions of this paragraph.

(j) ITFS response stations may operate on either all or part of a 6 MHz channel assigned a licensee, on any 125 kHz channel assigned a licensee, or on adjacent frequencies authorized to multiple licensees where such stations are operated jointly. The 125 kHz channels listed in the following table shall be assigned to the licensees of MDS and ITFS stations for use at response stations, or for licensing for point-to-multipoint transmissions pursuant to paragraph (l) of this section, in accordance with the table. The specified 125 kHz frequency channel may be subdivided to provide a distinct operating frequency for each of more than one station, or may be combined with adjacent channels, provided that digital modulation is employed in accordance with paragraph (a) of this section. The specified 125 kHz frequency channels also may be exchanged with the licensee of another MDS or ITFS station for use of another 125 kHz channel assigned to the other licensee.

Frequency (MHz)	Main channel designation	125 kHz channel designation
2686.0625	A1	I1
2686.1875	B1	I2
2686.3125	C1	I3
2686.4375	D1	I4
2686.5625	E1	I5
2686.6875	F1	I6
2686.8125	G1	I7
2686.9375	H1	I8
2687.0625	A2	I9
2687.1875	B2	I10
2687.3125	C2	I11
2687.4375	D2	I12
2687.5625	E2	I13
2687.6875	F2	I14
2687.8125	G2	I15
2687.9375	H2	I16
2688.0625	A3	I17
2688.1875	B3	I18
2688.3125	C3	I19
2688.4375	D3	I20
2688.5625	E3	I21
2688.6875	F3	I22
2688.8125	G3	I23
2688.9375	H3	I24
2689.0625	A4	I25
2689.1875	B4	I26
2689.3125	C4	I27
2689.4375	D4	I28
2689.5625	E4	I29
2689.6875	F4	I30
2689.8125	G4	I31

(k) 125 kHz wide response channels shall be subject to the following requirements: The 125 kHz wide channel shall be centered at the assigned frequency. If amplitude modulation is used, the carrier shall not be modulated in excess of 100%. If frequency modulation is used, the deviation shall not exceed ± 25 kHz. Any emissions outside the channel shall be attenuated at the channel edges at least 35 dB below peak output power when analog modulation is employed or 35 dB below licensed average output power when digital modulation is employed (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths). Any emissions more than 125 kHz from either channel edge, including harmonics, shall be attenuated at least 60 dB below peak output power when analog modulation is employed, or at least 60 dB below licensed average output power when digital modulation is employed (or, when subchannels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel bandwidths). Notwithstanding the foregoing, in situations where adjacent channel licensees jointly transmit over more than one channel utilizing digital

modulation, the maximum out-of-band power shall be attenuated at the edges of those combined channels at least 35 dB relative to the licensed average power level of each channel. Emissions more than 125 kHz from either edge of the combined channels, including harmonics, shall be attenuated at least 60 dB below peak analog power or licensed average digital power of each channel, as appropriate. Different types of emissions may be authorized for use on 125 kHz wide channels if the applicant describes fully the modulation and bandwidth desired, and demonstrates that the modulation selected will cause no more interference than is permitted under this paragraph. Greater attenuation may be required if interference is caused by out-of-channel emissions.

(l) Any MDS or ITFS conditional licensee or licensee who wishes to use one or more of its associated I channels for point-to-multipoint transmissions in a system with one or more authorized, or previously- or simultaneously-proposed, response station hub(s) shall:

(1) File FCC Form 331 with the Commission, filing with Mellon Bank for I channels associated with an MDS station, and filing with the Commission in Washington, DC for I channels associated with an ITFS station. The application shall specify which of the associated I channels is/are intended for point-to-multipoint transmissions. The applicant also shall certify on the appropriate form that it has complied with the requirements of paragraph (l)(2) of this section. Failure to certify compliance and to comply completely with the requirements of paragraph (l)(2) of this section shall result in dismissal of the application or revocation of the authorization for point-to-multipoint transmissions on the relevant I channels, and may result in imposition of a monetary forfeiture. Modification applications to convert I channels associated with ITFS stations to point-to-multipoint transmissions shall be considered minor changes for purposes of § 74.911. These applications shall be subject to the procedures set forth in § 21.27(d) of this chapter or § 74.911(e), as appropriate; and

(2) Submit to International Transcription Services, Inc., 1231 20th Street, N.W., Washington, DC 20036, both in hard copy, and on a 3.5″ computer diskette in ASCII, and likewise submit to the Commission, only upon Commission staff request:

(i) Duplicates of the Form 331 filed with Mellon Bank or with the Commission, as appropriate; and

(ii) The interference analyses required to be performed under § 21.902 of this chapter, and § 21.938 of this chapter where appropriate, including the provisions of §§ 21.909 of this chapter, 21.913 of this chapter, 74.939 and 74.985 regarding the protection of response station hubs and booster service areas from harmful electromagnetic interference, and including protection of stations authorized pursuant to §§ 21.940 of this chapter and 74.940 from harmful electromagnetic interference, using the appropriately adjusted interference protection values based upon the ratio of the bandwidths in use; and

(3) Except as provided in § 21.27(d) of this chapter or § 74.911(e), as appropriate, be permitted to file applications to convert associated I channels to point-to-multipoint transmissions at any time. I channels used for point-to-multipoint transmissions shall be afforded interference protection in the same manner as other point-to-multipoint MDS and ITFS facilities, with appropriate adjustment of the interference protection values for bandwidth. Notwithstanding any other provision of parts 21 and 74, applications to convert associated I channels to point-to-multipoint transmissions, meeting the requirements of paragraphs (l) (1) and (2) of this section, shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the proposed point-to-multipoint operations; and

(4) Notwithstanding the provisions of §§ 21.30(a)(4) of this chapter and 74.912, and except as provided in § 21.27(d) of this chapter or § 74.911(e), as appropriate, be subject to a petition to deny an application to convert associated I channels to point-to-multipoint transmissions that is filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding §§ 21.31 of this chapter and 74.911(d), and except as provided in § 21.27(d) of this chapter or § 74.911(e), as appropriate, an application to convert associated I channels to point-to-multipoint transmissions that meets the requirements of this paragraph shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 21.30(a) of this chapter or § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the I channels station until such time as the Commission issues an I channels station license for point-to-multipoint transmissions; and

(5) Where an application is granted under this paragraph, and a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a facility operated under this paragraph is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party.

(m) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the hub licensee as often as necessary to ensure that it is functioning in accordance with the requirements of the Commission's rules. The licensee of a response station hub is responsible for the proper operation of all associated response stations and must have reasonable and timely access to all station transmitters. Response stations shall be installed and maintained by the licensee of the associated hub station, or the licensee's employees or agents, and protected in such manner as to prevent tampering or operation by unauthorized persons. No response hub may lawfully communicate with any response station which has not been installed by an authorized person, and each response station hub licensee is responsible for maintaining, and making available to the Commission upon request, a list containing the customer name and site location (street address and latitude/longitude to the nearest second) of each associated response station, plus the technical parameters (e.g., EIRP, emission, bandwidth, and antenna pattern, height, orientation and polarization) pertinent to each specific response station.

(n) The transmitting apparatus employed at ITFS response stations shall have received type certification.

(o) An ITFS response station shall be operated only when engaged in communication with its associated ITFS response station hub or ITFS station, or

for necessary equipment or system tests and adjustments. Radiation of an unmodulated carrier and other unnecessary transmissions are forbidden.

(p) At least 20 days prior to the activation of a response station transmitter located within a radius of 1960 feet of a registered or previously-applied-for ITFS receive site, the response station hub licensee must notify, by certified mail, the licensee of the ITFS site of the intention to activate the response station. The notification must contain the street address and geographic coordinates (to the nearest second) of the response station, a specification of the station's EIRP, antenna pattern/orientation/height AMSL, channel(s) to be used, as well as the name and telephone number of a contact person who will be responsible for coordinating the resolution of any interference problems.

(q) Interference calculations shall be performed in accordance with Appendix D to the *Report and Order* in MM Docket No. 97–217, FCC 98–231, "Methods For Predicting Interference From Response Station Transmitters and To Response Station Hubs and For Supplying Data on Response Station Systems." Compliance with the out-of-band emission limitations shall be established in accordance with § 21.908(e) of this chapter.

41. New § 74.940 is added, to read as follows:

§ 74.940 Individually licensed 125 kHz channel ITFS response stations.

(a) The provisions of § 74.939 (a), (e), (h), (j), (k), (n) and (o), also shall apply with respect to authorization of a 125 kHz channel(s) ITFS response station not under a response station hub license. The applicant shall comply with the requirements of § 21.902 of this chapter, and § 21.938 of this chapter where appropriate, including the provisions of §§ 21.909 of this chapter, 21.913 of this chapter, 74.939 and 74.985 regarding the protection of response station hubs and booster service areas from harmful electromagnetic interference, using the appropriately adjusted interference protection values based upon the ratio of the bandwidths in use, where the authorized or previously-proposed cochannel or adjacent channel station is operated or to be operated in a system with one or more response station hub(s).

(b) An application for a license to operate a new or modified 125 kHz channel(s) ITFS response station not under a response station hub license shall be filed with the Commission in Washington, DC, on FCC Form 330. The applicant shall supply the following information on that form for each response station:

(1) The geographic coordinates and street address of the ITFS response station transmitting antenna; and

(2) The manufacturer's name, type number, operating frequency, and power output of the proposed ITFS response station transmitter; and

(3) The type of transmitting antenna, power gain, azimuthal orientation and polarization of the major lobe of radiation in degrees measured clockwise from True North; and

(4) A sketch giving pertinent details of the ITFS response station transmitting antenna installation including ground elevation of the transmitter site above mean sea level; overall height above ground, including appurtenances, of any ground-mounted tower or mast on which the transmitting antenna will be mounted or, if the tower or mast is or will be located on an existing building or other manmade structure, the separate heights above ground of the building and the tower or mast including appurtenances; the location of the tower or mast on the building; the location of the transmitting antenna on the tower or mast; and the overall height of the transmitting antenna above ground.

(c) Each ITFS response station licensed under this section shall comply with the following:

(1) No ITFS response station shall be located beyond the protected service area of the ITFS station with which it communicates; and

(2) No ITFS response station shall operate with a transmitter output power in excess of 2 watts; and

(3) No ITFS response station shall operate at an excess of 16 dBW EIRP.

(d) During breaks in communications, the unmodulated carrier frequency shall be maintained within 35 kHz of the assigned frequency at all times. Adequate means shall be provided to insure compliance with this rule.

(e) Each ITFS response station shall employ a directive transmitting antenna oriented towards the transmitter site of the associated ITFS station or towards the response station hub with which the ITFS response station communicates. The beamwidth between half power points shall not exceed 15° and radiation in any minor lobe of the antenna radiation pattern shall be at least 20 dB below the power in the main lobe of radiation.

(f) A response station may be operated unattended. The overall performance of the response station transmitter shall be checked by the licensee of the station or hub receiving the response signal, or by the licensee's employees or agents, as often as necessary to ensure that the transmitter is functioning in accordance with the requirements of the Commission's rules. The licensee of the station or hub receiving the response signal is responsible for the proper operation of the response station and must have reasonable and timely access to the response station transmitter. The response station shall be installed and maintained by the licensee of the associated station or hub, or the licensee's employees or agents, and protected in such manner as to prevent tampering or operation by unauthorized persons. No response station which has not been installed by an authorized person may lawfully communicate with any station or hub.

§ 74.950 [Removed]

42. Section 74.950 is removed.

43. In § 74.951, paragraph (b) is revised to read as follows:

§ 74.951 Modification of transmission systems.

* * * * *

(b) Any change in the antenna system affecting the direction of radiation, directive radiation pattern, antenna gain, or radiated power; provided, however, that a licensee may install a sectorized antenna system without prior consent if such system does not change polarization or result in an increase in radiated power by more than one dB in any direction, and notice of such installation is provided to the Commission on FCC Form 331 within ten (10) days of installation.

* * * * *

44. Section 74.952 is revised to read as follows:

§ 74.952 Acceptability of equipment for licensing.

ITFS transmitters must be type certified by the Commission for the particular signals that will be employed in actual operation. Either the manufacturer or the licensee must obtain transmitter certification for the transmitter by filing an application for certification with appropriate information concerning the signal waveforms and measurements.

45. In § 74.961, paragraph (a) is revised to read as follows:

§ 74.961 Frequency tolerance.

(a) The frequency of any ITFS station, or of any ITFS booster station authorized pursuant to § 74.985(b), shall be maintained within ±1 kHz of the assigned frequency at all times when the station is in operation. ITFS 65125booster

stations authorized pursuant to § 74.985(e) and ITFS response stations authorized pursuant to § 74.939 shall employ transmitters with sufficient frequency stability to ensure that the emission stays within the authorized bandwidth. A transmitter licensed prior to November 1, 1991, that remains at the station site initially licensed and does not comply with this paragraph may continue to be used for its life if it does not cause harmful interference to the operation of any other licensee. Any non-conforming transmitter replaced after November 1, 1991, must be replaced by a transmitter meeting the requirements of this paragraph.

* * * * *

46. Section 74.965 is revised to read as follows.

§ 74.965 Posting of station license.

(a) The instrument of authorization, a clearly legible photocopy thereof, or the name, address and telephone number of the custodian of the instrument of authorization shall be available at each station, booster station authorized pursuant to § 74.985(b) and ITFS response station hub. Each operator of an ITFS booster station shall post at the booster station the name, address and telephone number of the custodian of the notification filed pursuant to § 74.985(e) if such notification is not maintained at the booster station.

(b) If an ITFS station, an ITFS booster station or an ITFS response station hub is operated unattended, the call sign and name of the licensee shall be displayed such that it may be read within the vicinity of the transmitter enclosure or antenna structure.

47. In § 74.982, paragraph (b) is revised, and new paragraph (g) is added, to read as follows:

§ 74.982 Station identification.

* * * * *

(b) Except as otherwise provided in paragraphs (c) and (d) of this section, each instructional television fixed station solely utilizing analog transmissions shall transmit its call sign at the beginning and end of each period of operation and, during operation, on the hour. Visual or aural transmissions shall be employed.

* * * * *

(g) The provisions of paragraphs (b) through (e) of this section shall not apply to any ITFS licensee's station or transmissions where digital transmissions are utilized by the ITFS licensee on any of its licensed or shifted channels.

48. Section 74.985 is revised to read as follows:

§ 74.985 Signal booster stations.

(a) An ITFS booster station may reuse channels to repeat the signals of ITFS stations or to originate signals on ITFS channels. The aggregate power flux density generated by an ITFS station and all associated signal booster stations and all simultaneously operating cochannel response stations licensed to or applied for by the applicant may not exceed –73 dBW/m² (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel or 125 kHz bandwidths) at or beyond the boundary of the protected service area, as defined by § 21.902(d)(1) of this chapter, of the main ITFS station whose channels are being reused, as measured at locations for which there is an unobstructed signal path, unless the consent of the cochannel licensee is obtained.

(b) An ITFS licensee or conditional licensee who is a response station hub licensee, conditional licensee or applicant may secure a license for an ITFS signal booster station that has a maximum power level in excess of –9 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth) and that employs only digital modulation with uniform power spectral density in accordance with the Commission's Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996) (a "high-power ITFS signal booster station"). The applicant for a high-power ITFS signal booster station shall file FCC Form 331 with the Commission in Washington, DC, and certify on that form that the applicant has complied with the additional requirements of paragraph (b) of this section. Failure to certify compliance and to comply completely with the following requirements of paragraph (b) of this section shall result in dismissal of the application or revocation of the high-power ITFS signal booster station license, and may result in imposition of a monetary forfeiture. The applicant for a high-power ITFS signal booster station additionally is required to submit to International Transcription Services, Inc., 1231 20th Street, N.W., Washington, DC 20036, both in hard copy, and on a 3.5" computer diskette in ASCII, and likewise to submit to the Commission, only upon Commission staff request, duplicates of the Form 331 filed with the Commission, and the following information:

(1) A demonstration that the proposed signal booster station site is within the protected service area, as defined in § 21.902(d)(1) of this chapter, of the main ITFS station whose channels are to be reused; and

(2) A demonstration that the booster service area is entirely within the protected service area of the ITFS station whose channels are being reused, or in the alternative, that the licensee entitled to any cochannel protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(3) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(4) A study which demonstrates that the aggregate power flux density of the ITFS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant does not exceed –73 dBW/m² (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel or 125 kHz bandwidths) at or beyond the boundary of the protected service area of the main ITFS station whose channels are to be reused, as measured at locations for which there is an unobstructed signal path, unless the consent of affected licensees has been obtained; and

(5) In lieu of the requirements of § 74.903, a study which demonstrates that the proposed signal booster station will cause no harmful interference (as defined in § 74.903(a) (1) and (2)) to cochannel and adjacent channel, authorized or previously-proposed ITFS and MDS stations with protected service area center coordinates as specified in § 21.902(d) of this chapter, to any authorized or previously-proposed response station hubs, booster service areas, or I channel stations associated with such ITFS and MDS stations, or to any previously-registered ITFS receive sites, within 160.94 kilometers (100 miles) of the proposed booster station's transmitter site. Such study shall consider the undesired signal levels generated by the proposed signal booster station, the main station, all other licensed or previously-proposed associated booster stations, and all simultaneously operating cochannel response stations licensed to or applied for by the applicant. In the alternative, a statement from the affected MDS or ITFS licensee or conditional licensee stating that it does not object to operation of the high-power ITFS signal booster station may be submitted; and

(6) A description of the booster service area; and

(7) A certification that copies of the materials set forth in paragraph (b) of this section have been served upon the licensee or conditional licensee of each station (including each response station hub and booster station) required to be studied pursuant to paragraph (b)(5) of this section, and upon any affected holder of a BTA or PSA authorization pursuant to paragraph (b)(4) of this section.

(c) Applications for high-power ITFS signal booster station licenses shall be deemed minor change applications and, except as provided in § 74.911(e), may be filed at any time. Notwithstanding any other provision of part 74, applications for high-power ITFS signal booster station licenses meeting the requirements of paragraph (b) of this section shall cut-off applications that are filed on a subsequent day for facilities that would cause harmful electromagnetic interference to the proposed booster stations.

(d) Notwithstanding the provisions of § 74.912 and except as provided in § 74.911(e), any petition to deny an application for a high-power ITFS signal booster station license shall be filed no later than the sixtieth (60th) day after the date of public notice announcing the filing of such application or major amendment thereto. Notwithstanding § 74.911(d) and except as provided in § 74.911(e), an application for a high-power ITFS signal booster station license that meets the requirements of paragraph (b) of this section shall be granted on the sixty-first (61st) day after the Commission shall have given public notice of the acceptance for filing of it, or of a major amendment to it if such major amendment has been filed, unless prior to such date either a party in interest timely files a formal petition to deny or for other relief pursuant to § 74.912, or the Commission notifies the applicant that its application will not be granted. Where an application is granted pursuant to the provisions of this paragraph, the conditional licensee or licensee shall maintain a copy of the application at the ITFS booster station until such time as the Commission issues a high-power ITFS signal booster station license.

(e) Eligibility for a license for an ITFS signal booster station that has a maximum power level of –9 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth) (a "low-power ITFS signal booster station") shall be restricted to an ITFS licensee or conditional licensee. A low-power ITFS signal booster station may operate only on one or more ITFS channels that are licensed to the licensee of the ITFS booster station, but may be operated by a third party with a fully-executed lease or consent agreement with the ITFS conditional licensee or licensee. An ITFS licensee or conditional licensee may install and commence operation of a low-power ITFS signal booster station for the purpose of retransmitting the signals of the ITFS station or for originating signals. Such installation and operation shall be subject to the condition that for sixty (60) days after installation and commencement of operation, no objection or petition to deny is filed by an authorized cochannel or adjacent channel ITFS or MDS station with a transmitter within 8.0 kilometers (5 miles) of the coordinates of the low-power ITFS signal booster station. An ITFS licensee or conditional licensee seeking to install a low-power ITFS signal booster station under this rule must, within 48 hours after installation, submit FCC Form 331 to the Commission in Washington, DC, and submit to International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, both in hard copy, and on a 3.5″ computer diskette in ASCII, duplicates of the Form 331 filed with the Commission, and the following (which also shall be submitted to the Commission only upon Commission staff request at any time):

(1) A description of the signal booster technical specifications (including an antenna envelope plot or, if the envelope plot is on file with the Commission, the make and model of the antenna, antenna gain and azimuth), the coordinates of the booster, the height of the center of radiation above mean sea level, the street address of the signal booster, and a description of the booster service area; and

(2) A demonstration that the booster service area is entirely within the protected service area of the station whose channels are being reused, or, in the alternative, that the licensee entitled to any protected service area which is overlapped by the proposed booster service area has consented to such overlap; and

(3) A demonstration that the proposed booster service area can be served by the proposed booster without interference; and

(4) A certification that no Federal Aviation Administration determination of No Hazard to Air Navigation is required under part 17 of this chapter or, if such determination is required, either

(i) A statement of the FCC Antenna Structure Registration Number; or

(ii) If an FCC Antenna Structure Registration Number has not been assigned for the antenna structure, the filer must indicate the date the application by the antenna structure owner to register the antenna structure was filed with the FCC in accordance with part 17 of this chapter; and

(5) A certification that

(i) The maximum power level of the signal booster transmitter does not exceed –9 dBW EIRP (or, when subchannels or superchannels, or 125 kHz channels, are used, the appropriately adjusted value based upon the ratio of 6 MHz to the subchannel or superchannel, or 125 kHz, bandwidth); and

(ii) Where the booster is operating on channel D4, E1, F1, E2, F2, E3, F3, E4, F4 and/or G1, no registered receiver of an ITFS E or F channel station, constructed prior to May 26, 1983, is located within a 1 mile (1.61 km) radius of the coordinates of the booster, or in the alternative, that a consent statement has been obtained from the affected ITFS licensee; and

(iii) The applicant has complied with § 1.1307 of this chapter; and

(iv) Each MDS and/or ITFS station licensee (including the licensees of booster stations and response station hubs) with protected service areas and/or registered receivers within a 8 km (5 mile) radius of the coordinates of the booster has been given notice of its installation; and

(v) The signal booster site is within the protected service area of the ITFS station whose channels are to be reused; and

(vi) The aggregate power flux density of the ITFS station and all associated booster stations and simultaneously operating cochannel response stations licensed to or applied for by the applicant does not exceed –73 dBW/m2 (or, when subchannels or 125 kHz channels are used, the appropriately adjusted value based upon the ratio of the channel-to-subchannel or 125 kHz bandwidths) at or beyond the boundary of the protected service area of the main ITFS station whose channels are to be reused, as measured at locations for which there is an unobstructed signal path, unless the consent of affected licensees has been obtained; and

(vii) The antenna structure will extend less than 6.10 meters (20 feet) above the ground or natural formation or less than 6.10 meters (20 feet) above an existing manmade structure (other than an antenna structure); and

(viii) The ITFS conditional licensee or licensee understands and agrees that in

the event harmful interference is claimed by the filing of an objection or petition to deny, the conditional licensee or licensee must terminate operation within two (2) hours of notification by the Commission, and must not recommence operation until receipt of written authorization to do so by the Commission.

(f) Commencing upon the filing of an application for a high-power ITFS signal booster station license and until such time as the application is dismissed or denied or, if the application is granted, a letter informing the Commission of completion of construction is submitted, an applicant for any new or modified MDS or ITFS station (including any response station hub, high-power booster station, or I channels station) shall demonstrate compliance with the interference protection requirements set forth in §§ 21.902(i) of this chapter, 21.938(b)(3) of this chapter or 74.903 with respect to any previously-proposed or authorized booster service area both using the transmission parameters of the high-power ITFS signal booster station (e.g., EIRP, polarization(s) and antenna height) and the transmission parameters of the ITFS station whose channels are to be reused by the high-power ITFS signal booster station. Upon the submission of a letter informing the Commission of completion of construction of an ITFS booster station applied for pursuant to paragraph (b) of this section, or upon the submission of an ITFS booster station notification pursuant to paragraph (e) of this section, the ITFS station whose channels are being reused by the ITFS signal booster shall no longer be entitled to interference protection pursuant to §§ 21.902(i) of this chapter, 21.938(b)(3) of this chapter and 74.903 within the booster service area based on the transmission parameters of the ITFS station whose channels are being reused. A booster station shall not be entitled to protection from interference caused by facilities proposed on or prior to the day the application or notification for the booster station is filed. A booster station shall not be required to protect from interference facilities proposed on or after the day the application or notification for the booster station is filed.

(g) Where an application is granted under paragraph (d) of this section, if a facility operated pursuant to that grant causes harmful, unauthorized interference to any cochannel or adjacent channel facility, it must promptly remedy the interference or immediately cease operations of the interfering facility, regardless of whether any petitions to deny or for other relief were filed against the application during the application process. The burden of proving that a high-power ITFS signal booster station is not causing harmful, unauthorized interference lies on the licensee of the alleged interfering facility, following the filing of a documented complaint of interference by an affected party.

(h) In the event any MDS or ITFS receive site suffers interference due to block downconverter overload, the licensee of each signal booster station within five miles of such receive site shall cooperate in good faith to expeditiously identify the source of the interference. Each licensee of a signal booster station contributing to such interference shall bear the joint and several obligation to promptly remedy all interference resulting from block downconverter overload at any ITFS receive site registered prior to the submission of the application or notification for the signal booster station or at any receive site within an MDS or ITFS protected service area applied for prior to the submission of the application or notification for the signal booster station, regardless of whether the receive site suffering the interference was constructed prior to or after the construction of the signal booster station(s) causing the downconverter overload; provided, however, that the licensee of the registered ITFS receive site or the MDS or ITFS protected service area must cooperate fully and in good faith with efforts by the signal booster station licensee to prevent interference before constructing the signal booster station and/or to remedy interference that may occur. In the event that more than one signal booster station licensee contributes to block downconverter interference at a MDS or ITFS receive site, the licensees of the contributing signal booster stations shall cooperate in good faith to remedy promptly the interference.

49. In § 74.986, paragraph (a) is revised, and new paragraph (a)(8) is added, to read as follows:

§ 74.986 Involuntary ITFS station modifications.

(a) Parties specified in paragraph (b) of this section may, subject to Commission approval, involuntarily modify the facilities of an existing ITFS licensee in the following situations:

* * * * *

(8) There are no response station hubs licensed to or previously-proposed by any of the parties specified in paragraph (b) of this section, in the same system as the existing ITFS licensee of whose facilities involuntary modification is sought; however, in no event shall the Commission approve an involuntary retuning of an existing ITFS licensee's station to other frequencies, except as provided in § 74.902(i) through (k).

* * * * *

50. The alphabetical index to part 74 is amended by adding "ITFS" as the last entry under the "Changes of Equipment" heading; removing the "ITFS" entry from under the "Equipment and installation" heading; removing the "ITFS" entry from under the "Equipment Performance" heading; revising the entries under the "ITFS" heading; removing the "ITFS" entry from under the "Remote control operation" heading; revising the "Signal boosters, UHF translator (LPTV/TV Translators)" heading to read "Signal boosters", and adding entries under the "Signal boosters" heading; removing the "Mutually exclusive applications, selection procedure (ITFS)" heading; revising the "Response stations (ITFS)" heading; and adding in alphabetical order a "Response station hubs (ITFS)" heading and a "Wireless cable usage of ITFS" heading, to read as follows:

ALPHABETICAL INDEX—PART 74

. . . . . .

Changes of Equipment—

. . . . . .

ITFS 74.951

. . . . . .

ITFS—

Application processing 74.911

ALPHABETICAL INDEX—PART 74—Continued

Application requirements from part 73	74.910
Interference	74.903
Petition to deny	74.912
Purpose and permissible service	74.931
Response station hubs	74.939
Response stations (individually licensed)	74.940
Signal booster stations	74.985
Transmission standards	74.938
Wireless cable use	74.990
. . . . .	
Response station hubs (ITFS)	74.939
Response stations (ITFS; individually licensed)	74.940
. . . . .	
Signal boosters—	
UHF translator (LPTV/TV Translators)	74.733
ITFS	74.985
. . . . .	
W	
Wireless cable usage of ITFS	74.990
. . . . .	

[FR Doc. 98–31334 Filed 11–24–98; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket No. OST–98–4777]

RIN 2105–AC74

Amendments to Opiate Threshold Levels

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This final rule makes conforming changes to the Department's drug testing procedures to incorporate changes made by the Department of Health and Human Services (DHHS) in the threshold levels of opiates. It is essential for the Department's drug testing procedures to remain consistent with the DHHS Guidelines, as Congress provided in the Omnibus Transportation Employee Testing Act of 1991.

EFFECTIVE DATE: The final rule takes effect on December 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Room 10424, (202–366–9306); 400 7th Street, SW., Washington, DC 20590 or Mary Bernstein, Director, Office of Drug and Alcohol Policy and Compliance, Room 5405, (202–366–3784); 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On September 30, 1997, the Department of Health and Human Services (DHHS) published the final amendments to its Mandatory Guidelines for Federal Workplace Testing Programs (DHHS Guidelines) and indicated that May 1, 1998 would be the effective date for implementing these amendments. The amendments raised the initial and confirmatory test opiate thresholds from 300 nanograms per milliliter (ng/ml) to 2000 ng/ml. The DHHS amendments also established a new requirement to test for 6-acetylmorphine (6-AM), a metabolite that comes only from heroin, using a 10 ng/ml confirmatory level, for specimens that have tested positive for morphine on the confirmatory test at the 2000 ng/ml level.

DHHS made changes to the testing cutoff levels for opiates following a notice and opportunity for comment. DHHS received 22 comments, of which a majority favored their proposal. Under the previous standards, 87 percent of laboratory positive opiate specimens were verified as negative by medical review officers (MROs). DHHS anticipates that these amendments will eliminate the identification of most individuals legitimately taking prescriptions including morphine or codeine or who have ingested poppy seeds.

Subsequent to the publication of the final amendments, it became clear that manufacturers would not be able to provide a sufficient supply of the modified opiate test kits by the May 1, 1998 effective date. On February 4, 1998, DHHS sent a letter to all Federal agencies, HHS certified and applicant drug testing laboratories, and immunoassay kit manufacturers informing them that the effective date would be delayed 4 to 6 months beyond the May 1, 1998 effective date.

DHHS chose December 1, 1998 as the new effective date for implementing the new opiate testing cutoff levels. DHHS was satisfied that manufacturers of test kits can provide an adequate supply of the modified opiate test kits to the laboratories by the December 1, 1998 effective date and that the laboratories would be able to use these opiate test kits to conduct the initial and confirmatory tests at the revised testing levels for opiates.

It is essential for the Department's drug testing procedures to remain consistent with the DHHS Guidelines, as Congress provided in the Omnibus Transportation Employee Testing Act of 1991. Consistency is also necessary to avoid confusion in the testing process. For these reasons, the Department is making conforming changes to its drug testing procedures in 49 CFR Part 40.

Regulatory Process Matters

The final rule is considered to be a nonsignificant rulemaking under the DOT Regulatory Policies and Procedures. It is also a nonsignificant rule for purposes of Executive Order 12886. The Department certifies, under the Regulatory Flexibility Act, that the final rule does not have a significant economic effect on a substantial number of small entities. The rule does not impose any costs or burdens on regulated entities; since it will result in

fewer opiate positives having to be reviewed by medical review officers. The rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Issuance of Final Rule Without Opportunity for Notice and Comment

With respect to the amendments to 49 CFR Part 40 concerning opiate testing levels, the Department has determined that it would be impracticable, unnecessary, or contrary to the public interest to provide an opportunity for notice and comment under 5 U.S.C. 553(b). These amendments are conforming amendments making the Department's drug testing procedures consistent with those of DHHS, as is required under the Omnibus Transportation Employee Testing Act of 1991. Before publishing its amendments to the DHHS Guidelines, DHHS solicited, received, and responded to public comment on the identical provisions. Since there has already been an opportunity for public comment on the substance of the changes and consistency is necessary to avoid confusion in the testing process, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective less than 30 days from the date of publication in the **Federal Register**.

Paperwork Reduction Act

This rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq).

Unfunded Mandates Reform Act of 1995

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rulemaking.

Office of the Secretary of Transportation

List of Subjects in 49 CFR Part 40

Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

For the reasons set forth in the preamble, the Office of the Secretary amends 49 CFR Part 40 as follows:

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

1. The authority citation for Part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322; 49 U.S.C. App. 1301 nt., app. 1434 nt., app. 2717.; app. 1618a.

§ 40.29 [Amended]

2. In section 40.29(e)(1), the initial test level for opiates appearing in the table is amended by revising the value "300" to "2000" and deleting the footnote "*" that had specified a 25 ng/ml testing level if the immunoassay test was specific for free morphine.

3. In section 40.29(f)(1), the confirmatory test level for morphine appearing in the table is amended by revising the value from "300" to "2000".

4. In section 40.29(f)(1), the confirmatory test level for codeine appearing in the table is amended by revising the value from "300" to "2000".

5. In section 40.29(f)(1), the table is amended by adding a new line under opiates to read as follows:

§ 40.29 Laboratory analysis procedures.

	Confirmatory test cutoff levels (ng/ml)
. . . . .	
6-Acetylmorphine [4]	10 ng/ml.
. . . . .	

[4] Test for 6–AM when morphine concentration exceeds 2,000 ng/ml.

Issued this 17th day of November, 1998, at Washington, D.C.

Rodney E. Slater,

Secretary.

[FR Doc. 98–31495 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 230

[I.D. 022398A]

Whaling Provisions: Aboriginal Subsistence Whaling Quotas

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Revision of aboriginal subsistence whaling quota.

SUMMARY: The U.S. Government and Russian Federation have concluded bilateral arrangements to ensure that the quotas for bowhead whales and gray whales set at the 1997 Annual Meeting of the International Whaling Commission are not exceeded. In response, NMFS is revising the 1998 quota for bowhead whales from 77 bowhead whales struck to 75 bowhead whales struck. The gray whale quota for 1998 remains 5 gray whales landed. The revised bowhead quota will govern the harvest of bowhead whales by members of the Alaska Eskimo Whaling Commission.

FOR FURTHER INFORMATION CONTACT: Catherine Corson, (301) 713–2322.

SUPPLEMENTARY INFORMATION: So that the 1998 quota of bowhead strikes is not exceeded, the Russian natives may use no more than 7 strikes, and the Alaska Eskimos may use no more than 75 strikes. Each side will ensure that the numbers specified in this paragraph for its native group are not exceeded. The two sides plan to confer on monitoring of the 1999 quota, including any strikes that may be carried forward from 1998.

Likewise, so that the 1998 quota of gray whales is not exceeded, the bilateral arrangements concluded that the Makah Indian Tribe may take no more than five gray whales, and the Russian natives may take no more than 135 gray whales. Each side will ensure that the numbers specified in this paragraph for its native group are not exceeded. The two sides plan to confer on monitoring of the 1999 quota.

Dated: November 16, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31521 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 111698D]

Fisheries of the Exclusive Economic Zone Off Alaska; Bycatch Rate Standards for the First Half of 1999

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Pacific halibut and red king crab bycatch rate standards; request for comments.

SUMMARY: NMFS announces the Pacific halibut and red king crab bycatch rate standards for the first half of 1999.

Publication of these bycatch rate standards is necessary under regulations implementing the vessel incentive program. This action is necessary to implement the bycatch rate standards for trawl vessel operators who participate in the Alaska groundfish trawl fisheries. The intent of this action is to reduce prohibited species bycatch rates and promote conservation of groundfish and other fishery resources.

DATES: Effective 1201 hours, Alaska local time (A.l.t.), January 20, 1999, through 2400 hours, A.l.t., June 30, 1999. Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., December 24, 1998.

ADDRESSES: Comments should be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel; or be delivered to 709 West 9th Street, Federal Building, Room 401, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the exclusive economic zone of the Bering Sea and Aleutian Islands management area (BSAI) and Gulf of Alaska (GOA) according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing these FMPs and governing the U.S. groundfish fisheries appear at 50 CFR part 679.

Regulations at § 679.21(f) implement a vessel incentive program to reduce halibut and red king crab bycatch rates in the groundfish trawl fisheries. Under the incentive program, operators of trawl vessels may not exceed Pacific halibut bycatch rate standards specified for the BSAI and GOA midwater pollock and "other trawl" fisheries, and the BSAI yellowfin sole and bottom pollock fisheries. Vessel operators also may not exceed red king crab bycatch standards specified for the BSAI yellowfin sole and "other trawl" fisheries in Bycatch Limitation Zone 1 (defined in § 679.2). The fisheries included under the incentive program are defined in regulations at § 679.21(f)(2).

Regulations at § 679.21(f)(3) require publication of halibut and red king crab bycatch rate standards for each fishery included under the incentive program. The standards are in effect for specified seasons within the 6-month periods of January 1 through June 30, and July 1 through December 31. Because the Alaskan groundfish fisheries are closed to trawling from January 1 to January 20 of each year (§ 679.23(c)), the Administrator, Alaska Region, NMFS (Regional Administrator) is promulgating bycatch rate standards for the first half of 1999 effective from January 20, 1999, through June 30, 1999.

As required by § 679.21(f)(4), bycatch rate standards are based on the following information:

(A) Previous years' average observed bycatch rates;

(B) Immediately preceding season's average observed bycatch rates;

(C) The bycatch allowances and associated fishery closures specified under § 679.20;

(D) Anticipated groundfish harvests;

(E) Anticipated seasonal distribution of fishing effort for groundfish; and

(F) Other information and criteria deemed relevant by the Regional Administrator.

At its October 1998 meeting, the Council reviewed halibut and red king crab bycatch rates experienced by vessels participating in the fisheries under the incentive program during 1994–1998. Based on this and other information presented below, the Council recommended halibut and red king crab bycatch rate standards for the first half of 1999. These standards are unchanged from those specified for the past 5 years. Table 1 lists the Council's recommended bycatch rate standards.

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1999 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA

Fishery and quarter	1999 bycatch rate standard
Halibut bycatch rate standards (kilogram (kg) of halibut/metric ton (mt) of groundfish catch	
BSAI Midwater pollock:	
Qt 1	1.0
Qt 2	1.0
BSAI Bottom pollock:	
Qt 1	7.5
Qt 2	5.0
BSAI Yellowfin sole:	
Qt 1	5.0
Qt 2	5.0
BSAI Other trawl:	
Qt 1	30.0
Qt 2	30.0
GOA Midwater pollock:	
Qt 1	1.0
Qt 2	1.0
GOA Other trawl:	
Qt 1	40.0
Qt 2	40.0
Zone 1 red king crab bycatch rate standards (number of crab/mt of groundfish catch)	
BSAI yellowfin sole:	
Qt 1	2.5
Qt 2	2.5
BSAI Other trawl:	
Qt 1	2.5

TABLE 1.—BYCATCH RATE STANDARDS, BY FISHERY AND QUARTER, FOR THE FIRST HALF OF 1999 FOR PURPOSES OF THE VESSEL INCENTIVE PROGRAM IN THE BSAI AND GOA—Continued

Fishery and quarter	1999 bycatch rate standard
Qt 2	2.5

Bycatch Rate Standards for Pacific Halibut

The BSAI pollock roe season begins January 20 and ends April 15. In 1998, NMFS closed the inshore and offshore component fisheries for pollock 5 to 11 weeks prior to April 15, depending on the processing component and area. Directed fishing for pollock by the inshore and offshore component fisheries did not reopen until September 1, the start of the pollock non-roe season. Directed fishing for pollock by vessels participating in the community development quota program could continue after the end of roe season. However, the community development quota pollock fishery did not resume until just prior to September 1. As in past years, the directed fishing allowances specified for the 1999 pollock roe season likely will be reached before the end of the roe season on April 15.

As in past years, the halibut bycatch rate standard recommended for the BSAI and GOA midwater pollock fisheries (1 kg halibut/mt of groundfish) is higher than the bycatch rates normally experienced by vessels participating in these fisheries. The recommended standard is intended to encourage vessel operators to maintain off-bottom trawl operations and limit further bycatch of halibut in the pollock fishery when halibut bycatch restrictions at § 679.21 prohibit directed fishing for pollock by vessels using non-pelagic trawl gear.

The recommended halibut bycatch rate standards for the first calendar quarter BSAI bottom pollock fishery approximate the average rates observed on trawl vessels participating in this fishery during 1998 (7.87 kg halibut/mt groundfish). Though these rates are slightly higher than the average bycatch rate observed during 1994–1997, the recommended halibut bycatch rate standard remains at 7.5 kg halibut/mt groundfish to discourage unacceptably high halibut bycatch rates. The bycatch rate standard for the second quarter remains at 5 kg halibut/mt groundfish even though little fishing for pollock is anticipated during this period.

At its June 1998 meeting, the Council adopted a management measure that would prohibit the use of non-pelagic trawl gear in the BSAI pollock fishery. NMFS currently is preparing a proposed rule, that if approved, would implement the Council's intent and further reduce halibut bycatch mortality and bycatch rates in the pollock fishery. At this time, NMFS does not anticipate that the proposed prohibition on the use of non-pelagic trawl gear in the pollock fishery would be effective prior to the 1999 pollock non-roe season on September 1.

Other factors that could affect the spatial and temporal distribution of the directed pollock fishery include the 1999 allocations of pollock among the inshore and offshore fleets under the American Fisheries Act and conservation measures that may be necessary under the Endangered Species Act to mitigate potential fishery impacts on Steller sea lions. At this time, the effect of these changes on halibut bycatch rates in the pollock fishery are unknown.

Data available on halibut bycatch rates in the yellowfin sole fishery during the first and second quarters of 1998 showed average bycatch rates of 9.65 and 6.57 kg halibut/mt of groundfish, respectively. These rates are slightly higher than in past years, but the Council has presumed that a bycatch rate standard of 5.0 kg halibut/mt of groundfish for the yellowfin sole fishery will continue to encourage vessel operators to take action to avoid excessively high bycatch rates of halibut.

For the "other trawl" fisheries, the Council recommended a 30 kg halibut/mt of groundfish bycatch rate standard for the BSAI and a 40 kg halibut/mt of groundfish bycatch rate standard for the GOA. Observer data collected from the 1998 BSAI "other trawl" fishery show first and second quarter halibut bycatch rates of 12.07 and 13.78 kg halibut/mt of groundfish, respectively. Observer data collected from the 1998 GOA "other trawl" fishery show first and second quarter halibut bycatch rates of 26.23 and 57.15 kg halibut/mt of groundfish, respectively.

With the exception of the GOA second quarter "other trawl" fishery, the average bycatch rates experienced by vessels participating in the GOA and BSAI "other trawl" fisheries have been lower than the Council's recommended bycatch rate standards for these fisheries. The Council determined that its recommended halibut bycatch rate standards for the "other trawl" fisheries, including the second quarter GOA fishery, would continue to provide an incentive to vessel operators to avoid unusually high halibut bycatch rates while participating in these fisheries and contribute towards an overall reduction in halibut bycatch rates experienced in the Alaska trawl fisheries. Furthermore, these standards would provide some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts. The bycatch rates of halibut and crab could increase for those vessels using large mesh sizes, but the Council recommended maintaining the current bycatch rate standards for the "other trawl" fisheries until data becomes available that would provide a basis for bycatch rate standards for vessels using large mesh trawl gear.

Bycatch Rate Standards for Red King Crab

For the BSAI yellowfin sole and "other trawl" fisheries in Zone 1 of the Bering Sea subarea, the Council's recommended red king crab bycatch rate standard is 2.5 crab/mt of groundfish. This standard is unchanged since 1992. The red king crab bycatch rates experienced by the yellowfin sole fishery in Zone 1 during the first and second quarters of 1998 averaged 0.01 and 0.03 crab/mt of groundfish, respectively. The average bycatch rates of red king crab experienced in the "other trawl" fishery during the first and second quarter of 1998 were 0.12 and 0.01 crab/mt groundfish, respectively. The low 1998 red king crab bycatch rates primarily were due to trawl closures in Zone 1 that were implemented to reduce red king crab bycatch.

During 1998 through October, the total bycatch of red king crab by trawl vessels fishing in Zone 1 is estimated at 37,000 crab, considerably less than the 100,000 red king crab bycatch limit established for the trawl fisheries in Zone 1. NMFS anticipates that the 1999 red king crab bycatch in Zone 1 will increase relative to 1998 because the bycatch limit will double to 200,000 crab under criteria set out at

§ 679.21(e)(1)(i). The increased bycatch limit as well as the increased abundance of crab upon which the bycatch limit is based could result in increased red king crab bycatch rates, but the magnitude of any such increase is unknown at this time.

In spite of anticipated 1999 red king crab bycatch rates being significantly lower than 2.5 red king crab/mt of groundfish, the Council recommended the red king crab bycatch rate standards be maintained at this level to avoid unusually high crab bycatch rates while providing some leniency to those vessel operators that choose to use large mesh trawl gear as a means to reduce groundfish discard amounts.

The Regional Administrator has determined that Council recommendations for bycatch rate standards are appropriately based on the information and considerations necessary for such determinations under § 679.21(f). Therefore, the Regional Administrator concurs in the Council's determinations and recommendations for halibut and red king crab bycatch rate standards for the first half of 1999 as set forth in Table 1. The Regional Administrator may revise the bycatch rate standards when appropriate based on consideration of the information set forth at § 679.21(f)(4).

As required in regulations at §§ 679.2 and 679.21(f)(5), the 1999 fishing months are specified as the following periods for purposes of calculating vessel bycatch rates under the incentive program:

Month 1: January 1 through January 30;
Month 2: January 31 through February 27;
Month 3: February 28 through April 3;
Month 4: April 4 through May 1;
Month 5: May 2 through May 29;
Month 6: May 30 through July 3;
Month 7: July 4 through July 31;
Month 8: August 1 through August 28;
Month 9: August 29 through October 2;
Month 10: October 3 through October 30;
Month 11: October 31 through November 27; and
Month 12: November 28 through December 31.

Classification

This action is taken under 50 CFR 679.21(f) and is exempt from OMB review under E.O. 12866.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: November 19, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31520 Filed 11–24–98; 8:45 am]

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7 CFR P

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AGENCY:

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Proposed Rules

Federal Register
Vol. 63, No. 227
Wednesday, November 25, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AF48

1999-Crop Peanut National Poundage Quota for Quota Peanuts

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, (the 1938 Act) as amended, requires that the national peanut poundage quota for the 1999 crop be announced by December 15, 1998. This proposed rule suggests a national poundage quota figure in the range between 1,175,000 short tons (st) and 1,225,000 st.

DATES: Comments must be received by December 8, 1998, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays, in Room 5750-South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, Tobacco and Peanuts Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12998

This proposed rule has been reviewed in accordance with Executive Order 12998. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither the Farm Service Agency (FSA) nor Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

This proposed amendment does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Unfunded Federal Mandates

This proposed rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1999-crop peanut national poundage quota.

Determination of the Quota

Peanut producers voting in a mail referendum December 1 through 4, 1997, approved poundage quotas for the 1998 through 2002 marketing years (MY) by an affirmative vote of 94.8 percent. Therefore, as provided for in the 1938 Act, the Secretary is required to administer a peanut program in which marketings are governed through the use of federally-granted quota and in which price support is offered.

Section 358–1(a)(1) of the 1938 Act, as amended by the Federal Agricultural Improvement and Reform Act of 1996 (the 1996 Act), requires that the national poundage quota for peanuts for each of the 1996 through 2002 MYs be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed use) and related uses. Under the 1996 amendments to the 1938 Act, seed use remains a quota use but, unlike in the past, the seed aspect of the quota is accounted for through the grant of a temporary seed quota to all producers—hence, seed is no longer part of the basic quota calculation which will be codified through this determination. The MY for 1999-crop peanuts runs from August 1, 1999, through July 31, 2000.

The national poundage quota for MY 1998 was set at 1,167,000 st. This rule proposes that the national poundage quota for MY 1999 be set between 1,175,000 st and 1,225,000 st based on the following data:

ESTIMATED DOMESTIC EDIBLE, EXCLUDING SEED, AND RELATED USES FOR 1999-CROP PEANUTS WITH MARKETING LEVELS OF 98.4 PERCENT AND 94.4 PERCENT

Item	Farmer Stock Equivalent (Short tons)	
	98.4% of Quota Marketed	94.4% of Quota Marketed
Regular domestic food use	984,000	984,000
Related uses:		
Crushing residual	128,500	128,500
Shrinkage and other losses	44,000	44,000
Unused quota	18,500	68,500
Totals	1,175,000	1,225,000

The estimate of 1999 domestic food use was developed in two steps. First, normal commercial use was estimated based upon figures from the USDA Interagency Commodity Estimates Committee (ICEC) adjusted to take out peanut imports, peanut butter imports, and peanut butter exports (which are normally comprised of additional peanuts only). Then, farm sales and other direct marketings to consumers

were added based upon differences between production data and Federal-State Inspection Service inspection data. Insofar as related uses are concerned, an added allowance is made for the normal crushing residual that cannot effectively be used for food use and that amount has traditionally been expected to be about 12 percent, on a farmer stock basis, of the total of MY domestic production. An allowance for shrinkage and other losses is made to account for reduced kernel and other kernel losses during storage, using the customary factor of 4 percent of domestic food use. In addition, disaster transfers of poor quality peanuts are included as part of other losses. Finally the unused quota allowance goes to those instances where the farmer cannot fulfill a quota either because of under-planting or because the farmer is unable to produce enough Segregation 1 peanuts to fulfill the full quota. Because of the program changes in the 1996 Act, which have been outlined in previous notices, there is now a greater incentive than in the past to fully market the quota and it is expected that, after discounting for quality problems, somewhere between 94.4 percent and 98.4 percent of the quota will be marketed.

In MY 1996 about 97.3 percent was marketed, in MY 1997 about 99.7 percent of quota was marketed and for MY 1998 between 94 and 98 percent of the quota is anticipated to be marketed. Also, it is anticipated that between 94.4 and 98.4 percent of the MY 1999 quota will be marketed.

The proposed 1999 quota range, as set forth above, reflects expected growth in domestic consumption of peanut products through government purchases, new uses and a small increase in demand resulting from lower peanut support prices in recent years. Overall demand, including imports, is projected to increase about 2 percent. However, government support purchases in MY 1997 have increased about 15 percent from 28,516 st in MY 1996 to 32,799 st in MY 1997.

List of Subjects in 7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

Accordingly, it is proposed that 7 CFR parts 729 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 shall continue to read as follows:

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375, and 7271.

2. Section 729.216 paragraph (c) is revised to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years:

(1) The national poundage quota (excluding seed) for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota (excluding seed) for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota (excluding seed) for quota peanuts for marketing year 1998 is 1,167,000 short tons.

(4) The national poundage quota (excluding seed) for quota peanuts for marketing year 1999 will be set between 1,175,000 and 1,225,000 short tons.

Signed at Washington, DC, on November 20, 1998.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 98–31563 Filed 11–20–98; 4:37 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA67

Fees for Rice Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing an increase in certain fees for Federal Rice Inspection Services performed under the Agricultural Marketing Act (AMA) of 1946. This fee increase is intended to cover, as nearly as practicable, the projected approximate 3.6 percent increase to Federal salaries for Federal Rice Inspection Services. The proposed increase is designated to generate additional revenue required to recover operational costs created by cost-of-living increases to Federal salaries January 1, 1999.

DATES: Written comments must be submitted on or before January 25, 1999.

ADDRESSES: Written comments must be submitted to Sharon Vassiliades, USDA, GIPSA, ART, 1400 Independence Avenue, SW., Stop 3649, Washington, DC 20250–3649, or faxed to (202) 720–4628. Comments may also be sent by electronic mail or Internet to: svassili@fgisdc.usda.gov. All comments received will be made available for public inspection during regular business hours in Room 0623, South Building, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–3649 (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Sharon Vassiliades at 202 720–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to provisions of this rule.

Regulatory Flexibility Act and Effects on Small Entities

James R. Baker, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The proposed cost of living increase in the rice service fee is primarily applicable to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in the Arkansas, Louisiana and Texas geographic areas. Many of these customers meet the criteria for small business. GIPSA has determined that this proposed rule will have a limited economic impact on small entities as defined in the Regulatory Flexibility Act.

Under the provisions of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.), rice inspection services are provided upon customer request and GIPSA must recover from the customer the cost of providing such services. GIPSA is proposing to recover a projected January 1, 1999, 3.6 percent increase in federal salary costs by raising its rice service fee. The proposed increase will affect only that portion of the fees associated with the hourly salaries paid to Federal employees and

administrative personnel; overhead recovery is not being proposed in this docket.

GIPSA cannot absorb the approximate 3.6 percent increase in salary costs with the existing deficit in retained earnings. In fiscal year 1998, GIPSA's obligations were $3,820,820 with revenue of $4,011,446, resulting in a positive margin of $190,626 and retained earnings of negative $895,584.

The proposed increase in fees would not have a significant impact on either small or large entities. GIPSA estimates that the increased fee charged to its 550 customers will provide an annual increase of $155,356 in revenue (assuming fiscal year 1998 volume equivalents).

Information Collection and Record Keeping Requirements

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements concerning applications for official inspection services including rice inspections have been previously approved by the Office of Management and Budget under control number 0580–0013.

Background

The rice inspection fees were last amended on July 3, 1996 (61 FR 34714), with a tri-level fee increase with effective dates of August 2, 1996, January 1, 1997, and January 1, 1998. These fees were to cover, as nearly as practicable, the projected operating costs, including related supervisory and administrative costs and to maintain an operating reserve for Federal Rice Inspection Services. They presently appear at 7 CFR 868.91 in Tables 1 and 2. Currently, the regular workday contract and noncontract fees are $40.20 and $48.90, respectively, while the nonregular workday contract and noncontract fees are $56.00 and $67.90, respectively. The unit rate per hundredweight for export port services is currently $.048/cwt. and the unit rate for total oil and free fatty acid tests is currently $39.80. These unit rates also are proposed to be changed.

The proposed increase will affect only that portion of the fees associated with hourly salaries paid to Federal employees and administrative personnel; overhead recovery is not being proposed in this docket. The proposed fee increase generates additional revenue required to recover operational costs created by a projected January 1999 cost-of-living increase to Federal salaries. The average salary increase for GIPSA employees in calendar year 1999 is projected at approximately 3.6 percent. This proposed action is being taken to ensure that the service fees charged by GIPSA generate adequate revenue to cover the additional cost created by the January 1999 Federal salary increase.

The hourly fees covered by this proposal generate revenue to cover the basic salary, benefits, and leave for those employees providing direct service delivery and administrative salaries and benefits, as well as contributing to overall overhead cost recovery. GIPSA has also identified that part of the hourly rate that is directly attributable to salaries and benefits and certain unit fees for services not performed at an applicant's facility that contain labor costs. This proposal increases those hourly rates and unit fees based on an approximate 3.6 percent increase to the labor cost of each hourly rate and unit.

The amount of revenue collected under this proposal will be a direct result of the work volume. GIPSA estimates an annual increase of $155,356 in revenue (assuming fiscal year 1998 volume equivalents). If GIPSA foregoes this adjustment, GIPSA will incur a net loss equivalent to the approximate 3.6 percent Federal salary increase for every hour worked by an employee providing direct service delivery and administrative personnel.

In fiscal year 1998, GIPSA's obligations were $3,820,820 with revenue of $4,011,446, resulting in a positive margin of $190,626 and retained earnings of negative $895,589. GIPSA cannot afford to absorb a $155,356 loss due to the approximate 3.6 percent increase in salary costs with the existing deficit in retained earnings. Additionally, GIPSA will continue to monitor its costs to improve operating efficiencies and adopt cost saving measures, where possible and practicable.

Proposed Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

Section 868.91, Tables 1 and 2 are proposed to be revised to provide for the increase in rice inspection fees.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 et seq.).

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal Rice Inspection Services.

TABLE 1—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service [1]	Regular workday (Monday–Saturday)	Nonregular workday (Sunday–holiday)
Contract (per hour per Service representative)	$40.80	$56.80
Noncontract (per hour per Service representative) [2]	50.00	69.00
Export Port Services [2]	0.05	0.05

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.

[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service [1 3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$32.90	28.40	20.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	25.50	25.50	.....
(b) All other factors (per factor)	12.10	12.10	12.10
Total oil and free fatty acid interpretative line samples: [2]	.....	40.00	40.00
(a) Milling degree (per set)	.....	.....	85.10
(b) Parboiled light (per sample)	.....	.....	21.30
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or combined at other than at the applicant's facility.

[2] Interpretive lines samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Executive Hills Boulevard, Kansas City, Missouri 68030. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, DC 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.

[3] Fees for other services not referenced in Table 2 will be based on the noncontract hourly rate listed in Section 868.90, Table 1.

Dated: November 20, 1998.

James R. Baker,

Administrator.

[FR Doc. 98–31514 Filed 11–24–98; 8:45 am]

BILLING CODE 3410–EN–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–ANE–39]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to General Electric Company (GE) CF6 series turbofan engines, that currently requires initial and repetitive ultrasonic and eddy current inspections of high pressure compressor rotor (HPCR) stage 3–9 spools for cracks. This action would define more aggressive inspection intervals for certain HPCR stage 3–9 spools, add CF6–80E1 engines to the inspection program, add inspection requirements for spools manufactured from 8 inch diameter billet, add a one-time inspection of the stage 3–5 blade slot bottoms, and add a one-time inspection of the web and hub-to-web transition areas. This proposal is prompted by analysis of recent HPCR stage 3–9 spool inspection results and separations, and assessment of the adequacy of the existing program to prevent HPCR stage 3–9 spool cracking and separation. As a result of that assessment, the FAA has determined there is a need to make changes to the existing AD. The actions specified by the proposed AD are intended to prevent HPCR stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage.

DATES: Comments must be received by January 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–39, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 95–ANE–39." The postcard will be date-stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–ANE–39, 12 New

England Executive Park, Burlington, MA 01803–5299.

Discussion

On January 31, 1995, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 95–03–01, Amendment 39–9138 (60 FR 8930, February 16, 1995), applicable to General Electric Company (GE) CF6–45/–50/–80A series turbofan engines, to require initial and repetitive ultrasonic and eddy current inspections of a certain population of high pressure compressor rotor (HPCR) stage 3–9 spools for cracks. That action was prompted by a finding of several cracked parts in service.

Since the issuance of AD 95–03–01, the FAA received a report of an in-service uncontained failure of an HPCR stage 3–9 spool. The investigation revealed that the uncontained failure was caused by a crack that developed from the same metallurgical condition which prompted AD 95–03–01. However, that spool was not part of the population required to be inspected by AD 95–03–01. Further investigation indicated that the scope of AD 95–03–01 had to be expanded to include other HPCR stage 3–9 spools installed on GE CF6–45/–50/–80A engines, and also HPCR stage 3–9 spools installed on GE CF6–80C2 series engines, and that the inspection schedule for the spools affected by AD 95–03–01 needed to be accelerated. The FAA issued AD 95–23–03, amendment 39–9423 on November 13, 1995 (60 FR 57803, November 21, 1995) that superseded AD 95–03–01 and incorporated these inspection program changes and added a reporting requirement for operators to advise the FAA of the results of the inspections.

Since issuing AD 95–23–03, the FAA has analyzed the inspection reports submitted in accordance with AD 95–23–03, the results of an investigation of an uncontained failure caused by a crack that developed from a hard alpha inclusion material defect in the hub-to-web transition area of CF6–50 stage 6 disk, and the results of an investigation of an uncontained failure caused by a crack that developed in a CF6–80C2 stage 3 blade slot bottom. The stage 3–9 spool is one of the major structural elements of the fourteen-stage axial flow HPCR installed in the CF6 engine. The CF6 HPCR is manufactured from Ti 6–2–4–2 titanium alloy. Since 1974 there have been 9 events where CF6 stage 3–9 spools have failed due to cracking. All of these events have resulted in the release of engine fragments, and a majority have resulted in an uncontained engine failure. The root cause of the cracking and separation events has been attributed to two failure mechanisms. The first failure mechanism is crack initiation from hard alpha inclusions. Hard alpha inclusions are hard brittle areas within the material which can crack under service loads and propagate in fatigue. The second failure mechanism is dwell time fatigue (DTF). DTF is a crack initiation mode associated with certain creep resistant titanium alloys under sustained loading (dwell) at temperatures below 400 degrees Fahrenheit that results in internal crack initiations at flat facets. The facets are associated with groups or colonies of primary alpha grains having a common alpha phase crystal orientation. Crack initiation by both of these failure mechanisms can occur at relatively low cyclic exposures and result in HPCR stage 3–9 failure. Based on this analysis, the FAA has determined that the inspection program required by AD 95–23–03 must be accelerated and expanded to include spools manufactured from 8 inch diameter billets. This condition, if not corrected, could result in HPCR stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage.

The FAA has reviewed and approved the technical contents of the following GE Service Bulletins (SBs) and Alert Service Bulletins (ASBs): CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996; CF6–80A SB No. 72–678, Revision 1, dated July 29, 1996; CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998, CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998, CF6–50 SB No. 72–1157, Original, dated June 10, 1998, CF6–80A SB No. 72–719, Revision 1, dated September 24, 1998, CF6–80C2 SB No. 72–934, Original, dated June 10, 1998, CF6–80E1 SB No. 72–137, Original, dated June 9, 1998, CF6–50 ASB No. 72–A1131, Revision 1, dated March 12, 1998, CF6–80A ASB No. 72–A691, Revision 2, dated September 23, 1998, CF6–80C2 ASB No. 72–A848, Revision 2, dated March 12, 1998, CF6–80E1 ASB No. 72–A126, Revision 1, dated March 31, 1998, and Table 801 of GE CF6–50 Shop Manual GEK 50481, section 05–11–02 Time Limits. These service documents describe procedures for eddy current and ultrasonic inspections of HPCR stage 3–9 spools for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 95–23–03 to define more aggressive inspection intervals for certain HPCR stage 3–9 spools, add CF6–80E1 engines to the inspection program, add inspection requirements for spools manufactured from 8 inch diameter billet, add a one-time inspection of the stage 3–5 blade slot bottoms, and add a one-time inspection of the web and hub-to-web transition areas. The proposed inspection program would also incorporated repetitive inspection intervals that change based on the calendar time that has elapsed since the effective date of this proposed AD. These calendar date triggers have the effect of tightening the repetitive inspection intervals as the affected population of engines ages through normal utilization. The dates also reflect the risk analysis performed by the manufacturer which took into consideration many factors including the shop capacity to perform the required inspections. The FAA chose to use calendar dates for these triggers rather than engine cycles or hours in order not to unduly penalize high utilization users while providing some definite ending point for each phase of the repetitive inspection program.

The FAA is also considering additional rulemaking that would require eddy current and ultrasonic inspections of the side fillet radii of the stage 3–5 blade slot bottoms, the stage 6–9 blade slot bottoms, and a module level inspection of the stage 3–5 bores.

There are approximately 4,506 engines of the affected design in the worldwide fleet. The FAA estimates that 1,197 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 216 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $15,485,340.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9423 (60 FR 57803, November 21, 1995) and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. 95–ANE–39. Supersedes AD 95–23–03, Amendment 39–9423.

Applicability: General Electric Company (GE) CF6–45, –50, –80A, –80C2 and –80E1 series turbofan engines, with High Pressure Compressor Rotor (HPCR) stage 3–9 spools, part numbers (P/Ns) 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1333M66G10, 1669M22G01, 1781M52P01, 1781M53G01, 1782M22G01, 1782M22G02, 1782M22G04, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M96P05, 1854M95P06, 9136M89G02, 9136M89G03, 9136M89G06, 9187M89G07, 9136M89G08, 9136M89G09, 9136M89G10, 9136M89G11, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G28, 9136M89G29, 9253M85G01, 9253M85G02, 9273M14G01, 9331M29G01, and 9380M28P05 installed. These engines are installed on but not limited to Airbus A300, A310, and A330 series, Boeing 747 and 767 series, and McDonnell Douglas DC–10 and MD–11 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent HPCR stage 3–9 spool cracking and separation, which can result in an uncontained engine failure and aircraft damage, accomplish the following:

(a) For the purpose of this AD, the following abbreviations apply:

(1) Cycles Since New (CSN).

(2) Cycles Since Last Inspection (CSLI).

(3) Cycles At Last Inspection (CALI).

(4) Engine Shop Visit (ESV).

Note 2: Paragraph (b) of this AD is only applicable to GE CF6–45/50 series engines. Paragraph (c) of this AD is only applicable to GE CF6–80A series engines. Paragraph (d) of this AD is only applicable to GE CF6–80C2 series engines. Paragraph (e) of this AD is only applicable to GE CF6–80E1 series engines.

(b) For HPCR stages 3–9 spools installed in CF6–45/50 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G02, 9136M89G03, 9136M89G06, 9136M89G07, 9136M89G08, 9136M89G09, 9136M89G17, 9136M89G18, 9136M89G19, 9136M89G21, 9136M89G22, 9136M89G27, 9136M89G29, 9253M85G01, 9253M85G02, 9273M14G01, and 9331M29G01, installed in GE CF6–45/–50 series engines, as follows:

(i) Perform eddy current and ultrasonic inspections in accordance with GE CF6–50 Service Bulletin (SB) No. 72–1157, Original, dated June 10, 1998, at the next piece-part exposure after 1,000 CSN.

(ii) Perform eddy current and ultrasonic inspections in accordance with GE CF6–50 Alert Service Bulletin (ASB) No. 72–A1131, Revision 1, dated March 12, 1998, at the next piece-part exposure after 1,000 CSN.

(iii) Remove from service, prior to further flight, HPCR stage 3–9 spools that equal or exceed the reject criteria established by SB No. 72–1157, Original, dated June 10, 1998, or ASB No. 72–A1131, Revision 1, dated March 12, 1998, as applicable, and replace with a serviceable part.

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G08, 9253M85G02, 9273M14G01, and 9331M29G01 and with Serial Numbers (S/Ns) listed in Table 801 of GE CF6–50 Shop Manual GEK50481, section 05–11–02 Time Limits, and with P/Ns 9136M89G02 and 9136M89G06 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but prior to accumulating 3,500 CSN, or prior to exceeding 30 days from the effective date of this AD, whichever occurs later.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 1, 2, or 3 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(2)(v) of this AD.

TABLE 1

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before 3,500 CSLI.

TABLE 2

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before:
3,500 CSLI, if spool CALI is 0–6,500, or
9,500 CSN, if spool CALI is 6,501–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 3

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI and 3,500 CSN, and before:
3,500 CSLI, if spool CALI is 0–5,000, or
8,500 CSN, if spool CALI is 5,001–5,500, or
3,000 CSLI, if spool CALI is 5,501–6,500, or
9,500 CSN, if spool CALI is 6,501–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 1, Table 2, or Table 3 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(2)(v) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, and replace with a serviceable part.

(v) Use the Tables as follows:

(A) Use Table 1 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 2 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 3 after 36 months from the effective date of this AD.

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G08, 9253M85G02, 9273M14G01, and 9331M29G01, with S/Ns not listed in Table 801 of GE CF6–50 Shop Manual GEK50481, section 05–11–02 Time Limits, and with P/Ns 9136M89G03, 9136M89G07, 9136M89G09, 9136M89G17, 9136M89G18, and 9253M85G01 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 4,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22, 1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the first piece-part exposure after both 1,000 CSLI and 4,000 CSN, but not later than the first ESV after both 2,000 CSLI and 4,000 CSN.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the first piece-part exposure after both 1,000 CSLI and 4,000 CSN, but not later than the first ESV after both 2,000 CSLI and 4,000 CSN.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, and replace with a serviceable part.

(4) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G19, 9136M89G21, 9136M89G22, and 9136M89G27 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22,1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 18 to 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22,1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 4, 5, or 6 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(4)(vi) of this AD.

TABLE 4

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN.

TABLE 5

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and before:
9,500 CSN, if spool CALI is 0–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 6

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and before:
5,000 CSN, if spool CALI is 0–1,500, or
3,500 CSLI, if spool CALI is 1,501–5,000, or
8,500 CSN, if spool CALI is 5,001–5,500, or
3,000 CSLI, if spool CALI is 5,501–6,500, or

TABLE 6—Continued

9,500 CSN, if spool CALI is 6,501–7,000, or 2,500 CSLI, if spool CALI is 7,001–8,000, or 10,500 CSN, if spool CALI is 8,001–8,500, or 2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 4, Table 5, or Table 6 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (b)(4)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 4 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 5 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 6 after 36 months from the effective date of this AD.

(5) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G29 installed in GE CF6–45/–50 series engines. Perform the inspections in accordance with GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22,1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at the next piece-part exposure after 1,000 CSN.

TABLE 7

Either any one of the following: CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 71, dated October 1, 1995, CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 72, dated November 15, 1996, CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 74, dated May 1, 1998, and any one of the following: CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 71, dated October 1, 1995, CF6 Standard Practice Manual GEK9250 Procedures 70–32–010, Revision 72, dated November 15, 1996, CF6 Standard Practice Manual GEK9250 Procedures 70–32–010, Revision 74, dated May 1, 1998; or any one of the following: CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 70–25, dated August 26, 1996, CF6 Standard Practice Manual GEK9250 Procedure 70–32–13, Revision 72, dated November 15, 1996, CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 73, dated November 1, 1997, and any one of the following: CF6 Standard Practice Manual GEK9250 Procedures 70–32–14, Revision 70–26, dated August 26, 1996, CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 72, dated November 15, 1996, CF6 Standard Practice Manual GEK9250 Procedures 70–32–14, Revision 73, dated November 1, 1997.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–888, Revision 6, dated December 22,1995; or SB No. 72–1000, Revision 2, dated September 9, 1993; or SB No. 72–1108, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at first piece-part exposure after both 1,000 CSLI and 5,000 CSN.

(iii) Thereafter, inspect HPCR stage 3–9 spools at piece part exposure after both 1,000 CSLI and 5,000 CSN.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996, and replace with a serviceable part.

(c) For HPCR stages 3–9 spools installed in GE CF6–80A/–80A1/–80A2/–80A3 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G10, 9136M89G11, 9136M89G20, 9136M89G21, 9136M89G22, 9136M89G27, and 9136M89G28 installed in GE CF6–80A/–80A1/–80A2/–80A3 series engines, as follows:

(i) Perform eddy current and ultrasonic inspections in accordance with GE CF6–80A SB No. 72–719, Revision 1, dated September 24, 1998, at the next piece-part exposure after 1,000 CSN.

(ii) Perform eddy current and ultrasonic inspections in accordance with GE CF6–80A ASB No. 72–A691, Revision 2, dated September 23, 1998, at the next piece-part exposure after 1,000 CSN.

(iii) Remove from service, prior to further flight, HPCR stage 3–9 spools that equal or exceed the reject criteria established by the SB No. 72–719, Revision 1, dated September 24, 1998, or ASB No. 72–A691, Revision 2, dated September 23, 1998, as applicable, and replace with a serviceable part.

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G10, with the following S/Ns: MPOM0054, MPOM7090, MPOM8303, MPOM8304, MPOM9263, MPOM9264, MPON0054, MPON0071, MPON0072, MPON1643, MPON4251, and MPON4253 installed in GE CF6–80A/–80A1/–80A2/–80A3 series engines. Perform the inspections in accordance with GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22,1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but before accumulating 3,500 CSN, or prior to exceeding 30 days from the effective date of this AD, whichever is later.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 8, 9, or 10 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(2)(vi) of this AD.

TABLE B

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 3,500 CSN and 2,000 CSLI (for GE CF6–80A1/A3 engines) or 1,500 CSLI (for GE CF6–80A/A2 engines), and before 3,500 CSLI.

TABLE 9

First piece part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 3,500 CSN and 2,000 CSLI (for GE CF6–80A1/A3 engines) or 1,500 CSLI (for GE CF6–80A/A2 engines), and before:
3,500 CSLI, if spool CALI is 0—6,500, or
9,500 CSN, if spool CALI is 6,501—7,000, or
2,500 CSLI, if spool CALI is 7,001—8,000, or
10,500 CSN, if spool CALI is 8,001-8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 10

First piece-part exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 2,000 CSLI (for GE CF6–80A1/A3) or 1,500 CSLI (for GE CF6–80A/A2) and 3,500 CSN, and before:
3,500 CSLI, if spool CALI is 0—5,000, or
8,500 CSN, if spool CALI is 5,001—5,500, or
3,000 CSLI, if spool CALI is 5,501—6,500, or
9,500 CSN, if spool CALI is 6,501—7,000, or
2,500 CSLI, if spool CALI is 7,001—8,000, or
10,500 CSN, if spool CALI is 8,001—8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 8, Table 9, or Table 10 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(2)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 8 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 9 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 10 after 36 months from the effective date of this AD.

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G10, with S/Ns other than those listed in paragraph (c)(2) of this AD, and P/N 9136M89G11, installed in GE CF6–80A/A2 series engines. Perform the inspections in accordance with GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22,1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN, but not later than the first ESV after 5,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, and replace with a serviceable part.

(4) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G10, with S/Ns other than those listed in paragraph (c)(2) of this AD, and P/N 9136M89G11, installed in GE CF6–80A1/A3 series engines. Perform the inspections in accordance with GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22,1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 5,000 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22,1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the first piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, and replace with a serviceable part.

(5) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G20, 9136M89G21, 9136M89G22 and 9136M89G27, installed in GE CF6–80A1/A3 series engines. Perform the inspections in accordance with GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22,1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 18 to 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22,1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 11, 12, or 13 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(5)(vi) of this AD.

TABLE 11

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN.

TABLE 12

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and before: 9,500 CSN, if spool CALI is 0–7,000, or 2,500 CSLI, if spool CALI is 7,001–8,000, or 10,500 CSN, if spool CALI is 8,001–8,500, or 2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 13

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 2,000 CSLI and 5,000 CSN, and before: 5,000 CSN, if spool CALI is 0–1,500, or 3,500 CSLI, if spool CALI is 1,501–5,000, or 8,500 CSN, if spool CALI is 5,001–5,500, or 3,000 CSLI, if spool CALI is 5,501–6,500, or 9,500 CSN, if spool CALI is 6,501–7,000, or 2,500 CSLI, if spool CALI is 7,001–8,000, or 10,500 CSN, if spool CALI is 8,001–8,500, or 2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 11, Table 12, or Table 13 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(5)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 11 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 12 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 13 after 36 months from the effective date of this AD.

(6) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 9136M89G20, 9136M89G21, 9136M89G22, and 9136M89G27 installed in GE CF6–80A/A2 series engines. Perform the inspections in accordance with GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 18 to 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 14, 15, or 16 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(6)(vi) of this AD.

TABLE 14

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN.

TABLE 15

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN, and before: 9,500 CSN, if spool CALI is 0–7,000, or 2,500 CSLI, if spool CALI is 7,001–8,000, or 10,500 CSN, if spool CALI is 8,001–8,500, or 2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 16

First piece-part exposure after both 1,000 CSLI and 5,000 CSN, but not later than the first ESV after both 1,500 CSLI and 5,000 CSN, and before:
5,000 CSN, if spool CALI is 0–1,500, or
3,500 CSLI, if spool CALI is 1,501–5,000, or
8,500 CSN, if spool CALI is 5,001–5,500, or
3,000 CSLI, if spool CALI is 5,501–6,500, or
9,500 CSN, if spool CALI is 6,501–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 14, Table 15, or Table 16 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (c)(6)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 14 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 15 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 16 after 36 months from the effective date of this AD.

(7) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 9136M89G28 installed in GE CF6–80A/A1/A2/A3 series engines. Perform the inspections in accordance with GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–500, Revision 6, dated December 22,1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at the first piece-part exposure after both 1,000 CSN and the effective date of this AD.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72-500, Revision 6, dated December 22, 1995; or SB No. 72–583, Revision 5, dated December 22, 1995; or SB No. 72–678, Revision 1, dated July 29, 1996, or any earlier versions of these SBs, or any of the service documents listed in Table 7 of this AD, inspect at first piece-part exposure after both 1,000 CSLI and 5,000 CSN.

(iii) Thereafter, inspect HPCR stage 3–9 spools at piece-part exposure after both 1,000 CSLI and 5,000 CSN.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80A SB No. 72–678, Revision 1, dated August 8, 1996, and replace with a serviceable part.

(d) For HPCR stages 3–9 spools installed in GE CF6-80C2 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1333M66G10, 1781M52P01, 1781M53G01, 1854M95P01, 1854M95P02, 1854M95P03, 1854M95P04, 1854M95P05, 1854M95P06, and 9380M28P05 installed in GE CF6–80C2 series engines, as follows:

(i) Perform eddy current and ultrasonic inspections in accordance with GE CF6–80C2 SB No. 72–934, Original, dated June 10,1998, at the next piece-part exposure after 1,000 CSN.

(ii) Perform eddy current and ultrasonic inspections in accordance with GE CF6–80C2 ASB No. 72–A848, Revision 2, dated March 12, 1998, at the next piece-part exposure after 1,000 CSN.

(iii) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by the SB No. 72–934, Original, dated June 10, 1998 or ASB No. 72-A848, Revision 2, dated March 12, 1998, as applicable and replace with a serviceable part.

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1781M52P01, 1854M95P02, 1854M95P05, and 9380M28P05 installed in GE CF6–80C2 series engines. Perform the inspections in accordance with GE CF6-80C2 SB No. 72–812, Revision 1, dated January 30, 1998, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or SB No. 72–812, Revision 1, dated January 30, 1998, or any earlier versions of these SBs, inspect at the first piece-part exposure after 1,000 CSN but prior to accumulating 3,500 CSN, or prior to exceeding 30 days from the effective date of this AD, whichever occurs later.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or SB No. 72–812, Revision 1, dated January 30, 1998, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 17, 18, or 19 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(2)(vi) of this AD.

TABLE 17

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before 3,500 CSLI.

TABLE 18

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:
3,500 CSLI, if spool CALI is 0–6,500, or
9,500 CSN, if spool CALI is 6,501–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 19

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:
3,500 CSLI, if spool CALI is 0–5,000, or
8,500 CSN, if spool CALI is 5,001–5,500, or
3,000 CSLI, if spool CALI is 5,501–6,500, or
9,500 CSN, if spool CALI is 6,501–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 17, Table 18, or Table 19 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(2)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 17 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 18 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 19 after 36 months from the effective date of this AD.

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1333M66G01, 1333M66G03, 1333M66G07, 1333M66G09, 1781M53G01, 1854M95P01, 1854M95P03, 1854M95P04, and 1854M95P06 installed in GE CF6–80C2 series engines. Perform the inspections in accordance with GE CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or SB No. 72–812, Revision 1, dated January 30, 1998, or any earlier versions of these SBs, inspect at the first piece–part exposure after 1,000 CSN but not later than the first ESV after 3,000 CSN, provided, however, from 18 to 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or SB No. 72–812, Revision 1, dated January 30, 1998, or any earlier versions of these SBs, perform repeat inspections at the earliest occurrence of the requirements of Table 20, 21, or 22 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(3)(vi) of this AD.

TABLE 20

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN.

TABLE 21

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:
9,500 CSN, if spool CALI is 0–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 22

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:
3,500 CSLI, if spool CALI is 0–5,000, or
8,500 CSN, if spool CALI is 5,001–5,500, or
3,000 CSLI, if spool CALI is 5,501–6,500, or
9,500 CSN, if spool CALI is 6,501–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 21, Table 22, or Table 23 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (d)(3)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 21 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 22 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 23 after 36 months from the effective date of this AD.

(4) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 1333M66G10 installed in GE CF6–80C2 series engines. Perform the inspections in accordance with GE CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected using the procedures in GE SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or SB No. 72–812, Revision 1, dated January 30, 1998, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at the first piece-part exposure after both 1,000 CSN and the effective date of this AD.

(ii) For HPCR stage 3–9 spools that have been previously inspected using the procedures in GE SB No. 72–418, Revision 4, dated December 22, 1995; or SB No. 72–758, Revision 1, dated December 22, 1995; or SB No. 72–812, Revision 1, dated January 30, 1998, or any earlier versions of these SBs, or any of the combinations of service documents specified by Table 7 of this AD, inspect at first piece part exposure after both 1,000 CSLI and 3,500 CSN.

(iii) Thereafter, inspect HPCR stage 3–9 spools at piece part exposure after both 1,000 CSLI and 3,500 CSN.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998, and replace with a serviceable part.

(e) For HPCR stages 3–9 spools installed in GE CF6–80E1 series engines, eddy current and ultrasonic inspect for cracks as follows:

(1) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1669M22G01, 1669M22G03, 1782M22G01, 1782M22G02, and 1782M22G04 installed in GE CF6–80E1 series engines, as follows:

(i) Perform eddy current and ultrasonic inspections in accordance with GE CF6–80E1 SB No. 72–137, Original, dated June 9, 1998, at the next piece-part exposure after 1,000 CSN.

(ii) Perform eddy current and ultrasonic inspections in accordance with GE CF6–80E1 ASB No. 72–A126, Revision 1, dated March 31, 1998, at the next piece-part exposure after 1,000 CSN.

(iii) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by SB No. 72–137, Original, dated June 9, 1998 or ASB No. 72–A126, Revision 1, dated March 31, 1998, as applicable, and replace with a serviceable part.

(2) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/Ns 1669M22G01, 1669M22G03, 1782M22G01, and 1782M22G02 installed in GE CF6–80E1 series engines. Perform the inspections in accordance with GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected in accordance with in accordance GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998, or any of the combinations of service documents specified by Table 7 of this AD, inspect HPCR stage 3–9 spools at the first piece-part exposure after 1,000 CSN, but not later than the first ESV after 3,000 CSN, provided, however, from 18 to 36 months after the effective date of this AD, inspect not later than 9,500 CSN, and after 36 months after the effective date of this AD, inspect not later than 3,500 CSN.

(ii) For HPCR stage 3–9 spools that have been previously inspected in accordance with GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998, or any of the combinations of service documents specified by Table 7 of this AD, perform repeat inspections at the earliest occurrence of the requirements of Table 24, 25, or 26 of this AD, as applicable, based on elapsed calendar time from the effective date of this AD, as specified in paragraph (e)(2)(vi) of this AD.

TABLE 24

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN.

TABLE 25

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:
9,500 CSN, if spool CALI is 0–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

TABLE 26

First piece-part or module level exposure after both 1,000 CSLI and 3,500 CSN, but not later than the first ESV after both 1,500 CSLI and 3,500 CSN, and before:
3,500 CSLI, if spool CALI is 0–5,000, or
8,500 CSN, if spool CALI is 5,001–5,500, or
3,000 CSLI, if spool CALI is 5,501–6,500, or
9,500 CSN, if spool CALI is 6,501–7,000, or
2,500 CSLI, if spool CALI is 7,001–8,000, or
10,500 CSN, if spool CALI is 8,001–8,500, or
2,000 CSLI, if spool CALI is greater than 8,500.

(iii) Thereafter, inspect HPCR stage 3–9 spools at intervals not to exceed the earliest occurrence shown in Table 24, Table 25, or Table 26 of this AD, as applicable, based on the elapsed calendar time from the effective date of this AD, as specified in paragraph (e)(2)(vi) of this AD.

(iv) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998, and replace with a serviceable part.

(v) HPCR stage 3–9 spools with a CSN of 10,500 or greater may not be put back in service after an ESV.

(vi) Use the Tables as follows:

(A) Use Table 24 from the effective date of this AD to 18 months from the effective date of this AD.

(B) Use Table 25 after 18 months from the effective date of this AD to 36 months from the effective date of this AD.

(C) Use Table 26 after 36 months from the effective date of this AD.

(3) Eddy current and ultrasonic inspect for cracks HPCR stage 3–9 spools with P/N 1782M22G04 installed in GE CF6–80E1 series engines. Perform the inspections in accordance GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998, as follows:

(i) For HPCR stage 3–9 spools that have not been previously inspected in accordance with any of the service documents listed in Table 24 of this AD, inspect at first piece-part exposure after both 1,000 CSN and the effective date of this AD.

(ii) Thereafter, inspect at first piece part exposure after both 1,000 CSLI and 3,500 CSN.

(iii) Remove from service prior to further flight HPCR stage 3–9 spools that equal or exceed the reject criteria established by GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998, and replace with a serviceable part.

(f) Report within 5 calendar days of inspection the results of inspections that equal or exceed the reject criteria to: William Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (718) 238–7742, fax (781) 238–7199, as follows:

(1) Engine model in which the HPCR stage 3–9 spool was installed;
(2) P/N;
(3) S/N;
(4) Part CSN;
(5) Part CSLI;
(6) Date and location of inspection.

Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(g) For the purpose of this AD, a serviceable part for installation in an engine is defined as an HPCR stage 3–9 spool with less than 1,000 CSN or with less than 1,000 CSLI, in accordance with the inspection and pass/fail criteria contained in the applicable service documents or combinations of service documents provided by Table 27 of this AD.

TABLE 27

GE CF6–50 SB No. 72–888, Revision 3, dated January 31, 1991,
GE CF6–50 SB No. 72–888, Revision 4, dated March 28, 1991,
GE CF6–50 SB No. 72–888, Revision 5, dated November 7, 1994,
GE CF6–50 SB No. 72–888, Revision 6, dated December 22, 1995,
GE CF6–50 SB No. 72–1000, Original, dated December 14, 1990,
GE CF6–50 SB No. 72–1000, Revision 1, dated March 28, 1991,
GE CF6–50 SB No. 72–1000, Revision 2, dated September 9, 1993,
GE CF6–50 SB No. 72–1000, Revision 3, dated December 22, 1995,
GE CF6–50 SB No. 72–1108, Original, dated November 6, 1995,
GE CF6–50 SB No. 72–1108, Revision 1, dated July 29, 1996,
GE CF6–80A SB No. 72–500, Revision 3, dated March 19, 1991,
GE CF6–80A SB No. 72–500, Revision 4, dated July 1, 1991,
GE CF6–80A SB No. 72–500, Revision 5, dated November 7, 1994,
GE CF6–80A SB No. 72–500, Revision 6, dated December 22, 1995,
GE CF6–80A SB No. 72–583, Original, dated December 20, 1990,
GE CF6–80A SB No. 72–583, Revision 1, dated March 18, 1991,
GE CF6–80A SB No. 72–583, Revision 2, dated July 15, 1991,
GE CF6–80A SB No. 72–583, Revision 3, dated July 24, 1991,
GE CF6–80A SB No. 72–583, Revision 4, dated September 15, 1993,
GE CF6–80A SB No. 72–583, Revision 5, dated December 22, 1995,
GE CF6–80A SB No. 72–678, Original, dated November 6, 1995,
GE CF6–80A SB No. 72–678, Revision 1, dated July 29, 1996,
GE CF6–80C2 SB No. 72–418, Revision 2, May 14, 1991,
GE CF6–80C2 SB No. 72–418, Revision 3, November 7, 1994,
GE CF6–80C2 SB No. 72–418, Revision 4, December 22, 1995,
GE CF6–80C2 SB No. 72–758, Original, dated November 7, 1994,
GE CF6–80C2 SB No. 72–758, Revision 1, dated December 22, 1995,
GE CF6–80C2 SB No. 72–812, Orginal, dated November 6, 1995,
GE CF6–80C2 SB No. 72–812, Revision 1, dated January 30, 1998,
GE CF6–80E1 ASB No. 72–A135, Original, dated August 13, 1998,

Either any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 71, dated October 1, 1995,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 72, dated November 15, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–09, Revision 74, dated May 1, 1998,

and any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 71, dated October 1, 1995,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 72, dated November 15, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–10, Revision 74, dated May 1, 1998;

or any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 70–25, dated August 26, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 72, dated November 15, 1996,
CF6 Standard Practice Manual GEK9250 Procedures 70–32–13, Revision 73, dated November 1, 1997,

and any one of the following:

CF6 Standard Practice Manual GEK9250 Procedures 70–32–14, Revision 70–26, dated August 26, 1996,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 72, dated November 15, 1996,
CF6 Standard Practice Manual GEK9250 Procedure 70–32–14, Revision 73, dated November 1, 1997.

(h) For the purpose of this AD, core module exposure is defined as separation of the fan module from the engine.

(i) For the purpose of this AD, piece-part exposure is defined as disassembly and removal of the stage 3–9 spool from the HPC rotor structure, regardless of any blades, locking lugs, bolts or balance weights assembled to the spool.

(j) For the purpose of this AD, an ESV is defined as the introduction of an engine into a shop where the separation of a major engine flange will occur after the effective date of this AD. The following maintenance actions are not considered ESVs for the purpose of this AD:

(1) Introduction of an engine into a shop solely for removal of the compressor top case for airfoil maintenance;
(2) Introduction of an engine into a shop solely for removal or replacement of the Stage 1 Fan Disk;
(3) Introduction of an engine into a shop solely for replacement of the Turbine Rear Frame;
(4) Introduction of an engine into a shop solely for replacement of the Accessory and/or Transfer Gearboxes;

(5) Introduction of an engine into a shop for any combination of the above specified exceptions.

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 17, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–31437 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–32–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–31, PA–31–300, PA–31–325, PA–31–350, and PA–31P–350 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain The New Piper Aircraft, Inc. (Piper) Models PA–31, PA–31–300, PA–31–325, PA–31–350, and PA–31P–350 airplanes. The proposed AD would require installing access holes for the inspection of the elevator spar; inspecting the elevator ice protection boots for looseness and reinstalling or replacing the elevator ice protection boots if looseness is found. The proposed AD also requires repetitively inspecting the elevator spars for cracks, and replacing the elevators or elevator spar assemblies with parts of improved design either at a certain time period or when cracks are found, whichever occurs first. The proposed AD is the result of reports of cracks developing in the elevator spar inboard of the outboard hinge location on the affected airplanes. The actions specified by the proposed AD are intended to prevent failure of the elevator spar caused by fatigue cracking, which could result in reduced airplane controllability.

DATES: Comments must be received on or before January 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from The New Piper Aircraft, Inc., Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: William Herderich, Aerospace Engineer, FAA, Atlanta Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6084; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 97-CE–32-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–32–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of cracks in the elevator spar inboard of the outboard hinge attachment location on Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, and PA–31P–350 airplanes. Initiation of these cracks is at the end rivets in the reinforcement doubler on the aft surface of the spar. These cracks are occurring at the end row of rivets that attach the spar and reinforcement doubler. The FAA has also received reports of cracks at the outboard end of the spar.

Poorly installed or maintained ice protection boots on the affected airplanes may aggravate the occurrence and growth of these cracks. If these ice protection boots become loose, they may set up a vibration and promote fatigue cracking of the elevator spar.

These conditions, if not corrected in a timely manner, could result in failure of the elevator spar with reduced airplane controllability.

Relevant Service Information

Piper has issued Service Bulletin No. 998A, dated August 4, 1997, which specifies procedures for installing access holes for the inspection of the elevator spar; inspecting the elevator ice protection boots for looseness and reinstalling or replacing the elevator ice protection boots if looseness is found; and repetitively inspecting the elevator spars for cracks.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above,

including the referenced service information, the FAA has determined that AD action should be taken to prevent failure of the elevator spar caused by fatigue cracking, which could result in reduced airplane controllability.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA–31, PA–31–300, PA–31–325, PA–31–350, and PA–31P–350 airplanes of the same type design, the FAA is proposing AD action. The proposed AD would require installing access holes for the inspection of the elevator spar; inspecting the elevator ice protection boots for looseness and reinstalling or replacing the elevator ice protection boots if looseness is found. The proposed AD also requires repetitively inspecting the elevator spars for cracks, and replacing the elevators or elevator spar assemblies with parts of improved design either at a certain time period or when cracks are found, whichever occurs first.

Accomplishment of the proposed inspection access holes installation, inspections, and elevator ice protection boots reinstallation or replacement is required in accordance with Piper Service Bulletin No. 998A, dated August 4, 1997.

Accomplishment of the installation of the improved design elevators or elevator spar assemblies is required in accordance with the maintenance manual.

The FAA's Aging Commuter Aircraft Policy

The actions proposed in this NPRM are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) the safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

The alternative to replacing the elevators or elevator spar assemblies with ones of improved design would be to repetitively inspect this area for the life of the airplane.

Cost Impact

The FAA estimates that 1,739 airplanes in the U.S. registry would be affected by the proposed AD.

The proposed inspection holes installation and inspections would take approximately 2 workhours per airplane to accomplish with an average labor rate of approximately $60 an hour. Parts cost approximately $26 per airplane. Based on these figures, the total cost impact of the proposed inspection access holes installation and inspections on U.S. operators is estimated to be $253,894, or $146 per airplane.

The proposed elevator spar assembly replacements would take approximately 36 workhours per airplane to accomplish with an average labor rate of approximately $60 an hour. Parts cost approximately $600 per airplane ($300 per elevator spar assembly with 2 elevator spar assemblies per airplane). Based on these figures, the total cost impact of the proposed elevator spar assembly replacement on U.S. operators is estimated to be $4,799,640, or $2,760 per airplane.

According to Piper, numerous airplanes already have complied with the proposed initial inspection requirements of this NPRM, specifically most of the Model PA–31–350 airplanes since many of these are used in commuter service.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

The New Piper Aircraft, Inc.: Docket No. 97–CE–32–AD.

Applicability: The following airplane model and serial numbers, certificated in any category, that are not equipped with the applicable improved design elevators or elevator spar assemblies specified in the "Replacement Elevator P/N" and "Replace Spar P/N" columns of the "Material Required Table" on page 4 of Piper Service Bulletin No. 998A, dated August 4, 1997:

Models	Serial numbers
PA–31, PA–31–300, and PA–31–325	31–2 through 31–8312019.
PA–31–350	31–5001 through 31–8553002.
PA–31P–350	31P–8414001 through 31P–8414050.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the elevator spar caused by fatigue cracking, which could result in reduced airplane controllability, accomplish the following:

(a) Upon accumulating 2,500 hours time-in-service (TIS) on each elevator spar assembly or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, accomplish the following in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 998A, dated August 4, 1997:

(1) Install access holes for the inspection of the elevator spar;

(2) Inspect the elevator spars for cracks; and

(3) Inspect the elevator ice protection boots for looseness.

(b) If the elevator ice protection boots are found loose during the inspection required by paragraph (a)(3) of this AD, prior to further flight, reinstall or replace the elevator ice protection boots in accordance with the INSTRUCTIONS section of Piper Service Bulletin No. 998A, dated August 4, 1997.

(c) If no cracks are found in the elevator spars during the inspection required by paragraph (a)(2) of this AD, reinspect the elevator spars for cracks at intervals not to exceed 100 hours TIS, provided no cracks are found (if cracks are found, refer to paragraphs (d) and (d)(1) of this AD).

(d) At whichever of the compliance times presented in paragraphs (d)(1) and (d)(2) of this AD that occurs first, replace each elevator or elevator spar assembly with a part of improved design as specified in the "Replacement Elevator P/N" and "Replace Spar P/N" columns of the "Material Required Table" on page 4 of Piper Service Bulletin No. 998A, dated August 4, 1997. Accomplish these replacements in accordance with the applicable maintenance manual.

(1) Prior to further flight on any elevator spar assembly where any cracks are found during the initial inspection required by paragraph (a)(2) of this AD or any repetitive inspection required by paragraph (c) of this AD; or

(2) Within 1,000 hours TIS after the initial inspection required by paragraph (a)(2) of this AD.

(e) Replacing both the left and right elevators or elevator spar assemblies with parts of improved design as specified in the "Replacement Elevator P/N" and "Replace Spar P/N" columns of the "Material Required Table" on page 4 of Piper Service Bulletin No. 998A, dated August 4, 1997, is considered terminating action for the repetitive inspection requirement of this AD.

(1) This action may be accomplished at any time to terminate the repetitive inspections, but must be accomplished prior to further flight on any elevator spar found cracked or within 1,000 hours TIS after the initial inspection, whichever occurs first.

(2) If one elevator spar assembly is replaced prior to further flight when a crack is found, the other elevator spar assembly must still be repetitively inspected every 100 hours TIS until replacement at 1,000 hours TIS after the initial inspection or when cracks are found, whichever occurs later.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(h) All persons affected by this directive may obtain copies of the document referred to herein upon request to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on November 17, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31436 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–024–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening and extension of public comment period on proposed amendment.

SUMMARY: OSM is announcing receipt of revisions to and other explanatory information about a previously proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The revisions and explanatory information concern definitions, permitting requirements, small operator assistance program, performance standards, inspection and enforcement procedures, and corrections of reference citations and typographical errors. Oklahoma intends to revise its program to be consistent with the corresponding Federal regulations.

DATES: We will accept written comments until 4:00 p.m., c.s.t., December 10, 1998.

ADDRESSES: You should mail or hand deliver written comments to Michael C. Wolfrom, Director, Tulsa Field Office at the address listed below.

You may review copies of the Oklahoma program, the amendment, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions on the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Discussion of the Proposed Amendment

By letter dated December 18, 1997 (Administrative Record No. OK–981), Oklahoma sent us an amendment to its

program under SMCRA. Oklahoma sent the amendment in response to a letter dated June 17, 1997 (Administrative Record No. OK–979), that we sent to Oklahoma under 30 CFR 732.17(c). We announced receipt of the proposed amendment in the January 6, 1998, **Federal Register** (63 FR 454) and invited public comment on its adequacy. The public comment period ended February 5, 1998.

During our review of the amendment, we identified concerns relating to definitions, permitting requirements, small operator assistance program, performance standards, inspection and enforcement procedures, and corrections of reference citations and typographical errors. We notified Oklahoma of the concerns by facsimiles dated June 5 and 30, and October 21, 1998 (Administrative Record Nos. OK–981.13, OK–981.08, and OK–981.11). On June 22, August 10, September 24, and November 5, 1998, Oklahoma sent us ■ revised amendment or additional explanatory information (Administrative Record Nos. OK–981.06, OK–981.09, OK–981.10, and OK–981.12, respectively).

Oklahoma proposes to correct any incorrect reference citations and any typographical errors throughout the proposed amendment. Also, Oklahoma submitted additional revisions or other explanatory information for the following provisions of the amendment:

1. OAC 460:20–3–5. Definitions

Oklahoma proposes to revise the definitions for "other treatment facilities" and "previously mined areas."

2. OAC 460:20–27–14. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments (Surface Mining Activities)

a. Oklahoma proposes to revise paragraph (a)(3) so that structures that do not meet the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the U.S. Department of Agriculture Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," Technical Release No. 60 (TR–60) are not subject to the regulations in paragraphs (a)(3)(A)–(3)(D).

b. Oklahoma proposes to revise paragraph (c)(3) regarding permanent and temporary impoundments to read as follows:

(3) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR–60, (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs," or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 460:20–43–14(a)(3)(B) of this Chapter.

c. Oklahoma proposes to revise paragraph (f) regarding stability analysis so that it also applies to structures meeting the Class B or C criteria for dams in TR–60 or other criteria of 30 CFR 77.216(a).

3. OAC 460:20–31–9. Reclamation plan: siltation structures, impoundments, banks, dams, and embankments (Underground Mining Activities)

a. Oklahoma proposes to revise paragraph (a)(3) so that structures that do not meet the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in the U.S. Department of Agriculture Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985), "Earth Dams and Reservoirs" Technical Release No. 60 (TR–60) are not subject to the regulations in paragraphs (a)(3)(A) through (3)(D).

b. Oklahoma proposes to revise paragraph (c)(2) to read as follows:

(2) For an impoundment not meeting the size or other criteria of 30 CFR 77.216(a) or the Class B or C criteria for dams in TR–60, (210–VI–TR60, Oct. 1985) "Earth Dams and Reservoirs" TR60, or located where failure would not be expected to cause loss of life or serious property damage, the Department may establish through the State program approval process engineering design standards that ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 460:20–45–14(a)(3)(B) of this Chapter.

c. Oklahoma proposes to revise paragraph (f) Stability analysis to read as follows:

(f) Stability analysis. If the structure meets Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a) then each plan under Subsections (b), (c), and (e) of this Section shall include a stability analysis of each structure. The stability analysis shall include, but not limited to, strength parameters, pore pressures, and long-term seepage conditions. The plan shall also contain a description of each engineering design assumption and calculation with a discussion of each alternative considered in selecting the specific design parameters and construction methods.

4. OAC 460:20–31–16. Operation plan: Maps and plans (Underground Mining Activities)

Oklahoma proposes to redesignate paragraphs (a) through (c) as paragraphs (1) through (3) and to redesignate paragraphs (b)(1) through (b)(13) as paragraphs (2)(A) through (2)(M).

5. OAC 460:20–35–6. Program services and data requirements

Oklahoma proposes to revise paragraphs (b)(3) through (b)(6) to read as follows:

(3) The collection of archaeological and historical information required by Section 460:20–25–5(b), 460:20–29–5(2), 460:20–27–17 and 460:20–31–10 and any other archaeological and historical information required by the Department, and the preparation of plans necessitated thereby; and (4) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values and plans required by the Department under Section 460:20–27–9, 460:20–31–14, and any other applicable regulations; and (5) Pre-blast surveys if required under Section 460:20–43–19; and (6) The development of cross-section maps and plans required under Section 460:20–25–11, 460:20–29–11, and any other applicable regulation.

6. OAC 460:20–35–7. Applicant liability

In paragraph (a), Oklahoma proposes to remove the word "laboratory" so that applicants are responsible, under certain conditions, for reimbursing the Department for any services rendered under Subchapter 460:20–35 and not just for those pertaining to laboratory services.

7. OAC 460:20–35–8. Assistance funding

Oklahoma proposes to add this new section to read as follows:

(a) Use of funds. Funds specifically authorized for this program shall be used to provide the services specified in 460:20–35–6 of this Subchapter and shall not be used to cover administrative expenses.

(b) Allocation of funds. The program administrator shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to this Subchapter.

8. OAC 460:20–43–12. Hydrologic balance: siltation structures (Surface Mining Activities)

Oklahoma proposes to combine paragraph (a)(1) with paragraph (a) and to redesignate existing paragraphs (a)(2)(A) and (a)(2)(B) as new paragraphs (a)(1) and (a)(2).

9. OAC 460:20–43–14. Impoundments (Surface Mining Activities)

a. Oklahoma proposes to add new paragraph (a)(1) to specify that impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985) must comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60 and the requirements of section 460:20–43–14.

b. Oklahoma proposes to redesignate existing paragraphs (a)(1) through (a)(12) as new paragraphs (a)(2) through (a)(13).

c. Oklahoma proposes to revise new paragraph (a)(2) to read as follows:

(2) Impoundments meeting the criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR Section 77.216 and this section. The plan required to be submitted to the District Manager of MSHA under 30 CFR Section 77.216 shall also be submitted to the Department as part of the permit application.

d. Oklahoma proposes to revise new paragraph (a)(4)(A) to include impoundments meeting the Class B or C criteria for dams in TR–60.

e. Oklahoma proposes to revise new paragraph (a)(4)(B) to read as follows:

(B) Impoundments not included in Subsection (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20–27–14(c)(3).

f. The State proposes to revise new paragraph (a)(5) to require impoundments that meet the Class B or C criteria for dams in TR–60 to comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60.

g. Oklahoma proposes to revise new paragraph (a)(6)(A) to require impoundments that meet the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a) to be stable under all conditions of construction and operation. The impoundments must also be designed based on accurate and adequate information on the foundation conditions. In addition, the State requires sufficient foundation investigations and laboratory testing of foundation materials in order to determine the design requirements for foundation stability.

h. Oklahoma proposes to revise new paragraph (a)(9)(B)(i)-(iii) to read as follows:

(i) For an impoundment meeting the Class B or C criteria for dams in TR–60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, or greater event as specified by the Department.

(ii) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(iii) For an impoundment not meeting the requirements of Subsection (a)(9)(B)(i) or (ii) if this Section, a 25-year 6-hour event, or greater event as specified by the Department.

i. Oklahoma proposes to revise new paragraph (a)(11)(D) to allow qualified registered professional land surveyors to inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a).

j. Oklahoma proposes to revise new paragraph (a)(12) to require impoundments meeting the SCS Class B or C criteria for dams in TR–60 or other criteria of 30 CFR 77.216 to be examined in accordance with 30 CFR 77.216–3.

k. Oklahoma proposes to revise paragraph (c)(2)(A) and (B) to read as follows:

(A) In the case of an impoundment meeting the SCS Class B or C criteria for dams in TR–60, or other size or other criteria of Section 77.216(a) of 30 CFR , it is designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department, or

(B) In the case of an impoundment not included in Subsection (c)(2)(A) of this Section it shall be designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

10. OAC 460:20–43–29. Coal mine waste: general requirements (Surface Mining Activities)

Oklahoma proposes to revise paragraph (a) to include that coal mine waste be hauled or conveyed and placed for final placement in a controlled manner.

11. OAC 460:20–43–39. Backfilling and grading: thin overburden (Surface Mining Activities)

Oklahoma proposes to revise paragraph (a) to read as follows:

(a) Definition. Thin overburden means insufficient spoil and other waste materials available from the entire permit area to restore the disturbed area to its approximate original contour. Insufficient spoil and other waste materials occur where the overburden thickness times the swell factor, plus the thickness of other available waste materials, is less than the combined thickness of the overburden and the coal bed prior to removing the coal, so that after backfilling and grading the surface configuration of the reclaimed area would not:

12. OAC 460:20–45–12. Hydrologic balance: siltation structures (Underground Mining Activities)

Oklahoma proposes to combine paragraph (a)(1) with paragraph (a) and to redesignate existing paragraphs (a)(1)(A) and (a)(1)(B) as new paragraphs (a)(1) and (a)(2).

13. OAC 460:20–45–14. Impoundments (Underground Mining Activities)

a. Oklahoma proposes to add new paragraph (a)(1) to specify that impoundments meeting the Class B or C criteria for dams in the U.S. Department of Agriculture, Soil Conservation Service Technical Release No. 60 (210–VI–TR60, Oct. 1985) must comply with the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60 and the requirements of section 460:20–45–14.

b. Oklahoma proposes to redesignate existing paragraphs (a)(1) through (a)(12) as new paragraphs (a)(2) through (a)(13).

c. Oklahoma proposes to revise new paragraph (a)(2) to read as follows:

(2) Impoundments meeting the criteria of 30 CFR 77.216(a) shall comply with the requirements of 30 CFR Section 77.216 and this section. The plan required to be submitted to the District Manager of MSHA under 30 CFR Section 77.216 shall also be submitted to the Department as part of the permit application.

d. Oklahoma proposes to revise new paragraph (a)(4)(A) to include impoundments meeting the Class B or C criteria for dams in TR–60.

e. Oklahoma proposes to revise paragraph (a)(4)(B) to read as follows:

(B) Impoundments not included in Subsection (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20–31–9(c)(2).

f. The State proposes to revise new paragraph (a)(5) to require impoundments that meet the Class B or C criteria for dams in TR–60 to comply with the freeboard hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60.

g. Oklahoma proposes to revise new paragraph (a)(6)(A) to require impoundments that meet the Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a) to be stable under all conditions of construction and operation. These impoundments must also be designed based on accurate and adequate information on the foundation

conditions. In addition, the State requires sufficient foundation investigations and laboratory testing of foundation materials in order to determine the design requirements for foundation stability.

h. Oklahoma proposes to revise new paragraph (a)(9)(B)(i)–(iii) to read as follows:

(i) For an impoundment meeting the Class B or C criteria for dams in TR–60, the emergency spillway hydrograph criteria in the "Minimum Emergency Spillway Hydrologic Criteria" table in TR–60, or greater event as specified by the Department.

(ii) For an impoundment meeting or exceeding the size or other criteria of 30 CFR 77.216(a), a 100-year 6-hour event, or greater event as specified by the Department.

(iii) For an impoundment not included in Subsections (a)(9)(B)(i) or (ii), a 25-year 6-hour event, or greater event as specified by the Department.

i. Oklahoma proposes to revise new paragraph (a)(11)(D) to allow qualified registered professional land surveyors to inspect any temporary or permanent impoundment that does not meet the SCS Class B or C criteria for dams in TR–60 or the size or other criteria of 30 CFR 77.216(a).

j. Oklahoma proposes to revise new paragraph (a)(12) to require impoundments meeting the SCS Class B or C criteria for dams in TR–60 or other criteria of 30 CFR 77.216 to be examined in accordance with 30 CFR 77.216–3.

k. Oklahoma proposes to revise paragraph (c)(2)(A) and (B) to read as follows:

(A) In the case of an impoundment meeting the SCS Class B or C criteria for dams in TR–60, or the size or other criteria of Section 77.216(a) of 30 CFR , it shall be designed to control the precipitation of the probable maximum precipitation of a 6-hour event, or greater event as specified by the Department, or

(B) In the case of an impoundment not included in Subsection (c)(2)(A) of this Section it shall be designed to control the precipitation of a 100-year 6-hour event, or greater event as specified by the Department.

14. OAC 460:20–45–27. Disposal of excess spoil: preexisting benches (Underground Mining Activities)

Oklahoma proposes to revise paragraph (c) to include that fills be designed and constructed using current, prudent engineering practices.

15. OAC 460:20–45–29. Coal mine waste: general requirements (Underground Mining Activities)

Oklahoma proposes to revise paragraph (a) to include that coal mine waste be hauled or conveyed and placed for final placement in a controlled manner.

16. OAC 460:20–57–2. State inspections and monitoring

Oklahoma proposes to revise paragraph (h)(1)(C) to read as follows:

(C) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

III. Public Comment Procedures

We are reopening the comment period on the proposed Oklahoma program amendment to provide the public an opportunity to reconsider whether the proposed amendment is adequate in light of the additional materials submitted. Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments

Your written comments must be specific and pertain only to the issues proposed in this rulemaking. You must explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 18, 1998.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 98–31414 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–05–P

POSTAL SERVICE

39 CFR Part 20

International Priority Airmail Service; Proposed Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to change the postage rates and conditions of service for International Priority Airmail service (IPA). In addition to adjusting rates, the Postal Service is changing country rate groups to be the same as International Surface Air Lift service (ISAL) and increasing the minimum weight from 10 to 11 pounds of mail. Also, acceptance of IPA will be extended to all post offices accepting bulk mail.

DATES: Comments on the proposed changes must be received on or before December 28, 1998.

ADDRESSES: Written comments should be sent to the Manager, International Pricing, Costing, and Classification, Room 370–IBU, International Business Unit, U.S. Postal Service, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection between 9 a.m. and 4 p.m., Monday through Friday, in the International Business Unit, 10th Floor, 901 D Street SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter J. Grandjean, (202) 314–7256 or Dan Singer, (202) 314–3422.

SUPPLEMENTARY INFORMATION: International Priority Airmail service (IPA) is a volume airmail letter service. Mailers have the opportunity to benefit from work sharing with the Postal Service and gain improved speed of delivery for presorted mail, which the Postal Service does not have to sort.

The Postal Service recently adopted program changes to International Surface Air Lift Service (ISAL) on February 28, 1998, (63 FR 3642–3650) and is now proposing changes to IPA which will align it with ISAL in rate structure and preparation requirements. This will make it easier for mailers to participate in either service.

Minimum Weight

The Postal Service is increasing the minimum weight for direct country and mixed direct country package sacks from 10 to 11 pounds. This reflects the desired minimum sack which the Postal Service normally dispatches to other countries and matches the sack weights recently adopted in ISAL. This will cause the minimum weight for a mailing to be increased to 11 pounds. In addition, a package of mail will be defined as 10 or more pieces or 1 pound of mail to coincide with the definition used in ISAL. "Bundles" will be referred to as "packages" in the future.

Acceptance Cities

Since the inception of IPA, the Postal Service has limited the number of cities where IPA mailings could be deposited. This was intended to reduce the cost of maintaining an extensive transportation network, but many customers not located near an acceptance point could not use IPA. The Postal Service proposes a Full Service rate that will be available from all post offices where bulk mail is accepted and will make IPA accessible to all customers. Additionally, a drop shipment option is added.

Volume Discounts

The Postal Service proposes discounts for IPA based on the amount of postage spent by a mailer in the preceding postal fiscal year for both IPA and ISAL. For example, a mailer spending $2 million or more for IPA and ISAL during postal fiscal year 1996 (September 16, 1995–September 13, 1996) will receive a 5 percent discount on IPA mailings made during the next fiscal year, 1997 (September 14, 1996–September 12, 1997). Mailers spending over $5 million receive a 10 percent discount and a 15 percent discount for over $10 million. These discounts apply to full service and drop ship rates. The discount is calculated on the mailing statement.

Drop Ship Rates

The Postal Service is introducing drop ship rates for mailers willing to transport their mail to certain locations. The Postal Service avoids certain processing, handling, and transportation costs and these savings are being passed on to the mailer. Drop ship sites are located in the following locations: Jamaica, NY; Miami, FL; Franklin Park, IL; and San Francisco, CA.

Although exempt from the notice and comment requirements of the Administrative Procedure Act, S U.S.C. 553(b), (c) regarding proposed rulemaking by 39 U.S.C. 410 (a), the Postal Service invites comments on the following proposed revisions of Chapter 280 of the International Mail Manual, incorporated by reference in the Code of Federal Regulations. See 30 CFR 20.1.

List of Subjects in 39 CFR Part 20

Foreign relations, Incorporation by reference, International postal services.

Part 20—[AMENDED]

1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate program changes to Subchapter 280 International Priority Airmail Service as follows:

280 INTERNATIONAL PRIORITY AIRMAIL SERVICE

281 Description

281.1 General

International Priority Airmail (IPA) service is as fast as or faster than regular international airmail service. It is available to bulk mailers of all LC and AO items that are prepared by the sender in accordance with the requirements of this subchapter. Separate rates are provided for presorted mail and nonpresorted mail with drop shipment and volume discounts.

281.2 Qualifying Mail

Any item of the LC or AO classification, as defined in 141.2, qualifies. Letters, letter packages, postal cards, aerogrammes, regular printed matter, books and sheet music, publishers' periodicals, matter for the blind, and small packets, which are prepared in compliance with the applicable mailing conditions in this subchapter, may be sent in this service. Items do not have to be of the same size and weight to qualify.

281.3 Minimum Quantity Requirements

281.31 Worldwide Nonpresort Mail

The mailer must have a minimum of 11 pounds of LC/AO mail in the total mailing. The minimum does not apply to each country destination.

281.32 Presort Mail

The mailer must have a minimum of 11 pounds of presorted LC/AO mail to a single rate group to qualify for the presort rate for that rate group.

Note: Mail that cannot be made up in direct country packages (284.521) or in direct country sacks (284.61) does not qualify for the presort rates and is subject to the worldwide nonpresort rates.

281.4 Dutiable Items

Dutiable items may be sent in LC letter packages or AO small packets in accordance with the applicable rules in this subchapter for those classes of mail. Parcel post (CP) items, either ordinary or insured, may not be mailed as International Priority Airmail.

281.5 Deposit

281.51 Full Service

Mailings must be deposited and accepted at a business mail entry unit of the post office where the mailer holds an advance deposit account or postage meter license.

281.52 Drop Shipment

To qualify for the drop shipment rates, the mailer must tender the mail to one of the locations in 281.53. The mailer must pay postage at the drop shipment location either through an advance deposit account or postage meter license at the serving post office.

As an alternative, mailers who are participating in a PVDS program (see DMM P750) may have the mail verified, accepted and paid for at the mailer's plant or at the origin post office serving the mailer's plant if authorized under DMM P750.2.2. Plant-verified drop shipment mail must be transported by the mailer to the drop shipment location and the mail accompanied by a clearance document Form 8125.

281.53 Drop Shipment Locations

Drop shipment rates are available from the following offices:

New York

Regular and plant-verified drop shipment:
AMC JFK BUILDING 250
JFK INTERNATIONAL AIRPORT
JAMAICA NY 11430–9998

California

Regular drop shipment:
SAN FRANCISCO P&DC
1300 EVANS AVE
SAN FRANCISCO CA 94188

Plant-verified drop shipment:
AMC SAN FRANCISCO
BLDG 660 RD 6
SAN FRANCISCO CA 94158–9998

Florida

Regular drop shipment:
MIAMI P&DC
2200 NORTHWEST 72 AVE
MIAMI FL 33152

Plant-verified drop shipment:
AMC MIAMI
MIAMI INTERNATIONAL AIRPORT
MIAMI FL 33159–9998

Illinois

Regular and plant-verified drop shipment:
CHICAGO O'HARE DROPSHIP ISAL SERVICE CENTER
INTERNATIONAL PROCESSING CENTER ANNEX
3333 N MOUNT PROSPECT RD
FRANKLIN PARK IL 60131

281.6 Special Services Not Available

Items sent in this service may not be registered.

282 Postage

282.1 Rates

282.11 General

There are two rate options for International Priority Airmail service: a presort rate option that has four rate groups and a worldwide nonpresort rate. For both options there are full service rates for mail deposited at offices other than the four drop shipment offices listed in 281.5, and drop ship rates for mail deposited at one of the four drop shipment offices. The per-piece rates and per-pound rates are shown in Exhibit 282.11. The per-piece rate of $0.10 or $0.25 applies to each piece regardless of its weight. The per-pound rate applies to the net weight (gross weight minus tare weight of sack) of the mail for the specific rate group. Fractions of a pound are rounded to the next whole pound for postage calculation.

EXHIBIT 282.11—INTERNATIONAL PRIORITY AIRMAIL RATES

Rate group	Piece rate	Pound rate	
		Full service	Dropship
1	$0.25	$5.00	$4.00
2	0.10	5.25	4.25
3	0.10	6.50	5.50
4	0.10	7.50	6.50
Worldwide	0.25	7.00	6.00

282.12 Volume Discount

Mailers who spend $2 million or more on IPA and ISAL in the preceding postal fiscal year may receive discounts off the rates shown in Exhibit 282.11 as follows:

a. $2 million to $5 million: 5% discount
b. over $5 million to $10 million: 10% discount
c. over $10 million: 15% discount

Mailers entitled to these discounts must place the full per piece rate on each piece of mail if payment is by postage meter or mailer-precanceled stamps. The discount is calculated on the statement of mailing.

282.13 Qualifying for Volume Discounts

To qualify for volume discounts, mailers must apply in writing to the Manager, Mail Order, International Business Unit, 475 L'Enfant Plaza, SW, Room 370–IBU, Washington, DC 20260–6500. The Manager evaluates all requests and informs the mailer and the post office(s) of mailing whether discounts are approved and the level of discount. Mailers must supply the following information:

a. Postal fiscal year for the qualifying mail.

b. Permit number(s) and post office(s) where the permits are held.

c. Total revenue for the postal fiscal year.

d. Post office(s) where the discount is to be claimed.

The combined IPA and ISAL revenue is counted toward the discounts. The Postal Service will count as revenue to qualify for the volume discounts only postage paid by the permit holder. If a permit holder has more than one account, or accounts in several cities, then these revenues may be combined to qualify for discounts. Agents who prepare mail for the owner of the mail and mail paid by the owner's permit may not be included in the revenue to qualify for the discounts, except for the initial year (Postal Fiscal Year 1997, September 14, 1996, through September 12, 1997). Customers may be required to substantiate their request by providing copies of all postage statements for the appropriate postal fiscal year. All decisions of the Manager, Mail Order are final.

282.14 Availability

IPA service is available to all foreign countries, as listed in Exhibit 284.522. The exhibit shows the rate group assigned to each country.

282.15 Presort Rates

To qualify for the presort Group 1, 2, 3, or 4 rates (see Exhibit 282.11), a mailing must consist of a minimum of 11 pounds to a specific rate group. This minimum applies to each rate group and not to the entire mailing (see 281.32). Within a rate group all mail addressed to an individual country must be sorted into direct country packages of 10 or more pieces (or 1 pound or more of mail) (284.521) and/or sacked in direct country sacks of 11 pounds or more (284.61). Mail that cannot be made up into direct country packages or direct country sacks must be sent at the worldwide nonpresort rates.

282.16 Separation by Rate Group

The mailer must specify the rate group on the back of Tag 115, International Priority Airmail, with the number 1, 2, 3, 4 or WW (Worldwide), and must physically separate the sacks by rate group at the time of mailing.

282.17 Computation of Postage

Postage is computed on PS Form 3652, Postage Statement—International Priority Airmail. Postage at the worldwide nonpresort rate is calculated by multiplying the number of pieces in the mailing by the applicable per-piece rate, multiplying the net weight (in whole pounds) of the entire mailing by the applicable per-pound rate, and then adding the two totals together. Postage at the presorted rates is calculated by multiplying the number of pieces in the mailing destined for countries in a specific rate group by the appropriate per-piece rate, multiplying the net weight (in whole pounds) of those pieces by the corresponding per-pound rate, and then adding the two totals together. Volume discounts are calculated on the postage statement.

282.2 Postage Payment Methods

282.21 General

282.211 Postage Meter or Permit Imprint

Postage must be paid by postage meter, permit imprint, or mailer precanceled stamps (see DMM P023.3.0) or a combination. Postage charges are computed on PS Form 3652.

282.212 Piece Rate Portion

The applicable per-piece postage must be affixed to each piece by meter unless postage is paid by permit imprint (see 282.23).

282.213 Pound Rate Portion

Postage for the pound rate portion must be paid either by meter stamp(s) attached to the postage statement or from the mailer's authorized permit imprint advance deposit account.

282.22 Postage Meter

282.221 Postage Endorsement

When postage is paid by meter or mailer precanceled stamps, each piece must be legibly endorsed with the words "INTERNATIONAL PRIORITY AIRMAIL."

282.222 Specifications for Endorsement

The endorsement required in 282.221 must appear on the address side of each piece and must be applied by a printing press, hand stamp, or other similar printing device. It must be printed above the name of the addressee and to the left or below the postage, or it may be printed adjacent to the meter stamp in either the postal inscription slug area or ad plate area. If the postal endorsement appears in the ad plate area, no other information may be printed in the ad plate. The endorsement may not be typewritten or hand drawn. The endorsement is not considered adequate if it is included as part of a decorative design or advertisement.

282.223 Unmarked Pieces

Unmarked pieces lacking the postage endorsement required by 282.221 are subject to the applicable LC/AO airmail single piece rates.

282.224 Drop Shipment of Metered Mail

Mailers who want to enter metered IPA mail at a post office other than where the meter is licensed must obtain a drop shipment authorization. To obtain an authorization, the mailer must submit a written request to the postmaster at the office where the mail will be entered. (see DMM D072).

282.23 Permit Imprint

Mailers may use a permit imprint for mailings that contain identical weight pieces. Any of the permit imprints shown in Exhibit 152.3 are acceptable. The postage charges are computed on PS Form 3652 and deducted from the advance deposit account. Permit imprints must not denote Priority Mail, bulk mail, nonprofit, or other domestic or special rate mail. Mailers may use permit imprint with nonidentical weight pieces only if authorized to use postage mailing systems under DMM P710, P720, or P730.

283 Weight and Size Limits

See 223 and 233 for the weight and size limits for LC items sent in this service. See 243, 253, and 263 for the weight and size limits for AO items sent in this service.

284 Preparation Requirements for Individual Items

284.1 Addressing

See 122.

284.2 Marking

284.21 Airmail

The sender should mark "PAR AVION" or "AIR MAIL" on the address side of each piece. Use of bordered airmail envelopes is optional and may be used for items sent in this service if the envelope contains the "AIR MAIL" endorsement.

284.22 Class of Mail

284.221 Printed Matter

Printed matter is endorsed as required by weight:

a. Items weighing more than 4 pounds must be marked to specify the type of printed matter: "PRINTED MATTER," "PRINTED MATTER—BOOKS," "PRINTED MATTER—SHEET MUSIC," or "PRINTED MATTER—PERIODICALS," as appropriate (see 244.211).

b. Items weighing 4 pounds or less do not require any printed matter endorsement but may be marked with the endorsements in 284.221a at the mailer's option. Unmarked printed matter items are subject to the mailing conditions for letters (see 220).

284.222 Letters/Letter Packages

Letters and letter packages that might be mistaken for another class of mail because of their weight or appearance should be marked "LETTER" on the address side (see 224.2).

284.223 Small Packets

Each small packet must be marked "SMALL PACKET" (see 264.21).

284.3 Sealing

Any item sent in this service may be sealed at the option of the sender.

284.4 Packaging

All items must be placed in envelopes or prepared in package form. See 224.4 for LC mail and 244.4 for AO mail.

284.5 Sorting Requirements for IPA

284.51 Worldwide Nonpresorted Mail

284.511 Working Packages

IPA mail paid at the nonpresorted rate must be made up into working packages. Letters and flats must be packaged separately, although nonidentical pieces may be commingled within each of these categories. Pieces that cannot be packaged because of their physical characteristics must be placed loose in the sack.

284.512 Facing of Nonpresorted Mail Within Package

All pieces in the working packages must be faced the same way.

284.52 Presorted Mail

284.521 Direct Country Packages

When there are ten or more pieces or 1 pound or more of mail for the same country (except Great Britain and Mexico), it must be made up into a country package. Great Britain and Mexico require a finer sortation (see 284.523). At the mailer's option, a finer breakdown by city or postal code may be made based on sortation information provided by the postal administration of the destination country.

284.522 Country Package Label

a. The label (facing slip) for country packages that contain ten or more pieces

to a specific country (except for Great Britain and Mexico) must be completed as follows:

Line 1: Foreign Exchange Office
Line 2: Country of Destination
Line 3: Mailer, Mailer Location

Example

1150 VIENNA FLUG
AUSTRIA
RBA COMPANY WASHINGTON DC

b. See Exhibit 284.522 for Direct Country Package Label and Tag 178, CN 35 Par Avion, for information.

284.523 Country Packages to Great Britain and Mexico

Country packages to Great Britain and Mexico must be made up as follows:

a. Great Britain. When there are 10 or more pieces or 1 pound or more of mail per separation, mail to Great Britain must be sorted into packages as follows:

Separation Exchange Office (Line 1 Package Label):

LONDON CITY LONDONTOWN
SCOTLAND GLASGOW FWD
NORTHERN IRELAND BELFAST FWD
ALL OTHER GREAT BRITAIN GREAT BRITAIN, GREAT BRITAIN

Example

LONDONTOWN
GREAT BRITAIN
MAILER, MAILER LOCATION

b. Mexico. Mail to Mexico must be sorted based on state separations. When a state separation contains ten or more pieces or 1 pound or more of mail, it must be packaged and labeled to the designated foreign exchange office shown in Exhibit 284.523. When there are less than ten pieces or 1 pound to one or more states in the grouping, package and label these pieces to the designated foreign exchange office listed for "Remaining." When there are less than ten pieces or 1 pound to one or more states in the grouping, package and label these pieces to the designated foreign exchange office listed for "Remaining."

Example: MEXICO 506 DF MEXICO MAILER, MAILER LOCATION.

Exception: When there are less than ten pieces or 1 pound of mail to the Mexican states of Baja Calif Norte, Baja Calif Sur, Chihuahua, Distrito Federal (Mexico City), Guerrero, and Sonora, package the pieces separately and affix a facing slip labeled to the U.S. International Exchange Office listed in Exhibit 284.622.

284.524 Facing of Pieces Within Country Package

All pieces in the country package must be faced in the same direction and a facing slip identifying the contents of the package must be placed on the address side of the top piece of each package in such a manner that it will not become separated from the package.

Note: The pressure-sensitive labels and optional endorsement lines used domestically for presort mail are prohibited for International Priority Airmail.

284.53 Physical Characteristics and Requirements for Packages

284.531 Thickness

Packages of letter-size mail should be no thicker than approximately a handful of mail (4 to 6 inches thick).

284.532 Securing Packages

Each package must be securely tied. Placing rubber bands around the length and then the girth is the preferred method of securing packages of letter-size mail. Plastic strapping placed around the length and then the girth is the preferred method of securing packages of flat-size mail.

284.533 Separation of Packages

Letter-size and flat-size mail must be packaged separately. LC and AO mail classes may be commingled in a letter-size or flat-size mail package.

284.6 Sacking Requirements

284.61 Direct Country Sack (11 Pounds or More)

284.611 General

When there are 11 or more pounds of mail addressed to the same country (including Great Britain and Mexico), the mail must be packaged and enclosed in blue international airmail sacks and labeled to the country with Tag 178, Airmail Bag Label LC (CN 35/AV 8) (white). All types of mail, including letter-size packages, flat-size packages, and loose items for each destination, can be commingled in the same sack and counted toward the 11-pound minimum.

284.612 Direct Country Sack Tags

Direct country sacks must be labeled with Tag 178. The tag is white and specially coded to route the mail to a specific country and airport of destination. The blocks on the tag for date, weight, and dispatch information must be completed by the Postal Service and may not be completed by the mailer. The mailer must complete the "To" block showing the destination country. Tag 115, International Priority Airmail, must also be affixed to the Direct Country Sacks. Tag 115 is a "Day-Glo" pink tag that identifies the mail to ensure it receives priority handling. The mailer must designate on the back of Tag 115 the applicable rate group, using a number 1, 2, 3, 4, or WW (Worldwide).

284.62 Mixed Direct Country Package Sacks

284.621 General

The direct country packages containing 10 or more pieces or 1 pound or more of mail destined to a specific country that cannot be made up in direct country sacks must be enclosed in orange Priority Mail sacks unless other equipment is specified by the acceptance office.

284.622 Mixed Direct Country Sack Label

The sack label must be completed as follows. (See Exhibit 284.622 for list of U.S. International Exchange Offices.)

Line 1: Appropriate U.S. Exchange Office and Routing Code
Line 2: Contents—DRX
Line 3: Mailer, Mailer Location

Example

AMC SEATTLE WA 980
INT'L PRIORITY AIRMAIL—DRX
ABC STORE SEATTLE WA

284.63 Worldwide Nonpresort Mail Sacks

284.631 General

The working packages of mixed country mail and loose items must be enclosed in orange Priority Mail sacks unless other equipment is specified by the acceptance office. Nonpresorted letter-size mail may be presented in trays if authorized by the acceptance office.

Note: Working packages of mixed country mail cannot be enclosed in mixed direct country package sacks.

284.632 Worldwide Nonpresort Mail Sack Label

The sack label must be completed as follows:

Line 1: Appropriate U.S. Exchange Office and Routing Code
Line 2: Contents—WKG
Line 3: Mailer, Mailer Location

Example

AMC ATLANTA GA 300
INT'L PRIORITY AIRMAIL—WKG
CPA COMPANY ATLANTA GA

See Exhibit 284.622 for list of U.S. International Exchange Offices.

284.64 Tags and Weight Maximum for Sacks

284.641 Tag 115 and Tag 178

All IPA sacks (direct country, mixed direct country package sacks, and worldwide nonpresort mail sacks) must

be labeled with Tag 115, International Priority Airmail. Tag 115 is a "Day-Glo" pink tag that identifies IPA mail to ensure that it receives priority treatment. Tag 178 (see section 284.611) is a dispatching tag to be used only for direct country sacks. Tag 178 is white and specially coded to route the mail to a specific country and airport of destination. The Postal Service must complete the blocks on the tag for date, weight, and dispatch information. The mailer must complete only the "To" block showing the destination country. Postal tags and sacks are available from the post office.

284.642 Sack Weight Maximum

The maximum weight of the sack and contents must not exceed 66 pounds.

284.7 Customs Forms Requirements

284.71 Letters and Letter Packages

See 224.5.

284.72 Printed Matter

See 244.6.

284.73 Small Packets

See 264.5.

EXHIBIT 284.522—FOREIGN EXCHANGE OFFICE AND COUNTRY RATE GROUPS, INFORMATION FOR DIRECT COUNTRY PACKAGE LABEL (FACING SLIP), TAG 178, 3-LETTER COUNTRY EXCHANGE OFFICE CODE, AND EXCHANGE OFFICE

Rate group	Country	3-letter exchange office code	Exchange office
4	Afghanistan	KBL	Kabul.
1	Albania	TIA	Tirana.
4	Algeria	ALG	Algiers.
1	Andorra [1]		
4	Angola	LAD	Luanda.
2	Anguilla	AXA	The Valley.
2	Antigua and Barbuda	ANU	St. John's.
2	Argentina	BUE	Buenos Aires Avion.
4	Armenia	EVN	Yerevan.
2	Aruba	AUA	Oranjestad.
1	Ascension [1]		
3	Australia [2]	SYD	Sydney.
1	Austria	VIE	1150 Vienna Flug.
4	Azerbaijan	BAK	Baku.
1	Azores [1]		
2	Bahamas	NAS	Nassau.
4	Bahrain	BAH	Bahrain.
4	Bangladesh	DAC	Dhaka 17.
2	Barbados	BGI	Bridgetown.
1	Belarus	MOW	Moscow PCI–1.
1	Belgium	BRU	Brussels X.
2	Belize	BZE	Belize City.
4	Benin	COO	Cotonou.
2	Bermuda	BDA	Hamilton.
4	Bhutan [1]		
2	Bolivia	LPB	La Paz
2	Bonaire [1 3]		
1	Bosnia-Herzegovina	SJJ	Sarajevo.
4	Botswana	GBE	Gabrone.
2	Brazil	RIO	Rio de Janeiro.
2	British Virgin Islands	EIS	Roadtown Tortola
3	Brunei Darussalam	BWN	Bandar Seri Begawan.
1	Bulgaria	SOF	Sofia.
4	Burkina Faso	OUA	Ouagadougou.
4	Burma (Myanmar)	RGN	Rangoon.
4	Burundi	BJM	Bujumbura.
3	Cambodia	PNH	Phnom Penh.
4	Cameroon	DLA	Douala.
4	Cape Verde	SID	SAL.
2	Cayman Islands	GCM	Grand Cayman.
4	Central African Republic	BGF	Bangui.
4	Chad	NDJ	N'Djamena.
2	Chile	SCL	Santiago.
3	China	PEK	Beijing.
2	Colombia	BOG	Bogota Aeropuerto.
4	Comoros Islands [1]		
4	Congo, Dem. Rep. of the	FIH	Kinshasa CTT.
4	Congo, Rep. of the (Brazzaville)	BZV	Brazzaville.
4	Corsica [1]		
2	Costa Rica	SJO	San Jose.
4	Côte d'Ivoire	ABJ	Abidjan.
1	Croatia	ZAG	Zagreb.
2	Cuba	HAV	Havana.
	Curacao [3]	CUR	Willemstad.
4	Cyprus	NIC	Nicosia.
1	Czech Republic	PRG	Prague 120.
1	Denmark	CPH	Copenhagen PTM.

EXHIBIT 284.522—FOREIGN EXCHANGE OFFICE AND COUNTRY RATE GROUPS, INFORMATION FOR DIRECT COUNTRY PACKAGE LABEL (FACING SLIP), TAG 178, 3-LETTER COUNTRY EXCHANGE OFFICE CODE, AND EXCHANGE OFFICE—Continued

Rate group	Country	3-letter exchange office code	Exchange office
4	Djibouti	JIB	Djibouti.
2	Dominica	DOM	Roseau.
2	Dominican Republic	SDQ	Santo Domingo.
2	Ecuador	UIO	Quito.
4	Egypt	CAI	Cairo Int'l Airport.
2	El Salvador	SAL	San Salvador.
4	Equatorial Guinea	BSG	Bata.
4	Eritrea	ASM	Asmara.
1	Estonia	TLL	Tallinn.
4	Ethiopia	ADD	Addis Ababa.
2	Falkland Islands [1]		
1	Faroe Islands [1]		
3	Fiji	NAN	Nadi.
1	Finland	HEL	Helsinki.
1	France	PAR	Paris Aviation Passe.
2	French Guiana	CAY	Cayenne.
3	French Polynesia	PPT	Papeete.
4	Gabon	LBV	Libreville.
4	Gambia	BJL	Banjul.
4	Georgia, Republic of	TBS	Tbilisi.
1	Germany	FRA	Frankfurt am Main. Flughafen.
4	Ghana	ACC	Accra.
1	Gibraltar	GIB	Gibraltar.
1	Great Britain		
	London City	LON	Londontown.
	Northern Ireland	BFS	Belfast.
	Scotland	GLA	Glasgow.
	All Other		
	Great Britain	LON	Great Britain.
1	Greece	ATH	Athens.
1	Greenland [1]		
2	Grenada	GND	St. George's.
2	Guadeloupe	PTP	Pointe-a-Pitre.
2	Guatemala	GUA	Guatemala.
4	Guinea	CKY	Conakry.
4	Guinea-Bissau	BXO	Bissau.
2	Guyana	GEO	Georgetown.
2	Haiti	PAP	Port-au-Prince.
2	Honduras	TGU	Tegucigalpa.
3	Hong Kong	HKG	Victoria.
1	Hungary	BUD	Budapest 72 Trans.
1	Iceland	REK	Reykjavik.
4	India	DEL	Delhi Air.
3	Indonesia	JKT	Jakarta Soekarno-Hatta.
4	Iran	THR	Tehran.
4	Iraq	BGW	Baghdad.
1	Ireland	DUB	Dublin.
4	Israel	TLV	Tel Aviv-Yafo.
1	Italy	ROM	Rome Ferr.
2	Jamaica	KIN	Kingston.
3	Japan	TYO	Tokyo APT FWD.
4	Jordan	AMM	Amman.
4	Kazakhstan	ALA	Alma Ata.
4	Kenya	NBO	Nairobi.
3	Kiribati	TRW	Tarawa.
3	Korea, Dem. People's Rep. (North) [1]		
3	Korea, Republic of (South)	SEL	Seoul.
4	Kuwait	KWI	Kuwait.
1	Kyrgyzstan	MOW	Moscow PCI–1.
3	Laos	VTE	Vientiane.
1	Latvia	RIX	Riga.
4	Lebanon	BEY	Beirut.
4	Lesotho	MSU	Maseru.
4	Liberia	MLW	Monrovia.
4	Libya	TIP	Tripoli.
1	Liechtenstein [1]		
1	Lithuania	VNO	Vilnius.

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EXHIBIT 284.522—FOREIGN EXCHANGE OFFICE AND COUNTRY RATE GROUPS, INFORMATION FOR DIRECT COUNTRY PACKAGE LABEL (FACING SLIP), TAG 178, 3-LETTER COUNTRY EXCHANGE OFFICE CODE, AND EXCHANGE OFFICE—Continued

Rate group	Country	3-letter exchange office code	Exchange office
1	Luxembourg	LUX	Luxembourg Ville.
3	Macao	HKG	Macau.
1	Macedonia	BEG	Belgrade.
4	Madagascar	TNR	Antananarivo.
1	Madeira Islands	FNC	Funchal.
4	Malawi	BLZ	Limbe C.S.O.
3	Malaysia	KUL	Kuala Lumpur.
4	Maldives	MLE	Male.
4	Mali	BKO	Bamako.
4	Malta	VLT	Valletta.
2	Martinique	FDF	Fort de France.
4	Mauritania	NKC	Nouakchott.
4	Mauritius	MRU	Mauritius.
2	Mexico See Exhibit 284.523		
4	Moldova	KIV	Kishinev.
1	Monaco	MCM	Monte Carlo.
3	Mongolia [1]		
2	Montserrat	MNI	Plymouth.
4	Morocco	CAS	Casablanca P/PAL.
4	Mozambique	MPM	CPI Maputo.
4	Namibia	WDH	Windhoek.
3	Nauru	INU	Nauru.
3	Nepal	KTM	Kathmandu.
1	Netherlands	AMS	Amsterdam EXP.
2	Netherlands Antilles [1 3]		
3	New Caledonia	NOU	Noumea.
3	New Zealand	AKL	Auckland.
2	Nicaragua	MGA	Managua.
4	Niger	NIM	Niamey.
4	Nigeria	LOS	Lagos.
1	Norway	OSL	Oslo Transit.
4	Oman	MCT	Muscat.
4	Pakistan	KHI	Karachi.
2	Panama	PTY	Panama City.
3	Papua New Guinea	POM	Port Moresby.
2	Paraguay	ASU	Asuncion.
2	Peru	LIM	Lima Transito.
3	Philippines	MNL	Manila.
3	Pitcairn Island [1]		
1	Poland	WAW	Warsaw.[3]
1	Portugal	LIS	Lisbon Province.
4	Qatar	DOH	Doha.
4	Reunion	RUN	St. Denis.
1	Romania	BUH	Bucharest.
1	Russia	MOW	Moscow PCI–1.
4	Rwanda	KGL	Kigali.
2	Saba [1 3]		
2	Saint Christopher and Nevis	SKB	Basseterre.
2	Saint Eustatius [1 3]		
4	Saint Helena [1]		
2	Saint Lucia	SLU	Castries.
2	Saint Maarten [3]	SXM	Philipsburg.
2	Saint Pierre and Miquelon [1]		
2	Saint Vincent and The Grenadines	SVD	Kingstown.
1	San Marino [1]		
1	Sao Tome and Principe [1]		
4	Saudi Arabia	DHA	Dhahran APT.
4	Senegal	DKR	Dakar Yoff.
1	Serbia-Montenegro (Yugoslavia)	BEG	Belgrade.
4	Seychelles	SEZ	Mahe Is.
4	Sierra Leone	FNA	Freetown.
3	Singapore	SIN	Singapore.
1	Slovak Republic (Slovakia)	BTS	Bratislava.
1	Slovenia	LJU	Ljubljana.
3	Solomon Islands	HIR	Honiara.
4	Somalia	MGQ	Mogadishu.
4	South Africa	JNB	Johannesburg.
1	Spain	MAD	Madrid Airport.

EXHIBIT 284.522—FOREIGN EXCHANGE OFFICE AND COUNTRY RATE GROUPS, INFORMATION FOR DIRECT COUNTRY PACKAGE LABEL (FACING SLIP), TAG 178, 3-LETTER COUNTRY EXCHANGE OFFICE CODE, AND EXCHANGE OFFICE—Continued

Rate group	Country	3-letter exchange office code	Exchange office
4	Sri Lanka	CMB	Colombo.
4	Sudan	KRT	Khartoum.
2	Suriname	PBM	Paramaribo.
4	Swaziland	MTS	Manzini.
1	Sweden	STO	Stockholm Flug.
1	Switzerland	GVA	Geneva 1.
4	Syria	DAM	Damascus.
3	Taiwan	TPE	Taipei.
4	Tajikistan	MOW	Moscow PCI–1.
4	Tanzania	DAR	Dar es Salaam.
3	Thailand	BKK	Bangkok.
4	Togo	LFW	Lome.
3	Tonga	NUK	Nukualofa.
2	Trinidad and Tobago	POS	Port of Spain.
4	Tristan da Cunha [1]		
4	Tunisia	TUN	Tunis.
1	Turkey	IST	Istanbul Hava Alani.
1	Turkmenistan	MOW	Moscow PCI–1.
2	Turks and Caicos Islands	TKI	Grand Turk.
3	Tuvalu [1]		
4	Uganda	KLA	Kampala
4	Ukraine	IEV	Kiev.
4	United Arab Emirates	DXB	Dubai.
2	Uruguay	MVD	Montevideo.
4	Uzbekistan	TAS	Tashkent.
3	Vanuatu	VLI	Port Vila.
4	Vatican City	VCY	Vatican City State.
2	Venezuela	CCS	Caracas.
3	Vietnam	SGN	Ho Chi Minh Ville.
3	Wallis and Futuna Islands [1]		
3	Western Samoa	APW	Apia.
4	Yemen	SAH	Sanaa.
4	Zambia	NLA	Ndola.
4	Zimbabwe	HRE	Harare.

Footnotes

[1] Direct country sacks are not made to these destinations. Prepare direct country packages (ten or more pieces) and include in mixed direct country package sacks labeled to the assigned U.S. exchange office listed in Exhibit 284.622.

[2] At the mailer's option, a finer sortation for IPA items addressed to Australia may be used. If this option is chosen, items addressed with postal codes beginning with 0, 1, 2, 4, and 9 and uncoded mail should be sorted and packaged to Sydney. Direct country sacks should be tagged to Sydney as well. Both the three-letter exchange office code, "SYD," and the country name, Australia, should be entered in the "TO" block of Tag 178. Items addressed with postal codes beginning with 3, 5, 6, 7, and 8 should be sorted and packaged to Melbourne. Direct country sacks should be tagged to Melbourne as well. Both the three-letter exchange office code, "MEL," and the country name, Australia, should be entered in the "TO" block of Tag 178.

[3] Netherlands Antilles includes Bonaire, Curacao, Saba, St. Eustatius, and St. Maarten.

EXHIBIT 284.523—MEXICO

State group	State name	State abbreviation	Package label (facing slip) line 1	Tag 116 3-letter exchange office code
1	Aguascalientes	AGS	20001 Aguascalientes AGS DIS	GDL.
	Colima	COL	28001 Colima COL DIS	GDL.
	Guanajuato	GTO	36501 Irapuato GTO DIS	GDL.
	Jalisco	JAL	CPA Occidente	GDL.
			Guadalajara DIS	GDL.
	Nayarit	NAY	63001 Tepic NAY DIS	GDL.
	Zacatecas	ZAC	98001 Zacatecas ZAC DIS	GDL.
	Remaining	CPA	Occidente Guadalajara DIS	GDL.
2	Campeche	CAM	24001 Campeche CAM DIS	MID.
	Tabasco	TAB	86001 Villahermosa TAB DIS	MID.
	Yucatan	YUC	97001 Merida YUC DIS	MID.
	Remaining		97001 Merida YUC DIS	MID.
3	Coahuila	COAH	CPA Noreste Monterrey NL DIS	MTY.
	Nuevo Leon	NL	CPA Noreste Monterrey NL DIS	MTY.
	San Luis Potosi	SLP	78001 San Luis Potosi SPL DIS	MTY.
	Tamulipas	TAM	87001 DC Victoria TAM DIS	MTY.

EXHIBIT 284.523—MEXICO—Continued

State group	State name	State abbreviation	Package label (facing slip) line 1	Tag 116 3-letter exchange office code
	Remaining	CPA	Noreste Monterrey NL DIS	MTY.
4	Chiapas	CHIS	29002 Tuxtla Gtz CHIS DIS	MEX.
	Hidalgo	HGO	42001 Pachuca HGO DIS	MEX.
	Mexico	MEX	Mexico 506 DF DIS	MEX.
	Michoacan	MICH	58001 Morelia MICH DIS	MEX.
	Morelos	MOR	62001 Cuernavaca MOR DIS	MEX.
	Oaxaca	OAX	68001 Oaxaca OAX DIS	MEX.
	Puebla	PUE	72001 Puebla PUE DIS	MEX.
	Queretaro	QRO	76001 Queretaro QRO DIS	MEX.
	Quintana Roo	QROO	77001 Chetumal QROO DIS	MEX.
	Tlaxcala	TLAX	90001 Tlaxcala TLAX DIS	MEX.
	Veracruz	VER	91701 Veracruz VER DIS	MEX.
	Remaining Mexico		506 DF DIS	MEX.
5	Durango	DGO	82001 Mazatlan SIN DIS	MZT.
	Sinaloa	SIN	82001 Mazatlan SIN DIS	MZT.
	Remaining 82001	SIN DIS	Mazatlan	MZT.
6	Distrito Federal	DF	Mexico 506 DF (Mexico City)	MEX.
7	Guerrero	GRO	39301 Acapulco de Juarez GRO DIS	ACA.
8	Baja Calif Norte	BCN	22001 Tijuana BCN DIS	N/A.
	Baja Calif Sur	BCS	23001 La Paz BCS DIS	N/A.
	Chihuahua	CHIH	32001 CD Juarez CHIH DIS	N/A.
	Sonora	SON	84001 Nogales SON DIS	N/A.

EXHIBIT 284.622—LABELING OF IPA MAIL TO USPS EXCHANGE OFFICES

IPA acceptance office 3-digit ZIP code prefix	U.S. exchange office and routing code for line 1
004–005, 010–098, 100–199, 250–267	AMC KENNEDY NY 003.
200–249, 254, 268, 283–285, 400–418, 420–427, 476–477	P&DC DULLES VA 201.
270–282, 286–326, 344, 350–397, 399	AMC ATLANTA GA 300.
424, 430–459, 460–516, 520–528, 530–532, 534–535, 537–567, 570–588, 600–620, 622–631, 633–641, 644–658, 660–662, 664–681, 683–693, 739.	AMC O'HARE 606.
700–708, 710–738, 740–799, 885	ISC DALLAS TX 753.
590–599, 821, 832–838, 970–986, 988–999	AMC SEATTLE WA 980
850, 852–853, 855–857, 859–860, 863–865, 870–875, 877–884, 889–891, 900–908, 910–928, 930–936	AMC LOS ANGELES CA 900.
800–816, 820, 822–831, 840–847, 893–898, 937–966	AMC SAN FRANCISCO CA 940.
967–969	P&DC HONOLULU 967.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–31438 Filed 11–24–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6193–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Williams Pipe Line Disposal Pit Superfund Site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region VIII announces its intent to delete the Williams Pipe Line Disposal Pit Superfund Site (Site) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which the EPA promulgated pursuant of Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, commonly referred to as Superfund. EPA and the state of South Dakota Department of Environment and Nature Resources (State) have determined all appropriate CERCLA response actions have been implemented and the Site poses no significant threat to public health and the environment. Therefore, no further response measures pursuant to CERCLA are appropriate. This determination does not apply to ongoing non-CERCLA petroleum assessment and cleanup work conducted under State authorities.

DATES: Comments may be submitted to EPA on or before December 28, 1998.

ADDRESSES: Comments may be mailed to: Mr. Dennis R. Jaramillo, U.S. Environmental Protection Agency, Region VIII, Mail Code 8EPR–SR, 999 18th Street, Suite 500, Denver, Co 80202–2466, Telephone: (303) 312–6580.

Comprehensive information on this site is available through the EPA Region VIII public docket. Located at the EPA Region VIII, Superfund Records Center which are available for viewing from 8 AM to 4 PM, Monday through Friday excluding holidays. Requests for documents should be directed to the

EPA Region VIII, Superfund Records Center.

The address for the Region VIII Superfund Records Center is: Superfund Records Center, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, 5th Floor, Denver, Co 80202, Telephone: (303) 312–6473.

Background information from the Regional public docket is also available for viewing at the following locations:

Sioux Falls Library,
201 N. Main,
Sioux Falls, South Dakota 57105.
Contact: Mr. Doug Murdock.
South Dakota Department of Environment and Natural Resources (DENR),
Groundwater Quality Program,
Joe Foss Bldg.,
523 E. Capital,
Pierre, South Dakota 57501.
Contact: Mr. Mark Lawrensen.

FOR FURTHER INFORMATION CONTACT:
Dennis R. Jaramillo, (303) 312–6580.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Conclusion

I. Introduction

The Environmental Protection Agency (EPA), Region VIII announces its intent to delete the Williams Pipe Line Disposal Pit Superfund Site from the National Priorities List (NPL) and requests comments on this deletion. The NPL constitutes Appendix B of the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), Title 40 of the Code of Federal Regulations (40 CFR), as amended. The EPA identifies sites that appear to present a significant risk to the public health, welfare, or to the environment and maintains the NPL as a list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Trust Fund (fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for fund-financed remedial actions in the unlikely event that future conditions at the site warrant such action.

EPA intends to delete the Site from the NPL. EPA will accept comments on this proposed deletion for thirty days following publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Williams Pipe Line Site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations with regard to an individual site. It also does not alter the requirements under state orders.

II. NPL Deletion Criteria

The NCP establishes the criteria EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the state, has determined that that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate fund-financed responses under CERCLA have been implemented and EPA, in consultation with the state, has determined that no further response action by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the state, has determined that the release poses no significant threat to public health or the environment and, therefore taking remedial measures is not appropriate.

A five year-review for the Site is not warranted by EPA based on the Declaration portion of the No Action Record Of Decision (ROD), which states the five year review provision of CERCLA does not apply to a No Action remedy. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the Site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

EPA, Region VIII will accept and evaluate public comments before making a final decision to delete the Site. The following procedures were used for the intended deletion of this Site:

(1) EPA, Region VIII has recommended deletion of the Site and has prepared the relevant documents;

(2) The State of South Dakota has concurred with EPA's recommendation for deletion;

(3) Concurrent with this National Notice of Intent to Delete, a notice has been published in a local newspaper and has been distributed to appropriate Federal, State and local officials, and other interested parties; and

(4) EPA Region VIII has made all relevant documents available in the Regional Office and local Site information repositories.

Comments received during the notice and comment period will be evaluated before making a final decision to delete. Region VIII will prepare a Responsiveness Summary, which will address the comments received during the pubic comments period, the deletion will occur after EPA publishes a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsive Summary will be made available by mail to local residents by EPA Region VIII.

IV. Basis for Intended Site Deletion

The following summary provided EPA's rationale for recommending deletion of the Superfund Site.

A. Site Background

The Site is located on the Williams Pipe Line 12th Street Terminal (Terminal) property at the intersection of 12th Street and Marion Road in Minnehaha County, Sioux Falls, South Dakota. The disposal Pit, or burn pond, was located in the northeast corner of the Terminal. The Terminal included an unlined pit about 40 feet in diameter and 7–9 feet deep. The Terminal also includes 42 above ground petroleum fuel tanks, a fuel loading rack, garages, an administration building, and other support structures.

In 1966, the Terminal was purchased by Williams Pipe Line Company from the Great Lakes Pipe Line Company. Historically bulk quantities of liquid fertilizers as well as petroleum products have been stored and conveyed at the Terminal including fuel oil, diesel fuel, unleaded gasoline, aviation gasoline, and jet fuel. Tanks and pipe racks at the Terminal were used to convey and store petroleum fuel to the loading racks where delivery vehicles were filled.

The burn pond was constructed in 1945 and used until 1987 to collect storm water runoff, often contaminated with spilled materials, from various areas of the Terminal. Petroleum products accumulating on the pond surface were periodically burned off.

The environmental investigations at the Terminal are regulated under both Federal and State authorities to address the petroleum releases throughout the entire Terminal. Petroleum releases are regulated by the State. In the mid-1980's investigations were performed under State authority and directed at examining the nature and extent of the contamination from petroleum releases, such as leaks or spills throughout the

Terminal. In March and November 1987, EPA conducted an investigation that identified Site related chemicals, including some CERCLA hazardous substances, in the soil and the groundwater near the burn pond. Based on these results, the Site was placed on the NPL on August 30, 1990 (55 FR 35502). In November 1988 Williams Pipe Line Company signed a Settlement Agreement with the State of South Dakota and the City of Sioux Falls for investigation and cleanup of petroleum spills throughout the Terminal. The response actions taken pursuant to the Settlement Agreement consisted of the installation of recovery wells and an interception trench.

Williams Pipe Line signed an Administrative Order on Consent on April 25, 1991 to conduct a CERCLA Remedial Investigation (RI) and Feasibility Study (FS). The purpose of the RI, which was conducted in two phases from 1991 to 1993, was to more fully investigate the nature and extent of the hazardous substances contamination in the burn pond area. Through the RI, arsenic and benzene were identified as the main contaminants of concern, however, benzene is a petroleum constituent and addressed at the Site under State authority. EPA issued a Record of Decision (ROD) for the Site on September 29, 1994. The selected remedy for the Site was No Action with a minimum of two years of quarterly groundwater monitoring of arsenic. The ROD determination that no action was warranted applies only to CERCLA and not to state authority or other regulations and statutes. For a detailed understanding of the selected remedy, refer to the ROD dated September 29, 1994.

B. Characterization of Risks

Based on the Base Line Risk Assessment (BRA), the RI concluded that there was no current or likely future exposure to groundwater contaminated from arsenic. Since no exposure exists or is likely, there is no unacceptable risk. As an added measure of confidence, the ROD required a minimum of two years of quarterly groundwater monitoring to assure that no unacceptable levels of arsenic were moving from the Terminal.

Williams Pipe Line completed ten quarters of groundwater sampling in December 1997. These groundwater sampling events show that all monitoring wells that were tested for arsenic are below the Maximum Contaminant Level (MCL) of 50 µg/l, with the exception of one on-site monitoring well, P–11. This well has shown a decline in arsenic levels over the ten quarters of groundwater monitoring, with the current arsenic level at 150 µg/l. The offsite monitoring wells show for the ten quarters of groundwater sampling that the arsenic present in P–11 is not migrating off-site, due in part to a collection trench installed under the 1988 Settlement Agreement addressing hydrocarbon spills. The off-site wells show that levels of arsenic concentration are at 2 µg/l.

EPA is satisfied that the monitoring conducted pursuant to the ROD met its objectives to assure that the arsenic was not migrating off-site, and that there would be no unacceptable risk in the future.

Notwithstanding the declining levels of arsenic in well P–11, its capture by the ongoing hydrocarbon collection system administered under the State Settlement Agreement, and monitoring results clearly demonstrating no migration of arsenic from P–11 to off-site monitoring wells, Williams Pipe Line and the State have amended their settlement agreement for the future monitoring of arsenic due to its current elevated level in well P–11.

V. Conclusion

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if the remedial investigation has shown that the release poses no significant threat to public health or the environment and therefore, taking remedial measures is not appropriate. EPA, with concurrence of the State believes that this criterion for deletion has been met.

Subsequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available from the docket.

Dated: November 18, 1998.

William P. Yellowtail,

Regional Administrator, Region VIII.

[FR Doc. 98–31540 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

49 CFR Part 1420

[Docket No. BTS–98–4659]

RIN 2139–AA05

Revision to Reporting Requirements for Motor Carriers of Property; Extension of Comment Period

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Extension of comment period.

SUMMARY: The Bureau of Transportation Statistics (BTS) is extending the comment period for its proposed revisions to the reporting requirements for motor carriers of property. As initially published in the **Federal Register** of November 3, 1998 (63 FR 59263), the comments were to be received by December 3, 1998. BTS is extending the comment period until January 15, 1999, in order to give all interested persons the opportunity to comment fully.

DATES: Written comments must be submitted by January 15, 1999.

ADDRESSES: Please direct comments to the Docket Clerk, Docket No. BTS–98–4659, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10 a.m. to 5 p.m. ET, Monday through Friday, except Federal Holidays.

Comments should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–98–4659. The Docket Clerk will date stamp the postcard and mail it back to the commenter.

If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–2, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, at the address: http://dms.dot.gov. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. If you have access to the Internet, you can obtain an electronic copy at http://www.bts.gov/mcs/rulemaking.htm.

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II. Extension of Comment Period

Several parties who have been actively involved in the proceedings relating to the proposed revisions have requested additional time for their organizations to review the proposal and prepare and coordinate their responses. BTS is therefore extending the comment period to January 15, 1999, a period that includes additional time to avoid a deadline occurring immediately after the holidays.

List of Subjects in 49 CFR Part 1420

Motor carriers, Reporting and classification.

Issued in Washington, DC, on November 12, 1998.

Robert A. Knisely,

Deputy Director.

[FR Doc. 98–31522 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Notice of Finding on a Petition To Delist the Wood Bison From the List of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to delist the wood bison (*Bison bison athabascae*) pursuant to the Endangered Species Act of 1973, as amended. The Service finds that the petitioner did not supply substantial information to indicate that the delisting of wood bison may be warranted.

DATES: The finding announced in this document was made on November 12, 1998. Comments and information concerning this petition finding may be submitted until further notice.

ADDRESSES: Questions, comments, or information concerning this petition should be sent to the Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, D.C. 20240. The petition, finding, and supporting information are available for public inspection, by appointment, during normal business hours at the Office of Scientific Authority, 4401 N. Fairfax Dr., Rm. 750, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Javier Alvarez, Office of Scientific Authority, U.S. Fish and Wildlife Service, Mail Stop ARLSQ–750, Washington, D.C. 20240 (phone: 703–358–1708; fax: 703–358–2276; e-mail: Javier__Alvarez@mail.fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the U.S. Fish and Wildlife Service (Service) make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. This finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**.

The Service has made a 90-day finding on a petition to delist the wood bison (*Bison bison athabascae*) populations in Canada, currently listed as endangered under ESA. The petition was submitted by Mr. Gary A. Plumlee, Anderson, Indiana, and was received by the Service on May 14, 1998.

The document provided by the petitioner to substantiate his petition consisted primarily of a copy of the proposal submitted by the Government of Canada to the Tenth Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species (CITES), held in Harare, Zimbabwe, from 9–20 June, 1997. The proposal, which was adopted at the Tenth Conference, requested the transfer of wood bison from Appendix I to Appendix II of CITES to allow commercial trade of this subspecies. The information contained in the CITES proposal originated primarily from research and management conducted by Canadian federal, provincial and territorial governments as part of a recovery program for the wood bison.

The Service agrees that wood bison populations are capable of growing rapidly when protected from over-hunting. Historically found in the interior plains of northwestern North America (northwestern Saskatchewan, northern Alberta, northeastern British Columbia, and southwestern Northern Territories), the wood bison was almost extirpated by Europeans during the late 19th century. Of approximately 200,000 wood bison believed to exist in Canada in 1800, the population was reduced to about 250 animals at the beginning of this century. Under government protection (it currently has legal protection in British Columbia, Yukon Territory, and Northwest Territories; it is designated as threatened according to the Committee on the Status of Endangered Wildlife in Canada) this population has grown to an estimated 2,500 wood bison today, including 1,800 animals in seven wild herds, and around 700 held in captivity. An additional 2,300 animals exist in free-ranging populations that originate from wood bison exposed to hybridization with plains bison *(Bison bison bison)* and disease (tuberculosis and brucellosis). As a result of these increases in population, the Canadian government opened regulated hunting of wood bison in 1988, with an annual quota of 47 animals to be allocated among native peoples, local residents, and non-resident trophy hunters accompanied by native people.

The Service also agrees that illegal trade in this subspecies does not appear to be a significant problem. CITES records reveal that a very small number of live wood bison or their parts have entered international trade since it was included in Appendix I of CITES in 1973.

When referring to the downlisting of the wood bison from Appendix I to Appendix II of CITES, the petitioner incorrectly states that the wood bison was reclassified as threatened under CITES. CITES Appendix II is not equivalent to threatened under ESA. Moreover, although Parties to CITES consider the level of threat when listing species, the listing criteria are different. Listing criteria adopted by Parties to CITES in November 1994 (Resolution 9.24) clearly state that a species can be placed in CITES appendices only if it is threatened or has the potential to be threatened by trade. The Canadian proposal to downlist the subspecies to Appendix II was adopted in June 1997 based on these new criteria.

Although over-hunting and illegal trade are no longer considered threats to the species, recovery of the species is still limited by habitat availability and quality. Approximately 34 percent of the wood bison's historical range is no longer available because of agriculture and urban development, a problem that is expected to increase. A further 27 percent is temporarily unavailable because of the presence of disease. Several reintroduced populations are threatened by the risk of infection with tuberculosis and brucellosis, including the largest at Mackenzie Bison Sanctuary in the Northwestern Territories, which contains 1,300 of the remaining 1,800 free-ranging non-hybridized wood bison. Therefore, buffer zones are currently being established to separate diseased and

disease-free herds. This leaves only about 39 percent of the species' historical range available for recovery.

The official Canadian recovery plan developed by the Wood Bison Recovery Team calls for the establishment of four or more free-ranging herds of wood bison in suitable habitat in the original range, each herd containing or exceeding the minimum viable population (MVP) of 400 animals. The Canadian CITES proposal states that only the population at Mackenzie Bison Sanctuary exceeds the MVP, with the other four reestablished herds having "the potential to meet or exceed that number by the year 2000."

When evaluating petitions for delisting or downlisting of species under the ESA, the Service's guidelines state that a "not-substantial information" finding be made when already established recovery objectives have not been met (see page 14, section 2(a)(1) of Endangered Species Petition Management Guidance—U.S. Fish and Wildlife Service and National Marine Fisheries Service, July 1996). The Canadian recovery plan goals for the wood bison have not been met yet. Therefore, the Service finds that the petitioner did not supply substantial information to indicate that the petitioned action may be warranted. At such time when the free-ranging disease-free populations of wood bison meet the recovery plan criteria, the Service may initiate such a downlisting. In the meantime and within available resources, the Service will evaluate the advisability of downlisting the captive population of wood bison from endangered to threatened, with a special rule to allow the import to the United States of captive-bred wood bisons.

References Cited: 1997. Prop. 10.35. Proposal for the transfer of wood bison (*Bison bison athabascae*) from Appendix I to Appendix II of the Convention on International Trade in Endangered Species submitted by the Government of Canada at the Tenth Meeting of the Conferences of the Parties held in Harare, Zimbabwe, 9–20 June, 1997.

Author: The primary author of this document is Dr. Javier Alvarez (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 12, 1998.

John G. Rogers,

Director.

[FR Doc. 98–31282 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF04

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Notice of Public Hearings on Proposed Rule To Remove the Peregrine Falcon in North America From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposed rule to remove the peregrine falcon (*Falco peregrinus*) in North America from the list of Endangered and Threatened Wildlife will be extended and that two public hearings will be held. The extension and hearings will allow all interested parties to submit oral or written comments on the proposal.

DATES: The comment period for this proposal will be extended an additional 60 days from November 24, 1998 to January 23, 1999. Comments must be received by the closing date. Any comments received after the closing date may not be considered in the final decision on the proposal. The public hearings will be held from 7 p.m. to 9 p.m. on December 3, 1998 in Madison, Wisconsin and December 8, 1998, in Concord, New Hampshire. Both meetings will be preceded by an informational session from 6 p.m. to 7 p.m..

ADDRESSES: The public hearings will be held at the Madison Area Technical College, 3550 Anderson Street, Room 129D, Madison, Wisconsin and the New Hampshire Department of Fish and Game East-West Conference Room, 2 Hazen Drive, Concord, New Hampshire. Written comments should be sent to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Robert Mesta, at the above Ventura, California address, phone 805/644–1766, facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1998, the U.S. Fish and Wildlife Service (Service) published a proposal in the **Federal Register** to remove the peregrine falcon (*Falco peregrinus*) in North America from the List of Endangered and Threatened Wildlife (63 FR 45446). The Service proposed this action because the available data indicate that this species has recovered following restrictions on organochlorine pesticides in the United States and Canada, protections provided by the Endangered Species Act of 1973, as amended (Act), and the implementation of successful management activities, including the reintroduction of captive-bred and relocated wild hatchling peregrine falcons. Currently, a minimum of 1,388 American peregrine falcon pairs are found in Alaska, Canada, and the Western United States, and a minimum of 174 peregrine falcon pairs are found in the Eastern United States. At least 31 peregrine falcon pairs occur in 8 Midwestern States not covered by the Eastern Peregrine Falcon Recovery Plan or the two recovery plans for the American peregrine falcon in the Western United States. Overall productivity goals were met or exceeded in four American peregrine falcon recovery plans, and most recovery goals for the eastern peregrine falcon population have been met.

If made final, the action proposed will remove the American peregrine falcon (*Falco peregrinus anatum*) as an endangered species and will remove the designation of endangered due to similarity of appearance for any free-flying peregrine falcons within the 48 conterminous States from the List of Endangered and Threatened Wildlife. The action proposed will remove all Endangered Species Act protections from all subspecies and populations of *Falco peregrinus* in North American. The proposed action will not affect protection provided to this species by the Migratory Bird Treaty Act (MBTA). The proposal also includes a proposed minimum 5-year post delisting monitoring program as required for species that are delisted due to recovery. Monitoring will include population trends, productivity, contaminant exposure, and take for falconry.

Pursuant to 50 CFR 424.16(c)(2), the Service may extend or reopen a comment period upon finding that there is good cause to do so. Full participation of the affected public in a species' listing or delisting, allowing the Service to consider the best scientific and commercial data available in making a

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final determination on the proposed action, is deemed as sufficient cause.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to two such requests, the Service will hold public hearings on the dates and at the addresses described in the **DATES** and **ADDRESSES** sections above. Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the start of the hearing. In the event there is a large attendance, the time allotted for oral statements may have to be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearings or mailed to the Service. Legal notices announcing the dates, times, and locations of the hearings will be published in newspapers concurrently with the **Federal Register** notice.

Extension of the comment period will enable the Service to complete the peer review process for the proposed delisting action. The current comment period on this proposal closes on November 24, 1998. The Service is extending the public comment period. Written comments may be submitted until January 23, 1998, to the Service office in the **ADDRESSES** section.

Author. The primary author of this notice is Robert Mesta (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: November 18, 1998.

Anne Badgley,

Regional Director, Fish and Wildlife Service.

[FR Doc. 98–31478 Filed 11–24–98; 8:45 am]

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Notices

Federal Register
Vol. 63, No. 227
Wednesday, November 25, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Department of the Interior

Bureau of Land Management

Survey and Manage Strategy for National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service and the Bureau of Land Management (BLM) will prepare an environmental impact statement (EIS) to be used in considering a proposal to make changes in two of the mitigation measures first adopted in the Standards and Guidelines for Management of Habitat for Late-Successional and Old-Growth Forest Related Species Within the Range of the Northern Spotted Owl (Northwest Forest Plan), and then incorporated into subsequent planning documents of the Forest Service and BLM. These changes affect the Survey and Manage and Protection Buffer species provisions of the Standards and Guidelines and are based on new information that has been collected in the past four years of implementation. The purpose of these proposed changes is to update the conservation strategies in the Northwest Forest Plan and to continue to meet all of the objectives articulated in the Northwest Forest Plan. The selected alternative may result in amendment to agency land and resource management plans for National Forests and BLM Districts within the range of the northern spotted owl.

DATES: Comments concerning the scope of the analysis should be received in writing by December 24, 1998.

ADDRESSES: Send written comments concerning this proposal to Bill Torgersen, Project Manager, P.O. Box 3623, Portland, Oregon 97203.

FOR FURTHER INFORMATION CONTACT: Cynthia Henchell, EIS Team Leader, P.O. Box 3623, Portland, Oregon 97203, phone (503) 808–2490.

SUPPLEMENTARY INFORMATION: This EIS will evaluate the Survey and Manage and Protection Buffer species Standards and Guidelines as they are applied to National Forest System Lands (NFS) and public lands administered by the BLM within the range of the northern spotted owl. The selected alternative may result in an amendment to Land Management Plans (LMPs) for the Gifford Pinchot, Mount Baker-Snoqualmie, Mount Hood, Olympic, Rogue River, Siuslaw, Siskiyou, Six Rivers, Umpqua, and Willamette National Forests and portions of the Deschutes, Okanogan, Wenatchee, Winema, Klamath, Lassen, Mendocino, Modoc, and Shasta-Trinity National Forests implementing the Northwest Forest Plan.

The Record of Decision for this EIS would amend the BLM Resource Management Plans (RMPs) for the Salem, Eugene, Coos Bay, Roseburg, and Medford Districts, and the Klamath Falls Field Office of the Lakeview District in Oregon. In addition, the Record of Decision for this EIS would amend the plans for the Redding Field Office, Arcata Field Office, King Range National Conservation Area, and Ukiah Field Office within the grouping of independent Northern California Field Offices known as NORCAL.

New information, such as the range and abundance of species listed in Table C–3 of the Survey and Manage and Protection Buffer species Standards and Guidelines of the Northwest Forest Plan, continues to be compiled from surveys and analyzed following four years of implementation of these provisions. This new information indicates that adhering to some of the present Standards and Guidelines for Survey and Manage and Protection Buffer species may not fully meet both the need to protect old growth-related species and the need for forest products, which are the dual goals of the Northwest Forest Plan. The present Standards and Guidelines for Survey and Manage and Protection Buffer species require substantial reductions in the availability of resources from Federal lands; including recreation, timber, prescribed fire, mining, grazing and restoration activities, while providing little corresponding benefit to the species the provisions were designed to protect. Moreover, there is a need to clarify the Survey and Manage and Protection Buffer species (Standards and Guidelines to design an orderly and credible adaptive management process to change or revise the status of species and management of Survey and Manage and Protection Buffer species as we gain new insights to their needs.

The proposed action would alter certain procedures under the Survey and Manage provisions so that the agencies can more rapidly respond to new information concerning the population status and habitat requirements of species associated with late-successional and old-growth forest habitat of the Pacific Northwest. The proposed action would merge Protection Buffer species into the protective measures provided under the Survey and Manage provisions established under the Northwest Forest Plan. The proposed action may include the initial changes to species' categorization which would be made under the new adaptive management procedures to be adopted for the Survey and Manage mitigation measure, such as moving a species from one Component to another. These changes would be based on the information which has been developed since adoption of the Northwest Forest Plan.

Alternatives other than the proposal and the "no action" alternative have not been developed. The public is invited to propose alternatives for consideration during the scoping process.

The scoping process as defined in the Council of Environmental Quality's National Environmental Policy Act (NEPA) implementing regulations will be used to identify issues for developing a range of alternatives that consider the underlying need for this action. A scoping notice will be prepared and circulated to mailing lists of individuals and organizations previously expressing an interest in National Forest LMPs and BLM RMPs within the range of the northern spotted owl. The scoping notice along with background information will also be posted on the Internet: http://or.blm.gov/information.htm. A scoping meeting will not be held. For comments to be

most useful in this analysis, they should be submitted in writing before December 24, 1998.

The Forest Service and BLM will be joint lead agencies for this analysis. The two agencies will consult with the U.S. Fish and Wildlife Service and National Marine Fisheries Service pursuant to the Endangered Species Act. Other Federal agencies, such as the Pacific Northwest and Pacific Southwest Research Station, Bureau of Indian Affairs, National Park Service, Environmental Protection Agency (EPA), U.S. Army Corps of Engineers, Natural Resources Conservation Service, the U.S. Geological Survey Biological Resources Division, EPA Research Laboratory, and Tribal, local, and state governments will also be involved.

The responsible officials for NFS lands will be the Regional Forester, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208 and the Regional Forester, Pacific Southwest Region, 630 Sansome Street, San Francisco, CA 94111. The responsible official for public lands administered by the BLM will be the State Director for Oregon and Washington, P.O. Box 2965, Portland, Oregon 97208 and the State Director for California, 2135 Butano Drive, Sacramento, CA 95825.

The draft EIS is expected to be filed with the EPA approximately February 1999 and will be available for public review at that time. The comment period on the draft EIS will be 90 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service and BLM believe it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 90-day comment period on the draft EIS so that substantive comments and objections are made available to the Forest Service and BLM at a time when the agencies can meaningfully consider substantive comments and objectives and respond to them in the final EIS.

To assist the Forest Service and BLM in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3 in addressing these points.

It is expected that the final EIS will be filed with the EPA approximately October 1999. There will be two Records of Decisions issued; one for NFS lands and one for BLM public lands in Oregon, Washington and California. The decision for National Forest System Lands will be subject to Forest Service appeal regulations (36 CFR 217). The decision in regard to lands managed by the BLM would be subject to the protest procedures in BLM's planning regulations (43 CFR 1610.5–2).

Dated: November 16, 1998.

Robert W. Williams,

Regional Forester, R–6, Forest Service.

Dated: November 16, 1998.

William L. Bradley,

Deputy State Director, Resource Planning, Use & Protection, Bureau of Land Management.

[FR Doc. 98–31199 Filed 11–24–98; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: November 30–December 1, 1998; 3:00 p.m. and 9:00 a.m.

PLACE: The Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6)).

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Brenda Massey or John Lindburg at (202) 401–3736.

Dated: November 23, 1998.

Marc B. Nathanson,

Chairman.

[FR Doc. 98–31669 Filed 11–23–98; 3:38 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4:30 p.m. on December 11, 1998, in the Mayor's Conference Room, City Hall, Albany, New York 12207. The purpose of the meeting is to receive information on the status of civil rights in the State, to plan future activity, and to review the final draft of a report on section 8 housing.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson M.D. (Lita) Taracido, 212–645–8999, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 16, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–31537 Filed 11–24–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary.

Title: Revision to the Commerce Acquisition Regulation (CAR) clause at 1352.217–109 Entitled "Insurance Requirements."

Agency Form Number: N/A.

OMB Approval Number: 0690–0010.

Type of Request: Extension of a currently approved collection.

Burden: 30 hours.

Number of Respondents: 30.

Average Hours Per Response: 1 hour.

Needs and Uses: The Department of Commerce requires in its contracts for construction, alteration and repair of ships each selected contractor to procure and maintain insurance as specified in the CAR clause 1352.217–109, "Insurance Requirements." The clause also requires the contractor to submit proof of this insurance to the contracting officer before the work under the contract is authorized to start.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: November 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer

[FR Doc. 98–31439 Filed 11–26–98; 8:45 am]

BILLING CODE 3510–EC–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary.

Title: Department of Commerce Unique Solicitations: Requests for Proposals (RFPs) or Invitations for Bids (IFBs).

Agency Form Number: N/A.

OMB Approval Number: 0690–0008.

Type of Request: Extension of a currently approved collection.

Burden: 5,000.

Number of Respondents: 250.

Average Hours Per Response: 20 hours.

Needs and Uses: The Commerce Department is required by the Competition in Contracting Act (CICA) (Pub. L. 98–369) requires each agency to seek maximum competition when issuing contracts for supplies and services. The Department is required to issue solicitations which require prospective contractors to prepare and submit technical, business and cost proposals as part of the Federal acquisition process for awarding these contracts. In soliciting proposals, the Department collects, from each competing contractor, the information necessary to evaluate the proposals and make a decision as to which proposal offers the most benefit to the Government. There are seven official Commerce-unique clauses which place a paperwork burden on the contractor. The use of these clauses provide a less burdensome way for potential contractors to respond to the Government's request for information concerning the evaluation of bids and proposals; expedite solicitation and contract preparation; and facilitate contract negotiation, administration and review.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: November 18, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–31440 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–EC–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To Give Firms an Opportunity To Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 10/15/98–11/18/98

Firm name	Address	Date petition accepted	Product
Burley Design Cooperative, Inc	4020 Stewart Rd., Eugene, OR 97402	10/30/98	Bicycle trailers, TANDEMS and Rain Gear.
Ark Manufacturing, Inc	3780 Boone Rd., SE. Salem, OR 97301	10/21/98	Horse tack, and dog and cat equipment.
Tech Fab, Inc	1 W. Main St., South Hadley, MA 01075	10/22/98	Hand held air guns used for cleaning, blowing, drying and general maintenance.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 10/15/98–11/18/98—Continued

Firm name	Address	Date petition accepted	Product
Electro Technology, Inc	1830 Amos Dr., Muscle Shoals, AL 35661.	10/22/98	Custom electronic transformers.
A. W. Enterprises, Inc	6543 S. Laramie Ave., Bedford Park, IL 60638.	10/22/98	Leather, nylon, wood and vinyl cases.
Fotodyne, Incorporated	950 Walnut Ridge Dr., Hartland, WI 53029.	10/22/98	Chemical analysis and imaging instrumentation systems.
Circuits Engineering, Inc	1832 180th St., SE., Bothell, WA 98012 ..	10/26/98	Printed circuit boards.
Darius Enterprises, Inc	38 Lafayette St., Hudson Falls, NY 12839	10/27/98	Automobile engines.
Dixon Manufacturing, Inc	701 Clinton St., Arkadelphia, AR 71923 ..	10/28/98	School and nurses uniforms (dresses), and industrial aprons.
Precision Design, Inc	P.O. Box 2064, Weatherford, OK 73096	10/29/98	Control surface parts for airplanes, I.E. ailerons, flaps, gears doors and rudders.
Lube Systems, Inc	93 Stickles Pond Rd., Newton, NJ 07860	10/29/98	Industrial lubricating machinery.
Dick's Pattern	620 Cross St., Beloit, WI 53511	10/30/98	Patterns for the foundry industry.
E & F Electronics, Inc	55 S. State Ave., Indianapolis, IN 46201	10/30/98	Transformers and electronic coils.
Good Lad Company	431 East Tioga St., Philadelphia, PA 19134.	10/30/98	Children's clothing.
Perky Cap Company, Inc	186 Industrial Blvd., SE., Eatonton, GA 31024.	11/03/98	Caps, visors, curtains.
Mastercraft Mold, Inc	3301 W. Vernon Ave., Phoenix, AZ 85009.	11/03/98	Plastic injection molds and parts landscaping and gaming equipment.
Plastics Development, Inc	10360 SW. Spokane Court, Tualatin, OR 97062.	11/10/98	Custom injection molds—electronic, automotive, medical, sports, toy and transportation parts.
Cellini, Inc	215 Jefferson Blvd., Warwick, RI 02888 ..	11/13/98	Silver Jewelry.
Robison Solar Systems	404 Loomis Rd., Weatherford, OK 73096	11/16/98	Submersible pumps powered by solar modules.
Mackenzie Specialty Castings	19430 63rd Ave., NE, Arlington, WA 98223.	11/18/98	Syphon tubes, steel ingot molds and other castings.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: November 18, 1998.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 98–31479 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet December 17, 1998, 10:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers and comments by the public.
3. Discussion of Biological Weapons Convention protocol.

Executive Session

4. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

However, to facilitate distribution of public presentation materials to the Committee members, the materials should be forwarded prior to the meeting to the address below:

Ms. Lee Ann Carpenter, BXA MS: 3886C, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., N.W., Washington, D.C. 20230

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: November 19, 1998.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 98–31558 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1009]

Approval of Manufacturing Activity Within Foreign-Trade Zone 226 Atwater, California; Pacesetter, Inc. (Modular Buildings)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Merced County, California, grantee of FTZ 226, has requested authority under § 400.32(b)(1) of the Board's regulations on behalf of Pacesetter, Inc., to manufacture modular buildings for export under zone procedures within FTZ 226, Atwater, California (filed 8–12–98, FTZ Docket 38–98);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of § 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28, and further subject to a condition requiring that all foreign-status merchandise admitted to FTZ 226 for the Pacesetter, Inc., activity, must be exported.

Signed at Washington, DC, this 16th day of November 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–31550 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1007]

Grant of Authority for Subzone Status; Harris Corporation—Electronic Systems Sector (Telecommunications/Information Systems), Brevard County, Florida

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Canaveral Port Authority, grantee of Foreign-Trade Zone 136, has made application to the Board for authority to establish special-purpose subzone status at the telecommunications/information manufacturing facilities of Harris Corporation—Electronic Systems Sector, located at sites in Brevard County, Florida, (FTZ Docket 84–97, filed 12/22/97);

Whereas, notice inviting public comment has been given in the **Federal Register** (63 FR 2660, 1/16/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the telecommunications/information systems manufacturing facilities of Harris Corporation—Electronic Systems Sector, located at sites in Brevard County, Florida (Subzone 136C), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 16th day of November 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–31549 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1010]

Expansion of Foreign-Trade Zone 1 New York, New York, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the City of New York, New York, grantee of Foreign-Trade Zone 1, submitted an application to the Board for authority to expand FTZ 1 to include a new site in Staten Island, New York, within the New York Seaport Area Customs port of entry area (FTZ Docket 7–98; filed 2/5/98);

Whereas, notice inviting public comment was given in **Federal Register** (63 FR 7755, 2/17/98; 63 FR 23720, 4/30/98) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 1 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 16th day of November 1998.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–31551 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–98]

Foreign-Trade Zone 216—Olympia, WA; Request for Export Manufacturing Authority, Darigold, Inc. (Dairy/Sugar Food Products)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Olympia, grantee of FTZ 216, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting authority on behalf of Darigold, Inc. (Darigold), to manufacture dairy products for export under FTZ procedures within FTZ 216. It was formally filed on November 19, 1998.

Darigold operates a 74,000 square foot dairy product manufacturing facility (37 employees) within FTZ 216-Site 13 located at 67 S.W. Chehalis Avenue in Chehalis, Washington, which recently received FTZ Board authority to process foreign-origin liquid whey permeate under FTZ procedures for export (Board Order 986, 63 FR 35909, 7–1–98). The Port of Olympia is now requesting authority on behalf of Darigold to manufacture dry milk/honey blends, sweetened butter, butter/oil blends, dry coffee whiteners, and ice cream for export. In this activity, about 50 percent of all ingredients used will be sourced from abroad, including whey protein isolate, anhydrous milkfat, caseinate, butter, whey and whey protein concentrate-34, whole and skim milk powder, sugar, honey, glucose, lactose, wheat bran and flour, corn flour, soy flour, rice flour, coconut oil, milk calcium, calcium carbonate, niacin, cocoa, vanilla, tapioca, vegetable oil (soy, canola, corn), and corn sweeteners. All of the finished products would be exported, and none of the foreign ingredients noted above would be entered for U.S. consumption.

FTZ procedures would exempt Darigold from U.S. dairy product and sugar quota requirements and Customs duty payments on the foreign ingredients used in this export activity. The application indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

The application has requested review under Section 400.32(b)(1) of the FTZ Board regulations based on the export only activity.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 25, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 8, 1999).

A copy of the application will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: November 19, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–31554 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Certain Welded Carbon Steel Pipes and Tubes From Thailand: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Final Results of Antidumping Duty Administrative Review; Certain Welded Carbon Steel Pipes and Tubes from Thailand.

SUMMARY: On October 16, 1998 the Department of Commerce (the Department) published the final results of the administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from Thailand (63 FR 55578). This review covers the following manufacturer/exporter of the subject merchandise to the United States: Saha Thai Steel Pipe Company, Ltd. ("Saha Thai"), and its affiliated exporter S.A.F. Pipe Export Co., Ltd. ("SAF"). The period of review (POR) is March 1, 1996 through February 28, 1997.

On October 16, 1998, pursuant to section 353.28(a) of the Department's regulations, Saha Thai, SAF, and two U.S. importers, Ferro Union, Inc., and Asoma Corporation (collectively, "Saha Thai") filed a ministerial error allegation regarding the Department's calculation of importer-specific assessment rates in the final results of the review. In addition, when reviewing Saha Thai's allegation, the Department identified a misstatement in the **Federal Register** notice of the final results. The Department is publishing these amended final results to correct these ministerial errors.

EFFECTIVE DATE: November 25, 1998.

FOR FURTHER INFORMATION CONTACT: John Totaro, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1374.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (hereinafter, "the Act") by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 353 (1997). Although the Department's new regulations, codified at 19 CFR Part 351 (1998) ("Final Regulations"), do not govern this administrative review, citations to those regulations are provided, where appropriate, as a statement of current Departmental practice.

Ministerial Errors in the Final Results of Review

Where U.S. sales are on an export price (EP) basis and the record does not contain entered value data, the Department's margin calculation program calculates the duty amount to be collected from each importer on a dollars-per-metric ton basis. Because Saha Thai's sales during the POR were all EP sales, the Department's margin calculation program intended to calculate the duty owed for assessment purposes using the methodology described above. Saha Thai alleged that the Department's margin calculation program contained a ministerial error because in calculating the unit duty for each importer, the Department inadvertently increased the quotient of its unit duty calculation by a factor of 100. We examined the margin calculation program, and we agree with Saha Thai that this is a clerical error

within the meaning of 19 CFR 353.28 (d), *i.e.*, an error in arithmetic functions of the calculation program. We have corrected the program so that the result of the unit duty calculation program is no longer multiplied by a factor of 100. This correction affects only the importer-specific assessment rates, not the margin calculated in the final results.

We also note one additional ministerial error not raised by the parties in this review. In the final results **Federal Register** notice, the Department stated that "[f]or assessment purposes, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total entered value of sales examined during the POR." 63 FR at 55590. This statement is incorrect, and does not reflect the margin calculation program disclosed to the parties with the final results of this review. As stated above, the record of this review does not contain data on the entered value of the sales examined during the POR. Therefore, for the final results of this review we calculated the duty amount to be collected from each importer on a unit basis, *i.e.*, a ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR, not a ratio of antidumping duties to the entered value of these sales.

Amended Final Results of Review

Upon correction of the ministerial errors described above, the margin remains unchanged from the final results published in the **Federal Register** on October 16, 1998. However, as discussed above, the importer-specific assessment rates will change from those disclosed to the parties with the final results. We will instruct the Customs Service accordingly.

Manufacturer/ Exporter	Period	Margin
Saha Thai	3/1/96–2/28/97	1.92%

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service. As a result of this review, we have determined that the importer-specific duty assessments rates are necessary. For assessment purposes, therefore, we have calculated importer-specific duty assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR.

Furthermore, the following deposit requirements shall be effective upon publication of this notice of final results of review for all shipments of certain welded carbon steel pipes and tubes from Thailand, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed company will be the rate stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these reviews, the cash deposit rate for this case will continue to be 15.67 percent, the "All Others" rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This amended administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and sections 353.22 and 353.28(c) of the Department's regulations.

Dated: November 18, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31555 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California at Los Angeles; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–004R. *Applicant:* University of California at Los Angeles, Los Angeles, CA 90095–1547. *Instrument:* YAG Pumped Dye Laser. *Manufacturer:* Spectron Laser Systems, United Kingdom. *Intended Use:* See notice at 63 FR 8164, February 18, 1998.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) an internal modular three bar resonator design, (2) operation in "tophat" mode to minimize beam divergence and (3) an internal cavity telescope that compensates for the thermal loading on the laser rod. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–31552 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part

301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–058. *Applicant:* University of Hawaii, 1000 Pope Road, MSB 317, Honolulu, HI 96822. *Instrument:* Directional Wave Buoy. *Manufacturer:* Datawell bv, The Netherlands. *Intended Use:* The instrument will be used in support of ongoing research regarding the refraction, diffraction and reflection of sea and swell around the Hawaiian Islands. Two ongoing projects include: examination of wave-driven sediment transport at Kailua Bay and evaluation of various wave modeling strategies to predict nearshore waves around island coasts. Both require directional wave information in the open ocean. Application accepted by Commissioner of Customs: November 3, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–31553 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 88–2A015."

Ferrous Scrap Export Association's ("FSEA") original Certificate was issued on December 12, 1988 (53 FR 51294, December 21, 1988) and previously amended on February 28, 1989 (54 FR 9542, March 7, 1989). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Ferrous Scrap Export Association, 1209 Orange Street, Wilmington, Delaware 19809.

Contact: Cara E. Maggioni, Attorney, *Telephone:* (202) 662–5162.

Application No.: 88–2A015.

Date Deemed Submitted: November 13, 1998.

Proposed Amendment: FSEA seeks to amend its Certificate to:

1. Add Metal Management, Inc., Chicago, IL as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)); and

2. Delete Michael Schiavone & Sons, Inc., North Haven, CT; and Schiavone-Bonomo Corporation, Jersey City, NJ as "Members" of the Certificate.

Dated: November 19, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–31444 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–DR–I

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

1999 Survey of Reference Materials

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment of proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

DATES: Written comments must be submitted on or before January 25, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alim A. Fatah, Ph.D., National Institute of Standards and Technology (NIST), Building 225, Room A323, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION:

1. Abstract

In 1999, the Department of Justice-supported by NIST's Office of Law Enforcement Standards (OLES) will undertake a scientific study to determine the status, current need for, and use of standard reference materials (SRM) and standard reference collections (SRC) within the Nation's crime laboratories. The new study will build upon a 1977 study entitled "Standard Reference Collections of Forensic Science Materials: Status and

Needs. Since the report was issued, a number of SRMs have been developed and new technologies have placed evidentiary material under the scrutiny of district attorneys, defense teams, and the general public. The nations crime laboratories will be survey by mail and asked to identify the reference materials needed by the different disciplines or organizational sections within the laboratory ie. trace analysis, firearms, DNA, latent fingerprints etc. In addition, crime laboratories will be asked about their current reference collections source of these collections.

II. Method of Collection

Forensic science (crime) laboratories will be asked to complete and return a self-administered mail questionnaire.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Federal, state forensic science laboratories.

Estimated Number of Respondents: 330.

Estimated Time Per Response: Approximately 2 hours.

Estimated Total Annual Cost to Public: $0 (no capital expenditures are required).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 20, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–31557 Filed 11–24–98; 8:45 am]

BILLING CODE 3510–13–P

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Amendments to the Wheat, Oats, and Soybean Futures Contracts Modifying Certain Delivery Specifications of the Wheat Futures Contract, Amending Rules Governing Load Out Against Warehouse Receipts for Wheat and Oats and Shipping Certificates for Corn and Soybeans, and Revising the Last Trading and Delivery Days for the Oats and Wheat Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has submitted proposed amendments to its wheat futures contract which will modify the locational price differentials for delivery at Toledo and St. Louis, change the quality price differentials for U.S. No. 1 and U.S. No. 2 grade northern spring wheat, and reduce the speculative position limits for the March and May contract months during the last five trading days. In additional, the Exchange is proposing amendments that will modify the load-out provisions for the wheat, corn, oats and soybean futures contracts and which will change the last trading day and the last delivery day for all contract months for the wheat and oats futures contracts. The Commission has determined to request pubic comment on the proposed amendments based upon its finding that the proposed amendments are of major economic significance within the meaning of section 5a(a)(12) of the Commodity Exchange Act (Act) and that their publication is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to secretary@cftc.gov. Reference should be made to the CBT grain futures contracts' delivery specification proposals.

FOR FURTHER INFORMATION, CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, telephone (202) 418–5273, facsimile number (202) 418–5527, or electronically at flinse@cftc.gov.

SUPPLEMENTARY INFORMATION: The Commodity Futures Trading Commission (Commission), by letter dated December 19, 1996, issued a request to the Chicago Board of Trade (CBT) to undertake a study of the delivery specifications of its wheat futures contract and to submit its findings to the Commission by April 18, 1997, 120 days from the date of the Commission's request (see 61 FR 67998 (December 26, 1996)).[1] The CBT responded to the Commission's request by letter dated April 18, 1997, providing a status report to the Commission of its actions.[2] The Commission on July 8, 1997, solicited public comment on the delivery specifications of the CBT's wheat futures contract (62 FR 36499) to assist it in considering the concerns identified in the Commission's December 19, 1996 notification. The CBT on October 21, 1998, submitted to the Commission for its review proposed amendments to its wheat futures contract.

Current Contract Terms

The wheat futures contract's current terms provide for the delivery of warehouse receipts representing U.S. No. 1 or U.S. No. 2 grade soft red winter wheat, dark northern spring wheat, northern spring wheat, or hard red winter wheat in store at CBT-approved

[1] The request was made in conjunction with the Commission's notification to the CBT under Section 5a(a)(10) of the Act, 7 U.S.C. Sec. 7a(a)(10), that the delivery terms of the CBT corn and soybean futures contracts no longer accomplish the statutory objectives of "permit[ting] the delivery of any commodity . . . at such point or points and at such quality and locational price differentials as will tend to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce." This request was based on the continuing diminution of the role of terminal markets in the cash market for grain, the increasing shift of the locus of the main channels of commodity flows away from the delivery points on the grain contracts, particularly the par delivery point of Chicago, and the resulting precipitous drop in regular warehouse storage capacity at the Chicago delivery point. For corn and soybeans, the Commission on November 7, 1997, issued an Order changing and supplementing under Section 5a(a)(10) of the Act, 7 U.S.C. 7a(a)(10), the delivery terms of those futures contracts (62 FR 60831 (November 13, 1997)), and, on May 7, 1998, approved further changes to the corn and soybeans futures contracts' delivery terms (63 FR 26575 (May 13, 1998)).

[2] The CBT reported that, although a Task Force appointed by the CBT Board of Directors had recommended certain changes to the delivery terms of the wheat futures contract, the Board had decided to refrain from acting on those recommendations at that time and determined instead to conduct market research to determine whether a broader review of the contract, not limited to its delivery terms, should be undertaken.

(regular) delivery warehouses located in Chicago, Toledo and St. Louis. (Only soft red winter wheat is deliverable at St. Louis.) U.S. No. 2 grade soft red winter wheat, U.S. No. 2 dark northern spring wheat, U.S. No. 2 hard red winter and U.S. No. 1 northern spring wheat are deliverable at par. U.S. No. 1 grade soft red winter wheat, dark northern spring wheat, and hard red winter wheat are deliverable at a premium of three cents per bushel. U.S. No. 2 grade northern spring wheat is deliverable at a discount of one cent per bushel. Currently, wheat is deliverable in Chicago at par, in Toledo at a discount of two cents per bushel, and in St. Louis at a premium of eight cents per bushel.

The oats futures contract calls for the delivery of warehouse receipts representing oats in store at regular warehouses in Chicago and Minneapolis/St. Paul.

Beginning in the year 2000, the corn and soybean futures contracts will call for the delivery of shipping certificates providing for the loading out of corn at regular shipping stations in Chicago and on the northern Illinois River and the loading out of soybeans at regular shipping stations in Chicago, St. Louis, and on the Illinois River.

Under the current delivery procedures for the wheat and oats futures contracts, warehouse receipt holders may require load out of wheat or oats from regular elevators into vessels, barges or rail cars. Regular warehouse operators must load out wheat and oats at specified daily rates, which differ depending upon the mode of transportation provided by warehouse receipt holders. Load out must begin on the third business day following receipt of loading orders from the receipt holder or on the day after the transportation equipment has been constructively placed, whichever occurs later. Regular warehouse operators are required to load out wheat and oats consecutively without giving preference to products owned by the operator over the products of others and without giving preference to one depositor over another. The operator must in-load products into the warehouse consecutively in the order in which they arrive at his warehouse at specified minimum daily rates pursuant to in-loading orders previously received so far as the warehouse capacity for grain and grade permits.

An operator of a regular shipping station for corn or soybeans is required to begin loading out product within three business days of the operator's receipt of loading orders and cancelled shipping certificates from a shipping certificate holder. A shipping station operator must load out corn or soybeans at the station's registered daily loading rate, giving preference to takers of futures delivery.

Proposed Amendments

The CBT is proposing to amend its wheat contract as follows:

(1) The locational price differential for delivery of wheat at Toledo would be changed to par from the two-cent-per-bushel discount currently applicable to deliveries at that location.

(2) The location price differential for delivery at St. Louis would be increased to a premium of 10 cents per bushel from the current 8 cents per bushel premium.

(3) The quality price differential for delivery of U.S. No. 1 grade northern spring wheat would be changed to a premium of 3 cents per bushel from par as presently specified in the contract.

(4) U.S. No. 2 grade northern spring wheat would be deliverable at par, rather than at a one cent per bushel discount as currently specified.

(5) Speculative position limits would be reduced during the last five trading days in the March and May contract months to 350 contracts and 220 contracts, respectively, from the existing spot month level of 600 contracts which applies uniformly to all contract months.

The CBT also has submitted proposed amendments that would delete all of these CBT's existing provisions relating to the in-loading of wheat and oats at regular warehouses. In addition, the proposed amendments would extend to wheat and oats for futures delivery the preferential treatment that receivers of corn and soybeans for futures delivery currently receive when load-out is ordered (over the warehouse or shipping station operator's cash commitments).

In addition, the proposed amendments would specify that, if a lineup for loading out grain into barges from a particular regular warehouse/shipping station includes both wheat and corn or soybeans or both oats and corn or soybeans, then the minimum daily rate for loading shall be equal to the highest loading rate applicable for any one commodity in the line-up.[3] To the extent that the proposed terms applicable to the soybean and corn futures contracts differ from the provisions of the Commission's Order of May 7, 1998, the Exchange's request for approval of the proposed rule changes also constitutes a request to the Commission to amend its Order accordingly. Publication of these proposals, therefore, also constitutes notice of the proposed amendment of the Commission's Order consistent with the proposed rule amendments.

Finally, the Exchange is proposing, for both the wheat and oats futures contracts, amendments which would change the last trading day for all contract months to the business day prior to the fifteenth calendar day of the month from the current last trading day which is the business day prior to the last seven business days of the month. Along with this amendment, the last delivery day for these contracts would be changed to the seventh business day following the last trading day rather the last business day of the month as currently specified.

The Exchange plans to implement the proposed amendments to the wheat and oats futures contracts beginning with the March 2000 contract month except for the proposed amendments to the loading provisions. The latter proposals, which relate to the corn and soybeans futures contracts as well as the wheat and oats futures contracts, would apply to all grain loaded out against outstanding warehouse receipts on and after January 1, 2000. In reviewing whether proposed amendments can be applied to the terms of existing contracts, the Commission considers the effect any such amendments may have on the value of existing positions. In this regard, the proposed amendments to the wheat and oats futures contracts will apply beginning with the March 2000 contract month which has not yet been listed for trading for either contract. However, the proposed amendments to the soybean and corn futures contracts will apply to certain currently-listed contract months that expire after January 1, 2000 (as well as to all outstanding warehouse receipts delivered on prior contract months for corn, soybeans, wheat and oats). Accordingly, the Commission is seeking public comment on what effect, if any, the proposed amendments would have on the value of existing positions in the subject contracts.

The CBT, in support of the proposed amendment to provide for par delivery of wheat at Toledo, states that, "[P]ar recognizes that Toledo is the primary delivery point for the wheat futures contract and that it is a key pricing point for soft red winter wheat." With respect to the proposed increase in the premium for delivery at St. Louis, the Exchange states that the change "maintains the current differential spread between Toledo and St. Louis."

[3] For example, in St. Louis the minimum daily loading rate is 1 barge per day for soybeans and 3 barges per day for wheat. If both soybeans and wheat are in the line-up, the St. Louis warehouse/shipping station operator would be required to load a minimum of 3 barges per day total of beans and/or wheat.

The Exchange notes that the proposed increase in the quality grade differentials for U.S. No. 1 and U.S. No. 2 grade northern spring wheat "will bring the grade differentials for Northern Spring Wheat in line with the grade differentials for Hard Red Winter, Soft Red Winter and Dark Northern Spring Wheat."

With respect to the proposal to introduce lower speculative position limit levels during the last five trading days of the March and May wheat contract months, the Exchange states that, "The purpose of the decrease in speculative position limits is to satisfy CFTC concerns on the adequacy of deliverable supply of wheat." The Exchange further notes that, "while the decrease in the speculative position limits in the last five business days has the potential to reduce liquidity, the proposed [lower] limits would not have restrained positions held by speculators in the last five years."

The Exchange states that the proposed last trading day for both wheat and oats is the same as that for grain futures contracts and thus "will standardize the last trading day for CBOT commodities of wheat, corn, oats, soybeans, soybean meal and soybean oil." Finally, according to the Exchange, the proposed load-out requirements to give takers of delivery on the wheat and oats futures contracts preference in loading grain over the warehouse operator's non-futures delivery commitments "will allow delivery wheat to be more accessible to takers of delivery and allow the futures to be more reflective of nearby cash grain prices."

The Commission finds that the proposed changes in wheat differentials are of major economic significance and the publication of the CBT's proposed amendments as a whole is in the public interest and will assist the Commission in its consideration of the amendments. In particular, commenters are invited to analyze the following issues and to submit written data, views or comments relating to the CBT's proposals.

1. Would available deliverable supplies under the proposed contract terms for wheat be sufficient to prevent or diminish price manipulation, market congestion, or the abnormal movement of such commodity in interstate commerce?

2. Do the proposed locational price differentials for delivery of wheat at Toledo and St. Louis reflect cash market price differentials for wheat at such locations relative to cash market values at Chicago?

3. Do the proposed quality price differentials for delivery of U.S. No 1 and U.S. No. 2 grade northern spring wheat reflect cash market pricing relationships between such wheat and other deliverable classes and grades of wheat, particularly U.S. No. 2 grades soft red winter wheat?

4. Are the proposed amendments to the corn, wheat, soybeans and oats futures contracts concerning load out of grain against warehouse receipts and shipping certificates consistent with cash market practices for those commodities at the regular warehouse at the contracts' delivery points? If not, to what extent, if any, will the proposed load-out amendments limit deliverable supplies available for the wheat, oats, corn and soybean futures contracts?

5. In light of recently announced plans concerning changes [4] in the ownership and/or operational control of the wheat futures contract's delivery facilities, what effect, if any, will the increased concentration in the control of delivery capacity resulting from these changes have on the contract's susceptibility to price manipulation, market congestion or the abnormal movement of wheat in interstate commerce? To what extent do these changes reflect general trends in the cash market?

Copies of the proposed amendments will be a available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address or by telephone at (202) 418–5100.

Other materials submitted by the CBT may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 C.F.R. Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 C.F.R. 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquaters in accordance with 17 C.F.R. 145.7 or 145.8.

[4] On March 25, 1998, Cargill, Inc. announced an agreement under which The Andersons, Inc. would lease Cargill's two grain handling facilities in Toledo/Maumee, Ohio and provide on-site management of those facilities, in addition to the Andersons' own grain-handling facilities in Toledo/Maumee. Cargill also announced that it would provide marketing services for grain originated from all facilities owned or leased by the Andersons in Toledo/Maumee. In addtion, on November 10, 1998, Cargill announced the purchase of all of Continental Grain Co.'s grain merchandising operations, including Continental's existing wheat futures delivery facilities located in Chicago and St. Louis.

Issued in Washington, DC, on November 19, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31494 Filed 11–24–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

This is to give notice, pursuant to Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a), that the Commodity Futures Trading Commission's Global Markets Advisory Committee ("GMAC") will conduct a public meeting on December 9, 1998 in the first floor hearing room (Room 1000) of the Commission's Washington, D.C. headquarters, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581. The meeting will begin at 1:00 p.m. and last until 4:30 p.m. The agenda will consist of the following:

Agenda

1. Introductory Remarks—
   Commissioner Barbara P. Holum
2. Reports of GMAC Working Groups
   A. Working Group I—Electronic Terminals—Comment on CFTC Federal Register Release
   B. Working Group II—Impediments to Cross-Border Business—Report on Work Projects
   C. Working Group III—IOSCO initiatives
3. Discussion
4. New Business

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Barbara P. Holum, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Global Markets Advisory Committee, c/o Commissioner Barbara P. Holum, Commodity Futures Trading Commission, Three Lafayette Centre, 115 21st Street, N.W., Washington, D.C. 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Holum in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, D.C. on November 20, 1998.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–31631 Filed 11–24–98; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 25, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Denver Center, Defense Finance and Accounting Service, DFAS–DE/FJPD, Attn: Carolyn Crane, 6760 East Irvington Place, Denver, CO 80279–3000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Carolyn Crane, 303–676–7818.

Title, Associated Form, and OMB Number: Dependency Statement—Ward of a Court.

Needs and Uses: A military member may claim a ward of a court for monetary allowances. Pursuant to 37 U.S.C. 401, 403 and 406, the member must provide over one-half of the claimed ward's monthly expenses. DoDFMR 7000.14, Volume 7A defines the definition of dependent and directs that dependency be proved. This form may be prepared by the military member or may be prepared by another individual who may be a member of the public.

Affected Public: Individuals.

Annual Burden Hours: 187.5 hours.

Number of Respondents: 150.

Responses per Respondent: 1 (new form may be required if circumstances change).

Average Burden per Response: 1.25 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

When military members apply for benefits, they will complete this form, Dependency Statement—Ward of a Court. While members would normally complete this form, they could also be completed by others considered members of the public. Dependency claim examiners will use information from these forms to determine the degree of benefits. This collection will also decrease the possibility of monetary allowances being approved on behalf of ineligible dependents, and alleviate the opportunity for fraud, waste and abuse.

Dated: November 19, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc 98–31418 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Walter Reed Army Medical Center (WRAMC), Washington, DC, located in TRICARE Region 1 has been designated a Multi-Regional Specialized Treatment Services Facility (STSF) for Liver Transplantation and a National STSF for Renal Transplantation. The application for the STSF designation was submitted by WRAMC and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent for Region 1 will ensure that the STSF maintains the quality and standards required for specialized treatment services. The designation covers the following Diagnosis Related Groups:

480—Liver Transplant

302—Kidney Transplant

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one non-medical attendant, will be reimbursed by WRAMC in accordance with the provisions of the Joint Federal Travel Regulation. DOD beneficiaries who reside in the Multi-Regional STS Catchment Area for liver transplant which includes TRICARE Regions 1, 2, and 5 must be evaluated by WRAMC before receiving TRICARE/CHAMPUS cost sharing for liver transplantation that falls under Diagnosis Related Group 480. DOD beneficiaries who reside in the National STS Catchment Area must be evaluated by WRAMC before receiving TRICARE/CHAMPUS cost sharing for kidney transplantation that falls under Diagnosis Related Group 302. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to WRAMC. If the procedures cannot be performed at WRAMC, the facility will provide a medical necessity review prior to issuance of a Nonavailability Statement.

The STS Multi-Regional Catchment Area for liver transplant covering TRICARE Regions 1, 2, and 5 includes all zip codes within those TRICARE Regions. The STS National Catchment Area for kidney transplant is defined as the continental United States (i.e., 48 contiguous states and the District of Columbia excluding Alaska and Hawaii).

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Ms. Kendra Drew, WRAMC, at (202) 782–4302, or Captain D. Michael Jones, TRICARE Region 1 Lead Agent Office, at (202) 782–1483; or Lieutenant Colonel Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31419 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Keesler Medical Center, Keesler Air Force Base, Biloxi, Mississippi, has been designated a regional Specialized Treatment Services Facility (STSF) for TRICARE Region Four. The application for this STSF designation was submitted by the Lead Agent for TRICARE Region Four and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent will ensure that the STSF maintains the quality and standards required for specialized treatment services. This designation covers the following Diagnostic Related Groups:

001—Craniotomy, Age Greater than 17, Except for Trauma
003—Craniotomy, Age, 0–17
004—Spinal Procedures
049—Major Head and Neck Procedures
191—Pancreas, Liver and Shunt Procedures with CC
209—Major Joint and Limb Reattachment Procedures of Lower Extremity
286—Adrenal and Pituitary Procedures
357—Uterine and Adnexa Procedures for Ovarian or Adnexal Malignancy
491—Major joint and Limb Reattachment Procedures of Upper Extremity

Keesler Medical Center continues to be an STS facility for Cardiac Surgery (DRG 104, DRG 105, DRG 106, DRG 107, DRG 108, DRG 110, DRG 111, DRG 112, DRG 124, DRG 125); Complicated Obstetrics (DRG 370, DRG 372, DRG 383); and Neonatal care (DRG 604, DRG 607, DRG 611, DRG 612, DRG 613, DRG 617, DRG 618, DRG 622, DRG 626, DRG 636).

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by Keesler Medical Center in accordance with the provisions of the Joint Federal Travel Regulation. DoD beneficiaries who reside in the Regional STS Catchment Area for TRICARE Region Four must be evaluated by Keesler Medical Center before receiving TRICARE/CHAMPUS cost sharing for procedures that fall under the above Diagnosis Related Groups. Evaluation in person in preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to Keesler Medical Center. If the procedure cannot be performed at Keesler Medical Center, the facility will provide a medical necessity review prior to issuance of a Nonavailability Statement.

The Regional STS Catchment Area covering TRICARE Region four is defined by zip codes in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region Four that fall within a 200 mile radius of Keesler Medical Center.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Captain David Johnson, Keesler Medical Center, (228) 377–7685; or Colonel Joe Taylor, Office of the Lead Agent, TRICARE Region Four, (228) 377–9643; or Lieutenant Colonel Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31420 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that St. Joseph Hospital, 5665 Peachtree Dunwoody Road NE, Atlanta, GA 30342; The Medical University of South Carolina, 171 Ashley Avenue, Charleston, SC 29425; Tampa General Hospital, Davis Island, P.O. Box 1289, Tampa FL 33601; St. Thomas Hospital, 3401 West End Avenue, Suite 120, Nashville, TN 37203; The University of Alabama at Birmingham, Transplant Center, 102 Mortimer Jordan Hall, 1825 University Boulevard, Birmingham, AL 35294–2010; Egleston Children's Hospital, 1405 Clifton Road NE, Atlanta, GA 30322–1101; and Jackson Memorial Hospital, 1611 NW 12th Avenue, Miami, FL 33136–1094, have been designated as Regional Specialized Treatment Services Facilities (STSFs) for various Transplant procedures. The application for the STSF designation for these facilities was submitted by the Humana Military Health Services, Inc. (HMHS) in coordination with the Lead Agents for TRICARE Regions 3 and 4 and approved by the Assistant Secretary of Defense (Health Affairs). The HMHS will oversee that these STSFs maintain the quality and standards required for specialized treatment services. This designation covers the following Diagnosis Related Groups:

103—Heart Transplant (Medical University of South Carolina, University of Alabama-Birmingham, Egleston Children's Hospital, Jackson Memorial Hospital, St. Joseph Hospital, St. Thomas Hospital, and Tampa General Hospital)
480—Liver Transplants (Medical University of South Carolina, University of Alabama-Birmingham, Egleston Children's Hospital, and Jackson Memorial Hospital)
495—Lung Transplant (University of Alabama-Birmingham)
495—Heart-Lung Transplant (University of Alabama-Birmingham)

As part of the STS program within TRICARE Regions 3 and 4, HMHS will assume responsibility for transportation, food and lodging for patients within a radius ranging from over 40 miles and up to 200 miles from designated STS Transplantation Centers. Under this plan, HMHS will reimburse patients the mileage allowance for travel, pay up to the per diem allowed by the government for food and lodging, or the actual cost, whichever is less, and will adjust per diems and mileage allowances according to government regulations. Whenever possible, HMHS will also make lodging arrangements for the patients and one non-medical attendant.

DoD beneficiaries who reside in the catchment areas of the designated STS facilities must be evaluated by the appropriate facility prior to receiving TRICARE/CHAMPUS cost sharing for procedures that fall under the above Diagnosis Related Groups. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It may be possible to conduct the evaluation telephonically if the patient is unable to travel to the appropriate facility. If a needed procedure cannot be performed by one of the above facilities, HMHS will provide a medical necessity review prior to issuance of a Nonavailability Statement or other similar authorizations. The Catchment Area for each transplant STS includes zip codes within TRICARE Regions 3 and 4 that fall within a 200 mile radius of the facility.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Mancini, Director of Network Development, Humana Military Healthcare Services, Inc., 500 West Main St., Louisville, KY 40202, telephone (502) 580–1538; LCDR Leesa Kent, Office of the Lead Agent, TRICARE Region 3, (706) 787–3016; Colonel Joe Taylor, Office of the Lead Agent, TRICARE Region 4, (228) 377–9643; Lt. Col. Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31421 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that David Grant Medical Center (DGMC), Fairfield, California, has been designated a regional Specialized Treatment Services Facility (STSF) for Neurosurgery, General Surgery, Cardiovascular Surgery, Orthopedic Surgery and Gynecology for TRICARE Region 10. The application for this STSF designation was submitted by the Lead Agent for TRICARE Region 10 and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent will ensure that the STSF maintains the quality and standards required for specialized treatment services. This designation covers the following Diagnostic Related Groups:

001–Craniotomy, Age Greater than 17, Except for Trauma
003–Craniotomy, Age 0–17
004–Spinal Procedures
049–Major Head and Neck Procedures
110–Major Cardiovascular Procedures with CC
111–Major Cardiovascular Procedures without CC
191–Pancreas, Liver and Shunt Procedures with CC
209—Major Joint and Limb Reattachment Procedures of Lower Extremity
286–Adrenal and Pituitary Procedures
357–Uterine and Adnexa Procedures for Ovarian or Adnexal Malignancy
491–Major Joint and Limb Reattachment Procedures of Upper Extremity

DoD beneficiaries who reside in the DGMC STS Catchment Area for TRICARE Region 10 must be evaluated by DGMC before receiving TRICARE/CHAMPUS cost sharing for the procedures that fall under the above Diagnostic Related Groups. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by DGMC in accordance with the provisions of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to DGMC. If the procedure cannot be performed at DGMC, the facility will provide a medical necessity review prior to issuance of a Nonavailability Statement. The DGMC STS Catchment Area covering TRICARE Region 10 is defined by zip codes in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region 10 in California that fall within a 200 mile radius of DGMC.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Colonel Steve Jennings, DGMC, (707) 423–7828; or Lieutenant Colonel Pamela Cygan, Office of the Lead Agent, TRICARE Region 10, (707) 424–6533; or Lieutenant Colonel Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31422 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that Naval Medical Center, San Diego (NMCSD), has been designated a regional Specialized Treatment Services Facility (STSF) for TRICARE Region Nine. The application for this STSF designation was submitted by the Lead Agent for TRICARE Region Nine and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent will ensure that the STSF maintains the quality and standards required for specialized treatment services. This designation covers the following Diagnostic Related Groups:

001—Craniotomy, Age Greater than 17, Except for Trauma
003—Craniotomy, Age 0–17
004—Spinal Procedures
049—Major Head and Neck Procedures
104—Cardiac Valve Procedure with Cardiac Catheterization
105—Cardiac Valve Procedure without Cardiac Catheterization

106—Coronary Bypass with Cardiac Catheterization
107—Coronary Bypass without Cardiac Catheterization
110—Major Cardiovascular Procedures with CC
111—Major Cardiovascular Procedures without CC
191—Pancreas, Liver and Shunt Procedures with CC
209—Major Joint and Limb Reattachment Procedures of Lower Extremity
286—Adrenal and Pituitary Procedures
357—Uterine and Adnexa Procedures for Ovarian or Adnexal Malignancy
491—Major Joint and Limb Reattachment of Upper Extremity

DoD beneficiaries who reside in the NMCSD STS Catchment Area for TRICARE Region Nine must be evaluated by NMCSD before receiving TRICARE/CHAMPUS cost sharing for the procedures that fall under the above Diagnostic Related Groups. Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by NMCSD in accordance with the provisions of the Joint Federal Travel Regulation. Although evaluation in person is preferred, it is possible to conduct the evaluation telephonically if the patient is unable to travel to NMCSD. If the procedure cannot be performed at NMCSD, the TRICARE Managed Care Support Contractor for Region Nine will provide a medical necessity review prior to issuance of a Nonavailability Statement or other similar authorizations. The NMCSD Catchment Area covering TRICARE Region Nine is defined by zip codes in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region Nine in California and Yuma, Arizona, that fall within a 200 mile radius of NMCSD.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: LT Karen Leahy, NMCSD, (619) 532–5344; or Major Kelly Wolgast, Office of the Lead Agent, TRICARE Region Nine, (619) 532–6169; or Lt. Col. Teresa Sommese, TRICARE Management Activity, (703) 681–3628, extension 5029; or Mr. Tariq Shahid, TRICARE Management Activity, (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58, FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities be published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31423 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE; the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Specialized Treatment Services (STS) Program

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This notice is to advise interested parties that National Naval Medical Center (NNMC), Bethesda, Maryland, Walter Reed Army Medical Center (WRAMC), Washington, DC. and Malcolm Grow Medical Center (MGMC), Andrews Air Force Base, Maryland, have been designated as the components of a Regional Specialized Treatment Services Facility (STSF) for General Surgery and Orthopedic Surgery for TRICARE Region 1. NNMC and WRAMC have been designated as the components of a Regional STSF for Neurosurgery, Otorhinolaryngology Surgery, and Gynecologic Oncology Surgery for TRICARE Region 1. The application for the STSF designation for these facilities was submitted by the Lead Agent for TRICARE Region 1 and approved by the Assistant Secretary of Defense (Health Affairs). The Lead Agent will ensure that these facilities maintain the quality and standards required for specialized treatment services. The designation covers the following Diagnosis Related Groups:

General Surgery

191—Pancreas, Liver and Shunt Procedures with CC
286—Adrenal and Pituitary Procedures (adrenal only)

Orthopedic Surgery

209—Major joint/limb reattachment procedures lower extremity
491—Major joint/limb reattachment procedures upper extremity

Neurosurgery

001—Craniotomy, age greater than 17 except for trauma
003—Craniotomy, age 0–17
004—Spinal procedures
286—Adrenal and pituitary procedures (pituitary only)

Otorhinolaryngology Surgery

049—Major Head and Neck procedures

Gynecologic Oncology Surgery

357—Uterine and Adnexa procedures for Ovarian or Adnexal Malignancy

Travel and lodging for the patient and, if stated to be medically necessary by a referring physician, for one nonmedical attendant, will be reimbursed by NNMC, WRAMC, or MGMC in accordance with the provisions of the Joint Federal Travel Regulation. DOD beneficiaries who reside in the STS catchment area for TRICARE Region 1 must be evaluated by NNMC, WRAMC, or MGMC before receiving TRICARE/CHAMPUS cost sharing for General Surgery and Orthopedic Surgery procedures that fall under the above Diagnosis Related Groups. These Region 1 beneficiaries must be evaluated by NNMC or WRAMC before receiving TRICARE/CHAMPUS cost sharing for Neurosurgery, Otorhinolaryngology Surgery, and Gynecologic Oncology Surgery procedures that fall under the above Diagnosis Related Groups. Evaluation in person is preferred, and travel and lodging expenses for the evaluation will be reimbursed as stated above. It is possible to conduct the evaluation telephonically if the patient is unable to travel to NNMC, WRAMC, or MGMC. If the procedure cannot be performed at NNMC, WRAMC, or MGMC, the facility will provide a medical necessity review prior to issuance of a Nonavailability Statement.

The STS Catchment Area covering TRICARE Region 1 is defined by zip codes in the Defense Medical Information System STS Facilities Catchment Area Directory. The Catchment Area includes zip codes within TRICARE Region 1 in the states of Delaware, Maryland, New Jersey, New York, Pennsylvania, Virginia, and the District of Columbia that fall within a 200 mile radius of the midpoint of a line between WRAMC and NNMC.

EFFECTIVE DATE: March 1, 1999.

FOR FURTHER INFORMATION CONTACT: CDR W. Isley (NNMC) at (301) 295–6195, Ms. Kendra Drew (WRAMC) at (202) 782–4302, Capt. R. Warwar (MGMC) at (301) 981–2475, CAPT D. Michael Jones (TRICARE Region 1 Lead Agent Office) at (202) 782–1483, Lt. Col. Teresa Sommese, (TRICARE Management Activity) at (703) 681–3628, extension 5029; or Mr. Tariq Shahid, (TRICARE Management Activity) at (303) 676–3801.

SUPPLEMENTARY INFORMATION: In FR DOC 93–27050, appearing in the **Federal Register** on November 5, 1993 (Vol. 58,

FR 58955–58964), the final rule on the STS Program was published. Included in the final rule was a provision that a notice of all military and civilian STS facilities by published in the **Federal Register** annually. This notice is issued under the authority of 10 U.S.C. 1105 and 32 CFR 199.4(a)(10).

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31424 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Telecommunications Service Priority System Oversight Committee (TSPOC)

ACTION: Notice.

SUMMARY: This TSPOC has been renewed in consonance with the public interest, and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The TSPOC provides advice and recommendations to the Secretary of Defense regarding the priority treatment of national security and emergency preparedness telecommunications services. Functions include evaluating the currency of policies, procedures and system documentation requirements, and assessing the adequacy of the system in the light of technological advances.

The TSPOC will continue to be composed of 18 members, both federal, state and local government, and non-government individuals, who are experts in telecommunications services. Efforts will be made to ensure that there is a fairly balanced membership in terms of the functions to be performed and the interest groups represented.

For further information, contact: Ms. Debbie Bea, National Communications System, telephone: 703–607–4933.

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31415 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 2 December 1998 (0800 am to 1600 pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill BLVD, Washington, D.C. 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(I), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31416 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Globalization and Security

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Globalization and Security will meet in closed session on December 17–18, 1998, January 21–22, February 18–19, March 11–12, and April 7–8, 1999 at Strategic Analysis Inc. (SAI), 4001 N. Fairfax Drive, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will develop advice to provide to the DepSecDef and USD (A&T) regarding transformations to the industrial base serving the DoD—assessing the significant benefits to the Department and the risks that our adversaries will be able to learn about our technology.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that, accordingly, these meetings will be closed to the public.

Dated: November 19, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31417 Filed 11–24–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

[FE Docket No. 98–76–NG]

Office of Fossil Energy; Chevron U.S.A. Inc.: Order Granting Long-Term Authorization to Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Chevron U.S.A. Inc. (Chevron) long-term authorization to import from Canada up to 1,500 thousand cubic feet per day of natural gas from November 1, 1997, through October 31, 2001. This natural gas may be imported from Canada at the pipeline connection of TransCanada PipeLines Limited and North Country Gas Pipeline near Champlain, New York (Napierville, Quebec) at the United States/Canada border.

This order may be found on the FE web site at http://www.fe.doe.gov and on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities docket room, 3E–042, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, November 16, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import and Export Activities, Office of Fossil Energy.

[FR Doc. 98–31525 Filed 11–24–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–61–001]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1998.

Take notice that on November 16, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 111A, to be effective November 2, 1998.

ANR states that this filing is made in compliance with the Commission's Order dated October 20, 1998 in the captioned proceeding.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31467 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–64–001]

Canyon Creek Compression Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Canyon states that these tariff sheets were filed in compliance with the Commission's order issued October 30, 1998, in Docket No. RP99–64–000.

Canyon requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Canyon states that copies of the filing are being mailed to Canyon's customers and interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–64.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31468 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–2–32–000]

Colorado Interstate Gas Company; Notice of GRI Filing

November 19, 1998.

Take notice on November 16, 1998, Colorado Interstate Gas Company (CIG), tendered for filing FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 10 and Twenty-Fifth Revised Sheet No. 11. CIG requests that the proposed tariff sheets be made effective on January 1, 1999.

CIG states the purpose of this filing is to permit CIG to collect Gas Research Institute (GRI) charges associated with its transportation pursuant to the Commission order issued September 29, 1998 in Docket No. RP98–235–000.

CIG states that copies of the filing were served upon the company's jurisdictional firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31476 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–89–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Columbia Gas Transmission Corporation (Columbia) tendered for filing to become part its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of November 16, 1998:

Substitute Original Sheet No. 28B

Columbian states that on October 14, 1998, it filed sheets in Docket No. RP99–89–000, proposing to initiate interruptible parking and lending services under new Rate Schedule PAL. On November 12, 1998, the Commission accepted the filed sheets subject to Columbia filing revised tariff sheets as discussed in the body of the order. Specifically, Columbia was required to file revised sheets to provide for the maximum Rate Schedule PAL rate to track seasonal fluctuations in the maximum ITS rate. The instant filing is in compliance with the order, wherein Columbia has revised Sheet No. 28B by adding a summer maximum Rate Schedule PAL rate equivalent to the maximum summer base ITS rate of 14.08 cents.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, affected state commissions and parties on the official service list in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31473 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–22–002]

Dynegy Midstream Pipeline, Inc.; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Dynegy Midstream Pipeline, Inc. (DMP), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of February 1, 1999:

Substitute First Revised Sheet Nos. 64, 65, 68 and 70

DMP states that it is submitting these tariff sheets to comply with the October 30, 1998 order issued in the above reference proceeding. DMP proposes a February 1, 1999 effective date for these sheets to correspond to the effective date of the other tariff provisions implementing the intraday nomination and scheduling GISB standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31456 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–41–001]

El Paso Natural Gas Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of November 1, 1998:

Sub Fourth Revised Sheet No. 202A
Fifth Revised Sheet No. 210
Sub Third Revised Sheet No. 210.01
Substitute Third Revised Sheet No. 211
Substitute First Revised Sheet No. 211A

El Paso states that the filing is being made in compliance with the Commission's order issued October 30, 1998 at Docket No. RM99–41–000.

El Paso states that the tariff sheets are being filed to revise intra-day tariff provisions in compliance with the Commission's order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31462 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–80–001]

Granite State Gas Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1998.

Take notice that on November 16, 1998, Granite State Gas Transmission, Inc. (Granite State), tendered for filing with the Commission the original and revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on November 2, 1998:

Second Revised Sheet No. 144
Second Revised Sheet No. 201
Original Sheet No. 201A
Second Revised Sheet No. 202
Second Revised Sheet No. 272
Second Revised Sheet No. 273
Second Revised Sheet No. 274
Original Sheet No. 274A
Original Sheet No. 274B
Second Revised Sheet No. 275
Original Sheet No. 275A
Second Revised Sheet No. 276
Original Sheet No. 276A
Eighth Revised Sheet No. 289

Granite State states that on October 8, 1998, it filed certain revised tariff sheets purporting to comply with the requirements of the Commission's Order No. 587–H. Granite State's filing was rejected in a Letter Order issued October 28, 1998 which directed Granite State to refile tariff sheets correctly conforming with Gas Industry Standards Board Version 1.3 in the matter of intra-day nomination changes and other related nomination procedures. According to Granite State, the instant filing is in compliance with the directives in the Commission's Letter Order of October 28, 1998 respecting the prior filing.

Granite State states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31472 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2634–007]

Great Northern Paper, Inc.; Notice Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

November 19, 1998.

The license for the Storage Project, FERC No. 2634, located on Ragged Stream, Caucomgomoc Stream, and the West Branch and South Branch of the Penobscot River in Somerset and Piscataquis Counties, Maine, will expire on April 30, 2000. On April 28, 1998, an application for new major license was filed. The following is an approximate procedural schedule that will be followed in processing the application:

Date	Action
November 30, 1998	Commission notifies applicant that its application has been accepted and specifies the need for additional information and due date.
November 30, 1998	Commission issues public notice of the accepted application establishing dates for filing motions to intervene and protests.
March 31, 1999	Commission's deadline for applicant for filing a final amendment, if any, to its application.
September 30, 1999	Commission notifies all parties and agencies that the application is ready for environmental analysis.

Upon receipt of all additional information and the information filed in response to the public notices of the application, the Commission will evaluate the application in accordance with applicable statutory requirements and take appropriate action on the application.

Any questions concerning this notice should be directed to William Diehl, P.E. at (202) 219–2813, or his e-mail address, william.diehl@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31452 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–149–000]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1998.

Take notice that on November 16, 1998, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

First Revised Sheet No. 162A
Original Sheet No. 162B

Kentucky West states that the purpose of this filing is to comply with the January 21, 1998, "Stipulation and Agreement Concerning Gas Research Institute (GRI) Funding" which the Commission approved on April 29, 1998 in Docket No. RP97–149–003, et al. (83 FERC ¶61,093). Specifically, a voluntary contribution mechanism provision has been added to Section 28 of Kentucky West's General Terms and Conditions to allow customers to make voluntary contributions to GRI in such amounts and for such GRI projects as specified by the customers. Kentucky West's filing is consistent with the Stipulation and Agreement, in that the voluntary contribution mechanism is not a pipeline rate, rate provision, or term or condition of service.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31474 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–46–000]

Kentucky West Virginia Gas Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1998.

Take notice that on November 16, 1998, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following revised tariff sheets to become effective January 1, 1999:

Fifth Revised Sheet No. 4
Fifth Revised Sheet No. 5
Third Revised Sheet No. 162

Kentucky West states that the purpose of this filing is to comply with the "Order Approving the Gas Research Institute's 1999 Research, Development and Demonstration Program and 1999–2003 Five Year Plan" issued on September 29, 1998 in Docket No. RP98–235–000. The Commission authorized pipeline companies to collect the Gas Research Institute (GRI) funding unit from their customers. The 1999 GRI unit surcharge approved by the Commission is (1) $0.2300 per dekatherm (Dth) per month demand surcharge for high load factor customers, (2) $0.1420 per Dth month demand surcharge for low load factor customers, (3) $0.0075 per Dth commodity/usage surcharge and (4) $0.0180 per Dth for a small customer

surcharge. Also, on Sheet No. 162 the listing of the GRI charges were changed to a tariff sheet designation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31475 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–65–001]

Kern River Gas Transmission; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 2, 1998:

Substitute Second Revised Sheet No. 90
Substitute Fifth Revised Sheet No. 94
Substitute Third Revised Sheet No. 94–A
Substitute Second Revised Sheet No. 96
Substitute Second Revised Sheet No. 97

Kern River states that the purpose of this filing is to comply with the Commission's letter order dated October 30, 1998, in Docket No. RP99–65–000. The letter order was issued in response to Kern River's October 2, 1998 filing submitted in compliance with Order No. 587–H.

Kern River states that a copy of this filing has been served each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31469 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–67–002]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1998.

Take notice that on November 16, 1998, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing. These tariff sheets are proposed to be effective on November 1, 1998.

MRT states that the purpose of this filing is to comply with the Commissions Letter Order dated October 30, 1998 in the above-referenced docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31470 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–40–001]

Mojave Pipeline Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Mojave Pipeline Company (Mojave) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1998:

Substitute Second Revised Sheet No. 202
First Revised Sheet No. 218
Substitute First Revised Sheet No. 219
Original Sheet No. 219A
Original Sheet No. 219B

Mojave states that the filing is being made in compliance with the Commission's order issued October 30, 1998 at Docket No. RP99–40–000.

Mojave states that the tariff sheets are being filed to revise intra-day tariff provisions in compliance with the Commission's order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31461 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–55–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Natural states that these tariff sheets were filed in compliance with the Commission's order issued October 30, 1998, in Docket No. RP99–55–000.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Natural states that copies of the filing are being mailed to Natural's customers and interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–55.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31464 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–68–001]

NorAm Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 19, 1998.

Take notice that on November 16, 1998, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, revised tariff sheets listed on Appendix A to this filing. These tariff sheets are proposed to be effective on November 1, 1998.

NGT states that the purpose of this filing is to comply with the Commissions Letter Order in the above-referenced docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31471 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–399–001]

Northern Border Pipeline Company; Notice of Tariff Filing

November 19, 1998.

Take notice that on November 16, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective December 15, 1998:

Substitute Fourth Revised Sheet Number 246
Substitute First Revised Sheet Number 248J
Fourth Revised Sheet Number 249
Fourth Revised Sheet Number 257

Northern Border states that the filing is in compliance with the Commission's order, issued October 30, 1998, in the above-reference docket. Northern Border further states that the October 30, 1998 order required Northern Border to resubmit the above-referenced revised tariff sheets to include specific Gas Industry Standards Board (GISB) business standard language or to incorporate the entire GISB definition by reference and reflect certain pagination changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31454 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–75–000]

Northern Natural Gas Company; Notice of Application

November 19, 1998.

Take notice that on November 13, 1998, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, requesting authority for Northern: (1) To abandon, by certain pipeline facilities with appurtenances, (2) abandon, by relocation in some instances, certain small volume meter stations with appurtenances, and (3) abandon certain services rendered thereby, located primarily within the State of Kansas, as well as some within the States of Iowa, Nebraska, and Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Northern states that the subject facilities are primarily old 1930's vintage pipeline which were constructed using techniques and equipment in use at that time, including acetylene welding and Dresser couplings. Northern asserts that the subject facilities have experienced corrosion and leakage and that the pipeline segments have either been inactive or operating at a reduced pressure. Northern further asserts that current transportation requirements can be served by its existing B, C, D, and E-lines, thereby making abandonment rather than repair or replacement more economically and operationally feasible. Northern states that the subject proposal will not adversely effect capacity since current flows can be diverted to its existing lines.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211)

and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31451 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–31–001]

Northern Natural Gas Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Northern Natural Gas Company (Northern), submits this filing in compliance with the Commission's October 30, 1998 Letter Order.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31458 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–70–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 19, 1998.

Take notice that on November 12, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP99–70–000, a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to abandon by removal its Green Circle Farms and Lambert Farms Meter Stations in Benton and Yakima Counties, Washington, respectively, under Northwest's blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to abandon the Green Circle Farms and Lambert Farms Meter Stations because no deliveries have been made in many years to either meter station. By letter dated September 8, 1998, Cascade Natural Gas Corporation, the local distribution company downstream of the meter stations, confirmed that it does not object to Northwest abandoning and removing these two meter stations.

Northwest states the cost of removing the meter stations is estimated to be approximately $6,400. Northwest relates that all removed facilities will be scrapped. Northwest states it has sent a copy of this prior notice request to the Washington Utilities and Transportation Commission.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, filed with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426, pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31448 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–25–002]

Northwest Pipeline Corporation; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective November 2, 1998:

Substitute First Revised Sheet No. 225–A.01
Substitute Original Sheet No. 225–G
Substitute Fourth Revised Sheet No. 228

Northwest states that the purpose of this filing is comply with the Commission's Order Accepting Tariff Sheets, Subject to Conditions, issued October 30, 1998 in Docket No. RP99–25–000 (Order). The Order was issued in response to Northwest's October 1, 1998 filing submitted in compliance with Order No. 587–H.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31457 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–46–001]

PG & E Gas Transmission, Northwest Corporation; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 13, 1998, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets, with an effective date of November 2, 1998:

Third Revised Sheet No. 81A.01
Substitute Original Sheet No. 81A.01a
Substitute Original Sheet No. 81A.01b
Third Revised Sheet No. 81A.02
Substitute Third Revised Sheet No. 84A

PG&E GT–NW states that these tariff sheets are being filed in compliance with the Commission's October 30, 1998 letter order in this docket.

PG&E GT–NW further states that a copy of this filing has been served upon PG&E GT–NW's jurisdictional customers, interested state regulatory agencies and all parties on the Commission's official service list for this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31463 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–73–000]

Questar Pipeline Company; Notice of Request Under Blanket Authorization

November 19, 1998.

Take notice that on November 12, 1998, Questar Pipeline Company (Questar), 180 East 100 South, P.O. Box 45360, Salt Lake City, Utah 84145–0360, filed in Docket No. CP99–73–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon its Jurisdictional Lateral (J.L.) No. 61, located in Summit County, Utah, by sale to JN Exploration and Production Company (JN), an independent producer, under Questar's blanket certificate issued in Docket No. CP82–491–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to abandon J.L. No. 61 by sale to JN, which is located in Sections 25 and 26, Township 3 North, Range 7 East, Summit County, Utah. Questar states that J.L. No. 61 comprises 630 feet of 3.5-inch O.D. lateral and 4,976 feet of 4.5-inch O.D. lateral (a total of 1.06 miles of 3.5-inch and 4.5-inch diameter lateral) and includes a 10-inch drip assembly and a 400 bbl. liquid tank located near the main-line junction. Questar also proposes to abandon to JN the private land-owner rights of way and easement grants associated with J.L. No. 61.

Questar declares that JN intends to utilize J.L. No. 61 as a gathering lateral to accommodate new development in the area and enhance JN's ability to more effectively serve the needs of its customers in the North Pineview Field. Questar states that the abandonment of J.L. No. 61 to JN will also improve Questar's operating efficiencies in the area by eliminating the need for them to maintain this facility, which is not conveniently located for Questar's operating personnel. Questar asserts that the proposal will not result in a reduction or abandonment of transportation service on Questar's transmission system.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31450 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–72–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

November 19, 1998.

Take notice that on November 12, 1998, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–72–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 175.211) for authorization to construct and operate a new delivery point for service to Oglethorpe Company (Oglethorpe), under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Oglethorpe at a new delivery point at approximate Mile Post 9.0 on Southern Ocmulgee—Atlanta Line in Monroe County, Georgia. Southern states that the estimated cost of the construction and installation of the facilities is approximately $1,042,000. Southern also states the Oglethorpe has complied with all of the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff for the installation of the direct delivery connection by Southern and will reimburse Southern for the cost of

constructing, installing and operating the proposed facilities.

Southern states that it will transport gas on behalf of Oglethorpe under its Rate Schedule IT, and that the installation of the proposed facilities will have no adverse effect on its ability to provide firm deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is field and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31449 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–56–001]

Stingray Pipeline Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Stingray Pipeline Company (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Stingray states that these tariff sheets were filed in compliance with the Commission's order issued October 30, 1998, in Docket No. RP99–56–000.

Stingray requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Stingray states that copies of the filing are being mailed to Stingray's customers and interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–56.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31465 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–68–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

November 19, 1998.

Take notice that on November 12, 1998, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP99–68–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval to construct and operate a new delivery point for service to New York State Electric & Gas (NYSEG) acting as agent for Herkimer County Industrial Development Agency (Herkimer IDA), under Applicant's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a new delivery point located in Herkimer County, New York to provide up to 1920 Mcf of natural gas per day to NYSEG pursuant to an existing interruptible transportation agreement. Applicant specifically proposes to install, own, operate, and maintain two two-inch hot taps, 88 feet of two-inch diameter interconnection pipe to the edge of Applicant's right-of-way, and electronic gas measurement equipment. Applicant indicates that NYSEG will install and maintain the metering facilities, which will be owned by Herkimer IDA. It is further indicated that NYSEG will install, operate, and maintain ten feet of two-inch interconnecting pipe from the edge of Applicant's right-of-way to NYSEG's measurement building. Applicant asserts that NYSEG will reimburse Applicant $64,200 for this project.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31447 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–60–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective November 2, 1998.

Trailblazer states that these tariff sheets were filed in compliance with the Commission's order issued October 30, 1998, in Docket No. RP99–60–000.

Trailblazer requests waiver of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective November 2, 1998, pursuant to Order No. 587–H.

Trailblazer states that copies of the filing are being mailed to Trailblazer's customers and interested state regulatory agencies and all parties set out on the official service list in Docket No. RP99–60.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests

will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31466 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–39–001]

TransColorado Gas Transmission Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, TransColorado Gas Transmission Company, (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of November 1, 1998:

Substitute Fifth Revised Sheet No. 203
Sub Second Revised Sheet No. 203.01
Substitute First Revised Sheet No. 231A
Original Sheet No. 231B

TransColorado states that the tariff sheets are being filed to revise intra-day tariff provisions in compliance with the Commission's order in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31460 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–32–001]

Transwestern Pipeline Company; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet to be effective November 1, 1998:

Substitute Third Revised Sheet No. 81E

Transwestern states that the instant filing is made in compliance with the Commission's Letter Order accepting tariff sheets, subject to conditions, issued on October 30, 1998 in Docket No. RP99–32–000 (October 30 Order).

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31459 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–21–001]

Venice Gathering System, L.L.C.; Notice of Compliance Filing

November 19, 1998.

Take notice that on November 16, 1998, Venice Gathering System, L.L.C. (VGS), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Substitute First Revised Sheet Nos, 79, 80 and 83
Substitute Original Sheet Nos. 84 and 85

VGS states that it is submitting these tariff sheets to comply with the October 30, 1998 order issued in the above reference proceeding. VGS proposes a February 1, 1999 effective date for these sheets to correspond to the effective date of the other tariff provisions implementing the intraday nomination and scheduling GISB standards.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31455 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–4–76–000]

Wyoming Interstate Company, Ltd.; Notice of GRI Filing

November 19, 1998.

Take notice on November 16, 1998, Wyoming Interstate Company, Ltd. (WIC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 5.3, and Second Revised Volume No. 2, First Revised Sheet No. 4B, with an effective date of January 1, 1999.

WIC states the purpose of this filing is to permit WIC to collect Gas Research Institute (GRI) charges associated with WIC transportation pursuant to the Commission order issued September 29, 1998 in Docket No. RP98–235–000.

WIC states that copies of the filing were served upon the company's jurisdictional firm customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions

or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31477 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG98–110–000, et al.]

Lakota Ridge, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

November 13, 1998.

Take notice that the following filings have been made with the Commission:

1. Lakota Ridge, L.L.C.

[Docket No. EG98–110–000]

Take notice that on November 4, 1998, Lakota Ridge, L.L.C. tendered for filing an amended application to its August 31, 1998, submittal for determination of exempt wholesale generator status in the above-referenced docket.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Shaokatan Hills, L.L.C.

[Docket No. EG98–111–000]

Take notice that on November 4, 1998, Shaokatan Hills, L.L.C. tendered for filing an amended application to its August 31, 1998, submittal for determination of exempt wholesale generator status in the above-referenced docket.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Rockingham Power, LLC

[Docket No. EG99–16–000]

Take notice that on November 5, 1998, Rockingham Power, LLC, 1000 Louisiana, Suite 5800, Houston, Texas filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's Regulations.

Rockingham Power, LLC is a limited liability company, organized under the laws of the State of Delaware, and engaged directly and exclusively in owning and operating the Rockingham Power, LLC electric generating facility (the Facility) to be located in Rockingham County, North Carolina, and selling electric energy and related ancillary services at wholesale from the Facility, as well as selling at wholesale electric energy from sources other than the Facility. The Facility will consist of five gas turbine generators, each nominally rated at approximately 160 MW, for a total of 800 MW, a metering station, and associated transmission interconnection components.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limits its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Gauley River Power Partners, L.P.

[Docket No. EG99–17–000]

Take notice that on November 5, 1998, Gauley River Power Partners, L.P. (GRPP) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

GRPP, a Vermont limited partnership, is a wholly-owned subsidiary of Catamount Energy Corporation, which in turn is a wholly-owned subsidiary of Central Vermont Public Service Corp., both Vermont corporations.

GRPP will operate a hydroelectric project with an installed capacity of 80 MW to be located on the Gauley River in Nicholas County, West Virginia and owned by the City of Summersville, West Virginia. The Facility consists of one penstock, 17 feet in diameter, connected to the existing outlet of one Howell-Burger valve conduit of the Army Corps of Engineers' Summersville Dam; a powerhouse containing two 40 MW Francis hydraulic turbines with a combined installed capacity of 80 MW; a valve house with one Howell-Bunrger valve; and a tailrace. The Facility will also include a step-up transformer, associated breakers and metering equipment and an approximately 10-mile-long 69 kV transmission line that is required to connect the Facility to the transmission system of the Appalachian Power Company.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Southern Energy New England, L.L.C.

[Docket No. EG99–18–000]

On November 9, 1998, Southern Energy New England, L.L.C. (Southern New England), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338–4780, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern New England is a Delaware limited liability company that intends to acquire: (a) an indirect 100% ownership interest in the Canal Station, a two-unit generation facility with installed capacity of 1131 MW located in Sandwich, Massachusetts, (b) an indirect 1.4325% interest (amounting to approximately 8.9 MW per year of capacity) in the William F. Wyman Unit 4 generating facility located in Yarmouth, Maine, (C) an indirect 100% interest in two diesel-fueled generating facilities with a total capacity of 13.8 MW located on Martha's Vineyard, Massachusetts, and (d) an indirect 100% ownership interest in a 113 MW generation facility located in Cambridge, Massachusetts. Southern New England is engaged directly, or indirectly through one or more affiliates, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. Southern Energy Canal, L.L.C.

[Docket No. EG99–19–000]

On November 9, 1998, Southern Energy Canal, L.L.C. (Southern Canal), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338–4780, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern Canal is a Delaware limited liability company that intends to acquire: (a) a 100% ownership interest in the Canal Station, a two-unit generation facility with installed capacity of 1131 MW located in

Sandwich, Massachusetts, (b) a 1.4325% undivided interest (amounting to approximately 8.9 MW per year of capacity) in the William F. Wyman Unit 4 generating facility located in Yarmouth, Maine, and (C) a 100% interest in two diesel-fueled generating facilities with a total capacity of 13.8 MW located on Martha's Vineyard, Massachusetts. Southern Canal is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Southern Energy Kendall, L.L.C.

[Docket No. EG99–20–000]

On November 9, 1998, Southern Energy Kendall, L.L.C. (Southern Kendall), 900 Ashwood Parkway, Suite 500, Atlanta, Georgia 30338–4780, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Southern Kendall is a Delaware limited liability company that intends to acquire a 100% ownership interest in a 113 MW generation facility located in Cambridge, Massachusetts. Southern Kendall is engaged directly and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER99–275–000]

Take notice that on November 4, 1998, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), tendered for filing a corrected Service Agreement between Southern Company Energy Marketing, L.P., replacing the Service Agreement inadvertently filed on October 22, 1998, in the above-referenced docket.

Comment date: November 24, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Boston Edison Company

[Docket No. ER99–333–000]

Take notice that on October 27, 1998, Boston Edison Company (Boston Edison) filed, for informational purposes only, amended true-up to actual reports for calendar years 1995 and 1996 regarding charges to Cambridge Electric Light Company for the use of Station 509. Boston Edison's charges for the use of Station 509 are governed by its FERC Rate Schedule No. 101. A report for calendar year 1995 charges was previously accepted for filing in Docket No. ER97–2067–000. A report for calendar year 1996 charges was previously accepted for filing in Docket No. ER98–1985–000.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southwestern Public Service Company, Northern States Power Company, Northeast Utilities Service Company, and California Power Exchange Corporation

[Docket Nos. ER99–482–000, ER99–480–000, ER99–477–000, and ER99–380–000]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1998, Southwestern Public Service Company filed certain information as required by a Commission order issued in Docket No. ER95–1129–000.

On October 30, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) filed certain information as required by a Commission order issued in Docket No. ER98–2640–000.

On October 30, 1998, Northeast Utilities Service Company filed certain information as required by Commission orders issued in Docket Nos. ER96–780–000 and ER96–2525–000.

On October 30, 1998, California Power Exchange Corporation filed certain information as required by Commission orders issued in Docket Nos. ER98–2095–000 and ER98–4014–000.

11. Sierra Pacific Power Company

[Docket No. ER99–546–000]

Take notice that on November 9, 1998, Sierra Pacific Power Company (Sierra), tendered for filing Service Agreements (Service Agreements) with the following entities for Point-to-Point Transmission Service under Sierra's Open Access Transmission Tariff (Tariff), for Non Firm Point-to-Point Transmission Service Constellation Power Source, Inc., PacifiCorp Power Marketing, Inc., for Short-Term Firm Point-to-Point Transmission Service Constellation Power Source, Inc.

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet Nos. 148 and 148A (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit and effective date of November 10, 1998 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Service Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Duquesne Light Company

[Docket No. ER99–553–000]

Take notice that on November 9, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Cinergy Services, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 1, 1998.

Copies of this filing were served upon Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER99–554–000]

Take notice that on November 9, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with First Energy Corporation (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 1, 1998.

Copies of this filing were served upon Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Duquesne Light Company

[Docket No. ER99–555–000]

Take notice that on November 9, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with FirstEnergy Trading and Power Marketing, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 1, 1998.

Copies of this filing were served upon Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER99–556–000]

Take notice that on November 9, 1998, Duquesne Light Company (Dusquesne), tendered for filing under Duquesne's market-based rate tariff, (Docket No. ER98–4159–000), an executed Service Agreement with Koch Energy Trading, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 24, 1998.

Copies of this filing were served upon the Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–557–000]

Take notice that on November 9, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Merchant Energy Group of the Americas, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 1, 1998.

Copies of this filing were served upon Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Duquesne Light Company

[Docket No. ER99–558–000]

Take notice that on November 9, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with Strategic Energy Ltd. (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 1, 1998.

Copies of this filing were served upon Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Duquesne Light Company

[Docket No. ER99–559–000]

Take notice that on November 9, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) an executed Service Agreement at Market-Based Rates with WPS Energy Services, Inc. (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of November 1, 1998.

Copies of this filing were served upon Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Niagara Mohawk Power Corporation

[Docket No. ER99–560–000]

Take notice that on November 9, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Duke Energy Trading and Marketing, L.L.C. (DETM). This Transmission Service Agreement specifies that DETM has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and DETM to enter into separately scheduled transactions under which NMPC will provide transmission service for DETM as the parties may mutually agree.

NMPC requests an effective date of November 4, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and DETM.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Niagara Mohawk Power Corporation

[Docket No. ER99–561–000]

Take notice that on November 9, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Duke Energy Trading and Marketing, L.L.C., (DETM). This Transmission Service Agreement specifies that DETM has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and DETM to enter into separately scheduled transactions under which NMPC will provide transmission service for DETM as the parties may mutually agree.

NMPC requests an effective date of November 4, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and DETM.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Niagara Mohawk Power Corporation

[Docket No. ER99–562–000]

Take notice that on November 9, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and North American Energy Conservation, Inc. This Transmission Service Agreement specifies that North American Energy Conservation, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This tariff, filed with FERC on July 9, 1996, will allow NMPC and North American Energy Conservation, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for North American Energy Conservation, Inc., as the parties may mutually agree.

NMPC requests an effective date of November 4, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and North American Energy Conservation, Inc.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER99–563–000]

Take notice that on November 9, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and North American Energy Conservation, Inc. This Transmission Service Agreement specifies that North American Energy Conservation, Inc., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and North American Energy Conservation, Inc., to enter into separately scheduled transactions under which NMPC will provide transmission service for North American Energy Conservation, Inc., as the parties may mutually agree.

NMPC requests an effective date of November 4, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and North American Energy Conservation, Inc.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. AES NY, L.L.C.

[Docket No. ER99–564–000]

Take notice that on November 10, 1998, AES NY, L.L.C. (AES NY), c/o Henry Aszklar, AES NY, L.L.C., 1001 North 19th Street, Suite 2000, Arlington, Virginia 22209, a Delaware limited liability company, petitioned the Commission for an order accepting rate schedule for filing and granting waivers and blanket approvals.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Arizona Public Service Company

[Docket No. ER99–565–000]

Take notice that on November 10, 1998, Arizona Public Service Company (APS), tendered for filing revisions to its Open Access Transmission Tariff needed in order to accommodate retail direct access being implemented by the Arizona Corporation Commission.

APS requests an effective date of January 1, 1999.

A copy of this filing has been served on the Arizona Corporation Commission and the parties included on the service list attached to this filing letter.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. New England Power Pool

[Docket No. ER99–566–000]

Take notice that on November 9, 1998, the New England Power Pool Executive Committee filed for acceptance three signature pages to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Southern Energy New England, LLC (SENE); Southern Energy Canal, LLC (SE Canal); Southern Energy SE Kendall, LLC (SE Kendall). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Executive Committee states that the Commission's acceptance of the signature pages of SENE, SE Canal and SE Kendall would permit NEPOOL to expand its membership to include SENE, SE Canal and SE Kendall. NEPOOL further states that the filed signature pages do not change the NEPOOL Agreement in any manner, other than to make SENE, SE Canal and SE Kendall members in NEPOOL.

NEPOOL requests an effective date of as of the date of the acquisition by SE Canal and SE Kendall of the generating assets currently owned by Commonwealth Electric Company, Canal Electric Company, Montaup Electric Company and Cambridge Electric Light Company, which is anticipated to occur December 30, 1998.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. New York State Electric & Gas Corporation

[Docket No. ER99–567–000]

Take notice that on November 10, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing proposed changes in its Open Access Transmission Tariff (OATT) filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000. The changes include a change in address, revised lists of customers taking Point-to-Point and Network Integration Transmission Services, and a typographical error.

NYSEG has served copies of the filing on the New York State Public Service Commission and on the OATT customers.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Deseret Generation & Transmission Co-operative

[Docket No. ER99–568–000]

Take notice that on November 10, 1998, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella short-term firm point-to-point service agreement with Constellation Power Source, Inc., under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of November 10, 1998.

Constellation Power Source, Inc., has been provided a copy of this filing.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Deseret Generation & Transmission Co-operative

[Docket No. ER99–569–000]

Take notice that on November 10, 1998, Deseret Generation & Transmission Co-operative tendered for filing an executed umbrella non-firm point-to-point service agreement with Constellation Power Source, Inc., under its open access transmission tariff. Deseret's open access transmission tariff is currently on file with the Commission in Docket No. OA97–487–000.

Deseret requests a waiver of the Commission's notice requirements for an effective date of November 10, 1998.

Constellation Power Source, Inc., has been provided a copy of this filing.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Virginia Electric and Power Company

[Docket No. ER99–570–000]

Take notice that on November 10, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Energy Transfer Group, L.L.C., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to Energy Transfer Group, L.L.C., under the terms and conditions of the Tariff.

Virginia Power requests an effective date of November 10, 1998.

Copies of the filing were served upon Energy Transfer Group, L.L.C., the Virginia State Corporation Commission

and the North Carolina Utilities Commission.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. St. Joseph Light & Power Company

[Docket No. ER99–571–000]

Take notice that on November 10, 1998, St. Joseph Light & Power Co., tendered for filing nine executed agreements for transmission service under its Open Access Transmission Tariff. One of the service agreements provides for firm point-to-point transmission service to Nebraska Public Power District. The other eight agreements provide for non-firm point-to-point transmission service to American Electric Power Service Corporation; Amoco Energy Trading Corporation; Avista Energy, Inc.; Continental Energy Services, L.L.C.; Nebraska Public Power District; OGE Energy Resources, Inc.; The Power Company of America; and Tennessee Valley Authority.

Copies of the filing were served on each of these companies and the Tennessee Valley Authority.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Company of Colorado

[Docket No. ER98–4590–000]

Take notice that on November 6, 1998, Public Service Company of Colorado tendered for filing a response to the Commission's letter of deficiency in the above referenced docket.

Comment date: November 30, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31445 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–9–000, et al.]

PacifiCorp, et al.; Electric Rate and Corporate Regulation Filings

November 12, 1998.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. EC99–9–000]

Take notice that on November 9, 1998, PacifiCorp tendered for filing in accordance with 18 CFR Part 33 of the Commission's Rules and Regulations, an application seeking an order authorizing PacifiCorp to sell to the Flathead Electric Cooperative, Inc. (Flathead) approximately 122.42 miles of 34.5, 115 and 230 kilovolt transmission line and transmission substations located in Big Horn, Flathead and Lincoln Counties, Montana.

Copies of this filing were supplied to Flathead and the Montana Public Service Commission.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Tri Energy Company Limited

[Docket No. EG99–7–000]

Take notice that on November 4, 1998, Tri Energy Company Limited (the Applicant) whose address is Grand Amarin Tower, 16th Floor, 1550 New Petchburi Road, Ratchathewi, Bangkok 10320, Thailand, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

The Applicant states that it will be engaged directly and exclusively in the business of owning a nominal 700 MW combined cycle power plant located in Ratchaburi Province and selling electric energy at wholesale, as that term has been interpreted by the Commission. The Applicant requests a determination that the Applicant is an exempt wholesale generator under Section 32(a)(1) of the Public Utility Holding Company Act of 1935.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Nine, L.L.C., CL Power Sales Ten, L.L.C., Hartford Power Sales, CinCap IV, LLC, Cinergy Capital and Trading Inc., and Southern Company Energy Marketing L.P.

[Docket Nos. ER96–2652–017, ER96–2652–018, ER96–2652–019, ER96–2652–020, ER95–393–021, ER98–421–004, ER93–730–010, and ER97–4166–002]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 30, 1998, CL Power Sales Seven, L.L.C., CL Power Sales, Eight, L.L.C., CL Power Sales Nine, L.L.C. and CL Power Sales Ten filed certain information as required by a Commission order issued in Docket No. ER96–2652–000.

On October 30, 1998, Hartford Power Sales filed certain information as required by a Commission order issued in Docket No. ER95–393–000.

On October 30, 1998, CinCap IV, LLC filed certain information as required by a Commission order issued in Docket No. ER98–421–000.

On October 30, 1998, Cinergy Capital and Trading Inc. filed certain information as required by a Commission order issued in Docket No. ER93–730–000.

On October 30, 1998, Southern Company Energy Marketing L.P. filed certain information as required by a Commission order issued in Docket No. ER97–4166–000.

4. Northeast Electricity Inc., The Detroit Edison Company, Dynegy Power Services, Inc., Commonwealth Energy Corporation, LG&E Energy Marketing Inc., Enserch Energy Services, Inc., Statoil Energy Trading, Inc., PG&E Energy Trading—Power, Electric Clearinghouse, Inc., ONEOK Power Marketing Company, and Merchant Energy Group of the Americas

[Docket Nos. ER98–3048–001, ER99–516–000, ER94–1612–019, ER97–4253–002, ER94–1188–025, ER98–895–003, ER94–964–020, ER95–1625–016, ER94–968–024, ER98–3897–001, and ER98–1055–003]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 2, 1998, Northeast Electricity Inc. filed certain information

as required by a Commission order issued in Docket No. ER98–3048–000.

On November 2, 1998, The Detroit Edison Company filed certain information as required by a Commission order issued in Docket No. ER97–324–000.

On November 2, 1998, Dynegy Power Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER94–1512–000.

On November 2, 1998, Commonwealth Energy Corporation filed certain information as required by a Commission order issued in Docket No. ER97–4253–000.

On November 2, 1998, LG&E Energy Marketing Inc. filed certain information as required by a Commission order issued in Docket No. ER94–1188–000.

On November 2, 1998, Enserch Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–895–000.

On November 2, 1998, Statoil Energy Trading, Inc. filed certain information as required by a Commission order issued in Docket No. ER94–964–000.

On November 2, 1998, PG&E Energy Trading—Power filed certain information as required by a Commission order issued in Docket No. ER95–1625–000.

On November 2, 1998, Electric Clearinghouse, Inc. filed certain information as required by a Commission order issued in Docket No. ER94–968–000.

On November 2, 1998, ONEOK Power Marketing Company filed certain information as required by a Commission order issued in Docket No. ER98–3897–000.

On November 2, 1998, Merchant Energy Group of the Americas filed certain information as required by a Commission order issued in Docket No. ER98–1055–000.

5. California Power Exchange Corporation

[Docket No. ER98–4607–000]

Take notice that on November 6, 1998, California Power Exchange Corporation (PX), tendered for filing an amendment to its tariff filing in the above-referenced docket.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Sunlaw Cogeneration Partners I

[Docket No. ER99–213–000]

Take notice that on November 9, 1998, Sunlaw Cogeneration Partners I (Sunlaw), tendered for filing a supplement to its petition, submitted on October 16, 1998, which requested acceptance of FERC Electric Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER99–299–000]

Take notice that on November 9, 1998, Carolina Power & Light Company tendered for filing a supplement to its power purchase agreement with South Carolina Public Service Authority filed on October 23, 1998, in the above-referenced docket.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the South Carolina Public Service Authority.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Mountain Vista Power Generation L.L.C., Ormond Beach Generation, L.L.C., Ocean Vista Power Generation L.L.C., Alta Power Generation, L.L.C., State Line Energy, L.L.C., Sithe Mystic LLC, et al., Commonwealth Edison Company, United Power Technologies, Inc., and AG Energy, L.P., et al.

[Docket Nos. ER99–438–000, ER99–439–000, ER99–440–000, ER99–441–000, ER99–442–000, ER99–443–000, ER99–444–000, ER99–445–000, and ER98–2782–000]

Take notice that the following informational filings have been filed with the Commission and are available for public inspection and copying in the Commission's Office of Public Information:

On October 30, 1998, Mountain Vista Power Generation L.L.C. filed certain information as required by the Commission's order issued in Docket No. ER98–930–000.

On October 30, 1998, Ormond Beach Generation, L.L.C. filed certain information as required by the Commission's order issued in Docket No. ER98–2878–000.

On October 30, 1998, Ocean Vista Power Generation L.L.C. filed certain information as required by the Commission's order issued in Docket No. ER98–927–000.

On October 30, 1998, Alta Power Generation, L.L.C. filed certain information as required by the Commission's order in Docket No. ER98–931–000.

On October 30, 1998, State Line Energy, L.L.C. filed certain information as required by the Commission's order issued in Docket No. ER96–2869–000.

On October 30, 1998, Sithe Mystic LLC, *et al.*, filed certain information as required by the Commission's order issued in Docket No. ER98–1943–000.

On October 30, 1998, Commonwealth Edison Company filed certain information as required by the Commission's order issued in Docket No. ER98–1734–000.

On October 30, 1998, United Power Technologies, Inc. filed certain information as required by the Commission's order issued in Docket No. ER97–122–000.

On October 30, 1998, AG Energy, L.P., *et al.*, filed certain information as required by the Commission's order issued in Docket No. ER98–2782–000.

9. Great Bay Power Corporation, Unicom Power Marketing, Inc., CSW Power Marketing, Inc., Edison Source, CSW Energy Services, Inc., Texaco Energy Services, and Williams Energy Services Company

[Docket Nos. ER99–446–000, ER97–3954–005, ER97–1238–008, ER96–2150–011, ER98–2075–003, ER95–1787–011, and ER95–305–018]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Office of Public Information:

On October 30, 1998, Great Bay Power Corporation filed certain information as required by a Commission order issued in Docket No. ER98–3470–000.

On October 30, 1998, Unicom Power Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–3954–000.

On October 30, 1998, CSW Power Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–1238–000.

On October 30, 1998, Edison Source filed certain information as required by a Commission order issued in Docket No. ER96–2150–000.

On October 30, 1998, CSW Energy Services, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–2075–000.

On October 30, 1998, Texaco Energy Services filed certain information as required by a Commission order issued in Docket No. ER95–1787–000.

On October 30, 1998, Williams Energy Services Company filed certain information as required by a Commission order issued in Docket No. ER95–305–000.

10. Duquesne Light Company

[Docket No. ER99–532–000]

Take notice that on November 9, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated October 21, 1998 with Penn Power Energy, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Penn Power Energy, Inc., as a customer under the Tariff.

DLC requests an effective date of January 1, 1999, for the Service Agreement.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Tucson Electric Power Company

[Docket No. ER99–533–000]

Take notice that on November 6, 1998, Tucson Electric Power Company (TEP), tendered for filing proposed changes to its Open Access Transmission Tariff (OATT), FERC Electric Service Tariff No. 2. TEP has filed a revised OATT to include terms and conditions governing the provision of unbundled retail transmission service.

These changes to TEP's OATT are necessitated by the opening up of Arizona's retail electric markets to competition effective January 1, 1999.

Copies of the filing were served upon the TEP's jurisdictional customers and the Arizona Corporation Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Peco Energy Company

[Docket No. ER99–534–000]

Take notice that on November 6, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated June 2, 1997, with Fox Islands Electric Cooperative, Inc. (FIEC), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds FIEC as a customer under the Tariff.

PECO requests an effective date of October 8, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to FIEC and to the Pennsylvania Public Utility Commission.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Washington Water Power Company

[Docket No. ER99–542–000]

Take notice that on November 9, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Part 35 of the Commission's Rules and Regulations, an executed Long Term Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Duke Energy Trading and Marketing, LLC.

WWP requests an effective date of January 1, 1999.

Copies of this filing have been served upon Duke Energy Trading and Marketing, LLC.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER99–543–000]

Take notice that on November 9, 1998, Arizona Public Service Company (APS), tendered for filing Service Agreements under APS' FERC Electric Tariff, Original Volume No. 3, for service to the Electric Districts Nos. 1 and 3 of Pinal County, Arizona.

A copy of this filing has been served on the Arizona Corporation Commission, the Electric Districts Nos. 1 and 3.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Rochester Gas and Electric Corporation

[Docket No. ER99–544–000]

Take notice that on November 5, 1998, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Service Agreement between RG&E and the Strategic Energy LTD., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of the RG&E open access transmission tariff filed on July 9, 1996 in Docket No. OA96–141-000.

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of November 5, 1998, for the Strategic Energy LTD., Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. South Carolina Electric & Gas Company

[Docket No. ER99–545–000]

Take notice that on November 9, 1998, South Carolina Electric & Gas Company (SCE&G), tendered for filing a service agreement establishing Southeastern Power Administration (SEPA) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreement. Accordingly, SCE&G requests waiver of the Commission's notice requirements.

Copies of this filing were served upon SEPA and the South Carolina Public Service Commission.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–547–000]

Take notice that on November 9, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 39 to add PG&E Energy Trading—Power, L.P. and TransAlta Energy Marketing (U.S.) Inc., to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreements is November 6, 1998.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

18. Washington Water Power Company

[Docket No. ER99–548–000]

Take notice that on November 9, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR Section 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, with Merchant Energy Group of the Americas, Inc.

WWP requests waiver of the prior notice requirement and requests that the Service Agreement with Merchant Energy Group of the Americas, Inc., be accepted for filing effective October 22, 1998.

Comment date: November 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER99–549–000]

Take notice that on November 9, 1998, Delmarva Power & Light Company (Delmarva), tendered for filing executed umbrella service agreements with NGE Generation, Inc., and Northern/AES Energy, L.L.C., under Delmarva's market rate sales tariff.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Northern Indiana Public Service Company

[Docket No. ER99–550–000]

Take notice that on November 9, 1998, Northern Indiana Public Service Company, tendered for filing an executed Standard Transmission Service Agreement for Non-Firm Point-to-Point Transmission Service between Northern Indiana Public Service Company and TransAlta Energy Marketing (U.S.) Inc. (Transmission Customer).

Under the Transmission Service Agreement, Northern Indiana Public Service Company will provide Point-to-Point Transmission Service to Transmission Customer pursuant to the Transmission Service Tariff filed by Northern Indiana Public Service Company in Docket No. OA96–47–000 and allowed to become effective by the Commission.

Northern Indiana Public Service Company has requested that the Service Agreement be allowed to become effective as of November 30, 1998.

Copies of this filing have been sent to the Indiana Utility Regulatory Commission and the Indiana Office of Utility Consumer Counselor.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Public Service Company of New Mexico

[Docket No. ER99–551–000]

Take notice that on November 9, 1998, Public Service Company of New Mexico (PNM), tendered for filing an executed service agreement dated October 30, 1998, for non-firm point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Southern California Edison Company. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM requests an effective date of September 25, 1998 for the Service agreement.

Comment date: November 27, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas & Electric Corporation, and Power Authority of the state of New York

[Docket Nos. ER97–1523–000, OA97–470–000, and ER97–4234–000]

Take notice that on October 23, 1998, the Member Systems of the New York Power Pool [1] tendered an ISO Governance Issues Agreement.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31446 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–P

[1] Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Power Authority, New York Power Authority, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc. and Rochester Gas and Electric Corporation.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

November 19, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11623–000.

c. *Date filed:* November 3, 1998.

d. *Applicant:* Energy Recycling Company.

e. *Name of Project:* Klamath County Water Power Project.

f. *Location:* In Klamath County, Oregon, partially in Bureau of Land Management lands. T39S, R11E (sections 35 and 36), T39S, R12E (sections 19, 20, 30, and 31), T40S, R12E (sections 1, 2, 11, 12, 13, 14, 24, 25, and 26), T40S, R13E (section 6).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Douglas Spaulding, Energy Recycling Company, 1030 North Tyrol Trail, Minneapolis, MN 55416, (612) 315–6309.

i. *FERC Contact:* Any questions on this notice should be addressed to Héctor M. Pérez, E-mail address hector.perez@ferc.fed.us, or telephone 202–219–2843.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of the Project:* The proposed pumped storage project would consist of the following new facilities: (1) An upper reservoir with a maximum storage capacity of 14,300 acre-feet and an area of 199 acres at maximum normal water surface elevation of 5,523 feet above mean sea level (msl), impounded

by two earth and rock fill embankments, 178 and 50-foot-high, respectively, with a crest elevation of 5,533 feet msl; (2) a 24-foot-diameter, 1,326-foot-long vertical shaft; (3) a 24-foot-diameter, 3,200-foot-long concrete-lined tunnel; (4) four, 12-foot-diameter, 355-foot-long, steel-lined penstocks; (5) a powerhouse with four 250-megawatt pump/turbines; (6) a 1,500-foot-long by 38-foot-wide D-shaped tailrace tunnel; (7) a lower reservoir with a maximum storage capacity of 16,900 acre-feet and an area of 405 acres at maximum water surface elevation of 4,191 feet msl, impounded by a 49-foot-high earth and rockfill embankment, with a crest elevation of 4,200 feet msl; (8) a 4-mile-long, 500-kilovolt transmission line connecting the project to Captain Jack substation; and (9) other appurtenances. The project would operate as a closed system using water obtained from groundwater sources.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A completing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular applications.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31453 Filed 11–24–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00551A; FRL–6046–8]

Rodenticide Cluster Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of Comment Period.

SUMMARY: This notice announces the reopening of the original 60–day comment period, starting a new 30–day public comment period for the Rodenticide Cluster Reregistration Eligibility Decision (RED) document (63 FR 48729, September 11, 1998)(FRL–6027–7). This document includes the active ingredients brodifacoum (case 2755), bromadiolone (case 2760), bromethalin (case 2765), chlorophacinone (case 2100), diphacinone and its sodium salt (case 2205), and pival and its sodium salt (case 2810).

DATES: Written comments on the RED decisions must be submitted by December 28, 1998.

ADDRESSES: Three copies of comments identified with the docket control number "OPP–00551A" and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to the docket on the first floor (Room 119), CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following

the instructions under "SUPPLEMENTARY INFORMATION" of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection on the first floor (Room 119) at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED documents listed below should be directed to Dennis Deziel at (703) 308–8173.

To request a copy of any of the RED documents listed in the SUMMARY, or a specific RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, first floor (Room 119), at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Reregistration Eligibility Decisions (REDs) home page at http://www.epa.gov/REDs.

II. Reregistration Decision

The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed in the SUMMARY above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete.

The Agency has received a request from the California Deparment of Food and Agriculture to exend (or reopen) the Rodenticide Cluster RED comment period due to the extensive nature of this RED, and due to the fact that many registrants, including California, have multiple registrations with multiple active ingredients within the rodenticide cluster. The original comment period closed on November 10, 1998. The Agency believes that an additional 30-day comment period for the Rodenticide Cluster RED is justified, therefore, the Agency is reopening the comment period for an additional 30 days.

The official record for this notice, as well as the public version, has been established for this notice under docket control number "OPP–00551A" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–00551A). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection. Rodenticide.

Dated: November 16, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–31395 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00555; FRL–6038–9]

Pesticide Registration Reinvention Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA has issued updated policies and procedures concerning certain types of registration amendments. This document is available in a Pesticide Registration (PR) Notice entitled "Notifications, Non-notifications, and Minor Formulation Amendments" which is available upon request. EPA proposed this policy for 30 days of public comment on October 1, 1997 (62 FR 51467) (FRL–5742–1). Interested parties may request a copy of the Agency's final policy as set forth in the ADDRESSES unit of this notice.

ADDRESSES: The PR Notice is available from Linda Arrington; by mail: Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5446, e-mail: arrington.linda@epa.gov.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Arrington (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 713D, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5446, e-mail: arrington.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

A. Internet

Electronic copies of this document and the PR Notice also are available from the EPA Home page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

B. Fax-on-Demand

For Fax-on-Demand, use a faxphone to call 202–401–0527 and select item 6118 for a copy of the PR Notice.

II. Purpose

This **Federal Register** notice announces the availability of the final PR Notice which reinvents the registration process by expanding the types of minor amendments which may be accomplished by notification, non-notification or minor formula changes. This PR Notice supersedes PR Notice 95–2 (May 31, 1995). The goal of this notice is to increase the efficiency and timeliness of the registration amendment process so as to reduce regulatory burdens while maintaining protection to human health and the environment.

III. Applicability

The PR Notice applies to all applicants seeking minor registration amendments which meet the criteria in the notice.

IV. Contents of the PR Notice

The PR Notice simply expands the current PR Notice 95–2 to include more kinds of minor labeling amendments which may be accomplished by notification or non-notification. In addition, the notice revises the process for submission and review of notifications to reflect the new requirements of the Food Quality Protection Act (FQPA) of 1996, which required a new process be established for antimicrobial products. Finally, the notice describes a process for expediting the review of minor formulation amendments.

V. Public Record

Public comments submitted concerning the draft PR Notice were fully considered before this notice was made final. All public comments, as well as a summary of the Agency's responses to those comments, are filed in the Office of Pesticide Programs Docket Office under docket control number "OPP-00555." The public record is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. To contact the docket office by mail, telephone, or e-mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; (703) 305–5805; e-mail: opp-docket@epa.gov.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 23, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–31250 Filed 11–24–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30462; FRL–6038–8]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by December 28, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30462] and the file symbols to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), in the table listed below:

Regulatory Action Leader	Office location/telephone number	Address
Edward Allen	9th floor, CM #2, 703–308–8699, e-mail:allen.edward@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Sheila Moats	9th floor, CM #2, 703–308–1259, e-mail: moats.sheila@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 70724–E. Applicant: Agrium Inc., 402-15 Innovation Blvd., Saskatoon, Saskatchewan Canada S7N 2X8. Product Name: AtEze. Microbial Pesticide. Active ingredient: *Pseudomonas chlororphis* strain 63-28 at 1.15%. Proposed classification/Use: None. For the suppression of root/stem rot pathogens of greenhouse crops. (E. Allen)

2. File Symbol: 57538–RA. Applicant: Stoller Enterprises, Inc., 8580 Katy Freeway, Suite 200, Houston, TX 70024. Product Name: Adjust I. Biochemical. Active ingredient: Salicylic acid at 0.87%. Proposed classification/Use: None. For use on a variety of agricultural, horticultural applications to enchance plant defense against pathogens. (S. Moats)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30462] (including

comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30462]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: October 22, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–31392 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30421A; FRL–6038–6]

Babolna Bioenvironmental Centre Ltd.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to register the pesticide product Babolna Insect Attractant Trap, containing a new active ingredient not included any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Sheila Moats, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 9th floor, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 22202, (703) 308–1259, e-mail: moats.sheila@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published in the **Federal Register** of October 9, 1996 (61 FR 52942)(FRL–5395–6), which announced that Babolna Bioenvironmental Centre Ltd., 1107 Budapest X., Szallas U.6, Hungary, had submitted an application to register the pesticide product Babolna Insect Attractant Trap (EPA File Symbol 070062–R), containing the active ingredient maple lactone [2-hydroxy-3-methyl-cyclo-pent-2-en-1-one at 1.0%, an active ingredient not included in any previously registered product. The U.S. Agent for this company is c/o Landis International Inc., P.O. Box 5126, Valdosta, GA 31603-5209.

The application was approved on September 30, 1998, as Babolna Insect Attractant Trap for use as a monitoring device and as a control treatment on cockroaches (EPA Registration Number 70062–1).

The Agency has considered all required data on risks associated with the proposed use of maple lactone, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of maple lactone when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on this registration is contained in the EPA Pesticide Fact Sheet on maple lactone.

A paper copy of the fact sheet, which provides a summary description of the pesticides, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 22, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–31393 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30448A; FRL–6038–7]

Ecogen, Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application to conditionally register the pesticide product BTI Technical Powder Bioinsecticide containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Alan Reynolds, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 9th floor,

Crystal Mall #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–605–0515; e-mail: reynolds.alan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of February 25, 1998 (63 FR 9517)(FRL–5773–7), which announced that Ecogen Inc., 2005 Cabot Blvd., West, P.O. Box 3023 Langhorne, PA 19047–3023, had submitted an application to conditionally register the pesticide product BTI Technical Powder Bioinsecticide (EPA File Symbol 55638–UR) containing the active ingredient *Bacillus thuringiensis* subspecies *israelensis* strain EG2215 at 20%, an active ingredient not included in any previously registered pesticide product.

The application was approved on September 30, 1998, as BTI Techncial Powder Bioinsecticide, a manufacturing use product for formulation into end-use products to control mosquitoes (EPA Registration Number 55638–41).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Bacillus thuringiensis* subspecies *israelensis* strain EG2215, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Bacillus thuringiensis* subspecies *israelensis* strain EG2215 during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

The studies listed below must be completed within 6 months of the date of the conditional registration:

1. A *Daphnia Study.*

2. An Interperitoneal Injection Study.

3. Mosquito Bioassay to Verify the Potency of the Toxin.

4. An Eye/Dermal Irritattion Study.

This product is conditionally registered in accordance with FIFRA section 3(c)(7)(C). If these conditions are not complied with, the registration will be cancelled in accordance with FIFRA section 6(e).

More detailed information on this conditional registration is contained in an EPA Pesticide Fact Sheet on *Bacillus thuringiensis* subspecies *israelensis* strain EG2215.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: October 20, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–31547 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–841; FRL 6039–7]

Notice of Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition (PP) 8G5008 for an exemption from the requirement of a temporary tolerance for residues of the biopesticide, 2,6-diisopropylnapthalene (2,6-DIPN) when used to inhibit sprouting in potatoes held in storage.

DATES: Comments, identified by the docket control number (PF–841), must be received on or before December 28, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, PM 90, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail: Rm. 902W5, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–8291; e-mail: kumar.rita@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. This petition was submitted to support an application for an experimental use permit (EUP) to treat potatoes in closed storage facilities, to evaluate the control of sprouting. A notice of receipt for this EUP is being published elsewhere in this issue of the **Federal Register**. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number (PF–841) (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number (PF-841) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of the Petition

Petitioners summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summary verbatim with minor non-substantive editorial changes. The petiton summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Platte Chemical Company

PP 8G5008

EPA has received a pesticide petition (PP) 8G5008 from Platte Chemical Company, 419, 18th Street, Greeley, CO 80632, proposing pursuant to section 408(d) of the (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing an exemption from the requirement of a temporary tolerance for residues of 2,6-DIPN in or on the raw agriculture commodity potatoes.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Platte Chemical Company has submitted the following summary of information, data and arguments in support of their pesticide petition. This summary was prepared by Platte Chemical Company and EPA has not fully evaluated the merits of the petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary was not clear that it reflected the conclusion of the petitioner and not necessarily EPA.

A. Proposed Use Practices

The proposed experimental program will be conducted in potato storage facilities located in Idaho, Maine, Minnesota, North Dakota, Oregon, Washington, and Wisconsin. Stored potatoes will be treated in one or two facilities in each state. The proposed experimental program would utilize 1,500 pounds of active ingredient on approximately 90 million pounds of stored potatoes during 1998 and 1999. The active ingredient, 2,6-DIPN, is a plant growth regulator that will be applied as an aerosol at a rate of one pound active ingredient per 60,120 pounds of potatoes, to achieve an initial residue of 16.6 parts per million (ppm). A maximum of 3 applications may be made while the potatoes are held in storage.

B. Product Identity/Chemistry

1. *Identity of the biopesticide.* EPA has classified DIPN as a biochemical pesticide. The formulated end product, Amplify Sprout Inhibitor, contains 100% DIPN as the active ingredient which is an odorless liquid.

C. Residue Chemistry

Platte conducted studies to determine 2,6-DIPN residues in whole potatoes and peels at various times, up to 180 days, following 1 to 3 treatments at the maximum application rate. A gas chromatography method was used to measure residues of 2,6-DIPN. Potatoes were treated using a small chamber system that reproduced a commercial environment, including temperatures and humidity. The 2,6-DIPN was applied to the chambers using a fogging device that reproduced a commercial operation, but on a small scale. When treated up to 3 times during storage at a rate of 1.2 pounds active ingredient per 60,120 pounds of potatoes and sampled 0 days after treatment (DAT) to 180 DAT, residues in the peel ranged from 0.15 ppm to 4.05 ppm. Residues for whole potatoes ranged from 0.03 ppm to 2.43 ppm.

The 2,6-DIPN residues for potato peel were as follows: Potatoes treated 1 time at 1.2 pounds active ingredient per 60,120 pounds of potato had residues of 2.82 ppm, 3.39 ppm, and 4.05 ppm at 0 DAT; 1.01 ppm, 2.59 ppm, and 2.77 ppm at 30 DAT; 0.33 ppm, 0.46 ppm, and 0.76 ppm at 90 DAT; and 0.15 ppm, 0.24 ppm, and 0.24 ppm at 180 DAT.

Potatoes were treated 3 times at 1.2 pounds active ingredient per 60,120 pounds of potato per treatment at 0 day and at 60 days, and 120 days after the first treatment.

The 2,6-DIPN residues in peels were 2.18 ppm, 2.55 ppm, and 3.52 ppm at 0 DAT; 1.30 ppm, 1.82 ppm, and 2.59 ppm at 30 DAT; 2.43 ppm, 2.71 ppm, and 4.51 ppm at 60 DAT; 0.86 ppm, 1.32 ppm, and 1.83 ppm at 90 DAT; 2.41 ppm, 3.79 ppm, and 3.49 ppm at 120 DAT; and 0.74 ppm, 0.86 ppm, and 0.91 ppm at 180 DAT.

The 2,6-DIPN residues for whole potatoes were as follows: Potatoes treated 1 time at 1.2 pounds active

ingredient per 60,120 pounds of potato had residues of 0.82 ppm, 1.18 ppm, and 1.27 ppm at 0 DAT; 0.22 ppm, 0.28 ppm, and 0.41 ppm at 30 DAT; 0.10 ppm, 0.11 ppm, and 0.04 ppm at 90 DAT; and 0.03 ppm, 0.03 ppm, and 0.05 ppm at 180 DAT.

Potatoes treated 3 times at day 0, 60, and 120, as described above, had 2,6-DIPN residues of 0.83 ppm, 1.28 ppm, and 1.39 ppm at 0 DAT; 0.25 ppm, 0.30 ppm, 0.37 ppm at 30 DAT; 0.80 ppm, 1.07 ppm, and 2.43 ppm at 60 DAT; 0.28 ppm, 0.42 ppm, and 0.62 ppm at 90 DAT; 1.16 ppm, 1.79 ppm, and 1.86 ppm at 120 DAT; and 0.13 ppm, 0.17 ppm, and 0.24 ppm at 180 DAT.

Magnitude of residue at the time of harvest and method used to determine the residue. A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed. Since the petitioner has requested a tolerance exemption, an analytical method to detect residues is not required.

D. Toxicology Profile

1. *Acute toxicity.* Technical 2,6-DIPN exhibits low acute toxicity. It is a toxicity category IV biopesticide. The rat oral LD_{50} is greater than 5,000 milligram/kilogram (mg/kg), the rabbit dermal LD_{50} is greater than 5,000 mg/kg, and the rat inhalation LC_{50} is greater than 2.60 milligram/Liter (mg/L) at the maximum attainable condition. In addition, 2,6-DIPN is not a skin sensitizer in guinea pigs, shows no dermal irritation at 72 hours in rabbits, and shows minimal ocular irritation in rabbits. The end use formulation is the same as the technical formulation; it contains no intentionally added inert ingredients.

2. *Genotoxicity.* Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vivo/in vitro* unscheduled DNA synthesis in rat primary hepatocyte cultures at 2 time points, and an *in vivo* mouse micronucleus assay have been conducted for 2,6-DIPN. These studies show a lack of genotoxicity for 2,6-DIPN.

3. *Other tests.* No additional mammalian toxicology testing has been conducted. Platte requested a waiver from the requirement to submit further mammalian toxicology studies on the basis of the favorable toxicological profile for 2,6-DIPN, the low residues observed in treated potatoes, the specific plant growth regulator mode of action, and the confined nature of the proposed use. No data were found in the literature that would indicate 2,6-DIPN has any adverse effect on mammals. No incidents of hypersensitivity or any other adverse effects have been observed in individuals handling the material over the past 6 years.

E. Aggregate Exposure

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information about exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

1. *Dietary exposure from food and drinking water.* Any dietary exposure resulting from applications made under an experimental use permit (EUP) would be through potato consumption and animal products in which animals are fed potato feed stocks. Residues in treated potatoes have been shown to be low. Residues would be expected to continue to decline after potatoes are removed from storage and before consumption. Cooking and/or processing would be expected to further lower the residue level in consumed potatoes or potato products. Since 2,6-DIPN would only be used in commercial storage warehouses, there is little if any potential for drinking water exposure. There are no other established U.S. tolerances or exemptions from tolerances for 2,6-DIPN food or feed crops in the United States. The Agency has classified 2,6-DIPN as a biochemical pesticide.

2. *Non-dietary exposure.* The EUP would only cover use for direct application to potatoes when stored in commercial warehouses. There are currently no other registered uses of 2,6-DIPN. Non-dietary exposure to 2,6-DIPN via lawn care, topical treatments, etc., will not occur. Thus, the potential for non-occupational exposure to the general population is virtually non-existent.

F. Cumulative Exposure

EPA also is required to consider the potential for cumulative effects of 2,6-DIPN and other substances that have a common mechanism of toxicity. Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of 2,6-DIPN and no information that indicates toxic effects, if any, would be cumulative with any other compounds. Since, 2,6-DIPN does not exhibit a toxic mode of action in the target plant, it is appropriate to consider only the potential risks of 2,6-DIPN in this exposure assessment.

G. Endocrine Effects

Platte has no information to suggest that 2,6-DIPN will adversely affect the immune or endocrine systems. The Agency is not requiring information on endocrine effects of this biochemical pesticide at this time.

H. Safety Determinations

1. *U.S. population in general and infants and children.* Since there are no anticipated residues in drinking water or from other non-occupational sources, and no reliable information exists on cumulative effects due to a common mechanism of toxicity, the aggregate exposure to 2,6-DIPN is adequately represented by the dietary route. The lack of toxicity of 2,6-DIPN has been demonstrated by the results of acute toxicity testing in mammals in which 2,6-DIPN caused no adverse effects when dosed orally, dermally, and via inhalation at the limit dose for each study. Anticipated residues in consumed potatoes are low. Moreover, 2,6-DIPN exhibits close similarity to other plant-based, naturally occurring methyl and isopropyl naphthalenes. Thus, the dietary exposure to 2,6-DIPN should pose negligible risks to human health. Based on the lack of toxicity and low exposure, there is a reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to 2,6-DIPN residues. Exempting 2,6-DIPN from the requirement of a tolerance should pose no significant risk to humans or the environment.

I. Analytical Method

An analytical method for residues is not applicable, as this proposes an exemption from the requirement of a tolerance.

J. Existing Tolerances

No codex maximum residue levels are established for residues of 2,6-DIPN in or on any food or feed crop.

[FR Doc. 98–31248 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50848; FRL–6043–4]

Experimental Use Permit; Notice of Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application [34704–EUP–RG] from

Platte Chemical Company requesting an experimental use permit (EUP) for the biochemical pesticide 2,6–diisopropylnapthalene (2,6–DIPN). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Written comments must be received on or before December 28, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rita Kumar, PM 90, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 902W5, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, Telephone: 703–308–8291, e-mail: kumar.rita@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Following the review of the Platte Chemical Company's application and any comments received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

The proposed program would allow the use of 1,500 pounds of the plant growth regulator 2,6–DIPN on approximately 90 million pounds of potatoes in nine closed storage facilities (representing the harvest of approximately 3,160 acres). Platte's program would evaluate the control of potato spouting. The program would be authorized only in the States of Idaho, Maine, Minnesota, North Dakota, Oregon, Washington, and Wisconsin. This EUP is accompanied by a pesticide petition for an exemption from the requirement of a tolerance for residues of 2,6–DIPN when used to inhibit sprouting in potato held in storage. This pesticide petition is being issued elsewhere in this issue of the **Federal Register**.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number "OPP–50848" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–50848." Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Dated: November 4, 1998.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 98–31249 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6193–2]

Notice of Proposed De Minimis Administrative Order on Consent Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Osage Metals Superfund Site, Kansas City, Kansas, Docket No. VII–98–F–0023

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed De Minimis Administrative Order on Consent, Osage Metals Superfund Site, Kansas City, Kansas.

SUMMARY: Notice is hereby given that a proposed administrative order on consent regarding the Osage Metals Superfund Site, was signed by the United States Environmental Protection Agency (EPA) on September 30, 1998 and approved by the United States Department of Justice (DOJ) on October 30, 1998.

DATES: EPA will receive comments on or before December 28, 1998 relating to the proposed agreement and covenant not to sue.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City KS 66101 and should refer to *the Osage Metals Superfund Site Administrative Order on Consent, EPA Docket No. VII–98–F–0023.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101 (913–551–7255).

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the 1.7-acre Osage Metals Superfund Site ("Site"), located at 120 Osage Avenue in Kansas City, Kansas. The Site was the location of metals salvage and reclamation facilities between 1948 and 1993. Samples taken at the Site in 1994 found polychlorinated biphenyls ("PCBs") in surface soils at levels as high as 334 mg/kg, and lead contamination in levels as high as 56,600 mg/kg. The EPA approved a removal action at the Site on February 13, 1995, and began cleanup in March of 1995. EPA completed its work in October 1995. No further response action is anticipated.

As of May 31, 1998, EPA and DOJ had incurred costs in excess of $1.3 million exclusive of interest. Each of the proposed settlors arranged with Trinity Environmental Technologies, Inc. for disposal of capacitors contaminated with PCBs. Trinity Environmental Technologies, Inc. in turn arranged for disposal of these capacitors with PCB Treatment, Inc. In addition to this arrangement, each settlor arranged for disposal of capacitors contaminated with PCBs directly with PCB Treatment, Inc. PCB Treatment, Inc. then arranged for disposal at the Site of scrap metal from the capacitors.

EPA has determined that any party who arranged for disposal of between 206 and 89,387 pounds of capacitors contributed a *de minimis* volume of waste to the Site and that such wastes are not more toxic than any other hazardous substance at the Site.

Each settler will pay a share of costs based on its volumetric share of capacitor weight compared to all capacitor weight with an additional premium of 15%.

Through this settlement EPA will recover over $10,000. EPA has recovered over $80,000 through ■ consent decree with the former owner/operator and will seek the remaining costs from other potentially responsible parties at the Site. EPA will be recovering over $180,000 through Administrative Order on Consent EPA Docket No. VII–98–F0012, which became effective on October 23, 1998.

Dated: November 3, 1998.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 98–31539 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6193]

Notice of Proposed De Minimis Administrative Order on Consent Pursuant to Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Osage Metals Superfund Site, Kansas City, Kansas, Docket No. VII–98–F–0019

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed De Minimis Administrative Order on Consent, Osage Metals Superfund Site, Kansas City, Kansas.

SUMMARY: Notice is hereby given that ■ proposed administrative order on consent regarding the Osage Metals Superfund Site, was signed by the United States Environmental Protection Agency (EPA) on September 30, 1998 and approved by the United States Department of Justice (DOJ) on October 30, 1998.

DATES: EPA will receive comments on or before December 28, 1998 related to the proposed agreement and covenant not to sue.

ADDRESSES: Comments should be addressed to Audrey Asher, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101 and should refer to *the Osage Metals Superfund Site Administrative Order on Consent, EPA Docket No. VII–98–F–0019.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101 (913) 551–7255.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the 1.7-acre Osage Metals Superfund Site ("Site"), located at 120 Osage Avenue in Kansas City, Kansas. The Site was the location of metals salvage and reclamation facilities between 1948 and 1993. Samples taken at the Site in 1994 found polychlorinated biphenyls ("PCBs") in surface soils at levels as high as 334 mg/kg, and lead contamination in levels as high as 56,600 mg/kg. The EPA approved a removal action at the Site on February 13, 1995, and began cleanup in March of 1995. EPA completed its work in October 1995. No further response action is anticipated.

As of May 31, 1998, EPA and DOJ had incurred costs in excess of $1.3 million exclusive of interest. Each of the proposed settlors arranged with Trinity Environmental Technologies, Inc. for disposal of capacitors contaminated with PCBs. Trinity Environmental Technologies, Inc. in turn arranged for disposal of the capacitors with PCB Treatment, Inc. PCB Treatment, Inc. then arranged for disposal at the Site of scrap metal from the capacitors.

EPA has determined that any party who arranged for disposal of between 206 and 89,387 pounds of capacitors contributed a *de minimis* volume of waste to the Site and that such wastes are not more toxic than any other hazardous substance at the Site.

Each settlor will pay a share of costs based on its volumetric share of capacitor weight compared to all capacitor weight with an additional premium of 15%.

Through this settlement EPA will recover over $10,000. EPA has recovered $80,000 through a consent decree with the former owner/operator and will seek the remaining costs from other potentially responsible parties at the Site. EPA will be recovering over $180,000 through Administrative Order on Consent EPA Docket No. VII–98–F0012, which became effective on October 27, 1998.

Dated: November 3, 1998.

Dennis Grams, P.E.,

Regional Administrator, Region VII.

[FR Doc. 98–31538 Filed 11–24–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

November 16, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0859.

Expiration Date: 05/31/99.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Respondents: Business or other for-profit; State, local or tribal government.

Estimated Annual Burden: 80 respondents; 78.5 hours per response (avg.); 6280 total annual burden hours for all collections.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Section 253 of the Communications Act of 1934, as amended requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect prohibiting the ability of any

entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. In order to render a timely and informed decision, petitioners and commenters should submit relevant information sufficient to describe the legal regime involved in the controversy and to establish the factual basis necessary for decision. Factual assertions should be supported by credible evidence, including affidavits, and, where appropriate, studies or other descriptions of the economic effects of the legal requirement that is the subject to the petition. In preparing their submissions, parties should address as appropriate all parts of section 253. In particular, parties should first describe whether the challenged requirement falls within the proscription of section 253(a); if it does, parties should describe whether the requirement nevertheless if permissible under other sections of the statute, specifically sections 253(b) and (c). Lastly, parties should submit information on whether and how the Commission could tailor a decision to preempt the enforcement of an offending legal requirement only "to the extent necessary to correct such violation or inconsistency" as required by section 253(d). (Number of respondents filing petitions: 20; annual hour burden per respondent: 125 hours; total annual burden = 2500 hours. Number of respondents filing comments on petitions: 60; annual hour burden per respondent: 63 hours; total annual burden = 3780). The petition is placed on public notice and commented on by others. The Commission issued a Public Notice that establishes guidelines relating to its consideration of preemption petitions. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements. Obligation to respond: Voluntary.

Public reporting burden for the collections of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31492 Filed 11–24–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2305]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 18, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by December 10, 1998. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses (WT Docket No. 97–82).

Number of Petitions Filed: 6.

Subject: Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket No. 96–115).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31493 Filed 11–24–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting; Announcing an Open Meeting of the Board

TIME AND DATE: 10:00 a.m., Wednesday, December 2, 1998

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Office of Finance 1999 Debt Authorization.
- Approval of 1999 Operating and Capital Expenditure Budgets—Office of Finance.
- Finance Board 1999 Strategic Plan.
- Proposed Rule—Advances Collateral Changes.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–31629 Filed 11–23–98; 12:57 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 9, 1998.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The David J. Duey Trust, and David V. Duey, as Trustee, both of Plattsmouth, Nebraska; to acquire voting shares of Cass County State Company, Plattsmouth, Nebraska, and thereby indirectly acquire voting shares of Cass County Bank, Plattsmouth, Nebraska.

Board of Governors of the Federal Reserve System, November 19, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31425 Filed 11–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 18, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Planters Corporation, and its wholly owned subsidiary, Union Planters Holding Corporation, both of Memphis, Tennessee; to acquire 100 percent of the voting shares of First Mutual Bancorp, Inc., Decatur, Illinois, and thereby indirectly acquire First Mutual Bank, S.B., Decatur, Illinois.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Woodlands Bancorp, Inc., Homer, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Woodlands Bank, Homer, Louisiana;

Board of Governors of the Federal Reserve System, November 19, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31427 Filed 11–24–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 9, 1998.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Philippine National Bank, Metro Manila, The Philippines, and Century Holding Corporation, Beverly Hills, California; to acquire PNB Remittance Centers, Inc., Los Angeles, California, and thereby engage in money remittance activities; *Philippine Commercial International Bank*, 77 Fed. Res. Bull. 270 (1991); *Bergen Bank A/S*, 76 Fed. Res. Bull. 457 (1990); and *Norwest Corporation*, 81 Fed. Res. Bull. 974 (1995).

Board of Governors of the Federal Reserve System, November 19, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31426 Filed 11–24–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0396]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Medical Devices; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed in this document has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by December 28, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Margaret R. Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Title: Medical Devices; Reports of Corrections and Removals.

Description: FDA issued a direct final rule to amend the reporting and recordkeeping requirements for corrections and removals under part 806 (21 CFR part 806) to eliminate those requirements for distributors of medical devices. This amendment implements changes made by the Food and Drug Administration Modernization Act of 1997 (FDAMA) to section 519(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(f)). FDAMA did not amend section 519(f) of the act with respect to manufacturers and importers. Manufacturers and importers continue to be subject to the requirements of part 806.

Description of Respondents: Business or other for profit organizations.

In the **Federal Register** of August 7, 1998 (63 FR 42229), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
806.10	880	1	880	10	8,800

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
806.20	440	1	440	10	4,400

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The information collection requirements in part 806 prior to the direct final rule (63 FR 42229) have been approved by OMB and assigned control number 0910–0359. When preparing the earlier package for approval of the information collection requirements in part 806, FDA reviewed the reports of corrections and removals submitted in the previous 3 years under 21 CFR part 7 (the agency's recall provisions). During that period of time, no reports of corrections or removals were submitted by distributors. For that reason, FDA did not include distributors among the respondents estimated in the collection burden for the requirements previously approved by OMB. Because distributors were not included in that earlier estimate and because FDAMA now has eliminated requirements for distributor reporting, FDA has determined that estimates of the reporting burden for §§ 806.10 and 806.20 should remain the same.

Dated: November 17, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31411 Filed 11–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0791]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tisseel VH Kit

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Tisseel VH Kit and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product Tisseel VH Kit. Tisseel VH Kit is indicated for use as an adjunct to hemostasis in surgeries involving cardiopulmonary bypass and treatment of splenic injuries due to blunt or penetrating trauma to the abdomen, when control of bleeding by conventional surgical techniques, including suture, ligature, and cautery is ineffective or impractical, and also as an adjunct for the closure of colostomies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Tisseel VH Kit (U.S. Patent No. 4,362,567) from Immuno Aktiengesellschaft fur chemsih-medizinshe Produkte, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 7, 1998, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of Tisseel VH Kit represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Tisseel VH Kit is 5,065 days. Of this time, 1,203 days occurred during the testing phase of the regulatory review

period, while 3,862 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 351 of the Public Health Service Act became effective*: June 20, 1984. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on June 20, 1984.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act*: October 5, 1987. FDA has verified the applicant's claim that the product license application (PLA) for Tisseel VH Kit (PLA 87–0509) was initially submitted on October 5, 1987.

3. *The date the application was approved*: May 1, 1998. FDA has verified the applicant's claim that PLA 87–0509 was approved on May 1, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,827 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 25, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 24, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–31413 Filed 11–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–1017]

International Association of Color Manufacturers; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the International Association of Color Manufacturers has filed a petition proposing that the color additive regulations be amended to provide for the safe use of D&C Red No. 28 and its aluminum lake to color food and dietary supplements.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that a color additive petition (CAP 9C0264) has been filed by the International Association of Color Manufacturers, c/o Daniel R. Thompson, P.C., 1620 I St., suite 925, Washington, DC 20006. The petition proposes to amend the color additive regulations to provide for the safe use of D&C Red No. 28 and its aluminum lake to color food and dietary supplements.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 6, 1998.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–31505 Filed 11–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–1002]

Center for Biologics Evaluation and Research Medical Device Action Plan; Public Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 2, 1998 (63 FR 58743). The document announced an upcoming public meeting requesting suggestions for improvements to the Center for Biologics Evaluation and Research's regulation of medical devices or reasons to maintain the current systems to protect public health. The notice inadvertently omitted the date and addresses for the submissions of comments after the meeting. This document corrects those omissions.

FOR FURTHER INFORMATION CONTACT: Kathy A. Eberhart, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–1317.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 1998 (63 FR 58743), in FR Doc. 98–29185, FDA announced an upcoming public meeting requesting suggestions for improvements to the the Center for Biologics Evaluation and Research's regulations of medical devices or reasons to maintain the current systems to protect public health. The notice inadvertently omitted the date and address for the submissions of comments after the meeting.

1. On page 58743, in the third column, under the *Date and Time* caption, a second sentence is added to read "Submit written comments by December 22, 1998."

2. On the same page, after the "*Location*" portion, another paragraph is added to read "*Addresses*: Submit by December 22, 1998, written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy and received comments are available for public

examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday."

Dated: November 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31412 Filed 11–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0192]

Agency Information Collection Activities; Announcement of OMB Approval; Establishment and Product License Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Establishment and Product License Applications" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 4, 1998 (63 FR 47299), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under section 3507 of the PRA (44 U.S.C. 3507). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0124. The approval expires on November 30, 2001.

Dated: November 18, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31410 Filed 11–24–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–287 & HCFA–1491]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

(1) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Home Office Cost Statement and Supporting Regulations in 42 CFR Section 413.17;

Form No.: HCFA–287 (OMB# 0938–0202);

Use: Medicare law permits components of chain organizations to be reimbursed for certain costs incurred by the Home Offices of the chain. The Home Office Cost Statement is required by the fiscal intermediary to verify Home Office Costs claimed by the components. This requires that the provider include in its costs, the costs incurred by the related organization in furnishing such services, supplies or facilities.

Frequency: Annually;

Affected Public: Not-for-profit institutions, Business or other for-profit;

Number of Respondents: 1,231;

Total Annual Responses: 1,231;

Total Annual Hours: 573,646.

(2) *Type of Information Collection Request:* Extension of a currently approved collection;

Title of Information Collection: Request for Medicare Payment—Ambulance and Supporting Regulations in 42 CFR Section 410.40 and 424.124;

Form No.: HCFA–1491 (OMB# 0938–0042);

Use: This form is used by physicians, suppliers, and beneficiaries to request payment of Part B Medicare services. It is used to apply for reimbursement for ambulance services.

Frequency: On occasion;

Affected Public: Business or other for-profit, Individuals or households, and Not-for-profit Institutions;

Number of Respondents: 9,634,435;

Total Annual Responses: 9,634,435;

Total Annual Hours: 406,251.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 10, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–31536 Filed 11–24–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1051–N]

Medicare Program; December 14, 1998, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for December 14, 1998, from 8:30 a.m. until 5 p.m., E.S.T.

ADDRESSES: The meeting will be held in Room 800, 8th Floor, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Aron Primack, M.D., M.A., F.A.C.P., Executive Director, Practicing Physicians Advisory Council, Room 435-H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term.

The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson, M.D.; Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Gary C. Dennis, M.D.; Mary T. Herald, M.D.; Ardis Hoven, M.D.; Sandral Hullett, M.D.; Jerilynn S. Kaibel, D.C.; Marie G. Kuffner, M.D.; Marc Lowe, M.D.; Derrick K. Latos, M.D.; Sandra B. Reed, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; and Kenneth M. Viste, Jr., M.D. The chairperson is Kenneth M. Viste, Jr., M.D. The vice chairperson is Marie G. Kuffner, M.D.

Council members will receive updates on the activities of the Center for Beneficiary Services, access to care in managed care (provider protection), and Y2K. The agenda will provide for discussion and comment on the following topics:

- Medicare Integrity Program Contracting Initiatives (HCFA Solicitation RFP 98 0016).
- Proposed regulations to implement the Medicaid managed care provisions of the Balanced Budget Act of 1997.
- Using the inherent reasonableness authority.

Individuals or organizations that wish to make 5 minute oral presentations on the agenda issues should contact the Executive Director by 12 noon, December 3, 1998, to be scheduled. The number of oral presentations may be limited by the time available. A written copy of the oral remarks should be submitted to the Executive Director no later than 12 noon, December 9, 1998. Anyone who is not scheduled to speak may submit written comments to the Executive Director by 12 noon, December 9, 1998. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 C.F.R. Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 19, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–31428 Filed 11–24–98; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: The Field Museum of Natural History, Chicago, IL, PRT–004641.

The applicant requests a permit to import 8 scientific specimens of mouse lemurs (*Microcebus* sp.) collected in the wild in Madagascar, for the purpose of scientific research.

Applicant: University of Arizona, Laboratory of Molecular Systematics and Evolution, Tucson, AZ, PRT–837560.

The applicant requests amendment of their permit to import tissue samples taken from captive-held and/or wild chimpanzees (*Pan troglodytes*), pygmy chimpanzees (*Pan paniscus*), gorilla (*Gorilla gorilla*), and orangutan (*Pongo pygmaeus*) for the purpose of scientific research.

Applicant: Rhinoceros Advisory Group of the American Zoo and Aquarium Association, Cumberland, OH, PRT–004917.

The applicant requests a permit to import for the Honolulu Zoo, HI, one captive-born female black rhinoceros from the Asa Hiroshima Zoo Park, JP, for the purpose of captive propagation for the enhancement of the survival of the species.

Applicant: The National Museum of Natural History, Washington, DC, PRT–004868.

The applicant requests a permit to import the skin and skull and skeletal elements of one Kara-Tau argali (*Ovis ammon nigrimontana*) and one Kazakhstan argali (*Ovis ammon collium*) from the Republic of Kasakhstan for the purpose of scientific research and species identification.

Applicant: International Animal Exchange, Ferndale, MI, PRT–004862.

The applicant requests a permit for foreign commerce to purchase one male and one female jaguar (*Panthera onca*) from Tierpark Nadermann, Germany and sell to Taegu Talsung Park Zoo, Korea for the purpose of enhancement of survival of the species through conservation education and captive propagation.

Applicant: Howard Covey, Phoenix, AZ, PRT–005201.

The Applicant request a permit to import sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enchancement of the survival of the species.

Applicant: Zoological Society of San Diego, Escondido, CA, PRT–004996.

The applicant requests a permit to import 5 Lesser Rheas (*Rhea pennata*) from Tiergarten Hubertus, Vossberg, Dotlingen, Germany, for the enhancement of the survival of the species through captive propagation and conservation education.

Written data or comments should be submitted to the Director, U.S. Fish and

Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 20, 1998.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 98–31507 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–1430–01; WYW13591, WYW58783, WYW80291, WYW81213]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands located near the rural communities of Atlantic City, Jeffrey City, Lysite, and Shoshoni in Fremont County, Wyoming, have been examined and found suitable for classification for conveyance to the Fremont County Solid Waste Disposal District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Fremont County Solid Waste Disposal District intends to continue the use of the Shoshoni sanitary landfill. Solid Waste Transfer stations would be continued at the other three sites.

Sixth Principal Meridian

Shoshoni Sanitary Landfill

T. 38 N., R. 94 W.,
Sec. 34, E½SW¼SW¼, W½SE¼SW¼, W½W½E½SE¼SW¼.

The land described above contains 45 acres.

Lysite Transfer Station

T. 38 N., R. 91 W.,
Sec. 1, SE¼SW¼SE¼SE¼.

The land described above contains 2.5 acres.

Atlantic City Transfer Station

T. 29 N., R. 100 W.,
Sec. 15, SW¼NE¼NW¼NW¼NE¼, SE¼NW¼NW¼NW¼NE¼, N½NE¼SW¼NW¼NW¼NE¼, N½NW¼SE¼NW¼NW¼NE¼.

The land described above contains 1.875 acres.

Jeffrey City Transfer Station

T. 28 N., R. 92 W.,
Sec. 17, SW¼SW¼NE¼.

The land described above contains 10 acres.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Lander Field Office, Bureau of Land Management, 1335 Main, P.O. Box 589, Lander, Wyoming 82520, or contact Bill Bartlett at (307) 332–8400.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The conveyances of the four sites, when completed, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
2. All valid existing rights documented on the official public land records at the time of patent issuance.
3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.
4. A right-of-way for ditches and canals constructed by the authority of the United States.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Lander Field Office, P.O. Box 589, Lander, Wyoming 82520.

Classification Comments: Interested parties may submit comments involving the suitability of the lands for a sanitary landfill site at Shoshoni and for transfer station sites at Lysite, Atlantic City, and Jeffrey City. Comments on the classification should only address whether the land is physically suited for the landfill or transfer station sites (as appropriate), whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific uses proposed in the conveyance applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decisions, or any other factor not directly related to the suitability of the land for solid waste disposal facilities. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: November 18, 1998.

Jack Kelly,

Field Manager.

[FR Doc. 98–31433 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Arizona in the Possession of the Arizona State Museum, The University of Arizona, Tucson, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Arizona State Museum, The University of Arizona, Tucson, AZ which meets the definition of "object of cultural patrimony" under Section 2 of the Act.

The eleven cultural items consist of seven Dilzini Gaan headdresses and four wands.

In 1937, museum documentation indicates one headdress was collected by G. Mundinger at East Fork, AZ. In 1930, one headdress with wands was collected by the Donner family at Whiteriver, AZ; and two headdresses and one wand are part of the E.E. Guenther collection of Whiteriver, AZ. Around 1970, three wands and three headdresses came to the Arizona State Museum from the now-defunct Kinishba Museum near Fort Apache, AZ.

Museum documentation and consultation with representatives of the White Mountain Apache Tribe of the Fort Apache Reservation indicates these

cultural items are White Mountain Apache. Representatives of the White Mountain Apache Tribe of the Fort Apache Reservation state that the eleven cultural items have ongoing traditional and cultural importance to the tribe itself and could not have been alienated by any individual. Information regarding the status of this cultural item is being withheld from this notice by the Arizona State Museum at the request of the representatives of the White Mountain Apache Tribe of the Fort Apache Reservation in order not to compromise the White Mountain Apache Tribe of the Fort Apache Reservation's code of religious practice.

Officials of the Arizona State Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these eleven cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Arizona State Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the White Mountain Apache Tribe of the Fort Apache Reservation.

This notice has been sent to officials of the White Mountain Apache Tribe of the Fort Apache Reservation, the Yavapai-Apache Nation of the Camp Verde Indian Reservation, the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, the Tonto Apache Tribe, and the San Carlos Apache Tribe of the San Carlos Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Alyce Sadongei, Program Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721; telephone: (520) 621-4609 before December 28, 1998. Repatriation of these objects to the White Mountain Apache Tribe of the Fort Apache Reservation may begin after that date if no additional claimants come forward.

Dated: November 17, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31484 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Fowler Museum of Cultural History, University of California-Los Angeles, Los Angeles, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Fowler Museum of Cultural History, University of California-Los Angeles which meet the definition of "sacred object" under Section 2 of the Act.

The 17 cultural items consist of 12 katsinas, including Qoqto, a Corn Katsina, an Apache Katsina, two Chakwainam, Heoto, a "Mad" Katsina, and a Rugan Corn Katsina (X83.8; X83.537; X83.538; X83.539; X84.225; X84.226; X84.227; X84.228; X.84.229; X84.230; X.84.231; and X66.2796); three rattles (X72.1072; X68.504; X68.505); one dance wand (X76.291); and a drum and beater (X68.147A&B).

During 1983-1984, eleven katsinas were donated by a donor whose name is withheld at the museum's request and accessioned into the Fowler Museum of Cultural History.

In 1966, one Hopi katsina was donated by a donor whose name is withheld at the museum's request and accessioned in the Fowler Museum of Cultural History.

In 1972, the one rattle was donated by a donor whose name is withheld at the museum's request and accessioned in the Fowler Museum of Cultural History.

In 1968, the drum and beater and two rattles were purchased from Raleigh W. Applegate and accessioned in the Fowler Museum of Cultural History. The accession records state this drum and beater were used in Hopi kiva ceremonies.

In 1976, the dance wand was accessioned into the collections of the Fowler Museum of Cultural History. There is no donor or purchase information for this dance wand.

Based on construction and design, these cultural items have been identified as consistent with Hopi ceremonial and sacred items as recorded in ethnographic records. Representatives of the Hopi Tribe and the Katsimomngwit (traditional Hopi religious leaders) have identified these items as sacred objects used by them in the Hopi villages for the practice of traditional Hopi religion.

Based on the above-mentioned information, officials of the Fowler Museum of Cultural History have determined that, pursuant to 43 CFR 10.2 (d)(3), these 17 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Fowler Museum of Cultural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Diana Wilson, c/o NAGPRA Coordinator, Office of the Vice Chancellor, Research, Box 951405, Los Angeles, CA 90095-1405; telephone (310) 836-4343 before December 28, 1998. Repatriation of these objects to the Hopi Tribe may begin after that date if no additional claimants come forward.

Dated: November 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31485 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Pecos Pueblo, NM in the Possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Pecos Pueblo, NM in the possession of the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM.

A detailed assessment of the human remains was made by Maxwell Museum of Anthropology professional staff in consultation with representatives of the

Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Hopi Tribe, the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, the Kiowa Indian Tribe of Oklahoma, the Mescalero Apache Tribe of the Mescalero Reservation, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes.

In 1939, human remains representing approximately 51 individuals were recovered from the mission churches at Pecos Pueblo, NM during legally authorized excavations conducted by a joint research team from the University of New Mexico and the Museum of New Mexico headed by William B. Witkind. No known individuals were identified. The 26 associated funerary objects include burial wrappings, feathers, fur, human hair, cordage, animal bone, matting, ceramic sherds, adobe with fiber, obsidian chipped stone, worked wood, and beads.

Four Roman Catholic churches were constructed as Pecos Pueblo; two of these were built prior to the Pueblo Revolt of 1680; and two churches were constructed after 1680. The majority of human remains recovered in these 1939 excavations appear to correspond to burials associated with the second and fourth churches. Based on skeletal morphology and associated funerary objects, 49 of these individuals have been determined to be Native American. Historic records indicate that individuals from a number of Native American groups were baptized, married, or buried at the site. The burial records include persons with Tewa, Nambe, Picuri, Yuta, Apache, Comanche, and Tano affiliations as well as people from Pecos and the Pueblo of Jemez. Historic records and family information indicate Plains Indians were incorporated into the Pecos community through trade, slavery, and marriage.

Based on material culture, historic records and documents, and oral history presented by representatives of the Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Indian Tribe, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Zuni, and the Wichita and Affiliated Tribes, Pecos Pueblo (LA 625) and Pecos Mission (LA 4444) have been identified as a Puebloan occupation dating from the Pueblo III period (c. 1100 A.D.) to its abandonment in 1838 when the native inhabitants left Pecos Pueblo and went to the Pueblo of Jemez. While Pecos Pueblo mission churches have been determined to have shared cultural affiliation with the consulted tribes, the descendants and government of Pecos Pueblo now reside at the Pueblo of Jemez. In 1936, an Act of Congress recognized the Pueblo of Jemez as a "consolidation" and "merger" of the Pueblo of Pecos and the Pueblo of Jemez. This Act further recognized that all property, rights, titles, interests, and claims of both Pueblos were consolidated under the Pueblo of Jemez.

Based on the above mentioned information, officials of the Maxwell Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 49 individuals of Native American ancestry. Officials of the Maxwell Museum of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 26 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Maxwell Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Hopi Tribe, the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, the Kiowa Indian Tribe of Oklahoma, the Mescalero Apache Tribe of the Mescalero Reservation, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Santo Domingo, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Brenda A. Dorr, NAGPRA Project Director, Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM 87131-1201; telephone: (505) 277-0195, before December 28, 1998. Repatriation of the human remains and associated funerary objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: November 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31482 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from New Mexico in the Possession of the Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from New Mexico in the possession of the Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM.

A detailed assessment of the human remains was made by Museum of Indian Arts and Culture/Laboratory of Anthropology professional staff in consultation with representatives of the Pueblo of Nambe, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Tesuque.

In 1952, human remains representing 38 individuals were removed from Cuyamungue Pueblo (LA 38) during legally authorized excavations conducted by Museum of New Mexico staff. No known individuals were identified. The five associated funerary objects include a cotton textile fragment, two ceramic vessels, a cache of burned macro botanical remains, and a necklace of shell and turquoise beads.

Based on archeological evidence, Spanish Colonial documents, geographic location, continuity of occupation, and oral history presented during consultation by representatives of the pueblo listed above, Cuyamungue Pueblo (LA 38) has been identified as a puebloan village occupied from the Anasazi PIII period (1100-1300 A.D.) until the Pueblo Revolt of 1696. Historical documents and oral history indicates Cuyamungue Pueblo was

abandoned and the survivors were absorbed by the pueblos of Nambe, Pojoaque, San Ildefonso, San Juan, Santa Clara, and Tesuque.

Based on the above mentioned information, officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 38 individuals of Native American ancestry. Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have also determined that, pursuant to 43 CFR 10.2 (d)(2), the five objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Nambe, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Tesuque.

This notice has been sent to officials of the Pueblo of Nambe, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Tesuque. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Patricia House, Director, Museum of Indian Arts and Culture/Laboratory of Anthropology, P.O. Box 2087, Santa Fe, NM 87504; telephone: (505) 827-6344, before December 28, 1998. Repatriation of the human remains and associated funerary objects to the Pueblo of Nambe, the Pueblo of Pojoaque, the Pueblo of San Ildefonso, the Pueblo of San Juan, the Pueblo of Santa Clara, and the Pueblo of Tesuque may begin after that date if no additional claimants come forward.

Dated: November 17, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31486 Filed 11–25–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of the Olmsted County Historical Society, Rochester, MN

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of the Olmsted County Historical Society, Rochester, MN which meets the definition of "sacred object" under Section 2 of the Act.

The cultural item is a Iroquois Medicine Rattle constructed of a cow's horn with a wooden handle.

In 1966, this item was donated to the Olmsted County Historical Society by the Mayo Clinic, Rochester, MN. The Mayo Clinic had received this item from Dr. S.A. Barrett of the Milwaukee Public Museum. At an earlier unknown date, this item was acquired in western New York State.

Museum records indicate this rattle is a Medicine Rattle. Consultation with representatives of the Cayuga Nation of New York indicate this item is needed by traditional Native American religious leaders for practice of traditional Native American religion by present-day adherents.

Based on the above-mentioned information, officials of the Olmsted County Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(3), this cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Olmsted County Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Cayuga Nation of New York.

This notice has been sent to officials of the Cayuga Nation of New York, the Tuscarora Nation of New York, the Seneca Nation of New York, the Seneca-Cayuga Tribe of Oklahoma, the St. Regis Band of Mohawk Indians of New York, the Onondaga Nation of New York, the Oneida Nation of New York, and the Oneida Tribe of Wisconsin. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Margot Ballard, Curator, Olmsted County Historical Society, 1195 Cty. Rd. 22 SW, Rochester, MN 55902; telephone (507) 282–9447 before December 28, 1998. Repatriation of these objects to the Cayuga Nation of New York may begin after that date if no additional claimants come forward.

Dated: November 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31487 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Bernalillo, Cibola, and Socorro Counties, NM in the Control of the Cibola National Forest, United States Forest Service, Albuquerque, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Bernalillo, Cibola, and Socorro Counties, NM in the control of the Cibola National Forest, United States Forest Service, Albuquerque, NM.

A detailed assessment of the human remains was made by Maxwell Museum (University of New Mexico), the Museum of New Mexico, Northern Arizona University, and U.S. Forest Service professional staff in consultation with representatives of the Pueblo of Acoma, the Hopi Tribe, the Pueblo of Isleta, the Pueblo of Sandia, and the Pueblo of Zuni.

Between 1977 and 1979, human remains representing 28 individuals were recovered from sites NA 21566, NA 23177, and NA 23178 during legally authorized excavations conducted by J. Richard Ambler of Northern Arizona University. No known individuals were identified. The 11 associated funerary objects include ceramic vessels, sherds, and chipped stone.

Based on material culture, architecture, and site organization, sites NA 21566, NA 23177, and NA 23178 have been identified as small Anasazi pueblos occupied between 800-1150 A.D. Continuities of ethnographic materials, technology, and architecture indicate affiliation of Anasazi sites in

west-central New Mexico with historic and present-day Puebloan cultures. Oral traditions presented by representatives of the Pueblo of Acoma, the Hopi Tribe, and the Pueblo of Zuni support cultural affiliation with Anasazi sites in west-central New Mexico.

Based on the above mentioned information, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 28 individuals of Native American ancestry. Officials of the USDA Forest Service have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 11 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Acoma, the Hopi Tribe, and the Pueblo of Zuni.

Between 1948 and 1976, human remains representing 124 individuals were recovered from Tijeras Pueblo (LA 581) during legally authorized excavations and collections conducted by the University of New Mexico Archeological Field School, the Museum of New Mexico, and the Cibola National Forest. These human remains are currently curated at the Maxwell Museum of Anthropology (University of New Mexico) and the Museum of New Mexico. No known individuals were identified. The approximately 360 associated funerary objects include ceramic vessels, sherds, stone tools and jewelry, bone tools, botanical samples, corn cobs, and projectile points.

Based on material culture, architecture, and site organization, Tijeras Pueblo has been identified as a large masonry pueblo occupied between 1300-1600 A.D.

Between 1974 and 1977, human remains representing 33 individuals were recovered from Gallinas Springs Ruin (LA 1178 and LA 1180) during legally authorized excavations and collections conducted by the Western Michigan University Archeological Field School and the University of New Mexico Archeological Field School. These human remains are currently curated at the Maxwell Museum of Anthropology (University of New Mexico). No known individuals were identified. The approximately 20 associated funerary objects include ceramic vessels, sherds, stone tools, groundstone, and shell beads.

Based on material culture, architecture, and site organization, Gallinas Springs Ruin has been identified as a large masonry pueblo occupied between 1300-1600 A.D.

Between 1982 and 1983, human remains representing four individuals were recovered from Two Dead Juniper Village (LA 87432) during legally authorized excavations and collections by the Center for Anthropological Studies. These human remains are currently curated at the Maxwell Museum of Anthropology (Univerity of New Mexico). No known individuals were identified. No associated funerary objects were present.

Based on material culture, architecture, and site organization, Two Dead Juniper Village has been identified as an Anasazi pithouse village occupied between 1150-1250 A.D.

In 1987, human remains representing one individual were recovered from the Bear Canyon site (LA 61032) during legally authorized excavations conducted by University of New Mexico personnel. No known individual was identified. No associated funerary objects are present.

Based on material culture, architecture, and site organization, the Bear Canyon site has been identified as a small Anasazi pueblo occupied between 1200-1600 A.D.

Continuities of ethnographic materials, technology, and architecture indicate affiliation of Anasazi sites in portions of central New Mexico with historic and present-day Puebloan cultures. Oral traditions presented by representatives of the Pueblo of Isleta and the Pueblo of Sandia support cultural affiliation with Anasazi sites in the portions of central New Mexico where the preceeding sites are located.

Based on the above mentioned information, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 162 individuals of Native American ancestry. Officials of the USDA Forest Service have also determined that, pursuant to 43 CFR 10.2 (d)(2), the minimum of 380 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the USDA Forest Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Pueblo of Isleta, the Pueblo of Sandia, and Ysleta del Sur Pueblo.

This notice has been sent to officials of the Pueblo of Acoma, the Hopi Tribe, the Pueblo of Zuni, the Pueblo of Isleta, the Pueblo of Sandia, and Ysleta del Sur Pueblo. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Dr. Frank E. Wozniak, NAGPRA Coordinator, Southwestern Region, USDA Forest Service, 517 Gold Ave., SW, Albuquerque, NM 87102; telephone: (505) 842-3238, fax (505) 842-3800, before December 28, 1998. Repatriation of the human remains and associated funerary objects to the Hopi Tribe, the Pueblo of Acoma, the Pueblo of Isleta, the Pueblo of Sandia, the Pueblo of Zuni, and Ysleta del Sur Pueblo may begin after that date if no additional claimants come forward.

Dated: November 18, 1998.

Veletta Canouts,

Acting Departmental Consulting Archeologist,

Deputy Manager, Archeology and Ethnography Program.

[FR Doc. 98–31483 Filed 11–24–98; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–794–796 (Final)]

Certain Emulsion Styrene-Butadiene Rubber From Brazil, Korea, and Mexico

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731–TA–794–796 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Brazil, Korea, and Mexico of certain emulsion styrene-butadiene rubber ("ESBR"), provided for in subheading 4002.19.00 of the Harmonized Tariff Schedule of the United States.[1]

[1] The imported product subject to these investigations, ESBR, is a synthetic polymer made via free radical cold emulsion copolymerization of

Continued

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 2, 1998.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain emulsion styrene-butadiene rubber from Brazil, Korea, and Mexico are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on April 1, 1998, by Ameripol Synpol Corp., Akron, OH, and DSM Copolymer, Baton Rouge, LA.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on March 17, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on March 30, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 23, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 25, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing .

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is March 24, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is April 6, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before April 16, 1999. On April 16, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before April 20, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: November 19, 1998.

styrene and butadiene monomers in reactors. The reaction process involves combining styrene and butadiene monomers in water, with an initiator system, an emulsifier system, and molecular weight modifiers. ESBR consists of cold non-pigmented rubbers and cold oil extended non-pigmented rubbers that contain at least 1 percent of organic acids from the emulsion polymerization process. ESBR is produced and sold, both inside the United States and internationally, in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The universe of products subject to these investigations are grades of ESBR included in the IISRP 1500 series and IISRP 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber." ESBR is used primarily in the production of tires. It is also used in a variety of other products, including conveyor belts, shoe soles, some kinds of hoses, roller coverings, and flooring.

Imported products manufactured by blending ESBR with other polymers, high styrene resin master batch, carbon black master batch (i.e., IISRP 1600 series and 1800 series) and latex (an intermediate product) are not included within the scope of these investigations.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–31519 Filed 11–24–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–384 (Preliminary) and Investigations Nos. 731–TA–806–808 (Preliminary)]

Certain Hot-Rolled Steel Products From Brazil, Japan, and Russia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Brazil of certain hot-rolled steel products, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Brazil.[2] The Commission also determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of such imports from Brazil, Japan, and Russia that are alleged to be sold in the United States at less than fair value.[2]

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under section 703(b) and section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 705(a) and section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations, have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On September 30, 1998, a petition was filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; U.S. Steel Group, a unit of USX Corp., Pittsburgh, PA; Ispat Inland Steel, East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; National Steel Corp., Mishawaka, IN;[3] California Steel Industries, Fontana, CA; Gallatin Steel Co., Ghent, KY; Geneva Steel, Vineyard, UT; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Steel Dynamics, Butler, IN; Weirton Steel Corp., Weirton, WV; Independent Steelworkers Union, Weirton, WV; and the United Steelworkers of America, Pittsburgh, PA, alleging that an industry in the United States is materially injured by reason of subsidized or LTFV imports of certain hot-rolled steel products from Brazil, Japan, and Russia. Sales of such product are allegedly subsidized with respect to Brazil and made at LTFV with respect to Brazil, Japan, and Russia. Accordingly, effective September 30, 1998, the Commission instituted investigation No. 701–TA–384 (Preliminary) and investigations Nos. 731–TA–806–808 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 7, 1998 (63 FR 53926). The conference was held in Washington, DC, on October 21, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on November 16, 1998. The views of the Commission are contained in USITC Publication 3142 (November 1998), entitled Certain Hot-rolled Steel Products from Brazil, Japan, and Russia: Investigations Nos. 701–TA–384 and 731–TA–806–808 (Preliminary).

Issued: November 17, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–31517 Filed 11–24–98; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford determined that there is a reasonable indication that an industry in the United States is materially injured.

[3] National Steel Corp. is not a petitioner with respect to Japan.

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–111 (Review)]

Roller Chain From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on roller chain from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on roller chain from Japan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On October 8, 1998, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (63 FR 56048, October 20, 1998). A record of the Commissioners' votes and a statement by Commissioner Carol T. Crawford are available from the Office of the Secretary and at the Commission's web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by January 4, 1999. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than January 4, 1999. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on April 19, 1999, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on May 6, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 27, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 29, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is April 28, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 18, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before May 18, 1999. On June 9, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 11, 1999, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: November 17, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–31518 Filed 11–24–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–98–020]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 7, 1998 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–811 (Preliminary) (DRAMS of One Megabit and Above from Taiwan)—briefing and vote.
5. Outstanding action jackets:

1. Document No. INV–98–080: Approval of revised work schedule in Inv. Nos. 751–TA–21–27 (Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 23, 1998.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–31630 Filed 11–23–98; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq.; Excel Corp.

Under 28 CFR 50.7, notice is hereby given that on November 16, 1998 a proposed partial consent decree ("consent decree") in *United States* v. *Excel Corp.*, Civil Action No. 3:93CV119RM, was lodged with the United States District Court for the Northern District of Indiana.

In this action the United States sought civil penalties and unrecovered response costs in connection with the Main Street Well Field Site in Elkhart, Indiana ("Site"). The proposed consent decree provides for the payment by defendants Joseph S. Beale and JSB Corporation d/b/a Adlake Enterprises, Inc. (collectively "JSB") of $350,000 of the United States unrecovered response costs at the Site. The proposed consent decree also resolve the United States claims against JSB for its alleged failure to perform response activities at the Site pursuant to an administrative order issued by the United States Environmental Protection Agency ("EPA").

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Excel Corp.*, D.J. Ref. No. 90–11–3–799.

The proposed consent decree may be examined at the Office of the United States Attorney, 301 Federal Building, 204 South Main Street, South Bend, Indiana; at the Region 5 Office of EPA, 77 West Jackson Blvd., Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–31432 Filed 11–24–98; 8:45 am]

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DEPARTMENT OF JUSTICE

[AAG/A Order 154–98]

Privacy Act of 1974; Notice of Modified System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice, Federal Bureau of Investigation (FBI), is modifying the following system of records which was last published in the **Federal Register** on June 4, 1998 (63 FR 30514):

The National Instant Criminal Background Check System (NICS) JUSTICE/FBI–018.

In the rules section of today's **Federal Register**, the Department of Justice is also providing a final rule exempting the NICS from certain provisions of the Privacy Act.

This notice addresses comments received by the Department of Justice following publication of the Notice of New System of Records for the NICS, published in the **Federal Register** on June 4, 1998 (63 FR 30514), in which, in accordance with 5 U.S.C. 552a(e)(4) and (11), the public, the Office of Management and Budget, and the Congress were invited to comment on the new routine uses. The Department of Justice/FBI accepted comments on the NICS system notice from the public dated on or before July 6, 1998.

Significant Comments

A number of comments raised matters that were more pertinent to other notices of proposed rulemaking relating to the NICS: The National Instant Criminal Background Check System Regulation published in the **Federal Register** on June 4, 1998 (63 FR 30430), and the National Instant Criminal Background Check System User Fee Regulation, published in the **Federal Register** on August 17, 1998 (63 FR 43893). Such comments have been addressed in the final NICS rule, the National Instant Criminal Background Check System Regulation, published in the **Federal Register** on October 30, 1998 (63 FR 58303). Other comments raised matters that were more pertinent to the proposed rule exempting the NICS from certain provisions of the Privacy Act, published in the **Federal Register** on June 4, 1998 (63 FR 30429). Such comments are addressed in a final rule, Exemption of System of Records Under the Privacy Act, published in the rules section of today's **Federal Register**.

A number of comments opposed retention by the NICS of a temporary log of background check transactions that allow a firearm transfer to proceed. (For a more detailed discussion of this issue, see the final NICS rule, the National Instant Criminal Background Check System Regulation, published in the **Federal Register** on October 30, 1998 (63 FR 58303).) Although the Brady Handgun Violence Prevention Act (Brady Act) mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within which records of approvals must be destroyed. At the same time, the Brady Act requires that the Department ensure the privacy and security of the NICS and the proper operation of the system. The Department has attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS. The original NICS records system notice indicated that records of firearm transaction approvals would be maintained for eighteen months. However, in recognition of the numerous comments objecting to this retention period as too long, the Department reexamined the time period needed to perform audits of the NICS. The Department determined that the general retention period for records of allowed transfers in the NICS Audit Log should be the minimum reasonable period for performing audits on the system, but in no event more than six months. The final NICS regulations reflect this (but also provide that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system). The Department further determined that the FBI shall work toward reducing the retention period to the shortest practicable period of time less than six months that will allow basic security audits of the NICS. By February 28, 1999, the Department will issue a notice of a proposed revision of the regulation setting forth a further reduced period of retention that will be observed by the system. The NICS system of records has been modified to reflect these changes.

Various comments expressed concern that the Audit Log would allow states acting as NICS Points of Contact (POCs) and law enforcement agencies access to records of approved transfers. This is not a well-founded concern because only the FBI will be able to directly access information in the transaction log. Section 25.9(b)(2) of the final rule was revised to provide explicitly that such information is directly available only to the FBI, and only for the purposes of conducting audits of the use and performance of the NICS or pursuing cases of misuse of the system.

In addition to several comments which objected to particular routine uses, one comment pointed out that the list of "routine uses" in the original NICS system notice appeared broader than the uses addressed in the regulations for both the National Crime Information Center (NCIC) (citing 28 CFR 20.20(c) and 20.21(b)) and for the NICS (citing 28 CFR 25.6(j)). Specifically, 28 CFR 25.6(j) limits the

access to the NICS Index for purposes that are unrelated to NICS background checks required by the Brady Act to providing information to criminal justice agencies in connection with the issuance of firearm-related and explosives-related permits or licenses or to the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53). The comment objected that the original NICS system notice provided no justification for any such apparent differences and expressed the opinion that a significant number of the uses are "inconsistent with Congress' intent."

The Department acknowledges that these apparent differences warrant clarification. The NICS regulations were issued to establish policies and procedures implementing the Brady Act. As explained in the final NICS rule (63 FR 58305), the purpose of the limitation on access to the NICS Index was to prevent checks of the NICS Index for general law enforcement purposes.

The NICS Index is a separate database within the NICS which contains records provided by Federal agencies to the FBI on persons prohibited from receiving firearms under Federal law and records provided voluntarily by some states on persons who have been denied the purchase of a firearm or who are known to be disqualified from possessing a firearm under federal law. Information in the NICS Index generally relates to individuals who fall within categories "C" through "G" of the categories of individuals covered by the system described in the NICS system notice below. For the most part, criminal history records are not pertinent to these categories; instead the NICS Index consists of data relating to such matters as mental incompetence, renunciations of citizenship, immigration matters, and dishonorable discharges. Largely due to privacy-related concerns expressed by the federal agencies supplying such sensitive records to the NICS Index, the Department will limit generalized non-Brady law enforcement disclosures of the NICS Index to those uses provided in 28 CFR 25.6(j) (which are embodied in this notice as routine uses "A" and "B").

However, the NICS Index is only one of several parts of the NICS, and the express language of the regulation clearly limits the scope of 25 CFR 25.6(j) to the contents of the NICS Index. The NICS Audit Log is separate from the NICS Index. In the course of conducting a NICS search, the NICS will query the NICS Index, and any "match" found in the NICS Index will be replicated in the NICS Audit Log. The limitations in 28 CFR 25.6(j) do not extend to information in the NICS Audit Log derived from individual "hits" in the NICS Index. (Nor, apart from the NICS Index, do these limitations extend to other components of the NICS,) Thus—as to these other NICS components—28 CFR 25.6(j) does not preclude the generalized law-enforcement disclosures established in routine use "C." Routine use "C" would not, however, apply to the NICS Index, and this routine use is being revised to make this clear.

Nor was 28 CFR 25.6(j) intended to limit certain other disclosures incident to management and administration of the NICS when properly authorized pursuant to the Privacy Act. Although this may not be readily apparent from the express terms of the NICS regulation, it is clearly evidenced by the Department's publication of the original NICS Privacy Act system notice—which included the routine uses—simultaneously with the publication of the proposed NICS regulations, in which the system notice was expressly referenced. The NICS regulations are to be read together with the NICS system notice. (Indeed, this same result is a mirror of the NCIC, in which disclosures addressed in the NCIC regulations are supplemented in NCIC's system notice (60 FR 19775).) Thus, for instance, the NICS regulations must be read together with routine use "D," which provides for disclosures to contractors, grantees, experts, consultants, volunteers, detailees, and other non-FBI employees performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government when necessary to accomplish an agency function related to this system of records and under requirements (including Privacy Act requirements) specified by the FBI. The need to utilize outside service providers, particularly in the creation, maintenance, and management of highly complex systems, is a fact of life for virtually every public and private entity. Further, when an agency provides by contract for the operation of a system of records to accomplish an agency function, the Privacy Act itself provides for considering the contractor and any employee of such contractor as an employee of the agency for purposes of Privacy Act sanctions (5 U.S.C. 552a(m)). The persons covered by this use are the functional equivalent of FBI employees, and this use confirms authority for disclosures to these persons to the same extent as if they were actual FBI employees.

All of the routine uses contained in the NICS system notice comport with Congress' intent and are fully compatible with the Brady Act. As noted in House Report 103–344, the Brady Act was enacted in an effort to stem the appalling consequences of an epidemic of gun violence by preventing the acquisition of firearms by those prohibited under federal or state law. The routine uses further the Brady Act's preventive goals not only by preventing transfers of firearms to disqualified individuals, but also by enhancing the deterrent prospect of capture and prosecution of those who pursue unlawful transfers or otherwise seek to unlawfully subvert the Brady Act. Prevention is also furthered by routine uses which could permit prophylactic advisories to the public and/or potential victims. Finally, it is entirely compatible with the Brady Act to provide the FBI with the necessary flexibility to carry out its responsibilities, and to facilitate inquiries by Members of Congress to ensure their constituents have been treated appropriately under the Brady Act. Accordingly, except as noted below, this notice continues the routine uses as originally published.

Routine use "C" provides the necessary authority for further coordination among law enforcement agencies for the purposes of investigating, prosecuting, and/or enforcing violations of criminal or civil law or regulation that may come to light during the NICS operations. This provides a mechanism for pursuing criminal or civil sanctions against those attempting to thwart governing laws or regulations, which will strengthen and further the Brady Act's deterrence goal. One comment objected to this routine use's additional provision for disclosing violations of contract. Although this additional provision was modeled after other systems where such authority is useful and appropriate, it does appear not to be necessary in the NICS. We are modifying this routine use to delete the provision relating to disclosures of a violation or potential violation of a contract. (As previously discussed, we are also modifying this routine use to expressly provide that it does not apply to the NICS Index.)

Routine use "E" provides for appropriate disclosures to the public (including a victim or potential victim) in furtherance of a legitimate law enforcement or public safety function, or to keep the public appropriately informed of other law enforcement or FBI matters of legitimate public interest where disclosure would not constitute a clearly unwarranted invasion of personal privacy. As for all routine uses, such disclosures would only include those compatible with the purposes for

collecting the information under the Brady Act. Such disclosures might include local media announcements asking the public's assistance in locating a dangerous fugitive who attempted to purchase a firearm in the area, or alerting a protected spouse when the subject of a protective order attempts to purchase a firearm. Such disclosures would fully comport with the violence-prevention goals of Brady Act. As another example, providing the public examples of the NICS' effectiveness in particular cases could help deter disqualified persons who might otherwise be tempted to test the system. On further review, however, we conclude that it is unnecessary to also provide for public disseminations not related to law enforcement or FBI matters. We are modifying this routine use to delete the provision allowing disclosures to the news media or general public in situations not related to law enforcement or FBI matters. In addition, we are further modifying this routine use to expressly provide that it does not apply to information in the NICS Index.

Changes

This notice modifies the NICS system of records to reflect recent statutory and regulatory changes affecting the NICS, and to make various editorial and clarifying revisions. To the extent possible, the changes and additions are italicized throughout the attached system notice, and brief descriptions of the more noteworthy ones are provided below.

As discussed above, the system has been modified to reflect that the general retention period for records of allowed transfers in the NICS Audit Log should be the minimum reasonable period for performing audits on the system, but in no event more than six months, provided that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system.

Also as discussed above, routine use "C" has been modified to delete the provision for disclosing violations or potential violations of contracts, routine use "E" has been modified to delete provisions for public disclosures not related to law enforcement or FBI matters, and both of these routine uses have been modified to expressly provide that they do not apply to the NICS Index.

In consonance with other changes made in the final NICS rule, the NICS system notice has been modified to replace the term "password" with "code word"; replace words such as "purchase" and "purchaser" with words such as "transfer" and "transferee"; change terminology relating to NICS denials from "reason to believe" to "information demonstrating"; and to clarify that allowable non-Brady Act uses of the NICS Index include responding to inquiries by criminal justice agencies in connection with licenses or permits to carry a concealed firearm or to import, manufacture, deal in, or purchase explosives, and to inquiries by the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44) or the National Firearms Act (26 U.S.C. Chapter 53).

The original NICS records system notice indicated that NICS' searches of the National Crime Information Center (NCIC) and the Interstate Identification Index (III) would be specifically directed towards locating information that an individual is within the system-notice categories A, B, H, and I of persons covered by the system. The NICS searches of NCIC and III will also be directed towards locating information that an individual is within the system-notice categories C (unlawful user of or addicted to any controlled substance), and D (adjudicated as a mental defective or has been committed to a mental institution). The NICS system notice has been modified to reflect this.

The original NICS records system notice indicated that the categories of individuals covered by the system included persons who were FFLs authorized by the FBI to request NICS checks. The system will also cover persons who claim on applications submitted to the FBI for NICS access to be FFLs even though they are not, and FFLs on record with the ATF that have not been granted authority to request NICS checks. In addition, the original notice may not have been clear that these FFL records are separate from the NICS Index and the NICS Audit Log. The NICS system notice has been modified to clarify this.

The NICS system notice has been modified to expressly confirm that in advising an FFL that a response will be "delayed," the NICS may apprise an FFL of an estimated time for completing the analysis.

Dated: November 19, 1998.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/FBI–018

SYSTEM NAME:

National Instant Criminal Background Check System (NICS).

SYSTEM LOCATION:

Federal Bureau of Investigation, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by the system include any person who:

A. Is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

B. Is a fugitive from justice;

C. Is an unlawful user of or addicted to any controlled substance;

D. Has been adjudicated as a mental defective or has been committed to a mental institution;

E. Is an alien who is illegally or unlawfully in the United States;

F. Has been discharged from the Armed Forces under dishonorable conditions;

G. Having been a citizen of the United States, has renounced such citizenship;

H. Is subject to a court order that restrains the person from harassing, stalking, or threatening an intimate partner or child of such intimate partner (issued after a hearing of which actual notice was received);

I. Has been convicted in any court of a misdemeanor crime of domestic violence (involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim or by a person with a similar relationship with the victim);

J. Is otherwise disqualified from possessing a firearm under State law;

K. Is *or claims to be* a Federal firearms licensee (FFL), i.e., a person licensed by the Bureau of Alcohol, Tobacco and Firearms (ATF), United States Department of Treasury, as a manufacturer, dealer, or importer of firearms; or

L. Has applied for the *transfer* of a firearm or a firearms-related permit or license and has had his or her name forwarded to the NICS as part of a request for a NICS background check. (Identifying information about this category of individual is maintained for system administration and security purposes only in the "NICS Audit Log," a system transaction log described below under the headings "CATEGORIES OF RECORDS IN THE SYSTEM" AND "RETENTION AND DISPOSAL." In cases where the NICS background check does not locate a disqualifying record, information about the individual will only be retained temporarily for *the minimum reasonable period necessary for performing audits on the system, but in*

no event more than six months or such shorter period of time that the Department establishes by regulation, provided that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system. The system will not contain any details about the type of firearm which is the subject of the proposed transfer (other than the fact that it is a handgun or a long gun) or whether a sale or transfer of a firearm has actually taken place.

CATEGORIES OF RECORDS IN THE SYSTEM:

The "NICS Index" is the only database maintained by the FBI which was created specifically for the NICS. The NICS Index contains records obtained by the Attorney General from Federal agencies or States on individuals who fall into the categories of individuals listed above under the heading "CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM," C through G. These records contain an individual's name; sex; race; *other personal descriptive data (such as scars and tattoos)*; complete date of birth; state of residence; sometimes a unique identifying number, such as a Social Security number (but NICS does not require it to be furnished), a military number, or a number assigned by Federal, State, or local law enforcement authorities.

The "NICS Audit Log" is a chronological record of system (computer) activities that enables the reconstruction and examination of a sequence of events and/or changes in an event related to the NICS. With regard to a specific NICS transaction, the audit log will include: The name and other identifying information about the prospective *transferee*; the type of transaction (inquiry or response); line number; time; date of inquiry; header; message key; Originating Agency Identifier; and inquiry/response data, such as a NICS Transaction Number (a unique number assigned to each valid background request inquiry) and information found by the NICS search.

In addition, the NICS contains information on persons that are FFLs (or claim to be). This information includes the FFL name, address, phone numbers, ATF number, access code words, names of authorized representatives and contact persons, and similar information used by the NICS to identify, validate, and communicate with FFLs in the course of NICS operations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 18 U.S.C. 922, as amended by the Brady Handgun Violence Prevention Act (the "Brady Act") (Pub. L. 103–159, Nov. 30, 1993); (2) 28 U.S.C. 534, as amended (Pub. L. 103–322, Title IV, 4060(a), Sep. 13, 1994, 105 Stat. 1950).

PURPOSE(S):

The purpose of the NICS, which was established pursuant to the Brady Act, is to provide a means of checking available information to determine whether a person is disqualified from possessing a firearm under Federal or State law.

Prior to the transfer of a firearm, a prospective *transferee*, not licensed under 18 U.S.C. 923, must obtain a firearms transaction form from an FFL and provide the information required by the ATF. The firearms transaction form is returned to the FFL, who is required by the Brady Act to contact the NICS and furnish the name and certain other identifying data provided by the *transferee*. NICS conducts a search which compares the information about the *transferee* with information in or available to NICS.

State and local law enforcement agencies may serve as Points of Contact (POCs) for the NICS. Where there is no POC, the FBI's NICS Operations Center serves in its place. The POC (or the NICS Operations Center) receives inquiries from FFLs, initiates NICS background searches, may check available state and local record systems, determines whether matching records provide *information demonstrating* that an individual is disqualified from possessing a firearm under Federal or State law, and responds back to the FFLs.

In addition to a review of the NICS Index, a NICS search includes a review of the pre-existing, separately-managed FBI criminal history databases of the National Crime Information Center (NCIC)(JUSTICE/FBI–001), including the Interstate Identification Index (III), to the extent such searches are possible with the available information. NCIC and III are cooperative Federal-State programs for the exchange of criminal history record and other information among criminal justice agencies to locate wanted and missing persons and for other identification purposes. The search conducted of the NCIC and III, in conjunction with the search of the NICS Index, attempts to locate only information indicating that an individual firearm *transferee* is identical to an individual in one or more of categories A through J listed above under the heading CATEGORIES OF INDIVIDUALS IN THE SYSTEM, with the search of NCIC and III specifically directed towards locating information that an individual is within categories A, B, *C, D,* H, and I.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. Limited information may be provided by a POC or the NICS Operations Center to an FFL who has contacted the NICS concerning a prospective firearm *transferee*. If a matching record found by the NICS provides *information demonstrating* that the prospective *transferee* is disqualified from possessing a firearm under Federal or State law, the FFL will be notified only that the application is "denied," with none of the underlying information provided. If additional record analysis is required by the NICS representative *(e.g to confirm that a record relates to the potential transferee or to pursue supplemental information to clarify whether the potential transferee is disqualified from receiving a firearm)*, the response may read "delayed" *and may include an estimated time for completing the analysis.* If no disqualifying record is located by the NICS, the FFL will be told that it may "proceed." A unique identification number will be provided to the FFL for all responses received from the NICS, which number shall be recorded on the firearms transaction form.

B. Information in the NICS may be provided through the NCIC lines to Federal criminal justice agencies, criminal justice agencies in the fifty States, the District of Columbia, Puerto Rico, U.S. Possessions, and U.S. Territories, including POCs and contributors of information in the NICS Index, to enable them to determine whether the transfer of a firearm to any person not licensed under 18 U.S.C. 923 would be in violation of Federal or State law; whether the issuance of a license or permit for the possession or sale of a firearm or firearms, *or to carry a concealed firearm, or to import, manufacture, deal in, or purchase explosives* would be in violation of Federal or State law or regulation; whether appeals from denials should be granted or denied; and whether to add to, delete from, revise, or update information previously provided by the contributor. *This includes responding to inquiries by the ATF in connection with enforcement of the Gun Control Act (18 U.S.C. Chapter 44), or the National Firearms Act (26 U.S.C. Chapter 53).*

C. If, during the course of any activity or operation of the system authorized by the regulations governing the system (28 CFR, part 25, subpart A), any record is found by the system which indicates,

either on its face or in conjunction with other information, a violation or potential violation of law (whether criminal or civil) and/or regulation, the pertinent record may be disclosed to the appropriate agency/organization/task force (whether Federal, State, local, joint, or tribal) and/or to the appropriate foreign or international agency/organization charged with the responsibility of investigating, prosecuting, and/or enforcing such law *or* regulation, e.g., disclosure of information from the system to the ATF, United States Department of Treasury, regarding violations or potential violations of 18 U.S.C. 922(a)(6). *(This routine use does not apply to the NICS Index.)*

D. System records may be disclosed to contractors, grantees, experts, consultants, volunteers, detailees, and other non-FBI employees performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government when necessary to accomplish an agency function related to this system of records and under requirements (including Privacy Act requirements) specified by the FBI.

E. System records may be disclosed to the news media or members of the general public or to a victim or potential victim in furtherance of a legitimate law enforcement or public safety function, e.g., to assist in locating fugitives; to provide notification of arrests; to provide alerts, assessments, or similar information on potential threats to life, health, or property; or to keep the public appropriately informed of other law enforcement or FBI matters of legitimate public interest. *(The availability of information in pending criminal cases will be governed by the provisions of 28 CFR 50.2.) (This routine use does not apply to the NICS Index.)*

F. Where the disclosure of system records has been determined by the FBI to be reasonable and necessary to resolve a matter in litigation or in anticipation thereof, such records may be disclosed to a court or adjudicative body, before which the FBI is authorized to appear, when: (a) The FBI or any FBI employee in his or her official capacity; (b) any FBI employee in his or her individual capacity where the Department of Justice has agreed to represent the employee; or (c) the United States, where the FBI determines it is likely to be affected by the litigation, is or could be a party to the litigation, or has an official interest in the litigation.

G. System records may be made available to a Member of Congress or staff acting on the Member's behalf when the Member or staff requests the information on behalf and at the written request of the individual who is the subject of the record.

H. System records may be disclosed to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically for use in a computer environment in areas safe from access by unauthorized persons or exposure to environmental hazards. In general, the security policy for the NCIC (JUSTICE/FBI–001) is followed.

RETRIEVABILITY:

Records are retrieved by name, sex, race, date of birth, state of residence, *other personal descriptive data,* the NICS Transaction Number, FFL number, and, in some instances, unique numeric identifier, e.g., a Social Security number or a military identification number. (A Social Security number is not required by the NICS.)

SAFEGUARDS:

Records searched by the NICS are located in secure government buildings with limited physical access. Access to the results of a NICS record search is further restricted to authorized employees of Federal, State, and local law enforcement agencies who make inquiries by use of identification numbers and *code words.*

When a Federal, State, or local agency places information in the NICS Index, it uses its agency identifier and a unique agency record identifier for each record provided to the NICS. Federal, State, or local agencies can modify or cancel only the data that they have provided to NICS Index.

RETENTION AND DISPOSAL:

Information provided by other Federal agencies or State or local governments will be maintained in the NICS Index unless updated or deleted by the agency/government which contributed the data.

The FBI will maintain an Audit Log of all NICS transactions. Firearms transaction approvals will be maintained for *the minimum reasonable period necessary for performing audits on the system, but in no event more than six months or such shorter period of time that the Department establishes by regulation (except that such information may be retained for a longer period if necessary to pursue identified cases of misuse of the system).* The NICS Transaction Number (the unique number assigned to the NICS transaction) and the date on which it was assigned will be maintained indefinitely. Information related to firearms transfer denials will be retained for 10 years and then disposed of as directed by the National Archives and Record Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 935 Pennsylvania Avenue, NW, Washington, DC 20535–0001.

NOTIFICATION PROCEDURES:

This system of records has been exempted from the notification procedures of subsections (d) and (e)(4)(G), to the extent permitted by subsections (j)(2), (k)(2), and (k)(3) of the Privacy Act. Requests for notification should be addressed to the Systems Manager. Requirements for a request are the same as set forth below under the heading "RECORD ACCESS PROCEDURES."

RECORD ACCESS PROCEDURES:

This system of records has been exempted from the access procedures of subsections (d) and (e)(4)(H) to the extent permitted by subsections (j)(2), (k)(2), and (k)(3) of the Privacy Act. A request for access to a non-exempt record from the system should be addressed to the System Manager, shall be made in writing, and should have the envelope and the letter marked "Privacy Act Request." The request must include the full name, complete address, date of birth, and place of birth of the requester. The requester must sign the request; and, to verify it, the signature must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

Alternative procedures are available to a person who has been denied the *transfer* of, or permit for, a firearm or explosives because of information in the NICS. The procedures provide for an appeal of a denial and a method to seek the correction of erroneous data searched by or maintained in the system. The alternative procedures can be found at 28 CFR, part 25, subpart A.

CONTESTING RECORD PROCEDURES:

This system of records has been exempted from the contest and amendment procedures of subsections (d) and (e)(4)(H) to the extent permitted by subsections (j)(2),(k)(2), and (k)(3) of

the Privacy Act. Requests should be addressed to the System Manager and should clearly and concisely describe the precise information being contested, the reasons for contesting it, and the proposed amendment or correction proposed to the information. In addition, as described above under "RECORD ACCESS PROCEDURES," an alternative procedure is available to a person who has been denied the *transfer* of, or permit for, a firearm or explosives because of information in the NICS, by which the individual may seek the correction of erroneous data in the system. The procedures are further described at 28 CFR, part 25, subpart A.

RECORD SOURCE CATEGORIES:

Information contained in the NICS is obtained from local, State, Federal, and international records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4); (d); (e)(1); (2), and (3) (e)(4)(G) and (H); (e)(5) and (8); and (g) of the Privacy Act, pursuant to 5 U.S.C. 552a(j)(2). In addition, the Attorney General has exempted his system from subsections (c)(3), (d), (e)(1), and (e)(4)(G) and (H) of the Privacy Act, pursuant to 5 U.S.C. 552a (k)(2) and (k)(3). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e), and have been published in the **Federal Register**.

[FR Doc. 98–31503 Filed 11–24–98; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Omnipoint Corp.; United States v. 21st Century Bidding Corp.; United States v. Mercury PCS II, L.L.C.; Proposed Final Judgments and Competitive Impact Statements

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16 (b) through (h), that a proposed Final Judgment, Stipulation and Order, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in each of the following civil actions: *United States* v. *Omnipoint Corporation*, Civil Action No. 1:98CV02750; *United States* v. *21st Century Bidding Corp.;* Civil Action No. 1:98CV02752, and *United States* v. *Mercury PCS II, L.L.C.*, Civil Action No. 1:98CV02751. The proposed Final Judgments are subject to approval by the Court after expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

On November 10, 1998, the United States filed separate Complaints against each defendant that allege that defendants used coded bids during a Federal Communications Commission auction of radio spectrum licenses for personal communications services. The Complaints further allege that, through the use of these coded bids, defendants reached agreements to stop bidding against one another in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposal Final Judgments, filed the same time as the Complaints, prohibit defendants from entering into anticompetitive agreements and from using coded bids in future FCC auctions.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530 (telephone: (202) 307–6351).

Copies of the Complaint, Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481), and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Rebecca P. Dick,

Director of Civil Non-Merger Enforcement.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceedings.

5. The parties request that the Court acknowledge the terms of this stipulation by entering the Order in this Stipulation and Order.

Respectfully submitted,

For Plaintiff United States of America:

Jill A. Ptacek,

J. Richard Doidge,

Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307–0468.

For Defendant Omnipoint Corporation:

Michael F. Brockmeyer, Esq.,

Piper & Marbury L.L.P. Charles Center South, 36 South Charles Street, Baltimore, MD 21201–3018, (410) 576–1890.

Order

It is *so ordered, this* _____ day of _____, 1998.

_____

United States District Court Judge

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Complaint, Competitive Impact Statement and proposed Final Judgment to be served on counsel for the defendant in this matter in the manner set forth below:

By first class mail, postage prepaid, and by facsimile:

Michael F. Brockmeyer, Esquire, Piper & Marbury L.L.P., 36 South Charles Street, Baltimore, MD 21201–3018

Jill Ptacek,

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6607, (202) 616–2441 (Fax).

Final Judgment

Plaintiff, United States of America, filed its Complaint on November 10,

1998. Plaintiff and the Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed,* as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Venue is proper in the District of Columbia. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Definitions

As used herein, the term:

(A) "Defendant" means Omnipoint Corporation, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, directors, officers, managers, agents, and employees.

(B) "Document" means all "writings and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence.

(C) "FCC" means the Federal Communications Commission.

(D) "License-identifying information" means any number, letter, code or description that designates a license or that links licenses.

(E) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, public trust, or other legal entity.

III. Applicability

(A) This Final Judgment applies to the Defendant, to its successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV. Prohibited Conduct

The Defendant is enjoined and restrained from:

(A) Entering into any agreement with any other license applicant to fix, establish, suppress or maintain the price for any license to be awarded by the FCC in an auction, or to allocate any such licenses amongst competitors, provided, however, that nothing in this provision shall prohibit the Defendant from participating in any bidding consortium, teaming arrangement or other joint venture authorized under the rules and regulations of the FCC pertaining to future auctions, and disclosed to the FCC.

(B) In the course of any auction conducted pursuant to the rules and regulations of the FCC, offering any price to the FCC for the lease, purchase, or right to use any FCC-awarded license, that includes within that price any license-identifying information, unless the inclusion of such information is required by the FCC.

V. Compliance Program

The Defendant is ordered to maintain an antitrust compliance program, which shall include the following:

(A) Designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the Defendant to ensure that it complies with this Final Judgment.

(B) The Antitrust Compliance Officer shall be responsible for:

(1) Distributing within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to (a) all officers and directors of the Defendant, and (b) to all employees who have any responsibility for formulating, proposing, recommending, establishing, approving, implementing or submitting the Defendant's prices in FCC-conducted license auctions;

(2) Distributing in a timely manner a copy of this Final Judgment to any officer, director or employee who succeeds to a position described in Section V (B)(1);

(3) Obtaining from each present or future officer, director or employee designated in Section V(B)(1), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) Has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(4) Maintaining a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section V(B)(3), the certification has been obtained; and

(5) Reporting to the Plaintiff any violation of the Final Judgment.

VI. Certification

Within 75 days after the entry of this Final Judgment, the Defendant shall certify to the Plaintiff whether it has complied with Sections V (B)(1) and (B)(3) above.

VII. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the Defendant's office hours to inspect and copy all documents in the possession or under the control of the Defendant, who may have counsel present, relating to any matters contained in this Final Judgment, and

(2) Subject to the reasonable convenience of the Defendant and without restraint or interference from it, to interview officers, employees or agents of the Defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the Defendant's principal office, the Defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VII shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil

Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by Plaintiff to the Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendant is not a party.

VIII. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____.

United States District Judge

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On November 10, 1998, the United States filed a civil antitrust complaint alleging that the defendant, Omnipoint Corporation ("Omnipoint"), had violated Section 1 of the Sherman Act, 15 U.S.C. § 1. Omnipoint, through its affiliate Omnipoint PCS Entrepreneurs Two, Inc., participated in an auction (the "DEF auction") of broadband radio spectrum licenses for personal communication services ("PCS") that was conducted by the Federal Communications Commission ("FCC") between August 1996 and January 1997. The Complaint alleges that during the DEF auction Omnipoint submitted bids that ended with three-digit numerical codes to communicate with rival bidders and that, through the use of these coded bids, Omnipoint and one of its rivals reached an agreement to refrain from bidding against one another. As a consequence of this agreement, the complaint alleges Omnipoint and its competitor paid less for certain PCS licenses, resulting in a loss of revenue to the Treasury of the United States.

On November 10, 1998, the United States and Omnipoint filed a Stipulation and Order in which they consented to the entry of a proposed Final Judgment that provides the relief that the United States seeks in the Complaint. Under the proposed Final Judgment, Omnipoint would be enjoined from submitting coded bids in future FCC auctions and entering into any agreement related to bidding for FCC licenses that violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

The United States and Omnipoint have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce its provisions and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Background of the PCS Auctions

In 1993, Congress enacted legislation enabling the FCC to auction licenses for radio spectrum that could be used to provide PCS. Based on a wireless, digital technology, PCS offers an alternative to current traditional telephone services.

The FCC designated six bands of broadband radio spectrum for PCS: A, B, C, D, E and F. The A, B and C bands occupy 30 MHZ each, while the D, E and F licenses are 10 MHZ each. The FCC divided the country into 51 geographic areas called Market Trading Areas ("MTAs"), which were each allotted A and B licenses. The FCC subdivided the MTAs into 493 smaller geographic units called Basic Trading Areas ("BTAs"), which were each allotted C, D, E, and F licenses. Each BTA was assigned a number from 1 to 493.

The authorizing legislation required the FCC to adopt rules ensuring competitive auctions, and the FCC considered numerous auction formats for PCS, ultimately adopting a simultaneous, multiple-round, open format. Under this format, numerous licenses were offered in a single auction, staged over several rounds, with all licenses remaining open for bidding until the auction closed. Auction participants could observe all of the bidding activity in each round. The auction ended only when a round passed in which no bidder submitted a bid on any license.

To keep the auction moving forward, the FCC imposed eligibility limits and activity rules. The FCC gave each license a population value called "MHZ-pops." Each bidder made down payments to the FCC, with the size of the payment entitling it to bid for a certain amount of MHZ-pops. A participant could bid on any combination of licenses as long as the combined MHZ-pops of those licenses did not exceed the MHZ-pops to which the bidder's down payment entitled it (eligibility). Bidders also had to be "active" in each round (bid or have the high bid from the prior round) on licenses representing a set percentage of their MHZ-pops; otherwise, the FCC reduced their eligibility for the next round. As the auction proceeded, the bidders had to bid an increasing percentage of their MHZ-pops until in the final stages they had to bid nearly all of their eligibility.

Each round in the auction began with a bid submission period during which participants submitted bids electronically or by telephone for any of the licenses in which they were interested. After each bid submission period, the FCC published electronically to all bidders the results for each license, including the name of each company bidding, the amount of each bid, and the time each bid was submitted. The high bidder for a license in a round became the "standing high" bidder for that license with a tie going to the earliest bidder.

A bid withdrawal period then followed. During this period, bidders were permitted to withdraw their standing high bids from any market, subject to a withdrawal penalty specified by the FCC. The FCC then published the results. The bid submission and withdrawal periods comprised an auction round.

At the beginning of an auction, the FCC generally held one round per day. As the auction progressed, the FCC increased the number of rounds held in a single day, providing a period of time between rounds for auction participants to analyze the bidding from the prior round and to plan for the next round.

One goal of the FCC was to ensure the efficient allocation of licenses, that is, that the licenses would go to the bidders who valued them most highly. The simultaneous, multiple-round format of the PCS auctions helped achieve this goal in several ways. It allowed bidders to pursue different license aggregation strategies and change their strategies as the auction proceeded. In addition, it allowed auction participants to observe the value that other bidders placed on the licenses and use that information to refine their own assessment of license values. This was particularly useful

given that the technology used for PCS was new and bidders were uncertain about both the costs of providing the services and the prospective revenues. Ultimately, because the licenses were awarded to the highest bidders, the PCS auction format allowed the marketplace to determine the most efficient allocation of licenses.

Nothwithstanding these benefits of the auction format, the FCC recognized the risk that "collusive conduct by bidders prior to or during the auction process could undermine the competitiveness of the bidding process." Second Report and Order, FCC 94–61, ¶ 223 (Rel. April 20, 1994). The FCC sought to mitigate the risk of collusion by adopting rules restricting the disclosure of bidding strategies during the auction. The FCC noted, however, that Federal antitrust laws applied to the auctions and it would rely primarily on those laws to deter and punish collusion in the auctions. Second Report and Order, *supra*, at ¶ 225; Second Memorandum Opinion and Order, FCC 94–215, ¶ 50 (Rel. August 15, 1994).

B. Illegal Agreement To Allocate Licenses in the DEF Auction

The auction of the D, E and F licenses for all 493 BTAs began in August 1996. Because there were three bands being auctioned, the DEF auction involved a total of 1479 licenses. Lasting 276 rounds, the auction ended in January 1997.

Prior to the DEF auction, bidders analyzed which licenses (or groups of licenses) would best enable them to provide effective and competitive service, assessed the value they placed on those licenses, and developed strategies to obtain the desired licenses for the lowest possible prices. The bidders also speculated about their rivals' business strategies and attempted to identify the key licenses for those strategies, relying on an array of information, including knowledge of the licenses bidders had acquired in prior auctions.

As the auction proceeded, bidders carefully observed their rivals' actions and often adjusted their own market valuations and business strategies, sometimes based on their assessment of their rivals' objectives. Their rivals' bids however, did not necessarily reveal their true objectives. An auction participant might bid for a particular license during a particular round for a number of reasons: It may have always wanted the license, but for strategic reasons refrained from bidding until then; it may have changed its business strategy and decided that it now wanted the license; it may have seen an opportunity to acquire an undervalued license; it may have bid simply to preserve its eligibility to bid on other licenses later in the auction; it may have bid to raise a rival's cost to obtain the license; or it may have bid to send a message to the standing high bidder to refrain from bidding against it for a different license. Thus, the purpose of a particular bid might be procompetitive or anticompetitive.

A bidder's purpose is making a bid might, depending on the circumstances, be ambiguous to its rivals. Where ambiguity remains, it can be difficult to use a bid or bidding pattern alone to send clear messages or invitations to collude. To eliminate or reduce any ambiguity, Omnipoint sometimes placed bids during the DEF auction in which the final three digits intentionally corresponded to the number for a BTA (a "BTA end code"). Knowing that other bidders could see the bids and hence the BTA end codes, Omnipoint used the codes to better explain the real purpose of certain bids it made—to reach an agreement with a rival. In particular, Omnipoint used the BTA end codes to link the bidding of licenses in two (or more) specific BTA markets, highlight the licenses Omnipoint wanted, and convey to the competing bidders' offers to agree with Omnipoint not to bid against each other for the linked licenses.

Sometimes Omnipoint placed bids in one market with the BTA end code of another market to send the message: "I'm bidding for this license because you bid for the one I want (indicated by the BTA code) and I'll stop bidding in your market if you stop bidding in mine." Other times, Omnipoint used the BTA end codes to tell its rival: "If you don't stop bidding for this license, I will bid for the one you want (indicated by the BTA code)."

Ominipoint's use of the BTA end codes did not serve any legitimate purpose of the auction. Omnipoint's purpose for using BTA end codes was to send clear and unmistakable invitations to collude to rival bidders and to reach agreements with those rivals to refrain from bidding against each other. Such conduct was not authorized by the applicable FCC rules and was inconsistent with the FCC's goal to encourage competitive bidding.

Over the course of rounds 167 to 172, Omnipoint reached an agreement with NextWave Telecom, Inc. ("NextWave") to allocate between them the F-band licenses for Toledo, OH (BTA #444), Salisbury, MD (BTA #398), and Lancaster, PA (BTA #240). Omnipoint agreed to stop bidding for the Salisbury and Lancaster-F licenses in exchange for NextWave's agreement not to bid for the Toledo-F license. (The bidding for the Toledo, Salisbury, and Lancaster-F licenses between rounds 167 and 172 is depicted in the table attached as Appendix A to this Competitive Impact Statement.)

Prior to round 167, Omnipoint had the high bid in Salisbury-F and had bid intermittently in earlier rounds for the F license in Lancaster and Toledo. NextWave had the standing high bids for the Lancaster and Toledo-F licenses. In round 167, NextWave placed the high bid for Salisbury-F. Omnipoint bid for Toledo-F in round 168. NextWave won back the Toledo license in round 169.

In round 170, Omnipoint placed bids for the Toledo, Salisbury and Lancaster-F licenses. Omnipoint's bids for Salisbury and Lancaster licenses ended in "444"—the BTA number for Toledo. Omnipoint withdrew its Salisbury and Lancaster bids that same round, only to bid again for the two licenses in round 171, this time for lower prices than it had bid in round 170. Ominpoint's use of the BTA end codes established a link between the Salisbury and Lancaster-F licenses and the Toledo-F license.

NextWave saw the BTA end codes and understood that Omnipoint proposed to stop bidding in Salisbury and Lancaster in exchange for NextWave ceasing to bid for the Toledo-F license. In round 171, NextWave bid back over Omnipoint for the Salisbury and Lancaster-F licenses. NextWave accepted Omnipoint's offer and stopped bidding for Toledo-F even though it was willing to pay more for the Toledo-F license than Omnipoint's standing high bid for that license. Observing that NextWave had stopped bidding for Toledo-F, Omnipoint then stopped bidding for Salisbury-F and Lancaster-F.

Omnipoint's purpose for using the BTA end codes was to link the Salisbury, Lancaster and Toledo-F licenses, highlight the bids as retaliatory, and communicate an offer to stop bidding for Salisbury and Lancaster if NextWave stopped bidding for Toledo-F. Omnipoint believed that the Salisbury and Lancaster licenses were important to NextWave. The Salisbury and Lancaster licenses complemented the licenses that NextWave was holding in the Philadelphia and Washington, D.C. areas.

As a consequence of Omnipoint's agreement with NextWave, competition for the Toledo-F license was suppressed and the Treasury received less revenue for the Toledo-F license. It was in NextWave's economic self-interest to bid more for the Toledo-F license than Omnipoint's winning bid and, but for

the illegal agreement, it would have done so.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to ensure that Omnipoint does not enter into anticompetitive agreements when participating in future FCC auctions. The decree supplements any prohibitions on bidding conduct set forth in the FCC's auction rules, and the defendant may violate the decree even if its conduct does not violate an agency statute or rule.

The proposed Final Judgment would enjoin Omnipoint from entering into an agreement with another license applicant to fix, establish, suppress or maintain the price of a license to be awarded by the FCC or to allocate any such licenses among competitors (Section IV(A)). The proposed Final Judgment would not prevent Omnipoint from entering into any joint-venture or similar agreements regarding licenses to be awarded by the FCC that are both disclosed to the FCC and authorized under the FCC's rules and regulations. (Section IV(A)). However, such bidding arrangements would still be subject to scrutiny under the antitrust laws.

The proposed Final Judgment would also prevent Omnipoint from using BTA end codes or any similar signaling mechanism to solicit anticompetitive agreements in future FCC auctions. The proposed Final Judgment would enjoin Omnipoint from submitting bids that contain "license-identifying information" in future FCC auctions, unless the inclusion of such information is required by the FCC (Section IV(B)). License-identifying information is defined as "any number, letter, code or description that designates a license or that links licenses." (Section II(D)).

The proposed Final Judgment would further require Omnipoint to establish and maintain an antitrust compliance program (Section V). It would also provide that the United States may obtain information from Omnipoint concerning possible violations of the Final Judgment (Section VII).

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Omnipoint. In this case, the injured person is the United States.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Omnipoint have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evalaute and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register.** Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The proposed Final Judgment would expire ten (10) years from the date of its entry.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking damages in this case pursuant to section 4A of the Clayton Act, 15 U.S.C. § 15a. Doing so would likely have required a full trial on the merits against Omnipoint. In the view of the Department of Justice, undertaking the substantial cost and the risk associated with such a trial is not warranted, considering that the proposed Final Judgment provides full injunctive relief for the violations of the Sherman Act set forth in the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the compliant including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting that inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive

[1] 119 Cong. Rec. 24598 (1973); *see also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in 1974 U.S. C.C.A.N. 6535, 6538.

impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Case ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981); *see also, Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *'within the reaches of the public interest.'* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[3]

VIII. Determinative Materials and Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: _____.

Respectfully submitted,

Jill A. Ptacek

J. Richard Doidge,

Attorneys, Transportation, Energy, and U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 325 7th Street, Suite 500, Washington, D.C. 20530, (202) 307–6351.

APPENDIX A

[Bids for Lancaster-F, Salisbury-F, and Toledo-F in rounds 167 through 172]

Round	Lancaster-F (BTA #240)	Salisbury-F (BTA #398)	Toledo-F (BTA #444)
166	[Standing high bidder as of round 47—NextWave].	[Standing high bidder as of round 11—Omnipoint].	[Standing high bidder as of round 146—NextWave].
167		NextWave 51,000	
168			Omnipoint 1,251,015.
169			NextWave 1,377,001.
170	Omnipoint 513,444	Omnipoint 67,444	Omnipoint 1,515,002.
	Omnipoint Withdrawal	Omnipoint Withdrawal	
171	NextWave 514,000	NextWave 68,000	
	Omnipoint 512,444	Omnipoint 66,444	
172 and thereafter	No further bids	No further bids	No further bids.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceeding, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

5. The parties request that the Court acknowledge the terms of this Stipulation by entering the Order in this Stipulation and Order.

Respectfully submitted,

For Plaintiff United States of America:

Jill A. Ptacek

J. Richard Doidge,

Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307–0468.

For Defendant Mercury PCS II, L.L.C.:

Charles A. James, Esq.,

Jones, Day, Reavis & Pogue,

Metropolitan Square, 1450 G Street, N.W., Washington, D.C. 20005, (202) 879–3675.

Order

It is *so ordered*, this _____ day of _____, 1998.

_____

United States District Court Judge

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[2] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716; *see also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Complaint, Competitive Impact Statement and proposed Final Judgment to be served on counsel for the defendant in this matter in the manner set forth below:

By first class mail, postage prepaid, and by facsimile:

Charles A. James, Esquire, Jones, Day, Reavis & Pogue, Metropolitan Square, 1450 G Street, Washington, D.C. 20005

Jill Ptacek,

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6607, (202) 616–2441 (Fax).

Final Judgment

Plaintiff, United States of America, filed its Complaint on November 10, 1998. Plaintiff and the Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed,* as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Venue is proper in the District of Columbia. The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. Definitions

As used herein, the term:

(A) "Defendant" means Mercury PCS II, L.L.C., its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, directors, officers, managers, agents, and employees.

(B) "Document" means all "writings and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence.

(C) "FCC" means the Federal Communications Commission.

(D) "License-identifying information" means any number, letter, code or description that designates or identifies a license or that links licenses.

(E) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, public trust, or other legal entity.

III. Applicability

(A) This Final Judgment applies to the Defendant, to its successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV. Prohibited Conduct

The Defendant is enjoined and restrained from:

(A) Entering into any agreement with any other license applicant to fix, establish, suppress or maintain the price for any license to be awarded by the FCC in an auction, or to allocate any such licenses amongst competitors, provided, however, that nothing in this provision shall prohibit the Defendant from participating in any bidding consortium, teaming arrangement or other joint venture authorized under the rules and regulations of the FCC pertaining to future auctions, and disclosed to the FCC.

(B) In the course of any auction conducted pursuant to the rules and regulations of the FCC, offering any price to the FCC for the lease, purchase, or right to use any FCC-awarded license, that includes within that price any license-identifying information, unless the inclusion of such information is required by the FCC.

V. Compliance Program

The Defendant is ordered to maintain an antitrust compliance program, which shall include the following:

(A) Designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the Defendant to ensure that it complies with this Final Judgment.

(B) The Antitrust Compliance Officer shall be responsible for:

(1) Distributing within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to (a) all officers and directors of the Defendant; and (b) to all employees who have any responsibility for formulating, proposing, recommending, establishing, approving, implementing or submitting the Defendant's prices in FCC-conducted license auctions;

(2) Distributing in a timely manner a copy of this Final Judgment to any officer, director or employee who succeeds to a position described in Section V(B)(1);

(3) Obtaining from each present or future officer, director or employee designated in Section V(B)(1), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(4) Maintaining a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VI(B)(3), the certification has been obtained; and

(5) Reporting to the Plaintiff any violation of the Final Judgment.

VI. Certification

Within 75 days after the entry of this Final Judgment, the Defendant shall certify to the Plaintiff whether it has complied with Sections V(B)(1) and (B)(3) above.

VII. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the Defendant's office hours to inspect and copy all documents in the possession or under the control of the Defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Defendant and without restraint or interference from it, to interview officers, employees or agents of the Defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the Defendant's principal office, the Defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final

Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VII shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by Plaintiff to the Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendant is not a party.

VIII. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____.

_____

United States District Judge

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On November 10, 1998, the United States filed a civil antitrust complaint alleging that the defendant, Mercury PCS II, L.L.C. ("Mercury"), had violated Section 1 of the Sherman Act, 15 U.S.C. § 1. Mercury participated in an auction (the "DEF auction") of broadband radio spectrum licenses for personal communications service ("PCS") that was conducted by the Federal Communications Commission ("FCC") between August 1996 and January 1997. The Complaint alleges that during the DEF auction Mercury submitted bids that ended with three-digit numerical codes to communicate with rival bidders and that, through the use of these coded bids, Mercury and one of its rivals reached an agreement to refrain from bidding against one another. As a consequence of this agreement, the complaint alleges Mercury and its competitor paid less for certain PCS licenses, resulting in a loss of revenue of the Treasury of the United States.

On November 10, 1998, the United States and Mercury filed a Stipulation and Order in which they consented to the entry of a proposed Final Judgment that provides the relief that the United States seeks in the Complaint. Under the proposed Final Judgment, Mercury would be enjoined from submitting coded bids in future FCC auctions and entering into any agreement related to bidding for FCC licenses that violates Section 1 of the Sherman Act, 15 U.S.C. § 1.

The United States and Mercury have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce its provisions and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Background of the PCS Auctions

In 1993, Congress enacted legislation enabling the FCC to auction licenses for radio spectrum that could be used to provide PCS. Based on a wireless, digital technology, PCS offers an alternative to current traditional telephone services.

The FCC designated six bands of broadband radio spectrum for PCS: A, B, C, D, E and F. The A, B and C bands occupy 30 MHZ each, while the D, E and F licenses are 10 MHZ each. The FCC divided the country into 51 geographic areas called Market Trading Areas ("MTAs"), which were each allotted A and B licenses. The FCC subdivided the MTAs into 493 smaller geographic units called Basic Trading Areas ("BTAs"), which were each allotted C, D, E, and F licenses. Each BTA was assigned a number from 1 to 493.

The authorizing legislation required the FCC to adopt rules ensuring competitive auctions, and the FCC considered numerous auction formats for PCS, ultimately adopting a simultaneous, multiple-round, open format. Under this format, numerous licenses were offered in a single auction, staged over several rounds, with all licenses remaining open for bidding until the auction closed. Auction participants could observe all of the bidding activity in each round. The auction ended only when a round passed in which no bidder submitted a bid on any license.

To keep the auction moving forward, the FCC imposed eligibility limits and activity rules. The FCC gave each license a population value called "MHZ-pops." Each bidder made down payments to the FCC, with the size of the payment entitling it to bid for a certain amount of MHZ-pops. A participant could bid on any combination of licenses as long as the combined MHZ-pops of those licenses did not exceed the MHZ-pops to which the bidder's down payment entitled it (eligibility). Bidders also had to be "active" in each round (bid or have the high bid from the prior round) on licenses representing a set percentage of their MHZ-pops; otherwise, the FCC reduced their eligibility for the next round. As the auction proceeded, the bidders had to bid an increasing percentage of their MHZ-pops until in the final stages they had to bid nearly all of their eligibility.

Each round in the auction began with a bid submission period during which participants submitted bids electronically or by telephone for any of the licenses in which they were interested. After each bid submission period, the FCC published electronically to all bidders the results for each license, including the name of each company bidding, the amount of each bid, and the time each bid was submitted. The high bidder for a license in a round became the "standing high" bidder for the license with a tie going to the earliest bidder.

A bid withdrawal period then followed. During this period, bidders were permitted to withdraw their standing high bids from any market, subject to a withdrawal penalty specified by the FCC. The FCC then published the results. The bid submission and withdrawal periods comprised an auction round.

At the beginning of an auction, the FCC generally held one round per day. As the auction progressed, the FCC

increased the number of rounds held in a single day, providing a period of time between rounds for auction participants to analyze the bidding from the prior round and to plan for the next round.

One goal of the FCC was to ensure the efficient allocation of licenses, that is, that the licenses would go to the bidders who valued them most highly. The simultaneous, multiple-round format of the PCS auctions helped achieve this goal in several ways. It allowed bidders to pursue different license aggregation strategies and change their strategies as the auction proceeded. In addition, it allowed auction participants to observe the value that other bidders placed on the licenses and use that information to refine their own assessment of license values. This was particularly useful given that the technology used for PCS was new and bidders were uncertain about both the costs of providing the services and the prospective revenues. Ultimately, because the licenses were awarded to the highest bidders, the PCS auction format allowed the marketplace to determine the most efficient allocation of licenses.

Notwithstanding these benefits of the auction format, the FCC recognized the risk that "collusive conduct by bidders prior to or during the auction process could undermine the competitiveness of the bidding process." Second Report and Order, FCC 94–61, ¶ 223 (Rel. April 20, 1994). The FCC sought to mitigate the risk of collusion by adopting rules restricting the disclosure of bidding strategies during the auction. The FCC noted, however, that Federal antitrust laws applied to the auctions and it would rely primarily on those laws to deter and punish collusion in the auctions. Second Report and Order , *supra* at ¶ 225; Second Memorandum Opinion and Order, FCC 94–215, ¶ 50 (Rel. August 15, 1994).

B. Illegal Agreement To Allocate Licenses in the DEF Auction

The auction of the D, E and F licenses for all 493 BTAs began in August 1996. Because there were three bands being auctioned, the DEF auction involved a total of 1479 licenses. Lasting 276 rounds, the auction ended in January 1997.

Prior to the DEF auction, bidders analyzed which licenses (or groups of licenses) would best enable them to provide effective and competitive service, assessed the value they placed on those licenses, and developed strategies to obtain the desired licenses for the lowest possible prices. The bidders also speculated about their rivals' business strategies and attempted to identify the key licenses for those strategies, relying on an array of information, including knowledge of the licenses bidders had acquired in prior auctions.

As the auction proceeded, bidders carefully observed their rivals' actions and often adjusted their own market valuations and business strategies, sometimes based on their assessment of their rivals' objectives. Their rivals' bids, however, did not necessarily reveal their true objectives. An auction participant might bid for a particular license during a particular round for a number of reasons: It may have always wanted the license, but for strategic reasons refrained from bidding until then; it may have changed its business strategy and decided that it now wanted the license; it may have seen an opportunity to acquire an undervalued license; it may have bid simply to preserve its eligibility to bid on other licenses later in the auction; it may have bid to raise a rival's cost to obtain the license; or it may have bid to send a message to the standing high bidder to refrain from bidding against it for a different license. Thus, the purpose of a particular bid might be procompetitive or anticompetitive.

A bidder's purpose in making a bid might, depending on the circumstances, be ambiguous to its rivals. Where ambiguity remains, it can be difficult to use a bid or bidding pattern alone to send clear messages or invitations to collude. To eliminate or reduce any ambiguity, Mercury sometimes placed bids during the DEF auction in which the final three digits intentionally corresponded to the number for a BTA (a "BTA end code"). Knowing that other bidders could see the bids and hence the BTA end codes, Mercury used the codes to better explain the real purpose of certain bids it made—to reach an agreement with a rival. In particular, Mercury used the BTA end codes to link the bidding of licenses in two (or more) specific BTA markets, highlight the licenses Mercury wanted, and convey to the competing bidders offers to agree with Mercury not to bid against each other for the linked licenses.

Sometimes Mercury placed bids in one market with the BTA end code of another market to send the message: "I'm bidding for this license because you bid for the one I want (indicated by the BTA code) and I'll stop bidding in your market if you stop bidding in mine." Other times, Mercury used the BTA end codes to tell its rival: "If you don't stop bidding for this license, I will bid for the one you want (indicated by the BTA code)."

Mercury's use of the BTA end codes did not serve any legitimate purpose of the auction. Mercury's purpose for using BTA end codes was to send clear and unmistakable invitations to collude to rival bidders and to reach agreements with those rivals to refrain from bidding against each other. Such conduct was not authorized by the applicable FCC rules and was inconsistent with the FCC's goal to encourage competitive bidding.

Over the course of rounds 117 to 127, Mercury reached an agreement with High Plains Wireless, L.P. ("High Plains") to allocate between them the F-band licenses for Amarillo (BTA 013) and Lubbock (BTA #264). Mercury agreed to stop bidding for the Amarillo-F license in exchange for High Plains' agreement not to bid for the Lubbock-F license. (The bidding for the Lubbock-F and Amarillo-F licenses between rounds 114 and 127 is depicted in the table attached as appendix A to this Competitive Impact Statement.)

Prior to round 114, High Plains, Mercury and a third bidder were bidding for the Lubbock-F license. After the third bidder failed to bid for Lubbock-F in rounds 114 through 116, Mercury sought to strike an agreement with the only remaining active bidder on the license—High Plains. In round 117, Mercury attached the Amarillo BTA end code ("013") to its bid for the Lubbock-F license. By using the BTA end code in round 117, Mercury intended to communicate to High Plains that the bidding for these two licenses was linked and that Mercury would begin bidding for Amarillo-F if High Plains did not stop bidding for Lubbock-F.

Mercury believed that Amarillo was an important license for High Plains. High Plains had placed bids for the Amarillo license in the C auction and had been the standing high bidder for the Amarillo-F license since round 68.

After High Plains continued to bid for Lubbock-F, Mercury placed a bid in round 121 for the Amarillo-F license that ended with the Lubbock BTA end-code ("264"). Mercury's purpose for using the BTA end code was to link the two licenses, highlight the bid as retaliatory, and communicate an offer to stop bidding for Amarillo-F if High Plains stopped bidding for Lubbock-F. Mercury repeated its offer in subsequent rounds by ending its bids in Lubbock-F and Amarillo-F with BTA end codes. In round 128, High Plains accepted Mercury's offer and stopped bidding for Lubbock-F, even though High Plains had been willing to pay more for the Lubbock-F license. (Lying on the southern border of the Amarillo BTA, the Lubbock BTA presented a natural expansion territory for High Plains.)

Observing that High Plains had stopped bidding for Lubbock-F, Mercury stopped bidding for Amarillo-F.

As a consequence of Mercury's agreement with High Plains, competition for the Lubbock-F license was suppressed and the Treasury received less revenue for the Lubbock-F license. It was in High Plains' economic self-interest to bid more for the Lubbock-F license than Mercury's winning bid and, but for the illegal agreement, it would have done so.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to ensure that Mercury does not enter into anticompetitive agreements when participating in future FCC auctions. The decree supplements any prohibitions on bidding conduct set forth in the FCC's auction rules, and the defendant may violate the decree even if its conduct does not violate an agency statute or rule.

The proposed Final Judgment would enjoin Mercury from entering into an agreement with another license applicant to fix, establish, suppress or maintain the price of a license to be awarded by the FCC or to allocate any such licenses among competitors (Section IV(A)). The proposed Final Judgment would not prevent Mercury from entering into any joint-venture or similar agreements regarding licenses to be awarded by the FCC that are both disclosed to the FCC and authorized under the FCC's rules and regulations. (Section IV(A)). However, such bidding arrangements would still be subject to scrutiny under the antitrust laws.

The proposed Final Judgment would also prevent Mercury from using BTA end codes or any similar signaling mechanism to solicit anticompetitive agreements in future FCC auctions. The proposed Final Judgment would enjoin Mercury from submitting bids that contain "license-identifying information" in future FCC auctions, unless the inclusion of such information is required by the FCC (Section IV(B)). License-identifying information is defined as "any number, letter, code or description that designates or identifies a license or that links licenses." (Section II(D)).

The proposed Final Judgment would further require Mercury to establish and maintain an antitrust compliance program (Section V). It would also provide that the United States may obtain information from Mercury concerning possible violations of the Final Judgment (Section VII).

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Mercury. In this case, the injured person is the United States.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Mercury has stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register.** The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The proposed Final Judgment would expire ten (10) years from the date of its entry.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking damages in this case pursuant to Section 4A of the Clayton Act, 15 U.S.C. § 15a. Doing so would likely have required a full trial on the merits against Mercury. In the view of the Department of Justice, such a trial would involve substantial cost and the risk associated with such a trial is not warranted, considering that the proposed Final Judgment provides full injunctive relief for the violations of the Sherman Act set forth in the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." In making that determination, the court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [1] Rather, absent a showing of

[1] 119 Cong. Rec. 24598 (1973); *see also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D.

Continued

corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Case. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F. 2d 660, 666 (9th Cir. 1981): *s ee also, Microsoft*, 56 F.3d 1448 (D.C. Cir 1995). Precedent requires that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *'within the reaches of the public interest.'* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if its falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[3]

VIII. Determinative Materials and Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 10, 1998.

Respectfully submitted,

Jill A. Ptacek,

J. Richard Doidge,

Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 325 7th Street NW., Suite 500, Washington, DC 20530, (202) 307–6351.

APPENDIX A

[Bids for Lubbock-F and Amarillo-F in Rounds 114 through 127]

Round	Lubbock-F (BTA #264)	Amarillo–F (BTA #013)
114	High Plains 1,033,105	[Standing high bidder as of round 68—High Plains].
115	Mercury, 1,032,003	
116	Mercury 1,136,000	
117	High Plains 1,250,100	
118	Mercury 1,375,013	
119	High Plains 1,513,100	
120	Mercury 1,664,000	
121	High Plains 1,830,101	
122		Mercury 1,615,264.
123		High Plains 1,777,101.
124	Mercury 1,922,013	
125	High Plains 2,114,100	
126		Mercury 1,866,264.
127		High Plains 2,053,100.
Round 128 (and thereafter)	Mercury 2,326,013	
	High Plains Never Bids Again	Mercury Never Bids Again.

Stipulation and Order

It is hereby *stipulated* by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedure and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. The defendant shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though they were in full force and effect as an order of the Court.

4. In the event that plaintiff withdraws its consent, as provided in paragraph 2 above, then the parties are

Mass 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v.*Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406, F.Supp. at 716; *see also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *off'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

5. The parties request that the Court acknowledge the terms of this Stipulation by entering the Order in this Stipulation and Order.

Respectfully submitted,

For Plaintiff, United States of America:

Jill A. Ptacek

J. Richard Doidge,

Attorneys, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Washington, D.C. 20004, (202) 307–0468.

For Defendant, 21st Century Bidding Corp.:

Timothy J. O'Rourke, Esq.,

Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036, (202) 776–2716.

Order

It is *so ordered*, this _____ day of _____, 1998.

_____

United States District Court Judge

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Complaint, Competitive Impact Statement and proposed Final Judgment to be served on counsel for the defendant in this matter in the manner set forth below:

By first class mail, postage prepaid, and by facsimile:

Timothy J. O'Rourke, Esquire, Dow, Lohnes & Albertson, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036–6802.

Jill Ptacek,

Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–6607, (202) 616–2441 (Fax).

Final Judgment

Plaintiff, United States of America, filed its Complaint on November 10, 1998. Plaintiff and the Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law. This Final Judgment shall not be evidence against or an admission by any party with respect to any issue of fact or law. Therefore, before the taking of any testimony, without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby *ordered, adjudged, and decreed,* as follows:

I. Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. Venue is proper in the District of Columbia. The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act, 15 U.S.C. § 1.

II. Definitions

As used herein, the term:

(A) "Defendant" means 21st Century Bidding Corporation, its successors, assigns, subsidiaries, divisions, groups affiliates, partnerships and joint ventures, directors, officers, managers, agents, and employees.

(B) "Document" means all "writings and recordings" as that phrase is defined in Rule 1001(1) of the Federal Rules of Evidence.

(C) "FCC" means the Federal Communications Commission.

(D) "License-identifying information" means any number, letter, code or description that designates or identifies a license or that links licenses.

(E) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, association, institution, governmental unit, public trust, or other legal entity.

III. Applicability

(A) This Final Judgment applies to the Defendant, to its successors, and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of the Final Judgment by personal service or otherwise.

(B) Nothing herein contained shall suggest that any portion of this Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to any third party.

IV. Prohibited Conduct

The Defendant is enjoined and restrained from:

(A) Entering into any agreement with any other license applicant to fix, establish, suppress or maintain the price for any license to be awarded by the FCC in an auction, or to allocate any such licenses amongst competitors, provided, however, that nothing in this provision shall prohibit the Defendant from participating in any bidding consortium, teaming arrangement or other joint venture authorized under the rules and regulations of the FCC pertaining to future auctions, and disclosed to the FCC.

(B) In the course of any auction conducted pursuant to the rules and regulations of the FCC, offering any price to the FCC for the lease, purchase, or right to use any FCC-awarded license, that includes within that price any license-identifying information, unless the inclusion of such information is required by the FCC.

V. Compliance Program

The Defendant is ordered to maintain an antitrust compliance program, which shall include the following:

(A) Designating, within 30 days of entry of this Final Judgment, an Antitrust Compliance Officer with responsibility for accomplishing the antitrust compliance program and with the purpose of achieving compliance with this Final Judgment. The Antitrust Compliance Officer shall, on a continuing basis, supervise the review of the current and proposed activities of the Defendant to ensure that it complies with this Final Judgment.

(B) The Antitrust Compliance Officer shall be responsible for:

(1) Distributing within 60 days of the entry of this Final Judgment, a copy of this Final Judgment to (a) all officers and directors of the Defendant; and (b) to all employees who have any responsibility for formulating, proposing, recommending, establishing, approving, implementing or submitting the Defendant's prices in FCC-conducted license auctions;

(2) Distributing in a timely manner a copy of this Final Judgment to any officer, director or employee who succeeds to a position described in Section V(B)(1);

(3) Obtaining from each present or future officer, director or employee designated in Section V(B)(1), within 60 days of entry of this Final Judgment or of the person's succession to a designated position, a written certification that he or she: (1) has read, understands, and agrees to abide by the terms of this Final Judgment; and (2) has been advised and understands that his or her failure to comply with this Final Judgment may result in conviction for criminal contempt of court;

(4) Maintaining a record of persons to whom the Final Judgment has been distributed and from whom, pursuant to Section VI(B)(3), the certification has been obtained; and

(5) Reporting to the Plaintiff any violation of the Final Judgment.

VI. Certification

Within 75 days after the entry of this Final Judgment, the Defendant shall certify to the Plaintiff whether it has complied with Sections V (B)(1) and (B)(3) above.

VII. Plaintiff Access

(A) To determine or secure compliance with this Final Judgment and for no other purpose, duly authorized representatives of the Plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(1) Access during the Defendant's office hours to inspect and copy all documents in the possession or under the control of the Defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Defendant and without restraint or interference from it, to interview officers, employees or agents of the Defendant, who may have counsel present, regarding such matters.

(B) Upon the written request of the Assistant Attorney General in charge of the Antitrust Division made to the Defendant's principal office, the Defendant shall submit such written reports, under oath if requested, relating to any matters contained in this Final Judgment as may be reasonably requested, subject to any legally recognized privilege.

(C) No information or documents obtained by the means provided in Section VII shall be divulged by the Plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by the Defendant to Plaintiff, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days' notice shall be given by Plaintiff to the Defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendant is not a party.

VIII. Further Elements of the Final Judgment

(A) This Final Judgment shall expire ten years from the date of its entry.

(B) Jurisdiction is retained by this Court for the purpose of enabling the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

(C) Entry of this Final Judgment is in the public interest.

Dated: _____.

_____

United States District Judge

Competitive Impact Statement

The United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of This Proceeding

On November 10, 1998, the United States filed a civil antitrust complaint alleging that the defendant, 21st Century Bidding Corp. ("21st Century"), had violated Section 1 of the Sherman Act, 15 U.S.C. 1. 21st Century participated in an auction (the "DEF auction") of broadband radio spectrum licenses for personal communication services ("PCS") that was conducted by the Federal Communications Commission ("FCC") between August 1996 and January 1997. The Complaint alleges that during the DEF auction 21st Century submitted bids that ended with three-digit numerical codes to communicate with rival bidders and that, through the use of these coded bids, 21st Century and one of its rivals reached an agreement to refrain from bidding against one another. As a consequence of this agreement, the complaint alleges 21st Century and its competitor paid less for certain PCS licenses, resulting in a loss of revenue to the Treasury of the United States.

On November 10, 1998, the United States and 21st Century filed a Stipulation and Order in which they consented to the entry of a proposed Final Judgment that provides the relief that the United States seeks in the Complaint. Under the proposed Final Judgment, 21st Century would be enjoined from submitting coded bids in future FCC auctions and entering into any agreement related to bidding for FCC licenses that violates Section 1 of the Sherman Act, 15 U.S.C. 1.

The United States and 21st Century have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce its provisions and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. Background of the PCS Auctions

In 1993, Congress enacted legislation enabling the FCC to auction licenses for radio spectrum that could be used to provide PCS. Based on a wireless, digital technology, PCS offers an alternative to current traditional telephone services.

The FCC designated six bands of broadband radio spectrum for PCS: A, B, C, D, E and F. The A, B and C bands occupy 30 MHZ each, while the D, E and F licenses are 10 MHZ each. The FCC divided the country into 51 geographic areas called Market Trading Areas ("MTAs"), which were each allotted A and B licenses. The FCC subdivided the MTAs into 493 smaller geographic units called Basic Trading Areas ("BTAs"), which were each allotted C, D, E, and F licenses. Each BTA was assigned a number from 1 to 493.

The authorizing legislation required the FCC to adopt rules ensuring competitive auctions, and the FCC considered numerous auction formats for PCS, ultimately adopting a simultaneous, multiple-round, open format. Under this format, numerous licenses were offered in a single auction, staged over several rounds, with all licenses remaining open for bidding until the auction closed. Auction participants could observe all of the bidding activity in each round. The auction ended only when a round passed in which no bidder submitted a bid on any license.

To keep the auction moving forward, the FCC imposed eligibility limits and activity rules. The FCC gave each license a population value called "MHZ-pops." Each bidder made down payments to the FCC, with the size of the payment entitling it to bid for a certain amount of MHZ-pops. A participant could bid on any combination of licenses as long as the combined MHZ-pops of those licenses did not exceed the MHZ-pops to which the bidder's down payment entitled it (eligibility). Bidders also had to be "active" in each round (bid or have the high bid from the prior round) on licenses representing a set percentage of their MHZ-pops; otherwise, the FCC reduced their eligibility for the next

round. As the auction proceeded, the bidders had to bid an increasing percentage of their MHZ-pops until in the final stages they had to bid nearly all of their eligibility.

Each round in the auction began with a bid submission period during which participants submitted bids electronically or by telephone for any of the licenses in which they were interested. After each bid submission period, the FCC published electronically to all bidders the results for each license, including the name of each company bidding, the amount of each bid, and the time each bid was submitted. The high bidder for a license in a round became the "standing high" bidder for that license with a tie going to the earliest bidder.

A bidder withdrawal period then followed. During this period, bidders were permitted to withdraw their standing high bids from any market, subject to a withdrawal penalty specified by the FCC. The FCC then published the results. The bid submission and withdrawal periods comprised an auction round.

At the beginning of an auction, the FCC generally held one round per day. As the auction progressed, the FCC increased the number of rounds held in a single day, providing a period of time between rounds for auction participants to analyze the bidding from the prior round and to plan for the next round.

One goal of the FCC was to ensure the efficient allocation of licenses, that is, that the licenses would go to the bidders who valued them most highly. The simultaneous, multiple-round format of the PCS auctions helped achieve this goal in several ways. It allowed bidders to pursue different license aggregation strategies and change their strategies as the auction proceeded. In addition, it allowed auction participants to observe the value that other bidders placed on the licenses and use that information to refine their own assessment of license values. This was particularly useful given that the technology used for PCS was new and bidders were uncertain about both the costs of providing the services and the prospective revenues. Ultimately, because the licenses were awarded to the highest bidders, the PCS auction format allowed the marketplace to determine the most efficient allocation of licenses.

Notwithstanding these benefits of the auction format, the FCC recognized the risk that "collusive conduct by bidders prior to or during the auction process could undermine the competitiveness of the bidding process." Second Report and Order, FCC 94–61, ¶ 223 (Rel. April 20, 1994). The FCC sought to mitigate the risk of collusion by adopting rules restricting the disclosure of bidding strategies during the auction. The FCC noted, however, that Federal antitrust laws applied to the auctions and it would rely primarily on those laws to deter and punish collusion in the auctions. Second Report and Order, *supra* at ¶ 225; Second Memorandum Opinion and Order, FCC 94–215, ¶ 50 (Rel. August 15, 1994).

B. Illegal Agreement To Allocate Licenses in the DEF Auction

The auction of the D, E and F licenses for all 493 BTAs began in August 1996. Because there were three bands being auctioned, the DEF auction involved a total of 1,479 licenses. Lasting 276 rounds, the auction ended in January 1997.

Prior to the DEF auction, bidders analyzed which licenses (or groups of licenses) would best enable them to provide effective and competitive service, assessed the value they placed on those licenses, and developed strategies to obtain the desired licenses for the lowest possible prices. The bidders also speculated about their rivals' business strategies and attempted to identify the key licenses for those strategies, relying on an array of information, including knowledge of the licenses bidders had acquired in prior auctions.

As the auction proceeded, bidders carefully observed their rivals' actions and often adjusted their own market valuations and business strategies, sometimes based on their assessment of their rivals' objectives. Their rivals' bids, however, did not necessarily reveal their true objectives. An auction participant might bid for a particular license during a particular round for a number of reasons: it may have always wanted the license, but for strategic reasons refrained from bidding until then; it may have changed its business strategy and decided that it now wanted the license; it may have seen an opportunity to acquire an undervalued license; it may have bid simply to preserve its eligibility to bid on other licenses later in the auction; it may have bid to raise a rival's cost to obtain the license; or it may have bid to send a message to the standing high bidder to refrain from bidding against it for a different license. Thus, the purpose of a particular bid might be procompetitive or anticompetitive.

A bidder's purpose in making a bid might, depending on the circumstances, be ambiguous to its rival. Where ambiguity remains, it can be difficult to use a bid or bidding pattern alone to send clear messages or invitations to collude. To eliminate or reduce any ambiguity, 21st Century sometimes placed bids during the DEF auction in which the final three digits intentionally corresponded to the number for a BTA (a "BTA end code"). Knowing that other bidders could see the bids and hence the BTA end codes, 21st Century used the codes to better explain the real purpose of certain bids it made—to reach an agreement with a rival. In particular, 21st Century used the BTA end codes to link the bidding of licenses in two (or more) specific BTA markets, highlight the license 21st Century wanted, and convey to the competing bidders offers to agree with 21st Century not to bid against each other for the linked licenses. By placing bids in one market with the BTA end code of another market, 21st Century sent the message: "I'm bidding for this license because you bid for the one I want (indicated by the BTA code) and I'll stop bidding in your market if you stop bidding in mine."

21st Century's use of the BTA end codes did not serve any legitimate purpose of the auction. 21st Century's purpose for using BTA end codes was to send clear and unmistakable invitations to collude to rival bidders and to reach agreements with those rivals to refrain from bidding against each other. Such conduct was not authorized by the applicable FCC rules and was inconsistent with the FCC's goal to encourage competitive bidding.

Over the course of rounds 120 to 125, 21st Century reached an agreement with Mercury PCS II, L.L.C. ("Mercury") to allocate between them the F-band licenses for Indianapolis (BTA #204), Baton Rouge (BTA #32), and Biloxi (BTA #42). 21st Century agreed to stop bidding for the Baton Rouge and Biloxi-F licenses in exchange for Mercury's agreement not to bid for the Indianapolis-F license. (The bidding for the Baton Rouge, Biloxi and Indianapolis-F between rounds 120 and 125 is depicted in the table attached as Appendix A to this Competitive Impact Statement.)

Prior to round 120, 21st Century had been bidding for the Indianapolis-F license and had been the high bidder on that license since round 85. On the other hand, Mercury had been bidding consistently for the Baton Rouge and Biloxi-F licenses and was standing high bidder for both licenses. 21st Century had never bid for licenses in Baton Rouge or Biloxi; Mercury had never bid in Indianapolis.

In round 120, Mercury bid for the first time for the Indianapolis-F license. After 21st Century bid back in round 121, Mercury again bid for Indianapolis-

F. In round 123, 21st Century placed bids for the Baton Rouge and Biloxi-F licenses and attached the Indianapolis BTA end code ("204") to these bids. 21st Century's purpose for using the BTA end codes was to link the Baton Rouge, Biloxi and Indianapolis-F licenses, highlight the bids as retaliatory, and communicate an offer to stop bidding for Baton Rouge and Biloxi if Mercury stopped bidding for Indianapolis-F.

21st Century believed that the Baton Rouge and Biloxi licenses were important to Mercury. Mercury had been bidding persistently for these licenses since the start of the auction. In addition, Mercury held a number of licenses from the C block in the vicinity and the Baton Rouge and Biloxi-F licenses were contiguous to several other geographic markets where Mercury was the standing high bidder for the F licenses.

Mercury saw the BTA end code and understood that 21st Century proposed to stop bidding for Baton Rouge and Biloxi in exchange for Mercury ceasing to bid for the Indianapolis-F license. In round 124, Mercury bid back over 21st Century for the Baton Rouge and Biloxi-F licenses, attaching the Indianapolis BTA end code to its bids. Mercury's use of the Indianapolis BTA end code in round 124 confirmed that it understood the link between the three licenses. Mercury accepted 21st Century's offer and stopped bidding for Indianapolis-F even though it was willing to pay more for the Indianapolis-F license. Observing that Mercury had stopped bidding for Indianapolis-F, 21st Century stopped bidding for the Baton Rouge and Biloxi-F licenses.

As a consequence of 21st Century's agreement with Mercury, competition for the Indianapolis-F license was suppressed and the Treasury received less revenue for the Indianapolis-F license. It was Mercury's economic self-interest to bid more for the Indianapolis-F license than 21st Century's winning bid and, but for the illegal agreement, it would have done so.

III. Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to ensure that 21st Century does not enter into anticompetitive agreements when participating in future FCC auctions. The decree supplements any prohibitions on bidding conduct set forth in the FCC's auction rules, and the defendant may violate the decree even if its conduct does not violate an agency statute or rule.

The proposed Final Judgment would enjoin 21st Century from entering into an agreement with another license applicant to fix, establish, suppress or maintain the price of a license to be awarded by the FCC or to allocate any such licenses among competitors (Section IV(A)). The proposed Final Judgment would not prevent 21st Century from entering into any joint-venture or similar agreements regarding licenses to be awarded by the FCC that are both disclosed to the FCC and authorized under the FCC's rules and regulations (Section IV(A)). However, such bidding arrangements would still be subject to scrutiny under the antitrust laws.

The proposed Final Judgment would also prevent 21st Century from using BTA end codes or any similar signaling mechanism to solicit anticompetitive agreements in future FCC auctions. The proposed Final Judgment would enjoin 21st Century from submitting bids that contain "license-identifying information" in future FCC auctions, unless the inclusion of such information is required by the FCC (Section IV(B)). License-identifying information is defined as "any number, letter, code, or description that designates or identifies a license or that links licenses." (Section II (D)).

The proposed Final Judgment would further require 21st Century to establish and maintain an antitrust compliance program (Section V). It would also provide that the United States may obtain information from 21st Century concerning possible violations of the Final Judgment (Section VII).

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 59(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against 21st Century. In this case, the injured person is the United States.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and 21st Century have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment. The proposed Final Judgment would expire ten (10) years from the date of its entry.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking damages in this case pursuant to Section 4A of the Clayton Act, 15 U.S.C. 5a. Doing so would likely have required a full trial on the merits against 21st Century. In the view of the Department of Justice, undertaking the substantial cost and the risk associated with such a trial is not warranted, considering that the proposed Final Judgment provides full injunctive relief for the violations of the Sherman Act set forth in the Complaint.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final

Judgment "is in the public interest." In making that determination, the court may consider:

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment.

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*. 56 F.3d 1448 (D.C. Cir. 1995).

In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process."[1] Rather, absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances. *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Case. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981), *see also, Microsoft, 56 F.3d 1448 (D.C. Cir. 1995). Precedent requires that*

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is *'within the reaches of the public interest.'* More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[2]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted."[3]

VIII. Determinative Materials and Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America.

Dated: November 10, 1998.

Respectfully submitted,

Jill A. Ptacek,

J. Richard Doidge,

Attorneys, U.S. Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, 325 7th Street, Suite 500, Washington, D.C. 20530, (202) 307–6351.

APPENDIX A

[Bids for Baton Rouge-F, Biloxi-F, and Indianapolis-F in rounds 120 through 125]

Round	Baton Rouge-F (BTA #032)	Biloxi-F (BTA #042)	Indianapolis-F (BTA #204)
119	[Standing high bidder as of round 69—Mercury].	[Standing high bidder as of round 96—Mercury].	[Standing high bidder as of round 85—21st Century].
120			Mercury 2,582,000.
121			21st Cent. 2,850,021.
122			Mercury 3,135,123.
123	21st Cent. 3,990,204	21st Cent. 1,650,204	
124	Mercury 4,389,204	Mercury 1,815,204	
125			21st Cent. 3,300,545.
126 and thereafter	No further bids	No further bids	No further bids.

[1] 119 Cong. Rec. 24598 (1973), *See also United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong., 2d Sess. 8–9, reprinted in 1974 U.S.C.C.A.N. 6535, 6538.

[2] *United States* v. *Bechtel*, 648 F.2d at 666 (internal citations omitted) (emphasis added), *see United States* v. *BNS, Inc.*, 858 F.2d at 463, *United States* v. *National Broadcasting Co.*, 449 F.Supp. 1127, 1143 (C.D. Cal 1978) *Gillette*, 406 F. Supp. at 716, *see also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983).

[3] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *affid sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716, *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

[FR Doc. 98–31431 Filed 11–24–98; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

International Competition Policy Advisory Committee (ICPAC); Notice of Meeting

The International Competition Policy Advisory Committee (the "Advisory Committee") will hold its third meeting on December 16, 1998. The Advisory Committee was established by the Department of Justice to provide advice regarding issues relating to international competition policy; specifically, how best to cooperate with foreign authorities to eliminate international anticompetitive cartel agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multijurisdictional mergers, and how best to address issues that interface international trade and competition policy concerns. The meeting will be held at The Carnegie Endowment for International Peace, Root Conference Room, 1779 Massachusetts Avenue, N.W., Washington, D.C. 20036 and will begin at 10:00 a.m. EST and end at approximately 4:00 p.m. The agenda for the meeting will be as follows:

1. Enforcement Cooperation
2. Multijurisdictional Merger Review
3. Trade and Competition Policy Interface Issues
4. Work Program: Next Steps

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contact person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the meeting to the contact person listed below for consideration by the Advisory Committee. All written submissions will be included in the public record of the Advisory Committee. Oral statements from the public will not be solicited or accepted at this meeting. For further information contact: Merit Janow, c/o Eric J. Weiner, U.S. Department of Justice, Antitrust Division, 601 D Street, N.W., Room 10011, Washington, D.C. 20530, Telephone: (202) 616–2578, Facsimile: (202) 514–4508, Electronic mail: icpac.atr@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

[FR Doc. 98–31504 Filed 11–24–98; 8:45 am]
BILLING CODE 4410–11–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–55; Exemption Application No. D–10379, et al.]

Grant of Individual Exemptions; John Taylor Fertilizers Company

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

John Taylor Fertilizers Company, Profit Sharing Plan (the Plan), Sacramento, California

[Prohibited Transaction Exemption 98–55; Exemption Application No. D–10379]

Exemption

The restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of an undivided 16.28% interest (Leasehold Interest) in a certain leasehold of a professional office complex located in Sacramento, California, to John Taylor Fertilizers Company, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(A) All terms of the transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) The sale is a one-time transaction for cash;

(C) The Plan pays no commissions or other expenses relating to the sale;

(D) The purchase price is the greater of: (1) the fair market value of the Leasehold Interest as determined by a qualified, independent appraiser, or (2) the original acquisition cost, plus all costs attributable to holding the Leasehold Interest through the date of the sale; and

(E) The Plan receives rental income due and owing to the Plan through the date of the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on September 16, 1998 at 63 FR 49612.

FOR FURTHER INFORMATION CONTACT: Janet L. Schmidt of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

Toyota Motor Credit Corporation (TMCC) and certain of its Affiliates, Located in Torrance, California

[Prohibited Transaction Exemption No. 98–56; Application No. D–10438]

Exemption

Section I—Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, as of September 1, 1997, to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.A.(1) or (2).

Notwithstanding the foregoing, Section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan, as defined in Section III.K. below, by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[1]

B. The restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply, as of September 1, 1997, to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group, as defined in Section III.L., and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity shall not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that conditions set forth in paragraphs B.(1)(i), (iii), and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to Section I.B.(1) or (2).

C. The restrictions of sections 406(a), (b) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c) of the Code, shall not apply, as of September 1, 1997, to transactions in connection with the servicing, management and operation of a trust, provided;

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement; and

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, Section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act, or from the taxes imposed by reason of section 4975(c) of the Code, for the receipt of a fee by the servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in Section III.S. below.

D. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply, as of September 1, 1997, to any transaction to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider as described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

Section II—General Conditions

A. The relief provided under Section I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as such terms would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Ratings Services, Moody's Investor Service, Inc., Duff & Phelps, Inc., or Fitch IBCA, Inc., or their successors (collectively, the Rating Agencies);

(4) The trustee is not an affiliate of any other member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer

[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3–21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of the Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to or retained by the sponsor pursuant to the assignment of obligations (or interest therein) to the trust represents not more than the fair market value of such obligation (or interest); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the Pooling and Servicing Agreement and reimbursement of the servicer's reasonable expenses in connection therewith;

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933;

(7) To the extent that the pool of leases used to create a portfolio for a trust is not closed on the date of the issuance of certificates by the trust, additional leases may be added during a period of no more than 15 consecutive months from the closing date used for the initial allocation of leases that was made to create such portfolio, provided that:

(a) All such additional leases meet the same terms and conditions for eligibility as the original leases used to create the portfolio (as described in the prospectus or private placement memorandum for such certificates), which terms and conditions have been approved by the Rating Agencies. Notwithstanding the foregoing, the terms and conditions for an "eligible lease" (as defined in Section III.X below) may be changed if such changes receive prior approval either by a majority vote of the outstanding certificateholders or by the Rating Agencies; and

(b) Such additional leases do not result in the certificates receiving a lower credit rating from the Rating Agencies, upon termination of the period during which additional leases may be added to the portfolio, than the rating that was obtained at the time of the initial issuance of the certificates by the trust;

(8) Any additional period described in Section II.A.(7) must be described in the prospectus or private placement memorandum provided to investing plans;

(9) The average annual percentage lease rate (the Average Lease Rate) for the pool of leases in the portfolio for the trust, after the additional period described in Section II.A.(7), shall not be more than 200 basis points greater than the Average Lease Rate for the original pool of leases that was used to create such portfolio for the trust;

(10) For the duration of the additional period described in Section II.A.(7), principal collections that are reinvested in additional leases are first reinvested in the "eligible lease contract" (as defined in Section III.X. below) with the earliest origination date, then in the "eligible lease contract" with the next earliest origination date, and so forth, beginning with any lease contracts that have been reserved specifically for such purposes at the time of the initial allocation of leases to the pool of leases used to create the particular portfolio, but excluding those specific lease contracts reserved for allocation to or allocated to other pools of leases used to create other portfolios;

(11) The trustee of the trust (or the agent with which the trustee contracts to provide trust services) is a substantial financial institution or trust company experienced in trust activities and is familiar with its duties, responsibilities, and liabilities as a fiduciary under the Act. The trustee, as the legal owner of the obligations in the trust, enforces all the rights created in favor of certificateholders of such trust, including employee benefit plans subject to the Act;

(12) The Pooling and Servicing Agreement and other governing documents require that funds collected by the servicer with respect to trust assets be deposited on a monthly basis in a trust account, even though distributions on the certificates may be scheduled to be made less frequently than monthly, and invested in certain highly rated debt instruments known as "permitted investments"; and

(13) The Pooling and Servicing Agreement expressly provides that funds collected by the servicer with respect to trust assets are required to be deposited in a trust account within two business days after such collection, if TMCC's short-term unsecured debt is no longer rated P–1 by Moody's Investors Service and A–1 by Standard & Poor's Ratings Services (or successors thereto), unless such Rating Agencies accept an alternative arrangement.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under Section I, if the provision in Section II.A.(6) above is not satisfied for the acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees shall be required to make a written representation regarding compliance with the condition set forth in Section II.A.(6).

C. Toyota Motor Credit Corporation (TMCC) and its Affiliates abide by all securities and other laws applicable to any offering of interests in securitized assets, such as certificates in a trust as described herein, including those laws relating to disclosure of material litigation, investigations and contingent liabilities.

Section III—Definitions

For purposes of this exemption:

A. "Certificate" means:

(1) A certificate.

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal (except during the period described in Section II.A.(7), if any), interest, and/or other payments made in connection with the assets of such trust; or

(2) A certificate denominated as a debt instrument that is issued by and is an obligation of a trust;

With respect to certificates defined in Section III.A.(1) and (2) above, the underwriter shall be an entity which has received from the Department an individual prohibited transaction exemption relating to certificates which is substantially similar to this exemption (as noted below in Section III.C.) and shall be either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

For purposes of this exemption, references to "certificates representing an interest in a trust" include

certificates denominated as debt which are issued by a trust.

B. "Trust" means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Qualified motor vehicle leases (as defined in Section III.T.); or

(b) Fractional undivided interests in a trust containing assets described in paragraph (a) of this Section III.B.(1), where such fractional interest is not subordinated to any other interest in the same pool of qualified motor vehicle leases held by such trust; [4]

(2) Property which has secured any of the obligations described in Section III.B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to be made to certificateholders, except during the period described in Section II.A.(7) above when temporary investments are made until such cash can be reinvested in additional leases described in paragraph (a) of this Section III.B.(1); and

(4) Rights of the trustee under the Pooling and Servicing Agreement, and rights under motor vehicle dealer agreements, any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements for any obligations described in Section III.B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) the investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest categories by the Rating Agencies for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. "Underwriter" means any investment banking firm that has received an individual prohibited transaction exemption from the Department that provides relief for so-called "asset-backed" securities that is substantially similar in format and structure to this exemption (the Underwriter Exemptions); [5] or any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such investment banking firm; and any member of an underwriting syndicate or selling group of which such firm or person described above is a manager or co-manager with respect to the certificates.

D. "Sponsor" means an entity affiliated with Toyota Motor Corporation that organizes a trust by depositing obligations therein in exchange for certificates.

E. "Master Servicer" means TMCC or an entity affiliated with TMCC that is a party to the Pooling and Servicing Agreement relating to trust assets and is fully responsible for servicing, directly or through subservicers, the assets of the trust.

F. "Subservicer" means TMCC or an entity affiliated with TMCC which, under the supervision of and on behalf of the master servicer, services leases contained in the trust, but is not a party to the Pooling and Servicing Agreement.

G. "Servicer" means TMCC or an entity affiliated with TMCC which services leases contained in the trust, including the master servicer and any subservicer.

H. "Trustee" means an entity that is independent of TMCC and its Affiliates which is the trustee of the trust. In the case of certificates which are denominated as debt instruments, "trustee" also means the trustee of the indenture trust.

I. "Insurer" means the insurer or guarantor of, or provider of other credit support for, a trust. Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust. In addition, a person is not an insurer if such person merely provides: (1) property damage or liability insurance to an Obligor with respect to a lease or leased vehicle; or (2) property damage, excess liability or contingent liability insurance to any lessor, sponsor or servicer, if such entities are included in the same insurance policy, with respect to a lease or leased vehicle.

J. "Obligor" means any person, other than the insurer, that is obligated to make payments for a lease in the trust.

K. "Excluded Plan" means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. "Restricted Group" with respect to a class of certificates means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the trust, determined on the date of the initial issuance of certificates by the trust and at the end of the period described in Section II.A.(7); or

(7) Any Affiliate of a person described in (1)–(6) above.

M. "Affiliate" of another person includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. "Control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person shall be "independent" of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to assets of such person.

P. "Sale" includes the entrance into a forward delivery commitment (as defined in Section III.Q. below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

[4] It is the Department's view that the definition of "Trust" contained in Section III.B. includes a two-tier trust structure under which certificates issued by the first trust, which contains a pool of receivables described above, are transferred to a second trust which issues certificates that are sold to plans. However, the Department is of the further view that, since the exemption provides relief for the direct or indirect acquisition or disposition of certificates that are not subordinated, no relief would be available if the certificates held by the second trust were subordinated to the rights and interests evidenced by other certificates issued by the first trust.

[5] For a listing of the Underwriter Exemptions, see the description provided in the text of the operative language of Prohibited Transaction Exemption (PTE) 97–34 (62 FR 39021, July 21, 1997).

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. "Forward Delivery Commitment" means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. "Reasonable Compensation" has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. "Qualified Administrative Fee" means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing for the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the trust shall not be reduced by the amount of any such fee waived by the servicer.

T. "Qualified Motor Vehicle Lease" means a lease of a motor vehicle where:

(1) The trust owns or holds a security interest in the lease;

(2) The trust owns or holds a security interest in the leased motor vehicle; and

(3) The trust's interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

U. "Pooling and Servicing Agreement" means, collectively, (i) the securitization trust agreement between a sponsor and the trustee establishing a trust, (ii) the trust and servicing agreement relating to an origination trust and the servicing supplement thereto, and (iii) the supplemental agreement establishing a beneficial interest in certain specified origination trust assets (referred to herein as a "special unit of beneficial interest" or "SUBI"). In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

V. "Lease Rate" means an implicit rate in each lease calculated as an annual percentage rate on a constant yield basis, based on the capitalized cost of the leased vehicle as determined under the particular lease contract for the vehicle. With respect to the determination of a "Lease Rate", each lease will provide for equal monthly payments such that at the end of the lease contract term the capitalized cost will have been amortized to an amount equal to the residual value of the leased vehicle established at the time of origination of such contract. The amount to which the capitalized cost has been amortized at any point in time will be the outstanding principal balance for the lease.

W. "Average Lease Rate" means the average annual percentage lease rate, as defined in Section III.V. above, for all leases included at any particular time in a portfolio used to create a trust from which certificates are issued.

X. "Eligible Lease" or "Eligible Lease Contract" means a Qualified Motor Vehicle Lease, as defined in Section III.T. above, which meets the eligibility criteria established for, among other things, the term of the lease, place of origination, date of origination, and provisions for default, as described in the particular prospectus or private placement memorandum for the certificates provided to investors, if such terms and conditions have been approved by the Rating Agencies prior to the issuance of such certificates.

Y. "Permitted Investments" means investments which: (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States; or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; or (iii) consist of interests in money market mutual funds that are registered investment companies under the Investment Company Act of 1940, which are managed by parties independent of the Sponsor or Servicer, and which invest in securities described in item (i) above or highly rated short-term securities of the type described in item (ii) above, or which are of comparable credit quality to securities having such ratings; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

The Department notes that this exemption is included within the meaning of the term "Underwriter Exemption" as it is defined in Section V(h) of the Grant of the Class Exemption for Certain Transactions Involving Insurance Company General Accounts, which was published in the **Federal Register** on July 12, 1995 (see PTE 95–60, 60 FR 35925).

EFFECTIVE DATE: This exemption is effective for all transactions described herein occurring on or after September 1, 1997.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 8, 1998, at 63 FR 36946.

WRITTEN COMMENTS: The applicant (i.e., TMCC) submitted a written comment on the notice of proposed exemption (the Notice) relating to the proposed definition of "Permitted Investments" contained in Section III.Y.

"Permitted Investments" were defined in the Notice as follows:

> * * * investments which (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States, or (ii) have been rated (or the obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; are described in the pooling and servicing agreement; and are permitted by the Rating Agency.

TMCC's comment states that this definition requires that the securitization trust invest directly in the described investments and not through a mutual fund. TMCC states that it prefers to make such investments through a money market mutual fund designed for institutional investors. TMCC currently uses a mutual fund (Fund) managed by Federated Investors which is called the Prime Obligations Fund. The Fund invests in high quality money market instruments that have an average maturity of 90 days or less and are either rated in the highest short-term rating category by one or more of the Rating Agencies or are of comparable quality to securities having such ratings.

TMCC believes that a mutual fund investing in short-term high quality money market investments should be specifically included as a "permitted investment" for purposes of the exemption. Therefore, TMCC requests that the definition in Section III.Y. of the Notice be revised as follows:

> "Permitted Investments" means investments which: (i) are direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by, the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States; or (ii) have been rated (or the obligor has been rated) in one

of the three highest generic rating categories by a Rating Agency; *or (iii) consist of interests in money market mutual funds which are registered investment companies under the Investment Company Act of 1940, which are managed by parties independent of the Sponsor or Servicer, and which invest in securities described in item (i) above or highly rated short-term securities of the type described in item (ii) above, or which are of comparable credit quality to securities having such ratings;* are described in the pooling and servicing agreement; and are permitted by the Rating Agency. [emphasis added]

The Department agrees with the proposed revision of the definition and has so revised the language of Section III.Y. of the exemption.

The Department received no other written comments, nor any requests for a hearing.

Accordingly, the Department has determined to grant the exemption as modified.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of November, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–31510 Filed 11–24–98; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10372, et al.]

Proposed Exemptions; Keystone Financial, Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Keystone Financial, Inc., and Certain of Its Affiliates (Keystone), Located in Harrisburg, Pennsylvania

[Application Nos. D–10372]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

Section I—Proposed Exemption for In-Kind Transfers of CIF Assets

If the exemption is granted, the restrictions of section 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the past in-kind transfers of assets of various employee benefit plans for which Keystone served as a fiduciary (the Client Plans), that

were held in certain collective investment funds (CIFs) maintained by Keystone, in exchange for shares of the KeyPremier Funds (the Funds), an open-ended investment company registered under the Investment Company Act of 1940 (the ICA), for which Keystone is an investment adviser and may provide other services (i.e., Secondary Services, as defined below in Section II(h)), which occurred on December 2, 1996, February 3, 1997 and July 1, 1997,[1] provided that the following conditions were met:

(a) A fiduciary (the Second Fiduciary) who was acting on behalf of each affected Client Plan and who was independent of and unrelated to Keystone, as defined in Section II(g) below, received advance written notice of the in-kind transfer of assets of the CIFs in exchange for shares of the Fund and the disclosures described in paragraph (c) below.

(b) On the basis of the information described in paragraph (c) below, the Second Fiduciary provided prior written authorization for the in-kind transfer of the Client Plan's CIF assets in exchange for shares of the Funds, the investment of such assets in corresponding portfolios of the Funds, and the fees to be received by Keystone in connection with its services to the Fund. Such authorization by the Second Fiduciary must have been consistent with the responsibilities, obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act.

(c) The Second Fiduciary who was acting on behalf of a Client Plan received in advance of the investment by the Plan in any of the Funds, a full and detailed written disclosure of information concerning the Funds which included, but was not limited to:

(1) A current prospectus for each portfolio of each of the Funds in which such Client Plan was considering investing;

(2) A statement describing the fees for investment management, investment advisory, or other similar services, and any fees for Secondary Services, as defined in Section II(h) below, including the nature and extent of any differential between the rates of such fees;

(3) The reasons why Keystone considered such investments to be appropriate for the Client Plan; and

(4) A statement describing whether there were any limitations applicable to Keystone with respect to which assets of the Client Plan may be invested in the Funds, and, if so, the nature of such limitations.

(d) For each Client Plan, the combined total of all fees received by Keystone for the provision of services to the Client Plan, and in connection with the provision of services to any of the Funds in which the Client Plans invested, was not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(e) Neither Keystone nor an Affiliate received any fees payable pursuant to Rule 12b–1 under the ICA (the 12b–1 Fees) in connection with the transactions.

(f) All dealings between the Client Plans and any of the Funds were on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

(g) No sales commissions were paid by the Client Plans in connection with the in-kind transfers of CIF assets in exchange for shares of the Funds.

(h) The transferred assets constituted the Client Plan's pro rata portion of all assets that were held by the CIF immediately prior to the transfer.

(i) Following the termination of each CIF, each Client Plan received shares of the Funds that had a total net asset value equal to the Client Plan's pro rata share of the assets of the CIFs that were exchanged for such Fund shares on the date of transfer.

(j) With respect to each in-kind transfer of CIF assets to a Fund, each Client Plan received shares of the Fund which had a total net asset value that was equal to the value of the Plan's pro rata share of the assets of the corresponding CIF on the date of the transfer, based on the current market value of the CIF's assets, as determined in a single valuation performed in the same manner as of the close of the same business day with respect to all such Plans participating in the transaction on such day, using independent sources in accordance with the procedures set forth by the Securities and Exchange Commission (SEC) Rule 17a–7(b) under the ICA (Rule 17a–7) for the valuation of such assets. Such procedures must have required that all securities for which a current market price was not obtained by reference to the last sale price for transactions reported on a recognized securities exchange or NASDAQ[2] were to be valued based on an average of the highest current independent bid and lowest current independent offer, as of the close of business on the last business day prior to the in-kind transfers, determined on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of Keystone.

(k) Not later than thirty (30) days after completion of each in-kind transfer of CIF assets in exchange for shares of the Funds which occurred on December 2, 1996, February 3, 1997, and July 1, 1997, Keystone sent by regular mail to the Second Fiduciary, a written confirmation which contained:

(i) The identity of each of the assets that was valued for purposes of the transaction in accordance with SEC Rule 17a–7(b)(4) under the ICA;

(ii) The price of each of the assets involved in the transaction; and

(iii) The identity of each pricing service or market maker consulted in determining the value of such assets.

(l) For each in-kind transfer of CIF assets, Keystone sent by regular mail to the Second Fiduciary, no later than one-hundred and twenty (120) days after completion of the asset transfer made in exchange for shares of the Funds,[3] a written confirmation which contained:

(1) The number of CIF units held by each affected Client Plan immediately before the in-kind transfer, the related per unit value, and the aggregate dollar value of the units transferred; and

(2) The number of shares in the Funds that were held by each affected Client Plan immediately following the in-kind transfer, the related per share net asset value, and the aggregate dollar value of the shares received.

(m) Keystone maintains for a period of six (6) years the records necessary to enable the persons, as described in paragraph (n) below, to determine whether the conditions of the exemption have been, except that:

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Keystone, the records are lost or

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[1] In this regard, Keystone represents that any further in-kind transfers of CIF assets to the Funds will comply with the conditions of Prohibited Transaction Exemption (PTE) 97–41 (62 FR 42830, August 8, 1997.) PTE 97–41 permits the purchase by an employee benefit plan (i.e. a Client Plan) of shares of one or more open-end management investment companies (i.e mutual funds) registered under the ICA, in exchange for assets of the Client Plan transferred in-kind to the mutual fund from a collective investment fund (i.e. a CIF) maintained by a bank or a plan adviser, where the bank or plan adviser is the investment adviser to the mutual fund and also a fiduciary to the Client Plan, if the conditions of the exemption are met. However, as noted further below, Keystone distributed written confirmation to the Client Plans regarding the in-kind transfer of CIF assets made to the Funds within 120 days, rather than within the 105-day period required by Section I(g) of PTE 97–41. Thus, an individual exemption to cover these specific CIF conversions is necessary to provide the appropriate retroactive relief.

[2] The National Association of Securities Dealers Automated Quotation Nation Market System.

[3] See Footnote 1 above.

destroyed prior to the end of the six (6) year period, and

(2) No party in interest, other than Keystone, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (n) below.

(n)(1) Except as provided in paragraph (n)(2) and notwithstanding any provisions of Section 504(a)(2) and (b) of the Act, the records referred to in paragraph (n) above are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(ii) Any fiduciary of each of the Client Plans who has authority to acquire or dispose of shares of any of the Funds owned by such Plan, or any duly authorized employee or representative of such fiduciary; and

(iii) Any participant or beneficiary of the Client Plans or duly authorized employee or representative of such participant or beneficiary; and

(2) None of the persons described in paragraph (n)(1)(ii) and (iii) of this Section I shall be authorized to examine trade secrets of Keystone, or commercial or financial information which is privileged or confidential.

Section II—Definitions

For purposes of this proposed exemption,

(a) The term "Keystone" means Keystone Financial, Inc., and affiliates, as defined in Section II(b)(1).

(b) An "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) The term "Fund" or "Funds" means the KeyPremier Funds for which Keystone served as investment adviser, and provided certain "Secondary Services" (as defined paragraph (h) below), for the Funds that were involved in the in-kind transfers of CIF assets which occurred on December 2, 1996, February 3, 1997, and July 1, 1997.

(e) The term "net asset value" means the amount for purposes of pricing all purchases and sales of Fund Shares, as calculated by dividing the value of all securities, determined by a method as set forth in a Fund's prospectus and statement of additional information, and other assets belonging to each of the portfolios in such Fund, less the liabilities charged to each portfolio, by the number of outstanding shares.

(f) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(g) The term "Second Fiduciary" means a fiduciary of a Client Plan who was independent of and unrelated to Keystone at the time of the subject transaction. For purposes of this proposed exemption, the Second Fiduciary will not be deemed to have been independent of and unrelated to Keystone if:

(1) Such Second Fiduciary was directly or indirectly controlled, was controlled by, or was under common control with Keystone;

(2) Such Second Fiduciary, or any officer, director, partner, employee, or relative of such Second Fiduciary was an officer, director, partner, or employee of Keystone (or is a relative of such persons);

(3) Such Second Fiduciary directly or indirectly received any compensation or other consideration for his or her own personal account in connection with any transaction described in this proposed exemption.

With respect to the Client Plans, if an officer, director, partner, or employee of Keystone (or a relative of such persons), was a director of such Second Fiduciary, and if he or she abstained from participation in (i) the choice of the Plan's investment manager/advisor, (ii) the approval of any purchase or sale by the Plan of shares of the Funds, and (iii) the approval of any fees charged to or paid by the Plan, in connection with any of the transactions described in Section I above, then Section II(g)(2) above shall not apply.

(h) The term "Secondary Service" means a service, other than an investment management, investment advisory, or similar service, which was provided by Keystone to the Funds involved in the subject transaction, including but not limited to custodial, accounting, administrative, brokerage or any other service.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 2, 1996, February 3, 1997 and July 1, 1997, for transactions described in Section I.

Summary of Facts and Representations

1. *Keystone.* Keystone Financial, Inc., is a bank holding company with its principal offices in Harrisburg, Pennsylvania. Keystone's subsidiaries include Mid-State Bank and Trust Company, Northern Central Bank and Trust Company, and Martindale Andres & Company, Inc. (collectively, Keystone). Keystone provides trust and banking services to individuals, corporations, and institutions, both nationally and internationally. Keystone serves as trustee, investment manager, and/or custodian to the Plans described below and as an investment adviser to certain of the Funds. As of August 31, 1996, Keystone had total assets under management of approximately $754 million.

Other Affiliates of Keystone including Mid-State Bank and Trust Company, and Pennsylvania National Bank and Trust Company, Inc., may offer shares of the Funds to their fiduciary customers. However, these Affiliates did not have Client Plan assets or any other customer assets invested in the CIFs that were involved in the subject in-kind transfer of assets to the Funds which occurred on December 2, 1996, February 3, 1997 and July 1, 1997.

2. *The Client Plans.* The Client Plans were retirement plans qualified under section 401(a) of the Code for which Keystone served as a trustee or investment manager. The Client Plans were considered "pension plans" under section 3(2) of the Act. The Client Plans covered by this proposed exemption were those Plans invested in the subject CIFs at the time of each in-kind transfer of CIF assets to the Funds. The Client Plans participated in the conversion of the CIFs to the Funds based solely upon the decisions made in each case by a Plan fiduciary independent of Keystone (collectively, the Second Fiduciaries). In addition to the Client Plans, the CIFs also held assets of two qualified retirement plans sponsored by Keystone (collectively, the Bank Plans), which participated in the subject CIF asset transfer to the Funds. The Bank Plans were:

(i) The Keystone Financial Pension Plan (the Keystone DB Plan); and

(ii) The Keystone Financial 401(k) Plan (the Keystone DC Plan).

However, as discussed further below, the Bank Plans are not included in the relief that would be provided by this proposed exemption.

3. *The CIFs.* The CIFs comprised certain individual portfolios of the Client Plans and the Bank Plans.

Specifically, the CIFs were: (i) the Employee Benefit Intermediate Term Income Fund (Intermediate Term Income Fund); (ii) the Employee Benefit Core Equity Fund (Core Equity Fund); (iii) the Employee Benefit Growth Equity Fund (Growth Equity Fund); and (iv) the Short-Term Income Fund (Short Term Fund).

As a result of the transfer of CIF assets to the Funds, each of these CIFs have been terminated and the assets are now held in one of the corresponding Funds described below. These Funds are: (i) the KeyPremier Intermediate Term Income Fund ("Intermediate Income"); (ii) the KeyPremier Established Growth Fund ("Growth Fund"); and (iii) the KeyPremier Aggressive Growth Fund ("Aggressive Growth"); (iv) the KeyPremier Limited Duration Fund ("Limited Duration Fund"). The applicant states that each CIF's assets were transferred to a new Fund that had investment objectives corresponding directly to the investment objectives of the terminating CIF.

The following table shows which particular CIF assets were transferred to which particular Fund.

CIF	Corresponding fund portfolio
Intermediate Term	KeyPremier. Intermediate Term. Income Fund.
Core Equity Fund	KeyPremier. Established Growth. Fund.
Growth Equity Fund ..	KeyPremier. Aggressive Growth. Fund.
Short Term Income ...	KeyPremier Limited. Duration Government. Bond Fund.

4. *The Funds.* The Funds are all part of the KeyPremier Funds of the Session Group (collectively referred to as the "Trust"), an open-end investment company registered under the ICA. The Trust is comprised of a series of Funds (each a "Fund"). Each Fund is a separate investment portfolio available to the Client Plans, as well as certain other investors. Keystone also performs certain Secondary Services for the Funds, including co-administration and shareholder services, for which it receives fees.

Martindale Andres & Company, Inc. (Martindale), a wholly-owned subsidiary of Keystone, serves as investment advisor to the Funds.

Various parties unrelated to Keystone also provide Secondary Services to the Funds, including custodial, transfer agent, recordkeeping, and other non-advisory services.

Description of the Transactions

5. Keystone represents that the CIFs in which the Client Plans invested were maintained in accordance with the laws that apply to collective investment trusts. Keystone decided to terminate the CIFs and offer to the Client Plans participating therein shares of the corresponding Funds as alternative investments. Because interests in a CIF generally must be liquidated or withdrawn to effect distributions, Keystone believed that the interests of the Client Plans invested in the CIFs would be better served by investment in shares of the Funds which could be distributed in-kind. Keystone also believed that the Funds offered the Client Plans advantages over the CIFs as pooled investment vehicles. For example, as shareholders of the Funds, the Client Plans have opportunities to exercise voting and other shareholder rights. In addition, Client Plans can benefit from lower fees, daily valuation available with the Funds as well as more investment information.

The Plans, as Fund shareholders, periodically receive certain disclosures concerning the Funds. Such information includes: (i) a copy of the Fund prospectus, which is updated at least annually; (ii) an annual report containing audited financial statements of the Funds and information regarding such Funds' investment performance; and (iii) a semi-annual report containing unaudited financial statements. With respect to the Client Plans, Keystone reports all transactions in shares of the Funds in periodic account statements provided to each Client Plan. Further, Keystone maintains that the net asset value of the portfolios of the Funds can be monitored daily from information available in newspapers of general circulation.

Keystone states that the transfers in-kind of the CIF assets in exchange for Fund shares were ministerial transactions which were performed in accordance with pre-established objective procedures which were approved by the Board of Trustees of each Fund. Such procedures required that assets transferred to a Fund: (i) must be consistent with the investment objectives, policies, and restrictions of the Fund; (ii) must be marketable securities; (iii) must satisfy the applicable requirements of the ICA and the Code; and (iv) must have a readily ascertainable market value. Prior to entering into an in-kind transfer, a Second Fiduciary of each affected Client Plan received certain disclosures from Keystone and approved the transaction in writing.

6. *The Conversion Transactions.* Keystone specifically requests a retroactive exemption for the in-kind transfers of CIF assets to certain corresponding Funds which have already occurred with respect to Client Plans. With respect to the Bank Plans, Keystone states that the in-kind transfer of CIF assets to the Funds representing the interest held by the Bank Plans in such CIFs met the conditions of Prohibited Transaction Exemption (PTE) 77–3 (42 FR 18734, April 8, 1977).[4]

The in-kind transfers of assets with respect to the CIFs occurred on December 2, 1996, February 3, 1998, and July 1, 1997, respectively (the CIF Conversions). Each was a complete termination of the assets held in the CIFs by the Client Plans that elected to participate in the CIF Conversions. No brokerage commissions, fees or expenses (other than customary transfer charges paid to parties other than Keystone) were charged to the Plans or the CIFs in connection with the in-kind transfers of CIF assets to the Funds in exchange for shares of the Funds.

Each in-kind transfer of the assets of each of the CIFs was completed in a single transaction on a single day. In each case, the in-kind transfer transactions were accomplished by

[4] The Department is expressing no opinion as to whether the terms and conditions of PTE 77–3 were met with respect to the conversion of the Bank Plans' pro rata share of CIF assets to the Funds.

In this regard, Keystone filed a request for exemptive relief on October 23, 1996, which included the in-kind transfer of assets of the Bank Plans held in CIFs that were exchanged for shares of the Funds. However, on July 30, 1998, the Department issued Advisory Opinion 98–06 (A.O. 98–6). A.O. 98–06 states that PTE 77–3 provides relief for the acquisition of a proprietary mutual fund's shares by an in-house plan (i.e. an employee benefit plan sponsored by the mutual fund's investment adviser or an affiliate of such adviser) in exchange for assets that are transferred from a CIF, if the conditions of that exemption are met. As a result, Keystone withdrew its request for an individual exemption to cover the in-kind transfer of CIF assets by the Bank Plans.

The Department notes that prior to Keystone's withdrawal of its request for relief to cover the Bank Plans, Keystone retained Wilmington Trust Company (WTC) as a Second Fiduciary for the Bank Plans in connection with the in-kind transfer of CIF assets to the Funds. WTC is a banking corporation with trust powers, organized under the laws of the State of Delaware. As of December 31, 1995, WTC exercised discretionary authority over approximately $29.8 billion of fiduciary assets, including approximately $15.5 billion of benefit plan investors. WTC made the same determination and approval for the Bank Plans' participation in the CIF asset transfers, prior to each transaction, as were made by the Second Fiduciary of each Client Plan. Accordingly, Keystone states that a proportionate share of each CIF's assets representing the interests of the Bank Plans therein was transferred to the corresponding Fund.

transferring from the converting CIF a Client Plan's proportionate share of all of the assets then held by the CIF to the corresponding Fund in exchange for an appropriate number of Fund shares. Once all of a CIF's assets were transferred to a Fund, the CIF was terminated and its assets, then consisting of Fund shares, were distributed in-kind to the Plans participating in the CIFs based on each Plan's pro rata share of the assets of the CIFs on the date of the transaction.

7. *Advance Disclosure/Approval for Client Plans.* Keystone represents that it provided disclosures to each affected Plan in connection with the termination of the particular CIF, summarized the transaction, and complied with all of the provisions of Section I of this proposed exemption. Based on these disclosures, the Second Fiduciary for each affected Client Plan approved in writing the Plan's participation in the CIF Conversion, including the fees that were to be paid by the Funds to Keystone as a result of the CIF Conversion.

8. *Valuation Procedures.* The assets transferred by a CIF to its corresponding Fund consisted entirely of cash and marketable securities. For purposes of a transfer in-kind, the value of the securities in the CIFs were determined based on their market value as of the close of business on the last business date prior to the transfer (the CIF Valuation Date). The values on the CIF Valuation Date were determined using the valuation procedures described in SEC Rule 17a–7 under the ICA. In this regard, the "current market price" for specific types of CIF securities involved in the transaction was determined as follows:

a. If the security was a "reported security" as the term is defined in Rule 11Aa3–1 under the Securities Exchange Act of 1934 (the '34 Act), the last sale price with respect to such security reported in the consolidated transaction reporting system (the Consolidated System) for the CIF Valuation Date; or, if there were no reported transactions in the Consolidated System that day, the average of the highest current independent bid and the lowest current independent offer for such security (reported pursuant to Rule 11Ac1–1 under the '34 Act), as of the close of business on the CIF Valuation Date.

b. If the security was not a reported security, and the principal market for such security was an exchange, then the last sale on such exchange on the CIF Valuation Date or, if there were no reported transactions on such exchange that day, the average of the highest current independent bid and lowest current independent offer on the exchange as of the close of business on the CIF Valuation Date.

c. If the security was not a reported security and was quoted in the NASDAQ system, then the average of the highest current independent bid and lowest current independent offer reported on NASDAQ as of the close of business on the CIF Valuation Date.

d. For all other securities, the average of the highest current independent bid and lowest current independent offer, as of the close of business on the CIF valuation date, determined on the basis of reasonable inquiry. For securities in this category, Keystone obtained quotations from at least three sources that were either broker-dealers or pricing services independent of and unrelated to Keystone and, when more than one valid quotation was available, used the average of the quotations to value the securities, in conformance with interpretations by the SEC and practices under SEC Rule 17a–7.

The securities received by a transferee Fund portfolio were valued by such portfolio for purposes of the transfer in the same manner and as of the same day as such securities were valued by the corresponding transferor CIF. The per share value of the shares of each Fund portfolio issued to the CIFs was based on the corresponding portfolio's then-current net asset value. Thus, the value of a Plan's investment in shares of each Fund was, as of the opening of business on the first business day after the CIF Conversion, equal to the value of such Plan's investment in the CIFs as of the close of business on the last business day prior to the CIF Conversion.

Not later than thirty (30) business days after completion of each in-kind transfer transaction, Keystone sent by regular mail to each affected Client Plan a written statement that included a confirmation of the transaction. Such confirmation contained: (i) the identity of each security that was valued in accordance with SEC Rule 17a–7(b)(4), as described above; (ii) the price of each such security for purposes of the transaction; and (iii) the identity of each pricing service or market-maker consulted in determining the value of such securities.

Not later than one-hundred and twenty (120) days after completion of each in-kind transfer of CIF assets in exchange for shares of the Funds, Keystone mailed to the Client Plans a written confirmation of the number of CIF units held by each affected Client Plan immediately before the CIF Conversion (and the related per unit value and the aggregate dollar value of the units transferred), and the number of shares in the Funds that were held by each affected Plan following the CIF Conversion (and the related per share net asset value and the aggregate dollar value of the shares received). In this regard, Keystone represents that with respect to the CIF Conversions described herein, it was unable to distribute such confirmation to the Client Plans within 105 days, as required by Section I(g) of PTE 97–41. However, for purposes of future CIF Conversions, Keystone represents that it will meet this condition (as required by Section II(g) for transactions which occur after August 8, 1997), as well as the other conditions of PTE 97–41.

Receipt of Fees by Keystone From the Funds

9. Keystone represents that PTE 77–4 (42 FR 18732, April 8, 1977)[5] permits it to receive fees from the Funds which result from investments made by the Client Plans in the Funds, if the conditions of that exemption are met. Section II(c) of PTE 77–4 requires that either: (i) the Client Plan may not pay any investment management, investment advisory, or similar fees for the assets of such Plan invested in shares of a Fund for the entire period of such investment; or (ii) the Client Plan may pay investment management, investment advisory, or similar fees to Keystone based on the total assets of such Plans invested in shares of a Fund from which a credit has been subtracted representing such Plan's pro rata share of such investment advisory fees paid to Keystone by the Fund. Further, Section II(f) of PTE 77–4 requires that the second fiduciary be notified of any change in the rates of fees charged by the Fund and approve in writing the continued holding of shares acquired by the plan prior to such change.

Keystone represents that its fee structure and any future approval of fee increases with respect to investments by the Client Plans in the Funds will comply with PTE 77–4.[6] Accordingly, the Applicant has not requested an individual exemption for the receipt of fees by Keystone from the Funds for

[5] PTE 77–4, in pertinent part, permits the purchase and sale by an employee benefit plan of shares of a registered, open-end investment company when a fiduciary with respect to the plan is also the investment adviser for the investment company, provided that the conditions of the exemption are met.

In addition, PTE 77–3 permits the acquisition or sale of shares of a registered, open-end investment company by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined therein) of such investment adviser or principal underwriter, provided certain conditions are met.

[6] In this regard, the Department is expressing no opinion in this proposed exemption regarding whether any of the transactions with the Funds by Keystone involving either the Bank Plans or the Client Plans met the conditions of PTE 77–3 or PTE 77–4, respectively.

investment management, investment advisory, or similar services provided to the Funds, or for the receipt of fees for any Secondary Services provided by Keystone. Thus, the Department is not providing relief for the receipt of such fees attributable to investment in the Funds by the Client Plans in this proposed exemption.

10. In summary, Keystone represents that the transactions described herein satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Funds provide the Client Plans with a more effective investment vehicle than the CIFs that were maintained by Keystone.

(b) With respect to each in-kind transfer of a Client Plan's CIF assets into a Fund in exchange for Fund shares, a Second Fiduciary for the Client Plan authorized, in writing, such transfer prior to the transaction only after receiving full written disclosure of information concerning the Fund.

(c) Each Client Plan received shares of the Funds, in connection with the in-kind transfer of CIF assets, which had a total net asset value that was equal to the value of the Client Plan's pro rata share of the CIF on the date of the transfer, as determined in a single valuation performed in the same manner and at the close of the business day, using independent sources in accordance with procedures established by the Funds which comply with SEC Rule 17a–7 of the ICA, as amended, for the valuation of such assets.

(d) For all in-kind transfers of CIF assets to a Fund covered by the proposed exemption, Keystone sent to each affected Client Plan written confirmation by regular mail, not later than 30 days after the completion of the transaction, that contained the following information: (1) the identity of each security that was valued for purposes of the transaction in accordance with SEC Rule 17a–7(b)(4) of the ICA; (2) the price of each such security involved in the transaction; and (3) the identity of each pricing service or market maker consulted in determining the value of such securities.

(e) For all in-kind transfers of CIF assets to a Fund, made on behalf of Client Plans, Keystone sent by regular mail, no later than 120 days after completion of each CIF asset transfer, a written confirmation that contained the following information: (1) the number of CIF units held by the Client Plan immediately before the transfer, the related per unit value and the total dollar amount of such CIF units; and (2) the number of shares in the Funds that were held by the Client Plan following the Conversion, the related per share net asset value and the total dollar amount of such shares.

(f) The price paid or received by a Client Plan for shares of the Funds was the net asset value per share at the time of the transaction and was the same price for the Fund shares which was paid or received by any other investor at that time.

(g) The transferred assets constituted the Client Plan's pro rata portion of all assets that were held by the CIF immediately prior to the transfer.

(h) No sales commissions were paid by a Client Plan in connection with the in-kind transfers of CIF assets in exchange for shares of the Funds.

(i) Keystone did not receive any 12b–1 fees in connection with the transactions.

(j) All dealings between the Client Plans and any of the Funds were on a basis no less favorable to such Plans than dealings between the Funds and other shareholders holding the same class of shares as the Client Plans.

Notice to Interested Persons

Notice of the proposed exemption should be given to Client Plans that had investments in the terminating CIFs, including the Second Fiduciaries from whom approval was sought for the in-kind transfer of Client Plan assets to the Funds. Notice will be provided to each Second Fiduciary by first class mail within 30 days following the publication of this notice of pendency of the proposed exemption in the **Federal Register**. The notice should include a copy of this notice of proposed exemption, as published herein, and make interested persons aware of their right to comment or request a hearing on the proposed exemption. Comments and requests for a public hearing must be received by the Department within 60 days of the publication date for this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Schmidt of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Bankers Trust Company (BTC), Located in New York, New York

[Application Nos. D–10592 through D–10594]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to BTC by certain employee benefit plans (the Plans) investing in Hometown America L.L.C. (the LLC) of security interests in the capital commitments of the Plans to the LLC, where BTC is the representative of certain lenders (the Lenders) that will fund a so-called "credit facility" providing loans to the LLC, and the Lenders are parties in interest with respect to the Plans; and (2) the proposed agreements by the Plans to honor capital calls made to the Plans by BTC, in lieu of the LLC's sole managing member, in connection with the Plan's capital commitments to the LLC where such capital calls relate to the security interests in the capital commitments previously granted to BTC; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LLC and to execute such grants and agreements in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; and (c) with respect to Plans that may invest in the LLC in the future, such Plans will have assets of not less than $100 million and not more than 5% of the assets of such Plan will be invested in the LLC.

Summary of Facts and Representations

1. The LLC is a Delaware limited liability company, the sole managing member of which is Hometown America Communities, Inc. (the Manager), a Delaware corporation. The Manager is a separate affiliate of Transwestern Investment Company, L.L.C. (TWIC), a Delaware limited liability company, which is the sponsor of the LLC. The LLC shall have a perpetual existence until it is dissolved, wound up or liquidated in accordance with the agreement dated December 10, 1997 which established its organization and functions (the Agreement). The LLC was formed by the Manager (as sole managing member) and Transwestern Hometown America, L.L.C. (TWHA), an affiliate of TWIC (as non-managing member), with the intent of seeking capital commitments from a limited number of prospective investors who would become members (the Members) of the LLC. There are six current and prospective Members having, in the

aggregate, irrevocable, unconditional capital commitments of at least $100,000,000; and there are four other Members who have contributed property to the LLC.

2. The LLC has been organized to establish an integrated, self-administered and self-managed real estate operating company (see rep. 11, below) to acquire manufactured housing communities. The LLC will make acquisitions and provide property management services. As described in the Private Placement Memorandum, the LLC believes that significant opportunities exist to achieve superior risk-adjusted returns on its investments in excess of 15% over a five-year period. The LLC will identify and commit to all investments within five years of closing (the Investment Period). Strategies to maximize proceeds and create liquidity for the LLC include single asset sales, portfolio transactions, formation and exchange of assets for equity and a public offering for shares of the Manager in which Members will be granted the right to convert their membership interests into shares of the Manager.

3. The LLC may issue a variety of securities in connection with its investment activities, including operating company units, preferred operating company units, convertible preferred operating company units, warrants, options, debt, participating debt, convertible debt and other securities; the LLC may also purchase real estate manufactured housing-related securities, including publicly-traded or private debt or equity instruments. The LLC will distribute to the Members 100% of the LLC's taxable income from operations, dispositions, financing of investments and other events giving rise to distributable proceeds. Until a public offering occurs, Members will have the right (but not an obligation) to reinvest all or any part of any such distributions for an increased interest in the LLC.

4. The Agreement requires each Member to execute a subscription agreement that obligates the Member to make contributions of capital up to a specified maximum. The Agreement requires Members to make capital contributions to fulfill this obligation upon receipt of notice from the Manager. Under the Agreement, the Manager may make calls for cash contributions (Capital Calls) up to the total amount of a Member's capital commitment upon 10 business days' notice, subject to certain limitations. The Members' capital commitments are structured as unconditional, binding commitments to contribute equity when Capital Calls are made by the Manager. In the event of a default by a Member, the LLC may exercise any of a number of specific remedies.

The Members constituting over 90% of the equity interests and their investments in the LLC are:

Name of member	Capital commitment (in millions)
Northwestern Mutual Life Ins. Co.	$20
Public Employees' Ret. Assn. of CO	25
Allstate Life Ins. Co.	25
Ameritech Pension Trust	25
The Manager	1
TWHA	4

5. The applicant states that the LLC will incur indebtedness in connection with many of its investments. In addition to mortgage indebtedness, the LLC will incur short-term indebtedness for the acquisition of particular investments. This indebtedness will take the form of a credit facility (the Credit Facility) secured by, among other things, a pledge and assignment of each Member's capital commitment. This type of facility will allow the LLC to consummate investments quickly without having to finalize the debt/equity structure for an investment or having to arrange for interim or permanent financing prior to making an investment, and will have additional advantages to the Members and the LLC. Under the Agreement, the Manager may encumber Member's capital commitments, including the right to call for capital contributions, to one or more financial institutions as security for the Credit Facility. Each of the Members has appointed the Manager as its attorney-in-fact to execute all documents and instruments of transfer necessary to implement the provisions of the Agreement. In connection with this Credit Facility, each of the Members is required to execute documents customarily required in secured financings, including an agreement to unconditionally honor Capital Calls.

6. BTC will become agent for a group of Lenders providing a $63 million revolving Credit Facility to the LLC. BTC will also be a participating Lender. Some of the Lenders may be parties in interest with respect to some of the Plans that invest in the LLC by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Plans for assets other than the Plans' interests in the LLC. BTC is requesting an exemption to permit the Plans to enter into security agreements with BTC, as the representative of the Lenders, whereby such Plans' capital commitments to the LLC will be used as collateral for loans made by the Credit Facility to the LLC, when such loans are funded by Lenders who are parties in interest to one or more of the Plans.

The Credit Facility will be used to provide immediate funds for real estate acquisitions made by the LLC, as well as for the payment of LLC expenses. Repayments will be secured generally by the LLC from the Members' capital contributions, and Capital Calls on the Members' capital commitments. The Credit Facility is intended to be available until December 11, 2000. The LLC can use its credit under the Credit Facility either by direct or indirect borrowings or by requesting that letters of credit be issued. All Lenders will participate on a pro rata basis with respect to all cash loans and letters of credit up to the maximum of the Lenders' respective commitments. All such loans and letters of credit will be issued to the LLC or an entity in which the LLC owns a direct or indirect interest (a Qualified Borrower), and not to any individual Member. All payments of principal and interest made by the LLC or a Qualified Borrower will be allocated pro rata among all Lenders. The applicant represents that the aggregate capital commitments to be pledged will be at least 1.5 times the maximum amount of the credit available under the Credit Facility.

7. The Credit Facility will be a recourse obligation of the LLC, the repayment of which is secured primarily by the grant of a security interest to BTC, as agent under the Credit Facility for the benefit of the Lenders, from the LLC, in both: (a) the Members' capital commitments and (b) a collateral account (the Borrower Collateral Account) under which the LLC must deposit all Members' capital contributions when paid. In addition, the LLC and the Manager will grant BTC, as agent under the Credit Facility for the benefit of the Lenders, a security interest in: (a) the right to call capital under the Agreement; (b) Capital Call notices; and (c) the Members' capital commitments. The Borrower Collateral Account will be assigned to BTC to secure repayment of the indebtedness incurred under the Credit Facility. BTC has the right to apply any or all funds in the Borrower Collateral Account toward payment of the indebtedness in any manner it may elect. The capital commitments are fully recourse to all the Members and to the Manager. In the event of default under the Credit Facility, the agent (i.e., BTC) has the right to unilaterally make capital calls on the Members to pay their unfunded

capital commitments, and will apply cash received from such capital calls to any outstanding debt.

8. Under the Credit Facility, each Member that is a Plan will execute an acknowledgment (the Estoppel) pursuant to which it acknowledges that the LLC and the Manager have pledged and assigned to BTC, for the benefit of each Lender which may be a party in interest (as defined in Act section 3(14)) of such Member, all of their rights under the Agreement relating to capital commitments and Capital Call notices. The Estoppel will include an acknowledgment and covenant by the Plan that, if an event of default exists, such Plan will unconditionally honor any capital call made by BTC in accordance with the Agreement up to the unfunded capital commitment of such Plan to the LLC.

9. The applicant represents that at the present time the Ameritech Pension Trust (the Ameritech Trust) holds the assets of three defined benefit plans (the Ameritech Plans), which own interests in the LLC. The Ameritech Trust has made a capital commitment of $25 million to the LLC. The applicant states that some of the Lenders may be parties in interest with respect to some of the Ameritech Plans in the Ameritech Trust by virtue of such Lenders' (or their affiliates') provisions of fiduciary services to such Ameritech Plans with respect to Ameritech Trust assets other than their membership interests in the LLC. Thus, BTC states that there is an immediate need for the Ameritech Trust to enter into the Estoppel under the terms and conditions described herein. The total number of participants in the three Ameritech Plans is approximately 108,000, and the approximate fair market value of the total assets of the Ameritech Plans held in the Ameritech Trust as of December 31, 1996 is $12.15 billion.

The applicant represents that the fiduciary of the Ameritech Plans generally responsible for investment decisions in real estate assets which are managed internally could be, depending on the size and type of the investment, the Ameritech Corporation Asset Management Committee, the Chief Investment Officer of Ameritech Corporation, or the Ameritech Corporation Investment Management Department's Real Estate Committee (comprised of the staff real estate professionals and another Investment Management Department director). The fiduciaries responsible for reviewing and authorizing the investments in the LLC under this proposed exemption currently are William M. Stephens, Chief Investment Officer of Ameritech Corporation, and the Ameritech Corporation Investment Management Department's Real Estate Committee.

10. The applicant represents that the Ameritech Plans are currently the only employee benefit plans subject to the Act that are Members of the LLC. However, the applicant states that it is possible that one or more other Plans will become Members of the LLC in the future. Thus, the applicant requests relief for any such Plan under this proposed exemption, provided the Plan meets the standards and conditions set forth herein. In this regard, such Plan must be represented by an independent fiduciary, and the Manager must receive from the Plan one of the following:

(1) A representation letter from the applicable fiduciary with respect to such Plan substantially identical to the representation letter submitted by the fiduciaries of the Ameritech Trust, in which case this proposed exemption, if granted, will apply to the investments made by such Plan if the conditions required herein are met; or

(2) Evidence that such Plan and its responsible fiduciaries are eligible for relief under Prohibited Transaction Exemption 96–23 (PTE 96–23, 61 FR 15975, April 10, 1996), the class exemption for transactions by a plan with certain parties in interest where such plan's assets are managed by an in-house asset manager (INHAM) that has total assets under its management, attributable to plans maintained by its affiliates, in excess of $50 million (see Part IV(a) of PTE 96–23); or

(3) Evidence that such Plan is eligible for another class exemption or has obtained an individual exemption from the Department covering the potential prohibited transactions which are the subject of this proposed exemption.

11. BTC represents that the LLC will obtain an opinion of counsel that the LLC will constitute an "operating company" under the Department's plan asset regulations [see 29 CFR 2510.3–101(c)] if the LLC is operated in accordance with the Agreement and the private placement memorandum distributed in connection with the private placement of the LLC membership interests.[7]

12. BTC represents that the Estoppel constitutes a form of credit security which is customary among financing arrangements for real estate limited partnerships or limited liability companies, wherein the financing institutions do not obtain security interests in the real property assets of the partnership or limited liability companies. BTC also represents that the obligatory execution of the Estoppel by the Members for the benefit of the Lenders was fully disclosed in the Private Placement Memorandum as a requisite condition of investment in the LLC during the private placement of the membership interests. BTC represents that the only direct relationship between any of the Members and any of the Lenders is the execution of the Estoppel. All other aspects of the transaction, including the negotiation of all terms of the Credit Facility, are exclusively between the Lenders and the LLC. BTC represents that the proposed execution of the Estoppel will not affect the abilities of the Trust to withdraw from investment and participation in the LLC. The only Plan assets to be affected by the proposed transactions are any funds which must be contributed to the LLC in accordance with requirements under the Agreement to make Capital Calls to honor a Member's capital commitments.

13. BTC represents that neither it nor any Lender acts or has acted in any fiduciary capacity with respect to the Ameritech Trust's investment in the LLC and that BTC is independent of and unrelated to those fiduciaries (the Ameritech Trust Fiduciaries) responsible for authorizing and overseeing the Ameritech Trust's investments in the LLC. Each Ameritech Trust Fiduciary represents independently that its authorization of Trust investments in the LLC was free of any influence, authority or control by the Lenders. The Ameritech Trust Fiduciaries represent that the Ameritech Trust's investments in and capital commitments to the LLC were made with the knowledge that each Member would be required subsequently to grant a security interest in Capital Calls and capital commitments to the Lenders and to honor requests for cash contributions, also known as "drawdowns", made on behalf of the Lenders without recourse to any defenses against the Manager. Each Ameritech Trust Fiduciary

[7] The Department notes that the term "operating company" as used in the Department's plan asset regulation cited above includes an entity that is considered a "real estate operating company" as described therein (see 29 CFR 2510.3–101(e)). However, the Department expresses no opinion in this proposed exemption regarding whether the LLC would be considered either an operating company or a real estate operating company under such regulations. In this regard, the Department notes that it is providing no relief for either internal transactions involving the operation of the LLC or for transactions involving third parties other than the specific relief proposed herein. In addition, the Department encourages potential Plan investors and their independent fiduciaries to carefully examine all aspects of the LLC's proposed real estate investment program in order to determine whether the requirements of the Department's regulations will be met.

individually represents that it is independent of and unrelated to BTC and the Lenders and that the investment by the Ameritech Trust for which that Ameritech Trust Fiduciary is responsible continues to constitute a favorable investment for the Ameritech Plans participating in that Trust and that the execution of the Estoppel is in the best interests and protective of the participants and beneficiaries of such Ameritech Plans. In the event another Plan proposes to become a Member, the applicant represents that it will require similar representations to be made by such Plan's independent fiduciary. Any Plan proposing to become a Member in the future and needing to avail itself of the exemption proposed herein will have assets of not less than $100 million, and not more than 5% of the assets of such Plan will be invested in the LLC.

14. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) The Ameritech Plans' investments in the LLC were authorized and are overseen by the Ameritech Trust Fiduciaries, which are independent of the Lenders, and other Plan investments in the LLC from other employee benefit plans subject to the Act will be authorized and monitored by independent Plan fiduciaries; (2) None of the Lenders have any influence, authority or control with respect to the Ameritech Trust's investment in the LLC or the Ameritech Trust's execution of the Estoppel; (3) The Ameritech Trust Fiduciaries invested in the LLC on behalf of the Ameritech Plans with the knowledge that the Estoppel is required of all Members investing in the LLC, and all other Plan fiduciaries that invest their Plan's assets in the LLC will be treated the same as other Members are currently treated with regard to the Estoppel; and (4) Any Plan which may invest in the LLC in the future, which needs to avail itself of the exemption proposed herein, will have assets of not less than $100 million, and not more than 5% of the assets of any such Plan will be invested in the LLC.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Toledo Clinic, Inc. Employees 401(k) and Profit Sharing Plan (the T/C Plan); Hart Associates, Inc.; Profit Sharing Plan (the H/A Plan); and Midwest Fluid Power Company, Inc. Savings and Profit Sharing Plan and Trust (the M/F Plan, collectively; the Plans), Located in Toledo, Ohio

[Application Nos. D–10633, D–10634 and D–10635, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the cash sale of certain shares of preferred stock (the Preferred Stock) issued by TTC Holdings Inc. (TTC), by the individually-directed account of Dr. Edward Orrechio in the T/C Plan (the Orrechio Account), by the individually-directed account of Michael Hart in the H/A Plan (the Hart Account), and by the individually-directed account of Larry Peterson in the M/F Plan (the Peterson Account; collectively, the Accounts) to TTC, a party in interest with respect to the H/A Plan and M/F Plan; and (2) the arrangement for the subsequent purchase of certain shares of Common Stock (the Common Stock) issued by TTC by Messrs. Orecchio, Hart and Peterson (collectively; the Participants), in their own name, from TTC pursuant to an agreement with TTC that the purchase will occur immediately after the sale of the Preferred Stock by the Plans to TTC; provided that the following conditions are met:

1. The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants, in their individual capacity, are one-time transactions for cash;

2. The transactions described in (1) above take place on the same business day;

3. The amount paid to the Accounts by TTC is the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale;

4. The Participants, in their individual capacity, purchase from TTC shares of the Common Stock which are equal in number to the shares of Preferred Stock sold by the Accounts to TTC;

5. A qualified independent fiduciary (the Independent Fiduciary) determines that the transactions described herein are in the best interest and protective of the Accounts at the time of the transactions; and

6. The Independent Fiduciary supervises the transactions; assures that the conditions of this proposed exemption are met; and takes whatever actions are necessary to protect the interests of the Accounts, including reviewing amounts paid by TTC for the Preferred Stock.

EFFECTIVE DATE: This exemption, if granted, will be effective as of December 1, 1998.

Summary of Facts and Representations

1. The Plans are profit sharing, defined contribution plans that provide for individually directed accounts.

The T/C Plan is sponsored by the Toledo Clinic, Inc. (the Toledo Clinic), an Ohio corporation with its principal place of business in Toledo, Ohio. The Toledo Clinic is a large consortium of physicians and medical specialists which provide a broad range of health and medical services. Dr. Edward Orrechio (Dr. Orrechio) is a physician employed by the Toledo Clinic.

United Missouri Bank of Kansas City, N.A. is the trustee of the T/C Plan. As of July 1998, the T/C Plan had 490 participants and approximately $79,000,000 in assets. Dr. Orrechio is a participant in the T/C Plan. The Orrechio Account referred to herein is his individually-directed account in the T/C Plan.

2. TTC, the issuer of the Preferred Stock, is an Ohio corporation that was incorporated in April 1990. The Trust Company of Toledo (TTCOT) is a wholly-owned subsidiary of TTC. The applicant represents that TTCOT is a "bank" as that term is defined in Section 202(a)(2) of the Investment Advisers Act of 1940.[8]

[8] The applicant represents that under Section 202(a)(2) of the Investment Advisers Act of 1940, a "Bank" means (A) banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other institution or trust company, whether incorporated or not, doing business under the laws of any State of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the U.S. Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

3. The H/A Plan is sponsored by Hart Associates, Inc. (the Hart Associates), an Ohio corporation in the business of marketing and public relations. Michael Hart (Mr. Hart) is the president and chief executive officer of Hart Associates.

TTCOT became the directed trustee for the H/A Plan effective March 31, 1991. As of July 1998, the H/A Plan had 30 participants and approximately $2,000,000 in assets. Mr. Hart is a participant in the H/A Plan. The Hart Account referred to herein is his individually-directed account in the H/A Plan.

4. The M/F Plan is sponsored by Midwest Fluid Power Company, Inc. (the MFP Company), an Ohio corporation which is a distributor of industrial materials and parts used in fluid power applications in certain industries. Larry Peterson (Mr. Peterson) is the president and chief executive officer of the MFP Company.

As of July 1998, the M/F Plan had 70 participants and approximately $4,800,000 in assets. TTCOT became the directed trustee for the M/F Plan effective July 1, 1993. Mr. Peterson is a participant in the M/F Plan. The Peterson Account referred to herein is his individually-directed account in the M/F Plan.

5. The following table illustrates the percentage of assets of each Account which was represented by the shares of Preferred Stock at the time of original acquisition by the Accounts, and at the time of the sale of such Preferred Stock by the Accounts to TTC. In addition, this table shows the percentage of each Account's assets which was represented by the related debentures (the Debentures, as discussed below) at the time of original acquisition and prior to the sale of the Preferred Stock.

Accounts in the plans	Shares of preferred stock	Cost	Debenture	% assets at orig. purchase	% assets at sale
Orrechio	200	$20,000	$10,000	9.0	6.4
Hart	200	$20,000	10,000	55.5	18.1
Peterson	200	$20,000	10,000	16.5	10.6

6. It is represented that the Participants did not own shares of Preferred Stock as individuals prior to the subject transactions. In addition, the purchasing of shares of the Common Stock by the Participants from TTC did not cause any of the Participants to become majority shareholders of TTC. None of the Participants was or is currently an officer, director, principal or employee of TTC or TTCOT. At the time of original acquisition of the Preferred Stock by the Accounts, neither TTC nor TTCOT was a fiduciary or other party in interest under the Act with respect to the Plans.

Further, it is represented that TTCOT does not have the authority to make investment decisions for any of the Plans to which it acts as directed trustee (i.e., the H/A Plan and the M/F Plan) without written directions from the Participants.

7. TTC had two classes of Stock—the Preferred Stock and the Common Stock. There were 3,531 shares of the Common Stock outstanding prior to the subject transactions, which were owned in equal amounts by Theodore T. Hahn, Julie B. Higgins and David A. Snavely. These individuals are the three founders, principals and partners of TTC.

In addition, there were 20,000 shares of Preferred Stock outstanding prior to the subject transactions, which were held by 65 different shareholders. Among the shareholders of the Preferred Stock were the Orrechio Account in the T/C Plan, the Hart Account in the H/A Plan, and the Peterson Account in the M/F Plan.

8. The Preferred Stock was issued by TTC through a private offering that was made in 1990. The Initial Offering Memorandum (the Memorandum) was prepared on May 31, 1990. The offering allowed an investor to acquire 200 shares of Preferred Stock and a $10,000 subordinated debenture (the Debenture). The Debenture was issued in October 1990, with a due date of December 31, 2000. The Debenture accrued a nine percent (9%) per annum coupon rate, which was payable, along with installments of principal, on a semiannual basis. The Stock and the Debenture were offered to investors as constituent parts of a single offering unit which could not be severed by the investor. The price for each unit was $30,000, of which $20,000 was allocated to the Preferred Stock and $10,000 was allocated to the Debenture. Thus, each of the Accounts paid TTC $30,000 in cash and purchased one unit which consisted of 200 shares of the Preferred Stock and the Debenture, as described above.

Under the information described in the Memorandum, dividends were not expected to be paid on the Preferred Stock, and no dividends were paid on such shares.

It is represented that the Participants were aware of the identity of TTC as the issuer of the Preferred Stock and the Debentures. As a result of the acquisitions of the Preferred Stock, each of the Accounts became a minority shareholder in TTC. No fees or commissions were incurred or paid in connection with the acquisition of the Preferred Stock or the Debenture. No subsequent acquisitions of Preferred Stock or other Debentures were made by the Accounts.

The outstanding principal amount of the Debentures held by the Accounts and other investors will be prepaid by TTC in December 1998, prior to the subject transactions, in accordance with terms of the Debentures. [9]

9. The subject transactions were precipitated by TTC's desire to amend its Articles of Incorporation (the Articles). The amendment of the Articles enabled TTC to change its tax status to a Subchapter "S" corporation in accordance with Section 1362(a) of the Code. The change in tax status will be effective as of January 1, 1999. The Board of Directors of TTC determined that by eliminating its "C" Corporation tax status, TTC could increase the return to its shareholders. Furthermore, the switch by TTC to a Subchapter "S"

[9] The Department notes that the holding of the Debentures by the Plans at any time during which TTCOT was a directed trustee to the Plans would have resulted in a prohibited transaction under section 406(a)(1)(B) of the Act because TTC, the parent corporation of TTCOT, was the issuer of the Debentures. TTCOT, as the directed trustee of the H/A Plan and the M/F Plan, was a party in interest with respect to these Plans under section 3(14)(B) of the Act. Thus, TTC was a party in interest under section 3(14)(H) of the Act as a 10 percent or more shareholder of a person described in section 3(14)(B). However, TTC was not a "disqualified person" under section 4975(e)(2)(H) of the Code because that provision of the Code does not include the parent corporation of a service provider within the definition of that term. As a result, the holding of the Debentures would not constitute a prohibited transaction under section 4975(c)(1)(B) of the Code. In addition, the Department notes that under section 502(i) of the Act, no civil penalty shall apply to a transaction with respect to a plan described under section 4975(e)(1) of the Code. In any event, no relief is being provided herein for the past acquisition and holding of the Debentures.

status under the Code (the Conversion) required the conversion of the outstanding shares of the Preferred Stock into Common Stock.

The applicant states that the Participants and their respective Accounts in the Plans would have suffered adverse federal income tax consequences if they had continued to hold shares of the Preferred Stock in their Accounts after the Conversion. The Participants were informed by TTC that if the Plans continued to hold shares of the Preferred Stock after the Conversion, the Plans would be subject to unrelated business taxable income on all Subchapter "S" distributions, which could have resulted in a loss of each Plan's tax-free status under section 501(a) of the Code.

Accordingly, the Participants concluded that it was in the best interest of their Accounts and of the Plans to dispose of the investment in the Preferred Stock, to avoid the tax liabilities that would be incurred, once TTC becomes a Subchapter "S" corporation.

10. On May 1, 1998, TTC sent certain documents to its shareholders, including the Participants, as a result of their ownership of Preferred Stock and the Debentures in the Accounts. The documents stated that TTC desired to redeem, via cancellation, all shares of the Preferred Stock which were held by any shareholders that would have adverse tax consequences from continued ownership of shares in an "S" corporation after the conversion.

TTC has provided a mechanism whereby eligible shareholders and those who own shares through exempt employee benefit plans (i.e., the Accounts in the Plans) would designate a related party to purchase shares of TTC Stock equal to the number of shares sold by the Accounts in the Plans. Such purchase would be for cash and would be at the same price per share as that paid by TTC for redemption of the Stock.

11. Therefore, the Participants and TTC are requesting relief for the following transactions: (1) the proposed cash sale of shares of the Preferred Stock by the Orrechio Account in the T/C Plan, by the Hart Account in the H/A Plan, and by the Peterson Account in the M/F Plan to TTC; and (2) the arrangement for the subsequent purchase under the above described agreement with TTC of an equal number of shares of the Common Stock by Messrs. Orecchio, Hart and Peterson (i.e., the Participants), in their own name, from TTC immediately after the sale by the Accounts to TTC.

12. The redemption price for the shares of the Preferred Stock was determined by the parties based upon a written valuation dated May 6, 1998, prepared by Austin Financial Services, Inc. (Austin), a consulting firm with experience in the financial services industry. Austin was retained by the Board of Directors of TTC for the purpose of valuing TTC and its shares of Preferred Stock and Common Stock (together, the Stock). In determining fair market value of the Stock, Austin relied on the discounted cash flow method and the capitalization of earnings method. After weighing these two methods, Austin determined that the fair market value of all the outstanding shares of the Stock was approximately $7,263,035. This amount equates to $308.66 per share for each outstanding share of Preferred and Common Stock. Austin's valuation of the Stock was updated at the time of the transaction, but its conclusions for the fair market value of the Stock were unchanged. Therefore, based on the Austin valuation, each Account received a total of $61,732 for its shares of Preferred Stock, as of the date of Conversion.

13. TTC also engaged the law firm of Callister Nebeker & McCullough of Salt Lake City, Utah (CNM) to serve as the Independent Fiduciary for the Plans to review the offer of redemption of the Preferred stock, to render an opinion as to the prudence of the investment decisions relating thereto, and to direct the sale of shares as appropriate. In a report dated April 29, 1998 (the Report), CNM acknowledged its appointment as the Independent Fiduciary for the Plans in connection with TTC's proposed change from a Subchapter "C" corporation to a Subchapter "S" corporation.

As the Independent Fiduciary for the Plans, CNM determined whether the subject transactions, and the actions taken by the Plans in connection with the transactions, were in the best interest of such Plans and the Accounts, in accordance with the requirements of the Act. In this regard, each of the Participants (i.e., Dr. Orrechio, Mr. Hart and Mr. Peterson) made separate determinations that the proposed transactions would be in the best interests of their Accounts. Upon arriving at this conclusion, a determination was made to retain CNM as an independent fiduciary for the Plans in order to ensure that the terms of such transactions, including the appraisal made of the fair market value of the Stock, would be protective of the Plans and the Accounts.

In a supplemental statement dated August 25, 1998 (the Statement), CNM acknowledged its duties as an independent fiduciary for the transactions described herein. CNM represented that it had experience in acting as an independent fiduciary for employee benefit plans. CNM concluded that the subject transactions would be prudent and in the best interest of each of the Accounts. CNM represented that it would ensure, among other things, that the fair market value of the Stock, as determined by Austin, would be updated on the date of the transactions, and that each Account would receive the correct amount of cash for its shares of Preferred Stock. Thus, the Independent Fiduciary supervised the subject transactions to protect the interests of the Plans and the Accounts.

14. The applicant also obtained an opinion regarding the subject transactions from Houlihan Valuation Advisors dated June 16, 1998 (the Fairness Opinion). The Fairness Opinion stated that the Preferred Stock was essentially equivalent to the Common Stock because the Preferred Stock: (i) was convertible at the option of the holder into Common Stock; (ii) had voting privileges identical to the Common Stock; and (iii) paid no preferred dividends. The differences between the Preferred Stock and the Common Stock in terms of the liquidation value of the Preferred Stock was determined to be meaningless because the fair market value of the Preferred and Common Stock is much higher than its liquidation value.

The Fairness Opinion concluded that the sale of the Preferred Stock by the Accounts to TTC would be fair to the Accounts because the Accounts would receive adequate consideration for their shares of the Preferred Stock, based on an independent appraisal.

15. In summary, the applicant represents that the subject transactions satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

a. The sale of the Preferred Stock to TTC by the Accounts and the purchase of the Common Stock from TTC by the Participants were one-time transactions for cash;

b. The transactions described in (1) above took place on the same business day;

c. The amount paid to the Accounts by TTC was the fair market value of the Preferred Stock, as determined by a qualified independent appraiser at the time of the sale; and

d. The Independent Fiduciary determined that the subject transactions were in the best interest and protective of the Accounts. The Independent

Fiduciary supervised the subject transactions to protect the interests of the Accounts.

Notice to Interested Persons

Because the only assets of the Plans' involved in the subject transactions are those held in the Accounts, and no other participants in the Plans are affected by the transactions, it has been determined that there is no need to distribute this notice of proposed exemption to any interested persons other than the Participants. Comments and requests for a hearing on the proposed exemption are due 30 days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Sprinx Inc. Retirement Plan (the Plan), Located in Grand Prairie, Texas

[Application No. D–10660]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) the proposed loan of $90,000 (the Loan) by the Plan to Sprinx, Inc. (the Employer), the sponsor of the Plan; and (2) the guarantee of repayment of the Loan by Harry D. Spring, a party in interest with respect to the Plan; provided that the following conditions are satisfied:

1. The Loan does not exceed 25% of the total assets of the Plan at any time;

2. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

3. The Loan is secured by common stock issued by the Employer, which has a fair market value, as determined by an independent qualified appraiser, which will remain at least 200% of the outstanding principal balance of the Loan throughout its duration;

4. The Plan has a first priority perfected security interest in the Stock, which is properly filed and perfected under applicable state law;

5. An independent fiduciary reviews the terms and conditions of the Loan and determines that the Loan is in the best interest and protective of the Plan and its participants and beneficiaries;

6. An independent fiduciary monitors the Loan throughout its duration and takes whatever action is necessary to protect the interests of the Plan; and

7. The independent fiduciary monitors the parties' compliance with the terms and conditions of this proposed exemption, if granted.

Summary of Facts and Representations

1. The Plan is a pension plan that was established on August 18, 1993. The Plan currently has approximately eighteen (18) participants and beneficiaries. As of June 30, 1998, the Plan had total assets of $435,368. Harry D. Spring (Mr. Spring) is the trustee of the Plan.

2. The sponsor of the Plan is Sprinx, Inc. (the Employer). The Employer is a Subchapter "S" corporation, incorporated in the State of Texas. The Employer is in the business of health care consulting and billing. A primary part of the Employer's business is consulting with medical service companies to bill the health care services provided by these companies. Mr. Spring is an officer and director of the Employer, and is the sole shareholder of the Stock.

3. The Loan will have a principal amount of $90,000 and a ten year duration. The Loan will bear an interest rate equal to the lesser of (i) nine and one-half percent (9.5%) per annum, or (ii) the highest lawful non-usurious rate of interest permitted under Texas law provided that such rate is never less than 9.5% per annum.[10] The Loan provides for equal amortization of principal and interest, and will be payable in forty (40) quarterly installments. The first thirty-nine (39) installments, based on an interest rate of 9.5% per annum, will be equal to $3,510.20. The 40th and final installment on the Loan will be equal to the total unpaid balance at that time. The applicant represents that the Loan will at all times represent less than twenty-five percent (25%) of the Plan's total assets.

The Loan proceeds will be used to purchase additional equipment for the Employer, and to hire additional employees.

4. The Loan will be secured at all times by the total outstanding shares of the Stock, all of which is owned by Mr. Spring. The Plan will have a first priority perfected security interest in the Stock, which will be properly filed and perfected under applicable state law.

The Stock was appraised by Saville, Dodgen & Company, Professional Corporation, Cerified Public Accountants (the SDC Appraisal) as of June 30, 1998, as having a fair market value of $3.8 million. The SDC Appraisal used the capitalization of earnings method to estimate the fair market value of the Stock, and the Employer's business as evidenced thereby. The capitalization of earnings method is based on the future estimated earnings of the Employer. The SDC Appraisal has been supplemented by a statement from Clint Pugh (Mr. Pugh) of Saville, Dodgen & Company, P.C. (SDC) which states that the procedures and analysis utilized in the SDC Appraisal represent a reasonable estimate of fair market value of the Stock and the Employer's business at the present time. There are currently 10,800 shares of the Stock with an estimated value per share of $351.85, based on the SDC Appraisal.

In a further statement dated November 5, 1998, Mr. Pugh represents that SDC is independent of the Employer and Mr. Spring. In this regard, SDC performs tax compliance work for the Employer, but the fees collected from the Employer for these services represent less than one percent (1%) of the total annual revenue of SDC. Mr. Pugh also states that he is a qualified appraiser of the Stock and that he has been performing appraisals for ten (10) years for various corporations. Mr. Pugh represents that he adheres to the guidelines provided by the American Institute of Certified Public Accountants for business valuations.

5. Frost National Bank (the Bank) has examined the terms of the Loan. By letter dated August 19, 1998, the Bank represents that it would make the same loan on the same terms to the Employer, based on its assumptions regarding the creditworthiness of the Employer and Mr. Spring.

6. The Loan will be monitored by Richard S. Tucker (Mr. Tucker), who will serve as the independent fiduciary (the Independent Fiduciary) on behalf of the Plan for purposes of the Loan. Mr. Tucker has submitted a statement in which he discusses his proposed role as the Independent Fiduciary. Mr. Tucker states that the Loan will be in the best interest of the Plan and its participants and beneficiaries. Mr. Tucker believes that the Loan will be an appropriate investment for the Plan with adequate safeguards and protections to ensure repayment of all principal and interest. The Loan will also permit the Employer to satisfy its needs for additional

[10] The Department agreed to this provision at the request of the applicant in order to comply with Texas usury law. However, for purposes of this proposed exemption, the Department understands that the rate on this Loan will in no event be less than 9.5% per annum.

equipment and employees, which will increase its profitability.

Mr. Tucker states that the Loan will be protective of the Plan because the principal amount of the Loan will be adequately secured and will represent less than twenty-five percent (25%) of the Plan's total assets. The Stock, as collateral for the Loan, will have a fair market value which exceeds the outstanding principal amount of the Loan by at least two hundred percent (200%) at all times.

With respect to Mr. Tucker's qualifications to act as the Independent Fiduciary for the Plan for purposes of the Loan, Mr. Tucker represents that he is attorney with experience in evaluating transactions, such as the Loan, and ensuring that such transactions have proper legal documentation. Thus, Mr. Tucker states that he has experience in protecting the rights of the parties involved in such transactions.

Mr. Tucker represents that he is independent of the Employer, Mr. Spring and their affiliates for purposes of his proposed duties as the Independent Fiduciary. In this regard, Mr. Tucker states that he performs legal services for the Employer. However, Mr. Tucker's fees from the Employer for such services are less than one percent (1%) of his total revenues. In addition, the fees generated from the Employer represent less than one percent (1%) of the annual revenues received by Mr. Tucker's firm.

Mr. Tucker represents that he has been apprised of the duties and responsibilities of a fiduciary under the Act. Mr. Tucker states that he will obtain, if necessary, appropriate advice from an experienced ERISA counsel as to what is required to properly execute the duties of an independent fiduciary for the Plan. Mr. Tucker acknowledges and accepts his responsibilities and duties as the Independent Fiduciary for this Loan transaction.

As the Independent Fiduciary, Mr. Tucker will represent the interests of the Plan at all times. Mr. Tucker will monitor compliance by the Employer with the terms and conditions of the Loan, and take whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries.[11]

[11] In this regard, the applicant makes a request regarding a successor independent fiduciary. Specifically, if it becomes necessary in the future to appoint a successor independent fiduciary (the Successor) to replace Mr. Tucker, the applicant will notify the Department sixty (60) days in advance of the appointment of the Successor. Any Successor will have the responsibilities, experience and independence similar to those of Mr. Tucker.

7. Mr. Spring also unconditionally guarantees the prompt and full repayment of the Loan, pursuant to the terms of a written guarantee agreement (the Guarantee). Mr. Tucker, as the Independent Fiduciary, has examined the terms of the Guarantee. Mr. Tucker believes that the Guarantee is in the best interest of the Plan for several reasons: (a) it is an unconditional Guarantee, which is not conditioned on any other actions that may occur on the part of the Plan or the Employer; (b) the Guarantee covers the full amount of the indebtedness, including any additional costs or expenses associated with the liability; (c) if there are any changes in the collateral provided by the Employer for the Loan (i.e., the Stock), such changes will not affect the obligations of Mr. Spring under the Guarantee; and (d) the Guarantee is a guarantee of payment, under which the guarantor (i.e., Mr. Spring) is immediately required to perform by making payments.

Mr. Tucker represents that the Guarantee satisfies the applicable requirements for such agreements under Texas law and is protective of the Plan because it creates the maximum enforceable rights against Mr. Spring, as the Loan guarantor. Mr. Spring represents that he has an adequate net worth to honor the Guarantee, if necessary. Mr. Tucker states that Mr. Spring has sufficient personal assets, in addition to the Stock, to satisfy his obligations under the Guarantee. Mr. Tucker also states that he will monitor the financial status of Mr. Spring, as guarantor, and will ensure that the Loan remains adequately secured by the Stock and the Guarantee.

8. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

a. The Loan will not exceed 25% of the total assets of the Plan at any time;

b. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

c. The Loan will be secured by the Stock, which has a fair market value, as determined by an independent qualified appraiser, of at least 200% of the outstanding principal balance of the Loan;

d. The Plan has a first priority perfected security interest in the Stock, which will be properly filed and perfected under applicable state law;

e. Mr. Tucker, as the Independent Fiduciary, has reviewed the proposed terms and conditions of the Loan and determined that the Loan would be in the best interest and protective of the Plan and its participants and beneficiaries;

f. Mr. Tucker, as the Independent Fiduciary, will monitor the Loan throughout its duration and take whatever actions are necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

g. The Loan is personally and unconditionally guaranteed by Mr. Spring, who has an adequate net worth to honor the Guarantee, if necessary.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately

describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of November, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–31511 Filed 11–24–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–163]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Thursday, December 3, 1998, 9:00 a.m. to 4:30 p.m. and Friday, December 4, 1998, 9:00 a.m. to Noon.

ADDRESSES: Jet Propulsion Laboratory, National Aeronautics and Space Administration, Building 180, Room 101, 4800 Oak Grove Drive, Pasadena, CA 91109–8099.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—JPL Update
—AXAF
—SOHO
—TRIANA
—MARS Exploration Architecture
—Faster-Better-Cheaper
—ISS Software
—IORTF Status Report
—Committee/TaskForce/Working Group Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 18, 1998.

Lori B. Garver,

Acting Associate Administrator For Policy and Plans.

[FR Doc. 98–31496 Filed 11–24–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission, Regulation, Enforcement, & Internet Subcommittee.

ACTION: Notice of public meeting.

DATES: Tuesday, December 1, 1998, 5:00 p.m. to 7:00 p.m. (EST).

ADDRESSES: The meeting site will be: 800 North Capitol Street, NW, Suite 450, Washington, D.C. 20002.

DATES: Wednesday, December 2, 1998, 8:00 a.m. to 4:30 p.m. (EST).

ADDRESSES: The meeting site will be: 2358 Rayburn House Office Building, Washington, D.C. 20515.

STATUS: The meeting will take place in two separate locations on different days. The meeting is open to the public both days. However, seating may be limited. Members of the public wishing to attend should contact Craig Stevens at (202) 523–8217 to make arrangements for attendance.

SUMMARY: At the December 1 meeting of the Regulation, Enforcement, and Internet Subcommittee of the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, the Members of the Subcommittee will discuss and hear telephonic presentations related to gambling and the Internet. On December 2, the Subcommittee will hold further discussions and hear additional in-person presentations, as well as hold a public comment period.

CONTACT PERSONS: For further information on the agenda, meeting location or other matters contact Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002.

SUPPLEMENTARY INFORMATION: An open forum for public participation will be held from 4:00 to 4:30 p.m. on December 2. Anyone wishing to make an oral presentation must contact Craig Stevens by telephone at (202) 523–8217 no later than November 30, 1998. Written comments can be sent to the Commission at any time at 800 North Capitol St., N.W., Suite 450, Washington, D.C. 20002. Visit the Commission's Website at *www.ngisc.gov*.

Tim Bidwill,

Special Assistant to the Chairman.

[FR Doc. 98–31548 Filed 11–24–98; 8:45 am]

BILLING CODE 6802–ET–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 388]

PP&L, Inc.; Notice of Withdrawal of Application for Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of PP&L, Inc. (the licensee) to withdraw its March 20, 1996, application for proposed amendments to Facility Operating License Nos. NPF–17 and NPF–22 for the Susquehanna Steam Electric Station, Unit Nos. 1 and 2, located in Luzerne County, Pennsylvania.

The proposed amendments would have revised the Susquehanna Steam Electric Station's Technical Specifications (TSs) to eliminate the high pressure coolant injection pump auto-transfer on high suppression pool level.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on December 18, 1996 (61 FR 66713). However, by letter dated October 29, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendments dated March 20, 1996, and the licensee's letter dated October 29, 1998, which withdrew the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Dated at Rockville, Maryland, this 18th day of November 1998.

For The Nuclear Regulatory Commission.

Victor Nerses,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31500 Filed 11–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has

granted the request of Wolf Creek Nuclear Operating Corporation (the licensee) to withdraw its September 2, 1997, as supplemented by letter dated January 15, 1998. Application for proposed amendment to Facility Operating License No. NPF–42 for the Wolf Creek Nuclear Generating Station, Unit No. 1, located in Coffey County, Kansas.

The proposed amendment would have revised the technical specifications related to the auxiliary feedwater system.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 22, 1997 (62 FR 54878). However, by letter dated November 6, 1998, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 2, 1997, and supplemental letter dated January 15, 1998, and the licensee's letter dated November 6, 1998, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Dated at Rockville, Maryland, this 19th day of November 1998.

For The Nuclear Regulatory Commission.

Kristine M. Thomas,

Project Manager, Project Directorate IV–2, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31497 Filed 11–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 70–7001 and 70–7002]

Notice of Renewal for Certificates of Compliance GDP–1 and GDP–2 for the U.S. Enrichment Corporation, Paducah and Portsmouth Gaseous Diffusion Plants, Paducah, Kentucky, and Portsmouth, Ohio

The U.S. Nuclear Regulatory Commission (NRC) is issuing a certification decision for the United States Enrichment Corporation (USEC) to allow continued operation of the two gaseous diffusion plants (GDPs) located near Paducah, Kentucky, and Piketon, Ohio. The Director's Decision is to issue renewed Certificates of Compliance for the GDPs that cover a five-year period. USEC submitted its renewal applications on April 15, 1998. Notice of Receipt of the applications appeared in the **Federal Register** (63 FR 24832) on May 5, 1998, allowing a 45-day public comment period on the applications. As required by the Energy Policy Act, NRC consulted with the U.S. Environmental Protection Agency (EPA) about certification. EPA did not identify any significant compliance issues.

The NRC staff has reviewed the certificate renewal applications for the gaseous diffusion plants located near Paducah, Kentucky, and Piketon, Ohio, and concluded that in combination with certificate conditions, they provide reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue a renewed Certificate of Compliance for each plant. The staff has prepared Compliance Evaluation Reports which provide details of the staff's evaluations.

The NRC staff has determined that the renewals satisfy the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for the renewal.

USEC or any person whose interest may be affected and who submitted written comments in response to the **Federal Register** Notice on the renewal application under Section 76.37 may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the applications for renewal and (2) the Commission's Compliance Evaluation Reports. These items (except for classified and proprietary portions which are withheld in accordance with 10 CFR 2.790, "Availability of Public Records") are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Rooms established for these facilities.

Date of renewal requests: April 15, 1998.

Brief description of renewal applications: USEC did not request any changes to the existing documentation; previous applications, statements, and reports are incorporated by reference into the renewal application. These include the Technical Safety Requirements, Safety Analysis Report, Compliance Plan, Quality Assurance Program, Emergency Plan, Security and Safeguards Plans, Waste Management Program, and Decommissioning Funding Program, etc. Certificate of Compliance GDP–1 for the Paducah GDP and Certificate of Compliance GDP–2 for the Portsmouth GDP will be renewed for a 5-year period. This will allow continued operation of the GDPs.

Effective date: The renewal of Certificates of Compliance GDP–1 and GDP–2 becomes effective immediately after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Local Public Document Room locations: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003 and Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

FOR FURTHER INFORMATION CONTACT: Ms. Merri Horn, (301) 415–8126 or Mr.

Yawar Faraz (301) 415–8113; Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31498 Filed 11–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corp., Paducah Gaseous Diffusion Plant, Paducah, KY

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: September 11, 1998.

Brief description of amendment: The amendment proposes to delete Technical Safety Requirements (TSRs) 2.3.2.1, "Normetex Pump Discharge Pressure," and 2.3.3.1, "Normetex Pump High Discharge Pressure System." The request also includes changes to related sections of the Safety Analysis Report (SAR) to support deletion of the TSR requirements.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment deletes TSR requirements for the Normetex Pump High Discharge Pressure System. The accident scenario that the system was designed to prevent did not change so uranium hexafluoride (UF_6) remains the only effluent that may be released, and the amount remains bounded by the 250 lbs controlled by the Normetex UF_6 Release Detection System. Therefore, there is no change in the effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment does not propose any new or unanalyzed activity for the facility. Therefore, the amendment would not result in a significant increase in individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment deletes TSR requirements for the Normetex Pump High Discharge Pressure System. The accident scenario that the system was designed to prevent did not change, and the potential source term for UF_6 remains bounded by the 250 lbs controlled by the Normetex UF_6 Release Detection System. The downgrading of the Normetex Pump High Discharge Pressure System from a quality (Q) safety system to a non-safety safety system is offset by the upgrading of the Normetex Pump discharge block valve interlock to a Q safety system. Both systems were designed to prevent an overpressure of the pump discharge line when the pump discharge block valve closes with the pump still running. Worker protection practices would limit any exposure to the worker from any potential smaller release. Therefore, the proposed change will not result in a significant increase in the potential for, or radiological or chemical

consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment does not propose any new or unanalyzed activity for the facility. The downgrading of the Normetex Pump High Discharge Pressure System from a quality (Q) safety system to a non-safety safety system is offset by the upgrading of the Normetex Pump discharge block valve interlock to a Q safety system. Both systems were designed to prevent an overpressure of the pump discharge line when the pump discharge block valve closes with the pump still running. Therefore, the amendment does not raise the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The safety limit proposed for deletion did not change the bounding accident release of 250 lbs. The downgrading of the Normetex Pump High Discharge Pressure System from a quality (Q) safety system to a non-safety safety system is offset by the upgrading of the Normetex Pump discharge block valve interlock to a Q safety system. Both systems were designed to prevent an overpressure of the pump discharge line when the pump discharge block valve closes with the pump still running. With no increase in the potential amount of hazardous material released and the switching of one Q safety system for another equivalent system, the accident remains unlikely. Therefore, there is no significant reduction in the margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed amendment would delete a safety limit that was determined not to be safety significant. The safety margin remains the same. While one safety system has been downgraded, an equivalent safety system has been upgraded. Therefore, the deletion of the TSRs and supporting SAR changes do not decrease the effectiveness of the plant's safety program. It also does not propose any change to or affect the safeguards and security programs. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective 5 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: The amendment will delete the safety limit for the Normetex Pump discharge pressure (TSR 2.3.2.1) and TSR 2.3.3.1, "Normetex Pump High Discharge Pressure System."

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, MD, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31501 Filed 11–24–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation, Wisconsin Power and Light Company, Madison Gas and Electric Company, Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.60 to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee), for the Kewaunee Nuclear Power Plant located in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of the Proposed Action

By application dated August 6, 1998, the licensee requested an exemption from certain requirements of 10 CFR 50.60, "Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation," and 10 CFR Part 50, Appendix G, "Fracture Toughness Requirements." The proposed action would permit the licensee to use American Society of Mechanical Engineers (ASME) Code Case N–588 for analyses used to develop reactor pressure vessel (RPV) pressure-temperature (PT) limits, and the low temperature overpressure protection (LTOP) system pressure setpoint .

Note: The application also encompassed the proposed use of Code Case N–514; however, this assessment applies only to N–588.

The Need for the Proposed Action

Pursuant to 10 CFR 50.60(a), all lightwater nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary as set forth in 10 CFR Part 50, Appendix G. Appendix G of 10 CFR Part 50 defines PT limits during any condition of normal operation, including anticipated operational occurrences and system hydrostatic tests to which the pressure boundary may be subjected over its service lifetime, and Appendix G.IV.2. specifies that these PT limits must be at least as conservative as the limits obtained by the following methods of analysis and the margins of safety of the ASME Code, Section XI, Appendix G.

By application dated August 6, 1998, the licensee submitted an exemption request to enable use of ASME Code Case N–588. Code Case N–588 provides benefits in terms of calculating PT limits by revising the Section XI, Appendix G, to assume that a circumferential flaw, rather than an axial flaw, exists in each circumferential weld in a reactor vessel. This reference flaw is a postulated flaw that accounts for the possibility of a prior existing defect that may have gone undetected during the fabrication process. Any significant, undetected flaw in a circumferential weld in the beltline region of an RPV would be circumferentially oriented thereby having a lesser effect than an assumed axial flaw.

The effect of the change in reference flaw orientation for circumferential welds, in the calculation of PT limits, is to expand the resulting PT "operating window." For Kewaunee, this larger operating window will eliminate the current requirement to disable one reactor coolant pump during conditions of low reactor coolant system temperature.

Environmental Impacts of the Proposed Action

The staff has completed its evaluation of the proposed action and concludes that it is acceptable because, with the application of Code Case N–588, the RPV will continue to be adequately protected against the possibility of brittle fracture. The proposed action will not increase the probability or consequences of accidents, no significant changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable occupational or public radiation exposure. The staff has concluded that there is no significant radiological

environmental impact associated with the proposed action.

The proposed action does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the staff has concluded that there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the action (no-action alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement which was issued December 20, 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on November 19, 1998, the staff consulted with Ms. Sarah Denkins, of the Public Service Commission of the State of Wisconsin, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the staff has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 6, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW, Washington, D.C., and at the local public document room located at the University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, Wisconsin 54311–7001.

Dated at Rockville, Maryland, this 19th day of November 1998.

For The Nuclear Regulatory Commission.

William O. Long,

Senior Project Manager, Project Directorate III–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31499 Filed 11–24–98; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 1:00 p.m., Monday, December 7, 1998; 8:30 a.m., Tuesday, December 8, 1998.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: December 7 (Closed); December 8 (Open).

MATTERS TO BE CONSIDERED:

Monday, December 7—1:00 p.m. (Closed)

1. Audit Committee Report and Review of Year-End Financial Statements.
2. Compensation Issues.
3. Tray Management System.

Tuesday, December 8—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 2–3, 1998.
2. Remarks of the Postmaster General/ Chief Executive Officer.
3. Consideration of FY 1998 Audited Financial Statements.
4. Consideration of the FY 1998 Annual Report.
5. Final FY 2000 Appropriation Request.
6. Tentative Agenda for the January 4–5, 1999 meeting in Washington, D.C.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 98–31670 Filed 11–23–98; 3:39 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23540; File No. 812–11258]

INVESCO Value Trust; Notice of Application

November 18, 1998.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application under Section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from Section 17(a) of the Act.

SUMMARY OF APPLICATION: INVESCO Value Trust (the "Trust") on behalf of INVESCO Total Return Fund (the "Fund"), seeks an exemption permitting an in-kind redemption of Fund shares held by an affiliated person of the Trust.

APPLICANT: The Trust on behalf of the Fund.

FILING DATE: The application was filed on August 12, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 14, 1998, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, c/o Glen A. Payne, Esq., INVESCO Funds Group, Inc., 7800 East Union Avenue, Denver, Colorado 80237.

FOR FURTHER INFORMATION CONTACT: Ethan D. Corey, Senior Counsel, at (202) 942–0675, or Kevin M. Kirchoff, Branch Chief, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

Applicant's Representations

1. The Trust, a Massachusetts business trust, currently offers three series, including the Fund. INVESCO Funds Group, Inc. ("Adviser") is the Trust's investment adviser. INVESCO Capital Management, Inc. serves as the Fund's sub-adviser.

2. Connecticut General Life Insurance Company ("Connecticut General") is a Connecticut life insurance company. Separate Account 55K is a pooled separate account established and maintained by Connecticut General for receipt of amounts allocated to it in

accordance with the terms of group annuity contracts and funding agreements. All amounts allocated to Separate Account 55K are invested in shares of the Fund. Connecticut General, on behalf of Separate Account 55K (the "Affiliated Shareholder") owned beneficially, as of June 30, 1998, 14.15% of the outstanding shares of the Fund.

3. Connecticut General has determined that it would be in the best interest of pension, profit-sharing and annuity plans invested in Separate Account 55K if the shares of the Fund owned by the Affiliated Shareholder were redeemed and the proceeds placed in Separate Account 55K, which thereafter will be separately managed by Adviser or its affiliate. Consequently, the Affiliated Shareholder has advised the Trust that it expects to redeem all of its shares of the Fund and reinvest the proceeds in Separate Account 55K.

4. The Fund's prospectus and statement of additional information provide that shares may be redeemed at the net asset value per share next determined after receipt of a proper redemption request. If, however, the Board of Trustees of the Trust (the "Board") determines that conditions exist which make payment of redemption proceeds wholly in cash unwise or undesirable, the Fund may satisfy all or part of a redemption request by delivering readily marketable portfolio securities to a redeeming shareholder. The Board has determined that it would be in the best interests of the Fund and its shareholders to redeem the shares of the Affiliated Shareholder in-kind as described below.

5. Applicant proposes to redeem the shares of the Affiliated Shareholder in the form of a pro rata distribution of each portfolio security held by the Fund after excluding: (a) Securities which, if distributed, would be required to be registered under the Securities Act of 1933; and (b) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership.

6. Securities to be distributed to the Affiliated Shareholder through the in-kind redemption will be further limited to securities which are traded on a public securities market or for which quoted bid prices are available. Cash will be paid for that portion of the Fund's assets represented by cash equivalents (such as certificates of deposit, commercial paper and repurchase agreements) and other assets which are not readily distributable (including receivables and prepaid expenses), net of all liabilities (including accounts payable). In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distribution), fractional shares and accruals on such securities.

Applicant's Legal Analysis

1. Section 17(a)(2) of the Act prohibits affiliated persons of a registered investment company from knowingly purchasing any security from the company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include any person owning 5% or more of the outstanding voting securities of the other person. The Affiliated Shareholder is an affiliated person of the Fund under section 2(a)(3)(A) of the Act because it owns beneficially in excess of 5% of the Funds shares. In addition, the Affiliated Shareholder may be deemed to be an affiliated person of the Fund under Section 2(a)(3)(C) of the Act because the Affiliated Shareholder and the Fund may be deemed to be under the common control of Adviser, which serves as investment adviser of the Fund and which (or its affiliate), following the redemption, will be retained by the Affiliated Shareholder to serve as investment adviser to Separate Account 55K. To the extent that the proposed in-kind redemption would be considered to involve the "purchase" of portfolio securities (of which the Fund is not the issuer) by the Affiliated Shareholder, the proposed in-kind redemption would be prohibited by Section 17(a)(2) of the Act.

2. Section 17(b) of the Act provides that the Commission shall exempt a proposed transaction from Section 17(a) if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching; (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicant submits that the terms of the proposed in-kind redemption by the Affiliated Shareholder meet the standards set forth in Section 17(b).

3. Applicant asserts that the terms of the proposed in-kind redemption do not involve overreaching on the part of any person and are reasonable and fair to the Fund, its shareholders and the Affiliated Shareholder. The Affiliated Shareholder will have no choice as to the type of consideration to be received in connection with its redemption request, and neither the Adviser nor the Affiliated Shareholder will have any opportunity to select the specific portfolio securities to be distributed. In addition, the Fund will use an objective, verifiable standard to value any security to be distributed pursuant to the proposed in-kind redemption. In addition, the proposed in-kind redemption is consistent with the investment policies of the Fund, as set forth in its prospectus, which expressly discloses the Fund's ability to redeem shares in-kind. Finally, applicant asserts that the proposed in-kind redemption is consistent with the general purposes of the Act to protect shareholders of investment companies from self-dealing on the part of investment company affiliates to the detriment of other shareholders because the Affiliated Shareholder would not receive any advantage not available to other shareholders if the proposed in-kind redemption is permitted.

Applicant's Conditions

1. Applicant has consented to the following conditions:

a. The protfolio securities of the Fund distributed to the Affiliated Shareholder pursuant to the redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

b. The In-Kind Securities will be distributed by the Fund on a *pro rate* basis after excluding: (1) Securities which, if distributed, would be required to be register under the Securities Act of 1933; and (2) certain portfolio assets (such as futures and options contracts and repurchase agreements) that, although they may be liquid and marketable, must be traded through the marketplace or with the counterparty to the transaction in order to effect a change in beneficial ownership. Cash will be paid for that portion of the Fund's assets represnted by cash equivalents (such as certificates of deposit, commercail paper, and repurchase agreements) and other assets which are not readily distrutable (including receivables and prepaid expenses), net of all liabilities (including accounts payable.) In addition, the Fund will distribute cash in lieu of securities held in its portfolio not amounting to round lots (or which would not amount to round lots if included in the in-kind distridution), fractional shares, and accruals on such securities.

c. The In-Kind Securities distributed to the Affiliated Shareholder will be

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valued in the same manner as they would be valued for purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are avaialble, is their last reported sales price on the exhange on which the securities are primarily traded or at the last sales price on the national securities market, or, if the securities are not listed on an exchange or the national securities market or if there is no such reported price, the average of the most recent bid and asked prices (or, if no asked price is available, the last quoted bid price).

2. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the proposed in-kind redemption occurs the first two years in an easily security distributed, the terms of the distribution, and the information or materials upon which the valuation was made.

Conclusion

For the reasons summarized above, Applicant assets that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31443 Filed 11–24–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23541; 812–11336]

SunAmerica Asset Management Corp., et al.; Notice of Aapplication

November 19, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under Section 6(c) of the Investment Company Act of 1940 (the "Act") from Section 15(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and sub-advisory agreements (the "New Agreements") for a period of not more than 120 days beginning on the later of the date on which the acquisition by American International Group ("AIG") of SunAmerica Inc. ("SunAmerica") is consummated or the date on which the requested order is issued and continuing through the date the New Agreements are approved or disapproved by the shareholders (but in no event later than April 30, 1999) ("Interim Period"). The order would also permit payment of all fees earned under the New Agreements during the Interim Period following shareholder approval.

APPLICANTS: SunAmerica Asset Management Corp. ("Adviser"), SunAmerica Series Trust, Anchor Series Trust, Seasons Series Trust, Style Select Series, Inc., SunAmerica Equity Funds, SunAmerica Income Funds, SunAmerica Money Market Funds, Inc. (each a "Fund", collectively, the "Funds"), each on behalf of its separate portfolios (each a "Portfolio", collectively the "Portfolios").

FILING DATES: The application was filed on October 2, 1998, and amended on November 9, 1998, and November 18, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 14, 1998, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, The SunAmerica Center, 733 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. no. 202–942–8090).

Applicants' Representations

1. Each Fund is an open-end management investment company registered under the Act. SunAmerica Series Trust is comprised of twenty-five Portfolios,[1] Anchor Series Trust is comprised of twelve Portfolios,[2] Style Select Series, Inc. is comprised of nine Portfolios, Seasons Series Trust and SunAmerica Equity Funds each are comprised of six Portfolios, SunAmerica Income Funds is comprised of five Portfolios, and SunAmerica Money Market Funds, Inc. is comprised of one Portfolio. SunAmerica Money Market Funds and Style Select Series, Inc. are organized as Maryland corporations. All other Funds are organized as Massachusetts business trusts.

2. The Adviser, an indirect wholly-owned subsidiary of SunAmerica, is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser manages the assets of each Fund pursuant to an investment advisory contract between each Fund, on behalf of each of its Portfolios, and the Adviser ("Existing Management Agreements").

3. Certain Portfolios of SunAmerica Series Trust, Anchor Series Trust, Seasons Series Trust, and Style Select Series, Inc. are subadvised by one or more investment advisers registered under the Advisers Act (each a "Sub-Adviser", collectively, the "Sub-Advisers"). The Sub-Advisers serve pursuant to separate agreements (the "Existing Sub-Advisory Agreements").

4. On August 19, 1998, SunAmerica and AIG entered into an agreement pursuant to which SunAmerica will merge with and into AIG, with AIG as the surviving entity ("Transaction"). As a result of the consummation of the Transaction, the Adviser will become a wholly-owned subsidiary of AIG. The Transaction is expected to be consummated on or about December 15, 1998 ("Closing Date"). Applicants state that the Transaction will result in an assignment, and thus automatic termination, of the Existing Advisory Agreements and the Existing Sub-Advisory Agreements.

5. Applicant's request an exemption to permit (a) the implementation during the Interim Period, prior to obtaining shareholder approval, of the New Agreements between the Funds and the Adviser and Sub-Advisers, and (b) the Adviser and Sub-Advisers to receive

[1] Three of the SunAmerica Series Trust Portfolios, the Equity Income Portfolio, the Equity Index Portfolio, and the Small Company Value Portfolio are newly organized and have not yet commenced offering shares to the public. Applicants do not seek relief with respect to these Portfolios.

[2] One Portfolio of Anchor Series Trust, the Target '98 Portfolio, was liquidated as of November 15, 1998. Applicants do not seek relief with respect to this Portfolio.

from each Fund, upon approval of the applicable Portfolio's shareholders, any and all fees payable under the New Agreements during the Interim Period. The requested exemption would cover the Interim Period of not more than 120 days beginning on the later of the Closing Date or the date the requested order is issued and continuing, with respect to each Portfolio, through the date the New Agreements are approved or disapproved by the shareholders of the Portfolio (but in no event later than April 30, 1999).[3] The New Agreements will contain terms and conditions identical to those of the Existing Advisory Agreements and Existing Sub-Advisory Agreements, except for the effective and termination dates and escrow provisions described below.

6. On October 15, 1998 and October 20, 1998 the boards of directors or trustees of the Funds (the "Boards"), including a majority of the directors who are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Independent Board Members"), voted in accordance with section 15(c) of the Act to approve the New Agreements and to submit them to the Funds' shareholders. The shareholders meetings are scheduled to be held on or about December 30, 1998.

7. Applicants propose to enter into an escrow arrangement with an unaffiliated escrow agent. The fees earned by the Adviser and Sub-Advisers during the Interim Period under the New Agreements would be paid into an interest-bearing escrow account. The amounts in the escrow account with respect to a Portfolio (including any interest earned) will be paid (a) to the Adviser and Sub-Advisers, if any, only if shareholders of the Portfolio approve the applicable New Agreements or (b) to the Portfolio if the Interim Period has ended and shareholders have not approved the applicable New Agreements. Before any such payment is made, the Board of the relevant Fund will be notified.

[3] Applicants state that if the Closing Date precedes the issuance of the requested order, the Adviser, and if applicable the Subadvisers, will serve after the Closing Date and prior to the issuance of the order in a manner consistent with their fiduciary duty to provide investment advisory services to the Portfolios even though approval of the New Agreements has not been secured from the Portfolios' respective shareholders. Applicants also state that the Adviser, and if applicable the Subadviser, will be entitled to receive from each Portfolio with respect to the period from the Closing Date until the issuance of the order no more than the actual out-of-pocket cost to the Adviser, and if applicable the Subadvisers, for providing investment advisory services to the Portfolios.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires that the written contract provide for automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Transaction will result in an "assignment" of the Existing Advisory Agreements and Existing Sub-Advisory Agreements, and that the Agreements will terminate by their terms and in accordance with the Act.

2. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with an investment company is terminated, the adviser may continue to serve for up to 120 days under a written contract that has not been approved by the investment company's shareholders, provided that: (a) the new contract is approved by the board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation which would have been paid under the contract most recently approved by shareholders of the investment company; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the transaction. Applicants state that they may not rely on rule 15a–4 because of the benefits arising to SunAmerica, the Adviser's parent, in connection with the Transaction.

3. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

4. Applicants state that the requested relief satisfies this standard. Applicants assert that the structure and timing of the Transaction were determined by AIG and SunAmerica in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants further assert that the requested relief would permit continuity of investment management for the Funds following the Transaction. Applicants state that the Funds should receive, during the Interim Period, the same advisory services, provided in the same manner, at the same fee level, by substantially the same personnel, as they received prior to the Transaction. Applicants state that if the personnel providing material services pursuant to the New Agreements materially change, the Adviser will apprise and consult with the applicable Board to ensure that the Directors (including a majority of the Independent Board Members) are satisfied that the services provided by the Adviser and Sub-Advisers, if any, will not be diminished in scope or quality.

5. Applicants submit that to deprive the Adviser and Sub-Advisers of fees earned during the Interim Period would be an unduly harsh result and unreasonable penalty. Applicants also state that such fees will be released to the Adviser and Sub-Advisers only after shareholder approval of the New Agreements.

Applicants' Conditions

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions:

1. Each New Agreement that is in effect during the Interim Period will have substantially the same terms and conditions as the corresponding Existing Management Agreement and Existing Sub-Advisory Agreement, except for their respective effective and termination dates and escrow provisions.

2. Fees earned by the Advisers and the Sub-Advisers in respect of the New Agreements during the Interim Period will be maintained in an interest-bearing escrow account, and amounts in the account (including interest earned on such paid fees) will be paid (a) to the Adviser and Sub-Advisers in accordance with the New Agreements, only after the requisite shareholder approvals are obtained, or (b) to the respective Portfolio, in the absence of such approvals with respect to such Portfolio.

3. Each Fund will convene a meeting of the shareholders to vote on approval of the applicable New Agreement on or before the 120th day following the termination of the Existing Management Agreements and Existing Sub-Advisory Agreements (but in no event later than April 30, 1999).

4. Either AIG or the Adviser will bear the costs of preparing and filing this application and the costs relating to the solicitation of shareholder approval of

the Portfolios necessitated by the Transaction.

5. The Adviser will, and will cause the Sub-Advisers to, take all appropriate steps so that the scope and quality of the advisory and other services provided to the Portfolios during the Interim Period will be at least equivalent, in the judgment of each Board, including a majority of the Independent Board Members, to the scope and quality of service previously provided. If personnel providing material services during the Interim Period change materially, the Adviser will apprise and consult with the appropriate Board to assure that the Board, including a majority of the Independent Board Members, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31442 Filed 11–24–98; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection listed below is a proposed new collection requiring OMB approval:

Authorization to Obtain Earnings Data from the Social Security Administration—0960–NEW. SSA collects this information when a wage earner or a third party requests detailed earnings information pertaining to the wage earner from the Social Security Administration. The information provided on form SSA–581 is used by SSA to verify the authorization to access earnings record data and to produce an itemized statement for release to the third party named on the form. The information is provided by the wage earner and/or the third party.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 2 minutes.

Estimated Annual Burden: 2,000 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms, call the SSA Reports Clearance Officer on (410) 965–4145 or write to him at the address listed above.

Dated: November 18, 1998.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 98–31429 Filed 11–24–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held December 10, 1998, starting at 1:00 p.m. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591, in the Bessie Coleman Conference Center, Room 2AB.

The agenda will include: (1) Welcome and Opening Remarks; (2) Review Summary of the Previous Meeting; (3) FAA Report on (a) Controller Pilot Data Link Communications Human Factors Roadmap and (b) Safe Flight 21; (4) Report and Recommendations from the Free Flight Select Committee; (5) Progress Report on the GPS/WAAS Sole Means Risk Assessment; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile), or dclarke@rtca.org (e-mail). Members of the public may present a written statement at any time.

Issued in Washington, DC, on November 17, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–31533 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Hearing To Receive Public Comments Concerning the Implementation of the Noise Abatement Measures at the Indianapolis International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Public Hearing.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that a Public Hearing will be held concerning the environmental impact of implementing the Noise Abatement Measures described in the Draft Supplemental Environmental Impact Statement (DSEIS) for Indianapolis International Airport. This hearing is being held pursuant to the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and other laws as applicable.

DATES: January 5, 1999, 5:00 p.m.–8:00 p.m.

ADDRESSES: Holiday Inn Select—Airport, 2501 S. High School Road, Indianapolis, IN.

POINT OF CONTACT: Mr. Wally Welter, Environmental Specialist, FAA Great Lakes Region, Air Traffic Division, AGL–520.V, 2300 East Devon Avenue, Des Plaines, IL 60018.

SUPPLEMENTARY INFORMATION: A Draft Supplemental Environmental Impact Statement (DSEIS) has been prepared and will be available for public review and comment. This document will be available 30 days prior to the hearing at the following locations:

(1) Federal Aviation Administration, Air Traffic Division Office, 2300 East Devon Avenue, Des Plaines, IL 60018,

(2) Indianapolis Airport Authority, South High School Road, Indianapolis International Airport, Indianapolis, IN,

(3) Decatur Township Branch Library, 5301 Kentucky Avenue, Indianapolis, IN 46241,

(4) Marion County Public Library, 40 East St. Clair, Indianapolis, IN 46204,

(5) Mooresville Public Library, 220 W. Harrison Street, Mooresville, IN 46158,
(6) Plainfield Public Library, 1120 Stafford Road, Plainfield, IN 46208,
(7) Wayne Township Branch Library, 198 South Girls School Road, Indianapolis, IN 46214.

The purpose of the hearing is to consider the social, economic, and environmental effects of the proposed actions. During the hearing the public will be given an opportunity to present oral and/or written comments for the public record. Additionally, prior to January 8, 1999, written comments may be addressed to Mr. Wally Welter, Environmental Specialist, FAA Great Lakes Region, Air Traffic Division, AGL–520.V, Des Plaines, IL 60018.

Issued in Des Plaines, Illinois, on November 18, 1998.

David B. Johnson,

Assistant Manager, Air Traffic Division.

[FR Doc. 98–31532 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4774]

Decision That Nonconforming 1994–1996 Volkswagen Jetta Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that nonconforming 1994–1996 Volkswagen Jetta passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1994–1996 Volkswagen Jetta passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1994–1996 Volkswagen Jetta), and they are capable of being readily altered to conform to the standards.

DATES: This decision is effective as of November 25, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G.K.") (Registered Importer 90–007) petitioned NHTSA to decide whether 1993–1997 Volkswagen Jetta passenger cars manufactured in Mexico for the Mexican market are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA 97–3290 on January 12, 1998 (63 FR 1880) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Volkswagen of America, Inc. ("Volkswagen"), the United States representative of Volkswagenwerke, A.G., the vehicle's manufacturer. In this comment, Volkswagen contended that G&K's description of the modifications that would be necessary to conform the vehicle to applicable standards is incomplete in a number of significant respects.

Specifically, with respect to Standard No. 109, *New Pneumatic Tires*, Volkswagen contended that non-U.S. certified 1993–1997 Volkswagen Jettas may be equipped with tires that have insufficient load ratings once the vehicle is modified through the addition of air bag systems, side impact protection, and other required safety related components.

With respect to Standard Nos. 203 *Impact Protection for the Driver from the Steering Control System* and 208 *Occupant Crash Protection*, Volkswagen noted that the 1993 model U.S. certified Jetta is equipped with automatic seat belts and that all 1994 and later model year versions of the vehicle are equipped with driver's and passenger's side air bags. Volkswagen contended that it is not possible to install air bag systems in non-U.S. certified 1993 Jettas, and that automatic seat belts must therefore be installed in those vehicles using anchorages that conform to all of the requirements of Standard No. 210, *Seat Belt Assembly Anchorages*. Additionally, Volkswagen observed that in order to comply with the unbelted test requirement of Standard Nos. 208, all U.S. certified 1994–1997 Jettas are equipped with knee bar restraints in the instrument panel which are not present on non-U.S. certified versions of the vehicle. Volkswagen noted that the petitioner did not cite the need for the installation of this equipment. Volkswagen also noted that it began to use pretensioners in the seat belts for the front seating positions of U.S. certified Jettas during the 1994 model year, and that the petitioner failed to identify the need to install pretensioner equipped seat belts to conform non-U.S. certified versions of the vehicle to Standard No. 208. Additionally, Volkswagen observed that the seat belts on U.S. certified 1996 Volkswagen Jettas are equipped with convertible locking retractors in order to meet the child restraint lockability requirements of S7.1.1.5 of Standard No. 208. The company asserted that the seat belts in the front and rear outboard seating positions of non-U.S. certified 1996 Jettas would have to be changed if they are not equipped with the same retractors.

Volkswagen disputed the petitioner's contention that non-U.S. certified 1993–1997 Jettas meet Standard No. 214 *Side Impact Protection* in the same manner as their U.S. certified counterparts. The company asserted that beginning with the 1995 model year, it installed additional padding and structural reinforcements in U.S. certified versions of the vehicle to comply with the dynamic side impact requirements of the standard.

Volkswagen further observed that beginning with the 1994 model year, the Jetta was classified as a high theft line vehicle under the Theft Prevention Standard at 49 CFR Part 541. The company noted that in order to obtain an exemption from the parts marking

requirements of the standard, it installed a standard alarm system with a central locking feature that mechanically locks all doors when the key in the front door is turned. Volkswagen observed that non-U.S. certified 1994 Jettas may not have this central locking system, as a result of which those vehicles would not be exempt from the parts marking requirement of the standard, rendering them, in the Company's view, ineligible for importation.

Aside from these specific observations, Volkswagen made two general comments with respect to the petition. In the first of these, the Company questioned whether modifications such as the addition of air bags, safety belts, and side impact protection components can be performed on a used vehicle outside of a production line setting at a level of quality necessary to assure compliance of each vehicle with the Federal motor vehicle safety standards. In addition, the company expressed the belief that NHTSA cannot decide that all model year 1993 through 1997 Jettas are eligible for importation due to significant differences between vehicles within these model years with regard to their compliance with Standard Nos. 208 and 214. Because the modifications necessary to achieve compliance with those standards may differ by model year, Volkswagen contends that NHTSA may not make a single eligibility decision that encompasses all vehicles within the model years specified in the petition.

NHTSA accorded G&K an opportunity to respond to Volkswagen's comments. In its response, G&K notified the agency that it wished to amend its petition to cover only model years 1994–1996. G&K stated with respect to the Standard No. 109 compliance issues raised by Volkswagen that all vehicles imported will be inspected to confirm that they are equipped with tires of the same size and load rating as those furnished on the U.S. certified model, and that the tires will be replaced if necessary to comply with the standard. Addressing the Standard Nos. 203 and 208 compliance issues raised by Volkswagen with regard to 1994 through 1996 model year Jettas, G&K stated that all parts of the automatic restraint system in the U.S. certified version of these vehicles will be installed on existing mounts in non-U.S. certified models. As enumerated by G&K, those components include the dash braces, knee bolsters, wiring harnesses, warning lights, dash pads, air bag assemblies, seat belts in both front outboard seating positions, and control boxes for the seat belts and air bags. In addition, G&K stated that new door panels that will accommodate the electric window motors and central locking systems will be installed.

With regard to the Standard No. 214 compliance issues raised by Volkswagen, G&K stated that doorbars would be installed on non-U.S. certified models and dash braces and door panels will be replaced with U.S. model components to meet the requirements of the standard. After a further communication from Volkswagen identifying additional parts that were necessary to achieve compliance, G&K provided the agency with a complete parts list identifying all components to be installed.

Addressing the Theft Prevention Standard issues raised by Volkswagen, G&K stated that U.S. model central locking and alarm systems will be installed on non-U.S. certified Jettas.

NHTSA believes that G&K's response adequately addresses the comments that Volkswagen has made regarding the petition. NHTSA further notes that the modifications described by G&K, which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified 1994–1996 Volkswagen Jettas from being found "capable of being readily altered to comply with applicable motor vehicle safety standards." Additionally, NHTSA finds no merit to Volkswagen's contention that the agency lacks authority to make an import eligibility decision covering vehicles within a range of model years when different modifications may have to be made to vehicles within those model years to achieve compliance with certain of the standards. Accordingly, NHTSA has decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–274 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that 1994–1996 Volkswagen Jetta passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are substantially similar to 1994–1996 Volkswagen Jetta passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 19, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–31534 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 98–4275; Notice 2]

American Honda Motor Company, Inc.; Grant of Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 122

This notice grants the application of American Honda Motor Co., Inc., of Torrance, California ("Honda"), for a one-year renewal of its temporary exemption from the fade and water recovery requirements of Federal Motor Vehicle Safety Standard No. 122, *Motorcycle Brake Systems*. The basis of the application for renewal was that an exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard.

Notice of receipt of an application was published on August 10, 1998, and an opportunity afforded for comment (63 FR 42661).

The agency previously granted Honda NHTSA Temporary Exemption No. 97–1, expiring September 1, 1998, from the following requirements of 49 CFR 571.122 Standard No. 122 *Motorcycle Brake Systems*: S5.4.1 Baseline check—minimum and maximum pedal forces, S5.4.2 Fade, S5.4.3 Fade recovery, S5.7.2 Water recovery test, and S6.10 Brake actuation forces (62 FR 52372, October 7, 1997). This exemption covered Honda's 1998 CBR1100XX motorcycle. Honda has applied for an extension of its exemption to September 1, 1999, to cover the 1999 model CBR1100XX motorcycle, and "all unsold 1998 model year" CBR1100XX vehicles. However, it was unnecessary for Honda to have included unsold vehicles in its request. NHTSA's temporary exemptions apply as of the date of manufacture and certification of an exempted vehicle, and continue to cover that vehicle even if it is sold after the expiration date of the exemption.

Honda's original and renewed request concerned exemption "from the requirement of the minimum hand-lever force of five pounds in the base line check for the fade and water recovery tests." It is evaluating the marketability of an "improved" motorcycle brake system setting which is currently applied to the model sold in Europe. The difference in setting is limited to a softer master cylinder return spring in the European version. Using the softer spring results in a "more predictable (linear) feeling during initial brake lever application." Although "the change allows a more predictable rise in brake gain, the on-set of braking occurs at lever forces slightly below the five pound minimum" specified in Standard No. 122. Honda considers that motorcycle brake systems have continued to evolve and improve since Standard No. 122 was adopted in 1972, and that one area of improvement is brake lever force which has gradually been reduced. However, the five-pound minimum specification "is preventing further development and improvement" of brake system characteristics. This limit, when applied to the CBR1100XX "results in an imprecise feeling when the rider applies low-level front brake lever inputs." On November 5, 1997, Honda submitted a petition for rulemaking to amend Standard No. 122 to eliminate the minimum brake actuation force requirement. As of June 19, 1998, when Honda applied for a renewal of its application, NHTSA had not yet decided whether to grant the petition. The agency notes that it anticipates granting the petition and commencing a rulemaking proceeding this fall.

The 1999 model of the CBR1100XX "will be nearly identical" to the 1998 model "with two notable exceptions: the engine air/fuel delivery system will change from carburetors to electronic fuel injection, and the brake system will also have a minor change." This brake system change involves characteristics of the pressure control valve, but is "limited to high input force range, and it will not affect the baseline check result nor other test results in FMVSS 122."

The CBR1100XX is equipped with Honda's Linked Brake System (LBS) which is designed to engage both front and rear brakes when either the front brake lever or the rear brake pedal is used. The LBS differs from other integrated systems in that it allows the rider to choose which wheel gets the majority of braking force, depending on which brake control the rider uses.

According to Honda, the overall braking performance remains unchanged from a conforming motorcycle. Exempted CBR1100XX vehicles meet "the stopping distance requirement but at lever forces slightly below the minimum."

Honda argued in 1997 that granting an exemption would be in the public interest and consistent with objectives of traffic safety because it

> * * * should improve a rider's ability to precisely modulate the brake force at low-level brake lever input forces. Improving the predictability, even at very low-level brake lever input, increases the rider's confidence in the motorcycle's brake system.

This year Honda repeats those arguments and submits that a renewal allows further refinement and development of the LBS. It believes that the LBS has "many desirable characteristics—especially during emergency braking—that could reduce the number of rear brake lock-up crashes." Honda has produced about 1200 motorcycles under Exemption 97–1, and anticipates that it will produce about 1,500 vehicles under a renewal.

No comments were received on the application.

The changes that Honda intends to make to the braking system of its 1999 model do not affect the reasoning upon which the agency's findings were based in granting the original exemption for its 1998 motorcycle, and the agency's rationale is hereby incorporated by reference (62 FR 52372, October 7, 1997). A renewal should allow further refinement and development of the LBS.

In consideration of the foregoing, it is hereby found that an exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of Standard No. 122. It is also hereby found that the renewal of the temporary exemption is in the public interest and consistent with the objectives of motor vehicle safety. Accordingly, NHTSA Temporary Exemption No. 97–1 is extended to, and will expire on, September 1, 1999.

(49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.)

Issued on November 18, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–31523 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Annual List of Defect and Noncompliance Decisions Affecting Nonconforming Imported Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Annual list of defect and noncompliance decisions affecting nonconforming imported vehicles.

SUMMARY: This document contains a list of vehicles recalled by their manufacturers during Fiscal Year 1998 (October 1, 1997 through September 30, 1998) to correct a safety-related defect or a noncompliance with an applicable Federal motor vehicle safety standard (FMVSS). The listed vehicles are those that have been decided by NHTSA to be substantially similar to vehicles imported into the United States that were not originally manufactured to conform to all applicable FMVSS. The registered importers of those nonconforming vehicles are obligated to provide their owners with notification of, and a remedy for, the defects or noncompliances for which the listed vehicles were recalled.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards (FMVSS) shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle of the same model year that was originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115. Once NHTSA decides that a nonconforming vehicle is eligible for importation, it may be imported by a person who is registered with the agency pursuant to 49 U.S.C. 30141(c) ("registered importer"), who will undertake to bring the vehicle into conformity, or by a person who has a contract with a registered importer to perform this work. Before releasing the vehicle for use on public streets, roads, or highways, the registered importer must certify to NHTSA, pursuant to 49 U.S.C. 30146(a), that the vehicle has been brought into conformity with all applicable FMVSS.

If a vehicle originally manufactured and certified for importation into and sale in the United States is decided to

contain a defect related to motor vehicle safety, or not to comply with an applicable FMVSS, 49 U.S.C. 30147(a)(1)(A) provides that the same defect or noncompliance is deemed to exist in any nonconforming vehicle that NHTSA has decided to be substantially similar and for which a registered importer has submitted a certificate of conformity to the agency. Under 49 U.S.C. 30147(a)(1)(B), the registered importer is deemed to be the nonconforming vehicle's manufacturer for the purpose of providing notification of, and a remedy for, the defect or noncompliance.

To apprise registered importers of the vehicles for which they must conduct a notification and remedy (i.e., "recall") campaign, and to apprise the owners of those vehicles of the need for such action, 49 U.S.C. 30147(a)(2) requires NHTSA to publish in the **Federal Register** notice of any defect or noncompliance decision that is made with respect to substantially similar U.S. certified vehicles. Annex A contains a list of all such decisions that were made during Fiscal Year 1998, which ran from October 1, 1997 through September 30, 1998. The list identifies the Recall Number that was assigned to the recall by NHTSA after the agency received the manufacturer's notification of the defect or noncompliance under 49 CFR Part 573. After September 30, 1999, NHTSA will publish a comparable list of all defect and noncompliance decisions affecting nonconforming imported vehicles that are made during the current fiscal year.

Authority: 49 U.S.C. 30147(a)(2); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 20, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

ANNEX A—FISCAL YEAR 98 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS

Make	Model	Year	Recall No.
AUDI	A4	1996	97V175000.
BENTLEY	AZURE	1996	97V182000.
BLUE BIRD	TC2000	1990	97V197000.
BLUE BIRD	TC2000	1990	97V197002.
BMW	325I	1992	98V178000.
BMW	325IS	1994	98V178000.
BMW	525I	1989	98V178000.
BMW	525I	1990	98V178000.
BMW	525I	1991	98V178000.
BMW	525I	1994	98V178000.
BMW	540I	1994	98V178000.
BMW	540I	1995	98V178000.
BMW	850I	1991	98V178000.
BUICK	CENTURY	1998	98V102000.
BUICK	REGAL	1997	97V223000.
BUICK	REGAL	1997	98V102000.
BUICK	REGAL	1998	98V102000.
BUICK	ROADMASTER	1992	97V217000.
CADILLAC	DEVILLE	1995	98V115000.
CADILLAC	DEVILLE	1998	97V232000.
CADILLAC	DEVILLE	1998	97V183000.
CADILLAC	ELDORADO	1995	98V115000.
CADILLAC	SEVILLE	1995	98V115000.
CHEVROLET	CAPRICE	1992	97V217000.
CHEVROLET	CAVALIER	1996	98V027000.
CHEVROLET	CAVALIER	1996	98V146000.
CHEVROLET	CAVALIER	1997	98V032000.
CHEVROLET	CAVALIER	1997	98V146000.
CHRYSLER	CIRRUS	1998	97V219000.
CHRYSLER	CIRRUS	1995	97V201000.
CHRYSLER	CIRRUS	1995	98V063000.
CHRYSLER	CIRRUS	1995	98V183000.
CHRYSLER	CIRRUS	1996	97V201000.
CHRYSLER	CIRRUS	1996	98V183000.
CHRYSLER	CIRRUS	1997	97V201000.
CHRYSLER	CIRRUS	1997	98V183000.
CHRYSLER	CONCORDE	1993	98V130000.
CHRYSLER	CONCORDE	1993	98V184000.
CHRYSLER	CONCORDE	1994	98V184000.
CHRYSLER	CONCORDE	1995	98V184000.
CHRYSLER	CONCORDE	1996	98V184000.
CHRYSLER	CONCORDE	1997	98V184000.
CHRYSLER	LHS	1994	98V184000.
CHRYSLER	LHS	1995	98V184000.
CHRYSLER	LHS	1996	98V184000.
CHRYSLER	LHS	1997	98V184000.
CHRYSLER	SEBRING	1995	97V201000.
CHRYSLER	SEBRING	1996	97V201000.
CHRYSLER	SEBRING	1996	98V183000.
CHRYSLER	SEBRING	1997	97V201000.
CHRYSLER	SEBRING	1997	98V183000.
DODGE	INTREPID	1995	98V184000.
DODGE	INTREPID	1996	98V184000.
DODGE	INTREPID	1997	98V184000.

ANNEX A—FISCAL YEAR 98 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
DODGE	INTREPID	1998	98V049000.
DODGE	NEON	1995	97V169000.
DODGE	STRATUS	1995	97V201000.
DODGE	STRATUS	1995	98V183000.
DODGE	STRATUS	1996	97V201000.
DODGE	STRATUS	1996	98V183000.
DODGE	STRATUS	1997	97V201000.
DODGE	STRATUS	1997	98V183000.
DODGE	STRATUS	1998	98V183000.
EAGLE	TALON	1994	98V069000.
EAGLE	TALON	1994	98V069002.
EAGLE	VISION	1993	98V130000.
EAGLE	VISION	1993	98V184000.
EAGLE	VISION	1994	98V184000.
EAGLE	VISION	1995	98V184000.
EAGLE	VISION	1996	98V184000.
EAGLE	VISION	1997	98V184000.
FORD	CONTOUR	1995	97V225000.
FORD	CONTOUR	1995	98V233000.
FORD	CONTOUR	1996	97V233000.
FORD	CONTOUR	1996	97V225000.
FORD	CONTOUR	1996	98V233000.
FORD	CONTOUR	1997	97V203000.
FORD	CONTOUR	1997	98V233000.
FORD	CONTOUR	1998	98V028000.
FORD	CONTOUR	1998	98V028001.
FORD	CONTOUR	1998	98V233000.
FORD	MUSTANG	1994	97V180000.
FORD	MUSTANG	1995	97V180000.
FORD	MUSTANG	1996	97V180000.
FORD	MUSTANG	1998	97V216000.
FORD	TAURUS	1993	98V009000.
FORD	TAURUS	1993	98V094000.
FORD	TAURUS	1994	98V009000.
FORD	TAURUS	1997	98V028002.
FORD	TAURUS	1998	98V028002.
FREIGHTLINER	FREIGHTLINER	1997	98V003000.
GMC	JIMMY	1998	98V053000.
GMC	JIMMY	1998	98V097000.
GMC	S15	1995	98V150000.
GMC	S15	1996	98V150000.
GMC	SAFARI	1998	98V165000.
GMC	SONOMA	1998	98V097000.
GMC	SUBURBAN	1998	98V033000.
GMC	YUKON	1998	98V033000.
HARLEY DAVIDSON	FLHT	1998	98V158000.
HARLEY DAVIDSON	FLHTC	1995	98V158000.
HARLEY DAVIDSON	FLHTC	1996	98V158000.
HARLEY DAVIDSON	FLHTC	1997	98V158000.
HARLEY DAVIDSON	FLHTC	1998	98V158000.
HARLEY DAVIDSON	FLHTCI	1996	98V158000.
HARLEY DAVIDSON	FLHTCI	1997	98V158000.
HARLEY DAVIDSON	FLHTCI	1998	98V158000.
HARLEY DAVIDSON	FLHTCU	1996	98V158000.
HARLEY DAVIDSON	FLHTCU	1997	98V158000.
HARLEY DAVIDSON	FLHTCU	1998	98V158000.
HARLEY DAVIDSON	FLHTCUI	1997	98V158000.
HARLEY DAVIDSON	FLHTCUI	1998	98V158000.
HONDA	ACCORD	1995	98V231000.
HONDA	ACCORD	1996	98V231000.
HONDA	ACCORD	1997	98V231000.
HONDA	ACCORD	1998	98V018000.
HONDA	CIVIC	1998	97V193000.
JEEP	CHEROKEE	1990	98V005000.
JEEP	CHEROKEE	1991	98V005000.
JEEP	CHEROKEE	1997	97V194000.
JEEP	CHEROKEE	1997	97V194001.
JEEP	CHEROKEE	1998	98V023000.
JEEP	CHEROKEE	1997	97V194002.
JEEP	GRAND CHEROKEE	1993	98V005000.
JEEP	GRAND CHEROKEE	1996	98V006000.
JEEP	GRAND CHEROKEE	1997	98V194000.

ANNEX A—FISCAL YEAR 98 RECALLS AFFECTING VEHICLES IMPORTED BY REGISTERED IMPORTERS—Continued

Make	Model	Year	Recall No.
JEEP	GRAND CHEROKEE	1997	97V194001.
JEEP	GRAND CHEROKEE	1997	97V194002.
JEEP	GRAND CHEROKEE	1998	98V023000.
JEEP	WRANGLER	1990	98V005000.
JEEP	WRANGLER	1991	98V005000.
JEEP	WRANGLER	1997	97V194003.
JEEP	WRANGLER	1997	98V046000.
KENWORTH	T2000	1996	98V129000.
KENWORTH	T2000	1997	98V129000.
KENWORTH	T800	1996	97V196003.
KENWORTH	T800	1997	97V196003.
KENWORTH	W900	1997	97V196003.
LEXUS	LS400	1996	98V016000.
LINCOLN	CONTINENTAL	1990	97I003000.
LINCOLN	CONTINENTAL	1990	97V174000.
LINCOLN	CONTINENTAL	1994	98V009000.
LINCOLN	MARK VIII	1993	98V009000.
MAZDA	626	1997	98V206000.
MAZDA	626	1998	97V228000.
MAZDA	MX6	1997	98V206000.
MERCURY	MYSTIQUE	1995	97V225000.
MERCURY	MYSTIQUE	1995	98V233000.
MERCURY	MYSTIQUE	1996	97V225000.
MERCURY	MYSTIQUE	1996	98V233000.
MERCURY	MYSTIQUE	1997	98V233000.
MERCURY	MYSTIQUE	1998	98V028000.
MERCURY	MYSTIQUE	1998	98V233000.
MERCURY	SABLE	1989	97I003000.
MERCURY	SABLE	1993	98V009000.
MERCURY	SABLE	1993	98V094000.
MERCURY	SABLE	1994	98V009000.
MERCURY	SABLE	1997	98V028002.
MERCURY	SABLE	1998	98V028002.
NAVISTAR	4700	1995	98V119002.
NAVISTAR	4900	1993	98V171000.
OLDSMOBILE	ACHIEVA	1996	98V027000.
PLYMOUTH	BREEZE	1995	97V201000.
PLYMOUTH	BREEZE	1996	97V201000.
PLYMOUTH	BREEZE	1996	98V183000.
PLYMOUTH	BREEZE	1997	97V201000.
PLYMOUTH	BREEZE	1997	98V183000.
PLYMOUTH	BREEZE	1998	98V183000.
PLYMOUTH	NEON	1995	97V169000.
PLYMOUTH	PROWLER	1997	98V047000.
PLYMOUTH	PROWLER	1999	98V104000.
PONTIAC	GRAND AM	1996	98V027000.
PONTIAC	SUNFIRE	1996	98V027000.
PONTIAC	SUNFIRE	1996	98V146000.
PONTIAC	SUNFIRE	1997	98V032000.
PONTIAC	SUNFIRE	1997	98V146000.
PONTIAC	SUNFIRE	1998	97V219000.
PORSCHE	BOXSTER	1997	98V112000.
SAAB	900	1995	98V038000.
TOYOTA	CAMRY	1994	98V155000.
TOYOTA	CAMRY	1997	97V213000.
TOYOTA	SIENNA	1998	97V188000.
VOLKSWAGEN	GTI	1995	98V160000.
VOLKSWAGEN	GTI	1995	98V195000.
VOLKSWAGEN	JETTA	1996	98V160000.
VOLKSWAGEN	NEW BEETLE	1998	98V100000.

[FR Doc. 98–31535 Filed 11–24–98; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Notice No. 98–10]

Information Collection Activities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before January 25, 1999.

ADDRESSES: Address written comments to the Dockets Unit, Room PL 401, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590–0001. Comments may also be submitted by e-mail to: rules @ rspa.dot.gov, or faxed to (202) 366–3753. Comments should identify the Notice number (98–10) and the appropriate Office of Management and Budget (OMB) Control Number(s). Mailed written comments should be submitted in two copies. Persons wishing to receive confirmation of receipt of their mailed written comments should include a self-addressed, stamped postcard showing the Notice number. The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. Public information may be reviewed between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. Internet users may access all comments received by the U.S. Department of Transportation by using the Universal Resource Locator (URL) at http://dms.dot.gov. An electronic copy of the document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661.

Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for renewal and extension. These collections are contained in 49 CFR part 110, part 130, and parts 171–180. RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collections:

Title: Inspection and Testing of Portable Tanks and Intermediate Bulk Containers.

OMB Control Number: 2137–0018.

Summary: This information collection consolidates provisions for documenting qualifications, inspections, tests and approvals pertaining to the manufacture and use of portable tanks and intermediate bulk containers under various provisions of the Hazardous Materials Regulations (49 CFR Parts 171–180). It is necessary to ascertain whether portable tanks and intermediate bulk containers have been qualified, inspected and retested in accordance with the HMR. The information is used to verify that certain portable tanks and intermediate bulk containers meet required performance standards prior to their being authorized for use and to document periodic requalification and testing to ensure the packagings have not deteriorated due to age or physical abuse to a degree that would render them unsafe for the transportation of hazardous materials. Applicable sections are as follows: § 173.32—retest, retest marking, and record retention for portable tanks; § 173.32a—approval of IM portable tanks; § 173.32b—periodic inspections and testing for IM portable tanks; § 178.245–6—certification markings for DOT–51 portable tanks; § 178.245–7—manufacturer's data report for DOT–51 portable tanks; § 178.255–14—certification markings for DOT–60 portable tanks; § 178.255–15—manufacturer's data report for DOT–60 portable tanks; § 178.270–14—certification marking of IM portable tanks; § 178.801—testing, retesting and recordkeeping for intermediate bulk containers; and § 180.352—periodic retests and inspections for intermediate bulk containers.

Affected Public: Manufacturers and owners of portable tanks and intermediate bulk containers.

Recordkeeping:

Number of Respondents: 314.

Total Annual Responses: 51,220.

Total Annual Burden Hours: 51,340.

Frequency of collection: On occasion.

Title: Testing, Inspection and Marking Requirements for Cylinders.

OMB Control Number: 2137–0022.

Summary: Requirements in § 173.34 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following conduct of tests. Records showing the results of inspections and retests must be kept by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is reinspected or retested, whichever occurs first. These requirements are intended to ensure that retesters have the qualifications to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

Affected Public: Fillers, owners, users and retesters of reusable cylinders.

Annual Reporting Burden:

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 168,431.

Frequency: On occasion.

Title: Hazardous Materials Incident Reports.

OMB Control Number: 2137–0039.

Summary: This collection is applicable upon occurrence of incidents as prescribed in §§ 171.15 and 171.16. Basically, a Hazardous Materials Incident Report, DOT Form F5800.1, must be completed by a carrier of hazardous materials when a hazardous material transportation incident occurs, such as a release of materials, serious accident, evacuation or highway shutdown. Serious incidents meeting criteria in § 171.15 also require a telephonic report by the carrier. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

Affected Public: Carriers of hazardous materials.

Annual Reporting and Recordkeeping:

Number of Respondents: 803.

Total Annual Responses: 22,500.

Total Annual Burden Hours: 33,811.

Frequency of collection: On occasion.

Title: Flammable Cryogenic Liquids.

OMB Control Number: 2137–0542.

Summary: Provisions in § 177.818 require the carriage on a motor vehicle of written procedures for venting flammable cryogenic liquids and for responding to emergencies. Paragraph (h) of § 177.840 specifies certain safety procedures and documentation requirements for drivers of these motor vehicles. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme flammability and high compression ratio when in a liquid state.

Affected Public: Carriers of cryogenic materials.

Annual Reporting and Recordkeeping:

Total Respondents: 65.

Total Annual Responses: 18,200.

Total Annual Burden Hours: 1,213.

Frequency of collection: On occasion.

Title: Approvals for Hazardous Materials.

OMB Control Number: 2137–0557.

Summary: Without these requirements there is no means to: (1) determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.; (2) verify that various containers and special loading requirements for vessels meet the requirements of the HMR; and (3) assure that regulated hazardous materials pose no danger to life and property during transportation.

Affected Public: Businesses and other entities who must meet the approval requirements in the HMR.

Annual Reporting and Recordkeeping:

Total Respondents: 3,503.

Total Annual Responses: 3,853.

Total Annual Burden Hours: 18,302.

Frequency of collection: On occasion.

Title: Testing Requirements for Non-bulk Packaging (Formerly entitled Testing Requirements for Packaging).

OMB Control Number: 2137–0572.

Summary: Detailed packaging manufacturing specifications have been replaced by a series of performance tests that a non-bulk packaging must be capable of passing before it is authorized to be used for transporting hazardous materials. The HMR require proof that packagings meet these testing requirements. Manufacturers must retain records of design qualification tests and periodic retests. Manufacturers must notify, in writing, persons to whom packagings are transferred of any specification requirements that have not been met at the time of transfer. Subsequent distributors, as well as manufacturers must provide written notification. Performance-oriented packaging standards allow manufacturers and shippers much greater flexibility in selecting more economical packagings.

Affected Public: Each non-bulk packaging manufacturer that tests packagings to ensure compliance with the HMR.

Annual Reporting and Recordkeeping:

Annual Respondents: 5,000.

Annual Responses: 15,000.

Annual Burden Hours: 30,000.

Frequency of collection: On occasion.

Title: Container Certification Statement.

OMB Control Number: 2137–0582.

Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement is intended to ensure an adequate level of safety for transport of explosives aboard vessel and ensure consistency with similar requirements in international standards.

Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping:

Annual Respondents: 630.

Annual Responses: 835,000 HM Containers & 4400 Explosive Containers.

Annual Burden Hours: 13,989.

Frequency of collection: On occasion.

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Summary: Part 110 of 49 CFR sets for the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to deal with hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, reporting and requesting modifications.

Affected Public: State and local governments, Indian tribes.

Annual Reporting and Recordkeeping:

Annual Respondents: 66.

Annual Responses: 1.

Annual Burden Hours: 4,082.

Frequency of collection: On occasion.

Title: Response Plans for Shipments of Oil.

OMB Control Number: 2137–0591.

Summary: In recent years several major oil discharges damaged the marine environment of the United States. Under authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, RSPA issued regulations in 49 CFR Part 130 that require preparation of written spill response plans.

Affected Public: Carriers that transport oil in bulk, by motor vehicle or rail.

Annual Reporting and Recordkeeping:

Annual Respondents: 8,000.

Annual Responses: 8,000.

Annual Burden Hours: 10,560.

Frequency of collection: On occasion.

Issued in Washington, DC on November 19, 1998.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 98–31480 Filed 11–24–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5329

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5329, Additional Taxes Attributable to IRAs, Other Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs.

DATES: Written comments should be received on or before January 25, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Additional Taxes Attributable to IRAs, Other Qualified Retirement Plans, Annuities, Modified Endowment Contracts, and MSAs.

OMB Number: 1545–0203.

Form Number: 5329.

Abstract: Form 5329 is used to compute and collect taxes related to: early distributions from individual retirement arrangements (IRAs) and other qualified retirement plans; distributions from education (ED) IRAs not used for educational expenses; excess contributions to traditional IRAs, Ed IRAs, and medical savings accounts (MSAs); and excess accumulations in qualified retirement plans.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000.

Estimated Time Per Respondent: 1 hr., 3 min.

Estimated Total Annual Burden Hours: 1,042,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–31526 Filed 11–24–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8839

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8839, Qualified Adoption Expenses.

DATES: Written comments should be received on or before January 25, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Qualified Adoption Expenses.

OMB Number: 1545–1552.

Form Number: 8839.

Abstract: Section 23 of the Internal Revenue Code allows taxpayers to claim a nonrefundable tax credit for qualified adoption expenses paid or incurred by the taxpayer. Code section 137 allows taxpayers to exclude amounts paid or expenses incurred by an employer for the qualified adoption expenses of the employee which are paid under an adoption assistance program. Form 8839 is used to figure the credit and/or exclusion.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 3 hr., 11 min.

Estimated Total Annual Burden Hours: 159,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including

through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 18, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–31527 Filed 11–24–98; 8:45 am]

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Corrections

Federal Register

Vol. 63, No. 227

Wednesday, November 25, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulations H, K, O, and Y; Docket No. R-1021]

Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks; Bank Holding Companies and Change in Bank Control; Rules of Practice for Hearings; and Rules Regarding Delegation of Authority

Correction

In rule document 98–29097, beginning on page 58620, in the issue of Monday, November 2, 1998, make the following correction:

§ 225.4 [Corrected]

On page 58621, in the second column, under **§ 225.4 [Amended]**, in amendatory instruction 2, in the sixth line, "§ 208.8(0)-" should read "§ 208.8(f)-".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–4214–010; COC–61627]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

Correction

In notice document 98–30526, appearing on page 63745, in the issue of Monday, November 16, 1998, make the following correction:

On page 63745, in the third column, in the eighth line, "W½NW¼NE¼SE¼" should read "W½NW¼NE¼NE¼SE¼".

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federal register

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November 25, 1998

Part II

Department of Labor

Office of Workers' Compensation Programs

20 CFR Parts 10 and 25

Claims for Compensation Under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States; Final Rule

VOL 63 ISS 227 NO 25 1998 UMI

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Parts 10 and 25

RIN 1215–AB07

Claims for Compensation Under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: On December 23, 1997, the Department of Labor proposed revisions to the regulations governing the administration of the Federal Employees' Compensation Act (FECA) (62 FR 67120). The FECA provides benefits to all civilian Federal employees and certain other groups of employees and individuals who are injured or killed while performing their jobs.

The proposed changes were summarized in that publication. They contain a major revision of the medical fee schedule to include pharmacy and inpatient hospital bills. Other significant new provisions address suspension of benefits during incarceration and termination of benefits for conviction of fraud against the program; changes to the continuation of pay (COP) provisions; paying for an attendant as a medical expense; inclusion of OWCP nurse services in the definition of vocational rehabilitation services; clarifying the reconsideration process; restricting entitlement to postpone oral hearings; clarification of subpoena authority; streamlining the standards for review of representatives' fees; provision of more detailed guidance for claims involving the liability of a third party; and clarification of procedures for claims filed by non-Federal law enforcement officers.

Finally, in light of comments received, the proposal to remove all references to leave repurchase has been abandoned in favor of including a brief mention of this practice.

EFFECTIVE DATE: January 4, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, Room S–3229, 200 Constitution Avenue N.W., Washington, DC 20210; Telephone (202) 693–0040.

SUPPLEMENTARY INFORMATION: Proposed regulations were published in the **Federal Register** on December 23, 1997 (62 FR 67120). They allowed a 60-day period for comment, during which the Department of Labor received timely comments from 24 parties. Thirteen were submitted by Federal employing agencies, seven by labor organizations which represent Federal employees, two by attorneys, one by a physician, and one by a Department of Labor employee. Four untimely comments from Federal employing agencies were also received; many of the points they made were also made by other commenters.

The comments centered on time frames for use of continuation of pay (COP), time frames for submittal of forms by agencies, and postponement of hearing requests. None of the comments represented a profound challenge to the proposed rules.

This final rule applies to cases where the injury or death occurred before the effective date, but only when an initial decision on a particular issue is made on or after the effective date. This final rule does not apply, however, to issues decided for the first time in one of these cases before the effective date, even when such decision is being reviewed after a hearing before an OWCP representative, on reconsideration before OWCP, or on appeal to the Employees' Compensation Appeals Board (ECAB).

Several changes were made which did not result from the comments. One is the addition of nine new OMB clearance numbers to § 10.3 since publication of the Notice of Proposed Rulemaking. Another is that § 10.500 has been subdivided for clarity into four different subsections, and the contents have been rearranged slightly. Also, the title of subpart F has been changed to "Continuing Benefits", and the title of subpart G has been changed to "Appeals Process" for clarity. Several of the questions have been modified slightly for clarity, or so that they will be understandable on their own, without reference to the section where they appear.

Finally, after reviewing the decision of the United States District Court for the District of Massachusetts in *Jones-Booker* v. *United States* (C.A. No. 97cv10616–PBS, May 20, 1998), a provision is being added as new § 10.607(c). This provision will toll the running of the one-year time limitation for requesting reconsideration during any period for which the claimant can establish through the submission of probative medical evidence that he or she was unable to communicate in any way, and that his or her testimony was necessary to obtain modification of the prior decision. Any such period is not counted as part of the year in which a claimant has to timely request reconsideration. To establish eligibility for such tolling, the claimant will have the burden of proving both that he or she was unable to communicate in any way and that his or her testimony was necessary to establish factual matters that could not be established in any other way.

Overall, the parties who commented on the organization of the proposed regulations, the new question-and-answer format, and the "plain English" approach approved of these changes. However, one agency stated that the question-and-answer format might well be problematical, and that subject headings would be easier to follow.

The Department's analysis of the comments received is set forth below. Unless otherwise stated, section numbers refer to the revised regulations. No comments were received with respect to part 25.

Section 10.0

One labor organization asked that OWCP clarify the introduction to the regulations at § 10.0 by adding "including an officer or employee of an instrumentality wholly owned by the United States" to the first sentence. However, this same phrase already appears in the definition of "Employee" at § 10.5(h)(1), and it is not felt that repeating it in § 10.0 would provide any further clarification. Therefore, this change is not being made.

Section 10.5(a)

Two labor organizations noted OWCP's efforts to streamline its regulations and suggested dropping the term "Compensation" from the first line of § 10.5(a) since "Compensation" is defined at section 8101(12) of the FECA. While it is true that the FECA contains a general definition of "Compensation," § 10.5(a) provides a more precise definition of this term (which is used interchangeably with "Benefits" throughout these regulations) that takes into account the construction given to this particular section since the FECA was first amended to include it in 1924. Therefore, dropping the term "Compensation" from § 10.5(a) would not be consistent with OWCP's streamlining effort, and the suggestion is not adopted.

Two labor organizations also argued that § 10.5(a) should not include "medical treatment" paid for out of the Employees" Compensation Fund since beneficiaries are entitled to medical treatment for employment-related injuries and illnesses regardless of whether or not they sustain any

disability. However, this argument ignores the fact that, as one of the "benefits paid for from the Employees" Compensation Fund," medical treatment clearly falls within the statutory definition of "Compensation" set out at section 8101(12). Also, the regulatory definition of "Benefits or Compensation" in use since 1987 (20 CFR 10.5(a)(6)) includes "medical treatment" and, as there was no intent to change this aspect of the definition in these regulations, the suggestion is not accepted.

Section 10.5(f)

One commenter disagreed with the dual economic and medical nature of the definition of "Disability" in § 10.5(f) and argued that the definition of this word should focus solely on clinical findings. However, such a change would be contrary to settled precedent of the ECAB that has emphasized both the economic and medical aspects of disability for work under the FECA. Also, the regulatory definition of "Disability" in use since 1987 (20 CFR 10.5(a)(17)) was essentially identical to § 10.5(f), and as there was no intent to change this definition in these regulations, the suggestion is not adopted.

Section 10.5(g)

While one labor organization commended OWCP for providing further helpful explanation of the term "Earnings from employment or self-employment" in the definition at § 10.5(g), another labor organization asserted that "reimbursed expenses" are "commonly not considered to be income" and asked that they be deleted from the list of examples contained in § 10.5(g)(1) because they are not paid for "services" as that word is used in section 8114(e) of the FECA. There is nothing in the language referenced in section 8114(e) that would necessarily take precedence over the general requirement in section 8106(b) of the FECA that an employee must include any "other advantages which are part of his earnings in employment or self-employment and which can be estimated in money" in his reports to OWCP. The regulatory definition of "Earnings from employment or self-employment" in use since 1987 (20 CFR 10.125(c)) has included "reimbursed expenses", and as there was no intent to change this definition in these regulations, the request to delete this specific example from the list in § 10.5(g)(1) is not adopted.

Section 10.5(q)

One labor organization requested that the word "by" in the definition of "Occupational disease or illness" at § 10.5(q) be changed to "in" as it appeared in the prior regulatory definition in use since 1987. However, using the word "in" would not adequately convey the requirement in section 8101(5) of the FECA that occupational diseases or illnesses be "proximately caused by the employment" (emphasis added) rather than merely occurring during or "in" a period of employment in order to be compensable. Therefore, while there was no intent in these regulations to change the prior definition of "Occupational disease or illness" in any significant way, the requested change would not clarify § 10.5(q) in a manner consistent with the FECA, and it is therefore not adopted.

Section 10.5(x)

One Federal agency and two labor organizations expressed concern about the intended effect of the word "material" in the definition of "Recurrence of disability" and requested further clarification from OWCP. After considering the practical impact of the word "material" on the definition of this term, it does not appear that this particular word adds any further precision to § 10.5(x), and therefore it is deleted.

One labor organization suggested that confusion might result from the use of the term "intervening injury" in § 10.5(x) given the precise meaning of this term in the adjudication of claims for consequential injuries. However, since the context of § 10.5(x) makes it clear that the term "intervening injury" merely refers to a type of work stoppage that is not due to a "spontaneous change in a medical condition," and there was no intent to limit this term to the meaning it has with respect to consequential injuries, modification of this particular term is not warranted.

The same labor organization also suggested that the reductions-in-force referred to § 10.5(x) as not resulting in recurrences of disability be limited to "officially mandated" actions. As the agency responsible for adjudicating FECA claims for the entire Federal workforce, OWCP must be able to rely upon employers (and claimants) to advise it of any relevant and pertinent personnel actions that might have some bearing on the outcome of a FECA claim. OWCP has neither the resources nor the expertise to ascertain whether reductions-in-force are "officially mandated" (presumably, this phrase is equivalent to "duly authorized"), and must leave disputes about individual reductions-in-force to be resolved in the proper forum. Moreover, the words "general" or "officially mandated" add nothing to the sense of this section or its legal force. Under these circumstances, the requested modification of "reductions-in-force" would not be workable and is therefore not adopted.

Finally, two Federal agencies suggested that language be added to § 10.5(x) to highlight that a "Recurrence of disability" does not occur after an employee recuperates from surgery for an employment-related condition or injury if he or she has no entitlement to monetary benefits for refusing an offer of suitable work. Another commenter disagreed with the concept of recurrences altogether. This group of comments about the effect of changes in an employee's accepted medical condition indicates that it would be helpful to add another definition to answer the concerns raised. Therefore, § 10.5 is revised to add a new § 10.5(y), "Recurrence of medical condition", and subsequent paragraphs are renumbered accordingly.

Section 10.5(dd)

One labor organization suggested that a portion of the definition of "Temporary aggravation" in § 10.5(cc) (renumbered § 10.5(dd) in accordance with the revision noted above) be changed from "caused that condition" to "caused that preexisting condition." This same organization also suggested that the second part of this section be changed from "no greater impairment than existed prior to the employment injury" to "no greater impairment or disability than existed prior to the aggravation." The first wording change is redundant, given the context, and the second wording change would modify the sense of the definition in use since 1987 (20 CFR 10.5(a)(18)), which the program had no intent to change. For these reasons, the suggested changes are not adopted.

Section 10.5(ee)

One Federal agency assumed that the proposed definition of "Traumatic injury" in § 10.5(dd) (renumbered § 10.5(ee) in accordance with the revision noted above) differed from the prior regulatory definition of this term in that it now included the phrase "external force," and requested further clarification regarding the meaning of this phrase. However, the definition of "Traumatic injury" has included the phrase "external force" since 1975 and no further definition of this phrase is required since it does not represent an

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attempt to change the existing definition.

Section 10.6

One Federal agency felt that the statement that "certain other benefits are payable" in § 10.6(b) was not consistent with the language of section 8148(b)(3) of the FECA, which provides OWCP with discretionary authority in this area, and should be changed to "certain other benefits may be payable * * *." We agree that the statute does give OWCP discretion in this matter, and § 10.6(b) is therefore revised consistent with the suggestion.

The same agency also felt that § 10.6(c) should refer only to persons who live in the beneficiary's household "and are" dependent on the beneficiary for support. Adoption of this idea would eliminate compensation payable for dependents living in another household through no fault of their own, e.g., minor children whose non-custodial parent is a beneficiary. In any event, this interpretation of the term "dependent" does not conform to the statutory test for dependency contained in section 8110(a) of the FECA, and the suggested revision is not adopted.

Finally, this agency suggested addition of a means test for dependents to this section and to § 10.405. The FECA contains no basis for such a measure.

Section 10.7

Three agencies commented on the use of Form CA–3, two stating that they would like to see continued use of the form, and one stating that there should be some way to report return to duty in its place. If the form is not to be required, one agency said that it should be removed from the list. On balance, OWCP does not believe that use of the form should be required, since agencies routinely notify the district offices when employees return to work. Form CA–3 is therefore being removed from the list. However, OWCP is looking into alternative means of collecting the information requested on this form.

One agency inquired about the purpose of Form CA–12, and another suggested that it simply be deleted from the list. A labor organization suggested that its purpose be clarified. OWCP uses this form to obtain reports of dependents in death cases. As the form is used exclusively by OWCP, and employers have no need to stock it, it is being removed from the list.

Two employee organizations suggested that this section include a statement that employers may not modify forms prescribed by OWCP, or use substitute forms. A statement to that effect is being added to paragraph (a).

Forms CA–7a and CA–7b have been added to the list (see the comments concerning leave buy-back at the end of this analysis).

Sections 10.10, 10.11, and 10.12

Two agencies commented on the statement that all records related to claims filed under the FECA are covered by the Government-wide system of records established by the Department of Labor. More specifically, they stated that an employer generates and maintains a variety of records systems in connection with claims filed under the FECA. The agencies suggested that § 10.10 be revised to provide that DOL/GOVT–1 covers only those records whose primary purpose is to generate, record or report data required by OWCP in its adjudication of claims. All other records an agency may generate as a result of a claim, such as those needed for personnel actions, payroll actions, safety records and investigative reports, should be subject only to the agency's Privacy Act regulations.

Similar comments were submitted to OWCP in connection with its proposal to amend former § 10.12 of the FECA regulations. In the final rule promulgated in the **Federal Register** on October 22, 1998, OWCP concluded that all records collected because a claim was filed seeking benefits under the FECA, including copies of records maintained by the employing agency, were official records of OWCP and, with one limited exception, covered by DOL/GOVT–1.

OWCP recognized, however, that a record may be created to satisfy two or more purposes, and therefore may be covered by other systems of records even though the subject matter of the document relates to an on-the-job injury sustained by a Federal employee. Thus, for example, records collected by an agency as part of a safety, personnel, or criminal investigation conducted pursuant to statutory or regulatory authority other than the FECA would not be covered by DOL/GOVT–1, unless they are submitted by the employee or the agency to OWCP for consideration in connection with the FEC claim. Readers are directed to the comments set forth at 63 FR 56752.

As noted above, the Department's proposed amendments to former § 10.12 have been adopted as a final rule. To ensure consistency, the provisions of that rule are being included in this publication.

With respect to § 10.12, a commenter alleged that he had experienced difficulty obtaining copies of case records from OWCP and recommended that this provision be revised to include a time limitation. The Department of Labor's regulations at 29 CFR part 71 contain the pertinent time limitations applicable to Privacy Act requests, and repeating them in these regulations would serve no useful purpose.

The same commenter also suggested that § 10.12 be revised to require OWCP to suspend the adjudication process until it complies with a request for copies under this section, and also to provide claimants with an opportunity to "review and respond to the final decision after being provided with the requested documents." However, there is no reason given to support the recommendation that case adjudication should be interrupted until OWCP responds to a request under this provision, and the time periods within which claimants can exercise their appeal rights are set out in either the FECA itself or the ECAB's regulations and cannot be altered in these regulations. Accordingly, this second group of suggested revisions to § 10.12 have also not been made.

Section 10.16

One Federal agency requested the addition of a sentence at the end of § 10.16(a) to "clarify" that OWCP both cooperates with and supports the Department of Justice's efforts to enforce the criminal provisions that apply to claims under the FECA. However, OWCP already cooperates with and supports these efforts to vigorously enforce the criminal provisions referred to in § 10.16(a). Therefore, since the addition of an essentially hortatory sentence will not "clarify" OWCP's policy any further, the suggestion is not adopted.

One labor organization suggested deleting the phrase "for making a false report" from the question asked by § 10.16 to clarify that one of the criminal provisions referenced in this section, 18 U.S.C. 1922, applies to employer actions that wrongfully impede a claim. Since the question asked by proposed § 10.16 refers only to penalties that arise from filing a false report, it is revised consistent with the suggestion.

The same labor organization also suggested that a new subsection (c) be added to § 10.16 to further clarify that criminal penalties apply to actions by employers that wrongfully impede a claim. However, § 10.16(a) already lists 18 U.S.C. 1922 as one of the criminal provisions that can apply in connection with a claim under the FECA, so the addition of a new subsection to address this one provision is not seen as necessary. Instead, this subsection is

revised to clarify that criminal penalties also apply to actions of employers that wrongfully impede a claim.

Section 10.17

One Federal agency inquired whether the forfeiture of benefits provided for in § 10.17 applied to both Federal and State crimes and requested clarification if that was indeed the case. In light of the fact that section 8148(a) of the FECA refers to any "Federal or State criminal statute," § 10.17 is revised consistent with the suggestion. The same agency also requested that a reporting requirement be added to this section so beneficiaries would have to inform OWCP of their convictions, and such a requirement will in fact be added to Form CA–1032.

Section 10.18

One Federal agency asked whether benefits inadvertently paid to an incarcerated beneficiary would be considered an overpayment of compensation, and also asked whether the forfeiture described in § 10.18(a) would apply to a period of time already served prior to conviction that is later included in the sentence of a convicted felon. As for the overpayment inquiry, an incarcerated felon is not entitled to compensation during the period of his or her incarceration, and therefore any compensation paid to such an individual would clearly constitute an overpayment of compensation under section 8129 and would be recoverable as such.

With respect to the possible retroactive application of any such forfeiture, section 8148(b)(1) specifies the potential range of these forfeitures by providing that "no benefits * * * shall be paid or provided to any individual during any period" of incarceration, not for any period of incarceration. This temporal limitation means that the forfeiture provided for by section 8148(b)(1) of the FECA will result only in a cessation of current payments that would otherwise have been made "during" a period of incarceration based on a felony conviction, and will not also result in a retroactive forfeiture for a period of time already served prior to conviction if subsequently included in the sentence.

Four Federal agencies objected to OWCP's blanket decision in § 10.18(b) to exercise the discretion granted it by section 8148(b)(3) of the FECA in such a way as to require the payment of benefits to eligible dependents of all incarcerated beneficiaries, since this is a "benefit" that was not available to family members of uninjured Federal employees incarcerated for felony convictions. One of these agencies wanted OWCP to restrict payments of this sort to dependents of felons who are incarcerated for periods of up to six months only, while two of the four agencies complained that there would be "no reduction in compensation benefits" in certain situations under § 10.18(b).

OWCP's policy is consistent with both the remedial aspect of the FECA and Congress's decision in section 8148(b)(3) to provide OWCP with the discretion necessary to make these types of payments. Also, these comments include no recognition that OWCP has exercised this discretion in such a way that these payments to dependents will never exceed 75% of the incarcerated felon's gross current entitlement (which is less than their monthly pay), and will therefore always result in a reduction of compensation benefits. To clarify matters, § 10.18(b) is revised to point out that dependents under this paragraph will not be paid the same amount of compensation as other dependents.

One of these four Federal agencies also requested that a reporting requirement be added to this section so incarcerated felons would have to inform OWCP when they were incarcerated, and such a requirement will be added to Form CA–1032.

Section 10.100

With respect to paragraph (b)(1), one agency requested some examples of verbal notifications of injury, asking specifically what would happen if an employee claimed to have told a supervisor that an injury occurred, but the supervisor died before the facts could be determined. In practice, verbal notification very seldom forms the basis for a claim. In problematic situations such as the one cited, OWCP would need to explore the surrounding circumstances and make a finding consistent with all of the evidence. Since such situations are so individual in nature, as well as quite rare in occurrence, OWCP does not believe that a fuller discussion of this matter in the regulations is warranted.

A commenter objected to the three-year time limit, which is set by law. A modification to it would require a change to the FECA itself.

Sections 10.101 Through 10.106

An employer stated that proposed § 10.103 is redundant, since it essentially repeats the contents of proposed § 10.101. This point is well taken. The positions of proposed § 10.102 and § 10.101 have been reversed, the title of proposed § 10.101 (now § 10.102) has been reworded, and proposed § 10.104 through § 10.106 have been renumbered § 10.103 through § 10.105. (The suggestion from a labor organization that the heading in § 10.103 be rephrased to include only compensable injuries therefore becomes moot). The following comments refer to the provisions as renumbered.

Sections 10.100(b)(3), 10.101(a), and 10.105(a)

Three labor organizations objected to the provision allowing for withdrawal of claims on the grounds that employers may pressure employees to drop claims. While the program continues to believe that there are valid reasons for retaining this provision, the text of § 10.117(b) has been modified to prohibit employers from compelling or inducing employees to withdraw claims.

Two agencies suggested that language be added to § 10.100(b)(3) to indicate that any COP granted to an employee after a claim is withdrawn must be charged to sick leave, annual leave or leave without pay as chosen by the employee. This suggestion has been adopted with respect to annual or sick leave, and the last part of the sentence has been reworded in accordance with § 10.223, which says that COP paid in error may be considered an overpayment of pay consistent with 5 U.S.C. 5584.

One agency asked about the implications of withdrawal of cases which were closed "short form", on the basis that OWCP does not formally "determine eligibility for benefits" in these cases. While no case-specific determination is made in these cases, eligibility has been established using pre-determined criteria, and the program does not believe that the proposed language compromises the ability to withdraw a case which is closed "short form". Should this happen, any monies paid for medical care would be declared an overpayment, which would be handled according to the usual procedures.

Section 10.101 (b) and (c)

A labor organization stated that, because latent conditions may result from traumatic injuries, the discussion of timeliness with respect to latent conditions should not appear solely in the paragraph dealing with occupational disease. The point is well taken, and the language of paragraph (c) is being added to § 10.100 as new paragraph (c). The organization also favors removing the word "injurious" from the first sentence of paragraph (b). As the concept of "injury" is integral to workers'

compensation claims, OWCP believes that the use of this word is appropriate.

Section 10.102

A labor organization suggested that the heading be rephrased to include only compensable injuries. When a Form CA–7 is filed, OWCP has not necessarily determined the compensability of the claim. The suggested change would therefore be unnecessarily restrictive and confusing.

Section 10.102(a)

One agency suggested that this section be amended to include a statement that Form CA–7 is not needed during the initial period of disability, which is covered by COP. The first sentence is being modified to clarify this point.

A labor organization states that the requirement to submit Form CA–7 no more than 14 days after pay stops suggests a legal time limit which a reader might confuse with the time limits specified by the FECA for making claim for compensation, which are described in § 10.100(b). Section 10.101(a) is exclusively concerned with the mechanics of filing a particular form, and makes no reference to time limitations under the FECA. OWCP does not believe that readers will be misled by the wording of this section when it is read in context.

Section 10.102(b)(3)

One agency asked for clarification as to whether the medical evidence should be submitted to the employer or to OWCP. As OWCP is the proper recipient, this paragraph has been changed to so state. The agency also stated that the employee should be required to provide the medical evidence to the employer. OWCP strenuously disagrees, as it is the adjudicator of claims for compensation and employers do not have a global need for medical reports supporting such payments. The agency may, however, obtain copies of such medical evidence directly from OWCP. Therefore, this change has not been made.

Section 10.103

One agency proposed that Form CA–7 always be required to file claims for schedule awards, as they are tracked for timely processing and letters are not, and a request for a schedule award conveyed in a letter might be overlooked. While this suggestion has merit, it does not take into account that schedule awards are initiated by claims personnel as well as by claimants, or that a schedule award may be claimed whether or not the employee is receiving compensation for disability. Given the variety of ways in which a claim for a schedule award may originate, OWCP does not think it is prudent to restrict the method of filing the claim to Form CA–7.

One employee organization noted that the phrase "compensated according to the schedule" is redundant. The phrase is being removed and the word "such" is being added before "impairment" to ensure that the meaning of the paragraph is clear.

Section 10.104

A commenter objected to the concept of recurrences. Removal of this concept would require a change to the FECA itself.

Section 10.104(a)

An agency desired clarification of whether an employee must both lose time from work and incur a wage loss for the submittal of a Form CA–2a to be necessary. This in fact is the case, and no change is made to this paragraph.

Another agency noted that this section addresses only recurrences of disability, and does not consider recurrences of medical conditions (although Form CA–2a is designed to claim both). This agency proposed adding a phrase to the end of the first sentence to address recurrences of medical conditions, and this change has been made.

Three agencies and a labor organization noted a contradiction between a statement in this section and a statement in § 10.207(a), with respect to whether a Form CA–2a, Notice of Recurrence, must be filed during the COP period. One agency noted that submittal of the form is a workload item both for the employer and for OWCP, while another agency noted OWCP's comment in the Preamble to the Proposed Rule that it is difficult for OWCP to intervene in cases when it does not know that time loss is occurring. The statement in § 10.207(a) is correct, and the second sentence of proposed § 10.105(a) (now § 10.104(a)) has been removed.

A labor organization suggested rewording the sentence addressing situations where a Form CA–2a need not be filed. From the suggested text it is clear that three situations (new traumatic injuries, new occupational diseases, and new events contributing to already-existing occupational diseases), rather than the two specified in the proposed rule, need to be addressed in this regard, and the paragraph has been reworded accordingly.

Section 10.104(b)

An agency asked whether the statement accompanying Form CA–2a is to be submitted as a separate narrative, since the information listed in this paragraph is also listed on Form CA–2a. The paragraph is being reworded so that it refers to the specific requirements stated on Form CA–2a, just as § 10.104(b)(2) refers to specific requirements stated on Form CA–2a with reference to the submittal of a medical report.

Section 10.105(a)

A labor organization suggested that this section be reworded to refer to the claimant as the "survivor claimant" throughout. As the referent changes from "survivor" to "claimant" in the middle of the paragraph, different wording would clearly be desirable. Therefore, "claimant" has been changed to "survivor" both in this paragraph and in paragraph (c). The point that SSNs are to be provided for all survivors on whose behalf benefits are being claimed has been clarified, though this issue was not raised by the labor organization.

Section 10.105(d)

A labor organization suggested that the first sentence of this paragraph, which parallels the language of section 8122(c), be expanded to include occupational diseases, and this change has been made. However, the meaning of the statutory text has not been expanded as suggested, by changing "the same injury" to "the same compensable condition".

The organization also proposed that this section address the entitlement of a survivor to the remainder of a schedule award after an employee dies. That is not the subject of this section, however, and its inclusion here would not be germane.

The organization also asked what provision of the FECA bars a claim for disability which is not filed while the employee is alive. In *Anna Palestro (Vincent Palestro)*, 15 ECAB 241 (1964), the Employees' Compensation Appeals Board established that an individual must be alive to claim benefits for disability. The only provision for payments to carry over from a disability claim after death is found in section 8109.

Section 10.110 (a) and (b)

Nine employing agencies, one employee organization, and one other commenter objected to the reduction of time for submitting Forms CA–1 and CA–2 from 10 to five days. Many reasons were cited for this objection.

Practical concerns included observations that decentralized operations make it difficult to meet current time standards, much less tightened ones, and that delivery by the Postal Service can take five days. Also, injuries occurring on a night shift or weekend cannot always receive administrative attention until the next day, when the employee and/or witnesses may not be available; a five-day time frame may result in incomplete and/or inaccurate submittals of information; the quality of claims review by employers might suffer; and the proposed standards would be difficult to enforce.

With respect to traumatic injury cases, it was stated that a five-day period for submittal would be at variance with the 10-day period allowed employees to produce prima facie evidence of disability. It was further stated that, given that OWCP closes most traumatic injury cases "short form", and OWCP nurses are not assigned unless and until a Form CA–7 is submitted, the advantage of a five-day period over a 10-day period was not evident.

With respect to occupational disease cases, it was stated that 15 days should be allowed for submittal of Forms CA–2 for former employees, on the basis that it takes more than 10 days to compile even minimal information for these people. This longer time period would be consistent with the longer time frames OWCP allows for developing and adjudicating claims for occupational disease.

Concerns about the effect on employer morale included the observations that while a reduced time period is a worthy goal, less than half of claims submitted Government-wide meet the 10-day goal now; that employers trying to improve their performance in this area would be subject to criticism for inability to comply with this time limit; and that reducing the time limit would change employers' focus from the needs of injured employees to the need to meet the regulatory requirements.

As a related matter, an employer predicted with respect to § 10.117 that a five-day submittal requirement would result in more erroneous controversions, or more controversions after the initial submittal. This employer juxtaposed the five-day period to the 30-day period allowed for controversion, but this juxtaposition differs little from that presented by the current requirement to submit notices of injury within 10 days. Also, there is a difference between controverting the case, which can be done quickly, and providing supporting evidence, which may in fact take more time.

Finally, § 10.110(b) indicates that the employing agency will "transmit" the completed form to OWCP (as does § 10.113(c)). The word "transmit" is used specifically to allow for electronic transmission of forms. It was suggested that a five-day time frame would be more appropriate when electronic transmission is a reality. It is this argument which seemed most salient, and given the evolutionary nature of the program's electronic data processing efforts, the proposal to reduce the number of days allowed for submittal from 10 working days to five calendar days will be set aside until OWCP has the capacity to receive the notices in electronic format from all agencies. At that time OWCP will revisit this issue from the regulatory standpoint. The 10-day submittal period is very much within the norm by comparison with workers' compensation programs in the States and the District of Columbia. Nineteen states also set a 10-day submittal period, while 19 states set a shorter period and 13 states set a longer one.

A commenter stated that the employer cannot know if "the need for more than two appointments" as stated in § 10.110(b)(3) will develop, and suggests a more general rewording. The program has followed this practice for a number of years, and it has proven to be quite serviceable. Therefore, OWCP does not believe that a change is warranted.

Two labor organizations suggested that the employer be required to furnish the employee with a copy of both sides of Form CA–1 or CA–2 when the employer completes its portion of the form. A phrase to this effect is being added.

Section 10.111

Concerning paragraph (a), a labor organization suggested that language be added to explicitly require the employer to advise the employee of his or her rights under the FECA, as the current regulations provide at § 10.106(a). Employers are required at various places in these regulations to provide specific information and forms to injured workers, and inclusion of a general statement is superfluous.

Concerning paragraph (b), an agency suggested that the time frame for submitting Form CA–7 to OWCP remain as stated in current § 10.106(b), which allows for submittal by the tenth calendar day of wage loss rather than during the COP period. The proposed regulation represents long-standing policy in accordance with guidance first issued by FPM Letter 810–6 in May 1985. OWCP does not believe that this policy needs to be changed.

Concerning paragraph (c), three agencies objected to the five-day time frame for submitting Form CA–7. However, this time frame is the same as that found in the current regulations, and the program is striving to shorten the time frames for submittal of notices of injury and claims for compensation. Therefore, OWCP believes that it would be counterproductive to specify a period greater than the five days currently allowed for submittal of claim forms.

One employee organization suggested that the time frame be expressed as calendar days, rather than working days, to be consistent with § 10.110(a). As the latter section will be changed to read "10 working days" (see comments above), the wording in § 10.111(c) will remain "working days" as well.

Section 10.112

Two agencies objected to the five-day time frame for submitting Form CA–8. As noted in the comments about § 10.111(c) above, however, this time frame is the same as the one found in the current regulations, and the program is striving to shorten the time frames for submittal of claims for compensation. Here, too, the program believes that it would be counterproductive to specify a period greater than the five days currently allowed for submittal of claim forms.

As with § 10.111(c), one employee organization suggested that the time frame be expressed as calendar days, rather than working days, to be consistent with § 10.110(a). As the latter section will be changed to read "10 working days" (see comments above), the wording in § 10.112(b) will remain "working days" as well.

Section 10.115

Current § 10.104 requires the employee to submit medical evidence in all cases. One agency stated that this requirement is not clearly enunciated in the proposed regulations, in spite of specific references in proposed §§ 10.210, 10.101, and 10.105, and suggested a change to proposed § 10.115. The program concurs, and a sentence is being added to clarify this point.

A commenter recommended that Forms CA–1, CA–2, and CA–2c (perhaps CA–2a was intended) be combined, and that Forms CA–5 and CA–5b be combined, and that Forms CA–7, CA–8, and CA–12 be combined. Each of these forms serves a specific purpose and is accompanied by specific instructions. Any of the combinations suggested would result in much longer forms which would be more difficult to

use and understand, both for employees and employers.

A labor organization objected to the removal of the language found at current § 10.110(a) concerning the employee's burden of proof, and suggested that it be restored. Most of the material in the current rule is covered in proposed § 10.115, but the sentences pertaining to the belief of the claimant and emergence of a condition during a period of Federal employment with respect to causal relationship have been added to proposed § 10.115(e), and the latter part of that paragraph as proposed has been relettered (f). Also, a statement that the claimant must establish the five basic requirements of the claim to meet his or her burden of proof has been added to the introductory paragraph of this section.

Section 10.117

One agency read this section as applying only to occupational disease claims, as this is the subject of the section immediately preceding it, and proposed that § 10.117 be retitled to make clear that it applies to both traumatic injuries and occupational diseases. OWCP concurs, and this change has been made.

The same agency proposed a new paragraph providing that "OWCP will promptly respond" to an agency's objection to acceptance of a claim, and also that the agency and the claimant may review each other's responses to the agency's objections. Section 10.119 already addresses OWCP's responsibility to advise all of the parties to the claim when a claim is contested, and the remainder of this suggestion would add another layer of review by claimants and agencies. For these reasons OWCP has not adopted this suggestion.

One labor organization suggested that the last sentence of paragraph (b) be modified to include withdrawal of a claim. OWCP concurs with this suggestion and believes that it will address the issues raised with respect to §§ 10.100(b)(3), 10.101(a), and 10.105(a) (see the comments above with respect to these sections).

Section 10.118

One employee organization suggested that the language which appears in current § 10.140 with respect to the non-adversarial nature of proceedings under the FECA be added to this section. OWCP agrees that it should appear, but as this language applies to many aspects of claims processing, it is being added to § 10.0.

Section 10.119

An agency made two comments about delayed controversion which apparently flowed from the proposal to reduce the number of days allowed for filing notices of injury and occupational disease from 10 to five days. It asked whether OWCP would provide written explanation of an acceptance if the agency contested the claim within 30 days of receiving the notice from the claimant, even if the claim was not contested on the notice itself. OWCP will in fact provide such written explanation, and this section has been modified accordingly.

Section 10.121

Two employee organizations suggested that the phrase "up to" be removed, so that employees will always have 30 days to respond to a request for information. OWCP concurs, and the language of the current § 10.110(b) regulation is being retained in this regard.

Section 10.127

One employee organization suggested that the word "should" in the second sentence be changed to "will", both to ensure that the employee's representative is properly notified and to be consistent with the language in the last sentence. This change has been made.

Section 10.200

One agency requested amplification of when an agency can make preliminary determinations on an employee's entitlement to COP other than in the situations described in § 10.220 and § 10.221. Another agency suggested that the proposed language did not make it clear enough that the employing agency must pay COP, even while controverting it, except for certain delineated reasons. A labor organization also suggested clarifying language in this regard.

The policy behind the proposed rule was and remains that there are no circumstances under which an agency can refuse to pay COP, except for those listed in § 10.220 and § 10.221. The confusion and doubt expressed in the comments, however, pointed to a need for clarification. OWCP found language suggested by an employing agency to be helpful in this regard and changed § 10.200(b) accordingly.

Moreover, in paragraph (a), the phrase "workers" compensation benefits" has been changed to "wage loss benefits" to make the meaning more clear. Finally, paragraph (e) lacks the words "employing agency's" before the word "premises". This oversight has been corrected.

Sections 10.205 and 10.207

These sections elicited the most comments with respect to COP (six and seven, respectively). These sections propose that, to use COP: Disability must either (1) begin within 30 days after the date of injury (§ 10.205(a)(3)); or (2) recur within 30 days after the first return to work (§ 10.207(c)).

One agency objected to shortening the time frame for commencing COP after suffering a recurrence of disability, and noted that since a Form CA–2a was required, OWCP would be put on notice of the recurrence. That agency also pointed out that neither the current nor the proposed rules address the situation where an employee returns to work but takes intermittent COP for medical appointments only, and it suggested that a new section be added to specifically allow for this. COP is appropriately used for medical appointments, and while OWCP does not believe a separate section is needed, a phrase to this effect has been added to § 10.205(a)(1).

Finally, that agency also suggested that employees should document these medical visits. Since bills will be submitted to OWCP for any medical treatment and the dates of treatment will be specified on these bills, no additional documentation will be required.

Six labor organizations addressed the reduction in the time period for commencing COP in both § 10.205 and § 10.207. One organization noted that disability may not begin right away because, for example, of difficulty in scheduling surgery, and that the restriction in both sections was contrary to the remedial purpose of COP. Another noted that complete healing following surgery may take longer than the 30-day time frame would allow, and suggested that a special extension to 180 days be allowed where COP is used for medical appointments only. A third organization challenged OWCP's stated rationale, noting that agencies do not uniformly submit claim forms in a timely manner. This organization stated further that early intervention is valuable in cases involving extensive disability, not where disability is infrequent, and suggested that the intention was really to save agencies COP payments.

A fourth organization felt that the change would deprive the employee of one of the Act's benefits and instead allow agencies to return employees to work before they were physically able to do so. A fifth organization expressed deep concern with the proposal, stating that it failed to recognize that some conditions result in delayed disability,

and while it applauded efforts to minimize lost time, it asked that other methods be used. The fifth organization suggested that the period be reduced to 60 rather than 30 days. A sixth organization also registered grave concerns with this change, stating that it ran counter to the remedial intent of COP and noting that medical treatment may be delayed beyond 30 days from the date of the injury.

COP is intended to prevent an interruption of income in traumatic injury cases during the time period it takes for an employee to submit a claim and for OWCP to adjudicate the claim. While the legislative history does not specify why a 45-day maximum was chosen, the history, supported by the plain language of the statute, makes it clear that Congress was concerned about interruption of an employee's salary while a claim was filed and adjudicated, but had no intention of providing an entitlement to the entire 45-day period if wage-loss benefits could be paid instead. Section 8118(b)(3) further provides that COP is to be paid "under accounting procedures and such other regulations as the Secretary may require," giving the Secretary broad authority to establish the ground rules under which COP will be paid.

However, to mitigate any problems which a 30-day maximum time frame for beginning to use COP might cause, the time frame in the final rule has been changed to 45 days. Despite this change, OWCP believes that it will still be able to fulfill its goal of returning employees to work at the earliest possible time. As noted in the Preamble to the Proposed Rule, it is best if OWCP learns of lost-time cases as soon as possible so that early intervention can facilitate an early return to work. Continued disability-related absences, even intermittent absences, can prevent OWCP from intervening during this crucial time. OWCP recognizes that this need must be balanced against the need to ensure an income stream. The two are not mutually exclusive, however, and the efforts of the agencies and OWCP to shorten the time period required to process claims and pay benefits will prevent interruptions to the income stream.

One example put forth in favor of retaining the existing period for payment of COP when disability does not begin right after the date of injury is that of a claimant whose surgery cannot be scheduled within 30 days. If the claimant continues to work, lost time does not begin until the date of surgery, and if this date is more than 30 days past the date of injury, the individual will have no entitlement to COP and no income.

In this scenario, however, the income stream would not be interrupted. OWCP would note that surgery is pending, and the anticipated lost time would allow the agency and OWCP to process claim forms for wage-loss benefits so that the income stream would not be interrupted. Indeed, this is the very kind of scenario in which COP would not be appropriate, since such lost time is anticipated well in advance and the agency and OWCP have time to process the claim to provide the wage-loss benefits under the Act.

Finally, several commenters noted that employees in some cases lose time intermittently just to attend medical appointments, and cited this kind of time loss as a reason for not reducing the period for commenting use of COP. OWCP does not disagree with this argument, but after careful consideration, it concluded that administration of a provision with different time frames with respect to disability and medical care would be too complicated, both for employing agencies and for OWCP itself. Therefore, the time frame for beginning to use COP will be 45 days in all circumstances.

Three agencies and a labor organization noted a contradiction between a statement in this section and a statement in § 10.105(a), with respect to whether a Form CA–2a, Notice of Recurrence, must be filed during the COP period. As noted in the comments about § 10.105, the statement in § 10.207(a) is correct.

Section 10.205(a)(2)

An employing agency inquired as to what would constitute "another form" acceptable to OWCP, and whether a letter would suffice. This language is included so that the regulations reflect OWCP's position that a Form CA–2, CA–7 or CA–8 (all of which contain words of claim) fulfills the requirement that notice be given "in writing" under the appropriate circumstances. The word "form" does in fact denote an OWCP-approved claim form, and a letter would not serve the purpose described herein.

Section 10.206

One agency expressed concern with the retroactive election of COP in those cases OWCP terms "short form closure" cases, that is, cases where there is no wage loss claim and the medical bills do not exceed a certain dollar amount. In these cases, no formal acceptance is issued. The agency points out that in such cases, the wording in § 10.206(a) should be revised to reflect this by adding the parenthetical clause "(if written approval is issued)." This suggestion is accepted and the language has been changed accordingly.

Section 10.210

An employing agency argued that employees should submit medical reports to employing agencies as well as to OWCP. This issue is addressed in the comments about § 10.331(b). Several commenters pointed out a typographical error ("employer" instead of "employee"), which is corrected in the final rule.

A labor organization objected to changing the period within which medical evidence supporting disability must be submitted to the employer from 10 working days to 10 calendar days. This change was made because it is important to obtain this evidence as soon as possible. Using working days, which do not include Saturdays, Sundays and Federal government holidays, can easily result in a period of 15 or more calendar days elapsing before a medical report is received, a period during which the employee continues to be absent from work. OWCP has discussed the importance of early intervention, and the earlier the submittal, the better. This section is entitled "Employee's Responsibilities" to emphasize that return-to-work efforts are required by employees as well as employers and OWCP. Certainly the employee, who has chosen his or her physician, has the most leverage over the physician at this crucial time and can best ensure that such medical evidence is submitted. The new language requiring the report to contain a statement as to when the employee can return to work is consistent with and essential to this goal.

Section 10.211

One labor organization suggested wording changes to subsection (c) that would have the effect of eliminating the distinction between controverting a claim for COP and other objections an employer might raise to a claim under the FECA. Unlike a general objection that would have no immediate consequences for a claimant pending action by OWCP, controverting a claim for COP is a preliminary determination by an employer that stops a claimant's regular pay. Therefore, OWCP wants to retain the distinctive nature of this particular type of objection, and the suggested changes have not been adopted.

In subsection (d), several commenters asked what the phrase "other forms approved by the Secretary" meant. This phrase was added to ensure that the

regulations reflected OWCP's position that a Form CA–2, CA–7 or CA–8 (all of which contain words of claim) will fulfill the requirement that notice be given "in writing" under the appropriate circumstances. In addition, one labor organization suggested changing "return" to "transmit", and this change has been made. Finally, three agencies objected to the requirement that Form CA–1 be submitted to OWCP within five calendar days. For the reasons stated in the response to the comments received to § 10.110, OWCP has decided to keep the time frame of 10 working days, and the language of paragraph (d) has been changed accordingly.

Section 10.215

One agency noted with respect to paragraph (d) that there appeared to be a change in how COP days are calculated in this section as proposed. The section states that days off are counted toward COP if COP was used in the days immediately before and after the days off. The comment pointed to an inadvertent modification in how days are calculated and the final version has been changed to read that if COP is used on the day before or the day after days off and disability is supported by medical evidence, the days off are counted toward COP.

The same agency suggested language on calculating COP days for part-time or intermittent employees, and that language has been adopted. However, this agency's suggestion that OWCP add a new paragraph to § 10.215 to address the circumstances under which COP may be used for obtaining medical treatment would both limit the scope of paragraph (c) and unnecessarily restrict OWCP's ability to monitor the provision of medical treatment, and therefore the requested addition has not been made.

Sections 10.216 and 10.217

Two Federal agencies noted that the inclusion of differential and/or Sunday premium pay in the pay rate for COP was contrary to provisions in two appropriation bills passed by Congress, Pub. L. 104–208, section 630, 110 Stat. 3009, 3362 (1996) and Pub. L. 105–61, section 636, 111 Stat. 1272, 1316 (1997), which prohibited Federal agencies funded by those bills from paying differential and/or Sunday premium pay to their employees unless they actually performed work during the time period relevant to such pay. These agencies therefore suggested that both §§ 10.216(a)(1) and 10.217 be changed to reflect that these particular increments of pay are not to be included in the pay rate for COP.

Ever since Congress amended the FECA in 1974 to provide for COP, OWCP has directed agencies to include premium, night or shift differential, Sunday or holiday pay, and other extra pay in their calculations of the pay rate for COP. However, in several recent appropriation bills, Congress has included language similar to the prohibitions cited by the two Federal agencies, without actually amending the underlying statutory authority for such increments of pay or overturning court decisions construing such statutory authority.

Therefore, while it is clear in the absence of such appropriations language that it would still be proper for OWCP to require the inclusion of these two increments of pay in the pay rate for COP, it is also clear that the statutory authority for the payment of such increments is not derived from the FECA itself, nor are these increments currently being paid in a consistent manner throughout the entire Federal workforce due to the varied scope of agency legal authority to spend appropriated funds. In addition, the agencies funded by the appropriation bills in question would again be required to include these increments of pay in the pay rate for COP should the prohibition on their payment not be included in future appropriation bills.

From an administrative standpoint, there is little justification for OWCP involvement in payroll functions among the various agencies, only some of which are affected by the appropriation bills noted above, since COP constitutes a continuation of an employee's "pay" that is calculated and paid by his or her agency rather than a form of "compensation" that is calculated and paid by OWCP. Accordingly, §§ 10.216(a)(1) and 10.217 are revised to reflect these circumstances.

One of the same two Federal agencies also suggested adding language to § 10.216(a) to emphasize that "weekly pay" is based on an average of the employee's weekly pay over the prior 52 weeks. However, § 10.216(a) already explains this very point, and thus the suggested addition is not made. One labor organization urged that § 10.216 include a reference to paid leave in determining how COP is calculated, for fear that agencies would exclude it from their calculations. Certainly, paid leave must be included in the calculation of COP. While neither OWCP's regulations issued since 1975 nor the Federal (FECA) Procedure Manual make reference to paid leave, there is no indication that this absence has caused the feared exclusions to occur. Therefore, OWCP sees no need to add the requested reference.

Sections 10.220, 10.221 and 10.222

One labor organization recommended changes to § 10.221 regarding the requirement that an agency controvert a claim for COP before it stops an employee's pay. However, the suggested changes, which involve retention of language in current § 10.203(b), would not maintain the desired distinction between controverting and otherwise objecting to a claim, and they have therefore not been incorporated.

A number of labor organizations noted that the existing rules direct agencies to retroactively reinstate COP which it had stopped because medical evidence showing disability had not been received within 10 days, when that medical report is received. The language has been added to § 10.222(a)(1).

One agency asked about the type of medical evidence necessary to support the continued payment of COP and requested further guidance from OWCP. The evaluation of medical evidence by the employing agency is limited to a determination of whether, on its face, the medical report supports disability. Agencies do not properly consider medical rationale. Given this limited involvement, further guidance of the type requested is seen as unnecessary.

One labor organization objected to the provision in § 10.222(a)(1) that would allow an agency to stop paying COP if the claimant fails to submit the required medical evidence within 10 calendar days and requested that the time frame of 10 working days be retained. However, as noted previously in the response to this labor organization's objection to the equivalent language in § 10.210(b), the change to calendar days from working days was made because it is important to obtain this evidence as soon as possible. Therefore, for the same reasons that supported maintaining the equivalent change in § 10.210(b), the requested change in § 10.222(a)(1) has not been made.

Another labor organization objected to the change allowing the termination of COP when a personnel action—initiated before the injury and including a removal action—becomes final following the injury and during the COP period. No reason was offered for the objection, however, and the program believes that this clarification is necessary to ensure that employees who would otherwise not have received salary do not receive it merely because of the COP provisions. This change was supported by one agency.

Yet another labor organization, along with an agency, suggested that the

proposed rules clarify the employing agencies' authority to terminate COP. An agency noted that § 10.222(a)(3), regarding refusal of a written offer of suitable work, appears to change the current authority for an agency to stop COP. Such a change was not intended, and so new language has been added to this section which makes it clear that an agency can stop COP when an employee refuses a written offer of suitable work, but that OWCP has final authority to determine whether the termination was appropriate and can order retroactive restoration of COP benefits improperly terminated.

The labor organization noted that the language preventing an agency from terminating COP except under the circumstances listed in existing § 10.203 and § 10.204 does not appear in the proposed rules. The reasons for termination have remained essentially the same (except for termination for personnel actions initiated before the injury which become final after the injury). While the language in § 10.220 and § 10.222 is phrased to limit authority of the agency not to pay (§ 10.220) or to stop paying (§ 10.222) in those circumstances listed, the comments show that the program's intent was not clear. Therefore, additional language has been added to § 10.220 and § 10.222(c), clarifying that the agency cannot stop COP to which the employee is otherwise entitled except for the reasons set out in these two sections, or unless OWCP directs COP to stop, or unless the individual has returned to work.

Sections 10.223

Two agencies noted that this section failed to address disruptions by the employee's representative. That language has been added. A labor organization noted that the "required medical examination" is one required by OWCP and the regulations should so state, and this change has been made. The organization also suggested making clear that the suspension is subject to all appeal and review rights. This language is unnecessary, since all adverse decisions by OWCP are subject to the review and appeal processes set forth under the Act.

Section 10.300(b)

While agreeing with the proposed language that Form CA–16 need not be issued more than a week after the injury occurs, one agency suggested that this section be changed to state that the form need not be issued if the employee reports the injury more than one week after its occurrence. The current language covers this situation as well as the situation where an employee reports an injury right away but does not appear to need medical care for up to a week afterwards. Therefore, OWCP does not believe that the suggested change is necessary.

Another agency suggested that the time for issuing Form CA–16 be increased from four to 24 hours, citing distances among supervisors, injured employees, medical treatment facilities, and those authorized to sign Forms CA–16. The four-hour time frame is the same as currently provided, and as noted in the second sentence of this paragraph, verbal authorization may be given if necessary. In view of the excellent telephone and facsimile communications generally available in the United States, OWCP sees no reason to increase this time frame.

A commenter also objected to the time frame stated, claiming that reaching OWCP may take a week, that care cannot be authorized unless the specific procedures are known ahead of time, and that employees injured at night and on weekends are denied equal access to care. These arguments are not persuasive, especially as the proposed rule is unchanged from the existing rule, and the commenter's suggestion that the employer authorize one visit for medical care until OWCP can approve further care is impractical.

Three labor organizations argued that the proposed rule limiting issuance of Form CA–16 to one week following the injury is inconsistent with the statutory 30-day requirement for claiming COP. Still another labor organization stated that changing to a one-week limit from what it considered to be the current time frame of six months from the date of injury to be "radical and inappropriate". OWCP does not agree. The purpose of Form CA–16 is to authorize urgently-needed medical care in connection with a work-related traumatic injury, not to provide blanket medical coverage. An employee whose need for medical care develops so gradually that it is not apparent until a week after the injury occurred cannot accurately be said to require urgent medical care. The time requirements for claiming COP have no relation to those governing issuance of Form CA–16.

Section 10.300(d)

Three employee organizations suggested that the employer be specifically instructed to "advise the employee of the right to initial choice of physician", parallel to the language of proposed § 10.211(b) with respect to the employee's right to COP. This change has been made.

Another employee organization suggested that this paragraph allow for initial choice of medical facility as well as physician. Inasmuch as a report from a physician is needed to support a claim for compensation, the inclusion of the term "medical facility" is irrelevant at best, and might prove misleading as well.

A commenter stated that this section does not indicate how OWCP will notify physicians that they have been excluded. This information is provided in subpart I, which is referenced in this paragraph.

Section 10.303

Two agencies expressed their appreciation for the clear statement with respect to issuing Forms CA–16 for simple workplace exposures to hazardous substances when injuries have not occurred.

Section 10.310

Two agencies stated their support for the changes in this section with respect to appliances, supplies, and generic equivalents for prescribed medications, indicating their belief that these measures would assist in cost containment (and, in the view of one of them, sound fiscal management). Another agency stated its approval of the program's cost containment efforts in general. Another commenter, on the other hand, questioned how OWCP would apply the test of cost-effectiveness.

A commenter also questioned the statement that OWCP "will not approve an elaborate appliance or service where a more basic one is suitable", positing that OWCP will oppose use of higher-cost diagnostic tests (for instance MRIs, in comparison with x-rays) in a misguided attempt to cut costs. This conclusion is incorrect. The statement is intended to address requests for special equipment, such as exercise bicycles, and special services, such as health club memberships, when prescribed to treat the effects of an injury. OWCP will not pay for a top-of-the-line appliance or service where a less expensive equivalent exists. However, in matters of diagnosis and treatment, OWCP does not and will not attempt to second-guess physicians.

Section 10.310(b)

The last sentence in this paragraph gives OWCP the authority to require the use of generic equivalents where available. An agency suggested that OWCP require the use of generic equivalents where available for all prescribed medications, unless the employee shows good cause for not

doing so. Another commenter, on the other hand, stated that OWCP should not be allowed to require the use of generic equivalents if they do not represent the "SOC" (presumably "standard of care"), since doing so "sets MDs up for malpractice".

As the purpose of adding this provision to the regulations is to provide OWCP with the flexibility to implement such a policy in the future, the first comment is not adopted. With respect to the second comment, use of generic equivalents is a commonly accepted practice in many health plans and medical benefit programs, and the program has no intent to subvert generally accepted standards of care. The statement will therefore remain unchanged.

Section 10.311

With respect to § 10.311(a), two agencies stated their disagreement with what they considered the expansion of chiropractic services and suggested that the first sentence be reworded to more closely follow the statutory language. However, the proposed change is virtually identical to the last sentence of section 8101(2), and as there is no intent to expand the meaning of the statute, and the costs involved are consistent with the statute and with OWCP's past practice, OWCP does not believe that the language of this section needs to be modified.

Another commenter objected to §§ 10.311(a) and (b) on the basis that chiropractors cannot treat subluxations. Such treatment is authorized at section 8101(2).

Section 10.313

An agency asked that this section more clearly define when preventive treatment may be authorized and when it may not, particularly in the context that a work-related injury must be present before treatment may be authorized. Paragraphs (b) and (d) already refer to specific injuries, and paragraph (a) addresses complications of agency-sponsored preventive measures, which are considered to be injuries. Paragraph (c) refers to conversion of tuberculin reaction after exposure to tuberculosis in the performance of duty. Since tuberculosis is transmitted invisibly, through the air, a specific injury is inferred from the conversion. For these reasons, OWCP does not believe that changes to this paragraph are necessary.

Section 10.314

Two employee organizations objected to the change in method of payment to attendants as represented by this section, given the language of section 8111(a). The Preamble to the Proposed Rule (62 FR 67123–67124) sets forth in detail OWCP's reasons for making this change, and OWCP continues to believe that this exercise of the Director's discretion will be beneficial in several ways. As noted in the Preamble, employees currently receiving an attendant's allowance under section 8111(a) will not be affected by this change.

Two agencies stated that they support the changes noted in this section, one indicating its belief that this provision will help OWCP to monitor and control medical costs in the future. The other suggested that this section address the desired billing method, either specifically or by cross-reference to subpart I. OWCP concurs, and a cross-reference to § 10.801 has been added.

The second agency also suggested that the new provision apply to all cases, and that attendants' allowances currently being paid under section 8111(a) be discontinued. In this agency's view, such a change would reduce workload and avoid any confusion which might result from having two methods of payment. Given the relatively small number of cases affected by this provision, OWCP does not believe that the benefits which would result from changing the method of payment to claimants now receiving augmented compensation for attendants would outweigh the disruption which might result.

Section 10.320

An agency questioned whether an employee's spouse may attend a second opinion examination, and if not, asked that this be stated in the regulation (and in the letters notifying claimants of appointments). The proposed paragraph states that "the employee is not entitled to have anyone else present at the examination * * *." OWCP believes that the word "anyone" is inclusive enough to convey the intended meaning of this sentence, and that clarification is unnecessary.

A labor organization commented that it is unlikely that personal physicians will participate in second opinion examinations, due to other commitments, and that is unfair for an employee to be "be denied an opportunity to have a second person present during the examination." Another organization expressed similar concerns and stated that the language of § 10.323 is sufficient to address any improper behavior.

Section 8123(a) provides that "The employee may have a physician designated and paid by him present to participate in the examination." The FECA says nothing about other individuals participating in the examination. Of course, it is perfectly permissible for any individual to accompany the employee to the examination and remain nearby, in the waiting room, if the employee so desires.

On another subject covered by this section, an employee organization argued that the provision for sending a case file for second opinion evaluation without actual examination of the claimant is counter to the clear language of section 8123, and should therefore be removed. Evaluation of the case file without examination of the claimant can assist claims staff in resolving such issues as causal relationship in occupational disease cases, or making retroactive determination of whether surgery should be authorized. Furthermore, in *Melvina Jackson*, 38 ECAB 443 (1987), the ECAB authoritatively held that this section of the FECA is not limited to *physical examinations* of a claimant and specifically construed section 8123(a) as providing for evaluations of the evidence in a claimant's record without an actual physical examination. Therefore, the suggested deletion is not made.

Section 10.321

One agency asked that a statement be added to this section clarifying that not every difference in medical opinion results in a referee examination. The requested clarification is consistent with decisions of both the ECAB (Andrea Kay Roberts, Docket No. 95–1839 (October 22, 1997)) and federal courts that have addressed this point (*McDougal-Saddler* v. *Herman*, No.Civ.A. 97–1908 (E.D.Pa. December 24, 1997), and *Chaklos* v. *Reich*, et al., No. Civ.A. 95–1763 (W.D.Pa. August 25, 1997)). OWCP agrees that clarifying this section would be useful and therefore a new paragraph (a) has been added. Also, the current text has been relettered paragraph (b), and the title of this section has been slightly revised to more accurately reflect its subject matter.

One labor organization argued that the provision for sending a case file for referee evaluation without actual examination of the claimant is counter to the clear language of section 8123, and should therefore be removed. However, in *Melvina Jackson*, 38 ECAB 443 (1987), the ECAB noted that it had never held that an actual physical examination of a claimant was necessary to resolve disagreements using the medical referee provisions of

section 8123(a). Therefore, the suggested deletion is not made.

In paragraph (b), the reference to section 8123(a) has been replaced with a reference to § 10.502.

Section 10.322

An agency asked that a statement be added to this paragraph noting that the costs of second opinion and referee examinations are eventually charged back to employers. However, the costs associated with medical examinations are no different from other benefits under the FECA, as all expenses are charged back to employers. The mechanism for doing so is described in the FECA at section 8147. In line with OWCP's attempt to avoid repeating statutory provisions in the regulations wherever possible, the program does not believe that addition of language about chargeback of costs associated with medical examinations is necessary or desirable.

Section 10.323

An agency suggested that the title of this section be revised to include the word "penalties", and this change has been made.

Section 10.324

A labor organization argued for inclusion of language which would bar the results of medical examinations requested by the employer from being used to reduce or terminate OWCP benefits, unless those results were corroborated by medical examinations directed by OWCP. The program's procedures have stated for some time that such examinations will not be used in this way, and OWCP is not aware of any problems which have arisen with respect to this policy. Therefore, the program does not believe that it is necessary to address it by regulation.

Section 10.330

See the discussion above concerning § 10.115. This section is being modified to make clear that in all cases the employee is responsible for submitting medical evidence, or arranging for its submittal.

A commenter suggested that medical reports require the disclosure of previous claims for the same condition, pre-existing conditions of the same part of the body, and hobbies or other occupations which may contribute to the condition claimed. OWCP already has the capacity to identify previous Federal workers' compensation claims for injuries to the same part of the body. Where necessary, OWCP requests information about pre-existing conditions, hobbies and other jobs as part of evaluating claims for disability.

The same commenter stated that examining physicians should be required to state whether the condition found is causally related to employment. In fact, such a requirement already exists. The commenter also suggested that OWCP physicians review all claims to ensure that causal relationship is properly established. OWCP will shortly begin using automated decision tables, which will compare the condition claimed on the bill with the condition accepted in order to identify problematical acceptances.

Section 10.331(b)

An agency suggested that the employee or treating physician submit copies of medical reports to the employer, stating that while Form CA–17 is useful, physicians do not always complete it. The agency also suggested that OWCP should be required to submit to the employer a copy of any medical report showing that the employee can return to work in some capacity.

Another agency characterized the requirement that reports be sent directly to OWCP as "directing employees and medical providers to circumvent the employing agencies" and claimed that this represents a detrimental change, although current § 10.410(b) also requires submittal of reports to OWCP. This agency also stated that this policy will hinder agencies from helping claimants with requests for surgery and claims for wage loss and from becoming aware of new medical conditions which need to be considered in making offers of reemployment.

A third agency stated that it has difficulty managing cases without immediate access to medical reports, which it cannot always obtain right away from OWCP. Another commenter makes this argument as well.

This set of comments speaks to the need for careful information-gathering and for close coordination among employers, employees and OWCP. They also speak to the rights and responsibilities of all parties in the claims process. In its proposed regulations, OWCP has tried to strike a balance among these sometimes competing interests. Employers usually need copies of medical reports primarily to identify jobs to which their injured employees may return, and Form CA–17 is designed explicitly for this purpose. That medical providers do not always complete forms and reports as requested is an experience shared by OWCP, and the program does not believe that adding another requirement for information submittal will truly address this issue, particularly when the medical reports may not accurately describe work limitations.

With respect to managing claims and the need for up-to-date information when offering reemployment, one of the reasons that OWCP uses the services of registered nurses is to facilitate coordination and exchange of medical information among claimants, employers, and medical providers. When a claimant can return to work, whether to full or light duty, full or part time, it has been OWCP's experience that the nurses are able to provide information quickly and accurately so that reemployment can take place as soon as possible.

For all of these reasons the program does not believe that a change in this section is warranted. The agency may, however, obtain copies of such medical evidence directly from OWCP.

Another issue raised by several employing agencies is whether Form CA–17 may be used only for traumatic injuries. One agency notes that it might well be used to determine work limitations in certain kinds of occupational illness cases. OWCP concurs, and the word "traumatic" has been removed from this paragraph.

Section 10.333

One employee organization suggested that this section state that medical reports in support of claims for schedule awards must be based on the American Medical Administration's (actually, American Medical Association's) *Guides to the Evaluation of Permanent Impairment*. OWCP concurs, and this reference has been added to this section.

Section 10.336

A commenter stated that the time frames for submittal of bills are too long and suggested that OWCP require submittal within 30 days of the service date. However, the time frames set forth in the regulations are consistent with the practice of the insurance industry in general, and OWCP sees no reason to change them. The commenter also suggested that OWCP be required to process bills within 60 days of receipt. OWCP adheres to internal standards which require that 90 percent of medical payments be made within 28 days of receipt and that 95 percent be made within 60 days of receipt. For this reason, OWCP does not see the benefit of including specific time periods in the regulations. Requiring an "attached medical report", as is also suggested, is impractical in an automated bill processing environment.

Section 10.337

An employer and another commenter objected to the provision for reimbursement on the basis that it is unfair to both the agency, which will have to pay the chargeback bill, and to providers who adhere to the fee schedule. While OWCP does not consistently and/or routinely reimburse employees for these excess charges, paragraphs (b) and (c) have been revised so that the employee will be responsible for contacting the provider to obtain refund or credit. If the provider does not comply with this request, the claimant will need to submit documentation of the attempt to OWCP. OWCP may in its discretion make up the difference to the claimant, after reviewing the facts and circumstances of the case. Once such a payment is made, the employee would be aware of the monetary costs of continuing to seek treatment with such a provider, and OWCP might consider not reimbursing the employee for any subsequent excess charges, thereby minimizing the impact of § 10.337 on an agency's chargeback costs. (Section 10.802 has been modified consistent with these changes.)

Two labor organizations suggested that the language of § 10.813 be repeated for claimants in this section. Sections 10.337 and 10.813 are intended to be parallel in structure, and OWCP does not believe that repeating § 10.813 would serve any useful purpose.

Section 10.401

With respect to the period of disability which must elapse before the claimant may be compensated for the first three days of wage loss, an agency asked that the method of counting the days be clarified. The word "calendar" is being inserted to make the meaning clear. The agency also inquired as to whether the 14 days may be intermittent, and in fact they may.

One agency suggested a cross-reference to § 10.6. A specific reference to section 8110(a) would probably be more useful, and one is therefore being added.

Section 10.403(a)

One agency commented, apparently with respect to this section, that determinations of wage-earning capacity should be tied to the minimum wage rate. However, the FECA has no provision for establishing such a link.

Two labor organizations argued that, consistent with ECAB decisions in this area, any position selected as representing an employee's wage-earning capacity must be actually available to the employee within his or her commuting area. However, this is an incorrect interpretation of the ECAB's rulings, which have consistently held that OWCP only needs to find that a position is being performed in sufficient numbers in the area in which the employee lives so as to be considered reasonably available before it can determine that the job represents the employee's wage-earning capacity [*e.g., Kenneth H. Cummings, Sr.*, 28 ECAB 284 (1977); *James B. Stewart*, 32 ECAB 36 (1980)]. Accordingly, since there is no requirement that the selected position actually be available to the employee, the suggested change is not made.

Section 10.404

Two agencies objected to the inclusion of pre-existing impairments in payments made under the schedule award provisions of the FECA. These agencies argued that employees who are compensated for the full extent of their impairments actually receive benefits for non-occupational impairment.

It is a well-settled principle of workers' compensation law that each employee is hired "as is". The employee is a whole person, with various strengths and weaknesses, some of which pre-exist employment and some which develop concurrently with it. Apart from the practical difficulties which the commenting agencies admit would result from any attempt to differentiate work-related from non-work-related impairment to a schedule member, such an attempt would violate the remedial nature and spirit of the FECA.

One agency suggested re-writing this section to reflect a means test for dependency. The FECA contains no provision for such a test (see the comments about § 10.6).

A labor organization suggested restoring text concerning payment for schedule impairment which appears in current § 10.304(c). This material already appears in section 8107(a), and OWCP sees no reason to repeat it here.

Another commenter objected to the program's use of the AMA's *Guides to the Evaluation of Permanent Impairment* for determining schedule awards under the FECA, indicating that it focuses on the extent of the initial injury or illness, not the degree of recovery. This, however, is not true. The AMA states on page 1/1 of the fourth edition that "The *Guides* defines 'permanent impairment' as one that has become static or stabilized during a period of time sufficient to allow optimal tissue repair, and one that is unlikely to change in spite of further medical or surgical therapy." OWCP does not agree with the commenter's suggestion that the program use another publication for determining schedule awards.

The commenter also questioned whether medical benefits are payable in cases where the claimant has reached maximum medical improvement. Such expenses are in fact payable as long as treatment is found to be necessary and reasonable.

Section 10.405

An agency suggested addition of a means test for dependents to this section and to § 10.6. The FECA contains no basis for such a measure.

Section 10.406

A commenter suggested use of different percentages than those provided by law for payment of compensation for disability. Such modifications would require a change to the FECA itself.

Section 10.410

One labor organization requested that OWCP restore the partial description of the compensation payable in death cases that was set out at § 10.306 of the 1987 regulations (the organization was apparently unaware that the FECA was amended in 1990 to change the age of remarriage noted in section 8133(b)(1) to 55). Since the proposed rule was published in the **Federal Register** on December 23, 1997, the ECAB issued a decision construing section 8133(a)(5) of the FECA for the first time. That decision is *Clyde Stevenson (Donna R. Stevenson)*, Docket No. 95–3016 (issued February 4, 1998). In light of the authoritative construction of this section of the FECA provided by the ECAB in *Stevenson*, and to address the concerns of the labor organization, the heading and text of § 10.410 are revised consistent with the request.

Section 10.417

A commenter suggested that this section should state whether a handicapped child continues to be entitled to benefits if the employee dies. If this happens, payments end unless death benefits are awarded. No change is necessary as a result of this comment.

Section 10.420

In all four subsections, the statutory reference has been changed to section 8146a, not 8146(a).

Section 10.421

Two Federal agencies recommended that the election provision in § 10.421(a) be modified to make it either partially or fully irrevocable, citing the Office of

Personnel Management's (OPM's) rule that elections of benefits in death cases are irrevocable, while another commenter recommended that the provision be removed entirely. OPM and OWCP have adopted their respective policies for particular reasons, and neither agency is unaware of the other's position.

While it is understandable that agencies would desire that OPM and OWCP policy be the same, the changes proposed by these commenters would not be consistent with the settled construction given to section 8116 of the FECA by the ECAB in such leading cases as *Adeline N. Etzel (Bernard E. Etzel)*, 21 ECAB 151 (1969); *Charles W. Akers*, 24 ECAB 316 (1973); *Louis Teplitsky*, 29 ECAB 826 (1978); and *Gary J. Bartolucci*, 34 ECAB 1569 (1983). Therefore, the suggested modifications are not adopted.

The latter commenter recommended that both subsections (a) and (d) of § 10.421 be modified to automatically end compensation payments at retirement age (except for permanently totally disabled individuals), at which time such beneficiaries would "revert" to their respective retirement systems. The commenter also recommended that the dual benefit restrictions set out in § 10.421(a) also apply to the military payments described in § 10.421(b). Absent an act of Congress amending section 8116, however, such changes cannot be made, and OWCP is therefore not adopting them.

Finally, the same commenter recommended that the first sentence of § 10.421(e) be modified to add the requirement that beneficiaries provide "information on any other compensation or injury." However, such information would have no effect on a beneficiary's entitlement to compensation under the provisions of section 8116, and the requested modification is therefore considered unwarranted.

Section 10.430(a)

One labor organization suggested that the word "clear" be added before "indication of the period * * *", and OWCP is making this change. The organization also suggested that the section specify that periodic checks are to show any deductions or adjustments affecting the amount of the payment. OWCP is working on automated enhancements which will allow this information to be shown, but the capacity to do so is not yet available.

Sections 10.433, 10.436, and 10.437

Three agencies objected to being held financially accountable, through the chargeback process, for waivers of overpayments which resulted from errors made by OWCP. They suggested that when OWCP waives such an overpayment, the agency should receive a credit to its chargeback bill in the amount of the overpayment. For two reasons, OWCP does not concur with this suggestion.

First, the FECA is remedial in nature, and OWCP considers requests for waiver according to carefully defined procedures which are intended to protect the interests of both the claimant and the Government. The granting or withholding of a waiver is not intended to be a punishment or a reward, but rather the result of an administrative process as provided by law. Secondly, the FECA contains no provision for crediting the chargeback with monies reflecting either the commission of errors or the waiver of overpayments by OWCP.

Section 10.441

A commenter objected to inclusion of overpayment amounts in agencies' chargeback bills when the claimant is not at fault and the employer controverted the claim or detected the overpayment. The FECA contains no provision for crediting the chargeback because of such actions by the employer. In paragraph (b), the reference to the Debt Collection Act of 1982 has been replaced with the Federal Claims Collection Act of 1966 (as amended).

Section 10.500

As noted above, the proposed section has been subdivided into four new sections (§ 10.500 through 10.503) for clarity, and the contents have been slightly rearranged.

One agency objected to what it believed to be a new criterion for defining suitable work, namely that it be "appropriate to the nature of the employee's usual employment". This phrase represents a misreading of the actual text, which is taken from section 8115, as follows: "appropriate to the nature of the injury; the degree of physical impairment; the employee's usual work; * * *" The regulatory language contains nothing novel.

Four labor organizations argued that any position found to constitute suitable work should be available within the employee's commuting area. The availability of suitable work within the employee's "commuting area", a term which has been extensively addressed by the ECAB, is required. *See Arquelio Pacheco*, 40 ECAB 277 (1988); *Fred L. Nelly*, 46 ECAB 142 (1994). OWCP is modifying this section accordingly.

Section 10.501

One labor organization suggested rewording paragraph (a) to state that OWCP's requests for medical evidence in long-term disability cases will ordinarily occur not less than once a year. OWCP is making this change, as the suggested wording reflects long-term OWCP policy with respect to certain severely disabled employees.

One agency and another commenter noted that, while the Preamble to the Proposed Rule states that benefits may be suspended for failure to undergo non-invasive testing directed by OWCP, the text of paragraph (b) itself does not so state. A sentence is being added to this section to correct this oversight.

Section 10.505

One agency stated that this section combines two subsections of section 8151(b) in error, and a labor organization made the same point by suggesting that this section be rephrased. The word "within" is being replaced by the word "after" to correct this oversight.

The same agency noted that, because of the importance of making job offers in writing, § 10.505(c) is better placed in § 10.507, "How should the employer make an offer of suitable work?" OWCP concurs, and the language has been moved accordingly.

Section 10.505(a)

One labor organization suggested that this section require the employer to advise the employee in writing of the specific duties involved. This change has been made.

Section 10.506

An employer suggested that agencies not be limited to the use of Form CA–17 in gathering medical information from physicians. The form is usually adequate for this purpose, and this section has been revised to so state. Another agency wanted to remove the words "in writing" from this section, on the basis that return to work might be delayed or improper job placements might result from unclear descriptions of restrictions from physicians. The need for clarity in such descriptions is one of the two main reasons for requiring such offers to be made in writing, the other being the need for diligent attention to due process requirements. The suggested change has not been made.

A labor organization asked whether it is appropriate to use Form CA–17 for occupational diseases as well as traumatic injuries. OWCP has revised § 10.331(b) to allow its use in both kinds of situations.

This organization, along with one other, also suggested that employers be allowed to contact employees only in writing. Also, two labor organizations stated that employers should be explicitly prohibited from contacting physicians through phone calls or personal visits. OWCP concurs with both of these ideas, and the suggested changes have been added to this section.

Another labor organization objected to the provision allowing employers to contact employees at reasonable intervals to obtain medical evidence, due to a perceived possibility of harassment. While reasonable people may interpret the phrase "at reasonable intervals" differently, the phrase clearly does not provide license for harassment. OWCP does not believe that there is merit to the suggestion that this provision be removed.

Section 10.507

Two labor organizations stated that employers should be required to advise employees in writing of the information specified in paragraphs (a) and (b). This change has been made. (Also, "should" in (a) has been changed to "shall" for consistency with (b).)

Section 10.507(c)

An agency asked whether a job offer can be made verbally and followed up in writing. As discussed with respect to § 10.331(b), OWCP has tried to strike a balance among the sometimes competing interests of employers, employees, and OWCP itself.

In this case, the time gained by allowing verbal job offers must be balanced against the need to protect the employee's due process rights. The FECA provides a severe and permanent penalty for refusing an offered job, and the ECAB has remanded cases where OWCP has not scrupulously followed various procedural requirements. Job duties must be defined with great precision so that both employer and employee correctly understand them, and the potential for miscommunication is always higher in verbal than in written exchanges. However, as a practical matter, verbal job offers can expedite the process of reemployment, which benefits both the employer and the employee.

To both allow this flexibility and provide due process rights, this section has been modified to state that a job offer may be made verbally as long as the employing agency follows it up with a detailed written job offer within two business days of the verbal offer. This amount of time should be sufficient for the claimant to consider the job duties and assess whether he or she can perform them. The second half of this section has also been relettered "(d)".

Section 10.508

A labor organization stated that, since relocation expenses may be paid only to individuals who have been separated from the employer's rolls, the title of this section should be modified. However, the program believes that the question should continue to be phrased more generally, since it will arise with respect to employees still on the employer's rolls as well as to separated employees.

The same organization, and two others as well, proposed that the regulations require OWCP to notify employees that relocation expenses are payable when the job is offered. OWCP concurs that such notification should be provided in any case where a finding is made that the job is suitable, and text has been added to this effect.

Section 10.509

Three labor organizations suggested that the term "reduction-in-force" in § 10.509(a) be further modified by adding language that would limit its application to "general" or "officially mandated" actions. Using these modifiers, however, would not be consistent with ECAB decisions finding that employees do not sustain compensable recurrences of disability when they lose their light-duty positions pursuant to many different types of reductions-in-force.

Moreover, OWCP must be able to rely upon employers (and claimants) to advise it of any personnel actions that might affect the outcome of a FECA claim. OWCP has neither the resources nor the expertise to determine whether reductions-in-force are "officially mandated" (presumably, this phrase is equivalent to "duly authorized"), and must leave disputes about individual reductions-in-force to be resolved in the proper forum. The suggested change would therefore not be workable, nor would it enhance either the sense of this section or its legal force.

Two of the same organizations suggested that OWCP simply assume that eliminated light-duty positions have been abolished because of employment-related disability. It is not OWCP's practice to make assumptions where the facts can be determined, and OWCP sees no merit in this idea.

Another labor organization objected to the underlying premise in § 10.509(a) that a reduction-in-force will not lead to a compensable recurrence of disability. However, as noted above, the ECAB has consistently ruled that employees who lose their light-duty positions in a reduction-in-force do not sustain compensable recurrences of disability.

A labor organization suggested that this section be modified so that employers would be prohibited from eliminating only light-duty positions. This is a personnel matter, and one which is outside the scope of these regulations.

One labor organization argued that a partially disabled employee who loses his or her Federal job will not be able to find another job in private industry and should therefore be entitled to receive compensation. Because this statement is hypothetical, OWCP cannot address it. An employee whose light-duty job is withdrawn, except in reduction-in-force situations, will in fact be entitled to claim compensation for a recurrence of disability.

An agency noted that employees may be performing light-duty work in classified positions while they are still receiving "retained pay" based on their date-of-injury positions and questioned whether OWCP should use their actual earnings in such circumstances to determine their wage-earning capacities consistent with the language found in § 10.509(a). However, using an employee's actual earnings while he or she is receiving "retained pay" has been approved by the ECAB in cases such as *Domenick Pezzetti*, 45 ECAB 787, *petition for recon. denied*, Docket No. 92–2037 (issued November 2, 1994), which held that the use of actual earnings under these circumstances to determine an employee's wage-earning capacity was consistent with section 8115(a) of the FECA.

The same agency also suggested that § 10.509(b) specifically note that an injured employee must "encumber" a classified light-duty position before OWCP will use the actual earnings in such a position to determine the wage-earning capacity under § 10.509(a). This suggestion reflects OWCP's existing policy in this area, and § 10.509(b) is revised accordingly.

A labor organization raised a concern that pursuant to § 10.509(b), OWCP might be tempted to use an "odd-lot" or "sheltered" position created specifically for a particular injured employee to determine that employee's wage-earning capacity. However, the ECAB has long rejected use of such a position, and nothing in this subsection is meant to thwart this legal prohibition, which is widely recognized in the field of workers' compensation law. If a job is withdrawn after OWCP has determined the employee's loss of wage-earning capacity, and the job was in fact an odd-lot or sheltered job, the employee may file a claim for a recurrence of disability.

Finally, one commenter disagreed with the use of the term "light-duty" in this section and argued that it should be replaced with a term such as "modified" or "restricted duty" that would be based solely on medical restrictions. However, the term "light-duty" has a very specific meaning in § 10.509(b) that is obviously based on a number of medical and factual circumstances, and for these reasons OWCP does not accept the argument that it be replaced with a purely medical term.

Section 10.515(a)

A labor organization suggested that the word "total" be replaced by "his or her compensable" disability. In fact, neither the original phrase nor the proposed revision adds value to this paragraph, and the phrase "because total disability has ceased" is therefore being removed.

Section 10.515(b)

An agency suggested that this section be reworded to require claimants to seek suitable employment, as well as to accept it. This change, which is consistent with section 8106(c), has been made.

A labor organization suggested that this paragraph be expanded to include the effects of an "other acceptable medical condition" as well as the effects of the work-related injury. The suggested wording both obscures the meaning of the paragraph and introduces extraneous concerns, and no change is being made to it.

Section 10.515(c) and (d)

An agency noted that employees do not always advise attending physicians that work may be available for them, and asks whether the agency can contact the physician when there is a written job offer or the employee's work limitations can be accommodated. Section 10.331(b) allows employers to contact physicians to obtain descriptions of work limitations on Form CA–17.

Section 10.516

Two agencies argued that the 30-day period provided by OWCP for an employee to accept or decline an offered position is too long. One suggested that this period be shortened to five days, while the other suggested that it be shortened to 15 days.

Where a job is to be accepted or declined, and termination of benefits may be at issue, OWCP does not consider a period of less than 30 days sufficient, across the board, for response from employees. For instance, if the employee objects to the position offered for medical reasons and thus needs to obtain a medical report, it is unreasonable to expect that the physician will conform to a five or even a 15-day deadline to prepare and submit a medical report.

Although the circumstances in a particular case may not in fact warrant a 30-day period for response, clear and consistent procedures are especially important in this area of the program's operations, given the need to provide due process at every step. For these reasons, OWCP does not believe a change to this paragraph is warranted.

Sections 10.518 and 10.519

While one Federal agency strongly supported the inclusion of nursing services as one of the many vocational rehabilitation services that OWCP may provide to injured employees, one labor organization noted that such inclusion would change nursing services from a voluntary choice to an obligatory course that OWCP could "direct" an employee to undergo, and argued that OWCP should not make this change. It stated that such an approach would be "deeply unproductive" without giving any reason for this belief. The organization also posited that the mandatory aspect was proposed so that the costs associated with OWCP nurses would be shifted to the employing agencies, but in fact, the costs are already charged back to the agencies.

In addition, the organization argued that since section 8104(a) of the FECA only allows OWCP to direct "permanently disabled" employees to undergo vocational rehabilitation, OWCP could not impose the sanctions described in § 10.519 (which are derived from section 8113(b) against employees who refuse to cooperate with OWCP nurses unless they were "permanently disabled."

Pursuant to section 8104(a), OWCP has the discretionary authority to "direct a permanently disabled individual whose disability is compensable" to undergo vocational rehabilitation. The ECAB has repeatedly held that a "permanently disabled individual" refers to an employee with a loss of wage-earning capacity, since the intent of Congress in enacting section 8104(a) was to provide disabled employees with the services necessary to overcome or lessen their disability. *See, e.g., Wayne E. Vincent, 6 ECAB 1024 (1954); Joseph C. Reuter*, 11 ECAB 296 (1960); *Gary L. Loser*, 38 ECAB 673 (1987).

Consistent with these rulings, OWCP's policy is to presume that an injured employee who has a loss of wage-earning capacity is "permanently disabled," for purposes of § 10.519 only, unless and until the employee proves that the disability is not permanent, and to intervene in the early stages of disability cases to help employees return to some type of work as soon as possible. Since nursing services have been shown to be one of the most effective vocational rehabilitation services that can be provided to employees in the weeks immediately following their injuries, § 10.519 allows OWCP to impose sanctions against employees who refuse to cooperate with its nurses. However, in light of the apparent confusion regarding the scope of this regulation, § 10.519 is revised to better describe OWCP's policy.

Section 10.520

A labor organization asked that this section be reworded to state that positions must be available within the employee's commuting area. OWCP believes that this point is sufficiently addressed in the response to the comments to § 10.403 set out above.

Section 10.525(a)

Two agencies asked that this section include the authority for OWCP to request copies of employees' tax returns, though neither agency includes a reason for this request. The program occasionally finds it necessary to request tax returns, for instance to verify self-employment or to ensure that an employee has not earned income for a lengthy period for which retroactive compensation is claimed. When asked, employees have submitted the copies without protest. OWCP does not believe that an addition of regulatory authority is necessary.

Section 10.526

One agency asked OWCP to clarify the language of this section regarding the applicability and frequency of the intended reporting requirement, while another agency noted the similarity of this section to § 10.525 and suggested simply combining the two sections. To clarify § 10.526 consistent with the first suggestion, the text of this section has been modified to specifically state that this is a periodic reporting requirement which applies to both partially and totally disabled employees. However, the suggestion to combine §§ 10.525 and 10.526 is not adopted since the text of § 10.526 is intended to focus on volunteer activities, and keeping these sections separate will further highlight this intentional distinction.

The second agency also suggested that this section include OWCP's expectation that employees will report

any information which might reasonably affect their benefit levels. The program believes that this last point is better left to procedural guidance.

One labor organization argued that employees should not be required to report volunteer activities because such activities may help them cope with their disabilities. While agreeing that these activities may be beneficial to an employee's self-esteem, OWCP is of the opinion that they are also a useful indicator of an employee's ability to perform some form of work and therefore should be reported.

Section 10.527

One agency suggested strengthening the wording of this section by removing the words "attempt to" with respect to verifying employees earnings. Those two words have been removed. Another agency stated that this section should be reworded so as not to limit the kinds of computer matches which may be performed with records of State agencies. This suggestion is being adopted as well.

Section 10.540(b)

One labor organization suggested that the second sentence of § 10.540(b) be changed from "a claim has been made for a specific period of time" to "a claim has been approved for a specific period of time * * *" However, the recommended change would change the focus of this portion of § 10.540(b) from the reasonable expectation of the beneficiary to a determination of OWCP, and would therefore be inconsistent with the remainder of this subsection, which states that OWCP will not provide written notice before it terminates compensation "when the beneficiary has no reasonable basis to expect that payment of compensation will continue." Therefore, the suggested change is not made. However, two minor wording changes have been made to clarify the meaning of two clauses in the third sentence.

Section 10.540(c)

A labor organization suggested wording changes that would, in essence, provide employees who refuse to accept or perform suitable work additional procedural safeguards that exceeded those described in § 10.516. However, the procedures in § 10.516 are based on the ECAB's decision in *Maggie L. Moore*, 42 ECAB 484 (1991), *reaffirmed on recon.*, 43 ECAB 818 (1992). OWCP sees no basis to add further procedures in this area.

One agency was under the impression that this section, which states (among other things) that OWCP will not provide written notice before it terminates compensation based on a "failure or refusal to either continue performing suitable work or to accept an offer of suitable work," was inconsistent with the notice provided in these situations pursuant to § 10.516. However, the two regulations are not inconsistent since the notice provided under § 10.516 informs the employee of OWCP's determination that a particular position is suitable, whereas the notice contemplated by § 10.540 informs the employee of the impending cessation of his or her compensation rather than a finding on a preliminary issue such as suitability.

Therefore, for example, once an employee has received the notice required by § 10.516 and has refused an offer of suitable work, OWCP will issue a decision terminating the employee's monetary benefits without any prior written notice to that effect. The first sentence of § 10.540(c) is being amended to include the word "terminated" before "suspended or forfeited" to account for all of the possible ways in which OWCP may end compensation payments.

Section 10.541(b)

An agency suggested that the word "Substantial" be inserted before the word "Evidence" at the beginning of this section, which addresses the kinds of evidence which will affect OWCP's proposed action to reduce or terminate benefits. In practice, evaluations of evidence received when pre-termination notice has been issued always require judgment and discretion on the part of OWCP staff. This wording change would have no effect of any significance on the meaning of this subsection.

A labor organization suggested substituting "finding and award under 5 U.S.C. 8124" for "decision", but here again, such a wording change would have no apparent effect of any significance on the meaning of this subsection.

Section 10.600

One agency proposed giving agencies the right to seek review of decisions. Since proceedings under the FECA are non-adversarial, there is no statutory basis for providing the agencies with the right to seek review of benefit determinations.

Two employing agencies suggested that the phrase "initial final decision" in the first sentence is confusing. OWCP concurs, and the phrase has been changed to "formal decision".

Section 10.607

The existing rule, unchanged in the proposal, is that the claimant has a right to reconsideration of any decision if requested within one year of the date of the last merit decision. Three labor organizations noted that the proposal does not reflect OWCP's practice of including ECAB decisions among the "merit decisions" the date from which the one year begins to run.

Any suggestion that OWCP should review or reconsider an ECAB decision is inappropriate. OWCP and ECAB are separate and distinct entities. The ECAB is the highest appellate authority under the FECA and its decisions are binding on OWCP. Since OWCP has no authority to review decisions of the ECAB, OWCP has interpreted its limitation provision as liberally as possible, such that a merit decision of the ECAB will renew the one-year time period within which a claimant may request reconsideration before OWCP, with the date of the ECAB's merit decision serving as the new starting point from which the one-year period will run. OWCP will continue to do so, but because ECAB decisions cannot be reviewed by anyone, including OWCP, the language in this section has not been changed.

Section 10.609

One commenter suggested that the amount of time allowed for employers to comment on the application for reconsideration be expanded from 15 to 30 days, due to time constraints on the part of agency staff. While such a change would lengthen a process which is already time-consuming, OWCP recognizes that the 15-day period has been problematical. Therefore, the period for commenting on the application for reconsideration has been changed to 20 days in the final rule. This commenter also advocated allowing employers to "question" claims (presumably by requesting reconsideration). The FECA makes no provision for appeal rights for employers.

Section 10.610

One employing agency suggested that this section include appeal rights for employers. The FECA contains no provision for granting such rights.

Section 10.615

One agency objected to the proposal that a hearing representative may direct that the hearing be conducted by telephone or teleconference. A labor organization said that this should be a recommendation but not done at the hearing representative's option. Neither

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the agency nor the labor organization gives a basis for its objection. OWCP believes that this option will allow it to better control an ever-increasing workload and to provide hearings at an earlier time than it otherwise could, without limiting claimants' rights in any way.

Sections 10.616 and 10.619

Several labor organizations objected to recognizing forms of date marking other than postmarks. Since requests are being submitted through carriers other than the Postal Service, and electronic transmission is likely to become routine in the future, the text has not been changed.

With respect to § 10.616, one commenter noted that the claimant could ask for a change to an oral hearing after the case was far along in the written review process, thus undercutting efficiency and allowing for purposeful delays. The point is well taken, and the time frame for such requests has been shortened to 30 days after the Branch of Hearings and Review acknowledges the request.

Sections 10.617 and 10.618

Several comments about time frames were received. One commenter noted that the time frames set forth in § 10.617(f) for submitting evidence were confusing and potentially never-ending, because they would allow new evidence to be submitted up to the date of the decision, which in turn would require comments by the agency or the employee, and so forth. The final rules have been changed to clarify that evidence in cases where oral hearings are held is to be submitted up to 30 days after the date on which the hearing is held (unless the hearing representative specifically grants an extension of time). Similarly, § 10.618(a) has been changed to provide that OWCP will designate a date by which evidence is to be submitted in reviews of the written record.

Another commenter noted that the service provisions in § 10.618(b) represent a change from the current practice of having the agency serve their comments directly on the claimant (or the claimant's representative, if any) and provide OWCP with a certification of service. That section has been slightly modified to reflect this practice.

With respect to the agencies' comments that 15 days is not enough time to adequately review and analyze the transcript (§ 10.617(e)), OWCP recognizes that this time frame has been problematical and has therefore extended the period for response to 20 days. For consistency, the time frame for claimants to respond to agency comments has also been changed to 20 days.

A labor organization suggested that the notice of hearing be mailed 60 days, rather than 30 days, before the date of the scheduled hearing. The argument offered is that seven to 10 days can elapse between the hearing representative's determination of the date of the hearing and the employee's receipt of the notice. However, any increase in the period of notice adds an increment of delay to a process which OWCP is attempting to streamline. The program does not believe that this change is necessary, and it has not been adopted.

Finally, one labor organization noted that language from the statute (section 8124(b)(2)) which appears in the current rules (at existing § 10.133) should be included in § 10.617. The phrase "but may conduct the hearing in such a manner as to best ascertain the rights of the claimant" has been added to § 10.617(c).

Section 10.621

One employing agency noted that the agency's role in teleconferenced hearings and the number of representatives an agency may send to the hearing needed to be clarified (another agency made the latter point as well). Section 10.621 has been changed to allow more than one representative, where appropriate. The comments also stated that the agency and the claimant should each be given copies of the other's comments, and both should have the same amount of time to review and respond to transcripts and comments. The current practice of sending agency comments to the claimant reflects the non-adversarial nature of the FECA claims process, and the fact that the agency is not a party to the claim. Because the agency is a source of information, however, it is allowed limited participation, but expansion of that role would not be appropriate.

Section 10.621(a)

One labor organization objected to the statement allowing hearing representatives to ask employing agency representatives to testify, on the basis that the employee cannot easily anticipate what issues the hearing representative will raise and that employing agency representatives, who are often compensation specialists, may confuse employees with sophisticated arguments. The organization also argues that active participation by the agency will compromise the non-adversarial nature of the hearing process and hinder the ability of claimants to present evidence. These arguments do not take into consideration the role of the hearing representative, which is to uphold the non-adversarial nature of the process and adjudicate the issues based on the evidence. OWCP does not find these arguments persuasive, and the language of this section has not been modified.

Section 10.622

The provision prohibiting cancellations of hearings drew considerable criticism from four labor organizations and three commenters, and support from one Federal agency. Most of the comments suggested that the blanket prohibition against postponements was too harsh and suggested that postponements be allowed under "exceptional circumstances."

OWCP is concerned about providing any opportunity to further delay the hearing process or to add yet another issue for potential review. Nevertheless, it is recognized that very narrow circumstances exist which are truly out of the control of the claimant and would justify a postponement. Accordingly, § 10.622(b) has been changed to allow a postponement for exceptional circumstances, defined in § 10.622(c) as medically documented non-elective hospitalization of the claimant, or death of the claimant's parent, spouse or child.

One labor organization commented on the period for rescheduling a hearing. However, nothing in this section of the regulations refers to time periods.

The first sentence in § 10.622(b) has been slightly reworded and divided into two sentences for clarity.

Section 10.701

A labor organization questioned whether representational activity undertaken in connection with a claim under the FECA is exempt from the prohibitions set forth at 18 U.S.C. 205. The organization asserted that "the adjudication of a claim under the FECA is an administrative proceeding and thereby such representation meets the exceptions noted in the applicable law". OWCP believes that the organization was referring to section 205(d), which permits a Federal employee to represent another employee in "disciplinary, loyalty, or other personnel administration proceedings" so long as the person acts without compensation. Based on OWCP's reading of Informal Advisory Letter 85 x 1, issued January 7, 1995, by the Office of Government Ethics (OGE) (representation of persons seeking to establish entitlement to benefits under laws administered by the

Veterans Administration is not covered by section 205(d)), the program is of the opinion that proceedings under the FECA do not come within the exception. For these reasons, no change will be made to § 10.701.

Section 10.701(b)

A labor organization noted that the phrase "conflict with any other provision of law" is redundant, given that it appears in the first paragraph of this section. Therefore, the phrase has been removed from paragraph (b).

Section 10.703

One commenter objected to assigning the task of approving fee petitions to the body before which the services for which fees are charged were performed. However, the office before which the work was performed is in the best position to evaluate the usefulness of services, the nature and complexity of the claim and the other criteria set out in this section. Thus, the text remains unchanged in this regard.

Section 10.705

One Federal agency asked whether claims examiners exercise any discretion in requiring an employee to prosecute an action against a third party in regard to minor injury claims, noting that § 10.709 references the procedures under which a FECA beneficiary who has been directed to pursue an action against a third party can be released from that obligation. Section 10.705(a) provides that an injured claimant "can be required to take action" against a third party responsible for an injury covered under the FECA. It does, however, allow OWCP to exercise discretion in determining whether to require a FECA beneficiary to take action against a third party.

Section 10.711

One Federal agency pointed out that "Subtotal B" in the example should be "72,000" and not "-72,000", and that "Disbursement" in line 4 of the example should be "Disbursements." These observations are correct, and § 10.711 is revised accordingly.

Section 10.714

One commenter objected to the inclusion of costs for both second opinion medical examinations and referee medical examinations within the refundable disbursements used to calculate any required refund or any credit against future benefits. The objection is based upon the fact that the damages requested from a third party in any litigation are not based upon those expenditures. Inclusion of such costs within the refundable disbursements used to calculate both required refund and credit against future benefits is a longstanding practice based upon the fact that such costs are paid from the Employees' Compensation Fund and contribute to the ability of OWCP to "furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation" as set forth in section 8103(a) of the FECA.

Furthermore, the Supreme Court in *United States* v. *Lorrenzetti*, 467 U.S. 167 (1984), has specifically rejected any attempt to limit the calculation of either the refund required to be paid by FECA beneficiaries or any credit against future benefits based upon whether or not the expenditures at issue were within the elements of damages for which recovery was sought against a third party in the litigation that resulted in a recovery subject to section 8132. Accordingly, the requested change to this section is not made.

Section 10.717

One commenter disagreed with the statement that "an injury caused by medical malpractice in treating an injury covered by the FECA is also an injury covered under the FECA," and argued that such coverage should not result from the medical malpractice of a private physician. However, since the statement in question is based on ECAB cases where coverage has been found under these circumstances, such as in *Bonnie D. Jefferson*, 34 ECAB 1426 (1983), the suggested modification of § 10.717 would be directly contrary to the ECAB's interpretation of the FECA, and it is therefore considered unwarranted.

Sections 10.730 and 10.731

An agency objected to the elimination of a number of redundant provisions that involved the Peace Corps and stated that without their inclusion in these regulations, it would not be able to effectively administer the workers' compensation claims of its personnel. However, the retention of the provisions in question would not be consistent with OWCP's efforts to streamline its regulations and would not provide any significant assistance with respect to this class of claims since the eliminated provisions merely repeat statutory language without adding anything. The suggested changes to this section are therefore not adopted.

Section 10.800

One agency recommended that OWCP expand the list of issues addressed by medical records to include "disability." The recommended change would be consistent with § 10.330(j), which states that a medical report from an attending physician must address "the extent of disability," and therefore § 10.800 is revised to reflect this suggestion.

Section 10.801

One agency supported the changes to OWCP's fee schedule, but asked how the requirement to use the specific billing forms listed in § 10.801 would be communicated to providers and employees. These regulations themselves are the primary vehicle for informing providers and employees of OWCP's billing requirements, which will also be communicated via the Internet (from which copies of the forms can be downloaded) and through routine contacts with OWCP claims staff and bill processing units in the various district offices across the country.

Section 10.802

One agency asked if there were any consequences for providers who consistently refused to reimburse employees for amounts charged in excess of the fee schedule. Since the inception of the fee schedule in 1986, OWCP has specified such consequences, and § 10.815(e) of these regulations states that providers may be excluded from participating in the FECA program if they knowingly fail to reimburse employees for amounts charged in excess of the fee schedule. Another agency thought that allowing OWCP to consider reimbursing an employee for the amount in excess of the fee schedule in § 10.802(g) contravened the fee schedule and would lead to an undesirable increase in agency chargeback costs. As noted above in response to similar comments regarding § 10.337, subsections (e), (f), and (g) of § 10.802 have been modified consistent with the changes to § 10.337.

Section 10.805

One agency asked if some providers might be exempt from the OWCP fee schedule. In § 10.805(b) and (c), OWCP notes that its fee schedule does not currently cover services provided in nursing homes, nor does it cover appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

Another agency disagreed with the fact that the fee schedule did not apply to Government medical facilities, since this meant that agencies would pay more if they encouraged their employees to seek treatment for employment-related injuries or illnesses at such facilities. However, this agency did not seem to be aware that pursuant to section 8103(a), employees have the right to make an initial selection of a physician to provide medical treatment, and would presumably not choose to be treated in a Government medical facility if other sources were available. Furthermore, there seems to be little rationale for applying OWCP's fee schedule to these facilities since they are, to a large extent, designed to provide specific types of medical services to rather limited groups of patients and are not currently operated under any recognizable billing system.

Finally, one commenter disagreed with the development and application of OWCP's fee schedule. Referencing a February 1994 article in the *Journal of Occupational Medicine*, this commenter alleged that using the schedule would cause providers to choose not to treat injured Federal employees, thus resulting in a diminished quality of care. OWCP's medical fee schedule has been in use since 1986 and is currently based on the relative value scale (RVS) used by the Health Care Financing Administration (HCFA), which includes geographic index factors. These data were developed by HCFA through studies and consultations with national physicians' groups and others. They are updated yearly through the regulatory process. While OWCP has incorporated the HCFA RVS in its medical fee schedule, the conversion factors that translate the RVS into maximum dollar amounts are based on OWCP program data, data from other Federal programs, reimbursements under State workers' compensation programs, and common billing data.

The article referenced by the commenter discusses the comparative cost savings of a corporate medical department versus outside services and therefore has no relevance to the program administered by OWCP given its national scope and the restrictions imposed by the physician selection provision of section 8103(a).

In the years since 1986, OWCP has not received any evidence that the fee schedule has jeopardized the quality of care provided injured employees, and the program only rarely receives a complaint about the maxima allowable that is not satisfactorily resolved. Therefore, no changes to § 10.805 will be made.

Section 10.809

One agency recommended that OWCP reimburse employees only for prescription drugs that they purchase for employment-related injuries and illnesses at the lower of either the fee schedule or the employee's individual health insurance plan charges. As already provided in § 10.809, OWCP will not reimburse an employee for an amount that exceeds the price he or she actually paid, nor will it reimburse an employee for an amount that exceeds the fee schedule. However, further limitations of the sort recommended would not be feasible due to the wide variation in health insurance plan charges and the fact that most plans do not cover prescription drugs needed for employment-related injuries and illnesses.

One labor organization noted that some small pharmacies lack the means to submit bills electronically to OWCP or to wait for the assignment of a claim number before submitting bills for payment by OWCP. However, there is no requirement that pharmacies bill OWCP electronically in these regulations, nor is there a likelihood that a problem involving claim numbers will occur since these numbers are currently being assigned in an expeditious manner.

The same labor organization asked that this section be amended to provide that pharmacies be notified of the requirement to refund any charges in excess of the fee schedule when employees are only partially reimbursed for prescription drugs. However, § 10.802(e) already provides for this notice to pharmacies and repeating this provision in § 10.809 is seen as unnecessary.

Another labor organization wanted OWCP to give employees notice of the fee schedule and an explanation of how it works, presumably in addition to the legal notice of these matters provided by the publication of the regulations in the **Federal Register**. However, additional notice of the sort requested would not be practical and is not seen as necessary, since current beneficiaries will be informed of these matters as part of the routine administration of their claims by OWCP. Therefore, the requested changes to § 10.809 will not be made.

Section 10.810

As with § 10.809, one labor organization wanted OWCP to notify employees of the fee schedule for inpatient medical services in § 10.810 and explain how it works, in addition to the legal notice of these matters provided by the publication of the regulations in the **Federal Register**. However, additional notice of the sort requested would not be practical and is not seen as necessary, since current beneficiaries will be informed of these matters as part of the routine administration of their claims by OWCP.

One commenter criticized the decision to use the HCFA Prospective Payment System (PPS) using Diagnostic Related Groups (DRGs) as the foundation of OWCP's own PPS in § 10.810. However, this decision was based on research that explored available options and a study of FECA inpatient bills which revealed that the HCFA PPS using DRGs is well-suited to OWCP's efforts to monitor and control its inpatient costs. Accordingly, the requested changes to § 10.810 have not been adopted.

Section 10.816

One commenter suggested that a new paragraph (c) be added to § 10.816 requiring that the "partner or group" of a physician automatically excluded from the FECA program under § 10.816(a) also be excluded from participating in the program. However, the situations that would lead OWCP to automatically exclude a physician under § 10.816(a) would be specific to that physician, and therefore they would not form a proper legal basis for automatically excluding that physician's "partner or group" under this regulation. Therefore, the suggested addition of a new subsection is not adopted.

Leave Buy-Back Provision

Two employing agencies and two labor organizations objected to the removal of the leave buy-back provision found at current § 10.310. Most important among the reasons for this removal, which are stated in the Preamble to the Proposed Rule, is that leave buy-back is neither authorized nor required by the FECA, nor is it controlled by OWCP.

The commenters argued that agencies would not have the authority to convert periods of leave to LWOP without the equivalent of the current § 10.310, and that in remaining silent about this issue, OWCP is abandoning its own procedures. It was also stated that compensation would have to be paid directly to employees, without reimbursement to agencies, and that employees would have to pay the entire cost of leave to agencies before leave restoration, instead of compensation due being paid to agencies. Finally, the two agencies stated that the current procedure, where OWCP pays the

agency directly, aids in debt collection, and that removal of the leave buy-back provision from OWCP's regulations would add work for agencies.

As an ancillary issue, several agencies asked that Forms CA–7a and CA–7b be added to the list in § 10.7(a).

The reasons for removal of the leave buy-back provision have not changed. However, since OWCP does in fact have a procedure for paying compensation when leave is restorable, a brief mention of this process in this rule is considered warranted, and it is being added as new § 10.425. For similar reasons, Forms CA–7a and CA–7b are being added to the list in § 10.7(a). Current practice is not altered.

Miscellaneous Comments

OWCP also received comments and suggestions which did not pertain directly to the proposed regulations. Many would require legislative amendments before they could be implemented, or concern procedural matters. Because they are not germane to this final rule, no further comments are appropriate.

One commenter addressed the section about Executive Order 12866, questioning whether compliance will be possible with existing personnel. To the extent that the comment refers to the staff needed by pharmacies to comply with the fee schedule, OWCP does not agree since similar fee schedules are already widely used. If the comment refers to federal personnel who administer the FECA, OWCP also disagrees but, in any event, the Executive Order does not concern the impact of regulations on federal agencies.

The commenter also stated that the proposed pharmacy fee schedule will adversely affect claimants since the most advanced drugs for musculoskeletal disorders are very expensive. However, the providers will be required to accept the amount offered under the fee schedule, and if they do not, the regulations contain a provision for reimbursement to the claimant of the difference between the amount charged and the amount allowed by the fee schedule (see the comments about § 10.337 above).

This commenter also addressed the section about the Unfunded Mandates Reform Act, referring to the above-noted proposal for establishing "centers of excellence" as well as to occupational health personnel matters. The first concern is misplaced (unfunded mandates apply to Federal requirements imposing a burden on States). The second concern is not germane to the regulations at hand.

Finally, with regard to the section about the Paperwork Reduction Act, this commenter made a general recommendation that existing forms be eliminated and consolidated. Since no specific forms are named or specific criticisms offered, OWCP is unable to address this comment.

Publication in Final Re Non-Substantive Changes

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving the public comment on this rule with respect to the following changes:

(a) Typographical errors.

(b) Other minor wording changes and clarifications which do not affect the substance of the rules.

Executive Order 12866

This final rule constitutes a "significant" rule within the meaning of Executive Order 12866. The Department believes, however, that this rule will not have a significant economic impact on the economy, or any person or organization subject to the proposed changes. The changes will have little or no effect on the level of benefits paid (which in any case involve payments almost exclusively to Federal employees from funds appropriated by Congress); nor will there be a significant economic impact upon the hospitals and pharmacies which, for the first time, will be subject to the fee schedules established by these rules. The total dollar amount paid for inpatient hospital services in fiscal year 1996 was $81,955,562.00, and subjecting these charges to the DRG schedule is expected to result in a 20 percent decrease in the amount paid, or about $16.4 million. The total dollar amount paid for pharmacy costs in fiscal year 1996 was $31.9 million, and subjecting these charges to the fee schedule is expected to result in a 10 to 15 percent decrease in the amount paid, or about $3–4.5 million. Insofar as the new rules make it easier to seek benefits under the FECA and streamline the administration of the program, they would decrease administrative costs. These changes have been reviewed by the Office of Management and Budget for consistency with the President's priorities and the principles set forth in Executive Order 12866.

Unfunded Mandates Reform Act and Federalism Executive Order

For purposes of the Unfunded Mandates Reform Act of 1995, as well as E.O. 12875, this rule does not include any Federal mandate that may result in increased expenditures by State, local and tribal Governments, or increased expenditures by the private sector of more than $100 million.

Paperwork Reduction Act

The new collection of information contained in this rulemaking has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995. No person is required to respond to a collection of information request unless the collection of information displays a valid OMB control number.

The new information collection requirements contained in this proposed rule are set forth in §§ 10.801 and 10.802, and they relate to information required to be submitted by pharmacies and hospitals covering certain inpatient bills. The Department has adopted a new form (Universal Pharmacy Billing Form) which will be used by pharmacies in submitting claims for payment. Another form (the claimant reimbursement form) will be used by claimants seeking reimbursement for medical expenses for which they have paid the providers directly. The public reporting burden for these collections of information is estimated to average as follows: Universal Pharmacy Billing Form—It will take five (5) minutes to complete the form, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information; Claimant Reimbursement Form—It will take an average of ten (10) minutes to complete this form, including reviewing instructions, searching for existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Type of Review: New Collection.

Agency: Employment Standards Administration.

Title: Claimant Medical Reimbursement Form (CA–915).

OMB Number: 1215–0193.

Affected Public: Individuals or households, Federal Government.

Total Respondents: 40,500.

Frequency: On occasion.

Total Responses: 40,500.

Average Time per Response: 10 minutes.

Total Hours: 6,723.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintenance): 0.

Type of Review: New Collection.

Agency: Employment Standards Administration.

Title: NCPDP Universal Pharmacy Billing Form (79–1A) .

OMB Number: 1215–0194.
Affected Public: Businesses or other for-profit; Not-for-profit Institutions; Individuals or households; Federal Government; State, Local or Tribal Government.
Total Respondents: 406,198.
Frequency: On occasion.
Total Responses: 406,198.
Average Time per Response: 5 minutes.
Total Hours: 33,714.
Total Burden Cost (capital/startup): 0.
Total Burden Cost (operating/maintenance): 0.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act Pub. L. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The provision of the final rules extending cost control measures to hospital inpatient services and pharmacies is the only provision of the regulations which may have a monetary effect on small businesses. That effect will not be significant for a substantial number of those businesses, however, for no one business bills a significant amount to OWCP for FECA-related services, and the effect on those bills which are submitted, while a worthwhile savings for the Government in the aggregate, will be not be significant for individual businesses affected.

The two new cost containment provisions are: (1) A set schedule for payment of pharmacy bills; and (2) a prospective payment system for hospital inpatient services. The two methodologies are fully explained in the text of the Preamble to the Proposed Rule, including the fact that the use of Diagnostic Related Groups (DRGs) for setting payment for inpatient hospital charges essentially is an adaptation of a system used by the Health Care Finance Agency (HCFA) in payment of Medicare bills. The use of Average Wholesale Prices (AWP) in setting the maximum reimbursable amount for pharmacy bills is also commonplace in the industry.

The method selected by OWCP is therefore one which contains efficiencies both for the Government and providers. The Government benefits because OWCP did not develop a new system, but rather minimized the use of resources by adopting existing and well-recognized systems already in place. The providers benefit because submitting a bill to OWCP and receiving payment will be almost the same process as submitting it to Medicare, a program with which hospitals are already familiar and have in place for billing, so they will not have to learn a new process and the FECA bills will not represent an unnecessary administrative cost because the FECA bill process will not be essentially distinguished from that for Medicare. Similarly, the pharmacies are used to billing through clearing houses and having charges subject to limits by private insurers. By adopting the uniform billing statement and a familiar cost control methodology, OWCP has kept close to the environment with which the pharmacies are already familiar. The methods chosen, therefore, represent a familiar environment to the providers.

The costs savings resulting from the implementation of these cost containment methods will have no significant effect on any individual business. First, the need for cost containment in the FECA program is self-evident and these methods are already used by Medicare, CHAMPUS and the Department of Veterans Affairs, among Government entities, and for the private insurance carriers which cover Federal employees as part of the Federal employees' health benefit insurance programs. The costs to providers whose charges may be reduced are relatively small, both in incremental and in actual terms.

Incrementally, FECA bills simply do not represent a large share of any one provider's total business. Since Federal employees are spread throughout the United States and this system covers only those Federal employees who are injured on the job and require either prescription drugs or inpatient hospital care (a tiny subset of all employees), the number of bills submitted by any one provider which may be subject to these provisions is likely to be very small.

Second, in actual terms, the amount by which these bills might be reduced will not have a significant impact on any business. In fiscal year (FY) 1998, the program paid $100.1 million dollars on about 13,150 bills received for inpatient hospital services (an average charge of $7,600.00 per stay). The total number of hospitals on the program's provider files is about 5,000, for an average patient load of slightly over three FECA-claimant patients per hospital. If we assume that no hospital had more than three patients, then the average annual billings subject to these rules for any hospital would be about $22,800 (3 X $7,600). As noted in the Preamble to the Proposed Rule, the DRG method will reduce the $100.1 million by about 20 percent, or $20.2 million. Thus, the average dollar amount of the reduction in bills submitted by any one hospital resulting from these rules would be about $4,560.00.

A similarly small actual dollar reduction applies to pharmacy charges. OWCP paid about $32,000,000 for pharmacy charges, although the program cannot identify exactly what portion of this amount was paid to institutions, since much of this dollar figure represents reimbursements directly to claimants. OWCP cannot identify with certainty the number of pharmacies who provided supplies, for the same reason, but there are about 4,000 pharmacies in the program's provider files. Similarly, OWCP cannot determine the exact number of bills paid, since the program captures only those submitted by a provider for direct payment and not those submitted by a claimant for reimbursement. Assuming for purposes of this analysis that the reimbursements were evenly divided among pharmacies already part of our provider files, we divide 4,000 providers into the total number of dollars paid to get an average annual aggregate of charges paid to a provider of about $8,000. It is estimated that the schedule would result in an average reduction of five percent in pharmacy charges; based on these figures, the average pharmacy would see a reduction in the total amount received of about $400.

These figures illustrate that the "cost" of these rules to any one provider is negligible. On the other hand, OWCP will see substantial aggregate cost savings as a result (estimated at $18,000,000). These savings benefit OWCP (by strengthening the integrity of the program), the employing agencies (which ultimately foot the bill for FECA through the chargeback system), and taxpayer and rate payers to whom the ultimate costs of the program are eventually charged through appropriations.

The Assistant Secretary for Employment Standards has certified to the Chief Counsel for Advocacy of the Small Business Administration that these rules will not have a significant impact on a substantial number of small entities. The factual basis for this certification has been provided above. Accordingly, no regulatory impact analysis is required.

Executive Order 13045 Protection of Children From Environmental, Health Risks and Safety Risks

In accordance with Executive Order 13045, OWCP has evaluated the environmental health and safety effects of the rule on children. The agency has determined that the final rule will have no effect on children.

Submission to Congress and the General Accounting Office

In accordance with the Small Business Regulatory Enforcement Fairness Act, the Department will submit to each House of the Congress and to the Comptroller General a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will note that this rule does not constitute a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 20 CFR Parts 10 and 25

Administrative practices and procedures, Claims, Government employees, Labor, Workers' compensation.

For reasons set forth in the preamble, 20 Chapter I is amended to read as follows:

1. Part 10 is revised to read as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

Subpart A—General Provisions

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Authority: 5 U.S.C. 301, 8103, 8145 and 8149; 31 U.S.C. 3716 and 3717; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary's Order 5–96, 62 FR 107.

Subpart A—General Provisions

Introduction

§ 10.0 What are the provisions of the FECA, in general?

The Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101 et seq.) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The regulations in this part describe the rules for filing, processing, and paying claims for benefits under the FECA. Proceedings under the FECA are non-adversarial in nature.

(a) The FECA has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officers' Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers in Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (5 U.S.C. 5351 and 8144), certain law enforcement officers not employed by the United States (5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The FECA provides for payment of several types of benefits, including compensation for wage loss, schedule awards, medical and related benefits, and vocational rehabilitation services for conditions resulting from injuries sustained in performance of duty while in service to the United States.

(c) The FECA also provides for payment of monetary compensation to specified survivors of an employee whose death resulted from a work-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of the FECA and of this part. This section shall not be construed to modify or enlarge upon the provisions of the FECA.

§ 10.1 What rules govern the administration of the FECA and this chapter?

In accordance with 5 U.S.C. 8145 and Secretary's Order 5–96, the responsibility for administering the FECA, except for 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board, has been delegated to the Assistant Secretary for Employment Standards. The Assistant Secretary, in turn, has delegated the authority and responsibility for administering the FECA to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director, OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

§ 10.2 What do these regulations contain?

This part 10 sets forth the regulations governing administration of all claims filed under the FECA, except to the extent specified in certain particular provisions. Its provisions are intended to assist persons seeking compensation benefits under the FECA, as well as personnel in the various Federal agencies and the Department of Labor who process claims filed under the FECA or who perform administrative functions with respect to the FECA. This part 10 applies to part 25 of this chapter except as modified by part 25. The various subparts of this part contain the following:

(a) Subpart A: The general statutory and administrative framework for processing claims under the FECA. It contains a statement of purpose and scope, together with definitions of terms, descriptions of basic forms, information about the disclosure of OWCP records, and a description of rights and penalties under the FECA, including convictions for fraud.

(b) Subpart B: The rules for filing notices of injury and claims for benefits under the FECA. It also addresses evidence and burden of proof, as well as the process of making decisions concerning eligibility for benefits.

(c) Subpart C: The rules governing claims for and payment of continuation of pay.

(d) Subpart D: The rules governing emergency and routine medical care, second opinion and referee medical examinations directed by OWCP, and medical reports and records in general. It also addresses the kinds of treatment which may be authorized and how medical bills are paid.

(e) Subpart E: The rules relating to the payment of monetary compensation benefits for disability, impairment and death. It includes the provisions for identifying and processing overpayments of compensation.

(f) Subpart F: The rules governing the payment of continuing compensation benefits. It includes provisions concerning the employee's and the employer's responsibilities in returning the employee to work. It also contains provisions governing reports of earnings and dependents, recurrences, and reduction and termination of compensation benefits.

(g) Subpart G: The rules governing the appeals of decisions under the FECA. It includes provisions relating to hearings, reconsiderations, and appeals before the Employees' Compensation Appeals Board.

(h) Subpart H: The rules concerning legal representation and for adjustment and recovery from a third party. It also contains provisions relevant to three groups of employees whose status requires special application of the provisions of the FECA: Federal grand and petit jurors, Peace Corps volunteers, and non-Federal law enforcement officers.

(i) Subpart I: Information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

§ 10.3 Have the collection of information requirements of this part been approved by the Office of Management and Budget (OMB)?

The collection of information requirements in this part have been approved by OMB and assigned OMB control numbers 1215–0055, 1215–0067, 1215–0078, 1215–0103, 1215–0105, 1215–0115, 1215–0116, 1215–0144, 1215–0151, 1215–0154, 1215–0155, 1215–0161, 1215–0167, 1215–0176, 1215–0178, 1215–0182, 1215–0193 and 1215–0194.

Definitions and Forms

§ 10.5 What definitions apply to these regulations?

Certain words and phrases found in this part are defined in this section or in the FECA. Some other words and phrases that are used only in limited situations are defined in the later subparts of these regulations.

(a) *Benefits* or *Compensation* means the money OWCP pays to or on behalf of a beneficiary from the Employees' Compensation Fund for lost wages, a loss of wage-earning capacity or a permanent physical impairment, as well as the money paid to beneficiaries for an employee's death. These two terms also include any other amounts paid out of the Employees' Compensation Fund for such things as medical treatment, medical examinations conducted at the request of OWCP as part of the claims adjudication process, vocational rehabilitation services, services of an attendant and funeral expenses, but does not include continuation of pay.

(b) *Beneficiary* means an individual who is entitled to a benefit under the FECA and this part.

(c) *Claim* means a written assertion of an individual's entitlement to benefits under the FECA, submitted in a manner authorized by this part.

(d) *Claimant* means an individual whose claim has been filed.

(e) *Director* means the Director of OWCP or a person designated to carry out his or her functions.

(f) *Disability* means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.

(g) *Earnings from employment or self-employment* means:

(1) Gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or

(2) A reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties.

(h) *Employee means,* but is not limited to, an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States;

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual;

(3) An individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to tribal timber and logging operations on that reservation;

(4) An individual appointed to a position on the office staff of a former President; or

(5) An individual selected and serving as a Federal petit or grand juror.

(i) *Employer or Agency* means any civil agency or instrumentality of the United States Government, or any other organization, group or institution employing an individual defined as an "employee" by this section. These terms also refer to officers and employees of an employer having responsibility for the supervision, direction or control of employees of that employer as an "immediate superior," and to other employees designated by the employer to carry out the functions vested in the employer under the FECA and this part, including officers or employees delegated responsibility by an employer for authorizing medical treatment for injured employees.

(j) *Entitlement* means entitlement to benefits as determined by OWCP under the FECA and the procedures described in this part.

(k) *FECA* means the Federal Employees' Compensation Act, as amended.

(l) *Hospital services* means services and supplies provided by hospitals within the scope of their practice as defined by State law.

(m) *Impairment* means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(n) *Knowingly* means with knowledge, consciously, willfully or intentionally.

(o) *Medical services* means services and supplies provided by or under the supervision of a physician. Reimbursable chiropractic services are limited to physical examinations (and related laboratory tests), x-rays performed to diagnose a subluxation of the spine and treatment consisting of manual manipulation of the spine to correct a subluxation.

(p) *Medical support services* means services, drugs, supplies and appliances provided by a person other than a physician or hospital.

(q) *Occupational disease* or *Illness* means a condition produced by the work environment over a period longer than a single workday or shift.

(r) *OWCP* means the Office of Workers' Compensation Programs.

(s) *Pay rate for compensation purposes* means the employee's pay, as determined under 5 U.S.C. 8114, at the time of injury, the time disability begins or the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under 5 U.S.C. 8113 with respect to any period.

(t) *Physician* means an individual defined as such in 5 U.S.C. 8101(2), except during the period for which his or her license to practice medicine has been suspended or revoked by a State licensing or regulatory authority.

(u) *Qualified hospital* means any hospital licensed as such under State law which has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified hospital shall be deemed to be designated or approved by OWCP.

(v) *Qualified physician* means any physician who has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(w) *Qualified provider of medical support services or supplies* means any person, other than a physician or a hospital, who provides services, drugs, supplies and appliances for which OWCP makes payment, who possesses any applicable licenses required under State law, and who has not been excluded under the provisions of subpart I of this part.

(x) *Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn (except when such withdrawal occurs for reasons of misconduct, non-performance of job duties or a reduction-in-force), or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.

(y) *Recurrence of medical condition* means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a "need for further medical treatment after release from treatment," nor is an examination without treatment.

(z) *Representative* means an individual properly authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the FECA or this part.

(aa) *Student* means an individual defined at 5 U.S.C. 8101(17). Two terms used in that particular definition are further defined as follows:

(1) *Additional type of educational or training institution* means a technical, trade, vocational, business or professional school accredited or licensed by the United States Government or a State Government or any political subdivision thereof providing courses of not less than three months duration, that prepares the individual for a livelihood in a trade, industry, vocation or profession.

(2) *Year beyond the high school level* means:

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she had indicated an intention to continue schooling within four months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of

compensation based on such attendance; or

(ii) If the individual has indicated that he or she will not continue schooling within four months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on such attendance.

(bb) *Subluxation* means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an individual trained in the reading of x-rays.

(cc) *Surviving spouse* means the husband or wife living with or dependent for support upon a deceased employee at the time of his or her death, or living apart for reasonable cause or because of the deceased employee's desertion.

(dd) *Temporary aggravation* of a pre-existing condition means that factors of employment have directly caused that condition to be more severe for a limited period of time and have left no greater impairment than existed prior to the employment injury.

(ee) *Traumatic injury* means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

§ 10.6 What special statutory definitions apply to dependents and survivors?

(a) 5 U.S.C. 8133 provides that certain benefits are payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty.

(b) 5 U.S.C. 8148 also provides that certain other benefits may be payable to certain family members of employees who have been incarcerated due to a felony conviction.

(c) 5 U.S.C. 8110(b) further provides that any employee who is found to be eligible for a basic benefit shall be entitled to have such basic benefit augmented at a specified rate for certain persons who live in the beneficiary's household or who are dependent upon the beneficiary for support.

(d) 5 U.S.C. 8101, 8110, 8133 and 8148, which define the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or an augmented benefit, apply to the provisions of this part.

§ 10.7 What forms are needed to process claims under the FECA?

(a) Notice of injury, claims and certain specified reports shall be made on forms prescribed by OWCP. Employers shall not modify these forms or use substitute forms. Employers are expected to maintain an adequate supply of the basic forms needed for the proper recording and reporting of injuries.

Form No.	Title
(1) CA–1	Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/ Compensation.
(2) CA–2	Notice of Occupational Disease and Claim for Compensation.
(3) CA–2a	Notice of Employee's Recurrence of Disability and Claim for Pay/ Compensation.
(4) CA–5	Claim for Compensation by Widow, Widower and/or Children.
(5) CA–5b	Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren.
(6) CA–6	Official Superior's Report of Employee's Death.
(7) CA–7	Claim for Compensation Due to Traumatic Injury or Occupational Disease.
(8) CA–7a	Time Analysis Form.
(9) CA–7b	Leave Buy Back (LBB) Worksheet/Certification and Election.
(10) CA–8	Claim for Continuing Compensation on Account of Disability.
(11) CA–16	Authorization of Examination and/or Treatment.
(12) CA–17	Duty Status Report.
(13) CA–20	Attending Physician's Report.
(14) CA–20a	Attending Physician's Supplemental Report.

(b) Copies of the forms listed in this paragraph are available for public inspection at the Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. They may also be obtained from district offices, employers (i.e., safety and health offices, supervisors), and the Internet, at www.dol.gov./dol/esa/owcp.htm.

Information in Program Records

§ 10.10 Are all documents relating to claims filed under the FECA considered confidential?

All records relating to claims for benefits, including copies of such records maintained by an employer, are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974.

§ 10.11 Who maintains custody and control of FECA records?

All records relating to claims for benefits filed under the FECA, including any copies of such records maintained by an employing agency, are covered by the government-wide Privacy Act system of records entitled DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/GOVT–1 are official records of OWCP. The protection, release, inspection and copying of records covered by DOL/GOVT–1 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the **Federal Register**. All questions relating to access/disclosure, and/or amendment of FECA records maintained by OWCP or the employing agency, are to be resolved in accordance with this section.

§ 10.12 How may a FECA claimant or beneficiary obtain copies of protected records?

(a) A claimant seeking copies of his or her official FECA file should address a request to the District Director of the OWCP office having custody of the file. A claimant seeking copies of FECA-related documents in the custody of the employer should follow the procedures established by that agency.

(b) (1) While an employing agency may establish procedures that an injured employee or beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor which govern all other aspects of safeguarding these records.

(2) No employing agency has the authority to issue determinations with respect to requests for the correction or amendment of records contained in or covered by DOL/GOVT–1. That authority is within the exclusive control of OWCP. Thus, any request for correction or amendment received by an employing agency must be referred to OWCP for review and decision.

(3) Any administrative appeal taken from a denial issued by the employing agency or OWCP shall be filed with the

Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

§ 10.13 What process is used by a person who wants to correct FECA-related documents?

Any request to amend a record covered by DOL/GOVT–1 should be directed to the district office having custody of the official file. No employer has the authority to issue determinations with regard to requests for the correction of records contained in or covered by DOL/GOVT–1. Any request for correction received by an employer must be referred to OWCP for review and decision.

Rights and Penalties

§ 10.15 May compensation rights be waived?

No employer or other person may require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the FECA. No waiver of compensation rights shall be valid.

§ 10.16 What criminal penalties may be imposed in connection with a claim under the FECA?

(a) A number of statutory provisions make it a crime to file a false or fraudulent claim or statement with the Government in connection with a claim under the FECA, or to wrongfully impede a FECA claim. Included among these provisions are sections 287, 1001, 1920, and 1922 of title 18, United States Code. Enforcement of these and other criminal provisions that may apply to claims under the FECA are within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–12, to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the FECA. The Department of Labor's regulations implementing the PFRCA are found at 29 CFR part 22.

§ 10.17 Is a beneficiary who defrauds the Government in connection with a claim for benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the Federal Government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date either the guilty plea is accepted or a verdict of guilty is returned after trial, for any injury occurring on or before the date of such guilty plea or verdict. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.

§ 10.18 Can a beneficiary who is incarcerated based on a felony conviction still receive benefits?

(a) Whenever a beneficiary is incarcerated in a State or Federal jail, prison, penal institution or other correctional facility due to a State or Federal felony conviction, he or she forfeits all rights to compensation benefits during the period of incarceration. A beneficiary's right to compensation benefits for the period of his or her incarceration is not restored after such incarceration ends, even though payment of compensation benefits may resume.

(b) If the beneficiary has eligible dependents, OWCP will pay compensation to such dependents at a reduced rate during the period of his or her incarceration, by applying the percentages of 5 U.S.C. 8133(a)(1) through (5) to the beneficiary's gross current entitlement rather than to the beneficiary's monthly pay.

(c) If OWCP's decision on entitlement is pending when the period of incarceration begins, and compensation is due for a period of time prior to such incarceration, payment for that period will only be made to the beneficiary following his or her release.

Subpart B—Filing Notices and Claims; Submitting Evidence

Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions

§ 10.100 How and when is a notice of traumatic injury filed?

(a) To claim benefits under the FECA, an employee who sustains a work-related traumatic injury must give notice of the injury in writing on Form CA–1, which may be obtained from the employer or from the Internet at www.dol.gov./dol/esa/owcp.htm. The employee must forward this notice to the employer. Another person, including the employer, may give notice of injury on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee.

(b) For injuries sustained on or after September 7, 1974, a notice of injury must be filed within three years of the injury. (The form contains the necessary words of claim.) The requirements for filing notice are further described in 5 U.S.C. 8119. Also see § 10.205 concerning time requirements for filing claims for continuation of pay.

(1) If the claim is not filed within three years, compensation may still be allowed if notice of injury was given within 30 days or the employer had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the employer on notice of a possible work-related injury or disease.

(2) OWCP may excuse failure to comply with the three-year time requirement because of truly exceptional circumstances (for example, being held prisoner of war).

(3) The claimant may withdraw his or her claim (but not the notice of injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits. Any continuation of pay (COP) granted to an employee after a claim is withdrawn must be charged to sick or annual leave, or considered an overpayment of pay consistent with 5 U.S.C. 5584, at the employee's option.

(c) However, in cases of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment (see 5 U.S.C. 8122(b)).

§ 10.101 How and when is a notice of occupational disease filed?

(a) To claim benefits under the FECA, an employee who has a disease which he or she believes to be work-related must give notice of the condition in writing on Form CA–2, which may be obtained from the employer or from the Internet at www.dol.gov./dol/esa/owcp.htm. The employee must forward this notice to the employer. Another person, including the employer, may do so on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee. The claimant may withdraw his or her claim (but not the notice of occupational disease) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For occupational diseases sustained as a result of exposure to injurious work factors that occurs on or after September 7, 1974, a notice of occupational disease must be filed within three years of the onset of the

condition. (The form contains the necessary words of claim.) The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment (see 5 U.S.C. 8122(b)).

§ 10.102 How and when is a claim for wage loss compensation filed?

(a) Form CA–7 is used to claim compensation for periods of disability not covered by COP.

(1) An employee who is disabled with loss of pay for more than three calendar days due to an injury, or someone acting on his or her behalf, must file Form CA–7 before compensation can be paid.

(2) The employee shall complete the front of Form CA–7 and submit the form to the employer for completion and transmission to OWCP. The form should be completed as soon as possible, but no more than 14 calendar days after the date pay stops due to the injury or disease.

(3) The requirements for filing claims are further described in 5 U.S.C. 8121.

(b) Form CA–8 is used to claim compensation for additional periods of disability after Form CA–7 is submitted to OWCP.

(1) It is the employee's responsibility to submit Form CA–8. Without receipt of such claim, OWCP has no knowledge of continuing wage loss. Therefore, while disability continues, the employee should submit a claim on Form CA–8 each two weeks until otherwise instructed by OWCP.

(2) The employee shall complete the front of Form CA–8 and submit the form to the employer for completion and transmission to OWCP.

(3) The employee is responsible for submitting, or arranging for the submittal of, medical evidence to OWCP which establishes both that disability continues and that the disability is due to the work-related injury. Form CA–20a is attached to Form CA–8 for this purpose.

§ 10.103 How and when is a claim for permanent impairment filed?

Form CA–7 is used to claim compensation for impairment to a body part covered under the schedule established by 5 U.S.C. 8107. If Form CA–7 has already been filed to claim disability compensation, an employee may file a claim for such impairment by sending a letter to OWCP which specifies the nature of the benefit claimed.

§ 10.104 How and when is a claim for recurrence filed?

(a) A recurrence should be reported on Form CA–2a if it causes the employee to lose time from work and incur a wage loss, or if the employee experiences a renewed need for treatment after previously being released from care. However, a notice of recurrence should not be filed when a new injury, new occupational disease, or new event contributing to an already-existing occupational disease has occurred. In these instances, the employee should file Form CA–1 or CA–2.

(b) The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(1) The employee must include a detailed factual statement as described on Form CA–2a. The employer may submit comments concerning the employee's statement.

(2) The employee should arrange for the submittal of a detailed medical report from the attending physician as described on Form CA–2a. The employee should also submit, or arrange for the submittal of, similar medical reports for any examination and/or treatment received after returning to work following the original injury.

§ 10.105 How and when is a notice of death and claim for benefits filed?

(a) If an employee dies from a work-related traumatic injury or an occupational disease, any survivor may file a claim for death benefits using Form CA–5 or CA–5b, which may be obtained from the employer or from the Internet at www.dol.gov./dol/esa/owcp.htm. The survivor must provide this notice in writing and forward it to the employer. Another person, including the employer, may do so on the survivor's behalf. The survivor may also submit the completed Form CA–5 or CA–5b directly to OWCP. The survivor shall disclose the SSNs of all survivors on whose behalf claim for benefits is made in addition to the SSN of the deceased employee. The survivor may withdraw his or her claim (but not the notice of death) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For deaths that occur on or after September 7, 1974, a notice of death must be filed within three years of the death. The form contains the necessary words of claim. The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of death due to latent disability, the time for filing the claim does not begin to run until the survivor is aware, or reasonably should have been aware, of the causal relationship between the death and the employment (see 5 U.S.C. 8122(b)).

(d) The filing of a notice of injury or occupational disease will satisfy the time requirements for a death claim based on the same injury or occupational disease. If an injured employee or someone acting on the employee's behalf does not file a claim before the employee's death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

(e) A survivor must be alive to receive any payment; there is no vested right to such payment. A report as described in § 10.414 of this part must be filed once each year to support continuing payments of compensation.

Notices and Claims for Injury, Disease, and Death—Employer's Actions

§ 10.110 What should the employer do when an employee files a notice of traumatic injury or occupational disease?

(a) The employer shall complete the agency portion of Form CA–1 (for traumatic injury) or CA–2 (for occupational disease) no more than 10 working days after receipt of notice from the employee. The employer shall also complete the Receipt of Notice and give it to the employee, along with copies of both sides of Form CA–1 or Form CA–2.

(b) The employer must complete and transmit the form to OWCP within 10 working days after receipt of notice from the employee if the injury or disease will likely result in:

(1) A medical charge against OWCP;

(2) Disability for work beyond the day or shift of injury;

(3) The need for more than two appointments for medical examination and/or treatment on separate days, leading to time loss from work;

(4) Future disability;

(5) Permanent impairment; or

(6) Continuation of pay pursuant to 5 U.S.C. 8118.

(c) The employer should not wait for submittal of supporting evidence before sending the form to OWCP.

(d) If none of the conditions in paragraph (b) of this section applies, the Form CA–1 or CA–2 shall be retained as a permanent record in the Employee Medical Folder in accordance with the guidelines established by the Office of Personnel Management.

§ 10.111 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?

(a) When an employee is disabled by a work-related injury and loses pay for more than three calendar days, or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the employer shall furnish the employee with Form CA–7 for the purpose of claiming compensation.

(b) If the employee is receiving continuation of pay (COP), the employer should give Form CA–7 to the employee by the 30th day of the COP period and submit the form to OWCP by the 40th day of the COP period. If the employee has not returned the form to the employer by the 40th day of the COP period, the employer should ask him or her to submit it as soon as possible.

(c) Upon receipt of Form CA–7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–7 and any accompanying medical report to OWCP.

§ 10.112 What should the employer do when an employee files a claim for continuing compensation due to disability?

(a) If the employee continues in a leave-without-pay status due to a work-related injury after the period of compensation initially claimed on Form CA–7, the employer shall furnish the employee with Form CA–8 for the purpose of claiming continuing compensation.

(b) Upon receipt of Form CA–8 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–8 and any accompanying medical report to OWCP.

§ 10.113 What should the employer do when an employee dies from a work-related injury or disease?

(a) The employer shall immediately report a death due to a work-related traumatic injury or occupational disease to OWCP by telephone, telegram, or facsimile (fax). No more than 10 working days after notification of the death, the employer shall complete and send Form CA–6 to OWCP.

(b) When possible, the employer shall furnish a Form CA–5 or CA–5b to all persons likely to be entitled to compensation for death of an employee. The employer should also supply information about completing and filing the form.

(c) The employer shall promptly transmit Form CA–5 or CA–5b to OWCP. The employer shall also promptly transmit to OWCP any other claim or paper submitted which appears to claim compensation on account of death.

Evidence and Burden of Proof

§ 10.115 What evidence is needed to establish a claim?

Forms CA–1, CA–2, CA–5 and CA–5b describe the basic evidence required. OWCP may send any request for additional evidence to the claimant and to his or her representative, if any. Evidence should be submitted in writing. The evidence submitted must be reliable, probative and substantial. Each claim for compensation must meet five requirements before OWCP can accept it. These requirements, which the employee must establish to meet his or her burden of proof, are as follows:

(a) The claim was filed within the time limits specified by the FECA;

(b) The injured person was, at the time of injury, an employee of the United States as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;

(c) The fact that an injury, disease or death occurred;

(d) The injury, disease or death occurred while the employee was in the performance of duty; and

(e) The medical condition for which compensation or medical benefits is claimed is causally related to the claimed injury, disease or death. Neither the fact that the condition manifests itself during a period of Federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.

(f) In all claims, the claimant is responsible for submitting, or arranging for submittal of, a medical report from the attending physician. For wage loss benefits, the claimant must also submit medical evidence showing that the condition claimed is disabling. The rules for submitting medical reports are found in §§ 10.330 through 10.333.

§ 10.116 What additional evidence is needed in cases based on occupational disease?

(a) The employee must submit the specific detailed information described on Form CA–2 and on any checklist (Form CA–35, A–H) provided by the employer. OWCP has developed these checklists to address particular occupational diseases. The medical report should also include the information specified on the checklist for the particular disease claimed.

(b) The employer should submit the specific detailed information described on Form CA–2 and on any checklist pertaining to the claimed disease.

§ 10.117 What happens if, in any claim, the employer contests any of the facts as stated by the claimant?

(a) An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

(b) Any such statement shall be submitted to OWCP with the notice of traumatic injury or death, or within 30 calendar days from the date notice of occupational disease or death is received from the claimant. If the employer does not submit a written explanation to support the disagreement, OWCP may accept the claimant's report of injury as established. The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change or withdraw the claim.

§ 10.118 Does the employer participate in the claims process in any other way?

(a) The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

(b) The employer may ascertain the events surrounding an injury and the extent of disability where it appears that an employee who alleges total disability may be performing other work, or may be engaging in activities which would indicate less than total disability. This authority is in addition to that given in § 10.118(a). However, the provisions of the Privacy Act apply to any endeavor by the employer to ascertain the facts of the case (see §§ 10.10 and 10.11).

(c) The employer does not have the right, except as provided in subpart C of this part, to actively participate in the claims adjudication process.

§ 10.119 What action will OWCP take with respect to information submitted by the employer?

OWCP will consider all evidence submitted appropriately, and OWCP will inform the employee, the employee's representative, if any, and the employer of any action taken. Where an employer contests a claim within 30 days of the initial submittal and the claim is later approved, OWCP will notify the employer of the rationale for approving the claim.

§ 10.120 May a claimant submit additional evidence?

A claimant or a person acting on his or her behalf may submit to OWCP at any time any other evidence relevant to the claim.

§ 10.121 What happens if OWCP needs more evidence from the claimant?

If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required. OWCP is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof.

Decisions on Entitlement to Benefits

§ 10.125 How does OWCP determine entitlement to benefits?

(a) In reaching any decision with respect to FECA coverage or entitlement, OWCP considers the claim presented by the claimant, the report by the employer, and the results of such investigation as OWCP may deem necessary.

(b) OWCP claims staff apply the law, the regulations, and its procedures to the facts as reported or obtained upon investigation. They also apply decisions of the Employees' Compensation Appeals Board and administrative decisions of OWCP as set forth in FECA Program Memoranda.

§ 10.126 What does the decision contain?

The decision shall contain findings of fact and a statement of reasons. It is accompanied by information about the claimant's appeal rights, which may include the right to a hearing, a reconsideration, and/or a review by the Employees' Compensation Appeals Board. (See subpart G of this part.)

§ 10.127 To whom is the decision sent?

A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision will also be mailed to the representative. Notification to either the employee or the representative will be considered notification to both. A copy of the decision will also be sent to the employer.

Subpart C—Continuation of Pay

§ 10.200 What is continuation of pay?

(a) For most employees who sustain a traumatic injury, the FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days. This is called continuation of pay, or COP. The employer, not OWCP, pays COP. Unlike wage loss benefits, COP is subject to taxes and all other payroll deductions that are made from regular income.

(b) The employer must continue the pay of an employee who is eligible for COP, and may not require the employee to use his or her own sick or annual leave, unless the provisions of §§ 10.200(c), 10.220, or § 10.222 apply. However, while continuing the employee's pay, the employer may controvert the employee's COP entitlement pending a final determination by OWCP. OWCP has the exclusive authority to determine questions of entitlement and all other issues relating to COP.

(c) The FECA excludes certain persons from eligibility for COP. COP cannot be authorized for members of these excluded groups, which include but are not limited to: persons rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay; volunteers (for instance, in the Civil Air Patrol and Peace Corps); Job Corps and Youth Conservation Corps enrollees; individuals in work-study programs, and grand or petit jurors (unless otherwise Federal employees).

Eligibility for COP

§ 10.205 What conditions must be met to receive COP?

(a) To be eligible for COP, a person must:

(1) Have a "traumatic injury" as defined at § 10.5(ee) which is job-related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment;

(2) File Form CA–1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 45 days of the injury.

(b) OWCP may find that the employee is not entitled to COP for other reasons consistent with the statute (see § 10.220).

§ 10.206 May an employee who uses leave after an injury later decide to use COP instead?

On Form CA–1, an employee may elect to use accumulated sick or annual leave, or leave advanced by the agency, instead of electing COP. The employee can change the election between leave and COP for prospective periods at any point while eligibility for COP remains. The employee may also change the election for past periods and request COP in lieu of leave already taken for the same period. In either situation, the following provisions apply:

(a) The request must be made to the employer within one year of the date the leave was used or the date of the written approval of the claim by OWCP (if written approval is issued), whichever is later.

(b) Where the employee is otherwise eligible, the agency shall restore leave taken in lieu of any of the 45 COP days. Where any of the 45 COP days remain unused, the agency shall continue pay prospectively.

(c) The use of leave may not be used to delay or extend the 45-day COP period or to otherwise affect the time limitation as provided by 5 U.S.C. 8117. Therefore, any leave used during the period of eligibility counts towards the 45-day maximum entitlement to COP.

§ 10.207 May an employee who returns to work, then stops work again due to the effects of the injury, receive COP?

If the employee recovers from disability and returns to work, then becomes disabled again and stops work, the employer shall pay any of the 45 days of entitlement to COP not used during the initial period of disability where:

(a) The employee completes Form CA–2a and elects to receive regular pay;

(b) OWCP did not deny the original claim for disability;

(c) The disability recurs and the employee stops work within 45 days of the time the employee first returned to work following the initial period of disability; and

(d) Pay has not been continued for the entire 45 days.

Responsibilities

§ 10.210 What are the employee's responsibilities in COP cases?

An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf,

must take the following actions to ensure continuing eligibility for COP. The employee must:

(a) Complete and submit Form CA–1 to the employing agency as soon as possible, but no later than 30 days from the date the traumatic injury occurred.

(b) Ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the employer within 10 calendar days after filing the claim for COP.

(c) Ensure that relevant medical evidence is submitted to OWCP, and cooperate with OWCP in developing the claim.

(d) Ensure that the treating physician specifies work limitations and provides them to the employer and/or representatives of OWCP.

(e) Provide to the treating physician a description of any specific alternative positions offered the employee, and ensure that the treating physician responds promptly to the employer and/or OWCP, with an opinion as to whether and how soon the employee could perform that or any other specific position.

§ 10.211 What are the employer's responsibilities in COP cases?

Once the employer learns of a traumatic injury sustained by an employee, it shall:

(a) Provide a Form CA–1 and Form CA–16 to authorize medical care in accordance with § 10.300. Failure to do so may mean that OWCP will not uphold any termination of COP by the employer.

(b) Advise the employee of the right to receive COP, and the need to elect among COP, annual or sick leave or leave without pay, for any period of disability.

(c) Inform the employee of any decision to controvert COP and/or terminate pay, and the basis for doing so.

(d) Complete Form CA–1 and transmit it, along with all other available pertinent information, (including the basis for any controversion), to OWCP within 10 working days after receiving the completed form from the employee.

Calculation of COP

§ 10.215 How does OWCP compute the number of days of COP used?

COP is payable for a maximum of 45 calendar days, and every day used is counted toward this maximum. The following rules apply:

(a) Time lost on the day or shift of the injury does not count toward COP. (Instead, the agency must keep the employee in a pay status for that period);

(b) The first COP day is the first day disability begins following the date of injury (providing it is within the 30 days following the date of injury), except where the injury occurs before the beginning of the work day or shift, in which case the date of injury is charged to COP;

(c) Any part of a day or shift (except for the day of the injury) counts as a full day toward the 45 calendar day total;

(d) Regular days off are included if COP has been used on the regular work days immediately preceding or following the regular day(s) off, and medical evidence supports disability; and

(e) Leave used during a period when COP is otherwise payable is counted toward the 45-day COP maximum as if the employee had been in a COP status.

(f) For employees with part-time or intermittent schedules, all calendar days on which medical evidence indicates disability are counted as COP days, regardless of whether the employee was or would have been scheduled to work on those days. The rate at which COP is paid for these employees is calculated according to § 10.216(b).

§ 10.216 How is the pay rate for COP calculated?

The employer shall calculate COP using the period of time and the weekly pay rate.

(a) The pay rate for COP purposes is equal to the employee's regular "weekly" pay (the average of the weekly pay over the preceding 52 weeks).

(1) The pay rate excludes overtime pay, but includes other applicable extra pay except to the extent prohibited by law.

(2) Changes in pay or salary (for example, promotion, demotion, within-grade increases, termination of a temporary detail, etc.) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

(b) The weekly pay for COP purposes is determined according to the following formulas:

(1) For full or part-time workers (permanent or temporary) who work the same number of hours each week of the year (or of the appointment), the weekly pay rate is the hourly pay rate (A) in effect on the date of injury multiplied by (×) the number of hours worked each week (B): A × B = Weekly Pay Rate.

(2) For part-time workers (permanent or temporary) who do not work the same number of hours each week, but who do work each week of the year (or period of appointment), the weekly pay rate is an average of the weekly earnings, established by dividing (÷) the total earnings (excluding overtime) from the year immediately preceding the injury (A) by the number of weeks (or partial weeks) worked in that year (B): A ÷ B = Weekly Pay Rate.

(3) For intermittent, seasonal and on-call workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year (or period of appointment), the weekly pay rate is the average weekly earnings established by dividing (÷) the total earnings during the full 12-month period immediately preceding the date of injury (excluding overtime) (A), by the number of weeks (or partial weeks) worked during that year (B) (that is, A ÷ B); or 150 times the average daily wage earned in the employment during the days employed within the full year immediately preceding the date of injury divided by 52 weeks, whichever is greater.

§ 10.217 Is COP charged if the employee continues to work, but in a different job that pays less?

If the employee cannot perform the duties of his or her regular position, but instead works in another job with different duties with no loss in pay, then COP is not chargeable. COP must be paid and the days counted against the 45 days authorized by law whenever an actual reduction of pay results from the injury, including a reduction of pay for the employee's normal administrative workweek that results from a change or diminution in his or her duties following an injury. However, this does not include a reduction of pay that is due solely to an employer being prohibited by law from paying extra pay to an employee for work he or she does not actually perform.

Controversion and Termination of COP

§ 10.220 When is an employer not required to pay COP?

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:

(a) The disability was not caused by a traumatic injury;

(b) The employee is not a citizen of the United States or Canada;

(c) No written claim was filed within 30 days from the date of injury;

(d) The injury was not reported until after employment has been terminated;

(e) The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties;

(f) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or

(g) Work did not stop until more than 30 days following the injury.

§ 10.221 How is a claim for COP controverted?

When the employer stops an employee's pay for one of the reasons cited in § 10.220, the employer must controvert the claim for COP on Form CA–1, explaining in detail the basis for the refusal. The final determination on entitlement to COP always rests with OWCP.

§ 10.222 When may an employer terminate COP which has already begun?

(a) Where the employer has continued the pay of the employee, it may be stopped only when at least one of the following circumstances is present:

(1) Medical evidence which on its face supports disability due to a work-related injury is not received within 10 calendar days after the claim is submitted (unless the employer's own investigation shows disability to exist). Where the medical evidence is later provided, however, COP shall be reinstated retroactive to the date of termination;

(2) The medical evidence from the treating physician shows that the employee is not disabled from his or her regular position;

(3) Medical evidence from the treating physician shows that the employee is not totally disabled, and the employee refuses a written offer of a suitable alternative position which is approved by the attending physician. If OWCP later determines that the position was not suitable, OWCP will direct the employer to grant the employee COP retroactive to the termination date.

(4) The employee returns to work with no loss of pay;

(5) The employee's period of employment expires or employment is otherwise terminated (as established prior to the date of injury);

(6) OWCP directs the employer to stop COP; and/or

(7) COP has been paid for 45 calendar days.

(b) An employer may not interrupt or stop COP to which the employee is otherwise entitled because of a disciplinary action, unless a preliminary notice was issued to the employee before the date of injury and the action becomes final or otherwise takes effect during the COP period.

(c) An employer cannot otherwise stop COP unless it does so for one of the reasons found in this section or § 10.220. Where an employer stops COP, it must file a controversion with OWCP, setting forth the basis on which it terminated COP, no later than the effective date of the termination.

§ 10.223 Are there other circumstances under which OWCP will not authorize payment of COP?

When OWCP finds that an employee or his or her representative refuses or obstructs a medical examination required by OWCP, the right to COP is suspended until the refusal or obstruction ceases. COP already paid or payable for the period of suspension is forfeited. If already paid, the COP may be charged to annual or sick leave or considered an overpayment of pay consistent with 5 U.S.C. 5584.

§ 10.224 What happens if OWCP finds that the employee is not entitled to COP after it has been paid?

Where OWCP finds that the employee is not entitled to COP after it has been paid, the employee may chose to have the time charged to annual or sick leave, or considered an overpayment of pay under 5 U.S.C. 5584. The employer must correct any deficiencies in COP as directed by OWCP.

Subpart D—Medical and Related Benefits

Emergency Medical Care

§ 10.300 What are the basic rules for authorizing emergency medical care?

(a) When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the employer shall authorize such examination and/or treatment by issuing a Form CA–16. This form may be used for occupational disease or illness only if the employer has obtained prior permission from OWCP.

(b) The employer shall issue Form CA–16 within four hours of the claimed injury. If the employer gives verbal authorization for such care, he or she should issue a Form CA–16 within 48 hours. The employer is not required to issue a Form CA–16 more than one week after the occurrence of the claimed injury. The employer may not authorize examination or medical or other treatment in any case that OWCP has disallowed.

(c) Form CA–16 must contain the full name and address of the qualified physician or qualified medical facility authorized to provide service. The authorizing official must sign and date the form and must state his or her title. Form CA–16 authorizes treatment for 60 days from the date of issuance, unless OWCP terminates the authorization sooner.

(d) The employer should advise the employee of the right to his or her initial choice of physician. The employer shall allow the employee to select a qualified physician, after advising him or her of those physicians excluded under subpart I of this part. The physician may be in private practice, including a health maintenance organization (HMO), or employed by a Federal agency such as the Department of the Army, Navy, Air Force, or Veterans Affairs. Any qualified physician may provide initial treatment of a work-related injury in an emergency. See also § 10.825(b).

§ 10.301 May the physician designated on Form CA–16 refer the employee to another medical specialist or medical facility?

The physician designated on Form CA–16 may refer the employee for further examination, testing, or medical care. OWCP will pay this physician or facility's bill on the authority of Form CA–16. The employer should not issue a second Form CA–16.

§ 10.302 Should the employer authorize medical care if he or she doubts that the injury occurred, or that it is work-related?

If the employer doubts that the injury occurred, or that it is work-related, he or she should authorize medical care by completing Form CA–16 and checking block 6B of the form. If the medical and factual evidence sent to OWCP shows that the condition treated is not work-related, OWCP will notify the employee, the employer, and the physician or hospital that OWCP will not authorize payment for any further treatment.

§ 10.303 Should the employer use a Form CA–16 to authorize medical testing when an employee is exposed to a workplace hazard just once?

(a) Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the FECA. The employer therefore should not use a Form CA–16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure. OWCP will authorize preventive treatment only under certain well-defined circumstances (see § 10.313).

(b) Employers may be required under other statutes or regulations to provide their employees with medical testing and/or other services in situations described in paragraph (a) of this section. For example, regulations issued

by the Occupational Safety and Health Administration at 29 CFR chapter XVII require employers to provide their employees with medical consultations and/or examinations when they either exhibit symptoms consistent with exposure to a workplace hazard, or when an identifiable event such as a spill, leak or explosion occurs and results in the likelihood of exposure to a workplace hazard. In addition, 5 U.S.C. 7901 authorizes employers to establish health programs whose staff can perform tests for workplace hazards, counsel employees for exposure or feared exposure to such hazards, and provide health care screening and other associated services.

§ 10.304 Are there any exceptions to these procedures for obtaining medical care?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

Medical Treatment and Related Issues

§ 10.310 What are the basic rules for obtaining medical care?

(a) The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult OWCP prior to obtaining it.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. A qualified provider of medical support services may also furnish appropriate services, appliances, and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies. With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

§ 10.311 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed are limited by the FECA to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) In accordance with 5 U.S.C. 8101(3), a diagnosis of spinal "subluxation as demonstrated by X-ray to exist" must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight, the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of a qualified physician.

§ 10.312 What are the special rules for the services of clinical psychologists?

A clinical psychologist may serve as a physician only within the scope of his or her practice as defined by State law. Therefore, a clinical psychologist may not serve as a physician for conditions that include a physical component unless the applicable State law allows clinical psychologists to treat physical conditions. A clinical psychologist may also perform testing, evaluation and other services under the direction of a qualified physician.

§ 10.313 Will OWCP pay for preventive treatment?

The FECA does not authorize payment for preventive measures such as vaccines and inoculations, and in general, preventive treatment may be a responsibility of the employing agency under the provisions of 5 U.S.C. 7901 (see § 10.303). However, OWCP can authorize treatment for the following conditions, even though such treatment is designed, in part, to prevent further injury:

(a) Complications of preventive measures which are provided or sponsored by the agency, such as an adverse reaction to prophylactic immunization.

(b) Actual or probable exposure to a known contaminant due to an injury, thereby requiring disease-specific measures against infection. Examples include the provision of tetanus antitoxin or booster toxoid injections for puncture wounds; administration of rabies vaccine for a bite from a rabid or potentially rabid animal; or appropriate measures where exposure to human immunodeficiency virus (HIV) has occurred.

(c) Conversion of tuberculin reaction from negative to positive following exposure to tuberculosis in the performance of duty. In this situation, the appropriate therapy may be authorized.

(d) Where injury to one eye has resulted in loss of vision, periodic examination of the uninjured eye to detect possible sympathetic involvement of the uninjured eye at an early stage.

§ 10.314 Will OWCP pay for the services of an attendant?

Yes, OWCP will pay for the services of an attendant up to a maximum of $1,500 per month, where the need for such services has been medically documented. In the exercise of the discretion afforded by 5 U.S.C. 8111(a), the Director has determined that, except where payments were being made prior to January 4, 1999, direct payments to the claimant to cover such services will no longer be made. Rather, the cost of providing attendant services will be paid under section 8103 of the Act, and medical bills for these services will be considered under § 10.801. This decision is based on the following factors:

(a) The additional payments authorized under section 8111(a) should not be necessary since OWCP will authorize payment for personal care services under 5 U.S.C. 8103, whether or not such care includes medical services, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual.

(b) A home health aide, licensed practical nurse, or similarly trained individual is better able to provide quality personal care services, including assistance in feeding, bathing, and using the toilet. In the past, provision of supplemental compensation directly to injured employees may have encouraged family members to take on these responsibilities even though they may not have been trained to provide such services. By paying for the services under section 8103, OWCP can better determine whether the services provided are necessary and/or adequate to meet the needs of the injured employee. In addition, a system requiring the personal care provider to submit a bill to OWCP, where the amount billed will be subject to OWCP's fee schedule, will result in greater fiscal accountability.

§ 10.315 Will OWCP pay for transportation to obtain medical treatment?

The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services,

the employee's condition, and the means of transportation. Generally, 25 miles from the place of injury, the work site, or the employee's home, is considered a reasonable distance to travel. The standard form designated for Federal employees to claim travel expenses should be used to seek reimbursement under this section.

§ 10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?

(a) When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved. The employer may not authorize a change of physicians.

Directed Medical Examinations

§ 10.320 Can OWCP require an employee to be examined by another physician?

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

§ 10.321 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?

(a) If one medical opinion holds more probative value, OWCP will base its determination of entitlement on that medical conclusion (see § 10.502). A difference in medical opinion sufficient to be considered a conflict occurs when two reports of virtually equal weight and rationale reach opposing conclusions (*see James P. Roberts, 31 ECAB 1010 (1980)*).

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see § 10.502). This is called a referee examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee medical review where there is no need for an actual examination, or where the employee is deceased.

§ 10.322 Who pays for second opinion and referee examinations?

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

§ 10.323 What are the penalties for failing to report for or obstructing a second opinion or referee examination?

If an employee refuses to submit to or in any way obstructs an examination required by OWCP, his or her right to compensation under the FECA is suspended until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. 8129.

§ 10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?

The employer may have authority independent of the FECA to require the employee to undergo a medical examination to determine whether he or she meets the medical requirements of the position held or can perform the duties of that position. Nothing in the FECA or in this part affects such authority. However, no agency-required examination or related activity shall interfere with the employee's initial choice of physician or the provision of any authorized examination or treatment, including the issuance of Form CA–16.

Medical Reports

§ 10.330 What are the requirements for medical reports?

In all cases reported to OWCP, a medical report from the attending physician is required. This report should include:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found but not due to the claimed injury;

(h) The treatment given or recommended for the claimed injury;

(i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;

(j) The extent of disability affecting the employee's ability to work due to the injury;

(k) The prognosis for recovery; and

(l) All other material findings.

§ 10.331 How and when should the medical report be submitted?

(a) Form CA–16 may be used for the initial medical report; Form CA–20 may be used for the initial report and for subsequent reports; and Form CA–20a may be used where continued compensation is claimed. Use of medical report forms is not required, however. The report may also be made in narrative form on the physician's letterhead stationery. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician. (See also § 10.210.) The employer may request a copy of the report from OWCP. The employer should use Form CA–17 to obtain interim reports concerning the duty status of an employee with a disabling injury.

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§ 10.332 What additional medical information will OWCP require to support continuing payment of benefits?

In all cases of serious injury or disease, especially those requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the condition accepted by OWCP, a prognosis, a description of work limitations, if any, and the physician's opinion as to the continuing causal relationship between the employee's condition and factors of his or her Federal employment.

§ 10.333 What additional medical information will OWCP require to support a claim for a schedule award?

To support a claim for a schedule award, a medical report must contain accurate measurements of the function of the organ or member, in accordance with the American Medical Association's *Guides to the Evaluation of Permanent Impairment.* These measurements may include: The actual degree of loss of active or passive motion or deformity; the amount of atrophy; the decrease, if any, in strength; the disturbance of sensation; and pain due to nerve impairment.

Medical Bills

§ 10.335 How are medical bills submitted?

Usually, medical providers submit bills directly to OWCP. The rules for submitting and paying bills are stated in subpart I of this part. An employee claiming reimbursement of medical expenses should submit an itemized bill as described in § 10.802.

§ 10.336 What are the time frames for submitting bills?

To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable, whichever is later.

§ 10.337 If OWCP reimburses an employee only partially for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services (see § 10.805). The employee may be only partially reimbursed for medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, OWCP shall advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in § 10.812.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

Subpart E—Compensation and Related Benefits

Compensation for Disability and Impairment

§ 10.400 What is total disability?

(a) Permanent total disability is presumed to result from the loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes. However, the presumption of permanent total disability as a result of such loss may be rebutted by evidence to the contrary, such as evidence of continued ability to work and to earn wages despite the loss.

(b) Temporary total disability is defined as the inability to return to the position held at the time of injury or earn equivalent wages, or to perform other gainful employment, due to the work-related injury. Except as presumed under paragraph (a) of this section, an employee's disability status is always considered temporary pending return to work.

§ 10.401 When and how is compensation for total disability paid?

(a) Compensation is payable when the employee starts to lose pay if the injury causes permanent disability or if pay loss continues for more than 14 calendar days. Otherwise, compensation is payable on the fourth day after pay stops. Compensation may not be paid while an injured employee is in a continuation of pay status or receives pay for leave.

(b) Compensation for total disability is payable at the rate of 66⅔ percent of the pay rate if the employee has no dependents, or 75 percent of the pay rate if the employee has at least one dependent. ("Dependents" are defined at 5 U.S.C. 8110(a).)

§ 10.402 What is partial disability?

An injured employee who cannot return to the position held at the time of injury (or earn equivalent wages) due to the work-related injury, but who is not totally disabled for all gainful employment, is considered to be partially disabled.

§ 10.403 When and how is compensation for partial disability paid?

(a) 5 U.S.C. 8115 outlines how compensation for partial disability is determined. If the employee has actual earnings which fairly and reasonably represent his or her wage-earning capacity, those earnings may form the basis for payment of compensation for partial disability. (See §§ 10.500 through 10.520 concerning return to work.) If the employee's actual earnings do not fairly and reasonably represent his or her wage-earning capacity, or if the employee has no actual earnings, OWCP uses the factors stated in 5 U.S.C. 8115 to select a position which represents his or her wage-earning capacity. However, OWCP will not secure employment for the employee in the position selected for establishing a wage-earning capacity.

(b) Compensation for partial disability is payable as a percentage of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. The percentage is 66⅔ percent of this difference if the employee has no dependents, or 75 percent of this difference if the employee has at least one dependent.

(c) The formula which OWCP uses to compute the compensation payable for partial disability employs the following terms: Pay rate for compensation purposes, which is defined in § 10.5(s) of this part; current pay rate, which means the salary or wages for the job held at the time of injury at the time of the determination; and earnings, which means the employee's actual earnings, or the salary or pay rate of the position selected by OWCP as representing the employee's wage-earning capacity.

(d) The employee's wage-earning capacity in terms of percentage is computed by dividing the employee's earnings by the current pay rate. The comparison of earnings and "current" pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. OWCP may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.

(e) The employee's wage-earning capacity in terms of dollars is computed by first multiplying the pay rate for compensation purposes by the

percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity.

§ 10.404 When and how is compensation for a schedule impairment paid?

Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. OWCP evaluates the degree of impairment to schedule members, organs and functions as defined in 5 U.S.C. 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment.*

(a) 5 U.S.C. 8107(c) provides a list of schedule members. Pursuant to the authority provided by 5 U.S.C. 8107(c)(22), the Secretary has added the following organs to the compensation schedule for injuries that were sustained on or after September 7, 1974:

Member	Weeks
Breast (one)	52
Kidney (one)	156
Larynx	160
Lung (one)	156
Penis	205
Testicle (one)	52
Tongue	160
Ovary (one)	52
Uterus/cervix and vulva/vagina	205

(b) Compensation for schedule awards is payable at 66⅔ percent of the employee's pay, or 75 percent of the pay when the employee has at least one dependent.

(c) The period of compensation payable under 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts of the same member or function, or for disfigurement; and

(2) OWCP finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(d) Compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck which is likely to handicap a person in securing or maintaining employment.

§ 10.405 Who is considered a dependent in a claim based on disability or impairment?

(a) Dependents include a wife or husband; an unmarried child under 18 years of age; an unmarried child over 18 who is incapable of self-support; a student, until he or she reaches 23 years of age or completes four years of school beyond the high school level; or a wholly dependent parent.

(b) Augmented compensation payable for an unmarried child, which would otherwise terminate when the child reached the age of 18, may be continued while the child is a student as defined in 5 U.S.C. 8101(17).

§ 10.406 What are the maximum and minimum rates of compensation in disability cases?

(a) Compensation for total or partial disability may not exceed 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule. (Basic monthly pay does not include locality adjustments.) However, this limit does not apply to disability sustained in the performance of duty which was due to an assault which occurred during an attempted assassination of a Federal official described under 10 U.S.C. 351(a) or 1751(a).

(b) Compensation for total disability may not be less than 75 percent of the basic monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less. (Basic monthly pay does not include locality adjustments.)

Compensation for Death

§ 10.410 Who is entitled to compensation in case of death, and what are the rates of compensation payable in death cases?

(a) If there is no child entitled to compensation, the employee's surviving spouse will receive compensation equal to 50 percent of the employee's monthly pay until death or remarriage before reaching age 55. Upon remarriage, the surviving spouse will be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage. If remarriage occurs at age 55 or older, the lump-sum payment will not be paid and compensation will continue until death.

(b) If there is a child entitled to compensation, the compensation for the surviving spouse will equal 45 percent of the employee's monthly pay plus 15 percent for each child, but the total percentage may not exceed 75 percent.

(c) If there is a child entitled to compensation and no surviving spouse, compensation for one child will equal 40 percent of the employee's monthly pay. Fifteen percent will be awarded for each additional child, not to exceed 75 percent, the total amount to be shared equally among all children.

(d) If there is no child or surviving spouse entitled to compensation, the parents will receive compensation equal to 25 percent of the employee's monthly pay if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent, or 20 percent each if both were wholly dependent on the employee, or a proportionate amount in the discretion of the Director if one or both were partially dependent on the employee. If there is a child or surviving spouse entitled to compensation, the parents will receive so much of the compensation described in the preceding sentence as, when added to the total percentages payable to the surviving spouse and children, will not exceed a total of 75 percent of the employee's monthly pay.

(e) If there is no child, surviving spouse or dependent parent entitled to compensation, the brothers, sisters, grandparents and grandchildren will receive compensation equal to 20 percent of the employee's monthly pay to such dependent if one was wholly dependent on the employee at the time of death; or 30 percent if more than one was wholly dependent, divided among such dependents equally; or 10 percent if no one was wholly dependent but one or more was partly dependent, divided among such dependents equally. If there is a child, surviving spouse or dependent parent entitled to compensation, the brothers, sisters, grandparents and grandchildren will receive so much of the compensation described in the preceding sentence as, when added to the total percentages payable to the children, surviving spouse and dependent parents, will not exceed a total of 75 percent of the employee's monthly pay.

(f) A child, brother, sister or grandchild may be entitled to receive death benefits until death, marriage, or reaching age 18. Regarding entitlement after reaching age 18, refer to § 10.417 of these regulations.

§ 10.411 What are the maximum and minimum rates of compensation in death cases?

(a) Compensation for death may not exceed the employee's pay or 75 percent of the basic monthly pay of the highest

step of grade 15 of the General Schedule, except that compensation may exceed the employee's basic monthly pay if such excess is created by authorized cost-of-living increases. (Basic monthly pay does not include locality adjustments.) However, the maximum limit does not apply when the death occurred during an assassination of a Federal official described under 18 U.S.C. 351(a) or 18 U.S.C. 1751(a).

(b) Compensation for death is computed on a minimum pay rate equal to the basic monthly pay of an employee at the first step of grade 2 of the General Schedule. (Basic monthly pay does not include locality adjustments.)

§ 10.412 Will OWCP pay the costs of burial and transportation of the remains?

In a case accepted for death benefits, OWCP will pay up to $800 for funeral and burial expenses. When an employee's home is within the United States and the employee dies outside the United States, or away from home or the official duty station, an additional amount may be paid for transporting the remains to the employee's home. An additional amount of $200 is paid to the personal representative of the decedent for reimbursement of the costs of terminating the decedent's status as an employee of the United States.

§ 10.413 If a person dies while receiving a schedule award, to whom is the balance of the schedule award payable?

The circumstances under which the balance of a schedule award may be paid to an employee's survivors are described in 5 U.S.C. 8109. Therefore, if there is no surviving spouse or child, OWCP will pay benefits as follows:

(a) To the parent, or parents, wholly dependent for support on the decedent in equal shares with any wholly dependent brother, sister, grandparent or grandchild;

(b) To the parent, or parents, partially dependent for support on the decedent in equal shares when there are no wholly dependent brothers, sisters, grandparents or grandchildren (or other wholly dependent parent); and

(c) To the parent, or parents, partially dependent upon the decedent, 25 percent of the amount payable, shared equally, and the remaining 75 percent to any wholly dependent brother, sister, grandparent or grandchild (or wholly dependent parent), shared equally.

§ 10.414 What reports of dependents are needed in death cases?

If a beneficiary is receiving compensation benefits on account of an employee's death, OWCP will ask him or her to complete a report once each year on Form CA–12. The report requires the beneficiary to note changes in marital status and dependents. If the beneficiary fails to submit the form (or an equivalent written statement) within 30 days of the date of request, OWCP shall suspend compensation until the requested form or equivalent written statement is received. The suspension will include compensation payable for or on behalf of another person (for example, compensation payable to a widow on behalf of a child). When the form or statement is received, compensation will be reinstated at the appropriate rate retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

§ 10.415 What must a beneficiary do if the number of beneficiaries decreases?

The circumstances under which compensation on account of death shall be terminated are described in 5 U.S.C. 8133(b). A beneficiary in a claim for death benefits should promptly notify OWCP of any event which would affect his or her entitlement to continued compensation. The terms "marriage" and "remarriage" include common-law marriage as recognized and defined by State law in the State where the beneficiary resides. If a beneficiary, or someone acting on his or her behalf, receives a check which includes payment of compensation for any period after the date when entitlement ended, he or she must promptly return the check to OWCP.

§ 10.416 How does a change in the number of beneficiaries affect the amount of compensation paid to the other beneficiaries?

If compensation to a beneficiary is terminated, the amount of compensation payable to one or more of the remaining beneficiaries may be reapportioned. Similarly, the birth of a posthumous child may result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify OWCP of the birth and submit a copy of the birth certificate.

§ 10.417 What reports are needed when compensation payments continue for children over age 18?

(a) Compensation payable on behalf of a child, brother, sister, or grandchild, which would otherwise end when the person reaches 18 years of age, shall be continued if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask a beneficiary receiving compensation based on the student status of a dependent to provide proof of continuing entitlement to such compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask a beneficiary or legal guardian receiving compensation based on a dependent's physical or mental inability to support himself or herself to submit a medical report verifying that the dependent's medical condition persists and that it continues to preclude self-support.

Adjustments to Compensation

§ 10.420 How are cost-of-living adjustments applied?

(a) In cases of disability, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146a where injury-related disability began more than one year prior to the date the cost-of-living adjustment took effect. The employee's use of continuation of pay as provided by 5 U.S.C. 8118, or of sick or annual leave, during any part of the period of disability does not affect the computation of the one-year period.

(b) Where an injury does not result in disability but compensation is payable for permanent impairment of a covered member, organ or function of the body, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146a where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.

(c) In cases of recurrence of disability, where the pay rate for compensation purposes is the pay rate at the time disability recurs, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146a where the effective date of that pay rate began more than one year prior to the date the cost-of living adjustment took effect.

(d) In cases of death, entitlement to cost-of-living adjustments under 5 U.S.C. 8146a begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

§ 10.421 May a beneficiary receive other kinds of payments from the Federal Government concurrently with compensation?

(a) 5 U.S.C. 8116(a) provides that a beneficiary may not receive wage-loss compensation concurrently with a Federal retirement or survivor annuity. The beneficiary must elect the benefit that he or she wishes to receive, and the election, once made, is revocable.

(b) An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services, subject to the reduction of such pay in accordance with 5 U.S.C. 5532(b).

(c) An employee may not receive compensation for total disability concurrently with severance pay or separation pay. However, an employee may concurrently receive compensation for partial disability or permanent impairment to a schedule member, organ or function with severance pay or separation pay.

(d) Pursuant to 5 U.S.C. 8116(d), a beneficiary may receive compensation under the FECA for either the death or disability of an employee concurrently with benefits under title II of the Social Security Act on account of the age or death of such employee. However, this provision of the FECA also requires OWCP to reduce the amount of any such compensation by the amount of any Social Security Act benefits that are attributable to the Federal service of the employee.

(e) To determine the employee's entitlement to compensation, OWCP may require an employee to submit an affidavit or statement as to the receipt of any Federally funded or Federally assisted benefits. If an employee fails to submit such affidavit or statement within 30 days of the date of the request, his or her right to compensation shall be suspended until such time as the requested affidavit or statement is received. At that time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

§ 10.422 May compensation payments be issued in a lump sum?

(a) In exercise of the discretion afforded under 5 U.S.C. 8135(a), OWCP has determined that lump-sum payments will not be made to persons entitled to wage-loss benefits (that is, those payable under 5 U.S.C. 8105 and 8106). Therefore, when OWCP receives requests for lump-sum payments for wage-loss benefits, OWCP will not exercise further discretion in the matter. This determination is based on several factors, including:

(1) The purpose of the FECA, which is to replace lost wages;

(2) The prudence of providing wage-loss benefits on a regular, recurring basis; and

(3) The high cost of the long-term borrowing that is needed to pay out large lump sums.

(b) However, a lump-sum payment may be made to an employee entitled to a schedule award under 5 U.S.C. 8107 where OWCP determines that such a payment is in the employee's best interest. Lump-sum payments of schedule awards generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or is receiving annuity payments). An employee possesses no absolute right to a lump-sum payment of benefits payable under 5 U.S.C. 8107.

(c) Lump-sum payments to surviving spouses are addressed in 5 U.S.C. 8135(b).

§ 10.423 May compensation payments be assigned to, or attached by, creditors?

(a) As a general rule, compensation and claims for compensation are exempt from the claims of private creditors. This rule does not apply to claims submitted by Federal agencies. Further, any attempt by a FECA beneficiary to assign his or her claim is null and void. However, pursuant to provisions of the Social Security Act, 42 U.S.C. 659, and regulations issued by the Office of Personnel Management (OPM) at 5 CFR part 581, FECA benefits, including survivor's benefits, may be garnished to collect overdue alimony and child support payments.

(b) Garnishment for child support and alimony may be requested by providing a copy of the State agency or court order to the district office handling the FECA claim.

§ 10.424 May someone other than the beneficiary be designated to receive compensation payments?

A beneficiary may be incapable of managing or directing the management of his or her benefits because of a mental or physical disability, or because of legal incompetence, or because he or she is under 18 years of age. In this situation, absent the appointment of a guardian or other party to manage the financial affairs of the claimant by a court or administrative body authorized to do so, OWCP in its sole discretion may approve a person to serve as the representative payee for funds due the beneficiary.

§ 10.425 May compensation be claimed for periods of restorable leave?

The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing agency. Forms CA–7a and CA–7b are used for this purpose.

Overpayments

§ 10.430 How does OWCP notify an individual of a payment made?

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each periodic check a clear indication of the period for which payment is being made. A form is sent to the recipient with each supplemental check which states the date and amount of the payment and the period for which payment is being made. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically.

§ 10.431 What does OWCP do when an overpayment is identified?

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the beneficiary in writing that:

(a) The overpayment exists, and the amount of overpayment;

(b) A preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment;

(c) He or she has the right to inspect and copy Government records relating to the overpayment; and

(d) He or she has the right to present evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived.

§ 10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?

The individual may present this evidence to OWCP in writing or at a pre-recoupment hearing. The evidence must

be presented or the hearing requested within 30 days of the date of the written notice of overpayment. Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.

§ 10.433 Under what circumstances can OWCP waive recovery of an overpayment?

(a) OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in reporting events which may affect entitlement to or the amount of benefits. A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which he or she knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.

§ 10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the FECA (see § 10.436), or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 10.437).

§ 10.435 Is an individual responsible for an overpayment that resulted from an error made by OWCP or another Government agency?

(a) The fact that OWCP may have erred in making the overpayment, or that the overpayment may have resulted from an error by another Government agency, does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.

(b) However, OWCP may find that the individual was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The individual relied on misinformation given in writing by OWCP (or by another Government agency which he or she had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the FECA or its regulations; or

(2) OWCP erred in calculating cost-of-living increases, schedule award length and/or percentage of impairment, or loss of wage-earning capacity.

§ 10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?

Recovery of an overpayment will defeat the purpose of the FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because:

(a) The beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(b) The beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.

§ 10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?

(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, OWCP does not consider the individual's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

§ 10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?

(a) The individual who received the overpayment is responsible for providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA, or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

§ 10.439 What is addressed at a pre-recoupment hearing?

At a pre-recoupment hearing, the OWCP representative will consider all issues in the claim on which a formal decision has been issued. Such a hearing will thus fulfill OWCP's obligation to provide pre-recoupment rights and a hearing under 5 U.S.C. 8124(b). Pre-recoupment hearings shall be conducted in exactly the same manner as provided in § 10.615 through § 10.622.

§ 10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?

(a) OWCP will send a copy of the final decision to the individual from whom recovery is sought; his or her representative, if any; and the employing agency.

(b) The only review of a final decision concerning an overpayment is to the Employees' Compensation Appeals Board. The provisions of 5 U.S.C. 8124(b) (concerning hearings) and 5 U.S.C. 8128(a) (concerning reconsiderations) do not apply to such a decision.

§ 10.441 How are overpayments collected?

(a) When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the

overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the FECA with respect to the individual's death.

(b) When an overpayment has been made to an individual who is not entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966 (as amended) and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

Subpart F—Continuing Benefits

Rules and Evidence

§ 10.500 What are the basic rules governing continuing receipt of compensation benefits and return to work?

(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. Payment of medical benefits is available for all treatment necessary due to a work-related medical condition.

(b) Each disabled employee is obligated to perform such work as he or she can, and OWCP's goal is to return each disabled employee to suitable work as soon as he or she is medically able. In determining what constitutes "suitable work" for a particular disabled employee, OWCP considers the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area, the employee's qualifications to perform such work, and other relevant factors. (See § 10.508 with respect to the payment of relocation expenses.)

§ 10.501 What medical evidence is necessary to support continuing receipt of compensation benefits?

(a) The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.

(1) To support payment of continuing compensation, narrative medical evidence must be submitted whenever OWCP requests it but ordinarily not less than once a year. It must contain a physician's rationalized opinion as to whether the specific period of alleged disability is causally related to the employee's accepted injury or illness.

(2) The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation. Likewise, medical limitations based solely on the fear of a possible future injury are also not sufficient to support payment of continuing compensation. See § 10.330 for a fuller discussion of medical evidence.

(b) OWCP may require any kind of non-invasive testing to determine the employee's functional capacity. Failure to undergo such testing will result in a suspension of benefits. In addition, OWCP may direct the employee to undergo a second opinion or referee examination in any case it deems appropriate (see §§ 10.320 and 10.321).

§ 10.502 How does OWCP evaluate evidence in support of continuing receipt of compensation benefits?

In considering the medical and factual evidence, OWCP will weigh the probative value of the attending physician's report, any second opinion physician's report, any other medical reports, or any other evidence in the file. If OWCP determines that the medical evidence supporting one conclusion is more consistent, logical, and well-reasoned than evidence supporting a contrary conclusion, OWCP will use the conclusion that is supported by the weight of the medical evidence as the basis for awarding or denying further benefits. If medical reports that are equally well-reasoned support inconsistent determinations of an issue under consideration, OWCP will direct the employee to undergo a referee examination to resolve the issue. The results of the referee examination will be given special weight in determining the issue.

§ 10.503 Under what circumstances may OWCP reduce or terminate compensation benefits?

Once OWCP has advised the employee that it has accepted a claim and has either approved continuation of pay or paid medical benefits or compensation, benefits will not be terminated or reduced unless the weight of the evidence establishes that:

(a) The disability for which compensation was paid has ceased;

(b) The disabling condition is no longer causally related to the employment;

(c) The employee is only partially disabled;

(d) The employee has returned to work;

(e) The beneficiary was convicted of fraud in connection with a claim under the FECA, or the beneficiary was incarcerated based on any felony conviction; or

(f) OWCP's initial decision was in error.

Return to Work—Employer's Responsibilities

§ 10.505 What actions must the employer take?

Upon authorizing medical care, the employer should advise the employee in writing as soon as possible of his or her obligation to return to work under § 10.210 and as defined in this subpart. The term "return to work" as used in this subpart is not limited to returning to work at the employee's normal worksite or usual position, but may include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position, in accordance with 5 U.S.C. 8151(b)(2), if the employee has fully recovered after one year. The Office of Personnel Management (not OWCP) administers this provision.

(a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions.

(b) Where the employer has no specific alternative positions available for an employee who can perform restricted or limited duties, the employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury.

§ 10.506 May the employer monitor the employee's medical care?

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is usually adequate for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. (However, the employer shall not contact the physician by telephone or through personal visit.) When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

§ 10.507 How should the employer make an offer of suitable work?

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

(a) If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee in writing of the specific duties and physical requirements, the employer shall notify the employee in writing immediately of the date of availability.

(b) If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or whether an existing job can be modified. If so, the employer shall advise the employee in writing of the duties, their physical requirements and availability.

(c) The employer must make any job offer in writing. However, the employer may make a job offer verbally as long as it provides the job offer to the employee in writing within two business days of the verbal job offer.

(d) The offer must include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

§ 10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?

If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment. OWCP may also pay such relocation expenses when the new employer is other than a Federal employer. OWCP will notify the employee that relocation expenses are payable if it makes a finding that the job is suitable. To determine whether a relocation expense is reasonable and necessary, OWCP shall use as a guide the Federal travel regulations for permanent changes of duty station.

§ 10.509 If an employee's light-duty job is eliminated due to downsizing, what is the effect on compensation?

(a) In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made.

(b) For the purposes of this section only, a *light-duty position* means a classified position to which the injured employee has been formally reassigned that conforms to the established physical limitations of the injured employee and for which the employer has already prepared a written position description such that the position constitutes "regular" Federal employment. In the absence of a "light-duty position" as described in this paragraph, OWCP will assume that the employee was instead engaged in non-competitive employment which does not represent the employee's wage-earning capacity, i.e., work of the type provided to injured employees who cannot otherwise be employed by the Federal Government or in any well-known branch of the general labor market.

Return to Work—Employee's Responsibilities

§ 10.515 What actions must the employee take with respect to returning to work?

(a) If an employee can resume regular Federal employment, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, he or she must seek work. In the alternative, the employee must accept suitable work offered to him or her. (See § 10.500 for a definition of "suitable work".) This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the Federal Government, State and local Governments, or in the private sector.

§ 10.516 How will an employee know if OWCP considers a job to be suitable?

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in

time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.

§ 10.517 What are the penalties for refusing to accept a suitable job offer?

(a) 5 U.S.C. 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation. An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.

(b) After providing the two notices described in § 10.516, OWCP will terminate the employee's entitlement to further compensation under 5 U.S.C. 8105, 8106, and 8107, as provided by 5 U.S.C. 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. 8103.

§ 10.518 Does OWCP provide services to help employees return to work?

(a) OWCP may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. 8104. These services include assistance from registered nurses working under the direction of OWCP. Among other things, these nurses visit the worksite, ensure that the duties of the position do not exceed the medical limitations as represented by the weight of medical evidence established by OWCP, and address any problems the employee may have in adjusting to the work setting. The nurses do not evaluate medical evidence; OWCP claims staff perform this function.

(b) Vocational rehabilitation services may also include vocational evaluation, testing, training, and placement services with either the original employer or a new employer, when the injured employee cannot return to the job held at the time of injury. These services also include functional capacity evaluations, which help to tailor individual rehabilitation programs to employees' physical reconditioning and behavioral modification needs, and help employees to meet the demands of current or potential jobs.

§ 10.519 What action will OWCP take if an employee refuses to undergo vocational rehabilitation?

Under 5 U.S.C. 8104(a), OWCP may direct a permanently disabled employee to undergo vocational rehabilitation. To ensure that vocational rehabilitation services are available to all who might be entitled to benefit from them, an injured employee who has a loss of wage-earning capacity shall be presumed to be "permanently disabled," for purposes of this section only, unless and until the employee proves that the disability is not permanent. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will act as follows:

(a) Where a suitable job has been identified, OWCP will reduce the employee's future monetary compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. OWCP will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes meetings with the OWCP nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, meetings with the OWCP nurse, interviews, testing, counseling, functional capacity evaluations, and work evaluations), OWCP cannot determine what would have been the employee's wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee's monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

§ 10.520 How does OWCP determine compensation after an employee completes a vocational rehabilitation program?

After completion of a vocational rehabilitation program, OWCP may adjust compensation to reflect the injured worker's wage-earning capacity. Actual earnings will be used if they fairly and reasonably reflect the earning capacity. The position determined to be the goal of a training plan is assumed to represent the employee's earning capacity if it is suitable and performed in sufficient numbers so as to be reasonably available, whether or not the employee is placed in such a position.

Reports of Earnings From Employment and Self-Employment

§ 10.525 What information must the employee report?

(a) An employee who is receiving compensation for partial or total disability must advise OWCP immediately of any return to work, either part-time or full-time. In addition, an employee who is receiving compensation for partial or total disability will periodically be required to submit a report of earnings from employment or self-employment, either part-time or full-time. (See § 10.5(g) for a definition of "earnings".)

(b) The employee must report even those earnings which do not seem likely to affect his or her level of benefits. Many kinds of income, though not all, will result in reduction of compensation benefits. While earning income will not necessarily result in a reduction of compensation, failure to report income may result in forfeiture of all benefits paid during the reporting period.

§ 10.526 Must the employee report volunteer activities?

An employee who is receiving compensation for partial or total disability is periodically required to report volunteer activity or any other kind of activity which shows that the employee is no longer totally disabled for work.

§ 10.527 Does OWCP verify reports of earnings?

To make proper determinations of an employee's entitlement to benefits, OWCP may verify the earnings reported by the employee through a variety of means, including but not limited to computer matches with the Office of Personnel Management and inquiries to the Social Security Administration. Also, OWCP may perform computer matches with records of State agencies, including but not limited to workers' compensation administrations, to determine whether private employers are paying workers' compensation insurance premiums for recipients of benefits under the FECA.

§ 10.528 What action will OWCP take if the employee fails to file a report of activity indicating an ability to work?

OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage

loss under 5 U.S.C. 8105 or 8106 is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.

§ 10.529 What action will OWCP take if the employee files an incomplete report?

(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. 8129 and other relevant statutes.

Reports of Dependents

§ 10.535 How are dependents defined, and what information must the employee report?

(a) Dependents in disability cases are defined in § 10.405. While the employee has one or more dependents, the employee's basic compensation for wage loss or for permanent impairment shall be augmented as provided in 5 U.S.C. 8110. (The rules for death claims are found in § 10.414.)

(b) An employee who is receiving augmented compensation on account of dependents must advise OWCP immediately of any change in the number or status of dependents. The employee should also promptly refund to OWCP any amounts received on account of augmented compensation after the right to receive augmented compensation has ceased. Any difference between actual entitlement and the amount already paid beyond the date entitlement ended is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129 and other relevant statutes.

(c) An employee who is receiving augmented compensation shall be periodically required to submit a statement as to any dependents, or to submit supporting documents such as birth or marriage certificates or court orders, to determine if he or she is still entitled to augmented compensation.

§ 10.536 What is the penalty for failing to submit a report of dependents?

If an employee fails to submit a requested statement or supporting document within 30 days of the date of the request, OWCP will suspend his or her right to augmented compensation until OWCP receives the requested statement or supporting document. At that time, OWCP will reinstate augmented compensation retroactive to the date of suspension, provided that the employee is entitled to receive augmented compensation.

§ 10.537 What reports are needed when compensation payments continue for children over age 18?

(a) Compensation payable on behalf of a child that would otherwise end when the child reaches 18 years of age will continue if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least twice each year, OWCP will ask an employee who receives compensation based on the student status of a child to provide proof of continuing entitlement to such compensation, including certification of school enrollment.

(c) Likewise, at least twice each year, OWCP will ask an employee who receives compensation based on a child's physical or mental inability to support himself or herself to submit a medical report verifying that the child's medical condition persists and that it continues to preclude self-support.

(d) If an employee fails to submit proof within 30 days of the date of the request, OWCP will suspend the employee's right to compensation until the requested information is received. At that time OWCP will reinstate compensation retroactive to the date of suspension, provided the employee is entitled to such compensation.

Reduction and Termination of Compensation

§ 10.540 When and how is compensation reduced or terminated?

(a) Except as provided in paragraphs (b) and (c) of this section, where the evidence establishes that compensation should be either reduced or terminated, OWCP will provide the beneficiary with written notice of the proposed action and give him or her 30 days to submit relevant evidence or argument to support entitlement to continued payment of compensation. This notice will include a description of the reasons for the proposed action and a copy of the specific evidence upon which OWCP is basing its determination. Payment of compensation will continue until any evidence or argument submitted has been reviewed and an appropriate decision has been issued, or until 30 days have elapsed if no additional evidence or argument is submitted.

(b) OWCP will not provide such written notice when the beneficiary has no reasonable basis to expect that payment of compensation will continue. For example, when a claim has been made for a specific period of time and that specific period expires, no written notice will be given. Written notice will also not be given when a beneficiary dies, when OWCP either reduces or terminates compensation upon an employee's return to work, when OWCP terminates only medical benefits after a physician indicates that further medical treatment is not necessary or has ended, or when OWCP denies payment for a particular medical expense.

(c) OWCP will also not provide such written notice when compensation is terminated, suspended or forfeited due to one of the following: A beneficiary's conviction for fraud in connection with a claim under the FECA; a beneficiary's incarceration based on any felony conviction; an employee's failure to report earnings from employment or self-employment; an employee's failure or refusal to either continue performing suitable work or to accept an offer of suitable work; or an employee's refusal to undergo or obstruction of a directed medical examination or treatment for substance abuse.

§ 10.541 What action will OWCP take after issuing written notice of its intention to reduce or terminate compensation?

(a) If the beneficiary submits evidence or argument prior to the issuance of the decision, OWCP will evaluate it in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument which is repetitious, cumulative, or irrelevant will not require any further development. If the beneficiary does not respond within 30 days of the written notice, OWCP will issue a decision consistent with its prior notice. OWCP will not grant any request for an extension of this 30-day period.

(b) Evidence or argument which refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the beneficiary submits evidence or argument which fails to refute the evidence upon which the proposed action was based but which requires further development, OWCP will not provide the beneficiary with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, OWCP will either continue payment or issue a decision consistent with its prior notice.

Subpart G—Appeals Process

§ 10.600 How can final decisions of OWCP be reviewed?

There are three methods for reviewing a formal decision of the OWCP (§§ 10.125–10.127 discuss how decisions are made). These methods are: reconsideration by the district office; a hearing before an OWCP hearing representative; and appeal to the Employees' Compensation Appeals Board (ECAB). For each method there are time limitations and other restrictions which may apply, and not all options are available for all decisions, so the employee should consult the requirements set forth below. Further rules governing appeals to the ECAB are found at part 501 of this title.

Reconsiderations and Reviews by the Director

§ 10.605 What is reconsideration?

The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the "application for reconsideration."

§ 10.606 How does a claimant request reconsideration?

(a) An employee (or representative) seeking reconsideration should send the application for reconsideration to the address as instructed by OWCP in the final decision.

(b) The application for reconsideration, including all supporting documents, must:

(1) Be submitted in writing;

(2) Set forth arguments and contain evidence that either:

(i) Shows that OWCP erroneously applied or interpreted a specific point of law;

(ii) Advances a relevant legal argument not previously considered by OWCP; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

§ 10.607 What is the time limit for requesting reconsideration?

(a) An application for reconsideration must be sent within one year of the date of the OWCP decision for which review is sought. If submitted by mail, the application will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark, or it is not legible, other evidence such as (but not limited to) certified mail receipts, certificate of service, and affidavits, may be used to establish the mailing date.

(b) OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

(c) The year in which a claimant has to timely request reconsideration shall not include any period subsequent to an OWCP decision for which the claimant can establish through probative medical evidence that he or she is unable to communicate in any way and that his or her testimony is necessary in order to obtain modification of the decision.

§ 10.608 How does OWCP decide whether to grant or deny the request for reconsideration?

(a) A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in § 10.606(b)(2). If reconsideration is granted, the case is reopened and the case is reviewed on its merits (see § 10.609).

(b) Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(2), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.

§ 10.609 How does OWCP decide whether new evidence requires modification of the prior decision?

When application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision.

(a) After OWCP decides to grant reconsideration, but before undertaking the review, OWCP will send a copy of the reconsideration application to the employer, which will have 20 days from the date sent to comment or submit relevant documents. OWCP will provide any such comments to the employee, who will have 20 days from the date the comments are sent to him or her within which to comment. If no comments are received from the employer, OWCP will proceed with the merit review of the case.

(b) A claims examiner who did not participate in making the contested decision will conduct the merit review of the claim. When all evidence has been reviewed, OWCP will issue a new merit decision, based on all the evidence in the record. A copy of the decision will be provided to the agency.

(c) An employee dissatisfied with this new merit decision may again request reconsideration under this subpart or appeal to the ECAB. An employee may not request a hearing on this decision.

§ 10.610 What is a review by the Director?

The FECA specifies that an award for or against payment of compensation may be reviewed at any time on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied. A review on the Director's own motion is not subject to a request or petition and none shall be entertained.

(a) The decision whether or not to review an award under this section is solely within the discretion of the Director. The Director's exercise of this discretion is not subject to review by the ECAB, nor can it be the subject of a reconsideration or hearing request.

(b) Where the Director reviews an award on his or her own motion, any resulting decision is subject as appropriate to reconsideration, a hearing and/or appeal to the ECAB. Jurisdiction on review or on appeal to ECAB is limited to a review of the merits of the resulting decision. The Director's determination to review the award is not reviewable.

Hearings

§ 10.615 What is a hearing?

A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record. At the discretion of the hearing representative, an oral hearing may be conducted by telephone or teleconference. In addition to the evidence of record, the employee

may submit new evidence to the hearing representative.

§ 10.616 How does a claimant obtain a hearing?

(a) A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.

(b) The claimant may specify the type of hearing desired when making the original hearing request. If the request does not specify a format, OWCP will schedule an oral hearing. The claimant can request a change in the format of the hearing by making a written request to the Branch of Hearings and Review. OWCP will grant a request received by the Branch of Hearings and Review within 30 days of: The date OWCP acknowledges the initial hearing request, or the date OWCP issues a notice setting a date for an oral hearing, in cases where the initial request was for, or was treated as a request for, an oral hearing. A request received after those dates will be subject to OWCP's discretion. The decision to grant or deny a change of format is not reviewable.

§ 10.617 How is an oral hearing conducted?

(a) The hearing representative retains complete discretion to set the time and place of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved.

(b) Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time and place of the oral hearing to the claimant and any representative at least 30 days before the scheduled date. The employer will also be mailed a notice at least 30 days before the scheduled date.

(c) The hearing is an informal process, and the hearing representative is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure or by section 5 of the Administrative Procedure Act, but the hearing representative may conduct the hearing in such manner as to best ascertain the rights of the claimant. During the hearing process, the claimant may state his or her arguments and present new written evidence in support of the claim.

(d) Testimony at oral hearings is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath.

(e) OWCP will furnish a transcript of the oral hearing to the claimant and the employer, who have 20 days from the date it is sent to comment. Any comments received from the employer shall be sent to the claimant, who will be given an additional 20 days to comment from the date OWCP sends any agency comments.

(f) The hearing remains open for the submittal of additional evidence until 30 days after the hearing is held, unless the hearing representative, in his or her sole discretion, grants an extension. Only one such extension may be granted. A copy of the decision will be mailed to the claimant's last known address, to any representative, and to the employer.

(g) The hearing representative determines the conduct of the oral hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative at or near the place of the oral presentation.

§ 10.618 How is a review of the written record conducted?

(a) The hearing representative will review the official record and any additional evidence submitted by the claimant and by the agency. The hearing representative may also conduct whatever investigation is deemed necessary. New evidence and arguments are to be submitted at any time up to the time specified by OWCP, but they should be submitted as soon as possible to avoid delaying the hearing process.

(b) The claimant should submit, with his or her application for review, all evidence or argument that he or she wants to present to the hearing representative. A copy of all pertinent material will be sent to the employer, which will have 20 days from the date it is sent to comment. (Medical evidence is not considered "pertinent" for review and comment by the agency, and it will therefore not be furnished to the agency. OWCP has sole responsibility for evaluating medical evidence.) The employer shall send any comments to the claimant, who will have 20 more days from the date of the agency's certificate of service to comment.

§ 10.619 May subpoenas be issued for witnesses and documents?

A claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(a) A claimant may request a subpoena only as part of the hearings process, and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must:

(1) Submit the request in writing and send it to the hearing representative as early as possible but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.

(2) Explain why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(b) No subpoena will be issued for attendance of employees of OWCP acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(c) The hearing representative issues the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested, addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena can only be appealed as part of an appeal of any adverse decision which results from the hearing.

§ 10.620 Who pays the costs associated with subpoenas?

(a) Witnesses who are not employees or former employees of the Federal Government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant requested the subpoena, and where the witness submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

§ 10.621 What is the employer's role when an oral hearing has been requested?

(a) The employer may send one (or more, where appropriate) representative(s) to observe the proceeding, but the agency representative cannot give testimony or argument or otherwise participate in the hearing, except where the claimant or the hearing representative specifically asks the agency representative to testify.

(b) The hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot show that the testimony would be relevant or where the agency representative does not have the appropriate level of knowledge to provide such evidence at the hearing. The employer may also comment on the hearing transcript, as described in § 10.617(e).

§ 10.622 May a claimant withdraw a request for or postpone a hearing?

(a) The claimant and/or representative may withdraw the hearing request at any time up to and including the day the hearing is held, or the decision issued. Withdrawing the hearing request means the record is returned to the jurisdiction of the district office and no further requests for a hearing on the underlying decision will be considered.

(b) OWCP will entertain any reasonable request for scheduling the oral hearing, but such requests should be made at the time of the original application for hearing. Scheduling is at the sole discretion of the hearing representative, and is not reviewable. Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant, the oral hearing cannot be postponed at the claimant's request for any reason except those stated in paragraph (c) of this section, unless the hearing representative can reschedule the hearing on the same docket (that is, during the same hearing trip). When the request to postpone a scheduled hearing does not meet the test of paragraph (c) of this section and cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly. In the alternative, a teleconference may be substituted for the oral hearing at the discretion of the hearing representative.

(c) Where the claimant is hospitalized for a reason which is not elective, or where the death of the claimant's parent, spouse, or child prevents attendance at the hearing, a postponement may be granted upon proper documentation.

Review by the Employees' Compensation Appeals Board (ECAB)

§ 10.625 What kinds of decisions may be appealed?

Only final decisions of OWCP may be appealed to the ECAB. However, certain types of final decisions, described in this part as not subject to further review, cannot be appealed to the ECAB. Decisions that are not appealable to the ECAB include: Decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers, decisions by the Director to review an award on his or her own motion, and denials of subpoenas independent of the appeal of the underlying decision. In appeals before the ECAB, attorneys from the Office of the Solicitor of Labor shall represent OWCP.

§ 10.626 Who has jurisdiction of cases on appeal to the ECAB?

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. The OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case. Such issues would include, for example, the ability to terminate benefits where an individual returns to work while an appeal is pending at the ECAB.

Subpart H—Special Provisions

Representation

§ 10.700 May a claimant designate a representative?

(a) The claims process under the FECA is informal. Unlike many workers' compensation laws, the employer is not a party to the claim, and OWCP acts as an impartial evaluator of the evidence. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 10.701).

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant. Any notice requirement contained in this part or the FECA is fully satisfied if served on the representative, and has the same force and effect as if sent to the claimant.

§ 10.701 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A Federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

§ 10.702 How are fees for services paid?

A representative may charge the claimant a fee and other costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other charges. The claimant will not be reimbursed by OWCP, nor is OWCP in any way liable for the amount of the fee.

Administrative costs (mailing, copying, messenger services, travel and the like, but not including secretarial services, paralegal and other activities) need not be approved before the representative collects them. Before any fee for services can be collected, however, the fee must be approved by the Secretary. (Collecting a fee without this approval may constitute a misdemeanor under 18 U.S.C. 292.)

§ 10.703 How are fee applications approved?

(a) *Fee Application.* (1) The representative must submit the fee application to the district office and/or the Branch of Hearings and Review, according to where the work for which the fee is charged was performed. The application shall contain the following:

(i) An itemized statement showing the representative's hourly rate, the number of hours worked and specifically identifying the work performed and a total amount charged for the representation (excluding administrative costs).

(ii) A statement of agreement or disagreement with the amount charged, signed by the claimant. The statement must also acknowledge that the claimant is aware that he or she must pay the fees and that OWCP is not responsible for paying the fee or other costs.

(2) An incomplete application will be returned with no further comment.

(b) *Approval where there is no dispute.* Where a fee application is accompanied by a signed statement indicating the claimant's agreement with the fee as described in paragraph (a)(1)(ii) of this section, the application is deemed approved.

(c) *Disputed requests.* (1) Where the claimant disagrees with the amount of the fee, as indicated in the statement accompanying the submittal, OWCP will evaluate the objection and decide whether or not to approve the request. OWCP will provide a copy of the request to the claimant and ask him or her to submit any further information in support of the objection within 15 days from the date the request is forwarded. After that period has passed, OWCP will evaluate the information received to determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors:

(i) Usefulness of the representative's services;

(ii) The nature and complexity of the claim;

(iii) The actual time spent on development and presentation of the claim; and

(iv) Customary local charges for similar services.

(2) Where the claimant disputes the representative's request and files an objection with OWCP, an appealable decision will be issued.

Third Party Liability

§ 10.705 When must an employee or other FECA beneficiary take action against a third party?

(a) If an injury or death for which benefits are payable under the FECA is caused, wholly or partially, by someone other than a Federal employee acting within the scope of his or her employment, the claimant can be required to take action against that third party.

(b) The Office of the Solicitor of Labor (SOL) is hereby delegated authority to administer the subrogation aspects of certain FECA claims for OWCP. Either OWCP or SOL can require a FECA beneficiary to assign his or her claim for damages to the United States or to prosecute the claim in his or her own name.

§ 10.706 How will a beneficiary know if OWCP or SOL has determined that action against a third party is required?

When OWCP determines that an employee or other FECA beneficiary must take action against a third party, it will notify the employee or beneficiary in writing. If the case is transferred to SOL, a second notification may be issued.

§ 10.707 What must a FECA beneficiary who is required to take action against a third party do to satisfy the requirement that the claim be "prosecuted"?

At a minimum, a FECA beneficiary must do the following:

(a) Seek damages for the injury or death from the third party, either through an attorney or on his or her own behalf;

(b) Either initiate a lawsuit within the appropriate statute of limitations period or obtain a written release of this obligation from OWCP or SOL unless recovery is possible through a negotiated settlement prior to filing suit;

(c) Refuse to settle or dismiss the case for any amount less than the amount necessary to repay OWCP's refundable disbursements, as defined in § 10.714, without receiving permission from OWCP or SOL;

(d) Provide periodic status updates and other relevant information in response to requests from OWCP or SOL;

(e) Submit detailed information about the amount recovered and the costs of the suit on a "Statement of Recovery" form approved by OWCP; and

(f) Pay any required refund.

§ 10.708 Can a FECA beneficiary who refuses to comply with a request to assign a claim to the United States or to prosecute the claim in his or her own name be penalized?

When a FECA beneficiary refuses a request to either assign a claim or prosecute a claim in his or her own name, OWCP may determine that he or she has forfeited his or her right to all past or future compensation for the injury with respect to which the request is made. Alternatively, OWCP may also suspend the FECA beneficiary's compensation payments until he or she complies with the request.

§ 10.709 What happens if a beneficiary directed by OWCP or SOL to take action against a third party does not believe that a claim can be successfully prosecuted at a reasonable cost?

If a beneficiary consults an attorney and is informed that a suit for damages against a third party for the injury or death for which benefits are payable is unlikely to prevail or that the costs of such a suit are not justified by the potential recovery, he or she should request that OWCP or SOL release him or her from the obligation to proceed. This request should be in writing and provide evidence of the attorney's opinion. If OWCP or SOL agrees, the beneficiary will not be required to take further action against the third party.

§ 10.710 Under what circumstances must a recovery of money or other property in connection with an injury or death for which benefits are payable under the FECA be reported to OWCP or SOL?

Any person who has filed a FECA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received FECA benefits in connection with a claim filed by another, is required to notify OWCP or SOL of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim. This includes an injured employee, and in the case of a claim involving the death of an employee, a spouse, children or other dependents entitled to receive survivor's benefits. OWCP or SOL should be notified in writing within 30 days of the receipt of such money or other property or the acceptance of the FECA claim, whichever occurs later.

§ 10.711 How much of any settlement or judgment must be paid to the United States?

The statute permits a FECA beneficiary to retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The United States shares in the litigation expense by allowing the beneficiary to retain, at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the FECA beneficiary retains any surplus remaining, and this amount is credited, dollar for dollar, against future compensation for the same injury, as defined in § 10.719. OWCP will resume the payment of compensation only after the FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.

(a) The refund to the United States is calculated as follows, using the Statement of Recovery form approved by OWCP:

(1) Determine the gross recovery as set forth in § 10.712;

(2) Subtract the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees

considered by OWCP or SOL to be reasonable, from the gross recovery (Subtotal A);

(3) Subtract the costs of litigation, as allowed by OWCP or SOL (Subtotal B);

(4) Subtract one fifth of Subtotal B from Subtotal B (Subtotal C);

(5) Compare Subtotal C and the refundable disbursements as defined in § 10.714. Subtotal D is the lower of the two amounts.

(6) Multiply Subtotal D by a percentage that is determined by dividing the gross recovery into the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, to determine the Government's allowance for attorney's fees, and subtract this amount from Subtotal D.

(b) The credit against future benefits (also referred to as the surplus) is calculated as follows:

(1) If Subtotal C, as calculated according to paragraph (a)(4) of this section, is less than the refundable disbursements, as defined in § 10.714, there is no credit to be applied against future benefits;

(2) If Subtotal C is greater than the refundable disbursements, the credit against future benefits (or surplus) amount is determined by subtracting the refundable disbursements from Subtotal C.

(c) An example of how these calculations are made follows. In this example, a Federal employee sues another party for causing injuries for which the employee has received $22,000 in benefits under the FECA, subject to refund. The suit is settled and the injured employee receives $100,000, all of which was for his injury. The injured worker paid attorney's fees of $25,000 and costs for the litigation of $3,000.

(1) Gross recovery	$100,000
Attorney's fees	−25,000
(2) Subtotal A	75,000
(3) Costs of suit	−3,000
Subtotal B	72,000
One-fifth of Subtotal B	−14,400
(4) Subtotal C	57,600
Refundable Disbursements	22,000
(5) Subtotal D (lower of Subtotal C or refundable disbursements)	22,000
(6) Government's allowance for attorney's fees [25,000/100,000) × 22,000] (attorney's fees divided by gross recovery then multiplied by Subtotal D)	−5,500
Refund to the United States	16,500
(7) Credit against future benefits [57,600–22,000] (Subtotal C minus refundable disbursements)	35,600

§ 10.712 What amounts are included in the gross recovery?

(a) When a settlement or judgment is paid to, or for, one individual, the entire amount, except for the portion representing damage to real or personal property, is reported as the gross recovery. If a settlement or judgment is paid to or for more than one individual or in more than one capacity, such as a joint payment to a husband and wife for personal injury and loss of consortium or a payment to a spouse representing both loss of consortium and wrongful death, the gross recovery to be reported is the amount allocated to the injured employee. If a judge or jury specifies the percentage of a contested verdict attributable to each of several plaintiffs, OWCP or SOL will accept that division.

(b) In any other case, where a judgment or settlement is paid to or on behalf of more than one individual, OWCP or SOL will determine the appropriate amount of the FECA beneficiary's gross recovery and advise the beneficiary of its determination. FECA beneficiaries may accept OWCP's or SOL's determination or demonstrate good cause for a different allocation. Whether to accept a specific allocation is at the discretion of SOL or OWCP.

§ 10.713 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the gross recovery?

In this situation, the gross recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

§ 10.714 What amounts are included in the refundable disbursements?

The refundable disbursements of a specific claim consist of the total money paid by OWCP from the Employees' Compensation Fund with respect to that claim to or on behalf of a FECA beneficiary, less charges for any medical file review (i.e., the physician does not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the FECA beneficiary establishes that the examinations were required to be made available to the employee under a statute other than the FECA by the employing agency or at the employing agency's cost.

§ 10.715 Is a beneficiary required to pay interest on the amount of the refund due to the United States?

If the refund due to the United States is not submitted within 30 days of receiving a request for payment from SOL or OWCP, interest shall accrue on the refund due to the United States from the date of the request. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the **Federal Register** (as of the date the request for payment is sent). Waiver of the collection of interest shall be in accordance with the provisions of the Department of Labor regulations on Federal Claims Collection governing waiver of interest, 29 CFR 20.61.

§ 10.716 If the required refund is not paid within 30 days of the request for repayment, can it be collected from payments due under the FECA?

If the required refund is not paid within 30 days of the request for payment, OWCP can, in its discretion, collect the refund by withholding all or part of any payments currently payable to the beneficiary under the FECA with respect to any injury. The waiver provisions of §§ 10.432 through 10.440 do not apply to such determinations.

§ 10.717 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an injury covered by the FECA a gross recovery that must be reported to OWCP or SOL?

Since an injury caused by medical malpractice in treating an injury covered by the FECA is also an injury covered under the FECA, any recovery in a suit alleging such an injury is treated as a gross recovery that must be reported to OWCP or SOL.

§ 10.718 Are payments to a beneficiary as a result of an insurance policy which the beneficiary has purchased a gross recovery that must be reported to OWCP or SOL?

Since payments received by a FECA beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an injury covered by the FECA, they are not considered a gross recovery covered by section 8132 that requires filing a Statement of Recovery and paying any required refund.

§ 10.719 If a settlement or judgment is received for more than one wound or medical condition, can the refundable disbursements paid on a single FECA claim be attributed to different conditions for purposes of calculating the refund or credit owed to the United States?

(a) All wounds, diseases or other medical conditions accepted by OWCP in connection with a single claim are treated as the same injury for the purpose of computing any required refund and any credit against future benefits in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an injury covered under the FECA will be treated as a separate injury for purposes of section 8132.

(b) If an injury covered under the FECA is caused under circumstances creating a legal liability in more than one person, other than the United States, to pay damages, OWCP or SOL will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single FECA claim. If such an attribution is both practicable and equitable, as determined by OWCP or SOL, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the refund and credit owed to the United States under section 8132.

Federal Grand and Petit Jurors

§ 10.725 When is a Federal grand or petit juror covered under the FECA?

(a) Federal grand and petit jurors are covered under the FECA when they are in performance of duty as a juror, which includes that time when a juror is:

(1) In attendance at court pursuant to a summons;

(2) In deliberation;

(3) Sequestered by order of a judge; or

(4) At a site, by order of the court, for the taking of a view.

(b) A juror is not considered to be in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1) through (4) of this section.

§ 10.726 When does a juror's entitlement to disability compensation begin?

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation does not commence until the day after the date of termination of service as a juror.

§ 10.727 What is the pay rate of jurors for compensation purposes?

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for Grade GS–2 of the General Schedule unless his or her actual pay as an "employee" of the United States while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

Peace Corps Volunteers

§ 10.730 What are the conditions of coverage for Peace Corps volunteers and volunteer leaders injured while serving outside the United States?

(a) Any injury sustained by a volunteer or volunteer leader while he or she is located abroad shall be presumed to have been sustained in the performance of duty, and any illness contracted during such time shall be presumed to be proximately caused by the employment. However, this presumption will be rebutted by evidence that:

(1) The injury or illness was caused by the claimant's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; or

(2) The illness is shown to have pre-existed the period of service abroad; or

(3) The injury or illness claimed is a manifestation of symptoms of, or consequent to, a pre-existing congenital defect or abnormality.

(b) If the presumption that an injury or illness was sustained in the performance of duty is rebutted as provided by paragraph (a) of this section, the claimant has the burden of proving by the submittal of substantial and probative evidence that such injury or illness was sustained in the performance of duty with the Peace Corps.

(c) If an injury or illness, or episode thereof, comes within one of the exceptions described in paragraph (a)(2) or (3) of this section, the claimant may nonetheless be entitled to compensation. This will be so provided he or she meets the burden of proving by the submittal of substantial, probative and rationalized medical evidence that the illness or injury was proximately caused by factors or conditions of Peace Corps service, or that it was materially aggravated, accelerated or precipitated by factors of Peace Corps service.

§ 10.731 What is the pay rate of Peace Corps volunteers and volunteer leaders for compensation purposes?

The pay rate for these claimants is defined as the pay rate in effect on the date following separation, provided that the rate equals or exceeds the pay rate on the date of injury. It is defined in accordance with 5 U.S.C. 8142(a), not 8101(4).

Non-Federal Law Enforcement Officers

§ 10.735 When is a non-Federal law enforcement officer (LEO) covered under the FECA?

(a) A law enforcement officer (officer) includes an employee of a State or local Government, the Governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521–535 of Title 4, D.C. Code, whose functions include the activities listed in 5 U.S.C. 8191.

(b) Benefits are available to officers who are not "employees" under 5 U.S.C. 8101, and who are determined in the discretion of OWCP to have been engaged in the activities listed in 5 U.S.C. 8191 with respect to the enforcement of crimes against the United States. Individuals who only perform administrative functions in support of officers are not considered officers.

(c) Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this part, the provisions of the FECA and of subparts A, B, and D through I of this part apply to officers.

§ 10.736 What are the time limits for filing a LEO claim?

OWCP must receive a claim for benefits under 5 U.S.C. 8191 within five years after the injury or death. This five-year limitation is not subject to waiver. The tolling provisions of 5 U.S.C. 8122(d) do not apply to these claims.

§ 10.737 How is a LEO claim filed, and who can file a LEO claim?

A claim for injury or occupational disease should be filed on Form CA–721; a death claim should be filed on Form CA–722. All claims should be submitted to the officer's employer for completion and forwarding to OWCP. A claim may be filed by the officer, the officer's survivor, or any person or association authorized to act on behalf of an officer or an officer's survivors.

§ 10.738 Under what circumstances are benefits payable in LEO claims?

(a) Benefits are payable when an officer is injured while apprehending, or attempting to apprehend, an individual for the commission of a Federal crime. However, either an actual Federal crime must be in progress or have been committed, or objective evidence (of which the officer is aware at the time of injury) must exist that a potential Federal crime was in progress or had already been committed. The actual or potential Federal crime must be an integral part of the criminal activity toward which the officer's actions are directed. The fact that an injury to an officer is related in some way to the commission of a Federal crime does not necessarily bring the injury within the coverage of the FECA. The FECA is not intended to cover officers who are merely enforcing local laws.

(b) For benefits to be payable when an officer is injured preventing, or attempting to prevent, a Federal crime, there must be objective evidence that a Federal crime is about to be committed. An officer's belief, unsupported by objective evidence, that he or she is acting to prevent the commission of a Federal crime will not result in coverage. Moreover, the officer's subjective intent, as measured by all available evidence (including the officer's own statements and testimony, if available), must have been directed toward the prevention of a Federal crime. In this context, an officer's own statements and testimony are relevant to, but do not control, the determination of coverage.

§ 10.739 What kind of objective evidence of a potential Federal crime must exist for coverage to be extended?

Based on the facts available at the time of the event, the officer must have an awareness of sufficient information which would lead a reasonable officer, under the circumstances, to conclude that a Federal crime was in progress, or was about to occur. This awareness need not extend to the precise particulars of the crime (the section of Title 18, United States Code, for example), but there must be sufficient evidence that the officer was in fact engaged in actual or attempted apprehension of a Federal criminal or prevention of a Federal crime.

§ 10.740 In what situations will OWCP automatically presume that a law enforcement officer is covered by the FECA?

(a) Where an officer is detailed by a competent State or local authority to assist a Federal law enforcement authority in the protection of the President of the United States, or any other person actually provided or entitled to U.S. Secret Service protection, coverage will be extended.

(b) Coverage for officers of the U.S. Park Police and those officers of the Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System is adjudicated under the principles set forth in paragraph (a) of this section, and does not extend to numerous tangential activities of law enforcement (for example, reporting to work, changing clothes). However, officers of the Non-Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System are covered under the FECA during the performance of all official duties.

§ 10.741 How are benefits calculated in LEO claims?

(a) Except for continuation of pay, eligible officers and survivors are entitled to the same benefits as if the officer had been an employee under 5 U.S.C. 8101. However, such benefits may be reduced or adjusted as OWCP in its discretion may deem appropriate to reflect comparable benefits which the officer or survivor received or would have been entitled to receive by virtue of the officer's employment.

(b) For the purpose of this section, a comparable benefit includes any benefit that the officer or survivor is entitled to receive because of the officer's employment, including pension and disability funds, State workers' compensation payments, Public Safety Officers' Benefits Act payments, and State and local lump-sum payments. Health benefits coverage and proceeds of life insurance policies purchased by the employer are not considered to be comparable benefits.

(c) The FECA provides that, where an officer receives comparable benefits, compensation benefits are to be reduced proportionally in a manner that reflects the relative percentage contribution of the officer and the officer's employer to the fund which is the source of the comparable benefit. Where the source of the comparable benefit is a retirement or other system which is not fully funded, the calculation of the amount of the reduction will be based on a per capita comparison between the contribution by the employer and the contribution by all covered officers during the year prior to the officer's injury or death.

(d) The non-receipt of compensation during a period where a dual benefit (such as a lump-sum payment on the death of an officer) is being offset against compensation entitlement does not result in an adjustment of the respective benefit percentages of remaining beneficiaries because of a cessation of compensation under 5 U.S.C. 8133(c).

Subpart I—Information for Medical Providers

Medical Records and Bills

§ 10.800 What kind of medical records must providers keep?

Agency medical officers, private physicians and hospitals are required to keep records of all cases treated by them under the FECA so they can supply OWCP with a history of the injury, a description of the nature and extent of injury, the results of any diagnostic studies performed, the nature of the treatment rendered and the degree of any impairment and/or disability arising from the injury.

§ 10.801 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 10.800. The physician or provider shall itemize the charges on the standard Health Insurance Claim Form, HCFA 1500 or OWCP 1500, (for professional charges), the UB–92 (for hospitals), the Universal Claim Form (for pharmacies), or other form as warranted, and submit the form promptly to OWCP.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Health Care Financing Administration Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC), or the

Revenue Center Code (RCC), with a brief narrative description. Where no code is applicable, a detailed description of services performed should be provided.

(c) The provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the "International Classification of Disease, 9th Edition, Clinical Modification" (ICD–9-CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(1) (i) Hospitals shall submit charges for medical and surgical treatment or supplies promptly to OWCP on the Uniform Bill (UB–92). The provider shall identify each outpatient radiology service, outpatient pathology service and physical therapy service performed, using HCPCS/CPT codes with a brief narrative description. The charge for each individual service, or the total charge for all identical services, should also appear in the UB–92.

(ii) Other outpatient hospital services for which HCPCS/CPT codes exist shall also be coded individually using the coding scheme noted in this paragraph. Services for which there are no HCPCS/CPT codes available can be presented using the RCCs described in the "National Uniform Billing Data Elements Specifications", current edition. The provider shall also furnish the diagnostic code using the ICD–9–CM. If the outpatient hospital services include surgical and/or invasive procedures, the provider shall code each procedure using the proper CPT/HCPCS codes and furnishing the corresponding diagnostic codes using the ICD–9–CM.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on the Universal Claim Form and submit them promptly to OWCP. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly to OWCP.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(e) In summary, bills submitted by providers must: be itemized on the Health Insurance Claim Form (for physicians), the UB–92 (for hospitals), or the Universal Claim Form (for pharmacies); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDCs. Otherwise, OWCP may return the bill to the provider for correction and resubmission.

§ 10.802 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?

(a) If an employee has paid bills for medical, surgical or dental services, supplies or appliances due to an injury sustained in the performance of duty, he or she may submit an itemized bill on the Health Insurance Claim Form, HCFA 1500 or OWCP 1500, together with a medical report as provided in § 10.800, to OWCP for consideration.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service.

(2) The bill must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt.

(b) If services were provided by a hospital, pharmacy or nursing home, the employee should submit the bill in accordance with the provisions of § 10.801(a). Any request for reimbursement must be accompanied by evidence, as described in paragraph (a) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) OWCP may waive the requirements of paragraphs (a) and (b) of this section if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) OWCP will not accept copies of bills for reimbursement unless they bear the original signature of the provider, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.805.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by the Director's schedule. If this happens, OWCP shall advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in § 10.812.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the employee requests a refund of any excess amount, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, OWCP shall initiate exclusion procedures as provided by § 10.815.

(g) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

§ 10.803 What are the time limitations on OWCP's payment of bills?

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

Medical Fee Schedule

§ 10.805 What services are covered by the OWCP fee schedule?

(a) Payment for medical and other health services furnished by physicians, hospitals and other providers for work-

related injuries shall not exceed a maximum allowable charge for such service as determined by the Director, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing homes, but it does apply to charges for treatment furnished in a nursing home by a physician or other medical professional.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

§ 10.806 How are the maximum fees defined?

For professional medical services, the Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: An assignment of a value to procedures identified by Health Care Financing Administration Common Procedure Coding System/ Current Procedural Terminology (HCPCS/CPT) code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an index based on a relative value scale that considers skill, labor, overhead, malpractice insurance and other related costs; and a monetary value assignment (conversion factor) for one unit of value in each of the categories of service.

§ 10.807 How are payments for particular services calculated?

Payment for a procedure identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the relative values for that procedure by the geographic indices for services in that area and by the dollar amount assigned to one unit in that category of service.

(a) The "locality" which serves as a basis for the determination of average cost is defined by the Bureau of Census Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Health Care Financing Administration (HCFA).

(b) The Director shall assign the relative value units (RVUs) published by HCFA to all services for which HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any RVUs that he or she considers appropriate. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA and as updated or revised by HCFA from time to time. The Director will devise conversion factors for each category of service, and in doing so may adapt HCFA conversion factors as appropriate using OWCP's processing experience and internal data.

(c) For example, if the unit values for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (M), and the dollar value assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding geographical indices for the locality times the conversion factor. If the geographic indices for the locality are 0.988(W), 0.948 (PE), and 1.174 (M), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$
$$[2.45 + 3.44 + .56] \times \$61.20$$
$$6.45 \times \$61.20 = \$394.74$$

§ 10.808 Does the fee schedule apply to every kind of procedure?

Where the time, effort and skill required to perform a particular procedure vary widely from one occasion to the next, the Director may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

§ 10.809 How are payments for medicinal drugs determined?

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price of the medication by the quantity or amount provided, plus a dispensing fee.

(a) All prescription medications identified by National Drug Code (NDC) will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers. The Director will establish the dispensing fee.

(b) The NDCs, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

§ 10.810 How are payments for inpatient medical services determined?

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Prospective Payment System (PPS) devised by HCFA (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All hospital discharges will be classified according to the DRGs prescribed by the HCFA in the form of the DRG Grouper software program. On this list, each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by HCFA in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location (MSA) of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by HCFA to determine the specific rate for a hospital discharge under their PPS. The Director may devise price adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from HCFA's PPS on consideration of detailed medical reports and other evidence.

(4) The Director shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when he or she deems it necessary or appropriate.

(b) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when he or she deems it necessary or appropriate.

§ 10.811 When and how are fees reduced?

(a) OWCP shall accept a provider's designation of the code to identify a billed procedure or service if the code is consistent with medical reports and other evidence. Where no code is supplied, OWCP may determine the code based on the narrative description of the procedure on the billing form and in associated medical reports. OWCP will pay no more than the maximum allowable fee for that procedure.

(b) If the charge submitted for a service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge.

§ 10.812 If OWCP reduces a fee, may a provider request reconsideration of the reduction?

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the OWCP district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was incorrectly identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board-certification in a specialty is not sufficient evidence of unusual qualifications to justify an exception. These are the only three circumstances which will justify reevaluation of the paid amount.

(2) A list of OWCP district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210, or from the Internet at www.dol.gov./dol/esa/owcp.htm. Within 30 days of receiving the request for reconsideration, the OWCP district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the OWCP district office issues a decision which continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the OWCP district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

§ 10.813 If OWCP reduces a fee, may a provider bill the claimant for the balance?

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this part shall not request reimbursement from the employee for additional amounts.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge "substantially in excess of such provider's customary charges" for the purposes of § 10.815(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 10.815(h).

Exclusion of Providers

§ 10.815 What are the grounds for excluding a provider from payment under the FECA?

A physician, hospital, or provider of medical services or supplies shall be excluded from payment under the FECA if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any Federal or State program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any Federal or State program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under the FECA, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a twelve-month period under this subpart containing charges which the Director finds to be substantially in excess of such provider's customary charges, unless the Director finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart and paid for by OWCP;

(f) Failed, neglected or refused on three or more occasions during a 12-month period to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by the FECA and § 10.800;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

§ 10.816 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 10.815(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 10.815(b).

(b) The exclusion applies to participating in the program and to seeking payment under the FECA for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may consist of a copy thereof authenticated by the seal of the court or agency concerned.

§ 10.817 When are OWCP's exclusion procedures initiated?

Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has engaged in activities enumerated in paragraphs (c) through (h) of § 10.815, the Regional Director, after completion of inquiries he or she deems appropriate, may

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initiate procedures to exclude the provider from participation in the FECA program. For the purposes of this section, "Regional Director" may include any officer designated to act on his or her behalf.

§ 10.818 How is a provider notified of OWCP's intent to exclude him or her?

The Regional Director shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested, which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which the Regional Director has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from participation in the FECA program without admitting or denying the allegations presented in the letter; or

(2) Request that the decision on exclusion be based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the Regional Director, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 10.819) the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The name and address of the OWCP representative who shall be responsible for receiving the answer from the provider.

§ 10.819 What requirements must the provider's reply and OWCP's decision meet?

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 30 calendar days of receipt, the Regional Director may deem the allegations made therein to be true and may order exclusion of the provider.

(c) By arrangement with the official representative, the provider may inspect or request copies of information in the record at any time prior to the Regional Director's decision.

(d) The Regional Director shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested. The decision shall advise the provider of his or her right to request, within 30 days of the date of the adverse decision, a formal hearing before an administrative law judge under the procedures set forth in § 10.820. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

§ 10.820 How can an excluded provider request a hearing?

A request for a hearing shall be sent to the official representative named under § 10.818(f) and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for a more definite statement by OWCP;

(c) Any request for the presentation of oral argument or evidence; and

(d) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or Federal, State or local regulatory body.

§ 10.821 How are hearings assigned and scheduled?

(a) If the designated OWCP representative receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for more definite statements and for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The purpose of the designation of issues is to provide for an effective hearing process. The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate "all issues" for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

§ 10.822 How are subpoenas or advisory opinions obtained?

(a) The provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefor.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or Federal, State or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

§ 10.823 How will the administrative law judge conduct the hearing and issue the recommended decision?

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript

shall become a permanent part of the official record of the proceedings.

(d) Pursuant to 5 U.S.C. 8126, the administrative law judge may:

(1) Issue subpoenas for and compel the attendance of witnesses within a radius of 100 miles;

(2) Administer oaths;

(3) Examine witnesses; and

(4) Require the production of books, papers, documents, and other evidence with respect to the proceedings.

(e) At the conclusion of the hearing, the administrative law judge shall issue a written decision and cause it to be served on all parties to the proceeding, their representatives and the Director.

§ 10.824 How can a party request review by the Director of the administrative law judge's recommended decision?

(a) Any party adversely affected or aggrieved by the decision of the administrative law judge may file a petition for discretionary review with the Director within 30 days after issuance of such decision. The administrative law judge's decision, however, shall be effective on the date issued and shall not be stayed except upon order of the Director.

(b) Review by the Director shall not be a matter of right but of the sound discretion of the Director.

(c) Petitions for discretionary review shall be filed only upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) A statement in opposition to the petition for discretionary review may be filed, but such filing shall in no way delay action on the petition.

(f) If a petition is granted, review shall be limited to the questions raised by the petition.

(g) A petition not granted within 20 days after receipt of the petition is deemed denied.

(h) The decision of the Director shall be final with respect to the provider's participation in the program, and shall not be subject to further review by any court or agency.

§ 10.825 What are the effects of exclusion?

(a) OWCP shall give notice of the exclusion of a physician, hospital or provider of medical services or supplies to:

(1) All OWCP district offices;

(2) All Federal employers;

(3) The HCFA;

(4) The State or local authority responsible for licensing or certifying the excluded party; and

(5) All employees who are known to have had treatment, services or supplies from the excluded provider within the six-month period immediately preceding the order of exclusion.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to have known of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

§ 10.826 How can an excluded provider be reinstated?

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 10.816, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for oral argument. Oral argument will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director for Federal Employees' Compensation shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

2. Part 25 is revised to read as follows:

Part 25—Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States

Subpart A—General Provisions

Sec.

25.1 How are claims of Federal employees who are neither citizens nor residents adjudicated?
25.2 In general, what is the Director's policy regarding such claims?
25.3 What is the authority to settle and pay such claims?
25.4 What type of evidence is required to establish a claim under this part?
25.5 What special rules does OWCP apply to claims of third and fourth country nationals?
25.6 How does OWCP adjudicate claims of non-citizen residents of possessions?

Subpart B—The Special Schedule of Compensation

25.100 How is compensation for disability paid?
25.101 How is compensation for death paid?
25.102 What general provisions does OWCP apply to the Special Schedule?

Subpart C—Extensions of the Special Schedule of Compensation

25.200 How is the Special Schedule applied for employees in the Republic of the Philippines?
25.201 How is the Special Schedule applied for employees in Australia?
25.202 How is the Special Schedule applied for Japanese seamen?
25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

Authority: 5 U.S.C. 301, 8137, 8145 and 8149; 1946 Reorganization Plan No. 2, sec. 3, 3 CFR 1943–1948 Comp., p. 1064; 60 Stat. 1095; Reorganization Plan No. 19 of 1950, sec. 1, 3 CFR 1943–1953 Comp., p. 1010; 64 Stat. 1271; Secretary's Order 5–96, 62 FR 107.

Subpart A—General Provisions

§ 25.1 How are claims of Federal employees who are neither citizens nor residents adjudicated?

This part describes how OWCP pays compensation under the FECA to employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, as well as to any dependents of such employees. It has been determined that the compensation provided under the FECA is substantially disproportionate to the compensation for disability or death which is payable in similar cases under local law, regulation, custom or otherwise, in areas outside the United States, any territory or Canada. Therefore, with respect to the claims of such employees whose injury (or injury resulting in death) has occurred subsequent to December 7, 1941, or may occur, the regulations in this part shall apply.

§ 25.2 In general, what is the Director's policy regarding such claims?

(a) Pursuant to 5 U.S.C. 8137, the benefit features of local workers' compensation laws, or provisions in the nature of workers' compensation, in effect in areas outside the United States, any territory or Canada shall, effective as of December 7, 1941 and as recognized by the Director, be adopted and apply in the cases of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, unless a special schedule of compensation for injury or death has been established under this part for the particular locality, or for a class of employees in the particular locality.

(b) The benefit provisions adopted under paragraph (a) of this section are those dealing with money payments for injury and death (including medical benefits), as well as those dealing with services and purposes forming an integral part of the local plan, provided they are of a kind or character similar to services and purposes authorized by the FECA.

(1) Procedural provisions, designations of classes of beneficiaries in death cases, limitations (except those affecting amounts of benefit payments), and any other provisions not directly affecting the amounts of the benefit payments, in such local plans, shall not apply, but in lieu thereof the pertinent provisions of the FECA shall apply, unless modified in this section.

(2) However, the Director may at any time modify, limit or redesignate the class or classes of beneficiaries entitled to death benefits, including the designation of persons, representatives or groups entitled to payment under local statute or custom whether or not included in the classes of beneficiaries otherwise specified by this subchapter.

(c) Compensation in all cases of such employees paid and closed prior to January 4, 1999 shall be deemed compromised and paid under 5 U.S.C. 8137. In all other cases, compensation may be adjusted to conform with the regulations in this part, or the beneficiary may by compromise or agreement with the Director have compensation continued on the basis of a previous adjustment of the claim.

(d) Persons employed in a country or area having no well-defined workers' compensation benefits structure shall be accorded the benefits provided—either by local law or special schedule—in a nearby country as determined by the Director. In selecting the benefit structure to be applied, equity and administrative ease will be given consideration, as well as local custom.

(e) Compensation for disability and death of non-citizens outside the United States under this part, whether paid under local law or special schedule, shall in no event exceed that generally payable under the FECA.

§ 25.3 What is the authority to settle and pay such claims?

In addition to the authority to receive, process and pay claims, when delegated such representative or agency receiving delegation of authority shall, in respect to cases adjudicated under this part, and when so authorized by the Director, have authority to make lump-sum awards (in the manner prescribed by 5 U.S.C. 8135) whenever such authorized representative shall deem such settlement to be for the best interest of the United States, and to compromise and pay claims for any benefits provided for under this part, including claims in which there is a dispute as to questions of fact or law. The Director shall, in instructions to the particular representative concerned, establish such procedures in respect to action under this section as he or she may deem necessary, and may specify the scope of any administrative review of such action.

§ 25.4 What type of evidence is required to establish a claim under this part?

Claims of employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, if otherwise compensable, shall be approved only upon evidence of the following nature without regard to the date of injury or death for which claim is made:

(a) Appropriate certification by the Federal employing establishment; or

(b) An armed service's casualty or medical record; or

(c) Verification of the employment and casualty by military personnel; or

(d) Recommendation of an armed service's "Claim Service" based on investigations conducted by it.

§ 25.5 What special rules does OWCP apply to claims of third and fourth country nationals?

(a) *Definitions.* A "third country national" is a person who is neither a citizen nor resident of the United States who is hired by the United States in the person's country of citizenship or residence for employment in another foreign country, or in a possession or territory of the United States. A "fourth country national" is a person who is neither a citizen nor resident of either the country of hire or the place of employment, but who otherwise meets the definition of third country national. "Benefits applicable to local hires" are the benefits provided in this part by local law or special schedule, as determined by the Director. With respect to a United States territory or possession, "local law" means only the law of the particular territory or possession.

(b) *Benefits payable.* Third and fourth country nationals shall be paid the benefits applicable to local hires in the country of hire or the place of employment, whichever benefits are greater, provided that all benefits payable on account of one injury must be paid under the same benefit structure.

(1) Where no well-defined workers' compensation benefits structure is provided in either the country of hire or the place of employment, the provisions of § 25.2(d) shall apply.

(2) Where equitable considerations as determined by the Director so warrant, a fourth country national may be awarded benefits applicable to local hires in his or her home country.

§ 25.6 How does OWCP adjudicate claims of non-citizen residents of possessions?

An employee who is a *bona fide* permanent resident of any United States possession, territory, commonwealth or trust territory will receive the full benefits of the FECA, as amended, except that the application of the minimum benefit provisions provided therein shall be governed by the restrictions set forth in 5 U.S.C. 8138.

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Subpart B—The Special Schedule of Compensation

§ 25.100 How is compensation for disability paid?

Compensation for disability shall be paid to the employee as follows:

(a) *Permanent total disability.* In cases of permanent total disability, 66⅔ percent of the monthly pay during the period of such disability.

(b) *Temporary total disability.* In cases of temporary total disability, 66⅔ percent of the monthly pay during the period of such disability.

(c) *Permanent partial disability.* In cases of permanent partial disability, 66⅔ percent of the monthly pay, for the following losses and periods:

(1) Arm lost: 280 weeks' compensation.

(2) Leg lost: 248 weeks' compensation.

(3) Hand lost: 212 weeks' compensation.

(4) Foot lost: 173 weeks' compensation.

(5) Eye lost: 140 weeks' compensation.

(6) Thumb lost: 51 weeks' compensation.

(7) First finger lost: 28 weeks' compensation.

(8) Great toe lost: 26 weeks' compensation.

(9) Second finger lost: 18 weeks' compensation.

(10) Third finger lost: 17 weeks' compensation.

(11) Toe, other than great toe, lost: 8 weeks' compensation.

(12) Fourth finger lost: 7 weeks' compensation.

(13) Loss of hearing: One ear, 52 weeks' compensation; both ears, 200 weeks' compensation.

(14) Phalanges: Compensation for loss of more than one phalanx of a digit shall be the same as for the loss of the entire digit. Compensation for loss of the first phalanx shall be one-half of the compensation for the loss of the entire digit.

(15) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for the loss of the arm or leg; but, if amputated between the elbow and the wrist, or between the knee and the ankle, the compensation shall be the same as for the loss of the hand or the foot.

(16) Binocular vision or percent of vision: Compensation for loss of binocular vision, or for 80 percent or more of the vision of an eye shall be the same as for the loss of the eye.

(17) Two or more digits: Compensation for loss of two or more digits, one or more phalanges of two or more digits of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for the loss of a hand or a foot.

(18) Total loss of use: Compensation for a permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss of use of the member.

(20) Consecutive awards: In any case in which there shall be a loss or loss of use of more than one member or parts of more than one member set forth in paragraphs (c)(1) through (19) of this section, but not amounting to permanent total disability, the award of compensation shall be for the loss or loss of use of each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (c)(17) of this section shall apply.

(21) Other cases: In all other cases within this class of disability the compensation during the continuance of disability shall be that proportion of compensation for permanent total disability, as determined under paragraph (a) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

(22) Compensation under paragraphs (c)(1) through (21) of this section for permanent partial disability shall be in addition to any compensation for temporary total or temporary partial disability under this section, and awards for temporary total, temporary partial, and permanent partial disability shall run consecutively.

(d) *Temporary partial disability.* In cases of temporary partial disability, during the period of disability, that proportion of compensation for temporary total disability, as determined under paragraph (b) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

§ 25.101 How is compensation for death paid?

If the disability causes death, the compensation shall be payable in the amount and to or for the benefit of the following persons:

(a) To the undertaker or person entitled to reimbursement, reasonable funeral expenses not exceeding $200.

(b) To the surviving spouse, if there is no child, 35 percent of the monthly pay until his or her death or remarriage.

(c) To the surviving spouse, if there is a child, the compensation payable under paragraph (b) of this section, and in addition thereto 10 percent of the monthly wage for each child, not to exceed a total of 66⅔ percent for such surviving spouse and children. If a child has a guardian other than the surviving spouse, the compensation payable on account of such child shall be paid to such guardian. The compensation of any child shall cease when he or she dies, marries or reaches the age of 18 years, or if over such age and incapable of self-support, becomes capable of self-support.

(d) To the children, if there is no surviving spouse, 25 percent of the monthly pay for one child and 10 percent thereof for each additional child, not to exceed a total of 66⅔ percent thereof, divided among such children share and share alike. The compensation of each child shall be paid until he or she dies, marries or reaches the age of 18, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian, if there is one, otherwise to the person having the custody or care of such child, for such child, as the Director in his or her discretion shall determine.

(e) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his or her death and the other is not dependent to any extent, 25 percent of the monthly pay; if both are wholly dependent, 20 percent thereof to each; if one is or both are partly dependent, a proportionate amount in the discretion of the Director. The compensation to a parent or parents in the percentages specified shall be paid if there is no surviving spouse or child, but if there is a surviving spouse or child, there shall be paid so much of such percentages for a parent or parents as, when added to the total of the percentages of the surviving spouse and children, will not exceed a total of 66⅔ percent of the monthly pay.

(f) To the brothers, sisters, grandparents and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his or her death, 20 percent of the monthly pay to such dependent; if more than one are wholly dependent, 30 percent of such pay, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more are partly dependent, 10 percent of such pay divided among such dependents share and share alike. The compensation to such beneficiaries shall be paid if there

is no surviving spouse, child or dependent parent. If there is a surviving spouse, child or dependent parent, there shall be paid so much of the above percentages as, when added to the total of the percentages payable to the surviving spouse, children and dependent parents, will not exceed a total of 66⅔ percent of such pay.

(g) The compensation of each beneficiary under paragraphs (e) and (f) of this section shall be paid until he or she, if a parent or grandparent, dies, marries or ceases to be dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of 18 years, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister or grandchild under legal age shall be paid to his or her guardian, if there is one, otherwise to the person having the custody or care of such person, for such person, as the Director in his or her discretion shall determine.

(h) Upon the cessation of any person's compensation for death under this subpart, the compensation of any remaining person entitled to continuing compensation in the same case shall be adjusted, so that the continuing compensation shall be at the same rate such person would have received had no award been made to the person whose compensation ceased.

(i) In cases where there are two or more classes of persons entitled to compensation for death under this subpart, and the apportionment of such compensation as provided in this section would result in injustice, the Director may in his or her discretion modify the apportionments to meet the requirements of the case.

§ 25.102 What general provisions does OWCP apply to the Special Schedule?

(a) The definitions of terms in the FECA, as amended, shall apply to terms used in this subpart.

(b) The provisions of the FECA, unless modified by this subpart or otherwise inapplicable, shall be applied whenever possible in the application of this subpart.

(c) The provisions of the regulations for the administration of the FECA, as amended or supplemented from time to time by instructions applicable to this subpart, shall apply in the administration of compensation under this subpart, whenever they can reasonably be applied.

Subpart C—Extensions of the Special Schedule of Compensation

§ 25.200 How is the Special Schedule applied for employees in the Republic of the Philippines?

(a) *Modified special schedule of compensation.* Except for injury or death of direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members of the Philippine Social Security System, the special schedule of compensation established in subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, in the Republic of the Philippines, to injury or death occurring on or after July 1, 1968, with the following limitations:

(1) *Temporary disability.* Benefits for payments accruing on and after July 1, 1969, for injuries causing temporary disability and which occurred on and after July 1, 1968, shall be payable at the rates in the special schedule as modified in this section.

(2) *Permanent disability and death.* Benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death, shall be payable at the rates specified in the special schedule as modified in this section for all awards not paid in full before July 1, 1969, and any award paid in full prior to July 1, 1969: Provided, that application for adjustment is made, and the adjustment will result in additional benefits of at least $10. In the case of injuries or death occurring on or after December 8, 1941 and prior to July 1, 1968, the special schedule as modified in this section may be applied to prospective awards for permanent disability or death, provided that the monthly and aggregate maximum provisions in effect at the time of injury or death shall prevail. These maxima are $50 and $4,000, respectively.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Benefits are payable to the survivors in the following order of priority (all beneficiaries in the highest applicable classes are entitled to share equally):

(1) Surviving spouse and unmarried children under 18, or over 18 and totally incapable of self-support.

(2) Dependent parents.

(3) Dependent grandparents.

(4) Dependent grandchildren, brothers and sisters who are unmarried and under 18, or over 18 and totally incapable of self-support.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, provided for permanent total disability that proportion of the compensation (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $8,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $35.

(j) *Method of payment.* Only compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director in his or her discretion may make exceptions to the regulations in this section by:

(1) Reapportioning death benefits, for the sake of equity.

(2) Excluding from consideration potential death beneficiaries who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the beneficiary.

§ 25.201 How is the Special Schedule applied for employees in Australia?

(a) The special schedule of compensation established by subpart B of this part shall apply in Australia with the modifications or additions specified in paragraph (b) of this section, as of

December 8, 1941, in all cases of injury (or death from injury) which occurred between December 8, 1941 and December 31, 1961, inclusive, and shall be applied retrospectively in all such cases of injury (or death from injury). Compensation in all such cases pending as of July 15, 1946, shall be readjusted accordingly, with credit taken in the amount of compensation paid prior to such date. Refund of compensation shall not be required if the amount of compensation paid in any such case, otherwise than through fraud, misrepresentation or mistake, and prior to July 15, 1946, exceeds the amount provided for under this paragraph, and such case shall be deemed compromised and paid under 5 U.S.C. 8137.

(b) The total aggregate compensation payable in any case under paragraph (a) of this section, for injury or death or both, shall not exceed the sum of $4,000, exclusive of medical costs. The maximum monthly rate of compensation in any such case shall not exceed the sum of $50.

(c) The benefit amounts payable under the provisions of the Commonwealth Employees' Compensation Act of 1930–1964, Australia, shall apply as of January 1, 1962, in Australia, as the exclusive measure of compensation in cases of injury (or death from injury) according on and after January 1, 1962, and shall be applied retrospectively in all such cases, occurring on and after such date: Provided, that the compensation payable under the provisions of this paragraph shall in no event exceed that payable under the FECA.

§ 25.202 How is the Special Schedule applied for Japanese seamen?

(a) The special schedule of compensation established by subpart B of this part shall apply as of November 1, 1971, with the modifications or additions specified in paragraphs (b) through (i) of this section, to injuries sustained outside the continental United States or Canada by direct-hire Japanese seamen who are neither citizens nor residents of the United States or Canada and who are employed by the Military Sealift Command in Japan.

(b) Temporary total disability. Weekly compensation shall be paid at 75 percent of the weekly wage rate.

(c) Temporary partial disability. Weekly compensation shall be paid at 75 percent of the weekly loss of wage-earning capacity.

(d) Permanent total disability. Compensation shall be paid in a lump sum equivalent to 360 weeks' wages.

(e) Permanent partial disability.

(1) The provisions of § 25.100 shall apply to the types of permanent partial disability listed in paragraphs (c)(1) through (19) of that section: Provided that weekly compensation shall be paid at 75 percent of the weekly wage rate and that the number of weeks allowed for specified losses shall be changed as follows:

(i) Arm lost: 312 weeks.
(ii) Leg lost: 288 weeks.
(iii) Hand lost: 244 weeks.
(iv) Foot lost: 205 weeks.
(v) Eye lost: 160 weeks.
(vi) Thumb lost: 75 weeks.
(vii) First finger lost: 46 weeks.
(viii) Second finger lost: 30 weeks.
(ix) Third finger lost: 25 weeks.
(x) Fourth finger lost: 15 weeks.
(xi) Great toe lost: 38 weeks.
(xii) Toe, other than great toe lost: 16 weeks.

(2) In all other cases, that proportion of the compensation provided for permanent total disability in paragraph (d) of this section which is equivalent to the degree or percentage of physical impairment caused by the injury.

(f) Death. If there are two or more eligible survivors, compensation equivalent to 360 weeks' wages shall be paid to the survivors, share and share alike. If there is only one eligible survivor, compensation equivalent to 300 weeks' wages shall be paid. The following survivors are eligible for death benefits:

(1) Spouse who lived with or was dependent upon the employee.

(2) Unmarried children under 21 who lived with or were dependent upon the employee.

(3) Adult children who were dependent upon the employee by reason of physical or mental disability.

(4) Dependent parents, grandparents and grandchildren.

(g) Burial allowance. $1,000 payable to the eligible survivor(s), regardless of actual expenses. If there are no eligible survivors, actual expenses may be paid or reimbursed, up to $1,000.

(h) Method of payment. Only compensation for temporary disability shall be payable periodically, as entitlement accrues. Compensation for permanent disability and death shall be payable in a lump sum.

(i) Maxima. In all cases, the maximum weekly benefit shall be $130. Also, except in cases of permanent total disability and death, the aggregate maximum compensation payable for any injury shall be $40,000.

(j) Prior injury. In cases where injury or death occurred prior to November 1, 1971, benefits will be paid in accordance with regulations promulgated, contained in 20 CFR parts 1–399, edition revised as of January 1, 1971.

§ 25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

(a) The special schedule of compensation established by subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, to injury or death occurring on or after July 1, 1971 in the Territory of Guam to non-resident alien employees recruited in foreign countries for employment by the military departments in the Territory of Guam. However, the Director may, in his or her discretion, adopt the benefit features and provisions of local workers' compensation law as provided in subpart A of this part, or substitute the special schedule in subpart B of this part or other modifications of the special schedule in this subpart C, if such adoption or substitution would be to the advantage of the employee or his or her beneficiary. This schedule shall not apply to any employee who becomes a permanent resident in the Territory of Guam prior to the date of his or her injury or death.

(b) Death benefits. 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) Death beneficiaries. Beneficiaries of death benefits shall be determined in accordance with the laws or customs of the country of recruitment.

(d) Burial allowance. 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) Permanent total disability. 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) Permanent partial disability. Where applicable, the compensation provided in paragraphs (c)(1) through (19) of § 25.100, subject to an aggregate limitation of 400 weeks' compensation. In all other cases, that proportion of the compensation provided for permanent total disability (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) Temporary partial disability. Two-thirds of the weekly loss of wage-earning capacity.

(h) Compensation period for temporary disability. Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) Maximum compensation. The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $24,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $70.

(j) Method of payment. Compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) Exceptions. The Director may in his or her discretion make exception to the regulations in this section by:

(1) Reapportioning death benefits for the sake of equity.

(2) Excluding from consideration potential beneficiaries of a deceased employee who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the employee or his or her beneficiary(ies).

Signed at Washington, D.C., this 17th day of November, 1998.

Alexis M. Herman,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards Administration.

[FR Doc. 98–31190 Filed 11–24–98; 8:45 am]

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Part III

Department of Commerce

International Trade Administration

19 CFR Part 351
Countervailing Duties; Final Rule

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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 950306068–8205–05]

RIN 0625–AA45

Countervailing Duties

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce ("the Department") hereby issues final countervailing duty regulations to conform to the Uruguay Round Agreements Act, which implemented the results of the Uruguay Round multilateral trade negotiations. The Department has sought to issue regulations that: Where appropriate and feasible, translate the principles of the implementing legislation into specific and predictable rules, thereby facilitating the administration of these laws and providing greater predictability for private parties affected by these laws; simplify and streamline the Department's administration of countervailing duty proceedings in a manner consistent with the purpose of the statute and the President's regulatory principles; and codify certain administrative practices determined to be appropriate under the new statute and under the President's Regulatory Reform Initiative.

DATES: The effective date of this final rule is December 28, 1998, except that § 351.301(d) is effective on November 25, 1998. *See* § 351.702 for applicability dates.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Yeske at (202) 482–1032 or Jeffrey May at (202) 482–4412.

SUPPLEMENTARY INFORMATION:

Background

The publication of this notice of final rules, which deals with countervailing duty ("CVD") methodology, completes a significant portion of the process of developing regulations under the Uruguay Round Agreements Act ("URAA"). The process began when the Department took the unusual step of requesting advance public comments in order to ensure that, at the earliest possible stage, we could consider and take into account the views of the private sector entities that are affected by the antidumping ("AD") and CVD laws. On February 26, 1997, the Department published proposed rules dealing with CVD methodology ("1997 Proposed Regulations"). The Department received over 200 written public comments regarding the 1997 Proposed Regulations. On October 17, 1997, the Department held a public hearing, and thereafter, received over 50 additional post-hearing written public comments on the 1997 Proposed Regulations.[1]

In drafting these final rules, the Department has carefully reviewed and considered each of the comments it received. While we have not always adopted suggestions made by commenters, we found the comments to be very useful in helping us to work our way through the many legal and policy issues addressed in the regulation. Therefore, we are extremely grateful to those who took the time and trouble to express their views regarding how the Department should administer the CVD laws in the future.

In addition, in these final rules, the Department has continued to be guided by the objectives described in the 1997 Proposed Regulations. Specifically, these objectives are: (1) Conformity with the statutory amendments made by the URAA; (2) the elaboration through regulation of certain statements contained in the Statement of Administrative Action ("SAA");[2] and (3) consistency with President Clinton's Regulatory Reform Initiative and his directive to identify and eliminate obsolete and burdensome regulations.

In the case of CVD methodology, the Department previously issued proposed regulations in 1989 ("1989 Proposed Regulations").[3] Because the Department never issued final rules, the 1989 Proposed Regulations were not binding on the Department or private parties. Nevertheless, to some extent both the Department and private parties relied on the 1989 Proposed Regulations as a restatement of the Department's CVD methodology as it existed at the time. Thus, notwithstanding statutory amendments made by the URAA and subsequent developments in the Department's administrative practice, the 1989 Proposed Regulations still serve as a point of departure for any new regulations dealing with CVD methodology.

In an earlier rulemaking (see item 9 in note 1), we consolidated the AD and CVD regulations into a single part 351. For the most part, the regulations contained in this notice constitute subpart E of part 351.

Explanation of the Final Rules

In drafting these Final Regulations, the Department carefully considered each of the comments received. In addition, we conducted our own independent review of those provisions of the 1997 Proposed Regulations that were not the subject of public comments. The following sections contain a summary of the comments we received and the Department's responses to those comments. In addition, these sections contain an explanation of changes the Department has made to the 1997 Proposed Regulations either in response to

[1] The prior notices published by the Department as part of its URAA rulemaking activity are: (1) Advance Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 80 (January 3, 1995); (2) Advance Notice of Proposed Rulemaking; Extension of Comment Period (*Antidumping Duties; Countervailing Duties; Article 1904 of the North American Free Trade Agreement*), 60 FR 9802 (February 22, 1995); (3) Interim Regulations; Request for Comments (*Antidumping and Countervailing Duties*), 60 FR 25130 (May 11, 1995); (4) Proposed Rule; Request for Comments (*Antidumping and Countervailing Duty Proceedings; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*), 61 FR 4826 (February 8, 1996); (5) Notice of Proposed Rulemaking and Request for Public Comments (*Antidumping Duties; Countervailing Duties*), 61 FR 7308 (February 27, 1996); (6) Extension of Deadline to File Public Comments on Proposed Antidumping and Countervailing Duty Regulations and Announcement of Public Hearing (*Antidumping Duties; Countervailing Duties*), 61 FR 18122 (April 24, 1996); (7) Announcement of Opportunity to File Public Comments on the Public Hearing of Proposed Antidumping and Countervailing Duty Regulations (*Antidumping Duties; Countervailing Duties*), 61 FR 28821 (June 6, 1996); (8) Notice of Proposed Rulemaking and Request for Public Comment (*Countervailing Duties*), 62 FR 8818 (February 26, 1997); (9) Final Rules (*Antidumping Duties; Countervailing Duties*), 62 FR 27295 (May 19, 1997); (10) Extension of Deadline to File Public Comments on Proposed Countervailing Duty Regulations, (*Countervailing Duties*), 62 FR 19719 (April 23, 1997); (11) Extension of Deadline to File Public Comments on Proposed Countervailing Duty Regulations, (*Countervailing Duties*), 62 FR 25874 (May 12, 1997); (12) Notice of Public Hearing on Proposed Countervailing Duty Regulations and Announcement of Opportunity to File Post-Hearing Comments, (*Countervailing Duties*), 62 FR 38948 (July 21, 1997); (13) Notice of Public Hearing on Proposed Countervailing Duty Regulations and Announcement of Opportunity to File Post-Hearing Comments; Correction, (*Countervailing Duties*), 62 FR 41322 (August 1, 1997); (14) Notice of Postponement of Public Hearing on Proposed Countervailing Duty Regulations and of Opportunity to File Post-Hearing Comments, (*Countervailing Duties*), 62 FR 46451 (September 3, 1997); (15) Interim Final Rules; Request for Comments (*Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*), 63 FR 13516 (March 20, 1998); and (16) Final Rule; Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order, (*Antidumping and Countervailing Duty Proceedings*), 63 FR 24391 (May 4, 1998).

[2] *See Statement of Administrative Action accompanying H.R. 5110*, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. 911–955 (1994).

[3] *See Notice of Proposed Rulemaking and Request for Public Comments (Countervailing Duties)*, 54 FR 23366 (May 31, 1989).

comments or on its own initiative. Finally, these sections contain a restatement of principles that remain unchanged from the 1997 Proposed Regulations and that were not the subject of any public comments.

The Department is also hereby issuing interim final rules to set forth certain procedures for establishing the non-countervailable status of alleged subsidies or subsidy programs pursuant to section 771(5B) of the Tariff Act of 1930, as amended ("the Act"). Pursuant to authority at 5 U.S.C. 553(b)(A), the Assistant Secretary for Import Administration waives the requirement to provide prior notice and an opportunity for public comment because this action is a rule of agency procedure. This interim final rule is not subject to the 30-day delay in its effective date under 5 U.S.C. 553(d) because it is not a substantive rule. The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 note) are inapplicable to this rulemaking because it is not one for which a Notice of Proposed Rulemaking is required under 5 U.S.C. 553 or any other statute.

Section 351.102

These regulations add several definitions to § 351.102. Many of these definitions are identical (or virtually identical) to definitions contained in § 355.41 of the 1989 Proposed Regulations, and some are based on definitions contained in the Illustrative List of Export Subsidies ("Illustrative List") annexed to the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). We have made some changes to the definitions contained in the 1997 Proposed Regulations.

While we have not changed the definition of *consumed in the production process*, we are clarifying that the definition is not to be used as a way to expand significantly the rights of countries to apply border adjustments for a broad range of taxes on energy, particularly in the developed world. *See* SAA at 915.

The definition of *firm* is based on § 355.41(a) of the 1989 Proposed Regulations, but an additional clause has been added to clarify that the purpose of this term is to serve as a shorthand expression for the recipient of an alleged subsidy. While other terms could be used, the use of the term "firm" in this manner has become an accepted part of CVD nomenclature. For clarification, we have added "company" and "joint venture" to the entities listed in the definition in the 1997 Proposed Regulations.

Similarly, the term *government-provided* is used as a shorthand adjective to distinguish the act or practice being analyzed as a possible countervailable subsidy from the act or practice being used as a benchmark. As made clear in the regulation, the use of "government-provided" does not mean that a subsidy must be directly provided by a government. This definition is unchanged from our 1997 Proposed Regulations.

As in our 1997 Proposed Regulations, *loan* is defined to include forms of debt financing other than what one normally considers to be a "loan," such as bonds or overdrafts. Again, this definition is intended as a shorthand expression in order to avoid repetitive use of more cumbersome phrases, such as "loans or other debt instruments."

In this regard, the Department considered codifying its approach with respect to so-called "hybrid instruments," financial instruments that do not readily fall into the basic categories of grant, loan, or equity. In the 1993 steel determinations (*see Certain Steel Products from Austria (General Issues Appendix)*, 58 FR 37062, 37254 (July 9, 1993) ("GIA")), the Department developed a hierarchical approach for categorizing hybrid instruments, an approach that was sustained in *Geneva Steel* v. *United States*, 914 F. Supp. 563 (CIT 1996). However, notwithstanding this judicial imprimatur, the Department has relatively little experience with hybrid instruments. Therefore, although the Department has no present intention of deviating from the approach set forth in the GIA, the codification of this approach in the form of a regulation would be premature at this time.

Many commenters proposed definitions of the phrase "entrusts or directs" as it is used in section 771(5)(B)(iii) of the Act, which deals with "indirect subsidies." Indirect subsidies generally involve situations where a government provides a financial contribution through a private body. Under section 771(5)(B)(iii) of the Act, a subsidy exists when, *inter alia*, a government "makes a payment to a funding mechanism to provide a financial contribution, or *entrusts or directs* a private entity to make a financial contribution * * *" (emphasis added). In our 1997 Proposed Regulations, we did not address indirect subsidies in detail. Instead, we noted that the SAA directs the Department to proceed on a case-by-case basis (*see* SAA at 925–26), and we requested comments on the factors we should consider in making our case-by-case determinations.

One commenter suggested that an indirect subsidy need only be linked to a government action or program to satisfy the "entrusts or directs" standard. This same commenter asked the Department to include an illustrative list of situations that would meet the "entrusts or directs" standard. A second commenter believed that the standard is met when a government takes an action that causes a private party to confer a benefit. This same commenter asked the Department to clarify that the term "private body" is not limited to a single entity, but also includes a group of entities or persons. A third commenter proposed that the "entrusts or directs" standard be considered satisfied whenever a government takes an action that proximately results in a private entity providing a financial contribution. Certain commenters also asked the Department to confirm that the standard is no narrower than the prior U.S. standard for finding an indirect subsidy.

The issue of what "entrusts or directs" means was debated extensively at the Department's hearing on its 1997 Proposed Regulations. This debate prompted the submission of additional proposed definitions. Two commenters argued that an indirect subsidy occurs whenever a government action has the inevitable result of compelling a private party to provide a benefit. A second commenter proposed a "but for" test, *i.e.*, if the government did not act, the subsidy would not exist.

As the extensive comments on this issue indicate, the phrase "entrusts or directs" could encompass a broad range of meanings. As such, we do not believe it is appropriate to develop a precise definition of the phrase for purposes of these regulations. Rather, we believe that we should follow the guidance provided in the SAA to examine indirect subsidies on a case-by-case basis. We will, however, enforce this provision vigorously.

We agree with those commenters who urged the Department to confirm that the current standard is no narrower than the prior U.S. standard for finding an indirect subsidy as described in *Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) and *Certain Softwood Lumber Products from Canada*, 57 FR 22570 (May 28, 1992). Also, we believe that the phrase "entrusts or directs" subsumes many elements of the definitions proposed by commenters. With respect to the suggestion that we include an illustrative list of situations that would fall under the "entrusts or directs" standard, we do not believe this is necessary. The SAA at 926 lists a number of cases where the Department

has found indirect subsidies in the past, and these cases serve to provide examples of situations where we believe the statute would permit the Department to reach the same result. Similarly, regarding the request that we define the phrase "private entity" to include groups of entities or persons, the SAA is clear that groups are included (*see* SAA at 926). Therefore, we have not promulgated a regulation with this definition.

Although the indirect subsidies that we have countervailed in the past have normally taken the form of a foreign government requiring an intermediate party to provide a benefit to the industry producing the subject merchandise, often to the detriment of the intermediate party, indirect subsidies could also take the form of a foreign government causing an intermediate party to provide a benefit to the industry producing the subject merchandise in a way that is also in the interest of the intermediate party. We believe the phrase "entrusts or directs" could encompass government actions that provide inducements, other than upstream subsidies, to a private party to provide a benefit to another party.

One commenter argued that the Final Regulations should include a definition of consultations. Consistent with Article 13 of the SCM Agreement, section 702(b)(4)(A)(ii) of the Act requires the Department to provide the government of the exporting country named in a petition an opportunity for consultations with respect to the petition. This commenter suggested that the definition of consultations should include a statement of purpose as articulated in the SCM Agreement (*i.e.*, clarifying the allegations in the petition and arriving at a mutually agreed solution). Furthermore, the commenter argued, in the Final Regulations the Department should commit to consult with the foreign government both prior to initiating and during the course of the investigation. Finally, the commenter proposed that the definition contain a requirement that all government-to-government exchanges (oral and written) be placed on the record of the proceeding.

We do not believe that a regulation is required to define "consultations." We agree that, in accordance with Article 13 of the SCM Agreement, the purpose of consultations is to clarify the allegations presented in a petition and arrive at a mutually agreed solution. Section 351.202(h)(2)(i)(2) of *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27295, 27384 (May 19, 1997) clearly states that the Department will invite the government of any exporting country named in a CVD petition to hold consultations with respect to the petition. Further, consistent with Article 13.2 of the SCM Agreement, the Department affords foreign governments reasonable opportunities to consult throughout the period of investigation. In regard to communications, it is the Department's longstanding practice that all *ex parte* communications with Department decisionmakers be placed on the record of a proceeding through memoranda to the file.

Section 351.501

Section 351.501 restates very generally the subject matter of subpart E. To be more specific, the arrangement of subpart E is as follows. After dealing with the specificity of domestic subsidies in § 351.502 and the concept of "benefit" in § 351.503, §§ 351.504 through 351.513 deal with the identification and measurement of various general types of subsidy practices. Sections 351.514 through 351.520 focus on export subsidies, incorporating the appropriate standards from the Illustrative List of Export Subsidies contained in Annex I of the SCM Agreement. Sections 351.521 through 351.523 deal with import substitution subsidies (currently designated as "Reserved"), green light and green box subsidies, and upstream subsidies, respectively. Section 351.524 addresses the allocation of benefits to a particular time period. Section 351.525 sets forth rules regarding the calculation of an *ad valorem* subsidy rate and the attribution of a subsidy to the appropriate sales value of a product. Finally, §§ 351.526 and 351.527 contain rules regarding program-wide changes and transnational subsidies, respectively. The section numbering in these Final Regulations reflects minor changes from the 1997 Proposed Regulations. As discussed below, we have decided to codify a final rule on the concept of "benefit." This rule is now § 351.503. We have also moved the rules regarding the allocation of benefits, which were included in the section on grants in the 1997 Proposed Regulations to a separate section, § 351.524. Finally, we have moved § 351.520 of the 1997 Proposed Regulations to § 351.514(b) because general export promotion activities are more appropriately addressed as an exception to export subsidies.

The last sentence of § 351.501 acknowledges that subpart E does not address every possible type of subsidy practice. However, the same sentence provides that in dealing with alleged subsidies that are not expressly covered by these regulations, the Secretary will be guided by the underlying principles of the Act and subpart E.

In this regard, the Act and the SCM Agreement serve to eliminate much of the confusion and controversy surrounding the necessary elements of a countervailable subsidy. First, under section 771(5)(B) of the Act and Article 1.1(a)(1) and (2) of the SCM Agreement, there must be a financial contribution that a government provides either directly or indirectly, or an income or price support in the sense of Article XVI of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). Although the precise parameters will have to be determined on a case-by-case basis, this element provides a framework for analysis that previously was not directly addressed.

Second, under section 771(5)(B) of the Act and Article 1.1(b) of the SCM Agreement, the financial contribution (or income or price support) must confer a benefit. Section 351.503 sets out the principles we will generally follow in determining whether a benefit has been conferred.

Finally, under section 771(5)(A) of the Act and Article 1.2 of the SCM Agreement, a subsidy must be specific in order to be countervailable. The "specificity test" is addressed in § 351.502, but we note here that by clarifying the purpose of the specificity test and the manner in which it is to be applied, the URAA, the SAA and the SCM Agreement should serve to reduce the controversies and volume of litigation concerning this issue.

In the preamble to our 1997 Proposed Regulations we discussed our decision not to include two topics in our proposed changes to subpart E: Indirect subsidies (with the exception of upstream subsidies) and privatization. The numerous comments regarding our decision not to promulgate regulations on these two topics are addressed below.

Indirect Subsidies

In our 1997 Proposed Regulations, we discussed only briefly the topic of indirect subsidies. We received several comments on this issue. Comments concerning the adoption of a definition of the phrase "entrusts or directs" have been addressed previously (*see* § 351.102). The remaining comments relating to indirect subsidies are addressed here.

One commenter asked the Department to codify a rule stating that indirect subsidies are countervailable. In this commenter's view, this would eliminate any uncertainty that could become the cause of litigation. Another commenter requested that the Department include a

broad definition of indirect subsidies in our regulations.

We have not adopted either suggestion. We believe that section 771(5)(B)(iii) of the Act clearly states that subsidies provided by governments through private parties are covered by the CVD law. Additionally, section 771(5)(C) of the Act states that the determination of whether a subsidy exists shall be made "without regard to whether the subsidy is provided *directly or indirectly* * * *" (emphasis added). Therefore, no regulation is needed on this point. Regarding the second comment, as discussed previously, the phrase "entrusts or directs" as used in section 771(5)(B)(iii) of the Act could encompass a broad range of meanings. As such, we do not believe it is appropriate to develop a precise definition of the phrase for purposes of these regulations.

One commenter singled out subsidies involving the provision of goods and services for less than adequate remuneration and asked the Department to confirm that indirect subsidies can be conferred through the provision of goods or services by private parties. This same commenter also asked the Department to state in the preamble to the Final Regulations that the new statute will not alter the Department's practice of finding export restraints to be countervailable. Other commenters objected to this position. They argued that: (1) The practices constituting financial contributions under the Act are payments of cash or cash equivalents, while government regulatory measures do not entail any financial contribution; (2) export restraints do not direct private parties to make any type of payment; they simply limit the parties' ability to export; (3) regulatory measures that distort trade are separately covered by other World Trade Organization ("WTO") Agreements (*e.g.*, GATT 1994 Articles I–V, VII–IX, Agreement on Sanitary and Phytosanitary Measures, Agreement on Technical Barriers to Trade, and Agreement on Trade-Related Investment Measures); and (4) expanding the definition of subsidy to include regulatory measures would extend that term to absurd dimensions far beyond the limited scope intended by the SCM Agreement and the Act. These same commenters urged the Department to issue a regulation which clarifies what they see as a conflict between the clear language in the statute (regulatory measures are not financial contributions within the meaning of the Act and, hence, cannot confer subsidies) and the language in the SAA at 926 (suggesting that regulatory measures can be countervailed as indirect subsidies).

Regarding the issue of whether indirect subsidies can arise through the provision of goods and services, we believe this is clearly answered by the Act. Section 771(5)(D)(iii) states that financial contributions include the provision of goods or services. Hence, if a private entity is entrusted or directed to provide a good or service to producers of the merchandise under investigation, a financial contribution exists. With regard to export restraints, while they may be imposed to limit parties' ability to export, they can also, in certain circumstances, lead those parties to provide the restrained good to domestic purchasers for less than adequate remuneration. This was recognized by the Department in *Certain Softwood Lumber Products from Canada*, 57 FR 22570 (May 28, 1992) ("*Lumber*") and *Leather from Argentina*, 55 FR 40212 (October 2, 1990) ("*Leather*"). Further, as indicated by the SAA (at 926), and as we confirm in these Final Regulations, if the Department were to investigate situations and facts similar to those examined in *Lumber* and *Leather* in the future, the new statute would permit the Department to reach the same result.

We agree that regulatory measures that distort trade normally may be subject to the provisions of other WTO Agreements. We do not believe, however, that this negates our ability to address them through the application of our CVD law when such measures meet the definition of a countervailable subsidy. We disagree that countervailing such measures goes beyond the ambit of the SCM Agreement and the Act. As discussed above in response to an earlier comment, the SCM Agreement clearly permits, and the Act clearly requires, that we countervail subsidies provided through private parties. Also, Article VI of GATT 1994 continues to refer to subsidies provided "directly or indirectly" by a government.

Change in Ownership

The SAA and the House and Senate Reports emphasize the importance of considering the facts of individual cases to determine whether, and to what extent, change-in-ownership transactions eliminate previously conferred countervailable subsidies. In the 1997 Proposed Regulations, we did not include a provision dealing with change in ownership. Rather, we invited comment on a broad array of factors concerning this topic and whether we should promulgate a final rule that integrates some or all of the factors identified in the preamble.

The comments we received on this issue largely fell along two lines. On the one hand, several commenters argued that the Department should promulgate a regulation stating that change-in-ownership transactions, even if conducted at arm's-length and at fair market value, have no effect on non-recurring subsidies bestowed prior to the sale of a firm, and that non-recurring subsidies, in most instances, pass through in their entirety to the sold or privatized entity. Conversely, other commenters contended that a change-in-ownership regulation should establish a rebuttable presumption that, in general, the sale or change in ownership of a firm at fair market value eliminates the benefit conferred by prior non-recurring subsidies.

According to the first group of commenters, under section 771(5)(F) of the Act, the change in ownership of a firm has no effect on the Department's ability to countervail fully subsidies bestowed prior to the change in ownership. In fact, in these commenters' view, Congress expected the Department to continue countervailing prior subsidies, unless something serves to eliminate those subsidies. The sale of a firm at fair market value does not serve to eliminate prior subsidies; thus, after such a sale, prior subsidies would continue to be countervailed until fully amortized. The only instance where partial repayment of prior subsidies can exist is where economic resources have been returned to the government, *i.e.*, where the investor has paid more than fair market value for a productive unit. The Department should specify this in its regulations.

These same commenters argued that recent court decisions support the conclusion that subsidies continue to be countervailable after the privatization of a firm at fair market value. *See, e.g., Saarstahl AG* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996); *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. 1997). In light of these decisions, one commenter stated that it would be ironic for the Department now to conclude under the URAA that subsidies are no longer countervailable after the sale of a firm at fair market value. This commenter also claimed that such a conclusion would result in anti-subsidy practices weaker than those of the European Union ("EU"), because EU Guidelines on State Aid recognize that the sale of a company does not extinguish previously bestowed subsidies. Rather, according to this commenter, the EU requires subsidy recipients to repay illegal subsidies, including principal and interest, from the time the aid was disbursed, without

regard to whether the recipient is later sold or privatized.[4]

These commenters opposed the Department's attempt to develop a "flexible" approach toward privatization. They expressed concern that ascribing any significance to the broad array of factors listed in the 1997 Proposed Regulations may lead to all or some pre-privatization subsidies being extinguished in a fair market privatization, which would involve reevaluating the amount, and possibly the existence, of prior subsidies based on post-bestowal events and conditions. This would violate the statute's prohibition against considering the effects of subsidies and the Department's practice of not examining subsequent events to determine whether the subject merchandise continues to benefit from subsidies. *See* section 771(5)(C) of the Act and GIA at 37261. For example, one commenter stated that taking account of current market conditions, such as global overcapacity, in determining the extent to which pre-privatization subsidies pass through, is tantamount to considering effects. Similarly, another commenter rejected the suggestion that subsidies that reduce excess capacity are not countervailable because this too depends on an impermissible "use" analysis. Whatever the use of the subsidy, these commenters argued, the benefit from the subsidy continues unabated after privatization.

Finally, this first group of commenters asserted that the privatization or sale of a productive unit, even at fair market value, does not result in any partial or full repayment of prior subsidies. To conclude otherwise would conflict with Congress' mandate that the Department's privatization methodology be "consistent with the principles of the countervailing duty statute." S. Rep. No. 103–412, at 92 (1994). Those principles include prohibitions against (1) focusing on subsequent events, (2) analyzing alleged effects of subsidies, (3) granting offsets not included in the exclusive statutory list, and (4) valuing subsidies based on the cost-to-government standard. Some in this first group of commenters asserted that the logical reading of Congress' instruction to evaluate change-in-ownership transactions on a case-by-case basis is to determine whether a privatization or sale involving a productive unit elicits some non-commercial activity, *i.e.*, whether under- or overpayment for the productive unit has occurred. In the case of underpayment, the Department should find that additional subsidies have been bestowed; in the case of overpayment, the Department should find that certain prior subsidies have been repaid.

In contrast to these arguments, the second group of commenters asserted that the Department should issue regulations establishing a rebuttable presumption that the arm's-length sale of a firm, including a government-owned enterprise, at a price that reflects the current market value of its assets, in most cases extinguishes any previously received subsidies. This group argued that Congress' instruction to examine change-in-ownership transactions on a case-by-case basis indicates that the URAA contemplates extinguishment of prior subsidies, at least in certain circumstances. In these commenters' view, the arm's-length sale of a company at full market value is such a circumstance, because the market price takes into account prior subsidies, and the benefit is, therefore, eliminated. However, if the price paid for the firm does not reflect full market value, the question of a continuing benefit can reasonably be raised. According to several of these commenters, any other approach would be counterproductive, because it would discourage potential buyers from bidding on subsidized government-owned enterprises about to be privatized. One commenter further stressed that restructuring of, and foreign investment in, countries such as those in Eastern Europe, may be inhibited, which is a concern for U.S. investors and the United States' wider economic and political interests.

One member of this group of commenters found support for the proposition that an arm's-length sale at fair market value must extinguish prior subsidies with the following statutory analysis. The commenter claimed that the URAA requires the Department to determine whether and to what extent government financial contributions confer a benefit on the production or sale of the investigated merchandise in each CVD proceeding. Such a determination is based on the nature of the subsidy benefit, which is the artificially reduced cost of an input used in the production of the merchandise. Thus, where the subsidy is provided for a specific use, *e.g.*, the acquisition of capital assets, the continuing subsidy benefit is the reduced cost of that asset allocated over the useful life of the asset. Where government financial contributions are not tied to specific applications, as in the case of an equity infusion, the Department should normally view the money itself as the continuing subsidy benefit.

In light of this, the commenter contended that the Department's privatization analysis must first examine what inputs were acquired by the subsidy recipient at an artificially reduced cost. Then, the Department must determine whether the cost for those inputs was artificially reduced for the privatized company as well. According to this commenter, where the privatization transaction occurs at arm's-length and at fair market value, the privatized company would not continue to benefit from the past subsidies. Similarly, where government financial contributions are not tied to specific applications, meaning that the money itself is the continuing subsidy benefit, the Department's focus should be on the price and terms of the privatization transaction. If the privatization of the company, including all its physical and financial assets, was at fair market value, the Department would not find any benefit to have passed through, because the privatized company would not be operating with any capital for which it paid less than market value. According to this commenter, if the privatization of a firm were at full market value, the new owners of the company have paid for all of the inputs at market value. Therefore, the privatized firm no longer operates with inputs acquired at a cost that is less than what would have been paid without a government financial contribution.

This commenter stressed that there are several possible exceptions to this rule. For example, where an asset would not have been created or acquired absent the government financial contribution, and where the creation or acquisition of the asset was not economically viable, the Department may conclude that the very existence of the asset is the continuing benefit and not the reduced costs of the asset. In such an instance, the benefit could be deemed to continue, even after a full market privatization. However, this commenter asserted that this would represent an exception to the general rule.

This commenter rejected the argument that this analysis is tantamount to an "effects" test. If a subsequent event does in fact eliminate subsidization, limited Departmental resources should not prevent examination of that event. The commenter stated that, in the case of

[4] In support of this proposition, the commenter cites *Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty*, O.J. Eur. Comm. No. C283/2 at 283/4 (September 19, 1997) ("The assessment of rescue or restructuring aid is not affected by changes in the ownership of the business aided. Thus, it will not be possible to evade control by transferring the business to another legal entity or owner.")

subsidies not tied to any particular use, the only event that the Department would need to consider is one which would eliminate the artificially reduced cost of the company's inputs as a whole. The sale of an entire company for market value is such an event, in the commenter's view. Where a subsidy is tied to a particular use, the only event that the Department would need to consider is one that would affect or eliminate the benefit arising from that specific use. Moreover, according to the commenter, in numerous contexts the Department traces the use of a subsidy. These include instances where subsidies are provided for certain uses that may be greenlighted or that may benefit a company over time, *i.e.*, non-recurring subsidies.

Most commenters also found fault with the Department's existing repayment or reallocation methodology, under which pre-sale subsidies are partially repaid to the seller as part of the purchase price. Several commenters argued that the repayment/reallocation methodology should be abandoned, because it is not defensible, economically or legally. According to these commenters, the repayment/reallocation methodology violates the offset provision of the statute (section 771(6) of the Act), because this provision does not include repayment or reallocation of subsidies in the context of a privatization at fair market value. Moreover, a fair-market-value privatization does not offset the distortion caused by government subsidies, a fact recognized by EU law, according to which subsidy repayment can occur only if the illegal aid is returned.[5] According to these commenters, the repayment/reallocation methodology is also inconsistent with the Department's and the Court's "conceptual model of subsidies," which presumes that subsidies distort market processes and result in a misallocation of resources (*citing Carbon Steel Wire Rod from Poland*, 49 FR 19374, 19375 (May 7, 1984), and *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308, 1315–16 (Fed. Cir. 1986) ("*Georgetown Steel*"). Under this model, repayment or reallocation can only occur if an equivalent "distortion" takes place, that is, a return of the illegally provided resources from the subsidized entity. This does not occur, the commenters emphasized, in a fair-market privatization. Further, the repayment/reallocation methodology is inconsistent with the benefit-to-recipient standard because it is based on the assumption that the government was paid more money upon privatization than it would have received absent the subsidy, a fact that is only relevant under a cost-to-government standard. These commenters stated that while the cost of the subsidy to the government may be diminished in a fair-market privatization, the value of the subsidy to the recipient is unchanged. According to these commenters, by finding that repayment/reallocation occurs in a fair-market-value transaction, the Department is encouraging subsidization. This violates the basic purpose of the CVD law, which is intended to deter subsidization. These commenters also argued that the Court of International Trade's ("CIT") decision in *British Steel plc* vs. *United States*, 879 F. Supp. 1254, 1277 (CIT 1995), *aff'd in part and rev'd in part*, 127 F.3d 1471 (Fed. Cir. 1997), casts doubt on the permissibility of finding repayment in the context of a privatization at fair market value. One commenter also argued that the repayment/reallocation methodology is inconsistent with the URAA and the SAA's instruction to examine carefully the facts of each case in determining the effects of privatization on prior subsidies, because it is an automatic rule that always assumes a portion of the purchase price represents repayment or reallocation of prior subsidies.

Another commenter asserted that the repayment/reallocation methodology does not capture the full extent of the benefit bestowed upon a company because it does not capture the benefit from the government's assumption of risk. According to this commenter, to encourage investment in risky industry sectors, governments can assume some of the risk, for example by providing start-up capital. If the government privatizes the company, the trade-distorting effect of the government action continues, and the production of the company continues to enjoy the benefit of the government subsidy. This commenter argued that if the Department maintains the repayment/reallocation methodology, it should also consider whether the industry could attract private capital at the time the subsidies were provided. Where an industry could not attract private capital, the Department should find that all subsidies passed through after privatization. Alternatively, if the Department finds that privatization can extinguish or repay a subsidy, this should only be permitted when the price paid for the privatized company is equal to the net worth of the firm without the subsidy, plus the residual value of the subsidy. For example, a firm receives a $1 million countervailable subsidy, which the Department allocates over 10 years. In year two, the residual value of the subsidy (for countervailing duty purposes) is $900,000. In that year, the firm is privatized and its pre-subsidy assets are valued at $18 million. If the firm is sold for $18.9 million, the subsidy would be repaid. If it is sold for $18 million, the subsidy would pass through in its entirety. According to this commenter, this approach recognizes that the buyer of a firm is paying for the assets as well as the residual value of the subsidy, while the current repayment/reallocation approach fails to do this.

Another modification suggested by some commenters to the repayment/reallocation methodology is to alter the calculation of "gamma," which measures the proportion of the purchase price that the Department considers to be repaid to the government in a privatization transaction, or reallocated to the previous owner in a private-to-private sale. This commenter stated that the gamma ratio should be calculated using the total remaining value of the subsidies at the time of the privatization to the company's total net worth in the same year, rather than using the average of the historical values of the subsidies to the firm's net worth starting in the years the subsidies were received. This approach would give more weight to subsidies received immediately preceding privatization.

Finally, several commenters addressed the issue of whether subsidies provided in anticipation, or in the process, of privatization should be given special consideration. On the one hand, one commenter argued that subsidies provided shortly before, and in preparation for, the sale, such as debt forgiveness, asset revaluations, tax breaks, and other measures to "clean up" balance sheets, should be considered new subsidies and not "pre-privatization" subsidies. According to this commenter, under no circumstance should these subsidies be eliminated as part of the privatization transaction. On the other hand, another commenter suggested that steps taken by a government just prior to privatization to make a company more "saleable," such as closing inefficient operations, should not by themselves be considered

[5] *Citing Commission notice pursuant to Article 93(2) of the EC Treaty to other Member States and interested parties concerning aid which Germany has granted to Fritz Egger Spanplattenindustrie GmbH & Co. KG at Brilon*, O.J. Eur. Comm. No. C369/6, 369/8–369/9 (1994), and *Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry*, opened for signature December 21, 1994, art. 8, ¶5.

subsidies that pass through to the privatized company.

Except for the comments on our current repayment/reallocation methodology and the comments on subsidies given in the process of privatization, which we address below, the commenters have presented two general positions with respect to the impact of changes in ownership on subsidies bestowed prior to the sale: (1) That the arm's-length sale of a company at fair market value has no effect on the countervailability of prior subsidies; and (2) that the fair-market sale of a firm, in general, excuses the purchaser from any CVD liability for prior subsidies. While the commenters suggest possible exceptions to these general positions that theoretically would give effect to the statutory direction to consider the facts of each case, the exceptions are narrowly defined to fit improbable circumstances. In most cases, the proposals, with their narrowly defined exceptions, would lead to either total pass-through or total extinguishment of pre-sale subsidies.

Although we see merit in some of the arguments presented, we believe that adopting either of these extreme positions would require a strained interpretation of the statute. The statute, SAA, and legislative history plainly state that the arm's-length sale of a firm does not by itself require a determination that prior subsidies have been extinguished. *See* section 771(5)(F), SAA at 928, and S. Rep. No. 103–412, at 92 (1994); *see also* the discussion in the 1997 Proposed Regulations at 8821. Moreover, we continue to disagree with the claim that in order to impose countervailing duties on a privatized or post-sale firm, the Department must affirmatively demonstrate *how* subsidies continue to benefit the subject merchandise after the fair-market sale of a company. *See* GIA at 37263. Our refusal to read a continuing competitive benefit test (sometimes called an "effects test") into the CVD law was upheld by the Federal Circuit in *Saarstahl* v. *United States*, 78 F.3d 1539 (Fed. Cir. 1996) ("*Saarstahl*") and *British Steel plc* v. *United States*, 879 F. Supp. 1254 (CIT 1995), *aff'd in part and rev'd in part* 127 F.3d 1471 (Fed. Cir. 1997) ("*British Steel*"). As the CIT explained in *British Steel plc* v. *United States*, "Commerce has consistently maintained that it does not measure the effects of subsidies once they have been determined by Commerce. In other words, whether subsequent events mitigate these effects is irrelevant. This Court, for the purposes of this proceeding, has no quarrel with that practice." 879 F. Supp. at 1273. Further, section 771(5)(C) of the Act specifically states that the Department "* * * is not required to consider the effect of the subsidy in determining whether a subsidy exists * * *" *See also Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 61 FR 58377, 58379 (November 14, 1996) (*1994 Administrative Review UK Lead Bar*).

In this regard, it is useful to clarify what we mean in saying that we would not attempt to determine whether a subsidy had any "effect" on the recipient, or whether "subsequent events" might have mitigated or eliminated any potential effects from the subsidy. The term "effect," as used in the statute and SAA, and the term "subsequent events," as used by the Courts, refer to the question of whether a subsidy confers a competitive benefit upon the subsidy recipient or its successor. There is no requirement that the Department determine whether there is a competitive benefit, as is made clear in the SAA (at 926):

> * * * the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review.

In the course of the 1993 steel investigations, certain respondents argued that: (1) A subsidy cannot be countervailed unless it bestows a "competitive benefit" on merchandise exported to the United States; (2) the arm's-length sale of a subsidized company eliminates any competitive benefit from prior subsidies (because the price paid for the company includes payment for any continuing value the subsidies might have); and (3) therefore, the arm's-length sale of a subsidized company frees the new owner from any countervailing duty liability for prior subsidies to that company. We rejected this argument (*see* GIA at 37260–61), explaining that the statute did not require that a subsidy bestow a competitive benefit on imports to the United States as a condition of liability for countervailing duties. Just as we would not attempt to determine whether a subsidy conferred a competitive benefit on the original recipient in the first place (that is, whether the subsidy had any effect on the original recipient's subsequent performance (usually an effect upon its output or prices)), we would not attempt to determine whether any potential competitive benefit continued with respect to the new owner in light of a subsequent event such as a change in ownership. The Federal Circuit upheld this position in *Saarstahl* and *British Steel*. As one commenter noted, the law is concerned with the benefit originally received, not with what the recipient does with it.

When we say we do not consider "subsequent events" in the calculation of a subsidy, we generally are referring to events that arguably affect the subsequent performance (normally in terms of output or prices) of the subsidy recipient or its successor. We have never implied, however, that no subsequent event could ever affect the allocation of a subsidy. The Department may consider whether government or private actions occurring after the receipt of a subsidy should result in the reallocation of a subsidy as long as there is no tracing of the uses of the subsidy or the effect of the subsidy on the output or price of subject merchandise. Clearly, a post-subsidy change in ownership is an event that occurs subsequent to the receipt of the subsidy, and we have reallocated subsidies based on changes in ownership. It is entirely appropriate and consistent with the statute to consider whether a change in ownership is an appropriate occasion to reallocate countervailing duty liability for prior subsidies to the company that is sold. Section 771(5)(F) of the Act implies that such an exercise is warranted and, as explained above, a post-subsidy change in ownership is not the type of subsequent event or effect that is envisioned in section 771(5)(C).

The language of section 771(5)(F) of the Act purposely leaves much discretion to the Department with regard to the impact of a change in ownership on the countervailability of past subsidies. Specifically, a change in ownership neither requires nor prohibits a determination that prior subsidies are no longer countervailable. Rather, the Department is left with the discretion to determine, on a case-by-case basis, the impact of a change in ownership on the countervailability of past subsidies. The SAA at 928 specifically states that "Commerce retain[s] the discretion to determine whether, and to what extent, the privatization of a government-owned firm eliminates any previously conferred countervailable subsidies. . . ."

The repayment/reallocation methodology that we currently use achieves this objective. *See 1994 Administrative Review UK Lead Bar* at 58379–80. Depending on the amount of prior subsidies in relation to the company's net worth and the amount paid for the company, we might find that a considerable amount of prior subsidies passes through or that a

significant amount of subsidies has been repaid to the government or reallocated to the previous owner. Nonetheless, we are not codifying the current repayment/reallocation methodology. This methodology has been heavily criticized by various parties, and we recognize that it may not provide sufficient flexibility to deal with the "extremely complex and multifaceted" nature of changes in ownership. *See* SAA at 928. We will address comments related to the calculation of gamma in the context of specific cases.

While we have developed some expertise on the issue of changes in ownership over the past five years, and the comments submitted in response to the 1997 Proposed Regulations have provided us with additional ideas to consider, we do not think it is appropriate to promulgate a regulation on this issue at this time. As noted above, many of the ideas presented by the commenters would move us in the direction of adopting extreme positions. Another factor weighing against codification of any privatization methodology at this time is that the Courts may, in the course of their review of the current methodology, adopt an interpretation of the law that would either validate or overturn some of the options that we have considered, including those proposed by the commenters. Finally, given the rapidly changing economic conditions around the world, particularly with respect to the issue of state ownership, we believe we should continue to develop our policy in this area through the resolution of individual cases. These changing economic conditions pose additional challenges in developing a unified framework in which to analyze change-in-ownership transactions. In the 1997 Proposed Regulations, we identified many of these additional issues and new challenges that may warrant consideration in this context and raised questions about them. However, it is our view that the comments we received did not sufficiently address many of these concerns.

An additional issue that merits further discussion concerns subsidies received just prior to, or in conjunction with, the privatization of a firm. While we have not developed guidelines on how to treat this category of subsidies, we note a special concern because this class of subsidies can, in our experience, be considerable and can have a significant influence on the transaction value, particularly when a significant amount of debt is forgiven in order to make the company attractive to prospective buyers. As our thinking on changes in ownership continues to evolve, we will give careful consideration to the issue of whether subsidies granted in conjunction with planned changes in ownership should be given special treatment.

Our decision not to include a provision on changes in ownership in these Final Regulations does not preclude us from issuing such a regulation at a later date. We will continue to examine this issue and consider whether an alternative analytical framework can be developed that addresses the variety of change-in-ownership scenarios we have encountered and that, like the present methodology, satisfies Congressional intent that we examine changes in ownership on a case-by-case basis. In the interim, we will continue to apply our current methodology for ongoing CVD cases and carefully examine the facts of each case. However, we will consider whether modifications to the methodology may be appropriate.

Section 351.502

Section 351.502 deals with the "specificity" of domestic subsidies. Unlike its predecessor, § 355.43 of the 1989 Proposed Regulations, § 351.502 does not contain a "general" specificity test. As we noted in the preamble to the 1997 Proposed Regulations, section 771(5A) of the Act and the SAA provide much more detail and clarity regarding the application of the "specificity test" than did the prior statute and its legislative history. Thus, on the subject of specificity, there are far fewer interpretative gaps for the Department to fill than there were in 1989 and, thus, less need for regulations.

We received numerous comments arguing that we should codify the policies articulated in the preamble to the 1997 Proposed Regulations, especially those dealing with sequential analysis, purposeful government action, characteristics of a "group," and integral linkage. These commenters claimed that even where the SAA is clear on a particular point, it is unclear how the Courts will view the SAA. In their opinion, detailed specificity regulations would prevent costly litigation of these issues.

We have continued to limit § 351.502 to those aspects of the specificity test that are not addressed explicitly in the statute or the SAA. Section 102(d) of the URAA provides that the SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of (the Agreements and the URAA) in any judicial proceeding in which a question arises concerning such interpretation or application." 19 U.S.C. § 3512(d). Therefore, we see no need to repeat this principle. However, in reviewing the comments and the relevant provisions of the statute and the SAA, we have identified particular issues on which the SAA may usefully be clarified. In particular, we found that the statute and the SAA do not fully address sequential analysis and the characteristics of a group. Accordingly, we have included final regulations on these topics.

Sequential analysis: Paragraph (a) is a new paragraph which addresses the "sequential approach" to specificity. We received several requests that we codify the sequential approach. Under this approach, if a subsidy is *de jure* specific or meets any one of the enumerated *de facto* specificity factors, in order of their appearance in section 771(5A)(D)(iii) of the Act, further analysis is unnecessary and is not undertaken. In support of their position, these commenters emphasized the language contained both in section 771(5A)(D)(iii) of the Act and the SAA that a subsidy will be considered specific "if one or more" of the factors exists. *See* SAA at 931. Furthermore, these commenters contended, the SAA and the legislative history of the URAA make clear that the specificity test was intended to be generally consistent with the Department's previous practice, a practice that included this sequential approach. SAA at 929–31; S. Rep. No. 103–412, at 93–94 (1994).

In opposition to this view, other commenters maintained that the sequential approach contradicts the SAA, because the SAA states that the Department will "seek and consider information relevant" to all four of the *de facto* specificity factors. SAA at 931. Moreover, these commenters maintained, the language in the SCM Agreement requires that all of the *de facto* specificity factors be considered and that any specificity determination "shall be clearly substantiated on the basis of positive evidence." Articles 2.1(c) and 2.4 of the SCM Agreement.

The apparent disagreement over the interpretation of the SAA regarding the use of a sequential approach indicates that it is necessary to clarify our position in a regulation. Therefore, § 351.502(a) provides that the *de facto* specificity factors will be examined in sequence, in order of their appearance in section 771(5A)(D)(iii) of the Act, and that the Department may find a domestic subsidy to be specific based on the presence of a single *de facto* specificity factor. For example, the Department will first look to see if there is a limited number of users. If the number of users is limited, we will look

no further. In accordance with the SAA, the Department will continue its practice of collecting information regarding each of the four *de facto* specificity factors; however, our analysis of the issue will stop if we determine that a single factor justifies a finding of specificity. As for the SCM Agreement, none of the provisions cited precludes a finding of specificity based on the presence of a single factor. Moreover, a finding that a certain industry receives disproportionate amounts under a particular government program, for example, constitutes positive evidence of specificity even if there are numerous users of the program and there is little discretion in awarding benefits.

Discretion: In endorsing the use of a sequential approach in the preamble to the 1997 Proposed Regulations, we stated, "with the exception of the government discretion factor, the Department may find a domestic subsidy to be specific based on the presence of a single *de facto* specificity factor." (1997 Proposed Regulations at 8824.) Certain commenters objected to the exception of the discretion factor, arguing that the statute accords the exercise of government discretion equal status with the other *de facto* specificity factors. They asked the Department to clarify that the Department may find a subsidy to be specific solely based on the degree of discretion exercised in the administration of a subsidy program.

There appears to be a great deal of confusion and controversy over the role of the fourth factor, discretion, in the finding of *de facto* specificity. Based on the comments received and a review of the statute and SAA, we are elaborating on the statements we made in the preamble to the 1997 Proposed Regulations. As stated in the 1997 Proposed Regulations, we do not believe that a finding of specificity may be based solely on the fact that some measure of discretion may have been exercised in the administration of a subsidy program. This position is consistent with the SAA, which states that if a subsidy program is broadly available and widely used and there is no evidence of dominant or disproportionate use, the mere fact that government officials may have exercised discretion in administering the program is insufficient to justify a finding of specificity. SAA at 931.

Based on our experience in administering the CVD law, some measure of administrative discretion exists in the operation of almost every alleged subsidy program. At the most basic level, an administrator of a program typically must exercise judgment or discretion in evaluating the facts and merits of an application for a subsidy to determine whether the applicant qualifies for the subsidy. If we were to find specificity based simply on the exercise of this type of discretion, the other *de facto* factors would be rendered meaningless, because virtually every subsidy program in the world could be declared specific on the basis of the discretion factor alone. This is clearly an absurd result and could not have been the intent of Congress.

Instead, section 771(5A)(D)(iii)(IV) of the Act provides that a subsidy is specific if:

> The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that *an enterprise or industry is favored over others.* (Emphasis added.)

This language does not focus on discretion alone. Rather, it states that discretion is relevant only to the extent that it is exercised in a manner that favors one enterprise or industry over others. This distinction is important because it supports the statements made in the SAA and the position we are taking in these regulations. Haphazard, random, or purposeless discretion cannot by itself indicate specificity. Only discretion that shows favoritism toward some enterprises or industries over others can inform the question of specificity. In the Department's experience, favoritism generally will manifest itself as one of the first three *de facto* factors: A limited number of users, dominant users, or one or a few users receiving a disproportionate amount of the subsidy. For example, administrators of a program could exercise discretion in selecting some industries instead of others as beneficiaries. If the selected industries constituted a limited number of industries, there would be specificity. Similarly, if benefits were distributed such that there was a predominant user or such that certain users received disproportionate benefits, there would be specificity. However, if the selected industries constituted more than a limited number of industries, if there were no dominant users or disproportionate benefits to certain users, or if there were no other indication that one or a group of enterprises or industries was favored over others, the program would not be specific.

As indicated in the SAA at 931, the discretion factor is generally more valuable as an analytical tool that enhances the analysis of the other *de facto* specificity factors and criteria. The example given in the SAA is the case of a new subsidy program for which there have been few applicants and few recipients. In accordance with section 771(5A)(D)(iii) of the Act, in evaluating the four *de facto* factors, the Department must take into account "* * * the length of time during which the subsidy program has been in operation." In the case of a new program, the first three factors—limited number of users, dominant user, or disproportionately large user—may provide little or misleading indication regarding whether the program is *de facto* specific. Therefore, the manner in which authorities have exercised their discretion in the early days of a new program (*e.g.*, by excluding certain applicants and limiting the benefit to a particular industry) might be more useful for the Department in making a specificity determination. *See* SAA at 931.

Discretion can also come into play where evidence relating to the first three factors is inconclusive. As an example, where the number of users is borderline, discretion may help to inform whether there is specificity. In this situation, the factors we might consider in analyzing the relevance of discretion include the number of applicants that are turned down, the reasons they are turned down, and the reasons successful applicants are chosen.

Characteristics of a "group": New paragraph (b) clarifies the Department's position regarding whether the Department must examine the "actual make-up" of a group of beneficiaries when performing a specificity analysis. Citing *PPG Industries, Inc.* v. *United States*, 978 F.2d 1232, 1240–41 (Fed. Cir. 1992) ("*PPG II*"), one group of commenters argued that, to be consistent with judicial precedent, the Department must undertake such an analysis. According to these commenters, if a group of recipients does not share similar characteristics but, instead, consists of companies in a variety of industries, the Department cannot conclude that the subsidy in question is limited to a "group of industries." Moreover, they argued, nothing in the Act or the SAA requires the Department to ignore the characteristics of the group receiving the benefits from an alleged subsidy program.

Other commenters argued that the Department can identify a "group" of subsidy recipients without regard to any shared characteristics of the individual group members. According to these commenters, a proper understanding of what may constitute a specific "group of industries" flows directly from the

purpose of the specificity test as articulated in *Carlisle Tire & Rubber Co. v. United States*, 564 F. Supp. 834 (CIT 1983) (*"Carlisle"*); namely, that subsidy recipients should be considered a specific group unless the recipient industries are numerous and distributed very broadly throughout the economy. Moreover, these commenters maintained that the Department has on several occasions found subsidy programs specific even when the "group" of recipients has not shared common characteristics. *See, e.g., Steel Wheels from Brazil*, 54 FR 15523, 15526 (April 18, 1989) and *Cold-Rolled Carbon Steel Flat-Rolled Products from Korea*, 49 FR 47284, 47287 (December 3, 1984).

As noted in the preamble to the 1997 Proposed Regulations, we disagree with the first set of comments. Section 771(5A)(D) of the Act provides that a subsidy may be found to be specific if it is limited to a "group" of enterprises or industries. There is no requirement that the members of a group share similar characteristics. The purpose of the specificity test is simply to ensure that subsidies that are distributed very widely throughout an economy are not countervailed. There is no basis for adding the further requirement that subsidies that are not widely distributed are also confined to a group of enterprises or industries that share similar characteristics. *See, e.g., Certain Refrigeration Compressors from the Republic of Singapore*, 61 FR 10315 (March 13, 1996).

Assuming, *arguendo*, that *PPG II* is relevant under the new law, this decision upheld the Department's determination that the program in question was not specific. To put *PPG II* in its proper context, it is necessary to understand the facts presented in the underlying CVD case. In that case, there were numerous enterprises that used the program under investigation. Therefore, when looked at in terms of the number of enterprises, the actual recipient enterprises did not appear to be limited. However, this conclusion says nothing about whether the number of industries that received benefits under the program was limited. To answer this question, the Department (and the Court) correctly focused on the makeup of the users. If the numerous enterprises that received benefits had comprised a limited number of industries, then the program would have been specific. However, because the users represented numerous and diverse industries, the program was found not to be specific. There is no basis in *PPG II* or in the language of section 771(5A)(D) of the Act for concluding that there is a requirement that the limited users also share similar characteristics. Moreover, such a requirement would undermine the purpose of the specificity test as articulated in the SAA.

Several commenters have urged the Department to codify our position with respect to this issue. Because this issue is not addressed in the statute or the SAA, we have adopted this suggestion. Accordingly, § 351.502(b) provides that the Secretary is not required to determine whether there are shared characteristics among enterprises or industries that are eligible for, or actually receive, a subsidy in determining whether that subsidy is specific.

Integral linkage: Paragraph (c) is a new paragraph which sets out our revised test for considering two or more subsidy programs to be "integrally linked." Section 355.43(b)(6) of the 1989 Proposed Regulations provided that, for purposes of applying the specificity test, the Department would consider two or more subsidy programs as a single program if the Secretary determined that the programs were "integrally linked." Section 355.43(b)(6) also set forth factors to be considered in making this determination.

In the 1997 Proposed Regulations, we opted not to incorporate § 355.43(b)(6) into these regulations. We noted that claims of integral linkage were relatively rare, and that when they did arise, we did not find the factors set forth in § 355.43(b)(6) particularly helpful. We did not, however, rule out the possibility of considering two or more ostensibly separate subsidy programs as constituting a single program for specificity purposes, and we outlined circumstances that might lead us to do so.

We received a number of comments requesting that we promulgate a regulation which allows for integral linkage. Two commenters argued that, in addition to the factors discussed in the preamble, the regulation should re-codify certain of the factors found in the 1989 Proposed Regulations. These commenters also suggested that programs should not be considered to be integrally linked unless they were linked "at their inception." These commenters asked the Department to clarify that it will view claims of integral linkage narrowly and that respondents will be required to establish that the programs are linked by clear and convincing evidence. Other commenters argued that the factors enumerated in both the 1989 Proposed Regulations and in the preamble to the 1997 Proposed Regulations are too restrictive and that any integral linkage test should not be applied narrowly.

We have given further consideration to our earlier decision not to codify an integral linkage test. In light of the interest in this issue, and the fact that we have had experience with a regulation on this topic, we have concluded that it would be beneficial to parties to promulgate a rule describing when two or more separate programs may be integrally linked and treated as one program for specificity purposes. We have not codified the 1989 rule because, as we stated in the preamble to our 1997 Proposed Regulations, we did not find the factors enumerated in that provision to be particularly useful. Instead, § 351.502(c) provides that integral linkage is possible in situations where the subsidy programs have the same purpose (*e.g.*, to promote technological innovation), bestow the same type of benefit (*e.g.*, long-term loans or tax credits), confer similar levels of benefits on similarly situated firms, and were linked at their inception.

We believe these factors are more useful for finding integral linkage than those contained in the 1989 Proposed Regulations because they require evidence of similarities in the purposes and administration of the programs which are more than coincidental. For example, where a government claims that a program is integrally linked with another program, § 351.502(c)(4), which calls for the programs to be linked at inception, requires evidence that, in establishing the most recent program, the government's clear and express purpose was to complement the other program.

As stated in the preamble to the 1997 Proposed Regulations, when an interested party believes that two or more programs should be considered in combination for purposes of the Department's specificity analysis, that party will have the burden of identifying the relevant programs and supporting its contention that the programs are integrally linked by providing information and documentation regarding the purpose, type and levels of benefit associated with the programs.

Agricultural subsidies: Paragraph (d) is based on § 355.43(b)(8) of the 1989 Proposed Regulations and is the same as § 351.502(a) of the 1997 Proposed Regulations. It provides that the Secretary will not consider a domestic subsidy to be specific solely because it is limited to the agricultural sector. Instead, as under prior practice, the Secretary will find an agricultural subsidy to be countervailable only if it is specific within the agricultural sector, *e.g.*, a subsidy is limited to livestock, or

livestock receive disproportionately large amounts of the subsidy. See, *e.g., Lamb Meat from New Zealand*, 50 FR 37708, 37711 (September 17, 1985).

One commenter suggested that the Department should abandon the special specificity rule for agricultural subsidies, citing the fact that under section 771(5B)(F) of the Act and Article 13(a) of the WTO Agreement on Agriculture, so-called "green box" agricultural subsidies are non-countervailable. With respect to this comment, we note that the Department's application of the specificity test to agricultural subsidies was upheld in *Roses, Inc.* v. *United States*, 774 F. Supp. 1376 (CIT 1991) ("*Roses*"). Given the absence of any indication that Congress intended the "green box" rules to change the Department's practice or to overturn *Roses*, we are retaining the special specificity rule for agricultural subsidies.

Subsidies to small- and medium-sized businesses: Paragraph (e) is based on § 355.43(b)(7) of the 1989 Proposed Regulations, and continues to provide that the Secretary will not consider a subsidy to be specific merely because it is limited to small or small- and medium-sized firms. Instead, as under prior practice, the Secretary will find such a subsidy to be countervailable if, either on a *de jure* or a *de facto* basis, the subsidy is limited to certain small or small- and medium-sized firms. As in the case of the special specificity rule for agricultural subsidies, there is no indication that Congress intended to alter this aspect of the Department's specificity practice. We received no comments regarding this rule.

Disaster relief: Paragraph (f) provides that the Secretary will not regard disaster relief as a specific subsidy if the relief constitutes general assistance available to anyone in the affected area. Although paragraph (f) has no counterpart in the 1989 Proposed Regulations, the rule contained in paragraph (f) has been part of the Department's specificity practice since *Certain Steel Products from Italy*, 47 FR 39356, 39360 (September 7, 1982), in which the Department stated that "[d]isaster relief is not selective in the same manner as other regional programs since there is no predetermination of eligible areas and no part of the country, and no industry, is excluded from eligibility in principle." However, before declaring a subsidy to be non-specific under paragraph (f), the Department would have to be satisfied that the subsidy in question was, in fact, *bona fide* disaster relief. *See Certain Steel Products from Italy*, 58 FR 37327, 37332 (July 9, 1993). We received no comments regarding this rule.

Purpose of the specificity test: Some commenters requested that the Department restate in the regulations the policy rationale behind the specificity test. According to these commenters, the underlying purpose of the specificity test is to identify those domestic subsidies that confer a competitive advantage and thereby distort international trade. Other commenters pointed out that the new statute expressly states that the Department is not required to examine the effects of a subsidy or establish that the subsidy has any effect at all. These commenters, citing the reference to the *Carlisle* decision in the SAA, maintain that the sole purpose of the specificity test is to "winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy." SAA at 929–30.

In our view, the language from the SAA cited above makes the purpose of the specificity test abundantly clear. Given the clarity of the SAA on this point, the authoritative nature of the SAA (*see* 19 U.S.C. 3512(d)), and our general reluctance to issue regulations that merely repeat the statute or the SAA, we do not consider it appropriate to issue a regulation that restates the purpose of the specificity test.

Use of presumptions: Some commenters suggested that in applying the specificity test, the Department should employ certain presumptions. These commenters maintained that, when investigating a domestic subsidy program (and when considering whether to initiate an investigation of such a program), the Department should presume that the foreign government in question exercises discretion in the administration of the program, and that the program is specific. These commenters maintained that, because information regarding applications and approvals generally is not available to petitioners prior to the filing of a petition, the burden should be on respondent interested parties to provide such information and to rebut the presumption of specificity. One commenter also suggested that the Final Regulations should state that a previous finding that a subsidy was *de facto* non-specific should have no relevance when the same subsidy program is alleged in a new investigation involving different merchandise and different facts.

Other commenters argued that there is no legal basis for making presumptions regarding specificity. With respect to *de facto* specificity, the SAA states that the Department is obligated to "seek and consider" information relevant to each of the four factors listed in section 771(5A)(D)(iii) of the Act. SAA at 931. One of these commenters also asserted that a petitioner alleging that a subsidy is specific should be required to provide a reasonable amount of information supporting the allegation.

As was true under the law prior to the URAA, we note that a petition to initiate an investigation of alleged domestic subsidies must provide reasonably available information supporting the allegation that the subsidy is specific. *See* section 702(b) of the Act. On the other hand, we recognize that because detailed information regarding the distribution of program benefits usually either is not published or is not widely available, information supporting specificity often is not reasonably available to a petitioner at the time a petition is filed. Therefore, in deciding whether to include alleged domestic subsidies in our investigation, we carefully consider the information the petitioner has put forward, the reasons that more information may not be available, and any arguments the petitioner makes regarding the specificity of the program. Because the types of allegations and information available will vary from case to case, it is not possible to state a general rule for accepting or rejecting specificity allegations. However, we believe that the threshold we have used in the past for including alleged subsidies in CVD investigations has been sufficient to ensure that all potentially countervailable subsidies are investigated. We intend to continue employing this initiation threshold.

In this regard, we note that when a subsidy program has been previously investigated and found to be non-specific, it would be a waste of administrative resources to re-investigate that program without a reasonable basis to believe that the facts supporting the previous finding have changed. In situations where a previous finding may be pertinent to one industry, *e.g.*, that the paper clip industry did not receive dominant or disproportionate benefits under a particular program, petitioners seeking investigation of benefits under that program to the staple industry should allege that the program has changed or that the situation of the staple industry differs, and they should support their allegation with reasonably available information.

Where domestic subsidy programs are included in an investigation, we will not presume such programs are specific. Instead, we will seek in our questionnaire all of the information

necessary to apply the specificity test according to section 771(5A)(D) of the Act. Based on our analysis of the information provided in the questionnaire responses, verification, and other information that may be collected, we will make the necessary specificity determination. If a respondent refuses to provide the information requested by the Department to conduct its specificity analysis, we may draw adverse inferences in the application of "facts available." *See* section 776(b) of the Act. However, the use of an adverse inference in these situations is not the same thing as relying on a rebuttable presumption of specificity.

Purposeful government action: In our 1997 Proposed Regulations, we noted that certain commenters, citing such cases as *Saudi Iron and Steel Co. (Hadeed)* v. *United States*, 675 F. Supp. 1362, 1367 (CIT 1987), maintained that a finding of specificity does not require a finding of targeting or some other sort of purposeful government action that limits the number of subsidy program beneficiaries. They cited the statute and its legislative history for the proposition that the Department should deem irrelevant the fact that program usage may be limited by the "inherent characteristics" of the thing being provided by the government. SAA at 932; S. Rep. No. 103–412 at 94 (1994).

In the preamble to the 1997 Proposed Regulations, we agreed with these commenters, stating:

> [e]xcept in the special circumstances described in section 771(5A), *i.e.*, where respondents request the Department to take into account the extent of economic diversification in the jurisdiction of the granting authority or the length of time during which the program has been in operation, the Department is not required to explain why the users of a subsidy may be limited in number.

Several of the same commenters objected to this statement, arguing that it could be misinterpreted to mean that evidence of purposeful action is required in some instances. These commenters requested that the Department clarify, in a regulation, that purposeful government action is *never* required.

As we stated in the 1997 Proposed Regulations, the SAA and other legislative history are clear on this point. The SAA clearly indicates that the Department does not need to find "targeting" or "purposeful government action" to conclude that a domestic subsidy is specific. *See* SAA at 932 ("(E)vidence of government intent to target or otherwise limit benefits would be irrelevant in *de facto* specificity analysis"). Thus, for example, the fact that users may be limited due to the inherent characteristics of what is being offered would not be a basis for finding the subsidy non-specific. SAA at 932; S. Rep. No. 103–412 at 94 (1994). Regarding situations where the Department is asked to consider the economic diversification in the jurisdiction or the length of time during which the program has been in operation, neither purposeful government action nor targeting is required to find specificity. However, evidence indicating that the government has taken or will take actions to limit benefits to certain industries would be sufficient to find specificity.

Universe: One commenter argued that, in determining whether subsidies are specific, the Department generally should focus on the level of benefits provided to recipients, rather than the number of recipients to whom subsidies are provided. This commenter also argued that, in analyzing the level of benefits provided, the Department's point of reference should be the economy as a whole, as it was for the preferential loan programs used by the Korean steel industry in *Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993) ("*Korean Steel*"), rather than those enterprises or industries that were eligible to receive the subsidy.

For the most part, we disagree. The starting point of the Department's analysis of specificity will always be the number of users. We normally will not analyze the level of benefits provided (that is, whether the recipients were dominant or disproportionate users of the program) unless the subsidy in question was provided to numerous and diverse industries. Even in that situation, it may be impracticable or impossible to determine the relative level of benefits.

Once we have decided to analyze the level of benefits provided, our point of reference normally will be the enterprises or industries that received benefits under the program. In other words, we will attempt to determine whether one or a limited number of the recipient enterprises or industries were, in fact, dominant or disproportionate users. In certain limited circumstances, however, it may be appropriate to determine whether the benefits received by a particular enterprise or industry or group thereof were disproportionate in relation to the economy as a whole. The Department employed this approach in *Korean Steel*, because the type of subsidy under investigation—governmental use of the economy-wide banking system to direct credit to steel producers—required the broader analysis. We consider the Korean situation to be unusual compared with the majority of cases in which we have analyzed specificity. In addition, we agree that the analysis of whether an enterprise or industry or group thereof is a dominant user of, or has received disproportionate benefits under, a subsidy program should normally focus on the level of benefits provided rather than on the number of subsidies given to different industries.

Section 351.503

Section 351.503 deals with the concept of benefit. Under section 771(5)(B) of the Act and Article 1.1(b) of the SCM Agreement, a government action must confer a benefit in order to be considered a countervailable subsidy. Hence, the notion of benefit is central to the administration of the CVD law. In the preamble to the 1997 Proposed Regulations, we included a lengthy discussion of this topic. We described a benefit as being conferred when a firm pays less for an input than it otherwise would pay or receives more revenue than it otherwise would earn. Given the crucial role that benefit plays in our analysis of whether a government action confers a countervailable subsidy, we have decided to codify a final rule regarding benefit that reflects the principles outlined in the 1997 Proposed Regulations.

Paragraph (a) states that, where a specific rule for the measurement of a benefit is contained in these regulations, we will determine the benefit as provided in that rule. Where a government program is covered by a specific rule contained in these regulations, such as a program providing grants, loans, equity, direct tax exemptions, or worker-related subsidies, we will not seek to establish, nor entertain arguments related to, whether or how that program comports with the definition of benefit contained in this section.

Paragraph (b) outlines the principles we will follow when dealing with alleged subsidies for which these regulations do not establish a specific rule. In such instances, we will normally consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn.

We have adopted this definition because it captures an underlying theme behind the definition of benefit contained in section 771(5)(E) of the Act and, in our estimation, reflects the fundamental principles that we have

articulated over the years with respect to programs and practices that we have determined confer either direct or indirect countervailable subsidies. One common element the four illustrative examples set forth in the statute share is that, in the overwhelming majority of cases, the recipient of a government financial contribution, income or price support, or indirect subsidy, enjoys a reduction in input costs or revenue enhancement that it would not otherwise have enjoyed absent the government action. As explained below, we are using the terms "input" and "cost" broadly.

While we believe that this definition will provide useful guidance, we recognize that there may be programs or practices not fitting the input cost reduction or revenue enhancement definition in some economic or accounting senses that may still give rise to a benefit in the sense that the program or practice is similar to the illustrative examples listed in section 771(5)(E) of the Act. For example, without attempting to create a hypothetical program or practice not yet encountered in our experience, we would argue that a program that is similar to a countervailable equity infusion constitutes a reduction in a firm's cost of capital, or that a program that is similar to a countervailable provision of a freight forwarding service constitutes a reduction in a firm's input costs. Since both practices constitute a reduction in the cost of an input, there would be a benefit. We recognize that some might take issue with whether equity or a freight forwarding service is in fact an input into subject merchandise, or whether equity or freight forwarding constitutes a cost of producing subject merchandise. Nonetheless, in these and other instances in which a program or practice contains elements similar to those in the illustrative examples in the statute, a benefit would still exist. As explained further below, when we talk about input costs in the context of the definition of benefit, we are not referring to cost of production in a strict accounting sense. Nor are we referring exclusively to inputs into subject merchandise. Instead, we intend the term "input" to extend broadly to any input into a firm that produces subject merchandise.

When we talk about a firm paying less for its inputs than it otherwise would pay (or receiving more revenues than it otherwise would earn), we are referring to the lower price it pays to acquire the thing provided by the government (*e.g.*, money, a good, or a service), or the increased revenue it receives as a result of a government action. We believe that the definition of benefit outlined here is consistent with the various standards (or "benchmarks") used to identify and measure the benefit from different subsidy programs that are contained in section 771(5)(E) of the Act and Article 14 of the SCM Agreement. For example, when the amount that a firm pays on a government-provided loan is less than what the firm "would pay on a comparable commercial loan that the (firm) could actually obtain on the market," the firm's cost of borrowing money is reduced. *See* section 771(5)(E)(ii) of the Act. Similarly, when a firm sells its goods to the government and "such goods are purchased for more than adequate remuneration," the firm's revenues are increased beyond what it would otherwise earn. *See* section 771(5)(E)(iv) of the Act. In neither instance need the Department do more than apply the test enumerated by the statute in order to find that a benefit has been conferred.

Paragraph (b)(2) cautions that the definition of benefit as an input cost reduction or revenue enhancement does not limit our ability to impose countervailing duties when the facts of a particular case indicate that a financial contribution has conferred a benefit, even if that benefit does not take the form of a reduction in input costs or an enhancement of revenues. We will examine the concept of benefit in this broader sense by looking to see whether the alleged program or practice contains elements similar to the examples listed in sections 771(5)(E)(i) through (iv) of the Act. We cannot possibly foresee all the types of government actions we will encounter in administering the CVD law and, hence, cannot write a definition of benefit that would be sufficiently broad to capture all possible countervailable subsidies.

In this regard, it is important to note here our practice of not applying the CVD law to non-market economies. The CAFC upheld this practice in *Georgetown Steel Corp.* v. *United States*, 801 F.2d 1308 (Fed. Cir. 1986). See also GIA at 37261. We intend to continue to follow this practice. Where the Department determines that a change in status from non-market to market is warranted, subsidies bestowed by that country after the change in status would become subject to the CVD law.

We received several comments regarding the proposed definition of benefit. Two commenters expressed the opinion that the definition is too restrictive. These parties identified examples of benefits which they believed would not be captured under the proposed definition. The first example is where a domestic purchaser is the *only* customer for an input provided by a government entity or where non-domestic purchasers are not allowed to purchase an input. In these situations, the commenter maintains that there could be a benefit even though the price paid is not less than any other domestic price. The second example is where a transaction is structured so that the firm pays market value for the input but receives other perquisites, such as a higher-quality input or additional services or goods as part of a package.

We disagree that our definition of a benefit is not comprehensive enough to include these types of scenarios. The definition of a benefit (in the absence of a specific rule for the measurement of the benefit) does not call for comparisons only to other domestic prices. Rather, it calls for a determination of whether the input costs were reduced relative to what they would be in the absence of the financial contribution. In the first example, a benefit exists to the extent that the domestic purchaser would have paid more for the input absent the government provision or absent the restrictions placed on foreign purchasers. Likewise, in the second example, if the firm would have had to pay more in order to receive the additional perquisites without the government assistance, a benefit exists. Section 351.511, governing the provision of goods and services, contains more detailed guidance on how such subsidies would be valued.

Another commenter supported the proposed definition, but urged the Department to leave itself enough flexibility so that we could find a benefit when government action enables a firm to sell a product that would not have been created but for the government assistance. For example, if the government assists in the development of a new product, this commenter asserted that the benefit is not the reduced development cost of the new product, but the continuing existence of the product.

We believe that in situations such as that described by the commenter, the existence of a benefit is directly dependent upon the nature of the financial contribution. If a financial contribution has been provided, either directly or indirectly, in a form which is specifically identified in the statute or regulations (*e.g.*, a loan, a grant, an equity infusion, etc.), we will identify and measure the resulting benefit in accordance with the rules contained in the statute and regulations. If the financial contribution takes a form

which has not been specifically dealt with in these regulations, we will identify and measure the benefit in accordance with the definition of benefit contained in paragraph (b). Moreover, as noted above, paragraph (b) provides sufficient flexibility to accommodate circumstances in which the facts of a particular case indicate that a financial contribution has conferred a benefit, even if the benefit does not take the form of a reduction in input costs or an enhancement of revenues.

Finally, one commenter objected to the following statement which was included in the preamble to the 1997 Proposed Regulations: "By the same token, where a firm does not pay less for an input than it otherwise would pay (or its revenues are not increased) as a result of a financial contribution, it would be very difficult to contend that a benefit exists." This commenter argued that we should not define the types of practices which do not confer benefits as this would invite the creation and exploitation of loopholes.

We agree that we need only provide a definition of what constitutes a benefit. We believe we have given ourselves the flexibility to apply the concept of benefit in such a way that we will be able to find a benefit in situations in which the regulations do *not* contain specific rules for identifying and measuring the benefit from a particular government program or practice.

We received several comments regarding the extent to which the Department should consider the overall "effect" a government program has on a firm's behavior in determining whether a benefit exists. One group of commenters requested an affirmative statement preserving the Department's discretion to consider "effects" in appropriate circumstances. Another group of commenters urged us to renounce any use of our discretion and to state that the effects of government actions are irrelevant to the existence of a countervailable subsidy.

As we explained in the preamble to the 1997 Proposed Regulations, the determination of whether a benefit is conferred is completely separate and distinct from an examination of the "effect" of a subsidy. In other words, a determination of whether a firm's costs have been reduced or revenues have been enhanced bears no relation to the effect of those cost reductions or revenue enhancements on the firm's subsequent performance, such as its prices or output. In analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy. Our emphasis on reduced-cost inputs and enhanced revenues is derived from elements contained in the examples of benefits in section 771(5)(E) of the Act and in Article 14 of the SCM Agreement. In contrast, the effect of government actions on a firm's subsequent performance, such as its prices or output, cannot be derived from any elements common to the examples in section 771(5)(E) of the Act or Article 14 of the SCM Agreement.

For example, assume that a government puts in place new environmental restrictions that require a firm to purchase new equipment to adapt its facilities. Assume also that the government provides the firm with subsidies to purchase that new equipment, but the subsidies do not fully offset the total increase in the firm's costs—that is, the net effect of the new environmental requirements and the subsidies leaves the firm with costs that are higher than they previously were.

In this situation, section 771(5B)(D) of the Act, which deals with one form of non-countervailable subsidy, makes clear that a subsidy exists. Section 771(5B)(D) of the Act treats the imposition of new environmental requirements and the subsidization of compliance with those requirements as two separate actions. A subsidy that reduces a firm's cost of compliance remains a subsidy (subject, of course, to the statute's remaining tests for countervailability), even though the overall effect of the two government actions, taken together, may leave the firm with higher costs. As another example, if a government promulgated safety regulations requiring auto makers to install seat belts in back seats, and then gave the auto makers a subsidy to install the seat belts, we would draw the same conclusion. In the two examples, the government action that constitutes the benefit is the subsidy to install the equipment, because this action represents an input cost reduction. The government action represented by the requirement to install the equipment cannot be construed as an offset to the subsidy provided to reduce the costs of installing the equipment.

Thus, if there is a financial contribution and a firm pays less for an input than it otherwise would pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned. The Department need not consider how a firm's behavior is altered when it receives a financial contribution that lowers its input costs or increases its revenues.

If there were any doubt on this score, section 771(5)(C) of the Act eliminates it by clarifying that the "benefit" and the "effect" of a subsidy are two different things. While, as stated above, there must be a benefit in order for a subsidy to exist, section 771(5)(C) of the Act expressly provides that the Department "is not required to consider the effect of the subsidy in determining whether a subsidy exists." This message is reinforced by the SAA at 926, which states that "the new definition of subsidy does not require that Commerce consider or analyze the effect (including whether there is any effect at all) of a government action on the price or output of the class or kind of merchandise under investigation or review."

Paragraph (c) of the new regulation further reinforces this principle by stating affirmatively that, in determining whether a benefit is conferred, the Department is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered.

When we examine indirect subsidies, we are inquiring into whether a government is entrusting or directing a private entity to provide a reduced-cost input or enhanced revenue to a firm that produces the subject merchandise. For example, we have investigated whether below-market loans or reduced-cost goods have been provided by means of indirect subsidies. This analysis in no way implies that we are examining whether the indirect subsidy has an effect on the price or output of the subject merchandise. It merely means that we are investigating, in fulfillment of other statutory requirements, whether loans were provided on non-commercial terms or whether goods were provided for less than adequate remuneration.

In addition to those comments relating specifically to our proposed definition of a benefit, we received comments on other topics which we believe are appropriately addressed in the context of a discussion on benefits. First, one commenter objected to the absence of a regulation regarding so-called "tiered" programs. Tiered programs are those programs which provide varying levels of government assistance based upon differing eligibility criteria. Our longstanding practice regarding such programs has been to countervail only the difference between the assistance provided at a

non-specific level (within the meaning of section 771(5A) of the Act) and the assistance provided to a specific enterprise or industry (or group thereof). This practice was reflected in § 355.44(n) of the 1989 Proposed Regulations.

Our omission of a similar rule in this round of regulations was an oversight. To correct for this, we have added paragraph (d), which provides that where varying levels of financial contributions are provided, a benefit will be conferred to the extent that a specific enterprise or industry or group thereof receives a greater level of financial contribution than that provided at the non-specific level. The varying financial contribution levels must be set forth in a statute, decree, regulation, or other official act, and they must be clearly delineated and identifiable (*e.g.*, the investment tax credit program in *Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10041 (March 24, 1986)). We note, however, that this exception cannot apply where the statute specifies a commercial test for determining the benefit, such as with respect to loans and loan guarantees.

Another related topic involves the treatment of taxes on subsidies. Typically, we have referred to this issue as the "secondary tax consequences" of subsidies. Section 351.527 of the 1997 Proposed Regulations stated that we would not take account of secondary tax consequences. For example, if receipt of a grant increases the amount of income tax paid by a firm, we do not reduce the amount of the benefit from the grant to reflect the higher taxes paid. In these Final Regulations, we have retained this rule and have relocated it to § 351.503(e).

We received two comments expressing support for the 1997 Proposed Regulations. One of these commenters requested that we include in the regulation the following corollary, which flows from the same basic principle: where a subsidy is exempt from income tax, we will treat the tax exemption as a separate benefit in addition to the benefit from the original subsidy. An additional commenter requested that the regulation be expanded to clarify that we will not consider any secondary consequences or effects of the granting of the subsidy outside the exclusive list of subsidy offsets designated by the statute. To this end, this commenter advocated including the list of allowable offsets in the regulations and stating that we will not consider secondary consequences of the benefit. We have not added the requested language because the statute is clear regarding what is considered to be an allowable offset. Nor have we broadened the regulation as requested by either commenter. We believe that the impact of the benefit under one subsidy program should not be considered in calculating the benefit under a separate program. However, in our experience, this question has only arisen with respect to the impact of tax programs on other programs. Therefore, a broader regulation is not necessary.

Section 351.504

Section 351.504 deals with the benefit attributable to the most basic type of subsidy, a grant. In the 1997 Proposed Regulations, paragraph (c) of this section (which was then numbered § 351.503) included our methodology for allocating over time the benefit from a grant, or the benefit from a subsidy that the Department treated as a grant. In these Final Regulations, we have broken out the allocation issues from the grant section and created a separate section (§ 351.524) which deals with the allocation of benefits to a particular time period. Therefore, § 351.504 now pertains only to grants.

As in our 1997 Proposed Regulations, paragraph (a) provides that in the case of a grant, a benefit exists in the amount of the grant. Paragraph (b) sets forth the rule for determining when a firm is considered to have received a subsidy provided in the form of a grant. This paragraph provides that the Secretary will normally consider the benefit as having been received on the date on which the firm received the grant. In these Final Regulations, we have added the word "normally" for reasons explained in the preamble discussion of § 351.524. Finally, paragraph (c) provides that the benefit from a grant will be allocated to a particular time period pursuant to the methodology set forth in § 351.524.

All the comments that we received regarding grants dealt with the allocation of benefits. These comments are, therefore, discussed in the preamble to § 351.524.

Section 351.505

Section 351.505 deals with loans and other forms of debt financing. Paragraph (a) deals with the identification and measurement of the benefit attributable to a loan. Paragraph (a)(1) tracks the general standard set forth in section 771(5)(E)(ii) of the Act, which directs the Department to use a "comparable commercial loan that the recipient could actually obtain on the market" as the benchmark in determining whether a government-provided loan confers a benefit.

Use of Effective Interest Rates: Paragraph (a)(1) restates the Department's current practice of normally seeking to compare effective interest rates rather than nominal rates in making this comparison. "Effective interest rates" are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges (such as stamp taxes) or penalties paid in addition to the "nominal" interest. However, where effective rates are not available, we will compare nominal rates or, as a last resort, nominal to effective rates, as under current practice. If the "loan" is a bond (*see* definition of "loan" in § 351.102), we normally will treat the yield on the bond as the effective interest rate.

One commenter asked that the regulations clarify that only payments legitimately made on a loan will be used when calculating the effective interest rate. The commenter urged the Department to exclude other, unrelated payments to the government which the borrower might make along with the loan payments.

We agree with this commenter that payments unrelated to the loan should not be included when we calculate the effective interest rate, but we do not believe that the regulation needs to be modified to address this concern. The preamble clearly describes the types of payments that would be included in calculating an effective interest rate. However, we will examine whether there are requirements placed on either the government loan or the benchmark loan affecting the cost of borrowing that should be factored into the calculation of the benefit amount.

Selection of Benchmark Loans and Interest Rates

Paragraphs (a)(2) and (a)(3) elaborate on the criteria for selecting the benchmark. The criteria contained in these two paragraphs are much more general (and, thus, much more flexible) than the detailed hierarchies contained in § 355.44(b) of the 1989 Proposed Regulations. The Department seldom used these hierarchies because, in practice, the information required in the 1989 Proposed Regulations was seldom available.

"Comparable commercial loan" defined: Paragraph (a)(2) sets forth the criteria the Department normally will consider in selecting a comparable commercial loan. First, paragraph (a)(2)(i) defines the term "comparable." In the preamble to the 1997 Proposed Regulations, we stated that in order to be used as a benchmark, a comparable

commercial loan should represent a financial instrument that is similar to the government-provided loan and that was taken out (or could have been taken out) at the same time. To identify a loan that is comparable to the government-provided loan, the 1997 Proposed Regulations called for primary emphasis to be placed on the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturities of the loans (*e.g.*, short-term v. long-term), and the currencies in which the loans are denominated.

Several commenters maintained that it is not enough to look at the structure, maturity, and currency denomination to identify a benchmark loan that is comparable to the government-provided loan. These commenters argued that the Department should also consider the level of risk associated with the loans by comparing the security or collateral that the borrower is required to provide for each loan. One of the commenters observed that this approach would be consistent with the Department's practice in *Laminated Hardwood Trailer Flooring from Canada*, 62 FR 5201 (February 4, 1997). This commenter also noted that, while the risk element was discussed in the preamble of the 1997 Proposed Regulations, it did not appear in the regulation.

In opposition, another commenter argued that a commercial loan should be considered sufficiently comparable to a government loan when the structures and maturities of the two loans are identical or similar and the loans are provided in the same currency. This commenter argued that in the interest of predictability and uniformity, no further analysis, particularly with regard to the level of security of a loan, should be necessary. This commenter asserted that, where these three criteria are met, the loans would generally require the same level of security. Comparing the value of different assets securing different loans would create an unworkable test, according to the commenter, who suggested that the Department at least make it a rebuttable presumption that a commercial and a government-provided loan are comparable if the three criteria listed above match.

We have not adopted the proposals put forward by either set of commenters. As in the 1997 Proposed Regulations, § 351.505(a)(2)(i) states that we intend to place primary emphasis on three basic characteristics in determining whether particular loans are comparable to a government-provided loan: The structure, maturity, and currency denomination of the loans. This does not mean, however, that a loan in the same currency with a similar structure and maturity will always be found comparable to the government-provided loan. Nor should our decision to place primary emphasis on these three characteristics be seen as a rebuttable presumption.

Instead, we recognize that many characteristics could factor into a decision of whether a loan should be considered comparable to the government-provided loan. Certainly, as the first set of commenters has pointed out, the levels of security or collateral on the two loans could be relevant in determining comparability. Similarly, the amounts of principal might differ so greatly that the two loans should not be compared. However, rather than identifying numerous characteristics for finding loans to be comparable, and thereby limiting our ability to find benchmarks, we have continued to place primary emphasis on what we believe to be the three most important characteristics. Regarding other characteristics that might render particular loans not comparable to the government-provided loan, such as collateral and size, we will consider arguments made by the parties based on the facts presented in their cases.

Paragraph (a)(2)(ii) provides a definition of the term "commercial." The 1997 Proposed Regulations stated that we would normally treat a loan as "commercial" if it were taken out from a commercial lending institution or if it were a bond issued by the firm in commercial markets. We also stated that a loan provided under a government program, even if the program is not specific to an enterprise or industry, would not be considered a "commercial" loan for benchmark purposes. Finally, the 1997 Proposed Regulations stated that the Department would treat a loan from a government-owned bank as a commercial loan, unless there was evidence that the loan was provided at the direction of the government or with government funds.

We received several comments on this issue, all of which urged us not to use loans from government-owned banks for benchmark purposes. One commenter asserted that a loan from a government-owned bank is the same as a loan from the government, regardless of whether the loan is provided under a government program, because the actions of a government-owned bank are presumably consistent with the policies of its owner, the government. A second commenter maintained that the distinction between "a government program" and "government control" is blurred and pointed to the Department's determination in *Certain Steel Products from Korea*, 58 FR 37338 (July 9, 1993), where the Department found that a countervailable benefit was conferred by government-directed, preferential access to specific sources of credit offered at favorable terms. Because of the availability of "directed credit" such as that found in the Korean case, this commenter argued that the Department should not use rates from loans provided by government-owned banks as benchmark rates. A third commenter argued that the Department should not use loans from government-owned banks for benchmark purposes unless the respondent can demonstrate the commercial nature of such loans. This and other commenters objected to the burden that the 1997 Proposed Regulations allegedly placed upon a petitioner to show that a loan from a government-owned bank is provided at the direction of the government or with government funds. Noting that the 1989 Proposed Regulations directed the Department to use financing provided or directed by the government as a benchmark only under certain exceptional circumstances, several commenters urged the Department to continue to apply this narrow standard.

We have traditionally recognized that government-owned banks may operate as commercial banks in some countries. It is not appropriate to maintain that loans from government-owned banks *per se* are not commercial. Therefore, we continue to take the positions that: (1) We will not consider loans provided under government programs to be commercial loans, and (2) we will not automatically disqualify loans from government-owned commercial banks as benchmarks. However, we will not use loans from government-owned special purpose banks, such as development banks, as benchmarks because such loans are similar to loans provided under a government program or at the direction of the government. Regarding loans from government-owned commercial banks, we will treat such loans as being commercial and use them as benchmarks unless they are made on non-commercial terms or are provided at the direction of the government. We do not believe that this standard imposes an unreasonable burden on petitioners because this is the type of information they would routinely provide when alleging that government-provided loans are countervailable.

Further, regarding the definition of "commercial," where a firm receives a financing package including loans from both commercial banks and from the government, we intend to examine the package closely to determine whether

the commercial bank loans should in fact be viewed as "commercial" for benchmark purposes. In particular, we will look to whether there are any special features of the package that would lead the commercial lender to offer lower, more favorable terms than would be offered absent the government/commercial bank package.

Paragraphs (a)(2)(iii) and (iv) specify the time period from which the Department will select comparable financing. Paragraph (a)(2)(iii) addresses long-term loans and is unchanged from the 1997 Proposed Regulations. This regulation directs us to use a loan whose terms were established during or immediately before the year in which the terms of the government-provided loan were established. Paragraph (a)(2)(iv) addresses short-term loans. In the 1997 Proposed Regulations, we stated that we would use as the benchmark rate an annual average of the interest rates on comparable commercial loans taken out during the period of investigation or review. However, in cases with significantly fluctuating interest rates, the 1997 Proposed Regulations allowed us to use "the most appropriate" interest rate as the benchmark rate.

We received two comments regarding the benchmark interest rate for short-term loans. Both commenters argued against using a simple average of the interest rates on comparable commercial short-term loans obtained by the respondent. Instead, they asked the Department to weight the rates by the associated principal amount of each loan in order to prevent small, one-time loans from distorting the benchmark calculation. According to the commenters, this change would also address the Department's concern about significantly fluctuating interest rates.

We have adopted the commenters' proposal in part and have amended paragraph (a)(2)(iv) to provide that we will calculate a weighted rather than a simple average benchmark interest rate for short-term loans. However, we do not share the commenters' view that this change addresses situations where the interest rate fluctuates significantly over the year, *e.g.*, in economies with a high inflation rate. We are, therefore, retaining the provision that allows us to use benchmarks other than annual weighted averages in these situations.

We also wish to clarify that we intend to follow our practice of calculating short-term benchmarks on a calendar year basis. In most instances, the period of investigation or review is a calendar year, so the short-term benchmark will be calculated using commercial loans that were obtained (or could have been obtained) during the period of investigation or review. In situations where the loans under investigation span two calendar years, we will calculate two annual benchmarks corresponding to the two years.

Finally, we received one comment on the selection of benchmark interest rates to be used in administrative reviews of suspension agreements. In the preamble to the 1997 Proposed Regulations, we stated that in administering a suspended investigation, we would monitor developments in commercial benchmarks outside of the normal administrative review process and that this monitoring activity should serve to ensure that the commercial benchmarks used were timely. The commenter, however, claimed that a special regulation requiring the Department to monitor commercial benchmark rates is needed because otherwise there is no guarantee that the Department will do so. In the commenter's experience, the Department has not always undertaken this type of monitoring activity. Specifically, pointing to *Miniature Carnations and Roses and Other Fresh Cut Flowers from Colombia*, 59 FR 52514 (October 18, 1994), the commenter alleged that the Department set new benchmarks at the conclusion of each administrative review, with the result that the interest rates used for purposes of the suspension agreement always lagged behind the contemporaneous commercial rates. For short-term loans, the commenter argued, the Department should monitor commercial interest rates on at least a quarterly basis in order to keep the suspension agreement current.

We do not agree with the commenter's view that a regulation is needed on this issue. In the case of suspension agreements, we will revise the benchmarks for long- and short-term loans whenever appropriate, regardless of whether we are conducting an administrative review of the suspension agreement. To ensure that the benchmarks are kept as current as possible, we intend to review them once a year or more frequently, if information available to the Department indicates that a change is necessary.

"Could actually obtain on the market" defined: In accordance with section 771(5)(E)(ii) of the Act, paragraph (a)(3) addresses the requirement that the comparable loan be one that the firm "could actually obtain on the market," and reflects a change in our practice with respect to short-term loans. In the past, we have used national average interest rates to determine the benefit from government-provided short-term loans. This practice was codified in § 355.44(b)(3) of the 1989 Proposed Regulations. However, as early as 1989, we announced that we would consider using company-specific benchmarks for short-term loans. Based upon our experience in the interim, and especially because of the ability to computerize our loan calculations, we have concluded that we have the capability to use company-specific benchmarks. Moreover, we believe that company-specific benchmarks provide a more accurate measure of the benefit, if any, to a recipient of a government-provided short-term loan. Therefore, paragraph (a)(3)(i) states a preference for using company-specific benchmarks for both short- and long-term loans. Under paragraph (a)(3)(ii), we normally would use national averages only in the event that the firm did not take out any comparable commercial loans during the relevant period. Except for a minor clarification (adding "for both short- and long-term loans" to paragraph (a)(3)(i)), these paragraphs are unchanged from the 1997 Proposed Regulations.

Two commenters warned against using the interest rates on hypothetical loan offers as benchmark rates. One of the commenters pointed to a perceived loophole in the preamble to the 1997 Proposed Regulations, which stated that "a comparable commercial loan used as a benchmark should represent a financial instrument * * * that was taken out (or could have been taken out) at the same point in time." Another commenter suggested that the acceptance of hypothetical loan offers for benchmark purposes might tempt respondents to manipulate the benchmark rate by soliciting offers of loans that they do not intend to take. Both commenters asserted that the interest rates on such hypothetical loan offers would be very low and that they would, thus, distort the benchmark rate.

We agree that respondents should not be permitted to submit hypothetical loans for use as benchmarks. The language in the preamble cited by the commenter was meant to address another situation: Where the respondent did not actually take out any commercial loans during the relevant period and where we, therefore, would use an appropriate alternative benchmark interest rate * * * such as a national average interest rate. The national average interest rate is representative of a loan that "could have been taken out."

Benchmark for uncreditworthy companies: Paragraph (a)(3)(iii), which deals with long-term loans provided to firms considered to be uncreditworthy, describes our methodology for

calculating the benchmark that we will use in identifying and measuring the benefit attributable to a government-provided, long-term loan received by an uncreditworthy firm. One important aspect of this methodology has changed from the 1997 Proposed Regulations.

Our methodology is based explicitly on the notion that, when a lender makes a loan to a company that is considered to be uncreditworthy (as opposed to a safer, creditworthy company), the lender faces a higher probability that the borrower will default on repayment of the loan. As a consequence of this higher probability of default, the lender will charge a higher interest rate. The calculation described in paragraph (a)(3)(iii) addresses the increased probability of default for an uncreditworthy company by adjusting upward the interest rate for a creditworthy company in the country in question.

As stated in the 1997 Proposed Regulations, in making this adjustment, we are not proposing to calculate the probability that a particular uncreditworthy firm will default on a particular loan. Such a calculation would require extensive data and analysis, and any conclusion would be highly speculative. Instead, similar to the method we have used since 1984, we will rely on information regarding the U.S. debt market. In the 1997 Proposed Regulations, we stated that we would use the weighted average one-year default rate for speculative grade bonds, as reported by Moody's Investor Service. This weighted average default rate would be reflected indirectly in our formula for calculating the benchmark interest rate for uncreditworthy companies, which is based on the probability that these risky loans will be repaid.

We received numerous comments on our new methodology. One commenter expressed support for the methodology, stating that it seemed to calculate accurately the full benefit of a loan subsidy. Certain other commenters supported the new methodology as long as it resulted in a "substantial spread" between the observed commercial interest rates in the country under investigation and the benchmark interest rate used for uncreditworthy companies.

One commenter did not object to the new methodology but argued that, in calculating the risk premium, the Department should use data pertaining to the country under investigation, not U.S. data, which should only be used as facts available.

Another commenter criticized the reliance upon default rates in the U.S. "junk" bond market, arguing that U.S. data do not reflect the risk of lending to uncreditworthy companies in foreign countries, especially developing countries where the default rate is likely to be much higher. This commenter also criticized the use of a one-year default rate in the calculation of the risk premium, arguing that this significantly understates the overall default rate because default is more likely after the first year of the life of a loan. Should the Department decide to rely on U.S. market data, the commenter asked that the Department, at a minimum, examine the default rate over 10 years.

Another commenter stated that the Department's new methodology implies a serious departure from the statutory mandate to determine an interest rate that the borrower could actually obtain on the market. First, the commenter argued, a default-based premium does not take into account all the costs associated with lending to an uncreditworthy company, *e.g.*, collection costs and lost opportunity costs and, as a result, the premium is understated. Second, the commenter asserted, the new methodology treats all uncreditworthy borrowers as if they were large corporate borrowers able to issue junk bonds of the kind reported by Moody's. According to this commenter, many companies cannot obtain long-term loans even at junk bond rates and are forced to rely on borrowing from the venture capital market at substantially higher interest rates. In reality, the commenter argued, a private lender would assess a company's creditworthiness on a case-by-case basis using the same financial indicators that the Department has relied upon in the past (*see* § 355.44(b)(6)(i) of the 1989 Proposed Regulations). The regulations, therefore, should reflect such private lender behavior by directing the Department to determine the risk premium on a case-by-case basis.

Finally, two commenters noted that the European Union ("EU") takes a tougher stance on government loans to uncreditworthy borrowers by treating the entire loan as a grant when the recipient company's financial position is so weak that it could not have obtained a commercial loan, and implied that the Department should follow the EU's example.

As stated in the 1997 Proposed Regulations, we are changing our methodology because we believe that the new methodology more appropriately reflects the risk involved in lending to firms with little or no access to commercial bank loans from conventional sources. By adjusting upward the interest rate that an average, creditworthy company would pay to account for the greater likelihood of default by an uncreditworthy company, we recognize the speculative nature of loans to uncreditworthy borrowers and the premium they would have to pay the lender to assume that risk.

We have continued to rely on default information pertaining to the United States in our formula because we believe it would be difficult to locate detailed and comprehensive default information for many of the countries that we investigate. However, if such data do exist and are brought to our attention in the course of an investigation or review, and the data indicate that the default experience in the country in question differs significantly from that in the United States, we would consider using the default rate from the country under investigation. Therefore, we have amended the 1997 Proposed Regulation to say that the Secretary "normally" will calculate the benchmark for uncreditworthy companies using U.S. data.

We have not adopted the suggestion that we follow the EU's practice of treating loans to uncreditworthy firms as grants. Under our definition, uncreditworthy firms are those that cannot obtain long-term loans from conventional commercial sources. This does not mean, however, that they cannot borrow funds from other sources. Hence, we would not equate loans to these companies with grants. Instead, the purpose of our methodology is to capture the increased risk of lending to these companies.

Regarding the new calculation methodology, we agree that using a one-year default rate would not accurately reflect the risk that an uncreditworthy borrower will default on a long-term loan. We have, therefore, changed this aspect of our methodology and will use the average cumulative default rate for the number of years corresponding to the length of the loan, as reported in Moody's study of historical corporate bond default rates. In other words, we would use a five-year default rate for a five-year loan, a 15-year default rate for a 15-year loan, and so forth. We believe that using a default rate that is directly linked to the term of the loan is a better reflection of the risk associated with long-term lending to uncreditworthy borrowers.

Our formula for calculating the benchmark interest rate for an uncreditworthy company is based upon the assumption that a lender's expected return on all loans should be equal. Under this assumption, the interest rate differential on loans charged to

creditworthy and uncreditworthy companies is such that the lender's expected (total) return on a loan to an uncreditworthy company equals the expected (total) return on a loan to a creditworthy company, after accounting for differences in the risk of default. A second assumption is that, in the event of default, no portion of the principal or interest is recovered by the lender. The following equation relates the loan rate to a creditworthy company and the loan rate to an uncreditworthy company:

$(1 - q_n)(1+i_f)^n = (1 - p_n)(1 + i_b)^n$,

Where:

n = the term of the loan;

i_b = the benchmark interest rate for uncreditworthy companies;

i_f = the long-term interest rate that would be paid by a creditworthy company;

p_n = the probability of default by an uncreditworthy company within n years; and

q_n = the probability of default by a creditworthy company within n years.

Default means any missed or delayed payment of interest and/or principal, bankruptcy, receivership, or distressed exchange. For values of p_n, we will normally rely on the average cumulative default rates reported for the Caa to C-rated categories of companies in Moody's study of historical default rates of corporate bond issuers. For values of q_n, we will normally rely on the average cumulative default rates reported for the Aaa to Baa-rated categories of companies in Moody's study of historical default rates of corporate bond issuers.

Solving for i_b in the above equation yields a formula for the benchmark interest rate that should be paid by an uncreditworthy borrower:

$i_b = [(1 - q_n)(1+i_f)^n/(1 - p_n)]^{1/n} - 1$.

One commenter urged the Department to apply a risk premium also to short-term loans taken out by uncreditworthy borrowers. Another commenter supported this idea, arguing that even though long-term financing is riskier, a bank's decision on short-term loans is also based on the overall financial health of the borrower.

The fact that we are using a company-specific benchmark means that the risk associated with providing a short-term loan to a company will be reflected without any special adjustment. However, even where a company-specific benchmark is not available, we do not believe it would be appropriate to include a risk premium in the short-term benchmark calculation. Short-term lending is less risky than long-term lending and the inclusion of a risk premium in the short-term benchmark would overcompensate for the commercial default risk. The risk of default in short-term lending is minimal because short-term lending is usually associated with specific transactions, and these transactions provide security for the lender (albeit by means of a wide variety of legal modalities). Thus, we have not adopted this suggestion.

We note that we have identified one situation where it would be appropriate to include a risk premium in a short-term benchmark. This would arise if we were forced to use a short-term interest rate as a benchmark for long-term loans to an uncreditworthy company or as a discount rate for allocating benefits received by an uncreditworthy company.

Creditworthiness Analysis

Paragraph (a)(4) sets forth the standard for determining whether a firm is uncreditworthy. In the 1997 Proposed Regulations, we made certain modifications to § 355.44(b)(6)(i) of the 1989 Proposed Regulations to clarify the analysis we intended to undertake in determining whether a company is creditworthy. Specifically, we adopted a broader definition of "uncreditworthiness" where we would find a company to be uncreditworthy if information available at the time the terms of the government-provided loan were agreed upon indicated that the firm could not have obtained long-term financing from conventional commercial sources. In this context, the term "conventional commercial sources" referred to bank loans and non-speculative grade bond issues. Hence, uncreditworthy companies were those that would be forced to resort to other sources, such as junk bonds, to raise funds. We also listed factors we would consider in making a creditworthiness determination. These factors focused on the financial position of the firm receiving the government financing, without any consideration of the purpose of the financing or whether different levels of risk might be associated with different types of projects undertaken by the firm.

We received several comments on our definition of "uncreditworthiness." Certain commenters urged the Department to retain the definition of uncreditworthiness from the 1989 Proposed Regulations, arguing that this standard was objective, uncontroversial, and easy to administer. These commenters maintained that this standard provided important guidance for petitioners who may have difficulties obtaining information on the loan options available to respondents. The commenters also argued that the new regulation would place a nearly impossible burden of proof on petitioners to demonstrate that a respondent is uncreditworthy.

We have not adopted this suggestion. As we stated in the preamble to our 1997 Proposed Regulations, we changed the definition from the 1989 Proposed Regulations because we found that the old definition did not contain a general principle to guide our determinations of uncreditworthiness. Instead, the 1989 Proposed Regulation relied on a formulaic approach to determining creditworthiness that was too restrictive. We believe that the general principle adopted in these regulations (*i.e.*, an uncreditworthy firm is one which could not have obtained long-term financing from conventional sources) will give us the flexibility to address situations that would not have met the formulaic approach for finding a company uncreditworthy.

However, although we changed the definition of uncreditworthiness, we did not intend to change the standard for initiating an investigation of a company's creditworthiness. Therefore, petitioners may continue to provide the same type of information we have typically relied upon.

Another commenter argued that the Department should not limit itself to examining the creditworthiness of firms as a whole, but should also give itself the flexibility to examine the creditworthiness of individual projects. This commenter argued that some foreign manufacturers, though creditworthy *per se*, are able to carry out new development projects only because they obtain government financing. The commenter argued that these manufacturers would not have been able to secure financing from commercial sources for their huge development projects because these projects are not commercially viable and would be impossible to finance without government subsidies. The commenter noted that, under the Department's traditional approach, the Department would analyze the creditworthiness of the company as a whole, not the creditworthiness of the specific project. Hence, the Department would be likely to find the foreign manufacturer creditworthy, regardless of the commercial viability of the project. The commenter argued that, in this type of situation, the Department should focus on the creditworthiness of the project, not the firm.

We share this commenter's concern and have amended the 1997 Proposed Regulations to allow for a project-specific analysis in determining

creditworthiness. For example, for loans that are provided to fund a large investment project into new products, processes, or capacity (*e.g.*, a plant expansion or new model or product line, where repayment of a loan is contingent upon the success of the particular project being funded), our traditional analysis focusing primarily on the creditworthiness of the company as a whole may be inappropriate because the risk associated with a new project may be much higher or lower than the average risk of the company's existing operations. In these situations, we would expect commercial lenders to place greater emphasis on the expected return and risk of the project because the success or failure of the project would be the most important indicator of the borrowing firm's ability to repay the loan. This is not to say that the financial position of the firm as a whole would be irrelevant to the lender's decision, only that the primary focus would be on the project itself. Therefore, paragraph (a)(4) now allows for the possibility of focusing the creditworthiness analysis on the project being financed rather than the company as a whole.

Significance of long-term commercial loans: In the 1997 Proposed Regulations, paragraph (a)(4)(ii) provided that, if a privately-owned company received long-term commercial loans without a government loan guarantee, we would consider the presence of such commercial loans as dispositive evidence that the company was not uncreditworthy.

Two commenters criticized the Department's proposed approach. These commenters maintained that the presence of a long-term, commercial loan does not prove that a company is creditworthy. Instead they urged the Department to examine all the criteria listed in paragraphs (a)(4)(i) (A), (B), (C), and (D) without treating one of these factors as dispositive. One of the commenters argued that giving one criterion dispositive status would constitute abuse of the Department's discretion to implement the statute. The other commenter argued that the Department's proposed approach would preclude an in-depth review of the company as envisioned by the regulations. Both commenters stated that making the presence of a commercial loan a dispositive indication of creditworthiness would be particularly inappropriate if the commercial loan had characteristics different from the government loan (*e.g.*, different requirements of security).

In general, we believe that if commercial banks are willing to provide loans to the firm, we should not substitute our judgment and find the firm to be uncreditworthy. This does not mean, however, that if the firm has taken out a single commercial bank loan we would find that loan to be dispositive evidence that the firm was creditworthy. Instead, the intent of this paragraph is to indicate that, where the firm has recourse to commercial sources for loans, as made evident by the receipt of such loans, and the commercial loans are comparable with the government loan, those loans will be dispositive of the firm's creditworthiness. However, if, for example, the firm has obtained a single commercial loan in the year in question for a relatively small amount, and the loan has a short repayment term (*e.g.*, less than two years), or has unusual aspects, receipt of that loan will not be dispositive of the firm's creditworthiness, and we will go on to examine the other factors listed in paragraph (a)(4)(i) B through D.

We have also made a change from the 1997 Proposed Regulations regarding the presence of guarantees and the firm's creditworthiness. We have added "explicit or implicit" to modify "government guarantee." This serves to clarify our position that if either type of guarantee is present, the commercial loans will not be viewed as dispositive of the firm's creditworthiness. We may consider a commercial loan to be covered by an implicit government guarantee where the loan contributes to the financing of a project that is being undertaken in conjunction with government loan funds or other types of government participation such as development grants. In such a scenario, while no explicit government guarantee is present, we believe that banks are likely to assume that the government will stand behind the project and ensure that creditors are repaid.

Finally, we note our longstanding practice that creditworthiness determinations are made on a year-by-year basis. For example, if we are trying to determine whether a firm is creditworthy in 1998, we will look to whether the firm has negotiated commercial loans in 1998.

One commenter suggested that purchases of equity in a company by a commercial institution should also constitute dispositive evidence of creditworthiness. The commenter reasoned that a private entity willing to invest in a company would presumably also be willing to lend money to that company because investing is riskier than lending.

We have not adopted this suggestion. By its very terms, equity differs from loans and, hence, the presence of equity investments (even if made by private investors) is not necessarily indicative of whether the firm could obtain loans from commercial sources. As an extreme example, private owners may inject equity into their company because the debt-to-equity ratio is so high that it has become virtually impossible for the company to borrow funds. Clearly, in this situation, the presence of equity purchases by the owners would not be indicative of the firm's access to commercial loans.

We received two comments regarding the significance of the receipt of a commercial loan where we are examining the creditworthiness of a government-owned company. One commenter suggested that paragraph (a)(4)(ii) should apply also to government-owned firms. Another commenter took the opposite view, stating that it is not unusual to find commercial lenders providing loans to government-owned companies which are otherwise uncreditworthy.

We do not believe that the presence of commercial loans is dispositive of whether a government-owned firm could have obtained long-term financing from conventional commercial sources. This is because, in our view, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of default. Accordingly, paragraph (a)(4)(ii) provides that the presence of comparable commercial loans will be dispositive of creditworthiness only for privately owned companies. For government-owned firms, we will make our creditworthiness determination by examining this factor and the other factors listed in paragraph (a)(4)(i).

Significance of prior subsidies: Paragraph (a)(4)(iii) in the 1997 Proposed Regulations stated that we would ignore current and prior countervailable subsidies in determining whether a firm is uncreditworthy. In other words, we would not attempt to adjust a firm's financial data for current and prior subsidies in making a creditworthiness determination.

We received three comments on this issue, all of which urged the Department to change its approach and adjust for prior subsidies when examining a firm's creditworthiness. One of these commenters requested that the Department take prior subsidies into account to the same extent that a reasonable private lender would. This commenter argued that, by ignoring prior subsidies, the Department is not adhering to the standards of a reasonable private lender. The commenter maintained that, if a

company's financial health is due to government assistance, a private lender would examine the company's underlying performance independent of subsidies. The private lender, who would then discover that the company's financial health was superficial, might not lend money to the company unless the lender was convinced that the government would continue to provide subsidies in the future. A second commenter argued that failure to consider prior subsidies when making a creditworthiness determination underestimates the benefit received. This commenter urged the Department to estimate the recipient company's financial situation without subsidies and base its creditworthiness determination on this estimate.

We have not adopted this suggestion. Our longstanding practice has been not to take current or prior subsidies into account when determining a company's creditworthiness. We believe that trying to adjust a company's financial ratios for previously received subsidies would be an extremely difficult and highly speculative exercise.

We have made one small amendment to paragraph (a)(4)(iv) addressing the discount rate. We have changed "non-recurring grant" to "non-recurring benefit" to conform with the new nomenclature used in § 351.524.

Calculation of Benefit From Long Term Variable Rate Loans

Paragraph (a)(5) deals with long-term variable rate loans and codifies the methodology set forth in the GIA. Under paragraph (a)(5)(i), which is unchanged from the 1997 Proposed Regulations, the year in which the terms of the government-provided loan are set establishes the reference point for comparing the government-provided variable-rate loan with the comparable commercial variable-rate loan. If the interest rate on the government-provided loan is lower than the interest rate on the comparable commercial loan, a benefit exists. If the interest rate on the government-provided loan is the same or higher, no benefit exists. The rationale for basing the decision on the first-year interest rate differential is that the interest rate spread, if any, in that year generally will apply throughout the life of the loan.

Paragraph (a)(5)(ii) recognizes that there may be situations where the method described in paragraph (a)(5)(i) cannot be followed and provides the Department with the discretion to modify that method. For example, there may be no comparable commercial variable-rate loan to use for comparison purposes, or the repayment structure of the government-provided variable-rate loan may be such that the simple interest rate comparison described in paragraph (a)(5)(i) would not yield an accurate measure of the benefit.

Allegations

Paragraph (a)(6)(i) deals with the standard for initiating an investigation of a respondent company's creditworthiness. It is unchanged from the 1997 Proposed Regulations. In accordance with our past practice, this paragraph states that the Secretary will normally require a specific allegation before the Department will consider the creditworthiness of a firm.

One commenter argued that the Department should not employ a heightened initiation standard for investigating a company's creditworthiness. Specifically, this commenter suggested that the requirement that petitioners supply information "establishing a reasonable basis to believe or suspect" that a company is uncreditworthy be replaced with information "reasonably available to petitioners."

We have not adopted this suggestion. The requirement that petitioners establish "a reasonable basis to believe or suspect" uncreditworthiness rather than merely provide "information reasonably available" to them dates back to the 1989 Proposed Regulations. Because of the additional workload involved in investigating and determining whether a company is uncreditworthy, we continue to believe that it is appropriate to impose a higher standard for uncreditworthiness allegations. This does not involve any change in our past practice—the same types of allegations that we have accepted in the past will still suffice to start a creditworthiness inquiry.

Paragraph (a)(6)(ii) establishes the evidentiary standard for investigating loans extended by government-owned banks. In the 1997 Proposed Regulations, we made a distinction between government-owned banks that are operated to meet special financing needs and government-owned commercial banks. For special purpose banks (such as national development banks), we asked that petitioners provide information reasonably available to them indicating that loans provided by such banks were specific and that the interest charged was not at commercial rates. For government-owned commercial banks, we requested that petitioners also provide information establishing a reasonable basis to believe or suspect that the loans were something more than mere commercial loans. In particular, we requested information suggesting that such loans were provided at the direction of the government or with funds provided by the government.

Several commenters objected to the higher initiation standard for loans provided by government-owned commercial banks. They argued that the additional information required by the Department for initiating an investigation of loans from this category of banks is not reasonably available to petitioners. They contended that it should be sufficient for petitioners to demonstrate that a loan is specific and provided on terms inconsistent with commercial considerations. They suggested that the burden of proof be shifted to respondents to show that the loan involves no government funds or government direction. Another commenter asserted that the division of government-owned banks into two categories is a new approach and not part of the Department's past practice. The same commenter argued that the Department's 1997 Proposed Regulations would create a loophole because the Department's threshold for initiating an investigation of loans from government-owned commercial banks would be higher than for initiating an investigation of loans from privately-owned banks and government-owned special purpose banks.

Based on our consideration of these comments, we have decided that the distinction between government-owned special purpose banks and government-owned commercial banks may not be helpful in this context and that it is, therefore, not meaningful to retain different initiation standards for investigating loans from these two categories of banks. Paragraph (a)(6)(ii) has, thus, been changed and now provides that, for loans provided by any government-owned bank, the Secretary will require petitioners to present information reasonably available to them indicating that the loans: (1) Are specific in accordance with section 771(5A) of the Act, and (2) are provided on terms more favorable than those the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market. This initiation standard is consistent with the initiation standard for most subsidy allegations, *i.e.*, petitioner must allege (and provide reasonably available information in support of the allegation) that the subsidy is specific and that it confers a benefit. We believe that, for initiation purposes, government ownership is sufficient to indicate that funds have been provided at the direction of the government.

One commenter argued that loans provided by special purpose government-owned banks should be presumed to be specific for purposes of making a subsidy allegation because such banks promote specific and narrow objectives. This commenter stated that many petitioners cannot obtain the information needed to show that a loan is specific. In this commenter's view, the Department should instead require respondents to show that the loans are generally available.

We have not adopted this suggestion. With any presumption, there must be a factual basis for making the presumption, and none exists in this instance. The fact that special purpose banks may be set up to achieve certain objectives does not necessarily mean that they provide funds to a specific group of enterprises or industries. As with any other domestic program, petitioners must provide information reasonably available to them indicating that the bank's loans are specific and that they confer a benefit.

Timing of Receipt of Benefit

Paragraph (b) sets forth a rule regarding the point in time at which the benefit from a loan arises. The 1997 Proposed Regulations stated that we would consider the benefit as having been received on the date on which the firm is due to make a payment on the government-provided loan. In these Final Regulations, we have amended the regulation such that we will consider the benefit to have been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan. The second sentence of paragraph (b) addresses loans with special characteristics, *e.g.*, loans with non-commercial grace periods. With these types of loans, we believe that the benefit stream starts upon the receipt of the loan. It would not be appropriate to wait until the end of the grace period to begin assigning the benefit from such loans because the firm would have had to make loan payments during this period if the loan were provided on commercial terms.

Allocation Over Time

Paragraph (c) deals with the allocation of the benefits of a government-provided loan to a particular time period and reflects one minor change from the 1997 Proposed Regulations.

Paragraph (c)(1) provides that the benefit of a short-term loan will be allocated (expensed) to the year(s) in which the firm is due to make interest payments on the loan. This approach, which essentially treats short-term loans as recurring subsidies, is consistent with longstanding Department practice. We have added to the paragraph the same condition that applies to long-term loans, *i.e.*, that the amount of the subsidy conferred by a government-provided loan can never exceed the amount that would have been calculated if the loan had been given as a grant.

Paragraph (c)(2) deals with situations in which the benefit of a government-provided long-term loan stems solely from the concessionary interest rate of the loan, not from any differences in repayment terms. Where this is the case, there is no need to engage in the complicated calculations called for by § 355.49(c) of the 1989 Proposed Regulations. Instead, as paragraph (c)(2) provides, the annual benefit can be determined by simply calculating, for each year in which the loan is outstanding, the difference in interest payments between the government-provided loan and the comparison loan. The last sentence of paragraph (c)(2) restates our long-held principle that the amount of the subsidy conferred by a government-provided loan never can exceed the amount that would have been calculated if the loan had been given as a grant.

Paragraph (c)(3) deals with situations where both the government-provided loan and the comparison loan are long-term, fixed-interest rate loans, but where the two loans have dissimilar grace periods or maturities, or where the repayment schedules have different shapes (*e.g.*, declining balance versus annuity style). Because a firm may derive a benefit from special repayment terms, in addition to any benefit derived from a concessional interest rate, we will calculate the benefit in a two-step process. First, paragraph (c)(3)(i) directs us to calculate the present value, in the year in which repayment would begin on the comparable commercial loan, of the difference between the amount that the firm is to pay on the government-provided loan and the amount that the firm would have paid on the benchmark loan (this difference is called "the grant equivalent"). Second, paragraph (c)(3)(ii) provides that we allocate this grant equivalent over time by using the allocation formula in § 351.524(d)(1). We have decided to eliminate our old loan allocation formula described in the 1989 Proposed Regulations, as part of our effort to streamline methodologies, where possible. In determining that the benefit from these types of loans occurs in the year in which the government-provided loan was received (*see* § 351.505(b)), the old loan formula is unnecessary, because its primary purpose was to begin assigning annual benefit amounts in the year after the receipt of the loan.

We received two comments on this issue. Both commenters objected to our use of the number of years in the life of the government-provided loan when allocating the benefit of loans with concessionary grace or deferral periods. The commenters argued that, because of the concessionary grace/deferral period, the Department is diluting the annual benefit by including this period in the allocation period. Instead, the commenters urged the Department to allocate the benefit over the length of the benchmark loan. In addition, the commenters asked the Department to "add an additional amount to reflect the present value of the benefit from reduced interest and principal payments" due to a deferral of the repayment schedule.

We have not adopted these suggestions. With regard to the former comment, matching the allocation period with the life of the government-provided loan is a more predictable, transparent, and logical methodology. This is because we will be allocating subsidy benefits as long as the government-provided loan is on the firm's books. Using a different allocation period, such as the life of the benchmark loan, could mean that subsidy benefits would end even though the subsidized loan itself is still outstanding. Moreover, we do not share the commenters' view that our methodology dilutes the annual benefit. Although the amounts countervailed each year may be smaller under our methodology, the benefit stream will correspond to a period that matches the life of the subsidized loan.

Paragraph (c)(4) sets forth the method of calculating an annual benefit for government-provided variable-rate loans. No comments were received on this paragraph.

Contingent Liabilities

Paragraph (d) sets forth the method for calculating the annual benefit attributable to a long-term interest-free loan, for which the obligation for repayment is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, such as the achievement of a particular profit level by the firm. We have made changes to this paragraph so that our methodology for these loans conforms to the methodology for tax deferrals (*see, e.g.*, § 351.509). In the case of tax deferrals, we recognized that if the event that triggers repayment will not occur for several years, the deferral should be treated as a long-term loan and the

benefit measured using a long-term benchmark. Contingent liability loans are analogous to tax deferrals. Consequently, our regulation now states that where the event triggering repayment will occur at a point in time after one year from receipt of the contingent liability, we will treat the contingent liability as a long-term loan.

Additionally, paragraph (d)(2) now recognizes that it may be appropriate in certain circumstances to treat contingent liabilities as grants. This would occur, if at any point in time, we determine from record evidence that the event upon which repayment depends is not a viable contingency. In this instance, we will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself.

One commenter asked that the regulations clarify that in the event of forgiveness of a contingent liability, a new subsidy arises whose benefit is equal to the unpaid principal of the loan.

We will continue our longstanding practice and treat the entire unpaid principal of a forgiven loan and any accumulated interest, regardless of whether it is a contingent liability loan or a regular loan, as a grant bestowed at the time of the forgiveness (*see, e.g., Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from Germany*, 58 FR 6223, 6234–35 (January 27, 1993)).

Section 351.506

Section 351.506 deals with loan guarantees. Paragraph (a)(1) sets forth the general rule for identifying and measuring the benefit attributable to a government-provided loan guarantee, and conforms to the new standard contained in section 771(5)(E)(iii) of the Act. According to this general rule, a benefit exists to the extent that the total amount a firm pays for a loan with a government-provided loan guarantee is less than what the firm would have paid for a comparable commercial loan that the firm could actually obtain on the market absent the government guarantee. In this context, "total amount" includes both the loan guarantee fee and the effective interest paid on the loan. The terms "comparable commercial loan" and "could actually obtain on the market" are defined in § 351.505(a)(2) and (3), respectively.

One commenter asked the Department to recognize that the very existence of a government loan guarantee constitutes *prima facie* evidence that a countervailable benefit exists because a government loan guarantee is only necessary when a company cannot obtain a loan without a loan guarantee and when such a guarantee is not available from private sources.

We have not adopted this suggestion. As with other forms of financial contributions, the Department must determine that a benefit is conferred before we can find a subsidy program to be countervailable. However, we acknowledge that the presence of a government loan guarantee may affect other terms of the loan, such as the interest rate. Therefore, when we are dealing with a government-guaranteed loan, we will carefully examine all of the terms of both the government loan and the benchmark loan to ensure that we capture all of the benefit.

One commenter asked the Department to clarify that the term "comparable loan" includes both comparable size and risk level. Another commenter urged the Department to recognize that the risk to the lender would be higher without a loan guarantee and that the borrower, therefore, would have to pay a higher interest rate absent the guarantee.

We intend to interpret the term "comparable commercial loan" as it affects loan guarantees in the same manner as when we are addressing loans. The role of relative risk levels is discussed in the preamble to § 351.505. We agree with the second commenter that a lender faces greater risk if a loan is not guaranteed. We believe that this additional risk will be captured in the benefit methodology described in paragraph (a). This is because the interest rate on the guaranteed loan will be compared with either (1) the interest rate on a comparable unguaranteed (and, hence, riskier) loan that was obtained, or could have been obtained, by the firm; or (2) the interest rate on a comparable commercially guaranteed loan that was obtained, or could have been obtained, by the firm. In the latter case, we would expect that the two guaranteed loans would have similar risk levels and that the interest rates would be similar, assuming that the loans are comparable as defined above. Of course, we would also adjust for differences in guarantee fees as paragraph (a)(1) directs us to do.

Two commenters urged the Department to make sure that we capture the full benefit conferred by a government loan guarantee by measuring the difference in loan terms resulting from the government guarantee as well as the difference in the cost of the guarantees.

We believe that paragraph (a)(1) addresses the commenters' concerns. By measuring the difference between the total amount that a firm pays for a loan guaranteed by the government and the amount that the firm would have paid on a comparable commercial loan (including any difference in guarantee fees), we are capturing both elements brought up by the commenters.

Paragraph (a)(2) of the 1997 Proposed Regulations specified that a government loan guarantee that was given by the government in its capacity as owner (*i.e.*, not under a government guarantee program used by government-owned and privately owned companies) would not be considered countervailable if private owners normally provide guarantees in the same circumstances. In the preamble of the 1997 Proposed Regulations, we said that if the government directly guarantees the debt of a company it owns, it would fall upon the respondent to demonstrate that it is normal commercial practice for private shareholders in that country to guarantee the debt of the companies in which they own shares. The preamble further provided that in a situation where a government-owned holding company guarantees the debt of its subsidiaries, the respondent would need to show that it is normal commercial practice for non-government-owned corporations to guarantee the debt of their subsidiaries. In addition, the respondent would need to demonstrate that the holding company has sufficient internally-generated resources to serve as guarantor of the debt.

One commenter maintained that, because of their greater financial resources and also for social and political reasons, governments have a greater ability and interest in guaranteeing certain loans than private shareholders do. Therefore, the commenter argued, in a situation where a government provides a loan guarantee to a company it owns, the Department should presume that the guarantee constitutes a countervailable subsidy unless the respondent can show that the guarantee was provided on commercial terms. In addition, this commenter emphasized that the burden should be on the respondent, not on the Department, to show that it is normal commercial practice in the country under investigation to provide loan guarantees.

We have not adopted a presumption that government-provided loan guarantees to government-owned firms are countervailable subsidies. If the respondent cannot provide evidence showing that it is normal commercial practice for private owners to give comparable loan guarantees to firms they own, the Department will determine whether the government loan guarantee resulted in the borrower

receiving a loan on terms more favorable than the firm would have received on a comparable commercial loan. We have modified paragraph (a)(2) to reflect this burden.

In the preamble to the 1997 Proposed Regulations, we also stated that where the government or a government-owned holding company guarantees the debt of an "uncredit worthy" company it owns (*see* § 351.505(a)(4) regarding uncreditworthy companies), the respondent must provide evidence that private owners would also guarantee the debt of uncreditworthy companies they own.

Two commenters argued that in the case of uncreditworthy companies, the countervailable benefit is equal to the amount of the guaranteed loan because an uncreditworthy company would not have been able to obtain any loan at all without government loan guarantees. They urged the Department to treat the entire amount of a guaranteed loan provided to an uncreditworthy company as a grant. In addition, one of the commenters implied that the European Union follows this practice.

We have not adopted this suggestion. Subsidized loan guarantees are essentially treated as subsidized loans. Therefore, consistent with our methodology of constructing a benchmark for loans to uncreditworthy companies (*see* § 351.505(a)(3)(iii)), we would construct a benchmark when uncreditworthy companies are given loan guarantees.

Paragraph (b) sets forth a rule regarding the point in time at which the benefit from a loan guarantee arises. The 1997 Proposed Regulations stated that we would consider the benefit as having been received on the date on which the firm is due to make a payment on the government-guaranteed loan. In these Final Regulations, we have amended the regulation such that we will consider the benefit to have been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

Paragraph (c) deals with the allocation of the benefit to a particular time period. It is unchanged from the 1997 Proposed Regulations.

Section 351.507

Section 351.507 pertains to equity infusions. The methodology reflected here has changed from that laid out in the 1997 Proposed Regulations. The changes stem from our consideration of the comments received and a reevaluation of certain fundamental assumptions regarding the nature of, and circumstances surrounding, a government's purchase of shares in a company.

The 1997 Proposed Regulations assigned all equity infusions to one of two main methodological tracks according to whether or not a market share price for the company receiving the infusion was available. Where a market share price was available, we intended to use that price as a benchmark against which to compare the government purchase price of the stock. Any premium paid by the government was to be considered a benefit. While we expressed a preference for the use of a market price for newly issued shares which were identical or similar to the shares purchased by the government, we stated that, where such a price was not available, we would resort to using a market price for similar, pre-existing shares (*i.e.*, a "secondary market price") as the benchmark. Where secondary market prices were to be used, we proposed using *post-infusion* prices to ensure that our analysis captured any "dilution" effects (*i.e.*, any effects from the issue of new shares on the value of existing shares).

Where a market price for the shares purchased by the government was not available, we explained that we would first conduct our conventional equityworthiness test. If the company was deemed equityworthy, *i.e.*, appeared capable of generating a "reasonable rate of return within a reasonable period of time," and if there were no special conditions or restrictions attached to the government's shares rendering their purchase inconsistent with the usual investment practice of private investors, the equity infusion would not confer a benefit. A finding that the company was unequityworthy would equate to a finding that the investment was inconsistent with the usual investment practice of private investors. To measure the benefit, the Department would attempt to construct a price that a reasonable private investor would theoretically have been willing to pay for the shares ("constructed private investor price" or "CPIP"). Any difference between the government purchase price and the CPIP would be considered a subsidy. If the information necessary for calculating the CPIP was not available, the Department would allocate the entire infusion amount over time, but deduct from the portion allocated to a particular year the amount of actual returns achieved by the firm in question in that year.

We received numerous comments regarding many aspects of the proposed methodology. Several comments focused on the use of private prices: Some commenters suggested abandoning any reference to market prices in all cases; some suggested abandoning only any reference to secondary market prices; and some supported use of private market prices, but requested that a pre-infusion rather than a post-infusion price be used.

Some commenters argued that the fact that a company's previously issued shares are traded in the secondary market is not conclusive evidence of that company's ability to raise new capital from private investors. These commenters pointed to the case where an otherwise financially sound company is contemplating a new expansion project about which general sentiment among private investors is pessimistic given the increased risk or low value the expansion is expected to add to the company as a whole. In this case, private investors would not likely purchase new shares. These commenters argued that, rather than using the secondary market shares as a benchmark to measure the benefit, the Department should move straight to its equityworthiness analysis as it does when there is no benchmark.

If the Department relies on secondary market prices as a standard by which to evaluate the reasonableness of the government's equity investment, however, several commenters argued that post-infusion prices should not be used. These commenters argued that such prices are inappropriate because a reasonable private investor could not know at the time of the purchase of new shares what the subsequent market price of that stock would be. Pre-infusion, rather than post-infusion, prices are, therefore, a better standard by which to judge the reasonableness of a government equity infusion.

The vast majority of equity comments addressed the proposed methodology for measuring the benefit to unequityworthy companies. While a few commenters expressed support for the proposed methodology, many others objected, arguing that a change from the current methodology (*i.e.*, treating the entire infusion as a benefit) is not mandated by either the SCM Agreement or the URAA, and that such a change represents a troublesome weakening of the CVD law. According to these commenters, the Department's stated legal authorities for the proposed change are not relevant to this particular issue: the GATT Panel ruling in the *Lead and Bismuth* case was rejected by the United States as inconsistent with U.S. law and the international subsidy code, and the CIT ruling in *AIMCOR* dealt only with the case of an

equityworthy firm (*see United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany and the United Kingdom*, SCM/185 (November15, 1994) and *AIMCOR, Alabama Silicon, Inc.* v. *United States*, 912 F. Supp. 549, 552–55 (CIT 1995) ("*AIMCOR II*")).

The central point of the commenters opposing our proposed methodology was that, once a company has been deemed unequityworthy, the full amount of any equity infusion by the government should be considered a benefit. In other words, because the company would not have received any new capital absent government involvement, the benefit to the recipient is equal to the amount of the infusion. In contrast, the proposed methodology of constructing a private investor price, and the alternative methodology of adjusting for returns, use a cost-to-government standard which has been explicitly rejected as unlawful by the CIT. *See British Steel Corp.* v. *United States*, 605 F. Supp. 286, 295–296 (CIT 1985). These commenters also provided further theoretical, practical and legal reasons why each of the proposed methodologies is inappropriate.

First, several commenters maintain that the proposed CPIP methodology is based on the erroneous assumption that prices of a new share issue in an unequityworthy firm could be priced low enough to yield an overall return (dividends plus capital appreciation) to the new investor comparable to a market return. If the investment in which the new capital is used is not expected to yield a market return (which is why the firm is unequityworthy), issuing new shares at a discounted price would lower the existing shareholders' expected returns by diluting their claim on the firm's total equity. The existing shareholders, from the view of a reasonable private investor, have no incentive to allow this to happen. Hence, there is no price—in theory or in practice—at which, simultaneously, private investors would be willing to buy, and current shareholders willing to sell, shares in an unequityworthy company.

Another problem with the CPIP approach, according to these commenters, is that it is subject to manipulation in the case of an equity infusion into a 100 percent government-owned firm. In such a case, the earnings per share could always be manipulated (by adjusting the number of shares purchased) to reflect a fabricated per share "market return" without any adverse consequences for the government, which, in any case, would retain its claim on all of the company's profits.

Finally, as a practical matter, these commenters argue that the analysis called for under the CPIP approach places a significant burden on the Department. They argue that calculating the theoretical price a private investor would have been willing to pay for a stock would require a considerable level of financial expertise, would prove an inordinate drain on the Department's resources, and would involve too much conjecture on the part of the Department in matters of financial forecasting.

Several commenters also objected to the proposed alternative methodology of treating the entire infusion as a benefit, but then adjusting that benefit by actual returns. These commenters likened this methodology to the rate-of-return-shortfall ("RORS") approach rejected by the Department in 1993. In their opinion, the arguments proffered by the Department for rejecting the RORS approach are equally valid in this case.

One such argument is that dividends (or actual returns) cannot be considered a "repayment" of the benefit conferred by the government equity infusion because dividends are, in fact, generated from that benefit. Nor can the dividends be used to reduce the amount of the benefit because the CIT has ruled that dividends are not explicitly included in the statutory list of allowable offsets. *British Steel PLC.* v. *United States*, 879 F. Supp. 1254, 1309 (CIT 1995).

These commenters highlighted several additional arguments, originally identified by the Department with regard to the RORS methodology, that explain why it is inappropriate to adjust for actual returns. First, the actual returns method is a *post-hoc* valuation of an investment which measures events subsequent to the equity infusion. Second, the proposed approach fails to account for later subsidies which could improve the financial status of the company, improperly reducing the benefit associated with earlier subsidies. Third, a company that was performing poorly could have an anomalous profitable year, allowing it to escape countervailing duties for that year. Fourth, the proposed approach does not measure the rate of return on the government's original equity infusion, but rather the rate of return in the period of investigation or review on the firm's total equity. Finally, the approach engenders bias in the administration of the law in that investments in unequityworthy companies will escape countervailing duties when results are unexpectedly good, but investments in equityworthy companies will not be countervailed when the results are unexpectedly bad.

After considering all of the comments, we have decided to revise the methodology described in the 1997 Proposed Regulations for analyzing equity infusions. In large measure, we are codifying our current practice with a number of important modifications. We believe that the approach detailed below better reflects the principles set forth in the statute, SAA and the SCM Agreement, and addresses many commenters' concerns while maintaining, to the extent possible, continuity with past Department practice.

Consistent with section 771(5)(E)(i) of the Act, paragraph (a)(1) provides that a benefit is conferred by a government-provided equity infusion if the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. As in the 1997 Proposed Regulations, our methodology for identifying and measuring the resulting benefit is divided into two methodological tracks, with the choice of methodology dependent upon whether or not actual private investor prices can serve as a benchmark for the shares purchased by the government. However, for reasons discussed in greater detail below, we have changed our proposed methodology for calculating the benefit where there are no private investor prices and we will not construct the theoretical price a private investor would pay. Therefore, we have deleted the second sentence that appeared in paragraph (a)(1) of the 1997 Proposed Regulations.

Actual Private Investor Prices Available

Paragraph (a)(2) contains rules for analyzing equity infusions when actual private investor prices (*i.e.*, market prices) are available—the first methodological track—and has retained only some portions of the language in the 1997 Proposed Regulations. Under § 351.507(a), the initial step in analyzing an equity infusion is to determine whether, at the time of the infusion, there was a market price for newly issued equity. If so, the Department would consider the equity infusion to have conferred a benefit if the price paid by the government for the newly issued equity was more than the price paid by private investors for the same new issue. For example, if a government pays $10 per share for newly issued shares in a firm, and private investors pay $8 per share for shares in the same share issue,

a benefit exists in the amount of $2 per share ($10 − $3=$2).

Paragraph (a)(2)(i) also provides for the use of a "similar form" of new, contemporaneously issued shares as the basis for the reasonable private investor benchmark. As noted in the preamble to the 1997 Proposed Regulations, in the *Certain Steel* determinations the Department determined that, in appropriate circumstances, shares with similar characteristics can be compared, as long as appropriate adjustments are made. *See* GIA at 37252. The CIT subsequently upheld the principle of relying on a similar form of equity where the same form of equity does not exist. *Geneva Steel* v. *United States*, 914 F. Supp. 563, 580 (CIT 1996).

Where similar new, contemporaneously issued shares are used as the benchmark, paragraph (a)(2)(iv) provides that the Department will make a price adjustment for differences in the types of shares when it is appropriate. *See, e.g., Certain Fresh Atlantic Groundfish from Canada*, 51 FR 10047 (March 24, 1986). Moreover, paragraph (a)(2)(iii) requires that, where the Department uses the private investor prices, the amount of shares purchased by private investors must be significant so as to provide an appropriate benchmark. *See, e.g., Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe from Italy*, 60 FR 31992, 31994 (June 19, 1995).

An important change to paragraph (a)(2) from the 1997 Proposed Regulations is that we have eliminated any provision for the use of secondary-market share prices. As discussed in greater detail below, in cases where private investor prices for the newly issued shares are not available, we will proceed directly to an equityworthiness determination without any reference to secondary market prices. Although previous Department practice has been to prefer market-determined share prices (including secondary prices) when available and useable, we are persuaded that a revision of this practice is now warranted for the following reasons.

In our view, secondary market prices do not necessarily reflect the market value of new shares, regardless of the point in time the comparison is made. Use of secondary market prices before a government infusion does not account for the dilution of company ownership and does not take into consideration private investors' perceptions of the recipient company's intended use of the newly obtained equity capital. Use of post-infusion secondary market prices may also be problematic. For example, the fact that the government has made an infusion may cause investors to bid up the secondary market price of the stock to a higher level than that warranted by the improved capital position of the company. The Department cannot reasonably account for such secondary market phenomena. In sum, secondary market prices are not a reliable basis for measuring the market value of newly issued equity.

Actual Private Investor Prices Unavailable

One of the most difficult methodological problems confronted by the Department in its administration of the CVD law involves the analysis of government-provided equity infusions in situations where there is no market benchmark price. Since 1982, the Department has dealt with this problem by categorizing firms as either "equityworthy" or "unequityworthy." As set forth in § 355.44(e)(2) of the 1989 Proposed Regulations, an equityworthy firm was one that showed "an ability to generate a reasonable rate of return within a reasonable period of time." An unequityworthy firm did not show such an ability. If the Department found that a firm was equityworthy, the Department would declare a government-provided equity infusion in the firm to not be countervailable. The Department would not consider whether, notwithstanding the general financial health of a firm, an excessive price was paid for government-provided equity. Conversely, if the Department found a firm to be unequityworthy, the Department would declare a government-provided equity infusion in the firm to be countervailable without further analysis.

In these Final Regulations, we have retained the equityworthy/unequityworthy distinction. Thus, in paragraph (a)(3), if actual private investor prices are not available under paragraph (a)(2), the Secretary will determine whether the firm funded by the government-provided equity was equityworthy at the time of the equity infusion. Paragraph (a)(4) sets forth the standard the Secretary will apply in determining equityworthiness, and broadly follows § 355.44(e)(2) of the 1989 Proposed Regulations.

Several commenters have argued that, under certain circumstances, the equityworthiness of the project being financed, rather than the firm as a whole, should be the focus of the Department's equityworthiness analysis. This is especially true, according to these commenters, when the investment contemplated by a firm represents a significant departure, in terms of its riskiness or expected return, from the firm's existing operations. These commenters maintain that the riskiness of a firm's new investment can significantly impede the firm's ability to raise new capital on equity markets on commercially available terms.

We received a similar comment with respect to our creditworthiness determinations. Consistent with the position we have taken regarding loans and creditworthiness, in the case of equityworthiness determinations, we recognize the possibility that it may be appropriate, in certain circumstances, to focus on the risk and expected return of the project being financed rather than the firm as a whole. Therefore, we have included a provision that allows the Secretary to do a project analysis where appropriate, but we are maintaining the general principle that the focus of an equityworthiness determination will normally be on the firm as a whole. We will address issues relating to the appropriateness of a project-specific equityworthiness analysis in the context of specific cases.

Paragraph (a)(4)(ii) discusses the significance of the analysis performed prior to a government equity purchase. For every government equity infusion, we will analyze whether the government's decision to invest was consistent with "the usual investment practice of private investors, including the practice regarding the provision of risk capital." Section 771(5)(E)(i). Obviously, to answer this question, the basis upon which the government infusion was made must be clear. In prior CVD proceedings, governments have often failed to provide the Department *any* commercial rationale for their investment. This has been true for even very large infusions. In contrast, prior to making a significant equity infusion, it is the usual investment practice of a private investor to evaluate the potential risk versus the expected return, using the most objective criteria and information available to the investor. This includes an analysis of information sufficient to determine the expected risk-adjusted return and how such a return compares to that of alternative investment opportunities of similar risk. Absent such an objective analysis—performed prior to the equity infusion—it is unlikely that we would find that the infusion was in accordance with the usual investment practice of a private investor, except where we are satisfied that the lack of such an analysis is consistent with the actions of a reasonable private investor in the country.

Certain commenters have specifically requested that independent studies commissioned by foreign governments be considered by the Department in making an equityworthiness determination.

We will closely examine such studies. In order to be considered in our equityworthiness analysis, any study must have been prepared prior to the government's approval of the infusion and must be sufficiently objective and comprehensive. We intend to review such studies carefully to determine whether the government acted like a reasonable private investor, subjecting both the assumptions and the analysis to scrutiny. This will enable us to decide whether the decision to invest was commercially sound given the information at the disposal of the government.

Some independent studies commissioned to analyze the merits of a given investment may present an assessment of the company's expected returns and risks that is predicated on certain future actions by the company in question. For instance, a study might conclude that the investment in a company planning to close one outmoded plant and construct a new one in a different location is commercially viable so long as the company also reduces its workforce by half. In this case, the Department would take into consideration whether the downsizing will actually occur. If the company has known for a long time that a reduction in its workforce was a necessary condition for improved financial performance, but has consistently shown itself unwilling or incapable of making that reduction, this may prove sufficient cause to believe that the projected return is unattainable.

Some commenters cautioned the Department about relying too heavily on independent studies given their inherently speculative and subjective nature. We are well aware of the potential difficulties in using independent analyses, not least of which is the fact that independent experts often fundamentally disagree about the prospects of a given investment. In other instances, the objectivity of some studies is called into question. However, private investors are likewise usually faced with a similar variety of competing views and must exercise their own judgement with respect to the objectivity of information before them. When considering the suitability of a submitted study, we will seek to ensure the study is accurate and reliable, and exercise our own judgement with respect to a study's objectivity. Specifically, we will take into consideration the extent to which the study's premises and conclusions differ from those of other independent studies, accepted financial analysis principles, or market sentiment in general (*e.g.*, industry-specific business publications or general industry market studies).

Paragraph (a)(4)(iii) discusses the significance of prior subsidies in our equityworthiness determination. As in the 1997 Proposed Regulations, it states that in determining whether a firm or project was equityworthy, we will ignore current and prior subsidies received by the firm. Several commenters objected to this rule, arguing that any reasonable investor would take into consideration the role that past subsidies have played in a company's financial performance. These commenters noted that, while a company might appear to be successful, a reasonable investor may deem the company unequityworthy if he or she believes that, when forced to stand on its own (*i.e.*, without subsidies), the company would not yield a market return.

While we recognize the potential for prior subsidies to affect the present financial performance of a company, we are continuing with our practice of not considering the impact of prior subsidies when conducting an equityworthiness test. We continue to believe that it would be too difficult and speculative a task to determine what the company's performance would have been had it not previously benefitted from a subsidy.

Paragraph (a)(5) pertains to those infusions in which the firm or project is determined to be equityworthy. In our 1997 Proposed Regulations, we stated our intent to conduct a further examination of equityworthy companies to determine whether the particular investment was consistent with usual investment practice. We adopted this policy in light of the CIT decision in *AIMCOR II*, 912 F. Supp. at 552–55, in which the Court ruled that, because of restrictions imposed on the shares bought by the government, the government's purchase of those shares was inconsistent with commercial considerations, notwithstanding the fact that the firm in question was equityworthy.

Certain commenters objected to this proposal, arguing that if a firm has been deemed to be equityworthy, any investment in that firm is *per se* consistent with usual private investment practices and should not be countervailed. However, we note that, as the Court pointed out in a previous determination, "[w]here a company is equityworthy, as here, it does not necessarily follow that the purchase of stock from that company will be consistent with commercial considerations." *See AIMCOR* v. *United States*, 871 F. Supp. 447, 454 (CIT 1994) ("*AIMCOR I*"). Therefore, as provided in paragraph (a)(5), we will conduct a further analysis into whether the shares purchased by the government have special conditions or restrictions attached and, if so, whether those conditions render the investment inconsistent with usual private investment practices as stipulated in paragraph (a)(1). Any benefit found from these types of equity purchases will be determined on a case-by-case basis. In situations where the shares purchased by the government in an equityworthy firm are common shares, we will normally consider the infusion to have been consistent with usual private investment practice.

In cases where a government equity infusion has been made and the firm is unequityworthy, paragraph (a)(6) states that the amount of the benefit will be equal to the amount of the equity infusion. This is a codification of our current practice which has been in place since the 1993 steel determinations and has been upheld by the CIT in *British Steel plc* v. *United States*, 879 F. Supp. 1254, 1309 (CIT 1995), *aff'd in part and rev'd in part*, 127 F.3d 1471 (Fed. Cir. 1997). *See, also, Usinor Sacilor* v. *United States*, 893 F. Supp. 1112, 1125–26 (CIT 1995).

We believe this approach is most appropriate based mainly on the argument that, because a reasonable private investor could not expect a reasonable return on the invested capital, no such investor would provide the infusion. The CPIP approach, which we explored in the 1997 Proposed Regulations, attempted to measure the hypothetical price at which the investor would provide the funds. In the case of an unequityworthy firm or project, this hypothetical price would have to be lower than the price of existing shares. However, as explained in the summary of comments above, from the perspective of the existing shareholders of the company that received the infusion, such a lower price would be unacceptable. These shareholders would generally not allow the new shares to be issued at a reduced price because this would simultaneously lower the expected return on their existing investment. There is, therefore, no mutually acceptable price at which the transaction would take place between two private investors, and the investment would not occur.

Thus, the benefit to the operations of the recipient firm is the entire amount of the government infusion. That is not to say that the shares received by the government are worthless; they may have value. However, the comparison here is what the company actually received with what the company would have received absent the government intervention. In the case of an unequityworthy firm, the amount the company would have received is zero. Thus, although the government equity infusion is not *per se* a grant, it is appropriate to consider the full amount of the infusion as the benefit because the government provided a sum of money that would not have been provided by a private investor. This is the fundamental point overlooked by the GATT panel report. (*See United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany, and the United Kingdom*, SCM/185 (November 15, 1994) (unadopted).

Paragraph (a)(7) pertains to allegations regarding equity infusions and is based on § 355.44(e)(3) of the 1989 Proposed Regulations.

Paragraph (b) provides that the Secretary normally will consider the benefit from an equity infusion to have been received on the date on which the firm received the infusion. Paragraph (c) pertains to the allocation of the benefit to particular years and provides that the benefit conferred by an equity infusion will be allocated as if it were a non-recurring subsidy, using the methodology set forth in § 351.524(d).

Section 351.508

Section 351.508 deals with assumptions or forgiveness of debt. Paragraph (a), which deals with the identification and measurement of the benefit attributable to government-provided debt assumptions or forgiveness, is little changed from § 355.44(k) of the 1989 Proposed Regulations and from § 351.507 of the 1997 Proposed Regulations. Paragraph (b) describes when the benefit from debt assumption or forgiveness will be deemed to have been received. Paragraph (c) provides that the Secretary will normally treat the benefit from debt assumption or forgiveness as a non-recurring subsidy for allocation purposes. However, paragraph (c)(2) provides that, where the government is assuming interest under certain narrowly drawn circumstances, the interest assumption will be treated as a reduced-interest loan and allocated according to the loan allocation rules. Although it has undergone some refinement, this exception is consistent with the policy articulated by the Department in the 1993 *Certain Steel* determinations.

Section 351.509

Section 351.509 deals with subsidy programs that provide a benefit in the form of relief from direct taxes. ("Direct tax" is defined in § 351.102.) Such relief includes exemptions, remissions, and deferrals of direct taxes. The most common form of a direct tax is an income tax, and the subsidy programs most frequently encountered are those that provide special income tax exemptions, deductions, or credits. With respect to the benefit provided by these types of programs, paragraph (a)(1) of § 351.509 retains the standard set forth in § 355.44(i)(1) of the 1989 Proposed Regulations, *i.e.*, a benefit exists to the extent that the taxes paid by a firm as the result of a program are less than the taxes the firm would have paid in the absence of the program. *See* 1989 Proposed Regulations at 23372 and related cases cited.

Paragraph (a)(2) deals with another type of direct tax program: the deferral of direct taxes owed. Although § 355.44(i)(1) of the 1989 Proposed Regulations included tax deferrals with exemptions and remissions of direct taxes, the Department has consistently used a different methodology for identifying and measuring the benefits of deferrals by treating deferrals as government-provided loans. We have normally treated deferrals of one year or less as short-term loans, while multi-year deferrals have been treated as short-term loans rolled over on the anniversary date(s) of the deferral.

We received two comments on the deferral of direct taxes. One commenter maintained that it would be more appropriate to treat multi-year tax deferrals as long-term loans rather than as a series of rolled-over short-term loans. The commenter observed that the Department had not explained why multi-year tax deferrals should be treated as a series of short-term loans, arguing that this approach enables the recipient company to receive long-term benefits that are countervailed using a short-term benchmark interest rate. The commenter stated that long-term interest rates are typically higher than short-term rates and that the Department, therefore, should use the long-term rate as the benchmark rate. The second commenter argued that multi-year tax deferrals should be treated as long-term loans because such deferrals are authorized only once for the entire period of deferral. However, the second commenter stated, even if a multi-year deferral were authorized annually on a routine basis, the benefit would resemble a long-term loan and, therefore, a long-term interest rate should be used as the benchmark rate.

We agree that, in certain circumstances, where it is reasonable to conclude from the record that a deferral will extend over more than one year, multi-year deferrals should be viewed as long-term loans. For example, if the firm knows at the time the taxes would normally be due that the firm would not become liable for the taxes until five years later, it would be appropriate to view the deferral as a five-year loan and to use the appropriate benchmark. Moreover, if it is known at the time of the deferral that the deferral will be longer than one year, but the term is indefinite, we will also use a long-term benchmark to calculate the benefit in each year. However, if the deferral has an uncertain endpoint, we will examine whether it is appropriate to view the deferral as a short-term or long-term loan.

As in the past, tax deferrals of one year or less will be treated as short-term loans, using a short-term interest rate as the benchmark rate in accordance with § 351.505(a). Similarly, if it is not known if a tax deferral will extend over more than one year (*e.g.*, if the firm's payment of taxes is made contingent upon some future event) and we have no reasonable basis to conclude that the deferral will extend over more than one year, such tax deferral will be treated as a short-term loan.

In the 1997 Proposed Regulations, we identified one aspect of direct tax subsidy programs that might warrant modification. We stated that, in the case of special accelerated depreciation allowances, a firm typically experiences tax savings in the early years of an asset's life and tax increases in the latter years of the asset's life. In the past, the Department has focused on the tax savings but has not acknowledged the later tax increases. In the 1997 Proposed Regulations, we discussed adopting a methodology that accounts for both the early tax savings and the later tax increases by calculating the net present value of the expected tax savings at the outset of the accelerated depreciation period. However, we stated that we wanted to obtain the views of the public before changing our methodology.

We received several comments on this issue, all of which contained objections to our proposed change of methodology. The comments focused on four areas. First, the commenters characterized our proposed methodology as speculative because the Department cannot be certain that the benefits of an

accelerated depreciation program will be offset by higher taxes in the future. The commenters pointed to factors such as changes in tax provisions and government tax policies, the provision of additional future tax benefits, and the possibility that the recipient company would incur losses in the future, all of which might prevent higher taxes from materializing in the future. One commenter pointed to the Department's findings in *Extruded Rubber Thread from Malaysia*, 57 FR 38472 (August 25, 1992) (*"Malaysian Rubber Thread"*), where a hypothetical tax burden in later years did not prevent the Department from countervailing tax benefits provided during the period of investigation. In sum, these commenters argued that the Department should not give a company credit for a contingent tax liability that we could not be sure the company ever would incur.

Second, some of the commenters maintained that the Department's proposed change would be contrary to the central purpose of the CVD law, *i.e.*, to discourage the provision of subsidies. According to these commenters, the proposed methodology would encourage foreign governments to modify their tax programs so that future tax payments would appear to offset current countervailable tax benefits.

Third, some commenters asserted that it would be unlawful for the Department to offset countervailable benefits with higher future tax payments. These commenters pointed to the statutory list of permissible offsets, which does not include future tax payments. They also argued that our proposed methodology would be akin to taking secondary tax effects into account, which would be contrary to § 351.527 of the 1997 Proposed Regulations (this section, which deals with the tax consequences of benefits, is included in § 351.503(e) of these Final Regulations).

Fourth, a few commenters pointed to the administrative burden that the Department would assume if it were to adopt the proposed methodology. One commenter stated that it would be difficult to track companies' future tax payments. Another commenter portrayed it as unlikely that the Department would verify that higher taxes were actually paid in future years. Finally, one commenter recommended that the Department adopt a regulation saying that benefits resulting from accelerated depreciation may *not* be offset by a potentially higher tax burden in the future.

Based on the comments we have received, we are not changing our methodology. We will, therefore, continue our current methodology for calculating the tax benefits from accelerated depreciation schemes on a year by year basis.

In the 1997 Proposed Regulations, we also sought public comment on how we should address tax subsidies when the recipient company is incurring losses, including loss carryforwards and losses under accelerated depreciation. We received only a few comments on these issues. All the commenters agreed that losses should be dealt with according to the same underlying principle that guides the rest of the Department's direct tax methodology, *i.e.*, the Department should treat as a countervailable benefit the difference between the amount of taxes actually paid and the amount of taxes that would have been paid in the absence of the countervailable tax benefit. With respect to loss carryforwards, the commenters outlined two scenarios under which such carryforwards can convey countervailable benefits: (1) When a company is allowed to carry forward a greater value of losses from one year to the next than other companies, and (2) when a company is allowed to carry forward losses for a longer period of time than other companies. In both cases, the commenters urged the Department to follow the underlying principle described above, *i.e.*, to countervail the difference between the actual taxes paid and the taxes that would have been paid under normal circumstances. Regarding losses associated with accelerated depreciation, the commenters requested the Department to countervail the accelerated depreciation allowance only to the extent that it results in a reduction of taxes paid.

We agree with the commenters that our guiding principle is to treat as a countervailable benefit the difference between the taxes a company actually pays and the taxes it would have paid if it had not incurred a loss or a diminished profit as a result of accelerated depreciation or a loss carryforward (provided that these tax benefits are specific). We intend to follow the approach used in *Malaysian Rubber Thread*. We do not see any need to change or to add to our regulations in this respect.

Paragraph (b) of § 351.509 deals with the question of when the benefit from a direct tax subsidy is considered to have been received by a firm. In our 1997 Proposed Regulations, we proposed to consider the benefit as having been received on the date the firm knew the amount of its tax liability. However, as stated in the 1989 Proposed Regulations, the date the firm knows its tax liability normally is the date on which it files its tax return. In these Final Regulations, we have decided that, with respect to a full or partial tax exemption or remission, we will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission, which is usually the date it files its tax return. This conforms the regulations to our experience.

With respect to deferrals, under paragraph (b)(2), the Secretary normally will treat the deferral of a direct tax as a loan, and will treat the benefit as received, as follows. The Secretary normally will treat a tax deferral of one year or less as a short-term loan received on the date the tax originally was due and repaid when the tax was actually paid. The Secretary normally will consider the benefit from a multi-year deferral as having been received on the anniversary date(s) of the deferral.

Paragraph (c) deals with the allocation of the benefits of direct tax subsidies to particular time periods. As under the 1997 Proposed Regulations, the Department normally will allocate such benefits to the year in which the benefits are considered to have been received under paragraph (b).

Finally, the Department will apply § 351.509 consistently with WTO rules concerning direct tax measures. Thus, for example, in the case of a foreign tax measure that exempts from taxation (either in whole or in part) income attributable to economic processes (including transactions involving exported goods) located outside the territorial limits of the exporting country, the Department would not consider such a measure to be an export subsidy, provided that the measure complied with other relevant WTO rules.

Section 351.510

Section 351.510 deals with programs that provide full or partial exemptions from, and deferrals of, indirect taxes or import charges. ("Indirect tax" and "import charge" are defined in § 351.102.) However, § 351.510 deals only with programs that potentially would be considered import substitution subsidies or domestic subsidies under section 771(5A)(C) or section 771(5A)(D) of the Act, respectively. Sections 351.517 through 519 deal with programs that potentially would be considered export subsidies under section 771(5A)(B) of the Act because separate guidelines must be applied when examining export subsidy programs that involve exemptions or rebates of indirect taxes or import charges.

Paragraph (a)(1) of § 351.510 is based on § 355.44(i)(2) of the 1989 Proposed Regulations, and continues to provide that a benefit exists to the extent that the taxes or import charges paid by a firm as the result of a program are less than the taxes the firm would have paid in the absence of the program. As in the case of direct taxes under § 351.509, deferrals of indirect taxes and import charges will be treated under paragraph (a)(2) as government-provided loans. Normally, we will use a short-term interest rate as the benchmark for deferrals of one year or less and a long-term interest rate as the benchmark for multi-year deferrals. The treatment of multi-year deferrals represents a change from the 1997 Proposed Regulations and is discussed in detail in the preamble to § 351.509.

Paragraph (b) of § 351.510 is based on § 355.48(b)(6) of the 1989 Proposed Regulations, and continues to provide that the Secretary will consider the benefit from a full or partial exemption of indirect taxes or import charges to have been received on the date when the recipient firm otherwise would have had to pay the tax or charge. In the case of deferrals of one year or less, the Secretary normally will consider the benefit to have been received when the deferred amount becomes due. For multi-year deferrals, the benefit is received on the anniversary date(s) of the deferral.

Paragraph (c) deals with allocation to a particular time period, and provides that the Secretary normally will expense the benefits attributable to the types of subsidy programs covered by § 351.510 in the year of receipt.

Section 351.511

Section 351.511 deals with the provision of goods and services. Prior to the URAA, section 771(5)(A)(ii)(II) of the Act provided that the provision of goods or services constituted a subsidy if such provision was "at preferential rates." Now, under section 771(5)(E)(iv) of the Act, a subsidy exists if such provision is "for less than adequate remuneration." Under section 771(5)(E) of the Act, the adequacy of remuneration is to be determined:

> "in relation to prevailing market conditions for the good or service being provided * * * in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale."

In our 1997 Proposed Regulations, we designated paragraph (a) as "(reserved)," stating that we wished to acquire some experience with the new statutory provision before codifying our methodology in the form of a regulation. We received several comments expressing disappointment in the lack of a regulation on this topic. While these parties recognized that our relative lack of experience with the new statutory provision made it difficult to promulgate a regulation, they requested guidance as to how we intend to identify and measure adequate remuneration.

Several commenters stressed the importance of basing the adequate remuneration benchmark on market prices that have not been distorted by the government's involvement in the market. According to these commenters, where government involvement has distorted prices, the Department should either adjust the price to account for the distortion or resort to the use of an alternative price. These commenters also argued that the benchmark used should include all delivery charges and, if necessary, import duties.

We also received several comments in response to our stated intention of continuing to employ a preferentiality type analysis where the government is the sole provider of goods or services such as electricity, water, or natural gas. One commenter supported such an approach and encouraged us to codify it. Other commenters argued that the preferentiality approach does not sufficiently capture the benefit mandated by the adequate remuneration standard. That is, it does not adequately measure the differential between the price paid for the input and the full market value of the input.

Since issuing the 1997 Proposed Regulations, the Department has gained some experience in applying the adequate remuneration standard. *See, e.g., Steel Wire Rod from Germany*, 62 FR 54990, 54994 (October 22, 1997), *Steel Wire Rod from Trinidad and Tobago*, 62 FR 55003, 55006–07 (October 22, 1997), and *Steel Wire Rod from Venezuela*, 62 FR 55014, 55021–22 (October 22, 1997) (*"Venezuelan Wire Rod"*). Based on our experience in these cases and on the comments received on this issue, we are providing guidance on how we intend to apply this new standard. Accordingly, paragraph (a) outlines the conceptual approach we will follow to measure the benefit from governmental provision of goods or services.

Paragraph (a)(1) states that a benefit exists to the extent that the good or service is provided for less than adequate remuneration. Paragraph (a)(2)(i) provides that our preference is to compare the government price to market-determined prices stemming from *actual* transactions within the country. Such market-determined prices include actual sales involving private sellers and actual imports. They may also include, in certain circumstances, actual sales from government-run competitive bidding. The circumstances where such prices would be appropriate are where the government sells a significant portion of the goods or services through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price. In choosing actual transactions, the Secretary will consider product similarity, quantities sold or imported, and other factors affecting comparability.

We normally do not intend to adjust such prices to account for government distortion of the market. While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.

Paragraph (a)(2)(ii) provides that, if there are no useable market-determined prices stemming from *actual* transactions, we will turn to world market prices that *would be available* to the purchaser. We will consider whether the market conditions in the country are such that it is reasonable to conclude that the purchaser could obtain the good or service on the world market. For example, a European price for electricity normally would not be an acceptable comparison price for electricity provided by a Latin American government, because electricity from Europe in all likelihood would not be available to consumers in Latin America. However, as another example, the world market price for commodity products, such as certain metals and ores, or for certain industrial and electronic goods commonly traded across borders, could be an acceptable comparison price for a government-provided good, provided that it is reasonable to conclude from record evidence that the purchaser would have access to such internationally traded goods.

Where there is more than one commercially available world market price to be used as a benchmark, we intend to average these prices to the extent practicable, with due allowance for factors affecting comparability. If the

most appropriate benchmarks are for products that are dumped or subsidized in the country where the subject merchandise is produced, we will adjust the benchmarks to reflect the dumping or subsidization. However, we will only make an adjustment to reflect a determination of dumping or subsidization made by the importing country with respect to the input product imported from the country from which the world market price is derived.

Paragraph (a)(2)(iii) provides that, in situations where the government is clearly the only source available to consumers in the country, we normally will assess whether the government price was established in accordance with market principles. Where the government is the sole provider of a good or service, and there are no world market prices available or accessible to the purchaser, we will assess whether the government price was set in accordance with market principles through an analysis of such factors as the government's price-setting philosophy, costs (including rates of return sufficient to ensure future operations), or possible price discrimination. We are not putting these factors in any hierarchy, and we may rely on one or more of these factors in any particular case. In our experience, these types of analyses may be necessary for such goods or services as electricity, land leases, or water, and the circumstances of each case vary widely. *See, e.g., Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30954 (July 13, 1992) and *Venezuelan Wire Rod*.

We believe that this approach addresses the concerns raised by commenters about potentially continuing the use of the preferentiality standard by shifting the focus of our inquiry toward whether the government employed market principles in setting prices. Although we do not have enough experience with the adequate remuneration standard to state when a price discrimination analysis may be appropriate, we believe there may be instances where government prices are the most reasonable surrogate for market-determined prices. We would only rely on a price discrimination analysis if the government good or service is provided to more than a specific enterprise or industry, or group thereof.

Paragraph (a)(2)(iv) provides that, in determining the adequacy of remuneration, the Department will adjust comparison prices to reflect the price a company would pay if it imported the good or service. This adjustment will account for delivery charges and import duties. In addition, if the price of the imported good includes antidumping or countervailing duties imposed by the country in question, we would use the price inclusive of those duties for comparison purposes. Absent the imposition of antidumping or countervailing duties by the country in question, however, we would not adjust the import prices to reflect alleged dumping or subsidies.

Paragraph (b) is based on § 355.48(b)(2) of the 1989 Proposed Regulations, and continues to provide that the benefit from a government-provided good or service is considered received when the firm pays, or is due to pay, for the good or service. Paragraph (c), which also is consistent with existing practice, provides that the Secretary normally will expense the benefit of a government-provided good or service to the year of receipt. However, benefits conferred by the provision of non-general infrastructure normally will be allocated over time.

Paragraph (d) deals with the provision of general infrastructure. Section 355.43(b)(4) of the 1989 Proposed Regulations contained a special test for determining whether government-provided infrastructure was specific and, therefore, countervailable. In our 1997 Proposed Regulations, we explained that, unlike the pre-URAA statute, section 771(5) of the Act, as amended by the URAA, expressly mentions certain types of government-provided infrastructure. However, it does so not in the context of specificity, but in the context of "financial contribution," one of the prerequisites for a subsidy. Section 771(5)(D)(iii) of the Act, which implements Article 1.1(a)(1)(iii) of the SCM Agreement, provides that the term "financial contribution" includes the provision of "goods or services, other than general infrastructure." In other words, the provision of "general infrastructure" does not constitute a "financial contribution," and, thus, does not constitute a subsidy.

We noted in our 1997 Proposed Regulations that, in light of the change in the statute, the countervailability of infrastructure depends on the definition of "general infrastructure." However, because of our inexperience in applying this definition and our uncertainty regarding the extent to which the principles reflected in the 1989 Proposed Regulations remained useful analytical tools for distinguishing potentially countervailable infrastructure from non-countervailable general infrastructure, we opted not to issue a regulation on infrastructure.

We received several comments regarding the definition of general infrastructure. One commenter argued that the word "general" essentially describes *types* of infrastructure—such as roads, bridges, railroads, etc.—which would never be countervailable. This commenter maintained that the word "general" should not be interpreted as relating to the question of specificity and argued that to do so would be to ignore the plain language of the statute. Several other commenters argued that the language in the SCM Agreement regarding general infrastructure was meant to codify the U.S. practice of countervailing specific infrastructure.

We disagree with the proposition that certain *types* of infrastructure automatically constitute general infrastructure and, thus, are not countervailable. Roads, bridges, and railroads do not necessarily constitute "general infrastructure" and can provide benefits to particular industries, as in the case where a road or bridge is built in an industrial park or port facility that is used only by one industry, or a group of industries. *See, e.g., Certain Steel Products from Korea*, 58 FR 37338, (July 9, 1993) ("*Korean Steel*"). Therefore, the type of infrastructure *per se* is not dispositive of whether the government provision constitutes "general infrastructure." Rather, the key issue is whether the infrastructure is developed for the benefit of society as a whole.

Paragraph (d) defines "general infrastructure" as infrastructure that is created for the broad societal welfare of a country, region, state, or municipality. For example, interstate highways, schools, health care facilities, sewage systems, or police protection would constitute general infrastructure if we found that they were provided for the good of the public and were available to all citizens or to all members of the public. Because we have no experience with the new concept of general infrastructure, we are not establishing more precise criteria at this time. However, we intend to follow these broad principles in future cases and we may develop more detailed criteria as we gain more experience.

Any infrastructure that satisfies this public welfare concept is general infrastructure and therefore, by definition, is not countervailable and not subject to any specificity analysis. Any infrastructure that does not satisfy this public welfare concept is not general infrastructure and is potentially countervailable. The provision of industrial parks and ports, special purpose roads, and railroad spur lines, to name some examples (some of which

we have encountered in our cases), that do not benefit society as a whole, does not constitute general infrastructure and will be found countervailable if the infrastructure is provided to a specific enterprise or industry and confers a benefit. *See, e.g., Korean Steel.*

Section 351.512

Section 351.512 deals with the purchase of goods. Section 771(5)(E)(iv) of the Act provides that the purchase of goods by a government can confer a benefit if the goods are purchased "for more than adequate remuneration." As with the provision of goods and services, our lack of experience in applying the adequate remuneration standard led us to designate this section "[reserved]" in the 1997 Proposed Regulations. Unlike the case with the provision of goods and services, however, we have not had the opportunity to gain sufficient experience applying the new standard in the context of government purchases. In addition, while government procurement potentially was a countervailable subsidy prior to the URAA, allegations of procurement subsidies were extremely rare. Thus, we still do not have experience on such matters as the "timing" of procurement subsidies or the allocation of such subsidies to a particular time period. Therefore, given our lack of experience with procurement subsidies we are not issuing regulations concerning the government purchase of goods. Instead, we have continued to designate § 351.512 as "[reserved]."

One commenter, however, encouraged the Department to provide further guidance regarding how it intended to apply the adequate remuneration standard in the context of the government purchase of goods. In particular, this commenter advocated a definition of adequate remuneration which focuses on a comparison of comparable prices for the good or service provided based on prevailing market conditions in the country subject to investigation or review.

As noted above, we are hesitant to promulgate a regulation dealing with the purchase of goods by a government because of our relative lack of experience in this area. However, our intended approach toward the measurement of the adequacy of remuneration is outlined in detail in § 351.511 (government provision of goods or services). While we have not codified this approach with respect to government purchases, we expect that any analysis of the adequacy of remuneration will follow the same basic principle, *i.e.*, will focus on what a market-determined price for the good in question would be.

We also received one comment regarding the threshold for initiating an investigation into whether government purchases have been made for more than adequate remuneration. In particular, this commenter argued for a "reasonable basis to believe or suspect" standard. In other words, a petitioner would be required to allege facts that give the Department a reasonable basis to believe or suspect that government purchases have been made for more than adequate remuneration.

We disagree that a heightened initiation threshold should be employed for this type of subsidy. Because we have virtually no experience with this type of subsidy, it would be inappropriate to require petitioners to meet a higher threshold for initiation than that imposed by the statute. According to section 702(b)(1) of the Act, the petitioner need only allege the elements necessary for the imposition of the duty (*i.e.*, the existence of a countervailable subsidy) and support the allegation with reasonably available information.

One additional commenter stated that the government purchase of services should be treated similarly to the government purchase of goods. In the discussion of this point in the preamble to the 1997 Proposed Regulations, we noted that only government purchase of goods is identified as a financial contribution under section 771(5)(D)(iv) of the Act and Article 1.1(a)(1)(iii) of the SCM Agreement. This commenter argued, however, that according to the statute and the SCM Agreement, a subsidy can exist where there is either a financial contribution or an income or price support. A governmental purchase of services, according to this commenter, can be considered an income support and, therefore, can result in a subsidy.

We have not adopted this suggestion. We believe that if governmental purchases of services were intended to be treated similarly to the government purchase of goods, the statute and the SCM Agreement would specifically mention services as they do with the government provision of goods and services.

Finally, we received one comment arguing that if we chose to promulgate a regulation regarding government purchases, we should make clear that purchases by government monopolies are included. While we are not issuing a regulation on this subject, we agree that purchases by government monopolies can constitute subsidies provided there is a benefit and the benefit is specific.

Section 351.513

Section 351.513 deals with worker-related subsidies. Under paragraph (a), the Department will identify and measure the benefit of government-provided assistance to workers based on the extent such assistance relieves the firm of an obligation it otherwise normally would incur. The comments we received dealt mainly with the form the obligation must take in order for worker-related assistance to be countervailable.

All commenters agreed that the Department should continue its practice of countervailing worker-related assistance when there is a pre-existing obligation for the company to provide such assistance. However, the commenters differed in how they defined the term "obligation." Some commenters asked the Department to adopt a broad definition of the term "obligation" and not limit it to only contractual or statutory obligations, whereas others argued that an obligation must be contractual or statutory in order for the Department to find the assistance to be countervailable.

As in our 1997 Proposed Regulations, we continue to take the position that "obligation" should be interpreted broadly. Even though an obligation is not binding in a contractual or statutory sense, an exemption from it may nevertheless provide a benefit to a firm. As an example, social or political conditions in a country may be such that, although no legal or contractual obligation exists, it is normal practice that companies make severance payments to laid-off workers. If the government decides to shoulder all or part of such payments, then the government relieves the company of a payment it otherwise would have incurred. In this situation, we will find that a countervailable subsidy exists, as long as the government's action is specific.

A related issue arises in situations where a company's obligations to its workers are negotiated by labor and management with the knowledge that the government will make a contribution. We encountered this situation in *Certain Steel Products from Germany*, 58 FR 38318 (July 9, 1993) ("*Certain Steel from Germany*"), where we concluded that the parties' knowledge of the government's willingness to make a contribution had an impact on the outcome of the negotiations. In the absence of the government's payment, the company would likely have agreed to pay the

workers more. Because the additional amount would depend upon the relative negotiating strengths of labor and management, we found it reasonable to assume that workers and management held approximately equal negotiating strength. We, therefore, decided to split the difference and concluded that in the absence of the government's contribution, the company would have had to pay the workers 50 percent of the amount paid by the government. As a result, we decided that 50 percent of the government's contribution was countervailable because it relieved the company of a payment it otherwise would have had to make.

Some commenters asked the Department to continue to apply the methodology used in *Certain Steel from Germany* whereas another commenter maintained that this approach is too generous to respondents and that the Department should countervail the full amount of the government's contribution. In opposition, other commenters characterized the methodology as speculative and urged the Department not to countervail governmental social aid at all.

As in the 1997 Proposed Regulations, we have declined to codify the approach used in *Certain Steel from Germany*. We believe, and the CIT has found, that where a company's obligations to its workers are negotiated with the knowledge that the government will make a contribution, it is reasonable to conclude that the government's commitment, and the negotiating parties' awareness of the commitment, have an impact on the outcome of the negotiations *(see LTV Steel* v. *United States,* 985 F. Supp. 95 (1997)). However, we believe it is necessary to examine the facts in each case before determining whether it is appropriate to countervail 50 percent of the government's contribution or some other amount.

Paragraph (b) deals with the form and timing of worker-related subsidies. Even though we did not receive any comments on these issues, we are making the following clarifications: Although most worker-related subsidies are provided in the form of cash payments, we consider the term "payment" in paragraph (b) to include non-cash benefits. With respect to timing, the Secretary will consider the subsidy to have been received by the firm on the date on which the payment is made that relieves the firm of an obligation that it normally would have incurred.

Paragraph (c) deals with the allocation of worker-related subsidies to a particular time period. As in the past, these subsidies will normally be considered to provide recurring benefits and they will be allocated to the year of receipt (expensed) in accordance with § 351.524(a).

Section 351.514

Section 351.514 contains the standard for determining when a subsidy is an export subsidy, as opposed to a domestic or import substitution subsidy. Consistent with section 771(5A)(B) of the Act, paragraph (a) of § 351.514 codifies the expansion of the definition of an export subsidy to include any subsidy that is, in law or in fact, contingent upon export performance, alone or as one of two or more conditions. Paragraph (b) has been added, incorporating the previously separate regulation regarding general export promotion.

We received a number of comments regarding the expanded definition of export subsidy in the 1997 Proposed Regulations. Several commenters supported the expanded definition in the 1997 Proposed Regulations but suggested that language be added to the regulation making it clear that an export requirement need not be an explicit condition of the program as long as the facts indicated that the benefits were contingent upon actual or anticipated exportation. These commenters highlighted several factual scenarios under which the Department should find an export subsidy to exist. These include subsidies provided to "for-export" industries; subsidies provided in situations where the export market is the only market for the subject merchandise; and subsidies provided where a substantial portion of a subsidized project will be devoted to export production.

Several other commenters were opposed to the expanded definition. These commenters argued that, if narrowly applied, the definition would disproportionately penalize exporting countries which may have broad policy statements referring to exports. With the growing economic integration of the North American market under the North American Free Trade Agreement ("NAFTA"), firms in these countries may base their investment decisions on servicing the NAFTA market rather than a domestic and export market, and, as such, the assistance is not truly contingent upon export performance. Further, these commenters argued that mere consideration of possible exportation as one of the factors considered by the government in granting the benefit does not mean that the benefit is "contingent" upon export performance. As support, they cited footnote 4 to Article 3.1(a) of the SCM Agreement which states that "the mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision." One commenter argued that "contingent upon actual or anticipated exportation or export earnings" should be limited to situations where the subsidy is conferred only upon actual exportation or is lost if the recipient is unable to demonstrate that the goods were exported.

Finally, one commenter suggested that the regulations should include illustrative (but not all-inclusive) guidance regarding the factors that the Department will consider in its analysis of *de facto* export subsidies. In this commenter's view, the regulations should also incorporate language that clarifies the distinction between a *de jure* and a *de facto* analysis.

While we have made minor changes to more closely conform the language of the 1997 Proposed Regulations with the language in the SCM Agreement and the statute, we have made no changes in response to these comments. However, in applying the standard contained in § 351.514, we will distinguish between broad development goals or economic policy, and specific program objectives and criteria. For purposes of our analysis, we have developed a list of factors that we may consider. This list is non-exhaustive and includes: (1) The stated purpose or purposes of the subsidy as put forth in the governing laws or regulations; (2) the selection criteria and reasons for approval/disapproval; (3) application and approval documents, including market or economic viability studies; (4) the existence and nature of any monitoring or enforcement mechanism; (5) governmental collection of data regarding the program recipients' exports (other than the customary collection of export and import data); (6) the exporting history of recipient firms or industries; and (7) other evidence that the Department deems relevant to consider. We need not examine all of the factors to determine that the program is an export subsidy if our examination of one or more factors provides sufficient evidence to determine that the program is a *de facto* export subsidy.

In situations where the government evaluates multiple criteria under a program, § 351.514 would require an analysis different from that described in *Extruded Rubber Thread from Malaysia,* 57 FR 38472 (August 25, 1992). In that case, the Malaysian Government considered 12 criteria in evaluating

whether a particular company should receive "Pioneer" status. Two of these criteria addressed the export potential of a product or activity. In addition, in certain situations, companies were required to agree to export commitments. In analyzing the Pioneer program, the Department examined the criteria being applied with respect to a particular company. If one or more of the criteria applied by the Government included favorable prospects for export, but the export criteria did not carry preponderant weight, we did not consider the award of Pioneer status to constitute an export subsidy. However, under the new standard contained in § 351.514, if exportation or anticipated exportation was either the sole condition or one of several conditions for granting Pioneer status to a firm, we would consider any benefits provided under the program to the firm to be export subsidies unless the firm in question can clearly demonstrate that it had been approved to receive the benefits solely under non-export-related criteria. In such situations, we would not treat the subsidy to that firm as an export subsidy.

We have not adopted the suggestion to limit the interpretation of the phrase "contingent upon actual or anticipated export performance" to situations where the subsidy is conferred only upon actual exportation or is lost if the recipient is unable to demonstrate that the goods were exported. Such language would effectively negate the phrase "tied to * * * anticipated exportation or export earnings" and directly conflicts with the intent of Congress and the language of the SCM Agreement. The SCM Agreement states that a *de facto* export subsidy exists "when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or *anticipated* exportation or export earnings." *See* Footnote 4 to Article 3.1 of the SCM Agreement (emphasis added).

One commenter protested that the 1997 Proposed Regulations failed to provide a mechanism for notifying export subsidies discovered during an investigation to the Office of the U.S. Trade Representative ("USTR") for submission to the WTO. We do not believe a regulation is needed given the clear language of the statute which requires the Department to notify USTR of any subsidies which are "prohibited" under Article 3 of the SCM Agreement. (*See* section 281(b)(1) of the Act (19 U.S.C. 3571(b)(1) and (c)(1).)

General Export Promotion: Paragraph (b) contains an exception to the general rule which codifies the Department's practice with respect to certain types of government export promotion activities. In the 1997 Proposed Regulations, this paragraph was a separate section (*see*, § Section 351.520). However, we have decided it fits more appropriately as an exception to our discussion of what constitutes an export subsidy. As we have observed in the past, most countries maintain general export promotion programs. As long as these programs provide only general information services, such as information concerning export opportunities or government advocacy efforts on behalf of a country's exporters, they do not confer a benefit for purposes of the CVD law. However, if such activities promote particular products or provide financial assistance to a firm, a benefit could exist.

For example, government guides on how to export, overseas marketing reports, and marketing opportunity bulletins would be considered to be general promotion activities and, as such, would not be countervailable. Similarly, certain advocacy efforts, such as country image events or country product displays, could also be considered to be general promotion activities. However, image events or product displays that focus on individual products or which provide financial assistance to participants would not meet the exception for general export promotion. *See, e.g.*, the discussion regarding the treatment of two ProChile trade promotions, "Event Bon Appetit" and "Summer Harvest" in *Fresh Atlantic Salmon from Chile*, 63 FR 31437, 31440 (June 9, 1998).

Two commenters argued that the regulation should be modified first to identify what constitutes countervailable export promotion assistance and then to identify the criteria for potentially non-countervailable export promotion assistance. Another commenter argued that the regulation should be revised to make it clear that general export promotion programs never constitute export subsidies because such programs can never be considered to be contingent upon export results. According to the commenter, such treatment would be consistent with the "green box" treatment of general marketing and promotional programs under the WTO Agricultural Agreement. This commenter further suggested that the focus of the regulation should be on programs rather than activities. The commenter also argued that even where an export promotion program confers a benefit, the program should be considered to be non-countervailable if it is non-specific. Another commenter argued that even if an export promotion program is superficially generally available but upon examination is *de facto* specific, then it is countervailable.

Having clarified the exception for general export promotion by incorporating that proposed regulation into the general export subsidies regulation, we are not adopting the suggested modification regarding the identification of countervailable export promotion assistance. We also disagree that the regulation should be revised to state that general export promotion activities can never be countervailable because they are never contingent upon export results. As discussed in response to a similar comment posed by this commenter with respect to the general definition of an export subsidy contained in paragraph (a), the phrase "contingent upon actual or anticipated export performance" is not limited to actual exportation. Assistance to promote exports, even of a general nature, is designed to result in actual export performance.

With respect to whether the regulation should refer to export promotion programs rather than export promotion activities, we do not see the need to make this change. We often examine and make determinations with respect to certain aspects of, or activities under, a program, and as a result may find one project or activity under a program to be countervailable while finding another project or activity under the same program to be not countervailable.

Finally, with respect to the comments regarding the "specificity" of export promotion assistance, we do not need to reach this issue. All export promotion programs, even those of a general nature, are specific under section 771(5A)(B) of the Act. However, as noted above, as long as these programs provide only information services, such as information concerning export opportunities, or government advocacy efforts on behalf of a country's exporters, they do not confer a benefit for purposes of the CVD law.

Section 351.515

Section 351.515 corresponds to paragraph (c) of the Illustrative List, and deals with preferential internal transport and freight charges on export shipments. It is unchanged from the 1997 Proposed Regulations. Paragraph (a)(1) restates the general principle that a benefit exists to the extent that a firm pays less for the transport of goods destined for export than it would for the transport of goods destined for domestic consumption. In addition, paragraph

(a)(2), which is based on § 355.44(g)(2) of the 1989 Proposed Regulations, provides that the Secretary will not consider a benefit to exist if differences in charges are the result of an arm's-length transaction or are commercially justified.

Paragraph (b) provides that the Secretary will consider the benefit to have been received on the date on which the firm pays or, in the absence of payment, was due to pay the transport or freight charges. Paragraph (c) provides that the Secretary will normally allocate (expense) the benefit to the year in which the benefit is received.

Section 351.516

Section 351.516 deals with the government provision of goods or services on favorable terms or conditions to exporters. Like its predecessor, § 355.44(h) of the 1989 Proposed Regulations, § 351.516 is based on paragraph (d) of the Illustrative List, and reflects the changes to paragraph (d) made as part of the Uruguay Round. Paragraph (a) contains the standard for determining the existence and amount of the benefit attributable to these types of subsidy programs. As paragraph (a)(2) makes clear, in determining whether the domestically sourced input is being provided on more favorable terms than are commercially available on world markets, the Department will add to the world market price delivery charges to the country in question. In our view, delivered prices offer the best measure of prices that are commercially available to exporters in that country. Paragraphs (b) and (c) contain rules regarding the timing of benefit receipt and the allocation of the benefit to a particular time period, respectively. As discussed below, one change has been made to paragraph (a)(1) of the 1997 Proposed Regulations.

As noted in the 1997 Proposed Regulations, one commenter argued that the Department should provide that all export subsidy payments are prohibited *per se* under the SCM Agreement and U.S. law, and that nothing in paragraph (d) permits them. According to this commenter, in the past, foreign governments have claimed an exception to paragraph (d) for practices that protect domestic markets while promoting subsidized exports of agricultural and manufactured goods. As an example, this commenter cited the European Union program providing "export restitution" payments or "export refunds" on durum wheat, the primary agricultural product used in the production of pasta. The commenter stated that these refunds were prohibited because paragraph (d) applies only to the "provision" of goods and/or services, not export payments, and that the Department's regulations should clearly prohibit export "payments."

This argument is identical to one put forth by petitioners in the1985 administrative review on *Certain Iron-Metal Castings from India*, 55 FR 50747, 50748 (December 10, 1990). In that case, India's International Price Reimbursement Scheme ("IPRS") provided payments to castings exporters, refunding the difference between the price of raw materials purchased domestically and the price exporters otherwise would have paid on the world market. We refused to examine whether the IPRS met the criteria for non-countervailability under the exception in item (d) and countervailed the IPRS payments in their entirety.

Exporters and importers challenged the Department's determination, and, in its decision in *Creswell Trading Co.* v. *United States*, 783 F. Supp. 1418 (1992), the CIT remanded the case to the Department with instructions to analyze the consistency of the IPRS with item (d). The Federal Circuit discussed this decision with approval in connection with an appeal from a second CIT decision in this same case. *See Creswell Trading Co.* v. *United States*, 15 F. 3d 1054 (1994) ("*Creswell*"). Therefore, based on the above judicial precedent, we disagree with the commenter that paragraph (d) does not apply to programs where a government reimburses an exporter for the difference between a higher domestic price for an input and a lower price that the exporter would have paid on the world market, as opposed to providing the input itself.

Also consistent with the Federal Circuit's decision in *Creswell*, where a program exists that provides inputs for exported goods at a lower price than is available for inputs for use in the production of goods for domestic consumption, the burden will be on respondents to provide evidence that the lower price reflects the price that is commercially available on world markets.

In the preamble to the 1997 Proposed Regulations, we asked parties to comment on whether dumped or subsidized prices should be considered to be commercially available world market prices suitable for use as a benchmark to determine whether a government is providing price preferences for inputs used for exports. Several commenters opposed using dumped or subsidized prices as a benchmark because it would understate the subsidy, undermine the purpose of the SCM Agreement and would be inconsistent with our proposed upstream subsidy methodology. Other commenters argued that subsidized or dumped prices should be considered as a possible benchmark because they represent "commercially available" prices.

Where there is more than one commercially available world market price to be used as a benchmark, we intend to average these prices to the extent practicable, making due allowance for factors affecting comparability. If the most appropriate benchmarks are for products that are dumped or subsidized in the country where the subject merchandise is produced, we will adjust the benchmark. However, we will only make an adjustment to reflect a determination of dumping or subsidization made by the importing country with respect to the input product imported from the country from which the world market price is derived.

A number of parties commented on the Department's inclusion of delivery charges in determining the commercially available world market price benchmark. While some commenters supported the inclusion of delivery charges in the benchmark arguing that it more accurately reflected the price available to exporters in that country, others disagreed arguing that delivery charges merely reflect the distance the good is being transported. The difference in delivery costs between a locally sourced product and an imported product is not due to the government subsidy; rather it reflects the comparative advantage the domestic product has over the imported product with respect to geographic proximity.

Consistent with our past practice in evaluating such subsidies, we intend to continue to include delivery charges in the commercially available world market price benchmark used to measure price preferences for inputs used for exports. Item (d) of the Illustrative List specifically sets the benchmark as the price "commercially available on world markets to their exporters." By its very terms, the price they would pay would include freight.

This practice was upheld by the Federal Circuit in *Creswell* v. *the United States*, 141 F.3d 1471 (Fed. Cir. 1998) ("*Creswell II*"), a case which involves IPRS and exporters of iron-metal castings in India. According to the Court:

Item (d) thus recognizes that foreign governments may subsidize their domestic industries to allow them to compete effectively on the world market as long as the extent of the subsidization is not more favorable to their exporters than if those exporters had to participate in the world market without assistance. If the amount of the subsidization exceeds this point, it is excessive and this excessive amount is countervailable under Item (d). Accordingly, Item (d) mandates a comparison between the terms and conditions under which product was supplied to exporters by their governments and the terms and conditions to which those exporters would have been subject had they instead participated in the world market.

The Court explained that:

A castings manufacturer procuring pig iron on the world market would have to pay the FOB price for the pig iron itself, plus the cost of shipping that iron to India. Accordingly, the world market price must include the cost of shipping. To the extent that the Indian government's world market price did not include oceanic shipping costs, its world market price was artificially low and its rebate artificially high by this amount. The price of pig iron that is not delivered to India cannot be fairly compared with the price of pig iron that is delivered. Thus, because of the omission of oceanic shipping costs from the calculation of the world market price, the IPRS program has in effect provided pig iron to India's castings manufacturers on terms more favorable than had those manufacturers actually procured pig iron on the world market.

One commenter stated that, consistent with the SCM Agreement, § 351.516(a)(1) should be amended to include government-provided services. We have adopted this suggestion and have amended § 351.516(a)(1) to include services.

This same commenter also stated that when a foreign government charges less than the commercially available price on world markets, the Department should countervail the full amount of the difference between the price the government charges to domestic producers and that charged to exporters, not just the difference between the government price and the delivered commercially available world market price benchmark. Such an approach would be consistent with the Court's decision in *RSI (India) Pvt., Ltd.* v. *United States*, 687 F. Supp. 605, 611 (CIT 1988) ("*RSI*").

We have not adopted this suggestion. Where there is a government-mandated scheme in place, the benefit to the recipient from price preferences for inputs used in the production of goods for export is the difference between what the producer actually pays and what the producer would otherwise pay (*i.e.*, the commercially available price on the world market). We disagree that the suggested approach is consistent with the Federal Circuit's decision in *RSI*. In *RSI*, the Court was addressing a situation where the record was deficient, and it found that the Department was under no obligation to make calculations that should have been made by respondents. However, consistent with *RSI* and the Federal Circuit's decision in *Creswell II*, we continue to take the position that the respondents must provide evidence establishing that the lower price being charged by the government reflects the price that is commercially available on world markets.

Section 351.517

Section 351.517 deals with the exemption, remission or rebate upon export of indirect taxes. ("Indirect tax" is defined in § 351.102.) Section 351.517 is consistent with longstanding U.S. practice, (*see Zenith Radio Corp.* v. *United States*, 437 U.S. 443 (1978)), and is based on paragraph (g) of the Illustrative List. The regulation has been changed to reflect paragraph (g) of the Illustrative List by adding that it also applies to the exemption of indirect taxes, as well as to their remission. Paragraph (g) deals with indirect taxes on the production or distribution of the exported merchandise, such as value added taxes, and provides that the remission or rebate of such taxes constitutes an export subsidy only if the amount of the remittance or rebate is excessive; *i.e.*, if it exceeds the amount of indirect taxes levied on like products sold for domestic consumption. For example, if a government imposes a $7 tax on a widget sold for domestic consumption and provides a $10 rebate if the same type of widget is exported, an export subsidy exists in the amount of $3. In accordance with paragraph (g), the non-excessive exemption or remission upon export of indirect taxes does not constitute a subsidy. *See* note 1 of the SCM Agreement.

Paragraph (b) provides that the benefit from an excessive exemption or rebate of indirect taxes is deemed to be received on the date of exportation. Paragraph (c) provides that the Secretary will normally expense these types of subsidies in the year of receipt.

Section 351.518

While § 351.517 deals with the exemption or remission of indirect taxes in general, § 351.518 deals with the exemption, remission, or deferral of prior-stage cumulative indirect taxes and has been changed from the 1997 Proposed Regulations, as described below. ("Prior-stage indirect tax" and "cumulative indirect tax" are defined in § 351.102.) Section 351.518 is based on paragraph (h) of the Illustrative List, and reflects certain changes made to paragraph (h) as part of the Uruguay Round negotiations. Section 351.518 is consistent with paragraph (h) and the Guidelines on Consumption of Inputs in the Production Process (Annex II to the SCM Agreement).

Section 351.518 is drafted to address separately exemptions, remissions and deferrals of prior stage cumulative indirect taxes. Paragraph (a) deals with whether a benefit is received and how it is calculated. Paragraph (a)(1) deals with exemptions and states that where inputs are exempt from prior stage cumulative indirect taxes, a benefit exists to the extent that the exemption extends to inputs not consumed in the production of the exported product, as defined in accordance with the SAA and Annex II to the SCM Agreement, making normal allowance for waste, or where the exemption covers taxes other than indirect taxes. ("Consumed in the production process" is defined in § 351.102.) Where a benefit exists, it is equal to the amount of the taxes the firm would otherwise pay on inputs not consumed in the production of the exported product.

Paragraph (a)(2) addresses remissions of indirect taxes and states that a benefit exists to the extent that the amount remitted exceeds the amount of prior stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. Where a benefit exists, paragraph (a)(2) sets forth a general rule to the effect that the amount of the benefit normally will equal the difference between the amount remitted and the amount of prior stage cumulative indirect taxes on inputs that are consumed in the production of the exported product.

Paragraph (a)(3) deals with the amount of the benefit attributable to a deferral of prior-stage cumulative indirect taxes. We have modified paragraph (a)(3) in response to comments that the regulation should identify the practice considered countervailable before addressing the exception. Consistent with footnote 59 to the SCM Agreement, the first sentence of paragraph (a)(3) provides that a deferral gives rise to a benefit if the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge the appropriate interest on the taxes deferred.

Another commenter urged the Department to treat multi-year deferrals as long-term loans, because using a short-term interest rate as a benchmark understates the benefit to the recipient. For the reasons discussed in § 351.509 regarding deferrals of direct taxes, we have adopted this position. Consequently, § 351.518(a)(3) permits us to use long-term benchmark rates for determining the benefit conferred by deferrals of prior stage cumulative indirect taxes, where appropriate.

We have also modified the exception outlined in paragraph (a)(4) in response to a comment that the 1997 Proposed Regulations erroneously applies procedures set out in Annex II to the SCM Agreement only to remissions of indirect taxes and should apply as well to exemptions and deferrals. We agree that Annex II to the SCM Agreement applies not only to remissions but also to exemptions and deferrals. Accordingly, paragraph (a)(4) has been changed and directs that, based on Annex II to the SCM Agreement, the Secretary may consider the entire amount of an exemption, remission or deferral of prior-stage cumulative taxes to be a benefit if the Secretary determines that the foreign government has not examined the inputs in order to confirm which inputs are consumed in the production of exported products and in what amounts, and the taxes that are imposed on those inputs. This qualification is essentially a modified version of the Department's "linkage test," a test upheld in *Industrial Fasteners Group, American Importers Ass'n* v. *United States*, 710 F.2d 1576 (Fed. Cir. 1983). The test has been modified to conform to the guidelines of Annex II. Under the modified test, we will first examine whether the exporting government has a system in place that confirms which inputs are consumed in the production of the exported product, and in what amounts, and which taxes are imposed on the inputs consumed in production. Where we find that such a system is in operation, we will examine the system to determine whether it is reasonable, effective, and based on generally accepted commercial practices in the exporting country. Where such a system is not in operation, or where the system is not reasonable or effective, the government of the exporting country may examine the actual inputs involved to demonstrate that the exemption, remission or deferral of indirect taxes reflects only those inputs consumed in the production of the exported product, the quantity of those inputs consumed in production, including a normal allowance for waste, and only those indirect taxes imposed on the input product.

Paragraph (b) deals with the time of receipt of the benefit. Paragraph (b)(1) provides that in the case of a tax exemption, the benefit is received on the date of exportation. Paragraph (b)(2) provides that in the case of a tax remission, the benefit arises as of the date of exportation. Paragraphs (b)(3) and (b)(4) address deferrals and state that the benefit from deferrals of less than one year will be received on the date the deferred tax becomes due. For multi-year deferrals, the benefit is received on the anniversary date(s) of the deferral.

Paragraph (c) deals with the allocation of the benefit to a particular time period, and provides that the Secretary normally will allocate (expense) the benefit from an exemption, remission or deferral of prior-stage cumulative indirect taxes to the year in which the benefit is considered to have been received under paragraph (b).

Two commenters argued that § 351.518(a)(2) should state that the system, procedure or methodology of examination used by foreign governments to confirm the consumption of inputs in the production process is subject to the further examination by the Department, including verification. We have not adopted the suggested language regarding verification. We see no need to add this language. As with any information relied upon by the Department for its determinations, this information is subject to verification.

Section 351.519

Section 351.519 deals with the remission or drawback of import charges. The regulation has been changed to clarify that the term "remission or drawback" includes full or partial exemptions and deferrals of import charges. Section 351.519 is generally consistent with prior Department practice, but contains some revisions to reflect changes made to paragraph (i) of the Illustrative List during the Uruguay Round negotiations. Section 351.519 is based on paragraph (i), the Guidelines on Consumption of Inputs in the Production Process, and the Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies (Annex III to the SCM Agreement).

Paragraph (a)(1) reflects the longstanding principle that governments may remit or drawback import charges paid on imported inputs consumed in production when the finished product is exported. However, if the amount remitted or drawn back exceeds the amount of import charges paid, a benefit exists. In addition, paragraph (a)(1) now incorporates exemptions and deferrals of import charges on inputs consumed in the production of exported products.

Paragraph (a)(2) deals with so-called "substitution drawback." Under a substitution drawback system, a firm may substitute domestic inputs for imported inputs without losing its eligibility for drawback. However, a benefit exists if the amount drawn back exceeds the amount of import charges levied on imported inputs, or if the export of the finished product does not occur within a reasonable time (not to exceed two years) of the import of the inputs.

Paragraph (a)(3) deals with the calculation of the amount of benefit. Paragraph (a)(3)(i) sets forth the rule for calculating the benefit from an excessive remission or drawback and states that the amount of the benefit equals the difference between the amount remitted or drawn back and the amount of import charges paid on the inputs consumed in production for which the remission or drawback is claimed. For example, assume that a firm imports a widget which is an input consumed in the production of a gizmo, and pays $2 in import duties on the widget. If, when the firm exports the finished gizmo, the firm receives $5 in drawback, the benefit equals $3 ($5 − $2 = $3). Paragraphs (a)(3) (ii) and (iii) deal with calculation of the benefit from an exemption or deferral of import charges and parallel the language set forth in § 351.518.

However, paragraph (a)(4) provides that in certain circumstances, the Secretary may consider the amount of the benefit to equal the amount of the exemption, deferral, remission or drawback. Paragraph (a)(4) provides for a "linkage" test, and is essentially identical to § 351.518(a)(4). See discussion of § 351.518(a)(4), above.

One commenter suggested that language be added to § 351.519(a)(4) to clarify further the type of system or procedure referred to by the regulation. This commenter and another commenter also argued that the Department should state that the system, procedure or methodology of examination used by foreign governments to confirm the consumption of inputs in the production process is subject to further examination by the Department, including verification.

We have not adopted this clarifying language in § 351.519(a)(4). We believe that clarification regarding the type of system or procedure is unnecessary because any system, regardless of the

type, must meet the standards set forth in paragraph (a)(4) in order to be non-countervailable. We will examine all such systems carefully to ensure full compliance with these standards. With respect to the suggested language regarding verification, we have not adopted this language. As with any information relied upon by the Department for its determinations, this information is subject to verification.

Paragraph (b) deals with the time of receipt of the benefit. Paragraph (b)(1) provides that, in the case of remission or drawback, the Secretary normally will consider the benefit to have been received as of the date of exportation. Paragraphs (b)(2), (b)(3) and (b)(4) have been added to reflect the addition of exemptions and deferrals of import charges to this section. The timing of receipt of the benefit from an exemption or deferral of import charges parallels § 351.518. Paragraph (c) provides that the Secretary normally will allocate this benefit to the year in which the benefits are considered to have been received under paragraph (b).

Section 351.520

Section 351.520 deals with export insurance and is unchanged from the 1997 Proposed Regulations. Paragraph (a), which deals with the benefit attributable to export insurance, is based on paragraph (j) of the Illustrative List. Paragraph (a) differs from the section of the 1989 Proposed Regulations dealing with export insurance, § 355.44(d). First, to reflect changes made to the Illustrative List during the Uruguay Round, the word "manifestly" has been deleted.

Second, § 355.44(d)(1) of the 1989 Proposed Regulations required that an export insurance program must have exhibited losses for a five-year period before the Secretary would consider the program a countervailable subsidy. We have not included the five-year loss requirement in these regulations, because, depending on how an export insurance program is structured, it may be evident within less than five years that premiums will be inadequate to cover the long-term operating costs and losses of the program. On the other hand, where the program is structured in such a way that expected premiums can cover expected long-term operating costs and losses, we anticipate that we will continue to apply the five-year rule. For example, we would continue to apply the five-year rule to programs like Israel's Exchange Rate Risk Insurance Scheme. With respect to this program, we originally determined that it was structured so as to be self-balancing in the sense that it could reasonably be expected to break even over the long term. See Potassium Chloride from Israel, 49 FR 36122, 36124 (September 14, 1984). Therefore, we did not find a countervailable subsidy despite losses in the early years of the program. *Id.* However, after observing losses for five years, we concluded that the premiums charged were inadequate, and we determined that the scheme conferred a countervailable benefit. See Industrial Phosphoric Acid from Israel, 52 FR 25447, 25449–50 (July 7, 1987).

Finally, § 355.44(d)(1) of the 1989 Proposed Regulations stated that the Department would take into account income from other insurance programs operated by the entity in question. As discussed in the Preamble to the 1997 Proposed Regulations, we have reconsidered this policy, and, although we do not have much experience in this regard, have concluded that this requirement may be overly restrictive. For example, there may be instances where the insuring entity operates on a commercial basis, except for the export insurance function that may be specifically underwritten by the government. In such a situation, it would be inappropriate to take into account the insuring company's income from other insurance programs.

One commenter suggested that the Department's regulations should clearly state that the Department's evaluation of whether export insurance programs are being subsidized will be limited to those programs and not other insurance programs which may be offered by the insurer.

Section 351.520(a)(1) states, "In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses *of the program*." (Emphasis added). We do not see a need to clarify the regulation any further.

Section 351.521

Section 771(5A)(C) of the Act defines an "import substitution subsidy" as "a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions." As stated in the Senate Report, "the category of import substitution subsidies is a new one that is neither part of the 1979 Subsidies Code nor included in current law." S. Rep. No. 103–412, at 93 (1994). Under the new law, import substitution subsidies are automatically considered to be specific.

In the 1997 Proposed Regulations, we stated that we were not issuing a regulation on import substitution subsidies due to our lack of experience in dealing with this new category of subsidies.

One commenter supported the Department's decision not to issue a regulation on this topic but asked that we explain in these Final Regulations our reasons for not doing so. This commenter also requested that we reiterate our view, as expressed in the 1997 Proposed Regulations, that section 771(5A)(C) of the Act does not limit the definition of import substitution subsidies to include only *de jure* subsidies. Another commenter urged us to issue a regulation to clarify that both *de jure* and *de facto* import substitution subsidies are countervailable.

Because of our lack of experience in dealing with import substitution subsidies, we have continued to designate § 351.521 as "reserved." We intend to develop our practice regarding import substitution subsidies on a case-by-case basis. As we stated in the 1997 Proposed Regulations, the plain language of section 771(5A)(C) of the Act does not limit the definition of import substitution subsidies to only those subsidies that are contingent "in law" upon the use of domestic goods. Moreover, the absence of a regulation making explicit the coverage of *de facto* import substitution subsidies should not be construed as an indication that the Department believes that section 771(5A)(C) applies only to *de jure* import substitution subsidies.

A third commenter contended that investigations of import substitution subsidies would be very complex and time-consuming and that they, therefore, would divert attention and resources from the main countervailing duty investigation. For this reason, the commenter argued, the Department should not initiate an investigation of import substitution subsidies absent a specific allegation by petitioners that gives the Department a reasonable basis to believe or suspect that such subsidies have been bestowed.

We have not adopted this suggestion. Contrary to the commenter's view, we believe that investigation of import substitution subsidies may place less of a burden on the Department and respondents because import substitution subsidies are *per se* specific. Consequently, we would only need to investigate the existence and amount of any benefit. Therefore, we see no basis for employing a heightened initiation standard.

A fourth commenter asked that the regulations clarify that the term "domestic goods" should also apply to purchases within a customs union of which the subsidizing country is a member. The commenter argued that

this definition of "domestic" would be consistent with the definition of "country" in section 771(3) of the Act. The commenter noted that the Department has countervailed subsidies provided by the European Union in the past. According to the commenter, a regulation that includes purchases from within a customs union in the term "domestic goods" would, therefore, be consistent with the Department's past practice.

Import substitution subsidies generally protect domestic input producers by imposing requirements or providing incentives for companies to use these inputs. It seems unlikely that one country would provide incentives to use inputs from another country, even if the other country is in the same customs union. However, if the subsidy is provided by the customs union itself, we can reach that program directly through the definition of "country," as defined further in the preamble to § 351.523 on upstream subsidies. Furthermore, we believe the commenter's analysis of the relationship between "domestic goods" as used in section 771(5A)(C) and "country" as used in section 771(3) may have merit, and we will look carefully at this suggestion if the situation is presented in a specific case.

Section 351.522

Section 351.522 of the 1997 Proposed Regulations, entitled "Certain agricultural subsidies," codified particular aspects of how the Department intends to analyze "green box" subsidies. We did not promulgate proposed regulations governing the non-countervailable status of "green light" subsidies because we considered the statute and the SAA sufficiently clear with respect to these exceptions in the countervailing duty law. However, based on comments received, as discussed below, we have codified certain standards concerning our analysis of green light research and environmental subsidies in §§ 351.522(b) and 351.522(c). To reflect these changes from the 1997 Proposed Regulations, we have renamed § 351.522 "Green Light and Green Box Subsidies," and we have added paragraphs (b) and (c) in these Final Regulations.

Certain agricultural subsidies: Section 771(5B)(F) of the Act implements Article 13(a)(i) of the WTO Agreement on Agriculture regarding the non-countervailable status of certain "domestic support measures." Under Article (6)(1) of the Agreement on Agriculture, domestic support measures that meet the policy-specific criteria and conditions of Annex 2 of the WTO Agreement on Agriculture are exempt from member countries' commitments to reduce subsidies. In addition, Article 13(a)(i) of the Agreement on Agriculture directs that these subsidies, commonly referred to as "green box" subsidies, will be non-countervailable during the nine-year implementation period described in Article 1(f) of the Agreement on Agriculture.

Consistent with Article 13(a)(i) of the Agreement, section 771(5B)(F) of the Act provides that the Secretary will treat as non-countervailable domestic support measures that (1) are provided with respect to products listed in Annex 1 to the Agreement on Agriculture, and (2) the Secretary "determines conform fully to the provisions of Annex 2" to that Agreement. To implement section 771(5B)(F) of the Act, § 351.522(a) sets out the criteria the Secretary will consider in determining whether a particular domestic support measure conforms fully to the provisions of Annex 2.

One commenter argued that the Department should clarify that, in order to obtain green box status, a subsidy must truly be designed for agriculture because the Agreement on Agriculture makes a distinction between support provided to raw products and support provided to processed products. Specifically, the Department should make clear that a grant to upgrade a facility for processing agricultural products, while technically covered by the Agreement on Agriculture, would not receive green box treatment.

We have not adopted this proposal because neither Annex 1 nor Annex 2 of the Agreement on Agriculture draws a distinction between raw and processed agricultural products for purposes of green box treatment. Annex 1 covers products from HS Chapters 1–24 and various other HS Codes and Headings. These tariff categories include numerous forms of both raw and processed agricultural products. The policy-specific criteria and other conditions set forth in Annex 2 are not product-specific. Hence, a domestic support measure provided with respect to the specific agricultural products identified only in Annex 1, whether raw or processed, may warrant green box treatment as long as the measure fully conforms to the relevant criteria in Annex 2.

One commenter argued that the regulations should require the Department to consider whether or not an alleged green box subsidy has trade-distorting effects. Further, the commenter noted that the SAA enumerates certain U.S. programs that meet the green box criteria. According to the commenter, the regulations should explicitly treat as non-countervailable a foreign program that is similar to an enumerated U.S. program. This same commenter also argued that the list of eight types of direct payments to producers included in Annex 2 is illustrative, not exclusive. The commenter stated that the regulations should provide "precise, objective and even-handed" criteria for determining whether a particular subsidy is a green box subsidy.

Another commenter disputed the suggestion that the regulations should include a list of agricultural programs that the Department automatically would consider as non-countervailable. According to this commenter, there is no basis in the statute for automatically exempting particular programs from the CVD law. Instead, this commenter argued, the Department should assess whether particular programs meet the green box criteria on a case-by-case basis.

We believe there is little to be gained from enumerating in the regulations specific types of programs that would qualify automatically as green box subsidies. Annex 2 of the Agreement provides explicit criteria that a program must meet in order to receive green box status, and § 351.522(a) incorporates these criteria. Consistent with section 771(5B)(F) of the Act and the Agreement on Agriculture, paragraph (a) of § 351.522 provides that we will treat as non-countervailable a subsidy provided to an agricultural product listed in Annex 1 of the Agreement if the subsidy fully conforms to both the basic criteria of subparagraphs (a) and (b) of paragraph 1 of Annex 2 of the Agreement on Agriculture and the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of that Annex.

We received two comments concerning the so-called "peace clause" in the Agreement on Agriculture. Specifically, Articles 13(b) and (c) of that Agreement require WTO member countries to exercise "due restraint" in initiating CVD proceedings on agricultural subsidies provided by a member whose total non-green box agricultural subsidies (both domestic and export) are within that member's reduction commitments. See SAA at 723–25. The obligation to exercise "due restraint" exists only during the "implementation period," defined in Article 1(f) of the Agreement on Agriculture.

One commenter argued that the Department's regulations should ensure that the Department exercise due restraint by not self-initiating CVD

investigations on products that benefit from subsidies described in Articles 13(b) and (c). A second commenter argued that the Department should interpret the due restraint clause narrowly.

We do not believe that a regulation is necessary. The Department understands the due restraint requirement to entail a commitment to refrain from self-initiating CVD investigations with respect to agricultural subsidies described in Articles 13(b) and (c) during the implementation period, and the Department will administer the statute accordingly. See SAA at 937.

Green light subsidies in general: Under section 771(5B) of the Act, which implements Article 8 of the SCM Agreement, certain domestic subsidies and domestic subsidy programs that meet all the requirements may be treated as non-countervailable. There are three categories of these so-called "green light" subsidies: (1) Research subsidies (see section 771(5B)(B) of the Act); (2) subsidies to disadvantaged regions (see section 771(5B)(C) of the Act); and (3) subsidies for adaptation of existing facilities to new environmental requirements (see section 771(5B)(D) of the Act).

The non-countervailable status of these green light subsidies can be established in two ways. First, a WTO Member country can notify a subsidy program to the WTO SCM Committee in accordance with Article 8.3 of the SCM Agreement. Once notified, section 771(5B)(E) of the Act provides that a green light subsidy program "shall not be subject to investigation or review" by the Department. However, an exception to this rule exists in situations where a Member country has successfully challenged in the WTO a claim for green light status. In the event of a successful challenge, section 751(g) and section 775 of the Act establish mechanisms for promptly including the subsidy or subsidy program in an existing CVD proceeding should there be reason to believe that merchandise subject to the proceeding may be benefitting from the subsidy or subsidy program.

We received one comment on subsidy notifications. The commenter requested that the Department ensure that public subsidy notifications under Article 8.3 are made available and are circulated promptly upon receipt. We have adopted this suggestion. The Subsidies Enforcement Office within Import Administration intends to promptly add to the Subsidies Library all derestricted subsidy notifications, including those reported under Article 8.3. The Subsidies Library can be accessed via the Internet at http://www.ita.doc.gov/import_admin/records/esel/.

The second method for obtaining green light status involves situations where a subsidy or subsidy program has not been notified to the SCM Committee. In the case of a subsidy given under a non-notified program, the subsidy is non-countervailable if the Secretary determines in a CVD investigation or review that the subsidy satisfies the relevant green light criteria contained in subparagraphs (B), (C) or (D) of section 771(5B) of the Act (or a WTO panel determines in a dispute settlement proceeding that the relevant criteria of Article 8 of the SCM Agreement are met). The Secretary must determine that the subsidy satisfies all of the relevant criteria before a given subsidy will be treated as non-countervailable. *See* section 771(5B)(A) of the Act; SAA at 936. Moreover, as discussed in the SAA, in investigations and reviews of non-notified subsidies, the burden will be on the party claiming green light status to present evidence demonstrating that a particular subsidy meets all of the relevant criteria. SAA at 936. In addition, under section 771(5B)(A) of the Act, green light status may be claimed only in proceedings involving merchandise imported from a WTO Member country.

In the 1997 Proposed Regulations, we stated that, in accordance with the Administration's commitment in the SAA, we intend to construe strictly the various green light provisions to "limit the scope of the provision[s] to only those situations which clearly warrant non-countervailable treatment." SAA at 935. Thus, the Department "will not limit its analysis * * * to a narrow review of the technical criteria of Article 8 of the SCM Agreement, but will analyze all aspects of the subsidy program and its implementation to ensure that the purposes and terms of Article 8 have been respected." SAA at 937.

Two commenters argued that the green light provisions should not be construed more restrictively than other CVD law provisions. Therefore, these commenters stated that the Department should either eliminate any references to a strict interpretation of these provisions or explain why this different treatment is necessary, appropriate, and justified.

We reaffirm our commitment to interpret these provisions strictly as required by the SAA. The legislative history recognizes that complete exemption from the CVD law of government programs that meet the definition of a countervailable subsidy and that cause injury is extraordinary. Strict interpretation is needed both to prevent circumvention and to preserve the balance of commitments negotiated in the SCM Agreement. For these reasons, where there is a question regarding the green light status of a particular subsidy, we will ensure that the subsidy clearly qualifies before according it green light status. Moreover, a determination that a particular subsidy received by a firm is a green light or green box subsidy would not necessarily mean that we would find that the entire program under which the subsidy is provided satisfies all of the applicable green light criteria in all cases.

Certain commenters suggested that the Department "incorporate fully" in the regulations the discussion of green light subsidies contained in the SAA or the preamble to the 1997 Proposed Regulations. Another commenter suggested that the Department publish a regulation stating that green light is set to expire unless extended.

We have not adopted these suggestions. As with other areas of these regulations, unless we have determined that a particular aspect of our CVD methodology warrants clarification, we have not repeated language from the statute or the SAA. In response to the latter comment, the statute, at section 771(5B)(G), is explicit regarding the provisional application of the green light provisions.

Investigation of notified subsidies: One commenter, noting the text of section 771(5B)(E) of the Act, suggested that the Department should refrain from investigating notified subsidy programs. According to the commenter, a failure to "screen out" notified subsidies prior to the initiation of an investigation would result in a waste of Departmental resources and unnecessary burdens on foreign governments.

In response, several commenters argued that if there is any ambiguity regarding whether a subsidy alleged by a petitioner does, in fact, qualify as a notified green light subsidy, the Department should include the subsidy in its CVD investigation or review to determine whether it qualifies for a green light exemption. One example given by these commenters is a situation where a petitioner presents evidence that a subsidy program has been modified subsequent to its notification to the SCM Committee. These commenters also suggested that it may simply be unclear whether an alleged subsidy is the same as the notified subsidy, in which case the Department should include the alleged subsidy in the investigation to make this determination.

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We reaffirm our position in the preamble to the 1997 Proposed Regulations that section 771(5B)(E) of the Act and the SAA make clear that, if a subsidy program has been notified under Article 8.3 of the SCM Agreement, any challenge regarding its eligibility for green light treatment, whether due to later modification or otherwise, must be made through the review procedures under the WTO rather than in the context of a CVD proceeding. As described above, the Department may not initiate a CVD investigation or review of a notified subsidy program (which appears to benefit subject merchandise) unless informed by USTR that a violation has been determined under the procedures of Article 8.

However, as we explained further in the preamble to the 1997 Proposed Regulations, the identity of a subsidy is a different matter. If there is a legitimate question as to whether a subsidy alleged in a petition is, in fact, a subsidy provided under a program that has been notified under Article 8.3, pre-initiation consultations may be used to clarify that a subsidy or subsidy program contained in the petition was, in fact, notified. If consultations do not resolve the question, the Department will include the subsidy in a CVD investigation or review until the party claiming green light status demonstrates that a subsidy has been notified. If the party fails to establish that the alleged subsidy or subsidy program has been notified, then we will analyze the subsidy's eligibility for green light status in the same manner as for any other non-notified subsidy. To clarify the Department's procedure for investigating alleged subsidy programs notified under Article 8.3, as set forth below, we have codified § 351.301(d)(7) as an interim final rule.

Policy for investigating non-notified subsidies: One commenter argued that the Department should adopt a regulation providing that, whenever a petition includes a potential green light subsidy that has not been notified under Article 8.3, the Department will conduct a full investigation to determine whether the subsidy meets the relevant requirements of section 771(5B) of the Act. This commenter and others emphasized that the regulations also should include the SAA's express requirement that the party claiming green light status has the burden of presenting evidence demonstrating compliance with all of the relevant criteria for any particular subsidy category. See SAA at 936.

While we agree with the policy espoused, we do not believe that this policy must be codified in the regulations. As discussed above, the SAA is clear that in investigations and reviews of subsidies that have not been notified under Article 8.3 of the SCM Agreement, the party claiming green status must provide evidence demonstrating that a particular subsidy meets all of the relevant criteria for non-countervailable status.

Another commenter argued that all non-notified programs should be presumed countervailable. We have not adopted this suggestion. The SCM Agreement and the URAA make clear that there are two ways to achieve green light status—WTO notification and pursuant to a CVD investigation. We see no basis for presuming that a program is countervailable simply because a foreign government elects not to use the notification procedures established under Article 8.

Alleged green light subsidies not used during the period of investigation or review: As we stated in the preamble to the 1997 Proposed Regulations, in an investigation or a review of a CVD order or suspended investigation, we will not consider claims for green light status if the subject merchandise did not benefit from the subsidy during the period of investigation or review. Instead, consistent with the Department's existing practice, the green light status of a subsidy will be considered only in an investigation or review of a time period where the subject merchandise did benefit from the subsidy.

One commenter supported this position and argued that it should be codified. However, we continue to believe that a regulation is not needed to clarify this issue.

Research subsidies: Prior to the enactment of the URAA, we treated assistance provided by a government to finance research and development ("R&D") as non-countervailable if the R&D results were (or would be) made available to the public, including the U.S. competitors of the recipient of the assistance. This policy, sometimes referred to as the public availability test, was described by the Department in § 355.44(l) of the 1989 Proposed Regulations.

In the 1997 Proposed Regulations, we elected not to retain the public availability test. We stated that the objectives served by the public availability test were better met by applying the criteria listed in section 771(5B)(B) of the Act and Article 8.2(a) of the SCM Agreement. Two commenters supported our decision not to codify the public availability test, and two commenters argued that the Department should reinstate the public availability test. One commenter requested clarification of whether the public availability test would apply to the aircraft sector in light of the fact that the R&D green light provisions of the SCM Agreement do not apply to aircraft. In this commenter's view, the public availability test should be abandoned completely.

In these Final Regulations, we confirm our decision not to retain the public availability test for any sector. We believe the public availability test is inconsistent with the concept of benefit which underlies the SCM Agreement and statute, and which we have codified in § 351.503. According to § 351.503, a benefit is conferred when a firm pays less for its "inputs" than it otherwise would pay in the absence of the government-provided input or earns more than it otherwise would earn. A research and development subsidy would reduce the firm's input costs, whether or not the results of the research were made publicly available. This same rationale applies to the aircraft industry. Consequently, even though the R&D green light provisions of the SCM Agreement do not apply to aircraft, we do not intend to apply the public availability standard to the aircraft sector.

One commenter suggested that the Department should adopt an assumption that only grants will qualify for green light status under the R&D provisions; tax breaks and subsidized loans usually will not qualify. We have not adopted this proposal because neither the statute nor the SAA limits R&D green light provisions to grants.

One commenter argued that, in determining whether a given research subsidy falls within the 75 and 50 percent maximums allowed under section 771(5B)(B) of the Act, the Department should base its analysis on the total costs incurred over the duration of the project in question. Under this reasoning, the Department would not countervail a subsidy if the 75 or 50 percent maximum were exceeded in the particular year covered by the investigation or review, provided that the applicable threshold "is not exceeded over the life of the project." This commenter further argued that, if the Department determined that the applicable threshold was exceeded over the life of the project, only the amount of subsidy in excess of the relevant "maximum" should be countervailed.

Several commenters challenged these arguments. First, they argued that the Department should evaluate the 75 and 50 percent maximums based on the costs already incurred at the time of the relevant investigation or administrative review, and not on the basis of expected

costs over the lifetime of the project. Second, these commenters argued that, if the Department determined that the applicable threshold had been exceeded, the entire benefit—not just the excess over the relevant threshold—should be countervailed. According to these commenters, the SAA states clearly that all of the relevant criteria must be met for a given program to receive green light status, and that a failure to meet all relevant criteria would result in the "entire subsidy" being countervailable in full. See SAA at 936.

We agree in part with the first commenter, and in part with the latter commenters. With respect to the proper frame of reference for determining whether a given research subsidy has exceeded the specified statutory thresholds, section 771(5B)(B)(iii)(II) of the Act instructs the Department to base its analysis on "the total eligible costs incurred over the duration of a particular project." Thus, it would be improper for the Department to limit its analysis to only those costs incurred as of the time period covered by an investigation or administrative review. We recognize that a finding of non-countervailability may be based on projected or estimated costs. Given the Agreement's ceilings on government support, we expect that such projections will have been required by the program's administrators. On the basis of a reasonably-supported allegation in a subsequent review, we will revisit this finding to ensure that actual costs expended did not differ from the estimates upon which an earlier finding of green light status was based. Changes or amendments to the original project will be carefully scrutinized to ensure consistency with these provisions. We agree that, if it becomes clear at any point during the life of the project that the subsidy will exceed the relevant statutory threshold, the entire amount of the subsidy would be countervailable, not merely the excess.

Subsidies to disadvantaged regions: One commenter argued that the Department should clarify that the green light category regarding subsidies to disadvantaged regions is not limited to subsidies provided by national governments, but also includes subsidies granted by subnational levels of government, such as states or provinces. This commenter further argued that, in determining whether a subsidy provided by a state or province to a disadvantaged region meets the criteria of section 771(5B)(C) of the Act, the Department should assess the criteria within the framework of the subnational government's jurisdiction.

In response, other commenters argued that the Department should assess the green light criteria in relation to the investigated country as a whole, not just in relation to the jurisdiction of the subsidizing government if that government is at the subnational level. According to these commenters, the statute and the SAA instruct the Department to evaluate the relevant green light criteria in relation to the "average for the country subject to investigation or review."

We agree with the first commenter that the green light categories include subsidies granted by governments at the subnational level and that, in the case of the regional green light category, we should assess the relevant criteria in relation to the jurisdiction of the granting authority. In discussing the language in section 771(5B)(C)(ii) of the Act regarding the "average for the country subject to investigation or review," the SAA explains that, where a CVD proceeding involves a member of a customs union, the term "country" shall be defined in accordance with the structure of the regional assistance program. SAA at 934–35. For example, if we were to investigate a product from Luxembourg, the term "country" would refer to the EU as a whole if the subsidy being investigated were received under an EU regional assistance program. Thus, the SAA indicates that the Department should make its determinations based on averages for the jurisdiction granting the regional assistance subsidy.

Other commenters argued that where certain regions receiving assistance under a program do not meet the criteria for green light treatment, that should not prejudice the green light treatment of assistance to regions that do meet the criteria.

Because we have only limited experience in administering the regional green light provisions, we are not prepared to adopt a formal policy at this time. However, we find persuasive the argument that some regions that meet the jurisdiction's general framework of economic development but do not otherwise meet the green light criteria could potentially be given aid without automatically disqualifying all regions from green light treatment.

The language in section 771(5B)(C) of the Act states that a subsidy provided to a person in a disadvantaged region, "pursuant to a general framework of regional development," shall be treated as non-countervailable. This implies that some of the regions within the general framework may not necessarily meet the statutory criteria to be considered "disadvantaged." However, if the number of regions that do not qualify for green light treatment but continue to receive assistance is significant, this may call into question the basic principles of the general framework itself and, therefore, the eligibility for green light treatment of any subsidies provided under it.

Subsidies for adaptation of existing facilities to new environmental requirements: Certain commenters argued that, with respect to the Department's criteria for green light environmental subsidies described in section 771(5B)(D) of the Act, the Department should treat as non-countervailable those subsidies given to upgrade existing facilities to environmental standards that are higher than the minimum standards imposed by law or regulation. According to these commenters, governments should be allowed to encourage higher environmental standards than the minimum required by law by sharing the additional costs of achieving the higher environmental standards. Moreover, according to these commenters, the language of the statute does not limit green light treatment to subsidies that allow companies to meet, rather than exceed, standards. These commenters believe that the Department should retain the flexibility to find non-countervailable subsidies that assist in upgrading existing facilities to higher environmental standards than the minimum imposed by law or regulation.

Several commenters disputed this suggestion, claiming that section 771(5B)(D)(i) of the Act specifically limits green light status for environmental subsidies to those that are "provided to promote the adaptation of existing facilities to new environmental requirements * * *." According to these commenters, the Department has no authority to broaden the scope of environmental subsidies eligible for green light treatment. One commenter further argued that where the environmental subsidy exceeds the amount necessary to meet the minimum regulatory requirements of the law, even by a *de minimis* amount, the Department should confirm its intent to find countervailable the entire subsidy.

Although we acknowledge that governments have the flexibility to encourage higher environmental standards, we agree with the latter commenters. As noted above, section 771(5B)(D)(i) of the Act provides that non-countervailable environmental subsidies are those that are "provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation." According to

the SAA, "strict application of these requirements is essential in order to limit the scope of the provision to only those situations which clearly warrant non-countervailable treatment." SAA at 935. Given the clear language of the statute and the SAA, we believe that subsidies given to upgrade existing facilities to environmental standards in excess of legal requirements are countervailable. In response to the last comment on subsidies which exceed the amount necessary to meet the minimum statutory or regulatory requirements, we agree that the full amount of the subsidy would be countervailable.

One commenter suggested that the regulations should specify that environmental subsidies will receive green light treatment only if: (1) Required by law or regulations (administrative practice should not be sufficient); (2) limited to investments absolutely needed to meet new requirements; (3) limited to the adaptation of equipment and plant facilities; and (4) directly linked to the new investment.

Because we have received no green light claims for environmental subsidies and, therefore, have no experience in administering these provisions, we are not adopting the proposed criteria. Without experience, we cannot judge what impact the proposed criteria would have. Therefore, we are not yet prepared to adopt criteria such as these at this time. However, we do not rule out the possibility that such criteria may be adopted at a later time. With respect to the first proposed criterion (required by law or regulation, as opposed to practice), section 771(5B)(D)(i) of the Act and the SAA already include such a limitation.

One commenter argued that when a respondent can show that environmental assistance is not relieving a company of an obligation and that the assistance does not benefit the manufacture, production, or exportation of the subject merchandise, such assistance should not be countervailable. We disagree with the commenter's attempt to expand the criteria, which are clearly stated in the SCM Agreement, statute, and the SAA, under which the Department would find environmental assistance non-countervailable.

Finally, we have concluded that procedural rules setting forth the deadlines and obligations for filing green light and green box claims are necessary to ensure efficient and orderly administration of these new provisions in the CVD statute. As discussed in the Explanation of the Final Rules, we are issuing these procedural rules as interim final rules effective on their date of publication in the **Federal Register**. In keeping with our decision to consolidate antidumping and countervailing duty procedures, these interim final rules amend § 351.301(d) of the Department's regulations.

Section 351.301(d)(6) sets forth time limits for filing green light and green box claims. These time limits parallel the deadlines for filing new countervailable subsidy allegations in investigations and reviews. Consistent with the evidentiary burden to establish the validity of such claims, § 351.301(d)(6) also clarifies that all green light and green box claims must be made by the competent government with the full participation of the administering authority of the relevant program. We note that examinations of green light and green box requests require the full participation of the administering governments. Section 301(d)(7) clarifies procedures for investigating subsidies or subsidy programs notified under Article 8.3 of the SCM Agreement.

Section 351.523

Section 351.523 deals with the identification and measurement of upstream subsidies. Because the URAA did not significantly amend the corresponding statutory provision (section 771A of the Act), § 351.523 is based largely on § 355.45 of the 1989 Proposed Regulations, except for the deletion of language that merely repeats the statute. We have, however, adopted new terminology in § 351.523(a). Specifically, "affiliation" replaces "control" as the standard for when we will have a reasonable basis to believe or suspect that a competitive benefit is bestowed on the subject merchandise. This also represents a change from our 1997 Proposed Regulations, where the standard was "cross-ownership" (see discussion of cross-ownership in preamble to § 351.525 below) . We believe the new definition of "affiliated persons" contained in section 771(33) of the Act is sufficient to meet the threshold for deciding whether a competitive benefit is bestowed for purposes of initiating an upstream subsidy investigation. In addition, because we have changed our attribution rules regarding cross-owned input and downstream suppliers, it is no longer appropriate to use the "cross-ownership" standard.

With regard to the upstream subsidy provision in general, one commenter requested that the Department issue a regulation making clear its ability to apply an upstream subsidy analysis even where the subsidized input producer is located in a separate country from the producer of the subject merchandise. We agree that the statute provides the Department the flexibility to perform such an analysis in two specific circumstances. First, where two or more foreign countries are organized as a customs union, section 771A(a) clearly states that the Department may treat the customs union as a single country in conducting an upstream subsidy analysis if the countervailable subsidy is provided by the customs union. In addition, the definition of "country" in section 771(3) of the Act does not limit this reading of "country" to situations in which the subsidy is provided by the customs union itself. Second, where an international consortium is engaged in the production of the subject merchandise, section 701(d) of the Act allows the Department to cumulate the subsidies provided to members of the consortium by their respective home countries. We interpret this provision to include the receipt by members of the consortium of upstream subsidies provided by the member's own country or (where appropriate) customs union. Therefore, we see no need to include a regulation on this issue.

Another commenter suggested that the Final Regulations should expressly state that the Department is not required to investigate upstream subsidies further than one stage back in the chain of production. This commenter cites to legislative history which indicates Congress' intent to limit the scope of an upstream inquiry to the stage prior to final manufacture or production, unless information demonstrates the significance of subsidies at earlier stages. H.R. Rep. No. 725, 98th Cong., 2d Sess. 33–34 (1984).

We do not believe it is necessary to issue a regulation on this topic. Section 351.523(a)(iii) already requires a demonstration of the significance of prior-stage subsidies in order for the Department to initiate an upstream subsidy investigation. As one moves back in the chain of commerce, it is less and less likely that the subsidies will have a significant effect on the cost of manufacturing or producing the subject merchandise and, therefore, less likely that we would initiate an upstream subsidy investigation. However, in those circumstances where a party is able to demonstrate the significance of subsidies at earlier stages, we will investigate accordingly.

As noted in the 1997 Proposed Regulations, one aspect of these regulations which differs from the 1989 Proposed Regulations involves the standard for determining whether a

competitive benefit exists. In this regard, section 771A(b)(1) of the Act provides that a competitive benefit has been bestowed when:

> The price for the (subsidized) input product * * * is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

In addition, section 771A(b)(2) of the Act provides that when the Secretary has determined in a previous proceeding that a countervailable subsidy is paid or bestowed on the comparison input product, the Department "may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the countervailable subsidy, or (B) select in lieu of that price a price from another source."

In the past, as reflected in § 355.45(d) of the 1989 Proposed Regulations, we preferred to base our comparisons upon the price charged for unsubsidized inputs produced by other producers in the same country as the producer of the subject merchandise. If we had determined in a prior CVD proceeding that a countervailable subsidy had been bestowed in the subject country on the comparison input, our next preferred alternative was to adjust the price of the input product to reflect the subsidy. As a final alternative, we could select a "world market price for the input product." We interpreted the phrase "world market price" broadly to include (1) actual prices charged for the input product by producers located in other countries, and (2) average import prices. Additionally, because the statute did not preclude, for comparison purposes, the use of prices of subsidized, imported inputs, we had determined that it would be "inappropriate to exclude all subsidized producers, even assuming that we could identify them." Circular Welded Non-Alloy Steel Pipe From Venezuela, 57 FR 42964, 42967–68 (September 17, 1992) ("Venezuelan Steel Pipe").

We have revised our approach regarding "competitive benefit" in the following manner. Under paragraph (c)(1)(i), we will rely first upon the actual price charged or offered for an unsubsidized input product, regardless of whether the producer of that input is located in the same country as the producer of the subject merchandise. We will make due allowance for quantities, physical characteristics, and other factors that affect comparability. Upon further reflection, we see no justification for distinguishing between input products based on the country of production. Section 771A(b)(1) of the Act merely requires the Department to compare the price paid for the subsidized input product to the price that the producer "would otherwise pay for the product in obtaining it from another seller in an arms-length transaction." The price that the producer "would otherwise pay" could include the actual price paid by the producer of subject merchandise to an unrelated supplier or a bid offered by an unrelated supplier, regardless of the location of that supplier. However, we will examine quantities, physical characteristics, and other factors that may affect the comparability of the prices.

While several commenters argued against the use of offered prices, asserting that such prices do not reflect the true cost of alternative purchases, we have left this provision unchanged. Our preference, of course, is to use a price resulting from an actual sale; however, a *bona fide* price offer made at a time reasonably corresponding to the time of the purchase of the input does constitute a commercial alternative to the subsidized input product and, as such, is an acceptable benchmark.

Other comments concerning the use of actual or offered prices focused on the extent to which such prices are "representative." Essentially, these commenters defined a "representative" price as a price that is not less than the world market price. Therefore, they argued that if the actual unsubsidized price is less than the world market price, the Department should presume that the price is not representative and use the world market price.

We have not adopted this suggestion. As noted above, an actual price charged or offered represents the best example of what a downstream producer would "otherwise pay" for the subsidized input product. However, we are willing to entertain arguments during the course of a proceeding pertaining to whether an actual price or offer is anomalous or otherwise not comparable, including arguments that such price may be dumped or subsidized.

If actual prices or offers for unsubsidized inputs are not available, we will rely upon a world market price, *i.e.*, generally an average of publicly available prices for unsubsidized inputs from different countries or some other surrogate price deemed appropriate by the Department. See paragraph (c)(1)(ii). One commenter objected to the use of an average price, arguing that it is more reasonable to assume that the downstream producer would purchase the input product at the lowest publicly available price. Another commenter supported the use of an average world market price, but urged the Department to make it a weighted-average price.

We have made no change in response to these comments. Absent an actual price or offer for an unsubsidized product, we are in a position of having to construct the price that a company would "otherwise pay." We cannot assume that the downstream producer would always be able to purchase its inputs at the lowest publicly available price. Such a price might be an anomaly resulting from unusual market circumstances which may not always be available to the producer in question. Therefore, it is more appropriate to use an average of the publicly available prices. The use of weighted-average prices, however, is impractical because we are unlikely to have the information with which to weight the publicly available prices. Although we will generally use an average of available world market prices, we will consider arguments that certain world market prices may be inappropriate.

Finally, if there are no prices for unsubsidized inputs available from any source, we will resort to prices of subsidized input products, adjusted to reflect the countervailable subsidy. In such a case, under paragraph (c)(1)(iii), we first will rely upon the actual price that the producer of the subject merchandise otherwise would pay for the input product adjusted to reflect the subsidy, regardless of the country in which the input product is produced. If such a price is not available, under paragraph (c)(1)(iv), we would use an average price for the input product from different countries adjusted to reflect the subsidy or some other adjusted surrogate price. When no adjustable price is available (*e.g.*, the only available price is a published price reflecting an average of both subsidized and non-subsidized prices), we may include the price of a subsidized input in our analysis or we may resort to any other reasonable price. See paragraph (c)(1)(v).

We believe that this new approach for measuring the competitive benefit better reflects the overall purpose of the upstream subsidies provision, which is to account, when appropriate, for upstream subsidies provided on input products used in the production or manufacture of subject merchandise. The language of section 771A itself does not express a preference regarding the selection of a comparison input price, and grants the Department wide latitude in determining when to adjust the price

of the comparison product to reflect known countervailable subsidies. However, parts of the legislative history underlying the Trade and Tariff Act of 1984, which added section 771A to the Act, support a preference for using the price of an unsubsidized input, and support making adjustments for subsidies when there is no price for unsubsidized inputs. See, *e.g.*, 130 Cong. Rec. S13970 (daily ed. Oct. 9, 1984) (statement of Sen. Dole). Although, as described above, we are revising our practice regarding the identification and measurement of a competitive benefit, the preference for using the price of unsubsidized inputs also was reflected in our earlier practice See, *e.g.*, Certain Agricultural Tillage Tools From Brazil, 50 FR 24270, 24273 (June 10, 1985).

In determining whether a price is subsidized, we will rely primarily on CVD findings made by the United States or the investigating authorities of other countries in the recent past (*i.e.*, within the past five years).

As we noted in the 1997 Proposed Regulations, in determining whether there is a competitive benefit, we will adjust prices upward to account for delivery charges (*e.g.*, c.& f.). We received a number of comments concerning this point. Several commenters expressed support of this policy. One commenter objected, however, arguing that the inclusion of delivery charges could result in the Department finding a competitive benefit which results solely from the difference in the cost of transporting the subsidized versus unsubsidized goods, rather than from the subsidy to the input product.

Although the statute does not specify the precise basis for calculating a benchmark price for the input product, section 771A(b)(1) does require the use of the price that the manufacturer or producer of the subject merchandise "would otherwise pay." In our view, this requires the use of a price that represents a commercial alternative to the producer of the subject merchandise, and f.o.b. prices do not provide a measurement of the commercial alternative to the downstream producer. See, *e.g.*, Venezuelan Steel Pipe.

As the Federal Circuit recently stated in upholding the Department's inclusion of freight charges in determining the world price under Item (d) of the Illustrative List of Export Subsidies, "A castings manufacturer procuring pig iron on the world market would have to pay the f.o.b. price for the pig iron itself, plus the cost of shipping that iron to India. Accordingly, the world market price must include the cost of shipping." *Creswell Trading Co.* v. *United States*, 141 F.3d 1471, 1478 (Fed. Cir. 1998). For these reasons, we have not changed the position taken in the 1997 Proposed Regulations.

Section 351.524

In the 1997 Proposed Regulations, the Department's method for allocating benefits from subsidies was included in the grant section (see § 351.503(c) of the 1997 Proposed Regulations). For these Final Regulations, however, we have decided to issue a separate regulation on allocation because this issue concerns all types of subsidies, not only grants. Therefore, unless otherwise specified in §§ 351.504–523, the Secretary will allocate benefits to a particular time period in accordance with this section.

Which Benefits Are Allocated Over Time

Section 351.524 retains the distinction between "recurring" and "non-recurring" benefits. Although more precise terms might be "non-allocable" and "allocable," we are retaining the terms "recurring" and "non-recurring" because they are widely understood in the international trading community. Paragraph (a) provides that the Secretary will allocate a recurring benefit to the year in which the subsidy is considered to have been received, a practice usually referred to as "expensing." Paragraph (b) provides that, with one exception (discussed as "the 0.5 percent test" below), the Secretary will allocate non-recurring benefits over time.

Paragraph (c) contains a test for distinguishing between recurring and non-recurring benefits. In the 1997 Proposed Regulations, we proposed to codify the test applied by the Department in the GIA. Under the GIA standard, if a benefit is exceptional, *i.e.*, not received on a regular or predictable basis, or if it requires express government authorization or approval, the Department will consider it as non-recurring. Otherwise, the Department will treat it as a recurring benefit. However, as stated in the preamble to the 1997 Proposed Regulations, we were considering:

> * * * whether there might be a better standard for distinguishing between these two types of benefits. An important purpose of the recurring/non-recurring test is to reduce the burden on the Department and interested parties by limiting the amount of information requested on subsidies bestowed prior to the period of investigation or review. However, the Department is increasingly facing arguments regarding its application of the standard described in the GIA. At some point, the burden of applying the GIA standard may well outweigh the benefits. Therefore, we particularly invite comments on this issue. We note that the Department has considered other options in the past including: (1) Developing a list of the types of subsidies that would be allocated and those that would be expensed; (2) allocating any grant-like benefit that exceeds 0.5 percent * * *; and (3) allocating only those grant-like subsidies that are tied to the purchase of fixed assets.

We received a number of comments on this issue. (Because this and the other allocation issues discussed below were included in the grant section of our 1997 Proposed Regulations, the comments consistently refer to "grants." Our responses, however, are more generally drafted and refer not only to grants, but also to the allocation of other types of subsidies.)

One commenter argued that the regulation should include a provision that there will be a rebuttable presumption that certain grants will be expensed and others allocated. This commenter supported the option of developing an illustrative list showing which types of grants will be expensed and which will be allocated. According to the commenter, this approach would make the application of the law more predictable and consistent, and would reduce the administrative burden on the Department. Another commenter opposed the inclusion of an illustrative list as a rebuttable presumption, arguing that this would unfairly benefit respondents who control all information relating to the purpose and use of a subsidy.

Most commenters asked the Department to retain the GIA test for determining whether a grant is recurring or non-recurring. They argued that this methodology is both predictable and flexible and that it has worked well in the past. One commenter, however, asked the Department to take into consideration two factors which were included in the preamble to the Department's 1989 Proposed Regulations, but not in the GIA: (1) Whether the program is of a longstanding nature, and (2) whether there is reason to believe that the program will continue in the future.

Most of the commenters rejected our three suggested alternatives to the GIA test. They argued that the first option (*i.e.*, to develop a list of different types of subsidies) would be rigid, unworkable, inconsistent with commercial reality, and subject to abuse. In addition, they felt that it would be very difficult for the Department to compile a binding list, which would not only have to identify and categorize every type of subsidy we

have ever encountered, but which would also have to anticipate future grant programs. However, one commenter suggested that, as an alternative, the Department could develop a non-binding informative list, based on previous practice, as a complement to the GIA test.

These commenters agreed that the second option (to allocate all grants that exceed 0.5 percent *ad valorem*) would create unnecessary work since the Department would have to obtain historical information for all grant programs regardless of their nature and the Department's past treatment of identical or similar programs. One commenter argued that the courts are likely to find such a methodology arbitrary, adding that it was Congress' intent that only non-recurring subsidies be allocated over time.

The commenters agreed that the third option (*i.e.*, to allocate only grants that can be tied to the purchase of fixed assets) would be inconsistent with commercial reality since it would be based upon a flawed assumption, namely that only fixed assets continue to provide benefits after the year of receipt. In addition, this methodology would require the Department to abandon its longstanding practice of not considering the effect of a subsidy, the commenters stated.

We agree with the commenters that none of the three options listed in the 1997 Proposed Regulations provides a more reliable basis for determining whether a subsidy benefit should be treated as recurring or non-recurring than that in the GIA test. However, we do not think that the GIA test, on its own, should be the sole basis for determining whether a subsidy is recurring or non-recurring. If we applied only the GIA test, we believe we would run the risk of expensing some subsidies in the year of receipt that are more appropriately allocated over time, as explained in further detail below. In addition, the GIA test alone may lead to unnecessary arguments over which subsidies are recurring or non-recurring. We also do not agree with the commenter who asked us to modify the GIA test by resurrecting two standards from our 1989 Proposed Regulations (*i.e.*, to examine whether a program is longstanding and if there is reason to believe that it will continue in the future). As stated in the GIA, we changed our approach for distinguishing between recurring and non-recurring benefits in Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from France, 58 FR 6221 (January 27, 1993). In that determination, we explained that the two standards from the 1989 Proposed Regulations had not proven helpful in determining the nature of a benefit and that they had been difficult to interpret and apply in practice. Nothing in our subsequent experience has changed our view on this matter.

However, we find persuasive the comment that suggested developing a non-binding illustrative list as a complement to the GIA test. We believe that non-binding lists illustrating which types of subsidies we will normally treat as providing recurring benefits, and which types of subsidies we will normally treat as providing non-recurring benefits, would offer valuable guidance on how the Department views different types of subsidies. Since they are non-binding, the lists do not have to cover every single type of subsidy that we have encountered in the past, nor do they have to anticipate all conceivable new subsidies that we might come across in the future.

Therefore, for illustrative purposes we have added to paragraph (c) non-binding lists of subsidies which we will normally treat as providing recurring benefits, and subsidies which we will normally treat as providing non-recurring benefits. These lists have been developed based upon our past experience and our findings described in the GIA. Because these lists are non-binding, paragraph (c) also provides that parties may argue that the benefit from a subsidy on the recurring list should be considered non-recurring, or that the benefit from a subsidy on the non-recurring list should be considered recurring.

Our determination of whether a recurring subsidy should be treated as non-recurring, or vice versa, will rely principally on the test set forth in the GIA. However, because we have decided to codify these illustrative lists, we have reevaluated the GIA test to ensure that it covers all of the factors that should be considered in determining whether a subsidy should be treated as recurring or non-recurring. Based on this reevaluation, and the comments we received, we have determined that it is appropriate to expand the criteria that will be considered in applying the test of whether a subsidy traditionally considered as recurring should be treated as non-recurring, or whether a subsidy traditionally considered as non-recurring should be treated as recurring. Therefore, in addition to examining whether the subsidy is exceptional, or whether express government authorization or approval is provided or required, we will also examine whether the subsidy was provided for, or tied to, the capital structure or capital assets of the company. In this context, capital structure is considered to be the combination of common equity (including retained earnings), preferred stock, and long-term debt that comprises a firm's financial framework. Capital assets are the plant and equipment which produce other goods, and include industrial buildings, machinery and equipment. Thus, it is appropriate to consider the benefit from a subsidy provided for, or tied to, the capital structure or capital assets of a firm to be non-recurring because these types of subsidies generally benefit the creation, expansion, and/or continued existence of a firm.

The addition of this criterion to the GIA test in no way envisions or requires an examination of the effects or uses of the subsidy. Rather, we will examine whether, at the point of bestowal, the subsidy was provided to, or tied to, the company's capital structure or capital assets. For example, debt forgiveness benefits the capital structure of a company by reducing long-term liabilities, and thus increasing net worth. Similarly, a government's coverage of a company's losses benefits its capital structure because the company need not cover the losses out of its retained earnings.

If the government provides a grant expressly for the purchase of an industrial building, the capital assets of the firm are benefitted and, as such, it is reasonable to conclude that the benefit from the grant should be considered non-recurring. In the same vein, if the government provides import duty exemptions tied to major capital equipment purchases, it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring, even though import duty exemptions are on the list of recurring subsidies.

While we agree with the commenters who argued that one of the proposed options—allocating only those grant-like subsidies tied to the purchase of fixed assets—is based on a flawed assumption that only fixed assets continue to provide benefits after the year of receipt, we do not consider that our addition to the GIA test in these Final Regulations reflects the same flawed assumption. By including not only capital assets, but also capital structure, in our examination of whether a subsidy is recurring or non-recurring, we will be better able to identify those subsidies that continue to benefit a company after the year of receipt.

Under paragraph (c), a party may argue that a subsidy included on the illustrative list of recurring subsidies be

treated as non-recurring or that a subsidy on the non-recurring list be treated as recurring. If such arguments are presented to us and supported by sufficient information, we will apply the standards set forth in the regulation. In other words, we will examine whether the program is exceptional, whether it requires express government authorization or approval, or whether, at the point of bestowal, the subsidy was provided for, or was tied to, the capital structure or capital assets of the company. If a subsidy is not on either list, the Secretary will apply the standards set forth in the regulation to determine if it should be treated as recurring or non-recurring.

The 0.5 Percent Test and the Expensing of Small Subsidies

Although we normally will allocate non-recurring benefits over time, paragraph (b)(2) retains the so-called 0.5 percent test with a few minor modifications which are discussed below. *See* § 355.49(a)(3)(i) of the 1989 Proposed Regulations and the GIA at 37226. Under this test, we will expense non-recurring benefits under a particular subsidy program in the year of receipt if the total amount of such benefits is less than 0.5 percent *ad valorem*, as calculated under § 351.525.

We consider this test to be an important part of our efforts to simplify countervailing duty proceedings and to reduce the burdens on all parties involved. By expensing small non-recurring benefits in the year of receipt, we avoid the need to: (1) Collect, analyze, and verify the data needed to allocate such benefits over time; and (2) keep track of the allocation calculations for minuscule subsidies from year to year. If considered only in the context of a single case, the burdens imposed by this activity may not appear to be particularly onerous. However, when considered across all investigations and administrative reviews, the cumulative burden becomes considerable.

Since the 1993 Certain Steel investigations, we have performed the 0.5 percent test using the so-called "program-by-program" approach. Under this approach, we add the *ad valorem* rates for all subsidies received by a company under a single program in that year. If the resulting sum is below 0.5 percent, we expense the benefits in the year of receipt. An alternative approach would be to add the *ad valorem* rates for all subsidies approved under all programs for each company in a given year and examine whether this total rate is below 0.5 percent (the so-called "company-by-company" approach). In the 1997 Proposed Regulations, we stated that we intended to retain the program-by-program approach, but that we wanted to preserve "the flexibility to take a different approach in situations where petitioners are able to point to clear evidence that the foreign government has deliberately structured its subsidy programs so as to reduce the exposure of its exporters to countervailing duties."

We received three comments on the 0.5 percent test, all of which urged us to administer the test on a company-by-company basis. One commenter argued that the current program-by-program test could lead to anomalous results. For example, a company that received several small non-recurring grants, all below 0.5 percent of the company's total sales, would face a countervailing duty rate different from a company that received the same total amount of money in the form of one large non-recurring grant. Such anomalies would allow foreign governments to evade the countervailing duty law by providing several small subsidies instead of one large subsidy, according to the commenter. All three commenters agreed that the administrative convenience of expensing small non-recurring grants would be outweighed by the potential for abuse.

The same commenters also criticized the exception to the 0.5 percent rule as outlined in the 1997 Proposed Regulations, *i.e.*, that petitioners must show the intent of the foreign government if the Department is to deviate from the rule. These commenters argued that the standard imposes an improper burden on petitioners, who cannot be expected to divine the intent of a foreign government.

As explained above, the administrative burden on the Department to collect the information necessary to allocate very small non-recurring benefits over time would be considerable. This burden cannot be justified given that, after careful consideration, we believe that in most cases there would be little demonstrable impact in aggregating all programs on a company-specific basis. However, we agree that some potential for manipulation exists with the program-by-program approach. We also agree that petitioners may have difficulty demonstrating the intent of a foreign government. To address these concerns, we have made several changes to the 1997 Proposed Regulations.

Paragraph 351.524(b)(2) now states that the Secretary will normally expense non-recurring benefits in the year of receipt if the total of the benefits from subsidies approved in each year under a program is less than 0.5 percent *ad valorem* of the relevant sales. The relevant sales that we use to calculate the *ad valorem* rate are either the firm's total sales or, if the subsidy is tied, the sales of the product(s) or the sales to the market to which the subsidy is tied. In the case of an export subsidy program, we use the firm's export sales. The new paragraph adds the word "normally" and makes clear that we will apply the 0.5 percent test to all benefits associated with a particular program, not each individual benefit, if there are more than one. We have also changed the word "received" to "approved" with respect to all benefits associated with a particular program. This is intended to cover the situation where a government approves a subsidy in one year but disburses the funds in installments over a period of years. We will apply the 0.5 percent test to the full amount approved, not to each individual installment. In our experience, governments often make one-time approvals for large grants, but disburse the funds over a period of years. This is often the case in research and development programs. As such, basing our 0.5 percent test on disbursements could result in certain large non-recurring subsidies being expensed rather than allocated. To avoid this, it is more appropriate to base our determination of whether the subsidy should be allocated over time on the full amount approved, rather than on periodic installments. However, we will continue to countervail according to the amount received by the company in each year. The only difference is that once the 0.5 percent test has been applied to the approved amount and the subsidy exceeds 0.5 percent of sales, all disbursements will be allocated over time.

In addition, we have abandoned the requirement that petitioners show, in order to convince the Department to abandon the program-by-program approach, that a government deliberately structured its subsidy program so as to reduce exposure to countervailing duties. Instead, we intend to follow the program-by-program method, but we will consider aggregating all programs on a company-specific basis where the application of the 0.5 percent rule would have a significant impact on the results of the investigation or review. Since we have no experience in determining what constitutes a significant impact, we will examine this on a case-by-case basis in response to comments or on our own initiative.

The Time Period Over Which Non-Recurring Benefits Are Allocated

As described below, we have made changes in the methods used to determine certain variables included in our formula for allocating non-recurring benefits over time. In a departure from our current practice and from the 1997 Proposed Regulations, we have adopted a rebuttable presumption that non-recurring benefits will be allocated over the number of years corresponding to the average useful life ("AUL") of a firm's renewable physical assets, as set forth for the industry concerned in the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77–10, 1977–1, C.B. 548 (RR–38)) ("the IRS tables method"), as updated by the Department of Treasury, unless the parties establish that the IRS tables do not reasonably reflect the AUL of a firm's assets. Parties may rebut the presumption to use the IRS tables by demonstrating either that the company-specific AUL or country-wide AUL for the industry in the respondent country differs by one year or more from the AUL in the IRS tables for the industry under investigation. Before describing the criteria that we will consider in determining whether the presumption has been rebutted, we will first explain why we have decided to change the 1997 Proposed Regulations, which stated that we would use a company-specific AUL.

Selection of AUL Method

Before 1995, we allocated non-recurring benefits over the AUL listed in the IRS tables in accordance with our 1989 Proposed Regulations. We believed, and continue to believe, that the IRS tables method offers consistency and predictability and that it is simple to administer. However, for purposes of the 1997 Proposed Regulations, we decided to change our practice due to several CIT decisions which ruled against our use of the IRS tables method (*see, e.g., Ipsco* v. *United States*, 687 F. Supp. 614, 626 (CIT 1988) ("*Ipsco*")). One common theme of these decisions was that because the IRS tables method was not a company-specific approach, it failed to reflect adequately the benefit of a subsidy to a particular firm. Another common theme was that the IRS tables method could not be affirmed in the absence of a properly promulgated regulation (see *Ipsco*). In the 1997 Proposed Regulations, we also cited the findings in an unadopted GATT panel report (United States—Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in France, Germany, and the United Kingdom, SCM/185, Nov. 15, 1994) ("Leaded Bar") which criticized the way in which the Department applied the IRS tables method.

Although we did not necessarily agree with the reasoning of these decisions, we decided to develop an alternative method. Among several options, we chose to allocate non-recurring subsidies over the company-specific AUL of productive assets because we believed that this methodology would be more administrable and predictable than the alternatives and, also, that it would be easily calculable from a firm's accounting records. Consequently, in the 1997 Proposed Regulations, we codified our recent practice of allocating non-recurring benefits over a period corresponding to the company-specific AUL of productive assets.

We received many comments on the AUL method. Several commenters, including respondents, urged the Department to return to the use of the IRS tables or, alternatively, to use the IRS tables as a rebuttable presumption or a fallback methodology in situations where a company-specific AUL could not be calculated. These commenters argued that the main reason for the CIT's rejection of the IRS tables was that the Department had failed to codify its methodology into a regulation pursuant to the Administrative Procedure Act. One commenter observed that the GATT panel report referred to in the 1997 Proposed Regulations did not find that the Department was barred from using the IRS tables. Rather, the panel determined that the use of this methodology in Leaded Bar had not been supported by sufficient reasoning on the record.

The main arguments in favor of codifying the IRS tables methodology presented by the commenters were that this approach offers consistency and predictability and that the Department's use of the IRS tables has not been controversial in the vast majority of cases. In contrast, the commenters stated, the company-specific AUL methodology would produce inconsistent and unpredictable results, among other things, due to the respondents' varying accounting practices. In addition, it would increase the workload for all parties. Also, it would not be possible to use the methodology universally, *e.g.*, when respondent companies do not collect the information needed to calculate the AUL, when they do not use straight-line depreciation, or when they write down the value of their assets. Furthermore, one of the commenters pointed to problems allegedly associated with the Department's calculation of the gross book value of a firm's assets. The same commenter was also troubled by the fact that all of a company's assets are included in the asset base, as opposed to only those assets that are used to produce the subject merchandise.

We also received comments on our statement in the 1997 Proposed Regulations that, in certain situations, it might "be necessary to make normalizing adjustments for factors that may distort the calculation of an AUL" (*e.g.*, adjustments for extraordinary asset write-downs or hyperinflation). Some commenters expressed misgivings about such adjustments which, they said, might compromise the reliability of the data. One commenter also argued that relying on a company-specific AUL would allow respondents to manipulate the data and that the methodology, therefore, would lead to more litigation.

Other commenters suggested other approaches. One commenter argued that the Department should not limit its discretion to use one method or the other. Rather, the commenter suggested, the Department should make a case-by-case determination of the appropriate methodology after requiring respondents to report the average useful life of assets used in the production of the subject merchandise. In this commenter's view, the burden should be on respondents to show that their reported data are superior to the IRS tables.

Another commenter argued that unless challenged by respondents, the Department should use the AUL of fixed assets alleged in the petition, which generally would be the number of years set forth in the IRS tables. This commenter cited the significant burden that would be put on all parties, particularly respondents, and on the Department if the company-specific methodology were codified.

One group of commenters urged the Department not to return to the IRS tables methodology. One of these commenters supported the company-specific AUL methodology, arguing that this approach is more accurate than the IRS tables methodology, thus rendering fairer and more equitable results. The other commenters in this group expressed a preference for either of the two alternative methods for determining the allocation period which were outlined in our 1997 Proposed Regulations (*i.e.*, the company-specific average maturity of long-term debt and the company-specific weighted-average use of funds). These commenters' chief arguments against the IRS tables methodology were (1) that it had been struck down by the CIT and a GATT

panel, and (2) that it does not accurately reflect the benefit conferred upon the actual recipient of the subsidy.

Another commenter conveyed general criticism of what it claimed was the U.S. practice of assessing subsidy benefits over an "inordinate" number of years. This commenter stated that countervailing duties are intended to be remedial, not punitive, and urged the Department to achieve a fairer, more transparent, and more consistent regime. A second commenter argued that data from outside a certain country can never be used to evaluate subsidies within that country except in the absence of data from the country in question, which seems to suggest that in this commenter's view, the IRS tables should only be used as "facts available."

We have gained some experience with the company-specific AUL method over the last few years. In some cases, this method has turned out to be more burdensome than we had envisioned. We have also found that the method may not be appropriate for companies that have been sold and that it presents problems when a company revalues its assets, for example as a result of declaring bankruptcy (see, *e.g.*, Steel Wire Rod from Germany, 62 FR 54990 (October 22, 1997)). The results we have obtained using the company-specific AUL method have been mixed: in some cases, they have been close to the IRS tables, whereas in other cases we have found anomalies within the same industry.

Taking into account our experience with the use of the company-specific AUL method and our review of the numerous comments and concerns raised by both petitioner and respondent parties, we have decided to codify the IRS tables method as a rebuttable presumption. In our view, the IRS tables method offers consistency, predictability, and simplicity, and presents a reasonable substitute for the AUL of assets in specific industries around the world. Furthermore, we agree with the comment that one important reason behind the CIT's decisions regarding the IRS tables method was that it had not been codified into a final regulation. With respect to the GATT panel report, it is true that the panel found fault with the way the Department applied the IRS tables method. However, it is also true, as suggested by one commenter, that the panel concluded that it was not necessarily inconsistent with GATT's Guidelines on Amortization and Depreciation (Committee on Subsidies and Countervailing Measures, April 1985) for a signatory to apply a standard period as the average useful life of assets in a given industry, provided that such standard period was not established on an arbitrary basis and that it was applied with a degree of flexibility, taking into account the circumstances of a given case.

Therefore, as set forth in paragraph (d)(2), we will use the AUL listed in the IRS tables for the industry under investigation, unless parties claim and establish that these tables do not reasonably reflect the AUL of the renewable physical assets for the firm or industry under investigation. Since it is quite likely that the IRS tables, which are based on industry averages, will never exactly match a firm's AUL, we will not allow parties to claim that the IRS tables do not reflect the firm's AUL unless they can demonstrate either: (1) That the AUL for the firm differs by one year or more from the AUL listed for the industry in the IRS tables, or (2) that the relevant authorities in the respondent country have in place a system, equivalent to the IRS tables, for determining the actual AUL of assets in specific industries, and the respondent country's tables show that the AUL for the industry under investigation differs by one year or more from the IRS tables.

By requiring any party objecting to the application of the IRS tables to show that either the company-specific AUL, or the industry AUL in that country, differs by one year or more from the IRS tables, we will reduce the burden on all parties, as well as the Department, in analyzing, commenting on, and challenging claims that, even if ultimately accepted, would have relatively little impact on the calculation.

Although most commenters focused on some variation of the AUL method as the appropriate period over which to allocate non-recurring subsidies, one commenter urged the Department to adopt a special rule for determining the period over which to allocate subsidies that are tied to the development of a new product or which fund a specific project. This commenter maintained that the proper allocation period in cases where a subsidy is provided for the development of a specific product is the life of the product, and not the life of the renewable physical assets used to manufacture the product. The commenter stated that subsidies for the development of a new product continue to benefit the recipient over the life of the product and have no relationship to the recipient's AUL.

The same commenter noted that under the Department's methodology, regardless of whether it uses the IRS tables or the company-specific AUL, the allocation period begins with the receipt of the subsidy. The commenter argued that the allocation period should begin with the sale of the first product that has been developed with the aid of the subsidy, which may be several years after the initial provision of the subsidy. In the commenter's view, the Department's standard calculation methodology severely understates the duration of the benefit.

In our experience, we have found that for most industries and most types of subsidies, the IRS tables have provided an accurate and fair approximation of the AUL of assets in the industry in question, and that the AUL of assets represents a reasonable reflection of the duration of the benefit from a non-recurring subsidy. We recognize, however, that for certain types of industries or certain types of subsidies, the AUL of assets may not represent the best reflection of the duration of the benefit. In addition, with respect to certain types of subsidies, even if we were to use the AUL of assets, it is not clear when the benefit stream should commence.

It is reasonable to assume that the AUL of assets closely approximates the duration of the benefit in mature or traditional industries. For example, if a government provides a grant to a chair producer to purchase electric saws and wood-carving equipment, it is reasonable to assume that the grant will continue to benefit the chair producer as long as the equipment lasts. In this instance, the focus of the government's attention is to provide the means for the company to produce already developed products, or modest innovations in the manufacturing process of developed products. Often, both the equipment and the products made from the equipment have already been developed. There is usually only a relatively short lead time between receipt of the subsidy and production. In comparison with the total investment, research and development and marketing expenses are likely to be relatively low. In addition, the level of risk associated with the investment may be lower than that associated with the type of investment described below.

However, when a government provides a subsidy to fund the development of certain new technologies, or to fund an extraordinarily large project for the development of new products that encompasses not only basic research and development, but also implementation and commercialization, the duration of the benefit may not necessarily be related to the AUL of assets in that industry. For one thing, by definition, estimates of the AUL of

assets are based on existing equipment used to make existing products. The assets needed to develop new technologies, or to produce a new product may not even have been designed yet, and certainly the product is not yet developed. Often there is a significant lead time between receipt of the subsidy and development of the product and between the development of the product and the product's commercialization (*e.g.*, the first commercial sale); in some industries, these lead times can be several years. In these instances, even if we were to rely on the AUL of assets, there is a question as to when the benefit stream should begin: at the time the grant is received or at the time the product reaches commercial production.

For these reasons, we have added an exception to paragraph (d). Under paragraph (d)(2)(iv), we will consider arguments, with respect to subsidies to develop certain new technologies, or to fund extraordinarily large development projects that require extensive research and development prior to implementation of production, that we should rely on allocation periods other than AUL, or that the benefit stream should begin at some time other than the date the subsidy is received.

Calculation of a Company-Specific AUL

As noted above, in order to rebut the presumption that the IRS tables reasonably reflect the AUL of assets of the respondent company, a party must provide information showing either that a company-specific AUL differs by one year or more from the AUL listed in the IRS tables for that industry, or that the AUL of the industry in the respondent country differs by one year or more from the AUL in the IRS tables. The criteria that the Department will apply in deciding whether the presumption has been rebutted are discussed below and are set forth in paragraphs (d)(2)(ii) and (iii).

Because firms usually do not calculate the "actual" AUL of assets in the normal course of business, and requiring firms to calculate this figure for purposes of a countervailing duty proceeding could pose an extremely onerous burden on firms with thousands of individual assets, and on the Department to verify the accuracy of those calculations, we intend to continue relying on the basic method for calculating company-specific AUL which has been used by the Department since the remand determination in the 1993 Certain Steel investigations (*see, British Steel* v. *United States*, 929 F. Supp. 426, 432–34 (CIT 1996)). Under this method, which is set forth in general terms in paragraph (d)(2)(iii), a firm calculates an AUL as follows. First, the annual average gross book value of the firm's depreciable productive fixed assets (which is usually based on acquisition cost) is cumulated, for a period considered appropriate by the Department. In the preamble to the 1997 Proposed Regulations, we indicated that we had been requesting 10 years of data to calculate a company-specific AUL; however, we are still evaluating whether 10 years of data are necessary or appropriate. Second, the firm's annual charges to accumulated depreciation for the same time period are summed. Third, the sum of the annual average gross book values is divided by the sum of annual depreciation charges. The resulting number is a company-specific AUL. As we gain more experience in addressing the calculation of AULs under these regulations, we may make refinements to the approach described above.

The Secretary will attempt to exclude fixed assets that are not depreciable (such as land or construction in progress) and assets that have been fully depreciated and that are no longer in service. However, assets that are in service would be included even if they have been fully depreciated. There may be situations in which the company-specific AUL calculated in the manner described above is not representative of the company's actual AUL. For example, if a firm's depreciation is not based on an estimate of the actual useful life of its assets, the calculation described above is not a reasonable method of calculating AUL. Similarly, AUL cannot be calculated in this manner if the firm does not use straight-line depreciation unless additions to the firm's asset pool are regular and even. In addition, we will not use a company-specific AUL where we conclude that the company-specific AUL is aberrational, or in some other way not usable. As noted above, we have found that company-specific AULs may not be usable in the face of a recent change in ownership or bankruptcy.

It may also be necessary to make normalizing adjustments for factors that distort the calculation of an AUL. We are not in a position at this time to provide additional detail in the regulation itself on when we will make normalizing adjustments and how such adjustments will be made because the types of necessary adjustments will likely vary based on the facts of a particular case. However, certain obvious normalizing adjustments that come to mind are situations in which a firm may have charged an extraordinary write-down of fixed assets to depreciation, or where the economy of the country in question has experienced persistently high inflation.

If a party can show that a company's AUL meets all of the requirements set forth in paragraph (d)(2)(iii), and that the company-specific AUL differs from the IRS tables by one year or more, we will consider that the presumption has been rebutted and will use the company's own AUL for purposes of its analysis. Because petitioners may not have access to translated financial statements (which is where much of the required information on asset values and depreciation is reported), petitioners will be allowed to base their arguments that the IRS tables are not representative of a company's AUL either on the financial statements they submit in the petition, or on information submitted by respondents in their initial questionnaire responses. We recognize that, by waiting until the initial questionnaire response to examine claims to rebut the IRS tables presumption, we may be faced with a situation where we will need to collect additional years of information on the alleged subsidy programs. If that situation arises, we will determine on a case-by-case basis whether this provides sufficient reason to declare an investigation extraordinarily complicated in accordance with section 703(c) of the Act.

In addition to rebutting the presumption to use the IRS tables through the calculation of a company-specific AUL, we will also permit the respondent government to demonstrate that it has a system in place which reasonably reflects the AUL for industries. The government must demonstrate that the system was set up to determine the AUL of industries in the country, that it has conducted reliable surveys and/or studies to gather information from the companies on their AULs, and that it has ensured the accuracy of any reported information and of any calculations performed. If the respondent government's system meets these standards, and the AUL for the industry under investigation differs by one year or more from the IRS tables, we will consider that the presumption has been rebutted, and will use the AUL from the respondent government's system for the industry under investigation.

As is the case for any other information included in a response to a countervailing duty questionnaire, a firm's calculation of its AUL, or a government's system for determining the AULs of its industries, would be subject to verification by the Department and comment by parties to

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the proceeding. The regulation setting forth the use of the IRS tables as a rebuttable presumption is in paragraph (d)(2)(i); the standards we will apply to determine if the presumption has been rebutted are set forth in paragraphs (d)(2)(ii) and (iii).

Several commenters who objected to the use of a company-specific AUL also submitted comments on the method for calculating the company-specific AUL should the Department decide to retain this methodology. Although we have decided to use the IRS tables as a rebuttable presumption to determine the allocation period, parties will be able to use the company-specific AUL method to rebut the presumption. As such, we address these additional comments below regarding the calculation and application of a company-specific AUL.

One commenter argued that, in a situation where the petition is based upon the IRS tables and the company-specific AUL exceeds the AUL in the IRS tables, the Department must investigate all subsidies provided during the allocation period, and the petitioners must have a reasonable amount of time after the Department has made its AUL determination to allege additional subsidies from earlier years. To this effect, the commenter suggested that the investigation be declared extraordinarily complicated in accordance with the Department's regulations for postponing preliminary and final countervailing duty determinations when the company-specific AUL exceeds the AUL in the IRS tables.

In cases where the petition is based upon the AUL listed in the IRS tables, and where a party rebuts that presumption based on the factors discussed above, it is our intention to give the parties a reasonable amount of time to provide information concerning subsidies received in the earlier period (see the rules regarding the time limits for submission of factual information in § 351.301(b) of Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296 (May 19, 1997)). We will decide on a case-by-case basis if rebutting the use of the IRS tables provides sufficient reason to declare an investigation extraordinarily complicated in accordance with section 703(c) of the Act.

The same commenter asked that the regulations clearly state that the company-specific AUL method will be used only if the respondent (1) bases its depreciation charges on an estimate of the actual useful life of its productive assets, and (2) employs a straight-line depreciation methodology. Another commenter argued that there are two circumstances under which the Department should be precluded from using the company-specific AUL method: (1) When additions to a firm's asset pool are irregular and uneven, and (2) when the number of producers and exporters is so large that the Department uses aggregate data, as was the case in, *e.g.*, Live Swine from Canada, 62 FR 18087 (April 14, 1997).

As stated in the 1997 Proposed Regulations and reiterated previously, there are certain situations in which a company cannot compute its AUL using the methodology described above. For example, if a firm's depreciation is not based on an estimate of the actual useful life of its assets, the methodology cannot be used. Similarly, an AUL cannot be calculated in this manner if the firm does not use straight-line depreciation and additions to the firm's asset pool are irregular and uneven. With respect to the last comment about aggregate cases, we have found that in some aggregate cases it is possible to calculate an AUL based on combined data from a large number of companies (see, *e.g.*, Fresh Atlantic Salmon from Chile, 63 FR 31437 (June 9, 1998)). However, because we now intend to use the AUL in the IRS tables as a rebuttable presumption in all investigations, parties in an aggregate case that wish to rebut the presumption would have to provide the same type of information outlined above.

One commenter criticized the Department's practice of including fully depreciated assets that are still in service in the asset base used to calculate the company-specific AUL. The commenter argued that the Department would have to assign an actual value to a fully depreciated asset to be used as a substitute for its acquisition cost which would involve complicated calculations. The commenter asked that the Department instead exclude fully depreciated assets from the asset base for purposes of the AUL calculation.

We note that, in cases where assets are fully depreciated, yet remain in service, their useful life is simply longer than the depreciation period used by the respondent for accounting purposes. By including fully depreciated assets that are still in service, our calculation more accurately reflects the assets' useful life. With respect to the commenter's concern that we would have to assign a value to a fully depreciated asset in lieu of its acquisition cost, this is simply incorrect. As explained above, one element of our calculation of the AUL of productive fixed assets is the gross book value of these assets, which is based on their acquisition cost. We will still use the gross book value when the asset has been written off, just as we will use the aggregated depreciation of the asset. Thus, there is no need to assign a fictional value to a fully depreciated asset that is still in use for purposes of calculating the company-specific AUL.

The 1997 Proposed Regulations stated that, in administrative reviews, we would recalculate the AUL for non-recurring subsidies received after the period of investigation based upon updated information. One commenter labeled this approach as misguided and argued that there is no need to undertake such recalculation. Moreover, the commenter argued, this approach would lead to anomalous results, *e.g.*, in cases where a company that received two identical subsidies in two different years might face different countervailing duty rates based solely upon the company's financial structure and accounting practices.

We disagree that this approach would lead to anomalous results. Even if the subsidy amounts are identical, if they are provided in two different years, they will have different discount rates and, consequently, different benefit streams regardless of the allocation period. However, because we have limited experience in this area, we are continuing to evaluate whether we should recalculate the allocation period for new subsidies, and we will address this issue in the context of individual cases.

Calculation of the Benefit Stream

Once we have determined that a benefit is non-recurring and that it should not be expensed under the 0.5 percent rule under paragraph (b)(2), we will calculate the amount of the benefit that will be assigned to a particular year according to the formula described in paragraph (d)(1).

We noted in the 1997 Proposed Regulations that we had recently received comments on our allocation formula and that we intended to address the comments we had received in these Final Regulations. Those comments and our position follow.

One commenter, who argued that the Department's traditional calculation methodology is biased in favor of respondents, outlined four alternatives for determining when a grant is received: (1) In the beginning of the year of receipt, (2) at the end of the year of receipt, (3) on the actual date of receipt, or (4) in the middle of the year of receipt. The commenter maintained that because our traditional methodology is based on the implicit assumption that grants are received in the beginning of

the year of receipt, it favors respondents because it undervalues the benefit and artificially shortens the amortization period. The commenter also found our methodology to be inconsistent with commercial realities and with § 351.503(b) of the 1997 Proposed Regulations.

Regarding the second alternative (*i.e.*, basing the benefit calculation on the assumption that grants are received at the end of the year of receipt), the commenter stated that this would also be inconsistent with commercial realities and would unfairly favor petitioners. The third alternative (*i.e.*, using the actual date of receipt) was described as a neutral methodology that would favor neither petitioners nor respondents. According to the commenter, this approach is consistent with commercial reality, with the Department's past practice, and with § 351.503(b) of the 1997 Proposed Regulations. However, the commenter noted that this methodology would be burdensome and urged the Department to adopt the fourth alternative, *i.e.*, the mid-year methodology. The commenter maintained that this option is neutral, consistent with commercial realities, and would require only minor changes in the calculation formula. On average, the mid-year option would produce the same result as the actual date of receipt alternative and would thus be a fair methodology, according to the commenter. (A detailed explanation of how to calculate the annual benefit in accordance with the mid-year approach was also provided.)

A second commenter agreed with the previous argument that the Department's traditional calculation methodology favors respondents by undervaluing the benefit and preventing the Department from fully offsetting the benefit received. However, this commenter argued that the Department should change its calculation methodology to reflect the assumption that the benefit is received at the end of the year. The commenter asked that this underlying assumption should control unless respondents can establish the actual date of receipt.

We have not adopted any of the proposed alternatives to our current formula. Our current formula for allocating non-recurring benefits over time, which is shown in paragraph (d)(1), was developed as a result of the CIT's examination of our previous allocation method in *Michelin Tire Corp.* v. *United States*, 6 CIT 320 (1983). The formula first appeared in the Subsidies Appendix to Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 49 FR 18006 (April 26, 1984) and has since been part of the Department's longstanding practice. This methodology has been uncontroversial and has worked well in past cases. We, therefore, do not see any compelling need to change it. Moreover, we disagree with the commenters' specific proposals, including the proposed calculation formula developed by the first commenter. We find this commenter's methodology unduly complicated because it involves three different calculation formulas to be used at different times during the allocation period. Furthermore, the commenter's formula is not consistent with the declining balance methodology, which has been an important part of the Department's past practice.

Selection of Discount Rate

Paragraph (d)(3) deals with the selection of a discount rate. Consistent with the GIA at 37227, paragraph (d)(3)(ii) provides that, in the case of an uncreditworthy firm, the Secretary will use as a discount rate an interest rate with a "risk premium" included.

Section 351.525

Section 351.525 deals with the calculation of the *ad valorem* subsidy rate and the attribution of a subsidy to a particular product. While § 351.525 is based roughly on § 355.47 of the 1989 Proposed Regulations, it contains changes that reflect further refinements in the Department's practice since 1989.

Paragraph (a) deals with the calculation of the *ad valorem* subsidy rate, and continues to provide that the Secretary will calculate the rate by dividing the amount of the subsidy benefit by the sales value of the product or products to which the subsidy is attributed. For example, if a firm receives an untied domestic subsidy for which the benefit in the period of investigation or review is $100 and the firm's total sales in that period amount to $1,000, the *ad valorem* subsidy rate would be 10 percent ($100 ÷ $1,000 = 10 percent).

The second and third sentences of paragraph (a) deal with the basis on which the Secretary will determine the sales value of a product. The Department's longstanding practice has been to determine the sales value for products that are exported on an f.o.b. (port) basis in order to correspond to the basis on which the Customs Service assesses duties. However, in the GIA, we announced that we would begin using sales values as recorded in a firm's financial statements. We did so with the belief that this approach would be more accurate, would reduce the burden on the firms involved, and would allow us to account for the fact that shipping expenses might be subsidized. However, in order to ensure that the Customs Service collected the correct amount of duties based on an f.o.b. (port) basis, we found it necessary to adjust the calculated *ad valorem* subsidy rate based on a ratio of the invoice value of exports to the United States to the f.o.b. value of exports to the United States. In the end, only one of the respondents in the 1993 steel investigations had the information needed to calculate this ratio. Therefore, for all other firms in those cases, the Department resorted to its traditional f.o.b. (port) methodology.

Because our experiment with a different basis was not successful, in the second sentence of paragraph (a) we have reverted to our standard practice of determining sales value on an f.o.b. (port) basis in the case of products that are exported. In the case of products that are sold for domestic consumption, we would determine sales value on an f.o.b. factory basis. While this method imposes a bit more work on firms than does a method that relies on booked values, we believe that the burden can be mitigated by relying on aggregate figures and reasonable allocations of those figures across markets (*e.g.*, subtracting total freight and insurance expenses—expenses that usually are maintained in ledgers that are separate from sales information).

In addition, there is no compelling reason for allocating subsidy benefits over sales values that include freight and other shipping costs. Although there may be rare instances where the movement component of a transaction is subsidized, we can deal with those instances on a case-by-case basis. Accordingly, the third sentence of paragraph (a) provides that the Secretary may make appropriate adjustments to the *ad valorem* subsidy rate to account for movement subsidies.

Paragraph (b) deals with the attribution of a subsidy to a particular product. Paragraphs (b)(2) through (b)(7) set forth general rules of attribution that the Secretary will apply to a given factual situation. We have taken this approach because, depending on the facts, several of the different rules may come into play at the same time. If we tried to account for all the possible permutations in advance, the result would be an extremely lengthy set of rules that might prove unduly rigid.

On the other hand, we appreciate that there needs to be a certain degree of predictability as to how the Department will attribute subsidies. We believe that the rules set forth in paragraph (b) are sufficiently precise that parties can

predict with a reasonable degree of certainty how we will attribute subsidies to particular products in a given factual scenario. In this regard, our intent is to apply these rules as harmoniously as possible, recognizing that unique and unforeseen factual situations may make complete harmony among these rules impossible.

With respect to the attribution rules themselves, they are consistent with the concept of "benefit" described in § 351.503, *i.e.*, that a benefit generally is conferred when a firm pays less than it otherwise would pay in the absence of the government-provided input or when a firm receives more revenue than it otherwise would earn. In light of this, subsidies are by these rules attributed, to the extent possible, to the sales for which costs are reduced (or revenues increased). For example, an export subsidy reduces the costs of a firm's exports and is, therefore, attributed only to export sales. Similarly, a subsidy provided by a government for a specific product is attributed only to sales of that product for which the subsidy was provided (and any downstream products produced from that product), as it reduces the costs of a firm's sales of those products. This attribution principle applies equally to the current benefit from non-recurring subsidies allocated over time. For example, the current benefit of an untied subsidy will be attributed to the firm's total sales, even if the products produced by the firm differ significantly from the time the subsidy was provided. We will not, therefore, examine whether product lines have been expanded or terminated, or whether and to what extent the corporate structure of the firm has changed over time.

The principle of attributing a subsidy to sales of a particular product or products is embodied in the Department's longstanding practice concerning the "tying" of subsidies. See, *e.g.*, § 355.47 of the 1989 Proposed Regulations. As discussed below, there are various ways in which a subsidy can be tied. However, regardless of the method, we attribute a subsidy to sales of the product or products to which it is tied. In this regard, one can view an "untied" subsidy as a subsidy that is tied to sales of all products produced by a firm. For example, we consider certain subsidies, such as payments for plant closures, equity infusions, debt forgiveness, and debt-to-equity conversions, to be untied because they benefit all production.

Paragraphs (b)(2) through (b)(7) set forth rules that we will apply to different types of tying situations. For example, paragraph (b)(2) contains an attribution rule regarding export subsidies. Because an export subsidy is, by definition, limited to exports, paragraph (b)(2) provides that the Secretary will attribute an export subsidy only to the sales of products exported by a firm.

As noted above, we intend to apply paragraphs (b)(2) through (b)(7) consistently with each other, to the extent practicable. As an example, assume that a government provides an export subsidy on exports of widgets to Country X. Here, three attribution rules come into play. Under paragraph (b)(2), the subsidy would be attributed to the export sales of a firm. Under paragraph (b)(4), the subsidy would be attributed to products sold by a firm to Country X. Under paragraph (b)(5), the subsidy would be attributed to widgets sold by a firm. Putting the three rules together, the subsidy in this example would be attributed to the firm's export sales of widgets to Country X.

Certain commenters have identified potential scenarios where the Department should allow itself the flexibility to deviate from these tying rules (*e.g.*, where subsidies allegedly "tied" to non-subject merchandise or markets are actually meant to benefit the overall operations of the company).

We recognize that there may be many scenarios where these attribution rules do not fit precisely the facts of a particular case. Furthermore, we are extremely sensitive to potential circumvention of the countervailing duty law. We intend to examine all tying claims closely to ensure that the attribution rules are not manipulated to reduce countervailing duties. If the Secretary determines as a factual matter that a subsidy is tied to a particular product, then the Secretary will attribute that subsidy to sales of that particular product, in accordance with paragraph (b)(5). If subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, the Secretary will attribute the subsidy to sales of all products by the company. This example illustrates that the rules as proposed, and as finalized here, do serve their intended purpose, but that the facts of each case must be carefully examined.

The rules set forth in paragraphs (b)(5) and (b)(6) warrant additional explanation because of the special nomenclature that is being used. In all other sections of these regulations, the term "firm" is used to describe the recipient of the subsidy. See § 351.102. However, for purposes of certain attribution rules, where we are describing how subsidies will be attributed within firms, "firm" is too broad. Therefore, for purposes of paragraphs (b)(5) and (b)(6), we are using the term "corporation." In so doing, we are not intending to limit the application of these rules to firms that are organized as corporations. However, based on our experience, most of the firms we investigate are organized as corporations. Therefore, our use of the term "corporation" makes these attribution rules as clear as possible. If a respondent is not organized as a corporation, we will address any attribution issues covered by the rules in paragraphs (b)(5) and (b)(6) based on the facts of that case, while following as closely as possible the rules and principles set forth in paragraphs (b)(5) and (b)(6).

Paragraph (b)(5) sets out our rules regarding product tying. Paragraph (b)(5)(i) states our longstanding general rule that where a subsidy is tied to production of a particular product, the subsidy will be attributed to sales of that product. One commenter argued that the regulations should make clear that where a subsidy is provided to develop a specific model of a product (or to modernize a particular production facility), the subsidy should be attributed to sales of that model (or to production from that facility). We believe that this commenter's concerns may already be addressed by the proposed product-tying rule. If subsidies are provided for a specific model, they can be tied to that model. If a countervailing duty case is brought solely against that model, the subsidy would be attributed to that model, and a model-specific rate will, in effect, be calculated. However, if the case is brought against several models that comprise the subject merchandise, we would normally blend the model-specific rates to arrive at a single rate to apply to all merchandise covered by the countervailing duty order.

Our 1997 Proposed Regulations contained an exception to the general product tying rule which provided that, if an input product is produced within the same corporation, subsidies tied to the input product would be attributed to sales of both the input and the downstream products. Our stated intention was to limit this exception to situations where production of the input and downstream product occur within the same corporation. We took the position that if the input product is produced by a separately incorporated company, regardless of the level of affiliation or "cross-ownership" (as discussed further below), subsidies to the input product would only be considered in the context of an upstream subsidy investigation initiated

on the basis of a sufficient allegation from the petitioner.

We received numerous comments objecting to such an approach, arguing that the rule elevates form over substance. These commenters suggested that the rule creates a loophole whereby vertically integrated businesses could avoid countervailing duty exposure for input subsidies simply by separately incorporating the division that makes the input. In their opinion, where there is cross-ownership between the input supplier and the downstream product, subsidies to the input supplier should be automatically attributed to the downstream product. In situations where the cross-ownership standard is not met, but the corporations are nonetheless affiliated, the Department should determine whether to attribute the subsidies between the two companies according to the particular facts of the case.

Paragraph (b)(5)(ii) of these Final Regulations maintains the exception to the product tying rule whereby we will attribute a subsidy tied to the input product to the sales of both the input and downstream products where the production of the input and downstream products occurs within the same corporation. However, upon consideration of the comments received and a careful review of the upstream subsidy provision of the statute, we have decided to modify our practice regarding separately incorporated input and downstream producers.

The main concern we have tried to address is the situation where a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value added product—the type of input product that is merely a link in the overall production chain. This was the case with stumpage subsidies on timber that was primarily dedicated to lumber production and subsidies to semolina primarily dedicated to pasta production. (See Certain Softwood Lumber Products from Canada, 57 FR 22570, 22578 (May 28, 1992) and Certain Pasta from Italy, 61 FR 30287–309 (June 14, 1996).) We believe that in situations such as these, the purpose of a subsidy provided to the input producer is to benefit the production of both the input and downstream products. Accordingly, where the input and downstream production takes place in separately incorporated companies with cross-ownership (see discussion below defining cross-ownership) and the production of the input product is primarily dedicated to the production of the downstream product, paragraph (b)(6)(iv) requires the Department to attribute the subsidies received by the input producer to the combined sales of the input and downstream products (excluding the sales between the two corporations).

Where we are dealing with input products that are not primarily dedicated to the downstream products, however, it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. For example, it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles. Where we are investigating products such as appliances and automobiles, we will rely on the upstream subsidy provision of the statute to capture any plastics benefits which are passed to the downstream producer. Moreover, we believe that the upstream subsidy provision is still applicable when dealing with lower levels of affiliation. Therefore, if the relationship between the input and downstream producers meets the affiliation standard but falls short of cross-ownership, even if the input product is primarily dedicated to the downstream product, we will only consider subsidies to the input producer in the context of an upstream subsidy investigation.

Paragraph (b)(6) deals with situations where cross-ownership exists between corporations. We have decided to codify the definition of cross-ownership outlined in the preamble to the 1997 Proposed Regulations. Accordingly, paragraph (b)(6)(vi) makes clear that the relationships captured by the cross-ownership definition include those where the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits). For example, cross-ownership exists where corporation A owns corporation B (or *vice versa*), or where A and B are both owned by corporation C. Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.

As we noted in the 1997 Proposed Regulations, the term "cross-ownership" as it is used here clearly differs from "affiliation," as that term is defined in section 771(33) of the Act. In response to this, one commenter protested that reliance upon cross-ownership for attribution purposes will unlawfully limit the affiliated party standard as outlined in section 771(33) of the Act. Another commenter asked the Department to revise the definition of cross-ownership such that cross-ownership will be found when one "affiliated" company exercises control over another.

We believe that the definition of cross-ownership in these Final Regulations is a more useful basis than mere affiliation for identifying the types of relationships where it is reasonable to presume that subsidies to one corporation could benefit another corporation. The underlying rationale for attributing subsidies between two separate corporations is that the interests of those two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same ways it can use its own assets (or subsidy benefits). The affiliation standard does not sufficiently limit the relationships we would examine to those where corporations have reached such a commonality of interests. Therefore, reliance upon the affiliated party definition would result in the Department expending unnecessary resources collecting information from corporations about subsidies which are not benefitting the production of the subject merchandise, or diluting subsidies more properly attributed to input producers by allocating such subsidies over the production of remotely related and affected downstream producers. In response to the second comment, we note that varying degrees of control can exist in any relationship. Therefore, we believe the more precise definition of cross-ownership that we have adopted in these Final Regulations is more appropriate.

Contrary to the assertions of the commenters, in limiting our attribution rules to situations where there is cross-ownership, we are not reading "affiliated" out of the CVD law—we simply do not find the affiliation standard to be a helpful basis for attributing subsidies. Nowhere in the statute or the SAA is there any indication that the affiliated party definition was intended to be used for subsidy attribution purposes. Rather, it identifies the broadest category of relationships which might be relevant to either an antidumping or a countervailing duty analysis. Therefore,

we intend to include in our questionnaires a request for respondents to identify all affiliated parties. Also, persons affiliated with companies that shipped during the period of investigation will not be entitled to request a new shipper review under section 751(a)(2)(B) of the Act. However, we do not intend to investigate subsidies to affiliated parties unless cross-ownership exists or other information, such as a transfer of subsidies, indicates that such subsidies may in fact benefit the subject merchandise produced by the corporation under investigation.

Paragraph (b)(6) begins by stating a general rule, which is followed by four exceptions to that rule deriving from the rationale described above. Paragraph (b)(6)(i) states that the Secretary will normally attribute a subsidy received by a corporation to the products produced by that corporation. Hence, for example, if corporation A receives a subsidy, then that subsidy will normally be attributed to the sales of products produced by corporation A.

However, under paragraph (b)(6)(ii), if two (or more) corporations with cross-ownership produce the subject merchandise, then subsidies received by either or both of those corporations will be attributed to the combined sales of the two corporations. Thus, for example, if corporation A and corporation B are both owned by corporation C and both A and B produce widgets, benefits to A and B will be combined to determine the subsidy on widgets and the subsidy will be attributed to the combined production of A and B.

Paragraph (b)(6)(iii) addresses a second instance where subsidies received by one corporation might be attributed to sales of another corporation with cross-ownership. This is where the subsidy is received by a holding company. The term "holding company" is intended to mean any company that owns or controls subsidiaries through the ownership of voting stock or other means. In paragraph (b)(6)(iii) of these Final Regulations, we have clarified that the term "holding company" includes investment companies with no business of their own (commonly referred to as holding companies) as well as companies with their own operations (commonly referred to as parent companies). Under paragraph (b)(6)(iii), subsidies to a holding company will normally be attributed to the consolidated sales of the holding company (including the sales of subsidiaries). However, if the Department determines that the holding company is merely serving as a conduit for government-provided funds to one (or more) of its subsidiaries, then the subsidy will be attributed to the production of that subsidiary.

Analogous to the situation of a holding or parent company is the situation where a government provides a subsidy to a non-producing subsidiary (*e.g.*, a financial subsidiary) and there are no conditions on how the money is to be used. Consistent with our treatment of subsidies to holding companies, we would attribute a subsidy to a non-producing subsidiary to the consolidated sales of the corporate group that includes the non-producing subsidiary. *See, e.g., Certain Steel Products from Belgium*, 58 FR 37273, 37282 (July 9, 1993) ("*Certain Steel from Belgium*").

Paragraph (b)(6)(iv) incorporates the change in practice with regard to separately incorporated input producers discussed previously. This rule allows the Department to attribute the subsidies received by the input producer to the input and downstream products produced by both corporations when the input is primarily dedicated to the production of the downstream product.

Finally, where the exceptions contained in paragraphs (b)(6)(i)–(iv) have not been met, subsidies received by one corporation may still be attributed to sales of another corporation with cross-ownership if the Secretary determines under paragraph (b)(6)(v) that the corporation receiving the subsidy transfers it to the corporation producing the subject merchandise. Such a transferral could be shown by some form of extraordinary transaction between the two companies, *e.g.*, a transfer of assets, an assumption of debt, or a significant loan. Where we find such transfer mechanisms, we will attribute the subsidy to the combined sales of the two corporations.

Although cross-ownership is broadly defined, permitting us to include corporations under common government ownership, we expect that common government ownership will not normally be viewed as cross-ownership. Instead, we intend to continue our longstanding practice of treating most government-owned corporations as the government itself, and not as corporations that transfer subsidies received from the government to other government-owned corporations through loans or other financial transactions. For example, where a government-owned corporation producing the product under investigation purchases electricity from a government-owned utility, a subsidy is conferred if the utility does not receive adequate remuneration. However, given the complexity and variety of the government-owned corporate structures that we have encountered, the nature of the allegation may determine the nature of the analysis and the level at which the analysis should be applied. The situations where we would normally expect to apply the cross-ownership rules to common government ownership are: (1) Government-owned corporations producing the same product (*see* § 351.525(b)(6)(ii)) and (2) government-owned corporations producing different products where the corporations are under the control of the same ministry or within a corporate group containing producers of similar products (*see* § 351.525(b)(6)(v)).

Although the rules described in paragraphs (b)(2)—(b)(7) of § 351.525 deal with tying, § 351.525 does not contain a definition of "tied." In the past, the Department has described this concept in a variety of ways. For example, in Appendix 2 to *Certain Steel Products from Belgium*, 47 FR 39304, 39317 (September 7, 1982), we stated that "a grant is 'tied' when the intended use is known to the subsidy giver and so acknowledged prior to or concurrent with the bestowal of the subsidy." In the preamble to the 1989 Proposed Regulations at 23374, we stated that a "tied" subsidy benefit is "*e.g.*, a benefit bestowed specifically to promote the production of a particular product."

Given the wide variety of factual scenarios that we have encountered in the past, and are likely to encounter in the future, we are not promulgating an all-encompassing definition of "tied." Moreover, the absence of a definition of "tied" has not proven to be a problem in practice, and Annex IV to the SCM Agreement, which refers to "tied" subsidies in paragraph 3, also lacks a definition of this term. While the preamble to the 1997 Proposed Regulations requested comments regarding what factors are relevant to the Department's determination of whether benefits are tied, we received no such comments. For these reasons, at this time we intend to apply the term "tied" on a case-by-case basis, using the guidelines in this section.

Virtually every comment submitted on attribution-related issues included a reference to the fungibility of money. Certain commenters argued that because money is fungible, the Department should not allow subsidies to be tied to particular products or to particular export markets. In their view, the only distinction that should be made is between export and domestic subsidies. Other commenters invoked the

fungibility principle in support of their position that untied capital infusions to companies with multinational production should be attributed to worldwide sales of the firm.

While we agree with these commenters that money is fungible, these comments are somewhat misplaced. Fungibility has to do with the issue of whether we could, or should, trace the use of specific funds to determine whether such funds were used for their stated purpose, or the purpose that we evince from record evidence. We have generally stated that we will not trace the use of subsidies through a firm's books and records. Rather we analyze the purpose of the subsidy based on information available at the time of bestowal. Once the firm receives the funds, it does not matter whether the firm used the government funds, or *some of its own funds that were freed up as a result of the subsidy*, for the stated purpose or the purpose that we evince. This is what we mean when we say that money is fungible. Fungibility does not mean that we cannot attribute subsidies to particular portions of a firm's activities. This interpretation of fungibility would undermine congressional intent to attribute subsidies to the products that directly benefit from the subsidy. *See, e.g.*, H.R. Rep. No. 96–317, at 74–75 (1979) ("[W]ith regard to subsidies which provide an enterprise with capital equipment or a plant * * * the net amount of the subsidy should be * * * assessed in relation to the products produced with such equipment or plant * * *.").

For example, if we were to adopt some of the suggestions made by the commenters, there should be no distinction between export and domestic subsidies. Yet, this agency's consistent and, for the most part, non-controversial practice over the past 18 years has been to attribute export subsidies to the sales value of exported products and domestic subsidies to all products sold. As additional examples, over time, we also have adopted the practices of attributing subsidies that can be tied to particular products to sales of those products and attributing subsidies that can be tied to particular markets to products sold to those markets.

Our tying rules recognize that a government subsidy may not benefit all products or corporate entities equally. At the same time, they recognize that a subsidy may provide benefits to persons, products, or entities, not specifically named in a government program. Our tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal.

Section 351.525(b)(7) addresses the attribution of subsidies received by companies with multinational production. As we stated in the 1997 Proposed Regulations, it is our continued position, based upon our past administrative experience, that:

> The government of a country normally provides subsidies for the general purpose of promoting the economic and social health of that country and its people, and for the specific purposes of supporting, assisting or encouraging domestic manufacturing or production and related activities (including, for example, social policy activities such as the employment of its people).

GIA at 37231. Moreover, a government normally will not provide subsidies to firms that refuse to use them as the government wants, and firms receiving subsidies will not use them in a way that would contravene the government's purposes, as they otherwise risk losing future subsidies. Consistent with this, § 351.525(b)(7) states that we normally will attribute subsidies to sales of merchandise produced within the jurisdiction of the granting authority. However, where a respondent can demonstrate that the purpose of the subsidy was to benefit more than domestic production (*i.e.*, the subsidy was tied to more than domestic production), the subsidy will be attributed to multinational sales.

One commenter argued that it is inappropriate to assume that untied subsidies received by a multinational holding company benefit only the national operations of the company because such subsidies release resources for international as well as domestic operations. This argument, however, rests on the principle that money is fungible and, as discussed above, we do not believe that fungibility should be the guiding principle for attributing subsidies. Moreover, the presumption that domestic subsidies benefit domestic production has been a well-established practice since the *Certain Steel* investigations and has been upheld by the CIT. See GIA at 37231; *see also British Steel plc* v. *United States*, 929 F. Supp. 426, 453–55 (CIT 1996), *appeal pending sub nom. Inland Steel Industries, Inc.* v. *United States*, Nos. 98–1230, 1259 (Fed. Cir.).

The same commenter objected to the change from the rebuttable presumption adopted in 1993. We note that under the 1993 practice, a respondent was required to show that a subsidy was *not tied* to domestic production. If a respondent successfully demonstrated this, the subsidy would be attributed to multinational production. Under the proposed paragraph (b)(7), however, respondents were required to demonstrate that the subsidies were tied to foreign production. If we found the subsidy to be tied to foreign production, it would not be countervailed. The final rule, which is worded slightly differently, still requires affirmative evidence that the purpose of the subsidy was to benefit more than domestic production. We continue to believe that the shift in emphasis will bring our practice with respect to multinational companies more in line with the other attribution rules that require evidence of tying, as opposed to evidence that a subsidy is not tied.

Another commenter, while not objecting to the proposed change in the formulation of the presumption, objected to our statement that, if the Department found a subsidy tied to foreign production, it would not be countervailed. This commenter argued that if the Department maintains a countervailing duty order covering exports from the country in which the foreign production occurred, it should countervail those subsidies.

We have not adopted this suggestion because the statute permits countervailing subsidies provided by one government for the benefit of production in another country only in limited circumstances. See § 351.527 (transnational subsidies). However, this comment did prompt a closer examination of the proposed rule. Recognizing that governments are not likely to provide subsidies solely for the benefit of foreign production, we believe that the purpose, even of subsidies which may be tied to foreign production, is in fact to benefit multinational operations, including those in the subsidizing jurisdiction. Therefore, we have revised the rule so that if a respondent demonstrates that a subsidy is tied to more than domestic production, the subsidy will be attributed to multinational sales including sales in the subsidizing jurisdiction. We will examine such claims closely to ensure that the subsidy was, in fact, tied to more than domestic production. Respondents must show that, in the authorization and/or approval documents, the government explicitly stated that the subsidy was being provided for more than domestic production. Simply approving a loan to a company with multinational production, or providing an equity infusion to the company, is not sufficient to demonstrate that the subsidy was tied to more than domestic

production. The documentation must show that, at the point of bestowal, one of the express purposes of the subsidy was to provide assistance to the firm's foreign subsidiaries. Absent such a demonstration, all subsidies, whether tied or untied, will be attributed to the appropriate category of domestically-produced sales as mandated by the rules contained in paragraphs (b)(1) through (b)(6).

We received one comment requesting the Department to include language in its Final Regulations which would allow the agency to tie regional subsidies to production in a particular region—essentially to calculate factory-specific subsidy rates. This commenter points to *Live Swine from Canada*, 61 FR 26879 (May 29, 1996) ("*Live Swine from Canada*") in support of this proposal. In that case, the Department allocated regional benefits over regional production and then calculated a single country-wide rate based on each region's exports to the United States.

We have not adopted this suggestion. The calculation methodology employed in Live Swine from Canada was particular to the facts of that case " an aggregate case in which the majority of subsidy programs examined were regionally provided. If such a methodology were to be universally applied, foreign companies could easily escape payment of countervailing duties by selling the production of a subsidized region domestically, while exporting from a facility in an unsubsidized region.

Another commenter argued that if it were true that governments normally will not provide subsidies to firms that refuse to use them as the government wants, then even "untied" subsidies are worth less than their face value by virtue of the fact that the subsidy is inherently "restricted" in its use. This commenter appears to be seeking to have the Department reduce the value of the subsidy because of potential constraints placed on its receipt. We note that such a reduction is not an allowable offset under the statute.

Finally, we note that we have added a paragraph to this section which codifies our longstanding practice regarding the attribution of subsidies to trading companies. *See, e.g., Certain Stainless Steel Cooking Ware from the Republic of Korea*, 51 FR 42867 (November 26, 1986) and *Certain Steel Wire Nails from Thailand*, 52 FR 36987 (October 2, 1987). Although we did not receive any comments on this issue and our practice has been non-controversial, we believe it is important to codify those practices that we intend to continue. Therefore, paragraph (c) has been added which states that benefits from subsidies provided to trading companies (or any firm that only sells and does not produce subject merchandise) will be cumulated with benefits from subsidies provided to the producer of subject merchandise, regardless of whether the trading company and the producer are affiliated.

Section 351.526

Section 351.526 deals with program-wide changes, and is almost identical to § 355.50 of the 1989 Proposed Regulations.

One commenter suggested that the Department should add specific language to the regulation stating that the cash deposit rate will not be adjusted for a terminated program, unless the respondent has presented positive evidence demonstrating that no residual benefits will be bestowed and that no transitional program has been, or will be enacted. The commenter further suggested that the regulation also clearly set forth that the Department will not adjust the cash deposit rate based on mere assertion or announcement of a government's intent to terminate a program.

We agree with the commenter that program-wide changes must be documented by the respondent, beyond mere assertion. However, we do not feel that it is necessary to codify this position through an amended regulation. Given the general nature of this policy and our current practice, to which the commenter does not object, there is no reason to amend the current regulation.

A second commenter argued that § 351.526 should allow for the possibility that evidence of a program-wide change received subsequent to the period of investigation or review, but before the preliminary determination or preliminary results of an administrative review, may change the final determination or final results of the review. For example, when a program has been terminated and no residual benefits exist, the Department's final determination or final results should be negative (assuming that there is only one program). The commenter asserted that the 1997 Proposed Regulations, which would require the Department to render an affirmative determination with a zero cash deposit rate, is inconsistent with the overall purpose of the U.S. countervailing duty law. The commenter further argued that the Department should not have the discretion to determine that a "substitute program" continues to provide benefits; a substitute program must be considered only in a new investigation or upon an allegation in an administrative review.

We have not adopted the suggested changes of this commenter. It has been our longstanding practice to impose (or not to impose) a CVD order based exclusively on the subsidy rate in effect during the period of investigation. In *Pipe and Tube from Malaysia*, where the period of investigation rate was zero, we rendered a negative determination, even though we knew other benefits existed after the period of investigation. *See, Standard Pipe, Line Pipe, Light-Walled Rectangular Tubing and Heavy-Walled Rectangular Tubing from Malaysia*, 53 FR 46904, 46906 (November 21, 1988). If a subsidy exists during the period of investigation, we will issue a CVD order (where any required injury determination is affirmative) regardless of whether the program and the subsidy are eliminated after the period of investigation, but before our final determination. In regard to substitute programs, it is our practice to consider whether such programs exist when adjusting deposit rates. If we did not have such discretion to determine whether a substitute program offers the same benefits as a terminated program, then governments could terminate investigated or reviewed programs and replace them with other programs to obtain a lower deposit rate.

Section 351.527

Section 351.527, which is based on § 355.44(o) of the 1989 Proposed Regulations, provides that so-called "transnational subsidies" are not countervailable. Subsidies of this type include situations where the funding for the subsidy is provided (a) by the government of a country other than the country in which the recipient firm is located, of (2) by an international lending or development institution. Except for the addition of the phrase " * * * supplied in accordance with, and as part of, a program or project funded," which we discuss below, § 351.527 is the same as the provision in the 1997 Proposed Regulations and § 355.44(o) of the 1989 Proposed Regulations.

Paragraph (o)(2) of § 355.44(o) of the 1989 Proposed Regulations essentially duplicated what is now section 701(d) of the Act, a provision that deals with subsidies to international consortia. In light of our decision to avoid regulations that merely repeat the statute, § 351.527 merely references, but does not repeat, section 701(d).

One commenter stated that paragraph (a) in the 1997 Proposed Regulations should be clarified to apply solely to

foreign aid; otherwise any subsidy provided by the government of one country to a recipient located in another country would be not countervailable. The commenter argued that, as written, the regulation would prevent the Department from conducting an upstream analysis in a case where a subsidy is provided by the government of one country to an input producer in that country, that producer sells the input to a firm in another country, and this last firm ultimately sells subject merchandise to the United States. Another commenter stated that the statutory basis for not countervailing subsidies provided by one country to an entity producing or manufacturing the subject merchandise in another country no longer exists following the repeal of section 303 by the URAA and, prior to the URAA, did not exist for Subsidies Code members covered by section 701, notwithstanding previous assertions by the Department to the contrary. Therefore this commenter suggests striking paragraph (a) in its entirety. Both commenters supported paragraph (b), which addresses subsidies funded by international lending or development institutions.

Section 351.527 derives from prior section 303(a)(1) of the Act (now repealed), which stated:

> Whenever any country * * * shall pay or bestow, directly or indirectly, any bounty of grant upon the manufacture or production or export of any article * * * manufactured or produced in such country * * * there shall be levied a duty equal to the net amount of such bounty or grant * * * .
>
> 19 U.S.C. section 1303(a)(1)(1994)(emphasis added).

In our view, neither the successorship of section 701 for Subsidies Code members, nor the repeal of section 303 by the URAA, eliminated the transnational subsidies rule, and there is no other indication that Congress intended to eliminate this rule. In addition, § 351.527 does not preclude the Department from conducting an upstream analysis in a case where a subsidy is provided by the government of one country to an input producer in that country, that producer sells the input to a firm in another country, and this last firm ultimately sells subject merchandise to the United States. As explained in the preamble to § 351.523, section 701(d), the international consortia provision of the statute, allows the Department to countervail such subsidies where both countries are "members (or other participating entities)" in an international consortium and the subsidy on the input product "assisted, permitted, or otherwise enabled" the participation of that producer in the consortium. Furthermore, section 771A, the upstream subsidies provision of the statute, allows the Department to reach subsidies provided by one country that is a member in a customs union to an input produced in that country for incorporation into subject merchandise produced in another country that is a member of the same customs union.

With respect to § 351.527(b), we agree with the commenters that a subsidy does not exist if the funding for the subsidy is provided by an international lending or development institution. Common examples of this type of international funding include the construction of a dam, a hydroelectric plant, or some other large infrastructure project. The exemption in § 351.527 applies if sufficient evidence is provided showing that the funding for the subsidy is supplied in accordance with, and as part of, a program or project funded by another government or by an international lending or development institution. If, however, the recipient government decides on its own, outside of such a program or project, to provide a subsidy, that subsidy will be subject to the countervailing duty law. At the same time, the provision of transnational funds to a government does not in and of itself create a presumption of subsidization. We have amended § 351.527 to reflect the limited application of this exemption and to clarify that national government subsidy programs, if they meet the statutory criteria for a countervailable subsidy, will not escape countervailing duties.

Comments Relating to Procedural Regulations

We received comments arguing that remand determinations, like other determinations, should be published in the **Federal Register**. Although this issue was addressed in *Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27295, 27330 (May 19, 1997) ("*Procedural Regulations*"), these commenters assert that the alternatives described therein do not provide sufficient access to remand determinations. The commenters argue that the publication of remand determinations is crucial as they correct previously published determinations found to be unsupported by substantial evidence or not in accordance with the law. Moreover, remand decisions often include new analysis or expanded discussions of the Department's methodology which is not included in published decisions.

While we understand the concerns of the commenters, given the high cost of publishing notices in the **Federal Register**, we do not agree that remand determinations should be published in the **Federal Register**. At this time, we will continue the current plan of posting final remand determinations on the Import Administration web site (http://www.ita.doc.gov/import_admin/). After this system has been in place for a reasonable period of time, we will evaluate whether this system provides adequate distribution of the determinations, or if another system would provide better public access.

We also received a comment encouraging the Department to codify and follow all procedures relating to the issuance of deposit instructions to Customs. Under § 351.211(b) of the Department's *Procedural Regulations*, the Department is obligated to issue deposit instructions within seven days of a final affirmative ITC determination, and promptly after final review results. However, the commenter stated that the Department frequently misses these deadlines, and parties have no remedy. Also, the commenter noted that the regulations do not address changes resulting from remands. The commenter stated that in some cases, deposit rates are not amended until all appeals are exhausted, and that this harms petitioners. According to the commenter, a fair rule would be to issue amended deposit rates immediately after the remand results are approved by the Court, if the amended rate is higher than the rate calculated in the previous segment. If that higher rate is eventually determined to be incorrect, then the difference can be refunded.

We agree that we should issue deposit instructions promptly. With regard to changes in deposit rates after remand results are affirmed, our policy has been to follow the decision in *Timken* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990). Pursuant to our interpretation of this case, we do not change deposit instructions following a remand determination until all appeals are exhausted. If, however, the remand changes a negative determination to an affirmative determination, we will instruct Customs to suspend liquidation at a zero rate until all appeals are exhausted.

Subpart G—Effective Dates

Subpart G currently consists of a single § 351.701, which established the dates on which the new substantive AD and procedural AD and CVD regulations published on May 19, 1997, became effective. Section 701 also explains the extent to which the previous AD and procedural regulations govern segments of proceedings to which the new

regulations do not apply and the limited role of the new regulations in such proceedings.

We are now adding a new § 351.702 to establish effective dates for the new CVD substantive regulations. Because the procedural regulations published on May 19, 1997, apply to CVD proceedings, the effective dates in the substantive CVD regulations are structured as an exception to the effective dates in the procedural regulations.

Section 351.702(a) provides that the new substantive CVD regulations will apply to all investigations initiated pursuant to petitions filed more than 30 days after the date on which they are published. In addition, § 351.702(a) provides that the new regulations will apply to all administrative reviews initiated on the basis of requests filed in the month following the month in which the date 30 days after publication of this notice falls (in other words, the month following the month in which the regulations otherwise become effective). The slight difference in effective dates for requested administrative reviews is to avoid confusion over whether the new regulations apply to administrative reviews requested by different parties on different days during the month in which the new regulations become effective. Finally § 351.702(a) applies to all investigations or reviews that the Department self-initiates more than 30 days after the date on which the new regulations are published.

Section 351.702(b) provides that investigations and reviews to which the substantive CVD regulations do not apply will continue to be governed by the Department's previous CVD methodology, except to the extent that the previous methodology was invalidated by the URAA. Although there are no previous CVD substantive regulations, the Department's previous methodology generally is described in the proposed substantive CVD regulations published May 31, 1989. In situations where the previous methodology was invalidated by the URAA, the new regulations will serve as a restatement of the Department's interpretation of the Act as amended by the URAA. The 1997 Proposed Regulations have no role as precedent for any CVD determinations.

Classification

E.O. 12866

This final rule has been determined to be significant under E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. The Department does not believe that there will be any substantive effect on the outcome of AD and CVD proceedings as a result of the streamlining and simplification of their administration. With respect to the substantive amendments implementing the URAA, the Department believes that these regulations benefit both petitioners and respondents without favoring either, and, therefore, would not have a significant economic effect. As such, an initial regulatory flexibility analysis was not prepared.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. This final rule does not contain any new reporting or recording requirements subject to the Paperwork Reduction Act.

There are three separate collections of information contained in this rule. Each is currently approved by the Office of Management and Budget. The *Petition Format for Requesting Relief Under U.S. Antidumping Laws*, OMB Control No. 0625–0105, is estimated to impose an average public reporting burden of 40 hours. The information submitted is used to assess the petitioner's allegations of unfair trade practices and to determine whether an investigation is warranted. The information requested relates to the existence of sales at less than fair value and injury to the affected U.S. industry. Second, the *Format for Petition Requesting Relief Under the Countervailing Duty Law* is approved under OMB Control No. 0625–0148. This format is used to elicit the information required by the Tariff Act of 1930, as amended, and its implementing regulations, for the initiation of a CVD investigation. Specifically, the *Format* requests information about the imported product, a description of the alleged subsidies to the imported product, and the extent to which the domestic industry is being injured by the imported product. Finally, OMB Control No. 0625–0200, *Antidumping and Countervailing Duties, Procedures for Initiation of Downstream Product Monitoring*, provides for the filing of a petition requesting the review of a "downstream" product. A downstream product is one that has incorporated as a component part, a part that is covered by a U.S. antidumping or countervailing duty finding. To be eligible to file a petition, the petitioner must produce a product like the component part or the downstream product. It is estimated to require 15 hours per petition.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC. 20230, or to OMB Desk Officer, New Executive Office Building, Washington, DC. 20503.

E.O. 12612

This final rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

List of Subjects

19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and recordkeeping requirements.

19 CFR Part 353

Administrative practice and procedure, Antidumping, Business and industry, Confidential business information, Investigations, Reporting and recordkeeping requirements.

19 CFR Part 355

Administrative practice and procedure, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of Information, Investigations, Reporting and recordkeeping requirements.

Dated: November 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.* and 19 U.S.C. 3538.

2. Section 351.102 (Definitions) is amended by adding new definitions to read as follows:

§ 351.102 Definitions

* * * * *

(b) * * *

Consumed in the production process. Inputs "consumed in the production process" are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product.

Cumulative indirect tax. "Cumulative indirect tax" means a multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production.

* * * * *

Direct tax. "Direct tax" means a tax on wages, profits, interests, rents, royalties, and all other forms of income, a tax on the ownership of real property, or a social welfare charge.

* * * * *

Export insurance. "Export insurance" includes, but is not limited to, insurance against increases in the cost of exported products, nonpayment by the customer, inflation, or exchange rate risks.

Firm. For purposes of subpart E (Identification and Measurement of Countervailable Subsidies), "firm" is used to refer to the recipient of an alleged countervailable subsidy, including any individual, company, partnership, corporation, joint venture, association, organization, or other entity.

* * * * *

Government-provided. "Government-provided" is a shorthand expression for an act or practice that is alleged to be a countervailable subsidy. The use of the term "government-provided" is not intended to preclude the possibility that a government may provide a countervailable subsidy indirectly in a manner described in section 771(5)(B)(iii) of the Act (indirect financial contribution).

Import charge. "Import charge" means a tariff, duty, or other fiscal charge that is levied on imports, other than an indirect tax.

* * * * *

Indirect tax. "Indirect tax" means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge.

* * * * *

Loan. "Loan" means a loan or other form of debt financing, such as a bond.

Long-term loan. "Long-term loan" means a loan, the terms of repayment for which are greater than one year.

Prior-stage indirect tax. "Prior-stage indirect tax" means an indirect tax levied on goods or services used directly or indirectly in making a product.

* * * * *

Short-term loan. "Short-term loan" means a loan, the terms of repayment for which are one year or less.

* * * * *

3. A new subpart E is added to 19 CFR part 351, to read as follows:

Subpart E—Identification and Measurement of Countervailable Subsidies

Sec.

351.501 Scope.
351.502 Specificity of domestic subsidies.
351.503 Benefit.
351.504 Grants.
351.505 Loans.
351.506 Loan guarantees.
351.507 Equity.
351.508 Debt forgiveness.
351.509 Direct taxes.
351.510 Indirect taxes and import charges (other than export programs).
351.511 Provision of goods or services.
351.512 Purchase of goods. [Reserved]
351.513 Worker-related subsidies.
351.514 Export subsidies.
351.515 Internal transport and freight charges for export shipments.
351.516 Price preferences for inputs used in the production of goods for export.
351.517 Exemption or remission upon export of indirect taxes.
351.518 Exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes.
351.519 Remission or drawback of import charges upon export.
351.520 Export insurance.
351.521 Import substitution subsidies. [Reserved]
351.522 Green light and green box subsidies.
351.523 Upstream subsidies.
351.524 Allocation of benefit to a particular time period.
351.525 Calculation of *ad valorem* subsidy rate and attribution of subsidy to a product.
351.526 Program-wide changes.
351.527 Transnational subsidies.

§ 351.501 Scope.

The provisions of this subpart E set forth rules regarding the identification and measurement of countervailable subsidies. Where this subpart E does not expressly deal with a particular type of alleged subsidy, the Secretary will identify and measure the subsidy, if any, in accordance with the underlying principles of the Act and this subpart E.

§ 351.502 Specificity of domestic subsidies.

(a) *Sequential analysis.* In determining whether a subsidy is *de facto* specific, the Secretary will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of their appearance. If a single factor warrants a finding of specificity, the Secretary will not undertake further analysis.

(b) *Characteristics of a "group."* In determining whether a subsidy is being provided to a "group" of enterprises or industries within the meaning of section 751(5A)(D) of the Act, the Secretary is not required to determine whether there are shared characteristics among the enterprises or industries that are eligible for, or actually receive, a subsidy.

(c) *Integral linkage.* Unless the Secretary determines that two or more programs are integrally linked, the Secretary will determine the specificity of a program under section 771(5A)(D) of the Act solely on the basis of the availability and use of the particular program in question. The Secretary may find two or more programs to be integrally linked if:

(1) The subsidy programs have the same purpose;

(2) The subsidy programs bestow the same type of benefit;

(3) The subsidy programs confer similar levels of benefits on similarly situated firms; and

(4) The subsidy programs were linked at inception.

(d) *Agricultural subsidies.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to the agricultural sector (domestic subsidy).

(e) *Subsidies to small-and medium-sized businesses.* The Secretary will not regard a subsidy as being specific under section 771(5A)(D) of the Act solely because the subsidy is limited to small firms or small-and medium-sized firms.

(f) *Disaster relief.* The Secretary will not regard disaster relief as being specific under section 771(5A)(D) of the

Act if such relief constitutes general assistance available to anyone in the area affected by the disaster.

§ 351.503 Benefit.

(a) *Specific rules.* In the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution (or income or price support) confers a benefit as provided in that rule. For example, § 351.504(a) prescribes the specific rule for measurement of the benefit of grants.

(b) *Other subsidies.*—(1) *In general.* For other government programs, the Secretary normally will consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn.

(2) *Exception.* Paragraph (b)(1) of this section is not intended to limit the ability of the Secretary to impose countervailing duties when the facts of a particular case establish that a financial contribution (or income or price support) has conferred a benefit, even if that benefit does not take the form of a reduction in input costs or an enhancement of revenues. When paragraph (b)(1) of this section is not applicable, the Secretary will determine whether a benefit is conferred by examining whether the alleged program or practice has common or similar elements to the four illustrative examples in sections 771(5)(E)(i) through (iv) of the Act.

(c) *Distinction from effect of subsidy.* In determining whether a benefit is conferred, the Secretary is not required to consider the effect of the government action on the firm's performance, including its prices or output, or how the firm's behavior otherwise is altered.

(d) *Varying financial contribution levels.*—(1) *In general.* Where a government program provides varying levels of financial contributions based on different eligibility criteria, and one or more of such levels is not specific within the meaning of § 351.502, a benefit is conferred to the extent that a firm receives a greater financial contribution than the financial contributions provided at a non-specific level under the program. The preceding sentence shall apply only to the extent the Secretary determines that the varying levels of financial contributions are set forth in a statute, decree, regulation, or other official act; that the levels are clearly delineated and identifiable; and that the firm would have been eligible for the non-specific level of contributions.

(2) *Exception.* Paragraph (d)(1) of this section shall not apply where the statute specifies a commercial test for determining the benefit.

(e) *Tax consequences.* In calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit.

§ 351.504 Grants.

(a) *Benefit.* In the case of a grant, a benefit exists in the amount of the grant.

(b) *Time of receipt of benefit.* In the case of a grant, the Secretary normally will consider a benefit as having been received on the date on which the firm received the grant.

(c) *Allocation of a grant to a particular time period.* The Secretary will allocate the benefit from a grant to a particular time period in accordance with § 351.524.

§ 351.505 Loans.

(a) *Benefit.*—(1) *In general.* In the case of a loan, a benefit exists to the extent that the amount a firm pays on the government-provided loan is less than the amount the firm would pay on a comparable commercial loan(s) that the firm could actually obtain on the market. *See* section 771(5)(E)(ii) of the Act. In making the comparison called for in the preceding sentence, the Secretary normally will rely on effective interest rates.

(2) *"Comparable commercial loan" defined.*—(i) *"Comparable" defined.* In selecting a loan that is "comparable" to the government-provided loan, the Secretary normally will place primary emphasis on similarities in the structure of the loans (*e.g.*, fixed interest rate v. variable interest rate), the maturity of the loans (*e.g.*, short-term v. long-term), and the currency in which the loans are denominated.

(ii) *"Commercial" defined.* In selecting a "commercial" loan, the Secretary normally will use a loan taken out by the firm from a commercial lending institution or a debt instrument issued by the firm in a commercial market. Also, the Secretary will treat a loan from a government-owned bank as a commercial loan, unless there is evidence that the loan from a government-owned bank is provided on non-commercial terms or at the direction of the government. However, the Secretary will not consider a loan provided under a government program, or a loan provided by a government-owned special purpose bank, to be a commercial loan for purposes of selecting a loan to compare with a government-provided loan.

(iii) *Long-term loans.* In selecting a comparable loan, if the government-provided loan is a long-term loan, the Secretary normally will use a loan the terms of which were established during, or immediately before, the year in which the terms of the government-provided loan were established.

(iv) *Short-term loans.* In making the comparison required under paragraph (a)(1) of this section, if the government-provided loan is a short-term loan, the Secretary normally will use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan. However, if the Secretary finds that interest rates fluctuated significantly during the period of investigation or review, the Secretary will use the most appropriate interest rate based on the circumstances presented.

(3) *"Could actually obtain on the market" defined.*—(i) *In general.* In selecting a comparable commercial loan that the recipient "could actually obtain on the market," the Secretary normally will rely on the actual experience of the firm in question in obtaining comparable commercial loans for both short-term and long-term loans.

(ii) *Where the firm has no comparable commercial loans.* If the firm did not take out any comparable commercial loans during the period referred to in paragraph (a)(2)(iii) or (a)(2)(iv) of this section, the Secretary may use a national average interest rate for comparable commercial loans.

(iii) *Exception for uncreditworthy companies.* If the Secretary finds that a firm that received a government-provided long-term loan was uncreditworthy, as defined in paragraph (a)(4) of this section, the Secretary normally will calculate the interest rate to be used in making the comparison called for by paragraph (a)(1) of this section according to the following formula:

$$i_b = [(1 - q_n)(1+i_f)^n/(1 - p_n)]^{1/n} - 1,$$

where:

n = the term of the loan;

i_b = the benchmark interest rate for uncreditworthy companies;

i_f = the long-term interest rate that would be paid by a creditworthy company;

p_n = the probability of default by an uncreditworthy company within n years; and

q_n = the probability of default by a creditworthy company within n years.

"Default" means any missed or delayed payment of interest and/or principal,

bankruptcy, receivership, or distressed exchange. For values of p_n, the Secretary will normally rely on the average cumulative default rates reported for the Caa to C-rated category of companies in Moody's study of historical default rates of corporate bond issuers. For values of q_n, the Secretary will normally rely on the average cumulative default rates reported for the Aaa to Baa-rated categories of companies in Moody's study of historical default rates of corporate bond issuers.

(4) *Uncreditworthiness.*—(i) *In general.* The Secretary will consider a firm to be uncreditworthy if the Secretary determines that, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. The Secretary will determine uncreditworthiness on a case-by-case basis, and may, in appropriate circumstances, focus its creditworthiness analysis on the project being financed rather than the company as a whole. In making the creditworthiness determination, the Secretary may examine, among other factors, the following:

(A) The receipt by the firm of comparable commercial long-term loans;

(B) The present and past financial health of the firm, as reflected in various financial indicators calculated from the firm's financial statements and accounts;

(C) The firm's recent past and present ability to meet its costs and fixed financial obligations with its cash flow; and

(D) Evidence of the firm's future financial position, such as market studies, country and industry economic forecasts, and project and loan appraisals prepared prior to the agreement between the lender and the firm on the terms of the loan.

(ii) *Significance of long-term commercial loans.* In the case of firms not owned by the government, the receipt by the firm of comparable long-term commercial loans, unaccompanied by a government-provided guarantee, will normally constitute dispositive evidence that the firm is not uncreditworthy.

(iii) *Significance of prior subsidies.* In determining whether a firm is uncreditworthy, the Secretary will ignore current and prior subsidies received by the firm.

(iv) *Discount rate.* When the creditworthiness of a firm is considered in connection with the allocation of non-recurring benefits, the Secretary will rely on information available in the year in which the government agreed to provide the subsidy conferring a non-recurring benefit.

(5) *Long-term variable rate loans.*—(i) *In general.* In the case of a long-term variable rate loan, the Secretary normally will make the comparison called for by paragraph (a)(1) of this section by relying on a comparable commercial loan with a variable interest rate. The Secretary then will compare the variable interest rates on the comparable commercial loan and the government-provided loan for the year in which the terms of the government-provided loan were established. If the comparison shows that the interest rate on the government-provided loan was equal to or higher than the interest rate on the comparable commercial loan, the Secretary will not consider the government-provided loan as having conferred a benefit. If the comparison shows that the interest rate on the government-provided loan was lower, the Secretary will consider the government-provided loan as having conferred a benefit, and, if the other criteria for a countervailable subsidy are satisfied, will calculate the amount of the benefit in accordance with paragraph (c)(4) of this section.

(ii) *Exception.* If the Secretary is unable to make the comparison described in paragraph (a)(5)(i) of this section or if the comparison described in paragraph (a)(5)(i) of this section would yield an inaccurate measure of the benefit, the Secretary may modify the method described in paragraph (a)(5)(i) of this section.

(6) *Allegations.*— (i) *Allegation of uncreditworthiness required.* Normally, the Secretary will not consider the uncreditworthiness of a firm absent a specific allegation by the petitioner that is supported by information establishing a reasonable basis to believe or suspect that the firm is uncreditworthy.

(ii) *Government-owned banks.* The Secretary will not investigate a loan provided by a government-owned bank absent a specific allegation that is supported by information reasonably available to petitioners indicating that:

(A) The loan meets the specificity criteria in accordance with section 771(5A) of the Act; and

(B) A benefit exists within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of loans described in paragraphs (c)(1), (c)(2), and (c)(4) of this section, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan. In the case of a loan described in paragraph (c)(3) of this section, the Secretary normally will consider the benefit as having been received in the year in which the firm receives the proceeds of the loan.

(c) *Allocation of benefit to a particular time period.*—(1) *Short-term loans.* The Secretary will allocate (expense) the benefit from a short-term loan to the year(s) in which the firm is due to make interest payments on the loan. In no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(2) *Long-term fixed-rate loans with concessionary interest rates.* Except as provided in paragraph (c)(3) of this section, the Secretary normally will calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year, i.e., the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(3) *Long-term fixed-rate loans with different repayment schedules.*—(i) *Calculation of present value of benefit.* Where the government-provided loan and the loan to which it is compared under paragraph (a) of this section are both long-term, fixed-interest rate loans, but have different grace periods or maturities, or where the shapes of the repayment schedules differ, the Secretary will determine the total benefit by calculating the present value, in the year that repayment would begin on the comparable commercial loan, of the difference between the amount that the firm is to pay on the government-provided loan and the amount that the firm would have paid on the comparison loan. In no event may the total benefit calculated under the preceding sentence exceed the principal of the loan.

(ii) *Calculation of annual benefit.* With respect to the benefit calculated under paragraph (c)(3)(i) of this section, the Secretary will determine the portion of that benefit to be assigned to a particular year by using the formula set forth in § 351.524(d)(1) and the following parameters:

A_k = the amount countervailed in year k,

y = the present value of the benefit (*see* paragraph (c)(3)(i) of this section),

n = the number of years in the life of the loan,
d = the interest rate on the comparison loan selected under paragraph (a) of this section, and
k = the year of allocation, where the year that repayment would begin on the comparable commercial loan = 1.

(4) *Long-term variable interest rate loans.* In the case of a government-provided long-term variable-rate loan, the Secretary normally will determine the amount of the benefit attributable to a particular year by calculating the difference in payments for that year, *i.e.*, the difference between the amount paid by the firm in that year on the government-provided loan and the amount the firm would have paid on the comparison loan. However, in no event may the present value (in the year of receipt of the loan) of the amounts calculated under the preceding sentence exceed the principal of the loan.

(d) *Contingent liability interest-free loans.*—(1) *Treatment as loans.* In the case of an interest-free loan, for which the repayment obligation is contingent upon the company taking some future action or achieving some goal in fulfillment of the loan's requirements, the Secretary normally will treat any balance on the loan outstanding during a year as an interest-free, short-term loan in accordance with paragraphs (a), (b), and (c)(1) of this section. However, if the event upon which repayment of the loan depends will occur at a point in time more than one year after the receipt of the contingent liability loan, the Secretary will use a long-term interest rate as the benchmark in accordance with paragraphs (a), (b), and (c)(2) of this section. In no event may the present value (in the year of receipt of the contingent liability loan) of the amounts calculated under this paragraph exceed the principal of the loan.

(2) *Treatment as grants.* If, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance of the loan as a grant received in the year in which this condition manifests itself.

§ 351.506 Loan guarantees.

(a) *Benefit.*—(1) *In general.* In the case of a loan guarantee, a benefit exists to the extent that the total amount a firm pays for the loan with the government-provided guarantee is less than the total amount the firm would pay for a comparable commercial loan that the firm could actually obtain on the market absent the government-provided guarantee, including any difference in guarantee fees. *See* section 771(5)(E)(iii) of the Act. The Secretary will select a comparable commercial loan in accordance with § 351.505(a).

(2) *Government acting as owner.* In situations where a government, acting as the owner of a firm, provides a loan guarantee to that firm, the guarantee does not confer a benefit if the respondent provides evidence demonstrating that it is normal commercial practice in the country in question for shareholders to provide guarantees to their firms under similar circumstances and on comparable terms.

(b) *Time of receipt of benefit.* In the case of a loan guarantee, the Secretary normally will consider a benefit as having been received in the year in which the firm otherwise would have had to make a payment on the comparable commercial loan.

(c) *Allocation of benefit to a particular time period.* In allocating the benefit from a government-provided loan guarantee to a particular time period, the Secretary will use the methods set forth in § 351.505(c) regarding loans.

§ 351.507 Equity.

(a) *Benefit.*—(1) *In general.* In the case of a government-provided equity infusion, a benefit exists to the extent that the investment decision is inconsistent with the usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made. *See* section 771(5)(E)(i) of the Act.

(2) *Private investor prices available.*—(i) *In general.* Except as provided in paragraph (a)(2)(iii) of this section, the Secretary will consider an equity infusion as being inconsistent with usual investment practice (*see* paragraph (a)(1) of this section) if the price paid by the government for newly issued shares is greater than the price paid by private investors for the same (or similar form of) newly issued shares.

(ii) *Timing of private investor prices.* In selecting a private investor price under paragraph (a)(2)(i) of this section, the Secretary will rely on sales of newly issued shares made reasonably concurrently with the newly issued shares purchased by the government.

(iii) *Significant private sector participation required.* The Secretary will not use private investor prices under paragraph (a)(2)(i) of this section if the Secretary concludes that private investor purchases of newly issued shares are not significant.

(iv) *Adjustments for "similar" form of equity.* Where the Secretary uses private investor prices for a form of shares that is similar to the newly issued shares purchased by the government (*see* paragraph (a)(2)(i) of this section), the Secretary, where appropriate, will adjust the prices to reflect the differences in the forms of shares.

(3) *Actual private investor prices unavailable.*—(i) *In general.* If actual private investor prices are not available under paragraph (a)(2) of this section, the Secretary will determine whether the firm funded by the government-provided equity was equityworthy or unequityworthy at the time of the equity infusion (*see* paragraph (a)(4) of this section). If the Secretary determines that the firm was equityworthy, the Secretary will apply paragraph (a)(5) of this section to determine whether the equity infusion was inconsistent with the usual investment practice of private investors. A determination by the Secretary that the firm was unequityworthy will constitute a determination that the equity infusion was inconsistent with usual investment practice of private investors, and the Secretary will apply paragraph (a)(6) of this section to measure the benefit attributable to the equity infusion.

(4) *Equityworthiness.*—(i) *In general.* The Secretary will consider a firm to have been equityworthy if the Secretary determines that, from the perspective of a reasonable private investor examining the firm at the time the government-provided equity infusion was made, the firm showed an ability to generate a reasonable rate of return within a reasonable period of time. The Secretary may, in appropriate circumstances, focus its equityworthiness analysis on a project rather than the company as a whole. In making the equityworthiness determination, the Secretary may examine the following factors, among others:

(A) Objective analyses of the future financial prospects of the recipient firm or the project as indicated by, *inter alia*, market studies, economic forecasts, and project or loan appraisals prepared prior to the government-provided equity infusion in question;

(B) Current and past indicators of the recipient firm's financial health calculated from the firm's statements and accounts, adjusted, if appropriate, to conform to generally accepted accounting principles;

(C) Rates of return on equity in the three years prior to the government equity infusion; and

(D) Equity investment in the firm by private investors.

(ii) *Significance of a pre-infusion objective analysis.* For purposes of making an equityworthiness determination, the Secretary will request and normally require from the respondents the information and analysis completed prior to the infusion, upon which the government based its decision to provide the equity infusion (*see*, paragraph (a)(4)(i)(A) of this section). Absent the existence or provision of an objective analysis, containing information typically examined by potential private investors considering an equity investment, the Secretary will normally determine that the equity infusion received provides a countervailable benefit within the meaning of paragraph (a)(1) of this section. The Secretary will not necessarily make such a determination if the absence of an objective analysis is consistent with the actions of reasonable private investors in the country in question.

(iii) *Significance of prior subsidies.* In determining whether a firm was equityworthy, the Secretary will ignore current and prior subsidies received by the firm.

(5) *Benefit where firm is equityworthy.* If the Secretary determines that the firm or project was equityworthy (*see* paragraph (a)(4) of this section), the Secretary will examine the terms and the nature of the equity purchased to determine whether the investment was otherwise inconsistent with the usual investment practice of private investors. If the Secretary determines that the investment was inconsistent with usual private investment practice, the Secretary will determine the amount of the benefit conferred on a case-by-case basis.

(6) *Benefit where firm is unequityworthy.* If the Secretary determines that the firm or project was unequityworthy (*see* paragraph (a)(4) of this section), a benefit to the firm exists in the amount of the equity infusion.

(7) *Allegations.* The Secretary will not investigate an equity infusion in a firm absent a specific allegation by the petitioner which is supported by information establishing a reasonable basis to believe or suspect that the firm received an equity infusion that provides a countervailable benefit within the meaning of paragraph (a)(1) of this section.

(b) *Time of receipt of benefit.* In the case of a government-provided equity infusion, the Secretary normally will consider the benefit to have been received on the date on which the firm received the equity infusion.

(c) *Allocation of benefit to a particular time period.* The benefit conferred by an equity infusion shall be allocated over the same time period as a non-recurring subsidy. *See* § 351.524(d).

§ 351.508 Debt forgiveness.

(a) *Benefit.* In the case of an assumption or forgiveness of a firm's debt obligation, a benefit exists equal to the amount of the principal and/or interest (including accrued, unpaid interest) that the government has assumed or forgiven. In situations where the entity assuming or forgiving the debt receives shares in a firm in return for eliminating or reducing the firm's debt obligation, the Secretary will determine the existence of a benefit under § 351.507 (equity infusions).

(b) *Time of receipt of benefit.* In the case of a debt or interest assumption or forgiveness, the Secretary normally will consider the benefit as having been received as of the date on which the debt or interest was assumed or forgiven.

(c) *Allocation of benefit to a particular time period.*—(1) *In general.* The Secretary will treat the benefit determined under paragraph (a) of this section as a non-recurring subsidy, and will allocate the benefit to a particular year in accordance with § 351.524(d).

(2) *Exception.* Where an interest assumption is tied to a particular loan and where a firm can reasonably expect to receive the interest assumption at the time it applies for the loan, the Secretary will normally treat the interest assumption as a reduced-interest loan and allocate the benefit to a particular year in accordance with § 351.505(c) (loans).

§ 351.509 Direct taxes.

(a) *Benefit.*—(1) *Exemption or remission of taxes.* In the case of a program that provides for a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or a reduction in the base used to calculate a direct tax, a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program that provides for a deferral of direct taxes, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of direct taxes will be treated as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit.*—(1) *Exemption or remission of taxes.* In the case of a full or partial exemption or remission of a direct tax, the Secretary normally will consider the benefit as having been received on the date on which the recipient firm would otherwise have had to pay the taxes associated with the exemption or remission. Normally, this date will be the date on which the firm filed its tax return.

(2) *Deferral of taxes.* In the case of a tax deferral of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral of a direct tax to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.510 Indirect taxes and import charges (other than export programs).

(a) *Benefit.*—(1) *Exemption or remission of taxes.* In the case of a program, other than an export program, that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.

(2) *Deferral of taxes.* In the case of a program, other than an export program, that provides for a deferral of indirect taxes or import charges, a benefit exists to the extent that appropriate interest charges are not collected. Normally, a deferral of indirect taxes or import charges will be treated as a government-provided loan in the amount of the taxes deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(b) *Time of receipt of benefit.*—(1) *Exemption or remission of taxes.* In the case of a full or partial exemption or remission of an indirect tax or import charge, the Secretary normally will consider the benefit as having been received at the time the recipient firm

otherwise would be required to pay the indirect tax or import charge.

(2) *Deferral of taxes.* In the case of the deferral of an indirect tax or import charge of one year or less, the Secretary normally will consider the benefit as having been received on the date on which the deferred tax becomes due. In the case of a multi-year deferral, the Secretary normally will consider the benefit as having been received on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of a full or partial exemption, remission, or deferral described in paragraph (a) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.511 Provision of goods or services.

(a) *Benefit.*—(1) *In general.* In the case where goods or services are provided, a benefit exists to the extent that such goods or services are provided for less than adequate remuneration. *See* section 771(5)(E)(iv) of the Act.

(2) *"Adequate Remuneration" defined.*—(i) *In general.* The Secretary will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question. Such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions. In choosing such transactions or sales, the Secretary will consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability.

(ii) *Actual market-determined price unavailable.* If there is no useable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question. Where there is more than one commercially available world market price, the Secretary will average such prices to the extent practicable, making due allowance for factors affecting comparability.

(iii) *World market price unavailable.* If there is no world market price available to purchasers in the country in question, the Secretary will normally measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.

(iv) *Use of delivered prices.* In measuring adequate remuneration under paragraph (a)(2)(i) or (a)(2)(ii) of this section, the Secretary will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product. This adjustment will include delivery charges and import duties.

(b) *Time of receipt of benefit.* In the case of the provision of a good or service, the Secretary normally will consider a benefit as having been received as of the date on which the firm pays or, in the absence of payment, was due to pay for the government-provided good or service.

(c) *Allocation of benefit to a particular time period.* In the case of the provision of a good or service, the Secretary will normally allocate (expense) the benefit to the year in which the benefit is considered to have been received under paragraph (b) of this section. In the case of the provision of infrastructure, the Secretary will normally treat the benefit as non-recurring and will allocate the benefit to a particular year in accordance with § 351.524(d).

(d) *Exception for general infrastructure.* A financial contribution does not exist in the case of the government provision of general infrastructure. General infrastructure is defined as infrastructure that is created for the broad societal welfare of a country, region, state or municipality.

§ 351.512 Purchase of goods. [Reserved]

§ 351.513 Worker-related subsidies.

(a) *Benefit.* In the case of a program that provides assistance to workers, a benefit exists to the extent that the assistance relieves a firm of an obligation that it normally would incur.

(b) *Time of receipt of benefit.* In the case of assistance provided to workers, the Secretary normally will consider the benefit as having been received by the firm on the date on which the payment is made that relieves the firm of the relevant obligation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from assistance provided to workers to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.514 Export subsidies.

(a) *In general.* The Secretary will consider a subsidy to be an export subsidy if the Secretary determines that eligibility for, approval of, or the amount of, a subsidy is contingent upon export performance. In applying this section, the Secretary will consider a subsidy to be contingent upon export performance if the provision of the subsidy is, in law or in fact, tied to actual or anticipated exportation or export earnings, alone or as one of two or more conditions.

(b) *Exception.* In the case of export promotion activities of a government, a benefit does not exist if the Secretary determines that the activities consist of general informational activities that do not promote particular products over others.

§ 351.515 Internal transport and freight charges for export shipments.

(a) *Benefit.*—(1) *In general.* In the case of internal transport and freight charges on export shipments, a benefit exists to the extent that the charges paid by a firm for transport or freight with respect to goods destined for export are less than what the firm would have paid if the goods were destined for domestic consumption. The Secretary will consider the amount of the benefit to equal the difference in amounts paid.

(2) *Exception.* For purposes of paragraph (a)(1) of this section, a benefit does not exist if the Secretary determines that:

(i) Any difference in charges is the result of an arm's-length transaction between the supplier and the user of the transport or freight service; or

(ii) The difference in charges is commercially justified.

(b) *Time of receipt of benefit.* In the case of internal transport and freight charges for export shipments, the Secretary normally will consider the benefit as having been received by the firm on the date on which the firm paid, or in the absence of payment was due to pay, the charges.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from internal transport and freight charges for export shipments to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.516 Price preferences for inputs used in the production of goods for export.

(a) *Benefit.*—(1) *In general.* In the case of a program involving the provision by governments or their agencies, either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, a benefit exists to the extent that the Secretary determines that

the terms or conditions on which the products or services are provided are more favorable than the terms or conditions applicable to the provision of like or directly competitive products or services for use in the production of goods for domestic consumption unless, in the case of products, such terms or conditions are not more favorable than those commercially available on world markets to exporters.

(2) *Amount of benefit.* In the case of products provided under such schemes, the Secretary will determine the amount of the benefit by comparing the price of products used in the production of exported goods to the commercially available world market price of such products, inclusive of delivery charges.

(3) *Commercially available.* For purposes of paragraph (a)(2) of this section, *commercially available* means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(b) *Time of receipt of benefit.* In the case of a benefit described in paragraph (a)(1) of this section, the Secretary normally will consider the benefit to have been received as of the date on which the firm paid, or in the absence of payment was due to pay, for the product.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) benefits described in paragraph (a)(1) of this section to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.517 Exemption or remission upon export of indirect taxes.

(a) *Benefit.* In the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

(b) *Time of receipt of benefit.* In the case of the exemption or remission upon export of an indirect tax, the Secretary normally will consider the benefit as having been received as of the date of exportation.

(c) *Allocation of benefit to a particular time period.* Normally, the Secretary will allocate (expense) the benefit from the exemption or remission upon export of indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.518 Exemption, remission, or deferral upon export of prior-stage cumulative indirect taxes.

(a) *Benefit.*—(1) *Exemption of prior-stage cumulative indirect taxes.* In the case of a program that provides for the exemption of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, or if the exemption covers taxes other than indirect taxes that are imposed on the input. If the Secretary determines that the exemption of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the prior-stage cumulative indirect taxes that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(2) *Remission of prior-stage cumulative indirect taxes.* In the case of a program that provides for the remission of prior-stage cumulative indirect taxes on inputs used in the production of an exported product, a benefit exists to the extent that the amount remitted exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowance for waste. If the Secretary determines that the remission of prior-stage cumulative indirect taxes confers a benefit, the Secretary normally will consider the amount of the benefit to be the difference between the amount remitted and the amount of the prior-stage cumulative indirect taxes on inputs that are consumed in the production of the export product, making normal allowance for waste.

(3) *Deferral of prior-stage cumulative indirect taxes.* In the case of a program that provides for a deferral of prior-stage cumulative indirect taxes on an exported product, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the taxes deferred. If the Secretary determines that a benefit exists, the Secretary will normally treat the deferral as a government-provided loan in the amount of the tax deferred, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for tax deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for tax deferrals of more than one year.

(4) *Exception.* Notwithstanding the provisions in paragraphs (a)(1), (a)(2), and (a)(3) of this action, the Secretary will consider the entire amount of the exemption, remission or deferral to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts, and which indirect taxes are imposed on the inputs.

(b) *Time of receipt of benefit.* In the case of the exemption, remission, or deferral of priorstage cumulative indirect taxes, the Secretary normally will consider the benefit as having been received:

(1) In the case of an exemption, as of the date of exportation;

(2) In the case of a remission, as of the date of exportation;

(3) In the case of a deferral of one year or less, on the date the deferred tax became due; and

(4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit of the exemption, remission or deferral of prior-stage cumulative indirect taxes to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.519 Remission or drawback of import charges upon export.

(a) *Benefit.*—(1) *In general.* The term "remission or drawback" includes full or partial exemptions and deferrals of import charges.

(i) *Remission or drawback of import charges.* In the case of the remission or

drawback of import charges upon export, a benefit exists to the extent that the Secretary determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production of the exported product, making normal allowances for waste.

(ii) *Exemption of import charges.* In the case of an exemption of import charges upon export, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input.

(iii) *Deferral of import charges.* In the case of a deferral, a benefit exists to the extent that the deferral extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, and the government does not charge appropriate interest on the import charges deferred.

(2) *Substitution drawback.* "Substitution drawback" involves a situation in which a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. Substitution drawback does not necessarily result in the conferral of a benefit. However, a benefit exists if the Secretary determines that:

(i) The import and the corresponding export operations both did not occur within a reasonable time period, not to exceed two years; or

(ii) The amount drawn back exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.

(3) *Amount of the benefit.*—(i) *Remission or drawback of import charges.* If the Secretary determines that the remission or drawback, including substitution drawback, of import charges confers a benefit under paragraph (a)(1) or (a)(2) of this section, the Secretary normally will consider the amount of the benefit to be the difference between the amount of import charges remitted or drawn back and the amount paid on imported inputs consumed in production for which remission or drawback was claimed.

(ii) *Exemption of import charges.* If the Secretary determines that the exemption of import charges upon export confers a benefit, the Secretary normally will consider the amount of the benefit to be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product, making normal allowance for waste, and the amount of charges other than import charges covered by the exemption.

(iii) *Deferral of import charges.* If the Secretary determines that the deferral of import charges upon export confers a benefit, the Secretary will normally treat a deferral as a government-provided loan in the amount of the import charges deferred on the inputs not consumed in the production of the exported product, making normal allowance for waste, according to the methodology described in § 351.505. The Secretary will use a short-term interest rate as the benchmark for deferrals of one year or less. The Secretary will use a long-term interest rate as the benchmark for deferrals of more than one year.

(4) *Exception.* Notwithstanding paragraph (a)(3) of this section, the Secretary will consider the entire amount of an exemption, deferral, remission or drawback to confer a benefit, unless the Secretary determines that:

(i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, and in what amounts.

(b) *Time of receipt of benefit.* In the case of the exemption, deferral, remission or drawback, including substitution drawback, of import charges, the Secretary normally will consider the benefit as having been received:

(1) In the case of remission or drawback, as of the date of exportation;

(2) In the case of an exemption, as of the date of the exportation;

(3) In the case of a deferral of one year or less, on the date the import charges became due; and (4) In the case of a multi-year deferral, on the anniversary date(s) of the deferral.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from the exemption, deferral, remission or drawback of import charges to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.520 Export insurance.

(a) *Benefit.*—(1) *In general.* In the case of export insurance, a benefit exists if the premium rates charged are inadequate to cover the long-term operating costs and losses of the program.

(2) *Amount of the benefit.* If the Secretary determines under paragraph (a)(1) of this section that premium rates are inadequate, the Secretary normally will calculate the amount of the benefit as the difference between the amount of premiums paid by the firm and the amount received by the firm under the insurance program during the period of investigation or review.

(b) *Time of receipt of benefit.* In the case of export insurance, the Secretary normally will consider the benefit as having been received in the year in which the difference described in paragraph (a)(2) of this section occurs.

(c) *Allocation of benefit to a particular time period.* The Secretary normally will allocate (expense) the benefit from export insurance to the year in which the benefit is considered to have been received under paragraph (b) of this section.

§ 351.521 Import substitution subsidies. [Reserved]

§ 351.522 Green light and green box subsidies.

(a) *Certain agricultural subsidies.* The Secretary will treat as non-countervailable domestic support measures that are provided to certain agricultural products (*i.e.*, products listed in Annex 1 of the WTO Agreement on Agriculture) and that the Secretary determines conform to the criteria of Annex 2 of the WTO Agreement on Agriculture. *See* section 771(5B)(F) of the Act. The Secretary will determine that a particular domestic support measure conforms fully to the provisions of Annex 2 if the Secretary finds that the measure:

(1) Is provided through a publicly-funded government program (including government revenue foregone) not involving transfers from consumers;

(2) Does not have the effect of providing a price support to producers; and (3) Meets the relevant policy-specific criteria and conditions set out in paragraphs 2 through 13 of Annex 2.

(b) *Research subsidies.* In accordance with section 771(5B)(B)(iii)(II) of the Act, the Secretary will examine the total eligible costs to be incurred over the

duration of a particular project to determine whether a subsidy for research activities exceeds 75 percent of the costs of industrial research, 50 percent of the costs of precompetitive development activity, or 62.5 percent of the costs for a project that includes both industrial research and precompetitive activity. If the Secretary determines that, at some point over the life of a particular project, these relevant thresholds will be exceeded, the Secretary will treat the entire amount of the subsidy as countervailable.

(c) *Subsidies for adaptation of existing facilities to new environmental requirements.* If the Secretary determines that a subsidy is given to upgrade existing facilities to environmental standards in excess of minimum statutory or regulatory requirements, the subsidy will not qualify for non-countervailable treatment under section 771(5B)(D) of the Act and the Secretary will treat the entire amount of the subsidy as countervailable.

§ 351.523 Upstream subsidies.

(a) *Investigation of upstream subsidies.*—(1) *In general.* Before investigating the existence of an upstream subsidy (*see* section 771A of the Act), the Secretary must have a reasonable basis to believe or suspect that all of the following elements exist:

(i) A countervailable subsidy, other than an export subsidy, is provided with respect to an input product;

(ii) One of the following conditions exists:

(A) The supplier of the input product and the producer of the subject merchandise are affiliated;

(B) The price for the subsidized input product is lower than the price that the producer of the subject merchandise otherwise would pay another seller in an arm's-length transaction for an unsubsidized input product; or

(C) The government sets the price of the input product so as to guarantee that the benefit provided with respect to the input product is passed through to producers of the subject merchandise; and

(iii) The *ad valorem* countervailable subsidy rate on the input product, multiplied by the proportion of the total production costs of the subject merchandise accounted for by the input product, is equal to, or greater than, one percent.

(b) *Input product.* For purposes of this section, "input product" means any product used in the production of the subject merchandise.

(c) *Competitive benefit.*—(1) *In general.* In evaluating whether a competitive benefit exists under section 771A(b) of the Act, the Secretary will determine whether the price for the subsidized input product is lower than the benchmark input price. For purposes of this section, the Secretary will use as a benchmark input price the following, in order of preference:

(i) The actual price paid by, or offered to, the producer of the subject merchandise for an unsubsidized input product, including an imported input product;

(ii) An average price for an unsubsidized input product, including an imported input product, based upon publicly available data;

(iii) The actual price paid by, or offered to, the producer of the subject merchandise for a subsidized input product, including an imported input product, that is adjusted to account for the countervailable subsidy;

(iv) An average price for a subsidized input product, including an imported input product, based upon publicly available data, that is adjusted to account for the countervailable subsidy; or

(v) An unadjusted price for a subsidized input product or any other surrogate price deemed appropriate by the Secretary.

For purposes of this section, such prices must be reflective of a time period that reasonably corresponds to the time of the purchase of the input.

(2) *Use of delivered prices.* The Secretary will use a delivered price whenever the Secretary uses the price of an input product under paragraph (c)(1) of this section.

(d) *Significant effect.*—(1) *Presumptions.* In evaluating whether an upstream subsidy has a significant effect on the cost of manufacturing or producing the subject merchandise (*see* section 771A(a)(3) of the Act), the Secretary will multiply the *ad valorem* countervailable subsidy rate on the input product by the proportion of the total production cost of the subject merchandise that is accounted for by the input product. If the product of that multiplication exceeds five percent, the Secretary will presume the existence of a significant effect. If the product is less than one percent, the Secretary will presume the absence of a significant effect. If the product is between one and five percent, there will be no presumption.

(2) *Rebuttal of presumptions.* A party to the proceeding may present information to rebut these presumptions. In evaluating such information, the Secretary will consider the extent to which factors other than price, such as quality differences, are important determinants of demand for the subject merchandise.

§ 351.524 Allocation of benefit to a particular time period.

Unless otherwise specified in §§ 351.504–351.523, the Secretary will allocate benefits to a particular time period in accordance with this section.

(a) *Recurring benefits.* The Secretary will allocate (expense) a recurring benefit to the year in which the benefit is received.

(b) *Non-recurring benefits.* (1) *In general.* The Secretary will normally allocate a non-recurring benefit to a firm over the number of years corresponding to the average useful life ("AUL") of renewable physical assets as defined in paragraph (d)(2) of this section.

(2) *Exception.* The Secretary will normally allocate (expense) non-recurring benefits provided under a particular subsidy program to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of relevant sales (*e.g.*, total sales, export sales, the sales of a particular product, or the sales to a particular market) of the firm in question during the year in which the subsidy was approved.

(c) *"Recurring" versus "non-recurring" benefits.*—(1) *Non-binding illustrative lists of recurring and non-recurring benefits.* The Secretary normally will treat the following types of subsidies as providing recurring benefits: Direct tax exemptions and deductions; exemptions and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; wage subsidies; and upstream subsidies. The Secretary normally will treat the following types of subsidies as providing non-recurring benefits: equity infusions, grants, plant closure assistance, debt forgiveness, coverage for operating losses, debt-to-equity conversions, provision of non-general infrastructure, and provision of plant and equipment.

(2) *The test for determining whether a benefit is recurring or non-recurring.* If a subsidy is not on the illustrative lists, or is not addressed elsewhere in these regulations, or if a party claims that a subsidy on the recurring list should be treated as non-recurring or a subsidy on the non-recurring list should be treated as recurring, the Secretary will consider the following criteria in determining whether the benefits from the subsidy

should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;

(ii) Whether the subsidy required or received the government's express authorization or approval (*i.e.*, receipt of benefits is not automatic), or

(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

(d) *Process for allocating non-recurring benefits over time.*—(1) *In general.* For purposes of allocating a non-recurring benefit over time and determining the annual benefit amount that should be assigned to a particular year, the Secretary will use the following formula:

$$A_k = \frac{y/n + [y - (y/n)(k-1)]d}{1+d}$$

Where:

A_k = the amount of the benefit allocated to year k,
y = the face value of the subsidy,
n = the AUL (see paragraph (d)(2) of this section),
d = the discount rate (see paragraph (d)(3) of this section), and
k = the year of allocation, where the year of receipt = 1 and $1 \leq k \leq n$.

(2) *AUL.*—(i) *In general.* The Secretary will presume the allocation period for non-recurring subsidies to be the AUL of renewable physical assets for the industry concerned as listed in the Internal Revenue Service's ("IRS") 1977 Class Life Asset Depreciation Range System (Rev. Proc. 77–10, 1977–1, C.B. 548 (RR–38)), as updated by the Department of Treasury. The presumption will apply unless a party claims and establishes that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry under investigation, subject to the requirement, in paragraph (d)(2)(ii) of this section, that the difference between the company-specific AUL or country-wide AUL for the industry under investigation and the AUL in the IRS tables is significant. If this is the case, the Secretary will use company-specific or country-wide AULs to allocate non-recurring benefits over time (*see* paragraph (d)(2)(iii) of this section).

(ii) *Definition of "significant."* For purposes of this paragraph (d), *significant* means that a party has demonstrated that the company-specific AUL or country-wide AUL for the industry differs from AUL in the IRS tables by one year or more.

(iii) *Calculation of a company-specific or country-wide AUL.* A calculation of a company-specific AUL will not be accepted by the Secretary unless it satisfies the following requirements: the company must base its depreciation on an estimate of the actual useful lives of assets and it must use straight-line depreciation or demonstrate that its calculation is not distorted through irregular or uneven additions to the pool of fixed assets. A company-specific AUL is calculated by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to accumulated depreciation, for a period considered appropriate by the Secretary, subject to appropriate normalizing adjustments. A country-wide AUL for the industry under investigation will not be accepted by the Secretary unless the respondent government demonstrates that it has a system in place to calculate AULs for its industries, and that this system provides a reliable representation of AUL.

(iv) *Exception.* Under certain extraordinary circumstances, the Secretary may consider whether an allocation period other than AUL is appropriate or whether the benefit stream begins at a date other than the date the subsidy was bestowed.

(3) *Selection of a discount rate.* (i) *In general.* The Secretary will select a discount rate based upon data for the year in which the government agreed to provide the subsidy. The Secretary will use as a discount rate the following, in order of preference:

(A) The cost of long-term, fixed-rate loans of the firm in question, excluding any loans that the Secretary has determined to be countervailable subsidies;

(B) The average cost of long-term, fixed-rate loans in the country in question; or

(C) A rate that the Secretary considers to be most appropriate.

(ii) *Exception for uncreditworthy firms.* In the case of a firm considered by the Secretary to be uncreditworthy (*see* § 351.505(a)(4)), the Secretary will use as a discount rate the interest rate described in § 351.505(a)(3)(iii).

§ 351.525 Calculation of ad valorem subsidy rate and attribution of subsidy to a product.

(a) *Calculation of ad valorem subsidy rate.* The Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section. Normally, the Secretary will determine the sales value of a product on an f.o.b. (port) basis (if the product is exported) or on an f.o.b. (factory) basis (if the product is sold for domestic consumption). However, if the Secretary determines that countervailable subsidies are provided with respect to the movement of a product from the port or factory to the place of destination (*e.g.*, freight or insurance costs are subsidized), the Secretary may make appropriate adjustments to the sales value used in the denominator.

(b) *Attribution of subsidies.* (1) *In general.* In attributing a subsidy to one or more products, the Secretary will apply the rules set forth in paragraphs (b)(2) through (b)(7) of this section.

(2) *Export subsidies.* The Secretary will attribute an export subsidy only to products exported by a firm.

(3) *Domestic subsidies.* The Secretary will attribute a domestic subsidy to all products sold by a firm, including products that are exported.

(4) *Subsidies tied to a particular market.* If a subsidy is tied to sales to a particular market, the Secretary will attribute the subsidy only to products sold by the firm to that market.

(5) *Subsidies tied to a particular product.* (i) *In general.* If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.

(ii) *Exception.* If a subsidy is tied to production of an input product, then the Secretary will attribute the subsidy to both the input and downstream products produced by a corporation.

(6) *Corporations with cross-ownership.* (i) *In general.* The Secretary normally will attribute a subsidy to the products produced by the corporation that received the subsidy.

(ii) *Corporations producing the same product.* If two (or more) corporations with cross-ownership produce the subject merchandise, the Secretary will attribute the subsidies received by either or both corporations to the products produced by both corporations.

(iii) *Holding or parent companies.* If the firm that received a subsidy is a holding company, including a parent company with its own operations, the Secretary will attribute the subsidy to the consolidated sales of the holding company and its subsidiaries. However, if the Secretary finds that the holding company merely served as a conduit for the transfer of the subsidy from the government to a subsidiary of the holding company, the Secretary will attribute the subsidy to products sold by the subsidiary.

(iv) *Input suppliers.* If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

(v) *Transfer of subsidy between corporations with cross-ownership producing different products.* In situations where paragraphs (b)(6)(i) through (iv) of this section do not apply, if a corporation producing non-subject merchandise received a subsidy and transferred the subsidy to a corporation with cross-ownership, the Secretary will attribute the subsidy to products sold by the recipient of the transferred subsidy.

(vi) *Cross-ownership defined.* Cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations.

(7) *Multinational firms.* If the firm that received a subsidy has production facilities in two or more countries, the Secretary will attribute the subsidy to products produced by the firm within the country of the government that granted the subsidy. However, if it is demonstrated that the subsidy was tied to more than domestic production, the Secretary will attribute the subsidy to multinational production.

(c) *Trading companies.* Benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated.

§ 351.526 Program-wide changes.

(a) *In general.* The Secretary may take a program-wide change into account in establishing the estimated countervailing duty cash deposit rate if:

(1) The Secretary determines that subsequent to the period of investigation or review, but before a preliminary determination in an investigation (*see* § 351.205) or a preliminary result of an administrative review or a new shipper review (*see* §§ 351.213 and 351.214), a program-wide change has occurred; and

(2) The Secretary is able to measure the change in the amount of countervailable subsidies provided under the program in question.

(b) *Definition of program-wide change.* For purposes of this section, "program-wide change" means a change that:

(1) Is not limited to an individual firm or firms; and

(2) Is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.

(c) *Effect limited to cash deposit rate.*—(1) *In general.* The application of paragraph (a) of this section will not result in changing, in an investigation, an affirmative determination to a negative determination or a negative determination to an affirmative determination.

(2) *Example.* In a countervailing duty investigation, the Secretary determines that during the period of investigation a countervailable subsidy existed in the amount of 10 percent *ad valorem.* Subsequent to the period of investigation, but before the preliminary determination, the foreign government in question enacts a change to the program that reduces the amount of the subsidy to a *de minimis* level. In a final determination, the Secretary would issue an affirmative determination, but would establish a cash deposit rate of zero.

(d) *Terminated programs.* The Secretary will not adjust the cash deposit rate under paragraph (a) of this section if the program-wide change consists of the termination of a program and:

(1) The Secretary determines that residual benefits may continue to be bestowed under the terminated program; or

(2) The Secretary determines that a substitute program for the terminated program has been introduced and the Secretary is not able to measure the amount of countervailable subsidies provided under the substitute program.

§ 351.527 Transnational subsidies.

Except as otherwise provided in section 701(d) of the Act (subsidies provided to international consortia) and section 771A of the Act (upstream subsidies), a subsidy does not exist if the Secretary determines that the funding for the subsidy is supplied in accordance with, and as part of, a program or project funded:

(a) By a government of a country other than the country in which the recipient firm is located; or

(b) By an international lending or development institution.

4. Section 351.301 of subpart C is amended by adding the following paragraphs (d)(6) and (7) to read as follows:

§ 351.301(d) Time limits for submission of factual information.

* * * * *

(d) * * *

(6) *Green light and Green box claims.* (i) *In general.* A claim that a particular subsidy or subsidy program should be accorded non-countervailable status under section 771(5B),(C), or (D) of the Act ("green light subsidies") or under section 771(5B)(F) of the Act ("green box subsidies" must be made by the competent government with the full participation of the government authority responsible for funding and/or administering the program. Such claims are due no later than:

(i) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination, or

(ii) In an administrative review, new shipper review, or changed circumstance review, 20 days afer all responses to the initial questionnaires are filed with the Department, unless the Secretary alters this time limit.

(7) *Investigation of notified subsidies.* If the Secretary determines that there is insufficient evidence to demonstrate that an alleged subsidy or subsidy program has been notified under Article 8.3 of the WTO Subsidies and Countervailing Measures Agreement, the alleged subsidy or subsidy program will be included in the countervailing duty investigation or administrative, new shipper, or changed circumstance review. If the government authority claiming green light status establishes to the Secretary's satisfaction that the alleged subsidy or subsidy program has been notified, the Secretary will terminate the investigation of the notified subsidy.

5. Subpart G (Applicability Dates) is amended by adding the following § 351.702, to read as follows:

§ 351.702 Applicability dates for countervailing duty regulations.

(a) Notwithstanding § 351.701, the regulations in subpart E of this part apply to:

(1) All CVD investigations initiated on the basis of petitions filed after December 28, 1998;

(2) All CVD administrative reviews initiated on the basis of requests filed on

or after the first day of January 1999; and

(3) To all segments of CVD proceedings self-initiated by the Department after December 28, 1998.

(b) Segments of CVD proceedings to which subpart E of this part does not apply will continue to be guided by the Department's previous methodology (in particular, as described in the 1989 Proposed Regulations), except to the extent that the previous methodology was invalidated by the URAA, in which case the Secretary will treat subpart E of this part as a restatement of the Department's interpretation of the requirements of the Act as amended by the URAA.

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Part IV

Department of Defense

Office of the Secretary

32 CFR Part 286

DoD Freedom of Information Act Program Regulation; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD 5400.7–R]

RIN 0790–AG58

DoD Freedom of Information Act Program Regulation

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule conforms to the requirements of the Electronic Freedom of Information Act Amendments of 1996. This revision reflects substantial and administrative changes since May 1997, as a result of DoD reorganization. This revision also provides guidance to DoD on implementation of the amends law.

EFFECTIVE DATE: September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. C. Talbott, 703–697–1171.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 286 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; completion; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule implements the Freedom of Information Act (5 U.S.C. 552), a statute concerning the release of Federal Government records, and does no economically impact Federal Government relations with the private sector.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR part 286 is revised to read as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Subpart A—General Provisions

Sec.
286.1 Purpose and applicability.
286.2 DoD public information.
286.3 Definitions.
286.4 Policy.

Subpart B—FOIA Reading Rooms

286.7 Requirements.
286.8 Indexes.

Subpart C—Exemptions

286.11 General provisions.
286.12 Exemptions.

Subpart D—For Official Use Only

286.15 General provisions.
286.16 Markings.
286.17 Dissemination and transmission.
286.18 Termination, disposal and unauthorized disclosure.

Subpart E—Release and Processing Procedures

286.22 General provisions.
286.23 Initial determinations.
286.24 Appeals.
286.25 Judicial actions.

Subpart F—Fee Schedule

286.28 General provisions.
286.29 Collection of fees and fee rates.
286.30 Collection of fees and fee rates for technical data.

Subpart G—Reports

286.33 Reports control.

Subpart H—Education and Training

286.36 Responsibility and purpose.

Appendix A to Part 286—Combatant Commands—Processing Procedures for FOIA Appeals

Appendix B to Part 286—Addressing FOIA Requests

Appendix C to Part 286—DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost"

Appendix D to Part 286—DD Form 2086–1, "Record of Freedom of Information (FOI) Processing Cost for Technical Data"

Appendix E to Part 286—DD Form 2564, "Annual Report Freedom of Information Act"

Appendix F to Part 286—DoD Freedom of Information Act Program Components

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* This part provides policies and procedures for the DoD implementation of the Freedom of Information Act, as amended (5 U.S.C. 552), and DoD Directive 5400.7 [1], and promotes uniformity in the DoD Freedom of Information Act (FOIA) Program.

(b) *Applicability.* This part applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Command, the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD components"). This part takes precedence over all DoD Component publications that supplement and implement the DoD FOIA Program. A list of DoD Components is at appendix F.

§ 286.2 DoD public information.

(a) *Public information.* (1) The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall not be withheld in whole or in part unless the record is exempt from mandatory partial or total disclosure under the FOIA. As a matter of policy,

[1] Copy may be viewed via internet at http://web7.whs.osd.mil/corres.htm.

DoD Components shall make discretionary disclosures of exempt records or information whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information that would not be withheld under the FOIA should continue to be honored through appropriate means without requiring the requester to involve the FOIA.

(2) Within the OSD, the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence, as Chief Information Officer, in conjunction with the Assistant Secretary of Defense for Public Affairs, is responsible for ensuring preparation of reference material or a guide for requesting records or information from the Department of Defense, subject to the nine exemptions of the FOIA. This publication shall also include an index of all major information systems, and a description of major information and record locator systems, as defined by the Office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence. DoD FOIA Components shall coordinate with the appropriate office(s) to insure that this is also accomplished within their department or organization.

(3) DoD Components shall also prepare, in addition to normal FOIA regulations, a handbook for the use of the public in obtaining information from their organization. This handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. Each DoD Component should explain the types of records that can be obtained through FOIA requests, why some records cannot, by law, be made available, and how the DoD Component determines whether the record can be released. The handbook should also explain how to make a FOIA request, how long the requester can expect to wait for a reply, and explain the right of appeal. The handbook should supplement other information locator systems, such as the Government Information Locator Service (GILS), and explain how a requester can obtain more information about those systems. The handbook should be available on paper and through electronic means and contain the following additional information, complete with electronic links to the below elements; the location of reading room(s) within the Component and the types and categories of information available, the location of Component's World Wide Web page, a reference to the component's FOIA regulation and how to obtain a copy, a reference to the Component's FOIA annual report and how to obtain a copy and the location of the Component's GILS page. Also, the DoD Components' Freedom of Information Act Annual Reports should refer to the handbook and how to obtain it.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure accountability and compliance with the FOIA. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part, unless otherwise required by § 286.4(m).

§ 286.3 Definitions.

As used in this part, the following terms and meanings shall be applicable:

Administrative appeal. A request by a member of the general public, made under the FOIA, asking the appellate authority of a DOD Component to reverse a decision: to withhold all or part of a requested record; to deny a fee category claim by a requester, to deny a request for waiver or reduction of fees; to deny a request to review an initial fee estimate; to deny a request for expedited processing due to demonstrated compelling need under § 286.4(d)(3) of this part; to confirm that no records were located during the initial search. Requesters also may appeal the failure to receive a response determination within the statutory time limits, and any determination that the requester believes is adverse in nature.

Agency record. (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of Defense possession and control at the time the FOIA request is made. Care should be taken not to exclude records from being considered agency records, unless they fall within one of the categories in paragraph (2) of this definition.

(2) The following age not included within the definition of the word "record".

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iii) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business; and work-related personal papers that are not used in the transaction of Government business (see "Personal Papers of Executive Branch Officials: A Management Guide" [2]).

(3) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. See § 286.4(g)(2) on creating a record in the electronic environment.

(4) Hard copy or electronic records, that are subject to FOIA requests under 5 U.S.C. 552(a)(3), and that are available to the public through an established distribution system, or through the **Federal Register**, the National Technical Information Service, or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, DoD Components shall provide that requester with guidance inclusive of any written notice to the public, on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then the request shall be processed under the FOIA. If there is any doubt as to whether the request must be processed, contact the Directorate for Freedom of Information and Security Review.

[2] Available from the Records Administration Information Center, Agency Service Division (NIA), Washington, DC 20408.

Appellate authority. The Head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record, or any of the other adverse determinations outlined in definitions "Initial denial authority (IDA)" and "Administrative appeal".

DoD Component. An element of the Department of Defense, as defined in § 286.1(b), authorized to receive and act independently on FOIA requests. (See appendix F of this part.) A DoD Component has its own initial denial authority (IDA), appellate authority, and legal counsel.

Electronic record. Records (including e-mail) that are created, stored, and retrievable by electronic means.

Federal agency. As defined by 5 U.S.C. 552(f)(1), a Federal agency is any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

FOIA request. A written request for DoD records that reasonably describes the record(s) sought, made by any person, including a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal Agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this part, or DoD Component supplementing regulations or instructions. Requesters should also indicate a willingess to pay fees associated with the processing of their request or, in the alternative, why a waiver of fees may be appropriate. Written requests may be received by postal service or other commercial delivery means, by fascimile, or electronically. Requests received by fascimile or electronically must have a postal mailing address included since it may be practical to provide a substantive response electrically. The request is considered properly received, or perfected, when the above conditions have been met and the request arrives at the FOIA office of the Component in possession of the records.

Initial denial authority (IDA). An official who has been granted authority by the head of DoD component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. IDA's may also deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need under § 286.4(d)(3) of this part; deny a request for a waiver or reduction of fees; review a fee estimate; and confirm that no records were located in response to a request.

Public interest. The interest in obtaining official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens about what their Government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or officials own conduct.

§ 286.4 Policy.

(a) *Compliance with the FOIA.* DoD personnel are expected to comply with the FOIA, this part, and DoD FOIA policy in both better and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openiness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and aherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt action on requests.* (1) Generally, when a member of the public complies with the procedures established in this part and DoD Component regulations or instructions for obtaining DoD records, and after the request is received by the official designated to respond, DoD Components shall endeavor to provide a final response determination within the statutory 20 working days. If a significant number of requests, or the complexity of the requests prevent a final response determination within the statutory time period, DoD Components shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system (see § 286.4(d)(2)). A final response determination is notification to the requester that the records are released, or will be released on a certain date, or the records are denied under the appropriate FOIA exemption, or the records cannot be provided for one or more of the other reasons in § 286.23(b). Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination pursuant to the FOIA. If a request fails to meet minimum requirements as set forth in § 286.3, definition "FOIA request", Components shall inform the requester how to perfect or correct the request. The statutory 20 working day time limit applies upon receipt of a perfected or correct FOIA request which complies with the requirements outlined in § 286.3, definition "FOIA request".

(2) *Multitrack processing.* When a Component has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing as described in paragraph (d)(3) of this section. DoD Components may establish as many processing queues as they wish; however, as a minimum, three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request. One track shall be a processing queue for simple requests, one track for complex requests, and one track shall be a processing queue for expedited processing as described in paragraph (d)(3) of this section. Determinations as to whether a request is simple or complex shall be made by each DoD Component. DoD Components shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing as described in paragraph (d)(3) of this section), an opportunity to limit in writing hard copy, facsimile, or electronically, the scope of the request in order to qualify for the fastest queue. This multitrack processing system does not obviate components' responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(3) *Expedited processing.* A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and

demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the DoD Component's office that will determine whether to grant expedited processing. Once the DoD Component has determined to grant expedited processing, the request shall be processed as soon as practicable. Actions by DoD Components to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review.

(i) Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media (see § 286.28(e)) would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(A) Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(b) [Reserved]

(iii) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be true and correct to the best of their knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(iv) *Other reasons for expedited processing.* Other reasons that merit expedited processing by DoD Components are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interest of mankind. A demonstration of humanitarian need shall be also made by a statement certified by the requester to be true and correct to the best of his or her knowledge. Both statements mentioned above must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(v) These same procedures also apply to requests for expedited processing of administrative appeals.

(e) *Use of exemptions.* It is DoD policy to make records publicly available, unless the record qualifies for exemption under one or more of the nine exemptions. It is DoD policy that DoD Components shall make discretionary releases whenever possible; however, a discretionary release is normally not appropriate for records clearly exempt under exemptions 1, 3, 4, 6, 7(C) and 7(F) (see subpart C of this part). Exemptions 2, 5, and 7(A)(B)(D) and (E) (see subpart C of this part) are discretionary in nature, and DoD Components are encouraged to exercise discretionary releases whenever possible. Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in Components' reading rooms *in* paper form, as well as electronically, to facilitate public access. Discretionary releases to FOIA requesters constitute a waiver of the FOIA exemption that may otherwise apply. Disclosure to a properly constituted advisory committee, to Congress, or to other Federal Agencies does not waive the exemption. (See § 286.22(d).) Exempt records disclosed without authorization by the appropriate DoD official do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* (1) A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart F of this part.

(2) About electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, Components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and manpower, that would cause a significant interference with the operation of the Component's automated information system would not be a business as usual approach.

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the requester. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. In order to assist DoD Components in conducting more timely searches, requesters should endeavor to provide as much identifying information as possible. When a DoD Component receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined in paragraph (h)(2) of this section. DoD Components are not obligated to act on the request until the requester responds to the specificity

letter. When practicable, DoD Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort (Descriptive information about a record may be divided into two broad categories.):

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the DoD Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records in a Privacy Act System of records that can be retrieved by personal identifiers need be searched. However, if a DoD Component has reason to believe that records on the requester may exist in a record system other than a Privacy Act system, the DoD Component shall search that system under the provisions of the FOIA. In either case, DoD Components may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the Privacy Act. If the record is required to be released under the FOIA, the Privacy Act does not bar its disclosure. See paragraph (m) of this section for the relationship between the FOIA and the Privacy Act.

(5) The previous guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DoD Component to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the DoD Component's staff to reasonably ascertain and locate which records are being requested.

(i) *Referrals.* (1) The DoD FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DoD Component receives a request for records originated by another DoD Component, it should contact the DoD Component to determine if it also received the request, and if not, obtain concurrence from the other DoD Component to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed. While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DoD Components from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, DoD Components should coordinate with the originator of the information prior to making a release determination. A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other DoD Component has reason to believe it has the requested record. Prior to notifying a requester of a referral to another DoD Component, the DoD Component receiving the initial request shall consult with the other DoD Component to determine if that DoD Component's association with the material is exempt. If the association is exempt, the DoD Component receiving the initial request will protect the association and any exempt information without revealing the identity of the protected DoD Component. The protected DoD Component shall be responsible for submitting the justifications required in any litigation. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DoD Components making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number, and an e-mail address.

(2) A DoD Component shall refer for response directly to the requester, a FOIA request for a record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency. Whenever a record or a portion of a record is referred to another DoD Component or to a Government Agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component may refer a request for a record that it originated to another DoD Component or agency when the other DoD Component or agency has a valid interest in the record, or the record was created for the use of the other DoD Component or agency. In such situations, provide the record and a release recommendation on the record with the referral action. Ensure you include a point of contact with the telephone number. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. A FOIA request shall be referred to the appropriate DoD Component and the requester shall be notified of the referral, unless exempt information would be revealed. Another example is a record originated by a DoD Component or agency that involves foreign relations, and could affect a DoD Component or organization in a host foreign country. Such a request and any responsive records may be referred to the affected DoD Component or organization for consultation prior to a final release determination within the Department of Defense. See also § 286.22(e) of this part.

(4) Within the Department of Defense, a DoD Component shall ordinarily refer a FOIA request and a copy of the records it holds, but that was originated by other DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified by such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component, except as provided in § 286.22(e) of this part.

(5) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA, this part, and their multitrack processing queues, based upon the date of initial receipt of the request at the referring component or agency.

(6) Agencies outside the Department of Defense that are subject to the FOIA.

(i) A DoD Component may refer a FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DoD Component must respond to the request.

(ii) A DoD Component shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked, However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DoD Component may only respond directly to the requester after coordination with the outside agency.

(7) DoD Components that receive requests for records of the National Security Council (NSC), the White House, or the White House Military Office (WHMO) shall process the requests. DoD records in which the NSC or White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DoD Components' files shall be forwarded to the Directorate for Freedom of Information and Security Review (DFOISR). The DFOISR shall coordinate with the NSC, White House, or WHMO and return the records to the originating agency after coordination.

(8) To the extent referrals are consistent with the policies expressed by this section, referrals between offices of the same DoD Component are authorized.

(9) On occasion, the Department of Defense receives FOIA requests for General Accounting Office (GAO) records containing DoD information. Even though the GAO is outside the executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, shall be processed under the provisions of the FOIA.

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

(k) *Combatant Commands.* (1) The Combatant Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department or the Chairman of the Joint Chiefs of Staff, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3;[3] it authorizes and requires the Combatant Commands to process FOIA requests in accordance with DoD Directive 5400.7 and this part. The Combatant Commands shall forward directly to the Director, Freedom of Information and Security Review all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in appendix A of this part.

(2) Combatant Commands shall maintain an electronic reading room for FOIA-processed 5 U.S.C. 552(a)(2)(D) records in accordance with subpart B of this part. Records qualifying for this means of public access also shall be maintained in hard copy for public access at Combatant Commands' respective locations.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with the National Archives and Records Administration General Records Schedule, and DoD Component records schedules.

(m) *Relationship between the FOIA and the Privacy Act (PA).* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records, nor are all of them aware of appeal procedures. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts. See also § 286.24 regarding appeal rights.

(1) If the record is required to be released under the FOIA, the Privacy Act does not bar its disclosure. Unlike the FOIA, the Privacy Act applies only to U.S. citizens and aliens admitted for permanent residence.

(2) Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply only the Privacy Act, will have their requests processed under the provisions of both the Privacy Act and the FOIA. If the Privacy Act system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and if the records, or any portion thereof, are exempt under the FOIA, the requester shall be so advised with the appropriate Privacy Act and FOIA exemption. Appeals shall be processed under both Acts.

(3) Requesters who seek records about themselves that are not contained in a Privacy Act system of records and who cite or imply the Privacy Act will have their requests processed under the provisions of the FOIA, since the Privacy Act does not apply to these records. Appeals shall be processed under the FOIA.

(4) Requesters who seek records about themselves that are contained in a Privacy Act system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the Privacy Act and the FOIA. If the Privacy Act system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and if the records or any portion thereof, are exempt under the FOIA, the requester shall be so advised with the appropriate Privacy Act and FOIA exemption. Appeals shall be processed under both Acts.

(5) Requesters who seek access to agency records that are not part of a Privacy Act system of records, and who cite or imply the Privacy Act and FOIA, will have their requests processed under the FOIA since the Privacy Act does not apply to these records. Appeals shall be processed under the FOIA.

(6) Requesters who seek access to agency records and who cite or imply the FOIA will have their requests an appeals processed under the FOIA.

(7) Requesters shall be advised in the final response letter which Act(s) was (were) used, inclusive of appeal rights as outlined in paragraphs (m)(1) through (m)(6) of this section.

(n) *Non-responsive information in responsive records.* DoD Components shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DoD Components desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) If the responsive record is unclassified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that

[3] See footnote 1 to § 286.1(a).

even if the information were determined responsive, it would likely be exempt under (state appropriate exemption(s)). Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures in paragraph (n)(2) of this section. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester that even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552(b)(1), and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(o) *Honoring form or format requests.* DoD Components shall provide the record in any form or format requested by the requester if the record is readily reproducible in that form or format. DoD Components shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DoD Components shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DoD Components' automated information system. Such determinations shall be made on a case by case basis. See also paragraph (g)(2) of this section.

Subpart B—FOIA Reading Rooms

§ 286.7 Requirements.

(a) *Reading room.* Each DoD Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the records described in paragraph (b) of this section and § 286.8(a). In addition to the records described in paragraph (b) of this section and § 286.8(a), DoD Components may elect to place other records in their reading room, and also make them electronically available to the public. DoD Components may share reading room facilities if the public is not unduly inconvenienced, and also may establish decentralized reading rooms. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart F of this part.

(b) *Record availability.* The FOIA requires that records described in 5 U.S.C. 552(a)(2) (A), (B), (C), and (D) created on or after November 1, 1996, shall be made available electronically by November 1, 1997, as well as in hard copy in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. Personal privacy information, that if disclosed to a third party requester, would result in an invasion of the first party's personal privacy, and contractor submitted information, that if disclosed to a competing contractor, would result in competitive harm to the submitting contractor shall be deleted from all 5 U.S.C. 552(A)(2) records made available to the general public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. 5 U.S.C. 552(a)(2) (A), (B), (C) and (D) records are:

(1) *(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) *(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(3) *(a)(2)(C) records.* Administrative staff manuals and instructions, or portions therefo, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criterial for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and intelligence activities.

(4) *(a)(2)(D) records.* Those 5 U.S.C. 552(a)(3) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records.

(i) DoD Components shall decide on a case by case basis whether records fall into this category, based on the following factors:

(A) Previous experience of the DoD Component with simular records.

(B) Particular circumstances of the records involved, including their nature and the type of information contained in them.

(C) The identify and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(ii) This provision is intended for situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DoD Components may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(iii) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DoD Components shall process the FOIA request. However, DoD Components have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2) (A), (B), and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

§ 286.8 Indexes.

(a) *"(a)(2)" materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.7(a), an index of materials described in § 286.7(b) that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967, that are not indexed and either made available or

published may be relied upon, used or cited as precedent against any individual unless such individual has actual and-timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topical or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(4) A general index of FOIA-processed (a)(2) records referred to in § 286.7(b)(4), shall be made available to the public, both in hard copy and electronically by December 31, 1999.

(b) *Other materials.* (1) Any available index of DoD Component material published in the Federal Register, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms, and electronically to the public.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of "(a)(1)" materials are: descriptions of any agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 286.11 General provisions.

Records that meet the exemption criteria of the FOIA may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to a FOIA request.

§ 286.12 Exemptions.

The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law: A discretionary release of a record (see also § 286.4(e)) to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized by DoD 5400.11–R[4] and by a FOIA exemption.

(a) *Number 1 (5 U.S.C. 552(b)(1)).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1–R.[5] Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R apply. If the information qualifies as exemption 1 information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(2) Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and DoD 5200.R–1, and is not otherwise revealed in the individual items of information.

(b) *Number 2 (5 U.S.C. 552(b)(2)).* Those related solely to the internal personnel rules and practices of the Department of Defense or any of its Components. This exemption is entirely discretionary. This exemption has two profiles, high (b)(2) and low (b)(2). Paragraph (b)(2) of this section contains a brief discussion on the low (b)(2) profile; however, that discussion is for information purposes only. When only a minimum Government interest would be affected (administrative burden), there is a great potential for discretionary disclosure of the information. Consequently, DoD Components shall not invoke the low (b)(2) profile.

(1) Records qualifying under high (b)(2) are those containing or constituting statues, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, and examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii Computer software, the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch

[4] See footnote 1 to § 286.1(a).
[5] See footnote 1 to § 286.1(a).

hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings. DoD Components shall not invoke the low (b)(2) profile.

(c) *Number 3 (5 U.S.C. 552(b)(3)).* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. The Directorate for Freedom of Information and Security Review maintains a list of (b)(3) statutes used within the Department of Defense, and provides updated lists of these statutes to DoD Components on a periodic basis. A few examples of such statutes are:

(1) *Patent Secrecy, 35 U.S.C. 181–188.* Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(2) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(3) Communication Intelligence, 18 U.S.C. 798.

(4) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25.[6]

(5) Confidentiality of Medical Quality Assurance Records: Qualified Immunity for Participants, 10 U.S.C. 1102f.

(6) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(7) Protection of Intelligence Sources and Methods, 50 U.S.C. 403–3(c)(6).

(8) Protection of Contractor Submitted Proposals, 10 U.S.C. 2305(g).

(9) Procurement Integrity, 41 U.S.C. 423.

(d) *Number 4 (5 U.S.C. 552(b)(4)).* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm (see paragraph (d)(8) of this section). If the information qualifies as exemption 4 information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DoD Component and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. See also § 286.23(h)(2) of this part. Additionally, when the provisions of 10 U.S.C. 2305(g), and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption 3.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Chapter 2 of 48 CFR, Subpart 227.71–227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (see paragraph (c)(4) of this section).

(7) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary. (See also §286.23(h)(3).)

(e) *Number 5 (5 U.S.C. 552(b)(5)).* Those containing information considered privileged in litigation, primarily under the deliberative process privilege. Except as provided in paragraphs (e)(2) through (e)(5) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)), or within or among DoD Components. In order to meet the test of this exemption, the record must be both deliberative in nature, as well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary.

(1) Examples of the deliberative process include:

(i) The non factual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those non factual portions of evaluations by DoD Component personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature or such

[6] See footnote 1 to § 286.1(a).

matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(vi) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(vii) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(2) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the Agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporately by reference in the record containing the decision.

(f) *Number 6 (5 U.S.C. 552(b)(6)).* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption 6 information, there is no discretion in its release.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) Home addresses, including private e-mail addresses, are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name. Additionally, the names and duty addresses (postal and/or e-mail) of DoD military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(i) *Privacy interest.* A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(ii) Names and duty addresses (postal and/or e-mail) published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(3) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24.[7]

(4) A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained in a Privacy Act system of records, consult with legal counsel.

(5) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DoD Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption 6 must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies before referring a record that is exempt under the Glomar concept.

(i) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will

[7] See footnote 1 to § 286.1(a).

itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when:

(A) The person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights.

(B) The person initiated or directly participated in an investigation that lead to the creation of any agency record seeks access to that record.

(C) The person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family. See paragraph (f)(3) of this section.

(g) *Number 7 (5 U.S.C. 552(b)(7)).* Records or information complied for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive orders or regulations issued pursuant to law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of parts (C) and (F) (see paragraph (g)(1)(iii) of this section) of this exemption, this exemption is discretionary. If information qualifies as exemption (7)(C) or (7)(F) (see paragraph (g)(1)(iii) of this section) information, there is no discretion in its release.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(i) Could reasonably be expected to interfere with enforcement proceedings (5 U.S.C. 552(b)(7)(A)).

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication (5 U.S.C. 552(b)(7)(B)).

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record (5 U.S.C. 552(b)(7)(C)).

(A) this exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This a Glomar response, and exemption (7)(C) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DoD Components shall coordinate with other DoD Components or Federal Agencies before referring a record that is exempt under the Glomar concept.

(B) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(C) Refusal to confirm or deny should not be used when:

(*1*) The person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights.

(*2*) The person whose personal privacy is in jeopardy is deceased, and the Agency is aware of that fact.

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation (5 U.S.C. 552(b)(7)(D)).

(E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law (5 U.S.C. 552(b)(7)(E)).

(F) Could reasonably be expected to endanger the life or physical safety of any individual (5 U.S.C. 552(b)(7)(F)).

(2) Some examples of exemption 7 are:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings.

(ii) The identify of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office with a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500)) is not diminished.

(4) *Exclusions.* Excluded from exemption 7 are the following two situations applicable to the Department of Defense. (Components considering invoking an exclusion should first consult with the Department of Justice, Office of Information and Privacy.):

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstances continues, treat the records of information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the request will state that no records were found.

(h) *Number 8 (U.S.C. 552 (b)(8)).* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9 (5 U.S.C. 552(b)(9)).* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public because disclosure would

cause a foreseeable harm to an interest protected by one or more FOIA exemptions 2 through 9 (see subpart C of this part) shall be considered as being for official use only (FOUO). No other material shall be considered FOUO, and FOUO is not authorized as an anemic form of classification to protect national security interests. Additional information on FOUO and other controlled, unclassified information may be found in DoD 5200. 1–R or by contacting the Directorate for Security, Office of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence).

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether disclosure would result in a foreseeable harm to an interest protected by one or more FOIA exemptions 2 through 9. Even if any exemptions apply, the record shall be released as a discretionary matter when it is determined that there is no foreseeable harm to an interest protected by the exemptions.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 [8] shall bear that statement and may be marked FOUO, as appropriate.

§ 286.16 Markings.

(a) *Location of markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on each page containing FOUO information, and on the outside of the back cover (if any). Each paragraph containing FOUO information shall be marked as such.

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page. Individual paragraphs shall be marked at the appropriate classification level, as well as unclassified or FOUO, as appropriate.

(3) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the top and bottom of the page, as well as each paragraph that contains FOUO information.

(4) Other records, such as photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption(s) _____ applies/apply.

(b) [Reserved]

§ 286.17 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other Departments and Agencies of the Executive and Judicial Branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only," and the recipient shall be advised that the information may qualify for exemption from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4. [9] Release to the GAO is governed by DoD Directive 7650.1. [10] Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that prevents disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations, may be sent by fourth-class mail.

(c) *Electronically and facsimile transmitted messages.* Each part of electronically and facsimile transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages and facsimiles shall be transmitted in accordance with communications security procedures whenever practicable.

§ 286.18 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernment personnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to prevent unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or Government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles

[8] See footnote 1 to § 286.1(a).

[9] See footnote 1 to § 286.1(a).

[10] See footnote 1 to § 286.1(a).

such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of the National Security Act of 1959 shall meet the safeguards outlined for that group of records.

§ 286.19 Termination, disposal and unauthorized disclosure.

(a) *Termination.* The originator or other competent authority; e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to prevent reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. 3301–3314, as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 282.22 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the provisions of 5 U.S.C. 552(a)(3) of the FOIA may be denied only when:

(i) Disclosure would result in a foreseeable harm to an interest protected by a FOIA exemption, and the record is subject to one or more of the exemptions of FOIA.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or the subject's attorney, notarization of the request, or a statement certifying under the penalty of perjury that their identity is true and correct may be required. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

(2) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in appendix B of this part.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interest as opposed to U.S. Federal Agencies seeking official information. Requests from private persons will be made in writing, and should clearly show all other addressees within the Federal Government to which the request was also sent. This procedure will reduce processing time requirements, and ensure better inter- and intra-agency coordination. However, if the requester does not show all other addressees to which the request was also sent, DoD Components shall still process the request. DoD Components should encourage requesters to send requests by mail, facsimile, or by electronic means. Disclosure of records to individuals under the FOIA is considered public release of information, except as provided for in § 286.4(f) and § 286.12.

(c) *Requests from government officials.* Requests from officials of State or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (see also § 286.4(f) and paragraph (d) of this section). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

(d) *Privileged release outside of the FOIA to U.S. Government officials.* (1) Records exempt from release to the public under the FOIA may be disclosed in accordance with DoD Component regulations to agencies of the Federal Government, whether legislative, executive, or administrative, as follows:

(i) In response to a request of a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4.

(ii) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(iii) In response to an order of a Federal court, DoD Components shall release information along with a description of the restrictions on its release to the public.

(2) DoD Components shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA. DoD Components also shall advise officials of any special handling instructions. Classified information is subject to the provisions of DoD 5200.1–R, and information contained in Privacy Act systems of records is subject to DoD 5400.11–R.

(e) *Consultation with affected DoD component.* (1) When a DoD Component receives a FOIA request for a record in which an affected DoD organization (including a Combatant Command) has a clear and substantial interest in the subject matter, consultation with that affected DoD organization is required. As an example, where a DoD Component receives a request for records related to DoD operations in a foreign country, the cognizant Combatant Command for the area involved in the request shall be consulted before a release is made. Consultations may be telephonic, electronic, or in hard copy.

(2) The affected DoD Component shall review the circumstances of the request for host-nation relations, and provide, where appropriate, FOIA processing assistance to the responding DoD Component regarding release of information. Responding DoD Components shall provide copies of responsive records to the affected DoD Component when requested by the affected DoD Component. The affected DoD Component shall receive a courtesy copy of all releases in such circumstances.

(3) Nothing in paragraphs (e)(1) and (e)(2) of this section shall impede the processing of the FOIA request initially received by a DoD Component.

§ 286.23 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding the each request within the time limitations of the FOIA.

(2) The initial determination whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under the FOIA is applicable.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* The following are reasons for not complying with a request for a record under 5 U.S.C. 552(a)(3):

(1) *No records.* A reasonable search of files failed to identify responsive records.

(2) *Referrals.* The request is transferred to another DoD Component, or to another Federal Agency.

(3) *Request withdrawn.* The request is withdrawn by the requester.

(4) *Fee-related reason.* The requester is unwilling to pay fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with the fee estimate.

(5) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(6) *Not a proper FOIA request for some other reason.* The requester has failed unreasonably to comply with procedural requirements, other than fee-related, imposed by this part or DoD Component supplementing regulations.

(7) *Not an agency record.* The information requested is not a record within the meaning of the FOIA and this part.

(8) *Duplicate request.* The request is a duplicate request (e.g., a requester asks for the same information more than once). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

(9) *Other (specify).* Any other reason a requester does not comply with published rules other than those outlined paragraphs (b)(1) through (b)(8) of this section.

(10) *Partial or total denial.* The record is denied in whole or in part in accordance with procedures set forth in the FOIA.

(c) *Denial tests.* To deny a requested record that is in the possession and control of a DoD Component, it must be determined that disclosure of the record would result in a foreseeable harm to an interest protected by a FOIA exemption, and the record is exempt under one or more of the exemptions of the FOIA. An outline of the FOIA's exemptions is contained in subpart C of this part.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. Unless indicating the extent of the deletion would harm an interest protected by an exemption, the amount of deleted information shall be indicated on the released portion of paper records by use of brackets or darkened areas indicating removal of information. In no case shall the deleted areas be left "white" without the use of brackets to show the bounds of deleted information. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the record such deletion was made, unless including the indication would harm an interest protected by the exemption under which the deletion is made. This may be done by use of brackets, shaded areas, or some other identifiable technique that will clearly show the limits of the deleted information. When a record is denied in whole, the responsive advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Whenever possible, initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 20 working days after receipt of the request by the official designated to respond. When a DoD Component has a significant number of pending requests which prevent a response determination within the 20 working day period, the requester shall be so notified in an interim response, and advised whether their request qualifies for the fast track or slow track within the DoD Components' multitrack processing system. Requesters who do not meet the criteria for fast track processing shall be given the opportunity to limit the scope of their request in order to qualify for fast track processing. See also § 286.4(d)(2), for greater detail on multitrack processing and compelling need meriting expedited processing.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based, inclusive of a brief statement describing what the exemption(s) cover. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The final response to the requester should contain information concerning

the fee status of the request, consistent with the provisions of subpart F of this part. When a requester is assessed fees for processing a request, the requester's fee category shall be specified in the response letter. Components also shall provide the requester with a complete cost breakdown (e.g., 15 pages of office reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour, etc.) in the response letter.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part; e.g., 5 U.S.C. 552(b)(1). Merely referring to a classification; to a "For Official Use Only" marking on the requested record; or to this part or a DoD Component's regulation does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(7) When denying a request for records, in whole or in a part, a DoD Component shall make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part.

(8) When denying a request for records in accordance with a statute qualifying as a FOIA exemption 3 statute, DoD Components shall, in addition to sitting the particular statute relied upon to deny the information, also state whether a court has upheld the decision to withhold the information under the particular statute, and a concise description of the scope of the information being withheld.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond to the initial request, the DoD Component shall acknowledge the request in writing the 20 day period, describe the circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as follows:

(2) With respect to a request for which a written notice has extended the time limits by 10 additional working days, and the Component determines that it cannot make a response determination within that additional 10 working day period, the requester shall be notified and provided an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange an alternative time frame for processing the request or a modified request. Refusal by the requester to reasonably modify the request or arrange for an alternative time frame shall be considered a factor in determining whether exceptional circumstances exist with respect to DoD Components' request backlogs. Exceptional circumstances do not include a delay that results from predictable component backlogs, unless the DoD Component demonstrates reasonable progress in reducing its backlog.

(3) Unusual circumstances that may justify delay are:

(i) The need to search for and collect the requested records from other facilities that are separate from the office determined responsible for a release or denial decision on the requested information.

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are requested in a single request.

(iii) The need for consultation, which shall be conducted with all practicable speed, with other agencies having a substantial interest in the determination of the request, or among two or more DoD Components having a substantial subject-matter interest in the request.

(4) DoD Components may aggregate certain requests by the same requester, or by a group of requesters acting in concert, if the DoD Component reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances set forth in paragraph (f)(3) of this section, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated. If the requests are aggregated under these conditions, the requester or requesters shall be so notified.

(5) In cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. If should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. DoD Components are reminded that the requester still retains the right to treat this delay as a de facto denial with full administrative remedies.

(6) As an alternative to the taking of formal extensions of time as described in § 286.23(f), the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component or other Federal Agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of non-U.S. government source.* (1) When a request is received for a record that falls under exemption 4 (see § 286.12(d)), that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552, Exemption (b)(4)) (§ 286.12(d), this part and E.O. 12600 (3 CFR, 1987 Comp., p. 235)) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4) of 5 U.S.C. 552. If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request

normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(2) If the submitted information is a proposal in response to a solicitation for a competitive proposal, and the proposal is in the possession and control of DoD, and meets the requirements of 10 U.S.C. 2305(g), the proposal shall not be disclosed, and no submitter notification and subsequent analysis is required. The proposal shall be withheld from public disclosure pursuant to 10 U.S.C. 2305(g) and exemption (b)(3) of 5 U.S.C. 552. This statute does not apply to bids, unsolicited proposals, or any proposal that is set forth or incorporated by reference in a contract between a DoD Component and the offeror that submitted the proposal. In such situations, normal submitter notice shall be conducted in accordance with paragraph (h)(1) of this section, except for sealed bids that are opened and read to the public. The term proposal means information contained in or originating from any proposal, including a technical, management, or cost proposal submitted by an offeror in response to solicitation for a competitive proposal, but does not include an offeror's name or total price or unit prices when set forth in a record other than the proposal itself. Submitter notice, and analysis as appropriate, are required for exemption (b)(4) matters that are not specifically incorporated in 10 U.S.C. 2305(g).

(3) If the record or information was submitted on a strictly voluntary basis, absent any exercised authority that prescribes criteria for submission, and after consultation with the submitter, it is absolutely clear that the record or information would customarily not be released to the public, the submitter need not be notified. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Records or information submitted under these authorities are not voluntary in nature. When it is not clear whether the information was submitted on a voluntary basis, absent any exercised authority, and whether it would customarily be released to the public by the submitter, notify the submitter and ask that it describe its treatment of the information, and render an objective evaluation. If the decision is made to release the information over the objection of the submitter, notify the submitter and afford the necessary time to allow the submitter to seek a restraining order, or take court action to prevent release of the record or information.

(4) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the DoD from multi-national organizations, such as the North Atlantic Treaty Organization (NATO), United Nations Commands, the North American Aerospace Defense Command (NORAD), the Inter-American Defense Board, or foreign governments. Coordination with foreign governments under the provisions of this paragraph may be made through Department of State, or the specific foreign embassy.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records denied for any of the reasons contained in paragraph (b) of this section shall be maintained for a period of six years to meet the statute of limitations requirement.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence. The requester shall be notified that they are responsible for the full costs of special services.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts, and all money orders or checks remitting FOIA fees should be made payable to the U.S. Treasurer. These accounts, which are described in paragraphs (k)(1) and (k)(2) of this section shall be used for depositing all FOIA receipts, except receipts for Working Capital and non appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Working Capital and non appropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt account 3210 sale of publications and reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(2) *Receipt account 3210 fees and other charges for services, Freedom of Information Act.* This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§ 286.24 Appeals.

(a) *General.* If the official designated DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt under one or more of the exemptions of the FOIA, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disapproval of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis a determination not to grant expedited access to agency records, for no record determinations when the requester considers such responses adverse in nature, not providing a response determination to a FOIA request within the statutory time limits, or *any* determination found to be adverse in nature by the requester. When denials have been made under the provisions of the Privacy Act and the FOIA, and the denied information is contained in a Privacy Act system of records, appeals shall be processed under both the Privacy Act and the FOIA. If the denied information is not maintained in a Privacy Act system of records, the appeal shall be processed under the FOIA. Appeals of Office of the Secretary of Defense and Chairman of the Joint Chiefs of Staff determinations may be sent to the address in appendix B of this part. If a request is merely misaddressed, and the receiving DoD Component simply advises the requester of such and refers the request to the appropriate DoD Component, this shall not be considered a no record determination.

(b) *Time of receipt.* A FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of this 60-day period, the appeal may be considered closed. However, exceptions to the above may be considered on a case by case basis.

In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Records that are denied shall be retained for a period of six years to meet the statute of limitations requirement.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DoD Component has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum, on the three processing tracks established for initial requests. See § 286.4(d) of this part. All of the provisions of § 286.4(d) apply also to appeals of initial determinations, to include establishing additional processing queues as needed.

(d) *Delay in responding to an appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.23(f), the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.23(f), they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantiative response. The DoD component shall continue to process the case expeditiously.

(e) *Response to the requester.* (1) When an appellate authority makes a final determination to release all or a portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of the FOIA, and with respect to other appeal matters as set forth in paragraph (a) of this section.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(v) When the denial is based upon an exemption 3 statute (subpart C of this part), the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

(vi) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the DoD Office of the General Counsel.

Tentative decisions to deny records that raise new or significant legal issues of potential significance to other Agencies of the Government shall be provided to the DoD Office of the General Counsel.

§ 286.25 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statemetns of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(2) A requester may seek an order from a U.S. District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond with the time limits prescribed by the FOIA and in this part.

(b) *Jurisdiction.* The requester may bring suit in the U.S. District Court in the district in which the requester resides or is the requesters place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requester record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, to include negotiating with the requester to modify the scope of their request, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the witholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a non-government source or records based on information obtained from a non-government source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *FOIA litigation.* Personnel responsible for processing FOIA requests at the DoD Component level shall be aware of litigation under the FOIA. Such information will provide

management insights into the use of the nine exemptions by Component personnel. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a copy of the complaint by any means to the Director, Freedom of Information and Security Review with an information copy to the DoD Office of the General counsel, ATTN: Office of Legal Counsel.

Subpart F—Fee Schedule

§ 286.28 General provisions.

(a) *Authorities.* The Freedom of Information Act, as amended; the Paperwork Reduction Act (44 U.S.C. Chapter 35), as amended; the Privacy Act of 1974, as amended; the Budget and Accounting Act of 1921 and the Budget and Accounting Procedures Act, as amended (see 31 U.S.C.); and 10 U.S.C. 2328.

(b) *Application.* (1) The fees described in this subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD 7000.14–R,[11] which does not supersede the collection of fees under the FOIA. Nothing in this subpart shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(a)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.29 of this subpart. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See paragraph (b)(5) of this section, for the definition of review, and paragraph (c)(5) of this section and § 286.29(b)(2), for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable, the requester shall be notified that the copy provided is the best available and that the Agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the

[11] See footnote 1 to § 286.1(a).

Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be 8½" x 11" or 11" x 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search. See § 286.29, this subpart, for further details regarding fees for computer searches.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in paragraph (e) of this section when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determinate whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information that concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profitmaking organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of paragraph (e) of this section apply. Components are

reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(4) Components are reminded that the factors and examples used in this subsection are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(5) In addition, the following circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the Component shall:

(A) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) Requesters should submit a fee declaration appropriate for the following categories.

(A) *Commercial.* Requesters should indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or noncommercial scientific institution or news media.* Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All others.* Requesters should indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2)(i) and (e)(2)(ii) of this section, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Components' actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717, and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the previsions of paragraph (e)(2)(vii) of this section, apply.

(ix) When Components act under paragraphs (e)(2)(i) through (e)(2)(vii) of this section, the administrative time limits of the FOIA will begin only after the Component has received a willingness to pay fees and satisfaction

as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Components may also charge search and review (in the case of commercial requesters) time in records located are determined to be exempt from disclosure. In practice, if the Components estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object or reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commerical use. Requesters must reasonably describe the records sought. (See § 286.4(h)).

(i) The term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category. Components must determine the use to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commerical requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commerical requesters are not normally entitled to a waiver or reduction of fees.based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commerical enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commerical use. Such situations must be addressed on a case-by-case basis.

(4) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.4(h).). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. Fees shall be waived or reduced in the public interest if the criteria of paragraph (d) of this section, have been met.

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commerical scientific institution whose purpose is scientific research. Requesters must reasonbly describe the records sought (see § 286.4(h)). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in paragraph (e)(3) of this section, and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Fees shall be waived or reduced in the public interest if the criteria of paragraph (d) of this section, have beem met.

(6) Components shall provide documents to requesters in paragraphs (e)(4) and (e)(5) of this section for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.4(h)). Fees shall be waived or reduced if the criteria of paragraph (d) of this section, have been met.

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(7)(i) of this section, and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(iii) "Representative of the news media" does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the categories described in paragraphs (e)(3), (e)(4), (e)(5), or (e)(7) of this section, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters

must reasonably describe the records sought (see § 286.4(h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under paragraph (d)(1) of this section. (See also paragraph (e)(3)(ii) of this section.)

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document of documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting on concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the Agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (5 U.S.C. 5515 note).* The Debt Collection Act of 1982 (5 U.S.C. 5515 note) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to 5 U.S.C. 5515 note.

(h) *Computation of fees.* The fee schedule in this subpart shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized. The appropriate fee category of the requester shall be applied before computing fees.

(i) *Refunds.* In the event that a Component discovers that it has overcharged a requester or a requester has overpaid, the Component shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the Component.

§ 286.29 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.28(e)).

(b) *Search time*—(1) *Manual search.*

Type	Grade	Hourly rate
Clerical	E9/GS8 and below	$12
Professional	O1–O6/GS9–GS15	25
Executive	O7/GS16/ES1 and above.	45

(2) *Computer search.* Fee assessments for computer search consists of two parts; individual time (hereafter referred to as human time), and machine time.

(i) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms "programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(ii) *Machine time.* Machine time involves only direct costs of the Central Processing Unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DoD Components lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) *Duplication.*

Type	Cost per Page (cents)
Pre-Printed material.	02
Office copy	15
Microfiche	25
Computer copies (tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium)

(d) *Review time (in the case of commercial requesters).*

Type	Grade	Hourly rate
Clerical	E9/GS8 and below	$12
Professional	O1–O6/GS9–GS15	25
Executive	O7/GS16/ES1 and above.	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may recover the costs of special services requested by the requester after agreement has been obtained in writing

from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.30 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.29 of this subpart for other types of information released under the FOIA.

(b) *Waiver.* Components shall waive the payment of costs required in paragraph (a) of this section, which are greater than the costs that would be required for release of this same information under § 286.29 of this subpart if:

(1) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or

(3) The Component determines in accordance with § 286.28(d)(1), that such a waiver is in the interest of the United States.

(c) *Fee rates*—(1) *Search time*—(i) *Manual search: clerical.*

Type	Grade	Hourly rate
Clerical	E9/GS8 and below ...	$13.25
(Minimum Charge).	.....	8.30

(ii) *Manual search: professional and executive* (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates).

(2) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in paragraph (c)(1)(i) of this section) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search. See § 286.29(b)(2) for further details regarding computer search.

(3) *Duplication.*

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	$2.50
Engineering data (microfilm):	
(i) Aperture cards.	
(A) Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
(B) Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
(ii) 35mm roll film, per frame	.50
(iii) 16mm roll film, per frame	.45
(iv) Paper prints (engineering drawings), each	1.50
(v) Paper reprints of microfilm indices, each	.10

(4) *Review time*—(i) *Clerical.*

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below ...	13.25
(Minimum Charge).	.....	8.30

(ii) *Professional and executive* (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates).

(d) *Other technical data records.* Charges for any additional services not specifically provided in paragraph (c) of this section, consistent with Volume 11A of DoD 7000.14–R, shall be made by Components at the following rates:

(1) Minimum charge for office copy (up to six images)	$3.50
(2) Each additional image	.10
(3) Each typewritten page	3.50
(4) Certification and validation with seal, each	5.20
(5) Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 286.33 Reports control.

(a) *General.* (1) The Annual Freedom of Information Act Report is mandated by the statute and reported on a fiscal year basis. Due to the magnitude of the requested statistics and the need to ensure accuracy of reporting, DoD Components shall track this data as requests are processed. This will also facilitate a quick and accurate compilation of statistics. DoD Components shall forward their report to the Directorate for Freedom of Information and Security Review no later than November 30 following the fiscal year's close. It may be submitted electronically and via hard copy accompanied by a computer diskette. In turn, DoD will produce a consolidated report for submission to the Attorney General, and ensure that a copy of the DoD consolidated report is placed on the Internet for public access.

(2) Existing DoD standards and registered data elements are to be utilized to the greatest extent possible in accordance with the provisions of DoD Manual 8320.1–M,[12] "Data Administration Procedures."

(3) The reporting requirement outlined in this subpart is assigned Report Control Symbol DD–DA&M(A)1365, Freedom of Information Act Report to Congress.

(b) *Annual Report.* The current edition of DD Form 2564 shall be used to submit component input. DD Form 2564 is available on the Internet at http://www.defenselink.mil/pubs/ under Regulations and Forms. Instructions for completion follow:

[12] See footnote 1 to § 286.1(a).

(1) *Item 1: Initial request determinations.* Please note that initial Privacy Act requests which are also processed as initial FOIA requests are reported here. They will also be reported as "Privacy Act requests" on the Annual Privacy Act Report. See § 286.4(m), Relationship between the FOIA and the Privacy Act (PA).

(i) *Total requests processed.* Enter the total number of initial FOIA requests responded to (completed) during the fiscal year. Since more than one action frequently is taken on a completed case, total actions (see (b)(1)(vi) of this section) the sum of Items (b)(1)(ii) through (b)(1)(v) of this section, may exceed total requests processed (See appendix E of this part for form layout.)

(ii) *Granted in full.* Enter the total number of initial FOIA requests responded to that were granted in full during the fiscal year. (This may include requests granted by your office, yet still requiring action by another office.)

(iii) *Denied in part.* Enter the total number of initial FOIA requests responded to and denied in part based on one or more of the FOIA exemptions. (Do not report "other reason responses" as a partial denial here, unless a FOIA exemption is used also.)

(iv) *Denied in full.* Enter the total number of initial FOIA requests responded to and denied in full based on one or more of the FOIA exemptions. (Do not report "other reason responses" as denials here, unless a FOIA exemption is used also.)

(v) *"Other reason" responses.* Enter the total number of initial FOIA requests in which you were unable to provide all or part of the requested information based on an "other reason" response. Paragraph (b)(2)(ii) of this section explains the nine possible "other reasons."

(vi) *Total actions.* Enter the total number of FOIA actions taken during the fiscal year. This number will be the sum of (b)(1)(ii) through (b)(1)(v) of this section. Total actions must be equal to or greater than the number of total requests processed (paragraph (b)(1)(i) of this section).

(2) *Item 2: Initial request exemptions and other reasons*—(i) *Exemptions invoked on initial request determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of (b)(1)(iii) and (b)(1)(iv) of this section. The (b)(7) exemption is reported by subcategories identified in paragraphs (b)(2)(i)(A) through (b)(2)(i)(F) of this section:

(A) Interfere with enforcement;
(B) Fair trial right;
(C) Invasion of privacy;
(D) Protect confidential source;
(E) Disclose techniques; and
(F) Endanger life or safety.

(ii) *"Other reasons" cited on initial determinations.* Identify the "other reason" response cited when responding to a FOIA request and enter the number of times each was claimed.

(A) *No records.* Enter the number of times a reasonable search of files failed to identify records responsive to subject request.

(B) *Referrals.* Enter the number of times a request was referred to another DoD Component or Federal Agency for action.

(C) *Request withdrawn.* Enter the number of times a request and/or appeal was withdrawn by a requester. (For appeals, report number in Item 4b on the report form. (See appendix E of this part.))

(D) *Fee-related reason.* Requester is unwilling to pay the fees associated with a request; the requester is past due in the payment of fees from a previous FOIA request; or the requester disagrees with a fee estimate.

(E) *Records not reasonably described.* Enter the number of times a FOIA request could not be acted upon since the record had not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(F) *Not a proper FOIA request for some other reason.* Enter the number of times the requester has failed unreasonably to comply with procedural requirements, other than fee-related (described in paragraph (b)(2)(ii)(D) of this section), imposed by this part or a DoD Component's supplementing regulation.

(G) *Not an agency record.* Enter the number of times a requester was provided a response indicating the requested information was not a record within the meaning of the FOIA and this part.

(H) *Duplicate request.* Record number of duplicate requests closed for that reason (e.g., request for the same information by the same requester). This includes identical requests received via different means (e.g., electronic mail, facsimile, mail, courier) at the same or different times.

(I) *Other (specify).* Any other reason a requester does not comply with published rules, other than those reasons outlined in paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(H) of this section.

(J) *Total.* Enter the sum of paragraphs (b)(2)(ii)(A) through (b)(2)(ii)(I) of this section in the block provided on the form. This number will be equal to or greater than the number in paragraph (b)(1)(v) of this section since more than one reason may be claimed for each "other reason" response.

(iii) *(b)(3) statutes invoked on initial determinations.* Identify the number of times you have used a specific statute to support each (b)(3) exemption. List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure you cite the specific sections of the acts invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 2a on the report form.

(3) *Item 3: Appeal determinations.* Please note that Privacy Act appeals which are also processed as FOIA appeals are reported here. They will also be reported as "Privacy Act appeals" on the Annual Privacy Act Report. See § 286.4(m), Relationship Between the FOIA and the Privacy Act (PA).

(i) *Total appeal responses.* Enter the total number of FOIA appeals responded to (completed) during the fiscal year.

(ii) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(iii) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the FOIA exemptions. (Do not report "other reason responses" as a partial denial here, unless a FOIA exemption is used also.)

(iv) *Denied in Full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the FOIA exemptions. (Do not report "other reason responses" as denials here, unless a FOIA exemption is used also.)

(v) *"Other reason" responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on an "other reason" response (as outlined in "other reasons" in paragraph (b)(2)(ii) of this section).

(vi) *Total actions.* Enter the total number of FOIA appeal actions taken during the fiscal year. This number will be the sum of paragraphs (b)(3)(ii) through (b)(3)(v) of this section, and should be equal to or greater than the number of total appeal responses, paragraph (b)(3)(i) of this section.

(4) *Item 4: Appeal exemptions and other reasons*—(i) *Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (b)(3)(iii) and (b)(3)(iv) of this section. Note that the (b)(7) exemption is reported by subcategories identified in paragraphs (b)(4)(i)(A) through (b)(4)(i)(F) of this section:

(A) Interfere with enforcement;
(B) Fair trial right;
(C) Invasion of privacy;
(D) Protect confidential source;
(E) Disclose techniques; and
(F) Endanger life or safety.

(ii) *"Other reasons" cited on appeal determinations.* Identify the "other reason" response cited when responding to a FOIA appeal and enter the number of times each was claimed. See paragraph (b)(2)(ii) of this section for description of "other reasons." This number may be equal to or possibly greater than the number in paragraph (b)(3)(v) of this section since more than one reason may be claimed for each "other reason" response.

(iii) *(b)(3) statutes invoked on appeal determinations.* Identify the number of times a specific statute has been used to support each (b)(3) exemption identified in item 4a on the report form (Appendix E of this part). List the statutes used to support each (b)(3) exemption; the number of instances in which the statute was cited; note whether or not the statute has been upheld in a court hearing; and provide a concise description of the material withheld in each individual case by the statute's use. Ensure citation to the specific sections of the statute invoked. The total number of instances reported will be equal to or greater than the total number of (b)(3) exemptions listed in Item 4a on the report form.

(5) *Item 5: Number and median age of initial cases pending:* (i) Total initial cases pending:

(ii) *Beginning and ending report period:* Midnight, 2400 hours, September 30 of the Preceding Year—OR—0001 hours, October 1 is the beginning of the report period. Midnight, 2400 hours, is the close of the reporting period.

(iii) *Median age of initial requests pending:* Report the median age in days (including holidays and weekends) of initial requests pending.

(iv) *Examples of median calculation.* (A) If given five cases aged 10, 25, 35, 65, and 100 days from date of receipt as of the previous September 30th, the total requests pending is five (5). The median age (days) of open requests is the middle, not average value, in this set of numbers (10, 25, 35, 65, and 100), 35 (the middle value in the set).

(B) If given six pending cases, aged 10, 20, 30, 50, 120, and 200 days from date of receipt, as of the previous September 30th, the total requests pending is six (6). The median age (days) of open requests 40 days (the mean [average] of the two middle numbers in the set, in this case the average of middle values 30 and 50).

(v) *Accuracy of calculations.* Components must ensure the accuracy of calculations. As backup, the raw data used to perform calculations should be recorded and preserved. This will enable recalculation of median (and mean values) as necessary. Components may require subordinate elements to forward raw data, as deemed necessary and appropriate.

(vi) *Average.* If a Component believes that "average" (mean) processing time is a better measure of performance, then report "averages" (means) as well as median values (e.g., with data reflected and plainly labeled on plain bond as an attachment to the report). However, "average" (mean) values will not be included in the consolidated DoD report unless all Components report it.

(6) *Item 6: Number of initial requests received during the fiscal year.* Enter the total number of initial FOIA requests received during the reporting period (fiscal year being reported).

(7) *Item 7: Types of requests processed and median age.* Information is reported for three types of initial requests completed during the reporting period: Simple; Complex; and Expedited Processing. The following items of information are reported for these requests:

(i) *Total number of initial requests.* Enter the total number of initial requests processed [completed] during the reporting period (fiscal year) by type (Simple, Complex and Expedited Processing) in the appropriate row on the form.

(ii) *Median age (days).* Enter the median number of days [calendar days including holidays and weekends] required to process each type of case (Simple, Complex and Expedited Processing) during the period in the appropriate row on the form.

(iii) *Example.* Given seven initial requests, multitrack—simple completed during the fiscal year, aged 10, 25, 35, 65, 79, 90 and 400 days when completed. The total number of requests completed was seven (7). The median age (days) of completed requests is 65, the middle value in the set.

(8) *Item 8: Fees collected from the public.* Enter the total amount of fees collected from the public during the fiscal year. This includes search, review and reproduction costs only.

(9) *Item 9: FOIA program costs*—(i) *Number of full time staff.* Enter the number of personnel your agency had dedicated to working FOIA full time during the fiscal year. This will be expressed in work-years (manyears). For example: "5.1, 3.2, 1.0, 6.5, et al." A sample calculation follows:

Employee	Number (months worked)	Work-years	Note
SMITH, Jane	6	0.5	Hired full time at middle of fiscal year.
PUBLIC, John Q	4	.34	Dedicated to full time FOIA processing last quarter of fiscal year.
BROWN, Tom	12	1.0	Worked FOIA full time all fiscal year.
Total	22	1.84	

(ii) *Number of part time staff:* Enter the number of personnel your agency had dedicated to working FOIA part time during the fiscal year. This will be expressed in work-years (manyears). For example: "5.1, 3.2, 1.0, 6.5, et al." A sample calculation follows:

Employee	Number (hours worked)	Work-years	Note
PUBLIC, John Q	200	.1	Amount of time devoted to part time FOIA processing before becoming full time FOIA processor in previous example.
WHITE, Sally	400	.2	Processed FOIA's part time while working as paralegal in General Counsel's Office.
PETERS, Ron	1,000	.5	Part time employee dedicated to FOIA processing.
Total: [1] 1,600/2,000			

[1] Hours (hours worked in a year) equals 0.8 work-years.

(iii) *Estimated litigation cost:* Report your best estimate of litigation costs for the FY. Include all direct and indirect expenses associated with FOIA litigation in U.S. District Courts, U.S. Circuit Courts of Appeals, and the U.S. Supreme Court.

(iv) *Total program cost:* Report the total cost of FOIA program operation within your agency. Include your litigation costs in this total. While you do not have to report detailed cost information as in the past, you should be able to explain the technique by which you derived your agency's total cost figures if the need arises.

(A) Before the close of each fiscal year, the Directorate for Freedom of Information and Security Review (DFOISR) will dispatch the latest OSD Composite Rate Chart for military personnel to DoD Components. This information may be used in computing military personnel costs.

(B) DoD Components should compute their civilian personnel costs using rates from local Office of Personnel Management (OPM) Salary Tables and shall add 16% for benefits.

(C) Data captured on DD Form 2086, Record of Freedom of Information (FOI) Processing Cost and DD Form 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, shall be summarized and used in computing total costs.

(D) An overhead rate of 25% shall be added to all calculated costs for supervision, space, and administrative support.

(10) *Item 10: Authentication.* The official that approves the agency's report submission to DoD will sign and date; enter typed name and duty title; and provide both the agency's name and phone number for questions about the report.

(c) *Electronic publication.* The consolidated DoD Annual FOIA Program Report will be made available to the public in either paper or electronic format.

Subpart H—Education and Training

§ 286.36 Responsibility and purpose.

(a) *Responsibility.* The Head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this part.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the DoD.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this part.

(2) Instruct personnel, who act in FOIA matters, concerning the provisions of this part, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this part should be coordinated with the Director, Freedom of Information and Security Review.

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive 5400.7, the DoD Office of the General Counsel shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A to Part 286—Combatant Commands—Processing Procedures for FOIA Appeals

AP1.1. *General*

AP1.1.1. In accordance with DoD Directive 5400.7 [1] and this part, the Combatant Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information Act (FOIA) Program. This policy represents an exception to the policies in DoD Directive 5100.3.[2]

AP1.1.2. The policy change in AP1.1.1. of this appendix authorizes and requires the Combatant Commands to process FOIA requests in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10 [3] and to forward directly to the Director, Freedom of Information and Security Review, all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

AP1.2. *Responsibilities of Commands*

Combatant Commanders in Chief shall:

AP1.2.1. Designate the officials authorized to deny initial FOIA requests for records.

AP1.2.2. Designate an office as the point-of-contact for FOIA matters.

AP1.2.3. Refer FOIA cases to the Director, Freedom of Information and Security Review, for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

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[1] Copy may be viewed via internet at http://web7.whs.osd.mil/corres.htm.

[2] See footnote 1 to paragraph AP1.1.1. of this appendix.

[3] See footnote 1 to paragraph AP1.1.1. of this appendix.

AP1.2.4. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with Agencies outside of the Department of Defense, if required, is authorized.

AP1.2.5. Coordinate proposed denials of records with the appropriate Combatant Command's Office of the Staff Judge Advocate.

AP1.2.6. Answer any request for a record within 20 working days of receipt. The requesters shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

AP1.2.7. Provide to the Director, Freedom of Information and Security Review when the request for a record is denied in whole or in part, a copy of the response to the requester or the requester's representative, and any internal memoranda that provide background information or rationale for the denial.

AP1.2.8. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Director, Administration and Management and Washington Headquarters Services, Directorate for Freedom of Information and Security Review, Room 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155.

AP1.2.9. Upon request, submit to Director, Administration and Management and Washington Headquarters Services a copy of the records that were denied. The Director, Administration and Management and Washington Headquarters Services shall make such requests when adjudicating appeals.

AP1.3. *Fees for FOIA Requests*

The fees charged for requested records shall be in accordance with subpart F of this part.

AP1.4. *Communications*

Excellent communication capabilities currently exist between the Director, Freedom of Information and Security Review and the Freedom of Information Act Offices of the Combatant Commands. This communication capability shall be used for FOIA cases that are time sensitive.

AP1.5. *Information Requirements*

AP1.5.1. The Combatant Commands shall submit to the Director, Freedom of Information and Security Review, an annual report. The instructions for the report are outlined in subpart G of this part.

AP1.5.2. The annual reporting requirement contained in this part shall be submitted in duplicate to the Director, Freedom of Information and Security Review not later than each November 30. This reporting requirement has been assigned Report Control Symbol DD–DA&M(A) 1365 in accordance with DoD 8910.1–M.[4]

[4] See footnote 1 to paragraph AP1.1.1. of this appendix.

Appendix B to Part 286—Addressing FOIA Requests

AP2.1. *General*

AP2.1.1. The Department of Defense includes the Office of the Secretary of Defense, the Chairman of the Joint Chiefs of Staff, the Military Departments, the Combatant Commands, the Inspector General, the Defense Agencies, and the DoD Field Activities.

AP2.1.2. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

AP2.2. *Listing of DoD Component Addresses for FOIA Requests*

AP2.2.1. *Office of the Secretary of Defense and the Chairman of the Joint Chiefs of Staff.* Send all requests for records from the below listed offices to: Directorate for Freedom of Information and Security Review, Room 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155.

Executive Secretariat
Under Secretary of Defense (Policy)
  Assistant Secretary of Defense (International Security Affairs)
  Assistant Secretary of Defense (Special Operations & Low Intensity Conflict)
  Assistant Secretary of Defense (Strategy & Threat Reduction)
  Deputy to the Under Secretary of Defense (Policy Support)
  Director of Net Assessment
  Defense Security Assistance Agency
  Defense Technology Security Administration
Under Secretary of Defense (Acquisition & Technology)
  Deputy Under Secretary of Defense (Logistics)
  Deputy Under Secretary of Defense (Advanced Technology)
  Deputy Under Secretary of Defense (Acquisition Reform)
  Deputy Under Secretary of Defense (Environmental Security)
  Deputy Under Secretary of Defense (International & Commercial Programs)
  Deputy Under Secretary of Defense (Industrial Affairs & Installations)
  Assistant to the Secretary of Defense (Nuclear, Chemical & Biological Defense Programs)
  Director, Defense Research & Engineering
  Director, Small & Disadvantaged Business Utilization
  Director, Defense Procurement
  Director, Test Systems Engineering & Evaluation
  Director, Strategic & Tactical Systems
  DoD Radiation Experiments Command Center
  On-Site Inspection Agency
Under Secretary of Defense (Comptroller)
  Director, Program Analysis and Evaluation
Under Secretary of Defense (Personnel & Readiness)
Assistant Secretary of Defense (Health Affairs)
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)
Assistant Secretary of Defense (Command, Control, Communications & Intelligence)
Assistant Secretary of Defense (Reserve Affairs)
General Counsel, Department of Defense
Director, Operational Test and Evaluation
Assistant to the Secretary of Defense (Intelligence Oversight)
Director, Administration and Management
Special Assistant for Gulf War Illness
Defense Advanced Research Projects Agency
Ballistic Missile Defense Organization
Defense Systems Management College
National Defense University
Armed Forces Staff College
Department of Defense Dependents Schools
Uniformed Services University of the Health Sciences
Armed Forces Radiology Research Institute
Washington Headquarters Services

AP2.2.2. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR 518. Send requests to the Department of the Army, Freedom of Information and Privacy Acts Office, TAPC–PDR–PF, 7798 Cissna Road, Suite 205, Springfield, VA 22150–3166, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

AP2.2.3. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is a FOIA request. Send requests to Chief of Naval Operations, N09B30, 2000 Navy Pentagon, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Commandant of the Marine Corps, (ARAD), Headquarters U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775 for records of the U.S. Marine Corps, or it there is uncertainty as to which Navy or Marine activities may have the records.

AP2.2.4. *Department of the Air Force.* Air Force records may be requested from the commander of any Air Force installation, major command, or field operating agency (ATTN: FOIA Office). For Air Force records of Headquarters, United States Air Force, or it there is uncertainty as to which Air Force activity may have the records, send requests to Department of the Air Force, 11CS/SCSR(FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000.

AP2.2.5. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOIA requests to the Defense Contract Audit Agency, ATTN: CMR, 8725 John J. Kingman Road, Suite 2135, Fort Belvoir, VA 22060–6219, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

AP2.2.6. *Defense Information Systems Agency (DISA).* DISA records may be requested from any DISA field activity or from its Headquarters. Requesters should send FOIA requests to Defense Information Systems Agency, Regulatory/General Counsel, 701 South Courthouse Road, Arlington, VA 22204–2199.

AP2.2.7. *Defense Intelligence Agency (DIA).* FOIA requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: SVI–1, Washington, DC 20340–5100.

AP2.2.8. *Defense Security Service (DSS).* All FOIA requests for DSS records should be sent to the Defense Security Service, Office of FOIA and Privacy V0020, 1340 Braddock Place, Alexandria, VA 22314–1651.

AP2.2.9. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOIA requests to Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Ft. Belvoir, VA 22060–6221.

AP2.2.10. *National Imagery and Mapping Agency (NIMA).* FOIA requests for NIMA records may be sent to the National Imagery and Mapping Agency, General Counsels Office, GCM, mail Stop D–10, 4600 Sangamore Road, Bethesda, MD 20816–5003.

AP2.2.11. *Defense Special Weapons Agency (DSWA).* FOIA requests for DSWA records may be sent to the Defense Special Weapons Agency, Public Affairs Office, Room 113, 6801 Telegraph Road, Alexandria, VA 22310–3398.

AP2.2.12. *National Security Agency (NSA).* FOIA requests for NSA records may be sent to the National Security Agency/Central Security Service, FOIA/PA Services, N5P5, 9800 Savage Road, Suite 6248, Fort George G. Meade, MD 20755–6248.

AP2.2.13. *Inspector General of the Department of Defense (IG, DoD).* FOIA requests for IG, DoD records may be sent to the Inspector General of the Department of Defense, Chief FOIA/PA Office, 400 Army Navy Drive, Room 405, Arlington, VA 22202–2884.

AP2.2.14. *Defense Finance and Accounting Service (DFAS).* DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOIA requests to Defense Finance and Accounting Service, Directorate for External Services, Crystal Mall 3, Room 416, Arlington, VA 22240–5291, for records of its Headquarters, or if there is uncertainty as to which DFAS region may have the records sought.

AP2.2.15. *National Reconnaissance Office (NRO).* FOIA requests for NRO records may be sent to the National Reconnaissance Office, Information Access and Release Center, Attn: FOIA Officer, 14675 Lee Road, Chantilly, VA 20151–1715.

AP2.3. *Other Addresses.* Although the below organizations are OSD and Chairman of the Joint Chiefs of Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

AP2.3.1. *DoD TRICARE Management Activity.* Director, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

AP2.3.2. *Chairman, Armed Services Board of Contract Appeals (ASBCA).* Chairman, Armed Services Board of Contract Appeals, Skyline Six Rm 703, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

AP2.3.3. *U.S. Central Command.* Commander-in-Chief, U.S. Central Command, CCJ1 AGR, MacDill Air Force Base, FL 33608–7001.

AP2.3.4. *U.S. European Command.* Commander-in-Chief, Headquarters, U.S. European Command/ECJ1–AA(FOIA) Unit 30400 Box 1000, APO AE 09128–4209.

AP2.3.5. *U.S. Southern Command.* Commander-in-Chief, U.S. Southern Command, SCJ1–A, 3511 NW 91st Avenue, Miami, FL 33172–1217.

AP2.3.6. *U.S. Pacific Command.* Commander-in-Chief, U.S. Pacific Command, USPACOM FOIA Coordinator (J042), Administrative Support Division, Joint Secretariat, Box 28, Camp H. M. Smith, HI 96861–5025.

AP2.3.7. *U.S. Special Operations Command.* Commander-in-Chief, U.S. Special Operations Command, Chief, Command Information Management Branch, ATTN: SOJ6–SI, 7701 Tampa Point Blvd., MacDill Air Force Base, FL 33621–5323.

AP2.3.8. *U.S. Atlantic Command.* Commander-in-Chief, U.S. Atlantic Command, Code J02P, Norfolk, VA 23511–5100.

AP2.3.9. *U.S. Space Command.* Commander-in-Chief, U.S. Space Command, Command Records Manager/FOIA/PA Officer, 150 Vandenberg Street, Suite 1105, Peterson Air Force Base, CO 80914–5400.

AP2.3.10. *U.S. Transportation Command.* Commander-in-Chief, U.S. Transportation Command, ATTN: TCJ1–1F, 508 Scott Drive, Scott Air Force Base, IL 62225–5357.

AP2.3.11. *U.S. Strategic Command.* Commander-in-Chief, U.S. Strategic Command, Attn: J0734, 901 SAC Blvd., Suite 1E5, Offutt Air Force Base, NE 68113–6073.

AP2.4. *National Guard Bureau*

FOIA requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, ATTN: NGB–ADM, Room 2C363, 2500 Army Pentagon, Washington, DC 20310–2500.

AP2.5. *Miscellaneous*

If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Directorate for Freedom of Information and Security Review, Room 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155.

BILLING CODE 5000–04–M

Appendix C to Part 286—DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost"

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST *Please read instructions on back before completing form.*				REPORT CONTROL SYMBOL DA&M(A)1365
1. REQUEST NUMBER 98-F-8888	2. TYPE OF REQUEST *(X one)* X a. INITIAL ___ b. APPEAL		3. DATE COMPLETED *(YYYYMMDD)* 19980701	
4. CLERICAL HOURS *(E-9/GS-8 and below)*	TOTAL HOURS (1)		HOURLY RATE (2)	COST (3)
a. SEARCH	1.00			12.00
b. REVIEW/EXCISING	2.00	X	$12.00	24.00
c. CORRESPONDENCE AND FORMS PREPARATION	1.00			12.00
d. OTHER ACTIVITY	2.00			24.00
5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS-15)*	TOTAL HOURS (1)		HOURLY RATE (2)	COST (3)
a. SEARCH	2.00			50.00
b. REVIEW/EXCISING	1.00	X	$25.00	25.00
c. COORDINATION/APPROVAL/DENIAL	1.00			25.00
d. OTHER ACTIVITY	0.00			0.00
6. EXECUTIVE HOURS *(O-7 - GS-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)	COST (3)
a. SEARCH	0.00			0.00
b. REVIEW/EXCISING	0.00	X	$45.00	0.00
c. COORDINATION/APPROVAL/DENIAL	0.50			22.50
7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)	COST (3)
a. MACHINE HOURS	0.00		0.00	0.00
b. PROGRAMMER/OPERATOR TIME		X		
(1) Clerical	1.00		$12.00	12.00
(2) Professional	1.00		$25.00	25.00
8. OFFICE COPY REPRODUCTION	NUMBER (1)		RATE (2)	COST (3)
a. PAGES REPRODUCED	450	X	.15	67.50
9. MICROFICHE REPRODUCTION	NUMBER (1)		RATE (2)	COST (3)
a. MICROFICHE REPRODUCED	0	X	.25	0.00
10. PRINTED RECORDS	TOTAL PAGES (1)		RATE (2)	COST (3)
a. FORMS	0			0.00
b. PUBLICATIONS	156	X	.02	3.12
c. REPORTS	45			0.90
11. COMPUTER COPY	NUMBER (1)		ACTUAL COST (2)	COST (3)
a. TAPE	0	X	0.00	0.00
b. PRINTOUT	0		0.00	0.00
12. AUDIOVISUAL MATERIALS	NUMBER (1)		ACTUAL COST (2)	COST (3)
a. MATERIALS REPRODUCED	0	X	0.00	0.00

13. FOR FOI OFFICE USE ONLY

a. SEARCH FEES PAID	$99.00	f. TOTAL COLLECTABLE COSTS	$219.52
b. REVIEW FEES PAID	$49.00	g. TOTAL PROCESSING COSTS	$303.02
c. COPY FEES PAID	$71.52	h. TOTAL CHARGED	$219.52
d. TOTAL PAID	$219.52	i. FEES WAIVED/REDUCED *(X one)*	___ Yes X No
e. DATE PAID *(YYYYMMDD)*	19980801	*See Chapter 6, Fee Schedule, DoD 5400.7-R, to determine appropriate assessment of fees.*	

DD FORM 2086, AUG 1998 (EG) PREVIOUS EDITION MAY BE USED. Designed using Perform Pro, WHS/DIOR, Jul 98

SAMPLE

INSTRUCTIONS FOR COMPLETING DD FORM 2086

This form is used to record costs associated with the processing of a Freedom of Information request.

1. **REQUEST NUMBER** - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 97-001.

2. **TYPE OF REQUEST** - Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** - Enter year, month and day, i.e., 19970621.

4. **CLERICAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent in reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

5. **PROFESSIONAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

6. **EXECUTIVE HOURS** - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category.

7. **COMPUTER SEARCH** - When the amount of government-owned (not leased) computer processing machine time required to complete a search is known, and accurate cost information for operation on an hourly basis is available, enter the time used and the hourly rate. Then, calculate the total cost which is fully chargeable to the requester.

- Programmer and operator costs are calculated using the same method as in items 4 and 5. This cost is also fully chargeable to requesters as computer search time.

8. **OFFICE COPY REPRODUCTION** - Enter the number of pages reproduced.

- Multiply by the rate per copy and enter cost figures.

9. **MICROFICHE REPRODUCTION** - Enter the number of microfiche copies reproduced.

- Multiply by the rate per copy and enter cost figures.

10. **PRINTED RECORDS** - Enter total pages in each category. The categories are:

Forms *(include any type of printed forms)*

Publications *(include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(include any type of memorandum, staff action paper, etc.)*

- Multiply the total number of pages in each category by the rate per page and enter cost figures.

11. **COMPUTER COPY** - Enter the total number of tapes and/or printouts.

- Multiply by the actual cost per tape or printout and enter cost figures.

12. **AUDIOVISUAL MATERIALS** - Duplication cost is the actual cost of reproducing the material, including the wages of the person doing the work.

13. **FOR FOI OFFICE USE ONLY** -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 19971024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column and enter total in the total collectable cost block. Apply the appropriate waiver for the category of requester prior to inserting the final figure. Further discussion of chargeable fees is contained in Chapter VI of DoD Regulation 5400.7-R.

Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or the "No" block.

S A M P L E

DD FORM 2086 (BACK), AUG 1998

Appendix D to Part 286—DD Form 2086–1, "Record of Freedom of Information (FOI) Processing Cost for Technical Data"

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST FOR TECHNICAL DATA
Please read instructions on back before completing form.

REPORT CONTROL SYMBOL: DA&M(A)1365

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYYYMMDD)
98-F-9999	X a. INITIAL	b. APPEAL	19980701

	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
4. CLERICAL HOURS *(E-9/GS-8 and below)*					
a. SEARCH	2.00	X	$13.25	=	* 26.50
b. REVIEW/EXCISING	1.00	X	$13.25	=	* 13.25
c. CORRESPONDENCE AND FORMS PREPARATION	0.00	X	$13.25	=	0.00
d. OTHER ACTIVITY	0.00	X	$13.25	=	0.00
e. MINIMUM CHARGE	3.00	X	$ 8.30	=	24.90
5. PROFESSIONAL HOURS *(O-1 - O-6/GS-9 - GS/GM-15)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH	1.00	X	ACTUAL HOURLY RATE	=	* 25.00
b. REVIEW/EXCISING	1.50	X	ACTUAL HOURLY RATE	=	* 37.50
c. COORDINATION/APPROVAL/DENIAL	0.25	X	ACTUAL HOURLY RATE	=	6.25
d. OTHER ACTIVITY	0.00	X	ACTUAL HOURLY RATE	=	0.00
e. MINIMUM CHARGE	2.75	X	1/2 HOURLY RATE	=	34.38
6. EXECUTIVE HOURS *(O-7/GM-16/ES 1 and above)*	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. SEARCH	0.00	X	ACTUAL HOURLY RATE	=	* 0.00
b. REVIEW/EXCISING	0.00	X	ACTUAL HOURLY RATE	=	* 0.00
c. COORDINATION/APPROVAL/DENIAL	0.25	X	ACTUAL HOURLY RATE	=	25.00
d. MINIMUM CHARGE	0.25	X	1/2 HOURLY RATE	=	12.50
7. COMPUTER SEARCH	TOTAL HOURS (1)		HOURLY RATE (2)		COST (3)
a. MACHINE HOURS	0.00	X	0.00	=	* 0.00
b. PROGRAMMER/OPERATOR TIME					
- Clerical	1.00	X	$13.25 OR MINIMUM	=	* 13.25
- Professional	1.00	X	ACTUAL OR MINIMUM	=	* 25.00
8. REPRODUCTION	NUMBER (1)		RATE (2)		COST (3)
a. AERIAL PHOTOGRAPHS, SPECIFICATIONS, PERMITS, CHARTS, BLUEPRINTS, AND OTHER TECHNICAL DOCUMENTS	1	X	$ 2.50	=	* 2.50
b. ENGINEERING DATA *(Microfilm)*					
- Aperture cards					
– Silver duplicate negative, per card	0	X	.75	=	* 0.00
– When keypunched and verified, per card	0	X	.85	=	* 0.00
– Diazo duplicate negative, per card	1	X	.65	=	* 0.65
– When keypunched and verified, per card	0	X	.75	=	* 0.00
- 35 mm roll film, per frame	0	X	.50	=	* 0.00
- 16 mm roll film, per frame	0	X	.45	=	* 0.00
- Paper prints *(engineering drawings)*, each	0	X	1.50	=	* 0.00
- Paper reprints of microfilm indices, each	0	X	.10	=	* 0.00
c. AUDIOVISUAL MATERIALS *(insert actual cost in block (2))*	25	X	1.24	=	* 31.00
d. OTHER TECHNICAL DATA RECORDS Charges for any additional services not specifically provided above shall be made by components at the following rates:					
- Minimum charge for office copy *(up to six images)*	1	X	$ 3.50	=	* 3.50
- Each additional image	30	X	.10	=	* 3.00
- Each typewritten page	0	X	3.50	=	* 0.00
- Certification and validation with seal, each	0	X	5.20	=	* 0.00
- Hand-drawn plots and sketches, each hour or fraction thereof	0.00	X	12.00	=	* 0.00

** Chargeable to all requesters.*

9. FOR FOI OFFICE USE ONLY							
a. SEARCH FEES PAID	89.75	f. TOTAL COLLECTABLE	181.15				
b. REVIEW FEES PAID	50.75	g. TOTAL PROCESSING	212.40				
c. COPY FEES PAID	40.65	h. TOTAL CHARGED	181.15				
d. TOTAL PAID	181.15	i. FEES WAIVED/REDUCED *(X one)*		YES	X	NO	
e. DATE PAID *(YYYYMMDD)*	19980801						

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SAMPLE

VOL 63 ISS 227 NO 25 1998 UMI

INSTRUCTIONS FOR COMPLETING DD FORM 2086-1

This form is used to record costs associated with the processing of a Freedom of Information request 'or technical data.

1. **REQUEST NUMBER** - First two digits will express Calendar Year followed by dash (-) and Component's request number, i.e., 87-001.

2. **TYPE OF REQUEST** - Mark the appropriate block to indicate initial request or appeal of a denial.

3. **DATE COMPLETED** - Enter year, month and day, i.e., 19970621.

4. **CLERICAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search - Time spent in locating from the files the requested information.

Review/Excising - Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence and Forms Preparation - Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity - Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

5. **PROFESSIONAL HOURS** - For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity - See explanation above.

Coordination/Approval/Denial - Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

- Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Both search and review costs are chargeable to the requester.

6. **EXECUTIVE HOURS** - For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising - See explanation above.

Coordination/Approval/Denial - See explanation above.

- Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category. Review costs are chargeable to the requester.

7. **COMPUTER SEARCH** - When the amount of government-owned (not leased) computer processing machine time is known, and accurate cost information for operation on an hourly basis is available, enter the time used and the hourly rate. Then, calculate the total cost which is fully chargeable to the requester.

- Programmer and operator costs are calculated using the same method as in Items 4 and 5. This cost is also fully chargeable to requesters as computer search time.

8. **REPRODUCTION** - Enter the number of pages or items reproduced.

SAMPLE

- Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester. Reproduction cost for audiovisual material is the actual cost of reproducing the material, including the wage of the person doing the work.

9. **FOR FOI OFFICE USE ONLY** -

Search Fees Paid - Enter total search fees paid by the requester.

Review Fees Paid - Enter total review fees paid by the requester.

Copy Fees Paid - Enter the total of copy fees paid by the requester.

Total Paid - Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid - Enter year, month, and day, i.e., 19971024, the fee payment was received.

Total Collectable Costs - Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester. Further discussion of collectable costs is contained in Chapter VI, Section 3, DoD Regulation 5400.7-R.

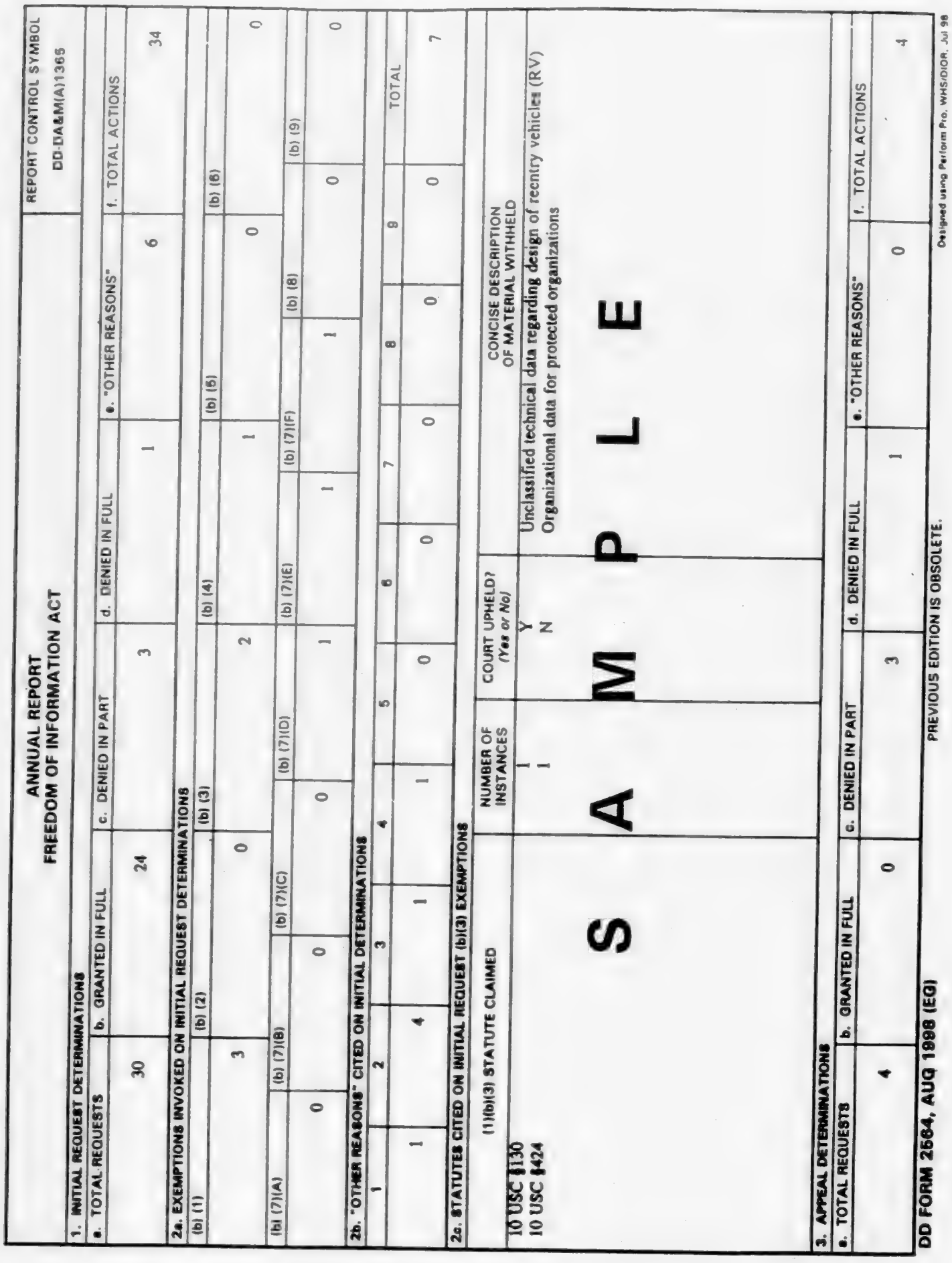
Total Processing Costs - Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged - Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced - Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "YES" block or an "X" in the "NO" block.

DD FORM 2086-1 (BACK), JUL 1997

Appendix E to Part 286—DD Form 2564, "Annual Report Freedom of Information Act"



ANNUAL REPORT
FREEDOM OF INFORMATION ACT

REPORT CONTROL SYMBOL
DD-DA&M(A)1365

1. INITIAL REQUEST DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS
30	24	3	1	6	34

2a. EXEMPTIONS INVOKED ON INITIAL REQUEST DETERMINATIONS

(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7)(A)	(b) (7)(B)	(b) (7)(C)	(b) (7)(D)	(b) (7)(E)	(b) (7)(F)	(b) (8)	(b) (9)	TOTAL
3	0	2	1	0	0	0	0	0	1	1	1	0	0	7

2b. "OTHER REASONS" CITED ON INITIAL DETERMINATIONS

1	2	3	4	5	6	7	8	9	TOTAL
1	4	1	1	0	0	0	0	0	7

2c. STATUTES CITED ON INITIAL REQUEST (b)(3) EXEMPTIONS

(1)(b)(3) STATUTE CLAIMED	NUMBER OF INSTANCES	COURT UPHELD? (Yes or No)	CONCISE DESCRIPTION OF MATERIAL WITHHELD
10 USC §130	1	Y	Unclassified technical data regarding design of reentry vehicles (RV)
10 USC §424	1	N	Organizational data for protected organizations

S A M P L E

3. APPEAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS
4	0	3	1	0	4

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4a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS

BILLING CO

BILLING CODE 5000-04-C

4a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS								
(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)			
4	0	1	0	0	0			
(b) (7)(A)	(b) (7)(B)	(b) (7)(C)	(b) (7)(D)	(b) (7)(E)	(b) (7)(F)	(b) (8)	(b) (9)	
0	0	0	0	0	0	0	0	

4b. "OTHER REASONS" CITED ON APPEAL DETERMINATIONS									
1	2	3	4	5	6	7	8	9	TOTAL
0	0	0	0	0	0	0	0	0	0

4c. STATUTES CITED ON APPEAL (b)(3) EXEMPTIONS			
(1)(b)(3) STATUTE CLAIMED	NUMBER OF INSTANCES	COURT UPHELD? *(Yes or No)*	CONCISE DESCRIPTION OF MATERIAL WITHHELD
10 USC §424	1	N	Organizational data for a protected organization.

5. NUMBER AND MEDIAN AGE OF INITIAL CASES PENDING	(1) AS OF BEGINNING REPORT PERIOD	(2) AS OF END REPORT PERIOD
a. TOTAL INITIAL REQUESTS PENDING *(open)*	15	12
b. MEDIAN AGE *(in days)* OF OPEN INITIAL REQUESTS	62	60

6. TOTAL NUMBER OF INITIAL REQUESTS RECEIVED DURING THE FISCAL YEAR	27

7. TYPES OF INITIAL REQUESTS PROCESSED AND MEDIAN AGE	TOTAL NUMBER OF CASES	MEDIAN AGE *(Days)*
a. SIMPLE	28	57
b. COMPLEX	1	348
c. EXPEDITED PROCESSING	1	13

8. TOTAL AMOUNT COLLECTED FROM THE PUBLIC	$ 2?

9. PROGRAM COST	
a. NUMBER OF FULL TIME STAFF	1
b. NUMBER OF PART TIME STAFF	1.6
c. ESTIMATED LITIGATION COST	$ 2,495
d. TOTAL PROGRAM COST	$ 121,345

10. AUTHENTICATION

a. SIGNATURE *(Approving Official)*

b. TYPED NAME *(Last, First, Middle Initial)*
A. G. CAMPBELL, Colonel, U. S. Army

c. DUTY TITLE
Asst Chief of Staff, J-1

d. AGENCY NAME
United States Antarctic Command (USARCCOM)
APO AS 00000-0001

e. TELEPHONE NUMBER *(Include Area Code)*
77-100-555-1212, DSN 314-999

S A M P L E

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Appendix F to Part 286—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/Chairman of the Joint Chiefs of Staff/Combatant Commands, Defense Agencies, and the DoD Field Activities
Department of the Army
Department of the Navy
Department of the Air Force
Defense Information Systems Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Security Service
Defense Logistics Agency
National Imagery and Mapping Agency
Defense Special Weapons Agency
National Security Agency
Office of the Inspector General, Department of Defense
Defense Finance and Accounting Service
National Reconnaissance Office

Dated: November 17, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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Part V

Department of Housing and Urban Development

Funding Availability (NOFA) for CDBG Small Cities Development Grants for Fiscal Year 1999; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4422–N–01]

Notice of Funding Availability for: the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program, Development Grants-Fiscal Year 1999; and the Section 108 Loan Guarantee Program for Small Communities in New York State

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA) for CDBG Small Cities Development Grants for Fiscal Year (FY) 1999.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of CDBG Small Cities economic development grants and guaranteed loans to fund eligible economic development activities related to the New York canal system. This NOFA is part of the Canal Corridor Initiative, a multiyear effort designed to revitalize the economic base of communities in upstate New York through economic development projects and job creation along the canal system and connecting waterways. HUD announced the first Canal Corridor Initiative grants in FY 1997 and awarded 51 Canal Corridor CDBG grants to communities for canal-related projects. This NOFA is the second round in that overall initiative.

Eligible economic development activities are expected to be funded through a combination of resources, including Community Development Block Grant (CDBG) funds made available through this NOFA under the HUD-administered Small Cities CDBG program and the Section 108 Loan Guarantee program. HUD expects to provide funds for the selected economic development projects through a combination of CDBG and Section 108 in an aggregate amount of approximately $3 million.

HUD expects that the typical project proposal would be a Section 108-eligible economic development project that builds on the unique locational opportunities afforded by the New York canal system and connecting waterways to foster commercial revitalization, business growth and expansion, and job creation that will result in the economic and physical revitalization of the project area. Such projects would utilize funds made available by the Section 108 Loan Guarantee program to provide the "up-front" financing, along with other public or private resources to the extent financially feasible. The loan guaranteed by section 108 would be expected to be repaid with a combination of the CDBG funds requested as part of this application, future CDBG appropriations, and the "cash flows", if any, generated by the assisted project. This NOFA makes available $1 million in FY 1999 funding through the HUD-administered Small Cities CDBG program for the first year of multiyear plans requested through applications. Multiyear plans approved will not propose an amount of grant funds totaling more than $4.63 million for all years.

HUD encourages applications from joint applicants in accordance with 24 CFR 570.422. The nature of riverfront revitalization is such that waterfront projects undertaken in tandem at different points along the waterfront creates a "regional synergy" that enhances the success of all projects in the region.

Combining Section 108 Loans with Multiyear Plans for CDBG Funding to Create a Financial Package. Under the Section 108 program and pursuant to 24 CFR 570.705(a)(2)(iii), a New York State nonentitled community/public entity eligible to receive HUD-administered CDBG Small Cities funds may borrow an aggregate amount of funds guaranteed under the Section 108 Loan Guarantee program that is five times the greater of:

(A) The most recent CDBG Small Cities grant approved for the applicant,

(B) The average of the most recent three CDBG Small Cities grants approved for the applicant (excluding any CDBG grant in the same fiscal year as the Section 108 Loan Guarantee commitment), or

(C) The average amount of CDBG Small Cities grants made to units of general local government in New York State in the previous fiscal year.

Note that the amount of Section 108 guaranteed funds that is available to a community for new projects may be determined by subtracting the recipient's total unpaid balance of debt obligations currently guaranteed under the Section 108 Loan Guarantee program from the amount authorized for the community as determined in (A) through (C) above.

In FY 1998, the average New York State CDBG Small Cities grant amount awarded was $421,699. This means that under the Section 108 program, a typical New York State nonentitled community or county may borrow, under (C) above, approximately $2.1 million (assuming that the community does not have any outstanding unpaid Section 108 Loan Guarantee balance). Given current Section 108 Loan Guarantee rates and a 20-year financing term, the average annual straight line principal and interest payment of a $2.1 million guaranteed Section 108 loan would be approximately $191,000 per year.

In addition to any other security arrangement that may be permitted or required pursuant to 24 CFR 570.705(b), and in order to reduce the risk to HUD and individual borrowers beginning in fiscal year 2000, HUD will establish a debt service reserve with CDBG Small Cities funds that will be used to make the first year's Section 108 debt obligation payments when they come due (ending in August of any year under the current system) for Canal Corridor projects approved under this NOFA. Early in the next fiscal year, HUD will replenish the debt service reserve for purposes of the next year's payments with another Small Cities grant under the noncompetitive authority of 24 CFR 570.432. HUD intends to, subject to the conditions stated in Sec. 570.432 including the availability of appropriations, continue to replenish the debt service reserve account each year for each grant made under this NOFA as long as any related Section 108 loan remains outstanding.

This NOFA sets out program guidelines that will govern the application, application review, and award process for the CDBG New York State Small Cities grants made available as part of the financial package for Canal Corridor Initiative projects.

DATES: Applications are due on or prior to February 3, 1999. Applications, if mailed, must be postmarked by the United States Postal Service no later than midnight on February 3, 1999. Overnight delivery items received within ten (10) days after February 3, 1999, will be deemed to have been received by that date, upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than February 3, 1999. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. on the deadline date.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received by 4:00 p.m. on, or postmarked by February 3, 1999. Applicants should take this policy into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by

unanticipated delays or other delivery-related problems.

ADDRESSES: Completed applications will be accepted at the following addresses:

1. For the nonentitled CDBG jurisdictions in and county of Ulster and nonparticipating jurisdictions in the urban county of Dutchess: Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068. Telephone (212) 264–0771; and

2. For the nonentitled CDBG jurisdictions in and counties of Albany, Cayuga, Clinton, Columbia, Erie, Essex, Fulton, Greene, Herkimer, Jefferson, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schuyler, Seneca, Tompkins, Warren, Washington, Wayne and Yates: Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203–1780. Telephone (716) 551–5742.

FOR FURTHER INFORMATION CONTACT: Robert Duncan, Deputy Director, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW, Washington, DC 20410, Telephone (202) 708–3587; or Mr. Michael Merrill, Director, Community Planning and Development Division, Department of Housing and Urban Development, 415 Main Street, Buffalo, NY 14203–1780, Telephone (716) 551–5755. (This is not a toll-free number)

Persons with hearing or speech impairments may access these numbers via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Purpose and Substantive Description

A. Authorities and Background

1. Authority

Title I, Housing and Community Development Act of 1974 (the HCD Act) (42 U.S.C. 5301–5320); 24 CFR part 570, subpart F.

2. Background

Title I of the Housing and Community Development Act of 1974 authorizes the Community Development Block Grant (CDBG) program. Section 106 of Title I permits the States to elect to assume the administrative responsibility for the CDBG program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG program for nonentitled areas within any State that does not elect to assume the administrative responsibility for the program. Subpart F of 24 CFR part 570 sets out the requirements for HUD's administration of the CDBG program in nonentitled areas (Small Cities program). The State of New York has not elected to implement the CDBG Small Cities program.

With respect to this NOFA, subpart F, at 24 CFR 570.421(a)(5), "Economic development grants," provides that in the event that a nonentitlement New York State Small Cities applicant needs a CDBG Small Cities grant, in addition to a Section 108 Loan Guarantee, to make its economic development project viable, HUD may fund such applications, as they are determined to be fundable in a specific amount up to the sum set aside for economic development projects in this Notice of Funding Availability. This NOFA proposes to maximize the utilization of Section 108 guaranteed loans in conjunction with multiyear plans for use of CDBG funds to undertake eligible development projects. As a result of this approach, the funds announced in this NOFA provide eligible small communities and counties in New York State with a unique opportunity to propose programs that focus on canal-related economic development projects to expand economic and job opportunities and act as a catalyst to spur community and neighborhood economic revitalization. HUD encourages eligible communities to propose programs that are creative and innovative in addressing their economic development needs. Although the focus of 24 CFR 570.421(a)(5) is broadly described as economic development, as a technical matter any activity eligible for Section 108 Loan Guarantee assistance under 24 CFR 570.703 is eligible under this NOFA (except as stated in section I.C.3.a. of this NOFA, below) to carry out the applicant's economic development project. As emphasized in the selection factors (see section II.C. of this NOFA), however, the overall purpose of the eligible activity, or group of eligible activities, proposed for funding in response to this NOFA is job creation and the economic development of the area served by the proposed project.

Because of the integral relationship of CDBG grant funds and the Section 108 Loan Guarantees, the scale of economic development projects solicited, and the expectation of a long-term stream of CDBG funds (subject to future appropriations) to make such projects economically feasible, this NOFA solicits applications for multiyear plans. If an applicant's multiyear plan is selected on a competitive basis, the first year will be funded, and HUD may fund future years for purposes of paying the Section 108 Loan Guarantee debt obligation due that year on a noncompetitive basis subject to acceptable performance, submission of an acceptable application and certifications, and the provision of adequate appropriations for the CDBG New York nonentitlement Small Cities program. Note that a community whose Canal Corridor grant and multiyear plan is approved will be required and must agree to submit an application for CDBG Small Cities funds to HUD each year of the multiyear plan in order to pay any amount of the Section 108 debt service obligation that would not otherwise be paid from the cash flow of the assisted project. This is necessary in order to ensure the timely payment of the Section 108 debt obligation and avoid a default of the 108 guaranteed loan.

3. Other Program Requirements

a. Abbreviated Consolidated Plan. Each jurisdiction that applies for funds under this NOFA must have submitted a consolidated plan, as provided at 24 CFR part 91. A jurisdiction that does not expect to be a participating jurisdiction in the HOME program under 24 CFR part 92, may submit (or may have submitted) an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD. (See 24 CFR 91.235.) If an applicant has an abbreviated consolidated plan previously approved by HUD, the applicant may update it, if necessary, if the CDBG development activities proposed in the application contain any new non-housing community development activity. Note that applicants that are also submitting applications for the New York CDBG Small Cities competition (see the NOFA for that program published elsewhere in this issue of the **Federal Register**) may meet the consolidated plan submission for both competitions with one consolidated plan submission as long as the consolidated plan submission covers the activities proposed in both applications.

Applicants are not authorized to undertake a housing activity with funds under this NOFA. An applicant seeking funds under this NOFA to address non-housing community development needs should prepare an abbreviated consolidated plan that describes the jurisdiction's priority non-housing community development needs eligible for assistance under the CDBG program by eligibility category, reflecting the

needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity (see 24 CFR 91.235(c)(2)). The abbreviated consolidated plan is subject to the same citizen participation requirements as is the jurisdiction's Small Cities CDBG application. Both must meet the citizen participation requirements before they may be submitted to HUD. (See 24 CFR 570.431) A Section 108 Loan Guarantee application would also have to meet these requirements if the jurisdiction submits one to HUD for consideration.

If possible, applicants should endeavor to submit the abbreviated consolidated plan in advance of the Small Cities Canal Corridor application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities program in New York will be the application due date for the Small Cities Canal Corridor application. Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency. Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

Any application that is fundable, but does not have an approved consolidated plan, will receive a conditional approval subject to HUD's approval of the abbreviated consolidated plan. If HUD is unable to approve the abbreviated consolidated plan within a reasonable period of time, but not less than 60 days from the date that the conditional approval is announced, HUD reserves the right to rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

b. Section 3. Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations in 24 CFR part 135. One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low- and very low-income persons. Public entities awarded funds under this NOFA that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in the regulations.

c. CDBG Program Requirements. The provisions of 24 CFR part 570, subpart F, as applicable, shall apply to CDBG grants made under this NOFA.

4. Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) (Pub. L. 101–235; approved December 15, 1989). The final rule is codified at 24 CFR part 4. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 16, 1992 (57 FR 1942), HUD published a final rule implementing section 102. Although the rule has been amended and now appears in part 4, the January 16, 1992 notice provided the public (including applicants for, and recipients of, HUD assistance) with further information on the implementation of section 102. The documentation, public access, and applicant and recipient disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

a. HUD Responsibilities. (1) Documentation and Public Access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

b. Units of General Local Government Responsibilities. Units of general local government awarded assistance under this NOFA are subject to the provisions of either paragraph b.(1), or paragraph b.(2) and b.(3), below. For units of local government awarded assistance under this NOFA which in turn make the assistance available on a NONCOMPETITIVE BASIS for a specific project or activity to a subrecipient, or a "Community Based Development Organization" (CBDO) as defined in 24 CFR 570.204, paragraph b. (1) applies. For units of local government awarded assistance under this NOFA, which in turn make the assistance available on a COMPETITIVE BASIS for a specific project or activity to a subrecipient, or a CBDO, paragraphs b. (2) and (3) apply.

(1) *Disclosures.* The units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for three years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form.

(2) *Documentation and Public Access.* The recipient unit of general local government must ensure that documentation and other information regarding each application submitted to the recipient by a subrecipient or CBDO applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subrecipients or CBDO's that receive the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs.

(3) *Disclosures.* Units of general local government receiving assistance under this NOFA must make all applicant disclosure reports available to the public for five years. Required update reports must be made available along with the applicant disclosure reports, but in no case for a period less than three years. Each unit of general local government may use HUD Form 2880 to collect the disclosures, or may develop its own form.

B. Allocation of Grant Amounts and Section 108 Loan Guarantee Commitments

1. Total Available Funding

The nonentitlement CDBG funds for New York State for FY 1999 total approximately $54,558,000. Of that amount, this NOFA sets aside $1 million for eligible economic development grants for projects that create jobs, principally for low and moderate income persons, and increase economic opportunities related to the New York State Canal System or connecting waterways (see section I.C.1. of this NOFA, below, regarding eligible applicants).

2. Maximum Grant Amounts

The maximum CDBG grant amount that will be awarded from FY 1999 funds for an eligible economic development project pursuant to this NOFA is $300,000, though the average grants may be less. For a multiyear plan, HUD expects that no more than $1 million will be made available in funds under this NOFA and approximately $191,000 per year in future years' CDBG funds (subject to appropriations) to pay the Section 108-guaranteed debt obligation per grantee over the life of the plan. Thus in the aggregate for all plans, HUD expects that no more than $38 million will be required (subject to appropriations) for Section 108 loan payments over a projected 20 year life of all multiyear plans approved, limiting the set-asides of CDBG funds for multiyear plans to an average of $1.91 million per year over a 20-year period.

Note that the maximum grant amounts discussed in this paragraph are solely for grants made under this NOFA. The maximum grant amounts authorized under the regular New York CDBG nonentitlement competition are $400,000 for cities, towns and villages and $600,000 for counties. A community may apply for a grant under both competitions and may be awarded grants up to the maximum amounts authorized under both competitions.

3. Availability of Section 108 Loan Guarantees

HUD could make up to $21 million in Section 108 Loan Guarantee commitments, or higher, if all applicants proposed projects that utilized the maximum amount of Section 108 loan guarantee authority available to them.

4. Multiyear Requests and Repayment of Section 108 Loans With CDBG Funds

a. General. Pursuant to 24 CFR 570.432, HUD expects to approve multiyear plans of up to twenty (20) years, for use of CDBG funds for the sole purpose of paying any amounts due on debt obligations issued by such unit of general local government (or its designated public agency) and guaranteed by the Secretary pursuant to section 108 of the Housing and Community Development Act of 1974, as amended.

b. Submission of multiyear request and plan. Each application for a CDBG economic development grant under this NOFA should include a multiyear plan for CDBG funds, the use of which will be limited to paying projected amounts due on Section 108-guaranteed debt obligations over the projected term of the loan.

The multiyear plans will be rated competitively against each other based on the selection criteria in section II.C. of this NOFA. Each applicant's multiyear plan must discuss:

- the total amount of the Section 108 Loan Guarantee commitment that will be requested,
- the term of the Section 108 guaranteed loan and
- a repayment schedule for the Section 108 guaranteed loan that clearly identifies the amount and source of the projected funds, including the CDBG funds proposed to be used to repay the Section 108 guaranteed loan over the course of the multiyear plan.

The multiyear period may not exceed 20 years.

HUD intends to fund succeeding years of the plan on a noncompetitive basis, subject to acceptable performance, submission of an acceptable application and certifications, and the provision of adequate appropriations for the HUD-administered Small Cities program. HUD reserves the right to lower the amount of funds for succeeding years if respective recipients are not in compliance with performance requirements and applicable regulations. The application must list for each year of the multiyear period the projected amount of CDBG funds requested for each year. The amount of CDBG funds requested for each year need not be the same amount; however, the amount requested for each year should relate to the anticipated amounts appropriate to meet the CDBG portion of the debt obligation, principal and interest, on the Section 108 guaranteed loan, consistent with section I.B.2. of this NOFA, above. For subsequent years of the multiyear period and pursuant to 24 CFR 570.432, HUD will adjust the actual CDBG grant amount awarded to such amounts required for the sole purpose of paying any principal and interest amounts due on the loan guaranteed by Section 108 as provided under the Section 108 note contract, or in the event of a default any amounts due under the guarantee.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State (excluding metropolitan cities, urban counties, units of government that are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city, and Indian tribes eligible for assistance under section 106 of the HCD Act) that are proposing development activities related to the New York State Canal System or connecting waterways, including, but not limited to the Hudson River, Cayuga Lake, Seneca Lake, Lake Champlain, Lake George, Lake Erie, and Lake Ontario. Eligible applicants are further limited to the nonentitled CDBG jurisdictions in and counties of Albany, Cayuga, Clinton, Columbia, Erie, Essex, Fulton, Greene, Herkimer, Jefferson, Madison, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Rensselaer, Saint Lawrence, Saratoga, Schenectady, Schuyler, Seneca, Tompkins, Ulster, Warren, Washington, Wayne, and Yates, and the nonparticipating jurisdictions in the urban counties of Dutchess and Monroe.

2. Joint Applicants

There may be several instances in which several communities have common economic development opportunities that are more feasible if an eligible development project were carried out jointly rather than on an individual basis. In such cases, HUD encourages these communities to develop regional solutions to regional problems and propose a joint application from all affected communities. This NOFA authorizes eligible units of general local government under section I.C.1. of this NOFA, above, to submit a joint application to carry out an eligible economic development project that addresses common problems faced by all of the jurisdictions. A joint application must be pursuant to a written cooperation agreement submitted with the application. The cooperation agreement must authorize one of the participating units of government to act as the lead applicant that will submit the application to HUD, and must delineate the responsibilities of each participating unit of government with respect to the Small Cities

program. (See 24 CFR 570.422 for requirements regarding joint applications.) Except as otherwise noted, a joint application must meet all of the requirements of this NOFA as an application from a single unit of general local government. Applications under this NOFA may be submitted individually or jointly, subject to 24 CFR 570.422. However, Section 108 Loan Guarantee applications must be submitted individually and in accordance with 24 CFR 570.704 by each unit of general local government that will receive a guarantee and issue guaranteed obligations.

3. Activities Eligible for CDBG Small Cities Grants Under This NOFA

Eligible activities are economic development activities related to the New York State Canal System or connecting waterways, including, but not limited to the Hudson River, Cayuga Lake, Seneca Lake, Lake Champlain, Lake George, Lake Erie and Lake Ontario. Economic development activities must also meet the criteria below:

a. Eligible economic development projects and activities to be financed with FY 1999 CDBG funds include the following:

(1) The activities listed under the Section 108 Loan Guarantee program at 24 CFR 570.703, except subparagraphs (j) Construction of housing by non-profit organizations, and (m) regarding activities by "colonias;" and

(2) Capitalization of a Section 108 debt service reserve/loan loss reserve as part of the financing of activities that are otherwise eligible under this NOFA. A debt service reserve created from Small Cities grant funds should not, however, exceed one year's Section 108 projected debt obligation needs.

b. Eligible activities to be funded during FY 2000 and later years with CDBG Small Cities funds under multiyear plans proposed pursuant to this NOFA are limited to the repayment of any amounts due on debt obligations issued by a units of general local government and guaranteed by the Secretary pursuant to section 108 of the HCD Act. This includes planned repayments from CDBG funds, as well as amounts due in the event of default, as applicable.

4. National Objectives and Primary Objective

Each activity to be funded with CDBG funds or funds guaranteed by the Section 108 Loan Guarantee program under this Canal Corridor Initiative competition only must meet the national objective of principally benefitting low and moderate income persons through the creation of jobs, 51% of which will be made available to or held by low and moderate income persons. See 24 CFR 570.208(a)(4). Pursuant to 24 CFR 570.420(e)(2), not less than 70 percent of the total of grant funds from a grant made under this NOFA and Section 108 Loan Guarantee funds received within a fiscal year must be expended for activities that benefit low- and moderate-income persons under the criteria of Sec. 570.208(a) or Sec. 570.208(d) (5) or (6).

5. Anti-Pirating Prohibition

Section 588 of the Quality Housing and Work Responsibility Act of 1998, P.L. 105–276, amended section 105(h) of the Housing and Community Development Act of 1974 as follows:

"(h) PROHIBITION ON USE OF ASSISTANCE FOR EMPLOYMENT RELOCATION ACTIVITIES. Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, then the application shall include from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs."

Accordingly, HUD will not award any grant for any project that would violate this prohibition.

6. Limitations on the Ratio of CDBG Grant Funds to Section 108 Loan Guarantee Funds

HUD reserves the right, within the maximum grant limit of $300,000 provided in section I.B.2. of this NOFA, above, to determine a minimum or a maximum amount of any CDBG grant award under this NOFA with the difference from the amount requested, if any, to be made up (to the maximum extent feasible to fund the eligible economic development project) with loan funds guaranteed by Section 108. HUD also reserves the right to determine the amount and number of years of the multiyear plan, or Section 108 Loan Guarantee award per applicant, application, or project and to modify requests accordingly.

In the case of an applicant that has received a prior CDBG grant award for an activity proposed in this application, HUD reserves the right to consider the amount of the previous CDBG award and the grant amount requested in response to this NOFA, and to adjust the amount of a CDBG award under this NOFA, including, if appropriate, not making an award.

In the event the applicant is awarded a CDBG grant that has been reduced below the original request, the applicant will be required to modify its project plans and application to conform to the terms of HUD approval before execution of a grant agreement and/or a Section 108 Loan Guarantee commitment. HUD reserves the right to reduce or de-obligate the CDBG grant award if an approvable Section 108 Loan Guarantee application is not submitted by the grantee in the required amounts on a timely basis (see section II.B.1.b. After approval of the CDBG grant, any program amendments must meet the provisions of 24 CFR 570.427.

7. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program, according to 24 CFR 570.604. Under part 58, grantees assume all of the responsibilities for environmental review, decision making, and action pursuant to the National Environmental Policy Act of 1969 and the other provisions of law specified by the Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

II. The Application Process

Eligible applicants seeking CDBG assistance must apply in accordance with this NOFA. The CDBG application shall be accompanied by a request for Section 108 Loan Guarantee commitments, as further described in section II.B. of this NOFA, below. Application requirements for the Section 108 program are found in Sec. 570.704.

A. Timing of submission

Applications for CDBG assistance must be submitted for receipt in the manner described under "Dates" and "Addresses," above.

B. Submission Requirements

1. The CDBG application (an original plus two copies) shall be accompanied by a request for loan guarantee assistance under Section 108. If more than one jurisdiction applies jointly, each entity that will receive a guarantee and issue guaranteed obligations must submit a separate request. Each request for Section 108 Loan Guarantee can be either one or more of the following:

a. A formal application for Section 108 Loan Guarantee(s), including the documents listed at 24 CFR 570.704(b);

b. A brief description of a Section 108 Loan Guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of CDBG selection (CDBG

awards will be conditioned on approval of actual Section 108 loan commitments). This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance;

c. A request for a Section 108 Loan Guarantee amendment (analogous to subparagraph a. or b. above) that proposes to increase the amount of a previously approved application.

d. Applicants should note that an application for a Section 108 Loan Guarantee commitment requires that the applicant certify that it has made efforts to obtain financing without the use of the Section 108 Loan Guarantee and that it cannot complete such financing consistent with the timely execution of the program plans without the Section 108 Loan Guarantee.

2. In addition, an application for CDBG grant funds shall include the following:

a. A completed Standard Form 424, Application for Federal Assistance.

b. A signed copy of certifications required under the CDBG program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying pursuant to section 319 of the Department of Interior Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF–LLL). The applicant may use the lobbying certification published with this NOFA.

c. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under 24 CFR 4.9 through 4.13. The applicant may use the form published with this NOFA.

d. Abbreviated consolidated plan, if applicable;

e. A narrative statement, in accordance with section I.A.3.a. of this NOFA, consisting of the following:

(1) A description of the eligible activities that will be carried out with the CDBG grant funds and Section 108 Loan Guarantee funds and how these activities will meet the national objective of principally benefitting low and moderate income persons by creating jobs, 51% of which will be made available to or held by low and moderate income persons. The narrative statement should explain how the use of CDBG grant funds together with Section 108 Loan Guarantee funds will meet the selection criteria in section II.C. of this NOFA, below;

(2) A description of the multiyear plan for CDBG funds, the use of which will be limited to paying projected amounts due on Section 108 guaranteed loan debt obligations (principal and interest) over the projected term of the loan that is guaranteed by the Section 108 Loan Guarantee. Each applicant's multiyear plan must discuss the total amount of the Section 108 Loan Guarantee commitments that will be requested, the term of the Section 108 guaranteed loans, a repayment schedule for the Section 108 guaranteed loans that clearly identifies the amount and source of the projected funds, including the CDBG funds proposed to be used to repay the Section 108 guaranteed loans over the course of the multiyear plan. The multiyear period may not exceed 20 years. The description must list, for each year of the multiyear period, the projected amount of CDBG funds that will be needed each year to meet the Section 108 debt obligation. The amount of CDBG funds requested for each year need not be the same amount; however, the amount requested for each year should relate to the anticipated amounts appropriate to meet the CDBG portion of the payment on the Section 108 guaranteed loans, consistent with the maximum grant amounts specified in section I.B.2. of this NOFA; and

(3) The description of the activities to be carried out with the CDBG grant and Section 108 Loan Guarantee funds should also describe how they will create visible change and are part of a larger comprehensive revitalization effort, and how they meet the selection criteria, including performance measures and benchmarks for these activities; identify and describe the project service area; and, as an aid to reviewing the multiyear plan, include a draft business plan with financial projections for not less than a 5-year period.

In addition to the above, HUD encourages applicants to submit maps and related information generated by the community's consolidated plan computer software with their applications, and depictions of proposed projects.

d. The narrative statement and the response to all of the selection criteria in section II.D. of this NOFA, below, should preferably not exceed thirty (30) 8.5″ by 11″ typewritten pages.

C. Selection Criteria

All applications will be considered for selection based on the following criteria. As described in section II.B.2.d. of this NOFA, above, each applicant's response to the narrative statement and all of the selection criteria should preferably not exceed thirty (30) 8.5″ by 11″ typewritten pages. Each application will receive only one score.

A maximum of 184 points is possible under this NOFA, with the maximum points for each factor being:

Need-absolute number of persons in poverty	22
Need-percent of persons in poverty	22
Program Impact	125
Outstanding performance-FHEO	15
Total	184

Each of the four factors is outlined below. All points for each factor are rounded to the nearest whole number.

1. Need-Absolute Number of Persons in Poverty (Up to 22 Points)

HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Applicants which are county governments are rated separately from all other applicants. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant, and multiplying by 22.

2. Need-Percent of Persons in Poverty (Up to 22 Points)

HUD uses 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Applicants in each group are compared in terms of the percentage of their population below the poverty level. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant, and multiplying by 22.

3. Program Impact (Up to 125 Points)

Within this selection factor, points will be awarded as follows:

a. *Quality of the Plan* (up to 65 points).

In reviewing the applicant's response to this criterion, HUD will consider the following:

(1) *Economic and commercial revitalization.* The extent to which the proposed canal-related economic development project will contribute to the physical and economic revitalization of a waterfront district, and the impact of the project in strengthening the economic health of the entire community.

(2) *Regional impact.* The extent to which the proposed canal-related economic development project relates to other waterfront development projects in the region to create a regional synergy which contributes to regional economic

growth, including job creation, increased business activity and tourism.

(3) *Job creation.* The extent to which the proposed canal-related economic development project assisted by the requested CDBG grant, Section 108 Loan Guarantees, and the multiyear CDBG program will create jobs, principally for low- and moderate-income persons.

(4) *Innovation and creativity.* The extent to which the applicant incorporated innovation and/or creativity in the design and proposed implementation of the activities to be carried out with Section 108/CDBG funds.

(5) *Feasibility of the economic development proposal.* HUD will consider the feasibility and quality of the applicant's canal-related economic development proposal for the use of CDBG funds and Section 108 guaranteed loans to address the applicant's economic and community development needs, and the extent to which the canal-related economic development proposal is logically, feasibly, and substantially likely to achieve its stated purpose. In evaluating feasibility, HUD will also consider the extent to which the proposal includes public/private partnerships, i.e. the involvement of groups such as nonprofit organizations, developers, financial institutions, and others integral to the implementation of the project.

(6) Impact of the project in utilizing the canal or related waterways to economically and physically revitalize the area.

b. *Extent of Need for CDBG Assistance to Financially Support the Section 108 Loans and the Project* (up to 20 points).

HUD will use the following information to evaluate this criterion. In utilizing this information, HUD will consider the extent to which the applicant's response demonstrates the financial need for the CDBG grant to support financially the loans guaranteed by the Section 108 Loan Guarantee commitments. Note that if the applicant proposes a generic loan fund to assist a certain category of project or business, the applicant should demonstrate the impact of the use of the CDBG funds to assist the project and the relationship of those funds to the use of Section 108 loans. Relevant information may include:

(1) Project costs and financial requirements;

(2) The amount of any debt service or operating reserve accounts to be established in connection with the economic development project;

(3) The reasonableness of the costs of any credit enhancement paid with CDBG grant funds;

(4) The amount of program income (if any) to be received each year during the repayment period for the guaranteed loans;

(5) Interest rates on those loans to third parties (other than subrecipients) (either as an absolute rate or as a plus/minus spread to the Section 108 rate);

(6) Underwriting guidelines used (or expected to be used) in determining project feasibility;

(7) The amount of anticipated "cash flow" the project is projected to generate that will be available to make debt service payments on the Section 108 guaranteed loans; and

(8) Other relevant information.

c. *The Extent to Which the Proposal, Compared to Other Canal-Related Economic Development Proposals Submitted Pursuant to this NOFA, Leverages Other Non-Federal Public and Private Resources, in Addition to Loan Funds Guaranteed Under the Section 108 Loan Guarantee Program* (up to 20 points).

Leveraged funds include State and local public funding and private financing.

d. *The Capacity or Potential Capacity of the CDBG applicant and the Section 108 Public Entities to Carry Out the Plan Successfully* (up to 20 points).

This may include factors such as the applicant's performance in the administration of its CDBG, HOME, or other programs; its previous experience, if any, in administering a Section 108 Loan Guarantee or CDBG grant; its performance and capacity in carrying out economic development projects; its ability to conduct prudent underwriting; its capacity to manage and service loans made with the guaranteed loan funds or CDBG grant funds; and its capacity to carry out its projects and programs in a timely manner. The applicant should also describe any recent experience it has had in carrying out programs similar to the one proposed in the application.

The capacity of subrecipients, nonprofit organizations, and other entities that have a role in implementing the proposed program will be included in this review. HUD may rely on information from performance reports, financial status information, monitoring reports, audit reports and other information available to HUD in making its determination under this criterion.

4. Fair Housing and Equal Opportunity Evaluation (Up to 15 Points)

Documentation for the 15 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract (CT) or block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, applicants must state so on the map. Only population data from the 1990 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. For the purposes of this section, the term "minority" does not include women as a separate category.

Counties claiming points under this criterion must use county-wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead entity only.

The following will be used to judge outstanding performance in these areas. Please note that points for outstanding performance may be claimed under each criterion:

a. *Housing Achievements* (up to 12 points total).

(1) *Provision of Assisted Housing* (up to 6 points).

Providing assisted housing for low- and moderate-income families, located in a manner which provides housing choice in areas outside of minority or low- and moderate-income concentrations.

Points will be awarded if both of the following criteria are met:

(a) More than one-third of the housing assistance provided by the applicant in the last five (5) years (excluding Section 8 existing and housing assistance provided in place) has been in census tracts (CT) or block numbering areas (BNA) having a percentage of minority population which is less than the minority population in the community as a whole; and

(b) With regard to the Section 8 Existing Housing program, a community must show the location (CT or BNA) of its currently occupied family units by race/ethnicity. Points will be awarded if more than one-half of the minority assisted families occupy units in areas which have a lower percentage of minority population than that of the community as a whole.

A community with no minorities must show the extent to which its assisted housing is located outside areas of concentrations of low- and moderate-income persons. In order to receive points under this criteria, applicants should follow the process outlined in (a)

and (b) above, substituting low- and moderate-income persons and families for minority persons or families. Applicants addressing the first criterion must use a map indicating the location of all assisted housing and a narrative indicating the number of units and the type of assisted housing. The map also must show the general location of low- and moderate-income households and minority households, giving the numbers and percentages for both.

To qualify as housing assistance provided, the units being claimed must be part of a project located outside minority or lower income concentrated areas which has, at a minimum, received a firm commitment from the funding agency.

(c) Points also may be awarded for efforts which enable low- and moderate-income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of (a) and (b) in order to receive points. Points will be awarded if more than one-half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

—The neighborhood experienced revitalization;
—The amount of displacement was substantial;
—Displacement was caused by private reinvestment;
—Low- and moderate-income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded if there is a balanced distribution of assisted housing throughout the community.

(2) *Implementation of a Fair Housing Action Plan* (up to 6 points).

The applicant must describe how it has implemented a Fair Housing Action Plan of its own or participated in a regional or countywide Fair Housing Action Plan. For the purposes of this NOFA, a Fair Housing Action Plan is a document that delineates specific actions to address fair housing problems in the area covered by the applicant. The plan should list Fair Housing actions, set priorities and time period for completion and include measures against which performance shall be evaluated, identify resources from local, State, and private agencies and organizations that have agreed to finance or support fair housing actions, and define the responsibilities of each group or organization. If the applicant is implementing a Fair Housing Plan, the application must include the plan being implemented, the actions taken to implement the plan, and the actions taken to address the fair housing problems. The applicant should provide written documentation of commitments from all involved parties.

b. *Equal Opportunity Employment* (up to 3 points).

Under this factor, the applicant must document that its percentage of minority permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

c. *Entrepreneurial Efforts and Local Equal Employment*. HUD encourages the use of minority contracting, although it will not be used as an evaluation factor in this NOFA.

D. Selection Process

All applications will be ranked in order of points assigned, with the applications receiving more points ranking above those receiving fewer points. Applications will be funded in rank order.

As discussed in section I.C.5. of this NOFA, above, HUD reserves the right to determine a minimum and a maximum amount of any CDBG award or Section 108 commitment per applicant, application, or project, the amount or number of years for which multiyear CDBG funding is proposed, and to modify requests accordingly. In addition, if HUD determines that an application rated, ranked, and fundable could be funded at a lesser CDBG grant amount than requested, consistent with feasibility of the funded project or activities and the purposes of the Act, HUD reserves the right to reduce the amount of the CDBG award and/or increase or decrease the Section 108 Loan Guarantee commitments, if necessary, in accordance with such determination.

HUD may decide not to award the full amount of CDBG grant funds available under this NOFA, and may make any remaining amounts available under a future NOFA.

To review and rate applications, HUD will establish a panel consisting predominantly of HUD employees assigned to the New York Field Offices. HUD may also include other HUD staff and persons not currently employed by HUD to obtain certain expertise and outside points of view, including views from other Federal agencies.

E. Timing of Grant Awards

To the extent full Section 108 applications are submitted concurrently with the CDBG grant application, HUD's approval of the related Section 108 Loan Guarantee commitments will in most cases be granted contemporaneously with CDBG grant approval. However, the CDBG grant may be awarded prior to HUD approval of the Section 108 commitments if HUD determines that such award will further the purposes of the Act. CDBG funds shall not be disbursed to the public entity before the issuance of the related Section 108 guaranteed obligations.

F. Program Administration

In order to be consistent with the local nature of the program, funds awarded under this NOFA will be administered by the New York State CPD Office.

G. Funding Award Process

In accordance with section 102 of the HUD Reform Act and HUD's regulation at 24 CFR part 4, HUD will notify the public, by notice published in the **Federal Register**, of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 4, HUD also will ensure that documentation and other information regarding each application submitted under this Notice of Funding Availability is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with the Reform Act and the regulations, HUD will make this material available for public inspection for a period of five years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Technical Assistance

Prior to the application deadline, the New York Offices will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations and the NOFA. In addition, HUD will conduct informational meetings around the State to discuss the Small Cities program, and will conduct application workshops in conjunction with these meetings. HUD employees are prohibited in these sessions, however, from advising applicants how to make substantive improvements to their applicants and

from disclosing other covered selection information described at 24 CFR 4.26. Please contact the Buffalo or New York Offices for further information regarding these meetings. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

IV. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

Applicants should note that if an abbreviated consolidated plan is not submitted, the failure to submit it in a timely manner is not considered a curable deficiency.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB approval number 2506–0020. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless the collection displays a valid control number.

Environmental Impact

In accordance with 24 CFR 50.19(c)(5) of HUD's regulations (as issued in a final rule on September 27, 1996 (61 FR 50914), this NOFA provides funding under, and does not alter environmental requirements of, a regulation previously published in the **Federal Register**. Therefore, this NOFA is categorically excluded from the requirements of the National Environmental Policy Act. The environmental review provisions of this regulation are in 24 CFR 570.604.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance through the Small Cities program to New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the State's political subdivisions.

Family

The General Counsel, as the Designated Official for Executive Order 12606, The Family, has determined that the policies announced in this NOFA would not have the potential for significant impact on family formation, maintenance, and general well-being within the meaning of the Order. No significant change in existing HUD policies and programs will result from issuance of this NOFA, as those policies and programs relate to family concerns.

Section 102 of the HUD Reform Act

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and public access requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

Section 103 of the HUD Reform Act

Section 103 of the Department of Housing and Urban Development Reform Act of 1989, and HUD's implementing regulation codified at subpart B of 24 CFR part 4, applies to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees, including those conducting technical assistance sessions or workshops and those involved in the review of applications and in the making of funding decisions, are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.)

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts,

grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Dated: November 20, 1998.

Joseph A. D'Agosta,

Acting General Deputy, Assistant Secretary for Community Planning and Development.

Certification Required By Title I of the Housing and Community Development Act of 1974, as Amended, With Respect to the Community Development Block Grant Program

In accordance with the Housing and Community Development Act of 1974, as amended, the Applicant certifies that:

(a) It possesses legal authority to make a grant submission and to execute a community development and housing program;

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the person identified as the official representative of the applicant to submit the subject application and all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the submission of the application and to provide such additional information as may be required;

(c) Prior to submission of its application to HUD, the applicant has met the citizen participation requirements of 24 CFR 570.431;

(d) It is following a detailed citizen participation plan which:

(1) Provides for and encourages citizen participation, with particular emphasis on participation by persons of low and moderate income who are residents of slum and blighted areas in which funds are proposed to be used, and provides for participation of residents in low and moderate income neighborhoods as defined by the local jurisdiction;

(2) Provides citizens with reasonable and timely access to local meetings, information, and records relating to the applicant's proposed use of funds, as required by the regulations of the Secretary, and relating to the actual use of funds under the Act;

(3) Provides for technical assistance to groups representative of persons of low and moderate income that request such assistance in developing proposals with the level and type of assistance to be determined by the applicant;

(4) Provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including at least the development of needs, the review of proposed activities, and review of program performance, which hearings shall be held after adequate notice, at times and locations convenient to potential or actual beneficiaries, and with accommodation for the handicapped;

(5) Provides for a timely written answer to written complaints and grievances, within 15 working days where practicable; and

(6) Identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate;

(e) The grant will be conducted and administered in compliance with:

(1) Title VI of the Civil Rights Act of 1964 (Public Law 88–352, 42 U.S.C. 2000d *et seq.*); and

(2) The Fair Housing Act (42 U.S.C. 3601–20);

(f) It will affirmatively further fair housing;

(g) It has developed its application so as to give maximum feasible priority to activities which benefit low and moderate income families or aid in the prevention or elimination of slums or blight; the application may also include activities which the applicant certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and where other financial resources are not available to meet such needs; except that the grant shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons;

(h) It has developed a community development plan for the grant period which identifies community development and housing needs and specifies both short and long term community development objectives that have been developed in accordance with the primary objective and requirements of the Act;

(i) Any proposed housing activities are consistent with its abbreviated consolidated plan submitted or being submitted to HUD for approval pursuant to 24 CFR 570.420(d) and 24 CFR 91.235.

(j) It will not attempt to recover any capital costs of public improvements assisted in whole or in part with funds provided under section 106 of the Act or with amounts resulting from a guarantee under section 108 of the Act by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:

(1) Funds received under section 106 of the Act are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under Title I of the Act; or

(2) For purposes of assessing any amount against properties owned and occupied by persons of moderate income, the applicant certifies to the Secretary that it lacks sufficient funds received under section 106 of the Act to comply with the requirements of subparagraph (1) above;

(k) Its notification, inspection, testing and abatement procedures concerning lead-based paint will comply with 24 CFR 570.608;

(l) It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, as required under 24 CFR 570.606(b) and Federal implementing regulations; and the requirements in 24 CFR 570.606(c) governing the residential anti-displacement and relocation assistance plan under section 104(d) of the Act (including a certification that the applicant is following such a plan); and the relocation requirements of 24 CFR 570.606(d) governing optional relocation assistance under section 105(a)(11) of the Act;

(m) It has adopted and is enforcing:

(1) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations; and

2. A policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstrations within its jurisdiction;

(n) To the best of its knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for

influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(3) It will require that the language of paragraph (n) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly;

(o) It will or will continue to provide a drug-free workplace by:

(1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(2) Establishing an ongoing drug-free awareness program to inform employees about— .

(a) The dangers of drug abuse in the workplace;

(b) The applicant's policy of maintaining a drug-free workplace;

(c) Any available drug counseling, rehabilitation, and employee assistance programs; and

(d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);

(4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will—

(a) Abide by the terms of the statement; and

(b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(5) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(6) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (4)(b), with respect to any employee who is so convicted—

(a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5) and (6).

(8) The applicant may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

_____

Check XX if there are workplaces on file that are not identified here; and

(p) It will comply with the other provisions of the Act and with other applicable laws.

_____

Signature

_____

Title

_____

Date

Appendix to CDBG Certifications

Instructions Concerning Lobbying and Drug-Free Workplace Requirements

A. Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

B. Drug-Free Workplace Certification

1. By signing and/or submitting this application or grant agreement, the applicant is providing the certification set out in paragraph (o).

2. The certification set out in paragraph (o) is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the applicant knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HUD, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For applicants other than individuals, Alternate I applies. (This is the information to which applicants certify).

4. For applicants who are individuals, Alternate II applies. (Not applicable to CDBG applicants.)

5. Workplaces under grants, for applicants other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the applicant does not identify the workplaces at the time of application, or upon award, if there is no application, the applicant must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the applicant's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio stations).

7. If the workplace identified to the agency changes during the performance of the grant, the applicant shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Applicants' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a applicant directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are not on the applicant's payroll. This definition does not include workers not on the payroll of the applicant (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the applicant's payroll; or employees of subrecipients or subcontractors in covered workplaces).

BILLING CODE 4210-29-P

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Application for Federal Assistance

OMB Approval No. 0348-0043

	2. Date Submitted	Applicant Identifier
1. Type of Submission: Application: ☐ Construction ☐ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction	3. Date Received by State	State Application Identifier
	4. Date Received by Federal Agency	Federal Identifier

5. Applicant Information

Legal Name	Organizational Unit
Address (give city, county, State, and zip code): matters	Name, telephone number, and facsimile number of the person to be contacted on involving this application (give area codes)

6. Employer Identification Number (EIN): ☐☐–☐☐☐☐☐☐☐

7. Type of Applicant: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N Non-profit
O Public Housing Agency
P. Other (Specify):

8. Type of Application:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. Name of Federal Agency:

10. Catalog of Federal Domestic Assistance Number: ☐☐–☐☐☐

Title:

11. Descriptive Title of Applicant's Project:

12. Areas Affected by Project (cities, counties, States, etc.):

13. Proposed Project:

Start Date	Ending Date

14. Congressional Districts of:

a. Applicant	b. Project

15. Estimated Funding:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. Total	$	.00

16. Is Application Subject to Review by State Executive Order 12372 Process?
a. Yes This preapplication/application was made available to the State Executive Order 12372 Process for review on:
Date: _____
b. No ☐ Program is not covered by E.O. 12372
or ☐ Program has not been selected by State for review.

17. Is the Applicant Delinquent on Any Federal Debt?
☐ Yes If "Yes," explain below or attach an explanation ☐ No

18. To the best of my knowledge and belief, all data in this application/preapplication are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative	b. Title	c. Telephone Number

d. Signature of Authorized Representative	e. Date Signed

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form SF-424 (4/92)
Prescribed by OMB Circular A-102

Instructions for the SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency .

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Certification for a Drug-Free Workplace

U.S. Department of Housing and Urban Development

Applicant Name

Program/Activity Receiving Federal Grant Funding:

Acting on behalf of the above named Applicant as its Authorized Official, I make the following certifications and agreements to the Department of Housing and Urban Development (HUD) regarding the sites listed below:

I certify that the above named Applicant will or will continue to provide a drug-free workplace by:

a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

b. Establishing an on-going drug-free awareness program to inform employees ---

(1) The dangers of drug abuse in the workplace;

(2) The Applicant's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph a.;

d. Notifying the employee in the statement required by paragraph a. that, as a condition of employment under the grant, the employee will ---

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

e. Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph d.(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federalagency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph d.(2), with respect to any employee who is so convicted ---

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs a. thru f.

2. Sites for Work Performance. The Applicant shall list (on separate pages) the site(s) for the performance of work done in connection with the HUD funding of the program/activity shown above: Place of Performance shall include the street address, city, county, State, and zip code. Identify each sheet with the Applicant name and address and the program/activity receiving grant funding.)

Check here [ ] if there are workplaces on file that are not identified on the attached sheets.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official: Title:

Signature: Date:

X

form HUD-50070 (3/98)
ref. Handbooks 7417.1, 7475.13, 7485.1 & .3

Certification of Payments to Influence Federal Transactions

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Applicant Name

Program/Activity Receiving Federal Grant Funding

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

I hereby certify that all the information stated herein, as well as any information provided in the accompaniment herewith, is true and accurate.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Name of Authorized Official: | Title:

Signature: | Date:

X

Previous edition is obsolete

form HUD 50071 (3/98)
ref. Handboooks 7417.1, 7475.13, 7485.1, & 7485.3

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Disclosure of Lobbying Activities

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse side for instructions.)

Public Reporting Burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please do not return your completed form to the Office of Management and Budget; send it to the address provided by the sponsoring agency.

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	☐ a. initial filing ☐ b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known:	Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a.) (last name, first name, MI):

11. Information requested through this form is authorized by Sec.319, Pub. L. 101-121, 103 Stat. 750, as amended by sec. 10; Pub. L. 104-65, Stat. 700 (31 U.S.C. 1352). This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semiannually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____

Date: _____

Federal Use Only:

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Standard Form-LLL (1/96)

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development
Office of Ethics

OMB Approval No. 2510-0011 (exp. 3/31/98)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 4.)

Part I Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code)

Social Security Number or Employer ID Number

2. Project Assisted/ to be Assisted (Project/Activity name and/or number and its location by Street address, City, and State)

3. Assistance Requested/Received	4. HUD Program	5. Amount Requested/Received $

Part II. Threshold Determinations – Applicants Only

1. Are you requesting HUD assistance for a specific project or activity, as provided by 24 CFR Part 12, Subpart C, and have you received, or can you reasonably expect to receive, an aggregate amount of all forms of covered assistance from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign the certification below and answer the next question.

   I hereby certify that this information is true. (Signature) _____ Date _____

2. Is this application for a specific housing project that involves other government assistance? ☐ Yes ☐ No

   If Yes, you must complete the remainder of this report.

   If No, you must sign this certification.

   I hereby certify that this information is true. (Signature) _____ Date _____

If your answers to both questions are No, you do not need to complete Parts III, IV, or V, but you must sign the certification at the end of the report.

Part III. Other Government Assistance Provided/Requested

Department/State/Local Agency Name and Address	Program	Type of Assistance	Amount Requested/Provided

Is there other government assistance that is reportable in this Part and in Part V, but that is reported only in Part V? ☐ Yes ☐ No

If there is no other government assistance, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (3/92)
ref. Sec 102, HRA 1989; PL 101 - 235

Part IV. Interested Parties

Alphabetical list of all persons with a reportable financial interest in the project or activity (for individuals, give the last name first)	Social Security Number or Employee ID Number	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

If there are no persons with a reportable financial interest, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

form HUD-2880 (3/92)
ref. Sec 102, HRA 1989; PL 101 - 235

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Part V. Report on Expected Sources and Uses of Funds

Source

If there are no sources of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Use

If there are no uses of funds, you must certify that this information is true.

I hereby certify that this information is true. (Signature) _____ Date _____

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosure of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature | Date

form HUD-2880 (3/92)
ref. Sec 102, HRA 1989; PL 101 - 235

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collecton displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §12.34.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions (See Note 1 on last page.)

I. Overview. Subpart C of 24 CFR Part 12 provides for (1) initial reports from applicants for HUD assistance and (2) update reports from recipients of HUD assistance. An overview of these requirements follows.

A. Applicant disclosure (initial) reports: General. All applicants for assistance from HUD for a specific project or activity must make a number of disclosures, if the applicant meets a dollar threshold for the receipt of covered assistance during the fiscal year in which the application is submitted. The applicant must also make the disclosures if it requests assistance from HUD for a specific housing project that involves assistance from other governmental sources.

Applicants subject to Subpart C must make the following disclosures:

Assistance from other government sources in connection with the project,

The financial interests of persons in the project,

The sources of funds to be made available for the project, and

The uses to which the funds are to be put.

B. Update reports: General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

C. Applicant disclosure reports: Specific guidance. The applicant must complete **all** parts of this disclosure form if **either** of the following **two** circumstances in paragraph 1. or 2., below, applies:

1.a. Nature of Assistance. The applicant submits an application for assistance for a specific project or activity (See Note 2) in which:

HUD makes assistance available to a recipient for a specific project or activity; or

HUD makes assistance available to an entity (other than a State or a unit of general local government), such as a public housing agency (PHA), for a specific project or activity, where the application is required by statute or regulation to be submitted to HUD for any purpose; **and**

b. Dollar Threshold. The applicant has received, or can reasonably expect to receive, an aggregate amount of all forms of assistance (See Note 3) from HUD, States, and units of general local government, in excess of $200,000 during the Federal fiscal year (October 1 through September 30) in which the application is submitted. (See Note 4)

2. The applicant submits an application for assistance for a specific housing project that involves other government assistance. (See Note 5) Note: There is no dollar threshold for this criterion: any other government assistance triggers the requirement. (See Note 6)

If the Application meets **neither** of these two criteria, the applicant need only complete Parts I and II of this report, as well as the certification at the end of the report. If the Application meets **either** of these criteria, the applicant must complete the entire report.

The applicant disclosure report must be submitted with the application for the assistance involved.

D. Update reports: Specific guidance. During the period in which an application for covered assistance is pending, or in which the assistance is being provided (as indicated in the relevant grant or other agreement), the applicant must make the following additional disclosures:

1. Any information that should have been disclosed in connection with the application, but that was omitted.

2. Any information that would have been subject to disclosure in connection with the application, but that arose at a later time, including information concerning an interested party that now meets the applicable disclosure threshold referred to in Part IV, below.

3. For changes in previously disclosed other government assistance:

For programs administered by the Assistant Secretary for Community Planning and Development, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed by $250,000 or by 10 percent of the assistance (whichever is lower).

For all other programs, any change in other government assistance that exceeds the amount of such assistance that was previously disclosed.

4. For changes in previously disclosed financial interests, any change in the amount of the financial interest of a person that exceeds the amount of the previously disclosed interests by $50,000 or by 10 percent of such interests (whichever is lower).

5. For changes in previously disclosed sources or uses of funds:

a. For programs administered by the Assistant Secretary for Community Planning and Development:

Any change in a source of funds that exceeds the amount of all previously disclosed sources of funds by $250,000 or by 10 percent of those sources (whichever is lower); and

Any change in a use of funds under paragraph (b)(1)(iii) that exceeds the amount of all previously disclosed uses of funds by $250,000 or by 10 percent of those uses (whichever is lower).

b. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a source of funds that was previously disclosed.

For all other projects, any change in a source of funds that exceeds the lower of:

The amount previously disclosed for that source of funds by $250,000, or by 10 percent of the amount previously disclosed for that source, whichever is lower; or

The amount previously disclosed for all sources of funds by $250,000, or by 10 percent of the amount previously disclosed for all sources of funds, whichever is lower.

c. For all programs, other than those administered by the Assistant Secretary for Community Planning and Development:

For projects receiving a tax credit under Federal, State, or local law, any change in a use of funds that was previously disclosed.

For all other projects, any change in a use of funds that exceeds the lower of:

The amount previously disclosed for that use of funds by $250,000, or by 10 percent of the amount previously disclosed for that use, whichever is lower; or

The amount previously disclosed for all uses of funds by $250,000, or by 10 percent of the amount previously disclosed for all uses of funds, whichever is lower.

Note: Update reports must be submitted within 30 days of the change requiring the update. The requirement to provide update reports only applies if the application for the underlying assistance was submitted on or after the effective date of Subpart C.

II. Line-by-Line Instructions.

A. Part I. Applicant/Recipient Information.

All applicants for HUD assistance specified in Section I.C.1.a., above, as well as all recipients required to submit an update report under Section I.D., above, must complete the information required by Part I. The applicant/recipient must indicate whether the disclosure is an initial or an update report. Line-by-line guidance for Part I follows:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.

2. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

3. Applicants describe the HUD assistance referred to in Section I.C.1.a. that is being requested. Recipients describe the HUD assistance to which the update report relates.

4. Applicants enter the HUD program name under which the assistance is being requested. Recipients enter the HUD program name under which the assistance, that relates to the update report, was provided.

5. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.

Note: In the case of Mortgage Insurance under 24 CFR Subtitle B, Chapter II, the mortgagor is responsible for making the applicant disclosures, and the mortgagee is responsible for furnishing the mortgagor's disclosures to the Department. Update reports must be submitted directly to HUD by the mortgagor.

Note: In the case of the Project-Based Certificate program under 24 CFR Part 882, Subpart G, the owner is responsible for making the applicant disclosures, and the PHA is responsible for furnishing the owner's disclosures to HUD. Update reports must be submitted through the PHA by the owner.

B. Part II. Threshold Determinations — Applicants Only

Part II contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

1. The first question asks whether the applicant meets the Nature of Assistance and Dollar Threshold requirements set forth in Section I.C.1. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct, and to complete the next question.

2. The second question asks whether the application is for a specific housing project that involves other government assistance, as described in Section I.C.2. above.

If the answer is Yes, the applicant must complete the remainder of the form. If the answer is No, the form asks the applicant to certify that its response is correct.

If the answer to both questions1 and 2 is No, the applicant need not complete Parts III, IV, or V of the report, but must sign the certification at the end of the form.

C. Part III. Other Government Assistance.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports. Applicants must report any other government assistance involved in the project or activity for which assistance is sought. Recipients must report any other government assistance involved in the project or activity, to the extent required under Section I.D.1., 2., or 3., above.

Other government assistance is defined in note 5 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

form HUD-2880 (3/92)
ref. Sec 102, HRA 1989; PL 101 - 235

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The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available. Include at least one organizational level below the agency name. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

2. Enter the program name and any relevant identifying numbers, or other means of identification, for the other government assistance.

3. State the type of other government assistance (e.g., loan, grant, loan insurance).

4. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).

If the applicant has no other government assistance to disclose, it must certify that this assertion is correct.

To avoid duplication, if there is other government assistance under this Part and Part V, the applicant/recipient should check the appropriate box in this Part and list the information in Part V, clearly designating which sources are other government assistance.

D. Part IV. Interested Parties.

This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

Applicants must provide information on:

(1) All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and

(2) any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Recipients must make the additional disclosures refferred to in Section I.D.1.,2., or 4, above.

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses of all persons referred to in paragraph (1) or (2) of this Part. If the person is an entity, the listing must include the full name of each officer, director, and principal stockholder of the entity. All names must be listed alphabetically, and the names of individuals must be shown with their last names first.

2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.

3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).

4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

If the applicant has no persons with financial interests to disclose, it must certify that this assertion is correct.

5. Part V. Report on Sources and Uses of Funds. This Part is to be completed by both applicants filing applicant disclosure reports and recipients filing update reports.

The applicant disclosure report must specify all expected sources of funds — both from HUD and from any other source — that have been, or are to be, made available for the project or activity. Non-HUD sources of funds typically include (but are not limited to) other government assistance referred to in Part III, equity, and amounts from foundations and private contributions. The report must also specify all expected uses to which funds are to be put. All sources and uses of funds must be listed, if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the source or use will be forthcoming.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

General Instructions — sources of funds

Each reportable source of funds must indicate:

a. The name and address, city, State, and zip code of the individual or entity making the assistance available. At least one organizational level below the agency name should be included. For example, U.S. Department of Transportation, U.S. Coast Guard; Department of Safety, Highway Patrol.

b. The program name and any relevant identifying numbers, or other means of identification, for the assistance.

c. The type of assistance (e.g., loan, grant, loan insurance).

Specific instructions — sources of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each source of funds must indicate the total amount of approved, and received; and must be listed in descending order according to the amount indicated.

(2) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each source of funds must indicate the total amount of funds involved, and must be listed in descending order according to the amount indicated.

(3) If Tax Credits are involved, the report must indicate all syndication proceeds and equity involved.

General instructions—uses of funds.

Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, evevators, exterior masonry, etc.

Specific instructions -- uses of funds.

(1) For programs administered by the Assistant Secretaries for Fair Housing and Equal Opportunity and Policy Development and Research, each use of funds must indicate the total amount of funds involved; must be broken down by amount committed, budgeted, and planned; and must be listed in descending order according to the amount indicated.

(ii) For programs administered by the Assistant Secretaries for Housing-Federal Housing Commissioner, Community Planning and Development, and Public and Indian Housing, each use of funds must indicate the total amount of funds involved and must be listed in descending order according to the amount involved.

(iii) If any program administered by the Assistant Secretary for Housing-Federal Housing Commissioner is involved, the report must indicate all uses paid from HUD sources and other sources, including syndication proceeds. Uses paid should include the following amounts.

AMPO
Architect's fee — design
Architect's fee — supervision
Bond premium
Builder's general overhead
Builder's profit
Construction interest
Consultant fee
Contingency Reserve
Cost certification audit fee
FHA examination fee
FHA inspection fee
FHA MIP
Financing fee
FNMA / GNMA fee
General requirements
Insurance
Legal — construction
Legal — organization
Other fees
Purchase price
Supplemental management fund
Taxes
Title and recording
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve
Total land improvement
Total structures

Uses paid from syndication must include the following amounts:

Additional acquisition price and expenses
Bridge loan interest
Development fee
Operating deficit reserve
Resident initiative fund
Syndication expenses
Working capital reserve

Footnotes:

1. All citations are to 24 CFR Part 12, which was published in the Federal Register on March 14, 1991 at 56 Fed. Reg. 11032.
2. A list of the covered assistance programs can be found at 24 CFR §12.30, or in the rules or administrative instructions governing the program involved. Note: The list of covered programs will be updated perodically.
3. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).
4. See 24 CFR §§12.32 (a)(2) and (3) for detailed guidance on how the threshold is calculated.
5. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
6. For further guidance on this criterion, and for a list of covered programs, see 24 CFR §12.50.
7. For purposes of Part 12, a person means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

form HUD-2880 (3/92)
ref. Sec 102, HRA 1989; PL 101 - 235

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Applicant Nondiscrimination Certifications

As the duly authorized representative of the applicant, I certify that the applicant:

1. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

   a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations pursuant thereto (24 CFR Part 1), which prohibit discrimination on the basis of race, color or national origin;
   b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), and implementing regulations at 24 CFR Part 8, which prohibit discrimination on the basis of handicap;
   c) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), and implementing regulations at 24 CFR Part 146, which prohibit discrimination on the basis of age; and,
   d) the requirements of any other nondiscrimination statute(s) which may apply to the application.

2. Will comply with the Fair Housing Act of (42 U.S.C. 3601-19), as amended, and with implementing regulations at 24 CFR Part 100 et seq., which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

3. Will comply with Section 109 of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301-5322), which states that no person shall on the ground of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

Signature of Authorized Certifying Official: X	Applicant:
Title:	Date:

Certification Regarding Debarment and Suspension

U.S. Department of Housing and Urban Development

Certification A: Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency;

b. Have not within a three-year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (A)

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was place when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of these regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines this eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph (6) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

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Certification B: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Certification (B)

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded**, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph (5) of these instructions, if a participant in a lower covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies including suspension and/or debarment.

Applicant	Date
Signature of Authorized Certifying Official	**Title**

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Part VI

Department of Housing and Urban Development

Funding Availability for the HUD-Administered Small Cities Community Development Block Grant Program and the Section 108 Loan Guarantee Program for Small Communities in New York State; Notice

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4424–N–01]

Notice of Funding Availability for: the HUD-Administered Small Cities Community Development Block Grant (CDBG) Program—Fiscal Year 1999; and the Section 108 Loan Guarantee Program for Small Communities in New York State

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability for Fiscal Year 1999.

SUMMARY: This Notice of Funding Availability (NOFA) announces: (1) the availability of approximately $54,558,000 in Fiscal Year (FY) 1999 funding for the HUD-administered Small Cities Program in New York State under the Community Development Block Grant (CDBG) Program ($1,000,000 of this amount has been set aside for the Canal Corridor Initiative which is being announced elsewhere in this **Federal Register**); and (2) the availability of a maximum of approximately $200,000,000—$250,000,000 in FY 1999 funding under the Section 108 Loan Guarantee program for small cities in New York State. Amounts available under the Section 108 Loan Guarantee program are not awarded competitively and are not rated under the criteria of this NOFA. Grants awarded under this NOFA for activities and projects for which Section 108 assistance will also be needed, however, will be conditioned upon approval of the requisite Section 108 application within a stated time.

The exact amount of funds that will be available from the approximately $53,558,000 of FY 1999 funds that communities will be able to compete for under this NOFA is not known at this time. In FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative in the **Federal Register** on December 3, 1996 (61 FR 64196) and the amendment published in the **Federal Register** on December 12, 1996 (61 FR 66692)). Pursuant to that NOFA, HUD approved Canal Corridor applications for approximately $6.5 million in Fiscal Year 1997 New York Small Cities funds. HUD must also be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to section 108 of the Housing and Community Development Act of 1974, as amended, for projects approved under the Canal Corridor Initiative NOFA. At this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during Fiscal Year 1999 is not known. However, in the December 3, 1996 NOFA, HUD estimated that the average amount of CDBG funds required to meet the debt obligation payments would not exceed an average of $3 million per year over a 20-year period.

The funds announced in this NOFA provide small communities and counties in New York State with an opportunity to propose programs that focus on creating or expanding job opportunities, addressing housing needs, or meeting local public facilities needs. HUD encourages communities to propose programs that are creative and innovative in addressing the needs of their community. A community may propose a program that is "single purpose" in nature addressing a specific area of need. The maximum amount for a Single Purpose grant is $400,000 ($600,000 for counties).

DATES: Applications are due by February 8, 1999. Application kits may be obtained from and must be submitted to either HUD's New York or Buffalo Office. (The addresses for these offices are provided in Section II. of this NOFA.) In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

Applications, if mailed, must be postmarked no later than midnight on February 8, 1999 and received within 10 calendar days of the deadline. If an application is hand-delivered to the New York or the Buffalo Office, the application must be delivered to the appropriate office by no later than 4:00 p.m. (local time) on February 8, 1999.

Application kits will be made available by a date that affords applicants no fewer than 45 days to respond to this NOFA. For further information on obtaining and submitting applications, please see Section II. of this NOFA.

The above-stated application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received by 4:00 p.m. on, or postmarked by, February 8, 1999. Applicants should take this procedure into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Yvette Aidara, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7184, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1322 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

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I. Purpose and Substantive Description

A. Authority and Background

1. Authority

Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320) (1974 HCD Act); 24 CFR part 570, subpart F, for the New York State Small Cities program, and subpart M for the Section 108 Loan Guarantee program.

2. Background

Title I of the 1974 HCD Act authorizes the Community Development Block Grant (CDBG) Program. Section 106(d) of Title I permits States, in such manner and at such time as the Secretary shall prescribe, to elect to assume the administrative responsibility for the CDBG Program for nonentitled areas within their jurisdiction. Section 106 provides that HUD will administer the CDBG Program for nonentitled areas within any State that does not elect to assume the administrative responsibility for the program. HUD's regulations at 24 CFR part 570, subpart F describe the requirements for HUD's administration of the CDBG Program in nonentitled areas (Small Cities Program). This NOFA supplements subpart F of 24 CFR part 570.

In accordance with 24 CFR 570.421(b), and with the requirements of section 102 of the Housing and Urban Development Reform Act of 1989 (HUD Reform Act), HUD is issuing this NOFA for New York State's Small Cities Program for FY 1999. This NOFA announces the allocation of funds for a Single Purpose grant competition, and establishes the deadline for filing grant applications. The NOFA explains how HUD will apply the regulatory threshold requirements for funding eligibility, and the selection criteria for rating and scoring applications for Single Purpose grants.

Other information about the Small Cities Program will be provided in the application kit, which will be made available to applicants by HUD's New York Office and Buffalo Office (see Section II. of this NOFA). In addition, application kits and additional information are available on HUD's website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

3. Other Program Requirements

a. Abbreviated Consolidated Plan. Each jurisdiction that applies for funds under this NOFA must have submitted a consolidated plan, as provided in 24 CFR part 91. An applicant for more than one grant under this NOFA or for the Canal Corridor Initiative NOFA published else where in this **Federal Register** need submit only one consolidated plan or abbreviated consolidated plan, as applicable, covering the activities proposed in all applications. A jurisdiction that does not expect to be a participating jurisdiction in the HOME program under 24 CFR part 92 may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD (see 24 CFR 91.235). Any applicant that plans to undertake a housing activity with funds under this NOFA needs to prepare and submit, at a minimum, an abbreviated consolidated plan that is appropriate to the types and amounts of housing assistance sought under this NOFA.

Even if the community's Small Cities application is approved, HUD must also approve an abbreviated consolidated plan that covers activities proposed in such application(s) before the community may receive Small Cities funding. Further, that applicant must also include a certification that the housing activities in its CDBG Small Cities application are consistent with the consolidated plan. The applicant's consolidated plan must describe the jurisdiction's priority nonhousing community development needs eligible for assistance under the CDBG program by eligibility category, reflecting the needs of families for each type of activity, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity (see 24 CFR 91.235(c)(2)).

The abbreviated consolidated plan is subject to the same citizen participation requirements as is the jurisdiction's Small Cities CDBG application. Both must meet the citizen participation requirements before they may be submitted to HUD (see 24 CFR 570.431). A Section 108 Loan Guarantee application would also have to meet citizen participation requirements, as described in 24 CFR 570.704, if the jurisdiction submits one to HUD for consideration.

If possible, an applicant should submit the abbreviated consolidated plan in advance of the Small Cities application due date. The latest time at which the abbreviated consolidated plan will be accepted by HUD for the HUD-administered Small Cities Program in New York will be February 8, 1999 (the application due date for the Small Cities application). *Failure to submit the abbreviated consolidated plan by the due date is not a curable technical deficiency.* Questions regarding the abbreviated consolidated plan should be directed to the appropriate HUD field office.

Any application that is fundable but does not have an approved consolidated plan will receive a conditional approval subject to HUD's approval of the abbreviated consolidated plan. If HUD is unable to approve the abbreviated consolidated plan within a reasonable period of time (but not more than 60 days from the date that the conditional approval is announced), HUD will rescind the award. In such event the funding will be awarded to the highest rated fundable applicant that did not receive funding under this competition.

b. *Section 3.* Assistance provided under this NOFA is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and HUD's implementing regulations in 24 CFR part 135. One of the purposes of this NOFA, which is consistent with section 3, is to give, to the greatest extent feasible and consistent with Federal, State, and local laws and regulations, job training, employment and other contracting opportunities generated from certain HUD financial assistance to low- and very low-income persons. Public entities awarded funds under this NOFA that intend to use the funds for housing rehabilitation, housing construction, or other public construction must comply with the applicable requirements set forth in 24 CFR part 135.

4. Accountability in the Provision of HUD Assistance: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations

codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

a. *HUD Responsibilities.*

(1) *Documentation and Public Access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

b. *Units of General Local Government Responsibilities.*

Units of general local government awarded assistance under this NOFA must ensure that documentation and other information regarding each application submitted to the recipient by a subsequent recipient applicant are adequate to indicate the basis upon which assistance was provided or denied. The unit of general local government must make this material, including any letters of support, available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Unit of general local government recipients must also notify the public of the subsequent recipients of the assistance. Each recipient will develop documentation, public access, and notification procedures for its programs.

B. Allocation Amounts

1. Total Available Funding

The nonentitlement CDBG funds for New York State for FY 1999 total approximately $54,558,000. The exact amount of funds available for this Small Cities CDBG funding competition is not known at this time. In FY 1997 HUD carried out the Canal Corridor Initiative (see the NOFA for this initiative in the **Federal Register** on December 3, 1996 (61 FR 64196) and as amended on December 18, 1996 (61 FR 66692)). HUD must be prepared, pursuant to 24 CFR 570.432, to use CDBG funds each year, as necessary, for the sole purpose of paying any amounts due on debt obligations, for up to 20 years, issued by units of general local government (or their designated public agencies) and guaranteed by the Secretary pursuant to section 108 of the Housing and Community Development Act of 1974, as amended, for projects approved under the Canal Corridor Initiative NOFA. HUD approved approximately $6.55 million in FY 1997 Small Cities funds for Canal Corridor grants. However, at this time, the exact amount of CDBG funds that will be needed to meet required debt obligation payments during Fiscal Year 1999 is not known. Of the approximately $53,558,000 available under this NOFA, approximately $47,024,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Buffalo Field Office. Approximately $6,534,000 is allocated for distribution to eligible units of general local government within the jurisdiction of HUD's New York Office. Once HUD has determined the final amount of funds available for competitive distribution under this NOFA, HUD will allocate such funds in the same ratio as above to HUD's Buffalo and New York Offices. However, HUD has the option to revise these final allocations between offices by up to $400,000 in order to assure full distribution of funds. Finally, HUD reserves the right, in its sole discretion, not to award all of the funds available under this NOFA and to make any such funds available in a future NOFA, if an insufficient number of applications are determined fundable under this NOFA.

2. Imminent Threats

All imminent threat projects must meet the national objective of benefitting low- and moderate-income persons. HUD may elect to set aside up to 15 percent of the FY 1999 allocations for imminent threat projects. These funds will be available until the rating and ranking process for funds distributed under this NOFA is completed.

C. Eligibility

1. Eligible Applicants

Eligible applicants are units of general local government in New York State, excluding: (1) metropolitan cities; (2) urban counties; (3) units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city; and (4) Indian tribes (as defined in section 102(a)(17) of the 1974 HCD Act). Applications may be submitted individually, or jointly, as described in 24 CFR 570.422.

2. Previous Grantees

Eligible applicants that previously have been awarded Small Cities Program CDBG grants are also subject to an evaluation of capacity and performance (see generally, section I.E.2. of this NOFA). Numerical thresholds for drawdown of funds have been established to assist HUD in evaluating a grantee's progress in implementing its program activities. (These standards apply to all CDBG Program grants received by the community.) In FY 1996 an additional threshold was established which relates to the submission of annual Performance Assessment Reports (PARs). A PAR was due on October 31, 1998, for each grant which a local government received prior to April 1, 1997. *Failure to submit a PAR is not a curable technical deficiency.*

Applicants generally will be determined to have performed adequately in the area(s) where the thresholds are met. Where a threshold has not been met, HUD will evaluate the documentation of any mitigating factors, particularly with respect to actions taken by the applicant to accelerate the implementation of its program activities.

3. Eligible Activities and National Objectives

Eligible activities under the Small Cities CDBG Program are those identified in subpart C of 24 CFR part 570. With respect to the Section 108 Loan Guarantee program, eligible activities are identified in § 570.703. Note that § 570.703 does not include all CDBG-eligible activities. Each activity under both programs must meet one of the national objectives (i.e., benefit to

low- and moderate-income persons, elimination of slums or blighting conditions, or meeting imminent threats to the health and safety of the community; see § 570.208), and each grant and use of Section 108 Loan Guarantee proceeds must meet the requirements for compliance with the primary objective of principally benefitting low- and moderate-income persons, as required under § 570.420(e). The CDBG program requires that not less than 70 percent of the total of grant funds from a grant made under this NOFA and Section 108 Loan Guarantee funds received within a fiscal year must be expended for activities that benefit low- and moderate-income persons under the criteria of 24 CFR § 570.208(a). The method of calculating the use of these funds for compliance with the 70 percent overall benefit requirement is set forth in § 570.420(e). In general, all applications must describe the projects and activities proposed in sufficient detail that compliance with these and other applicable statutory, regulatory, and NOFA provisions can be determined.

4. Anti-pirating Prohibition

Section 588 of the Quality Housing and Work Responsibility Act of 1998, P.L. 105–276, amended section 105(h) of the Housing and Community Development Act of 1974 as follows:

"(h) PROHIBITION ON USE OF ASSISTANCE FOR EMPLOYMENT RELOCATION ACTIVITIES. Notwithstanding any other provision of law, no amount from a grant under section 106 made in fiscal year 1999 or any succeeding fiscal year may be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from 1 area to another area, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs."

Accordingly, HUD will not award any grant for any project that would violate this prohibition.

5. Environmental Review Requirement

The HUD environmental review procedures contained in 24 CFR part 58 apply to this program. Under part 58, grantees assume all of the responsibilities for environmental review, decisionmaking and action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the other provisions of law specified by the Secretary in 24 CFR part 58 that would apply to the Secretary were he to undertake such projects as Federal projects.

D. Grants

1. Single Purpose Grants

1. *General.* HUD will fund only Single Purpose grants which are designed to address and resolve a specific community development need. A Single Purpose grant may consist of more than one project. A project may consist of one activity or a set of activities. Each project must address community development needs in one of the following problem areas:

- Housing
- Public Facilities
- Economic Development.

Each project will be rated against all other projects addressing the same problem area, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e., separate Needs Description, Community Development Activities, Impact Description and Program Schedule forms have been filled out, indicating project names). In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were rated as a whole, as has been the case with some economic development and housing projects. If, however, the projects tend to meet impact criteria to the same extent, or the weaker element is only a small portion of the overall project, there is no discernable benefit in designating separate projects.

2. Grant Limits and Funding Requirements

The maximum annual grant for a Single Purpose grant is $400,000, except that counties may apply for up to $600,000 in Single Purpose funds, if the project will be carried out in more than one community. If other sources of funds are to be used with respect to a project, the source of those funds must be identified and the level of commitment indicated. With respect to grant limits for joint applicants, the maximum amount that may be awarded pursuant to a joint application is the maximum single grant limit established above for communities and counties multiplied by the number of participants in the cooperation agreement, provided that for purposes of determining such a multiple grant limit, and in order to receive that amount, a participating joint applicant must receive a substantial direct benefit from the activities proposed in the application and must not be acting solely on behalf of or in conjunction with another jurisdiction for the sole purpose of raising the maximum grant amount that may be awarded. In addition, the statistics of each participant counted for maximum grant limits purposes shall also be used for purposes of the selection factors under section I.E.3. of this NOFA.

3. Applications with Multiple Projects

If an application contains more than one project, each project will be rated separately for program impact. Applicants should note that regardless of the number of projects, the total grant amount cannot exceed the limits identified in section I.D.2. of this NOFA.

E. Selection Criteria/Ranking Factors and Final Selection

1. General

Complete applications received from eligible applicants by February 8, 1999 will be rated and scored by HUD. Applications are rated and scored against five factors. These five factors are discussed in more detail in section I.E.3. of this NOFA. Note that when an applicant proposes to use Section 108 Loan Guarantee assistance as a partial funding resource for a proposed project under this NOFA, HUD, when applying the rating factors to such projects, will consider the applicant's description of the Section 108 assisted project in arriving at the score for a particular factor. An applicant may have an approved 108 Loan Guarantee application, submit a full Section 108 Loan Guarantee application or provide a description of the Section 108 Loan Guarantee application. (The description must be specific as to the amount of the Section 108 Loan Guarantee commitment that the applicant will request and the purpose for which the 108 Loan Guarantee proceeds will be used. See section II.C.1. of this NOFA for more information on this subject.) However, any such CDBG application under this NOFA that is fundable and relies upon Section 108 Loan Guarantee assistance to partially carry out the activities and does not have an approved Section 108 Loan Guarantee commitment will receive a conditional approval. If the applicant does not submit and HUD does not approve the required Section 108 Loan Guarantee application within a reasonable period of time (see section II.C.1.(f)(2) of this NOFA), HUD may rescind the award. In such event the funding will be awarded to the highest rated fundable applicant

that did not receive funding under this competition.

2. Performance Evaluation

As noted in section I.C. of this NOFA, previous recipients of Small Cities Program CDBG grants are subject to an evaluation of performance and continuing capacity to undertake the proposed program. For purposes of making performance evaluations, HUD will use any information that becomes available before grant awards are announced. Performance also will be evaluated using information which may be available already to HUD, including previously submitted performance reports, site visit reports, audits, monitoring reports and annual community assessments. The HUD Office may request and consider additional information in cases where it is essential to make the required performance judgments (see 24 CFR 570.423(d), Thresholds). No grants will be made to an applicant that does not have the capacity to undertake the proposed program. A performance determination will be made by an evaluation of the following areas:

a. *Community Development Activities.* The following thresholds for performance in expending CDBG funds have been established for FY 1999 and pertain to all Single Purpose Grants, including grants pursuant to approved multiyear plans:

FY 1993 and earlier—Grants must be closed out

FY 1994—Grant funds 100 percent expended

FY 1995—Grant funds 75 percent expended

FY 1996—Grant funds 30 percent expended

FY 1997 and FY 1998—Recipients must be on target with respect to the latest Small Cities Program Schedule received by HUD.

Note: These standards will be used as benchmarks in judging program performance, but will not be the sole basis for determining whether the applicant is ineligible for a grant due to a lack of capacity to carry out the proposed project or program. Any applicant that fails to meet the percentages specified above may wish to provide updated data to HUD, either in conjunction with the application submission or under separate cover, but in no case will data received by HUD after February 8, 1999 be accepted, unless specifically requested by HUD.

b. *Compliance with Applicable Laws and Regulations.* An applicant will be considered to have performed inadequately if the applicant:

(1) Has not substantially complied with the laws, regulations, and Executive Orders applicable to the CDBG Program, including applicable civil rights laws as may be evidenced by: (1) an outstanding finding of civil rights noncompliance, unless the applicant demonstrates that it is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance; (2) an adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the applicant demonstrates that it is operating in compliance with a court order designed to correct the area(s) of noncompliance; (3) a deferral of Federal funding based upon civil rights violations; (4) a pending civil rights suit brought against it by the Department of Justice; or (5) an unresolved charge of discrimination issued against it by the Secretary under section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400;

(2) Has not resolved or attempted to resolve findings made as a result of HUD monitoring; or

(3) Has not resolved or attempted to resolve audit findings.

An applicant will be ineligible for a grant where the inadequate performance in compliance with applicable laws and regulations evidences a lack of capacity to carry out the proposed project or program. For example, an application will not be accepted from a unit of general local government which has an outstanding audit finding or monetary obligation for any HUD program. Additionally, applications will not be accepted from any entity which proposes an activity in a unit of general local government that has an outstanding audit finding or monetary obligation for any HUD program. The Director of the Community Planning and Development Division of the HUD field office may provide an exception to this prohibition if the unit of general local government has made a good faith effort to clear the audit finding. No exception will be provided if funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

c. *Performance Assessment Reports.* Under 24 CFR 570.507, Small Cities CDBG grantees are required to submit Performance Assessment Reports (PARs) on October 31st, for the period ended September 30th, for all open grants awarded before April 1st of the same year. For an application for FY 1999 funds to be considered for funding, the applicant must be current in its submission of PARs. Failure to submit a PAR is not a curable technical deficiency under section V. of this NOFA.

3. *Five Factor Rating.*

As noted in section I.E.1. of this NOFA, all applications are rated and scored against five factors. These five factors are:

- Need based on absolute number of persons in poverty;
- Need based on the percent of persons in poverty;
- Program Impact;
- Outstanding performance in fair housing and equal opportunity; and
- Welfare to Work Initiative

A maximum of 605 points is possible under this system with the maximum points for each factor being:

Need—absolute number of persons in poverty.	75 points.
Need—percent of persons in poverty.	75 points.
Program Impact	400 points.
Outstanding performance—FHEO:	
a. Provision of fair housing choice.	20 points.
b. New Horizons Fair Housing Assistance Project.	20 points.
c. Equal opportunity employment.	10 points.
Welfare to Work Initiative	5 points.
Total	605 points

Each of the five factors is outlined below. All awarded points for each factor will be rounded to the nearest whole number.

a. *Need—Absolute number of persons in poverty.* HUD uses 1990 census data to determine the absolute number of persons in poverty residing within the applicant unit of general local government. Applicants which are county governments are rated separately from all other applicants. For applications from joint applicants, data from each participating unit of general local government (as described in 24 CFR 570.422) will be aggregated. Applicants in each group are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

b. *Need—Percent of persons in poverty.* HUD uses 1990 census data to determine the percent of persons in poverty residing within the applicant unit of general local government. Applicants in each group are compared in terms of the percentage of their population below the poverty level. For applications from joint applicants, data from each participating unit of general local government will be aggregated. Individual scores are obtained by dividing each applicant's percentage of

persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

c. *Program Impact.* In evaluating program impact, HUD will consider various factors. Within each activity type described below is a set of factors and scoring weights that will be used. Each proposal will be rated using the factors and scoring weights described in the selection criteria below.

Assessments are done on a comparative basis and, as a result, it is important that each applicant present information in a detailed and uniform manner.

For projects consisting of more than one activity, the activity that directly addresses the need must represent at least the majority of funds requested. Other activities must be incidental to and in support of the principal activity. For example, public improvements included in a rehabilitation project that addresses housing need must: (1) be a relatively small amount in terms of funds requested; (2) clearly be in support of the housing objective; and (3) demonstrate a positive and direct link to the national objective. For incidental activities claiming benefit to low -and moderate-income persons on an area basis, the application must document that at least 51 percent of the residents of the service area meet the low -and moderate-income requirement. Funds should not be requested for activities that are not incidental to and in support of the principal activity.

In addressing Program Impact criteria, applicants should adhere to the following general guidelines for quantification. Where appropriate, absolute and percentage figures should be used to describe the extent of community development needs and the impact of the proposed program. This includes, but is not limited to, appropriate units of measure (e.g., number of housing units or structures, linear feet of pipe, pounds per square inch, etc.), and costs per unit of measure. These quantification guidelines apply to the description of need, the nature of proposed activities and the extent to which the proposed program will address the identified need.

Appropriate documentation should be provided to support the degree of need described in the application. Basically, the sources for all statements and conclusions relating to community needs should be included in the application or incorporated by reference. Examples of appropriate documentation include planning studies, letters from public agencies, newspaper articles, photographs and survey data.

Generally, the most effective documentation is that which specifically addresses the subject matter and has a high degree of credibility. Applicants which intend to conduct surveys to obtain data are advised to contact the appropriate HUD office prior to conducting the survey for a determination as to whether the survey methodology is statistically acceptable.

There are a number of program design factors related to feasibility which can alter significantly the award of impact points. Accordingly, it is imperative that applicants provide adequate documentation in addressing these factors. Common feasibility issues include site control, availability of other funding sources, validity of cost estimates, and status of financial commitments as well as evidence of the status of regulatory agency review and approval.

Past productivity and administrative performance of prior grantees will be taken into consideration when reviewing the overall feasibility of the program. Overall program design, administration and guidelines are other feasibility issues that should be articulated and presented in the application, since they are critical in assessing the effectiveness and impact of the proposed program.

Each project will be rated against other projects addressing the same problem area, so that, for example, housing projects only will be compared with other housing projects, according to the criteria outlined below. It should be noted that each project within an application will be given a separate impact rating, if each one is clearly designated by the applicant as a separate and distinct project (i.e., separate Needs Descriptions, Community Development Activities, and Impact Description and Program Schedule forms have been filled out, indicating separate project names).

In some cases, it may be to the applicant's advantage to designate separate projects for activities that can "stand on their own" in terms of meeting the described need, especially where a particular project would tend to weaken the impact rating of the other activities, if they were all related as a whole, as has been the case with some economic development projects. If, however, the projects tend to meet the impact criteria to the same extent, or the weaker element is only a small portion of the overall program, there is no discernable benefit in designating separate projects.

Applicants should bear in mind that the impact of the proposed project will be judged by persons who may not be familiar with the particular community. Accordingly, individual projects will be rated according to how well the application demonstrates in specific, measurable terms, the extent to which the impact criteria are met. General statements of need and impact alone will not be sufficient to obtain a favorable rating. HUD will not make a Small Cities grant when it determines that the grant will only have a minimal or insignificant impact on the grantee. For the purposes of this NOFA, any application not scoring above 100 points of the possible 400 points for the Program Impact factor will be deemed to have a minimal or insignificant impact on the grantee and will not be funded regardless of the number of points the applicant may otherwise receive or the ranking it attains as a result of its score due to points received on other rating factors.

(1) *Program Impact—Housing.* There are three distinct types of Housing projects: Housing Rehabilitation, Creation of New Housing and Direct Homeownership Assistance. Separate rating criteria are provided for each type of project.

(a) *Housing Rehabilitation.* The following factors and weights will be used to evaluate proposed housing rehabilitation projects:

(i) Severity of Need (proportion of units that are substandard and extent of disrepair) (up to 160 points of the total Program Impact score). Each application should provide information on the total number of units in the project area, the number that are substandard, and the number of substandard units occupied by low- and moderate-income households. The purpose of this information is to establish the relative severity of housing conditions within the designated project area compared to other housing rehabilitation applications. The application also should describe the date and methodology of any surveys used to obtain the information, including any explicit and detailed definition of "substandard."

Surveys of Housing Conditions. Surveys of housing conditions serve several purposes in evaluating applications for housing rehabilitation activities. These include establishing the seriousness of need for such assistance in the project area, providing a basis for estimating overall budgetary needs, and providing an indication of the marketability of the project.

(ii) Extent to which proposed program will resolve the identified problem (up

to 50 points of the total Program Impact score). Note that programs that propose minimal rehabilitation may not necessarily be addressing the identified problem.

(iii) Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score). The application should describe the project in sufficient detail to allow the reviewer to assess its feasibility and its probable impact on the conditions described. It also should describe project requirements in such a way that regulatory and policy concerns will be addressed.

HUD encourages communities to support the Healthy Homes Secretarial initiative. Applicants applying for Small Cities CDBG funds to rehabilitate housing and/or construct new housing units may support these initiatives by including Healthy Homes features in their program design, such as window locks, deadbolt locks on doors, locks or safety latches on medicine cabinets, smoke detectors, carbon monoxide detectors, energy efficient windows, elimination of lead-based paint, and any other activities that contribute to Healthy Homes, especially regarding children.

(iv) Leveraging of other resources (up to 60 points of the total Program Impact score). HUD encourages communities to design projects supplementing Small Cities rehabilitation funds with private funds wherever feasible and appropriate, especially in the case of rental units and housing not occupied by lower-income persons. In such cases, the Small Cities grant subsidy should be as low as possible, while retaining sufficient incentive to attract local participants. On the other hand, projects designed for low-income homeowners should not require private contributions at a level that puts the project out of reach of potential participants.

(v) Cost per unit (up to 80 points of the Program Impact score). HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing rehabilitation projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(b) *Creation of New Housing.* CDBG funds may be used to support the construction of new housing units, the creation of new units proposed through conversion of existing structures (currently vacant structures or conversion of nonresidential structures for residential use) and, in certain circumstances, to finance the actual cost of constructing new units. New construction may be carried out by an eligible nonprofit entity pursuant to 24 CFR 570.204, or as last resort housing. Note that for purposes of specific uses of Section 108 Loan Guarantee proceeds, eligibility is limited to assistance for community economic development projects under § 570.204(a)(2). See also 24 CFR 570.703(i)(2). Support of new construction could include nonconstruction assistance such as the acquisition and/or clearance of land, the provision of infrastructure, or the payment of certain planning costs.

The following factors and weights will be used to evaluate proposed projects for the creation of new housing:

(i) Severity of need for new housing affordable to low- and moderate-income persons shown in the project area (up to 160 points of the total Program Impact score). Where the creation of new units is proposed, the application should document the need for additional units based on vacancy rates, waiting lists, and other pertinent information.

(ii) Extent to which the proposed program will create new housing units affordable to low- and moderate-income persons (up to 50 points of the total Program Impact score). The proposed project clearly must support, or result in, additional units for low- and moderate-income persons. The units may result from new construction projects for which the proposed project will provide nonconstruction assistance.

(iii) Feasibility (marketability, project design affecting timely completion of the project) (up to 50 points of the total Program Impact score). Applicants should address issues of site control and marketability, in addition to addressing feasibility from the standpoint of market financing.

(iv) Leveraging of other resources (up to 60 points of the total Program Impact score). Where the proposed project involves the use of Federally assisted housing, the applicant must identify and document the current commitment status of the Federal assistance. Lack of a firm financial commitment for assistance may adversely affect project impact.

(v) Cost per unit (up to 60 points of the total Program Impact score). HUD will review the applicant's documentation to determine whether the applicant's cost-per-unit is lower than other applicants' costs-per-unit. All applications should provide documentation to justify the cost-per-unit estimates, particularly grantees where past performance does not support the estimates in the applications. In reviewing applications from grantees with prior housing projects, reasonableness of cost-per-unit, stated in the application, will be compared against the grantee's actual past performance.

(vi) Extent to which the project would affirmatively further fair housing (either through spatial deconcentration of minorities throughout the community or through spatial deconcentration of low- and moderate-income households if there are no areas of minority concentration) (up to 20 points of the total Program Impact score).

(c) *Direct Homeownership Assistance.* Homeownership activities are defined as activities which would promote homeownership within the applicant jurisdiction, focusing particularly on aiding low- and moderate-income persons in becoming homeowners. This may include activities authorized under 24 CFR 570.201(n) for purposes of use of Small Cities grant funding. However, activities eligible solely under 24 CFR 570.201(n) are not permitted uses of Section 108 loan guarantee proceeds. While declining to identify any particular type of proposed project as superior, HUD is identifying several criteria which must be addressed within the project design, in order for the application to receive the maximum project impact.

Applications must include a well developed description of homeownership needs in the applicant jurisdiction, focusing particularly on the needs of low- and moderate-income persons. The description also should include, if applicable, any alternative approaches which have been considered in meeting homeownership needs. Project feasibility must be addressed as part of the application.

The application must demonstrate that the proposed project would make effective use of all available funds. This would include any local, State or other Federal funds which would be utilized by the proposed project. If other such funds are included as part of the proposed project, the applicant must demonstrate that such funds are committed and truly available for the project. Any efforts which would affirmatively further fair housing, by promoting homeownership among minorities as well as homeownership throughout the community, must be outlined in the application.

The application must explain how the project would benefit low- and moderate-income homebuyers,

particularly focusing on first-time and minority homebuyers. The application also should address any homeownership counseling services, including counseling pertaining to Federal, State, and local fair housing laws and requirements, which would be provided to persons selected to participate in the proposed project. Finally, the application should describe how the project would utilize public/private partnerships to promote homeownership, particularly in the sense that private sector financing would be accessible, as necessary, to project participants to complement available public sector funds, including CDBG money.

The following factors and weights will be used to evaluate proposed direct homeownership assistance projects:

(i) The extent to which the application demonstrates severity of homeownership needs in the community (up to 160 points of the total Program Impact score).

(ii) The extent to which: the project design is appropriate to meet demonstrated homeownership needs; the project would make effective us of available funds; alternative approaches to meeting the homeownership needs have been considered; and the proposed project would target first-time homebuyers (up to 60 points of the total Program Impact score).

(iii) The extent to which the project is feasible and likely to be implemented in accordance with a project schedule (up to 50 points of the total Program Impact score).

(iv) The extent to which the proposed project would: complement other Federal, State or local programs that promote homeownership; and utilize public/private partnerships in attempting to promote homeownership, particularly in regard to participation by local financial institutions considering the cost per unit (up to 80 points of the total Program Impact score).

(v) The extent to which the proposed project would provide homeownership counseling to project participants (up to 30 points of the total Program Impact score).

(vi) The extent to which the project would affirmatively further fair housing through proposed initiatives to reach out to potential minority homeowners and/or to promote homeownership opportunities throughout the community (up to 20 points of the total Program Impact score).

(2) *Program Impact—Public Facilities Affecting Public Health and Safety.* In the case of public facility projects, documentation of the problem by outside, third-party sources is of primary importance. In the case of water and sewer projects, documentation from public agencies is particularly helpful, especially where such agencies have pinpointed the exact cause of the problem and have recommended courses of action which would eliminate the problem. Such supporting documentation should be as up-to-date as possible; the older the supporting material, the more doubt arises that the need is current and immediate. Applicants also should be sure to indicate how the project would address public health and safety needs and conditions. Quantification also is essential in describing needs. Documentation from those affected should be included.

The following factors and weights will be used to evaluate proposed public facilities projects affecting the public health and safety:

(a) Severity of Need (up to 160 points of the total Program Impact score). The applicant should describe, including appropriate documentation, as best as possible, the degree to which the need is serious, current and requires prompt attention.

(b) Extent to which the proposed program will resolve the identified problem and public health and safety concerns (up to 50 points of the total Program Impact score). The applicant should demonstrate that the project will completely solve the problem and, if applicable, the applicant should address whether the proposal would be satisfactory to other State/local agencies which have jurisdiction over the problem.

(c) Feasibility (up to 50 points of the total Program Impact score). The applicant should address whether the proposal is the most cost effective and efficient among the possible alternatives considered, and the funding requested will be sufficient to resolve the problem. Total project costs should be documented by qualified third-party estimates, and be as recent as possible.

(d) Extent of benefit to affected persons and the cost per household (up to 80 points of the total Program Impact score).

(e) Leveraging other resources to minimize project costs (up to 40 points of the total Program Impact score). To the extent that Small Cities grant funds will not cover all costs, the source of other funds should be identified and committed. If local funds are to be used, the applicant should show both the willingness and the ability to provide the funds.

(f) Extent to which the project addresses deficiencies in accessibility for disabled persons and/or provides a significant increase in the number of public facilities accessible to disabled persons (up to 20 points of the total Program Impact score).

(3) *Program Impact—Economic Development Projects.* As discussed earlier in this section of the NOFA, each individual Single Purpose project will receive a separate impact rating. Applicants whose proposed economic development program will include multiple proposals should determine the most appropriate form of submission. This determination will require a choice as to either the incorporation of all proposals into a single project or the submission of separate projects for each proposal (each transaction will be considered a separate project). The single project format presents an "all or nothing" situation. In determining the appropriate submission format, applicants should consider the ability of a transaction to rate well on its own, based on the magnitude of employment impact, size of the financial transaction and the other factors discussed in this section.

The submission of proposals as separate projects must be clearly designated by the applicant with individual Needs Descriptions, Community Development Activities, Impact Descriptions and Program Schedule forms, including an appropriate name for each project on HUD Form 4124.1.

Section 807(c)(3) of the Housing and Community Development Act of 1992 (42 U.S.C. 5305 note) provides that it is the sense of Congress that each grantee should devote one percent of its grant for the purpose of providing assistance under section 105(a)(23) of the 1974 HCD Act to facilitate economic development through commercial microenterprises. A "microenterprise" is defined as a commercial enterprise with five or fewer employees, one or more of whom owns the enterprise. While not a requirement, this intent should be considered in developing an economic development application.

It is noted that in accordance with section 105 of the 1974 HCD Act, HUD published on January 5, 1995 (60 FR 1922), a final rule relating to evaluation and selection of Economic Development activities by grantees, including evaluation of public benefit (generally codified at 24 CFR 570.209). Economic Development applications must be specific enough to permit a determination that such threshold public benefit standards are met.

(a) Scoring. The following factors and weights will be used to evaluate

proposed economic development projects:

(i) The extent to which the project will have a direct and positive impact on employment opportunities for persons from low-and moderate-income households (up to 160 points of the total Program Impact score). Applicants are reminded that for an activity to be consistent with the statutory objective of low-and moderate-income benefit, as a result of the creation or retention of jobs, at least 51 percent of created or retained employment opportunities must be held by, or made available to, persons from low-and moderate-income families. Applicants must fully document and describe employment benefits. In addition, applicants should address the following issues:

a. All employment data must be expressed in terms of full-time equivalents (FTEs). Only permanent jobs may be counted, and applicants must take into account such factors as seasonal and part-time employment. A seasonal job may be considered permanent if the season is long enough to be considered the person's principal occupation; permanent part-time jobs must be converted to the full-time equivalent.

b. The amount of CDBG assistance required to produce each full-time equivalent job will affect the impact assessment by HUD. Lower CDBG costs per job are preferable to higher CDBG costs per job. Such assessments of impact will be done on a comparative basis among all projects submitted, rather than by comparison to a given standard.

c. The use of CDBG funds to assist a business with transferring to a different community will generally be considered as having no employment impact. Exceptions to this rule may include an expansion to the business as a result of, or concurrent with, the transfer; or if the business can demonstrate that it is infeasible to continue operations at the current site. An applicant that fails to document a basis for such an exception could receive a substantially lower score under this ranking factor. Applicants are encouraged to use CDBG funds for projects that provide as many jobs as possible for individuals that are currently receiving public assistance. Providing employment to recipients of public assistance will help break the cycle of dependency and empower low-income citizens to take control of their lives.

(ii) The extent to which market analysis and other risk data provides assurance that the proposed project will be successful (up to 50 points of the total Program Impact score).

(iii) The extent to which the proposed project addresses all appropriate feasibility issues (including extent of firm private financing commitments) and the extent to which there is reasonable assurance that the project will be completed in a timely manner (up to 50 points of the total Program Impact score). Projects that are likely to encounter feasibility issues which would hinder the timely completion of the project will receive a lower score under this criterion. Such issues include, but are not limited to: site control, zoning, public approvals and permits, infrastructure, environment, and relocation. Applicants should address these and any other applicable issues and provide documentation where appropriate.

Applicants also must demonstrate the reasonable likelihood of the project's success, from both a financial and employment standpoint. An analysis or market data, which indicates an inordinate risk in the undertaking of the project, will affect the overall rating of program impact. In order to receive a higher rating, the costs must be reasonable (i.e., not inflated).

(iv) Extent to which the project provides Public Benefits relative to other proposals' cost per job (up to 80 points of the total Program Impact score).

(v) The extent to which Small Cities grant funds will leverage the investment of private and other dollars and the extent to which Small Cities grant funds are NOT used to substitute for private financing (up to 60 points of the total Program Impact score). Leverage is defined as the amount of private debt and equity to be invested as a direct result of the CDBG-funded activity. Projects which provide the maximum feasible level of private investment will be considered as having appropriate leverage. The extent of firm commitments for private financing will be reviewed as well as the amount of equity investment. The project will be reviewed to determine whether CDBG funds are replacing private sources of funds. In order to receive maximum impact CDBG funds may not replace private financing, CDBG assistance must be limited to the amount necessary to fund the project without replacing CDBG funds for private funds, and equity funds should bear the greatest risk in the project.

In addition to the standard submission requirements, HUD will evaluate the following as part of its Eligibility Review prior to considering an application for funding in the FY 1997/1998 competition.

(b) *The Appropriate Determination.* HUD has developed guidelines for review of economic development activities undertaken with CDBG funds. These guidelines are composed of two components: guidelines for evaluating project costs and financial requirements; and standards for evaluating public benefit. The standards for evaluating public benefit are mandatory, but the guidelines for evaluating project costs and financial requirements are not. The guidelines for evaluating project costs are to ensure:

(i) *Reasonableness of Proposed Costs.* The applicant must review each project cost element and determine that the cost is reasonable and consistent with third-party, fair-market prices for that cost element. The general principle is that the level of CDBG assistance cannot be adequately determined if the project costs are understated or inflated.

(ii) *Commitment of Other Sources of Funds.* The applicant shall review all projected sources of funds necessary to complete the project and shall verify that all sources (in particular private debt and equity financing) have been firmly committed to the extent practicable, and are available to be invested in the project. Verification means ascertaining that: the source of funds is committed; that the terms and conditions of the committed funds are known; and the source has the capacity to deliver.

(iii) *No Substitution of CDBG Funds (including Section 108 Loan Guarantee proceeds) for Private Sources of Funds.* The applicant shall financially underwrite the project and ensure to the extent possible that CDBG funds are not being substituted for available private debt financing or equity capital. The analysis must be tailored to the type of project being assisted (e.g., real estate, user project, capital equipment, working capital, etc.). Real estate projects require different financial analysis than working capital or machinery and equipment projects. Applicants should ensure that both a significant equity commitment by the for-profit business exists and that the level of certainty of the end use of the property or project is sufficient to ensure the achievement of national objectives within a reasonable period of time.

(iv) *Establishment of Small Cities Grant Financing Terms.* The amount of Small Cities grant assistance provided to a for-profit business ideally should be limited to the amount, with appropriate repayment terms, sufficient to go forward without substituting Small Cities grant funds for available private debt or cash equity. The applicant should structure its repayment terms so

that the business is allowed a reasonable rate of return on invested equity, considering the level of risk of the project. Equity funds generally should bear the greatest risk of all funds invested in a project.

(v) *Public Benefit Determination.* The applicant's activities must meet the public benefit standards found in 24 CFR 570.209(b). Activities covered by these guidelines (subject to certain exceptions) must, in the aggregate, either:

- Create or retain at least one full-time equivalent, permanent job per $35,000 of CDBG funds used; or
- Provide goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted businesses amounts to at least one low- and moderate-income person per $350 of CDBG funds used.

(c) *CDBG Assistance Must Minimize Business and Job Displacement.* Each applicant will evaluate the potential of each economic development project for causing displacement of existing businesses and lost jobs in the neighborhood where the project is proposed to be located. When the grantee concludes that the potential exists to cause displacement, given the size, scope or nature of the business, then the grantee must, to the extent practicable, take steps to minimize such displacement. The project file must document the grantee's review conclusions and, if applicable, the steps the grantee will take to minimize displacement.

(d) *Section 105(a)(17) Requirements.* Section 105(a)(17) of the 1974 HCD Act requires that an activity assisted under that section achieve one of the following criteria:

(i) Creates or retains jobs for low- and moderate-income persons (note that a project which meets the national objective of principally benefitting low- and moderate-income persons by creating or retaining jobs, 51 percent of which are for low- and moderate-income persons, will be deemed to have met this criterion without any additional documentation);

(ii) Prevents or eliminates slums or blight (note that a project which meets the national objective of aiding in the prevention or elimination of slums or blight on an area basis will be deemed to have met this criterion without any additional documentation);

(iii) Meets an urgent need (note that a project which meets the national objective of meeting community development needs having a particular urgency will be deemed to have met this criterion without any additional documentation);

(iv) Creates or retains businesses owned by community residents;

(v) Assists businesses that provide goods or services needed by and affordable to low- and moderate-income residents;

(vi) Provides technical assistance to promote any of the activities under (i) through (v) of this subsection.

(e) *National Objectives.* As previously stated in this NOFA, all CDBG-assisted activities must address one of the three broad national objectives. Since economic development projects usually result in new employment or the retention of existing jobs, these activities most likely would be categorized as principally benefitting low- and moderate-income persons in this manner. Such projects will be considered to benefit low- and moderate-income persons where the criteria of 24 CFR 570.208(a)(4) are met. HUD will consider an activity to qualify under this provision where the activity involves jobs at least 51 percent of which are taken by or made available to such persons, or retained by such persons. The extent to which the proposed project will directly address employment opportunities for low- and moderate-income persons in the applicant jurisdiction will be a primary factor in HUD's assessment of the proposed program.

The application must contain adequate documentation to explain fully, and to support, the process that will be used to ensure that project(s) comply with the low- and moderate-income employment requirements. The documentation must be sufficient to show that the process has been developed and that program participants have agreed to adhere to that process. In determining whether the person is a low- and moderate-income person for these activities, it is the person's family income at the time the CDBG assistance is provided that is determinative. When making judgments concerning whether an individual qualifies as a low- and moderate-income person, both family size and the income of the entire family must be considered. This consideration is necessary because a "low- and moderate-income person" is defined as a member of a low- and moderate-income family.

HUD will accept a written certification by a person of his or her family income and size to establish low- and moderate-income status. The certification may simply state that the person's family income is below that required to be low- and moderate-income in that area. The form for such certification must include a statement that the information is subject to verification.

In addition to person-by-person income certifications discussed above, under section 105(c)(4) of the 1974 HCD Act, an employee may be presumed to be a low- and moderate-income person if the employee resides in a census tract where not less than 70 percent of the residents are low- and moderate-income persons, and a presumption of low- and moderate-income may also be made if the business is located in and/or the employee resides in a census tract (or block numbering group) where 20 percent of the residents are in poverty. The key consideration in this presumption is the location of the business or employee. The documentation to support the presumption must contain the location. (See 24 CFR 570.209(b)(2)(v) for more information on this subject.)

In cases where an activity (e.g., a shopping center or a super market) provides goods and services to residents of an area, the low- and moderate-income objective may be met by the area benefit requirements at 24 CFR 570.208(a)(1). To document low and moderate income, 51 percent of the residents of the area or block numbering group must be low- and moderate-income persons.

(f) *Application Requirements.* To the extent feasible, the material listed below should be submitted for economic development projects. The material should be submitted for each proposed activity, whether the proposed activity is presented as a separate project or as part of a project involving multiple activities. Since economic development projects are rated against each other, the more completely these submission requirements are met, the greater the potential exists for enhancing the impact score of the project.

(i) A letter from each appropriate developmental entity which includes at least the following information:

a. A detailed physical description of the project with a schedule of events and maps or drawings as appropriate.

b. The estimated costs for the project, including any working capital requirements.

c. A discussion of all financing sources, including the need for CDBG, the terms of the CDBG assistance, and the proposed lien structure. The amount, source, and nature of any equity investment(s) must also be provided as well as a commitment to invest the equity.

d. A discussion of employment impact which includes a schedule of newly created positions. The schedule

should identify the number, salary and skill level of each permanent position to be created. If jobs are made available to low- and moderate-income persons, the applicant must also demonstrate and document how persons from low- and moderate-income households will be accorded first consideration for employment opportunities.

e. A discussion of all appropriate feasibility issues including, but not limited to: site control, zoning, public approvals and permits, impact fees, corporate authorizations, infrastructure, environment and relocation.

f. An analysis and summary of market and other data which supports the anticipated success of the project.

g. A statement as to whether or not the project will result in the relocation of any industrial or commercial plant, facility, or operation from one area to another. If the CDBG funded project will result in the relocation of a plant, facility, or operation, then the application shall include a statement as to the total number of jobs that are currently filled at the existing/current plant, facility, or operation and the number of jobs that are projected to exist at that former plant, facility, or operation after the proposed CDBG funded project is complete and fully operational.

(ii) A development budget showing all costs for the project, including professional fees and working capital.

(iii) Documentation to support project costs. Documentation generally should be from a third-party source and be consistent with the following guidelines:

a. Acquisition costs should be supported by an appraisal.

b. Construction/renovation costs should be certified by an architect, engineer or contractor. Use of Federal Prevailing Wage Rates should be cited where applicable.

c. Machinery and equipment costs should be supported by vendor quotes.

d. Soft costs (e.g., legal, accounting, title insurance) need be substantiated only where such costs are anticipated to be abnormally high.

(iv) Letters from all financing sources discussing (at a minimum) the amount and terms of the proposed financing, and the current status of the application for funding.

(v) Historical financial data of the development entity, preferably for the last 3 years. This information may be submitted under separate cover with confidentiality requested. It is recognized that historical financial data may be unavailable or inappropriate for some projects (e.g., start-up companies and real estate transactions).

(vi) A 2- to 5-year cash flow pro forma with accompanying notes citing basic assumptions.

(vii) The applicant's assessment of the project's consistency with the CDBG program eligibility requirements and standards for evaluating project cost, financial requirements and public benefit.

d. *Fair Housing and Equal Opportunity Evaluation.* Documentation for the 50 points for these items is the responsibility of the applicant. Claims of outstanding performance must be based upon actual accomplishments. Clear, precise documentation will be required. Maps must have a census tract or block numbering area (BNA), and they must be in accordance with the 1990 Census data. Additionally, maps must identify the locations of areas with minorities by census tract or BNA. If there are no minority areas, state so on the map. Only population data from the 1990 Census will be acceptable for purposes of this section.

Please note that a "minority" is a person belonging to, or culturally identified as, a member of any one of the following racial/ethnic categories: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. For the purposes of this section, the separate category of "women" is not considered a minority.

Counties claiming points under this criterion must use county-wide statistics (excluding entitlement communities). In the case of joint applications, points will be awarded based on the performance of the lead entity only.

The following factors will be used to judge outstanding performance in these areas. Please note that points for outstanding performance may be claimed under each criterion:

(1) *Housing Achievements* (40 points total).

(a) *Provision of Fair Housing Choice (20 points)*

(i) HUD will consider the extent to which the applicant demonstrates that it has provided housing assistance for low- and moderate-income families that results in housing choice in areas outside of minority or low- and moderate-income concentration. Such actions may include the construction or rehabilitation of housing in areas outside of minority or low- and moderate-income concentration; the provision of Section 8 Existing Certificate or Voucher assistance in ways that lessen concentration of such assisted units within minority and low- and moderate-income concentrated areas; or the provision of direct homeownership assistance such as homeownership counseling, downpayment assistance, or first-time homebuyer assistance. If applicable, the applicant may use a map to show the general location(s) of individual projects and/or housing occupied by Section 8 Existing Program participants.

(ii) Points also may be awarded for efforts which enable low- and moderate-income persons to remain in their neighborhood when such neighborhoods are experiencing revitalization and substantial displacement as a result of private reinvestment. Applicants requesting points under this criterion would not need to meet the requirements of paragraphs (a) and (b) in order to receive points. Points will be awarded where more than one-half of the families displaced were able to remain in their original neighborhood through the assistance of the applicant. Applicants must show that:

- The neighborhood experienced revitalization;
- The amount of displacement was substantial;
- Displacement was caused by private reinvestment;
- Low- and moderate-income persons were permitted to remain in the neighborhood as a result of action taken by the applicant.

If the community is inhabited predominantly by persons who are members of minority and/or low-income groups, points will be awarded where there is a balanced distribution of assisted housing throughout the community.

(b) *Implementation of a Fair Housing Strategy that Affirmatively Furthers Fair Housing (20 points).* The applicant must demonstrate that it is implementing or plans to implement a Fair Housing Strategy on its own or demonstrate that it does or plans to participate in a county/State or regional analysis of impediments to fair housing choice. A fair housing strategy must include the following elements:

- Local compliance activities;
- Educational programs to enhance the clarity and understanding of the community's fair housing policy. For communities with few or no minorities, this should include publication in the surrounding communities of the applicant's policy of fair housing for minorities and persons with disabilities;
- Assistance to minority families; and
- Special programs (e.g., utilization of Community Housing Resource Board (CHRB) Programs, efforts to encourage local realtors to enter into voluntary agreements to encourage equal access to financial institutions, etc.).
- Assistance to minority families through mobility counseling programs

and other activities that encourage such families to pursue such housing opportunities outside of minority concentrated areas;

• Special programs targeted at lenders, builders, realtors, and other housing industry groups;

• Affirmative marketing strategies targeted at those groups in the eligible population considered least likely to apply without special outreach.

The fair housing strategy must include goals for each of the above elements. The date of adoption or development of the strategy should be indicated, as well as the date proposed activities will be or have been implemented.

(2) *Entrepreneurial Efforts and Local Equal Opportunity Performance.* HUD encourages the use of minority contracting, although it will not be used as an evaluation factor in this NOFA.

(3) *Equal Opportunity Employment.* (10 points) Under this factor, the applicant must document that its percentage of minority, permanent full-time employees is greater than the percentage of minorities within the county or the community, whichever is higher. Applicants with no full-time employees may claim points based on part-time employment provided that they document that the only permanent employment is on a part-time basis.

e. *Welfare to Work Initiative.* (5 points) Five bonus points will be added to proposals which support the Welfare to Work Initiative. These points will be added to those proposals that include activities which will provide assistance to persons moving from welfare to work. Examples of such activities are: jobs, day care slots, training or transportation assistance.

4. *Final Selection*

The total points received by a project for all of the selection factors are added, and the project is ranked against all other projects from all applications, regardless of the program areas in which the projects were rated. The highest ranked projects will be funded to the extent funds are available. If an applicant submits two applications under this NOFA, it may receive up to two single grants in the amounts of the project or projects applied for in those applications which were ranked high enough to be funded. In the case of ties at the funding line, HUD will use the following criteria in order to break ties:

• The project receiving the highest program impact rating will be funded;

• If tied projects have the same program impact rating, the project having the highest combined score on the needs factors will be funded;

• If tied projects have the same program impact ratings and equal needs factor scores, the project having the highest score on the percent of persons in poverty needs factor will be funded; and

• If tied projects have the same program impact ratings, equal needs factor scores, and an equal percent of persons in poverty needs factor score, the application having the most outstanding performance in fair housing and equal opportunity will be funded.

As soon as possible after the rating and ranking process has been completed, HUD will notify all applicants regarding their rating scores and funding status. Thereafter, applicants may contact HUD to discuss scores or any aspects of the selection process.

II. Application and Funding Award Process

A. Obtaining Applications

All nonentitled communities in New York State may obtain application kits through HUD's New York or Buffalo Offices. The addresses for HUD's Buffalo and New York offices are:

Department of Housing and Urban Development, Office of Community Planning and Development, Attention: Small Cities Coordinator, 26 Federal Plaza, New York, NY 10278–0068, Telephone (212) 264–2885 x3401.

Department of Housing and Urban Development, Community Planning and Development Division, Attention: Small Cities Coordinator, 465 Main Street, Lafayette Court, Buffalo, NY 14203, Telephone (716) 551–5755 x5800.

In addition, application kits and additional information are available on the HUD website located at: www.hud.gov or by contacting Community Connections at (800) 998–9999.

B. Submitting Applications

A final application must be submitted to HUD no later than February 8, 1999. A final application includes an original and two photocopies. Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than midnight, February 8, 1999. If an application is hand-delivered to the New York or Buffalo Offices, the application must be delivered by 4:00 p.m. on the application deadline date. Applicants in the counties of Sullivan, Ulster, Putnam, and in nonparticipating jurisdictions in the urban counties of Dutchess, Orange, Rockland, Westchester, Nassau, and Suffolk should submit applications to the New York Office. All other nonentitled communities in New York State should submit their applications to the Buffalo Office. Applications must be submitted to the HUD office at the addresses listed above in section II.A.

The above-stated application deadline is firm as to *date* and *hour*. In the interest of fairness to all competing applicants, HUD will treat as *ineligible for consideration* any application that is not received on, or postmarked by February 8, 1999. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

C. The Application

1. Application Requirements

An application for the Small Cities Program CDBG Grants is made by the submission of:

(a) A completed HUD Form 4124, including HUD Forms 4124.1 through 4124.6 and all appropriate supporting material;

(b) A completed Standard Form 424;

(c) A signed copy of certifications required under the CDBG Program, including, but not limited to the Drug-Free Workplace Certification, and the Certification Regarding Lobbying pursuant to section 319 of the Department of Interior Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352), generally prohibiting use of appropriated funds, and, if applicable, Disclosure of Lobbying Activities (SF–LLL);

(d) Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart A of 24 CFR part 4 (Accountability in the Provision of HUD Assistance); and, if applicable,

(e) Abbreviated Consolidated Plan.

(f) A Section 108 Loan Guarantee application or request, if applicable, consisting of one of the following:

(1) A formal application for Section 108 Loan Guarantee(s), including the documents listed at § 570.704(b);

(2) A brief description of a Section 108 Loan Guarantee application(s) to be submitted within 60 days (with HUD reserving the right to extend such period for good cause on a case-by-case basis) of a notice of CDBG Small Cities grant award. (The CDBG grant award will be conditioned on approval of actual Section 108 Loan Guarantee commitments within a stated period of time.) This description must be sufficient to support the basic eligibility of the proposed project or activities for Section 108 assistance; or

(3) If applicable, a copy of a Section 108 Loan Guarantee approval document with grant number and date of approval.

2. Streamlined Application Requirements for Certain Applicants

Single Purpose applications submitted under the FY 1997/98 NOFA but not selected for funding will be reactivated for consideration under this NOFA, if the applicant notifies HUD in writing by February 8, 1999 that the applicant wishes the prior application to be considered in this competition. Applications which are reactivated may be updated, amended or supplemented by the applicant provided that such amendment or supplementation is received no later than the due date for applications under this NOFA. If there is no significant change in the application involving new activities or alteration of proposed activities that will significantly change the scope, location or objectives of the proposed activities or beneficiaries, there will be no further citizen participation requirement to keep the application active for a succeeding round or competition.

D. Funding Award Process

In accordance with section 102 of the HUD Reform Act and HUD's regulation in 24 CFR part 4, HUD will notify the public by notice published in the **Federal Register** of all award decisions made by HUD under this competition. In accordance with the requirements of section 102 of the Reform Act and HUD's regulations at 24 CFR part 4, HUD also will ensure that documentation and other information regarding each application submitted under this NOFA is sufficient to indicate the basis upon which assistance was provided or denied. Additionally, in accordance with § 4.5(b) of these regulations, HUD will make this material available for public inspection for a period of 5 years, beginning not less than 30 calendar days after the date on which assistance is provided.

III. Technical Assistance

Prior to the application deadline, the Buffalo and New York offices will provide technical assistance on request to individual applicants, including explaining and responding to questions regarding program regulations, and defining terms in the application package. In addition, HUD will conduct informational meetings around the State to discuss the Small Cities Program, and will conduct application workshops in conjunction with these meetings. Please contact the New York or Buffalo Office for further information regarding these meetings. Application kits will be available at these meetings, as well as from the New York or Buffalo Offices. In order to ensure that the application deadline is met, it is strongly suggested that applicants begin preparing their applications immediately and not wait for the informational meetings.

IV. Checklist of Application Submission Requirements

The following checklist is intended to aid applicants in determining whether their application is complete:

Application Completeness Checklist

Applicant: _____
Amount Requested $_____

1. Is amount of funds requested within established maximum?
2. Part I—Needs Description (HUD Form 4124.1)
   a. Program Area
   ____Housing
   ____Target Area
   ____Nontarget Area
   ____Public Facilities
   ____Economic Development (If an "appropriate" analysis is required but is not included, the application cannot be rated.)
   b. Is description of community development needs included in application?
3. Part II—Community Development Activities (HUD Form 4124.2)
   a. Has national objective been identified for each activity?
   b. Will 70 percent of grant funds primarily benefit low- and moderate-income persons? (If not, the application cannot be rated.)
4. Part III—Impact Description (HUD Form 4124.3)
5. Part IV—Outstanding Performance (HUD Form 4124.4)
6. Part V—Program Schedule (HUD Form 4124.5)
7. Part VI—Maps
   a. Location of proposed activities. (Applicants must show the boundaries of the defined area or areas.)
   b. Location of areas with minorities by census tract. (If there are no minority areas, state so on the map.)
   c. Housing conditions if project involves housing rehabilitation. (Number and location of each standard and substandard unit should be clearly identified.)
8. a. Is Standard Form 424 complete? Yes No
   b. Is original signature on at least one copy? Yes No
9. Is Certification signed with original signature? Yes No
10. Has the abbreviated consolidated plan been prepared and submitted to HUD (or included with this application)?
11. Form HUD–2880, Application/Recipient Disclosure/Update Report.
12. Do proposed economic development activities meet the public benefit standards as defined in 24 CFR 570.209?

V. Corrections to Deficient Applications

Under no circumstances will HUD accept from the applicant unsolicited information regarding the application after the application deadline has passed.

HUD may advise applicants of technical deficiencies in applications and permit them to be corrected. A technical deficiency would be an error or oversight which, if corrected, would not alter, in either a positive or negative fashion, the review and rating of the application. Examples of curable technical deficiencies would be a failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. Situations not considered curable would be, for example, a failure to submit program impact descriptions.

HUD will notify applicants in writing of any curable technical deficiencies in applications. Applicants will have 14 calendar days from the date of HUD's correspondence to reply and correct the deficiency. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

Applicants should note that if an abbreviated consolidated plan is not submitted, the failure to submit it in a timely manner is not considered a curable deficiency.

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements related to this CDBG program have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and have been assigned OMB approval number 2506–0020. *An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.*

Environmental Impact

This NOFA provides funding under, and does not alter environmental requirements of, a regulation previously published in the **Federal Register**. Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded

from environmental review under the National Environmental Policy Act. The environmental review provisions of this regulation are in 24 CFR 570.604.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this NOFA will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government. While the NOFA will provide financial assistance to the Small Cities Program of New York State, none of its provisions will have an effect on the relationship between the Federal Government and New York State, or the State's political subdivisions.

Accountability in the Provision of HUD Assistance

See Section I.A.4. of this NOFA.

Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included in the application package.

The Lobbying Disclosure Act of 1995, which repealed section 112 of the HUD Reform Act and resulted in the elimination of the regulations at 24 CFR part 86, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

Prohibition Against Advance Information on Funding Decisions

Section 103 of the Department of Housing and Urban Development Reform Act of 1989, and HUD's implementing regulation codified at subpart B of 24 CFR part 4, applies to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees, including those conducting technical assistance sessions or workshops and those involved in the review of applications and in the making of funding decisions, are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants who have ethics related questions should contact the HUD Office of Ethics, (202) 708–3815. (This is not a toll-free number.)

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance Number for this program is 14.219.

Dated: November 20, 1998.

Joseph A. D'Agosta,

Acting General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 98–31516 Filed 11–20–98; 1:30 pm]

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Part VII

Department of Justice

Bureau of Prisons

28 CFR Part 551
Smoking/No Smoking Areas; Proposed Rule

VOL 63 ISS 227 NO 25 1998 UMI

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1084–P]

RIN 1120–AA79

Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document the Bureau of Prisons is proposing to revise its regulations on smoking in order to limit smoking in Bureau of Prisons facilities to visibly designated outdoor locations, unless an indoor area has been designated as a smoking area to be used exclusively for authorized religious activities. Previously, smoking areas at medical referral centers and minimum security institutions were ordinarily located outside of all buildings, and Wardens at other institutions could, but were not required to, identify certain indoor areas as designated smoking areas where the needs of effective operations so required (for example, for those who may be employed in, or restricted to, a nonsmoking area for an extended period of time). This amendment is intended to promote a clean air environment and to protect the health and safety of staff and inmates.

DATES: Comments due by January 25, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Smoking/No Smoking Areas (28 CFR part 551, subpart N). A final rule on this subject was published in the **Federal Register** on July 6, 1994 (59 FR 34742).

The hazards of tobacco smoke (including the health risks associated with passive inhalation of second-hand smoke by nonsmokers) are well established by medical and public health authorities. The national health promotion disease prevention objectives of the Public Health Service study Healthy People 2000 have identified health status, risk reduction, and services and protection objectives in relation to tobacco. One of the objectives calls for stricter policies in the workplace that prohibit or severely restrict smoking. Cigarette smoking is responsible for an estimated 21 percent of all coronary heart disease deaths, 30 percent of all cancer deaths, and 87 percent of lung cancer deaths. The known health risks associated with smoking and the increasing societal concern about passive tobacco smoke, provide ample evidence and support for the Bureau to enact stricter smoking/no smoking rules to protect the health and safety of both staff and inmates.

In the previous revision of its regulations on smoking/no smoking areas (59 FR 34742), the Bureau limited smoking at medical referral centers and minimum security institutions ordinarily to outside locations. Under the revised regulations, Wardens at low, medium, high, and administrative institutions could identify certain indoor areas as designated smoking areas for those who may be employed in, or restricted to, a nonsmoking area for an extended period of time. The regulations, however, did not require the Wardens at these institutions to designate indoor smoking areas.

The Bureau has an obligation to its employees and to the inmates in its custody to provide the safest and healthiest environment possible. Therefore, the Bureau is now proposing that the restriction on designated indoor smoking areas be extended to all Bureau of Prisons institutions. Smoking will only be permitted outdoors in visibly designated locations with the exception that an indoor smoking area may be designated to be used exclusively for authorized religious activities. Individuals who do not observe the smoking restrictions are subject to appropriate disciplinary action.

Programs to assist those persons wishing assistance in quitting smoking are available through normal health care programs offered to inmates.

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB. After review of the law and regulations, the Director, Bureau of Prisons certifies that this rule, for the purpose of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), does not have a significant economic impact on a substantial number of small entities, within the meaning of the Act. Because this rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, its economic impact is limited to the Bureau's appropriated funds.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 551 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

Subchapter C—Institutional Management

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99; Attorney General's May 1, 1995 Guidelines for Victim and Witness Assistance.

2. Subpart N is revised to read as follows:

Subpart N—Smoking/No Smoking Areas

Sec.

551.160 Purpose and scope.
551.161 Definitions.
551.162 Designated smoking areas.
551.163 Disciplinary action.

Subpart N—Smoking/No Smoking Areas

§ 551.160 Purpose and scope.

To promote a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons restricts areas and circumstances where smoking is permitted within its institutions and offices.

§ 551.161 Definitions.

For purpose of this subpart, *smoking* is defined as carrying or inhaling a lighted cigar, cigarette, pipe, or other lighted tobacco products.

§ 551.162 Designated smoking areas.

The Warden is responsible for designating smoking areas. Smoking is permitted only in these visibly designated areas. Designated areas are to be outdoors, with the exception that an indoor area may be designated if the indoor designated smoking area is to be used exclusively for authorized religious activities.

§ 551.163 Disciplinary action.

Appropriate disciplinary action may be taken for failure to observe smoking restrictions.

[FR Doc. 98–31556 Filed 11–24–98; 8:45 am]

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Part VIII

Department of Labor

Pension and Welfare Administration

Notice on Annual Reporting Enforcement Policy

VOL 63 ISS 227 NO 25 1998 UMI

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

RIN 1210 AA57

Notice on Annual Reporting Enforcement Policy

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the Department of Labor's decision not to adopt the proposed annual reporting enforcement policy described in a notice published in the **Federal Register** on March 13, 1997 (62 FR 11929). Under the proposal, the Department would not have rejected the annual report (Form 5500) of a multiemployer welfare benefit plan solely because the accountant's opinion accompanying the report was "qualified" or "adverse" due to a failure to account and report for post-retirement benefit obligations in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) 92–6, or otherwise was affected by or reflected noncompliance with the financial statement disclosure requirements of SOP 92–6. The proposed enforcement relief also was made available on an interim basis for the 1996, 1997, and 1998 plan years to provide time for consideration of public comments on the proposal. Although the Department has decided not to adopt the proposed enforcement policy, to provide multiemployer welfare benefit plans with adequate time to comply with SOP 92–6's requirements, the Department, by this notice, is extending the interim reporting relief to cover 1999 plan year annual reports filed by multiemployer welfare benefit plans. Annual reports of multiemployer welfare benefit plans filed for plan years commencing on or after January 1, 2000, however, will be subject to rejection if there is any material qualification in the accountant's opinion accompanying the annual report due to a failure to comply with the requirement of SOP 92–6.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration (PWBA), U.S. Department of Labor, Washington, DC 20210, (202) 219–8515 (not a toll free number).

SUPPLEMENTARY INFORMATION:

A. Background

In general, the administrator of an employee benefit plan with 100 or more participants at the beginning of a plan year is required under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Department's regulations issued thereunder, to file an annual report and to include as part of that report the opinion of an independent qualified public accountant.[1] These annual reporting requirements are satisfied by filing the Form 5500 Annual Return/Report in accordance with its instructions and related regulations. The requirements governing the content of the opinion and report of the independent qualified public accountant are set forth in ERISA section 103(a)(3)(A) and 29 CFR 2520.103–1(b)(5). ERISA section 104(a)(4) permits the Department to reject an annual report if it determines that there is a material qualification by an accountant contained in the opinion required to be submitted pursuant to section 103(a)(3)(A). If the Department rejects a filing under section 104(a)(4), and the administrator fails to submit a satisfactory filing within 45 days, the Department may, among other things, assess a civil penalty of up to a $1,000 a day against the administrator for failing or refusing to file an annual report.[2]

On March 13, 1997, the Department published a notice in the **Federal Register** (62 FR 11929) inviting public comment on a proposed annual reporting policy for multiemployer welfare benefit plans. Under this proposed policy, the Department would not reject the annual report of a multiemployer welfare benefit plan solely because the accountant's opinion accompanying the report is "qualified" or "adverse" due to a failure to account and report for post-retirement benefit obligations in accordance with the financial statement disclosure requirements of SOP 92–6. To allow sufficient time for considering public comments on the proposal, the Department announced in the **Federal Register** notice that the Department would not reject 1996 and 1997 plan year multiemployer welfare benefit plan annual reports due to such qualified or adverse accountant's opinions. In response to questions, the Department subsequently clarified the scope of the relief indicating that it would not reject the subject annual reports because the accountant's opinion reflects or is otherwise affected by noncompliance with any aspect of SOP 92–6.[3] This interim report relief was later extended to the 1998 annual reports filed by multiemployer welfare benefit plans.

B. Non-Adoption of Proposed Enforcement Policy

The Department received public comments supporting and opposing adoption of the proposed policy. After carefully evaluating all of the comments received, the Department has decided not to adopt the proposed enforcement policy.

Section 103(a)(3)(A) of ERISA provides, in relevant part, that the administrator of an employee benefit plan must engage an independent qualified public accountant to conduct an examination of any financial statements, books and records of the plan necessary to enable the accountant to form an opinion as to whether the financial statements and schedules, required to be included in the annual report, are presented fairly and in conformity with Generally Accepted Accounting Principles or "GAAP." Because the accounting profession establishes the requirements pertaining to GAAP, it has been the Department's longstanding position that it generally will not rule as to the acceptability of methods of accounting or auditing for purposes of the accountant's opinion required to be attached to the annual report. *See, e.g.*, Advisory Opinion 84–45A (November 16, 1984).

Although the Department believes that the questions raised relating to the usefulness of the post-retirement benefit obligation disclosure required under SOP 92–6 for multiemployer and other welfare benefit plans have merit, the Department, following consideration of the comments, has concluded that the accounting profession, rather than the Department through reporting enforcement policies, should be responsible for addressing problems attendant to the application of accounting principles. For this reason, the Department has determined not to adopt the proposed enforcement policy. The Department, however, continues to encourage the AICPA, as well as the Financial Accounting Standards Board, as they review SOP 92–6 to continue to work with the multiemployer plan community and other interested parties and develop accounting methodologies for assessing post-retirement benefit obligations that will serve to produce

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[1] See ERISA sections 101(b)(1) and 103, and 29 CFR 2520.103–1.

[2] ERISA sections 104(a)(5) and 502(c)(2), and 29 CFR 2560.502c–2. See 29 CFR 2570.502c–2 which, in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, increased the civil penalty from $1,000 a day to $1,100 a day for violations occurring after July 29, 1997.

[3] *See* letter to Cary Hammond from Assistant Secretary Olena Berg (July 11, 1997).

meaningful financial information that will be useful to plan fiduciaries, plan participants and beneficiaries and the Department of Labor.

C. Interim Relief and Applicability Date

This notice does not affect the Department's previous announced interim reporting relief for annual reports filed by multiemployer welfare benefit plans for 1996, 1997 and 1998 plan years. In addition, to ensure that multiemployer welfare benefit plans have an adequate opportunity to prepare their financial recordkeeping and other related systems so that financial statements can be prepared to comply with SOP 92–6, the Department hereby announces that this same interim reporting relief will apply for the 1999 plan year annual reports filed by multiemployer welfare benefit plans. In particular, the Department understands that multiemployer welfare benefit plans may need this additional time to be able to present plan year 1999 and plan year 2000 comparative financial statements for Form 5500 filings made for the 2000 plan year. Multiemployer welfare benefit plan administrators who rely on the interim reporting relief must comply with the AICPA's pre-SOP 92–6 requirements in their financial statement treatment of the matters now covered by SOP 92–6. Annual reports of multiemployer welfare benefit plans filed for plan years commencing on or after January 1, 2000, however, will be subject to rejection if there is any material qualification in the accountant's opinion accompanying the annual report due to a failure to comply with the requirements of SOP 92–6.

Signed at Washington DC, this 18th day of November 1998.

Meredith Miller,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–31524 Filed 11–24–98; 8:45 am]

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Part IX

The President

Proclamation 7150—World Fisheries Day, 1998

Proclamation 7151—National Family Caregivers Week, 1998

Proclamation 7152—National Family Week, 1998

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Presidential Documents

Title 3—

The President

Proclamation 7150 of November 20, 1998

World Fisheries Day, 1998

By the President of the United States of America

A Proclamation

As a coastal Nation, America has a proud fishing heritage, and we have long benefited from the bounty of the oceans. Generations of our people have made their living from the sea, fishing for cod off the rocky coast of New England, shrimp in the Gulf of Mexico, or Pacific salmon along the West Coast and Alaska. In this Year of the Ocean, it is fitting that we set aside a special day to celebrate one of our Nation's oldest industries and the source of so much of our sustenance.

World Fisheries Day is not only an occasion for celebration, it is also a time to raise awareness of the plight of so many of the world's fish resources. A recent United Nations study reported that more than two-thirds of the world's fisheries have been overfished or are fully harvested and more than one third are in a state of decline because of factors like the loss of essential fish habitats, pollution, and global warming.

My Administration is committed to restoring our marine resources and preserving their diversity through careful stewardship. At the National Oceans Conference in June of this year, I announced our goal of creating sustainable fisheries and rebuilding fish stocks by working with industry to improve fishing practices and technologies that catch only targeted species, devoting additional resources to fisheries research, and protecting essential fish habitats. We have also launched the Clean Water Action Plan that, among other things, reduces the runoff from farms and city streets that flow into our streams, rivers, and oceans.

While these efforts are important, the United States acting alone cannot preserve the health of the world's oceans and their marine life. It will take concerted international action—both at the government level and from fish harvesters, workers, and consumers themselves—and a commitment to scientifically based fishing limits to rebuild the world's fisheries and ensure that future generations will benefit from their abundance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the Constitution and laws of the United States, do hereby proclaim Saturday, November 21, 1998, as World Fisheries Day. I call upon Government officials, fishing industry professionals, scientists, environmental experts, and the people of the United States to observe this day and to recognize the importance of conserving the world's fisheries, sustaining the health of the oceans, and protecting their precious and abundant variety of marine life.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98–31750
Filed 11–24–98; 8:45 am]
Billing code 3195–01–P

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Presidential Documents

Proclamation 7151 of November 20, 1998

National Family Caregivers Week, 1998

By the President of the United States of America

A Proclamation

As American families enjoy Thanksgiving this year, millions of aging parents and grandparents or relatives with disabilities will be able to join these celebrations because of the loving support of family caregivers. Each day these generous women and men devote their time and energies to care for family members who can no longer live independently or who need assistance to remain in the familiar surroundings of their own homes.

The need for such caregivers in our Nation is growing. We are blessed to live in a time when medicine and technology have helped us live longer; as a result, people 85 years of age and older constitute America's fastest-growing age group. For these older Americans, however, the blessing of longevity also brings with it an increased likelihood of disability and chronic disease, reduced physical and mental agility, and higher risk of injury or illness—all of which create a greater need for care.

Families across our country have quickly responded to this need, but often at great financial, physical, and emotional sacrifice. Family members, working without pay, are the major providers of long-term care in the United States, and half of all caregivers today are over the age of 65 and are often themselves in declining health. Women, who tend to be the primary family caregivers in our society, often must juggle full-time work and family schedules with their caregiving responsibilities.

The contributions that family caregivers make to our society are best gauged by the impact they have in improving the quality of life of the family members for whom they care. Thanks to family caregivers, those they serve retain a measure of independence, remain with friends and relatives, and continue making contributions to our Nation.

This week, as we celebrate Thanksgiving and reflect with gratitude on our many blessings, let us remember to give thanks for the family caregivers among us whose love and care make life brighter for so many and whose dedication and generosity contribute so much to the strength and well-being of our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim November 22 through November 28, 1998, as National Family Caregivers Week. I call upon Government officials, businesses, communities, educators, volunteers, and the people of the United States to pay tribute to and acknowledge the heroic efforts of caregivers this special week and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 98–31751
Filed 11–24–98; 8:45 am]
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Proclamation 7152 of November 20, 1998

National Family Week, 1998

By the President of the United States of America

A Proclamation

Of all the blessings that Americans enjoy, our families are perhaps the most precious. It is within the family that we first gain an understanding of who we are and learn to respect the individuality of others. It is to our families that we turn for the unconditional love, acceptance, comfort, and support we need. And it is our families who teach us how to give that love and support to others, helping us to grow into strong, caring adults who can contribute to the well-being of our communities and our world.

In the broad and diverse America of today, families take many different forms, but they all share a need for security and stability. If we are to maintain strong families as the cornerstone of our society and our hope for the future, it is our responsibility as individuals to strengthen and protect our own families—and it is our responsibility as Americans to reach out with compassion to help other families in need.

My Administration has worked hard to help provide America's families with the tools they need to thrive. Our economic policies have brought dignity, security, and opportunity to millions of families by creating new jobs and reducing unemployment.

The most important work, however, is always done in the hearts and homes of individuals. During this week, I encourage all Americans to reflect upon the many blessings of family life and to join in our national effort to promote strong, loving families across our country. By strengthening and supporting the American family, we are ensuring that the future will be bright for our children, our Nation, and the world.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 22 through November 28, 1998, as National Family Week. I call upon Federal, State, and local officials to honor American families with appropriate programs and activities. I encourage educators, community organizations, and religious leaders to celebrate the strength and values we draw from family relationships, and I urge all the people of the United States to reaffirm their own family ties and to reach out to other families in friendship and goodwill.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of November, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.

William J Clinton

[FR Doc. 98–31752
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A cumulative list of Public Laws for the second session of the 105th Congress will be published in the **Federal Register** on November 30, 1998.

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NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1301 and 1304

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: This rule amends the Compact Over-order Price Regulation to limit the payment of the Compact Over-order producer price to milk disposed of within the Compact regulated area, with a seasonally adjusted allowance for diverted or transferred milk, but does not restrict Compact payment on bulk transfers of processed fluid milk products. This rule also amends the definitions of *producer* and *producer milk* to be consistent with the amended rules regarding diverted and transferred milk, and further amends the definition of *producer* to include December 1998 as an additional requirement for qualification.

EFFECTIVE DATE: January 1, 1999.

ADDRESSES: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

On June 11, 1998 the Northeast Dairy Compact Commission issued a notice of proposed rulemaking [1] to consider amendments to the Compact Over-order Price Regulation that would exclude milk from the pool which is either diverted or transferred, in bulk, out of the Compact regulated area. The Commission held a public hearing to receive testimony on the proposed rules on July 1, 1998 and additional comments and exhibits were received until 5:00 PM on July 15, 1998. The Commission held a deliberative meeting on August 5, 1998 [2] to consider the testimony and comments received and to discuss modifications to the proposed rules based on that information. The Commission determined that it required additional information on the issues and published notice [3] (1) that an additional public hearing would be held on September 2, 1998; (2) that the comment period would be extended to September 16, 1998 to receive further testimony and comment on the proposed rules regarding diverted and transferred milk; and (3) that the Commission was considering updating the definition of *producer* to include December 1998 as an additional requirement for qualification.

The Commission held a second deliberative meeting on October 7, 1998 [4] to consider all oral and written comments received at the public hearings held on July 1, 1998 and September 2, 1998 and the additional comments received by the Commission's published comment deadlines, and to deliberate and act on the proposed amendments to the Over-order Price Regulation.

Based on the oral testimony and written comments and exhibits received, the Commission concludes that appropriate limits must be established to prevent increases in milk supply that are not needed for the New England market and hereby amends the following sections of the Over-order Price Regulation:

(1) 7 C.F.R. 1301.12—to clarify that producer milk must be physically moved to a pool plant, or be diverted as permitted by the regulation, to qualify for the Compact payment;

(2) 7 C.F.R. 1301.23 and 1304.2—to exclude milk from the pool which is either diverted or transferred, in bulk, out of the Compact regulated area, in excess of 8% in the fall months of August, September, October and November, 10% in the transition months of January, February, July and December and 13% in the spring months of March, April, May and June. The percentage is calculated on the milk handler's total producer receipts. The amended rule does not restrict Compact payments on bulk transfers of skim milk and condensed milk, bulk milk transferred and classified Class I by a federal market order and fluid milk processed (i.e., pasturized, homogenized, or blended) or fluid milk diverted or transferred due to certain catastrophic circumstances; and

(3) 7 C.F.R. 1301.11—to be consistent with the amended rules regarding diverted and transferred milk and to add December 1998 as an additional requirement in the definition of *producer*.

II. Summary and Analysis of Issues and Comments

At the July 1, 1998 public hearing, the Commission's Regulations Administrator, Carmen Ross, testified and explained the issues presented under the current Over-order Price Regulation and why the proposed rules were needed.[5] Mr. Ross provided data regarding the volume of milk transferred or diverted out of the Compact regulated area from July 1997 through May 1998.[6] This data showed a clear pattern of an increasing volume of milk being diverted and transferred out of the Compact regulated area since the inception of the Over-order Price Regulation. For example, in July 1997, the first month of the Compact pool, diverted and transferred milk constituted 34.4 million pounds, or 6.5 percent of the July pool. However, in February 1998, the diverted and transferred milk volume had risen to 49.8 million pounds, or 9.8 percent of the February pool. This trend continued and in May 1998, 53.2 million pounds of milk was diverted or transferred out of the Compact regulated area, amounting to 9.2% of the May pool.[7] Mr. Ross provided the most current data at the September 2, 1998 hearing which demonstrated that the volume of milk diverted and transferred out of the

[1] 63 FR 31943 (June 11, 1998). In this same notice of proposed rulemaking, the Commission also proposed to establish a reserve fund for reimbursement to school food authorities. The final rule establishing the reserve fund was published at 63 FR 46385 (September 1, 1998).

[2] Public notice of this meeting was published at 63 FR 40069 (July 27, 1998).

[3] 63 FR 43891 (August 17, 1998).

[4] Public notice of this meeting was published at 63 FR 51864 (September 29, 1998).

[5] Carmen Ross, First Public Hearing Transcript ("Tr.") 9–28.

[6] Ross, Tr. 17–18.

[7] Ross Tr. 17–21.

Compact regulated area continued to rise to 64.3 million pounds, representing 11.3% of the July 1998 pool, or nearly double the volume of milk diverted and transferred in July 1997.

To address the concern of a steadily increasing volume of milk that qualifies for the Compact Over-order producer price and is then diverted and transferred out of the Compact regulated area, the Commission proposed to amend the Over-order Price Regulation, section 1301.12, which defines *producer milk*,[8] and section 1301.23, which defines *diverted milk*, and section 1304.2 relating to classification of transfers of milk. The effect of these proposed amendments would be to depool the volume of producer milk that a handler diverts or transfers, in bulk, outside of the regulated area, thereby excluding it from the Compact Over-order producer price.[9]

The Commission held two public hearings and received testimony and comments from a total of fifteen individuals, including six representatives of dairy cooperatives,[10] two representatives from a milk processor,[11] two state Commissioners of Agriculture and one state dairy economist,[12] a dairy farmer,[13] and two representatives of the Community Development and Applied Economics Department of the University of Vermont.[14] In addition, at the request of the Commission, the Federal Order 1 Market Administrator submitted additional data and testified at the September 2, 1998 hearing to answer the Commission's technical questions relating to that data.[15]

Of the total comments received after the first public hearing on July 1, 1998, two commenters[16] supported the proposed rules relating to diverted or transferred milk, while eight commenters[17] opposed the total exclusion of diverted and transferred milk from the Compact pool. Those commenters opposed to the proposed amendments were most concerned with the seasonal fluctuations of supply and demand in the New England milk market,[18] the vital role diversions and transfers of milk play in balancing the market to accommodate those fluctuations,[19] and the impact, on both producers and the market, of totally depooling diverted and transferred milk.[20] However, most of these commenters also recognized the concerns identified by the Commission regarding the increase in diversions and transfers of milk out of the Compact regulated area, and offered some other solutions, including extending the qualification period for producers[21] and implementing a cap on the volume of diverted and transferred milk that could qualify for the Compact payment.[22]

Nine commenters[23] provided new or supplemental testimony during the extended public comment period. Of those nine commenters, four commenters[24] expressed support for a seasonally adjusted cap on the volume of diverted and transferred milk, calculated as a percentage of total handler producer receipts. No commenters opposed a seasonally adjusted cap. One commenter reiterated his prior suggestion that the qualification period for producers be extended.[25]

In the initial public comment period, one commenter supported the proposed amendments and their intended effect of "limiting payments of the compact's over-order producer price to milk that is necessary to meet the demand of the New England market."[26]

The concerns expressed by this commenter reflect the concerns initially identified by the Commission. However, after careful review of all the testimony and comments received during this rulemaking proceeding, and as discussed in detail below, the Commission concludes, as does the commenter,[27] that a seasonally adjusted cap on the total volume of milk diverted and transferred out of the Compact regulated area appropriately addresses these concerns. The Commission further concludes that the Over-order Price Regulation appears to be having its intended result of stabilizing the New England milkshed, and, therefore, also concludes that a seasonally adjusted cap meets the dual goals of the Compact of assuring the continued viability of dairy farming in the Northeast and of assuring consumers of an adequate, local supply of pure and wholesome milk. Compact Article I, Section 1.

A. The New England Milkshed

One of the commenters who supported the proposed amendments at the first hearing stated that the proposals did not go far enough.[28] This commenter further suggested that the Commission should consider not paying the Compact price for any milk produced outside of the Compact area.[29] Another commenter was concerned that the Compact payment should only be made on milk needed to supply the New England market.[30]

In response to questions from the Commission, one commenter[31] stated that there is never enough milk produced in New England to meet the New England milk plant demands.[32] The Commission emphasizes that milk produced outside of the Compact regulated area has traditionally been needed to meet the demand for milk and milk products in New England. As the Commission previously concluded:

According to data, the six state, New England, region draws approximately seventy percent of the raw product supply needed for the consumption of all milk products, fluid and manufactured, from New England farmers. The total volume of milk supplied for the region is approximately five billion pounds. The predominant remainder is supplied by New York farmers, who have traditionally made up a substantial portion of

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[8] 63 FR 31945 (June 11, 1998).

[9] Ross Tr. 14–15.

[10] Robert Wellington and Carl Peterson representing Agri-Mark; Dean Ellinwood representing Dairy Farmers of America; Edward Gallagher representing Dairylea Cooperative, Inc.; Leon Berthiaume representing St. Albans Cooperative Creamery, Inc.; and Sally Beach representing Independent Dairyman's Cooperative Association, Inc.

[11] Neil Marcus and Bill Fitchett from Marcus Dairy.

[12] Jonathan Healy, Commissioner and William Gillmeister, Dairy Economist, Massachusetts Department of Food and Agriculture and Leon Graves, Vermont Commissioner of Agriculture, Food and Markets.

[13] Kenneth Dibbell.

[14] Assistant Professors Rick Wackernagel and Charles Nichols.

[15] Erik Rasmussen, Market Administrator, Federal Milk Order No. 1.

[16] Dibbell Tr. 31; Healy, First Written Comment Period ("WC") 3.

[17] Marcus, Fitchett, Wellington, Ellinwood, Gallagher, Berthiaume, Graves, and Beach.

[18] *See*, e.g., Marcus Tr. 43; Wellington Tr. 63–64, 68, 72; Ellinwood Tr. 99–100; Gallagher Tr. 119–120; Berthiaume WC 5; Graves WC 14; and Beach WC 15.

[19] *See*, e.g. Marcus Tr. 44, 59; Wellington Tr. 64, 68, 72; Ellinwood Tr. 100–101 and WC 1; Gallagher Tr. 120–121; Berthiaume WC 5–6; Graves WC 13–14; and Beach WC 15.

[20] *See*, e.g. Marcus Tr. 54; Wellington Tr. 65, 67, 69 and WC 11; Ellinwood Tr. 102, 111; Gallagher Tr. 121–123; Berthiaume WC 5, 8; Graves WC 13; and Beach WC 15.

[21] Wellington, on behalf of Agri-Mark and Dairylea, WC 12; Berthiaume WC 7; and Graves WC 14.

[22] Wellington, on behalf of Agri-mark and Dairylea, WC 11; Ellinwood WC 2; Berthiaume WC 7; and Beach WC 16.

[23] Rasmussen, Wellington, Marcus, Dibbell, Berthiaume, Peterson, Gillmeister, Wackernagel and Nichols.

[24] Wellington Extended Public Hearing Transcript ("ETr.") 55 , Marcus ETr. 112, Berthiaume ETr. 141 and Gillmeister Extended Written Comment Period ("EWC") 2.

[25] Wellington ETr. 56, 96–97 and EWC 2.

[26] Healy WC 3.

[27] Gillmeister EWC 1–3, on behalf of the Massachusetts Department of Food and Agriculture.

[28] Dibbell Tr. 30.

[29] Dibbell Tr. 30–31.

[30] Healy WC 3.

[31] Gallagher Tr.135.

[32] Gallagher Tr. 136–7.

the New England milkshed. Less than three percent of the raw milk supply for the New England market is produced outside of the six state/New York milkshed.[33]

The data submitted in this rulemaking proceeding confirms that the New England market, Federal Order 1, continues to rely on New York producers to meet the consumer demand for milk and milk products.[34] Since July 1997, New York producers have accounted for between 25% and 28% of the total producers supplying the New England market.[35] The data also shows that the total number of producers supplying the New England market since July 1997 is still less than the total number of producers in 1995 and 1996.[36]

Mr. Rasmussen explained that the data reflects that over time, dairy farms get larger and, with New England urbanizing, there is less milk and fewer farmers in New England. As the number of dairy farms in New England continues to decline, milk handlers must look to New York to replenish their supply, because New England is surrounded on all other sides by ocean and Canada. Therefore, there is less of a decline in the number of producers in New York supplying the New England market.[37]

Additional data compiled by the University of Vermont demonstrates that Vermont and New York have provided the largest volume of the milk supply to the New England market for the period of the study 1977–1997.[38] While the volume of milk produced in Vermont has increased substantially over this time period, the supply from New York state appears to be more volatile, with a small net increase over the twenty year period.

The Commission emphasizes that payment of the Compact Over-order premium to all producers supplying the New England market, regardless of location of production, is needed to stabilize the milkshed and assure a local supply of milk. In implementing the Over-order Price Regulation, the Commission found that, although milk production and consumption are in balance in New England, the situation is under considerable distress, and that it is necessary to at least stabilize, if not increase, the present, local supply of milk through the price regulation.[39] The Commission also found that "the present, distant supply itself must be stabilized as well, to ensure that the milkshed does not reach further west."[40]

Since the inception of the Over-order Price Regulation, the supply of milk to the New England market and the Compact pool has steadily risen.[41] The commenters offered several explanations for this increase in supply, and a simultaneous increase in diversions and transfers, such as the closing of a manufacturing plant in Hinesburg, Vermont and a slight increase in production in the region due to favorable weather conditions, lower grain prices, and good quality forage.[42] A few commenters also observed that the Compact price regulation has attracted some milk to the New England market.[43] Therefore, the Commission concludes that the price regulation appears to be having the intended effect of stabilizing the milkshed and increasing the supply of milk available to the New England market, thus assuring consumers of a local supply of pure and wholesome milk.

B. Seasonal/Balancing

Eight commenters[44] who opposed the total exclusion of diverted and transferred milk in the proposed amendments commented that diversions and transfers are necessary due to seasonal or other normal and predictable fluctuations of supply and demand in the milk market, and are a routine method of balancing the market[45]; that the normal production swing from spring to fall in the supply of milk is in direct opposition to the normal fluctuation in the demand for milk[46]; that in order to meet the consumer demand for milk in the low production months, typically in the fall, cooperative associations and milk handlers must accept and market milk from their supplying producers in the high production months, typically in the spring[47]; and that handlers must also establish a reserve pool of milk to meet the New England fluid processing needs.[48]

As these same commenters explained, cooperative associations and milk handlers must have a method of balancing the supply of milk at times when supply exceeds demand.[49] Balancing often is accomplished at a balancing plant, where milk that is not needed to meet the demand is processed into other marketable products such as butter and powder.[50] Reloading milk and shipping it to another plant outside of the Compact regulated area (transferring), or diverting milk to such a plant directly from a farm, also are common methods of balancing the supply of milk in the New England market.[51] Five commenters[52] noted that the federal order regulations allow transfers and diversions to meet the processors' balancing needs.

One commenter[53] observed that every Class 1 market has a large butter/powder plant for balancing. However, as this commenter also explained, when the New England market lost the Hinesburg, Vermont manufacturing plant, the West Springfield, Massachusetts butter/powder plant suddenly became a manufacturing plant, thus limiting the capacity of that plant to balancing the market.

The Commission recognizes the normal fluctuations of supply and demand of milk in the New England market and, as noted above, the traditional supply of milk to New England from outside the Compact area. The Commission appreciates the concerns expressed by the commenters and recognizes the seasonal fluctuations in milk supply and demand, and also recognizes the importance of balancing plants and methods in the New England milk market. In recognition of this integral part of the milk market, the Commission includes in the amended rules a seasonally adjusted allowance for the total of volume of diverted and transferred milk as a percentage of a milk handler's total producer receipts.

While the Commission concludes that the price regulation appears to be having the desired impact of increasing the supply of milk to the New England market and thereby stabilizing the

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[33] 62 FR 23039 (April 28, 1997).

[34] Rasmussen, New England Milk Market Statistics 1994–1998.

[35] Rasmussen EWC Tables 2 and 3.

[36] Rasmussen EWC Table 3.

[37] Rasmussen ETr. 14, 24.

[38] Wackernagel EWC 3, Figure 1.

[39] 62 FR 23039–40 (April 28, 1997); 62 FR 29635 (May 30, 1997); 62 FR 62814 (November 25, 1997).

[40] 62 FR 23040 (April 28, 1997).

[41] Ross, Second Addendum, EC 1.

[42] Rasmussen ETr. 22; Wellington ETr. 48, 95; and Berthiaume ETr. 136.

[43] Wellington ETr. 91, EWC 10–11; Berthiaume EWC 4; Gillmeister EWC 2; Wackernagel EWC 4–5; and Nichols EWC 2.

[44] Marcus; Pritchett; Wellington; Ellinwood; Gallagher; Berthiaume; Graves; and Gillmeister.

[45] Marcus Tr. 43; Ellinwood Tr. 99–100; Wellington Tr. 63–64; Gallagher Tr. 116; Berthiaume WC 5; Graves WC 13; Beach WC 15; and Gillmeister EWC 2.

[46] Marcus Tr. 44; Wellington Tr. 63–64, 68; Ellinwood Tr. 99–100; Gallagher Tr. 119–120, 131, 133; Berthiaume WC 5–6; Graves WC 14; and Beach WC 15.

[47] Marcus Tr. 59; Wellington Tr. 63–64, 68; and Berthiaume WC 5.

[48] Ellinwood Tr. 100.

[49] Wellington Tr. 72, WC 11; Gallagher Tr. 131, 133; Berthiaume WC 5–6; Graves WC 14; and Beach WC 15.

[50] Beach WC 16; Wellington EWC 1–4.

[51] Ellinwood WC 1; Wellington Tr. 72, ETr. 34–40, EWC 1–4; Gallagher Tr. 120

[52] Ellinwood Tr. 100–101, WC 1; Wellington Tr. 64, WC 10; Gallagher Tr. 121 and Rasmussen ETr. 17–18.

[53] Wellington ETr. 40–41.

milkshed, it also concludes that appropriate limits must be established to prevent increases in milk supply that are not needed for the New England market.

C. Technical Amendments to the Price Regulation

Five commenters [54] observed that milk coming into the compact regulated area and being transferred or diverted back out of the compact regulated area is a problem. Three of these commenters [55] stated that such milk should not receive the compact payment. Two of these commenters [56] stated that this was a problem that would be difficult to solve.

Eight commenters opposed the proposed amendment of the current Over-order Price Regulation. However, some of these commenters did suggest alternative regulatory changes as discussed below.

1. Definition of Producer

Five commenters [57] proposed that the Commission amend the regulation at 1301.11 which defines "producer." One of these commenters [58] suggested that the existing rule, at 7 CFR 1301.11(b)(2) limits the handler's ability to replace producers. The Commission amends this section to delete the current language and to substitute "the volume of milk excluded from producer milk pursuant to section 1304.2." This amended language both addresses the concerns raised by the commenter and also makes this provision consistent with the amended diversion and transfer provisions adopted by the Commission.

The Commission also adds the language "and December 1998" to the provisions of sections 1301.11(b) and (b)(1) to update the current requirement that a producer must move milk to a pool plant in December 1996 and December 1997 and December 1998. The remaining four commenters all suggested that the five-month qualification period contained in the regulation at 1301.11(b) be extended to eight months . One commenter [59] further suggested that the Commission eliminate the December 1996 and 1997 provisions from this regulation. The Commission responds that increasing the qualification period cannot be expected to have a significant impact on the issue of how much milk should be moved in and moved out of the market.[60]

In response to a question from the Commission, one commenter [61] observed that extending the qualification requirement that requires producers to move their milk into the Compact regulated area on more than one-half of the days on which they move milk would create higher transportation costs and decrease the balancing options for that milk. Similarly, Mr. Ross explained that increasing the number of days per month for qualifying purposes would not address the problem identified by the Commission and could actually make the situation worse by causing handlers to then move other milk, which would in turn create a financial burden on the handlers.[62] As a result, the Commission concludes that no amendment to the qualifying period provisions of the existing regulation is justified at the present time.

2. Definition of Producer Milk

The Commission's initial rulemaking notice proposed to amend the definition of *producer milk* to clarify that the milk must be physically moved to a pool plant in the regulated area or be diverted pursuant to the Commission's regulation.[63] Mr. Ross explained that this amendment will depool producer milk that is moved to plants outside of the Compact regulated area and will treat all qualified producers the same.[64]

The Commission received no comments on this provision and thus adopts the amendment as proposed.

3. Diverted and Transferred Milk Provisions

The Commission initially proposed to amend sections 1301.23 and 1304.2 to exclude all milk from the pool which was diverted or transferred out of the Compact region. During the first public hearing and comment period, five commenters [65] suggested that the Commission impose a five percent cap on transferred milk and one of these commenters [66] suggested the Commission impose a cap on both diverted and transferred milk. Four of these commenters [67] also stated that if the Commission imposed a cap, then certain processed milk products, such as skim and skim condense, should be excluded from the cap, and also, that provision be made to suspend the cap for an individual cooperative or handler in appropriate circumstances, such as equipment failure.

Three commenters [68] recommended that a five percent cap on transferred milk be applied to the total volume of milk pooled by the cooperative or handler, with an exclusion for skim, and skim condense or other processed fluid milk products. Two commenters also recommended excluding milk sold for Class I purposes outside of the compact area.[69] The Commission discussed the recommendation for a five percent cap at its deliberative meeting on August 5, 1998.

During the second public hearing and comment period, some of those commenters and an additional commenter [70] refined their positions and instead proposed that the Commission adopt a seasonally adjusted allowance for a combined volume of diverted and transferred milk. These commenters explained in detail, and provided substantial data to support their arguments, that a seasonally adjusted allowance would best address the Commission's concerns and accommodate the realities of the New England milk market, including the possible negative impact that a five percent cap would have on the primary balancing plant in the Compact regulated area.[71]

After careful consideration of the entire record, the Commission agrees that a seasonally adjusted allowance for diversions and transfers of milk more appropriately addresses the Commission's concerns. The Commission also agrees that the seasons should be defined as follows: Transition months—January, February, July, December; Spring months—March, April, May, June; Fall months—August, September, October, November.[72]

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[54] Dibbell Tr. 30–31; Jonathan Healy WC 3; Leon J. Berthiaume WC 5–6; Leon Graves WC 13; and Sally Beach WC 15.

[55] Dibbell Tr. 30; Healy WC 3; and Berthiaume WC 5, 6.

[56] Graves WC 13; and Beach WC 15–16.

[57] Marcus Tr. at 47; Wellington, on behalf of Agri-Mark and Dairylea at WC 11; Berthiaume at WC 7; and Graves at WC 14.

[58] Marcus Tr. at 47.

[59] Berthiaume at WC 7.

[60] Ross ETr. 149–150.

[61] Wellington ETr. 96–97.

[62] Ross ETr. 150–152.

[63] 63 FR 31943 (June 11, 1998).

[64] Ross Tr. 13.

[65] Ellinwood at WC 2; Wellington on behalf of Agri-Mark and Dairylea at WC 11; Berthiaume at WC 7; and Beach at WC 16.

[66] Beach at WC 16.

[67] Ellinwood at WC 2; Wellington on behalf of Agri-Mark and Dairylea at WC 11; and Berthiaume at WC 7.

[68] Wellington WC at 11; Ellinwood WC at 2; and Berthiaume WC at 7.

[69] Wellington WC at 11; Berthiaume WC at 7.

[70] Wellington ETr. 53–4, EWC 12; Marcus ETr. 112; Berthiaume ETr. 137, 145–6; and Gillmeister EWC 2.

[71] Rasmussen ETr. 16, 21, 31; Wellington ETr. 41–2, 45, 47, 93, EWC 1–7, 12–13, and Table 9 (supplemental); Marcus ETr. 99, 112; Dibbell ETr. 129; Berthiaume ETr. 133, 135, 137, EWC 3–4; and Gillmeister EWC 2–3.

[72] Wellington EWC 12; Berthiaume ETr. 141; Gillmeister EWC 2.

In setting the allowance for each season, the Commission has carefully reviewed the data and arguments of the commenters. The Commission is mindful of the importance of maintaining an allowance high enough to accommodate the reasonable balancing needs of the market while at the same time establishing reasonable limits on the amount of milk supplying the New England market relative to the demand for milk products within the Compact regulated area. Therefore, the Commission establishes the following seasonally adjusted allowance: Transition months—10%; Spring months—13%; Fall months—8%.

The Commission notes that these allowances were recommended by one commenter,[73] although the method adopted by the Commission is somewhat different than that used by the commenter. The Commission also notes that these percentages are slightly lower than those recommended by a commenter,[74] and supported by two commenters.[75] The Commission carefully considered the data provided by Mr. Wellington in Table 9 in his supplemental written comments. This commenter explained that the data provided in that table supported a seasonally adjusted allowance of 12% in the Transition months, 15% in the Spring months and 10% in the Fall months.[76] However, this commenter also acknowledged that the diversion and transfer volume numbers included in the table reflected milk transferred on behalf of other handlers, and that the handler volume used in the chart did not similarly reflect the total volume of milk handled.[77]

The Commission concludes that adjusting the figures in Table 9 to reflect the percentage of the handler's milk diverted and transferred relative to the handler's volume for each month and excluding volumes attributable to other handlers results in appropriate percentage limits of 10% in the Transition months, 13% in the Spring months and 8% in the Fall months. The Commission also notes that the data provided in Table 9 include Class 1 transfers [78] which, as discussed below, are excluded from the allowance calculation.

The Commission emphasizes that the amendments regarding diverted and transferred milk specifically apply to milk received at a pool plant in the regulated area. These amendments do not affect milk diverted or transferred to a partially regulated plant having Class 1 disposition in the regulated area. The Commission also emphasizes that the amendments apply only to bulk diversions and transfers of fluid milk, and do not apply to packaged milk products.

In addition, the Commission recognizes the importance of accommodating milk temporarily displaced due to catastrophic circumstances and adopts a provision for suspending the seasonally adjusted allowance in circumstances such as fire, flood, storm and equipment failure which are completely beyond the pool plant operator's control. The suspension provision requires the operator of the pool plant (and the handler, in the case of diverted milk) to notify the Commission of the catastrophic circumstance within two (2) days of the occurrence.

The Commission also recognizes the commenters' concerns regarding the treatment of processed milk under the diversion and transfer provisions. The commenters noted (1) that milk transferred or diverted for Class I utilization should be excluded from any cap because all producers benefit from the Class I utilization,[79] (2) that reloads for Class I utilization are for proper long distance hauling,[80] and (3) that processed products such as skim and condensed milk have separate markets. The Commission recognizes that these milk products do not present the problem identified by the Commission, which was acknowledged by several commenters,[81] of "reloaded" milk, which is brought into a pool plant simply to qualify for the compact payment. Therefore, the Commission excludes bulk transfers of skim milk, condensed milk, bulk milk transferred and classified Class I by a federal market order and milk processed (i.e. pasturized, homogenized, or blended). All other fluid milk products transferred in bulk from a pool plant to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, will be subject to the seasonally adjusted allowance.

If the handler exceeds the diversion and transfer allowance, the plant operator may select the sources to be excluded. If the plant operator fails to select the sources to be excluded, then the transferred milk that is excluded under this rule shall be prorated to all sources of milk received at that plant. The Commission notes that this provision is analogous to the federal order system regarding selection, by the handler, of classification of milk.

In sum, the Commission adopts a seasonally adjusted allowance that is calculated on the total of all diverted milk, which by definition is not processed milk, and non-excluded transferred milk, in determining the volume of milk on which the Compact payment will be made. This seasonally adjusted allowance is calculated on the total producer receipts reported by the handler.[82] The Commission concludes that the seasonally adjusted allowance appropriately accommodates the competing interests and needs of the producers, consumers, cooperative associations and handlers, in order to assure New England consumers of an adequate, local supply of pure and wholesome milk throughout the year.[83] The Commission acknowledges the many and varied concerns raised by the commenters, and will continue to monitor closely the Over-order Price Regulation, as amended, to assure that the mission, purposes and objectives of the Compact and the price regulation are met.

III. Summary of Required Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments

The first finding considers whether the amendment of the Over-order Price Regulation serves the public interest. The Commission previously has determined that an Over-order Price Regulation serves the public interest,[84] and the Commission reaffirms that determination. The Commission also finds that the public interest will be served by amendment of the Over-order Price Regulation to exclude milk from the pool that is either diverted or transferred in bulk out of the Compact regulated area in excess of a seasonally adjusted allowance of total producer receipts, set at 10% in the Transition months of January, February, July and

[73] Gillmeister EWC 2–3.
[74] Wellington ETr. 55, EWC 12.
[75] Marcus ETr. 112; Berthiaume ETr. 141.
[76] Wellington ETr. 55, EWC 12.
[77] Wellington ETr. 55, EWC 11, Table 8.
[78] Wellington EWC 11.
[79] Marcus Tr. 45, 53, 55, ETr. 111; Ellinwood WC 2; Wellington WC 11, ETr. 72, EWC 10; Berthiaume WC 5–8, ETr. 138; and Rasmussen ETr. 21.
[80] Berthiaume WC 7.
[81] Ross Tr. 13; Dibbell Tr. 30–31; Healy WC 3; Berthiaume WC 5–6; Graves WC 13; and Beach WC 15.
[82] Concurring with this method: Wellington ETr. 53–4, EWC 12.
[83] *See*, discussion *infra* at III. a.
[84] 62 FR 29638 (May 30, 1997); 62 FR 62825 (November 25, 1997); 63 FR 10110 (February 27, 1998).

December, 13% of the Spring months of March, April, May and June, and 8% in the Fall months of August, September, October and November. The Commission further finds that the public interest will be served by amending the definitions of *producer* and *producer milk* to be consistent with the amended rules regarding diverted and transferred milk and to further amend the definition of *producer* to include December 1998 as an additional requirement.

The Commission emphasizes that the amendments regarding diverted and transferred milk do not impact on the New England consumers. The Over-order Price Regulation is structured so that assessments and obligations are based on Class I milk distributed in the New England market. Data submitted by the New England Market Administrator demonstrates that Class I utilization has been relatively constant over the last several years, although there has been a slight decline.[85] Therefore, the amount of milk subject to the Over-order Price Regulation is relatively stable and the cost to the consumer is defined by only this volume of Class I milk consumed in New England. The amended rules restricting the volume of diverted and transferred milk that is eligible for the Compact Over-order payment to a seasonally adjusted allowance is, therefore, cost-neutral to New England consumers.

b. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The second finding considers impact of the amendments on the level of producer price needed to cover costs of production and to assure an adequate local supply of milk for the inhabitants of the regulated area.[86]

The Commission reaffirms its prior findings regarding the sufficiency of pay prices for milk needed to meet the New England market demand.[87] In adopting these amendments, the Commission notes that the primary impact of the increase in the pool beyond the capacity of the New England market, as reflected in the volume of milk that is diverted and transferred out of the Compact regulated area, is revealed in a slight depression of the producer pay price per hundred weight of milk. The Commission concludes that the diverted and transferred milk amendments will not negatively impact on the price level paid to producers that is needed to assure an adequate local supply of milk. The Commission reaffirms its prior finding that the over-order price level will assure a sufficient price to producers and an adequate local supply of milk.[88]

In reaching this conclusion, the Commission recognizes the seasonal variation in supply and demand for milk and milk products and the vital role diversions and transfers play in balancing the New England milk market. The Commission recognizes that the historical movement of milk in the New England milkshed involves both movement of milk into the Compact area from outside of the Compact area, and the reverse.[89] The Commission, in adopting these amendments, is focusing on the Compact payment to producers who supply milk to the New England market. The Commission recognizes the many challenges involved in balancing the supply and demand for milk in the New England market and therefore builds in a seasonally adjusted allowance on diverted or transferred milk.

The Commission further notes that the Compact payments to producers are intended to assure the continued viability of dairy farming in the northeast. Compact Art. 1, Section 1. The Over-order Price Regulation, as amended, balances this purpose with the equally important purpose of assuring an adequate, local supply of pure and wholesome milk for the Compact area consumers. Compact Art. 1, Section 1. The Compact specifically charges the Commission to also "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." Compact Art. IV, Section 9(f). The Commission concludes that the amended regulation meets all three of these objectives and best preserves the integrity of the Compact by appropriately balancing these objectives.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonably Designed To Achieve the Purposes of the Order

The third finding requires a determination of whether the provisions of the regulation other than those establishing minimum milk prices are in the public interest. The amendments establish a seasonally adjusted allowance on milk diverted or transferred out of the Compact region. Therefore, the matter of the public interest is addressed under the first required finding and not under this finding. In any event, the Commission finds that the price regulation, as hereby amended, is in the public interest in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendment Are Approved by Producers

The fourth finding, requiring a determination of whether the amendment has been approved by producer referendum pursuant to Article V, section 13 of the Compact is invoked in this instance given that the amendments will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR Part 1371.

Pursuant to 7 CFR Part 1371.3, and the referendum procedure certified by the Commission, a referendum was held during the period of October 26, 1998 through November 6, 1998. All producers who were producing milk pooled in the Federal Order #1, or for consumption in New England during June, 1998, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before October 26, 1998 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on November 6, 1998. The ballots were opened and counted in the Commission offices on November 9, 1998 under the direction and supervision of Mae S. Schmidle, Vice-Chair of the Commission and designated "Referendum Agent."

Twelve Cooperative Associations were notified of the procedures necessary to block vote. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative

[85] Rasmussen, New England Market Statistics 1994–1998.

[86] As noted in prior rulemaking proceedings, the Commission limits its assessment to issues relating to the fluid milk market. 62 FR 29632 (May 30, 1997); 62 FR 62812 (November 25, 1997); and 63 FR 10109 (February 27, 1998).

[87] 62 FR 29632–29637 (May 30, 1997); 62 FR 62812–62817 (November 25, 1997); and 63 FR 10109–10110 (February 27, 1998).

[88] 62 FR 29638 (May 30, 1997); 62 FR 62825 (November 25, 1997).

[89] *See*, 62 FR 23039 (April 28, 1997).

Association block vote had to be received in the Commission office by 5:00 p.m. on November 6, 1998. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by October 28, 1998 with notice mailed to the Commission offices no later than October 30, 1998.

Notice of Referendum Results

On November 9, 1998 the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. A total of 4,080 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following:

A total of 4,080 ballots were mailed to eligible producers.

A total of 3,006 ballots were returned to the Commission.

A total of 15 ballots were disqualified—late, incomplete or duplicate.

A total of 2,989 ballots were verified.

A total of 2,966 verified ballots were cast in favor of the price regulation.

A total of 23 verified ballots were cast in opposition to the price regulation.

Accordingly, notice is hereby provided that of the verified ballots cast, 2,989, 99.2%, or 2,966, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the proposed amendment is approved by producers.

IV. Required Findings of Fact

Pursuant to Compact Article V. Section 12, the Compact Commission hereby finds:

(1) That the public interest will be served by the amendment of minimum milk price regulation to dairy farmers under Article IV to: (1) exclude milk from the pool which is either diverted or transferred, in bulk, out of the compact regulated area, in excess of a seasonally adjusted allowance of total producer receipts, set at 10% for the Transition months of January, February, July and December, 13% for the Spring months of March, April, May and June and 8% for the Fall months of August, September, October and November, with specified exclusions; (2) to amend the definitions of *producer* and *producer milk* to be consistent with the amended provisions regarding diverted and transferred milk; and (3) to amend the definition of *producer* to include December 1998 as a requirement.

(2) That a level price of $16.94 (Zone 1) to dairy farmers under Article IV will assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed amendments are approved by producers pursuant to a producer referendum required by Article V. section 13.

List of Subjects in 7 CFR Parts 1301 and 1304

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR Chapter XIII as follows:

PART 1301—DEFINITIONS

1. The authority citation for part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1301.11(b) is revised to read as follows:

§ 1301.11 Producer.

* * * * *

(b) A dairy farmer who produces milk outside of the regulated area that is moved to a pool plant, provided that on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during December 1996, December 1997, and December 1998, all of that milk was physically moved to a pool plant in the regulated area. Or: to be considered a qualified producer, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the current month and for five (5) months subsequent to July of the preceding calendar year, all of that milk must have moved to a pool plant, provided that the total amount of milk at a pool plant eligible to qualify producers who did not qualify in December 1996, December 1997, and December 1998 shall not exceed the total bulk receipts of fluid milk products less:

(1) Producers receipts as described in paragraph (a) of this section and producer receipts as described in paragraph (b) of this section who are qualified based on December 1996, December 1997, and December 1998; and

(2) The volume of milk excluded from producer milk pursuant to §§ 1301.23 (d) and (e), and 1304.2 (c) and (d).

* * * * *

3. Section 1301.12 is revised to read as follows:

§ 1301.12 Producer milk.

Producer milk means milk that the handler has received from producers and is physically moved to a pool plant in the regulated area or is diverted pursuant to § 1301.23(d). The quantity of milk received by a handler from producers shall include any milk of a producer that was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1301.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

4. Section 1301.23 is amended by adding paragraphs (d) and (e) to read as follows:

§ 1301.23 Diverted milk.

* * * * *

(d) Milk moved, as described in paragraphs (a) and (b) of this section, from a dairy farmer's farm to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, the volume of milk (including milk transferred pursuant to § 1304.2(c)) in excess of the percentage of total producer receipts, pursuant to paragraph (e) of this section, shall be excluded from producer milk. This paragraph will not apply to milk normally associated with a pool plant which was caused to be diverted because the facilities of the pool plant are temporarily unusable because of fire, flood, storm, equipment failure or similar extraordinary circumstances completely beyond the pool plant operator control, provided both the handler and the operator of the pool plant notify the Commission within two (2) days following such occurrence;

(e) Milk diverted in excess of the following percentage of total producer receipts shall be excluded from producer milk:

	Percent
January, February, July, December	10
March, April, May, June	13
August, September, October, November	8

PART 1304—CLASSIFICATION OF MILK

1. The authority citation of part 1304 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1304.2 is amended by adding paragraphs (c) and (d) to read as follows:

§ 1304.2 Classification of transfers and diversions

* * * * *

(c) *Transfers to plants located outside of the regulated area.* Fluid milk products (not including bulk transfers of skim milk, condensed milk, bulk milk transferred and classified Class I by a federal market order and milk processed (i.e., pasturized, homogenized, or blended) transferred in bulk from a pool plant to a plant located outside of the regulated area, except a partially regulated plant having Class I disposition in the regulated area, the volume of milk (including milk diverted pursuant to § 1301.23(d)) in excess of the percentage of total producer receipts, pursuant to paragraph (d) of this section, shall be excluded from producer milk. The transferred milk excluded pursuant to this paragraph shall be prorated to all sources of milk received at this plant unless the operator of the plant selects the sources to be excluded. This paragraph will not apply to any pool plant in which the facilities are temporarily unusable because of fire, flood, storm, equipment failure or similar extraordinary circumstances completely beyond the pool plant operator's control; provided, the operator of the pool plant notifies the Commission within two (2) days following such occurrence;

(d) Milk transferred in excess of the following percentages of total producer receipts shall be excluded from producer milk:

	Percent
January, February, July, December	10
March, April, May, June	13
August, September, October, November	8

Dated: November 17, 1998.

Kenneth M. Becker,

Executive Director.

[FR Doc. 98–31587 Filed 11–25–98; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN: 0560–AF29

American Indian Livestock Feed Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This regulation sets forth the terms and conditions of the American Indian Livestock Feed Program (AILFP). Assistance will be available to Federally recognized Indian tribes when, as a result of natural disaster, a significant loss of livestock feed has occurred and a livestock feed emergency exists, as determined by the Commodity Credit Corporation.

DATES: This interim rule is effective on November 27, 1998. Comments on this rule must be received on or before December 28, 1998 to be assured of consideration. Comments on the information collection in this rule must be received on or before January 26, 1999.

ADDRESSES: Submit written comments on this rule to Sean O'Neill, Chief, Noninsured Assistance Programs Branch (NAPB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–9003; e-mail Sean__Oneill@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Sean O'Neill, Chief, Noninsured Assistance Programs Branch (NAPB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517; telephone (202) 720–9003; e-mail Sean__Oneill@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by OMB.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because neither FSA nor the Commodity Credit Corporation is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12988

The interim rule has been reviewed in accordance with Executive Order 12988. The provisions of this interim rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning the provisions of this rule, the administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

Executive Order 13084

The American Indian Livestock Feed Program is a voluntary program dispensing benefits to American Indian tribes. Nothing contained in this voluntary program imposes any substantial direct compliance costs on American Indian tribes. The American Indian Livestock Feed Program is a government-to-government program that adheres to the policies and procedures contained in Executive Order 13084.

Unfunded Mandates Reform Act of 1995 (UMRA)

This rule contains no Federal mandates under the regulatory provisions of Title II of the UMRA for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Due to the need for immediate action and necessity in providing payments for losses expeditiously, CCC has determined that, pursuant to section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, it is impracticable and contrary to public interest to require this rule to conform to the requirements of section 801 of that Act. Accordingly this rule is effective upon publication.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, CCC will submit an emergency information collection request to OMB for the approval of the AILFP reports as necessary for the proper functioning of the program.

Title: American Indian Livestock Feed Program.

OMB Control Number: 0560–NEW SUBMISSION.

Type of Request: Emergency.

Abstract: This information collection will allow CCC to effectively administer American Indian Livestock Feed Program conducted under section 813 of the Agricultural Act of 1970. The information collected allows CCC to provide assistance under the program for losses of livestock feed crops, including feed grains and forage. The collection is necessary to provide those charged with determining eligibility, a basis to determine whether the producer meets applicable conditions for assistance and to determine compliance with existing rules.

Estimate of Burden: Public reporting burden for this information collection is estimated to average .5 hours per response.

Respondents: Tribal members as determined by tribal governments.

Estimated Number of Respondents: 45,050.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 22,563 hours.

Proposed topics for comment include: (a) Whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the CCC's estimate of burden including the validity of the methodology and assumptions used; (c) enhancing the quality, utility, and clarity of the information collected; or (d) minimizing the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Sean O'Neill, Chief, NAPB, PECD, FSA, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517. All comments will become a matter of public record.

OMB is required to make a decision concerning the collection of information contained in these interim regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

Section 813 of the Agricultural Act of 1970 gives the Secretary of Agriculture the authority to provide assistance to relieve distress caused by a natural disaster. Accordingly, under this authority CCC will establish the American Indian Livestock Feed Program (AILFP). CCC will enter into contracts with tribal governments in regions that have been affected by a natural disaster. The contracts will enable tribal governments to approve requests for benefits for eligible owners. When the eligible owner is a tribal government, CCC will make determinations regarding eligibility. The criteria set forth in this rule will be used to determine eligible regions for AILFP and other eligibility criteria.

List of Subjects in 7 CFR part 1439

Agricultural commodities, Disaster assistance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1439 is amended as set forth below.

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation for Part 1439 continues to read as follows:

Authority: 15 U.S.C. 714b and 714c, 7 USC 1427 and 1471–1471j.

2. Part 1439 is amended by adding Subpart—American Indian Livestock Feed Program to read as follows:

Subpart—American Indian Livestock Feed Assistance Program

Sec.

1439.900 [Reserved]
1439.901 Applicability.
1439.902 Administration.
1439.903 Definitions.
1439.904 Region.
1439.905 Responsibilities.
1439.906 Program availability.
1439.907 Eligibility.
1439.908 Payment application.
1439.909 Payments.
1439.910 Program suspension and termination.
1439.911 Appeals.
1439.912 through 1439.915 [Reserved]

Subpart—American Indian Livestock Feed Program

§ 1439.900 [Reserved]

§ 1439.901 Applicability.

This subpart sets forth the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). The AILFP has been allocated a budget of $12.5 million. Assistance will be available in those regions that Commodity Credit Corporation (CCC) determines have been affected by natural disaster, and where a determination is made by the Deputy Administrator for Farm Programs that a livestock feed emergency exists on tribal land. Funds made available under the AILFP shall be available beginning in crop year 1997 and subsequent crop years. Payments may become available as contracts with

tribal governments are approved. If any other benefits are received from the Department of Agriculture for the same loss, then payments under this part will be reduced accordingly. Payments will terminate when funds have been exhausted, without respect to the date of any application, or of when any contract has been entered into by any tribal government and CCC. Applicants will receive benefits on a first come, first served basis.

§ 1439.902 Administration.

(a) This subpart shall be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs, Farm Service Agency (FSA). This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

(c) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any provisions of regulations of this subpart.

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, and other program requirements in cases where the applicant or tribe, as applicable, show that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA) and FSA State and county committees, recommend the geographical size and shape of the region where the natural disaster has occurred, and whether the regional eligibility requirement has been satisfied. Documentation to support the reported natural disaster shall be provided by the FSA State office and shall accompany the recommendation. The recommendation of eligibility must be acted on by the Deputy Administrator.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) The FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) The provisions of §§ 1439.3, 1439.11 through 1439.22, 1439.24 and 1439.6(i)(1)(i), 1439.8(a), and 1439.9 (d) through (f) shall apply to this subpart, and the provisions of §§ 1439.10(a) and 1439.15, shall apply as set forth in §§ 1439.908 and 1439.909 of this subpart.

§ 1439.903 Definitions.

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Animal Unit (AU) means a standard expression of livestock based on a net energy maintenance requirement equal to 13.6 megacalories per day.

Animal Unit Day (AUD) means an expression of expected or actual stocking rate equal to one day.

Approving official means a representative of the tribal government who is authorized to approve an application for assistance made in accordance with this subpart.

Carrying capacity means the stocking rate expressed as acres per animal unit which is consistent with maintaining or improving vegetation or related resources.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or designee.

Disaster period means the length of time that damaging weather, adverse natural occurrence, or related condition has a detrimental affect on the production of livestock feed.

Eligible feed for assistance means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy megacalories and which is consistent with acceptable feeding practices and was not produced by the owner.

Eligible livestock means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; and swine.

Eligible owner means an individual or entity, including the tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in § 1439.907 of this subpart; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

Livestock Feed Emergency means a situation in which a natural disaster causes more than a 35 percent reduction in the feed produced in a region determined in accordance with § 1439.904 of this subpart for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

Natural disaster means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, which occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

Net Energy Maintenance means the appropriate amount of net energy needed to meet the daily maintenance needs for livestock based on the weight range by type of eligible livestock as provided in this section, as determined by CCC.

Region means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with § 1439.904 of this subpart.

Tribal Governed Land means:

(1) All land within the limits of any Indian reservation;

(2) Dependent Indian communities;

(3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village or village or regional corporation under the provisions of the Alaska Native Claim

Settlement Act or other Act relating to Alaska Natives.

Tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

Type and weight range means the weight range by type of livestock and appropriate amount of energy required to provide the daily maintenance needs for livestock, as follows:

Kind/type	Weight range (lbs.)	Daily energy requirements
(1) Beef cattle (Buffalo/Beefalo):		
Beef	Less than 400	3.01 NEm Mcal
Beef	400–799	5.59 NEm Mcal
Beef	800–1099	7.31 NEm Mcal
Beef	1100+	10.75 NEm Mcal
Beef, cow	All	13.60 NEm Mcal
Beef, bull	1000+	11.18 NEm Mcal
(2) Dairy cattle:		
Dairy	Less than 400	3.01 NEm Mcal
Dairy	400–799	5.59 NEm Mcal
Dairy	800–1099	7.31 NEm Mcal
Dairy	1100+	10.75 NEm Mcal
Dairy, cow	Less than 1100	23.22 NEl Mcal
Dairy, cow	11–1299	26.66 NEl Mcal
Dairy, cow	1300–1499	28.38 NEl Mcal
Dairy, cow	1500+	29.67 NEl Mcal
Dairy, bull	1000+	12.47 NEm Mcal
(3) Equine:		
Equine	Less than 450	6.2 DE Mcal
Equine	450–649	8.9 DE Mcal
Equine	650–874	11.6 DE Mcal
Equine	875+	17.3 DE Mcal
(4) Swine:		
Swine	Less than 45	780 DE Kcal
Swine	45–124	1630 DE Kcal
Swine	125+	2867 DE Kcal
Swine, sow	235+	9854 DE Kcal
Swine, boar	235+	5446 DE Kcal
(5) Sheep:		
Sheep	Less than 44	0.34 NEm Mcal
Sheep	44–82	0.77 NEm Mcal
Sheep	83+	0.95 NEm Mcal
Sheep, ewe	150+	2.66 NEm Mcal
Sheep, ram	150+	1.46 NEm Mcal
(6) Goats:		
Goats	Less than 44	0.43 NEm Mcal
Goats	44–82	0.95 NEm Mcal
Goats	83+	1.29 NEm Mcal
Goats, doe	125+	3.00 NEm Mcal
Goats, doe, dairy 1994 and subsequent crop years	125+	4.47 NEm Mcal
Goats, buck	125+	1.80 NEm Mcal

§ 1439.904 Region.

(a) The size of a region will consist of:

(1) An entire reservation, even if the reservation is less than 320,000 acres; or

(2) Contiguous acreage of at least 320,000 acres and include land acreage of an Indian reservation or tribal governed land. If a region is delineated based on minimum size of 320,000 acres, the region shall be delineated without regard to the boundary of a reservation or tribal governed land. If the acreage affected by the natural disaster does not meet the minimum acreage requirement specified in this subparagraph, acreage will be added from surrounding land until the minimum requirement is met.

(b) The region must:

(1) Include acreage affected by the natural disaster which is the basis for the region's designation;

(2) Correspond to the shape of the natural disaster to the maximum extent possible;

(3) Be defined in a manner that does not intentionally include or exclude owners or crops;

(4) Contain some acreage of tribal governed land; and

(5) Have suffered a livestock feed emergency as defined in § 1439.903 of this subpart.

§ 1439.905 Responsibilities.

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Approaching CCC to obtain a contract to participate in the AILFP based on the tribes' voluntary decisions that participation will benefit its members;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the method and requirements for filing applications;

(4) Accepting applications for payment from individual livestock owners;

(5) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(6) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative, shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information which the tribal government deems necessary to determine the owner's eligibility; and

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

§ 1439.906 Program availability.

(a) When a tribal government determines that a livestock feed emergency exists due to a natural disaster, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of December 28, 1998, or 30 days after the end of the disaster period specified on the contract.

(b) Properly completed contracts shall consist of:

(1) A completed form CCC–453, Contract To Participate; and

(2) A completed form CCC–648, Region Designation And Feed Loss Assessment; and

(3) Supportive documentation as determined by CCC including, but not limited to:

(i) A map of the region delineated according to § 1439.904 of this subpart;

(ii) Historical production data and estimated or actual production data for the disaster year;

(iii) Climatological data provided by the FSA State Office; and

(iv) A report of an on-site survey.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency exists not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and FSA State Office of such determination as applicable.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if the livestock feed emergency no longer exists. Notwithstanding the duration of any feeding period, assistance under this subpart terminates immediately and without notice according to § 1439.901.

(e) The tribal government may request to extend the feeding period not to exceed an additional 90 days for each extension if disaster conditions have not diminished significantly and a livestock feed emergency continues.

§ 1439.907 Eligibility.

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement which has been in effect at least 6 months prior to the date of application for assistance made under this subpart shall be considered as being owned by the lessee if the lease:

(1) Requires the lessee to furnish the feed for such livestock; and

(2) Provides for an interest in such livestock, such as the right to market a share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application with the tribal government. When such a payment application is filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal governed land in the delineated region; and have had livestock on such land at the time of disaster which is the basis for the region's designation

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

§ 1439.908 Payment application.

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the tribal government by the owner no later than a date announced by the tribe, such date being no later than the applicable date in § 1439.907(c); and

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC; and

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in § 1439.907(d)(3) of this subpart and shall contain:

(i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;

(ii) The names and addresses of the buyer and the vendor;

(iii) The type of feed purchased;

(iv) The quantity of the feed purchased;

(v) The cost of the feed; and

(vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in paragraphs (c) and/or (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application, as specified by CCC, shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not

otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

§ 1439.909 Payments.

(a) Provided all other eligibility requirements of this subpart are met and funds are available, all eligible payment applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC which were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the application.

(d) CCC may reduce the benefits payable to an applicant under this program if CCC has made assistance available to such applicant under any other CCC program with respect to the same natural disaster.

(e) The amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased, as documented by acceptable purchase receipts, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period; or

(2) 30 percent of the amount computed by multiplying:

(i) The number of animal units determined on the basis of the number of eligible livestock of each type and weight range; by

(ii) The smaller of the number of days the owners provided feed to eligible livestock or the total days in the contract's feeding period; by

(iii) The Animal Unit Day value, as established by the Deputy Administrator for Farm Programs, less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the feeding period.

(f) Payments issued in conjunction with this program will not be subject to offset for debts incurred through participation in any other program conducted by the Department of Agriculture.

§ 1439.910 Program suspension and termination.

(a) The tribal government that requested the AILFP assistance, may at any time during the operation of a program recommend suspension or termination of the program.

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) Funding is exhausted.

§ 1439.11 Appeals.

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

§§ 1439.912 through 1439.915 [Reserved]

Signed at Washington, DC, on November 20, 1998.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 98–31655 Filed 11–25–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 331

[Docket No. 98–048F]

Termination of Designation of the State of Minnesota With Respect to the Inspection of Meat and Meat Food Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule and termination of designation.

SUMMARY: This final rule amends the Federal meat inspection regulations by terminating the designation of the State of Minnesota under Titles I, II, and IV of the Federal Meat Inspection Act (FMIA). The State of Minnesota has enacted a State meat inspected program law and regulations that impose inspection requirements that are at least equal to those requirements of the FMIA. The State of Minnesota will remain designated under sections 1–4, 6–11, and 12–22 of the Poultry Products Inspection Act (PPIA).

DATES: The effective date of this final rule is December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. William F. Leese, Director, Federal-State Relations Staff, Food Safety and Inspection Service; telephone (202) 418–8900 or FAX (202) 418–8834.

SUPPLEMENTARY INFORMATION:

Background

Section 301(c) of the FMIA (21 U.S.C. 661(c)) and section 5(c) of the PPIA (21 U.S.C. 454(c)) authorize the Secretary of Agriculture to designate a State as one in which the provisions of Titles I and IV of FMIA shall apply to operations and transactions wholly within the State after the Secretary has determined that requirements at least "equal to" those imposed under the Acts have not been developed and effectively enforced by the State.

On January 2, 1971, and May 16, 1972, the Secretary of Agriculture designated the State of Minnesota under paragraph 5(c) (21 U.S.C. 454(c) of the PPIA and paragraph 301(c) (21 U.S.C. 661(c)) of the FMIA as a State in which the Federal Government is responsible for providing meat and poultry inspection, respectively, at eligible establishments and for otherwise enforcing the applicable provisions of PPIA and FMIA with regard to intrastate activities in the State.

In addition, on January 31, 1975 (40 FR 4646), a document was published in the **Federal Register** announcing that effective on that date, the Federal Government would assume the responsibility of administering the authorities provided for under sections 202, 203, and 204 (21 U.S.C. 642, 643, and 644) of the FMIA and sections 11 (b) and (c) (21 U.S.C. 460 (b) and (c)) of the PPIA regarding certain categories of processors of meat and poultry products.

These designations were undertaken by the Department when it was determined that the State of Minnesota was not in a position to enforce inspection requirements under State laws for products in intrastate commerce that are at least "equal to" the requirements of FMIA and PPIA enforced by the Federal Government.

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The Governor of the State of Minnesota has advised FSIS that on December 28, 1998, the State of Minnesota will be in a position to administer a State meat inspection program which includes requirements at least "equal to" those imposed under the Federal meat inspection program for products in interstate commerce. The Governor of the State of Minnesota also has advised FSIS that the State, at this time, will remain designated for poultry products inspection under the PPIA.

Section 301(c)(3) of the FMIA provides that whenever the Secretary of Agriculture determines that any designated State has developed and will enforce State meat inspection requirements at least "equal to" those imposed by the Federal Government under the FMIA, with regard to intrastate operations and transactions within the State, the Secretary will terminate the designation of such State. The Secretary has determined that the State of Minnesota has developed, and will enforce, such a State meat inspection program in accordance with such provisions of the FMIA. In addition, the Secretary has determined that the State of Minnesota also is in a position to enforce effectively the provisions of sections 202, 203, and 204 of the FMIA. Therefore, the designations of the State of Minnesota under Titles I, II, and IV of FMIA are hereby terminated. The designations of Minnesota under sections 1–4, 6–11, and 12–22 of the PPIA, however, at this time, will remain in effect, and are hereby not terminated.

Because it does not appear that public participation in this matter would make additional relevant information available to the Secretary under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public procedure is impracticable and unnecessary.

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined not to be a major rule. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Terminating the designation of the State of Minnesota will provide for the State to assume the responsibility, previously limited to the Federal Government, of administering a meat inspection program for intrastate operations and transactions and for ensuring compliance by persons, firms, and corporations engaged in intrastate commerce in specified kinds of businesses. Qualifying businesses will have the option to operate under State inspection as an alternative to Federal inspection. The State of Minnesota will be required to administer the meat inspection program in a manner that is at least "equal to" the inspection program administered by the Federal Government.

Effect on Small Entities

The Administrator of the Food Safety and Inspection Service (FSIS) has determined that this action will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). As stated above, the State of Minnesota is assuming a responsibility, previously limited to the Federal Government, of administering the meat inspection program for intrastate meat operations and transactions. The State's poultry products inspection program, at this time, will remain designated. No additional requirements are being imposed on small entities.

List of Subjects in 9 CFR Part 331

Meat inspection.

Part 331 of the Federal meat inspection regulations (9 CFR Part 331) is amended to read as follows:

PART 331—[AMENDED]

1. The authority citation for Part 331 continues to read as follows:

Authority: 21 U.S.C. 601–695; CFR 2.17, 2.55.

§ 331.2 [Amended]

2. The table in § 331.2 of the Federal meat inspection regulations (9 CFR 331.2) is amended by removing the entry for "Minnesota".

§ 331.6 [Amended]

3. Section 331.6 of the Federal meat inspection regulations (9 CFR 331.6) is amended by removing the entry for "Minnesota" in all three places.

Done in Washington, DC, on November 18, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–31441 Filed 11–25–98; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0990]

Appraisal Standards for Federally Related Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System has approved an amendment to Subpart G of the Board's Regulation Y, Appraisal Standards for Federally Related Transactions, which exempts from the Board's appraisal requirements transactions involving the underwriting or dealing of mortgage-backed securities. This amendment permits bank holding company subsidiaries engaged in underwriting and dealing in securities (so-called section 20 subsidiaries) to underwrite and deal in mortgage-backed securities without demonstrating that the loans underlying the securities are supported by appraisals that meet the Board's appraisal requirements.

EFFECTIVE DATE: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Norah M. Barger, Assistant Director (202/452–2402), or Virginia M. Gibbs, Senior Supervisory Financial Analyst, (202/452–2521), Division of Banking Supervision and Regulation; or Mark Van Der Weide, Attorney (202/452-2263), Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The Board is adopting an amendment to its appraisal regulation that exempts from the Board's appraisal regulation transactions involving the underwriting or dealing of mortgage-backed securities. The amendment is designed to address the concerns raised by bank holding companies regarding the extent to which the Board's appraisal regulation restricts the ability of section 20 subsidiaries to actively participate in the commercial mortgage-backed securities (CMBS) market.

In 1990, the Board adopted its appraisal regulation pursuant to the requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 *et seq.*). Title XI directed the federal banking agencies (the agencies) to publish appraisal rules for federally

related transactions [1] within the jurisdiction of each agency. The stated purpose of the legislation is to protect federal financial and public policy interests in real estate-related financial transactions by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, and by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.[2] In their appraisal regulations, the agencies exempted certain categories of real estate-related financial transactions that do not require the services of an appraiser in order to protect federal financial and public policy interests or to satisfy principles of safe and sound banking.

In June 1994, several existing exemptions to the agencies' appraisal regulations were modified and new exemptions were added. At that time, the agencies clarified that a regulated institution investing in, underwriting, or dealing in a mortgage-backed security or similar instrument need not obtain new Title XI appraisals for the underlying real estate-secured loans so long as the loans met regulatory appraisal requirements for the institution at the time the loans were originated.[3]

When the agencies adopted the 1994 amendments to their appraisal rules, the mortgage-backed securities market consisted of securitized 1-to-4 family residential loans, most of which were generated in accordance with the agencies' appraisal requirements. Since 1994, the commercial real estate market has recovered and a market in CMBS has emerged and expanded significantly with the wider acceptance of collateralized securities. Because many commercial mortgages are originated by non-regulated institutions, they often do not fully meet the agencies' appraisal regulations. As a result, banking organizations have effectively been restricted in their ability to participate in the CMBS market.

In December 1997, the Board issued a proposal to amend its real estate appraisal regulation to permit bank holding companies and their nonbank subsidiaries to underwrite and deal in mortgage-backed securities without demonstrating that the loans underlying the securities are supported by appraisals that meet the Board's appraisal requirements.[4] In issuing this proposal, the Board acknowledged that the amendment would affect only section 20 subsidiaries because section 20 subsidiaries are the only nonbank entities subject to the Board's appraisal regulation that are permitted to underwrite or deal in mortgage-backed securities.

Summary of Comments and Description of the Final Rule

The Board received eleven comments on the proposed amendment to the appraisal regulation: four from banking associations, one from a bank holding company, one from a professional appraiser association, and five from Federal Reserve Banks. Ten of the commenters strongly favored the proposed amendment. The professional appraiser association did not express support for the proposal and urged the Board to consider whether a uniform due diligence standard should be developed for the CMBS market before adopting this amendment.

Several of the commenters stated that the appraisal regulation made it difficult for bank holding companies and their section 20 subsidiaries to participate in the CMBS market. As one commenter stated, the amendment would strengthen the competitiveness of bank holding companies by placing their section 20 subsidiaries on a more equal footing with nonbank competitors. Ten commenters stated that the public rating and due diligence required by the market for mortgage-backed securities provided sufficient information for the regulated institution to assess risks. One commenter noted that the rating agencies perform sophisticated stress tests of mortgage-backed securities, which examine the ability of the real estate collateral to meet the associated debt obligation under adverse market conditions, to ensure the soundness of their rating.

One commenter contended that the CMBS market attributed little value to appraisals and that other characteristics of the CMBS market, such as public ratings and due diligence requirements, typically provide more protection to investors than the appraisal requirement. Another commenter stated that obtaining appraisals is a costly and time-consuming process that is impossible to complete in the time constraints applicable to underwriting and dealing in CMBS.

One commenter suggested that the Board consider adopting additional exemptions from the appraisal regulation for transactions involving: (1) the investment in investment-grade CMBS by bank holding companies and their bank and nonbank affiliates and (2) the warehousing of commercial real estate loans by bank holding companies and their nonbank affiliates for the purpose of packaging and selling them as CMBS.

In contrast, the comment letter from the professional appraiser association contended that federal oversight and underwriting criteria, as well as due diligence procedures used by market participants, may not adequately address all safety and soundness issues that exist in the CMBS market. The commenter expressed concern that without guidance from the agencies regarding due diligence standards for CMBS, federally insured institutions could assume undue or unacceptable risk. Further, this commenter contended that many of the underwriting criteria and investment decisions involving CMBS require that an appraisal be performed to check the validity, quality, and quantity of cash flow from the underlying property. The commenter also expressed concern that increased competition in the commercial real estate market may lead to increased risk taking and raised concern about the use of federally-insured deposits to fund CMBS activity.

The Board believes that permitting section 20 subsidiaries to underwrite and deal in mortgage-backed securities without obtaining appraisals that meet the Board's appraisal requirements is not likely to create significant additional risks for bank holding companies or pose a systemic risk to the banking system. The Board notes that bank holding companies have substantial expertise in analyzing the risks associated with loans secured by residential and commercial real estate, and that section 20 subsidiaries have developed the necessary procedures to evaluate the credit risks involved in underwriting and dealing in mortgage-backed securities. In addition, section 20 subsidiaries that seek to underwrite or deal in CMBS are subject to an operational and managerial infrastructure inspection prior to being permitted to engage in such activities. Periodic inspections by the Federal Reserve verify that proper underwriting

[1] Section 1121(4) of FIRREA, 12 U.S.C. 3350(4), defines a federally related transaction as a real estate-related financial transaction that is regulated or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser. Section 1121(5), in turn, defines a real estate-related financial transaction as any transaction that involves: (1) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (2) the refinancing of real property or interests in real property; and (3) the use of real property or interests in real property as security for a loan or investment, *including mortgage-backed securities* (emphasis added).

[2] *See* Title XI's Statement of Purpose. 12 U.S.C. 3331.

[3] *See* 59 FR 29482 (1994).

[4] *See* 62 FR 64997 (1997).

and risk management procedures are in place at section 20 subsidiaries.

When a section 20 subsidiary serves as lead underwriter, it is responsible for performing adequate due diligence. In other instances, such as the dealing of an outstanding debt security, a section 20 subsidiary may rely on the due diligence performed by independent rating agencies. Due diligence efforts conducted by a section 20 subsidiary or an independent rating agency often include analyses of factors such as payment history, mortgage and security structure, borrower's income or property cash flow, credit enhancements, and seasoning. In most CMBS transactions, the underlying loans have demonstrated their ability to perform over a period of time. As the underlying commercial real estate loans in a CMBS pool season, appraisals obtained at origination become increasingly less relevant to an investor's decision to purchase the related CMBS because the market assumptions upon which the appraisals were based may have become obsolete. Further, the public rating or due diligence that must be obtained or conducted for CMBS provides investors with sufficient information to assess the risks associated with the CMBS. A majority of the commenters agreed with this assessment of the CMBS market.

In response to the concerns expressed by one commenter that exempting CMBS transactions from the appraisal regulation would pose undue or unacceptable risk to federally-insured depository institutions, the Board notes that the proposed amendment relates solely to section 20 subsidiaries of bank holding companies and would not affect the appraisal requirements applicable to any federally-insured depository institution. In addition, transactions between a federally-insured depository institution and an affiliated section 20 subsidiary would continue to be subject to applicable restrictions in section 23A and 23B of the Federal Reserve Act (12 U.S.C. 37k, 37k–1). At this time, the Board is not considering any additional exemptions from the appraisal regulation for other transactions related to the CMBS market. Further, since the agencies have uniform appraisal regulations, any proposal to exempt CMBS-related transactions for federally-insured depository institutions would be addressed on an interagency basis.

Regulatory Flexibility Act Analysis

This amendment is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because this amendment will only affect bank holding companies that have section 20 subsidiaries, which generally are among the largest bank holding companies. Further, the amendment is not expected to impose any additional burdens on regulated institutions.

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in this rulemaking.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board amends 12 CFR part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828o, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Subpart G, § 225.63 is amended by removing the word "or" at the end of paragraph (a)(11), by redesignating paragraph (a)(12) as paragraph (a)(13), and by adding a new paragraph (a)(12) to read as follows:

§ 225.63 Appraisals required; transactions requiring a State certified or licensed appraiser.

(a) * * *

(12) The transaction involves underwriting or dealing in mortgage-backed securities; or

* * * * *

By order of the Board of Governors of the Federal Reserve System.

Dated: November 20, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31602 Filed 11–25–98; 8:45 am]

BILLING CODE 6210–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 722, 723 and 741

Organization and Operations of Federal Credit Unions; Appraisals; Member Business Loans; and Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule; extension of comment period.

SUMMARY: On September 23, 1998, the NCUA issued an interim final rule concerning member business loans and appraisals for federally insured credit unions' as well as implementing recent statutory limitations regarding member business loans. The interim final rule was published in the **Federal Register** on September 29, 1998 (see 63 FR 51793). The NCUA Board stated that comments on the interim final rule must be received by November 30, 1998. Due to a request made, the Board has decided to extend the comment period for an additional 60 days to January 29, 1999.

DATES: The comment period is being extended from November 30, 1998 to January 29, 1999. Comments must be postmarked or received by January 29, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

By the National Credit Union Administration Board on November 19, 1998.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–31597 Filed 11–25–98; 8:45 am]

BILLING CODE 7535–01–U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Conversion of Insured Credit Unions to Mutual Savings Banks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: The NCUA is revising its rules that govern the conversion of insured credit unions to mutual savings banks or savings associations, if the savings associations are in mutual form. These revisions will simplify the charter conversion process and reduce regulatory burden for insured credit unions that choose to convert. NCUA is making these revisions in compliance

with recent federal legislation that mandates such revisions.

DATES: This rule is effective November 27, 1998. Comments must be received on or before February 25, 1999.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Frank S. Kressman, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

The Credit Union Membership Access Act (the Membership Access Act) was enacted into law on August 7, 1998. Public Law 105–21. Section 202 of the Membership Access Act amends the provisions of the FCU Act concerning conversion of insured credit unions to mutual savings banks or mutual savings associations. Pursuant to the amendments, NCUA is required to promulgate final rules regarding charter conversions within six months that are: (1) consistent with the Membership Access Act; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. Accordingly, NCUA is revising part 708a to implement the provisions of § 202 of the Membership Access Act. NCUA does not interpret the Membership Access Act to preclude state regulatory authorities from imposing more restrictive charter conversion rules on federally insured state-chartered credit unions.

Interim Final Rule

The NCUA Board is issuing this rule as an interim final rule because there is a strong public interest in having rules in place consistent with the requirements of § 202 of the Membership Access Act. If this rule were not effective immediately, there would be no such rule in place to process credit union conversions to mutual savings banks. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice of publication. Although the rule is being issued as an interim final rule and is effective immediately, the NCUA Board encourages interested parties to submit comments.

Section by Section Analysis

Section 708a.1 Definitions

This section defines a number of terms used throughout part 708a. Although the former part 708a did not contain a section specifically designated for definitions, former § 708a.2(c)(2) defined "senior management official." Revised § 708a.1 expands on that definition to include, at the end of the definition, the phrase "and any other senior executive officer as defined by the appropriate federal banking agency pursuant to section 32(f) of the Federal Deposit Insurance Act." 12 U.S.C. 1831i(f).

Section 708a.2 Authority to Convert

This section restates a portion of the Membership Access Act that provides an insured credit union may convert to a mutual savings bank or a savings association that is in mutual form without the prior approval of NCUA. Although the Membership Access Act eliminates the need for credit unions to obtain NCUA's prior approval, it requires NCUA to administer the membership vote. Also, the vote must be verified by the federal or state agency having jurisdiction over the credit union after the conversion. As provided in § 708a.7 discussed below, if NCUA disapproves of the methods or procedures applicable to the membership vote, it may require that another vote be taken. This section also states that conversions require the approval of the credit union's members and are subject to the laws governing mutual savings banks and savings associations and the other requirements of this part.

Section 708a.3 Board of Directors and Membership Approval

This section provides that the board of directors must approve the proposal to convert by a majority vote and must set a date for a membership vote on the proposal. Membership approval requires an affirmative vote of a majority of those members who vote on the proposal. Former § 708a.5 required a majority vote of the entire membership, not just a majority of those members choosing to vote. The former requirements for NCUA approval of a detailed plan and disclosure statement have been deleted.

Section 708a.4 Voting Procedures

This section sets out the voting and notice requirements for the membership vote on the proposal to convert. It provides that members eligible to vote on the proposal to convert may do so in person at the meeting designated for the vote on the proposal or by written ballot filed by the member. It also provides that the credit union must provide members with notice to the members 90, 60, and 30 calendar days before the date of the vote and a ballot not less than 30 calendar days before the date of the vote. This section describes the basic requirements for the content of the notice, namely, that the notice must adequately state the purpose and subject matter of the proposal and inform members that they may vote either at the meeting or by submission of a written ballot. The notice must set out the date, time, and place for the meeting.

Section 708a.5 Notice to NCUA

This section requires the credit union to provide NCUA with notice of its intent to convert during the 90 calendar day period preceding the date for the membership vote. A credit union may fulfill this notification requirement by providing the NCUA a letter describing the material features of the conversion or a copy of the filing made with another federal or state regulatory agency seeking that agency's approval of the conversion. With the notice to NCUA, a credit union must include a copy of the notice, ballot and all other written materials it has provided or intends to provide to members so that NCUA can fulfill its oversight responsibility regarding the methods and procedures of the membership vote. If it chooses, a credit union may provide notice of intent to convert prior to the 90 calendar day period preceding the membership vote. If a credit union submits its notice of intent early, the Regional Director will review it and let the credit union know within 30 calendar days if there is a problem with the methods and procedures for the membership vote. This preliminary review is intended to provide time to credit unions, for example, to correct any defects in the notice to members or other problems in connection with the proposed membership vote. In any event, the credit union will still have to comply with the requirement of verifying the membership vote once it is taken and the Regional Director will still have the right to require a new vote if it is determined that the methods and procedures of the membership vote were not conducted properly.

Section 708a.6 Certification of Vote on Conversion Proposal

This section requires the board of directors of the converting credit union to certify to NCUA the results of the membership vote within 10 calendar days after the vote is taken. The board of directors is also required at this time to certify that all notices, ballots and other written materials provided to members were identical to those submitted to NCUA pursuant to § 708a.5 or to provide copies of any new or revised materials and an explanation of the reason for the changes.

Section 708a.7 NCUA Oversight of Methods and Procedures of Membership Vote

The Membership Access Act specifically requires NCUA to participate in the conversion process by overseeing the membership vote concerning the charter conversion. This oversight function centers on reviewing the methods by which the membership vote was taken and the procedures applicable to the membership vote. The Membership Access Act provides that if, upon review of the membership vote, NCUA disapproves of the methods by which the vote was taken or the procedures applicable to the membership vote, then NCUA is authorized to direct a new membership vote be taken on the proposal to convert. NCUA interprets "methods and procedures" of the membership vote to include determining that the notice that the credit union sends to its members is accurate and not misleading, that all required notices were timely, and that the membership vote was conducted in a fair and legal manner.

This section provides that, once the Regional Director receives a certification from the converting credit union of the results of the membership vote, the Regional Director will have 10 calendar days to issue a determination regarding the methods and procedures applicable to the membership vote. This section also sets out that the Regional Director's review of the methods and procedures will consider whether the notice was accurate and not misleading, that all required notices were provided and that the membership vote was conducted in a fair and legal manner.

Section 708a.8 Other Regulatory Oversight of Methods and Procedures of Membership Vote

The Membership Access Act requires the federal or state regulatory agency that will have jurisdiction over the financial institution after conversion to verify the membership vote, and has authorized that agency to direct a new membership vote be taken on the proposal to convert if it disapproves of the methods by which the vote was taken or the procedures applicable to the membership vote.

Section 708a.9 Completion of Conversion

This section provides that upon receipt of the approvals discussed in § 708a.7 and § 708a.8, the credit union may complete the conversion transaction. The board of directors of the newly chartered mutual savings bank or mutual savings association is required to certify completion of the conversion transaction to NCUA within 30 calendar days of the effective date of the conversion. Upon receipt of such certification, the NCUA will cancel the credit union's insurance certificate and federal charter, if applicable.

Section 708a.10 Limit on Compensation of Officials

This section provides that directors and senior management officials of a credit union may not receive any economic benefit from the conversion of their credit union other than compensation and benefits paid to them in the ordinary course of business. This section is intended to insure that decisions to convert are based on proper and appropriate business judgment.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that this interim rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the notice and disclosure requirements in part 708a constitute a collection of information under the Paperwork Reduction Act. NCUA is submitting a copy of this interim final rule to the Office of Management and Budget (OMB) for its review.

The interim final rule requires an insured credit union that intends to convert to a mutual savings bank or savings association to provide notice and disclosure of its intent to convert to its members and NCUA. It also requires the credit union to provide additional information to NCUA at various points in the conversion process. These notice and disclosure requirements are mandated by the Membership Access Act. They are also necessary to insure safety and soundness in the credit union industry, and to protect the interests of credit union members in the charter conversion context.

The NCUA Board estimates that it will take an average of 15 to 20 hours to comply with the notice and disclosure requirements of part 708a. The NCUA Board also estimates that fewer than 10 insured credit unions will convert per year, so that the total annual collection burden is estimated to be no more than 200 hours.

The Paperwork Reduction Act of 1995 and OMB regulations require that the public be provided an opportunity to comment on information collection requirements, including an agency's estimate of the burden of the collection of information. The NCUA Board invites comment on: (1) whether the collection of information is necessary; (2) the accuracy of NCUA's estimate of the burden of collecting the information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collection of information. Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, D.C. 20503; Attention: Alex T. Hunt, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule, as does the current rule, applies to all federally insured credit unions, including federally insured state chartered credit unions. However, since the final rule reduces regulatory burden, NCUA has determined that the final rule does not constitute a "significant regulatory action" for purposes of the Executive Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget is reviewing this rule to determine whether it is major for

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purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on November 19, 1998.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, 12 CFR part 708a is revised to read as follows:

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

Sec.

708a.1 Definitions.
708a.2 Authority to convert.
708a.3 Board of directors and membership approval.
708a.4 Voting procedures.
708a.5 Notice to NCUA.
708a.6 Certification of vote on conversion proposal.
708a.7 NCUA oversight of methods and procedures of membership vote.
708a.8 Other regulatory oversight of methods and procedures of membership vote.
708a.9 Completion of conversion.
708a.10 Limit on compensation of officials.

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

§ 708a.1 Definitions.

As used in this part:

(a) *Credit union* has the same meaning as insured credit union in section 101 of the Federal Credit Union Act.

(b) *Mutual savings bank* and *savings association* have the same meaning as in section 3 of the Federal Deposit Insurance Act.

(c) *Federal banking agencies* has the same meaning as in section 3 of the Federal Deposit Insurance Act.

(d) *Senior management official* means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the appropriate federal banking agency pursuant to section 32(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1831i(f).

§ 708a.2 Authority to convert.

An insured credit union, with the approval of its members, may convert to a mutual savings bank or a savings association that is in mutual form without the prior approval of the NCUA, subject to applicable law governing mutual savings banks and savings associations and the other requirements of this part.

§ 708a.3 Board of directors and membership approval.

(a) The board of directors must approve a proposal to convert by majority vote and set a date for a vote on the proposal by the members of the credit union.

(b) The membership must approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal.

§ 708a.4 Voting procedures.

(a) A member may vote on the proposal to convert in person at a special meeting held on the date set for the vote or by written ballot filed by the member.

(b) A credit union that proposes to convert must provide written notice of its intent to convert to each member who is eligible to vote on the conversion. The notice to members must be sent by registered, certified, or regular mail with postage prepaid and postmarked 90 calendar days, 60 calendar days, and 30 calendar days before the date of the membership vote on the conversion and a ballot must be sent not less than 30 calendar days before the date of the vote.

(c) The notice to members must adequately describe the purpose and subject matter of the vote to be taken at the special meeting or by submission of the written ballot. The notice must clearly inform the member that the member may vote at the special meeting or by submitting the written ballot. The notice must state the date, time, and place of the meeting.

§ 708a.5 Notice to NCUA.

(a) The credit union must provide the Regional Director for the region where the credit union is located with notice of its intent to convert during the 90 calendar day period preceding the date of the membership vote on the conversion.

(b) The credit union must give notice to the Regional Director by providing a letter describing the material features of the conversion or a copy of the filing the credit union has made with another federal or state regulatory agency in which the credit union seeks that agency's approval of the conversion. The credit union must include with the notice to the Regional Director a copy of the notice the credit union provides to members under § 708a.4, as well as, the ballot form and all written materials the credit union has distributed or intends to distribute to the members.

(c) If it chooses, the credit union may provide the Regional Director notice of its intent to convert prior to the 90 calendar day period preceding the date of completion of the conversion. In this case, the Regional Director will make a preliminary determination regarding the methods and procedures applicable to the membership vote. The Regional Director will notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the Regional Director disapproves of the proposed methods and procedures applicable to the membership vote. The credit union's prior submission of the notice of intent does not relieve the credit union of its obligation to certify the results of the membership vote required by § 708a.6 or eliminate the right of the Regional Director to disapprove the actual methods and procedures applicable to the membership vote if the credit union fails to conduct the membership vote in a fair and legal manner.

§ 708a.6 Certification of vote on conversion proposal.

The board of directors of the converting credit union must certify the results of the membership vote to the Regional Director within 10 calendar days after the vote is taken. The board of directors must also certify at this time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to § 708a.5 or provide copies of any new or revised materials and an explanation of the reasons for the changes.

§ 708a.7 NCUA oversight of methods and procedures of membership vote.

(a) The Regional Director will issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within 10 calendar days of receipt from the credit union of the certification of the result of the membership vote required under § 708a.6.

(b) If the Regional Director disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote, the Regional Director may direct that a new vote be taken.

(c) The Regional Director's review of the methods by which the membership vote was taken and the procedures applicable to the membership vote includes determining that the notice to members is accurate and not misleading, that all notices required by this section were timely, and that the membership vote was conducted in a fair and legal manner.

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§ 708a.6 Other regulatory oversight of methods and procedures of membership vote.

The federal or state regulatory agency that will have jurisdiction over the financial institution after conversion must verify the membership vote and may direct that a new vote be taken, if it disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote.

§ 708a.9 Completion of conversion.

(a) Upon receipt of approvals under § 708a.7 and § 708a.8 of this part, the credit union may complete the conversion transaction.

(b) Within 30 calendar days after the effective date of the conversion, the board of directors of the mutual savings bank or mutual savings association must certify completion of the transaction to the Regional Director. NCUA will cancel the insurance certificate of the credit union and, if applicable, the charter of the federal credit union.

§ 708a.10 Limit on compensation of officials.

No director or senior management official of an insured credit union may receive any economic benefit in connection with the conversion of the credit union other than compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 932, 935, 936 and 970

[No. 98–48]

RIN 3069–AA75

Community Investment Cash Advance Programs

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is adopting a final rule establishing a general framework under which the Federal Home Loan Banks (Banks) may offer Community Investment Cash Advance (CICA) programs in addition to their Affordable Housing Programs (AHP) and Community Investment Programs (CIP). CICA programs other than AHP and CIP are entirely optional on the part of the Banks. The final rule is intended to provide the Banks with an array of specific standards for projects, targeted beneficiaries and targeted income levels that the Finance Board has determined support community lending under all CICA programs, including CIP. The final rule, however, does not apply to a Bank's AHP, which is governed specifically by part 960 of the Finance Board's regulations. A Bank may offer CICA programs, called Rural Development Advance (RDA) and Urban Development Advance (UDA) programs, for community lending using the specified standards for targeted beneficiaries or targeted income levels, without prior Finance Board approval. A Bank also may offer other CICA programs for projects, targeted beneficiaries and targeted income levels established by the Bank with prior Finance Board approval.

EFFECTIVE DATE: December 28, 1998.

FOR FURTHER INFORMATION CONTACT: Charles E. McLean, Deputy Director, Market Research, (202) 408–2537, Stanley Newman, Associate Director, Market Research, (202) 408–2812, or Diane E. Dorius, Associate Director, Program Development, (202) 408–2576, Office of Policy; or Roy S. Turner, Jr., Attorney-Advisor, (202) 408–2512, Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, or Deborah F. Silberman, General Counsel, (202) 408–2570, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

The Banks currently have broad authority under section 10(a) of the Federal Home Loan Bank Act (Bank Act) and part 935 of the Finance Board's regulations to make advances in support of housing finance, including housing for very low-, low- and moderate-income families. *See* 12 U.S.C. 1430(a); 12 CFR part 935. In the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress required the Banks to offer two programs, the AHP and the CIP, to provide advances in support of unmet housing finance and economic development credit needs. *See* Pub. L. 101–73, § 721, 103 Stat. 183 (Aug. 9, 1989).

The AHP is a subsidy program through which the Banks support the finance of affordable owner-occupied and rental housing. *See* 12 U.S.C. 1430(j). The Finance Board first issued implementing regulations for the AHP in 1990. *See* 12 CFR part 960.

The CIP is a program through which the Banks provide advances to members at cost to support the financing of housing benefiting families with incomes at or below 115 percent of the area median income, and economic development activities benefiting families with incomes at or below 80 percent of the area median income. *See* 12 U.S.C. 1430(i)(2). The Finance Board previously has not promulgated regulations implementing the CIP.

Section 10(j)(10) of the Bank Act authorizes the Banks to establish CICA programs in addition to the CIP and the AHP to support "community investment." *See id.* section 1430(j)(10). The Finance Board has not previously promulgated regulations or other specific guidance on what kinds of Bank lending are permitted under this authority.

Since the enactment of the Banks' statutory authority to make advances for community investment under FIRREA, the Banks have provided relatively less long-term credit for economic development projects than for housing, and all of the verifiable targeted economic development lending by the Banks has been done under their CIP authority, as opposed to their authority to establish other CICA programs. In the past eight years, the Banks have provided $18.1 billion in CIP advances to finance 368,359 housing units. Only 25 percent of those units have been rental units that often provide housing for lower-income families and are usually more difficult to finance than single-family owner-occupied housing. In addition, only $751 million or 4 percent of CIP advances have financed economic development projects. Furthermore, CIP advances are not available to the Banks' nonmember borrowers. *See id.* section 1430(i)(1).

The Finance Board believes there is a need for long-term financing for economic development that is not being met by the financial community generally, nor by members using the CIP specifically. The Banks can help to meet this need through the establishment of other CICA programs to provide long-term financing for economic development. In order to facilitate and encourage such community lending, the Finance Board issued a proposed rule to establish uniform standards for all CICA programs defining the kinds of housing and economic development projects and activities, targeted beneficiaries and targeted income levels that would constitute "community investment" eligible to be financed by advances under section 10(j)(10) of the Bank Act. This proposed rule was published in the **Federal Register** on May 8, 1998, with a 90-day period for public comment that closed on August 6, 1998. *See* 63 FR 25718 (May 8, 1998).

The Finance Board received 31 comment letters on the proposed rule. Commenters included: eleven Banks, a Bank board of directors, a Bank member thrift, three Bank Advisory Councils, five government entities, an organization representing government entities, five trade associations, and an investment advisor.

In the proposed rule, the Finance Board requested comment on whether it should establish CICA standards, in whole or in part, in the form of a regulation or a policy statement or guidelines. *See* 63 FR 25718. The Finance Board asked whether a policy statement or guidelines would be a more effective means of achieving the goal of promoting the Bank's support of community investment financing. Commenters supporting issuance of CICA standards via a regulation stated that the proposed rule contained sufficient flexibility and discretion to enable the Banks to promote community investment in response to the needs of their individual districts. Commenters noted that the establishment of clear and specific CICA standards would be more likely to increase economic development activities in targeted communities, and would make CICA programs easier to implement and monitor. The Finance Board agrees with these commenters and has determined to issue a final rule.

Commenters preferring issuance of a policy statement or guidelines stated that regulatory standards and reporting requirements would increase the cost of implementing CICA programs and might discourage members and others from participating in such programs. Commenters also suggested that policy guidelines could be modified more quickly than a regulation to respond to changing markets and project needs. There appears to be little merit in these arguments. First, the standards and reporting requirements would exist regardless of the form of the guidance. This argument implies that such standards and requirements could be more easily ignored if the guidance existed in the form of a policy statement, since a policy statement is not legally enforceable by the agency. Such arguments only serve to demonstrate why a regulation is preferable to a policy statement. Second, changing a policy statement requires action by the Board of Directors of the Finance Board, as does changing a regulation. The only real difference in timing is the public comment process required for a rulemaking procedure. Once again, this only serves to demonstrate why the regulatory route is preferable.

Under the Administrative Procedures Act (APA), regulations are subject to a wide-ranging notice and public comment process, which enables the regulatory agency to obtain the broadest possible input from the regulated industry, program users, and the public in developing the standards and other requirements to be incorporated into such regulations. *See* 5 U.S.C. 553. In addition, as noted above, unlike policy statements and guidelines which do not have the force of law and therefore are not legally binding, regulations are legally enforceable by the agency. In order to provide the most certainty for the agency, the Banks and their members, the Finance Board has determined that it is most appropriate to issue the CICA program standards in a regulation rather than as a policy statement or guidelines.

II. Analysis of Final Rule

The final rule adds a new part 970 to the Finance Board's regulations. Part 970 establishes a general framework whereby the Banks may offer CICA programs to provide advances to members and nonmember borrowers, who in turn can use the advances to provide financing for housing and economic development projects or activities for targeted beneficiaries with incomes at or below a targeted income level, to address unmet economic development credit needs. Projects with unmet credit needs are those for which financing is not generally available, or is available at lower levels or under less attractive terms. The final rule does not require a Bank to establish a CICA program (other than AHP and CIP, which are required by statute). The final rule is intended to provide the Banks with the parameters for what the Finance Board has determined will meet the statutory requirement for "community investment" under section 10(j)(10). *See* 12 U.S.C. 1430(j)(10).

As further described below, the final rule has been substantially reorganized from the proposed rule to provide greater clarity.

A. Scope—§ 970.1

Section 970.1 of the final rule states that part 970 establishes requirements for all CICA programs offered by a Bank, except for a Bank's AHP, which is governed specifically by part 960 of the Finance Board's regulations (Affordable Housing Program Regulation, 12 CFR part 960).

B. Purpose—§ 970.2

Section 970.2 of the final rule states that the purpose of part 970 is to identify community lending projects or activities (as defined in § 970.3 and discussed further below) that the Banks may support through the establishment of CICA programs. A Bank may offer the following CICA programs in support of community lending: Rural Development Advance (RDA) programs; Urban Development Advance (UDA) programs; and any other CICA programs that meet the requirements of part 970. In addition, a Bank is required to offer CICA programs under section 10(i) of the Bank Act (CIP) (12 U.S.C. 1430(i)), and under section 10(j) of the Bank Act (AHP) (12 U.S.C. 1430(j)).

C. Community Lending Plan—§ 970.4

Section 970.4 of the final rule requires each Bank to develop and adopt an annual Community Lending Plan pursuant to § 936.6 of the Finance Board's Community Support Regulation (12 CFR 936.6). As further discussed below, a Bank's Community Lending Plan shall contain quantitative community lending performance goals, and the initiatives and incentives the Bank intends to offer to promote community lending and affordable housing finance by the Bank's borrowers.

1. Proposed Budget and Strategy Process

The final rule does not adopt the budget and strategy process for establishing community lending goals that was set forth in the proposed rule. Proposed § 970.3 would have authorized the Banks to establish an annual budget for the cumulative discount the Bank intended to make available under its CIP and other CICA programs (excluding AHP) the Bank established. The budget was to be based on the Bank's projected annual totals of CIP advances and other CICA advances that the Bank intended to make, and the extent to which the Bank intended to provide a pricing discount, if any, for such other CICA advances. If a Bank chose to establish a budget, the Bank was urged to establish standards for allocating the discount among specific types of eligible community lending activities. In the absence of such a budget, the Bank was required to fund requests from qualified borrowers for any advances that otherwise met the requirements of the Bank's CIP or any other CICA program the Bank offered. The proposed rule also would have required each Bank to establish a strategy, after consultation with the Bank's Advisory Council and economic development organizations in the Bank's district, for providing CIP advances to support financing for community lending that is otherwise not generally available, or is available at

lower levels or under less attractive terms.

The proposal was meant to encourage the Banks to engage in a deliberate decisionmaking process about how much community lending credit they intended to make available each year, through their CIP and other CICA programs, and the kinds of projects to which that credit should be directed. As discussed above, the Banks' community lending efforts to date have been through volume lending under the CIP in support of home mortgage loans, to the relative exclusion of economic development financing. The Banks' concentration on volume funding of CIP-eligible home mortgage loans may have been encouraged by the CIP target system established in the past by the Finance Board, which was based on a Bank's average annual outstanding CIP advances. The Finance Board wishes to reverse this trend and to shift the Banks' focus from volume of CIP lending to maximizing the impact of individual advances. The proposed rule made clear that each Bank had authority to determine the appropriate amount of CIP credit to make available on an annual basis. However, the Finance Board believed that the authority to limit the amount of available CIP credit imposed an obligation for the Bank to target how the opportunity cost associated with CIP advances is to be used most effectively in relation to the kinds of CIP projects the Bank funds.

One Bank commenter specifically supported the necessity of having a Bank System-wide basis for determining the dollar value of the discount for specific advances, in order to ensure that all of the Banks budget their cumulative discounts consistently, regardless of the actual CICA programs and discounts offered. The commenter stated that capital limitations should be included as a factor which Banks could consider in the cumulative discount budgeting process, since CIP and other CICA advances must be funded under the statutory 20-to-1 capital leverage limits, just as regular advances are funded. *See id.* section 1426(b)(2). One Bank commenter added that it should be clarified that the Banks are dependent on lenders to decide whether to originate specific types of loans and to finance them with Bank advances and, therefore, the Banks should have flexibility to adjust their budgets in response to changing market realities.

Other commenters stated that the budget dollar amount selected by the Bank would be an inaccurate and unrelated measure of a Bank's commitment to community lending and should not be used by the Finance Board as a proxy for such lending. Commenters claimed that it would be nearly impossible for the Banks to demonstrate that a CICA advance to support projects is "otherwise not generally available or is available at lower levels or under less attractive terms." A Bank commenter questioned how the Finance Board would treat Banks that do not "spend" all of their annual CICA budget, or spend more or budget less than the Finance Board desires. Another commenter expressed concern that the proposed annual budget requirement could result in a Bank having to make all of its advances at cost, without any profit, which would be burdensome and unworkable. One commenter also noted that the proposed budget requirement could create uncertainty rather than a stable source of discounted funding for eligible projects. For example, if the volume of CICA advances were to decline, discounts offered near the end of the budget period may be more significant that those offered earlier in the year in order for the Banks to fulfill their volume or discount quota under the proposed rule. Conversely, in order to meet volume or discount quota, Banks may offer aggressive discounts early in the year, to the detriment of worthy projects needing funding later in the year that may not receive as favorable terms.

A Bank commenter recommended deletion of the proposed provision that in determining projected annual totals for CIP and other CICA program advances, a Bank should take into account its earnings, fearing that this would become the primary measure for establishing a CICA budget, rather than taking into account market conditions, product demand, and other variables that typically are considered in developing budget projections.

Several Bank commenters suggested that the proposed requirement that the Bank must fund CICA advance requests in the absence of a CICA budget adopted by the Bank be deleted as inconsistent with safe and sound business practices, and contrary to the statutory language granting the Banks' boards of directors discretionary authority to deny or condition approval of an advance. *See id.* section 1429.

Several commenters suggested instead that each Bank's board of directors, in consultation with its Advisory Council, should be required to establish specific annual measurable goals or performance standards for CIP and CICA advances, such as volume targets or dollar targets, based on assessment of critical community lending needs in the Bank's district. One Bank commenter suggested evaluating a Bank's CICA performance taking into account its marketing efforts, technical assistance activities and other information on CICA programs.

A commenter suggested that the Banks be encouraged to adopt one CICA plan covering the AHP, CIP, Community Support and other CICA programs, rather than separate plans for each program.

A commenter suggested clarification of the need for a CIP strategy statement where the Bank will not be establishing a budget but intends to fund all qualified requests for CIP advances. Several commenters supported requiring consultation with economic development organizations, in addition to Advisory Councils, in developing CIP strategies. Other commenters suggested that consultation with such organizations should be encouraged but not required, as the Advisory Councils are very capable of providing input in the development of CICA programs, and representatives of such organizations often are members of the Advisory Councils.

The Finance Board believes that many of these comments have merit, and has sought in the final rule to address the concerns expressed by the commenters while maintaining the essence of the proposal in a less burdensome manner. Accordingly, the budget and strategy provisions of proposed § 970.3 have not been adopted in the final rule. Instead, a number of the comments have been incorporated into the final rule through amendment of § 936.6 of the Finance Board's Community Support Regulation, as further discussed below.

2. Community Lending Plan

There is already established in the Finance Board's Community Support Regulation (12 CFR 936) a requirement that the Banks provide technical assistance and engage in outreach to their members for affordable housing and certain community lending. *See id.* § 936.6. The final rule amends § 936.6 to require the Banks to expand the scope of the existing marketing activities required under their Community Support Programs to encourage community lending by their borrowers, and include in their Community Support Programs an annual Community Lending Plan containing quantitative community lending performance goals. As further discussed below, "community lending" is defined in the final rule as "providing financing for economic development projects for targeted beneficiaries." *See* § 970.3.

Specifically, the final rule amends § § 936.6(a) and (b) of the Community Support Regulation (to be codified in

§ 936.6(a)), to provide that a Bank's Community Support Program should:

(1) Promote and expand affordable housing finance;

(2) Encourage members to increase their community lending and affordable housing finance activities by providing incentives, as provided therein;

(3) Include an annual Community Lending Plan, approved by the Bank's board of directors and subject to modification, which shall require the Bank to:

(i) Conduct market research in the Bank's district;

(ii) Describe how the Bank will address the identified credit needs and market opportunities in the Bank's district for community lending;

(iii) Consult with its Advisory Council and with members, nonmember borrowers, and public and private economic development organizations in the Bank's district in developing and implementing its Community Lending Plan; and

(iv) Establish quantitative community lending performance goals.

The Community Lending Plan is intended not as a burden, but as a tool to assist the Banks in identifying credit needs and business opportunities within the Bank's district and in crafting viable business responses to those needs and opportunities. Market research is the methodology through which the Banks may discover the opportunities available and thereby may develop an informed Community Lending Plan. No formal methodology is required by the final rule; each Bank, therefore, is responsible for determining what market research activity will be sufficient to enable the Bank to identify the community lending credit needs and market opportunities in its district and develop programs to address those needs and opportunities.

3. CICA Program Information Dissemination

In the proposed rule, the Finance Board requested comment on how information about a Bank's CIP and other CICA programs could best be disseminated to Bank members and nonmember borrowers, as well as to other interested members of the public. *See* 63 FR 25719. Several commenters stated that existing Bank information dissemination procedures under the Banks' other affordable housing and community lending programs are adequate for CICA purposes. The Finance Board agrees with these commenters and has included in the final rule a CICA information dissemination requirement as a part of the existing Community Support information dissemination process. Specifically, the final rule amends § 936.6(c) of the Finance Board's Community Support Regulation (to be codified in § 936.6(b)) to require that the Banks provide annually to each of their members a written notice:

(1) Identifying CICA programs and other Bank activities that may provide opportunities for a member to meet the community support requirements and to engage in community lending; and

(2) Summarizing community lending and affordable housing activities undertaken by members, nonmember borrowers, nonprofit housing developers, community groups, or other entities in the Bank's district, that may provide opportunities for a member to meet the community support requirements and to engage in community lending.

D. Community Investment Cash Advance Programs—§ 970.5

1. Types of CICA Programs

The final rule defines a "CICA program" as a Bank's AHP, CIP, RDA or UDA program using any combination of the standards specified in § 970.3, and any other program for community lending offered by a Bank using standards other than those specified in § 970.3, with prior Finance Board approval. *See* § 970.3.

2. "Community Lending"

Section 970.5 of the final rule provides that Bank advances offered under CICA programs must be made for "community lending" and eligible housing projects at the appropriate "targeted income levels." *See also* 12 CFR 935.1 (as amended by the final rule) (definition of "community investment cash advance"). "Community lending" is a new term in the final rule, which is defined as "providing financing" for "economic development projects" for "targeted beneficiaries." *See* § 970.3.

In response to a commenter, the Finance Board wishes to clarify that CICA loans may be used for affordable housing, but that only the CIP and AHP CICA programs have targeting requirements for affordable housing under CICA. The fact that CICA loans may be made for targeted economic development financing does not negate the fact that CICA loans also may be made for affordable housing. CICA loans also may be used for mixed-use projects involving both community lending and affordable housing, although only the community lending portion of the project would be subject to targeting under CICA (except for CIP projects). *See* § 970.5(b). Nothing in this final rule diminishes the Banks' authority to provide advances to fund loans for affordable housing projects pursuant to their regular advances authority under section 10(a) of the Bank Act. *See* 12 U.S.C. 1430(a).

In the proposed rule, the Finance Board requested comment on defining targeted income levels for CICA programs based upon area median income data other than that published annually by HUD. *See* 63 FR 25720. A number of commenters favored allowing the Banks to choose among the median income standards identified in the Finance Board's AHP regulation (12 CFR 960.1). Accordingly, targeted income levels in the final rule are based on the "median income for the area," as defined in § 970.3, consistent with the definition in the AHP regulation, which will provide uniformity between the AHP and other CICA programs. In addition, in response to commenters, the median income for the area may be adjusted for family size, rather than just for a family of four.

The final rule specifically defines the component terms of "community lending," as further discussed below.

a. "Providing financing"

"Providing financing" means:

(1) Originating loans;

(2) Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;

(3) Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;

(4) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;

(5) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;

(6) Originating CICA-eligible loans within 3 months prior to receiving the CICA advance; or

(7) purchasing low-income housing tax credits. *See* § 970.3.

Bank commenters specifically supported the inclusion of purchasing qualifying mortgage revenue bonds and mortgage-backed securities, and creating

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or maintaining a secondary market for qualifying loans. The financing techniques listed in paragraphs (2), (3), (6) and (7) were added in response to commenters' suggestions, in order to provide additional flexibility for the Banks to use various financing strategies to support community lending.

A Bank commenter recommended that the proposed list of eligible financing techniques be revised to permit other appropriate activities as determined by the Bank, which the Bank may submit to the Finance Board for approval. The Finance Board believes that the list of eligible activities in the final rule, which has been expanded to include commenters' suggestions, is sufficiently inclusive to take into account anticipated community lending financing.

b. "Economic development projects"

"Economic development projects" are:

(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and

(2) Public or private infrastructure projects, such as roads, utilities, and sewers. *See* § 970.3.

In response to a Bank comment, the final rule adds industrial projects, which were not included in the proposed rule.

c. "Targeted beneficiaries"

"Targeted beneficiaries" are beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries). *See* § 970.3. A list of targeted beneficiaries appeared under the definition of "benefit" in § 970.4 of the proposed rule. Targeted beneficiaries as defined in the final rule are composed of three groups:

(1) Geographically Defined Beneficiaries:

(i) The project is located in a neighborhood with a median income at or below the targeted income level. Thus, for CIP-funded projects, the targeted income level must be 80 percent of area median income; for RDA-funded projects (defined in § 970.3), the targeted income level is 115 percent of area median income; and for UDA-funded projects (defined in § 970.3), the targeted income level is 100 percent of area median income;

(ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the U.S. Department of Agriculture (USDA);

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of the Department of Housing and Urban Development (HUD);

(iv) The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), Alaskan Native Village, or Native Hawaiian Home Land;

(v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;

(vi) The project is located in an area affected by a military base closing and is a "community in the vicinity of the installation" as defined by the Department of Defense at 32 CFR part 176;

(vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;

(viii) The project is located in a Federally declared disaster area; or (ix) the project is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board.

One Bank commenter suggested that projects located in state declared disaster areas be included as eligible for CICA advances. Another Bank commenter recommended including state-designated Empowerment and Enterprise Zones in order to provide greater flexibility in addressing local needs of the targeted income group. Other commenters suggested allowing the Banks the discretion to select other areas not listed in the rule that are designated for targeted economic development. In response to these comments, paragraph (ix) was added to enable the Banks to fund projects located in state declared disaster areas, or qualifying for assistance under another Federal or state targeted economic development program not specifically listed in the final rule, with prior approval of the Finance Board. This will enable the Finance Board to determine, on a case-by-case basis, whether specific state declared disaster areas or economic development programs are defined by specific standards and are sufficiently targeted to be considered a CICA program.

(2) Individual Beneficiaries:

(i) The annual salaries for at least 51 percent of the permanent full-and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level (job creation or retention project); or

(ii) At least 51 percent of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

The Finance Board requested comment in the proposed rule on whether measuring the salaries of jobs created by a project is an effective way to determine whether the project benefits families with incomes at or below a targeted income level. *See* 63 FR 25720. Several Bank commenters supported measuring such salaries as a reasonable method of determining whether a project benefits households with incomes at or below a targeted income level. A Bank commenter noted that jobs with modest salaries are typically entry level or for people with limited job skills, and are an important link in upward mobility of low-income people. Other commenters stated that the proposed job salary measure gives the appearance of promoting lower-paying jobs when it would be preferable to promote an increase in the number and quality of employment opportunities, and could prevent worthy projects that could not meet the standard from being eligible for CICA funds.

Some commenters recommended lowering the target for eligible job creation or retention projects from 75 percent in the proposed rule (*see* 63 FR 25724 (definition of "benefit")) to 50 or 51 percent. Commenters stated that projects meeting the lower standard still would be creating or retaining a significant number of jobs in the community, and would provide more career and income potential and may be more viable, given the mix of incomes, than projects with a higher percentage of the jobs at or below the targeted income level. Commenters stated that a 50 percent standard would maintain consistency with other targets in the proposed rule, as well as with targets used by other Federal housing and economic development programs. One commenter suggested changing the target to a "significant number" of jobs created or retained by the project, with the threshold number determined by each Bank in its community investment-affordable housing plan. Another Bank commenter recommended that the Banks have the discretion to set the target for the number of jobs created or retained by the project, taking into account the individual needs of the Bank's district.

The final rule retains the proposed measure of salaries of jobs created or retained by a project which, as noted by a number of commenters, should be an effective method to determine whether the project benefits families with incomes at or below a targeted income level. However, in response to the comments, the final rule changes the target for job creation or retention projects in the proposed rule from 75 percent to 51 percent of the total number of jobs created or retained. The 51 percent standard should ensure that projects eligible for CICA funding have a substantial number of jobs at the targeted salary level, while not excluding a large number of worthy projects in credit needy areas. The 51 percent standard also is consistent with the targeting requirements of other Federal housing and economic development programs.

(3) Activity Beneficiaries:

Projects that qualify as small businesses, as defined in § 970.3.

(4) Other Targeted Beneficiaries:

A Bank may designate, with the prior approval of the Finance Board, other targeted beneficiaries for its community lending.

A number of commenters were concerned that the list of CICA-eligible projects in the definition of "benefit" in the proposed rule was too limited and did not allow the Banks flexibility to fund other types of worthy projects, thereby limiting innovation by the Banks. The final rule addresses this concern by allowing the Banks, with the prior approval of the Finance Board, to designate other types of projects as eligible for CICA funding.

Section 970.3 of the final rule further provides that only targeted beneficiaries identified in paragraphs (1)(i) through (iv), and (2)(i) and (ii) are eligible for CIP advances. This is necessary in order to ensure satisfaction of the statutory CIP targeting requirements. *See* 12 U.S.C. 1430(i)(2).

3. AHP

Section 970.5(a)(1) of the final rule reiterates the statutory requirement that each Bank shall offer an AHP, in accordance with part 960 of the Finance Board's regulations. *See* 12 U.S.C. 1430(j); 12 CFR part 960.

4. CIP

Section 970.5(a)(2) of the final rule provides that each Bank shall offer a CIP, as required by statute (*see* 12 U.S.C. 1430(i)), to "provide financing" for "housing projects" and for eligible "community lending" at the appropriate "targeted income levels." Under the statute, the Banks are required to provide funding for members who, in turn, "provide loans" to finance CIP-eligible activities. *See id.* Most of the Banks have implemented this statutory requirement by providing advances to members to fund the origination of loans financing CIP-eligible activities. Consistent with the proposed rule, the final rule adopts a more expansive reading of the meaning of the statutory language authorizing CIP advances to be used by members to "provide loans." *See id.* section 1430(i)(2). Specifically, the final rule authorizes CIP advances and other CICA advances to be used not only to fund CICA-eligible loan originations, but also for other types of financing activities as set forth in the definition of "providing financing" in § 970.3. The Finance Board believes that these are additional means of providing loans for the financing of CIP- and other CICA-eligible activities, in accordance with the intent of the statute, because they create liquidity in the market for CIP- and other CICA-eligible loans.

Section 970.3 of the final rule defines "housing projects" to mean projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(2) Projects involving multiple units of owner-occupied housing in which at least 51 percent of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;

(3) Rental housing where at least 51 percent of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(4) Manufactured housing parks where:

(i) At least 51 percent of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(ii) The project is located in a neighborhood with a median income at or below the targeted income level.

In response to comments, the final rule adds as eligible CIP projects any projects involving rehabilitation of owner-occupied housing units, construction of rental housing and manufactured housing parks, or predevelopment financing for housing projects, which were omitted from the proposed rule.

The final rule clarifies in paragraph (2) that projects involving multiple units of owner-occupied housing, *i.e.*, condominium, cooperative and single-family detached housing projects, that meet the 51 percent test are eligible for CIP funding. Thus, single-family detached owner-occupied housing projects with a mix of incomes, Planned Unit Developments, and other mixed income projects, would be eligible for CIP advances.

In response to comments, the final rule changes the requirement in the proposed rule that "substantially all" of the resident families in a manufactured housing park have incomes at or below the targeted incomes, to a requirement that at least 51 percent of the units in the project are occupied by, or the rents are affordable to, families meeting the targeted income level. This makes the occupancy/affordability standard for manufactured housing parks consistent with the 51 percent standard for rental housing projects, and is a clearer standard to meet than the proposed standard.

Most occupants of manufactured housing parks own their homes but rent the space on which their homes are located. Verification of income is not a usual practice in the course of renting space to the owner of a manufactured home. Therefore, it is difficult to verify that the resident families in a manufactured housing park are income-eligible. The criterion in the final rule that the manufactured housing park be located in a neighborhood with a median income at or below the targeted income level is intended as a proxy for the requirement that each resident family be income-eligible.

The "targeted income level" for CICA advances provided under CIP for housing projects and economic development projects is incomes at or below 115 percent and 80 percent of the median income for the area, respectively, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four. *See id.*

5. RDA and UDA Programs

Section 970.5(a)(3) of the final rule provides that each Bank may offer RDA or UDA programs, or both, for community lending using the targeted beneficiaries or targeted income levels specified in § 970.3, without prior Finance Board approval. "RDA programs" and "UDA programs" are programs offered by a Bank for community lending in "rural" or "urban" areas, respectively. *See* § 970.3. "Targeted income levels" for RDA and UDA programs, where applicable, are incomes at or below 115 percent and 100 percent of the median income for

the area, respectively, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four. *See* § 970.3. These income limits are higher than those required under CIP or AHP, and are intended to benefit families not targeted by those programs. Due to generally higher median incomes in urban areas, the UDA income eligibility limit, although numerically lower than the RDA income eligibility limit, reaches families with higher incomes.

A number of commenters specifically supported the income limits established for RDA and UDA programs. Several Bank commenters stated that these income limits do not go far enough to address the income level imbalances between rural and urban areas. Several commenters suggested that the RDA and UDA programs both should have the same income limit of 115 percent, on the basis that while income ranges are lower in rural areas, urban areas have higher costs of living. A trade association commenter supported the establishment of such programs generally, but expressed concern that the higher income limits of these programs would divert financing from lower income and minority neighborhoods to neighborhoods where residents are either mostly middle-income or in the upper range of moderate-income. If a Bank determines that the higher income limits of the RDA or UDA programs are not appropriate for a particular CICA program it wishes to offer in its district, under the final rule the Bank may adopt other income limits upon prior Finance Board approval. *See* § 970.3 (definition of "targeted income level").

Section 970.3 of the final rule defines "urban area" as: (1) a unit of general local government with a population of more than 25,000; or (2) an unincorporated area within a Metropolitan Statistical Area (MSA) that does not qualify for housing or economic development assistance from the USDA.

A Bank commenter recommended that "rural area" be defined as any town with a population of 30,000 that is not attached to a central city. Another Bank commenter suggested deletion of the proposed 30,000 reference, recommending instead that "rural area" be defined as any county located outside an MSA, consistent with the definition in other Federal housing programs. In response to these comments, "rural area" is defined in § 970.3 as: (1) a unit of general local government with a population of 25,000 or less; (2) an unincorporated area outside an MSA; or (3) an unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA. The population number of 30,000 was changed to 25,000 in order to be consistent with the definition of rural used in USDA housing programs. Paragraph (3) of the definition takes into account a comment that the proposed definition should not have excluded large areas within MSAs that are predominantly rural in nature.

6. Other CICA Programs Requiring Finance Board Approval

Section 970.5(a)(4) of the final rule provides that each Bank may offer CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in § 970.3, established by the Bank with the prior approval of the Finance Board. In response to comments, this provision is intended to give the Banks greater flexibility, in response to market needs and demands, to offer CICA programs that may not use one of the enumerated targeted beneficiaries or targeted income levels included in the final rule, to better reflect the needs of the individual Bank's district.

7. Mixed-Use Projects

a. CICA programs other than CIP

Section 970.5(b)(1) of the final rule provides that for projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

b. CIP programs

Section 970.5(b)(2) of the final rule provides that for projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels. This is necessary to ensure satisfaction of the statutory CIP targeting requirements for housing and economic development projects. *See* 12 U.S.C. 1430(i)(2).

8. Refinancing

Section 970.5(c) of the final rule provides that CICA advances other than AHP may be used to refinance economic development and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing park projects are used to rehabilitate the projects or to preserve affordability for current residents.

A trade association commenter specifically supported allowing the use of CICA advances for refinancing of economic development projects. Several commenters opposed the proposed restriction on the use of CICA advances for refinancing as unnecessary and difficult to enforce from a compliance standpoint. One commenter stated that the restriction in proposed §§ 970.5(d)(2) and 970.7(d) on owner-occupied refinancing would penalize low-income families vis a vis upper-income families who face no such limitations on their right to refinance their homes. The Finance Board agrees that targeted homeowners should be able to take advantage of all the incidents of home ownership, including accessing any equity that has accumulated, that other homeowners may use. Accordingly, the proposed refinancing restriction for owner-occupied housing has been omitted from the final rule. In response to a commenter's request for clarification, the final rule's reference to "any" equity proceeds makes clear that there is no restriction on refinancing that results in no "equity proceeds," *i.e.*, refinancing with no cash out to achieve a lower debt service. The Finance Board believes that the restriction on refinancing of rental housing and manufactured housing park projects is necessary to ensure that occupants of such projects are not adversely affected by a refinancing, such as taking equity out of a project resulting in an increase in rents to cover the repayment of the financing.

9. Pricing and Availability of CICA Advances

a. Advances to members

Consistent with proposed § 970.7(f)(1), § 970.5(d)(1) of the final rule provides that for CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in § 935.6 of the Finance Board's Advances Regulation (12 CFR 935.6), and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Bank Act (12 U.S.C. 1430(a)). Permitting the Banks to price such CICA advances as regular advances may provide the Banks with a financial incentive to make such advances. Banks still have the option to provide reduced pricing for such advances in order to provide borrowers with a financial incentive to undertake community lending.

b. Pricing of CIP advances

Consistent with the statutory requirement, § 970.5(d)(2) of the final rule provides that the price of CICA advances made under CIP shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs. *See id.* section 1430(i)(1). The CIP pricing provision formerly appeared at § 935.7 of the Finance Board's Advances Regulation (12 CFR 935.7).

Section 970.5(f)(1) of the proposed rule would have allowed the Banks, in pricing CIP advances, to take into account only those administrative costs necessary for the operation of the CIP. A trade association commenter specifically supported this pricing restriction, stating that it would ensure that the prices of CIP advances are lower than prices of other similar regular advances. A Bank commenter pointed out that it currently prices CIP advances by adding a minimal markup based on the overall cost of putting advances on its books, not based on unique CIP costs. The commenter noted that if unique CIP costs are singled out and spread only over the relatively small CIP advances portfolio, the resulting price markup may actually be greater than the current CIP markup. In response to the latter comment, the final rule does not include the pricing restriction of the proposed rule.

In the proposed rule, the Finance Board requested comment on whether the rule should contain a list of factors that could be the basis for deeper CIP discounts by the Banks. *See* 63 FR 25721. The proposed rule noted that several Banks vary CIP pricing based on the kinds of projects being financed and the income levels of the households benefiting from the project, such as projects that benefit families with incomes at or below 80 percent of the area median income. One Bank provided lower pricing for members that have been assigned a rating of outstanding under the Community Reinvestment Act. *See* 12 U.S.C. 2901 *et seq.* A Bank commenter supported inclusion of such a list in the rule in order to provide special incentives for borrowers to use CIP advances for projects that are difficult to develop. A trade association commenter and Bank commenter supported inclusion of a list of such factors in the rule as long as adoption of the factors was optional for the Banks. A number of Bank commenters opposed inclusion of a list of such factors, stating that the adoption of such pricing factors should be left to the discretion of the Banks in order to ensure greater flexibility and creativity on the part of the Banks.

The Finance Board found these comments to be extremely useful. In response to these comments, § 970.5(d)(6) of the final rule authorizes each Bank to establish a fund (Discount Fund), as discussed further below, which the Bank may use to reduce the price of CIP or CICA advances below the advance prices provided by part 970. The Finance Board believes the Discount Fund authorized by the final rule will be a more productive method of addressing the points raised by the commenters than the inclusion of a list of factors for a Bank to consider contained in the proposal.

c. Pricing of AHP advances

Section 970.5(d)(3) of the final rule provides that a Bank shall price CICA advances made under AHP in accordance with parts 935 and 960 of the Finance Board's regulations (12 CFR parts 935, 960).

d. Advances to nonmember borrowers

Section 970.5(d)(4)(i) of the final rule provides that a Bank may offer advances under CICA programs to nonmember borrowers at the Bank's option, except for AHP and CIP, which are available only to members.

Consistent with proposed § 970.7(f)(2), § 970.5(d)(4)(ii) of the final rule provides that a Bank shall price advances to nonmember borrowers as provided in § 935.24 of the Finance Board's Advances Regulation (12 CFR 935.24), and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Bank Act (12 U.S.C. 1430b).

A consumer mortgage trade association and a member thrift expressed their opinion that the Banks do not have authority to provide advances to nonmembers under section 10(j)(10) of the Bank Act. The trade association also stated that the rule would allow the Banks to compete with well-functioning private markets, thereby destabilizing those markets. The Finance Board disagrees.

Section 10(j)(10) of the Bank Act provides that "[n]o provision of this subsection or subsection (i) of this section shall preclude any Bank from establishing *additional* community investment cash advance programs or contributing additional sums to the Affordable Housing Reserve Fund." *See id.* section 1430(j)(10) (emphasis added). While advances under AHP and CIP are restricted by statute to members, section 10(j)(10) states that the Banks may establish "additional" community investment cash programs, *i.e.*, programs in addition to those specified in the Bank Act. There is nothing in the plain language of section 10(j)(10) to suggest or require that Bank advances under "additional" CICA programs be restricted solely to members. The Finance Board has determined that the statutory language is sufficiently broad to be reasonably interpreted to allow Bank lending to nonmembers, especially since the Banks already are authorized to lend to nonmember borrowers pursuant to section 10b of the Bank Act. *See id.* section 1430b. The final rule does not *require* that the Banks offer CICA programs to nonmember borrowers, but merely provides for such an option, if a Bank should choose to do so.

e. Pricing pass-through

Section 970.5(d)(5) of the final rule provides that a Bank may require that borrowers receiving CICA advances pass through the benefit of any price reduction from regular advance pricing to their borrowers. This provision extends the pricing pass-through option for CIP advances in proposed § 970.5(g) to all CICA advances, which was recommended by a trade association commenter. As suggested by commenters, the benefit of a price reduction may be passed through in a number of ways other than as a reduction in the interest rate on the end loan, such as through reduced fees or downpayment requirements on the end loan.

The statutory provisions governing CIP do not require members that obtain CIP advances to pass on the benefit of the pricing differential between CIP advances and regular Bank advances to the owners or occupants of CIP-financed projects. *See* 12 U.S.C. 1430(i)(1). A 1996 survey of the Banks' CIP pricing policies indicated that two Banks specifically required such a pass-through and four Banks encouraged a pass-through.

f. Discount Fund

As discussed above, the Finance Board in the proposed rule requested comment on whether the rule should contain a list of factors that could be the basis for deeper CIP discounts by the Banks. *See* 63 FR 25721. A number of commenters opposed including an exclusive list of such factors in the rule. In lieu of that approach, § 970.5(d)(6) of the final rule provides that a Bank may establish a Discount Fund which the Bank may use to reduce the price of CIP or other CICA advances below the advance prices provided for by part 970. Price reductions made through the

Discount Fund must be made in accordance with a fair distribution scheme. This authority is intended to encourage the Banks to find sources of income both from within the Bank and from third party partners to be used to reduce the cost of financing for community lending. One Bank currently has established such a fund with monies received from a third party partner which the Bank uses to reduce the cost of CIP advances, with discounts below the CIP rate ranging from 50 to 300 basis points for maturities up to 20 years.

E. Reporting—§ 970.6

Section 970.6(a) of the final rule requires each Bank, by July 1, 1999, to provide to the Finance Board an initial assessment of the credit needs and market opportunities in a Bank's district for community lending.

Section 970.6(b) provides that, effective in 2000. each Bank annually shall provide to the Finance Board, on or before January 31, a Community Lending Plan (as outlined in § 936.6(a) (as amended by this final rule)).

Section 970.6(c) requires each Bank to provide such other reports concerning its CICA programs as the Finance Board may request from time to time.

F. Documentation—§ 970.7

Section 970.7(a) of the final rule provides that each Bank shall require the borrower to certify to the Bank that each project funded by a CICA advance (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained. The certification requirement is based on current documentation practices employed by the Banks for their CIPs.

Section 970.7(b) provides that for those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

Section 970.7(c) provides that such certifications shall satisfy the Bank's obligations to document compliance with the CICA lending provisions of part 970. Finance Board examination of the Banks for compliance with part 970 will be satisfied by demonstration of compliance with the documentation requirements of § 970.7. Examination as to whether any Bank's level of community lending is consistent with the carrying out of such Bank's mission would be undertaken pursuant to separate regulatory standards to be developed by the Finance Board in the future.

Several commenters recommended that the rule include specific CICA documentation and monitoring requirements in order to avoid discouraging member participation due to lack of clear requirements as to any reporting and monitoring burdens. Another Bank commenter stated that the proposed rule contained reporting requirements that would discourage program users from participating in CICA programs. The documentation requirements contained in the final rule should provide the clarity requested by the commenter without being so burdensome as to discourage participation by borrowers in CICA programs.

G. Conforming Amendments to the Finance Board's Advances Regulation and Incentive Compensation Regulation

The final rule makes several conforming amendments to other regulations. First, the final rule amends the Finance Board's Advances Regulation in order to make clear that a Bank may make long-term advances for the purpose of financing community lending and affordable housing finance activities that meet the requirements of a CICA program. Specifically, the final rule amends the existing definition of "residential housing finance assets" in § 935.1 of the Advances Regulation to include loans or investments financed by CICA advances. *See* 12 CFR 935.1 (as amended). The final rule also revises certain provisions of the Advances Regulation regarding the use of long-term advances under the CIP in order to make clear that these provisions apply to all CICA programs, not just the CIP. *See id.* §§ 935.13(a)(5), 935.14(b)(2) (as amended). In addition, the final rule replaces the definition of "Community Investment Program" in the Advances Regulation with a new definition of "Community Investment Cash Advance," which, as discussed above, includes advances made under CICA programs, including the CIP. *See id.* § 935.1.

Second, the final rule replaces a reference to CIP with a reference to CICA in § 932.41(c)(2)(ii) of the Finance Board's Compensation Regulation, *see id.* § 932.41(c)(2)(ii) (as amended by the final rule), and deletes references to "growth" in the activities to be considered to encourage quality over volume as the appropriate standard.

III. Regulatory Flexibility Act

The final rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* § 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 932

Banks, Banking, Conflicts of interest, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 935

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 936

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 970

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, chapter IX, title 12, Code of Federal Regulations, is hereby amended as set forth below:

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 932—ORGANIZATION OF THE BANKS

1. The authority citation for part 932 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1426, 1427, 1432; 42 U.S.C. 8101 *et seq.*

2. Amend § 932.41 by revising the first sentence of paragraph (c)(2)(ii) to read as follows:

§ 932.41 Compensation.

* * * * *

(c) *Incentive payments for Bank employees.*

* * * * *

(2) * * *

(ii) At least fifty percent of the Bank President's incentive payment shall be based on the extent to which the Bank meets reasonable numerical performance targets established by the Bank's board of directors related to the

Bank's achievement of its housing finance mission, which shall include substantial consideration of innovative products directed at unmet credit needs, Community Investment Cash Advances (including Community Investment Program advances) as defined in § 935.1 of this chapter, non-advance credit support and risk management products for members, as well as advances, including long-term advances. * * *

* * * * *

PART 935—ADVANCES

1. The authority citation for part 935 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b, and 1431.

2. Section 935.1 is amended by adding in alphabetical order the following definition of *Community Investment Cash Advance*, by removing the definition of *Community Investment Program*, and in the definition of *Residential housing finance assets* by republishing the introductory text and revising paragraph (4) to read as follows:

§ 935.1 Definitions.

* * * * *

Community Investment Cash Advance or *CICA* means any advance made through a program offered by a Bank under section 1430 of the Act and parts 960 and 970 of this chapter to provide advances for community lending and affordable housing, including advances made under: a Bank's Rural Development Advance (RDA) program, offered under section 1430(j)(10) of the Act; a Bank's Urban Development Advance (UDA) program, offered under section 1430(j)(10) of the Act; a Bank's Affordable Housing Program (AHP), offered under section 1430(j) of the Act; a Bank's Community Investment Program (CIP), offered under section 1430(i) of the Act; or any other program offered by a Bank that meets the requirements of part 970 of this chapter.

* * * * *

Residential housing finance assets means any of the following:

* * * * *

(4) Loans or investments financed by advances made pursuant to a CICA program;

* * * * *

§ 935.7 [Removed and reserved]

3. Section 935.7 is removed and reserved.

4. Section 935.13 is amended by revising paragraph (a)(5) to read as follows:

§ 935.13 Restrictions on advances to members that are not qualified thrift lenders.

(a) * * *

(5) The requirements of paragraph (a)(2) of this section shall not apply to applications from non-savings association members for CICA advances.

* * * * *

5. Section 935.14 is amended by revising paragraph (b)(2) to read as follows:

§ 935.14 Limitations on long-term advances.

* * * * *

(b) * * *

(2) Applications for CICA advances are exempt from the requirements of paragraph (b)(1) of this section.

PART 936—COMMUNITY SUPPORT REQUIREMENTS

1. The authority citation for part 936 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

2. Amend § 936.1 by revising paragraphs (g) and (h) to read as follows:

§ 936.1 Definitions.

* * * * *

(g) *CICA* or *Community Investment Cash Advance* has the same meaning as in § 935.1 of this chapter.

(h) *Community lending* has the same meaning as in § 970.3 of this chapter.

* * * * *

3. Amend § 936.5 by revising paragraph (e) to read as follows:

§ 936.5 Restrictions on access to long-term advances.

* * * * *

(e) *CICA.* A member that is subject to a restriction on access to long-term advances under this part shall not be eligible to participate in a CICA program offered under parts 960 and 970 of this chapter. The restriction in this paragraph (e) shall not apply to CICA applications or funding approved before the date the restriction is imposed.

* * * * *

4. Amend § 936.6 by revising paragraphs (a) introductory text, (a)(2) and (a)(4), removing paragraph (b), redesignating paragraph (c) as paragraph (b) and revising it, and adding paragraph (a)(5) to read as follows:

§ 936.6 Bank community support programs.

(a) *Requirement.* Consistent with the safe and sound operation of the Bank, each Bank shall establish and maintain a community support program. A Bank's community support program shall:

* * * * *

(2) Promote and expand affordable housing finance;

* * * * *

(4) Encourage members to increase their community lending and affordable housing finance activities by providing incentives such as awards or technical assistance to nonprofit housing developers or community groups with outstanding records of participation in community lending or affordable housing finance partnerships with members;

(5) Include an annual Community Lending Plan, approved by the Bank's board of directors and subject to modification, which shall require the Bank to:

(i) Conduct market research in the Bank's district;

(ii) Describe how the Bank will address identified credit needs and market opportunities in the Bank's district for community lending;

(iii) Consult with its Advisory Council and with members, nonmember borrowers, and public and private economic development organizations in the Bank's district in developing and implementing its Community Lending Plan; and

(iv) Establish quantitative community lending performance goals.

(b) *Notice.* A Bank shall provide annually to each of its members a written notice:

(1) Identifying CICA programs and other Bank activities that may provide opportunities for a member to meet the community support requirements and to engage in community lending; and

(2) Summarizing community lending and affordable housing activities undertaken by members, nonmember borrowers, nonprofit housing developers, community groups, or other entities in the Bank's district, that may provide opportunities for a member to meet the community support requirements and to engage in community lending.

5. Revise § 936.7 to read as follows:

§ 936.7 Reports.

Each Advisory Council annual report required to be submitted to the Finance Board pursuant to section 10(j)(11) of the Act shall include an analysis of the Bank's community lending and affordable housing activities.

6. Subchapter F, consisting of part 970, is added to chapter IX to read as follows:

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SUBCHAPTER F—COMMUNITY INVESTMENT

PART 970—Community Investment Cash Advance Programs

Sec.
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Authority: 12 U.S.C. 1422b(a)(1) and 1430.

§ 970.1 Scope.

Section 10(j)(10) of the Act authorizes the Banks to offer Community Investment Cash Advance (CICA) programs. (See 12 U.S.C. 1430(j)(10)). This part establishes requirements for all CICA programs offered by a Bank, except for a Bank's Affordable Housing Program (AHP), which is governed specifically by part 960 of this chapter.

§ 970.2 Purpose.

The purpose of this part is to identify community lending projects that the Banks may support through the establishment of CICA programs under section 10(j)(10) of the Act. (12 U.S.C. 1430(j)(10)). Pursuant to this part, a Bank may offer Rural Development Advance (RDA) or Urban Development Advance (UDA) programs, or both, for community lending using the targeted beneficiaries or targeted income levels specified in § 970.3 of this part, without prior Finance Board approval. A Bank also may offer other CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in § 970.3 of this part, established by the Bank with the prior approval of the Finance Board. In addition, a Bank shall offer CICA programs under section 10(i) of the Act (Community Investment Program (CIP), 12 U.S.C. 1430(i)), and section 10(j) of the Act (Affordable Housing Program (AHP), 12 U.S.C. 1430(j)).

§ 970.3 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Advance has the same meaning as in § 935.1 of this chapter.

AHP means the Affordable Housing Program, the CICA program required to be offered pursuant to section 10(j) of the Act (12 U.S.C. 1430(j)) and part 960 of this chapter.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board of Directors means the Board of Directors of the Finance Board.

Champion Community means a community which developed a strategic plan and applied for designation by either the Secretary of HUD or the Secretary of the USDA as an Empowerment Zone or Enterprise Community, but was designated a Champion Community.

CICA or *Community Investment Cash Advance* has the same meaning as in § 935.1 of this chapter.

CICA program or *Community Investment Cash Advance program* means:

(1) A Bank's AHP;

(2) A Bank's CIP;

(3) REA Bank's RDA program or UDA program using any combination of the targeted beneficiaries and targeted income levels specified in § 970.3 of this part; and

(4) Any other program offered by a Bank using targeted beneficiaries and targeted income levels other than those specified in § 970.3 of this part, established by the Bank with the prior approval of the Finance Board.

CIP means the Community Investment Program, a CICA program required to be offered pursuant to section 10(i) of the Act (12 U.S.C. 1430(i)).

Community lending means providing financing for economic development projects for targeted beneficiaries.

Economic development projects means:

(1) Commercial, industrial, manufacturing, social service, and public facility projects and activities; and

(2) Public or private infrastructure projects, such as roads, utilities, and sewers.

Family means one or more persons living in the same dwelling unit.

Finance Board means the agency established as the Federal Housing Finance Board.

Housing projects means projects or activities that involve the purchase, construction or rehabilitation of, or predevelopment financing for:

(1) Individual owner-occupied housing units, each of which is purchased or owned by a family with an income at or below the targeted income level;

(2) Projects involving multiple units of owner-occupied housing in which at least 51% of the units are owned or are intended to be purchased by families with incomes at or below the targeted income level;

(3) Rental housing where at least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(4) Manufactured housing parks where:

(i) At least 51% of the units in the project are occupied by, or the rents are affordable to, families with incomes at or below the targeted income level; or

(ii) The project is located in a neighborhood with a median income at or below the targeted income level.

HUD means the United States Department of Housing and Urban Development.

Median income for the area. (1) *Owner-occupied housing projects and economic development projects.* For purposes of owner-occupied housing projects and economic development projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD;

(ii) The applicable median family income, as determined under 26 U.S.C. 143(f) (Mortgage Revenue Bonds) and published by a State agency or instrumentality;

(iii) The median income for the area, as published by the USDA; or

(iv) The median income for any definable geographic area, as published by a Federal, state, or local government entity for purposes of that entity's housing and economic development programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

(2) *Rental housing projects.* For purposes of rental housing projects, median income for the area means one or more of the following, as determined by the Bank:

(i) The median income for the area, as published annually by HUD; or

(ii) The median income for any definable geographic area, as published by a Federal, state, or local government entity for purposes of that entity's housing programs, and approved by the Board of Directors, at the request of a Bank, for use under the Bank's CICA programs.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with § § 933.20 and 933.25 of this chapter.

MSA means a Metropolitan Statistical Area as designated by the Office of Management and Budget.

Neighborhood means:

(1) A census tract or block numbering area;

(2) A unit of local government with a population of 25,000 or less;

(3) A rural county; or

(4) A geographic location designated in comprehensive plans, ordinances, or other local documents as a

neighborhood, village, or similar geographic designation that is within the boundary of but does not encompass the entire area of a unit of general local government.

Nonmember borrower means an entity that has been approved as a nonmember mortgagee pursuant to Subpart B of part 935 of this chapter.

Provide financing means:

(1) Originating loans;

(2) Purchasing a participation interest, or providing financing to participate, in a loan consortium for CICA-eligible housing or economic development projects;

(3) Making loans to entities that, in turn, make loans for CICA-eligible housing or economic development projects;

(4) Purchasing mortgage revenue bonds or mortgage-backed securities, where all of the loans financed by such bonds and all of the loans backing such securities, respectively, meet the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;

(5) Creating or maintaining a secondary market for loans, where all such loans are mortgage loans meeting the eligibility requirements of the CICA program under which the member or nonmember borrower receives an advance;

(6) Originating CICA-eligible loans within 3 months prior to receiving the CICA advance; and

(7) Purchasing low-income housing tax credits.

RDA or *Rural Development Advance* means an advance made pursuant to an RDA program.

RDA program or *Rural Development Advance program* means a program offered by a Bank for community lending in rural areas.

Rural area means:

(1) A unit of general local government with a population of 25,000 or less;

(2) An unincorporated area outside an MSA; or

(3) An unincorporated area within an MSA that qualifies for housing or economic development assistance from the USDA.

Small business means a "small business concern," as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration under 13 CFR part 121, or any successor provisions.

Targeted beneficiaries means beneficiaries determined by the geographical area in which a project is located (Geographically Defined Beneficiaries), by the individuals who benefit from a project as employees or service recipients (Individual Beneficiaries), or by the nature of the project itself (Activity Beneficiaries), as follows:

(1) Geographically Defined Beneficiaries:

(i) The project is located in a neighborhood with a median income at or below the targeted income level;

(ii) The project is located in a rural Champion Community, or a rural Empowerment Zone or rural Enterprise Community, as designated by the Secretary of the USDA;

(iii) The project is located in an urban Champion Community, or an urban Empowerment Zone or urban Enterprise Community, as designated by the Secretary of HUD;

(iv) The project is located in an Indian area, as defined by the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*), Alaskan Native Village, or Native Hawaiian Home Land;

(v) The project is located in an area and involves a property eligible for a Brownfield Tax Credit;

(vi) The project is located in an area affected by a military base closing and is a "community in the vicinity of the installation" as defined by the Department of Defense at 32 CFR part 176;

(vii) The project is located in a designated community under the Community Adjustment and Investment Program as defined under 22 U.S.C. 290m-2;

(viii) The project is located in a Federally declared disaster area; or

(ix) The project is located in a state declared disaster area, or qualifies for assistance under another Federal or state targeted economic development program, approved by the Finance Board.

(2) Individual Beneficiaries:

(i) The annual salaries for at least 51% of the permanent full- and part-time jobs, computed on a full-time equivalent basis, created or retained by the project, other than construction jobs, are at or below the targeted income level; or

(ii) At least 51% of the families who otherwise benefit from (other than through employment), or are provided services by, the project have incomes at or below the targeted income level.

(3) Activity Beneficiaries: Projects that qualify as small businesses.

(4) Other Targeted Beneficiaries. A Bank may designate, with the prior approval of the Finance Board, other targeted beneficiaries for its community lending.

(5) Only targeted beneficiaries identified in paragraphs (1)(i) through (1)(iv), and (2)(i) and (2)(ii) of this definition are eligible for CIP advances.

Targeted income level means:

(1) For rural areas, incomes at or below 115 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(2) For urban areas, incomes at or below 100 percent of the median income for the area, as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four;

(3) For CICA advances provided under CIP:

(i) For economic development projects, incomes at or below 80 percent of the median income for the area; or

(ii) For housing projects, incomes at or below 115 percent of the median income for the area, both as adjusted for family size in accordance with the methodology of the applicable area median income standard or, at the option of the Bank, for a family of four; or

(4) For CICA advances provided under any other CICA program offered by a Bank, a targeted income level established by the Bank with the prior approval of the Finance Board.

UDA or *Urban Development Advance* means an advance made pursuant to a UDA program.

UDA program or *Urban Development Advance program* means a program offered by a Bank for community lending in urban areas.

Urban area means:

(1) A unit of general local government with a population of more than 25,000; or

(2) An unincorporated area within an MSA that does not qualify for housing or economic development assistance from the USDA.

USDA means the United States Department of Agriculture.

§ 970.4 Community Lending Plan

Each Bank shall develop and adopt an annual Community Lending Plan pursuant to § 936.6 of this chapter.

§ 970.5 Community Investment Cash Advance Programs.

(a) *In general.*

(1) Each Bank shall offer an AHP in accordance with part 960 of this chapter.

(2) Each Bank shall offer a CIP to provide financing for housing projects and for eligible community lending at the appropriate targeted income levels.

(3) Each Bank may offer RDA programs or UDA programs, or both, for

community lending using the targeted beneficiaries or targeted income levels specified in § 970.3 of this part, without prior Finance Board approval.

(4) Each Bank may offer CICA programs for community lending using targeted beneficiaries and targeted income levels other than those specified in § 970.3 of this part, established by the Bank with the prior approval of the Finance Board.

(b) *Mixed-use projects.* (1) For projects funded under CICA programs other than CIP, involving a combination of housing projects and economic development projects, only the economic development components of the project must meet the appropriate targeted income level for the respective CICA program.

(2) For projects funded under CIP, both the housing and economic development components of the project must meet the appropriate targeted income levels.

(c) *Refinancing.* CICA advances other than AHP may be used to refinance economic development projects and housing projects, provided that any equity proceeds of the refinancing of rental housing and manufactured housing parks are used to rehabilitate the projects or to preserve affordability for current residents.

(d) *Pricing and Availability of CICA advances.*

(1) *Advances to members.* For CICA programs other than AHP and CIP, a Bank shall price advances to members as provided in § 935.6 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10(a) of the Act. (12 U.S.C. 1430(a)).

(2) *Pricing of CIP advances.* The price of CICA advances made under CIP shall not exceed the Bank's cost of issuing consolidated obligations of comparable maturity, taking into account reasonable administrative costs.

(3) *Pricing of AHP advances.* A Bank shall price CICA advances made under AHP in accordance with parts 935 and 960 of this chapter.

(4) *Advances to nonmember borrowers.* (i) A Bank may offer advances under CICA programs to nonmember borrowers at the Bank's option, except for AHP and CIP, which are available only to members.

(ii) A Bank shall price advances to nonmember borrowers as provided in § 935.24 of this chapter, and may price such advances at rates below the price of advances of similar amounts, maturities and terms made pursuant to section 10b of the Act. (12 U.S.C. 1430b).

(5) *Pricing pass-through.* A Bank may require that borrowers receiving CICA advances pass through the benefit of any price reduction from regular advance pricing to their borrowers.

(6) *Discount Fund.* (i) A Bank may establish a fund which the Bank may use to reduce the price of CIP or other CICA advances below the advance prices provided for by this part.

(ii) Price reductions made through the Discount Fund shall be made in accordance with a fair distribution scheme.

§ 970.6 Reporting.

(a) By July 1, 1999, each Bank shall provide to the Finance Board an initial assessment of the credit needs and market opportunities in a Bank's district for community lending.

(b) Effective in 2000, each Bank annually shall provide to the Finance Board, on or before January 31, a Community Lending Plan.

(c) Each Bank shall provide such other reports concerning its CICA programs as the Finance Board may request from time to time.

§ 970.7 Documentation.

(a) A Bank shall require the borrower to certify to the Bank that each project funded by a CICA advance (other than AHP) meets the respective targeting requirements of the CICA program. Such certification shall include a description of how the project meets the requirements, and where appropriate, a statistical summary or list of incomes of the borrowers, rents for the project, or salaries of jobs created or retained.

(b) For those CICA-funded projects that also receive funds from another targeted Federal economic development program that has income targeting requirements that are the same as, or more restrictive than, the targeting requirements of the applicable CICA program, the Bank shall permit the borrower to certify that compliance with the criteria of such Federal economic development program will meet the requirements of the respective CICA program.

(c) Such certifications shall satisfy the Bank's obligations to document compliance with the CICA lending provisions of this part.

Dated: October 28, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–31489 Filed 11–25–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–05–AD; Amendment 39–10918; AD 98–24–32]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS–365N2, SA–360C, SA–365C, C1, C2, N, N1, and SA–366G1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS–365N2, SA–360C, SA–365C, C1, C2, N, N1, and SA–366G1 helicopters. This action requires inspecting for broken or out-of-tolerance attachment springs on the tail rotor hub fairing (fairing), replacing broken attachment springs and attachment springs that are out-of-tolerance, and marking the fairing to indicate compliance with this AD. This amendment is prompted by three in-service reports of failed attachment springs. The actions specified in this AD are intended to prevent failure of an attachment spring, which could cause loss of the fairing, damage to the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective December 14, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 26, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–05–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Mr. Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model AS–365N2, SA–360C, SA–365C, C1, C2, N, N1, and SA–366G1 helicopters. The DGAC advises that inspecting for broken or out-of-tolerance attachment springs on the fairing, replacing broken attachment springs and attachment

springs that are out-of-tolerance, and marking the fairing are necessary due to reports of broken attachment springs.

Eurocopter France has issued SA–360C, SA–365C, C1, C2 Service Bulletin No. 01.34, dated 96–14(N); SA–365N Service Bulletin No. 01.00.43, dated 96–14(N); SA–365N1, AS–365N2 Service Bulletin No. 01.00.42, dated 96–14(N), and SA–366G1 Service Bulletin No. 01.22, dated 96–14(N). These service bulletins specify several actions regarding the fairing and attachment springs. The DGAC classified these service bulletins as mandatory and issued AD 95–107–039(B)R1 and AD 95–112–040(B), both dated June 7, 1995, and AD 95–108–018(B), dated May 24, 1995, in order to assure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation previously described. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Model AS–365N2, SA–360C, SA–365C, C1, C2, N, N1, and SA–366G1 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the attachment springs which could cause loss of the tail rotor hub fairing, damage to the tail rotor, and subsequent loss of control of the helicopter. This AD requires inspecting for broken or out-of-tolerance attachment springs on the fairing, replacing broken attachment springs and those that are out-of-tolerance, and marking the fairing with an "X" by the fairing part number to indicate compliance.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, the inspections, replacement, and marking are required prior to further flight, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 135 helicopters of U.S. registry will be affected by this AD, that it will take 1.5 work hours per helicopter to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $988 per helicopter. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $145,530.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–05–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 98–24–32 Eurocopter France: Amendment 39–10918. Docket No. 98–SW–05–AD.

Applicability: Model AS–365N2, SA–360C, SA–365C, C1, C2, N, N1, and SA–366G1, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (e) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no

case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously

To prevent failure of an attachment spring (spring), which could cause loss of the tail rotor hub fairing (fairing), damage to the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight with fairing, part number (P/N) 360A33–1079–01, installed, that has modification 365A07–64B20 incorporated but is not marked with an "X" after the part number:

(1) Remove the six fairing attachment bolts (bolts), then remove the fairing from the helicopter.

(2) Inspect for broken springs, especially in the rounded sections at the rotor hub groove (Point A, Figure 1).

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FIGURE 1
CORRECT INSTALLATION

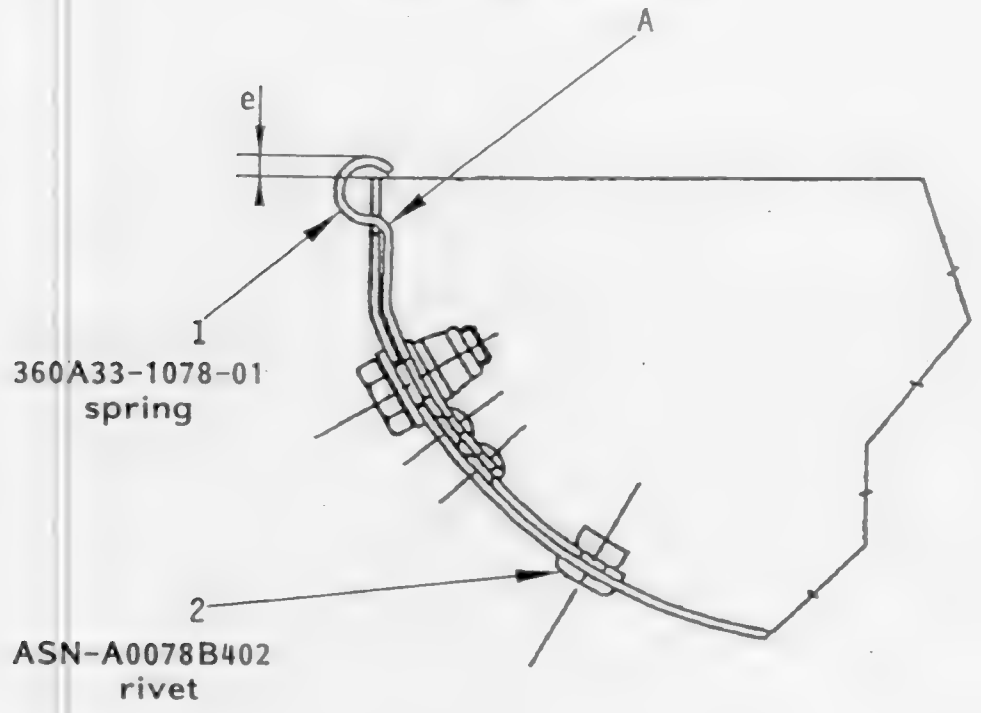
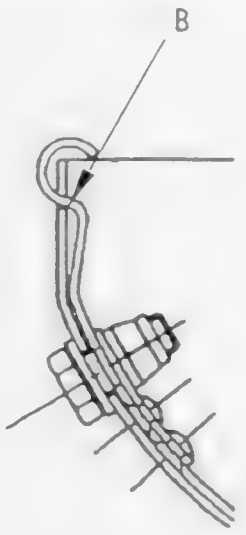


FIGURE 2
INCORRECT INSTALLATION



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(3) If any broken springs are discovered, replace them with airworthy springs using the procedure specified in paragraph (b) of this AD.

(4) Lubricate the threads with NATO 156 oil, then reinstall the six bolts, torqued to 0.4–0.5 m.daN (35.3–44.2 in.-lbs.).

(5) Inspect for interference between the spring and the fairing (Point B, Figure 2), and replace any spring that exhibits such interference in accordance with the procedure specified in paragraph (b) of this AD.

(6) Measure the outward axial protrusion (Dimension e, Figure 1), for each spring. If the protrusion dimension obtained from the measurement required by paragraph (a)(6) of this AD is less than 1mm (0.039-inches), or greater than 2.7mm (0.106 inches), either

(i) replace the spring with an airworthy spring before further flight or,

(ii) Inspect the out-of-tolerance spring(s) in accordance with paragraph (a)(2) before the first flight of each day until each spring is replaced with an airworthy spring. Any out-of-tolerance spring must be replaced with an airworthy spring within 25 hours time-in-service (TIS).

(b) Replace a broken or out-of-tolerance spring as follows:

(1) Remove the spring attachment rivet.

(2) Temporarily install an airworthy spring, P/N 360A33–1078–01, and verify that the axial protrusion (Dimension e, Figure 1) is within tolerance and that no interference (see Figure 2) exists.

(3) Permanently secure the new spring to the fairing with one ASN-A0078B402 rivet, coated with Mastinox 6856KD150–2, and installed with the rivet head on the outside of the fairing (see Figure 1).

(4) Mark an "X" after the fairing part number using indelible ink after completing all inspections and spring replacements, as required.

(c) Reinstall the fairing.

(d) If one or more springs are replaced, rebalance the tail rotor head.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(f) Special flight permits will not be issued.

(g) This amendment becomes effective on December 14, 1998.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 95–107–039(B)R1 and AD 95–112–040(B), both dated June 7, 1995, and AD 95–108–018(B), dated May 24, 1995.

Issued in Fort Worth, Texas, on November 19, 1998.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–31589 Filed 11–25–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 744

[Docket No. 98–1019261–8261–01]

RIN 0694–AB73

Correction to: India and Pakistan Sanctions and Other Measures

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule; correction.

SUMMARY: On November 19, 1998, (63 FR 64322) the Bureau of Export Administration published an interim rule revising the Export Administration Regulations (EAR) to codify sanctions against India and Pakistan by setting forth a licensing policy of denial for exports and reexports of items controlled for nuclear nonproliferation and missile technology reasons to India and Pakistan, with limited exceptions. This licensing policy was adopted in practice in existing regulations in June 1998. This rule also contained certain discretionary measures. BXA added to the Entities List set forth in the EAR certain Indian and Pakistani government, parastatal, and private entities determined to be involved in nuclear or missile activities. In addition, Indian and Pakistani military entities were added to the Entity List in order to supplement the sanctions. BXA adopted a licensing policy of a presumption of denial with respect to items specifically listed on the Commerce Control List to listed Indian and Pakistani military entities, with limited exceptions.

This document corrects an inadvertent error in codification related to the Entity List, specifically the entity Wah Munitions Plant.

EFFECTIVE DATE: This correction is effective November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: In the interim rule of November 19, 1998 (63 FR 64322), FR Doc. 98–1019261–8261–01, make the following corrections to Supplement No. 4 to part 744, Entity List:

PART 744—[CORRECTED]

Supplement No. 4 [Corrected]

1. On page 64341, in the third column of the Entity List table, in the row for Wah Munitions Plant, a.k.a. Explosives Factory, Pakistan Ordnance Factories (POF), correct the phrase, "For all items subject to the EAR having a classification other than EAR99." to read "For all items subject to the EAR."

Dated: November 23, 1998.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 98–31666 Filed 11–25–98; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for one approved abbreviated new animal drug application (ANADA) from American Veterinary Products, Inc., to Veterinary Research Associates, Inc.

EFFECTIVE DATE: November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas J. McKay, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0213.

SUPPLEMENTARY INFORMATION: American Veterinary Products, Inc., 749 South Lemay, suite A3–231, Fort Collins, CO 80524, has informed FDA that it has transferred the ownership of, and all rights and interests in, the approved ANADA 200–073 (ketamine hydrochloride) to Veterinary Research Associates, Inc., 20 Old Dock Rd., Yaphank, NY 11980. Accordingly, the agency is amending the regulations in 21 CFR 522.1222a. The agency is also amending the regulations in 21 CFR 510.600(c)(1) and (c)(2) by removing American Veterinary Products, Inc., because the firm is no longer the sponsor of any approved ANADA's, and by alphabetically adding a new listing for Veterinary Research Associates, Inc.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "American Veterinary Products, Inc.," and by alphabetically adding an entry for "Veterinary Research Associates, Inc.," and in the table in paragraph (c)(2) by removing the entry for "045984" and by numerically adding an entry for "064408" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* * * *
Veterinary Research Associates, Inc., 20 Old Dock Rd., Yaphank, NY 11980	064408
* * *	* * * *

(2) * * *

Drug labeler code	Firm name and address
* * *	* * * *
064408	Veterinary Research Associates, Inc., 20 Old Dock Rd., Yaphank, NY 11980
* * *	* * * *

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.1222a [Amended]

4. Section 522.1222a *Ketamine hydrochloride injection* is amended in paragraph (c) by removing the phrase "045984, 059130, and 061690" and adding in its place "059130, 061690, and 064408".

Dated: October 29, 1998.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–31574 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use In Animal Feeds; Chlortetracycline, Salinomycin, and Roxarsone

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two abbreviated new animal drug applications (ANADA's) filed by Alpharma Inc. The ANADA's provide for using approved chlortetracycline, salinomycin, and roxarsone Type A medicated articles to make Type C medicated broiler chicken feeds used for prevention of coccidiosis and as an aid in the reduction of mortality due to *Escherichia coli* infections.

EFFECTIVE DATE: November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20852, 301–827–0209.

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, is sponsor of ANADA's 200–259 and 200–260 that provide for combining approved ChlorMax™ (50, 65, or 70 grams per pound (g/lb) chlortetracycline), Sacox® or Bio-Cox® (30 or 60 g/lb salinomycin sodium), and 3–Nitro® (10, 20, or 50 percent roxarsone) Type A medicated articles to make Type C medicated broiler feeds containing chlortetracycline 500 grams per ton (g/t), salinomycin 40 to 60 g/t, and roxarsone 45.4 g/t. The Type C medicated feed is used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, including some field strains of *E. tenella* that are more susceptible to roxarsone combined with salinomycin than salinomycin alone, and as an aid in the reduction of mortality due to *E.*

coli infections susceptible to such treatment.

Alpharma Inc.'s ANADA 200–259 is approved as a generic copy of Hoechst-Roussel's ANADA 200–091. Alpharma Inc.'s ANADA 200–260 is approved as a generic copy of Roche Vitamins, Inc.'s NADA 140–867. Alpharma Inc.'s ANADA's 200–259 and 200–260 are approved as of September 21, 1998, and 21 CFR 558.550(a)(3) is added and paragraph (d)(1)(xv) is amended to reflect the approvals. The basis for approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.550 is amended by revising paragraph (a) and the last sentence in paragraph (d)(1)(xv)(*c*) to read as follows:

§ 558.550 Salinomycin.

(a) *Approvals.* Type A medicated articles containing 30 or 60 grams of salinomycin activity per pound (as salinomycin sodium biomass) as follows:

(1) To 063238 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(2) To 012799 for use as in paragraphs (d)(1)(i), (d)(1)(iii) through (d)(1)(xvi), and (d)(3)(i) through (d)(3)(iii) of this section.

(3) To 046573 for use as in paragraph (d)(1)(xv) of this section.

* * * * *

(d) * * *

(1) * * *

(xv) * * *

(*c*) * * * Chlortetracycline as provided by Nos. 046573 and 063238 and roxarsone as provided by No. 046573 in § 510.600(c) of this chapter.

* * * * *

Dated: November 12, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–31575 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Roche Vitamins, Inc. The supplemental NADA provides for a zero-day withdrawal period for use of 500 grams per ton (g/t) chlortetracycline (CTC) Type C medicated chicken feeds.

EFFECTIVE DATE: November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298, filed supplemental NADA 48–761 that provides for use of Aureomycin® (CTC) Type A medicated articles to make 500 g/t CTC Type C chicken feeds. The 500 g/t CTC Type C chicken feeds are used for 5 days for reduction of mortality due to CTC susceptible *Escherichia coli* infections. The supplement provides for reducing the 24-hour withdrawal period to a zero-day slaughter withdrawal period. The supplemental NADA is approved as of October 26, 1998, and the regulations in 21 CFR 558.128(d)(1)(viii) are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.128 [Amended]

2. Section 558.128 *Chlortetracycline* is amended in the table in paragraph (d)(1) in the entry for "(viii) 500 g/ton" under the column "Limitations" by removing the phrase "; withdraw 24 h prior to slaughter".

Dated: November 16, 1998.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 98–31572 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 98N–0520]

Medical Devices; Establishment Registration and Device Listing for Manufacturers and Distributors of Devices; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a direct final rule that appeared in the

Federal Register of September 29, 1998 (63 FR 51825). The document amended certain regulations governing establishment registration and device listing by domestic distributors. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: February 11, 1999.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4699.

SUPPLEMENTARY INFORMATION: In FR Docs. 98–25796 appearing on page 51825 in the **Federal Register** of September 29, 1998, the following correction is made:

On page 51826, in the third column, amendatory paragraph four is corrected to read:

4. Section 807.20 is amended by revising paragraph (a)(4), by removing paragraph (c), by redesignating paragraph (d) as paragraph (c), and by adding paragraph (c)(3) to read as follows:

* * * * *

Dated: November 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31569 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. RM 98–4 CARP]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule and initiation of voluntary negotiation period.

SUMMARY: The Copyright Office is initiating the six-month voluntary negotiation periods, as required by the Digital Millennium Copyright Act of 1998, for negotiating terms and rates for two compulsory licenses, which in one case, allows public performances of sound recordings by means of eligible nonsubscription transmissions and by new subscription services, and in the second instance, allows the making of an ephemeral phonorecord of a sound recording in furtherance of making a permitted public performance of the sound recording. In addition, the Office is adopting procedural regulations to implement the Digital Millennium Copyright Act of 1998.

EFFECTIVE DATES: The effective date of the regulation is December 28, 1998. The effective date of the initiation of the six-month voluntary negotiation periods is November 27, 1998.

ADDRESSES: Copies of voluntary license agreements and petitions, if sent by mail, should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On October 28, 1998, the President signed into law the "Digital Millennium Copyright Act of 1998" ("DMCA" or "Act"). Public Law 105–304. Among other things, the DMCA amends sections 112 and 114 of the Copyright Act, title 17 of the United States Code, to create a new license, governing the making of an ephemeral recording of a sound recording, and to expand another to facilitate the public performance of sound recordings by means of certain audio transmissions. *See* 17 U.S.C. 112(e)(1) and 114(d)(2). In amending these sections, Congress sought to "first, further a stated objective of Congress when it passed the Digital Performance Right in Sound Recordings Act of 1995 (DPRA) to ensure that recording artists and record companies will be protected as new technologies affect the ways in which their creative works are used; and second, to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services." H.R. Conf. Rep. No. 105–796, at 79–80 (1998).

In enacting the Digital Performance Right in Sound Recordings Act of 1995 (DPRA), Pub. L. 104–39, Congress created an exclusive right for copyright owners of sound recordings, subject to certain limitations, to perform publicly the sound recordings by means of certain digital audio transmissions. Among the limitations on the performance was the creation of a new compulsory license for nonexempt, noninteractive, digital subscription transmissions. The DMCA expands this license to allow a nonexempt eligible nonsubscription transmission and a nonexempt transmission by a preexisting satellite digital audio radio service to perform publicly a sound recording in accordance with the terms and rates of the statutory license. 17 U.S.C. 114(a).

An "eligible nonsubscription transmission" is a noninteractive, digital audio transmission which, as the name implies, does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings which purpose is to provide audio or entertainment programming, but not to sell, advertise, or promote particular goods or services. A "preexisting satellite digital audio radio service" is a subscription digital audio radio service that received a satellite digital audio radio service license issued by the Federal Communications Commission on or before July 31, 1998. *See* 17 U.S.C. 114(j)(6) and (10). Only two known entities, CD Radio and American Mobile Radio Corporation, qualify under the statutory definition as preexisting satellite digital audio radio services.

In addition to expanding the current 114 license, the DMCA creates a new statutory license for the making of an "ephemeral recording" of a sound recording by certain transmitting organizations. The new statutory license allows entities that transmit performances of sound recordings to business establishments, pursuant to the limitations set forth in section 114(d)(1)(C)(iv), to make an ephemeral recording of a sound recording for purposes of a later transmission. The new license also provides a means by which a transmitting entity with a statutory license under section 114(f) can make more than the one phonorecord specified in section 112(a). 17 U.S.C. 112(e).

Determination of Reasonable Terms and Rates

The statutory scheme for establishing reasonable terms and rates is the same for both licenses. The terms and rates for the two new statutory licenses may be determined by voluntary agreement among the affected parties, or if necessary, through compulsory arbitration conducted pursuant to Chapter 8 of the Copyright Act. Because the DMCA does not establish reasonable rates and terms for either the new section 112 or the expanded section 114 license, the statute requires the Librarian of Congress to initiate a

voluntary negotiation period, the first phase in the rate setting process, within 30 days of enactment for the purpose of determining reasonable terms and rates for each license. *See* 17 U.S.C. 112(e)(4) and 114(f)(2)(A).

If the affected parties are able to negotiate an industry-wide agreement, then it will not be necessary for the parties to participate in an arbitration proceeding. In such cases, the Librarian of Congress will follow current rate regulation procedures and notify the public of the proposed agreement in a notice and comment proceeding. If no party with a substantial interest and an intent to participate in an arbitration proceeding files a comment opposing the negotiated rates and terms, the Librarian will adopt the proposed terms and rates without convening a copyright arbitration royalty panel. 37 CFR 251.63(b). If, however, no industry-wide agreement is reached, or only certain parties negotiate license agreements, then those copyright owners and users relying upon one or both of the statutory licenses shall be bound by the terms and rates established through the arbitration process.

Arbitration proceedings are initiated upon the filing of a petition for ratemaking with the Librarian of Congress during the 60 days immediately following the six month negotiation period. Arbitration cannot take place, however, unless a party files a petition even if the parties fail to negotiate a voluntary license agreement. 17 U.S.C. 112(e)(5) and 114(f)(1)(B).

The rates and terms established shall be effective during the period beginning on the effective date of the enactment of the DMCA and ending on December 31, 2000, or upon agreement by the affected parties, another mutually acceptable date. 17 U.S.C. 112(e)(5) and 114(f)(2)(A).

Initiation of Voluntary Negotiations

Pursuant to sections 112(e)(4) and 114(f)(2)(A), the Copyright Office of the Library of Congress is initiating the six-month voluntary negotiation periods for determining reasonable rates and terms for the statutory licenses permitting the public performance of a sound recording by means of certain digital transmissions and the making of a phonorecord in furtherance of these public performances. The negotiation period shall run from November 27, 1998, to May 27, 1999. Parties who negotiate a voluntary license agreement during this period are encouraged to submit two copies of the agreement to the Copyright Office at the above-listed address within 30 days of its execution.

Petitions

In the absence of a license agreement negotiated under 17 U.S.C. 112(e)(4) or 114(f)(2)(A), those copyright owners of sound recordings and entities availing themselves of the statutory licenses are subject to arbitration upon the filing of a petition by a party with a significant interest in establishing reasonable terms and rates for the statutory licenses. Petitions must be filed in accordance with 17 U.S.C. 803(a)(1) and may be filed anytime during the sixty-day period beginning six months after the publication of this document in the **Federal Register**. *See also* 37 CFR 251.61. Parties should submit petitions to the Copyright Office at the address listed in this notice. The petitioner must deliver an original and five copies to the Office.

Amendment of CARP Rules To Reflect Passage of the Digital Millennium Copyright Act of 1998

The DMCA creates two new compulsory licenses governing the public performance of certain audio transmissions and the making of ephemeral recordings to facilitate the transmission of certain public performances. In both instances, the reasonable rates and terms for the statutory license may be determined by a CARP, when voluntary negotiations prove unsuccessful. Therefore, the Copyright Office is amending its regulations to reflect the additional rate setting responsibilities of the Office and the CARP.

Section 553(b)(3)(A) of the Administrative Procedure Act, 5 U.S.C., states that general notice of proposed rulemaking is not required for rules of agency organization or practice. Since the Office finds that the following final regulations are rules of agency organization, procedure, or practice, no notice of proposed rulemaking is required.

List of Subjects in 37 CFR Part 251

Administrative practice and procedures, Hearing and appeal procedures.

For the reasons set forth in the preamble, the Copyright Office and the Library of Congress amend 37 CFR part 251 as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

2. In § 251.2, redesignate paragraphs (b) through (g) as (c) through (h), respectively, and add new paragraph (b) and revise newly redesignated paragraph (c) to read as follows:

§ 251.2 Purpose of Copyright Arbitration Royalty Panels

* * * * *

(b) To make determinations concerning royalty rates and terms for making ephemeral recordings, 17 U.S.C. 112(e);

(c) To make determinations concerning royalty rates and terms for the public performance of sound recordings by certain digital audio transmissions, 17 U.S.C. 114;

* * * * *

§ 251.58 [Amended]

3. In § 251.58, paragraph (c) is amended by adding the number "112," after the number "111,".

§ 251.60 [Amended]

4. Section 251.60 is amended by removing the word "subscription" and adding in its place the phrase "the making of ephemeral recordings (17 U.S.C. 112), certain" after the term "(17 U.S.C. 111),".

5. In § 251.61, paragraph (a) is revised to read as follows:

§ 251.61 Commencement of adjustment proceedings

(a) In the case of cable, ephemeral recordings, certain digital audio transmissions, phonorecords, digital phonorecord deliveries, and coin-operated phonorecord players (jukeboxes), rate adjustment proceedings shall commence with the filing of a petition by an interested party according to the following schedule:

(1) Cable: During 1995, and each subsequent fifth calendar year.

(2) Ephemeral Recordings: During a 60-day period prescribed by the Librarian in 1999, 2000, and at 2-year intervals thereafter, or as otherwise agreed to by the parties.

(3) Digital Audio Transmissions: For preexisting digital subscription transmission services and preexisting satellite digital audio radio services:

(i) During a 60-day period commencing on July 1, 2001 and at 5-year intervals thereafter, or

(ii) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of subscription digital audio transmission service; and for an eligible nonsubscription service or a new subscription service:

(A) During a 60-day period prescribed by the Librarian in 1999,

(B) During a 60-day period commencing on July 1, 2000, and at 2-year intervals thereafter,

(C) During a 60-day period prescribed by the Librarian in a proceeding to set reasonable terms and rates for a new type of eligible nonsubscription service or new subscription service, or

(D) As otherwise agreed to by the parties.

(4) Phonorecords: During 1997 and each subsequent tenth calendar year.

(5) Digital Phonorecord Deliveries: During 1997 and each subsequent fifth calendar year, or as otherwise agreed to by the parties.

(6) Coin-operated phonorecord players (jukeboxes): Within one year of the expiration or termination of a negotiated license authorized by 17 U.S.C. 116.

* * * * *

§ 251.62 [Amended]

6. In § 251.62, paragraph (a) is amended by removing the word "subscription" and adding in its place the phrase "ephemeral recordings, certain" after the word "cable,".

Dated: November 18, 1998.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 98–31657 Filed 11–25–98; 8:45 am]

BILLING CODE 1410–33–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY29–1–187a; FRL–6193–5]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating a correction to the State Implementation Plan (SIP) for the State of New York regarding the State's general prohibition on air pollution. EPA has determined that this rule was erroneously incorporated into the SIP. EPA is removing this rule from the approved New York SIP because the rule does not have a reasonable connection to the national ambient air quality standards (NAAQS) and related air quality goals of the Clean Air Act. The intended effect of this correction to the SIP is to make the SIP consistent with the requirements of the Clean Air Act, as amended in 1990 ("the Act"), regarding EPA action on SIP submittals and SIPs for national primary and secondary ambient air quality standards.

EFFECTIVE DATE: This direct final rule is effective on January 26, 1999 without further notice, unless EPA receives adverse comment by December 28, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following address:

Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

I. Correction to SIP

EPA has determined that Part 211.2 of Title 6 of the New York Code of Rules and Regulations (NYCRR), which was approved in 1984 as part of the SIP, does not have a reasonable connection to the NAAQS and related air quality goals of the Clean Air Act and is not properly part of the SIP.

Part 211.2 is a general prohibition against air pollution. Such a general provision is not designed to control NAAQS pollutants such that EPA could rely on it as a NAAQS attainment and maintenance strategy. After it came to the attention of EPA that Part 211.2 was not properly part of the SIP, EPA in turn brought the matter to the attention of the New York State Department of Environmental Conservation (NYSDEC). NYSDEC shared EPA's understanding that Part 211.2 was improperly approved into the SIP.

EPA, pursuant to section 110(k)(6) of the Act, is correcting the SIP since Part 211.2 is not reasonably related to the NAAQS-related air quality goals of the Act. Section 110(k)(6) of the amended Act provides: "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise any such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and the public." It should be noted that section 110(k)(6) has also been used by EPA to delete an improperly approved odor provision from the Wyoming SIP. 61 FR 47058 (1996).

Since the State of New York's Part 211.2 has no reasonable connection to the NAAQS-related air quality goals of the Act, EPA has found that the approval of this State rule was in error. The State has reached the same conclusion and concurs with EPA's decision that Part 211.2 was submitted and approved in error and should be removed from the approved SIP. Consequently, EPA is removing 6 NYCRR Part 211.2 from the approved New York SIP, pursuant to section 110(k)(6) of the Act.

II. EPA Final Rulemaking Action

EPA is removing 6 NYCRR Part 211.2 of the New York air quality Administrative Rules from the approved New York SIP pursuant to section 110(k)(6) of the Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective January 26, 1999 without further notice unless the Agency receives relevant adverse comments by December 28, 1998.

If EPA receives such comments, then EPA will publish a timely withdrawal of the final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this action will be effective on January 26, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.)

12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intgovernmental relations, Reporting and recordkeeping.

Dated: November 16, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C 7401 *et seq.*

Subpart HH—New York

2. Section 52.1679 is amended by revising the entry for "Part 211, General Prohibitions" to read as follows:

§ 52.1679 EPA-approved New York State regulations.

New York State regulation	State effective date	Latest EPA approval date	Comments
Part 211, General Prohibitions	8/11/83	November 27, 1998 [citation of this document].	Section 211.2 has been removed from the approved plan.

[FR Doc. 98–31542 Filed 11–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 055–1055; FRL–6134–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is taking final action to approve the State Implementation Plan (SIP) revisions submitted by the state of Missouri to broaden the current visible emissions rule exceptions to include smoke-generating devices. This revision would allow smoke generators to be used for military and other types of training when operated under applicable requirements.

DATES: This rule is effective on December 28, 1998.

ADDRESSES: Comment may be addressed to Kim Johnson, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air & Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION:

I. Background

This amendment broadens the current rule exceptions to include smoke-generating devices in general when a required permit or a written determination that a permit is not required has been issued. The amendment defines a smoke-generating device as a specialized piece of equipment which is not an integral part of a commercial, industrial or manufacturing process and whose sole purpose is the creation and dispersion of fine solid or liquid particles in a gaseous medium. This revision would allow smoke generators to be used for military training at such facilities as Fort Leonard Wood as long as such facilities operate in accordance with applicable permit requirements.

No comments were received in response to the public comment period regarding this rule action.

For more background information the reader is referred to the proposal for this rulemaking published on May 7, 1998, at 63 FR 25191.

II. Final Action

The EPA is taking final action to approve, as a revision to the SIP, the amendment to Rule 10 CSR 10–3.080, "Restriction of Emission of Visible Air Contaminants," submitted by the state of Missouri on July 10, 1996.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

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section 1(a) of Executive Order 12875 does not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084 the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the EPA consults with those governments. If the EPA complies by consulting, Executive Order 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act (CAA) do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205 the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 26, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 23, 1998.

Dennis Grams,

Regional Administrator, Region VII.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(109) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(109) This State Implementation Plan (SIP) revision submitted by the state of Missouri on July 10, 1996, broadens the current rule exceptions to include smoke-generating devices. This revision would allow smoke generators to be used for military and other types of training when operated under applicable requirements.

(i) Incorporation by reference.

(A) Regulation 10 CSR 10–3.080, "Restriction of Emission of Visible Air Contaminants," effective on May 30, 1996.

[FR Doc. 98–31541 Filed 11–25–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 409, 410, 411, 413, 424, 483, and 489

[HCFA–1913–N2]

RIN 0938–AI47

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Reopening of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of reopening of comment period for interim final rule.

SUMMARY: We published an interim final rule with comment period in the **Federal Register** on May 12, 1998 (63 FR 26252). That interim final rule implements provisions in section 4432 of the Balanced Budget Act of 1997 related to Medicare payment for skilled nursing facility services. Those include the implementation of a Medicare prospective payment system for skilled nursing facilities, consolidated billing, and a number of related changes.

A document published on July 13, 1998 extended the comment period for the May 12, 1998 interim final rule until September 11, 1998. This document reopens and extends the comment period for an additional 30 days after the date of publication of this notice. The document also clarifies the explanation of the Federal rates.

DATES: The comment period is reopened and extended to 5 p.m. on December 28, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1913–IFC, P.O. Box 26688, Baltimore, MD 21207–0488.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1913-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890). For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT:

Laurence Wilson, (410) 786–4603 (for general information).

John Davis, (410) 786–0008 (for information related to the Federal rates).

Dana Burley, (410) 786–4547 (for information related to the case-mix classification methodology).

Steve Raitzyk, (410) 786–4599 (for information related to the facility-specific transition payment rates).

Bill Ullman, (410) 786–5667 (for information related to consolidated billing and related provisions).

SUPPLEMENTARY INFORMATION: On May 12, 1998, we issued an interim final rule with comment period in the **Federal Register** (63 FR 26252) that implements provisions in section 4432 of the Balanced Budget Act of 1997 related to Medicare payment for skilled nursing facility services. Those include the implementation of a Medicare prospective payment system for skilled nursing facilities, consolidated billing, and a number of related changes. We indicated that comments would be considered if we received them by July 13, 1998.

Because of the complexity and scope of the interim final rule and because numerous members of the industry and professional associations requested more time to analyze the potential consequences of the rule, we published a notice on July 13, 1998, which extended the comment period until September 11, 1998.

Because of further requests from industry and professional associations to extend the comment period, we have decided to reopen and extend the comment period. This document announces the reopening and extension of the public comment period to December 28, 1998.

Additionally, because of a request from industry and professional associations, we are clarifying our explanation of the Federal rates. Paragraph A.3.a in section II of the May 12, 1998 interim final rule on the prospective payment system for skilled nursing facilities describes the cost data used in the development of the Federal rates. This paragraph indicates that, in developing the per diem costs of skilled nursing facilities, the cost data (including the estimate of Part B costs) are separated into components based on their relationship to the case-mix indices described earlier in the rule. This is done to facilitate standardization of the Federal rates and the application of the case-mix adjustment. This paragraph goes on to detail that costs related to nursing (excluding nurse management) and social service salaries (including benefits) and total costs (after allocation of overhead expenses) of non-therapy ancillary services are grouped into the component related to the nursing case-mix index. As indicated in the rule, this component of cost was related to the "nursing component" of the Federal rates detailed in Tables 2.A, 2.B, 2.E, and 2.F.

Members of the public requested that we publish information in the **Federal Register** concerning this area of the rate-setting process. Specifically, members of the public requested information on the proportion of non-therapy ancillaries to nursing and social services costs included in the nursing component of the rates enumerated in the tables cited above. Accordingly, we have determined the approximate percentage of non-therapy ancillary costs and nursing and social services salary costs (including benefits) included in this component of the Federal rate. For the Federal rates associated with urban areas (Tables 2.A and 2.E), 43.4 percent of the nursing component is related to non-therapy ancillary costs (including Part B non-therapy ancillary services) and 56.6 percent is related to nursing and social services salary costs. For the Federal rates associated with rural areas (Tables 2.B and 2.F), 42.7 percent of the nursing component is related to non-

therapy ancillary costs (including Part B non-therapy ancillary services) and 57.3 percent is related to nursing and social services salary costs. We invite comments on this or other aspects of the May 12, 1998 interim final rule.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 20, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: November 23, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–31694 Filed 11–25–98; 8:45 am]

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Proposed Rules

Federal Register
Vol. 63, No. 228
Friday, November 27, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Notice of Proposed Rulemaking Proceedings.

SUMMARY: The Northeast Dairy Compact Commission is seeking testimony and comments on specific subjects and issues related to: Whether to amend the formula for distribution of monies from the producer-settlement fund, including whether to adopt a cap on the amount of milk, per producer, eligible for the Compact Over-order producer price; whether additional supply management policies and provisions should be incorporated into the Over-order Price Regulation; whether organic milk should be exempted from the Compact Over-order Price Regulation; and whether the amount of, or method for determining, the administrative assessment should be amended.

DATES: See **SUPPLEMENTARY INFORMATION** section for public hearing dates and filing dates for pre-filed testimony and written comments and exhibits.

ADDRESSES: Mail, or deliver, pre-filed testimony, comments and exhibits to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601. See **SUPPLEMENTARY INFORMATION** section for public hearing locations.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Public Hearing Dates, Times and Locations; Filing Dates for Written Comments

The public hearing dates and locations are:

1. December 11, 1998, 9:00 a.m. to 12:00 p.m., at the Holiday Inn at Boxborough Woods, Parade Room, 242 Adams Place, Boxborough, MA, public hearing on administrative assessment.

2. December 11, 1998, 1:00 p.m. to 4:00 p.m., at the Holiday Inn at Boxborough Woods, Parade Room, 242 Adams Place, Boxborough, MA public hearing on income distribution and supply management.

3. December 16, 1998, 9:00 to 12:00 p.m., at the Tuck Library Building, Chubb Auditorium, 30 Park Street, Concord, NH public hearing on organic milk.

4. Pre-filed testimony is encouraged and may be submitted to the Northeast Dairy Compact Commission at the address in the **ADDRESSES** section by 12:00 p.m. December 7, 1998.

5. Written comments and exhibits may be submitted until 5:00 p.m. December 31, 1998.

II. Background

The Northeast Dairy Compact Commission initially promulgated an Over-order Price Regulation on May 30, 1997.[1] The regulation was subsequently amended generally and extended on November 25, 1997.[2] Over the past year, the Commission also has amended specific provisions of the Over-order Price Regulation.[3] The Commission is now seeking testimony and comment on specific subjects and issues related to (1) whether to amend the formula for distribution of monies from the producer-settlement fund, including whether to adopt a cap on the amount of milk, per producer, eligible for the Compact Over-order producer price; (2) whether additional supply management policies and provisions should be incorporated into the Over-order Price Regulation; (3) whether organic milk should be exempted from the Compact Over-order Price Regulation; and (4) whether the amount of, or method for determining, the administrative assessment should be amended.

[1] 62 FR 29626 (May 30, 1997).

[2] 62 FR 62810 (November 25, 1997).

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and the most recent amendment is published elsewhere in this issue of the **Federal Register**.

III. Statement of Subjects and Issues

(1) Income Distribution From the Producer-Settlement Fund

The Massachusetts delegation to the Compact Commission petitioned the Commission to consider a policy change that would alter the income distribution provisions of the current Over-order Price Regulation by placing a cap on the amount of milk, per producer, that would be eligible to receive the Compact Over-order producer price.

(2) Supply Management Policies

Article IV, Section 9(f) of the Compact requires the Commission to "take such action as necessary and feasible to ensure that the over-order price does not create an incentive for producers to generate additional supplies of milk." The Commission's Committee on Regulations and Rulemaking previously held five public meetings to receive informal public comment on various supply management proposals that are consistent with the Commission's Section 9(f) responsibilities. The Commission also recently promulgated a regulation, effective January 1, 1999, that will limit the payment of the Compact Over-order producer price to milk disposed of within the Compact regulated area, with a seasonally adjusted allowance for diverted and transferred milk.[4] The Commission now seeks formal public comment on whether any additional supply management policies and provisions should be incorporated into the Over-order Price Regulation.

(3) Organic Milk

Organic milk handlers have petitioned the Commission to consider exempting organic milk from the Compact Over-order Price Regulation.

(4) Administrative Assessment

The Commission determined that it would benefit from comments and testimony regarding whether the amount of, or method for determining, the administrative assessment should be amended. The current administrative assessment regulation was promulgated with the initial price regulation on May 30, 1997.[5] The November 25, 1997 extension of the price regulation

[4] As published elsewhere in this issue of the **Federal Register**.

[5] 62 FR 29626, codified at (7 CFR 1308.1).

maintained the administrative assessment.[6] In addition to comments on the specific proposals, discussed below, to address the identified subjects and issues, the Commission also would welcome comments, suggestions, and recommendations for other policies or methods for addressing the issues of income distribution, supply management, organic milk and the administrative assessment.

IV. Specific Proposals

The Commission seeks comment and analysis of the following proposals. (A comparison chart of the producer payments under the current price regulation and the impact of the main income distribution proposals, discussed at sections 1 and 2 below, is provided at Table 1 to facilitate comment and analysis of the various proposals.) The Commission specifically requests comments regarding the effectiveness of each of these proposals in light of the Commission's mission to assure the continued viability of dairy farming in the northeast, and to assure consumers of an adequate, local supply of pure and wholesome milk.

1. The Massachusetts Cap Proposal

This proposal would limit the milk eligible for the Compact Over-order producer price to up to 95,000 pounds of a producer's monthly milk production, or 1.14 million pounds per year. This proposal would not provide any Compact Over-order producer price for milk produced in excess of the cap.

2. Split Pool Proposal

A split pool also would address the income distribution aspects of the Over-order Price Regulation. Under this proposal, a certain percentage of the total value of the monthly producer pool would be divided equally among all qualified farms supplying the New England market, regardless of farm size. The balance of the pool would be paid out on a per hundredweight basis, as it is under the current regulation. For example, the pool could be divided to distribute the first 55% of the pool on a per farm basis and distribute the remaining 45% of the pool on a per hundredweight basis. An alternate proposal would be to distribute the first 25% of the pool on a per farm basis and distribute the remaining 75% on a per hundredweight basis.

TABLE 1.—COMPARISON OF VARIOUS PROPOSALS

[July 1998]

No. of cows	Lbs.	Actual compact	95,000 CAP	55%/45% split (dollars)	25%/75% split (dollars)
12	20,000	238	422	986	577
18	30,000	357	633	1,037	665
29	50,000	595	1,055	1,139	841
41	70,000	833	1,477	1,241	1,017
56	95,000	1,131	2,005	1,369	1,237
58	100,000	1,190	2,005	1,394	1,281
64	110,000	1,309	2,005	1,445	1,369
70	120,000	1,428	2,005	1,496	1,457
76	130,000	1,547	2,005	1,547	1,539
82	140,000	1,666	2,005	1,598	1,633
88	150,000	1,785	2,005	1,649	1,721
94	160,000	1,904	2,005	1,700	1,809
99	170,000	2,023	2,005	1,751	1,897
105	180,000	2,142	2,005	1,802	1,985
111	190,000	2,261	2,005	1,853	2,073
117	200,000	2,380	2,005	1,904	2,161
123	210,000	2,499	2,005	1,955	2,249
129	220,000	2,618	2,005	2,006	2,337
135	230,000	2,737	2,005	2,057	2,425
146	250,000	2,975	2,005	2,159	2,601
175	300,000	3,570	2,005	2,414	3,041
205	350,000	4,165	2,005	2,669	3,481
234	400,000	4,760	2,005	2,924	3,921
264	450,000	5,355	2,005	3,179	4,361
292	500,000	5,950	2,005	3,434	4,801
351	600,000	7,140	2,005	3,944	5,681
400	700,000	8,330	2,005	4,454	6,561

3. Proposal To Cap the Largest Producers

This proposal would set a cap on the amount of milk, per producer, eligible for the Over-order producer price, but at a level much higher than under the Massachusetts proposal discussed in section 1 above. Under this proposal, the cap for all farms producing more than 600,000 pounds per month would be set at the 1998 production level.

4. Refund/Assessment Option

This proposal would establish an assessment on all milk during the year at some percentage of each month's producer pool. The assessment would be held in escrow and returned to eligible producers at some frequency, e.g. annually, semi-annually or quarterly. Producers would be eligible for a refund from the assessment only if they document that they did not increase production during the relevant time period. The Commission would welcome comments regarding the level to set the assessment percentage to ensure an effective supply management result.

5. Exemption of Organic Milk From the Compact Over-Order Price Regulation

This proposal would exempt organic milk handlers from the Compact Over-order Obligation and exclude organic milk producers from the producer pool.

[6] 62 FR 62810 (Nov. 25, 1997).

6. Amendment of the Administrative Assessment Regulation

The current administrative assessment regulation, 7 CFR 1308.1, establishes a set rate of 3.2 cents per hundredweight of fluid milk as determined under 7 CFR 1306. This assessment is due monthly from all handlers regulated under the Over-order price regulation. The Commission seeks testimony and comments on whether the amount of the administrative assessment, or the method for determining the administrative assessment, should be amended.

Official Notice of Technical, Scientific or Other Matters

Pursuant to the Commission regulations, 7 CFR 1361.5(g)(5), the Commission hereby gives public notice that it may take official notice, at the public hearings on December 11 and December 16, 1998, or afterward, of relevant facts, statistics, data, conclusions, and other information provided by or through the United States Department of Agriculture, including, but not limited to, matters reported by the National Agricultural Statistics Service, the Market Administrators, the Economic Research Service, the Agricultural Marketing Service and information, data and statistics developed and maintained by the Departments of Agriculture of the States or Commonwealth within the Compact regulated area.

Request for Pre-filed Testimony and Written Comments

Pursuant to the Commission rules, 7 CFR 1361.4, any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments or exhibits to the Commission. Comments and exhibits may be submitted at any time before 5:00 p.m. on December 31, 1998. Comments and exhibits will be made part of the record of the rulemaking proceeding only if they identify the author's name, address and occupation, and if they include a sworn notarized statement indicating that the comment and/or exhibit is presented based upon the author's personal knowledge and belief. Facsimile copies will be accepted up until the 5:00 p.m. deadline, but the original must then be sent by ordinary mail.

The Commission is requesting pre-filed testimony from any interested person. Pre-filed testimony must include the name, address and occupation of the witness and a sworn notarized statement indicating that the testimony is presented based upon the author's personal knowledge and belief. Pre-filed testimony must be received in the Commission office no later than 12:00 p.m. December 7, 1998 to ensure distribution to Commission members prior to the public hearings.

Pre-filed testimony, comments and exhibits should be sent to: Northeast Dairy Compact Commission, 43 State Street, P.O. Box 1058, Montpelier, Vermont 05601 or by facsimile to (802) 229–2028.

Dated: November 19, 1998.

Dixie L. Henry,

General Counsel.

[FR Doc. 98–31588 Filed 11–25–98; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ASO–18]

Proposed Amendment of Class E Airspace; Carrollton, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Carrollton, GA. The Non-Directional Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 34 and the Localizer (LOC) RWY 34 Standard Instrument Approach Procedures (SIAP's) have been amended to the West Georgia Regional Airport. The outbound course from the Carrollton NDB for the NDB or GPS RWY 34 SIAP will change from the 168 degree bearing to the 167 degree bearing and the inbound course will change from the 348 degree bearing to the 347 degree bearing. The outbound course from the Carrollton NDB for the LOC RWY 34 SIAP will change from the 165 degree bearing to the 166 degree bearing and the inbound course will change from the 345 degree bearing to the 346 degree bearing. As a result, the length of the Class E airspace extension south of the NDB would be reduced from 9 to 7 miles and the width of the airspace extension would be increased from 6 to 7 miles.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 98–ASO–18, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–ASO–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future

NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Carrollton, GA. The NDB or GPS RWY 34 and the LOC RWY 34 SIAP's have been amended to the West Georgia Regional Airport. As a result, the length of the Class E airspace extension south of the NDB would be reduced from 9 to 7 miles and the width of the airspace extension would be increased from 6 to 7 miles. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9D, Airspace Designations and Reporting Points, dated September 4, 1996, and effective September 16, 1996, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO GA E5 Carrollton, GA [Revised]

West Georgia Regional Airport
(Lat. 33(37'51" N, long. 85(09'08" W)

That airspace extending upward from 700 feet or more above the surface of the earth within a 6.4-mile radius of West Georgia Regional Airport and within 3.5 miles from the east side of the 166 degree bearing from the Carrollton NDB, extending west to a point 3.5 miles on the west side of the 167 degree bearing from the Carrollton NDB, extending from the 6.4-mile radius to 7 miles south of the NDB.

* * * * *

Issued in College Park, Georgia, on November 16, 1998.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 98–31648 Filed 11–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 807

[Docket No. 98N–0520]

Medical Devices; Establishment Registration and Device Listing for Manufacturers and Distributors of Devices; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of September 29, 1998 (63 FR 51874). The document proposed to amend certain regulations governing establishment registration and device listing by domestic distributors. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Walter W. Morgenstern, Center for Devices and Radiological Health (HFZ–305), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20857, 301–594–4699.

SUPPLEMENTARY INFORMATION: In FR Doc. 98–25797 appearing on page 51874 in the **Federal Register** of September 29, 1998, the following correction is made:

On page 51875, in the third column, amendatory paragraph four is corrected to read:

4. Section 807.20 is amended by revising paragraph (a)(4), by removing paragraph (c), by redesignating paragraph (d) as paragraph (c), and by adding paragraph (c)(3) to read as follows:

* * * * *

Dated: November 19, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31570 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–115446–97]

RIN 1545–AV68

Termination of Puerto Rico and Possession Tax Credit; New Lines of Business Prohibited; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations that provide guidance regarding the addition of a substantial new line of business by a possessions corporation that is an existing credit claimant.

DATES: The public hearing originally scheduled for Tuesday, December 1, 1998, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, August 19, 1998 (63 FR 44416), announced that a public hearing was scheduled for Tuesday, December 1, 1998, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of

the public hearing is proposed regulations under section 936 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, November 17, 1998.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of November 18, 1998, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, December 1, 1998, is cancelled.

Michael L. Slaughter,

Acting Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–31667 Filed 11–25–98; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 98–7A]

Notice and Recordkeeping for Making and Distributing Phonorecords

AGENCY: Copyright Office, Library of Congress.

ACTION: Reopening of reply comment period.

SUMMARY: The Copyright Office of the Library of Congress is reopening the reply comment period on the requirements by which copyright owners shall receive reasonable notice of the use of their works in the making and distribution of phonorecords.

DATES: Comment period is reopened to December 11, 1998.

ADDRESSES: If sent by mail, an original and ten copies of the reply comments should be addressed to: David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. If hand delivered, an original and ten copies of the reply comments should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380 or Telefax (202) 707–8366.

SUPPLEMENTARY INFORMATION: On September 4, 1998, the Copyright Office published a notice of inquiry seeking comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works in the making and distribution of phonorecords. 63 FR 47215 (September 4, 1998). The Digital Performance Right in Sound Recordings Act of 1995, Pub. L. 104–39 (1995), requires the Librarian of Congress to establish these regulations to ensure proper payment to copyright owners for the use of their works. 17 U.S.C. 115(c)(3)(D). Comments were timely filed by the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and the National Music Publishers' Association, Inc. (NMPA) and the Recording Industry Association of America, Inc. (RIAA). Reply comments were due to be filed on November 18, 1998.

The Office, however, has decided to reopen the deadline for filing reply comments by a period of two weeks beginning from the date of publication of this notice. The Office takes this action in response to a request to reopen the reply comment period by two weeks to December 2, 1998. It is argued in the request that the complexity of the issues involved in the adoption of notice and recordkeeping procedures for the making and distribution of phonorecords merits additional time in which to file reply comments. The Office agrees with this analysis and thus grants the request to reopen the reply comment period. The Office sets the reopened deadline for filing reply comments two weeks from publication of this notice in the **Federal Register** in order to afford all interested parties sufficient time in which to file their reply comments.

Dated: November 23, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98–31659 Filed 11–25–98; 8:45 am]

BILLING CODE 1410–31–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY29–1–187b; FRL–6193–4]

Approval and Promulgation of Implementation Plans; New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is proposing to correct the State Implementation Plan (SIP) for the State of New York regarding the State's general prohibition on air pollution pursuant to section 110(k)(6) of the Clean Air Act, as amended in 1990.

In the final rules section of this **Federal Register**, the EPA is approving the correction as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the correction is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this rule. Should the Agency receive such comment, it will publish a document informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before December 28, 1998.

ADDRESSES: All comments should be addressed to: Ronald J. Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

Copies of the documents relevant to this action are available at the following address for inspection during normal business hours: Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final Rule of the same title which is located in the Rules Section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Reporting and recordkeeping.

Dated: November 16, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 98–31543 Filed 11–25–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 98–182, RM–9222; FCC 98–251]

1998 Biennial Regulatory Review—Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes several amendments to the Commission's Rules as part of its 1998 biennial review of regulations. Additionally, this document addresses certain rules regarding extended implementation periods for public safety licensees, and an ex parte filing in the Commission's Refarming Proceeding, PR Docket No. 92–235, regarding trunking on frequencies in the bands between 150 and 512 MHz. This document proposes various rule changes applicable to the Private Land Mobile Radio Services that will either simplify and upgrade part 90 and/or be deregulatory in nature. The proposed rules will reduce the regulatory burden on licensees, and will promote more efficient and flexible use of the private land mobile radio frequency spectrum.

DATES: Comments are due January 4, 1999, and reply comments are due January 22, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, Room 222, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Gene Thomson, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, (*"Notice"*), WT Docket No. 98–182, FCC 98–251, adopted September 30, 1998, and released October 20, 1998. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room 246, 1919 M Street N.W. Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS, Inc., 1231 20th St. N.W., Washington, D.C. 20036, telephone (202) 857–3800. The complete (but unofficial) text is also available on the Commission's Internet site at <http://www.fcc.gov/Bureaus/Wireless/Notices/1998/index.html≤ under the file name "fcc98251.txt" in ASCII text and "fcc98251.wp" in Word Perfect format.

Synopsis of the Notice of Proposed Rule Making

1. The Commission has released a *Notice of Proposed Rule Making* that proposes several amendments to the part 90 Private Land Mobile Radio Services rules. This action is part of our 1998 biennial review of regulations pursuant to Section 11 of the Communications Act of 1934, as amended. Section 11 requires us to review all our regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. However, we believe it is appropriate to review all of our regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be streamlined or eliminated. A comprehensive review of part 90 of the Commission's Rules determined which regulations were either not in the public interest or were obsolete, overly complex, required editorial change, or redundant in nature.

2. The document proposes:

a. to amend 47 CFR 90.35(c)(60) to indicate that, in addition to permitting the use of the listed frequencies at any location for low power, non-voice operation, voice operation will be permitted when the frequencies are used specifically for cargo handling purposes.

b. to amend 47 CFR 90.149(a) to provide that licenses for stations authorized under part 90 will be issued for a term not to exceed ten years from the date of initial issuance or renewal.

c. to amend 47 CFR 90.155 to permit any public safety applicant to seek extended implementation authorization pursuant to the provisions of 47 CFR 90.629.

d. to amend 47 CFR 90.175(i)(14), to require that applicants for any of the fifteen 220 MHz public safety channels set forth in 47 CFR 90.719(c) and 90.720, submit their applications to a public safety frequency coordinator for frequency coordination prior to submission of the applications to the Commission.

e. to amend 47 CFR 90.179 to provide that a radio facility authorized to a public safety licensee may be shared with a Federal government entity on a cost-shared, non-profit basis.

3. Additionally, the document requests comments on: (1) An *ex parte* filing in the Commission's Refarming Proceeding, PR Docket No. 92–235, regarding trunking on frequencies in the bands between 150 and 512 MHz; (2) the Land Mobile Communications Council's suggestion that decentralized trunking systems be designated as such on the licensees' authorizations, and whether two separate authorizations are needed for "hybrid" trunked systems; (3) whether the licensing requirement can be eliminated for certain part 90 frequencies and; (4) the concept of Adjacent Channel Couples Power as proposed by Motorola, Inc. as an alternative approach to emission masks for limiting out-of-band emissions. The document proposes these rule changes applicable to the Private Land Mobile Radio Services that will either simplify and upgrade part 90 and/or be deregulatory in nature. The document also invites commenters to submit information on the costs and benefits of the rules at issue in this proceeding and of the Commissions proposed modifications. The document does not address the part 90 Commercial Radio Services.

Administrative Matters

Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act ("RFA"), the Commission has prepared this present Initial Regulatory Flexibility Analysis ("IRFA") of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making ("Notice")*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on this Notice. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need For, and Objectives Of, the Proposed Rules

5. Although not required by statute, we initiate this proceeding in conjunction with the Commission's 1998 biennial regulatory under Section 11 of the Communications Act of 1934, 47 U.S.C. 161. Section 11 requires us to

review all our regulations applicable to providers of telecommunications service and determine whether any rule is no longer in the public interest as a result of meaningful economic competition between providers of telecommunications service, and whether such regulations should be deleted or modified. As part of our biennial review of regulations required under Section 11, however, we believe it is appropriate to review all of our regulations relating to administering wireless services, not just those pertaining to providers of a telecommunications service, to determine which regulations can be streamlined or eliminated. Therefore, to streamline part 90 of the rules and reduce regulatory requirements, the Commission proposes to amend part 90 of its rules to: (1) Modify the language of specific rules to eliminate the confusions that applicants have had, which in many cases, has caused additional effort on the part of the applicant and resultant delays in application processing; (2) extend all five-year license terms to ten years, thus reducing the licensee's burden and costs for license renewal; (3) for stations with an eight-month construction period, increase the time in which a station must be placed in operation from eight to twelve months; (4) provide extended implementation periods for public safety licensees under identical parameters regardless of the operating frequency band and; (5) permit public safety licensees with excess communications capacity to provide communications service to the Federal Government on a non-profit, cost-shared basis. We believe these changes will encourage growth of land mobile systems and enhance telecommunications offerings for consumers, producers and new entrants.

B. Legal Basis

6. Authority for issuance of this *Notice of Proposed Rulemaking* is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

7. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

8. Depending upon individual circumstances, the various proposed rules will apply to only certain businesses and local government entities that operate radio systems for their own internal use in the Private Land Mobile Radio (PLMR) services. PLMR systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed nor would it be possible to develop a definition of small entities specifically applicable to PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

9. We note that the Commission's 1994 Annual Report indicates that at the end of fiscal year 1994, there were approximately 292,000 stations and 5.4 million transmitters operating just in the 800 and 900 MHz and 24 GHz bands. Further, because any entity engaged in a business activity is eligible to hold a PLMR license, these proposed rules could potentially impact every small business in the U.S.

10. The RFA also includes small governmental entities as a part of the regulatory flexibility analysis. The definition of a small governmental entity is one with a population of less than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities, and towns, and of those, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 96 percent, or 81,600 are small entities that may be affected by our proposed rules. Therefore in this IRFA, we seek comment on the number of small businesses which could be impacted by the proposed rule changes.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

11. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the actions proposed in this rulemaking proceeding.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

12. Many of our proposed rules will result in economic benefits to small business and local government entities. We believe that there would be several public interest benefits gained by extending the license term for all part 90 licensees to ten years. First, there would be an economic benefit to new applicants in that their licensing costs would effectively be lowered. Under the Commission's current license fee structure, a part 90 licensee with a ten-year authorization has an economic advantage over a licensee with a five-year license in that it enjoys a longer license term at less cost. Second, under our proposal, existing five-year licenses would receive a ten-year renewal period upon expiration of the five-year license, thus halving the licensee's long-term renewal costs.

13. Regarding the proposal to increase the time in which a station must be placed in operation from eight to twelve months, we envision that this change in the regulatory treatment of PLMRS stations would reduce the necessity for a licensee to request an extension of the time to construct, and thus would eliminate the costs necessary to make such a request.

14. The distinction between systems operating above and below 800 MHz is about to change because recently adopted rules will lead to the availability of new narrowband equipment and increase the possibility of using trunked equipment. This will, in turn, lead to larger, more complex public safety systems. Our proposal to permit "slow growth" extended implementation periods under the same parameters for systems operating below and above 800 MHz will enable faster system planning and implementation, resulting in reduced costs to licensees.

15. Permitting a public safety licensee to share its station with a Federal government entity, is on a non-profit, cost-sharing basis would be beneficial to

both parties. It would lower the operational costs of the public safety system in that the public safety licensee would obtain cost-sharing benefits from the Federal agency, and it would enable the Federal agency to obtain needed communications at a lower cost than if the Federal agency had to implement its own communications system.

16. We seek comments on these tentative conclusions.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

17. None.

Ordering Clauses

18. It is ordered that, pursuant to Sections 4(i), 4(j), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 403, notice is hereby given of proposed amendments to part 90 of the Commission's Rules, 47 CFR part 90, in accordance with the proposals, discussions, and statement of issues in this *Notice of Proposed Rulemaking*.

19. It is further ordered that the Petition for Rulemaking submitted by the Association of Public-Safety Communications Officials-International, Inc. is granted to the extent indicated in the *Notice of Proposed Rulemaking*.

20. It is further ordered that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.1 is amended by revising paragraph (b) to read as follows:

§ 90. 1 Basis and purpose.

* * * * *

(b) *Purpose.* This part states the conditions under which radio communications systems may be licensed and used in the Public Safety Pool, Industrial/Land Transportation Pool, and the Radiolocation Radio Service. These rules do not govern radio systems employed by agencies of the Federal Government.

3. Section 90.35 is amended by revising paragraph (c)(60)(i) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(c) * * *

(60) (i) Frequencies subject to this limitation may be used for voice or non-voice communications when utilized for cargo handling from a dock, or a cargo handling facility, to a vessel alongside. Any number of the frequencies may be authorized to one licensee for the purpose. Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when a vessel is alongside the dock or cargo handling facility.

* * * * *

4. Section 90.149 is amended by revising paragraph (a) to read as follows:

§ 90. 149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed ten (10) years from the date of the original issuance, modification, or renewal.

* * * * *

5. Section 90.155 is revised to read as follows:

§ 90.155 Time in which station must be placed in operation.

(a) All stations authorized under this part, except as provided in §§ 90.629, 90.665, and 90.685, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

(b) A local government entity in the Public Safety Pool, applying for any frequency in this part, may also seek extended implementation authorization pursuant to § 90.629.

(c) For purposes of this section, a base station is not considered to be placed in operation unless at least one associated mobile station is also placed in operation. See also §§ 90.633(d) and 90.631(f).

(d) Multilateration LMS systems authorized in accordance with § 90.353 must be constructed and placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. MTA-licensed multilateration LMS systems will be considered constructed and placed in operation if such systems construct a sufficient number of base stations that utilize multilateration technology (see paragraph (e) of this section) to provide multilateration location service to a substantial portion of at least one BTA in the MTA.

(e) A multilateration LMS station will be considered constructed and placed in operation if it is built in accordance with its authorized parameters and is regularly interacting with one or more other stations to provide location service, using multilateration technology, to one or more mobile units. Specifically, LMS multilateration stations will only be considered constructed and placed in operation if they are part of a system that can interrogate a mobile, receive the response at 3 or more sites, compute the location from the time of arrival of the responses and transmit the location either back to the mobile or to a subscriber's fixed site.

(f) For purposes of this section, a station licensed to provide commercial mobile radio service is not considered to have commenced service unless it provides service to at least one unaffiliated party.

(g) Application for extension of time to commence service may be made on FCC Form 600. Extensions of time must be filed prior to the expiration of the construction period. Extensions will be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays caused by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created.

(h) An application for modification of an authorization (under construction) at the existing location does not extend the initial construction period. If additional time to commence service is required, a request for such additional time must be submitted on FCC Form 600, either separately or in conjunction with the submission of the FCC Form 600 requesting modification.

§ 90.167 [Removed]

6. Section 90.167 is removed.

7. Section 90.175 is amended by revising paragraph (i)(14) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(i) * * *

(14) Except for applications for the frequencies set forth in §§ 90.719(c) and 90.720, applications for frequencies in the 220–222 MHz band.

* * * * *

8. Section 90.177 is amended by revising the second sentence of paragraph (d)(2) to read as follows:

§ 90.177 Protection of certain radio receiving locations.

* * * * *

(d) * * *

(2) * * * Prospective applicants should communicate with: Chief, Compliance and Information Bureau, Federal Communications Commission, Washington, D.C. 20554.

* * * * *

9. Section 90.179 is amended by adding paragraph (h) to read as follows:

§ 90.179 Shared use of radio stations.

* * * * *

(h) Licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section.

10. Section 90.187 is amended by adding paragraph (d) to read as follows:

§ 90.187 Trunking in the bands between 150 and 512 MHz.

* * * * *

(d) The maximum number of frequency pairs that may be assigned at any one time for the operation of a trunked radio station (class of station YG or YW) is ten.

11. Section 90.421 is revised to read as follows:

§ 90.421 Operation of mobile station units not under the control of the licensee.

Mobile stations, as defined in § 90.7 include vehicular-mounted and hand-held units. Such units may be operated by persons other than the licensee, as provided for below, when necessary for the licensee to meet its requirements in connection with the activities for which it is licensed. If the number of such units, together with units operated by the licensee, exceeds the number of mobile units authorized to the licensee, license modification is required. The licensee is responsible for taking necessary precautions to prevent unauthorized operation of such units not under its control.

(a) *Public Safety Pool.* (1) Mobile units licensed in the Public Safety Pool may be installed in any vehicle which in an emergency would require cooperation and coordination with the licensee, and in any vehicle used in the performance, under contract, of official activities of the licensee. This provision does not permit the installation of radio units in non-emergency vehicles that are not performing governmental functions under contract but with which the licensee might wish to communicate.

(2) Mobile units licensed under § 90.20(a)(2)(iii) may be installed in a vehicle or be hand-carried for use by any person with whom cooperation or coordinations is required for medical services activities.

(b) *Industrial/Business Pool.* Mobile units licensed in the Industrial/Business Pool may be installed in vehicles of persons furnishing under contract to the licensee and for the duration of the contract, a facility or service directly related to the activities of the licensee.

(c) In addition to the above, frequencies assigned to licensees in the Private Land Mobile Radio Services may be installed in the facilities of those who assist the licensee in emergencies and with whom the licensee must communicate in situations involving imminent safety to life or property.

12. Section 90.629 is amended by revising paragraphs (a)(1) and (a)(2) and adding paragraph (f) to read as follows:

§ 90.629 Extended implementation period.

* * * * *

(a) * * *

(1) The proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity; or

(2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve (12) months to plan, approve, fund, purchase, construct, and place in operation; or

* * * * *

(f) Pursuant to § 90.155(b), the provisions of this section shall apply to local government entities applying for any frequency in the Public Safety Pool.

[FR Doc. 98–31608 Filed 11–25–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 111698A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, December 9, 1998, at 9:00 a.m. and on Thursday, December 10, 1998, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, 427 Walnut Street, Wakefield, MA 01880; telephone (781) 245–9300. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Wednesday, December 9, 1998

The meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Acting Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard, the Atlantic States Marine Fisheries Commission, and the U.S. Fish and Wildlife Service. Following reports, the Chairman of the Herring Committee will ask for approval of draft regulations and other documents associated with the submission of the Fishery Management Plan (FMP) for the Atlantic Herring Fishery to NMFS. After a noon break, the Council intends to seek approval of management measures and draft regulations for Amendment 12 to the Northeast Multispecies FMP (for whiting, offshore hake, and red hake). As part of the whiting discussion, the Council also will resolve issues relative to meeting the plan objectives, the Sustainable Fisheries Act requirements, and provide an update on document

preparation and submission of the final amendment to NMFS. The Wednesday agenda will conclude with the Multispecies Monitoring Committee (MSMC) Annual Report. Information presented will include projected groundfish landings through April 1999, target total allowable catches for the 1999–2000 fishing year, and options for reaching or maintaining fishing mortality objectives that achieve rebuilding for the principal groundfish species.

Thursday, December 10, 1998

The Council will make a number of decisions at this meeting based on information presented in the MSMC Report. These include action on Framework Adjustments 26 and 27 to the Northeast Multispecies FMP. The Council intends to approve final action on Framework Adjustment 26, which contains measures to protect cod, prior to the May 1 start of the 1999 fishing year. Alternatives under consideration include an increase in the size and/or duration of the existing Gulf of Maine groundfish closed areas, the possible addition of areas to conserve the Georges Bank cod stock, and a modification to the Gulf of Maine cod trip limit "running clock" feature. The Council also intends to approve initial action on Framework Adjustment 27 to the Northeast Multispecies FMP. Framework Adjustment 27 would contain measures that meet the 1999 fishing year rebuilding plan objectives and might include area closures, trip limits, adjustments to days-at-sea or gear/mesh modifications. This Council meeting will conclude after any other outstanding business has been addressed.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 20, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–31651 Filed 11-25-98; 8:45 am]

BILLING CODE 3510–22–F

VOL 63 ISS 228 NO 27 1998 UMI

Notices

Federal Register
Vol. 63, No. 228
Friday, November 27, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass National Forest Timber Demand Considerations; Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; request for comments.

SUMMARY: The Tongass Timber Reform Act of 1990 requires the Secretary to seek to provide a supply of timber that meets the annual market demand for timber from the Tongass as well as the market demand for timber from the Tongass for each planning cycle. The draft procedures for considering market demand in planning annual timber sale offerings are now available for public review and comment.

DATES: Comments must be received in writing on or before January 11, 1999.

ADDRESSES: Single copies of the draft procedures may be obtained by writing the Regional Forester, Alaska Region, Forest Service, USDA, PO Box 21628, Juneau, Alaska 99802–1628. Send written comments on the draft procedures to the same address. The document is also posted on the internet at ww.fs.fed.us/r10/issues.htm.

FOR FURTHER INFORMATION CONTACT: Frederick L. Norbury or Kathleen S. Morse, Ecosystem Planning and Budgeting Staff, Alaska Region, Forest Service, USDA, PO Box 21628, Juneau, Alaska 99802–1728, (907) 586–8886/8809.

SUPPLEMENTARY INFORMATION: The draft procedures estimate the volume of timber likely to be purchased from the Tongass National Forest in the coming year based on observations of industry behavior in prior years. The industry draws its annual raw material supply from an accumulated inventory of timber volume under contract, sometimes called the "buffer stock". This inventory must be large enough to keep mills operating at a steady rate while new sales are prepared for offer and harvest. Historically, the Forest Service has attempted to allow the industry to hold the equivalent of two to three years worth of raw material as volume under contract. The draft procedures essentially suggest a similar approach but defined this inventory requirement in more analytical terms.

The draft procedures assume that, at a minimum, the industry will want to maintain its existing timber inventory and will purchase timber to replace that harvested in a given year. If the existing timber inventory is lower than the desired, the industry may want to purchase more timber than is processed in order to build up inventory. By comparing the current inventory with an estimate of the desired inventory and factoring in projected annual harvest, the Forest Service can develop a range of expected timber purchases for any given year. The volume offered will be adjusted to fall within the most current estimate.

Dated: November 20, 1998.

James A. Caplan,

Acting Regional Forester, Alaska Region.

[FR Doc. 98–31609 Filed 11–25–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Certain Welded Carbon Steel Pipes and Tubes From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 27, 1998.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the antidumping duty administrative review of the antidumping order on certain welded carbon steel pipes and tubes from Thailand, covering the period March 1, 1997 through February 28, 1998.

FOR FURTHER INFORMATION CONTACT: John Totaro or Abdelali Elouaradia, AD/CVD Enforcement Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–1374 or 482–2243, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Tariff Act, as amended (the Act), the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. In the instant case, the Department has determined that it is not practicable to complete the review within the statutory time limit. See Memorandum from Roland L. MacDonald to Robert S. LaRussa (November 9, 1998).

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until March 31, 1999.

Dated: November 19, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 98–31660 Filed 11–25–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101598A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that PRBO International Biological Research, 4990 Shoreline Highway, Stinson Beach, CA 94970–9701, has been issued an amendment to scientific research permit No. 939.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS,

1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Regional Office, NMFS, NOAA, 501

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West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On August 11, 1998, notice was published in the **Federal Register** (63 FR 42828) that an amendment of permit No. 939, issued December 12, 1994 (59 FR 65016), had been requested by the above-named organization. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Dated: November 3, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–31652 Filed 11–25–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–05 ; Low Dose Research Program—Scientific, Regulatory, and Societal Issues

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications to address, analyze, and anticipate scientific, regulatory, and societal issues and opportunities arising from advances in low dose research and from current and planned regulatory policy. This may include research to summarize (1) the state-of-the-art of low dose research, (2) research and technology developments that support needs of the low dose research program, and (3) information needs and risk policy development strategies of regulatory agencies responsible for developing low dose radiation exposure standards. Research summaries should be submitted for publication in the peer-reviewed literature so they are broadly available to scientists, regulators, and the public. Information can be made broadly available through the development and use of a web site or other educational materials. Applications can also include the organization of studies, conferences, or workshops that identify and clarify, on an ongoing basis, the most urgent issues for the low dose research program and for the use of information developed in the program for risk assessment.

DATES: Potential applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–05, should be received by DOE by 4:30 p.m., e.s.t., December 14, 1998. A response to the preapplications discussing the potential program relevance of a formal application generally will be communicated within 7 days of receipt.

The deadline for receipt of formal applications is 4:30 p.m., e.s.t., January 18, 1999, in order to be accepted for merit review and to permit timely consideration for award in FY 1999.

ADDRESSES: Preapplications, referencing Program Notice 99–05, should be sent by E-mail to joanne.corcoran@oer.doe.gov; however, preapplications will also be accepted if mailed to the following address: Ms. Joanne Corcoran, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications, referencing Program Notice 99–05, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 99–05. This address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, telephone: (301) 903–9817, Office of Biological and Environmental Research, SC–72, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290. The full text of Program Notice 99-05 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION:

Background

Current standards for occupational and residential exposures to radiation and chemicals are based on linear, no-threshold models of risk that drive regulatory decisions and estimations of cancer risk. Linear, no-threshold models assume that risk is always proportional to dose, that there is no risk only when there is no dose, and that even a single molecule or radiation induced ionization can cause cancer or disease. However, the scientific basis for these assumptions is limited and uncertain at very low doses and dose rates.

Much scientific evidence suggests that the risks from exposure to low doses or low dose-rates of radiation and chemicals may be better described by a non-linear, dose-response relationship. This evidence includes long term human and animal studies and research at the cellular and molecular level on the DNA repair capabilities of cells and tissues, 'bystander' effects associated with low dose exposures, the effects of exposure-induced gene expression, the effects of a cell's micro environment on its response to low dose exposures, and studies of the multi-step nature of cancer development. A more definitive understanding of the biological responses induced by low dose, low dose-rate exposures is needed to clarify the role played by these and other cell responses and capabilities in determining risk.

The low dose research program focuses on quantifying and understanding the mechanisms of molecular and cellular responses to low dose, low dose-rate exposures to radiation to improve the scientific underpinning for estimating risks from these exposures. The goal of this research program is the development of scientifically defensible tools and approaches for determining risk that are widely used, accepted, and understood.

Applicant Qualifications and Capabilities

Applicants should demonstrate knowledge of radiation biology, relevant literature, risk modeling strategies and needs, federal regulatory policy and policy development, and public concerns over exposure to radiation. Applicants should demonstrate their understanding of the needs for and the uses of the types of scientific information likely to be developed in the low dose research program. They should demonstrate understanding of previous epidemiologic and experimental studies involving low dose, low dose-rate exposures to radiation. Finally, interested applicants should demonstrate knowledgeability of research opportunities and capabilities at National Laboratories, universities, and industry in the area of molecular and cellular responses to low dose, low dose-rate exposures.

Program Funding

It is anticipated that up to $300,000 will be available for grant awards during FY 1999, contingent on availability of appropriated funds. Multiple year funding is expected, contingent on availability of appropriated funds,

progress of research, and programmatic needs. It is anticipated that a single award will be made.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, and the field of scientific research. The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the DOE Low Dose Research Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. The Project Description must be 25 pages or less, exclusive of attachments. The application must contain an abstract or project summary, letters of intent from collaborators, and short curriculum vitaes consistent with NIH guidelines.

The Office of Science, as part of its grant regulations, requires at 10 CFR 605.11(b) that a recipient receiving a grant to perform research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/nih97__1.html, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on November 18, 1998.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 98–31653 Filed 11–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Privacy Act of 1974; Deletion of Privacy Act Systems of Records

AGENCY: Department of Energy.

ACTION: Notification of deletion of Department of Energy Privacy Act Systems of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of Energy is deleting from the agency's inventory of systems of records, record systems that are obsolete and the information is no longer collected, maintained or retrieved by name or personal identifier and, therefore, not Privacy Act record systems.

EFFECTIVE DATE: November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Abel Lopez, Director, Freedom of Information Act and Privacy Act Division, HR–73, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5955.

SUPPLEMENTARY INFORMATION: After reviewing the Department's Privacy Act Systems of Records, the following records systems were identified for deletion:

- DOE–10
  System name: Office of General Counsel Time and Accountability Reports.
- DOE–15
  System name: Payroll and Pay Related Data for Employees of Terminated Contractors.
- DOE–32
  System name: Government Motor Vehicle Operator Records.
- DOE–39
  System name: Labor Standards Complaints & Grievances.
- DOE–42
  System name: Personnel Security Clearance Index.
- DOE–49
  System name: Security Correspondence File.
- DOE–67
  System name: Participants in Experiments, Studies, and Surveys.
- DOE–79
  System name: Clinch River Breeder Reactor Plant Work Force Survey.

Issued in Washington, DC, on November 6, 1998.

Rick T. Farrell,

Director of Human Resources and Administration.

[FR Doc. 98–31654 Filed 11–25–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–71–001]

Caprock Pipeline Co.; Notice of Tariff Filing

November 23, 1998.

Take notice that on November 18, 1998, Caprock Pipeline Co. (Caprock), tendered for filing to become a part of Caprock's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective November 2, 1998:

Substitute Fifth Revised Sheet No. 29A
Substitute Third Revised Sheet No. 37
Substitute First Revised Sheet No. 37A
Substitute Second Revised Sheet No. 38
Substitute First Revised Sheet No. 38A
Substitute First Revised Sheet No. 39

Caprock states that this filing is being submitted in compliance with the Letter Order dated November 3, 1998 (Letter Order), in Docket No. RP99–71–000.

Caprock states that copies of the filing were served upon all affected firm customers of Caprock and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31619 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–6–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

November 23, 1998.

Take notice that on November 18, 1998, Chandeleur Pipe Line Company (Chandeleur), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets hereto in compliance with the Commission's Order No. 597–H issued July 15, 1998 in the above-referenced docket, Tariff Sheet Nos. 29, 66A, 67, 67A and 69 to be effective November 2, 1998 in order to implement the GISB Standards adopted under Order No. 587–H.

Chandeleur states that it is serving copies of the filing to its customers, State Commissions and interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31618 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–74–000]

CNG Transmission Corporation; Notice of Application for Abandonment

November 23, 1998.

Take notice that on November 13, 1998, CNG Transmission Corporation (CNG) 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP99–74–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to partially abandon by sale to the People's Natural Gas Company, (Peoples) certain certificated natural gas facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, CNG proposes to abandon by sale to Peoples approximately 4200 feet of pipeline, known as TLNG–461, and located in Beaver County, Pennsylvania. CNG states that CNG purchased TLNG–461 (42.3 miles of 14 inch pipe) from Laurel Pipeline Company in 1986 but did not use TLNG–461 from 1986 through 1990. CNG also states that in 1990, CNG placed 9.1 miles of TLNG–461 in-service pursuant to 18 CFR Section 157.208, and reported the in-service as part of the annual report filing for CNG in Docket No. CP82–537 filed on February 20, 1992.

CNG asserts that currently it is not utilizing this section of TLNG–461 and it has no customers located on, or downstream of this section of TLNG–461.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 14, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 175.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31613 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–003]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

November 23, 1998.

Take notice that on November 18, 1998, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing to the Commission the following contract for disclosure of a recently negotiated rate transaction:

ITS–2 Service Agreement No. 61641 between Columbia Gulf Transmission Company and Entergy Louisiana Inc., dated October 7, 1998

Amendment to ITS–2 Service Agreement No. 61641 between Columbia Gulf Transmission Company and Entergy Louisiana Inc., dated October 20, 1998

Columbia Gulf requests an effective date of December 1, 1998, for the negotiated rate agreement and amendment.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed on or before December 1, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31616 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–629–000]

El Segundo Power, LLC; Notice of Filing

November 23, 1998.

Take notice that on November 16, 1998, El Segundo Power, LLC, tendered for filing a Summary of Activity for market-based transactions for the quarter ended September 30, 1998.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before December 4, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31614 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–3–000]

John B. Fleeger, Thomas H. Fleeger, and Mary Jean Blanton Trust; Notice of Petition for Adjustment

November 23, 1998.

Take notice that on October 28, 1998, John B. Fleeger filed a petition for adjustment in Docket No. SA99–3–000, pursuant to Section 502(c) of the Natural Gas Policy Act of 1978, on behalf of himself, including his ⅓ interest in the Many States Oil Company (Many States), the Mary Jean Blanton Trust (Mary Jean Blanton, Trustee), including the trust's ⅓ interest in Many States, and Thomas H. Fleeger, including his ⅓ interest in Many States. Applicants request relief from paying Kansas ad valorem tax refunds to Williams Gas Pipelines Central, Inc., (Williams). Applicants state that they were notified by Helmerich & Payne, Inc., that they owe refunds to Williams. Applicants's petition indicates that, with interest computed to July 7, 1998, each owes approximately $36,483.75 to Williams. Applicants' petition is on file with the Commission and open to public inspection.

Applicants contend that paying these refunds will cause them economic harm. Applicants state that they obtained their respective interests, which is less than 15%, from their father many years ago. Applicants further state that they are not oil people by education or upbringing, that Thomas H. Fleeger's financial condition is very bad, and that they each rely on the income from these wells to differing degrees. Applicants add that the wells associated with the subject refund amount have not been money-makers.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before 15 days after the date of publication in the **Federal Register** of this notice, file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31624 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–74–001]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

November 23, 1998.

Take notice that on November 18, 1998, KN Interstate Gas Transmission Co. (KNI), tendered for filing to become a part of KNI's FERC Gas Tariff, the following revised tariff sheet(s) to be effective November 2, 1998:

Third Revised Volume No. 1–A

Substitute Second Revised Sheet No. 20
Substitute Second Revised Sheet No. 21
Substitute First Revised Sheet No. 22
Substitute First Revised Sheet No. 22A
Substitute Original Sheet No. 22B
Substitute Second Revised Sheet No. 47
Substitute Second Revised Sheet No. 48
Substitute Second Revised Sheet No. 49
Substitute First Revised Sheet No. 49A
Substitute First Revised Sheet No. 49B
Substitute Second Revised Sheet No. 104
Substitute Second Revised Sheet No. 105
Substitute Second Revised Sheet No. 106
Substitute First Revised Sheet No. 106A
Substitute First Revised Sheet No. 106B
Substitute Second Revised Sheet No. 126
Substitute Second Revised Sheet No. 127
Substitute Second Revised Sheet No. 129
Substitute First Revised Sheet No. 129A
Substitute Second Revised Sheet No. 130

Third Revised Volume No. 1–B

1st Revised Third Revised Sheet No. 6
Substitute Fourth Revised Sheet No. 89A

First Revised Volume No. 1–C

Substitute First Revised Sheet No. 16A
Substitute Second Revised Sheet No. 17
Substitute First Revised Sheet No. 17A
Substitute First Revised Sheet No. 17B
Substitute Original Sheet No. 17C
Substitute Second Revised Sheet No. 43
Substitute First Revised Sheet No. 43A
Substitute First Revised Sheet No. 43B
Substitute Original Sheet No. 43C
Substitute Original Sheet No. 43D

First Revised Sheet No. 1–D

Substitute Second Revised Sheet No. 6
Substitute Fourth Revised Sheet No. 71A

KNI States that this filing is being submitted in compliance with the Letter Order dated November 3, 1998 (Letter Order), in Docket No. RP99–74–000.

KNI states that copies of the filing were served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be

filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31622 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–73–001]

KN Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

November 23, 1998.

Take notice that on November 18, 1998, KN Wattenberg Transmission Limited Liability Co. (KNW), tendered for filing to become a part of KNW's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective November 2, 1998:

Substitute First Revised Sheet No. 19
Substitute First Revised Sheet No. 20
Substitute Original Sheet No. 20A
Substitute Original Sheet No. 20B
Substitute First Revised Sheet No. 21
Substitute First Revised Sheet No. 33
Substitute First Revised Sheet No. 34
Substitute Original Sheet No. 34A
Substitute Original Sheet No. 34B
Substitute First Revised Sheet No. 42
Substitute Second Revised Sheet No. 67

KNW states that this filing is being submitted in compliance with the Letter Order dated November 3, 1998 (Letter Order), in Docket No. RP99–73–000.

KNW states that copies of the filing were served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31621 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–630–000]

Long Beach Generation LLC; Notice of Filing

November 23, 1998.

Take notice that on November 16, 1998, Long Beach Generation LLC filed a Summary of Activity for market-based transactions for the quarter ending September 30, 1998.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 4, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31615 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–151–000]

Northwest Alaskan Pipeline Company; Notice of Tariff Changes

November 23, 1998.

Take notice that on November 17, 1998, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Forth-Third Revised Sheet No. 5, with an effective date of January 1, 1999.

Northwest Alaskan states that it is submitting Forty-Third Revised Sheet No. 5, reflecting a decrease in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Pan-Alberta Gas (U.S.), Inc. (PAG–US) under Rate Schedules X–1, and PIT under Rate Schedule X–4. Northwest Alaskan states that Forty-Third Revised Sheet No. 5, reflects an increase in total demand charges for Canadian gas resold to PAG–US under Rate Schedules X–2 and X–3.

Northwest Alaskan states that it is submitting Forty-Third Revised Sheet No. 5, pursuant to the provisions of the amended purchase agreements Northwest Alaskan and PAG–US and PIT, and pursuant to Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1999 through June 30, 1999) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken. but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31623 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–69–000]

Northwest Pipeline Corporation; Notice of Request Under Blanket Authorization

November 20, 1998.

Take notice that on November 12, 1998, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP99–69–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon, by sale to The Washington Water Power Company (Washington Water) an approximate 2.782 mile section of its Klamath Falls Lateral, located in Klamath County, Oregon. Northwest makes such request under its blanket certificate issued in Docket No. CP82–433–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Northwest states that the section of the lateral proposed for abandonment is an 8-inch line that extends from Northwest's existing Klamath Falls Meter Station at Lateral Milepost 14.84 to the terminus block valve interconnection with Washington Water's distribution system at Lateral Milepost 17.64. It is averred that Washington Water, as agent for Northwest, operates the subject portion of the lateral and desires to assume ownership of such line segment.

Northwest has agreed to sell that portion of the Klamath Falls Lateral and the accompanying rights-of-way to Washington Water for $1,000.00, pursuant to a Facilities Sales Agreement dated August 1, 1998. It is stated that the facility is fully depreciated and that the sales price will cover Northwest's estimated cost of administering the sale and assigning the rights-of-way to Washington Water. It is indicated that Washington Water will operate the subject facilities as part of its distribution system, and that no abandonment of transportation service will occur as a result of the sale of the subject facilities.

Northwest indicates that the purchase of the portion of the Klamath Falls Lateral downstream of Northwest's meter station will enhance Washington Water's flexibility in providing local distribution service at various points along that section of lateral. It is further averred that, other than re-designating the location of Northwest's Klamath Falls delivery point from the terminus of the lateral to the outlet of the meter station, no changes in transportation service agreement obligations will result from the proposed sale.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31590 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–71–000]

ONG Transmission Company and ONEOK Gas Transportation, L.L.C.; Notice of Application

November 20, 1998.

Take notice that on November 12, 1998, ONG Transmission Company (ONG) and ONEOK Gas Transportation, L.L.C. (OGT), 100 West Fifth Street, P.O. Box 22089, Tulsa, Oklahoma 74121, filed in Docket No. CP99–71–000 a joint application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act for permission and approval for ONG to abandon to certain services and receipt points and for OGT to acquire authorization to perform the abandoned services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ONG and OGT state that; (1) ONG would abandon and transfer to OGT, its limited jurisdiction certificate authorizing the transportation of gas for Coastal States Gas Transmission Company (Coastal) as authorized in 1987 and transferred to ONG in 1991, (2) OGT would acquire the subject authorization and perform the transportation services previously performed by ONG, (3) OGT would abandon certain receipt points as no gas has been received through such points in years, and (4) OGT would abandon such service upon the expiration of the applicable contract September 30, 1999.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before December 11, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An Intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered, a person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally

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whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for ONG and OGT to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31591 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–4–000]

Questa Energy Corporation; Notice of Petition for Adjustment

November 23, 1998.

Take notice that on November 4, 1998, Questa Energy Corporation (Questa), filed a petition for adjustment in Docket No. SA99–4–000, pursuant to Section 502(c) of the Natural Gas Policy Act of 1978, requesting to be relieved from having to pay Kansas ad valorem tax refunds on the Edwards #1 well to Northern Natural Gas Company (Northern). Questa is the successor-in-interest to Enertec Corporation (Enertec) and Oakwood Resources, Inc., (Oakwood) in the Edwards #1 well. Northern's May 18, 1998, Refund Report shows that the refund previously attributable to Enertec is $151.28, and that the refund previously attributable to Oakwood is $1,244.56. Questa's petition is on file with the Commission and open to public inspection.

Questa states that it acquired the Enertec and Oakwood working interests, effective June 1, 1986, and that the Edwards #1 well is a marginal gas well that was under consideration to be plugged when Questa acquired it. According to Questa, both Enertec and Oakwood are bankrupt and dissolved. Questa asserts that it did not profit from the alleged unlawful gas price and was not aware of the potential refund obligation when it acquired Enertec and Oakwood's working interests. Questa contends that it would suffer a special hardship if it is required to step into the shoes of Enertec and Oakwood and pay a refund obligation on their behalf, for a marginal gas well, when Questa has no way to recover those refunds from Enertec and Oakwood, the entities that actually benefited from the over-collections.

Any person desiring to be heard or to make any protest with reference to said petition should, on or before 15 days after the date of publication in the **Federal Register** of this notice, file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31625 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–2–000]

Suerte Oil Company; Notice of Petition for Staff Adjustment

November 20, 1998.

Take notice that on November 2, 1998, Suerte Oil Company (Suerte), P.O. Box 725, Howard, Kansas 67349 filed in Docket No. SA99–2–000 a petition for adjustment pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting to be relieved of its obligation to make Kansas ad valorem tax refunds, as required by the Commission's September 10, 1997 order in Docket No. RP97–369–000 *et al.*[1]

Suerte's petition is on file with the Commission and open to public inspection.

The Commission's September 10, 1997 order on remand from the D.C. Circuit Court of Appeals[2] directed first sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988.

Suerte indicates that Colorado Interstate Gas Company (CIG) paid Suerte a total of $683.54 in Kansas ad valorem tax reimbursements on the Hines lease. Of this amount, Suerte's portion was $598.10. The remaining $85.44 was the royalty owners' portion. Suerte refunded the $598.10 to CIG, but not $1,438.80 now due in interest. Suerte states that 22 royalty owners are involved in this lease and it would be impossible to collect the money from all of them since some are deceased and others didn't pay their taxes before the law went into effect and Suerte had to deduct it from their royalty payments.

Suerte states that this well has been shut-in since January, 1996 and will be plugged later at an approximate cost of $5,000–$10,000, making it impossible to pay-off the interest payment through well revenues.

Suerte requests the Commission to waive the payment of the $1,438.80 in interest and the royalty owners' portion ($85.44) on the basis that the payment of such refunds would prove to be an economic hardship for Suerte.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31595 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

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[1] See 80 FERC ¶ 61,264 (1997); order denying rehearing issued January 28, 1998, 82 FERC ¶ 61,058 (1998).

[2] *Public Service Company of Colorado* v. *FERC*, 91 F.3d 1478 (D.C. 1996) cert. denied, Nos. 96–954 and 96–1230 (65 U.S.L.W. 3751 and 3754, May 12, 1997) (Public Service).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–72–001]

TCP Gathering Company; Notice of Tariff Filing

November 23, 1998.

Take notice that on November 18, 1998, TCP Gathering Co. (TCP), tendered for filing to become a part of TCP's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective November 2, 1998:

Substitute Second Revised Sheet No. 18A
Substitute First Revised Sheet No. 18B
Substitute Original Sheet No. 18C
Substitute Original Sheet No. 18D
Substitute Third Revised Sheet No. 46
Substitute Original Sheet No. 46A
Substitute Third Revised Sheet No. 47
Substitute Second Revised Sheet No. 47A
Substitute Original Sheet No. 47B
Substitute Second Revised Sheet No. 60
Substitute Third Revised Sheet No. 103A

TCP states that this filing is being submitted in compliance with the Letter Order dated November 3, 1998 (Letter Order), in Docket No. RP99–72–000.

TCP states that copies of the filing were served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31620 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. TX94–4–000 and TX94–4–002]

Tex-La Electric Cooperative of Texas, Inc.; Notice of Filing

November 23, 1998.

Take notice that on November 17, 1998, Texas Utilities Electric Company and Southwestern Electric Service Company (collectively TU), tendered for filing on behalf of TU and Tex-La Electric Cooperative of Texas, Inc., an Offer of Settlement.

Copies of the filing were served on all parties on the official service list in Docket Nos. TX94–4–000 and TX94–4–002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions and protests should be filed on or before December 17, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31626 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–425–002]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

November 23, 1998.

Take notice that on November 18, 1998, Texas Gas Transmission Corporation (Texas Gas), tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1:

Second Substitute Second Revised Sheet No. 206C
Second Substitute Ninth Revised Sheet No. 207

Texas Gas states that the instant filing revises specific tariff sheets filed on November 10, 1998 in the same docket listed above. The revised tariff sheets simply correct mistakes of an omission of previously approved time lines and the deletion of GISB Standards 1.3.2(v) and (vi). The instant tariff sheets continue to reflect those revisions filed in the November 10, 1998, filing in order to comply with the Commission's directives in the October 29, 1998, Order which conditionally accepted Texas Gas's September 30, 1998, filing to comply with the Commission's Order No. 587–H.

Texas Gas states that copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, and all parties on the official service list in Docket No. RP98–425.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31617 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–152–000]

Trailblazer Pipeline Company; Notice of Petition for Waiver

November 20, 1998.

Take notice that on November 18, 1998, Trailblazer Pipeline Company (Trailblazer) filed, pursuant to Rule 207 of the Commission's Rule of Practice and Procedure, to seek a limited waiver of the capacity release policies and regulations of the Federal Energy Regulatory Commission (Commission), codified at 18 CFR 284.243. Specifically, Trailblazer requests waiver of said regulations to allow replacement shippers, taking release of firm capacity from Trailblazer's Rate Schedule T shippers, to exercise the right of first refusal in the original contracts, under specified circumstances.

In support of its petition, Trailblazer states that it is a project-financed pipeline, the construction of which was authorized in Opinion No. 138.[1] Because of the constraints of the project financing loan agreement, Trailblazer is subject to limitations in dealing with the shippers that "backstopped" the system by entering into firm long-term contracts for firm capacity. Absent the consent of the lenders, the original Rate Schedule T shippers cannot be supplanted by new shippers and this limitation extends to the acquisition of firm capacity through permanent capacity releases.

Trailblazer states that the Rate Schedule T shippers on Trailblazer have now entered into what are in effect permanent capacity releases (releases at the maximum rate for the remaining term of the T Agreement) covering all of the firm capacity that remains dedicated under the Rate Schedule T Agreements. A summary of these releases is set out at Appendix A to the petition.

Trailblazer states the Commission has already granted a waiver to allow the release of capacity held by shippers under Rate Schedule T. Trailblazer now requests a further waiver of Commission Regulations and policies, so that the replacement shippers taking what are in effect permanent releases of Rate Schedule T capacity would be able to exercise the right of first refusal set out at Section 21.2 of the General Terms and Conditions in Trailblazer's Tariff with respect to the firm capacity covered by the Rate Schedule T release agreement. The waiver would be limited to situations where the shipper is paying the applicable maximum rate for the remaining term of the underlying (released) Rate Schedule T contract pursuant to a long-term release Agreement (one year or longer).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before November 30, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31594 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

[1] 18 FERC ¶61,244, *rehearing denied*, 19 FERC ¶61,116 (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–000]

Viking Gas Transmission Company; Notice of Informal Settlement Conference

November 20, 1998.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, December 2, 1998, at 10:00 a.m., continuing on Thursday, December 3, 1998, at 10:00 a.m., at the office of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161 or John P. Roddy at (202) 208–0053.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31593 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1663–045, et al.]

California Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 17, 1998.

Take notice that the following filings have been made with the Commission:

1. California Power Exchange Corporation

[Docket No. ER96–1663–045]

Take notice that on November 12, 1998, the California Power Exchange Corporation (PX), tendered a compliance filing required by the October 27, 1998, order in the above-referenced docket. The compliance filing consists of clean versions of tariff pages that were previously provided to the Commission in redlined form and accepted for filing in the October 27th order.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Montana Power Company, Kohler Company, WKE Station Two Inc., PG&E Power Services Company, Louisville Gas and Electric Company, Kentucky Utilities

[Docket Nos. ER97–449–001; ER95–1018–006; ER98–1278–003; ER94–1394–017; ER99–490–000; and ER99–489–000]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 2, 1998, Montana Power Company filed certain information as required by a Commission order issued in Docket No. ER97–449–000.

On November 2, 1998, Kohler Company filed certain information as required by a Commission order issued in Docket No. ER95–1018–000.

On November 2, 1998, WKE Station Two Inc. filed certain information as required by a Commission order issued in Docket No. ER98–1278–000.

On November 2, 1998, PG&E Power Services Company field certain information as required by a Commission order issued in Docket No. ER94–1394–000.

On November 2, 1998, Louisville Gas and Electric Company filed certain information as required by a Commission order issued in Docket No. ER92–533–000.

On November 2, 1998, Kentucky Utilities filed certain information as required by a Commission order issued in Docket No. ER95–854–000.

3. GPU Advanced Resources, Inc.; GPU Advanced Resources, Inc.; South Carolina Electric and Gas Company; Western Kentucky Energy Corp.; CLECO Corporation; Millennium Power Partners, L.P.; Logan Generating Company, L.P.; Duke Energy Moss Landing, LLC

[Docket Nos. ER97–3666–006; ER97–3666–007; ER99–512–000; ER98–1279–003; ER96–2677–004; ER98–830–003; ER95–1007–011; and ER98–3418–003]

Take notice that the following informational filings have been made with the Commission and are available

for public inspection and copying in the Commission's Public Reference Room:

On November 2, 1998, GPU Advanced Resources, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–3666–000.

On November 2, 1998, South Carolina Electric and Gas Company filed certain information as required by a Commission order issued in Docket No. ER98–1085–000.

On November 2, 1998, Western Kentucky Energy Corp. filed certain information as required by a Commission order issued in Docket No. ER98–1279–000.

On November 2, 1998, CLECO Corporation filed certain information as required by a Commission order issued in Docket No. ER96–2677–000.

On November 2, 1998, Millennium Power Partners, L.P. filed certain information as required by a Commission order issued in Docket No. ER98–830–000.

On November 2, 1998, Logan Generating Company, L.P. filed certain information as required by a Commission order issued in Docket No. ER95–1007–000.

On November 2, 1998, Duke Energy Moss Landing filed certain information as required by a Commission order issued in Docket No. ER98–3418–000.

4. OGE Energy Resources, Inc.; Western Kentucky Energy Corp.; Resource Energy Services Company, LLC; Gelber Group, Inc.; VTEC Energy Inc.; Oxbow Power Marketing, Inc.

[Docket Nos. ER97–4345–007; ER98–1279–001; ER97–828–003; ER96–1933–006; ER95–1855–011; and ER96–1196–008]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 2, 1998, OGE Energy Resources, Inc. filed certain information as required by a Commission order issued in Docket No. ER97–4345–000.

On November 2, 1998, Western Energy Kentucky Corp. filed certain information as required by a Commission order issued in Docket No. ER98–1279–000.

On November 2, 1998, Resource Energy Services Company, LLC. filed certain information as required by a Commission order issued in Docket No. ER97–828–000.

On November 2, 1998, Gelber Group, Inc. filed certain information as required by a Commssion order issued in Docket No. ER96–1933–000.

On November 2, 1998, VTEC Energy Inc. filed certain information as required by a Commission order issued in Docket No. ER95–1855–000.

On November 2, 1998, Oxbow Power Marketing, Inc. filed certain information as required by a Commission order issued in Docket No. ER96–1196–000.

5. Panda Power Corporation; Duke Energy Oakland, LLC; Duke Energy Moss Landing; Duke Energy Morro Bay, LLC; Duke Energy Trading and Marketing, LLC; Duke/Louis Dreyfus, L.L.C.; Duke Energy Oakland, LLC

[Docket Nos. ER98–447–003; ER98–3416–003; ER98–2680–001; ER98–2681–001; ER96–2921–011; ER96–108–015; and ER98–2682–001]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 2, 1998, Panda Power Corporation filed certain information as required by a Commission order issued in Docket No. ER98–447–000.

On November 2, 1998, Duke Energy Oakland, LLC filed certain information as required by a Commission order issued in Docket No. ER98–3416–000.

On November 2, 1998, Duke Energy Moss Landing filed certain information as required by a Commission order issued in Docket No. ER98–2680–000.

On November 2, 1998, Duke Energy Morro Bay, LLC filed certain information as required by a Commission order issued in Docket No. ER98–2681–000.

On November 2, 1998, Duke Energy Trading and Marketing, LLC filed certain information as required by a Commission order in Docket No. ER96–2921–000.

On November 2, 1998, Duke/Louis Dreyfus, L.L.C. filed certain information as required by a Commission order in Docket No. ER96–108–000.

On November 2, 1998, Duke Energy Oakland, LLC filed certain information as required by a Commission order in Docket No. ER98–2682–000.

6. TransCanada Power Marketing Ltd.; Lambda Energy Marketing Company; Great Western Power Cooperatives Company; Pacific Energy & Development Corporation; California Polar Power Brokers, LLC; Energy2, Inc.

[Docket Nos. ER98–564–001; ER94–1672–015; ER98–1722–001; ER98–1824–003; ER98–701–001; and ER96–3086–007]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 2, 1998, TransCanada Power Marketing Ltd. filed certain information as required by a Commission order issued in Docket No. ER98–564–000.

On November 2, 1998, Lambda Energy Marketing Company filed certain information as required by a Commission order issued in Docket No. ER94–1672–000.

On November 2, 1998, Great Western Power Cooperatives Company filed certain information as required by a Commission order issued in Docket No. ER98–1722–000.

On November 2, 1998, Pacific Energy & Development Corporation filed certain information as required by a Commission order issued in Docket No. ER98–1824–000.

On November 2, 1998, California Polar Power Brokers, LLC filed certain information as required by a Commission order issued in Docket No. ER98–701–000.

On November 2, 1998, Energy2, Inc. filed certain information as required by a Commission order issued in Docket No. ER96–3086–000.

7. Southern California Edison Company

[Docket No. ER98–2843–001]

Take notice that on November 12, 1998, Southern California Edison Company (SCE), tendered a compliance filing to the Commission's October 28, 1998, order issued in the above referenced docket number.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. AES Redondo Beach, L.L.C.; AES Huntington Beach, L.L.C.; AES Alamito, L.L.C.

[Docket Nos. ER98–2843–003; ER98–2844–003; and ER98–2883–003]

Take notice that on November 12, 1998, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C., filed amended rate schedules in compliance with the Commission's order issued in the above referenced dockets on October 28, 1998.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. El Segundo Power, LLC

[Docket No. ER98–2971–004]

Take notice that on November 12, 1998, El Segundo Power, LLC (El Segundo), tendered for filing revisions to its Rate Schedule FERC No. 1,

pursuant to the Commission's Order of October 28, 1998 in AES Redondo Beach, et al., 85 FERC ¶ 61,123 (1998), which required public utility suppliers to file amendments to their rate schedules under which they sell energy at market-based rates to include Replacement Reserve Service as a separate product.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Long Beach Generation LLC

[Docket No. ER98–2972–004]

Take notice that on November 12, 1998, Long Beach Generation LLC (Long Beach), tendered for filing revisions to its Rate Schedule FERC No. 1, pursuant to the Commission's Order of October 28, 1998 in AES Redondo Beach, et al., 85 FERC ¶ 61,123 (1998), which required public utility suppliers to file amendments to their rate schedules under which they sell energy at market-based rates to include Replacement Reserve Service as a separate product.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. People's Electric Corporation; Energy2, Inc.; Environmental Resources Trust Inc.; Bonneville Fuels Management Corporation; DTE-CoEnergy, L.L.C.; Amerada Hess Corporation; Working Assets Green Power

[Docket Nos. ER98–3719–001; ER96–3086–007; ER98–3233–001; ER96–659–011; ER97–3835–004; ER97–2153–001; and ER96–2914–006]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 2, 1998, People's Electric Corporation filed certain information as required by a Commission order issued in Docket No. ER98–3719–000.

On November 2, 1998, Energy2, Inc. filed certain information as required by a Commission order issued in Docket No. ER96–3086–000.

On November 2, 1998, Environmental Resources Trust, Inc. filed certain information as required by a Commission order issued in Docket No. ER98–3233–000.

On November 2, 1998, Bonneville Fuels Management Corporation filed certain information as required by a Commission order issued in Docket No. ER96–659–000.

On November 2, 1998, DTE-CoEnergy L.L.C. filed certain information as required by a Commission order issued in Docket No. ER97–3835–000.

On November 2, 1998, Amerada Hess Corporation filed certain information as required by a Commission order issued in Docket No. ER97–2153–000.

On November 2, 1998, Working Assets Green Power filed certain information as required by a Commission order issued in Docket No. ER96–2914–000.

12. Consumers Energy Company

[Docket No. ER98–4421–001]

Take notice that on November 12, 1998, Consumers Energy Company tendered for filing a compliance filing of its Market-Based Power Sales Tariff revised to implement the directives contained in the Federal Energy Regulatory Commission's order issued October 28, 1998, in this proceeding.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Sempra Energy Trading Corp.

[Docket No. ER98–4497–001]

Take notice that on November 12, 1998, Sempra Energy Trading Corp. (SET), tendered for filing a compliance filing pursuant to the Commission's order of October 28, 1998 in Docket No. ER98–4497–000. Sempra Energy Trading Corporation, 85 FERC ¶61,122 (1998).

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. San Diego Gas & Electric Company

[Docket No. ER98–4498–001]

Take notice that on November 12, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing a compliance filing pursuant to the Commission's order issued October 28, 1998 in Docket No. ER98–4498–000. Sempra Energy Trading Corporation, 85 FERC ¶ 61,122 (1998).

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER99–573–000]

Take notice that on November 12, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Generation Imbalance Service Agreement between Virginia Electric and Power Company and North Carolina Electric Membership Corporation.

Virginia Power requests an effective date for this agreement of November 2, 1998. The term of this agreement shall be 39 days from the effective date unless extended by mutual consent.

Copies of the filing were served upon North Carolina Electric Membership Corporation, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Arizona Public Service Company

[Docket No. ER99–574–000]

Take notice that on November 12, 1998, Arizona Public Service Company (APS), tendered for filing in compliance of the Commission's Order dated October 28, 1998, in Docket No. ER98–2843–001, *et al.*, a revised FERC Electric Tariff, Original Volume No. 3 (Market Rate Tariff No. 1) to allow sales to the California Independent System Operator Corporation and its suppliers and market participants of Replacement Reserve Service and the following ancillary services: Regulation and Frequency Response, Energy Imbalance, Operating Reserve—Spinning Reserve, and Operating Reserve—Supplemental Reserve.

Copies of this filing have been served on the Arizona Corporation Commission, and all parties on the Commission's official service list of this docket.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Public Service Company of New Mexico

[Docket No. ER99–575–000]

Take notice that on November 12, 1998, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with Public Service Company of Colorado (dated October 26, 1998), Glendale Water & Power (dated November 6, 1998), and Merchant Energy Group of the Americas, Inc. (dated November 6, 1998). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to Public Service Company of Colorado, Glendale Water & Power, Merchant Energy Group of the Americas, Inc., and to the New Mexico Public Utility Commission.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER99–576–000]

Take notice that on November 12, 1998, PJM Interconnection, L.L.C. (PJM),

tendered for filing executed service agreements for Non-Firm Point-to-Point and Firm Point-to-Point Transmission Service with H.Q. Energy Services (U.S.), Inc; Merchant Energy Group of the Americas, Inc., under PJM's Open Access Tariff.

Copies of this filing were served upon the parties to the service agreements.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER99–577–000]

Take notice that on November 12, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Georgetown Municipal Light Department (Georgetown) under the NU System Companies' System Power Sales/ Exchange Tariff No. 6.

NUSCO states that a copy of this filing has been mailed to Georgetown.

NUSCO requests that the Service Agreement become effective on November 1, 1998.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Electric Power Company

[Docket No. ER99–578–000]

Take notice that on November 12, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Northern Indiana Public Service Company.

Wisconsin Electric respectfully requests an effective date of November 10, 1998, to allow for economic transactions.

Copies of the filing have been served on Northern Indiana Public Service Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Pacific Gas and Electric Company

[Docket No. ER99–579–000]

Take notice that on November 12, 1998, Pacific Gas and Electric Company (PG&E), tendered for filing an amended Appendix IV to its Transmission Owner Tariff.

PG&E is filing this amendment in compliance with the Commission's October 28, 1998, "Order on Rehearing, Granting Clarification, Establishing Further Procedures, Providing Guidance and Dismissing Complaint" (Order) (in Docket No. ER98–2843–001, *et al.*)

Copies of this filing have been served upon the California Public Utilities Commission, and all other parties listed in the official Service Lists compiled by the Federal Energy Regulatory Commission in Docket Nos. ER97–2358–000 and ER98–2843–001, et al.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southwestern Public Service Company

[Docket No. ER99–580–000]

Take notice that on November 12, 1998, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern) tendered for filing an executed umbrella service agreement between Southwestern and Energy Transfer Group, LLC under Southwestern's Rate Schedule for the Sale, Assignment, or Transfer of Transmission Rights.

Southwestern requests that this service agreement become effective on October 30, 1998. Consistent with the Commission's policy, this requested effective date is appropriate because Southwestern filed this umbrella service agreement within 30 days of it being executed.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Business Discount Plan, Inc.

[Docket No ER99–581–000]

Take notice that on November 12, 1998, Business Discount Plan, Inc. (BDP), petitioned the Commission for acceptance of BDP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

BDP intends to engage in wholesale electric power and energy purchases and sales as marketer. BDP is not in the business of generating or transmitting electric power. BDP is a California Corporation engaged in the resale of telecommunications services.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. The Washington Water Power Company

[Docket No. ER99–582–000]

Take notice that on November 12, 1998, The Washington Water Power Company (WWP), tendered for filing three additional service schedules, Schedules F, G, and H, to WWP's FERC Electric Tariff, Second Revised Volume No. 9, pursuant to section 35.12 of the Commission's Regulations, 18 CFR 35.12. Schedules F, G, and H set forth the parameters for selling Spinning Reserve Service, Non-Spinning Reserve Service, and Replacement Reserve Service, respectively, to the California Independent System Operator. WWP proposes to offer all three services at market-based rates, pursuant to the Commission's order in *AES Redondo Beach, L.L.C.*, 85 FERC ¶ 61,123 (Oct. 28, 1998), and WWP's market-based rate authority, granted in Docket No. ER97–7–000.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Duke Energy Trading and Marketing, L.L.C

[Docket No. ER99–583–000]

Take notice that on November 12, 1998, Duke Energy Trading and Marketing, L.L.C. (DETM), tendered for filing an amended rate schedule in compliance with the Commission's October 28, 1998 order, 85 FERC ¶ 61,123 (1998). DETM amended its Rate Schedule FERC No. 1, which governs DETM's sales of energy and capacity at market-based rates.

The amended rate schedule reflects the Commission's directive to jurisdictional suppliers of energy in the California market to amend their rate schedules to include the sales of ancillary services. DETM has limited the sales of ancillary services to either the California Independent System Operator Corporation (California ISO) or others that self-supply ancillary services to the California ISO. DETM has informed the Commission that DETM will not commence the sales of ancillary services until the Commission acts upon this compliance filing.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Duquesne Light Company

[Docket No. ER99–584–000]

Take notice that on November 12, 1998, Duquesne Light Company (DLC), tendered for filing a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated November 11, 1998 with First Energy Services Corp., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds First Energy Services Corp., as a customer under the Tariff.

DLC requests an effective date of January 1, 1999, for the Service Agreement.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Enron Power Marketing, Inc.

[Docket No. ER99–596–000]

Take notice that on November 12, 1998, Enron Power Marketing, Inc. (EPMI), tendered for filing an amendment to its FERC Electric Service Tariff Rate Schedule No. 1.

The proposed changes allow EPMI to sell Ancillary Services and Replacement Reserve Services at market-based rates to the California Independent System Operator Corporation, pursuant to the order of the Federal Energy Regulatory Commission in AES Redondo Beach, L.L.C., 85 FERC ¶ 61,123 (1998).

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Pool

[Docket No. OA97–237–000]

Take notice that on November 12, 1998, the New England Power Pool (NEPOOL), Executive Committee tendered for filing materials related to its filing on December 31, 1996 in the captioned dockets. These materials identify a reduced Schedule 1—Scheduling, System Control and Dispatch Service rate surcharge that is to be in effect in accordance with the NEPOOL Open Access Transmission Tariff for the period January 1, 1999 through May 31, 1999.

The NEPOOL Executive Committee states that copies of these materials were sent to all persons identified in the Commission's official service lists for the captioned dockets, the New England state governors and regulatory commissions, and the NEPOOL participants.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31612 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3853–001, et al.]

New England Power Pool, et al.; Electric Rate and Corporate Regulation Filings

November 18, 1998.

Take notice that the following filings have been made with the Commission:

1. New England Power Pool

[Docket No. ER98–3853–001]

Take notice that on November 13, 1998, the New England Power Pool (NEPOOL), Executive Committee submitted the Thirty-Ninth Agreement Amending New England Power Pool Agreement and related materials, in compliance with the Commission's order in New England Power Pool, 85 FERC ¶ 61,141 (October 29, 1998) (Order Conditionally Accepting Compliance Filing, as Modified, and Accepting in Part, and Rejecting in Part, Proposed Tariff Changes, as Modified).

The NEPOOL Executive Committee states that copies of these materials were sent to all entities on the service list in Docket No. ER98–3853–000, the participants in the New England Power Pool, and the New England state governors and regulatory commissions.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Symmetry Device Research, Inc.

[Docket No. ER96–2524–003

TransAlta Energy Marketing (U.S.) Inc.

[Docket No. ER98–3184–001

Duke Energy Morro Bay, LLC

[Docket No. ER98–3417–003]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On October 29, 1998, Semmetry Device Research, Inc. filed certain information as required by a Commission order issued in Docket No. ER96–2524–000.

On October 30, 1998, TransAlta Energy Marketing (U.S.) Inc. filed certain information as required by a Commission order issued in Docket No. ER98–3184–000.

On November 2, 1998, Duke Energy Morro Bay, LLC filed certain information as required by a Commission order issued in Docket No. ER98–3417–000.

3. Niagara Mohawk Power Corp.

[Docket Nos. ER98–4635–000, ER98–4630–000, ER98–4631–000, ER99–76–000 thru ER99–158–000, ER99–194–000 and ER99–195–000]

Take notice that on November 13, 1998, Niagara Mohawk Power Corporation tendered for filing proposed changes in its proposed Scheduling and Balancing Services Tariff. The proposed changes would provide clarification as to the entities to which the Tariff applies and as to the calculation of charges under the Tariff, and would make adjustments for generation facilities providing frequency control service.

These proposed changes are intended to clarify and improve the proposed Scheduling and Balancing Services Tariff.

Copies of the filing were served upon Niagara Mohawk's OATT customers, all generators in Niagara Mohawk's control area, all entities that have intervened in the referenced dockets, and the New York Public Service Commission.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER99–169–000]

Take notice that on November 13, 1998 Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an amendment to its quarterly reports for short-term transactions under Rate Schedule SP.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER99–419–000]

Take notice that on November 13, 1998 Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing an amendment to its quarterly report for short-term transactions under

Rate Schedule SP during the third quarter of 1998.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER99–585–000]

Take notice that on November 13, 1998, Virginia Electric and Power Company (Virginia Power) tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with Entergy Power Marketing Corp. under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of November 13, 1998, the date of filing the Service Agreement.

Copies of the filing were served upon Entergy Power Marketing Corp., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PJM Interconnection, L.L.C.

[Docket No. ER99–586–000]

Take notice that on November 13, 1998, PJM Interconnection, L.L.C. (PJM) tendered for filing two signature pages of parties to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including each of the parties for which a signature page is being tendered with this filing, and each of the state regulatory commissions within the PJM Control Area.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER99–587–000]

Take notice that on November 13, 1998, Arizona Public Service Company (APS) tendered for filing a Service Agreement under APS' FERC Electric Tariff, Original Volume No. 3 for service to the Public Service Company of New Mexico (PNM).

A copy of this filing has been served on the Arizona Corporation Commission and the Public Service Company of New Mexico.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Washington Water Power Company

[Docket No. ER99–588–000]

Take notice that on November 13, 1998, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under WWP's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8 with Constellation Power Source, Inc. and PacifiCorp Power Marketing, Inc.

WWP requests the Service Agreements be given respective effective dates of October 14, 1998 and October 16, 1998.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Central Hudson Gas & Electric Corporation

[Docket No. ER99–589–000]

Take notice that on November 13, 1998, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 35.12), a Service Agreement for Non-firm Point-to-Point Transmission Service between CHG&E and Merchant Energy Group of the Americas, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume 1 (Transmission Tariff) filed in compliance with the Commission's Order 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11 and make the effective date of the Service Agreement October 26, 1998.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER99–590–000]

Take notice that on November 13, 1998, Southern California Edison Company (SCE) tendered for filing the First Amendment to the District-Edison 1987 Service and Interchange Agreement (Amendment) between SCE and The Metropolitan Water District of Southern California.

The Amendment establishes a new methodology for pricing Edison Purchased Power and valuing Exchange Energy based on the California Power Exchange's market clearing price.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Central Hudson Gas & Electric Corporation

[Docket No. ER99–591–000]

Take notice that on November 13, 1998, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 35.12), a Service Agreement Non-firm Point-To-Point Transmission Service between CHG&E and West Penn Power (dba Allegheny Energy). The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume 1 (Transmission Tariff) filed in compliance with the Commission's Order 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR 35.11 and make the effective date of the agreement October 12, 1998.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER99–592–000]

Take notice that on November 13, 1998, Niagara Mohawk Power Corporation (NMPC) tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and North American Energy, Inc. This Transmission Service Agreement specifies that North American Energy, Inc. has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow

NMPC and North American Energy, Inc. to enter into separately scheduled transactions under which NMPC will provide transmission service for North American Energy, Inc. as the parties may mutually agree.

NMPC requests an effective date of October 30, 1998.

NMPC has served copies of the filing upon the New York State Public Service Commission and North American Energy, Inc.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Tampa Electric Company

[Docket No. OA97–461–002]

Take notice that on November 13, 1998, Tampa Electric Company (Tampa Electric) submitted a filing in compliance with the Commission's Order on Standards of Conduct, issued on October 16, 1998, in Ameren Services Co., *et al.*, 85 FERC ¶61,068.

A copy of the compliance filing has been served on each person designated on the official service list in Docket No. OA97–461–000 and the Florida Public Service Commission.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31611 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1163–003, et al.]

Southwest Power Pool, Inc., et al.; Electric Rate and Corporate Regulation Filings

November 19, 1998.

Take notice that the following filings have been made with the Commission:

1. Southwest Power Pool, Inc.

[Docket No. ER98–1163–003]

Take notice that on November 12, 1998, Southwest Power Pool, Inc., tendered for filing a revised version of Tariff Sheet No. 52, to its November 4, 1998, compliance filing in Docket No. ER98–1163–003.

Comment date: December 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. American Electric Power Service Corporation

[Docket No. ER98–4339–000]

Take notice that on November 16, 1998, American Electric Power Service Corporation (AEPSC), tendered for filing an amendment to its filing in Docket ER98–4339–000. The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5. AEPSC had no transactions with Texas Utilities Electric Company prior July 23, 1998.

AEPSC respectfully requests to amend the initially requested effective date of July 21, 1998 to July 23, 1998, for a service agreement with Texas Utilities Electric Company under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff).

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Washington Water Power

[Docket No. ER99–470–000]

Take notice that on November 3, 1998, Washington Water Power filed an amended summary of activity for the quarter ending September 30, 1998, under Washington Water Power's FERC Electric Tariff Original Volume No. 9.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Public Service Electric and Gas Company

[Docket No. ER99–485–000]

Take notice that on November 2, 1998, Public Service Electric and Gas Company (PSE&G) filed a summary of transactions made during the third quarter of calendar year 1998 under PSE&G'S Market Based Rate Tariff, Original Volume No. 6, accepted by the Commission in Docket No. ER97–837–000.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Ameren Services Company

[Docket No. ER99–517–000]

Take notice that on November 3, 1998, Ameren Services Company filed its quarterly report detailing sale transactions undertaken for the quarter ending September 30, 1998 pursuant to the Commission order issued on August 3, 1998 in Docket No. ER98–3285–000.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER99–521–000]

Take notice that on November 4, 1998, Central Vermont Public Service Corporation filed a quarterly report of short-term transactions under Central Vermont's Market Rate Sales Tariff, Original Volume No. 8. This tariff was made effective May 27, 1998 by orders issued May 15, 1998 and June 30, 1998 in Docket No. ER98–2329–000.

Comment date: December 9, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER99–593–000]

Take notice that on November 16, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement with Constellation Power Source under the NU System Companies' Sale for Resale, Tariff No. 7.

NUSCO states that a copy of this filing has been mailed to the Constellation Power Source.

NUSCO requests that the Service Agreement become effective October 30, 1998.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Peco Energy Company

[Docket No. ER99–594–000]

Take notice that on November 16, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement

dated March 5, 1998, with Merchant Energy Group of the Americas, Inc., (Merchant Energy) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds Merchant Energy as a customer under the Tariff.

PECO requests an effective date of November 12, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to Merchant Energy and to the Pennsylvania Public Utility Commission.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. The Montana Power Company

[Docket No. ER99–595–000]

Take notice that on November 16, 1998, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Ballard Petroleum LLC (Ballard) under Montana's FERC Electric Tariff, Second Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Ballard.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER99–597–000]

Take notice that on November 13, 1998, New England Power Company (NEP), tendered for filing an amendment to NEP's Code of Conduct governing the relationships between NEP and its affiliates.

Copies of this filing have been served on regulatory agencies in Massachusetts, Rhode Island and New Hampshire.

Comment date: December 3, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER99–598–000]

Take notice that on November 16, 1998 Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and NorAm Energy Services, Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER99–599–000]

Take notice that on November 16, 1998, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-To-Point Transmission Service between LG&E/KU and Southwestern Public Service Company under LG&E/KU's Open Access Transmission Tariff.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER99–600–000]

Take notice that on November 16, 1998, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Non-Firm Point-To-Point Transmission Service between LG&E/KU and TransAlta Energy Marketing (U.S.), Inc., under LG&E/KU's Open Access Transmission Tariff.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Louisville Gas and Electric Company, Kentucky Utilities Company

[Docket No. ER99–601–000]

Take notice that on November 16, 1998, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU), tendered for filing an executed Service Agreement for Firm Point-To-Point Transmission Service between LG&E/KU and Southwestern Public Service Company under LG&E/KU's Open Access Transmission Tariff.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER99–602–000]

Take notice that on November 16, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Short-Term Firm Transmission Service Agreement and a Non-Firm Transmission Service Agreement between itself and Strategic Energy Ltd., (SEL). The Transmission Service Agreements allow SEL to receive transmission services under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Volume No. 1.

Wisconsin Electric requests an effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on SEL, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. The Washington Water Power Company

[Docket No. ER99–603–000]

Take notice that on November 16, 1998, The Washington Water Power Company (WWP), tendered for filing, pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, a new FERC Electric Tariff volume, under which WWP proposes to offer Dynamic Capacity and Energy Service, Spinning Reserve Service, and Non-Spinning Reserve Service at cost-based rates. WWP proposes to offer the three services only in conjunction with transactions in which the customer is not receiving basic transmission service from WWP under WWP's open access transmission tariff.

WWP requests that the Commission waive its notice requirements and accept for filing the tariff and service schedules to be effective November 16, 1998.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company, as agent for Union Electric Company and Central Illinois Public Service Company

[Docket No. ER99–604–000]

Take notice that on November 16, 1998, Ameren Services Company (Ameren), as agent for Union Electric Company and Central Illinois Public Service Company (collectively identified as the Ameren Companies), tendered for filing a proposed First Revised Sheet No. 2, to the Market Based Rate Power Sales Tariff (the Tariff) of the Ameren Companies. Ameren states that the change is being made to remove restrictions on the delivery points for delivery of capacity and/or energy sold under the Tariff.

Ameren has asked that the revision be permitted to become effective on November 17, 1998.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Entergy Services, Inc.

[Docket No. ER99–605–000]

Take notice that on November 16, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc.,

Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and PanCanadian Energy Services, Inc.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Entergy Services, Inc.

[Docket No. ER99–606–000]

Take notice that on November 16, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (EAI), Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Fifth Amendment to the Power Agreement between EAI and the City of North Little Rock, Arkansas dated October 20, 1998.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER99–607–000]

Take notice that on November 16, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-to-Point Transportation Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Enron Power Marketing, Inc.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Entergy Services, Inc.

[Docket No. ER99–608–000]

Take notice that on November 16, 1998, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Proliance Energy, LLC.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Ameren Services Company Central Illinois Public Service Company Union Electric Company

[Docket Nos. OA97–270–001 and OA97–510–000]

Take notice that on November 16, 1998, Ameren Services Company tendered for filing a compliance filing revising Ameren's Standards of Conduct to conform to the Commission's order issued on October 16, 1998 in Ameren Services Company, 85 FERC ¶ 61,068.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31610 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

November 20, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11620–000

c. *Date filed:* October 5, 1998

d. *Applicant:* Kacie Lake Hydro, Inc.

e. *Name of Project:* Kacie Lake Hydroelectric.

f. *Location:* On an unnamed stream, near the City of Unalaksa, Alaska. The project is on federal lands under the control of the U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Steven Marmon, Kacie Lake Hydro, Inc., 625 Cornwall Avenue, Bellingham, WA 98225, (360) 738–9999.

i. *FERC Contact:* Any questions on this notice should be addressed to Surender M. Yepuri, E-mail address, surender.yepuri@ferc.fed.us, or telephone (202) 219–2847.

j. Deadline for filing motions to intervene and protest: 60 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the relating to the merits of an issue that may affect the responsibilities of the particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The project would consist of the existing Kacie Lake and the following new facilities: (1) A dam at the outflow of the existing lake, which will raise the lake's water surface (diameter to be determined in the range of 60 to 90 inches); (3) a 80-foot-long, 65-foot-wide concrete powerhouse with an installed capacity of 6 megawatts; (4) a tailrace; (5) a 25-kV, 22-mile-long transmission line connecting the project to the existing distribution system; and (6) other apprutenances.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item (h) above.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified

comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31592 Filed 11–25–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 09, 1998 Through November 13, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (62 FR 17856).

Draft EISs

ERP No. D–AFS–L82016–ID Rating LO, Sandpoint Noxious Weed Control Project, Implementation, Proposing to control noxious weeds on 46 sites, Idaho Panhandle National Forests, Sandpoint Ranger District, Bonner County, ID.

Summary: Review of the Draft EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. D–DOI–J31026–UT Rating EO2, Spanish Fork Canyon—Nephi Irrigation System (SFN) System), Construction and Operation, Bonneville Unit, Central Utah Project, Central Utah Water Conservancy District, Utah, Salt Lake and Juab Counties, UT.

Summary: EPA expressed environmental objections about potential adverse impacts to water quality, and on the basis of the incomplete alternatives analysis contained in the DEIS, EPA recommends that the draft EIS be revised and re-issued.

ERP No. D–NPS–A61319–00 Rating LO, Oregon, California, Moron Pioneer and Pony Express National Historic Trails, Implementation, Comprehensive Management and Use Plan, OR, CA, MO, IA, IL, KS, NB, CO, WY, ID, WA, UT and NV.

Summary: EPA expressed lack of objections.

ERP No. D–NPS–L61221–AK Rating LO, Sitka National Historical Park, General Management Plan, Implementation, City and Borough of Sitka, AK.

Summary: EPA used a screening tool to conduct a limited review of this action. Based upon the screen, EPA does foresee having any environmental objections to the proposed project. Therefore, EPA will not be conducting a detailed review.

Final EISs

ERP No. F–BLM–J39027–CO, Plateau Creek Pipeline Replacement Project, Operation and Maintenance, Ute Water Conservancy District, Right-of-Way Permit, Mesa County, CO.

Summary: EPA continued to express concerns that the Final EIS did not address indirect effects as they relate to non-jurisdictional wetland and that the purpose and need statement does not reflect the actual purpose and need for the increase in capacity of the project.

ERP No. F–BLM–L65298–AK, Northeast National Petroleum Reserve-Alaska (NPR–A), Integrate Activity Plan, Multiple-Use Management, for Land within the North Slope Borough, AK.

Summary: Review of the Final EIS was not deemed necessary. No formal

comment letter was sent to the preparing agency.

Dated: November 23, 1998.

Joe Montgomery,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. 98–31661 Filed 11–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5497–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed November 16, 1998 Through November 20, 1998

Pursuant to 40 CFR 1506.9

EIS No. 980473, DRAFT EIS, BOP, WV, Ohio and Tyler Counties Federal Correctional Facility, Construction and Operation, Three Possible Sites: Wheeling-Ohio County Airport Industrial Park, Fort Henry and Iver Flats, Ohio and Tyler Counties, WV, Due: January 11, 1999, Contact: David J. Dorworth (202) 514–6470.

EIS No. 980474, DRAFT EIS, FHW, CA, US–7 Expressway Project, Construction between CA–98 to Interstate 8, Improve Access to the new Calexico East Port of Entry, Funding and COE Section 404 Permit, Imperial County, CA, Due: January 19, 1999, Contact: C. Glen Clinton (916) 498–5037.

EIS No. 980475, FINAL EIS, FHW, MI, US–2/141 Alternate Highway, Construction in the vicinty of City of Iron Mountain, Funding, NPDES Permit and COE Section 404 Permit, Dickinson County, MI, Due: December 28, 1998, Contact: James Kirschensteiner (517) 377–1880.

EIS No. 980476, DRAFT SUPPLEMENT, AFS, CO, Lakewood Raw Water Pipeline for Continued Operation, Maintenance, Reconstruction and/or Replacement, Updated and New Information for the Arapaho and Roosevelt National Forests and Pawnee National Grassland, Application for Easement, in the City of Boulder, CO, Due: January 11, 1999, Contact: Jean A. Thomas (970) 498–1267.

EIS No. 980477, FINAL EIS, FHW, PA, US 222 Corridor Design Location Study, Improvements from Breingsville to the I–78 Interchange, Funding, Lower and Upper Macungie Township, Lehigh County, PA, Due: December 28, 1998, Contact: Ronald W. Carmichael (717) 221–3461.

EIS No. 980478, FINAL EIS, NOA, MS, Grand Bay National Estuarine Reseach Reserve (NERR), Designation, To Conduct Research, Educational Project and Construction, East of the City of Biloxi, Jackson County, MS, Due: December 28, 1998, Contact: Jeffery R. Benoit (301) 713–3155.

EIS No. 980479, FINAL EIS, FHW, PA, PA–0119 South Transportation Improvement Project, Between Blairsville and Homer City, Funding, NPDESs Permit and COE Section 404 Permit, Indiana County, PA, Due: December 30, 1998, Contact: Ronald W. Carmichael (717) 221–3461.

EIS No. 980480, DRAFT SUPPLEMENT, FAA, IN, Indianapolis International Airport Master Plan Development, Updated and New Information on Establishing New Air Traffic Procedures to Restore, Construction and Operation, Runway 5L/23R Parallel to existing Runway 14/32 and connecting to Runways 5R/23L and 5L/23R, Airport Layout Plan Approval, Funding and Section 404, Due: January 11, 1999, Contact: Wally Welter (847) 294–8091.

Amended Notices

EIS No. 980393, DRAFT SUPPLEMENT, AFS, CO, Telluride Ski Area Expansion Project, Implementation, New/Additional Information, Special-Use-Permit and COE Section 404 Permit, Grand Mesa Uncompahgre and Gunnion National Forests, Norwood Ranger District, San Miguel County, CO, Due: December 08, 1998, Contact: Arthur Bauer (970) 327–4261. Published FR 10–09–98—Review Period extended.

EIS No. 980438, DRAFT SUPPLEMENT, FHW, CA, CA–1 Improvement, Carmel River Bridge to CA–1/Pacific Grove (Route 68) Interchange, Updated and Additional Information, Funding Section 404 Permit, Monterey County, CA, Due: December 21, 1998, Contact: John R. Schultz (916) 498–5041. The notice for the above DSEIS should have appeared in the 11/13/98 **Federal Register**. The 30-day Comment Period is Calculated from 11/13/98.

EIS No. 980454, FINAL EIS, NPS, UT, Capitol Reef National Park, Implementation, General Management Plan, Development Concept Plan, Emery, Garfield, Sevier and Wayne Counties, UT, Due: December 14, 1998, Contact: Charles V. Lundy (435) 425–3791. Published FR 11–13–98. The notice for the above FEIS should have appeared in the 11/13/98 **Federal Register**. The 30-day Comment Period is Calculated from 11–13–98.

EIS No. 980462, FINAL EIS, BOP, PA, Greater Scranton Area, United States Penitentiary (USP) Construction and Operation, Site Selection, Lackawanna and Wayne Counties, PA, Due: December 21, 1998, Contact: David J. Dorworth (202) 514–6470.

The notice for the above FEIS should have appeared in the 11/20/98 **Federal Register**. The 30-day Comment Period is Calculated from 11–20–98.

Dated: November 23, 1998.

Joe Montgomery,

Environmental Protection Specialist, Office of Federal Activities

[FR Doc. 98–31662 Filed 11–25–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00572; FRL–6048–6]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2-day meeting, December 7 and 8, 1998. This notice announces the location and times for this meeting and sets forth the tentative agenda topics. The meetings are open to the public.

DATES: The SFIREG will meet on Monday, December 7, 1998, from 8:30 a.m. to 5:00 p.m. and Tuesday, December 8, 1998, from 8:30 a.m. to 12:00 noon.

ADDRESSES: The meeting will be held at: The Key Bridge Marriott, 1401 Lee Highway, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: By mail: Elaine Y. Lyon, Field and External Affairs Division, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 1921 Jefferson Davis Highway, Arlington, VA 22202, Crystal Mall 2 (CM #2); (703) 305–5306; fax (703) 308–1850; e-mail: lyon.elaine@.epa.gov.

SUPPLEMENTARY INFORMATION: The tentative agenda of the SFIREG includes the following.

1. Food Quality Protection Act implementation update:

(a) Minor use coordination on Registration Eligibility Decisions vs. Tolerance reassessments.
(b) Clarification of EPA - FDA jurisdiction (amendment to Federal Food, Drug and Cosmetic Act).
(c) Tolerance Reassessment Advisory Committee update.
(d) Status of consumer bulletin.
(e) Section 18 rule.

2. Pesticide Regulatory Education Program courses for 1999.
3. Field Data Plan.
4. Methyl Parathion Long Term Strategy.
5. Outreach to Health Care Providers.
6. FIFRA 25(b)
7. Aluminum and Magnesium Phosphide RED.
8. Rodenticide Stakeholder Meeting.
9. Consumer Labeling Initiative:
(a) Draft recommendations.
(b) Pesticide disposal instructions.

10. Office of Pesticide Programs Update.
11. Office of Enforcement and Compliance Assurance Update.
12. Committee Reports and Issue Papers.
13. SFIREG Issues Update Report.

List of Subjects

Environmental protection.

Dated: November 23, 1998.

Jay Ellenberger,

Acting Director, Field and External Affairs Division.

[FR Doc. 98–31776 Filed 11–24–98; 1:25 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–2]

Proposed Implementation Guidance for the Revised Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the EPA has issued proposed guidance for public review and comment on implementation of the Clean Air Act requirements for the revised 8-hour ozone (62 FR 38856, July 18, 1997) and PM (62 FR 38652, July 18, 1997) NAAQS. This proposed guidance supplements the proposed guidance previously issued on August 14, 1998 (63 FR 45060, August 24, 1998). On July 16, 1997 (62 FR 38421, July 18, 1997), President Clinton issued a memorandum to EPA Administrator Browner on implementation of the revised standards for ozone and PM. In that memorandum, the President laid out a plan on how these new standards are to be implemented. This proposed guidance reflects the Presidential Memorandum.

DATES: The EPA is establishing a 30-day comment period, ending on December 28, 1998.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–95–38, Category IV–I, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For general questions on the document or for specific questions and comments on the ozone portion of this guidance, contact Mr. John Silvasi, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5666, e-mail address "silvasi.john@epa.gov"; for specific questions and comments on the PM portion of this guidance, contact Mr. Larry Wallace, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–0906, e-mail address "wallace.larry@epa.gov"; and for specific questions and comments on the regional haze portion of this guidance, contact Mr. Rich Damberg, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 54l–5592, e-mail address "damberg.rich@epa.gov".

SUPPLEMENTARY INFORMATION: The purpose of this guidance is to set forth EPA's current views on the issues identified above. These issues will be addressed in future rulemakings as appropriate, e.g., actions approving or disapproving SIP submittals. In those rulemakings, EPA plans to propose to take a particular action based in whole or in part on its views of the relevant issues, and the public will have an opportunity to comment on EPA's interpretations during the rulemakings. When EPA issues final rules based on its views at that time, those views will be binding on the States, the public, and EPA as a matter of law.

Electronic Availability—A World Wide Web (WWW) site has been developed for overview information on the NAAQS and the ozone, PM, and regional haze implementation process. The Uniform Resource Location (URL) for the home page of the web site is *http://ttnwww.rtpnc.epa.gov/implement.* The proposed implementation guidance can be accessed through this web site in a table entitled "Major Action Items to Reinvent Ozone and PM NAAQS and Regional Haze Implementation." The URL for the table is *http://ttnwww.rtpnc.epa.gov/implement/actions.htm.* For assistance with these web sites, the TTN Helpline is (919) 541–5384. For those persons without electronic capability, a copy of the proposed implementation guidance may be obtained from Ms. Tricia Crabtree, U.S. EPA, MD–15, Air Quality Strategies and Standards Division, Research Triangle Park, NC 27711, telephone (919) 541–5688).

The official record for this proposed guidance, as well as the public version, has been established under docket number A–95–38 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The official proposed rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–95–38. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Dated: November 19, 1998.

Anna B. Duncan,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 98–31668 Filed 11–25–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, December 1, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, December 3, 1998 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Report of the Audit Division on Clinton/Gore '96 Primary Committee, Inc.
Report of the Audit Division on Clinton/Gore '96 General Committee, Inc. and Clinton/Gore '96 General Election Legal and Accounting Compliance Fund.
Report of the Audit Division on the Dole for President Committee, Inc. (Primary).
Report of the Audit Division on the Dole/Kemp '96 and Dole/Kemp Compliance Committee, Inc. (General).
Notice of Proposed Rulemaking Defining Who Qualifies as "Member" of a Membership Association.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–31835 Filed 11–24–98; 3:13 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: Technical Mapping Advisory Council.

DATE OF MEETING: December 7–8, 1998.

PLACE: Heinz Center, 1001 Pennsylvania Avenue, NW, Washington, DC.

TIME: 8:30 a.m. to 5:00 p.m., both days.

PROPOSED AGENDA:

1. Call to order and announcements.
2. Action on minutes of previous meeting.
3. Progress report on FEMA's Map Modernization Program.
4. Discussion of location and agenda for March meeting.
5. Finalize 1998 Annual Report.
6. Status update on alluvial fan report, and riverine and coastal erosion studies.
7. Adjournment.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Sally Magee, Federal Emergency Management Agency, 500 C Street SW., room 444, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596 on or before December 2, 1998.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting.

Dated: November 19, 1998.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 98–31645 Filed 11–25–98; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–010689–079.
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd. ("APL")
Hapag-Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Synopsis: The proposed amendment provides that a Class B member of TWRA can complete the performance of any group TWRA service contract if the member, the shipper, and TWRA agree. APL is resigning from TWRA as of January 1, 1999, and will become a Class B member at that time. The amendment also provides that independent actions on tariff items will become effective immediately upon notice and filing thereof and that the right of individual service contracting is extended to refrigerated cargo.

Agreement No.: 202–011375–044.
Title: Trans-Atlantic Conference Agreement.
Parties:
Atlantic Container Line AB
Sea-Land Service, Inc.
A.P. Moller-Maersk Line
Hapag-Lloyd Container Linie GmbH
Mediterranean Shipping Co., S.A.
DSR-Senator Lines
POL-Atlantic
Orient Overseas Container Line (UK) Ltd.
Mexican Line Limited
Hyundai Merchant Marine Co., Ltd.
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Nippon Yusen Kaisha
Tecomar Limited
Synopsis: The proposed modification restates the agreement and conforms it to the requirements of the Ocean Shipping Reform Act of 1998 ("ORSA") and the European Commission. Changes include deleting authority to discuss or agree on prices for inland transportation within the European Union, but authorizes adoption of a "not below cost" rule with respect to inland transportation in Europe; adding joint U.S. inland service procurement authority in accordance with ORSA; replacing current service contract rules with those complying with ORSA and EC requirements; limiting forwarder compensation/brokerage to shipments from the United States; reducing the notice period required for independent action from 10 to 5 days; and deleting the names of four members resigning on January 1, 1999.

Agreement No.: 207–011441–002.
Title: The NOSAC/NYK Joint Service (East/West) Agreement.
Parties:
NOSAC ANS ("NOSAC")
Nippon Yusen Kaisha
Synopsis: The proposed amendment replaces NOSAC as a member with its wholly owned subsidiary Wilhelmsen Lines. It adds ports and points in Mexico, Central America, South America, and the Caribbean Islands to the Agreement's geographic scope; it adds other provisions related to the administration of the joint service; and changes the name of the Agreement to the "NYK/NOS Joint Service Agreement." Upon the effectiveness of this amendment, the parties intend to terminate the NOSAC/NYK Joint Service (North/South) Agreement (FMC Agreement No. 207–011438).

Agreement No.: 203–011512–001.
Title: Hyundai/MSC Agreement.
Parties:
Hyundai Merchant Marine Co., Ltd.
Mediterranean Shipping Co., S.A.
Synopsis: The proposed amendment sets the expiration date of the agreement as December 31, 1999. It also removes the six-month notice period for termination.

Agreement No.: 202–011587–003.
Title: United States South Europe Conference.
Parties:
A.P. Moller-Maersk Line
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Synopsis: The proposed modification expands the agreement's geographic scope to include Eastern Mediterranean and Black Sea ports; deletes authority to agree on inland rates in the European Union, but authorizes adoption of a "not below cost" rule with respect to inland transportation in Europe; authorizes the members to jointly negotiate with providers of inland transportation within the U.S. effective May 1, 1999; limits the authority to agree on freight forwarder compensation to U.S. exports; requires a unanimous vote to "close" any rate, rule, or regulation; eliminates mandatory service contract guidelines, but provides for voluntary guidelines; and reduces the obligations of members under the agreement.

Dated: November 20, 1998.

By order of the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 98–31567 Filed 11–25–98; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1998.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Fishback Financial Corporation, Brookings, South Dakota; to acquire 100 percent of the voting shares of Pipestone Bancshares, Inc., Pipestone, Minnesota, and thereby indirectly acquire First National Bank and Trust, Pipestone, Minnesota, and First National Bank of Garretson, Garretson, South Dakota.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Barret Bancorp, Inc., Barretville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Barretville Bank & Trust Company, Barretville, Tennessee, and 39 percent of the voting shares of Somerville Bank & Trust Company, Somerville, Tennessee.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Ace Gas, Inc., Deshler, Nebraska, and Gibbon Exchange Company, Gibbon, Nebraska; to acquire 100 percent of the voting shares of Junction City First National Co., Junction City, Kansas; and thereby indirectly acquire First National Bank, Junction City, Kansas.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. WB&T Bancshares, Inc., Duncanville, Texas, and WB&T Delaware Bancshares, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of Western Bank & Trust, Duncanville, Texas.

Board of Governors of the Federal Reserve System, November 20, 1998.

Robert deV. Frierson,
Associate Secretary of the Board.

[FR Doc. 98–31565 Filed 11–25–98; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 21, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Premier Financial Bancorp, Inc., Georgetown, Kentucky; to merge with Mt. Vernon Bancshares, Mount Vernon, Kentucky, and thereby indirectly acquire Bank of Mt. Vernon, Mount Vernon, Kentucky.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Altrust Financial Services Employee Stock Ownership Plan, Cullman, Alabama; to become a bank holding company by acquiring up to 45 percent of the voting shares of Altrust Financial Services, Inc., Cullman, Alabama, and thereby indirectly acquire The Peoples Bank of North Alabama, Cullman, Alabama.

2. First Bancshares, Inc., Hattiesburg, Mississippi; to acquire 100 percent of the voting shares of First National Bank of the Pine Belt, Laurel, Mississippi.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Citizens First Corporation, Bowling Green, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens First Bank, Inc., Bowling Green, Kentucky (in organization).

Board of Governors of the Federal Reserve System, November 23, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31665 Filed 11–25–98; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the request of the Agency for Health Care Policy and Research (AHCPR) to the Office of Management and Budget (OMB) for a generic approval of "Voluntary Customer Surveys of 'Partners' of the Agency for Health Care Policy and Research". In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), the AHCPR invites the public to comment on this proposed information collection request to allow it to conduct voluntary customer satisfaction surveys of partners. AHCPR will publish periodic summaries of proposed projects to be carried out under this generic approval in accordance with the Paperwork Reduction Act requirements.

DATES: Comments on this notice must be received by December 30, 1998.

ADDRESSES: Written comments should be submitted to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Voluntary Customer Surveys of 'Partners' of the Agency for Health Care Policy and Research."

In response to Executive Order 12862, the Agency for Health Care Policy and Research (AHCPR) plans to conduct voluntary customer surveys of "partners" to identify how well AHCPR is performing its functions with its partners and to use this information to determine the kind and quality of services they like and expect, their level of satisfaction with existing services, and to implement improvements where feasible and practical. AHCPR partners are typically health care payers, plans, practitioners and providers, researchers, professional associations, AHCPR data suppliers, and State and local governments, as well as persons or entities that provide service to the public for AHCPR, e.g., dissemination of AHCPR publications by a "middle man" such as a professional society.

Partner surveys to be conducted by AHCPR may include, for example, surveys of research grantees to measure satisfaction with technical assistance received from AHCPR. Results of these surveys will be used to assess and redirect resources and efforts needed to improve services. For example, the AHCPR's Office of Research Review, Education, and Policy (ORREP) provides grant funds for training of health services researchers. AHCPR would like to survey scholars whose training it has supported regarding their training experience.

In addition, the Office for Health Care Information (OHCI) is proposing to survey one component of their customers: researchers. This proposed survey will be undertaken by a contractor to determine how AHCPR could better serve the research community.

Questions asked may include a need for extended hours to answer inquiries on grant submission-related matters or the development of a comprehensive manual on grant submission.

Method of Collection

The data will be collected using a combination of preferred methodologies appropriate to each survey. These methodologies are: mail surveys; evaluation forms; automated and electronic technology (e.g., AHCPR Clearinghouse Publications, Instantfax); telephone surveys; and focus groups.

The estimated annual burden is as follows:

Type of survey	No. of respondents	Average burden/response	Total hours of burden
Mail/Telephone Surveys or Electronic Technologies	3,000	20 minutes	1,000
Focus Groups	200	1.5 Hours	300
Totals	3,200	.41 Hours	1,300

Request for Comments

Comments are invited on: (a) the necessity of the proposed collections for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collections plans can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: November 19, 1998.

John M. Eisenberg,

Administrator.

[FR Doc. 98–31778 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Suspension of Site Registration Fee for Facilities Transferring or Receiving Select Agents

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention is announcing the suspension of the site registration fee for facilities registered under (42 CFR 72.6). (Additional Requirements for Facilities Transferring or Receiving Select Agents; Final Rule).

DATES: Effective date is November 27, 1998.

FOR FURTHER INFORMATION CONTACT: Laboratory Registration/Select Agent Transfer (LR/SAT) Program, Office of Health and Safety, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mail Stop F–05, Atlanta, Georgia 30333, telephone (404) 639–4418, LR/SAT Program website at http://www.cdc.gov/od/ohs/lrsat.htm.

SUPPLEMENTARY INFORMATION: "The Antiterrorism and Effective Death Penalty Act of 1996," Pub. L. 104–132, (42 U.S.C. 262) note, enacted on April 24, 1996, established new provisions to regulate transfer of certain biological agents and toxins (i.e., select agents), and required HHS to issue rules to implement these provisions. The final rule was published in the **Federal Register** on October 24, 1996, and became effective April 15, 1997. To comply with the final rule, commercial suppliers of select agents, as well as government agencies, universities, research institutions, and private companies that transfer these agents, must register with the Centers for Disease Control and Prevention (CDC). In return for the registration, facilities are responsible for paying a site registration fee. (42 CFR 72.6(a)(2)(iv)).

CDC calculated the direct costs to manage the program, and in a **Federal Register** Notice dated April 14, 1997, announced those fees. (**Federal Register** notice, April 14, 1997, Vol. 62, No. 71:18134–5). Many facilities wishing to register expressed concern that the fees were high and constituted a substantial burden, particularly for small facilities with limited and inflexible budgets. The CDC has reviewed the situation and has determined that for Fiscal Year 1999, funds are available within the agency budget to defray the site registration fee.

Suspension of Site Registration Fee for Facilities Transferring or Receiving Select Agents: Effective November 27, 1998, the site registration fee schedule for all facilities will be suspended. Facilities registered between April 15, 1997, and the effective date of this notice will be contacted by CDC with information regarding the refunding of the site registration fee. The decision as to whether to impose registration fees will be re-evaluated annually to determine whether appropriated funds may be used to cover registration costs.

The site registration will still cover a three year time period. All applications for registration of facilities under this regulation should be mailed to: Centers for Disease Control and Prevention (CDC), Office of Health and Safety, Laboratory Registration/Select Agent Transfer Program, 1600 Clifton Road, NE., Mail Stop F–05, Atlanta, Georgia 30333.

CDC will mail applications to all facilities that express an interest. Questions about this notice and requests for application packages should be faxed to CDC, Office of Health and Safety, telephone (404) 639–0880 or sent by e-mail (lrsat@cdc.gov).

Dated: November 20, 1998.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31603 Filed 11–25–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

State Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Childhood Grantees

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: State Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children Grantees.

Times and Dates: 8 a.m.–5 p.m., February 1, 1999. 8:30 a.m.–5 p.m., February 2, 1999. 8:30 a.m.–5 p.m., February 3, 1999. 9 a.m.–12 noon, February 4, 1999.

Place: Holiday Inn SunSpree Resort and Conference Center, 715 South Gulfview Boulevard, Clearwater Beach, Florida, 33767, telephone 813/447–9566.

Status: Open to the public, limited only by space available. The meeting room accommodates approximately 140 people.

Purpose: The purpose of this meeting is to provide a forum for childhood lead poisoning prevention coordinators and data administrators to review program progress and discuss prevention issues and concerns.

Matters to be Discussed: Agenda items include screening issues; surveillance systems issues; alternative methods of surveillance; data release; coalition building; healthy homes; STELLAR; GIS; and program evaluation. There will be information presented regarding computer programming issues and how it is related to data analysis, and the use of data to make decisions.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Claudette Grant-Joseph, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–42, Atlanta, Georgia 30341–3724, telephone 770/488–7330.

Persons wishing to make written or oral comments at the meeting should notify the contact person in writing or by telephone no later than close of business January 20, 1999. Requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

The Director, Management Analysis and Services office has been delegated the

authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 20, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31604 Filed 11–25–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

State Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children new and competing Grantees Pre-application Workshop

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: State Childhood Lead Poisoning Prevention and Surveillance of Blood Lead Levels in Children new Grantees Pre-application workshop.

Time and Date: 2 p.m.–5 p.m., January 31, 1999.

Place: Holiday Inn SunSpree Resort and Conference Center, 715 South Gulfview Boulevard, Clearwater Beach, Florida, 33767, telephone 813–447–9566.

Status: Open to the public, limited only by space available. The meeting room accommodates approximately 100 people.

Purpose: The purpose of this meeting is to provide a forum for childhood lead poisoning prevention coordinators to address issues and concerns relating to the FY99 program announcement and application process.

Matters to be Discussed: Agenda items include FY99 program announcement and processes related to the completion of applications for FY99 funds.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Claudette Grant-Joseph, Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–42, Atlanta, Georgia 30341–3724, telephone 770/488–7330.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 20, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31605 Filed 11–25–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Workshop on the Potential for Transfusion-Transmission of Tickborne Agents

The Centers for Disease Control and Prevention (CDC) announces an open meeting concerning the potential for transfusion-transmission of tickborne agents.

Name: Workshop on the Potential for Transfusion-Transmission of Tickborne Agents.

Times and Dates: 10 a.m.–5 p.m., January 14, 1999. 8:30 a.m.–12 p.m., January 15, 1999.

Place: Holiday Inn Hotel and Conference Center, 130 Clairmont Avenue, Decatur, Georgia 30030.

Status: Open to the public, limited only by the space available.

Purpose: The objectives of this meeting are to review current information on tickborne pathogens and their potential for transmission by blood transfusion; identify information gaps and research priorities; and identify approaches to reduce the risk of transfusion-related infections from tickborne agents.

Matters To Be Discussed: Agenda items will include:

1. Epidemiology of Major Tickborne Diseases
2. Mechanics of Transmission to the Human Host
3. Pathogenesis, Clinical Disease, and Persistence of the Organism in Human Host
4. Persistence, Detection, Inactivation of Organisms in Blood and Blood Products
5. Studies in Donors and Recipients
7. Department of Defense Perspective/Special Studies
8. Blood Banking Perspective of Transfusion Transmission of Tickborne Agents
9. Panel Discussion

Other agenda items include announcements/introductions; question and answer sessions; and consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Tanya Mercer, Viral & Rickettsial Zoonoses Branch, NCID, CDC, 1600 Clifton Road, m/s G–13, NE, Atlanta, Georgia 30333, telephone 404/639–1075, fax 404/639–4436.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 20, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–31606 Filed 11–25–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Early Head Start Evaluation Father Study.

OMB No.: 0970–0169.

Description: The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response the Administration on Children, Youth and Families (ACYF) designed the Early Head Start (EHS) program. In September 1995, ACYF awarded grants to 68 local programs to serve families with infants and toddlers. ACYF has awarded grants to additional programs, totaling more than 290.

EHS programs are designed to produce outcomes in four domains: (1) Child development, (2) family development, (3) staff development, and (4) community development. The Reauthorization required that his new initiative be evaluated. To study the effect of the initiative, ACYF awarded a contract through a competitive

procurement to Mathematics Policy Research, Inc. (MPR) with a subcontract to Columbia University's Center for Young Children and Families. The evaluation will be carried out from October 1, 1995 through March 30, 2002. Data collection activities that are the subject of this **Federal Register** notice are intended for the fourth phase of the EHS evaluation. The sample for the assessments will be approximately 1,144 fathers from the 3,000 EHS sample families, whose mothers and infants/toddlers are participating in the study (see OMB #0970–0143) in 13 of the EHS study sites. Each family will be randomly assigned to a treatment group or a control group. The 36-month father assessments will be conducted through personal interviewing, structured observations and videotaping. All data collection instruments have been designed to minimize the burden on respondents by minimizing interviewing and assessment time. Participation in the study is voluntary and confidential.

The information will be used by government managers, Congress and others to better understand the roles of fathers and father-figures with their children and in the EHS program.

Respondents: Fathers or father-figures of children whose families are in the EHS national evaluation sample (both program and control group families).

ANNUAL BURDEN ESTIMATES

Instrument	Estimated number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
36-month father interview	89	1	1.0	89
36-month interview and videotaping protocol	74	1	1.3	96
36-month abbreviated interview and videotaping protocol	30	1	1.05	32
Estimated Total Annual Burden: 217.				

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Ms. Wendy Taylor.

Dated: November 20, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–31566 Filed 11–25–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0480]

Determination of Regulatory Review Period for Purposes of Patent Extension; Tasmar

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Tasmar and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Tasmar® (tolcapone). Tasmar® is indicated for use as an adjunct to levodopa and carbidopa for the treatment of the signs and symptoms of idiopathic Parkinson's disease. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Tasmar® (U.S. Patent No. 5,236,952) from Hoffman–La Roche, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 15, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Tasmar® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Tasmar® is 2,618 days. Of this time, 2,014 days occurred during the testing phase of the regulatory review period, while 604 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food Drug, and Cosmetic Act (the act)(21 U.S.C. 355) became effective*: December 1, 1990. The applicant claims November 28, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 1, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: June 5, 1996. The applicant claims June 3, 1996, as the date the new drug application (NDA) for Tasmar® (NDA 20–697) was initially submitted. However, FDA records indicate that NDA 20–697 was submitted on June 5, 1996.

3. *The date the application was approved*: January 29, 1998. FDA has verified the applicant's claim that NDA 20–697 was approved on January 29, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 530 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 26, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 26, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the ¶docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 4, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–31576 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0965]

United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using *ISBT 128*," December 1997. The International Council for Commonality in Blood Banking Automation (ICCBBA) has submitted the draft document to FDA with a recommendation that it serve as the basis for current FDA guidance on the labeling of blood and blood components. The ICCBBA recommends that the bar coding system described in the draft document, "ISBT 128," replace the coding system "ABC Codabar" currently in use for blood and blood components. FDA is considering updating its guidance on blood labeling and is issuing this notice to invite public comment on the ICCBBA's draft document and the "ISBT 128" coding system, as well as issues related to the possible transition from the labeling of blood and blood components using the "ABC Codabar" to a new coding system.

DATES: Written comments may be submitted at any time, however, to ensure comments are adequately considered in the preparation of guidance, comments should be submitted by February 25, 1999.

ADDRESSES: Submit written requests for single copies of the draft document "United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using *ISBT 128*" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft document.

Submit written comments on the draft document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gloria J. Hicks, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA published in the **Federal Register** of August 30, 1985 (50 FR 35472), a notice of availability of a document entitled "Guideline for the Uniform Labeling of Blood and Blood Components," which described the uniform container label for blood and blood components. The standard labels recommended in the guideline for blood and blood components incorporated bar code symbology known as ABC Codabar.

The International Society for Blood Transfusion (ISBT) was organized to bring together professionals involved in blood transfusion medicine. One of the Society's goals is to promote and to maintain a high level of ethical, medical, and scientific standards in blood transfusion medicine and science throughout the world. In August 1989, an ISBT Working Party on Blood Banking Automation recognized that Codabar was becoming outdated and initiated the design of a totally new system named ISBT 128 using the bar code symbology known as Code 128. The *ISBT 128 Technical Specification* document was accepted by the ISBT Council in July 1994.

In November 1994, the ISBT turned over to the ICCBBA the responsibility for worldwide management and distribution of the *ISBT 128 Technical Specification* and associated databases. ICCBBA is a nonprofit group organized to oversee, maintain, and distribute the ISBT 128 system. ICCBBA submitted a draft document to FDA that proposes that ISBT 128 replace the current ABC Codabar system used on blood and blood component labels in the United States. On March 23, 1995, FDA asked the Blood Products Advisory Committee

(BPAC) whether FDA should support conversion from the ABC Codabar system to the ISBT 128 system. BPAC voted in favor of FDA supporting the transition to the new coding system. The change to ISBT 128 is also supported by the American Association of Blood Banks (AABB), American Red Cross (ARC), America's Blood Centers (ABC), and the Department of Defense (DoD).

In December 1996, ICCBBA held an ISBT 128 Consensus Conference in Washington, DC, to provide an opportunity for dialogue among the affected industry groups and FDA. Although consensus was obtained for use of ISBT 128 as proposed in the draft document, concerns were expressed regarding implementation timeframes and costs of implementation to hospital transfusion services. The ICCBBA submitted a draft of the industry consensus document to FDA with the recommendation that it serve as the basis for current FDA guidance on blood and blood component labeling. The agency is making this draft document describing the use of ISBT 128 in the labeling of blood and blood components available for public comment to assist the agency in determining whether to update its guidance on blood labeling.

Under FDA's "Good Guidance Practices" (GGP's), published in the **Federal Register** on February 27, 1997 (62 FR 8961), this draft document is being made available for public comment. The GGP's provide that members of the public may comment on and suggest areas for guidance development or revision and submit draft guidance for possible adoption by the agency. In its discretion, FDA may choose to publish for comment such a draft document as the agency considers whether or not to develop or revise guidance. In this instance, FDA believes it would be helpful to obtain public comment on the ISBT 128 coding system as the agency considers updating its guidance on blood labeling.

II. Request for Comments

FDA is making available for comment this draft document entitled "United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using *ISBT 128*." In addition to comments about the adoption of ISBT 128 as a blood coding system and the proposed label format, FDA specifically requests comments on the following: (1) The proposed "rule-based" system for naming blood components since adoption of ISBT 128 would entail changing some of the currently accepted names of blood components, e.g., Platelets, Pheresis would become Apheresis Platelets; and (2) timeframes and procedures for the transition and full implementation of ISBT 128. FDA notes that its intent would be to initiate changes to language in order to permit the use of the new system if FDA determines the ISBT 128 is an acceptable coding system. Thus, in a future document FDA may consider changes to accommodate the new system of blood component bar coding, identification, and naming.

This draft document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft document. Written comments may be submitted at any time, however, comments should be submitted by February 25, 1999, to ensure adequate consideration in the preparation of guidance. Received comments will be considered in determining whether to issue guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft document and received comments are available for public examination in the office above between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: November 18, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–31571 Filed 11–25–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–50 and HCFA–1515/1572]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Medical Records Review Under PPS and Supporting Regulations in 42 CFR 412.40–412.52; Form No.: HCFA-R–0050 (OMB# 0938–0359); Use: Peer Review Organizations (PRO) are authorized to conduct medical review activities under the Prospective Payment System (PPS). In order to conduct the medical review activities we depend upon hospitals to make available medical records. PROs ensure that admissions are medically necessary, provided in the appropriate setting, and that they meet acceptable standards of quality.; Frequency: When records are reviewed; Affected Public: Business or other for profit; Number of Respondents: 7,053; Total Annual Responses: 895,419; Total Annual Hours: 26,865.

2. Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Home Health Agency Survey and Deficiencies Report, Home Health Functional Assessment Instrument and Supporting Regulations in 42 CFR 484.10—484.52; Form No.: HCFA–1515/1572 (OMB# 0938–0355); Use: In order to participate in the Medicare program as a Home Health Agency (HHA) provider, the HHA must meet Federal Standards. These forms are used to record information about patients' health and provider compliance with requirements.; Frequency: Annually; Affected Public: Business or other for-profit, Not-for-profit institutions; Number of Respondents: 9,942; Total Annual Responses: 19,884; Total Annual Hours: 19,884.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your

request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: November 17, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–31578 Filed 11–25–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C. and section 10(d) of the Federal Advisory Committee Act, as amended, for discussions pertaining to NCI personnel and programmatic issues. These discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and would be likely to significantly frustrate the subsequent implementation of personnel and programmatic recommendations made during these discussions.

Name of Committe: National Cancer Advisory Board.

Date: December 8–9, 1998.

Open: December 8, 1998, 8:30 am to 4:00 pm and December 9, 1998, 8:30 am to 1:00 pm.

Agenda: Report of the Director, National Cancer Institute; Overview of Board of Scientific Advisors activities; Intramural and Extramural Program Overviews and Updates; Presentations by various NCI working groups on current and proposed program activities, projects and initiatives; other NCAB business.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: December 8, 1998, 4:00 pm to 5:30 pm.

Agenda: To review and evaluate discussion of Intramural site visits, proprietary, programmatic and personnel issues. Review and discussion of Extramural proprietary, programmatic and personnel issues.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, Executive Plaza North, Suite 600, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–5147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31635 Filed 11–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Nation Human Genome Research Institute; National Bioethics Advisory Commission; Notice of Workshop

Notice is hereby given of the meeting on Involving Diverse Communities in Genetics Research, sponsored by the National Human Genome Research Institute (NHGRI), and the National Bioethics Advisory Commission, November 23, 1998, 8:30 a.m. to 5:30 p.m., at the Natcher Building, Room D, on the NIH campus. Registration is required.

To register and for further information, contact Ms. Hope Kott, 301 770–3153.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Kott, 301 770–3153 by November 19.

(Catalogue of Federal Domestic Assistance Program No. 93.172, Human Genome Research.)

Date: November 12, 1998.

Kathy Hudson,

Assistant Director for Policy and Public Affairs, NHGRI.

[FR Doc. 98–31639 Filed 11–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Degenerative and Dementing Diseases of Aging.

Date: December 1, 1998.

Time: 12:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Paul Lenz, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Patient-Oriented Research in Aging.

Date: December 4, 1998.

Time: 3:00 pm to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, Room 2C–212, National Institute on Aging, National Institutes of Health, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, Scientific Review Administrator, The

Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Alzheimer's Disease Data Coordinating Center (ADDCC).

Date: December 9–10, 1998.

Time: 6:00 pm to 9:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Washington/Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815, MD 20815.

Contact Person: Mary Ann Guadagno, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, Geriatrics and Demography/Economics of Aging Training Grant Application Review.

Date: December 14, 1998.

Time: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave Room 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Paul Lenz, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31633 Filed 11–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Special Emphasis Panel.

Date: November 24, 1998.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Projects Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vwills@willco.niaaa.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: November 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31634 Filed 11–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of mental Health Special Emphasis Panel.

Date: November 23, 1998.

Time: 11:00 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Victoria S. Levin, Scientific Review Administrator, Division of Extramural Activities, National Institute of mental health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental health Special Emphasis Panel.

Date: December 2, 1998.

Time: 12:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Henry J. Haigler, Scientific Review Administrator, Division of Extramural Activities, National institute of Mental health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 7, 1998.

Time: 2:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 15, 1998.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Mary Sue Krause, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 16, 1998.

Time: 1:00 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Lawrence E. Chaitkin, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: November 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31636 Filed 11–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Chromosome 6p and Developmental Defects.

Date: Novebmber 23–24, 1998.

Time: 7:00 pm to 3:00 pm.

Agenda: To review and evaluate grant applications.

Place: The Inn at Longwood Medical, 342 Longwood Avenue, Boston, MA 02115.

Contact Person: Edgar E. Hanna, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (302) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 17, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31638 Filed 11–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Executive Committee of the Board of Governors of the Warren Grant Magnuson Clinical Center, November 23, 1998 from 9:00 a.m. to 12:00 p.m., National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892, which was published in the **Federal Register** on November 5, 1998, 63 FR 59801.

In accordance with the provisions set forth in sec. 552b(c)(6) of Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, a portion of this meeting will be closed to the public from approximately 11:00 a.m. to adjournment for discussion of personnel qualifications and performance, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31637 Filed 11–25–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4363–FA–05]

Announcement of Funding Awards for Intermediaries to Administer Preservation Technical Assistance Grants for FY 1998–1999

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition of funding under the Notice of Funding Availability for Intermediaries to Administer Mark-to-Market (M2M) Intermediary Technical Assistance Grants (ITAGs). This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Arthur Goldstein, Mark-to-Market program, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2300, ext. 2657 (this is not a toll-free number). The TTY number for the hearing impaired is 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Mark-to-Market, Intermediary Technical Assistance Grant program is authorized by section 514 of the FY 1998 HUD Appropriations Act (Pub. L. 105–65, approved October 27, 1997).

The purpose of the competition was to promote the ability of residents of eligible M2M properties to participate meaningfully in the M2M process established by section 514 of the FY 1998 HUD Appropriations Act.

The 1998 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 30, 1998 (63 FR 23933). Applications were scored and selected for finding on the basis of selection criteria contained in that Notice.

A total of $9.0 million has been awarded to three (3) Intermediary Technical Assistance Grant applicants. The program covers the entire country which has been divided into 5 geographic regions. The three applicants that were selected are: Low Income Housing Fund that will cover the Southwest (Arizona, Arkansas, California, Louisiana, Nevada, New Mexico, Oklahoma, Texas) and Southeast (Alabama, Caribbean, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, Virginia) regions, Amador Tuolumne will cover the Northwest (Alaska, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming) and Midwest (Indiana, Michigan, Ohio, Wisconsin) regions, and Georgetown-National Center for Tenant Ownership will cover the Northeast (Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Washington, DC,

Vermont, West Virginia) region. For each region that the applicant has been selected for, they will be given $1.8 million to be dispersed as grants over a 2-year period.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). The Department is publishing the names, addresses, geographic responsibility and amounts of those awards as follows:

Recipients of the Intermediaries To Administer Preservation Technical Assistance Grants for FY 1998–1999

Amador Toulumne Community Action Agency: $3.6 million
935 South State Highway 49, Jackson, CA 95642, Contact: Ms. Diane Bennett, Phone: (209) 533–1397, Fax: (209) 533–1034

Geographic Responsibility

Northwest: Alaska, Colorado, Hawaii, Idaho, Illinois, Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming.

Midwest: Indiana, Michigan, Ohio, Wisconsin.

Low Income Housing Fund: $3.6 million
605 Market Street, Suite 200, San Francisco, CA 94105, Contact: Mr. John Klein, Phone: (415) 777–9404, Fax: (415) 777–9195

Geographic Responsibility

Southwest: Arizona, Arkansas, California, Louisiana, Nevada, New Mexico, Oklahoma, Texas.

Southeast: Alabama, Caribbean, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia.

National Center for Tenant: $1.8 million
Ownership—Georgetown University Law School, 777 N. Capital St., NE, Suite 405, Washington, DC 20002–4239, Contact: Mr. Peter Clare, Phone: (202) 628–0750, Fax: (202) 628–0672

Geographic Responsibility

Northeast: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Washington, DC, Vermont, West Virginia.

Dated: November 23, 1998.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 98–31663 Filed 11–25–98; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4363–FA–06]

Announcement of Funding Awards for Outreach and Training Grants for FY 1998–1999 to Conduct Outreach and Training Development for HUD Tenants in Mark-to-Market Properties

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition of funding under the Notice of Funding Availability for Outreach and Training Mark-to-Market (M2M) Grants (OTAGs). This announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Arthur Goldstein, Mark-to-Market program, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, D.C. 20410, telephone (202) 708–2300, ext. 2657 (this is not a toll-free number). The TTY number for the hearing impaired is 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Mark-to-Market, Intermediary Technical Assistance Grant program is authorized by section 514 of the FY 1998 HUD Appropriations Act (Pub. L. 105–65, approved October 27, 1997).

The purpose of the competition was to promote the ability of residents of eligible M2M properties to participate meaningfully in the M2M process established by section 514 of the FY 1998 HUD Appropriations Act.

The 1998 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on April 30, 1998 (63 FR 23943). Applications were scored and selected for finding on the basis of selection criteria contained in that Notice.

A total of $6.0 million has been awarded to 32 OTAG applicants. The program will cover 28 states.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545). The Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: November 23, 1998.

William C. Apgar,

Assistant Secretary for Housiing-Federal Housing Commissioner.

APPENDIX A.—RECIPIENTS OF AWARDS FOR THE OUTREACH AND TRAINING GRANTS FOR FY 1998–1999 TO CONDUCT OUTREACH AND TRAINING DEVELOPMENT FOR HUD TENANTS IN MARK-TO-MARKET PROPERTIES

Legal name	Address	Contact person	$ allocation
Iowa Coalition for Housing and Homeless	205 15th Street, Polk County, Des Moines, IA 50309.	Jim Cain, (515) 288–5022.	$220,000
California Coalition for Rural Housing Project (Northern CA).	926 J. Street, Suite 422, Sacramento County, Sacramento, CA 95814.	Robert J. Wiener, (916) 443–4448.	280,000
The Tenants Action Group in Philadelphia	21 S. 12th Street, 12th Floor, Philadelphia, PA 19107.	Liz Hersh, (215) 575–0707.	400,000
Community Alliance of Tenants	2710 NE 14th Avenue, Multnomah County, Portland, OR 97212.	Anita Rodgers, (503) 460–9702.	100,000
Iron Bound Comm. Corporation	51 McWhorten Street, Newark, NJ 07105	Nancy Zak, (973) 589–3353.	210,000
New York State Tenant & Neigh. Info. Service (NY State minus Bronx, Brooklyn).	505 8th Avenue, 8th Floor, New York, NY 10018	Joe Heaphy, (212) 605–8922.	350,000
Virginia Poverty Law Center Inc	201 West Broad Street, Suite 302, Richmond, VA 23220.	Evan G. Lewis, (804) 772–9430.	75,000
Texas Tenant's Union, Inc	5405 East Grand Avenue, Dallas, TX 75223	Sandy Rollins, (214) 823–3846.	250,000

APPENDIX A.—RECIPIENTS OF AWARDS FOR THE OUTREACH AND TRAINING GRANTS FOR FY 1998–1999 TO CONDUCT OUTREACH AND TRAINING DEVELOPMENT FOR HUD TENANTS IN MARK-TO-MARKET PROPERTIES—Continued

Legal name	Address	Contact person	$ allocation
Coalition of Homeless & Hsing	85 East Gay Street, Suite 603, Columbus, OH 43215.	Bill Faith, (614) 280–1984.	400,000
Indiana Coalition on Housing and Homeless	902 North Capitol Ave., Marion County, Indianapolis, IN 6204–1005.	Jeff Terry, (317) 636–8819.	350,000
Housing Comes First	300 Delmar Blvd., St. Louis, MO 63112–3199	Laura Barrett, (314) 367–2003.	350,000
Tenants United for Housing Inc	4550 N. Claredon, Suite D. North, Chicago, IL 60640.	Denice Irwin, (773) 271–2235.	350,000
The Tenants Union	3902 South Ferdinand, Seattle, WA 98118	Catherine Castillo Cota, (206) 722–6848.	240,000
LA Center for Affordable Tenant Hsg (L.A. & SF CA areas).	1296 North Fairfax Ave, Los Angeles, CA 90046	Larry Gross	290,000
Housing and Credit Counseling, Inc	1195 SW Buchanan, Suite 203, Topeka, KS 66604–1183.	Karen Miller, (785) 234–0217.	250,000
The Legal Aid Society (Bronx, Brooklyn, NY)	90 Church St., 15th Floor, New York, NY 10007	Pascale Nijhof, (212) 577–3303.	250,000
Legal Aid Bureau, Inc	500 E. Lexington St., Baltimore, MD 21202	Rhonda Lipkin, (410) 539–5340.	160,000
Crossroads Urban Center	347 South 400 East, Salt Lake City, UT 84111	Glenn L. Bailey, (801) 333–8931.	100,000
National Housing Trust	1101 30th Street NW, Suite 400, Washington, DC 20007.	Michael Bodaken, (202) 333–8931.	
1. Alabama			1. 35,000
2. Tennessee			2. 35,000
3. Minnesota			3. 35,000
4. Michigan			4. 35,000
5. Mississippi			5. 35,000
6. W. VA			6. 35,000
7. Wisconsin			7. 45,000
Homeless and Hsg Coalition of KY	306 W. Main St, Suite 502, Frankfort, KY 40601	Alan Dahl, (302) 223–1834.	210,000
NC Low Income Housing Coalition	3901 Barrett Drive, Suite 200, Raleigh, NC 27609	Linda S. Shaw, (919) 881–0707.	250,000
Florida Housing Coalition	1367 East Lafayette St, Suite C, Tallahassee, FL 32301.	Tracey D. Suber, (851) 878–4219.	110,000
MA Alliance HUD Tenants (Eastern MA)	353 Columbus Avenue, Boston, MA 02116	Michael Kane, (617) 267–2949.	250,000
Anti Displacement Proj (Western MA)	57 School Street, Hampden County, Springfield, MA 01105.	Carrolyn Murrey, (413) 739–7233.	250,000
Legal Aid Society of Hawaii	1108 Nuugnu Ave, Honalulu, HI 96817	Victor Geminiani, (808) 536–536–4302.	50,000

[FR Doc. 98–31664 Filed 11–25–98; 8:45 am]
BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–37]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2656 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless

assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *AIR FORCE:* Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; *COE:* Mr. Robert Swieconek, Army Corps of Engineers, Management & Disposal Division, Pulaski Building, Room 4224, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000; (202) 761–1749; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; *NAVY:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Code 241A, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–7342; *VA:* Mr. George L. Szwarcman, Director, Land Management Service, 184A, Department of Veterans Affairs, 811 Vermont Avenue, NW, Room 414, Lafayette Bldg., Washington, DC 20420; (202) 565–5941; (These are not toll-free numbers).

Dated: November 19, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 11/27/98

Suitable/Available Properties

Buildings (by State)

Delaware

Unaccompanied Pers. Housing
800 Inlet Road
Rehoboth Beach Co: Sussex DE 19971–2698
Landholding Agency: GSA
Property Number: 549840009
Status: Excess
Comment: 3600 sq. ft., 2-story, termite damage, most recent use—housing, off-site use only
GSA Number: 4–U–DE–462

Missouri

Proj. Residence #1
Stockton Lake
Stockton Co: Cedar MO 65785–
Landholding Agency: COE
Property Number: 319840001
Status: Excess
Comment: 1260 sq. ft. w/attached garage, most recent use—residence, off-site use only

Proj. Residence #2
Stockton Lake
Stockton Co: Cedar MO 65785–
Landholding Agency: COE
Property Number 319840002
Status: Excess
Comment: 1260 sq. ft. w/attached garage, most recent use—residence, off-site use only

North Carolina

Coinjock Station
Canal Road
Coinjock Co: Currituck NC 27293–
Landholding Agency: GSA
Property Number 549840010
Status: Excess
Comment: 4 bldgs., most recent use—storage/office
GSA Number: 4–U–NC–734

Oklahoma

NIPER
Natl. Inst. for Petroleum & Energy Research
220 Virginia Ave.
Bartlesville OK 74003–
Landholding Agency: GSA
Property Number: 549840011
Status: Surplus
Comment: 25 structures on 15.66 acres of land, most recent use—offices to labs, environmental issues
GSA Number: 7–B–OK–563

Pennsylvania

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 319830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 3
Oliktok Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189840010
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 8
Oliktok Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189840011
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 19
Lonely Short Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189840012
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 20
Lonely Short Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189840013
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 338
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189840014
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 560
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189840015
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 612
King Salmon Airport
Naknek Co: Bristol Bay AK

Landholding Agency: Air Force
Property Number: 189840016
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 618
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189840017
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 643
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189840018
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 649
King Salmon Airport
Naknek Co: Bristol Bay AK
Landholding Agency: Air Force
Property Number: 189840019
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 114
Indian Mountain Long Range Radar Site
Elmendorf AFB AK 99506–2270
Landholding Agency: Air Force
Property Number: 189840020
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 34–636
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189840021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 34–638
Elmendorf AFB
Anchorage AK 99506–3240
Landholding Agency: Air Force
Property Number: 189840022
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Extensive deterioration

Bldg. 140
Cape Lisburne Long Range Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 189840023
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 145
Cape Lisburne Long Range Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 189840024
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 310
Cape Lisburne Long Range Radar Site
Elmendorf AFB AK 99506–3240
Landholding Agency: Air Force
Property Number: 189840025
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 27
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840026
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 30
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840027
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 42
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840028
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 212
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840029
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 213
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840030
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 223
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840031
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 452
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840032
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 502
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840033
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 503
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840034
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 522
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840035
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 587
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840036
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 588
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840037
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 598
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840038
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 605
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840039
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 613
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840040
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 614
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840041
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 615
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840042
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 616
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840043

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Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 617
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840044
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 624
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840045
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 700
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840046
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 718
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840047
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 727
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840048
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 731
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840049
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 751
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840050
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 753
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840051
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1001
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840052
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1005
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840053
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1010
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840054
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1025
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840055
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 1030
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840056
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 3016
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840057
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 3062
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840058
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 3063
Eareckson Air Station
Shemya Island AK
Landholding Agency: Air Force
Property Number: 189840059
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Guam

Andersen South
Andersen Admin. Annex
360 housing units & a commercial structure
Mangilao GU 96923–
Landholding Agency: Air Force
Property Number: 189840009
Status: Underutilized
Reason: Secured Area

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 779840023
Status: Unutilized
Reason: Secured Area

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 779840024
Status: Unutilized
Reason: Secured Area

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 779840025
Status: Unutilized
Reason: Secured Area

Wyoming

Bldg. 80
Medical Center
Sheridan WY 82801–
Landholding Agency: VA
Property Number: 979840001
Status: Unutilized
Reason: Floodway, Extensive deterioration

Land (by State)

Kentucky

8.04 acres
Taylorsville Lake Project
Taylorsville Co: Spenser KY 40071–9801
Landholding Agency: COE
Property Number: 319840003
Status: Unutilized
Reason: Other
Comment: Inaccessible

[FR Doc. 98–31481 Filed 11–25–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–942–09–1420–00]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10:00 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David J. Clark, Chief, Branch of Geographic Services, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Boulevard Way, P.O. Box 12000, Reno, Nevada 89520, 702–861–6559.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 28, 1998:

The plat, representing the dependent resurvey of a portion of the

subdivisional lines, and the subdivision of section 35, Township 18 North, Range 29 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 763, was accepted November 23, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

2. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 28, 1998:

The plat, representing the dependent resurvey of a portion of the subdivisional lines of Township 16 North, Range 28 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 763, was accepted November 23, 1998.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

3. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 28, 1998:

The plat, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, and the meanders of Carson Lake, and the determination of a partition line in the relicted lands of Carson Lake, the completion survey of the south boundary, the subdivision of fractional sections 25 and 36, the metes-and-bounds survey of Parcel A, and the survey of Tracts 37, 38, 39 and 40, Township 17 North, Range 28 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 763, was accepted November 23, 1998.

This survey was executed to meet certain needs of the Bureau of Reclamation.

4. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 28, 1998:

The plat, in three (3) sheets, representing the dependent resurvey of portions of the east and west boundaries, a portion of the subdivisional lines, and the meanders of Carson Lake, and the survey of portions of the east and west boundaries, the metes-and-bounds survey of a portion of U.S. Highway No. 95, and the survey of Tracts 37 and 38, Township 16 North, Range 29 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 763, was accepted November 23, 1998.

This survey was executed to meet certain needs of the Bureau of Reclamation.

5. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 28, 1998:

The plat, in three (3) sheets, representing the dependent resurvey of portions of the west and north boundaries, a portion of the subdivisional lines, and the meanders of Carson Lake, and the determination of the partition lines in the relicted lands of Carson Lake, the survey of the south boundary, the completion survey of the east and west boundaries, the metes-and-bounds surveys of a private claim and a portion of U.S. Highway No. 120, and the survey of Tracts 37, 38, 39 and 40, Township 17 North, Range 29 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 763, was accepted November 23, 1998.

This survey was executed to meet certain needs of the Bureau of Reclamation.

6. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 28, 1998:

The plat, representing the survey of the subdivisional lines of Township 16 North, Range 30 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 763, was accepted November 23, 1998.

This survey was executed to meet certain needs of the Bureau of Reclamation.

7. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on December 28, 1998:

The plat, in three (3) sheets, representing the dependent resurvey of portions of the south, west and north boundaries, a portion of the subdivisional lines, and the meanders of Carson Lake, and the completion survey of the south boundary, and the survey of Tract 37, Township 17 North, Range 30 East, of the Mount Diablo Meridian, in the State of Nevada, under Group No. 763, was accepted November 23, 1998.

This survey was executed to meet certain needs of the Bureau of Reclamation.

8. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, those lands listed under items 2 through 7 are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or prior to December 28, 1998, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

9. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: November 23, 1998.

David J. Clark,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 98–31777 Filed 11–25–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection solicitation.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on an information collection using an optional electronic spreadsheet to simplify creation of the Form MMS–2014 when reporting purchases of the Government's royalty oil.

DATES: Written comments should be received on or before January 26, 1999.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, PO. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is RMP.comments@mms.gov.

FOR FURTHER INFORMATION CONTACT: For questions concerning this information collection—Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov. For questions concerning the electronic spreadsheet—Larry Barker, Division of Verification, phone (303) 231–3157, FAX (303) 231–3189, e-mail Lawrence.Barker@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, section 3506 (c)(2)(A), we are notifying you, members of the public and affected agencies, of this collection of information, including a newly-developed electronic spreadsheet. On September 3, 1998, OMB emergency approval was granted for MMS to provide, for optional use, an

electronic spreadsheet to simplify required submission by industry of payment and other data associated with royalty production purchased from MMS (OMB Control Number 1010–0118). One version of this spreadsheet may be used to report purchase of Federal-only RIK production. A second version may be used to report Federal purchase data and also to submit data in a form acceptable to the State of Wyoming (State) on the State RIK production jointly sold with Federal production. The publication of this Notice has been timed to coincide with current RIK purchasers' use of the new spreadsheet so that they can provide feedback to MMS on their experience using it to report Federal production. Examples of both versions of the spreadsheet are attached for use of others who may wish to comment (Attachment 1). MMS would like to know, with regard to reporting Federal RIK purchases only:

(a) Is using the spreadsheet easier and more efficient than preparing a manual Form MMS–2014?

(b) Is this information collection necessary for us to properly do our job?

(c) Have we accurately estimated the industry burden for responding to this collection?

(d) If not, please explain.

(e) Can we enhance the quality, utility, and clarity of the information we collect?

The Secretary of the Interior is responsible for the collection of royalties from lessees producing minerals from leased Federal lands. The Secretary is required by various laws to manage the production of mineral resources on Federal onshore and offshore leases and agreements, to collect the royalties due, and to distribute resulting revenues in accordance with those laws. MMS performs the royalty management functions for the Secretary. Most royalties are now paid in-value—when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS uses an automated fiscal accounting system, the Auditing and Financial System (AFS), to account for revenues collected from Federal leases/agreements. The Report of Sales and Royalty Remittance, Form MMS–2014, is the only document used for reporting royalties paid in-value and other lease-related financial transactions to MMS. The AFS relies on data reported by payors on Form MMS–2014 for the majority of its processing.

In addition to accounting for royalties reported by payors, the AFS, using Form MMS–2014 information, performs numerous other functions. These functions include monthly distribution of mineral revenues to State and General Treasury accounts; providing royalty accounting and statistical information to States and others who have a need for such information; and identifying under-reporting and nonreporting so MMS can promptly collect revenues. Sales and royalty information gathered through the AFS is compared with production data collected by an MMS automated production accounting system—the Production Accounting and Auditing System (PAAS). This AFS/PAAS comparison of reported sales with reported production provides MMS with the ability to corroborate reported production volumes to help verify that the proper royalties are being collected.

MMS has begun the first of three pilot programs to study the feasibility and cost/effectiveness of taking the Government's oil and gas royalties in-kind (RIK), that is, as a share of production rather than an in-value payment. Successful bidders who entered into RIK contracts with MMS pursuant to an Invitation for Bids (IFB) published July 1, 1998 are taking federal royalty oil beginning October, 1998. The contracts require purchasers of royalty oil to make payment to MMS for the royalty oil and report payments and related data. The first payments and reports are due by November 30, 1998.

Since RIK pilot purchasers will not need to use the full range of reporting instructions and methods on Form MMS–2014, MMS has made available at no cost an electronic spreadsheet to more simply create electronic Form MMS–2014. The purchaser has the choice of reporting either (1) through use of the spreadsheet (which will electronically generate a Form MMS–2014 for MMS) (2) on a hard copy Form MMS–2014, or (3) through a company's own MMS-compatible automated reporting systems (which a number of present in-value royalty reporters currently use).

Before providing the electronic spreadsheet to purchasers, MMS will enter into each purchaser's copy of the spreadsheet the following reference data—lease number, royalty rate, property name, total property volume, percent allocated to Federal ownership, percent allocated to fee or State ownership and what percent of total property volume a particular lease represents. MMS needs the reference data to identify and account for purchasers' reports of payment for RIK production purchased from those properties.

The purchaser will, on its monthly Form MMS–2014, subsequently enter for the entire property (1) RIK volumes purchased, (2) the unit price, (3) total value, and (4) quality value. If reference data items such as royalty rate should change, purchasers would update the electronic spreadsheets for continued (always optional) use based on information provided by BLM or MMS personnel and lessees/operators.

If purchasers need to amend an initial Form MMS–2014 report, they will have the choice of doing so either by entering changes manually on a hard-copy Form MMS–2014 or by using MMS's established electronic reporting process.

MMS has chosen to defer development of a permanent form for reporting of the purchase of RIK production until MMS has gained the benefit of experience from the RIK pilots. If simplifying filing of Form MMS–2014 data through use of the electronic spreadsheet is effective for the 1 to 3-year period represented by the Wyoming crude oil RIK pilot, then MMS plans to continue use of this approach through the second RIK pilot (limited to gas from Texas 8(g) zone) and the third RIK pilot (larger volumes of gas from wider areas of the Gulf of Mexico Region). Using the electronic spreadsheet has the advantage of eliminating or delaying creation of a new form until its requirements are better defined, while still meeting MMS" needs to properly distribute funds, carry out the AFS/PAAS comparison, and provide information to other recipients about their share of payments distributed from Federal revenues.

This collection represents a significant net reduction in burden. While a few new companies may report, the overall number of respondents is greatly reduced. This is because only one purchaser need report one or two lines of data aggregating volumes from a multi-lease property, rather than multiple lessee/producers each reporting at the detailed revenue source level that in-value royalty payments would require for the same properties. The electronic spreadsheet allocates data needed by MMS automatically to levels of the revenue sources within each lease agreement on the Form MMS–2014, reducing complexity of reporting. We estimate that the time required to prepare and submit this information is about 2 minutes per line monthly.

Attachment 1

OMB 1010-0118 (Exp. March 31, 1999)

Minerals Management Service
Royalty-In-Kind Pilot Program
Federal Oil and Gas Purchase System

RIK Oil and Gas Reporting and Payment for:
Example. Oil Company Inc.
123 Green Tree Street
Sam City, Wyoming 82003

Payor Code RIK07
Payor Assigned (Document Number: A12345
Contract Number: MMS-RIKWY9:

Report Month (mmyy):	1198
Pmt Method Code:	3

MMS	
RIK Quantity	1,735
RIK Value	$15,657.40

Internal Disk File Name a:\Test.csv

MMS - 2014 Transmittal Letter
MMS - 2014 Form

Instructions: Enter the data in the yellow boxes above and below. Once you have ensured that all of the data elements are correct, select/push the "MMS-2014 Transmittal Letter" button to print the Transmittal Letter.
Then select/push the "MMS - 2014 form" button to create the MMS-2014 CSV format file.
The files should then be sent to the MMS as provided in the "2014 Instruction Sheet".
The RIK purchase amount due is shown in the green box noted as "RIK Value".
For modifications insert at least two new lines (one with a negative amount of the original line and one for the new line).
Give the new lines a new line code. For example line code B0100 would become B0100M1 and B0100M2.
Insert the proper amount of lines in the 2014 Work Sheet and 2014 sheet.

Line Code	Property Name	Agree/Lease Number	Purchased RIK Quantity	Purchase Unit Price	RIK Value	Gravity ° API	Sales Month	Selling Arrg. Code	Transaction Code	Adjustment Reas. Code.	MMS Tract Pct.	State/Fee Tract Pct.	100% Volume
B0100	Example Agreement	892-000123-A	1,692.5	$9.00	$15,232.40	25.0	1098	002	01	00	62.8827%	37.1173%	2,691.50
B0200	Example Lease	Fed 1234567890	42.5	$10.00	$425.00	23.1	1098	002	01	00	100.0000%	0.0000%	42.50
		Totals	1,735.0	$9.02	$15,657.40								2,734.00

Certification Statements

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected by the Minerals Management Service (MMS) to document details of royalty payments and sales of minerals from leases on Federal lands. We will use this information to maintain and audit lease accounts, and we estimate the burden for reporting electronically is 2 minutes per line and for reporting manually is 7 minutes per line. Comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N. W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U. S. Department of the Interior, Washington, DC 20503. Proprietary information submitted to the U. S. Department of the Interior is protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982 (30 U. S. C. 1733), the Freedom of Information Act (5 U.S.. 552 (b) (4), and the Departmental Regulations (43 CFR 2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated:
Lucy Qu
Associat
BILLING C
[FR Doc.
BILLING C

Minerals Management Service / State of Wyoming Land & Farm Loan Office OMB 1010-0118 (Exp. March 31, 1999)

Joint Effort Royalty-In-Kind Pilot Program

Royalty Oil and Gas Purchase System

ve 1.0

RIK Oil and Gas Reporting and Payment for: Exmpl. Oil Company Inc.
123 Green Tree Street
Sam City, Wyoming 82003

Payer Code RIK0?
Payor Assigned (Document Number: A12346
Contract Number: 123456789

Report Month (mmyy):	1198
Part Method Code:	3

	MMS	State	Total
RIK Quantity	1,107	629	1,736
RIK Value	$10,003.84	$5,663.86	$15,667.40

MMS-2014 Transmittal Letter
MMS-2014 Form
State of Wyoming - Form M2E

Internal Disk File Name:
a:\Test.csv

Instructions: Enter the data in the yellow boxes above and below. Once you have ensured that all of the data elements are correct, select/push the "MMS-2014 Transmittal Letter" button to print the Transmittal Letter. Then select/push the "MMS - 2014 form" button to create the MMS-2014 CSV format file. Then select/push the "State of Wyoming - Form M2E" button to create the M2E text file. These separate files should then be sent to the MMS and the State of Wyoming as provided in the instruction package. The RIK purchase amount due is shown in the green box noted as "RIK Value". For modifications insert at least two new lines (one with a negative amount of the original line and one for the new line). Give the new lines a new line code. For example line code B0100 would become B0100M1 and B0100M2. Insert the proper amount of lines in the 2014 Work Sheet and 2014 sheet.

Line Code	Property Name	Agree/Lease Number	Purchased RIK Quantity	Purchase Unit Price	RIK Value	Gravity ° API	Sales Month	Selling Arng. Code	Transaction Code	Adjustment Reas. Code	MMS Tract Pct.	State Tract Pct.	100% Volume
B0100	Example Agreement	892-000123-A	1,692.5	$9.00	$15,232.40	25.0	1098	002	01	00	62.8827%	37.1173%	1,692.49
B0200	Example Lease	Fed 1234567890	42.5	$10.00	$425.00	23.1	1098	002	01	00	100.0000%	0.0000%	42.50
		Totals	1,735.0	$9.02	$15,657.40								1,734.99

Certification Statements

The Paperwork Reduction Act of 1995 requires us to inform you that this information is being collected by the Minerals Management Service (MMS) to document details of royalty payments and sales of minerals from leases on Federal lands. We will use this information to maintain and audit lease accounts, and we estimate the burden for reporting electronically is 2 minutes per line and for reporting manually is 7 minutes per line. Comments on the accuracy of this burden estimate or suggestions on reducing this burden should be directed to the Information Collection Clearance Officer, MS 4230, MMS, 1849 C Street, N. W., Washington, DC 20240 and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the U. S. Department of the Interior, Washington, DC 20503. Proprietary information submitted to the U. S. Department of the Interior is protected in accordance with standards established by the Federal Oil and Gas Royalty Management Act of 1982 (30 U. S. C. 1733), the Freedom of Information Act (5 U.S.. 552 (b) (4), and the Departmental Regulations (43 CFR 2). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: November 17, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management.

BILLING CODE 4310-MR-P

[FR Doc. 98-31322 Filed 11-25-98; 8:45 am]

BILLING CODE 4310-MR-C

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention

[OJP(OJJDP)–1203]

RIN 1121–ZB39

Meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention.

SUPPLEMENTARY INFORMATION: A meeting of the Coordinating Council on Juvenile Justice and Delinquency Prevention will take place in the District of Columbia, beginning at 1:00 p.m. on Wednesday, December 9, 1998 and ending at 3:00 p.m. on December 9, 1998. This advisory committee, chartered as the Coordinating Council on Juvenile Justice and Delinquency Prevention, will meet at the Office of Justice Programs, located at 810 Seventh St. SW., in the third floor auditorium, Washington, D.C. 20531. The Coordinating Council, established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C.) App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. This meeting will be open to the public. Expedited scheduling considerations for this meeting precluded the full notice period. For security reasons, members of the public who are attending the meeting must contact the Juvenile Justice Resource Center by close of business December 4, 1998. The point of contact is Jan Shaffer who can be reached at (301) 519–5886. The public is further advised that a pictured identification is required to enter the building.

Dated: November 18, 1998.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 98–31628 Filed 11–25–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. AR980042 dated February 13, 1998.

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contractor file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA980001 (Feb. 13, 1998)
MA980002 (Feb. 13, 1998)
MA980003 (Feb. 13, 1998)
MA980005 (Feb. 13, 1998)
MA980006 (Feb. 13, 1998)

MA980007 (Feb. 13, 1998)
MA980008 (Feb. 13, 1998)
MA980009 (Feb. 13, 1998)
MA980010 (Feb. 13, 1998)
MA980012 (Feb. 13, 1998)
MA980013 (Feb. 13, 1998)
MA980017 (Feb. 13, 1998)
MA980018 (Feb. 13, 1998)
MA980019 (Feb. 13, 1998)
MA980020 (Feb. 13, 1998)
MA980021 (Feb. 13, 1998)

Volume II

Pennsylvania
PA980021 (Feb. 13, 1998)

Volume III

Florida
FL980017 (Feb. 13, 1998)
Mississippi
MS980057 (Feb. 13, 1998)
South Carolina
SC980033 (Feb. 13, 1998)

Volume IV

Illinois
IL980001 (Feb. 13, 1998)
IL980002 (Feb. 13, 1998)
IL980006 (Feb. 13, 1998)
IL980008 (Feb. 13, 1998)
IL980009 (Feb. 13, 1998)
IL980011 (Feb. 13, 1998)
IL980013 (Feb. 13, 1998)
IL980015 (Feb. 13, 1998)
IL980016 (Feb. 13, 1998)
IL980018 (Feb. 13, 1998)
Indiana
IN980001 (Feb. 13, 1998)
IN980002 (Feb. 13, 1998)
IN980003 (Feb. 13, 1998)
IN980004 (Feb. 13, 1998)
IN980005 (Feb. 13, 1998)
IN980006 (Feb. 13, 1998)
Michigan
MI980003 (Feb. 13, 1998)
MI980063 (Feb. 13, 1998)

Volume V

Arkansas
AR980001 (Feb. 13, 1998)
AR980006 (Feb. 13, 1998)
AR980008 (Feb. 13, 1998)
AR980030 (Feb. 13, 1998)
AR980034 (Feb. 13, 1998)
Iowa
IA980002 (Feb. 13, 1998)
IA980004 (Feb. 13, 1998)
IA980006 (Feb. 13, 1998)
Kansas
KS980009 (Feb. 13, 1998)
KS980025 (Feb. 13, 1998)
KS980026 (Feb. 13, 1998)
KS980063 (Feb. 13, 1998)
New Mexico
NM980001 (Feb. 13, 1998)
NM980005 (Feb. 13, 1998)
Texas
TX980069 (Feb. 13, 1998)

Volume VI

Oregon
OR980001 (Feb. 13, 1998)
OR980017 (Feb. 13, 1998)
Washington
WA980005 (Feb. 13, 1998)
WA980008 (Feb. 13, 1998)
WA980023 (Feb. 13, 1998)

Volume VII

California
CA980002 (Feb. 13, 1998)
CA980004 (Feb. 13, 1998)
CA980028 (Feb. 13, 1998)
CA980031 (Feb. 13, 1998)
CA980034 (Feb. 13, 1998)
CA980036 (Feb. 13, 1998)
CA980037 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 20th day of November 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–31509 Filed 11–25–98; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL EDUCATION GOALS PANEL

Notice of Meeting/Press Conference/ Teleconference

AGENCY: National Education Goals Panel.

ACTION: Notice of Meeting/Press Conference/Teleconference.

SUMMARY: This notice sets forth the date and location of a forthcoming meeting of the National Education Goals Panel. This notice also describes the functions of the Panel.

DATE AND TIME: Thursday, December 10, 1998, 8:30 a.m. to 3:30 p.m.

ADDRESSES: National Press Club, 529 14th Street, NW, Washington, DC 20045. (Task Force on the Future of the Goals, 8:30 a.m.–10:30 a.m., Holeman Lounge; National Education Goals Panel Meeting, 10:30 a.m. to 11:00 a.m., Holeman Lounge; Press Conference, 11:00 a.m. to 12:00 p.m., Ballroom; Teleconference, 1:30 p.m. to 3:30 p.m., Ballroom.

FOR FURTHER INFORMATION CONTACT: Ken Nelson, Executive Director, 1255 22nd Street, NW, Suite 502, Washington, DC 20037. Telephone: (202) 724–0015.

SUPPLEMENTARY INFORMATION: The National Education Goals Panel was established to monitor, measure and report state and national progress toward achieving the eight National Education Goals, and report to the states and the Nation on the progress.

Agenda Items

The meeting of the Panel is open to the public. The National Education Goals Panel will convene a series of events on December 10 at the National Press Club. From 8:30 a.m. to 11:00 a.m. a Task Force and the Panel will discuss the future of the Goals and the Panel. From 11:00 to 12:00 there will be a press conference announcing the release of four new reports, Building a Nation of Learners, 1998; Data Volume for the National Education Goals, 1998; Promising Practices: Progress Toward the Goals, 1998 and Talking About Tests: An Idea Book for State Leaders. This year's Goals Report will recognize those states that have made significant improvement over time and those states which are highest performing and most improved on the Goals and Indicators. The Data Volume will provide detailed information about each state's performance towards attaining the National Education Goals. Promising Practices: Progress Toward the Goals 1998, identifies top performing and improving states on one indicator per Goal and tells the story of how these states have made progress toward the Goal. It characterizes the policies and programs which have enabled North Carolina and Texas to make rapid achievement on multiple indicators. Talking About Tests: An Idea Book for State Leaders, offers state and district examples on how to simplify the complicated messages of standards and

assessments and make tests results more meaningful to parents. The teleconference (which will be held from 1:30 p.m. to 3:30 p.m.) is an effort to bring education policy makers together with governors, their education aides, state legislators, presidents of state boards of education and representatives of the business community to talk about education reform initiatives.

Dated: November 20, 1998.

Ken Nelson,

Executive Director, National Education Goals Panel.

[FR Doc. 98–31581 Filed 11–25–98; 8:45 am]

BILLING CODE 4010–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting; Regular Board Meeting of the Board of Directors

TIME AND DATE: 2:00 p.m., Monday, December 7, 1998.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Board Room, Washington, DC 20005.

STATUS: Open/Closed.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary, 202/376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes:
  September 9, 1998, Regular Meeting
III. Audit Committee Report:
  September 8, 1998
IV. Treasurer's Report
V. Executive Director's Quarterly Management Report
VI. Personnel Committee Report:
  November 9, 1998, Closed Meeting
VII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 98–31799 Filed 11–24–98; 8:45 am]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213]

In the Matter of Connecticut Yankee Atomic Power Company (Haddam Neck Plant); Exemption

I

Connecticut Yankee Atomic Power Company is the holder of Facility Operating License No. DPR–61, which authorizes the licensee to possess the Haddam Neck Plant (HNP). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized-water reactor located at the licensee's site in Middlesex County, Connecticut. The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II

Section 50.54(w) of 10 CFR Part 50 requires power reactor licensees to maintain onsite property damage insurance coverage in the amount of $1.06 billion. Section 140.11(a)(4) of 10 CFR Part 140 requires a reactor with a rated capacity of 100,000 electrical kilowatts or more to maintain liability insurance of $200 million and to participate in a secondary insurance pool.

NRC may grant exemptions from the requirements of 10 CFR Part 50 of the regulations which, pursuant to 10 CFR 50.12(a), (1) are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) present special circumstances. Special circumstances exist when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)). The underlying purpose of Section 50.54(w) is to provide sufficient property damage insurance coverage to ensure funding for onsite post-accident recovery stabilization and decontamination costs in the unlikely event of an accident at a nuclear power plant.

NRC may grant exemptions from the requirements of 10 CFR Part 140 of the regulations which, pursuant to 10 CFR 140.8, are authorized by law and are otherwise in the public interest. The underlying purpose of Section 140.11 is to provide sufficient liability insurance to ensure funding for claims resulting from a nuclear incident or precautionary evacuation.

III

On October 7, 1997, the licensee requested exemption from the financial protection requirement limits of 10 CFR 50.54(w) and 10 CFR 140.11. The licensee requested that the amount of insurance coverage it must maintain be reduced to $50 million for onsite property damage and $100 million for offsite financial protection. The licensee stated that special circumstances exist because of the permanently shutdown and defueled condition of HNP.

The financial protection limits of 10 CFR 50.54(w) and 10 CFR 140.11 were established to require a licensee to maintain sufficient insurance to cover the costs of a nuclear accident at an operating reactor. Those costs were derived from the consequences of a release of radioactive material from the reactor. Although the risk of an accident at an operating reactor is very low, the consequences can be large. In an operating plant, the high temperature and pressure of the reactor coolant system, as well as the inventory of relatively short-lived radionuclides, contribute to both the risk and consequences of an accident. In a permanently shutdown and defueled reactor facility, the reactor coolant system will never be operated and contains no short-lived radionuclides, which eliminates the possibility of reactor accidents. A further reduction in risk occurs because decay heat from the spent fuel decreases over time, which reduces the amount of cooling required to prevent the spent fuel from heatingup to a temperature that could compromise the ability of the fuel cladding to retain fission products.

Along with the reduction in risk, the consequences of a release decline after a reactor permanently shuts down and defuels. The short-lived radionuclides contained in the spent fuel, particularly volatile components such as iodine and most of the noble gases, decay away, thereby reducing the inventory of radioactive materials that are readily dispersible and transportable in air.

Although the risk and consequences of a radiological release decline substantially after a plant permanently defuels its reactor, they are not completely eliminated. There are potential onsite and offsite radiological consequences that could be associated with the onsite storage of the spent fuel in the spent fuel pool (SFP). In addition, a site may contain a radioactive inventory of liquid radwaste, activated reactor components, and contaminated structural materials. For purposes of modifying the amount of insurance coverage maintained by a power reactor licensee, the potential consequences, despite very low risk, are an appropriate consideration.

In order to determine the insurance coverage sufficient for a permanently defueled facility, the cost of recovery from potential accident scenarios must be evaluated. At the HNP, spent fuel is the largest source term on the site. The spent fuel is stored in the SFP, which uses water to cool the fuel. By letter dated September 26, 1997, the licensee

submitted an analysis of the heatup characteristics of the spent fuel in the absence of SFP water inventory. The analysis was based on storing the fuel in a configuration consistent with the analysis. By letter dated December 18, 1997, the licensee stated that, as of October 23, 1997, the spent fuel assemblies had been rearranged within the SFP to comply with the configuration used for the heat-up analysis. The licensee concluded that air cooling of the fuel would be sufficient to maintain the integrity of the fuel cladding and that rapid zircaloy oxidation is no longer possible. The staff independently evaluated the licensee's conclusion and found it acceptable. The staff concluded that the cost of recovering from a loss of SFP water would be bounded by other accidents that may occur at a permanently defueled site.

In SECY 96–256, "Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11," dated December 17, 1996, the staff estimated the onsite cleanup costs of accidents considered to be the most costly at a permanently defueled site with spent fuel stored in the SFP. The staff found that the onsite recovery costs for a fuel handling accident could range up to $24 million. The estimated onsite cleanup costs to recover from the rupture of a large liquid radwaste storage tank could range up to $50 million. The licensee's proposed level of $50 million for onsite property insurance is sufficient to cover these estimated cleanup costs.

The offsite cleanup costs of the accident scenarios discussed above are estimated to be negligible in SECY 96–256. However, a licensee's liability for offsite costs may be significant due to lawsuits alleging damages from offsite releases. Experience at Three Mile Island Unit 2 showed that significant judgments against a licensee can result despite negligible dose consequences from an offsite release. An appropriate level of financial liability coverage is needed to account for potential judgments and settlements and to protect the Federal Government from indemnity claims. The licensee's proposed level of $100 million in primary offsite liability coverage is sufficient for this purpose.

The staff has determined that participation in the secondary insurance pool for offsite financial protection is not required for a permanently shut down and defueled plant after the time that air cooling of the spent fuel is sufficient to maintain the integrity of the fuel cladding. As noted above, the staff finds that sufficient time has elapsed to ensure the integrity of the HNP spent fuel cladding.

IV

The NRC staff has completed its review of the licensee's request to reduce financial protection limits to $50 million for onsite property insurance and $100 million for offsite liability insurance. On the basis of its review, the NRC staff finds that the spent fuel stored in HNP's SFP is no longer susceptible to rapid Zircaloy oxidation. The requested reductions are consistent with SECY–96–256, "Changes to the Financial Protection Requirements for Permanently Shutdown Nuclear Power Reactors, 10 CFR 50.54(w) and 10 CFR 140.11," dated December 17, 1996. The Commission informed the staff by a staff requirements memo dated January 28, 1997, that it did not object to the insurance reductions recommended in SECY 96–256. The licensee's proposed financial protection limits will provide sufficient insurance to recover from limiting hypothetical events, if they occur. Thus, the underlying purposes of the regulations will not be adversely affected by the reductions in insurance coverage.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), an exemption to reduce onsite property insurance to $50 million is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, special circumstances are present, as set forth in 10 CFR 50.12(a)(2)(ii). Therefore the Commission hereby grants an exemption from the requirement of 10 CFR 50.54(w).

In addition, the Commission has determined that, pursuant to 10 CFR 140.8, an exemption to reduce primary offsite liability insurance to $100 million, accompanied by withdrawal from the secondary insurance pool for offsite liability insurance, is authorized by law and is in the public interest. Therefore, the Commission hereby grants an exemption from the requirements of 10 CFR 140.11(a)(4).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of these exemptions will not have a significant effect on the quality of the human environment (63 FR 50929).

These exemptions are effective upon issuance.

Dated at Rockville, Maryland, this 19th day of November 1998.

For the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31643 Filed 11–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company, Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–87 and NPF–89 issued to Texas Utilities Electric Company (the licensee) for operation of Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County, Texas.

The proposed amendment would increase the allowed outage time (AOT) for a centrifugal charging pump from 72 hours to 7 days and add a Configuration Risk Management Program.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

There is no effect on the probability of an event; the only potential effect is on the capability to mitigate the event. The centrifugal charging pumps are credited in the Final Safety Analysis Report Chapter 15

LOCA analysis for ECCS injection and for the containment sump recirculation mode for the design-basis LOCA. Increasing the AOT for the centrifugal charging pumps does not affect analysis assumptions regarding functioning of required equipment designed to mitigate the consequences of accidents. Further, the severity of postulated accidents and resulting radiological effluent releases will not be affected by the increased AOT.

A reliability analysis of the charging system found the change to have no significant impact on normal operation or on the RCP seal cooling function. Therefore, the change would not significantly increase in the probability of a seal LOCA.

The increase in the AOT potentially affects only the availability of the charging system for accident mitigation and has no effect on the ability of other ECCS systems to perform their functions. Through the use of a probabilistic risk assessment, it was determined that the proposed change would have an insignificant effect on the core damage frequency.

The proposed changes to the Technical Specification BASES are administrative in nature and do not change the specific Technical Specifications requirements. The changes to the BASES sections of the Technical Specifications ensure that when the centrifugal charging pumps are taken out of service, administrative controls are in place to consider and manage risk associated with the specific configuration of the plant. Changes to the Administrative Controls section of the Technical Specifications are administrative in nature and reflect addition of a configuration risk management program. These administrative changes provide additional assurance that risk is appropriately considered and managed during changing plant configurations in order to assure that intended plant design/safety functions will be maintained. No design basis accidents are affected by these proposed administrative changes as they do not impact nor affect accident analysis assumptions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different type of accident from any accident previously evaluated?

Unavailability of one centrifugal charging pump for a finite period of time is currently allowed by the Technical Specifications. Increasing the AOT from 72 hours to 7 days would not change the method that TU Electric operates CPSES, thus would not create a new condition. Further, the proposed change would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety related system performs its function. The ECCS would still be capable of mitigating the consequences of the design-basis accident LOCA with the one centrifugal charging pump operable. No new unanalyzed accident would be created.

The proposed changes to add a configuration risk management program and reference to that program in the BASES section of the Technical Specifications for the Centrifugal Charging pumps will not delete any specification requirement or function already designated in the Technical Specifications. The administrative changes retain adequate regulatory basis to ensure that intended plant design/safety functions will be maintained. These changes are administrative in nature and do not affect the design or operation of any system, structure, or component in the plant. Accordingly, no new failure modes have been defined for any plant system or component important to safety, nor have any new initiating events been identified as a result of the proposed changes.

In summary, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed increase in the AOT does not impact either the physical protective boundaries or performance of safety systems for accident mitigation. There is no safety analysis impact since the extension of the centrifugal charging pump AOT interval will have no effect on any safety limit, protection system setpoint, or limiting condition of operation. There is no hardware change that would impact existing safety analysis acceptance criteria, therefore there is no significant change in the margin of safety.

The proposed changes involve the addition of a configuration risk management program and reference to that program in the BASES section of the Technical Specifications for the Centrifugal Charging pumps affected by License Amendment Request 96–06. These changes are administrative in nature and do not directly affect any protective boundaries nor impact the safety limits for the protective boundaries. The addition of the configuration risk management program provides additional assurance that adequate regulatory basis for continued proper administrative review and plant configuration control to ensure that actions prescribed in plant operating procedures are maintained so as not to impact the plant's margin of safety. Therefore, there is no significant reduction in the margin of safety.

In summary, the proposed change would not have a significant impact on the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 28, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and

Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, N.W., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 2, 1996 (TXX–96434), originally noticed in the **Federal Register** (62FR50011). The application has been supplemented by letters dated October 2, 1998 (TXX–98215), and November 13, 1998 (TXX–98241 and TXX–98244), which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019.

Dated at Rockville, Maryland, this 20th day of November 1998.

For the Nuclear Regulatory Commission.

Timothy J. Polich,

Project Manager, Project Directorate IV–1, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31642 Filed 11–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Florida Power and Light Company, Turkey Point Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

[Docket Nos. 50–250 and 50–251]

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an exemption from certain requirements of its regulations to Florida Power and Light Company (the licensee), holder of Facility Operating Licenses Nos. DPR–31 and DPR–41 for operation of Turkey Point Units 3 and 4, respectively.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated July 31, 1997, as supplemented by submittals dated July 2, and October 27, 1998, for exemption from certain requirements of Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," for Turkey Point Units 3 and 4. Specifically, the licensee requested an exemption from the requirements of Appendix R, Subsection III.G.2.a, for raceway fire barriers in the Open Turbine Building.

The Need for the Proposed Action

The Thermo-Lag fire barriers installed at Turkey Point Units 3 and 4 have a rating that does not meet the requirements specified in Subsection III.G.2.a. The proposed exemption is needed because compliance with the regulation would result in significant additional costs.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and

concludes that the underlying purpose of the regulation, to provide reasonable assurance that at least one means of achieving and maintaining safe shutdown conditions will remain available during and after any postulated fire in the plant, will be met. Accordingly, the proposed action will not result in an increase in the probability or consequences of accidents previously analyzed or result in a change in occupational or public dose. Therefore, there are no significant radiological impacts associated with the proposed action.

In addition, the proposed action will not result in a change in nonradiological plant effluents and will have no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with this action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (no-action alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Turkey Point Units 3 and 4, dated July 1972.

Agencies and Persons Consulted

In accordance with its stated policy, on November 4, 1998, the NRC staff consulted with the Florida State official, Mr. William Passetti of the Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's request dated July 31, 1997, as supplemented by submittals dated July 2, and October 27, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Florida International University, University Park, Miami, Florida.

Dated at Rockville, Maryland, this 20th day of November 1998.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31641 Filed 11–25–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Privacy Act of 1974, As Amended; Establishment of Two New Systems of Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Systems of records; two new systems of records proposed.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Nuclear Regulatory Commission (NRC) is issuing public notice of its intent to establish two new systems of records (systems) entitled NRC–43, "Employee Health Center Records—NRC," and NRC–44, "Employee Fitness Center Records—NRC.".

EFFECTIVE DATE: Each system of records will become effective without further notice on January 6, 1999, unless comments received on or before that date cause a contrary decision. If changes are made based on NRC's review of comments received, a new final notice will be published.

ADDRESSES: Send comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications staff. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays. Copies of comments received may be examined at the NRC Public Document Room at 2120 L Street, NW., Lower Level, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jona L. Souder, Freedom of Information Act/Privacy Act Section, Information Services Branch, Information Management Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7170 (jls3@nrc.gov).

SUPPLEMENTARY INFORMATION: NRC is establishing a new system of records entitled NRC–43, "Employee Health Center Records—NRC," to facilitate management of and document individuals' use of services provided by NRC's Employee Health Center and any other health care facilities operating under a contract or agreement with NRC. The Employee Health Center was previously run by the Public Health Service (PHS) and covered by a PHS system notice. Information in the new NRC system is maintained to (1) provide date necessary to ensure proper evaluation, diagnosis, treatment, and referral to maintain continuity of care; (2) provide an accurate medical history of health care and medical treatment received by the individual; (3) plan for further care of the individual; (4) provide a means of communication among health care members who contribute to the individual's care; and (5) provide a means for evaluating the quality of health care provided.

NRC is also establishing a new system of records entitled NRC–44, "Employee Fitness Center Records—NRC." Information in the system is maintained to facilitate management of the Fitness Center, document individuals' voluntary use of services provided, and monitor the health and physical fitness of individual members.

Reports on the two new systems of records are being sent to the Office of Management and Budget (OMB), the Committee on Governmental Affairs of the U.S. Senate, and the Committee on Government Reform and Oversight of the U.S. House of Representatives as required by the Privacy Act and OMB Circular No. A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals."

Accordingly, NRC proposes to add the following new systems of records, NRC–43, "Employee Health Center Records—NRC," and NRC–44, "Employee Fitness Center Records—NRC," to read as follows:

NRC–43

SYSTEM NAME:

Employee Health Center Records—NRC.

SYSTEM LOCATION:

Primary system—NRC Employee Health Center, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems may exist, in whole or in part, at the NRC's regional and other offices listed in Addendum I, Parts 1 and 2, and/or at any other health care facilities operating under a contract or agreement with NRC

for health-related services. This system may contain some of the information maintained in other systems of records, including NRC–11, "General Personnel Records (Official Personnel Folder and Related Records)—NRC," NRC–17, "Occupational Injuries and Illness Records—NRC," and, when in effect, NRC–44, "Employee Fitness Center Records—NRC."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former NRC employees, consultants, contractors, other Government agency personnel, and anyone on NRC premises who requires emergency or first-aid treatment.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system is comprised of records developed as a result of voluntary employee use of health services provided by the Health Center, and of emergency health services rendered by Health Center staff to individuals for injuries and illnesses suffered while on NRC premises. Specific information maintained on individuals includes, but is not limited to, their name, date of birth, and Social Security number; medical history and other biographical data; test reports and medical diagnoses based on employee health maintenance physical examinations or health screening programs (tests for single medical conditions or diseases); history of complaint, diagnosis, and treatment of injuries and illness rendered by the Health Center staff; immunization records; records of administration by Health Center staff of medications prescribed by personal physicians; medical consultation records; statistical records; daily log of patients; and medical documentation such as personal physician correspondence and test results submitted to the Health Center staff by the employee. Forms used to obtain or provide information include the following:

(1) Employee Health Record
(2) Immunization/Health Profile
(3) Problem List
(4) Progress Notes
(5) Consent for Release of Medical Information
(6) Against Medical Advice (AMA) Release
(7) Patient Treatment Record
(8) Injection Record
(9) Allergy
(10) Respirator Certification Form
(11) Pre-travel Questionnaire
(12) Flu Vaccine Form
(13) Pneumonia Vaccine Form
(14) TB Test Form
(15) Office of Workers' Compensation Programs (OWCP) Occupational Injury Form
(16) Medical History
(17) Medical Examination
(18) Prostate Symptoms Questionnaire
(19) Proctosigmoidoscopy Form

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To refer information required by applicable law to be disclosed to a Federal, State, or local public health service agency concerning individuals who have contracted certain communicable diseases or conditions in an effort to prevent further outbreak of the disease or condition.

b. To disclose information to the appropriate Federal, State, or local agency responsible for investigation of an accident, disease, medical condition, or injury as required by pertinent legal authority.

c. To disclose information to the Office of Workers' Compensation Programs in connection with a claim for benefits filed by an employee.

d. To Health Center staff and medical personnel under a contract or agreement with NRC who need the information in order to schedule, conduct, evaluate, or follow up on physical examinations, tests, emergency treatments, or other medical and health care services.

e. To refer information to private physicians designated by the individual when requested in writing.

f. To the National Archives and records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

g. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, on computer media, and on file cards, logs, x-rays, and other medical reports and forms.

RETRIEVABILITY:

Records are retrieved by the individual's name, date of birth, and Social Security number, or any combination of those identifiers.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force and entry to each floor is controlled by keycard. Records in the system are maintained in lockable file cabinets with access limited to agency or contractor personnel whose duties require access. The records are under visual control during duty hours. Access to automated data requires use of proper password and user identification codes by authorized personnel.

RETENTION AND DISPOSAL:

Records documenting an individual employee's medical history, physical condition, and visits to Government health facilities, for nonwork-related purposes, are maintained for six years from the date of the last entry as are records on consultants, contractors, other Government agency personnel, and anyone on NRC premises who requires emergency or first-aid treatment in accordance with Government Records Schedule (GRS) 1–19. Health Center control records such as logs or registers reflecting daily visits are destroyed three months after the last entry if the information is summarized on a statistical report in accordance with GRS 1–20a and two years after the last entry if the information is not summarized in accordance with GRS 1–20b.

SYSTEM MANAGER(S) AND ADDRESSES:

Employee Assistance Program Manager, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9; and provide their full name, any former name(s), date of birth, and Social Security number.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedures."

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from a number of sources

including, but not limited to, the individual to whom it pertains; laboratory reports and test results; NRC Health Center physicians, nurses, and other medical technicians or personnel who have examined, tested, or treated the individual; the individual's coworkers or supervisors; other systems of records; the individuals' personal physician(s); NRC Fitness Center staff; other Federal agencies; and other Federal employee health units.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

NRC–44

SYSTEM NAME:

Employee Fitness Center Records—NRC.

SYSTEM LOCATION:

Primary system—NRC Fitness Center, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

Duplicate systems—Duplicate systems may exist, in whole or in part, at the NRC's regional and other offices listed in Addendum 1, Parts 1 and 2, and/or at other facilities operating under a contract or agreement with NRC for fitness-related services. This system may contain some of the information maintained in other systems of records, including NRC–32, "Office of the Chief Financial Officer Financial Transactions and Debt Collection Management Records—NRC."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NRC employees who apply for membership in the Fitness Center as well as current and inactive Fitness Center members.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes employees' applications to participate in NRC's Fitness Center, information on individuals' degree of physical fitness and their fitness activities and goals, and various forms, memoranda, and correspondence related to Fitness Center membership and financial/payment matters. Specific information contained in the application for membership includes the employee applicant's name, gender, age, Social Security number, height, weight, and medial information, including a history of certain medical conditions; the name of the individuals's personal physician and any prescription or over-the-counter drugs taken on a regular basis; and the name and address of a person to be notified in case of emergency.

Forms used to obtain or provide information include the following:

(1) Application Package
(2) Release of Medical Information/Physician's Statement
(3) Fitness Assessment
(4) Pre-exercise Health Screening
(5) Account Logs
(6) Terminated Memberships
(7) New Memberships
(8) Monthly Dues Collected
(9) Accident Report
(10) "Dear Participant" Letter
(11) Refund Request
(12) Regional Employee Sign-in Log
(13) Member of the Month
(14) User Evaluation Form

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7901; Executive Order 9397, November 22, 1943.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to the disclosures permitted under subsection (b) of the Privacy Act, the NRC may disclose information contained in this system of records without the consent of the subject individual if the disclosure is compatible with the purpose for which the record was collected under the following routine uses:

a. To the individual listed as an emergency contact, in the event of an emergency.

b. To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 or 2906.

c. For any of the routine uses specified in the Prefatory Statement of General Routine Uses.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12)

Disclosures of information to a consumer reporting agency are not considered a routine use of records. Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681(a)(f)) or the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer media and in paper form in logs and files.

RETRIEVABILITY:

Information is indexed and accessed by an individual's name and/or Social Security number.

SAFEGUARDS:

Records in the primary system are maintained in a building where access is controlled by a security guard force and access to the Fitness Center is controlled by keycard and bar code verification. Records in paper form are stored alphabetically by individuals' names in lockable file cabinets maintained in the NRC Fitness Center where access to the records is limited to agency and Fitness Center personnel whose duties require access. The records are under visual control during duty hours. Automated records are protected by screen saver. Access to automated data requires use of proper password and user identification codes. Only authorized personnel have access to areas in which information is stored.

RETENTION AND DISPOSAL:

Fitness Center records are currently unscheduled and must be retained until the National Archives and Records Administration approves a records disposition schedule for this material.

SYSTEM MANAGER(S) AND ADDRESS:

Safety and Health Program Manager, Office of Human Resources, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information pertaining to themselves should write to the Freedom of Information Act and Privacy Act Officer, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and comply with the procedures contained in NRC's Privacy Act regulations, 10 CFR part 9.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedures."

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedures."

RECORD SOURCE CATEGORIES:

Information in this system of records is principally obtained from the individuals upon whom the records are maintained. Other sources of information include, but are not limited to, the NRC Fitness Center Director and other staff, physicians retained by the NRC, the individuals' personal physicians, and other systems of records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated at Rockville, MD, this 20th day of November 1998.

For the Nuclear Regulatory Commission.
A.J. Galante,
Chief Information Officer.
[FR Doc. 98–31640 Filed 11–25–98; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23542]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

November 20, 1998.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of November 1998. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1998, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549.
For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549.
Management of Managers Short Term Municipal Bond Fund [File No. 811–3747]
Management of Managers Fixed Income Fund [File No. 811–3748]
Management of Managers Income Equity Fund [File No. 811–3750]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On December 31, 1987, each applicant transferred all of its assets to a corresponding series of the Management of Managers Group of Funds (the "Trust") based on net asset value per share. Reorganization expenses were paid pro rata by each series of the Trust.

Filing Dates: Management of Managers Short Term Municipal Bond Fund filed its application on September 24, 1998, and Management of Managers Fixed Income Fund and Management of Managers Income Equity Fund filed their applications on September 25, 1998. each applicant amended its application on November 2, 1998.

Applicants' Address: 40 Richards Avenue, Norwalk, Connecticut 06854.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 98–31646 Filed 11–25–98; 8:45 am]
BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40687; File No. SR–CHX–98–21]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Automatic Stopping of Market Orders

November 18, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant partial accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The exchange proposes to amend Article XX, Rule 37(b) relating to the Exchange's "pending auto stop" program that automatically stops market orders under certain circumstances. The text of the proposed rule change is available at the Office of the Secretary, the CHX, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 13, 1998, the Commission approved a rule change that: (i) Automates the stopping of certain market orders, and (ii) permits specialists to manually stop marketable limit orders received through the Midwest Automated Execution System ("MAX System").[3] This program for automated stopping of market orders is known as the "pending auto stop" program.

Under the pending auto stop program, all MAX System market orders that are between 100 and 599 shares (or a higher amount chosen by a specialist on a stock by stock basis) and that are not automatically executed in the normal course of operations (*i.e.*, because there is insufficient size associated with the Intermarket Trading System ("ITS") best bid or offer ("BBO"), because the order would result in an out of range execution,[4] or because the order is a professional order[5] and the specialist has not yet decided whether to accept the order, etc.) are identified as "pending auto stop" orders.[6]

[3] Securities Exchange Act Release No. 41096 (July 13, 1998), 63 FR 38866 (July 20, 1998).
[4] An out of range execution is an execution that results in a new high or a new low for the day.
[5] The term "professional order" is defined as any order for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest. *See* CHX, Art. XXX, Rule 2, interpretation and policy .04. The term "agency order" means an order for the account of a customer, but does not include professional orders.
[6] Both agency and professional orders are currently eligible for the "pending auto-stop" feature of MAX; however, all or none orders, odd-lot orders, fill or kill orders, immediate or cancel orders, orders that are or will be stopped under the Enhanced SuperMAX program, and other orders that cannot be entered into the MAX System (*i.e.*, not held orders, sell short exempt orders and

Continued

These orders retain their "pending auto-stop" status for 30 seconds. At the end of this 30 second period, the MAX System automatically stops the order and sends a "UR Stopped" message to the firm that sent the order, *unless*, before the end of the 30 second period, the specialist manually executes, cancels or stops the entire order or the specialist puts the order "on hold." If any of these events occurs, the "pending auto-stop" status is removed from the order and the order is not automatically stopped. If an order is "put on hold," the CHX's existing rules for order handling apply.[7] If the order is automatically stopped, the stop price currently is the ITS BBO at the time the order is received in the MAX System. Furthermore, if the order is automatically stopped, the *entire* order is stopped. The "pending auto-stop" feature of the MAX System currently operates from 8:45 a.m. until 2:57 p.m.

Although the Exchange has only limited experience operating under the pending auto stop program, the Exchange believes that it is appropriate to amend certain aspects of the program. In general, the proposed rule change limits the operation of the program under certain circumstances. The proposed rule change would: (1) Eliminate securities trading at or above $100 at the time the order is received from being eligible for the program; (2) change the hours of the program so that it will operate from 9 a.m. until 2:30 p.m., Central Time; (3) eliminate professional orders from being eligible for the program; and (4) change the stop price from the ITS BBO to the primary market price when the size associated with the relevant side of the ITS BBO is 100 shares.

The Exchange believes that it is appropriate to limit the operation of the pending auto stop program to a typical trading environment. Each of the above cases involve unique situations. In addition, under the current program, specialists have the ability to manually override the pending auto stop feature. The Exchange believes limiting the pending auto stop program to a typical trading environment alleviates the burden placed on the specialist to continuously monitor orders in the above cases, and if necessary, place the orders on "hold." Each of the proposed changes is discussed in turn.

a. Securities Trading at or Above $100

The Exchange proposes to exclude securities trading at or above $100 at the time the order is received from the pending auto stop program. The CHX states that highly priced securities trade in a manner and in an environment that is different from other lower priced securities. In addition, these securities are geared more toward the institutional market and often are traded with wider spreads, among other things, making them inappropriate for a program that automatically stops the order.

b. Change in Hours of Operation of the Program

Currently, the pending auto stop program operates from 8:45 a.m. to 2:57 p.m., Central Time. As proposed, the pending auto stop program would operate from 9 a.m. to 2:30 p.m., Central Time. The Exchange believes that the periods surrounding the opening and closing are both the most busy and, often, the most volatile periods of the day that require the most amount of specialist attention and action. Having an automatic program that requires the specialist to review these orders and, if necessary, put orders on hold, within 30 seconds during this time period puts undue strain on the specialist's resources by diverting the specialist from his or her core job function of maintaining a fair and orderly market at a time when this function is most critical.

c. Professional Orders

The vast majority of orders received on the Exchange floor through the MAX system are retail sized agency orders.[8] Giving these customer orders executions that are quicker and better than other market centers is an important priority for the Exchange. The pending auto stop program is targeted specifically at these types of orders. Although trading conditions change throughout the day, the Exchange believes that implementing the pending auto stop program in a manner that requires the least amount of specialist intervention will result in the greatest use of the program and, as a result, the greatest benefit to customers. If specialists believe that the program is sufficiently limited to those orders for which the pending auto stop program is most appropriate, they will be less likely to put orders on hold to evaluate and examine the orders in more detail. Given this philosophy, the Exchange believes that it is appropriate to remove professional orders from the program. Professional orders are not subject to the Exchange's Article XX, Rule 37(a) ("BEST Rule"),[9] or any similar guarantee, if stopped. The Exchange no longer believes that it is appropriate, at this time, to give these orders a better guarantee merely because they are stopped under the pending auto stop program.

d. Use of Primary Market as Stopped Price

Currently, when an order is stopped under the pending auto stop program, the order is stopped at the relevant side of the ITS BBO in existence at the time the order is first received. Under the existing pending auto stop program, an entire order is stopped regardless of the size associated with the ITS BBO. Thus, a 599 share order that is eligible for the pending auto stop program is stopped for 599 shares, even if the ITS BBO is only for 100 or 200 shares. As stated above, this results in better guarantees for the order than are required under the BEST Rule.

The Exchange proposes to change the stop price for an order under the pending auto stop program from the ITS BBO to the primary market quote when the size associated with the relevant side of the ITS BBO is 100 shares. In all other cases, the stop price will remain the ITS BBO. Because the guarantee under the pending auto stop program does not depend on the size of the ITS BBO, the Exchange believes that it is appropriate to exclude 100 share markets for purposes of determining the stop price. In most instances, 100 share markets are not an appropriate indicator of where to stop orders under the pending auto stop program, especially when the execution guarantee is for the full size of the order, notwithstanding the 100 share market being displayed. Thus, in instances where the size of the ITS BBO is 100 shares, the Exchange believes that the most appropriate indicator of the price at which to stop the entire order is the primary market bid and offer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act [10] in that it is designed to promote just and equitable principles of trade, to remove impediments to and to perfect the

special settlement orders) will not be eligible to be "pending auto stop" orders.

[7] *See* CHX, Article XX, Rules 28 and 37(a).

[8] The term "agency order" means an order for the account of a customer, but does not include professional orders defined in CHX, Art. XXX, Rule 2, interpretation and policy .04.

[9] Under the Exchange's BEST Rule, Exchange specialists are required to guarantee executions of all agency market and limit orders for Dual Trading Systems issues (issues traded on the CHX, through listing on the CHX or unlisted trading privileges and also listed on either the New York Stock Exchange or the American Stock Exchange) from 100 shares up to and including 2099 shares.

[10] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–98–21 and should be submitted by [insert date 21 days from the date of publication].

V. Commission's Findings and Order Granting Partial Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as it pertains to: (1) Excluding securities at or above $100 at the time of the trade from the pending auto program; (2) changing the time of operation of the pending auto stop program; and (3) excluding professional orders from the pending auto stop program, is consistent with the requirements of the Act.[11] and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that these three aspects of the proposed rule change are consistent with section 6(b)(5) of the Act [13] requiring that the rules of an exchange be designated to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest. The Commission believes that approving a portion of the proposed rule change should streamline the operation of the pending auto stop program and increase the efficiency and productivity of specialists operating within the program. The Commission believes it is appropriate to exclude securities that are at or above $100 at the time of the trade from the program because of the CHX's representation that such securities tend to trade in an environment different from lower priced securities. Higher priced securities are generally traded by institutional investors with wider spreads. According to the Exchange, wider spreads may deplete a stock's liquidity and require a specialist to risk larger amounts of capital. The Exchange represents that these factors could divert specialist attention away from smaller public customer orders, defeating a primary goal of the pending auto program. Thus, the Commission believes that excluding securities that are at or above $100 at the time of trade should streamline the program and enhance efficiency.[14]

The Commission also believes that changing the hours of operation for the pending auto stop program from 8:45 a.m. to 2:57 p.m. to 9 a.m. to 2:30 p.m. should allow specialists to focus on their primary duties at the opening and closing of the business day when trading is often most busy and most volatile. The Commission believes that changing the pending auto stop program's hours of operation to alleviate the specialists' duties during the increased activity often associated with the opening and closing of the business day should contribute to the maintenance of a fair and orderly market.

The Commission also believes that eliminating professional orders from the pending auto stop program should benefit the individual and retail investors who are the focus of the program. Professional orders are not subject to the BEST Rule, and have a direct or indirect broker-dealer interest. The Commission believes that the exclusion of professional orders should appropriately streamline the program and help maintain a focus on agency orders which are subject to the BEST Rule. Thus, the Commission believes that eliminating professional orders from the program should enhance the Exchange's ability to meet its stated goal of achieving superior customer executions. Accordingly, the Commission finds good cause for partially approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.**

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CHX–98–21) as it pertains to: (1) Excluding securities at or above $100 at the time of the trade from the pending auto program; (2) changing the time of operation of the pending auto stop program; and (3) excluding professional orders from the pending auto stop program is hereby approved on a accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31584 Filed 11–25–98; 8:45 am]

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[11] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] The portion of the proposed rule change relating to the use of the primary market as the stopped price will be subject to the full notice and comment period described in Item IV.

[13] *Id.*

[14] The Exchange represents that very few of the securities in the pending auto stop program are at or above $100 at the time of trade. Telephone conversation between David Rusoff, Counsel, Foley & Lardner, and Marc McKayle, Attorney, Division of Market Regulation, Commission (October 30, 1998).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40689; File No. SR–NASD–98–73]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Fees for Subscribers Who Receive Nasdaq Level 1 and Last Sale Data Through Automated Voice Response Services

November 19, 1998.

On October 1, 1998, the National Association of Securities Dealers,Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 7010 to make permanent its current monthly pilot fee for subscribers who receive Nasdaq Level 1 and Last Sale data through automated voice response services.

The proposed rule change appeared in the **Federal Register** on October 20, 1998.[3] The Commission received no comments concerning the proposed rule change. This order approves the proposed rule change.

Nasdaq is proposing to make permanent its $21.25 monthly per port fee for subscribers who receive Nasdaq Level 1 service through automated voice response services.[4] These services provide callers with automated voice access to real-time Nasdaq pricing information. The monthly $21.25 fee has been in effect as a pilot fee for over 11 years and was originally based on a formulation of a $5.00 premium above the combined $16.25 Level 1/Last Sale rate in effect at that time. This fee has not increased despite a subsequent increase of Level 1/Last Sale Rates to the current $20.00 per month level. Given the continued usage of voice-based quote access services,[5] Nasdaq believes that the charge for such services should now be made a permanent part of its fee structure.

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Sections 15A(b)(5)[6] and 15A(b)(6)[7] of the Act.[8] The Commission believes the proposal is consistent with these provisions of the Act because the fee is reasonable and equitable and will apply in a non-discriminatory manner to all member firms that use the Nasdaq Level 1 automated voice response service.

The proposed fee has been in effect since the pilot's inception 11 years ago.[9] During this time members have paid this fee without complaint. Moreover, the NASD has kept the per port fee constant despite a $3.75 increase in Level 1/Last Sale rates. Thus, the Commission supports this fee becoming a permanent part of the NASD's fee structure. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–98–73) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 40546 (October 13, 1998), 64 FR 56055. There was a misprint in the **Federal Register** version of this release. The **Federal Register** contained the following sentence: "Nasdaq believes that the charge for such services should *not* be made a permanent part of its fee structure." *Id.* at p. 56056 (emphasis added). The correct text, as submitted to the **Federal Register** by the Commission, with emphasis added, is as follows: "Nasdaq believes that the charge for such services should *now* be made a permanent part of its fee structure." This sentence is not in the **Federal Register** release. The correction was published on November 17, 1998, in Securities Exchange Act Rel. No. 40546, 63 FR 63967 (November 17, 1998).

[4] A vendor's voice port count is defined as the maximum number of callers capable of accessing Nasdaq data at any given time. For example, if a vendor's voice port count is 100 (*i.e.*, capable of handling a maximum of 100 callers at any given time) then the fee accessed would be $2,125 ($21.25 x 100). Conference call on October 6, 1998, between Thomas P. Moran, Senior Attorney, Office of General Counsel, Nasdaq, and Mignon McLemore, Attorney and Robert B. Long, Attorney, Division of Market Regulation, Commission.

[5] There are currently 7,629 voice ports in service.

[6] Section 15A(b)(5) requires that an association's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. 15 U.S.C. 78*o*–3(b)(5).

[7] Section 15A(b)(6) requires that an association's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. 15 U.S.C. 78*o*–3(b)(6).

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. The Commission believes that disseminating real-time pricing information through automated voice response systems enhances market efficiency and promotes competition among the markets. 15 U.S.C. 78c(f).

[9] The Commission notes that 11 years is a significant length of time to determine a pilot's viability. The Commission believes that gathering and analyzing market data to assess such factors as market interest and profitability should be done within a substantially shorter time frame.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[FR Doc. 98–31585 Filed 11–25–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40688; File No. SR–NYSE–97–31]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 to Proposed Rule Change by the New York Stock Exchange, Inc. To Amend Its Rule 500 Relating to Voluntary Delistings by Listed Companies

November 18, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 1998, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 2 to the proposed rule change as describe in Items I, II and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing the second amendment to its proposed rule change to replace existing NYSE Rule 500 with a new Rule 500 to revise the procedures a NYSE-listed company must follow to delist its securities from the Exchange. The test of Amendment No. 2 to the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 17, 1997, the Exchange submitted the proposed rule change, proposing to amend NYSE Rule 500, which states the procedures a NYSE-listed company must follow before voluntarily delisting its securities from the Exchange. On December 3, 1997, the Exchange submitted Amendment No. 1 to the proposed rule change to the Commission. The amended proposal was published for comment in the **Federal Register** on December 10, 1997.[3]

NYSE Rule 500 currently requires holders of 66 percent of a security to approve a company's decision to delist the company's securities from the Exchange, with less than ten percent of the individual holders objecting to the delisting. As originally proposed, the amended rule would have permitted a domestic issuer to delist stock if it obtained the approval of: (1) A majority of the company's full board of directors; and (2) the company's audit committee. The issuer then would have been required to provide shareholders with between 45 and 60 calendar days' notice of the delisting. A non-U.S. issuer would have had to obtain board approval to delist its stock. A non-U.S. issuer also would have had to provide holders with reasonable notice of its intention to delist, which would have required the issuer to send written notice to U.S. holders and to follow home-country practice to provide notice to non-U.S. holders.

In response to the Commission's request for comment on the original proposal, the Commission received a number of comments both for and against the proposal. In response to those comments and discussions with Commission staff, the Exchange now proposes the following amendments to the original proposal:

- Permit approval by a company's board of directors according to applicable state law requirements on majority votes (generally the majority of a quorum), rather than requiring approval by a majority of the entire board. The Exchange would continue to require audit committee approval.
- Amend the notice provision to require U.S. companies to provide actual written notice to no less than 35 of their largest record holders (rather than all holders). A foreign issuer would have to provide such notice to its 35 largest U.S. shareholders.
- Require both U.S. and foreign companies to issue a press release to inform shareholders generally of the proposed delisting.
- Shorten the minimum waiting period from 45 calendar days to 20 business days, and change the maximum waiting period from 60 calendar days to 60 business days, with the ability of companies to extend the period, subject to approval by the Exchange.

The Exchange believes that new Rule 500, as proposed to be amended, will continue to provide investors with adequate procedural protections in the delisting process while providing listed companies with greater flexibility in this area.

2. Statutory Basis

The Exchange believes Amendment No. 2 to the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act,[4] which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

In adopting the original proposal to amend Rule 500, the Exchange consulted with numerous Board and advisory committees, pension funds and other Exchange constituents. The Exchange also has informally discussed the current proposals with various of these constituencies.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–97–31 and should be submitted by December 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31582 Filed 11–25–98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40686; File No. SR–PCX–98–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to Amendments to Rule 2.6(e) on the Prevention of the Misuse of Material, Nonpublic Information

November 18, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

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[3] Securities Exchange Act Release No. 39394 (December 3, 1997) 62 FR 65116.

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 2.6(e) to modify and clarify its current guidelines established for the prevention of the misuse of material, non-public information by members and member organizations for whom the PCX is the Designated Examining Authority ("DEA"). Below is the test of the proposed rule change. The proposed new language is italicized and the deleted language is bracketed.

* * * * *

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Prevention of the Misuse of Material, Nonpublic Information

RULE 2.6(e) Every member *or member organization must* [shall] establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member *or member organization's* business, to prevent the misuse of material, non-public information by such member *or member organization* or persons associated with such member *or member organization*. Members *or member organizations for whom the Exchange is the Designated Examining Authority ("DEA")* that are required, pursuant to Rule 2.6, to file SEC Form X–17A–5 with the Exchange on an annual *or more frequent basis must* [shall] file contemporaneously with [those] *the* submissions *for the calendar year end* [attestations signed by such members] *ITSFEA compliance acknowledgments* stating that the procedures mandated by this Rule have been established, enforced and maintained. Any member *or member organization* or associated person who becomes aware of a possible misuse of material, non-public information must promptly notify the Exchange's Equities or Options Surveillance Department.

Commentary.

.01 For purposes of Rule 2.6(e), conduct constituting the misuse of material, non-public information includes, but is not limited to, the following:

A. *T*[t]rading in any securities issued by a corporation, or in any related securities or related options or other derivative securities, while in possession of material, non-public information concerning that issuer; *or*

B. *T*[t]rading in a security or related options or other derivative securities, while in possession of material non-public information concerning imminent transactions in the security or related securities; [and] *or*

C. *D*[d]isclosing to another person or entity any material, non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuse of such material, non-public information.

.02 The terms "associated person" and "person associated with a member *or member organization*" mean *anyone who directly is engaged in the member or member organization's trading-related activities, including General* [any] partners, officers, directors, [or branch] managers [of a member] (or any person occupying a similar status or performing similar functions), or any person directly or indirectly controlling, controlled by, or under common control with a member, or any employee of *the* [a] member *or member organization.*

For the purposes of this Rule, the term "employee" includes every person who is compensated directly or indirectly by the member or member organization for the solicitation or handling of business in securities, including individuals trading securities for the account of the member or member organization, whether such securities are dealt in on an exchange or are dealt over-the-counter.

.03 Rule 2.6(e) [requires] *provides* that [, at a minimum,] each member *or member organization for which the Exchange is the DEA should* establish, maintain, and enforce [the following] *written* policies and procedures *similar to the following, as applicable:*

A. All associated persons must be advised in writing of the prohibition against the misuse of material, non-public information; *and*

B. *All associated persons of the member or* [Each] member organization [and all persons associated with that member organization] must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and

C. Each *member or* member organization must *receive and re*[main]tain copies of trade confirmations and monthly account statements for each account in which an associated person: [(1)] has a direct or indirect financial interest [,] or [(2)] makes investment decisions. [These account statements and trade confirmations must be maintained for at least three years, the first two years in an easily accessible place.] *The activity in* [S]such brokerage accounts *should* [must] be reviewed at least quarterly by the *member or* member organization for the *express* purpose of detecting the possible misuse of material, non-public information; *and*

D. All associated persons must disclose to the *member or* member organization whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decision, [is] *are* an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information. [("Eligible members" are member organizations and sole PSE members that do not carry or introduce customer accounts and for whom the Exchange is the Designated Examining Authority ("DEA").]

Maintenance of the foregoing policies and procedures may not, in all cases, satisfy the requirements *and intent* of Rule 2.6(e). The adequacy of each member *or member organization's* policies and procedures will depend upon the nature of each member *or member organization's* business.

.04 [The Exchange has developed sample forms, denominated as the "ITSFEA Compliance Procedures" (in reference to the Insider Trading and Securities Fraud Enforcement Act of 1998), that may be used by certain eligible member organizations to facilitate their compliance with the filing and record-keeping requirements of Rule 2.6(e). Use of these forms does not create a presumption by the Exchange that any particular member has satisfied the requirements of this Rule.] *An Exchange member who is solely a lessor of a membership and is not registered and not required to register as a broker-dealer under Section 15 of the Exchange Act is not subject to the requirement of Exchange Rule 2.6(e) concerning the establishment, maintenance, and enforcement of written policies and procedures respecting the misuse of material, non-public information.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The test of these statement may be examined at the placed specified in Item IV below. The Exchange has prepared summaries, set forth in sections, A, B and C below, of the most significant aspects of such statements.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The PCX filed an amendment to the proposed rule change. *See* Letter from Robert Pacileo, Jr., Staff Attorney, PCX, to Kathy England, Assistant Director, Division of Market Regulation, Commission, dated October 29, 1998 ("Amendment No. 1"). The substance of Amendment No. 1 is incorporated into this Notice.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

Background: In November 1988, Congress enacted the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed to prevent, deter, and prosecute insider trading. ITSFEA requires broker-dealers to maintain written procedures reasonably designed to prevent the misuse of material, non-public information by broker-dealer or any person associated with them.[4] ITSFEA also provides for penalties of up to $1 million or three times the amount gained or amount of loss avoided, whichever is greater, for the misuse of material non-public information.[5] ITSFEA clearly anticipates liability where written procedures have not been established or have not been enforced. In December 1992, the Commission approved a PCX proposal to adopt new Rule 2.6(e) relating to the establishment, maintenance and enforcement of procedures designated to prevent the misuse of material non-public information.[6] The Commission also approved similar proposals of other self-regulatory organizations relating to ITSFEA requirements.[7]

Proposal: The Exchange is proposing to modify its Rule 2.6(e) to clarify the guidelines established for the prevention of the misuse of material, non-public information by members and member organizations for whom the PCX is the DEA. Currently, the rule states: "Members that are required, pursuant to Rule 2.6, to file SEC Form X–17A–5 with the Exchange on an annual basis shall file contemporaneously with those submissions attestations signed by such members stating that the procedures mandated by this Rule have been established, enforced and maintained." The proposed rule change would state that only those organizations for which the Exchange is the DEA are required to file ITSFEA compliance acknowledgments stating that the procedures mandated by this rule have been established, enforced and maintained. In that regard, the rule change will codify the existing practices of the Exchange.

The Exchange also proposes to modify the definition of "associated person" in Rule 2.6(e). The current rule defines associated person as "any partner, officer, directors or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with a member, or any employee of a member." The Exchange is proposing to change the definition to "anyone who directly is engaged in the member or member organization's trading-related activities, including general partners, officers, directors, managers (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by or under common control with ■ member, or any employee of the member or member organization." The rule change would exclude limited partners from this definition, unless such limited partners are directly involved in the member organization's trading-related activities. The Exchange believes that the current requirement, which covers limited partners who are not directly involved in the member organization's trading-related activities, goes to far because it would impose unnecessary affirmative obligations on PCX members. For example, if a floor trader's grandmother, who lives across the country, is a small investor in that trader's market making operation, under the current rule, the trader would be required to review his grandmother's securities account statements pursuant to Commentary .03(C), which the Exchange believes would be an unreasonable requirement.

The Exchange further proposes to define "employee" as "every person who is compensated directly or indirectly by the member or member organization for the solicitation or handling of business in securities, including individuals trading securities for the account of the member or member organization, whether such securities are dealt in on the exchange or dealt over-the-counter."[8] Thus, independent contractors[9] as well as actual employees will be subject to the requirements of the rule.

The Exchange proposes to delete superfluous language regarding record keeping in Commentary .03 of Rule 2.6(e). In Commentary .03(C), the Exchange proposes to delete language that reads "These account statements and trade confirmations must be maintained for at least three years, the first two years in an easily accessible place." The Exchange believes this language is superfluous given requirements under Rule 17a–3 of the Act. Specifically, Rule 17a–3 sets requirements for records to be made by certain Exchange Members, Brokers and Dealers and would require the members or member organizations to maintain account statements and trade confirmations.

Finally, the Exchange proposes to clarify that an Exchange member who is a lessor of a membership, and is not registered and required to register as a broker-dealer under Section 15 of the Act, is not subject to the requirements of Exchange Rule 2.6(e) concerning the establishment, maintenance and enforcement of written policies and procedures respecting the misuse of material, non-public information. A lessor of a membership that is not registered as a broker-dealer under section 15 of the Act cannot engage in trading operations and is therefore not required, pursuant to Rule 2.6, to file SEC Form X–17A–5 with the Exchange.

Basis

The Exchange believes the proposed rule change is consistent with section 6(b)[10] of the Act, in general, and furthers the objectives of section 6(b)(5),[11] in particular, because it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[4] 15 U.S.C. 78o(f).

[5] 15 U.S.C. 78u–1.

[6] *See* Securities Exchange Act Release No. 33171 (November 9, 1993), 58 FR 60892 (November 18, 1993) (SR–PSE–92–20).

[7] *See* Securities Exchange Act Release No. 30597 (April 16, 1992), 57 FR 14855 (April 23, 1992) (SR–Phlx–91–47); Securities Exchange Act Release No. 33008 (October 4, 1993), 58 FR 52518 (October 8, 1993) (SR–Phlx–93–36); Securities Exchange Act Release No 30557 (April 6, 1992) 57 FR 13393 (April 16, 1992) (SR–CBE–91–14); Securities Exchange Act Release No. 33937 (April 20, 1994), 59 FR 22030 (April 28, 1994) (SR–CBOE–93–58). *See also* New York Stock Exchange Rule 342.

[8] The Commission approved a similar definition that the Philadelphia Stock Exchange proposed in 1997. *See* Securities Exchange Act Release No. 39178 (October 1, 1997), 62 FR 52804 (October 9, 1997).

[9] *See, e.g.*, Letter from Douglas Scarff, Director, Division of Market Regulation, SEC to Gordon S. Macklin, President, National Association of Securities Dealers, Inc., dated June 18, 1982 (clarifying the status of independent contractors under the Act).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neigher solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File SR–PCX–98–52 and should be submitted by December 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31586 Filed 11–25–98; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40685; File No. SR–Phlx–98–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing and Trading Options on The Street.com Internet Index

November 17, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 23, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change for interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to list and trade European-style, cash-settled options on The Street.com Internet Index ("Index"),[3] an equal dollar-weighted, A.M.-settled, narrow-based index of 20 small to mid-size companies by capitalization that are involved in Internet software, computer data security, and consulting services.[4] The Phlx is filing this proposal pursuant to Phlx Rule 1009(A), which provides for the commencement of trading of options on the Index 30 days after the date of the filing. The Phlx believes that this proposal is in compliance with Phlx Rule 1009(A) and the standards approved in the Generic Index Option Approval Order ("Generic Index Approval Order").[5]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to list for trading European style, cash-settled options on The Street.com Internet Index, a new index developed by the Exchange pursuant to Phlx Rule 1009A(b) in accordance with the Generic Index Approval Order for the listing and trading of narrow-based index options. Options on The Street.com Internet Index will provide an important hedging vehicle for basket traders who engage in trading securities that comprise this subsector of the computer industry.

The following is a more detailed description of the proposed Index options:

Ticker Symbol: DOT

Settlement Value Symbol: DOS

Underlying Index: The Street.com Internet Index is an equal dollar-weighted index composed of 20 stocks involved in Internet software, computer data security, and counsulting services that are traded on the New York Stock Exchange ("NYSE") and Nasdaq Stock Market ("Nasdaq"), and are therefore, reported securities as defined in Rule "11Aa3–1 under the Act. Further, all of the stocks presently meet the Exchange's listing criteria for equity options contained in Exchange Rule 1009 and are currently the subject of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Phlx pre-filed the Index with the Commission in August 1998. The pre-filing was submitted in accordance with the Generic Index Approval Order, *infra* note 5. Subsequent to the pre-filing, the Exchange renamed the Phlx Internet Growth Index as The Street.com Internet Index. The Street.com, Inc. does not guaranty the accuracy or completeness of the Index, makes no express or implied warranties with respect to the Index and shall have no liability for any damages, claims, losses or expenses caused by errors in the Index calculation. The Exchange represents that it will have sole discretion over the calculation of the Index.

[4] Since the pre-filing, the Phlx represented to the Commission that nothing has changed with the Index, including the stocks selected for the Index; only the name of the Index was changed. Telephone conversation between Nandita Yagnik, Counsel, Phlx, and Joseph Corcoran, Division of Market Regulation, Commission on November 12, 1998.

[5] *See* Securities Exchange Act Relese No. 34157 (June 3, 1994), 59 FR 30062 (June 9, 1994) (order approving File Nos. SR–Amex–92–35; SR–CBOE–93–59; SR–NYSE–94–17; SR–PSE–94–07; and SR–Phlx–94–10). The Generic Index Approval Order established generic listing standards for options on narrow-based indexes and adopted streamlined procedures for introducing trading in options satisfying the generic listing standards.

listed options on U.S. options exchanges.

The Exchange notes that all of the companies represented in the Index are U.S. companies. However, if non-U.S. companies are added to the Index (such as American Depository Receipts) that are not subject to comprehensive surveillance sharing agreements, those components will not account for more than 20% of the weight of the Index.

As of September 30, 1998, the market capitalization of all the stocks in the Index exceeded $50 billion, with individual capitalizations ranging from $167 million to $24 billion. All 20 component issues in the Index had monthly trading volumes in excess of one million shares over each of the months from April through September.

Index Calculation: The methodology used to calculate the Index is an equal dollar-weighted method, meaning that each of the component stocks is represented in the Index in approximately equal dollar amounts. The Exchange believes that this method of calculation is important because it will provide each component issue with equivalent influence on the movement of the Index value instead of allowing one highly capitalized stock to dominate the movement of the Index. To determine the initial dollar weighting of the stocks, the Exchange calculated the number of shares of each that would represent an investment of approximately $10,000 in each of those stocks comprising the Index based on closing prices on September 30, 1998. The value of the Index equals the current market value of the sum of the assigned number of shares of all of the stocks in the Index divided by the current Index divisor. The Index divisor was set to yield an initial Index value of 200 at the opening on October 1, 1998.

Index Maintenance: To maintain the continuity of the Index, the divisor will be adjusted to reflect nonmarket changes in the price of the component securities as well as changes in the composition of the Index. Changes which may result in divisor adjustments include but are not limited to stock splits, dividends, spin-offs, mergers and acquisitions. In accordance with Phlx Rule 1009A, if any change in the nature of any component (*e.g.*, delisting, merger, acquisition or otherwise) in the Index will change the overall market character of the Index, the Exchange will take appropriate steps to remove the stock or replace it with another stock that the Exchange believes would be compatible with the intended market character of the Index. Any replacement components will be reported securities as defined in Rule 11Aa3–1 under the Act.

Currently, the Index is comprised of 20 component stocks. Absent Commission approval, the Exchange will not change the number of components to more than 24 or fewer than 16. The Exchange notes that the component stocks comprising the top 90% of the Index, by weight, will each maintain a minimum market capitalization of $75 million. The remaining 10%, by weight, will each maintain a minimum market capitalization of $50 million. The component stocks comprising the top 90% of the Index, by weight, will maintain a trading volume of at least 500,000 shares per month. The trading volume for each of the component stocks constituting the bottom 10% of the Index, by weight, will maintain at least 400,000 shares per month. No fewer than 90% of the component issues by weight or fewer than 80% of the total number of the components qualify as stocks eligible for options trading.

If the Index fails at any time to satisfy one or more of the required maintenance criteria, the Exchange will notify the Commission staff immediately and will not open for trading any additional series of options on the Index, unless the above is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of options on The Street.com Internet Index has been approved by the Commission under Section 19(b)(2) of the Act.[6] In addition to not opening for trading any additional series, the Exchange may, in consultation with the Commission, prohibit opening purchase transactions in series of options previously opened for trading to the extent that the Exchange deems such action necessary or appropriate.[7]

In addition to the maintenance criteria above, no single component of the Index shall account for more than 25% of the Index and the three highest weighted component securities shall not account for more than 60% of the Index. If the Index fails to satisfy the maintenance listing standards set forth above, the Exchange shall not open for trading any additional series of options of that class unless such failure is determined by the Exchange not to be significant and the Commission concurs in that determination, or unless the continued listing of that class of Index options has been approved by the Commission under Section 19(b)(2) of the Act.

Rebalancing: Following the close of trading on the third Friday of January, April, July and October the Index portfolio will be adjusted by changing the number of whole shares of each component so that each company is gains represented in "equal" dollar amounts. If necessary, a divisor adjustment will be made at the rebalancing to ensure the continuity of the Index's value. The newly adjusted portfolio will then become the basis for the Index's value on the first trading day following the adjustment.

The number of shares of each component stock in the Index portfolio will remain fixed between quarterly rebalances except in the event of certain types of corporate actions, such as the payment of a dividend other than an ordinary cash dividend, stock dividend, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In the case of a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted to the nearest whole share to maintain the component's relative weight in the Index at the level immediately prior to the corporate action. In the event of a stock addition or replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity. All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever possible. The Exchange will make this information available to the public through dissemination of an information circular.

Unit of Trading: Each option contract will represent $100, the Index multiplier, times the Index value. For example, an Index value of 200 will result in an option contract value of $20,000 ($100 × $200).

Exercise Price: The exercise prices will be set in accordance with Phlx Rule 1101A(a).

Settlement: A.M.—settled index options.

Settlement Value: The Index value for purposes of settling outstanding Index option contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day

[6] *See* Phlx Rule 1009A.

[7] *See* Phlx Rule 1010.

prior to expiration. In the case of National Market securities traded through Nasdaq, the first reported sale price will be used for the final settlement value for expiring Index option contracts. In the event that a component security does not open for trading on the last day before the expiration of a series of Index options, the last sale price for that security will be used in calculating the Index value. However, in the event that the Options Clearing Corporation ("OCC") determines that the current Index value is unreported or otherwise unavailable (including instances where the primary market for securities representing a substantial part of the value of the Index is not open for trading at the time when the current Index value used for exercise settlement purposes would be determined), the OCC shall determine an exercise settlement amount for the Index in accordance with Article XVII, Section 4 of the OCC By-Laws.[8]

Last Trading Day: Last business day prior to the third Friday of the month for options which expire on the Saturday following the third Friday of that month.

Trading Hours: 9:30 a.m. to 4:02 p.m.

Position and Exercise Limits: The Street.com Internet Index is an industry or narrow-based index option. Accordingly, the Exchange will employ position and exercise limits pursuant to Phlx Rules 1001A(b) and 1002A, respectively. The position and exercise limits will be 15,000 contracts.

Expiration Cycles: Three months from the March, June, September, December cycle, plus two additional near-term months.

Exercise Style: European.

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to Phlx Rule 1033A. For example, a bid or offer of 1½ will represent a premium per options contract of $150 (1½ × 100).

The Street.com Internet Index value will be disseminated every 15 seconds during the trading day. The Phlx has retained Bridge Data Inc. to compute and perform all of the necessary maintenance of the Index.[9] Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value will also be available on broker-dealer interrogation devices to subscribers of options information. The Exchange represents that it has the capacity to handle the additional traffic of The Street.com Internet Index. Further, the Options Price Reporting Authority ("OPRA") represents that it has the capacity to handle the additional traffic generated by the Index.[10]

The options will be traded pursuant to current Phlsx rules governing the trading of index options including provisions addressing sales practices, floor trading procedures, position and exercise limits, margin requirements and trading halts and suspensions.[11] The Exchange also represents that surveillance procedures currently used to monitor trading in index options will be applicable to this Index option. These procedures include having complete access to trading activity in the underlying securities which are all traded on the NYSE and Nasdaq. In addition, the Intermarket Surveillance Group ("ISG") Agreement dated July 14, 1983, as amended on January 29, 1990 and June 20, 1994 will be applicable to the trading of options on the Index.

2. Statutory Basis

The Phlix believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with section 6(b)(5),[12] in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

Specifically, the Exchange believes that the introduction of the proposed The Street.com Internet Index will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means of hedging exposure to market risks associated with the securities issued by companies that comprise this subsector of the computer industry. The trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with these securities. Accordingly, the Exchange believes that options on the Index will provide investors with an additional trading and hedging mechanism that outweighs any potential for manipulation that would diminish public confidence. Further, the Exchange believes that the proposed Index will have a positive impact on efficiency, competition and capital formation consistent with section 3(f) of the Act.[13]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change complies with the standards set forth in the Generic Index Approval Order,[14] it has become effective pursuant to section 19(b)(3)(A) of the Act[15] and subparagraph (e) of Rule 19b–4 thereunder.[16] Pursuant to the Generic Index Approval Order, the Exchange may not list options on the Street.com Internet Index prior to thirty days after the date that the proposed rule change was filed with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC

[8] *See, e.g.*, OCC Article XVII, Section 4 and Securities Exchange Act Release No. 37315 (June 17, 1996), 61 FR 32471 (June 24, 1996) (order approving File No. SR–OCC–95–19).

[9] As a back-up to Bridge Data Inc., the Phlx will utilize its own internal calculation system called the Index Calculation Engine ("ICE") System.

[10] *See* Letter from Joe Corrigan, Executive Director, OPRA, to Michael Walinskas, Deputy Associate Director, Commission dated September 22, 1998.

[11] *See* Phlx Rule 722 and Rule Phlx Rules 1000A through 1102A; *See generally* Phlx Rules 1000 to 1080.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78c(f).

[14] *See* note 5, *supra*.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(e).

20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–48 and should be submitted by December 18, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31583 Filed 11–25–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted on or before January 26, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "Survey of Women-Owned Businesses who are Active Exporters or who are export ready".

Type of Request: New Collection.

Form No: 2082.

Description of Respondents: Women-Owned Businesses that are either Actively exporting or export-ready.

Annual Responses: 500.

Annual Burden: 250.

Comments: Send all comments regarding this information collection to, Sally Clark, Director of Special Initiatives, Office Women Business Ownership, Small Business Administration, 409 3rd Street S.W., Suite 4400, Washington, D.C. 20416. Phone No: 202–205–6673.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Dated: November 20, 1998.

Vanessa Piccioni,

Acting Chief, Administrative Information Branch.

[FR Doc. 98–31601 Filed 11–25–98; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3146]

State of Kansas; (Amendment #2)

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on October 30, 1998 and continuing through November 15, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 4, 1999 and for economic injury the termination date is August 5, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 19, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–31650 Filed 11–25–98; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3145]

State of Texas; (Amendment #3)

In accordance with a notice from the Federal Emergency Management Agency dated November 17, 1998, the above-numbered Declaration is hereby amended to include the Counties of Blanco, Jefferson, Medina, and San Patricio in the State of Texas as a disaster area due to damages caused by severe storms, flooding, and tornadoes which occurred October 17 through October 31, 1998.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location:

Gillespie, Llano, Orange, Uvalde, and Zavala in the State of Texas. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is December 19, 1998 and for economic injury the termination date is July 21, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 19, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–31649 Filed 11–25–98; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice #2933]

Renewal of the Overseas Schools Advisory Council

The Department of State is renewing the Overseas Schools Advisory Council to provide a formal channel for regular consultation and advice from U.S. corporations and foundations regarding American-sponsored overseas schools. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Members of the committee will be appointed by the Assistant Secretary for Administration. The Committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with the FACA section 10(d) and 5 U.S.C. 552b(c) (1) and (4) that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, contact Dr. Keith D. Miller, Executive Secretary of the committee at 703–875–7800.

Dated: November 16, 1998.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 98–31580 Filed 11–25–98; 8:45 am]

BILLING CODE 4710–24–U

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 2936]

Privacy Act of 1974; As Amended; Removal of System of Records

Notice is hereby given that the Department of State is removing a system of records, STATE–55—Security Access Control Records, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and in accordance with the record-keeping practices and the reorganization of the Bureau of Diplomatic Security.

As reported in Public Notice 2884 dated August 24, 1998 (98 FR/Vol. 63, No. 176, September 11, 1998, 48779–48781) the records reflected in STATE–55 became part of STATE–36.

Dated: November 6, 1998.

Patrick F. Kennedy,

Assistant Secretary of Administration.

[FR Doc. 98–31579 Filed 11–25–98; 8:45 am]

BILLING CODE 4710–05–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 192 meeting to be held December 10, 1998, starting at 9:00 a.m. The meeting will be held at MITRE in the Main Briefing Room—A207, 1820 Dolley Madison Boulevard, McLean, VA 22102. The MITRE host is Lee Brown, at (703) 883–7618 (phone) or lbrownmitre.org (e-mail).

The agenda will be as follows: 9:00 a.m. Plenary Session: (1) Chariman's Introductory Remarks; (2) Review/ Approval of Meeting Agenda. 9:30–10:00 a.m. (3) Discuss and Approve New Terms of Reference; 10:00–10:30 a.m. (4) Discuss Work Group Structure; 10:30–12:00 noon (5) Break into Work Groups; 12:00–1:00 p.m. (6) Lunch; 1:00–3:00 p.m. (7) Continue Work Group Activities. 3:00–4:00 p.m. Plenary Session, Continued: (8) Discussion of Future Work Plan; (9) Set Agenda for Next Meeting; (10) Date and Location of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 883–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (website). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 20, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–31647 Filed 11–25–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the twentieth session of the United Nation's Committee of Experts on the Transport of Dangerous Goods (COE) to be held December 7–16, 1998 in Geneva, Switzerland.

DATES: December 3, 1998, 9:30 a.m.–1:00 p.m.; January 12, 1999, 9:30 a.m.–1:00 p.m.

ADDRESSES: The meeting on December 3, 1998 will be held in room 2230–2232, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. The meeting on January 12, 1998 will be held in room 8236–8240, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the twentieth session of the COE and to discuss U.S. positions on COE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the session and to prepare for the sixteenth session of the Sub-Committee of Experts on the Transport of Dangerous Goods which is scheduled for July 5–16, 1999 in Geneva, Switzerland. Optics to be covered during the public meetings include matters related to restructuring the UN Recommendations on the Transport of Dangerous Goods into a model rule including development of packing instructions prescribing the types of packagings for specific materials, international harmonization of classification criteria and labeling, review of intermodal portable tank requirements, review of the requirements applicable to small quantities of hazardous materials in transport (limited quantities), classification of individual substances, primary and subsidiary labeling requirements, restructuring the COE to address future global harmonization of classification criteria and labeling requirements and the future work program for the COE during its 1999–2000 biennium.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the twentieth session of the COE meeting may be obtained from the RSPA Dockets Division (202–366–5046) or by downloading them from the United Nations Transport Division's web site at *http://www.itu.int/itudoc/un/editrans/dgdb/dgscomm.html.* This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http://hazmat.dot.gov/uncomtdg.htm.* A summary of the papers and the US positions will be provided at the meetings.

Issued in Washington, DC, on November 20, 1998.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 98–31600 Filed 11–25–98; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

United States Mint

Dollar Coin Design

November 23, 1998.

ACTION: Request for comments.

SUMMARY: The United States Mint is in the process of selecting designs for the obverse ("heads") and reverse ("tails") for the new $1 coin to be issued beginning in 2000. By law, the Secretary of the Treasury, in consultation with Congress, shall select appropriate designs for the coin. The Secretary has determined that the obverse design will be a depiction of Sacagawea, the young

Native American guide who was instrumental to the success of the Lewis and Clark expedition. The reverse of the coin is required by statute to depict an eagle. In September 1998, the Mint invited twenty-three artists, including Mint sculptors and engravers, to submit obverse and reverse designs for the new coin. These submissions have been evaluated and the Mint is now seeking comments from the public on approximately five proposed obverse and five proposed reverse designs. The designs will be displayed on the Mint's web site (http://www.usmint.gov) beginning December 7, 1998.

COMMENT DEADLINE: December 21, 1998.

RECEIPT OF COMMENTS: Any member of the public wishing to comment should do so via the Internet by accessing the Mint's web site (http://www.usmint.gov) Alternatively, comments may be submitted in writing to Michael White, 633 3rd Street NW., Room 715, Washington, DC 20220, Fax (202) 874–4083; mail must be received no later than December 21, 1998.

Philip Diehl,

Director, The United States Mint.

[FR Doc. 98–31656 Filed 11–25–98; 8:45 am]

BILLING CODE 4810–37–M

UNITED STATES INFORMATION AGENCY

Fulbright Senior Scholars Program

ACTION: Notice: Amendment to Proposal Submission Instructions for Fulbright Senior Scholars Program.

SUMMARY: The Proposal Submission Instructions referenced in FR Doc. 98–28288 published at 63 FR 56698, Oct. 12, 1998, for the Fulbright Senior Scholars Program, available at http://www.usia.gov/education/rfps/menu.htm, fax-on demand at (202) 401–7616 and in print from USIA has been amended as follows:

Tab C of the Proposal Submission Checklist should read:

Narrative (Not to exceed 50 pages). Supplementary addenda are also acceptable. Calendar of activities/itinerary, if applicable.

The Fulbright Senior Scholars Program was announced in the **Federal Register**, Volume 63, Number 204, page 56698, on October 22, 1998.

Dated: November 20, 1998.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 98–31568 Filed 11–25–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 63, No. 228
Friday, November 27, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99-3-000, et al.]

MidAmerican Energy Company, et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 98–31110, beginning on page 64694, in the issue of Monday, November 23, 1998, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01-98-125]

RIN 2115-AE46

Special Local Regulations: Greenwood Lake Powerboat Classic, Greenwood Lake, New Jersey

Correction

In proposed rule document 98–30446, beginning on page 63426, in the issue of Friday, November 13, 1998, make the following correction:

On page 63426, in the third column, under **DATES**, in the second line "January 12, 1998" should read "January 12, 1999".

BILLING CODE 1505-01-D

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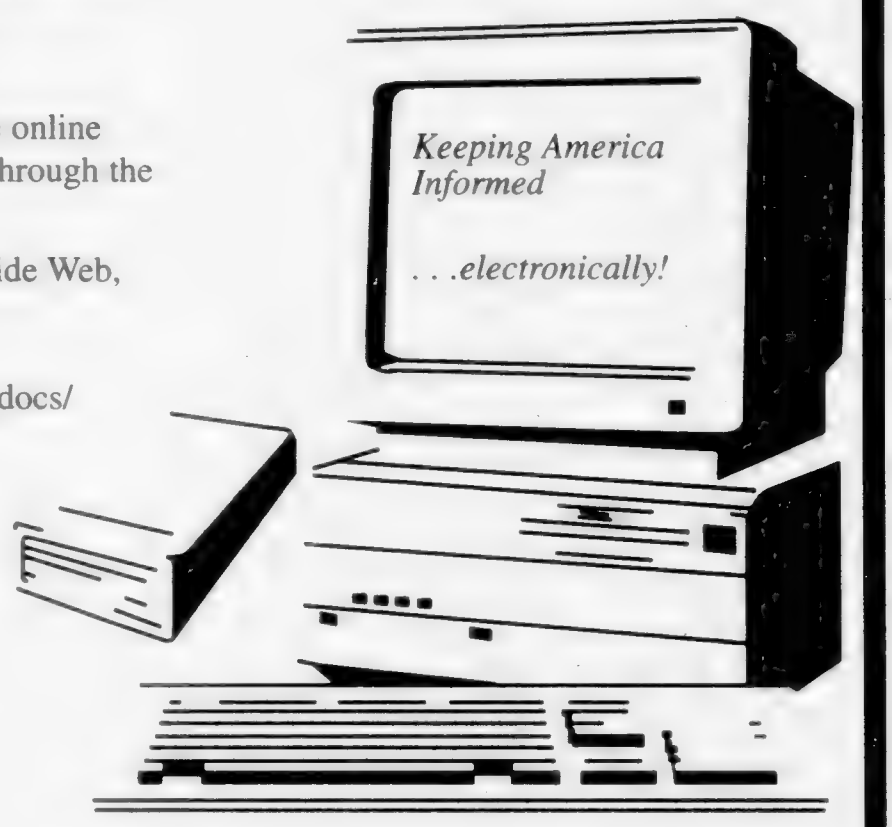

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Rules and Regulations

Federal Register
Vol. 63, No. 229
Monday, November 30, 1998

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206–AI53

Authorization of Solicitations During the Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Interim Rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule giving the Director the discretion to authorize solicitations upon written request during the Combined Federal Campaign (CFC). In extraordinary circumstances, solicitations in support of victims in cases of emergencies or disasters may be approved. The intended effect of this rule is to enable the Federal workforce to respond to emergencies or disasters of catastrophic proportions which may occur during the CFC.

DATES: Interim rule effective: November 30, 1998; comments must be received on or before December 30, 1998.

ADDRESSES: Send written comments to Lorraine Lewis, General Counsel, Office of General Counsel; Office of Personnel Management; Room 7353, 1900 E Street, NW., Washington, DC 20415–1300.

FOR FURTHER INFORMATION CONTACT: Becky Kumar, Office of General Counsel, Office of Personnel Management, (202) 606–2885.

SUPPLEMENTARY INFORMATION: The recent devastation in Central America caused by Hurricane Mitch in late October and early November resulted in over 10,000 deaths and destroyed the homes and communities of many thousands more. This tragedy provided the impetus for OPM to review its regulations governing the solicitation of the Federal workforce and to conclude that there is a need for further flexibility in its regulations in order to respond to emergencies and disasters of catastrophic proportions.

The CFC regulations prohibit solicitations of the Federal workforce apart from those conducted as part of the Combined Federal Campaign. The CFC was designed to be the one concentrated period during which Federal employees may be solicited to contribute to all eligible organizations. The rationale for limiting the CFC to a single period during the year is to provide Federal employees with a means of contributing to a wide variety of worthy voluntary organizations, but to accomplish this with minimal disruption to the work of the Government.

The regulations contain an exception for solicitations requested in writing on behalf of victims of emergencies and disasters, with the limitation that no such solicitations may occur between September 1 to December 15, the period of the CFC. In our review of this matter, we have determined on rare occasions, it may be necessary to authorize a solicitation during this time period. Natural disasters are not subject to time constraints, and extraordinary occurrences may necessitate extraordinary relief measures. OPM believes that this time period is of continuing concern in the future, since, according to the National Oceanic and Atmospheric Administration, the Atlantic hurricane season runs from June 1 through November 30 each year and the Pacific hurricane season runs from May 15 through November 30. Both of these periods overlap with the CFC.

In light of all of the above, OPM is adding a provision to the current regulations governing the CFC to allow the Director to authorize solicitations during the CFC for victims of disasters or emergencies, upon written request and a showing of extraordinary circumstances. OPM expects that both the requests and approvals for such solicitations will be rare.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. This regulation is needed to provide the Director with the discretion to authorize solicitations during the Combined Federal Campaign, in extraordinary circumstances in cases of emergencies or disasters.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 950

Administrative practice and procedure, Charitable contributions, Government employees, Military personnel, Nonprofit organizations.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

PART 950— SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A— General Provisions

1. The authority citation for part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.SC. 1101 Note).

2. In § 950.102, paragraph (a) is amended by revising the last sentence to read as follows:

§ 950.102 Scope of the Combined Federal Campaign.

(a) * * * No such permissions will be granted for such solicitations during the period September 1 through December 15, except at the discretion of the Director upon a showing of extraordinary circumstances.

* * * * *

[FR Doc. 98–31693 Filed 11–27–98; 8:45 am]
BILLING CODE 6325–01–P

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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2423

Unfair Labor Practice Proceedings

AGENCY: Office of the General Counsel, Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The General Counsel of the Federal Labor Relations Authority (FLRA) revises the regulations regarding the prevention, resolution, and investigation of unfair labor practice (ULP) disputes (part 2423, subpart A). The purpose of the revisions is to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. Implementation of the changes will enhance the purposes and policies of the Federal Service Labor-Management Relations Statute (Statute) by preventing ULP disputes, resolving disputes that arise, and fully investigating and taking determinative action in disputes that are not resolved. The revisions implement the FLRA's agency-wide collaboration and alternative dispute resolution initiative to assist labor and management parties in developing collaborative relationships, and to provide dispute resolution services in ULP, representation, negotiability, impasses, and arbitration cases pending before the Office of the General Counsel, the three Authority Members, and the Federal Service Impasses Panel. The regulations are applicable to any charge pending or filed after January 1, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Deputy General Counsel, at the address listed above or by telephone at (202) 482–6680, ext. 203.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1998, the Office of the General Counsel (OGC) of the FLRA published proposed modifications to the existing rules and regulations in subpart A of part 2423 of title 5 of the Code of Federal Regulations regarding the prevention of ULPs, as well as to the meaning of terms as used in this subchapter located at part 2421, and to related miscellaneous and general requirements located at part 2429 (63 FR 45013) (August 24, 1998). These revisions are part of the FLRA's initiative to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. For the sake of clarity, with respect to the substance of the revisions proposed for parts 2421 and 2429, those revisions have been incorporated, where appropriate, in subpart A of part 2423. Further, the general provision regarding dates of applicability of part 2423, which was § 2423.1, is now found prior to subpart A as § 2423.0. The respective revisions are discussed below in the section-by-section analysis.

Concurrent with issuing the proposed rule, the General Counsel invited comment on the proposed rule in one of two ways: By convening a series of meetings held in each of the seven Regional Office cities as well as the OGC Headquarters in Washington DC, and by offering the public an opportunity to submit written comments. All comments, whether expressed orally at one of the meetings, or submitted in writing, have been considered prior to publishing the final rule, although all comments are not specifically addressed below.

Sectional Analyses

Sectional analyses of the revisions to Part 2423—Unfair Labor Practice Proceedings are as follows:

Part 2423—Unfair Labor Practice Proceedings

Section 2423.0

This newly-created section incorporates and amends § 2423.1 of the current regulations. Specifically, this section is amended to clarify that Subpart A of the regulations is applicable to any charge pending or filed after January 1, 1999. The provision regarding applicability of this part to any complaint filed on or after October 1, 1997 remains unchanged.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Section 2423.1

Numerous commenters responded favorably to the regulatory revision. One commenter stated that the revisions merely codify and emphasize the dispute resolution efforts that Regional Office agents routinely initiate.

Two commenters suggested retaining the 15-day delay before a Regional Office begins processing a charge because the parties may wish to resolve any ULP dispute without outside intervention or might prefer to use another third party neutral to provide such services. The final regulation deletes the 15-day delay requirement because the parties are always free to communicate with each other to arrange for any assistance, either through the efforts of Regional Office staff, or through other outside assistance, prior or subsequent to filing a charge. Regional Office representatives routinely assist parties in resolving their dispute as part of the investigation. Thus, there is no need to require a 15-day delay before beginning to process a ULP charge. However, to further accommodate the interest raised by these commenters, if an outside facilitator is assisting the parties in resolving the subject matter of a pending ULP charge, the parties may jointly request that the Regional Director defer the initiation of an investigation for a reasonable period of time.

One commenter suggested adding a provision which clarifies that the statutory time limits for filing a ULP charge are not tolled during the time that the parties are attempting to resolve the dispute. This suggestion has been incorporated in the final regulation because it is necessary that parties consider the statutory time limit, which is set forth at 5 U.S.C. 7118(a)(4), in determining whether to engage in dispute resolution before a ULP charge is filed. The provision is inserted as the last sentence of paragraph (a).

Another commenter suggested that there be a presumption in favor of providing the services upon request. The OGC's public Intervention Policy currently provides criteria and principles for Regional Offices to follow in determining whether to offer these services. This Policy will be incorporated into an Unfair Labor Practice Casehandling Manual (ULP Manual) that will be issued and made public in the spring of 1999.

A minor editorial modification has been made to paragraph (b) for clarity purposes.

Section 2423.2

There was almost unanimous agreement among the commenters that the provision of Alternative Dispute Resolution (ADR) Services promotes the purposes and policies underlying the Statute. In this regard, experience has shown that by providing these services to parties: Their labor-management relationships are improved and enhanced; ULP disputes are avoided; and, the parties are better able to resolve ULP disputes among themselves. A desired by-product of the provision of ADR services has been a reduction in the filing of ULP charges. Paragraph (a) has been modified to reflect that these ADR services, delivered by the OGC, are part of the FLRA-wide Collaboration and Alternative Dispute Resolution Program.

Several commenters suggested inserting a requirement to notify the national or parent organization when an ADR service is to be provided at a local

facility, particularly where a nationwide bargaining unit is involved. Parties engaged in ADR services delivered by the OGC are free to notify their national or parent organization. However, to accommodate the interest raised by these commenters, before undertaking to provide an ADR service, Regional Office staff may inquire whether notification of the parties' national or parent organization is desired.

Another commenter recommended that the ADR process be made mandatory upon the request of one of the parties. Experience has shown that the success and/or effectiveness of the provision of ADR services depends upon the parties voluntarily requesting or agreeing to partake in the process. Paragraph (b) is clarified to state that the parties may jointly request, or agree to, the provision of an ADR service.

Section 2423.3

No comments were received concerning the proposed rule. New paragraphs (b) and (c) have been added to incorporate the definitions for "Charging Party" and "Charged Party" that were initially proposed as definitions in proposed new §§ 2421.23 and 2421.24 of part 2421.

Section 2423.4

The majority of the comments concerning the proposed rule recommended retaining the requirement that the charge state the section(s) and paragraph(s) of the Statute alleged to have been violated. These commenters stated that preserving this requirement will help charged parties to better understand the basis of the charge. Based upon comments received and discussion at the meetings, the OGC has reconsidered the proposed rule and has decided to retain the requirement which is set forth in the final rule at paragraph (a)(5).

Several comments suggested that the charge form be amended to provide space for the charging party to indicate whether it has attempted to meet with the charged party to resolve the ULP dispute before the charge was filed and to ask whether the charging party is willing to attempt to resolve the charge with or without the assistance of the Regional Office. These matters are routinely considered by the Regional Office in their initial conversations with the parties in considering whether the provision of ADR services would be beneficial in any given case. Since Regional Office staff routinely make these inquiries, and the parties may communicate with each other prior to filing a charge, there is no need to amend the charge form.

Many commenters expressed concern regarding the requirement that supporting evidence and documents be submitted with the charge. These commenters stated, for various reasons, that it is sometimes difficult to gather all of the supporting evidence at the time a charge is filed. This requirement, which is set forth at paragraph (e) is, in relevant part, the same as the regulatory requirement that has always existed. The new regulation merely explains the requirement by listing the types of supporting evidence and documents that are routinely provided by charging parties. It is necessary to submit supporting evidence with the charge so that the agent to whom an investigation is assigned is able to fully understand the basis of the charge and to prepare to talk with the parties, which is the first step in the investigation process. This regulation does not preclude parties from submitting additional evidence and information during the course of the investigation, as it becomes available. A minor edit also has been made to this paragraph for clarity purposes.

The final regulation contains a new paragraph (c) concerning Statement of Service requirements which had been proposed as the second sentence of paragraph (b). Other minor editorial clarifications have been made to the final regulation.

Section 2423.5

One comment received suggested that once the Authority revises part 2424 of the regulations concerning negotiability proceedings, the General Counsel should make a corresponding revision concerning the availability of the ULP process to resolve certain duty to bargain issues. As the matter concerning related ULP and negotiability proceedings is being addressed by the Authority in its final regulations in part 2424, there is no reason to address the matter in subpart A of part 2423. The Regions will continue to follow § 2424.5 until the effective date of a new rule promulgated by the Authority. Moreover, the deletion of any provision addressing negotiability matters from subpart A of part 2423 has no impact on the availability of the ULP process to a charging party to resolve allegations that a charged party failed to fulfill a statutory bargaining obligation and committed a ULP.

Section 2423.6

Almost all of the comments on this section were favorable and pertained to the use of facsimile transmission to file a charge. Several commenters expressed concern regarding verification of receipt of a charge filed by facsimile transmission. This concern has been addressed by clarifying in paragraph (c) that a "charging party assumes responsibility for receipt of a charge."

Two commenters questioned the proposed imposition of a 5-page limitation on those charges filed by facsimile transmission. One commenter inquired about the basis for the proposed limitation and another was concerned about practical problems that arise upon the imposition of a page limitation. The final regulation has been changed to contain a 2-page limitation for those charges filed by facsimile. After reviewing the proposed regulation, the OGC has concluded that in order to expedite the inception of the investigatory process, charging parties must present their factual allegations supporting the charge in a succinct and organized manner. This may be accomplished in 2 pages. The final regulation also clarifies that a charging party may not file a charge by electronic mail and that supporting evidence and documents shall be filed in person, by commercial delivery, first-class mail, or certified mail. Recognizing that at times, supporting evidence and other documents may be voluminous, the regulation provides that all such documents may not be filed by facsimile transmission. Other minor editorial revisions have been made to this section to clarify that parties are aware that a charge may now be filed by facsimile transmission.

Section 2423.7

One commenter and others who favor the use of facilitation as an effective means to resolve disputes in some circumstances nevertheless expressed concern that there are other circumstances that may require enforcement of the Statute through issuance of a formal complaint. The OGC agrees that not every dispute is an appropriate candidate for the alternative case processing procedure. Regional staff will apply criteria and principles in determining whether to offer an alternative case processing procedure, upon joint request, to the parties. These criteria and principles currently are contained in the OGC's public Intervention Policy and will be incorporated into the public ULP Manual. The intent underlying the revision of the regulations is not to accord lesser priority to the General Counsel's essential prosecutorial role in seeking enforcement of the Statute through traditional means, but rather to recognize the use of an alternative case processing procedure and other ADR techniques as tools to assist parties in resolving their dispute.

Another commenter in favor of the alternative case processing procedure suggested that the process be mandatory upon the request of one of the parties. For the reasons discussed above concerning ADR services under § 2423.2, the OGC has determined that a strictly voluntary process works best. For those reasons, paragraph (a) has been amended to clearly state that the parties must "voluntarily" agree to use the alternative case processing procedure.

In addition, paragraph (b) has been clarified by substituting "shall" for "may" in the last sentence. This revision is necessary to contrast the difference between the alternative case processing procedure and a traditional investigation. In the former, the regional agent facilitates a problem-solving process which does not, in any way, involve taking evidence or the parties' positions on the merits. Several commenters suggested that attempts to resolve the dispute should also occur during the investigation. This concern is specifically addressed in § 2423.1(b) concerning resolving ULP disputes after filing a charge, where it is stated that a "representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute." Only one other minor editorial modification has been made to this paragraph.

The comments received regarding paragraph (c) concerned the last sentence. Several individuals recommended replacing "may" with "shall" to indicate a mandatory requirement that another representative of the Regional Office will conduct an investigation in the event an alternative case processing procedure is unsuccessful. Another commenter suggested that the person who presides over the alternative case processing procedure is better situated to investigate the case, if necessary. Yet another commenter suggested that the word "shall" be used with the caveat that the parties be allowed to waive the requirement that the same agent who facilitated the alternative case processing procedure shall not be the same person who investigates the merits of the charge. The last recommendation has been modified and adopted because it addresses the interests of the parties, as well as those of the Regional Director.

An additional concern was raised about the potential for disclosure of information discussed during the alternative case processing procedure should the dispute not be resolved and a ULP investigation be necessary. No evidence pertaining to the alleged ULP violation will be obtained during the alternative case processing procedure. Moreover, the agent involved in working with the parties in the alternative case processing procedure will not be involved in any manner in the investigation and decision-making process of the ULP charge, unless the parties and the Regional Director agree otherwise. These safeguards ensure that the alternative case processing procedure will have no impact on the investigation, if deemed necessary.

Section 2423.8

This section of the proposed regulations generated the most comments. Many commenters who favor the proposed regulation stated that it is useful to explain what specific actions are expected of a party during an investigation.

Many other commenters expressed concern that the proposed regulation would upset the careful balance that currently exists between Regional Directors and charged parties. That is, under the regulation, commenters stated that Regional Directors will have access to all of the evidence whereas charged parties do not have access to the statements relied upon by the Regional Director unless and until after that person testifies at trial.

Other concerns raised by commenters suggest that, among other things: (1) There is no statutory authority to order Federal supervisors and managers to give sworn testimony; (2) based on a vague charge, the Regional Director will insist that a charged party provide sworn statements; (3) the General Counsel should delete the reference to cooperation in the final regulations; (4) the Regional Director should be required to disclose exculpatory evidence to the charged party representative obtained during the course of an investigation; (5) the regulation provides the Regional Director with investigatory powers that exceed the current level of discovery afforded litigants before Administrative Law Judges under § 2423.23; (6) a detailed explanation for expanding the General Counsel's investigatory authority should be given because the current procedures have worked well for 20 years; and (7) that in exchange for charged party cooperation, the Regional Offices should disclose their case file prior to a decision on the merits. It further is suggested that unlike the private sector, where there is good reason to withhold the General Counsel's evidence due to the prospect of retaliation that may befall a charging party or neutral witness, retaliation should not be an issue in the Federal sector because a Federal employee has avenues of redress before several different agencies. The following discussion addresses these concerns.

The role of a Regional Office investigator, in part, is to obtain the best possible relevant evidence for a Regional Director to be able to reach a proper disposition in each case. This is an OGC quality standard applicable to all investigations which is part of the OGC's current, public Quality of Investigations Policy, and which will be incorporated into the public ULP Manual. To this end, a regional agent must identify the questions to ask witnesses, and ask the parties to provide relevant documents from all potential sources. So that a complete record is developed, it is necessary that both the charging party and the charged party voluntarily cooperate during the investigation. None of the commenters have cited any legal authority which purportedly allows any Federal agency that has been charged with violating a Federal law, to refuse to cooperate with another Federal agency that has been charged by the Congress to initiate an investigation to determine if the alleged violation of law has occurred, and if so, to prosecute, absent settlement, the agency charged with violating the law.

Current OGC practice protects a charged party's right to represent its agents. If a Regional Director deems it necessary to take the sworn/affirmed statement of a charged party witness, whether an agency or a union witness, the current OGC practice provides that all regional agents first contact the charged party representative to arrange to take the charged party witness' statement. No regional agent is authorized to directly initiate contact with any current agency manager/supervisor or union official who is an agent of a charged party agency or union unless authorized to do so by a charged party agency or union representative. Second, anytime it is necessary to take the statement of a charged party witness, the charged party has the right to have a representative present when the statement is given. These safeguards protect the interest of a charged party to represent its agents.

If a charging party fails to cooperate in an investigation, after being afforded ample opportunity to do so, the charge will be dismissed for lack of cooperation, absent withdrawal. If a neutral entity or a charged party fails to cooperate in an investigation, after being afforded ample opportunity to do so, the final regulation provides that an investigatory subpoena may be issued and enforced.

A new paragraph (c) has been added to the final regulation to incorporate a

provision concerning investigatory subpoenas. This section is modeled after, and consistent with, the subpoena provision set forth at § 2423.28 in subpart B of part 2423, which concerns post complaint and prehearing procedures. The authority for both of these sections is derived from section 7132 of the Statute. Under section 7132, the General Counsel, the Authority Members, and the Federal Service Impasses Panel have the same authority to issue and enforce subpoenas.

Because charged parties are usually cooperative to the extent deemed necessary by the Region during an investigation, it is anticipated that only in rare situations will it be necessary for an investigatory subpoena to be issued. During the meetings, many commenters suggested that since these subpoenas will be used only on rare occasions, they should only be issued upon the approval of the General Counsel. To accommodate this interest, the final regulation provides that an investigatory subpoena will be issued only by the General Counsel, upon the recommendation of a Regional Director. Moreover, prior to the issuance of an investigatory subpoena, a charged party will be afforded ample opportunity to cooperate in the investigation before a Regional Director recommends to the General Counsel to issue an investigatory subpoena "for the attendance and testimony of witnesses and the production of documentary or other evidence." Further, the Regional Directors will consider, among other things, the following factors before recommending the issuance of an investigatory subpoena: (1) Whether the evidence submitted by charging party and any neutral wi. .esses establishes a potential violation (if the Region has sufficient evidence for the Regional Director to decide the merits of the charge, it would not be necessary to require the charged party to produce additional evidence); (2) whether the evidence sought is relevant and material and is neither privileged, unduly repetitious nor unreasonably cumulative; (3) whether the evidence is necessary to decide a factual issue which must be resolved to determine whether or not a violation of the Statute has occurred, and that evidence is not otherwise available; (4) whether the evidence sought is not within the control of the charging party; (5) whether the evidence can be produced without an undue burden and is specific, narrowly tailored, and reasonable; and (6) the likelihood of compliance, and failing that, the prospect for successful enforcement of the subpoena. Once the General Counsel has determined to issue a subpoena, the investigative agent will once again contact the charged party representative and give the charged party one final opportunity to voluntarily cooperate with the investigation. The charged party will be informed that absent voluntary compliance, a subpoena will issue, and absent compliance with the subpoena, enforcement will be sought in an appropriate United States district court.

Thus, it is expected that the use of an investigatory subpoena will occur only in rare cases. Parties should understand that its use will be infrequent and that it is not intended either as a substitute for, or to lessen, the charging party's burden of submitting evidence to support the underlying allegations of a charge.

Consistent with § 2423.28, under paragraph (c)(2), a provision for the revocation of an investigatory subpoena has been included, although not statutorily required under section 7132. Paragraph (c)(3) contains the applicable standards for ruling on a petition to revoke a subpoena. These standards are, with minor editorial modifications, the same as those set forth at paragraph (e)(1) of § 2423.28. In addition, the regulation provides that any petition to revoke, and any ruling on the petition to revoke, shall become part of the official record if there is a hearing under subpart C of this part.

Subsection (c)(4) addresses the situation where a charged party fails to comply with a subpoena issued by the General Counsel. In this situation, the General Counsel makes the determination whether to institute proceedings in the appropriate district court for the enforcement of the subpoena.

The General Counsel's confidentiality policy reflected in paragraph (d) (previously paragraph (c) in the proposed rule), which is the same as stated in the proposed rule, has existed for many years and remains sound. Maintaining the confidentiality of individuals who submit statements and information during the course of an investigation and to protect against the disclosure of documents obtained during an investigation is essential. However, it bears noting that under the section of the Authority's revised post-complaint regulations published on July 31, 1997 (62 FR 40911), which specifically concerns new prehearing disclosure requirements (§ 2423.23), the OGC attorney is required to disclose to charged parties, among other things, the witnesses and documents on which the OGC attorney will rely to prove the General Counsel's case, should a complaint issue and, absent settlement, the case goes to hearing.

Section 2423.9

No comments were received concerning this section.

Section 2423.10

No comments were received concerning this section. Minor editorial modifications have been made to paragraphs (a), (b) and (c). One additional edit to proposed paragraph (c) has been made in the next-to-last sentence. In this regard, to be consistent with the remainder of the paragraph, the word "will" has been changed to "may."

Section 2423.11

Commenters submitted favorable responses to the proposed revisions in this section. Two commenters suggested that the charging party be required to serve a copy of an appeal of a Regional Director determination not to issue complaint on the charged party. This interest has been addressed by modifying paragraph (c) which requires the OGC to serve notice on the charged party that an appeal has been filed.

Another commenter suggested adding the standards Regional Directors use to exercise prosecutorial discretion to this section. These standards are set forth in the OGC's public Prosecutorial Discretion Policy, which will be incorporated in the public ULP Manual.

Other minor editorial modifications have been made to this section. For example, paragraphs (a) and (b) have been clarified to state that the Regional Director acts on behalf of the General Counsel when determining not to issue a complaint. Thus, a dismissal letter issued by a Regional Director, on behalf of the General Counsel, constitutes the "written statement of reasons for not issuing a complaint" as required by section 7118(a) of the Statute. Further, an appeal of a Regional Director's dismissal decision will only be granted on one of the specific grounds in paragraph (e). The review, therefore, is similar to the Authority's review of Regional Directors' decisions and orders in representation cases, and is not a *de novo* review. Upon an appeal, the appeal letter states the grounds listed in paragraph (e) for granting or denying the appeal.

One other suggestion concerned clarification of paragraph (g) to state that the General Counsel's decision on reconsideration is final. This suggestion has been adopted. In addition, this paragraph has been changed to state that a motion for reconsideration shall be

filed within 10 days of the date on which the General Counsel's decision is postmarked. The provisions for filing an appeal and for filing a motion for reconsideration are governed by 5 CFR 2429.22.

Section 2423.12

The only change made to this section appears in paragraph (b) which now clarifies that the Regional Director acts on behalf of the General Counsel in approving a unilateral settlement agreement.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the General Counsel of the FLRA has determined that this final rule will not have a significant impact on a substantial number of small entities, because this rule applies to federal employees, federal agencies, and labor organizations representing federal employees.

Unfunded Mandates Reform Act of 1995

This final rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The final rule contains no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

List of Subjects in 5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons discussed in the preamble, the General Counsel of the Federal Labor Relations Authority revises 5 CFR part 2423 as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Section 2423.0 and subpart A of Part 2423 are revised to read as follows:

Sec.

2423.0 Applicability of this part.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.
2423.2 Alternative Dispute Resolution (ADR) services.
2423.3 Who may file charges.
2423.4 Contents of the charge; supporting evidence and documents.
2423.5 [Reserved]
2423.6 Filing and service of copies.
2423.7 Alternative Case Processing Procedure.
2423.8 Investigation of charges.
2423.9 Amendment of charges.
2423.10 Action by the Regional Director.
2423.11 Determination not to issue complaint; review of action by the Regional Director.
2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.
2423.13–2423.19 [Reserved]

§ 2423.0 Applicability of this part

This part is applicable to any charge of alleged unfair labor practices pending or filed with the Authority on or after January 1, 1999, and any complaint filed on or after October 1, 1997.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.

(a) *Resolving unfair labor practice disputes prior to filing a charge.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons to meet and, in good faith, attempt to resolve unfair labor practice disputes prior to filing unfair labor practice charges. If requested, or agreed to, by both parties, a representative of the Regional Office, in appropriate circumstances, may participate in these meetings to assist the parties in identifying the issues and their interests and in resolving the dispute. Attempts to resolve unfair labor practice disputes prior to filing an unfair labor practice charge do not toll the time limitations for filing a charge set forth at 5 U.S.C. 7118(a)(4).

(b) *Resolving unfair labor practice disputes after filing a charge.* The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to a determination on the merits of the charge by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.

§ 2423.2 Alternative Dispute Resolution (ADR) services.

(a) *Purpose of ADR services.* The Office of the General Counsel furthers its mission and implements the agency-wide Federal Labor Relations Authority Collaboration and Alternative Dispute Resolution Program by promoting stable and productive labor-management relationships governed by the Federal Service Labor-Management Relations Statute and by providing services which assist labor organizations and agencies, on a voluntary basis: To develop collaborative labor-management relationships; to avoid unfair labor practice disputes; and to resolve any unfair labor practice disputes informally.

(b) *Types of ADR Services.* Agencies and labor organizations may jointly request, or agree to, the provision of the following services by the Office of the General Counsel:

(1) *Facilitation.* Assisting the parties in improving their labor-management relationship as governed by the Federal Service Labor-Management Relations Statute;

(2) *Intervention.* Intervening when parties are experiencing or expect significant unfair labor practice disputes;

(3) *Training.* Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor-Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on utilizing problem solving and ADR skills, techniques, and strategies to resolve informally unfair labor practice disputes; and

(4) *Education.* Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that

arise by consensual, rather than adversarial, methods.

(c) *ADR services after initiation of an investigation.* As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

§ 2423.3 Who may file charges.

(a) *Filing charges.* Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under 5 U.S.C. 7116.

(b) *Charging Party.* Charging Party means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director.

(c) *Charged Party.* Charged Party means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) *What to file.* The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:

(1) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party;

(2) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party;

(3) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party's point of contact;

(4) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party's point of contact;

(5) A clear and concise statement of the facts alleged to constitute an unfair labor practice, a statement of the section(s) and paragraph(s) of the Federal Service Labor-Management Relations Statute alleged to have been violated, and the date and place of occurrence of the particular acts; and

(6) A statement whether the subject matter raised in the charge:

(i) Has been raised previously in a grievance procedure;

(ii) Has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or the Office of the Special Counsel for consideration or action;

(iii) Involves a negotiability issue raised by the Charging Party in a petition pending before the Authority pursuant to part 2424 of this subchapter; or

(iv) Has been the subject of any other administrative or judicial proceeding.

(7) A statement describing the result or status of any proceeding identified in paragraph (a)(6) of this section.

(b) *Declaration of truth and statement of service.* A charge shall be in writing and signed, and shall contain a declaration by the individual signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that individual's knowledge and belief.

(c) *Statement of service.* A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the name, title and location of the individual served, and the method of service.

(d) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to supporting evidence documents submitted under paragraph (e) of this section.

(e) *Submitting supporting evidence and documents and identifying potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses and shall provide a brief synopsis of their expected testimony.

§ 2423.5 [Reserved]

§ 2423.6 Filing and service of copies.

(a) *Where to file.* A Charging Party shall file the charge with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director.

(c) *Method of filing.* A Charging Party may file a charge with the Regional Director in person or by commercial delivery, first-class mail, or certified mail. Notwithstanding § 2429.24(e) of this subchapter, a Charging Party also may file a charge by facsimile transmission if the charge does not exceed 2 pages. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. A Charging Party assumes responsibility for receipt of a charge. Supporting evidence and documents shall be submitted to the Regional Director in person, by commercial delivery, first-class mail, or certified mail, not by facsimile transmission. Charges shall not be filed by electronic mail.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section. The Region routinely serves a copy of the charge on the Charged Party, but the Charging Party remains responsible for serving the charge in accordance with this paragraph.

§ 2423.7 Alternative case processing procedure.

(a) *Alternative case processing procedure.* The Region may utilize an alternative case processing procedure to assist the parties in resolving their unfair labor practice dispute, if the parties voluntarily agree, by facilitating a problem-solving approach, rather than initially investigating the particular facts and determining the merits of the charge.

(b) *No evidence is taken.* The purpose of the alternative case processing procedure is to resolve the underlying unfair labor practice dispute without determining the merits of the charge. The role of the agent is to assist the parties in that endeavor by facilitating a solution rather than conducting an investigation. No testimonial or documentary evidence or positions on the merits of the charge shall be gathered during the alternative case processing procedure or entered into the case file.

(c) *Investigation is not waived.* If the parties are unable to resolve the dispute, the Region conducts an investigation on the merits of the charge. The agent who is involved in the alternative case processing procedure shall not be involved in any subsequent investigation on the merits of the charge, unless the parties and the Regional Director agree otherwise.

§ 2423.8 Investigation of charges.

(a) *Investigation.* The Regional Director, on behalf of the General

Counsel, conducts such investigation of the charge as the Regional Director deems necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons shall cooperate fully with the Regional Director in the investigation of charges. Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

(1) Making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;

(2) Producing documentary evidence pertinent to the matters under investigation; and

(3) Providing statements of position on the matters under investigation.

(c) *Investigatory subpoenas.* If a person fails to cooperate with the Regional Director in the investigation of a charge, the General Counsel, upon recommendation of a Regional Director, may decide in appropriate circumstances to issue a subpoena under 5 U.S.C. 7132 for the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel or training within an agency or between an agency and the Office of Personnel Management.

(1) A subpoena shall be served by any individual who is at least 18 years old and who is not a party to the proceeding. The individual who served the subpoena must certify that he or she did so:

(i) By delivering it to the witness in person;

(ii) By registered or certified mail; or

(iii) By delivering the subpoena to a responsible individual (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the Regional Director and the General Counsel.

(2) Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the General Counsel.

(3) The General Counsel shall revoke the subpoena if the witness or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The General Counsel shall state the procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, and any ruling on the petition to revoke, shall become part of the official record if there is a hearing under subpart C of this part.

(4) Upon the failure of any person to comply with a subpoena issued by the General Counsel, the General Counsel shall determine whether to institute proceedings in the appropriate district court for the enforcement of the subpoena. Enforcement shall not be sought if to do so would be inconsistent with law, including the Federal Service Labor-Management Relations Statute.

(d) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of ensuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

§ 2423.9 Amendment of charges.

Prior to the issuance of a complaint, the Charging Party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.10 Action by the Regional Director.

(a) *Regional Director action.* The Regional Director may take any of the following actions, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to issue a complaint;

(3) Approve a written settlement agreement in accordance with the provisions of § 2423.12;

(4) Issue a complaint; or

(5) Withdraw a complaint.

(b) *Request for appropriate temporary relief.* Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel may initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority to seek such appropriate temporary relief is final and shall not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief may be sought if it is just and proper and the record establishes probable cause that an unfair labor practice is being committed. Temporary relief shall not be sought if it would interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel shall inform the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.

(a) *Opportunity to withdraw a charge.* If upon the completion of an investigation under § 2423.8, the Regional Director, on behalf of the General Counsel, determines that issuance of a complaint is not warranted because the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the Charging Party to withdraw the charge.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director may, on behalf of the General Counsel, dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision not to issue

a complaint by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The Office of the General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's refusal to issue a complaint, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to an informal settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the agreement may be between the Charged Party and the Regional Director. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel shall take action on the appeal as set forth in § 2423.11(e)–(g).

§§ 2423.13–2423.19 [Reserved]

Dated: November 24, 1998.

Joseph Swerdzewski,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 98–31763 Filed 11–27–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 97–005–2]

Fruit From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment may be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit will also have to meet certain additional requirements, including packaging requirements. We are also allowing durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are allowing certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies. These actions will relieve restrictions on the movement of these fruits from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. The regulations are necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the Malaysian fruit fly (*Bactrocera latifrons*). These types of fruit flies are collectively referred to in this document as "fruit flies."

On June 10, 1998, we published in the **Federal Register** (63 FR 31675–31678, Docket No. 97–005–1) a proposal to allow abiu (*Pouteria caimito*), atemoya (*Annona squamosa* x *A. cherimola*), longan (*Dimocarpus longan*), rambutan (*Nephelium lappaceum*), and sapodilla (*Manilkara zapota*) to be moved interstate from Hawaii if, among other things, the fruits undergo irradiation treatment in accordance with § 318.13–4f of the regulations. We also proposed to allow durian (*Durio zibethinus*) to be moved interstate from Hawaii if it is inspected and found free of plant pests. In addition, we proposed to allow green bananas (*Musa* spp.) of the cultivars "Williams," "Valery," and dwarf

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"Brazilian" to be moved interstate from Hawaii under certain conditions.

We solicited comments concerning our proposal for 60 days ending August 10, 1998. We received five comments by that date. They were from representatives of industry and State governments. One commenter supported the proposal rule in its entirety. The remaining four commenters expressed concerns about portions of the proposed rule. Their concerns are discussed below.

Comment: The proposed rule should require each irradiation facility to have in place a set of standard operating procedures before the facility is approved by the Animal and Plant Health Inspection Service (APHIS).

Response: In order to be approved by APHIS, each irradiation facility must meet certain operating standards and enter into a compliance agreement with APHIS, in accordance with § 318.13–4f(b)(2)(iii). Therefore, no changes to the proposal appear necessary in response to this comment.

Comment: Treatment record requirements should be clarified for Hawaiian fruits treated by irradiation on the mainland United States. Section 318.13–4f(b)(4)(i)(C) specifies that fruits irradiated in Hawaii for subsequent interstate movement are required to be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. It is not clear, however, whether Hawaiian fruits treated by irradiation on the mainland United States are subject to comparable labeling requirements. In order to maintain the identity of a shipment treated at any location and to expedite inspections at the port of destination, all irradiated Hawaiian fruits, whether treated in Hawaii or on the mainland United States, should be subject to these same labeling requirements. In addition, all irradiated Hawaiian fruit should be accompanied by a document or labeling that provides information on the absorbed minimum dose of irradiation.

Response: In Hawaii, irradiated shipments could, if treated or handled improperly, be reinfested with fruit flies. Therefore, we established certain labeling requirements for shipments of fruits and vegetables irradiated in Hawaii to aid in traceback if those shipments were found to contain fruit flies upon arrival on the mainland United States. Since the mainland United States does not have established populations of fruit flies, and irradiation facilities will be located in non-fruit fly-supporting areas of the mainland, the risk of reinfestation of shipments irradiated on the mainland United States is, at best, negligible. Therefore, we do not believe that it is necessary to require similar labeling of shipments irradiated on the mainland United States.

Further, it is standard procedure for irradiation facilities to supply the person who commissions the irradiation of fruit or vegetables with a document stating the minimum absorbed dose of the irradiation treatment. Therefore, we do not feel that it is necessary to label boxes with that information.

Comment: APHIS should require that irradiated fruit be labeled so that consumers can easily differentiate irradiated fruit from organically grown fruit.

Response: The labeling of irradiated fruit falls under the jurisdiction of the Food and Drug Administration (FDA). Under the FDA's regulations at 21 CFR 179.26(c), concerning irradiated foods not in package form (e.g., loose fresh fruits and vegetables), an irradiation logo and phrase (e.g., "Treated with radiation" or "Treated by irradiation") must be displayed to the purchaser of the food either by labeling of the bulk container plainly in view; a counter sign, card, or other appropriate device bearing the required information; or individual labels on each item of food. In any case, the information must be prominently and conspicuously displayed to purchasers. Therefore, no changes to the proposal appear necessary in response to this comment.

Comment: APHIS should reconsider its proposal to allow durian and green bananas to move interstate to the mainland United States without a quarantine treatment. Durian and green bananas both have the potential to carry pink hibiscus mealybug (*Maconellicoccus hirsutus*) (PHM). PHM occurs in Hawaii, attacks more than 200 different plants, and is considered to be a serious threat to American agriculture. Inspection is not sufficient to mitigate the risk of the introduction of PHM on durian and green bananas from Hawaii.

Response: We consider PHM a serious plant pest, but we disagree that inspection is not sufficient to mitigate the risk of the introduction of PHM on durian and green bananas from Hawaii. PHM is easily detectable by inspection because when fruits are infested with PHM, they are covered, to at least some degree, with the white waxy coating of the mealybug, which is clearly visible on fruits and vegetables. We successfully inspect a variety of untreated commodities, including avocados, bananas, citrus fruits, peppers, and tomatoes, imported into the United States from many different countries for the presence of PHM. Therefore, we are making no changes to the proposal in response to this comment.

Comment: This proposal should be postponed until it is determined whether Hawaii will build an irradiation facility. If Hawaii does not build its own irradiation facility, there will be no irradiated Hawaiian fruit to move interstate under the provisions outlined in the proposal.

Response: This rule allows abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility in Hawaii or in non-fruit fly supporting areas of the mainland United States. Therefore, the presence of an irradiation facility in Hawaii is not necessary to enable Hawaiian fruits to move interstate under this rule.

Comment: It is unclear from the proposal whether untreated abiu, atemoya, longan, rambutan, and sapodilla moving from Hawaii to the mainland United States for irradiation treatment may move into or through all States on the mainland or just certain States. Allowable ports of entry should be identified in advance and should be consistent with those ports considered safe for the entry of other untreated fruit fly host shipments intended for cold treatment upon arrival.

Response: In accordance with § 318.13–4f(b)(1), all untreated fruits and vegetables moving from Hawaii to the mainland United States for irradiation treatment may not move into or through the States of Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia, except that certain movements are allowed through Dallas/Fort Worth, TX. Dallas/Fort Worth is authorized as an approved stop for air cargo, and as a transloading location for shipments that arrive by air and then are loaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route. We are considering allowing untreated fruits and vegetables moving from Hawaii to the mainland United States for irradiation treatment to move to other locations on the mainland United States where cold treatment of fruit flies has been approved. If it appears that movement to these additional locations would be appropriate, we will propose that change in the **Federal Register**.

Comment: Citrus should be added to the list of fruit approved for movement interstate from Hawaii with irradiation treatment.

Response: We are currently reviewing data to determine the pest risk associated with the movement of irradiated citrus from Hawaii to the mainland United States. If, after review, it appears that citrus may safely move interstate from Hawaii with irradiation treatment, we will propose that change in the **Federal Register**.

Comment: Because green bananas are not a fruit fly host, pest-proof containers or cartons should not be required for the interstate movement of green bananas from Hawaii.

Response: Because research shows that harvested bananas gradually become susceptible to fruit fly infestation, we believe that it is necessary to require a measure of protection against possible infestation. However, we agree that producers should have flexibility in the way that they meet this requirement. Therefore, in this final rule, § 318.13–4i(d) will read: "The bananas must be safeguarded from fruit fly infestation from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States." This will allow producers to use either pest-proof shipping cartons, pest-proof shipping containers (e.g., air or sea containers), or other means, such as loading the bananas into a cold storage facility or packing the bananas in a carton fully covered by plastic or netting, to ensure that harvested bananas are protected from fruit fly infestation.

Comment: Green bananas of the cultivars 'Grand Nain' and standard 'Brazilian' should be allowed to move interstate from Hawaii to the mainland United States under the same provisions outlined in the proposal for certain other cultivars of green bananas.

Response: We agree. At the time that we were developing our proposal, it was our understanding that "Grand Nain" and standard "Brazilian" bananas were either not grown commercially in Hawaii or were grown in such limited quantities in Hawaii that there would be no interest in moving them interstate to the mainland United States. Therefore, we omitted these cultivars of green bananas from our proposal. This comment, however, makes it clear that there is interest in moving these cultivars of green bananas to the mainland United States. Research conducted concurrently with research on the other cultivars of green bananas proposed for interstate movement from Hawaii indicates that green bananas of the cultivars "Grand Nain" and standard "Brazilian" can be safely moved interstate under the same conditions outlined in the proposal for green bananas of the cultivars "Williams," "Valery," and dwarf "Brazilian." Therefore, in this final rule, § 318.13–4i includes green bananas of the cultivars "Grand Nain" and standard "Brazilian."

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are allowing abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment may be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit will also have to meet certain additional requirements, including packaging requirements. We are also allowing durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are allowing certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies.

The mainland United States has very limited, if any, quantities of abiu, atemoya, durian, longan, rambutan, and sapodilla for sale to consumers. Three of these specialty fruits—abiu, durian, and rambutan—are not grown commercially on the mainland United States; atemoya, longan, and sapodilla are grown commercially on the mainland United States but only in relatively small quantities. All mainland production of atemoya, longan, and sapodilla occurs in the State of Florida. It is estimated that Florida's annual production of atemoya amounts to approximately 80,000 pounds; of longan, approximately 2 million pounds; of sapodilla, approximately 350,000 pounds.

Unlike the other fruits listed in this document, bananas are generally not considered to be specialty fruits. Also unlike the other fruits, the mainland United States has abundant quantities of bananas, including green bananas, for sale to consumers. However, virtually all bananas sold in the United States are imported. Less than 1 percent of the U.S. supply of bananas is produced domestically, and only a minuscule portion of domestic production occurs on the mainland United States, in Florida and California. In 1992, Florida produced 158,662 pounds of bananas. Production data for California is not available, but production in California is estimated to be much less than in Florida, given that in 1992 there were only 2 banana-producing farms in California and 67 in Florida. Hawaii accounted for the remainder of domestic banana production in 1992, with a total of 12,570,831 pounds. Based on data for 1992, therefore, Hawaii accounts for nearly all of the banana production in the United States.

It is estimated that there are fewer than 100 farms growing tropical specialty fruits in Florida, and virtually all of these farms are located in the southern part of the State. Information is not available on the gross receipts for each of these farms, but since the farms are generally less than 5 acres in size, it is reasonable to assume that most are small entities under Small Business Administration (SBA) standards. We do not expect the interstate movement of abiu, atemoya, durian, longan, rambutan, and sapodilla to affect these fruit producers for several reasons. First, as discussed earlier, three of the six specialty fruits are not grown commercially on the mainland United States. Second, the demand for the remaining three specialty fruits that are produced in Florida is strong, particularly among Asian Americans on the mainland United States. Florida currently has no difficulty selling all of the atemoya, longan, and sapodilla that it produces. Third, Hawaiian fruit will likely be marketed primarily in western States on the mainland while Florida's fruits are sold primarily in eastern States. Therefore, Hawaii's specialty fruits will likely be in little direct competition with Florida's specialty fruits.

As discussed above, in 1992, 67 farms in Florida and 2 farms in California produced bananas. Like the specialty fruit growers, most banana-producing

farms in Florida and California are assumed to be small entities under SBA standards. However, any interstate movement of green bananas from Hawaii should have little or no impact on banana producers on the mainland United States. This is due to the relatively small volume of bananas that may be moved interstate from Hawaii. Even in the unlikely event that Hawaii moved all of its production interstate, Hawaii's bananas would still account for less than 1 percent of the mainland U.S. supply.

We expect that fruit growers in Hawaii will benefit from the interstate movement of abiu, atemoya, durian, green bananas, longan, rambutan, and sapodilla from Hawaii because these growers will have new outlets for their products. In 1995, the State of Hawaii produced 1,250,800 pounds of specialty tropical fruit (of all varieties) with a value of $987,100. Three varieties of fruit—carambola, litchi, and specialty pineapple—accounted for 74 percent of Hawaii's 1995 production. The remaining 26 percent, or approximately 325,000 pounds of fruit, consisted of all other varieties of fruit grown in Hawaii, including the six specialty fruits named in this document. Also, in 1992, Hawaii produced 12,570,831 pounds of bananas, with a value of $5.2 million.

In 1995, 115 farms in the State of Hawaii grew at least one variety of specialty tropical fruit. However, information on which of those farms grew one or more of the six specialty fruits named in this document is not available. Information is also not available on the gross receipts for each of the 115 farms. In all likelihood, most of the 115 farms are small entities because data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards.

The production of tropical specialty fruit is growing rapidly in Hawaii. The State's 1995 production level represents an increase of approximately 126 percent, or 698,100 pounds, over the 1994 level of 552,700 pounds. Carambola and specialty pineapple accounted for more than 80 percent of the increase. The increase in production of tropical specialty fruit is expected to continue, as a response to the decline in the sugar industry and to the recent availability of prime agricultural lands in the State of Hawaii. In 1995, Hawaiian growers devoted 415 acres to tropical specialty fruits, 6 percent more acreage than in 1994. It is estimated that by the year 2000, Hawaii will be producing 2.6 million pounds of tropical specialty fruits annually, more than double the 1995 level. If Hawaiian growers move 200,000 pounds of each of the six specialty fruits named in this document interstate annually, using the 1995 average per pound value of all tropical specialty fruits produced in Hawaii (on all 115 farms) of $.79, the collective annual sales of the fruit would generate $948,000. This amounts to $8,243 per farm when divided equally among the 115 farms growing specialty tropical fruit.

In 1992, bananas were produced on 700 farms in Hawaii, and a total of 1,506 acres were devoted to banana production on those farms. Although data for individual farms in Hawaii that produce bananas is not available, most are probably small entities by SBA standards because, as mentioned earlier, data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards. However, we do not expect this rule to have a significant impact on Hawaiian banana producers. Even if those producers were to move interstate the equivalent of half of the 1992 banana production (6.3 million pounds), the combined revenues from such sales would amount to $2.6 million dollars, an average of only $3,681 per farm.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

Lists of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we are amending 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 318.13–2 [Amended]

2. In § 318.13–2, paragraph (b), the list of fruits and vegetables is amended by adding, in alphabetical order, "Durian (*Durio zibethinus*)."

3. In § 318.13–4f, paragraphs (a) and (b)(4)(iii) are revised to read as follows:

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables: Abiu, atemoya, carambola, litchi, longan, papaya, rambutan, and sapodilla.

(b) * * *

(4) * * *

(iii) Litchi and longan from Hawaii may not be moved interstate into Florida. All cartons in which litchi or longan are packed must be stamped "Not for importation into or distribution in FL."

* * * * *

4. A new § 318.13–4i is added to read as follows:

§ 318.13–4i Administrative instructions; conditions governing the movement of green bananas from Hawaii.

Green bananas (*Musa* spp.) of the cultivars "Williams," "Valery," "Grand Nain," and standard and dwarf "Brazilian" may be moved interstate from Hawaii with a certificate issued in accordance with §§ 318.13–3 and 318.13–4 of this subpart if the bananas meet the following conditions:

(a) The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during

that 24-hour period, they must be stored in a facility that prevents access by fruit flies;

(b) No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;

(c) The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and

(d) The bananas must be safeguarded from fruit fly infestation from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31714 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–011–2]

Importation of Coffee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the regulations for importing coffee by removing unnecessary text, updating references to officials of the Animal and Plant Health Inspection Service, and clarifying the requirements for moving samples of unroasted coffee through Hawaii and Puerto Rico to other destinations and the prohibitions on importing coffee berries or fruits. These nonsubstantive changes will make the regulations easier to read and understand, thereby facilitating compliance.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231, (301) 734–6799; or e-mail: Peter.M.Grosser@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR 319.73 through 319.73–4, "Subpart—Coffee" (referred to below as the coffee regulations), restrict the importation of coffee from foreign countries and localities. The coffee regulations are intended to prevent the introduction of coffee berry borers *Hypothenemus hampei* (Ferrari) and a rust disease caused by the fungus *Hemileia vastatrix* (Berkeley and Broome) into Hawaii and Puerto Rico, where coffee is commercially grown.

On May 9, 1997, we published in the **Federal Register** (62 FR 25561–25562, Docket No. 97–011–1) a proposal to amend the coffee regulations by removing unnecessary text, updating references to officials of the Animal and Plant Health Inspection Service (APHIS), and making other nonsubstantive changes to clarify the requirements for moving samples of unroasted coffee through Hawaii and Puerto Rico to other destinations. In addition, we proposed to amend the coffee regulations to clarify that coffee fruits or berries are prohibited importation into all parts of the United States because they present a significant risk of introducing the Mediterranean fruit fly, which attacks a wide range of host material grown throughout the United States.

We solicited comments concerning our proposal for 60 days ending July 8, 1997. We received two comments by that date. One was from a State government official and the other was a representative of the coffee industry. Their concerns are addressed below.

Importation of Coffee Berries and Fruit for Research and Analytical Purposes

One commenter stated that it was his understanding that restricted articles such as coffee berries and fruits may be imported into the United States under certain conditions for research and analytical purposes. He therefore suggested that the coffee regulations include a provision that provides an exemption for coffee berries and fruits being imported for research and analytical purposes.

Seeds of all kinds when in pulp, including coffee berries or fruits, may be imported into the United States for research and analytical purposes by the United States Department of Agriculture under the conditions listed in § 319.37–2(c). We agree that this provision should be made clear in the coffee regulations. Therefore, in order to avoid confusion, and to facilitate compliance with the coffee regulations, we are including a reference in the revised coffee regulations to the scientific and experimental importation provisions currently contained in § 319.37–2(c).

Importation of Green Coffee and Coffee Nursery Stock into Hawaii

We received a comment from an official of Hawaii's Department of Agriculture that recommends new requirements for the importation of green coffee beans and coffee nursery stock into that State. We intend to consider the comment further and consult with Hawaii's State Department of Agriculture about the recommendations. However, the recommendations are outside the scope of our original proposal. Therefore, any changes we make in response to those recommendations will have to be the subject of a subsequent rulemaking.

We are also clarifying the proposed § 319.73–4, "Costs," to clearly indicate that costs for the listed services will be borne by the owner, importer, or agent of the owner or importer, including a broker.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This final rule updates and clarifies the regulations for importing coffee into the United States and for moving samples of unroasted coffee through Hawaii and Puerto Rico in transit to other destinations. This rule makes no substantive changes in import or transit requirements. Therefore, it should have no economic impact on any United States entities, whether large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Subpart—Coffee, consisting of §§ 319.73–1 through 319.73–4, is revised to read as follows:

Subpart—Coffee

Sec.

319.73–1 Definitions.
319.73–2 Products prohibited importation.
319.73–3 Conditions for transit movement of certain products through Puerto Rico or Hawaii.
319.73–4 Costs.

Subpart—Coffee

§ 319.73–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Inspector. Any individual authorized by the Administrator to enforce this subpart.

Sample. Unroasted coffee not for commercial resale. Intended use includes, but is not limited to, evaluation, testing, or market analysis.

United States. The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

Unroasted coffee. The raw or unroasted seeds or beans of coffee.

§ 319.73–2 Products prohibited importation.

(a) To prevent the spread of the coffee berry borer *Hypothenemus hampei* (Ferrari) and the fungus *Hemileia vastatrix* (Berkely and Broome), which causes an injurious rust disease, the following articles are prohibited importation into Hawaii and Puerto Rico, except as provided in § 319.73–3 of this subpart:

(1) Unroasted coffee;

(2) Coffee plants and leaves; and (3) Empty sacks previously used for unroasted coffee.

(b) Due to the risk of Mediterranean fruit fly and other injurious insects, seeds of all kinds when in pulp, including coffee berries or fruits, are prohibited importation into all parts of the United States by § 319.37–2(a) of this part, except as provided in § 319.37–2(c).

§ 319.73–3 Conditions for transit movement of certain products through Puerto Rico or Hawaii.

(a) *Mail.* Samples of unroasted coffee that are transiting Hawaii or Puerto Rico en route to other destinations and that are packaged to prevent the escape of any plant pests may proceed without action by an inspector. Packaging that would prevent the escape of plant pests includes, but is not limited to, sealed cartons, airtight containers, or vacuum packaging. Samples of unroasted coffee received by mail but not packaged in this manner are subject to inspection and safeguard by an inspector. These samples must be returned to origin or forwarded to a destination outside Hawaii or Puerto Rico in a time specified by an inspector and in packaging that will prevent the escape of any plant pests. If this action is not possible, the samples must be destroyed.

(b) *Cargo.* Samples of unroasted coffee that are transiting Hawaii or Puerto Rico as cargo and that remain on the carrier may proceed to a destination outside Hawaii or Puerto Rico without action by an inspector. Samples may be transshipped in Puerto Rico or Hawaii only after an inspector determines that they are packaged to prevent the escape of any plant pests. Samples that are not packaged in this manner must be rewrapped or packaged in a manner prescribed by an inspector to prevent the escape of plant pests before the transshipment will be allowed.

(c) Other mail, cargo, and baggage shipments of articles covered by § 319.73–2 arriving in Puerto Rico or Hawaii may not be unloaded or transshipped in Puerto Rico or Hawaii and are subject to inspection and other applicable requirements of the Plant Safeguard Regulations (part 352 of this chapter).

319.73–4 Costs.

All costs of inspection, packing materials, handling, cleaning, safeguarding, treating, or other disposal of products or articles under this subpart will be borne by the owner, importer, or agent of the owner or importer, including a broker. The services of an inspector during regularly assigned hours of duty and at the usual places of duty will be furnished without cost to the importer.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31712 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–107–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; or E-mail: Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

On June 5, 1998, we published in the **Federal Register** (63 FR 30646–30655) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States and to declare certain areas in Mexico as fruit fly-free areas. We proposed these actions at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate these actions can be taken without significant risk of introducing plant pests into the United States.

We solicited comments on our proposal for 60 days, ending August 4, 1998. We received six comments by that date. They were from representatives of industry and a State government. Four commenters supported the proposed rule in its entirety. The remaining two commenters had reservations about specific provisions of the proposed rule. Of those two, one commenter expressed concerns about the proposed declaration of certain areas in Mexico as fruit fly-free areas. Upon further review and consideration of this issue, we are taking final action at this time on all portions of our June 5, 1998, proposed rule except the portion concerning fruit fly-free areas in Mexico. We will continue to review data and research concerning the proposed fruit fly-free areas in Mexico. The comment that raised concerns about actions other than the proposed declaration of certain areas in Mexico as fruit fly-free areas is discussed below.

Comment: The Animal and Plant Health Inspection Service (APHIS) should reconsider proposing the entry of certain vegetable crops into the United States from South America because of their association with the pests *Japanagromyza phaseoli*, *Copitarsia consueta*, and *Mycena citricolor*. We believe that, although these pests are detectable by inspection, the overwhelming workload of APHIS inspectors, as discussed in a recent Government Accounting Office (GAO) report, may prevent those inspectors from detecting these pests in shipments. In fact, we suggest that APHIS review its policy of considering port of entry inspections as a reliable and effective mitigation measure and, instead, think of inspections more realistically as a tool to monitor compliance with quarantine regulations.

Response: The pests referred to by the commenter are readily detectable by inspection, and we are confident that our inspectors will detect these pests if they occur in a shipment of vegetable crops from South America. Further, while the GAO Report (GAO Report GAO/RCED–97–102, May 1997) mentioned by the commenter pinpoints certain weaknesses in our inspection programs, the report acknowledges that APHIS has changed its inspection program to address new challenges, increased resources for inspection activities, expanded use of alternative inspection practices, increased interagency coordination, and implemented a program to determine pest risks at ports. With information from this report and other sources, we continue to enhance our inspection programs. We believe that our inspections at the port of entry are an effective and reliable mitigation measure to prevent the introduction of plant pests into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Therefore, based on the rationale presented in the proposed rule and in this document, we are adopting the provisions of the proposed rule, with the exception of the proposed declaration of certain areas in Mexico as fruit fly-free areas, as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. In our proposed rule, we invited comments on the potential effects of the proposed actions. In particular, we requested information on the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. No comments were submitted. Based on the information we have, there is no basis to conclude that adoption of this rule will result in any significant economic impact on a substantial number of small entities.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

We are amending the Fruits and Vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to such disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

This rule is based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this rule may, under certain conditions, be imported into the United States without significant pest risk.

Availability of Data

For many of the commodities allowed to be imported into the United States in this document, data on the levels of production and the anticipated import volume is unavailable for a number of

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or by calling the Plant Protection and Quarantine (PPQ) fax vault at 301–734–3560.

reasons. First, many of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States; generally, less statistical data is collected—and therefore available—for commodities produced in small quantities when compared to a country's more heavily produced commodities. Second, some of these commodities do not appear to be produced in the United States at all; therefore, data on the U.S. production and export levels for those commodities does not exist. Finally, estimates of potential exports of commodities from foreign countries to the United States are often difficult to obtain, due in part to the uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States.

Watermelon From Brazil

Complete information is not available on U.S. watermelon production. However, data shows that, in 1996, a total of 459,180 metric tons of watermelon, of which 22 percent was imported, was shipped to 18 major U.S. cities.

The United States is a net importer of watermelons. In 1996, imports totaled 207,000 metric tons, valued at $49.9 million, compared to 116,000 metric tons exported, worth $30.4 million.

Data on the number or size of watermelon producers in the United States is not available. However, since most U.S. vegetable and melon farms are small by Small Business Administration (SBA) standards, it is very likely that the U.S. farms that produce watermelons are also small.

Watermelons will be allowed to be exported to the United States from that part of Brazil considered free of the South American cucurbit fly. Information on the quantity of watermelons produced in that area of Brazil and on the quantity of watermelons expected to be imported from Brazil is not available, but we do not expect that amount to be large enough to adversely affect U.S. growers.

Brassica spp. from Ecuador, El Salvador, Nicaragua, and Peru

Brassica spp. include a variety of crops, some of which are more familiar (such as broccoli, cauliflower, and cabbage) than others (such as pak choi, tatsoi, celery mustard, and celery cabbage).

For the two major *Brassica* sub-varieties, broccoli and cauliflower, U.S. commercial production in 1996 was valued at about $397 million (649,600 metric tons) and $217 million (297,560 metric tons), respectively. Although U.S. production data is not available for other *Brassica* species, information on quantities shipped fresh to 18 major U.S. cities illustrates their relative importance to those markets. While fresh shipments of broccoli and cauliflower totaled 170,830 metric tons and 87,270 metric tons, respectively, fresh shipments of cabbage totaled 219,360 metric tons; Chinese cabbage, 27,490 metric tons; turnips-rutabagas, 10,800 metric tons; and Brussels sprouts, 6,080 metric tons.

In 1996, the value of U.S. exports of major *Brassica* spp. totaled about $188 million, compared to U.S. imports of $146 million. This means that the United States is a net exporter of these vegetables.

Information on U.S. production of less popular *Brassica* varieties and sub-varieties, such as *Brassica rapa*, *Brassica chinensis*, and *Brassica pekinensis*, is generally very limited for a number of reasons. Data that is recorded for the production of these commodities is usually presented in an aggregated format, under "Chinese" or "Oriental" vegetables or more broadly under a "Miscellaneous" category. Even when data specifically addresses one or more of these commodities, the information may still provide an incomplete picture of overall production. For example, statistics obtained from county lists of pesticide permittees only include crops treated with pesticides for which permits are required.

Bearing in mind these limitations, APHIS has made inquiries at the county and producer levels in principal production areas of California and Florida regarding number of growers, acreage, and quantities and values of production. Though most domestic production probably occurs in California and Florida, some production of these commodities takes place in other States as well. For example, one large-scale producer in California regularly grows mizuna and tatsoi in California for 37 weeks and in Arizona during the remaining weeks of the year. However, most domestically grown *Brassica rapa* and *Brassica chinensis* are probably produced in California and Florida.

Twenty-five counties in California were surveyed for production of these commodities. No information was available from seven of the counties. Of the remaining 18 counties, "Oriental" vegetables are grown on about 12,250 acres, with total annual production valued at about $33 million. Nine of the 18 counties were found to record information on areas planted in specific sub-varieties of *Brassica rapa* and *Brassica chinensis*. Those counties reported a combined production area of about 3,500 acres for these varieties. Only four of the nine counties could provide information on the value of production for certain sub-varieties; in those counties, the sub-varieties were grown on a total of 1,012 acres and were valued at about $4.9 million.

Because most of the data on California's production of these commodities is aggregated, there is little that can be stated with confidence about the individual quantities grown. However, it would appear that the value of California's annual production of *Brassica rapa* and *Brassica chinensis* probably lies well above $5 million, but below $30 million. By far, most producers are small entities by SBA standards. Even the larger operations can probably be considered small entities (with annual sales below $0.5 million).

In Florida, most production of *Brassica rapa* and *Brassica chinensis* takes place in Palm Beach County, by both small- and large-scale producers. It is possible that a couple of the larger ones may have annual sales exceeding $0.5 million. In 1995–96, over 1,260 acres were planted with these commodities in Palm Beach County, with production valued at almost $2.3 million. Assuming this amount represents about 80 percent of the State's total, Florida's overall production may be worth more than $2.8 million.

To these estimates for California and Florida should be added production taking place in other States where conducive growing conditions are found. When all growers are considered, U.S. producers of *Brassica rapa* and *Brassica chinensis* may number in the hundreds, with most of the operations very small-scale. The value of U.S. production is probably in the tens of millions of dollars.

Although statistics are not available on U.S. production of Chinese cabbage (*Brassica pekinensis*), fresh shipments to 18 major U.S. cities in 1996 totaled about 27,490 metric tons, of which less than 2 percent was imported (about 320 metric tons from Mexico and 180 metric tons from Canada). California was the origin of nearly 95 percent of fresh shipments of domestically grown Chinese cabbage. Between 1994 and 1996, shipments to the 18 major U.S. cities grew by more than 20 percent.

Of the surveyed counties in California, only four offered specific information on the number of acres planted with Chinese cabbage and the

value of production. They reported Chinese cabbage grown on 845 acres and worth $5.5 million.

The most recent data on Ecuador's production of principal *Brassica* vegetables indicate relative small quantities compared to those of the United States. In 1996, Ecuador produced 11,132 metric tons of cabbage, 4,000 metric tons of broccoli, and 1,421 metric tons of cauliflower. However, it has not been possible to gather information on the quantity of *Brassica* spp. expected to be imported from Ecuador, but the amounts are unlikely to be large enough to affect U.S. entities.

Certain *Brassica oleracea* varieties, including cabbage, cauliflower, broccoli, Brussels sprouts, and kale, grown in El Salvador have been entering the United States under permit for many years. Therefore, the impact of allowing entry of all *Brassica* spp. would be based on the potential imports of the more minor species, such as *Brassica rapa* varieties. Research is being conducted in El Salvador on some of the minor *Brassica* varieties, such as Chinese cabbage, but they are not established commercial crops. Therefore, no impacts are expected in allowing the importation into the United States of *Brassica* spp. from El Salvador.

The only information available on the production of *Brassica* spp. by Nicaragua concerns broccoli and cauliflower. Nicaragua's annual levels of production of these two vegetables are reported to be 158 metric tons and 308 metric tons, respectively. These quantities represent less than 0.03 percent and 0.1 percent, respectively, of U.S. broccoli and cauliflower production. Also, in a recent year, Nicaragua exported about 162 tons of cabbage to El Salvador and Honduras. Given these relatively low levels of production and export, importation of *Brassica* spp. from Nicaragua is expected to have a negligible impact on U.S. entities.

Certain *Brassica oleracea* varieties, including cabbage, cauliflower, broccoli, Brussels sprouts, and kale, grown in Peru have been entering the United States under permit for many years. In 1996, Peru exported approximately 211 metric tons of cabbage and 6 metric tons of Brussels sprouts to the United States. Therefore, the impact of allowing entry of all *Brassica* spp. would be based on the potential imports of the more minor species, such as *Brassica rapa* varieties. Information is not available on the quantity of these commodities grown in or expected to be imported from Peru, but the amounts are unlikely to be large enough to adversely affect U.S. entities.

Rhubarb From Guatemala

No official data is available on U.S. rhubarb production, but in 1996, shipments of fresh rhubarb to 18 major U.S. cities totaled about 454 metric tons, with 90 percent coming from Washington and 10 percent from Oregon. In 1995, there were 3,732 metric tons of frozen rhubarb shipped commercially to the same cities from western States (California, Colorado, Idaho, Montana, Oregon, Washington, and Wyoming). In general, U.S. rhubarb imports and exports are very minor.

Although the demand for rhubarb is fairly stable, with little change among long-time commercial buyers, production in Washington is expected to expand. An additional 300 acres are being brought into production, and the growing season has been lengthened, from January-July to December-September, by using hot house and covered field production in addition to open field production.

In Guatemala, rhubarb is produced in very small quantities for domestic sales only. Commercial production could increase if importation to the United States were allowed. However, any impact on the U.S. rhubarb market will probably be negligible, given the small amount produced by Guatemala and the current absence of Guatemalan rhubarb exports.

Parsley From Israel and Nicaragua

California leads all States in parsley production. In 1996, there were 45,411 tons of parsley produced from 2,982 acres in California. That same year, fresh parsley imports (together with fresh tarragon and marjoram imports) to the United States totaled 1,509 metric tons and were valued at $3.1 million. In other words, U.S. imports represented about 3 percent or less of California's production. No U.S. exports of fresh parsley were recorded in 1996.

Israel, with a total 1997 production of about 4,500 tons of parsley, is already an important source of imported dehydrated (manufactured) parsley in the United States. It is estimated that Israel's annual fresh parsley exports to the United States could amount to about 50 tons. This quantity represents an extremely small fraction (only about 3 percent) of current fresh parsley imports by the United States, and it is a negligible amount compared to U.S. domestic production. Therefore, no significant impacts are expected for U.S. parsley producers or other small entities.

The quantity of parsley expected to be imported from Nicaragua is not known, but given the relatively low level of current imports of parsley from all sources, which amount to only 3 percent of California's production, no significant impacts are expected for U.S. parsley producers or other entities.

Salicornia from Mexico

Salicornia is a succulent grown primarily as an oil seed crop. Much like asparagus, the tips of the salicornia plant are consumed as food in many countries; in Europe, for example, salicornia is widely eaten. The demand for salicornia as a food item in the United States is still a niche market, although some is produced along coastlines, such as in Texas and California. Domestic production is limited to one or two months of the year.

Information is not available on the number of U.S. producers of salicornia or on the quantity produced, but it is assumed to be a very minor crop in the United States. The quantity expected to be imported from Mexico is also not known, and will depend upon market development. Since it is to be grown on irrigated land in Mexico, exports to the United States could potentially be year-round. APHIS has no information to suggest that U.S. entities will be adversely affected by salicornia imports from Mexico.

Mint From Nicaragua

An average of 151,600 acres of mint were harvested annually in the United States between 1994 and 1996, for the production of peppermint oil and spearmint oil. The average annual value of the oils produced during these years was about $150 million. Statistics are not available on the production of mint leaves for purposes other than oil production. The annual value of mint leaves imported by the United States from 1992 through 1994 averaged approximately $407,000, increasing to $422,000 in 1996 and $469,000 in 1997. Thus, the current value of mint leaf imports is not significant compared to the value of U.S. mint oil production.

The quantity of mint expected to be imported from Nicaragua is not known, but given existing levels of U.S. production, potential imports of mint from Nicaragua are not expected to have an impact on U.S. producers or other entities.

Rosemary From Nicaragua

No information is readily available on rosemary production or imports for the United States. Similarly, no estimates were possible regarding Nicaragua's production or potential exports of rosemary to the United States. However, there is no reason to believe that

allowing rosemary imports from Nicaragua will have negative impacts on U.S. entities.

Belgian Endive, Chicory, and Endive From Panama

Although there is no information on U.S. production of Belgian endive, chicory, and endive, fresh endive shipments to 18 major U.S. cities in 1996 totaled about 17,550 metric tons, of which imports contributed about 1,135 metric tons (1,000 tons from Belgium, 90 tons from Canada, and 45 tons from The Netherlands). California and Florida were the sources of about 40 percent and 28 percent, respectively, of domestically grown shipments. Between 1994 and 1996, endive shipments to those 18 major U.S. cities grew by more than 77 percent. In 1996, the value of imports, $11.45 million, was three times that of exports, $3.9 million.

It has not been possible to gather information on the production levels or expected import quantities of Belgian endive, chicory, and endive from Panama. However, we do not expect the importation of these commodities from Panama to significantly impact U.S. entities.

Pineapple From South Africa

Pineapple production in the United States is concentrated in Hawaii, and, in 1996, totaled about 314,800 metric tons, of which 7,800 metric tons were exported. U.S. imports of pineapple in the same year reached 135,260 metric tons. In other words, about 30 percent of the pineapples consumed in the United States are imported.

South Africa produces about 46,000 metric tons of pineapple, of which approximately 4,000 metric tons are exported to the European Union and parts of Asia. It is estimated that South Africa could potentially export about 2,000 metric tons a year to the United States, depending on demand and available airfreight space. This amount represents less than one percent of U.S. production, and about 1 percent of U.S. imports. Therefore, we expect that U.S. producers and other entities will not be significantly affected by the importation of pineapple from South Africa.

Peppers From Spain

Although there is no information on U.S. production of *Capsicum* species, there were about 240,230 metric tons of fresh bell peppers and 36,150 metric tons of other fresh peppers shipped to 18 major U.S. cities in 1996. Nearly 30 percent of the bell pepper shipments were imported, as were more than one-half of other pepper shipments. In 1996, pepper imports (fresh and chilled) by the United States totaled 277,320 metric tons and were valued at $217 million. That same year, U.S. pepper exports amounted to 60,470 metric tons, valued at $48.4 million. As such, the United States is clearly a net importer of peppers.

The size distribution of U.S. pepper producers is similar to that of most crops, with numerous small-scale operations and fewer very large operations. For example, in Florida in 1992, there were 199 sweet pepper farms with a total of 19,554 harvested acres. More than half were farms of less than 15 acres. Most pepper producers in the United States are small entities (less than $0.5 million in annual sales).

Between 1994 and 1996, fresh bell pepper shipments to the 18 major U.S. cities grew by about 3.5 percent, while shipments of other fresh peppers increased by more than 58 percent.

Peppers from Spain would be required to have been grown in insect-proof greenhouses in the Province of Almeria. Currently, about 20,000 metric tons of the 200,000 metric tons of peppers produced annually in Province of Almeria are grown in insect-proof greenhouses. It is expected that about 1,500 metric tons would be shipped yearly to the United States. Annual shipments could increase to as much as 4,000 metric tons, depending on production and market developments.

This higher estimate, 4,000 metric tons, represents only 1.4 percent of current U.S. pepper imports, and even a smaller fraction of U.S. domestic production. Pepper imports from Spain will have a negligible impact on U.S. entities. However, they may help to satisfy the rapidly increasing U.S. demand for fresh peppers.

Cantaloupe, Honeydew Melon, and Watermelon From Venezuela

The U.S. melon season runs from May to November, with most domestic shipments taking place in May, June, and July. Production statistics are available only for honeydew melon; in 1996, the commercial crop totaled 242,490 metric tons and was valued at $91.3 million. Although such information is not available for cantaloupe or watermelon, quantities shipped to 18 major U.S. cities in 1996 are as follows: Cantaloupe, 325,230 metric tons (30 percent imported); honeydew melon, 130,770 metric tons (40 percent imported); and watermelon, 459,180 metric tons (22 percent imported).

California dominates cantaloupe and honeydew melon production, while Florida, Georgia, and Texas devote the most acreage to watermelon production. Most melon and cantaloupe producers can be considered small entities, but probably a major share of production is by a relatively few large-scale operations having annual sales greater than $0.5 million.

U.S. trade in cantaloupes, honeydew melons, and watermelons demonstrates that the United States is a net importer of these commodities. In 1996, overall fresh melon imports were valued at $205 million, and exports worth $81 million.

The Paraguana Peninsula, because it is considered free of the South American cucurbit fly, is the area in Venezuela from which cantaloupe, honeydew melons, and watermelons would be allowed to be exported to the United States. When melons were last shipped from the Paraguana Peninsula to the United States in 1985, 2,000 metric tons of honeydew melon and 400 metric tons of watermelon were exported. (No cantaloupe was exported.) In 1986, shipments were discontinued because of phytosanitary restrictions.

With removal of the restrictions, projected annual exports to the United States are 6,000 metric tons of cantaloupe, 3,000 metric tons of honeydew melon, and 2,000 metric tons of watermelon. In each case, these amounts represent about 1 percent or less of U.S. domestic production. The export season for the melons will be October to April, the period of the year when domestic supply is at its lowest.

Shipments from Venezuela will improve the year-round availability of melons for consumers by augmenting existing off-season imports. The relatively small amounts expected to be shipped are likely to have only a negligible impact on U.S. producers of cantaloupe, honeydew melon, and watermelon.

Executive Order 12988

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule are preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56–2t, the table is amended by adding, in alphabetical order, the following entries:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
Ecuador			
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
El Salvador			
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
Guatemala			
	Rhubarb	*Rheum rhabarbarum*	Above ground parts.
Israel			
	Parsley	*Petroselinum crispum*	Above ground parts.
Mexico			
	Salicornia	*Salicornia* spp	Above ground parts.
Nicaragua			
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
	Mint	*Mentha* spp	Above ground parts.
	Parsley	*Petroselinum crispum*	Above ground parts.
	Rosemary	*Rosmarinus officinalla*	Above ground parts.
Panama			
	Belgian endive	*Cichorium* spp	Above ground parts.

Country/locality	Common name	Botanical name	Plant part(s)
	Chicory	*Cichorium* spp	Above ground parts.
	Endive	*Cichorium* spp	Above ground parts.
Peru			
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
	Swiss chard	*Beta vulgaris*	Leaf and stem.
South Africa			
	Pineapple	*Ananas* spp	Fruit.

* * * * *

3. Section 319.56–2aa is revised to read as follows:

§ 319.56–2aa Administrative instructions governing the entry of cantaloupe, honeydew melons, and watermelon from Brazil and Venezuela.

Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Brazil and Venezuela only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Brazil or the area of Venezuela considered by the Animal and Plant Health Inspection Service to be free of the South American cucurbit fly, (*Anastrepha grandis*), in accordance with § 319.56–2(e)(4) of this subpart. In addition, all shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued either by the Departmento de Defesa e Inspeção Vegetal (Braziliañ Department of Plant Health and Inspection) or the Servicio Autonomo de Sanidad Agropecuaria (the plant protection service of Venezuela) that includes a declaration indicating that the cantaloupe or melons were grown in an area recognized to be free of the South American cucurbit fly.

(1) *Area considered free of the South American cucurbit fly in Brazil.* The following area in Brazil is considered free of the South American cucurbit fly: That portion of Brazil bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN–015 from Mossoro to the Ceara State line; and on the west by the Ceara State line to the Atlantic Ocean.

(2) *Area considered free of the South American cucurbit fly in Venezuela.* The following area in Venezuela is considered free of the South American cucurbit fly: The Paraguana Peninsula, located in the State of Falcon, bounded on the north and east by the Caribbean Ocean, on the south by the Gulf of Coro and an imaginary line dividing the autonomous districts of Falcon and Miranda, and on the west by the Gulf of Venezuela.

(b) *Shipping requirements.* The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plaştic tarpaulin while in transit to the United States.

(c) *Labeling.* All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

4. A new § 319.56–2gg is added to read as follows:

§ 319.56–2gg Administrative instructions; conditions governing the entry of peppers from Spain.

Peppers (fruit) (*Capsicum* spp.) may be imported into the United States from Spain only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) The peppers must be grown in the Almeria Province of Spain in pest-proof greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(b) The peppers may be shipped only from December 1 through April 30, inclusive;

(c) Beginning October 1, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all outside areas, including urban and residential areas, within 8 kilometers of the greenhouses, MAFF must set and maintain Medfly traps baited with trimedlure at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(d) Capture of a single Medfly in a registered greenhouse will immediately halt exports from that greenhouse until the Deputy Administrator determines that the source of infestation has been identified, that all Medflies have been eradicated, and that measures have been taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increased trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse during a 1-month period will halt exports from all registered greenhouses within 2 kilometers of the capture, until the source of infestation is determined and all Medflies are eradicated;

(e) The peppers must be safeguarded against fruit fly infestation from harvest to export. Such safeguarding includes covering newly harvested peppers with fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packing the peppers in fruit fly-proof cartons, or cartons covered with fruit-fly proof mesh or plastic tarpaulin, and placing those cartons in enclosed shipping containers for transit to the airport and subsequent shipment to the United States;

(f) The peppers must be packed for shipment within 24 hours of harvest;

(g) During shipment, the peppers may not transit other fruit fly-supporting areas unless shipping containers are sealed by MAFF with an official seal whose number is noted on the phytosanitary certificate; and

(h) A phytosanitary certificate issued by MAFF and bearing the declaration, "These peppers were grown in registered greenhouses in Almeria Province in Spain," must accompany the shipment.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31713 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, and 299

[INS 1962–98]

RIN 1115–AF31

Petitioning Requirements for the H–1B Nonimmigrant Classification Under Public Law 105–277

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service's (Service) fee schedule and regulations with respect to filing requirements for Form I–129, Petition for H–1B Nonimmigrant Worker, for alien workers coming to perform services in a specialty occupation. Specifically, this rule amends the regulations to reflect an additional $500 billing fee, added by the American Competitiveness and Workforce Improvement Act (ACWIA), for H–1B petitions filed on or after December 1, 1998. This rule also describes the organizations that are exempt from the new fee requirements. Finally, this rule amends the regulations to reflect the new annual numerical limits on H–1B classification.

DATES: *Effective date:* This rule is effective December 1, 1998.

Comment date: Written comments must be submitted on or before January 29, 1999.

ADDRESSES: Please submit the original and two copies of written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1962–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act of 1990 (ACWIA), as Title IV of Div. C of Public Law 105–277. This new legislation amended and created several statutory provisions relating to the H–1B nonimmigrant classification. These amendments include, among others:

(1) revisions to the attestation requirements for labor condition applications (LCA) under section 212(n) of the Immigration and Nationality Act (INA);

(2) new penalties and definitions of violations of LCA conditions;

(3) amendments to prevailing wage computations for academic and research organizations; and

(4) data collection and reporting requirements.

The Department of Labor is primarily responsible for administration and enforcement of the labor condition application and associated penalties. Therefore, as a number of these provisions require close coordination between the Department of Labor and the Service, they will be the subject of a separate rulemaking.

For this rulemaking, the Service is implementing only the provisions of section 414(a) and 415(a) of ACWIA, addressing the new fees for United States employers filing petitions for H-1B nonimmigrants and the organizations that are exempt from the new fee requirements. The Service is also revising the regulations at § 214.2(h)(8)(i)(A) to reflect the increase in the annual limitations on the number of aliens who can be granted an H–1B visa or otherwise accorded such status.

What Is the New Fee Required by H–1B Petitions?

ACWIA requires certain H–1B petitioners to pay an additional fee of $500, in addition to the standard $110 filing fee for Form I–129 petitions. This $500 fee will be disbursed between the Department of Labor and National Science Foundation for job training, low-income scholarships, grants for mathematics, engineering, or science enrichment courses, systematic reform activities, and administration and enforcement of the H–1B program. The Service will receive 1.5 percent of the fee as reimbursement for the costs of collection and processing of H–1B nonimmigrant petitions.

Who Is Required to Pay This Fee?

The new $500 filing fee must be paid by United States employers when they file H–1B petitions on or after December 1, 1998, and before October 1, 2001, for any of the following purposes:

(1) an initial grant of H–1B status under section 101(a)(15)(H)(i)(b) of the INA;

(2) an extension of stay for individuals currently in H–1B status; or

(3) authorization for a change in employment for individuals currently in H–1B status.

All United States employers seeking authorization for a change in employment (e.g., a change from one specialty occupation to another specialty occupation) for an H–1B nonimmigrant must pay the additional $500 fee, regardless of whether the request for change in employment is the first request for such a change or a subsequent request for the same H–1B nonimmigrant. For employers seeking an extension of stay under § 214.2(h)(15)(i), the additional $500 fee only applies to the *first* extension request. However, in instances where a new employer has received approval for a change in employment for an H–1B nonimmigrant and subsequently seeks an extension of stay for that H–1B worker, the new employer must also pay the additional $500 filing fee for its *first* request for extension of stay, regardless of whether the prior employer had requested an extension of stay for the H–1B nonimmigrant. Finally, the additional fee will not be required for employers filing amended petitions under § 214.2(h)(2)(i)(E), unless the

petition has the effect of extending the alien's status and is the first petition that the employer has filed to extend that alien's status.

Employers should note that the additional $500 filing fee is not waivable under § 103.7(c)(1).

What Are the Application Procedures for H–1B Petitions in Light of the New Fee Requirements?

All H–1B petitions filed on or after December 1, 1998, for new H–1B employment, concurrent employment, sequential employment, and the first extension of stay filed by an employer for the alien, must be filed in accordance with § 103.2(a), at the Service Center having jurisdiction over the area where the alien will perform the specialty occupation services. The completed Form I–129 must be accompanied by the required $110 filing fee and an additional $500 fee in a single remittance (one check or money order) of $610, unless the United States employer is an "exempt organization" as defined under § 214.2(h)(19)(iii).

Those United States employers claiming exemption from the additional $500 filing fee should submit a completed Form I–129, the $110 filing fee, the Form I–129W, Petition for Nonimmigrant Worker, Filing Fee Exemption, and evidence that their organization is an "exempt organization" as defined in § 214.2(h)(19)(iii).

Employers should note that under section 413(a) of ACWIA, which amends section 212(n)(2)(C) of the INA, an employer may not require an alien beneficiary to reimburse or otherwise compensate the employer for all or part of an H–1B petition filing fee. Therefore, the Service will reject remittances from an alien beneficiary or the alien's representative that accompanies an H–1B petition.

Who Is Exempt From the $500 Filing Fee?

The only organizations exempt from paying the additional $500 fee for filing H–1B petitions are:

(1) institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, or related or affiliated nonprofit entities, and

(2) nonprofit or governmental research organizations.

The Service has created preliminary definitions for the terms "nonprofit" and "research" and the phrase "related or affiliated," drawing on generally accepted definitions of the terms. In addition, the Service has drawn from definitions of the terms. In addition, the Service has drawn from definitions contained in the regulations of the Internal Revenue Service (IRS), 26 CFR 1.501(c)(3)–1, (c)(4)–1, and (c)(6)–1, and Small Business Administration, 13 CFR 121.103. The Service also consulted with the Department of Labor and nonprofit and academic organizations for assistance in developing the definitions reflected in this rulemaking. In addition, these definitions will be the subject of a separate rulemaking proceeding with an opportunity for public comment when the Service and the Department of Labor address section 415 and subtitle C of ACWIA. The definitions are set forth in new § 214.2(h)(19)(iii). We invite public comment on this section.

Which H–1B Petitions Are Affected by ACWIA?

The new law only applies to petitions filed on or after December 1, 1998, and before October 1, 2001. For purposes of determining whether a petition is filed on or after December 1, 1998, the Service will rely on its existing regulation at § 103.2(a)(7), under which "filing" occurs on the date of receipt. As Senator Abraham stated in the House Conference Report 105–825, October 21, 1998, 2nd. Sess. 1998, ACWIA was the product of combined efforts by Congress and the business industry to implement changes in the H–1B nonimmigrant program. The Service believes that United States employers filing for H–1B nonimmigrant workers are well aware of the new fee requirements and the December 1, 1998, effective date for the new fee. In addition, since the Service has existing regulations governing filing and receipt of benefit applications, and employers of H–1B nonimmigrant workers are familiar with these regulations, United States employers should not have difficulty complying with the new fee requirement.

In the rulemaking, the Service also is requiring that a United States employer claiming to be an "exempt organization" must provide the Service with evidence of its section 501 (c)(3), (c)(4), or (c)(6) tax exempt status. The Service understands from the IRS that certain organizations (e.g., churches) qualify for nonprofit status even without a notice from the IRS confirming such status. The Service, however, believes that most employers of specialty occupation workers claiming an exemption will be able to meet this evidentiary requirement, either with a notice from the IRS or other documents demonstrating the United States employer's nonprofit status. In addition, the Service believes that information to be submitted with the H–1B petition, as provided in this interim rule, should provide sufficient evidence that the employer is an institution of higher education or research institution. The Service is not imposing any additional evidentiary requirements at this time; however, the Service may invoke its existing authority under § 103.2(b)(8) to request additional evidence if there is a question of eligibility for exemption from the filing fee. This is consistent with conference report language at House Report 105–825, October 21, 1998, 2nd Sess. 1998.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B). Sections 414(a) and 415(a) of ACWIA became effective immediately upon enactment on October 21, 1998. Publication of this rule as an interim rule will expedite implementation of these sections. It also will inform the public about the new $500 filing fee for H–1B petitions for nonimmigrant workers and allow the Service to begin collecting this fee for H–1B petitions filed on or after December 1, 1998.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. Sections 414(a) and 415(a) of ACWIA established the new $500 filing fee and exemptions that are effective December 1, 1998. This regulation implements procedures for submission of the new $500 filing fee for Form I–129, H–1B Nonimmigrant Petitions.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in

costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. While the rule is not a major rule, the Service recognizes that all businesses, regardless of size, whose hiring practices involve H–1B aliens, are affected by this rule in that they will be required to submit an additional $500 per petition, unless exempt. It is anticipated that this rule will result in an estimated annual effect on the economy of $75,050,000 for the first year. It is anticipated that the effect on the economy for the second year will be $88,550,000. Further, as previously stated in the supplement to this rule, sections 414(a) and 415(a) of ACWIA establish the new $500 filing fee and exemptions that are effective December 1, 1998. This regulation merely implements procedures for the submission of the new $500 filing fee for H–1B nonimmigrant petitions.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation proposed herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

Under ACWIA, on or after December 1, 1998, a United States employer must file an additional $500 fee for all petitions to classify an alien as an H–1B nonimmigrant worker. Institutions of higher education or related or affiliated nonprofit entities, and nonprofit or governmental research organizations, are exempt from this new fee requirement. United States employers claiming to be an exempt organization must complete Form I–129W, Petition for Nonimmigrant Worker, Filing Fee Exemption, and submit it to the Service. This attachment is considered an information collection covered under the Paperwork Reduction Act (PRA). The estimated burden hours for the first year are 38,500 which lead to a cost of $385,000. The additional costs of the collection total $75,050,000 for the first year. The estimated burden hours for the second year are 46,000 which lead to a cost of $460,000. The additional costs of the collection for the second year total $88,550,000.

Accordingly, the Service will be submitting an information collection package to the Office of Management and Budget (OMB) for review and approval in accordance with 8 CFR part 1320.13.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended as follows:

a. In paragraph (b)(1), remove the entries for "Form I–129H" and "Form I–129L" from the listing of fees;

b. Revise in paragraph (b)(1) the entry for "Form I–129"; and

c. In paragraph (c)(1) add a new sentence at the end of the paragraph, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–129. For filing a petition for a nonimmigrant worker, a base fee of $110 plus an additional $500 fee in a single remittance of $610. Payment of this additional $500 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter. Payment of this additional $500 fee is not waivable under § 103.7(c)(1).

* * * * *

(c) * * *

(1) * * * The payment of the additional $500 fee prescribed by section 214(c)(9) of the Act when applying for petition for nonimmigrant worker under section 101(a)(15)(H)(i)(b) of the Act may not be waived.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows;

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

4. Section 214.2 is amended by:

a. Revising paragraph (h)(8)(i)(A); and by

b. Adding a new paragraph (h)(19); to read as follows:

§ 214.2. Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(8) * * *

(i) * * *

(A) Aliens classified as H–1B nonimmigrants, excluding those involved in Department of Defense research and development projects or coproduction projects, may not exceed:

(*1*) 115,000 in fiscal year 1999;

(*2*) 115,000 in fiscal year 2000;

(*3*) 107,500 in fiscal year 2001; and

(*4*) 65,000 in each succeeding fiscal year.

* * * * *

(19) *Additional fee for filing certain H–1B petitions*—(i) A United States employer (other than an exempt employer as defined in paragraph (h)(19)(iii) of this section) who files a Form I–129, on or after December 1, 1998, and before October 1, 2001, must include the additional fee required in § 103.7(b)(1) of this chapter, if the petition is filed for any of the following purposes:

(A) An initial grant of H–1B status under section 101(a)(15)(H)(i)(b) of the Act;

(B) An initial extension of stay, as provided in paragraph (h)(15)(i) of this section; or

(C) Authorization for a change in employment, as provided in paragraph (h)(2)(i)(D) of this section.

(ii) The service will accept remittances of the additional fee only from the United States employer or its representative of record, as defined under 8 CFR part 292 and 8 CFR 103.2(a)(3).

(iii) The following exempt organizations are not required to pay the additional fee:

(A) *An institution of higher education,* as defined in section 101(a) of the Higher Education Act of 1965;

(B) *An affiliated or related nonprofit entity.* A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(C) *A nonprofit research organization or governmental research organization.* A research organization that is either a nonprofit organization of entity that is primarily engaged in basic research and/or applied research or a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research also is not research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services.

(iv) For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is one that is qualified as a tax exempt organization under section 501(c)(3), (c)(4), or (c)(6) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)) and has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

* * * * *

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

6. Section 299.1 is amended in the table by adding the Form "I–129W" in numerical order to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
.	.	.
I–129W ..	11–24–98	Petition for Nonimmigrant Worker, Filing Fee Exemption.
.	.	.

7. Section 299.5 is amended in the table by adding Form "I–129W" in numerical order to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
.	.	.
I–129W ..	Petition for Nonimmigrant Worker, Filing Fee Exemption	1115–0225
.	.	.

Dated: November 25, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–31953 Filed 11–25–98; 3:36 pm]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1026]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $47.8 million to $46.5 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $4.7 million to $4.9 million the amount of reserveable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reserveable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reserveable liabilities exemption to determine the frequency of deposit reporting from $78.9 million to $81.9 million for nonexempt depository institutions and from $50.7 million to $52.6 million for exempt institutions. (Nonexempt institutions are those with total reserveable liabilities exceeding the amount exempted from reserve requirements ($4.9 million) while exempt institutions are those with total reserveable liabilities not exceeding the amount exempted from reserve requirements.) Thus, beginning in September 1999, nonexempt institutions with total deposits of $81.9 million or more will be required to report weekly while nonexempt institutions with total deposits less than $81.9 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $52.6 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $52.6 million may report annually on form FR 2910a.

DATES: *Effective date:* December 1, 1998.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reserveable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 1, 1998, and the corresponding reserve maintenance period that begins Thursday, December 31, 1998. For institutions that report quarterly, the low reserve tranche adjustment and the reserveable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 15, 1998, and the corresponding reserve maintenance period that begins Thursday, January 14, 1999. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1999 to determine the reporting

frequency for the twelve month period that begins in September 1999.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Attorney (202/452–3688), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544); Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $47.8 million. Net transaction accounts of all depository institutions decreased by 3.5 percent (from $713.6 billion to $688.6 billion) from June 30, 1997, to June 30, 1998. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1998 by $1.3 million to $46.5 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)) provides that $2 million of reservable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increase from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions increased by 4.6 percent (from $1,821.2 billion to $1,904.6 billion) from June 30, 1997, to June 30, 1998. Consequently, the reservable liabilities exemption amount for 1999 under section 19(b)(11)(B) will be increased by $0.2 million to $4.9 million.[2]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1997, to June 30, 1998, is to decrease the low reserve tranche to $46.5 million, to apply a zero percent reserve requirement on the first $4.9 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective for the reserve computation period beginning Tuesday, December 1, 1998, and for the corresponding reserve maintenance period beginning Thursday, December 31, 1998. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective for the computation period beginning Tuesday, December 15, 1998, and for the reserve maintenance period beginning Thursday, January 14, 1999. In addition, all institutions currently submitting form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set a single cutoff level for all depository institutions of $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels, increasing the cutoff level for nonexempt institutions, and in September 1997 further increased the cutoff level for nonexempt institutions to $75.0 million. In September 1998, the cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was raised to $78.9 million, and the deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), was raised to $50.7 million.

From June 30, 1997, to June 30, 1998, total deposits increased 4.8 percent, from $4,441.3 billion to $4,653.2 billion. Accordingly, the nonexempt deposit cutoff level will increase by $3.0 million to $81.9 million and the exempt deposit cutoff level will increase by $1.9 million to $52.6 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.7 million to $4.9 million. Institutions with total deposits below $4.9 million will be excused from reporting if their deposits can be estimated from other data sources. The $81.9 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $52.6 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.9 million level threshold for reporting will be used in the second quarter 1999 deposits report screening process, and the adjustments will be made when the new deposit

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

[3] "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

reporting panels are implemented in September 1999.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1999, all other institutions that have reserveable liabilities in excess of the exemption level of $4.9 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the nonexempt deposit cutoff level ($81.9 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve month period starting September 1999. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($81.9 million), will be able to file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reserveable liabilities at or below the exemption level ($4.9 million) (known as exempt institutions) will be required to file the Quarterly Report of Selected Deposits, Vault Cash, and Reserveable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($52.6 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($52.6 million) but at least equal to the exemption amount ($4.9 million) will be able to file the Annual Report of Total Deposits and Reserveable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.9 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $46.5 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, or contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $46.5 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions. *See* "Notice and Public Participation" above.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $46.5 million	3 percent of amount.
Over $46.5 million	$1,395,000 plus 10 percent of amount over $46.5 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

[1] Before deducting the adjustment to be made by paragraph (b) of this section.

(b) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of $4.9 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, November 23, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–31764 Filed 11–27–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. 98–118]

RIN 1550–AB20

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to more equitably impose assessments on savings associations. OTS's experience has shown that the current assessment structure may cause some savings associations to pay assessments over or under OTS's costs of supervising those savings associations. The final rule is designed to correlate OTS's assessments on savings associations more closely with the costs associated with supervising those associations. At the same time, the final rule establishes a regulatory structure that allows OTS to keep its assessment rates as low as possible while providing OTS the resources essential to effectively supervise the industry. The rule also clarifies certain other matters involving assessments and other fees, and revises the entire assessment and fee regulation using a plain language format.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office; or Eric Hirschhorn, Principal Financial Economist, (202) 906–7350, Research & Analysis; William Brady, Director, Planning & Budget, (202) 906–7408, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS is charged with the mission of examining, regulating, and providing for the safe and sound operation of savings associations.[1] Under 12 U.S.C. 1467, OTS funds these operations through assessments on savings associations and through other fees, as necessary and appropriate. This section authorizes the Director of OTS to assess examination costs against savings associations and their affiliates, and to recover the agency's direct and indirect expenses, as the Director deems necessary or appropriate.

Recently, OTS analyzed its operating costs and compared these costs to its assessments on savings associations under its current regulation. OTS found that its assessments could be more closely correlated to its costs in certain respects. For these reasons, on August 14, 1998, OTS proposed to amend its assessment regulation.[2] The proposed rule based assessments on three components: the savings association's asset size, its condition, and its complexity. The proposed rule also streamlined and clarified OTS's regulation concerning fees, and clarified administrative matters.

Today, OTS is issuing a final assessments rule. Briefly, this final rule is substantially identical to the proposal, but with certain changes to the complexity component. OTS limits its trust examinations fee to those associations not subject to the complexity component's coverage of trust assets. Additionally, OTS has decided to adopt a structure that will permit OTS to use one or more different assessment rates for each of the different activities covered by the complexity component. Currently, for trust assets and recourse obligations and direct credit substitutes, OTS will use flat rates. In contrast, for loans serviced for others, OTS will initially use two rates to reflect economies of scale in examining these activities. Additionally, the final rule clarifies which assets and activities are covered by each of the three categories within the complexity component. The final rule is described more specifically below.

II. General Discussion of Comments

The comment period on the proposed rule closed on October 13, 1998. OTS received thirteen comments from eight savings associations, four trade associations, and one holding company. The comments were mixed, with most commenters supporting some parts of the proposal while opposing others. Several commenters opposed the complexity component as proposed, but expressed no opinions on other aspects of the proposal. One commenter supported the proposal, but suggested alternatives. One commenter discussed the proposal but did not take a position. All others had mixed reactions.

In the proposed rule, OTS indicated that it has two goals with respect to the assessment rule. First, OTS wants to establish an assessment structure that keeps assessment rates as low as possible while providing the resources essential to effective supervision of a changing industry. One commenter opposed the proposal to the extent that it would result in an overall increase in assessments. The final rule adopted today is designed to correlate OTS assessments to the costs of supervision of the thrift industry. As the industry's size, condition, and complexity change in the future, OTS's costs will also change. The final rule will enable OTS's revenues to move along with these changes in its supervisory expenses. OTS believes the approach in the final rule is appropriate and should not result in overcharging the thrift industry.

As its second goal, OTS wants to more closely tailor assessments with OTS's supervisory costs. To do so, OTS used statistical analyses of examiner hours to correlate its proposed assessments with supervisory costs. Two commenters supported basing assessments on examination costs, while one opposed this method, believing examiner hours are excessive. Examiner hours are the main component of OTS's supervisory expenses that vary with the size, condition, or other attributes of thrift institutions. As such, they are a useful standard for evaluating consistency between an assessment schedule and actual supervision. OTS has not found, and no one has proposed, a better alternative. OTS, therefore, will continue to base its assessments on its statistical analyses of examination costs.

Commenters specifically argued that OTS did not provide empirical evidence supporting its assertions regarding examination time and costs. One commenter noted that OTS did not provide details regarding the actual supervision costs, the structure of the quantitative model used to analyze costs, or the variables in the model.

While OTS studied examination costs and examination hours devoted to different tasks, it did not publish these studies in the **Federal Register** because they are too voluminous. Instead, OTS provided adequate details through other means. First, OTS summarized its findings in the notice of proposed rulemaking. In addition, OTS placed a paper providing background analysis in the public comment file. This paper has been available for inspection in the OTS public reading room. Moreover, the Principal Financial Economist who conducted the studies was listed as an

[1] 12 U.S.C. 1463(a).

[2] 63 FR 43642 (Aug. 14, 1998).

contact person in the proposed rule. Finally, OTS's financial statements, including information about OTS's expenses, are available on OTS's web site.

Several commenters noted that the proposed assessments rule would place OTS-regulated institutions at a competitive disadvantage with regard to national banks and other entities. For example, these commenters pointed out that the Office of the Comptroller of the Currency (OCC), which regulates national banks, does not impose a complexity component, charges a lower condition premium for 4- and 5-rated institutions, and does not charge for trust examinations. Commenters argued that the proposed complexity component would discourage thrifts from engaging in the certain activities, particularly where profit margins are low, as in the loan servicing field. Other commenters predicted that new or existing institutions may reconsider their charter choice.

Competitive disparities are inevitable in any assessment structure. Savings associations compete with many institutions that are subject to differing assessments structures and other entities that are not subject to any assessments. For example, thrifts compete with credit unions, and with state chartered commercial and savings banks who do not pay Federal assessments. Thrifts also compete with entities that are not regulated by a federal banking agency, such as mutual funds.

Moreover, eliminating the aspects of this rule that are different from the OCC assessments model would not eliminate all competitive inequities. Rather, such a change would merely move a competitive disparity from one thrift to another. For example, if OTS were to eliminate the assessment on trust activities or on loan servicing, it would necessarily transfer the costs of supervising those activities from the institutions that cause them to other savings associations. These other institutions would be forced to bear these costs while, at the same time, they are trying to compete with other institutions who do not have to cover such costs. OTS sees no benefit in such an approach. OTS's goal in amending its assessment regulation is to more closely tailor its assessments to its costs, which this regulation does. OTS believes this is the most equitable approach.

One commenter encouraged OTS to meet with the OCC to discuss the disparities between the assessments for thrifts and national banks. Specifically, this commenter urged OTS to evaluate the merits of the complexity component with the OCC before implementing the proposed rule. This commenter encouraged OTS to work toward a uniform regulation with the OCC. Another commenter noted that section 303(a)(2) of the Riegle Community Development Act requires OTS to work toward uniform regulation with the other federal banking agencies.[3]

OTS considered the OCC's assessment structure in developing its proposed and final rules, just as the OCC considered the OTS structure in adding a surcharge on its assessments for national banks requiring additional supervisory resources.[4] However, because the thrift industry and the national bank industry differ in certain respects, identical rules are not necessarily the most equitable. For example, thrifts concentrate on mortgage lending operations, such as mortgage servicing, more than national banks. As a result, an assessment that does not cover mortgage loan servicing would have a more inequitable impact on institutions in the thrift industry than in the banking industry. OTS's system will reduce the cross-subsidies between thrifts. While this system is different than the OCC's, OTS believes it is more equitable for the thrift industry.

III. Description of the Final Rule

A. Size Component

OTS proposed to base the first component of the assessment calculation on asset size, as reported in the Thrift Financial Report (TFR). Like the current regulation, the size component would use marginal assessment rates that decline as asset size increases. Second, OTS would incorporate some fixed costs into the assessment rate schedule via an explicit charge. Commenters generally supported the size component, and one noted that this method is easy to understand and to plan for. Specific comments regarding the size component are discussed below.

1. Declining Rate Schedule

The proposed assessment structure uses assessment rates that decline as asset size increases because OTS realizes economies of scale in supervising and regulating larger savings associations. Because OTS's experience indicated that the current marginal assessment rates are no longer consistent with existing economies of scale, the projected marginal rates in the preamble to the proposed rule differed from the rates OTS had been using for assessments. Four commenters supported this system of declining rates.

Like the current rule, the proposed graduated schedule included seven asset size classes. The highest class included institutions with over $35 billion in assets. One commenter urged OTS to add more asset size classes. This commenter believed that the largest asset size category, $35 billion and larger, denies economies of scale to the largest institutions.[5] Another commenter suggested that OTS reexamine whether the proposed asset size categories are appropriate.

OTS considered altering the asset size categories in its assessments regulation, but declines to amend them at this time. There currently are not enough savings institutions significantly over $35 billion in size to justify a new, larger, size category. OTS believes the seven asset size categories, along with an adjustable marginal assessment rate for each category, will permit OTS to appropriately recognize existing economies of scale in the size component. If those economies of scale change over time, OTS can incorporate those changes by adjusting the rates, for each appropriate class, accordingly.

2. Fixed Charge

OTS proposed to incorporate fixed supervision costs into the assessment rate schedule via an explicit charge assessed on all savings associations. Two commenters supported this proposal.[6] One commenter, however, suggested that OTS should include a lower fixed cost in the schedule to cover only the "basic" cost of examination and impose the fixed cost of other activities (e.g., rule drafting) directly on those institutions that are affected by the specific regulatory activity.

The commenter's proposed alternative would impose excessive and unnecessary administrative burdens on

[3] 12 U.S.C. 4803(a)(2). This statute required Federal banking agencies to work jointly toward uniform regulations in common areas.

[4] *See* 62 FR 54147 n.5 (Oct. 21, 1997).

[5] Alternatively, the commenter proposed that OTS base assessments on a per hour charge for examiners' actual time at each institution. While this method would correlate assessments with OTS's supervisory costs, it would also result in fluctuating and unpredictable assessments. OTS does not always examine thrifts at regular intervals. Some are examined more or less frequently in response to marketplace or other events. Currently, for example, OTS is conducting Year 2000 examinations, which are a temporary cost. OTS believes that the final assessments rule offers savings associations a measure of predictability as to the amount due at the time of each assessment. This will aid both institutions and the agency in the budgetary process. Further, this assessment scheme is simpler and less burdensome for the agency to administer.

[6] Three commenters argued that the fixed charge could be burdensome to small institutions. These comments are discussed below in connection with the alternate fee calculation for small institutions.

OTS. It would be impractical administratively to charge each affected institution for specific supervision costs on a rule by rule or policy by policy basis. It is impossible to determine all the thrifts affected by any rule or policy. It would also increase OTS's costs and create uncertainty over the assessments that thrifts would pay from one year to the next. Accordingly, OTS declines to adopts the commenter's alternative proposal. The final rule continues to incorporate the fixed cost aspect of the size component, as proposed.

3. Alternate Calculation for Certain Small Institutions

OTS recognized that the size component could have a disproportionate impact on the smallest savings associations—those with less than $100 million in assets. Accordingly, OTS proposed to base the size component for certain qualifying savings associations on the lesser of the new size component or the assessment calculated under the current general assessment table. This grandfather provision would not be available to savings associations formed after this rule's effective date, or to institutions whose assets have exceeded $100 million at the end of any quarter. Three commenters supported the grandfather provision.

Three commenters suggested modifications to the grandfather provisions. These commenters suggested that institutions with less than $100 million in assets should qualify for the grandfather provision, even if they had more that $100 million in assets at the end of a prior quarter. Another commenter believed that institutions should qualify for the grandfather clause if their asset size is $150 million or less.

These suggested approaches would have little effect. For the January 1999 assessment, the size component for institutions with over $67.5 million in assets will be lower under the new assessment schedule than under the existing general assessment schedule. Thus, even if these institutions qualified for the special treatment afforded small institutions, OTS would use the new size component to compute their assessment, rather than the grandfather provision. Institutions under $67.5 million in assets will find little difference between the two assessments. OTS acknowledges that if supervisory expenses increase in the future, this may no longer be true. However, if OTS needs to increase its rates, it will consider the effects of an increase on small institutions before increasing the marginal rates under the size component.

Finally, one commenter urged that institutions that become savings associations after the rule's effective date should qualify for the small institution exemption. In proposing the small institution exemption, OTS was concerned that the new size component would impose undue burdens on existing savings associations, which may not be in a position to absorb the new burden. It is not necessary to minimize the potential burden of a changing regulatory structure for newly created institutions because those institutions will be able to plan for and take into account the new assessment schedule as they make their initial business decisions.

4. Assessment Rates

In its proposed rulemaking, OTS included a chart indicating the base assessment amounts and marginal assessment rates it was considering for the initial size component. OTS, however, also indicated that these amounts and rates could change depending on changes to the final rule. For example, OTS noted that if it were to decide against imposing a complexity component, it would charge higher rates under the size component.

As discussed below, OTS has adopted different assessment rates for the activities within the complexity component. As a result, the rates for the initial size component are different than those listed in the notice of proposed rulemaking. The rates OTS will apply for the January 31, 1999 semi-annual assessment are set forth in a Thrift Bulletin issued simultaneously with this rulemaking and available on OTS's web site.

B. Condition Component

Under the second component of the assessment calculation, OTS proposed to impose an additional 25% premium on the size component for 3-rated institutions and to continue its current 50% premium on 4- and 5-rated institutions. Commenters addressing the condition component generally favored it. One commenter, however, opposed the 25% surcharge, arguing that OTS's examination rating system is arbitrary and may pressure examiners to generate income through the rating system.

The CAMELS rating system that OTS uses was developed jointly by all of the Federal banking regulators in an effort to establish a uniform rating system using standard criteria and definitions for rating in six different ratings areas. The CAMELS rating system, with its correlation to increased supervisory attention, is well suited to distinguish between savings associations whose performance is consonant with safe and sound operations (1- and 2-rated institutions), those whose performance is flawed in certain respects (3-rated institutions), and those whose performance is poor or unsatisfactory (4- and 5-rated institutions). Over the years, this rating system has proven to be an effective supervisory tool for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special supervisory attention or concerns.[7]

Moreover, OTS does not believe that the surcharge for 3-rated thrifts will place pressure on examiners to generate income. OTS's experience with its surcharge for 4- and 5-rated thrifts has shown no pressure to lower ratings to generate revenue. On the contrary, the number of 4- and 5-rated savings associations has steadily decreased since OTS began imposing a premium for lower rated associations. For example, there were 203 institutions rated 4 or 5 in 1992, which dropped to 101 in 1993, and plummeted to only 18 by June 1998.

Two commenters were concerned that the condition component would take capital away from struggling institutions. While OTS agrees with these commenters' concerns, its analyses demonstrate that examiners devote substantially more hours to 3-rated institutions than 1-or 2-rated institutions, although not as many hours as 4- and 5-rated institutions. In other words, 3-rated institutions cause OTS to incur extra supervisory costs. OTS must, therefore, pass along those costs either to 3-rated associations or to other institutions. Passing the costs to 4- and 5-rated institutions would worsen their condition. Passing the costs to 1- and 2-rated institutions would unfairly burden them. OTS believes the 25% surcharge for three-rated institutions in the condition component is the most fair and appropriate solution overall, and therefore adopts it as proposed.

To alleviate some of the burden on 3-rated institutions, one commenter suggested a sliding scale within the 3-rated category. Under this alternative, some institutions would not incur a full 25% premium. OTS considered the commenter's suggestion, but believes that it would be impossible to administer fairly. OTS does not assign "high" and "low" three-ratings and does not track its examiners' hours on this basis. Accordingly, OTS declines to adopt this suggestion.

[7] See 61 FR 67021 (Dec. 19, 1996) (Uniform Financial Institutions Rating System).

C. Complexity Component

OTS proposed to include a new complexity component in its assessment regulation. This component would impose an assessment based on a percentage of the value of certain complex assets or activities that require OTS to expend supervisory resources beyond those at institutions of similar size and condition. OTS proposed that the complexity component cover loans serviced for others, trust assets, and recourse obligations and direct credit substitutes, to the extent that any of these categories exceed $1 billion. OTS solicited comments on whether commercial loans and non-residential real estate loans should also be included in the basis for the complexity component.

The complexity component drew the most public comment. One commenter agreed that the component was logical, and another supported the complexity component for larger institutions with complex operations but not for local community institutions that make consumer and commercial loans. Ten others opposed at least one aspect of the proposed complexity component. As detailed below, OTS adopts much of the complexity component as proposed, but makes certain changes and clarifications in response to the comments.

1. Assets or Activities Subject to the Complexity Component

(a) *Loan serviced for others.* The proposed rule would include loans serviced for others as part of the base for the complexity component. Three commenters asked how OTS would interpret "loans serviced for others." Loans serviced for others, as clarified in the final rule, means the principal amount of loans serviced for others, as currently reported in the TFR on line SI390.[8] This definition is familiar to all thrifts that service loans for others because they routinely use it in completing TFRs. OTS, therefore, believes this is the most appropriate definition to use.

Four commenters noted that loans serviced for others are reflected on the balance sheet under some circumstances (i.e., mortgage servicing rights and asset backed securities), and are therefore covered by the size component. At the same time, these assets would also be covered by the complexity component. Commenters urged OTS to either remove the asset from the complexity component base or from the size component base.

OTS's statistical analyses of examiner hours showed that institutions that service loans for others require more examiner hours than institutions of similar size and condition without such activities. Thus, even to the extent that some assets related to these activities are also covered by the size component, the analyses demonstrates that the size component alone does not cover the supervisory costs for such activities.[9]

One commenter observed that there could also be inconsistent counting on an industry-wide basis. For example, loans included under one association's size component could also be covered by another association's complexity component as loans serviced for others. By contrast, if an originator retained both the loans and the servicing, the loans would be included in the originator's size component, but the servicing would not be assessed under the complexity component. This commenter questioned why OTS should collect more revenue in the first instance than in the second.

When loans are split into their components and spread between institutions, it is appropriate to assess under different components to correlate to OTS's costs. Separating loans from their servicing increases OTS's supervisory workload because both the loans and the loan servicing require OTS's review, sometimes by different groups of examiners. To the extent that loan servicing for others exceeds $1 billion, OTS has found that this activity increases OTS's examination costs independently of an institution's size and condition.

Finally, one commenter noted that complex assets are often supported by other related on-balance sheet assets (e.g., fixed assets to generate cash flow) and that these related assets are also assessed under the size component. Such fixed assets are not included in the complexity component, so they are not assessed twice. Rather, they are included only in the size component, as are all fixed assets. OTS sees no reason to treat these assets differently than the fixed assets that support any lines of business.

Two commenters suggested that mortgage loans serviced for government sponsored entities (GSEs) should be excluded from the complexity component because GSEs already supervise their servicers. GSEs, however, do not always examine servicing for the same purposes as OTS, so OTS oversight is also necessary. The complexity component is based on, and reflects, OTS's examination costs. If OTS did not assess for those costs through the complexity component, the same costs would necessarily be imposed on other savings associations.

One commenter urged OTS to distinguish between loan servicing and subservicing. This commenter argued that subservicing does not raise the same safety and soundness concerns that servicing does, and that subservicing should therefore be excluded from the complexity component. In this rulemaking, OTS is seeking to correlate assessments with its costs of supervision rather than with the safety and soundness of activities. Nevertheless, OTS did consider this concern about subservicing. The agency's workload analyses are based on TFRs, which do not distinguish between servicing and subservicing. Therefore, the agency's statistical analysis cannot separate examination time spent on subservicing specifically. However, the agency's experience is that supervising loan servicing and subservicing are quite similar and require substantially the same amount of examiner time. With both servicing and subservicing, examiners look at the quality of operations, and they analyze future expected income and costs.

Subservicing may require slightly less examiner time than servicing. However, this is counterbalanced by the fact that direct servicing is assessed under the size component because a small percentage of the loan value does appear on the balance sheet as a servicing asset. Thus, while subservicing may require slightly less examining than direct servicing, subservicing is assessed less under this rule than direct servicing.

Current information demonstrates that subservicing should be covered by the complexity component. OTS will monitor the amount of its time examiners spend on subservicing. If, over time, OTS determines that subservicing requires less examination than direct servicing, OTS may partially or wholly exclude subservicing from assessments.

(b) *Trust assets administered by the association.*

[8] This definition covers loans and securities that a savings association or its consolidated subsidiary services but does not own. It excludes loans and securities for which the savings association or its consolidated subsidiary owns the servicing rights but for which it has subcontracted subservicing to a third party. It also excludes loans and securities serviced for a savings association by its consolidated subsidiary or a subsidiary depository institution.

[9] OTS recognizes that servicing rights are covered by the size component. However, the value of those rights, within the size component, is a very small percentage of the loan size. For example, in June 1998, no thrift reported servicing rights assets over 2.25% of loans serviced for others. Therefore, even to the extent that loan servicing is counted in two components, the amount counted twice is very small. Because the amount involved is so small, OTS does not believe that the deduction of these amounts is warranted.

The proposed rule would include an assessment under the complexity component on trust assets administered by a savings association. For purposes of this rule, OTS uses the trust assets identified in Line SI350 of the TFR. This covers assets in both discretionary and nondiscretionary accounts.

Two commenters pointed out that OTS currently charges an hourly examination fee for trust examinations. Commenters argued that this fee in addition to the complexity component's assessment of trust assets would be too burdensome. One, a state-chartered trust company, noted that it is subject to both state and OTS charges for trust examinations.[10] Another commenter argued that OTS should impose only a trust examination fee and should not impose any complexity component on trust assets.

OTS agrees that coverage of trust assets under the complexity component, when combined with the trust examination fee, is duplicative. OTS will not assess both against the same institution. Under the final rule, the complexity component will only apply when trust assets administered by an association exceed $1 billion. The trust examination fee, on the other hand, as set forth in a Thrift Bulletin issued today, will apply only to trust examinations of savings associations that administer $1 billion or less in trust assets. The final rule, at §§ 502.5(c) and 502.50(a), states that trust examination fees do not apply to associations that administer more than $1 billion in trust assets. This approach should alleviate concerns about overly burdensome assessments on savings associations that administer trust assets. At the same time, it will keep assessments and fees correlated to OTS's costs of supervising associations that administer trust assets.

(c) *Recourse obligations and direct credit substitutes.*

The proposed rule would impose an assessment, as part of the complexity component, on off-balance sheet activities that are recourse obligations and direct credit substitutes, if those activities exceed $1 billion. One commenter asked OTS to clarify what this assessment covers. For purposes of this rule, OTS uses the same definitions for recourse obligations and direct credit substitutes that OTS uses for the TFR line CC455. This definition includes the full value of assets covered, fully or partially, by a savings association's recourse obligations or direct credit substitutes. The final rule, at § 502.25(a)(3), contains this clarification. Generally, recourse obligations are arrangements by which an association retains credit risk on assets that it sells to a third party. Direct credit substitutes are arrangements by which an association assumes credit risk on assets that another institution sells to a third party.

One commenter specifically requested that OTS clarify its use of the phrase "off-balance sheet assets." This commenter noted that that some off-balance sheet assets, such as routine interest rate swaps, require less OTS oversight than other types, such as complex hedging strategies. The complexity component would not be assessed against all off-balance sheet activities, but only those identified in the regulation. To avoid confusion with other types of off-balance sheet activities, however, OTS has revised the rule text to delete the phrase "off-balance sheet assets."

Another commenter observed that some direct credit substitutes and recourse obligations are also on-balance sheet assets, and are subject to assessment twice, under the size and the complexity components. However, these items have an independent significant effect on OTS's costs. OTS's statistical analyses of examiner hours showed that institutions with recourse obligations or direct credit substitutes require more examiner hours than institutions of similar size and condition without such activities. Thus, even to the extent that some recourse obligations and direct credit substitutes are covered by the size component, the analysis demonstrates that the size component alone does not cover the supervisory costs for such activities.

(d) *Commercial and non-residential real estate loans.*

OTS asked for comment whether commercial and non-residential real estate loans should be included in the complexity component. The four commenters addressing this question advocated excluding these loan types from the complexity component's coverage. One pointed out that while these are more complex than other loans, they have higher balances and produce economies of scale in the examination process. Another commenter believed that all on-balance sheet assets should be subject to the same assessment rate no matter their complexity. Finally, one commenter believed that commercial and non-residential mortgages should not be included in the complexity component without sound empirical evidence that this lending entails more examination costs.[11]

OTS has decided against including commercial loans and non-residential real estate loans in the complexity component. OTS wishes to encourage thrifts to diversify their operations where they can do so safely and soundly. Additionally, commercial and non-residential real estate lending is currently a relatively minor part of the industry's overall activities. However, OTS will continue to collect empirical data on this lending activity. If in the future, OTS determines that its costs of supervision warrant the addition of commercial and non-residential loans to the complexity component, it will propose appropriate revisions to the assessment rule.

(e) *Loans sold with servicing released.*

OTS considered including another type of asset in the complexity component—loans sold with servicing released. Some savings associations originate large volumes of loans and immediately sell the loans and the servicing. Because the originators sell these loans quickly, only a portion of the loans appear on the savings association's September or March TFR and are subject to assessment under the size component. These associations, however, can incur serious risks to their safety and soundness and significant compliance obligations in producing and selling large volumes of these loans. As a consequence, examiners must expend considerable amounts of time examining these operations.

The final rule does not specifically address loans sold with servicing released. However, if OTS determines that a particular savings association is taking on additional risks with this type of activity, thus requiring OTS to incur extraordinary expenses to examine and supervise the activity, the agency may impose a fee under §§ 502.5(c) and 502.60(c).[12] If in the future, the risks

[10] This commenter felt that, while state and federal agencies acknowledge the desirability of working together, they generally do not coordinate trust examinations. The commenter would prefer to see a proposal aimed at finding remedies for these inefficiencies. OTS agrees that regulators should avoid duplicative examinations when possible. As a policy matter, OTS makes every effort to coordinate examinations with state regulators, but it is not always possible to do so. OTS will continue its efforts to coordinate examinations where appropriate.

[11] One commenter believed that commercial and non-residential mortgage loans only require extra supervisory efforts if they suffer from credit problems. This commenter argued that OTS's extra costs for such credit problem would be covered by the condition component and that covering the costs in the complexity component is unnecessary. OTS agrees that credit risk is a part of commercial lending, but it does not follow that savings associations exposed to some credit risk are necessarily rated a 3, 4, or 5. Thus, the condition component may not apply to associations with commercial loans that require extra supervision.

[12] One commenter opposed proposed §§ 502.5(c) and 502.60, arguing that the condition component

Continued

from this activity become more commonplace or more severe, OTS may consider amending this rule to specifically cover the activity.

2. $1 Billion Threshold

OTS proposed to assess the complexity component only when assets included in each category of complex assets (trust assets, loans serviced for others, and recourse obligations and direct credit substitutes) exceed $1 billion. OTS solicited comments on this proposed $1 billion threshold. One commenter believed the $1 billion proposed threshold is reasonable, while another thought it is too high. One commenter opined that complex assets require less supervisory attention in larger institutions than in smaller institutions. This commenter argued that the complexity component should apply when complex assets exceed a specified percentage of assets.

OTS's statistical analyses found that a $1 billion threshold is better correlated with the agency's examination workload than a percentage-of-assets threshold. Additionally, a threshold based on a percentage of assets would be more difficult to administer, and would be more uncertain for thrifts. For these reasons, OTS adopts the $1 billion threshold as proposed.

3. Assessment Rates for Complexity Component

OTS proposed to use the same assessment rate for all assets subject to the complexity component. The preamble to the proposed rule indicated that OTS expected to apply a flat rate of 0.0015% to all complex assets that exceed the $1 billion thresholds.

Several commenters questioned whether all complex assets warrant the same assessment rate. Commenters argued that different off-balance sheet assets may require differing levels of supervision.

In response to these comments, OTS reviewed its cost statistics. OTS found that loans serviced for others, trust assets, and recourse obligations and direct credit substitutes do not all have identical effects on examination hours. More specifically, OTS found that recourse obligations and direct credit substitutes have a greater effect on examiner hours than trust assets administered by a savings association, which, in turn, have a greater effect on examiner hours than loans serviced for others. OTS therefore believes different assessment rates should apply to the different activities within the complexity component. Initially, OTS will assess trust assets at a rate of 0.0015%, and recourse obligations and direct credit substitutes at 0.0030%. For loans serviced for others, OTS will use two different assessment rates to recognize economies of scale, as discussed immediately below.

OTS proposed no upper limit on the complexity component, but requested comment on whether there should be a cap on this component. Five commenters discussed economies of scale in administering or supervising complex activities. One thought a cap of $3 billion would avoid penalizing thrifts who have achieved economies of scale in their operations. Three favored a declining marginal assessment rate as asset size increases, and one of these suggested a flat fee together with a declining assessment rate. The fifth commenter did not suggest a specific method for addressing economies of scale. In addition, two commenters suggested some unspecified cap on the complexity component.

In response to comments, OTS reviewed its data, focusing on the extent to which economies of scale affect examiner workload for complex activities. The analysis demonstrates that OTS may realize some economies of scale in supervising loans serviced for others for portfolios above $10 billion.

OTS's experience with the examination of trust assets, recourse obligations and direct credit substitutes, on the other hand, does not support a conclusion that the economies of scale for these activities should be reflected in the assessment rates. Therefore, the agency continues to use a flat rate for each of these activities above the $1 billion threshold. OTS will continue to collect and analyze data concerning these activities to determine whether it should recognize economies of scale in the future.

Therefore, OTS has revised § 502.25 to indicate that it may establish one or more assessment rates for activities under the complexity component. OTS will set forth all assessment rates for the complexity component in a Thrift Bulletin and will revise theses rates periodically. Initially, OTS will use the following rates:

Complexity component category	Assessment rate (percent)
Loans serviced for others, over $1 billion, up to $10 billion	0.0010
Loans serviced for others, over $10 billion	0.0005
Trust assets administered	0.0015
Recourse obligations and direct credit substitutes	0.0030

D. Consolidation

OTS solicited comments on how it should assess savings associations that own depository institutions or non-depository institutions, or multiple savings associations owned by one holding company. Four commenters favored consolidating thrifts that own thrifts for assessment purposes, while one opposed this approach. One commenter opposed aggregating off-balance sheet activities of a thrift's consolidated subsidiary with the parent's off-balance sheet activities, believing that the parent-subsidiary structure insulates the thrift from risk. Two commenters thought OTS should adjust assessments to reflect economies of scale in supervising institutions within the same family structure. Finally, two commenters believed that non-lead thrifts owned by a multiple savings and loan holding company should get a discount on their assessments.

OTS will continue to include consolidated depository institution or other regulated subsidiaries in the assessment calculations for parent thrifts on the same basis as all other consolidated subsidiaries. This will incorporate economies of scale into the assessment of consolidated companies through the decreased assessment rates for larger associations. OTS believes recognizing these economies of scale is appropriate because it reflects OTS's costs of supervising consolidated entities. OTS will not, at this time, incorporate any discount for a non-lead thrift owned by a multiple savings and loan holding company, but will continue its practice of treating the sister thrifts as separate corporations. Because sister thrifts do not necessarily operate as one company, and can have very different operations and different types or amounts of risk, OTS does not realize the same economies of scale as it does with one larger thrift.

E. Other Matters

1. Semi-annual Assessment

Unlike the current rule, which provides for quarterly or semi-annual

should cover all extraordinary expenses. OTS continues to believe that the most appropriate treatment of extraordinary expenses is to charge the institution that causes OTS to incur the expenses. Contrary to the commenter's assertion, OTS does not always incur such costs in examining 3-, 4- or 5-rated institutions. Rather, extraordinary fees may be appropriate for recovering supervisory costs from any institution that poses an extraordinary burden, or requires OTS to obtain expert advice in areas beyond those that OTS normally encounters. Such costs might, for example, include the cost of an interpreter where numerous documents are in a foreign language. OTS might also assess a fee for extraordinary expenses if assets are nominally transferred to on affiliate to avoid assessments, but the savings association retains the risks and responsibilities of those assets. For these reasons, OTS adopts §§ 502.5(c) and 502.60(e) as proposed.

assessments, the proposed rule would collect all assessments on a semi-annual basis. Three commenters supported the semi-annual assessment, and none opposed it. OTS believes that a semi-annual assessment will impose the least burden on the thrift industry and the agency. Accordingly, the final rule requires semi-annual assessments.

One commenter requested that OTS clarify whether the complexity component would be imposed on a semiannual basis. The proposed rule stated, at § 502.10, "OTS determines your semiannual assessment by totaling three components: your size, your condition and the complexity of your business." OTS calculates each component semiannually.

2. Publication of Assessment Schedules

The size component would use a chart to identify base assessment amounts for total assets at certain levels, and would impose marginal rates on assets above those levels. This is similar to the treatment under existing part 502. However, unlike the existing regulation, the proposed rule would not include specific base assessment amounts or marginal rates in the regulatory text. Rather, OTS proposed to publish the specific base amounts and marginal rates in publicly available Thrift Bulletins and on its web site. Similarly, OTS proposed to publish the assessment rate for the complexity component in the Thrift Bulletin and on its web site.

Three commenters agreed that this approach is reasonable. These commenters argued that this system eliminates delays, is more flexible, and will make rates more easily available. One commenter, however, argued that OTS should not increase the assessment rate schedule without publishing a proposal in the **Federal Register** for notice and comment. This commenter, however, would not object to the current system where the regulation reflects higher assessment levels that are subject to a reduction in a Thrift Bulletin. This commenter also argued that OTS may be required to publish a new proposal if the rates in the final regulation differ significantly from the proposal.

OTS currently publishes assessment rates in a Thrift Bulletin, under the authority in existing § 502.6 to set rates lower than those published in its regulation. Thus, since the early 1990s, thrift have been charged assessments that are different from those included in the regulation. Having outdated rates in the regulation has caused confusion. For this reason, OTS does not want to codify rates in a regulation that will quickly become obsolete.

Additionally, OTS's goals in this rulemaking are to keep its rates as low as it can while still providing OTS with essential resources, and to more closely tailor its rates to its costs. With actual rates in a Thrift Bulletin rather than in a regulation, OTS can readily revise the rates to lower them when it is appropriate, and can more readily align them to changes in OTS's costs of supervising the thrift industry. The industry has received an opportunity to comment on the structure through this rulemaking. Conducting new rulemakings for adjustments in rates would impede the agency's ability to adjust its rates to reflect increases in its supervisory workload, and thus could impair its ability to regulate the industry. For these reasons, OTS will announce the rates in Thrift Bulletins.

3. Refund and Proration of Assessments

In the proposed rule, OTS clarified the existing regulation and incorporated OTS's long-standing practice by stating that it will not refund or prorate assessments, even if an entity ceases to be a savings association. Further, OTS stated that it would not increase or decrease assessments based on events that occur after the date of the TFR upon which the assessment is based, except for errors in the TFR. One commenter believed that this approach avoids burden.

OTS believes that changing assessments for events after the relevant TFR date complicates the assessment process without adding any benefit. Accordingly, OTS adopts proposed § 502.40 without amendment. At the same time, however, assessments must be calculated accurately and should not be based on errors in the TFR. Therefore, consistent with its current practice, OTS will, where necessary, continue to adjust assessment to reflect corrections to errors contained in the TFR.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., applies to this rulemaking. Accordingly, OTS included in its notice of proposed rulemaking an initial regulatory flexibility analysis (IRFA). With this final rule, OTS includes the following final regulatory flexibility analysis, as required by section 604(a) of the Regulatory Flexibility Act, 5 U.S.C. 604(a). In the IRFA, OTS solicited comments on all aspects of the IRFA, including any significant impacts the proposed rule would have on small entities. OTS received no comments on its IRFA. However, OTS did receive comments discussing small savings associations and the proposed rule's special size component calculation for qualifying associations. These comments are discussed earlier in this preamble.

Reasons for rulemaking. OTS is issuing this final rule to revise its current assessments system to match assessments more closely with OTS's costs. As described in this preamble and in the notice of proposed rulemaking, OTS has found that, under its prior assessment system, OTS's costs of supervising some institutions are higher or lower than those associations pay in assessments. OTS believes it is inappropriate for some savings associations to subsidize the costs of others. Therefore, OTS is attempting, through this rule, to more closely associate its costs with assessments.

Objectives of and legal basis for the final rule. OTS has two primary objectives for this final rule: (1) establishing an assessment structure that keeps the agency's rates as low as possible, and (2) more closely tailoring rates to the agency's increased costs in supervising certain types of institutions. The Director of OTS is authorized by statute to impose assessments.[13]

Effect of the final rule on small savings associations. This final rule could affect small savings associations through its condition, size, or complexity components. The rule will have no effect on small businesses or small organizations other than small savings associations, and will not affect small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[14]

The condition component will affect small savings associations. As discussed earlier in this preamble and in the notice of proposed rulemaking, the condition component imposes an assessment equal to 25% of an association's size component for each 3-rated association, regardless of its size. Currently, there are 43 savings associations that are 3-rated and that have assets under $100 million. The smallest of these has assets of approximately $5 million, and the largest has approximately $100 million. Their assessments will increase due to the condition component by approximately $422 and $5464 annually, respectively. Other 3-rated small savings associations will see their assessments increase, depending on their size. The largest increase will be $5792 for a thrift with $69 million in assets. (Thrifts between $69 million and

[13] 12 U.S.C. 1462a, 1463, 1467, 1467a.
[14] 13 CFR 121.201 Division H (1998).

$100 million will realize a smaller asset-based assessment under the new rule, while thrifts below $69 million will see no change in their asset-based assessment. Because the condition component is a percentage of the asset-based assessment, it will be greater for a $69 million thrift than for a $100 million thrift.)

As discussed more fully in the notice of proposed rulemaking, 3-rated savings associations require more supervisory attention than 1- or 2-rated associations. OTS therefore has three alternatives: impose extra assessments on all 3-rated associations; require institutions not rated 3 to subsidize the extra supervisory costs of 3-rated institutions; or require some but not all 3-rated institutions to cover those costs. OTS believes it is most equitable to match assessments with OTS's supervisory costs, and therefore adopts a condition component for 3-rated associations. Furthermore, OTS believes that requiring 3-rated institutions to pay for their extra supervisory costs will provide an incentive for those institutions to improve their condition and their ratings. OTS believes that the condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-rated institutions while keeping assessment rates as low as possible.

OTS believes the size component will not have a significant economic impact on a small number of small entities. OTS specifically designed this rule to allow qualifying savings associations, generally those with assets under $100 million, to choose between calculating their size components under either the old regulation or the new regulation. These institutions can therefore avoid any increases in their size components.

If an institution increases above $100 million in assets then shrinks below $100 million, or for savings associations that are not yet formed, this choice would not be available. OTS cannot predict the number of savings associations that will exceed then shrink below $100 million in assets, and cannot predict the number of savings associations that will be formed in the future. Likewise, OTS cannot predict the economic impact of the final rule on such institutions. That is because OTS's assessment rates will vary in the future, as OTS's supervisory costs change.

OTS considered, as an alternative to the size component with protection for small institutions, leaving its assessment system unchanged. OTS believes this alternative would not meet OTS's objective of closely tailoring assessment rates to OTS's increased supervisory costs while keeping assessment rates as low as possible, while minimizing significant economic impacts on small savings associations.

The complexity component applies only to savings associations that have more than $1 billion in certain activities, mostly off balance sheet. For Regulatory Flexibility Act purposes, a small savings association is generally defined as one having less than $100 million in assets on its balance sheet. There are five savings associations that have less than $100 million in balance sheet assets that are subject to the complexity component. OTS believes that a regulatory flexibility analysis is not necessary regarding the complexity component for two reasons. First, OTS believes that five savings associations is not a substantial number of small savings associations. Second, for purposes of the regulatory flexibility analysis regarding the complexity component, OTS defines a small savings association as one with less than $100 million in assets including off-balance sheet assets. OTS received no public comments on this definition of small savings association. The Regulatory Flexibility Act is designed to protect the interests of small businesses, while the complexity component only affects savings associations with assets or activities in excess of $1 billion. OTS does not believe that institutions whose activities involve more than $1 billion in off-balance sheet assets need any particular protection from the complexity component.

In any event, OTS considered alternatives to the complexity component. OTS considered using no such component, and considered including different complex assets in the component, such as commercial and non-residential mortgage loans. With no complexity component, less complex thrifts would have to subsidize OTS's costs of supervising complex institutions. OTS believes the complexity component best accomplishes OTS's objective of tailoring assessments to match OTS's supervisory costs and keeping assessments as low as possible, while minimizing significant economic impacts on small savings associations.

Other matters. The final rule imposes no reporting, recordkeeping, or other compliance requirements. Assessments will continue to be based on Thrift Financial Reports that savings associations are otherwise required to file with OTS, and OTS will continue to collect assessments by its current procedures. Therefore, the final rule will impose no new or additional reporting, recordkeeping, or compliance requirements.

Finally, there are no federal rules that duplicate, overlap, or conflict with this rule.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Paperwork Reduction Act of 1995

This final rule contains no new information collection requirements. The information collection requirements in § 502.70 are the same as those in the prior assessments regulation, 12 CFR 502.3 (1998), which the Office of Management and Budget has previously received and approved in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0053.

VII. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, by revising part 502 to read as follows:

PART 502—ASSESSMENTS AND FEES

Sec.
502.5 Who must pay assessments and fees?

Subpart A—Assessments

502.10 How does OTS calculate my assessment?
502.15 How does OTS determine my size component?
502.20 How does OTS determine my condition component?

502.25 How does OTS determine my complexity component?
502.30 When must I pay my assessment?
502.35 How must I pay my assessment?
502.40 Can I get a refund or proration of my assessment?
502.45 What if I do not pay my assessment on time?

Subpart B—Fees

502.50 What fees does OTS charge?
502.55 Where can I find OTS's fee schedule?
502.60 When will OTS adjust, add, waive, or eliminate a fee?
502.65 When is an application fee due?
502.70 How must I pay an application fee?
502.75 What if I do not pay my fees on time?

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

§ 502.5 Who must pay assessments and fees?

(a) *Authority.* Section 9 of the HOLA, 12 U.S.C. 1467, authorizes the Director to charge assessments to recover the costs of examining savings associations and their affiliates, to charge fees to recover the costs of processing applications and other filings, and to charge fees to cover OTS "s direct and indirect expenses in regulating savings associations and their affiliates.

(b) *Assessments.* If you are a savings association that OTS regulates on the last day of January or on the last day of July of each year, you must pay a semi-annual assessment due on that day. Subpart A of this part describes OTS's assessment procedures and requirements.

(c) *Fees.* Whether or not you are a savings association, if you make any filings with OTS or use OTS services, the Director may require you to pay a fee to cover the costs of processing your submission or providing those services. The filings for which the Director may charge a fee include notices, applications, and securities filings. Among the services for which the Director may charge a fee are publications, seminars, certifications for official copies of agency documents, and records or services requested by other agencies. The Director also assesses fees for examining and investigating savings associations that administer trust assets of $1 billion or less, and affiliates of savings associations. If you are a savings association and you or any of your affiliates cause OTS to incur extraordinary expenses related to your examination, investigation, regulation, or supervision, the Director may charge you a fee to fund those expenses. Subpart B of this part describes OTS's fee procedures and requirements.

Subpart A—Assessments

§ 502.10 How does OTS calculate my assessment?

OTS determines your semi-annual assessment by totaling three components: your size, your condition, and the complexity of your business. For the size and complexity components, OTS uses the September 30 Thrift Financial Report to determine amounts due at the January 31 assessment; and the March 31 Thrift Financial Report to determine amounts due at the July 31 assessment. For purposes of this subpart, total assets are your total assets as reported on Thrift Financial Reports filed with OTS. For the condition component, OTS uses the most recent composite rating, as defined in 12 CFR Part 516, of which you have been notified in writing before an assessment's due date.

§ 502.15 How does OTS determine my size component?

(a) *General.* (1) Unless you are a qualifying savings association under paragraph (b) of this section, OTS uses the following chart to calculate your size component:

If your total assets are:		Your size component is:		
Over—	But not over—	This amount—Base assessment amount	Plus—Marginal rate	Of assets over—Class floor
Column A	Column B	Column C	Column D	Column E
0	$67 million	C1	D1	0.
$67 million	215 million	C2	D2	$67 million.
215 million	1 billion	C3	D3	215 million.
1 billion	6.03 billion	C4	D4	1 billion.
6.03 billion	18 billion	C5	D5	6.03 billion.
18 billion	35 billion	C6	D6	18 billion.
35 billion		C7	D7	35 billion.

(2) To calculate your size component, find the row in Columns A and B that describes your total assets. Reading across in that same row, find your base assessment amount in Column C, your marginal rate in Column D, and your class floor in Column E. Calculate how much your total assets exceed your Column E class floor. Multiply this number by your Column D marginal rate. Add this number to your Column C base assessment amount. The total is your size component. OTS will establish the base assessment amounts and the marginal rates in columns C and D in a Thrift Bulletin.

(b) *Special size component calculation for qualifying savings associations.* If you meet all of the criteria set forth in paragraph (b)(1) of this section, you are a qualifying savings association and OTS will calculate your size component in accordance with paragraph (b)(2) of this section.

(1) *Criteria for qualifying savings association status.* (i) You were a savings association as of January 1, 1999.

(ii) Your total assets have never exceeded $100 million at the end of any quarter.

(2) *Size component for qualifying savings associations.* If you are a qualifying savings association, your size component is the lesser of:

(i) Your size component calculated under paragraph (a) of this section; or

(ii) Your assessment calculated using the general assessment table at 12 CFR 502.1(c) as contained in the 12 CFR, parts 500 to 599, edition revised as of January 1, 1998, as implemented in Thrift Bulletin 48–9, dated December 21, 1992.

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component:

If your composite rating is:	Then your condition component is:
1 or 2	zero.
3	25 percent of your size component.
4 or 5	50 percent of your size component.

§ 502.25 How does OTS determine my complexity component?

If your portfolio exceeds any of the thresholds in paragraph (a) of this section, OTS will calculate your complexity component according to paragraph (c) of this section. If your portfolio does not exceed any of the thresholds in paragraph (a) of this section, your complexity component is zero.

(a) *Thresholds for complexity component.* OTS uses three separate thresholds in calculating your complexity component. You exceed a threshold if you have more than $1 billion in any of the following:

(1) Trust assets you administer.

(2) The outstanding principal balance of assets covered, fully or partially, by your recourse obligations or direct credit substitutes.

(3) The principal amount of loans that you service for others.

(b) *Assessment rates.* OTS will establish one or more assessment rates for each of the types of activities listed in paragraph (a) of this section. OTS will publish those assessment rates in a Thrift Bulletin.

(c) *Calculation of complexity component.* OTS separately considers each of the thresholds in paragraph (a) of this section in calculating your complexity component. OTS first calculates the amount by which you exceed any of those thresholds. OTS multiplies the amount by which you exceed any threshold in paragraph (a) of this section by the applicable assessment rate(s) under paragraph (b) of this section. OTS then totals the results. This total is your complexity component.

§ 502.30 When must I pay my assessment?

OTS will bill you semiannually for your assessments. Assessments are due January 31 and July 31 of each year. At least seven days before your assessment is due, the Director will mail you a notice that indicates the amount of your assessment, explains how OTS calculated the amount, and specifies when payment is due.

§ 502.35 How must I pay my assessment?

(a) *Debit at Federal Home Loan Banks.* If you are a member of a Federal Home Loan Bank, you must maintain a demand deposit account at your Federal Home Loan Bank with sufficient funds to pay your assessment when due. OTS will notify your Federal Home Loan Bank of the amount of your assessment. OTS will debit your account for your assessments.

(b) *Direct billing.* If you are not a member of a Federal Home Loan Bank, OTS will directly debit an account you must maintain at your association.

§ 502.40 Can I get a refund or proration of my assessment?

OTS will not refund or prorate your assessment, even if you cease to be a savings association. If you are a savings association for whom a conservator or receiver has been appointed, you must continue to pay assessments in accordance with this part. OTS will not increase or decrease your assessment based on events that occur after the date of the Thrift Financial Report upon which your assessment is based.

§ 502.45 What if I do not pay my assessment on time?

The Director will charge interest on delinquent assessments. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter. Assessments under this subpart A are delinquent if you do not pay them when required by § 502.30.

Subpart B—Fees

§ 502.50 What fees does OTS charge?

(a) The Director assesses fees for examining or investigating savings associations that administer trust assets of $1 billion or less, and savings association affiliates. "Affiliate" has the meaning in 12 U.S.C. 1462(9), except that, for this part only, "affiliate" does not include any entity that is consolidated with a savings association on the Consolidated Statement of the Thrift Financial Report.

(b) The Director assesses fees for processing notices, applications, securities filings, and requests, and for providing other services.

§ 502.55 Where can I find OTS's fee schedule?

OTS will periodically publish a schedule of its fees in a Thrift Bulletin. OTS will publish these fees at least thirty days before they are effective.

§ 502.60 When will OTS adjust, add, waive, or eliminate a fee?

Under unusual circumstances, the Director may deem it necessary or appropriate to adjust, add, waive, or eliminate a fee. For example, the Director may:

(a) Reduce any fee to adjust for any inequities, efficiencies, or changed procedures that OTS projects will reduce its applications processing costs but that OTS did not consider in determining its fees;

(b) Reduce or waive any fee if OTS determines that the fee would unduly or unjustifiably discourage particular types of applications or applications for particular categories of transactions;

(c) Add a fee for a new type of application;

(d) Increase a fee for an application that presents unusual or particularly complex issues of law or policy or otherwise causes the agency to incur unusually high processing costs; or

(e) Charge a fee to recover extraordinary expenses related to examination, investigation, regulation, or supervision of savings associations or their affiliates.

§ 502.65 When is an application fee due?

(a) You must pay the application fee when you file an application. OTS will not process your application if you do not include the required fee.

(b) If OTS cannot complete its review of your application because the application is materially deficient and it refuses to accept your application for processing, you must pay a new application fee upon filing a revised application.

(c) If a transaction involves multiple applications, you must pay the appropriate fee for each application, unless OTS specifies otherwise by Thrift Bulletin.

§ 502.70 How must I pay an application fee?

You must pay an application fee to the Office of Thrift Supervision. You must include a statement of the fee and how you calculated the fee.

§ 502.75 What if I do not pay my fees on time?

(a) *Interest.* An examination or investigation fee is delinquent if OTS does not receive the fee within 30 days of the date specified in a bill. The Director will charge interest on a delinquent examination or investigation fee. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter.

(b) *Failure to pay.* If your holding company, affiliate, or subsidiary fails to pay any examination or investigation fee within 60 days of the date specified in a bill, the Director may assess that fee, with interest, against you and collect it from you. If any such entity is a holding company, affiliate, or subsidiary of more than one savings association, the Director may assess the fee against and collect it from each savings association as the Director may prescribe.

Dated: November 20, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31745 Filed 11–27–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 555, and 559

[No. 98–119]

RIN 1550–AB00

Electronic Operations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule that streamlines and updates its regulations relating to electronic operations. Under this rule, Federal savings associations may engage in prudent innovation through the use of emerging technology. The rule permits Federal savings associations to use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. The rule also requires each savings association (state- or federally-chartered) to notify OTS 30 days before it establishes a transactional web site. Savings associations that present supervisory or compliance concerns may be subject to additional procedural requirements. Finally, the rule includes a conforming change to OTS's service corporation regulation, reflecting a recent statutory change.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Karen A. Osterloh, Assistant Chief Counsel, (202) 906–6639; Paul D. Glenn, Special Counsel, Chief Counsel's Office, (202) 906–6203; Paul J. Robin, Program Analyst, Compliance Policy, (202) 906–6648; or Paul R. Reymann, Senior Policy Analyst, Supervision Policy, (202) 906–5645, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Advance Notice of Proposed Rulemaking

On April 2, 1997, OTS published an advance notice of proposed rulemaking (ANPR) seeking comment on all aspects of banking affected by electronic operations.[1] The ANPR was designed to elicit information to enhance OTS's understanding of new electronic banking technologies and the impact of these technologies on the regulation of Federal savings associations.[2] The ANPR asked a series of questions concerning the types of restrictions or requirements OTS should impose on electronic operations, including Internet banking.

B. Notice of Proposed Rulemaking

Based on the comments received on the ANPR, on October 3, 1997, OTS published a notice of proposed rulemaking (NPR) to streamline and update its regulations relating to electronic operations.[3] The NPR proposed to amend OTS's electronic-related regulations to address advances in technology and to permit prudent innovation through the use of emerging technology by Federal savings associations. In crafting the proposed rule, OTS was guided by two broad principles suggested by commenters on the ANPR:

- The public and insured depository institutions will be best served if statutory and regulatory restrictions are kept to a minimum. The premature imposition of restrictive operational standards could impede the development of improved financial services.
- Federal savings associations should be permitted to compete effectively with other regulated financial institutions and unregulated firms offering financial and related services.

Consistent with these principles, OTS proposed a broad enabling regulation designed to allow Federal savings associations to engage in any activity through electronic means that they may conduct through more traditional delivery mechanisms. OTS proposed to eliminate three existing regulations: § 545.138 (Data-Processing Services), § 545.141 (Remote Services Units), and § 545.142 (Home Banking Services). The elimination of these sections would not take away the authority to engage in any activities described in these sections.

OTS made the proposal to enhance the ability of Federal savings associations to serve as financial intermediaries and to permit Federal savings associations to utilize fully their capacities and by-products generated in providing financial services. The proposal was consistent with the principles established in the Administration's electronic commerce policy statement.[4] The NPR noted, however, that OTS would continue to gain additional experience with electronic technology and might issue more specific guidance regulating particular elements of electronic operations.[5]

C. Comments on NPR—General Discussion

The comment period on the NPR closed on December 2, 1997. OTS received nine comment letters on the NPR from five Federal savings associations, two trade associations, and two technology firms.

All of the commenters recognized the need for the agency to revise or remove its existing regulations in this area. Seven commenters supported the proposal's overall flexible regulatory approach, while suggesting modifications or clarifications to particular aspects of the rule. Two commenters argued that for even greater flexibility the agency should not issue any new electronic banking regulations. These two commenters suggested the agency rely entirely on flexible guidelines and advisories as technology evolves. OTS has addressed specific comments on the NPR below.

D. Supplemental Notice of Proposed Rulemaking

One commenter on the NPR argued that OTS should establish a procedure to review and approve new products or services, in order to protect the safety and soundness of the industry. Another urged OTS not to require a Federal savings association to obtain OTS's prior approval before adopting new technologies "unless absolutely necessary to ensure industry-wide safety and soundness." After considering these comments, OTS concluded that safety and soundness and compliance considerations warranted the agency receiving advance notice of industry use of one developing technology—transactional web sites. Such web sites allow savings association customers to use the Internet to conduct a wide variety of financial transactions. They may, however, also pose particular security, compliance, and privacy risks.

Accordingly, on August 13, 1998, OTS issued a supplemental notice of proposed rulemaking (Supplemental NPR) seeking comment on additional proposed rules that would require each savings association to notify OTS before

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[1] 62 FR 15626 (April 2, 1997).

[2] *See* 62 FR at 15631 and 15633.

[3] 62 FR 51817 (October 3, 1997). The NPR contains a summary of the comments received on the ANPR.

[4] *See* "Framework for Global Electronic Commerce" (July 1, 1997).

[5] 62 FR at 51820.

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it establishes a transactional web site.[6] OTS also proposed to give the Regional Offices discretion to impose additional requirements in appropriate circumstances.

Safety and soundness and compliance considerations are similar for state-chartered and federally-chartered institutions. Thus, the Supplemental NPR proposed to require every savings association to notify OTS before it established a transactional web site and to comply with additional requirements that the Regional Offices may impose in appropriate circumstances. Since the ANPR and NPR did not specifically discuss these requirements and applied only to Federal savings associations, OTS concluded that additional public comment would assist in the development of a final rule.

E. Comments on Supplemental NPR—General Discussion

The comment period on the Supplemental NPR closed on September 14, 1998. OTS received nine comment letters from six Federal savings associations, two trade associations, and one public interest organization.

Two commenters supported the notice requirement. Four commenters opposed the requirement. The other three commenters did not specifically support or oppose the requirement. OTS has addressed the specific comments on the Supplemental NPR below.

II. Today's Final Rule

Today's final rule incorporates the same broad principles and reflects the same supervisory concerns articulated in the NPR and Supplemental NPR. OTS continues to believe that it is important to have enabling regulations in this area. These regulations will help ensure that OTS has sufficient information to understand developing technologies, to provide appropriate guidance on these technologies, and to supervise electronic operations effectively. The proposed approach in the NPR and Supplemental NPR, with some modifications as discussed below, will provide both the industry and the agency with the appropriate amount of flexibility to adapt to changing conditions.

Today's final rule is meant to provide authority for Federal savings associations' electronic operations and a structure for all savings associations' use of electronic means and facilities.[7] Standing alone, it cannot, and does not purport to, answer all questions in this rapidly changing area. These operations, by their very nature, are evolving, presenting the industry and the agency with both old issues in a new form (*e.g.*, the appropriate documentation to open an account) and new issues unique to electronic operations (*e.g.*, treatment of stored value cards). The agency has issued, and will continue to issue, guidance as electronic operations evolve. This guidance has taken the form of letters to chief executive officers of savings associations, interagency examiner guidelines, revisions to the Thrift Activities Handbooks, conditions on the approval of applications, and responses to requests for legal interpretations.[8] The agency expects to continually update its guidance and to continue to make it available on OTS's web site at www.ots.treas.gov.

Further, while today's final rule removes §§ 545.138, 545.141, and 545.142, OTS emphasizes that the new rules continue to authorize all activities formerly authorized under these provisions.

III. Section-by-Section Discussion

Today's final rule creates a new part 555 to address electronic operations. In the NPR, OTS originally proposed to place the electronic operations regulations in a new subpart B to part 545. However, part 545 only applies to Federal savings associations. The notice requirements proposed in the Supplemental NPR and incorporated into this final rule, however, apply to all savings associations. Thus, as proposed in the Supplemental NPR, OTS is placing the electronic operations regulations in a new part 555.

A. What Does This Part Do? (§ 555.100)

Section 555.100 explains the purpose of part 555. Subpart A explains how a Federal savings association may provide products and services through electronic means and facilities. Subpart B contains the advance notice and other requirements applicable to all savings associations.

OTS received no specific comments on § 555.100 of the Supplemental NPR (or on § 545.140 of the NPR, which served a similar function). The section is unchanged from the Supplemental NPR.

B. Authority of Federal Savings Associations to Conduct Electronic Operations (Subpart A to Part 555)

1. How May I Use or Participate With Others to use Electronic Means and Facilities? (Proposed § § 545.141, 545.142, and 545.143, Final § 555.200)

Final § 555.200 combines, with changes, proposed § 545.141, 545.142, and 545.143. Section 555.200(a) corresponds to proposed § 545.141, but merges part of proposed § 545.143. Section 555.200(b) corresponds to proposed § 545.142 and also merges part of proposed § 545.143. Sections 555.200(a) and 555.200(b) are discussed separately below.

Section 555.200(a)

Consistent with OTS's goal of minimizing regulatory restrictions on electronic operations, proposed § 545.141 would have specifically permitted Federal savings associations to use electronic means or facilities to perform any authorized function or provide any authorized product or service. Electronic means or facilities would include, but would not be limited to, automated teller machines (ATMs), automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices. The preamble explained that this authority would include the opening of savings or demand accounts and the establishment of loan accounts—functions previously excluded from the definition of remote service unit—because performing these functions electronically may enhance the operating flexibility of Federal savings associations.

Commenters generally supported this section. One commenter, however, a trade association, argued that proposed § 545.141 was too broad and did not sufficiently protect the safety and soundness of the industry. Instead, the commenter emphasized the need for a thorough risk assessment of any new delivery system to protect safety and soundness. The commenter urged OTS to establish a procedure whereby OTS would issue an approval or interpretation before a product or service was first offered electronically. Once one institution was approved to use an electronic delivery system,

[6] 63 FR 43327 (August 13, 1998).

[7] New § 555.200 is similar to the Office of the Comptroller of the Currency's (OCC) rule on furnishing of products and services by electronic means and facilities. *See* 12 CFR 7.1019 (1998).

[8] *See, e.g.*, Memorandum from Richard M. Riccobono, Deputy Director, for Chief Executive Officers (November 3, 1998) (Policy Statement on Privacy and Accuracy of Personal Customer Information); Memorandum from Richard M. Riccobono, Deputy Director, for Chief Executive Officers (July 23, 1998) (Interagency Guidance on Electronic Financial Services and Consumer Compliance); Memorandum from John Downey, Executive Director, Supervision, for Chief Executive Officers (June 23, 1997) (Statement on Retail On-Line Personal Computer Banking); Thrift Activities Regulatory Handbook, Section 341, Information Technology (October 1997) (Regulatory Bulletin 32–6, October 15, 1997); Federal Financial Institutions Examinations Council (FFIEC) Information Systems Examination Handbook (1996); OTS Order No. 95–88 (May 8, 1995) (application approval of Internet bank); OTS Op. Chief Counsel (September 19, 1997) (establishment of automated loan machines).

approval for subsequent institutions would not be required. Presumably, subsequent institutions would be required to provide the same protections and safeguards.

While OTS does not believe that a new procedure is necessary for most types of electronic operations, OTS has added subpart B to part 555, to deal with the special risks associated with transactional web sites. As discussed in Section III.C. below, subpart B will enhance OTS's ability to supervise electronic operations, particularly Internet banking activities.

Three Federal savings associations asked OTS to clarify whether the new regulation would permit specific products or services. As noted in the preamble to the proposed rule, by revising its rules, OTS intends to allow Federal savings associations to engage in any authorized activity through electronic means that they may conduct through more traditional delivery mechanisms.[9] To clarify this point, OTS has revised the language of § 555.200(a) to provide that a Federal savings association may use electronic means or facilities "to perform any function, or provide any product or service, as part of an authorized activity."

As with all activities of Federal savings associations, OTS's position, like that of its predecessor agency, the Federal Home Loan Bank Board (FHLBB), has been that if the Home Owners' Loan Act (HOLA)[10] authorizes an activity, a specific authorizing regulation is not necessary.[11] In some cases, the HOLA speaks clearly on an activity and institutions generally choose to act without obtaining agency concurrence. In other cases, where the authority is less clear or specific facts are more determinative, an application or an interpretive legal opinion may be the best route for resolving issues of first impression.

To assist the industry further, OTS will continue to provide both formal and informal guidance on authorized activities for Federal savings associations. If applicable statutes, regulations, court cases, and OTS opinions do not provide a sufficient basis for a Federal savings association to determine whether a product or service is authorized under the HOLA or the use of electronic means or facilities is appropriate, it may request an interpretive opinion[12] or consult with OTS's Regional Director for the Region in which its home office is located.

OTS has previously provided explicit guidance on several of the questions about specific products or services raised. For example, the preamble to the proposed rule stated that Federal savings associations could establish loan accounts and open savings or demand accounts through electronic means.[13] Similarly, the ANPR indicated that the term "electronic means and facilities" would clearly encompass new technologies that enable a depository institution to make risk-based judgments electronically.[14] This would include, for example, automated credit scoring and other forms of automated underwriting.

In addition, OTS and the FHLBB have long recognized that Federal savings associations may open accounts and transfer funds for persons overseas. For example, the FHLBB opined that Federal savings associations may solicit deposits and open accounts for individuals who are not citizens or residents of the United States by mail or electronic means.[15] Since this is an authorized activity under the HOLA, this final rule permits a Federal savings association to engage in this activity through electronic operations. However, Federal savings associations engaging in such electronic activities must comply with all applicable requirements, including addressing safety and soundness concerns and ensuring compliance with other federal laws and requirements.[16]

OTS has not opined on whether certain activities cited by commenters are authorized for Federal savings associations. Specifically, one commenter asked whether a Federal savings association may issue, use, and deal in all forms of electronic monetary value, including stored value and smart-card technologies. Another commenter asked whether a Federal savings association may use and participate in digital authentication and certification, including serving as a certificate authority (an entity certifying electronic signatures for use in electronic commerce).

OTS has not opined on whether every activity that could involve the use of electronic money or participation in digital authentication regimes is an authorized activity for Federal savings associations.[17] With any new activity, the factual context and the accompanying safeguards are often critical to determining whether and how an activity may be conducted, whether or not electronic means are involved. Thus, OTS believes that it is important that savings associations continue to consult with their Regional Offices to obtain up-to-date guidance as they move forward in the use of electronic means and facilities.

Another Federal savings association asked OTS to adopt an expansive

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[9] 62 FR at 51818.

[10] 12 U.S.C. 1461–1468c.

[11] *See, e.g.*, 60 FR 44442, 44444 (August 28, 1995); 48 FR 23032 (May 23, 1983).

[12] *See* OTS Customer Service Plan—Interpretive Opinions (January 1996). Such questions may also be addressed in the context of an application process (*e.g., de novo* applications).

[13] 62 FR at 51818. However, all statutory and regulatory restrictions associated with offering a product or service continue to apply where electronic means and facilities are used.

One commenter asked whether a signed deposit application would have to be executed and transmitted with the initial deposit in hard copy. At one time, FHLBB regulations specifically imposed this type of signature card requirement. *See* 12 CFR 545.2(a) (1983). In May 1983, the FHLBB eliminated this specific requirement. 48 FR 23032 (May 23, 1983).

[14] 62 FR at 15632.

[15] *See* Memorandum from Jack D. Smith, Deputy General Counsel, FHLBB, to Alvin Smuzynski, Deputy Director, Supervisory Activities (December 7, 1987). Pursuant to that opinion, the institution was permitted to undertake the activity where the institution maintained the deposits in United States dollar denominations, offered standard money market and term certificate of accounts with interest rates and other terms and conditions that were the same as those offered by the institution to those residing in the United States, and complied with the requirements applicable to the type of accounts. *See also* FHLBB Op. General Counsel (May 10, 1984).

[16] OTS anticipates that it will shortly publish a proposed "Know Your Customer" rule, as part of an interagency rulemaking effort.

[17] With regard to electronic monetary value, OTS has opined that a Federal savings association has authority to market and sell prepaid telephone cards as agent for a telephone company. OTS Op. Chief Counsel (August 29, 1996). We also note that the other federal banking agencies have indicated that financial institutions may deal in other types of electronic monetary value. *See* OCC Interpretive Letter No. 718 (March 14, 1996) (national banks may dispense alternate media such as public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising materials, electronic benefits transfer scripts, and credit and debit cards) and Federal Deposit Insurance Corporation General Counsel's Op. No. 8, *published in*, 61 FR 40490 (Aug. 2, 1996) (discussing whether, and under what circumstances, funds underlying stored value cards may be considered deposits under the Federal Deposit Insurance Act, 12 U.S.C. 1811–1835a).

With regard to digital authentication and certification, Federal savings associations have incidental authority under the HOLA to guarantee customer signatures for documentary transactions in which an association has an interest as part of its deposit taking, lending, or trust business, as well as guarantees executed as a separate customer service with respect to stock transfers and similar transactions in which the association has no direct interest. FHLBB Op. General Counsel (August 11, 1981). In addition, the OCC has authorized a national bank operating subsidiary to act as a certification authority and repository for certificates that verify digital signatures. The authority was not limited to transactions in which the subsidiary had a direct interest. OCC Op. Chief Counsel (January 12, 1998) (Operating Subsidiary Application by Zions First National Bank, Salt Lake City, Utah).

OTS believes the reasoning of the other regulators appears persuasive. OTS will consider these opinions when it reviews a Federal savings association's authority to conduct such activities as these issues are presented to the agency.

interpretation of the phrase "authorized product or service." The commenter's proposed interpretation would clarify that as long as the primary electronic product or activity is permitted, the Federal savings association may provide a minor ancillary application, even though the ancillary application is not specifically authorized by the HOLA. Federal savings associations possess powers that are incident to the express powers of Federal savings associations, as set forth in the HOLA.[18] Today's final rule allows Federal savings associations to use electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity, including activities authorized under the incidental powers doctrine. OTS will review whether particular activities are authorized as incidental powers on a case-by-case basis as these issues are presented to the agency.

As noted above, § 555.200(a) continues to permit Federal savings associations to perform all data processing and transmission services formerly authorized under § 545.138(a) and (b). When § 545.138 was promulgated in 1983, the FHLBB imposed certain data and customer restrictions designed to ensure that a Federal savings association would conduct data processing and transmission services consistent with the authority provided in HOLA.[19] OTS recognizes that the HOLA may authorize the provision of data processing services in additional circumstances. Accordingly, the final rule, like the OCC's rule, does not impose specific data or customer restrictions. Rather, final § 555.200(a) merely requires that services provided through electronic means and facilities must be a "part of an authorized activity." This restriction means that data processing and transmission services provided must be authorized under the HOLA, either expressly or as an incidental power.

Final § 555.200(a) has also been revised to incorporate provisions in proposed § 545.143, entitled "How may I participate with others in the use of electronic means and facilities?" Proposed § 545.143 would have permitted a Federal savings association to participate with others to perform, provide, or deliver activities, functions, products, or services described in the proposed rule. A Federal savings association could have participated with an entity that is not subject to examination by a Federal agency regulating financial institutions only if that entity agreed, in writing, to permit OTS to examine its electronic means or facilities, to pay for any related OTS examination fees, and to make all relevant records in its possession, written or electronic, available to OTS for examination. OTS also indicated that if the participation by a Federal savings association was through a service corporation, OTS's service corporation rules would apply.[20]

The Examination Parity and Year 2000 Readiness for Financial Institutions Act,[21] has obviated the need for proposed § 545.143 as a separate section of the rule. Section 3 of this legislation provides:

> [I]f a savings association, a subsidiary thereof, or any savings and loan affiliate or entity, as identified by section 8(b)(9) of the Federal Deposit Insurance Act [12 U.S.C. 1818(b)(9)], that is regularly examined or subject to examination by the Director [of OTS], causes to be performed for itself, by contract or otherwise, any service authorized under [HOLA] * * *, such performance shall be subject to regulation and examination by the Director to the same extent as if such services were being performed by the savings association on its own premises.

In light of this legislation, today's final rule simply clarifies the authority of a Federal savings association to participate with others to perform any function, or provide any product or service, as part of an authorized activity, through electronic means and facilities. This language has been merged into final § 555.200(a). OTS is making a similar conforming change to § 555.200(b), discussed below.

In making these changes, OTS is removing the proposed requirement concerning record availability since this requirement is implicit in examinations authorized by the legislation. OTS is also removing the proposed requirement concerning examination fees. The other banking agencies do not charge fees specifically for examinations of service providers. OTS does not intend to impose fees for the examination of service providers, except as otherwise provided for under OTS's assessment rule and Thrift Bulletins.

While the relevance of many of the comments on proposed § 545.143 has been negated by this intervening legislation, it is useful to respond to some of the points raised by commenters on the NPR. Two commenters criticized the third party examination, fee, and record requirements as burdensome and unnecessary. In implementing the new legislation, OTS will focus its service provider examinations on those whose activities could have a direct impact on the safety and soundness of savings associations.[22] Data processing servicers and ATM servicers are among the types of service providers OTS examines because they provide functions critical to financial operations.

Another Federal savings association explained that the software industry is wary of providing unrestricted access to their information without explicit assurances of confidentiality to protect proprietary trade secrets. The commenter stated that, at a minimum, the final rule should provide that any information reviewed or gathered during an examination of a service provider will be treated as "unpublished OTS information" under 12 CFR 510.5 (1998), which provides confidentiality safeguards.

OTS treats service provider examination reports as confidential unpublished OTS information.[23] Consistent with this regulation, these reports are not publicly available, but OTS does share the examination reports of service providers with the Federal banking agencies. It also shares relevant portions of the examination reports with Federal and State savings associations that use the services of those service providers.

Section 555.200(b)

Former § 545.138(c) subjected marketing by-products and excess capacity of data processing and transmission services to significant restrictions. In contrast, under proposed § 545.142, a Federal savings association could market and sell electronic capacities and by-products to third parties if it acquired or developed the capacities and by-products in good faith as part of providing financial services. The proposed rule was substantially identical to the OCC rule on marketing and selling such capacities.[24]

Two commenters expressly supported the proposed section. Upon further review, OTS believes it is necessary to make two minor clarifications to § 555.200(b).

First, the final rule indicates that the marketing and selling of electronic capacities and by-products to third-parties is to enable Federal savings

[18] *See* OTS Op. Chief Counsel (August 29, 1996) at 2.

[19] *See* 48 FR 7428, 7429–7430 (February 22, 1983).

[20] *See* 12 CFR 559.4 (1998).

[21] Pub. L. No. 105–164 (enacted March 20, 1998).

[22] *See* Statement of Ellen Seidman, Director, Office of Thrift Supervision, concerning Examination Parity and Year 2000 Readiness for Financial Institutions Act, before the Committee on Banking and Financial Services, United States House of Representatives, February 5, 1998, at 8–10.

[23] *See* 12 CFR 510.5(a)(2)(ii) (1998).

[24] *See* 12 CFR 7.1019 (1998).

associations to optimize their resources. This language conforms the OTS rule more closely to the OCC's rule.

Second, the final rule indicates that a Federal savings association may also participate with others to market and sell electronic capacities and by-products to third-parties. Like the revision to § 555.200(a) discussed above, this change incorporates part of § 555.143 of the proposed rule.

One Federal savings association asked OTS to define the phrase "electronic capacities and by-products" to clarify that Federal savings associations may provide "fully integrated solutions to a range of business needs." These solutions may involve a combination of software development, computer systems design and construction, electronic communication (including sending electronic mail), and data processing and storage.

OTS does not believe it is appropriate to make the clarification requested by the commenter. As long as a Federal savings association acquired or developed its electronic capacities and by-products in good faith as part of providing financial services, the Federal savings association may market and sell them to third-parties. OTS cautions, however, that to the extent a Federal savings association may wish to engage in additional activities in connection with the marketing and sale of such capacities and by-products, the additional activities must be authorized under the HOLA, either expressly or as an incidental power.

2. What Precautions Must I Take? (Proposed § 545.144, Final § 555.210)

Although OTS believes that it is vital that Federal savings associations establish appropriate internal controls for risks and security measures when they engage in electronic operations, it did not propose to codify static risk or security requirements. Because methods of electronic commerce and their attendant security measures are continually evolving, OTS's proposed rule reflected the view that it is impracticable to prescribe security measures that would remain useful for the indefinite future.

Instead, proposed § 545.144 would have required a Federal savings association to adopt standards and policies designed to ensure secure operations. In addition, the proposed rule would have required a Federal savings association to implement security measures adequate to prevent unauthorized access to its records and its customers' records, and to prevent financial fraud through the use of electronic means or facilities. The proposed rule also stated that a Federal savings association must comply with the current security devices requirements of part 568, if it provides an ATM, an automated loan machine, or another similar electronic device.

One Federal savings association noted that the banking industry has not yet embraced any particular standards with respect to encryption, authentication, digital signatures, and other technical matters affecting transmission over the Internet. Accordingly, the commenter urged OTS to avoid imposing unnecessary regulatory impediments or micro-managing system implementation or maintenance. While the commenter was not critical of proposed § 545.144, the commenter criticized OTS's imposition of certain security-related conditions on approvals of recent applications, such as requiring an applicant to have its delivery of services over the Internet tested and reviewed by independent computer security specialists before commencing operation. The commenter urged OTS to reconsider whether there is a need to impose such conditions.

In approving applications to commence operations, OTS requires proof that adequate security measures are in place for safe, sound, and secure operations. To date, these requirements routinely have included testing and review by independent computer security specialists. OTS tailors specific conditions on a case-by-case basis. It may be possible that future applications may not raise these security concerns. However, currently OTS believes such a condition in application approval orders remains essential to safe and sound internal operations. Similarly, under the notice procedures in subpart B to part 555 of this final rule (including the 30-day advance notice requirement), OTS will have an opportunity to consider, before any savings association establishes a transactional web site, whether the savings association will be able to conduct such operations in a safe, sound, secure, and compliant manner.

In the preamble to the proposed rule, OTS indicated that it "expects Federal savings associations to establish security measures that are consistent with current industry standards, and to continually monitor and regularly update these security procedures to keep pace with changes to industry standards." [25] One trade association urged OTS to incorporate this statement in the final rule.

OTS believes that such interpretive statements are best contained in OTS policy statements, advisories, and other explanatory materials, rather than the regulation. For similar reasons, OTS has deleted from the final rule the proposed statement indicating that Federal savings associations should adopt standards and policies on security issues. Instead, the rule requires Federal savings associations to implement security measures designed to ensure secure operations.

Another trade association urged OTS to provide guidelines alerting Federal savings associations to security issues that should be addressed before a new electronic delivery mechanism is implemented. As summarized in Section II above, OTS has issued such guidelines and advisories to Federal savings associations, both on its own and as part of FFIEC.

OTS has made clarifying revisions to the section. These revisions require that the management of Federal savings associations identify, assess, and mitigate potential risks and establish prudent internal controls, in addition to implementing security measures that are designed to ensure secure operations.[26] These risks may be strategic, legal, regulatory, or operational.[27]

C. Requirements Applicable to All Savings Associations

1. Must I Inform OTS Before I Use Electronic Means or Facilities? (§ 555.300)

Proposed § 555.300(a) of the Supplemental NPR sets forth the general rule that a savings association does not have to inform OTS before it uses electronic means and facilities. However, two exceptions apply. First, proposed § 555.300(b) would require a savings association to file a written notice with OTS before it establishes a transactional web site. Second, proposed § 555.300(c) would provide that if the OTS Regional Office has informed a savings association of any supervisory or compliance concerns that may affect the savings association's use of electronic means or facilities, the savings association must follow any additional procedures the Regional Office has imposed in writing. Proposed § 555.300(a) also would encourage savings associations to consult with OTS even in circumstances not covered by the notice requirement or other procedures in § 555.300(b) or (c).

[25] 62 FR at 51819.

[26] Further guidance on these requirements is provided in Appendix A to Part 570, section 341 of the Thrift Activities Regulatory Handbook, and Statement on Retail On-Line Personal Computer Banking.

[27] *See* Statement on Retail On-Line Personal Computer Banking.

Four commenters indicated that the proposed notice requirement would help OTS to monitor adequately savings associations' technological innovations and to assess security, compliance, and privacy risks. Some commenters, however, expressed concerns.

Four commenters argued that the notice requirement would place savings associations at a competitive disadvantage, since other banking regulators do not impose a similar notice requirement. OTS does not anticipate that the notification requirement will place savings associations at a significant competitive disadvantage. As discussed below, in general, once an association has addressed any follow-up questions from the Regional Office and the 30-day period has expired, the association will be free to bring its transactional web site on-line. No affirmative authorization from OTS is necessary except where the Regional Office may otherwise indicate.

While providing this information will impose a minimal burden on savings associations, the process will allow individual associations, and the industry as a whole, to reap important benefits. The notice will make it easier for OTS to obtain information on the industry's use of transactional web sites. As a result, OTS will be better able to assist associations that are contemplating or already conducting Internet operations to identify and address the risks that accompany such activities. The information will also broaden OTS's awareness of trends in Internet banking operations, which OTS can share with institutions. It will also efficiently allow OTS to keep abreast of significant changes in the way particular savings associations interact with their existing or potential customers to enable OTS to issue appropriate guidance. Finally, the procedure responds to the concern raised by the commenter on the NPR who indicated that OTS should be vigilant about new electronic operations raising safety and soundness concerns, since the procedure will assist OTS to supervise effectively the electronic operations of savings associations.[28]

One commenter asserted that transactions conducted over the Internet pose no more risk than transactions performed using other technologies for which no prior notice is required. This commenter also asserted that the notice was unnecessary since the industry already fully understands the risks associated with the Internet.

OTS does not agree that transactions conducted over the Internet pose no more risk than transactions performed through other more established technologies.[29] While it is true that risks are inherent in all electronic capabilities, the use of an electronic channel such as the Internet to deliver products and services introduces unique risks due to the increased speed at which systems operate, user anonymity, and broad access in terms of geography, user groups, applications, databases, and peripheral systems.

As explained in the preamble to the Supplemental NPR, OTS has been, and continues to be, concerned with the adequacy of firewalls to prevent hackers from breaking into an association's computer systems and thereby jeopardizing the association's security.[30] OTS is also concerned about other operational and compliance risks presented by Internet banking and intends to increase its monitoring of web sites for compliance with disclosure laws and regulations.[31] Additionally, OTS is concerned about protecting the privacy of individuals submitting information (or about whom information has been submitted).[32]

Even traditional risks that are similar to those in customary banking activities must be considered in a new light. For example, if an association conducts lending or deposit gathering activities over an electronic channel, credit risks must be considered in the context of the high-speed, wide-access electronic environment. The collection of baseline information on transactional web sites is an important and integral part of OTS efforts to enhance its supervision of Internet banking activities.

Another commenter noted that the costs of developing a web site are substantial and would be incurred before the savings association files the notice. Consistent with § 555.300(a), OTS encourages associations concerned about expending resources to develop a transactional web site to consult with their Regional Office in the early stages of development, even before filing a notice.

In lieu of the notice requirement, several commenters urged OTS to continue to rely on existing supervisory guidance, examination oversight, and application processes to ensure that Internet activities are conducted in a safe, sound, secure, and compliant manner. One commenter encouraged OTS to address transactional web sites in the Statement on Retail On-Line Personal Computer Banking and in additional questions in the Pre-Examination Response Kit. Another commenter suggested that the additional guidance should address such issues as development costs, security and privacy issues, and compliance matters.

OTS has provided and will continue to provide important guidance to the industry. OTS has addressed development costs, security, privacy, and compliance matters in its Statement on Retail On-Line Personal Computer Banking and in section 341 of the Thrift Activities Regulatory Handbook. OTS will update and supplement this guidance as necessary. However, this guidance is not a substitute for OTS's obtaining information necessary for proper supervision.

OTS proposed to define a transactional web site as "an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other products or services."[33] Four commenters supported OTS's proposed definition. Two commenters indicated that the Supplemental NPR adequately distinguished between transactional and informational web sites.

In light of the generally favorable comments, OTS does not believe significant changes to the definition are necessary. However, OTS is making one clarifying change to the definition of transactional web site in response to a comment. The commenter recommended clarifying the meaning of the phrase "purchasing other products

[28] A September 30, 1998 report prepared, at OTS's request, by the Office of Inspector General (OIG), United States Department of the Treasury, made several suggestions. Among these were that OTS: (1) develop a complete list of savings associations providing on-line and Internet banking services; (2) enhance monitoring of savings associations' web sites for compliance with federal disclosure regulations and laws, and (3) begin to focus more on the operational risks presented by on-line and Internet banking. The OIG recommended these steps to help OTS determine risks, plan strategic examination coverage, identify staff development needs, and foster examination uniformity and consistency. *See* Office of Inspector General, U.S. Dep't of the Treasury, *Consultative Report on the Office of Thrift Supervision Examination of On-Line and Internet Banking Risks*, (OIG–CA–98–003, 1998).

[29] *See* 63 FR at 43328.

[30] *Id.*

[31] As noted in the preamble to the Supplemental NPR, OTS is aware that advertising and disclosure problems may apply equally to transactional and informational web sites. OTS believes, however, that the need for advance notice is greater where such concerns are combined with the other compliance, security, and privacy issues related to transactional web sites. To minimize regulatory burden, OTS is limiting the advance notice requirement to transactional web sites. However, OTS will continue to examine both types of web sites for operational and compliance problems. *See* 63 FR at 43329 n. 11.

[32] 63 FR at 43328.

[33] 63 FR at 43330 (proposed § 555.300(b)).

or services" used in the definition. The final rule clarifies that the phrase refers to any authorized products or services.

Another commenter asked OTS whether a new notice would be required when the type and level of activities conducted on a transactional web site are increased or substantially modified. A new notice will not be required in such circumstances. Once the savings association alerts OTS about its transactional web site, the agency will be able to monitor and examine the web site without a need for subsequent notices when changes are made.[34]

Other commenters, however, suggested further revisions or clarifications that OTS believes would be too limiting. One commenter indicated that the covered web sites should be those that transact business equivalent to a branch through which money passes. Another argued that a web site is not transactional if an applicant may only complete and return a loan application electronically, but would be transactional if the web site also permits the application to be processed through an automated credit scoring system and is used to notify the customer of an approval or denial.

OTS does not agree that transactional web sites subject to the notice requirement should be limited to those that are used for monetary transactions or are used to notify the customer of an application approval or denial. The same concerns about providing a secure environment apply where confidential information is exchanged in other circumstances that are transactional, but do not necessarily constitute a monetary transaction or notification on an application.

However, it is appropriate to clarify a related matter. OTS will not consider a web site to be transactional simply because it allows the sending of e-mail messages. For an association simply to include an e-mail address on its web site does not necessarily invite the public to attempt to conduct transactions with the association over the Internet or to submit confidential information. For example, the public may use the e-mail address for a variety of tasks (*e.g.*, inquiring about products or services offered, requesting that a customer service representative call, or asking that forms or information be mailed). In contrast, a web site that provides an electronic application form for transmission to the association by e-mail would be considered transactional. Such an application, by its nature, is designed to conduct a transaction and will likely actively elicit the submission of confidential information to the association over the Internet through the questions contained in the application.

One commenter recommended that OTS define an "informational web site." OTS does not believe that a separate definition of this term is necessary. As noted in the preamble to the Supplemental NPR, an informational web site is a non-transactional web site, such as one limited to advertising and fee and rate posting.[35]

Six commenters opposed a notice requirement for electronic activities other than a transactional web site. Three commenters explained that OTS already has sufficient authority to examine any activity that raises safety and soundness concerns.

OTS is not requiring a notice under § 555.300(b) for any activities using electronic means or facilities other than transactional web sites. For example, a savings association would not be required to notify OTS before it establishes an informational web site.[36] As with other activities, OTS will continue to rely on its existing supervisory examinations and application processes to ensure the savings association's ability to engage in new activities in a safe, sound, secure, and compliant manner.[37]

As technologies emerge, OTS may revise the rule to require notice of activities other than establishing a transactional web site. Similarly, as technologies mature and the industry and OTS gain additional experience, OTS may revise the rule to no longer require notice before establishing a transactional web site.

OTS is also making an editorial change to § 555.300(a). The change clarifies that OTS encourages consultations with the Regional Office regardless of whether the notice requirement in § 555.300(b) or the additional procedures in § 555.300(c) apply.

2. How do I Notify OTS? (§ 555.310)

Proposed § 555.310 of the Supplemental NPR described the advance notice procedures. Proposed § 555.310(a) would require a savings association to provide a written notice to the appropriate Regional Office at least 30 days before establishing a transactional web site. Proposed § 555.310(b) contained a transition provision applicable to transactional web sites established after the date of the association's last regular onsite OTS safety and soundness examination but before the effective date of the rule.

Two commenters supported the 30-day advance notice period. Another commenter argued that the 30-day notice period would be too long and suggested a 10-day notice period. Another commenter urged OTS to permit a savings association to apprise OTS within 30 days *after* establishing a transactional web site. This notice would permit OTS to review the web site in an examination.

OTS has decided to retain the 30-day advance notice procedure as proposed. As discussed above, OTS does not anticipate this procedure will be burdensome. Thirty days is an appropriate time period to allow OTS to consider the notice and ask any follow-up questions that may be necessary.

In the Supplemental NPR, OTS did not propose to prescribe any particular form for the notice. Proposed § 555.310(a) would simply require that a savings association describe the transactional web site, indicate the date the transactional web site will become operational, and list a contact familiar with the deployment, operation, and security of the transactional web site. The preamble to the Supplemental NPR indicated that, upon receipt of the notice, the Regional Office may require additional information to ensure that the savings association will operate the transactional web site in a safe, sound, secure, and compliant manner.[38] The preamble further indicated that OTS contemplated that the notice may be brief. It contained sample language that read:

[*Name of savings association*] plans to establish a transactional web site on the Internet at [*URL*]. It will be operational on [*Date*]. The site will contain mortgage loan applications that can be transmitted securely

[34] However, as noted in the preamble to the Supplemental NPR, before a savings association may change an informational web site to a transactional web site, the savings association must file a notice with OTS. 63 FR at 43329 n. 9.

[35] 63 FR at 43329.

[36] However, OTS has implemented a change to the Thrift Financial Report (TFR). The electronic filing software now collects information on all savings associations' Internet web site addresses. This change was effective for the third quarter 1998 TFR.

[37] OTS reviews the safety and soundness of new activities, the appropriateness of the internal controls and security precautions, and compliance with applicable laws and regulations on a case-by-case and institution-by-institution basis in connection with applications and through the examination process. For institutions subject to an application process (*e.g.*, *de novo* applications), these initial safety and soundness and compliance determinations will be made in the application review. After application approval or where no application is required, safety and soundness and compliance will generally be assessed as a part of the examination process. This process will review and assess the institution's identification of risks of the activity, the steps it has taken to mitigate these risks, the testing it has undertaken to ensure safety and soundness, and its compliance monitoring process.

[38] 63 FR at 43329.

to our loan processing office. For further information contact: [*Name* at *telephone number, e-mail*].[39]

Four commenters stated that OTS should not require any information in the notice beyond that described in the Supplemental NPR. One commenter specifically endorsed OTS's sample statement in the preamble as sufficient. One commenter, however, recommended that institutions describe how they will conduct the activity, the type of security they will use, the internal controls they will follow, and the program they will follow to ensure compliance with all applicable laws and regulations. Another commenter observed that an overview of controls and safeguards designed to preserve privacy and security and protect against financial fraud would be sufficient.[40] One commenter suggested that if OTS discovers that new information is necessary following this rulemaking, it should require this information in guidance, rather than in a revised rule.

OTS is adopting the requirements concerning the contents of the notice as proposed. It believes these requirements will provide sufficient information to the Regional Offices without being burdensome or inflexible. The guidance contained in the preamble to the Supplemental NPR, including the sample language set forth above, remains valid.

Several commenters sought clarification of the review procedures. One commenter sought assurance that the notice process was informational only. Two commenters sought clarification whether OTS would approve or disapprove notices (*e.g.*, where there are supervisory or compliance concerns). One noted that if prior OTS approval is required, the notice process would impose substantial financial, strategic, and compliance risks on institutions. Another commenter urged OTS to review all notices within the notice period and quickly act to prevent a savings association from establishing a transactional web site that could threaten its safety and soundness.

The procedure will work as follows: The savings association will file a written notice with the Regional Office. The Regional Office will review the notice and may ask follow-up questions. In general, once an association has addressed those follow-up questions from the Regional Office and the 30-day period has expired, the association will be free to bring its transactional web site on-line. No affirmative authorization from OTS is necessary except where the Regional Office may otherwise indicate. If, however, by the end of the 30-day period, the Regional Office informs the association that there are supervisory or compliance concerns that may affect the association's establishment of a transactional web site, the association must follow any procedures that the Regional Office imposes in writing. The procedures the Regional Office may impose could include, for example, requiring further information to be submitted or precautions to be taken before the savings association may establish the transactional web site, limiting in some fashion the ways in which the association may use the transactional web site, or prohibiting the association from establishing a transactional web site.

One commenter opposing notice procedures observed that the advance notice only made sense if the Regional Office would review the notice before the roll-out of the web site. This commenter, however, predicted that OTS Regional Offices may apply inconsistent standards and that this inconsistency could be problematic since web sites provide services nationwide. The commenter suggested that the final rule should require the Regional Office to notify the thrift of any conditions it would impose on web site operations. OTS will issue industry guidance to help a savings association deploy a transactional web site in a safe, sound, secure, and compliant manner. OTS will also issue uniform guidance to its Regional Offices to verify that transactional web sites are in compliance with the industry guidance and this regulation and that savings associations have established an adequate infrastructure for operating safe, sound, secure, and compliant transactional web sites.

One commenter urged OTS to require public notice and comment before a savings association may establish a transactional web site. This commenter indicated that, in some states, financial institutions must provide public notice and comment before opening a deposit-collecting branch or deposit-taking ATM.

OTS does not believe it is appropriate to require a public comment procedure. Moreover, OTS posts notices on its web site upon filing. The same policy will apply to notices for transactional web sites. This procedure will provide adequate information to the public.

IV. Other Rule Provisions

A. Conforming Amendment to Branch Offices Regulation

The proposed rule would revise OTS's branch office regulation to clarify that electronic facilities (such as automated loan machines) are not branch offices. Three commenters specifically supported this section, although two requested clarifications. One Federal savings association argued that the final rule should indicate that *all* electronic facilities and the Internet are excluded from the definition of "branch office." The proposed rule would have excluded an "electronic facility" from the definition of "branch office," but did not indicate that an "electronic means" was also excluded.

For consistency in terminology, the final rule has been revised to exclude all "electronic means or facilities" from the definition of "branch office." Under § 555.200(a), the Internet continues to be an electronic means or facility and is not considered to be a branch.

Another Federal savings association asked whether a "hybrid office" would be treated as a branch office. This commenter defined a hybrid office as an office in which a Federal savings association conducts the majority of its operations electronically, but conducts some functions in person by appointment. The type of office the commenter has described may be either a branch office[41] or an agency[42] depending upon the types of services provided. A Federal savings association may request an OTS opinion if it requires further guidance on this topic.[43]

B. Conforming Amendment to Subordinate Organizations Rule

The Examination Parity and Year 2000 Readiness for Financial Institutions Act, discussed above, applies to Federal and State savings associations and provides OTS with the authority to examine service corporations. Accordingly, OTS is conforming the service corporation examination provision of its Subordinate Organizations regulation, 12 CFR 559.3(o)(2), to reflect this authority.

V. Other Issues Raised by Commenters

A. Preemption

One Federal savings association commenting on both the NPR and the

[39] *Id.*

[40] One commenter, however, noted that security information may be difficult to obtain when the web site is maintained by a service bureau. This commenter noted that service bureaus often claim that the release of such information will compromise their systems.

[41] 12 CFR 545.92 (1998).

[42] 12 CFR 545.96 (1998).

[43] OTS will shortly undertake another rulemaking to clarify the regulations governing various types of offices.

Supplemental NPR urged OTS to add specific preemption provisions stating that OTS's electronic operations regulations preempt state laws purporting to restrict or govern the electronic operations of federal savings associations. The commenter noted that various states have enacted such laws. The commenter argued that preemption would encourage Federal savings associations to participate in various electronic banking activities, facilitate the development of best industry practices, and prevent the development of a patchwork of conflicting state and local rules.

Electronic operations and related state and federal laws are still evolving. Thus, OTS believes it is premature to craft specific preemption regulations in the area of electronic operations. OTS intends to address specific state laws on a case-by-case basis as they are raised to the agency.

The commenter may have raised this matter, in part, because the electronic operations provisions will not be placed in part 545, but rather in a new part 555. Part 545 currently contains regulations pertaining to electronic operations [44] and also contains a general provision preempting state laws affecting "Operations." [45] However, the movement of the electronic operation provisions to a new part 555 does not indicate a substantive change. OTS will apply principles of preemption consistently with its prior interpretations of OTS's authority under the HOLA.[46] Accordingly, the regulations in subpart A to part 555 will have preemptive effect where appropriate to: (1) facilitate the safe and sound operations of a Federal savings association, (2) enable a Federal savings association to operate according to the best thrift institution practices in the United States, or (3) further other purposes of the HOLA.[47]

When evaluating preemption of a state law, OTS will focus first on the underlying activity affected by the state law. For example, if a state law affects a Federal savings association's ability to take deposits or lend using electronic means and facilities, OTS will apply the part 557 or part 560 preemption analysis for deposit or lending activities, respectively. OTS will evaluate other activities that may be conducted electronically, on a case-by-case basis.

While OTS intends to give Federal savings associations maximum flexibility to operate electronically according to a uniform federal scheme of regulation, OTS has recognized that some types of state laws, under certain circumstances, generally will not be preempted.[48] Consistent with this approach, OTS will determine that a state law regulating electronic operations is not preempted if it furthers a vital state interest, and either has only an incidental effect on Federal savings associations' ability to provide financial services electronically or is not otherwise contrary to the purposes of OTS's rule.

B. Community Reinvestment Act

Several commenters on the NPR addressed the impact of emerging electronic technologies on Community Reinvestment Act (CRA) requirements. The comments generally argued that the current CRA requirements do not: (1) provide adequate recognition of loans, investments and services generated outside of a Federal savings association's traditional assessment area (*i.e.* the area surrounding its branch network), or (2) permit Federal savings associations with Internet operations to define their CRA assessment areas more broadly than the branch network concept allows. Some commenters offered options intended to address these types of concerns. These included allowing Federal savings associations that engage in alternate delivery systems to be treated as limited purpose institutions or to define an assessment area in a manner that is tied to the customer base rather than a particular geography. One commenter on the Supplemental NPR expressed concern that financial institutions may use web sites to conduct business nationwide, but would be required to include only certain geographical areas in their CRA assessment areas.

Currently, OTS is working on an interagency basis to resolve these concerns and other CRA issues arising from the use of alternative methods of delivering financial products and services. The interagency effort involves revisiting the definition of an assessment area for institutions that use alternative delivery systems. Until this interagency effort is completed, OTS intends to allow the new electronic technologies to develop within the existing CRA regulatory framework. Specific CRA issues that arise in connection with an application will continue to be handled on a case-by-case basis in an effort to adapt existing laws to modern technologies and innovations. [49] An institution, of course, always has the option of taking advantage of the flexibility in the existing CRA regulation by developing and seeking approval of a strategic plan that would link CRA performance to its particular business strategy. [50]

C. Other Interagency Issues

Both trade association commenters on the NPR urged OTS, other Federal bank regulators, and the Treasury Department to coordinate their activities to ensure the development of consistent approaches to electronic operations issues, to minimize regulatory burdens, and to avoid potential conflicts. One commenter on the Supplemental NPR indicated it would only support the notice requirement for transactional web sites if all banking regulators imposed the same requirement on their regulated institutions.

As OTS issues rules and guidance on electronic operations, it continually strives for consistency with other Federal banking regulators. Accordingly, OTS will continue to participate in all interagency efforts to establish consistent regulatory approaches to electronic operations issues.

One Federal savings association noted that when the Federal banking agencies and the Department of Justice review a merger or acquisition for its impact on competition, the analysis focuses on the relevant product and geographic markets. These concepts generally require an analysis of deposits taken, loans made, and services provided in the geographic areas served by the combining institutions. The commenter urged the Federal banking agencies to view Internet banking activities as outside the scope of the traditional antitrust analysis and recognize that current technology gives Federal savings associations and banks the ability to conduct business with customers all over the country.

The entry of financial institutions into electronic operations raises a host of new issues. OTS has attempted through

[44] 12 CFR 545.138, 545.141, and 545.142 (1998).

[45] 12 CFR 545.2 (1998).

[46] *See* 12 CFR 545.2 (Operations), 557.11–557.13 (Deposits), and 560.2 (Lending and Investment) (1998).

[47] *Accord* 12 CFR 557.11(a) and 560.2(a) (1998).

[48] *See* 12 CFR 557.13 and 560.2(c) (1998).

[49] While not specifically involving electronic operations, the 1997 application from the Travelers Group is illustrative of an institution's efforts to develop a new approach on CRA. The Travelers Group filed an application to convert a state-chartered bank to a Federal savings association charter. The converted Federal savings association was to engage in consumer lending and trust services nationwide. In its application, Travelers stated that its CRA obligation extended throughout all the communities where it does business and made an initial pledge to make at least $430 million of home equity loans to low- and moderate-income borrowers over three years. OTS approved Travelers' application. *See* Order No. 97–120 (November 24, 1997).

[50] *See* 12 CFR 563e.27 (1998).

this rulemaking and guidelines to address issues that have arisen. To date, the antitrust issue cited by the commenter has not been a critical issue in an application. Currently, financial business through electronic operations constitutes a very small portion of financial services offered by Federal savings associations. OTS will consider providing guidance on this issue and other issues in the future should they emerge as prominent issues.

VI. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

VII. Paperwork Reduction Act of 1995

The collection of information requirements in this rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1550–0095.

Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0095), Washington, DC 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1.

The collection of information requirements are found in 12 CFR 555.300 and 555.310. OTS requires this information for the proper supervision of electronic operations by savings associations. The likely respondents/recordkeepers are savings associations.

VIII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this regulation will not have a significant impact on a substantial number of small entities. This final rule should make it easier for Federal savings associations, including small institutions, to engage in electronic operations. While it imposes a notice requirement on savings associations using one particular type of electronic means or facility (*i.e.*, a transactional web site) and allows Regional Offices to impose case-by-case restrictions for supervisory or compliance reasons, these requirements are the minimum necessary for proper supervision and should not have a significant impact on a substantial number of small institutions.

IX. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 555

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12 of the Code of Federal Regulations as set forth below:

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.92 is amended by revising paragraph (a) to read as follows:

§ 545.92 Branch offices.

(a) *General.* A branch office of a Federal savings association is any office other than its home office, agency office, administrative office, data processing office, or an electronic means or facility under part 555 of this chapter.

* * * * *

§§ 545.138 through 545.142 [Removed]

3. Sections 545.138 through 545.142 are removed.

4. Part 555 is added to read as follows:

PART 555—ELECTRONIC OPERATIONS

Sec.

555.100 What does this part do?

Subpart A—Authority of Federal Savings Associations to Conduct Electronic Operations

555.200 How may I use or participate with others to use electronic means and facilities?

555.210 What precautions must I take?

Subpart B—Requirements Applicable to All Savings Associations

555.300 Must I inform OTS before I use electronic means or facilities?

555.310 How do I notify OTS?

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 555.100 What does this part do?

Subpart A of this part describes how a Federal savings association may provide products and services through electronic means and facilities. Subpart B of this part contains requirements applicable to all savings associations.

Subpart A—Authority of Federal Savings Associations to Conduct Electronic Operations

§ 555.200 How may I use or participate with others to use electronic means and facilities?

(a) *General.* A federal savings association ("you") may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.

(b) *Other.* To optimize the use of your resources, you may market and sell, or participate with others to market and sell, electronic capacities and by-products to third-parties, if you acquired or developed these capacities and by-products in good faith as part of providing financial services.

§ 555.210 What precautions must I take?

If you use electronic means and facilities under this subpart, your management must:

(a) Identify, assess, and mitigate potential risks and establish prudent internal controls; and

(b) Implement security measures designed to ensure secure operations. Such measures must be adequate to:

(1) Prevent unauthorized access to your records and your customers' records;

(2) Prevent financial fraud through the use of electronic means or facilities; and

(3) Comply with applicable security devices requirements of part 568 of this chapter.

Subpart B—Requirements Applicable to All Savings Associations

§ 555.300 Must I inform OTS before I use electronic means or facilities?

(a) *General.* A savings association ("you") are not required to inform OTS before you use electronic means or facilities, except as provided in paragraphs (b) and (c) of this section. However, OTS encourages you to consult with your Regional Office before you engage in any activities using electronic means or facilities.

(b) *Activities requiring advance notice.* You must file a written notice as described in § 555.310 before you establish a transactional web site. A transactional web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.

(c) *Other procedures.* If the OTS Regional Office informs you of any supervisory or compliance concerns that may affect your use of electronic means or facilities, you must follow any procedures it imposes in writing.

§ 555.310 How do I notify OTS?

(a) *Notice requirement.* You must file a written notice with the appropriate Regional Office at least 30 days before you establish a transactional web site. The notice must do three things:

(1) Describe the transactional web site.

(2) Indicate the date the transactional web site will become operational.

(3) List a contact familiar with the deployment, operation, and security of the transactional web site.

(b) *Transition provision.* If you established a transactional web site after the date of your last regular onsite OTS safety and soundness examination but before January 1, 1999, you must file a notice describing your activity by February 1, 1999.

PART 559—SUBORDINATE ORGANIZATIONS

5. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

6. Section 559.3 is amended by revising paragraph (o)(2) to read as follows:

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of federal savings associations?

* * * * *

(o) * * *

(2) A service corporation is subject to examination by OTS.

* * * * *

Dated: November 20, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31746 Filed 11–27–98; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 922, 931, 932, 933, 934, and 941

[No. 98–47]

RIN 3069–AA55

Election of Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations on the election of Federal Home Loan Bank (Bank) directors. The final rule devolves responsibility for determining the eligibility of elective directors and administering the election process from the Finance Board to the Banks. The final rule is part of the Finance Board's continuing effort to transfer management and governance responsibilities to the Banks and is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

EFECTIVE DATE: The Final Rule will become effective on December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Compliance Assistance Division, Office of Policy, 202/408–2872, or Roy S. Turner, Jr., Attorney-Advisor, Office of General Counsel, 202/408–2512, Federal Housing Finance Board, 1777 F Street NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Pursuant to section 7 of the Federal Home Loan Bank Act (Act), which sets forth the eligibility requirements and the procedures for electing and appointing Bank directors, and regulations promulgated thereunder, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), determined the eligibility of all Bank directors, administered the Bank director elections, and appointed public interest directors. *See* 12 U.S.C. 1427 (1989); 12 CFR part 522 (1989). After Congress abolished the FHLBB in 1989, *see* Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub.L. 101–73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board adopted the FHLBB regulations on Bank directors, without change. *See* 54 FR 36757 (Sept. 5, 1989), *codified at* 12 CFR part 932. The Finance Board subsequently amended its regulations to implement the changes FIRREA made to the eligibility requirements for, and to apply the conflicts of interest limitations FIRREA imposed on, Bank directors. 55 FR 1393 (Jan. 16, 1990); 56 FR 55205 (Oct. 25, 1991); *see* FIRREA, secs. 707, 710(b)(4), 103 Stat. 417, 418, *codified at* 12 U.S.C. 1427.

Since the enactment of FIRREA the Finance Board has determined the eligibility of all Bank directors, has administered the election of Bank directors, and has appointed public interest directors. As part of its policy of removing itself from the management and governance functions of the Banks and devolving those responsibilities to the Banks, the Finance Board is transferring the administration of the elections, including the responsibility to determine the eligibility of elective directors, to the Banks. This action does not affect the appointment of public interest directors for the Banks, who will continue to be appointed in the sole discretion of the Finance Board.

The final rule amends, redesignates, or eliminates various provisions of part 932, and includes conforming amendments to parts 900, 931, 933, 934, and 941. The Finance Board also is repealing the current conflict of interest and financial disclosure requirements established by part 922 of its regulations for the appointed members of the Board of Directors of the Finance Board. All of the changes are consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review. *See* E.O. 12861, 58 FR 48255 (Sept. 11, 1993).

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II. Analysis of the Public Comments and Final Rule

The Finance Board received seven comment letters in response to its proposal to devolve the management and administration of the election process to the Banks. The proposed rule was published in the **Federal Register**, with a 45-day period for public comment. 63 FR 26532 (May 13, 1998). Commenters included six Banks and one member. Most commenters supported the devolution of the election process to the Banks, though they also offered suggested revisions to the rule. Two commenters opposed the proposal, citing the potential administrative burden that could be placed on the Banks. One of these commenters also characterized the regulation as too detailed and restrictive and failing to devolve to the Banks any meaningful control over the election process.

Notwithstanding those concerns, the Board believes that the election of directors to serve on the board of a corporate entity is a responsibility more appropriately assigned to the entity than to its safety and soundness regulator. Accordingly, the Board is adopting the regulation largely as proposed, with revisions made to take into account a number of revisions proposed by the commenters. Those revisions are discussed below.

A. Definitions—§ 932.1

1. "Bona Fide Resident"— § 932.1

The proposed definition of "bona fide resident" that appeared in the **Federal Register** included a typographical error, which prompted two commenters to question whether appointive directors need always have some residence within the district. The final rule corrects the error, making clear that an appointive director who does not maintain a principal residence within the district may, nonetheless, be a "bona fide resident" if he or she owns or leases in his or her own name a residence within the district and is employed within a voting state in the district. The same test applies to elective directors.

2. "Voting State"—§ 932.1

Under the proposal, a member's "voting state" is the state in which the member's principal place of business, "as determined in accordance with part 933," is located on the record date. One commenter contended that the definition might bar a member from voting if its principal place of business were located outside the district of the Bank in which the institution is a member. Because that scenario could occur only in rare circumstances, which would require Finance Board approval, and the existing regulations and statutes would address the matter, the final rule adopts the definition as proposed.

By statute, an institution must become a member of the Bank whose district includes the state in which the institution maintains its principal place of business, unless the institution requests membership in an adjoining district, which is permissible only if it is "demanded by convenience" and only if it is approved by the Finance Board. 12 U.S.C. 1424(b). Thus, a member could have its principal place of business outside of its normal Bank district only pursuant to the "demanded by convenience" provision. If such a transfer were to occur, it would be governed by the regulations of the Finance Board, principally Section 933.18(a) and (b). Those provisions authorize membership in another Bank under the "demanded by convenience" provision and provide that "[e]xcept as otherwise designated in accordance with this section" a member's principal place of business is the state in which it maintains its home office. The latter provision contemplates that the Finance Board may "otherwise designate" a state other than the one in which a member maintains its home office as its principal place of business, which the Finance Board would have to do if the home office were outside the district. As the regulations address the concern of the commenter, especially when read in conjunction with section 1427(c), which requires the Finance Board to designate the state in which each member is deemed to be located for voting purposes, the Finance Board does not believe it is necessary to revise this definition.

B. Director Elections—§ 932.3

1. Responsibilities of the Banks

Consistent with the proposed rule, the final rule transfers the responsibility for the conduct and administration of the director elections from the Finance Board to the Banks. Two commenters believed that the regulatory language should expressly permit the Banks to use staff and contractors to run the elections process, even though the preamble to the proposal indicated that Bank staff could be used. As it was never the Finance Board's intent to have the board of directors personally perform those tasks, the final rule clarifies that the disinterested members of the board of directors, or a committee of disinterested directors, may use staff or an outside contractor to perform the ministerial and administrative tasks associated with the elections process. The final rule retains the language that the disinterested members, or committee of disinterested members, are responsible for overseeing the election process, which means that they must ensure that the persons administering the election are competent and act in accordance with these regulations.

Further, three commenters suggested that the Finance Board share information with, and offer the appropriate training to, the Banks as a part of its devolution of the election process. The Finance Board intends to provide the information and training necessary to ensure a smooth transition of the management of the election process from the Finance Board to the Banks and anticipates that it will do so in consultation with the Banks in advance of the 1999 election cycle. No regulatory changes are necessary to provide such assistance.

2. Designation of elective directorships.

For any Bank district with five or more states, the Act authorizes the Finance Board to increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships. 12 U.S.C. 1427(a). The proposed rule had provided that in creating any additional appointive directorships under this authority the Finance Board may round up to the nearest whole number. Two Banks objected to the rounding provision, contending that it could result in a Bank having a number of appointive directors in excess of the three-fourths statutory limit.

The principal difficulty in applying the statutory limit is that it results in a whole number of appointive directors only when the number of elective directors is eight or twelve. If a Bank has nine, ten, or eleven elective directors, the formula results in a fractional cap on the number of appointive directors, *i.e.*, 6.75, 7.5, and 8.25, respectively. It is not clear from the statute how Congress intended the cap to be applied when it includes a fraction. The Finance Board could disregard all fractions altogether, meaning that it would have to "round down" to the nearest whole number in all cases. Alternatively, the Finance Board could follow standard rounding conventions and round to the nearest whole number in all cases. The Finance Board has determined that the most reasonable means of applying the limitation is to use standard rounding conventions whenever the "three-fourths" formula results in something other than a whole number. Thus, for any fraction of one-half or more the Finance Board will round up to the

nearest whole number, and for any fraction of less than one-half the Finance Board will round down to the nearest whole number.

The Finance Board believes that this interpretation is permissible and is in accord with the standards of statutory interpretation. *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council Inc.*, 467 U.S. 837, 844 (1984). The final rule amends the proposed language by deleting the term "up," to make clear that fractions less than one-half will be rounded down, and adds a provision requiring the Finance Board to consult with the affected Banks prior to increasing the number of elective or appointive directorships.

One commenter suggested that the Finance Board establish separate seats on the board of directors of a Bank for co-operative banks and federal savings and loan associations, as those institutions are too small to have sufficient votes to elect their own representatives. The Finance Board cannot make such a change because it is not permitted by the statute. The Finance Board has no authority to set up separate classes of directors to represent different segments of the membership base.

C. Capital Stock Report—§ 932.4

The proposed rule would have required each Bank, by April 10 of each year, to submit to the Finance Board and to each member a capital stock report, which would indicate the minimum number of shares of Bank stock each member was required to hold at the end of the preceding calendar year. The proposal also would have allowed each member to obtain Finance Board review of the Bank's determination of its minimum stock holdings. Two commenters objected to this provision, contending that providing the capital stock report to the members would be confusing because the report would not indicate the number of votes each member would be entitled to cast in the election, and that the appeals process would delay the elections.

The Finance Board believes that there is some merit in the suggestion about member confusion, but also believes that it is important for each member to have the opportunity to review for itself and, if necessary, to obtain Finance Board review of the Bank's calculation of the member's minimum stock purchase requirement (which is used to determine the member's voting rights) and to confirm that the Bank has included the member in the appropriate voting state. To balance those concerns, the final rule relocates the reporting and review provisions from the election regulation to the membership regulation, at section 933.22(b)(1).

Section 933.22(b)(1) currently directs the Banks annually to calculate each member's minimum stock purchase requirement and to notify the member of any required adjustment. The final rule amends section 933.22(b)(1) to require the Banks to include as part of the notice a statement informing the member that the Bank's minimum stock calculation will be used to determine the number of votes the member may cast in that year's election, and identifying the state in which the member will vote. If a member does not agree with the Bank's calculation of the minimum stock holdings or the Bank's identification of the voting state, the member may request the Finance Board to resolve either matter. The Finance Board must do so promptly and its determination is final.

By requiring the Bank to notify the member of its voting state the final rule affords each member the opportunity to confirm that the records of the Bank correctly indicate the location of its principal place of business. This should minimize the possibility that a member may be assigned to vote in the wrong state, which might occasionally occur as members merge, consolidate, or relocate across state lines. Although the Banks do not designate the state in which a member is deemed to be located for voting purposes (that is done by the Finance Board), they do need to know promptly whenever a member relocates its principal place of business (*i.e.*, its home office) to another state. Toward that end, the final rule also amends § 933.18(a)(1) to require that a member promptly notify its Bank whenever it relocates its principal place of business to another state. The Bank, in turn, must inform the Finance Board of any such relocation.

Section 7(c) of the Act requires the Finance Board to designate the state in which each member is deemed to be located for voting purposes and, if the member has its principal place of business in a state within the district, the Finance Board must designate that state as its voting state for purposes of the election. 12 U.S.C. 1427(c). The Finance Board has made such a designation in its current regulations, 12 CFR 932.11(a) (1998), and the final rule retains a comparable provision, amending Section 932.3(d) to provide that for purposes of director elections a member is deemed to be located in its voting state.

D. Determination of Member Votes—§ 932.5

Section 7(b) of the Act provides that in electing directors, each member may cast a number of votes equal to the number of shares of capital stock in the Bank the member was required to hold as of the record date (December 31 of the prior year), but the number of votes may not exceed the average number of shares required to be held by all of the members in that state as of the record date. 12 U.S.C. 1427(b).

Because the statute establishes voting rights as of the record date, the proposal would not have terminated those rights based on events occurring subsequent to the record date, such as a merger or consolidation into a nonmember, transfer to another Bank, or withdrawal from the Bank. Consequently, in the event of such a transaction the proposed rule would have allowed the legal successor to the member to exercise whatever voting rights the member possessed as of the record date, but only for the election occurring in the year of the merger or other transaction. In subsequent years the successor's right to vote, if any, would be determined by its own membership status.

Three commenters objected to any provision that might allow institutions that were not members at the time of the election to vote in the election for Bank directors. One commenter questioned whether a member that was subject to the maximum cap on the number of votes it may cast (*i.e.*, not to exceed the average stock purchase requirement for all members) would be permitted to cast the votes belonging to another member that had merged into the first member subsequent to the record date.

The final rule retains the provisions under which voting rights are to be determined as of the record date. The Finance Board has decided not to introduce a number of exceptions to this rule that would terminate a member's voting rights based on corporate transactions occurring after the record date. The Finance Board is mindful of the concerns expressed about entities that are not members being allowed to vote in the election of directors for the Banks, but is persuaded that the Banks should conduct their elections in the same manner as other corporate entities, which use a record date to determine which shareholders may vote for directors. If the concept of the record date is to be applied in a meaningful fashion, events occurring subsequently should not alter the voting rights that existed as of the record date. Thus, if a member merges into a nonmember subsequent to the record date but prior

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to the election, or if a member relocates its home office to another Bank district or withdraws from the Bank System, the successor or the former member may vote those shares if it wishes to do so. Similarly, if a member that has reached the maximum number of votes that a single member may cast in an election acquires by merger or consolidation another member that was entitled to vote in the election, and in the same state, as of the record date, the resulting member would be entitled to cast its own votes, as well as those of the acquired member, but only in the election occurring in the year of the merger. Thereafter, the voting rights of the member would be determined by the number of shares it was required to hold as of the next following record date.

Moreover, as a practical matter the Finance Board is not persuaded that terminating the voting rights of members that merge, relocate, or withdraw from the System after the record date can be done in a manner that would treat each such member the same. At some point prior to the distribution of the ballots the Banks must finalize their lists of institutions that are entitled to vote in the election, even though there may be a period of several weeks " during which time other mergers could occur " before the balloting closes. Thus, there always could be some institutions receiving ballots that no longer would be members at the time of the election. In addition, terminating the voting rights of even a single member that has participated in such a transaction will affect the voting rights of every other member that is subject to the cap on the maximum number of votes that it may cast in the election, because the cap—the average stock holdings of all members—will increase or decrease depending on the size of the former member.

At some point, the voting membership and the number of votes per member must be fixed. To select any date other than the record date may result in disparate treatment of similarly situated members, hamper the ability of the Banks to administer the election process, and subject the election to challenge by some members. Given those difficulties, the Finance Board believes that reliance solely on the record date is consistent with general corporate practice and best ensures that all members having voting rights on the record date will be treated equitably in the election for the subsequent year.

One commenter suggested that the Finance Board be made the sole authority to resolve "voting determination disputes," such as vote tabulation, principal residence requirement, and record date stock requirement. Aside from the determination of the number of shares of stock each member is required to maintain as of the record date and the state in which the member may vote, for which Finance Board review is available as noted previously, the Finance Board believes that these matters are best left to the Banks as a part of the devolution of the election process. The Banks may adopt dispute resolution procedures and make elective director eligibility and voting determinations, as they deem appropriate, consistent with the Act and these regulations.

E. Eligibility Requirements for Elective Directors—§ 932.7

The proposed rule, at § 932.7, would have required the Banks to verify that a director nominee meets the statutory and regulatory eligibility requirements before placing the name of the nominee on the ballot. One commenter suggested that the regulation be revised to require the Banks to rely on the director eligibility certification form ("Form E–1") and to refer as well to any successor forms, so that the Banks have clear guidance as to the source of information from which they are required to assess a potential nominee's eligibility. The final rule modifies the proposal to indicate that the Banks are required to determine eligibility based on the forms provided by the directors. It also amends the rule to refer to an executed "director eligibility certification" as prescribed by the Finance Board rather than to refer to the form by its current designation.

F. Conflicts of Interest Policy for Bank Directors—§ 932.11

To prevent conflicts of interest that may affect a Bank director in the performance of his or her official duties, the final rule includes a conflicts of interest provision that would replace the financial disclosure requirements and the prohibitions on service, financial interests, financial relationships, and gifts in the current regulation. *See* 12 CFR 932.18(b)-(d), 932.21(b)-(c)(1998). Like the proposal, the final rule requires each Bank to adopt a written conflicts of interest policy and specifies the minimum contents for the policy. The final rule also requires directors to disclose conflicts of interest to the board of directors and to refrain from voting on matters in which they have a financial interest.

One commenter suggested that § 932.11(a) (requiring the adoption of the policy and specifying its minimum contents) be deleted as being duplicative of the Act and common law duties and lacking any practical enforcement mechanism. The commenter believed that the disclosure and recusal provisions in proposed § 932.11(b) to be sufficient. The Finance Board believes that the Banks, like other business corporations, are well served by having clear corporate policies on matters such as conflict of interests of their directors. The final rule includes only two provisions, § 932.11(a)(1) and (2), that parallel provisions of the Act, but does not otherwise duplicate the Act or common law. The Finance Board believes the inclusion of these provisions is appropriate to remind directors of the obligations imposed by the Act. Indeed, the provision relating to appointive directors was added to the final rule on the basis of comments received on the proposal. The remaining provisions in § 932.11(a) describe what the Finance Board believes to be minimal requirements for an effective conflict of interests policy, which the individual Banks are free to supplement as they believe appropriate.

Some commenters criticized various aspects of § 932.11(b), the disclosure and recusal provisions, which prompted the Finance Board to revise that paragraph in its entirety. The final rule requires full disclosure of any conflicts to the board of directors, applies to the personal financial interests of the director and those of certain family members and business associates, and requires recusal from consideration or voting on matters in which a director has such an interest. The interests of family members and business associates require disclosure only if they are known to the director and arise in connection with any matter to be considered by the board of directors or any matter in which the other party does, or proposes to do, business with the Bank. A director is required to disclose the full nature of his or her interest, and should provide whatever information that he or she has about the matter to the board. The definition of "financial interest" has been revised in the final rule to make clear that it does not include deposits or savings accounts maintained with a member or loans obtained in the ordinary course of business. This exception was added in order that the provision barring appointed directors from having any financial interest in a member not be read as prohibiting ordinary business transactions with the member in which there would be no real risk of conflict or abuse.

One commenter suggested that the disclosure requirements apply only to

financial interests that would materially affect board decisions. The definition of "financial interest" has been modified as noted above, to exclude certain ordinary business transactions.

One commenter suggested that the rule incorporate the conflict of interests provisions applicable to the Federal Reserve Banks. The Finance Board reviewed those provisions, as well as those of other corporate entities, in considering the proposed and final rules, but does not believe it necessary to adopt the same policies that apply to the Reserve Banks. If any Bank wishes to include provisions comparable to those applicable to the Reserve Banks in their own conflict policies they are free to do so.

III. Regulatory Flexibility Act

The final rule implements statutory requirements binding on all Banks, all Bank members, and all prospective and incumbent Bank directors. The Finance Board is not at liberty to make adjustments in those requirements to accommodate small entities. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. In addition, in an effort to reduce the reporting burden on prospective and incumbent Bank directors, the Finance Board has streamlined Form E–1, the Elective Director Eligibility Certification Form, and Form A–1, the Appointive Director Eligibility Certification Form, eliminated Forms E–2 and A–2, and will allow individuals to certify that no changes have occurred since they last submitted required information rather than completing anew the entire form. Thus, in accordance with the provisions of the Regulatory Flexibility Act, the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

As part of the proposed rulemaking, the Finance Board published a request for comments concerning the collection of information contained in proposed rule. *See* 63 FR 26532 (May 13, 1998). The Finance Board received one comment in support of the Finance Board's efforts to reduce the burden of regulatory reporting requirements. The Finance Board submitted an analysis of the information collection to the Office of Management and Budget (OMB) for review in accordance with section 2507 of the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3507. OMB assigned a control number, 3069–0002, and approved the information collection without conditions with an expiration date of June 30, 2001. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See id.* 3512(a). Although the final rule does not modify the approved information collection, the revised collection reduces the reporting and recordkeeping burden imposed on many respondents by streamlining Forms E–1 and A–1 and eliminating Forms E–2 and A–2 and permitting individuals to certify that no changes have occurred since they last submitted required information rather than completing anew the entire form.

The following table discloses the estimated annual reporting and recordkeeping burden:

a. Number of respondents	3442
b. Total annual responses	3442
Percentage of these responses collected electronically	0
c. Total annual hours requested	1,172
d. Current OMB inventory	376
e. Difference	796

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/ startup costs	$180,000.00
b. Total annual costs (O&M)	24,000.00
c. Total annualized cost requested	0
d. Current OMB inventory	0
e. Difference	$204,000.00

Any comments concerning the information collection should be submitted to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F. Street, NW, Washington, DC 20006, and the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503.

List of Subjects

12 CFR Part 900

Organization and functions (Government agencies).

12 CFR Part 922

Conflict of interests.

12 CFR Part 931

Banks, Banking, Federal home loan banks.

12 CFR Part 932

Banks, Banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

12 CFR Part 941

Federal home loan banks, Organization and functions (government agencies).

Accordingly, the Federal Housing Finance Board hereby amends chapter IX, title 12, parts 900, 922, 931, 932, 933, 934, and 941 of the Code of Federal Regulations as follows:

PART 900—[Amended]

1. The authority citation for part 900 continues to read as follows:

Authority: 5 U.S.C. 552;(12 U.S.C. 1422b(a).

§ 900.51 [Amended]

2. Amend § 900.51 by removing "A–2—Appointive Directors—Personal Certification and Disclosure Form" and "E–2—Elective Directors—Personal Certification and Disclosure Form."

PART 922—[Removed]

1. Under the authority in 12 U.S.C. 1422a and 1422b, remove part 922.

PART 931—DEFINITIONS

1. The authority citation for part 931 continues to read as follows:

Authority: 12 U.S.C. 1422a and 1422b.

§§ 931.13 through 931.40 [Removed]

2. Remove §§ 931.13 through 931.40.

§§ 931.11 and 931.12 [Redesignated as §§ 931.5 and 931.6]

3. Redesignate §§ 931.11 and 931.12 as §§ 931.5 and 931.6, respectively.

PART 934—OPERATIONS OF THE BANKS

1. The authority citation for part 934 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431(g), 1432(a), and 1442.

§ 932.3 [Redesignated as § 934.17]

2. Redesignate § 932.3 as § 934.17.

PART 932—DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS

1. Revise the heading of part 932 to read as set forth above.

2. Revise the authority citation for part 932 to read as follows:

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Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432; 42 U.S.C. 8101 *et seq.*

3. Revise the table of contents of part 932 to read as follows:

Subpart A—Definitions

Sec.
932.1 Definitions.
932.2 Dates.

Subpart B—Bank Directors

Sec.
932.3 Director elections.
932.4 Capital stock report.
932.5 Determination of member votes.
932.6 Elective director nominations.
932.7 Eligibility requirements for elective directors.
932.8 Election process.
932.9 Prohibition on actions to influence director elections.
932.10 Selection of appointive directors.
932.11 Conflict of interests policy for Bank directors.
932.12 Reporting requirements for Bank directors
932.13 Ineligible Bank directors.
932.14 Vacant Bank directorships.
932.15 Minimum number of elective directorships.
932.16 Site of board of directors and committee meetings.
932.17 Compensation and expenses of Bank directors.

Subpart C—Selection of Bank Officers and Employees

Sec.
932.18 Selection of Bank officer and employees
932.19 Compensation of Bank officers and employees

4. Designate §§ 932.1 and 932.? as subpart A and add a subpart heading to read as follows:

Subpart A—Definitions

5. Revise § 932.1 to read as follows:

§ 932.1 Definitions.

For purposes of this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Bank or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

Bona fide resident of a Bank district means an individual who:

(1) Maintains a principal residence within the Bank district; or

(2) If serving as an elective director, owns or leases in his or her own name a residence within the Bank district and is an officer or director of a member located in a voting state within the Bank district; or

(3) If serving as an appointive director, owns or leases in his or her own name a residence within the Bank district and is employed within a voting state within the Bank district.

Docket number means the number assigned to each member by the Finance Board and used by the Finance Board and the Banks to identify a particular member.

Finance Board means the agency established as the Federal Housing Finance Board.

Member means an institution admitted to membership and owning capital stock in a Bank.

Record date means December 31 of the calendar year immediately preceding the election year.

Voting state means the District of Columbia, Puerto Rico, or the state of the United States in which a member's principal place of business, as determined in accordance with part 933 of this chapter, is located as of the record date. The voting state of a member with a principal place of business located in the U.S. Virgin Islands as of the record date shall be Puerto Rico, and the voting state of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date shall be Hawaii.

6. Add § 932.2 to subpart A to read as follows:

§ 932.2 Dates.

If any date specified in this part, or specified by a Bank pursuant to this part, falls on a Saturday, Sunday, or federal holiday, the relevant time period shall be deemed to include the next business day.

7. Designate §§ 932.3 through 932.17 as subpart B and add a subpart heading to read as follows:

Subpart B—Bank Directors

8. Add § 932.3 to subpart B to read as follows:

§ 932.3 Director elections.

(a) *Responsibilities of the Banks.* Each Bank annually shall conduct an election the purpose of which is to fill all elective directorships designated by the Finance Board as commencing on January 1 of the calendar year immediately following the year of the election. Subject to the provisions of the Act and in accordance with the requirements of this part, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process. The term of office of each elective directorship shall be two years and shall commence on January 1 of the calendar year immediately following the year in which the election is held. Each Bank shall complete the election in sufficient time to allow newly elected directors to assume their seats on January 1 of the year immediately following the election.

(b) *Designation of elective directorships.* The Finance Board annually shall establish the number of elective directorships for each Bank, which are to be allocated as follows:

(1) One elective directorship shall be allocated to each state within the Bank district;

(2) If the total number of elective directorships allocated pursuant to paragraph (b)(1) of this section is less than eight, the Finance Board shall allocate additional elective directorships among the states, using the method of equal proportions, until the total allocated for the Bank equals eight;

(3) If the number of elective directorships allocated to any state pursuant to paragraphs (b)(1) and (2) of this section is less than the number allocated to that state on December 31, 1960, as specified in § 932.15, the Finance Board shall allocate such additional elective directorships to that state until the total allocated equals the number allocated to the Bank on December 31, 1960;

(4) Pursuant to section 7(e) of the Act, the Federal Home Loan Bank of New York is hereby allocated one additional elective directorship, which is designated as representing the members in the Commonwealth of Puerto Rico;

(5) Pursuant to section 7(a) of the Act, in any Bank district that includes five or more states, the Finance Board, after consultation with the affected Banks, may increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships. In determining the number of appointive directorships, the Finance Board may round to the nearest whole number.

(c) *Notification.* On or before June 1 of each year, the Finance Board shall notify each Bank in writing of the total number of elective directorships established for the Bank and the number of elective directorships designated as representing the members in each voting state in the Bank district. The annual designation of elective directorships shall not cause any incumbent director to surrender his or her directorship prior to the expiration of the full term of office.

(d) In accordance with section 7(c) of the Act, unless otherwise designated by the Finance Board, for purposes of election of directors a member shall be deemed to be located in its voting state.

(e) *Transition.* The term of office of each elective directorship existing on the effective date of this section shall continue to its scheduled expiration date, and the Banks may not thereafter alter the commencement or expiration date for any elective directorship in conducting the annual election of directors.

9. Add § 932.4 to Subpart B to read as follows:

§ 932.4 Capital stock report.

(a) On or before April 10 of each year, each Bank shall submit to the Finance Board, for its use in designating the elective directorships a capital stock report that indicates, as of the record date, the number of members in each voting state in the Bank's district, and the number of shares of capital stock required to be held by each member (identified by docket number), and the aggregate total number of shares of capital stock required to be held by all members in each voting state in the Bank's district. The Bank shall certify to the Finance Board that to the best of its knowledge the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holdings pursuant to § 933.22(b)(1) of this chapter.

(b) A Bank shall determine the number of shares of capital stock each member is required to hold as of the record date in the following manner:

(1) The number of shares of capital stock shall be equal to the greater of the advances-to-capital stock requirement under § 935.15(a) of this chapter, or the minimum capital stock requirement under § 933.20(a) of this chapter.

(2) If a member has elected to purchase its minimum required capital stock in installments under § 933.20(b)(2) of this chapter, the number of shares of capital stock required to be held as of the record date shall be the cumulative total of shares of capital stock actually purchased as of the record date.

10. Add § 932.5 to subpart B to read as follows:

§ 932.5 Determination of member votes.

(a) *Authority.* The Bank shall determine, in accordance with this section, the number of votes each member of the Bank may cast in the election of directors.

(b) *Determination.* The number of votes a member may cast for any elective director nominee shall be the lesser of the number of shares of capital stock the member was required to hold as of the record date, as determined in accordance with § 932.4(b), or the average number of shares of capital stock required to be held by all of the members in its voting state as of the record date.

11. Add § 932.6 to subpart B to read as follows:

§ 932.6 Elective director nominations.

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall provide to each member in its district a written notice of the election that includes:

(1) The number of elective directorships designated as representing the members in each voting state in the Bank district;

(2) The name of each incumbent Bank director, the name and location of the member at which each elective director serves, and the name and location of the organization with which each appointive director is affiliated, if any, and the expiration date of each Bank director's term of office;

(3) An attachment indicating the name, location, and docket number of every member in the member's voting state, and the number of votes each such member may cast in the election, as determined in accordance with § 932.5(b); and (4) A nominating certificate.

(b) *Nominations.* (1) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available elective directorship for its voting state by submitting to its Bank, prior to a deadline to be established by the Bank, a nominating certificate duly adopted by the member's governing body or by an individual authorized to act on behalf of the member's governing body.

(2) The nominating certificate shall include the name of the nominee and the name, location, and docket number of the member at which the nominee serves as an officer or director.

(3) The Bank shall establish a deadline for submitting nominating certificates, which shall be no earlier than 30 calendar days after the date on which the Bank mails the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline. The Bank shall retain all nominating certificates for at least two years after the date of the election.

(c) *Accepting nominations.* A Bank shall notify in writing any person nominated for an elective directorship promptly upon receipt of the nominating certificate. A person may accept the nomination only by submitting an executed director eligibility certification, as prescribed by the Finance Board, to the Bank prior to the deadline established by the Bank. A Bank shall allow each nominee at least 30 calendar days after the date of the notice of nomination within which to submit the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to submit a properly executed director eligibility certification prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

12. Add § 932.7 to subpart B read as follows:

§ 932.7 Eligibility requirements for elective directors.

(a) *Eligibility verification.* Based on the information provided on the director eligibility certification form prescribed by the Finance Board, a Bank shall verify that each nominee meets all of the eligibility requirements for elective directors set forth in the Act and this part before placing that nominee on the ballot prepared by the Bank under § 932.8(a).

(b) *Eligibility requirements.* Each elective director, and each nominee, shall be:

(1) A citizen of the United States;

(2) A bona fide resident of the Bank district; and

(3) An officer or director of a member that is located in the voting state to be represented by the elective directorship, that was a member of the Bank as of the record date, and that meets all minimum capital requirements established by its appropriate federal regulator or appropriate state regulator. For purposes of this paragraph (b)(3), the term *appropriate federal regulator* has the same meaning as the term "appropriate Federal banking agency" in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and, for federally insured credit unions, shall mean the National Credit Union Administration, and the term *appropriate state regulator* means any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member.

(c) *Restrictions.* A nominee is not eligible if he or she:

(1) Is an incumbent elective director, unless:

(i) The incumbent director's term of office would expire before the new term of office would begin; and

(ii) The new term of office would not be barred by the term limit provision of section 7(d) of the Act.

(2) Is a former elective director whose service would be barred by the term limit provision of section 7(d) of the Act.

(3) Is an incumbent appointive director.

13. Revise § 932.8 to read as follows:

§ 932.8 Election process.

(a) *Ballots.* Promptly after verifying the eligibility of all nominees in accordance with § 932.7(a), a Bank shall prepare a ballot for each voting state for which an elective directorship is to be filled and shall mail the ballot to all members within that state that were members as of the record date. A ballot shall include at least the following provisions:

(1) An alphabetical listing of the names of each nominee for the member's voting state, the name, location, and docket number of the member at which each nominee serves, the nominee's title or position with the member, and the number of elective directorships to be filled by members in that voting state in the election;

(2) A statement that write-in candidates are not permitted; and

(3) A confidentiality statement prohibiting the Bank from disclosing how a member voted.

(b) *Lack of nominees.* If, for any voting state, the number of nominees is equal to or less than the number of elective directorships to be filled in the election, the Bank shall notify the members in the affected voting state in writing (in lieu of providing a ballot) that the directorships are to be filled without an election due to a lack of nominees. The Bank shall declare elected any eligible nominee, who shall be included as a director-elect in the report of election required under paragraph (e). If necessary, the board of directors shall fill, any elective directorship that has become vacant due to a lack of a nominee in accordance with § 932.14(a).

(c) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 932.5. A member may not split its votes among multiple nominees for a single directorship, nor, where there are multiple directorships to be filled for a voting state, may it cumulatively vote for a single nominee. Any ballots cast in violation of this subsection shall be void. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each elective directorship to be filled in the member's voting state. Each nominee so selected shall receive all of the votes that the member is entitled to cast.

(2) Execute the ballot by resolution of the member's governing body, or by an appropriate writing signed by an individual authorized to act on behalf of the governing body.

(3) Deliver the executed ballot to the Bank on or before the closing date that has been established by the Bank, which shall be no earlier than 30 calendar days after the date the ballots are mailed in accordance with paragraph (a) of this section. A member may not change a ballot after it has been delivered to the Bank.

(d) *Counting ballots.* A Bank shall not open any ballot until after the closing date, and may not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate, by each voting state, the votes cast in accordance with paragraph (c) of this section, and shall declare elected the nominee receiving the highest number of votes.

(1) If more than one elective directorship is to be filled in a voting state, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all open elective directorships for that voting state are filled.

(2) In the event of a tie for the last available seat, the incumbent board of directors of the Bank shall, by a majority vote, declare elected one of the nominees for whom the number of votes cast was tied.

(3) The Bank shall retain all ballots it receives for at least two years after the date of the election, and shall not disclose how any member voted.

(e) *Report of election.* Promptly following the election, each Bank shall provide written notice to its members, to each nominee, and to the Finance Board of the following:

(1) The name of each director-elect, the name and location of the member at which he or she serves, and his or her title or position at the member;

(2) The voting state represented by each director-elect;

(3) The expiration date of the term of office of each director-elect;

(4) The number of members voting in the election and the total number of votes cast, both reported by state; and

(5) The number of votes cast for each nominee.

14. Revise § 932.9 to read as follows:

§ 932.9 Prohibition on actions to influence director elections.

(a) *Prohibition.* Except as provided in paragraph (b) of this section:

(1) No director, officer, attorney, employee, or agent of the Finance Board or of a Bank may:

(i) Communicate in any manner that a director, officer, attorney, employee, or agent of the Finance Board or of a Bank, directly or indirectly, supports the nomination or election of a particular individual for an elective directorship; or

(ii) Take any other action to influence votes for a directorship.

(2) No member may take any action prohibited by paragraph (a)(1)(i) of this section.

(b) *Exception for incumbent Bank directors.* A Bank director acting in his or her personal capacity may support the nomination or election of any individual for an elective directorship, provided that no Bank director shall purport to represent the views of the Bank, the Finance Board, any other director, or any officer, attorney, employee, or agent of the Bank or of the Finance Board concerning the nomination or election of a particular individual for an elective directorship.

15. Revise § 932.10 to read as follows:

§ 932.10 Selection of appointive directors.

(a) *Selection.* In accordance with the Act, the Finance Board, in its sole discretion, shall select all appointive directors.

(b) *Term of office.* The term of office of each appointive directorship shall commence on January 1.

16. Revise § 932.11 to read as follows:

§ 932.11 Conflict of interests policy for Bank directors.

(a) *Adoption of conflict of interests policy.* Each Bank shall adopt a written conflict of interests policy that shall apply to all Bank directors. At a minimum, the conflict of interests policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower;

(2) Prohibit appointed directors from serving as an officer of any Bank or as an officer or director of any member, and from owning any equity or debt security issued by a member or from having any other financial interest in a member;

(3) Prohibit the use of a director's official position for personal gain;

(4) Require directors to disclose actual or apparent conflict of interests and establish procedures for addressing such conflicts;

(5) Provide internal controls to ensure that reports are filed and that conflicts are disclosed and resolved in accordance with this section; and

(6) Establish procedures to monitor compliance with the conflict of interests policy.

(b) *Disclosure and recusal.* A director shall disclose to the board of directors any personal financial interests he or she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the board of directors and in any other matter in which another person or entity does, or proposes to do, business with the Bank. A director shall fully disclose the nature of his or her interest in the matter and shall provide to the board of directors any information requested to aid in its consideration of the director's interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has a financial interest.

(c) *Confidential Information.* Directors shall not disclose or use confidential information received by them solely by reason of their position with the Bank to obtain a financial interest for themselves or for any other person.

(d) *Gifts.* Directors shall not accept, and shall discourage their immediate family members from accepting, any substantial gift where the director has reason to believe that the gift is given in order to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift gives the appearance of influencing the director's actions as a member of the board.

(e) *Compensation.* Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

(f) *Definitions.* For purposes of this section:

(1) *Immediate family member* means parent, sibling, spouse, child, or dependent, or any other relative sharing the same residence as the director.

(2) *Financial interest* means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account maintained with a member, nor does it include a loan or extension of credit obtained from a member in the normal course of business on terms that are generally available to the public.

(3) *Business associate* means any individual or entity with whom a director has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the director is an officer or partner, or in which the director beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which a director has a substantial beneficial interest or as to which the director serves as trustee or in a similar fiduciary capacity.

(4) *Substantial Gifts* includes:

(i) Gifts of more than token value;

(ii) Entertainment or hospitality, the cost of which is in excess of what is considered reasonable, customary, and accepted business practices; or

(iii) Any other items or services for which a director pays less than market value.

17. Revise § 932.12 to read as follows:

§ 932.12 Reporting requirements for Bank directors.

(a) *Annual reporting.* On or before March 1 of each year, each director shall submit to his or her Bank the appropriate executed director eligibility certification, as prescribed by the Finance Board. (The forms are available pursuant to 12 CFR 900.51). The Bank shall promptly forward to the Finance Board a copy of the certification filed by each appointive director.

(b) *Report of noncompliance.* If an elective or appointive director knows or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Act or this part, the director shall so inform the Bank in writing within 30 calendar days of first learning of the facts causing the loss of eligibility. An appointive director also shall inform the Finance Board in writing at the same time that he or she informs the Bank.

18. Revise § 932.13 to read as follows:

§ 932.13 Ineligible Bank directors.

(a) *Elective directors.* Upon a determination by the Finance Board or a Bank that an elective director no longer satisfies the eligibility requirements set forth in the Act or this part, or has failed to comply with the reporting requirements of § 932.12, the elective directorship shall immediately become vacant. Any elective director that is determined to have failed to comply with the eligibility or reporting requirements shall not continue to act as a Bank director.

(b) *Appointive directors.* Except as provided herein, upon a determination by the Finance Board that an appointive director no longer satisfies the eligibility requirements set forth in the Act, or has failed to comply with the reporting requirements of § 932.12, the appointive directorship shall immediately become vacant. Notwithstanding the vacancy, an appointive director may continue to serve until a successor assumes the directorship or the term of office expires, whichever occurs first, and the Finance Board, in its sole discretion, may allow an appointive director up to 90 calendar days to comply with the eligibility or reporting requirements.

19. Revise § 932.14 to read as follows:

§ 932.14 Vacant Bank directorships.

(a) *Vacant elective directorships.* (1) As soon as practicable after a vacancy occurs, a Bank shall fill the unexpired term of office of a vacant elective directorship by a majority vote of the remaining Bank directors regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(2) An individual so selected to fill a vacant elective directorship shall satisfy all of the eligibility requirements for elective directors set forth in the Act and this part, and shall provide to the Bank an executed director eligibility certification. The Bank shall verify the individual's eligibility in accordance with § 932.7(a) before allowing the individual to assume the directorship, and shall retain the information it receives in accordance with § 932.6(c).

(3) Promptly after verifying the individual's eligibility under paragraph (a)(2) of this section, a Bank shall notify the Finance Board and each member located in the Bank's district in writing of the following:

(i) The name of the new elective director, the name, location and docket number of the member at which the new director serves, and the new director's title or position with the member;

(ii) The voting state that the new elective director represents; and

(iii) The expiration date of the new elective director's term of office.

(b) *Vacant appointive directorships.* (1) As soon as practicable after a vacancy occurs, the Finance Board shall fill the unexpired term of office of a vacant appointive directorship.

(2) Promptly after filling a vacant appointive directorship, the Finance Board shall notify the affected Bank in writing of the following:

(i) The name of the new appointive director, the name and location of the organization with which the new director is affiliated, if any, and the new

director's title or position with such organization; and

(ii) The expiration date of the new appointive director's term of office.

(3) Promptly after receiving the notice required by paragraph (b)(2) of this section, a Bank shall provide each of its members with the information described in paragraphs (b)(2)(i) and (ii) of this section.

§§ 932.15 through 932.19 [Removed]

20. Remove §§ 932.15 through 932.19.

§§ 932.20 [Redesignated as § 932.15]

21. Redesignate § 932.20 as § 932.15 and revise the second sentence and table to read as follows:

§ 932.15 Minimum number of elective directorships

* * * The following list sets forth the states whose members held more than one (1) seat on December 31, 1960:

State	No. of elective directorships on December 31, 1960
California	3
Colorado	2
Illinois	4
Indiana	5
Iowa	2
Kansas	3
Kentucky	2
Louisiana	2
Massachusetts	3
Michigan	3
Minnesota	2
Missouri	2
New Jersey	4
New York	4
Ohio	4
Oklahoma	2
Pennsylvania	5
Tennessee	2
Texas	3
Wisconsin	4

§§ 932.21 through 932.25 [Removed]

22. Remove §§ 932.21 through 932.23.

§ 932.26 [Redesignated as § 932.16]

23. Redesignate § 932.26 as § 932.16 of subpart B.

§ 932.27 [Redesignated as § 932.17]

24. Redesignate § 932.27 as § 932.17 of subpart B.

§§ 932.28 through 932.39 [Removed]

25. Remove §§ 932.28 through and 932.39.

26. Designate §§ 932.18 and 932.19 as subpart C and add a subpart heading to read as follows:

Subpart C—Selection of Bank Officers and Employees

§ 932.40 [Redesignated as § 932.18]

27. Redesignate § 932.40 as § 932.18 of subpart C, remove paragraph (d), and revise the section heading and paragraph (a) introductory text to read as follows:

§ 932.18 Selection of Bank officers and employees.

(a) *Bank presidents.* The board of directors of each Bank may appoint a president, who shall be the chief executive officer of the Bank, subject to the following limitations:

* * * * *

§ 932.41 [Redesignated as § 932.19]

28. Redesignate § 932.41 as § 932.19 of subpart C and revise the section heading to read as follows:

§ 932.19 Compensation of Bank officers and employees.

* * * * *

§§ 932.42 through 932.62 [Removed]

29. Remove §§ 932.42 through 932.62.

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Part 933 is amended by removing "§ 932.3" wherever it appears and adding "§ 934.17" in its place in the following locations:
a. 933.24(b)(3)
b. 933.25(e)
c. 933.26(d)
d. 933.27(f)
e. 933.28(c)

§ 933.18 [Amended]

3. Amend § 933.18 by adding a sentence to paragraph (a)(1) and revising paragraph (e) as follows:

§ 933.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) * * * A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform the Finance Board in writing of any such relocation.

* * * * *

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Act or §§ 933.26, 933.27, and 933.28, nor the restriction on reacquiring Bank membership within 10 years set forth in § 933.30.

* * * * *

4. Amend § 933.20 by revising paragraph (e) to read as follows:

§ 933.20 Stock purchase.

* * * * *

(e) *Reports.* The Bank shall make quarterly reports to the Board setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section.

5. Amend § 933.22 by adding three sentences to paragraph (b)(1) as follows:

§ 933.22 Adjustments in stock holdings.

* * * * *

(b)(1) *Annual Adjustment.* * * * The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the state within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock requirement or with the identification of its voting state may request the Finance Board to review the Bank's determination. The Finance Board shall promptly determine the member's minimum required holdings and its proper voting state, which determination shall be final.

* * * * *

§ 933.24 [Amended]

6. Amend § 933.24 by removing paragraph (b)(4).

§ 933.25 [Amended]

7. Amend § 933.25 by removing paragraph (f).

§ 933.26 [Amended]

8. Amend § 933.26 by removing paragraph (e).

§ 933.27 [Amended]

9. Amend § 933.27 by removing paragraph (g).

§ 933.28 [Amended]

10. Amend § 933.28 by removing paragraph (d).

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

1. The authority citation for part 941 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

2. Amend § 941.7 by revising paragraph (f)(2) to read as follows:

§ 941.7 Office of Finance Board of Directors.

* * * * *

(f) * * *

(2) *Private Citizen member.* The Office of Finance shall pay compensation and expenses to the Private Citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank directors set forth in § 932.17 of this chapter, except that, for these purposes:

(i) The Office of Finance policy on director compensation must be approved by the board of directors of the Finance Board;

(ii) Section 932.17(a)(3) and (c)(1)(ii) of this chapter shall not apply; and

(iii) The terms "average compensation per director" and "ACPD," as used in § 932.17 of this chapter, shall be deemed to mean "maximum compensation of the Private Citizen member".

Dated: October 28, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–31786 Filed 11–27–98; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 938 and 943

[No. 98–49]

RIN 3069–AA61

Federal Home Loan Bank Standby Letters of Credit

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board is codifying its existing policy on Federal Home Loan Bank (FHLBank) standby letters of credit (LOCs) in a regulation and amending the policy to allow for broader use of standby LOCs by FHLBank members and eligible nonmember mortgagees. This final rule also eliminates or modifies some of the restrictions currently imposed on standby LOCs issued or confirmed by FHLBanks that limit the usefulness of these products to members and eligible nonmember mortgagees.

DATES: This final rule is effective on December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Diane E. Dorius, Associate Director, Program Development, Office of Policy, (202) 408–2576; or Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408–2932, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1998, the Federal Housing Finance Board (Finance Board) published, and requested public comments on, a proposed rule to add to its regulations a new part 938, governing the issuance and confirmation of standby LOCs by FHLBanks. *See* 63 FR 25726 (May 8, 1998). The rulemaking proposed to amend the Finance Board's existing policy on FHLBank standby LOCs to provide the FHLBanks with greater flexibility to respond to member needs for these products in a manner that would be consistent with the FHLBank System's housing and community investment mission, and to codify the amended policy into regulatory form.

The ninety day public comment period closed on August 6, 1998. The Finance Board received a total of 24 comments: eleven from FHLBanks, two from FHLBank Advisory Councils, eight from trade associations, and one each from an executive agency of the U.S. Government, a FHLBank member, and a private law firm. The FHLBanks that commented generally supported the proposed rule. The executive agency, FHLBank member and several trade associations opposed the rule.

The proposed rule established uniform standards for the issuance of standby LOCs that addressed eligible purposes, collateral requirements, nonmember use of LOCs, maturity limits, FHLBank capital stock, and other policy requirements. The purpose of the proposal, and of the final rule, is to provide the FHLBanks with greater flexibility and discretion, consistent with safe and sound operation, than exist under the Finance Board's current Interim Policy Guidelines for FHLBank Standby LOCs (Interim Guidelines).

Specifically, the Finance Board proposed that the enumeration of specific permissible uses for FHLBank LOCs that is set forth in the Interim Guidelines be replaced with a provision authorizing the FHLBanks to issue or confirm standby LOCs for any of four general purposes: to assist members in facilitating residential housing finance; to assist members in facilitating community lending (so-called in the final rule, this was referred to as "targeted economic development" in the proposed rule); to assist members with asset/liability management; and to assist members with liquidity and other funding.

The proposed rule permitted FHLBanks to issue and confirm standby LOCs on behalf of nonmember borrowers for the same purposes as members if such LOCs were secured by Federal Housing Administration (FHA) insured loans or Government National Mortgage Association (GNMA) securities backed by FHA loans. Under the proposed rule, FHLBanks could issue or conform standby LOCs on behalf of nonmember borrowers that are state housing finance agencies (SHFAs) for residential or economic development lending that benefits individuals or families meeting the income requirements in sections 142(d) or 143(f) of the Internal Revenue Code, 12 U.S.C. 142(d), 143(f), if these LOCs were secured by collateral with which an SHFA may secure advances under section 10B(b) of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1430b(b).

Under the proposed rule, all LOCs were required to be fully collateralized at the time of issuance by collateral eligible to secure advances to members (or, as appropriate, nonmember mortgagees) and, in the case of standby LOCs issued or confirmed on behalf of members for housing or community lending purposes, also by certain other high-quality collateral. Unlike the existing Interim Guidelines, the proposed rule neither required nor permitted outstanding LOCs to be taken into account in the computation of a member's advances-to-FHLBank capital stock ratio.

Finally, the proposed rule required that: LOCs have a specific expiration date or be for a definite term; LOC renewals be conditioned upon the member/applicant meeting the FHLBank's credit criteria at the time of renewal; and the FHLBank issuing an LOC would approve any transfer of the LOC.

The final standby LOC regulation remains unchanged on most substantive points from the rule as proposed, although the Finance Board has made several amendments for purposes of clarity and in order to make the regulation conform to the final Community Investment Cash Advances (CICA) regulation, (published in the November 27, 1998 edition of the **Federal Register**), to which the community lending provisions of the rule are tied. These changes are described in detail below. Also provided below are clarifications of certain issues that were raised in the comment letters.

II. Statutory Basis for FHLBank Standby Letter of Credit Authority

Nine commenters explicitly addressed the statutory authority of FHLBanks to issue and confirm LOCs pursuant to the terms set forth in the proposed rule.

Three of these (two FHLBanks and one trade association) expressly supported the view that, under the Bank Act, 12 U.S.C. 1421–49, FHLBanks have such statutory authority. Six commenters (one FHLBank member, the executive agency and four trade associations) questioned the statutory bases underlying the proposed rule. Two of the trade associations, in letters that were nearly identical, queried whether the FHLBanks have statutory authority to issue standby LOCs under any circumstances. The Finance Board has reviewed the legal reasoning underlying the provisions of the proposed rule and has concluded that there is ample authority under the Bank Act to permit the FHLBanks to issue and confirm standby LOCs under the terms of the final rule.

A. Legal Determinations of the FHLBB Regarding FHLBank LOCs

Although the Bank Act does not expressly address LOCs, the FHLBanks have been explicitly permitted to engage in standby LOC transactions since 1983, when the predecessor agency to the Finance Board, the former Federal Home Loan Bank Board (FHLBB), first adopted Policy Guidelines for Issuance of FHLBank Standby Letters of Credit (FHLBB Policy). Underlying the adoption of the FHLBB Policy was an opinion rendered by the FHLBB General Counsel that, because a FHLBank standby LOC is the functional equivalent of a loan between the FHLBank and its member, FHLBanks have authority to issue standby LOCs as part of their power to make advances under section 10 of the Bank Act, 12 U.S.C. 1430, provided that the member has the unconditional obligation to reimburse the FHLBank for any payment made thereunder. As an alternative, the FHLBB further concluded that the issuance by a FHLBank of a standby LOC on behalf of a member and payment by the FHLBank of a draft presented by the beneficiary thereunder is incidental to a FHLBank's payment instrument processing authority under section 11(e)(2) of the Bank Act, 12 U.S.C. 1431(e)(2), so long as the disbursement process under the LOC is directly linked to the member's FHLBank demand deposit account. However, having relied on the section 10 advances authority as its primary rationale, the FHLBB imposed upon each FHLBank standby LOC at the time of issuance all statutory requirements that applied to outstanding advances, including requirements as to capital stock ratio and purchase, purpose and collateral. (The Finance Board later permitted FHLBanks to issue standby LOCs on behalf of eligible nonmember mortgagees pursuant to the FHLBanks' section 10b advances authority. *See* 12 U.S.C. 1430b.)

After numerous requests over a period of years from several FHLBanks, the Finance Board undertook a comprehensive legal and policy review of the Interim Guidelines in order to determine whether any of these advances-related restrictions could be eliminated, so as to make FHLBank LOCs more useful to their members and eligible nonmember mortgagees. As a result of its legal review, the Finance Board's Office of General Counsel (OGC) determined that, while the legal authority for issuing LOCs articulated in the original FHLBB legal analysis remains valid, it is not necessary to view a LOC as an outstanding advance at the time the LOC is issued, nor is it necessary as a matter of law to subject LOCs to all of the statutory restrictions and limitations that apply to outstanding advances. OGC concluded that the authority to engage in standby LOC transactions also arises from the FHLBanks' authority to accept deposits and process payments under section 11(e) of the Bank Act, 12 U.S.C. 1431(e), and from their incidental authority to enter into commitments to make advances under sections 9, 10(a), and 11(a) of the Bank Act. *Id.* 1429, 1430(a), 1431(a).

B. FHLBank Deposit Taking and Payment Processing Authorities

Section 11(e)(1) of the Bank Act authorizes each FHLBank to accept deposits from members, upon such terms and conditions as the Finance Board shall prescribe. *Id.* 1431(e)(1). In addition, section 11(e)(2)(A) authorizes the Finance Board to permit FHLBanks, among other things, to be drawees of drafts drawn on members of any FHLBank and to have such incidental powers as the Finance Board shall find necessary for the exercise of such powers. *Id.* 1431(e)(2)(A).

A FHLBank that has issued a standby LOC on behalf of a member would be the drawee of—that is, the financial institution directed to make payment upon—any draft presented to it thereunder. Although the funds paid by a FHLBank to a beneficiary pursuant to a LOC draft technically are considered to be paid from the FHLBank's own funds, a LOC draft may be regarded as being drawn on the member's deposit account at the FHLBank where: (1) The FHLBank maintains an absolute right, either by contract or operation of law, to offset the member's FHLBank deposit account in the amount of the LOC draft; and (2) the member assumes an absolute obligation to the FHLBank to have available in its account sufficient funds to cover the amount of the LOC draft at the time of the FHLBank's payment thereon. Because a primary purpose of a standby LOC is to transfer the risk of default by the applicant from the beneficiary to the issuer, it is consistent with the reality of a standby LOC transaction to consider payment on a LOC draft to result in a draw on a member/applicant's deposit account. These requirements have been imposed upon FHLBank LOC transactions since they were first permitted in 1983 and, in commercial practice, are common to standby LOC transactions generally.

The plain language of section 11(e)(2) makes clear that the Finance Board's powers to authorize FHLBank activity thereunder is to be interpreted broadly, empowering the Finance Board both to implement definitions of terms used therein and to permit the FHLBanks to engage in such incidental activities as the Finance Board finds necessary for the exercise of any authorities thereunder. *See id.* 1431(e)(2)(A). The legislative history of section 11(e)(2) also stresses the broad range of activities that may be authorized thereunder, explaining that "it is important that the [FHL]Banks have the ability to service the broad and evolving financial service needs of members." H.R. Rep. No. 842, 96th Cong., 2nd Sess. 74 (1980). Given this expansive language, and considering that section 11(e)(2) contains no limitation as to the subject matter of the transaction of which the draft is a part, section 11(e)(2) permits the Finance Board to authorize FHLBanks to act as drawee on drafts drawn on a member's FHLBank deposit account as part of a standby LOC transaction.

Regardless of the purpose for which a standby LOC is issued, the sole substantive undertaking by the issuer is to honor any conforming draft that is presented by the beneficiary. All other apparent aspects of a standby LOC transaction are merely by-products of this central obligation. For example, while one might characterize the issuance of a standby LOC as a guarantee of the applicant's obligation, or as a lending of credit to the applicant, such characterizations are merely means of describing the effect of the issuer's agreement to honor a conforming draft presented by the beneficiary. In that, under section 11(e)(2) of the Bank Act, the Finance Board may authorize FHLBanks to execute this central obligation by making payment on a conforming draft presented by the beneficiary, the power to agree to undertake such an obligation (by

contracting therefore with the member) and the power to undertake the obligation (by issuing the standby LOC) are well within the FHLBanks' incidental authority to engage in activities necessary to facilitate the exercise of the FHLBanks' authority to make payment on the LOC draft. Accordingly, under both the express terms and the incidental powers clause of section 11(e)(2) of the Bank Act, the Finance Board is authorized to permit FHLBanks to contract with members to issue standby LOCs, to issue standby LOCs, and to honor conforming drafts presented by a beneficiary pursuant to a standby LOC issued by a FHLBank.

C. FHLBanks' Incidental Power To Enter Commitments To Make Advances

While the Finance Board has concluded that section 11(e) provides sufficient independent authority to permit a FHLBank to engage in a standby LOC transaction, it has not rejected the FHLBB's position that such activity is also authorized as part of the FHLBanks' statutory advances powers. However, the Finance Board has concluded that, in applying the statutory advances provisions to a standby LOC transaction, a standby LOC is characterized more logically as a form of advance commitment than as an outstanding advance. Section 9 of the Bank Act authorizes any FHLBank member to apply in writing for advances. *See* 12 U.S.C. 1429. In turn, section 10(a) authorizes each FHLBank to extend to members advances that are fully secured at the time of origination or renewal by a security interest in one or more of the types of eligible collateral that are listed in that section. *See id.* 1430(a). In addition to these express powers, section 11(a) of the Bank Act authorizes the FHLBanks to do all things necessary for carrying out the provisions of the Bank Act and "all things incident thereto." *See id.* 1431(a).

D. Legal Authority for Nonmember LOCs

Because the power to enter into a contractual commitment to extend an advance is convenient and useful in connection with the FHLBanks' express authority to make advances and to accept applications for advances, such power is incidental to both of these express authorities. A standby LOC is a form of advance commitment in that both may: (1) Involve the FHLBank entering into an obligation, intended to benefit its member, to disburse funds at some future date; (2) require reimbursement by the member in the event that the commitment to fund is exercised; and (3) result in an advance. The proposed regulation further tied standby LOC authority to the FHLBanks' power to enter into advance commitments by authorizing the FHLBanks to issue standby LOCs only when: (1) the member has assumed an unconditional obligation to reimburse the FHLBank for any amounts paid to the beneficiary pursuant to a LOC draft; and (2) prior to agreeing to issue a standby LOC, the FHLBank performs the same type of credit analysis of the member that would occur before entering into a traditional commitment. Accordingly, the FHLBanks' incidental power to enter into commitments to make advances provides an alternative source of authority for the FHLBanks to engage in standby LOC transactions.

Because the FHLBanks' express deposit taking and payment processing authorities set forth in section 11(e) of the Bank Act apply only to dealings with members and those eligible to make application to become members, the power of the FHLBanks to issue standby LOCs on behalf of nonmember mortgagees arises only from the FHLBanks' authority, detailed in section 10b of the Bank Act, 12 U.S.C. 1430b, to make and to commit to make advances to nonmember mortgagees. Because the Finance Board cannot authorize the FHLBanks, as part of this payment processing power, to be a drawee on a draft drawn on the deposit account of a nonmember, the provisions of the proposed rule authorizing FHLBanks to issue standby LOCs on behalf of nonmembers is grounded entirely in the FHLBanks' powers to make advances to nonmember mortgagees and to enter into commitments to make such advances.

III. Comments on Proposed Rule and Analysis of Changes Made in Final Rule

A. Definitions

Section 938.1 of both the proposed and final rules set forth the definitions of terms used in part 938. One of the purposes for which FHLBank members, and certain nonmembers, may issue standby LOCs under both the proposed and final rules is to assist members in facilitating the financing of community lending eligible for any of the FHLBanks' CICA programs under part 970 of the Finance Board's regulations. Because, at the time that the proposed LOC rule was published, the CICA regulation had not been codified as a final rule, the Finance Board included definitions of all CICA-related terms explicitly in the proposed LOC rule for purposes of clarity. However, because the Finance Board has now promulgated a final CICA rule, the Finance Board has removed most of the CICA-related definitions from the final LOC rule and has merely cross-referenced the CICA regulation, where appropriate.

The one remaining CICA-related term that is set forth in § 938.1 is "community lending," which is intended to refer to non-housing activities addressed in the CICA regulation. In the proposed LOC rule, these activities were referred to as "economic development projects that would benefit families with incomes at or below a targeted income level" (the individual terms in this phrase were each defined separately in the proposed rule). This terminology has been changed in the final LOC rule so that it remains consistent with that used in the CICA regulation. Aside from the elimination of the CICA-related definitions and the substitution of the term "community lending," § 938.1 remains unchanged in the final rule.

B. Purposes for Which a FHLBank May Issue or Confirm a Standby LOC

Sections 938.2 and 938.3 of the proposed and final rules govern FHLBank issuance and confirmation of standby LOCs on behalf of members and eligible nonmembers, respectively. Sections 938.2(a) (1)–(4) set forth the four general purposes for which a FHLBank may issue or confirm a standby LOC on behalf of a member, while §§ 938.3(a) (1)–(4) enumerate the same four general purposes with respect to standby LOCs issued or confirmed on behalf of eligible nonmember mortgagees that are not SHFAs. In the final rule, both § 938.2(a)(2) and § 938.3(a)(2) have been amended to refer to community lending that is eligible for any of the FHLBanks' CICA programs under part 970 of the regulations, as opposed to "economic development projects that benefit families with incomes at or below a targeted income level." This was done in order to make clear the connection between the LOC and CICA regulations, to eliminate the need to address in the LOC regulation terms of art that are defined in detail in the CICA regulation and, as explained above, to conform to the terminology used in the final CICA rule.

Although this amended wording was not intended to result in a substantive change, changes made to the community lending (*i.e.*, non-housing) provisions of the CICA regulation in the final CICA rule have resulted in a slightly altered scope for both §§ 938.2(a)(2) and 938.3(a)(2) in the final standby LOC rule. These changes, as well as comments received regarding the scope of what is now termed "community lending," are addressed in detail in the preamble to the final CICA rule.

Four commenters (the executive agency and three trade associations) criticized the enumerated purposes for which FHLBanks would be permitted to issue or confirm standby LOCs. All four commenters expressed concern that the breadth of the proposed purposes would allow the FHLBanks to finance, with government subsidized funds, a wide array of economic activities and other transactions that may have little or no relation to the FHLBank System's mission. All four also stated that the Finance Board had failed to show that expanding the FHLBanks' authority to issue LOCs is necessary to overcome a market failure and that the regulation appeared to allow the FHLBanks to intrude into private markets for credit enhancements by unfairly taking advantage of their funding subsidy to supplant, rather than supplement, the role of private sector financial services providers. Two of the trade associations and the executive agency also stated that FHLBank LOCs will serve merely as a substitute for advances.

There exists no statutory provision that limits the FHLBanks to providing to their members and eligible nonmembers only those products or services for which there has been a failure of the market. Moreover, the FHLBanks have been issuing LOCs on behalf of members since 1983, and on behalf of nonmember mortgagees since 1993, and such issuance has not resulted in a diversion of attention or funds from the FHLBanks' advances programs. Although a FHLBank LOC technically could be structured so as to serve as a substitute for an advance, there are many instances where it is more logical to provide a LOC to support a particular transaction than an advance. For example, a LOC may be issued to support the issuance of bonds, to guarantee a member's performance in a swap transaction, or to secure public unit deposits. The use of an advance to support any of these transactions would be both cumbersome and not in keeping with modern business practices. The Finance Board's decision to permit FHLBanks to issue or confirm LOCs for such purposes, and for asset/liability management and liquidity purposes generally, is in keeping with Congress's expressed desire to allow the FHLBanks to service the broad and evolving financial service needs of their members. *See* H.R. Rep. No. 842, 96th Cong., 2nd Sess. 74 (1980); 108 Cong. Rec. H4994 (daily ed. Aug. 3, 1989) (statement of Rep. Garcia).

The only truly new use that has been authorized for FHLBank LOCs under the proposed and final rules is for CICA-defined community lending activities, which clearly is consistent with the System's housing and community lending mission, and is expressly mentioned in the Bank Act as an authorized use of advances. *See* 12 U.S.C. 1430(j)(10). Even this authorization is not a wholesale departure from past practice, as the FHLBanks have been permitted since 1993 to issue LOCs to support targeted economic development activities under their Community Investment Programs. In addition, by permitting only mission-related LOCs to be secured by collateral that would not be eligible to secure advances (discussed more thoroughly below), the Finance Board is encouraging the FHLBanks to concentrate on providing LOCs to support mission-related activities.

C. Collateral for Standby LOCs

1. Full Collateralization

Sections 938.2(b) and 938.3(b) of the proposed rule, addressing collateralization of member and nonmember LOCs, respectively, required that all LOCs be fully collateralized at the time of issuance. The Finance Board specifically requested comment on: (1) Whether there are any circumstances under which the FHLBanks could safely and soundly issue LOCs that are not fully collateralized; and (2) whether there are other assets, in addition to those enumerated in the proposed rule, that should be considered as eligible collateral for LOCs and whether the Finance Board should establish limits on these additional types of collateral. Three FHLBanks supported continuing to require full collateralization of LOCs and stated that they were unaware of any circumstance where less than full collateralization would be appropriate or prudent. These FHLBanks also stated that they believed the expanded types of collateral provided sufficient flexibility to members and that maintenance of the AAA rating of each FHLBank and the FHLBank System as a whole far outweighed any possible perceived benefit to permitting issuance of less than fully secured LOCs.

Three FHLBanks supported giving the FHLBanks the authority to issue LOCs that are not fully collateralized. One FHLBank stated that commercial banks issue unsecured LOCs based on their credit underwriting and their assessment of the business relationship with the applicant and that FHLBanks similarly should be permitted to use their business judgment in determining the assets it will accept as collateral. Another FHLBank recommended that the FHLBanks be permitted to take into account the probability of actual loss on a LOC in determining the level of collateralization necessary.

Sections 938.2(b) and 938.3(b) of the final rule continue to require that LOCs issued or confirmed on behalf of members or nonmembers, respectively, be fully collateralized at the time of issuance or confirmation. Requiring that LOCs be fully collateralized at the time of issuance provides protection from credit risk and ensures that a FHLBank is not involved in underwriting the transaction that is supported by the LOC.

2. Collateral Eligible To Secure FHLBank Standby LOCs for Members

Section 938.2(c) of the proposed rule authorized a FHLBank, at its discretion, to accept from members as collateral for LOCs for housing and community lending purposes, in addition to the section 10(a) collateral required for advances: secured or federally guaranteed loans to small businesses; investment-grade obligations of state or local government agencies; and "other real estate-related" collateral in excess of the "30 percent of capital" limitation applicable to such collateral used for advances, *see* 12 CFR 935.9(a)(4). Sections 938.2(c)(1) and (2) have been amended in the final rule to make clear that standby LOCs that are confirmed on behalf of a member, as well as those that are issued on behalf of a member, must be secured by assets that fall within the enumerated categories of eligible collateral. The words "or confirmed" had been omitted inadvertently from both sections in the proposed rule.

In addition, the last sentence of paragraph (c)(1) has been amended to eliminate reference to "outstanding advances," so as not to imply that an FHLBank standby LOC is, or must otherwise be treated as, an outstanding advance. The first sentence of § 938.2(c)(1) permits the FHLBanks to accept as collateral for standby LOCs any collateral that is eligible to secure advances under § 935.9(a) of the regulations. Under § 935.9(a)(4) of the regulations, and as required by section 10(a)(4) of the Bank Act, 12 U.S.C. 1430(a)(4), a FHLBank may not accept as collateral for advances so-called "other real estate related collateral" in an amount exceeding 30 percent of the borrowing member's capital. *See* 12 U.S.C. 1430(a)(4), 12 CFR 935.9(a)(4). As discussed above, the Finance Board has concluded that statutory requirements pertaining to FHLBank advances need not be applied to LOCs at the time of issuance. Therefore, as a legal matter, the Finance Board may permit the FHLBanks to accept "other real estate

related collateral" as security for standby LOCs without regard to the statutory "30 percent of capital" limitation that applies to advances, to the extent that the acceptance of such collateral is consistent with the safe and sound operation of the FHLBanks.

However, as a matter of regulatory policy, the Finance Board is permitting FHLBanks to accept "other real estate-related collateral" in excess of the "30 percent of capital" limitation only where the LOC being secured is issued or confirmed for one of the mission-related purposes enumerated in §§ 938.2(a)(1) and (2). This policy is expressed in negative terms in the second sentence of § 938.2(c)(1), which qualifies the presumption that LOCs must be secured by collateral that is eligible to secure advances by stating that only those LOCs that are issued or confirmed for the non-mission-related purposes enumerated in §§ 938.2(a)(3) and (4) are subject to the "30 percent of capital limitation." In other words, § 938.2(c)(1) requires that the combined amount of advances and outstanding standby LOCs issued or confirmed for purposes enumerated in §§ 938.2(a)(3) and (4) that are secured by "other real estate-related collateral" may not exceed 30 percent of a member's capital. The intent behind the second sentence of § 938.2(c)(1) is to permit FHLBanks to accept without limitation as security for mission-related standby LOCs—that is, those issued or confirmed to assist members in facilitating residential housing finance or community lending—"other real estate related collateral" referred to in § 935.9(a)(4) of the regulations.

Seven commenters (five FHLBanks and two trade associations) supported the expanded types of eligible collateral identified in the proposed rule. One commenter noted in particular that residential acquisition, development and construction loans that otherwise would be subject to the "30 percent of capital" limitation applied to "other real estate related collateral" have proven to be profitable and performed quite well. In addition, requiring the FHLBanks to establish policies and procedures for valuing and securing this collateral could allay any safety and soundness concerns. Five commenters (four FHLBanks and one advisory council) supported leaving the eligible collateral to the discretion of the FHLBank. Three commenters (the executive agency and two trade associations) opposed expanding the categories of eligible collateral for LOCs.

In the final rule, the Finance Board has retained the collateral requirements that were included in the proposed rule. Because the Bank Act does not specify the types of collateral that may be used to secure LOCs, the Finance Board has the discretion to specify the eligible types of collateral, consistent with the safe and sound operation of the FHLBanks, and even to authorize the FHLBanks themselves to determine the appropriate types of collateral. The proposed rule identified additional types of collateral that may be used only to finance activities that are clearly linked to the FHLBanks' mission of supporting housing and community lending. Accordingly, the Finance Board's determination to allow FHLBanks to accept such collateral is clearly tied to a beneficial public policy goal. In addition, the expanded types of collateral (secured or federally guaranteed loans to small businesses, investment-grade obligations of state or local government agencies and "other real estate-related" collateral in excess of the 30 percent of capital limitation) build upon the experience the FHLBanks currently have in valuing and securing such collateral.

The FHLBanks already are permitted to accept "other real-estate related collateral" to secure LOCs and advances (within the "30 percent of capital" limitation). Thus, the FHLBanks already manage the credit, liquidity and marketability risks, as well as other risks, associated with these types of collateral. There is no evidence that permitting the FHLBanks to accept these types of collateral for LOCs in excess of that which is allowed for advances will subject the FHLBanks to underwriting tasks that are beyond their ability to manage.

With regard to the FHLBanks' acceptance of small business loans as collateral, the Finance Board requires that the FHLBanks have underwriting expertise and credit policies in place before accepting such loans as collateral. Specifically, § 935.5 of the Finance Board's advances regulation, 12 CFR 935.5, requires that the FHLBanks establish written procedures for determining the value of collateral and to follow these procedures in ascertaining the value of particular assets used as collateral. This requirement has been applied to LOC transactions in § 938.5(a)(1)(ii) of the proposed and final rules. Under § 935.12 of the regulations, which has also been made to apply to LOCs under § 938.5(b)(2) of the proposed and final rules, the FHLBanks also are permitted to require a member to support the valuation of any collateral with an appraisal or other investigation of the collateral as the FHLBank deems necessary.

The Finance Board is requiring each FHLBank to review its collateral procedures, and amend them as necessary to reflect the changes made in the final rule before accepting any newly authorized assets as collateral for LOCs. The Finance Board also expects that the FHLBanks, as a matter of practice, will conduct careful review and, if necessary, require an appraisal of such collateral, taking into account the additional risks inherent in small business lending and each FHLBank's own capability to evaluate those risks. In addition, the FHLBanks generally require that members pledge additional collateral if the value of their original collateral declines.

Finally, as the regulator of the FHLBanks, the Finance Board's primary responsibility is to ensure that the FHLBanks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). The Finance Board's oversight of the FHLBanks includes annual on-site examinations and regular off-site review of FHLBank operations. Emphasis is placed on areas of FHLBank operation that could potentially expose the FHLBank and the FHLBank System to risk. As part of the examination process, the Finance Board reviews and evaluates the FHLBanks' management of collateral. Examiners review valuation methodology, discounts applied to collateral, and frequency of re-valuation for various types of collateral. In short, the above-described FHLBank practices, regulatory requirements, and Finance Board examination oversight, all serve to ensure that the safety and soundness of the FHLBanks would not be compromised by authorizing the expanded collateral options in the final rule.

3. Collateral Securing Nonmember Standby LOCs

Under § 938.3 of the proposed rule, nonmember borrowers were permitted to secure LOCs with the same types of collateral that they may use to secure advances. Under proposed § 938.3(a), nonmember borrowers (including SHFAs) were permitted to use FHA-insured loans or GNMA securities backed by FHA-insured loans as collateral for LOCs used for any of the same four purposes permitted for LOCs on behalf of members. Under § 938.2(b), a SHFA may secure LOCs with collateral eligible to secure advances under section 10(a) of the Bank Act, 12 U.S.C. 1430(a), provided the LOCs are used to facilitate residential or commercial lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code.

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See 26 U.S.C. 142(d), 143(f). Both of these provisions remain unchanged in the final rule.

Noting that the proposed rule would permit members to use investment grade debt securities of a SHFA as eligible collateral for LOCs, one commenter (a private law firm) recommended that nonmember SHFAs be permitted to obtain LOCs backed only by an investment-grade general obligation of the SHFA, where the obligation is secured by a statutory lien on the SHFA's unencumbered assets. The commenter stated that the ability to combine collateral types (the SHFA's investment grade obligation and the statutory lien, and the option of the mortgage being financed) may be the only way to provide economical tax-exempt financing for housing and economic development projects. While this suggestion has logical merit, as explained above, the Finance Board has concluded that, as a matter of law, LOCs may be issued or confirmed on behalf of nonmembers only under the same conditions that apply to nonmember advances. *See* 12 U.S.C. 1430b, 12 CFR 935.24. Therefore, under the Bank Act, the Finance Board may not authorize a nonmember SHFA to offer as collateral its general obligation, even under the conditions recommended by this commenter.

D. Additional Provisions Applying to FHLBank Standby LOCs

1. Special Pricing Provisions in FHLBank Standby LOC Policies

In the final rule, § 938.5(a)(1)(iii), regarding pricing criteria that must be set forth in each FHLBank's standby LOC policy, has been amended to cross-reference the codified CICA regulation, thereby eliminating the need to use and define in the LOC regulation terms of art that are explained thoroughly in the CICA regulation.

2. Cost of Capital Adjustment Factor

In the proposed rule, the Finance Board requested comments on whether FHLBank fees for LOCs may be subject to a cost of capital adjustment factor under section 11(e)(2) of the Bank Act, 12 U.S.C. 1431(e)(2), given that the FHLBanks' power to make payments upon standby LOCs arises partially from the FHLBanks' payment processing powers. Five commenters (three FHLBanks, one advisory council and one trade association) opposed applying the adjustment factor to LOC fees.

Section 11(e)(2)(B) of the Bank Act requires FHLBanks to make charges for payment processing services provided under section 11(e)(2), including the payment of drafts, in a manner consistent with the criteria established for pricing of Federal Reserve Bank payment processing under section 11A(c) of the Federal Reserve Act. 12 U.S.C. 248a(c). This statutory requirement has been implemented through part 943 of the Finance Board's regulations. 12 CFR part 943. Specifically, the pricing of services is addressed in § 943.6(b), which requires that the FHLBanks apply a cost of capital adjustment factor to their payment processing charges in order to take into account all direct and indirect costs of such services and the imputed rate of return that would have been earned and the taxes that would have been paid if the FHLBanks were wholly private corporations. *See id.* 943.6(b).

Accordingly, the Finance Board has concluded that, for any draw made by a beneficiary under a standby LOC, the applicant must be charged a processing fee calculated in accordance with the requirements of § 943.6(b) of the Finance Board's regulations. In the final rule, § 938.5(a)(1) has been amended to add a new paragraph (iv) requiring that each FHLBank's standby LOC policy require such a charge. This requirement does not extend to fees, periodic or otherwise, charged to a customer to issue, confirm, or renew a standby LOC.

In addition, in the final rule, the Finance Board has amended § 943.6(c) of its regulations to exempt fees collected for draws upon a LOC from the publication requirement set forth therein. The Bank Act does not require that FHLBank payment processing fees be published in the **Federal Register**.

3. Members' FHLBank Capital Stock

Section 938.5(b)(2) has been amended in the final rule to make clear that the provisions regarding advances collateral that are set forth in § § 935.9(d) and 935.10 of the Finance Board's regulations apply also to collateral pledged to secure a FHLBank LOC. Section 935.9(d) of the regulations provides that each FHLBank shall have a lien upon the stock of its members for all indebtedness of the member to the FHLBank. The cross-reference to this section that has been added to § 938.5(b)(2) of the final rule is intended to make clear that each FHLBank shall have a lien upon its member's FHLBank stock for any indebtedness that may result from a draw upon a LOC issued or confirmed by the FHLBank on behalf of that member. This reference is intended only to require a lien on FHLBank stock that the member already owns and should not be read as requiring or permitting a FHLBank to include standby LOCs in the calculation of its members' capital stock-to-advances leverage ratio. Stock purchase would be required only if and when an LOC is drawn and the FHLBank and its member agree to fund any resulting overdraft of the member's deposit account with an advance.

Seven commenters (five FHLBanks, one advisory council and one trade association) supported this provision. One FHLBank noted that the elimination of the stock purchase requirement contained in the current policy would improve the FHLBank's leverage position and make the program more attractive to shareholders. Four commenters (one FHLBank and three trade associations) believed LOCs, like advances, should be subjected to a stock purchase requirement. One FHLBank noted that this minimizes risk to the FHLBank if the LOC must be drawn upon. One of the trade associations stated that the proposal could exacerbate the risks to which the FHLBanks would be exposed by permitting them to deduct LOCs from their capital calculation and from their reported balances of outstanding advances, permitting a dangerous leveraging of FHLBank balance sheets which would be undetectable to the Finance Board and outside analysts. The other two trade associations stated that unlike commercial banks or other private financial service providers, the FHLBanks operate without an adequate cushion of permanent stock. Most members are free to redeem their stock and give up their membership, and in times of financial difficulty, the Finance Board is unlikely to be able to prevent these members from fleeing the FHLBank System. Further, they believed that the FHLBanks would issue or confirm a much higher volume of LOCs if they are free from requirements to reserve capital to protect taxpayers from the consequences of any mistakes.

The Finance Board's decision not to require that LOCs be included in a member's advances-to-capital stock ratio calculation will not undermine the safety and soundness of the FHLBank System. Under the capital requirements of the FHLBanks specified in the Bank Act, members must purchase capital in their FHLBank equal to the greater of 1 percent of their residential mortgage assets, 0.3 percent of total assets, or 5 percent of their outstanding advance balances. See 12 U.S.C. 1426. These statutory capital requirements, together with the Finance Board's regulation limiting the FHLBank System's debt to 20 times capital, assure that the FHLBanks have capital-to-asset ratios which approximates the 5 percent ratio for well-capitalized depository

institutions and is about twice the 2.5 percent capital-to-asset requirements for Fannie Mae and Freddie Mac.

On a risk-adjusted basis, the FHLBanks are even better capitalized than the raw numbers would indicate. To be considered well-capitalized, depository institutions must have total risk-based capital of 10 percent and, as of year-end 1997, insured depository institutions held 12.65 percent risk-based capital on average. By comparison, the FHLBanks held over 22 percent risk-based capital at year-end 1997. As of year-end 1997, advances outstanding to members totaled $202.2 billion and LOCs outstanding totaled $2.9 billion. Even if, as a result of the changes in policy implemented by this final rule, the total amount of LOCs outstanding increased, FHLBanks would remain well-capitalized.

Because a LOC must be fully collateralized at time of issuance, a FHLBank would have secured sufficient collateral to reimburse the FHLBank for any draw, minimizing the financial risk to the FHLBank. In fact, unlike commercial financial institutions, the FHLBanks generally have required members to secure LOCs with collateral in excess of the value of the LOC. Because the regulation clarifies that the contingent liability of an LOC is covered by section 10(c) of the Bank Act that provides a FHLBank shall have a lien upon the stock of a member as further collateral security for all indebtedness of the member to the FHLBank, the FHLBank's position would be further secured. In addition, § 938.5(a)(1)(ii) provides that a member or nonmember requesting an LOC is subject to the same underwriting criteria that applies to the making of advances. It is anticipated that FHLBanks will use this information to minimize their exposure to credit risk. Therefore, eliminating the requirement that LOCs be supported by the purchase of capital stock does not present any safety and soundness concerns.

4. Priority Lien on Member Collateral

The cross-reference to § 935.10 that has been added to § 938.5(b) is intended to make clear that the statutory priority lien that applies to any security interest granted by a member, or an affiliate of a member, to a FHLBank, see 12 U.S.C. 1430(f), applies to security interests in collateral pledged to secure standby LOCs.

IV. Regulatory Flexibility Act

The final rule applies only to the FHLBanks, which do not come within the meaning of "small business," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 938

Federal home loan banks, Credit, Letters of credit, Community development and housing.

12 CFR Part 943

Federal home loan banks, Checks, Price controls, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, as follows:

1. Add part 938 to read as follows:

PART 938—STANDBY LETTERS OF CREDIT

Sec.

938.1 Definitions.
938.2 Standby letters of credit on behalf of members.
938.3 Standby letters of credit on behalf of nonmember mortgagees.
938.4 Obligation to Bank under all standby letters of credit.
938.5 Additional provisions applying to all standby letters of credit.

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

§ 938.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421–49).

Applicant means a person or entity at whose request or for whose account a standby letter of credit is issued.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Beneficiary means a person or entity who, under the terms of a standby letter of credit, is entitled to have its complying presentation honored.

Community Lending has the meaning set forth in § 970.4 of this chapter.

Confirm means to undertake, at the request or with the consent of the issuer, to honor a presentation under a standby letter of credit issued by a member or nonmember mortgagee.

Document means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion that is presented under the terms of a standby letter of credit.

Finance Board means the agency established by the Act as the Federal Housing Finance Board.

Issuer means a person or entity that issues a standby letter of credit.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with § § 933.20 and 933.24 of this chapter.

Nonmember mortgagee means an entity certified as a nonmember mortgagee pursuant to § 935.22(b) of this chapter.

Nonmember SHFA means a nonmember mortgagee that is a "state housing finance agency," as that term is defined in § 935.1 of this chapter, and that has met the requirements of § 935.22(d) of this chapter.

Presentation means delivery of a document to an issuer, or an entity that has undertaken a confirmation at the request or with the consent of the issuer, for the giving of value under a standby letter of credit.

Residential housing finance means:

(1) The purchase or funding of "residential housing finance assets," as that term is defined in § 935.1 of this chapter; or

(2) Other activities that support the development or construction of residential housing.

Small business means a "small business concern," as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration at 13 CFR part 121, or any successor provisions.

Standby letter of credit means a definite undertaking by an issuer on behalf of an applicant that represents an obligation to the beneficiary, pursuant to a complying presentation: to repay money borrowed by, advanced to, or for the account of the applicant; to make payment on account of any indebtedness undertaken by the applicant; or to make payment on account of any default by the applicant in the performance of an obligation. The term *standby letter of credit* does not include a commercial letter of credit, or any short-term self-liquidating instrument used to finance the movement of goods.

§ 938.2 Standby letters of credit on behalf of members.

(a) *Authority and purposes.* Each Bank is authorized to issue or confirm on behalf of members standby letters of credit that comply with the requirements of this part, for any of the following purposes:

(1) To assist members in facilitating residential housing finance;

(2) To assist members in facilitating community lending that is eligible for

any of the Banks' CICA programs under part 970 of this chapter;

(3) To assist members with asset/liability management; or

(4) To provide members with liquidity or other funding.

(b) *Fully secured.* A Bank, at the time it issues or confirms a standby letter of credit on behalf of a member, shall obtain and maintain a security interest in collateral that is sufficient to secure fully the member's unconditional obligation described in § 938.4(a)(2) of this part, and that complies with the requirements set forth in paragraph (c) of this section.

(c) *Eligible collateral.* (1) Any standby letter of credit issued or confirmed on behalf of a member may be secured by collateral that is eligible to secure advances under § 935.9(a) of this chapter. Only standby letters of credit issued for the purposes described in paragraphs (a)(3) or (a)(4) of this section shall be counted in making the calculation required under § 935.9(a)(4)(iii).

(2) A standby letter of credit issued or confirmed on behalf of a member for a purpose described in paragraph (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by:

(i) Secured or federally-guaranteed loans to small businesses or securities representing interests in such loans; or

(ii) Obligations of state or local government units or agencies, rated as investment grade by a nationally-recognized rating agency.

§ 938.3 Standby letters of credit on behalf of nonmember mortgagees.

(a) *Nonmember mortgagees.* Each Bank is authorized to issue or confirm on behalf of nonmember mortgagees standby letters of credit that are fully secured by collateral described in §§ 935.24(b)(1)(i) or (ii) of this chapter, and that otherwise comply with the requirements of this part, for any of the following purposes:

(1) To assist nonmember mortgagees in facilitating residential housing finance;

(2) To assist nonmember mortgagees in facilitating community lending that is eligible for any of the Banks' CICA programs under part 970 of this chapter;

(3) To assist nonmember mortgagees with asset/liability management; or

(4) To provide nonmember mortgagees with liquidity or other funding.

(b) *Nonmember SHFAs.* Each Bank is authorized to issue or confirm on behalf of nonmember SHFAs standby letters of credit that are fully secured by collateral described in § 935.24(b)(2)(i)(A), (B) or (C) of this chapter, and that otherwise comply with the requirements of this part, for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)).

§ 938.4 Obligation to Bank under all standby letters of credit.

(a) *Obligation to reimburse.* A Bank may issue or confirm a standby letter of credit only on behalf of a member or nonmember mortgagee that has:

(1) Established with the Bank a cash account pursuant to § § 934.5, 935.24(b)(2)(i)(B) or 935.24(d) of this chapter; and

(2) Assumed an unconditional obligation to reimburse the Bank for value given by the Bank to the beneficiary under the terms of the standby letter of credit by depositing immediately available funds into the account described in paragraph (a)(1) of this section not later than the date of the Bank's payment of funds to the beneficiary.

(b) *Prompt action to recover funds.* If a member or nonmember mortgagee fails to fulfill the obligation described in paragraph (a)(2) of this section, the Bank shall take action promptly to recover the funds that such member or nonmember mortgagee is obligated to repay.

(c) *Obligation financed by advance.* Notwithstanding the obligations and duties of the Bank and its member or nonmember mortgagee under paragraphs (a) and (b) of this section, the Bank may, at its discretion, permit such member or nonmember mortgagee to finance repayment of the obligation described in paragraph (a)(2) of this section by receiving an advance that complies with sections 10 or 10b of the Act and part 935 of this chapter.

§ 938.5 Additional provisions applying to all standby letters of credit.

(a) *Written policy; other requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Be issued or confirmed only in compliance with a written policy, developed and implemented by the Bank to govern its standby letter of credit programs, that:

(i) Is consistent with the provisions of the Act and this part;

(ii) Sets forth credit underwriting criteria, consistent with the provisions of § 935.5 of this chapter, to be applied in evaluating applications for standby letters of credit and renewals thereof;

(iii) Sets forth criteria regarding the pricing of standby letters of credit, including any special pricing provisions for letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 970 of this chapter; and

(iv) Provides that, for any draw made by a beneficiary under a standby letter of credit, the applicant will be charged a processing fee calculated in accordance with the requirements of § 943.6(b) of this chapter;

(2) Contain a specific expiration date, or be for a specific term; and

(3) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity;

(b) *Additional collateral provisions.* (1) A Bank may take such steps as it deems necessary to protect its secured position on standby letters of credit, including requiring additional collateral, whether or not such additional collateral conforms to the requirements of § § 938.2 or 938.3 of this part.

(2) Collateral pledged by a member or nonmember mortgagee to secure a letter of credit issued or confirmed on its behalf by a Bank shall be subject to the provisions of §§ 935.9(b), 935.9(d), 935.9(e), 935.10, 935.11 and 935.12 of this chapter.

PART 943—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

2. The authority citation for part 943 continues to read as follows:

Authority: 12 U.S.C. 1430, 1431.

3. Amend § 943.6 by revising paragraph (c) to read as follows:

§ 943.6 Pricing of services.

* * * * *

(c) *Review and publication.* The Finance Board shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this part for compliance with the principles set forth in paragraphs (a) and (b) of this section. All prices for Bank services authorized in this part will be published annually in the **Federal Register**, except those for fees charged to an applicant for draws made by a beneficiary under a standby letter of credit.

Dated: October 28, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–31837 Filed 11–27–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–29–AD; Amendment 39–10914; AD 98–24–27]

Airworthiness Directives; First Technology Fire and Safety Ltd. Toilet Compartment Fire Extinguishers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to First Technology Fire and Safety Ltd. toilet compartment fire extinguishers. This amendment requires inspection of suspect fire extinguishers for leakage, and removal from service and replacement with serviceable parts if the extinguisher is found to be leaking. This amendment is prompted by reports of leakage at the fire extinguisher's eutectic tip. The leakage is the result of a design change. The actions specified by this AD are intended to prevent fire extinguisher failure due to leakage, which in the event of a toilet compartment fire could result in an uncontained fire and damage to the aircraft.

DATES: Effective January 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 29, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Percival Aviation Ltd., The Sidings, Knowle, Fareham, Hampshire PO17 5LZ England; telephone 011 44 1329 833814, fax 011 44 1329 834013. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain First Technology Fire and Safety Ltd. toilet compartment fire extinguishers, approved for installation on Airbus A320, A330, A340; British Aerospace Bae 146, Bombardier CL–600–2B19 (CRJ), Dornier 328, Embraer EMB 145, and all Fokker series airplanes, was published in the **Federal Register** on July 1, 1998 (63 FR 35884). That action proposed to require, within three months after the effective date of this AD, inspection of suspect fire extinguishers for leakage, and removal from service and replacement with serviceable parts if found leaking.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters indicate that they do not operate any of the affected airplanes.

One commenter does not concur with the 3 month compliance time. The initial compliance deadline, for the First Technology fire and Safety Service Bulletin (SB) No. 26–110, Revision 1, dated January 1998, was April 1998. This allowed a sufficient amount of time since issuance of the UK CAA AD to comply with the FAA AD. The commenter has since withdrawn the request for an extended compliance period. The commenter also requests that reference to Revision 1 of SB 26–110, dated January 1998, be made in the final rule since the SB dated January 1998, referenced in the Notice for Proposed Rulemaking (NPRM) is Revision 1. The FAA concurs. SB No. 26–110, Revision 1, dated January 1998 has been listed in the Applicability section.

One commenter disagrees with the 3 minute inspection compliance time. The 3 minute reference was for weighing the extinguisher. A reasonable time period for inspection, weighing, and replacement of the extinguisher is 20 minutes. The FAA concurs. The economic impact statement has been revised.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 1,500 fire extinguishers of the affected design installed on the worldwide fleet. There are an unknown number of fire extinguishers installed on aircraft of U.S. registry. The FAA estimates that it would take approximately 20 minutes per fire extinguisher to accomplish the actions, and that the average labor rate is $60 per work hour. The manufacturer has advised the CAA that replacement parts would be provided at no charge to the operator. Based on these figures, the total cost impact of the AD on worldwide operators is estimated to be $30,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by the following new airworthiness directive:

98–24–27 First Technology Fire and Safety Ltd.: Amendment 39–10914. Docket No. 98–ANE–29–AD.

Applicability: First Technology Fire and Safety Ltd. toilet compartment fire extinguisher, identified by serial and model number in First Technology Fire and Safety Ltd. Service Bulletin (SB) No. 26–110, Revision 1, dated January 1998. These fire

extinguishers are installed on but not limited to Airbus A320, A330, A340; British Aerospace Bae 146, Bombardier CL–600–2B19 (CRJ), Dornier 328 Embraer EMB 145, and all Fokker Series aircraft.

Note 1: This airworthiness directive (AD) applies to each fire extinguisher identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For fire extinguishers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire extinguisher failure due to leakage, which could result in an uncontained fire and damage to the aircraft, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a one time inspection of fire extinguishers for leakage, and replace leaking fire extinguishers with serviceable parts, in accordance with First Technology Fire and Safety Ltd. SB No. 26–110, Revision 1, dated January 1998.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with First Technology Fire and Safety Ltd. SB:

Document No.	Pages	Revision	Date
26–110 ..... Total pages: 4	1–4	1	January, 1998.

This incorporation by reference was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Percival Aviation Ltd., The Sidings, Knowle, Fareham, Hampshire PO17 5LZ England; telephone 011 44 1329 833814, fax 011 44 1329 834013. Copies may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 29, 1999.

Issued in Burlington, Massachusetts, on November 18, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 98–31607 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29389; Amdt. No. 1901]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office when originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by

publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 13, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

FDC Date	State	City	Airport	FDC No.	SIAP
10/20/98 ...	WI	Fond Du Lac	Fond Du Lac County	FDC 8/7439	GPS Rwy 36, Orig...
10/28/98 ...	TX	Arlington	Arlington Muni	FDC 8/7624	VOR/DME Rwy 34, Orig...
10/29/98 ...	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 8/7648	ILS Rwy 12R, Amdt 6A...
10/29/98 ...	MN	Minneapolis	Minneapolis-St. Laul Intl (Wold-Chamberlain).	FDC 8/7649	ILS Rwy 30L (CAT I & II), Amdt 42A...
10/29/98 ...	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 8/7650	ILS PRM Rwy 30L, Amdt 3A...
10/29/98 ...	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 8/7651	ILS PRM Rwy 12R, Amdt 2A...
10/31/98 ...	MA	Plymouth	Plymouth Muni	FDC 8/7664	GPS Rwy 6 Amdt 2...
10/31/98 ...	OH	Shelby	Shelby Community	FDC 8/7692	VOR or GPS–A, Amdt 4...
11/09/98 ...	LA	Ruston	Ruston Regional	FDC 8/7950	NDB Rwy 18, Orig-A...
11/02/98 ...	CA	Los Angeles	Los Angeles Intl	FDC 8/7739	ILS Rwy 24L Amdt 22...
11/03/98 ...	CA	Merced	Merced Muni-MacReady Field	FDC 8/7757	ILS Rwy 30 Amdt 14...
11/03/98 ...	TX	Houston	Ellington Field	FDC 8/7747	GPS Rwy 22, Orig...
11/03/98 ...	TX	Houston	Ellington Field	FDC 8/7748	ILS Rwy 35L, Amdt 4...
11/03/98 ...	TX	Houston	Ellington Field	FDC 8/7749	ILS Rwy 17R, Amdt 4...
11/03/98 ...	TX	Houston	Ellington Field	FDC 8/7750	ILS Rwy 22, Amdt 2...
11/04/98 ...	AK	Anchorage	Merrill Field	FDC 8/7836	GPS–A Orig...
11/04/98 ...	AK	Nome	Nome	FDC 8/7824	GPS Rwy 2, Orig...
11/04/98 ...	AK	Nome	Nome	FDC 8/7825	GPS Rwy 9, Orig...
11/04/98 ...	AK	Nome	Nome	FDC 8/7842	GPS Rwy 27, Orig
11/04/98 ...	GA	Savannah	Savannah Intl	FDC 8/7845	MLS Rwy 27, Orig...
11/05/98 ...	GA	Portland	Portland Intl	FDC 8/7875	ILS Rwy 10L Amdt 1A...This replaces TL 98–24

FDC Date	State	City	Airport	FDC No.	SIAP
11/10/98 ...	AL	Dothan	Dothan	FDC 8/7972	LOC BC Rwy 14 Amdt 6C...
11/10/98 ...	AL	Dothan	Dothan	FDC 8/7973	VOR Or TACAN Or GPS–A Amdt 11B...
11/10/98 ...	MA	Plymouth	Plymouth Muni	FDC 8/7968	NDB Rwy 6 Amdt 4...
11/10/98 ...	OK	Duncan	Halliburton Field	FDC 8/7984	VOR Rwy 35, Amdt 10A...
11/10/98 ...	PA	Chambersburg	Chambersburg Muni	FDC 8/7982	VOR/DME Or GPS–B Amdt 1...
11/10/98 ...	PA	Easton	Easton	FDC 8/7983	VOR/DME Or GPS–D Orig–A...

. . . Effective Upon Publication.

[FR Doc. 98–31784 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29388; Amdt. No. 1900]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availiability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists

for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 13, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective 3 December, 1998*

Chino, CA, Chino, NDB OR GPS–C, Amdt 1, Cancelled
Riverside, CA, Riverside Muni, ILS RWY 9, Amdt 7
Kankakee, IL, Greater Kankakee, ILS RWY 4, Amdt 6
Louisville, KY, Louisville-Standiford Field, ILS RWY 17L, Amdt 2
Louisville, KY, Louisville-Standiford Field, ILS RWY 35L, Amdt 1
Louisville, KY, Louisville-Standiford Field, ILS RWY 35R, Amdt 2
New York, NY, LaGuardia, ILS RWY 13, Orig
New York, NY, Laguardia, ILS/DME RWY 13, Amdt 2A, Cancelled
Cleveland, OH, Burke Lakefront, LOC RWY 24R, Amdt 10, Cancelled
Cleveland, OH, Burke Lakefront, ILS RWY 24R, Orig
Austin, TX, Austin Executive Airpark, GPS RWY 18, Orig
Austin, TX, Austin Executive Airpark, VOR/DME RWY 18, Amdt 2, Cancelled
Austin, TX, Lakeway Airpark, VOR/DME–A, Orig
Austin, TX, Lakeway Airpark, VOR/DME OR GPS–C, Amdt 1, Cancelled
Austin, TX, Lakeway Airpark, GPS RWY 16, Orig
Austin, TX, Lakeway Airpark, VOR/DME RNAV OR GPS RWY 16, Amdt 1, Cancelled
Austin, TX, Robert Mueller Muni, VOR/DME OR TACAN OR GPS RWY 13R, Amdt 9, Cancelled
Austin, TX, Robert Mueller Muni, VOR/DME OR TACAN OR GPS RWY 17, Amdt 8, Cancelled
Austin, TX, Robert Mueller Muni, VOR/DME OR GPS RWY 31L, Orig, Cancelled
Austin, TX, Robert Mueller Muni, NDB RWY 31L, Amdt 33, Cancelled
Austin, TX, Robert Mueller Muni, ILS RWY 13R, Amdt 10
Austin, TX, Robert Mueller Muni, ILS RWY 13L, Amdt 33
Austin, TX, Robert Mueller Muni, GPS RWY 13R, Orig
Austin, TX, Robert Mueller Muni, GPS RWY 31L, Orig
Burnet, TX, Burnet Muni Kate Craddock Field, NDB RWY 1, Amdt 5
Burnet, TX, Burnet Muni Kate Craddock Field, GPS RWY 1, Amdt 1
Burnet, TX, Burnet Muni Kate Craddock Field, GPS RWY 19, Orig
Burnet, TX, Burnet Muni Kate Craddock Field, VOR/DME RNAV OR GPS RWY 19, Amdt 3, Cancelled
College Station, TX, Easterwood Field, LOC BC RWY 16, Amdt 5
College Station, TX, Easterwood Field, ILS RWY 34, Amdt 11
College Station, TX, Easterwood Field, GPS RWY 10, Orig
College Station, TX, Easterwood Field, GPS RWY 34, Orig
Georgetown, TX, Georgetown Muni, NDB OR GPS RWY 18, Amdt 5
Giddings, TX, Giddings-Lee County, VOR/DME OR GPS–A, Amdt 3
Giddings, TX, Giddings-Lee County, VOR/DME RNAV OR GPS RWY 35, Amdt 1
Lago Vista, TX, Lago Vista TX-Rusty Allen, GPS RWY 15, Orig
Lockhart, TX, Lockhart Muni, VOR/DME OR GPS RWY 18, Orig, Cancelled
New Braunfels, TX, New Braunfels Muni, GPS RWY 17, Amdt 1
San Antonio, TX, San Antonio Intl, NDB RWY 3, Amdt 38
San Antonio, TX, San Antonio Intl, NDB RWY 3, Amdt 18
San Marcos, TX, San Marcos Muni, VOR/DME OR GPS–A, Amdt 5, Cancelled
San Marcos, TX, San Marcos Muni, GPS RWY 12, Orig
Taylor, TX, Taylor Muni, VOR/DME RWY 17, Orig
Taylor, TX, Taylor Muni, VOR/DME OR GPS–A, Orig, Cancelled
Waco, TX, McGregor Muni, GPS RWY 15, Amdt 1

** * * Effective 31 December, 1998*

Orlando, FL, Orlando Sanford, NDB RWY 27R, Orig
Joplin, MO, Joplin Regional, ILS/DME RWY 18, Orig

** * * Effective 28 January, 1999*

Decatur, AL, Pryor Field Rngl, VOR OR GPS RWY 18, Amdt 12
Alma, GA, Bacon County, VOR OR GPS RWY 33, Amdt 7
Waynesville, MO, Waynesville Regional Airport at Forney Field, VOR RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, VOR RWY 32, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, LOC RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, NDB/DME RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, NDB RWY 32, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, GPS RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, GPS RWY 32, Orig
Chambersburt, PA, Chambersburg Muni, GPS RWY 24, Orig
Reedsville, PA, Mifflin County, GPS RWY 24, Orig
Richmond, VA, Richmond Intl, VOR OR GPS RWY 16, Amdt 26
Richmond, VA, Richmond Intl, VOR RWY 20, Orig
Richmond, VA, Richmond Intl, VOR/DME RWY 20, Orig, Cancelled
Richmond, VA, Richmond Intl, VOR OR GPS RWY 25, Amdt 15
Richmond, VA, Richmond Intl, VOR RWY 34, Amdt 22
Saluda, VA, Hummel Field, GPS RWY 36, Orig
Lewisburg, WV, Greenbrier Valley, VOR OR GPS–A, Amdt 7, Cancelled

[FR Doc. 98–31782 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50627A; FRL–6033–6]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for four chemical substances which were the subject of premanufacture notices (PMNs). Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under § 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by section 5 (h)(1), (2), (3), and (5) of TSCA, and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5 (e), 5(f), 6, or 7 of TSCA to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Background

EPA proposed SNURs for four chemical substances, which were the subject of PMNs P–95–1584, P–96–1674/1675, and P–97–267 in the **Federal Register** of August 13, 1997 (62 FR 43297) (FRL–5720–2). The background and reasons for the SNURs are set forth in the preamble to the proposed rule. EPA received no comments regarding P–96–1674/1675 and will issue the rules as proposed. EPA received comments concerning P–97–267 and P–95–1584. EPA's response to the comments is discussed in this unit. EPA is issuing P–97–267 as proposed and is issuing P–95–1584 as a modified final rule.

The submitter of P–97–267 was the only commenter for the proposed SNUR. While the commenter did not object to the specific language required in the material safety data sheet (MSDS) in the proposed SNUR, the commenter did object to EPA's requiring any language in an MSDS under TSCA such as those requirements for SNURs at § 721.72. The commenter's position is that development and preparation of MSDS's fall under the criteria set forth under the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard, 29 CFR part 1910.1200. The commenter stated that requiring specific language on an MSDS under TSCA would interfere with the ongoing process of developing the MSDS under OSHA's Hazard Communication Standard as new toxicological information is developed.

EPA strongly disagrees with this position for several reasons. The hazard communication requirements at § 721.72 were designed to parallel OSHA's hazard communication standard as closely as possible. For further background consult the preamble to EPA's General Provisions for New Chemical Follow-Up, published July 27, 1989 (54 FR 31298). The language dictated by this SNUR does not affect the ongoing process of modifying or updating an MSDS with other statements as new information is received.

In the unlikely event that the commenter develops new toxicological data contradicting the acute toxicity studies already conducted on the substance demonstrating potential lethality via the oral, dermal, inhalation, and ocular routes of exposure, the submitter may submit a significant new use notice or can petition for modification of the SNUR based on the new toxicity data.

In order to prevent potential unreasonable risks or significant changes in exposure under TSCA, EPA will require specific hazard communication warnings in TSCA 5(e) consent orders and SNURs. EPA thinks it is especially important in this case to warn workers of the potentially lethal hazard. It is EPA's position that any delay in updating the specific MSDS language mandated by the SNUR is far outweighed by the potential change in exposure by not adequately warning potentially exposed workers of the lethality of this compound.

The submitter of P–95–1584 was the only commenter for the proposed SNUR. The commenter objected to the molecular weight designation in the proposed SNUR, stating that commencement of manufacture or

import of the PMN substance with a number average molecular weight in the range from 707–1051 daltons as described in the PMN had already occurred. As this is an existing use, EPA concurs that it is unable to finalize the SNUR as proposed. However, in order to prevent potential exposures to low molecular weight forms of this PMN substance, EPA is issuing a final SNUR requiring 90-day notification before any manufacture, processing, or use of the substance with a number average molecular weight less than 700 daltons.

The commenter stated that EPA's concerns for the PMN substance arose solely from the low molecular weight species (LMWS) and EPA had no objection to importation of the high molecular weight species (HMWS).

EPA disagrees with this statement. Based on the existing toxicity and exposure data, EPA was unable to make an unreasonable risk finding for the HMWS of the PMN substance. While it is true that the potential toxicity of the HMWS decreases as the molecular weight increases, EPA would have preferred significant new use notification at the molecular weight stated in the proposed SNUR to ensure that no significant new exposures occurred. The HMWS can have a number average molecular weight as low as 700 daltons. As the molecular weight approaches 700 daltons the potential toxicity of the PMN substance becomes more like that of the LMWS.

The commenter stated that the specific uses referenced in the proposed SNUR, a phenolic resin substitute for wood adhesives, rubber tackifier, and brake pads; an additive to enhance degradibility of polymer blends; and a moisture barrier for paper lamination were projected uses for the HMWS of the PMN substance and should not be considered when estimating potential exposures to the LMWS. The commenter also noted that after substantially lowering its estimated production volume of the HMWS of the PMN substance and eliminating completely its production volume estimate of the LMWS, EPA's risk assessment remained the same and stated that any exposure estimates should be based on the revised production volume limit of the HMWS. The commenter also stated that information based on existing uses of the HMWS of the PMN substance cannot be used as a basis for a SNUR applying to the LMWS of the PMN substance.

Before addressing each comment specifically, EPA is reiterating the following considerations it made when deciding to issue a SNUR for the PMN substance:

1. As a polymeric substance that is already on the TSCA Inventory, the PMN substance may be manufactured or imported at any molecular weight or range of molecular weights without further notification even when the different molecular weight species can and do exhibit different physical and toxicological properties.

2. The stated purpose of the SNUR was to require 90-day notification before any release of the LMWS of the PMN substance to the environment.

3. When considering the potential change in exposures and production volumes for a SNUR, EPA must consider all potential manufacturers, importers, and processors and not just the PMN submitter.

The commenter questioned the applicability of the specific uses cited in the proposed SNUR to the LMWS of the PMN substance. It is EPA's finding that any use of the LMWS warrants notification in order to evaluate potential releases. The original PMN submitted for the LMWS and the uses of the HMWS are merely evidence that usage of the LMWS is possible.

The commenter also questioned why, when the estimated production volume was reduced, that the risk assessment remained the same. EPA did not change its risk assessment because its analysis of the potential market for the PMN substance did not agree with the submitter's revised estimate. In addition, when notifying the Agency of its reduced estimated production volume, the commenter also informed EPA of the estimated production volume of its potential customers who would import the PMN substance directly. The estimated production volume of the PMN substance imported directly by customers was high enough that EPA's original risk assessment was not changed.

The commenter stated that information, such as use and production volume information, specific to a chemical substance for an existing use cannot be used as a basis for a SNUR for another substance. EPA strongly disagrees with this statement. While it is true that a significant new use cannot be designated when the use is ongoing, EPA can and does use information regarding existing use of similar chemicals as a basis for a SNUR for other chemicals. When evaluating new chemical substances under section 5(a)2 or 5(e) of TSCA, reasonable estimates of production volume, use, and exposure can only be based on past experience with other chemicals and their existing uses.

This paragraph summarizes and reiterates EPA's findings for P–95–1584. Based on a structure-activity relationship analogy to similar phenols and aldehydes, EPA is concerned for environmental toxicity effects at concentrations as low as 10 parts per billion (ppb) in surface waters, especially the LMWS of the PMN substance. Because the substance is a polymer, once it is placed on the TSCA Inventory, any manufacturer, importer, or processor may use the PMN substance of any molecular weight. This is true even if different molecular weights have different physical and toxicological properties. Based on the potential uses and production volume of the PMN substance, EPA finds that exposures may result in toxicity to the aquatic environment. To prevent any significant change in exposures, EPA is designating any manufacture, import, or processing of the PMN substance at a number average molecular weight less than 700 daltons as a significant new use. This designation of molecular weight is different from the proposed rule because existing use of the PMN substance occurred at a number average molecular weight no lower than 707 daltons.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA determined that one or more of the criteria of concern established at § 721.170 were met. EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs. Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. The preamble to the proposed SNUR lists recommended tests (if any) that would address the potential risks of the substances.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the substances.
3. Information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as Confidential Business Information (CBI). EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in § 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a bona fide intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a bona fide intent to manufacture or import the substance, EPA will tell the person whether the use identified in the bona fide submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the bona fide submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant "new" use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, all four of the substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN bona fide submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50627A).

IX. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50627A (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

X. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or additional OMB review in accordance with Executive Order 13045, entitled *Protection of*

Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note).

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 16, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.555 to subpart E to read as follows:

§ 721.555 Alkyl amino nitriles (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl amino nitriles (PMNs P–96–1674 and P–96–1675) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63

(a)(2)(iii), (a)(4), (a)(5)(i), (a)(6)(ii),(a)(6)(v), and (c). A full face shield is required if splashing or spraying occurs.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (c)(1) and (c)(2)(iv). The MSDS required by this paragraph shall include the following statement: Ocular exposure may cause death.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (l).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.2077 to subpart E to read as follows:

§ 721.2077 Substituted carbazate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted carbazate (PMN P–97–267) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (c)(1) and (c)(2)(iv). The MSDS required by this paragraph shall include the following statements: Overexposure to this material may cause severe acute toxicity including death. This concern is particularly true with respect to direct contact to the eyes. Exposure to the eyes may cause severe acute toxicity including death.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (a), (b), (c), and (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

4. By adding new § 721.5460 to subpart E to read as follows:

§ 721.5460 Organosolv lignin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as an organosolv lignin (PMN P–95–1584; CAS No. 8068–03–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any manufacture, processing, or use of the substance with a number average molecular weight less than 700 daltons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and records documenting compliance with the designated molecular weight requirements are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–31680 Filed 11-27-98; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–43

[FPMR Amendment H–198]

RIN 3090–AG64

Excess Personal Property Reporting Requirements

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; withdrawal.

SUMMARY: Federal Property Management Regulations (FPMR) Amendment 198 (FR Document 98–20010) published at 63 FR 40058, July 27, 1998, and effective on December 1, 1998, is withdrawn. The reason is that an issue has been raised that calls into question some aspects of the rule: one aspect being the reference to the label "Excellent" when coding property for disposal and the implications this has for Federally-owned, contractor-held inventory. A revised regulation will be published in the **Federal Register** as a proposed rule with a 60-day request for comment.

EFFECTIVE DATE: The final rule published at 63 FR 40058 is withdrawn November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP) 202–501–3828.

Dated: November 23, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–31827 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–123, RM–8875]

Radio Broadcasting Services; Tullahoma, Lynchburg, and Petersburg, TN.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a proposal by Tri-County Broadcasting, Inc. for a Channel 296A allotment at Tullahoma, Tennessee, as well as counterproposals filed by Petersburg Broadcasting for a Channel 296A allotment at Petersburg, Tennessee, and Hopkins-Hall Broadcasting, Inc., and Big River Broadcasting Corporation for Channel 296A at Lynchburg, Tennessee. *See* 61 FR 55781, October 29, 1996. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* adopted November 18, 1998, and released November 20, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–31687 Filed 11–27–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 63, No. 229
Monday, November 30, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV98–981–4]

Almonds Grown in California; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of California almonds to determine whether they favor continuance of the marketing order regulating the handling of almonds grown in the production area.

DATES: The referendum will be conducted from February 1 through February 19, 1999. To vote in this referendum, growers must have been producing California almonds during the period August 1, 1997, through July 31, 1998.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209)487–5901; fax (209)487-5906; or Anne Dec, Rulemaking Team Leader, Marketing Order Administration Branch, Fruit & Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; fax (202)205–6632.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 981 (7 CFR part 981), hereinafter referred to as the "order" and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the growers. The referendum shall be conducted during the period February 1, through February 19, 1999, among California almond growers in the production area. Only growers that were engaged in the production of California almonds during the period of August 1, 1997, through July 31, 1998, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of California almonds represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum. The Secretary will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071 for California almonds. It has been estimated that it will take an average of 10 minutes for each of the approximately 7,000 growers of California almonds to cast a ballot. Participation is voluntary. Ballots postmarked after February 19, 1999, will not be included in the vote tabulation.

Martin Engeler of the California Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, is hereby designated as the referendum agent of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et. seq*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agent and from his appointees.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: November 20, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–31787 Filed 11–27–98; 8:45 am]
BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 98–069–1]

Horses from Australia and New Zealand; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of horses to exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. We believe this action is warranted because neither country has ever had a reported case of dourine, New Zealand has never had a reported case of

glanders, and Australia has not had a reported case of glanders since 1891. It appears that horses imported from Australia and New Zealand would pose a negligible risk of introducing dourine and glanders into the United States.

DATES: Consideration will be given only to comments received on or before January 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–069–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–069–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization Evaluation Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including dourine and glanders. Dourine and glanders are potentially fatal equine diseases that are not known to exist in the United States.

Under § 93.308(a)(3) of the regulations, horses imported from any part of the world must, in order to qualify for release from quarantine, test negative to official tests for dourine, glanders, equine piroplasmosis, equine infectious anemia, and any other tests and procedures that may be required by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to determine their freedom from communicable diseases.

The Governments of Australia and New Zealand have requested that the U.S. Department of Agriculture exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. Australia has never had a reported case of dourine, and the last case of glanders in that country was reported in 1891. New Zealand has never had a reported case of dourine or glanders.

The Governments of Australia and New Zealand also provided APHIS with documentation about their veterinary infrastructure, animal health monitoring system, trading practices with other regions, and other pertinent information to support their requests. Copies of this documentation may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

APHIS has reviewed the documentation, and based on that documentation, we believe that horses imported from Australia and New Zealand would pose a negligible risk of introducing dourine and glanders into the United States. Therefore, we are proposing to amend 93.308(a)(3) of the regulations to exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. However, horses imported from Australia and New Zealand would still have to be quarantined and tested for equine piroplasmosis, equine infectious anemia, and undergo any other tests and procedures that may be required by the Administrator to determine their freedom from communicable diseases.

Miscellaneous

In § 93.308(a)(3), footnote 14 states that official tests for dourine and glanders are performed at the Veterinary Services Laboratory in Beltsville, MD; however, those tests are currently performed at the National Veterinary Services Laboratories in Ames, IA. We are proposing to amend the footnote to reflect the current location. We are also proposing to make several nonsubstantive editorial changes to § 93.308(a)(3).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would exempt horses imported into the United States from Australia and New Zealand from the requirement for testing for dourine and glanders during the quarantine period. As explained previously in this document, we believe that there is a negligible risk of horses imported from Australia and New Zealand introducing dourine and glanders into the United States.

U.S. importers of horses from Australia and New Zealand would be affected by this rule if it is adopted. These importers would no longer be required to have horses that are imported from Australia and New Zealand tested for dourine and glanders during the quarantine period. As a consequence, U.S. importers would save $18.00 for the cost of both tests. However, horses imported from Australia and New Zealand would still have to be tested for equine piroplasmosis, equine infections anemia, and undergo any other tests and procedures that may be required by APHIS to determine their freedom from communicable diseases.

According to the 1992 Census of Agriculture, the United States had a total population of at least 2,049,522 horses. The United States is a net exporter of horses. In 1997, the United States exported 56,953 horses valued at $271 million, and imported 23,794 horses valued at $134 million. However, only 45 of the horses were imported from Australia, and 130 of the horses were imported from New Zealand. The total number of horses imported into the United States from Australia and New Zealand is small due to the distances the horses must travel and the high transportation costs, which are reflected in the prices of the horses. For example, horses imported from Canada have an average price of $1,490, while horses imported from Australia and New Zealand have an average price of $20,682, and $13,781, respectively. Given these relatively high prices and the rather small expected savings of $18 per horse imported, we do not expect this proposed action would result in an increase in the number of horses imported into the United States from Australia and New Zealand, nor do we expect this proposed action would have a significant economic impact on U.S. importers of horses from Australia and New Zealand, regardless of their size.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 93.308, paragraph (a)(3) would be revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(3) To qualify for release from quarantine, all horses must test negative to official tests for dourine, glanders, equine piroplasmosis, and equine infectious anemia.[14] However, horses imported from Australia and New Zealand are exempt from testing for dourine and glanders. In addition, all horses must undergo any other tests, inspections, disinfections, and precautionary treatments that may be required by the Administrator to determine their freedom from communicable diseases.

* * * * *

Done in Washington, DC, this 20th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31711 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

[14] Because the official tests for dourine and glanders are performed only at the National Veterinary Services Laboratories in Ames, IA, the protocols for those tests have not been published and are, therefore, not available; however, copies of "Protocol for the Complement-Fixation Test for Equine Piroplasmosis" and "Protocol for the Immuno-Diffusion (Coggins) Test for Equine Infectious Anemia" may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 712

Credit Union Service Organizations

AGENCY: National Credit Union Administration

ACTION: Proposed rule.

SUMMARY: NCUA proposes several changes to its recently revised rule concerning federal credit unions' (FCUs') investments in and loans to credit union service organizations (CUSOs). The proposed changes: delete a provision preventing FCUs from investing in or lending to CUSOs in which non-credit union depository institutions are co-investors or lenders; revise a provision limiting CUSO investments in non-CUSO service providers; delete a provision preventing FCUs from investing in the debentures of a CUSO; and clarify how the NCUA measures the limit on an FCU's investment in or loans to CUSOs. The proposed changes decrease the regulatory burden for FCUs investing in or lending to CUSOs.

DATES: Comments must be received by March 1, 1999.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

Section 107 of the Federal Credit Union Act (the Act) authorizes FCUs to make loans to and invest in CUSOs subject to certain funding limits and other restrictions. 12 U.S.C 1757. As to funding, § 107(5)(D) authorizes an FCU to lend, in the aggregate, up to 1% of its shares and undivided earnings to CUSOs, and § 107(7)(I) authorizes an FCU to invest up to an additional 1% in the shares, stocks, or obligations of a CUSO. 12 U.S.C. 1757(5)(D), (7)(I). Other restrictions include § 107(5)(D)'s requirement that a service organization "primarily serve the needs of its member credit unions" and § 107(7)(I)'s prohibition against using the CUSO authority to acquire control of other specified organizations such as trade associations and other financial institutions.

NCUA's implementing regulations have, since their inception, combined these lending and investment provisions in a single "CUSO rule." Now codified at 12 CFR part 712, the CUSO rule was most recently revised in March 1998. 63 FR 10743 (March 5, 1998). That revision reflected a comprehensive updating and streamlining of the rule. Among other changes, the revised rule clarifies NCUA's authority to examine CUSO books and records, adds to the list of permissible CUSO services, and simplifies the legal opinion requirements. Upon reconsideration of the revised rule, NCUA now believes that three provisions of the rule are unnecessarily restrictive and should be changed and that one provision needs further clarification.

Proposed Changes

The first proposed change concerns the question of what other organizations may participate with FCUs in the formation and operation of a CUSO. In this connection, § 712.2(c) of the current rule states that "[a]n FCU may invest in, or loan to, a CUSO by itself or with other credit unions, or with non-depository institution parties not otherwise prohibited by § 712.6 or this part." This language prohibits an FCU from investing in or lending to a CUSO in which one or more banks or thrift institutions are also participating lenders or investors.

Explaining this prohibition, the preamble to the current rule cited concern about non-credit union depository institutions participating in credit union service centers, such as shared branches. NCUA was concerned that credit union members would be confused if both NCUSIF and FDIC signs were posted together at shared service centers. 63 FR at 10746. On further consideration, however, NCUA believes any possible confusion can be properly addressed through appropriate disclosures to service center customers. The prohibition on bank and thrift participants is unnecessary and NCUA proposes to revise § 712.2(c) to read: "A federal credit union may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties." This language is substantially the same as the rule prior to the March 1998 revision. In addition the proposed rule removes a cross-reference in the current version of § 712.2(c) to § 712.6. Section 712.6 stands on its own to implement the statutory prohibition

against using the CUSO authority to acquire control of certain other organizations such as the trade associations and other depository institutions. 12 U.S.C. 1757(7)(I).

The second change concerns § 712.3(b) of the current rule and the amount a CUSO can invest in other service providers. This paragraph, entitled "Customer base," provides in part "if in order for the CUSO to provide a permissible service it is necessary for the CUSO to own stock in a service provider not meeting the customer base requirement, then the CUSO can own and buy the minimal amount of service provider stock necessary to provide the service." As an example of how this authority can be used, a CUSO might wish to buy stock in a bank or thrift-owned ATM network, in order to make the network available to members of the CUSO's participating credit unions.

Upon further consideration, NCUA believes it is not necessary to limit a CUSO's investment in a service provider to a minimum amount required as a condition of participation in the service provider. If a CUSO can, as a result of an increased investment, obtain a reduced price for goods or services, the CUSO should be free to make that business decision. Accordingly, NCUA proposes to revise the language concerning service providers to permit CUSO investments in non-CUSO service providers if the investment is limited to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services, for the CUSO, its credit unions, or the credit unions' members.

The intent of this provision is to allow a CUSO to invest as much as is necessary to obtain an economic advantage on the goods or services it is receiving. CUSOs would not be permitted to use this provision as independent investment authority. The NCUA Board is interested in receiving comment on this distinction, and on whether the proposed regulatory language achieves the intended result.

NCUA believes it would be clearer for this provision to be set out in that portion of the regulation addressing permissible activities rather than in the section addressing customer base. NCUA proposes to move this provision from the customer base section of the rule, § 712.3(b), and add it as a new subsection (p) to § 712.5 concerning permissible CUSO activities and services.

The third change concerns § 712.2(a) of the current rule that limits an FCU's investment in a CUSO structured as a corporation to the equity of the corporation. The preamble explains that this limitation was a clarification. However, this provision has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation, a practice that was previously permissible. NCUA proposes to eliminate this provision because the limitation is more restrictive than the Act, which permits FCUs to invest in the obligations of a CUSO. 12 U.S.C. 1757(7)(I).

Currently, § 712.2(a) states that an FCU can only invest in a limited partnership as a limited partner. This provision is more related to the permissible structure of a CUSO than permissible investments in a CUSO. NCUA believes this provision would be clearer if it is moved from § 712.2(a) to § 712.3(a). In addition, the provision limiting an FCU's investment in a limited liability company to membership is deleted because it is unnecessary.

The final change clarifies that generally accepted accounting principles (GAAP) are to be used in accounting for an FCU's investments in and loans to a CUSO both for purposes of accounting for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. In the past, some FCUs have measured both regulatory limitations and financial statement amounts consistent with GAAP while others have measured the regulatory limitation differently, using a concept called aggregate cash outlay.

The aggregate cash outlay practice came about because of a perceived inequity in having to use GAAP in certain situations. If a credit union owns 20% or more, but less than 50% of a CUSO's voting common stock, it is presumed to "have the ability to exert significant influence" over the CUSO and GAAP requires the credit union to use the equity method to account for its CUSO investment. Under this method, the FCU records its initial investment and, subsequently, its proportionate share of the CUSO's profits and losses. A situation could arise in which an FCU's initial investment is within the 1% regulatory limitation but, as the CUSO operates with continued profitability and the credit union absorbs its proportionate share of the profits through no additional cash outlay, the FCU exceeds its 1% limitation. This could trigger regulatory action requiring divestiture. Some argue this is contrary to prudent business practice and unfair because it would be penalizing FCUs for investing in profitable CUSOs. To avoid this result, there grew in practice a concept generally known as aggregate cash outlay. Under this concept, the regulatory limitation would only be measured in relation to the actual cash invested or lent to a CUSO, not counting subsequent increases or decreases to this amount growing out of application of equity method accounting.

The Board agrees that divestiture should not be required, but believes it is important for FCUs to account in accordance with GAAP. The proposed rule strikes a balance. It requires FCUs to account in accordance with GAAP for both regulatory and financial reporting purposes. It does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the equity method without any additional cash outlay.

To accomplish this, new subsections (d) and (e) have been added to § 712.2. Subsection (d) includes the definition of "paid-in and unimpaired capital and surplus" that was formerly in subsection (a) and adds the requirement that total investments in and loans to the CUSO be measured consistent with GAAP for regulatory purposes. Section 712.3(c) is revised by adding "for financial reporting purposes" to the title.

As an example of how the rule will be applied, if an FCU owns 45% of a CUSO and the CUSO has an annual net income of $50,000, the equity method requires an FCU to book a $22,500 addition to its "investments in and loans to CUSO" asset account. If by doing so, the regulatory limitation is reached or exceeded, NCUA will not require divestiture.

Request for Comment

The NCUA Board is interested in receiving comments on the proposed amendments to part 712.

The NCUA Board is also interested in receiving comment on § 712.5(d)(8) which lists cyber financial services as a permissible CUSO activity. The preamble to the current rule defined cyber financial services as "credit union member financial services that are analogous to services performed for credit union members in a credit union branch and not unrelated services." 63 FR at 10753. As part of a CUSO's authority to provide cyber financial services, it may also want to provide other forms of cyber service. The NCUA Board is interested in receiving comment on the scope of services that should be included within the category of cyber financial services.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under 1 million in assets). Because these proposed changes reduce regulatory burden, the NCUA Board has determined and certifies that the proposal does not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

This proposal has no effect on reporting requirements in part 712.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this proposal does not constitute a "significant regulatory action" for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

List of Subjects in 12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and record-keeping requirements.

By the National Credit Union Administration Board on November 19, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 712 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS

1. The authority citation for part 712 will continue to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Amend § 712.2 by removing the second and third sentences of paragraph (a), revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 712.2 How much can an FCU invest in, or loan to, CUSOs, and what parties may be involved?

* * * * *

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section: paid-in and unimpaired capital and surplus means shares and undivided earnings; and total investments in and total loans to CUSOs will be measured consistent with GAAP.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

3. Amend § 712.3 by adding a new sentence following the first sentence of paragraph (a), by removing the second sentence of paragraph (b) and by revising the title of paragraph (c) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) *Structure.* * * * An FCU may only participate in a limited partnership as a limited partner. * * *

* * * * *

(c) Federal credit union accounting for financial reporting purposes. * * *

* * * * *

4. In § 712.5 add paragraph (p) to read as follows:

§ 712.5 What activities and services are preapproved for CUSOs?

* * * * *

(p) *CUSO investments in non-CUSO service providers:* In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

[FR Doc. 98–31598 Filed 11–27–98; 8:45 am]
BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–295–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model DHC–7 series airplanes. This proposal would require removal of all attachment bolts and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings; a one-time visual inspection to detect corrosion of each attachment bolt; and installation of new attachment bolts and PLI washers of the wing-to-fuselage attachment fittings. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the attachment bolts of the wing-to-fuselage attachment fittings due to stress corrosion cracking, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by December 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–295–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on all Bombardier Model DHC–7 series airplanes. TCA advises that on two Model DHC–7 series airplanes, two attachment bolts of the wing-to-fuselage attachment fittings were found broken on each airplane. On one airplane, two attachment bolts were corroded and the head of one attachment bolt had been completely sheared off, and was attached only by the lock wire. A similar incident occurred on another airplane. Failure of the attachment bolts was attributed to stress corrosion cracking, which was caused by moisture contamination of the wing-to-fuselage interface. Such cracking, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Service Bulletin S.B. 7–57–37, dated August 8, 1997, which describes procedures for removal of all attachment bolts (one at a time) and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings; a one-time visual inspection to detect corrosion of each attachment bolt; and installation of new attachment bolts and PLI washers of the wing-to-fuselage attachment fittings. The service bulletin also describes procedures for notifying Bombardier in the event that corrosion is detected on any attachment bolt of the wing-to-fuselage attachment fittings.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–98–12, dated June 24, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 65 work hours per airplane to accomplish the proposed actions and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $355,000, or $7,100 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 98–NM–295–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment bolts of the wing-to-fuselage attachment fittings due to stress corrosion cracking, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Bombardier Service Bulletin S.B. 7–57–37, dated August 8, 1997.

(1) Remove all attachment bolts (one at a time), and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings.

(2) Perform a one-time visual inspection to detect corrosion of each attachment bolt. If any corrosion is detected, within 10 days after accomplishing the visual inspection, or within 10 days after the effective date of this AD, whichever occurs later, submit a report of the inspection results to Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(3) Install new attachment bolts (one at a time), and new PLI washers of the wing-to-fuselage attachment fittings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–12, dated June 24, 1998.

Issued in Renton, Washington, on November 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31700 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA series airplanes. This proposal would require a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–289–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 SHERPA series airplanes. The CAA advises that the existing power control cable assemblies are subject to breakage, which is caused by the inflexible construction of the cable. The manufacturer has introduced a more flexible construction of the cable, which was incorporated during production of the subject airplanes, however, the possibility does exist that not all airplanes were modified. Breakage of the power control cable assemblies due to the inflexible construction of the cable, if not corrected, could result in loss of engine power and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Service Bulletin SD3–60 SHERPA–76–1, dated July 1998, which describes procedures for a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–07–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection by this AD on U.S. operators is estimated to be $25,200, or $900 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 98–NM–289–AD.

Applicability: All Model SD3–60 SHERPA series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 1,200 flight hours after the effective date of this AD, perform a one-time visual inspection to determine the part number (P/N) of the power control cable assemblies and pulleys of the engine controls, in accordance with Part A of the Accomplishment Instructions of Shorts Service Bulletin SD3–60 SHERPA–76–1, dated July 1998.

(1) If any power control cable assembly having P/N SD3–47–1091 or SD3–47–1094 is found, prior to further flight, replace the power control cable assembly with a new power control cable assembly in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(2) If any pulley having P/N C181605 is found, prior to further flight, replace the pulley with a new pulley in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) As of the effective date of this AD, no person shall install on the engine controls of any airplane a cable assembly having P/N SD3–47–1091 or SD3–47–1094, or any pulley having P/N C181605.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 004–07–98.

Issued in Renton, Washington, on November 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31699 Filed 11–27–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[Notice No. 870]

RIN 1512–AB58

Distilled Spirits Plant Regulatory Initiative Proposals

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing changes to the distilled spirits plant regulations to implement the Administration's Reinventing Government effort to reduce the regulatory burden and streamline requirements on the regulated public.

Proposals for change include removing an obsolete provision relating to special (occupational) tax; liberalizing the requirement for approval of changes in plant security personnel or procedures; reducing the paperwork when plant premises are alternated with other premises according to a previously approved plan; providing for alternation of distilled spirits plant and brewery premises; allowing denaturation and manufacture of articles to be done in a single, unified process; specifying marks for packages of spirits withdrawn taxpaid for industrial use; clarifying regulations that refer to a transfer record required when spirits are transferred in bulk from customs custody to the bonded premises of a distilled spirits plant; and incorporating a provision of Industry Circular 80–6 regarding the importation of alcohol fuel.

ATF believes these proposed changes will benefit distilled spirits plant proprietors and other industry members by enabling them to operate more easily and with less regulatory oversight from the Government.

Besides proposing and soliciting comments on these specific changes, ATF is requesting suggestions for additional changes that may, in the future, be proposed for the general system of recordkeeping at distilled spirits plants.

DATES: Written comments on specific proposals for which regulatory language is set forth in this notice must be received by January 29, 1999. Comments suggesting future possible changes pertaining to the general system of recordkeeping at distilled spirits plants must be received by March 30, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 870.

Copies of written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Steven C. Simon, Regulations Division, 650 Massachusetts Avenue NW., Washington, DC 20226; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Delegations of Authority

Since the authorities formerly assigned to the "regional director (compliance)" have been reassigned to other officials, references to "regional director (compliance)" in regulations proposed to be amended or promulgated by this document are proposed to be changed to "appropriate ATF official."

Special Tax Provisions

ATF proposes to delete obsolete provisions in § 19.49(a)(2) which refer to the special (occupational) tax rate applicable to distilled spirits plants in business as of January 1, 1988. There are no substantive changes proposed relating to special tax.

Change in Security Personnel or Procedures

Currently, § 19.153(b) requires an application for amended plant registration (ATF Form 5110.41) to be filed each time there is a change in plant security personnel or procedures. ATF has determined that this requirement may be liberalized without jeopardy to the revenue. Therefore, this notice proposes to amend § 19.153(b) to require a letterhead application for changes in security procedures (§ 19.153(a) (1)–(4)), and a letterhead notice for changes in security personnel (§ 19.153(a)(5)). The plant registration would be updated on an annual basis to incorporate changes made during the preceding year.

Alternation of Premises

Current regulations in §§ 19.203–206 require the filing of a notice on ATF Form 5110.34 every time distilled spirits plant premises are alternated with general premises or with other ATF-regulated premises. However, ATF has determined that this requirement is unnecessary and burdensome when, as frequently occurs, these premises are regularly alternated according to a set plan of operations. Therefore, this notice proposes to amend §§ 19.203–206 to provide that after the proprietor has received approval of the plan (defining the boundary of the premises to be alternated), the alternation may take place pursuant to records to be kept in a logbook. The content of those records is prescribed in new § 19.781. Further, it is proposed to provide for alternation of distilled spirits plant and brewery premises, which is not currently provided for. With respect to alternation of proprietors under § 19.201 and alternation with customs premises under § 19.202, this notice proposes to substitute a letterhead notice for the filing of Form 5110.34; thus, that form (OMB control number 1512–0202) will become obsolete. The notice of suspension of production operations for 90 days or more in section A of Form 5110.34 will be covered by an amendment of § 19.311.

Denaturation and Article Manufacture

Regulations in § 19.454 require gauges both before and after denaturation. If followed, this requirement prevents a distilled spirits plant from conducting denaturation and article manufacture in a single, unified process. A unified process may be desirable, for example, when manufacture of an article involves addition of more of the same chemicals as are used as denaturants in making the denatured spirits formula from which the article is manufactured. Clearly, in this case, and in other similar situations, it would be helpful to be able to add the entire quantity of chemicals for denaturation and article manufacture in a single step, rather than pausing to take a gauge after the chemicals necessary to denature the spirits had been added. The purpose of requiring gauges before and after denaturation is to obtain accurate measurements of spirits used for denaturation, and of denatured spirits produced. However, when denatured spirits and articles are manufactured in a unified process, the quantity of denatured spirits produced can be accurately determined by a computation. Therefore, this notice proposes to amend § 19.454 to allow proprietors using such a process to use a prescribed method of computation to determine the quantity of denatured spirits produced.

Marks on Packages of Tax-Paid Industrial Spirits

Regulations in § 19.596 require certain information to be marked on "packages" (i.e. barrels or drums) of distilled spirits. These regulations primarily envision barrels of beverage spirits (e.g. whisky) entering bonded storage. Thus, in § 19.596(a), only "rated capacity" need

be shown on packages filled in production or storage, since the actual contents of wooden barrels changes during the aging process. For packages filled in processing (§ 19.596(b)), not even the rated capacity is required; the proof must be shown, but not the quantity. In general, there is no requirement for quantity of contents to be shown on packages. This may be appropriate for beverage spirits, which will be put in bottles before withdrawal from bond, but it can be problematic for industrial spirits. Particularly, if spirits in drums are withdrawn on tax determination for shipment to a manufacturer of nonbeverage products, that manufacturer does not have a ready means of determining their contents for taking a physical inventory. Moreover, the absence of a requirement for quantity of contents to be shown on packages is abnormal, when compared with regulations governing similar situations. Thus, quantity of contents must be shown on cases of spirits filled in processing (§ 19.607), on cases of industrial alcohol (§ 19.608), on containers of imported spirits (§ 19.484), on containers of spirits from an alcohol fuel plant (§ 19.1008), on bulk conveyances (§ 19.606), and even on packages of denatured spirits (§ 19.601). ATF feels that the advantage to nonbeverage manufacturers in having contents information as a required package mark outweighs any added burden on distilled spirits plant proprietors in being required to provide such information. Therefore, this notice proposes an amendment to § 19.605 to require proof, tare, and proof gallons to be marked on packages of spirits withdrawn on determination of tax.

Transfer Record for Shipments From Customs Custody

The transfer record for spirits being received into ATF bond from customs custody is mentioned in § 19.770 in a way that implies that this transfer record would be prepared under that section. However, 27 CFR 251.138 prescribes the information for the transfer record covering such transfers, and that information is different in several ways from the information required for domestic transfers by § 19.770. Therefore, it is proposed to amend § 19.770 to clarify that the record required for transfer of spirits from customs custody must be prepared in accordance with § 251.138. ATF also proposes to add a sentence to § 19.481, cross referencing the requirements of part 251 pertaining to transfers from customs custody.

Importation of Alcohol Fuel

Industry Circular 80–6, titled "Distilled Spirits for Fuel Use," explained that an alcohol fuel plant may receive shipments of imported alcohol from customs custody, provided the alcohol was not produced from petroleum, natural gas, or coal. Subsequently, ATF has determined that, under the statute, this privilege only applies to medium and large alcohol fuel plants, since small plants are not covered by a bond. (Nontaxpaid bulk spirits transferred from customs custody are required by 26 U.S.C. 5232 to go to premises that are "bonded.") Further, 26 U.S.C. 5181(a)(1) provides that an alcohol fuel plant may be established solely for the purpose of (A) producing, processing, and storing, and (B) using or distributing distilled spirits for fuel use. Therefore, an alcohol fuel plant may not be established solely for the purpose of receiving and processing imported alcohol, since no distilled spirits would be "produced." For the same reason, imported spirits received at an alcohol fuel plant must be subjected to some form of manufacture or processing (such as addition of materials to render the spirits unfit for beverage use). However, 26 U.S.C. 5232 prevents such spirits from being redistilled or denatured if they were imported at less than 185° proof. This notice proposes to incorporate expressly these determinations in the regulations by adding a new § 19.1003.

General System of Recordkeeping

In general, the system of recordkeeping prescribed in part 19 is derived from the system that was in place prior to the institution of "all-in-bond" in 1980. In many instances, use of commercial records is prescribed in lieu of previously required Government forms, but the content of the commercial record must be the same as was formerly shown on the Government form. Thus, the present recordkeeping system is not as different from the former system as it might appear. Ultimately, the present system descends from the era when Federal officers were permanently stationed at distilled spirits plants and kept many of the records that are now required to be kept by the plant proprietors. ATF feels that this is a situation that calls for examination under the Administration's Reinventing Government initiative. Modern methods of recordkeeping, particularly the use of computers, should be taken into account. The entire system should be looked at globally to determine whether the Government's goal of ensuring that all distilled spirits are accounted for, from production to taxpayment, can be met by a modern system that is based as much as possible on the industry's own recordkeeping methods. Before proposing specific regulatory changes, comments and suggestions should be considered from all segments of the distilled spirits industry and others concerned. Accordingly, this notice requests such comments and suggestions.

Public Participation—Written Comments

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8½" x 11" in size; (3) contain a written signature; and (4) are three pages or less in length. Please mail (do not FAX) any comments that exceed three pages. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at the ATF Reading Room, located in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue NW., Washington, DC.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action, because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan

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programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The collections of information contained in regulations proposed to be amended by this notice have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers 1512–0202, 1512–0206, 1512–0215, 1512–0250, and 1512–0461. The proposed amendments are expected to result in a net annual reduction of 450 burden hours, due to (1) the elimination of control number 1512–0202 (1,000 burden hours), (2) a net increase of 50 burden hours under control number 1512–0206, and (3) an increase of 500 burden hours under control number 1512–0250. Comments on these collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226.

Regulatory Flexibility Act

Pursuant to § 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. As discussed elsewhere in this preamble, this proposed rule will ease the regulatory burden on small proprietors and will not: (1) impose, or otherwise cause, a significant increase in recordkeeping or other compliance burdens on a substantial number of small entities or (2) have significant secondary or incidental effects on a substantial number of small entities. The factual basis for this certification is that the proposed regulatory amendments will result in a reduced burden on small entities. Accordingly, an initial regulatory flexibility analysis is not required.

Drafting Information

This notice was written by Steven C. Simon, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

Issuance. Accordingly it is proposed to amend Title 27, Code of Federal Regulations, as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2–3. Section 19.49(a) is revised to read as follows:

§ 19.49 Liability for special tax.

(a) *Proprietor of distilled spirits plant.* Except as provided in § 19.906, every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by § 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

* * * * *

Par. 4. Section 19.153 is amended by revising paragraph (b) to read as follows:

§ 19.153 Statement of physical security.

* * * * *

(b) *Changes.* For changes in any of the information provided under paragraphs (a)(1) through (a)(4) of this section, the proprietor shall submit a letterhead application to the appropriate ATF official and receive approval thereof before instituting the change. For changes in security personnel listed in paragraph (a)(5) of this section, the proprietor shall submit a letterhead notice within 30 days after the change. Annually on May 1 (or other date approved by the appropriate ATF official), if there have been any changes, the proprietor shall submit an application for amended registration reflecting the changes made during the preceding year.

* * * * *

Par. 5. In § 19.201, the second, fourth, and last (fifth) sentences of paragraph (a) are revised, and new paragraph (f) is added, to read as follows:

§ 19.201 Procedure for alternating proprietors.

(a) *General.* * * * Where operations by alternating proprietors are limited to parts of the plant, the notice of registration shall describe the areas, rooms or buildings, or combinations thereof, which will be alternated, indicate the method to be used to separate the premises being alternated from those not being alternated, and be accompanied by special diagrams designating the parts of the plant which are to be alternated. * * * Once such qualifying documents have been approved, the plant or parts thereof may be alternated pursuant to letterhead notices filed in accordance with paragraph (f) of this section by each proprietor involved in the alternation. A single notice may be filed if it is signed by an authorized representative of each proprietor.

* * * * *

(f) *Filing of notices.* The letterhead notices required by paragraph (a) of this section shall be submitted to the area supervisor for transmission to the appropriate ATF official. Separate notices shall be submitted for each alternation of premises. The notices must be received by the area supervisor prior to the effective date of the alternation and shall contain the following information:

(1) The name and plant number of the proprietor(s) filing the notice.

(2) Identification (by name and plant number) of the outgoing proprietor and the incoming proprietor.

(3) The date and hour of the alternation.

(4) Identification of any applicable special diagrams, in the registration documents of each proprietor named under paragraph (a)(1) of this section, depicting the portions of the premises to be alternated.

(5) The purpose of the alternation.

(6) Whether distilling materials, unfinished or finished spirits, denatured spirits, or wine will be transferred to the incoming proprietor.

(7) Whether denatured spirits or articles in the processing account will be retained in locked tanks during the period of alternating proprietorship.

* * * * *

Par. 6. In § 19.202, the fifth sentence of paragraph (a) and the entirety of paragraph (c) are revised, and new paragraph (d) is added, to read as follows:

§ 19.202 Alternate use of premises and equipment for customs purposes.

(a) *General.* * * * Once such qualifying documents have been approved by the appropriate ATF official, the designated premises and equipment may be alternately curtailed or extended pursuant to a letterhead notice filed in accordance with paragraph (d) of this section. * * *

* * * * *

(c) *Exception.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, the bonded premises may be used temporarily without filing Form 5110.41 or the notice described in paragraph (d) of this section, for the sole purpose of gauging bulk distilled spirits to effect their transfer from customs custody to ATF bond.

(d) *Filing of notice.* The notice required by paragraph (a) of this section shall be submitted to the area supervisor for transmission to the appropriate ATF official. A separate notice shall be submitted for each alternation of premises. The notice must be received by the area supervisor prior to the effective date of the alternation and shall contain the following information:

(1) The name and plant number of the proprietor filing the notice.

(2) The date and hour of the alternation.

(3) Whether the premises are being curtailed or extended.

(4) Identification of the special diagrams in the registration documents depicting the premises as they exist before and after the alternation;

(5) The purpose of the alternation, including the class of customs warehouse (if any) temporarily occupying the curtailed premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Par. 7. Section 19.203 is amended by revising the heading and paragraphs (a), (c), (d), and the authority citation, and by adding new paragraph (e), to read as follows:

§ 19.203 Alternation of distilled spirits plant and bonded wine cellar or taxpaid wine bottling house premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous bonded wine cellar or taxpaid wine bottling house, who desires to alternate the use of such premises with distilled spirits plant premises by temporary extension and curtailment, shall file qualifying documents, keep records, and conduct operations as prescribed in this section.

* * * * *

(c) *Records.* After approval of qualifying documents for the alternation of premises, the proprietor may alternate the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* Separation of distilled spirits plant premises from bonded wine cellar or taxpaid wine bottling house premises shall be in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Segregation of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated to wine premises, except that spirits may remain if they are being withdrawn for use in wine production under § 19.532 or for use in the production of nonbeverage wine or wine products under § 19.534, and wine may remain if it is being transferred in bond under § 19.505(b)(1)(ii); and all wine and spirits shall be removed from premises to be alternated to distilled spirits plant premises, except that wine may remain if it is being transferred in bond under § 19.505(b)(1)(i), and spirits may remain if they are being returned from bonded wine cellar to distilled spirits plant bonded premises under § 19.686(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Par. 10. Section 19.204 is revised to read as follows:

§ 19.204 Alternation of distilled spirits plant and brewery premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous brewery, who desires to alternate the use of brewery premises with distilled spirits plant premises by temporary extension and curtailment, shall file qualifying documents, keep records, and conduct operations as prescribed in this section.

(b) *Qualifying documents.* The proprietor shall file with the appropriate ATF official:

(1) Form 5110.41 and Form 5130.10 to cover the proposed alternation of premises;

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Records.* After approval of qualifying documents for the alternation of premises, the proprietor may alternate the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* Separation of distilled spirits plant premises from brewery premises shall be in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Segregation of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated to brewery premises; and all beer shall be removed from premises to be alternated to distilled spirits plant premises, except that beer may remain if it is being received for production of distilled spirits as provided in § 19.312.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Par. 9. Section 19.205 is amended by revising paragraphs (c) and (d), and by adding new paragraph (e), to read as follows:

§ 19.205 Alternate curtailment and extension of bonded premises for use as general premises.

* * * * *

(c) *Records.* After approval of qualifying documents for the alternation of bonded and general premises, the proprietor may alternate the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* Separation of bonded premises from general premises shall be in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Removal of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated, except that—

(1) Bonded spirits may remain on portions of bonded premises to be alternated to general premises if the spirits are taxpaid concurrently with the alternation; and

(2) Taxpaid spirits may remain on portions of general premises to be alternated to bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart U of this part.

* * * * *

Par. 10. Section 19.206 is amended by revising paragraphs (c) and (d), and by adding new paragraph (e), to read as follows:

§ 19.206 Curtailment and extension of plant premises for the manufacture of eligible flavors.

* * * * *

(c) *Records.* After approval of qualifying documents for the alternate curtailment and extension of distilled spirits plant plant premises, the proprietor may alternately curtail and extend the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Removal of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated, except that—

(1) Bonded spirits may remain on portions of bonded premises to be curtailed if the spirits are taxpaid concurrently with the curtailment; and

(2) Taxpaid spirits which have not been used in the manufacture of a nonbeverage product may remain on portions of premises to be included by extension of bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart U of this part.

* * * * *

Par. 11. Section 19.311 is revised to read as follows:

§ 19.311 Notice by proprietor.

(a) *Commencement of operations.* The proprietor shall, before commencing production operations or resuming production operations after having given notice of suspension, file a letterhead notice with the area supervisor, specifying the date on which the proprietor desires to commence or resume operations for the production of spirits. The proprietor shall not commence or resume operations prior to the time specified in the notice.

(b) *Suspension of operations.* Any proprietor desiring to suspend production operations for a period of 90 days or more shall file a letterhead notice with the area supervisor, specifying the date on which the operations will be suspended. In case of an accident which makes it apparent that operations cannot be conducted for 90 days or more, the proprietor shall immediately notify the area supervisor. (If such notification is verbal, it shall be followed up with a written notice.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1364, as amended (26 U.S.C. 5221))

Par. 12. Section 19.454 is revised by designating the existing text as "(a)," and by adding a heading to paragraph (a) and a new paragraph (b), to read as follows:

§ 19.454 Gauge for denaturation.

(a) *General.* * * *

(b) *Denaturation and article manufacture in a single process.* When spirits are denatured and articles are immediately produced therefrom in a unified process, the spirits and denatured spirits may be gauged by the following method:

(1) The spirits to be denatured are gauged by weight.

(2) The denaturants to be used are gauged by weight.

(3) The following computation is performed:

(i) The weight (in pounds) of denaturants used for denaturation (not to include any additional quantity of the same chemicals being used for article manufacture) is added to the weight (in pounds) of the spirits.

(ii) The sum thus obtained is divided by a number consistent with the data in § 21.161 of this chapter under the heading "Wt./gal. in air (lbs.)," extrapolated as necessary to the exact proof of the spirits.

(iii) The result is the number of wine gallons of denatured spirits produced; this figure shall be entered in the record required by § 19.752(b).

* * * * *

§ 19.481 [Amended]

Par. 13. Section 19.481 is amended by adding at the end of the existing text the following new sentence:

§ 19.481 General.

* * * The procedures in subpart L of part 251 of this chapter pertain to the transfer of spirits from customs custody to the bonded premises of a distilled spirits plant.

* * * * *

Par. 14. Paragraph (a) of § 19.605 is revised to read as follows:

§ 19.605 Additional marks on portable containers.

(a) In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits or denatured spirits to be withdrawn from the bonded premises shall bear the following marks:

(1) If withdrawn without payment of tax for export, for transfer to a customs manufacturing bonded warehouse or to a foreign trade zone, or for use as supplies on certain vessels or aircraft: the marks required by part 252 of this chapter.

(2) If withdrawn tax free for shipment to a permittee under part 22 of this chapter: the word "Tax-Free."

(3) If withdrawn in packages on determination of tax: the tare, proof, and proof gallons.

* * * * *

Par. 15. In § 19.770, paragraph (a)(6)(i) is revised and new paragraph (c) is added, to read as follows:

§ 19.770 Transfer record.

(a) Consignor. * * *

(6) * * *

(i) Name and plant number of the producer, warehouseman or processor (Not required for denatured spirits or wine. For imported spirits transferred in bond between distilled spirits plants, record the name and plant number of the warehouseman or processor who received the spirits from customs custody. For Virgin Islands or Puerto Rican spirits, show the name of the producer in the Virgin Islands or Puerto Rico. For spirits of different producers or warehousemen which have been mixed in the processing account, record the name of the processor.);

* * * * *

(c) *Receipt of spirits from customs custody.* When spirits are transferred from customs custody as provided in subpart O of this part, the transfer record shall contain the information prescribed by § 251.138 of this chapter.

* * * * *

Par. 16. New § 19.781 is added immediately following § 19.780, to read as follows:

§ 19.781 Record of alternating premises.

When distilled spirits plant bonded premises are alternated to or from bonded wine cellar, taxpaid wine bottling house, brewery, manufacturer of nonbeverage products, or general premises, under an approved plan of alternation described in the plant registration, the proprietor shall record the following information:

(a) The date and hour of the alternation;

(b) The kind of premises being curtailed, including plant identification number, if applicable;

(c) The kind of premises being extended, including plant identification number, if applicable;

(d) Identification of the special diagrams in the registration documents depicting the premises as they exist before and after the alternation; and

(e) The purpose of the alternation.

Par. 17. In § 19.1001, the first sentence of paragraph (a) is revised to read as follows:

§ 19.1001 Consignee premises.

(a) *General.* When spirits are received by transfer in bond or from customs custody, the proprietor shall examine each conveyance to determine whether the locks, seals, or other devices are intact upon arrival at the premises.

* * *

* * * * * *

Par. 18. New § 19.1003 is added immediately following § 19.1002, to read as follows:

§ 19.1003 Transfer from customs custody.

(a) *General.* Spirits imported or brought into the United States in bulk containers may be withdrawn from customs custody and transferred in such bulk containers or by pipeline, without payment of tax, to the bonded premises of a large or medium alcohol fuel plant, but only if the spirits were not produced from petroleum, natural gas, or coal. Spirits received on alcohol fuel plant premises as provided in this section shall be subjected to further manufacturing or processing after receipt. Such spirits may be redistilled or denatured only if imported at 185 degrees or more of proof, and withdrawn for fuel use only, in the same manner and subject to the same requirements as domestically produced alcohol fuel.

(b) *Transfer procedures.* The procedures in § 19.1001 and in subpart L of part 251 of this chapter pertain to the transfer of spirits from customs custody to an alcohol fuel plant.

(c) *Restriction.* A proprietor who intends not to produce spirits, but to engage solely in the business of receiving spirits from customs custody as authorized in this section, must qualify as a regular distilled spirits plant under 26 U.S.C. 5171 and subpart G of this part.

§ 19.1010(b) [Amended]

Par. 19. Section 19.1010(b) is revised to:

(a) Remove references to control number 1512–0202 from §§ 19.201–19.205,

(b) Revised the reference to control number 1512–0202 in § 19.311 to a reference to control number 1512–0206,

(c) Remove all references to obsolete control number 1512–0189,

(d) Remove all entries for §§ 19.661–19.672,

(e) Remove entries for §§ 19.610 and 19.772, and

(f) Add an entry for § 19.781, to read as follows:

§ 19.1010 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Section where identified	Current OMB control no.
* * * * *	
19.781	1512–0250
* * * * *	

Signed: August 5, 1998.

John W. Magaw,

Director.

Approved: October 26, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–30942 Filed 11–27–98; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6193–7]

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is extending the public comment period on the notice of proposed rulemaking (NPRM) for hazardous air pollutants from the petroleum refining industry, which was published in the **Federal Register** on September 11, 1998 (63 FR 48890). The purpose of this notice is to extend the comment period from November 10, 1998, to December 1, 1998. This extension is being made in response to a request from the National Petrochemical & Refiners Association, an industry trade association.

DATES: The EPA will accept comments on the NPRM until December 1, 1998.

ADDRESSES: Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–36, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (Mr. Robert Lucas). The docket may be inspected at the above address between 8:00 a.m. and 5:30 p.m., on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the NPRM, contact Robert B. Lucas, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0884; electronic mail address, "lucas.bob@epamail.epa.gov."

Dated: November 20, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 98–31674 Filed 11–27–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[ET Docket No. 98–197, FCC 98–289]

Radionavigation Service at 31.8–32.3 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this action, we propose to amend the Commission's Rules in order to delete the unused non-Government radionavigation service allocation at 31.8–32.3 GHz and to also remove this frequency segment from the list of available frequencies set forth in the rules for the Aviation Services. The adoption of this proposal would protect the Federal Government's deep space operations in the 31.8–32.3 GHz band from uncoordinated commercial radionavigation usage that may otherwise occur in the future, while maintaining adequate spectrum for future non-Government radionavigation services in the adjacent 32.3–33.4 GHz band.

DATES: Comments are due December 30, 1998, reply comments are due January 14, 1999.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A–325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* ET Docket 98–197, FCC 98–289, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–C404), 445 Twelfth Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Notice of Proposed Rulemaking

1. National Telecommunications and Information Administration ("NTIA"), at the request of the National Aeronautics and Space Administration ("NASA"), asks that we delete the non-Government radionavigation service from the 31.8–32.3 GHz band. NASA bases its request on the potential for interference to its deep space receive site at Goldstone, California, from uncoordinated commercial radionavigation usage of the 31.8–32.3 GHz band. In support of its request, NASA cites International Telecommunication Union Recommendation ITU–R SA.1061 as documenting that space research (deep space) sharing with airborne operations in the radionavigation service is not feasible. NASA explains that signals received on Earth from spacecraft in deep space are extremely weak, and thus are highly susceptible to interference of all kinds. Further, NASA stresses that airborne interference sources, if present, would easily overwhelm the desired but weak signals from space. In its normal deep space operations, to bolster signal reception, NASA points out that it has fitted its large earth station antennas with cryogenically-cooled preamplifiers and has employed specialized receivers. NASA states that it has sited the earth stations in such a way as to provide radio shielding from *terrestrial* radio sources sharing the same frequency band, which are potential interferers. But, NASA states, its earth stations cannot be shielded from *airborne* radio sources operating in the 31.8–32.3 GHz band, because the potential interfering signals may emanate from the same general direction as the desired deep space signals.

2. NASA indicates that currently, the only radionavigation operations in the 31.8–32.3 GHz band are from Federal Government (military) operations. The coordination of these military operations with NASA/Goldstone has been successful, NASA says, largely because they occur infrequently. By contrast, NASA does not believe that deep space operations can be coordinated successfully with private or commercial aircraft using terrain-following or landing-aid radars operating on an unrestricted basis within line-of-sight of the Deep Space Network site at Goldstone. To avoid causing interference, NASA states, such aircraft would have to choose between the impractical solutions of either avoiding the airspace in the Goldstone vicinity or turning off their transmitters in the 31.8–32.3 GHz band while within line-of-sight of Goldstone.

3. NASA brought this issue before NTIA's Interdepartment Radio Advisory Committee ("IRAC"). During these discussions, the Federal Aviation Administration indicated that there are no known plans for commercial aeronautical radionavigation operations in the 31.8–32.3 GHz band. After considering several options, IRAC recommended to NTIA that the 31.8–32.3 GHz band be limited to Federal Government operations. NTIA endorsed this recommendation, concluding that future demand for commercial or private radionavigation services could be adequately accommodated in the 1.1 gigahertz of radionavigation spectrum that would remain at 32.3–33.4 GHz.

4. We propose to implement NTIA's proposal to delete the non-Government radionavigation service allocation at 31.8–32.3 GHz. We agree with NTIA that the 32.3–33.4 GHz band appears adequate to accommodate commercial and private radionavigation services that may develop in the future. By limiting future non-Government radionavigation services to the 32.3–33.4 GHz band, we believe that adequate spectrum would be preserved for these potential services and that NASA's deep space operations in the 31.8–32.3 GHz band would be adequately protected from those services. We further propose to remove the 31.8–32.3 GHz segment from the list of frequencies that are available for use by the aeronautical radionavigation service under § 87.173 of the rules for the Aviation Services and to add a rule part cross reference to part 87 in the Table of Frequency Allocations entry for the 32.3–33.4 GHz band in § 2.106. In addition, as suggested in NTIA's letter, we propose to parallel the international table by changing the space research service (deep space) (space-to-Earth) allocation from a footnote allocation to a table entry allocation and, as a consequence of that proposal, to modify the text of footnote US262 to remove unneeded information. We request comment on these proposals.

Initial Regulatory Flexibility Certification

5. The Regulatory Flexibility Act ("RFA")[1] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business"

[1] The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with American Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA").

6. In this *Notice of Proposed Rule Making*, we propose to delete an unused non-Government allocation for the radionavigation service at 31.8–32.3 GHz in order to protect existing Government operations in this band from harmful interference. In addition, we tentatively conclude that the remaining portion of the existing non-Government radionavigation allocation at 32.3–33.4 GHz will provide sufficient spectrum for future non-Government radionavigation services, if and when such services develop. Accordingly, we hereby certify that the proposed deletion of the non-Government radionavigation allocation at 31.8–32.3 GHz will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 87

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31689 Filed 11–27–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 98–D019]

Defense Federal Acquisition Regulation Supplement; Restructuring Savings Repricing Clause

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that contracting officers should consider using a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before January 29, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite DFARS Case 98–D019 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 98–D019 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Since the late 1980's, defense contractors have been restructuring their business operations to increase efficiencies and become more competitive in the defense marketplace. Many of the restructuring activities result from business combinations (such as mergers or acquisitions), and often lead to reduced overall costs and future savings. However, a significant amount of time may lapse between the announcement of the merger or acquisition and the point at which the contractor reflects the restructuring savings in reduced overhead rates and contract prices. During this uncertain period, fixed-price contracts without a repricing or reopener clause are risky because, once awarded, they cannot be repriced. Projected restructuring savings are difficult to estimate and may be significant in amount.

This rule proposes to amend DFARS 231.205–70, External restructuring costs, to specify that contracting officers should consider including a downward-only repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring. The repricing clause should ensure that DoD receives its appropriate share of restructuring savings.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 98–D019), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 231 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is amended by adding paragraph (f) to read as follows:

231.205–70 External restructuring costs.

* * * * *

(f) *Contracting officer responsibilities.* (1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The repricing clause should provide for downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring savings.

(3) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period; and

(iv) The size of the potential dollar impact on the contract.

[FR Doc. 98–31696 Filed 11–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF STATE

48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652, 653

[Public Notice No. 2925]

RIN 1400–AA71

Department of State Acquisition Regulation (DOSAR)

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is being issued for comment in accordance with Section 4301 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104–106). Section 4301 requires the elimination of certification requirements from the Department of State Acquisition Regulation (DOSAR) that are not specifically imposed by statute. In addition, this proposed rule adds one new certification required by statute and one new certification not required by statute but justified in accordance with section 29 of Public Law 104–106. This proposed rule also eliminates internal coverage from the codified section of the DOSAR. Finally, the proposed rule contains miscellaneous amendments and corrections needed to bring the DOSAR in line with recent changes in the Federal Acquisition Regulation.

DATES: Public comments must be received by January 29, 1999.

ADDRESSES: Comments may be sent to: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: ginesgg@state.gov.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, telephone (703) 516–1691 or at the e-mail address specified above.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with Section 4301 of the Federal Acquisition Reform Act of 1996, the Department of State proposes to remove several certifications from the DOSAR. They are: 652.203–71, Certification Regarding Federal Employment (requirement not based in statute); 652.223–70, Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract (superseded by FAR 52.223–9); and, 652.223–71, Certification of Minimum Content Actually Utilized in the Performance of the Contract (also superseded by FAR 52.223–9).

In conjunction with the review of the DOSAR to eliminate any certifications not based in statute, the Department looked at all current DOSAR provisions and clauses to determine if they could be eliminated or revised. In addition, the Department proposes to add several new certifications and clauses. Accordingly, the Department proposes to take the following actions:

- Eliminate the clause at 652.203–70, Prohibition Against the Use of Federal Employees.
- Eliminate the clauses at 652.204–70, Security Requirements, and 652.204–71, Security Requirements—Personnel. Both of these clauses implement requirements for contractors that have access to classified information. However, the Department falls under the National Industrial Security Program (NISP), which establishes a program to safeguard Federal Government classified information that is released to contractors. FAR 4.404 prescribes clauses for use by agencies covered by the NISP. The Department has determined that the FAR coverage is adequate and the DOSAR language is no longer required. The associated DOSAR prescription at 604.404–70 is also removed.
- Revise the provision at 652.206–70, Competition Advocacy/Ombudsman, to better explain the role of the Acquisition Ombudsman.
- Renumber the clause at 652.214–70, Notices, to 652.243–70. The associated prescription at 614.201–7–70(b) is also removed, and a new prescription is found at 643.104–70. The change was made because the clause deals with contract modifications, and is applicable to all contracts, not just those awarded using sealed bidding.
- Revise the provision at 652.214–71, Authorization to Perform, to clarify that (1) the requirement to obtain licenses, permits, etc. is in accordance with the date specified in the solicitation, (e.g., the date may be after contract award); and (2) the requirement to obtain the licenses, permits, etc. applies only to the parties who will actually be performing the work, i.e., prime contractor, subcontractors or joint venture partner.
- Revise the clause at 652.216–71, Price Adjustment, for clarification purposes.
- Add a new clause at 652.219–71, Section 8(a) Direct Awards, to implement the Memorandum of Understanding between the Department and the Small Business Administration to allow for direct awards to contractors under the 8(a) Program. Subpart 619.8 is also revised accordingly.
- Eliminate the provisions and clauses at 652.223–72, Use of Double-Sided Copying in the Submission of Bids and Proposals; 652.223–73, Use of Double-Sided Copying in the Submission of Reports; 652.223–74, Use of Fly Ash as a Partial Replacement for Cement and Concrete; 652.223–75, Use of Recovered Materials in Building Insulation Products; 652.223–76, Use of Lubricating Oils Containing Re-Refined Oils; 652.223–77, Use of Retread Tires; and, 652.223–78, Use of Recovered Materials in Paper and Paper Products. These provisions and clauses have been superseded by FAR language incorporated in FACs 90–27 and 97–1. DOSAR Subpart 623.4 is revised in its entirety to conform to the new FAR requirements.
- Add a new certification at 652.225–70, Arab League Boycott of Israel, and a new clause at 652.225–71, Section 8(a) of the Export Administration Act of 1979, As Amended. This certification and clause are required by Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Pub. L. 103–236), which has continuing effect. A new Subpart 625.70 is also added.
- Add a new certification at 652.226–70, Certification of Status as a Minority Business Enterprise. This certification is not statutorily based. However, Federal agencies are required to report to the Minority Business Development Agency information concerning awards to minority-owned businesses, both large and small. Since this information is not readily available, this certification represents the most logical manner in which to gather this information. A justification for including this certification has been approved by the agency head. A new Part 626 is also added.
- Eliminate the clause at 652.228–73, Waiver of the Defense Base Act. The Department received a waiver from the Department of Labor for service contracts performed overseas for employees who are not U.S. citizens or

residents, or who are not hired in the U.S. Therefore, this clause is unnecessary. The associated prescription at 628.305(b)(3) is also removed.

• Combine the clauses at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services, and 652.228–72, Worker's Compensation Insurance (Defense Base Act)—Construction, into one clause with an alternate. Since the two clauses were virtually identical, it was determined to make coverage for construction contracts an Alternate I. The clause prescriptions at 628.305(b) have been revised accordingly.

• Combine the provisions at 652.228–74, Defense Base Act Insurance Rates—Limitation—Services, and 652.228–75, Defense Base Act Insurance Rates—Limitation—Construction, into one provision. The associated prescriptions at 628.306(a) are revised accordingly.

• Combine the provisions at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, and 652.228–77, Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Material, into one provision. The associated prescriptions at 628.307 and 628.307–70 are revised accordingly.

• Add a new clause at 652.229–71, Personal Property Disposition at Posts Abroad. Department of State regulations at 22 CFR part 136 require that contractors that may have importation or tax privileges in a foreign country because of their contractual relationship to the U.S. Government follow these regulations and the procedures established by the chief of mission. The regulations are intended to ensure that individuals do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. A new section 649.402 is added accordingly.

• Revise the clauses at 652.232–70, Payment Schedule and Invoice Submission (Fixed-Price), and 652.232–71, Voucher Submission (Cost-Reimbursement), to add the SF–1449 and to correct the block numbers to which the payment requests are to be sent.

• Add a new clause at 652.232–72, Limitation of Funds. This clause allows for the incremental funding of fixed-price, labor-hour, and time-and-material contracts for severable services. An associated prescription at 632.705–70 is also added.

• Add a new clause at 652.236–70, Accident Prevention. In accordance with a class deviation approved by the Procurement Executive, this clause will replace FAR 52.236–13 for use in overseas construction contracts not exceeding $500,000, since 52.236–13 refers to 29 CFR and the Corps of Engineers safety regulations and manuals which are not practical on such contracts overseas.

• Revise the clause at 652.237–71, Identification/Building Pass, to correct the address of the Building Pass Application Unit.

• Eliminate the clause at 652.246–70, Commercial Warranty. FAR Part 12, Acquisition of Commercial Items, contains adequate coverage in FAR 12.404 regarding warranties. Contracting officers shall follow the guidance in FAR 12.404(b) regarding use of express warranties. The associated prescription at 646.710–70 is also removed.

The proposed rule also eliminates internal coverage from the *codified* version of the DOSAR. The entire DOSAR, which may be found on the Internet (see DOSAR 601.105–3 for the Internet address), will contain both the codified and uncodified sections. This change is being made for ease of administration and updating of the DOSAR. Internal procedures which do not affect contractors or the public need not be published for comment. This is consistent with FAR 1.301(a)(2) which states, in part, that "* * * any agency head may issue or authorize the issuance of internal agency guidance at any organizational level", and FAR 1.301(b) which states, in part, that "* * * Issuances under 1.301(a)(2) need not be publicized for public comment." Removing such passages from the DOSAR will result in the Department being able to easily update these internal procedures without having to pursue the formal rulemaking process. As such, the following sections are deleted from the codified sections of the DOSAR:

• DOSAR 601.471, which contains procedural guidance to contracting officers for requesting deviations from the FAR or DOSAR.

• DOSAR 601.602–3 and 601.602–3–70 regarding ratification of unauthorized commitments. These sections contain detailed guidance on the authority levels for ratifications and the documentation requirements for unauthorized commitments.

• DOSAR 603.203 on reporting suspected violations of the Gratuities clause. This section contains procedural guidance for reporting such violations to internal DOS entities.

• DOSAR Subpart 603.3 on reporting suspected antitrust violations. This section contains procedural guidance for reporting such violations to internal DOS entities.

• DOSAR Subpart 604.2, which contains guidance on internal distribution of contractual documents.

• DOSAR Subpart 604.70 which contains guidance for internal review of solicitations and contracts by contracting officers and the Office of the Procurement Executive (A/OPE).

• DOSAR 605.207 on the preparation and transmittal of CBD synopses to A/OPE by overseas contracting activities.

• DOSAR Subpart 616.1 on selecting contract types. This provides internal guidance to overseas contracting officers on the limits of their authority in terms of awarding specific types of contracts.

• DOSAR Subpart 616.6, which describes determination and findings requirements for time-and-materials, labor-hour, and letter contracts.

• DOSAR Subpart 625.9 regarding the approval authority for foreign acquisition clauses.

• DOSAR 633.211, which provides instructions to the contracting officer on final decision letters and approval authorities.

• DOSAR 649.111 regarding internal approval authorities for the review of proposed termination settlements.

Finally, the proposed rule makes some technical amendments and corrections to conform the DOSAR to recent changes in the FAR. The more substantial changes are:

• Revision to 601.603–3 to provide guidance on temporary contracting officer warrants.

• Elimination of 601.670 regarding the Procurement Career Management Program. This elimination is consistent with FAC 90–23, which provided coverage on such programs in the FAR.

• Revision of 603.104 regarding procurement integrity requirements to conform to FAC 90–45.

• Addition of a new Subpart 603.9 to identify that the Procurement Executive is the agency head's designee for purposes of this subpart.

• Extension of the waiver in 605.202–70 to May 19, 2001, as approved by the agency head.

• Removal of Subpart 608.3 regarding utility services and the creation of a new Part 641, per FAC 90–23.

• Removal of Part 610 dealing with the Department's Metric Program and its inclusion in Part 611. FAC 90–32 revised FAR Part 10 to deal with market research. Information on describing agency needs was moved to FAR Part 11.

• Revision of Part 613 in its entirety to conform to the reorganization of FAR Part 13 as implemented in FAC 97–3.

• Revision of Subpart 614.2 for better clarity.

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• Revision of Part 615 in its entirety to conform to the revision of FAR Part 15 as implemented in FAC 97–2.

• Addition of a new 616.505 to designate an ombudsman for task and delivery order contracts.

• Removal of 633.105 regarding protests to the GSBCA, as that forum was eliminated per FAC 90–41. Changes have also been made to 633.104, protests to GAO, to delete obsolete, internal coverage.

• Removal of 634.001, definition of "major system", as the FAR now provides a definition in FAR Part 2. Further information can be found in DOSAR Part 602.

• Removal of Part 639, Acquisition of Information Resources, per FAC 90–41, which eliminated the FIRMR.

• Addition of a new Subpart 647.2, Contracts for Transportation or for Transportation-Related Services. This subpart implements a class deviation approved by the Procurement Executive to revise the amount reflected in paragraph (c) of FAR 52.247–3, Contractor Liability for Loss of and/or Damage to Household Goods. The amount of $5.00 per pound (or metric equivalent based on local currency) based on the total net weight is consistent with liability calculations found in International Through Government Bills of Lading (ITGBL).

II. Impact

The Department of State certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

III. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 requires agencies to prepare several analytical statements before proposing any rule that may result in annual expenditures of $100 million of State, local, and Indian tribal governments or the private sector. Since this proposed rule will not result in expenditures of this magnitude, the Department certifies that such statements are not necessary.

IV. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 by OMB, and were assigned control number 1405–0050.

List of Subjects in 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652, 653

Government procurement.

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 614, 616, 617, 619, 620, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 642, 643, 645, 646, 647, 649, 652, 653 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION

601.105 [Redesignated as 601.106]

2. Section 601.105 is redesignated as section 601.106. A new section 601.105, consisting of section 601.105–3, is added to read as follows:

601.105 Issuance.

601.105–3 Copies.

The DOSAR is available on CD–ROM disks through the Department's INFOEXPRESS program, or through the Internet from A/OPE's Acquisition Website. The Internet address is: http://www.statebuy.inter.net/home.htm.

3. Newly designated section 601.106 is revised to read as follows:

601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget before collecting information from ten (10) or more members of the public. Individuals are not required to respond to information collection unless the OMB number and burden estimate information is provided. Accordingly, the information and recordkeeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405–0050. The burden estimate is 225,302 hours.

601.301 [Amended]

4. Section 601.301 is amended by redesignating paragraph (a)(1) as paragraph (a) and by removing paragraph (a)(2) in its entirety.

601.302 [Amended]

5. Section 601.302 is amended in the first sentence of paragraph (a) by removing the words "and leases of real and personal property".

601.303 [Amended]

6. Section 601.303 is amended by correcting the citation at the end of paragraph (c) to read "FAR 1.105–2(c)".

601.471 [Amended]

7. Section 601.471 is removed.

8. The heading of Subpart 601.6 is revised to read as follows:

Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

601.602–3 and 601.602–3–70 [Removed]

9. Section 601.602–3, and section 601.602–3–70, are removed.

10. Section 601.603–3 is amended by adding a title to paragraph (a); by revising the second sentence of paragraph (a); by revising paragraph (b) in its entirety; and, by adding a new paragraph (d), to read as follows:

601.603–3 Appointment.

(a) General. * * * The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603–3, with the one exception as noted in paragraph (b) of this section. * * *

(b) Temporary warrants. The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than $100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

* * * * *

(d) Personal services agreements. Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) An individual, or class of individuals, granted authority by the Director, PER/OE; or

(2) Individuals with contracting officer certificates of appointment.

601.603–70 [Amended]

11. Section 601.603–70 is amended—

(a) By adding a period after the words "and services" and removing the words "to sell personal property; and to lease real property." in the first sentence of paragraph (a)(1) introductory text;

(b) By adding a period after the words "Deputy Assistant Secretary for Foreign

Buildings" and removing the words "and to the Director for Acquisitions as the HCA." in paragraph (a)(2);

(c) By removing the heading "Office of Acquisition" and inserting "Office of Logistics Management; Office of Acquisition Management (A/LM/AQM)" in its place; and by removing the words "and Deputy Director as the HCA" and inserting "or designee as the HCA" in their place in paragraph (a)(3);

(d) By removing the word "and" before the word "construction" and removing the word "of" after "construction" and by adding the words "and supplies for" after the word "construction" in paragraph (a)(7);

(e) By adding the word "supplies," after the word "subsystems," in paragraph (a)(8);

(f) By revising subparagraph (a)(9) to read as indicated below;

(g) By removing the words "Office of Acquisition" and inserting the acronym "A/LM/AQM" in their place in the second sentence of paragraph (b) introductory text;

(h) By removing the words "schedule contracts" and inserting the words "existing contracts up to the maximum ordering threshold or limitation" in their place in paragraphs (b)(1) through (b)(6); and

(i) By adding a new paragraph (b)(7), to read as follows:

601.603–70 Delegations of authority.

(a) * * *

(9) Regional Procurement Support Offices. The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(i) RPSO Germany in conjunction with Embassy Bonn and Consulate General Frankfurt;

(ii) RPSO Tokyo in conjunction with Embassy Tokyo;

(iii) RPSO Singapore in conjunction with Embassy Singapore; and,

(iv) RPSO Florida in conjunction with the Florida Regional Center.

(b) * * *

(7) Office of Small and Disadvantaged Business Utilization. The authority to enter into and administer 8(a) purchase orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

601.670 [Removed]

12. Section 601.670 is removed.

PART 602—DEFINITIONS OF WORDS AND TERMS

13. Section 602.101–70 is amended by removing the definition of "local procurement"; and by adding, in alphabetical order, a definition of "major system" to read as follows:

602.101–70 DOSAR definitions.

* * * * *

Major System has the same definition as described in FAR 2.101; however, the Department of State's dollar threshold as defined in paragraph (b) is $30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (c).

* * * * *

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

14. Subpart 603.1 is revised to read as follows:

Subpart 603.1—Safeguards

Sec.

603.104 Procurement integrity.

603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

603.104–10 Violations or possible violations.

Subpart 603.1—Safeguards

603.104 Procurement integrity.

603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized to receive contractor bid or proposal information or source selection information by the contracting officer or head of the contracting activity, who is the agency head's designee, when such access is necessary to the conduct of an acquisition:

(1) Individuals involved in the selection process, such as the Contracting Officer's Representative, technical evaluators, advisors, consultants, and the Source Selection Official;

(2) Clerical personnel directly involved in the acquisition;

(3) Supervisors in the contracting officer's chain of command;

(4) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification;

(5) Individuals from offices who may be required to perform pre-award audits, such as DCAA; and,

(6) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of the Legal Adviser, Office of Legislative Affairs, Office of the Inspector General, Office of the Procurement Executive, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

(c) All information which is considered proprietary or source selection information shall be marked to prevent its unauthorized disclosure before award. This may be performed by marking each page of proprietary or source selection material with the statement "Source Selection Information—See FAR 3.104" or "Proprietary Information—See FAR 3.104", as applicable. Alternatively, this requirement may be met by attaching Forms DS–1926, Proprietary Information (Cover Page), and DS–1927, Source Selection Information (Cover Page), to any proprietary and source selection information. Individuals responsible for preparing derivative documents which reference, cite, or paraphrase proprietary or source selection information, are responsible for marking such documents as indicated in this paragraph. The required marking or cover page shall be included when technical proposals are submitted for evaluation and when an audit is requested. After award, the procedures governing the Freedom of Information Act and related laws/regulations shall be followed regarding release of proprietary or source selection information.

603.104–10 Violations or possible violations.

(a)(1) The contracting officer shall report any violation or possible violation to the head of the contracting activity after he or she has reviewed the documentation and has concluded that there is no impact on the acquisition.

(d)(2)(ii)(B) The Procurement Executive is the agency head's designee for the purposes of FAR 3.104–10(d)(2)(ii)(B).

603.203 [Removed]

15. Section 603.203 is removed.

Subpart 603.3—[Removed]

16. Subpart 603.3, consisting of section 603.303, is removed.

17. Section 603.405 is added to read as follows:

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient to determine whether an actual violation has occurred. The

contracting officer may also obtain the advice of the Office of the Legal Adviser as to the legality and general propriety of any information disclosed.

603.408 [Removed]

18. Section 603.408, consisting of section 603.408–1, is removed.

603.670 [Removed]

19. Section 603.670 is removed.

20. Subpart 603.9 is added to read as follows:

Subpart 603.9—Whistleblower Protections for Contractor Employees

Sec.
603.905 Procedures for investigating complaints.
603.906 Remedies.

Subpart 603.9—Whistleblower Protections for Contractor Employees

603.905 Procedures for investigating complaints.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.905.

603.906 Remedies.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.906.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—[Removed]

21. Subpart 604.2, consisting of section 604.202, is removed.

Subpart 604.4—[Removed]

22. Subpart 604.4, consisting of sections 604.404 and 604.404–70, is removed.

23. Subpart 604.5 is added to read as follows:

Subpart 604.5—Electronic Commerce in Contracting

Sec.
604.502 Policy.
604.505 FACNET certification.
604.505–2 Full certification.
604.506 Exemptions.

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

(b) The Procurement Executive is the agency head for the purpose of FAR 4.502(b).

604.505 FACNET certification.

604.505–2 Full certification.

(a)(3) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.505–2(a)(3).

604.506 Exemptions.

(b) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.506(b).

24. Subpart 604.70, consisting of sections 604.7001 and 604.7002, is removed.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

25. Section 605.202–70 is amended by removing the date "June 15, 1998" and inserting the date "May 19, 2001" in its place in the last sentence of paragraph (a).

26. Section 605.207 is removed.

27. Section 605.303 is amended by inserting a comma after the word "Affairs"; and by adding the words "upon request," after the word "Affairs" in the first sentence of paragraph (a).

PART 606—COMPETITION REQUIREMENTS

28. Subpart 606.1, consisting of sections 606.101 and 606.101–70, is removed.

29. Section 606.302–6 is amended by removing "E.O. 12356" and inserting "E.O. 12958" in its place wherever it appears in paragraphs (c)(1) introductory text and (c)(1)(vi) .

30. Section 606.304 is amended in paragraph (a)(2) by removing the amounts "$100,000" and "$1,000,000" and inserting "$500,000" and "$10,000,000" in their place, respectively.

31. Section 606.501 is amended by revising the first sentence of paragraph (b) to read as follows:

606.501 Requirement.

* * * * *

(b) A contracting activity competition advocate has been designated for A/LM/AQM. * * *

32. Section 606.570 is revised to read as follows:

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206–70, Competition Advocate/Ombudsman, in all solicitations exceeding the simplified acquisition threshold.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

33. Part 608, consisting of subpart 608.3 and section 608.302, is removed.

PART 609—CONTRACTOR QUALIFICATIONS

34. Section 609.206, consisting of section 609.206–1, is added to read as follows:

609.206 Acquisitions subject to qualification requirements.

609.206–1 General.

(b) The authority prescribed in FAR 9.206–1(b) is delegated, without power of redelegation, to the head of the contracting activity.

35. Section 609.404 is amended by revising the section heading to read as follows:

609.404 List of parties excluded from federal procurement and nonprocurement programs.

36. Section 609.405 is amended by revising paragraphs (d)(4)(i) and (d)(4)(ii) to read as follows:

609.405 Effect of listing.

* * * * *

(d) * * *

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition threshold, contracting officers need not consult the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the "List of Parties Excluded from Federal Procurement and Nonprocurement Programs", either in hard copy or electronic form, prior to awarding a procurement action exceeding the simplified acquisition threshold.

37. Section 609.406–3 is amended in paragraph (b)(7) by removing the number "10" and inserting the number "30" in its place.

38. Subpart 609.5 is amended by revising the heading to read as follows:

Subpart 609.5—Organizational and Consultant Conflicts of Interests

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

39. Part 610, consisting of sections 610.002 and 610.002–70, is removed.

40. Part 611 is added to subchapter H to read as follows:

PART 611—DESCRIBING AGENCY NEEDS

Sec.
611.002 Policy.
611.002–70 Metric system implementation.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

Subpart 611.5—Liquidated Damages

611.502 Policy.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

611.002 Policy.

611.002–70 Metric system implementation.

(a) Policy. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, et. seq.), requires Federal agencies to establish implementing guidelines pursuant to metric policy to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This section establishes the Department of State's metric conversion guidelines.

(b) Applicability. This section applies to all DOS acquisitions, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(c) Definitions.

Dual system means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid system means the use of both traditional and hard metric values in specifications, standards, supplies and services.

Measurement sensitive means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations, etc.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures.

Metrication means any act that increases metric system use, including metric training and initiation or conversion of measurement sensitive processes and systems to the metric system.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the "inch-pound system." The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) Procedures. (1) DOS contracting activities shall implement the metric system in a manner consistent with 15 U.S.C. 205a, *et seq.*

(2) All DOS contracting activities shall use the metric system in acquisition consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system by acquiring commercially available metric products and services that meet the Department's needs whenever practical. Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms. The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available from the National Technical Information Service; and

(ii) For contracts expected to exceed $500,000 contracting officers shall return to the requirements office all specifications and statements of work that are not expressed in some form of metric terms unless the requirements office has prepared a justification, for the approval of the contracting officer, for the use of non-metric specifications or statement of work. The justification shall be in a format as prescribed by the head of the contracting activity. Option year prices shall be considered when computing the $500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules.

(5) Valid justifications for non-metric specifications or statements of work include, but are not limited to:

(i) Existing specifications or standards are in inch-pound units, unless conversion of the existing specifications or standards is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components should be avoided if the total cost of the retrofit, including redesign costs, exceeds $50,000;

(ii) Metric is not the accepted industry system with respect to a business-related activity; however, soft, hybrid, or dual systems may be used during the transition to hard metric;

(iii) The use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prior to the release of the solicitation. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation for the disapproval.

(7) The in-house operating metric costs shall be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric specifications. All contracting activities and requirements offices shall maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

(a) The head of the contracting activity is the agency head for the purpose of FAR 11.103(a).

Subpart 611.5—Liquidated Damages

611.502 Policy.

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.502(d).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

41. Part 613 is revised to read as follows:

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).
613.303–5 Purchases under BPAs.
613.305 Imprest funds and third party drafts.
613.305–3 Conditions for use.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).

613.303–5 Purchases under BPAs.

(c) In accordance with FAR 13.303–5(c), BPAs shall be awarded to small businesses to the maximum extent practicable.

613.305 Imprest funds and third party drafts.

613.305–3 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.305–3(a).

PART 614—SEALED BIDDING

42. Subpart 614.2 is revised to read as follows:

Sec.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).
614.201–70 Use of English language.
614.201–6 Solicitation provisions.
614.201–6–70 DOSAR solicitation provision.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201–70 Use of English language.

Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

614.201–6 Solicitation provisions.

614.201–6–70 DOSAR solicitation provision.

The contracting officer shall insert the provision at 652.214–71, Authorization to Perform, in all solicitations for contracts to be awarded or performed overseas.

43. Section 614.404–1 is amended by adding a new paragraph (f) to read as follows:

614.404–1 Cancellation of invitations after opening.

* * * * *

(f) The head of the contracting activity is the agency head for the purpose of FAR 14.404–1(f). This authority is not redelegable.

44. Section 614.406, consisting of sections 614.406–3 and 614.406–4, is re-designated as "614.407", "614.407–3", and "614.407–4", respectively.

45. Newly designated section 614.407–3 is amended by correcting "FAR 14.406" to read "FAR 14.407" where it appears in the first sentence; and, by correcting "FAR 14.406–3(f)" to read "FAR 14.407–3(f)" where it appears in the second sentence.

46. Newly designated section 614.407–4 is amended by correcting "FAR 14.406–4" to read "FAR 14.407–4" where it appears in the first sentence; and, by correcting "FAR 14.406–4(d)" to read "FAR 14.407–4(d)" where it appears in the second sentence.

PART 615—CONTRACTING BY NEGOTIATION

47. Part 615 is revised to read as follows:

PART 615—CONTRACTING BY NEGOTIATION

Sec.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.
615.205 Issuing solicitations.
615.205–70 Use of English language.
615.209 Solicitation provisions and contract clauses.
615.209–70 DOSAR solicitation provision.

Subpart 615.3—Source Selection

615.303 Responsibilities.

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 15.204(e).

615.205 Issuing solicitations.

(a) Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205–5(a). However, the list of those firms which actually submit proposals is not releasable. Requests for information other than solicitation mailing lists shall be handled under the Freedom of Information Act.

615.205–70 Use of English language.

The requirements of DOSAR 614.201–70 also apply when contracting by negotiation.

615.209 Solicitation provisions and contract clauses.

615.209–70 DOSAR solicitation provision.

The contracting officer shall insert the provision at 652.214–71, Authorization to Perform, in all solicitations for contracts to be awarded or performed overseas.

Subpart 615.3—Source Selection

615.303 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 15.303(a).

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

(a)(4) The contact points for unsolicited proposals are the heads of the contracting activities.

PART 616—TYPES OF CONTRACTS

48. Subpart 616.1, consisting of sections 616.102, 616.102–70, is removed.

49. Subpart 616.3, consisting of sections 616.301–3 and 616.306, is removed.

50. Section 616.505 is re-designated as section 616.506, and the section heading is revised to read as follows:

616.506 Solicitation provisions and contract clauses.

51. Section 616.505–70 is re-designated as section 616.506–70.

52. A new section 616.505 is added to read as follows:

616.505 Ordering.

(b)(4) The Departmental Competition Advocate is designated the task and delivery order contract ombudsman.

53. Subpart 616.6, consisting of sections 616.603 and 616.603–2, is removed.

PART 617—SPECIAL CONTRACTING METHODS

54. Subpart 617.1 is revised to read as follows:

Subpart 617.1—Multiyear Contracting

Sec.
617.104 General.
617.105 Policy.
617.105–1 Uses.
617.108 Congressional notification.

Subpart 617.1—Multiyear Contracting

617.104 General.

(b) The Procurement Executive is the agency head for the purpose of FAR 17.104(b).

617.105 Policy.

617.105–1 Uses.

(d) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

617.108 Congressional notification.

(a) The Procurement Executive is the agency head for the purposes of FAR 17.108(a).

55. Section 617.504–70 is amended in paragraph (a) by adding the words "or their equivalents" after the words "Department deputy assistant secretaries."

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS PROGRAMS

56. Part 619 is amended by revising the heading to read as set forth above.

57. Section 619.201 is amended in paragraph (d)(5) by removing the word "limitation" and adding the words "threshold, including commercial items using the simplified procedures of FAR Subpart 13.5," in its place; and, by revising paragraph (d)(18) to read as follows:

§ 619.201 General policy.

* * * * *

(d) * * *

(18) Participating in interagency programs relating to small and small disadvantaged business matters as authorized by the A/SDBU Operations Director.

58. Section 619.501 is amended by deleting the phrase "/Labor Surplus Area" from the title of the Form DS–1910.

59. Section 619.505 is amended by revising the section heading to read as follows:

619.505 Rejecting Small Business Administration recommendations.

60. Subpart 619.7 is amended by revising the subpart heading to read as follows:

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

61. Section 619.705–3 is revised to read as follows:

619.705–3 Preparing the solicitation.

To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

62. Subpart 619.8 is revised to read as follows:

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

Sec.

619.800 General.
619.801 Definitions.
619.803 Selecting acquisitions for the 8(a) program.
619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).
619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.
619.804 Evaluation, offering, and acceptance.
619.804–2 Agency offering.
619.804–3 SBA acceptance.
619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.
619.805 Competitive 8(a).
619.805–2 Procedures.
619.806 Pricing the 8(a) contract.
619.808 Contract negotiation.
619.808–1 Sole source.
619.810 SBA appeals.
619.811 Preparing the contracts.
619.811–1 Sole source.
619.811–2 Competitive.
619.811–3 Contract clauses.
619.812 Contract administration.

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

619.800 General.

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal contracting activities. The Department of State has signed an MOU with SBA, effective May 6, 1998. Under the MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

619.803 Selecting the acquisitions for the 8(a) program.

619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.

Contracting activities may use the simplified acquisition procedures of FAR Part 13 and DOSAR Part 613 to issue purchase orders or contracts, not exceeding $100,000, to 8(a) participants. The $100,000 limitation for use of FAR Part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (http://www.sba.gov) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the agency contracting officer shall establish the price with the selected 8(a) contractor.

(d) The contracting officer shall issue the purchase order or contract directly to the 8(a) firm in accordance with the provisions of FAR Part 13 and DOSAR Part 613. The contracting officer shall insert FAR clause 52.219–14, Limitations on Subcontracting, and DOSAR clause 652.219–71, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection. The contracting officer's title shall include the contracting activity, as follows: Contracting Officer for the Department of State [*insert contracting activity*]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose, shall sign the purchase order or contract as a third party.

(e) The contracting officer shall forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

619.804 Evaluation, offering, and acceptance.

619.804–2 Agency offering.

(a) When applicable, this notification shall identify that the offering is in accordance with the MOU identified in 619.800.

619.804–3 SBA acceptance.

619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting agency.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the contracting agency may assume that the requirement has been accepted and proceed with the acquisition.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

619.805 Competitive 8(a).

619.805–2 Procedures.

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see FAR Part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding $100,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

619.806 Pricing the 8(a) contract.

(a) When required by FAR Subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 619.800.

619.808 Contract negotiation.

619.808–1 Sole source.

(a) If the acquisition is conducted under an MOU cited in 619.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 619.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in the negotiations.

619.810 SBA appeals.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

619.811 Preparing the contracts.

619.811–1 Sole source.

(d) If the award is to be made under an MOU cited in 619.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall insert FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding $100,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, i.e., an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate form.

619.811–2 Competitive.

(a) If the award is made under the delegation of 8(a) contracting authority, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole source contracts. See 619.811–1.

(b) If the acquisition is conducted under the MOU cited in 619.800, the process for obtaining signatures shall be as specified in 619.811–1(d)(4).

619.811–3 Contract clauses.

(d)(3) The contracting officer shall insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), in competitive solicitations and contracts exceeding $100,000 when the acquisition is processed under the MOU cited in 619.800.

(f) The contracting officer shall insert the clause at FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards, in all solicitations and contracts that are processed under the MOU cited at 619.800. The clauses at FAR 52.219–11, Special 8(a) Contract Conditions; 52.219–12, Special 8(a) Subcontract Conditions; and, 52.219–17, Section 8(a) Award, shall not be used.

619.812 Contract administration.

(d) The head of the contracting activity is the agency head for the purposes of FAR 19.812(d). Awards under the MOU cited in 619.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at DOSAR 652.219–71, Section 8(a) Direct Awards, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

63. Section 622.401 is removed.

64. Section 622.406–3 is removed.

65. Section 622.803 is added to read as follows:

622.803 Responsibilities.

(c) The Procurement Executive is the agency head for the purpose of FAR 22.803(c).

66. The heading of Subpart 622.13 is revised to read as follows:

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

67. The heading of Subpart 622.14 is revised to read as follows:

Subpart 622.14—Employment of Workers with Disabilities

PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

68. Subpart 623.4 is revised to read as follows:

Subpart 623.4—Use of Recovered Materials

Sec.
623.400 Scope of subpart.
623.404 Procedures.

Subpart 623.4—Use of Recovered Materials

623.400 Scope of subpart.

The affirmative procurement program is applicable to all domestic acquisitions of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.404 Procedures.

(b)(2) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase EPA designated items containing other than recovered materials only if one of the exemptions listed in FAR 23.404(b)(3) applies. If the requirements office determines to acquire EPA designated items that do not contain recovered materials, a written justification must be submitted to the head of the contracting activity.

(i) Contracts for the purchase of, or requiring the supply of, any EPA designated item shall require that the item conform to the EPA guidelines, unless an exception has been approved by the head of the contracting activity in accordance with FAR 23.404(b)(3) and DOSAR 623.404(b)(3).

(ii) Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-bid and pre-proposal conferences, when appropriate. Other means of promotion may include a specific notice on a solicitation's cover letter, calling attention to the requirement for recovered materials.

(iii) Contracting officers shall include FAR clause 52.223–9 to ensure that contractors estimate, certify, and verify the amount of recovered material used in the performance of the contract.

(iv) The effectiveness of the program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered materials is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices, or an unacceptable level of performance.

(3) The head of the contracting activity is the agency head for the purpose of FAR 23.404(b)(3).

PART 625—FOREIGN ACQUISITION

69. Subpart 625.9, consisting of sections 625.901 and 625.903, is removed.

70. Subpart 625.70 is added to read as follows:

Subpart 625.70—Arab League Boycott and Related Provisions

Sec.
625.7001 Policy.
625.7002 Solicitation provision and contract clause.

Subpart 625.70—Arab League Boycott and Related Provisions

625.7001 Policy.

(a) Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Pub. L. 103–236) prohibits the Department of State from entering into any contract that expends funds appropriated to the Department of State:

(1) With a foreign person that complies with the Arab League Boycott of Israel; or,

(2) With any foreign or United States person that discriminates in the award of subcontracts on the basis of religion.

This authority has continuing effect. Section 565 requires specific language to be included in all Invitations for Bids and Requests for Proposals with respect to a contract subject to Section 565's prohibitions.

(b) Section 565 may be waived on a country-by-country basis if such a waiver is in the national interest and necessary to carry on diplomatic functions.

625.7002 Solicitation provision and contract clause.

Contracting officers shall include the following provision and clause in all solicitations and contracts exceeding the simplified acquisition threshold, unless a waiver has been granted in accordance with DOSAR 625.7001(b):

(a) 652.225–70, Arab League Boycott of Israel; and

(b) 652.225–71, Section 8(a) of the Export Administration Act, as amended.

71. Part 626 is added to subchapter D to read as follows:

PART 626—OTHER SOCIOECONOMIC PROGRAMS

Subpart 626.2—Minority Business Enterprise

626.200–70 Solicitation provision.

The contracting officer shall insert the provision at 652.226–70, Certification of Status as a Minority Business Enterprise, in all solicitations issued by domestic contracting activities. If the solicitation is being issued using electronic commerce, the contracting officer shall use the provision with its Alternate I.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

72. Section 628.305 is amended by revising the second and third sentences of paragraph (b) introductory text and adding a fourth sentence to read as follows; and by removing paragraphs (b)(1), (b)(2), and (b)(3):

628.305 Overseas workers' compensation and war-hazard insurance.

* * * * *

(b) * * * In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries have been waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert the clause at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

* * * * *

73. Section 628.306 is revised to read as follows:

628.306 Insurance under fixed-price contracts.

The contracting officer shall insert the provision at 652.228–74, Defense Base Act Insurance Rates—Limitation—Fixed-Price, in solicitations for fixed-price or construction contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

74. Section 628.307 is revised to read as follows:

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials, in solicitations for cost-reimbursement, labor-hour, or time-and-materials type contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

75. Section 628.307–70 is removed.

PART 629—TAXES

76. Section 629.402, consisting of sections 629.402–1 and 629.402–1–70, is added to read as follows:

629.402 Foreign contracts.

629.402–1 Foreign fixed-price contracts.

629.402–1–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Personal Property Disposition at Posts Abroad, in all solicitations and contracts performed overseas.

PART 630—COST ACCOUNTING STANDARDS

77. Part 630 is removed.

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

78. Subpart 631.2 is added to read as follows:

Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.

631.205–6 Compensation for personal services.

(g)(3) The head of the contracting activity is the agency head's designee for the purpose of FAR 31.205–6(g)(3).

PART 632—CONTRACT FINANCING

79. Section 632.006, consisting of sections 632.006–1, 632.006–2, and 632.006–4, is added to read as follows:

PART 632—CONTRACT FINANCING

Sec.
632.006 Reduction or suspension of contract payments upon finding of fraud.
632.006–1 General.
632.006–2 Definitions.
632.006–4 Procedures.

632.006 Reduction or suspension of contract payments upon finding of fraud.

632.006–1 General.

The Procurement Executive is the agency head for the purpose of FAR 32.006–1.

632.006–2 Definitions.

Remedy coordination official means the Assistant Inspector General for Investigations.

632.006–4 Procedures.

The Procurement Executive is the agency head for the purposes of FAR 32.006–4.

80. Subpart 632.1 is added to read as follows:

632.1 Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

The Procurement Executive is the agency head for the purpose of FAR 32.114.

81. Subpart 632.2 is added to read as follows:

Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

82. Section 632.404 is added to read as follows:

632.404 Exclusions.

(a) Total advance payments may be authorized for the items listed in FAR 32.404(a), notwithstanding their designation as a commercial item and acquisition under FAR Part 12 procedures.

83. Subpart 632.7 is revised to read as follows:

Subpart 632.7—Contract Funding

Sec.
632.702 Policy.
632.702–70 DOS policy.
632.703 Contract funding requirements.
632.703–3 Contracts crossing fiscal years.
632.705 Contract clauses.
632.705–70 DOSAR contract clause.

Subpart 632.7—Contract Funding

632.702 Policy.

632.702–70 DOS policy.

The Department's policy is to provide full funding for all contracts, to the maximum extent practicable. FAR 32.704 and 32.705–2 provide for incremental funding of cost-reimbursement contracts. Fixed-price, labor-hour, and time-and-materials contracts for severable services may also be incrementally funded if full funding is not available at the time of contract award and the contracting officer executes a determination and findings, approved by the requirements office, justifying the need for incremental funding due to the unavailability of funds.

632.703 Contract funding requirements.

632.703–3 Contracts crossing fiscal years.

(b) The head of the contracting activity is the agency head for the purpose of FAR 32.703–3(b).

632.705 Contract clauses.

632.705–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.232–72, Limitation of Funds, in incrementally funded fixed-price, labor-hour, and time-and-materials solicitations and contracts for severable services.

84. Section 632.803 is amended by adding the following sentence to the end of paragraph (b):

632.803 Policies.

(b) * * * The Directors, Regional Procurement Support Offices may approve the assignment of claims for contracts under their administration after obtaining legal consultation.

PART 633—PROTESTS, DISPUTES AND APPEALS

85. Section 633.102 is amended by removing the words "or the General Services Administration Board of Contract Appeals (GSBCA)".

86. Section 633.103 is revised to read as follows:

633.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

87. Section 633.104 is revised to read as follows:

633.104 Protests to GAO.

(a) *General procedures.* The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

88. Section 633.105 is removed.

89. Section 633.211 is removed.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

90. Sections 634.001, 634.001–70, and 634.002 are removed.

91. Section 634.003 is amended in paragraph (a) by removing the second sentence.

92. Section 634.005–6 is amended by removing the period at the end of the sentence and adding the following

words to the end of the sentence "with power of redelegation to the Under Secretary for Management."

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

93. Section 636.101–70 is amended by adding the following sentence:

636.101–70 Exception.

* * * The Deputy Assistant Secretary for Foreign Buildings Operations is authorized to waive the provisions of the FAR.

94. Subpart 636.5 is added to read as follows:

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

(a) In accordance with a class deviation approved by the Procurement Executive, contracting officers at overseas contracting activities shall insert DOSAR 652.236–70, Accident Prevention, in lieu of FAR clause 52.236–13 when awarding construction contracts.

95. Section 636.602–1 is added to read as follows:

636.602–1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602–1(b).

PART 637—SERVICE CONTRACTING

96. Section 637.106 is removed.

97. Section 637.110 is amended by adding the following sentence to the end of paragraph (c):

637.110 Solicitation provisions and contract clauses.

* * * * *

(c) * * * Overseas contracting activities may add local holidays to the list included in paragraph (a) of the clause.

98. Subpart 637.2 is added to read as follows:

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

The head of the contracting activity is the agency head for the purposes of FAR 37.204.

PART 639—ACQUISITION OF INFORMATION RESOURCES

99. Part 639, consisting of section 639.001–70, is removed.

100. Part 641 is added to subchapter F to read as follows:

PART 641—ACQUISITION OF UTILITY SERVICES

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 641.2—Acquiring Utility Services

641.201 Policy.

(d) The Procurement Executive is the agency head for the purposes of FAR 41.201(d)(2)(i) and FAR 41.201(d)(3).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

101. Subpart 642.7 is added to read as follows:

Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703–2 Certificate of indirect costs.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 42.703–2(b).

PART 643—CONTRACT MODIFICATIONS

102. Section 643.102–70 is revised by removing paragraph (b) and by removing the paragraph designation in paragraph (a).

103. Section 643.104, consisting of section 643.104–70, is added to read as follows:

643.104 Notification of contract changes.

643.104–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.243–70, Notices, in all solicitations and contracts exceeding the micro-purchase threshold which are awarded or performed overseas.

104. Part 644 is added to subchapter G to read as follows:

PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 40 U.S.C. 486 (c); 22 U.S.C. 2658.

Subpart 644.3—Contractor's Purchasing System Reviews

644.302 Requirements.

(a) The Procurement Executive is the head of the agency for the purpose of FAR 44.302(a).

PART 645—GOVERNMENT PROPERTY

105. Subpart 645.4 is added to read as follows:

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

(a) The head of the contracting activity is the agency head's designee for the purpose of FAR 45.403(a).

PART 646—QUALITY ASSURANCE

106. Part 646 is removed.

PART 647—TRANSPORTATION

107. Subpart 647.2 is added to read as follows:

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207–7 Liability and insurance.

(e) The Procurement Executive has approved a class deviation for paragraph (c) of FAR clause 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods. The contracting officer shall indicate that the contractor shall indemnify the owner of the goods at a rate of $5.00 per pound (or metric equivalent in local currency) based on the total net weight. The rate conforms with liability calculations found in International Through Government Bills of Lading (ITGBL).

PART 649—TERMINATION OF CONTRACTS

108. Section 649.111 is removed.

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

109. Section 652.203–70 is removed.

110. Section 652.203–71 is removed.

111. Section 652.204–70 is removed.

112. Section 652.204–71 is removed.

113. Section 652.206–70 is revised to read as follows:

652.206–70 Competition Advocacy/ Ombudsman.

As prescribed in 606.570, insert the following provision:

Competition Advocacy/Ombudsman (MO/YR)

(a) The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition and use of commercial items. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and commercial practices, potential offerors are

encouraged to first contact the contracting officer for the respective solicitation. If concerns remain unresolved, contact the Department of State Competition Advocate on (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Competition Advocate, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(b) The Department of State's Acquisition Ombudsman has been appointed to hear concerns from potential offerors and contractors during the preaward and postaward phases of this acquisition. The role of the ombudsman is not to diminish the authority of the contracting officer, the Technical Evaluation Panel or Source Evaluation Board, or the selection official. The purpose of the ombudsman is to facilitate the communication of concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel, and work to resolve them. When requested and appropriate, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to contact the contracting activity ombudsman, [insert name], at [insert telephone and fax numbers]. For an American Embassy or overseas post, refer to the numbers below for the Department Acquisition Ombudsman. Concerns, issues, disagreements, and recommendations which cannot be resolved at a contracting activity level may be referred to the Department of State Acquisition Ombudsman at (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Acquisition Ombudsman, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(End of provision)

114. Section 652.214–70 is removed and reserved.

115. Section 652.214–71 is revised to read as follows:

652.214–71 Authorization to Perform.

As prescribed in 614.201–6–70(c) and 615.209–70, insert the following provision:

Authorization to Perform (MO/YR)

(a) The offeror agrees, should it be selected for contract award, that

(1) It has obtained (or will obtain by the date specified in the solicitation), authorization to operate and do business in the country or countries in which this contract will be performed;

(2) It has obtained (or will obtain by the date specified in the solicitation), all necessary licenses and permits required to perform this contract; and

(3) It shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(b) If the party actually performing the work will be a subcontractor or joint venture partner, then such subcontractor or joint venture partner agrees to the requirements of paragraph (a) of this provision.

(End of provision)

116. Section 652.216–70 is amended by revising the introductory text to read as follows:

652.216–70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.506–70, insert the following clause:

* * * * *

117. Section 652.216–71 is revised to read as follows:

652.216–71 Price Adjustment.

As prescribed in 616.203–4, insert a clause substantially the same as follows:

Price Adjustment (MO/YR)

(a) The contract price may be increased or decreased in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the [insert name of country] Government. Direct service labor costs include only the costs of wages and direct benefits (such as social security, health insurance, unemployment compensation insurance) paid to or incurred for the direct benefit of personnel performing services under one of the categories listed in Section [identify section number] of this contract. Price adjustments will include only changes in direct service labor costs incurred in order to comply with the requirements of the law. No adjustment will be made under this clause with respect to labor costs of personnel not performing direct service labor under the categories of Section [identify section number], nor for overhead, profit, general and administrative (G&A) costs, taxes or any other costs whatsoever.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred during the term of this contract and subsequent to the award date of this contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the contractor's costs under this contract.

(c) The contractor shall present data that clearly supports any request for adjustment. This data shall be submitted no later than 30 calendar days after the changes in the law have been made public. This data shall include, but not be limited to, the following:

(1) The calculation of the amount of adjustment requested; and,

(2) Documentation which identifies and provides the appropriate portions of the text of the particular law from which the request is derived.

(d) In order to establish the change between the requested adjusted rate and the original rate, the contractor shall support the appropriate data and composition of the original rate and the requested adjusted rate. This shall include details regarding specific hourly rates paid to individual employees. The allowable adjustment shall be limited to the extent to which increases in direct service labor costs due to host country law changes are not offset by exchange rate gains. For contracts paid in U.S. dollars, the contractor's request for price adjustment shall present data reflecting:

(1) The exchange rate in effect on the date of the contractor's proposal that was accepted for the basic contract; and

(2) The current exchange rate and its effect on payment of workers in local currency.

(e) Only direct cost changes mandated by enacted laws shall be considered for adjustment under this contract. Changes for purposes of maintaining parity of pay between employees at the minimum mandated levels and employees already paid at levels above the newly mandated minimums shall not be considered. Therefore, if the contractor elects to increase payments to employees who are already being paid at or above the mandated amounts, such increased costs shall be borne solely by the contractor and shall not be justification for an increase in the hourly and monthly rates under this contract.

(f) Any request for adjustment shall be presented by signature of an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(g) No adjustment shall be made to the contract price that relates to any indirect, overhead, or fixed costs, profit or fee. Only the changes in direct service labor wages (and any benefits based directly on wages) shall be considered by the U.S. Government as basis for contract price changes.

(h) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment has been made under this contract.

(i) This clause shall only apply to laws enacted by the [insert name of country] Government meeting the criterion set forth in paragraph (b) of this clause. No adjustments shall be made due to currency fluctuations in exchange rates.

(End of clause)

118. Section 652.219–71 is added to read as follows:

652.219–71 Section 8(a) direct awards.

As prescribed in 619.811–3(f), insert the following clause:

Section 8(a) Direct Awards (MO/YR)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of State (DOS). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The DOS contracting officer is responsible for administering the purchase

order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the DOS contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The DOS contracting officer shall also coordinate with SBA prior to processing any novation agreement. The DOS contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the DOS contracting officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and,

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of clause)

119. Section 652.223–70 is removed.

120. Section 652.223–71 is removed.

121. Section 652.223–72 is removed.

122. Section 652.223–73 is removed.

123. Section 652.223–74 is removed.

124. Section 652.223–75 is removed.

125. Section 652.223–76 is removed.

126. Section 652.223–77 is removed.

127. Section 652.223–78 is removed.

128. Section 652.225–70 is added to read as follows:

652.225–70 Arab League Boycott of Israel.

As prescribed in 625.7002(a), insert the following provision:

Arab League Boycott of Israel (MO/YR)

(a) Definitions. As used in this provision:

Foreign person means any person other than a United States person as defined in this paragraph (a).

United States person means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as provided under the Export Administration Act of 1979, as amended.

(b) Certification. By submitting this offer, the offeror certifies that it is not:

(1) Taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which Section 8(a) of the Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)) prohibits a United States person from taking; or,

(2) Discriminating in the award of subcontracts on the basis of religion.

(End of provision)

129. Section 652.225–71 is added to read as follows:

652.225–71 Section 8(a) of the Export Administration Act of 1979, as amended.

As prescribed in 625.7002(b), insert the following clause:

Section 8(a) of the Export Administration Act of 1979, as Amended (MO/YR)

(a) Section 8(a) of the U.S. Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)), prohibits compliance by U.S. persons with any boycott fostered by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. The Boycott of Israel by Arab League countries is such a boycott, and therefore, the following actions, if taken with intent to comply with, further, or support the Arab League Boycott of Israel, are prohibited activities under the Export Administration Act:

(1) Refusing, or requiring any U.S. person to refuse to do business with or in Israel, with any Israeli business concern, or with any national or resident of Israel, or with any other person, pursuant to an agreement of, or a request from or on behalf of a boycotting country;

(2) Refusing, or requiring any U.S. person to refuse to employ or otherwise discriminating against any person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person;

(3) Furnishing information with respect to the race, religion, or national origin of any U.S. person or of any owner, officer, director, or employee of such U.S. person;

(4) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the State of Israel, with any business concern organized under the laws of the State of Israel, with any Israeli national or resident, or with any person which is known or believed to be restricted from having any business relationship with or in Israel;

(5) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the State of Israel; and,

(6) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement against doing business with the State of Israel.

(b) Under Section 8(a), the following types of activities are not forbidden "compliance with the boycott," and are therefore exempted from Section 8(a)'s prohibitions listed in paragraphs (a) (1) through (6) of this clause:

(1) Complying or agreeing to comply with requirements:

(i) Prohibiting the import of goods or services from Israel or goods produced or services provided by any business concern organized under the laws of Israel or by nationals or residents of Israel; or,

(ii) Prohibiting the shipment of goods to Israel on a carrier of Israel, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(2) Complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipments as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(3) Complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurance, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(4) Complying or agreeing to comply with the export requirements of the boycotting country relating to shipments or transshipments of exports to Israel, to any business concern of or organized under the laws of Israel, or to any national or resident of Israel;

(5) Compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and,

(6) Compliance by a U.S. person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his or her activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his or her own use, including the performance of contractual services within that country, as may be defined by such regulations.

(End of clause)

130. Section 652.226–70 is added to read as follows:

652.226–70 Certification of status as a minority business enterprise.

As prescribed in 626.200–70, insert the following provision:

Certification of Status as a Minority Business Enterprise (MO/YR)

The Bidder/Offeror/Supplier certifies that is [ ] is [ ] is not [check one] a minority

business enterprise which is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are:

[Check the applicable block]

[ ] Black Americans

[ ] Hispanic Americans

[ ] Native Americans

[ ] Asian-Pacific Americans

[ ] Other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

Alternate I (MO/YR).

Certification of Status as a Minority Business Enterprise (Alternate I) (MO/YR)

(a) If you are a minority-owned business, please indicate in the comments section of your quote/response the applicable minority designation from those listed in paragraph (b) of this provision. If no comments are received, it shall be assumed that you are not a minority-owned business. This request for information is to assist the Department collect statistics on awards to minority-owned businesses and will not influence the award decision.

(b) A minority business enterprise is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are: Black Americans; Hispanic Americans; Native Americans; Asian-Pacific Americans; and, other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

131. Section 652.228–70 is amended by revising the introductory text to read as follows:

652.228–70 Indemnification.

As prescribed in 628.7001(b), insert the following clause:

* * * * *

132. Section 652.228–71 is revised to read as follows:

652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services

As prescribed in 628.305(b), insert the following clause:

Worker's Compensation Insurance (Defense Base Act)—Services (MO/YR)

(a) This clause supplements FAR 52.228–3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(c) Since the Department of State has obtained a waiver of DBA coverage for contractor employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(End of clause)

Alternate I (MO/YR). If the contract is for construction, as prescribed in 628.305(b), substitute the last sentence of paragraph (b) to read as follows: "The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction."

133. Section 652.228–72 is removed and reserved.

134. Section 652.228–73 is removed and reserved.

135. Section 652.228–74 is revised to read as follows:

652.228–74 Defense Base Act insurance rates—Limitation—Fixed-price.

As prescribed in 628.306, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Fixed-Price (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ [contracting officer insert current rate] of compensation; or

Construction @ [contracting officer insert current rate] of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: _____

(2) Defense Base Act Insurance Costs: _____

(3) Total Cost: _____

(c) Bidders/offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

136. Section 652.228–75 is removed and reserved.

137. Section 652.228–76 is revised to read as follows:

652.228–76 Defense Base Act insurance rates—Limitation—Cost-reimbursement, labor-hour, and time-and-materials.

As prescribed in 628.307, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation (direct salary plus differential, but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); or

Construction @ [contracting officer insert current rate] of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

138. Section 652.228–77 is removed.

139. Section 652.229–70 is amended by revising the introdcutorty text to read as follows:

652.229–70 Excise tax exemption statement for contractors within the United States.

As prescribed in 629.401–70, insert the following clause:

* * * * *

140. Section 652.229–71 is added to read as follows:

652.229–71 Personal property disposition at posts abroad.

As prescribed in 629.402–1–70, insert the following clause:

Personal Property Disposition at Posts Abroad (MO/YR)

Regulations at 22 CFR Part 136 require that U.S. Government employees and their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. Should the contractor experience importation or tax privileges in a foreign country because of its contractual relationship to the United States Government, the contractor shall observe the requirements of 22 CFR Part 136 and all policies, rules, and procedures issued by the chief of mission in that foreign country.

(End of clause)

141. Section 652.232–70 is amended in paragraph (c) of the clause by revising the first sentence to read as follows:

652.232–70 Payment Schedule and Invoice Submission—(Fixed-Price).

* * * * *

Payment Schedule and Invoice Submission (Fixed-Price) (MO/YR)

* * * * *

(c) Invoice Submission. Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449. * * *

* * * * *

142. Section 652.232–71 is amended in paragraph (a) by revising the last sentence to read as follows:

652.232–71 Voucher Submission (Cost-Reimbursement).

* * * * *

Voucher Submission (Cost-Reimbursement) (MO/YR)

(a) * * * All vouchers shall be submitted to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449.

* * * * *

143. Section 652.232–72 is added to read as follows:

652.232–72 Limitation of funds.

As prescribed in 632.705–70, insert the following clause:

Limitation of Funds (MO/YR)

(a) Of the total price in Section B (or the "Prices" section), only the amount stated on the contract award document or subsequent modifications is now available for payment and obligated under this contract. It is anticipated that from time to time, additional funds will be obligated under the contract until the total price of the contract is obligated.

(b) The Government is not obligated to pay or reimburse the contractor more than the amount obligated pursuant to this clause. The contractor agrees to perform the contract up to the point at which the total amount paid and payable by the Government (including amounts payable for subcontracts and settlement costs if this contract is terminated for convenience) approximates but does not exceed the total amount obligated.

(c)(1) It is contemplated that funds now obligated under this contract will cover the work to be performed until [contracting officer insert date].

(2) If the contractor considers the funds obligated under this contract to be insufficient to cover the work to be performed until that date, or another date agreed to by the parties, the contractor shall notify the contracting officer in writing and indicate the date on which it expects expended funds to approximate 75 percent of the total amount obligated. The notice shall state the estimated amount of additional funds required to continue performance through the date specified in paragraph (c)(1) of this clause or another date agreed to by the parties.

(3) If, after notification is provided pursuant to paragraph (c)(2) of this clause, additional funds are not obligated, or an earlier date than the date in paragraph (c)(1) of this clause is not agreed to, the contractor shall not be obligated to continue performance under this contract (including actions under the termination clause of this contract) beyond the funds obligated for contract performance.

(d) When additional funds are obligated from time to time for continued performance of this contract, the contract shall be modified to increase the funds obligated and to indicate the period of performance for which funds are applicable. The contractor may notify the contracting officer as provided in paragraph (c)(2) of this clause regarding any additional funds obligated.

(e) If the contractor incurs additional costs or is delayed in the performance of work under this contract, solely by reason of the Government's failure to obligate additional funds in amounts sufficient for the timely performance of this contract, an equitable adjustment may be made to the price, or time of delivery, or both.

(f) This clause shall become inoperative upon obligation of funds sufficient to cover the full price stated in the contract, except for rights and obligations then existing under this clause.

(g) Nothing in this clause shall affect the Government's right to terminate the contract for convenience or default.

(End of clause)

144. Section 652.236–70 is added to read as follows:

652.236–70 Accident prevention.

As prescribed in 636.513, insert the following clause:

Accident Prevention (MO/YR)

(a) General. The contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and, control costs in the performance of this contract. For these purposes, the contractor shall:

(1) Provide appropriate safety barricades, signs and signal lights;

(2) Comply with the standards issued by any local government authority having jurisdiction over occupational health and safety issues; and,

(3) Ensure that any additional measures the contracting officer determines to be reasonably necessary for this purpose are taken.

(4) [The contracting officer shall specify additional requirements regarding safety if the work involves scaffolding or other work at heights above 2 meters, trenches or other excavation greater than 1 meter, earth moving equipment, electrical hazards, work in confined spaces (limited exits, potential for oxygen less than 19.5%, toxic or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.), or hazardous materials (especially those used indoors, e.g., paints, solvents, etc.).]

(b) Records. The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(c) Subcontracts. The contractor shall be responsible for its subcontractors' compliance with this clause.

(d) Written program. Before commencing work, the contractor shall:

(1) Submit a written plan for implementing this clause; and,

(2) Meet with the contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) Notification. The contracting officer shall notify the contractor of any non-compliance with these requirements and the corrective actions required. This notice, when delivered to the contractor or the contractor's representative on site, shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer may issue an order suspending all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any suspension of work order issued under this clause.

(End of clause)

145. Section 652.237–71 is amended by revising the clause date to "(MO/YR)"; and, in paragraph (c) of the clause by removing the words "Building Pass

Application Unit, Room 309, State Annex Number 1, Columbia Plaza., 22401 E Street, NW, Washington, DC" and inserting the words "Building Pass Application Unit, Room B266, Department of State, 2201 C Street, NW, Washington, DC" in their place.

146. Section 652.237–72 is amended by revising the clause date to "(MO/YR)"; and, in paragraph (a) of the clause by removing the words "President's Day" from the list of designated holidays and inserting the words "Washington's Birthday" in their place.

147. Section 652.242–70 is amended by revising the clause date to "(MO/YR)"; and by deleting the parenthetical "[insert name of COR]" in paragraph (b) of the clause and inserting the words "[insert job title of COR]" in their place.

148. Section 652.242–71 is amended by revising the introductory text to read as follows:

652.242–71 Notice of Shipments.

As prescribed in 642.1406–2–70(a), insert the following clause:

* * * * *

149. Section 652.242–72 is amended by revising the introductory text to read as follows:

652.242–71 Shipping Instructions.

As prescribed in 642.1406–2–70(b), insert the following clause:

* * * * *

150. Section 652.243–70 is added to read as follows:

652.243–70 Notices.

As prescribed in 643.104–70, insert the following clause:

Notices (MO/YR)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the contracting officer.

(End of clause)

151. Section 652.246–70 is removed.

PART 653—FORMS

152. Section 653.213–70 is removed.

153. Section 653.219 is amended by revising the section heading to read as follows:

653.219 Small business programs.

154. Section 653.219–70 is revised to read as follows:

653.219–70 DOS form DS–1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

As prescribed in 619.501(c), DS–1910 is prescribed for use in documenting set-aside decisions.

Dated: November 16, 1998.

Lloyd W. Pratsch,

Procurement Executive.

[FR Doc. 98–31430 Filed 11–27–98; 8:45 am]

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VOL 63 ISS 229 NO 30 1998 UMI

Notices

Federal Register
Vol. 63, No. 229
Monday, November 30, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra Nevada Forest Plan Amendment Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Department of Agriculture, Forest Service, Regions 4 and 5 published a document in the **Federal Register** of November 20, 1998 concerning the preparation of an environmental impact statement (EIS) to amend eleven National Forest Land and Resource Management Plans and the Regional Guides for the Intermountain and Pacific Southwest Regions. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: John Bradford, (916) 492–7548.

Correction

In the **Federal Register** of November 20, 1998, in FR Doc. 98–31022 on page 64452, correct the "Dates" paragraph to read:

DATES: The public is asked to provide any additional information they believe the Forest Service may still not have at this time, and to submit any issues (points of concern, debate, dispute or disagreement) regarding potential effects of the proposed action or alternatives by January 19, 1999.

Dated: November 23, 1998.

Kent Connaughton,

Deputy Regional Forester.

[FR Doc. 98–31761 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Keystone Resort, Jones Gulch Development; White River National Forest, Summit County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement, correction.

SUMMARY: The USDA, Forest Service published a Notice of Intent to prepare an Environmental Impact Statement (EIS) on November 10, 1998, 63 FR 63024–63025. Under the Public Involvement and Scoping section on page 63025, an error was made by not identifying specific months for anticipated completion of both the draft and final EIS. In addition, the length of the comment period for the Draft EIS was incorrect. Finally, the standard paragraphs required in Notices of Intent was also inadvertently omitted. This document corrects those errors.

DATES: Written scoping comments and suggestions should be postmarked or received by the Dillon Ranger District no later than December 10, 1998. Send comments to Michael Liu, Attn: Keystone, Dillon Ranger District, P.O. Box 620, Silverthorne, Colorado, 80498, fax (970) 468–7735.

FOR FURTHER INFORMATION CONTACT: Michael Liu, Special Projects Coordinator, Dillon Ranger District, phone (970) 262–3440.

SUPPLEMENTARY INFORMATION: Make the following correction in the Notice of Intent published on November 10, 1998. On page 63025, the last paragraph under the Public Involvement and Scoping section should be deleted and the following sections inserted.

Estimated Dates For Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by April 1999. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Final EIS is scheduled to be completed by June 1999. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewers Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the court's. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The Responsible Official for this project is Martha Ketelle, Forest Supervisor for the White River National Forest. The Responsible Official will document the decision and reasons for the decision in the Record of Decision issued concurrently with the release of

the final EIS. That decision will be subject to appeal under 36 CFR 215.

Dated: November 19, 1998.

Martha J. Ketelle,

Forest Supervisor, White River National Forest.

[FR Doc. 98–31697 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA Forest Service.

ACTION: Action of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, December 10, 1998. The meeting will be held at the Salem BLM Office; 1717 Fabry Road SE; Salem, Oregon 97306; phone (503) 375–5642. The meeting is scheduled to begin at 9:00 a.m., and will conclude at approximately 1:00 p.m. The tentative agenda includes: (1) Review of 1998 PAC activities, (2) Selection of topics and issues for PAC action in 1999, (3) Membership changes for 1999–2000, (4) Recognition of outgoing PAC members.

The public forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentation will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may also be submitted prior to the December 10 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: November 23, 1998.

Darrel L. Kenops,

Forrest Supervisor

[FR Doc. 98–31759 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 30, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Cover, Folding Cot
7105–00–935–1845
NPA: Cambria County Association f/t Blind & Handicapped, Johnstown, Pennsylvania

Services

Base Supply Center, Moody Air Force Base, Georgia
NPA: Georgia Industries for the Blind, Bainbridge, Georgia
Commissary Shelf Stocking, Custodial and Warehousing, Naval Air Station, Key West, Florida
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida
Commissary Shelf Stocking, Custodial and Warehousing, Bangor ANGB, Bangor, Maine
NPA: Multiple Handicap Center of Penobscot Valley, Bangor, Maine
Commissary Shelf Stocking, Custodial and Warehousing, Fort Detrick, Maryland
NPA: The Jeanne Bussard Center, Inc., Frederick, Maryland
Commissary Shelf Stocking, Custodial and Warehousing, Fallon Naval Air Station, Fallon, Nevada
NPA: Churchill Association for Retarded Citizens-Fallon Industries, Fallon, Nevada
Commissary Shelf Stocking, Custodial and Warehousing, Dahlgren Naval Surface Warfare Center, Dahlgren, Virginia
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia
Commissary Shelf Stocking, Custodial and Warehousing, Fort McCoy, Wisconsin
NPA: Handi-Shop Industries, Inc., Tomah, Wisconsin
Food Service, 147 Fighter Wing, Texas Air National Guard, Ellington Field, Houston, Texas
NPA: Center For The Retarded, Inc., Houston, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Broom, Upright
7920–00–291–8305
7920–00–292–4372
7920–00–292–4375
7920–00–292–4371

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31823 Filed 11–27–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: December 30, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 31, August 21, and October 16, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 49877, 44833 and 55577) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services

HUD Albany Office, 52 Corporate Circle, Albany, New York
Base Supply Center, Bolling Air Force Base, Washington, DC
Base Supply Center, Naval Air Station, Meridian, Mississippi
Operation of Individual Equipment Element Store, Offutt Air Force Base, Nebraska

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Cover, Cushion Assembly
2540–01–245–2524
2540–01–245–2525
2540–01–245–2526
2540–01–246–6212
Box, M16 Rifle
8140–00–X40–4785

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31824 Filed 11–27–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Additions to the Procurement List; Correction

In the document appearing on page 63671, FR Doc. 98–30574, in the issue of November 16, 1998, in the first column, the listing for Meals Operations Rations Commercial (MORC) Kits, MORC Kits, Infantry Kits, Supplemental Kits for Sandwiches and Variety Pack, the Class 8790 for each of the NSNs should read as 8970.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31825 Filed 11–27–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission which was to convene at 9:00 a.m. and adjourn at 4:30 p.m. on November 19, 1998, has been cancelled. The notice originally published in the **Federal Register** on Wednesday, November 4, 1998, vol. 63, no. 213, pp. 59507–59508.

Persons desiring additional information should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116).

Dated at Washington, DC, November 18, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–31796 Filed 11–27–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one countervailing duty order in part.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received a request to revoke in part the countervailing duty order on certain agricultural tillage tools from Brazil.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 1999.

	Period to be reviewed
Antidumping Duty Proceedings	
Italy: Pressure Sensitive Tape A–475–059	10/1/97–9/30/98
Autoadesivi Magri, Srl	
Japan:	
Large Newspaper Printing Presses A–588–837	9/1/97–8/31/98
Tokyo Kikai Seisakusho, Ltd.[1]	
Tapered Roller Bearings, Under 4 Inches A–588–054	10/1/97–9/30/98
Fuji Heavy Industries, Ltd.	
Koyo Seiko Co., Ltd.	
NSK, Ltd.	
Tapered Roller Bearings, Over 4 Inches A–558–604	10/1/97–9/30/98
Koyo Seiko Co., Ltd.	
NSK Ltd.	
NTN Corporation	
Vector Supercomputers A–588–841	10/16/97–9/30/98
Fujitsu Limited	
NEC Corporation	
Malaysia: Extruded Rubber Thread A–557–805	10/1/97–9/30/98
Filati Lastex Elastrofibre Sdn. Bhd.	
Filmax Sdn. Bhd.	
Heveafil Sdn. Bhd.	
Rubberflex Sdn. Bhd.	
Rubfil Sdn. Bhd.	
The People's Republic of China: A–570–007	10/1/97–9/30/98
Barium Chloride[2].	
Zhang Jia Ba	
Tangshan	
Tianjin Chemical	
Red Star	
Linshu	
Ermeishang	
Hengnan	
Buohai	
Kunghan	
Xinji	
Helical Spring Lock Washers[3] A–570–822	10/1/97–9/30/98
Zhejiang Wanxin Group Co., Ltd.	
Countervailing Duty Proceedings	
Brazil: Certain Agricultural Tillage Tools C–351–406	1/1/97–12/31/97
Marchesan Implementos e Maquinas, Argicolas "TATU" S.A.[4]	
India: Certain Iron-Metal Castings C–533–063	1/1/97–12/31/97
AGV (or AGV Exports)	
Agarwal Hardware	
Ambika Exports	
Bengal Exports	
Bengal Iron Corporation	
Bhagyadevi	
Calcutta Ferrous Ltd.	
Carnation Enterprise Pvt. Ltd.	
Sweden:	

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	Period to be reviewed
Carnation Industries Commex Corporation Crescent Foundry Co. Pvt. Ltd. Delta Enterprises Delta Corporation Ltd. Dinesh Brothers (P) Ltd. Dugar International Edcons Castings Essen International Ganapati Suppliers Global Intertrade Hargolal & Sons Hindusthan Malleables & Forgings Ltd. J.K. Udyog Kajaria Iron Castings Pvt. Ltd. Kajaria Iron Castings Ltd. Kauntia Exports Kejriwal Iron & Steel Works Kiswok Industries Pvt. Ltd. Metflow Nandikeshwari Iron Foundry Pvt. Ltd. Orissa Metal Industries Overseas Iron Foundry Rangilal & Sons RBA Exports R.B. Agarwalla & Company R.B. Agarwalla & Co. Pvt. Ltd. RR Enterprises RSI Limited RS Ispat Pvt. Ltd. Samitex (or Samitek) Sammitex (or Sammitek) Shakti Isabgel Ind. Serampore Industries Pvt. Ltd. Shree Hanuman Foundry Shree Rama Enterprise Shree Uma Foundries Siko Exports Sitaram Maohogarhia Sociedad J.B. Nagar SSL Exports Super Iron Foundry Tara Engineering Works Thames Engineering Tirupati International Trident Industries Trident International Uma Iron & Steel Victory Castings Ltd.	
Sweden: Certain Carbon Steel Products C–401–401 SSAB Svenskt Stal AB	1/1/97–12/31/97

[1] Inadvertently omitted from previous initiation notice.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of barium chloride from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of helical spring lock washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] Marchesan has submitted a request for partial revocation of the order under 19 CFR 351.222(c)(3). The Department will examine the request for revocation to determine whether Marchesan meets the threshold requirements for revocation under 19 CFR 351.222(e)(2)(iii).

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniverary of the publication of a an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of the Department's Regulations to any

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administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 23, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–31841 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846 and A–821–809]

Preliminary Determinations of Critical Circumstances: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan and the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski (Russian Federation) at (202) 482–3208; and Nithya Nagarajan (Japan) at (202) 482–4243, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Preliminary Determination of Critical Circumstances

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

Critical Circumstances

On October 15, 1998, the Department of Commerce ("the Department") initiated investigations to determine whether imports of certain hot-rolled flat-rolled carbon-quality steel products ("hot-rolled steel") from Brazil, Japan, and the Russian Federation ("Russia") are being, or are likely to be, sold in the United States at less than fair value (63 FR 56607, October 22, 1998). In the petition filed on September 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil, Japan, and Russia. On November 13, 1998, the International Trade Commission ("ITC") preliminarily determined that there was threat of material injury to the domestic industry from imports of hot-rolled steel from Brazil, Japan, and Russia.

In accordance with 19 CFR 351.206(c)(2)(i), because petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination. In a policy bulletin issued on October 8, 1998, the Department stated that it has determined that it may issue a preliminary critical circumstances determination prior to the date of the preliminary determination of dumping, assuming adequate evidence of critical circumstances is available (*see Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations*, 63 FR 55364). In accordance with this policy, we are issuing preliminary critical circumstances decisions in the investigations of imports of hot-rolled steel from Japan and Russia.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Japan

History of Dumping and Importer Knowledge

We are not aware of any antidumping order in any country on hot-rolled steel from Japan. Therefore, we examined whether there was importer knowledge. In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling hot-rolled steel at less than fair value and thereby causing material injury, the Department must rely on the facts before it at the time the determination is made. The Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the likelihood of resultant material injury.

In the present case, since we have not yet made a preliminary finding of dumping, the most reasonable source of information concerning knowledge of dumping is the petition itself. In the petition, petitioners calculated estimated dumping margins of 27.20 and 28.25 percent, which both exceed the 25 percent threshold. Therefore, we preliminarily determine importers knew or should have known that the exporters were dumping the subject merchandise.

As to the knowledge of likely injury from such dumped imports, we considered the information regarding injury to the domestic industry in the petition. We also considered other sources of information, including numerous press reports from early to mid-1998 regarding rising imports, falling domestic prices resulting from rising imports, and domestic buyers shifting to foreign suppliers. In addition to this information, the ITC preliminarily found threat of material injury to the domestic industry due to imports of hot-rolled steel from Japan. Therefore, with respect to Japan, we preliminarily find that there is a reasonable basis to believe or suspect that importers knew or should have known that material injury from the dumped merchandise was likely.

Massive Imports

In determining whether there are "massive imports" over a "relatively short time period," the Department ordinarily bases its analysis on import data for at least the three months preceding (the "base period") and following (the "comparison period") the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. However, as stated in the Department's regulations, at section 351.206(i), if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.

In this case, petitioners argue that importers, exporters, or producers of Japanese hot-rolled steel had reason to believe that an antidumping proceeding was likely before the filing of the petition. The Department examined whether conditions in the industry and published reports and statements provide a basis for inferring knowledge that a proceeding was likely. For Japan, we find that such press reports, particularly in March and April 1998, are sufficient to establish that by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning hot-rolled products from Japan. (*See* discussion in the Determination of Critical Circumstances Memo). Accordingly, we examined the increase in import volumes from May–September 1998 as compared to December 1997–April 1998 and found that imports of hot-rolled steel from Japan increased by more than 100 percent (*see* the Attachment to the Critical Circumstances Memo). Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of hot-rolled steel from Japan over a relatively short time.

Russia

History of Dumping and Importer Knowledge

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i), the Department considers evidence of an existing antidumping order on hot-rolled steel from Russia in the United States or elsewhere to be sufficient. In this case, petitioners alleged that Chile, Indonesia, and Mexico all have antidumping orders in place covering subject merchandise. Because the antidumping order in Chile has been revoked, we are not considering it for purposes of this determination. Nevertheless, we find the antidumping orders in place against Russian hot-rolled steel in Indonesia and Mexico to be sufficient to indicate a history of injurious dumping. Therefore, with respect to Russia, we find that a history of dumping causing material injury exists. Since we have found a history of dumping causing material injury with respect to Russia, there is no need to examine importer knowledge.

Massive Imports

In this case, petitioners argue that importers, exporters, or producers of Russian hot-rolled steel had reason to believe that an antidumping proceeding was likely before the filing of the petition. The Department examined whether conditions in the industry and published reports and statements provide a basis for inferring knowledge that a proceeding is likely. As discussed in the Determination of Critical Circumstances Memo, we find that for Russia such press reports are sufficient to establish that by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely. Accordingly, we examined the increase in import volumes from May–September 1998, as compared to December 1997–April 1998, and found that imports of hot-rolled steel from Russia increased by 98 percent (*see* the Attachment to the Critical Circumstances Memo). Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of hot-rolled steel from Russia over a relatively short time.

Brazil

Because there is insufficient evidence on the record at this time that importers, exporters, or producers knew or should have known, at some time prior to the filing of the petition, that a proceeding concerning Brazil was likely, the appropriate comparison period for determining whether imports have been massive would begin at the time of filing of the petition. Because data for this period are not yet available, the Department will make its preliminary critical circumstances finding by the date of its preliminary determination regarding dumping.

Conclusion

We preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of hot-rolled steel from Japan and Russia.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, upon issuance of an affirmative preliminary determination of sales at less than fair value in the Japan or Russia investigation, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of hot-rolled steel from Japan or Russia, as appropriate, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances for Japan and Russia when we make our final determinations regarding sales at less than fair value in these investigations, which will be 75 days after the preliminary determinations regarding sales at less than fair value.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations.

This notice is published pursuant to section 777(i) of the Act.

Dated: November 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31842 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–057. Applicant: Ames Laboratory, U.S. Department of Energy, 211 TASF, Iowa State University, Ames, IA 50011–3020. Instrument: Auger Microprobe, Model JAMP–7800F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for the following to help

towards providing better processes for growing and characterization of alloy systems: (1) Detect position shifts in the Auger electron binding energy due to differences in bonding characteristic, (2) identify the type of bonding in complex alloy systems, (3) determine which elements are involved in oxidation and corrosion of various systems, (4) detect and identify second phases present in single crystals, (5) get an overview of all the elements present in a particular sample quickly, and (6) sputter clean a sample and return the material to its bulk configuration. Application accepted by Commissioner of Customs: October 28, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–31843 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90–5A006.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review ("Certificate") granted to the Forging Industry Association ("FIA") on July 9, 1990. Notice of issuance of the original Certificate was published in the **Federal Register** on July 13, 1990 (55 FR 28801).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998). The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11 (a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The Forging Industry Association's ("FIA") original certificate was issued on July 9, 1990 (55 FR 28801, July 14, 1990) and previously amended on April 30, 1991 (56 FR 21128, May 7, 1991); May 29, 1992 (57 FR 24022, June 5, 1992); April 1, 1994 (59 FR 16619, April 7, 1994); and July 28, 1995 (60 FR 41879, August 14, 1995).

FIA's Certificate has been amended to:

1. Add the following companies as a new "Member" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Anderson Shumaker Company, Chicago, IL; Dana Corporation, for the activities of its Spicer Heavy Axle & Brake Division, Marion Forge, Marion, OH.

2. Delete the following companies as "Members" of the Certificate: Hussey Marine Alloys, Ltd., Leetsdale, PA; Schlosser Forge Company, Cucamonga, CA; Western Forge & Flange Co., Santa Clara, CA; and

3. Change the listing of the company name for each current "Member" cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Beth Forge, Inc. (Lehigh Heavy Forge Corporation); Eaton Corporation, Marion, OH (Eaton Corporation, South Bend, IN); Kaiser Aluminum & Chemical Corporation, Erie, PA (Kaiser Aluminum & Chemical Corporation, Oxnard, CA); Teledyne Portland Forge (Portland Forge, An Allegheny Teledyne Company, Portland, IN); The Harris -Thomas Drop Forge Co. (Harris Thomas Industries, Inc.); Waltec American Forgings, Inc., Waterbury, CT (Waltec Forgings, Inc.-Port Huron, Port Huron, MI).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: November 23, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–31726 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, application No. 85–7A018.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to U.S. Shippers Association ("USSA") on June 3, 1986. Notice of issuance of the original Certificate was published in the **Federal Register** on June 9, 1986 (51 FR 20873).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 85–00018, was originally issued to U.S. Shippers Association on June 3, 1986 (51 FR 20873, June 9, 1986), and subsequently amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); September 22, 1993 (58 FR 51061, September 30, 1993); June 28, 1994 (59 FR 34411, July 5, 1994); and on April 10, 1997 (62 FR 18586, April 16, 1997).

USSA's Export Trade Certificate of Review has been amended to:

1. Add the following entities as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Rhodia, Inc., Cranbury, New Jersey (Controlling Entity: Rhone-Poulenc, S.A., Courbevoie

Cedex, France); and Rhone-Poulenc Animal Nutrition, Inc., Atlanta, Georgia (Controlling Entity: Rhone-Poulenc, S.A., Courbevoie Cedex, France); and

2. Change the listing of the company name for current "Member," Rhone-Poulenc, Inc., to the new name of Rhone-Poulenc AG Company, Inc.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: November 23, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–31826 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 67625, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 30, 1998, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	8,828,362 square meters.
225	6,384,614 square meters.
313–O [2]	13,330,756 square meters.
314–O [3]	66,417,908 square meters.
317–O/617/326–O [4]	28,716,274 square meters of which not more than 3,834,249 square meters shall be in Category 326–O.
331/631	2,158,543 dozen pairs.
340/640	1,706,087 dozen.
359–S/659–S [5]	764,946 kilograms.
369–S [6]	945,251 kilograms.
604–A [7]	528,781 kilograms.
618–O [8]	500,005 square meters.
641	1,723,343 dozen.
643	245,404 numbers.
644	202,130 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 617; Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[5] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 604–A: only HTS number 5509.32.0000.

[8] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–31770 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Elimination of Export Visa and Electronic Visa Information System (ELVIS) Requirements for Silk Apparel Products Produced or Manufactured in the People's Republic of China

November 23, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs eliminating export visa and ELVIS requirements.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In accordance with the Export Visa Arrangement, effected by a Memorandum of Understanding dated February 1, 1997, between the Governments of the United States and the People's Republic of China, the U.S. Government has agreed to discontinue the requirement for export licenses and ELVIS (Electronic Visa Information System) transmissions for silk apparel products in Categories 733–736, 738–748, 750–752, 758 and 759, produced or manufactured in China and entered into the United States after December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to no longer require a visa or ELVIS transmission for silk apparel products in the aforementioned categories which are produced or manufactured in China and entered into the United States on and after January 1, 1999. Other export documentation will continue to be required.

See 62 FR 15465, published on April 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, and silk apparel products, produced or manufactured in the People's Republic of China.

Effective on January 1, 1999, you are directed to no longer require a visa or ELVIS (Electronic Visa Information System) transmission for silk apparel products in Categories 733–736, 738–748, 750–752, 758 and 759, produced or manufactured in China and entered into the United States after December 31, 1998.

Shipments of silk apparel products in the aforementioned categories which are produced or manufactured in China and entered into the United States on and after January 1, 1999 shall not be denied entry for lack of an export visa or ELVIS transmission. Other export documentation will continue to be required.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–31772 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

November 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 63524, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 25, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 30, 1998, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
226/313	126,225,452 square meters.
351/651	360,228 dozen.
359–C/659–C [2]	1,621,030 kilograms.
363	49,484,642 numbers.
369–F/369–P [3]	2,644,511 kilograms.
369–S [4]	799,188 kilograms.
613/614	24,993,797 square meters.
615	26,637,611 square meters.
625/626/627/628/629	81,776,324 square meters of which not more than 40,888,163 square meters shall be in Category 625; not more than 40,888,163 square meters shall be in Category 626; not more than 38,573,739 square meters shall be in Category 627; not more than 7,980,774 square meters shall be in Category 628; and not more than 38,573,739 square meters shall be in Category 629.
666–P [5]	809,891 kilograms.
666–S [6]	4,489,906 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[6] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.
[FR Doc. 98–31771 Filed 11–27–98; 8:45 am]
BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Commission Finding That Shortens Periods For Issuing Information On Mesh Playpens

AGENCY: Consumer Product Safety Commission.
ACTION: Notice.

SUMMARY: The Commission finds that certain mesh playpens present a potential hazard to children and that, to protect the public health and safety, the customary manufacturer comment and notification periods preceding public release of certain information shall be shortened.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0626 ext. 1348.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission staff negotiated with the manufacturers of mesh playpens to recall many models with protruding rivets, catchpoints for pacifier cords and children's clothing, that lead to strangulation of toddlers. The manufacturers of the playpens are Graco Children's Products, Inc., Bilt-Rite, Pride Trimble Corp., Pride Trimble, Inc., Kolcraft Enterprises, Inc., Hufco-Delaware, Evenflo Co., Inc., and Strolee Co.

The staff prepared a video news release (VNR), and provided the manufacturers with the opportunity to comment on it beginning on November 10. The staff received comments from the manufacturers, worked with them, and made some requested changes. The staff informed the manufacturers that it would issue the VNR on November 24.

B. Statutory and Regulatory Provisions

Under section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b)(1), the Commission must provide manufacturers or private labelers with at least 30 days advance notice before disseminating information that identifies the manufacturer's product. In addition, section 6(b)(2) of the CPSA, 15 U.S.C. 2055(b)(2), requires at least 10 days additional notice if the manufacturer or private labeler claims that the information to be released is inaccurate. However, the Commission may provide lesser periods of notice, in both cases, if "the Commission finds that the public health and safety requires a lesser period of notice."

Under the CPSA and the Commission's regulations, the Commission must publish its "public health and safety" findings in the **Federal Register**. 16 CFR 1101.23(b) and (c) and 1101.25(b) and (c). Disclosure of the information in the VNR may be made concurrently with the filing of the **Federal Register** notice, and need not await its publication.

C. Commission Finding

The Commission finds that the public health and safety requires less notice than the periods of time specified in section 6(b) of the Consumer Product Safety Act. Specifically, the 30-day period is reduced to the period from November 10 until November 23 for the video news release. In addition, the 10-day period is reduced to the period from November 23 until November 24, 1998.

Dated: November 24, 1998.
Sayde E. Dunn,
Secretary of the Commission.
[FR Doc. 98–31775 Filed 11–27–98; 8:45 am]
BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed collection; Comment Request

AGENCY: Department of Defense, Under Secretary of Defense (Acquisition and Technology)/Deputy Under Secretary of Defense (Industrial Affairs and Installations/Industrial Capabilities and Assessments)
ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Under Secretary of Defense (Acquisition and Technology)/ Deputy Under Secretary of Defense (Industrial Affairs and Installations/ Industrial Capabilities and Assessments) announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 29, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: ATTN: Mr. Ronald Cooke, Office of Deputy Under Secretary of Defense (Industrial Affairs and Installations/ Industrial Capabilities and Assessments), 3310 Defense Pentagon, Washington, DC 20301–3310.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Mr. Ronald Cooke at (703) 588–0192 or DSN 245–0192.

Title, Associated Form, and OMB Number: Industrial Capabilities Questionnaire, DD Form 2737, OMB Number 0704–0377.

Needs and uses: As part of its responsibilities to facilitate a diverse, responsive, and competitive industrial base, the Department of Defense (DoD) requires accurate, pertinent, and up to date information as to industry's ability to satisfy defense needs. The Industrial Capabilities Questionnaire will be used by all Services and the Defense Logistics Agency to gather business, industrial capability (employment, skills, facilities, equipment, processes, and technologies), and manufactured end item information to conduct required industrial assessments and to support DoD strategic planning and decisions.

Affected public: Business or Other For-Profit.

Annual Burden Hours: 153,600.

Number of Respondents: 12,800.

Responses Per Respondent: 1.

Average Burden Per Response: 12 Hours.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are industry professionals who provide information to the requesting DoD agency on the industrial capabilities associated with the subject facility being reviewed. The DoD agencies are directed to solicit only those data elements within this form necessary to conduct the particular planning or assessment task at hand. This approach is used to minimize the

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burden for data requests on industry and limit the retention of in-house data to that essential to supporting defense decisions and plans. A significant portion of this information will be collected electronically and, with appropriate measures to protect sensitive data, will be made available to authorized users in the Department to support a wide variety of industrial capability analyses. These analyses are used to support cost effective acquisition of defense systems and key troop support/consumable items, assess the implications of changes in defense spending on industry, development of responsive logistics support efforts, and industrial preparedness planning and readiness analyses. The lack of accurate, current and relevant industry capability information will adversely impact the integrity of the Department's decisions and planning efforts.

Dated: November 19, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31769 Filed 11–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0038]

Proposed Collection; Comment Request Entitled Mistake in Bid

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Mistake in Bid. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FUTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtains verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *30* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: *Respondents*, 4,673; *responses per respondent*, 1; *total annual responses*, 4,673; *preparation hours per response*, .5; and *total response burden hours*, 2,337.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0038, Mistake in Bid, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31753 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0039]

Proposed Collection; Comment Request Entitled Descriptive Literature

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Descriptive Literature. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Descriptive literature means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per response, including the time for reviewing

instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The annual reporting burden is estimated as follows: Respondents, *2,663*; responses per respondent, *3*; total annual responses, *7,989*; preparation hours per response, *.167*; and total response burden hours, *1,334*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0039, Descriptive Literature, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31754 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Proposed Collection; Comment Request Entitled Delivery Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Delivery Schedules. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA, (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,440*; responses per respondent, *5*; total annual responses, *17,200*; preparation hours per response, *.167*; and total response burden hours, *2,872*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31755 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Proposed Collection; Comment Request Entitled Authorized Negotiators

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Authorized Negotiators. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph De Stefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 minute per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *61,875*; responses per respondent, *8*; total annual responses, *495,000*; preparation hours per response, *.017*; and total response burden hours, *8,415*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW,

Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31829 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0004]

Proposed Collection; Comment Request Entitled Architect-Engineer and Related Services Questionnaire (SF 254)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire (SF 254). The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541—544 by firms wishing to be considered for Government A–E contracts. The information obtained on this form is used to determine if a firm should be solicited for A–E projects.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *5,000;* responses per respondent, *7;* total annual responses, *35,000;* preparation hours per response, *1;* and total response burden hours, *35,000.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31830 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0065]

Proposed Collection; Comment Request Entitled Overtime

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Overtime. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal solicitations normally do not specify delivery schedules that will require overtime at the Government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,270;* responses per respondent, *1;* total annual responses, *1,270;* preparation hours per response, *.25;* and total response burden hours, *318.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31831 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035]

Proposed Collection; Comment Request Entitled Claims and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Claims and Appeals. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *4,500;* responses per respondent, *3;* total annual responses, *13,500;* preparation hours per response *1;* and total response burden hours, *13,500.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31832 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0047]

Proposed Collection; Comment Request Entitled Place of Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Place of Performance. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14;* total annual responses, *1,111,558;* preparation hours per response, *.07;* and total response burden hours, *77,810.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31833 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on December 30, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarters Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: November 20, 1998..

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DFMP 26

SYSTEM NAME:

Vietnamese Commando Compensation Files *(June 30, 1997, 62 FR 35158).*

CHANGES

* * * * *

CATEGORIES OF INDIVIDUALS COVERED:

At the end of the paragraph add 'and parents and siblings of deceased Commandos.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace 'Section 657,' with 'Sections 657 and 658,'.

* * * * *

PURPOSE(S):

In part (2) of the paragraph, delete 'October 1, 1998' and replace with 'November 15, 1998'.

* * * * *

DFMP 26

SYSTEM NAME:

Vietnamese Commando Compensation Files.

SYSTEM LOCATION:

Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are former Vietnamese operatives who either (1) participated in OPLAN 34A (or its predecessor) and were captured and incarcerated by the Democratic Republic of Vietnam (DRG) as a result of such participation, or (2) participated in OPLAN 35, were captured and incarcerated by North Vietnam forces as a result of such participation in Laos or along Lao-Vietnamese border, remained in captivity after 1973 (or died in captivity), and have not previously received payment from the United States for the period spent in captivity, provided that neither claimant has served in the Peoples Army of Vietnam or provided active assistance to the Government of the DRG during the period 1958 through 1975; the surviving spouse of a deceased claimant; the surviving children (including natural and adopted) of the deceased claimant if there is no surviving spouse; parents of a deceased claimant if there is no surviving spouse or children; and siblings of the deceased claimant if there is no surviving spouse, children or parents of the deceased claimant.

CATEGORIES OF RECORDS IN THE SYSTEM:

System (including documentation) is comprised of (1) names (including aliases, former names, or other names used); (2) current address; (3) current telephone number(s); (4) United States Social Security Number, (if any), United States Immigration and Naturalization Service (INS) Identification or similar number(s), (if any), and any equivalent social security or identification number(s), (if any), issued to applicant by the Democratic Republic of Vietnam, the Republic of Vietnam, or the current government of Vietnam; (5) date of birth; (6) place of birth; (7) distinguishing marks (fingerprints, scars, etc.); (8) family identification, including (a) parents; (b) spouse; (c) children; (d) brothers; (e) sisters; (f) others; (9) team name; (10) place of insertion; (11) date of launch; (12) dates of captivity; (13) name, address, and telephone number of counsel or attorney (if any); and (14) required sworn declaration of veracity of above, including denial of service with or collaboration with North Vietnam.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub.L. 104–201, sections 657, as amended by Pub.L. 105-261, 658, payments to certain persons captured or interned by North Vietnam.

PURPOSE(S):

To be used by officials of the Vietnamese Commandos Compensation Commission to (1) verify the identity of claimants; (2) ensure the claim has been submitted in a timely manner (on or before November 15, 1998); (3) adjudicate the claim; (4) establish verified list of claimants for disbursing agency and facilitate cash payments to claimants; (5) provide a check list for attorney's fees limitation (as specified in the law); (6) establish a check list of paid claimants to preclude future claims or judicial review; and (7) prepare future reports to the Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice, Litigation Division, in connection with litigation concerning *Au Dong Quy et al./Lost Commandos vs. United States* for the purpose of representing the Department of Defense in pending or potential litigation to which the record is pertinent.

To the Central Intelligence Agency and the Immigration and Naturalization Service for the purpose of checking and verifying claim information.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files are maintained in file folders; computer files are stored on magnetic tape and disk.

RETRIEVABILITY:

Records are retrieved by name, date and place of birth, and/or Social Security Number if assigned and voluntarily furnished.

SAFEGUARDS:

Files are maintained under the direct control of office personnel in the Commission on Compensation during duty hours. Office is locked and alarmed during non-duty hours. Computer access requires log-on and password and computer media is stored in a controlled area.

RETENTION AND DISPOSAL:

Records will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

Requesters should provide full name and any former names used and date and place of birth. If a requester has a Social Security Number and desires to furnish it, he or she may do so but failure to provide it will not result in the request not being processed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

Requesters should provide full name and any former names used and date and place of birth. If a requester has a Social Security Number and desires to furnish it, he or she may do so but failure to provide it will not result in the request not being processed.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from claimants, their survivors, their attorneys and other authorized representatives; third party individuals; the Department of Defense; and Government intelligence agencies; the Immigration and Naturalization Service; and from the National Archives and Records Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 98–31768 Filed 11–27–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a routine use to permit the release of information to the Department of Veterans Affairs for the purposes of conducting authorized research projects.

DATES: This proposed action will be effective without further notice on December 30, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 12, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 23, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0640–10b TAPC

SYSTEM NAME:

Official Military Personnel Record *(April 9, 1998, 63 FR 17389).*

Changes:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph under the Department of Veterans Affairs as follows: 'To provide information relating to authorized research projects.'

* * * * *

A0640–10b TAPC

SYSTEM NAME:

Official Military Personnel Record.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active Army officers.

U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Reserve Personnel Command, 9700 Page Avenue, St Louis, MO 63132–5200 for reserve personnel.

National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Command showing physical location of the Official Military Personnel of retired, separated and files on all service members returned to active duty.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the U.S. Army who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Department of Veterans Affairs benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; field for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; casualty report; U.S. field medical card; retirement points, deferment; preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C. section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/waivers/election and travel; efficiency appeals; promotion/reduction/recommendations, approvals/declinations announcements/notifications, reconsiderations/worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to manage the member's Army service effectively; document historically a member's military service, and safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs:

1. To provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

2. To provide information relating to authorized research projects.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and

Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Optical digital imagery, microfiche stored randomly in electro-mechanical storage/retrieval devices. Files consists of selected data automated in support of military personnel management purposes on platters, disc fiche and other computer media.

RETRIEVABILITY:

Alphabetically by surname; automated data retrievable by name, Social Security Number or ADP parameter; records of active Army, Reserve, National Guard, (officer), retired, separated and deceased persons are retrieved by Social Security Number terminal digit sequence.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent; retained in active file until termination of service, following which they are retired to the U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Command, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents and other relevant papers in Department of the Army, other Federal agencies, or state and local governmental entities; civilian education and training institutions; and members of the public when information is relevant to the Service Member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.

[FR Doc. 98–31767 Filed 11–27–98; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, Office of Small and Disadvantaged Business Utilization, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, the information collection on respondents, including thorough use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 1999.

ADDRESSES: Written comments and recommendation on the proposed information collection should be sent to Director, Defense Logistics Agency, ATTN: Kenneth Dougherty, DDAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instructions, please write to the above address, or call Mr. Kenneth Dougherty at (703) 767–1657.

Title; Associated Form; and OMB Number: Request for Approval for Procurement Technical Assistance Cooperative Agreement Performance Report, DLA Form 1806, OMB Control Number 0704–0320.

Needs and Uses: The Defense Logistics Agency uses the report as the principal instrument for measuring, on a semiannual basis, Cooperative Agreement recipient's (State and local governments, private nonprofit organizations, Indian tribal organizations and Indian economic enterprises) performance against the goals and objectives as established in their application for which the award was made.

Affected Public: State or local governments; businesses or other for-profit; Federal agencies or employees; Nonprofit institutions; Small businesses or organizations.

Annual Burden Hours: 1344.
Number of Respondents: 84.
Responses per Respondent: 2.
Average Burden per Response: 8 hrs.
Frequency: Semiannually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Cooperative agreements are awarded on a competitive basis. Past performance is a major evaluation factor for selecting programs to be funded each fiscal year. Past performance data is obtained from the performance report. The data is used to measure recipient accomplishments against goals and objectives set forth in the application, for which an award was made. The reported data also provides budget information (total amount expended, total DoD fund expended) used to monitor the expenditure of DoD funds and to assure that the DoD/recipient share ratio established at award is maintained

Additionally, the information is used to identify programs that are experiencing difficulty to establish the need for assistance and the frequency of on-site reviews.

Carla A. Von Bernewitz,
Chief Information Officer, Defense Logistics Agency.

[FR Doc. 98–31798 Filed 11–27–98; 8:45 am]
BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2000–2001 year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs). The Secretary also requests comments on changes under consideration for the 2001–2002 FAFSA. This notice provides additional information not provided in an earlier notice published on November 23, 1998.

DATES: Interested persons are invited to submit comments on or before January 22, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. In addition, interested persons can access this document on the Internet:

(1) Go to IFAP at http://ifap.ed.gov
(2) Click on the "Bookshelf"
(3) Scroll down and click on "FAFSA and Renewal FAFSA Forms and Instructions"
(4) Click on "By 2000–2001 Award Year"
(5) Click on "FAFSA Instructions"
(6) Click on the red icon to open the file.

Please note that the free Adobe Acrobat Reader software, version 3.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's website: http://www.adobe.com

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, "in cooperation with agencies and organizations involved in providing student financial assistance," to "produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under" the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

In consultation with the financial aid community, State agencies administering student financial aid, and the public, the FAFSA was substantially redesigned for the 1999–2000 year. Therefore the proposed 2000–2001 FAFSA was intentionally designed to be a "rollover," containing minimal change from the redesigned 1999–2000 application.

In addition to comments on the proposed 2000–2001 FAFSA, the Secretary also requests comments on the following changes under consideration to the 2001–2002 FAFSA. References to the current FAFSA are to the 1999–2000 FAFSA.

Addition of Parent Identifying Information

The Secretary is considering collecting the following parental data: names, Social Security Numbers, dates of birth, citizenship, and Alien Registration Number. Also under consideration are parents' driver's license number and state, and permanent phone number. The purpose of adding this information is to facilitate using the FAFSA as a Plus loan application or an IRS match, as described below.

The FAFSA as PLUS Loan Application

One possible use of parent identifying information (described above) is to make the FAFSA the PLUS loan application. The Secretary is considering implementing this in 2001–2002.

IRS Match

Another possible use of parent identifying information (described above) is to conduct a computer match to confirm student and parent income information with the IRS. The Secretary is considering implementing this in 2001–2002.

Reduction of Number of Schools on the FAFSA

The current FAFSA allows students to select up to six schools to receive their application information. Applicant data show, however, that the vast majority of students list only three or fewer schools. In addition, improved information technology has made it easier for students to add more schools after submitting their initial application. As such, the Secretary is considering reducing the number of schools students can list on the FAFSA.

Elimination of FAFSA Express

The success of FAFSA on the Web and the increasing availability of Internet access lead the Secretary to consider consolidating student electronic application options by eliminating the PC software program FAFSA Express in the 2001–2002 award year.

Addition of E-mail Address

E-mail is becoming an increasingly viable means of communication between students and various agencies and organizations that administer student financial aid. As such, the Secretary is considering collecting student (and parent) e-mail addresses on the 2001–2002 paper FAFSA. In addition, the Secretary is considering adding student e-mail address to FAFSA on the Web for 2000–2001 for the purpose of an e-mail notification to the student that his or her application has been processed.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (1) Is this collection necessary to the proper functions of the Department, (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate, (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 23, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.
Title: Free Application for Federal Student Aid (FAFSA).
Frequency: Annually.
Affected Public: Individuals and families.
Annual Reporting and Recordkeeping Hour Burden:

Responses: 10,254,697
Burden Hours: 6,589,649

Abstract: The FAFSA collects identifying and financial information about a student who applies for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

[FR Doc. 98–31720 Filed 11–27–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 30, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel—d@al.eop.gov*. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *PatSherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 23, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Technological Innovation and Cooperation for Foreign Information Access Program.

Frequency: Every 3 Years.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 50. Burden Hours: 800.

Abstract: Collect program and budget information to make grants to institutions of higher education and/or libraries. This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–31719 Filed 11–27–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Solicitation for Financial Assistance Applications; Northeast Regional Biomass Energy Program Management Project

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications number DE–PS36–99GO10385.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for the Northeast Regional Biomass Program (NERBEP) Management Project. The selected applicant will receive financial assistance to manage NERBEP under a financial assistance agreement with DOE.

DATES: The solicitation will be issued on or about November 30, 1998.

AVAILABILITY: To obtain a copy of the Solicitation once it is issued, interested parties must access the Golden Field Office Application, Award and Solicitation page at http://www.eren.doe.gov/golden/solicit.htm, click on "solicitations" and then locate the solicitation number identified above. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: The major goals of the DOE NERBEP are: to promote biomass energy by creating awareness, a positive image, and confidence in biomass energy technologies within the region; to develop a climate supportive of biomass energy among the general public and relevant government agencies; to assist both the public and private sectors in the responsible development, commercialization, and utilization of biomass energy technologies so that the region achieves full realization of associated energy, economic, and environmental benefits; and to select and perform activities that provide for responsible development of biomass energy within the region. The Northeast Region includes the following states: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.

Applications must address each of the following activities in order to be considered for award. The activities are (1) management and planning, (2) information and outreach, and (3) project oversight and evaluation.

1. Management and Planning includes a plan for the overall management of the project at the state level, including coordination with the DOE Boston Regional Support Office (BRSO) and NERBEP ad hoc steering committees. The responsibility also includes development of resource plans and the provision of technical input to DOE for development of annual operating plans for the NERBEP.

The NERBEP Annual Operating Plan (AOP) is a document which will be prepared each year by the BRSO, with appropriate committee input, which provides guidance and direction to the program for the following Fiscal Year.

The draft FY '99 AOP will be made an attachment to the solicitation. It will be the responsibility of the recipient to guide the Program in meeting AOP objectives, recommend and implement changes to the AOP as necessary, and assist the BRSO in the preparation and completion of future AOP's.

2. Information and Outreach includes responding to inquiries about the program from interested parties, developing biotech briefs, collecting and contributing articles to support dialogue, and preparing regional biomass energy program reports. The recipient also will coordinate and publish a regional newsletter at least quarterly and will establish and maintain a NERBEP Internet site which provides relevant biomass program information and project summaries.

3. Project Oversight and Evaluation includes the award and administration of subgrants to organizations in the region. The recipient will solicit applications for projects in support of program objectives through a competitive solicitation. Administration of the individual subgrants, including financial commitments, performance tracking, and the provision of periodic reports to DOE, will be the responsibility of the recipient with appropriate oversight from the BRSO.

In response to this solicitation, DOE expects to make a single award. Solicitation number DE–PS36–99GO10385 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. No pre-application conference is planned. Issuance of the solicitation is planned on or about November 30, 1998, with responses due on January 20, 1999.

Issued in Golden, Colorado, on November 8, 1998.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 98–31809 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law No. 92–463,86 Stat.770)

notice is hereby given of the following advisory committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, December 14, 1998; 6:30 p.m.–9:30 p.m.

ADDRESSES: Arvada Center of the Arts and Humanities 6901 Wadsworth Boulevard Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB–Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Continue Discussion on Waste Management Topics and Development of a "Vision" for the Closure of the Rocky Flats Site

Other Board Business May Be Conducted as Necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and a reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make a public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation of the Public Reading Room are 9:00 a.m. through 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on November 24, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–31839 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board.

DATES: Wednesday, December 16, 1998, 9:00 am–3:30 pm.

ADDRESSES: Swissotel Washington—The Watergate Hotel, Monticello Ballroom, 2650 Virginia Avenue, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (The Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Public Law 95–91). The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its Task Force Subcommittees provide timely, balanced, and authoritative advice to the Secretary on the Department's management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

Wednesday, December 16, 1998

9:00 am–9:15 am Welcome & Opening Remarks—Chairman Walter Massey
9:15 am–9:30 am Remarks and Introduction of New Board Members—Secretary Bill Richardson
9:30 am–11:30 am SEAB Subcommittee Reports & Discussion
11:30 am–11:45 am Response and Charge to the Board—Secretary Bill Richardson
11:45 am–12:00 pm Public Comment Period
12:00 pm–1:00 pm Lunch
1:00 pm–3:15 pm SEAB Planning Session
3:15 pm–3:30 pm Public Comment Period
3:30 pm Closing Remarks

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 24, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–31838 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

RIN 1904–AA77

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), the Office of Codes and Standards (OCS) in the Office of Energy Efficiency and Renewable Energy (EERE) invites the general public and other Federal agencies to take this opportunity to comment on the proposed information collection under the title "Study of Central Air Conditioner Prices." OCS is soliciting comments concerning the collection of data regarding equipment and installation prices for residential unitary air conditioners and heat pumps.

DATES: Consideration will be given to comments submitted by January 29, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to: U.S. Department of Energy, Attn: Kathi Epping, Office of Codes and Standards (EE–43), 1J–018/FORS, 1000 Independence Ave., SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Codes and Standards, Mail Station EE–431, Room 1J–018 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7425, E-mail: Kathi.Epping@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Collection title: Study of Central Air Conditioner Life Cycle Costs.

Form Number: N/A.

Abstract: OCS is undertaking a rulemaking to determine whether the current regulations mandating minimum energy efficiency levels for central air conditioners and heat pumps should be amended. Legislation requires that, in determining whether an energy conservation standard is economically justified, the Secretary shall consider "the savings in operating costs throughout the estimated average life of the covered product . . . compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products." (42 U.S.C. 6295(o)(2)(B)(i)(II)). As part of this analysis, the Office of Codes and Standards is seeking to survey participants in central air conditioner and heat pump markets to determine current retail unitary equipment prices and installation costs by equipment efficiency level.

The information collection will include contractors participating in the residential unitary equipment market. Consumers will not be surveyed. Questions will attempt to gather data related to equipment costs, sales volumes, and other information pertinent to the determination of retail prices. Some information does exist and is available to OCS from government and private sources. These sources include:

- Current Industrial Report MA35M(96), U.S. Bureau of the Census, 1997.
- ARI Statistical Profile, Air Conditioning and Refrigeration Institute, 1997.
- U.S. Unitary and Close Control Air Conditioning, Report 11973/2, Building Services Research and Information Association, 1997.
- 1996 Measure Cost Study, California Energy Commission, 1997.
- Forced-air Furnace and Central Air Conditioner Market, Report 164–1, Energy Center of Wisconsin.

This information is not sufficient to determine retail prices for the purposes of this analysis, because most sources (1) disaggregate by capacity rather than efficiency, (2) aggregate on a national rather than regional level, (3) do not differentiate between "deluxe" and standard models, and (4) do not differentiate between the appropriate product classes. OCS is not aware of any source or combination of sources that satisfies all requirements. This information collection request is intended to provide that additional necessary information.

Approximately 250 respondents each will be asked 6–10 questions, and responses will be voluntary. Independent market research firms and consultants will conduct much of the collection on behalf of the Department. Most interviews will be conducted via telephone or facsimile and in person. Responses requiring disclosure of proprietary information will be kept confidential in accordance with Department policy.

Type of request: Approval of new collection.

Type of respondents: Contractors.

Estimated annual number of respondents: 250.

Total annual responses: 250 (one per respondent).

Estimated Burden hours per respondent: 1.5 hours.

Estimated total reporting burden: 375 hours.

Estimated cost burden to respondents: No monetary burden.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget's (OMB) approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the proposed collection of information is necessary to carry out the mandates of the legislation; (2) the accuracy of DOE's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Issued in Washington, DC, on November 23, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–31810 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–11–000; FERC Form No. 11]

Proposed Information Collection and Request for Comments

November 23, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before January 29, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 11 "Natural Gas Pipeline Company Quarterly Statement of Monthly Data" (OMB No. 1902–0032) is used by the

Commission to implement the statutory provisions of Sections 10(a), 16 and 21 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w, and the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. The NGA and NGPA authorize the Commission to prescribe rules and regulations requiring natural gas pipeline companies whose gas was either transported or stored for a fee and exceeds 50 million Dekatherms in each of the three previous calendar years, to submit FERC Form No. 11. The form provides monthly data on a quarterly basis on certain revenue and expenditure items of major pipelines, and also provides some volume data on their operations.

The filing requirements of the monthly statement for selected revenues, income, and refund obligations, as well as details of operation and maintenance expenses incurred by natural gas companies in connection with transportation, or storage of natural gas are used by the Commission to develop analyses and studies in investigating the reasonableness of the various revenue and cost of service items claimed in Section 4 and 5 of the NGA rate filings. These data also provide an indication of the current status of pipeline activities and comparisons between pipelines, and are used to measure the financial status of the regulated pipelines as a group.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 260.3 and 385.2011.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public Reporting burden for this collection is estimated as:

Number of Respondents Annually	Number of Responses per Respondent	Average Burden Hours Per Response	Total Annual Burden Hours
(1)	(2)	(3)	(1)×(2)×(3)
55	4	3	660

Estimated cost burden to respondents: 660 hours divided by 2,080 hours per year times $109,889 per year equals $34,868. The cost per respondent is equal to $634.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31703 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4636–004; Docket No. ER97–4652–004]

New Energy Ventures, L.L.C. NEV East, L.L.C., Notice of Filing

November 23, 1998.

Take notice that on November 17, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31710 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

November 23, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 1:00 p.m. on Thursday, December 3, 1998 and continuing on Friday, December 4, 1998, if necessary, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–

0583, Bob Keegan at (202) 208–0158, or Edith A. Gilmore at (202) 208–2158.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31708 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–379–013]

Peak Energy, Inc.; Notice of Filing

November 23, 1998.

Take notice that on November 18, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31709 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–78–000]

Williams Gas Pipeline Central; Notice of Request Under Blanket Authorization

November 23, 1998.

Take notice that on November 16, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–78–000, a request pursuant to Sections 157.205, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, 157.216) for authorization install, reclaim, and to abandon facilities, all located in Greene County, Missouri, under the blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Williams proposes to install a custody transfer meter setting at the site of an existing high pressure regulator setting, to reclaim a high pressure regulator setting, and to abandon in place by sale to Missouri Gas Energy, a division of Southern Union Company (MGE) three meter settings and approximately 7.25 miles of the Brookline 4-inch lateral pipeline and approximately 100 feet of 2-inch lateral pipeline.

Williams states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31705 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

[Docket No. ER99–609–000, et al.]

Central Maine Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 20, 1998.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Company

[Docket No. ER99–609–000]

Take notice that on November 16, 1998, Central Main Power Company tendered for filing Quarterly Report Transactions for the period ending September 30, 1998. This report was filed in compliance with the Commission's Order in Docket No. ER97–3390-000 issued August 29, 1997.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket Nos. EC96–19–044, and ER96–1663–046

Take notice that on November 16, 1998 (corrected on November 17, 1998) the California Independent System Operator Corporation filed with the Federal Energy Regulatory Commission, in compliance with the Commission's October 16, 1998, Order in the above-noted dockets, revised Tariff Sheets of the ISO Tariff and Protocols reflecting Amendments No. 10 and 11, as approved by the Commission. The revised sheets also include one additional change to the Tariff and Protocols to require the ISO to provide notice of failed availability tests to relevant Scheduling Coordinators and owners and operators of sources of Ancillary Services as soon as practicable after such tests.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket Nos. EC96–19–045 and ER96–1663–047

Take notice that on November 16, 1998, the California Independent System Operator Corporation filed with the Federal Energy Regulatory Commission, in compliance with the Commission's October 16, 1998, Order in the above-noted dockets, revised Tariff Sheets of the ISO Tariff and Protocols reflecting Amendments No. 10 and 11, as approved by the Commission. The revised sheets also include one additional change to the Tariff and Protocols to require the ISO to provide notice of failed availability tests to relevant Scheduling Coordinators and owners and operators of sources of Ancillary Services as soon as practicable after such tests.

Comment Date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. City of Las Cruces, New Mexico v. El Paso Electric Company

[Docket No. EL99–10–000]

Take notice that on November 12, 1998, the City of Las Cruces, New Mexico filed a Complaint Requesting an Expedited Commission Order Directing El Paso Electric Company to Provide Wholesale Power.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northwest Power Marketing Company; Calpine Power Services Company; Northern/AES Energy, LLC; Industrial Energy Applications; J. Anthony & Associates Ltd.; The Montana Power Trading and Marketing Company; Cargill-Alliant, LLC; Union Electric Development Corporation

[Docket Nos. ER96–688–010; ER94–1545–000; ER98–445–003; ER95–1465–010; ER95–784–014; ER97–399–008; ER97–4273–005; and ER97–3663–005]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 3, 1998, Northwest Power Marketing Company filed certain information as required by the Commission order issued in Docket No. ER96–688–000.

On November 3, 1998, Calpine Power Services Company filed certain information as required by the Commission order issued in Docket No. ER94–1545–000.

On November 3, 1998, Northern/AES Energy, LLC filed certain information as required by the Commission order issued in Docket No. ER98–445–000.

On November 3, 1998, Industrial Energy Applications, Inc. filed certain information as required by the Commission order issued in Docket No. ER95–1465–000.

On November 3, 1998, J. Anthony & Associates Ltd. filed certain information as required by the Commission order issued in Docket No. ER95–784–000.

On November 3, 1998, The Montana Power Trading and Marketing Company filed certain information as required by the Commission order issued in Docket No. ER97–399–000.

On November 3, 1998, Cargill-Alliant, LLC filed certain information as required by the Commission order issued in Docket No. ER97–4273–000.

On November 3, 1998, Union Electric Development Corporation filed certain information as required by the Commission order issued in Docket No. ER97–3663–000.

6. Duke Power, a division of Duke Energy Corporation

[Docket No. ER99–610–000]

Take notice that on November 17, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing amendments to Service Schedule C of the Interconnection Agreement between Duke and Yadkin, Inc., FERC Rate Schedule Original Volume No. 282, dated as of October 16, 1998.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER99–611–000]

Take notice that on November 17, 1998, Commonwealth Edison Company (ComEd), tendered for filing a Non-Firm Service Agreement and a Short-Term Firm Service Agreement with Ameren Services Company (AMRN), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 11, 1998, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on AMRN and the Illinois Commerce Commission.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Unitil Power Corp.

[Docket No. ER99–612–000]

Take notice that on November 17, 1998, Unitil Power Corp. (UPC), tendered for filing a service agreement between UPC and Strategic Energy Ltd., for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

UPC requests an effective date of November 3, 1998, for the service agreement with Strategic Energy Ltd.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Fitchburg Gas and Electric Light Company

[Docket No. ER99–613–000]

Take notice that on November 17, 1998, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing a service agreement between Fitchburg and Strategic Energy, Ltd., for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000.

Fitchburg requests an effective date of November 3, 1998, for the service agreement with Strategic Energy, Ltd.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southwest Power Pool

[Docket No. ER99–614–000]

Take notice that on November 17, 1998, Southwest Power Pool (SPP), tendered for filing an executed service agreement with El Paso Power Services Company (El Paso) for non-firm point-to-point firm transmission service under the SPP Open Access Transmission Tariff (Tariff), and two executed service agreements with Constellation Power Source, Inc. (Constellation), for short-term firm point-to-point and non-firm point-to-point firm transmission service under the Tariff.

SPP requests an effective date of October 15, 1998, for the agreement with El Paso, and an effective date of September 28, 1998, for the agreements with Constellation.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Williams Energy Services Company

[Docket No. ER99–615–000]

Take notice that on November 17, 1998, Williams Energy Marketing & Trading Company (formerly Williams Energy Services Company) (Williams), tendered with the Federal Energy Regulatory Commission a change to its Rate Schedule FERC No. 1. The filed change identifies the California ancillary and energy services Williams sells and limits the sales of such services to either the California Independent System Operator Corporation (CAISO) or others that are self-supplying ancillary services to the CAISO, as well as reflects the change of corporate name.

Williams requests that such change be made effective November 13, 1998.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Dighton Power Associates Limited Partnership

[Docket No. ER99–616–000]

Take notice that on November 17, 1998, Dighton Power Associates Limited Partnership (Dighton), petitioned the Commission for acceptance of Dighton Power Associates Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity generated at its proposed generating facility at market-based rates; and the waiver of certain Commission Regulations.

Dighton intends to engage in wholesale electric power and energy generation and sales as a marketer. Dighton is an exempt wholesale generator under Section 32 of the Public Utility Holding Company Act of 1935. Neither Dighton nor any affiliate of Dighton is engaged in the business of transmitting electric power or has any franchised service area for the sale of electricity.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER99–617–000]

Take notice that on November 17, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and NorAm Energy Management, Inc., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to NorAm Energy Management, Inc., under the terms and conditions of the Tariff.

Virginia Power requests an effective date of November 17, 1998.

Copies of the filing were served upon NorAm Energy Management, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER99–618–000]

Take notice that on November 17, 1998, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire, tendered for filing Service Agreements between NUSCO and Duke/Louis Dreyfus, L.L.C., under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7, Market Based Rates and System Power Sales/Exchanges Tariff No. 6. Said Service Agreements were subsequently assigned to Duke Energy Trading and Marketing, L.L.C.

NUSCO requests an effective date of January 16, 1999, for these Service Agreements.

NUSCO states that copies of its submission have been mailed or delivered to Duke Energy Trading and Marketing, L.L.C.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER99–619–000]

Take notice that on November 17, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing the First Amendment to the Agreement for Wholesale Power Service between Entergy Arkansas, Inc., and the City of Prescott, Arkansas.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER99–620–000]

Take notice that on November 17, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Engage Energy US, L.P., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Power Service Corporation, on behalf of Monongahela Power Co. The Potomac Edison Company, and West Penn Power Company (Allegheny Power).

[Docket No. ER99–621–000]

Take notice that on November 17, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a revised schedule for its Pro Forma Open Access Transmission Tariff. Allegheny Power will provide retail transmission services pursuant to the schedule as of January 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Texas Utilities Electric Company

[Docket Nos. ER99–622–000]

Take notice that on November 17, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing a revision to the distribution level transmission service and transformation rates included in TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections (TFO Tariff).

TU Electric has requested a waiver to permit the revisions to become effective as of November 1, 1998.

TU Electric states that a copy of this filing has been served on the Public Utility Commission of Texas and on all parties receiving service under the TFO Tariff.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. PG&E Energy Trading-Power, L.P.

[Docket No. ER99–631–000]

Take notice that on November 17, 1998, PG&E Energy Trading-Power, L.P. (PGET), 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed an amended to its Electric Rate Schedule No. 1, related to the sale of certain Ancillary Services and Replacement Reserves to either the California Independent System Operator Corporation (California ISO) or others that are self-supplying ancillary services to the California ISO.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Indiana Gas and Electric Company

[Docket No. OA97–308–002]

Take notice that on November 16, 1998, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing revised OASIS Standards of Conduct and other requested information in compliance the order issued by the Federal Energy Regulatory Commission (Commission) on October 16, 1998 in the above-referenced docket. See Ameren Services Company, et al., 85 FERC ¶ 61,068 (1998).

Copies of this filing were served on the Indiana Utility Regulatory Commission and Indiana Office of the Utility Consumer Counselor and all parties designated on the official service list.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. South Carolina Electric & Gas Company

[Docket No. OA97–416–003]

Take notice that on November 16, 1998, South Carolina Electric & Gas Company tendered for filing a compliance filing revising its Standards of Conduct to conform to the Commission's order issued on October 16, 1998 in Ameren Services Company, 85 FERC ¶ 61,068.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Tucson Electric Power Company

[Docket No. OA97–436–002]

Take notice that on November 16, 1998, Tucson Electric Power Company (TEP) tendered for filing revised OASIS Standards of Conduct and other requested information in compliance the order issued by the Federal Energy Regulatory Commission (Commission) on October 16, 1998 in the above-referenced docket. See Ameren Services Company, et al., 85 FERC ¶ 61,068 (1998).

Copies of this filing were served on the Arizona Corporation Commission and all parties designated on the official service list.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Duke Power Company

[Docket No. OA97–450–003]

Take notice that on November 16, 1998 Duke Energy Corporation, on behalf of its divisions, Duke Power and Nantahala Power and Light, (Duke) made a Compliance filing in the above-referenced docket.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31706 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–10–000, et al.]

Cleco Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 23, 1998.

Take notice that the following filings have been made with the Commission:

1. Cleco Corporation

[Docket No. EC99–10–000]

Take notice that on November 18, 1998, Cleco Corporation (Cleco) submitted an application pursuant to Section 203 of the Federal Power Act for authority to effect a "disposition of facilities" that would be deemed to occur as a result of the implementation of a proposed holding company structure for itself.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Energy Masters International, Inc.

[Docket No. ER94–1402–020]

Take notice that on November 17, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. Power Exchange Corporation IGI Resources, Inc.; Penobscot Bay Energy Co.

[Docket Nos. ER95–72–016; ER95–1034–012 and ER95–1034–013; and ER97–2875–004]

Take notice that on November 16, 1998 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. Stand Energy Corporation

[Docket No. ER95–362–015]

Take notice that on November 18, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. Proven Alternatives; PanCanadian Energy Services Inc.; Brooklyn Navy Yard Cogeneratin Partners, L.P.; Alternate Power Source, Inc.; K N Marketing, Inc.

[Docket Nos. ER95–473–011; ER90–168–039; ER97–886–003; ER96–1145–009; and ER95–869–013]

Take notice that on November 5, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. TECO EnergySource, Inc.; Premier Enterprises, LLC; Amoco Energy Trading Corporation; ProGas Power, Inc.; Nine Energy Services, LLC; INFINERGY Services, LLC and Power Marketing Coal Services, Inc.; PowerMark Electric Power Trading & Marketing; U.S. Energy; Power Systems Group, Inc.

[Docket Nos. ER96–1563–011; ER95–1123–010; ER95–1359–014; ER95–968–006; ER98–1915–002; ER98–3478–001; ER97–1548–005; ER96–332–007; ER96–2879–003; ER97–3187–001]

Take notice that on November 9, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. AEP Power Marketing, Inc.; Revelation Energy Resources Corporation

[Docket No. ER96–2495–008 and ER97–765–001]

Take notice that on November 6, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

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8. The A'Lones Group, Inc.; PPM One; PPM Two; PPM Three; PPM Four; PPM Five; PPM Six

[Docket No. ER97–512–001 and ER97–3926–001, ER97–3927–001, ER97–3928–001, ER97–3929–001, ER97–3930–001 and ER97–3931–001]

Take notice that on November 10, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

9. Community Electric Power Corporation

[Docket No. ER97–2792–004]

Take notice that on November 12, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

10. Alpha Energy Corporation; Calpine Power Services Company; FirstEnergy Trading and Power Marketing, Inc.; British Columbia Power Exchange Corporation

[Docket No. ER97–4730–003; ER94–1545–015; ER95–1295–010; and ER97–4024–006]

Take notice that on November 13, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

11. Astra Power, LLC

[Docket No. ER98–3378–002]

Take notice that on November 18, 1998, Astra Power LLC (Astra), tendered for filing notification of change in status, in the above-referenced docket.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. ACN Power, Inc.

[Docket No. ER98–4685–000]

Take notice that on November 18, 1998, ACN Power, Inc., (ACN Power), tendered for filing an amendment to its petition, setting forth certain additional information about its corporate affiliations and about the ownership interests of its shareholders.

ACN Power intends to engage in wholesale electric power and energy purchases and sales as a marketer. ACN Power is not in the business of generating or transmitting electric power. The business activities of ACN Power also will include the wholesale purchase and sale of natural gas. ACN Power is a wholly-owned subsidiary of ACN Utility Services, Inc., ACN Utility Services, Inc., is a wholly-owned subsidiary of American Communications Network, Inc., which is primarily engaged in the marketing of long distance telephone, paging and internet services.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company

[Docket No. ER99–531–000]

Take notice that on November 5, 1998, Jersey Central Power & Light Company filed a letter to inform the Commission that there have been no transactions under GPU Energy's Market-based Sales Tariff (GPU Operating Companies, FERC Electric Tariff, Original Volume No. 5) since the Commission accepted the tariff on January 15, 1998 in Docket No. ER98–702–000.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER99–623–000]

Take notice that on November 18, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Non-Firm Point-to-Point Transmission Service to PacifiCorp Power Marketing Inc., and Firm and Non-Firm Point-to-Point Transmission Service to Statoil Energy Trading, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on PacifiCorp Power Marketing Inc., Statoil Energy Trading, Inc., and the Arizona Corporation Commission.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. NGE Generation, Inc.

[Docket No. ER99–624–000]

Take notice that on November 18, 1998, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements (the Service Agreements) under which NGE Gen may provide capacity and/or energy to El Paso Energy Marketing Company (El Paso) and Columbia Energy Power Marketing Corporation (Columbia Energy) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreements with El Paso and Columbia Energy become effective as of November 19, 1998.

NGE Gen has served copies of the filing upon the New York State Public Service Commission, El Paso and Columbia Energy.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER99–625–000]

Take notice that on November 18, 1998, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Ameren Services Company, (2 agreements, dated November 13, 1998 for Non-Firm and Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Peco Energy Company

[Docket No. ER99–626–000]

Take notice that on November 18, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated November 13, 1998, with Central Vermont Public Service Corporation (CVPS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CVPS as a customer under the Tariff.

PECO requests an effective date of November 1, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to CVPS and to the Pennsylvania Public Utility Commission.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–627–000]

Take notice that on November 18, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 9 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of November 17, 1998, to The Detroit Edison Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER99–628–000]

Take notice that on November 18, 1998, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with Southern Company Energy Marketing LP (SCEM) under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7, Market Based Rates.

NUSCO requests an effective date of December 1, 1998.

NUSCO states that a copy of its submission has been mailed or delivered to SCEM.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Ridge Generating Station, L.P.

[Docket No. ER99–632–000]

Take notice that on November 17, 1998, Ridge Generating Station, L.P., owner of a 39.6 MW biomass-fueled generating facility in Polk County, Florida, petitioned the Commission for acceptance of changes in its Rate Schedule FERC No. 1, and waiver of the 60-day notice requirement and certain requirements under Subparts B and C of Part 35 of the Commission's Regulations. Ridge Generating Station, L.P. is an indirect subsidiary of Wheelabrator Technologies Inc.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Montaup Electric Company

[Docket No. ER99–633–000]

Take notice that on November 18, 1998, Montaup Electric Company (Montaup) filed 1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and the following companies:

1. Griffin Energy Marketing, L.L.C.
2. FPL Energy Power Marketing, Inc.
3. NRG Power Marketing Inc.

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of November 21, 1998.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER99–634–000]

Take notice that on November 18, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing the Power Coordination and Interchange Agreement Entergy Arkansas, Inc., and the East Texas Electric Cooperative, Inc.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER99–635–000]

Take notice that on November 18, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing three Letter Amendments to the Agreements for Wholesale Power Service between Entergy Gulf States Utilities, Inc., and the Cities of Caldwell, Kirbyville and Newton, Texas.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER99–636–000]

Take notice that on November 18, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its Interconnection Agreement with independent power producer Onondaga Cogeneration Limited Partnership. The Interconnection Agreement governs the interconnection between Niagara Mohawk's transmission system and Onondaga Cogeneration's Geddes, New York facility.

The Geddes, New York facility recently lost its Qualifying Facility status under the Public Utilities Regulatory Policies Act (PURPA), requiring the Interconnection Agreement to be filed with the Commission.

Copies of the filing were served upon Onondaga Cogeneration Limited Partners and the New York Public Service Commission.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Koch Power Louisiana, L.L.C.

[Docket No. ER99–637–000]

Take notice that on November 18, 1998, Koch Power Louisiana, L.L.C. (KPL), 20 Greenway Plaza, Houston, Texas 77046, filed with the Federal Energy Regulatory Commission an application for authorization to make wholesale sales of electricity at market-based rates.

KPL requests that its rate schedule providing for such sales be allowed to become effective on January 17, 1999.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Idaho Power Company

[Docket No. ER99–638–000]

Take notice that on November 18, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and

1. Seattle City Light
2. PacifiCorp Power Marketing, Inc.
3. NorAm Energy Services, Inc.
4. Tractebel Energy Marketing, Inc.
5. New Energy Ventures, L.L.C.

and

Firm Point-to-Point Transmission Service between Idaho Power Company and

1. Constellation Power Source, Inc.
2. NorAm Energy Services, Inc.
3. TransAlta Energy Marketing (U.S.) Inc.
4. Tractebel Energy Marketing, Inc.
5. New Energy Ventures, L.L.C.

under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–31707 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence Project Construction

November 23, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Friends of the North County, Inc.

c. *Project No.:* The proposed AuSable Hydroelectric Project, FERC No. 10836–007 is to be located on the AuSable River in Clinton County, New York.

d. *Date Filed:* October 20, 1998.

e. *Pursuant to:* Public Law 105–191.

f. *Applicant Contact:* Ann Ruzow Holland, Executive Director, Friends of the North Country, Inc., 1A Mill Street, P.O. Box 446, Keeseville, New York 12944, (518) 834–9606, Toll Free (1–888–355–3662).

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* January 7, 1999.

i. *Description of the Request:* The licensee requests that the deadline for commencement of construction for FERC Project No. 10836 be extended for three consecutive two-year extensions of time. The deadline to commence project construction for the project would be extended to October 27, 2002. The deadline for completion of construction would be extended to October 27, 2004.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31704 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6193–8]

Agency Information Collection Activities Up for Renewal—Water Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before January 29, 1999.

ADDRESSES: Written comments should be submitted to Karen Gourdine, Water Quality Standards Branch, Mailcode 4305, USEPA, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Gourdine; Telephone (202) 260–1328, Facsimile Number (202) 260–9830.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are the 50 States and 7 Territories (the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands) and Indian Tribes that are seeking or have EPA authorization to administer the water quality standards program contained in section 303 of the Clean Water Act (the Act).

Title: Information Collection Request for the Water Quality Standards Regulation, OMB Control #2040–0049; Expiration Date: March 31, 1999.

Abstract: Water Quality Standards are provisions of State, Tribal, and Federal law which consist of designated uses for waters of the United States, numeric or narrative water quality criteria to protect the designated uses, and an antidegradation policy to protect existing uses and high quality waters. States are required by Federal law to

establish water quality standards. Section 303(c) requires States and certain Indian Tribes (those Tribes that have received EPA authorization to administer the water quality standards program and have had their water quality standards approved by EPA) to review and, if appropriate, revise their water quality standards regulations once every three years and to submit to EPA the results of the review. EPA then reviews each State and Tribal submission for approval or disapproval.

The Water Quality Standards (WQS) Regulation (40 CFR part 131) is the EPA regulation governing the implementation of the water quality standards program. The WQS Regulation describes requirements and procedures for the States and Tribes to develop, review, and revise their water quality standards, and EPA procedures for reviewing and approving the water quality standards. The regulation requires, in some cases, the development and submission of information to EPA. The following paragraphs describe the information collection requirements in part 131.

Section 131.6 establishes minimum requirements for a State or Tribe to submit new or revised water quality standards to EPA including the submissions required every three years by section 303(c) of the Act. The information to be submitted consists of: (a) Use designations for water bodies consistent with sections 101(a)(2) and 303(c)(2) of the Act; (b) methods used and analyses conducted to support water quality standards revisions; (c) water quality criteria sufficient to protect the designated uses; (d) an antidegradation policy consistent with 40 CFR 131.12; (e) certification by the Attorney General or other appropriate legal authority that the water quality standards were duly adopted pursuant to State or Tribal law; and (f) information which will aid EPA in determining the adequacy of the scientific basis of the water quality standards and information on general policies that may affect the implementation of the standards.

Part 131.8 specifies information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to administer the Water Quality Standards Program. The application must include the following information: (a) Evidence that the Tribe is recognized by the Secretary of the Interior; (b) a statement that the Tribe is currently carrying out substantial governmental duties and powers over a Federal Indian Reservation; (c) a statement of the Tribe's authority to regulate the quality of the reservation's waters; and (d) a narrative statement describing the capability of the Tribe to administer an effective water quality standards program.

Additionally, part 131.7 describes a dispute resolution mechanism that will assist in resolving disputes that arise between States and Tribes over water quality standards on common waterbodies. Implementation of this provision includes collection of information by EPA to determine if initiation of a formal EPA dispute resolution action is justified. Although States and Tribes are not required to request formal EPA dispute resolution action, information collection is necessary where a State or Tribe formally requests EPA intervention.

A Federal agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

EPA is soliciting comments from the public to:

(i) Evaluate whether the proposed collection of information (see Burden statement below) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The existing estimated total annual burden to the respondents is 193,980 hours per year (based on 77 jurisdictions, including 20 Indian Tribes qualifying to administer the water quality standards program). This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: November 17, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–31675 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6193–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards (NSPS) for Municipal Waste Combustors (MWCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for MWCs subpart Ea and subpart Eb, OMB 2060–0210, expires January 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1506.08.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Municipal Waste Combustors (MWCs) Subpart Ea and Subpart Eb (OMB Control No.2060–0210; EPA ICR No.1506.08) expiring 1/31/99. This is a request for extension of a currently approved collection.

Abstract: The NSPS for Municipal Waste Combustors of which (1) construction commenced after December 20, 1989 and on or before September 20, 1994, or (2) modification or reconstruction commenced after December 20, 1989 and on or before June 19, 1996, subpart Ea was proposed on December 20, 1989 and promulgated on February 11, 1991. The NSPS for Municipal Waste Combustors which (1) construction commenced after September 20, 1994, or (2) modification or reconstruction commenced after June 19, 1996, subpart Eb was proposed on September 20, 1994 and promulgated on December 19, 1995. Both of these standards apply to the municipal waste combustors with unit capacities greater than 225 megagrams per day (Mg/yr)]. This information is being collected to assure compliance with 40 CFR part 60, subpart Ea and subpart Eb.

Need for and Use of the Collection
Owners or operators of the affected facilities described must make one-time-only notifications and reports, must keep records as required of all facilities subject to NSPS requirements. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to NSPS subpart Ea and subpart Eb provide information on the operation of the emissions control devices and compliance with the MWC organics, MWC metals, MWC acid gases, good combustion practices (GCP), and nitrogen oxides. Owners and operators must submit semiannual and annual compliance reports. In addition, facilities subject to subpart Eb are required to keep records of the weekly amount of carbon used for carbon injection and to calculate the estimated hourly carbon injection rate for hours of operation as a means of determining continuous compliance for mercury. Quarterly reports of excess emissions are required under subpart Ea, while semi-annual reports of excess emissions are required under subpart Eb. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of subpart Ea shall maintain a file of these measurements, and retain the file for at least 2 years. For MWCs subject to subpart Eb all records are required to be maintained at the source for a period of 5 years. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance was achieved. The information generated by monitoring, recordkeeping and reporting requirements described in this ICR issued by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment and achieve continuous compliance with the regulation. The collection of this information is mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/4/98 (63 FR 47279); No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 316 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The total annualized cost burden includes the capital cost for continuous emission monitors (CEMs) of $240,000 and the annualized operation and maintenance costs of $323,010, which includes costs for calibrating the CEMs.

Respondents/Affected Entities: Owners and operators of municipal waste combustors.

Estimated Number of Respondents: 40.

Frequency of Response: one-time, quarterly, semi-annual and annual.

Estimated Total Annual Hour Burden: 67,004 hours.

Estimated Total Annualized Cost Burden: $563,010.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1506.08 and OMB Control No. 2060–0210 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 20, 1998.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–31676 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA EMPACT Urban Environmental Issues Study of 86 Cities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA EMPACT Urban Environmental Issues Study of 86 Cities; EPA ICR No. 1864.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1864.01.

SUPPLEMENTARY INFORMATION:

Title: EPA EMPACT Urban Environmental Issues Study of 86 Cities, EPA ICR No. 1864.01. This is a new collection.

Abstract: The Environmental Monitoring for Public Access and Community Tracking Program (EMPACT) is a pilot program of the U.S. Environmental Protection Agency. By the year 2001, it will provide to citizens in 86 of the largest urban areas in the country, up-to-date urban

environmental information they can understand and use in their day-to-day decision making about their health and the environment. As a part of program planning efforts, EMPACT is currently developing a telephone survey. The objective of the survey is to rank citizens' top local urban environmental concerns in each of the 86 EMPACT cities. EMPACT will use this information for the following purposes:

Direct successful FY '99 projects into new metropolitan areas
Guide the selection of EMPACT urban grant recipients
Directing the development of information delivery systems in urban areas
Guiding the development of new/innovative information delivery and public access media and models
Support information needs of concurrent programs

Participation in this data collection effort is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 3, 1998. Two comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: citizens within 86 designated EMPACT cities.

Estimated Number of Respondents: 8,600.

Frequency of Response: one-time collection.

Estimated Total Annual Hour Burden: 1720 hours.

Estimated Total Annualized Cost Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No and OMB Control No. in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 19, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–31677 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Environmental Information Customer Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Center for Environmental Information and Statistics, Environmental Information Customer Survey. The ICR describes the nature of this information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1853.01

SUPPLEMENTARY INFORMATION:

Title: CEIS Environmental Information Customer Survey (EPA ICR Number 1853.01) This is a new collection.

Abstract: This information collection request covers a *voluntary* program of activities to be implemented by the EPA's Center for Environmental Information and Statistics (CEIS) over the next three years (FY1999–2001). The CEIS was established in EPA's Office of Policy starting in 1997, to provide the public with a single, convenient source of EPA's information on environmental quality, status and trends. In brief, CEIS compiles existing data and information from major EPA databases and makes that information available to the public in plain English and in graphical, easy-to-use formats. The CEIS is providing this information to the public via a Web site on EPA's home page (www.epa.gov/ceis), publications, and in other suitable formats identified by EPA's information customers. Soon after the announcement of the Center, a *Customer Survey Plan* was drafted and peer reviewed to establish a three-year series of survey activities to keep CEIS informed of the public's changing environmental information needs and access preferences. The survey activities identified in this information collection request will ultimately support the achievement of EPA's goals to, "Expand Americans' Right to Know About Their Environment" (per EPA's *Strategic Plan* (EPA/190–E–97–002) . The results of these survey activities will also shape the development and delivery of the Center's products and services over time.

The survey activities in the *Customer Survey Plan* will enable the Center to:

- Identify who among the general public uses environmental information;
- Understand who, among the public, considers themselves to be an EPA environmental information customer;
- Understand, who among the public, considers themselves to be a customer of the new Center,
- Assess what types of data and information CEIS customers need and how they would like to access these data and information, and,
- Develop the capacity to use customer feedback in developing and improving the Center's products and services.

The CEIS *Customer Survey Plan* calls for a three year, iterative program of qualitative and quantitative survey activities including telephone surveys, focus groups, interviews, and self-

administered questionnaires via mail and various electronic media. In addition to assessing customer needs and access preferences, these activities will help CEIS to test product or service concepts (alpha testing); test actual products and services (beta-testing); or determine customer satisfaction with finished products and services. CEIS and its consultants will store survey data and analysis on their computers and in hard copy. Personal or demographic information will be collected and aggregated to maintain confidentiality of responses and to protect the identity of individual respondents.

The activities proposed for this three-year program will involve an estimated 47,040 members of the public and cost an estimated $4.2 million dollars. The estimated total respondent burden hours for the entire three-year set of activities is approximately 18,395 hours.

A national telephone survey of the public's environmental information needs, proposed to start in January, 1999, is described in Part B of this Information Collection Request. EPA's CEIS will submit cost and burden data to OMB for each major survey activity called for in this ICR, once individual survey budgets, survey designs, and/or interview protocols are developed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 3, 1998; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The U.S. public.

Estimated Number of Respondents in all proposed survey activities: 47,040.

Frequency of Response: occasional.

Estimated Total Annual Respondent Burden: 6,130 hours

Estimated Total Cost: $0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1853.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 20, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–31803 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–9]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a request to amend a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O from the Engelhard Corporation (Engelhard). On March 20, 1998 (63 FR 13660) EPA certified a Engelhard retrofit catalytic muffler which demonstrated a 25% reduction in particulate matter (PM) for 1992–1993 Cummins L–10 electronically-controlled (EC) petroleum-fueled diesel engines (that are not originally equipped with aftertreatment devices). In the original notification dated October 18, 1996, Engelhard requested approval for all Cummins L–10 engines manufactured prior to and including 1993. However, EPA noted in the March **Federal Register** document that, based on the test engine, certification could only apply to 1992–1993 L–10 EC (electronically controlled) models. EPA stated that should Engelhard provide additional information requesting to extend this certification to additional models, EPA would provide the opportunity for public comment. EPA has since received such information from Engelhard, and Engelhard is requesting that certification be extended to include all pre-1994 Cummins L–10 engines and all other 4-stroke urban bus engines.

In addition to providing a summary of the notification in this document, EPA is identifying the engines that are included in the, "all other 4-stroke urban bus engine" classification under the urban bus retrofit/rebuild program. After receipt and review of the comments, EPA will publish in the **Federal Register** a listing of the engines to be included in the "all other 4-stroke engine" classification. It is intended that this listing would define the classification "all other 4-stroke engines," as it applies to the candidate equipment of today's document, as well as other previously certified urban bus retrofit/rebuild equipment.

Pursuant to part 85.1407(a)(7), today's **Federal Register** document summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review the additional information submitted relative to the notification of intent to certify, as well as comments received, to determine whether the additional models identified in the amendment to the notification of intent to certify should be included in the certification. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Engelhard amendment information, the original notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XVII–A of Public Docket A–93–42, entitled "Certification of Urban Bus Retrofit/Rebuild Equipment." This docket is at the address below.

Today's document initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the additional models should be included in this notification of intent to certify and whether the models listed for the "all other 4-stroke

engines" are appropriate. Comments should be provided in writing to Public Docket A–93–42, Category XVII–A, at the address below. An identical copy should be submitted to Anthony Erb, also at the address below.

DATES: Comments must be submitted on or before January 14, 1999.

ADDRESSES: Submit separate copies of comments to the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XVII–A), Room M–1500, 401 M Street SW, Washington, DC 20460.

2. Anthony Erb, Engine Compliance and Programs Group, Engine Programs & Compliance Division (6403J), 401 "M" Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Programs & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone: (202) 564–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance programs: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

Certification of retrofit/rebuild equipment is a key element of the retrofit/rebuild. To show compliance under either of the compliance programs, operators of the affected buses must use equipment that has been certified by the Agency. Emissions requirements under either of the two compliance programs depend on the availability of certified retrofit/rebuild equipment for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent To Certify

By a notification of intent to certify signed November 18, 1996, Engelhard applied for certification of equipment applicable to all Cummins L–10 engines that were originally manufactured prior to and including 1993. The notification of intent to certify stated that the candidate equipment would reduce PM emissions 25 percent or more on petroleum-fueled diesel engines that are rebuilt to Cummins specifications.

The candidate equipment consists of a "catalytic converter muffler" or CMX™, that is a muffler containing an oxidation catalyst. The emission testing data is provided in Table A. Applicable engines are discussed further below.

Life cycle cost information was submitted with the original notification, along with a guarantee that the equipment would be offered to all affected operators for less than the incremental life cycle cost ceiling. EPA's certification of this equipment triggered the requirements for operators using compliance option 1, to reduce PM by 25% when rebuilding or replacing 1992–1993 Cummins L–10 EC models. As a trigger of this standard, urban bus operators are required to use this retrofit/rebuild equipment, or other equipment certified to provide a PM reduction on any applicable engine that is rebuilt on or after September 21, 1998.

In a letter to EPA dated April 20, 1998, Engelhard requested that the certification be amended to include all pre-1994 Cummins L–10 models and all other 4-stroke urban bus engines. Table B of this notice provides a listing of the additional 4-stroke urban bus engines to which the candidate equipment is believed to be applicable (refer to footnote 3). EPA requests comment on the appropriateness of the engines currently listed in Table B and information on any additional engines for which this certification may be applicable.

Identification of the engines in this classification was deemed to be necessary based on a letter from Engelhard dated March 16, 1998 which states that the inclusion of "all other 4-stroke engines" in the Engine Control Systems certification dated January 29, 1998 (63 FR 4445) was causing confusion in the marketplace because it was not clear which engines were included in the "all other 4-stroke engine" classification. Accordingly, this notice seeks to clarify this matter by identifying the applicable engines. EPA is requesting additional information on the appropriateness of the engines identified in Table B of this notice for this classification. It is EPA's intent that the list of engines will apply to the candidate Engelhard certification discussed herein, the Engine Control Systems certification referenced above and to future notifications of intent to certify equipment under the urban bus retrofit regulations that include engines in the "all other 4-stroke" classification.

Engelhard is requesting that the amendment be certified as providing a 25% particulate matter emission reduction. Engelhard is requesting that the certification apply to both options 1 and 2. Engelhard has not provided life-cycle cost data in the amendment request relative to the additional engines that are covered in the amendment. Therefore, this amendment request, if approved, will not trigger new requirements for any of the models covered by the amendment.

The equipment to be applied to the engines is a "catalytic Converter Muffler" or CMX™, that is a muffler containing an oxidation catalyst. The CMX is intended to replace the standard muffler previously installed in the engine exhaust system. The CMX is intended to be maintenance free, requiring no service for the full in-use compliance period. The engine fuel to be used with this equipment is standard diesel fuel with a maximum sulfur content of 0.05 wt.% sulfur.

Engelhard has requested approval for all Cummins L–10 engines and all other urban bus 4-stroke engines manufactured prior to and including 1993. As a basis for this certification, Engelhard presents exhaust emission data from testing a 1987 240hp Cummins L–10 engine, control parts list number 0777 (CPL# 0777) along with test data to support this certification.

Engelhard states that the test engine selected (CPL# 0777) can be considered worst case. The urban bus regulation states that EPA will allow results to be extrapolated to engine types and model years known to have engine-out PM levels equal to or less than that of the test engine. In the case at hand, the test engine has a pre-rebuild PM emission level of 0.61 g/bhp-hr. The PM levels listed in the table at part 85.1403(c)(1)(iii)(A) for all Cummins models are lower than the stated level for the test engine. Under 40 CFR 85.1406(a), a test engine must represent the "worst case" with respect to particulate emissions of all those engine configurations for which the equipment is being certified. The worst case configuration is the engine configuration having the highest engine-out PM level, prior to installation of the retrofit/rebuild equipment. EPA requests comments and information concerning identification of the engines to which the candidate equipment is applicable.

In its amendment request Engelhard also presents additional test data and information on the 1987 Cummins L–10 mechanical injection engine, engine serial number 48407900. This engine was first rebuilt to CPL# 0774 by Cummins Recon in South Carolina and tested for emissions. Subsequently, this engine was rebuilt to CPL# 0777 (rated at 240 horsepower) by Engine Test Services (ETS) in South Carolina and tested for emissions. Both CPLs were tested for baseline emissions and emissions with a CMX installed. All testing was conducted at the ETS laboratory in South Carolina in accordance with the Federal Test Procedure. For CPL# 0774 the test data show a PM level of 0.476 g/bhp-hr for the base engine without the CMX. On CPL# 0774, Engelhard conducted tests on two different catalyst formulations. With the candidate equipment installed, the results show a PM level of 0.326 g/bhp-hr with formulation 1 and a PM level of 0.287 g/bhp-hr with formulation 2. This represents a PM reduction of 31.5% and 39.7% respectively with candidate equipment installed. The test data also show that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) are less than applicable standards. Fuel consumption for the baseline engine was 0.399 lb/bhp-hr during the test. Fuel consumption for the tests conducted with the candidate equipment installed was 0.394 lb/bhp-hr for each formulation.

For CPL# 0777 the test data show a baseline PM level of 0.473 g/bhp-hr without the CMX. The results show a PM level of 0.335 g/bhp-hr with the CMX installed (only one formulation was tested). This represents a PM reduction of 29%. The test data also show that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) are less than applicable standards. Fuel consumption for the baseline test was 0.413 lb/bhp-hr. Fuel consumption for the tests conducted with the CMX installed was 0.400 lb/bhp-hr. Engelhard presents smoke emission measurements demonstrating compliance with applicable standards.

Engelhard provided supporting information and testing data regarding this candidate certification in submissions to EPA dated September 29, 1997, January 30,1998, March 30, 1998 and April 20, 1998. In the September, January and March submissions, Engelhard provides testing data demonstrating a 25% on a Cummins L–10 engine built to CPL# 0774 as discussed above. Additionally, the March 30, 1998 submission includes information on the ability of the Engelhard equipment to reduce both soluble and insoluble particulate in the exhaust stream. In the submission of April 20, 1998, Engelhard provides information and testing data demonstrating a 25% reduction on the Cummins L–10 engine built to CPL# 0777.

TABLE A.—EXHAUST EMISSIONS SUMMARY G/BHP–HR

Gaseous and particulate test	1987 L–10 Baseline CPL# 0774	1987 L–10 Baseline CPL# 0777	1987 L–10 w/ CMX CPL# 0774 Formula 1/formula 2	1987 L–10 w/ CMX CPL# 0777
HC	2.29	2.29	1.07/0.68	1.07
CO	2.19	2.65	1.52/1.01	1.31
NO_x	5.50	5.89	5.23/5.09	5.41
PM	0.476	0.473	0.326/0.287	0.335
BSFC[1]	0.399	0.413	0.394/0.394	0.400
Smoke Test:				
ACCEL	8.2%	11.7%	9.3%/11.0%	10.9%
LUG	1.5%	1.7%	1.8%/1.4%	2.0%
PEAK	14.8%	29.2%	15.7%/20.3%	24.8%

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

Engelhard has not provided life-cycle cost data relative to this notification amendment. Therefore, this equipment will not be considered for certification in compliance with the life-cycle cost requirements of the standard for the additional engines covered by the amendment.

If the Agency certifies the candidate Engelhard equipment operators will be affected as follows. Under Program 1, this equipment would be available for all rebuilds of applicable Cummins L–10 urban bus engines and other 4-stroke urban bus engines listed in footnote 3 of Table B following the effective date of certification. With regard to the Cummins L–10 models included in this amended notification of intent to certify by Engelhard, triggering equipment has already been certified by EPA. On December 13, 1995 EPA published a document in the **Federal Register** (60 FR 64046) approving certification of equipment for the applicable L–10 models for the Cummins Engine Company.

The requirement to use certified equipment demonstrating at least a 25% reduction in PM will continue for the applicable engines until such time as equipment is certified that triggers the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars). If the Agency certifies the candidate Engelhard equipment, then operators who choose to comply with Program 2 and install this equipment may use the PM emission level(s) established during the certification review process in their calculations for fleet level as specified in the program regulations. Emission levels proposed by Engelhard are provided in Table B.

TABLE B—ENGELHARD RETROFIT/REBUILD CERTIFICATION LEVELS FOR 4-STROKE ENGINES [2]

Cummins/ other engine family	Control parts list (CPL)	Manufacture Dates	New Engine PM level	Retrofit PM level with CM	Retrofit PM level with CM & Cummins kit
343B	780	11/20/85 to 12/31/87	0.58	0.44	0.26
343B	0781	11/20/85 to 12/31/87	0.59	0.44	0.26
343C	0774	11/20/85 to 12/31/89	0.46	0.34	0.26
343C	0777	11/20/85 to 12/31/89	0.61	0.46	0.26
343C	0996	12/04/87 to 08/19/88	0.61	0.46	0.26
343C	1226	07/26/88 to 12/31/90	0.50	0.38	0.26
343F	1226	07/12/90 to 08/26/92	0.45	0.34	0.26
343F	1441	12/18/90 to 12/31/92	0.46	0.34	0.26
343F	1622	04/24/92 to 12/31/92	0.46	0.34	0.26
343F	1624	04/24/92 to 12/31/92	0.45	0.34	0.26
Other [3] 4-stroke engines	N/A	Pre-1988	0.50	0.38	N/A
Other 4-stroke engines	.....	1988 To 1993	([4])	25 % reduction from certification PM levels	N/A

[2] The New Engine PM certification levels for Cummins engines are based on the certification level or the average test audit result for each engine family. It is noted that for engine family 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NOx standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.6 g/bhp-hr NOx under the averaging, banking and trading program.

[3] Applicable to the following 4-stroke engines: Caterpillar 8 cylinder engines, General Motors 6 cylinder and 8 cylinder engines, International Harvester/Navistar 8 cylinder engines, MAN 6 and 8 cylinder engines, Saab-Scania 6 cylinder engines, and Volvo 6 cylinder engines installed in applicable urban buses.

[4] Certification level.

* Not applicable.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of part 85.1406, including whether the testing accurately proves the claimed emission reduction or emission levels; and, (2) the requirements of part 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the Engelhard notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: November 20, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 98–31805 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6195–1]

Notice of Deficiency For Clean Air Act Operating Permits Program in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority at 40 CFR 70.10(b)(1), EPA is publishing this Notice of Deficiency for the State of Oregon's Clean Air Act Title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the State's requirements for judicial standing to challenge State-issued Title V permits does not meet minimum federal requirements for program approval. Publication of this Notice is a prerequisite for withdrawal of the State's Title V program approval, but does not effect such a withdrawal. Withdrawal of program approval, if necessary, will be accomplished through subsequent rulemaking.

FOR FURTHER INFORMATION CONTACT: Adan Schwartz, U.S. Environmental Protection Agency, 1200 Sixth Avenue, ORC–158, Seattle, Washington 98101, (206) 553–0015.

I. Description of Action

EPA is publishing a Notice of Deficiency for the Clean Air Act (CAA or Act) Title V program for the state of Oregon. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a Title V permitting authority is not adequately administering or enforcing a part 70 program. The deficiency being noticed relates to Oregon's requirements for obtaining judicial review of Title V operating permit actions. A recent decision by the Oregon Supreme Court held that organizations do not have standing to represent their members in challenging State-issued environmental permits. Because of this restriction on access to judicial review, the State's program no longer meets the program approval requirements of Title V and 40 CFR part 70.

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. State permitting authorities must submit programs to EPA that meet certain minimum criteria, and EPA must disapprove a program that fails to meet

these criteria. Among these criteria is a requirement that the state program include procedures for "judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law." CAA section 502(b)(6). This requirement is echoed in the operating permit program approval regulations promulgated at 40 CFR part 70. *See* § 170.4(b)(3)(x).

EPA has interpreted this requirement to mean that a state must provide the same opportunity for judicial review of Title V permitting actions as would be available in federal court under Article III of the U.S. Constitution. This interpretation has been upheld as "both authorized by Congress and reasonable." *Commonwealth of Virginia v. Browner*, 80 F.3rd 869 (4th Cir., 1996).

Article III generally requires that, to obtain judicial review, a person must suffer an actual or threatened injury. However, an organization that does not suffer actual or threatened injury to itself may obtain judicial review on behalf of its members when (1) the members would otherwise have standing to sue in their own right, (2) the interests the organization seeks to protect are germane to its purpose, and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. In such a case, the organization itself need not show actual or threatened injury. *See Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 341–345 (1977). This exception to the Article III requirement for actual or threatened injury is known as "representational standing."

On July 18, 1996, the Oregon Supreme Court issued a decision in *Local 290, Plumbers and Pipefitters* v. *Oregon Department of Environmental Quality*, 323 Or. 559, 919 P. 2d 1168 ("*Local 290*"). Interpreting the language of the state Administrative Procedures Act (APA), the Court held that this statute requires that the person seeking judicial review under that statute must be aggrieved (which, under Oregon law, is roughly synonymous with having suffered actual or threatened injury), and that representational standing is therefore not allowed. The Oregon APA governs judicial review for all State environmental permits.

On August 1, 1996, EPA received a petition from a coalition of Oregon environmental groups requesting that EPA withdraw approval of the State's CAA Title V and Clean Water Act National Pollutant Discharge Elimination System (NPDES) programs on the basis that these programs no longer met federal minimum requirements in light of *Local 290*. EPA subsequently received a written opinion from the Oregon Department of Justice, dated October 21, 1996, addressing the question of whether the *Local 290* decision renders the Oregon programs deficient from the standpoint of federal approval. On January 14, 1997, the EPA Region 10 Administrator wrote the Director of the Oregon Department of Environmental Quality informing him that EPA was reviewing the petition for withdrawal. On April 21, 1997, the Regional Administrator again wrote to the Director of ODEQ, informing him that EPA had reviewed the *Local 290* decision, and had reached a preliminary conclusion that the decision rendered the State's Title V program deficient. After noting that *Local 290* appears to preclude an organization from suing on behalf of its members unless the organization itself is aggrieved, the letter inquires whether the State could offer a different opinion regarding the effect of this decision. To date, EPA has not received a formal response to this inquiry.

EPA at this time concludes that the *Local 290* decision should be interpreted to mean that representational standing is not allowed under the State APA. The only analysis of this issue from the state that EPA knows of is the October 21, 1996, opinion from an Assistant Attorney General for the Oregon Department of Justice. While not taking issue with the apparent holding of *Local 290*, the opinion questions whether Title V does in fact require a state program to provide for representational standing. Subsequent to receiving this opinion, EPA has reviewed the question and has again concluded that representational standing is a requirement for Title V approval.

The Oregon Department of Justice opinion also suggests, but does not strongly assert, that Oregon state regulations approved by EPA pursuant to Title V may obviate the effect of *Local 290*, because these regulations provide that any person who submitted comments during the public comment period on a permit is "adversely affected or aggrieved" for the purpose of intervening in a contested case hearing under the Oregon APA. *See* Oregon Administrative Rules §§ 340–28–2300(4) and 340–28–2290. The apparent inference is that a party (including an organization representing its members) would be considered "adversely affected or aggrieved" in state court merely by virtue of the fact that its submittal of comments gave it standing to intervene in a contested case hearing.

EPA does not believe that this regulatory provision removes the barrier to judicial review created by *Local 290*. First, CAA section 502(b)(6) requires that a state provide an opportunity for judicial review to the permittee *or* to any person who participated in the public comment period. This requirement is not satisfied by merely allowing persons to intervene in a proceeding commenced by the permittee. Second, the State regulation nominally addresses only contested case hearings. The opinion does not explain why a party's standing within the administrative adjudicatory forum would necessarily carry over to State judicial courts. In EPA's opinion, the inference that a party qualifying as "adversely affected or aggrieved" in this manner for purposes of a contested case hearing would necessarily have standing in State court is particularly weak given that the State regulation was promulgated prior to *Local 290* and uses the same "adversely affected or aggrieved" language employed by the APA provision at issue in the *Local 290* decision. In summary, EPA is not convinced that this or any other existing Oregon regulation obviates the effect of *Local 290* for purposes of State court review of Title V permitting decisions.

As noted above, the barriers to standing created by *Local 290* apply to all environmental permits for which judicial review is governed by the State APA. This includes permits issued pursuant to the State's NPDES program. This decision requires interpretation of the recently promulgated regulation addressing standing for judicial review in state NPDES programs, codified at 40 CFR 123.30. *See* 61 FR 20972 (May 8, 1996). EPA plans to hold a public hearing on this issue if representational standing is not restored for NPDES permits during the next Oregon legislative session. The primary purpose of this hearing would be to gather information regarding the extent to which *Local 290* interferes with public participation in the permitting process. Gathering this information would enable EPA to make a more informed decision regarding whether to proceed with NPDES program withdrawal. For the present, EPA notes that restoring representational standing to challenge State NPDES permits will obviate the need for further inquiry into whether *Local 290* poses a problem for continued EPA approval of the State's NPDES program.

40 CFR 70.10(c)(1) provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever

the approved program no longer complies with the requirements of part 70. This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70 because a court has struck down or limited state authorities to administer the program. 40 CFR 70.10(c)(1)(I)(B).

40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken "significant action to assure adequate administration and enforcement of the program" within 90 days after publication of a notice of deficiency, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a federal Title V program. 40 CFR 70.10(b)(2). Part 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of finding of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw the State's Title V program. Consistent with part 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether the State has taken significant action to correct the deficiency. Any proposal to withdraw approval of the State's Title V program will occur after the end of the 90-day period.

II. Administrative Requirements

As noted above, publication of this notice of deficiency does not effect a withdrawal of the State's Title V program. Program withdrawal, if necessary, will be accomplished through a subsequent notice-and-comment rulemaking. This action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). The Office of Management and Budget has exempted this action from review under Executive Order 12866 (58 FR 51735, October 4, 1993). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This action is a Notice of Deficiency and does not constitute a rule; therefore Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks does not apply. For the same reason, section 112(d) of the National Technology Transfer Advancement Act of 1995 also does not apply.

Dated: November 20, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–31800 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–7]

The Freelove Valley Home Meth Lab Superfund Site; Notice of Proposed Agreement for Payment Future Costs and Recovery of Past Response Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), notice is hereby given that a proposed CERCLA section 122(h)(i) Agreement for Payment of Past Costs associated with the Freelove Valley Home Meth Lab Superfund Site (Site) was executed by EPA and the Mr. Ramon Cercas. The proposed Agreement would resolve certain claims of EPA under section 107 of CERCLA, 42 U.S.C. 9607. The proposed Agreement would require Mr. Ramon Cercas to pay to EPA $12,000 for the work conducted by EPA at the Site.

For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the settlement. If requested prior to the expiration of this document, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for inspection at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before December 30, 1998.

AVAILABILITY: A copy of the proposed Agreement may be obtained from David Rabbino, Assistant Regional Counsel (RC–3), 75 Hawthorne Street, San Francisco, California 94105. Comments should reference the Freelove Valley Home Meth Lab Superfund Site and EPA Docket No. 99–02, and should be addressed to David Rabbino at the above address.

FOR FURTHER INFORMATION CONTACT: David Rabbino, Office of Regional Counsel, U.S. EPA, Region IX, 75 Hawthorne Street, (RC–3), San Francisco, California 94105; E-mail: Rabbino.David@epamail.epa.gov; Telephone: (415) 744–1336.

Keith Takata,

Acting Deputy Director, Superfund Division, Region IX.

[FR Doc. 98–31804 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRC–6194–6]

Southern Wood Piedmont Superfund, Wilmington, New Hanover, North Carolina; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement.

SUMMARY: Pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into an Agreement for the Recovery of Past Response Costs with Southern Wood Piedmont, Inc. and its parent company, Rayonier, Inc. (Settling Parties). Pursuant to the Agreement, the Settling Parties will reimburse EPA all response costs expended at the Site, excluding interest that has accrued such costs.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the

proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta, Georgia 30303.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: November 12, 1998.

James T. Miller,

Program Services Branch, Waste Management Division.

[FR Doc. 98–31678 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51918; FRL–6044–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from October 1, to October 30, 1998.

ADDRESSES: Written comments, identified by the document control number "[OPPTS–51918]" and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51918]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under "SUPPLEMENTARY INFORMATION" of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number "[OPPTS–51918]" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551,

for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0001	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0002	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0003	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aliphatic saturated copolyester
P–99–0004	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0005	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0006	10/02/98	12/31/98	CIBA Specialty Chemicals	(G) Raw material	(S) Benzenesulfonic acid, 2-amino-5-[[2-(sulfooxy) ethyl]sulfonyl]-(9cl)*
P–99–0007	10/02/98	12/31/98	CIBA Specialty Chemicals Corporation - additives division	(S) Corrosion inhibitor for paint primers	(G) Organosilane derivatives
P–99–0008	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0009	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0010	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0011	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0012	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0013	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0014	10/05/98	01/03/99	Clariant Corporation	(G) Reactant	(S) 2-oxazolidinone*
P–99–0015	10/05/98	01/03/99	CBI	(G) Fuel additives	(G) Alkenes, maleic anhydride polymer reaction product with aminopropyl fatty amine
P–99–0016	10/06/98	01/04/99	CBI	(S) Coagulant for industrial wastewater treatment; coagulant for municipal water treatment	(G) Iron Salt of metal hydroxy chloride phosphate
P–99–0017	10/05/98	01/03/99	CBI	(G) Lubricant and fuel additives	(G) Alkenes, maleic anhydride polymer
P–99–0018	10/05/98	01/03/99	DyStar L.P.	(S) Disperse Dye for coloration of polyester fiber	(G) Propanoic acid, 2-methyl-, 2-[[4-[(3-cyano-5-nitro-substituted)]-3-substituted]ethylamino]ethyl ester
P–99–0019	10/05/98	01/03/99	CIBA Specialty Chemicals	(S) Reactive dye for cellulose, black; reactive dye for cellulose, orange	(G) Benzenesulfonic acid, diamino-3-[[4-2-sulfooxyethyl]sulfonyl]phenyl]azo]-5-4-[[2-(sulfooxy)ethyl]sulfonyl]-sulfonylphenyl]azo]-, sodium salt
P–99–0020	10/05/98	01/03/99	CBI	(G) Lubricant additives	(G) Modified polymeric succinimide disperant
P–99–0021	10/08/98	01/06/99	CBI	(G) Automotive coating	(G) Modified acrylic copolymer
P–99–0022	10/08/98	01/06/99	CBI	(S) Base resin for acrylic modified alkyd	(S) Fatty acids, tall-oil, polymers with benzoic acid, pentaerythritol, phthalic anyhdride, soybean oil and trimethylolpropane
P–99–0023	10/08/98	01/06/99	CBI	(S) Industrial primer for car refinish, fleet primer plastics and metal	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(1,3-dioxobutyl)-omega-(1,3-dioxobutoxy)-*
P–99–0024	10/07/98	01/05/99	CBI	(G)Open, non dispersive (impact Modifier)	(G) Polyester polyurethane
P–99–0025	10/07/98	01/05/99	Solutia Inc.	(S) Scale inhibitor in off-shore down hole secondary oil recovery	(G) Sodium salt of polyaminophosphonic acid
P–99–0026	10/08/98	01/06/99	OMG Americas, Inc.	(S) Fuel oil additive/ diesel additive	(S) Cerium, hydroxy oleate propionate complexes*
P–99–0027	10/09/98	01/07/99	CBI	(G) Printing Ink Resin	(G) Rosin, maleated, polymer with alkylene glycol; also cmpd. with ethanolamine*
P–99–0028	10/09/98	01/07/99	CBI	(G) Printing Ink Resin	(G) Rosin, maleated, polymer with alkylene glycol; also cmpd. with ethanolamine*
P–99–0029	10/07/98	01/05/99	CBI	(G) Additive for metal cleaning or metal working fluids	(G) Modified fatty acids, salts with mixed alkanolamines
P–99–0030	10/05/98	01/03/99	CBI	(G) Lubricant Additives	(G) Modified polymeric succinimide dispersant
P–99–0031	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate
P–99–0032	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0033	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate
P–99–0034	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate
P–99–0035	10/13/98	01/11/99	BASF Corp.	(G) Colorant	(G) 22,7-naphthalenedisulfonic acid, ((substituted)imino)tris(5-hydrocy-6-((1-sulfo-2-naphthalenyl)azo)-, mixed salt*
P–99–0036	10/14/98	01/12/99	CBI	(G) Ingredient for use in consumer products; highly dispersive use	(G) Cyclic Ketonic Diether
P–99–0037	10/13/98	01/11/99	RAHN USA Corporation	(S) UV/eb Inks; uv/eb coatings; uv/eb adhesives; uv/eb fillers	(G) Aromatic urethane acrylate
P–99–0038	10/13/98	01/11/99	RAHN USA Corporation	(S) UV/eb Inks; uv/eb coatings; uv/eb adhesives; uv/eb fillers	(G) Aliphatic urethane acrylate
P–99–0039	10/13/98	01/11/99	RAHN USA Corporation	(S) UV/eb inks; uv/eb coatings; uv/eb adhesives; uv/eb fillers	(G) Aliphatic urethane acrylate
P–99–0040	10/13/98	01/11/99	CBI	(G) Destructive use	(G) Polyester resin
P–99–0041	10/13/98	01/11/99	CBI	(G) Open, non-dispersive use	(G) Polyester / acrylic copolymer
P–99–0042	10/13/98	01/11/99	Hampshire Chemical Corp.	(G) Hydrogel polymer	(G) Aliphatic polyurethane prepolymer
P–99–0043	10/13/98	01/11/99	Hampshire Chemical Corp.	(G) Hydrogel polymer	(G) Aliphatic polyurethane prepolymer
P–99–0044	10/13/98	01/11/99	CBI	(S) Bonding agent for mineral aggregates (sand)	(S) Formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated*
P–99–0045	10/14/98	01/12/99	CBI	(G) Urethane coating component	(G) Polymer of aromatic diisocyanate with polyether polyol
P–99–0046	10/14/98	01/12/99	CBI	(G) Colorant	(G) Sulfonated copper phthalocyanine, substituted with aromatic sulfonamid, sodium salt.
P–99–0047	10/14/98	01/12/99	BASF Corporation	(G) Colorant	(G) B-alanine, *n*-(substituted)phenyl)azo-3-alkyl(phenyl)-*n*-ethyl-, alkoxy ester
P–99–0048	10/14/98	01/12/99	BASF Corporation	(G) Colorant	(G) Naphthalenedisulfonic acid, substituted triazine, substituted naphthalenyl azo-, mixed salts
P–99–0049	10/14/98	01/12/99	BASF Corporation	(G) Colorant	(G) 2-naphthalenesulfonic acid, 4-hydroxy-substituted amino - substituted phenylazo, mixed salt
P–99–0050	10/14/98	01/12/99	CBI	(G) Tracer Dye	(G) Amino substituted naphthalimide
P–99–0051	10/16/98	01/14/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0052	10/15/98	01/13/99	3M Company- group compliance 3M automotive and chemical markets group	(S) Chemical Intermediate	(S) Hydrofluoric Acid, reaction products with octane*
P–99–0053	10/14/98	01/12/99	CBI	(G) Multi-purpose adhesive; open, non-dispersive use; laminating adhesive; open. non-dispersive use	(G) Polyurethane prepolymer; polyurethane adhesive
P–99–0054	10/16/98	01/14/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0055	10/16/98	01/14/99	CBI	(S) Site limited intermediate surfactant	(G) Alkoxylated alkyloxypropylamine
P–99–0056	10/16/98	01/14/99	CBI	(G) Surfactant	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0057	10/16/98	01/14/99	CBI	(G) Surfactant	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0058	10/16/98	01/14/99	CBI	(G) Surfactant	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0059	10/16/98	01/14/99	CBI	(S) Site limited intermediate surfactant	(G) Alkoxylated alkyloxypropylamine
P–99–0060	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) Ammonium salt of acrylic copolymer
P–99–0061	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) Sodium salt of acrylic co polymer
P–99–0062	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) DMEA Salt of acrylic copolymer
P–99–0063	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) 2-amino-2-methyl-1-propanol salt of acrylic copolymer
P–99–0064	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) MEA salt of acrylic co polymer

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0065	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) Tea salt of acrylic co polymer
P–99–0066	10/19/98	01/17/99	CBI	(G) Rheology modifier for aqueous systems	(G) Hydrophobically modified polyether
P–99–0067	10/20/98	01/18/99	Arizona Chemical	(G) Printing Ink additive (open, non-dispersive)	(G) Modified glycerol ester of tall oil fatty acid
P–99–0068	10/19/98	01/17/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0069	10/19/98	01/17/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0070	10/15/98	01/13/99	3M Company - group compliance 3M automotive and chemical markets group	(G) Paper or film coating	(G) Amine neutralized acrylate polymer
P–99–0071	10/19/98	01/17/99	H. B. Fuller Company	(S) Hot-melt adhesive for the shoe industry	(G) Polyamide
P–99–0072	10/19/98	01/17/99	CBI	(G) A Destructive use as a chemical intermediate	(G) Polyester resin
P–99–0073	10/19/98	01/17/99	CBI	(G) Paint	(G) Polyisocyanate resin
P–99–0074	10/19/98	01/17/99	BASF Corp.	(S) Plasticizer in concrete	(G) Modified polycoarboxylate
P–99–0075	10/19/98	01/17/99	CBI	(S) Fixing agent in paper making process	(G) Modified polyethyleneimine
P–99–0076	10/22/98	01/20/99	CBI	(G) Decorative coating	(G) Acrylic polymer
P–99–0077	10/22/98	01/20/99	CBI	(G) Decorative coating	(G) Acrylic polymer
P–99–0078	10/22/98	01/20/99	CBI	(G) Decorative coating	(G) Acrylic polymer
P–99–0079	10/19/98	01/17/99	Loctite Corporation, Corporate Environmental Health & Safety Affairs	(S) A component of industrial adhesive formulations	(S) 2-propenoic acid, 2-methyl-, monoester with 1,2-propanediol, polymers with hydroxy-terminated acrylonitrile-butadiene polymer, 4,4'-(1-methylethylidene)bis[cyclohexanol] and 4,4-tdi*
P–99–0080	10/21/98	01/19/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0081	10/21/98	01/19/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0082	10/21/98	01/19/99	CBI	(G) Prepolymer of polyester urethane	(G) Aliphatic saturated copolyester
P–99–0083	10/21/98	01/19/99	CBI	(G) Additive, open, non-disperive use	(G) Ammonium salt of an acidic polymer
P–99–0084	10/23/98	01/21/99	Union Carbide Corporation	(G) Site limited Chemical Intermediate	(G) Aryl phosphoryl chloride
P–99–0085	10/23/98	01/21/99	CBI	(G) Toner Chemical (open, non-dispersive)	(G) Bisphenol a-type polyester resin
P–99–0086	10/26/98	01/24/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0087	10/20/98	01/18/99	CBI	(G) Paper manufacture; textile size	(G) Hydroxyalkyl cationic starch, hydrolzed
P–99–0088	10/20/98	01/18/99	CBI	(G) Process intermediate	(G) Hydroxyalkyl cationic starch
P–99–0089	10/26/98	01/24/99	CBI	(G) Colorant for water-based formulations	(G) Polyalkoxylated aromatic amine tint
P–99–0090	10/26/98	01/24/99	Univation Technologies, Exxon Chemical/union carbide joint venture	(S) Polymerization catalyst	(G) Aluminum organometallic compound
P–99–0091	10/28/98	01/26/99	CBI	(G) Open non-dispersive (polyurethane)	(G) Aqueous polyurethane dispersion
P–99–0092	10/28/98	01/26/99	CBI	(G) Open non-dispersive (binding agent)	(G) Polycarbonate
P–99–0093	10/27/98	01/25/99	Witco Corporation	(G) Additive for plastics	(S) 1,4-dioxa-7,9-dithia-8-stannacycloundecane-511-dione, 8,8-dioctyl-(9ci)*
P–99–0094	10/27/98	01/25/99	CBI	(S) Disperse dye for the coloring of polyester fibers, as a granular dye; disperse dye for the coloring of polyester fibers, as a liquid dye	(S) Acetamide, *n*-[2-[(2-bromo-6-cyano-4-nitrophenyl)azo]-5-(diethylamino)phenyl]-*
P–99–0095	10/29/98	01/27/99	CBI	(S) Site limited intermediate	(G) Triazine derivative
P–99–0096	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings adhesive, fillers)	(G) Polyether amino acrylate

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0097	10/29/98	01/27/99	CBI	(S) Paraffin & asphaltene dissolving agent in territory oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) Heavy aromatic solvent
P–99–0098	10/29/98	01/27/99	CBI	(S) Paraffin & asphaltene dissolving agent in territory oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) Heavy aromatic solvent
P–99–0099	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Polyetheraminoacrylate
P–99–0100	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Polyether amino acrylate
P–99–0101	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Aliphatic urethane acrylate
P–99–0102	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Aliphatic urethane acrylate
P–99–0103	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers	(G) Acrylated oligoamine
P–99–0105	10/30/98	01/28/99	CBI	(G) Inkjet ink	(G) Soduim salt of substituted copper phthalocyanine derivative

II. 37 Notices of Commencement Received From: 10/01/98 to 10/30/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1659	10/14/98	09/28/98	(S) Ethanol, niobium (5+) salt or niobium etoxide*
P–96–0966	10/19/98	09/21/98	(G) Bis-disubstituted phenylazo substituted sulfonaphthyl azo diphenylamine monosulfonic acid, sodium salt
P–94–0662	10/26/98	10/15/98	(S) A polymer of: methyl methacrylate; ethylene-ethyl acrylate copolymer*
P–94–1371	10/26/98	10/10/98	(G) Triethylamine salt of an aliphatic polyurethane polymer
P–95–1457	10/26/98	10/06/98	(G) Neutralized water based acid functional polymer
P–96–1447	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin
P–96–1448	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, ammonium salt
P–96–1449	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. eith ethanolamine
P–96–1450	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. with diethanolamine.
P–96–1451	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. with triethanolamine.
P–96–1452	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. with 2(dimethylamino) ethanol.
P–96–1453	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, sodium salt.
P–97–0176	10/05/98	09/11/98	(G) Cyclopentadiene derivative, sodium salt
P–97–0177	10/05/98	09/11/98	(G) Cyclopentadiene derivative
P–97–0189	10/05/98	09/11/98	(G) Substituted bis(cyclopentadienyl)zirconium dichloride
P–97–0216	10/19/98	09/16/98	(G) Propoxylated, ethoxylated amine
P–97–0480	10/19/98	10/06/98	(G) Mono azo yellow pigment
P–97–0664	10/07/98	09/11/98	(G) Acid fluoride derivative
P–97–0690	10/05/98	09/23/98	(G) Reaction product of: petroleum by products, di ethylene glycol, alphatic branched alcohol, and aliphatic cyclic anhydrides
P–97–0917	10/05/98	09/15/98	(G) Perfluoroalkylfunctional silicone silsesquioxane copolymer
P–97–1079	10/02/98	09/18/98	(G) Alkyl methacrylate copolymer
P–98–0141	10/07/98	09/24/98	(G) Phosphoric acid ester
P–98–0142	10/07/98	09/24/98	(G) Phosphoric acid ester
P–98–0159	10/13/98	10/02/98	(G) Polyamine adduct
P–98–0163	10/14/98	09/23/98	(S) Hexanedioic acid, bis[4-(ethenyloxy)butyl] ester*
P–98–0330	10/06/98	09/26/98	(G) Metallated porphyrin
P–98–0389	10/02/98	09/24/98	(G) Ppdi polyester prepolymer
P–98–0621[1]	07/17/98	07/06/98	(G) Derivative bisphenol sulfone
P–98–0659	10/26/98	10/19/98	(G) Reaction products of formaldehyde, amine substitiuted piperazine, and alkyl amine
P–98–0700	10/13/98	10/03/98	(G) Mixed alkylmetallic mercaptoester sulfides
P–98–0758	10/13/98	09/23/98	(G) Polyester acrylate

II. 37 Notices of Commencement Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–98–0802	10/06/98	10/01/98	(G) Isocyanate-fuctionalized polyurethane polymer*
P–98–0814	10/20/98	10/14/98	(G) Styrene/ acrylate copolymer
P–98–0820	10/13/98	09/13/98	(G) Copolymer of styrene and acrylic esters
P–98–0833	10/02/98	09/09/98	(G) Acrylic latex
P–98–0874	10/30/98	10/14/98	(G) Alkyd resin
P–98–0945	10/30/98	10/13/98	(G) Acrylate copolymer

[1]P–98–0621 was inadvertantly omitted from the document of July 15 to 31, 1998, Notices of Commencement, but is now included.

List of Subjects

Environmental protection, Premanufacture notices.

Dated: November 18, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–31679 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–5]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility in violation of the regulations issued under section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), ("Oil Pollution Prevention Regulations" 40 CFR part 112) may be assessed a civil penalty of up to $137,500 by EPA in a "Class II" administrative penalty proceeding. Class II proceedings under section 311(b)(6) of the Clean Water Act are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits at 40 CFR part 22 ("part 22")."

Pursuant to section 311(b)(6)(C) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(C), EPA is providing notice of the following proposed Class II penalty proceeding initiated by the Superfund Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105:

In the Matter of Speedy's Convenience, Inc., Docket No. OPA–09–98–05, filed September 30, 1998; proposed penalty $137,500; for violations of the Oil Pollution Prevention Regulations (40 CFR Part 112) at the oil storage, processing and distribution facility located at Lupton, AZ.

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Danielle Carr, Regional Hearing Clerk (RC–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this document.

Dated: September 30, 1998.

Nancy Lindsay,

Associate Director, Superfund Division, Region IX.

[FR Doc. 98–31801 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–6]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3) may be administratively assessed a civil penalty of up to $137,500 by EPA in a "Class II" administrative penalty proceeding. Class II proceedings under section 311(b)(6) of the Clean Water Act are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

Revocation and Suspension of Permits at 40 CFR part 22 ("part 22")."

Pursuant to section 311(b)(6)(C) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(C), EPA is providing public notice of the following proposed Class II penalty proceeding initiated by the Oil Program, Superfund Division, U.S.EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105:

In the Matter of Kinder Morgan Energy Partners, LP/Santa Fe Pacific Pipeline Partners, LP (Santa Fe); Docket Number OPA–09–98–01, filed September 29, 1998; proposed penalty $50,000.00; for a violation of 311(b) of the Clean Water Act, 33 U.S.C. 1321(b), at Santa Fe's pipeline Rockin, California to Sparks, Nevada 5 miles west of Highway 80 near Donner Summit, California.

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Danielle Carr, Regional Hearing Clerk (RC–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this document.

Dated: September 25, 1998.

Michael T. Feeley,

Deputy Director, Superfund Division, Region IX.

[FR Doc. 98–31802 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2307]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 19, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by December 15, 1998. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services to Louisiana (CC Docket No. 98–121).

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31688 Filed 11–27–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1994 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

U.S.A. Transport, 330 Broadway, Hillsdale, NJ 07642, Neal Freedman, Sole Proprietor.

Dated: November 23, 1998.

Joseph C. Polking,

Secretary.

[FR Doc 98–31695 Filed 11–27–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 A.M.—December 2, 1998.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTER(S) TO BE CONSIDERED: The Open Portion of the Meeting; 1. Proposed Rules (46 CFR) Implementing the Ocean Shipping Reform Act, relating to Agreements, Marine Terminal Operator Schedules, and Ocean Transportation Intermediaries.

The Portion Closed to the Public: 1. Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31862 Filed 11–24–98; 4:40 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 2, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31904 Filed 11-25-98; 11:06 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Performance Review Boards for Small Client Agencies Services by the General Services Administration, Names of Members

Sec. 4314©(1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive. The Performance Review Board also shall make recommendations as to whether the career executive should be recertified, conditionally recertified, or not recertified.

As provided under Section 601 of the Economy Act of 1932, amended 31 U.S.C. 1525, the General Services Administration through its Agency Liaison Division, provides various personnel management services to a number of diverse Presidential commissions, committees, boards and other agencies through reimbursable administrative support agreements. This notice is processed on behalf of the client agencies, and it supersedes all other notices in the **Federal Register** on this subject. Because of their small size, a Performance Review Board register has been established in which SES members from the client agencies participate. The Board is composed of SES members from various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve a particular client agency.

The members whose names appear on the Performance Review Board standing roster to serve client agencies are:

Barry M. Goldwater Scholarship and Excellence In Education Foundation

Gerald J. Smith, Executive Secretary

Committee for Purchase From People Who Are Blind or Severely Disabled

Beverly L. Milkman, Executive Director

Federal Retirement Thrift Investment Board

David L. Black, Director of Accounting
Stratos D. Valakis, Director of Contracts and Administration
Lawrence E. Stiffler, Director of Automated Systems
Alisone M. Clark, Director of Benefits and Program Analysis
Veda R. Charrow, Director of Communications
Thomas J. Trabucco, Director of External Affairs
Peter B. Mackey, Director of Investments
John J. Omeara. General Counsel
James B. Petrick, Deputy General Counsel
Elizabeth S. Woodruff, Associate General Counsel

Defense Nuclear Facilities Safety Board

Kenneth M. Pusateria, General Manager
Joseph R. Neubeiser, Deputy General Manager
Richard A. Azaro, Deputy General Counsel for Policy and Litigation
George W. Cunningham, Technical Director
Wallace R. Kornack, Technical Advisor for Technical Studies

Harry S. Truman Scholarship Foundation

Louis H. Blair, Executive Secretary

Japan-United States Friendship Commission

Eric J. Gangloff, Executive Director

Office of Navajo and Hopi Indian Relocation

Christopher J. Bavasi, Executive Director
Michael J. McAlister, Deputy Executive Director

Arctic Research Commission

Garrett W. Brass, Executive Director

National Mediation Board

Ronald M. Etters, General Counsel
Stephen E. Crable, Chief of Staff

Dated: November 12, 1998.

Elaine Dade,

Director, Laision Division.

[FR Doc. 98–31840 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1019]

BF Goodrich Specialty Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BF Goodrich Specialty Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 8B4631) has been filed by BF Goodrich Specialty Chemicals, 9911 Brecksville Rd., Cleveland, OH 44141. The petition proposes to amend the food additive regulations in § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: November 10, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–31692 Filed 11–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0994]

Draft Guidance for Industry on BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation." This

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draft guidance provides recommendations to sponsors of new drug applications, abbreviated new drug applications, new animal drug applications, abbreviated new animal drug applications, and holders of drug master files or veterinary master files who intend, during the postapproval period, to change the site of manufacture, the scale of manufacture, the equipment, the specifications, and/or the manufacturing process of intermediates in the synthetic pathway leading to the drug substance.

DATES: Written comments on the draft guidance may be submitted by March 31, 1999. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cvm". Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kasturi Srinivasachar, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5376, or David R. Newkirk, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2701.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance entitled "BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation." This draft guidance defines recommended chemistry, manufacturing and controls tests, and documentation in support of each change. The draft guidance applies to synthetic drug substances and the synthetic steps involved in the preparation of semisynthetic drug substances. It is limited to structurally well-characterized drug substances where impurities can be monitored at the levels recommended. The draft guidance covers changes as follows: (1) Site, scale, and equipment changes involving the synthetic steps up to and including the step that produces the final intermediate, (2) specification changes for raw materials, starting materials, and intermediates, excluding the final intermediate, and (3) manufacturing process changes involving the synthetic steps up to and including the final intermediate. Postapproval changes affecting: (1) Synthetic peptides, (2) oligonucleotides, (3) radiopharmaceuticals, or (4) drug substances derived exclusively by isolation from natural sources or produced by procedures involving biotechnology are not addressed in this document.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on postapproval changes for the manufacture of intermediates in drug substance syntheses. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31765 Filed 11–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0996]

Draft Guidance for Industry on General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products." This document is intended to assist applicants who plan to conduct pharmacokinetic (PK) studies in the pediatric population so that drugs and biological products can be labeled for pediatric use.

DATES: Written comments may be submitted on the draft guidance by January 29, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm" or "http://www.fda.gov/cber/guidelines.htm". Submit written requests for single copies of "General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Copies of this guidance may also be obtained by fax from 1–888–CBERFAX or 301–827–3844 or by mail from the CBER Voice Information System at 800–835–4709 or 301–827–1800.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2330.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products." The guidance is intended to assist applicants who plan to conduct pharmacokinetic (PK) studies in the pediatric population so that drugs and biological products can be labeled for pediatric use.

In the past few years, the agency has addressed the need for greater information on the use of drugs in the pediatric population. In the **Federal**

Register of December 13, 1994 (59 FR 64240), FDA published a final rule that encouraged manufacturers to provide more information in the labeling on the use of a drug in the pediatric population. The rule recognized several methods of establishing substantial evidence to support pediatric labeling claims, including relying in certain cases on studies carried out in adults. Under the final rule, products may be labeled for pediatric use based on adequate and well-controlled studies in adults together with other information supporting pediatric use (e.g., pharmacokinetic data, safety data, pharmacodynamic data). In the **Federal Register** of August 15, 1997 (62 FR 43899), FDA published a proposed rule that would require new drugs and biological products to be labeled for use in the pediatric population. The enactment of the Food and Drug Modernization Act of 1997 (Pub. L. 105–111) (Modernization Act) on November 21, 1997, further addressed this need by providing incentives to sponsors for conducting pediatric studies (21 U.S.C. 355a). This draft guidance addresses general considerations for conducting PK studies in the pediatric population.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on pediatric pharmacokinetic studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–31691 Filed 11–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Evaluation of National Youth Anti-Drug Media Campaign

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes on Drug Abuse of the National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

PROPOSED COLLECTION: *Title:* Evaluation of National Youth Anti-Drug Media Campaign. *Type of Information Collection Request:* New. *Need and use of Information Collection:* The White House Office of National Drug Control Policy has transferred funds to NIDA to conduct an independent, scientifically designed and implemented evaluation of the National Youth Anti-Drug Media Campaign, the first prevention campaign to use paid advertising to discourage youth from drug use. The study will assess the outcomes and impact of the national campaign in reducing illegal drug use among children and adolescents.

For this study, two different surveys will be conducted: (1) the National Survey of Parents and Youth, a cross-sectional household survey; and (2) a Longitudinal Study of Parents and Youth in four communities with an ethnographic component. All data will be collected using a combination of computer-assisted personal interviews (CAPI) and audio computer-assisted self-interviews (ACASI). The findings will form the basis of semiannual and annual reports on campaign progress. These reports will provide assistance in improving the national campaign, and will help to establish a rich data base of information about the process involved in changing attitudes and behaviors by the mass media.

Frequency of Response: The National Survey of Parents and Youth will be carried out in 8 waves over a four-year period. Each data collection wave will last 6 months. The Longitudinal Study will be carried out annually over four years. *Affected Public:* Individuals and households. *Type of Respondents:* Children and parents. The annual reporting burden is as follows:

TABLE 1: RESPONDENT AND BURDEN ESTIMATE

Type of respondents	Estimated number of respondents	Estimated number of responses of per respondent	Average burden hours per response	Estimated total burden hours requested	Estimated annualized burden (over 3 years)
National Survey of Youth and Parents					
Screener respondent	225,600	1	.07	15,792	5,264
Youth 9–11	6,600	1	.50	3,300	1,100
Adolescents 12–18	13,800	1	.75	10,350	3,450
Parents	20,700	1	.75	15,525	5,175
Longitudinal Study					
Screener respondent	38,000	1	.07	2,600	887
Youth 9–11	2,150	3	.58	3,741	1,247
Adolescents 12–14	2,150	3	.92	5,934	1,978
Parents	3,500	3	.92	9,660	3,220
Total	312,500		.21	66,962	22,321

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. Because of the sensitivity of collecting data from families in households involving children as young as 9 years old, and

the importance of minimizing costs for repetitive, return visits to obtain respondent cooperation, NIDA is considering the provision of a reasonable cost incentive to reimburse respondents for their time.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Susan David, Project Officer; Division of Epidemiology and Prevention Research, National Institutes on Drug Abuse, Room 9A54, 5600 Fishers Lane, Rockville, MD 20857; or call non-toll-free number (301) 443–6543; or fax to (301) 443–2636; or e-mail your request, including your address, to: Sd69t@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by January 29, 1999.

Dated: November 19, 1998.

Laura Rosenthal,

Executive Officer, NIDA.

[FR Doc. 98–31728 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; Survey of Colorectal Cancer Screening Practices in Health Care Organizations

SUMMARY: In compliance with the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

PROPOSED COLLECTION: *Title:* Survey of Colorectal Cancer Screening Practices in Health Care Organizations. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will measure primary care and specialty physicians' knowledge, attitudes, and practice patterns related to colorectal cancer screening and diagnostic follow-up. This study also will assess guidelines, policies, and programs to provide or promote colorectal cancer screening within health plans. The purpose of this study is to obtain current, nationally representative data on the physician and health system factors that may influence the use of colorectal cancer screening and diagnostic follow-up for suspected colorectal cancer in community practice. Three questionnaires will be administered by mail, telephone, facsmile, or Internet using national samples of physicians and health plans. Study participants will select their preferred response mode. Study participants will be primary care and speciality physicians with active licenses to practice medicine in the U.S., and the medical directors of health plans listed by the American Association of Health Plans. Burden estimates are as follows:

Questionnaire	Estimated # respondents	# responses per respondent	Average burden hours per response	Estimated total annual burden hours
Primare care physician	1,810	1	0.250	452
Speciality physician	1,544	1	0.333	514
Health plan	453	1	0.333	151
Total:				1,117

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Send comments to Carrie N. Klabunde, Ph.D., Epidemiologist, National Cancer Institute, EPN 313, 6130 Executive Boulevard, MSC 7344, Bethesda, Maryland 20892–7344, telephone 301–402–3362.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by January 29, 1999.

Dated: November 19, 1998.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 98–31729 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Drug And Method For The Therapeutic Treatment of Lymphomas And Leukemias

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is seeking Licensee(s) and/or a Cooperative Research and Development Agreement ("CRADA") to further develop, evaluate, and commercialize a recombinant immunotoxin, termed RFB4(dsFv)–PE38

or BL22, for use in the therapeutic treatment of lymphomas and leukemias. RFB4(dsFv)–PE38 (BL22) is a disulfide-linked recombinant immunotoxin fused to PE38, a mutant form of Pseudomonas Exotoxin (PE), that binds to CD22—a 135kDa phosphoglycoprotein adhesion molecule present on the surface of B-cells. RFB4 is a mouse monoclonal antibody that recognizes an external epitope on the CD22 cell surface antigen and has no detectable cross-reactivity with any other normal cell types. CD22 is a lineage-restricted B-Cell antigen that belongs to the Ig superfamily and is displayed on chronic B-Lymphocytic Leukemia cells and B-cell Non-Hodgkins Lymphoma cells. To kill CD22-positive cells, the RFB4 antibody was used to make a recombinant immunotoxin. To construct the recombinant PE immunotoxin, the variable portions of the heavy and light chains of RFB4 were cloned and the Fv fragments linked together by a disulfide bond to form a disulfide stabilized (ds) construct. The construct was combined by gene fusion with PE38, a truncated version of PE, to form RFB4(dsFv)–PE38, or BL22.

The inventions are claimed in USPN 4,892,827, entitled: "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects"; USSN 07/865,722, entitled: "Recombinant Antibody-Toxin Fusion Protein"; USPN 5,696,237, entitled: "Recombinant Antibody-Toxin Fusion Protein"; and USSN 08/461,825, entitled: "Recombinant Antibody-Toxin Fusion Protein"; and are available for either exclusive or non-exclusive licensing for these aforementioned applications only (in accordance with 35 U.S.C. 207 and 37 CFR part 404).

DATES: Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions" on or before March 1, 1999.

Interested CRADA collaborators must submit a confidential proposal summary to the National Cancer Institute ("NCI") on or before March 1, 1999, for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals submitted thereafter may be considered if a suitable CRADA collaborator has not been selected.

ADDRESSES: Questions about licensing opportunities may be addressed to J. R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301)–496–7056 ext. 206; Facsimile: (301)–402–0200; E-Mail "DixonJ@OD.NIH.GOV". Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an "Application for License to Public Health Service Inventions".

Depending upon the mutual interests of the Licensee(s) and the NCI, a Cooperative Research and Development Agreement (CRADA) to collaborate to improve the properties of the RFB4(dsFv)–PE38 immunotoxin may also be negotiated. Proposals and questions about this CRADA opportunity may be addressed to Dr. Patrick Twomey, Technology Development Specialist, Technology Development & Commercialization Branch, National Cancer Institute, 6120 Executive Plaza South-Room 450, Rockville, Maryland 20852; Telephone: (301)–496–0577; Facsimile: (301)–402–2117; email: twomeyp@OTD.NCI.NIH.GOV. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: NIH/NCI scientists have done toxicity studies with the RFB4(dsFv)–PE38 immunotoxin in mice and cynomolgus monkeys. The immunotoxin is toxic for CD22 positive cells and exhibits antitumor activity in nude mice bearing human B-cell lymphomas. The IC_{50} of BL22 against four Burkitt's lymphoma cell lines range from 0.25–1.5 ng/ml. The dose in mice producing complete regression of subcutaneous CA46 lymphomas was 275 μg/kg on an alternate daily X 3 schedule (WODX3). The LD_{50} in tumors was approximately 1,303 μg/kg and the maximum tolerated dose was 400 μg/kg/dose. Pilot studies in cynomolgus monkeys showed no dose limiting toxicity at doses up to 2,000 μg/kg QODX3 by i.v. bolus. Peak plasma levels were 2.5, 10, and 55 μg/mL in monkeys treated with 100 μg/kg, 500 μg/kg and 2,000 μg/kg BL22, respectively. BL22 was eliminated nonexponentially from plasma with a half-life of approximately 44 to 66 minutes.

In the United States, Non-Hodgkin's lymphomas have a 1998 expected incidence of 55,400 including 24,900 expected deaths. The incidence of Non-Hodgkin's lymphomas has risen 50% during the last 15 years, including 3–4%/year recently, making it one of the most rapidly increasing malignancies in terms of incidence. Chronic lymphocytic leukemias have a 1998 incidence of 7,300 cases with 4,800 deaths. Thus approximately 50,000 patients per year in the U.S. are diagnosed with CD22+ malignant disease, half of which cannot be effectively treated with known modalities. This makes CD22+ malignancies a major public health problem in the U.S. and an appropriate target for newer targeted approaches. Hence, the development of new therapeutic modalities, such as RFB4(dsFv)–PE38, to treat these malignancies is needed.

A Cooperative Research and Development Agreement or CRADA means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate to improve the properties of the RFB4(dsFv)–PE38 immunotoxin. The expected duration of the CRADA would be from one (1) to five (5) years.

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the collaborator with samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
3. Planning research studies and interpreting research results.
4. Carrying out research to improve the properties of the RFB4(dsFv)–PE38 which include, but are not restricted to, increased production yield, decreased side effects, increased cytotoxic activity and better tissue penetration.
5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing sufficient amounts of BL22 for clinical trials.
2. Conducting Phase 2 and Phase 3 clinical trials.
3. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
4. Planning research studies and interpreting research results.
5. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
6. Providing technical and/or financial support to facilitate scientific goals and for further design of

applications of the technology outlined in the agreement.

7. Incorporating the immunotoxin into formulations in order to increase the therapeutic efficacy and decrease immunogenicity.

8. Providing immunotoxin for laboratory and animal studies.

9. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

2. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

4. The demonstration of expertise in the commercial development and production of products related to this area of technology.

5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

6. The demonstration of expertise pertinent to the development of models to evaluate and improve the efficacy of the RFB4 (dsFv)–PE38 immunotoxin for the treatment of lymphomas and leukemias.

7. The demonstration of expertise in the formulation of drugs.

8. The willingness to cooperate with the NCI in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: November 5, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

Dated: November 16, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 98–31733 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Dennis H. Penn, Pharm.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 211; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Mitochondrial-Specific ATP-Binding Transporter Gene (ABC7) Is An Iron Transporter In An Interhited Ataxia-Anemia Syndrome

MC Dean, R Allikmets, AA Hutchinson (NCI)

DHHS Reference No. E–181–98/0 filed Oct 23, 1998

The gene responsible for the rare genetic disease, X-linked siderblastic anemia and ataxia (XLSA/A) has been identified and linked to a mutation of the ATP-Binding transporter gene (ABC7). Two sequence changes which correspond to amino acid changes at positions 50 and 396 were detected. This gene may prove useful as a diagnostic for XLSA/A carriers or as a means to rule out XLSA/A from other siderblastic anemias. ABC7, an iron transporter, may prove to be a valuable tool for studying the function and regulation of muscle cells and the loss of motor function associated with many diseases with faculty iron metabolism, i.e. neuromuscular disease, cardiac disorders and neurological disorders.

Compsitions And Uses of FIG-alpha Gene

J Dean, L Liang, S soyal (NIDDK)

Serial No. 60/069,037 filed Dec. 12, 1997

This application related to an isolated and purified polynucleotide encoding an isolated and purified polypeptide associated with the expression of zona pellucida genes. The mouse zona pellucida is composed of three glycoproteins, ZP1, ZP2 and ZP3, encoded by single-copy genes whose expression is temporarlly and spatially restricted to oocytes. All three proteins are required for the formation of the extracellular zona matrix and female mice with a single disrupted zona gene lack a zona and are infertile. An E-box (CANNTG), located approximately 200 bp upstream of the transcription start site of the ZP1, ZP2 and ZP3, forms a protein-DNA complex present in oocytes and, to a much lesser extent, in testes. The integrity of this E-box in ZP2 and ZP3 promoters is required for expression of luciferase reporter genes microinjected into growing oocytes. The presence of the ubiquitous transcription factor E12 in the complex was used to identify a novel basic helix-loop-helix protein FIGα (Factor In the Germline alpha) whose expression was limited to oocytes within the ovary.)

This invention relates to the molecular characterization of FIGα, a novel germ cell specific bHLB transcription factor that binds as a heterodimer with E12 to the E-box in the promoter region of all three mouse zona pellucida genes and has the ability to transactivate reporter gene constructs in vitro. FIGα is critical for folliculogenesis and has a role in the coordinate, oocyte-specific expression of the three zona pellucida genes, the products of which for an extracellular matrix required for fertilization and early development. This invention also relates to monoclonal and polyclonal antibodies, which recognize the FIGα polypeptide.

Ureido Derivatives Of Poly-4-Amino-2-Carboxy-1-Methyl Pyrrole Compounds For Treatment Of inflammation

OM Zac Howard (SAIC), JJ Oppenheim (NCI), WJ Murphy (SAIC), EA Sausville (NCI)

Serial No. 60/067,526 filed Dec 4, 1997

Inflammatory reactions arising from a variety of medical conditions may have serious medical consequences when poorly controlled. Such inflammatory reactions contribute to a variety of disease states such as arthritis, asthma, non-bacterial medicated respiratory distress syndrome, reperfusion injury, and blunt force trauma. Accordingly, there is a need for new methods of diminished inflammation, especially acute inflammation.

This invention describes a method of inhibiting inflammation, particularly non-TNF dependent inflammation, by administering pharmacologically active ureido derivatives of distamycin. Since TNF is only one of many inducers of chemokines, this invention provides a more inclusive method for treatment of many inflammatory conditions, including conditions in which TNF does not play a substantial deleterious role in the pathology of the condition.

Therapeutic Chemokine Antagonists

JJ Oppenheim, JM Wang, OY Chertov, LO Arthur, F Ruscetti (NCI)

DHHS Reference No. E–170–96/0 filed Sep 06, 1996; PVT/US97/15594 filed Sep 05, 1997

This invention relates to a new class of chemoattractant antagonists, which are therapeutic candidates for treating disease conditions involving recruitment of inflammatory cells. These chemoattractant antagonists are comprised of a group consisting of gp120, gp41, domains and variants of gp41 and gp120.

Chemoattractants include the subgroup of chemokines and are known to mediate chemotaxis and other pro-inflammatory phenomena. The chemoattractants are generally short peptides. The family of chemokines is subdivided into distinct subfamilies, C–X–C and C–C, based on the arrangements of the first two cysteines of the primary amino acid sequence.

Members of the chemokine subfamily have remarkable similarities in their structural organization and biochemical properties. These homologies are consistent with the similarities observed in their biological effects, both in vitro and in vivo. These properties have prompted speculation that chemokines are mediators in autoimmune and allergic disorders.

Dated: November 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–31730 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Drug and Method for the Therapeutic Treatment of Primary Brain Tumors (Such as Intracranial Human Glioma, Astrocytomas, Medulloblastomas and Metastatic Tumors to the Central Nervous System)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is seeking Licensees to further develop, evaluate, and commercialize a Transforming Growth Factor-alpha-Pseudomonas Exotoxin fusion protein, known a TGF-alpha-PE38, for the therapeutic treatment of refractory brain tumors such as intracranial human glioma, astrocytomas, medulloblastomas and metastatic tumors to the central nervous system ("SNS").

The invention claimed in USPN 4,892,827, Entitled: "Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects," is available for licensing on an exclusive or non-exclusive basis (in accordance with 35 USC 207 and 37 CFR part 404) with the Field of Use limited to the therapy of primary brain tumors, metastatic carcinomas, and leptomeningeal carcinomatosis.

ADDRESSES: Licensing information and copies of the U.S. patent referenced above may be obtained by contacting J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 206; fax: 301/402–0220; e-mail: "DixonJ@od.nih.gov". Respondees interested in licensing the invention will be required to submit an "Application for License to Public Health Service Inventions."

SUPPLEMENTARY INFORMATION: Epidermal growth factor receptor ("EGFR") is amplified or over expressed in many malignant gliomas, other primary brain tumors, and carcinomas of epithelial origin (e.g., breast, lung, etc.) but is low or undetectable in normal brain tissue. TGF-alpha-PE38 represents a growing class of recombinant toxins designed for use in targeted cancer therapy. These genetically engineered chimeric proteins consist of a targeting moiety and a cytotoxic moiety. While TGF-alpha-PE38 is extremely toxic to tumor cells that have a relatively high expression of EGFR, it is also active against primary human brain tumor cells which are known to have moderate to high EGFR expression. Direct delivery of TGF-alpha-PE38 into brain tumors by intratumoral implanted catheters or controlled-release biodegradable polymers or intrathecal administration into the cerebrospinal fluid of patients with leptomeningeal carcinomatosis, may represent clinically useful applications of recombinant toxin therapy in tumors with high EGFR expression.

Anaplastic astrocytoma and glioblastoma, the most common primary brain tumors in adults, respond poorly to all current therapies: Median survival for patients with these tumors ranges from 19 to 57 weeks. Local tumor recurrence also constitutes a significant problem in medulloblastoma, the most common childhood brain tumor. Despite 5-year survivals for medulloblastoma exceeding 80% in some studies, nearly half of these patients will eventually die from progressive tumor. Treatment failure in patients with brain tumors is a multifactorial process involving the intrinsic resistance of these tumors to radiation therapy and chemotherapy, the development of acquired treatment resistance, and limitations of drug delivery due to blood-brain barrier restrictions. Local recurrence of brain tumors represents the most common pattern of treatment failure. Accordingly, the identification of new therapeutic agents that have high intrinsic activity against brain tumors and are appropriate for local therapy remains a major goal of the NIH.

Dated: November 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–31731 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

VOL 63 ISS 229 NO 30 1998 UMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel.

Date: December 15, 1998.

Time: 12:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Riverwalk Marriott, 555 S. Alamo St., San Antonio, TX 78205.

Contact Person: Harvey Stein, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301–496–7481.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31741 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: December 1–2, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Deborah R Jaffe, PhD, PhD, MS, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, (301–496–7221.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93,393, Cancer Cause and Prevention Research; 93,394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93,397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31742 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cellular & Molecular Interrelationships of Atherosclerosis & Hypertension.

Date: December 18, 1998.

Time: 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Ivan C. Baines, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Room 7184, Bethesda MD 20892–7924, (301) 435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31737 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ADK1 GRB–B(J1)P.

Date: December 13–15, 1998.

Time: December 13, 1998, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn on the Lane, 328 West Lane Avenue, Columbus, OH 43201.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Building 45, Room 6AS–25S, National Institutes of Health, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB (J2) P.

Date: January 10–12, 1999.

Time: January 10, 1999, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Edmond Meany Hotel, 4507 Brooklyn NE, Seattle, WA 98105.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Building 45, Room 6AS–25S, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31734 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB 4 J1.

Date: December 16–17, 1998.

Time: December 16, 1998, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Campus Inn, 615 East Huron Street, Ann Arbor, MI 48104.

Contact Person: William Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; 93.847, Diabetes, Endocrinology and Metabolic Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31735 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 2, 1998.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: December 4, 1998.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–7216.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: November 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31736 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 8, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

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Date: December 9, 1998.
Time: 8:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31739 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.
Date: December 15–16, 1998.
Time: 8:30 AM to 4:00 PM.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: National Institutes of Health, Building 10, Room 9S235, Bethesda, MD 20892.
Contact Person: Linda Peterson, Board Secretary, National Institutes of Health, NIAMS, Building 10, Room 9N228, Bethesda, MD 20892, 301–496–3375.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31740 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, SEP ZDK1 GRB–D (J1).
Date: December 15, 1998.
Time: 12:45 PM to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, 45 Center Drive, Room 6as37F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann A. Hagan, PhD, Chief, Review Branch, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Phs, Dhhs, Rm. 6as37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

(Catalog of Federal Domestic Assistance Program Nos. 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; 93.847, Diabetes, Endocrinology and Metabolic Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31743 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB D (J2).
Date: November 25, 1998.
Time: 1:30 pm to adjournment.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, 45 Center Drive, Room 6as37F, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ann A. Hagan, PhD, Chief, Review Branch, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6as37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31744 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 1, 1998.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Carlton Hotel, 932 Sixteenth Street, Washington, DC 20006.
Contact Person: David L Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MBC–2 (03).
Date: December 1, 1998.
Time: 10:00 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gerald Liddel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, (301) 435–1150.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 1, 1998.
Time: 1:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sami A Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 2, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gerhard Ehrenspeck, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7848, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.drg.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 2, 1998.
Time: 10:00 AM to 11:00 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7848, Bethesda, MD 20892, 301–435–1258.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 2, 1998.
Time: 1:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7848, Bethesda, MD 20892, (301) 435–1717.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MGN(2).
Date: December 2, 1998.
Time: 1:30 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7840, Bethesda, MD 20892, (301) 435–1037.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MBC–2(04).
Date: December 2, 1998.
Time: 2:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Gerald Liddel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7808, Bethesda, MD 20892, 301–435–1150.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 2, 1998.
Time: 3:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel B. Berch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7848, Bethesda, MD 20892, 301–435–1256.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 2, 1998.
Time: 12:30 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, 301–435–1045.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: December 3, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Joe Marwah, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1253.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 REN 1.
Date: December 3–4, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel .

Date: December 3, 1998.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel .

Date: December 4, 1998.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel .

Date: December 4, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7848, Bethesda, MD 20892, (301) 435–1017.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31738 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Drug and Method for the Therapeutic Treatment of Ovarian Cancer and Mesotheliomas

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209 (c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to U.S. Patent Applications 08/776,271 entitled: "Mesothelium Antigen and Methods and Kits for Targeting it" and 60/067,175 entitled: "Antibodies, Including Fv Molecules and Immunoconjugates having High Binding Affinity for Mesothelin and Methods for their Use" and corresponding foreign patent applications to NeoPharm, Inc. having a place of business in Bannockburn, Illinois. The patent rights in these inventions have been assigned to the United States of America and the contemplated license may be limited to the use of the SS(dsFv)–PE38 immunotoxin and relevant patent applications for the therapeutic treatment of ovarian cancer and mesotheliomas.

DATES: Only written comments and/or applications for a license which are received by NIH on or before March 1, 1999, will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 206; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The technology disclosed in USPA 08/776,271 relates to the discovery of a differentiation antigen termed mesothelin which is associated with mesotheliomas and ovarian cancers. The 08/776,271 technology includes uses for the amino acid and nucleic acid sequences for mesothelin, recombinantly expressed mesothelin antigen, methods for targeting and/or detecting the antigen and its expression level as an indication of the presence of tumor cells, and kits for such detection. In normal tissue, mesothelin is limited in its expression to mesothelial cells and basal cells of the trachea (low expression).

The provisional 60/067,175 patent application is directed to anti-mesothelin antibodies, including Fv molecules, with particularly high affinity for mesothelin, and immunoconjugates employing them. Also described in the provisional and application are diagnostic and therapeutic methods using the antibodies.

Note: Mesothelin is a differentiation antigen present on the surface of ovarian cancers and mesotheliomas. Because in normal tissues, mesothelin is only present on mesothelial cells, it represents a good target for antibody mediated delivery of cytotoxic agents.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of the SS(dsFv)–PE38 immunotoxin under the relevant patent applications for the therapeutic treatment of ovarian cancer and mesotheliomas.

Applications for a license [i.e., completed "Applications for License to Public Health Service Inventions] in the field of use of the SS(dsFv)–PE38 immunotoxin and the relevant Patent Applications for the therapeutic treatment of ovarian cancer and mesotheliomas filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–31732 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Notice Requesting Public Comments on our Re-evaluation of Whether Designation of Critical Habitat Is Prudent for 245 Hawaiian Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On August 10, 1998, the U.S. Fish and Wildlife Service (Service) was ordered by U.S. District Court (Civil No. 97–00098ACK Conservation Council for Hawaii, *et al.* vs. Bruce Babbitt, *et al.*) to publish proposed critical habitat designations or non-designations for at least 100 federally listed Hawaiian plant species by November 30, 2000, and to publish proposed rules for an additional 145 listed plants by April 30, 2002. At this time, the Service seeks comments, suggestions or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party on our re-evaluation of whether designation of critical habitat is prudent for these 245 species of federally protected Hawaiian plants.

DATES: Comments from all interested parties must be received by March 1, 1999.

ADDRESSES: Comments and materials concerning the notice should be sent to Robert P. Smith, Pacific Islands Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850 (telephone: 808/541–2749; facsimile: 808/541–2756).

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor, Ecological Services (see **ADDRESSES** section) (*telephone:* 808/541-3441; *facsimile:* 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1997, the Sierra Club Legal Defense Fund (now Earthjustice Legal Defense Fund) filed a lawsuit on behalf of the Conservation Council for Hawaii, the Sierra Club, and the Hawaiian Botanical Society in U.S. District Court in Honolulu, Hawaii, for the Service's failure to designate critical habitat for 278 endangered or threatened Hawaiian plant taxa. Because the statute of limitations had elapsed for many of the plants, this list of plants was later reduced to 245 taxa.

Critical habitat is defined in section 3 of the Endangered Species Act (Act) of 1978, as amended, as: (I) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. Additional Service regulations (50 CFR 424.12(a)(2)) state that designation of critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. The requirement that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat through any action authorized, funded or carried out by such agency (agency action) is in addition to the section 7 prohibition on jeopardizing the continued existence of a listed species; and, it is the only mandatory, legal consequence of a critical habitat designation. Any future Federal action that may affect the species will be subject to section 7 consultation to ensure that the action does not jeopardize the continued existence of the species. Implementing regulations (50 CFR part 402) define "jeopardize the continuing existence of" and "destruction or adverse modification of" in very similar terms. To jeopardize the continuing existence of a species means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification of habitat means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. An action that appreciably diminishes habitat for recovery and survival may also jeopardize the continued existence of the species by reducing reproduction, numbers, or distribution because negative impacts to such habitat may reduce population numbers, decrease reproductive success, or alter species distribution through habitat fragmentation.

The addition of critical habitat for these species in Hawaii may have the effect of drawing more Federal actions into formal consultation—actions that would not be subject to consultation without designated critical habitat. The reason for this is that critical habitat often includes large habitat areas that are unoccupied by the species, but could be occupied in the future. Therefore, it is possible that formal section 7 consultation may be triggered by Federal actions that trip the "may affect" threshold for consultation solely because such actions cause changes to unoccupied critical habitat.

The 245 plant species that are the subject of this notice were listed by 6the Service over a period of several years, between 1990 and 1996, at which time the Service determined that designation of critical habitat was not prudent for one or more of the following three reasons: designation of critical habitat would increase the likelihood of illegal taking or vandalism; designation of critical habitat would not be beneficial for plant species located on private property; and, designation of critical habitat for plant species located on Federal lands provides little or no additional benefit beyond the existing

precautions the Federal government must take under section 7 of the Act.

The 245 plant taxa are: *Abutilon eremitopetalum, Abutilon sandwicense, Acaena exigua, Achyranthes mutica, Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron obovatum, Alsinidendron trinerve, Alsinidendron viscosum, Amaranthus brownii, Argyroxiphium kauense, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bidens wiebkei, Bonamia menziesii, Brighamia insignis, Brighamia rockii, Canavalia molokaiensis, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce depone, Chamaesyce halemanui, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia oblongifolia* ssp. *brevipes, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Ctenitis squamigera, Cyanea asarifolia, Cyanea acuminata, Cyanea copelandii* ssp. *copelandii, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea hamatiflora* ssp. *carlsonii, Cyanea humboldtiana, Cyanea koolauensis, Cyanea lobata, Cyanea longiflora, Cyanea macrostegia* ssp. *gibsonii, Cyanea mannii, Cyanea mceldowneyi, Cyanea pinnatifida, Cyanea platyphylla, Cyanea procera, Cyanea recta, Cyanea remyi, Cyanea st.-johnii, Cyanea shipmanii, Cyanea stictophylla, Cyanea superba, Cyanea truncata, Cyanea undulata, Cyperus trachysanthos, Cyrtandra crenata, Cyrtandra cyaneoides, Cyrtandra dentata, Cyrtandra giffardii, Cyrtandra limahuliensis, Cyrtandra munroi, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra tintinnabula, Cyrtandra viridiflora, Delissea rhytidosperma, Delissea rivularis, Delissea subcordata, Delissea undulata, Diellia erecta, Diellia falcata, Diellia pallida, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Dubautia latifolia, Dubautia pauciflorula, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gahnia lanaiensis, Gardenia mannii, Geranium arboreum, Geranium multiflorum, Gouania meyenii, Gouania vitifolia, Hedyotis cookiana, Hedyotis coriacea, Hedyotis degeneri, Hedyotis mannii, Hedyotis parvula, Hedyotis st.-johnii, Hesperomannia arborescens, Hesperomannia arbuscula, Hesperomannia lydgatei, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscadelphus woodii, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Huperzia mannii, Ischaemum byrone, Isodendrion hosakae, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Kokia kauaiensis, Labordia cyrtandrae, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lepidium arbuscula, Lipochaeta fauriei, Lipochaeta kamolensis, Lipochaeta lobata* var. *leptophylla, Lipochaeta micrantha, Lipochaeta tenuifolia, Lipochaeta waimeaensis, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lycopodium nutans, Lysimachia filifolia, Lysimachia lydgatei, Lysimachia maxima, Mariscus fauriei, Mariscus pennatiformis, Marsilea villosa, Melicope adscendens, Melicope balloui, Melicope haupuensis, Melicope knudsenii, Melicope lydgatei, Melicope mucronulata, Melicope ovalis, Melicope pallida, Melicope quadrangularis, Melicope reflexa, Melicope saint-johnii, Melicope zahlbruckneri, Munroidendron racemosum, Myrsine juddii, Myrsine linearifolia, Neraudia angulata, Neraudia ovata, Neraudia sericea, Nothocestrum breviflorum, Nothocestrum peltatum, Nototrichium humile, Ocrosia kilauaensis, Panicum niihauense, Peucedanum sandwicense, Phyllostegia glabra* var. *lanaiensis, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia knudsenii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Phyllostegia waimeae, Phyllostegia wawrana, Plantago hawaiensis, Plantago princeps, Platanthera holochila, Pleomele hawaiiensis, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Portulaca sclerocarpa, Pritchardia affinis, Pritchardia aylmer-robinsonii, Pritchardia kaalae, Pritchardia munroi, Pritchardia napaliensis, Pritchardia remota, Pritchardia schattaueri, Pritchardia viscosa, Pteralyxia kauaiensis, Pteris lidgatei, Remya kauaiensis, Remya mauiensis, Remya montgomeryi, Rollandia crispa, Sanicula mariversa, Sanicula purpurea, Schiedea apokremnos, Schiedea haleakalensis, Schiedea helleri, Schiedea hookeri, Schiedea kaalae, Schiedea kauaiensis, Schiedea kealiae, Schiedea lydgatei, Schiedea membranacea, Schiedea nuttallii, Schiedea sarmentosa, Schiedea spergulina* var. *leiopoda*, Schiedea spergulina var. *spergulina, Schiedea stellarioides, Schiedea verticillata, Sesbania tomentosa, Sicyos alba, Silene alexandri, Silene hawaiiensis, Silene lanceolata, Silene perlmanii, Solanum incompletum, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne bifida, Stenogyne campanulata, Stenogyne kanehoana, Tetramolopium arenarium, Tetramolopium capillare, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Tetramolopium rockii, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Viola chamissoniana* ssp. *chamissoniana, Viola helenae, Viola kauaensis* var. *wahiawaensis, Viola lanaiensis Viola oahuensis, Wilkesia hobdyi, Xylosma crenatum, Zanthoxylum dipetalum* var. *tomentosum, and Zanthoxylum hawaiiense.*

In accordance with the U.S. District Court's August 10, 1998, order (Civil No. 97–00098ACK Conservation Council for Hawaii, *et al.* vs. Bruce Babbitt, *et al.*), the Service is hereby reconsidering the not prudent determinations that were made for these 245 plant species and is seeking any new information that may affect whether the Service proceeds with a proposal to designate critical habitat for these species.

Public Comments Solicited

Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this notice are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, vandalism, or other relevant data concerning any threat to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species;

(5) Additional information on the principal biological or physical constituent elements that are essential to the conservation of these species. These primary constituent elements may include, but are not limited to, the following: seasonal wetland or dryland, water quality or quantity, plant

pollinator, geological formation, vegetation type, and specific soil types;

(6) Information on existing management for any of these species and benefits to these species.

The decision on whether to propose critical habitat for any of the subject species will take into consideration the information received in response to this request. Proposed designations or non-designations of critical habitat will also solicit public comments, and any comments received will be considered before making a final decision.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 19, 1998.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 98–31757 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1220–00]

Correction to Description of Occupancy and Camping Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Occupancy and Camping Closure on Selected Public Lands in Clark County, Nevada.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register** Vol. 63, No. 38, page 9858 and 9859 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office announced the Closure of certain public lands in the Las Vegas Valley to occupancy and camping. The original description listed the southern boundary as generally following Lake Mead Blvd. (State Route 147). The correct description should have been *Lake Mead Drive (State Route 146).* A correction has also been made to remove certain restrictions listed in the original Closure Notice that were confusing, redundant or gave the impression of Federal enforcement of State statute. The increase in population and growth in employment in the Las Vegas area, has attracted many short term and transient residents and workers. Many of these individuals set up residence on public lands under the guise of "camping." This problem is particularly prone to occur on public lands within the urban Las Vegas Valley.

Trash accumulation and human refuse are impacting public and private lands. There are no public facilities on any of these lands. The existing 14 day camping stay limit has been effective in correcting this situation. In addition, many of these lands are now adjacent to, or included within, private residential and commercial development due to the inter-mixed public-private land ownership pattern in Law Vegas Valley. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation and prevent long-term occupancy of public lands.

EFFECTIVE DATE: Effective immediately upon publication (November 30, 1998).

Closure Area

Public Lands affective are within the following townships: All public lands within Townships 18 S to 22 S and Ranges 59 E to 64 E and certain lands in Townships 23 S and 24 S Ranger 61 E to 63 E MDM; which can generally be described as falling within the area encompassed by Lake Mead Drive (State Route 146), on the South; the Red Rock Canyon National Conservation Area Boundary; on the West; the Lee Canyon Road (State Route 156), Corn Creek Road and the southern boundary of the Desert Game Range on the North; and the Lake Mead National Recreation Area Boundary on the East.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas, Field Office, Bureau of Land Management.

Exceptions to Closure

Camping locations which may be designated by the Las Vegas Field Office Manager for over night use. Such designations may be by the posting of appropriate signs, by publications in the **Federal Register**, or be made available to the public by other means deemed appropriate by the authorized officer.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Camp or engage in camping.

b. Park, stop, or leave personal property, whether attended or unattended.

c. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to citation and impoundment at the owner's expense.

d. Take, drive, or operate any vehicle through, around or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

Definitions

"Camp" or Camping means the erection of a tent or shelter, preparing a sleeping bag or other bedding material for use, or the parking of a vehicle, motor home, or trailer for the apparent purpose of sleeping or overnight occupancy.

Personal Property includes but is not limited to bicycles, vehicles (whether propelled by living or non-living power sources), motor vehicles, trailers, tents, campers, pets, and livestock.

"Public Lands" means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts or Eskimos (43 CFR 1601.0–5(I)).

This closure order is issued under the authority of 43 CFR 8364.1. Violation of any of the terms, conditions, or restrictions contained within this closure order, may subject the violator to citation or arrest, with a penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager, or Ron Crayton, Ranger, Ken Burger, Ranger, at the Bureau of Land Management, Las Vegas, Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone number (702) 647–5000.

Dated: November 18, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98–31788 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1220–00]

Correction to Description of Shooting Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Shooting Closure on selected Public Lands in Clark County, Nevada.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register** Vol. 63, No. 38, page 9860 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office

announced the Closure of certain public lands in the Las Vegas Valley to Shooting. The original description listed the southern boundary as generally following Lake Mead Blvd. (State Route 147). The correct description should have been *Lake Mead Drive (State Route 146)*. A correction has also been made to remove certain restrictions listed in the original Closure Notice that were confusing, redundant or gave the impression of Federal enforcement of State statute. The Closure is intended to compliment and supplement an existing Clark County shooting closure. The rapid increase in population and growth of the Las Vegas Valley has created conflicts between new urban areas and traditional public land users accustomed to target shooting on public lands around Las Vegas. There have been incidents of indiscriminate shooting toward residential areas and other public land users, destruction of property, injury, and one fatality. Trash accumulation from items being used as targets are impacting public lands. This action is being taken to help ensure public safety, prevent environmental degradation, and provide consistency with the Clark County shooting closure. This Closure does not apply to hunting under the laws and regulations of the State of Nevada.

EFFECTIVE DATE: Effective immediately upon publication (November 30, 1998).

Closure Area

Public Lands affected are within the following townships: All public lands within Townships 18 S to 22 S and Ranges 59 E to 64 E and certain lands in Townships 23 S and 24 S Ranges 61 E to 63 E MDM; which can generally be described as falling within the area encompassed by Lake Mead Drive (State Route 146), on the South; the Red Rock Canyon National Conservation Area Boundary; on the West; the Lee Canyon Road (State Route 156), Corn Creek Road and the southern boundary of the Desert Game Range on the North; and the Lake Mead National Recreation Area Boundary on the East. Also included but not described above are public lands contained within the portions of the existing Clark County Shooting Closure that are outside the above boundaries (Goodsprings Township).

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas, Field Office, Bureau of Land Management, 4765 W. Vegas Drive, Las Vegas, Nevada.

Exceptions to Closure

(1) Hunting with valid state hunting license and in accordance with the laws and regulations of the State of Nevada; (2) Paintball game devices used within approved areas; and (3) Areas which may be designated by the Las Vegas Field Office Manager as target shooting areas. Such designation may be made by the publishing of notices in the local media and by the posting of appropriate signs marking the boundary of such area(s).

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Discharge any firearm.

b. Possess any firearm in violation of Federal regulations.

Definitions

Firearm: means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant or release of compressed gases.

"Public Lands" means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos (43 CFR 1601.0–5(i)).

This closure order is issued under the authority of 43 CFR 8364.1. Violations of any of the terms, conditions, or restrictions contained within this closure order, may subject the violator to citation or arrest, with penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Assistant District Manager, Recreation; Ron Crayton, Law Enforcement Ranger; and Ken Burger, Law Enforcement Ranger; Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone number (702) 647–5000.

Dated: November 18, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98–31789 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1220–00]

Correction to Description of Off-Highway Vehicle Closure of Certain Public Lands in the Las Vegas Valley Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Closure of selected Public Lands in Clark County, Nevada to use by Off-Highway Vehicles.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register**, Vol. 63, No. 38, page 9858 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office announced the Closure of certain public lands in the Las Vegas Valley to Off-Highway Vehicle (OHV) use. The original description listed the southern boundary as generally following Lake Mead Blvd. (State Route 147). The correct description should have been *Lake Mead Drive (State Route 146)*. A correction has also been made to remove certain restrictions listed in the original Closure Notice that were confusing, redundant or gave the impression of Federal enforcement of State statute. The lands included are public lands managed by the Bureau of Land Management which, due to urban expansion, are now included within or are immediately adjacent to urban areas developed for residential or business purposes. This action is being taken to reduce the amount of dust and particulate matter generated from the use of public lands, ensure health and public safety and prevent environmental degradation. This action will assist local governmental efforts to meet Environmental Protection Agency air quality standards and to reduce dust production from unpaved roads within the Las Vegas Valley Non-attainment Area.

EFFECTIVE DATE: Effective immediately upon publication (November 30, 1998).

Closure Area

Public Lands affected are within the following townships: All public lands within Townships 18 S to 22 S and Ranges 59 E to 64 E MDM and certain lands in Townships 23 S and 24 S Ranges 61 E to 63 E; which can generally be described as falling within the area encompassed by Lake Mead Drive (State Route 146), on the South; the Red Rock Canyon National Conservation Area Boundary; on the

West; the Lee Canyon Road (State Route 156), Corn Creek Road and the southern boundary of the Desert Game Range on the North; and the Lake Mead National Recreation Area Boundary on the East.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas Field Office, Bureau of Land Management, 4765 W. Vegas Drive, Las Vegas, Nevada.

Exceptions to Closure

(1) OHV use areas which may be designated by the Las Vegas Field Office Manager. Such designations may be made by the publishing of notice in the local media and by the posting of appropriate signs and marked boundaries; (2) Roads and trails designated and signed for OHV use; (3) Roads included within transportation systems managed by Clark County and/or the cities of Las Vegas, North Las Vegas, and Henderson; and (4) Official travel by government agencies.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Operate an Off-Highway Vehicle (OHV) or motor vehicle off of designated roads and/or trails.

b. Take, drive, or operate any OHV or motor vehicle through, around or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

Definitions

"Designated Road" means a road or roads identified on a map which will be available for public inspection at the Las Vegas Field Office, Bureau of Land Management.

"Designated Trails" means a trail, trails or routes, identified on a map available for public inspection at the Las Vegas Field Office, Bureau of Land Management.

"Designated Areas" means areas that are designated within the closed area by the Las Vegas Field Office Manager as OHV use areas. These areas will be signed with set boundaries. Maps will be made available at the Las Vegas Field Office.

"Off-Highway Vehicle" (OHV) means any motorized or non-motorized mechanized vehicle designed for or capable of travel off maintained roadways including but not limited to 2 and 4 wheel drives vehicles, motorcycles, ATVs, and mountain bikes. OHV as defined herein is synonymous with "Off-road Vehicle" as defined in 43 CFR Part 8440.0-5(a). Off-Highway Vehicle is the term more commonly used.

"Public Lands" means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos (43 CFR 1601.0-5(i)).

This closure order is issued under the authority of 43 CFR 8341.1 and Part 8364.1. Violation of any of the terms, conditions or restrictions contained within this closure order, may subject the violator to citation or arrest, with ■ penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Assistant District Manager, Recreation; Ron Crayton, Law Enforcement Ranger; or Ken Burger, Law Enforcement Ranger, at the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, Telephone Number (702) 647–5000.

Dated: November 18, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98–31790 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–7122–00–5513; AZA 28793; AZA 29640]

Extension of Public Comment Period for Draft Environmental Impact Statement (DEIS) for the Dos Pobres/San Juan Project Case Number AZA 28973 and AZA 29640, Safford Field Office, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of Public Comment Period.

SUMMARY: The notice published in the **Federal Register** on Thursday, September 24, 198, in Vol. 63, No. 185, page 51091, provided for the acceptance of written comments relating to the Draft Environmental Impact Statement for the Dos Pobres/San Juan Project to be accepted until November 25, 1998. This notice will extend the public comment period to December 18, 1998.

Dated: November 19, 1998.

William T. Civish,

Field Office Manager.

[FR Doc. 98–31797 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–1010–00; AZA–29861]

Notice of Availability of Final Hualapai Mountains Land Exchange Environmental Impact Statement/Plan Amendment and; Notice of Realty Action

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability and Notice of Realty Action.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended and section 102(2)(C) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kingman Field Office, Arizona, has prepared an EIS/Plan amendment to analyze the effect of a proposed land exchange and a proposed plan amendment to the Kingman Resource Management Plan. The EIS addresses the effects of a proposal to exchange approximately 70,000 acres of public land for approximately 70,000 acres of private land. The Equal Appraised Value Alternative, the BLM preferred, would result in approximately 70,000 acres coming into public ownership while transferring approximately 60,000 acres to private ownership. The proposed land exchange is entirely within Mohave County, Arizona. The amendment is needed because the Proponent selected public lands that were not identified for disposal in the Kingman Resource Management Plan by Township, Range, and Section. The plan amendment will assess impacts of proposed changes to land tenure classification decisions and resource management.

The Realty Action is in accordance with sections 1 and 7 of the Taylor Grazing Act, 43 U.S.C. 315 and 315f, the selected public lands described in the FEIS are hereby classified for disposal by exchange. This disposal classification is pursuant to the Taylor Grazing Act and the decision to amend the Kingman Resource Management Plan to re-categorize approximately 10,000 acres for disposal will follow the 30 day protest period.

DATES: Written comments will be accepted until 30 days following Environmental Protection Agency's **Federal Register** Notice of Filing. The Notice of Filing is expected to occur on December 4, 1998. The EPA Notice of Filing date also begins a 30-day protest

period for the proposed plan amendment.

Comments

Comments should be sent to the Team Leader, Hualapai Mountain Project, Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona, 86401–3629. Comments should pertain to the overall land exchange as plan protest procedures are explained below.

Plan Protest Procedures

The BLM's planning process includes an opportunity for administrative review via a plan protest to the BLM Director. This plan protest procedure is only applicable to the proposed plan amendment.

The protest must specifically address the proposal to categorize certain parcels as available for disposal (Appendix A, Part 2 of the final EIS). These parcels were not determined to be disposal lands when the Kingman Resource Management Plan (RMP) was approved in March 1995. Currently, no decision has been made on the overall exchange, so the exchange itself cannot be protested. Only the proposal to amend the Kingman RMP to place parcels (Appendix A, Part 2 of the final EIS) into the disposal category can be protested.

To protest the proposed plan amendment, file a letter of protest with: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

The overnight mail address is: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator (WO–210), 1620 L Street NW, Room 1075, Washington, DC 20036.

To expedite consideration, in addition to the original sent by mail or overnight mail, a copy of the protest may be sent by fax to (202) 452–5112 or e-mail to bhudgens@wo.blm.gov.

WO–210 will immediately acknowledge receipt of the protest and fax/e-mail a copy to the appropriate BLM State Director and the assigned field support staff. Protests filed late or filed with the BLM State Director or district, field or area manager shall be rejected by the BLM Washington Office (WO–210).

At minimum, the letter of protest must contain the following information.

1. The name, mailing address, telephone number and interest of the person filing the protest.

2. A statement of which parcel or parcels (by township, range and section) are being protested.

3. A copy of each document addressing the parcels proposed to be categorized as disposal lands, such as letters sent during the plan amendment process that addresses parcels within the proposed plan amendment.

4. A statement of reasons why the BLM State Director's proposed decision to place the lands in the disposal category is believed to be incorrect. All relevant facts need to be included in the statement of reasons. These facts, reasons and documentation are very important to understand the protest rather than merely expressing disagreement with the proposed decision.

ADDRESSES: Copies of the document are available at the following locations: Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona, 86401–3629 and Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203.

FOR FURTHER INFORMATION CALL: Don McClure, phone: (520) 692–4400.

SUPPLEMENTARY INFORMATION: The land exchange includes both public and non-public land in Mohave County in northwestern Arizona, encompassing approximately 140,000 acres. Issues that have been addressed are ranching, biological resources, socioeconomics, recreation/access, soil erosion, cultural resources, realty, riparian areas, mineral resources, and areas of critical environmental concern. Proposed modifications to the Kingman Resource Management Plan have been integrated with the proposed Hualapai Mountains Land Exchange, and the impacts thereof will be presented in a single EIS-level analysis.

Dated: November 23, 1998.

John R. Christensen,

Field Manager.

[FR Doc. 98–31760 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–09–1430–01; CACA–39899]

Notice of Realty Action; Land Use Lease of Public Lands, El Dorado County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Land Use Lease of Public Lands, CA–39899.

SUMMARY: The following described public land (surface only) located in El Dorado County is being considered for a land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 as amended (43 U.S.C. 1732):

Mount Diablo Meridian

T. 9N., R. 10E.

Sec 12: Portion of lot 1.

El Dorado County, California;

Containing .50 acre more or less.

The above parcel of public land would be leased to Betty J. Luke to resolve a trespass situation. The trespass resulted due to the construction of a home located partially on public land and removal would constitute a severe hardship for the occupant. The lease would be issued for the remainder of Mrs. Luke's life, and upon her death, all improvements would have to be removed from the public land. The rental shall be based on the appraised fair market value. The public interest will be served because it will enable the Bureau to rectify a trespass situation.

All necessary clearances, including clearances for cultural and historical resources, threatened and endangered plants and animals, will be completed on these lands prior to authorization of the lease.

This notice, as provided in 43 CFR 2201.1(b), segregates the above-described public land being considered for this exchange from settlement, location and entry under the public land laws, including the mining laws. The segregative effect shall terminate upon publication in the **Federal Register** of a termination of the segregation.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Jodi Lawson, Realty Assistant, BLM Folsom Resource Area, 63 Natoma St., Folsom, CA 95630, (916) 985–4474.

Dated: November 17, 1998.

D.K. Swickard,

Area Manager.

[FR Doc. 98–31794 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–00; N–63039]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed an application (N–63039) to withdraw 913.66 acres of public land for flood control facilities in Clark County, Nevada. This notice closes the lands for up to 2 years from surface entry and mining.

DATE: Comments and requests for meeting should be received on or before March 1, 1999.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532.

SUPPLEMENTARY INFORMATION: On November 19, 1998, the Department of the Army, Los Angeles District, Corps of Engineers, filed an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 21 S., R. 59 E.,

Sec. 3, lots 5 to 8, inclusive;
Sec. 15, lots 10, 11, 16, and 17;
Sec. 22, lots 1, 2, 7, and 8.

T. 22 S., R. 59 E.,

Sec. 13, NE¼, N½SE¼, N½S½SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼, E½SW¼SE¼SE¼, SE¼SE¼SE¼, E½NW¼SE¼SW¼, NE¼SE¼SW¼, SE¼NW¼, and NE¼SW¼.

The areas described aggregate 913.66 acres in Clark County.

The purpose of the proposed withdrawal is for the Tropicana and Flamingo Washes Flood Control Project at Las Vegas, Nevada.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested person who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

The temporary segregation of the land in connection with a withdrawal application shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Corps of Engineers.

Dated: November 23, 1998.

Michael R. Ford,

Deputy State Director, Natural Resources, Lands and Planning.

[FR Doc. 98–31758 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council, Bay-Delta Advisory Council's Ecosystem Roundtable Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will hold its next meeting in Sacramento, California on December 10, 1998. The BDAC will review, discuss and provide recommendations to the CALFED Bay-Delta Program on components of CALFED's proposed draft preferred alternative. The BDAC will be asked specifically to provide comments on CALFED's proposed water management strategy, and the proposed actions on groundwater and surface storage and on Delta conveyance options. The Bay-Delta Advisory Council's Ecosystem Roundtable will hold a workshop to discuss the FY 99 spending program in coordination with the CALFED Integration Panel on December 7, 1998. The BDAC Ecosystem Roundtable will also meet on December 11, 1998, to discuss several issues including: an implementation and tracking system update, the development of other directed funding programs including water quality, the spending plan for FY 99, funding coordination, and other issues. Should additional time be necessary to complete items listed for the December 11, 1998, meeting, an additional meeting day of December 16, 1998, has been reserved as a back-up. These meetings are open to the public. Interested persons may make oral statements to the BDAC and Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council will meet on Thursday, December 10, 1998 from 9:00 a.m.–5:00 p.m. The BDAC Ecosystem Roundtable workshop will be held from 1:00 p.m. to 4:00 p.m. on Monday, December 7, 1998. The BDAC Ecosystem Roundtable regular meeting will be held from 9:30 a.m. to 12:00 p.m. on Friday, December 11, 1998. If needed, an additional meeting will occur on December 16, 1998 from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Sacramento Convention Center, 1030 15th Street, Room 307, Sacramento, CA 95814. The BDAC Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For the Bay-Delta Advisory Council, Mary Selkirk (916) 657–2666; for the BDAC Ecosystem Roundtable, Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural Environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory

responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as Advisory Council BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 17, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–31762 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Overseas Private Investment Corporation, December 15, 1998 Board of Directors Meeting

TIME AND DATE: Tuesday, December 15, 1998, 1:00 pm (Open Portion), 1:30 pm (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 pm to 1:30 pm Closed portion will commence at 1:30 pm (approx.)

MATTERS TO BE CONSIDERED: .

1. President's Report
2. Approval of September 22, 1998 (Open Portion)
3. Appointments:
   Simon Ferro
   John J. Pikarski, Jr.
   Mark Van de Water

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Insurance Project in Philippines
2. Insurance Project in Guatemala
3. Insurance Project in Russia
4. Approval of September 22, 1998 Minutes (Closed Portion)
5. Pending Major Projects
6. Report on Worker Rights Monitoring
7. Report on Russia

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: November 25, 1998.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 98–31958 Filed 11–25–98; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Department of Justice policy, notice is hereby given that on November 24, 1998, a proposed Consent Judgment in *United States* v. *General Motors Corporation, et al.*, Civil No. 98–CV–10368 BC, was lodged in the United States District Court for the Eastern District of Michigan. The Complaint filed by the United States pursuant to section 107 of CERCLA, 42 U.S.C. 9607, sought to recover damages for injuries to natural resources in and around the Saginaw River and Saginaw Bay, as a result of releases of polychlorinated biphenyls (PCBs) from several facilities owned or operated by General Motors Corporation, the City of Saginaw, the City of Bay City, and the Michigan Department of Transportation. The State of Michigan and the Saginaw Chippewa Tribe have also filed actions in the United States District Court for the Eastern District of Michigan seeking damages from these defendants for injuries to natural resources in Saginaw River and Bay as a result of releases from defendants' facilities.

The proposed Consent Judgment would resolve claims asserted against defendants in all of the above-referenced civil actions. Under the proposed Consent Judgment, settling parties will: (1) Pay up to $10.89 million into a fund that will be used to finance the dredging and disposal of PCB-contaminated sediments from designated areas in the Saginaw River in accordance with a Dredge Plan approved by the natural resource Trustees; (2) convey certain ecologically valuable properties to the Federal, State and Tribal Trustees, who will manage the properties for the benefit of natural resources; (3) perform specified natural resource restoration activities, including measures to restore coastal wetland or lakeland prairie conditions on certain properties conveyed to the State Trustee and measures to restore fish habitat in the Tobico Marsh; (4) pay approximately $3.1 million into a fund that will be used for monitoring and other activities to evaluate the effectiveness of the activities undertaken pursuant to the Consent Judgment, or for other purposes consistent with CERCLA; (5) grant the United States Fish and Wildlife Service (USF&WS) a 99 year lease in property comprising the Greenpoint Environmental Learning Center (with an option to renew for an additional 99 years, rent free) and pay $520,000 to USF&WS for use at the Greenpoint Environmental Learning Center in restoring, replacing or acquiring the equivalent of injured natural resources; (6) pay a total of $2 million to Federal and State Trustees for past and future natural resource damage assessment and restoration costs; and (6) establish certain recreational areas. In addition, pursuant to previous agreements in principle among parties to the settlement, defendants have previously paid $260,000 into an account used to finance design of the sediment dredging and disposal work contemplated under the Consent Judgment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

concerning the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *General Motors Corporation, et al.*, D.J. Ref. No. 90–11–2–1041.

The proposed Consent Judgment may be examined at any of the following offices: (1) the United States Attorney for the Eastern District of Michigan, 203 Federal Building, 106 Washington Street, Bay City, MI 48708 (contact Assistant United States Attorney Michael Hluchaniuk); (2) the United States Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823 (contact Lisa Williams); and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Consent Judgment may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, telephone (202) 624–0892. For a copy of the Corfsent Judgment, please enclose a check in the amount of $58.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–31861 Filed 11–27–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that two collections of information have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval numbers and expiration dates.

FOR FURTHER INFORMATION CONTACT: Renee Carter, Office of General Industry Compliance Assistance, Directorate of Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 693–1850.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1997, (62 FR 60284–60285), and February 3, 1998, (63 FR 5572–5573), the Agency announced its intent to request revision of a currently approved collection for the Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes (29 CFR part 24) and a reinstatement of its OMB approval for the Notice of Alleged Safety and Health Hazards, OSHA–7 Form. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved both information collections and assigned OMB control number 1218–0236 to the Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes and number 1218–0064 to the Notice of Alleged Safety and Health Hazards, OSHA–7 Form. The approvals expire April 30, 2001 and September 30, 2001, respectively.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: November 19, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–31785 Filed 11–27–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–164]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before December 30, 1998.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith, Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: NASA Form 1018.

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of Review: Extension.

Need and Uses: NASA is required to account for Government-owned/contractor-held property in accordance with SFFAS #6. Contractors' records are the official Government property records. NASA Form 1018 provides for the annual collection of summary data from these records to ensure the accurate reflection of Agency assets and related depreciation on the financial statements and essential property management information.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 1400.

Responses Per Respondent: 1.

Annual Responses: 1400.

Hours Per Request: 400@16 hrs ea, 1000 @ 2hrs ea.

Annual Burden Hours: 8,400.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–31690 Filed 11–27–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Reassessment of Support for Arts Organizational Resources

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of Availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to assist in a reassessment of the Endowment's support for arts organizational resources. The project as envisioned will include: convening a series of colloquia; conducting research; assessing the impact of past awards on 12 grantee organizations; synthesizing colloquium discussions, related papers and research; and, preparing a report detailing potential options for future National Endowment for the Arts organizational support. Those interested in receiving the Solicitation should reference Program Solicitation PS 99–01 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will be honored.

DATES: Program Solicitation PS 99–01 is scheduled for release approximately

December 15, 1998 with proposals due on January 20, 1999.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreement and Contracts.

[FR Doc. 98–31795 Filed 11–27–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 21, 1998, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 19, 1998 to the following applicant:

Jerry L. Mullins Permit No. 99–013

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 98–31821 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Advanced Networking Infrastructure Research (#1207).

Date & Time: Janaury 14 and 15, 1999; 8:30 AM–5:00 PM.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Tatsuya Suda, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Special Projects Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 28, 1998.

M. Rebecca Sinkler,

Committee Management Officer.

[FR Doc. 98–31724 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Galactic Astronomy Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 15 and 16, 1998, (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Eileen Friel, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, Room 1030, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1826.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidental nature, includng technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1998.

Mr. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31721 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences #1754).

Date and Time: December 17th, 1998, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 615, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Gerald Selzer, Program Director, Living Stock Collections, Room 615, National Science Foundation, 4201 Wilson Boulevard, Va 22230 Telephone: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the Living Stock Collections program announcement (NSF 97–80).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: Novembert 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31722 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: December 14, 15, 16, and 17, 1998, 8:00 a.m.-5:30 p.m.

Place: Rooms 310, 320, 330, 340, 360, 370, 380, 390, 680, and 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ming Leu, Program Director, Manufacturing, Machines, and Equipment, Dr. Delcie Durham, Program Director, Material Processes and Manufacturing, Dr. George A. Hazelrigg, Program Director, Design and Integration Engineering, Dr. Larry Seiford, Program Director, Operations Research and Production Systems, (703), 306-1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recmmendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals assoicated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31725 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: December 14–16, 1998; 8:30 A.M. until 5:00 P.M.

Place: Rooms 320, 1020, 1060, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Keith N. Crank, James Rosenberger, and Javier Rojo, Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice to Program Officers concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Statistics and Probability Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31723 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: April 24, 1998.

Brief description of amendment: The amendment proposes to revise the Technical Safety Requirements (TSRs) which specify the C–310, C–315, and C–360 facilities crane design features credited for safety. The proposed change will specify the design requirement for the crane brakes as opposed to listing the specific type of brake for each

facility crane. USEC is committing to ANSI B30.2–1990. "Overhead and Gantry Cranes" for the hoist brakes on the cranes.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed changes to revise the design requirements for the cranes in C–310, C–315, and C–360 have no effect on the generation or disposition of effluents. Therefore, the proposed TSR modifications will not result in a change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed TSR revisions will not change or increase maintenance, testing or operational requirements for the affected equipment; implementation of the revised TSRs will not increase exposure. The changes do not relate to controls used to minimize occupational radiation exposures. Therefore, the changes will not result in a significant increase in individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any building construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed TSR changes involve a change to the description of the safety features on the cranes in the withdrawal and toll transfer and sampling facilities. The current TSRs specify the type of brakes on the cranes. The proposed TSR would require that the brake designs comply with the requirements of the standard on cranes (ANSI B30.2–1990). The brakes will continue to perform their safety function. The change to the design requirements does not increase the probability of occurrence or consequences of any postulated accident currently identified in the safety analysis report.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed TSR modifications will require the brakes to comply with ANSI B30.2–1990. The brakes will continue to perform their safety function. The specific type of brake required will no longer be specified in the TSR. The proposed changes will not create the possibility of a new or different type of equipment malfunction or a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed TSR changes involve a change to the description of the brake safety feature. Instead of specifying the type of brake, the TSR will commit to a brake design that complies with the requirements of the industry standard for cranes (ANSI B30.2–1990). Although the previous brake designs complied with the standard, it was not required by the TSR. The safety function of the brakes remains unchanged and the brakes will continue to perform their safety function. As such, the changes do not decrease the margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: Amendment will revise TSRs 2.1.5.2 and 2.3.5.2 to change the design requirement for the crane brakes in the C–310, C–315, and C–360 facilities.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31812 Filed 11–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley Authority (the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would include provisions in Technical Specification (TS) 4.3 which allows for the storage of fuel assemblies having a maximum nominal enrichment of 5.0 weight percent (w/o) Uranium 235 (U–235) in the new fuel storage racks and would revise requirements governing the placement of fuel assemblies in the new fuel storage pit. The proposed action is in accordance with the licensee's application for amendment dated May 6, 1998, as supplemented on June 5, 1998.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel assemblies enriched to a maximum nominal of 5.0 w/o U–235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with increased fuel burnup, may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts on the uranium fuel cycle and transportation resulting from the use of higher enrichment fuel and extended irradiation were discussed in the NRC staff Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on February 29, 1988 (53 FR 6040). These impacts were also discussed in the staff

assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988. This assessment was published in connection with an Environmental Assessment related to the Shearon Harris Nuclear Plant, Unit 1, which was published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322). As indicated therein, the environmental cost contribution of an increase in the fuel enrichment of up to 5.0 w/o percent U–235 and irradiation limits of up to 60,000 gigawatt days per metric ton (GWD/MT) are either unchanged or may, in fact, be reduced from those summarized in 10 CFR 50.51(b), Table S–3, and in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed increase at Watts Bar given that the proposal involves fuel enrichment of up to 5.0 w/o U–235 and burnup of less than 60,000 GWD/MT. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential non-radiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment (no-action alternative). This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for WBN, Units 1 and 2, dated April 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on October 22, 1998, the staff consulted with the Tennessee State official, Mr. E. Nanney of the Division of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The staff has reviewed the proposed modification to WBN, Unit 1, TS relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff has concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the proposed action, see the licensee's letter dated May 6, 1998, as supplemented by letter dated June 5, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31813 Filed 11–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on December 16–17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

A portion of this meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, December 16, 1998—8:30 a.m. until the conclusion of business.

Thursday, December 17, 1998—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the application of the Westinghouse Electric Company's WCOBRA/TRAC best-estimate large-break LOCA code to nuclear power plants with upper head plenum injection; the NRC Thermal-Hydraulic Code Review Action Plan; and the status of the NRC thermal-hydraulic research program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of Westinghouse, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 23, 1998.

Noel F. Dudley,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–31811 Filed 11–27–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of November 1, 1998, of one rescission proposal that has been pending for more than 45 days and was contained in a special message for FY 1998 and two deferrals contained in the first special message for FY 1999. These messages were transmitted to Congress on July 24, and October 22, 1998.

Rescissions (Attachments A and C)

As of November 1, 1998, one rescission proposal totaling $5.2 million had been transmitted to the Congress. Attachment B shows the status of the FY 1998 rescission proposals.

Deferrals (Attachments B and D)

As of November 1, 1998, $168 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information from Special Messages

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the edition of the **Federal Register** cited below:

63 FR 41303, Monday, August 3, 1998. As of this date, the October 22, 1998, special message has not been published.

Jacob J. Lew,

Director.

ATTACHMENT A—STATUS OF FISCAL YEAR 1999 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	5.2
Rejected by the Congress	

ATTACHMENT A—STATUS OF FISCAL YEAR 1999 RESCISSIONS—Continued

[In millions of dollars]

	Budgetary resources
Currently before the Congress	5.2

ATTACHMENT B—STATUS OF FISCAL YEAR 1999 DEFFERALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	167.6
Routine Executive releases through November 1998 (OMB/Agency releases of $0)	
Overturned by the Congress	
Currently before the Congress	167.6

ATTACHMENT C—STATUS OF FISCAL YEAR 1999 RESCISSION PROPOSALS—AS OF NOVEMBER 1, 1998

[Amounts in thousands of dollars]

Agency/Bureau/Account	Amounts pending before Congress			Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
	Rescission No.	Less than 45 days	More than 45 days					
Department of the Interior								
Bureau of Land Management								
Mineral leasing and associated payments.	R98–25		5,200	7–24–98	5,200	10–16–98		
Total, Rescissions		0	5,200		5,200		0	

ATTACHMENT D—STATUS OF FISCAL YEAR 1999 DEFRERALS—AS OF NOVEMBER 1, 1998

[Amounts in thousands of dollars]

Agency/Bureau/Account	Deferral No.	Amounts transmitted		Date of message	Releases(–)		Congressional action	Cumulative adjustments	Amount deferred as of 11–1–98
		Original request	Subsequent change(+)		Cumulative OMB/agency	Congressionally required			
Department of State									
Other									
United States emergency refugee and migration assistance fund.	D99–1	82,858		10–22–98					82,858

ATTACHMENT D—STATUS OF FISCAL YEAR 1999 DEFRERALS—AS OF NOVEMBER 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/Bureau/Account	Deferral No.	Amounts transmitted		Date of message	Releases(−)		Congressional action	Cumulative adjustments	Amount deferred as of 11–1–98
		Original request	Subsequent change(+)		Cumulative OMB/agency	Congressionally required			
International Assistance Programs International Security Assistance Economic support fund.	D99–2	84,777		10–22–98					84,777
Total, Deferrals.		167,635	0		0			0	167,635

[FR Doc. 98–31727 Filed 11–27–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26943]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

November 20, 1998.

Notice is hereby giving that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) and any amendment is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 15, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 15, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–9021)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and AEP Resources, Inc. ("Resources"), a subsidiary of AEP (collectively "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43125, have filed a post-effective amendment to an application-declaration filed under sections 6(a), 7, 9(a), 13(b), 32 and 33 of the Act and rules 45 and 54 under the Act.

By order dated April 27, 1998 (HCAR No. 26864), the Commission authorized AEP to use the net proceeds of common stock sales and borrowings to acquire interests in, and to issue guarantees of, the obligations of exempt wholesale generators, as defined under section 32 of the Act ("EWGs"), and foreign utility companies, as defined under section 33 of the Act ("FUCOs" and together with EWGs, "Exempt Projects"). Under that order, the aggregate amount of such sales, borrowing and guarantees would not, when added to AEP's "aggregate investments" (as defined in section 32) in all Exempt Projects, exceed 100% of AEP's "consolidated retained earnings" (as defined in section 32).

Applicants now request authority to make investments, through December 31, 2000, in Exempt Projects, directly or indirectly through one or more subsidies ("Intermediate Subsidiaries"). Any direct or indirect investment in an Intermediate Subsidiary holding an interest in an Exempt Project will be treated for purposes of rule 53 under the Act as if it were an investment in the Exempt Project.

In addition, Applicants request authority to provide preliminary project development, marketing, management and administration services and related goods to nonassociates through one or more subsidiaries organized exclusively for this purpose ("Special Purpose Subsidiaries"). Resources also requests authority to provide these goods and services to nonassociates. All services and goods rendered by Special Purpose Subsidiaries and Resources to nonassociates will be priced at fair market value. Also, Applicants propose that Intermediate Subsidiaries and Special Purpose Subsidiaries provide these respective services and goods to any subsidiary of Resources that is an Exempt Project or qualifying facility at fair market prices, under an exemption from the at cost standards of section 13(b).

Further, Applicants request authority directly or indirectly to acquire, through December 31, 2000, interests in one or more financing subsidiaries ("Finance Subsidiaries"). The Finance Subsidiaries would be wholly owned by Intermediate Subsidiaries. The exclusive function and business activity of any Finance Subsidiary will be to issue securities and loan the proceeds to the Intermediate Subsidiary. Issuances of securities by the Finance Subsidiaries and borrowings by the Intermediate Subsidiary of the proceeds of those issuances will comply with rule 52 under the Act.

CMP Group, Inc., et al (70–9367)

CMP Group, Inc. ("CMP Group"), a Maine electric public utility holding company exempt under section 3(a)(1) from all provisions of the Act, except

section 9(a)(2),[1] and New England Gas Development Corporation ("New England Gas"), a wholly owned nonutility subsidiary of CMP Group, both located at 83 Edison Drive, Augusta, Maine 04336, have filed an application under sections 9(a)(2) and 10 of the Act.

CMP Group requests authority to acquire, through New England Gas, up to 50% of the membership interests in CMP Natural Gas, L.L.C. ("Maine GasCo"), a Maine limited liability company.[2] New England Cas requests an order under section 3(a)(1) exempting it from all provisions of the Act, except section 9(a)(2), following the proposed acquisition. In addition, CMP Group requests an order under section 3(a)(1) granting it an exemption from all provisions of the Act, except section 9(a)(2), following the proposed acquisition.

CMP Group's principal utility subsidiary, Central Maine Power Company ("CMP"), is an investor-owned public utility company primarily engaged in the business of generating, purchasing, transmitting, distributing and selling electricity to wholesale customers and retail customers in Maine. CMP is the largest electric utility in Maine and serves approximately 528,000 customers in its 11,000 square-mile service area in southern and central Maine. CMP had approximately $954 million in consolidated electric operating revenues in 1997. CMP is subject to the regulatory authority of the Maine Public Utilities Commission ("MPUC").

CMP is also a Maine electric public utility holding company exempt under section 3(a)(1) from all provisions of the Act, except section 9(a)(2). CMP currently has three utility subsidiaries, each of which is organized and operates almost exclusively in Maine: Maine Electric Power Company, Inc. ("MEPCo"), Aroostook Valley Electric Company ("AVEC"), and NORVARCO. MEPCo owns and operates a 345–kV transmission interconnection between the Maine-New Brunswick, Canada international border at Orient, Maine. AVEC owns and operates a 31–MW wood-fired generating plant in Fort Fairfield, Maine, the output of which is sold to CMP.[3] NORVARCO is one of two general partners in Chester SVC Partnership, a general partnership which owns certain transmission assets in Chester, Maine, adjacent to MEPCo's transmission interconnection described above.[4]

CMP Group owns, directly or indirectly, the following nonutility subsidiaries: CNEX (formerly CMP International Consultants), MaineCom Services, Inc., MainePower, TeleSmart, The Union Water-Power Company ("Union Water"),[5] Central Securities Corporation, Cumberland Securities Corporation, Kennebec Hydro Resources, Inc. ("Kennebec Hydro"),[6] Water Power Company ("Kennebec Water") and The Gulf Island Pond Oxygenation Project ("GIPOP").[7] These subsidiaries are engaged in utility support services (such as training, research, project management and technical consulting), telecommunications, river facilities management, administrative services, and real estate activities. MainPower is currently preparing to operate as a competitive energy marketer once electric competition commences in Maine.

The MPUC has authorized Maine GasCo to furnish natural gas service, on a non-exclusive basis, in certain areas of Maine not currently receiving natural gas service. Maine GasCo plans to construct, own and operate a local natural gas distribution system in Maine consistent with the MPUC authorization. When fully developed, Maine GasCo expects to derive at least 50% of its supply of natural gas from the Western Canadian Sedimentation Basin via the TransCanada Pipeline and the proposed Portland Natural Gas Transmission System Pipeline. As a public utility under Maine law, Maine GasCo will be subject to regulation by the MPUC as to rates and other matters.

New England Gas and Energy East Enterprises, Inc. ("EEC Enterprises"), the other proposed member of Maine GasCo, are parties to a Joint Venture Agreement dated as of November 13, 1997, as amended ("Joint Venture Agreement"), which provides for, among other things, the formation of Maine GasCo. Each member's ownership interest is subject to adjustment under the terms of the Joint Venture Agreement. The Joint Venture Agreement establishes a management committee consisting of three New England Gas appointees and three EEC Enterprises appointees and generally vests a designated manager, who will be located in Maine, with exclusive authority to manage the business of Maine GasCo within the limitations contained in the Joint Venture Agreement. The Joint Venture Agreement authorizes the manager to perform any and all acts customary or incident to the business of Maine GasCo. The Joint Venture Agreement also authorizes the manager to delegate authority and to hire or contract for appropriate and necessary services. Certain actions may be taken by the manager only upon the affirmative vote of a majority of the members of the management committee. The Joint Venture Agreement provides for the resolution of stalemates or impasses among the management committee by appeal to the chief executive officers of the Maine GasCo members, and by arbitration in the event that the chief executive officers of the members of Maine GasCo are unable to resolve the impasse.

CMP Group states that Maine GasCo's affiliate with CMP Group is expected to result in economies of scale and efficiencies in several areas. These include: (i) Meter installation and reading operations; (ii) information systems and telecommunications; (iii) billing support; and (iv) customer call center operations. The Applicants also expect significant administrative economies and efficiencies to result from the provision by CMP Group's subsidiaries of corporate services, such

[1] CMP Group is exempt under section 3(a)(1) of the Act by order of the Commission dated August 7, 1998 (HCAR No. 26903).

[2] The remaining membership interests of Maine GasCo will be held by Energy East Enterprises, Inc., a wholly owned subsidiary of Energy East Corporation, an exempt public utility holding company and the parent holding company of New York State Electric & Gas Corporation, an electric and gas utility company. Energy East Corporation and Energy East Enterprises, Inc. have an application pending before the Commission, in File No. 70–9369, for an order authorizing, among other things, their acquisition of membership interests in Maine GasCo.

[3] CMP has reached an agreement with a nonassociate, FLP Group, to sell its interests in AVEC, as part of a sale of substantially all of its nonnuclear assets.

[4] CMP also owns a 38% common stock interest in Maine Yankee Atomic Power Company, which owns the Maine Yankee nuclear electric generating plant in Wiscasset, Maine. The Maine Yankee plant was permanently shut down on August 6, 1997. In addition, CMP owns (i) a 9.5% common stock interest in Yankee Atomic Electric Company, which has permanently shut down its plant located in Rowe, Massachusetts, (ii) a 6% common stock interest in Connecticut Yankee Atomic Power Company, which has permanently shut down its plant in Haddam, Connecticut, and (iii) a 4% common stock interest in Vermont Yankee Nuclear Power Corporation, which owns a nuclear plant in Vernon, Vermont. Under a joint ownership agreement, CMP also has a 2.5% direct ownership interest in the Millstone 3 nuclear unit in Waterford, Connecticut.

[5] Union Water owns 25% of the voting stock of Androscoggin Reservoir Company, which owns a storage reservoir and dam on the Androscoggin River and owns real estate and other facilities at Aziscohos Dam in northwestern Maine that it leases to a qualifying facility. Union Water's interest in Androscoggin Reservoir Company will be sold to a nonassociate, FPL Group.

[6] Kennebec hydro owns a 50% interest in The Merimil Limited Partnership, which owns a qualifying facility.

[7] CMP has agreed to sell its interests in Kennebec hydro, Kennebec Water and GIPOP to a nonassociate, FPL Group.

as accounting, financial planning and analysis, financial reporting, human resources, regulatory affairs, insurance, legal, payroll, purchasing, tax, training, treasury, transportation, real estate, facilities management and engineering, construction and environmental services.

Applicants state that CMP Group will continue to qualify for exemption under section 3(a)(1) of the Act as an "intrastate" holding company, and that New England Gas will also qualify for this exemption, after acquiring Maine GasCo's voting securities. CMP Group and New England Gas state that they, and their public utility subsidiaries, will be predominantly intrastate in character and will carry on their business substantially in Maine, the state in which they are all organized.

Energy East Corporation, et al. (70–9369)

Energy East Corporation ("EEC"), a New York public utility holding company exempt under section 3(a)(1) from all provisions of the Act, except section 9(a)(2),[8] and Energy East Enterprises, Inc. ("EEC Enterprises"), a wholly owned nonutility subsidiary of EEC, both located at P.O. Box 12904, Albany, New York 12212–2904, have filed an application under sections 9(a)(2) and 10 of the Act.

EEC requests authority to acquire, through EEC Enterprises, at least 50% of the membership interests in CMP Natural Gas, L.L.C. ("Maine GasCo"), a Maine limited liability company.[9] EEC Enterprises requests an order under section 3(a)(1) exempting it from all provisions of the Act, except section 9(a)(2), following the proposed acquisition. In addition, EEC requests an order under section 3(a)(1) for an exemption from all provisions of the Act, except section 9(a)(2), following the proposed acquisition.

EEC's utility subsidiaries are New York State Electric & Gas Corporation ("NYSEG") and NGE Generation, Inc. ("NGE Generation"). NYSEG is a combination electric and gas utility company engaged in the business of generating, transmitting and distributing electricity, as well as transporting and distributing natural gas, in central, eastern and western parts of New York. NYSEG provides electricity to approximately 815,000 customers and provides natural gas to approximately 240,000 customers. In providing these services, NYSEG is subject to the regulatory authority of the New York Public Service Commission with respect to retail rates charged and to regulation by the Federal Energy Regulatory Commission with respect to wholesale rates.

NYSEG has transportation and/or storage contracts with eight major interstate pipelines, two major intrastate pipelines, the TransCanada Pipeline and four New York local distribution companies. Approximately 28.5% of NYSEG's gas supply originates from the Western Canadian Sedimentation Basin, 63.0% from the Texas and Louisiana basins, 7.2% from Appalachia and 1.3% from other sources. The natural gas NYSEG receives from the Western Canadian Sedimentation Basin is delivered through the TransCanada Pipeline.

NGE Generation was organized to engage in the generation business. NGE Generation currently owns 50% of the Homer City generating station and owns and operates the Kintigh, Milliken, Groudey, Greenidge, Hickling and Jennison generating stations and certain associated assets and liabilities ("Generation Assets").[10]

NYSEG has two direct nonutility subsidiaries. These are Somerset Railroad Corporation, which owns a rail line used to transport coal and other materials to one of NYSEG's generating plants, and NGE Enterprises, Inc. NGE Enterprises, Inc. owns interests in various companies engaged in power marketing, environmental and conservation engineering and consulting, energy-related financial services, energy usage information services, demand-side management services, utility-related software development, and energy management services.

The Maine Public Utility Commission ("MPUC") has authorized Maine GasCo to furnish natural gas service, on a non-exclusive basis, in certain areas of Maine not currently receiving natural gas service. Maine GasCo plans to construct, own and operate a local natural gas distribution system in Maine consistent with the MPUC authorization. When fully developed, maine GasCo expects to derive at least 50% of its supply of natural gas from the Western Canadian Sedimentation Basin via the TransCanada Pipeline and the proposed Portland Natural Gas Transmission System Pipeline. As a public utility under Maine law, Maine GasCo will be subject to regulation by the MPUC as to rates and other matters.

EEC Enterprises and New England Gas Development Corporation ("New England Gas"), the other proposed member of Maine GasCo, are parties to a Joint Venture Agreement dated as of November 13, 1997, as amended ("Joint Venture Agreement"), which provides for, among other things the formation of Maine GasCo. Each member's ownership interest is subject to adjustment under the terms of the Joint Venture Agreement. The Joint Venture Agreement establishes a management committee consisting of three EEC Enterprises appointees and three New England Gas appointees and generally vests a designated manager, who will be located in Maine, with exclusive authority to manage the business of Maine GasCo within the limitations contained in the Joint Venture Agreement. The Joint Venture Agreement authorizes the manager to perform any and all acts customary or incident to the business of Maine GasCo. The Joint Venture Agreement also authorizes the manager to delegate authority and to hire or contract for appropriate and necessary services. Certain actions may be taken by the manager only upon the affirmative vote of a majority of the members of the management committee. The Joint Venture Agreement provides for the resolution of stalemates or impasses among the management Committee by appeal to the chief executive officers of the Maine GasCo members, and by arbitration in the event that the chief executive officers of the Maine GasCo members are unable to resolve the impasse.

Applicants state that they believe the proposed acquisition will provide significant financial and organizational advantages to Maine GasCo. Applicants further state that NYSEG's experience in operating a local natural gas distribution system will enable Maine GasCo to construct a safe and efficient system of its own.

Applicants state that EEC will continue to qualify for exemption under section 3(a)(1) of the Act as a New York "intrastate" holding company, and EEC Enterprises will qualify for exemption

[8] EEC is exempt under section 3(a)(1) of the Act by order of the Commission dated March 4, 1998 (HCAR No. 26834).

[9] The remaining membership interests of Maine GasCo will be held by New England Gas Development Corporation, a wholly owned subsidiary of CMP Group, Inc., an exempt public utility holding company and the parent holding company of Central Maine Power Company, an electric utility company. CMP Group, Inc., and New England Gas Development Corporation have an application pending before the Commission, in File No.

[10] Among its other activities, NGE Generation sells some electricity at wholesale from certain of its generating stations into the Pennsylvania-New Jersey-Maryland Interconnection ("PJM Power Pool") which sales in 1997 accounted for less than 5% of NYSEG's total operating revenues. In August 1998, NGE Generation accepted offers to sell the Generation Assets to The AES Corporation and Edison Mission Energy. After consummation of the sale of the Generation Assets, NGE Generation will no longer make these sales into the PJM Power Pool.

as a Maine "intrastate" holding company, after acquiring Maine GasCo's voting securities, because both EEC and EED Enterprises, and their respective public utility subsidiaries, will be predominantly intrastate in character and will carry on their business substantially in their respective states of organization.

EUA Energy Investment Corporation (70–9385)

EUA Energy Investment Corporation ("EEIC"), P.O. Box 2333, Boston Massachusetts 02107, a nonutility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rules 45 and 54.

By orders dated December 4, 1987 and January 11, 1988 (HCAR Nos. 24515 and 24515A, respectively) the Commission authorized EEIC, among other things, to conduct energy and energy conservation research and to invest, directly or indirectly up to $2 million in these activities.

By order dated June 6, 1996 (HCAR No. 26529; ("June 1996 Order"), the Commission authorized EEIC to invest, through December 31, 1998, approximately $4 million to acquire approximately 1,053,630 shares of common stock of Separation Technologies, Inc., ("STI"). STI is engaged in the research, development, design, sale, installation, construction and servicing of solid and liquid materials separation systems and facilities including, without limitation, a system for economically separating unburned carbon from coal (or fly) ash produced by utility generation plants.

The Commission, in the June 1996 Order also authorized EEIC, through December 31, 1998, to make project financing available up to an aggregate principal amount of $15 million for the installation and construction of STI fly ash separation projects. The Commission authorized that the financing by EEIC was to be provided through joint arrangements between EEIC and STI at locations where STI equipment would be installed. EEIC's investment in these utility locations was anticipated to range between $0.5 million and $2.5 million per installation. EEIC's investments in these projects with STI would take the form of, without limitation, joint ventures, general partnerships, limited partnerships, teaming agreements, royalties or other revenue sharing, special purpose entities, loans and equity participations. The aggregate amount of the project investments currently outstanding totals $2,875 million. Since the issuance of the June 1996 Order, EEIC has determined that in certain circumstances, instead of project investments, it may also be desirable to make additional direct investments in STI.

EEIC proposes, through December 31, 2002, to provide financial assistance to STI in the form of project financing up to an additional principal amount of $15 million under the terms and conditions stated in the June 1996 Order. EEIC's direct investments may take the form of the purchase of additional securities of STI, short- or long-term loans, open account advances or capital contributions.

The Southern Company (70–9393)

The Southern Company ("Southern"), a registered holding company under the Act, has filed an application under sections 9(a) and 10 of the Act and rule 54 under the Act.

Southern proposes to purchase from Chesapeake Utilities Corporation 218,464 shares of the common stock, par value $1.50 per share ("Shares"), of Florida Public Utilities Company, a nonaffiliate electric and gas utility company ("FPU"), at a price of $16.50 per Share, or a total of approximately $3.6 million. The Shares represent approximately 7.3% of the outstanding common stock of FPU. Their acquisition would cause FPU to be an affiliate of Southern.

FPU provides natural and propane gas service, electric service and water service to consumers in Florida. The company has four divisions. One division provides retail natural gas services to approximately 28,000 customers in southeast Florida, and another division provides this service to approximately 8,000 customers in middle Florida. A third division provides electricity at retail to approximately 12,000 customers in the Florida panhandle, and a fourth division provides this service to approximately 12,000 customers in extreme northeast Florida.

Interstate Energy Corporation (70–9395)

Interstate Energy Corporation ("Interstate"), a registered holding company, and its nonutility subsidiary, Alliant Industries ("Alliant"), both located at 222 West Washington Avenue, Madison, Wisconsin 53703–0192, and Alliant's nonutility subsidiary, Whiting Petroleum Corporation ("Whiting Petroleum"), located at 1700 Broadway, Suite 2300, Denver, Colorado 80290, (collectively "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

Alliant serves as the holding company for Interstate's energy-related and nonutility investments and subsidiaries. Whiting Petroleum purchases, develops, and produces crude oil and natural gas. It currently has an interest in 333 wells in Oklahoma and is operator of 29 wells.

Interstate requests authority to acquire all of the issued and outstanding common stock of Golden Gas Production Company ("Golden Gas"), an independent oil and gas producer located in Oklahoma, for an amount of Interstate common stock ("Interstate Stock") equal in value to approximately $9.5 million ("Sale Price"), subject to adjustment. Golden Gas' assets consist primarily of interests in 240 gas and oil wells, most of which are in Oklahoma. For the year ended December 31, 1997, Golden Gas had revenues of $4.4 million and net income of $662,000. Golden Gas does not own or operate any facilities used for the distribution at retail of natural of manufactured gas.

In accordance with an Agreement and Plan of Reorganization among Interstate, Whiting Petroleum, Golden Gas and Alan R. Staab, sole shareholder of Golden Gas ("Shareholder"), dated September 15, 1998 (the "Agreement"), Interstate would acquire from Shareholder all of the issued and outstanding common stock shares of Golden Gas ("Golden Gas Shares") through a tax-free exchange of these shares for Interstate Stock. in order to accomplish the exchange, Interstate requests authority to issue shares of Interstate Stock up to the amount described below.

Under the Agreement, the number of shares of Interstate Stock used to purchase the Golden Gas Shares would be determined by dividing the Sale Price by $32. In addition, if the Market Price (as defined in the Agreement) of the Interstate Stock is less than $32 per share on the date of closing, the Shareholder will be entitled to receive an additional number of shares of Interstate Stock on the second anniversary of the date of the Agreement. This additional amount will represent the difference, if any, between $32 per share and the greater of (i) the average of the trading prices for Interstate Stock for the 90 days immediately preceding that second anniversary ("Average Trading Price"), or (ii) the Market Price, provided that in no event would the difference exceed $4 per share. The Shareholder will not be entitled to any additional shares of Interstate Stock if the Average Trading Price for the Interstate Stock exceeds $32.

Interstate has reserved 246,875 unissued shares of Interstate Stock to be exchanged at closing for the Golden Gas Shares, representing, on a pro forma basis, about .32% of the issued and outstanding shares of Interstate Stock as of July 31, 1998. In addition, Interstate has reserved 35,268 shares of Interstate Stock, representing the maximum number of shares of Interstate Stock required to be delivered to Shareholder on the second anniversary date of the Agreement.

Whiting Petroleum will manage the oil and gas assets of Golden Gas. In order to facilitate this plan, Interstate proposes to contribute the Golden Gas Stock to Alliant, and Alliant proposes to contribute those shares to Whiting Petroleum.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31715 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23543; 813–188]

Sixty Wall Street Fund, L.P. et al.; Notice of Application

November 20, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 ("Act") exempting the applicants from all provisions of the Act, except section 9, sections 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)) and 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants request an order superseding a prior order [1] to exempt certain limited partnerships formed for the benefit of key employees of J.P. Morgan & Co. Incorporated ("JP Morgan") and its affiliates from certain provisions of the Act. Each partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

APPLICANTS: Sixty Wall Street Fund, L.P. ("Master Partnership"), Sixty Wall Street SBIC Fund, L.P. ("SBIC Partnership"), and JP Jorgan on behalf of other partnerships or other investment vehicles that may be formed in the future (together, with the Master Partnership and the SBIC Partnership, the "Partnerships").

FILING DATES: The application was filed on October 30, 1997. Applicants have agreed to file a amendment to the application, the substance of which is reflected in this notice during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o J. Edmund Colloton, J.P. Morgan Capital Corporation, 60 Wall Street, New York, New York 10260.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. JP Morgan Group, as defined below, is a global financial firm. J.P. Morgan Securities Inc., a wholly-owned subsidiary of JP Morgan, is the principal broker-dealer affiliate of JP Morgan and is registered under the Securities Exchange Act of 1934 ("Exchange Act"). JP Morgan and its affiliates, as defined in rule 12b–2 of the Exchange Act, are referred to in this notice collectively as "JP Morgan Group" and individually as a "JP Morgan Group entity."

2. Applicants propose to offer various investment programs for the benefit of certain key employees of JP Morgan Group. The programs may be structured as different Partnerships or as separate plans within the same Partnership. Each Partnership will be a limited partnership or limited liability company formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of JP Morgan Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. Sixty Wall Street Corporation, a Delaware corporation, will act as the general partner of the Master Partnership and Sixty Wall Street SBIC Corporation, a Delaware corporation, will act as general partner of SBIC Partnership (together with any affiliate that controls, is controlled by or is under common control with JP Morgan and that acts as a Partnership's general partner, the "General Partner"). The General Partner will manage and operate each of the Partnerships. The General Partner will be authorized to delegate management responsibility to JP Morgan Group or to a committee of JP Morgan Group employees. A JP Morgan Group entity will act as the investment adviser to a Partnership and will be registered as an investment adviser under the Investment Advisers Act of 1940.

4. Interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act"), or Regulation D under the Securities Act, and will be sold without a sales load only to "Eligible Employees" and "Qualified Participants," in each case as defined below, or to JP Morgan Group (collectively, "Participants"). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (i) an individual who is a current or former employee, officer, director, or "Consultant" of JP Morgan Group and, except for certain individuals who manage the day-to-day affairs of the Partnership in question ("Managing Employees"), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (ii) an entity

[1] Sixty Wall Street Fund 1995, L.P., *et al.*, Investment Company Act Release Nos. 21451 (Oct. 25, 1995) (notice) and 21536 (Nov. 21, 1995) (order).

that is a current or former "Consultant" of JP Morgan Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[2] Eligible Employees will be experienced professionals in the banking and financial services businesses, or in related administrative financial, accounting, legal, or operational activities.

5. Managing Employees, who also will qualify as Eligible Employees, will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the Participants in the Partnership, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions by the General Partner. Each Managing Employee will (a) be closely involved with and knowledgeable with respect to the Partnership's affairs, (b) be an officer or employee of JP Morgan Group, and (c) have reportable income from all sources (including any profit sharing and bonuses) in the calendar year immediately preceding the Employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the Employee invests in a Partnership.

6. A Qualified Participant (a) is an eligible Family Member or Qualified entity (in each case as defined below) of an Eligible Employee, and (b) if the individual or entity is purchasing an Interest from a Partner or directly from the Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D.[3] An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A "Qualified Entity" is: (a) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee,[4] of (c) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, in a limited partnership agreement (the "Limited Partnership Agreement"), which will be furnished at the time of Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, deductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General partner. No person will be admitted into a Partnership as a Partner unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a JP Morgan Group entity.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (a) the Eligible Employee's relationship with JP Morgan Group is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of JP Morgan Group, or (c) the Eligible Employee voluntarily resigns from employment with JP Morgan Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), and (b) the fair market value of the Interest as determined at the time of repurchase in good faith by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Limited Partnership Agreement, a Partnership will be permitted to enter into transactions involving (a) a JP Morgan Group entity, (b) a portfolio company, (c) any Partner or any person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with JP Morgan Group and over which a JP Morgan Group entity will exercise investment discretion ("Third Party Fund"), or (e) any partner or other investor of a Third Party Fund that is not affiliated with JP Morgan Group (a "Third Party Investor"). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any JP Morgan Group entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. A JP Morgan Group entity (including the General partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are "usual and customary." Fees or other compensation will be deemed "usual and customary" only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. JP Morgan Group entities, including the General Partner, also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt

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[2] A "Consultant" is a person or entity whom JP Morgan Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with JP Morgan Group and JP Morgan Group employees.

[3] "Partner" means any partner of a Partnership, including the General Partner.

[4] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "qualified Entities" is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between JP Morgan Group and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an "accredited investor" under rule 501(a)(6) of Regulation D and who will have access to the General Partner or JP Morgan Group.

employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under section 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) a JP Morgan Group entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any JP Morgan Group entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any JP Morgan Group entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any JP Morgan Group entity or Third Party Fund is or will become otherwise affiliated; and (c) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with a Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with JP Morgan Group. Applicants also state that, as professionals employed in the banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and JP Morgan Group will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with JP Morgan Group, JP Morgan Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be organized for the benefit of Eligible Employees as an incentive for them to remain with JP Morgan Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with JP Morgan Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of JP Morgan Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by JP Morgan Group will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. Applicants state that the concern that premitting co-investment by JP Morgan Group and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that JP Morgan Group will be acutely concerned with its relationship with the investors in the Partnership, and fact that senior officers and directors of JP Morgan Group entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by a JP Morgan Group entity pursuant to a contractual obligiation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for a Third Party Fund to require that JP Morgan Group invest its own capital in Third Party Fund investments, and that the JP Morgan Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants state that it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or othewise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to JP Morgan Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by JP Morgan Group in the employer/employee

context, whereas the same concerns are not present with respect to the Partnerships and a Third Party Fund.

9. Section 17(e) and rule 17e-1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a JP Morgan Group entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed "usual and customary." Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a JP Morgan Group entity will be deemed "usual and customary" only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because JP Morgan Group does not wish to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a JP Morgan Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all of the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a JP Morgan Group entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants state that, because of the community of interest between JP Morgan Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and given certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the General Partner's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transactions otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the "Section 17 Transactions") will be effected only if the General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, the Partnership's organizational documents, and the Partnership's reports to its Partners. In addition, the General Partner will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the

findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[5]

2. In connection with the Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Partnership and a Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one days, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is: (a) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) JP Morgan Group; (c) an officer or director of JP Morgan Group; or (d) an entity (other than a Third party Fund) in which the General Partner acts as general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to a spouse, parent, child, spouse of child, brother, sister, or grandchild of the Co-Investor or a trust or other investment vehicle established for any family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; 9d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to the Participants, and agree that all such records will be subject to examination by the SEC and its staff.[6]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year or at other times as necessary in accordance with customary practice, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his or its federal and state income tax returns, and a report of the investment activities of the Partnership during that year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a JP Morgan Group director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31716 Filed 11–27–98; 8:45 am]

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[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[6] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 30, 1998.

A closed meeting will be held on Tuesday, December 1, 1998, at 11:00 a.m. An open meeting will be held on Wednesday, December 2, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 1, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

The subject matter of the open meeting scheduled for Wednesday, December 2, 1998, at 10:00 a.m., will be:

The Commission will consider adopting rules regarding the regulation of alternative trading systems under the Securities

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Exchange Act. In addition, the Commission will consider adopting Rule 19b–5 and amendments to Rule 19b–4, under the Securities Exchange Act, that address the rule filing requirements for self-regulatory organizations. For further information contact: Marianne H. Duffy, Special Counsel at (202) 942–4163 or Kevin Ehrlich, Staff Attorney at (202) 942–0778, Office of Market Supervision, Division of Market Regulation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 24, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–31905 Filed 11-25-98; 11:50 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following meeting during the week of November 23, 1998.

A closed meeting was held on Wednesday, November 25, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who have a interest in the matters were also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting held on Wednesday, November 25, 1998, at 11:00 a.m., was:

Settlement of injunctive actions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

November 25, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32019 Filed 11–25–98; 3:49 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40701; File No. SR–OPRA–98–1]

Options Price Reporting Authority; Order Granting Approval of Amendment to OPRA Plan Adopting a New Rider to OPRA's Vendor Agreement Permit Vendors to Utilize Electronic Contracts

November 23, 1998.

I. Introduction

On September 18, 1998, the Options Price Reporting Authority ("OPRA")[1] submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Exchange Act"), an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). The proposed amendment adds a new Electronic Contract Rider ("Rider") to OPRA's Vendor Agreement that would permit OPRA's vendors to utilize electronic contracts with certain categories of Internet or other on-line customers in satisfaction of the requirement of the Vendor Agreement for written agreements between vendors and their customers.

The proposed amendment was published for comment in the **Federal Register** on October 20, 1998.[2] No comments were received on the proposal. This order approves the proposal.

II. Description and Purpose of the Amendment

The purpose of the proposed amendment is to allow OPRA vendors who wish to offer Internet or other on-line access to options market information to Nonprofessional Subscribers or PC Dial-Up customers to make use of electronic contracts in satisfaction of the requirement of the Vendor Agreement that there be written agreements between OPRA's Vendors and these categories of customers. This amendment is proposed in response to requests from an increasing number of OPRA vendors (including some whose activities as vendors are in support of their primary function as electronic brokers) to be able to conduct all of their business with customers electronically, including contract administration.

The Rider imposes several conditions on the use of these electronic contracts by vendors. As a threshold matter, a vendor is permitted to use these electronic contracts only if the vendor's other agreements with its customers may be entered into electronically. In addition, the vendor is required to submit for OPRA's approval an "Attachment A" that describes the procedures and systems the vendor intends to utilize in administering its electronic contracts. The Rider requires vendors to use the forms of electronic contracts (one for Nonprofessional Subscribers and one for Dial-Up Customers), except that vendors are permitted to use their own forms of electronic contracts for Dial-Up Customers, subject to the approval of OPRA. In this respect the Rider is comparable to the existing Vendor Agreement, which requires the use of a specified form of written Nonprofessional Subscriber Agreement and requires OPRA's approval of each form of Dial-Up Agreement.

The Rider imposes certain requirements on vendors concerning the manner in which they present electronic contracts to their customers and how customers may indicate their assent to these contracts. These requirements are intended to assure that customers are given an opportunity to read the full text of each contract before they are asked to assent to it, and that procedures are in place to verify the identity of the customers who enter into agreements electronically and to confirm the terms of the electronic contracts to which they have agreed. Vendors are required to maintain detailed records of all electronic contracts entered into, and to make such records available for OPRA's inspection. Finally, each time a customer accesses the Options Information Service, the vendor must give the customer notice concerning the electronic contract and must make the text of that contract available for the customer's review.

Vendors are also required to indemnify OPRA against loss in the

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

[2] *See* Exchange Act Release No. 40547 (October 13, 1998) 63 FR 56051.

event electronic contracts are held to be invalid or unenforceable by reason of their having been entered into or administered electronically. Because the law on electronic contracts is still developing, OPRA believes it is reasonable to ask those vendors who wish to use electronic contracts to assume any risk that such contracts may be found to be unenforceable or invalid.

The Rider also provides OPRA with the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice concerning electronic contracts or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason. In light of the continuing evolution of the law of electronic contracts, OPRA believes it should be able to amend or withdraw permission to use electronic contracts if such contracts are likely to be held invalid or unenforceable or are otherwise found to be deficient.

III. Discussion

After careful review, the Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[3] Specifically, the Commission believes that the proposed amendment, which accommodates the use of electronic contracts by vendors, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system.

The Commission notes that the proposed amendment will require a number of conditions intended to ensure that OPRA's interests are protected, regardless of the type of contract used by its vendors. First, OPRA limits the use of electronic contracts to those vendors that allow their customers to enter into other agreements electronically. Second, vendors must submit for OPRA's approval an "Attachment A," describing the vendors' procedures and systems.[4] Third, OPRA requires vendors to use OPRA's forms for electronic contracts, except that vendors may use their own forms for Dial-Up Customers, subject to OPRA's approval. Fourth, vendors must keep detailed records of all electronic contracts, and make such records available for review by OPRA. Fifth, the vendor must give the customer notice and make the text of the electronic contract available for the customer's review every time the customer accesses the Options Information Service. Sixth, vendors must indemnify OPRA against loss due to a determination that any electronic contract is invalid or unenforceable. Finally, the amendment also grants OPRA the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason.

The Commission believes that, in the absence of substantial historical experience with electronic contracts and given the current unsettled state of the law in this area, it is reasonable for OPRA to take precautions, such as those proposed, to protect its interests. The Commission believes that the above-mentioned conditions imposed by OPRA on vendors desiring to use electronic contracts are reasonable and consistent with the Act. Accordingly, the Commission believes that the proposed amendment will provide additional flexibility to OPRA vendors by allowing them to use electronic contracts under certain circumstances while providing OPRA with the contractual protections that it requires.

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act, that the proposed Plan amendment (SR–OPRA–98–1) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31814 Filed 11–27–98; 8:45 am]

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[3] In approving this rule, the Commission has considered the proposed Plan Amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[4] In its review of vendors' Attachment A, OPRA will consider "the reasonableness of the procedures that the vendor plans to use to identify its customers, to ensure that those customers are who they say they are, and to keep track of the exact form of agreement that is assented to by each customer" in light of the then-current industry practices. OPRA will also review the security procedures that vendors will use. *See* Letter from Lisa Winger, Schiff, Hardin & Waite, to Deborah Flynn, Division of Market Regulation, Commission, dated October 21, 1998.

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40696; File No. SR–DTC–98–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Validation Testing

November 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on September 1, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will require that its participants successfully complete a Year 2000 validation test.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 1, 2000, certain computer programs may misinterpret the Year 2000 as the Year 1900. Because DTC depends on computer technology to allow its participants to input and retrieve settlement transaction reports and to complete the daily settlement of securities transactions, such a misinterpretation could have serious

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

consequences for DTC and its participants. Accordingly, DTC is assessing its own Year 2000 readiness as well as the Year 2000 readiness of all its participants.

Under the proposed rule change, DTC is setting forth a policy statement with respect to DTC's Rule 2. That rule provides the standards and obligations that entities must meet to become DTC participants and to retain their status as participants. Pursuant to Rule 2, a participant must furnish to DTC upon DTC's request information that demonstrates the participant has satisfactory operational capability.

In accordance with Rule 2, DTC will require participants that provide input to DTC through a computer to computer link to conduct a Year 2000 validation test directly with DTC at some point during the first nine months of 1999. Because DTC recognizes the importance in obtaining assurances that participants are individually prepared to receive settlement transaction reports from DTC, input settlement transactions to DTC, and complete settlement, DTC's validation testing process will focus on a limited number of scripted transactions in certain settlement-related areas. The validation test will require participants to process a series of scripted transactions and to balance with DTC's position and settlement statements. DTC will require that each participant provide DTC with a standard testing acknowledgment, signed by a senior internal auditor, that the participant has balanced to the position and settlement statements and has done so in a Year 2000 compliant environment.[3]

In DTC's view, a participant's failure to successfully complete the Year 2000 validation test will constitute a failure to demonstrate the sufficient operational capability required by Rule 2.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because the proposed validation testing will reduce the risk of participant failures caused by computer programs that misinterpret the Year 2000 as the Year 1900. The Year 2000 validation test will help ensure that DTC participants have sufficient operational capability to properly interface with DTC before, on, and after the Year 2000.

[3] If a participant does not have an internal auditor, the testing acknowledgment may be executed by a senior compliance officer or other equivalent officer.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

The Year 2000 validation test requirement has been received positively by the Securities Industry Association ("SIA") Year 2000 Steering Committee. A draft testing acknowledgment has been reviewed without comment by SIA's Legal and Compliance subcommittee as well as the New York Clearing House Year 2000 Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act [4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the Year 2000 validation test should allow DTC to address any potential problems associated with its participants' Year 2000 readiness. As a result, DTC should be able to continue to provide for the prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should allow DTC and its participants to immediately begin to prepare for DTC's Year 2000 validation testing.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–98–18 and should be submitted by December 21, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–DTC–98–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31815 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q-1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40700; File No. SR–DTC–98–16]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Modifying the Initial Public Offering Tracking System

November 20, 1998.

On August 19, 1998, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–98–16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] notice of the proposal was published in the **Federal Register** on October 21, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change modifies DTC's Initial Public Offering ("IPO") tracking system.[3] Under the rule change, DTC

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40552 (October 14, 1998), 63 FR 56279.

[3] For a detailed description of the IPO tracking system, refer to Securities Exchange Act Release No.

will process resales of IPO shares by institutional customers without first determining the identity of the syndicate members that distributed the shares being resold. In addition, DTC will fill stock loans of shares in new issues with shares purchased in the secondary market prior to using shares received in the initial distributions.

I. Resales of IPO Shares by Institutions

DTC's IPO tracking system allows lead managers of new issues to monitor "flipping" of shares in new issues that are distributed through DTC by book-entry movement rather than by use of certificates.[4] When a lead manager in an IPO notifies DTC of its decision to use the IPO tracking system, the system establishes a database of information about the customers who purchased the IPO shares ("IPO database"). Before DTC processes a resale of IPO shares, the delivering participant must provide to DTC information about its customer. DTC compares the customer information with the customer detail in the IPO database. DTC then reports to the lead manager the identity of the syndicate member whose customer has resold IPO shares.

When IPO shares are sold by a retail customer, the customer information is normally provided by the same participant that populated the IPO database (*i.e.*, the syndicate member). Therefore, the processing of a retail customer's resale of IPO shares is usually not delayed because of a failure to match the identity of the reselling customer with any of the customers included in the IPO database.

In contrast, when IPO shares are distributed to an institutional customer, the syndicate member that makes the distribution is rarely the same participant that acts as the institution's agent for settlement. According to DTC, many redeliveries of IPO shares for institutional customers during the period from three days prior to closing to three days after closing are delayed because the customer detail provided by the institution's agent does not match any customer in the IPO database.[5] For example, a failure to match can occur if the syndicate member enters incorrect customer account information (*e.g.*, information with missing digits or transposed characters) into the IPO database because that information will not match the customer account information entered by the reselling institution's agent. A failure to match may also occur when on the day an issue closes an institution's agent attempts to redeliver IPO shares that were not distributed to its participant account until late in the processing day. Ordinarily, the redelivery would be effected if the agent had a sufficient position in an issue. However, if an issue is being tracked by the system, the redelivery will fail because account information relating to the reselling institutional customer will not be resident in the IPO database.

Therefore, under the rule change DTC will process resales of tracked issues by institutional customers without first determining the identity of syndicate members that distributed the shares being resold. DTC has informed the Commission that the IPO tracking system will continue to try to determine the identity of the syndicate members whose institutional customer has resold IPO shares.

2. Stock Loans

Currently, when a participant that has received a distribution of shares in an issue that is being tracked makes a stock loan in that issue, the system attempts to fulfill the stock loan delivery by first using shares received during the initial distribution. DTC then reports these transactions to the lead manager. Under the rule change, DTC will attempt to satisfy the stock loan by first using the lending participant's "secondary market shares" (*i.e.*, shares that have previously been reported to the lead manager as having been "flipped" or shares purchased by the participant in the secondary market). As a result, stock loan transactions will not be reported to the lead manager to the extent that they are processed using secondary market shares.

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should ensure more efficient processing of trades through the IPO tracking system. Specifically, the rule change should reduce the amount of failed trades in IPO shares that result from processing delays in the IPO tracking system. In addition, the rule change should reduce the amount of processing for loans of IPO shares.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–98–16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31819 Filed 11–27–98; 8:45 am]

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37208 (May 13, 1996) (order approving proposed rule change).

[4] Flipping occurs when a syndicate's lead manager is supporting an IPO with a stabilization bid (*i.e.*, the lead manager is purchasing shares in the secondary market in order to keep the price of the issue from dropping below its initial offering price), and shares in the IPO that had been distributed to investors are resold by those investors in the secondary market to a syndicate member. The lead manager may wish to identify flipped transactions so that underwriting concessions (*i.e.*, the discount from the offering price received by syndicate members) can be recovered from the appropriate syndicate members.

[5] Because shares in new issues can be traded on a when-issued basis, the IPO tracking system allows participants to enter redeliveries of IPO shares as early as three business days prior to the date the issue closes and is distributed through the depository.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40702; File No. SR–MBSCC–98–03]

Self-Regulatory Organizations, MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to an Increase in the Number of Directors

November 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 5, 1998, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves an amendment to MBSCC's by-laws to

[1] 15 U.S.C. 78s(b)(1).

increase the number of directors on its board from thirteen to fifteen.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend Article 3, Section 3.1 of MBSCC's by-laws to increase the number of directors from thirteen to fifteen.[3] Currently MBSCC has thirteen directors divided into three classes. Classes I and II each consist of four directors, and Class III consists of five directors. Under the proposed rule change, each class will consist of five directors.

MBSCC's shareholders agreement provides that one director represents management, one director represents National Securities Clearing Corporation, and the remaining directors represent MBSCC's participants. Under the proposed rule change, the two additional directors will represent MBSCC's participants. Accordingly, MBSCC believes that the proposed rule change will increase the opportunity for participants to be represented on MBSCC's board of directors.

MBSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, MBSCC believes the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,[4] which requires that the rules of a clearing agency be designed to assure the fair representation of shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] Article 3, Section 3.1 governs the number, election, and term of office of directors.

[4] 15 U.S.C. 78q–1(b)(3)(C).

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC comments, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–98–03 and should be submitted by December 21, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31816 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40694; File NO. SR–NASD–98–70]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Logon Identification Fee for Nasdaq's Mutual Fund Quotation System

November 19, 1998.

I. Introduction

On September 18, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] In its proposal, Nasdaq sought to establish a logon identification fee for its Mutual Fund Quotation Service ("MFQS"). Notice of the proposal was published in the **Federal Register** on October 19, 1998. ("Notice").[3] No comments were received on the filing. This order approves the proposal.

II. Description of the Proposal

Nasdaq proposed to amend NASD Rule 7090 to charge a $75 logon identification fee for subscribers of Nasdaq's MFQS. Currently, subscribers of the MFQS transmit pricing information and other data to Nasdaq through the service. Nasdaq then distributes the information to the news media and market data vendors. Until recently, Nasdaq could not use the MFQS to collect price information on closed-end funds because of technological limitations. However, using web based technology, Nasdaq re-designed and upgraded the MFQS. The upgraded system can now handle the pricing of closed-end funds. Further, the enhancements allow MFQS subscribers

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40543 (Oct. 9, 1998), 63 FR 55907 (File No. SR–NASD–98–70).

to transmit price information and other data to Nasdaq over the Internet.

As part of the upgrade, Nasdaq created software to protect the information transmitted over the Internet. Each MFQS subscriber will be given a unique logon identification which will allow the subscribers to securely transmit price information and other data to Nasdaq. A logon identification can only be used by one person at a time; if a subscriber wants two people to simultaneously submit its pricing information, the subscriber must order two logon identifications. According to Nasdaq, the Internet security software was also developed to protect sensitive information transmitted to the NasdaqTrader.com system. In the future, Nasdaq indicates that it may also use the Internet security system with other NASD web-based services.

Nasdaq estimates that the MFQS's share of the on-going costs to administer and maintain the Internet security system will be $239,000. To pay for the administrative and maintenance costs of the MFQS, Nasdaq proposed to charge $75 a month for each logon identification a subscriber orders. According to Nasdaq, the fee will only be used to cover the administrative and maintenance costs of the Internet security software; Nasdaq maintains that the fee will not be used to pay for the development costs of the software.

III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal creating a $75 logon identification fee for subscribers of Nasdaq's MFQS. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act[4] and the rules and regulations thereunder that govern the NASD.[5] In evaluating a given proposal, the Commission examines the record before it. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[6]

Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. In its proposal, the Association sought to charge MFQS subscribers $75 a month for each logon identification fee the subscriber orders.

The Commission believes that this charge provides for the reasonable allocation of fees among those who use the system. MFQS subscribers, who benefit from the Internet security system, are the only ones who are charged with the fee. Moreover, Nasdaq represented to the Commission that the fee will only be used to cover the maintenance and administrative costs of operating the Internet security system and not to cover the development costs of the security system. Nasdaq also represented to the Commission that the fee will be allocated between the MFQS and the NasdaqTrader.com service based on each service's proportionate usage of the security system.[7] Because the fee is only assessed against those who benefit from the Internet security system and the fee will only be used to cover the MFQS's portion of the on-going operational costs of the security system, the Commission believes that the NASD has provided for the equitable allocation of fees among persons using a system which the Association operates and controls.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[8] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–98–70) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31820 Filed 11–27–98; 8:45 am]

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[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78*o*–3.

[7] Along with SR–NASD–98–70, the NASD also filed SR–NASD–98–71. The NASD has withdrawn SR–NASD–98–71. *See* Securities Exchange Act Release No. 40658 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (notice of withdrawal of SR–NASD–98–71).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78(c)f.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40698; File No. SR–NYSE–98–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program to Amend Paragraph 902.02 of the Exchange's Listed Company Manual and Requesting Permanent Approval of the Pilot Program

November 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposed rule change instituting a three-month pilot program pending the Commission's review of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a three-month pilot program (the "Pilot") to amend Paragraph 902.02 of the Exchange's Listed Company Manual (the "Manual"). In addition, the Exchange seeks permanent approval of the proposed amendments to Paragraph 902.02 of the Manual. Paragraph 902.02 of the Manual contains the schedule of current listing fees for companies listing securities on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Item III below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business combinations. Specifically, the Exchange seeks to adopt a reduced fee structure for mergers between an NYSE-listed company and a non-NYSE listed company, other than for those considered to be "back door listings" pursuant to Paragraph 703.08(E) of the Manual.

The Exchange proposes to reduce the basic initial listing fee such that the fee is 25% of the applicable basic initial listing fee for the above specified listings that occur within 12 months of the merger. However, if the merger and subsequent listing occur within 12 months of the initial listing of the NYSE-listed company, the Exchange proposes to reduce the basic initial listing fee for the merged entity to the lesser of (a) 25% of the applicable basic initial listing fee for the merged entity; or (b) the full applicable basic initial listing fee for the merged entity less the fee already paid by the NYSE-listed company at the time of its initial listing.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) [3] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[3] 15 U.S.C. 78f(b)(4).

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–40 and should be submitted by December 21, 1998.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of section 6 of the Act.[4] More specifically, the Commission believes that the portion of the proposed rule change dealing with the three-month pilot is consistent with section 6(b)(4) of the Act [5] which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities.[6] The Commission believes that the proposal may ease the financial burdens of merger transactions with Exchange-listed issuers, thus facilitating capital formation and competition among exchanges and other markets.

The Commission finds good cause for approving the three-month pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This accelerated approval will permit Exchange-listed issuers to take advantage of the Exchange's initial listing fee reduction program on an expedited basis while the Commission undertakes a more exhaustive review of the proposal. Accordingly, the Commission believes that good cause exists, consistent with section 6(b)(5) and section 19(b)(2) of the Act, to grant accelerated approval to the three-month pilot.[7] The Commission notes, however, that approval of the pilot should not suggest a predisposition regarding the ultimate approval of the proposal on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–98–40) is approved on an accelerated basis until February 19, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31817 Filed 11–27–98; 8:45 am]

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[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] In approving the three-month pilot, the Commission has considered the pilot's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40695; File No. SR–NYSE–98–27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Arbitration Rules

November 19, 1998.

I. Introduction

On September 8, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission

("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 600 to exclude shareholder derivative actions from arbitration; to amend Rules 604 and 621 to allow arbitrators to dismiss pleadings, with or without prejudice, as a sanction for a willful failure to comply with their orders; to amend Rules 608 and 613 to increase the minimum notice of the appointment of arbitrators and the initial hearing date from eight to fifteen business days; to amend Rule 608 to reflect the proposed change to Rule 609 to extend the time within which to exercise a peremptory challenge, with regard to replacement arbitrators; to amend Rules 609 and 611 to extend the time to exercise a peremptory challenge from five to ten business days; and to amend Rule 627 to require the award to be served contemporaneously on all parties and to allow the Exchange to serve awards via facsimile or other electronic means. The proposed rule change also adds new Rule 638 to require, on a two year pilot basis, a single mediation session in non-customer cases, where the amount of the claim is $500,000 or more. Rule 638 will also provide mediation, with the parties' consent, in cases involving public customers where the amount of the claim is $500,000 or more, and provide for mediation in all other cases upon the consent of the parties and at their expense. Finally, the proposed rule change adds new Rule 639 which will require, on a two year pilot basis, an administrative conference between the parties and arbitrators in all cases where the amount of the claim is $500,000 or more. The NYSE states that the proposed rule change, with the exception of amendments to Rule 600 and new Rules 638 and 639, is based on proposals developed by the Securities Industry Conference on Arbitration.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 40524 (October 6, 1998), 63 FR 55170 (October 14, 1998). One comment was received on the proposal.[3] This order approves the proposed rule change as proposed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Stephen G. Sneeringer, Chairman, Securities Industry Association ("SIA") Arbitration Committee, to Margaret H. McFarland, Deputy Secretary, Commission, dated November 3, 1998 ("SIA Letter").

II. Description

The Exchange proposes to amend Rule 600 to exclude shareholder derivative actions from arbitration. The Exchange also proposes amendments to Rules 604 and 612 to provide that arbitrators may dismiss claims or defenses, with or without prejudice, as a sanction for a willful failure to comply with their orders. The Exchange will keep records of any dismissals under the amended rules. The proposed rule change amends Rules 608 and 613 to provide that the minimum notice of the appointment of arbitrators and the initial hearing date be extended from eight to 15 business days. Additionally, the proposed rule change amends Rules 609 and 611 to extend the parties' time to exercise a peremptory challenge from five to ten business days after notification of the identity of the arbitrators. The proposed rule change also amends Rule 627 to provide that the Exchange may serve awards via facsimile or other electronic means, and that the Director of Arbitration ("Director") shall try to serve a copy of the award contemporaneously on all parties.

The proposed rule change adds Rule 638 which requires, on a pilot basis for two years from the date of Commission approval, a single mediation session, in non-customer cases where the amount of the claim is $500,000 or more. The mediator's fee for this first session will be borne by the Exchange. The pilot will also provide for mediation, with the parties' consent, in cases involving public customers where the amount of the claim is $500,000 or more. The mediator's fee for this first session also will be borne by the Exchange. Moreover, mediation will be available upon the consent of the parties and at their expense in all other cases. Where the parties have not selected a mediator on their own, the Exchange will provide the names and profiles of five mediators.[4] The parties have ten days to agree on a mediator from the list, or choose their own mediator. If the parties cannot agree, the Director will select a mediator from the list, unless the parties object to all the names on the list, in which case the Director will appoint a mediator from outside the list.

The NYSE states that the current "Arbitrator Profile" form will be used to provide the parties with biographical and disclosure data regarding the proposed mediators. The profile form includes the employment histories of the mediators for the past ten years and any information disclosed regarding conflicts of interest. The profile also includes information about the mediator's education, business and professional background, mediation experience and training and membership in professional associations.

Finally, the proposed rule change adds Rule 639, which requires, on a pilot basis for two years from the date of Commission approval, an administrative conference between the parties and arbitrators in all cases where the amount of the claim is $500,000 or more. The Director shall schedule the conference within thirty days after the answer is filed. At the hearing, the arbitrators can establish a schedule for discovery and the hearing, issue subpoenas and direct the appearance of witnesses, and resolve or narrow any other issue which may expedite the arbitration.

[4] If the parties select their own mediator from outside the list of mediators proposed by the NYSE, the parties are responsible for any difference in the mediator's fee.

III. Summary of Comments

The Commission received one comment letter on the proposal, which supports the proposed amendments and, subject to certain qualifications and clarifications, supports the new rules pertaining to mediation and administrative conferences.[5]

The SIA supports proposed Rule 638 to the extent it would encourage litigants in non-customer cases of $500,000 or more to participate in a mediation session, but opposes the portion of Rule 638 which would make a mediation session mandatory with respect to these cases. The SIA believes that mediation should always be a voluntary process. In addition, the SIA requests that the final rules, adopting release, or accompanying Information Circular clarify that the mediation sessions or administrative conference provided for in Rules 638 and 639, respectively, be conducted via telephone at the request of any party.

The NYSE, in its response to the SIA Letter,[6] agrees that mediation by its very nature is a voluntary process, but that the proposed rule change does not alter that. The NYSE states that while the rule requires participation in a mediation session, it does not mandate that the mediation be successful, nor does it require the parties to compromise their positions. The NYSE developed the mediation program based upon its experience in non-customer disputes involving large damage claims;

[5] *See supra* note 3.

[6] *See* letter from Robert S. Clemente, Director, Arbitration, to Jonathan G. Katz, Secretary, Commission, dated November 11, 1998 ("NYSE Response").

these cases often contain multiple allegations that can be quickly resolved or eliminated through mediation. In addition, early resolution of some issues can minimize time and expense of resolving core issues. The NYSE states that the mediation program is intended to encourage parties to sit down early in the process and try to find an agreeable resolution before each side incurs the expense of preparing for a hearing.

The NYSE also states that, with regard to conducting mediation and administrative conferences by telephone, the decision on how to proceed should be left to the arbitrators, and that the rule leaves open the possibility that a mediator may decide that a telephone session is sufficient. However, the NYSE states that experience shows that telephone conferences with all three arbitrators become counter-productive, and that while it may be technically possible to conduct a mediation over the telephone, it would be impractical in most circumstances. The Exchange believes that to be successful, a mediation should be conducted in person.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[7] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[8] In particular, the Commission believes that the proposed rule change will help ensure that NYSE members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

The Commission believes it is reasonable for the Exchange to exclude derivative actions from arbitration. The Exchange's Arbitration rules already exclude class actions. The Exchange believes that shareholder derivative actions, like class actions, are representative in nature,[9] and that the court system is better equipped to manage shareholder derivative actions which involve parties in different jurisdictions and issues such as the notification of shareholders, the appointment of counsel and the awarding of attorneys' fees. The Commission also notes that the Exchange has previously declined the use of its arbitration facilities for shareholder derivative actions pursuant to Article XI, section 3 of the Exchange Constitution, which grants the Exchange discretion to "decline in any case to permit the use of the arbitration facilities of the Exchange."

The Commission believes that the portion of the proposed rule change to Rules 604 and 612, relating to dismissal of arbitration proceedings with and without prejudice, is consistent with the Act. This portion of the proposed rule change will help provide for a fair, efficient and cost-effective arbitration process by clarifying that the arbitrators can dismiss the proceeding either with or without prejudice; currently, Rule 604 does not distinguish between these two choices. Also, the proposed rule change amends Rule 604 to add that the arbitrators, when dismissing without prejudice, can refer the parties to any dispute resolution forum agreed to by the parties, in addition to their judicial remedies.

The Commission believes that the proposed change to Rule 604 allowing for dismissal with prejudice, which is intended to encourage compliance with the arbitrators' orders on discovery issues and other pre-hearing matters, should help establish clearly that arbitrators have the power to issue orders in aid of the arbitration process and to enforce those orders by use of the sanction of dismissal with prejudice. Such a sanction could be used, for example, where a party refused to produce documents that the arbitrators already have ordered them to produce as necessary for another party's claim or defense. In such instances, after the arbitrators have imposed lesser sanctions that have not induced compliance with their order, the arbitrators may dismiss a claim, defense, or the entire arbitration proceeding, with prejudice. The Commission also believes that this proposed rule change would provide for a more efficient arbitration process because it will allow the arbitrators to assert greater control over the proceedings and will provide parties with clear notice of the possible consequences of non-compliance with an order of the arbitrators. It also would help to protect all parties to an arbitration, and ensure that one party to the proceeding does not take advantage of the other.[10]

The Commission believes that the proposed changes to Rules 608, 609, 611, and 613 providing for an extension of time limitations relating to the notice of the appointment of arbitrators and the initial hearing date, peremptory challenges, and arbitrator disclosures are consistent with the Act because they allow the parties additional time to prepare for the arbitration proceedings. Specifically, the amendments will allow parties more time to research and gather information on the arbitrators, in order to evaluate the arbitrators and decide whether to issue a peremptory challenge.[11]

The Commission believes that the proposed change to Rule 627 that allows for service by means other than registered mail or personal service, such as facsimile or other electronic transmission, is reasonable under the Act because it will help to provide for more efficient service. The Commission notes that the proposed rule change provides adequate safeguards to allow for all parties to receive notice of the awards contemporaneously, for purposes of time limitations on post-award motions. The amendment is intended to enable the Exchange to deliver the award in the fastest and most reliable way. The amendment is intended to adapt Exchange arbitration practices to technological changes.

The Commission believes that it is consistent with the Act to allow for mediation of arbitration because it may result in savings of time and money for

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[7] 15 U.S.C. 78f(b).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] "Shareholder controversies are not appropriately within the mandatory arbitration provisions of the Exchange's Constitution." *In re Salomon Inc. Shareholders' Derivative Litigation*, 68 F.3d 554, 556 (1995) (Judge McLaughlin of the Second Circuit quoting from the Exchange's decision denying jurisdiction in a shareholder derivative action).

[10] The Commission notes that the NYSE has stated its intention to keep records of any dismissals under the amended rules. The Commission believes the NYSE should maintain records of any dismissals so it can monitor the use of this sanction.

[11] The proposed changes extend the time limitations for a party to (1) seek additional information under Rules 608 and 611 about initial and replacement arbitrators, by extending the time that the Director shall inform the parties of the names of the arbitrators, as well as any information on the arbitrators, from eight to fifteen days prior to the initial hearing session, and extending the time within which a party can exercise the right to challenge a replacement arbitrator; and (2) exercise a peremptory challenge under Rules 609 and 611, from 5 days to 10 business days after notification of the identity of the person(s) proposed as arbitrators. In addition, the proposed rule change amends Rule 608 to change the Director's obligation to provide the parties with the names and histories of the arbitrators from eight to fifteen days before the date of the first hearing. Also, the proposed rule change amends Rule 613 to extend the time when the Director must give notice of the time and place of the initial hearing from eight to fifteen business days prior to the date fixed for the hearing.

the parties. Mediation is a method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. The NYSE states that when mediation is successful, cases are settled earlier, often with significant cost savings. The Commission recognizes the SIA's concern that mediation should be a voluntary process and that the proposed new rule requires a single mediation session in certain instances. However, the Commission believes that in this instance, where the requirement is limited to non-customer cases, is only for large cases, and is required for a two year period the possible benefits outweigh any perceived inequity.[12] In addition, the Commission notes it is only the first session that is mandatory, that the NYSE is paying the mediator's fee, and that any settlement reached must be with the participation and consent of each party.

Finally, the Commission believes it is reasonable under the Act to require an administrative conference between the parties and the arbitrator in all large cases, in order to attempt to expedite the arbitration process and reduce costs of the arbitration. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules, resolve discovery disputes and other preliminary matters, and to attempt to narrow the issues in dispute and avoid costly contests over procedural matters.[13]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–98–27) is approved. The mediation program, Rule 638, and the administrative conference rule, Rule 639, are each approved on a two-year pilot basis through November 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

[12] The Commission expects the NYSE to review the effectiveness of the requirement over the two year pilot period.

[13] In responses to SIA's comment, the Commission notes that the rules do not restrict arbitrators from conducting mediation sessions and administrative conferences by telephone, and that the decision whether or not to do so is best left to the arbitrators.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31818 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3147]

State of Florida (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated November 16, 1998, the above-numbered Declaration is hereby amended to include Palm Beach County, Florida as a disaster area due to damages caused by Tropical Storm Mitch beginning November 4, 1998 and continuing through November 5, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Broward, Glades, Hendry, and Martin in the State of Florida may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 5, 1999 and for economic injury the termination date is August 6, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 19, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–31834 Filed 11–27–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License # 06/06–0286]

Sunwestern Ventures, Ltd.; Notice of License Surrender

Notice is hereby given that *Sunwestern Ventures, Ltd. ("Sunwestern"), 12221 Merit Drive, Suite 1300, Dallas, Texas 75251* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). *Sunwestern* was licensed by the Small Business Administration on *October 22, 1984.*

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on *October 31, 1998,* and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance program No. 59.011, Small Business Investment Companies)

Dated: November 17, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–31836 Filed 11–27–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2922]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-three (23) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State {(703) 875–6644}.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: October 28, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

OCT 8 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of remote sensing satellite technical data and a regional operations center to Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 69-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 21 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export to Greece of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of 919 TOW 2A Anti-Tank Missiles to the Hellenic Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 97-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

SEP 21 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of four S70B SEAHAWK helicopters, spare parts, ground support equipment and logistical support to Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 98-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment or defense services sold under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of 6 M88A2 Tracked Armor Recovery Vehicles, spare parts, tech manuals and operator and preventive maintenance training to Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 99-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Canada.

The transaction described in the attached certification involves the manufacture of various computer systems for use by the U. S. Navy, the U. S. Army, the Royal Australian Air Force, and the Canadian Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 103-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of certain PATRIOT System components to support the PATRIOT Product Improvement Program in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 106-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of ten MK 45 gun mounts, spare parts, and associated equipment for the Australian ANZAC Shipbuilding Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 113-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 '998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance for the cooperative design and manufacture of a cryogenic upper stage engine for use on the Delta IV launch vehicle and the Japanese H-II launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 116-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of F-15 electrohydraulic flight control systems in Japan for use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 117-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 19

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves upgrading Japanese F-15 aircraft for AMRAAM capability, and modernizing the avionics to include the APG-63(V)1 radar.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 120-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export, installation, and support of a border air surveillance system, including four (4) AN/TPS-70 radars, to Algeria.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 124-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Israel of avionics in support of the U. S. Air Force T-38 Avionics Upgrade Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 126-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

OCT - 5 19

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of two shipsets of MK 41 Vertical Launch Systems for use by the Japanese Maritime Self-Defense Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 127-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of 2,180 TOW 2A, 380 TOW 2B and 240 TOW Practice Missiles to the Government of Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 128-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

OCT 3 '98

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export to Singapore of support services for the T-55-L-714A engine used on CH-47 helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 129-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 8 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached notification involves the sale of 110 U2 Self-Propelled Howitzers to the Singapore Ministry of Defense Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 130-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

OCT - 5 199[illegible]

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of F100-PW-100 engines for use in Japanese Defense Agency F-15 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 131-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of F100-PW-229/-229A engine parts in Norway for use on F-16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 132-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

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United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of military vehicle wiring harnesses in Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 133-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of transmissions in South Korea for use on the Korean K95 Howitzer and the K1A1 Main Battle Tank.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 138-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

VOL 63 ISS 229 NO 30 1998 UMI

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of two (2) CH-47D helicopters to the Government of Australia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 140-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of eighteen (18) Model 139A Vertical Launch ASROC (VLA) Missiles, less payload for use in the Japan Defense Agency's vessels.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 143-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

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United States Department of State

Washington, D.C. 20520

OCT 16 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of six hundred NULKA Electronic Payloads and related technical data.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 144-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 98–31791 Filed 11–27–98; 8:45 am]
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DEPARTMENT OF STATE

[Public Notice #2937]

U.S. International Telecommunication Advisory Committee (ITAC); Charter Renewal

The Department of State has renewed the Charter of the United States International Telecommunication Advisory Committee (ITAC). This advisory committee will continue to obtain the views and advice of American experts and interested parties with respect to a broad range of technical, operational and administrative questions in the telecommunications and information sector. ITAC's focus is on U.S. participation in the work of international treaty organizations, primarily the International Telecommunication Union (ITU) and the OAS Inter-American Telecommunication Commission (CITEL).

The committee's principal work, which is to develop, coordinate and recommend contributions to and positions for international meetings and conferences, has been a major factor in ensuring effective U.S. preparations for the relevant international activities. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Membership in the ITAC is unlimited and may include representatives of all parties interested in the telecommunications and information fields or in the work of ITAC, including U.S. Government agencies, recognized operating agencies, service providers, manufacturers, users, associations, academia, and the public in general. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, please call: Richard Beaird, ITAC Chairman and Director, Office of Multilateral Affairs, International Communications and Information Policy, (202) 647–5832; fax (202) 647–5957.

Dated: November 16, 1998.

Ambassador Vonya B. McCann,

U.S. Coordinator, Communications and Information Policy.

[FR Doc. 98–31792 Filed 11–27–98; 8:45 am]

BILLING CODE 4210–45–P

DEPARTMENT OF STATE

[Public Notice #2938]

United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector (ITAC–R); Notice of Meetings

The Department of State announces that a meeting of the National Committee of the Radiocommunications Sector of the U.S. International Telecommunication Advisory Committee will be held December 8, 1998, 9:30 A.M.–1:00 P.M. in Room 4517 of the Department of State, 2201 "C" Street, NW, Washington, DC. The purpose of the National Committee is to advise the Department's ITAC-R on policy, technical and operational matters with respect to international radiocommunication issues. Related meetings of the ITAC CITEL Permanent Consultative Committee II-Broadcasting PCC III-Radiocommunications will be held January 7, 1999. PCC II will convene at 9:30 and PCC III at 2:00 P.M.

The National Committee meeting will consider the preparatory process and guidelines for participation in ITU Radiocommunication meetings, review relevant results of the 1998 Plenipotentiary Conference, begin preparatory activities for the Radiocommunication Advisory Group meeting February 22–26, 1998, and review Study Group and Conference Preparatory Meeting (CPM) activities.

The PCC II and PCC III preparatory meetings will review the results of the December COMCITEL meeting and consider U.S. preparations for international meetings in the Spring of 1999.

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Persons intending to attend the meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the 'C' Street Main Lobby.

Dated: November 16, 1998.

John T. Gilsenan,

Chairman, U.S. ITAC for Radiocommunication Sector.

[FR Doc. 98–31793 Filed 11–27–98; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267–3132

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 23, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29202.

Petitioner: Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 25.961(a)(5).

Description of Relief Sought/ Disposition: To allow Boeing Commercial Airplane Group an 85°F maximum fuel temperature limitation for JP–4 and Jet-B fuels on Boeing 757–300 series airplanes.

Docket No.: 29383.

Petitioner: Ilyushin Aviation Complex, Russia.

Sections of the FAR Affected: 14 CFR 25.52(b)(2).

Description of Relief Sought/ Disposition: To allow Ilyushin Aviation Complex to exempt from the floor warpage test requirements of 14 CFR 25.562(b)(2) for all seats on the Ilyushin IL–96T airplane.

Dispositions of Petitions

Docket No.: 18324.

Petitioner: American Airlines, Inc.

Sections of the FAR Affected: 14 CFR 43.3(a) and 121.709(b)(3).

Description of Relief Sought/ Disposition: To permit American to allow its properly trained and certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make the appropriate entry in the aircraft maintenance logbook.

Grant, November 16, 1998, Exemption No. 2678K.

Docket No.: 27309.

Petitioner: Mr. David Abshire 14 CFR 65.71 (a) and (b).

Description of Relief Sought/ Disposition: To permit Mr. Abshire to become eligible for a mechanic certificate and associated rating although he cannot speak the English language.

Grant, November 16, 1998, Exemption No. 6840.

Docket No.: 26914.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.583(a).

Description of Relief Sought/ Disposition: To permit Air Transport Association member airlines and other similarly situated part 121 certificate holders to allow FAA air traffic controllers and certain technical representatives to ride in the cockpit observer's seat of all-cargo aircraft when those aircraft do not meet the passenger-carrying requirements.

Grant, November 12, 1998, Exemption No. 5562C.

Docket No.: 28905.

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit Petroleum Helicopters to operate three Bell 212 helicopters, two Bell 214ST helicopters, three Bell 412 helicopters and one Bell 412SP helicopter without FAA-approved digital flight data recorders installed.

Grant, November 9, 1998, Exemption No. 6713C.

[FR Doc. 98–31783 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on November 20, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reasons for delay	Estimated date of completion
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	12/31/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	12/31/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	12/31/1998
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	12/31/1998
11817–N	FIBA Techologies, Inc., Westboro, MA	1, 4	12/31/1998
11862–N	The BOC Group, Murray Hill, NJ	4	12/31/1998
11883–N	Brownie Tank Mfg., Co., Minneapolis, MN	4	12/31/1998
11884–N	Degussa Corporation, Ridgefield Park, NJ	4	12/31/1998
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	12/31/1998

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reasons for delay	Estimated date of completion
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	12/31/1998
11934–N	UtiliiCorp United, Inc., Omaha, NE	4	12/31/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	12/31/1998
11947–N	Patts Fabrication & Services, Odessa, TX	4	01/29/1999
11954–N	Republic Environmental System (PA), Inc., Hatfield, PA	4	12/31/1998
11983–N	Degussa Corporation, Ridgefield Park, NJ	4	01/29/1999
12001–N	Albemarle Corporation, Baton Rouge, LA	4	01/29/1999
12003–N	Degussa Corporation, Ridgefield Park, NJ	4	01/29/1999
12020–N	Rhone-Poulenc, Inc., Shelton, CT	4	01/29/1999
12029–N	NACO Technologies, Lombard, IL	4	01/29/1999
12032–N	Physical Acoustics Quality Services Lawrenceville, NJ	4	01/29/1999
12033–N	PPG Industries, Inc., Pittsburgh, PA	4	01/29/1999
12051–N	General Ameircan Transporation Corporation, Chicago, IL	4	01/29/1999
12052–N	Engineered Carbons, Inc., Borger, TX	4	01/29/1999
12063–N	The Hydrocarbon Flow Specialist, Inc., Morgan City, LA	4	12/31/1999
12064–N	Occident Chemical Corp., Webster, TX	4	01/29/1999
12071–N	Pennwalt India Limited, Worli, Mumbai, IN	4	01/29/1999
12072–N	Consani Engineering (PTY) Limited, Cape Province, RA	4	01/29/1999
12073–N	Patriotic Fireworks, North East, MD	4	12/15/1998

MODIFICATION TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	12/31/1998
7887–M	Kosdon Enterprises Ventura, CA	4	12/31/1998
9266–M	ERMEWA, Inc., Houston, TX	4	12/31/1998
9419–M	FIBA Technologies, Inc., Westboro, MA	4	12/31/1998
9421–M	Taylor-Wharton Co., Harrisburgh, PA	4	12/31/1998
9706–M	Taylor-Wharton Co., Harrisburgh, PA	4	12/31/1998
9819–M	Halliburton Energy Services, Inc., Duncan, OK	4	12/31/1998
10047–M	Taylor-Wharton Co., Harrisburgh, PA	4	12/31/1998
10138–M	Betz Dearborn, Inc., Trevose, PA	4	12/31/1998
10458–M	Marsulex, Inc., Sudbury, Ontario, CN	4	12/31/1998
10996–M	Kosdon Enterprises, Ventura, CA	4	12/31/1998
11270–M	The Specialty Chemicals Div. of B.F. Goodrich Co., Cleveland, OH	4	12/31/1998
11483–M	Autoliv, Autoflator AB, Vargarda, SW	4	12/31/1998

[FR Doc. 98–31747 Filed 11–27–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Advisory Bulletin

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: We are issuing this advisory bulletin to owners and operators of Hazardous Liquid and Natural Gas Pipelines located on the Outer Continental Shelf (OCS). The bulletin reminds operators of the September 15th, 1998, deadline to mark the point on their OCS pipeline facilities where operating responsibility transfers from a production operator to a transportation operator.

ADDRESSES: This document can be viewed on our home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty, (202) 366–4577.

SUPPLEMENTARY INFORMATION:

I. Background

We published a direct final rule amending the DOT pipeline safety regulations in 49 CFR parts 191, 192, and 195 consistent with an MOU (62 FR 61692; November 19, 1997) establishing the boundaries that will be used to delineate the locations over which the Department of Transportation and the Department of the Interior will exercise their respective regulatory authority over pipelines located on the OCS. The direct final rule excluded from DOT regulations OCS pipelines upstream from the point where operating responsibility transfers from a producing operator to a transporting operator. Also, the rule required operators to durably mark the specific points at which operating responsibility transfers or, if it is not practicable to durably mark a transfer point, to depict the transfer point on a schematic maintained near the transfer point. The requirement applies only to OCS pipelines on which there is a transfer of operating responsibility from a producing operator to a transporting operator. Producer-operated OCS pipelines on which there is no transfer of operating responsibility on the OCS have not been affected.

II. Advisory Bulletin (ADB–98–4)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines.

Subject: September 15, 1998, deadline to mark OCS pipeline facilities where operating responsibility transfers from a

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production operator to a transportation operator.

Purpose: We remind all operators of natural gas and hazardous liquid pipelines located on the Outer Continental Shelf of the September 15, 1998, deadline to durably mark the specific points at which operating responsibility transfers from a producing operator to a transporting operator, or, if it is not practicable to durably mark this transfer point, to depict the transfer point on a schematic maintained near the transfer point.

Operators must meet all of the following criteria to be affected by this rule:

(1) Operating responsibility must transfer from a producer to a transporter;
(2) The transfer must take place on the Outer Continental Shelf; and
(3) The producer must be upstream from the transporter.

Pipelines that do not meet these criteria continue to be subject to the provisions of 49 CFR Parts 192.1(b)(1) and 195.1(b)(5) that state these Parts do not apply upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. Any proposed amendments to these regulations will be initially announced through publication of the Department of Transportation Semi-Annual Regulatory Agenda in the **Federal Register** and afforded full public participation through subsequent publication in the **Federal Register** of a notice of proposed rulemaking and request for comments.

Issued in Washington, D.C. on November 24, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–31780 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4799]

Pipeline Safety User Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the fiscal year 1999 user fee assessments for pipeline facilities. The assessments will be mailed to pipeline operators on or about December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Kokoszka, OPS, (202) 366–4554, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The fees to be assessed for natural gas transmission, hazardous liquid and liquefied natural gas (LNG) are as indicated below:

Natural gas transmission pipelines: $70.47 per mile (based on 288,205 miles of pipeline).

Hazardous liquid pipelines: $57.88 per mile (based on 156,828 miles of pipeline).

LNG is based on the number of plants and total storage capacity:

Total Storage Capacity BBLS	Assessment/ Plant
<10,000	$1,250
10,000–100,000	2,500
100,000–250,000	3,750
250,000–500,000	5,000
>500,000	7,500

Section 60301 of Title 49, United States Code, authorizes the assessment and collection of pipeline user fees to fund the pipeline safety activities conducted under 49 U.S.C. 60101 *et seq.* RSPA assesses each operator of regulated interstate and intrastate natural gas transmission pipelines (as defined in 49 CFR part 192), and hazardous liquid pipelines carrying petroleum, petroleum products, anhydrous ammonia and carbon dioxide (as defined in 49 CFR part 195) a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline each operator has. Onshore pipelines excluded from regulation by 49 CFR part 195, are not included. Operators of LNG facilities are assessed based on total storage capacity (as defined in 49 CFR part 193).

In accordance with the provisions of 49 U.S.C. 60301, Departmental resources were taken into consideration for determining total program costs. The apportionment ratio between gas and liquid, as shown below, increased in recent years with our environmental protection activities in the hazardous liquid program area:

Year(s)	General program costs (gas)	General program costs (liquid)
1986–1990 (percent)	80	20
1991–1992 (percent)	75	25
1993 (percent)	[1] 75	[1] 25
Do	[2] 60	[2] 40
1994 (percent)	60	40
1995 (percent)	75	25
1996 (percent)	65	35
1997–1999 (percent)	55	45

[1] 3¼ yr. [2] 2¼ yr.

In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative charges will be assessed on delinquent debts in accordance with 31 U.S.C. 3717.

Authority: 49 U.S.C. 60301.

Issued in Washington, DC, on November 24, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–31781 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33681]

Fort Worth & Western Railroad Company—Acquisition Exemption—South Orient Railroad Company, Ltd.

Fort Worth & Western Railroad Company (FWWR), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by lease and to operate approximately 176 miles of rail line of the South Orient Railroad Company, Ltd. (SORC).[1]

The lines to be leased are: (1) Centex Rural Rail Transportation District's (a) Fort Worth-Ricker Line, between approximately milepost 1 + 1,541 feet near Fort Worth, TX, and approximately milepost 134 + 2,171 feet near Ricker, TX, and (b) Cresson-Cleburne Line, between approximately milepost 18 + 133 feet near Cresson, TX, and approximately milepost 0 + 1,167.1 feet near Cleburne, TX; and (2) Texas Central Railroad Company's line of railroad between approximately milepost 104.6 at Dublin, TX, and approximately milepost 129.5 at Gorman, TX.[2] In addition, FWWR will acquire from SORC by assignment incidental overhead trackage rights over the following lines: (1) The Burlington

[1] *See Cen-Tex Rail Link, Ltd.—Merger Exemption—South Orient Railroad Company, Ltd.*, STB Finance Docket No. 32951 (STB served Aug. 2, 1996).

[2] *See Cen-Tex Rail Link, Ltd.—Trackage Rights Exemption—Texas Central Railroad Company*, Finance Docket No. 32521 (ICC served Aug. 18, 1994) and *Cen-Tex Rail Link, Ltd.—Lease and Operation Exemption—Texas Central Railroad Company*, Finance Docket No. 32596 (ICC served June 18, 1995).

Northern and Santa Fe Railway Company (BNSF) line between Ricker (approximately milepost 134 + 2,171 feet on the former Atchison, Topeka and Santa Fe Railway Company (ATSF) Dublin Subdivision) and San Angelo Junction (approximately milepost 0 + 330 feet on the former ATSF San Angelo Subdivision), (2) the line segment formerly part of the ATSF Dublin Subdivision between approximately milepost 1 + 1,541 feet near Fort Worth and approximately milepost 0 + 4,752 feet near Belt Junction, and (3) the BNSF line between approximately milepost 1 + 1,541 feet (former ATSF Dublin Subdivision) and approximately milepost 368.5 (former ATSF Fort Worth Subdivision) for certain intermodal produce shipments.[3]

Finally, FWWR will acquire overhead trackage rights on BNSF's former BN Wichita Falls Subdivision between approximately milepost 0.0 near Tower 55 in Fort Worth and approximately milepost 5.1 near Tower 60 in Fort Worth (including BNSF's Race Track from approximately milepost 2.2 on the preceding segment to the end of track at the connection point with the Missouri Pacific Railroad Company, a further distance of approximately 0.2 miles) and on BNSF's line between approximately milepost 1.29 on the former ATSF Dublin Subdivision and approximately milepost 349.97 on the former ATSF Fort Worth Subdivision near Tower 60 in Fort Worth.[4]

The earliest the transaction could be consummated was November 13, 1998, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33681, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kevin M. Sheys, 1350 Eye Street, NW, Suite 200, Washington, DC 20005–3324.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31644 Filed 11–27–98; 8:45 am]

BILLING CODE 4915–00–P

[3] *See Cen-Tex Rail Link, Ltd.—Acquisition and Operation Exemption—Certain Lines of The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32507 (ICC served June 10, 1994), *Centex Rural Rail Transportation District—Acquisition Exemption—Certain Assets of Cen-Tex Rail Link, Ltd.*, Finance Docket No. 32496 (ICC served Aug. 1, 1994), and *Fort Worth and Western Railroad Company—Acquisition Exemption—Line of The Atchison, Topeka and Santa Fe Railway Company*, STB Finance Docket No. 33001 (STB served Aug. 13, 1996).

[4] *See Fort Worth & Western Railroad Company—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32524 (ICC served June 24, 1994), and *Cen-Tex Rail Link, Ltd.—Trackage Rights Exemption—Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32715 (ICC served June 22, 1995).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 381X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Hennepin and Ramsey Counties, MN

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 2.43 miles of rail line between milepost 0.00 near East Minneapolis and milepost 2.43 near Rollins Oil, in Hennepin and Ramsey Counties, MN. The line traverses United States Postal Service Zip Codes 55113, 55413, 55414, and 55418.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 30, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 10, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 21, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sarah Whitley Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, Fort Worth, TX 76131–02830.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 4, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

BNSF's filing of a notice of consummation by November 30, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31822 Filed 11–27–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

November 16, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 30, 1998 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0027.
Form Number: POD 1681.
Type of Review: Extension.
Title: Application for Payment of a Deceased Depositor's Postal Savings.
Description: This form is required in cases of deceased postal Savings Depositors with account of $50 or less. The form is used by relatives of the deceased depositor showing the relationship to the depositor and the date of the depositor's death. The information helps to determine whether the applicant is entitled to the proceeds of the account. If entitled, payment is made.
Respondents: Individuals or households.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25 hours.
OMB Number: 1510–0035.
Form Number: None.
Type of Review: Extension.
Title: Assignment Form.
Description: This form is used when awardholders wish to assign or transfer all or portion of their award to another person. In doing so, awardholder forfeits all future rights to the portion assigned.
Respondents: Individuals or households.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 75 hours.
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–31717 Filed 11–27–98; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 20, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1467.
Form Number: IRS Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, and 9789(SP).
Type of Review: Extension.
Title: Electronic Federal Tax Payment System (EFTPS).
Description: Enrollment is vital to the implementation of the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service will use to accept electronically transmitted federal tax payments. This system is a necessary outgrowth of advanced information and communication technologies.
Respondents: Business and other for-profit, Individuals or households.
Estimated Number of Respondents: 4,470,000.
Estimated Burden Hours Per Respondent:

Form	Response time
9779	20
9779(SP)	20
9783	20
9783(SP)	20
9787	20
9787(SP)	20
9789	20
9789(SP)	20

Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 1,489, 852 hours.
OMB Number: 1545–1476.
Regulation Project Number: INTL–3–95 Final.
Type of Review: Extension.
Title: Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.
Description: The information requested is necessary for the Service to Audit taxpayers' returns to ensure taxpayers have properly determined the source of income from sales of inventory produced in one country and sold in another.
Respondents: Business and other for-profit.
Estimated Number of Respondents: 425.
Estimated Burden Hours Per Respondent: 2 hours, 36 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 1,125 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–31718 Filed 11–27–98; 8:45 am]

BILLING CODE 4830–01–P

federal register

Monday
November 30, 1998

Part II

Reader Aids

Cumulative List of Public Laws
105th Congress, Second Session

CUMULATIVE LIST OF PUBLIC LAWS

This is a Cumulative List of Public Laws for the 105th Congress, Second Session. Other cumulative lists (1993–1997) are available online at http://www.nara.gov/fedreg. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send E-mail to info@fedreg.nara.gov.

The List of Public Laws will resume when bills are enacted into public law during the first session of the One Hundred Sixth Congress, which convenes January 6, 1999. The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws are not yet available online or for purchase.

Public Law	Title	Approved	112 Stat.
105–154	To rename the Washington National Airport located in the District of Columbia and Virginia as the "Ronald Reagan Washington National Airport".	Feb. 6, 1998	3
105–155	FAA Research, Engineering, and Development Authorization Act of 1998	Feb. 11, 1998	5
105–156	Environmental Policy and Conflict Resolution Act of 1998	Feb. 11, 1998	8
105–157	To authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel PRINCE NOVA, and for other purposes.	Feb. 11, 1998	13
105–158	Holocaust Victims Redress Act	Feb. 13, 1998	15
105–159	Disapproving the cancellations transmitted by the President on October 6, 1997, regarding Public Law 105–45.	Feb. 25, 1998	19
105–160	National Sea Grant College Program Reauthorization Act of 1998	Mar. 6, 1998	21
105–161	To designate the United States Post Office building located at 750 Highway 28 East in Taylorsville, Mississippi, as the "Blaine H. Eaton Post Office Building".	Mar. 9, 1998	28
105–162	To designate the post office located at 194 Ward Street in Paterson, New Jersey, as the "Larry Doby Post Office".	Mar. 9, 1998	29
105–163	To designate the Federal building and United States courthouse located at 475 Mulberry Street in Macon, Georgia, as the "William Augustus Bootle Federal Building and United States Courthouse".	Mar. 20, 1998	31
105–164	Examination Parity and Year 2000 Readiness for Financial Institutions Act	Mar. 20, 1998	32
105–165	To designate the Federal building located at 61 Forsyth Street SW., in Atlanta, Georgia, as the "Sam Nunn Atlanta Federal Center".	Mar. 20, 1998	37
105–166	Lobbying Disclosure Technical Amendments Act of 1998	Apr. 6, 1998	38
105–167	To consolidate certain mineral interests in the National Grasslands in Billings County, North Dakota, through the exchange of Federal and private mineral interests to enhance land management capabilities and environmental and wildlife protection, and for other purposes.	Apr. 13, 1998	40
105–168	Birth Defects Prevention Act of 1998	Apr. 21, 1998	43
105–169	To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District.	Apr. 24, 1998	46
105–170	Aviation Medical Assistance Act of 1998	Apr. 24, 1998	47
105–171	To authorize the Secretary of Agriculture to convey certain lands and improvements in the State of Virginia, and for other purposes.	Apr. 24, 1998	50
105–172	Wireless Telephone Protection Act	Apr. 24, 1998	53
105–173	To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General.	Apr. 27, 1998	56
105–174	1998 Supplemental Appropriations and Rescissions Act	May 1, 1998	58
105–175	Expressing the sense of the Congress on the occasion of the 50th anniversary of the founding of the modern State of Israel and reaffirming the bonds of friendship and cooperation between the United States and Israel.	May 11, 1998	102
105–176	To amend chapter 51 of title 31, United States Code, to allow the Secretary of the Treasury greater discretion with regard to the placement of the required inscriptions on quarter dollars issued under the 50 States Commemorative Coin Program.	May 29, 1998	104
105–177	To extend certain programs under the Energy Policy and Conservation Act	June 1, 1998	105
105–178	Transportation Equity Act for the 21st Century	June 9, 1998	107
105–179	To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the "Howard T. Markey National Courts Building".	June 16, 1998	510
105–180	Care for Police Survivors Act of 1998	June 16, 1998	511
105–181	Bulletproof Vest Partnership Grant Act of 1998	June 16, 1998	512
105–182	To extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason.	June 19, 1998	516
105–183	Religious Liberty and Charitable Donation Protection Act of 1998	June 19, 1998	517
105–184	Telemarketing Fraud Prevention Act of 1998	June 23, 1998	520
105–185	Agricultural Research, Extension, and Education Reform Act of 1998	June 23, 1998	523
105–186	U.S. Holocaust Assets Commission Act of 1998	June 23, 1998	611
105–187	Deadbeat Parents Punishment Act of 1998	June 24, 1998	618
105–188	To permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration for lease.	July 7, 1998	620
105–189	To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes.	July 14, 1998	622
105–190	To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes.	July 14, 1998	623
105–191	To extend the deadline under the Federal Power Act applicable to the construction of the Au-Sable Hydroelectric Project in New York, and for other purposes.	July 14, 1998	624
105–192	To extend the deadline under the Federal Power Act for the construction of the Bear Creek Hydroelectric Project in the State of Washington, and for other purposes.	July 14, 1998	625
105–193	To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes.	July 14, 1998	626

Public Law	Title	Approved	112 Stat.
105–194	Agriculture Export Relief Act of 1998	July 14, 1998	627
105–195	To validate certain conveyances in the City of Tulare, Tulare County, California, and for other purposes.	July 16, 1998	629
105–196	National Bone Marrow Registry Reauthorization Act of 1998	July 16, 1998	631
105–197	Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998.	July 16, 1998	638
105–198	To amend the Occupational Safety and Health Act of 1970	July 16, 1998	640
105–199	National Drought Policy Act of 1998	July 16, 1998	641
105–200	Child Support Performance and Incentive Act of 1998	July 16, 1998	645
105–201	Approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital	July 16, 1998	675
105–202	To extend the legislative authority for construction of the National Peace Garden memorial, and for other purposes.	July 16, 1998	676
105–203	National Underground Railroad Network to Freedom Act of 1998	July 21, 1998	678
105–204	To require the Secretary of Energy to submit to Congress a plan to ensure that all amounts accrued on the books of the United States Enrichment Corporation for the disposition of depleted uranium hexafluoride will be used to treat and recycle depleted uranium hexafluoride.	July 21, 1998	681
105–205	To amend chapter 87 of title 5, United States Code, with respect to the order of precedence to be applied in the payment of life insurance benefits.	July 22, 1998	683
105–206	Internal Revenue Service Restructuring and Reform Act of 1998	July 22, 1998	685
105–207	National Science Foundation Authorization Act of 1998	July 29, 1998	869
105–208	To facilitate the sale of certain land in Tahoe National Forest in the State of California to Placer County, California.	July 29, 1998	879
105–209	To allow for election of the Delegate from Guam by other than separate ballot, and for other purposes.	July 29, 1998	880
105–210	To make a minor adjustment in the exterior boundary of the Devils Backbone Wilderness in the Mark Twain National Forest, Missouri, to exclude a small parcel of land containing improvements.	July 29, 1998	881
105–211	To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 3862 in the State of Iowa, and for other purposes.	July 29, 1998	882
105–212	To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes.	July 29, 1998	883
105–213	To extend the time required for the construction of a hydroelectric project	July 29, 1998	884
105–214	To amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests.	July 29, 1998	885
105–215	To present a congressional gold medal to Nelson Rolihlahla Mandela	July 29, 1998	895
105–216	Homeowners Protection Act of 1998	July 29, 1998	897
105–217	African Elephant Conservation Reauthorization Act of 1998	Aug. 5, 1998	911
105–218	To designate the United States courthouse to be constructed at the corner of Superior and Huron Roads, in Cleveland, Ohio, as the "Carl B. Stokes United States Courthouse".	Aug. 7, 1998	912
105–219	Credit Union Membership Access Act	Aug. 7, 1998	913
105–220	Workforce Investment Act of 1998	Aug. 7, 1998	936
105–221	Amy Somers Volunteers at Food Banks Act	Aug. 7, 1998	1248
105–222	To designate the auditorium located within the Sandia Technology Transfer Center in Albuquerque, New Mexico, as the "Steve Schiff Auditorium".	Aug. 7, 1998	1249
105–223	To establish the United States Capitol Police Memorial Fund on behalf of the families of Detective John Michael Gibson and Private First Class Jacob Joseph Chestnut of the United States Capitol Police.	Aug. 7, 1998	1250
105–224	To provide for the conveyance of small parcels of land in the Carson National Forest and the Santa Fe National Forest, New Mexico, to the village of El Rito and the town of Jemez Springs, New Mexico.	Aug. 12, 1998	1252
105–225	To revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observances, ceremonies, and organizations, as title 36, United States Code, "Patriotic and National Observances, Ceremonies, and Organizations".	Aug. 12, 1998	1253
105–226	John F. Kennedy Center for the Performing Arts Authorization Act of 1998	Aug. 12, 1998	1513
105–227	To amend the District of Columbia Convention Center and Sports Arena Authorization Act of 1995 to revise the revenues and activities covered under such Act, and for other purposes.	Aug. 12, 1998	1515
105–228	Emergency Farm Financial Relief Act	Aug. 12, 1998	1516
105–229	To ensure maintenance of a herd of wild horses in Cape Lookout National Seashore	Aug. 13, 1998	1517
105–230	Biomaterials Access Assurance Act of 1998	Aug. 13, 1998	1519
105–231	To grant a Federal charter to the American GI Forum of the United States	Aug. 13, 1998	1530
105–232	To designate the Federal building and United States courthouse located at 85 Marconi Boulevard in Columbus, Ohio, as the "Joseph P. Kinneary United States Courthouse".	Aug. 13, 1998	1534
105–233	To amend chapter 45 of title 28, United States Code, to authorize the Administrative Assistant to the Chief Justice to accept voluntary services, and for other purposes.	Aug. 13, 1998	1535
105–234	Amending the Fastener Quality Act to exempt from its coverage certain fasteners approved by the Federal Aviation Administration for use in aircraft.	Aug. 14, 1998	1536
105–235	Finding the Government of Iraq in unacceptable and material breach of its international obligations.	Aug. 14, 1998	1538
105–236	Texas Low-Level Radioactive Waste Disposal Compact Consent Act	Sept. 20, 1998	1542
105–237	Military Construction Appropriations Act, 1999	Sept. 20, 1998	1553
105–238	To transfer administrative jurisdiction over part of the Lake Chelan National Recreation Area from the Secretary of the Interior to the Secretary of Agriculture for inclusion in the Wenatchee National Forest.	Sept. 23, 1998	1562
105–239	Marion National Fish Hatchery and Claude Harris National Aquacultural Research Center Conveyance Act.	Sept. 23, 1998	1564
105–240	Making continuing appropriations for the fiscal year 1999, and for other purposes	Sept. 25, 1998	1566
105–241	Postal Employees Safety Enhancement Act	Sept. 28, 1998	1572
105–242	National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998.	Oct. 5, 1998	1574
105–243	Sand Creek Massacre National Historic Site Study Act of 1998	Oct. 6, 1998	1579
105–244	Higher Education Amendments of 1998	Oct. 7, 1998	1581

Public Law	Title	Approved	112 Stat.
105–245	Energy and Water Development Appropriations Act, 1999	Oct. 7, 1998	1838
105–246	Nazi War Crimes Disclosure Act	Oct. 8, 1998	1859
105–247	To correct a provision relating to termination of benefits for convicted persons	Oct. 9, 1998	1863
105–248	Mammography Quality Standards Reauthorization Act of 1998	Oct. 9, 1998	1864
105–249	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 9, 1998	1868
105–250	To designate the United States courthouse located at 141 Church Street in New Haven, Connecticut, as the "Richard C. Lee United States Courthouse".	Oct. 9, 1998	1869
105–251	To provide for the improvement of interstate criminal justice identification, information, communications, and forensics.	Oct. 9, 1998	1870
105–252	To extend a quarterly financial report program administered by the Secretary of Commerce	Oct. 9, 1998	1886
105–253	Waiving certain enrollment requirements for the remainder of the One Hundred Fifth Congress with respect to any bill or joint resolution making general or continuing appropriations for fiscal year 1999.	Oct. 12, 1998	1887
105–254	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 12, 1998	1888
105–255	Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development Act.	Oct. 14, 1998	1889
105–256	To make certain technical corrections in laws relating to Native Americans, and for other purposes.	Oct. 14, 1998	1896
105–257	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 14, 1998	1901
105–258	Ocean Shipping Reform Act of 1998	Oct. 14, 1998	1902
105–259	To extend the date by which an automated entry-exit control system must be developed	Oct. 15, 1998	1918
105–260	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 16, 1998	1919
105–261	Strom Thurmond National Defense Authorization Act for Fiscal Year 1999	Oct. 17, 1998	1920
105–262	Department of Defense Appropriations Act, 1999	Oct. 17, 1998	2279
105–263	Southern Nevada Public Land Management Act of 1998	Oct. 19, 1998	2343
105–264	Travel and Transportation Reform Act of 1998	Oct. 19, 1998	2350
105–265	Great Lakes Fish and Wildlife Restoration Act of 1998	Oct. 19, 1998	2358
105–266	Federal Employees Health Care Protection Act of 1998	Oct. 19, 1998	2363
105–267	Gallatin Land Consolidation Act of 1998	Oct. 19, 1998	2371
105–268	Library of Congress Bicentennial Commemorative Coin Act of 1998	Oct. 19, 1998	2378
105–269	Migratory Bird Hunting and Conservation Stamp Promotion Act	Oct. 19, 1998	2381
105–270	Federal Activities Inventory Reform Act of 1998	Oct. 19, 1998	2382
105–271	Year 2000 Information and Readiness Disclosure Act	Oct. 19, 1998	2386
105–272	Intelligence Authorization Act for Fiscal Year 1999	Oct. 20, 1998	2396
105–273	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 20, 1998	2418
105–274	District of Columbia Courts and Justice Technical Corrections Act of 1998	Oct. 21, 1998	2419
105–275	Legislative Branch Appropriations Act, 1999	Oct. 21, 1998	2430
105–276	Making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes.	Oct. 21, 1998	2461
105–277	Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999	Oct. 21, 1998	2681
105–278	Charter School Expansion Act of 1998	Oct. 22, 1998	2682
105–279	Mount St. Helens National Volcanic Monument Completion Act	Oct. 23, 1998	2690
105–280	To provide for a land exchange involving the Cape Cod National Seashore and to extend the authority for the Cape Cod National Seashore Advisory Commission.	Oct. 26, 1998	2694
105–281	Granite Watershed Enhancement and Protection Act of 1998	Oct. 26, 1998	2695
105–282	To authorize the Secretary of Agriculture to convey the administrative site for the Rogue River National Forest and use the proceeds for the construction or improvement of offices and support buildings for the Rogue River National Forest and the Bureau of Land Management.	Oct. 26, 1998	2698
105–283	To extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Arkansas.	Oct. 26, 1998	2700
105–284	To authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia.	Oct. 26, 1998	2701
105–285	Community Opportunities, Accountability, and Training and Educational Services Act of 1998	Oct. 27, 1998	2702
105–286	Border Smog Reduction Act of 1998	Oct. 27, 1998	2773
105–287	Armored Car Reciprocity Amendments of 1998	Oct. 27, 1998	2776
105–288	Miles Land Exchange Act of 1998	Oct. 27, 1998	2778
105–289	Plant Patent Amendments Act of 1998	Oct. 27, 1998	2780
105–290	To authorize the Secretary of the Interior to provide assistance to the National Historic Trails Interpretive Center in Casper, Wyoming.	Oct. 27, 1998	2782
105–291	Guam Organic Act Amendments of 1998	Oct. 27, 1998	2785
105–292	International Religious Freedom Act of 1998	Oct. 27, 1998	2787
105–293	Irrigation Project Contract Extension Act of 1998	Oct. 27, 1998	2816
105–294	Advisory Council on California Indian Policy Extension Act of 1998	Oct. 27, 1998	2818
105–295	To authorize the construction of temperature control devices at Folsom Dam in California	Oct. 27, 1998	2820
105–296	To amend the Idaho Admission Act regarding the sale or lease of school land	Oct. 27, 1998	2822
105–297	Curt Flood Act of 1998	Oct. 27, 1998	2824
105–298	To amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.	Oct. 27, 1998	2827
105–299	To designate a Federal building located in Florence, Alabama, as the "Justice John McKinley Federal Building".	Oct. 27, 1998	2835
105–300	To provide that a person closely related to a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) may not be appointed as a judge of the same court, and for other purposes.	Oct. 27, 1998	2836
105–301	Crime Victims With Disabilities Awareness Act	Oct. 27, 1998	2838
105–302	To amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers.	Oct. 27, 1998	2841
105–303	Commercial Space Act of 1998	Oct. 28, 1998	2843
105–304	Digital Millennium Copyright Act	Oct. 28, 1998	2860
105–305	Next Generation Internet Research Act of 1998	Oct. 28, 1998	2919
105–306	Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998	Oct. 28, 1998	2926
105–307	Dante Fascell Biscayne National Park Visitor Center Designation Act	Oct. 29, 1998	2931

Public Law	Title	Approved	112 Stat.
105–308	To remove the restriction on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Cahuilla Indians.	Oct. 30, 1998	2932
105–309	Technology Administration Act of 1998	Oct. 30, 1998	2935
105–310	Money Laundering and Financial Crimes Strategy Act of 1998	Oct. 30, 1998	2941
105–311	Federal Employees Life Insurance Improvement Act	Oct. 30, 1998	2950
105–312	To clarify restrictions under the Migratory Bird Treaty Act on baiting and to facilitate acquisition of migratory bird habitat, and for other purposes.	Oct. 30, 1998	2956
105–313	Miccosukee Reserved Area Act	Oct. 30, 1998	2964
105–314	Protection of Children From Sexual Predators Act of 1998	Oct. 30, 1998	2974
105–315	Alternative Dispute Resolution Act of 1998	Oct. 30, 1998	2993
105–316	Canadian River Project Prepayment Act	Oct. 30, 1998	2999
105–317	Glacier Bay National Park Boundary Adjustment Act of 1998	Oct. 30, 1998	3002
105–318	Identity Theft and Assumption Deterrence Act of 1998	Oct. 30, 1998	3007
105–319	Irish Peace Process Cultural and Training Program Act of 1998	Oct. 30, 1998	3013
105–320	Torture Victims Relief Act of 1998	Oct. 30, 1998	3016
105–321	Oregon Public Lands Transfer and Protection Act of 1998	Oct. 30, 1998	3020
105–322	To authorize the Secretary of the Interior to provide financial assistance to the State of Maryland for a pilot program to develop measures to eradicate or control nutria and restore marshland damaged by nutria.	Oct. 30, 1998	3027
105–323	To amend the State Department Basic Authorities Act of 1956 to provide rewards for information leading to the arrest or conviction of any individual for the commission of an act, or conspiracy to act, of international terrorism, narcotics related offenses, or for serious violations of international humanitarian law relating to the Former Yugoslavia, and for other purposes.	Oct. 30, 1998	3029
105–324	Antimicrobial Regulation Technical Corrections Act of 1998	Oct. 30, 1998	3035
105–325	National Cave and Karst Research Institute Act of 1998	Oct. 30, 1998	3038
105–326	Dutch John Federal Property Disposition and Assistance Act of 1998	Oct. 30, 1998	3040
105–327	To amend the Land and Water Conservation Fund Act of 1965 to allow national park units that cannot charge an entrance or admission fee to retain other fees and charges.	Oct. 30, 1998	3055
105–328	Fish and Wildlife Revenue Enhancement Act of 1998	Oct. 30, 1998	3057
105–329	Arches National Park Expansion Act of 1998	Oct. 30, 1998	3060
105–330	Trademark Law Treaty Implementation Act	Oct. 30, 1998	3064
105–331	Thomas Alva Edison Commemorative Coin Act	Oct. 31, 1998	3073
105–332	Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998	Oct. 31, 1998	3076
105–333	ANCSA Land Bank Protection Act of 1998	Oct. 31, 1998	3129
105–334	Drive for Teen Employment Act	Oct. 31, 1998	3137
105–335	Utah Schools and Lands Exchange Act of 1998	Oct. 31, 1998	3139
105–336	William F. Goodling Child Nutrition Reauthorization Act of 1998	Oct. 31, 1998	3143
105–337	Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998.	Oct. 31, 1998	3171
105–338	Iraq Liberation Act of 1998	Oct. 31, 1998	3178
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Part III

Environmental Protection Agency

40 CFR Part 260, et al.
Hazardous Remediation Waste Management Requirements (HWIR-Media); Final Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, 270 and 271

[FRL–6186–6]

RIN 2050–AE22

Hazardous Remediation Waste Management Requirements (HWIR-media)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of President Clinton's March 1994 environmental regulatory reform initiative, the United States Environmental Protection Agency (EPA) is issuing new requirements for Resource Conservation and Recovery Act (RCRA) hazardous remediation wastes treated, stored or disposed of during cleanup actions. These new requirements make five major changes: First, they make permits for treating, storing and disposing of remediation wastes faster and easier to obtain; second, they provide that obtaining these permits will not subject the owner and/or operator to facility-wide corrective action; third, they create a new kind of unit called a "staging pile" that allows more flexibility in storing remediation waste during cleanup; fourth, they exclude dredged materials from RCRA Subtitle C if they are managed under an appropriate permit under the Marine Protection, Research and Sanctuaries Act or the Clean Water Act; and fifth, they make it faster and easier for States to receive authorization when they update their RCRA programs to incorporate revisions to the Federal RCRA regulations.

DATES: These final regulations are effective on June 1, 1999.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98-MHWF-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Michael Fitzpatrick, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–8411, fitzpatrick.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index and supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/id/hwirmdia.htm

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I. Overview Information

A. Why do This Rule and Preamble Read so Differently From Other Regulations?

Today's regulatory language and accompanying preamble are written in a "readable regulations" format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns "we" for EPA and "you" for the owner/operator (in the regulatory text), and other techniques to make it easier for readers to find and understand the information in today's rule and preamble.

This new format is part of the Agency's ongoing efforts at regulatory reinvention, and may be unfamiliar to readers as it looks very different from the existing regulatory text of the Parts affected by today's rule. However, the Agency believes that this new format will increase readers' abilities to understand the regulations, which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

All of the requirements found in today's final regulations, including those set forth in table format, constitute binding, enforceable legal requirements. The plain language format used in today's final regulations may appear different from other rules, but it establishes binding, enforceable legal requirements just as those in the existing regulations.

B. What Law Authorizes This Rule?

These regulations are finalized under the authority of sections 2002(a), 3001, 3004, 3005, 3006, 3007 and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6924, 6925, 6926, 6927 and 6974.

II. Background Information

A. What Problems Does Today's Rule Address?

Currently, hazardous wastes managed during cleanup are generally subject to the same RCRA Subtitle C requirements as newly generated hazardous wastes. Often those Subtitle C requirements are not appropriate for the cleanup scenario, as described below.

1. Response-oriented Programs Have Different Objectives and Incentives Than Prevention-oriented Programs

Since 1980, EPA has developed a comprehensive regulatory framework under Subtitle C of RCRA for identifying, generating, transporting, treating, storing and disposing of hazardous wastes. The RCRA program is generally considered prevention-rather than response-oriented. The regulations center around two broad objectives: to *prevent* releases of hazardous wastes and constituents through a comprehensive and conservative set of management requirements (commonly referred to as "cradle-to-grave management"); and to *minimize* the generation and *maximize* the legitimate reuse and recycling of hazardous wastes. However, in the remediation programs, EPA wants to develop a regulatory regime that encourages people to cleanup contaminated areas thereby generating potentially large volumes of hazardous waste.

The RCRA regulations constitute minimum national standards for managing hazardous wastes. With limited exceptions, they apply equally to all hazardous wastes, regardless of where or how generated, and to all hazardous waste management facilities, regardless of how much government oversight any given facility receives. To ensure an adequate level of protection nationally, the RCRA regulations have been conservatively designed to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies. This causes remediation activities to be subject to conservative, and often inappropriate requirements. For example, all waste piles must have a leachate collection and removal system under § 264.251(a)(2). This is appropriate when highly concentrated wastes will be stored in a pile for an extended time, but may not be necessary for less-concentrated wastes, or shorter-term activities, or cleanup actions when the level of oversight is high. However, to account for any activities that may take place nationally, EPA wrote the regulations conservatively to require all waste piles to comply with these requirements, even when they will contain less-concentrated waste for a short time. Nationally applicable requirements must be written in this manner to provide protective requirements for the highest risk activities that the regulations allow.

As opposed to requirements designed for on-going waste management, remediation activities often involve less-concentrated wastes, one-time activities, and shorter-term activities. Remediation activities are also conducted under close EPA or State oversight. However, the current regulations do not allow EPA or the State to modify the requirements for piles, or many other Subtitle C requirements, to make them more appropriate for the specific circumstances of the remediation taking place.

In administering current RCRA regulations for hazardous waste generated during cleanup, EPA and States have recognized fundamental differences in both incentives and objectives for prevention- and response-oriented programs. In prevention-oriented programs, the regulations require taking appropriate precautions against causing contamination before an activity takes place, such as the regulations that require liners and leachate collection systems. Also, because the regulations provide an incentive to minimize waste production, from the beginning, the activity is planned and managed to carefully control the appropriate factors such as amount of waste produced, concentrations, and handling practices to prevent unacceptable situations such as releases. However, in administering remedial programs such as Superfund and the RCRA Corrective Action program, EPA and the States already face an unacceptable situation (contaminated sites) that must be remedied. Response-oriented programs must address already existing problems. Response-oriented programs cannot predetermine the location of the contamination, but must respond where contamination has already occurred, which may be close to sensitive ecosystems or populated areas. Response-oriented programs cannot control the volumes or concentrations of remediation wastes, but must manage what wastes have already been released into the environment in varying volumes, concentrations and matrices. Often the site-specific situations facing response-oriented programs make waste management difficult, such as complex matrices and combinations of constituents of concern, or concerns over on-site treatment or disposal units to manage the wastes that must be cleaned up.

In a prevention-oriented system, if the community objected to building new on-site units, the facility could decide not to engage in business practices that would generate the waste that would need to be managed. In the response-oriented situation, however, the facility (or the regulatory agency) must deal with existing contamination, and must find an acceptable response.

Also, remedial actions generally receive intensive government oversight, and remedial decisions are made by a State or Federal Agency only after they thoroughly investigate site-specific

conditions. In contrast, prevention-oriented hazardous waste regulations are generally implemented independently by facility owner/operators through complying with national regulatory requirements.

2. LDRs, MTRs, and Permitting Raise Problems When Applied to Remediation Wastes

In the HWIR-media proposed rule, EPA identified the application of three RCRA requirements to remediation wastes as the biggest problems to address; Land Disposal Restrictions (LDRs), Minimum Technological Requirements (MTRs), and permitting.

The LDRs (which appear in 40 CFR part 268) generally prohibit land disposal (or "placement" in land-based units) of hazardous wastes until the wastes have met the applicable treatment standards. Often this placement is appropriate and desirable when managing remediation wastes to excavate them from their current locations, and temporarily store the wastes before on-site treatment, or to excavate the wastes and accumulate enough volume to ship off-site cost effectively. By not allowing temporary storage and accumulation in land-based units, the LDRs can be a strong disincentive to excavating and managing remediation waste. The staging pile provisions of today's final rule address this issue by allowing temporary storage and accumulation of remediation wastes in a staging pile without being subject to LDR.

Another example of the problems with LDRs in the cleanup scenario is that contaminated media are often physically quite different from as-generated process wastes. Contaminated soils often contain complex mixtures of multiple contaminants and are highly variable in their composition, handling, and treatability characteristics. For this reason, treating contaminated soils can be particularly complex, involving one or sometimes a series of custom-designed treatment systems. It can be very difficult to treat contaminated soils to the LDR treatment levels. The parts of the HWIR-media proposal that addressed this issue have been finalized in the LDR Phase IV rule (63 FR 28556 (May 26, 1998)).

The MTR requirements were designed as preventative standards for wastes generated through industrial processes. They were not designed for the remedial context. For example, under 40 CFR Subpart F, surface impoundments, waste piles, and land treatment units or landfills must have specific detection, compliance monitoring programs, and corrective action programs for potential groundwater contamination from the unit. These are appropriate preventative requirements for units managing process wastes. However, many cleanup actions involve short-term placement of remediation wastes into a waste pile, and all of these requirements may not be necessary. The staging piles provisions of today's rule address this issue by allowing the Director to determine appropriate design criteria for the staging pile based on the site-specific circumstances such as the concentration of the wastes to be placed in the unit and the length of time the unit will operate. EPA also explained in the preamble to the CAMU rule additional reasons why LDR and MTR requirements can be counterproductive when managing remediation waste as opposed to as-generated process wastes. To read about these additional reasons, see 58 FR 8658 (8659–8661)(February 16, 1993).

Finally, another area creating roadblocks is permitting. The time-consuming process for obtaining a RCRA permit can delay cleanups, thereby delaying the environmental and public health benefits of cleaning up a contaminated site. For example, the traditional RCRA permitting process requires the facility owner/operator to submit a great deal of information on activities at the facility to EPA or the State, and the permit must include terms and conditions to protect against any improper waste management practices over the long-term active life of an operating facility. Because of the large volume of information submitted, these permits are huge documents and approval often takes several years. However, in the remedial scenario, cleanup activities are generally a one-time project; once the cleanup is completed and the remediation waste is properly treated and disposed, then the activities are completed. Also, these activities are limited to addressing the contamination at the site, and therefore are often more limited in scope than the operating practices of a facility that is engaged in on-going waste treatment, storage and disposal. To overcome the limitations discussed above from traditional RCRA permits, the new Remedial Action Plans (RAPs) requirements in today's rule streamline the process for receiving a permit for treating, storing and disposing of remediation wastes, and require the facility owner/operator to submit significantly less information than for a traditional RCRA permit. However, the information submitted for a RAP application and RAP terms and conditions must be sufficient to ensure proper waste management of the remediation wastes involved during the life of the cleanup activities.

Furthermore, a facility seeking a traditional RCRA permit to manage remediation wastes on-site must investigate and cleanup their entire facility (facility-wide corrective action). This requirement can deter potential cleanups from happening at all. For instance, facility owners and operators may wish to clean up a small portion of their facility for any number of reasons, such as to avoid future liability, to free the property for sale or other uses, or because they simply wish to restore the environmental health of their property. However, they may not be willing to take on the burden of investigating and cleaning up their entire facility, when it is only a small portion they wish to voluntarily clean up, and they may be reluctant to conduct the cleanup under the RCRA corrective action program. Therefore, to encourage cleanups, under today's final rule, facilities that need a RCRA permit only to treat, store, or dispose of remediation wastes (remediation-only facilities) are not subject to the facility-wide corrective action requirement.

B. How Has EPA Tried to Solve These Problems in the Past?

EPA has tried to solve these problems in the past through a series of regulations and policies; for example;

- The "Area of Contamination" (AOC) policy;
- The "contained-in" policy; and
- The regulations for Corrective Action Management Units (CAMUs), and temporary units.[1]

All of these regulations and policies help alleviate some of the problems facing cleanups, but none have completely solved these problems. (See the October 1997 report by the United States General Accounting Office, "Remediation Waste Requirements Can Increase the Time and Cost of Cleanups."[2])

The AOC policy allows important flexibility for activities done within a contiguous contaminated area. For example, hazardous remediation wastes may be consolidated or treated *in situ*

[1] 61 FR 18780, 18782 (April 29, 1996), memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers, (March 13, 1996); 55 FR 8666, 8758–8760 (March 8, 1990); and 58 FR 8658 (February 16, 1993).

[2] Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups, U.S. General Accounting Office, GAO/RCED–98–4, October 1997.

within an AOC without triggering the LDRs or MTRs. However, the AOC policy does not address the permitting issues today's rule is addressing, nor does it address LDR and MTR for wastes removed from an AOC, or treated *ex situ*.

The contained-in policy defines when some contaminated media can be considered to no longer "contain" hazardous waste. When EPA or an authorized State determines that media do not "contain" hazardous waste, RCRA does not generally pose a barrier to remediation because permitting requirements, LDRs (generally), and MTRs do not apply to media that do not contain hazardous waste. However, the contained-in policy is limited to media only, and does not provide any flexibility for other remediation wastes, nor does it provide needed flexibility for highly concentrated media.

The CAMU and temporary unit rules provide much-needed flexibility for unit-specific standards at cleanup sites. CAMUs and temporary units are not subject to LDRs or MTRs. The requirements for these units are set on a site-specific basis, depending on site-specific factors such as the types of wastes being managed (for example, concentrations, volumes, other characteristics) and the period of time the unit will operate. However, CAMUs and temporary units do not address any of the permitting issues that cause problems for remediation wastes.

Because each of these regulations or policies is limited in solving the problems inherent to managing hazardous remediation waste under the RCRA Subtitle C system, EPA felt it was necessary to propose additional solutions.

C. How Did the Proposed Rule Attempt to Solve These Problems?

EPA recognized a continuing need for further reforms than the regulations and policies discussed above had provided, and yet knew that these reforms would be controversial. In 1993, EPA convened a committee under the Federal Advisory Committee Act (FACA) to provide recommendations to EPA on how to make these reforms. The FACA Committee included representatives from environmental groups, regulated industry, the waste management industry, States, and EPA. The FACA Committee met numerous times between January 1993 and September 1994. EPA based the options in the April 29, 1996 HWIR-media proposal on the recommendations and discussions of the FACA Committee.

EPA presented several options for reforms in the HWIR-media proposal. EPA presented two comprehensive options (the Bright Line and the Unitary Approach), and requested comment on sub-options and issues within those comprehensive options.

1. The "Bright Line" Approach for Contaminated Media

The first comprehensive option, which formed the basis for the proposed rule, was the "Bright Line" option. The Bright Line option would have been limited to "contaminated media" only. Contaminated media was defined to include soils, groundwater, and sediments, but not debris, nor other remediation wastes such as sludges. The Bright Line option got its name from a "line" dividing more highly contaminated media from less contaminated media. That Bright Line was a set of constituent-specific concentrations based on the risks from those constituents. Media found to contain constituents above these concentrations would have remained subject to Subtitle C management requirements (however, the proposal requested comment on some potential modifications to those requirements), and media containing constituents below the concentrations would have been eligible for a determination that it no longer "contained" hazardous waste, thereby generally removing it from Subtitle C jurisdiction.

The determinations of which media were and were not subject to Subtitle C requirements were to be documented in a Remediation Management Plan (RMP) approved by EPA or an authorized State. The RMP would have been an enforceable document that would also have included any requirements for managing media below the Bright Line, and would have served as a RCRA Subtitle C permit for treatment, storage or disposal of media above the Bright Line. The RMP process would have been more streamlined than that required for RCRA permits obtained under the current regulations, and also, at remediation-only facilities, would not have required 3004(u) and (v) facility-wide corrective action, as is required for all RCRA permits before today's rule.

2. Other Options Within the "Bright Line" Approach

Other requirements that EPA proposed to modify were LDR treatment standards for soils that remained subject to Subtitle C requirements, standards applicable to on-site storage and/or treatment of cleanup wastes during the life of the cleanup, and State authorization requirements. New treatment standards would have applied to soils that remained subject to LDRs under the Bright Line approach. EPA also proposed a new unit called a "remediation pile." Remediation piles could have been used temporarily without triggering LDRs and MTRs, for the on-site treatment or storage of remediation wastes subject to Subtitle C. States picking up any revisions to their RCRA programs (the proposal was not limited to the revisions to remediation waste management programs) could have followed new streamlined authorization procedures. Also, EPA proposed to withdraw the CAMU regulations if the final HWIR-media rule would sufficiently replace the flexibility currently available under the CAMU rule.

Finally, EPA proposed excluding dredged materials from Subtitle C if they were managed under permits issued under the Clean Water Act (CWA) or Marine Protection Research and Sanctuaries Act (MPRSA).

3. The "Unitary" Approach—An Alternative to the "Bright Line"

As an alternative to the Bright Line approach, EPA requested comment on the "Unitary Approach." The Unitary Approach excluded all remediation wastes (irrespective of the concentration of hazardous constituents in the waste and including non-media remediation wastes) managed under a Remedial Action Plan (RAP) (which was very similar to a RMP) from Subtitle C management requirements and made them subject to site-specific requirements in the RAP.

Again, EPA requested comment on the two main comprehensive options, the Bright Line and the Unitary Approach, and on all the sub-issues, such as the proposed elimination of CAMUs, and the new requirements for remediation piles, LDR, RMPs and RAPs, dredged materials, and State authorization.

D. What General Comments did EPA Receive About the Two Major Proposed Options?

Some commenters supported the Bright Line option and thought it was appropriate to distinguish between highly contaminated media and media that were less contaminated, and to regulate them differently.

However, most commenters on the Bright Line option believed that the Bright Line would be too difficult to implement, and therefore should not be finalized. There were several elements of the Bright Line option that commenters were concerned about implementing. One concern was sampling to determine whether media was above or below the Bright Line.

Concentrations of contaminants in environmental media typically are not heterogeneous, and it is difficult to make assumptions about the concentrations of large areas of contamination without taking many samples.

Another concern was how to differentiate between media, debris, and other remediation wastes, such as sludges. Commenters stated that often these different types of remediation waste are all found at the same site and they will all need to be managed, and it would be unduly complicated to have to separate the different types of remediation wastes and manage them separately under separate regulatory requirements.

Also, commenters were concerned about the methodology that EPA used to determine the Bright Line levels themselves. EPA received many specific comments on the proposed Bright Line constituent specific numbers, as well as the choice of which constituents were assigned Bright Line numbers.

With regard to the Unitary Approach, many industry and State commenters supported the Unitary Approach, saying that the flexibility would greatly streamline cleanups and allow more appropriate decisions for managing remediation waste. These commenters emphasized that flexibility was needed so that States could develop cleanup programs with oversight and public participation requirements specific to the concerns, needs, and resources of individual States, and felt that the Unitary Approach most closely addressed those concerns. However, some commenters were concerned that the lack of any national requirements was too open-ended and would not guarantee protectiveness. Commenters were also concerned about the resources required for States and Regions to make site-specific determinations of the appropriate management requirements for remediation wastes at each different site.

Finally, commenters had many specific comments on the elements of these options such as RAPs and RMPs, remediation piles, LDRs, etc. Major comments and EPA's responses are summarized under those more specific sections of this preamble, and all comments are answered specifically in the "response to comments" document for today's rule.

E. What did EPA Decide to do After Considering Those Comments?

EPA has decided to promulgate only selected elements of the HWIR-media proposal in today's rule, rather than go forward with a more comprehensive approach as proposed. EPA plans to complement the elements finalized today by leaving the CAMU regulations in place, rather than withdrawing these regulations as proposed.

Although EPA conducted a lengthy outreach process before developing the HWIR-media proposal and made every effort to balance the concerns and interests of various stakeholder groups, public comment on the proposal makes it clear that stakeholders fundamentally disagree on many remediation waste management issues.

EPA agreed with commenters' concerns that the Bright Line approach would be too difficult to implement, and that a Bright Line that would satisfy commenters who wanted the Bright Line levels to consist of very conservative levels would not sufficiently reform the system to remove the existing barriers to efficient, protective remediation waste management. EPA has concluded that pursuing broader regulatory reform would be a time- and resource-intensive process that would most likely result in a rule that would provoke additional years of litigation and associated uncertainty. This uncertainty would be detrimental to the program and have a negative effect on ongoing and future cleanups. Based on these conclusions, the Agency has decided not to finalize either the Bright Line or the Unitary Approach, and recognizes that a purely regulatory response will not solve all of the remediation waste management issues that HWIR-media was designed to solve.

While EPA believes the elements finalized today along with the retention of the CAMU rule, will improve remediation waste management and expedite cleanups, the Agency is also convinced that additional reform is needed to expedite the cleanup program, especially to provide greater flexibility for non-media remediation wastes like remedial sludges, address certain statutory permitting provisions, and more appropriate treatment requirements for remediation wastes (for example, treatment that focuses on "principal threats" rather than all underlying hazardous constituents). Therefore, the Agency continues to support appropriate, targeted legislation to address application of RCRA Subtitle C land disposal restrictions, minimum technological and permitting requirements to remediation waste and will continue to participate in discussions on potential legislation. If legislation is not forthcoming, the Agency may reexamine its approach to remediation waste regulation and may take additional administrative action.

The elements finalized in today's rule are:

- Streamlined permitting for treating, storing and disposing of remediation wastes generated at cleanup sites that, among other things, eliminates the requirement for facility-wide corrective action at remediation-only facilities;
- A variation on the proposed remediation piles, called staging piles, modified in response to public comments;
- A RCRA exclusion for dredged materials managed under Clean Water Act (CWA) or Marine Protection Research and Sanctuaries Act (MPRSA) permits; and
- Streamlined procedures for State authorization.

EPA also finalized, in a separate document (63 FR 28604 (May 26, 1998)), the LDR treatment standards specific to hazardous contaminated soil that were proposed in the HWIR-media proposal. EPA is deferring action on the Treatability Sample Exclusion Rule, that EPA requested comments on expanding in the HWIR-media proposal at 61 FR 18817.

EPA will withdraw all other portions of the proposal, such as the proposal under the Bright Line option to distinguish between lower- and higher-risk contaminated media and give regulatory agencies the flexibility to exempt lower-risk contaminated media from RCRA requirements, and the portion of the proposal that proposed to withdraw the CAMU rule.

Existing areas of flexibility for managing remediation waste, such as the contained-in and AOC policies, and site-specific land disposal restrictions treatability variances, continue to be available.

III. Definitions Used in this Rule (§ 260.10)

Some terms defined in today's rule may be difficult to understand when discussed out of context of the rest of the rule; therefore, readers may wish to read the preamble sections on RAPs and staging piles before reading this section on definitions. To discuss related terms together in this preamble, discussion of the definitions is not in alphabetical order (which is how the terms appear in the rule language). The section discusses:

- First the revised definition of "corrective action management unit" or "CAMU," then
- The definition of "remediation waste," then
- "Remediation waste management site" and "facility," then
- "Staging pile," then finally,
- "Miscellaneous unit."

A. Corrective Action Management Unit (CAMU)—Changes to the Existing Definition, and Changes to the CAMU and Temporary Unit Regulations at §§ 264.552(a) and 264.553(a)

1. Definition of CAMU

In today's final rule, the Agency has revised the definition of CAMU, as well as the CAMU and temporary unit regulations themselves. This revision clarifies the Agency's interpretation of these provisions and accommodates EPA's new interpretation, promulgated today, that remediation-only facilities are not subject to the facility-wide corrective action requirement under RCRA section 3004(u). (See discussion under the definition of remediation waste management site below.) Specifically, the Agency has added to both the CAMU definition (§ 260.10) and §§ 264.552 and 264.553 language providing that CAMUs and temporary units are not limited to facilities subject to RCRA sections 3004(u) or 3008(h), but may also be approved at other cleanup facilities, as well.[3]

The revised definition in today's rule reads as follows:

Corrective action management unit (CAMU) means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

EPA is amending the definition of CAMU by deleting the parts of the definition that referred to corrective action authorities under § 264.101 and RCRA section 3008(h). This change will accommodate RAPs and permits for the management of remediation waste as defined in today's rule that are not subject to § 264.101 or RCRA section 3008(h). Also, the reference in this definition (as well as in the definition of remediation waste) to actions taken "for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h)" implied that EPA intended to restrict CAMU to these authorities. In fact, EPA did not intend to restrict the CAMU (or the temporary unit) to wastes generated solely through specific RCRA regulatory mechanisms, or to cleanup wastes generated solely at RCRA treatment, storage or disposal facilities.

For example, EPA anticipated that CAMUs or temporary units might be used as applicable or relevant and appropriate requirements (ARARs) for the remediation of many CERCLA sites, especially where CERCLA remediation involves management of RCRA hazardous wastes. EPA tied its definition of CAMUs and remediation waste to RCRA Federal authorities applicable to TSD's (that is, 40 CFR 264.101 and RCRA section 3008(h)) because the Agency developed the CAMU and temporary unit rules within that context—that is, they were developed as Federal rules to implement corrective action at facilities subject to RCRA sections 3004(u) or 3008(h). Yet, EPA also expected that the CAMU would be appropriate as ARARs at Superfund sites; at the Regional Administrator's discretion for purposes of remediation under RCRA section 7003 (even if not at a Subtitle C facility); and under State authorities analogous to section 7003 or CERCLA (which provide a waiver from otherwise applicable State RCRA requirements).[4]

The revised definition of CAMU makes it clear that the CAMU is also available under RAPs and other permits for remediation-only facilities that under the new interpretation in today's rule are not subject to 40 CFR 264.101 or RCRA section 3008(h).

Without this change, the current definitions of CAMU and remediation waste might be interpreted to preclude the use of CAMUs and temporary units at remediation-only facilities operating under RAPs. Yet these facilities are clearly among the type of facilities for which CAMUs and temporary units would be beneficial—that is, facilities at which remediation should be expedited and encouraged.

For this reason, EPA has removed the section of the CAMU definition (and also parallel provisions in the definition of remediation waste) that appeared to limit CAMUs (and temporary units) to facilities subject to § 264.101 or section 3008(h). This change should eliminate any confusion over the scope of CAMUs and remediation waste, and it is consistent with the central purpose of today's rule—expediting cleanup at sites overseen by Federal and State cleanup authorities, whether these sites are within the corrective action universe, or whether they are "remediation-only" or "remediation waste management sites" where RCRA hazardous waste is being managed.

Without this change, the Agency's new interpretation that remediation waste management sites are not subject to section 3004(u) corrective action requirements, which is intended to stimulate cleanups, would have had the unintended effect of eliminating the availability of two of the waste management options, CAMUs and temporary units, that were designed for the same purposes.

2. §§ 264.552 and 264.553

The removal of the language referencing activities performed under § 264.101 or RCRA 3008(h) from the definition of CAMU does not change the scope of CAMUs. EPA simply removed the language discussing authorities from the definition, and added it to the regulatory language for CAMUs and temporary units at §§ 264.552 and 264.553. EPA also added specific language clarifying that CAMUs and temporary units may be approved at permitted facilities that, under today's rule, are not subject to § 264.101. EPA believes these provisions are more appropriate in the regulatory text of the CAMU and temporary unit requirements instead of in the definitions because they identify the mechanisms by which CAMUs and temporary units are approved, rather than define the scope of the unit itself. By including these authorities in the text of §§ 264.552 and 264.553, EPA is clarifying that CAMUs and temporary units are intended to implement corrective action consistent with the requirements in § 264.101 and 3008(h) requirements, as well as cleanup under today's RAPs, which do not require compliance with § 264.101. The mechanisms for approval of CAMUs and temporary units will be the permit and order procedures, and the RAP procedures. Of course, Federal and State authorities with permit waiver provisions may also use CAMUs, as discussed above and in the preamble to the CAMU rule at 58 FR 8658 (p. 8679) (February 16, 1993).

EPA is also adding language to §§ 264.552 and 264.553, and has included language in the new § 264.554 created in today's rule, to specify that CAMUs, temporary units, and staging piles may only be used within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. EPA added this language because the Agency removed that limitation from the definition of remediation waste, as discussed below. EPA believes these restrictions are more appropriate in the regulatory text of the CAMU, temporary unit, and staging pile requirements instead of in the definitions.

[3] When using the term "remediation-only" facilities, EPA means facilities that require RCRA permits solely for the purposes of treating, storing or disposing of remediation wastes due to cleanup at the facilities. EPA uses this term to distinguish these facilities from operating treatment, storage and disposal facilities that manage as-generated process wastes as part of ongoing facility operations.

[4] For a discussion of State permit waiver authorities, see the memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA to Regional Administrators, Regions I–X, EPA (November 16, 1987), available in the docket to today's rule.

EPA is retaining the current limitation that CAMUs and temporary units may only be used within the contiguous property under the control of the owner/operator, and creating the same limitation for staging piles created under today's rule. However, EPA believes that it may be advantageous in some cases to use CAMUs, temporary units, and staging piles at off-site facilities. Today's rule provides some relief for off-site management of remediation wastes, but does not allow off-site CAMUs, temporary units, or staging piles. EPA may reconsider the need for and appropriateness of allowing off-site CAMUs, temporary units and staging piles in the future.

B. Remediation Waste—Changes to the Existing Definition

Under current regulations, the term "remediation waste" defines wastes that can be managed in a CAMU or temporary unit. Today's rule amends the definition for the same reason that EPA made the same change to the definition of CAMU—to remove the limitation to wastes managed under § 264.101 and RCRA § 3008(h). The new definition retains the term's current use, and makes the definition conform with the new RAPs and staging piles provisions by not limiting remediation wastes to wastes managed under certain specific corrective action authorities. Wastes managed under the provisions of today's rule will be managed during the course of a wide range of cleanups conducted under many different types of cleanup authorities.

The existing definition of remediation waste (in § 260.10) might be read as limiting the term to wastes managed under the RCRA corrective action cleanup authorities of 40 CFR 264.101 and RCRA section 3008(h). In the preamble to the proposed rule (61 FR 18836), EPA requested comment on a revised definition of remediation waste that eliminated the limitation to wastes "managed for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h)," and added that wastes from a "media remediation site" could be considered remediation wastes. Today's definition is based on this definition and reads as follows:

Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.

The Agency has made two changes to the existing § 260.10 definition of remediation waste originally promulgated for the CAMU and temporary unit rules. The first change removes references to RCRA corrective action authorities, and the second change eliminates the restriction that remediation wastes may originate only from within the facility boundary.

The first reference that was eliminated defined remediation waste as wastes "managed for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h)." The revised definition refers to wastes "that are managed for implementing cleanup," without specifying the authority under which owner/operators must address these wastes. As mentioned above, the Agency specifically suggested this change in the preamble of the proposed rule (61 FR 18836) in a discussion of the Unitary.

No comments were submitted specifically on the definition of remediation waste, although several commenters expressed their views on the general issue of what materials should be subject to the proposed rule, which is the issue addressed by the definition of "remediation waste." For example, one commenter expressed support for the approach envisioned by the proposal, and finalized in today's clarification to the definition, stating that "the HWIR-media rule should be applied to any management of hazardous contaminated media (and further, to all remediation waste . . .), regardless of whether this remediation is conducted under RCRA, CERCLA, or other State or Federal authority."

In view of the statements made by commenters expressing support for allowing the use of different State and Federal authorities, EPA continues to believe that the purpose behind the provisions finalized today—to encourage cleanup by removing unnecessary regulatory barriers—is best served by the broad definition finalized today.[5]

The second change has removed the limitation that waste must originate from "within the facility boundary." This allows remediation waste managed at off-site locations, such as those permitted under § 270.230 to continue to meet the definition of remediation waste even though they are removed from the original site.

The changes made to the definition of remediation waste parallel changes in the definition of CAMU, and changes to the CAMU and temporary units regulations at §§ 264.552 and 264.553.[6]

Commenters were concerned about the status of wastes that have migrated beyond the traditional RCRA "facility" boundary, and the need to include those wastes in remediation waste. Some commenters were concerned that, as proposed, owners and operators would be required to obtain a RAP for on-site activities and an RCRA permit for off-site locations where wastes had migrated. Some were concerned that they would not be able to bring wastes that had migrated off-site back to the site for management; still others were concerned that they would be forced to manage wastes on-site even if it was not the most protective option. EPA has retained the inclusion of wastes that have migrated beyond the facility boundary by removing the clause that limited from where remediation waste could originate. EPA expects this to resolve the concerns of these commenters.

Finally, it is important to stress two points. First, it should be noted that remediation waste includes only waste managed because of cleanup, and does not include wastes generated from on-going hazardous waste operations, which are commonly referred to as "newly generated," "as generated," or "process" wastes. When managed as part of a legitimate cleanup action, any (non-"as-generated") hazardous wastes (for example, media, debris, sludges, or other wastes) are all remediation waste. Second, remediation waste includes both hazardous and non-hazardous solid wastes managed as a result of cleanup, including any wastes generated from treating remediation wastes (for example, carbon canisters and sludges generated from groundwater pump-and-treat or soil vapor extraction systems). Third, the changes made to the definition of remediation waste do not, in any way, change the scope of the CAMU and temporary unit regulations. EPA has replaced the limitation on contiguous property removed from this definition with a limitation in the CAMU and temporary unit regulations themselves at §§ 264.552 and 264.553. That same limitation also applies to staging piles created in today's rule.

[5] Many commenters on the proposal addressed the issue of the types of materials that should be eligible for the relief offered by the proposed rule—most notably, whether relief should be provided for both contaminated media and hazardous wastes that are managed during cleanup (for example, sludges that have not commingled with media). Because this issue was addressed differently under the various provisions of the proposed rule, these comments are addressed in the discussion of each specific provision finalized today.

[6] Today, EPA is also modifying §§ 264.552 and 264.553 to allow implementation of CAMUs and temporary units under permits (including RAPs) at facilities that are not subject to § 264.101 and 3008(h) as discussed in today's preamble under the definition of CAMU.

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C. Remediation Waste Management Site and Facility—New Requirements for Remediation Waste Management Sites

The final definition for remediation waste management site included in § 260.10 in today's rule is:

Remediation waste management site means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under § 264.101 of this chapter, but is subject to corrective action requirements if the site is located in such a facility.

Traditionally, RCRA has focused on "facilities" when applying hazardous waste regulations. These are generally properties where industrial operations manage hazardous wastes that they have generated, or where commercial operations or entities conduct hazardous waste treatment, storage, and/or disposal operations. For corrective action under § 3004(u) and (v) (implemented through § 264.101) and 3008(h), a facility was defined (see § 260.10) as "all contiguous property under the control of the owner or operator" where hazardous wastes are managed.

In the proposal, EPA defined "media remediation site" as a new term that would apply to a location where certain remediation waste management activities were taking place, and might or might not include all or part of a pre-existing RCRA "facility." EPA felt that it was important to differentiate between existing "facilities" and a new kind of site that would be eligible for the streamlined permits (Remedial Action Plans or RAPs) promulgated in today's rule, and would be exempt from § 264.101 and certain other Part 264 requirements that are not necessary or appropriate for areas used solely to manage cleanup wastes.

1. EPA Changed the Term From "Media Remediation Site" in the Proposal to "Remediation Waste Management Site" in the Final Rule

EPA has replaced the term "media remediation site" with the more descriptive term "remediation waste management site." Commenters generally supported the concept of a media remediation site, but the term "media remediation site" caused confusion for some, because "remediation site" implies an area that is being cleaned up, not, as is meant in this case, an area where hazardous remediation wastes are being managed.

Also, the proposed rule allowed only contaminated media to be exempted from Subtitle C requirements, and the word "media" in the title "media remediation site" was meant to emphasize that the exemptions were only for contaminated media. In today's final rule, EPA is not exempting any wastes from Subtitle C, and all provisions of this final rule apply to all remediation wastes, so the term "media" is no longer needed in the definition of the site.

These are the reasons EPA changed the term from "media remediation site" to "remediation waste management site." Changes to the definition of the proposed term are discussed later in this section.

2. EPA has Created Different Requirements for Remediation Waste Management Sites Than for Facilities Managing "As-generated" Hazardous Wastes

Throughout today's rule and the proposal, EPA has emphasized that, to stimulate cleanup, it is important to regulate remediation waste management activities differently from as-generated process waste management where appropriate. This definition of remediation waste management site allows EPA to apply requirements to remediation waste management activities that are more appropriate for the remediation scenario than the current requirements that, until today's rule, have applied to both remediation waste management and as-generated process waste management.

In today's rule, to facilitate prompt and protective treatment, storage, and disposal of hazardous remediation wastes, EPA has created three new requirements for remediation waste management sites that are different from those for other facilities:

- A new form of an RCRA permit for treating, storing and disposing of hazardous remediation wastes (a RAP) that streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly (Part 270, Subpart H);
- Performance standards for remediation waste management sites that replace the detailed requirements in Part 264 Subparts B, C, and D (General Facility Standards, Preparedness and Prevention and Contingency Plans and Emergency Procedures) (§ 264.1(j)); and
- A provision excluding remediation waste management sites from RCRA § 3004(u)'s requirement for facility-wide corrective action(§§ 264.1(j) and 264.101(d)).

As noted above, EPA believes it is appropriate to regulate facilities that manage as-generated process wastes and those that manage remediation wastes differently, and the designation of a remediation waste management site defines when the new provisions unique to areas that manage remediation wastes will apply.

3. Differences Between the Proposed Definition of Media Remediation Site and the Final Definition of Remediation Waste Management Site

The definition of media remediation site in the proposal which, like today's definition of remediation waste management site, was used to define where reduced permitting requirements would apply, was:

An area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas in close proximity to the contaminated area at which remediation wastes are being or will be managed pursuant to State or Federal remediation authorities (such as RCRA Corrective Action or CERCLA). A media remediation site is not a facility for the purposes of implementing corrective action under 40 CFR 264.101, but may be subject to such corrective action requirements if the site is located within such a facility (as defined in 40 CFR 260.10).

In response to the limitations to "contaminated areas" and "areas in close proximity," several commenters identified specific situations where those limitations might prevent owners and operators from conducting environmentally beneficial activities under a RAP. These comments are addressed in today's rule under new § 270.230, and the preamble discussion of that section instead of in today's definition.

EPA has removed from the proposed definition the requirement that limits media remediation sites to areas subject to cleanup under State or Federal authority, and wastes managed under State or Federal remediation authorities. EPA has always intended that today's rule would promote voluntary initiation of cleanup activities by people not already required to conduct cleanup under other authorities. EPA continues to hope that this will be a result of today's rule.

Therefore, EPA has removed this limitation to make it clear that people voluntarily initiating cleanup can have their properties designated as remediation waste management sites. These activities would still ordinarily require a RCRA permit (for example, a RAP) if owner/operators were to treat, store or dispose of hazardous remediation wastes, so that the proper requirements would be applied, and the public would have the opportunity to participate in the waste management decisions.

Finally, EPA has kept in the final rule the part of the proposed definition of

media remediation site that stated that these were not facilities for implementing facility-wide corrective action. As discussed elsewhere in this preamble, EPA believes that applying 3004(u) and (v) and 3008(h) requirements to facilities not already subject to these requirements is such a disincentive to voluntarily initiated cleanup actions that people often choose options that do not require permitting, rather than face such a responsibility.

4. Remediation Waste Management Sites Are Not Subject to Facility-wide Corrective Action

Today's rule, like the proposal, provides that a remediation waste management site is not subject to the requirements in RCRA section 3004(u) for facility-wide corrective action. EPA believes, as discussed more fully in the proposal, that requiring facility-wide corrective action for facilities that are or will be engaged in ongoing hazardous waste management outside the context of an environmentally beneficial cleanup activity may properly be seen as a quid pro quo for the costs of doing business in, and in some way profiting from, the management of hazardous wastes. In a remedial context, however, there is no profit or advantage gained by owners and operators from managing hazardous wastes; it is simply a necessary part of performing an act that is environmentally beneficial (that is, cleaning up a site). To view remediation-only sites as traditional hazardous waste facilities (which would impose additional cleanup responsibilities) can have the effect of penalizing those who wish to clean up their properties. EPA does not believe that this result is one that Congress intended. (See 61 FR 18792–93).

The large majority of commenters on this issue supported the interpretation, because it is widely recognized that the facility-wide corrective action requirement often acts as disincentive to cleanup of wastes subject to Subtitle C. Some commenters, however, expressed concern over the Agency's legal theory supporting the interpretation. This concern appears to stem from the commenters' perception that the Agency is making a purely semantic argument—that is, that by being renamed "media remediation sites," these sites are no longer the "facilities" to which section 3004(u) applies.

The Agency understands the commenters' confusion on this point. The corrective action requirement of section 3004(u) applies to "a treatment, storage, or disposal facility seeking a permit." Today EPA clarifies that the Agency's view is not that remediation-only facilities do not constitute "facilities" for RCRA purposes, but simply that they should not be interpreted to be the "facilities *seeking a permit*" to which the requirements in section 3004(u) apply. In the Agency's opinion, the reference to "a treatment, storage, or disposal facility seeking a permit" clearly refers to facilities that need permits because they are in the business of hazardous waste management. Remediation-only facilities, because they only obtain a permit to engage in remediation, do not fit into that category. EPA believes that it is a reasonable interpretation of section 3004(u) that sites that are or will be conducting hazardous waste management only as part of cleanup activities are not the types of facilities to which Congress intended to apply the section 3004(u) facility-wide corrective action requirements. (See 61 FR 18792–93).

In addition, in light of the disincentive to cleanup created by applying the facility-wide corrective action requirement to remediation-only facilities, to continue to apply the requirement would appear to be contrary to one of Congress' clear goals in enacting section 3004(u)—to ensure that currently unmanaged remediation wastes that pose a risk to human health and the environment are addressed.

Today's rule differs in one significant respect from the proposal: this interpretation is no longer limited to facilities that obtain RAPs, but also applies to remediation-only facilities that obtain traditional RCRA permits. Thus, any facility that meets the definition of a "remediation waste management site" (promulgated today), regardless of whether its hazardous waste management activities are authorized by a RAP or traditional RCRA permit, will not be subject to the facility-wide corrective action requirement. The Agency agrees with the one commenter who argued that there was no reason to limit the relief from section 3004(u) to facilities addressed under the RAP framework. After all, because the RAP standards are less stringent than existing requirements, States may choose not to adopt them as part of their authorized programs. There is no reason to prevent these States, however, from nonetheless amending their programs to reflect the section 3004(u) interpretation finalized today. Similarly, if a State not authorized for corrective action issues a RCRA permit for remediation-only sites (remediation waste management sites), Federal corrective action requirements will not attach.

Although the above discussion stresses the use of RAPs as the vehicle for permitting a remediation waste management site and for applying the benefits of RAPs, the new requirements in § 264.1(j), and the elimination of § 264.101 facility-wide corrective action through the new § 264.101(d) provision for remediation waste management sites are not limited to sites permitted under RAPs. States wishing to use the traditional RCRA permits process for activities at remediation waste management sites may do so, and the other benefits of remediation waste management sites (§ 264.1(j), and 264.101(d)) continue to apply to remediation waste management sites under permits, as well as under RAPs. The preamble discussion explaining the need and rationale for these other provisions can be found in the section of the preamble discussing those provisions.

5. Remediation Waste Management Sites Are Excluded From Only the Second Part of the Definition of Facility

This exclusion from the definition of facility is strictly limited to the definition of facility for purposes of corrective action, which is found in part (2) of the definition of facility. Remediation waste management sites are not excluded from part (1) of the definition of facility for other purposes.

6. Facility

EPA is revising the definition of facility, (to make conforming changes with the definition of remediation waste management site), as follows:

Facility means ... (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to § 264.101, but is subject to § 264.101 corrective action requirements if the site is located within such a facility.

EPA requested comment on this change to the definition of facility at § 260.10 of the proposal, and did not receive any comments opposing this change, and is therefore finalizing this amendment with only two minor changes.

First, the proposed rule language stated that "notwithstanding (1) and (2)" remediation waste management sites were not subject to the facility-wide corrective action requirement, but on further reflection, it has become clear that the reference to paragraph (1) was an oversight. This is because the proposed definition clearly stated that remediation waste management sites are only not "facilities" "for the purposes of § 264.101." The facility definition in paragraph (1) is not used for those

purposes. In addition, because the facility definition in paragraph (1) is used in implementing the rest of the RCRA hazardous waste regulations, which continue to apply to activities at remediation waste management sites, paragraph (1) must remain applicable.

Second, the proposed definitional change did not include the current language that states "but may be subject to such corrective action requirements if the site is located within such a facility." EPA has added this clause to make the language consistent with the definition of remediation waste management site, which was included in this language at proposal.

As the Agency stated in the preamble to the proposed rule, this language is meant to provide for the following situation: "In some cases a media remediation site could be part of an operating (or closing) RCRA hazardous waste management facility that is already subject to the § 3004(u) and (v) corrective action requirements; in those cases, identifying an area of the facility as a media remediation site [today's remediation waste management site] would not have any effect on the corrective action requirements for that site or the rest of the facility." (61 FR 18793).

D. Staging Pile—A New Kind of Unit

The definition of staging pile states that "[s]taging pile means an accumulation of solid, non-flowing remediation waste (as defined in 40 CFR 260.10) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements in 40 CFR § 264.554."

1. Differences Between the Definition of Staging Pile and the Existing Definition of Pile

This definition uses a slight alteration of the definition of "pile," as defined in § 260.10 for waste piles (§ 264.250), which better fits the purposes of today's staging pile rule. The definition of pile differs from the staging pile definition in three ways; the definition of pile:

- Is limited to non-containerized waste;
- Addresses the "accumulation of solid, nonflowing *hazardous* waste," rather than "solid, nonflowing *remediation* waste;" and
- Allows for "treatment or storage" rather than simply temporary storage.

First, EPA believes it may often be environmentally protective or simply more convenient to move remediation wastes in bags or other containers when placing them into a staging pile. Because bags may reduce blowing of wastes in a pile, or volatilization of hazardous constituents, EPA did not want to eliminate the option of bagging, or other protective activities, of wastes in a staging pile.

Second, because today's rule does not allow "as-generated" hazardous waste to be stored or treated in a staging pile, the rationale behind using the term remediation waste rather than simply hazardous waste should be clear. EPA also included the "solid, non-flowing" portion of the definition of pile to ensure that liquid wastes will not be placed in the staging pile. Liquid wastes are inappropriate for storing in staging piles because of the possibility of releases and run-off.

Third, the definition of "piles" allows both storage and treatment. However, as discussed below, staging piles allow only storage.

2. Differences Between the Proposed Definition of Remediation Pile and the Final Definition of Staging Pile

In the proposed rule, the definition of remediation pile reads that, "[r]emediation [p]ile means a pile used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in § 269.3), during remedial operations."

This definition was altered for a number of reasons. First, the Agency felt that including the term "pile" in the staging pile definition would only serve to confuse staging piles with waste piles. Furthermore, because staging piles will accept hazardous remediation waste, rather than only hazardous contaminated media for the reasons previously discussed, this portion of the definition also had to be changed. Finally, treatment is not mentioned in today's staging pile definition, because treatment will not be allowed in staging piles. No commenters provided comments directly addressing the definition of remediation pile. For a fuller discussion of staging piles, and the comments EPA received, see the discussion of staging piles in section VII of this preamble.

E. Miscellaneous Unit—An Edit to the Existing Definition

EPA is simply adding the unit "staging pile" to the list of units excluded from the definition of miscellaneous unit. The revised definition is as follows:

Miscellaneous Unit means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, unit eligible for research, development, and demonstration permit under § 270.65, or staging pile.

Miscellaneous units are meant to cover units that do not have regulatory provisions specific to that individual type of unit. Because EPA is today adding provisions for staging piles, staging piles should likewise be excluded from the definition of miscellaneous units.

IV. Information on Remedial Action Plans (RAPs) (§§ 270.2, 270.68 and 270.80—270.230)

General Information About RAPs

A. What Are EPA's Objectives for RAPs?

After considering the public comments on the proposal, the Agency crafted the final RAP regulation with the following six objectives in mind:

One, RAPs should be suited to the specifics of managing remediation waste in the context of cleanup, both in procedure and in substantive requirements;

Two, RAPs should ensure compliance with the applicable requirements for safe hazardous remediation waste management;

Three, RAPs should provide certainty and protection to the permitted party, as appropriate;

Four, the RAP approval process should provide opportunities for meaningful public involvement;

Five, because RAPs constitute RCRA permits, the RAP approval process must, at the least, follow the statutory minimum requirements for obtaining a permit; and

Six, RAPs, and the RAP approval process should accomplish the previous objectives through the most streamlined, reasonable, and understandable regulations possible.

In today's rule, EPA believes that it has reached a reasonable compromise consistent with these objectives. In summary, the RAP requirements promulgated today:

- Significantly reduce procedural steps in permitting, while retaining the minimum statutory public participation requirements and certain basic permitting steps or conditions (for example, permit appeal procedures);
- Replacing the detailed requirements in §§ 270.3—270.66 with broader performance standards;
- Significantly reducing and focusing information requirements; and
- Removing the requirement for facility-wide corrective action.

Given this flexibility, EPA believes that it will be possible for EPA and authorized States to develop RAPs that are much more suited to cleanups than are current RCRA permits—that is, a RAP will generally fit the model of a Superfund Record of Decision or an approval of a cleanup workplan, rather than that of a RCRA Part B permit. EPA believes this flexibility is essential for an effective cleanup program.

At the same time, EPA recognizes that its approach to RAPs in today's rule (and more broadly today's rule as a whole) only partially solves the long-standing problems associated with remediations involving hazardous waste regulated under RCRA Subtitle C. For example, as EPA and others have long emphasized, the statutory public participation requirements (newspaper notices and radio spots) are highly prescriptive without, in fact, ensuring effective public involvement. EPA believes a more flexible approach could better reflect the wide variety of cleanup actions, while still providing a full opportunity for public involvement. EPA also recognizes that it has made less extensive changes to Subtitle C permitting requirements as they apply to remediation waste than some have recommended. Indeed, EPA believes that, in the long run, further changes are appropriate.

For example, EPA has left the substantive, unit-specific requirements in 40 CFR part 264 intact (although the Agency has added new flexibility for staging piles), even though EPA recognizes that these requirements do not always make sense in a remedial context. (For example, secondary containment may not always be needed for tanks within an area of contamination.) EPA took this approach in today's rule because it has not yet aired these issues in detail in previous proposals. EPA is deferring action here, however, the issues are continuing to be discussed more fully in the context of possible statutory changes to RCRA.

In the meantime, EPA emphasizes that today's rule, in combination with existing rules and policies, provides important flexibility in cleanup scenarios. EPA not only expects that today's rule will provide significant benefits; EPA also intends (and encourages authorized States) to use existing flexibility in EPA land disposal standards for soils, the CAMU rule (which today's rule is retaining), the Agency's contained-in policy for contaminated media, the AOC concept for contaminated sites, and similar tools to expedite effective cleanups. The flexibility provided by today's rule should be understood within this broader context.

B. What Is a RAP? (§§ 270.68, 270.2 and 270.80)

§ 270.68

To make it clear that RAPs are subject to different, more streamlined requirements than other RCRA permits, EPA created a separate Subpart (40 CFR Part 270, Subpart H) for RAPs. The provision in today's rule in § 270.68 simply points readers who may look for RAPs in the existing Subpart F (Special Forms of Permits) to the section for RAPs in the new Subpart H.

1. The Differences Between a RAP and a Traditional RCRA Permit

§§ 270.2 and 270.80(a)

EPA defines a RAP in §§ 270.2 and 270.80(a) as a "special form of RCRA permit that you [a facility owner/operator] may obtain instead of a permit issued under sections 270.3–270.66, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in § 260.10) at a remediation waste management site." Often, remedies selected for cleanup sites involve treating, storing or re-disposing of hazardous remediation waste. RCRA permits are required whenever you treat, store or dispose of hazardous waste (unless a specific permit exemption or exclusion applies). Until now, treating, storing or re-disposing of hazardous remediation wastes required the same type of permit as that for as-generated process waste management. Traditional RCRA permits, however, were designed for operating hazardous waste treatment, storage, and disposal facilities managing as-generated process wastes. The permit procedures, requirements, and contents were designed specifically for those situations. Traditional RCRA permits also require facility-wide corrective action under RCRA Sections 3004 (u) and (v). Many of these requirements are not well suited to cleanup activities.

Section 270.80(a) also limits RAPs to permit activities done in the area of contamination or areas in close proximity. This is because EPA generally wishes to encourage owners and operators to conduct remediation waste management activities on-site. EPA does allow RAPs for off-site locations for limited circumstance under § 270.230, when managing the remediation waste off-site will be more protective than managing it on-site.

2. Some Advantages of a RAP Compared to a Traditional RCRA Permit

EPA believes that the traditional RCRA permitting requirements are not well suited for cleanup activities for many reasons.

First, flexibility in public participation for RAPs, as opposed to the more specific requirements for traditional RCRA permits, is necessary because cleanup activities vary greatly in volumes of waste to be managed; amount of time allocated for the project; types of activities to take place; and risks posed by the cleanup activities. Also, EPA and State cleanup programs generally involve ongoing dialogue with the surrounding community about choices of remedies and other considerations. Many of these programs have developed creative and successful public participation strategies which may vary slightly from specific procedures that could be set out in a nationally applicable Federal regulation.

Second, the more streamlined and flexible requirements for RAPs are better designed for the cleanup scenario than requirements for traditional RCRA permits in 40 CFR Part 270 because the Part 270 standards are designed specifically to mirror and implement the requirements throughout Subtitle C for as-generated process wastes. As discussed earlier, the Subtitle C requirements are designed for the on-going management of as-generated waste, and are designed to be a "cradle-to-grave" system of regulations that will prevent new releases from the possible mismanagement of hazardous wastes. While this "cradle-to-grave" system has been successful in preventing new releases and in providing incentives to minimize the amount of waste generated, the system is often cumbersome when applied to remediation wastes. Remediation wastes have already escaped into the environment, and often are found in unique volumes, matrices, mixtures, etc. The nationally applicable Subtitle C requirements do not often have the flexibility to respond to unique circumstances encountered at cleanup sites. Therefore, the permitting requirements based on the Subtitle C requirements also do not have the proper flexibility to respond to unique circumstances encountered at cleanup sites.

Third, information requirements for traditional RCRA permits are generally based on those nationally applicable requirements mentioned above, and so are not necessarily appropriate for all cleanup sites.

Fourth and finally, as discussed below, EPA believes that requiring facility-wide corrective action for all new RAPs provides disincentives to cleanups and to remedies that involve excavating and treating or moving wastes. These disincentives are discussed below.

In implementing, overseeing, and observing the hazardous waste cleanup programs under RCRA Corrective Action and State cleanup programs, EPA has concluded that the requirement to obtain a RCRA permit for on-site treatment, storage or disposal of hazardous remediation wastes often acts as a disincentive to cleanup, particularly in the cases where the site is not otherwise subject to RCRA. Cleanups may be desirable at these sites for many reasons (for example, a State or Federal cleanup authority might determine that the site presents a hazard; the facility owner/operator may wish to clean up the property voluntarily; or a potential future facility owner may hope to acquire and reuse the property.) Before today's rule, if facility owners and operators of these sites chose to treat, store, or dispose of hazardous remediation wastes on-site, they generally would be required to obtain a RCRA permit, along with all the requirements (including facility-wide corrective action) that come with that permit. Obtaining these permits can be very time-consuming and expensive, and facility-wide corrective action provides a strong disincentive to any action that would require a permit. This requirement to obtain a RCRA permit, especially the requirement for facility-wide corrective action, was found by EPA's Permits Improvements Team (PIT)[7] to be a major disincentive to cleanup. A recent study by the Government Accounting Office (GAO) came to a similar conclusion.[8] To avoid having to secure a RCRA permit, many remedial decision-makers often choose options for remediation that avoid application of the permit requirements, such as capping in place, which may not be the best remedial option for the site.

Under the streamlined approach to permitting promulgated today, these sites (which have sometimes been referred to as "remediation-only sites") can receive a RAP for remediation waste management activities that take place at the site rather than a traditional RCRA permit. EPA has designed the RAPs process to be more streamlined than that for existing permits to reduce disincentives to cleanups. As opposed to traditional RCRA permits, RAP procedures, requirements, and contents are designed specifically for the cleanup scenario.

The differences between the processes for receiving approval of RAPs and for receiving approval of traditional permits are described more fully in the sections that follow, as well as in the section entitled "Comparison of RAPs Process to That for Other Permits."

As discussed more fully in the preamble discussion of the definition of remediation waste management site, RAP recipients (other than those who are already subject to the corrective action requirements because of independent RCRA permitting requirements), are also not required to perform facility-wide corrective action. The regulatory language for the exemption from the requirements in RCRA sections 3004 (u) and (v) does not actually appear in the RAPs section of the regulatory language. Instead, because the requirements for RCRA sections 3004 (u) and (v) are implemented through the regulatory language at § 264.101, the exemption from these requirements in today's rule is found in Part 264 at §§ 264.1(j) and 264.101(d), as well as in the definition of remediation waste management site and facility in § 260.10, instead of part 270.

RAPs cannot be used to permit treatment, storage, and disposal of "as-generated" process wastes. RAPs are limited to authorizing the treatment, storage, or disposal of hazardous remediation wastes. As this preamble discusses, the definition of remediation waste is limited to wastes that are managed to implement cleanup. This does not include "as-generated" process waste or wastes from any activities that are not specifically implemented for the purposes of cleanup.

3. Differences Between "Remediation Management Plans" in the Proposal and "Remedial Action Plans" in the Final Rule

EPA proposed streamlined permits for remediation-only sites under the name Remediation Management Plans, or RMPs. The RMP concept was proposed at §§ 269.40 through 269.45. As in today's rule, RMPs were proposed as a special form of a permit for hazardous remediation wastes; however, RMPs[9] were also the vehicle by which EPA or a State could exempt low-level hazardous contaminated media from Subtitle C management requirements, and could impose any necessary site-specific management requirements on these wastes. As discussed in section II. E. of this preamble, the Agency is not finalizing the aspects of the proposed rule that exempt hazardous remediation waste from Subtitle C, but is finalizing the streamlined permitting process for treating, storing, and disposing of hazardous remediation waste (that is, wastes that would have remained within Subtitle C jurisdiction under the proposal). However, in the final rule, EPA has named these permits Remedial Action Plans or RAPs.

In today's rule, as in the proposal, RAPs streamline the permitting process but, unlike in the proposal, a RAP in today's rule is not used to document and enforce alternative management requirements for remediation wastes that are exempt from Subtitle C. Hazardous remediation wastes remain subject to the applicable requirements in parts 260–271. Many of the provisions of the proposed RMPs have been eliminated or revised to accommodate this change.

The specific differences between RMPs, as proposed, and RAPs, as finalized, are discussed under the description of each section of the final regulation. EPA emphasizes that the contained-in principle, which provided a legal rationale for the proposed approach exempting low-level contaminated media, remains an existing EPA policy. EPA continues to encourage States to apply this policy, where appropriate, to expedite cleanups.

Section 270.80(b)

In § 270.80(b) EPA states that the requirements in §§ 270.3–270.66 do not apply to RAPs unless those traditional RCRA permit requirements are specifically required under §§ 270.80–270.230, but that the definitions in § 270.2 do apply to RAPs. This is meant simply to identify those requirements that apply to RAPs and those that do not. Where appropriate, the RAPs requirements in Subpart H include their own provisions instead of those in §§ 270.3–270.66.

Section 270.80(c)

In addition, new § 270.80(c) provides that, notwithstanding any other

[7] EPA's Permits Improvement Team (PIT) was created in 1994 to identify specific actions that could be taken by EPA to increase the efficiency and effectiveness of environmental permitting programs. The PIT held numerous stakeholder meetings throughout the country and prepared a draft set of recommendations before it finished its work in 1997.

[8] *Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups*, U.S. General Accounting Office, GAO/RCED–98–4, October 1997.

[9] EPA has chosen to use the term RAP in the final rule because it is more commonly understood than RMP.

provision of [Part 270] or Part 124, any document that meets the requirements in this section constitutes a RCRA permit under RCRA section 3005(c). This is to ensure that, although RAPs may not be expressly referred to in other provisions of Parts 270 and 124, they are indeed RCRA permits. Although today's rule contains additional language to enhance the reader's understanding, these two new provisions are the same as proposed at § 269.40(c). The Agency did not receive any negative comments on this provision, and has therefore finalized the approach as proposed.

Section 270.80(d)

To facilitate streamlining at cleanup sites, EPA included the provision at § 270.80(d), which states that a RAP may be either: (1) a stand-alone document that includes only the information and conditions required by this Subpart; or (2) part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this Subpart.

EPA anticipates that RAPs will often be granted at the same time that other decisions, such as remedy selection, are made at a cleanup site. Under the cleanup program, the facility owner/operator or the Director may be preparing other documents, such as remedy decision documents, which may cover much if not all of what a RAP will cover. EPA has included this provision to make it clear that the facility owner/operator and the Director do not have to duplicate efforts, and can create one document that serves both purposes. This approach was proposed at § 269.40(e), and again, the Agency did not receive any negative comment on this provision. In this case—where the issuing authority is an authorized State—only the portion of the RAP imposed under today's rule will be enforceable as part of the Federal RCRA program.

Section 270.80(e)

Throughout the development of the HWIR-media rule, there has been much confusion about the relationship between RAPs and cleanup requirements. Notwithstanding the confusion, EPA believes this is a very simple relationship. Cleanup programs dictate the goals of cleanup (that is, "how clean is clean" and how to select remedies, investigate sites, and conduct other related activities). Frequently, the remedies selected under these cleanup programs involve treating, storing, or disposing of hazardous remediation wastes in a way that would require a RCRA permit.

RAPs are simply the permitting mechanism for authorizing (according to RCRA requirements) this treatment, storage or disposal. In § 270.80(e), EPA has clarified that, if you are treating, storing or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your cleanup obligations under those authorities in any way. The RAP does not affect "how clean is clean" (cleanup standards), and does not affect, in any way, existing legal obligations to perform cleanup actions. This was proposed at § 269.1(c), and the Agency did not receive any negative comments on this provision, and so it is being finalized as proposed, except for edits to make it easier to understand.

Section 270.80(f)

New § 270.80(f) provides that interim status facilities that treat, store or dispose of remediation waste under a RAP will not lose their interim status by virtue of receiving an approved RAP, because the RAP applies only to the remediation waste management activities that take place as a result of the cleanup, and not to any obligations under other authorities.

Under today's rule RAPs can now be used to designate CAMUs, temporary units and staging piles (as well as other non-combustion remediation waste management units and operations). Owner/operators of interim status facilities who wish to construct CAMUs, temporary units or staging piles may now apply for a RAP as the vehicle for imposing the site-specific requirements, providing a mechanism for enforcing those requirements and providing for public participation. RAPs provide for all three of these functions, and may be a desirable alternative to a 3008(h) enforcement order.

EPA is concerned that allowing a RAP at an interim status facility may cause confusion about the impact on that facility's interim status, and therefore has included § 270.80(f). Because RAPs are RCRA permits, and because permit issuance at an interim status facility often terminates interim status for that facility, EPA is concerned that some may think that issuing a RAP at an interim status facility terminates that facility's interim status. Existing § 270.1(c)(4) already provides that, if EPA issues or denies a permit for one or more units at a facility without simultaneously issuing or denying a permit to all units at the facility, this does not affect the interim status for any unit for which a permit has not been issued or denied. Section 270.80(f) in today's rule serves a similar function by providing that RAP issuance does not terminate interim status for the other parts of the facility not covered by the RAP (or for facility-wide corrective action purposes).

EPA did not specifically propose this provision, but has included it in the final rule to avoid confusion. In the proposed rule (see for example, 61 FR 18791), EPA stated that these provisions would be implemented under many different programs and agencies. In the proposed rule at 61 FR 18814, EPA gave examples of CERCLA sites and permitted treatment, storage and disposal facilities (TSDFs), but did not clarify how these requirements would apply at interim status TSDFs. This was an oversight and is corrected by § 270.80(f) in today's final rule.

C. When Do I Need a RAP? (§ 270.85)

Section 270.85(a)

Section 270.85(a) states that "whenever you treat, store, or dispose of hazardous remediation waste in a manner that requires a RCRA permit under § 270.1, you must either obtain: (1) a RCRA permit according to §§ 270.3—270.66 of [Part 270]; or (2) a RAP according to [Part 270 Subpart H]."

1. What Activities Require RCRA Permits?

Section 270.1 describes what activities require RCRA permits. If the facility owner/operator intends to perform activities that require permits, but is managing only hazardous remediation waste and not as-generated process wastes, he may take advantage of the streamlined procedures for RAPs, or may obtain a traditional RCRA permit. There are also instances where treating, storing or disposing of remediation wastes do not require a RCRA permit. Today's rule, like the proposal, will not change, in any way, when a RCRA permit is required. Thus, no RAP is needed where a permit would not otherwise be required.

One example of when neither RAPs nor traditional RCRA permits would be required is CERCLA removal and remedial actions. CERCLA Section 121(e) grants a RCRA permit waiver for on-site response actions selected under CERCLA Section 121. Generally, however, a Record of Decision (ROD) or other CERCLA decision document would specify the requirements for complying with the substantive RCRA Subtitle C requirements for treating, storing, or disposing of remediation waste on-site. Another example would be when State that is authorized to

implement the RCRA program has a permit waiver authority that is analogous to EPA's authority under CERCLA Section 121(e) or RCRA Section 7003. This permit waiver policy is described in a memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA to Regional Administrators, Regions I—X, EPA, (November 16, 1987) available in the docket to today's rule. Today's rule does not change or affect this policy in any way.

In addition, facility owner/operators may manage hazardous remediation wastes in a way that does not require a RCRA permit. For example, contaminated remediation wastes can be capped in place, or excavated and transported off-site to a designated, permitted facility for treatment or disposal. Another example is that wastes can be treated or stored on-site in units that are exempt from permitting requirements, such as wastewater treatment units. (See 40 CFR §§ 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v)). Still another example is that remediation wastes can be treated or stored on-site for less than 90 days in tanks, containers, or containment buildings (see 40 CFR 262.34), which also does not require a permit.

Section 270.85(b)

In the proposed rule at § 269.43(f), EPA proposed that RMPs involving on-site combustion of hazardous remediation wastes would have to follow the requirements for issuance of RCRA permits in 40 CFR parts 270 and 124, and would not be eligible to obtain RMPs. EPA has finalized that requirement at new § 270.85(b).

EPA received one negative comment on that provision, which stated that the Agency had not demonstrated how combustion of hazardous remediation waste is different from other management techniques. However, the Agency continues to believe, as stated in the preamble to the proposed rule (61 FR 18818), that it is necessary to include this provision because §§ 270.16 and 270.62 include requirements for trial burns and other important procedures for incinerators that EPA continues to believe are necessary, even for combustion units handling hazardous remediation waste. Also there is a high level of public interest in hazardous waste combustion, which EPA believes merits the extra public participation steps of the traditional RCRA permitting process.

Another commenter asked that EPA clarify the procedures required for permitting of combustion units under RAPs. The proposed rule stated that "for remedial actions involving on-site combustion of hazardous remediation wastes, the procedural requirements for issuance of RCRA permits . . . shall at a minimum be followed for review and approval of RMPs [which are RAPs in today's final rule]." This language led to confusion over what requirements are considered "procedural." Today's final rule states that "[t]reatment units that utilize combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subpart."

EPA believes that this revised regulatory language makes it clear that permitting for combustion units does not follow any of the RAP requirements, but instead the traditional RCRA permitting requirements. (However, 40 CFR 264.101(d) of today's rule would exempt a facility receiving a permit for a combustion unit from facility-wide corrective action, if that facility were a remediation-only site (remediation waste management site).)

§ 270.85(c)

The proposed rule provided for the situation where a facility owner/operator permitted for on-going hazardous waste operations sought a RAP for cleanup activities at the facility. Under the proposed rule, a facility owner/operator might desire a RAP for two reasons—the RAP was the vehicle by which remediation wastes could become exempt from Subtitle C, and, for wastes that remained in Subtitle C, the application and procedural requirements for RAPs were more streamlined and better tailored to the remediation scenario.

To accommodate these situations, the proposed rule would have allowed traditional RCRA permits to serve as RAPs (§ 269.40(e)(2)), and also would have allowed the permitted facility to obtain a RAP, which would only cover the remedial operations at a site, in addition to its RCRA permit, (see 61 FR 18814). Because under the final rule, RAPs are not a vehicle for obtaining an exemption from Subtitle C, there is no need to finalize the proposed rule provision allowing traditional RCRA permits to serve as RAPs. On the other hand, the Agency continues to believe it is appropriate to allow permitted facilities to obtain the benefits provided by the RAP format and has crafted today's rule accordingly.

Specifically, today's rule (§ 270.85(c)) states:

> You may obtain a RAP for managing hazardous remediation waste at an already permitted RCRA facility. You must have these RAPs approved as a modification to your existing permit according to the requirements in §§ 270.41 or 270.42 instead of the requirements in this Subpart. When you submit an application for such a modification, however, the information requirements in § 270.42(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you must submit the information required under § 270.110. When your permit is modified, the RAP becomes part of the RCRA permit. Therefore when your permit (including the RAP portion) is modified, revoked and reissued, terminated, or when it expires, it will be modified according to the applicable requirements in §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements in §§ 270.41 and 43, terminated according to the applicable requirements in § 270.43, and expire according to the applicable requirements in §§ 270.50 and 270.51.

This approach differs from the proposal in that a facility with a permit covering ongoing hazardous waste operations would not obtain a RAP as a separate authorizing document for the hazardous waste management activities conducted during the course of cleanup. The Agency made this change to avoid potential overlaps, gaps or confusion in having two authorizing documents at one facility. Instead, the rule provides that a RAP at a permitted facility be integrated into the permit as a permit modification. Thus, the more streamlined RAP application content requirements in § 270.110 apply, but the procedures for RAP approval in these cases are the permit modification procedures § 270.41 or § 270.42.

The Agency chose the permit modification procedures over the RAP procedures because it believes that establishing two different procedures for permit modifications—depending on whether you were modifying permits to include a RAP, or doing any other form of permit modification under §§ 270.41 and 270.42—would be unnecessarily confusing.

Comments were mixed. Two commenters stated that the proposed rule was unclear as to how RAPs would apply at facilities that already had a RCRA permit. One commenter said that EPA should not require both a RAP and a permit for the same activity. Another commenter suggested amending permits to require compliance with RAPs. Two other commenters disagreed with each other. One stated that RAPs would be beneficial because they would avoid the cumbersome and costly permit modification process. The other stated that it was unnecessary and inappropriate to allow separate and less rigorous procedures at facilities already subject to permitting. EPA agrees with this commenter to the extent that today's rule requires issuance,

modification, revocation and reissuance, and termination of RAPs through standard permit procedures at permitted facilities. But, EPA also believes that the relief provided by the content requirements for RAPs at § 270.100 should be available at permitted facilities. EPA developed the standards of today's rule with cleanups specifically in mind. The Agency believes that they are generally appropriate for cleanups taking place at TSDs, as well as to cleanups taking place under RAPs elsewhere.

There are three classes of modifications for traditional permits, Classes 1, 2, and 3. When modifying a permit to incorporate a RAP, the Director and the facility owner/operator must follow the Class modification procedure that is appropriate for the activities being permitted under the RAP. The last sentence of new § 270.85(c) provides that once the RAP is part of the permit, the applicable permit procedures must be followed for modification, revocation and reissuance, termination and expiration. However, the content requirements for RAPs will always remain those in § 270.110. EPA included this provision to avoid confusion about which requirements apply when making changes to RAPs that are part of RCRA permits.

This does not mean that RAPs at permitted facilities must follow two procedures, one for approval of the RAP and one for permit modification. On the contrary, RAPs at permitted facilities need only follow one process, the permit modification procedure, to receive approval.

D. Does my RAP Grant me Any Rights or Relieve me of Any Obligations? (§ 270.90)

Today's rule at new § 270.90 applies the § 270.4 provisions to RAPs. Section 270.4(a) is known as "permit as a shield," and protects the facility owner/operator in that as long as they comply with the terms of their RAP, they will be considered in compliance with RCRA Subtitle C for enforcement purposes, except for the four exceptions noted below. This means that EPA will not take enforcement actions against facility owner/operators for activities that are in compliance with their RAP, unless one of the four exceptions in § 270.4(a) applies. Although the proposed rule did not contain this provision, EPA requested comment on applying it at 61 FR 18815 of the proposal.

One commenter expressed concern about EPA granting "permit as a shield" to RAPs, arguing that the shield concept presumes that all RAPs will be properly drafted, and that this presumption is inappropriate, given the Agency's own acknowledgment, embodied in the proposed rule's requirements for State HWIR-media program withdrawal, that improper drafting may occur. Several other commenters, however, stated that it is appropriate to specify that compliance with a RAP constitutes compliance with RCRA.

The Agency agrees with these latter commenters. The Agency believes that including this provision is necessary to provide facility owners and operators with a measure of assurance that activities performed under an approved RAP will be recognized by the Agency as satisfying Subtitle C requirements for those activities expressly addressed and permitted by the RAP. EPA articulated the rationale for a "shield" provision in the May, 19 1980 final rule, which established this provision for permits (see 45 FR 33311). Specifically, EPA stated:

> EPA believes that this "shield" provision is one of the central features of EPA's attempt to provide permittees with maximum certainty during the fixed terms of permits. . . . This new provision gives a permittee the security of knowing that, if it complies with its permit, it will not be enforced against for violating some requirement of the appropriate Act [e.g. , RCRA] which was not a requirements of the permit . . . EPA agrees that one of the most useful purposes of issuing a permit is to prescribe with specificity the requirements that a facility will have to meet, both so that the facility can plan and operate with knowledge of what rules apply, and so the permitting authority can redirect its standard-setting efforts elsewhere. If all the 3004 standards were fully enforceable against a permitted RCRA facility even though they were not reflected in the permit (or, perhaps, not consistent with it), facilities would be exposed to unavoidable uncertainty as to the standing of their operations under the law. In addition, such a provision would increase pressure on EPA and States to keep permit conditions applicable to a given facility in a perpetual state of re-examination. EPA's resources will at most be barely sufficient to issue and renew RCRA permits, and review State permits, at the time of their initial issuance and periodic renewal. EPA and States are likely to make much better use of their resources if they restrict examination of permits between issuance and renewal to monitoring compliance and taking enforcement action where necessary.... [The shield] now places the burden on permit writers rather than permittees to search through the applicable regulations and correctly apply them to the permittee through its permit. This means that a permittee may rely on its . . . permit document to know the extent of its enforceable duties.

With regards to the commenter who was concerned about granting "permit as a shield" to RAPs, EPA believes that the commenters concerns are alleviated by the differences between the proposed and the final rule. RAPs under the proposed rule performed a different function from RAPs under the final rule. In the proposed rule, RAPs were the vehicle for excluding remediation wastes from Subtitle C requirements and instead imposed site-specific requirements on these wastes. The commenter who was concerned about the permit as a shield provision may have been concerned that a poorly written RAP might include site-specific requirements for wastes excluded from Subtitle C that were not protective of human health and the environment. Because today's final rule does not exclude any wastes from Subtitle C requirements, that is no longer a concern.

As mentioned above, § 270.4(a) includes four exceptions to the "shield" provision. Specifically, the permit does not shield the facility owner/operator from enforcement for requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under Part 268 of this chapter restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under Part 264 of this chapter regarding leak detection systems; or

(4) are promulgated under Subparts AA, BB or CC of Part 265 of this chapter limiting air emissions.

With respect to the fourth exception, under § 264.1080(b)(5) the requirements in Part 264 Subpart CC do not apply to "a waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v) or 3008(h), CERCLA authorities, or similar Federal or State authorities." Therefore, remediation waste management units permitted by RAPs will not be subject to Subpart CC requirements. EPA expects that any of these four exceptions to the shield, especially numbers (3) and (4), will often not be relevant to activities taking place under RAPs.

Also, in the same way as for traditional RCRA permits, the shield provisions cover only activities that are authorized by the RAP, not any other hazardous waste management activities the facility owner/operator may perform at the site. For example, if the RAP covers a treatment unit, then activities performed in compliance with the RAP requirements for that treatment unit are covered by the "shield."

However, if the operator decides to build and use a disposal unit on-site that is not addressed in the RAP, the

operator must either obtain a modification to the RAP, or a traditional RCRA permit for that new activity, or they will not be shielded from an enforcement action under RCRA for operating that unit without a permit. In no way does this provision be shield a facility owner or operator from an enforcement action for a RCRA violation for any as-generated waste management requirements (as those activities are excluded from coverage under RAPs). Finally, because a RAP is simply a permitting mechanism for managing remediation waste, but does not address cleanup obligations, § 270.4(a) does not shield a facility owner/operator from cleanup obligations that apply to facilities subject to Federal or State remedial authorities.

Section 270.4(b) and (c) address property rights, privileges, and authorization of injury, invasion of rights, or infringement of State or local law or regulations. Because the Agency received no adverse comments on these provisions proposed at § 269.40(f) and (g), and because they were the same as § 270.4(b) and (c) for traditional RCRA permits, EPA is not creating new provisions specific to RAPs, but is applying the identical § 270.4(b) and (c) provisions to RAPs as proposed.

Applying for a RAP

E. How do I Apply for a RAP? (§ 270.95)

The first step towards obtaining RAP approval is to apply for a RAP. This section simply states that to apply for a RAP the owner/operator must complete an application, sign it, and submit it to the Director according to the requirements in part 270 Subpart H.

F. Who Must Obtain a RAP? (§ 270.100)

This requirement explains that if the site is owned by one person, but the activities are operated by another person, then it is the operator's duty to obtain a RAP, except that the facility owner must also sign the RAP application. It mirrors the requirement for other permits in § 270.10(b). The operator is the person responsible for the activity being permitted by the RAP, is the most familiar with the proposed activity, and is therefore, the most reasonable choice for who should be responsible for obtaining the RAP. The proposed rule stated that "the owner/operator must receive approval by the Director of a Remediation Management Plan (RMP)." The proposal did not distinguish between the facility owner and operator, but the Agency believes that this provision of today's rule will provide additional clarity about who is responsible for obtaining a RAP.

G. Who Must Sign an Application for a RAP? (§ 270.105)

The proposed rule (at § 269.43(b)) (like the final rule today) required both the facility owner and operator to sign the application for a RAP according to § 270.11. Their signatures are meant to certify that the information contained in the RAP application, to the best of the signatory's knowledge and belief, is true, accurate, and complete (see § 270.11 (d)).

In response to the Agency's request for comment on whether signatures of both the facility owner and operator should be required (61 FR 18817), several commenters objected to the proposed requirement, pointing out that in many instances one party may take a completely passive role in the cleanup process. One commenter pointed out that the current owner of a site may not have technical involvement in the cleanup or may be unwilling to commit resources to the cleanup.

These commenters felt that it could obstruct or delay cleanup efforts if both parties are required to sign the RAP application, especially if the passive party was fearful of incurring liability by signing. Other commenters felt that both parties should be required to sign the RAP application (as is required for traditional RCRA permits) as an indication that they both agree with the provisions in it. One of these latter commenters pointed out that States still hold the facility owner responsible for activities on his property regardless of whether another party operates the site. This commenter felt that requiring the facility owner to sign as well as the operator would signify that the property owner is aware of the activities occurring on his property.

EPA has sympathy with commenters on this issue who argue that in some cases owners may take a passive role, especially with respect to how the remediation waste is managed. At the same time, EPA notes that, under the statute, RCRA permits must be issued to both the owner and the operator. EPA also believes that owners, as well as operators, should ordinarily be responsible for the conduct of cleanup activities. Finally, owners may know about activities on the property that the operator is not involved in or aware of, and can provide valuable information for the permit. To be sure, one of the prime justifications for requiring the facility owner's signature on the permit—that the facility owner is liable for facility-wide corrective action—does not apply in this case. Nevertheless, the facility owner's signature is generally important to confirm that the cleanup is proceeding with his knowledge and approval, and to put the facility owner on notice of potential liabilities. Where it is difficult to get a facility owner to agree to a RAP, EPA may find that an enforcement action is more appropriate than a permit.

As proposed (§ 269.43(b)), § 270.105 in today's rule requires the RAP application to be signed according to § 270.11. The requirements in § 270.11(a) specify the appropriate person to sign the RAP application in the case of a corporation, partnership, sole proprietorship, municipality, State, Federal, or other public agency. Section 270.11(b) requires that any reports required by the RAP be signed by the person specified in § 270.11(a) or a duly authorized representative. Section 270.11(c) describes what to do if authorization under § 270.11(b) changes. Section 270.11(d) requires a person signing a document under § 270.11(a) or (b) to certify that the documents were prepared under their direction, that the information is accurate and complete, and that they understand the penalties of submitting false information. EPA has provided that the facility owner may choose an alternative certification under § 270.11(d)(2) if the operator certifies under § 270.11(d)(1).

After reviewing comments on the respective role of the operator and the land owner, EPA concluded that a less rigorous certification may be appropriate for the land owner, if the operator is more familiar with the cleanup activities than the facility owner. As explained earlier, EPA expects that the operator will be preparing the RAP application and will be familiar with its details. He will also be responsible for carrying out the cleanup. Therefore, it makes sense to have the operator provide the certification. At the same time, as a signatory to the permit, the landowner remains jointly and severally liable with the operator, and EPA retains the ability to enforce the terms of the RAP against the landowner where this enforcement is appropriate in EPA's discretion.

EPA believes that the less rigorous certification in § 270.11(d)(2) is appropriate because it continues to require the facility owner to make appropriate inquiries and provide any information he has about the property that will be the subject of the RAP. Other than general comments on who should submit the permit application, EPA did not receive comment on these requirements. Therefore, with this one exception, EPA has finalized the requirements as proposed.

H. What Must I Include in My Application for a RAP? (§ 270.110)

1. Description of the Specific Content Requirements

This subsection lists the specific pieces of information that the owner/operator must include in a RAP application, and also requires the facility owner/operator to submit any other information the Director considers necessary. The information required under § 270.110(a) through (e) includes names and addresses, latitude and longitude of the site, a map showing site location, and scaled drawings of the remediation waste management site features and boundaries.

The proposal did not explicitly list in the "Content of RMPs" section the information required in the final rule under § 270.110(a) through (e). However, these details were suggested by a commenter on the proposal. EPA expected that this information would generally have been required under the proposed rule. Because the information would be important in identifying the activities to be authorized by a RAP, the information generally would either have been included in the RAP application, or if not, would have been required by the Director under the proposed § 269.41(c)(10) ("other information determined by the Director to be necessary").

The Agency, however, agrees with the commenter that it should be added as an express requirement, to avoid any unnecessary delay caused by an applicant's failure to submit it in the first instance. In addition, these information requirements are similar to the types of information required under a Part A application in § 270.13, although better tailored to the remediation scenario.

New § 270.110(f) requires the application to specify the hazardous remediation waste to be treated, stored, or disposed of, to estimate the quantity of waste to be managed, and to describe the processes to be used for treating, storing, and disposing of the waste. This provision finalizes appropriate aspects of what was required under proposed §§ 269.41 (c)(1) through (6).

Specifically, the proposed rule differs from the rule promulgated today in that it required information regarding not only what under today's rule constitutes "hazardous remediation waste," but also what constitutes "non-hazardous contaminated media." The Agency has eliminated references to "non-hazardous contaminated media" because, as discussed more fully in preamble section II. E., EPA has decided not to finalize any of the approaches from the proposal that would have excluded remediation waste from Subtitle C, and had the RAP address non-hazardous media. The Agency has therefore eliminated requirements that were proposed to implement that portion of the proposed rule (proposed § 269.41(c)(1) and (3)).

Section 270.110(g) requires the facility owner/operator to submit information to demonstrate that the remediation wastes will be managed according to the applicable hazardous waste management requirements found in Parts 264, 266 and 268. This provision finalizes the proposed provision of § 269.43(c)(2). Although many commenters would have preferred all remediation wastes to be exempt from the Subtitle C requirements, including Parts 264, 266 and 268, for the reasons discussed earlier in this preamble, the Agency has decided not to finalize either the Bright Line or Unitary approaches which would have exempted remediation wastes from Subtitle C, and therefore, all hazardous remediation wastes remain subject to these requirements.

This flexible requirement replaces the detailed, unit-specific requirements in 40 CFR 270.14 through 270.27 that apply to traditional RCRA permits, and which lay out the information required in a Part B permit application. EPA has taken this more flexible approach, both because of the wide variation in cleanup activities, and because of the Agency's interest in streamlining the permit process for remediation activities. In implementing current remedial programs, including CERCLA and EPA's RCRA enforcement programs, the regulated community, the regulators, and interested members of the public successfully work together to develop enforceable remediation plans, and EPA believes there is no need for the Agency at this point to mandate detailed "information" requirements for RAPs based on part B requirements. Thus today's rule simply requires the RAP applicant to provide enough information to demonstrate compliance.

Section 270.110(h) requires the RAP applicant to submit enough information for the Director to comply with other Acts, as required for traditional RCRA permits under § 270.14(b)(20). In approving any form of permit, the Director must comply with the requirements in other applicable laws, and therefore, may need information from the RAP applicant to determine the applicability of these other Acts. This was not specifically discussed in the proposal, but where applicable, could have been required under proposed § 269.41(c)(10). The Agency believes that making this requirement explicit will eliminate delays that might result from any potential confusion on this point.

The wide variation in possible hazardous remediation waste management that may take place under RAPs makes it difficult to anticipate all of the Director's information needs. Therefore, § 270.110(i) requires the RAP applicant to submit any other information the Director determines to be necessary for demonstrating compliance with the provisions of Subpart H of part 270 or for determining additional conditions necessary to protect human health and the environment.

The first part of § 270.110(i) was proposed at § 260.41(c)(10); because EPA received no comment on this provision, it is finalized as proposed. The second part § 270.110(i) about information for determining additional conditions necessary to protect human health and the environment simply makes express the Director's authority to request information necessary to enable him to fulfill his duty under the "omnibus" authority of RCRA section 3005(c) to include conditions in permits necessary to protect human health and the environment. This statutory provision is codified in today's rule at § 270.135(b)(4).

All of the information required under § 270.110 forms the basis for the Director's determination of whether or not to approve the RAP application. The Agency expects RAPs to be more streamlined than traditional permits and therefore expects that, as a general matter, the information the facility owner/operator will need to submit for a RAP application will be significantly less than is traditionally required for a RCRA Part B permit application under §§ 270.14 through 270.27. This is because the specific Part B requirements for units, which are much more extensive that what is required by today's rule, were designed with long-term operation of a TSDF in mind. This operation is generally very different from the activities that take place as part of a one-time remediation waste management activity.[10]

Also, the Agency believes that, due to the wide range of activities that might take place under a RAP, it is more appropriate to provide flexibility so that the appropriate amount of information can be determined by the site-specific action. RAPs may permit many different

[10] It should be noted that EPA is also developing a proposal to streamline (and in most cases eliminate) information requirements for RCRA permits covering on-site storage or treatment of hazardous waste in tanks or containers.

types of activities, from on-site storage of investigation-derived waste to treatment and permanent disposal under RCRA requirements. EPA has allowed considerable flexibility in what information is required to be submitted, to allow for the variation in the types of activities being performed under a RAP, and the anticipated generally shorter time-frames for remediation waste management activities.

2. Comments on the Contents of RAPs

Several commenters agreed with EPA's basic framework for the contents of RAP applications. Commenters suggested additional information that should be included in a RAP application if it were the vehicle for determining when hazardous contaminated media could be exempt from Subtitle C, but because the RAP is not serving that function, those comments no longer apply. One commenter was concerned that EPA would require information on management of wastes off-site, but that information is not required in today's rule.

One commenter was concerned that the requirements to include volumes of the waste being managed would require excessive site characterization. However, the regulatory language in § 270.110(f) reads, "an estimate of the quantity of these wastes," which is the same language used for Part A permit applications in § 270.13(j). The purpose of this information is simply to provide an idea of the scope of the operation, not to require an exhaustive site characterization effort. EPA understands that the estimated volume of waste to be managed may change significantly in the course of the cleanup.

Another commenter noted that the different types of wastes regulated under the proposed "Bright Line" approach made the contents of RAPs overly complicated, but EPA is not finalizing that option in today's rule, and so has eliminated that complication.

Several commenters asked that EPA allow the RAP to be coordinated with other submittals of the same information, so that efforts need not be duplicated to prepare numerous submittals. It is for precisely that reason that EPA has allowed other documents (or parts of other documents) to serve as parts or all of the RAP if they contain the information and conditions necessary for RAPs, so that the facility owner/operator does not have to duplicate efforts. This can be found at new § 270.125.

Finally one commenter suggested that EPA make it possible for a facility owner/operator to incorporate "presumptive remedies" into RAPs similar to the approach EPA developed in the CERCLA program. While EPA is not addressing issues such as proper cleanup levels or remedies under today's rule, EPA could develop a set of "standard" RAP provisions to cover commonly encountered situations at sites managing hazardous remediation wastes. These generic provisions could be customized, as necessary, to address appropriate site-specific considerations.

EPA believes that a "generic RAP provisions" approach can be appropriate at RCRA sites, and it agrees this approach can significantly streamline the development of new documents. EPA will consider creating such a model as guidance for the HWIR-media rule.

However, in the meantime, EPA encourages States, or even large companies with multiple sites, to develop model RAPs. For example, commenters have told EPA that there are multiple, similarly contaminated areas in Alaska involving petroleum product spills. EPA believes that this may be an appropriate situation for regulated industries, the State of Alaska, and EPA to work together to develop a model RAP that would cover the situations frequently encountered in Alaska with petroleum and other contaminants. Such a model RAP could be used, with minor modifications to consider any unique, site-specific circumstances, and would be faster to develop and approve if EPA, the State, and the facility owner/operator had already agreed on the basic principles in the model.

3. Contents of RAPs in the Proposal That Are Not Required in the Final Rule

Several parts of the proposed "RAPs contents" requirements are not included in the final rule. First, proposed § 269.41(c)(8) required facility owners and operators to submit information that describes planned sampling and analysis procedures. This requirement is not necessary because waste analysis is required under today's rule at § 264.1(j)(2).

Proposed §§ 269.41(c)(9) and 269.42(b) required facility owners and operators to submit data from treatability studies and full scale implementation of treatment systems to EPA. The Agency has not included that requirement in the final rule. EPA proposed to require the collection of treatability data so that it could set treatment standards with reasonable confidence that those standards could be met with available technologies, and to provide information on the effectiveness of available technologies in treating different kinds of contaminated media.

One of the proposed rule's goals was to provide data to ensure appropriate future treatment requirements. To collect this data, the proposed rule would have required owners and operators to submit data to EPA upon completing remedial treatment (both full-scale as well as treatability studies). EPA has decided not to mandate the collection of treatability data for contaminated media as originally proposed. Since the proposal, EPA has finalized new LDR treatment standards for contaminated soils. EPA believes that those new standards are supported by the available data and does not feel it is necessary to burden the regulated community with the requirement to submit treatability data. Treatability data is discussed more fully in the preamble to the LDR Phase IV rule (63 FR 28556 (May 26, 1998)), in which EPA finalized the soil treatment standards proposed in the HWIR-media proposal.

Also, in the proposed rule at § 269.42(a), EPA proposed that treatability studies that would require a RCRA permit could be conducted under a RMP instead. The significant benefit of this requirement was that those wastes in the treatability study could be excluded from Subtitle C requirements under the RMP. Because RMPs no longer serve that function, the remaining benefit would be the more streamlined process for receiving RAP approval under the final rule instead of a traditional permit.

As discussed throughout the RAPs section of today's rule, any on-site treatment, storage or disposal of hazardous remediation waste that would have otherwise required a RCRA permit may be authorized under a RAP, which would include any treatability studies. Therefore, a separate provision allowing treatability studies under a RAP is not necessary.

EPA recognizes that treatability studies conducted off-site may still confront the problem of needing a traditional RCRA permit, and EPA will evaluate this and any remaining issues with regard to treatability studies in the future.

In the preamble to the proposed rule at 61 FR 18817, EPA requested comment on the limits on the existing Treatability Sample Exclusion Rule (§ 261.4(e) and (f)), which exempts the generator of wastes for treatability studies from 40 CFR Parts 261 through 263, and from notification under RCRA Section 3010. The rule also exempts the facility conducting the study from 40 CFR parts

124, 261–266, 268 and 270 and from notification under RCRA Section 3010. This exemption is currently limited to volumes of no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream.

This exemption remains in effect for no more than 90 days after the study is completed or one year (two years for bioremediation) after the shipment of the same sample, whichever comes first. The Regional Administrator may grant requests case by case for up to an additional two years for treatability studies involving bioremediation. The Regional Administrator may grant requests case by case for extensions of the quantity limits for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, and 1 kg of acute hazardous waste.

When EPA requested comment on whether it should amend the rule to allow EPA to expand those limits on a site-specific basis; the Agency received several comments. All comments favored giving site-specific discretion to the Director to determine appropriate volumes of wastes to be included in the treatability study, and to determine appropriate timeframes. Despite the favorable comment, EPA is not including this provision in the final rule. The Agency is reviewing more broadly the issue of treatability studies and may consider more extensive relief at a future date.

I. What if I Want to Keep This Information Confidential? (§ 270.115)

Some information required under § 270.110 may be confidential business information, such as the design of treatment units. This provision simply requires the facility owner/operator to assert a claim of confidentiality at the time the information is submitted, and EPA will treat the information according to 40 CFR part 2 (Public Information).

EPA has included this provision in the final rule, which is substantially the same as § 270.12 (with only minor changes meant to make the regulation more readable), to allow the facility owner/operator to protect this information. This provision was not discussed in the proposal, but EPA has added it to allow for confidentiality in the same way as with other permitting requirements, and to protect legitimate confidential business information of RAP applicants.

J. To Whom Must I Submit My RAP Application? (§ 270.120)

This provision simply requires that the facility owner/operator submit the RAP application to the Director. This was proposed at § 269.41(a). The "Director" is the EPA or State official responsible for the RCRA hazardous waste management program in the relevant State or Tribal lands, and is defined in § 270.2.

K. If I Submit My RAP Application as Part of Another Document, What Must I do? (§ 270.125)

To avoid duplicative processes, today's rule (§ 270.80(d)) allows RAPs to be a part of another document, such as a State cleanup program's remedy selection document, or a workplan for a cleanup. In many cases, the Agency expects RAPs to be issued at the time that a site manager is selecting a remedy, which will often include a mandatory process for including the public in the remedy selection process, and completion of remedy decision documents, under a cleanup program. Therefore, it would be a waste of time and resources to require a separate RAP application. If the facility owner/operator is preparing the other document(s), then today's rule, at new § 270.125, allows the facility owner/operator to submit the RAP application as a part(s) of those documents. In this case, the rule requires that the facility owner/operator identify the parts of the document that make up the RAP application, so that the Director can develop an appropriate draft RAP, and so the public can comment on it. Often, however, it will be the Director who is preparing the other documents, in which case, the facility owner/operator may choose to submit a separate RAP application, and the Director may incorporate the elements that make up the draft RAP into the other document(s) that he is preparing prior to public comment.

1. Provisions From the Proposal That Are Not Included in the Final Rule

The proposed rule required that "such [other] documents must be approved by the Director according to procedures that allow equivalent or greater opportunities for public involvement than those prescribed in § 269.43." This statement was confusing as to whether those "other" documents would be considered RAPs.

Any RAP application to receive approval as a RAP must follow the authorized RAP procedures of the authorized State or EPA. However, EPA expects that different States will apply for authorization of different types of programs and processes to qualify as RAPs. Therefore, RAPs in different States may look somewhat different, and the processes may vary, but all RAPs must be approved under a program authorized for this regulation.

Because this is already required under the State authorization procedures, and therefore language in the RAPs section of the regulations is not necessary, EPA has not included it in the final rule. In addition, EPA intends it to be clear that the Director may do more in the way of public involvement than is required under today's rule and the facility owner/operator is certainly encouraged to do so. However, that is always possible under RCRA authorized programs, and again it is not necessary to include this statement in the RAPs regulatory language.

As mentioned elsewhere, EPA has written the process for RAP approval to be as flexible as possible so that approval of RAPs, be they stand alone documents or parts of other documents, can be integrated as smoothly as possible into other approval and public comment procedures taking place at the site. EPA expects EPA Regional and State programs implementing the RAP provisions to merge processes at cleanup sites as much as possible to streamline the approval and public participation processes. At the same time, since RAPs will be issued under a Federally authorized program, and will be Federally enforceable, it will be important for States to identify when requirements are imposed under RAPs, and when they are imposed under independent sate authority.

Getting a RAP Approved

L. What Is the Process for Approving or Denying My Application for a RAP? (§ 270.130)

Section 270.130 specifies the basis upon which the Director will determine whether to tentatively decide to either approve the RAP application and therefore prepare a draft RAP, or to deny the RAP application and therefore prepare a notice of intent to deny the RAP application ("notice of intent to deny"). If the Director finds that the RAP application includes all of the information required under § 270.110 (correct signatures, names addresses, maps, drawings, specifications of the wastes; information to demonstrate compliance with applicable part 264, 266 and 268 requirements; information necessary for the Regional Administrator to carry out his duties

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under § 270.3; and other information specified by the Director) and he determines that the information is in fact sufficient to show compliance with the regulatory standards, then he will make a tentative decision to approve the RAP application and prepare a draft RAP. If the Director finds that the RAP application does not meet these criteria, and if the facility owner or operator fails or refuses to correct any deficiencies, then the Director will make a tentative decision to deny the RAP application, and prepare a notice of intent to deny. The most critical parts of the Director's determination is whether or not operation according to the RAP will ensure compliance with applicable Part 264, 266, and 268 requirements.

As with any permit, the Director may deny the RAP application either in its entirety or in part. If the Director decides to either approve or deny the RAP application, he will then solicit, consider, and respond to public comments before making his final decision on the RAP application. The Director's decision is called a "tentative" decision at this stage until he has solicited, considered, and responded to public comments.

Because it is important for the regulated community, the regulators, and the public to clearly understand the basis for the Director's decision to approve or deny a RAP application, EPA has added these provisions to provide clarity.

The proposed rule at § 269.43(e) simply stated that "[w]hen the Director determines that a draft RAP is complete and adequately demonstrates compliance with applicable requirements, the RMP shall be approved according to the [certain specified] procedures." Today's final rule provisions of § 270.130 make express both what was meant by "complete and adequate," and the Agency's underlying assumption that, like the traditional permit process, the RAP approval process will be one of interaction between the applicant and the Agency. In addition, the regulations allow the Director to tentatively deny the RAP in whole or in part, where appropriate.

Thus, in a tentative permit decision, the Director would solicit public comment both on the parts of the RAP that are tentatively approved and on the parts that are tentatively denied.

As stated above, EPA expects the RAP approval process will be one of interaction between the RAP applicant and the Director until the Director is satisfied that he has enough information to tentatively approve or deny the RAP application. Thus, the rule has been written to make this expectation clear. Of course, the exact number of opportunities the Director should provide to correct deficiencies will depend on site-specific circumstances. The rule does make clear, however, that some opportunity to correct deficiencies must be given before a RAP application is denied.

M. What Must the Director Include in a Draft RAP? (§ 270.135)

Sections 270.135(a) and (b) specify the contents of a draft RAP. In today's rule, EPA is allowing flexibility in the format for RAPs. EPA expects that the RAP application will form the basis of the draft RAP. EPA does not expect the regulatory agency to engage in a time-consuming process of re-creating or re-formatting all of the information in the RAP application. Generally, EPA believes that records of decision, workplans, and other documents developed under existing cleanup programs such as CERCLA and RCRA will provide good models for RAPs. Under § 270.135(a) and (b) the Director is required to include in the draft RAP:

(1) The information from the RAP application discussed above (§ 270.110(a)–(f)) (for example, name of the facility, ID number, site boundaries, etc.); and

(2) Terms and conditions required under this section.

Section 270.135(b) specifies that RAPs must include:

(1) Terms and conditions necessary to ensure that the operating requirements specified in the RAP comply with the applicable provisions of parts 264, 266, and 268;

(2) Terms and conditions in § 270.30;

(3) Terms and conditions for modifying, revoking and reissuing, and terminating the RAP; and

(4) any additional terms and conditions necessary to protect human health and the environment.

The Agency received no adverse comment on the proposed requirement that RAPs include terms and conditions that ensure compliance with the applicable provisions of Parts 264, 266, and 268 (proposed sections 269.40(b) and 269.41(c)(2)), and therefore today is finalizing this requirement at § 270.135(b)(i) with minor editorial changes. To promote streamlining, however, the final rule also expressly allows these requirements to be specified "expressly or by reference." In other words, when RAP conditions are based solely on what is required by the regulations (that is, there is no need to establish site-specific conditions), the RAP may either duplicate the text of the requirements from the regulations in describing what is required under the RAP, or may simply cite the applicable requirements. Of course, many Subtitle C requirements, such as design requirements for CAMUs, temporary units, and staging piles in Part 264, must be derived site-specifically, and therefore, must be included in each individual RAP if these units will be used.

The Agency did not specifically request comment on requiring the terms and conditions in § 270.30 to apply to RAPs. However, the Agency believes these terms and conditions provide legal clarity on such issues as "duty to comply," "duty to reapply," and "inspection and entry," and will ensure effective implementation of the RAP.

Therefore, EPA has added this requirement to RAPs at § 270.135(b)(2). Many of the conditions in § 270.30 will not apply to specific actions taken under a RAP. For example, if all remediation waste is managed on-site under the RAP, then there will be no requirement for manifests, and therefore the manifest discrepancy report required under § 270.30(l)(7) will not apply to that RAP. Similarly, the monitoring requirements in § 270.30(j) would apply only to monitoring associated with units regulated under the RAP. It would not apply to general site investigation or monitoring at the cleanup site. In the future, EPA may further simplify these requirements and revise them so they are tailored more specifically to cleanup, and so that they provide greater flexibility.

Section 270.135(b)(3) requires the Director to include in the draft RAP the procedures for modifying, revoking and reissuing, and terminating the RAP, as is required under §§ 270.175, 270.180 and 270.185. These procedures are discussed fully in the preamble sections discussing the procedures for modification, revocation and reissuance, and termination in §§ 270.175, 270.180 and 270.185.

Finally, the requirement of § 270.135(b)(4) for the Director to include "any additional terms or conditions necessary to protect human health and the environment," is simply a codification of RCRA section 3005(c)(3), commonly referred to as RCRA's "omnibus permit authority provision." This provision allows the Director to add terms and conditions necessary to protect human health and the environment as concerns the activities expressly permitted under the RAP.

However, the Agency has also added a degree of specificity to this provision in the final rule. Specifically, today's rule expressly provides that these

additional terms or conditions include, "any additional terms and conditions ... necessary to respond to spills and leaks during use of any units permitted under the RAP."

The Agency added this provision to clarify that, although remediation-only facilities are no longer subject to RCRA section 3004(u) facility-wide corrective action, they do not escape cleanup responsibilities for the units permitted by the RAP. Because any units permitted under a RAP will be subject to the applicable part 264 requirements and must be approved by the Director in the RAP, EPA believes that most units will not experience problems with spills or leaks, because they will be well designed and maintained.

Also, most units permitted under RAPs will be shorter term than most units at operating TSDF, and so will be less likely to develop leaks. However, if unlikely spills or leaks occur, these units are not exempt from spill response and cleanup requirements specific to these units. The omnibus provisions in § 270.135(b)(4) provide an added option for dealing with these events from activities permitted under the RAP.

The RAP is not required to include information or conditions related to cleanup levels, site investigation, remedy selection, or similar requirements not specifically related to hazardous remediation waste management subject to RCRA permitting.

New § 270.135(c) provides that if the draft RAP is part of another document, as described in § 270.80(d)(2), the Director must clearly identify the components of that document that constitute the draft RAP. This is the same requirement for the Director as the earlier requirement for the RAP applicant (in new § 270.125), that if the RAP applicant prepares the RAP application as part of another document, he must identify the portions of the other document that make up the RAP application. This simply allows for consolidation of documents when other decisions, such as remedy selection, are occurring at the same time as decisions on the RAP, and allows the Director to prepare only one document instead of several. This approach was proposed at § 269.40(e)(2) and EPA did not receive any negative comments on this procedure.

1. Provisions of the Proposal That Are Not Included in the Final Rule

The proposed rule also contained several additional requirements for RAP terms and conditions that the Agency is not finalizing today. First, during the development of the proposal, some of the FACA Committee members expressed concerns that certain cleanup activities may unintentionally cause additional contamination through cross-media transfer of contaminants (that is, transfer of contaminants to clean soil, air, and surface or ground water).

In response to these concerns, EPA proposed (at § 269.41(c)(7)) to require the facility owner/operator to submit information that demonstrates that any proposed treatment system will be designed and operated in a manner that will adequately control the transfer of pollutants to other environmental media. This aspect of the proposal was important because the proposal exempted significant portions of remediation waste from unit-specific standards.

However, in today's final rule all hazardous remediation wastes remain subject to Subtitle C requirements, including those designed to prevent cross media contamination (for example, the requirements in § 264.175 for tanks, § 264.221 for surface impoundments, and § 264.251 for waste piles, covering such cross-media prevention techniques as liners and covers, and controls to prevent migration into groundwater or surface water). This requirement therefore is no longer generally necessary and the Agency did not include it in the final rule. In addition, the Director may address any remaining concerns about cross-media transfer of contaminants related to the remediation waste management activities permitted by the RAP under the Agency's omnibus permitting authority, addressed above.[11]

[11] In addition to the existing regulatory requirements, since proposal, EPA has developed the Best Management Practices (BMPs) for Soil Treatment Technologies (EPA530-R97–007, May 1997) guidance document on how to identify and minimize the potential for causing cross-media contamination during implementation of cleanup technologies for contaminated soils or solid media. The guidance outlines the potential cross-media concerns for specific activities and recommends approaches for preventing cross-media transfer of contaminants. Its primary purpose is to prevent the cross-media transfer of contaminants during implementation of contaminated soils or solid media treatment technologies in compliance with applicable State and/or Federal regulations.

This document does not replace any existing State or Federal regulations or guidance. It was developed to support the HWIR-media rule. The BMPs guidance was not developed for and should not be used as a compliance guide for any particular set of cleanup standards, but instead as a reference during implementation of those standards. Similarly, BMPs are not meant as a selection tool for remedial treatment technologies; they should be used during the implementation stage of remedies once they are selected. The facility owner/operator and the Director should consider whether this guidance will provide helpful recommendations for the remediation waste management taking place under the RAP.

In addition, §§ 269.43(c) and (d) of the proposal allowed the Director to add provisions to the RAP specifying the conditions under which the owner/operator would manage media under a RAP, and concentration levels below which the Director would no longer consider the media to contain hazardous waste, and to add provisions (if necessary) specifying when the Director would consider threats to human health and the environment from the media to be minimized. These provisions were based on the proposed rule's provisions that would allow the Director to exempt hazardous contaminated media from Subtitle C if it were below the proposed Bright Line levels (see proposed § 269.4, and preamble about the Bright Line at 61 FR 18794; about the LDR requirements at 18804; and about treatability variances at 18810).

In some cases, under the proposal, the media would have been exempt from most of Subtitle C, but remain subject to LDR treatment standards. In those cases, the Director might specify minimize threat levels under a treatability variance as an alternative LDR level (instead of requiring treatment to the levels required in part 268). This approach was finalized in the recent Phase IV Land Disposal Restrictions Rule (63 FR 28556 (May 26, 1998)).

N. What Else Must the Director Prepare in Addition to the Draft RAP or Notice of Intent to Deny? (§ 270.140)

Once the Director has prepared the draft RAP or notice of intent to deny, § 270.140(a) requires the Director to prepare a statement of basis supporting the RAP decision. Section 270.140(b) requires the Director to compile an administrative record and specifies the contents of the administrative record for the draft RAP, which are:

(1) The RAP application and any supporting data;

(2) The draft RAP or notice of intent to deny;

(3) The statement of basis and all the documents cited in the statement of basis; and

(4) Any other documents supporting the decision to approve or deny the RAP.

Today's rule also provides that any documents which are readily available to the public do not need to be physically included in the administrative record as long, as these documents are specifically referenced. This eliminates the need to unnecessarily copy documents such as regulations and statutes, and other commonly available documents, and to crowd each administrative record with

documents that can be easily found elsewhere.

The statement of basis and the administrative record are essential to explain and document the basis for the Director's decision to approve or deny the RAP, and if the RAP is appealed, they provide the record for review by the Environmental Appeals Board or similar State body. The information in the administrative record allows members of the public to review the basis for the Director's decision in order to participate in a meaningful way during the comment period. The requirements for a statement of basis and administrative record are the same as the requirements in §§ 124.7 and 124.9 for other RCRA permits, except that they have to be re-worded to be more readable.

The proposed rule did not allow for administrative appeals and did not expressly require a statement of basis or compilation of an administrative record. However, because (in response to public comments) the final rule does allow for administrative appeals, as discussed later, the statement of basis and administrative record are essential to successful operation of the appeals process, and EPA has therefore added them to the requirements for RAPs in today's final rule.

New § 270.140 (c) requires that information contained in the administrative record be made available for public review upon request. This ensures that the public can review all relevant documents in preparing their comments on the draft RAP.

O. What Are the Procedures for Public Comment on the Draft RAP or Notice of Intent to Deny? (§ 270.145)

1. A Description of the Requirements

Today's rule sets out procedures for reviewing and approving RAPs. EPA considers public review and comment procedures an extremely important part of the review and approval process for remedial activities. EPA recognizes that remediation waste management activities will vary greatly in scope and risk involved, and the Agency in turn believes that public participation should vary depending on the scope and risk involved with the remediation waste management taking place. EPA expects that States that apply for authorization for today's rule may request authorization for programs that vary somewhat from today's requirements, and EPA wants to allow for flexibility in this process. EPA expects States and Regions issuing RAPs to make appropriate decisions about what levels of public participation are appropriate in different situations. However, to receive authorization for RAPs, States must at least require the minimum public participation requirement mandated by RCRA section 7004(b) and must have requirements equivalent to the other requirements in today's rule. For further discussion of State authorization issues, see the State Authority section of today's preamble.

EPA is finalizing its proposal to require the use of the statutory public participation requirements in RCRA section 7004(b). Thus, if the Director makes a tentative decision to approve or deny the RAP application, he must:

- Send notice to the facility owner/operator of his decision with a copy of the statement of basis (§ 270.145(a)(1);
- Publish that decision in a major local newspaper of general circulation (§ 270.145(a)(2);
- Broadcast his decision over a local radio station (§ 270.145(a)(3);
- Send a notice of his intent to approve or deny the RAP to each unit of local government having jurisdiction over the area in which the site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site (§ 270.145(a)(4).

This was proposed at § 269.43(e)(1)(i) and (ii).

Section 270.145(b) requires that this notice provide the public with the opportunity to submit written comments on either the draft RAP or the notice of intent to deny within no fewer than 45 days. This was proposed at § 269.43(e)(1)(ii).

Section 270.145(c) specifies the information requirements for the notice, which are:

(1) The name and addresses of the office processing the RAP application;

(2) The name and address of the RAP applicant and the site or activity;

(3) A description of the activity;

(4) The name, address, and phone number of a person from whom interested persons may obtain further information;

(5) A description of the comment procedures and other procedures by which the public may participate;

(6) If a hearing is scheduled, the date, time, location, and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

(8) The location of the administrative record and times when it will be open for public inspection; and

(9) Additional information the Director considers necessary or proper.

These requirements ensure that the public will have enough information to participate in a meaningful way in the comment process.

The proposed rule required the same procedures. Proposed § 269.43(e)(1)(i) required notice according to the procedures of 40 CFR 124.10(d) for the contents of the notice. In the final rule, EPA has incorporated applicable requirements in § 124.10(d) directly into the regulations for RAPs (with non-substantive changes made to incorporate the requirements into today's readable format) to avoid potentially confusing cross-referencing.

Section 270.145(d) requires that if within the comment period the Director receives written notice of opposition to his decision to approve or deny the RAP and a request for a hearing, the Director must hold an informal public hearing. The Director may also determine on his own initiative that a hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must:

- Schedule the hearing at a location convenient to the nearest population center to the remediation waste management site;
- Give notice again in the newspaper and on the radio and to the local government including the information described above; and

(1) Reference the date of any previous public notices relating to the RAP application;

(2) Include the date, time, and place of the hearing; and

(3) Provide a brief description of the nature and purpose of the hearing, including procedures.

Again, these hearing requirements are identical to what was proposed at § 269.43(e)(2), but with minor editorial changes to increase readability. These requirements are also required under RCRA section 7004(b).

2. Commenters Requested More Flexibility

Several commenters requested additional flexibility in the public participation process under today's § 270.145 requirements. Commenters suggested that RAPs for media that were excluded from Subtitle C should not have to follow the RCRA statutory public participation requirements. Today's rule does not exempt any hazardous remediation waste from Subtitle C, so RAPs always must serve as RCRA permits and must follow the RCRA statutory requirements for permits. Commenters specifically mentioned the 45-day comment period, the requirement to hold a hearing if one is requested, and the requirement to send a copy of the RAP to each State

agency having any authority under State law with respect to any construction or operations at the site. Commenters generally suggested that EPA should allow flexibility in how public participation was performed, depending on the activities taking place at the site.

However, under today's rule, RAPs constitute RCRA permits, and therefore, the statute mandates certain very specific public participation activities in RCRA section 7004(b) including the 45-day comment period, hearings, and sending copies of the RAP to State agencies. EPA has limited any additional specificity (for example, the requirements for the contents of a notice in § 270.145(c)) of today's rule to information or procedures necessary for smooth implementation of those statutory requirements, and has not included other procedural requirements, such as §§ 124.31–124.33.

The requirements in § 270.145(a)(2), (3), (4), (b) and (d) are direct requirements from section 7004 of RCRA. The only requirements that EPA has added beyond the statutory requirements are:

- For the Director to send a notice of his decision to the RAP applicant (§ 270.145(a)(1));
- The content requirements for the public notice of the RAP decision (§ 270.145(c)); and
- The content requirements for the public notice for any hearings (§ 270.145(d)(1)–(3)).

EPA believes that it is important to notify the RAP applicant of the Director's decision, and for public notices to include sufficient information about RAP decisions and public hearings to allow meaningful public participation. This is why EPA has added these few requirements to the statutory minimum procedures, and these requirements are the same as the equivalent requirements for traditional RCRA permits. It is, however, the Agency's policy on public participation to stress the importance of appropriate public participation in environmental decision-making.

EPA has acknowledged repeatedly that the Agency believes that the RCRA statute is overly prescriptive in its definition of public participation requirements for RCRA permits applying to remediation-only sites. Indeed, cleanups under EPA's own Superfund program—which provides a full and extensive opportunity for public participation—might not meet all of the RCRA statutory standards. Ideally, EPA would provide significantly greater latitude for State programs in today's rule; however, the Agency believes it is constrained by the statute. For this as well as other reasons, the Administration is supporting legislative reform of RCRA specific to remediation waste.

P. The Importance of Public Involvement in the RAP Process

It is EPA's policy to encourage public involvement early and often in the permitting process, in its remediation programs, as well as in other Agency actions. EPA intends this rule, and its implementation, to be consistent with that policy.

EPA also recognizes that existing State and Federal authorities provide for public involvement through widely varying processes. EPA, in crafting today's rule, intends to provide enough procedural flexibility so that States will not have to either modify their public involvement policies, or duplicate their efforts towards public participation in order to comply with slightly different requirements under today's rule.

EPA recognizes that meaningful public participation means that all potentially affected parties have an opportunity to participate early in the process and have ample time to participate in the remediation waste management decisions. Today's rule establishes the minimum procedures for public involvement—public notice and opportunity for comment when the authorized regulatory agency makes a preliminary decision to either approve or deny a draft RAP. EPA wishes to encourage involvement of the public throughout the remediation waste management process. EPA also believes that particular situations may warrant more than these minimum requirements.

In general, the level of public involvement will depend on the action—for example, the Agency may simply provide the minimum required opportunity for public comment on a proposed RAP for on-site storage of waste with low levels of contamination before it is removed, but may provide higher levels of involvement when a RAP includes treatment of a large quantity of remediation waste or on-site waste disposal. For these reasons, EPA believes that public involvement should be tailored to the needs at the site, and has therefore provided necessary flexibility in this rule.

Some cases may warrant more than notice and opportunity for comment. The Director or the facility owner/operator may choose to voluntarily take additional steps beyond what is required in today's regulations when additional involvement is warranted. In some cases, meaningful public notice may include bilingual notifications, publication of site fact sheets or of legal notices in city or community newspapers (or other media, such as radio, church organizations, and community newsletters) at key milestones in the remediation waste management decision process. Existing forums of communication, such as regular community meetings and electronic bulletin boards can be used to provide regular progress reports on remediation waste management activities.

The idea of different levels of public involvement is not new. EPA has long recognized that the level of public involvement should be determined by the action taking place. As an example of EPA's recognition that different activities warrant different levels of public participation, in a final rule dated September 28, 1988 (53 FR 37936), EPA promulgated regulations to govern modification of permits. Those regulations established different levels of public involvement depending on the significance of the permit modification.

Class 1 modifications, which apply to minor changes to permits, require minimal public involvement. The permittee must send a notice of the permit modification to all persons on the facility mailing list, and to the appropriate units of State and local government. Interested persons may request review of these permit modifications.

Class 2 permit modifications require increased public involvement, and Class 3 modifications, for major modifications to permits, require far more extensive involvement of the public—publication in a local newspaper, a public meeting, and a public comment period. To assist facility owners and operators in implementing the rule, EPA classified different activities as Class 1, 2, or 3 modifications, based on the significance of the action in Appendix 1 to § 270.42. These different classes of permits show that EPA has long agreed that different levels of public participation are appropriate for different activities.

EPA has also issued guidance on public involvement which may, as appropriate, be used as guidance in implementing today's rule (*see* the RCRA Public Participation Manual, September, 1996, EPA 530–R–96–007). This manual provides guidance on addressing public participation in the permit process, including permitting and enforcing corrective action activities. The manual emphasizes the importance of cooperation and communication and highlights the public's role in providing valuable input. It stresses the importance of early and meaningful involvement of the

public in Agency activities, and of open access to information.

In addition to the manual, EPA fully encourages the Director and the RAP applicant to consider, as appropriate, The Model Plan for Public Participation, developed by the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council (a Federal Advisory Council to the U.S. Environmental Protection Agency) when taking actions that would benefit from additional public involvement beyond what is required in today's rule. The Model Plan encourages public participation in all aspects of environmental decision making. It emphasizes that communities, including all types of stakeholders, and regulatory agencies should be seen as equal partners in any dialogue on environmental justice issues. The model also recognizes the importance of maintaining honesty and integrity in the process by clearly articulating goals, expectations, and limitations.

Most recently, the Agency issued the Enhanced Public Participation Rule (60 FR 63431 (December 11, 1995)), which amended 40 CFR parts 124 and 270 to provide for public participation earlier in the permitting process, and expanded public access to information throughout the permitting process and the operational lives of facilities. It requires the person associated with the facility, usually the facility operator, to notify the public before applying for a permit under § 124.31.

The Agency encourages using this rule, as appropriate, as guidance for cleanups that require a RAP, especially when there is a highly toxic or large volume of remediation waste. Where a cleanup involves treating, storing or disposing of hazardous remediation waste and a RAP is issued, public participation on the RAP should generally be folded into the broader strategy for encouraging public involvement in the cleanup. EPA encourages regulators and facility owners/operators implementing the provisions of today's final rule to refer to these regulations and guidance documents as guidance in developing appropriate public participation activities for individual RAPs.

Q. How Will the Director Make a Final Decision on My RAP Application? (§ 270.150)

1. A Description of the Requirements

Section 270.150(a) requires the Director to consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny. Section 270.150(b) and (c) require that, when the Director has responded to all significant comments and revised the RAP as appropriate and has determined whether the RAP includes all the required information and terms and conditions, he must issue a final decision on the RAP application, and notify in writing the RAP applicant and all commenters on the draft RAP or the notice of intent to deny. This was proposed at § 269.43(e)(4), on which the Agency received no adverse comment.

Section 270.150(d) specifies that if the Director's final decision is that his tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP. This is the same as the approach taken for traditional RCRA permits (see § 124.6(b)), and the Agency sees no reason to deviate from that approach in today's rule.

Under new § 270.150(e), when the Director issues his decision, he must include reference to the procedures for appealing the decision. Because appeals were not provided for in the proposed rule, this is a new requirement EPA has added to the final rule. This is the same requirement as for permits under § 124.15(a), and EPA did not see any reason to differ from these existing requirements for permits.

New § 270.150(f) requires that, before issuing the final RAP decision, the Director compile an administrative record that includes the information from the administrative record from the draft RAP and also:

(1) All comments received;

(2) Tapes or transcripts of hearings;

(3) Written materials submitted at hearings;

(4) Responses to comments;

(5) New material placed in the record since the draft RAP was issued;

(6) Other documents supporting the RAP; and

(7) The final RAP.

This section again repeats that material readily available need not be included. This is the same as for the administrative record for draft RAPs and also for traditional RCRA permits.

Section 270.150(g) requires that the administrative record must be made available for review by the public upon request.

As described for the administrative record for the draft RAP, EPA believes that express requirements for compiling administrative records are essential for successful hearing of appeals, and because appeals were not permitted in the proposal, EPA did not include this requirement in the proposal. However, an administrative record is now a necessary part of today's final rule. The elements of the administrative records for RAPs are the same as those required for traditional RCRA permits under § 124.18. EPA believes that the same information that is necessary to understand the decision-making on a traditional RCRA permit is also appropriate for RAPs.

2. Comments on the Proposed Requirements

The proposed rule requirement for the Director to consider and respond to any significant comments, and to modify the RAP as appropriate, was at § 269.43(e)(3). (The final rule uses the word "revised" instead of "modified" to avoid confusion with §§ 270.170 and 270.175 pertaining to post-issuance modifications.) Several commenters were concerned that the Director would unilaterally modify RAPs due to public comments without consulting with the facility owner or operator. They asked that EPA require the Director to consult or negotiate with the facility owner or operator before making modifications due to public comment. One commenter explained that changes resulting from public comment may substantially increase the cost of compliance, or otherwise significantly affect the facility's ability to complete remedial actions, in which case the facility would have no choice but to comply, or suspend remedial activities while seeking judicial review. Commenters were also concerned that any action that requires approval from the Agency takes a very long time to get approved. The commenter asked for EPA to limit the Director's review period to 60 days, and if the Director had not acted on the RAP within 60 days, the RAP would go into effect automatically.

EPA considers open communication with the facility owner/operator important to successful implementation of the RCRA program. EPA encourages Regional offices and States implementing today's rule to discuss, when appropriate, any revisions that may be made to the RAP in response to public comment with the facility owner/operator before making them. The Agency has not added this as a requirement to the approval process, however. An overriding objective of today's rule is to eliminate unnecessary process from the regulations. The Agency believes that a mandatory consultation process such as that suggested by the commenter is unnecessary because today's rule, unlike the proposal, provides for appeal of the Director's final decision to EPA's Environmental Appeals Board. Facility

owner/operators who are unhappy with changes made in response to public comment will have ample opportunity, at that time, to convince the Agency to change the contested provisions.

EPA has also decided not to limit the amount of time the Director has to review and approve RAPs so that if the Director does not act, the RAP becomes effective. EPA does not believe that the Agency would be fulfilling its statutory obligation to ensure compliance with RCRA requirements if RAPs could become effective without an affirmative decision from the Director (see RCRA section 3005). In addition, this would be especially problematic because under new § 270.90, the RAP generally serves as a shield against enforcement, and therefore the Director must make an affirmative decision that the RAP will ensure compliance with the applicable Subtitle C requirements before the RAP can become effective.

Commenters also asked that the facility owner or operator be required to provide copies of all documents he is required to maintain during the remedial activity into a local library to allow for public review. EPA encourages any steps the Director can take to facilitate meaningful public involvement, but again has chosen to limit actual regulatory requirements in an effort to maintain a more flexible process. EPA already requires the Director to make the administrative record available under both §§ 270.140(c) and 270.150(g). In addition, the Director can require the facility owner/operator to set up an information repository as a part of the RAP under the terms and conditions imposed at § 270.135, if the Director considers a repository appropriate. We believe these authorities allow the full range of options to assure easy public access to information so that meaningful public involvement can occur.

The requirement for the Director to make a determination at § 270.150(b) and (c) was proposed at § 269.43(e)(4), and stated "When the Director determines that the RMP adequately demonstrates compliance with all applicable requirements. . . ." The requirements in § 270.150 of today's final rule clarify what the proposal meant by "all applicable requirements."

The proposed rule did not expressly outline the procedures if the Director decided to deny a RAP. This was an oversight. To correct that oversight, EPA has made denial procedures for RAPs equivalent to approval procedures for RAPs.

R. May the Decision To Approve or Deny My RAP Application Be Administratively Appealed? (§ 270.155)

The Agency had originally proposed to eliminate administrative appeals (that is, to the EPA Environmental Appeals Board) because EPA felt that allowing facility owner/operators to proceed directly to judicial review (if necessary) after the Director's decision on the RAP would streamline the process. However, numerous commenters did not believe that this particular part of the proposal resulted in any beneficial streamlining. Commenters expressed an interest in being able to avoid expensive and time-consuming judicial proceedings by first requesting an administrative appeal. Also, one commenter pointed out that in instances where the RAP applicant is a Federal agency, the judicial review process is not available because Federal administrative agencies are unable to seek judicial review of final actions of other Federal administrative agencies. No commenters wrote to support EPA's proposal to not provide for appeals.

The Agency agrees with these commenters that allowing for further review within the Agency will, in many cases, help avoid time-consuming and costly litigation. Because, in the remediation setting, this is time and money better spent on cleanups, the Agency has decided in this final rule to provide for administrative appeals for RAPs. Thus, the procedure in new § 270.155 requires facility owner/operators to follow the procedures of § 124.19 for appeals. The only difference between the process EPA requires for RAPs, and the traditional § 124.10 requirements is that when the Director gives public notice of appeals decisions for RAPs, (under § 124.19(c)), he will follow the RAPs public participation procedures in § 270.145 instead of those in § 124.10, which are used to give public notice of appeals decisions for traditional RCRA permits.

Sections 270.155(a)(1)-(3) include requirements for what the public notice of the appeal must include, which are: (1) the briefing schedule for the appeal; (2) a statement that any interested person may file an amicus brief with the Environmental Appeals Board; and (3) the appropriate information from § 270.145(c), such as the name and address of the remediation waste management site and a description of the proposed activities.

The requirements under § 270.155(a)(1) and (2) for what to include in the public notice already appear in § 124.19(c), but are repeated in § 270.155 for clarity. Section 124.19(c) also specifies that public notice of appeals decisions will be given as provided in § 124.10. However, EPA has specified in today's rule that public notice of appeals decisions for RAPs will follow the procedures of § 270.145, and will contain the information from § 270.145 (c), instead of § 124.10.

For clarity, new § 270.155(b) repeats the requirement in § 124.19 that exhausting the administrative appeals procedure of § 124.19 is a prerequisite to judicial review under RCRA section 7006(b). This is the same requirement as in place for traditional RCRA permits under § 124.19(e), and EPA saw no reason to differ from the current requirements.

S. When Does My RAP Become Effective? (§ 270.160)

Section 270.160 states that the RAP is effective 30 days after the Director has notified the facility owner and operator and all commenters that he approves the RAP. This is the same as the effective dates for traditional RCRA permits. The 30-day period allows time for parties to appeal the Director's final decision before the RAP is effective. EPA stated in the preamble to May 19, 1980 rulemaking, when these provisions for permits were promulgated, that the 30 days "is a necessary part of a party's right to request an evidentiary hearing."

Under § 270.160(a), the Director may specify a later effective date in the final RAP decision if he feels that a longer time is necessary to allow facility owners and operators more time to come into compliance with the new requirements, or knows of other necessary reasons for a later effective date.

Section 270.160(b) specifies that if a RAP has been appealed, and the appeal is granted, conditions of the RAP will be stayed according to the provisions of § 124.16, pending the outcome of the appeal. The Director may identify which conditions of the RAP are severable, and therefore are not stayed. However, the provisions that are appealed and any provisions that are not severable from the appealed provisions will be stayed.

Section 270.160(c) specifies that the RAP may become effective immediately if no commenters requested a change from the draft RAP. This is because if no one requested a change, then no one would have the right to an appeal. Only parties who comment on the draft RAP may request appeal.

The proposed rule did not specify effective dates for RAPs. This was an oversight EPA has corrected in today's final rule. These effective date requirements are the same as those currently required for traditional RCRA permits under § 124.15(b), and EPA saw

no reason to differ from these existing requirements.

T. When May I Begin Physical Construction of New Units Permitted Under the RAP? (§ 270.165)

Section 270.165 specifies that the RAP applicant cannot begin physical construction of new units before receiving a finally effective RAP. This is the same as the requirements for traditional RCRA permits at § 270.10(f)(1).

How May My RAP be Modified, Revoked and Reissued, or Terminated?

U. After My RAP Is Issued, How May It Be Modified, Revoked and Reissued, or Terminated? (§ 270.170)

Plans for remedial actions sometimes need to be modified, revoked and reissued, or terminated. Often, modifications, revocations and reissuances, or terminations are necessary as new information becomes available. To retain reasonable flexibility in the remedial process—where it is difficult to predict all contingencies, and where different State programs may have different existing requirements for when plans need to be modified, revoked and reissued, or terminated—today's rule (as did the proposal), does not include specific procedures for RAP modification, revocation and reissuance, or termination but requires the Director to specify these procedures in the RAP. This provides authorized State or Federal programs the ability to allow modifications, revocations and reissuances, and terminations when and how they would fit efficiently into the State or Federal program. Today's rule at § 270.170 requires (the same as the proposal) that the Director include these procedures in the RAP, and also requires that these procedures provide for public review and comment if there is a "significant" change in the management of hazardous remediation waste at the site, or in circumstances which otherwise merit public review and comment. This was proposed at § 269.44(a) and is consistent with EPA's preference for involving the public in important decisions.

While commenters agreed with this general approach, two commenters asked for clarification on what constitutes a "significant" modification. EPA expects the Director to consider examples such as changes in treatment processes, use of new units, or activities that would require Class 2 or 3 modifications in Appendix 1 to § 270.42 as "significant" modifications (see also § 270.42(d)(2)). EPA expects that activities that would require Class 2 or 3 modifications would generally be the same kinds of activities that would be considered "significant" in this case. However, because activities that take place at cleanup sites are so often influenced by the site-specific factors that affect the management of remediation wastes at each site, EPA has decided not to put any limits into the regulatory language defining a "significant" change. This allows the Director full discretion to determine what constitutes "significant" for any given site.

The proposed regulatory language explaining which modifications should include public participation included modifications that were "major or significant." EPA considers "major" and "significant" to mean the same thing in this instance—and so has eliminated that redundancy by limiting the final rule to the term "significant."

Proposed § 269.44 referred only to modifications and not to revocation and reissuance, which was an oversight. Proposed § 269.45 included revocation with expiration and termination. The requirements for both proposed sections were the same, stating that the Director would specify procedures for these actions. EPA has decided to move the requirement to specify procedures for all these activities into one section (§ 270.170) because the same requirement applies to all of these activities, that the Director must specify procedures for modification, revocation and reissuance, and termination in the RAP.

Today's final rule also allows the Director to specify these modification, revocation and reissuance, or termination procedures individually or to incorporate them by reference. EPA expects that State programs may already have or may develop standard modification and revocation and reissuance procedures. EPA intended for the proposed rule language, which simply stated that the "Director shall specify . . . procedures," to allow States having existing procedures to incorporate these procedures by reference, but the final rule language makes that explicit. EPA believes that incorporating already approved procedures by reference can save time and controversy in preparing and approving RAPs.

Section 270.170 also specifies that if your RAP has been incorporated into a traditional RCRA permit, then the RAP will be modified, revoked and reissued, or terminated according to the applicable traditional RCRA permit requirements. Of course, the Director may, as appropriate, specify in the RAP additional grounds or procedures, at his discretion. This is conforming change to make this requirement consistent with § 270.85(c), which allows RAPs to be incorporated into traditional RCRA permits.

V. For What Reasons May the Director Choose To Modify My Final RAP? (§ 270.175)

Today's rule specifies at § 270.175 that the Director may determine on his own initiative that a modification is necessary. New §§ 270.175(a) (1)–(8) specify the causes that justify a Director-initiated modification. The only cause specified in the proposal for Director initiated modifications was "new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site" (see 61 FR 18854). The Agency received no adverse comment on limiting the Director's discretion in this area. However, the Agency has decided to clarify the causes for Director-initiated modifications in today's RAPs regulations to include the same causes for Director-initiated modifications as for traditional RCRA permits under §§ 270.41 and 270.43. EPA believes this is an outgrowth of the proposed requirement, and responds to commenters' concerns that the Director had too much discretion as to when he could modify RAPs.

As discussed above, the proposed rule allowed the Director to make "unilateral" modifications based on "new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site." Commenters expressed concern about what they saw as the Director's too-broad discretion to make "unilateral" modifications. In response to these comments, today's final rule requirements for "causes" adds more specificity to what that "new information" may be.

Section 270.175(b) allows the Director to modify the RAP as necessary to ensure the facility continues to comply with the currently applicable requirements of parts 124, 260–266 and 270 when he reviews a RAP for a land disposal facility every five years, as is required under § 270.195. This same requirement applies to traditional RCRA permits under § 270.41(a)(5).

Also to protect the facility owner/operator, at new § 270.175(c) the Agency has included the provision that applies currently to traditional RCRA permits which specifies that the Director will not reevaluate the suitability of the location of the facility at the time of RAP modification. This would cause too

much disruption to facility operations. The location will be evaluated once when the RAP is initially approved, but once approved it will not be reevaluated unless new information or standards indicate that a threat to human health or the environment exists that was unknown at the time of RAP issuance.

W. For What Reasons May the Director Choose To Revoke and Reissue My Final RAP? (§ 270.180)

The Agency has specified in new § 270.180(a) causes for when the Director may modify or revoke and reissue a RAP. Again, these causes are the same as those for permits under the current regulations at §§ 270.41 and 270.43, and are intended to provide assurance to the facility owner/operator security that they can operate in compliance with their permit without fear that their permit will be modified without a good cause.

EPA explained its original reasoning for promulgating causes for Director-initiated modifications and revocation and reissuances of traditional RCRA permits at 45 FR 33314 (May 19, 1980). That preamble stated that "EPA has rewritten the permit modification section . . . to provide greater certainty to permittees during the period when they hold permits and thereby make it easier to make business decisions and obtain financing . . . Normally, a permit will not be modified during its term if the facility is in compliance with the conditions of the permit. The list of causes for modifying a permit is narrow; and absent cause from this list, the permit cannot be modified." In that notice, EPA also explains the specific rationale for each of the causes for Director-initiated modifications, revocations and reissuances, which are the same causes as allowed in today's rule. EPA included the same protection for owners and operators when RAPs are revoked and reissued at § 270.180(b) as is provided for when RAPs are modified at § 270.175(c). That is that the Director will not reevaluate the suitability of the location of the facility at the time of RAP revocation and reissuance. The reasons for this protection are discussed above at § 270.175(c).

X. For What Reasons May the Director Choose To Terminate My Final RAP, or Deny My Renewal Application? (§ 270.185)

Unlike in the proposed rule, the Agency has decided to retain the requirements in § 270.43 for causes for permit termination. Thus in new § 270.185, EPA cites the three reasons from § 270.175 why RAPs may be terminated. They are that:

(1) The facility owner/operator violates the RAP;

(2) The facility owner/operator did not fully disclose or misrepresented information during the application process; or

(3) The activity authorized by the RAP endangers human health or the environment, and can only be remedied by termination.

The Agency believes it is appropriate to retain these requirements for RAPs because they specify the basis of what EPA believes should be potential grounds for termination, while providing assurances of certainty to the facility owner/operator by limiting the reasons the Director may terminate the RAP. The proposed rule did not specify detailed reasons for why RAPs could be terminated, but simply left that up to the Director to specify in the RAP.

Y. May the Decision To Approve or Deny a Modification, Revocation and Reissuance, or Termination of My RAP Be Administratively Appealed? (§ 270.190)

Section 270.190(a) states that any commenter on the modification, revocation and reissuance or termination, or any participant in any hearings on these actions, may appeal the decision to modify, revoke and reissue or terminate a RAP to the Environmental Appeals Board, using the same procedures as those used for appealing the original RAP decision in § 270.155. Appeals of approvals of modifications, revocation and reissuances, and terminations of traditional RCRA permits follow the same process as appeals of original permit decisions. EPA has decided that it will be easiest to understand if RAPs follow the same construct as traditional RCRA permits. Also, modifications of RAPs could possibly include significant changes in the remediation waste management activities at the remediation waste management site, and so the right to appeal these decisions is important to the facility owner/operator and to the community.

Section 270.190(b) specifies that denials of requests for RAP modification, revocation and reissuance or termination may be informally appealed, and § 270.190(c) sets out the procedures for informal appeals which are that: (1) The person appealing the decision must send a letter to the Environmental Appeals Board; (2) the Board has 60 days to act; and (3) if the Board does not take action within 60 days, the appeal will be considered denied.

In the May 19, 1980 final rule which created the § 124.5 requirements for informal appeals, EPA explained the Agency's rationale in this way: "EPA rejected comments urging that modification denials be appealable through the same agency procedures as permit issuance or denial. Departures from the cycle of permit issuance and periodic examination should not be encouraged in such a manner. If encouraged, they could keep many permits in a state of perpetual reexamination thus impeding the control program being implemented." EPA has chosen to apply the same process for RAP modification, revocation and reissuance and termination denials as applies to the same decisions for traditional RCRA permits. This process for informal appeals is the same as the process for informal appeals of denials of requests for permit modification, revocation and reissuance and termination in § 124.5(b), except that it has been re-written to be more readable. EPA sees no reason why the processes should differ.

Section 270.190(d) states that this appeal is a prerequisite to judicial review of these actions. This same requirement applies to traditional RCRA permits under §§ 124.19(e) and 124.5(b).

Of course, because the proposal did not allow for appeal of RAPs, it also did not allow for appeal of RAP modification, revocation and reissuance, or termination. However, the Agency has provided these provisions in response to commenters' requests, as more fully discussed in the preamble section for § 270.155 entitled "May the decision to approve or deny my RAP application be administratively appealed?"

Z. When Will My RAP Expire? (§ 270.195)

As with all RCRA permits, § 270.195 requires (as proposed at § 269.45) that RAPs have a maximum life of 10 years, and that RAPs that permit land disposal units be reviewed every five years. This requirement is a statutory requirement under RCRA section 3005(c)(3). Of course, in many cases, remedies will be short-term; in those cases, the RAP would specify a shorter term than the 10-year maximum. The Agency did not receive any adverse comment on this requirement.

AA. How May I Renew my RAP if It Is Expiring? (§ 270.200)

Like the rule for traditional RCRA permits (see § 270.10(a)), today's rule provides that the procedures for renewing RAPs (new § 270.200) are the

same as the procedures for issuing RAPs. The proposed rule's silence on this issue was an oversight.

BB. What Happens if I Have Applied Correctly for a RAP Renewal, But Have Not Received Approval by the Time My Old RAP Expires? (§ 270.205)

The same as § 270.51 provides for traditional RCRA permits, new § 270.92(e) provides assurances to the facility owner/operator by stating that an expiring RAP remains in effect until a new RAP is effective, as long as a timely application has been submitted and, through no fault of the facility owner/operator, the Director has not issued an effective RAP before the previous RAP expires. This will ensure that remediation waste management will not be interrupted because the Director was unable to renew the RAP before the previous RAP expired. Again, EPA did not specify requirements in the proposed rule for this situation, but is expressly including these requirements in today's rule to ensure effective implementation.

Operating Under Your RAP

CC. What Records Must I Maintain Concerning My RAP? (§ 270.210)

As discussed above, the administrative record for RAPs must be kept by the Director under §§ 270.140 and 270.150. Under new § 270.210, however, the facility owner or operator is required to keep records of all data used to complete the RAP application and any supplemental information that is submitted for at least 3 years from the date the application is signed, and any operating and/or other records the Director requires the facility owner/operator to maintain as a condition of the RAP.

This language is included to remind the facility owner/operator that recordkeeping and reporting requirements may be imposed under the Director's authority to impose "terms and conditions necessary to ensure that the operating requirements specified in your RAP comply" with applicable requirements (§ 270.135). Although the Agency proposed that all recordkeeping and reporting requirements would be set on a site-specific basis (see 61 FR 18817), the Agency is including these requirements in today's rule to avoid unnecessary disputes each time a RAP is issued. In addition, the facility owner/operator must comply with recordkeeping requirements from the applicable Part 264 requirements.

The requirements in new § 270.210 are the same as those for traditional RCRA permits required under § 270.10(i), except that they have been reworded to be more readable. In the May 19, 1980 notice where EPA first promulgated the § 270.10(i) requirements, EPA justified the requirement saying that "[t]he recordkeeping requirements are necessary to support any subsequent EPA enforcement action for false reporting" (45 FR 33300 (May 19, 1980)).

Several commenters supported EPA's proposal to allow the Director to set all recordkeeping and reporting requirements site-specifically in the RAP. However, two commenters requested that EPA require the owner/operator to maintain certain records in all cases. One requested that EPA require the facility owner/operator to maintain records about waste that is shipped off-site for management to provide EPA the ability to track the waste if a non-hazardous determination was found to be inappropriate. Another commenter suggested requiring the facility owner/operator to maintain a copy of the RAP, testing results, and manifests and/or bills-of-lading for wastes moved off-site.

All of these comments were based on the premise that EPA was allowing some contaminated media to be exempted from Subtitle C requirements. However, in today's rule, all hazardous remediation wastes remain subject to Subtitle C, including the requirements for manifests, which should alleviate the concerns of the two commenters who recommended requiring manifests. Also, all hazardous remediation wastes remain subject to the applicable requirements in Part 264, some of which require the facility owner/operator to maintain certain records.

In addition to those requirements, EPA decided it was appropriate to require the same recordkeeping requirements for RAPs as are required for traditional RCRA permits under § 270.10(i). These provisions require the facility owner/operator to maintain records of data used to prepare the RAP application and supporting documents. EPA believes that these requirements sufficiently respond to the concerns raised by the two commenters.

DD. How Are the Time Periods in the Requirements of This Subpart and My RAP Computed? (§ 270.215)

Although the proposal did not discuss this issue, to avoid unnecessary disputes over the computation of time, EPA has decided to add new § 270.215, which keeps the provision at § 124.20 clarifying how time periods specified in the permitting rules will be computed. Specifically, § 270.215(a) specifies that any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. Section 270.215(b) specifies that any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. Section 270.215(c) specifies that if the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day. Finally, § 270.215(d) specifies that whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed term. The regulatory language includes examples to make these requirements easier to understand.

EE. How May I Transfer My RAP to a New Owner or Operator? (§ 270.220)

The Agency has decided to apply the same requirements to RAPs (under new § 270.220) that § 270.40 requires for traditional RCRA permits. This requires that if the ownership or operational control of the facility changes, the RAP must be modified or revoked and reissued to reflect this change. Again, although this was not proposed, the Agency added it to ensure that the appropriate person is responsible for activities permitted under the RAP.

Note, however, that a change in facility ownership or operational control should not be considered a "significant" change; the regulations for traditional RCRA permits in § 270.40 allow a change in facility ownership to be made as a Class 1 modification to a permit, which is not a significant change.

Like § 270.40, new § 270.220 requires the new facility owner or operator to submit a revised RAP application no later than 90 days before the scheduled change, and requires a written agreement for the date for transfer of RAP responsibility, and includes requirements for Part 264, Subpart H, Financial requirements. The requirement to submit the revised RAP application to the Director 90 days before the change allows adequate time to revise the RAP before the change occurs, makes clear when facility ownership or operational control is transferred, and ensures that ■ responsible person will be fulfilling the Part 264, Subpart H, financial responsibility requirements for the facility at all times. These requirements in new § 270.220 are identical to the requirements in § 270.40, except that they have been rewritten to be more readable and to use the words "RAP" and "remediation waste management site" instead of "permit" and "facility."

FF. What Must the State or EPA Region Report About Non-compliance With RAPs? (§ 270.225)

Section 270.225 requires the State or EPA Region implementing RAPs to report to the EPA Regional Administrator or to EPA headquarters, respectively, on noncompliance with RAPs according to § 270.5. The proposed rule did not explicitly include this permitting requirement, which is currently imposed for traditional RCRA permits. However, without soliciting comment on this issue more explicitly, EPA is reluctant to eliminate this requirement for RAPs.

Obtaining a RAP for an Off-site Location

GG. May I Perform Remediation Waste Management Activities Under a RAP at a Location Removed From the Area Where the Remediation Wastes Originated? (§ 270.230)

New § 270.80(a) states that a RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated and areas in close proximity to the contaminated area, except as allowed in limited circumstances under this section. This limitation was originally included in the definition of remediation waste management site in the proposal for today's rule. Many commenters addressed this limitation in their comments. One commenter argued that managing remediation waste away from the area of contamination might be the most environmentally protective option in some cases. For example, permafrost in many areas in Alaska means that surface water is abundant and floodplains are extensive, so if the area of contamination were in these areas, it would be more environmentally protective to treat, store, or dispose the remediation waste at a more suitable, possibly remote, location. Other commenters suggested that it would be environmentally beneficial to locate remediation waste management sites away from the area of contamination if the contaminated area were located in a potable well field or over a sole-source aquifer.

One commenter raised the point that "pipelines and other industries that operate facilities on extensive linear rights-of-way frequently must deal with historical contamination of soils at multiple, noncontiguous locations, many of which may be extremely remote. In these instances, it is most cost-effective to establish a centralized remediation site, rather than to carry out remedial treatment at each site of original deposition. This allows the remedial treatment to be carried out at a location selected for characteristics to minimize exposure to sensitive environments and to resident human populations."

Other commenters pointed out that some large facilities may limit public access, and that plant services and equipment, such as waste water treatment plants and paved areas for staging may be far away from the contaminated areas. These commenters suggested expanding the definition to include, if necessary, the entire facility boundary (that is, areas under common ownership) to allow the use of an area that may be several miles away, but better suited or safer for remedial functions, yet contained within the perimeter of the facility's security fence.

Another commenter raised the point that contaminated areas are often located in areas of a site remote from utilities such as electricity, steam, roadways, etc., and that it would be reasonable to allow these remediation wastes to be managed in other areas of the site where these utilities were available. Finally, the Department of Energy (DOE) commented that there are locations where space is limited, and the remediation site needs to be expanded to a location that is removed from general employee access, and that at large sites with multiple areas of contamination, it might be most efficient to consolidate those wastes into one centralized management area within the boundaries of the facility.

The Agency proposed to limit media remediation sites to the "area of contamination" and "areas in close proximity" to ensure adequate oversight of the waste management activities, to ensure that the process was streamlined, and to reduce administrative complications. Many commenters considered EPA's concerns and also added additional potential concerns that locations away from the area of contamination might become contaminated in the course of waste management, that surrounding communities might be affected by this waste management, and that these might be long-term actions which might not be desirable to the surrounding community.

However, commenters also suggested solutions. Commenters suggested that the Agency set up a preference for locating remediation waste management sites in the area of contamination or areas in close proximity, unless good justification could be made why other locations would be preferable. In light of concerns about control over the boundaries of a remediation waste management site, and community involvement, commenters suggested that the RAP approval process would provide the Director the opportunity to approve or deny the designation of the boundaries of the remediation waste management site, would allow the surrounding community to participate in the decisions for activities that might affect them, and would provide the oversight to ensure proper waste management.

EPA agrees that in some cases, such as the commenters have raised, it may be preferable to designate alternative locations for remediation waste management, and has added the special requirements under § 270.230 for performing remediation waste management activities at a location removed from the area where the remediation wastes originated, to respond to these comments. Section 270.230(a) and (b) allow the facility owner/operator to request and the Director approve a RAP for an alternative location if performing the remediation waste management activities at such a location will be more protective than managing the remediation in the area of contamination or areas in close proximity. Section 270.230(c) specifies that a RAP for an alternative location will be approved or denied according to the procedures and requirements for RAPs in this Subpart.

EPA expressed concern about the possibility of contaminated areas being located in floodplains in the proposal, and was persuaded by the other examples provided by commenters such as permafrost areas, potable well fields, and sole source aquifers. EPA agrees that it would not be environmentally desirable to designate remediation wastes management sites in these locations. EPA agrees that centralized treatment, in the types of situations described by the commenters, may be environmentally beneficial. The Agency does not want to inhibit the remediation of contaminated properties.

The Agency has set specific requirements in § 270.230(d) for RAPs at alternative locations. First, EPA has specified in § 270.230(d)(1) that the RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated. EPA wants to encourage environmentally beneficial cleanups, but does not want to allow a commercial remediation waste management facility to open as an "alternative location" which is owned and operated exclusively by someone who is not involved in the cleanup activities, and then be exempt from facility-wide corrective action

requirements. Therefore this limitation ensures that the facility owner or operator performing the cleanup activities be a permittee at the remote location, as either the operator or the owner, or both. Of course, others can also be permittees (for example, the land owner, if not the same as the person performing the cleanup). For example, in the situation discussed above where it may be more protective to remove remediation wastes for management outside of a floodplain in Alaska, the remote location may be owned by someone other than the person responsible for the cleanup, such as the Federal government. In that case, the person responsible for the cleanup and the Federal agency responsible for the land would be the permittees for the remote location.

Sections 270.230(d)(2) and (3) require that RAPs for alternative locations are subject to the expanded public participation requirements in §§ 124.31, 124.32, and 124.33, and the public notice requirements in § 124.10(c). EPA has required this additional public participation for these alternative locations to give the community surrounding the alternative location ample opportunity to participate in the decisions about managing remediation waste in their community.

Remediation waste management sites located in contaminated areas will presumably be subject to extensive public participation as part of the remedy selection process, and also the community will be receiving the benefit that a contaminated area in their community will be cleaned up. In alternative locations, the community would not be involved in the process of selecting the remedy for the contaminated area, nor would they be receiving the benefit of their community being cleaned up. Therefore, EPA felt it was important to require this additional public participation.

Section 270.230(d)(4) requires these alternative locations to comply with the location standards of § 264.18. Remediation waste management sites located in areas of contamination cannot choose their location. The area of contamination is already established, and therefore it does not make sense to require these remediation waste management sites to comply with the seismic location standard. However, owners and operators of these alternative locations can choose the location and so should comply with this standard.

Finally, § 270.230(e) specifies that these alternative locations are remediation waste management sites, and retain the benefits of remediation waste management sites, that is, the exclusion from facility-wide corrective action, and the application of the performance standards in § 264.1(j) instead of Part 264, Subparts B, C, and D. EPA believes that the disincentives to cleanup would remain if EPA required facility-wide corrective action for these alternative locations, and so is keeping this exclusion the same as it applies to other remediation waste management sites to eliminate disincentives to cleanup. Also, the same reasons why the § 264.1(j) performance standards are more appropriate for remediation waste management sites than Part 264, Subparts B, C, and D, also apply to why § 264.1(j) is more appropriate for these alternative locations than Part 264, Subparts B, C, and D.

EPA believes that the requirements for the Director to approve the designation of the remediation waste management site in the RAP or other permit will assure that the location will be decided for the best environmental reasons. Also, the RAP or other permit approval process for designating the remediation waste management site will ensure that the public has the opportunity to comment on the decisions of where to locate the remediation waste management site.

Finally, the Agency wishes to make it clear that if an owner/operator manages hazardous remediation wastes as part of cleanup on their facility, and ships that waste off-site, then, of course, they become a generator. Therefore, when they ship the waste off their facility, including shipping it to a facility under an off-site RAP under § 270.230, they must comply with the applicable requirements for generators, such as manifesting and transportation requirements.

If an owner/operator will be treating, storing, or disposing both on-site and off-site (in a way that triggers the requirement for a permit in § 270.1), the owner/operator must get a separate RAP (or a traditional RCRA permit) for both the on-site and the off-site activities. Only the off-site RAP, however, is subject to § 270.230.

HH. Comparison of the RAPs Process to That for Traditional RCRA Permits

The procedures for approving RAPs in today's rule are more streamlined than the requirements for traditional RCRA permits. EPA expects that RAPs will most often be developed concurrently with the cleanup's remedy selection process. Most cleanup programs contain a remedy selection process requiring the Director's approval and public participation. (As discussed in the State authorization section of this preamble, a program without the required RAP public participation provisions will not be authorized to implement today's rule.)

As described elsewhere in today's preamble, EPA has intentionally constructed the RAP requirements to allow enough flexibility to integrate them with remedy selection requirements. EPA expects remedy selection and RAP approval will most often occur together, and therefore has designed the RAPs process to allow this. EPA expects joint issuance of RAPs and remedy selection documents that will be significantly more streamlined than separate permitting and remedy selection processes and will still maintain meaningful public involvement.

In addition to general streamlining, there are eight specific steps in the traditional permitting process that EPA has eliminated for RAPs.

- First, and perhaps most significantly, in an effort to better tailor the RAPs requirements to the cleanup setting, the content requirements for RAP applications (from § 270.110) are significantly less than those required in a RCRA Part B permit application.
- Second, § 124.3(c) requires a "completeness check" for traditional permits, which EPA does not require for RAPs. Instead, for RAPs, new § 270.130 describes the finding that the Director will make to determine whether to tentatively approve or deny a RAP application. Obviously, if the Director feels that a RAP application is incomplete, the Director will communicate with the RAP applicant to fill in any gaps, but it is not a specific additional step in the process.
- Third, EPA has removed the facility mailing list (§ 124.10(c)(1)(ix)) requirements; and
- Fourth, has reduced the Director's public notice requirements under § 124.10(c)(1). (For RAPs, the Director must send notices to local and State agencies as required under RCRA 7004(b), and to the RAP applicant.)
- Fifth, EPA is not requiring a pre-application public meeting and notices (§ 124.31); nor
- Sixth, public notice at the application stage (§ 124.32); nor
- Seventh, the requirements for an information repository (§ 124.33) at remediation waste management sites, but encourages the Director and the RAP applicant to conduct these activities where appropriate.
- Eighth and finally, the procedural requirements for modification and termination, revocation and reissuance are much more flexible for RAPs than for traditional RCRA permits. Today's

rule allows the Director to specify these requirements site-specifically in the RAP, instead of the EPA-promulgated requirements such as in §§ 270.41, 270.42, and 270.43. EPA expects that many States will have established procedures in their remedial programs for modifying, terminating and revoking and reissuing RAPs. EPA is allowing for any of these State requirements as long as they meet the threshold requirements of including an opportunity for public participation whenever significant modifications are made (see § 270.170).[12]

V. Requirements Under Part 264 for Remediation Waste Management Sites (§ 264.1(j))

In the proposed rule at § 269.40(b), EPA proposed that media remediation sites (finalized in today's rule as remediation waste management sites) would be subject to the applicable provisions of part 264 except Subparts B (General Facility Standards) and C (Preparedness and Prevention). Subparts A and D–DD would continue to apply unchanged, at least for wastes above the Bright Line. EPA proposed this approach, as one option, because the unit specific standards of part 264 provided ready-made standards to ensure protection of human health and the environment. However, EPA recognized that part 264 standards other than those in Subparts B and C also may not be appropriate and solicited comment on which, if any, other provisions of part 264 should not apply to media remediation sites (61 FR 18814). EPA also requested comment on the "Unitary Approach" that would remove all part 264 standards for remediation wastes.

After examining public comments on this part of the proposal, EPA has decided to finalize a somewhat different approach from what was proposed. Specifically, today's rule at § 264.1(j) provides that remediation waste management sites must comply with all parts of part 264 except Subparts B, C, D (Contingency Plan and Emergency Procedures), and § 264.101.[13] In place of the requirements in Subparts B, C, and D, however, EPA is finalizing performance standards based on the general requirement goals in these sections.[14] These new standards eliminate the specific requirements of Subparts B, C, and D, which for two reasons can be inappropriate for remediation-only sites. Either the requirements were not specifically designed for the treatment, storage, and disposal activities during cleanups, or they are likely to duplicate or conflict with requirements imposed under the remedial authority compelling cleanup.

Thus, the provisions finalized today ensure that the concerns addressed by these provisions will be addressed by the Director in the permit or RAP, without requiring specific conditions that may be inappropriate. At the same time, EPA has chosen not to amend the unit-specific standards of Part 264 for remediation waste, although the Agency continues to believe a more extensive revision of these requirements is appropriate. The applicability of § 264.101 is discussed in section VII. of this preamble.

A. Comments on Applying Part 264 Standards to Remediation Waste Management Sites

Many commenters, arguing for the Unitary Approach, suggested that Part 264 standards should not apply to remediation waste management, and that regulatory Agencies overseeing cleanup should have broad flexibility in imposing conditions on specific units.

Other commenters suggested more narrowly that several of the specific Part 264 management provisions included in the HWIR-media proposal are unnecessary for managing remediation wastes under a RAP. The earlier commenters argued that these requirements were clearly intended for the long-term management of hazardous waste at facilities which manage these materials on an on-going basis, whereas many cleanups are short-term and do not lend themselves to these restrictive provisions. These commenters argued that more flexibility is necessary to allow cleanups to take place quickly and to proceed unencumbered by regulatory provisions more appropriate for the risks posed by managing hazardous "as-generated" process wastes.

Specifically, several commenters suggested that the Agency should allow the Director to waive specific requirements from Part 264 or make site-specific adjustments under appropriate site-specific circumstances.

Part 264, Subpart E

Commenters specifically mentioned Part 264, Subpart E, requirements for manifesting, and commented that these requirements should not apply to wastes managed on-site. One commenter stated that manifesting requirements were not appropriate for all corrective action activities and that specific manifesting requirements should be set out in the RAP for that site. EPA disagrees; the Agency believes that manifesting is no less important when hazardous wastes are being transported off-site in the remedial context than in the as-generated waste context, and so these requirements continue to apply to hazardous remediation wastes. However, manifests are not required when wastes are managed on-site.

Part 264, Subpart F

Another commenter stated that Subpart F §§ 264.90–264.100 groundwater monitoring and corrective action requirements should not apply to remediation waste units, because that would lead to a perpetual cycle of waste management activities. This commenter, in EPA's view, has raised a complex and important issue. EPA believes that, where a new land based unit is created as part of corrective action, it should be handled as a landfill—subject to Subpart F groundwater requirements (including Subpart F § 264.100 corrective action)—or as a CAMU, under which EPA establishes alternative site-specific conditions to protect groundwater.

On the other hand, where an old regulated unit has released hazardous constituents into the environment, and releases from the unit are being addressed as part of a cleanup, EPA believes that Subpart F requirements do not make sense (since these requirements were designed primarily as preventive standards for units that had not yet had releases into the environment); instead, remedial authorities like CERCLA or RCRA 3004(u) are better suited for defining groundwater monitoring and cleanup requirements at these units.

EPA's post-closure rule, which was promulgated on October 22, 1998 (63 FR 56710), is designed to allow integration of cleanup requirements at closing regulated units into broader cleanup requirements at specific sites, and may address the commenters' concerns. Areas of contamination, which are not typically "regulated units" subject to Subpart F or unit-specific RCRA requirements would be handled in a similar fashion. The regulatory agency facing an area of contamination would

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[12] Note that by complying with the public participation requirements for RAPs, a facility owner/operator may not have automatically fulfilled all applicable public participation requirements for corrective action, closure/post-closure, or any other cleanup-related activities that require public participation and the facility owner/operator needs to remain cognizant of these separate public participation requirements.

[13] Note that § 264.1080(b)(5) already includes an exemption from Subpart CC for certain wastes that are generated as the result of implementing remedial activities.

[14] Of course, facilities other than remediation-only facilities must comply with Subparts B, C, and D.

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base specific decisions on groundwater monitoring, cleanup levels, and cover requirements on the remedial authorities being invoked, rather than on RCRA Subpart F or other unit-specific requirements.

In summary, where a new land-based unit is created, EPA disagrees with the commenter; in this case, current Part 264 standards (including the CAMU) should continue to apply. But where an old or existing unit is being addressed as part of a cleanup, EPA shares the commenter's concerns. EPA believes that considerable flexibility already exists in the RCRA regulations to address this situation, but the Agency also acknowledges that further evaluation (including possible statutory changes) is appropriate.

Part 264, Subpart G

Another commenter stated that Subpart G closure requirements could be incorporated into the RAP, and therefore a separate closure plan or permit would be redundant. EPA agrees with this commenter, and throughout the RAPs section of today's preamble stresses the importance of integrating processes and documents whenever possible and helpful. EPA agrees that, if closure requirements can be integrated into the RAP, then two separate documents will not be necessary.

At the same time, today's rule does not alter the way that Subpart G or unit specific closure requirements apply to cleanup sites. Subpart G and unit specific closure requirements apply to new units permitted under a RAP, but not to areas of contamination, or to old units not already subject to Subtitle C (for example, units where non-hazardous wastes that subsequently became hazardous were disposed). This is how closure requirements apply at any other regulated facility. Thus, if a new landfill were created under a RAP in the course of a remediation, it would be subject to Subpart G closure standards. Or, the Director might approve a CAMU, which would provide greater flexibility than the landfill closure standards.

Subpart G or unit-specific closure standards will not apply in areas of contamination where new "placement" of hazardous wastes has not occurred.[15] Closure, and monitoring, at these units or areas will be a remedial issue, to be addressed under the remedial authority under which the cleanup is being performed.

Part 264, Subpart H

Several commenters focused on Part 264, Subpart H, financial assurance. They suggested that financial assurance for corrective action has a very different purpose from the propose it has for operating facilities. Also, they suggested that sites should be allowed to set up site-specific plans for financial assurance, depending on the specifics of the site and the activities taking place.

Today's rule, however, does not address financial assurance for corrective action requirements, such as the ability to finance a cleanup and meet remedy goals. It does not impose any additional requirements for financial assurance for corrective action, beyond what a facility may already be subject to under other authorities. Thus, at a remediation-only site, today's rule would impose no financial assurance for corrective action. However, if the site is located at a facility subject to corrective action, then the financial assurance requirements for the corrective action activities will still apply to the full extent provided by this Subpart (that is, on a facility-wide basis). That is, designation as a remediation waste management site does not eliminate otherwise applicable financial assurance requirements.

At the same time, however, EPA has chosen to retain the unit-specific financial assurance requirements for third-party liability and closure. EPA recognizes that the very detailed nature of the Agency's current requirements in these areas may constrain some State programs, and that in some cases it may be better for the environment if marginal facility owners are allowed (or required) to proceed with cleanup, even if they cannot secure financial assurance mechanisms. (In this case, an enforcement mechanism may be preferable to a permit mechanism.) EPA, however, did not solicit, or receive, sufficient comment in this area to change the current requirements. Thus, remediation units permitted under a RAP will remain subject to the unit-specific RCRA financial assurance requirements for third-party liability and closure.

Part 264, Subparts I, J, K, L, M, N, and O

One commenter suggested that the requirements in 40 CFR part 264, Subparts I, J, K, L, M, N, and O, be specifically incorporated into RAPs only as necessary. The commenter suggests that they might not be necessary for managing low-risk media. However, EPA is not finalizing the Bright Line which would have distinguished between high- and low-risk media. EPA agrees that these requirements only need to be incorporated into the RAP if they apply to units being permitted under the RAP.

Part 264, Subpart BB

Finally, one commenter suggested dividing Subpart BB into three tiers:

(1) Subpart BB would not apply to actions that would take place for a shorter time than one year;

(2) The Director would apply Subpart BB, as appropriate, to actions that would take between one and three years; and

(3) Subpart BB would apply in its entirety for actions taking longer than three years. Again, EPA has chosen not to amend the unit specific standards of part 264 for remediation waste, although the Agency continues to believe a more extensive revision of these requirements is appropriate.

EPA believes that it will be extremely rare for the Part 264, Subpart BB, requirements to apply to units managing remediation waste. The Subpart BB requirements only apply to units managing wastes with organic concentrations of at least 10 percent by weight. EPA believes that concentrations at that high a level are rarely found in remediation wastes. Also, if the Director determines that the Subpart BB requirements do apply, but are not appropriate for a particular cleanup site, the Director can designate the unit as a temporary unit. That allows the Director to modify the unit-specific standards as appropriate in cleanup situations. However, temporary units may only be used for a limited period of time.

B. EPA's Response to These Comments

The Agency agrees with the many commenters who pointed out that more flexibility is desirable for many cleanups, but does not believe at this point that a blanket exemption from Part 264 is appropriate. In the first place, certain requirements (for example, MTRs for landfills) are imposed by statute, and EPA does not believe the Agency has the authority to eliminate them in today's rule. In addition, EPA does not believe the Agency has fully aired the issues for public comment. For example, EPA is not convinced that secondary containment is needed for tanks in all remedial situations. However, EPA did not solicit comment specifically on this issue, and the Agency is not prepared today to finalize amendments to the current regulations.

[15] For a description of what constitutes "placement" in an area of contamination, see the March 13, 1996 memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, regarding "Use of the Area of Contamination (AOC) Concept During RCRA Cleanups."

At the same time, EPA believes that the current regulations already provide significant flexibility in remedial contexts. Secondary containment, for example, is not necessarily required for tanks or other units used in remediation if they were approved as temporary units under § 264.553. Innovative technologies can often be permitted under the flexible standards of Subpart X. As discussed earlier, the CAMU regulations provide flexibility for land-based units, as do staging piles, which are promulgated in today's rule and discussed elsewhere in this preamble.

On the question of air emissions, raised specifically by one commenter, EPA notes that the temporary unit standards allow the Director to develop alternative operating standards for temporary tanks and containers managing remediation waste (which would include alternative standards to Subpart BB; if they applied). And furthermore, EPA has explicitly exempted on-site remedial activities under EPA or State cleanup authorities from Subpart CC standards. Thus, while EPA believes that further review and tailoring of the current technical permitting standards for remediation waste is appropriate, the Agency also concludes that considerable flexibility already exists.

C. EPA Is Providing Relief From Part 264, Subparts B, C, and D

On the other hand, in today's rule, EPA is amending the general facility standards of Subparts B, C, and D to provide greater flexibility for owner/operators of remediation waste sites. Instead of the current, detailed requirements in these Subparts, persons managing remediation waste sites will be able to meet general performance standards. These performance standards define the facility requirement, such as "inspect the facility . . . often enough to identify problems in time to correct them," but allow considerable flexibility to the regulator in determining how an owner/operator will meet those standards. The Agency believes that the basic goals of Subparts B, C, and D continue to be important, but also EPA believes that the protection desired under Subparts B, C, and D can be achieved at remediation waste management sites by applying the performance standards of today's rule.

Flexibility in applying many of these substantive requirements is important because of the wide variety of remediation waste management activities that may be permitted under a RAP, everything from managing small volumes of investigation-derived wastes, to remediating large volumes of contaminated soils, or treating highly concentrated remediation wastes. Also, some activities permitted under RAPs may be very short-term actions, and yet some may involve multi-year treatment of remediation wastes at a large remediation waste management site. The following paragraphs describe the flexibility EPA is providing for general RCRA facility standards in § 264.1(j).

The opening sentences of § 264.1(j) provide for applicability of these provisions instead of § 264.10.

Section 264.1(j)(1)

Instead of § 264.11, new § 264.1(j)(1) requires the facility owner/operator to obtain an EPA identification number. These identification numbers are important to allow EPA and States to track activities at facilities that generate hazardous wastes, whether as a result of ongoing processes or during cleanup. This is a simple procedure and can be done quickly. This standard is only different from § 264.11 entitled "identification number," because of editorial changes to enhance readability.

The requirements in § 264.12 do not apply to remediation waste management sites because they are requirements for receiving wastes from foreign (§ 264.12(a)) and off-site (§ 264.12(b)) sources, which will not occur at remediation waste management sites. (Owner/operators are exempt from the § 264.12(b) requirements when they are also the generator. The only way an owner/operator can have a RAP at an off-site location is if they are both the generator and the owner/operator of the off-site location. Therefore, this requirement will never apply to RAPs.)

Section 264.1(j)(2)

Instead of "general waste analysis" (§ 264.13), today's rule requires a chemical and physical analysis of the hazardous remediation waste under new § 264.1(j)(2) , which at a minimum must contain all the information needed to treat, store, or dispose of the waste according to this part and part 268. The waste analysis must be accurate and up to date.

This requirement mirrors the existing requirement in § 264.13(a)(1), which sets out the general goal of the waste analysis requirement. However, this standard eliminates requirements that:

(1) Were written with facilities engaged in the business of hazardous waste operations in mind (for example, § 264.13(a)(3), which addresses analysis of wastes from unfamiliar off-site sources); or

(2) Are likely to duplicate or conflict with requirements imposed by the remedial authority at the site (for example, 264.13(b) to develop an analysis plan that may duplicate testing done for site-characterization and remedy selection).

EPA expects that waste analysis plans developed under a reliable cleanup program, such as EPA's RCRA corrective action program or its CERCLA program, will provide enough data to meet this requirement. EPA emphasizes that waste analysis should be tailored to provide information needed to manage cleanup wastes successfully. EPA does not encourage analysis for analysis' sake.

Section 264.1(j)(3)

Instead of the "security" provision (§ 264.14), EPA has promulgated a performance standard at § 264.1(j)(3) to warn potential intruders and to minimize the unauthorized entry of persons or livestock onto the active portion of the remediation waste management site. EPA allows an exemption from this requirement if the facility owner or operator can show that this entry will not injure these persons or livestock or cause violations of the requirements in part 264.

For traditional RCRA permits, this requirement and the exemption are at § 264.14(a). However, § 264.14(b) and (c) are very detailed in exactly how to provide that security. EPA has determined that, for remediation waste management sites, the performance standard reasonably provides that the site will be secure, but allows flexibility in achieving that goal. This takes into account the different types of activities that may be taking place at remediation waste management sites.

Section 264.1(j)(4)

Instead of the "general inspection requirements" (§ 264.15), EPA has promulgated a performance standard at § 264.1(j)(4) requiring facility owner/operators to inspect the facility often enough to identify problems in time to correct them before a problem leads to a human health or environmental hazard. This performance standard, which is the same as the current permitting requirement, also:

- Requires the facility owner/operator to take action immediately if a hazard is imminent or has already occurred;
- Is drawn from the language in § 264.15(a) and (c);
- Ensures that the facility owner/operator will make appropriate inspections; but
- Allows for flexibility in how these inspections will be done.

EPA is not requiring the other parts of § 264.15(b) and (d) regarding a written schedule and log, but instead, new

§ 264.1(j)(12) and (13) require the facility owner/operator to have a plan and records. EPA expects this approach will be more streamlined than requiring a separate plan and record for each activity under 264.1(j).

Section 264.1(j)(5)

Instead of the "personnel training" requirements at § 264.16, EPA has promulgated § 264.1(j)(5) requiring the facility owner/operator to train personnel to perform their duties in a way that ensures the facility's compliance with the requirements in this part, and to respond effectively to emergencies. This performance standard is derived from the requirements in § 264.16(a)(1) and (3).

Training is important when personnel are dealing with hazardous substances, not only to ensure proper precaution during normal operations, but also to ensure that well-trained personnel are available and can respond effectively in emergencies. This performance standard requires training, but is flexible enough to cover a wide range of reasonable programs. For example, where a site is subject to Occupational Safety and Health Administration (OSHA) or similar training standards for hazardous waste site workers, additional standards probably will not be necessary. EPA does not want to create duplicative requirements where training is already adequate.

EPA is not specifying all of the details of how to provide and keep records of training as is required under § 264.16(a)(2), (b), (c), (d), and (e). EPA believes that each site will be very different and require different intensities of training. Also, § 264.1(j)(13) will ensure proper records are maintained.

Section 264.1(j)(6)

Instead of the § 264.17 "general requirements for ignitable, reactive, or incompatible wastes," EPA has promulgated the performance standard at § 264.1(j)(6). This standard requires facility owners and operators to take precautions when managing ignitable, reactive and incompatible wastes. This performance standard is similar to the § 264.17(a) and (b) requirements.

Because ignitable and reactive wastes can be highly dangerous materials, and because different properties of different hazardous wastes can cause explosions, toxic fumes, or other hazards if they react with other incompatible materials, it is important to take appropriate precautions when dealing with these wastes. EPA did not include the specifics of how to separate wastes from potential sources of ignition or reaction or what kinds of reactions to avoid or how to document compliance. EPA believes that, due to the level of oversight at cleanup sites, these precautions will be adequately addressed, and recordkeeping will be addressed under new § 264.1(j)(13).

Section 264.18(a) does not make sense for remediation waste management sites, as contaminated areas are already located in a certain location, and if the remediation waste management site must be located in the area of contamination or areas in close proximity, there is not much choice about where to locate the remediation waste management site. Therefore, EPA has not included a performance standard for remediation waste management sites instead of § 264.18(a). However, EPA expects facility owners and operators to do their best to locate units a safe distance from faults whenever possible. EPA has required compliance with this standard under § 270.230(d)(4) when alternative locations are approved for remediation waste management.

Section 264.1(j)(7)

Section 264.1(j)(7) is the same requirement as the provisions of § 264.18(b) for floodplains, but re-written to enhance readability. Section 264.18(b) already provides some flexibility for locating within a floodplain (provided certain mitigating design or operating criteria are met). Today's performance standard allows the same flexibility.

Section 264.1(j)(8)

Section 264.1(j)(8) is the same requirement as § 264.18(c) for salt dome formations, salt bed formations, underground mines, and caves. This is also a RCRA statutory requirement at RCRA § 3004(b), and is the same as that in § 264.18(c), but is re-written to enhance readability. EPA believes that it is unlikely that the situation contemplated in this provision would arise during a remediation, but—because the requirement is statutory—EPA included it in today's rule.

Section 264.1(j)(9)

Section 264.1(j)(9) requires the facility owner/operator to have a construction quality assurance (CQA) program for all new surface impoundments, waste piles (except staging piles), and landfill units at the remediation waste management site according to the requirements in § 264.19. While this requirement is included under "General Facility Standards," EPA views the requirement as more akin to the unit-specific, technical standards that appear later in Part 264. Because EPA did not specifically solicit comment on the technical need for these requirements in a remedial context, or the possibility of more flexible alternatives, the Agency is not prepared at this point to revisit them. Therefore, EPA (consistent with the Agency's decision to leave Part 264 unit-specific requirements intact) has simply required compliance with the existing requirements in § 264.19. EPA notes, however, that these requirements do not apply to CAMUs or to already existing areas of contamination where waste is left in place.

Section 264.1(j)(10)

Section 264.1(j)(10) requires that, instead of Subpart C—Preparedness and Prevention (§§ 264.30 through 264.37) and Subpart D—Contingency Plan and Emergency Procedures (§§ 264.50 through 264.56), the facility owner/operator must have accident preparedness and prevention procedures and a contingency and emergency plan. These plans must: (1) ensure that the hazardous waste units at remediation waste management sites are designed, constructed, maintained, and operated to minimize the possibility of an emergency; and (2) minimize hazards to human health or the environment from any emergencies from treating, storing, and disposing of the hazardous remediation waste.

The performance standard embodies the requirements in § 264.31 and § 264.51. However, the Part 264, Subparts C and D, requirements include considerable detail about preparing for and responding to emergencies. In the cleanup scenario, this detail can become a problem because of the wide variety of activities taking place. Detailed requirements may be redundant with other cleanup requirements or simply unnecessary in many cases. For example, the cleanup program overseeing the remediation may already have procedures for notifying police, fire departments, and emergency personnel. In this case, the specific requirements in Part 264, Subparts C and D, would be redundant. Because of the wide variety of activities that may be taking place at a remediation waste management site, and the fact that these activities may often be short-term, EPA is allowing considerable flexibility in these preparedness requirements.

Section 264.1(j)(11)

New 264.1(j)(11) requires the facility owner/operator to designate one or more employees as an emergency coordinator. This is the same requirement as under § 264.55. This requirement makes it possible to implement the emergency

procedures in the contingency and emergency plan quickly and efficiently. In any circumstance involving treating, storing, or disposing of hazardous wastes, including hazardous remediation wastes, an emergency coordinator facilitates an effective response.

Sections 264.1(j)(12) and (13)

New § 264.1(j)(12) requires the facility owner/operator to have and implement a plan or plans to meet the requirements in subparagraphs (j)(2) through (j)(6) and (j)(9) through (j)(11). Thus, the facility owner/operator must have a plan to address waste analysis, security, inspection, training, waste compatibility, construction quality assurance, and accident preparedness. Also, new § 264.1(j)(13) requires the facility owner/operator to maintain records documenting compliance with subparagraphs (j)(1) through (j)(12).

In the existing Subparts B, C, and D, each of the individual sections has requirements to have plans and keep records. New §§ 264.1(j)(12) and (13) streamline those requirements by requiring only one plan and one set of records to cover the requirements instead of several plans and sets of records. Note, however, that the owner/operator is not limited to one plan; more than one plan would be perfectly acceptable if that is more appropriate for the particular site. These plans and records are necessary so that the Agency or the public can inspect the facility's compliance with these requirements. EPA believes that any well-managed remediation project will have plans and records of this type, and the Agency does not anticipate that sites with acceptable plans as part of their remedial activities will have to reformat or rewrite these plans solely to meet the performance standards of today's rule.

It is important to note that, in the same way as the current Part 264 standards apply to facilities, these new standards under § 264.1(j) apply at remediation waste management sites only to *hazardous* remediation waste management units, not to units that are not otherwise subject to Part 264 requirements, such as solid waste management units, or exempt hazardous waste units. [16]

In the proposed rule, the requirements in Subparts B and C were waived for media remediation sites (which in the final rule are remediation waste management sites) under RAPs. There was no mention that there could possibly be a media remediation site that was not permitted by a RAP. Under the final rule, EPA acknowledges that there may be remediation waste management sites that are permitted under a traditional RCRA permit, and so has not specified that the new part 264 requirements for remediation waste management sites are limited to those permitted under RAPs, but are available for all remediation waste management sites.

The arguments for alternative standards still apply, even without the limitation to RAPs. Remediation waste management sites will vary greatly between the different types of remediation wastes and activities taking place. They will be subject to cleanup requirements under the programs requiring cleanup at these sites, and often cleanup requirements and the traditional part 264 standards may be duplicative. Therefore, today's rule makes these new part 264 performance standards available for all remediation waste management sites.

VI. Application of RCRA Sections 3004(u) and (v), and § 264.101 to Remediation Waste Management Sites (§ 264.101(d))

EPA proposed that the 3004(u) and (v) facility-wide corrective action requirement (which is implemented through § 264.101) would generally not apply to facilities that obtain RMPs (see proposed § 269.40(d)). EPA has included in the final rule in § 264.1(j) that § 264.101 does not apply to remediation waste management sites. However, some remediation waste management sites may be part of a facility that is subject to a traditional RCRA permit because that facility also treats, stores, or disposes of hazardous wastes that are not remediation wastes. The rule does clarify that in these cases, Subparts B, C, and D, and § 264.101 do apply to the facility subject to the traditional RCRA permit. EPA also amended § 264.101 to add a paragraph (d) as follows: "(d) This section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes." Subpart F § 264.101 facility-wide corrective action does not apply to remediation waste management sites. [17] This issue is more fully discussed in today's preamble section on the definition of remediation waste management site.

VII. Staging Piles (§§ 260.10 and 264.554)

A. Introduction and Background

Today's rulemaking establishes a new type of unit— the staging pile— which will provide needed regulatory flexibility for the facilitation of certain cleanup activities, while ensuring environmentally protective results. A staging pile is an accumulation of solid, non-flowing remediation waste (as defined today in 40 CFR 260.10) that is not a containment building and is used only during remedial operations for temporary storage at a facility. Today's regulations provide the Director with the authority to designate and approve staging piles for the purpose of storing remediation waste. In today's staging pile provisions, EPA has modified the remediation pile concept proposed in the HWIR-media proposal on April 29, 1996 in response to comments and also to correspond with other changes that have been made to the rule since its proposal.

A goal repeated throughout today's final rule is the achievement of environmental progress by facilitating the cleanup of as many contaminated sites as possible. The physical, economic, and technical limitations on the operation of a cleanup program often dictate that remediation wastes be temporarily stored on-site prior to completion of the remedial activity. The regulations establishing staging piles are designed to provide greater flexibility for decision-makers to implement protective, reliable, and cost-effective remedies. Staging piles will allow short-term storage to occur under circumstances that are protective of human health and the environment, without the extensive set of prescriptive standards that may be required for units in long-term use.

EPA believes that the additional flexibility provided by staging piles will improve the ability of program implementors and facility owner/operators to implement the most effective remedy for any given facility. For example, the use of staging piles will facilitate short-term storage of remediation wastes so that sufficient volumes can be accumulated for shipment to an off-site treatment facility, or for efficient on-site treatment. The Agency also anticipates, for example, that staging piles will facilitate treatment technologies such as chemical extraction by allowing on-site accumulation of sufficient treatment

[16] Of course, solid waste management units are subject to § 264.101 corrective action requirements at facilities subject to corrective action.

[17] The exclusion of remediation waste management sites from the definition of facility in today's rule is strictly limited to the definition of facility for purposes of corrective action, which is found in part (2) of the definition of facility. Remediation waste management sites are not excluded from part (1) of the definition of facility for other purposes.

volumes. In addition, staging piles should be useful since they will allow storage of wastes during the conduct of interim measures at a facility, while decisions on the final remedy are being formulated. Longer-term and more complex activities such as land-based treatment and permanent disposal will not be allowed in staging piles. As discussed more fully below, the Agency believes that these activities are more properly conducted in CAMUs (§ 264.552, promulgated on February 16, 1993; 58 FR 8658).

To facilitate the cleanup of sites contaminated with hazardous waste, the Agency believes that it must remove some of the obstacles to cleanup that exist in the RCRA Subtitle C program. These obstacles stem from the Subtitle C program's structure as primarily a "prevention oriented" program, with requirements that can act as a disincentive to protective remedies in "response-oriented" programs and can limit the flexibility of decision-makers to choose the most appropriate remedy at a site. Although LDRs and MTRs, established in RCRA Section 3004 (m) and (o) respectively, are appropriate to ensure proper ongoing management or permanent disposal of hazardous industrial waste, these sections of the statute often become a barrier to cleanup and overall environmental protection when applied to remediation waste.

Under current regulations, waste piles are considered land disposal units, and all hazardous wastes must therefore be treated to LDR standards before being placed into a waste pile. Large volumes of waste and contaminated media are often encountered during remedial actions and, because LDR and MTR often create a disincentive to exhuming hazardous remediation waste, EPA believes that allowing these wastes to be temporarily stored in on-site piles without meeting LDR and MTR standards will significantly further prompt remediation. Accommodating the need for temporary storage in piles without imposing LDRs and MTRs was also generally supported by the Committee authorized by the Federal Advisory Committee Act (FACA), representing the interests of industry, government and environmental groups, whose recommendations formed the basis for the proposed rule. In addition, the overwhelming majority of commenters that addressed the proposed remediation piles expressed support for a new type of unit that would allow for temporary storage in piles. A number of commenters emphasized that, even if EPA decided to retain the CAMU regulation, piles would be useful as a reasonable option for storage of materials awaiting transport or on-site treatment. Although many of the commenters also supported treatment in piles (which is not allowed under today's rule), the consensus of commenters was that the ability to operate some kind of temporary pile that would not trigger LDRs or MTRs would be beneficial to the remedial process by promoting efficient cleanups. Not one of the commenters disputed that LDRs and MTRs can be a barrier to increasing the rate and quality of cleanups. It was with the backing of this consensus that today's staging pile regulation was formulated.

Applying LDRs to temporary placement of remediation waste often makes it impractical to store hazardous remediation wastes in a pile pending its ultimate disposition, since this land placement generally may not occur prior to treatment to LDR standards. This essentially presents the remedial decision maker with three options:

- Leaving remediation waste in place;
- Storing it in a tank or container (or temporary unit, when available) prior to further management;
- Or seeking a CAMU.

Leaving waste in place is often an unsatisfactory solution due to the potential for future risks to public health, an outcome that EPA strives to discourage. Temporary unit or tank and container storage, although sometimes preferable in cases where the volume of waste is not particularly large, may cause delay and add complexity for sites with a large volume of waste, while providing little, if any, additional benefit to human health and the environment. CAMUs are also an option, but they have proved to be administratively complex for relatively short-term storage. The Agency therefore believes that the temporary storage in staging piles, subject to regulatory imposition of site-specific requirements and oversight, is preferable to the present regime, which encourages the continuing, unmanaged presence of remediation waste for an indefinite period of time.

Staging piles do not replace existing mechanisms that allow remediation waste managers to tailor RCRA requirements to accommodate site-specific circumstances. These include CAMUs, temporary units (§ 264.553), treatability variances (§ 268.44), and the Area of Contamination (AOC) policy.[18] Rather, staging piles provide an additional mechanism which may be used for short-term storage when, for example, the AOC policy does not apply and tank, container, or temporary unit storage is not feasible. Below is a comparison chart of the units most applicable to today's rulemaking:

Type of unit	Unit structure	Kind of waste	Time limit	Management activities
Staging Pile § 264.554	Pile	Remediation Waste	2 years plus one 180-day extension period.	Storage.
CAMU § 264.552	Designated Area or Unit within a Facility.	Remediation Waste	None	Treatment, Storage, and/or Disposal.
Temporary Unit § 264.553.	Tank or Container Storage Area.	Remediation Waste	1 year plus a 1 year extension period.	Treatment and/or Storage.
Area of Contamination.	Land-based Area of Contamination.	Remediation Waste	None	Storage, In-Situ Treatment, Disposal.

B. A Summary of Principal Changes From the Proposal

1. Changes From the Proposal

The staging pile regulation promulgated today is based on the remediation pile regulation proposed on April 29, 1996 in the HWIR-media proposal. Today's regulation differs from the remediation pile proposal in five main ways:

- The name is changed;
- Treatment in the pile is not allowed;
- "Temporary" is defined;
- A more specific performance standard is added; and

[18] Memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers (March 13, 1996).

• The closure requirements are defined.

These changes, as well as other issues and responses to major comments, are discussed below.

First, EPA changed the name from "remediation piles" to "staging piles" to make it clear that these piles are to be used only for the temporary storage of remediation wastes, and not for other remediation activities such as treatment.

Second, the primary difference between the staging pile regulation finalized today and the proposed remediation pile regulations is that today's rule does not allow for treatment in the pile. The Agency recognizes the effectiveness of many treatment approaches relying on engineered piles, and does not wish to discourage their use, where appropriate. At the same time, one commenter vigorously opposed treatment in remediation piles. The Agency acknowledges that some forms of "treatment," (for example, air stripping, or in some cases, biological treatment) may raise concerns with regard to air emissions. Therefore, for today's rule, EPA has restricted treatment to units other than staging piles, such as CAMUs. The CAMU decision criteria, as applied through the overseeing agency designation process, provide a way to ensure that the activities that occur in a CAMU have more protective design and operating controls than what is called for in the case of the short term, generally lower risk activities, allowed to take place in staging piles. The CAMU regulation includes, for example, a specific ground water monitoring requirement and an associated performance standard (40 CFR 264.552(e)(3)). Furthermore, the designation of a CAMU through a permit modification requires the more extensive Class 3 procedures while today's staging pile regulation requires Class 2.

In addition, the temporary unit regulation (§ 264.553, promulgated on February 16, 1993; 58 FR 8658) allows for treatment, as well as storage, of hazardous remediation waste in tanks or containers.[19] Like the CAMU rule, the regulations governing temporary units are designed to address the risks posed by treatment in the remedial setting. First, temporary units are containerized, rather than land-based, and therefore generally pose less risk of releases or cross-media transfer than do the land-based staging piles. In addition, temporary units may only operate for one year unless they receive an extension. The temporary unit extension, which can be granted once for one year, can only be provided after a site-specific determination is made by the Director that continued operation of the unit will not pose a threat to human health and the environment and is necessary to ensure timely and efficient implementation of remedial actions at the facility (§ 264.553(e)). The temporary unit time limitation is more stringent than the time limit provided in today's staging pile regulation. In general, the relatively short amount of time allowed for treatment in a temporary unit addresses the greater risk to human health and the environment that may arise through treatment activities.

Third, unlike the proposal, the final rule defines the temporary nature of staging piles as a two-year lifetime for the pile. At the end of the operating term for the staging pile (which can be designated by the Director as any amount of time up to two years), all hazardous remediation waste and residues in the pile must be removed unless an operating term extension (of up to 180 days) is granted by the Director.

Fourth, the Agency believes that the process and analysis necessary for the designation of a staging pile should be more straightforward than that needed for a CAMU due to the lower level of potential risks presented from the nature of activities that can take place in a staging pile, and EPA has designed today's regulation accordingly. Because staging piles are intended for the temporary storage of remediation waste, they will complement CAMUs and temporary units by providing program implementors and facility owners/operators with an intermediate option to use in a number of circumstances, such as when temporary units do not have the capacity for the chosen remedial strategy, but a CAMU is not necessary.

A modest difference between the proposed remediation piles and the staging piles promulgated today is that the Director will have more than the temporary unit decision factors (as proposed) to guide the establishment of design and operating criteria for a staging pile. In response to commenters' requests, today's rule includes a more specific performance standard, set out in § 264.554(d)(1), which expands upon the temporary unit decision factors to assist the Director in determining appropriate staging pile design and operating standards based on conditions at a particular site. This performance standard will be discussed in detail in the section of this preamble dealing with the staging pile performance criteria. The Agency's goal in providing this performance standard is to ensure that the design criteria used for a staging pile correspond to site- and waste-specific characteristics. The proposed regulation for remediation piles included only a reference to the decision factors for temporary units as a guide to the Director in setting case-by-case standards for remediation piles. Today's staging pile regulatory text includes language similar to the temporary unit decision factors, as well as a performance standard, both of which are incorporated directly into the regulation to add more predictability and assurance of protectiveness into the process of designating a staging pile. Clear expectations for performance should provide a beneficial focus for both the program implementor and the facility owner/operator.

Fifth, at the end of the staging pile's operating term or extension period, the staging pile is subject to one of two sets of closure requirements based on whether the staging pile has been located on either a previously contaminated or a previously uncontaminated area of the facility. If the pile has been located in an uncontaminated area of the site, any remaining contamination (containment system components, subsoils, etc.) must be decontaminated according to the clean closure standard for waste piles in § 264.258(a) and the closure performance standard of § 264.111. (For interim status facilities, the standards to be used are located in § 265.258(a) and § 265.111.) On the other hand, if the pile has been located on a previously contaminated area of the site, all remediation waste, contaminated containment system components, and structures and equipment contaminated with waste and leachate must be removed or decontaminated within 180 days after the expiration of the operating term of the staging pile. Also, the facility owner/operator must decontaminate contaminated subsoils in a manner and pursuant to a schedule that the Director determines will protect human health and the environment. These closure requirements were added to the final rule in response to comments pointing out that despite mentioning that "clean closure" was a requirement in the proposed rule preamble, the Agency had not included this language in the rule text.

2. Consistent With the Proposal

In keeping with the proposal, staging piles will be able to accept all types of solid, non-flowing remediation waste, rather than only hazardous

[19] Using the temporary unit regulation, the Director imposes alternative requirements, based on site-specific conditions, for temporary tank or container units used for the treatment or storage of remediation waste during a remedial action.

contaminated media. Like CAMUs and temporary units, staging piles cannot be used to manage hazardous waste from ongoing industrial processes, commonly referred to as "as-generated" hazardous waste. In addition, as proposed, a staging pile may be used only for the storage of "solid, non-flowing" hazardous remediation waste. Flowing wastes are inappropriate for staging piles because of the possibility of releases and run-off of these wastes.

Also unchanged from the proposal is the provision that staging piles will not be considered land disposal units and therefore placement of remediation waste into a staging pile will not trigger LDRs or applicable MTRs (RCRA section 3004(o). However, assuming the waste is subsequently managed in a way that triggers these requirements, LDRs and MTRs will ultimately apply to the remediation waste.

C. What Is a Staging Pile? (§ 264.554(a))

Section 264.554(a) states that "a staging pile is an accumulation of solid, non-flowing remediation waste (as defined in 40 CFR 260.10) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the Director according to the requirements in this section." This provision includes the definition of staging pile from § 260.10 which is discussed in the definitions section of this preamble. This provision also limits where the owner/operator may locate a staging pile to within the contiguous property under the control or the owner/operator. This limitation was originally in the definition of remediation waste, however, as discussed in the definitions section of this preamble, EPA believed this limit was more appropriate in the regulatory text rather than in definitions. Finally, this provision specifies that staging piles must be designated by the Director according to this section. Without designation as a staging pile, a pile will be considered a "waste pile" under § 264.250, and therefore subject to the requirements in that section (including LDRs and applicable MTRs). Since today's staging pile regulation is not self-implementing, the Director must incorporate the provisions for a staging pile into a permit (either traditional permit or RAP), closure plan, or order in which it is designated.

In keeping with the proposal, staging piles will be able to accept all types of solid, non-flowing remediation waste, rather than only hazardous contaminated media. Despite criticism from one commenter who stated that only media should be allowed to be managed in a remediation pile, not other forms of remediation waste, the Agency has retained this approach because non-media wastes can be generated in very high volumes creating remedial obstacles similar to those created by large volumes of hazardous contaminated media. In support of the proposed approach, another commenter argued that because contaminated media is often "found in the same shovel" as sludges and debris it would be both difficult and inefficient to attempt to regulate these differently. At sites where this occurs, staging piles would likely not facilitate an appropriate remedy if limited to accepting only media.

One commenter suggested that the Agency should encourage the management of sludges and other non-media remediation wastes in tanks and containers instead of piles. EPA believes that the Agency has at least partially addressed the commenter's concern by limiting the use of staging piles to non-flowing wastes. This restriction serves to eliminate some sludges as well as other problematic wastes. EPA also emphasizes that tanks and containers can provide important protection in certain circumstances (for example, to address run-off concerns), and the Agency recommends the use of these units where appropriate. At the same time, EPA disagrees with the commenter's premise that a waste's status as "media" or "non-media" is particularly relevant to the kind of unit that waste should be stored in. The concentration of hazardous constituents, their leachability, and their volatility are far greater concerns. More generally, EPA believes that the decision on which specific remediation unit is most appropriate at a given cleanup depends on numerous site-specific factors, and that this decision should be made through the site-specific permit process. EPA has issued extensive guidance on the management of remediation waste, both under RCRA and CERCLA (including the Best Management Practices Guidance developed in conjunction with this rule), which site managers and regulators can use in making their decision. EPA, however, has concluded that more specific direction on this issue is not appropriate or necessary in today's rule.

Finally, as mentioned above, the final rule provides that staging piles may be used only for storage of remediation wastes. "Treatment" will not be permitted primarily for the reasons outlined in the "A Summary of Changes from the Proposal" section of this preamble. To summarize, treatment was a particularly sensitive issue for one commenter and EPA acknowledges that treatment, in some cases—such as air stripping—may involve higher levels of risks than typical storage. Furthermore, treatment, especially biological treatment, is often a long-term activity. Since staging piles are to be temporary, they will not necessarily require fixed controls such as leachate collection and removal systems, which are more appropriate for long-term use. Instead, staging piles should be relatively easy to create and dismantle given their temporary nature and to expedite remedial activities by providing the opportunity for short-term storage. Given these considerations, EPA has decided that treatment should occur in units that provide more specific safeguards; that is, treatment units meeting 40 CFR Part 264 requirements, including those units specifically designed for treatment in the cleanup context (for example, CAMUs and temporary units).

Although many commenters supported both treatment and storage in temporary piles, no commenter suggested that, without including the possibility of treatment, the piles would not facilitate the remedial process. Rather, a number of commenters directly supported the need for temporary storage of remediation waste in piles, without LDR or MTR applicability, before subsequent management. One commenter specifically stated that EPA should limit these piles to storage only, citing the increased potential for emissions to the air and other pathways if treatment were allowed. The Agency believes that today's staging pile regulation adequately addresses the commenters' concerns.

D. How Is a Staging Pile Designated? (§ 264.554(b))

Staging piles are subject to a few key limitations. First, today's rule specifies that the facility owner/operator may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to LDRs) [20] only if you follow the standards and design criteria the Director has designated for that staging pile. This language is an outgrowth of the language proposed in § 264.554(a), which provided that a

[20] For a discussion of situations where remediation wastes that are no longer "hazardous" may nonetheless remain subject to LDRs see 63 FR 28617–28620 (May 26, 1998).

remediation pile would only be used for the storage of remediation waste based on design and operating standards the Director had designated on a case-by-case basis. Both versions of this language make it clear that remediation piles would not be self-implementing and would have standards that must be designated by the Director. The Agency received no adverse comments on this aspect of the proposal, and so has only re-worded this requirement for readability in the final rule.

Second, the final rule states that the Director must designate the staging pile in either a permit or, at an interim status facility, in a closure plan or order (consistent with §§ 270.72(a)(5) and (b)(5)). Consequently, staging piles can also be approved under a RAP as finalized by today's rule in Part 270 (because a RAP is a form of a permit). The proposed rule would have required remediation piles to be designated in a "permit or order" (proposed § 264.554(a)). Commenters did not question this approach; however, today's rule includes one clarifying change to the proposed regulatory language, as well as an additional mechanism for designating a staging pile.

The Agency adds a clarifying change to today's final rule language which specifies that staging piles may be designated in orders at interim status facilities only. In the proposal, the Agency did not specify when orders could be used to designate a staging pile. EPA intended that the same mechanisms be used under today's rule to designate staging piles as can be used under the current regulations to designate other types of units. At most facilities, it is necessary to receive a permit to implement hazardous waste management units. However, at interim status facilities, units can be implemented according to §§ 270.72(a)(5) and (b)(5) when required under an order. EPA, therefore, has included the language in the final staging pile rule clarifying that orders may be used to designate a staging piles at interim status facilities to be consistent with how other types of units can currently be designated.

In today's rule EPA has included an additional mechanism—the closure plan—for the designation of staging piles at interim status facilities, since the Agency believes that staging piles will be useful to facility owner/operators where remediation is conducted during the closure of waste management units. EPA believes it is appropriate to allow staging piles to be designated through closure plans since final closure plans are enforceable and because the closure plan approval process, both at permitted and interim status facilities, incorporates sufficient public participation. In addition, EPA believes it is also appropriate to make closure plans available for the approval of staging piles at interim status facilities because an order may not always be suitable. For example, the owner/operator of an interim status facility may wish to conduct cleanup at a regulated unit and achieve closure by removal even when he is not required to do so under an order. As part of the closure, the facility owner/operator may find it most practical to stage the removed waste in a pile, before it is moved to an on or off-site treatment unit. In this case, the facility owner/operator can include staging piles, if necessary for voluntary cleanup, into his closure plan.

At a permitted facility, a closure plan is a part of the original permit, and so is approved following the traditional permit approval process. Modifications to closure plans are incorporated into permits as permit modifications and follow the appropriate permit modification procedures found in § 270.42. Because staging piles require a Class 2 permit modification, as discussed in the "How may my existing permit (for example, RAP), closure plan, or order be modified to allow the use of a staging pile?" section of today's preamble, a staging pile incorporated into a closure plan modification would also require at least Class 2 procedures. Because staging piles can be approved through permits, it follows that a staging pile can be designated in a closure plan at a permitted facility. Nonetheless, EPA wanted to make this clear, and therefore has explicitly stated that staging piles can be designated in closure plans.

At interim status facilities, the process used to gain approval of a closure plan also requires an opportunity for public notice and comment. Specifically, these closure plans are approved according to the requirements in § 265.112(d). These requirements include the opportunity, available through a newspaper notice, for the facility owner/operator and the public to submit written comments on the closure plan and request modifications to the plan within 30 days of the date of the notice. In addition, the Director can hold a public hearing to clarify any issues regarding the closure plan. Therefore, approved closure plans can be used to designate staging piles under today's rule.

The regulations regarding staging piles are expected to be applicable or relevant and appropriate requirements (ARARs) for the remediation of RCRA hazardous wastes at CERCLA sites. In these cases, staging pile requirements would be incorporated into CERCLA decision documents rather than permits, closure plans, or orders. This section of the rule also includes language to make it clear that a staging pile only need be designated in a permit (for example, a RAP), closure plan, or order when hazardous remediation waste (or remediation waste otherwise subject to LDRs) is being stored. Non-hazardous remediation waste or remediation waste that is no longer subject to LDRs can, of course, be stored in a pile without being designated as a "staging pile."

The third provision of new § 264.554(b) is the provision that the Director must establish conditions in the permit, closure plan, or order that comply with paragraphs (d)–(k) of the staging pile regulation. This portion of the regulation simply serves to affirm that the provisions of the staging pile regulation will be incorporated by the Director into the designating mechanism for the pile.

E. What Information Must I Provide To Get a Staging Pile Designated? (§ 264.554(c))

Section 264.554(c)(1) sets out the requirement that the facility owner/operator must provide information to the Director that will enable him to designate a staging pile according to the regulatory requirements in today's rule. The Agency does not believe that the evaluation of these performance criteria will generally involve detailed quantitative analyses; the level of detail needed by the Director to make decisions on appropriate design and operating criteria will vary case-by-case depending on site-specific factors, such as proximity to points of exposure, physical and chemical characteristics of the waste, and hydrogeological conditions at the site. The Agency anticipates that the information contained in the RCRA Facility Investigation or an analogous document will contain most of the information necessary to designate a protective staging pile. The Agency's intention with this portion of the regulation is not to create a burdensome reporting requirement, but rather to authorize the Director to require sufficient information to enable him to designate a staging pile.

Today's rule also requires a certification by an independent, qualified, registered professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information provided by the facility owner/operator, that this certification is not necessary to

ensure a staging pile that is protective of human health and the environment (§ 264.554(c)(2)). This certification should be incorporated into any documentation necessary for the permit, closure plan, or order in which the staging pile is designated. The Agency's intention is not to create an obstacle for the facility owner/operator, but rather to provide assurance that the technical information is accurate, has been prepared by technically competent personnel, and can be relied upon by the Director. If the Director believes that this certification is unnecessary, such as in a case where the staging pile design is to be very simple due to a short term of storage or relatively low constituent concentrations, the Director may waive the need for the professional engineer certification. Finally, RCRA § 264.554(c)(3) enables the Director to request any additional information that he determines is necessary to protect human health and the environment. EPA expects that this provision will be used infrequently, but considers it important to ensure that all pertinent information is available to the Director when making a decision on designating a staging pile or staging pile extension. Because this is not intended to be a burdensome provision, the Director should restrict any information request to that which is necessary to protect human health and the environment. The Agency intends this portion of the regulation to reinforce the Director's ability to request additional information to ensure that, for example, staging piles are designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment (§ 264.554(d)(1)(ii)).

Although an information requirement was not included explicitly in the proposed remediation pile regulation, EPA believes that the Director's need for information to designate a protective staging pile was a principle embedded in the proposal. The proposed remediation pile regulation was centered around providing, both the regulatory agency and the facility, site-specific flexibility with the goal of matching the risk-based regulatory requirements with the conditions at a particular site. This flexibility can only be granted when there is an exchange of accurate and sufficient information between the facility and the regulatory agency. Moreover, under the proposal, the Director could, of course, have denied a request to designate a remediation pile if he did not have sufficient information to make a sound protectiveness judgement, so his ability to obtain additional information was implicit. Therefore, to clarify this expectation, today's § 264.554(c) explicitly defines what kind of information must be provided to the Director to enable him to make the findings mandated by the regulations.

F. What Performance Criteria Must the Staging Pile Satisfy? (§ 264.554(d))

1. Performance Standards for Staging Piles (§ 264.554(d)(1))

Many commenters requested that the Agency avoid prescriptive national standards that would not take into account site-specific considerations and therefore would be likely to over or under estimate the exact design and operating requirements needed at any given facility. There were, however, persuasive comments suggesting that a performance standard for staging pile design and operation is necessary, in addition to the decision factors, to better guide the program implementor and facility owner/operator in setting site-specific design and operating criteria that will protect human health and the environment. Consequently, today's rule finalizes a performance standard that, in combination with a specific time limit for the piles, will ensure that staging piles are protective without sacrificing the flexibility that helps make staging piles an implementable option at facilities.

The Agency proposed a standard for remediation piles that reads "the Director may prescribe on a case-by-case basis design and operating standards for such units that are protective of human health and the environment." In response to comments suggesting a more specific performance standard for staging piles, the Agency has promulgated today's performance standard for staging piles. The staging pile performance standard is based on the principles underlying the staging piles provisions, as well as provisions that were already included in the proposed remediation pile regulation. In designating the performance standard the Agency looked to the standard in the CAMU rule as guidance (§ 264.552(c)).

The performance standard finalized in today's rule (§ 264.552(d)(1)) supplements the decision factors for temporary units as proposed. The Agency believes that finalizing more than the decision factors provides the designating authority with more complete guidance for the establishment of protective design and operating criteria. Under the rule, the decision factors are elements that must be considered when establishing standards for the staging pile. The performance standard is the Agency's overall requirement for the construction and engineering of the unit. There were some commenters that suggested the Agency promulgate specific technical requirements for the staging piles. These comments appear to be based on the concern that the proposed remediation piles, which allowed treatment and longer term storage, did not have baseline standards. EPA believes that today's staging pile regulation, which allows short-term storage only, would not be improved by prescriptive standards due to the relatively low risk posed by the piles and the requirement that the Director take into account site-specific conditions in setting standards.

The performance standard for staging piles has three parts. First, "the staging pile must facilitate a reliable, effective and protective remedy." (§ 264.552(d)(1)(i)) Second, "the staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, run-off/run-on controls, as appropriate)," (§ 264.552(d)(1)(ii)). Finally, "the staging pile must not operate for more than two years, except when the Director grants an operating term extension under paragraph (i) (entitled "May I Receive an Operating Extension for a Staging Pile?") of this section. You must measure the two-year limit, or other operating term specified by the Director in the permit, closure plan, or order, from the first time you place remediation waste into a staging pile. You must maintain a record of the date when you first placed remediation waste into the staging pile for the life of the permit, closure plan, or order, or three years, whichever is longer," (§ 264.552(d)(1)(iii)).

Therefore, in designating a staging pile, the first consideration of the Director will be whether the pile will facilitate the implementation of a reliable, effective, and protective remedy (§ 264.554(d)(1)(i)). This criterion is designed to require a site-specific showing that the premise behind allowing for these piles (see 61 FR 18831) is satisfied at each site where they are used. By including this criterion, the Agency is emphasizing that the goal of today's staging pile regulation is not to undercut the protectiveness of the existing Subtitle C regime, but rather to assist in the execution of reliable, effective, and protective remedies.

The second criterion requires that activities associated with the design and

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operation of the staging pile must prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (§ 264.554(d)(1)(ii)). This portion of the performance standard is an outgrowth of the proposed remediation pile regulation, because it simply adds specificity to the proposed rule's requirement that the standards must be "protective of human health and the environment" (proposed § 264.554(a)) and that the "Director shall specify in the permit or order . . . any requirements for control of cross-media contaminant transfer" (proposed § 264.554(d)). Section 264.554(d)(1)(ii) also builds upon the fourth and sixth decision factors mentioned later in this section of the preamble (§ 264.554(d)(2)(iv) and (vi) which require the Director to consider the potential for releases from the unit and the potential for human and environmental exposure when establishing standards for the staging pile). A similarly worded performance standard was suggested by one of the commenters on the proposal. The Agency agrees with the commenter that it is advantageous to include a provision directly in the performance standard for staging piles, as is finalized in today's rule. The Agency emphasizes that minimizing or adequately controlling cross-media transfer (for example, transfer to air through volatilization or particulate matter) is vital to the protectiveness of a staging pile.[21]

This second criterion is also included to ensure that there will be no unacceptable risks created by the storage of hazardous remediation waste in a staging pile either during the remedial activities or afterwards. Liners, covers, and run-off/run-on controls are all examples of design stipulations that might be appropriate in specific circumstances, and these examples have been included directly in the regulation to assist the Director. These examples, however, are in no way a definitive list of possible design stipulations that could be included in the permit, closure plan, or order, nor would they always be necessary. Depending on site-specific circumstances, ground water and air monitoring equipment may also be appropriate to ensure adequate attention to cross-media transfer from a staging pile. However, the Agency anticipates that this monitoring equipment will often be installed as part of the overall cleanup at the site rather than for the staging pile itself. In addition to the type of substantive standards and design criteria described above, the rule also allows the Director to specify operating requirements for the staging pile by providing that the Director must include "standards." Examples of these operating requirements include appropriate inspection schedules and recordkeeping.

The Agency believes that the Director will be able to make a determination of what design and operating requirements are necessary to prevent or minimize releases from the staging pile based on information from the facility owner/operator, site assessments, past overseeing agency experience, and standard good engineering practices. If the facility owner/operator does not provide the information necessary for an informed decision to be made regarding what requirements are protective, the staging pile should not be designated by the Director.

One commenter suggested a "no significant migration" standard be included in the rule. The Agency agrees that a staging pile should be designed to prevent any significant additional migration of hazardous waste and hazardous constituents. However, EPA did not include this precise language in the final rule because EPA believes that the requirement that a staging pile be designed so as to prevent or minimize releases of hazardous waste and hazardous constituents into the environment and minimize or adequately control cross-media transfer will have an equivalent effect.

The final performance criterion (§ 264.554(d)(1)(iii)) limits the use of staging piles to two years, unless a 180-day extension is provided, and establishes a recordkeeping requirement. Refer to the discussion later in this section on time limits for details of this provision.

2. Decision Factors for Staging Piles (§ 264.554(d)(2)

In the proposal, EPA requested comment on whether to prescribe any specific design or operating standards for remediation piles or to allow the Director to establish requirements on a case-by-case basis using the decision factors specified for temporary units. The Agency's intent to use the slightly modified temporary unit decision factors, as expressed in the proposal, received no negative comments and consequently they are finalized in today's rule. The Agency continues to believe that these decision factors are reasonable and will result in sound decisions for staging pile design. Specifically, the rule requires the Director to consider the following factors in establishing the standards and design criteria for the staging pile:

(1) Length of time the pile will be in operation;

(2) Volumes of wastes to be stored;

(3) Physical and chemical characteristics of the wastes to be stored in the unit;

(4) Potential for releases from the unit;

(5) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and

(6) Potential for human and environmental exposure to potential releases from the unit.

EPA believes that these considerations will help ensure that the staging pile will be designed to protect human health and the environment.

G. May a Staging Pile Receive Ignitable, Reactive, or Incompatible Remediation Wastes? (§ 264.554(e))

The final rule contains a new provision, § 264.554(e), that addresses the handling of ignitable or reactive remediation wastes in a staging pile. This new provision is a modification of § 264.256, the special requirements for ignitable and reactive wastes in a waste pile. Section 264.554(e) prohibits placement of ignitable or reactive remediation waste into a staging pile unless the waste is made non-ignitable or non-reactive as these characteristics are defined in § 261.21 and § 261.23, while also complying with § 264.17(b) (which lists reactions that precautions must be taken to prevent) or the waste is managed in such a way that it is protected from materials or conditions which may cause it to ignite or react. EPA expects that non-flowing wastes encountered during cleanup will rarely be ignitable or reactive.

When they are, however, they clearly require continuing protection from conditions which may cause them to ignite or react. An important factor to note is that mixing of wastes in a staging pile is relatively common when storing large volumes of waste. Unless these wastes are rendered non-ignitable or non-reactive, the facility owner/operator may find it difficult to protectively manage these wastes in a staging pile. Reactive wastes may be particularly difficult to manage since a staging pile can be directly exposed to the

[21] Consulting the Agency's Best Management Practices (BMPs) for Soil Treatment Technologies (EPA530–R97–007, May 1997) guidance document, which was developed to provide guidance on how to identify and minimize the potential for causing cross-media contamination during implementation of cleanup technologies for contaminated soils or solid media, is recommended to assist in ensuring that this portion of the performance standard is achieved.

environment. The Agency will allow the management of ignitable or reactive wastes in a staging pile, as long as the wastes are protected from the material or conditions which may cause them to ignite or react. The modification to § 264.256 makes the provision applicable to remediation waste in staging piles rather than hazardous waste in waste piles and enhances its readability. Also, the language modified from that of § 264.256 does not allow waste to be treated, rendered, or mixed immediately after placement in a staging pile, although this language is included in the waste pile regulation (§ 264.256(a)).

Since treatment is not permitted in a staging pile, this portion of the waste pile regulation was considered by the Agency to be inappropriate and therefore was not included in today's rule.

H. How Do I Handle Incompatible Remediation Wastes in a Staging Pile? (§ 264.554(f))

The final rule also contains a new provision, (§ 264.554(f)), that deals with the handling of incompatible wastes in a staging pile. This provision is a modification of § 264.257, the special requirement for incompatible wastes in waste piles. The modification makes the provision applicable to remediation waste in staging piles rather than hazardous waste in waste piles and enhances its readability. The potential dangers from the mixing of incompatible wastes include, but are not limited to, extreme heat, fire, explosion, and violent reaction. Clearly, the potential impacts on human health and the environment which could result from these conditions must be avoided.

To this end, the regulation includes a provision that staging piles should not contain incompatible wastes unless precautions are taken to avoid the reactions listed in § 264.17(b). The regulation also states that if remediation waste in a staging pile is stored near incompatible wastes, precautions must be taken to ensure that these materials are protected or separated from one another. Finally, for the same reasons as those provided above, today's regulation states that remediation waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with § 264.17(b).

Although these provisions were not included in the proposed rule, EPA believes that it is reasonable to include them in today's final rule because the provisions do not create an additional regulatory burden for either the Director or facility owner/operator. The Director would normally examine the possibility of risk from ignitable, reactive, or incompatible wastes being placed in a pile before designating a pile, so these provisions simply serve to ensure that this caution will be exercised in every case.

I. Are Staging Piles Subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR)? (§ 264.554(g))

Like placement of remediation waste into CAMUs, placement of remediation wastes into staging piles will not trigger RCRA LDRs. Because staging piles are generally a subset of units that, absent today's rule, would be CAMUs, this provision is based on the Agency's view, fully explained in the preamble to the CAMU rule, that placement into these units does not constitute "land disposal" under RCRA section 3004(k) (See 58 FR 8658, 8662 (February 16, 1993)). As stated in that preamble, EPA believes this interpretation is reasonable "since remedial areas are not a listed regulatory unit under 3004(k), because Congress recognized that the application of LDRs to remediation wastes might require a different framework than that developed for the application to as-generated wastes, and, . . . because the direct application of preventive standards to remediation wastes is often inappropriate and counterproductive." (See 58 FR 8662). Also, as explained in the preamble to the CAMU rule, staging piles would not be subject to the MTRs under section 3004(o), because the pile is not a land disposal unit subject to those requirements.

J. How Long May I Operate a Staging Pile? (§ 264.554(h))

The remediation pile provisions, as proposed, did not set limits on the amount of time that remediation waste could be in the pile, other than to say that these piles would be "temporary" and only available for use during remedial operations. The proposal requested comment on whether time limits and renewals that prescribe the lifetime of remediation piles should be set at the national level.

Only one commenter agreed with the proposal that EPA should not set a specific limit, but instead allow the staging pile to operate indefinitely.

All other commenters on this issue recommended that EPA set a specific time limit for operation of staging piles. Suggestions ranged from six months to three years, however, the majority of commenters recommended two years. Several commenters also suggested that EPA allow a limited extension of the time limit when necessary. Suggestions for extensions ranged from six months to three years.

EPA has decided to impose a two-year time limit on staging piles, with the opportunity to obtain a six month extension, when necessary. EPA agrees with commenters who feel that there is a need to define "temporary" in the context of staging piles. The Agency also agrees with commenters who argued that a two-year time limit is reasonable for the staging piles and therefore has promulgated this limit in today's rule. The Agency does not believe that staging piles should exist indefinitely or with an undefined "temporary" lifetime because these units might not be designed in a manner protective enough for the "de facto" disposal that might occur. In other words, if "temporary" was left as the only standard, the storage in staging piles could take place for such a long period of time that the risks to human health and the environment would be essentially equivalent to a disposal scenario, which the staging piles standards in today's rule are not designed to address. The Agency does not believe it is necessary to create standards in today's rule to accommodate a long-term storage scenario because long-term storage and disposal can be conducted in CAMUs and, as discussed below, the operations the Agency intends to accommodate in this rule—staging—can generally be conducted during the 2-year time period.

EPA believes that a time limit that generally corresponds to the length of time needed for staging or storage activities at a site is appropriate. EPA consulted with program implementers at the Regional and State level who agreed that 2 years was an appropriate limit for staging piles.

In response to commenters' suggestions, EPA has decided to allow a 6-month extension for staging pile operation when necessary (see the preamble discussion for § 264.554(i)). EPA again consulted with Regional and State program implementers who agreed that six months was an appropriate amount of time to allow for an extension. As discussed below in section K, EPA believes that six months provides an adequate balancing of interests in providing flexibility while ensuring that staging piles are indeed temporary.

In practice, a facility owner/operator could request, or the Director could designate on his own initiative, a shorter lifetime for a staging pile and consequently the Director could set design and operating requirements that

would take into account this shorter period of storage. The Director is encouraged to establish a duration shorter than two years, when appropriate.

Longer-term use of a staging pile, however, is much more similar to "disposal" activities which provide a greater opportunity for releases. As stated in the "Summary of Principal Changes from the Proposal" section above, the Agency has concluded, for the purposes of today's rule, that land-based treatment activities, long-term storage, and permanent disposal are more appropriately addressed using the CAMU provisions in § 264.552.

One commenter suggested that a two-year time limit on staging piles is also consistent with the limits on the storage of prohibited wastes under § 268.50, EPA's regulations implementing RCRA section 3004(j).[22] In response to this comment, which highlighted the relationship between the staging pile provisions and § 268.50, the Agency today is also amending § 268.50 to expressly provide that storage of hazardous wastes in approved staging piles is not subject to the prohibition contained in that section (§ 268.50(g)).

Section 268.50 provides that hazardous wastes prohibited from land disposal may not be stored unless certain conditions are met. For treatment, storage, or disposal facilities, those conditions are that this storage takes place in tanks, containers or containment buildings and is "solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal." In addition, dates of accumulation generally must be clearly marked and recorded.

EPA believes an express exemption from these requirements (as opposed to amending them to add staging piles to the list of units in which storage may conditionally take place) will eliminate the need for regulatory agencies and site owner/operators to engage in unnecessarily duplicative factual findings, because the concerns underlying the requirements in § 268.50 (that is, that storage of prohibited wastes only occur "as necessary to facilitate proper recovery, treatment, or disposal") will necessarily be satisfied during approval of the staging pile. Specifically, as discussed above, by imposing a two-year time limit on staging pile operation, today's rule is consistent with the time limits in § 268.50 (and, by way of analogy, the two-year cap on case-by-case capacity variances under RCRA section 3004(h)(3)). In addition, staging piles will only be used during remediation, a process that is specifically designed to "facilitate proper recovery, treatment or disposal" of wastes. The final staging pile rule promulgated today will further ensure this result, since it specifically requires that staging piles only be approved where they will "facilitate the implementation of a reliable, effective and protective remedy."

The final rule also makes clear that the operating term limit (§ 264.554(h)) is to be measured from the initial placement of remediation waste in a staging pile. The closure process must begin at the end of the operating term or extension term (if approved by the Director) for the staging pile. EPA believes that, to make this requirement implementable, a record must be kept which defines the date of initial placement of waste into the staging pile. Therefore, EPA has included a provision in the staging pile performance standard (§ 264.554(d)(2)(iii)) that requires that a record of initial placement date be kept by the facility owner/operator for the life of the permit, closure plan, or order or for three years, whichever is longer. This will aid in the enforcement of staging pile time limits by providing a specific date by which to measure how long remediation waste has been stored in the pile. The three-year period used in today's rule as the minimum period of record retention, is in keeping with the recordkeeping requirement of "at least three years" found in § 270.30(j) (which outlines the monitoring and recordkeeping regulations applicable to all permits) and a number of other recordkeeping requirements in RCRA regulations (for example, § 262.40).

K. May I Receive an Operating Term Extension for a Staging Pile? (§ 264.554(i))

In the proposal, the Agency requested comment on whether any time limits placed on remediation piles should be renewable. In response, an operating term extension period was suggested by a number of commenters. Recommendations for the length of this extension period varied from six months to three years. The Agency agrees with these commenters in that it can be difficult to judge in advance the amount of time that will be necessary to store remediation wastes in furtherance of a remedy. EPA recognizes that in some cases unforeseen circumstances may dictate that a staging pile remain in service beyond the limit originally set in the permit, closure plan, or order. For example, unexpectedly large volumes of waste may need to be handled to complete the remedy, or the remedial process may be slowed by forces beyond the control of the facility owner/operator or Director. An extension would be appropriate, for example, when wastes being stored in a staging pile are to be taken to an off-site facility, but that facility no longer has the capacity, or is unwilling, to accept the wastes. Consequently, today's rule includes a provision, § 264.554(i), that states the Director may provide one extension of up to 180 days as a modification of the original permit, closure plan, or order.

To justify to the Director the need for an operating term extension, the facility owner/operator must provide sufficient information to enable the Director to make a determination that continued operation of the unit:

- Will not pose a threat to human health and the environment; and
- Is necessary to ensure timely and efficient implementation of remedial actions at the facility. In addition, the regulation states that the Director may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary to ensure protection of human health and the environment. This language is based, in large part, on the time limit extension language for temporary units, which provides a one-year extension beyond a one-year operational limit (§ 264.553(e)). EPA believes that this language is both appropriate and reasonable for staging piles. The Agency believes that the language addresses the concerns of commenters who suggested, among other things, that the extension should be consistent with the extension in § 264.553, especially since the temporary unit extension provision can only be approved after a showing that a time extension will not threaten increased environmental risk. The Agency agrees with these comments, as well as with other commenters who saw the need for an extension period to ensure that unexpected circumstances will be accommodated by the staging pile regulations. The Agency believes that the criteria that must be met before the Director grants an extension of the operating term for a staging pile are appropriate as they correspond to the overall goals of the staging pile regulation.

The initial criterion, ensuring that continued operation of the unit will not pose a threat to human health and the environment, is a reasonable test to maintain the protective nature of the staging pile despite the increased

[22] RCRA section 3004(j) provides that wastes prohibited from land disposal may be stored "solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal."

storage time. The second criterion allows the Director to specify further standards or design criteria for the staging pile if the increased storage time requires more protective or different specifications. EPA believes that it is unlikely that additional standards will be necessary for only a 180 day extension; however, this criterion will allow the Director to impose these standards in unusual circumstances. One commenter stated that the temporary unit extension provision of§ 264.553(e) was too prescriptive to be appropriate for remediation piles. This commenter felt that any extension should be approved or rejected based solely on site-specific considerations. However, EPA believes that the criteria finalized today leave the Director with ample discretion to consider site-specific factors in making decisions on extensions, and yet place appropriate limits on that discretion. The Agency also believes that limiting the number of extensions to one of up to 180 days will reduce the potential administrative burden that could be created by facility owner/operators seeking multiple extensions for staging pile operations, as well as ensuring that staging piles are indeed "temporary."

Furthermore, if the facility owner/operator or Director can anticipate, before designating the staging pile, that additional time will be necessary for staging activities, EPA recommends the use of a CAMU instead of a staging pile. If the facility owner/operator and Director are not able to anticipate that a CAMU will be preferable to a staging pile, the option remains to designate an existing staging pile as a CAMU through the CAMU approval process. This might require modifications to the design of the staging pile to address the risk posed by longer-term storage. Modifications necessary to designate a CAMU from what was previously a staging pile might include leak detection systems, run-off controls, air emissions controls, ground water monitoring systems, and leachate collection systems. However, the specific modifications will depend on the nature of the unit and the future plans for it.

L. What Is the Closure Requirement for a Staging Pile Located in a Previously Contaminated Area? (§ 264.554(j))

The preamble to the proposal stated that "remediation piles would be required to close by removal of all wastes (i.e. 'clean close')." This requirement, however, was not explicitly stated in the proposed regulation. This created confusion with some commenters, who requested that "clean closure" be defined and stated clearly in the final rule. In response to these comments, explicit closure requirements are included in today's rule. EPA foresees two scenarios applicable to closure in which a staging pile might be designated: (1) in an area of previous contamination, with remediation waste consolidated from non-contiguous areas of contamination (designation of a staging pile is not necessary if all the wastes are consolidated from within one area of contamination, see discussion below); and (2) in an uncontaminated area of the site. Consequently, the closure requirement is divided into two parts: § 264.554(j), which applies to staging piles designated at contaminated areas of the site; and § 264.554(k), which applies to staging piles designated at uncontaminated areas of the site.

At closure of staging piles located in previously contaminated areas, the final rule requires the facility owner/operator to "remove or decontaminate all remediation waste, contaminated containment system components, and structures and equipment contaminated with waste and leachate within 180 days after the expiration of the operating term of the staging pile." The Agency included this provision, which contains typical "clean closure" language (see § 264.258(a)), to ensure that closure of staging piles at facilities is completed in a safe and protective manner, as well as within a reasonable time frame. The 180-day time limit for removal and decontamination is an outgrowth of comments made requesting that the Agency ensure that temporary piles will indeed be temporary and of the intention expressed in the preamble to the proposal to require clean closure, a process under the Agency's regulations that must be complete within 180 days (§ 265.113). The Agency believes that a 180-day period is reasonable, as well as comparable to existing closure requirements in Parts 264 and 265.

The closure standard for staging piles designated in previously contaminated areas differs from the typical clean closure standard in the way that any contaminated subsoils created by the staging pile will be addressed. [23] Today's standard, instead of simply requiring "removal or decontamination," specifies that the facility owner/operator, "must also decontaminate contaminated subsoils in a manner, and pursuant to a schedule, that the Director determines will protect human health and the environment." This change was made in response to a commenter who identified the utility of considering the closure of a pile as part of the ongoing remedial process at a site. The Agency was persuaded by this comment to design a standard that recognizes that staging piles will only be used in the cleanup context, where the staging piles will likely be an intermediate step towards the cleanup of a site. In addition, since the portion of the facility where the staging pile will be located will have been previously contaminated, it may be very difficult to distinguish this previous contamination from residues that may have been left by the staging pile. Therefore, in designing today's standard, the Agency felt it was appropriate to include a standard that would allow any cleanup of soils contaminated by the staging pile to be coordinated with the site remedy, rather than addressed under a distinct set of resource-intensive requirements.

Because the final remedy at the site may not occur within 180 days after the operating term of the staging pile expires, the closure requirement does not include a time limit for this decontamination of contaminated subsoils. It is the Agency's expectation that the decontamination of any contaminated subsoils will be consistent with the overall remedy at the site. The Agency expects that the Director will often incorporate the schedule and cleanup levels for the chosen remedy at the site as the closure standards for the staging pile in the authorizing vehicle (for example, the RAP). By providing that contaminated subsoils must be decontaminated "in a manner, and pursuant to a schedule, that the Director determines is necessary to protect human health and the environment," the Agency believes it is providing essential flexibility, while at the same time ensuring that the use of a staging pile does not increase contamination where it was located. The Agency believes that this design fulfills the goal of protection of human health and the environment in these unique circumstances.

[23] Of course, EPA expects (and today's rule requires) that staging piles located in previously contaminated areas will be designed and operated in a manner that prevents or minimizes the release of additional contaminants to the degree technically practicable. A prime objective of remedial waste management is preventing further releases that will require cleanup. Consequently, EPA fully expects that at the majority of facilities that use staging piles, no decontamination of subsoils will be necessary due to the protective structure of the site-specific staging pile design and operating standards. However, as with other units regulated under Subtitle C, the Agency acknowledges the possibility that residues can remain after all remediation waste is removed from the pile and containment system components are decontaminated.

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M. What Is the Closure Requirement for a Staging Pile Located in an Uncontaminated Area? (§ 264.554(k))

Under today's rule (§ 264.554(k)), staging piles located in previously uncontaminated areas of the site must be closed according to the closure requirement for waste piles in § 264.258(a) as well as the closure performance standard of § 264.111 (or the requirements in § 265.258(a) and § 265.111) within 180 days after the expiration of the operating term of the staging pile (Part 265 is applicable to staging piles designated at interim status facilities). The Agency does not prefer the siting of staging piles in previously uncontaminated areas of the facility, yet acknowledges that site conditions may dictate such a siting (for example, to site the staging pile outside of a floodplain or lagoon area). As stated above, the 180-day time limit for removal and decontamination is, in part, in response to comments made requesting the Agency to ensure that staging piles would indeed be temporary. It should be noted that the reference to "post-closure escape of hazardous wastes" in the § 264.111 and § 265.111 does not eliminate the need for clean closure of staging piles. As stated in § 264.258(a) and § 265.258(a), all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and leachate must be removed or decontaminated. The closure requirements that a staging pile located in a previously uncontaminated area of the site must fulfill should be included, according to currently applicable procedures, directly into the permit, closure plan or order in which the staging pile is designated to ensure a clear and enforceable outcome.

N. How May My Existing Permit (for Example, RAP), Closure Plan, or Order Be Modified To Allow Me To Use a Staging Pile? (§ 264.554(l))

The proposal did not specifically address the process for designating a staging pile at an already permitted facility. EPA anticipates that staging piles will most often be designated as part of the approval of remedy selection at a site; and therefore, like selection of the remedy, staging piles will generally be approved using the Agency's permit modification procedures. To add certainty to this process, today's rule specifically requires that incorporation of a staging pile, or staging pile extension, into an existing permit be conducted according to the Agency-initiated permit modification procedures (§ 270.41) or the Class 2 permit modification procedures under § 270.42. The Agency believes that a Class 2 designation is generally appropriate as it corresponds to the Class 2 permit modification necessary for the approval of temporary units, a close analogue to staging piles. If the Agency did not specify permit modification procedures in today's rule, the procedure outlined in § 270.42(d) would have been necessary, requiring a Class 3 modification unless the modification requestor could have provided information sufficient to support the requested classification. EPA believes that it is preferable to explicitly state that Class 2 procedures should be used to designate a staging pile or staging pile operating term extension, rather than default to § 270.42(d) procedures. Furthermore, the Class 3 modification procedures that would be required under § 270.42(d) are inappropriate for staging piles. Class 3 permit modification procedures are designed for changes that substantially alter the facility or its operations (§ 270.42(d)(2)(iii)). EPA believes the additional requirements in the Class 3 procedures would unnecessarily delay the process of designating a staging pile, diminishing the ability of staging piles to facilitate the remedial process. The subject of what permit modification procedure to use when designating a staging pile did not surface in the comments on the proposal.

Other than through a traditional permit modification, a staging pile or staging pile operating term extension can also be designated through modification of a RAP, closure plan, or order. As finalized by today's rule, RAPs are a new type of permit in which staging piles can be approved. Because traditional permit modification procedures are available when incorporating a staging pile or staging pile operating term extension into a traditional RCRA permit, EPA also believes it is reasonable to allow staging piles and staging pile operating term extensions, designated through a RAP, to be modified through RAP modification procedures. Therefore, as stated in the staging pile regulations at § 264.554(l)(2), "[t]o modify a RAP to incorporate a staging pile or staging pile operating term extension, you must comply with the RAP modification requirements under §§ 270.170 and 270.175." Although this language was not used in the proposed remediation pile regulation, it is an outgrowth of the RAP section of the proposal to use the RAP modification procedures to incorporate staging piles or staging pile operating term extensions, similar to the way traditional permit modification procedures would be used.

In addition, modification of a closure plan to incorporate a staging pile or staging pile operating term extension should proceed according to the requirements in § 264.112(c) at permitted facilities or the requirements in § 265.112(c) at interim status facilities. As discussed in the "How is a Staging Pile Designated?" section of today's preamble, the closure plan is an additional mechanism by which a staging pile can be designated. In keeping with the use of closure plans, the Agency believes that the use of the established closure plan modification procedures cited above is reasonable.

Finally, modification of an order to incorporate a staging pile or staging pile operating term extension must occur according to the terms of the order and the applicable provisions of § 270.72 (a)(5) or (b)(5). Any inclusion will be governed by the standards promulgated today and, as noted below, the Agency's policy on public participation and corrective action orders should be followed.

The Agency received no comments on the proposal regarding the use of these, or any other, modification procedures to designate a staging pile or staging pile operating term extension.

O. Is Information About the Staging Pile Available to the Public? (§ 264.554(m))

Section 264.554(m) requires the Director to document the rationale for designating a staging pile or operating term extension for a staging pile and to explain the basis for the designation. The rationale for these decisions should be incorporated as part of the Statement of Basis in a permit, closure plan or order modification. Documentation of staging pile decisions is analogous to the documentation the Agency currently makes to support the selection of a remedy. Therefore, if a staging pile is incorporated as part of a final remedy, this explanation would be incorporated into the Statement of Basis for the remedy under a permit modification, closure plan or under an order. The staging pile rationale, as determined by the Director, will be available to the public through the appropriate public participation process. This requirement was not included in the proposal, but is intended simply to clarify and emphasize that staging pile decisions must be documented and explained as part of the existing notice and comment procedures for orders, permits, and closure plans. EPA believes that documenting the designation rationale is necessary to ensure that the public

has access to information relevant to the designation of a staging pile which is both substantial and clear. The Agency believes that including regulatory language to this effect is in keeping with EPA policy with regard to the importance of meaningful public participation.[24]

Public participation during the staging pile designation process, when implemented through the traditional (non-RAP) permit process, will proceed as prescribed in the Class 2, or Agency initiated, permit modification procedures. If the staging pile is designated in an order, it is the Agency's current policy that the order provide a level of public participation and comment comparable to that provided for in a permit modification (see RCRA Public Participation Manual, Chapter 4; and "Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities; Proposed Rule," 61 FR 19432; (19453–19454) (May 1, 1996)). Since a staging pile has been designated as a Class 2 permit modification, these procedures should be used for public participation under an order. Documentation should be made available to the public through the order approval or order modification process.

P. What Is the Relationship Between Staging Piles, Corrective Action Management Units, and the Area of Contamination Policy?

The CAMU rule provides flexibility to EPA and implementing States to specify site-specific design, operating, and closure/post closure requirements for units used for land-based storage, or for treatment of wastes that are generated during cleanup at a RCRA facility. The CAMU regulations also specify requirements for units that are used as long-term repositories for cleanup wastes. The proposed remediation piles were intended to replace, to some extent, the flexibility that would be lost if the CAMU rule was withdrawn and the use of CAMUs was no longer available. However, as discussed more fully above, the Agency believes that, although CAMUs are retained in today's rule, staging piles will be a useful part of a remedial strategy in cases where waste is temporarily staged during remediation.

The staging piles provisions in today's rule will not affect current implementation of the AOC policy. The AOC policy is an interpretation of the statutory RCRA term, "land disposal" (section 3004(k)). The AOC policy, first elucidated in the March 8, 1990 "National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 55 FR 8758–8760)," equates dispersed areas of contamination with RCRA landfills, and clarifies that hazardous wastes may be moved within the AOC without triggering LDRs.[25] The Agency anticipates that staging piles will aid in situations in which the AOC policy does not apply. For example, a staging pile will be a valuable option in cases where a site has non-contiguous areas of contaminated soil, and where waste is being staged in a pile within one of the areas prior to further management. A staging pile will allow for consolidation of remediation waste into the pile without triggering RCRA LDRs. In cases where a facility owner/operator would like to consolidate remediation waste within one area of contamination, this can be accomplished under the AOC policy, and therefore a staging pile would not be necessary.

VIII. Corrective Action Management Units (CAMUs) (§ 264.552)

This final rule retains the regulations for Corrective Action Management Units (CAMUs) promulgated on February 16, 1993 at § 264.552 (see 58 FR 8658).

The CAMU regulations allow EPA to impose site-specific standards for on-site units used to manage remediation wastes. As discussed in the preamble of that final rule, the CAMU regulations were adopted by EPA to provide remedial decision-makers with flexibility to expedite and improve remedial decisions by removing barriers to cleanup created by RCRA hazardous waste requirements—specifically, the LDRs in Part 268 and the MTRs in Parts 264 and 265 applicable to land-based units . As is discussed in the preamble to the CAMU rule, the Agency believed (and still believes) that these Subtitle C requirements, when applied to remediation wastes, can act as a disincentive to more protective remedies, and can limit the flexibility of a regulatory decision maker in choosing the most practicable remedy at a specific site (see 58 FR 8658 at 8660).

Under the final CAMU regulations, LDRs do not apply to CAMUs because placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous waste, and MTRs do not apply because consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to MTRs (see 58 FR 8658 at 8661). The purpose of the CAMU regulations is to provide for more and improved cleanup of wastes, thus, providing increased protection of human health and the environment (see 58 FR 8658 at 8659).

While the CAMU regulations provided some flexibility to address the problems described above, the April 29, 1996 HWIR-media proposal was intended to be a more comprehensive response to the problems faced when applying traditional RCRA Subtitle C standards to the management of remediation wastes. In developing the HWIR-media proposal, EPA evaluated the CAMU regulations in the context of the proposed provisions and recognized that the proposed revisions to Part 269 in the HWIR-media rule, if promulgated, would provide flexibility similar to that provided by the CAMU regulations. EPA considered that the CAMU regulations might not be necessary if the HWIR-media proposal was promulgated, and thus the Agency proposed to withdraw the CAMU regulations if the proposed revisions to Part 269 were promulgated. The Agency noted in that preamble, however, that it did not intend to withdraw the CAMU regulations without, at the same time, substituting one of the two major options proposed in the HWIR-media proposal in its stead. The preamble of the proposed HWIR-media rule made clear that the Agency believed the CAMU regulations provided needed flexibility to remediation sites, and that the Agency intended to withdraw the CAMU regulations only if the site-specific flexibility provided in the CAMU rule would be preserved by the final HWIR-media rule (see 61 FR 18780 at 18829).

When EPA promulgated the CAMU final regulations in 1993, the Agency explained that, in implementing CAMUs, the Agency would have a preference for "treatment-based remedies" and that "long-term reliability and protectiveness of remedial activities is directly tied to effective treatment of wastes that pose future release threats" (see 58 FR 8658 at 8670). In retaining the CAMU regulations, EPA does not alter that long-standing position and further notes that it is consistent with EPA's coordination and "principle of parity" between RCRA and CERCLA cleanup activities (see Memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA Policy Managers,

[24] For more information see the September 1996 RCRA Public Participation Manual, Chapter 4, EPA530–R–96–007.

[25] For more information consult the March 13, 1996 Memorandum: "Use of the Area of Contamination (AOC) Concept During RCRA Cleanups," from Michael Shapiro, Director Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement to RCRA Branch Chiefs and CERCLA Regional Managers.

September 24, 1996, entitled "Coordination Between RCRA Corrective Action and Closure and CERCLA Site Activities"). EPA considers the CAMU requirements, and in particular § 264.552(c)(6), as the functional equivalents of CERCLA's expectation that treatment should be used, whenever practicable, to address principal threats posed by a site (see 40 CFR 300.430(a)(1)(iii)(A)). EPA continues to believe that the implementation of the CAMU regulations, as described above, enhances protection of human health and the environment.

While EPA recognized that the proposed HWIR-media rule would have provided flexibility similar to that provided by the CAMU regulations, EPA also recognized that the proposed rule applied to a more limited spectrum of waste—the proposed rule covered only contaminated media, whereas the CAMU regulations allowed all types of cleanup wastes to be managed. Thus, when it proposed to withdraw the CAMU regulations, the Agency also requested comment on what benefits might accrue if the CAMU rule were retained, and on what the ramifications might be if the final rule failed to provide the degree of relief that the CAMU rule has provided.

A majority of commenters favored the retention of the CAMU regulations. In many cases, commenters favored the retention of the CAMU regulations, even if EPA promulgated extensive regulatory reforms in this final rule. (Two commenters voiced their support for withdrawal of the CAMU rules, but did not explain their specific objections). Many commenters argued that EPA had failed to articulate a persuasive rationale for removing the CAMU regulations.

Many commenters on the proposal to withdraw the CAMU regulations believed that the CAMU regulations are important and should be retained because the proposed HWIR-media rule would have been limited to contaminated media. Commenters pointed out that contaminated debris, remediation sludges, and other waste generated as part of corrective action activities would not qualify for any site-specific flexibility that might be provided by the final HWIR-media rule. Without the CAMU regulations, commenters believed, the site decision makers would lose a large amount of flexibility (that is, LDR/MTR relief). One commenter pointed out that, because the HWIR-media proposal would only have applied to contaminated media, withdrawing the CAMU regulations would create a disincentive to remediation of non-media wastes. EPA agrees with these commenters.

This final rule does not include the extent of additional flexibility for remediation wastes that EPA anticipated when it proposed to withdraw the CAMU provisions. As is discussed in section II of this preamble, either the Bright Line or the Unitary approach of the proposed rule would have exempted certain remediation wastes from Subtitle C requirements (such as LDRs and MTRs), and subjected them, instead, to site-specific requirements. Neither of those options is promulgated in this final rule; thus, this type of flexibility is currently available only to remediation wastes managed in CAMUs. EPA believes this flexibility is vital to remove impediments to cleanup imposed by certain Subtitle C requirements. For these reasons, EPA is retaining the CAMU regulations in this final rule.

Since the promulgation of the CAMU regulations, just more than 30 CAMUs have been approved by the Agency. Though this small number might, on its face, appear to indicate that CAMUs have not proved useful to the regulated community, EPA believes, and commenters on the proposed HWIR-media rule verified, that this number is misleadingly low. EPA believes, and again commenters verified, that litigation on the CAMU regulations[26] has resulted in uncertainty about the future of CAMUs and, consequently, provides a disincentive to their use. Thus, despite the low number of CAMUs approved to date, EPA continues to believe that CAMUs provide a valuable tool to promote more and better cleanup of remediation wastes.[27] In fact, EPA expects that the use of CAMUs will increase as more corrective action sites move to the remedy selection phase, and the Agency strongly encourages States who are the major implementers of the corrective action program, to adopt and take advantage of this mechanism for cleanup.

[26] On May 14, 1993, a petition for review of the final CAMU rule was filed with the U.S. Court of Appeals for the District of Columbia Circuit (see Environmental Defense Fund v. EPA No. 93–1316 (D.C. Cir.)). Petitioners challenged both the legal and policy basis for the final CAMU regulations. On October 27, 1994, the litigation was stayed pending EPA's publication of a final HWIR-media rule, to allow parties to determine whether the final rule would resolve issues raised in the petition for review.

[27] The October 27, 1994 stay of the CAMU litigation provided that within 91 days after the final HWIR-media rule is published in the **Federal Register**, the parties will inform the court whether they intend to dismiss the petitions for review, enter into settlement discussions, or proceed with the litigation. Thus, the litigation should be resolved in the near future, thereby removing the uncertainty surrounding implementation of the CAMU regulations.

IX. Dredged Material Exclusion (§ 261.4(g))

A. What Is the Dredged Material Exclusion?

Today's final rule contains an exclusion from the definition of hazardous waste for dredged material subject to a permit that has been issued under section 404 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (CWA) or under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA, also known as the Ocean Dumping Act).[28] EPA proposed this change to reduce potential overlaps between the CWA or MPRSA and RCRA regulation of dredged material disposal. At present, if dredged material proposed for disposal in the aquatic environment is contaminated or suspected of being contaminated with hazardous waste, the potential application of both RCRA Subtitle C regulations and dredged material regulations under CWA or MPRSA complicates efficient assessment and management of dredged material. Today's rule eliminates the overlap of RCRA Subtitle C with the CWA and MPRSA programs by excluding dredged material managed under a CWA or MPRSA permit from RCRA Subtitle C, while ensuring an accurate and environmentally sound evaluation of any potential impacts to the aquatic environment. This exclusion will not alter existing practice significantly, but it clarifies regulatory roles within EPA in an effort to avoid duplication of administrative efforts and is authorized under RCRA section 1006.

The U.S. Army Corps of Engineers ("Corps") and other entities must dredge large volumes of sediment and other materials to maintain navigable waterways, ports and marinas. Dredged material can be mechanically or hydraulically dredged, and disposed of by barges or pipelines into river channels, lakes, and estuaries. Of the total amount of dredged material excavated, approximately one-fifth is disposed of in the ocean at designated sites in accordance with section 103 of the MPRSA. Most of the remaining dredged material is discharged into waters of the United States, either in open water, at confined disposal facilities (CDFs), or for beneficial uses, which are all regulated under the CWA. Any discharge of dredged material that

[28] "Permit" also includes the administrative equivalent of a CWA or MPRSA permit for U.S. Army Corps of Engineers' civil works projects.

occurs in upland areas and has return flow to waters of the United States is regulated under the CWA. However, if upland-disposed dredged material were to have no return flow to waters of the United States, as defined by CWA section 404, that dredged material would not be regulated under the MPRSA or CWA, and is not, therefore, subject to the exclusion under today's rule. [29]

B. Regulation of Dredged Material Under CWA and MPRSA

Section 404 of the CWA establishes a permit program to regulate the discharge of dredged material into waters of the United States that is administered by the Corps and EPA. Proposed discharges must comply with the environmental criteria provided in 40 CFR part 230 to be authorized by a CWA 404 permit. The EPA and Corps regulations under section 404 define dredged material as "material that is excavated or dredged from waters of the United States." In addition to such discharges as open water disposal from a barge, the section 404 regulations specifically identify the runoff or return flow from a contained land or water disposal area into waters of the United States as a discharge of dredged material. In most cases, this type of discharge occurs from a weir and outfall pipe to drain water from a confined disposal facility, including the water entrained with the solid portion of the dredged material discharged at the site and from rainwater runoff.

The MPRSA regulates the management of material, including dredged material, that will be dumped into ocean waters. Section 102 of the MPRSA requires that EPA, in consultation with the Corps, develop environmental criteria for reviewing and evaluating applications for ocean dumping permits. Section 103 of the MPRSA assigns to the Corps the responsibility for authorizing the ocean dumping of dredged material, subject to EPA review and concurrence. In evaluating proposed ocean dumping activities, the Corps is required to determine whether these proposals comply with EPA's ocean dumping criteria (40 CFR parts 220–228).

C. Dredged Material and RCRA Applicability

RCRA regulates the management of hazardous wastes at treatment, storage, and disposal facilities (TSDFs). Hazardous wastes are a subset of solid wastes. A solid waste is considered hazardous for regulatory purposes if it is listed as hazardous in RCRA regulations or exhibits any of four hazardous waste characteristics: ignitability, corrosivity, reactivity, or toxicity. Dredged material could trigger RCRA's Subtitle C requirements by exhibiting any of the four characteristics or by containing a listed hazardous waste. Environmental media (such as the sediments which make up dredged material) is not itself waste, but is sometimes contaminated with hazardous waste and must be managed as a hazardous waste when it exhibits a characteristic or "contains" a listed waste. These media would be subject to the RCRA requirements applicable to the contaminated waste. As a practical matter, naturally occurring sediments will not normally be associated with any specific industrial waste stream, so as to "contain" listed waste. Consequently, the most likely means by which dredged sediments could become subject to RCRA Subtitle C regulation is by failing one of the tests for characteristic hazardous waste. Given the nature of sediments, they would be most likely to become subject to RCRA Subtitle C if they fail toxicity testing (that is, Toxicity Characteristic Leaching Procedure, or TCLP). In fact, dredged sediments from navigational dredging projects very rarely, if ever, fail TCLP tests. In all but a very small number of cases, RCRA has not been applied in practice to proposed discharges of dredged material. Nevertheless, as asserted by the commenters, the potential applicability of RCRA Subtitle C requirements has been a concern at many dredging operations.

The Agency is confident that today's exclusion will promote efficient handling of dredged material since future use of the TCLP will not be necessary for dredged material subject to a permit issued under CWA Section 404 or MPRSA Section 103. Specifically, today's rule will eliminate the unnecessary expense and effort, currently borne by the Corps and other entities, of applying the TCLP to large volumes of dredged material. The Corps and other entities typically apply testing procedures under CWA and MPRSA that are better suited to the chemical and biological evaluation of dredged material disposed of in the aquatic environment, where the vast majority of dredged material is managed. These tests are specifically designed to evaluate effects such as the potential contaminant-related impacts associated with the discharge of dredged material into oceans and waterways of the United States. Thus it is appropriate to assess and manage dredged material under the aquatic testing and management protocols developed by the Corps and EPA under the MPRSA and CWA.

D. Determination of Regulatory Jurisdiction

Today's rule establishes an integrated approach to the regulation of dredged material disposal that will avoid duplicative regulatory processes while ensuring an accurate, appropriate, and environmentally sound evaluation of potential impacts to the environment. This approach is authorized under section 1006(b) of RCRA, which states that "the Administrator * * * shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of * * * the Federal Water Pollution Control Act (CWA), * * * the Marine Protection, Research and Sanctuaries Act, * * *, and such other Acts of Congress as grant regulatory authority to the Administrator." Section 1006(b) of RCRA calls for the provisions of RCRA to be integrated with other statutes, including the CWA and the MPRSA, to avoid duplication when the integration "can be done in a manner consistent with the goals and policies expressed" in RCRA and the other Acts. Applying the RCRA Subtitle C program together with the CWA and MPRSA permitting programs can be redundant and unduly burdensome, and may cause unnecessary procedural difficulties (for example, by requiring duplicate permit applications and procedures). It is also possible that the duplicative nature of the programs could in fact increase environmental risks by causing delays in proper disposal. The Agency believes that today's rule is appropriate and consistent with the goals and policies in each of these statutes.

The Agency believes that the CWA and MPRSA permit programs protect human health and the environment from the consequences of dredged material disposal to an extent that is at least as protective as the RCRA Subtitle C program. These programs incorporate appropriate biological and chemical assessments to evaluate potential impacts on water column and benthic organisms, and the potential for human health impacts caused by food chain transfer of contaminants. As improved assessment methods are developed, they can be incorporated into these procedures. The programs also make available appropriate control measures (for example, 40 CFR 230.72) for addressing contamination in each of the relevant pathways.

The Agency believes that RCRA Subtitle C coverage of dredged material

[29] Ground water flow is not considered return flow under CWA section 404 unless there is a "direct hydrogeological connection" to a surface water body.

disposal in the aquatic environment, whether or not this disposal is considered to be "land disposal" under RCRA, is duplicative and unnecessary when considered alongside the CWA and MPRSA coverage of these activities. The overriding goal of each of the three statutory programs is to protect human health and the environment, and the CWA and MPRSA programs achieve this goal appropriately by addressing the proposed aquatic disposal of dredged material.

The exclusion also applies in the case of a Corps civil works project which receives the administrative equivalent of a CWA or MPRSA permit, as provided for in Corps regulations. This regulatory language refers to the fact that the Corps does not process and issue permits for its own activities, but authorizes its own discharges of dredged or fill material by applying the same applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines or MPRSA criteria. EPA has the authority to develop environmental guidelines and the authority to prohibit or conduct further review of a proposed discharge by the Corps, in the same manner as it can with a private permit applicant. Thus, the exclusion in today's rule includes CWA and MPRSA permits, as well as their administrative equivalents in the case of Corps civil works projects.

E. Clarification of Future Practice

With the promulgation of today's rule, the regulation of dredged material will generally proceed in one of the following two ways, with the vast majority of activities expected to fall under the first example:

1. If the dredged material is subject to a permit that has been issued under CWA section 404 or MPRSA section 103, RCRA Subtitle C requirements do not apply.

2. If the dredged material disposal is not subject to a CWA section 404 or MPRSA section 103 permit, RCRA Subtitle C requirements may apply. (For example, if dredged material were to be disposed in upland facilities with no runoff or return flow to waters of the United States, this material would not be under the jurisdiction of the CWA or MPRSA and therefore would be subject to RCRA Subtitle C if it meets the definition of an RCRA hazardous waste.)

For dredged material covered by a CWA or MPRSA permit, the combination of statute, Federal regulations, and Regional guidance, along with the testing and management protocols that have been developed jointly by EPA and the Corps, will be adequate to address potential contaminant-related impacts in both ocean and inland waters. Examples of the existing testing and management protocols include: *Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual* (EPA–823–B–98–004) and *Evaluation of Dredged Material Proposed for Ocean Dumping—Testing Manual* (EPA–503–B–91–001), which contain current procedures on implementing the dredged material testing requirements under the CWA and MPRSA respectively. The manuals contain tiered evaluation systems that include, as appropriate: physical analysis of sediment; chemical analysis of sediment, water, and tissue; bioassay tests; and bioaccumulation tests of contaminant impacts. EPA believes that CWA and MPRSA permits coupled with these testing manuals and relevant Regional guidance will ensure the protective management and discharge of dredged material.

F. Comments on the Dredged Material Exclusion

Comments from 18 sources mentioned the dredged material exclusion. These sources included various industries and trade groups, as well as federal and state agencies. These comments are included in the record and are available for review in the RCRA docket. Commenters generally supported the exclusion of dredged material from RCRA Subtitle C regulation when the discharge is covered by a permit issued under the CWA or MPRSA. There was also general concurrence among commenters that this exclusion would avoid current unnecessary and duplicative regulation under RCRA. The proposed dredged material exclusion received only one comment that could be considered adverse. The comment was from a state environmental agency and addressed only a portion of the exclusion. The commenter stated that dredged material disposed upland should not be excluded from RCRA Subtitle C requirements. EPA agrees with this concern when there would be no return flow to waters of the United States since, under these circumstances, CWA section 404 or MPRSA 103 permits would not be issued. However, for the reasons provided in today's rule, EPA does not agree with the commenter in cases where there is return flow to waters of the United States and the dredged material is subject to a permit under CWA section 404 or MPRSA section 103. Moreover, the commenter provides no rationale as to why dredged material disposed upland under a CWA section 404 or MPRSA section 103 permit should not be excluded from the definition of hazardous waste. Therefore, EPA has finalized the rule as proposed. In addition to this comment, several commenters raised further issues that are outlined and discussed below.

G. Dredged Material as a Solid Waste

The Agency proposed that the dredged material exclusion apply only to the hazardous waste requirements of RCRA Subtitle C and not to the solid waste requirements of RCRA Subtitle D. Today's final rule adopts this approach as proposed.

Some commenters noted that the context and wording of the proposed dredged material exclusion implied that all dredged material is solid waste. They were concerned that excluding dredged material from the definition of hazardous waste could be interpreted to mean that all dredged material is inherently a hazardous waste, and consequently, also a solid waste. They believe that is not the case, and asked EPA to clarify this matter in the final rule.

EPA agrees with these comments. Nothing in the proposal or in today's final rule is meant to imply that dredged material is always a solid waste. Dredged material, which is media, may or may not contain a RCRA solid or hazardous waste. Dredged material should not be assumed, a priori, to contain a solid waste and today's rule does not expand the scope of dredged material regulation under RCRA.

In cases where dredged material may be both a solid and a hazardous waste, today's rule excludes these materials from the hazardous waste requirements only. Two commenters requested that the dredged material exclusion extend to all aspects of RCRA (that is, that dredged material be excluded not only from hazardous waste requirements, but also from solid waste requirements). EPA has not adopted this suggestion. While EPA believes that excluding dredged sediments from Subtitle C regulation is appropriate, the Agency is not persuaded that these sediments should be excluded from all RCRA jurisdiction. It would be inappropriate to extend the exclusion to Subtitle D because, in certain circumstances, this exclusion would remove the ability of states to exercise authority over dredged material under their RCRA Subtitle D programs. (For example, in some States, State authorities preclude State regulations from being more stringent than Federal regulations.) Also, because there is no federal permit program for Subtitle D, state and local authorities have well-established regulatory discretion in the non-hazardous waste

arena, which the Agency does not wish to alter at this time. Consequently, today's rule does not alter the existing abilities of States and local authorities to regulate dredged material as a solid waste under RCRA.

Furthermore, although certain dredged materials will no longer be considered hazardous wastes under today's rule, this exclusion does not affect whether dredged materials are considered solid wastes for the purposes of RCRA section 7003. As advanced in the proposal, EPA may take action under RCRA section 7003 to address the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste that may present an imminent and substantial endangerment to human health or the environment. This authority remains intact, regardless of the Agency's decision to exclude dredged materials from RCRA's hazardous waste provisions. Thus, this rule does not diminish in any way the Administrator's authority to take action under section 7003 in connection with dredged material. EPA believes this authority provides an important backstop to the regulatory authorities of the CWA and MPRSA. Emergency powers under these other two statutes are different from and not co-extensive with RCRA section 7003 authority. Furthermore, many States have comparable authorities over non-hazardous waste, which EPA does not wish to undercut.

In sum, the status of dredged material as potentially a solid waste under RCRA is unchanged by today's rule. Where dredged material is (or contains) both a solid and a hazardous waste and is subject to a permit that has been issued under CWA section 404 or MPRSA section 103, today's rule excludes it from RCRA's hazardous waste requirements, but not from solid waste requirements.

H. Clarification of Terms Related to Dredged and Fill Material

Two commenters stated that transferring the term "discharge of dredged material" from CWA section 404 regulations into the dredged material exclusion regulation, as was done in the proposal, would complicate the exclusion unnecessarily. EPA agrees with these comments. The term "discharge of dredged material," which was incorporated into the proposed exclusion, is defined in 40 CFR 232.2 (and the Corps' 33 CFR 323.2) and includes descriptions of the scope of these discharges. The definition also describes discharges that do not require a section 404 permit. Confusion could have resulted, for example, over whether dredged sediments should be removed from RCRA regulation when they are within the scope of a section 404 permit exclusion. The references to this term and its definition have been removed from the rule to avoid confusion and misinterpretation, and only the term "dredged material" (which is defined in 40 CFR 232.2 as "material that is excavated or dredged from the waters of the United States") is used in the final rule.

Similarly, EPA stated that the exclusion did not address "fill material". The Agency's goal is to ensure that upland-derived fill material is not eligible for the exclusion, but the language in the proposal did not distinguish between dredged material used as fill and fill material not excavated from waters of the U.S. The "fill material" that is not included in the exclusion is any material that does not meet the definition of dredged material. For example, dredged material can be used as fill under a CWA 404 permit for beneficial purposes, such as the creation of an underwater berm for erosion control. EPA sees no reason to differentiate between dredged material that is discharged for disposal and dredged material that is used as fill, as long as both are subject to the CWA or MPRSA dredged material permitting requirements.

As a result, as in the case of the term "discharge of dredged material," "discharge of fill material" and "fill material" are not terms pertinent to the dredged material exclusion and therefore are not included in today's regulatory language.

I. Normal Dredging Operations and the Exclusion

Two commenters recommended extending the exclusion to normal dredging operations for navigation or flood control that are subject to some form of federal regulation other than CWA or MPRSA permitting, in particular when the dredged material would be disposed in upland facilities with no return flow. EPA was asked to interpret RCRA section 1006(b) expansively to avoid regulatory duplication with the Rivers and Harbors Act of 1899 (RHA, 33 U.S.C. 403) which regulates normal dredging operations. However, section 1006(b) of RCRA requires EPA to avoid duplication with Acts of Congress that grant regulatory authority to the Administrator, and RHA does not grant regulatory authority to the Administrator. Furthermore, the proposed rule's exclusion for dredged material was premised only on the applicability of CWA or MPRSA permitting, and the proposal did not request comments on expanding the exclusion from RCRA Subtitle C for dredged material that is not subject to CWA or MPRSA permits. Therefore, the Agency will limit the scope of the exclusion to dredged material subject to a permit that has been issued under CWA section 404 or MPRSA section 103, as proposed.

J. The Exclusion and Nationwide Permits

One commenter asked whether the proposed exclusion would not only apply to project-specific individual permits issued by the Corps, but also to general permits.[30] The proposed rule and the preamble implied to this commenter that the scope of the exclusion includes only individually-issued permits. Although under today's rule the exclusion applies to any dredged material subject to a section 404 permit and, therefore, would technically extend to Corps general permits (those which allow for certain dredging activities without requiring an individual application), it is important to note that it is very unlikely that any dredged material suspected of being contaminated would be authorized under a general permit. General permits may not authorize discharges where contaminant-related impacts are expected to be more than minimal, evaluated separately, as well as cumulatively. However, in the unlikely event that these discharges are authorized under a general permit, both the Corps and the appropriate state regulatory agency retain the authority to impose individual permit requirements or deny a permit to avoid impacts of concern. Therefore, EPA believes that it is appropriate, and in keeping with the logic of the proposal, to retain dredged material managed under CWA section 404 general permits within the exclusion from RCRA Subtitle C.

X. State Authority (§ 271.1(j))

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA Subtitle C program within the State. Following authorization, EPA retains independent enforcement authority under sections 3008, 3013, and 7003 of RCRA to initiate an action, although authorized States have primary enforcement responsibility. The

[30] The Agency notes that there are no nationwide permits under MPRSA that are applicable to dredged material, so the following discussion is in the context of CWA section 404.

standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program instead of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. Although the States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA is directed to carry out HSWA requirements and prohibitions in authorized States, including the issuance of permits implementing those requirements, until the State is granted authorization to do so.

Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also, 40 CFR 271.1(i). Therefore, authorized States can, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent. Less stringent regulations, both HSWA and non-HSWA, do not go into effect in authorized States until those States adopt them and are authorized to implement them.

B. Effect on State Authorization

Today's rule is promulgated, in part, pursuant to non-HSWA authority and, in part, pursuant to HSWA. Requirements applicable to Remedial Action Plans (RAPs) and the dredged material exclusion are promulgated pursuant to non-HSWA authority. Therefore, these requirements are effective on the effective date of this rule only in those States without final authorization. They will become effective in States with final authorization once the State has amended its regulations and the amended regulations are authorized by EPA.

The requirements for staging piles are promulgated pursuant to HSWA. Specifically, as discussed in the HWIR-media proposal (see 61 FR 18830–18831), the requirements relating to staging piles are based on an interpretation of RCRA sections 3004(k) and (o). (See below for details regarding implementation in authorized States.) Also, the provisions exempting remediation waste only management sites from the requirements in RCRA section 3004(u), namely §§ 264.1(j) and 264.101(d), are promulgated under HSWA authority. The Agency is adding these requirements to Table 1 in § 271.1(j), which identifies rulemakings that are promulgated pursuant to HSWA.

As noted above, authorized States are only required to modify their program when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. The standards promulgated today (including those promulgated under HSWA authority) are less stringent than the existing Federal standards. Therefore, States are not required to modify their programs to adopt today's rulemaking. However, EPA strongly encourages States to adopt the provisions promulgated today, as the Agency believes that they will increase the pace and efficiency of hazardous waste cleanups. The swift authorization of States that have adopted provisions equivalent to those promulgated today is a high priority for EPA.

1. Staging Piles

The implementation of the provisions regarding staging piles will vary, depending on the authorization status of a particular State. Although these provisions are promulgated under HSWA authority, they are less stringent than the existing Federal provisions, namely the Land Disposal Restrictions (LDR) and Minimum Technology Requirements (MTR) that apply to waste piles. Thus, if a State is authorized for the LDR and MTR provisions, EPA will not implement the provisions regarding staging piles in that State, even where it is conducting a corrective action. In some cases, however, a State that has LDR and MTR authorization and has adopted the staging pile provision, but is not yet authorized for staging piles may be able to implement its staging pile provisions if, under State law, it has a waiver authority comparable to the Federal authorities under RCRA section 7003 and CERCLA section 121(e). (A State's waiver authority is discussed further below.) If, prior to authorization for staging piles, the State exercises this authority in a way that is consistent with today's provisions regarding staging piles, EPA would not consider the State's program to be less stringent than the Federal program. These approaches should be used only to cover the transition period during which the State amends its regulations and obtains formal authorization for the staging pile provisions.

In those States that do not have authorization for the LDR and MTR rules, EPA is responsible for implementing the provisions regarding staging piles, because they are part of the Federal RCRA program operating in these States. EPA will use the Federal procedures for the implementation of the staging pile. For example, if the facility at which the staging pile is to be located holds a RCRA permit, EPA will modify the HSWA portion of the permit using the Federal permit modification procedures. However, EPA will not implement the staging pile provisions if this implementation is in conflict with a State's hazardous waste program. In some cases, States may have adopted the LDR or MTR provisions in their regulations, but may not have received authorization from EPA. Thus, these provisions may be effective under State law, preventing the implementation of the staging pile provisions. To address this situation, to the extent permitted by EPA regulations, EPA may modify its action so it is consistent with State law, or structure its action to mirror existing State requirements which allow waiver of the authorized State LDR and MTR provisions. Alternately, the State may use an authority under its own laws to provide a waiver.

C. Authorization for Today's Rule

In today's rule (as described later in the preamble), EPA establishes streamlined procedures for authorizing States for routine or minor program revisions of RCRA requirements. Streamlined authorization procedures were a major feature of the HWIR-media proposal, as well as several other recent regulatory proposals, and they are a key feature of EPA's program to reinvent the RCRA State authorization process.

The specific substantive provisions of today's rule, however, are not eligible for these streamlined procedures. This is because EPA considers today's rule to be fairly complex, and not part of a series of routine rulemakings. For these reasons EPA disagrees with the several commenters who wanted the abbreviated authorization procedures promulgated today to apply to the authorization of the HWIR-media rule.

At the same time, EPA is placing a high priority on authorization of States who seek to implement today's rule. The success of the regulatory reforms in today's rule depends on its rapid adoption by the program implementers, that is, the States. Furthermore, EPA intends to use its existing discretion under 40 CFR 271.21(b), to follow the streamlined procedure for the authorization of States which only adopt § 264.101(d) of today's rule. This provision eliminates § 264.101 facility-wide requirements from RCRA permits or RAPs issued to facilities not otherwise subject to facility-wide corrective action. The streamlined authorization procedure and EPA's existing discretion are discussed below.

Although today's HWIR-media rule is not eligible for the streamlined authorization procedures, EPA believes that in most cases, the authorization of States for this rule should be straightforward. Today's rule, for the most part, does not change the current regulatory standards for waste management, but merely streamlines procedures for a particular category of waste (that is, remediation waste). Any State currently authorized to implement RCRA hazardous waste regulations, particularly those States authorized for the LDR program and for corrective action, should have little difficulty becoming authorized for today's rule, as long as the State adopts a program that meets the minimum standards in today's rule.

EPA particularly emphasizes that, in authorizing States for the RAP part of today's rule, it will not be judging the adequacy, the stringency, or the resources of State clean-up programs. This is because today's rule does not modify or alter in any way clean-up requirements, but simply streamlines the permitting process for management of hazardous remediation wastes.

EPA will be reviewing the State's regulations and program for managing hazardous remediation waste to determine whether they are equivalent to the standards promulgated in today's rule. If a State program is already authorized to regulate hazardous waste under the base RCRA program, there is every reason to presume it can adequately regulate that same waste under a RAP or in a staging pile. The main task for EPA will be to ensure that States, in providing relief for remediation waste, meet the national minimum standards. EPA anticipates that, in most cases, this will be a clear and simple standard for States to meet, and authorization will be correspondingly expedited.

EPA also emphasizes that State programs seeking authorization must be equivalent to and no less stringent than the program EPA will be administering under today's rule. State programs, however, do not need to be identical to the federal program. EPA included considerable detail on procedural requirements in today's rule, because it will be implementing the rule in unauthorized States. Thus, the Agency needed to spell out permitting procedures, information requirements, and similar provisions explicitly and in detail. Although some States may choose to adopt these requirements verbatim or by reference, EPA expects that other States will prefer to establish different procedures (e.g., for RAP issuance or revisions, appeal rights, computation of time periods, and similar requirements), analogous to the situation regarding 40 CFR part 124 requirements such as administrative permit appeals that States are not required to adopt for authorization (see §§ 270.155, 270.190, and 270.215). EPA stresses that State programs will be eligible for authorization, as long as they comply with the statutory minimum in areas like public participation, their requirements apply equivalent (or more rigorous) procedures, they provide for adequate enforcement, and they meet the substantive standards of the federal regulations.

D. Authorization of State Non-RCRA RAP Authorities

In some instances, States may want to use as RAPs, enforceable documents issued by a State program other than the State's authorized RCRA program (see section IV of today's preamble for further discussion). Enforceable documents containing hazardous remediation waste management requirements that are not specifically issued through EPA's or an authorized State's RCRA program are not considered to be RAPs (this is, RCRA permits). Where a State wishes to use enforceable documents issued under authorities other than State RCRA authorities to implement hazardous waste remediation requirements, this will require specific authorization review to determine whether the State has the requisite implementation and enforcement authority and whether the provisions are consistent and equivalent to those promulgated today. In order to provide EPA with a basis for its authorization determination, during the authorization process for this rule, the State should specifically identify the enforceable documents it intends to use as RAPs, as well as the State authorities under which they are issued. If EPA approves the authorization, then the enforceable documents become a part of the RCRA program and the State will have the discretion to use such documents as RAPs. As part of RCRA, the RAP portion (i.e., hazardous remediation waste requirements and conditions) of the enforceable document is enforceable pursuant to the State RCRA enforcement authorities and by EPA pursuant to its independent RCRA enforcement authority.[31]

Elsewhere in this preamble, EPA discusses the appropriate level of public involvement in site cleanups, given the need for flexibility to do what makes sense in a given situation. Thus, States need to ensure in particular, that any enforceable documents to be used as RAPs will be developed through procedures that meet the public participation requirements in § 270.145; otherwise they will not meet the standards for authorization. Further, the authorities used to issue these documents must also ensure that hazardous waste is managed under the appropriate standards of the hazardous waste program.

As noted earlier, nothing in today's rule limits or expands the authorities States may already have to waive RCRA permit requirements, consistent with EPA's authority in section 7003 of RCRA or section 121(e) of CERCLA. RCRA section 7003 allows EPA to order response actions in the case of imminent and substantial endangerment to health or the environment, "notwithstanding any other provision in this Act." An authorized State may use a comparable authority to authorize activities consistent with today's rule. Similarly, where comparable authority exists under a State Superfund program, the State may use that authority. As explained in EPA guidance, the two preconditions to allowing the use of this authority are that: "(1) the State has the authority under its own statutes or regulations to grant permit waivers; and (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, for example, section 7003 of RCRA or section 121(e) of CERCLA." (See the Memorandum, "RCRA Permit Requirements for State Superfund Actions", from J. Winston Porter to Regional Administrators, Region I–X (Nov. 16, 1987) (OSWER Dir. No. 9522.00–2).) A State cannot, however, waive applicable Federal requirements. Thus, if a State is not authorized to

[31] Nothing in either the State's authorized "enforceable document" or in the State's law can restrict EPA's independent authority to enforce the authorized RCRA program.

implement a portion of the RCRA program in that State, the exercise of the State's waiver authority does not waive the Federal portion of the RCRA requirements. Also, EPA recognizes that many States have enforcement authorities allowing them to compel corrective action at interim status facilities comparable to EPA's section 3008(h) authority. States with appropriate regulatory and enforcement authority would be able to use these authorities in the same way EPA uses its section 3008(h) authority, for example, to approve the use of a staging pile outside the context of a RAP. As long as the authorized State acted in a way that was consistent with Federal requirements, its program would be considered to be as stringent as the Federal program.

XI. Abbreviated Authorization Procedures (§ 271.21(h))

EPA and States have recognized the need to improve the RCRA State authorization procedures for many years. For example, in the 1990 RCRA Implementation Study, the authorization process was identified as being too slow and cumbersome. In response to these longstanding concerns, the practices used by EPA and States have evolved over the years. The purpose of these attempts has been to make the authorization process operate more smoothly. Further, because Federal regulatory revisions promulgated under non-HSWA statutory authority do not go into effect until States have adopted them and received authorization, a more speedy authorization process will enhance environmental protection.

In several notices published during the past three years, EPA has proposed abbreviated authorization procedures intended to expedite the review and approval of revisions to authorized State programs. In the August 22, 1995, Land Disposal Restrictions (LDR) Phase IV proposal, EPA proposed a procedure (subsequently called Category 1) for authorizing minor or routine rules (see 60 FR 43654). This abbreviated procedure would require an application that was reduced in scope and composed of a statement from the State that its laws provide authority that is equivalent to and no less stringent than EPA's regulations, and a copy of those State statutes and regulations. After a complete application was submitted, EPA would then conduct a speedy review, and within 60 days after receiving an acceptable application, finish its action by publishing a **Federal Register** notice. With this notice and the associated public comment period, EPA would provide notice to the public of authorization decisions in the same fashion as is currently done. This procedure was proposed to apply to certain minor amendments to the LDR program that had become a routine part of the LDR program. EPA also requested comment on the future applicability of this procedure.

EPA modified this proposal in the January 25, 1996, LDR Phase IV supplemental proposal (see 61 FR 2338). EPA also proposed streamlined procedures for the authorization of more significant rules in the April 29, 1996, HWIR-media proposal (see 61 FR 18818). This proposed procedure was known as Category 2.

However, after carefully evaluating the comments received on these proposals, as well as the Agency's goal of speeding up the State authorization process, EPA has decided to promulgate abbreviated authorization procedures based on the procedures proposed in the August 22, 1995, LDR Phase IV notice. Thus, EPA is not promulgating the more extensive proposed Category 2 procedures from the HWIR-media proposal and the modifications to the proposed Category 1 procedures outlined in the January 25, 1996 LDR supplemental proposal. This preamble explains the details of today's abbreviated procedures, and discusses EPA's overall approach towards streamlining and improving the authorization process for all State authorization revisions.

A. Existing Authorization Process

During the past 15 years, EPA has frequently amended the Federal RCRA program by promulgating rulemakings to reflect statutory mandates, court decisions, and technical and scientific progress. EPA Regions and States have worked together to incorporate these regulatory amendments into revised State hazardous waste programs. This has been accomplished through the State adoption of rules equivalent to the Federal rulemakings, and the subsequent authorization of States. The existing regulations regarding the revision of a State's authorized program are located in 40 CFR 271.21.

Authorization revision applications generally consist of a copy of the State regulations, a revised Attorney General's (AG) statement, a revised Program Description (PD), a revised Memorandum of Agreement (MOA), or other documents EPA determines to be necessary (see 40 CFR 271.21(b)(1)). This provision does provide EPA with flexibility regarding the content of authorization applications. However, all of these components are generally submitted to EPA because the State applications often cover Federal rulemakings promulgated during a period of one to several years and therefore address significant Federal rulemakings. This practice is based on provisions located in 40 CFR 271.21(e). These provisions set forth the concept of "clustering" rules, and established deadlines for State submission of applications. Because State applications address Federal rulemakings promulgated during a set period of time, it is common that these applications contain analogous State rules that are both very minor and quite significant.

Although the regulations in § 271.21 contain only general provisions regarding the EPA review and approval process, over time EPA Regions and States have developed practices for the development and review of State applications that vary according to the content of the application, method of State adoption, and the individual approaches of State and EPA staff. Of course, all of these practices are based on the standards for review set forth in the RCRA statute, along with other sections of 40 CFR part 271, and the content and nature of the individual applications. Typically, the State provides a draft of its application, including draft or proposed State regulations, to the EPA Region for review and comment. After the Region submits comments back to the State, the State addresses the comments, and prepares and sends a final application to the EPA Region for review, comment if necessary, and in most cases, approval through notice in the **Federal Register** as an immediate final rule, also known as a direct final rule (see 40 CFR 271.21(b)(3)).

The authorization revision process as implemented does not incorporate formal deadlines or time lines. Many factors have contributed to the duration of the entire process, which EPA and States have often characterized as being too lengthy. One factor is the size and complexity of many revision applications. Another factor is the time necessary for a State to conduct rulemakings to revise its regulations, and to put together a complete application. Allowing EPA review of draft or proposed State regulations may also lengthen the process, even though it is particularly recommended in cases where States find it difficult to amend regulations after they are first promulgated.

B. Summary of Comments on the August 22, 1995 Proposal

EPA did not receive any adverse comments regarding the abbreviated

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authorization procedures that were proposed in the August 22, 1995 notice. Some of these commenters wanted these procedures to apply to the authorization of States for all Federal RCRA rulemakings, and not just to rules that are minor in nature. Other commenters thought that the procedures were appropriate for the authorization of minor rules that would be promulgated in the future, or were already promulgated by EPA. One commenter maintained that the procedures should not be applied to authorizations involving rules that are significant, since the necessary EPA review may involve State enforcement and technical capability.

C. Basis and Rationale for Today's New Procedures

EPA has determined that, while the authorization processes that are currently employed may be appropriate for the authorization of significant changes to the RCRA program, a process that does not include all the possible components of the application, and that provides deadlines for certain actions is better suited for routine or minor changes. As discussed in the August 22, 1995 proposal, routine or minor rulemakings are those EPA rulemakings that do not change the basic structure of the RCRA hazardous waste program, or expand the program into significant new areas or jurisdictions. For example, a new waste listing which amends 40 CFR part 261, a technical correction to a previously promulgated rulemaking, or a rulemaking that is part of a series of rulemakings where the basic regulatory authority has already been established (and remains largely the same), could be considered a minor or routine rulemaking and appropriate for the abbreviated authorization process.

As already discussed, these rules would have a limited impact on the implementation and scope of the RCRA program and therefore, the minor or routine rulemakings do not significantly expand or change the nature of existing State authorized regulatory authority. Further, such rules have a negligible effect on the resources necessary to implement the RCRA program, and do not have an effect on the intergovernmental relationship between EPA and States. Thus, it is appropriate to have an abbreviated authorization process for minor or routine rules to be used by States that have already received authorization for the significant parts of the RCRA program that are being revised, since those States have demonstrated capability in both the administration and implementation of those aspects of the program.

Additionally, an abbreviated authorization process is appropriate since certain components of the normally submitted authorization application (such as the MOA and PD) are affected only rarely by minor or routine revisions. Rather, revisions to these components are usually required in the authorization revision application for a set of rules because of the presence of significant rulemakings, not the minor or routine rules. Likewise, much of the time and effort expended on reviewing and revising authorization applications is due to the extensive changes to the RCRA regulations caused by significant rulemakings.

Further, revisions to the PD or MOA should not be necessary because, as already mentioned above, the minor or routine rules to which today's new, abbreviated procedures apply do not have any significant impact on the States' capability to implement the RCRA program, and do not present any new issues for EPA-State coordination. Also, due to the nature of these minor or routine rules, they should not have an effect on State program consistency and the adequacy of a State's enforcement program. Thus, EPA believes that today's procedure will expedite the implementation of many minor or routine rulemakings, and will enable EPA Regions and States, including the State Attorney General's Office, to devote their resources towards efficient authorization of more significant rules.

EPA has always had the discretion to implement authorization procedures similar to those promulgated today without promulgating regulations. For example, § 271.21(b)(1) allows EPA to determine what documents are necessary in a revision application, according to the circumstances presented by each particular rule. Nonetheless, EPA believes that this codification of procedures is useful for two reasons. First, a codification will provide a consistent procedure for States and EPA to use when processing an application for minor or routine rules. Second, since these procedures will be included in the CFR, all parties involved in the authorization process, including States and the general public, will be aware of this alternative procedure.

Section 3006(b) of RCRA establishes the legal standard for State program approval. As detailed below, the application required in today's procedure includes a statement that the State's regulations for which the State is seeking authorization are equivalent to the Federal regulations. EPA has concluded that this statement, coupled with the review EPA conducts on these minor or routine rules as part of the authorization process, will provide an adequate basis for EPA to make its required findings and grant approval of a program revision under 40 CFR part 271.

D. Rule Listed in Table 1 to § 271.21 to Which the Abbreviated Procedure Applies

In new Table 1 to 40 CFR 271.21, EPA has listed the first rule for which the new abbreviated procedure may be used. This rule is the Universal Treatment Standards (UTS) in §§ 268.40 and 268.48 that were promulgated in the Phase II LDR rule (see 59 FR 47982, September 19, 1994). Note that States are not required to use the new procedures in 40 CFR 271.21(h) when they seek authorization for this rule and other rules that may be placed in Table 1 in the future.

Note that the August 22, 1995, notice proposed to use the abbreviated procedures for the authorization of other LDR rules. These rules were portions of the proposed Phase III LDR rule, and the Phase IV LDR rule (which was split up into two final rules). These LDR proposals have since been finalized (see 61 FR 15660, April 8, 1996, for the Phase III LDR rule; 62 FR 26040, May 12, 1997 for the LDR rule) on wood preserving wastes (part of the Phase IV; and 63 FR, 28556, May 26, 1998 for the Phase IV LDR rule). EPA has decided not to use today's abbreviated procedures in 40 CFR 271.21(h) for the authorization of these final rules. This is because these rules, in addition to the routine modifications and additions to the LDR treatment standards, made changes to the definition of solid waste and other aspects of the RCRA program which affected its scope in a more significant manner.

Today's HWIR-media final rule is also not listed in Table 1 and therefore, as explained earlier, the abbreviated authorization process will not be used for its authorization. EPA considers today's HWIR-media rule to be a significant rule because, for example, it provides for a new type of permit mechanism and a new type of waste management unit. Although EPA believes that today's rule will have many environmentally beneficial effects, it involves several complex regulatory concepts, and thus EPA believes the abbreviated procedures are not appropriate for its authorization.

In the future, as EPA proposes rulemakings under RCRA, EPA will also propose to list additional minor or routine rules in Table 1 to 40 CFR 271.21, to ensure that today's procedure

can be used for their authorization. These future proposed additions to Table 1 will generally be in the same notice as the proposed minor or routine rule. This action was supported by commenters to the August 22, 1995 proposal. Once public comment is received on the proposed listing in Table 1, EPA will promulgate it as appropriate.

In the August 22, 1995 proposed rule, EPA discussed and requested comment on the rules a State must be authorized for to use the abbreviated process. In particular, EPA suggested that States should be authorized for the LDR Third Third rule (see 55 FR 22520, June 1, 1990) to use the new procedure for the LDR Phase II, III and IV rules, or the designated parts of them. Based on the comments, EPA has concluded that the proposed approach was reasonable. However, the prerequisite has been modified so that it is more generally applicable, and easier to understand and implement. Therefore, today's rule simply requires that States be authorized for the part of the program that the routine rule is amending. One example is a revision to an existing rule. Another example is a new waste listing, which amends the list of hazardous wastes in 40 CFR part 261. This prerequisite requirement is located in § 271.21(h)(5).

E. Use of Today's Abbreviated Procedure for the Authorization of Previously Promulgated Rules

In today's rule, EPA explicitly identifies a portion of the Phase II LDR rule as subject to the abbreviated authorization procedures. However, EPA considers the development and review of an authorization application that contains only this rule to be inefficient, and not justified by the administrative resources that EPA and States would expend to develop and review such a small application. This situation would render today's new procedures largely ineffective in accomplishing the goal of making the authorization process more efficient, considering that authorization applications generally cover a large number of Federal rulemakings, ranging in size from about 20 to 100 rules. Further, EPA does not believe that it should treat the authorization of minor or routine rules in a different manner based solely on when the rule was promulgated.

Section 271.21(b)(1) provides the Agency with the flexibility to tailor the contents of a State's application to revise its authorization. Thus, under this provision, EPA could require the same information that is required to be in the State application under the new requirements in § 271. 21(h)(1). EPA also has the discretion to review authorization applications in the same manner as promulgated in today's abbreviated procedures. EPA has always had the ability to commit to an expedited review of State applications. For example, EPA has committed to conducting a speedy review of State applications for several recent rules.

Since today's procedure continues to meet the review requirements set forth in the RCRA statute and existing regulations, and EPA has discretion under 40 CFR 271.21(b)(1) to appropriately tailor the authorization application requirements and review schedules, EPA intends to use the timetables and application requirements in today's procedure for previously promulgated rules, as long as those rules are minor or routine in nature and scope. EPA is developing guidance to enable States and Regions to make speedy and proper decisions regarding which previously promulgated rules should be included in an authorization application that uses the abbreviated procedures. This guidance will identify those previous rulemakings which EPA considers to be minor or routine in nature. It will also identify those rules that are not minor or routine, and for which the abbreviated procedures will not be used. One example of such a rule is the Boilers and Industrial Furnace rule, which establishes authority over a new and complex area. This guidance will take into account the criteria EPA will use to propose to list a new rule in Table 1, the considerations discussed in the section regarding basis and rationale in today's preamble, and EPA's previous experience in authorizing these existing rules. This guidance will also consider how EPA's checklist guidance that is contained in the annual State Program Advisories treats these rules, since the guidance is widely used in those States that do not incorporate the Federal regulations by reference. Copies of the checklist guidance for all existing rules as well as other authorization related guidance are located on the Internet (at: http://www.epa.gov/epaoswer/hazwaste/state/index.htm). For example, many technical corrections to significant rules, which on their own would be considered minor, are included on the same checklist as the original major rule. EPA does not think that States which use the checklist guidance would separate out these technical corrections into a second application because doing so would be difficult and inefficient. Thus, these corrections would not be listed as minor in the guidance. (However, if a State had already been authorized for the major rule, and would prefer to seek an abbreviated process for the subsequent technical corrections, EPA has the discretion to process it accordingly.) EPA encourages States to discuss and coordinate upcoming authorization applications with EPA Regions to determine the most efficient approach to take regarding the submission of revision applications in light of today's rulemaking.

It is important to note that this abbreviated process for the authorization of minor or routine rules only addresses the procedures for processing certain State authorization applications. Today's procedure does not affect the continued responsibility of States to inform EPA of changes to its basic statutory or regulatory authority under 40 CFR 271.21(a). Likewise, today's rule does not affect EPA's ability under 40 CFR 271.21(d) to request a supplemental Attorney General's statement, program description, or other documents or information as necessary.

Occasionally, EPA requests additional information from a State under 40 CFR 271.21(d). A prime example is when a State uses non-RCRA authorities to implement rule requirements. If a State were to use alternative authorities to seek authorization for a rule that is considered to be minor or routine, EPA would probably request additional information from the State Attorney General. Further, where a rulemaking would have a significant impact on the size of a State's universe of regulated facilities, EPA may ask for a revised Program Description and/or a revised MOA. Although EPA does not believe that situations such as this will be common, States should be aware of these and work with the EPA Region before an application is submitted, so that issues regarding the contents and review requirements for an application may be resolved.

F. Final Abbreviated Authorization Procedures

Today's rule amends 40 CFR 271.21 to create a new authorization procedure in paragraph (h) of § 271.21 that consists of an abbreviated application and an expedited process. Note that this procedure was originally proposed in a new § 271.28, but then paragraph (h) of § 271.21 was reserved for this procedure in the April 29, 1996, HWIR-media proposal. Likewise, in the proposal, the rules for which this authorization procedure would be used were listed in 40 CFR 271.28(a), but are now listed in new Table 1 to § 271.21. EPA believes

that this table format is easier to read than the proposed listing.

G. Authorization Application Requirements

The requirements for a State's abbreviated application are located at 40 CFR 271.21(h)(1). These application requirements are essentially unchanged from the August 22, 1995 proposal. This abbreviated application does not require a revised Program Description, Memorandum of Agreement, or Attorney General's Statement. Instead, the application must include a statement from the State that the laws and regulations of the State provide authorities that are equivalent to, and no less stringent than the Federal authorities for which the State is seeking authorization. The certification must include appropriate citations to the specific statutes, administrative regulations and where appropriate, judicial decisions. It must also include a copy of the applicable State laws and regulations. The cited State statutes and regulations must be lawfully adopted at the time the certification is signed and fully effective by the time the program revisions are approved. This statement may be signed by the signatory of the State application. Although the Attorney General may sign this statement, the signature of the Attorney General is not necessary for the authorization of the minor rules subject to today's procedures. These minor or routine rules do not affect the previously authorized legal authority of the State to carry out its hazardous waste program. This requirement is consistent with the provisions of the proposed rule, which did not require the Attorney General to sign the statement. EPA did not receive any negative comments on this aspect of the proposed rule.

H. Procedures for Reviewing and Approving Applications

EPA expects that a concerted effort from both the EPA Regions and States will be essential to meet the deadlines specified in new § 271.21(h). Thus, the Agencies should coordinate their efforts before and after the State application is submitted. EPA encourages States to submit applications in draft form where feasible. This will make it easier for the State to incorporate any changes to its application, and will reduce the frequency of errors in the final application. States should note that high level signatures, such as from the State Director, are not required for a draft application. Further, to make the Regional review more efficient, States should provide clear explanations regarding changes they have made to the Federal regulations and provide a crosswalk between State and Federal regulations.

Once the State submits an application to EPA, the Agency will conduct an expedited review of the State's regulations. This review will consist primarily of a check for completeness and errors within the State regulations, such as LDR treatment levels that are above the Federal levels (and thus are less stringent). EPA anticipates that these errors will be rare because the rulemakings eligible for this abbreviated procedure are not complex, and are easily adopted by the State. This review will constitute the finding of equivalency required by section 3006 of RCRA. Note that this procedure does not affect in any way a State's ability to promulgate regulations more stringent than the Federal regulations under section 3009 of RCRA.

Under § 271.21(h)(2), EPA is required to notify the State within 30 days of receipt of the application if EPA determines that the application, including the statement, is not complete or contains errors. The reasons why EPA can determine that an application is not complete are specified in § 271.21(h)(3). These reasons are: (1) Copies of applicable statutes or regulations are not included; (2) the statutes or regulations relied on by the State to implement the program revisions are not lawfully adopted or effective by the time the program revisions are approved; (3) in the statement, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete; and (4) the State is not authorized to implement the prerequisite RCRA rules as specified in § 271.21(h)(5). If EPA does find that an application is incomplete or contains errors, EPA will summarize the deficiencies in the completeness notice sent to the State under § 271.21(h)(2).

After the State submits an application to the Region (either in draft or final form), the EPA Region should discuss any questions and concerns with State staff. One purpose of these discussions is to seek clarification regarding the State's application, and to attempt to resolve these questions and concerns. Thus, if EPA's questions and concerns are resolved through these discussions, a completeness notice may not be necessary since there would be no outstanding issues. EPA Regions also should commit to conduct additional reviews only on application components that are new or have changed since the previous submission. EPA Regions will prioritize any comments submitted to the States regarding a draft or final application, and will make distinctions between those errors that cause a State's regulations to be less stringent and need to be changed before the application can be approved, and those that may be made at a State's discretion, such as typographical errors. After addressing EPA comments, if any, the State will then resubmit the application to EPA as a final application. Of course, EPA encourages the States to seek clarification regarding any of the Regional comments so they can be properly resolved before resubmitting an application.

Under § 271.21(h)(4), EPA will publish an immediate final rule in accordance with the requirements in § 271.21(b)(3), within 60 days of receiving a complete final application under paragraph (h)(2). Thus, if EPA does not find any deficiencies in a State's final application, this notice will be published within 30 days after EPA completes its check. Likewise, if EPA finds deficiencies in a State's application, this notice will be published within 60 days after receipt of a new corrected application. This immediate final rule is the same promulgation procedure used for other revision authorization decisions, which provides the public the ability to comment on tentative EPA authorization decisions before they become effective. The notice would provide for a 30-day public comment period, and would normally go into effect 60 days after publication unless an adverse comment is received by EPA.

I. EPA's Decision To Not Promulgate Proposed Category 1 and 2 Procedures

In comments on the proposed Category 2 procedures, most commenters supported the concept of improving the authorization procedures. However, many commenters did not support the specific procedural changes that would apply to the authorization of significant rules. These commenters maintained that the proposed Category 2 procedures were too complex and cumbersome, and did not address the underlying interactions between EPA and States within the process. In addition, the proposed procedures would not have affected the authorization process for the dozens of previously promulgated rules for which States are not authorized. Other commenters believed that the proposed Category 2 procedures would amend the EPA review process and standard of review in a way that was not consistent with the RCRA statutory requirements. As a result of these comments, EPA has

further evaluated the existing barriers to accomplishing the goals of the proposals. EPA has concluded that many of the barriers to the authorization of significant rules involve the process of communication and coordination between EPA and States that is more appropriately addressed through guidance and other non-regulatory means. Therefore, EPA is not finalizing the Category 2 procedures proposed in the HWIR-media proposal. EPA is also not finalizing the modifications to the proposed Category 1 procedures that were proposed in the January 25, 1996 notice (see 61 FR 2338). These modifications were opposed by commenters.

J. Improvements to the Existing Authorization Process

EPA believes that the abbreviated procedures promulgated today will help make the State authorization program more efficient. However, most of the authorization work that confronts EPA and States will continue to involve rules that are considered to be significant rules, which are not affected by today's procedure. Examples of these rules include the Boiler and Industrial Furnace rule, the Used Oil rule, and today's HWIR-media rule. EPA believes that many of the coordination and communication activities recommended for today's abbreviated process should be applied to the development and review of all other authorization applications. One example is the prioritization of Regional comments that may be submitted to the State. Further, EPA recommends that EPA Regions and States hold discussions throughout the authorization process to foster closer coordination between the agencies. For example, before a State develops an application, the agencies should discuss what revisions to the MOA and PD may be necessary, and any major changes to the regulations planned by the State. These discussions can be used to produce an authorization process time line that satisfies the needs of both agencies. This time line should contain commitments by both the Region and State to provide expeditious turn-around of comments on applications, revisions to applications, and other correspondence. To meet these commitments, Regions should set internal deadlines for review based on the size of the application and the method a State uses to adopt the Federal regulations. Finally, to avoid numerous submissions of the same document, Regions should help the State develop acceptable language when appropriate or desired by the State.

XII. Conforming Changes (§§ 265.1(b), 268.2(c), 268.50(g), 270.11(d), and 270.42 Appendix I)

Section 265.1(b), which discusses the applicability of part 265 and other standards at interim status facilities, is amended in today's rule to incorporate 40 CFR 264.554 (staging piles requirements) into the list of standards that apply to interim status facilities. Because today's rule for staging piles includes part 264 requirements for staging piles, but not part 265 requirements, EPA wanted to make this conforming change to make it clear that staging piles can be used at interim status facilities. The same conforming change was made in the February 16, 1993 CAMU rule to incorporate CAMUs and temporary units into the same provision for the same reason. The CAMU rule stated, "heretofore, technical requirements for interim status facilities were specified only under part 265. Therefore conforming changes are necessary * * *". The CAMU, temporary unit and staging pile provisions are the only part 264 standards that apply to interim status facilities. The CAMU rule also made a similar conforming change to § 264.3; however that change used the phrase "40 CFR part 264 Subpart S," which includes the provisions for staging piles, so no additional conforming changes to § 264.3 are necessary.

The conforming change to § 268.2(c) is a change to the definition of land disposal. Because placement in a staging pile does not constitute land disposal, it is necessary to make that clear in the definition of land disposal. EPA made the same change for CAMUs in the February 16, 1993 CAMU rule. The new language changes the definition to read that "land disposal means placement in or on the land, except in a corrective action management unit or staging pile." For further discussion of the applicability of land disposal restrictions to staging piles, see the staging piles of today's preamble.

The conforming change to § 268.50(g) makes it clear that storage in a staging pile is not prohibited under the part 268 Subpart E prohibitions on storage. A full discussion of this change can be found in the staging piles of today's preamble.

The changes to § 270.11(d) in today's rule offer an alternative certification for land owners applying for a RAP at a remediation waste management site. A full discussion of this change can be found in the preamble discussion of § 270.82(a) in today's preamble.

The changes to Appendix I of § 270.42 specify which type (Class 1, 2, or 3) of permit modification is necessary for using staging piles at closing facilities and for approval of staging piles or operating term extensions at corrective action facilities. Both of these activities require a Class 2 permit modification. This decision is discussed further in the staging pile of today's preamble.

XIII. How Does Today's Rule Relate to Other EPA Regulations, Initiatives and Programs?

A. Subpart S Initiative

EPA expects today's rule to complement activities being done under the Subpart S Initiative. The Subpart S initiative is an effort to identify and implement broad-based improvements to the corrective action program, drawing upon more than ten years of experience in program implementation. The Subpart S Initiative addresses such issues as corrective action program priorities, use of administrative flexibility in implementing corrective action, and development of guidance and regulations for setting site-specific conditions in permits and orders for investigating and remediating releases. The May 1, 1996 Advance Notice of Proposed Rulemaking (61 FR 19432) describes the Subpart S Initiative in detail. Because the HWIR-media regulations specifically address the management of remediation waste during site clean up, they complement the broader Subpart S Initiative.

B. Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris

EPA had hoped that the more comprehensive reforms proposed in the HWIR-media proposal would sufficiently address the issues raised in the "Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris" proposal. This proposal, generally referred to as the "Non-UST TC Suspension," was published on December 24, 1992 (57 FR 61542). EPA never finalized the Non-UST Suspension, but stated in the HWIR-media proposal that finalization would not likely be necessary because a final HWIR-media rule would solve the problems that the Non-UST TC Suspension was intended to address. However, especially in light of the more limited changes included in today's final rule, EPA recognizes that additional reform may be needed for the cleanup of non-UST petroleum contaminated media and debris.

States have developed petroleum response programs to respond to petroleum contamination including contaminated media and debris.

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However, as stated by many States with these programs, if the wastes must be managed as RCRA hazardous because they fail the TCLP test for benzene (as is sometimes the case), then the applicable Subtitle C requirements such as LDR, MTR and permitting delay the response actions, significantly increase costs, and in some cases may act as a disincentive to full cleanup. If remediation wastes, including petroleum contaminated media and debris, had been excluded under either the Bright Line or Unitary Approaches proposed in the HWIR-media proposal, then those State programs may have been able to conduct responses as they had planned, and the Non-UST TC Suspension may have no longer been needed. However, today's HWIR-media rule does not exclude any wastes from Subtitle C requirements, and although EPA is streamlining the permitting process, it is still time consuming in comparison to the fast response times needed by these State petroleum response programs. EPA will continue to review the issues addressed in the Non-UST TC Suspension proposal (and subsequently raised in comments received on the proposed HWIR-media rule); however, the Agency is not taking final action today on that proposal.

C. Deferral of Petroleum-Contaminated Media and Debris from Underground Storage Tank Corrective Actions

Today's rule does not affect the temporary deferral from certain portions of EPA's hazardous waste regulations of petroleum-contaminated media and debris that are generated from underground storage tank corrective actions that are subject to Subtitle I of RCRA. This UST deferral was published on March 29, 1990 (55 FR 11862), and amended later on June 29, 1990 (55 FR 26986). The deferral appears at 40 CFR part 261.4(b)(10).

D. Hazardous Waste Identification Rule (HWIR-waste) (May 20, 1992, and December 21, 1995)

Although today's rule and the HWIR-waste rule are often discussed together, they are two separate rulemaking efforts on separate schedules. Today's rule does not address, in any way, the key issue of the HWIR-waste rule, which is at what point wastes and media should exit the Subtitle C regulatory system. EPA will sign a new proposal for HWIR-waste by October 31, 1999 and a final rule by April 30, 2001.

E. CERCLA

EPA expects that the provisions in today's rule applicable to staging piles will provide the CERCLA program with more flexibility at CERCLA sites where these provisions are ARARs. EPA does not expect the new RAP provisions to have any effect on CERCLA sites, because CERCLA sites do not require permits for on-site management of remediation wastes. Likewise, because the dredged sediments exclusion will not alter current practice significantly, EPA does not expect significant impact from the new dredged material provisions on the CERCLA program. Finally, today's streamlined State authorization procedures will have no effect on the CERCLA program. In summary, EPA anticipates some positive effect on the CERCLA programs from staging piles, but little or no effect on the CERCLA program from the other provisions of HWIR-media.

F. Legislative Reforms

While EPA believes today's rule will improve remediation waste management and expedite cleanups, the Agency also recognizes that additional reform is needed, especially for management of non-media remediation wastes, such as remedial sludges, and to provide for more tailored land disposal requirements, minimum technological requirements, and address certain statutory permitting requirements. The Agency considers today's rule to be a partial step, rather than a full solution to the problems raised by the application of RCRA Subtitle C requirements to remediation wastes. The Agency will continue to participate in discussions on potential legislation to promote this additional needed reform. If legislation is not forthcoming, the Agency may reexamine its approach to remediation waste management and may take additional administrative action.

G. Brownfields

Today's rule complements EPA's continuing efforts to address Brownfields properties. The Agency defines Brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. In February 1995, EPA announced its Brownfields Action Agenda, launching the first Federal effort of its kind designed to empower States, tribes, communities, and other parties to safely clean up, reuse, and return Brownfields to productive use. In 1997, to broaden the mandate of the original agenda, EPA initiated the Brownfields National Partnership Agenda, involving nearly 20 other Federal agencies in Brownfields cleanup and reuse. Since the 1995 announcement, EPA has funded Brownfield pilots and reduced barriers to cleanup and redevelopment by clarifying environmental liability issues, developing partnerships with interested stakeholders, and stressing the importance of environmental workforce training.

As the Agency's Brownfield activities have increased, EPA and stakeholders have recognized that the statutory and regulatory hazardous waste management and permitting requirements under RCRA can render the cleanup and reuse of Brownfields properties cost and time prohibitive. In particular, certain RCRA requirements, written with "end of pipe" wastes in mind, may be unnecessarily burdensome when applied to Brownfield cleanups. By streamlining the permitting process and removing the requirement for facility-wide corrective action at remediation-only facilities, today's rule should facilitate cleanup activities. Reducing RCRA impediments to cleanup activities not only addresses existing Brownfield sites by facilitating cleanups at these sites, but also helps prevent the creation of future Brownfields by encouraging proactive responses to site contamination during the productive life of a facility.

H. Land Disposal Restrictions (Part 268)

EPA proposed revisions to the treatment standards for hazardous contaminated soils first in the Phase II LDR rule, "Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soils," 58 FR 48092, and again in the April 29, 1996 HWIR-media proposal, 61 FR 18780. EPA finalized the soil treatment standards in the final LDR Phase IV rule (63 FR 28556 (May 26, 1998).

XIV. When Will the Final HWIR-media Rule Become Effective?

Today's rule will become effective June 1, 1999.

XV. Regulatory Requirements

A. Assessment of Potential Costs and Benefits

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether any proposed or final regulatory action is "significant" and therefore, subject to Office of Management and Budget (OMB) review and the requirements in the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(a) have an annual effect on the economy of $100 million or more, or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(b) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The Agency has determined that today's final rule is a "significant regulatory action" because it raises "novel legal or policy issues" as specified in (d) above. OPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for this rulemaking (*see* Docket # F–98–MHWF–FFFFF). The Agency has prepared an economic assessment background document in support of today's final rule which provides much greater detail than this preamble discussion on the analysis of today's standards ("Economic Assessment of the Final Hazardous Waste Identification Rule for Contaminated Media"). A copy of that document can be found in the docket for today's rule; a summary of this assessment is presented below.

2. Background

Today's rule addresses three main issues: dredged material exclusion, staging piles, and remedial action plans (RAPs). Although still believing there is a need for comprehensive regulatory reform of remediation waste management requirements, the Agency has decided not to go forward with the comprehensive regulatory changes which were proposed in the April 29, 1996 HWIR-media Proposed Rule (61 FR 18780). (Please see section II.E. for a full discussion of the basis for the Agency's decision.) The economic assessment prepared in support of today's rule addresses only the three main issues covered in the rule, none of which were analyzed in the proposed rule economic assessment due to their relatively small scale impacts compared with the other proposed rule provisions. The response to comments document for today's rule responds to comments received on the proposed rule economic assessment, and is available in the docket for today's rule.

3. Need for Regulation

Today's rule provides relief from existing regulatory requirements in three specific cases dealing with remediation and management of wastes. The dredged material exclusion excludes from RCRA requirements a portion of dredged material handled under CWA and MPRSA permits, and thus provides clarity of regulatory jurisdiction and removes the potential for duplicative effort. The staging pile provision allows for temporary storage of remediation wastes in preparation for future management. This temporary relief from the traditional requirements for land placement provides potential cost savings and encourages remediation of wastes. Additionally, the RAP provision allows for remedial activities to occur under an expedited vehicle instead of the customary RCRA permit requirements. Furthermore, use of this vehicle does not invoke RCRA 3004(u) facility-wide corrective action obligations; those facilities already under facility-wide corrective action requirements which employ a RAP remain under these requirements. Thus, today's rule represents a modest reform of the remediation waste requirements, while maintaining protection of human health and the environment.

4. Assessment of Potential Regulatory Costs

The economic assessment examines the cost impacts of the provisions of today's rule. Benefits of the rule, in the form of human health and environmental risk impacts, are not examined in this assessment. The Agency believes, however, that these provisions will tend toward greater protection of human health and the environment by promoting more cleanups. Economic impacts to industries affected by today's rule have not been estimated, as the rule provides an overall cost savings.

a. Methodology and Results for Estimating Regulatory Costs

i. Dredged Material Exclusion

The Agency did not assess impacts from the dredged material exclusion in the proposed rule economic assessment, and provided a qualitative assessment of the cost savings for this provision in the final rule.

The Agency believes that this exclusion will result in minor reductions of compliance costs with respect to current practices of dredged material management. The Agency did not collect volume data on dredged material management under RCRA. Therefore, no estimate of the cost savings has been developed, although it is not expected to be significant. In addition to the minor cost savings associated with this provision, the exclusion may also decrease the potential for procedural delays (caused by multiple permit applications) that delay timely waste disposal.

ii. Staging Piles

The Agency did not assess the impacts of remediation piles (the predecessor of staging piles in the proposed rule) in the proposed rule economic assessment, and has not quantified the impacts from this provision in today's final rule economic impact assessment. Because of the narrow scope of the staging pile provisions and their significant overlap with existing CAMU, temporary unit, and AOC provisions, the Agency believes that this portion of the rule will likely have only minor cost savings and economic impacts. As discussed earlier, in some cases, staging piles may facilitate the short-term accumulation of remediation wastes until a sufficient volume can be shipped to a treatment or disposal facility or accumulated to implement cost-effective on-site management. In these situations, the new provisions will result in cost savings. The Agency, however, does not expect that the use of staging piles will provide significant quantifiable cost savings, and any savings realized must be evaluated in light of the costs associated with obtaining staging pile approval (either through an RCRA permit or a RAP). The staging pile provisions will, however, not result in any increase in cost because their use is voluntary.

One alternative which the Agency has determined not to adopt in today's final rule is to allow treatment in staging piles. Allowing treatment would potentially increase the use of staging piles, making them more beneficial in certain cases where a CAMU is not necessary for disposal and a temporary unit does not provide enough management flexibility. However, the Agency believes that these cases would be relatively few, and that treatment is more appropriate in a CAMU, which has design and operating standards to fit the requirements surrounding treatment in a unit.

iii. Remediation Action Plans (RAPs)

This section of the preamble summarizes the methodology and results for the cost assessment performed on the RAP provisions in today's final rule. The Agency estimates

a total cost savings of between $5 million and $35 million per year for the RAP provision. The Agency did not assess the impacts of RAPs in the proposed rule economic assessment.

To evaluate this new provision, the Agency performed a quantitative analysis focusing on the cost saving opportunities provided by RAPs to unpermitted facilities which excavate contaminated media and send it off-site for treatment. An additional savings is estimated to occur at unpermitted facilities which are not currently undertaking remediation due to requirements involved in RCRA permitting; however, this savings has not been quantified.

Facilities permitted under RCRA, as well as interim status facilities, are already under facility-wide corrective action obligations, and would therefore be much less likely to shift to use of RAPs given the relatively minor incremental savings of using a RAP over obtaining a permit modification. Therefore, unpermitted facilities, mainly from State and voluntary cleanups, were examined for a cost savings impact from the RAP provisions. To calculate this savings, the Agency: (1) Estimated the total number of unpermitted facilities currently sending remediation waste off site in the baseline; (2) determined the number of facilities in this group which will shift current practices to take advantage of the RAP provision (that is, will shift to on-site treatment); (3) projected an incremental cost savings for this shift; and (4) applied it to the number of facilities determined to shift to estimate the total cost savings for that group. The cost savings was quantified as the reduction in transportation costs for facilities which are estimated to no longer ship waste off-site for treatment, and the reduction in treatment costs for those facilities projected to shift from off-site ex-situ treatment in the baseline to on-site in-situ treatment in the post-regulatory case. The Agency estimated the number of States which already have permit-waiver authority, and thus where the RAP provision is less likely to have a significant impact; this figure was employed in determining the number of facilities likely to be impacted.

The total number of facilities estimated to shift to use of RAPs is between seven and 66 facilities, all of which currently (in the baseline) treat excavated contaminated media off-site. The total cost savings estimated for this group is between $5 million and $35 million per year.

B. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken incorporation of environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the HWIR-media final rule on low-income populations and minority populations.

EPA has concluded that today's final rule will potentially advance environmental justice causes. The HWIR-media final rule will potentially assist in expediting site cleanups across the nation by reducing the need for time-consuming permitting of on-site cleanup activities, increasing the flexibility of decision-makers to respond to site-specific conditions, and lessening administrative and regulatory complications and delays. This may free remediation resources to address additional sites. By encouraging excavation of contaminated media, the HWIR-media final rule will expedite the restoration of sites and lead to their beneficial use, which may result in new jobs and increased economic activity in low-income or minority communities. This economic activity could take the form of increased employment of local community members at the cleanup sites; the sale and redevelopment of sites for new economic activities; and new beneficial uses for remediated properties, such as parks, transportation facilities, and even hospitals.

C. Unfunded Mandates Reform Act

The Agency also evaluated the final HWIR-media rule for compliance with the Unfunded Mandates Reform Act of 1995. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, Local, and Tribal governments, in the aggregate or to the private sector, of $100 million or more in one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Local, or Tribal governments or the private sector because the UMRA generally excludes from the definition of "Federal intergovernmental mandate" duties that arise from participation in a voluntary Federal program. HWIR-media is a voluntary program as it applies to State, Local, and Tribal governments. In addition, promulgation of the HWIR-media rule, because it is considered less stringent than current requirements, is not expected to result in mandated costs estimated at $100 million or more to any State, Local, or Tribal governments, in any one year. Thus, today's proposal is not subject to the requirements in sections 202 and 205 of the UMRA. Finally, EPA has determined that the proposed HWIR-media rule contains no regulatory

requirements that might significantly or uniquely affect small governments, and thus is not subject to the requirements in section 203 of the UMRA. Specifically, the program is generally less stringent than the existing program and makes no distinctions between small governments and any potentially regulated party.

D. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. It provides more flexibility for States to implement already-existing requirements.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) at the time the Agency publishes a proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis that describes the effect of the rule on small entities. However, no regulatory flexibility analysis is required if the Administrator certifies the rule will not have a significant adverse impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Agency has determined that today's final rule will not have a significant adverse economic impact on a substantial number of small entities, because the rule is estimated to provide regulatory relief, and will not impose any costs on the regulated community. (For the analysis of impacts showing the relief nature of today's rule, see the above economic assessment.) Therefore, no RFA has been prepared. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq*. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. *1775.02*) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The Agency has estimated the burden associated with complying with the requirements in this proposed rule. Included in the ICR are the burden estimates for the following requirements for industry respondents: reading the regulations; for staging piles, applying, keeping records, requesting extensions, closing, and incorporating into permits; for general facility standards for remediation waste management sites, obtaining an EPA identification number, performing waste analysis, demonstrations for locating units in floodplains, and contingency and emergency plans; for RAPs at permitted facilities, the permit modification procedures; and finally, for RAP applicants, the data in the RAP application, transfer of facility ownership, and recordkeeping. Included also are the burden estimates for State respondents for applying for abbreviated State authorization.

The Agency has determined that all of this information is necessary to ensure compliance with today's rule. Specifically, the information for staging piles is required to ensure that the design and operating of staging piles will comply with all applicable regulations and will be protective of human health and the environment, to ensure that staging piles are operated within the two year limit, to ensure that any requested extensions are necessary and will not threaten human health and the environment, to ensure that staging piles are closed according to the applicable regulations, and finally, to ensure that permits are modified appropriately. The information for general facility standards is necessary to ensure consistent and coordinated identification of the site, to have adequate knowledge of the waste being managed to ensure the appropriate waste management requirements are complied with, and to be adequately prepared for contingencies and emergencies. The information for RAPs is necessary to determine whether the remediation waste management activities will comply with the applicable regulatory requirements, to ensure smooth transfer of facility ownership, and to ensure that facility owners and operators have access to all relevant information regarding their RAP application. The information for State respondents seeking authorization is necessary to verify legal authorities and confirm that the State requirements are no less stringent than Federal law.

All of the information required under today's rule is required only when the respondent wishes to obtain a benefit such as a staging pile, a RAP, or State authorization. Provisions already exist, such as other units in part 264, and traditional RCRA permits whereby respondents could perform the same functions allowed in staging piles and RAPs, except that staging piles and RAPs may be more desirable because they are more flexible and more appropriate for the cleanup scenario, so respondents may voluntarily choose to obtain staging piles and RAPs instead of other options, but they are not required to. Also, because today's rule is less stringent than the existing RCRA regulations, it is optional for States to adopt and seek authorization for this rule. Therefore, States could choose not to adopt today's rule.

Section 3007(b) of RCRA and 40 CFR part 2, Subpart B, which define EPA's general policy on the public disclosure of information, contain provisions for confidentiality and apply to today's rulemaking.

EPA has tried to minimize the burden of this collection of information in respondents. The universe of respondents is expected to be sites conducting cleanup under State and Federal cleanup programs. EPA expects that the industries most likely to be affected by these requirements will be associated with the following SIC codes:

SIC Code	Industry
2491	Wood preserving
2812	Alkalies and chlorine
2819, 2869	Industrial organic chemicals

2821 Plastics materials and resins
2879 Agricultural chemicals
2899 Chemical preparations
2911 Petroleum refining
3000 Rubber and miscellaneous plastics products
3089 Plastics products
3229 Pressed and blown glass
3316 Cold finishing of steel shapes
3339 Primary nonferrous metals
3341 Secondary nonferrous metals
3470 Metal services
3480, 3489 Ordnance and accessories
3482 Small arms ammunition
3568 General industrial machinery
3662 Communications equipment
3674 Semiconductors and related devices
3691 Storage batteries
3728 Aircraft parts and equipment
3764 Space propulsion units and parts
3792 Travel trailers and campers
3820 Measuring and controlling devices
3840 Medical instruments and supplies
4230 Trucking terminal facilities
4581 Airports, flying fields, and services
4953 Refuse systems
7210 Laundry, cleaning, and garment services
8221 Colleges and universities
9711 National security

EPA estimates the projected annual hour burden for industry respondents will be 33,733 hours, and cost of $1,967,699. Total estimates over three years are 101,199 hours and $5,903,097. EPA estimates that State agency respondent will incur a total annual burden of 886 hours and $22,410, which over three years would be 2,658 hours and $67,230. EPA estimates that the annual Agency burden will be 5,726 hours and $176,899, which over three years would be 17,178 hours and $530,697. As subsets of the above total costs, EPA estimates no annual capital costs, and annual operation and maintenance costs for staging piles and RAPs of $49,902, and for State authorization of $54. As a subset of operation and maintenance, EPA estimates $750 each time a responder purchases services for waste analysis, for a total of $65,472. This is the only area where EPA expects purchase of services.

For complying with the requirements in the HWIR-media rule, industry respondents are expected to spend an average of 13.7 hours per year on recordkeeping requirements and 5.0 hours per year on reporting requirements. State agency respondents are expected to spend no time on recordkeeping, as there are no recordkeeping requirements for the States, and 16.4 hours per year on reporting requirements.

EPA estimates that 1,805 sites are eligible for RAPs and staging piles, and are assumed by EPA to be the universe of potential responders. These 1,805 potential responders are expected to read the regulations. EPA estimates that 90 responders per year will use staging piles, and 66 responders per year will use RAPs. EPA estimates that 18 States per year will apply for authorization. Responders will only need to respond once for each activity for staging piles, RAPs, or State authorization.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by December 30, 1998. Include the ICR number in any correspondence.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using these standards.

EPA is not proposing any new test methods or other technical standards as part of today's final rule. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

H. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (*see* 62 FR 19885, April 23, 1997) applies to any rule that EPA determines: (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because this is not an "economically significant" regulatory action as defined by E.O. 12866.

J. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not

required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. In addition, this rule imposes no new requirements on owners and operators, but rather, allow flexibility to regulators to implement requirements already in place. Accordingly, the requirements in 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Parts 264 and 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business administration, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: 42 U.S.C. 6912(a), 6921, 6924, 6926, and 6927.

Dated: November 2, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by revising the introductory text; by removing the definition for "Corrective action management unit or CAMU"; by revising the definitions for "Miscellaneous unit" and "Remediation waste"; by adding paragraph (3) to the definition of "Facility"; and by adding definitions in alphabetical order for "Corrective action management unit (CAMU)," "Remediation waste management site" and "Staging pile" to read as follows:

§ 260.10 Definitions.

When used in parts 260 through 273 of this chapter, the following terms have the meanings given below:

* * * * *

Corrective action management unit (CAMU) means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

* * * * *

Facility * * *

(3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.

* * * * *

Miscellaneous unit means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under part 146 of this chapter, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under 40 CFR 270.65, or staging pile.

* * * * *

Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.

Remediation waste management site means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under 40 CFR 264.101, but is subject to corrective action requirements if the site is located in such a facility.

* * * * *

Staging pile means an accumulation of solid, non-flowing remediation waste (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements of 40 CFR 264.554.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

4. Section 261.4 is amended by adding paragraph (g) to read as follows:

§ 261.4 Exclusions.

* * * * *

(g) *Dredged material that is not a hazardous waste.* Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term *dredged material* has the same meaning as defined in 40 CFR 232.2;

(2) The term *permit* means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs (g)(2)(i) and (ii) of this section, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

6. Section 264.1 is amended by adding new paragraph (j) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(j) The requirements of subparts B, C, and D of this part and § 264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D of this part, and § 264.101 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of subparts B, C, and D of this part, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700–12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to this part and part 268 of this chapter, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of this part, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under subparts I through O and subpart X of this part, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of § 264.18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with §§ 264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d) at the remediation waste management site, according to the requirements of § 264.19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in paragraphs (j)(2) through (j)(6) and (j)(9) through (j)(10) of this section; and

(13) Maintain records documenting compliance with paragraphs (j)(1) through (j)(12) of this section.

7. Section 264.73 is amended by adding paragraph (b)(17) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(17) Any records required under § 264.1(j)(13).

8. Section 264.101 is amended by adding paragraph (d) to read as follows:

§ 264.101 Corrective action for solid waste management units.

* * * * *

(d) This does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes.

9. Section 264.552 is amended by revising paragraph (a) to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) To implement remedies under § 264.101 or RCRA 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit, as defined in § 260.10, under the requirements in this section. A CAMU must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(2) Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

* * * * *

10. Section 264.553 is amended by revising paragraph (a) to read as follows:

§ 264.553 Temporary Units (TU).

(a) For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under § 264.101 or RCRA 3008(h), or at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate a unit at the facility, as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the temporary unit originated. For temporary units, the Regional Administrator may replace the design, operating, or closure standard applicable to these units under this part 264 or part 265 of this chapter with alternative requirements which protect human health and the environment.

* * * * *

11. New § 264.554 is added to subpart S to read as follows:

§ 264.554 Staging piles.

This section is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this establishes enforceable legal requirements. For this "I" and "you" refer to the owner/operator.

(a) *What is a staging pile?* A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in § 260.10 of this chapter) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the Director in according to the requirements in this section.

(b) *When may I use a staging pile?* You may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if you follow the standards and design criteria the Director has designated for that staging pile. The Director must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with § 270.72(a)(5) and (b)(5) of this chapter). The Director must establish conditions in the permit, closure plan, or order that comply with paragraphs (d) through (k) of this section.

(c) *What information must I provide to get a staging pile designated?* When seeking a staging pile designation, you must provide:

(1) Sufficient and accurate information to enable the Director to impose standards and design criteria for your staging pile according to paragraphs (d) through (k) of this section;

(2) Certification by an independent, qualified, registered professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

(3) Any additional information the Director determines is necessary to protect human health and the environment.

(d) *What performance criteria must a staging pile satisfy?* The Director must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

(1) The standards and design criteria must comply with the following:

(i) The staging pile must facilitate a reliable, effective and protective remedy;

(ii) The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, run-off/run-on controls, as appropriate); and

(iii) The staging pile must not operate for more than two years, except when the Director grants an operating term extension under paragraph (i) of this section (entitled "May I receive an operating extension for a staging pile?"). You must measure the two-year limit, or other operating term specified by the Director in the permit, closure plan, or order, from the first time you place remediation waste into a staging pile. You must maintain a record of the date when you first placed remediation waste into the staging pile for the life of the permit, closure plan, or order, or for three years, whichever is longer.

(2) In setting the standards and design criteria, the Director must consider the following factors:

(i) Length of time the pile will be in operation;

(ii) Volumes of wastes you intend to store in the pile;

(iii) Physical and chemical characteristics of the wastes to be stored in the unit;

(iv) Potential for releases from the unit;

(v) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and

(vi) Potential for human and environmental exposure to potential releases from the unit;

(e) *May a staging pile receive ignitable or reactive remediation waste?* You must not place ignitable or reactive remediation waste in a staging pile unless:

(1) You have treated, rendered or mixed the remediation waste before you placed it in the staging pile so that:

(i) The remediation waste no longer meets the definition of ignitable or reactive under § 261.21 or § 261.23 of this chapter; and

(ii) You have complied with § 264.17(b); or

(2) You manage the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.

(f) *How do I handle incompatible remediation wastes in a staging pile?* The term "incompatible waste" is defined in § 260.10 of this chapter. You must comply with the following requirements for incompatible wastes in staging piles:

(1) You must not place incompatible remediation wastes in the same staging pile unless you have complied with § 264.17(b);

(2) If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers,

other piles, open tanks or land disposal units (for example, surface impoundments), you must separate the incompatible materials, or protect them from one another by using a dike, berm, wall or other device; and

(3) You must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with § 264.17(b).

(g) *Are staging piles subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR)?* No. Placing hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or create a unit that is subject to the minimum technological requirements of RCRA 3004(o).

(h) *How long may I operate a staging pile?* The Director may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. You must use a staging pile no longer than the length of time designated by the Director in the permit, closure plan, or order (the "operating term"), except as provided in paragraph (i) of this section.

(i) *May I receive an operating extension for a staging pile?* (1) The Director may grant one operating term extension of up to 180 days beyond the operating term limit contained in the permit, closure plan, or order (see paragraph (l) of this section for modification procedures). To justify to the Director the need for an extension, you must provide sufficient and accurate information to enable the Director to determine that continued operation of the staging pile:

(i) Will not pose a threat to human health and the environment; and

(ii) Is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(2) The Director may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure protection of human health and the environment.

(j) *What is the closure requirement for a staging pile located in a previously contaminated area?* (1) Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in a previously contaminated area of the site by removing or decontaminating all:

(i) Remediation waste;

(ii) Contaminated containment system components; and

(iii) Structures and equipment contaminated with waste and leachate.

(2) You must also decontaminate contaminated subsoils in a manner and according to a schedule that the Director determines will protect human health and the environment.

(3) The Director must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.

(k) *What is the closure requirement for a staging pile located in an uncontaminated area?* (1) Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in an uncontaminated area of the site according to §§ 264.258(a) and 264.111; or according to §§ 265.258(a) and 265.111 of this chapter.

(2) The Director must include the above requirement in the permit, closure plan, or order in which the staging pile is designated.

(l) *How may my existing permit (for example, RAP), closure plan, or order be modified to allow me to use a staging pile?* (1) To modify a permit, other than a RAP, to incorporate a staging pile or staging pile operating term extension, either:

(i) The Director must approve the modification under the procedures for Agency-initiated permit modifications in § 270.41 of this chapter; or

(ii) You must request a Class 2 modification under § 270.42 of this chapter.

(2) To modify a RAP to incorporate a staging pile or staging pile operating term extension, you must comply with the RAP modification requirements under §§ 270.170 and 270.175 of this chapter.

(3) To modify a closure plan to incorporate a staging pile or staging pile operating term extension, you must follow the applicable requirements under § 264.112(c) or § 265.112(c) of this chapter.

(4) To modify an order to incorporate a staging pile or staging pile operating term extension, you must follow the terms of the order and the applicable provisions of § 270.72(a)(5) or (b)(5) of this chapter.

(m) *Is information about the staging pile available to the public?* The Director must document the rationale for designating a staging pile or staging pile operating term extension and make this documentation available to the public.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

§ 265.1 [Amended]

13. Section 265.1(b) is amended in the first sentence by revising ", and of 40 CFR 264.552 and 40 CFR 264.553," to read ", and of 40 CFR 264.552, 264.553, and 264.554,".

PART 268—LAND DISPOSAL RESTRICTIONS

14. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

15. Section 268.2 is amended by revising paragraph (c) to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(c) *Land disposal* means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

* * * * *

16. Section 268.50 is amended by adding new paragraph (g) to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

* * * * *

(g) The prohibition and requirements in this do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to § 264.554 of this chapter.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

17. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

18. Section 270.2 is amended by adding a definition for "Remedial

Action Plan (RAP)" in alphabetical order to read as follows:

§ 270.2 Definitions.

* * * * *

Remedial Action Plan (RAP) means a special form of RCRA permit that a facility owner or operator may obtain instead of a permit issued under §§ 270.3 through 270.66, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in § 260.10 of this chapter) at a remediation waste management site.

* * * * *

Subpart B—Permit Application

19. Section 270.11 is amended by revising paragraph (d) to read as follows:

§ 270.11 Signatories to permit applications and reports.

* * * * *

(d)(1) Any person signing a document under paragraph (a) or (b) of this must make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) For remedial action plans (RAPs) under subpart H of this part, if the operator certifies according to paragraph (d)(1) of this section, then the owner may choose to make the following certification instead of the certification in paragraph (d)(1) of this section:

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Subpart D—Changes to Permits

20. Appendix I to § 270.42 is amended by adding new modification D.3.g. and new modification N.3. to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

Modifications	Class
• • • • •	
D. Closure	
• • • • •	
3. Addition of the following new units to be used temporarily for closure activities:	
• • • • •	
g. Staging piles	2
• • • • •	
N. Corrective Action:	
• • • • •	
3. Approval of a staging pile or staging pile operating term extension pursuant to § 264.554 ...	2

Subpart F—Special Forms of Permits

21. A new § 270.68 is added to subpart F to read as follows:

§ 270.68 Remedial Action Plans (RAPs).

Remedial Action Plans (RAPs) are special forms of permits that are regulated under subpart H of this part.

Subpart G—Interim Status

22. Section 270.73 is amended by revising paragraph (a) to read as follows:

§ 270.73 Termination of interim status.

* * * * *

(a) Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under subpart H of this part, is made.

* * * * *

23–24. A new Subpart H is added to Part 270 to read as follows:

Subpart H—Remedial Action Plans (RAPs)

Sec.

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Subpart H—Remedial Action Plans (RAPs)

§ 270.79 Why is this subpart written in a special format?

This subpart is written in a special format to make it easier to understand the regulatory requirements. Like other

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Environmental Protection Agency (EPA) regulations, this establishes enforceable legal requirements. For this Subpart, "I" and "you" refer to the owner/operator.

General Information

§ 270.80 What is a RAP?

(a) A RAP is a special form of RCRA permit that you, as an owner or operator, may obtain, instead of a permit issued under §§ 270.3 through 270.66, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in § 260.10 of this chapter) at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under § 270.230.

(b) The requirements in §§ 270.3 through 270.66 do not apply to RAPs unless those requirements for traditional RCRA permits are specifically required under §§ 270.80 through 270.230. The definitions in § 270.2 apply to RAPs.

(c) Notwithstanding any other provision of this part or part 124 of this chapter, any document that meets the requirements in this section constitutes a RCRA permit under RCRA section 3005(c).

(d) A RAP may be:

(1) A stand-alone document that includes only the information and conditions required by this subpart; or

(2) Part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this subpart.

(e) If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your obligations under those authorities in any way.

(f) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

§ 270.85 When do I need a RAP?

(a) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a RCRA permit under § 270.1, you must either obtain:

(1) A RCRA permit according to §§ 270.3 through 270.66; or

(2) A RAP according to this subpart.

(b) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subpart.

(c) You may obtain a RAP for managing hazardous remediation waste at an already permitted RCRA facility. You must have these RAPs approved as a modification to your existing permit according to the requirements of § 270.41 or § 270.42 instead of the requirements in this Subpart. When you submit an application for such a modification, however, the information requirements in § 270.42(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you must submit the information required under § 270.110. When your permit is modified the RAP becomes part of the RCRA permit. Therefore when your permit (including the RAP portion) is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements in §§ 270.41 and 270.43, terminated according to the applicable requirements in § 270.43, and expire according to the applicable requirements in §§ 270.50 and 270.51.

§ 270.90 Does my RAP grant me any rights or relieve me of any obligations?

The provisions of § 270.4 apply to RAPs. (**NOTE:** The provisions of § 270.4(a) provide you assurance that, as long as you comply with your RAP, EPA will consider you in compliance with Subtitle C of RCRA, and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in § 270.4.)

Applying for a RAP

§ 270.95 How do I apply for a RAP?

To apply for a RAP, you must complete an application, sign it, and submit it to the Director according to the requirements in this subpart.

§ 270.100 Who must obtain a RAP?

When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.

§ 270.105 Who must sign the application and any required reports for a RAP?

Both the owner and the operator must sign the RAP application and any required reports according to § 270.11(a), (b), and (c). In the application, both the owner and the operator must also make the certification required under § 270.11(d)(1). However, the owner may choose the alternative certification under § 270.11(d)(2) if the operator certifies under § 270.11(d)(1).

§ 270.110 What must I include in my application for a RAP?

You must include the following information in your application for a RAP:

(a) The name, address, and EPA identification number of the remediation waste management site;

(b) The name, address, and telephone number of the owner and operator;

(c) The latitude and longitude of the site;

(d) The United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;

(e) A scaled drawing of the remediation waste management site showing:

(1) The remediation waste management site boundaries;

(2) Any significant physical structures; and

(3) The boundary of all areas on-site where remediation waste is to be treated, stored or disposed;

(f) A specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This must include information on:

(1) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;

(2) An estimate of the quantity of these wastes; and

(3) A description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of part 268 of this chapter, as applicable;

(g) Enough information to demonstrate that operations that follow the provisions in your RAP application will ensure compliance with applicable requirements of parts 264, 266, and 268 of this chapter;

(h) Such information as may be necessary to enable the Regional Administrator to carry out his duties under other Federal laws as is required for traditional RCRA permits under § 270.14(b)(20);

(i) Any other information the Director decides is necessary for demonstrating compliance with this subpart or for determining any additional RAP conditions that are necessary to protect human health and the environment.

§ 270.115 What if I want to keep this information confidential?

Part 2 (Public Information) of this chapter allows you to claim as confidential any or all of the information you submit to EPA under this subpart. You must assert any such claim at the time that you submit your RAP application or other submissions by stamping the words "confidential business information" on each page containing such information. If you do assert a claim at the time you submit the information, EPA will treat the information according to the procedures in part 2 of this chapter. If you do not assert a claim at the time you submit the information, EPA may make the information available to the public without further notice to you. EPA will deny any requests for confidentiality of your name and/or address.

§ 270.120 To whom must I submit my RAP application?

You must submit your application for a RAP to the Director for approval.

§ 270.125 If I submit my RAP application as part of another document, what must I do?

If you submit your application for a RAP as a part of another document, you must clearly identify the components of that document that constitute your RAP application.

Getting a RAP Approved

§ 270.130 What is the process for approving or denying my application for a RAP?

(a) If the Director tentatively finds that your RAP application includes all of the information required by § 270.110 and that your proposed remediation waste management activities meet the regulatory standards, the Director will make a tentative decision to approve your RAP application. The Director will then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to this subpart.

(b) If the Director tentatively finds that your RAP application does not include all of the information required by § 270.110 or that your proposed remediation waste management activities do not meet the regulatory standards, the Director may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the Director requests, or to correct any deficiencies in your RAP application, the Director may make a tentative decision to deny your RAP application. After making this tentative decision, the Director will prepare a notice of intent to deny your RAP application ("notice of intent to deny") and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in this Subpart. The Director may deny the RAP application either in its entirety or in part.

§ 270.135 What must the Director include in a draft RAP?

If the Director prepares a draft RAP, it must include the:

(a) Information required under § 270.110(a) through (f);

(b) The following terms and conditions:

(1) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of parts 264, 266, and 268 of this chapter (including any recordkeeping and reporting requirements). In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of parts 264, 266, and 268 of this chapter into the RAP or establish site-specific conditions as required or allowed by parts 264, 266, and 268 of this chapter;

(2) Terms and conditions in § 270.30;

(3) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in § 270.170; and

(4) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

(c) If the draft RAP is part of another document, as described in § 270.80(d)(2), the Director must clearly identify the components of that document that constitute the draft RAP.

§ 270.140 What else must the Director prepare in addition to the draft RAP or notice of intent to deny?

Once the Director has prepared the draft RAP or notice of intent to deny, he must then:

(a) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;

(b) Compile an administrative record, including:

(1) The RAP application, and any supporting data furnished by the applicant;

(2) The draft RAP or notice of intent to deny;

(3) The statement of basis and all documents cited therein (material readily available at the issuing Regional office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and

(4) Any other documents that support the decision to approve or deny the RAP; and

(c) Make information contained in the administrative record available for review by the public upon request.

§ 270.145 What are the procedures for public comment on the draft RAP or notice of intent to deny?

(a) The Director must:

(1) Send notice to you of his intention to approve or deny your RAP application, and send you a copy of the statement of basis;

(2) Publish a notice of his intention to approve or deny your RAP application in a major local newspaper of general circulation;

(3) Broadcast his intention to approve or deny your RAP application over a local radio station; and

(4) Send a notice of his intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

(b) The notice required by paragraph (a) of this section must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

(c) The notice required by paragraph (a) of this section must include:

(1) The name and address of the office processing the RAP application;

(2) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

(3) A brief description of the activity the RAP will regulate;

(4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

(5) A brief description of the comment procedures in this section, and any other procedures by which the public may participate in the RAP decision;

(6) If a hearing is scheduled, the date, time, location and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

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(8) The location of the administrative record, and times when it will be open for public inspection; and

(9) Any additional information the Director considers necessary or proper.

(d) If, within the comment period, the Director receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the Director must hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on his own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in paragraph (a) of this section. This notice must, at a minimum, include the information required by paragraph (c) of this section and:

(1) Reference to the date of any previous public notices relating to the RAP application;

(2) The date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§ 270.150 How will the Director make a final decision on my RAP application?

(a) The Director must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.

(b) If the Director determines that your RAP includes the information and terms and conditions required in § 270.135, then he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.

(c) If the Director determines that your RAP does not include the information required in § 270.135, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.

(d) If the Director's final decision is that the tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this subpart.

(e) When the Director issues his final RAP decision, he must refer to the procedures for appealing the decision under § 270.155.

(f) Before issuing the final RAP decision, the Director must compile an administrative record. Material readily available at the issuing Regional office or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see § 270.140(b)) and:

(1) All comments received during the public comment period;

(2) Tapes or transcripts of any hearings;

(3) Any written materials submitted at these hearings;

(4) The responses to comments;

(5) Any new material placed in the record since the draft RAP was issued;

(6) Any other documents supporting the RAP; and (7) A copy of the final RAP.

(g) The Director must make information contained in the administrative record available for review by the public upon request.

§ 270.155 May the decision to approve or deny my RAP application be administratively appealed?

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application to EPA's Environmental Appeals Board under § 124.19 of this chapter. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit). Instead of the notice required under §§ 124.19(c) and 124.10 of this chapter, the Director will give public notice of any grant of review of RAPs by the Environmental Appeals Board through the same means used to provide notice under § 270.145. The notice will include:

(1) The briefing schedule for the appeal as provided by the Board;

(2) A statement that any interested person may file an amicus brief with the Board; and

(3) The information specified in § 270.145(c), as appropriate.

(b) This appeal is a prerequisite to seeking judicial review of these EPA actions.

§ 270.160 When does my RAP become effective?

Your RAP becomes effective 30 days after the Director notifies you and all commenters that your RAP is approved unless:

(a) The Director specifies a later effective date in his decision;

(b) You or another person has appealed your RAP under § 270.155 (if your RAP is appealed, and the request for review is granted under § 270.155, conditions of your RAP are stayed according to § 124.16 of this chapter); or

(c) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued.

§ 270.165 When may I begin physical construction of new units permitted under the RAP?

You must not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a finally effective RAP.

How May my RAP be Modified, Revoked and Reissued, or Terminated?

§ 270.170 After my RAP is issued, how may it be modified, revoked and reissued, or terminated?

In your RAP, the Director must specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional RCRA permit, as allowed under § 270.85(c), then the RAP will be modified according to the applicable requirements in §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements in §§ 270.41 and 270.43, or terminated according to the applicable requirements of § 270.43.

§ 270.175 For what reasons may the Director choose to modify my final RAP?

(a) The Director may modify your final RAP on his own initiative only if one or more of the following reasons listed in this section exist(s). If one or

more of these reasons do not exist, then the Director will not modify your final RAP, except at your request. Reasons for modification are:

(1) You made material and substantial alterations or additions to the activity that justify applying different conditions;

(2) The Director finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

(3) The standards or regulations on which the RAP was based have changed because of new or amended statutes, standards or regulations, or by judicial decision after the RAP was issued;

(4) If your RAP includes any schedules of compliance, the Director may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as the owner/operator have little or no control and for which there is no reasonably available remedy;

(5) You are not in compliance with conditions of your RAP;

(6) You failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;

(7) The Director has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or

(8) You have notified the Director (as required in the RAP under § 270.30(l)(3)) of a proposed transfer of a RAP.

(b) Notwithstanding any other provision in this section, when the Director reviews a RAP for a land disposal facility under § 270.195, he may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in parts 124, 260 through 266 and 270 of this chapter.

(c) The Director will not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

§ 270.180 For what reasons may the Director choose to revoke and reissue my final RAP?

(a) The Director may revoke and reissue your final RAP on his own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then the Director will not modify or revoke and reissue your final RAP, except at your request. Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in § 270.175(a)(5) through (8) if the Director determines that revocation and reissuance of your RAP is appropriate.

(b) The Director will not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

§ 270.185 For what reasons may the Director choose to terminate my final RAP, or deny my renewal application?

The Director may terminate your final RAP on his own initiative, or deny your renewal application for the same reasons as those listed for RAP modifications in § 270.175(a)(5) through (7) if the Director determines that termination of your RAP or denial of your RAP renewal application is appropriate.

§ 270.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed?

(a) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the Director's decision to approve a modification, revocation and reissuance, or termination of your RAP, according to § 270.155. Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may petition for administrative review only of the changes from the draft to the final RAP decision.

(b) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the Director's decision to deny a request for modification, revocation and reissuance, or termination to EPA's Environmental Appeals Board. Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

(c) The process for informal appeals of RAPs is as follows:

(1) The person appealing the decision must send a letter to the Environmental Appeals Board. The letter must briefly set forth the relevant facts.

(2) The Environmental Appeals Board has 60 days after receiving the letter to act on it.

(3) If the Environmental Appeals Board does not take action on the letter within 60 days after receiving it, the appeal shall be considered denied.

(d) This informal appeal is a prerequisite to seeking judicial review of these EPA actions.

§ 270.195 When will my RAP expire?

RAPs must be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the Director in fixed increments of no more than ten years. In addition, the Director must review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and you or the Director must follow the requirements for modifying your RAP as necessary to assure that you continue to comply with currently applicable requirements in RCRA sections 3004 and 3005.

§ 270.200 How may I renew my RAP if it is expiring?

If you wish to renew your expiring RAP, you must follow the process for application for and issuance of RAPs in this subpart.

§ 270.205 What happens if I have applied correctly for a RAP renewal but have not received approval by the time my old RAP expires?

If you have submitted a timely and complete application for a RAP renewal, but the Director, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

Operating Under Your RAP

§ 270.210 What records must I maintain concerning my RAP?

You are required to keep records of:

(a) All data used to complete RAP applications and any supplemental information that you submit for a period of at least 3 years from the date the application is signed; and

(b) Any operating and/or other records the Director requires you to maintain as a condition of your RAP.

§ 270.215 How are time periods in the requirements in this subpart and my RAP computed?

(a) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. (For example, if your RAP

specifies that you must close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.)

(b) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. (For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator must submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator must submit the revised RAP application no later than October 3, so that the 90th day would be December 31.)

(c) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day. (For example, if you wish to appeal the Director's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Director has issued the final RAP decision. If the 30th day falls on Sunday, then you may submit your appeal by the Monday after. If the 30th day falls on July 4th, then you may submit your appeal by July 5th.)

(d) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon him by mail, 3 days must be added to the prescribed term. (For example, if you wish to appeal the Director's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Director has issued the final RAP decision. However, if the Director notifies you of his decision by mail, then you may have 33 days to petition the Environmental Appeals Board.)

§ 270.220 How may I transfer my RAP to a new owner or operator?

(a) If you wish to transfer your RAP to a new owner or operator, you must follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute "significant" modifications for purposes of § 270.170. The new owner/operator must submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.

(b) When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements in part 264, subpart H (Financial Requirements), of this chapter until the new owner or operator has demonstrated that he is complying with the requirements in that subpart. The new owner or operator must demonstrate compliance with part 264, subpart H, of this chapter within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with part 264, subpart H, of this chapter to the Director, the Director will notify you that you no longer need to comply with part 264, subpart H, of this chapter as of the date of demonstration.

§ 270.225 What must the State or EPA Region report about noncompliance with RAPs?

The State or EPA Region must report noncompliance with RAPs according to the provisions of § 270.5.

Obtaining a RAP for an Off-Site Location

§ 270.230 May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated?

(a) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.

(b) If the Director determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the Director may approve a RAP for this alternative location.

(c) You must request the RAP, and the Director will approve or deny the RAP, according to the procedures and requirements in this subpart.

(d) A RAP for an alternative location must also meet the following requirements, which the Director must include in the RAP for such locations:

(1) The RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;

(2) The RAP is subject to the expanded public participation requirements in §§ 124.31, 124.32, and 124.33 of this chapter;

(3) The RAP is subject to the public notice requirements in § 124.10(c) of this chapter;

(4) The site permitted in the RAP may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time (you must demonstrate compliance with this standard through the requirements in § 270.14(b)(11)) (See definitions of terms in § 264.18(a) of this chapter);

Note to paragraph (d)(4): Sites located in political jurisdictions other than those listed in Appendix VI of Part 264 of this chapter, are assumed to be in compliance with this requirement.

(e) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:

(1) Exclusion from facility-wide corrective action under § 264.101 of this chapter; and

(2) Application of § 264.1(j) of this chapter in lieu of part 264, subparts B, C, and D, of this chapter.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

25. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

26. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
• •	• •	• •	•
November 30, 1998	Hazardous Remediation Waste Management Requirements[5].	[Insert FR page numbers]	June 1, 1999.
• •	• •	• •	•

[5] These regulations implement HSWA only to the extent that they apply to the standards for staging piles and to §§ 264.1(j) and 264.101(d) of this chapter.

27. Section 271.21 is amended by adding paragraph (h) and table 1 to the end of the section to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(h) Abbreviated authorization revisions. This abbreviated procedure applies to State Program revisions for the Federal rulemakings listed in Table 1 of this section. The abbreviated procedures are as follows:

(1) An application for a revision of a State's program for the rulemakings listed in Table 1 of this section shall consist of:

(i) A statement from the State that its laws and regulations provide authority that is equivalent to, and no less stringent than, the designated minor rules or parts of rules specified in Table 1 of this section, and which includes references to the specific statutes, administrative regulations and where appropriate, judicial decisions. State statutes and regulations cited in the statement shall be lawfully adopted at the time the statement is signed and fully effective by the time the program revisions are approved; and

(ii) Copies of all applicable State statutes and regulations.

(2) Within 30 days of receipt by EPA of a State's application for final authorization to implement a rule specified in Table 1 of this section, if the Administrator determines that the application is not complete or contains errors, the Administrator shall notify the State. This notice will include a concise statement of the deficiencies which form the basis for this determination. The State will address all deficiencies and resubmit the application to EPA for review.

(3) For purposes of this section an application is considered incomplete when:

(i) Copies of applicable statutes or regulations were not included;

(ii) The statutes or regulations relied on by the State to implement the program revisions are not lawfully adopted at the time the statement is signed or fully effective by the time the program revisions are approved;

(iii) In the statement, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete; or

(iv) The State is not authorized to implement the prerequisite RCRA rules as specified in paragraph (h)(5) of this section.

(4) Within 60 days after receipt of a complete final application from a State for final authorization to implement a rule or rules specified in Table 1 of this section, the Administrator shall publish a notice of the decision to grant final authorization in accordance with the procedures for immediate final publication in paragraph (b)(3) of this section.

(5) To be eligible to use the procedure in this paragraph (h), a State must be authorized for the provisions which the rule listed in Table 1 to this section amends.

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
Land Disposal Restrictions Phase II—the Universal Treatment Standards in §§ 268.40 and 268.48 of this chapter only.	September 19, 1994.	59 FR 47982

[FR Doc. 98–30269 Filed 11–27–98; 8:45 am]
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Part IV

Department of Agriculture

Forest Service

36 CFR Part 251
Special Uses; Final Rule

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB35

Special Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting amendments to regulations governing the use and occupancy of National Forest System lands to streamline and make more efficient the process for obtaining special use authorizations, to provide for the use of one-time payments for easements as presently used in the market place, to limit certain liability requirements to amounts determined by a risk assessment, to clarify definitions of certain terms, and to clarify requirements related to renewal of existing special use authorizations. The intent is to improve service and reduce costs to proponents and applicants for and holders of National Forest System special use authorizations, to expedite decisionmaking, and to permit more "user-friendly" administration of such authorizations by removing certain requirements deemed unnecessary and outdated.

EFFECTIVE DATE: This rule is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Randall Karstaedt, Lands Staff, (202) 205–1256, or Ken Karkula, Recreation, Heritage, and Wilderness Resources Management Staff, (202) 205–1426, Forest Service, USDA.

SUPPLEMENTARY INFORMATION:

Background

Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities, ranging from individual private uses to large-scale commercial facilities, and public services. Examples of authorized land uses include road rights-of-way serving private residences, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, hydroelectric power generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds. The agency receives about 6,000 applications for special use authorizations each year. These applications are subjected to a rigorous, time-consuming, and costly review and decisionmaking process in determining whether to approve or reject them.

There are 14 statutes authorizing special uses on National Forest System lands. These authorities, which are listed at 36 CFR 251.53, include statutes of broad application, such as the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976, and the Bankhead-Jones Farm Tenant Act of 1937, as well as statutes focusing on a specific use of Federal lands, such as the National Forest Ski Area Permit Act. The basic authority of the Secretary of Agriculture to regulate the occupancy and use of National Forest System lands is the Act of June 4, 1897 (16 U.S.C. 551).

Additionally, the Independent Offices Appropriations Act of 1952, as amended, (31 U.S.C 9701) and the Office of Management and Budget (OMB) Circular A–25 require holders of authorizations to pay for the use of the Federal land. The Federal Land Policy and Management Act of 1976 requires holders of rights-of-way authorizations to pay annually, in advance, the fair market value of the use of the Federal land and its resources. The 1976 Act also provides that fees may be waived, in whole or in part, under specified conditions when equitable and in the public interest.

Requirements of the National Environmental Policy Act, the Wilderness Act of 1964, the Endangered Species Act, the Archaeological Resources Protection Act of 1979, additional requirements of the Federal Land Policy and Management Act of 1976, and Executive Order Nos. 11990 (Floodplains) and 11998 (Wetlands) also bear directly on the issuance of special use authorizations. These directives and statutory authorities require extensive analysis and documentation of the impacts of use and occupancy on a wide array of environmental, cultural, and historical resources. The practical effect of these requirements has been to greatly lengthen the time required and the costs involved in processing applications for special use authorizations or reissuing authorizations for existing uses. The time and cost impacts weigh on both the Forest Service and applicants and holders of authorizations. The significance of these impacts has been a principal factor in the development of these amendments to the special use regulations.

On August 14, 1992, the Forest Service published a proposed rule (57 FR 36618) and sought public comment to amend regulations governing the use and occupancy of National Forest System lands at 36 CFR Part 251, subpart B. Such use and occupancy is authorized by "special use authorizations," which include permits, term permits, easements, licenses, and leases. The proposed revisions had several purposes: to (1) streamline the application process for special use authorizations, (2) enhance efficiency of review of special use proposals, (3) authorize one-time payments of rental fees for certain types of special use authorizations, (4) limit certain liability requirements, (5) clarify certain definitions, and (6) clarify direction on renewal of special use authorizations.

A total of 25 responses were received on the proposed rule. Identity of the respondents is as follows:

Respondent category	Number	Percent
Individuals	3	12
Electric Utilities	6	24
Oil & Gas Companies	4	16
Telephone Company	1	4
Permit Holder Associations	8	32
Government Agencies	3	12
Total	25	100

Readers are advised that a major revision to this subpart was made subsequent to the August 14, 1992, proposed rule. On August 30, 1995, the agency adopted a final rule revising those portions of subpart B governing noncommercial group uses and noncommercial distribution of printed material within the National Forest System (60 FR 45293). The 1995 revisions, referred to in this rulemaking as the "noncommercial group use regulations," ensure that the authorization procedures for these activities comply with First Amendment requirements of freedom of speech, assembly, and religion. They did not directly impact the concurrent effort to streamline and make more efficient the process for obtaining special use authorizations. However, the 1995 revisions added new provisions and revised existing text which required redesignation of several sections and paragraphs throughout the subpart. In the narrative which follows, the terms "current rules" or "current regulations" refer to the regulations at 36 CFR part 251, subpart B, as published in the current volume of Title 36 of the Code of Federal Regulations, revised as of July 1, 1997.

General Comments

Respondents to the 1992 streamlining proposed rule generally supported the Forest Service's effort to streamline the permit application process and to make the administration of special use

authorizations more user friendly, although most asked that the final rule clarify that the revisions apply to new permits only. These respondents felt that the proposed regulations would reduce unnecessary paperwork burdens on applicants and, thereby, reduce costs for both the applicant and the agency. Indicating that the proposed revisions would improve the agency's performance, a number of respondents cited examples of the poor quality of service, the lack of experienced field personnel, and the length of time taken by the agency's field offices in responding to and processing special use permit applications. Further, these respondents urged the agency to quickly adopt final regulations that implement statutory authorities that have been available to the agency for several years, particularly amendments made to the Federal Land Policy and Management Act of 1976 by the Act of October 27, 1986.

Several respondents suggested that the agency institute a land and resource planning procedure or incorporate into its Forest planning activity a process that would pre-authorize certain types of land uses and thus avoid or minimize time consuming and costly analysis of individual applications for authorizations. These respondents suggested the process could be built around standards and guidelines in a national forest's land and resource management plan (forest plan). One respondent suggested the U.S. Army Corps of Engineers Nationwide Permit Program could serve as a model for this process. The types of special uses that would be subject to this pre-authorization process are described by the respondents as routine activities serving the public, such as electric and telephone rights-of-way.

Three respondents expressed concern that the agency's efforts to improve its administration of special use authorizations and make those regulations more user friendly will not be successful unless and until funding for this activity is dramatically improved. These respondents pointed out that the lack of adequate funding at the field office level is the biggest single factor responsible for poor service and delays in processing applications experienced by permit applicants.

The Department of the Interior (DOI) urged that Forest Service regulations for permitting and administering uses on National Forest System lands be more compatible with those of the land-managing agencies in the Department of the Interior, particularly the Bureau of Land Management (BLM). Because both the Forest Service and the BLM derive much of their authority for administering land uses from the Federal Land Policy and Management Act of 1976, the DOI believes any regulations of the two agencies should be very similar. Further, the DOI urged a coordinated effort to review and revise regulations promulgated under the 1976 Act.

The DOI also expressed concern that the proposed delay in consideration of the environmental effects of the proposed use could result in environmentally unsound projects passing screens only to be rejected in later stages of development after substantial time and investment have been made by the agency and the proponent. In the same context, the DOI suggested that notification of adjacent land-managing agencies should be made earlier in the application review process so that the concerns of the affected agencies could be made known sooner.

The U.S. Small Business Administration advised the Forest Service that the proposed rule was not in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612). That Act requires Federal Government agencies promulgating rules to describe the impact of the rulemaking on small entities through preparation of a regulatory flexibility analysis. Despite the agency's acknowledgment that the proposed rule would have a beneficial impact on a substantial number of small entities, the U.S. Small Business Administration stated that the aforementioned analysis must nevertheless be prepared.

Response to the General Comments. The Forest Service and the Department are pleased that most respondents generally viewed the proposed rule as a positive step toward improving the administration of special use authorizations. The agency is aware that its performance in responding to applications and administering existing authorizations often is inadequate and its service to permit applicants and holders—its "customers"—needs to be significantly improved. The Department is also mindful of the President's direction to improve service to the public. Executive Order No. 12866, dated September 30, 1993, directed agencies to reform and make more efficient their regulatory processes. The Forest Service initiated this effort with the goal of streamlining and making more user friendly its special use regulations and will, through the adoption of a final rule, ensure that this goal is met in part. Since beginning this particular rulemaking, the Forest Service has undertaken a major project to re-engineer special uses administration. A team of agency employees is currently at work to implement the re-engineering recommendations, which are focused on agency procedures. Implementation of these recommendations may lead to further changes in rules and will certainly result in additional revisions in agency directives governing special uses administration. Any revisions to rules or directives will be fully coordinated with the revisions made by these final rules.

The agency agrees with the suggestion that broad guidance for considering applications for special use authorizations be made a part of its land and resource planning processes. This guidance would allow decisions to be made on routine permit activities without further analysis. Such a procedure would require that the requisite environmental documentation be made in the Forest plan and that the documentation be specific enough to cover the proposed use.

However, the agency believes that such a procedure can be implemented without additional regulatory guidance. The forest planning process described in the agency's administrative manual (Forest Service Manual, Chapter 1920) prescribes the format and content of each Forest plan. The initial plans were completed in the early to mid 1980's and currently remain in effect. Almost without exception, these plans lack any detail regarding authorizations for use and occupancy of National Forest System lands. The life of these plans is generally 10–15 years and most of the plans for the 123 National Forest planning units of the agency are now or soon will be undergoing revision. The Forest Service recognizes the need to address land use and occupancy generally in the forest plans. The forest plan revision process offers the opportunity for units to consider the need for more specific guidance on land uses. The Department further notes that public participation is a fundamental ingredient in the preparation and revision of Forest plans. Thus, this will allow holders of or applicants for authorizations to participate directly in the development of the plan and, thereby, identify specific opportunities for addressing land use authorizations at the Forest level.

The Department fully agrees with respondents' concerns that sufficient funding for administration of special use authorizations must be considered along with revisions to the regulations. The Forest Service is addressing this matter in a variety of ways. However, the Department must emphasize that the budgeting and appropriation process

takes a much larger view of the management of National Forest System lands, balancing the funding of a wide variety of Forest Service programs and activities in the context of constraints imposed on the Department of Agriculture and the Federal Government as a whole. Thus, while the Department agrees that improving funding for this activity is desirable, it cannot unilaterally support respondents' urging of greater funding for the administration of special use authorizations. Instead, the Forest Service will seek recognition in its budget requests of the importance of efficient and cost-effective administration of land use authorizations and service to its customers.

The Forest Service concurs with the DOI suggestion that regulations governing administration of land uses on Federal lands should be more consistent. The Forest Service and the BLM are taking actions to bring their regulations into closer agreement, albeit in the context of individual uses. The two agencies have agreed that more comprehensive action is needed and are undertaking joint examination and coordination of regulations. While this action was prompted in part by the publication of the proposed special use regulations, additional motivation has been provided by the National Performance Review effort and Executive Order No. 12866. To the extent that statutory authorities permit, the two agencies have embarked on a course to adopt common regulatory approaches to land use and occupancy.

The Department acknowledges the DOI concern that the effort to streamline the permit application process may allow environmentally unsound projects to be initially considered, only to be rejected later after substantial investment of time and money by proponents and the agency. The Forest Service has examined the "screening" process set forth in the proposed regulations (§ 251.54(a)) and made appropriate revisions to respond to the DOI concern.

With regard to the DOI's suggestion that Federal agencies managing lands adjacent to the National Forest System land being considered for a land use authorization be notified sooner in the application process so that those agencies' views can be made known, the Department suggests that such notification may counteract the intent to streamline the application process by inserting a step that is unnecessary. Analysis of an application generally requires, as part of environmental documentation, a "scoping" of the proposal to learn of the concerns of other agencies and the public. This process of advising the public and affected parties of a proposal provides timely notice to adjacent landowners, whether public or private, and allows those landowners to bring forth any concerns.

The Department's response to the U.S. Small Business Administration's advice that a regulatory flexibility analysis be prepared is found at the conclusion of this supplementary information statement.

Specific Comments on Proposed Rule and Response

The following analysis of and response to comments on the proposed rule is organized by the section of the current special use regulations.

Section 251.51 Definitions. The proposed rule combined definitions found in other sections of the current regulations into this section and added four new definitions intended to improve the implementation of the regulations.

Comment. Three respondents were concerned that the proposed definition for "termination" would be confusing, because the new definition is a reversal of past usage and incorporates the expiration of a permit and ending of a permitted use. They noted that termination of a permit occurred by the direct action of the authorized officer and not by the expiration of a stated period of time.

Response. New definitions for revocation and termination are proposed because over the years the two terms have come to be used interchangeably, even though they have distinctly different usages. This lack of precision has caused confusion among holders of permits and agency personnel. The purpose in adding these two definitions to the regulations is to differentiate between cessation of a special use permit by action of an authorized officer (revocation) and cessation of a special use permit under its own terms without any action by an authorized officer (termination). Terms of a permit which would result in termination could include: (1) Expiration of the term authorized, and (2) transfer of the improvement to another party. Nothing further is intended. Adoption of these definitions will in no way bear upon reissuance of a permit. There will be no change in policy for reissuing a permit that terminates as a result of the application of these definitions. Consequently, the definition of "termination" will remain as defined in the proposed rule, but it has been clarified by listing examples of permit terms and conditions that would cause a permit to terminate.

Comment. Three respondents commented that the revised definition for "revocation" must be revised to limit use of the "reasons in the public interest" standard to special use permits only, not to easements, for consistency with existing laws and regulations.

Response. Provisions for termination, revocation, and suspension of an easement are contained in § 251.60 (g) and (h). Therefore, the Department has not included easements under the revocation and suspension provisions in § 251.60(a)(2)(i). Moreover, the Department disagrees with the respondents concerning leases. Leases may be revoked for reasons that are in the public interest, and leases are compensable according to their terms as defined in § 251.51. Therefore, leases are not exempted from revocation and suspension criteria in § 251.60(a)(2)(i). To avoid redundancy in the regulations, the definition does not repeat criteria for revoking an authorization that are listed in § 251.60(a)(2)(i), but the provision has been amended to require that revocation in the public interest must be for reasons that are "specific and compelling."

Comment. One respondent suggested that the definition of "sound business management principle" be expanded to include "an accepted *industry* practice or method * * *," as this would clarify that one individual's or company's practice or method is not necessarily more correct than others.

Response. The Department agrees with this suggestion and has made this change in the final rule.

Other Changes. In preparing this final rule, the Department discovered that the proposed definition of the word "lease" was not consistent with the use of that word in the private rental market, and as proposed could have led to confusion when applied in the field. Specifically, a lease conveys a conditional and limited interest in land that may be revocable and compensable according to its terms. Accordingly, the final rule reflects this clarification in the definition of the word "lease."

In analyzing the comments on and the adequacy of the definitions included in § 251.51, the Department considered whether or not to include a definition for the word "license." This term is often used in connection with the word "permit" and may be confused with the words "easement" and "lease." A separate definition could imply the two terms have separate meaning and, thus, that separate rights in the land may be conveyed, when, in fact, both permits and licenses convey only a privilege to

use and occupy the land, rather than an interest in the land. Therefore, a definition of the term "license" is not included in the final rule.

In preparing this final rule, the Department also concluded that the goal of clarifying when environmental analysis is conducted on proposals for special use authorizations would be enhanced by defining the term "NEPA procedures" as used in several places in the rule. Thus, the term has been added to the definitions included in § 251.51 and refers to the agency's written compliance with the National Environmental Policy Act.

Section 251.54 Special use application procedure and authorization. This section of the current regulations describes the procedures by which the agency accepts and acts upon applications for special use authorizations. This section includes direction on holding advance discussions with a proponent before an application is submitted, where to submit applications, the content of applications, and agency response to applications. The current regulations make it difficult to deny an application for a special use authorization that does not meet certain minimum requirements imposed by law or regulation as they lack specific direction guiding the consideration of and decision on applications for authorizations. The current regulations also result in unnecessary paperwork and expense being imposed on both the proponent and the agency.

The proposed rule would expand this section, adding step-by-step procedures that enumerate required activities and outcomes through the proposal, application, and authorization phases. Specifically, the proposed rule would establish a two-level screening process before a formal application is accepted by the agency.

This section of the proposed rule received the most attention from respondents, and consideration of these responses has resulted in extensive revision of this section in the final rule.

General Comments. Several respondents expressed concern that the new procedures described in this section could be interpreted to apply to reissuance of authorizations for existing uses as well as to issuance of new authorizations. While endorsing the initial screening process, several respondents also cautioned that any efficiencies that might be gained through this process could be lost, unless the agency imposed a time limit on itself, such as 30 days, in which to complete the proposed screening process and respond to the proponent.

Some respondents observed that the organization of this section was difficult to follow in the proposed rule, noting that the sequence of events described by the rule did not seem to correspond with the actions taken by the agency's field officers when receiving and processing requests for special use authorizations.

Response. This section applies only to applications for new or substantially changed uses. Renewal of special use authorizations is covered in § 251.64. To remove the confusion, the title of this section has been revised in the final rule to read "Proposal and application requirements and procedures."

The Department agrees that the initial screening process should be completed as expeditiously as possible. However, because of the number, variety, and complexity of special use proposals, it does not believe a specified time limit should be imposed on the screening process. The Forest Service policy on customer service in combination with proponent expression of interest should provide necessary encouragement to field offices to act promptly on proposals. Thus, the final rule does not specify a time limit on the proposal screening process.

The Department agrees with those respondents who found the organization of this section hard to follow. In considering the respondents' comments, and in revising the section to respond to those comments and to its own concerns, the Department determined that an overall reorganization of the section was needed. The intent of the reorganization is to make the process that defines the agency's consideration of proposals and applications more logical and sequential, and fully consistent with regulations implementing the procedural provisions of the National Environmental Policy Act at 40 CFR Parts 1500–1508 and guidance issued by the Council of Environmental Quality.

Readers are advised that the reorganization of this section requires that a clearer distinction be made between actions by proponents and actions by the agency during the process by which a request for an authorization is considered. Hence, a "proponent" makes a "proposal" for a special use authorization. That proposal is subjected to the screening processes described in paragraph (e). Upon meeting the criteria in the initial and second-level screenings, the proposal becomes an "application" and the proponent becomes an "applicant."

Because of the extensiveness of the revisions to the proposed rule, readers are advised that § 251.54 has been presented in the final rule in its entirety, thus including provisions not revised in the proposed rule. Presentation of the entire section, therefore, includes amendments made by the adoption in 1995 of the noncommercial group use regulations. The following table displays the provisions of § 251.54 in the final rule with the same provisions as located in the proposed rule:

Final rule	Proposed rule
(a) Early notice	(a)(1) (Untitled).
(b) Filing proposals	(b) Filing applications.
(c) Rights of proponents	(d) Rights of applicants.
(d) Proposal content	(e) Application content.
(1) Proponent identification	(1) Applicant identification.
(2) Required information.	
(i) Noncommercial group uses.	
(ii) All other special uses.	
(3) Technical and financial capability	(2) Technical and financial capability.
(4) Project description	(3) Project description.
(5) Additional information	(4) Additional information.
(e) Pre-application actions	(f) Receipt and denial of applications for uses.
(1) Initial screening	(a) Initial screening.
(2) Results of initial screening.	
(3) Guidance and information to proponents	(a)(3) (Untitled).
(4) Confidentiality	(a)(4) (Untitled).
(5) Second-level screening of proposed uses	(i) Response to applications for all other special uses.

Final rule	Proposed rule
(6) NEPA compliance for second-level screening process.	
(f) Special requirements for certain proposals	(h) Special application procedures.
(1) Oil and gas pipeline rights-of-way	(1) Oil and gas pipeline rights-of-way.
(2) Electric power transmission lines 66 KV or over	(2) Electric power transmission lines 66 KV or over.
(3) Major development	(3) Major resort development.
(g) Application processing and response.	
(1) Acceptance of applications	(f)(1).
(2) Processing applications	(g) Processing applications, and (c) Coordination of applications.
(3) Response to applications for non-commercial group uses.	
(4) Response to all other applications	(j) Action taken on accepted applications.
(5) Authorization of a special use	(k) Authorization and reauthorization of a special use.

Comments on specific provisions of § 251.54 as proposed and the Departmental response follow.

Section 251.54, Paragraph (a)—Initial screening. In a general comment on this paragraph of the proposed rule, a number of respondents stated a concern that the initial screening process would add another step to the already lengthy process of evaluating an application, which would place an additional burden on the applicant. Respondents suggested that paragraph (a)(1) should make clear that the initial screening begins only with a *written* notice or application.

Response. The Department does not agree that the screening process would impose additional burdens on a proponent. In fact, the screening process is expected to reduce the burden by preventing unsuitable or inconsistent projects from proceeding to full-scale applications. The screening process would require only a very simple abstract of the proposed use and would not require a lengthy analysis by the authorized officer. The purpose of the screening is to eliminate those proposed uses which are obviously unsuitable on National Forest System (NFS) lands. The initial screening process appears as paragraph (e)(1) of § 251.54 in the final rule.

The Department also does not agree that any proposal for use of NFS lands that would trigger the screening process must be in writing. Currently, many requests to use National Forest System lands begin with a verbal request by a proponent to the District Ranger's staff. The final rule has been clarified to state that a written notice is not required until a proposal has cleared the initial and second-level screening processes and is ready to be considered as an application for a special use authorization. However, for more complex special use proposals, proponents may be advised to prepare a brief written summary to ensure that the Forest Service has a full understanding of the scope of the proposal.

Readers are also advised that the final rule makes a technical modification to language adopted by the noncommercial group use amendments to this subpart on August 30, 1995, to ensure consistency with the overall intent of this revision to subpart B. The proposed rule would have established nine minimum requirements (or criteria) to be applied at the initial screening stage. These were listed in paragraph (a)(1) of the proposed rule. Comments received on these requirements and the Department's response follow.

Minimum requirement (i). A suggestion was made that this criterion, requiring all special uses to be consistent with laws, regulations, orders, and policies, should state that the agency has an obligation to protect the environmental integrity of the area proposed for a special use. Another respondent commented that under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) determines whether proposed hydroelectric uses on NFS lands are consistent and that FERC's authority should not be prejudiced by the agency authorizing official.

Response. The Forest Service obligation to protect the environment is adequately covered, since laws pertaining to environmental protection are included in the laws, regulations, and policies referred to in this criterion. All special uses must comply with environmental law. Thus, this suggested revision has not been adopted in the final rule.

FERC does not have sole responsibility for determining the consistency of hydroelectric uses on NFS lands. As part of its responsibility under Section 4(e) of the Federal Power Act, the Forest Service must make a consistency determination on proposed hydroelectric uses. The FERC determines whether the proposed hydroelectric project should be licensed, based in part on the consistency determination by the Forest Service. That consistency determination is based on the direction found in the applicable forest plan, as set forth in minimum requirement (ii). Therefore, the text of this requirement (a)(1)(i) is unchanged in the final rule, but now appears at paragraph (e)(1)(i).

Minimum requirement (ii). No comments were received recommending revision or change to this criterion, which would require the proposed use to be consistent with the applicable forest plan for the area. The intent of this requirement is to capture the provision in section 6(i) of the National Forest Management Act of 1976 (90 Stat. 2955). The agency did streamline the language of this requirement from that in the proposed rule but made no substantive change in the text of the requirement, which now appears at paragraph (e)(1)(ii) in the final rule.

Minimum requirement (iii). A respondent suggested that this criterion, which would require that the proposed use not pose a serious or substantial risk to public health and safety, include a list of examples which are considered acceptable from a health and safety standpoint.

Response. The Department agrees that examples would clarify the intent of this criterion, but believes that it would be more appropriate to include such examples in the Forest Service's internal procedural handbooks. This possibility will be explored following adoption of this final rule. Further, the agency believes that the phrase "serious and substantial risk" will limit the discretion of the authorized officer to findings of genuine risk to public health and safety. Therefore, no changes were made to this requirement in the final rule, which appears at paragraph (e)(1)(iii).

Minimum requirement (iv). Several respondents stated that utility companies seeking rights-of-way across NFS lands should be exempted from this criterion, which would cause rejection of a proposed use if it created an exclusive or perpetual right of use or occupancy. The respondents contended

that a perpetual right of use is the basis under which all utility service is provided. Another respondent asked that the language be revised to ensure that applications for permanent easements, such as those authorized by the Forest Roads and Trails Act of 1964, would be accepted. Finally, a respondent suggested that the language of the proposed rule could be interpreted to mean that a proponent, after having an application approved and expending capital to implement the use, would not have an exclusive right to receive the proceeds resulting from the use.

Response. The Department recognizes the concerns of these respondents but rejects the suggestions that utility companies should be exempted from this criterion because they must have an exclusive and perpetual use of Federal land. To grant such use would, in effect, grant fee title to Federal land to an authorization holder. Longstanding Congressional and Executive Branch policy dictates that authorizations to use NFS lands cannot grant a permit holder an exclusive or perpetual right of occupancy in lands owned by the public. The direction contained in this requirement is no different from that contained in the current regulations at § 251.55(b). Similarly, the respondent's assertion that a proponent without exclusive right would not have the exclusive right to receive the proceeds from the use is without merit since such rights are provided by the terms of an easement or lease. Accordingly, the recommendation that the criterion allow automatic acceptance of an application for a permanent road easement is not adopted. Such applications should be subjected to the same screening as all other applications. The language of this requirement remains unchanged in the final rule and appears at paragraph (e)(1)(iv).

Minimum requirement (v). Three comments were received on this criterion, which would prohibit approval of proposed uses that would unreasonably conflict or interfere with administrative use by the agency, with other existing uses, or with use of adjacent non-NFS lands. These respondents were concerned that this criterion was overly broad and would lead to abuses by local agency officials when reviewing applications and recommended that clarifying guidelines be added. Additionally, the respondents suggested that proposals that may have an effect on adjacent non-NFS lands, whether unreasonable or not, should prompt local Forest Service officials to inform adjacent landowners, including land-managing government agencies, of the proposal and possible impacts on adjoining lands.

Response. The criterion is limited to unreasonable conflicts or interference; some conflict or interference with existing uses would still be allowed. Therefore, the Department does not agree that additional guidance is needed in the rule and has retained the text of this requirement in the final rule (paragraph (e)(1)(v)) without change. The appropriate place for more detailed, cautionary guidance is in the agency's administrative Manual and Handbooks. Upon adoption of this final rule, the applicable Manual and Handbooks will be reviewed to determine if there is a need for additional guidance to prevent overly broad application of this requirement.

Minimum requirement (vi). This criterion stated that proposals will not be considered if the proponent has outstanding debts owed to the Forest Service under a prior authorization. Seven respondents suggested that an exception to this criterion be allowed if the delinquent debt is the result of an administrative appeal decision, a fee review, or similar legal or administrative process. By contrast, another respondent suggested that the authorized officer check with the BLM to determine if a proponent owes any debts to that agency. Finally, a respondent suggested that the criterion not be interpreted to include obligations of a proponent who is a cooperator with the agency through a road cost-share and use agreement.

Response. Without this requirement, a proponent's bad faith under a prior authorization could not be used to disqualify the applicant from receiving another authorization. To reward an applicant with a delinquent debt with a new authorization is not a prudent management practice and would be unacceptable on privately owned lands. The Department agrees with the suggestion that debts owed the Government as a result of an administrative appeal or similar legal process, including that involving a review of annual rental fees, should not be considered in applying this criterion and has revised the rule to specify that debts owed as a result of decisions in administrative appeals or fee reviews will not be included under this criterion. However, such debts must be current and the proponent in good standing on a payment schedule.

While the Department agrees that debts owed other Federal agencies are important, requiring authorized officers to check with other agencies could lengthen the time involved in the initial screening process. Indebtedness in general, and delinquent debts owed to the Federal government in particular, should be revealed at the second-level screening process.

Finally, road cost-share and use agreements are not special use authorizations; outstanding obligations existing under these agreements are not considered debts for the purpose of applying this criterion. Therefore, this requirement does not need to be revised to respond to this concern. For this reason, no changes were made to this provision in the final rule, which appears as paragraph (e)(1)(vi).

Minimum requirement (vii). This criterion would prohibit consideration of a proposed use that involves gambling or providing sexually oriented services. No comments were received on this requirement which has been long-standing agency administrative policy. It is retained in the final rule without change as paragraph (e)(1)(vii).

Minimum requirement (viii). This criterion would codify longstanding agency policy to prohibit consideration of a proposed use if it involves military or paramilitary training or exercises by private organizations or individuals, unless the training is federally funded. No comments were received on this criterion, and it is retained without change in the final rule as paragraph (e)(1)(viii).

Minimum requirement (ix). This criterion would prohibit consideration of a proposed use if it involves disposal of solid waste or storage or disposal of radioactive or other hazardous material. Two responses were received on this criterion. One respondent suggested that the term "hazardous material" be changed to "hazardous substances" to conform to the definitions in the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act. The other respondent suggested that the reference to "storage" of hazardous materials be deleted because it would prohibit storage at an authorized use area of crude oil and chemicals necessary to maintain oil and gas production.

Response. The Department agrees that the terms used in this rule should conform to definitions set forth in other Federal statutes and has, therefore, revised the wording of this requirement in the final rule. The Department also agrees that materials to be used in conducting activities at the use area, even though considered hazardous, should not be cause to reject a proposed use. Since controls prescribed by other Federal statutes should ensure that proper care is taken, the term "storage" has not been included in this

requirement in the final rule, which appears as paragraph (e)(1)(ix) in the final rule.

Other Changes. No comments were received on paragraphs (a)(2) and (3) of § 251.54 of the proposed rule.

Paragraph (a)(2) stated that if a proposed use did not meet all the minimum requirements, as set forth in paragraphs (a)(1)(i)–(ix), it would not be considered further and the applicant would be notified of this action in writing. Paragraph (a)(2) does not appear in the current regulation. The text of paragraph (a)(2) is included in the final rule as paragraph (e)(2) and it has been revised to state that the authorized officer would not have to notify in writing a proponent who makes an oral request that the proposal will not receive further consideration. Requests for special use authorizations are frequently made orally to local agency officials, and, as such, would not require a written response.

Paragraph (a)(3) of the proposed rule stated that if a proposed use appears to meet the minimum requirements, the authorized officer would provide the applicant with information relevant to obtaining a special use authorization. The content of paragraph (a)(3) of the proposed rule was unchanged from that already in effect, § 251.54(a)(1)–(8). However, when reviewing paragraph (a)(3) of the proposed rule in the context of the overall public review and comment, the Department determined that the phrase "appear to" might suggest the possibility of arbitrary action and, therefore, removed the words in the final rule. This material appears at paragraphs (e)(3)(i)–(viii) in the final rule.

In addition, minor editing changes have been made to paragraphs (e)(2) and (3) in the final rule for clarity and to incorporate changed terminology.

Section 251.54, Paragraph (a)(4). This paragraph of the proposed rule would have directed the agency, if requested by the proponent, and to the extent reasonable and authorized by law, not to disclose project and program information revealed during pre-application consideration and screening. Respondents stated their concern that this provision could prevent public scrutiny of a proposal, particularly one involving large commercial projects, thus giving the proponent an inside track on approval.

Response. The Department disagrees that maintaining confidentiality, to the extent reasonable and authorized by law, at the pre-application stage of a proposal having commercial application would preclude public scrutiny. Confidentiality would be maintained only prior to the agency's acceptance of a formal written application that has cleared the screening processes, and only to the extent it is reasonable and authorized by law. Once an application is accepted and initial review determines that an environmental assessment or environmental impact statement must be prepared, law and agency policy require public disclosure in the review and approval process. Applications for relatively minor proposals which a review indicates can be categorically excluded from documentation in an environmental assessment or environmental impact statement under current rules, generally do not include the public review and disclosure of information envisioned by this paragraph.

This paragraph appears in the final rule at paragraph (e)(4) under the heading "Confidentiality." The text has been revised in the final rule to substitute the word "shall" for "will" in the direction regarding the disclosure of project and program information, and the paragraph has also been edited to improve clarity of the provision's intent.

Section 251.54,Paragraph (b)—Filing applications. Paragraph (b) of current § 251.54 gives direction on where and with whom applications for authorizations should be filed. This paragraph appears at § 251.54(b), entitled "Filing proposals," in this final rule. The text has been revised to conform to changed terminology; namely, to change "application" to "proposal" and "applicant" to "proponent," or the plural forms of these words.

Section 251.54, Paragraph (c)—Coordination of applications. The proposed change to this paragraph would have eliminated the requirement that proponents of projects requiring use of National Forest System (NFS) lands who must obtain a license or permit from a State, county, or other Federal agencies for that project must simultaneously file an application with the Forest Service. The proposed rule stated that the Forest Service may require in its authorization that the applicant obtain licenses, permits, certificates, or similar approval documents from other entities or agencies.

Comment. Four respondents suggested that this provision describes a requirement in an authorization and thus should not be included in this section describing the proposal and application process. Instead, the respondents recommended that the provision be placed in § 251.56(a).

Response. The Department agrees that revision and relocation of this provision is appropriate and has placed it at § 251.56(a)(2) in the final rule. This action will benefit the applicant by not requiring that other approval documents be obtained until a decision is made on the application to use NFS lands. However, the provision has been revised in the final rule to make clear to holders that such licenses, permits, certificates, or other approval documents must be obtained prior to commencement of any activities on NFS lands.

No revision was proposed to paragraph (d), "Rights of applicants," of section 251.54 of the regulations. While the text remains unchanged, this paragraph has been redesignated as paragraph (c), "Rights of proponents," in the final rule.

Section 251.54, Paragraph (e)—Application content. This paragraph of the proposed rule defined the minimum content of an application for a special use authorization. In the proposed rule, the agency proposed revising paragraph (e)(3), "Project description," to make it consistent with the proposed addition which addresses the issuance of planning permits for major commercial developments. Paragraph (e)(4) in the current rules also required an applicant to describe the impact of the proposed use on the environment. However, to streamline the proposal/application process, the proposed rule would have moved this requirement to paragraph (j), which described actions to be taken by the agency after an application has been accepted.

Comment. Some respondents were concerned with the removal from paragraph (e)(3) of the requirement that applicants address the proposed uses's impact on the environment, and with a companion provision in paragraph (e)(5) that the application include a plan for protection and rehabilitation of the environment during the life of the proposed project. These respondents believe early consideration of environmental effects is essential to ensure that environmentally unacceptable projects do not proceed to the application stage and recommended that all of the provisions in paragraphs (e)(3) and (4) be retained.

Response. Paragraph (e) was extensively revised by the noncommercial group use amendments of August 30, 1995 (60 FR 45294). As revised by those amendments, this paragraph distinguishes between noncommercial group uses (paragraph (e)(2)(i)) and all other special uses (paragraph (e)(2)(ii)), in describing the information required for an application for a special use authorization. This final rule redesignates this paragraph as (d), retitles it as "Proposal content," and

makes additional changes. Changes in terminology are made throughout paragraph (d) to be consistent with changes made earlier in this section. Paragraph (e)(3), "Technical and financial capability," is redesignated as (d)(3), but is unchanged in the final rule. Paragraph (e)(4), "Project description," has been redesignated as (d)(4) in the final rule and revised to make the exception in the first sentence applicable to all major developments, rather than just to "major resort development." This revision is consistent with the revision to paragraph (f)(3) of the final rule which describes the requirements for requesting authorizations for major developments.

The Department recognizes respondents' concern with paragraph (e)(5), "Environmental protection plan." It emphasizes that it does not seek to avoid consideration of environmental effects when evaluating proposals. However, the removal of environmental analysis requirements in this paragraph is consistent with the overall objective of streamlining the regulation. It will save the proponent and the agency the time and expense of conducting an environmental analysis on proposals that would be rejected on other grounds. For example, the agency has found that applications often are not approved because the proponent lacks sufficient technical or financial capability to operate the proposal successfully, or because the Forest plan for the area precludes the proposed use. Readers are reminded that the procedure proposed in the rule to screen proposals is intended to screen out those proposals which do not meet minimum requirements/criteria before they become proposals as defined by the National Environmental Policy Act (NEPA) and its implementing regulations, which would require environmental analysis and documentation. Once an application has been accepted by the agency, analysis of the proposed use's environmental effects must be considered (§ 251.54(g)(2) of the final rule).

Section 251.54, Paragraph (f)—Receipt and denial of applications for special uses. This paragraph of the proposed regulation, which has been paragraph (i) in the previous regulations describing agency response to applications, would mark the point in processing requests for special use authorizations at which the proposal is considered received by the agency.

Comment. Respondents suggested that a time limit be set for completion of the application analysis set forth in paragraph (f)(2): 30 days was suggested. One respondent stated that proposals for hydroelectric projects, which are also governed by the Federal Power Act, would not be subject to the criteria listed in paragraph (f)(2), since the ultimate approval of these projects lies with the FERC. A respondent suggested that subjecting an application for reissuance of an authorization for an existing use to this second-level screening seemed unfair and inconsistent with due process requirements.

Response. The Department does not agree that a rigid time limit should be applied to analysis of applications. The wide variation in scope and complexity of applications requires flexibility in response time. Thus, while the Department recognizes the appropriateness of prompt action, it will not impose time limits on its decisionmaking responsibility. Also, the Forest Service has affirmative responsibility with respect to applications for hydroelectric projects. Section 4(e) of the Federal Power Act requires the agency to provide the FERC a determination of whether the project is consistent with the purpose for which the National Forest is established. This statutory requirement, coupled with the agency's internal policy on hydroelectric projects, serves as sufficient guidance in recognizing the unique actions necessary for these projects.

The screening/analysis process described in paragraph (f)(2) (now (e)(5) in the final rule) is tiered to the initial screening process and thus applies only to applications for new authorizations, not renewals for existing uses, which are covered by § 251.64. Therefore, the criteria in proposed paragraph (f)(2) have been retained in the final rule as paragraph (e)(5)(i)–(v) since this second-level screening is intended to apply to proposals that have met the criteria of the initial screening and which would be subjected to additional scrutiny and consideration. This shift presents the agency's process for considering requests for special use authorizations in a more logical sequence than that of the proposed rule.

No comments were received on proposed paragraphs (f)(1) and (3) of this section of the proposed rule. Proposed paragraph (f)(1) of the proposed rule was a new provision stating that an application that passes the initial screening set forth in paragraph (a) would be received but not accepted by the agency for consideration. The paragraph appears in the final rule as (g)(1), "Acceptance of applications," but has been revised to state that a proposal meeting the criteria of both the initial and second-level screening processes (paragraphs (e)(1) and (e)(5)) would be accepted by the agency as a formal application for the use. If the request does not meet the criteria for the screening processes, it is not accepted as a formal application. Proposed paragraph (f)(3), also a new provision, stated that the decision to deny a special use application based on the factors listed in paragraph (f)(2) would not constitute a "proposal" as defined by Council on Environmental Quality regulations and thus would not require the agency to conduct an environmental analysis. This paragraph applies to proposals which have been screened under the second-level screening process. It is retained as paragraph (e)(6) in the final rule, but edited to clarify its intent.

Other comments relevant to Section 251.54(f).

Four respondents objected to the removal of an unnumbered paragraph which has been at the end of § 251.54(i) requiring the authorized officer, when denying an application under two conditions, to offer the applicant an alternative site or time for the proposed use. These respondents believed that removal of this provision would alter the agency's obligation to consider alternatives to the proposed use under current Council on Environmental Quality regulations and the agency's own policies for environmental analysis and documentation. The respondents urged that the provision be retained to provide applicants additional flexibility in obtaining authorizations to use NFS lands. However, one respondent supported the elimination of this provision, stating that it avoided unnecessary duplication in the application process and thus would be helpful to applicants.

Response. The removal of the provision requiring that an alternative site be offered when denying an application does not circumvent NEPA requirements to consider reasonable alternatives to a proposed action when documenting environmental impacts. The Forest Service believes that it has no affirmative duty to provide alternative sites for a proposed use when a use is denied because it is inconsistent or incompatible with the purposes for which the lands are managed, or because the applicant is not qualified. Therefore, this provision has not been included in the final rule.

This determination on the offering of an alternative site for special use authorizations in general differs from that in the recently adopted revisions to this subpart concerning noncommercial group uses and noncommercial

distribution of printed material. Constitutional requirements concerning ample alternatives for communication of information dictated that an alternative site provision be included in the noncommercial group use regulations.

Section 251.54, Paragraph (g)—Processing Applications. Paragraph (g) of the proposed rule, which has until now appeared as paragraph (f) of § 251.54, describes the procedure to be followed when an application is accepted for processing. The proposed rule revised this paragraph to be consistent with revisions made elsewhere in the regulations. Central to these revisions was the removal of those provisions in paragraph (f)(1) that required the authorized officer to complete environmental documentation requirements, consult with other agencies and interested parties, hold public meetings, and take other actions necessary to evaluate an application. These provisions were moved to paragraph (i) of the proposed rule to achieve the consistency sought by the overall revision to subpart B.

A new paragraph (3) was proposed to provide guidance on processing applications for planning permits, principally those for major resort developments. This addition was tied to a revision in paragraph (h) of this section describing major commercial developments. This proposed new provision would limit application information to that needed to make a decision on issuance of a planning permit; that is, a permit authorizing only minor disturbance of the proposed site in order to gather information and data to prepare an application for the development project which would be submitted later. If the planning resulted in an application to develop the project, the detailed information and requisite environmental documentation would be completed.

There were no comments received on proposed paragraph (g). Nevertheless, as noted in the discussion of and comments on proposed paragraph (f), this paragraph has been revised extensively in the final rule to conform to the overall reorganization of this section. In particular, it should be noted that this paragraph was reformatted to accommodate the August 30, 1995, noncommercial group use regulations which are redesignated as paragraph (g)(3) in the final rule.

In the final rule, paragraph (g)(2) requires the authorized officer to evaluate formal applications for special use authorizations, including evaluation of effects on the environment, and, where required by NEPA procedures, to provide notice to the public with an opportunity to comment on the application. This provision appeared in paragraph (j) of the proposed rule. Paragraph (g)(2) represents the point of the special use proposal/application process at which the proposal becomes an application as defined by 40 CFR 1508.23, and thus requires environmental analysis and documentation. In the final rule, paragraph (g)(2) also incorporates provisions previously found elsewhere in the rule regarding notice to and consideration of findings of other Federal, State, and local government agencies concerning the application.

Section 251.54, Paragraph (h)—Special application procedures. This paragraph of the proposed rule described special requirements and procedures for handling applications for oil and gas pipelines and large electric transmission line rights-of-way. In the proposal, a third type of special use requiring special procedures when applying for an authorization would have been added—that is, proponents for a major resort development on NFS lands could apply for a 5-year planning permit.

This provision would substantially change the way proposals for major commercial recreation development would be considered. Previously, an application for this use would trigger full-scale economic and environmental analysis—before the proponent has fully defined the project and prepared a master development plan. Once a project is fully defined in a development plan, a project different from that described in the application often results, thus requiring reconsideration of the original analysis and decision and sometimes requiring a supplemental environmental impact statement. This supplemental analysis can impose considerable additional cost on the proponent and the agency. Under the proposed rule, a proponent who passed the initial screening criteria would apply for a planning permit. This application would be subjected to the established procedures for review and decision by the agency. Approval of the planning permit application would allow the proponent to complete the master development plan, which would then become the basis for an application for an authorization to construct and operate the major resort development. The second application would be subject to separate analysis and decision.

Comment. Respondents generally endorsed the proposed 2-part permitting process for major commercial recreation development. However, they urged that the process be available for all large-scale commercial developments. The respondents suggested that oil and gas pipelines or hydroelectric projects, for example, would qualify for this procedure. The respondents believed that this procedure would further reduce the regulatory burden on both the applicant and the agency.

Response. The Department agrees that the proposed planning permit for major resort developments should be available for all types of major developments on NFS lands and has adopted this change in the final rule. Further, the Department believes that a fixed term of five years for the planning permit may not be adequate for some types of major development, which are subject to separate licensing/approval actions by other Federal and State agencies. Accordingly, the final rule states that planning permits may be issued for up to 10 years.

Paragraph (h) of the proposed rule has been redesignated as (f) in the final rule, with the new provision concerning major developments appearing as paragraph (f)(3). This redesignation places this paragraph ahead of the regulations on processing applications; thus it occupies a more logical location in the sequence of processing requests for authorizations. The title of paragraph (f) has been revised to read "Special requirements for certain proposals," to more accurately reflect the paragraph's purpose.

Section 251.54, Paragraph (j)—Action taken on accepted applications. This provision of the proposed rule would require the authorized officer to evaluate the effects of the accepted application, including effects on the environment, and to make a decision on whether to approve or disapprove the application. The proposed paragraph described the three types of action that could be taken by the authorized officer on an accepted application: (1) approval; (2) denial; or (3) approval with modification. By specifying the range of decisions available, this provision would enable the agency to define more clearly in the environmental documentation the purpose of and need for the project to which the agency is responding.

Comment. Respondents stated that the agency needed to describe in greater detail the review and analysis process that culminates in a decision on the application. For example, respondents suggested that this paragraph address the backgrounds, or areas of expertise, of those who will review the application and the regulations, policies, and agency procedures that will apply to the review. This suggestion was offered in the belief that a more complete decision record is needed. Respondents also

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urged the agency to include a time limit in this paragraph for making a decision on an application. If a decision was not made within the time specified, the application would be considered approved under standard permit terms and conditions.

One respondent suggested that due to the magnitude of the revisions proposed in its comments on this and other sections of the proposed rule, the agency should reissue proposed regulations and provide for an additional comment period.

Two respondents objected to the sentence in this paragraph that would allow several similar special use applications to be approved in one decision and its documentation. These respondents felt that an application's approval could be delayed by incomplete applications for similar projects of others and suggested that this provision be amended to require that a combined decision be made only with the concurrence of the applicants. Another respondent believed that all applications need to be considered individually to give adjacent land managers adequate opportunity to consider a proposed use.

Response. Expanding paragraph (j) to describe in detail the process for reaching a decision on an application is not necessary or appropriate to a regulation. While no change will be made in this regard in the final regulations, upon adoption of final regulations, the Forest Service will review its Manual and Handbook direction to determine if revision is necessary to improve consistent interpretation among field units.

It also would be inappropriate to place a time limit on the authorized officer to render a decision on an accepted application. Such a provision could prevent the authorized officer from reaching a sound decision, particularly where unforeseen events, such as an extended period of forest fire emergency, prevent the authorized officer from performing the administrative duties involved in evaluating a special use application. Thus, this suggestion is not adopted in the final regulation.

Similarly, it is not appropriate to reissue proposed regulations reflecting the Department's response to respondents' suggestions. Comments of all respondents were carefully considered and their appropriateness and applicability determined. Acknowledgment of the Department's response to those comments, as explained in this supplementary information section, is considered to be sufficient explanation of the rulemaking decision.

The Department recognizes respondents' concerns about combining applications into one decision. However, it is the agency's intent that uses that could be grouped under one decision would be homogeneous and have relatively minor impact. Applications for complex proposals could not be grouped due to the variations in impacts and the resulting variation in the depth of analysis required for each proposal. An example of how this provision could be used occurs in the Pacific Northwest, where a large number of applications are received each year to place bee hives temporarily on NFS lands where timber harvest activities have recently occurred. While the hives may be scattered over an area of several hundred acres, the impact of each hive is essentially the same as that of all others. Thus, a single decision could authorize placement of all hives. Therefore, the Department has decided to retain the language of this provision as § 251.54(g)(4) in the final rule, but has added clarifying guidance limiting the application of this provision to those uses having minor impacts.

The Department disagrees with the respondent who believes each application must be considered individually to ensure that it does not adversely affect management of adjoining land. Even if several applications were acted upon in one decision, the impacts of each proposed use, including those on adjacent lands, would have to be considered. Further, where an environmental assessment or environmental impact statement is prepared, the public, including the adjacent landowner, would have the opportunity to be involved in the analysis of the proposed use.

Paragraph (j) has been relocated in the final rule as part of the overall reorganization of this section to achieve a more logical sequential process. A portion of the first sentence of proposed paragraph (j) concerning evaluation of the proposed use has been moved to paragraph (g)(2), while the remainder of the paragraph has been moved to paragraph (g)(4) in the final rule. These provisions have been edited in the final regulation to improve clarity.

As part of the overall reorganization of § 251.54, the rules applicable to noncommercial group uses are now codified as paragraph (g)(3). A provision previously in paragraph (f)(5) stating that applications for noncommercial group uses are automatically granted unless denied within 48 hours of receipt has been moved to paragraph (g)(3) in the final rule since the provision concerns the response to rather than the processing of the application. Also, the text of paragraph (g)(3) has been revised to correct citations to other parts of this subpart which have been revised in the final rule and to correct incorrect uses of the word "shall"; however, the Department emphasizes that no substantive changes have been made.

Section 251.54, Paragraph (k)—Authorization and reauthorization of a special use. This proposed paragraph would govern issuance of a special use authorization after a decision is made to authorize the use. The use thus authorized may be reauthorized as long as it remains consistent with the original decision. However, if new information becomes available, or new circumstances have developed, new analysis must support a decision to reauthorize the use.

Comment. Eight respondents commented on paragraph (k). These respondents suggested that the direction regarding reauthorizing uses is not appropriate since § 251.54 applies only to new authorizations. Respondents also stated that the language on reauthorizations does not provide sufficient protection from an arbitrary decision not to reissue an authorization. One respondent suggested that reauthorizations should be allowed at any time, not just upon expiration of the authorization.

Response. The Department agrees that this language concerning reauthorization of the special use authorization is out of place. Thus, the second sentence of proposed paragraph (k) has been moved to § 251.64(a) in the final rule, which deals with renewals of special use authorizations. The heading of § 251.54 has been revised to make clear that this section deals solely with the special use proposal and application process. Further, the agency believes that placement of the language concerning reauthorization in § 251.64 responds to respondent concerns that decisions disallowing reauthorization may be arbitrary. The language in § 251.64(a), as modified by the final rule, prescribes additional requirements that must be observed when reauthorization is considered. These requirements will help prevent arbitrary decisions.

The adoption of the noncommercial group use regulations on August 30, 1995, to this subpart did not affect proposed paragraph (k). However, the first sentence of proposed paragraph (k) has been redesignated as (g)(5) in the final rule in keeping with the placement of all actions related to processing and responding to applications in paragraph

(g)—Application processing and response.

Because of the complexity of the screening and application processes, the Department has prepared Exhibit 1 to display the entire special use authorization approval process defined in § 251.54. Exhibit 1 is set out at the end of this rule but will not appear in the Code of Federal Regulations.

Section 251.56 Terms and conditions. This section of the current regulations sets forth the terms and conditions to be included in each special use authorization. Paragraph (d) prescribes the liability requirements to be imposed on a holder of an authorization. The proposed rule would have revised only paragraph (d)(2) of this section. The revision was intended to clarify that the maximum limit of liability for certain high hazard authorized uses would be determined by an assessment of the risk associated with the use rather than an amount set by the authorized officer. This is usually $1,000,000, the maximum liability amount previously established by the regulations at § 251.56(d)(2).

Comment. Most respondents commenting on this revision agreed with the proposal to require risk assessments in order to establish liability limits for a specific use. Several respondents suggested factors to be included in the risk assessment, such as the holder's past performance and the historical frequency of incidents where negligence associated with the holder's use and occupancy has contributed to the liability of the Forest Service. Some respondents proposed that holders of authorizations with a lower risk of accidents and negative impacts on the land should not pay the same fee as holders of authorizations with a higher risk use.

Three respondents objected to the current provision, for which revision was not proposed, that requires holders of authorizations for high-risk uses to be liable for all injury, loss, or damage without regard to the holder's negligence. These respondents stated that since the holder does not have exclusive use of the lands and cannot control the activities of others on those lands, the holder should not be liable for the actions of third parties.

Finally, one respondent recommended that the regulations be revised to allow the agency to obtain restitution in excess of the amount established by a risk assessment, or $1,000,000 as authorized by law, should special circumstances arise or actual costs incurred by the agency exceed the established amount. This respondent further suggested that the regulations provide that damages paid to the agency under the liability provision be made available to adjacent landowners who suffer losses as a result of a holder's activities on Federal lands.

Response. Factors to be included in a risk assessment to determine the maximum limit of liability should be identified, in order to avoid standardizing the liability and thus creating inequities among holders of authorizations involving high-risk uses. However, this type of information is more appropriately included in the Forest Service's internal directive system; namely, the Special Uses Handbook (FSH 2709.11). The agency will add direction on how to conduct liability risk assessment to the Special Uses Handbook. Factors to be included in this risk assessment will recognize uses having less risk of damage to National Forest System resources and improvements.

The Department does not agree with those respondents who object to placing liability for all injury, loss, or damage on holders without regard to the holders' negligence. Placing the burden of risk on the holder of the authorization rather than the landowner is an established practice in transactions involving private lands and is justified as a reasonable requirement to insure against potential liability from any cause. Therefore, no change has been made to this provision in the final rule.

State laws governing rules of ordinary negligence allow the agency to litigate to seek damages in excess of an amount established by law or regulation for strict liability. These State laws offer sufficient protection to the Federal Government, and these same laws allow adjacent landowners the opportunity to seek damages from the holder, instead of claiming a share of damages received by the Forest Service. Thus, no change was made in the final regulations to respond to this comment.

Paragraph (a) of § 251.56 has been reformatted and slightly revised in the final rule to clarify the content of a special use authorization. A new paragraph (a)(2) has been added to this section, which states that authorizations may be conditioned to require approvals from other government agencies. This paragraph was previously at § 251.54(c).

Section 251.57 Rental fees. This section of the regulations currently requires that holders of authorizations pay an annual rental fee in advance based on the fair market value of the rights and privileges authorized. In addition, this section prescribes the conditions under which all or a part of those annual fees may be waived and the circumstances under which additional fees may be assessed.

The proposed rule incorporated into paragraph (a) of the regulation an amendment made to the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) by the Act of October 27, 1986 (Pub. L. 99–545). That amendment allows the Secretary of Agriculture to require payment of fees either annually or for more than one year at a time. The 1986 amendment also gives private individuals (holders of authorizations who are not commercial or governmental entities and are acting in an individual capacity) whose annual rental fees are greater than $100 the option of paying annually or for more than one year at a time.

The supplementary information section for the proposed rule explained that in accordance with Title V of FLPMA, the agency is authorized to issue easements and leases, instead of annual permits, when authorizing certain types of special uses, particularly those involving large-scale commercial operations but that this authority had not been implemented in agency practice. (See the definitions for "easement" and "lease" in § 251.51.) The agency can provide an extended authorization period by using easements or leases to authorize commercial land uses, such as communication sites, utility rights-of-way, and roads. In the case of easements, the commonly accepted practice in the private marketplace is to receive a onetime payment when the easement is negotiated that recognizes the fair market value of the rights and privileges granted, as determined by appraisal or other sound business management practices. The proposed rule indicated that if the Forest Service uses this approach when authorizing use of NFS lands by an easement, considerable cost-savings could accrue to the agency and to the holder of the authorization through avoidance of annual administrative costs and the costs of permit renewal activities. It is also possible (although uncommon in the private market) that the acquisition of an easement could be accomplished by periodic payments, in which case the purchase value would be amortized over an agreed-upon timeframe, and an appropriate interest rate on the unpaid balance would be applied.

Comment. Eleven respondents commented on this section. Five respondents suggested that the option of annual versus multi-year payments not be limited to private individuals, suggesting that partnerships and corporations be given this option as

well. Five respondents supported the agency's proposal to allow use of easements and leases, but suggested that the conversion of permits be made at the request of the holder rather than upon expiration of the permit. Some respondents expressed concern that allowing a one-time payment would not allow the agency to keep pace with inflation, thus preventing receipt of fair market value. Finally, some respondents asked how the proposed revisions to this section would be implemented by the agency, suggesting that modification of the agency's directive system would be necessary.

Response. The provision in the proposed rule allowing private individuals the option of paying fees annually or for more than one year at a time if their annual fees are more than $100 precisely tracks with the language in the 1986 amendment to FLPMA. Thus, since the law limits the revision to private individuals, the suggestion to allow partnerships, corporations, and governmental entities the same privilege in the final rule cannot be adopted. However, the language of proposed paragraph (a)(2) of this section has been revised in the final rule to simplify and clarify the provision.

Allowing immediate use of easements and leases would be desirable; however, the workload imposed on the agency's field staff should this occur could be overwhelming. Thus, the agency will revise its current administrative direction to indicate that conversion to easements and leases will be made as permits expire, or as mutually agreed upon between the holder and the authorized officer, in order to spread out the workload of conversion. Also, it should be noted that many of the authorizations that would be affected by this provision can be terminated annually by mutual agreement of the agency and the holder, thus accomplishing what has been suggested by the respondents.

The Department disagrees with those respondents who suggest that the effects of inflation should be a part of the fee calculation process when providing for a one-time payment of fees. The fair market value of an easement is indicated by comparable transactions in the private market place. The agency assumes that inflation is considered by the grantor in determining the value of the easement in the same manner that the additional rights granted are recognized in determining value. For example, an easement could convey additional rights to the holder, such as tenure, transferability, and compensation in the event of termination. In addition, the holder could treat the easement as a capital asset, thereby gaining favorable financial treatment. The value of these additional rights would be realized in increased fees, providing increased returns to the Treasury. Thus, a one-time payment can represent fair market value for the entire term of the authorization, and no loss to the Government will occur. Upon adoption of this final rule, the agency's directives will be amended to reflect this regulatory revision.

The proposed regulation would have removed paragraph (g) of § 251.57. Subsequently redesignated as paragraph (h) by the 1995 noncommercial group use rule, this paragraph provides special authority to the Supervisor of the Mark Twain National Forest to waive fees under certain specified conditions. This provision was added to the regulations to test a procedure to reduce costs to the agency and contained an expiration date of December 31, 1990. Thus, the provision is no longer in effect and should be removed from the section. No comments were received on the removal of this paragraph, and no additional information has come to light bearing on this provision. Therefore, this provision is removed by adoption of this final rule.

Section 251.59 Transfer of special use privileges. This section sets forth the requirements for transferring a special use authorization from the current holder to a new holder. No change was proposed to this section in the 1992 proposed rule. However, as a result of its review of public comments and the overall analysis of subpart B, the Department has determined that this section contains incorrect and misleading requirements. Specifically, the language of this section can be interpreted to contradict itself by stating in the first sentence that a permit may be transferred and, then, by stating in the last sentence that, if the holder through transfer of the authorized improvements ceases to be the owner, the permit is subject to termination.

Section 504(c) of FLPMA (90 Stat. 2778) provides discretionary authority to the agency (delegated through the Secretary of Agriculture) to specify the terms and conditions applicable to authorizations it grants. The Department's longstanding position has been and remains that, with the exception of easements, an authorization itself has no value. To allow transfer of the authorization would simply imply that it is a valuable asset to the owner of the improvements. Accordingly, the Forest Service requires as a provision of the authorizing document that new owners of improvements covered by a special use authorization must first obtain a new authorization. Therefore, except for certain types of easements and leases, the agency does not actually transfer an authorization when the authorized improvements are sold or otherwise transferred between parties. Rather, upon a change of ownership, the agency deems the original authorization terminated and issues a new authorization to the new owner of the improvements upon a determination that the new owner is eligible to hold a special use authorization.

Therefore, the agency has revised the title and the text of this section to remove the current ambiguity and to reflect more accurately its purpose and intent. In the final rule, the title reads "Transfer of authorized improvements." The text of the section has been reorganized and edited for precision and clarity. It now states that a special use authorization terminates when the holder of the authorization ceases to be the owner of the authorized improvements. A new owner of the improvements may be issued an authorization upon applying for and receiving approval from the authorized officer.

The Department considers this change to be a technical correction that reflects longstanding policy and practice and that it has no substantial effect on administration of current special use authorizations.

Section 251.60 Termination, revocation, and suspension. This section of the regulation prescribes the conditions under which a special use authorization may be suspended, terminated, or revoked. Revisions to paragraphs (b), (e), (f), and (h) of this section were proposed to be consistent with proposed definitions of these terms in § 251.51. Revision to paragraphs (g) and (i) of this section was necessary to correct identification of regulations pertaining to administrative appeals of decisions relating to special use authorizations.

Comment. Five respondents commented on the proposed revisions to this section. These respondents noted that the use of the word "termination" in paragraph (a) implies an action by the authorized officer, which is inconsistent with the proposed definition in § 251.51. One respondent recommended that the proposed revision require the authorized officer to follow agency policy and procedures when decisions to terminate, revoke, or suspend a permit are under consideration. Another respondent recommended that decisions to suspend or revoke a permit not be delegated to agency officials below the

Regional Forester. Two respondents suggested that the on-site review set forth in paragraph (f), proposed to be conducted within 10 days following the request of the holder when a permit is suspended, is too long a period for public utilities such as hydroelectric facilities or electric or gas transmission lines. These respondents suggested that the review be conducted within 24 hours of a suspension.

One respondent suggested that the proposed regulation be revised to require that all authorizations issued to holders providing public utilities must be renewed as long as the holder is in compliance with all laws and regulations affecting the authorization. One respondent suggested that the proposed definition for "termination" would require review of all related laws, regulations, and policies and revision of many individual permits to make them conform to the proposed definition. As a result, the agency would face a major increase in regulatory burden and costs.

Response. Readers are advised that the adoption of the noncommercial group use amendments on August 30, 1995, resulted in extensive revision to paragraphs (a) and (b) of § 251.60. The amendments, in specifying the grounds for termination, revocation, and suspension of special use authorizations, distinguished between noncommercial group uses (paragraph (a)(1)) and all other special uses (paragraph (a)(2)). In responding to comments to this section of the proposed rule, the agency was required to take special consideration of the August 30, 1995, amendments. The revisions also caused paragraph (b), as amended in 1995, to be reorganized to be consistent with paragraph (a). The revision of paragraphs (a) and (b) of this section resulted in the elimination in the final rule of paragraph (g), concerning appeals of termination, revocation, and suspension decisions by an authorized officer. This provision has been incorporated into both paragraphs (a) and (b).

The Department agrees that the language of paragraph (a) of the proposed regulations (previously paragraph (a)(2)) was inconsistent with the new definition for "termination" in § 251.51 and has revised this paragraph to remove the inconsistency. The agency disagrees that additional language should be added in the final rule to ensure that authorized officers follow policy and procedures when considering decisions to terminate, revoke, or suspend permits. The delegation of authority to agency officials carries with it the responsibility to follow agency policies and procedures; therefore, no additional regulatory guidance is necessary. The suggestion that decisions to suspend or revoke permits not be delegated below the Regional Forester has not been adopted. Decisions by authorized officers below the Regional Forester are reviewable by line officers one level above the deciding officers under current administrative appeal regulations. The Department believes that this procedure offers sufficient protection for holders.

In response to the concern about the proposed 10-day period to review conditions leading to suspension of a permit, readers should be aware that paragraph (f) would be invoked only in an emergency to protect the public health and safety or the environment. In a normal situation where suspension of a permit is contemplated, written notice would be given and a reasonable time to cure the condition leading to the suspension would be provided. However, the Department agrees that 10 days is too long to respond in an emergency situation and has revised the provision in the final rule to provide for a 48-hour response period.

The Department disagrees with the respondent who suggested that all authorizations for utility rights-of-way must be renewed, if the holder is in compliance with applicable laws and regulations. This proposal would inappropriately restrict the actions of the authorized officer responsible for protecting and managing the NFS lands.

The Department also disagrees with the respondent who believed that the definition of the word "termination" would increase regulatory burden and agency costs. Upon adoption of this final rule, the agency will make necessary revision to its internal directives to ensure consistency and conformity with the regulations. Conformance of these directives with the use of the terms adopted by this rule will be a part of this effort. Thus, no change has been made to this provision in the final rule.

The agency determined during its analysis of the proposed rule and the public comments that the regulation does not clearly identify the agency official who may initiate termination, revocation, or suspension of authorizations. Thus, the final rule provides that for the purposes of section 251.60 the authorized officer is the officer who issues the authorization or that officer's successor.

In addition to the revisions and new language included in this section, the final rule also reflects some minor editing to clarify and simplify the text.

Section 251.61 Modifications. This section of the regulation describes those actions which a holder is required to undertake when it becomes necessary to modify an existing authorization and the information which the holder must supply to the authorized officer when modification becomes necessary. The proposed rule would have clarified paragraph (c) of this section, to provide that modifications to an authorization requiring the approval of the authorized officer include all activities that would impact the environment, other users, or the public, not just those involving "maintenance or other activities."

Three respondents were concerned that the wording of the proposed revision would apply to all activities that would impact the environment, other users, or the public, not just those activities for which modification is proposed. They suggested that the language be clarified to allow implementation of activities already approved in the permit that are not subject to modification to proceed without further approval.

Response. The Department agrees that the language of proposed paragraph (c) was overly broad. In response to respondents' concerns, the Department has revised paragraph (c) to require the holder to obtain prior approval for all *modifications* to approved uses that will impact the environment, other users, or the public.

Section 251.64 Renewals. This section of the regulation enumerates the criteria for renewing an authorization when it provides for renewal and when it does not. There were no changes proposed to this section, nor did the adoption of the noncommercial group use regulations on August 30, 1995, to this subpart, affect this section. However, the agency has revised this section to incorporate a provision moved from § 251.54(k) into paragraph (a) of this section which respondents had indicated was out of place in that section.

Section 251.65 Information collection requirements. This section of the regulation describes the requirements imposed on the agency when collecting information from applicants. The regulation sets forth in paragraph (b) the agency's estimate of the time required for a proponent/applicant to provide the information requested in an application for a special use authorization, which is estimated to range from 30 minutes for simple projects (or uses) to several months for complex ones with an average of four hours for each project (or use). There were no changes proposed to this section.

The Department notes it is no longer required to set forth the information

contained in paragraph (b) of § 251.65 concerning estimates of the information collection requirement burden. Thus, this paragraph has been removed in the final rule as a technical revision to the section. The text of former paragraph "(a)" is retained but as an undesignated paragraph.

Summary

This final rule responds to direction from the President to reduce the regulatory burden imposed on those entities holding or seeking to obtain authorizations to use and occupy National Forest System (NFS) lands. The current special use regulations at 36 CFR Part 251, Subpart B addresses the rights of all citizens regarding uses of National Forest System lands are protected. The regulations provide the means to protect the health and safety of the public when using the services of commercial entities authorized to use the Federal lands; ensure that the services or facilities authorized are operated in compliance with Title VI of the Civil Rights Act of 1964; and ensure that environmental safeguards are employed and that authorized uses do not have adverse environmental effects on National Forest System lands.

This final rule will retain these basic safeguards. The rule will enhance efficiency in the review of applications, the approval/denial process, and the administration of authorizations, thereby providing significant cost savings to applicants, holders, and the Federal Government. The intent of the final rule is to make the issuance and administration of special use authorizations a less cumbersome and costly process, thereby reducing the burden on that segment of the public making use of these Federal lands, improving productivity of agency employees, and streamlining operations of the agency. Screening a proposed use will permit review of the proposal before the proponent invests time and expense in providing detailed information to accompany the application or the Forest Service invests time and expense in performing a detailed evaluation of the proposed use, including an analysis of the impacts on the environment. By eliminating time-consuming and costly processing of proposals that cannot meet minimum requirements, a faster agency response on those applications that pass the initial screening would result.

The final rule also incorporates into regulation statutory authority that has been available to the Forest Service that expands its authority to administer special use authorizations. The final rule underscores that the agency may issue long-term easements instead of annual or short-term permits and that those easements may allow for a one-time fee payment rather than annual fee payments. Holders of authorizations for high-risk uses such as electric transmission lines will be subject to strict liability for damage or loss that will be determined by a risk assessment rather than a fixed dollar amount specified in regulations. Finally, the agency has made the regulations more "user-friendly" by clarifying certain provisions and removing unnecessary language, and carefully reorganizing the text to flow in a logical sequence.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866. To the contrary, adoption of this final rule will have positive effects on the economy by creating efficiencies for the Forest Service and special use proponents and holders. The expected benefits of this rule outweigh the expected costs to society, the rule is fashioned to maximize net benefits to society, and the rule provides clarity to the regulated community.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, contrary to the views of the Small Business Administration, a regulatory flexibility analysis is not required. The efficiencies and cost savings to be achieved by the rule will benefit both small entities who apply for or hold special use authorizations as well as large-scale entities.

No Taking Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property rights. This rule applies to the discretionary use of Federally owned land.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. With adoption of this final rule, (1) all State and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions." Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Controlling Paperwork Burdens on the Public

This rule will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, subpart B of part 251 of title 36 of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.51, revise the definitions for "Easement" and "Lease," and add definitions for "NEPA procedures," "Revocation," "Sound business management principles," "Suspension," and "Termination" in the appropriate alphabetical order to read as follows:

§ 251.51 Definitions.

* * * * *

Easement—a type of special use authorization (usually granted for linear rights-of-way) that is utilized in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and that may be compensable according to its terms.

* * * * *

Lease—a type of special use authorization (usually granted for uses other than linear rights-of-way) that is used when substantial capital investment is required and when conveyance of a conditional and transferable interest in National Forest System lands is necessary or desirable to serve or facilitate authorized long-term uses, and that may be revocable and compensable according to its terms.

* * * * *

NEPA procedures—the rules, policies, and procedures governing agency compliance with the National Environmental Policy Act set forth in 50 CFR parts 1500–1508, 7 CFR part 1b, Forest Service Manual Chapter 1950, and Forest Service Handbook 1909.15.

* * * * *

Revocation—the cessation of a special use authorization by action of an authorized officer before the end of the specified period of occupancy or use for reasons set forth in § 251.60(a)(1)(i), (a)(2)(i), (g), and (h) of this subpart.

* * * * *

Sound business management principles—a phrase that refers to accepted industry practices or methods of establishing fees and charges that are used or applied by the Forest Service to help establish the appropriate charge for a special use. Examples of such practices and methods include, but are not limited to, appraisals, fee schedules, competitive bidding, negotiation of fees, and application of other economic factors, such as cost efficiency, supply and demand, and administrative costs.

* * * * *

Suspension—a temporary revocation of a special use authorization.

* * * * *

Termination—the cessation of a special use authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in an authorization without the necessity for any decision or action by the authorized officer; for example, expiration of the authorized term or transfer of the authorized improvement to another party.

3. Revise § 251.54 to read as follows:

§ 251.54 Proposal and application requirements and procedures.

(a) *Early notice.* When an individual or entity proposes to occupy and use National Forest System lands, the proponent is required to contact the Forest Service office(s) responsible for the management of the affected land as early as possible in advance of the proposed use.

(b) *Filing proposals.* Proposals for special uses must be filed in writing with or presented orally to the District Ranger or Forest Supervisor having jurisdiction over the affected land (§ 200.2 of this chapter), except as follows:

(1) Proposals for projects on lands under the jurisdiction of two or more administrative units of the Forest Service may be filed at the most convenient Forest Service office having jurisdiction over part of the project, and the proponent will be notified where to direct subsequent communications;

(2) Proposals for cost-share and other road easements to be issued under § 251.53(j) must be filed in accordance with regulations in § 212.10(c) and (d) of this chapter; and

(3) Proposals for oil and gas pipeline rights-of-way crossing Federal lands under the jurisdiction of two or more Federal agencies must be filed with the State Office, Bureau of Land Management, pursuant to regulations at 43 CFR part 2882.

(c) *Rights of proponents.* A proposal to obtain a special use authorization does not grant any right or privilege to use National Forest System lands. Rights or privileges to occupy and use National Forest System lands under this subpart are conveyed only through issuance of a special use authorization.

(d) *Proposal content*—(1) *Proponent identification.* Any proponent for a special use authorization must provide the proponent's name and mailing address, and, if the proponent is not an individual, the name and address of the proponent's agent who is authorized to receive notice of actions pertaining to the proposal.

(2) *Required information*—(i) *Noncommercial group uses.* Paragraphs (d)(3) through (d)(5) of this section do not apply to proposals for noncommercial group uses. A proponent for noncommercial group uses shall provide the following:

(A) A description of the proposed activity;

(B) The location and a description of the National Forest System lands and facilities the proponent would like to use;

(C) The estimated number of participants and spectators;

(D) The starting and ending time and date of the proposed activity; and

(E) The name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the proponent.

(ii) *All other special uses.* At a minimum, proposals for special uses other than noncommercial group uses must include the information contained in paragraphs (d)(3) through (d)(5) of this section. In addition, if requested by an authorized officer, a proponent in one of the following categories must furnish the information specified for that category:

(A) If the proponent is a State or local government agency: a copy of the authorization under which the proposal is made;

(B) If the proponent is a public corporation: the statute or other authority under which it was organized;

(C) If the proponent is a Federal Government agency: the title of the agency official delegated the authority to file the proposal;

(D) If the proponent is a private corporation:

(*1*) Evidence of incorporation and its current good standing;

(*2*) If reasonably obtainable by the proponent, the name and address of each shareholder owning three percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(*3*) The name and address of each affiliate of the entity;

(*4*) In the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the

entity owns either directly or indirectly; or

(5) In the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly by the affiliate; or

(E) If the proponent is a partnership, association, or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

(3) *Technical and financial capability.* The proponent is required to provide sufficient evidence to satisfy the authorized officer that the proponent has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which an authorization is requested, and the proponent is otherwise acceptable.

(4) *Project description.* Except for requests for planning permits for a major development, a proponent must provide a project description, including maps and appropriate resource information, in sufficient detail to enable the authorized officer to determine the feasibility of a proposed project or activity, any benefits to be provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and the proposal's compliance with applicable laws, regulations, and orders.

(5) *Additional information.* The authorized officer may require any other information and data necessary to determine feasibility of a project or activity proposed; compliance with applicable laws, regulations, and orders; compliance with requirements for associated clearances, certificates, permits, or licenses; and suitable terms and conditions to be included in the authorization. The authorized officer shall make requests for any additional information in writing.

(e) *Pre-application actions.* (1) *Initial screening.* Upon receipt of a request for any proposed use other than for noncommercial group use, the authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:

(i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.

(ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.

(iii) The proposed use will not pose a serious or substantial risk to public health or safety.

(iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.

(v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.

(vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.

(vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.

(viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

(2) *Results of initial screening.* Any proposed use other than a noncommercial group use that does not meet all of the minimum requirements of paragraphs (e)(1)(i)-(ix) of this section shall not receive further evaluation and processing. In such event, the authorized officer shall advise the proponent that the use does not meet the minimum requirements. If the proposal was submitted orally, the authorized officer may respond orally. If the proposal was made in writing, the authorized officer shall notify the proponent in writing that the proposed use does not meet the minimum requirements and shall simultaneously return the request.

(3) *Guidance and information to proponents.* For proposals for noncommercial group use as well as for those proposals that meet the minimum requirements of paragraphs (e)(1)(i)-(ix), the authorized officer, to the extent practicable, shall provide the proponent guidance and information on the following:

(i) Possible land use conflicts as identified by review of forest land and resource management plans, landownership records, and other readily available sources;

(ii) Proposal and application procedures and probable time requirements;

(iii) Proponent qualifications;

(iv) Applicable fees, charges, bonding, and/or security requirements;

(v) Necessary associated clearances, permits, and licenses;

(vi) Environmental and management considerations;

(vii) Special conditions; and

(viii) identification of on-the-ground investigations which will require temporary use permits.

(4) *Confidentiality.* If requested by the proponent, the authorized officer, or other Forest Service official, to the extent reasonable and authorized by law, shall hold confidential any project and program information revealed during pre-application contacts.

(5) *Second-level screening of proposed uses.* A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration. In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:

(i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or

(ii) The proposed use would not be in the public interest; or

(iii) The proponent is not qualified; or

(iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

(6) *NEPA compliance for second-level screening process.* A request for a special use authorization that does not meet the criteria established in paragraphs (e)(5)(i) through (e)(5)(v) of this section does not constitute an agency proposal as defined in 40 CFR

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1508.23 and, therefore, does not require environmental analysis and documentation.

(f) *Special requirements for certain proposals.* (1) *Oil and gas pipeline rights-of-way.* These proposals must include the citizenship of the proponent(s) and disclose the identity of its participants as follows:

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not own an appreciable interest in any oil and gas pipeline right-of-way or associated permit; and

(ii) The authorized officer shall notify the House Committee on Resources and the Senate Committee on Energy and Natural Resources promptly upon receipt of a proposal for a right-of-way for a pipeline twenty-four (24) inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty (60) days (not counting days on which the House of Representatives or the Senate has adjourned for more than three (3) days) after a notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to terms and conditions the officer proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(2) *Electric power transmission lines 66 KV or over.* Any proposal for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this section must be referred to the Secretary of Energy for consultation.

(3) *Major development.* Proponents of a major development may submit a request for a planning permit of up to 10 years in duration. Requests for a planning permit must include the information contained in paragraphs (d)(1) through (d)(3) of this section. Upon completion of a master development plan developed under a planning permit, proponents may then submit a request for a long-term authorization to construct and operate the development. At a minimum, a request for a long-term permit for a major development must include the information contained in paragraphs (d)(1) and (d)(2)(ii) through (d)(5) of this section. Issuance of a planning permit does not prejudice approval or denial of a subsequent request for a special use permit for the development.

(g) *Application processing and response.* (1) *Acceptance of applications.* Except for proposals for noncommercial group uses, if a request does not meet the criteria of both screening processes or is subsequently denied, the proponent must be notified with a written explanation of the rejection or denial and any written proposal returned to the proponent. If a request for a proposed use meets the criteria of both the initial and second-level screening processes as described in paragraph (e) of this section, the authorized officer shall notify the proponent that the agency is prepared to accept a written formal application for a special use authorization and shall, as appropriate or necessary, provide the proponent guidance and information of the type described in paragraphs (e)(3)(i) through (e)(3)(viii) of this section.

(2) *Processing applications.* (i) Upon acceptance of an application for a special use authorization other than a planning permit, the authorized officer shall evaluate the proposed use for the requested site, including effects on the environment. The authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects.

(ii) Federal, State, and local government agencies and the public shall receive adequate notice and an opportunity to comment upon a special use proposal accepted as a formal application in accordance with Forest Service NEPA procedures.

(iii) The authorized officer shall give due deference to the findings of another agency such as a Public Utility Commission, the Federal Regulatory Energy Commission, or the Interstate Commerce Commission in lieu of another detailed finding. If this information is already on file with the Forest Service, it need not be refiled, if reference is made to the previous filing date, place, and case number.

(iv) Applications for noncommercial group uses must be received at least 72 hours in advance of the proposed activity. Applications for noncommercial group uses shall be processed in order of receipt, and the use of a particular area shall be allocated in order of receipt of fully executed applications, subject to any relevant limitations set forth in this section.

(v) For applications for planning permits, including those issued for a major development as described in paragraph (f)(3) of this section, the authorized officer shall assess only the applicant's financial and technical qualifications and determine compliance with other applicable laws, regulations, and orders. Planning permits may be categorically excluded from documentation in an environmental assessment or environmental impact statement pursuant to Forest Service Handbook 1909.15 (36 CFR 200.4).

(3) *Response to applications for noncommercial group uses.* (i) All applications for noncommercial group uses shall be deemed granted and an authorization shall be issued for those uses pursuant to the determination as set forth below, unless applications are denied within 48 hours of receipt. Where an application for a noncommercial group use has been granted or is deemed to have been granted and an authorization has been issued under this paragraph, an authorized officer may revoke that authorization only as provided under § 251.60(a)(1)(i).

(ii) An authorized officer shall grant an application for a special use authorization for a noncommercial group use upon a determination that:

(A) Authorization of the proposed activity is not prohibited by the rules at 36 CFR part 261, subpart B, or by Federal, State, or local law unrelated to the content of expressive activity;

(B) Authorization of the proposed activity is consistent or can be made consistent with the standards and guidelines in the applicable forest land and resource management plan required under the National Forest Management Act and 36 CFR part 219;

(C) The proposed activity does not materially impact the characteristics or functions of the environmentally sensitive resources or lands identified in Forest Service Handbook 1909.15, chapter 30;

(D) The proposed activity will not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands, including but not limited to uses and activities authorized under parts 222, 223, 228, and 251 of this chapter;

(E) The proposed activity does not violate State and local public health laws and regulations as applied to the proposed site. Issues addressed by State and local public health laws and regulations as applied to the proposed site include but are not limited to:

(*1*) The sufficiency of sanitation facilities;

(*2*) The sufficiency of waste-disposal facilities;

(*3*) The availability of sufficient potable drinking water;

(*4*) The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site; and

(5) The risk of contamination of the water supply;

(F) The proposed activity will not pose a substantial danger to public safety. Considerations of public safety must not include concerns about possible reaction to the users' identity or beliefs from non-members of the group that is seeking an authorization and shall be limited to the following:

(1) The potential for physical injury to other forest users from the proposed activity;

(2) The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(3) The potential for physical injury to users from scheduled or existing uses or activities on National Forest System lands; and

(4) The adequacy of ingress and egress in case of an emergency;

(G) The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded; and

(H) A person or persons 21 years of age or older have been designated to sign and do sign a special use authorization on behalf of the applicant.

(iii) If an authorized officer denies an application because it does not meet the criteria in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section, the authorized officer shall notify the applicant in writing of the reasons for the denial. If an alternative time, place, or manner will allow the applicant to meet the eight evaluation criteria, an authorized officer shall offer that alternative. If an application is denied solely under paragraph (g)(3)(ii)(C) of this section and all alternatives suggested are unacceptable to the applicant, the authorized officer shall offer to have completed the requisite environmental and other analyses for the requested site. A decision to grant or deny the application for which an environmental assessment or an environmental impact statement is prepared is subject to the notice and appeal procedures at 36 CFR part 215 and shall be made within 48 hours after the decision becomes final under that appeal process. A denial of an application under paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section constitutes final agency action and is immediately subject to judicial review.

(4) *Response to all other applications.* Based on evaluation of the information provided by the applicant and other relevant information such as environmental findings, the authorized officer shall decide whether to approve the proposed use, approve the proposed use with modifications, or deny the proposed use. A group of applications for similar uses having minor environmental impacts may be evaluated with one analysis and approved in one decision.

(5) *Authorization of a special use.* Upon a decision to approve a special use or a group of similar special uses, the authorized officer may issue one or more special use authorizations as defined in § 251.51 of this subpart.

4. In § 251.56, revise paragraphs (a) and (d)(2), to read as follows:

§ 251.56 Terms and conditions.

(a) *General.* (1) Each special use authorization must contain:

(i) Terms and conditions which will:

(A) Carry out the purposes of applicable statutes and rules and regulations issued thereunder;

(B) Minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment;

(C) Require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and

(D) Require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards.

(ii) Such terms and conditions as the authorized officer deems necessary to:

(A) Protect Federal property and economic interests;

(B) Manage efficiently the lands subject to the use and adjacent thereto;

(C) Protect other lawful users of the lands adjacent to or occupied by such use;

(D) Protect lives and property;

(E) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes;

(F) Require siting to cause the least damage to the environment, taking into consideration feasibility and other relevant factors; and

(G) Otherwise protect the public interest.

(2) Authorizations for use of National Forest System lands may be conditioned to require State, county, or other Federal agency licenses, permits, certificates, or other approval documents, such as a Federal Communication Commission license, a Federal Energy Regulatory Commission license, a State water right, or a county building permit.

* * * * *

(d) * * *

(2) Holders of special use authorizations for high risk use and occupancy, such as, but not limited to, powerlines and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy, without regard to the holder's negligence, provided that maximum liability shall be specified in the special use authorization as determined by a risk assessment, prepared in accordance with established agency procedures, but shall not exceed $1,000,000 for any one occurrence. Liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

* * * * *

5. In § 251.57, remove paragraph (h), redesignate paragraph (i) as (h), and revise paragraph (a) to read as follows:

§ 251.57 Rental fees.

(a) Except as otherwise provided in this part or when specifically authorized by the Secretary of Agriculture, special use authorizations shall require the payment in advance of an annual rental fee as determined by the authorized officer.

(1) The fee shall be based on the fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles.

(2) Where annual fees of one hundred dollars ($100) or less are assessed, the authorized officer may require either annual payment or a payment covering more than one year at a time. If the annual fee is greater than one hundred dollars ($100), holders who are private individuals (that is, acting in an individual capacity), as opposed to those who are commercial, other corporate, or business or government entities, may, at their option, elect to make either annual payments or payments covering more than one year.

* * * * *

6. Revise § 251.59 to read as follows:

§ 251.59 Transfer of authorized improvements.

If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, ceases to be the owner of the authorized improvements, the authorization terminates upon change of ownership. Except for easements issued under authorities other than § 251.53(e) and leases and easements under § 251.53(l) of this subpart, the new

owner of the authorized improvements must apply for and receive a new special use authorization. The new owner must meet requirements under applicable regulations of this subpart and agree to comply with the terms and conditions of the authorization and any new terms and conditions warranted by existing or prospective circumstances.

7. Amend § 251.60 as follows:

a. Remove paragraph (g);

b. Redesignate paragraphs (h), (i), and (j) as (g), (h), and (i), respectively; and

c. Revise paragraphs (a)(2), (b), (e), (f), and newly redesignated (g), (h), and (i) to read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) * * *

(2) *All other special uses.* (i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except an easement issued pursuant to § 251.53 (e) and (l):

(A) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(B) For failure of the holder to exercise the rights or privileges granted;

(C) With the consent of the holder; or

(D) At the discretion of the authorized officer for specific and compelling reasons in the public interest.

(ii) *Administrative review.* Except for revocation or suspension of an easement issued pursuant to § 251.53 (e) and (l) of this subpart, a suspension or revocation of a special use authorization under this paragraph is subject to administrative appeal and review in accordance with 36 CFR part 251, subpart C, of this chapter.

(iii) *Termination.* For all special uses except noncommercial group uses, a special use authorization terminates when, by its terms, a fixed or agreed-upon condition, event, or time occurs. Termination of a special use authorization under this paragraph does not involve agency action and is not subject to administrative or judicial review.

(b) For purposes of this section, the authorized officer is that person who issues the authorization or that officer's successor.

* * * * *

(e) Except when immediate suspension pursuant to paragraph (f) of this section is indicated, the authorized officer shall give the holder written notice of the grounds for suspension or revocation under paragraph (a) of this section and reasonable time to cure any noncompliance, prior to suspension or revocation pursuant to paragraph (a) of this section,

(f) Immediate suspension of a special use authorization, in whole or in part, may be required when the authorized officer deems it necessary to protect the public health or safety or the environment. In any such case, within 48 hours of a request of the holder, the superior of the authorized officer shall arrange for an on-site review of the adverse conditions with the holder. Following this review, the superior officer shall take prompt action to affirm, modify, or cancel the suspension.

(g) The authorized officer may suspend or revoke easements issued pursuant to § 251.53 (e) and (l) of this subpart under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(h)(1) The Chief may revoke any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089, 16 U.S.C. 534:

(i) By consent of the owner of the easement;

(ii) By condemnation; or

(iii) Upon abandonment after a 5-year period of nonuse by the owner of the easement.

(2) Before any such easement is revoked for nonuse or abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, an opportunity to present relevant information in accordance with the provisions of 36 CFR part 251, subpart C, of this chapter.

(i) Upon revocation or termination of a special use authorization, the holder must remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the authorized officer, unless the requirement to remove structures or improvements is otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but holder shall remain liable for the costs of removal and site restoration.

8. In § 251.61, revise paragraph (c) to read as follows:

§ 251.61 Modifications.

* * * * *

(c) A holder shall obtain prior approval from the authorized officer for modifications to approved uses that involve any activity impacting the environment, other users, or the public.

9. In § 251.64, add two sentences at the end of paragraph (a) to read as follows:

§ 251.64 Renewals.

(a) * * * Special uses may be reauthorized upon expiration so long as such use remains consistent with the decision that approved the expiring special use or group of uses. If significant new information or circumstances have developed, appropriate environmental analysis must accompany the decision to reauthorize the special use.

* * * * * *

10. Revise § 251.65 to read as follows:

§ 251.65 Information collection requirements.

The rules of this subpart governing special use applications (§ 251.54 and § 251.59), terms and conditions (§ 251.54), rental fees (§ 251.57), and modifications (§ 251.61) specify the information that proponents or applicants for special use authorizations or holders of existing authorizations must provide in order for an authorized officer to act on a request or administer the authorization. As such, these rules contain information requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0082.

Dated: October 31, 1998.

Anne Kennedy,

Deputy Under Secretary, Natural Resources and Environment.

Note: The following exhibit will not appear in the Code of Federal Regulations.

BILLING CODE 3410–11–P

Special Use Authorization Approval Process
Exhibit 1

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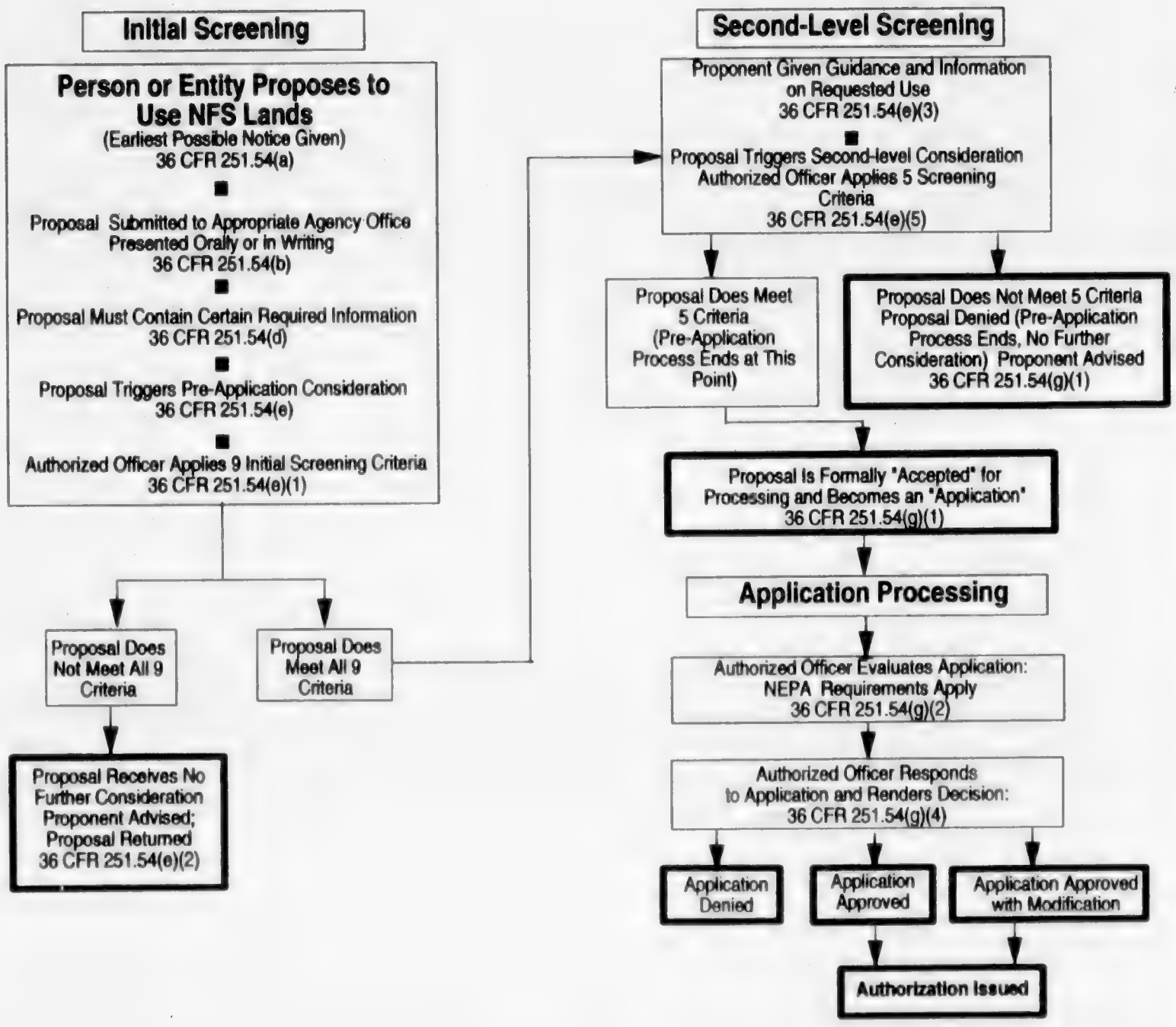
VOL 63 ISS 229 NO 30 1998 UMI

Special Use Authorization Approval Process
Exhibit 1



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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation for Cincinnati/Northern Kentucky International Class C Airspace Area; KY; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–5]

RIN 2120–AE97

Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation for Cincinnati/Northern Kentucky International Class C Airspace Area; KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class B airspace area and revokes the existing Class C airspace area for the Cincinnati/Northern Kentucky International Airport. The Cincinnati Class B airspace area will consist of an area encompassing a 25-mile radius of the Cincinnati/Northern Kentucky International Airport from the surface or higher up to and including 8,000 feet above mean sea level. The current Class C airspace area serving the Cincinnati/Northern Kentucky International Airport will be revoked concurrent with the implementation of this action. The FAA is taking this action to enhance safety, reduce the potential for midair collisions, and to improve the management of air traffic operations in the Cincinnati/Northern Kentucky area while accommodating the concerns of the airspace users.

EFFECTIVE DATE: 0901 UTC, December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone number: 703–321–3339), or the Government Printing Office's electronic bulletin board service (telephone number: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling 202–267–9680. Communications must identify the amendment number or docket number for this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the FAA's Office of Rulemaking (address above) a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov and may send electronic inquiries to the following Internet address: 9-AWA-SBREFA@faa.gov.

Related Rulemaking Actions

On May 21, 1970, the FAA published in the **Federal Register** the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782; May 21, 1970). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On October 14, 1988, the FAA published in the **Federal Register** the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318; Oct. 14, 1988). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published in the **Federal Register** the Airspace Reclassification Final Rule (56 FR 65638; Dec. 17, 1991). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this final rule.

Background

The TCA area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between general aviation (GA) aircraft and air carrier or military aircraft, or between one GA aircraft and another GA aircraft. The basic cause common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean sea level (MSL), with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

On February 10, 1998, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket 93–AWA–5;

63 FR 6818; Feb. 10, 1998; correction at 63 FR 9459; Feb. 25, 1998) proposing to establish a Class B airspace area and revoke the existing Class C airspace area for the Cincinnati/Northern Kentucky International Airport (CVG). The comment period for this proposed rulemaking action closed on April 13, 1998. However, the FAA received two petitions to extend the comment period. On May 15, 1998, in response to these petitions, the FAA reopened the comment period for an additional 60 days (63 FR 27160; May 15, 1998). The supplemental comment period closed on July 14, 1998.

In response to the proposal the FAA received 36 comments. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's responses are summarized below.

Discussion of Comments

Two commenters suggested that the proposed configuration of the Cincinnati Class B airspace area had changed and was not the same as presented to the public during the informal airspace meetings.

The FAA disagrees with these comments. The proposed configuration for the Class B airspace area presented during the informal meetings held on September 3 and 4, 1992 (57 FR 32835; July 23, 1992) is the same as published in the Notice of Proposed Rulemaking (NPRM) on February 10, 1998.

The Experimental Aircraft Association (EAA), Chapter 174 and several other commenters recommended the adoption of a modified airspace area that would eliminate areas F and G from the FAA's proposal, and that would use a vertical ceiling of 6,000 feet instead of the 8,000-foot ceiling proposed by the FAA. These commenters believe that the elimination of these areas would allow aircraft to operate to and from satellite airports without the need for an altitude encoding transponder.

Several commenters recommended reducing the size of the proposed Class B airspace area to a 15- to 20-mile radius rather than the proposed 25-mile radius. These commenters are of the opinion that a smaller Class B airspace area should be sufficient airspace to accommodate aircraft operations into and out of CVG, would allow more airspace for non-participating aircraft electing to circumnavigate the area, and would reduce the probability of numerous aircraft in a concentrated area.

The FAA does not agree with these comments. Areas F and G of this Class B airspace area support IFR approaches and departure procedures for CVG, and provide optimum use of the airspace to contain aircraft operations and enhance aviation safety. The purpose of a Class B airspace area is to provide for the separation, segregation, and control of aircraft operations, creating a safer environment in congested terminal areas. On March 11, 1970, the FAA published in the **Federal Register** the results of a Midair Collision Study Program (Notice 69–41B). The study found that 97 percent of the terminal area incidents occurred below 8,000 feet above ground level (AGL), and that the vast majority involved conflict between GA aircraft, and either air carriers, military, or another GA aircraft. The study also highlighted that the mix of noncontrolled VFR, and controlled IFR aircraft was a basic causal factor of these air traffic conflicts.

The FAA believes that the proposed vertical 8,000-foot ceiling is necessary to provide greater protection for air traffic in the airspace areas most commonly used by passenger-carrying aircraft and still provide sufficient areas for those aircraft electing to circumnavigate the Class B airspace area. In addition, aircraft transitioning from the outer fixes to final approach courses at satellite airports routinely enter the terminal area at 5,000 feet from the south and southeast. Because of the high volume of arrival and departure aircraft at the primary airport, it is necessary to utilize the area between 20–25 NM, including areas F and G, to transition lower performance aircraft to and from the satellite airports.

Many commenters submitted comments specifically addressing the area commonly known as the Mode C Veil area, which is the 30-mile radius of a Class B airspace area primary airport up to the floor of the Class B airspace, and associated equipment requirements. These commenters are of the opinion that the veil area creates an unnecessary economic burden on aircraft operations within the proposed Class B airspace area. The Aircraft Owners and Pilots Association (AOPA) and others commented that the provisions of Special Federal Aviation Regulations No. 62 (SFAR 62), Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement, was intended to suspend the altitude encoding capability requirement for certain operations to and from specific outlying airports located within 30 NM of a Class B airspace area.

In response to the Department of Transportation and Related Agencies Appropriation Bill, 1988 (Pub. L. 100–202) and the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223), the FAA published in the **Federal Register** the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356; June 21, 1988). This rule, commonly referred to as the "Mode C rule," requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule also provides an exclusion for those aircraft that were not originally certificated with an engine-driven electrical system, (or those that have not subsequently been certified with such a system), balloons, or gliders operating outside of the Class B airspace area, but within the 30 NM veil area.

On December 5, 1990, the FAA issued SFAR 62. The intent of the SFAR was to provide temporary relief for approximately 300 airports at which operations by aircraft not equipped with a transponder with altitude encoding capability could be conducted at or below a specified altitude (1) within a 2 NM radius of a listed airport; and (2) along a direct route between that airport and the outer boundary of the veil area. The SFAR expired in December of 1993. Comments relating to the expired SFAR are beyond the scope of this rulemaking effort.

The commenters are correct that the proposed airspace area will have a veil area wherein a transponder with altitude encoding capability will be required. Section 91.215 of title 14 of the Code of Federal Regulations (CFR) sets out requirements for air traffic control (ATC) transponder and altitude reporting equipment and use; however, this regulation also includes procedures whereby aircraft not equipped with the required transponder equipment may get relief from the stipulated requirements.

In the preamble of the Mode C rule, the FAA assessed the economic impact on aircraft operators complying with the rule. The FAA acknowledged that the rule would impose an additional cost component for transponder maintenance. The FAA also projected the cost for obtaining transponder and altitude encoding equipment, and estimated at the time of rulemaking that some aircraft operators would incur a one-time acquisition and installation cost ranging between $900 and $2,000, depending on whether or not they had a transponder. However, the FAA still finds that the potential benefits, primarily in the form of enhanced safety to the aviation community and flying

public, far outweigh the economic factors. Additionally, those aircraft transiting the area that do not want to establish radio communication with ATC may also choose to circumnavigate the Class B airspace area. As set out in the regulatory evaluation for this rule (see "Economic Evaluation" below), the FAA believes that any costs associated with circumnavigation will be negligible.

The FAA received several comments concerning accessibility to satellite airports located within the lateral boundaries of the Class B airspace area. Some of the comments recommended a cutout for Hamilton-Fairfield, Hickory Grove, Blue Ash, and Clermont Airports to ensure that these airports remain accessible. These commenters are of the opinion that cutouts should be utilized to remove satellite airports from the Class B airspace area and, consequently, the requirements of the Mode C Veil.

The FAA does not agree with these comments. Providing a cutout would remove these satellite airports from the Class B airspace area; however, the satellite airports would remain within the Mode C Veil and continue to be subject to the Class B airspace equipment requirements. The FAA notes that 14 CFR 91.215(d) provides for ATC-authorized deviations under certain conditions. An ATC deviation may require, among other conditions, two-way radio communication with ATC or a restriction of that operation to certain altitudes or areas.

The Air Line Pilots Association (ALPA) supported the proposed establishment of a Class B airspace area, but suggested that the ceiling for the airspace area should be at 10,000 feet rather than the proposed 8,000 feet. ALPA believes that this would eliminate a perceived a 2,000-foot gap of airspace where aircraft without an altitude encoding transponder can fly and not have to contact an ATC facility.

The FAA does not agree with this comment, and believes that a ceiling of 8,000 feet will be sufficient to control aircraft operations within the Class B airspace. Raising the ceiling to 10,000 feet would result in unnecessary restrictions to that airspace. In addition, aircraft operating within a 30-mile radius of CVG are already required to be equipped with an operational altitude encoding transponder from the surface to 10,000 feet MSL (14 CFR 91.215).

Several pilots commented on the FAA's limited utilization of geographical landmarks to define the lateral boundaries of the Class B airspace area. One pilot commended the FAA for proposing to utilize I–275 and I–74 as identifiable landmarks, but questioned whether pilots could see the powerlines as a prominent landmark at altitudes of 5,000 to 6,000 feet.

The FAA agrees with the concept of these comments. Identifiable and prominent landmarks have proven to be extremely useful to pilots operating under VFR in assisting them with identifying the boundaries of a Class B airspace area. During the preliminary planning for the Class B airspace area design, consideration was given to utilizing Very High Frequency Omnidirectional Range (VOR) radials, latitudes and longitudes, as well as geographical landmarks wherever possible. This site-specific design is an effort to utilize as many landmarks (i.e., I–275, I–74, and the powerlines to the east of CVG), as feasible to identify the boundaries of the Class B airspace area. The FAA will continue to work with the airspace users to further identify any additional landmarks.

Several commenters recommended that the FAA establish VFR corridors or VFR flyways for the Cincinnati/Covington area. The FAA agrees with the concept of these comments. Identifiable and prominent landmarks have proven to be extremely useful to pilots operating under VFR in assisting them with identifying the boundaries of a Class B airspace area. During the preliminary planning for the Class B airspace area design, consideration was given to utilizing Very High Frequency Omnidirectional Range (VOR) radials, latitudes and longitudes, as well as geographical landmarks wherever possible. However, the issue of VFR flyways and corridors was not addressed. The FAA will continue to work with the airspace users to determine the feasibility of VFR flyways and corridors and to further identify any additional landmarks to assist general aviation operators with identifying the Class B airspace area.

One commenter suggested that the areas F and G, designated with floors at 5,000 or 6,000 feet, should be reduced to a minimum of 7 miles east of the airport to allow sufficient airspace for operations outside the Class B airspace area. In addition, this commenter suggested that the floor designated at 3,000 feet (area C) does not appear to interfere with operations, but the floor at 2,100 feet (area B) will not provide enough room to transition under the shelf of the area and above the tallest obstacle.

The FAA does not agree with this comment. The floors of areas F and G are necessary to support IFR approaches and departure procedures for CVG. Furthermore, the 2,100-foot floor of Area B is necessary to provide optimum safety to enplaned passengers and to contain aircraft operations in the Class B airspace area.

AOPA commented that the FAA ignored the guidelines in FAA Order 7400.2D, *Procedures for Handling Airspace Matters*, when developing the proposed Class B airspace area between the 10 to 20-mile radius. AOPA also recommended changing the Runway 27 glidescope to 3.5 degrees thereby raising the floor of area D to 4,000 feet.

The FAA does not agree with this comment. In order to effectively design a safe and efficient airspace area, it is necessary to tailor the airspace configuration to the particular needs of that area, taking into consideration the local terrain, noise abatement, and adjacent airspace. The FAA made every effort to comply with the guidelines as published in FAA Order 7400.2D. FAA Order 7400.2D states that the floor of the area between "10 and 20 NM shall be predicated on a 300-foot per NM gradient for 10 NM." It also states that "this segment will normally have a floor between 2,800 feet and 3,000 feet above the airport elevation." However, the order also states that, to the extent practicable, the vertical and lateral limits of the airspace should be designed to retain all published instrument procedures once their flight track enters the Class B airspace area. The national standard for the angle of a glidescope is 3 degrees as published in FAA Order 8260.36A. Any angle above 3.1 degrees would raise the minimums for Category C aircraft, and preclude the authorization of approaches for Category D and E aircraft. The FAA complied with FAA Order 8260.36A in establishing the 3-degree glidescope angle to accommodate Category C, D, and E aircraft operations.

The Board of Aviation Commissioners for the City of Madison, IN, submitted comments regarding operations at the Madison Municipal Airport and proposed Class B airspace area. The Board raised the possibility of pilots departing that airport on an IFR flight plan and encountering delays when receiving a clearance on the ground. The Board explained to the FAA that many pilots may have to travel substantially longer distances to get their clearances because of the proposed establishment of a Class B airspace area. The Board recommended that the FAA: (1) change the size or ceiling of the proposed Class B airspace to make it feasible to depart Madison Municipal Airport eastbound; (2) adjust the airspace to allow at least a 10-mile area between the existing restricted area and the western edge of Class B airspace area; and (3) install

equipment to allow pilot to receive his or her clearance on the ground.

The FAA does not agree with the assessment of the Madison Board of Aviation Commissioners. The Madison County Airport is located approximately 41 miles southwest of CVG. The proposed Class B airspace area boundary will be approximately 16 miles from the Madison County Airport. VFR aircraft departing Madison eastbound can remain below 5,000 feet and would have ample time to contact the approach control facility and receive the required clearance to enter the Class B airspace area. Additionally, IFR aircraft may contact the approach control facility on the ground by radio or telephone before departure to receive a clearance.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this final rule.

The Rule

This amendment to 14 CFR part 71 establishes a Class B airspace area at CVG and revokes the CVG Class C airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve the management of air traffic operations in the Cincinnati/Northern Kentucky area.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the order.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this final rule (1) will generate benefits that justify the minimal costs of the rule and is not "a significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses are summarized in this preamble, and the full Regulatory Evaluation is contained in the docket.

The final rule will provide benefits to participating and non-participating aircraft operators primarily in the form of enhanced safety by increasing ATC's authority and capability to monitor and to separate aircraft in the terminal airspace around CVG.

The FAA has determined that this final rule will impose minimal additional cost on the agency and aircraft operators. The FAA has determined this final rule will impose a one-time cost on the agency for the revision of aeronautical charts for CVG because of the changes to the plates used to print those charts on which the Class B airspace area will be depicted. The National Oceanic Service, the agency responsible for the publication and distribution of aeronautical charts, estimates that the total one-time cost of these changes will be approximately $75,480 (1997 dollars). The final rule will not impose any additional administrative costs on the FAA for either personnel or equipment. The additional ATC operations workload generated by the final rule will be absorbed by current ATC personnel and equipment resources at CVG. The final rule will not require any additional air traffic controllers or any additional radar control or hand-off positions. Last, those few operators without the required aircraft equipment (Mode C transponder and two-way radio) will incur only negligible cost for circumnavigating the Class B airspace area.

In view of the minimal cost of compliance, enhanced safety and operational efficiency, the FAA has determined that the final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. If an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that the vast majority of affected unscheduled aircraft operators are already equipped to operate under IFR requirements. This is because such operators routinely fly into CVG airspace and other airspace where radar approach control services have been established. The few operators who do not have the required equipment will only incur negligible costs for circumnavigating the Class B airspace area.

The FAA has also determined that other local airspace users, such as balloonists, parachutists, ultralight and sailplane owners, and fixed base operators, will only have to circumnavigate a portion of the Class B airspace area. Cincinnati Approach Control will accommodate these users on a case-by-case basis and use letters of agreement and cutouts, where advisable, to ensure as little adverse impact as possible on these users.

The FAA conducted the required review of this proposal and determined that it will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The FAA has determined that the final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S.

products or services in foreign countries. This is because the final rule will impose, at most, only negligible costs on aircraft operators and no costs on aircraft manufacturers (U.S. or foreign).

Federalism Implications

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore in accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of the regulatory proposal.

This final rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. In § 71.1, Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO KY B Cincinnati/Northern Kentucky International Airport, KY [NEW]

* * * * *

Cincinnati/Northern Kentucky International Airport (Primary Airport)
(Lat. 39°02′46″ N., long. 84°39′44″ W.).
Cincinnati VORTAC (CVG)
(Lat. 39°00′57″ N., long. 84°42′12″ W.).

Boundaries

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a radius of 5 miles from the Cincinnati/Northern Kentucky International Airport.

Area B. That airspace extending upward from 2,100 feet MSL to and including 8,000 feet MSL beginning at the 5-mile arc of the airport and the Kentucky bank of the Ohio River northeast of the airport; northeast along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence clockwise along the 10-mile arc to the Kentucky bank of the Ohio River southwest of the airport, north along the Kentucky bank of the Ohio River to the Indiana-Ohio State line (long. 84°49′00″ W); thence north to Interstate 275; follow Interstate 275 northeast to Interstate 74; thence east on Interstate 74 to CVG VORTAC 040° radial; thence southwest on the CVG VORTAC 040° radial to the 5-mile arc of the airport; thence counterclockwise on the 5-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL beginning at the intersection of Interstate 275 and the Indiana-Ohio State line (long. 84°49′00″ W); thence north on the Indiana Ohio State line, to intersect the 15-mile arc of the airport; thence clockwise on the 15-mile arc to long. 84°30′00″ W; thence south on long. 84°30′00″ W to the 10-mile arc of the airport; thence clockwise on the 10-mile arc to the Kentucky bank of the Ohio River; proceed along the Kentucky bank the Ohio River west to the 5-mile arc of the airport; thence counterclockwise along the 5-mile arc to the CVG VORTAC 040° radial; thence northeast along the CVG VORTAC 040° radial to Interstate 74; proceed west along Interstate 74 to Interstate 275; thence west along Interstate 275 to the point of beginning. That airspace beginning at the 10-mile arc southeast of the airport and long. 84°30′00″ W; thence south along long. 84°30′00″ W to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning.

Area D. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL beginning at lat. 39°09′18″ N and the 10-mile arc northeast of the airport; thence east to the 15-mile arc of the airport; thence clockwise on the 15-mile arc to lat. 38°56′15″ N; thence west on lat. 38°56′15″ N to intersect the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning. That airspace beginning at the intersection of the Kentucky bank of the Ohio River and lat. 38°56′15″ N southwest of the airport; thence west along lat. 38°56′15″ N to the 15-mile arc of the airport; clockwise on the 15-mile arc to lat. 39°09′18″ N; thence east to the Indiana-Ohio State line; thence South along the Indiana-Ohio State line to the Kentucky bank of the Ohio River; thence south along the Kentucky bank of the Ohio River to point of beginning. That airspace beginning at the intersection of the 15-mile arc of the airport and the Indiana-Ohio State line; thence proceeding north to the 20-mile arc of the airport; thence clockwise along the arc to long. 84°30′00″ W; thence south to the 15-mile arc of the airport; thence counterclockwise along the 15-mile arc to point of beginning. That airspace beginning at the intersection of the 15-mile arc southeast of the airport and long. 84°30′00″ W; thence south to the 20-mile arc of the airport; thence clockwise along the 20-mile arc to long. 84°49′00″ W; thence north to the Kentucky bank of the Ohio River; thence proceeding north along the Kentucky bank of the Ohio River to the 15-mile arc of the airport; thence counterclockwise on the 15-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to and including 8,000 feet MSL beginning at the 20-mile arc of the airport and the Indiana-Ohio State line; thence north to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°30′00″ W; thence south to the 20-mile arc of the airport; thence counterclockwise on the 20-mile arc to the point of beginning. That airspace extending beginning at the 20-mile arc of the airport and long. 84°30′00″ W south of the airport; thence south along the long. 84°30′00″ W to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°49′00″ W; thence north along long. 84°49′00″ W to the 20-mile arc of the airport;

thence counterclockwise along the 20-mile arc to the point of beginning.

Area F. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL beginning at the 25-mile arc north of the airport and long. 84°30′00″ W; thence clockwise on the 25-mile arc of the airport to Route 28; thence southwest along Route 28 3-miles to the power line; thence south along the power line to the Ohio River; thence south-southeast along the Ohio bank of the Ohio River to the 25-mile arc of the airport southeast; thence clockwise on the 25-mile arc of the airport to long. 84°30′00″ W south of the airport; thence north to the 10-mile arc of the airport at lat. 38°56′15″ N; thence east along lat. 38°56′15″ N to the 15-mile arc of the airport; thence north along the 15-mile arc of the airport to lat. 39°09′18″ N; thence west to the 10-mile arc of the airport and long. 84°30′00″ W; thence north to the point of beginning. That airspace beginning at the 25-mile arc of the airport and the Indiana-Ohio State line; thence counterclockwise along the 25-mile arc to long. 84°49′00″ W south of the airport; thence north to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to lat. 38°56′15″ N; thence west to the 15-mile arc of the airport; thence clockwise on the 15-mile arc of the airport to lat. 39°09′18″ N; thence east to the Indiana-Ohio State line; thence north to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 8,000 feet MSL beginning at the intersection of Route 28 and the 25-mile arc of the airport; thence southwest along Route 28 3 miles to the powerline; thence south along the powerline to the Ohio River; thence south-southeast along the Ohio bank of the Ohio River to the 25-mile arc southeast of the airport; thence counterclockwise along the 25-mile arc of the airport to the point of beginning.

* * * * *

Paragraph 4000—Subpart C—Class C Airspace

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ASO KY C Cincinnati/Northern Kentucky International Airport, KY [Revoked]

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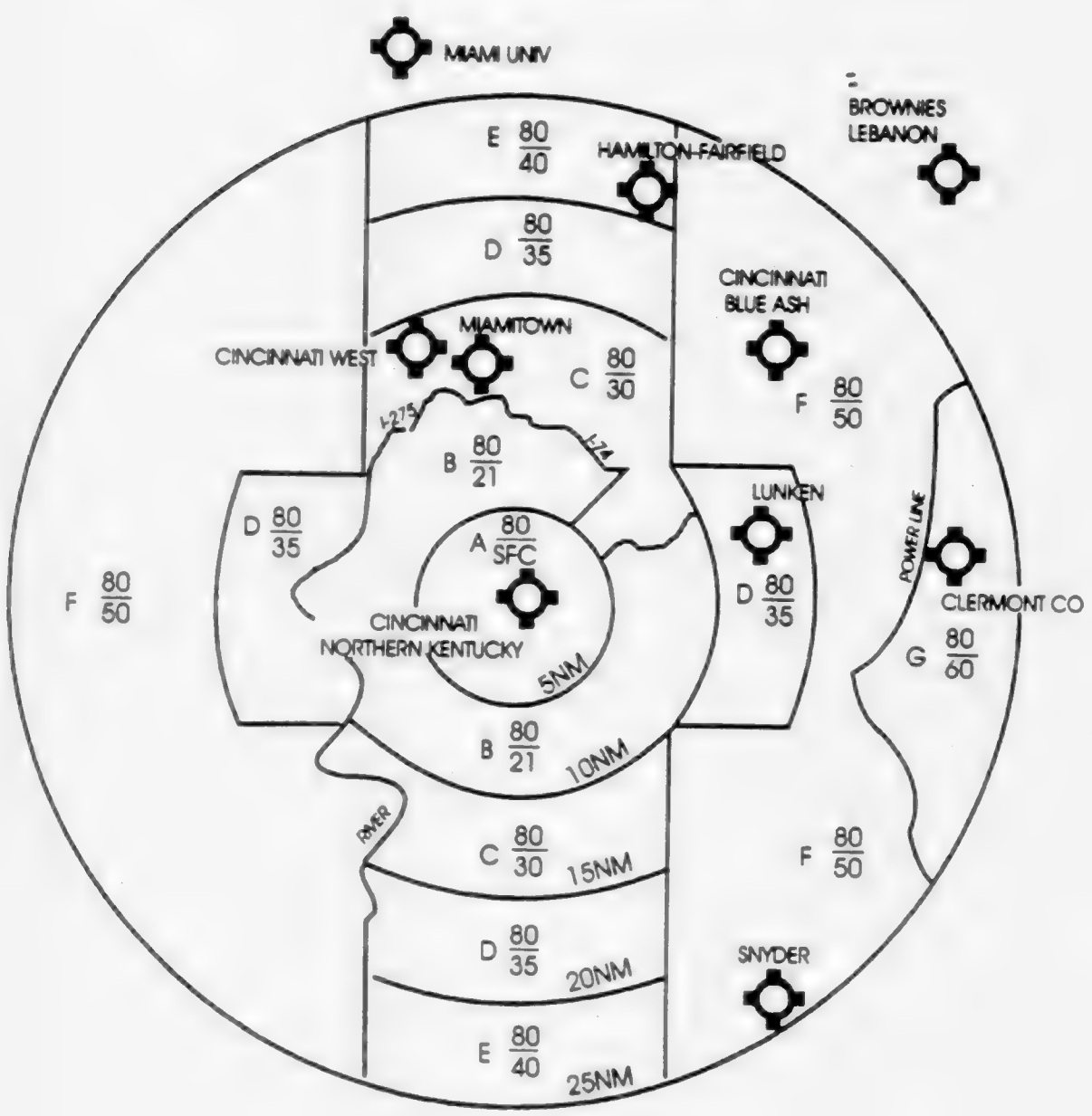
COVINGTON, KENTUCKY
Cincinnati Class B Airspace Area
COVINGTON/CINCINNATI/NORTHERN KENTUCKY INTERNATIONAL AIRPORT
AIRPORT ELEVATION - 897 - FEET
(Not to be used for navigation)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Air Traffic Publications
ATA-10

Issued in Washington, DC, on November 24, 1998.

Jane Garvey,

Administrator.

[FR Doc. 98–31774 Filed 11–24–98; 3:02 pm]

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federal register

Monday
November 30, 1998

Part VI

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

VOL 63 ISS 229 NO 30 1998 UMI

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of intent to re-promulgate temporary, emergency amendment as permanent amendment; and other proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, and certain other provisions of law, the Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. The Commission seeks comment on the proposed amendments, alternative proposed amendments, and any other aspect of the sentencing guidelines, policy statements, and commentary. The Commission may submit amendments to the Congress not later than May 1, 1999.

Part I sets out the Commission's proposed re-promulgation of a telemarketing fraud amendment as a permanent amendment. On September 23, 1998, the Commission submitted this telemarketing fraud amendment to Congress as a temporary, emergency amendment in response to the Telemarketing Fraud Protection Act of 1998, Pub. L. 105–184.

Part II sets out a proposed "Economic Crime Package." The Economic Crime Package developed from the Commission's work in the past two years to examine the sufficiency of guidelines covering certain economic crimes, particularly fraud, theft, and tax offenses. The primary focus of this examination has been: (1) To develop a loss table that incorporates the more-than-minimal-planning enhancement and increases sentence severity for large-dollar loss offenses; (2) to develop a loss definition that, among other things, is more consistent across offense types and easier to use; (3) to consolidate the theft, property destruction, and fraud guidelines in order to provide uniformity of applicable commentary; and (4) to make necessary conforming changes to all other guidelines that refer to the fraud and theft loss tables.

Recent highlights of the Commission's work in this area include (1) soliciting, in January 1998, public comment on various amendment proposals and issues for comment (see 63 FR 602–25); (2) conducting, in March 1998, two public hearings, one of which (in San Francisco, California) was dedicated exclusively to economic crimes; (3) Commissioner consideration, in April 1998, of an "economic crime package" of amendments to the sentencing guidelines; and (4) conducting field testing, in the summer of 1998, of the proposed loss definition with the Criminal Law Committee of the Judicial Conference, probation officers, and other guideline users.

The Economic Crime Package primarily is composed of the following: (1) The Theft, Property Destruction, and Fraud Package; (2) the Tax Package; (3) More than Minimal Planning Conforming Amendments; (4) Amendments for Referring Guidelines; and (5) Other Technical and Conforming Amendments. The proposed amendments in this part are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates alternative proposals and that the Commission invites comment and suggestions for appropriate policy choices; for example, in a case in which the Commission is considering whether a particular enhancement should provide only a minimum offense level or a minimum offense level with an additional two-level increase, each option would appear in bracketed text. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific guideline language.

Part III proposes to make certain amendments to the probation and supervised release guidelines that are consistent with recently enacted legislation.

Finally, Part IV presents several issues for which the Commission requests public comment.

DATES: The Commission will announce at a later date the deadline for public comment on these proposed amendments and issues for comment, and the date for any public hearing(s) that may be scheduled.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year, pursuant to 28 U.S.C. 994(p).

(**Note:** The publication of these proposed amendments and issues for comment was approved before October 21, 1998.)

Authority: 28 U.S.C. 994(a), (o), (p), (x); Pub. L. 105–184, section 6, June 23, 1998, 112 Stat. 520.

Richard P. Conaboy,
Chairman.

Part I—Notice of Proposed Re-Promulgation of Telemarketing Fraud Amendment as Permanent Amendment

1. Synopsis of Proposed Amendment: On September 23, 1998, in response to directives contained in the Telemarketing Fraud Protection Act of 1998, Pub. L. 105–184, the Commission submitted to Congress a temporary, emergency amendment that provided (1) a two-level increase and a minimum offense level of level 12 in the fraud guideline (§ 2F1.1) for offenses that involve sophisticated means; and (2) a two-level increase in the vulnerable victim guideline (§ 3A1.1) for offenses that involve a large number of vulnerable victims. The amendment, particularly the sophisticated means enhancement, built upon and broadened an amendment submitted to Congress on May 1, 1998, which created an enhancement in § 2F1.1 for sophisticated concealment. The Commission specified an effective date of November 1, 1998 for the emergency amendment.

The Commission proposes to re-promulgate this amendment as a permanent, non-emergency amendment and submit it to Congress not later than May 1, 1999. Under the terms of the congressionally granted authority, the emergency amendment is temporary unless re-promulgated in the next amendment cycle under regularly applicable amendment procedures. See Pub. L. 100–182, § 21, set forth as an editorial note under 28 U.S.C. § 994.

Proposed Amendment: Section 2F1.1(b) is amended by striking

subdivision (3) and all that follows through the end of the subsection and inserting the following:

"(3) If the offense was committed through mass-marketing, increase by 2 levels.

(4) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (B) violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(5) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(6) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

(7) If the offense—

(A) substantially jeopardized the safety and soundness of a financial institution; or

(B) affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,

increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by striking Application Note 14 and all that follows through the end of the Application Notes and inserting the following:

"15. For purposes of subsection (b)(5)(B), 'United States' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(5)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

The enhancement for sophisticated means under subsection (b)(5)(C) requires conduct that is significantly more complex or intricate than the conduct that may form the basis for an enhancement for more than minimal planning under subsection (b)(2)(A).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.

16. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. §§ 20, 656, 657, 1005–1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and "any health, medical, or hospital insurance association," as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

17. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if, as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above.

18. 'The defendant derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(7)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. § 982(a)(4).

19. If the defendant is convicted under 18 U.S.C. § 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

20. If subsection (b)(7) (A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by redesignating Notes 3 through 13 as Notes 4 through 14, respectively; and by inserting after Note 2 the following new Note 3:

"3. 'Mass-marketing,' as used in subsection (b)(3), means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply, for example, if the defendant conducted or participated in a telemarketing campaign that solicited a large number of individuals to purchase fraudulent life insurance policies.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended in Note 1 by striking "§ 2F1.1(b)(3)" and inserting "§ 2F1.1(b)(4)"; in redesignated Note 5 (formerly Note 4), by striking "(b)(3)(A)" and inserting "(b)(4)(A)"; and in redesignated Note 6 (formerly Note 5), by striking "(b)(3)(B)" and inserting "(b)(4)(B)".

The Commentary to § 2F1.1 captioned "Background" is amended by inserting after the fifth paragraph the following new paragraph:

"Subsection (b)(5) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.".

Section 3A1.1(b) is amended to read as follows:

"(b)(1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.

(2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by 2 additional levels.".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the first paragraph by striking "'victim' includes any person" before "who is" and inserting "'vulnerable victim' means a person (A)"; and by inserting after "(Relevant Conduct)" the following:

"; and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the second paragraph by striking "where" each place it appears and inserting "in which".

The Commentary to § 3A1.1 captioned "Application Notes" is amended in Note 2 in the third paragraph by striking "offense guideline specifically incorporates this factor" and inserting "factor that makes the person a vulnerable victim is incorporated in the offense guideline".

The Commentary to § 3A1.1 captioned "Background" is amended by adding at the end the following additional paragraph:

"Subsection (b)(2) implements, in a broader form, the instruction to the Commission in section 6(c)(3) of Public Law 105–184.".

The Commentary to § 2B5.1 captioned "Application Notes" is amended in Note 1 by inserting "United States" before "Virgin Islands".

Part II—The Economic Crime Package

In May, 1997, the Commission set as one of its priorities the systematic study and analysis of the guidelines for fraud, theft, and tax offenses. After approximately two years of data collection, analyses, public comment, and public hearings, the Commission developed a comprehensive "Economic Crime Package".

The Economic Crime Package is composed of the following: (A) The Theft, Property Destruction, and Fraud Package; (B) the Tax Package; (C) More than Minimal Planning Conforming Amendments; (D) Amendments for Referring Guidelines; and (E) other technical and conforming amendments.

In addition to seeking comment on the Economic Crime Package, the Commission invites suggestions for options, other than those presented in the Package, for treating theft, fraud, and tax offenses in the guidelines.

(A) The Theft, Property Destruction, and Fraud Package

2. Synopsis of Proposed Amendment: The "Theft, Property Destruction, and Fraud Package" has the following principal features: (A) A consolidated theft, fraud, and property destruction guidelines; (B) a new loss table for fraud and theft offenses, with more than minimal planning "built in"; and (C) a clarified loss definition.

The new consolidated guideline begins with a base offense level of level 6. This base offense level has the effect of increasing the base offense level for theft and property destruction cases. However, this increase will be offset, for the most part, by a higher floor offense level in the new loss table for these offenses. The current loss table for theft and property destruction has its first offense level increase at amounts exceeding $100, whereas the offense level increase in the new loss table will begin at amounts exceeding $2000.

The proposed guideline also provides for a loss table that builds more than minimal planning into the table, instead of maintaining this factor as a separate two-level enhancement. The first level from the former enhancement is built in at amounts exceeding $10,000; the second level is built in at amounts exceeding $20,000. The proposed loss table also provides an increase in offense level severity beginning at amounts exceeding $40,000. Because more than minimal planning is built into the loss table, the package also presents options for departure language that would either prohibit or discourage a departure from the guideline range based on more than minimal planning, or lack thereof.

The enhancement for sophisticated means is included in the consolidated guideline based on the assumption that the enhancement, promulgated as a temporary, emergency amendment effective November 1, 1998, will be re-promulgated as a permanent amendment during the next amendment cycle. (See, Part I—Notice of Re-Promulgation of Telemarketing Fraud Amendment as Permanent Amendment.) Other changes in the guideline structure include (A) the addition of risk of death to the risk of serious bodily injury enhancement and an increase in the floor offense level from level 13 to level 14 in this enhancement; (B) options for a floor offense level and offense level increase for the gross receipts enhancement; and (C) options for a bribery cross reference and other, general cross references.

The clarified loss definition begins with the general rule that loss is the greater of actual loss or intended loss. The loss definition also: (A) Defines "actual loss," "reasonably foreseeable," and "intended loss"; (B) provides flexibility in determining the loss amount, giving consideration to a number of factors; (C) provides that gain shall be used instead of loss if gain is greater than loss and more accurately reflects the seriousness of the offense; (D) provides rules for crediting amounts the defendant paid back to the victim; (E) provides special rules relating to certain kinds of cases, such as "Ponzi" schemes; (F) presents options on whether interest can be considered in the loss calculation; and (G) sets out upward and downward departure considerations.

Proposed Amendment: Strike the heading to Part B of Chapter Two, the heading to Subpart 1 of Part B of Chapter Two, the Introductory Commentary to such subpart, §§ 2B1.1, 2B1.3, and 2F1.1, and insert the following:

Part B—Basic Economic Offenses

1. Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, Fraud, and Insider Trading

Introductory Commentary

These sections address basic forms of property offenses: theft, embezzlement, fraud, forgery, counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States), insider trading, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Part K, Offenses Involving Public Safety.) These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilative Crimes Act.

§ 2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States.

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) More than $2,000	Add 1.
(B) More than $5,000	Add 2.
(C) More than $10,000	Add 4.
(D) More than $20,000	Add 6.
(E) More than $40,000	Add 8.
(F) More than $80,000	Add 10.
(G) More than $200,000	Add 12.
(H) More than $500,000	Add 14.
(I) More than $1,200,000	Add 16.
(J) More than $2,500,000	Add 18.
(K) More than $7,500,000	Add 20.
(L) More than $20,000,000	Add 22.
(M) More than $50,000,000	Add 24.

Loss (apply the greatest)	Increase in level
(N) More than $100,000,000	Add 26.

(2) If the offense involved theft from the person of another, increase by 2 levels.

(3) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by 2 levels.

(4) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by 2 levels.

(5) If the offense was committed through mass-marketing, increase by 2 levels.

(6) If (A) the offense involved theft of property from a national cemetery; or (B) property of a national cemetery was damaged or destroyed, increase by 2 levels.

(7) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; or (B) a violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than 10, increase to level 10.

(8) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(9) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(10) If (A) the offense involved an organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts, and (B) the offense level as determined above is less than level 14, increase to level 14.

(11) If the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.

[Gross Receipts, Option 1: [(12) If (A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense; and (B) the offense level as determined above is less than level 24, increase to level 24.]

[Gross Receipts, Option 2: [(12) If (A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels. If the resulting offense level is less than level 24, increase to level 24.]

[**Note:** The Commission also has the option to keep the current 4-level enhancement (as well as the floor) gross receipts SOC.]

(c) Cross References.

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate, if the resulting offense level is greater than that determined above.

(2) If the offense involved (A) arson; or (B) property destruction by use of explosives, apply § 2K1.4 (Arson: Property Destruction by Use of Explosives).

[(3) If the offense involved (A) commercial bribery, or (B) bribery, gratuity, or a related offense involving a public official, apply § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery) or a guideline from Chapter Two, Part C (Offenses Involving Public Officials), as most appropriate [, if the resulting offense level is greater than that determined above].]

[(4) If (A) none of subdivisions (1), (2), or (3) of this subsection apply; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (e.g., 18 U.S.C. § 1001, 1341, 1342, or 1343); and (C) the conduct set forth in the count of conviction is more specifically covered by another guideline in Chapter Two, apply that other guideline.]

(d) Special Instruction.

(1) If the defendant was convicted under 18 U.S.C. § 1030(a)(4) or (5), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment.

Commentary

Statutory Provisions: 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b–6, 1644, 1983–1988, 1990c; 18 U.S.C. §§ 225, 285–289, 471–473, 500, 510, 511, 553(a)(1), (2), 641, 656, 657, 659, 662, 664, 1001–1008, 1010–1014, 1016–1022, 1025–1028, 1029, 1030(a)(5), 1031, 1341–1344, 1361, 1363, 1702, 1703, 1708, 1831, 1832, 2113(b), 2312–2317, 2321; 29 U.S.C. §§ 439, 461, 501(c), 1131. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—

'Financial institution' means (A) any institution described in 18 U.S.C. §§ 20, 656, 657, 1005–1007, and 1014; (B) any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; (C) any health, medical or hospital insurance association; (D) brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; (E) futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and (F) any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and 'health, medical, or hospital insurance association,' primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

'Firearm' and 'destructive device' are defined in the Commentary to § 1B1.1 (Application Instructions).

'Foreign instrumentality,' 'foreign agent,' and 'trade secret' have the meaning given those terms in 18 U.S.C. § 1839(1), (2), and (3), respectively.

'Mass-marketing,' means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply,

for example, if the defendant conducted or participated in a telemarketing campaign that solicited a large number of individuals to purchase fraudulent life insurance policies.

'National cemetery' means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

'Theft from the person of another' means the taking, without the use of force, of property that was being held by another person or was within arms' reach. Examples include pick-pocketing or non-forcible purse-snatching, such as the theft of a purse from a shopping cart.

2. For purposes of subsection (b)(1)—

(A) General Rule. Loss is the greater of the actual loss or the intended loss.

'Actual loss' means the reasonably foreseeable pecuniary harm that resulted or will result from the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). 'Reasonably foreseeable pecuniary harm' means pecuniary harm that the defendant knew or, under the circumstances of the particular case, should have known would likely follow, in the ordinary course of events, as a result of that conduct.

'Intended loss' means the pecuniary harm intended to be caused by the conduct for which the defendant is accountable under § 1B1.3, even if that harm would have been unlikely or impossible to accomplish (e.g., as in a government sting operation).

(B) Determination of Loss. The court need not determine the precise amount of the loss. Rather, it need only make a reasonable estimate of that amount, based on available information and using, as appropriate and practicable under the circumstances to best effectuate the general rule in subdivision (A), factors such as the following:

(i) The fair market value of the property, or other thing of value, taken or otherwise unlawfully acquired, misapplied, misappropriated, or destroyed; or if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing property taken or otherwise unlawfully acquired or destroyed.

(ii) The cost of repairs to damaged property, not to exceed the replacement cost had the property been destroyed.

(iii) The approximate number of victims multiplied by the average loss to each victim.

(iv) More general factors, such as the scope and duration of the offense and revenues generated by similar operations.

(C) Gain. The court shall use gain instead of loss under subsection (b)(1) if both (i) gain is greater than loss (which may be zero); and (ii) gain more accurately reflects the seriousness of the offense.

(D) Credits Against Loss. Except as provided in subdivision (F)(i), loss shall be reduced by the value of the economic benefit the defendant or other persons acting jointly with the defendant transferred to the victim before the defendant knew or should have known that the offense had been detected.

In the case of collateral, the value of the economic benefit is the amount the victim has recovered as of the time of sentencing from disposition of the collateral. If the collateral has not been disposed of by that time, the value is its fair market value as of the time of sentencing.

In any other case, the value of the economic benefit is its fair market value as of the time of transfer to the victim.

However, in cases in which the economic benefit transferred to the victim has little or no value to the victim because it is substantially different from what the victim intended to receive, loss shall not be reduced by the value of that economic benefit.

For purposes of this subdivision: (i) "economic benefit" includes money, property, or services performed; and (ii) "transferred" means pledged or otherwise provided as collateral, returned, or otherwise conveyed.

Option 1: [(E) Opportunity Costs. Interest (of any kind), anticipated profits, and other opportunity costs shall not be included in determining loss. However, there may be cases in which the amount of interest, anticipated profits, and other opportunity costs is so substantial that not including that amount as part of the loss would substantially understate the seriousness of the offense or the culpability of the defendant. In such cases, an upward departure may be warranted.]

Option 2: [(E) Interest. Interest shall be included in determining loss only if it is bargained for as part of a lending transaction that is involved in the offense. The court shall include any such interest that is accrued and unpaid as of the time the defendant knew or should have known that the offense had been detected.]

(F) Special Rules. The following special rules shall be used to assist in determining actual loss in the cases indicated:

(i) Fraudulent Investment Schemes. In a case involving a fraudulent investment scheme, such as a Ponzi scheme, actual loss is the sum of the net actual losses of each victim who lost all or part of that victim's principal investment as a result of the fraudulent investment scheme. Because this subdivision provides, in cases covered hereunder, for determination of the net loss of each victim, subdivision (D), relating generally to credits against loss, shall not apply to such cases.

(ii) Stolen or Counterfeit Credit Cards and Access Devices; Purloined Numbers and Codes. In a case involving stolen or counterfeit credit cards (see 15 U.S.C. § 1602(k)), stolen or counterfeit access devices (see 18 U.S.C. § 1029(e)(1)), or purloined numbers or codes, the actual loss includes any unauthorized charges made with the credit cards, access devices, or numbers or codes. The actual loss determined for each such credit card, access device, or number or code shall be not less than $100.

(iii) Diversion of Government Program Benefits. In a case involving diversion of government program benefits, actual loss is the value of the benefits diverted from intended recipients or uses.

(iv) Davis-Bacon Act Cases. In a case involving a Davis-Bacon Act violation (i.e., a violation of 40 U.S.C. § 276a, criminally prosecuted under 18 U.S.C. § 1001), the actual loss is the difference between the legally required and actual wages paid.

(G) Upward Departure Considerations. There may be cases in which the loss substantially understates the seriousness of the offense or the culpability of the defendant. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure is warranted:

(i) A primary objective of the offense was an aggravating, non-monetary objective. For example, a primary objective of the offense was to inflict emotional harm.

(ii) The offense caused or risked substantial non-monetary harm. For example, the offense caused physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of a privacy interest.

(iii) The offense created a risk of substantial loss beyond the loss determined above.

(iv) The offense (I) endangered national security or military readiness; or (II) caused a loss of confidence in an important institution.

(v) The offense (I) endangered the solvency or financial security of one or more victims; or (II) impacted numerous victims and the loss determination

substantially understates the aggregate harm.

(H) Downward Departure Considerations. There also may be cases in which the loss substantially overstates the seriousness of the offense or the culpability of the defendant. In such cases, a downward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether a downward departure is warranted:

(i) The primary objective of the offense was a mitigating, non-monetary objective. For example, the primary objective of the offense was to fund medical treatment for a sick parent. [However, if, in addition to that primary objective, a substantial objective of the offense was to benefit the defendant economically, a downward departure would not be warranted.]

(ii) The defendant made complete, or substantially complete, restitution prior to the time the defendant knew or should have known that the offense had been detected.

(I) Appropriate Deference. The sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence. Accordingly, the court's loss determination is entitled to appropriate deference. See 18 U.S.C. § 3742(e) and (f).

3. In some cases in which the amount of intended loss exceeds the actual loss, whether some of the intended loss would have occurred may be speculative. In such cases, the offense level ordinarily applicable to that amount of intended loss sometimes must be reduced, in accordance with § 2X1.1. (Conspiracies, Attempts, Solicitations). Specifically, in a case involving only inchoate offense conduct (i.e., a case in which the defendant was convicted only of an attempt, conspiracy, or solicitation, and in which the offense involved only intended loss), a decrease of three levels sometimes may apply, as provided under § 2X1.1.

Similarly, in the case of a partially completed offense (e.g., an offense involving a completed fraud that is part of a larger, attempted fraud in which both actual loss and additional intended loss result), the offense level is to be determined, and may be decreased in some cases, in accordance with the provisions of § 2X1.1, whether the defendant is convicted of the substantive offense, the inchoate offense (attempt, solicitation, or conspiracy), or both. As explained more fully in Application Note 4 of the Commentary to § 2X1.1, in such a case, a three-level decrease in the offense level for the intended loss sometimes may apply, except that the offense level for the intended loss, with or without a three-level decrease, shall not be used if it is less than the offense level for the actual loss.

Options on Discouraged or Prohibited Departure Based on MMP:

[4. [Option 1: The Commission has determined that the amount of loss involved in a particular case is a more appropriate factor in distinguishing the seriousness of an offense than is the extent of planning. Accordingly, (A) a sentence below the applicable guideline range [Option 2: [ordinarily]] would not be warranted in a case merely because it involved only minimal planning; and (B) a sentence above the applicable guideline range [Option 2: [ordinarily]] would not be warranted in a case merely because it involved more-than-minimal planning.]

5. Subsection (b)(7)(A) applies in the case of a misrepresentation that the defendant was an employee or authorized agent of a charitable, educational, religious or political organization, or a government agency. Examples of conduct to which this factor applies include (A) the mail solicitation by a group of defendants of contributions to a non-existent famine relief organization; (B) the diversion by a defendant of donations given for a religiously affiliated school as a result of telephone solicitations to church members in which the defendant falsely claims to be a fund-raiser for the school; and (C) the posing by a defendant as a federal collection agent in order to collect a delinquent student loan.

Subsection (b)(7)(B) provides an adjustment for violation of any judicial or administrative order, injunction, decree, or process. If it is established that an entity the defendant controlled was a party to the prior proceeding, and the defendant had knowledge of the prior decree or order, this provision applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business was previously enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, would be subject to this provision. This subsection does not apply to conduct addressed elsewhere in the guidelines; e.g., a violation of a condition of release (addressed in § 2J1.7 (Offense Committed While on Release)) or a violation of probation (addressed in § 4A1.1 (Criminal History Category)).

The enhancements in subsection (b)(7) are alternative rather than cumulative; however, if both of the enumerated factors apply in a particular case, an upward departure may be warranted.

7. For purposes of subsection (b)(8)(B), "United States" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(8)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

If the conduct that forms the basis for an enhancement under subsection (b)(8) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.

8. For purposes of subsection (b)(10), a minimum measure of loss is provided in the case of an ongoing, sophisticated operation (such as an auto theft ring or "chop shop") to steal vehicles or vehicle parts or to receive stolen vehicles or vehicle parts. "Vehicles" refers to all forms of vehicles, including aircraft and watercraft.

9. For purposes of subsection (b)(11), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E) was placed in substantial jeopardy of experiencing any of the conditions described in subdivisions (A) through (D) of this note.

10. For purposes of subsection (b)(12), the defendant shall be considered to have derived more than $1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. "Gross receipts" means any moneys, funds, credits, assets, securities, or other real or personal property, whether tangible or intangible, owned by, or under the custody or control of, a financial institution, that are obtained

directly or indirectly as a result of the offense. See 18 U.S.C. §§ 982(a)(4), 1344.

11. Subsection (c)[(4)] provides a cross reference to another Chapter Two guideline in cases in which the defendant is convicted of a general fraud statute, and the conduct set forth in the count of conviction is more specifically covered by that other Chapter Two guideline. Sometimes offenses involving fraudulent statements are prosecuted under 18 U.S.C. § 1001, or a similarly general statute, although the offense is also covered by a more specific statute. Examples include false entries regarding currency transactions, for which § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports) would be more apt, and false statements to a customs officer, for which § 2T3.1 (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property) likely would be more apt. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses.

Offenses involving fraudulent identification documents and access devices, in violation of 18 U.S.C. §§ 1028 and 1029, are also covered by this guideline. If the primary purpose of the offense involved the unlawful production, transfer, possession, or use of identification documents for the purpose of violating, or assisting another to violate, the laws relating to naturalization, citizenship, or legal resident status, apply § 2L2.1 or § 2L2.2, as appropriate, rather than this guideline, pursuant to subsection (c)(3).

12. If the defendant is convicted under 18 U.S.C. § 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the continuing financial crimes enterprise.

Background: This guideline covers offenses involving theft, stolen property, property damage or destruction, fraud, forgery, insider trading, and counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States). It also covers offenses involving altering or removing motor vehicle identification numbers, trafficking in automobiles or automobile parts with altered or obliterated identification numbers, odometer laws and regulations, obstructing correspondence, the falsification of documents or records relating to a benefit plan covered by the Employment Retirement Income Security Act, and the failure to maintain, or falsification of, documents required by the Labor Management Reporting and Disclosure Act.

Because federal fraud statutes often are broadly written, a single pattern of offense conduct usually can be prosecuted under several code sections, as a result of which the offense of conviction may be somewhat arbitrary. Furthermore, most fraud statutes cover a broad range of conduct with extreme variation in severity. The specific offense characteristics and cross references contained in this guideline are designed with these considerations in mind.

The Commission has determined that, ordinarily, the sentences of defendants convicted of federal offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under this guideline. Because of the structure of the Sentencing Table (Chapter 5, Part A), subsection (b)(1) results in an overlapping range of enhancements based on the loss.

Both direct and consequential pecuniary harm that is reasonably foreseeable to result from the offense will be taken into account in determining the loss. Accordingly, in any particular case, the determination of loss may include consideration of factors not specifically set forth in this guideline. For example, in an offense involving unlawfully accessing, or exceeding authorized access to, a "protected computer," as defined in 18 U.S.C. § 1030(e)(2)(A) or (B), "loss" is the reasonably foreseeable pecuniary harm to the victim, which typically includes costs such as conducting a damage assessment and restoring the system and data to their condition prior to the offense, and any lost revenue due to interruption of service. The Commission does not intend that the cost to the government of prosecution and criminal investigation of an offense covered by this guideline will be included in the determination of loss, even if such costs are reasonably foreseeable.

Theft from the person of another, such as pickpocketing or non-forcible purse-snatching, receives an enhanced sentence because of the increased risk of physical injury. This guideline does not include an enhancement for thefts from the person by means of force or fear; such crimes are robberies and are covered under § 2B3.1 (Robbery).

A minimum offense level of 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial, but the value of the property may be particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of an organized scheme is used as an alternative to loss in setting a minimum offense level.

Use of false pretenses involving charitable causes and government agencies enhances the sentences of defendants who take advantage of victims' trust in government or law enforcement agencies or the generosity and charitable motives of victims. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct; rather, defendants who exploit victims' charitable impulses or trust in government create particular social harm. In a similar vein, a defendant who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process or orders issued by federal, state, or local administrative agencies.

Subsection (b)(5) implements, in a broader form, the instruction to the Commission in section 6(b)(1) of Public Law 105–184. Subsection (b)(6) implements the instruction to the Commission in section 2 of Public Law 105–101. Subsection (b)(8) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184. Subsection (b)(9)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322. Subsection (b)(11) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73. Subsection (b)(12) implements the instruction to the Commission in section 2507 of Public Law 101–647. Subsection (d)(1) implements the instruction to the Commission in section 805(c) of Public Law 104–132.".

(B) The Tax Package

3. Synopsis of Proposed Amendment: The following proposed amendment provides increases that are similar to the loss table presented in the consolidated theft, fraud, and property destruction

guideline, except at amounts between $12,500 and $80,000.

Proposed Amendment: Strike the tax table in § 2T4.1 and insert a new table as follows:

"§ 2T4.1. Tax Table.

Tax loss (apply the greatest)	Offense level
(A) $2,000 or less	6
(B) More than $2,000	8
(C) More than $5,000	10
(D) More than $12,500	12
(E) More than $30,000	14
(F) More than $80,000	16
(G) More than $200,000	18
(H) More than $500,000	20
(I) More than $1,200,000	22
(J) More than $2,500,000	24
(K) More than $7,500,000	26
(L) More than $20,000,000	28
(M) More than $50,000,000	30
(N) More than $100,000,000	32.".

Issue for Comment: On May 1, 1998, the Commission submitted to Congress an amendment that provided a two-level enhancement in the fraud guideline, § 2F1.1, for sophisticated concealment. The Commission also submitted amendments that generally conformed the sophisticated means enhancement in §§ 2T1.1, 2T1.4 and 2T3.1 to the sophisticated concealment enhancement provided in the fraud guideline.

Subsequent to these amendments, the Congress enacted the Telemarketing Fraud Protection Act of 1998, Pub. L. 105–184. This Act required the Commission to act under emergency authority and, among other things, specifically required the Commission to provide "an additional appropriate sentencing enhancement, if [a telemarketing] offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States."

The Commission responded to this directive by building on the amendment to § 2F1.1 that added sophisticated concealment. The new amendment, which was submitted to Congress in September, 1998, broadened the scope of the "sophisticated concealment" enhancement to cover "sophisticated means" of executing or concealing a fraud offense.

The Commission invites comment on whether it should amend §§ 2T1.1, 2T1.4, and 2T3.1 to generally conform the sophisticated concealment enhancement (and the accompanying commentary) to the sophisticated means enhancement added to the fraud guideline in response to the Telemarketing Fraud Protection Act. The Commission also invites comment on whether it should provide a minimum offense level of [12] for tax offenses that involve either sophisticated concealment or sophisticated means (if the Commission conforms the enhancement in §§ 2T1.1, 2T1.4, and 2T3.1).

(C) More Than Mimimal Planning Conforming Amendments

4. Synopsis of Proposed Amendment: The following amendment makes conforming changes that necessarily follow from the incorporation of more than minimal planning into the loss table. The amendment proposes to strike references to more than minimal planning in appropriate places throughout the guidelines.

Proposed Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(f) in the first paragraph by striking the last sentence as follows:

"'More than minimal planning' also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which § 3C1.1 (Obstructing or Impeding the Administration of Justice) applies.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(f) by striking the second paragraph as follows:

"'More than minimal planning' is deemed present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune. Consequently, this adjustment will apply especially frequently in property offenses."

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(f) by striking the last two paragraphs as follows:

"In a theft, going to a secluded area of a store to conceal the stolen item in one's pocket would not alone constitute more than minimal planning. However, repeated instances of such thefts on several occasions would constitute more than minimal planning. Similarly, fashioning a special device to conceal the property, or obtaining information on delivery dates so that an especially valuable item could be obtained, would constitute more than minimal planning.

In an embezzlement, a single taking accomplished by a false book entry would constitute only minimal planning. On the other hand, creating purchase orders to, and invoices from, a dummy corporation for merchandise that was never delivered would constitute more than minimal planning, as would several instances of taking money, each accompanied by false entries.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 4 in the second paragraph by striking the last sentence as follows:

"For example, the adjustments from § 2F1.1(b)(2) (more than minimal planning) and § 3B1.1 (Aggravating Role) are applied cumulatively.".

Section 2B1.1(b)(4) is amended by striking subdivision (A) as follows:

"(A) If the offense involved more than minimal planning, increase by 2 levels; or".

Section 2B1.1(b)(4)(B) is amended by striking "(B)'; and by striking "4 " and inserting "2".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by striking "'More than minimal planning,'"; and by striking "'firearm,'" and inserting "'Firearm"'.

The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Note 13 as follows:

"13. If subsection (b)(6) (A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.'".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by redesignating Notes 14, 15, and 16 as Notes 13, 14, and 15, respectively.

The Commentary to § 2B1.1 captioned "Background" is amended in the first paragraph by striking the last sentence as follows:

"Because of the structure of the Sentencing Table (Chapter 5, Part A), subsection (b)(1) results in an overlapping range of enhancements based on the loss.".

The Commentary to § 2B1.1 captioned "Background" is amended by striking the second paragraph as follows:

"The guidelines provide an enhancement for more than minimal planning, which includes most offense behavior involving affirmative acts on multiple occasions. Planning and repeated acts are indicative of an intention and potential to do considerable harm. Also, planning is often related to increased difficulties of detection and proof.".

Section 2B1.3(b) is amended by striking subdivision (3) as follows:

"(3) If the offense involved more than minimal planning, increase by 2 levels."; and by redesignating (b)(4) as (b)(3).

The Commentary to § 2B1.3 captioned "Application Notes" is amended in Note 1 by striking the first paragraph as follows:

"'More than minimal planning' is defined in the Commentary to § 1B1.1 (Application Instructions)."

Section 2F1.1(b) is amended by striking subdivision (2) as follows:

"(2) If the offense involved (A) more than minimal planning, or (B) a scheme

to defraud more than one victim, increase by 2 levels.".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by striking Note 2 as follows:

"2. 'More than minimal planning' (subsection (b)(2)(A)) is defined in the Commentary to § 1B1.1 (Application Instructions).";

by striking Note 4 as follows:

"4. 'Scheme to defraud more than one victim,' as used in subsection (b)(2)(B), refers to a design or plan to obtain something of value from more than one person. In this context, 'victim' refers to the person or entity from which the funds are to come directly. Thus, a wire fraud in which a single telephone call was made to three distinct individuals to get each of them to invest in a pyramid scheme would involve a scheme to defraud more than one victim, but passing a fraudulently endorsed check would not, even though the maker, payee and/or payor all might be considered victims for other purposes, such as restitution.";

by striking Note 20 as follows:

"20. If subsection (b)(7) (A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.'";

by redesignating Note 3 as Note 2, and by redesignating Notes 5 through 19 as Notes 3 through 17, respectively.

The Commentary to § 2F1.1 captioned "Background" is amended by striking the third paragraph as follows:

"The extent to which an offense is planned or sophisticated is important in assessing its potential harmfulness and the dangerousness of the offender, independent of the actual harm. A complex scheme or repeated incidents of fraud are indicative of an intention and potential to do considerable harm. In pre-guidelines practice, this factor had a significant impact, especially in frauds involving small losses. Accordingly, the guideline specifies a 2-level enhancement when this factor is present.".

The Commentary to § 3D1.3 captioned "Application Notes" is amended in Note 3 by striking the last sentence as follows:

"In addition, the adjustment for 'more than minimal planning' frequently will apply to multiple count convictions for property offenses.".

The "Illustrations of the Operation of the Multiple-Count Rules" after guideline 3D1.5 is amended in the fifth sentence of illustration 2 by inserting "and" before "1 level"; by striking "; and 2 levels are added because the conduct involved repeated acts with some planning (§ 2F1.1(b)(2)(A))"; and in the last sentence by striking "9" and inserting "7".

(D) Amendments for Referring Guidelines

5. Synopsis of Proposed Amendment: Currently, many guideline provisions refer to the loss tables in the theft (§ 2B1.1) and fraud (§ 2F1.1) guidelines. In general, the following amendments show how the guidelines that refer to either § 2B1.1 or § 2F1.1 are proposed to be amended if the Commission were to adopt the consolidated guideline presented in Proposed Amendment 1, above.

The proposed amendment accomplishes the following: (A) Presents a reference monetary table to be used as an alternative to the loss table in the consolidated guideline for guidelines that already build in more than minimal planning; (B) sets out the guidelines that would refer to this new reference monetary table; (C) presents three options for amending the pornography and obscenity guidelines; (D) presents two options for amending the copyright and structuring transactions guidelines; (E) presents two options for amending § 2B3.2 for offenses involving the invasion of a protected computer; (F) consolidates the bank gratuity and principal gratuity guidelines; and (G) presents technical and conforming amendments that would be required if the Commission consolidates the theft, fraud, and property destruction guidelines.

5(A). Reference Monetary Table

Proposed Amendment: Chapter Two, Part X is amended by adding at the end the following new subpart:

"6. Reference Monetary Table

§ 2X6.1. Reference Monetary Table

Amount (apply the greatest)	Increase in level
(A) More than $2,000	Add 1.
(B) More than $5,000	Add 2.
(C) More than $10,000	Add 3.
(D) More than $20,000	Add 4.
(E) More than $40,000	Add 6.
(F) More than $80,000	Add 8.
(G) More than $200,000	Add 10.
(H) More than $500,000	Add 12.
(I) More than $1,200,000	Add 14.
(J) More than $2,500,000	Add 16.
(K) More than $7,500,000	Add 18.
(L) More than $20,000,000	Add 20.
(M) More than $50,000,000	Add 22.
(N) More than $100,000,000	Add 24.".

5(B). Guidelines That Will Refer to Reference Monetary Table

Proposed Amendment: Section 2B5.1(b) is amended by striking:

"(1) If the face value of the counterfeit items exceeded $2,000, increase by the corresponding number of levels from the table at § 2F1.1 (Fraud and Deceit).", and inserting:

"(1) If the face value of the counterfeit items exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2B6.1(b) is amended by striking:

"(1) If the retail value of the motor vehicles or parts involved exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).", and inserting:

"(1) If the retail value of the motor vehicles or parts involved exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2F1.2(b) is amended by striking:

"(1) Increase by the number of levels from the table in § 2F1.1 corresponding to the gain resulting from the offense.", and inserting:

"(1) If the gain resulting from the offense exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2B4.1(b) is amended by striking:

"(1) If the greater of the value of the bribe or the improper benefit to be conferred exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1.", and inserting:

"(1) If the greater of the value of the bribe or the improper benefit to be conferred exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2B3.3(b) is amended by striking:

"(1) If the greater of the amount obtained or demanded exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1.", and inserting:

"(1) If the greater of the amount obtained or demanded exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2Q2.1(b)(3) is amended by striking:

"(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or",

and inserting:

"(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table), [but in no event more than [18] levels]; or".

Section 2C1.1(b)(2) is amended by striking:

"(A) If the value of the payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest, exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).",

and inserting:

"(A) If the value of the payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest, exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2C1.2(b)(2) is amended by striking:

"(A) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).",

and inserting:

"(A) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2C1.7(b)(1) is amended by striking:

"(A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or",

and inserting:

"(A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2E5.1(b) is amended by striking:

"(2) Increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater.",

and inserting:

"(2) If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

5(C). Pornography and Obscenity Guidelines

Proposed Amendment: [Option 1: Section 2G2.2(b) is amended by striking:

"(2) If the offense involved distribution, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.",

and inserting:

"(2) If the offense involved distribution, increase by the number of levels from the table in § 2X6.1 (Reference Monetary Table) corresponding to the retail value of the material, but in no event by less than [5] levels.".

[Option 2: Section 2G2.2(b)(2) is amended by inserting "(Fraud and Deceit)" after "§ 2F1.1".

[Option 3: Section 2G2.2(b)(2) is amended by striking "the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than".

The Commentary to § 2G2.2 captioned "Application Notes" is amended by adding at the end the following new note:

"4. Subsection (b)(2) provides a five-level enhancement if the offense involved distribution. If the offense involved distribution by a large-scale commercial enterprise [(i.e., a commercial enterprise distributing material having a retail value that is more than [$40,000])], an upward departure may be warranted.".

[Option 1: Section 2G3.1(b) is amended by striking:

"(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.",

and inserting:

"(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2X6.1 (Reference Monetary Table) corresponding to the retail value of the material, but in no event by less than [5] levels.".

[Option 2: Section 2G3.1(b)(1) is amended by inserting "(Fraud and Deceit)" after "§ 2F1.1".

[Option 3: Section 2G3.1(b)(1) is amended by striking "the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5", and inserting "[5]".

The Commentary to § 2G3.1 captioned "Application Note" is amended by striking "Note" and inserting "Notes"; and adding at the end the following new note:

"2. Subsection (b)(1) provides a [five-level] enhancement if the offense involved an act related to distribution for pecuniary gain.. If the offense involved distribution by a large-scale commercial enterprise [(i.e., a commercial enterprise distributing material having a retail value that is more than [$40,000])], an upward departure may be warranted".

[Option 1: Section 2G3.2(b) is amended by striking:

"(2) If 6 plus the offense level from the table at 2F1.1(b)(1) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.",

and inserting:

"(2) If 6 plus the number of levels from the table in § 2X6.1 (Reference Monetary Table) corresponding to the volume of commerce attributable to the defendant results in a greater offense level than the offense level determined above, increase to the greater offense level.".

[Option 2: Section 2G3.2(b) is amended by striking:

"(2) If 6 plus the offense level from the table at 2F1.1(b)(1) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.",

and inserting:

"(2) If 6 plus the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the volume of commerce attributable to the defendant results in a greater offense level than the offense level determined above, increase to the greater offense level.".

[Option 3: Section 2G3.2(b) is amended by striking:

"(2) If 6 plus the offense level from the table at 2F1.1(b)(1) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.".

The Commentary to § 2G3.2 is amended by striking:

"Background: Subsection (b)(1) provides an enhancement where an obscene telephonic communication was received by a minor less than 18 years of age or where a broadcast was made during a time when such minors were likely to receive it. Subsection (b)(2) provides an enhancement for large-scale

"dial-a-porn" or obscene broadcasting operations that results in an offense level comparable to the offense level for such operations under § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter). The extent to which the obscene material was distributed is approximated by the volume of commerce attributable to the defendant.";

and by inserting:

"Application Notes:

1. Subsection (b)(1) provides an enhancement where an obscene telephonic communication was received by a minor less than 18 years of age or where a broadcast was made during a time when such minors were likely to receive it.

2. If the offense involved communications or broadcasting operations by a large-scale commercial enterprise [(i.e., a commercial enterprise engaging in a volume of commerce having a value that is more than [$40,000])], an upward departure may be warranted.".

5(D). Copyright and Structuring Transactions

Proposed Amendment: [Option 1: Section 2B5.3(b) is amended by striking:

"(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).",

and inserting:

"(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

[Option 2: Maintains current reference to the fraud table.

[Option 1: Section § 2S1.3 is amended by striking:

"(a) Base Offense Level: 6 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.",

and inserting:

"(a) Base Offense Level: 6 plus the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table), if the value of the funds exceeded $2,000.

[Option 2: Section § 2S1.3 is amended by striking:

"(a) Base Offense Level: 6 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.",

and inserting:

"(a) Base Offense Level: 6 plus the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit), if the value of the funds exceeded $2,000.".

5(E). Trespass Offenses Involving Invasion of Protected Computers

Proposed Amendment: [Option 1: Section 2B2.3(b) is amended by striking:

"(3) If the offense involved invasion of a protected computer resulting in a loss exceeding $2,000, increase the offense level by the number of levels from the table in § 2F1.1 corresponding to the loss.",

and inserting:

"(3) If (A) the offense involved invasion of a protected computer, and (B) the loss resulting from the invasion exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

[Option 2: Section 2B2.3(b) is amended by striking:

"(3) If the offense involved invasion of a protected computer resulting in a loss exceeding $2,000, increase the offense level by the number of levels from the table in § 2F1.1 corresponding to the loss.",

and inserting:

"(3) If (A) the offense involved invasion of a protected computer, and (B) the loss resulting from the invasion exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).".

5(F). Consolidation of Bank Gratuity and Principal Gratuity Guidelines

Proposed Amendment: Section 2C1.2(b)(2) is amended by striking:

"(A) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).",

and inserting:

"(A) If the value of the unlawful payment exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).".

Section 2C1.2(b)(2)(B) is amended by striking "gratuity" and inserting "unlawful payment".

The Commentary to § 2C1.2 captioned "Statutory Provision" is amended by striking "Provision" and inserting "Provisions"; by inserting "§ " following "U.S.C. § "; and by inserting ", 212–214, 217" following "(1)".

The Commentary to § 2C1.2 captioned "Application Notes" is amended by adding at the end the following new note:

"5. An unlawful payment may be anything of value; it need not be a monetary payment.".

The Commentary to § 2C1.2 captioned "Background" is amended by striking the second and third sentences as follows:

"A corrupt purpose is not an element of this offense. An adjustment is provided where the value of the gratuity exceeded $2,000, or where the public official was an elected official or held a high-level decision-making or sensitive position.",

and inserting:

"It also applies to the offer to, or acceptance by, a bank examiner of any unlawful payment; the offer or receipt of anything of value for procuring a loan or discount of commercial paper from a Federal Reserve Bank; and the acceptance of a fee or other consideration by a federal employee for adjusting or canceling a farm debt.".

Strike § 2C1.6 in its entirety.

5(G). Technical and Conforming Amendments

Synopsis of Proposed Amendment: The following amendments are technical and conforming amendments that would be required if the Commission adopts the amendments in (A) that propose to consolidate the theft, fraud, and property destruction guidelines.

Proposed Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 4 in the second paragraph by striking the second sentence.

The Commentary to § 1B1.3 captioned "Application Notes" is amended in Note 5 by striking "§ 2F1.1 (Fraud and Deceit)" and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)".

Chapter Two is amended by striking "§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)" wherever it appears and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)"; and by striking "§ 2F1.1 (Fraud and Deceit)" wherever it appears and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 2C1.1 captioned "Application Notes" is amended in Note 2 by striking "and includes both actual and intended loss".

The Commentary to § 2C1.7 captioned "Application Notes" is amended in Note 3 by striking "and includes both actual and intended loss".

Section 2F1.2 is deleted in its entirety; and Chapter Two, Part B is amended by adding at the end the following new guideline:

"§ 2B1.4. Insider Trading

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud)

corresponding to the gain resulting from the offense.

Commentary

Statutory Provisions: 15 U.S.C. 78j and 17 CFR 240.10b–5. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Note:

1. Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should be applied only if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary "tippee."

Background: This guideline applies to certain violations of Rule 10b–5 that are commonly referred to as 'insider trading.' Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, i.e., the total increase in value realized through trading in securities by the defendant and persons acting in concert with him or to whom he provided inside information, is employed instead of the victims' losses.

Certain other offenses, e.g., 7 U.S.C. § 13(e), that involve misuse of inside information for personal gain also may appropriately be covered by this guideline.".

The Commentary to § 2B5.3 captioned "Background" is amended in the first paragraph by striking", which will generally exceed the loss or gain due to the offense".

Section 2H3.3(a)(2) is amended by inserting "or destruction" after "theft'.

Section 2H3.3(a) is amended by striking subdivision (3).

The Commentary to § 2H3.3 captioned "Background" is amended by striking "or § 2B1.3 (Property Damage or Destruction)".

Section 2K1.4(a) is amended in subdivision (3) by striking "if the offense was committed in connection with a scheme to defraud; or" and inserting a period; and by striking subdivision (4).

Section 2K1.4(b) is amended in subdivision (2) by striking "(a)(4)" and inserting "(a)(3)".

The Commentary to § 2N2.1 captioned "Application Notes" is amended in Note 2 by inserting "theft, property destruction, and" after "involved"; and by striking "theft, bribery, revealing trade secrets, or destruction of property" and inserting "bribery".

The Commentary to § 2N3.1 captioned "Background" is amended by striking "the guideline for fraud and deception, § 2F1.1," and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 3B1.3 captioned "Application Notes" is amended by adding at the end the following new note:

"4. The following additional illustrations of an abuse of a position of trust pertain to theft or embezzlement from employee pension or welfare benefit plans or labor unions:

(A) If the offense involved theft or embezzlement from an employee pension or welfare benefit plan and the defendant was a fiduciary of the benefit plan, an adjustment under this section for abuse of a position of trust will apply. Fiduciary of the benefit plan is defined in 29 U.S.C. § 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.

(B) If the offense involved theft or embezzlement from a labor union and the defendant was a union officer or occupied a position of trust in the union (as set forth in 29 U.S.C. § 501(a)), an adjustment under this section for an abuse of a position of trust will apply.".

Section 3D1.2(d) is amended by striking "2B1.3" and inserting "2B1.4"; and by striking "§§ 2F1.1, 2F1.2;".

Section 3D1.3(b) is amended by striking "(e.g., theft and fraud)".

The Commentary to § 3D1.3 captioned "Application Notes" is amended in Note 3 by striking "(e.g., theft and fraud)".

The "Illustrations of the Operation of the Multiple-Count Rules" after § 3D1.5 is amended in illustration 4 by striking "§ 2F1.1 (Fraud and Deceit)" and inserting "2B1.1 (Theft, Property Destruction, and Fraud)"; and by striking illustration 2 in its entirety; and by redesignating illustrations 3 and 4 as illustrations 2 and 3.

Chapter Eight is amended by striking "Larceny, Embezzlement, and Other Forms of Theft" wherever it appears and inserting "Theft, Property Destruction, and Fraud".

Chapter Eight is amended by striking "2F1.1 (Fraud and Deceit)" wherever it appears and inserting "§ 2B1.1 (Theft, Property Destruction, and Fraud)".

The Commentary to § 8A1.2 captioned "Application Notes" is amended in Note 3(i) by striking "§ " before "§ 2B1.1"; and by striking "(Larceny, Embezzlement, and Other Forms of Theft), § 2F1.1 (Fraud and Deceit)" and inserting "(Theft, Property Destruction, and Fraud)".

Section 8C2.1 subsection (a) is amended by striking "2B1.3" and inserting "2B1.4"; and by striking "§§ 2F1.1, 2F1.2;";

Section 8C2.1 subsection (a) is amended by striking "2C1.6,".

Appendix A (Statutory Index) is amended in the line referenced to 15 U.S.C. § 1281 by striking "2B1.3 " and inserting "2B1.1";

in the lines referenced to 16 U.S.C. §§ 114, 117c, 123, 146, 413, and 433 by striking "2B1.3";

in the lines referenced to any of 18 U.S.C. §§ 32(a)(b), 33, 37, 43, 112(a), 970(a), 1030(a)(5), 1361, 1363, 1366, 1702, 1705, 1706, 1857, 2275, 2276, 2280, 2281, 2332a, by striking "2B1.3" and inserting "2B1.1";

in the lines referenced to any of 18 U.S.C. §§ 1852 through 1854 by striking "2B1.3";

in the line referenced to 49 U.S.C. App. § 1687(g) by striking "2B1.3" and inserting "2B1.1".

in the line referenced to 18 U.S.C. § 217 by striking "2C1.6" and inserting "2C1.2"; in the lines referenced to any of 7 U.S.C. §§ 6, 6b(A), 6b(B), 6b(C), 6c, 6h, 6o, 13(a)(2), 13(a)(3), 13(a)(4), 23, 270, 2024(b), and 2024(c) by striking "2F1.1" and inserting "2B1.1";

in the line referenced to 12 U.S.C. § 631 by striking "2F1.1" and inserting "2B1.1";

in the lines referenced to any of 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 80-b-6, 158, 645(a), 714m(a), 1644, 1681q, and 1693n(a) by striking "2F1.1" and inserting "2B1.1";

in the line referenced to 15 U.S.C. § 645(b) by striking ", 2F1.1";

in the line referenced to 15 U.S.C. § 714m(b) by striking ", 2F1.1";

in the lines referenced to any of 16 U.S.C. §§ 831t(b) and 831t(c) by striking "2F1.1" and inserting "2B1.1";

in the line referenced to 18 U.S.C. § 152 by striking "2F1.1" and inserting "2B1.1";

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in the lines referenced to any of 18 U.S.C. § 656, 657, 659, 663, 665(a), and 666(a)(1)(A), by striking ", 2F1.1";

in the lines referenced to any of 18 U.S.C. §§ 709 and 712 by striking "2F1.1" and inserting "2B1.1";
in the lines referenced to any of 18 U.S.C. §§ 911, 914, 915, 917, 1001–1007, 1010–1022 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 18 U.S.C. § 1023 by striking ", 2F1.1";
in the lines referenced to any of 18 U.S.C. §§ 1025, 1026, 1028, 1029, 1030(a)(6), 1031, 1032 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 18 U.S.C. § 1033 by striking ", 2F1.1";
in the lines referenced to any of 18 U.S.C. §§ 1035, 1341–1344, 1347, 1422, 1704, 1708, 1712, 1716C, 1720, 1728, 1919, 1920, 1923, 2072, 2073, 2197, and 2272 by striking "2F1.1" and inserting "2B1.1";
in the lines referenced to any of 18 U.S.C. §§ 2315 and 2316 by striking ", 2F1.1";
in the lines referenced to any of 19 U.S.C. §§ 1434–1436, 1919, and 2316 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 20 U.S.C. § 1097(a) by striking ", 2F1.1";
in the lines referenced to any of 20 U.S.C. §§ 1097(b) and 1097(d) by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 21 U.S.C. § 333(a)(2) by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 22 U.S.C. §§ 1980(g), 2197(n), and 4221 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 25 U.S.C. § 450d by striking ", 2F1.1";
in the line referenced to 26 U.S.C. § 7208 by striking "2F1.1" and inserting "2B1.1";
in the lines referenced to any of 26 U.S.C. §§ 7214 and 7232 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 29 U.S.C. § 1141 by striking "2F1.1" and inserting "2B1.1";
in the lines referenced to any of 38 U.S.C. §§ 787 and 3502 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 41 U.S.C. § 423(e) striking "2F1.1" and inserting "2B1.1";
in the lines referenced to any of 42 U.S.C. §§ 408, 1307(a), 1307(b), 1320a–7b, 1383(d)(2), 1383a(a), 1383a(b), 1395nn(a), 1395nn(c), 1396h(a), 1713 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 42 U.S.C. § 1760(g) by striking ", 2F1.1";
in the line referenced to 42 U.S.C. § 1761(o)(1) by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 42 U.S.C. §§ 1761(o)(2), by striking ", 2F1.1";
in the line referenced to 42 U.S.C. § 3220(a) by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 42 U.S.C. § 3220(b) by striking ", 2F1.1";
in the line referenced to 42 U.S.C. § 3426 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 42 U.S.C. § 3791 by striking ", 2F1.1";
in the line referenced to 42 U.S.C. § 3792 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 42 U.S.C. § 3795 by striking ", 2F1.1";
in the line referenced to 42 U.S.C. § 5157 by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 45 U.S.C. § 359(a) by striking "2F1.1" and inserting "2B1.1";
in the line referenced to 46 U.S.C. § 1276 by striking "2F1.1" and inserting "2B1.1";
in the lines referenced to any of 49 U.S.C. §§ 121, 11903, 14912, 16102, 80116, by striking "2F1.1" and inserting "2B1.1";
in the lines referenced to any of 7 U.S.C. § 13(d) and 13(f) by striking "2F1.2" and inserting "2B1.4";
in the line referenced to 15 U.S.C. § 78j by striking "2F1.2" and inserting "2B1.4"; and
in the line referenced to 18 U.S.C. § 1902 by striking "2F1.2" and inserting "2B1.4'.

Part III—Conditions of Probation and Supervised Release

6. Synopsis of Proposed Amendment: In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105–119, Congress amended sections 3563(a) and 3583(d) of title 18, United States Code, to add a new mandatory condition of probation for persons convicted of sex offenses. The new mandatory condition requires a person convicted of a sex offense (as described in 18 U.S.C. § 4042(c)(4)) to report that person's address and any change of residence to the probation officer supervising the case and to register as a sex offender in any State where the person resides, works, or is a student. These amendments to sections 3563(a) and 3583(d) become effective one year after November 26, 1997.

The following proposed amendment would add this new condition to the mandatory conditions of probation and supervised release listed in §§ 5B1.3 and 5D1.3.

Proposed Amendment: Subsection 5B1.3(a) is amended by adding at the end the following new subdivision:

"(9) a defendant convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student (see 18 U.S.C. § 3563(a)(8)).".

Subsection 5D1.3(a) is amended by adding at the end the following new subdivision:

"(7) a defendant convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student (see 18 U.S.C. § 3583(d)).".

Part IV—Issues for Comment

7. *Unauthorized Compensation:* As a result of enacted legislation, the maximum term of imprisonment for violations of 18 U.S.C. § 209 is now five years if the conduct is willful. Before that change, the maximum term of imprisonment for any violation of 18 U.S.C. § 209 was one year. The Commission invites comment on whether, in view of the increased maximum term of imprisonment for violations of 18 U.S.C. § 209, the guideline offense levels in § 2C1.4 (Payment or Receipt of Unauthorized Compensation) should be increased, and, if so, by what amount.

8. *Cloning of Wireless Telephones:* (A). The Wireless Telephone Protection Act, Pub. L. 105–418 (the "Act"), provides a general directive to the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements to provide an appropriate penalty for offenses involving the cloning of wireless telephones, including attempts and conspiracies. The Commission invites comment on whether and how it should amend the guidelines for offenses involving the cloning of wireless telephones, including offenses involving an attempt or conspiracy to clone a wireless telephone. See 18 U.S.C. § 1029(e)(9) (as amended by the Act).

Specifically, should the Commission amend § 2F1.1 (Fraud), the guideline to which such offenses are referenced, to provide a tailored enhancement (specific offense characteristic) if the offense, including any relevant conduct, involved the use of hardware (a "copycat box") or software which has been configured for altering or modifying a wireless telephone? If so, what should be the magnitude of such an enhancement? Should the

Commission provide a specific offense characteristic in § 2F1.1, or a cross reference to other offense guidelines, if the cloning offense facilitated, or was in connection with, another offense? If such a specific offense characteristic or a cross reference is warranted, by how many levels should the sentence for such offenders be increased?

(B). If the Commission does not adopt a comprehensive revision of the guidelines and commentary for theft, property destruction, and fraud offenses, such as the comprehensive revision set forth in the Economic Crime Package proposed in Amendment 2, above (which, in the proposed loss definition, includes a special rule for access devices and purloined numbers), should the Commission nevertheless adopt a special rule for cases involving stolen, unauthorized, or counterfeit access devices used in cloning offenses? Such a special rule could, for example, provide for a minimal loss amount of $100 in the case of each such access device.

9. *Nuclear, Chemical, and Biological Weapons:* Section 1423(a) of the Defense Authorization Act for Fiscal Year 1997 expressed the sense of Congress that the guidelines for the offenses of importation, attempted importation, exportation, and attempted exportation of nuclear, biological, and chemical weapons materials provide inadequate punishment for those offenses. Section 1423(b) of that Act urged the Commission to amend the guidelines to increase the penalties for such offenses under (1) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410); (2) sections 38 and 40 of the Arms Export Control Act (22 U.S.C. 2778 and 2780); (3) the International Economic Powers Act (50 U.S.C. 1701 et seq.); and (4) section 309(c) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 2156a(c)).

The Commission invites comment on whether, as Congress suggests, the guidelines, particularly §§ 2M5.1 (Evasion of Export Controls) and 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License) provide inadequate penalties for these offenses. If the guidelines provide inadequate punishment, how should the Commission address that inadequacy? Should the base offense level be increased? Are there specific offense characteristics that should be added to the guidelines to take into account more egregious offense conduct? Alternatively, should encouraged upward departure commentary be added to these guidelines for cases in which more egregious conduct occurs?

Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 pertains to biological weapons. It incorporates attempt and conspiracy into 18 U.S.C. § 175, which prohibits the production, stockpiling, transferring, acquiring, retaining, or possession of biological weapons. It also expands the scope of biological weapons provisions in chapter 10 of title 18 by expanding the meaning of biological agents.

Section 201 of the Chemical Weapons Convention Implementation Act of 1998 creates a new offense at 18 U.S.C. § 229. The new offense makes it unlawful for a person knowingly (1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or (2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1). The penalty, set out in 18 U.S.C. § 229A, is any term of years, or, if the death of another person results, death or life imprisonment.

The Commission also invites comment as to how the guidelines should be amended to cover these statutes. One approach could be to amend § 2M6.1 (Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities) to include conduct that violates these statutes. If the Commission were to select this approach, what changes, if any, would be appropriate to accommodate these offenses? For example, should an alternative base offense level be added in the case of biological or chemical materials, weapons, or facilities? Are there specific offense characteristics that should be added to take into account the range of likely offense conduct? Should commentary encouraging an upward (or downward) departure be added for cases in which certain atypical conduct occurs?

10. *Tax Privacy Issues:* The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, created an offense, codified at 26 U.S.C. § 7217, that makes it unlawful for the President, Vice President, anyone employed in their executive offices, or certain other high-ranking officials of the executive branch to request the Internal Revenue Service to conduct or terminate an audit or other investigation of the tax liability of any person. The maximum term of imprisonment is 5 years.

The Act also amended 26 U.S.C. § 7213, which makes it unlawful for federal and state employees and certain other persons to disclose tax return information. The Act amended § 7213 to also make it unlawful to disclose tax-related computer software. The maximum term of imprisonment for such offenses is 5 years.

The Taxpayer Browsing Protection Act, Pub. L. 105–35, created an offense, codified at 26 U.S.C. § 7213A, that makes it unlawful for federal and state employees and certain other persons to inspect tax return information in any way other than that authorized under the Internal Revenue Code. The maximum term of imprisonment for such offenses is one year.

These new provisions are similar in nature to another tax offense, codified at 26 U.S.C. § 7216, which makes it unlawful for persons who are in the business of preparing tax returns to knowingly or recklessly disclose any such information or to use any such information for any purpose other than the preparation of the tax return. The maximum term of imprisonment for such offenses is one year.

The Commission invites comment on whether and/or how the sentencing guidelines might be amended to address violations of 26 U.S.C. §§ 7213, 7213A, 7216, and 7217. One approach may be to rework the guideline pertaining to the interception of communications or eavesdropping, § 2H3.1, because arguably all of the offenses described above implicate the privacy interests of the taxpayer whose tax information was the subject of the offense. An alternative approach would be to create a new guideline dealing with the invasion of privacy with respect to the audit, inspection, or disclosure of tax information. Are there other approaches that might be appropriate to address these offenses? The Commission invites alternative suggestions with proposed offense levels.

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A cumulative list of Public Laws for the second session of the 105th Congress is in Part II of this issue of the **Federal Register**.

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

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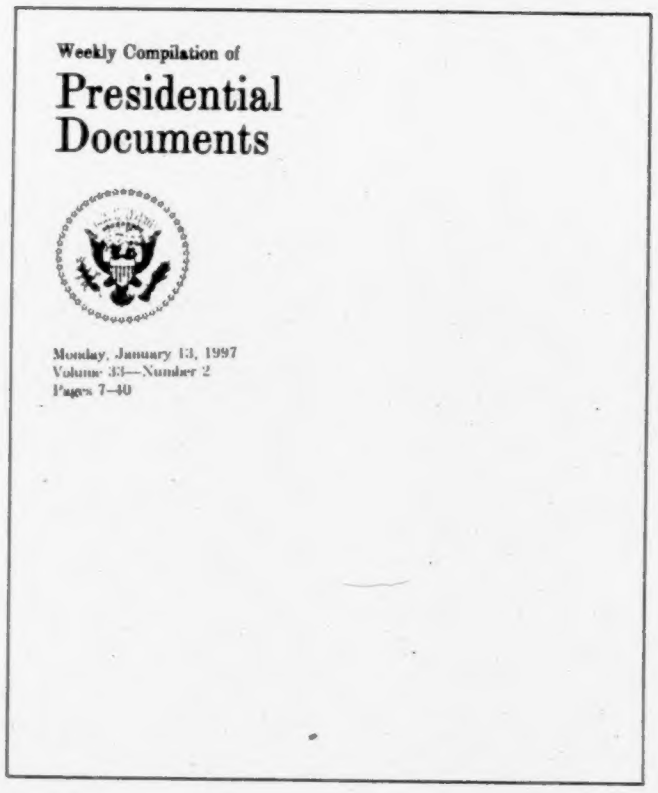

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